

Squeeze-out, Freeze-out, and Discounts: Why Is Illinois in the Minority in Protecting Shareholder Interests?

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Article Abstract:

As contrasted with Delaware, Illinois generally has been considered a pro-shareholder state. The Illinois business corporation act was the model for the original Model Business Corporation Act. In addition, Illinois has been a leading jurisdiction in protecting minority interests and in developing the concept of fiduciary obligations. Consequently, it is paradoxical that Illinois courts frequently have accepted the imposition of minority and marketability (liquidity) discounts in "fair value" proceedings, such as those involving oppressive conduct or squeeze out mergers.

This article critiques the various rationales Illinois courts have utilized in accepting minority discounts and demonstrates that such discounts reward to those in control, often for their wrongful conduct, by transferring value from the minority shareholders to the majority shareholders. It reviews the history of minority discounts in which courts across the country now almost uniformly reject such discounts and argues that Illinois, by case law or legislation, should follow the lead of other jurisdictions. It includes an appendix which summarizes the positions taken in every jurisdiction which has considered these issues.