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CORPORATIONS—APPRAISAL STATUTES—WHAT CONSTITUTES A WRITTEN OBJECTION TO CORPORATE MERGER SCHEME—Plaintiff sent a letter to the president of a corporation, in which he held stock, revoking his proxy and stating that he would vote against a proposed merger with defendant corporation. Later, plaintiff demanded payment of the fair value of his shares pursuant to an appraisal statute which so permitted if a stockholder, dissatisfied with a merger plan, “. . . objected thereto in writing. . . .”¹ Held, the letter constituted a sufficient written objection for purposes of this statute. *Wiswell v. General Waterworks Corporation*, (Del. Ch. 1949) 66 A. (2d) 424.

The common law required that all stockholders consent to any corporate consolidation, merger, or alienation of assets, but the exigencies of modern business revealed to legislatures the need for approval of these schemes by something less than unanimous vote.² The resultant appraisal statutes have generally provided, as a protection against misguided action, that any dissenting stockholder

¹ Del. Rev. Code, 1935, c. 65, §2093, as amended by 44 Del. Laws, 1943, c. 125, §6.

² Levy, “Rights of Dissenting Shareholders to Appraisal and Payment,” 15 CORN. L. Q. 420 (1930); *Chicago Corp. v. Munds*, 20 Del. Ch. 142, 172 A. 452 (1934).

is entitled to the value of his shares if he satisfies certain conditions precedent such as objection to the proposal, voting against the plan or not voting at all, and making a demand for payment on his shares.³ While it is often said that these statutes are to be liberally construed in favor of the stockholder, in view of the deprivation of his common law safeguards, the courts have been strict when dealing with the question of whether the statutory requirements have been met.⁴ The reason for this, with respect to the necessity for a written objection, is not difficult to comprehend. This requirement was designed to protect the majority stockholders by giving them information, before final action, on how many shares they might have to purchase from dissenters. If the number was large, this might well affect their ultimate decision.⁵ An additional purpose was that the public, in acquiring the new corporate securities, should not be injured by untimely objections.⁶ Consequently, the courts have seemed to adopt, as the test of statutory compliance, the inquiry of whether or not the corporation has been given adequate notice that a future demand for payment may possibly be made.⁷ The inference to be gained from a proxy, marked as a vote against a merger, has been held not a sufficient express objection, since the dissenting stockholder might reasonably be willing to go along with the merger if adopted.⁸ While the letter in the principal case appears to be but an invalid proxy and, as such, entitled to no more consideration than if valid, the court apparently felt that the plaintiff displayed enough affirmative action to put the corporation on notice of his objection and possible future demand. This would seem to indicate that in close degree questions, the liberal rules of construction will be taken as controlling.

Daniel A. Isaacson

³ Weiner, "Payment of Dissenting Stockholders," 27 *COL. L. REV.* 547 (1927); *New Jersey & Hudson River R. Co. v. American Electrical Works*, 82 *N.J.L.* 391, 81 *A.* 989 (1911); *Anderson v. International Minerals & Chemical Corp.*, 295 *N.Y.* 343, 67 *N.E. (2d)* 573 (1946).

⁴ *In re Camden Trust Co.*, 121 *N.J.L.* 222, 1 *A. (2d)* 475 (1938); *Stephenson v. Commonwealth & Southern Corp.*, 18 *Del. Ch.* 91, 156 *A.* 215 (1931), *affd.* 19 *Del. Ch.* 447, 168 *A.* 211 (1933); 15 *FLETCHER, CYC. CORP.*, perm. ed., §7165 (1938).

⁵ "The corporation must know within a reasonably short time how many shareholders there are who insist upon being paid off so that the plan can be promptly abandoned if the drain on the corporate treasury will be too great." Lattin, "A Reappraisal of Appraisal Statutes," 38 *MICH. L. REV.* 1165 at 1183 (1940). See also *In re Universal Pictures Co.*, (*Del. Ch.* 1944) 37 *A. (2d)* 615.

⁶ *National Supply Co. v. Leland Stanford Junior University*, (*C.C.A.* 9th, 1943) 134 *F. (2d)* 689.

⁷ *Stephenson v. Commonwealth & Southern Corp.*, *supra*, note 4; *Schenck v. Salt Dome Oil Corp.*, (*Del. Ch.* 1943) 34 *A. (2d)* 249; *Friedman v. Booth Fisheries Corp.*, (*Del. Ch.* 1944) 39 *A. (2d)* 761; *Klein v. United Theaters Co.*, 148 *Ohio* 306, 74 *N.E. (2d)* 319 (1947). Most of the cases in this area involve the question of who may object, but the same policy considerations apply.

⁸ *Friedman v. Booth Fisheries Corp.*, *supra*, note 7.