Shareholder Liability Upon Voluntary Dissolution of Corporation

Adrian P. Schoone
SHAREHOLDER LIABILITY UPON VOLUNTARY DISSOLUTION OF CORPORATION

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INTRODUCTION—SCOPE OF DISCUSSION

The Wisconsin Business Corporation Law,¹ which revised, modernized and codified the Wisconsin law on business corporations, became generally effective as to all Wisconsin corporations with capital stock on July 1, 1953. The Code was patterned after the Model Business Corporation Act as drafted by the Committee on Corporate Laws of the American Bar Association.² One of the many objectives of the draftsmen of the Code appears to be the limiting of liability of directors and shareholders following voluntary dissolution of the corporation,³ and the result of this objective is Section 180.787.⁴ Although almost eight years have passed since enactment of this statute, the Wisconsin Supreme Court has not yet had opportunity to construe it. The long-awaited revised Model Business Corporation Act Annotated has recently been published⁵ and contains a section⁶ substantially similar to 180.787.⁷ The purpose of this article is to examine the statutes and

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¹ Wis. Stat. ch. 180 (1959), hereinafter sometimes referred to as the “Code.”
² 1 MODEL BUS. CORP. ACT ANN. V (1960).
⁴ Wis. Stat. §180.787 (1959): "Survival of remedy after dissolution. The dissolution of a corporation shall not take away or impair any remedy available to or against such corporation, its directors, or shareholders, for any right or claim existing or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within 2 years after the date of such dissolution. Any such suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 2 years so as to extend its period of duration.”
⁵ Published for American Bar Foundation by West Publishing Company (1960).
⁶ 2 MODEL BUS. CORP. ACT ANN. §98 (1960).
⁷ The MODEL Act contains the following language after the words “The dissolution of a corporation” and before the words “shall not take away . . .”: "either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated the
cases in states having a similar law to determine the efficacy of 180.787 in purporting to abate remedies against shareholders of a dissolved corporation after the expiration of the two year period following the filing of articles of dissolution.8

COMMON LAW GOVERNING CORPORATE DISSOLUTION
AND LIQUIDATING DISTRIBUTIONS TO SHAREHOLDERS

In discussing the effect of liquidation and dissolution of a business corporation on the liability (to its creditors) of shareholders receiving assets of the dissolved corporation, it is well to briefly review terminology. Dissolution, as in partnership law, means the termination of corporate existence so that the corporation may no longer carry on its business, since it lacks legal authority to do so. Liquidation is the process of collecting assets, paying creditors, and distributing residual assets, less liquidation expenses, to the shareholders in accordance with their preferences.9

It was decided early in the course of the common law that a creditor had no right to prevent the dissolution of a corporation even though the legal authority to dissolve was granted after the debt was created.10 There was some dispute regarding the right of the creditor to pursue the property in the hands of shareholders of the dissolved corporation. Early treatises indicated that upon dissolution the corporate debts ceased to exist, the corporate real property reverted to the grantors, and the state was entitled to the personal property.11 However, the validity of this was questioned at an early date.

It may be doubted whether it was ever the law that equitable rights to property held by a corporation were lost by a dissolution of the company. The doctrine that the property of a dissolved corporation belongs to the King or to the original donors, was first applied in the case of ecclesiastical and municipal corporations. In these cases there were no shareholders, and seldom creditors; the property was in reality without an owner, after the particular use for which it had been given had come to an end by the dissolution of the corporation. But modern business companies differ essentially from ecclesiastical and municipal corporations, both in purpose and organization. The shareholders or corporators in an ordinary business company are themselves the donors of its property; each member contributes his share of the capital for the common benefit of all; and the corporation it-

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8 See Introduction to the Business Corporation Law, supra note 3, at XXXV.
9 See LATIN, CORPORATIONS 550 (1959).
11 Cf. BLACKSTONE 484-85 (1765) with 2 MORAWETZ, PRIVATE CORPORATIONS §1031, p. 988 (2d ed. 1886).
self holds the property given it merely as trustee for its share-
holders.2

American courts traditionally drew an analogy to a deceased natural
person and his inability to hold property, sue or be sued, in consider-
ing the status of a creditor holding the obligations of a dissolved cor-
poration. Just as the representative of the estate of a deceased natural
person could sue and be sued on behalf of the deceased and hold his
property, the courts held that, in equity,13 the property of a dissolved
 corporation passed to the shareholders subject to the payment of the
 corporate debts and other liabilities.14 The United States Supreme
 Court speaking through Mr. Justice Curtis expressed the law in Curran

We are of opinion, that the dissolution of the Corporation,
under the Acts of Virginia and Maryland, cannot in any just
sense be considered, within the clause of the Constitution of the
United States on this subject, an impairing of the obligation of
the contracts of the Company by those States, any more than the
death of a private person can be said to impair the obligation of
his contracts. The obligation of those contracts survives; and
the creditors may enforce their claims against any property be-
longing to the Corporation, which has not passed into the hands
of bona fide purchasers, but is still held in trust for the Com-
pany, or for the stockholders thereof, at the time of its dissolu-
tion, in any mode permitted by the local laws.

Indeed, if it be once admitted that the property of an insolv-
ent trading corporation, while under the management of its
officers, is a trust fund in their hands for the benefit of creditors,
it follows that a court of equity, which never allows a trust to
fail for want of a trustee, would see to the execution of that
trust, although by the dissolution of the corporation, the legal
title to its property had been changed. . . .15

The theory that the assets of a corporation whose right to do busi-
ness had expired constituted a “trust fund” for the benefit of creditors
was the product of Mr. Justice Story’s pen.16 It has sometimes been
criticized as a misleading label since it is not the same doctrine as ex-
pressed in early cases that stockholders of going corporations held
their capital stock in trust for creditors.17 Under proper application of

13 Morawetz, supra note 11, at 1032; See also Lindemann v. Rusk, 125 Wis. 210,
230, 104 N.W. 119 (1905).
15 Mumma v. The Potomac Company, supra note 10; Lattin, supra note 9; at
553; 19 C.J.S. Corporations §1760 (1940); Ballantine, Corporations §318,
pp. 732-733 (1946); Warren, Safeguarding the Creditors of Corporations, 36
Harv. L. Rev. 509, 545 (1923).
17 See Wood v. Dummer, 3 Mason 308, 30 Fed. Cas. 435, No. 17,944 (C.C.D.
Me. 1824).
18 See Warren, Safeguarding the Creditors of Corporations, 36 Harv. L. Rev.
509, 545 (1923).
the common law, creditors of a dissolved corporation were permitted to reach all assets of the corporation, and not simply a fraction of the assets equal to the amount of its capital. Whatever trust there was arose from the equitable rights of the stockholders in the corporate property and their conditional liability to corporate creditors. It was rather a trust in the administration of the assets after possession by a court of equity than a trust attaching to the property, as such, for the benefit of creditors.

The importance of limiting the meaning of the dissolution-trust fund theory stems from early Wisconsin cases ruling that the assets of an insolvent corporation are not a trust fund for the benefit of creditors in such a sense that a creditor knowing of such insolvency cannot acquire a valid lien by attaching the corporate property. As will be seen as the discussion develops, Wisconsin is a leading jurisdiction holding that, after the dissolution of a corporation, its property passes to its stockholders subject to the payment of the corporation debts.

The proper rationale for this early-established rule permitting creditors to trace assets into the hands of transferee shareholders seems grounded in constitutional principles. The United States Supreme Court, per Mr. Justice Story, held in *Mumma v. The Potomac Company* that the obligation of a contract made by a corporation survived after it had been dissolved, and state laws governing the dissolution procedure could not effectively impair the obligation of the contract. Wisconsin hastily accepted the warning of the United States Supreme Court.

Because of constitutional prohibitions against severing the claims of creditors, courts were charged with responsibility for supervising the liquidating distributions. Since shareholders were not entitled to a share of the assets of the corporation until corporate debts were paid, if the assets were divided, leaving any debts unpaid, every shareholder receiving his share was in equity liable pro rata to contribute to the discharge of such debts out of the funds he had received. But this

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20 See Ballin v. Merchants' Exchange Bank, 89 Wis. 278, 61 N.W. 1118 (1895); Ford v. Hill, 92 Wis. 188, 66 N.W. 115 (1896); Hinz v. Van Dusen, 95 Wis. 503, 70 N.W. 657 (1897); Marvin v. Anderson, 111 Wis. 387, 87 N.W. 226 (1901); Atlanta & Walworth Butter & Cheese Association, 141 Wis. 377, 123 N.W. 106 (1910). *Cf.* In re Sparta Canning Co., 73 F. 2d 732 (7th Cir. 1934).
21 See text at infra, note 32.
22 *Supra* note 10.
transferee liability was secondary and limited by the amount of the liquidating dividend, not merely by the pro rata share of the corporation's obligations in the ratio which the transferee shareholder's stock bore to the total outstanding stock at the time of the liquidation. And the shareholder, although severally liable for the corporate debts, had a right of contribution from other shareholders.26

The availability of this equitable remedy was something of a "consolation award" for the creditor holding a claim against a corporation that took the notion to dissolve. Upon dissolution and termination of the legal existence of the corporation, no action could be maintained against it.27 This was true whether the action was one in personam or one in rem.28 The corporation could not carry on except for the purpose of liquidating its assets, paying its creditors, and distributing what remained to the shareholders.29

This arrangement was soon recognized as unsatisfactory and statutes were enacted to preserve the life of the corporation during the winding-up period, designating certain representatives to supervise the process of liquidating.30 The statutory granting of extended life served the double purpose of permitting the corporation to prosecute and defend claims in its own right. This permission has generally been limited to a specified number of years.31 What the effect of the expiration of the time period had on the creditor remedy under the common law "trust fund" doctrine was the next question before the courts.

The Wisconsin solution to the common law doctrine of abatement of creditors' remedies against dissolved corporations was the enactment of a statute that resuscitated the dissolved corporations to the extent that the corporations "shall nevertheless continue . . . for three years thereafter for the purpose of prosecuting and defending actions, and of enabling them to settle and close up their business, dispose of and


29 See Leibson v. Henry, 356 Mo. 953, 204 S.W. 2d 310, 315 (1947).

30 Note, 23 Mo. L. Rev. 82 (1958).

convey their property and divide their assets and for no other pur-
pose. . ."32

In *Lindemann v. Rusk*33 the Wisconsin Supreme Court heard an argu-
ment to the effect that the enactment of the statute was intended
by the legislature to furnish an exclusive remedy for creditors and to
abrogate the common law equitable remedy previously available against
shareholders. The Court emphatically rejected this suggestion.

. . . The contention seems an unwarranted construction of
this statute, in view of the requirements for the protection of pri-
vate rights and interests in its assets. This section, in effect,
extends the life of a corporation for three years to accomplish
final liquidation of its affairs through its directors, and there is
nothing which suggests that the usual equitable remedies should
not be resorted to at the expiration of such period, if the direc-
tors fail to accomplish this object within that time. . . .34

When given another opportunity to construe the statute, the Court
was more explicit.

However, the debts of the corporation, if any, were not
extinguished because the corporation ceased to exist. The credi-
tors of the corporation may follow its assets into the hands of
the stockholders, who may be required to respond to the extent
of their distributive shares thereof. *Lindemann v. Rusk*, 125
Wis. 210, 229, 104 N.W. 119.35

And the Court thereafter continued their assertions that the creditor
had his remedy against the transferees of the dissolved corporation,
until the enactment of the new Code in 1953.36 Among the criticisms
directed at Chapter 181, the former Business Corporation chapter, was
a request for a revised dissolution statute dealing with the status of
contracts executory at the time the carrying on of regular business
ended.37 While remedial legislation was suggested, it was also urged
that it was "unjust for a corporation by its own act to detract from
contractual benefits it has conferred for consideration received. . . ."38

**CONSTRUCTION OF 180.787 AND ITS COUNTERPARTS—**
**LIMITING THE CAUSE OF ACTION RATHER THAN CORPORATE EXISTENCE**

As discussed above, Section 181.02 of the old Code limited corpor-
ate existence to three years *after* dissolution. This provision thus had

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32 Wis. Stat. §181.02 (1949).
33 125 Wis. 210, 104 N.W. 119 (1905).
34 Id. at 231, 104 N.W. at 125.
35 State *ex rel.* Pabst v. Circuit Court, 184 Wis. 301, 307, 199 N.W. 213, 215
(1924).
36 West Milwaukee v. Bergstrom, 242 Wis. 137, 7 N.W. 2d 587 (1943). See also
Metropolitan Casualty Ins. Co. v. Industrial Comm., 260 Wis. 298, 50 N.W. 2d
399 (1951).
37 Comment, 33 Marq. L. Rev. 114 (1949).
38 Id. at 118.
the rather anomalous effect of reincarnating what was thought by definition to be dead—the dissolved corporation. The basis for the anomaly was the conceived analogy between the death of an individual and the dissolution of a corporation. But the legislative creation resulting from this drawn resemblance did restrict the likeness to a three year period, making no provision for claims presented thereafter. The *Pabst* case and the subsequent decisions following its rationale demonstrably illustrated the inadequacy of the statutes. And commentators readily suggested that the revival of the dead corporation approach be abandoned in favor of legislation deferring the death until the completion of liquidation, so as to settle corporate rights and liabilities prior to demise.

The result of the suggestions and criticisms is the “two-step” procedure for voluntary dissolution contained in Chapter 180. Upon reaching a decision to dissolve, the corporation “publicizes” it by filing and recording a statement of intent to dissolve with the Secretary of State and Register of Deeds of the appropriate county. Thereupon the corporation is no longer authorized to carry on business, except that necessary for the proper winding up of its affairs. No specific time limit has been placed upon the period of winding up, and when provision has been made for the payment of all debts and all property has been distributed, articles of dissolution are filed and recorded, “and thereupon the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action of shareholders, directors and officers as provided in this chapter....”

Pennsylvania, Texas, Virginia, Washington, and the District of Columbia all have provisions substantially similar to Wisconsin. Among those states providing for dissolution immediately on filing with or acceptance by the secretary of state of a form stating that the pre-requisites for voluntary dissolution have been met are Alabama, Arizona, Arkansas, Connecticut, Indiana, Maryland, Michigan, Nebraska, Nevada, New Jersey, Ohio, South Carolina, Tennessee and West Virginia.

Under the “two-step” liquidation procedure, there is no necessity to continue the existence of a corporation following its dissolution for the purpose of settling its affairs. Under Section 180.787 and its counterpart in the Model Business Corporation Act, it is provided that, while the dissolution of a corporation shall not destroy any remedy available to or against the corporation, suit must be commenced within two years after the date of dissolution.

The intention of the draftsman apparently was to place the limitation, not on the corporation’s existence, but on the cause of action. The hoped-for result was the abating of causes of action against shareholders after the expiration of two years from the date of filing of articles of dissolution. Some of

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58 Okla. Stat. Tit. 18, §§1.178 to 1.185, 1.186, 1.189 to 1.192, 1.194, 1.219, 1.220, 1.223, 1.225, 1.226.
62 Wash. Rev. Code §§23.01.530, 23.01.560, 23.01.570 to 23.01.620, 23.01.630.
70 Mich. Comp. Laws §§450.71 and 450.72 (1948), 450.73, 450.74 (Supp. 1956).
74 Ohio Rev. Code Ann. §§1701.86 (F) to 1701.86(I).
80 See Young, Some Comments on the New Wisconsin Business Corporation Law, 1952 Wis. L. Rev. 5, 15.
the draftsmen carefully avoided a prediction as to the proximity of their creation to the desired result. To make such determination at the present time requires an examination of the cases in other jurisdictions since the Wisconsin Supreme Court has not construed the statute since its passage.

The neighboring state of Illinois has been most active in litigating questions arising under its counterpart of 180.787. The vital ruling handed down by the Illinois courts is that the statute limits capacity to sue or be sued to two years, in contradistinction to the typical statute of limitation bearing only upon remedy and not right. The first case so holding was decided by an Illinois Court of Appeals. In *Dukes v. Harrison & Reidy*, suit was brought against a dissolved corporation and its shareholders, on the allegation that the latter had not paid the full subscription price of their shares. The suit was based on a section of the Illinois corporation statutes providing that after the dissolution of a corporation, any creditor could bring suit in equity against all persons in any way responsible for the dissolution, "by joining the corporation in such suit. After exhausting the assets of such corporation, each stockholder may be required to pay his pro rata share of such debts and liabilities to the extent of the unpaid portion of the stock..." The defendant representatives of the corporation made a special appearance and objected to the jurisdiction of the court based on the fact that under the forerunner to the present statute, the time for suit had expired.

The plaintiff argued in rebuttal that because he had previously brought a suit of the same nature, following which the two year period expired prior to the present action, he could rely on Illinois law providing that where the statute of limitation expires prior to the time the action is dismissed, a plaintiff may have another year within which to reinstitute his action. The defendant corporation replied that the two year period for bringing suit under the corporation statutes was not a period of limitation, but rather a definite limit on corporate capacity to sue and be sued. The Illinois appellate court accepted the construction of the statute submitted by the defense. And the Illinois courts have persisted in this construction.

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82 *Contrast Young, supra note 80, with Luce, The Wisconsin Business Corporation Law,* 36 MARQ. L. REV. 1, 23 (1952): "... Remedies against the corporation, directors, and shareholders are preserved for a period of two years after articles of dissolution are filed." *Quaere* as to the extent of shareholder liability thereafter.

83 ILL. REV. STAT., ch. 32, §157.94.
84 270 Ill. App. 372 (1933).
85 CAHILL'S REV. ILL. STAT., ch. 32, para. 53.
86 *Supra* note 83.
87 The Appellate Court relied on Bishop v. Chicago Ry. Co., 303 Ill., 273, 135 N.E. 439 (1922), which did not deal with a question of corporation law.
88 See Sarelis v. McCue & Co., 291 Ill. App. 540 (1937); Ruthfield v. Louis-
The effect of the *Dukes* case was to negate an earlier decision of the Seventh Circuit Court of Appeals which held that where the informational data filed with the Secretary of State contained a positive misstatement of fact as to tax liabilities, the federal government was not barred from collecting its claim. The Court of Appeals seemed to admit as much in *Reconstruction Finance Corporation v. Teter*, where suit was brought against a dissolved corporation and its stockholders to recover upon certain guaranties. Motions to dismiss the complaint, and to quash the summons and the return thereof against the dissolved corporation were sustained by the trial court. The plaintiff argued on appeal that although the defendant company was dissolved more than two years prior to the filing of the action, it yet had an equitable remedy against the shareholders, since "in equity the assets of a dissolved corporation passing to its stockholders constitute a trust fund which can be reached in their hands by the corporation's creditors for the purpose of satisfying claims. . . ." The Court of Appeals rejected the argument as it interpreted the two-year limit statute as controlling both the substantive and procedural rights of the parties, to the exclusion of any common law equitable remedy.

But the court went on to weaken this ruling by alternatively deciding that since the defendant stockholders were sued as representatives of all the stockholders of the dissolved corporation, and the plaintiff had failed to plead impracticability as justification for his omission of the others, the complaint was procedurally deficient.

Thus, the *Teter* case does not wholly support any notion that the two-year statute will bar a common-law remedy against shareholders after the expiration of such period. Other dictum came as close. In *Markus v. Chicago Title & Trust Co.*, the Illinois Supreme Court stated that

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89 In re Wolf Mfg. Industries, 56 F. 2d 64, 66 (7th Cir. 1932): "... there having been no compliance with the statute by the corporation, and the dissolution being void as to the government, the two-year limitation provided for actions against a dissolved corporation where dissolution is perfected does not apply." The case was cited approvingly in *Missouri State Life Ins. Co. v. Langreder*, 87 F. 2d 586, 593 (7th Cir. 1937): "... A suit against a corporation does not abate if there is a local policy expressed by statute or decision, that the corporation, although dissolved, shall continue for a given period for the purpose of winding up its affairs. . . ."

90 117 F. 2d 716 (7th Cir. 1941).
91 Id. at 726.
92 Id. at 727.
93 Id. at 727-28.
The dissolution of the corporation in this case, therefore, did not have the effect of destroying the mortgage lien against the premises though it did bar, after two years, any action against the corporation itself. . . . It follows that the limitation provided in section 94 of the Corporations act, III. Rev. Stat. 1939, chap. 32, par. 157.94, limiting suits against the corporation, its officers or stockholders, to a period of two years after dissolution, is not applicable here, though it barred any remedy against the corporation, its officers or stockholders. . . .

The most recent important case dealing with the meaning of Section 94 of the Illinois Business Corporation Act was decided in 1956. Stockholders of a dissolved Kentucky corporation brought suit on a deficiency judgment entered in favor of the corporation prior to dissolution. The defendant, a resident of Illinois, relied on a Kentucky statute which was almost identical to Section 94, since the dissolution had occurred long before the suit was brought. The Court of Appeals did not clearly specify whether Illinois or Kentucky corporate law applied, but did state the conflicts question was "perhaps not material." At any rate, it did apply the limitations law of Illinois, and made short shrift of the defense of want of capacity to sue because of expiration of the two-year period.

As noted, Imperial filed its Certificate of Dissolution November 28, 1942, and it appears plain that under the provision just quoted any action for or against it was limited to a two-year period. On expiration of that period it became extinct for all purposes and it no longer had the capacity to sue or be sued. We are unable to agree, however, . . . that this provision had a like effect or any effect upon the rights of plaintiffs as former shareholders of Imperial. The provision by its express language applies to "any right or claim existing, or any liability incurred prior to such dissolution." It is obvious that the right or claim of Imperial in the Chicago judgment against defendant existed prior to the time of its dissolution, but it is equally obvious that the right or claim of plaintiffs in suit was not in existence prior to that time.

Applying the converse of the reasoning of the Seventh Circuit, one can argue that the effect of Levy is to render Section 94 and similar statutes ineffective to bar creditor claims against shareholders. The statutes speak of barring liabilities, along with rights, "incurred prior to . . . dissolution." If the derivative liability of a shareholder receiving assets of a corporation does not arise until dissolution, since prior to

95 Id. at 562, 27 N.E. 2d at 465.
96 Levy v. Liebling, 238 F. 2d 505 (7th Cir. 1956).
98 Supra note 96, at 506.
99 Id. at 506-7.
100 See 13 Am. Jur. Corporations §1352, pp. 1197-98 (1938): " . . . after the
that time the primary liability of the corporation can be enforced, the
two-year statute may be ineffectual to limit shareholder liability since
it did not arise "prior to dissolution"!

To defeat such construction, one might argue that the words "prior
to such dissolution" refer to any point in time before the date the arti-
cles of dissolution are filed and recorded. Since the shareholders would
of necessity receive assets prior to that date because of the recital in
the certificate, and any ignored creditor would as a practical matter
be frustrated in suing the "shell" corporation thereafter, a court might
so construe the statute. Section 180.787 itself speaks of suing "with-
in 2 years after the date of such dissolution." And the legislative
history indicates quite clearly that that date does not occur until all
corporation-ending business is completed. Indeed, the Levy case may
be restricted to its facts and shareholders may be able to rest without
disturbance from that case.

But this does not resolve the broader issue of the effect of 180.787
on the transferee liability of shareholders without regard to the exact
point in time at which the liability arises. The Teter case came close
to holding the statute efficacious in abolishing the common law remedy
predicated on the "trust fund" theory. But no case has been located
which squarely decides the question. An early North Carolina case
did hold that a counterpart of old Wis. Stat. §181.02 had the effect of
abolishing all common law remedies. In Von Glahn v. De Rosset, an
action was brought against shareholders of a dissolved bank by virtue
of a personal liability clause in the charter of the bank providing that in
the event of insolvency or inability of the bank to pay, the shareholders
would be liable to creditors in an amount double the value of the stock
held by them. The shareholders relied on a limitation statute preventing
corporate liability from abating for three years after dissolution, since
the period had expired prior to the action. The plaintiff countered with
the argument that an equitable remedy was effective irrespective of sta-
tute. The Supreme Court of North Carolina carefully discussed the

\[dissolution of a corporation, its property passes to its stockholders subject to\]
the payment of the corporate debts.\] [Emphasis supplied.]

31 (1945), the court held that the effective date of dissolution for franchise
tax purposes in California, a jurisdiction with a "two-step" dissolution pro-
cedure, is when the state is notified of intent to dissolve and not when the
final certificate of dissolution is issued.
102a [Emphasis supplied.]
103 See Revision Committee Note, 1951: "... under the new chapter, in voluntary
dissolution, articles of dissolution are not filed and the corporation is not dis-
solved until after the winding up process has been completed. See 180.755,
104 Supra note 90.
105 81 N.C. 467 (1879).
validity of the "trust fund" doctrine, but ruled it was no longer available.

As the law-making power has thus undertaken to regulate the settlement of the affairs of an expired corporation and provide the mode in which it shall be done, the statutory remedy must be considered as superseding and substituted for all others directed to the same end. The relief is within reach of each and every creditor, and of the stockholders and members of the corporation, during the space of three years, next ensuing the dissolution and no longer. The limitation is reasonable and proper in itself and an inseparable condition of the remedy.¹⁰⁶

Shareholders who would be quick to seize upon this case as a panacea for the problem are reminded that many cases in addition to those of Wisconsin¹⁰⁷ construing similar "one-step" dissolution statutes are contra.¹⁰⁸

NOTICE TO CREDITORS—A MINIMUM NECESSITY FOR EFFECTIVENESS OF 180.787

Clearly, the efficacy of statutes molded in the pattern of the Model Business Corporation Act¹⁰⁹ is unclear. But merely because the adjudicated cases indicate that a shareholder may not be free from the long arm of the corporate creditor after the expiration of the statutory period, there is not necessarily cause for legislative upheaval of the statutes. There may be a serious question of fundamental policy as to whether a shareholder receiving a liquidating distribution is entitled to legislative protection to the detriment of the creditor.¹¹⁰ However, the present confused state of the law is not a happy one. The draftsmen of 180.787 approached their task with the avowed purpose¹¹¹ of limiting shareholder liability to two years after dissolution. The legislative enactment of their labors is the recognition of policy favoring a limitation of shareholder liability. How to bolster the legislation to make it efficacious before courts is the present problem.

¹⁰⁶ Id. at 476. See also Heggie v. Building & Loan Association, 107 N.C. 581, 12 S.E. 277 (1890); Sisk v. Old Hickory Motor Freight, Inc., 222 N.C. 631, 24 S.E. 2d 489 (1945).
¹⁰⁷ See footnotes 35 and 36 supra.
¹⁰⁹ 2 MODEL BUS. CORP. ACT ANN. §98 (1960).
¹¹⁰ See Warren, Safeguarding the Creditors of Corporations, 36 HARV. L. REV. 509 (1923).
¹¹¹ See footnotes 80-82 supra.
Without an effective statute, transferee shareholders will be relegated to limitation defenses predicated upon the normal six year statute of limitation.\textsuperscript{112} The special limitation statute\textsuperscript{113} governing actions against "stockholders . . . to enforce a liability created by law . . ." should be inapplicable to a creditor's action predicated upon the "trust fund" theory evolved through the course of the common law. Section 330.51 has been construed as affecting only statutory liability and not obligations grounded in the common law.\textsuperscript{114}

Even though Section 330.19 be applicable to the case the cause of action may be interpreted as not "accruing"\textsuperscript{115} until the dissolution of the corporation,\textsuperscript{116} and the statute would thus begin to toll from that period.\textsuperscript{117} Of course the primary liability of the corporation must still be outstanding at the time of the dissolution.\textsuperscript{118}

The discussion of what statute of limitation will apply may well be academic in the event the tax collector unexpectedly extends his talons in the direction of the transferee shareholder. It is fundamental that governments are usually bound only by their self-imposed limitation of time. In point of fact, the transferee liability for taxes imposed on shareholders of dissolved corporations\textsuperscript{119} may well be the policy justification for the creation of statutes nobly attempting to solve the problems resulting from that liability in terms of defining it, rather than barring it after lapse of time.

The threat of unexpected suit against the transferee shareholder does seem grave enough to warrant legislative attention. There is no doubt but that statutory provisions for dissolution of corporations do not violate constitutional prohibitions against the impairment of contracts.\textsuperscript{120} It might be argued that the very basis for sustaining the con-

\textsuperscript{112} Wis. Stat. §330.19(3) (1959).
\textsuperscript{113} Wis. Stat. §330.51 (1959).
\textsuperscript{114} Gores v. Field, 109 Wis. 408, 84 N.W. 867, 85 N.W. 411 (1901); Musback v. Schaefer, 115 Wis. 357, 91 N.W. 966 (1902); Bank of Verona v. Stewart, 223 Wis. 577, 270 N.W. 534 (1937). Cf. G.M.C. Hotels, Inc. v. Hanson, 234 Wis. 164, 290 N.W. 615 (1940). An astute lawyer might argue that Wis. Stat. §180.40(5) (b) (1959) is the basis for any creditor's action against a transferee shareholder, especially in view of Wis. Stat. §180.765(3) (1959) (recital that all debts of which the corporation has knowledge have been provided for). The importance of utilizing 330.51 is because the limitation period does not begin to toll until discovery of the facts creating the shareholder liability.
\textsuperscript{116} See 19 C.J.S. Corporations §1762 (1940).
\textsuperscript{118} Ibid.
\textsuperscript{119} Such shareholders often are charged with notice of a subsequently levied tax constituting a potential tax liability at the time of dissolution. See 9 MERTENS, LAW OF FEDERAL INCOME TAXATION §53.15; Scott v. Comm., 117 F. 2d 36 (8th Cir. 1941); United States v. Armstrong, 26 F. 2d 227 (8th Cir. 1928); Updike v. United States, 8 F. 2d 913 (8th Cir. 1925), cert. denied, 271 U.S. 661 (1926); United States v. Seyler, 142 F. Supp. 408 (W.D. Pa. 1956).
\textsuperscript{120} Mumma v. The Potomac Company, 33 U.S. (8 Pet.) 281 (1834); Crossman
stitutionality of dissolution statutes is the remedy surviving against the shareholders. But it should be within legislative province to limit that remedy to a certain period, since the setting of a time limit in a statute of limitation appears to be a matter of legislative discretion. Discounting the effect of Illinois construction of such legislation as not properly a statute of limitation, but rather a limitation on capacity to sue or be sued, the legislature seems empowered to limit the liability if it so sees fit and takes proper action to do so. However, any change to limit liability should probably be made prospective in effect to withstand judicial scrutiny.

Irrespective of the desirability of change in the language of 180.787, the Wisconsin legislature may wish to consider the enactment of legislation providing for mailing to creditors a notice of intention to dissolve by the dissolving corporation.

The Model Act contains such a provision as do many states. Affording notice to all known creditors should enhance the validity of the legislative attempt to limit time for presenting creditor claims. Decisions have been found in which courts were unimpressed with the fact such notice was given. But providing for notice and clearly expressing an intention of making the statute the exclusive remedy—defining shareholder liability in terms of the statute—could go a long way in effectuating the purpose of 180.787 and its counterparts.

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v. Vivienda Water Co., 150 Cal. 575, 89 Pac. 335 (1907); Nelson v. Hubbard, 96 Ala. 238, 11 So. 428 (1892); In re Courtney Bros., Inc., 110 Mont. 289, 100 P. 2d 471 (1942).

121 Nadstanek v. Trask, 130 Ore. 669, 281 Pac. 840 (1929).

122 Dukes v. Harrison & Reidy, 270 Ill. App. 372 (1933), discussed above.


124 See Casey v. Trecker, 268 Wis. 87, 66 N.W. 2d 724 (1954); Guardianship of Blenski, 226 Wis. 361, 276 N.W. 626 (1937); Gianella v. Bigelow, 95 Wis. 185, 71 N.W. 111 (1897); Hasbrouck v. Shipman, 16 Wis. 296 (1862).


127 Lattin, Corporations 569 (1959).