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ARTICLE

Stamping Out Merger Objection Cases – Expedited Proceedings: A Privilege Not a Right

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Companies bemoan merger objection lawsuits as a waste of resources, yet frequently settle even the most unmeritorious cases since relevant standards are sufficiently amorphous that the certainty of settlement costs is appealing compared to the potential price of litigation. Eliminating expedited discovery effectively erases a plaintiff's leverage to force a pre-closing settlement. This article proposes legislation that would provide federal jurisdiction over any merger objection lawsuits not filed in the company's place of incorporation and subject such cases to a heightened standard for expedited discovery, eliminating frivolous cases filed with the expectation that defendants will have to settle. It also suggests that Delaware raise its standards for expedited discovery.

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