

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF DELAWARE

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

v.

TRANSAMERICA CORPORATION, and
its Officers and Directors,
Defendants

Civil Action No. 861

On Petition for Reargument

LEAHY, District Judge

Defendants seek reargument on two grounds:

(1) that the Court has erroneously assumed that Gilbert's proposal that independent public auditors should be elected by the stockholders at the annual meeting, beginning in 1947, and that a representative of such auditing firm so chosen attend the annual meeting each year, was intended to be accomplished by the adoption of a resolution by the stockholders, whereas both plaintiff and defendants agree in their interpretation that such proposal actually contemplated an amendment to the corporate by-laws; and

(2) Rules X-14A-7 and X-14A-2 were inapplicable to defendants because defendants did not intend that the Gilbert proposal should be acted upon pursuant to the proxies solicited by defendants. These grounds have no merit.

I still think that independent auditors are of such fundamental importance that their selection should be decided by the stockholders and I think this is what Gilbert had in mind. He says nothing about amending the by-laws for the purpose stated.

Some courts have held, for example, that a mortgage of the entire corporate assets is so vital to the stockholders that approval by stockholders is required even in the absence of specific statutory provisions. The matter here is likewise of comparable significance. The sentence in the opinion which, I suspect, gives defendants difficulty is the one which states: "The matter of independent auditors is obviously a proper subject matter to come before a stockholders' annual meeting or any special meeting." That sentence does not mean that any subject which is proper in the colloquial sense must be noticed for the annual meeting. If that were so, incalculable matters could be suggested and would probably be proper in the colloquial sense. This would create an intolerable situation and it would be difficult to conclude a stockholders' meeting. There would be little defense against cranks.

The noted sentence was not intended to use proper subject matter in this sense. Hence, for defendants to correctly interpret the opinion, I think the quoted sentence should be changed to read thusly: "The matter of independent auditors is therefore of such fundamental importance that it should be considered and passed upon by stockholders themselves at a meeting and is not such a matter which it may be said the stockholders have already delegated to others."

The arguments urged by defendants as to the inapplicability of Rules X-14A-7 and X-14A-2 have been considered, but I think they are without merit.

Reargument denied.

Dated: September 9, 1946