

# The Persuaders: Choosing a Proxy Solicitor

IN A CRISIS, THE CHOICE OF A COMPANY'S PROXY SOLICITOR MAY DETERMINE THE SUCCESS OR FAILURE OF A PROPOSAL AT AN AGM. *DAVE LAKE* IDENTIFIES THE KEY QUESTIONS THEY SHOULD BE ASKING

**W**ith the high-rolling takeover binge of the last decade now regarded as a purged nightmare for many managers in the corporate community, what is a raider in a tight money era to do? In the struggle to restructure corporate America, raiders have decided to go after the board of directors rather than trying to control company stock. The point men in this latest ploy are the proxy solicitors, not the investment bankers. Yet America's top proxy SWAT teams are just as apt to protect as attack, their mercenary allegiance tied to the most tempting fee.

For the biggest public companies, the ability to choose a proxy ally when billions of dollars are on the line is crucial. Despite signs of pension fund activists burying the hatchet in a new economic order, a sluggish US economy is once again set to prompt shareholder discontent over the performance issue. Corporate predators are now gearing up for the 1992 season.

1991 witnessed bluechips like AT&T,

NCR, Lockheed and Avon going at it in hardball proxy wars. In one of the most protracted battles, dissident shareholder Harold Simmons finally threw in the towel after a two year fight with Lockheed; Chartwell Associates wound up with a modest profit and two directors on the Avon board.

Taking a smaller cut than lawyers or investment bankers, proxy solicitors are the unsung heroes of M&A contests and will figure prominently in the frugal capital market environment of the 1990s.

According to John Gavin, president of New York-based proxy firm DF King & Co, the key is understanding and interacting with institutions. 'Over 50 per cent of all US equities are owned by institutions, and their major concern is corporate governance', says Gavin. 'Institutional investors need a different kind of contact from individuals, and companies need a proxy solicitor who can guide them in understanding what institutions have on their minds. The ability to dialogue with institutions is of the



*John Gavin of DF King: 'Institutional investors need a different kind of contact from individuals'.*

greatest value', he says.

Artie Regan is president of New York-based Regan & Associates, a new proxy firm that mostly represents the banking industry (see box, Artie's Army). He says that after the company, its bankers and lawyers have washed their hands of the transaction, the solicitor ends up with some 70 per cent of the work: 'US proxy guys ultimately decide whether a tender offer or proxy fight is successful. In the end, all the blame may be with us, but precious little glory.'

## Regular Fare

Yet proxy solicitors are not only indispensable in crisis situations. The very foundation of the business is their ability to make sure the annual meeting takes place without a hitch. A proxy firm ensures a quorum at annual meetings, lobbies for votes on management or stockholder proposals, and serves as an agent in corporate disputes.

Many solicitors have expanded their primary role as vote gatherers by adding stock watch departments. These allow them to ferret out holdings at the earliest possible moment and warn clients of sneak attacks. A few industrious firms also offer an all-round investor relations service, including public relations and strategic advice.

The leading proxy heavyweights are DF King and Georgeson, each with a well-oiled

machine servicing over 500 clients. On their heels are firms like Morrow & Co, Kissel-Blake, and Dewe Rogerson.

But it is hard to determine who leads the pack in terms of quality. Several firms publish statistics on success rates in full-blown fights, and each usually looks good in its own data. 'When you analyse a proxy record, you must look beyond raw numbers to understand the obstacles faced,' says John Wilcox, vice chairman of Georgeson. 'Morrow, for example, claims a high win/loss record, but all their wins involved thrifts where they worked for management.'

A study by Georgeson on proxy contests from October 1984 to September 1990 shows the top six solicitors (now five with the disappearance of The Carter Organization) handled 90 per cent of all assignments. In this study, the overall scores show Georgeson on top with 49 per cent, then DF King with 45 per cent, Carter (42 per cent), Morrow (35 per cent), Kissel-Blake (25 per cent) and Dewe Rogerson, winning just 17 per cent of the time. Meanwhile, DF King's win/loss score for the 1991 season show its own score to be at least twice as good as the Georgeson figure.

As for the fees, a routine proxy distribution and collection may bring in less than \$10,000 a season; a small contest around \$50,000. But a fight like Lockheed's -

employing all the resources in a proxy firm's arsenal - can run into the millions.

'The annual meeting business is high volume and low margin,' says Wilcox. 'The 30 or 40 proxy fights which come yearly are gravy.' Kissel-Blake president William Willis concurs: 'The name of the game is to get as many clients as you can on a routine basis because sooner or later somebody will wind up in a proxy fight.'

## The Choice

Before selecting a solicitor, clients must define the nature of the services they require. To the extent that solicitation means chasing down proxies to ensure a quorum for routine meetings, a solicitor may not even be necessary. Many use a transfer agent or simply do the work in-house.

But in a volatile climate, many companies feel that they need all the optional extras. 'Investors make the ultimate decision for management or dissidents, but having a good solicitor is like having a pinch hitter on your team,' says Dewe Rogerson's Dan Burch. 'Many firms pick one because if they get in trouble they want the best on side. The difference between a good solicitor and one that does the job for \$7000 is that the good one anticipates problems.'

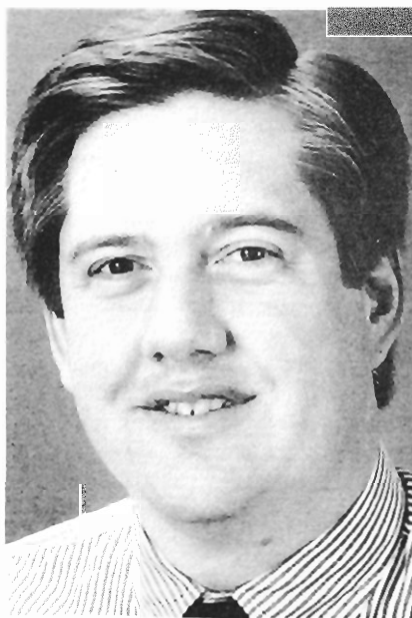
While most firms review solicitors yearly, as long as the solicitor consistently



John Wilcox of Georgeson & Co Inc: 'The 30 or 40 proxy fights each year are gravy'.



Bill Willis of Kissel-Blake: 'Prospective clients want a solicitor with a drive to come in for the kill'.



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# Artie's Army

The proxy industry suffered a setback after the Don Carter affair. Known as the raider's solicitor, Carter over-billed his clients and served time in prison for fraud. These revelations helped spark a softening of proxy fees while prompting many corporations to investigate smaller firms, which often claim to be more nimble than their larger counterparts. One of these fiery smaller operators is led by the colourful and brutally honest Artie Regan (pictured).

'This is an industry where ethics are not all that common,' says Regan. 'In this mercenary business you don't claim to be a saint because you'd be laughed out of the room. I'm a thief because I'm in a den of thieves. You cannot be a professional solicitor in the US and be perfectly above the law. Each firm violates, bends or manipulates rules. That is, for better or worse, the name of the game.'

Some of the greatest transgressions take place in the shark watch business, where it is common to have moles in various companies: 'The shroud is being pierced all the time' says Regan. 'To a dangerous degree there is a world of almost perfect information if you know how to get it. In the end, the King people may have been better to start off the conversation with Bear Stearns by saying, "I have four tickets to the Garden and, by the way, could you tell me who your clients are for XYZ corporation?"'

Regan launched his own firm after leaving Morrow & Co in 1988. 'In our industry, you set up your own shop,' says Regan. 'If you are not that good, you work for somebody else.' Regan is a proponent of the 'small is better' philosophy, and plans to limit client numbers to a maximum of 125. In an industry where response time is crucial, Regan believes that large firms are cumbersome. 'With some representing over 500 clients, how much time can they focus on you in the

busy season?' he asks. 'There are growing numbers of firms my size devoting the necessary personal treatment to clients'.

'Many hire Morrow because they want Joe Morrow's experience and wisdom, but they often end up getting a young graduate with a year in the industry while paying a big league fee,' says Regan. 'When I was at Morrow, I had to charge Chicago and Northwestern Transportation \$100,000 for a fight I knew was a walk. The client felt raped because it was saddled for a fight fee in what was a routine situation.'

To succeed, Regan must surmount the incestuous forces of the Street. He points out that too often a proxy solicitor is chosen at the recommendation of a lawyer without investigation. During these tight money times, Regan routinely bases fees on performance. 'If we don't get you what you want, you

don't pay a dime. All in all, there is too little shopping. Georgeson, King and Morrow have longstanding relations with law firms who refer to them as a matter of policy. If corporations shopped around, lots of money could be saved.'

That is the view of Artie Regan. DF King's Gavin retorts, 'Guys that say they want to stay small would be bigger if they could. Larger firms do an excellent job and that's why they have the client base. Unless you are larger, it's hard to develop edges in technology and experience.' Georgeson's Wilcox adds, 'Smaller firms don't have our clout. We are conscious of the inner workings of brokers and banks and our operation is designed to dovetail with theirs. A well-organised, high-volume business does the trick. It is not a commodity service.'

by Jeff Cossette



Artie Regan: 'colourful and brutally honest'.

achieves high quorums with a minimum of aggravation, loyalty is high. According to Rhoda Andrews, AT&T district manager for shareholder relations, one evaluates solicitors based on accuracy, timeliness, and staying current within the industry: 'If the relationship stays on track, you do not generally go looking for someone else. When

the banks and brokers get material late and call to complain, that is a good way to determine if your solicitor is doing the job.'

Pamela Craven, the assistant general council at NCR, looks for certain sense of security in her proxy solicitor relations: 'We want an accurate forecast of whether a charter amendment will be accepted or reject-

ed. We do not want to fall flat on our face, and we expect the solicitor to identify beneficial owners and predict how they will vote. If we see we are down on votes we can call key people and persuade them to vote as the board of directors recommends.'

NCR enjoyed a good relationship with Georgeson until outside council advising

on charter amendments suggested using a proxy firm they were dealing with. 'The mechanics of the proxy process are unbelievably complex with many layers of banks, brokers, custodians and a cumbersome tabulation system,' says Craven. 'The new firm did a reasonable job the first year, but in the next they were involved in a number of difficult solicitations and we ended up having one of the lowest quorums ever. We were relegated to a delightful young man who just couldn't handle the work.' Craven went back to Georgeson.

### The Protection Racket

Though the choice of a proxy solicitor is based on select criteria and can make the difference between management keeping or losing control, it is interesting to note that not choosing a solicitor can be equally important. The industry is small and only a handful of companies can properly run a contest. For firms faced with major proxy challenges, the trend is to buy all the big guns on Wall Street.

The idea is that if a solicitor works for you, it will not work against you, and solicitors rack up substantial revenues on protection retainers. This point was illustrated in Avon's fight with Chartwell, when management hired three solicitors. 'If you are an Avon,' notes Willis, 'you may want to hire potential adversarial solicitors to take them out of the picture. You are paying insurance by taking the talent available to work against you and putting it on payroll.'

Craven knows the drill well. Several years ago, when rumours were flying that Unysis would attempt a takeover, Craven was surprised to get a call from a solicitor: 'I said we already had a firm. They said fine, but if we paid a \$10,000 retainer they would promise not to represent another firm against us. I told them that they were flattering themselves in thinking they were such a threat that we would pay them protection money.'

### In the Trenches

As in any service business, it is the quality and dedication of personnel that are paramount. 'This business is hard work,' says Willis. 'You must be certain your people are motivated when you are talking about a fight that may be 24 hours a day for 30 days. An employee making \$15,000 a year won't care. When it is all over what can he say?

That he was in 92 proxy fights, but never home on weekends, his wife hates him, and the kids are strangers. Show me a guy making a nominal salary and I will show you a guy I do not want on my team. Prospective clients want a solicitor with a drive to come in for the kill.'

Employees are so important because of the aggressive data gathering process. The golden fleece for any firm is the ability to look beyond the veil of the 70 per cent of publicly traded shares held by banks and brokers in street name to identify the beneficial holders. While sophisticated technology is a solution, information gathered

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from gossip on the street is key. Getting through to the decision maker and making sure that votes are tallied is where mastery of back offices makes or breaks a solicitor.

Once the shroud is penetrated, the identified investors must still be convinced. The 'fight letter' is the opening salvo. SEC regulations demand that each shareholder get roughly the same package of propaganda. The proxy statement is a legal document and looks like one, but the fight letter is often written to grab the eye. 'You don't get a PR firm to write your fight letter,' advises Willis. 'It is a unique correspondence. In a brief letter you must convey the idea that the other side is not worthy of a vote and stress what a great guy you are. You must paint the opposition black.'

The most effective method to get shareholders to vote is by phone. While stock

watch departments focus on large blocks, callers manning banks of phones get the message out to smaller holders. 'People still perceive proxy material as basic junk mail,' says Paul Torre, who handles solicitations for the mutual fund industry for Shareholder Communication Corporation. 'In the mutual fund business, many investors buy as a savings type instrument, and do not realise they have a vote. Due to the fear of redemptions, we are experts in the soft sell approach when we solicit these individual investors.'

### Breaking the Street

It is amazing what kind of information can be given over the phone, and winning in that business is not always accomplished by acting on the up and up. In late August, Wall Street broker Bear Stearns sued DF King, accusing King employees of tricking low level staff to rattle off confidential information about client names and stock trading over the phone. In the end, Bear Stearns and King reached a settlement while one young King employee got his walking papers.

'Once you get past the mechanics of soliciting proxies, you must crack the names behind Street positions. You can have Perry Mason as your lawyer and Hemingway as your copywriter, but you still must get voters. If you can identify holders then you have an edge,' says Willis. 'Getting to know who owns securities is a vital product, but there are ways of finding out without having to sink to the depths. Few in the industry believe the King managers did not know about the sham.'

If you want a voter turn-out you throw money at it, but you have to be careful how you get the vote in, according to Marty Shea of the Paramount Communications corporate secretary department: 'Each solicitor has adequate resources, but the approach is key', says Shea. 'You can upset higher-level people in some institutions unless you know who they are and the relationship they have with the company. If we get word that our friends are being pestered that's the end of the relationship. That kind of sensitivity is the difference between solicitors.'

Offering practical advice, Shea states that mailing and tabulation agents for the brokers and banks are another way of evaluating solicitors: 'They wink and blink and through body language you can tell who are good solicitors in their view.' □