

Critical Legal Cases for Chapter 38

38.2 Dissenting Shareholder Appraisal Rights: No, John Bershada may not obtain dissenting shareholder appraisal rights. To obtain appraisal rights, a dissenting shareholder must (1) file a written objection to the merger prior to the vote of shareholders, (2) not vote in favor of the proposed merger, and (3) make a written demand for payment of his shares. Failure to comply with these statutory procedures results in loss of appraisal rights.

In this case, Bershada failed to comply with the statutory requirements. He failed to make a written objection to the merger prior to the vote of shareholders, he tendered his shares for the merger and received payment for his shares, and he failed to make a written demand for payment of his shares. The court held that since Bershada did not meet the statutory procedure, he did not qualify to bring an action to recover dissenting shareholder appraisal rights or any other remedy. *Bershada v. Curtiss-Wright Corporation*, 535 A.2d 840, **Web** 1987 Del. Lexis 1313 (Supreme Court of Delaware).

38.3 Tender Offer: Mobil Corporation wins. The court held that Marathon Oil Company had violated Section 14(e) of the Williams Act. Section 14(e) prohibits fraudulent, deceptive, and manipulative practices in connection with tender offers. The court held that both the stock option and Yates Field option that Marathon granted to U.S. Steel was a fraudulent, deceptive, and manipulative practice in violation of Section 14(e).

First, the stock option was fraudulent in that it gave U.S. Steel the right to purchase 30 million shares of Marathon common stock for \$90 per share. This was fraudulent because it was below the fair market value of the stock, which was currently around \$125 per share. This stock option violated Section 14(e) because it subsidized U.S. Steel's purchase of Marathon. No other suitor, particularly Mobil, was given this same right.

Second, the Yates Field option which gave U.S. Steel the irrevocable right to purchase Marathon's interest in Yates Field for \$2.8 billion if a third party gained control of Marathon violated Section 14(e). This was because the fair market value of Marathon's interest in the Yates Field was worth up to \$3.6 billion. This is called selling the "crown jewel" because Marathon was selling one of the most important assets that attracted Mobil to make the tender offer for Marathon's share in the first place.

The court held that both the stock option and Yates Field option granted by Marathon to U.S. Steel violated Section 14(e) of the Williams Act. The court ordered that U.S. Steel's \$125 per share offer be kept open for a reasonable time but free of the inhibiting and unlawful impact of these two options. Note: U.S. Steel acquired Marathon Oil through a tender offer and follow-up merger. *Mobil Corporation v. Marathon Oil Company*, 669 F.2d 366, **Web** 1981 U.S. App. Lexis 14958 (United States Court of Appeals for the Sixth Circuit).

38.4 State Antitakeover Statute: The court held that Wisconsin's antitakeover statute was lawful and did not conflict with the federal Williams Act or violate the Commerce Clause of the U.S. Constitution. The Court of Appeals reached this decision by applying the reasoning used by the U.S. Supreme Court in upholding a state antitakeover statute in *CTS Corporation v. Dynamics Corporation of America*, 481 U.S. 69, 107 S. Ct. 1637 (1987).

The court in the present case held that the Williams Act regulates the process of tender offers, i.e., timing, disclosures, proration, best price rule, and such. None of these provisions are violated by the Wisconsin act; it does not alter any of the procedures governed by federal regulation. The court also held that the Wisconsin act does not unduly burden interstate commerce. It is an accepted part of the business landscape in this country for states to create corporations, prescribe their powers, and regulate their internal affairs. Wisconsin has done no more than that in this case. The court held that the Wisconsin antitakeover statute did not conflict with the Williams Act or violate the Commerce Clause of the U.S. Constitution. *Amanda Acquisition Corporation v. Universal Foods*, 877 F.2d 496, **Web** 1989 U.S. App. Lexis 9024 (United States Court of Appeals for the Seventh Circuit).