SMU Law Review

Volume 1 | Issue 2 Article 10

1947

Reduction of Capital Stock - Disposal of the Resulting Surplus

Gordon R. Carpenter

REDUCTION OF CAPITAL STOCK—DISPOSAL OF THE RESULTING SURPLUS

THE reduction of capital stock was a comparatively unused corporate device in the early period of corporate development[1] which began in the United States about one hundred years ago. At first, both in the United states as well as in England, a reduction of capital stock either was not allowed at all[2] or there was required to effect it some specific permission of the legislature.[3] However, as stock reduction came into more frequent use, it became apparent that the early doctrines were too stringent to be practical. As a consequence, both in England and the United States, statutes were passed permitting reduction and providing the methods of effecting it. The courts of both countries now rather consistently maintain that once statutory methods of reduction have been prescribed they are not directory but are mandatory and exclusive.[4] Unfortunately, however, the procedure to be followed to accomplish this statutory act has not always been clear.[5]

---

[1] Note (1934) 47 HARV. L. REV. 693.

[2] Sutherland v. Olcott, 95 N. Y. 93 (1834) (where charter fixed amount of stock and provided for increase by vote of directors but did not provide for reduction, authority to reduce could not be implied); see also Smith v. Goldsworthy, 4 Q. B. 430, 114 Eng. Rep. 960 (1843)

[3] "In this commonwealth the source and origin of such power is the legislature, and corporations are to exercise no authority, except what is given by express terms or by necessary implication of that body—if credited with a fund limited by the act, it cannot enlarge or diminish that fund, but by a license from the legislature." See Salem Mill Dam Corporation v. Ropes, 6 Pick. 23, 32 (Mass. 1827).

[4] Gade v. Forest Glenn Brick & Tile Co., 165 Ill. 367, 46 N. E. 286 (1896); Ferris v. Ludlow, 7 Ind. 517 (1856); Moses v. Ocoee Bank, 1 Lea 398 (Tenn. 1878); see Dominguez Land Corp. v. Daugherty, 196 Cal. 453, 238 Pac. 697 (1925), 44 A.L.R. 1, 11 (1925).

[5] See 1 DODD AND BAKER, CASES ON BUSINESS ASSOCIATIONS (1940) 1244; Security National Bank v. Crystal Ice & Fuel Co., 145 Kan. 899, 67 P. (2d) 527 (1937) (under such a statute it was proper for shareholders to vote to reduce the capital and to effectuate such reduction by the purchase of shares owned by a bank); Germann v. Farmers Tobacco Warehouse Co., 260 Ky. 249, 84 S. W. (2d) 82 (1935) (purchase by a corporation of the shares owned by certain shareholders, followed by a shareholders' resolution to cancel the shares and thereby reduce the capital, held proper where statute provided for reduction by vote of the shareholders, despite the fact that the statute did not provide how reduction should be effected and that another section of the statute forbade

In the boom period prior to 1929, sky-rocketing increases of capital stock were the order of the day; but in the recession that followed the reduction of capital stock gained favor as a means of either eliminating or reducing—on the corporate books—deficits piled up during the depression.[6] It has later come to be recognized that this expedient may be utilized when assets are greater than can profitably be used in the corporate business, or when the stockholders wish to withdraw part of their investment without a total dissolution.[7] The Texas statutes even suggest that a reduction might be desired to avoid a forfeiture of the charter for a failure to pay unpaid subscriptions within the statutory period.[8]

The states tend to have rather uniform statutory requirements relating to the reduction of capital stock.[9] In general there must be a corporate act; the reduction shall not be made unless the assets of the corporation remaining after such reduction are sufficient to pay any debts; and there shall be filed with a designated public official a certificate stating the above facts. The Texas statutes and those of a few other states make additional requirements.[10] In a

corporations to purchase their own shares); Haggard v. Lexington Utilities Co., 260 Ky. 261, 84 S. W. (2d) 84 (1935) (reduction effected in a different manner upheld).

[6] For an excellent note discussing the mechanics of dealing with deficts during the depression, see (1935) 44 YALE L. J. 1025. For an early case illustrating how a deficit was turned into a million dollar surplus, out of which dividends were paid, see United Rys. of San Francisco, 6 Ops. Cal. R. R. Comm. 961, 967 (1915), cited in Note (1934) 47 HARV. L. REV. 693.

[7] See, *e.g.*, Irvine v. Old Kentucky Distillery, 208 Ky. 414, 271 S. W. 577 (1924); Continental Securities Co. v. Northern Securities Co., 66 N. J. Eq. 274, 57 Atl. 876 (Ch. 1904) (holding company forced under anti-trust laws to disassociate itself from a railroad.

[8] TEX. REV. CIV. STAT. ANN. (Vernon, 1925), art. 1342: "The stockholders of any such company shall have the right, at any time within two years from the date of filing of the charter, to make payment of the unpaid portion of the capital stock, to reduce the same so that by reduction, or reduction and payment, the full amount of the capital stock authorized by such reduction shall be paid, and thus avoid a forfeiture of the charter. No creditor of said company shall in any wise be prejudiced by such reduction of its capital stock in any claim or cause of action such creditor may have against such company or any stockholder or officer thereof."

[9] See statutes collected in Note (1935), 21 VA. L. REV. 562, 564, n. 16.

[10] TEX. REV. CIV. STAT. ANN. (Vernon, 1925), art. 1332: "A corporation may decrease its capital stock by such amount as its stockholders may decide, by a two-thirds vote of all its oustanding stock, in like manner as is required for an increase. No such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company, or any stockholder thereof. Such

recent case the Supreme Court of Texas held that the right to increase or decrease the capital stock of a corporation is determined by the statute under which the corporation was organized, and unless the statute is complied with, the decrease of stock is unauthorized.[11]

Although the corporate structure by its very nature lends itself to treatment according to the doctrines of agency so that such terms as "apparent and implied authority" have become frequently used in connection with corporate transactions, yet the courts have not applied such terms to the reduction of capital stock, holding that authority to increase capital stock does not include or imply the power to reduce the same.[12] It appears then that in the absence of express statutory authority a corporation is without power to decrease its authorized capital stock.[13] In the absence of this express statutory authority the board of directors

---

decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such Corporation, giving therein all its assets and liabilities, with names and post office addresses of all creditors and the amount due each; and the Secretary of State may require, as a condition precedent to the filing of such certificates of decrease, that the debts of such corporation be paid or reduced." Article 1333 provides: "Whenever any corporation shall reduce its capital stock, and by reason thereof fractional shares of its stock shall be issued to or held by any of its stockholders, the holder of any such fractional share shall be entitled to vote the same at any meeting of the stockholders in accordance with the proportionate or ratable value of such shares."

[11] Shaw v. Lewis, 126 Tex. 248, 86 S. W. (2d) 741 (Comm. of App. 1935) (shareholder in an insolvent state bank could be assessed on the amount he originally held rather than on the number of shares held following unauthoried reduction). On the question of the reduction of capital stock, banks are viewed with especial strictness by the Texas Courts. See Shaw v. Noyes, 13 S. W. (2d) 443 (Tex. Civ. App. 1929). In another jurisdiction it was argued that a reduction in the capital stock of a bank was a radical and fundamental change in the purpose and character of the originl charter, necessitating the unanimous vote of the stockholders, but the court said that a reasonable change in the amount of the capital stock was not a fundamental or radical change but was auixiliary and incidental to the main purpose of the corporation. Perry v. Bank of Commerce, 116 Miss. 838, 77 So. 872 (1917), on appeal, 118 Miss. 852, 80 So. 332 (1918).

[12] Seignouret v. Home Ins. Co., 24 Fed. 332 (C. C. E. D. La. 1885); Sutherland v. Olcott, 95 N. Y. 93 (1884). In A. B. Frank Co. v. Latham, ___ Tex ___, 190 S. W. (2d) 739 (1946), the Supreme Court said, "The Legislature, by expressly providing the manner in which capital stock of a corporation may be reduced, impliedly exclude any other method and superseded any conflicting provision of the corporation charter."

[13] See cases cited in note 12 *supra;* also 5 THOMPSON, CORPORATIONS (3rd ed. 1927) 518, to the effect that "as there can be a reduction of the capital stock of a corporation only on express statutory authority, the method prescribed by the statute must be followed."

cannot effect a decrease.[14] Where such a statute is in force, such power may be conferred on the board of directors by the governing statute or by the charter, the articles of incorporation, or by the by-laws, or resolution of the stockholders;[15] and an unauthorized exercise of this power by the directors may be validated by the consent, acquiescence, or ratification of the stockholders.[16] It may be asked whether this acquiescence or ratification by the shareholders would operate to overcome minor irregularities in the proceedings to reduce the capital stock. Apparently so, if the transaction were pursuant to charter or statutory authority.[17] More particularly would this be true as against third persons who have in good faith acted on the apparent regularity of the proceeding.[18] What, however, if the irregularity complained of should be lack of notice to the stockholders? Generally, if the statute requires that a reduction of the capital stock must be by a meeting of the stockholders on a notice specifying the object of the meeting and the proposed changes to be made, then there must be a substantial compliance with the statute.[19] Authority exists, however, for the proposition that if the act is otherwise valid, failure to give notice will not invalidate the reduction.[20] It seems certain that irrespective of the procedure or form used to effect the reduction of capital stock, it must be by a majority acting in good faith and impartially as to all the shareholders. If the majority

---

[14] TEX. REV. CIV. STAT. ANN. (Vernon, 1925), art. 1332; for a collection of cases on this point see 18 C. J. S. 746, n. 91.

[15] Hackett v. Northern Pac. Ry., 73 N. Y. Supp. 1087, 36 Misc. 583 (Sup. Ct. 1901).

[16] Chicago City Ry. v. Allerton, 18 Wall. 233 (U. S. 1873).

[17] Security National Bank v. Crystal Ice & Fuel Co., 145 Kan. 899, 67 P. (2d) 527, 531 (1937).

[18] Alabama Cons. Coal & Iron Co. v. Baltimore Trust Co., 197 Fed. 347 (D. C. Md. 1912); Security National Bank v. Crystal Ice & Fuel Co., 145 Kan. 899, 67 P. (2d) 527-531 (1937).

[19] Thompson v. Reno Savings Bank, 19 Nev. 103, 7 Pac. 68, 3 Am. St. Rep. 797 (1885); Meisenheimer v. Alexander, 162 N. C. 226, 78 S. E. 161 (1913); Shaw v. Lewis, 126 Tex. 248, 86 S. W. (2d) 741 (Comm. App. 1935) (an attempt of the stockholders to reduce the capital stock of a bank without complying with the statute requiring publication of notice held invalid); 5 THOMPSON, CORPORATIONS (3d ed., 1927) § 3688.

[20] Meisenheimer v. Alexander, 162 N. C. 226, 78 S. E. 161 (1913).

act fraudulently or in violation of the rights of particular shareholders their action may be enjoined or set aside at the suit of the latter.[21]

The ways in which this reduction may be affected should also be considered. Several devices for reduction have been worked out, and the statutes of most states specifically authorize the reduction of capital stock in one or more of these ways. The following are a few of the more generally accepted methods: (1) Purchasing shares and retiring them.[22] This may be affected by purchasing shares drawn by lot, pro-rata from all stockholders, on the open market, or as the result of an agreement between the corporation and a stockholder entered into at the time of sale. (2) Cancelling shares not issued.[23] (3) Cancelling shares owned by the corporation. (4) Exchanging shares for a decreased number of shares of the same or different class. (5) Exchanging stock having a par value for stock having no-par value. (6) Reducing the par value of stock. (7) Reducing the amount of capital represented by shares having no-par value.[24] Before, however, use is made of any of these methods, reference should be made to the

---

[21] General Investment Co. v. American Hide & Leather Co., 98 N. J. Eq. 326, 129 A. 244, 44 A. L. R. 60 (Ct. Err. & App. 1925), *aff'g* 97 N. J. Eq. 214, 127 A. 529, and 97 N. J. Eq. 230, 127 A. 659 (Ch. 1925).

[22] Text-writers now agree that a corporation may purchase its own shares. See BALLANTINE, PRIVATE CORPORATIONS (1927) § 66. However, a mere repurchase is not a reduction of the capital stock, Crandall v. Lincoln, 52 Conn. 73, 52 Am. Rep. 560 (1884); Cartwright v. Dickinson, 88 Tenn. 476, 12 S. W. 1030, 7 L. R. 706, 17 Am. St. Rep. 910 (1890); A. B. Frank Co. v. Latham, ... Tex. ...., 190 S. W. (2d) 739 (1946), *writ of error granted;* San Antonio Hardware Co. v. Sanger, 151 S. W. 1104 (Tex. Civ. App. 1912); Howe Grain & Mercantile Co. v. Jones, 21 Tex. Civ. App. 198, 51 S. W. 24 (1889). One well known writer suggests that a corporation should not be permitted to purchase its own shares for the purpose of holding them, inasmuch as such purchase does reduce its capital stock to that extent until the shares are reissued, BALLANTINE, PRIVATE CORPORATIONS (1927) § 136. This is not, properly speaking, a reduction. Borg v. International Silver Co., 11 F. (2d) 147 (C. C. A. 2nd, 1925) (presumption that stock purchased is not retired and may not be resold); Allen v. Francisco Sugar Co., 193 Fed. 825 (C. C. A. 3rd, 1912). *But cf.* Security National Bank v. Crystal Ice & Fuel Co., 145 Kan. 899, 67 P. (2d) 527 (1937) (a corporation has power to purchase its own stock to effect a reduction of capital stock).

[23] This method would not seem to be available under the Texas par-type of corporation as 100 per cent of the stock has to be subscribed and 50 per cent of it paid in.

[24] 1 PRENTICE-HALL, CORPORATION SERVICE § 4075-a; 1 DODD AND BAKER, CASES ON BUSINESS ASSOCIATIONS (1940) 1244.

statutes of the state involved, as well as to the case law of the particular jurisdiction since the courts have given varying interpretations to the statutes prescribing these methods.[25] The necessity for adherence to the proper statutory procedure to carry out a plan of reduction cannot be emphasized too strongly.[26]

No serious problem is presented if the reduction is merely a reduction of authorized capital stock or of the number of shares or of the shares of a particular class, without any attempt to vary the existing condition as to the capital paid in or subscribed or shares issued and outstanding. Such a reduction merely surrenders part of an existing capacity to create additional shares, as yet unexercised. But a reduction which affects capital already contributed or agreed to be contributed may affect present and even future creditors.[27] Even though the method selected for a reduction has been proper and the statute has been strictly followed, no reduction will be condoned that would prejudice existing creditors.[28] In many states the statutes expressly provide that a reduction cannot be made if it will impair the corporation's ability to meet its obligations.[29] On this point the Texas statutes are rather explicit.[30]

---

[25] State *ex rel.* Radio Corp. of America v. Benson, 32 Del. 576, 128 Atl. 107 (1924) (a reduction in the number of par value shares, without a reduction of capital, is not a decrease of the authorized capital stock); California Tel. & Light Co. v. Jordan, 19 Cal. App. 536, 126 Pac. 593 (1912) (reclassification of capital stock without changing the number of shares is not a decrease); see 1 PRENTICE-HALL, CORPORATION SERVICE § 4037, unless the amount of the authorized and fixed capital stock is decreased there is no reduction; for the proposition that purchase and resale by a corporation of shares of its own capital stock is not a decrease; also cases collected in 18 C. J. S. 740, n. 41.

[26] Theis v. Durr, 125 Wis. 651, 104 N. W. 985, 1 L. R. A. (n.s.) 571 (1905) (the means selected was so important and held to be so improper a violation of the rights of certain shareholders that the decree wholly set aside an otherwise valid proceeding for reduction).

[27] 1 DODD AND BAKER, CASES ON BUSINESS ASSOCIATIONS (1940) § 9.

[28] For a good discussion of the rights of creditors, see notes (1934) 47 HARV. L. REV. 693; (1935) 44 YALE L. JOUR. 1025; Ballantine and Hills, *Corporate Capital* (1935) 23 CALIF. L. REV. 229, 258; Hills, *Model Corporation Act* (1935) 48 HARV. L. REV. 1334, 1341, 1344, 1376-78; (1934) 19 CORNELL L. QUAR. 470, 473, 474; (1935 21 VA. L. REV. 562; see also (1925) Note 44 A. L. R. 11.

[29] See note 28 *supra.*

[30] TEX. REV. CIV. STAT. ANN. (Vernon, 1925) arts. 1332 and 1342. For a recent Texas case on the conditions prescribed for a reduction of capital stock, see A. B. Frank Co. v. Latham, ... Tex. ....., 190 S. W. (2d) 739 (1946).

II

When a corporation with an authorized capital stock structure, for example, of $100,000 lawfully reduces its capital stock to $50,000, there appears, theoretically at least, a reduction surplus of $50,000 on the corporate books. But it would be far from accurate to indicate this as the true balance sheet. Outstanding liabilities and obligations of the corporation, claims by creditors, and the changing valuation of fixed assets must all be considered before a true picture can be obtained. Some authors refer to this accounting surplus as a paid-in surplus.[31] However, this seems questionable. It seems far more accurate to refer to it as the reduction surplus. Assuming the existence of such a "book surplus" following a reduction, what may be done with it? Is it available to creditors? May it be distributed as dividends to stockholders? Since there arises a presumption that the capital stock of a corporation is the security looked to by the creditors, they will certainly be expected to manifest an interest in the proposed reduction, if as a part of the plan there is to be some distribution of the corporate assets to the shareholders. Some statutes require that the creditors be satisfied and all debts paid before the management is free to deal with the surplus as it chooses.[32] Even then a question arises as to whether or not the surplus remaining after debts have been paid must or may be distributed as dividends to stockholders. It is generally conceded that a corporation, by a lawful reduction of its capital stock, may create a surplus which is available for distribution as dividends to stockholders.[33] Statutes

---

[31] For other origins of paid-in surplus, see Note (1921) 21 COL. L. REV. 444.

[32] TEX. REV. CIV. STAT. ANN. (Vernon, 1925) art. 1332.

[33] Dominguez Land Corp. v. Daugherty, 196 Cal. 453, 236 Pac. 697, 44 A. L. R. 1 (1925); Benas v. Title Guaranty Trust Co., 216 Mo. App. 53, 267 S. W. 218 (1924); Continental Securities Co. v. Northern Securities Co., 66 N. J. Eq. 274, 57 Atl. 876 (Ch. 1904); Roberts v. Roberts-Wick Co., 184 N. Y. 257, 77 N. E. 13 (1906); Seely v. N. Y. National Exchange Bank, 8 Daly 400, 4 Abb. N. Cas. 61, aff'd 78 N. Y. 608 (1879); Strong v. Brooklyn Cross-Town R. R., 93 N. Y. 426 (1883); Western & Southern Fire Ins. Co. v. Murphey, 56 Okla. 702, 156 Pac. 885 (1916) (buying back own stock). In liquidation of corporation, preferred stockholders are not entitled to have accumulated dividends paid out of capital surplus created by reduction of capital stock, but such sur-

regulating the declaration of dividends have generally not prohibited the use of a reduction surplus for this purpose or limited the discretion of directors in dealing with it.[34] The discretionary nature of acts of directors in dealing with the corporate assets is sound on principle; the court will not and should not substitute its judgment for that of the management of a corporation in such a matter as the advisability of declaring dividends.[35] So, in the absence of objecting creditors or stockholders, the courts have stated that if the corporation is solvent and has assets remaining in excess of the sum of liabilities after capital stock is reduced, the directors may[36] distribute the new-found surplus.[37] Some text-writers, overlooking the actual interest adjudicated, have cited such cases as though they limit the rights of creditors.[38] As has been pointed out earlier, reduction of the authorized capital stock will never be allowed in the first place if the rights of creditors will be prejudiced thereby.[39]

The power to reduce capital stock somewhat arbitrarily as provided by statute in most states has been criticized, chiefly for the reason that adequate protection has not been guaranteed to the

---

plus after payment of full par value of preferred stock, belongs to common stockholders. See Hull v. Pfister & Vogel Leather Co., 235 Wis. 653, 290 N. W. 18 (1940). *Cf.* Jerome v. Cogswell, 204 U. S. 1 (1907).

[34] Note (1921) 21 COL. L. REV. 444.

[35] Berger v. U. S. Steel Corp., 63 N. J. Eq. 506, 53 Atl. 14, 44 A. L. R. 1, 29 (Ch. 1902), *on appeal*, 63 N. J. Eq. 809, 53 Atl. 68 (1902); U. S. Steel Corp. v. Hodge, 64 N. J. Eq. 807, 54 Atl. 1, 60 L. R. A. 742 (Ct. Err. and App. 1903).

[36] These cases vary according to the statute of the various states under which they arise. See note 33 *supra*.

[37] It was held in an early case in New York involving a national bank that a shareholders' vote to reduce the capital amounted to a vote that only the amount of capital as reduced was needed in the business and that the directors were, accordingly, under a duty to distribute the balance. Seeley v. New York National Exchange Bank, 8 Daly 400 (1878), aff'd, 78 N. Y. 608 (1879). *But cf.* Berger v. U. S. Steel Corp., 63 N. J. Eq. 809, 53 Atl. 68 (Ch. 1902), indicating that the surplus, if any, which a corporation reducing the amount of its capital is at liberty to pay to its shareholders must in every case be ascertained, and depends upon the result of an examination into its affairs, and not upon the difference between the original amount of capital and the reduced amount.

[38] 11 FLETCHER, CYCLOPEDIA OF CORPORATIONS (1932) § 5150, n. 9; 5 THOMPSON, CORPORATIONS (3rd. ed. 1927) § 3695.

[39] See note 28 *supra*.

creditors.[40] As a matter of fact the corporation statutes of thirty-seven states and the District of Columbia attempt with various modifications, to protect creditors by assuring the maintenance of a minimum capital investment by the stockholders of the corporation.[41] This is done by provisions which in effect would prohibit the payment of dividends when stated capital of the corporation is impaired or will be impaired by the payment. Again the Texas statute has made several provisions and "is the closest approach that any American state has made to the comprehensive procedure provided by the English Companies Act for the protection of creditors in event of a reduction in capital."[42] The Texas statute, after directing that no reduction shall prejudice the rights of creditors, requires that the corporate management shall furnish the Secretary of State with a list of the names and addresses of all the company's creditors and the amount due each, as well as with proof by affidavit of the financial condition of the corporation. The Secretary of State may then require that the company's debts be paid or reduced as a condition precedent to allowing the reduction in stated capital.[43]

As a practical matter some companies, instead of utilizing the resultant capital stock surplus for dividend purposes, have cancelled the surplus in whole or in part against a reduction in the valuation of fixed assets to represent purported current price levels.[44] Again, instead of distributing the entire surplus, the corporation may for a proper reason distribute a portion only and retain the balance as assets. Any such distribution need not be in

---

[40] Note (1934) 47 HARV. L. REV. 693.

[41] See state statutes collected in Note (1934) 44 YALE L. JOUR. 1025, 1030.

[42] *Ibid.* The statement is made with reference to the English Statutes, 19 & 20 Geo. V., c. 23, § 55-60 (1929), that "Section 56(2) of the Companies Law seems to make the procedure provided in the act for the protection of creditors mandatory upon the courts only where the reduction of capital is to be followed by payment of dividends from the resultant surplus, and discretionary where the purpose is to cancel any paid-up shares capital which is lost or unrepresented by available assets—§ 55b."

[43] TEX. REV. CIV. STAT. ANN. (Vernon, 1925) art. 1332, set out in full in note 10 *supra.*

[44] See Note (1934) 44 YALE L. JOUR. 1025, 1076, n. 7, for a list of companies who have accomplished write-downs in such a manner.

cash, but may be made specifically in stock of other corporations in which the surplus has been invested.[45] Such disposition of the surplus, however, is still subject to the claims of those who were creditors before the reduction.[46]

Actually the problem of the reduction of capital stock and the disposition to be made of the resulting surplus, has received very little attention in Texas. The cases dealing directly with the matter are relatively few in number, and Dean Hildebrand in his work on Texas Corporations has devoted only a few lines to the subject.[47] In explanation, however, it may be said that the Texas statutes on reduction have been surprisingly well written and are free from apparent ambiguities necessitating interpretation by the courts. Moreover, the apparent bulk of cases have arisen at the corporate domicile of a great number of corporations and thus Delaware, New Jersey and a few other eastern states have witnessed the greater part of the litigation on this subject. Although the Texas statutes on reduction of capital stock compare somewhat favorably with those of the rest of the states, there could well be inserted more definite requirements as to notice to creditors and stockholders and as to opportunities for hearings upon application of interested parties before the reduction actually takes place. It has also been suggested that directors should be made civilly liable[48] to stockholders for false or misleading statements or omissions in the resolution or notice in which the plan of reduction is stated.[49]

Gordon R. Carpenter.

---

[45] Continental Securities Co. v. Northern Securities Co., 66 N. J. Eq. 274, 57 Atl. 876 (Ch. 1904).

[46] Strong v. Brooklyn Cross-Town R. R. Co., 93 N. Y. 426 (1883).

[47] 1 HILDEBRAND, TEXAS CORPORATIONS (1942) § 264.

[48] For a rather lengthy discussion of suggested improvements in statutory requirements relating to protection of creditors upon reduction of capital stock, see Note (1934) 44 YALE L. JOUR. 1025, 1049-53.

[49] Note (1934) 47 HARV. L .REV. 693, 698.