

## MAJORITY SHAREHOLDERS WHO TAKE PART IN “SQUEEZE-OUTS” CAN NO LONGER COUNT PENNSYLVANIA AS THE SANCTUARY IT ONCE WAS THOUGHT TO BE

By Patrick M. Horan

Standard learning has long held that a minority shareholder of a Pennsylvania corporation who was deprived of his stock by a “cash-out” or “squeeze-out” merger had no remedy after the merger was completed other than to take what the merger gave or demand statutory appraisal and be paid the “fair value” for his shares. No other post-merger remedy, whether based in statute or common law, was thought to be available to a minority shareholder to address the actions of the majority in a “squeeze-out.” Now, after the Pennsylvania Supreme Court’s holding in *Mitchell Partners, L.P. v. Irex Corporation*, minority shareholders may pursue common law claims on the basis of fraud or fundamental unfairness against the majority shareholders that squeezed them out.

Prior to the Pennsylvania Supreme Court’s decision, the Third Circuit turned this long-standing view of Pennsylvania law on end with its *Mitchell Partners, L.P. v. Irex Corporation* opinion of late 2011. In that case, the Court held that Pennsylvania’s Business Corporation Law does not bar recovery based on common law claims following a cash-out merger. The Court reasoned that “barring [post-merger suits] would do little more than insulate alleged tortfeasors from responsibility for their conduct.” After a motion for rehearing from the defendants, and some added pressure from the Governor of Pennsylvania in the form

of an amicus brief, the Third Circuit granted rehearing and certified the question at hand to the Pennsylvania Supreme Court. The specific inquiry was “Does 15 Pa. [C. S.] §1105, providing for appraisal of the value of the shares of minority shareholders who are “squeezed out” in a cash-out merger[,] preclude all other post-merger remedies including claims of fraud, breach of fiduciary duty, and other common law claims?”

The Pennsylvania Supreme Court granted the requested certification of the question. Following oral argument, the Supreme Court issued an opinion which agreed with much of the reasoning of the Third Circuit while limiting the extent of its original holding. The Supreme Court held that there are remedies available to a minority shareholder in Pennsylvania after the merger in the event of fraud or fundamental unfairness. The opinion, along with the concurrence, was careful to point out that this exception to the rule of exclusivity should not be invoked lightly. The exception does not allow a minority shareholder to pursue a common law claim based solely on the nature of the squeeze-out or on an allegation that the majority inadequately compensated the minority for its shares.

This change moves the law of the Commonwealth of Pennsylvania closer to that of the State

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of Delaware which, like many other jurisdictions across the United States, allows for post-merger remedies other than appraisal rights. Those considering pursuing a cash-out merger must now address the potential of post-merger claims in every stage of planning. Schnader's Corporate and Finance Practice Group, along with Schnader's Litigation Department, have extensive experience addressing such issues. Should your circumstances require counsel to plan or react to a squeeze-out merger, Schnader attorneys are here to help. ♦

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