An Interview with Artie Regan of Regan & Associates, Inc.

"King of the Community Proxy Fight"

Required reading, we advise, if you are a smallish or mid-cap company.

Q: In the interest of full disclosure, it should probably be noted up front that the interviewer has worked along side you - as the Inspector of Election in roughly a dozen proxy fights over the last few years. Can you give us a quick bit of background about yourself and your firm?

Regan: I started in the proxy solicitation business in 1982, with Morrow & Co., where I was involved in two of the biggest proxy fights of all times: the Sam Heyman-GAF and Icahn-Texaco fights. I started my own firm in 1988, so I have over 25 years in the business, 22 of them with my own firm.

Q: What are some of the common threads you see in the typical proxy fight?

Regan: This is an especially timely question to ask, for several reasons: First, the vast majority of the proxy fights that occur each year occur at small to mid-sized companies that are mostly located in smallish to mid-sized communities. Second, as you well know, the number of "Community-Oriented Proxy Fights", as I've come to call them, has been going up steadily, each and every year. Third, and most important for your readers to know, perhaps, these fights almost always take the corporate management team by surprise: The top managers and their usual advisors have never experienced such a unique and "energizing" event and are almost always totally unprepared for the incredible efforts that must be made if the management team is to walk away the winner. And last, but far from least, if the SEC's stated plan to have Proxy Access provisions defined in 2010 and in place by the 2011 proxy season goes through, small and mid-sized companies will be more vulnerable to proxy fights than ever.

Q: Why is it that smaller and mid-sized "community-oriented companies" are especially vulnerable here?

Regan: Most community-oriented fights have a large number of things in common. Typically, the company has quite a long history in the community where most of its shareholders and customers tend to be. Typically, the company has been a "pillar of the community" - a very good corporate citizen, with a, solid customer base and a pretty solid performance record too. Typically, a high percentage of the shares are held by very long-term owners, which is a good thing. But, the fact that the stock price tends not to move very much, coupled with the typically conservative business plans that such companies generally have, often make the stock look like an "underperformer" versus other companies in the same industry. And this attracts the eyes of more venturesome investors, who know that a proxy fight – whether it's via a proposal to insert new directors and oust others, or simply to "study strategic alternatives" almost always makes the stock price jump.

Q: Any other common factors you note in community-oriented fights?

Regan: Yes, there are quite a few more: Often there is, or has been a merger somewhere in the picture. The very idea of a merger tends to polarize the community - particularly if the community stands to lose jobs - or worse - the main headquarters. A very common phenomenon, and one that usually generates a real horse-race, is where a former Chairman or CEO tries to block the merger of his or her old firm.

Another very common thread is where the former CEO, a former CFO, or a former Director who lost his or her seat in a merger tries to stage a comeback. Often, they can make a fairly compelling case – or simply round up enough of their friends and family members to bet with them – that they can do it better than the incumbents.

Another surprisingly common thread involves a company founder who acquires one or more smaller companies, thinking to groom a successor – only to discover that he's handed over

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the reins to a "rogue CEO" – who suddenly moves to oust the founder entirely. This always makes for quite a brawl.

Family feuds are another very common cause of "community proxy fights". One of the first small-company fights I did – in North Tonowanda, New York – involved a son's fight to oust his father as Chairman. Sometimes, there's a falling out among first or second cousins – some of whom want to keep the "family firm" while the other branch wants cash from a quick sale or a merger-driven uptick in the stock price. We see this in big-company fights too, of course, like at the Wall Street Journal not so long ago. A recent fight we were involved in pitted a very popular community-bank CEO -who wanted to arrange a merger with a neighboring bank - against his long-term mentor, who owned another bank that may well have been disadvantaged by the deal.

This brings up another common factor: regardless of who the combatants are, such fights almost always get intensely "personal" in smaller communities, since everybody knows everybody. Often, there tends to be more than the usual amount of gossip, some outright mudslinging, and a lot of back-room dealing. One proxy fight I was involved in a few years back, at a small - town company called Poland Molecular, was written up by the local press as being about "sex, lies and videotape" thanks to some particularly creative and colorful combatants. At another meeting, where the margin was less than a quarter of one percent, a shareholder stood up and offered to switch his vote – for the right consideration. Fortunately for my client, that did not go over well in that mid-sized southern community, I suspect that nobody sits next to him in church anymore.

Q: Are their some industries that are particularly vulnerable to proxy fights?

Regan: Community Banks, Thrifts, S&Ls and Commercial Banks are among the most vulnerable industries. I've been involved in over 50 proxy fights in this industry alone. In part, it's because there are so many of them; over 8,000 in fact, according to the November FDIC survey. There has been a steady movement toward "consolidation" in the industry, and there are often compelling potential rewards due to economies of scale. And just by the law of averages, half of them can be spun as "underperformers" . But Community Banks actually have a very good chance of fending off "bear hugs". Why? Because they *are* Community Banks – where loyalty counts for a lot.

Another big industry for Community-Oriented proxy fights is the REIT industry, because so many of them are oriented around a specific geographic area, industry segment or some other "community of interest". Smallish high-tech firms are often singled out for attack by investors who think they can quickly put them in the "fast lane". And never forget those older, conservatively run firms, in relatively low-tech manufacturing or service businesses – which can be suddenly "discovered" by folks who want to move the company into a faster track.

Q: OK; You've forewarned some of the most vulnerable kinds of companies. What do you suggest they do if suddenly someone comes knocking on the door?

Regan: The two most important things to recognize are (1) that you need to react immediately and (2) that you will need expert help if you want to be sure to win. In my experience, if there is a professional proxy-fight expert on one side only, that team will win by a 20-25% margin. This is good news for you if the fight has been launched by amateurs, as many are. But *serious* launchers of proxy fights will always have an experienced team in place. Meanwhile, the executives at most targeted companies have never dealt with a proxy fight - and often, their key legal advisors haven't done so either. So if you are the target, and you don't have an expert team in place, you can be in very deep trouble. Perhaps the worst outcome for a management team is where they've rounded up enough votes to win, only to discover that because of "technical deficiencies" in their proxies, they do not have enough *valid* votes to win, after the expert fighters challenge the results.

Q: Any other tips to offer readers? Some important "dos and don'ts"?

Regan: The number-one mistake I see companies make in the early going – and a mistake their legal and PR advisors sometimes make too – is to play their cards too close to the vest where their proxy solicitor is concerned. Treating the solicitor as a "delivery boy" or a mere "proxy chaser" can be a fatal mistake. I try to make that clear from the get-go.

Q: Are there any important differences between large-company proxy fights and "community-oriented" fights?

Regan: Absolutely. In community-oriented fights you're not dealing so much with money-managers and hedge-fund operators as you are with gas station owners, customers, employees, retirees and fellow community members. They think and act in an entirely different manner. Your strategies, tactics – and particularly your communications strategies – need to be entirely different. Most of these fights are not purely money-driven. Here's where a firm like mine will really excel: We have plenty of Wall-Street experience – and lots of Park Avenue and Madison Avenue experience too. But we don't try to bring a Park Avenue approach to a community-oriented fight – and we don't come with Madison or Park Avenue prices either.

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