

Client Alert

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Parties to a Dissenting Shareholder Valuation Proceeding Are Not Entitled to a Jury Trial

Under the Texas Business Organizations Code, shareholders in certain situations are entitled to dissent to specific corporate actions, including a merger, and obtain a valuation of their shares by a Texas court. More specifically, pursuant to Tex. Bus. & Org. Code § 10.361, the dissenting shareholders and the corporation may file “a petition requesting a finding and determination of the fair value of the owner’s ownership interests” Among other things, the statute requires the court to appoint one or more qualified appraisers to reach a conclusion as to fair value and file a report with the court. Both the corporation and dissenting shareholders are entitled to object to the appraiser’s conclusion. Section 10.364 provides that, if an objection is raised, “the court shall hold a hearing to determine the fair value of the ownership interest that is the subject of the report.” The statute is silent as to whether a judge or a jury should determine value. In a case of first impression, *Kruse v. Henderson Texas Bancshares, Inc.*, ___ S.W.3d ___, 2019 WL 4125966 (Tex. App. – Tyler Aug. 30, 2019, no pet. h.), the court held that the parties to a judicial valuation proceeding are not entitled to a jury trial.

In *Kruse*, two shareholders of Prosper Bancshares, Inc., objected to a merger between Prosper and Henderson Texas Bancshares, Inc., claiming that the fair value of their shares was \$1.82 per share. After the court-appointed independent appraiser determined that the fair value was \$0.96 per share, the shareholders objected and demanded that a jury determine fair value. The trial court denied the shareholders’ jury demand. After a hearing at which the court heard testimony from expert witnesses, including the court-appointed appraiser, the court agreed with the appraiser and entered judgment finding that the fair value of the shares was \$0.96 per share. The shareholders appealed to the Court of Appeals at Tyler, Texas. On August 30, 2019, the Court of Appeals held that the shareholders were not entitled to a jury trial, and it affirmed the trial court’s fair value determination.

The shareholders argued that they were entitled to a jury trial under the statute and two provisions of the Texas Constitution—Article I, Section 15, commonly referred to as the Bill of Rights Article, and Article V, Section 10, commonly referred to as the Judiciary Article. With respect to the shareholders’ statutory argument, the court noted that Section 10.361 requires a “hearing,” not a trial, and it requires the “court,” not a jury, to determine fair value. Concluding that the Texas Legislature’s intent as expressed in the statute was unambiguous, the court concluded that the shareholders were not entitled to a jury trial under the statute.

With respect to the Bill of Rights Article, the court recognized that the provision guarantees a jury trial only in actions or analogous actions that were tried to a jury when the Constitution was adopted in 1876. Because dissenting shareholder proceedings did not exist in 1876, the court held that the Bill of Rights Article did not guarantee the shareholders a jury trial.

The Judiciary Article guarantees a jury trial “[i]n the trial of all causes” in a Texas district court, but the court, consistent with prior rulings of other Texas courts, noted that not all adversary proceedings are “causes” within the meaning of the provision. Historically, Texas courts have identified “special proceedings,” such as proceedings before an administrative board, contested elections, family violence protective orders and child custody habeas corpus proceedings, are not “causes” under the Constitution for which the parties are entitled to a jury. The court held that dissenting shareholder proceedings also are

special proceedings created and controlled by statute, and therefore are not “causes” under the Texas Constitution.

The court's ruling is significant for both corporations and dissenting shareholders. Without a jury trial, a judicial valuation can be obtained more quickly and at less expense to the benefit of all parties. Further, because of the highly technical nature of valuing shares, judges often are more qualified than juries to determine fair value. The ruling also brings Texas in line with the holdings of courts in other states that have reached the same conclusion under those states' statutes and constitutions.

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