

cerned, it was urged to this committee that these were small companies, they would never grow very large.

The Congress therefore felt that certain elementary safeguards should be put into the statute, and these were to provide in certain situations that a minority of the board would be unaffiliated and in others a majority, and that the unaffiliated directors would have the job of approving the contract. They also provided for shareholder ratification.

What I am trying to say is that if you didn't have these requirements, the courts might have been able to deal with these problems under the same rules against overreaching that apply with respect to ordinary corporations. But because of those things, the courts have said that those rules shall not apply. The plaintiff must prove corporate waste, and that is the end of the world, so to speak.

Mr. STUCKEY. So he can do this.

Mr. COHEN. Sorry?

Mr. STUCKEY. So he can do this. So an average stockholder can do this, right, through the vote.

Mr. COHEN. He has to carry the burden of proof, and no stockholder has been able to do that.

Mr. STUCKEY. And this is what I—

Mr. COHEN. Even though in 50 cases this was brought in issue.

Mr. STUCKEY. All of these people that we refer to, and I will be quite honest with you, I have heard no public outcry from them. You haven't seen that many cases, and I am sure if this was this much of a gross excess, of excessively excessive wrong with it, we would have heard this public outcry because people simply do not like to be taken advantage of.

Personally I agree with what you said up to and including the 1940 act. I think it has worked quite well. It does give them legal means if they have a group or if they are being mistreated.

Mr. COHEN. I don't know if you are agreeing with what I said, but I understand your point, Mr. Stuckey.

Now so far as the public outcry is concerned, there are a number of answers to that. I don't know about your mail, but mine has been very substantial. And I think that there have been other things that have been in the public print which deal with this particular problem. But I don't think you measure this by the numbers of people, some of them small, modest people who have jobs, that go about their own business, by counting the letters that they write. Even if you did that, I have got a lot of letters. That is not the point. The basic point is that the Congress created a structure here. The Federal Government is responsible for it. It has produced the result which the Commission, after studying this matter very, very carefully over a long period of time, has found to be unfair to the shareholders, and all we are suggesting here is not any radical change of the laws, not any new radical statute, but a minor, a relatively minor, adjustment of the existing statute to take care of a problem which it was urged on the Congress would not arise in 1940. It has now arisen.

Mr. STUCKEY. How can you say that it would not put them out of the business in this situation?

Mr. COHEN. We wouldn't put any mutual fund out of a business and I don't know how you arrive at the conclusion that you would put half of the businesses out of business. I just don't get it.