

OHARE DEAN R  
Form 4  
May 18, 2010

**FORM 4**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

OMB APPROVAL

OMB Number: 3235-0287  
Expires: January 31, 2005  
Estimated average burden hours per response... 0.5

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
OHARE DEAN R

(Last) (First) (Middle)

C/O FLUOR CORPORATION, 6700  
LAS COLINAS BOULEVARD

(Street)

IRVING, TX 75039

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol  
FLUOR CORP [FLR]

3. Date of Earliest Transaction  
(Month/Day/Year)  
05/14/2010

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director  10% Owner  
 Officer (give title below)  Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)

Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Beneficial Ownership (Instr. 4)	
				(A) or (D)	Price			
				Code	V	Amount	(D)	Price

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474  
(9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)**

1. Title of Derivative Security	2. Conversion or Exercise	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any	4. Transaction Code	5. Number of Derivative Securities	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)
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(Instr. 3)	Price of Derivative Security	(Month/Day/Year)	(Instr. 8)	Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares
Phantom stock units	<u>(1)</u>	05/14/2010	A	487.5195					<u>(2)</u>	<u>(2)</u>	Common Stock	487.5195

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
OHARE DEAN R C/O FLUOR CORPORATION 6700 LAS COLINAS BOULEVARD IRVING, TX 75039	X			

## Signatures

/s/ Eric P. Helm by Power of  
Attorney  
Date: 05/18/2010

\*\*Signature of Reporting Person

Date

## Explanation of Responses:

- \* If the form is filed by more than one reporting person, see Instruction 4(b)(v).
  - \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) Each phantom stock unit is the economic equivalent of one share of Fluor common stock.

These phantom units were acquired under the Fluor Corporation 409A Deferred Directors' Fees Program (the "Program") and are to be settled in cash. Distributions will be made, at the election of the reporting person, either (i) in the distribution year specified by the reporting person or (ii) upon the reporting person's termination of service as a director, death or disability, in a single lump sum payment or annual installment payments over a period of two to ten years. The reporting person may transfer the phantom units into an alternative investment at any time. However, unvested units granted as matching contributions under the Program shall be forfeited by the reporting person to the extent attributable to the transferred units.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. llars in thousands)

ASSETS

Cash and due from banks

\$  
9,851

\$  
-

\$  
9,851

Short-term interest-bearing deposits

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6,097

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-

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6,097

Total cash and cash equivalents

	15,948
	-
	15,948
Interest-bearing deposits in banks	
	11,378
	11,378
Securities - Available-for-sale	
	17,785

	17,785
Securities - Held-to-maturity	
	9,177
	9,177
Federal Home Loan Bank stock, at cost	
	4,425
	4,425
Loans held for sale	
	1,069
Explanation of Responses:	5

	1,069
Loans, net	
	227,657
	227,657
Real estate owned	
	714
	714
Explanation of Responses:	6

Bank owned life insurance

6,829

6,829

Accrued interest receivable

1,520

1,520

Investment in limited partnership

1,144

	1,144
Premises and equipment, net	
	6,176
	6,176
Goodwill, net of accumulated amortization	
	5,109
	5,109
Originated mortgage servicing rights	



1,864

1,864

Other assets

1,636

1,636

Total assets

\$

312,431

\$

-

\$

Explanation of Responses:

9

**LIABILITIES AND STOCKHOLDERS' EQUITY**

LIABILITIES:

Deposit accounts:

Noninterest-bearing

\$

18,117

\$

-

\$

18,117

Explanation of Responses:

11

Interest-bearing

196,411

196,411

Borrowings from Federal Home Loan Bank

51,903

742

52,645

Repurchase agreements

15,000

15,000

Accrued interest payable

618

618

Other liabilities

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1,795

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1,795

Total liabilities

283,844

742

284,586

STOCKHOLDERS' EQUITY

Preferred stock - \$1 par value:

Authorized - 1,000,000 shares

Issued and outstanding - 0 shares

-

Common stock - \$1 par value:

Authorized - 9,000,000 shares



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Issued and outstanding - 2,809,285 shares

2,730

(46

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2,677

Additional paid-in capital

16,641

(696

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15,945

Accumulated other comprehensive income

87

Retained earnings

Retained earnings

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9,136

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9,136

Total stockholders' equity

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28,587

	(742)
)	
	27,845
Total liabilities and stockholders' equity	
	\$
	312,431
	\$
	-
	\$
	312,431

*See notes for assumptions*

**STURGIS BANCORP, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED PRO FORMA**  
**STATEMENTS OF INCOME AND COMPREHENSIVE INCOME**  
**(Unaudited)**

	Year ended December 31, 2003		
	Historical	Pro Forma Adjustments	Pro Forma Combined
	(Dollars in thousands except per share)		
Interest income:			
Loans	\$ 13,821	\$ -	\$ 13,821
Investment securities:			
Taxable	870	-	870
Tax-exempt	137	-	137
Dividends	418	-	418
Total interest income	15,246	-	15,246
Interest expense			
Deposits	4,135	-	4,135
Borrowed funds	2,882	9	2,891
Total interest expense	7,017	9	7,026
Net interest income	8,229	(9)	8,220
Provision for loan losses	820	-	820
Net interest income after provision for loan losses	7,409	(9)	7,400
Noninterest income:			
Service charges and other fees	1,438	-	1,438
Commission income	847	-	847
Mortgage banking activities	2,662	-	2,662
Trust fee income	485	-	485
Increase in cash surrender value of life insurance	293	-	293
Other income	25	-	25
Total noninterest income	5,750	-	5,750
Noninterest expenses:			
Salaries and employee benefits	4,922	-	4,922
Office occupancy and equipment	1,385	-	1,385
Data processing expense	754	-	754
Professional fees and services	377	(47)	330
Real estate owned expense	225	-	225
Advertising expense	221	-	221
Other	1,694	(38)	1,656
Total noninterest expenses	9,578	(85)	9,493

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INCOME - before income tax expense	3,581	76	3,657
Provision for federal income tax	976	26	1,002
Net income	\$ 2,605	\$ 50	\$ 2,655
Basic earnings per share	\$ 0.93		\$ 0.96
Diluted earnings per share	\$ 0.93		\$ 0.96

*See notes for assumptions*

**STURGIS BANCORP, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED PRO FORMA**  
**STATEMENTS OF INCOME AND COMPREHENSIVE INCOME**  
**(Unaudited)**

Nine months ended September 30, 2004

	<u>Historical</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Combined</u>
	(Dollars in thousands except per share)		
Interest income:			
Loans	\$ 9,888	\$ -	\$ 9,888
Investment securities:			
Taxable	797	-	797
Tax-exempt	91	-	91
Dividends	216	-	216
<b>Total interest income</b>	<b>10,992</b>	<b>-</b>	<b>10,992</b>
Interest expense			
Deposits	2,669	-	2,669
Borrowed funds	2,020	6	2,026
<b>Total interest expense</b>	<b>4,689</b>	<b>6</b>	<b>4,695</b>
<b>Net interest income</b>	<b>6,303</b>	<b>(6)</b>	<b>6,297</b>
Provision for loan losses	571	-	571
<b>Net interest income after provision for loan losses</b>	<b>5,732</b>	<b>(6)</b>	<b>5,726</b>
Noninterest income:			
Service charges and other fees	1,233	-	1,233
Commission income	803	-	803
Mortgage banking activities	719	-	719
Trust fee income	329	-	329
Increase in cash surrender value of life insurance	200	-	200
Other income	9	-	9
<b>Total noninterest income</b>	<b>3,293</b>	<b>-</b>	<b>3,293</b>
Noninterest expenses:			
Salaries and employee benefits	4,047	-	4,047
Office occupancy and equipment	920	-	920
Data processing expense	473	-	473
Professional fees and services	308	(40)	268
Real estate owned expense	58	-	58
Advertising expense	119	-	119
Other	1,225	(38)	1,187
<b>Total noninterest expenses</b>	<b>7,150</b>	<b>(78)</b>	<b>7,072</b>

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INCOME - before income tax expense	1,875	74	1,947
Provision for federal income tax	531	25	556
Net income	\$ 1,344	\$ 49	\$ 1,392
Basic earnings per share	\$ 0.48		\$ 0.52
Diluted earnings per share	\$ 0.48		\$ 0.52

*See notes for assumptions*

**STURGIS BANCORP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED PRO FORMA EARNINGS TO FIXED CHARGES**  
**(Unaudited)**

<u>Ratio of earnings to fixed charges</u>	Year ended <u>12/31/2003</u>	Year ended <u>12/31/2002</u>	Pro Forma Year ended <u>12/31/2003</u>	Nine months ended <u>9/30/2004</u>	Pro Forma Nine months ended <u>9/30/2003</u>	Pro Forma Nine months ended <u>9/30/2004</u>
	(Dollars in thousands)					
<b><u>Earnings</u></b>						
<b><u>Add</u></b>						
Pretax income	\$ 3,581	\$ 3,908	\$ 3,655	\$ 1,875	\$ 2,952	\$ 1,947
Fixed charges	7,017	8,414	7,028	4,689	5,393	4,695
Amortization of capitalized interest	-	-	-	-	-	-
Distributed income of equity investees	-	-	-	-	-	-
Share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges	-	-	-	-	-	-
<b><u>Less</u></b>						
Interest capitalized	-	-	-	-	-	-
Preference security dividend requirements	-	-	-	-	-	-
Minority interest in pre-tax income of subsidiaries that have not incurred fixed charges	-	-	-	-	-	-
<b>Total earnings</b>	<b>\$ 10,598</b>	<b>\$ 12,322</b>	<b>\$ 10,683</b>	<b>\$ 6,564</b>	<b>\$ 8,345</b>	<b>\$ 6,642</b>
<b><u>Fixed Charges</u></b>						
Interest expensed & capitalized	\$ 7,017	\$ 8,414	\$ 7,028	\$ 4,689	\$ 5,393	\$ 4,695
Amortized premiums, discounts and capitalized expenses	-	-	-	-	-	-
Interest within rental expense	-	-	-	-	-	-
Preference security dividend requirements of consolidated subs	-	-	-	-	-	-
<b>Total fixed charges</b>	<b>\$ 7,017</b>	<b>\$ 8,414</b>	<b>\$ 7,028</b>	<b>\$ 4,689</b>	<b>\$ 5,393</b>	<b>\$ 4,695</b>



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**Ratio of earnings to fixed  
charges**

151.03%

146.45%

152.01%

139.99%

154.74%

141.47%

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*See notes for assumptions*

**STURGIS BANCORP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED PRO FORMA BOOK VALUE PER SHARE**  
**(Unaudited)**

	<b>Actual 9/30/2004</b>	<b>Pro Forma Adjustments</b>	<b>Pro Forma 9/30/2004</b>
	(Dollars in thousands except share and per share data)		
Common stock	\$ 2,723	\$ (46)	\$ 2,677
Additional paid-in capital	16,641	(696)	15,945
Retained earnings	9,136	-	9,136
Accumulated other comprehensive income, net	87	-	87
Unearned Employee Stock Ownership Plan shares	-	-	-
<b>Total shareholders' equity</b>	<b>\$ 28,587</b>	<b>\$ (742)</b>	<b>\$ 27,845</b>
Outstanding shares 6/30/04	2,722,885	(46,371)	2,676,514
Book value per share 6/30/04	\$ 10.50		\$ 10.40

**NOTES TO PRO FORMA FINANCIAL STATEMENTS**

- (1) The Company has assumed that the Merger occurred as of September 30, 2004, for the purposes of the unaudited consolidated pro forma balance sheet, and as of January 1, 2003, and January 1, 2004, respectively, with respect to the unaudited condensed consolidated pro forma income statements for the year ended December 31, 2003, and the nine months ended September 30, 2004.
- (2) The Company has assumed that a total of 46,371 shares are cashed out in the merger at a price of \$16.00 per share, for a total payment of \$741,936.
- (3) The Company has assumed that all of the cash required to consummate the Merger will be provided from working capital of the corporation.
- (4) The Company has adjusted for a pretax cost savings, estimated to be approximately \$76,000 for the year ended December 31, 2003, and \$74,000 for the nine months ended September 30, 2004. The applicable incremental federal income tax rate is assumed to be 34%. This is an estimate of the actual cost incurred in these periods for legal, accounting and other professional fees associated with the filing requirements under the Exchange Act. This adjustment is not a prediction of future results. No adjustment is made for employee, overhead, indirect or incidental expenses. Management estimates that costs associated with being a filing company under the Exchange Act will be significantly higher in later periods.



## APPENDIX A

### AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER ("Plan of Merger"), dated as of September 21, 2004, is entered into by and between SB Merger Company ("Merger Co.") and Sturgis Bancorp, Inc. ("Sturgis").

Merger Co. is a corporation, duly organized and validly existing under the laws of the State of Michigan. As of the date of this Plan of Merger, the authorized capital stock of Merger Co. consists of 50,000 shares of common stock, without par value ("Merger Co. Common Stock"), of which 100 shares are issued and outstanding. All of Merger Co.'s outstanding shares are owned by Sturgis. Sturgis is a corporation, duly organized and validly existing under the laws of the State of Michigan. As of the date of this Plan of Merger, the authorized capital stock of Sturgis consists of its common stock, \$1.00 par value ("Sturgis Common Stock"), of which 9,000,000 shares are authorized and of which 2,722,885 shares are issued and outstanding, and its preferred stock, \$1.00 par value, of which 1,000,000 shares are authorized and of which no shares are issued or outstanding. The respective Boards of Directors of Sturgis and Merger Co. deem this Plan of Merger advisable and in the best interests of each such corporation and their respective shareholders. The respective Boards of Directors of Sturgis and Merger Co. have each adopted the Plan of Merger, directed that this Plan of Merger be submitted for approval by their respective shareholders, and recommended that the Plan of Merger be approved by their respective shareholders.

Merger Co. and Sturgis agree:

#### ARTICLE I THE MERGER

1.1 **The Merger.** Subject to the terms and conditions of this Plan of Merger, and in accordance with the Michigan Business Corporation Act (the "Act"), at the Effective Time (as defined in Section 1.2), Merger Co. will merge with and into Sturgis (the "Merger"). Sturgis will survive the Merger and will continue its corporate existence (referred to after the Merger as the "Surviving Corporation") under the laws of the State of Michigan. Upon consummation of the Merger, the separate corporate existence of Merger Co. will terminate and the name of the Surviving Corporation will be "Sturgis Bancorp, Inc."

1.2 **Effective Time.** After approval of this Plan of Merger by the shareholders of Merger Co. and Sturgis, a certificate of merger will be filed with the Michigan Department of Labor and Economic Growth for approval. The Merger will become effective (the "Effective Time") when the certificate of merger has been filed with the Michigan Department of Labor and Economic Growth or as of any later time specified in the certificate of merger.

1.3 **Effects of the Merger.** At and after the Effective Time, the Merger will have the effects set forth in the Act and in this Plan of Merger.

1.4 **Treatment of Common Stock.**

(a) At the Effective Time, by virtue of the Merger and without any shareholder action, the following will occur:

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(i) Each issued and outstanding share of Sturgis Common Stock owned of record by a Qualified Holder (as defined in Section 1.5) at the Effective Time will continue as one share of common stock of the Surviving Corporation.

(ii) Each issued and outstanding share of Sturgis Common Stock owned of record by a Nonqualified Holder (as defined in Section 1.5) at the Effective Time will be converted into the right to receive cash from the Surviving Corporation in the amount of \$16.00 per share (the "Cash Consideration"). Nonqualified Holders will not have any rights as shareholders of Sturgis

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or the Surviving Corporation after the Effective Time except the right to receive the Cash Consideration, without interest, upon surrender to the Surviving Corporation of their certificates which previously represented shares of Sturgis Common Stock and dissenters' rights as described in Article III of this Plan of Merger.

(b) At the Effective Time, by virtue of the Merger and without any shareholder action, each issued and outstanding share of Merger Co. Common Stock will be cancelled without consideration.

(c) In no event will any Holder (as defined in Section 1.5) holding of record as of the Effective Time 500 or more shares in the aggregate be entitled to receive any consideration with respect to the shares so held except the right to continue to own those shares.

(d) It will be a condition precedent to the right of any Holder to receive Cash Consideration, if any, payable with respect to the shares held by such Holder that such Holder certify in the letter of transmittal (described in Section 2.2 below) that such Holder held of record fewer than 500 shares of Sturgis Common Stock in the aggregate immediately prior to the Effective Time.

#### 1.5 **Certain Definitions.**

(a) The term "Qualified Holder" means a Holder of Sturgis Common Stock who holds of record 500 or more shares of Sturgis Common Stock immediately prior to the Effective Time.

(b) The term "Nonqualified Holder" means a Holder of Sturgis Common Stock who is not a Qualified Holder.

(c) The term "Holder" means any record holder or holders of Sturgis Common Stock who would be deemed, under Rule 12g5-1 promulgated under the Securities Exchange Act of 1934, as amended, to be a single "person" for purposes of determining the number of record shareholders of Sturgis.

1.6 **Articles of Incorporation.** The Articles of Incorporation of Sturgis in effect as of the Effective Time will be the Articles of Incorporation of the Surviving Corporation after the Merger until amended in accordance with applicable law.

1.7 **Bylaws.** The Bylaws of Sturgis in effect as of the Effective Time will be the Bylaws of the Surviving Corporation after the Merger until amended in accordance with applicable law.

1.8 **Board of Directors.** The directors of Sturgis immediately prior to the Effective Time will be the directors of the Surviving Corporation from and after the Effective Time until their respective successors will have been elected or appointed and qualified or until their earlier death, resignation, or removal in accordance with the Surviving Corporation's Articles of Incorporation and Bylaws.

1.9 **Officers.** The officers of Sturgis immediately prior to the Effective Time will be the officers of the Surviving Corporation from and after the Effective Time until their respective successors have been elected or appointed and qualified or until their earlier death, resignation, or removal in accordance with the Surviving Corporation's Articles of Incorporation and Bylaws.

1.10 **Shareholder Approval.** The Merger is subject to the condition that this Plan of Merger be approved by a vote of the holders of a majority of the issued and outstanding shares of Sturgis Common Stock.

**ARTICLE II**  
**STOCK CERTIFICATES**

2.1 **Certificates Held by Qualified Holders.** Certificates evidencing shares of Sturgis Common Stock held by a Qualified Holder as of the Effective Time will evidence the same number of shares of common stock of the Surviving Corporation after the Effective Time.

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2.2 **Certificates Held by Nonqualified Holders.** After the Effective Time, the Surviving Corporation will send or deliver to each Nonqualified Holder a letter of transmittal. This letter will describe how to exchange stock certificates for the Cash Consideration. Until presented to the Surviving Corporation as directed by the letter of transmittal, certificates that previously represented shares of Sturgis Common Stock held by a Nonqualified Holder will only evidence the right to receive cash as provided in this Plan of Merger. Upon presentation to the Surviving Corporation of certificates that previously represented shares of Sturgis Common Stock held by a Nonqualified Holder, cash will be paid in an amount to which such holder will be entitled pursuant to Article I of this Plan of Merger. No interest will be due on any cash payable pursuant to this Plan of Merger, except as may be applicable pursuant to Article III.

### **ARTICLE III DISSENTERS' RIGHTS**

Pursuant to a resolution of the Board of Directors, each Nonqualified Holder may elect to dissent from this Plan of Merger, and obtain payment for his or her shares of Common Stock, in the manner, with the rights, and subject to the requirements applicable to dissenting shareholders as provided in Sections 761 through 774 of the Act. No other Holder will have the right to dissent. The right of a Nonqualified Holder to dissent is subject to the condition that the Nonqualified Holder comply strictly with Sections 765, 767 and 772 of the Act, and any Nonqualified Holder who exercises dissenters' rights will be deemed by such exercise to have agreed to be bound by those sections of the Act. As provided in Section 765 of the Act, a Nonqualified Holder who wishes to assert dissenters' rights must deliver to Sturgis, before the shareholder vote to approve this Plan of Merger is taken, a written notice of his or her intent to demand payment for his or her shares if this Plan of Merger is effectuated. In addition, the dissenting Nonqualified Holder must not vote his or her shares in favor of the Plan of Merger proposal.

### **ARTICLE IV GENERAL PROVISIONS**

#### **4.1 Resolution of Issues.**

(a) Sturgis (acting through its officers or any other person or entity to which it may delegate or assign any responsibility or task) will have full discretion and exclusive authority to make such inquiries as it may deem appropriate for purposes of this Plan of Merger and resolve and determine in its sole discretion, all ambiguities, questions of fact, and interpretive and other matters relating to this Plan of Merger, including, without limitation, any questions as to the number of shares held of record by any Holder immediately prior to the Effective Time. All determinations by Sturgis or such officer, person or entity will be final and binding on all parties, and no person or entity will have any recourse against Sturgis or any other person or entity with respect to such determinations.

(b) For purposes of Article I, Sturgis may, in its sole discretion, but will not be obligated to: (i) presume that any shares of Sturgis Common Stock held in a discrete account are held by a person distinct from any other person, notwithstanding that the registered Holder of a separate discrete account has the same or a similar name as the Holder of a different discrete account; and (ii) aggregate the shares held by any person or persons that Sturgis determines to constitute a single Holder for purposes of determining the number of shares held by such Holder.



4.2 **Governing Law.** This Plan of Merger will be governed and construed in accordance with the laws of the State of Michigan, without regard to any applicable conflicts of law.

4.3 **Abandonment.** At any time prior to the Effective Time, before or after approval of the Plan of Merger by the shareholders of Merger Co. and Sturgis, Merger Co. and Sturgis may abandon this Plan of Merger without further shareholder action by a written agreement signed by an officer of each of Merger Co. and Sturgis; provided, however, that if a certificate of merger has been filed, this Plan of Merger may not be abandoned unless a certificate of abandonment is filed with the Michigan Department of Labor and Economic Growth within 10 days of

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the abandonment, but not later than the proposed effective date. If abandoned, this Plan of Merger will terminate and be of no further force and effect and no shareholder shall have any rights under this Plan of Merger.

4.4 **Amendment.** Subject to compliance with applicable law, this Plan of Merger may be amended by a written agreement executed by Merger Co. and Sturgis and authorized by their respective Boards of Directors or duly authorized committees at any time before or after approval of the Plan of Merger by the shareholders of Merger Co. or Sturgis; provided, however, that after any approval of the transactions contemplated by this Plan of Merger by the shareholders of Sturgis, there may not be, without further approval of such shareholders, any amendment of this Plan of Merger which (i) alters or changes the amount or the form of the consideration to be delivered to the holders of Sturgis Common Stock other than as contemplated by this Plan of Merger, (ii) alters or changes any term of the Articles of Incorporation of the Surviving Corporation, or (iii) adversely affects the holder of any stock of the constituent corporations.

THIS AGREEMENT AND PLAN OF MERGER has been executed as of the date first above written.

SB MERGER COMPANY

STURGIS BANCORP, INC.

By:           /s/ Eric L. Eishen            
Eric L. Eishen  
President

By:           /s/ Eric L. Eishen            
Eric L. Eishen  
President

"Merger Co."

"Sturgis"

**APPENDIX B**

**PROPOSED AMENDMENT TO  
ARTICLES OF INCORPORATION**

**ARTICLE EIGHTEENTH**

Eighteenth. *Odd-Lot Transfers*. No shareholder may transfer shares of common stock without the consent of the corporation if, as a result of an attempted transfer, the party who would receive the shares would own of record fewer than 100 shares of common stock. This restriction may be noted conspicuously on stock certificates issued or transferred after the effective date of the amendment adding this Article Eighteenth to the Articles of Incorporation. For purposes of this Article Eighteenth, "transfer" means any type of disposition, including but not limited to a sale, gift, contribution, pledge or other action that would result in a change of the record ownership of any share of common stock. It is the intent of the shareholders that this restriction on transfer will be enforced to the full extent, but only to the extent, it is enforceable against shareholders under the laws of the State of Michigan. The officers of the Corporation have discretionary authority to determine issues relating to a proposed transfer, including without limitation whether the transfer would or would not be in violation of this Article Eighteenth and whether the restrictions of this Article Eighteenth may or may not be enforced against a holder requesting a transfer of shares. The recording of a transfer on the stock records of the Corporation shall be conclusive evidence that the Corporation has consented to the transfer, if required under this Article Eighteenth, and any transfer of shares recorded on the stock records of the Corporation will be valid for all purposes.

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**APPENDIX C**

September 23, 2004

Board of Directors  
Sturgis Bancorp, Inc.  
125 E. Chicago Road  
Sturgis, MI 49091

Members of the Board of Directors:

You have requested our opinion as to the fairness, from a financial point of view, of the cash consideration of \$16.00 per share to be received by the common shareholders Sturgis Bancorp, Inc. ("Sturgis" or the "Company") holding fewer than 500 shares immediately prior to the Effective Time as defined in the Proxy Statement relating to the Agreement and Plan of Merger (the "Transaction"). Shareholders who hold 500 or more shares immediately prior to the Effective Time will be issued new shares, the number of which will depend on the number of pre-Transaction shares held. These shareholders may also be issued fractions of shares and will not receive cash from the Company. Shareholders who hold fewer than 500 shares immediately prior to the Effective Time will, as a result of the Transaction, no longer be shareholders of the Company and instead will receive cash in the amount of \$16.00 per pre-Transaction share ("Transaction Consideration"). Thereafter, these shareholders shall cease to have any rights as shareholders of the Company except such rights, if any, as they may have pursuant to the Michigan Business Corporation Act, and, except as aforesaid, their sole right shall be the right to receive the Transaction Consideration as aforesaid, without interest thereon, upon surrender to the Company of their certificates which theretofore represented shares of Sturgis Common Stock.

Donnelly Penman & Partners ("DP&P") is an investment-banking firm of recognized standing. As part of our investment banking services, we are continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, private placements and valuations for stock plans, corporate and other purposes. We are acting as financial advisor to the Company in connection with the Transaction and will receive a fee from the Company for our services pursuant to the terms of our engagement letter with the Company, dated as of July 28, 2004 (the "Engagement Letter").

In arriving at our Opinion, we have:

- I. Reviewed the Annual Reports of the Company for the years ended December 31, 2002 through 2003 as well as interim financials through July 31, 2004;
- II. Reviewed reports from the Board of Directors meetings for Sturgis Bancorp, Inc. and Sturgis Bank and Trust held during the month of July, 2004;
- III. Reviewed the Company's Strategic Plan and 2004 - 2006 forecast;
- IV.

Explanation of Responses:

Compared certain financial characteristics of the Company to certain publicly held companies we deemed relevant;

- V. Reviewed current banking industry conditions and trends concerning the valuation of recent mergers and acquisitions;
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*The Board of Directors  
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- VI. Conducted discussions with the senior management of the Company concerning the business and future prospects of the Company;
- VII. Prepared a discounted cash flow analysis of the Company based on projections derived from discussions with and deemed reasonable by management of the Company; and
- VIII. Reviewed such other data, including financial and industry data, performed such other analyses and taken into account such other matters as we deemed necessary or appropriate.

In conducting our review and arriving at our opinion, as contemplated under the terms of our engagement by the Company, we, with the consent of the Company, relied, without independent investigation, upon the accuracy and completeness of all financial and other information provided to us by the Company. DP&P has further relied upon the assurance of management of the Company that they are unaware of any facts that would make the information provided by or available to the Company incomplete or misleading in any respect. With respect to the financial forecast information discussed with us by the Company, we have assumed that they have been reasonably prepared in good faith and reflect the best currently available estimates and judgments of the senior management of the Company as to the expected future financial performance of the Company. The Company's management team has undertaken and agreed to advise us promptly if any information previously provided has become inaccurate or is required to be updated during the period of our review.

No limitations were imposed by the Company on DP&P on the scope of DP&P's investigation or the procedures to be followed by DP&P in rendering this opinion. On September 21, 2004, the Board of Directors was provided with a DP&P valuation of the fully marketable, undiscounted value of a share of Sturgis common stock as of June 30, 2004. On September 23, 2004 DP&P updated the valuation to reflect the fully marketable, undiscounted value of a share of Sturgis common stock as of September 20, 2004. Although DP&P believes the value presented to the board and subsequent update are reasonable valuations, the actual share valuation for purposes of this Transaction is at the sole discretion of the Board of Directors. In addition, DP&P was not requested to and did not make any recommendation to the Company's Board of Directors as to the form of the consideration to be paid to the Company's shareholders. DP&P was not requested to opine as to, and this opinion does not address, The Company's underlying business decision to proceed with or effect the Transaction or the relative merits of the Transaction compared to any alternative transaction that might be available to the Company.

DP&P did not make or obtain any independent evaluation, valuation or appraisal of the assets or liabilities of the Company, nor were we furnished with such materials. DP&P has not reviewed any individual credit files of the Company and has assumed, without independent verification, that the aggregate allowances for credit losses for the Company are adequate and appropriate to cover such losses. Our opinion is necessarily based upon economic and market conditions and other circumstances as they exist and have been evaluated by us on the date of our opinion. We do not have any obligation to update our opinion beyond the September 20, 2004 valuation, unless requested by the Company in writing to do so, and we expressly disclaim any responsibility to do so in the absence of any such request. Our services to the Company in connection with the Transaction have been comprised solely of financial advisory services, as described in the Engagement Letter.



*The Board of Directors  
Sturgis Bancorp, Inc.  
September 23, 2004  
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In our analyses, we have made numerous assumptions with respect to industry performance, business and economic conditions, and other matters, many of which are beyond the control of the Company. These assumptions include:

interest rates are expected to gradually trend upward through 2006 and remain constant thereafter;  
general economic conditions are not expected to improve or deteriorate significantly from their current state;  
no significant industry regulations or events are expected to occur that would impair the Company's ability to earn income at the projected levels; and  
industry trading and transaction multiples are not projected to change significantly from the current values.

Any estimates contained in our analyses are not necessarily indicative of future results or value, which may be significantly more or less favorable than such estimates. Estimates of values of companies do not purport to be appraisals or to necessarily reflect the prices at which companies or their securities actually may be sold. No company or merger utilized in our analyses was identical to the Company. Accordingly, such analyses are not based solely on arithmetic calculations; rather, they involve complex considerations and judgments concerning differences in financial and operating characteristics of the relevant companies, the timing of the relevant mergers and prospective buyer interests, as well as other factors that could affect the public trading markets of companies to which the Company is being compared. The analyses performed by DP&P were assigned a weighting based on DP&P's opinion of their relative comparability and significance with regard to the specific characteristics of the Company. The complete valuation provided to the Company on September 21, 2004, including a comprehensive explanation of methodologies utilized has been delivered to the Board of Directors of the Company. Additional copies are available to members of the Board of Directors of the Company and the Company's management upon request. A duplication of this valuation is also presented in the Proxy Statement under the heading of Opinion of Financial Advisor.

Our opinion is furnished to the Board of Directors of the Company in connection with its consideration of the proposed Transaction and does not constitute a recommendation to or any advice to the Board of Directors of the Company or to any shareholder to take any other action in connection with the Transaction. Furthermore, this letter should not be construed as creating any fiduciary duty on the part of DP&P to any such party. We hereby consent to the reference to our opinion in the proxy statement relating to the shares of common stock of the Company to be repurchased in the Transaction and to the inclusion of the foregoing opinion in the materials relating to the Transaction. In giving such consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933 or the rules and regulations of the Securities and Exchange Commission thereunder.



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Based upon and subject to the foregoing, including the various assumptions and limitations set forth herein, it is our opinion that, as of September 21, 2004, the Transaction Consideration of \$16.00 per share, is fair, from a financial point of view, to the common shareholders of the Company. This opinion confirms our verbal opinion provided to the Board of Directors of the Company on September 21, 2004.

Very truly yours,

John C. Donnelly  
Managing Director  
Donnelly Penman & Partners

**APPENDIX D**

**DISSENTERS' RIGHTS STATUTE**

**450.1761. Definitions**

Sec. 761. As used in sections 762 to 774:

- (a) "Beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.
- (b) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving corporation by merger of that issuer.
- (c) "Dissenter" means a shareholder who is entitled to dissent from corporate action under section 762 and who exercises that right when and in the manner required by sections 764 through 772.
- (d) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.
- (e) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.
- (f) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (g) "Shareholder" means the record or beneficial shareholder.

**450.1762. Shareholder's right to dissent, fair value of shares; exceptions to right to dissent**

Sec. 762.

- (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:
  - (a) Consummation of a plan of merger to which the corporation is a party if shareholder approval is required for the merger by section 703a or 736(5) or the articles of incorporation and the shareholder is entitled to vote on the merger, or the corporation is a subsidiary that is merged with its parent under section 711.
  - (b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.
  - (c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order.
  - (d) An amendment of the articles of incorporation giving rise to a right to dissent pursuant to section 621.
  - (e) A transaction giving rise to a right to dissent pursuant to section 754.
  - (f) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their

shares.

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- (g) The approval of a control share acquisition giving rise to a right to dissent pursuant to section 799.
- (2) Unless otherwise provided in the articles of incorporation, bylaws, or a resolution of the board, a shareholder may not dissent from any of the following:
- (a) Any corporate action set forth in subsection (1)(a) to (e) as to shares that are listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, on the record date fixed to vote on the corporate action or on the date the resolution of the parent corporation's board is adopted in the case of a merger under section 711 not requiring shareholder vote under section 713.
  - (b) A transaction described in subsection (1)(a) in which shareholders receive cash or shares that satisfy the requirements of subdivision (a) on the effective date of the merger or any combination thereof.
  - (c) A transaction described in subsection (1)(b) in which shareholders receive cash or shares that satisfy the requirements of subdivision (a) on the effective date of the share exchange or any combination thereof.
  - (d) A transaction described in subsection (1)(c) that is conducted pursuant to a plan of dissolution providing for distribution of substantially all of the corporation's net assets to shareholders in accordance with their respective interests within 1 year after the date of closing of the transaction, where the transaction is for cash or shares that satisfy the requirements of subdivision (a) on the date of closing or any combination thereof.
- (3) A shareholder entitled to dissent and obtain payment for his or her shares pursuant to subsection (1)(a) to (e) may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.
- (4) A shareholder who exercises his or her right to dissent and seek payment for his or her shares pursuant to subsection (1)(f) may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

**450.1763. Dissenters' rights; partial dissenter, beneficial shareholder**  
Sec. 763.

- (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his or her name only if he or she dissents with respect to all shares beneficially owned by any 1 person and notifies the corporation in writing of the name and address of each person on whose behalf he or she asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he or she dissents and his or her other shares were registered in the names of different shareholders.
- (2) A beneficial shareholder may assert dissenters' rights as to shares held on his or her behalf only if all of the following apply:
- (a) He or she submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights.
  - (b) He or she does so with respect to all shares of which he or she is the beneficial shareholder or over which he or she has power to direct the vote.

**450.1764. Corporate action creating dissenters' rights; vote at shareholders' meeting, notice; action taken without shareholder vote notice**  
Sec. 764.

- (1) If proposed corporate action creating dissenters' rights under section 762 is submitted to a vote at a



shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this act and shall be accompanied by a copy of sections 761 to 774.

- (2) If corporate action creating dissenters' rights under section 762 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 766. A shareholder who consents to the corporate action is not entitled to assert dissenters' rights.

**450.1765. Shareholder asserting dissenter rights; written notice of intent to demand payment for shares, submission prior to vote at shareholder meeting**

Sec. 765.

- (1) If proposed corporate action creating dissenters' rights under section 761 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must deliver to the corporation before the vote is taken written notice of his or her intent to demand payment for his or her shares if the proposed action is effectuated and must not vote his or her shares in favor of the proposed action.
- (2) A shareholder who does not satisfy the requirements of subsection (1) is not entitled to payment for his or her shares under this act.

**450.1766. Delivery of written dissenters notice by corporation; notice contents**

Sec. 766.

- (1) If proposed corporate action creating dissenters' rights under section 762 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 765.
- (2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken, and must provide all of the following:
- (a) State where the payment demand must be sent and where and when certificates for shares represented by certificates must be deposited.
  - (b) Inform holders of shares without certificates to what extent transfer of the shares will be restricted after the payment demand is received.
  - (c) Supply a form for the payment demand that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether he or she acquired beneficial ownership of the shares before the date.
  - (d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (1) notice is delivered.

**450.1767. Shareholders sent dissenter's notice; demand for payment, certification of beneficial ownership date, deposit of certificates; rights retained; failure to demand payment**

Sec. 767.

- (1) A shareholder sent a dissenter's notice described in section 766 must demand payment, certify whether he or she acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to section 766(2)(c), and deposit his or her certificates in accordance with the terms of the notice.
- (2) The shareholder who demands payment and deposits his or her share certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

- (3) A shareholder who does not demand payment or deposit his or her share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his or her shares under this act.

**450.1768. Transfer of shares without certificates, restriction; rights retained**

Sec. 768.

- (1) The corporation may restrict the transfer of shares without certificates from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 770.
- (2) The person for whom dissenters' rights are asserted as to shares without certificates retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

**450.1769. Payment to dissenters of estimated fair value of shares plus accrued interest; accompanying information**

Sec. 769.

- (1) Except as provided in section 771, within 7 days after the proposed corporate action is taken or a payment demand is received, whichever occurs later, the corporation shall pay each dissenter who complied with section 767 the amount the corporation estimates to be the fair value of his or her shares, plus accrued interest.
- (2) The payment must be accompanied by all of the following:
- (a) The corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and if available the latest interim financial statements.
  - (b) A statement of the corporation's estimate of the fair value of the shares.
  - (c) An explanation of how the interest was calculated.
  - (d) A statement of the dissenter's right to demand payment under section 772.

**450.1770. Failure of corporation to take proposed action; return of certificates, release of transfer restrictions; taking action after return and release, new dissenter's notice**

Sec. 770.

- (1) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on shares without certificates.
- (2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 766 and repeat the payment demand procedure.

**450.1771. Election by corporation to withhold payment from certain dissenters; estimate of fair value of shares, offer of payment, statement**

Sec. 771.

- (1) A corporation may elect to withhold payment required by section 769 from a dissenter unless he or she was the beneficial owner of the shares before the date set forth in the dissenters' notice pursuant to section 766(2)(c).

- (2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall offer to pay this amount to each dissenter who shall agree to accept it in full satisfaction of his or her demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 772.

**450.1772. Estimate of fair value, written notice; demand for payment, conditions; waiver of right to demand payment**  
Sec. 772.

- (1) A dissenter may notify the corporation in writing of his or her own estimate of the fair value of his or her shares and amount of interest due, and demand payment of his or her estimate, less any payment under section 769, or reject the corporation's offer under section 771 and demand payment of the fair value of his or her shares and interest due, if any 1 of the following applies:
- (a) The dissenter believes that the amount paid under section 769 or offered under section 771 is less than the fair value of his or her shares or that the interest due is incorrectly calculated.
  - (b) The corporation fails to make payment under section 769 within 60 days after the date set for demanding payment.
  - (c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on shares without certificates within 60 days after the date set for demanding payment.
- (2) A dissenter waives his or her right to demand payment under this section unless he or she notifies the corporation of his or her demand in writing under subsection (1) within 30 days after the corporation made or offered payment for his or her shares.

**450.1773. Unsettled demand for payment, appraisal proceedings; commencement, parties, jurisdiction, appraisers, discovery rights, judgment amount**  
Sec. 773.

- (1) If a demand for payment under section 772 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.
- (2) The corporation shall commence the proceeding in the circuit court of the county in which the corporation's principal place of business or registered office is located. If the corporation is a foreign corporation without a registered office or principal place of business in this state, it shall commence the proceeding in the county in this state where the principal place of business or registered office of the domestic corporation whose shares are to be valued was located.
- (3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.
- (4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint 1 or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.
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- (5) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his or her shares, plus interest, exceeds the amount paid by the corporation or for the fair value, plus accrued interest, of his or her after-acquired shares for which the corporation elected to withhold payment under section 771.

**450.1773a. Appointment of referee to conduct proceedings; powers and duties**  
Sec. 773a.

- (1) In a proceeding brought pursuant to section 773, the court may, pursuant to the agreement of the parties, appoint a referee selected by the parties and subject to the approval of the court. The referee may conduct proceedings within the state, or outside the state by stipulation of the parties with the referee's consent, and pursuant to the Michigan court rules. The referee shall have powers that include, but are not limited to, the following:
- (a) To hear all pretrial motions and submit proposed orders to the court. In ruling on the pretrial motion and proposed orders, the court shall consider only those documents, pleadings, and arguments that were presented to the referee.
  - (b) To require the production of evidence, including the production of all books, papers, documents, and writings applicable to the proceeding, and to permit entry upon designated land or other property in the possession or control of the corporation.
  - (c) To rule upon the admissibility of evidence pursuant to the Michigan rules of evidence.
  - (d) To place witnesses under oath and to examine witnesses.
  - (e) To provide for the taking of testimony by deposition.
  - (f) To regulate the course of the proceeding.
  - (g) To issue subpoenas, when a written request is made by any of the parties, requiring the attendance and testimony of any witness and the production of evidence including books, records, correspondence, and documents in the possession of the witness or under his or her control, at a hearing before the referee or at a deposition convened pursuant to subdivision (e). In case of a refusal to comply with a subpoena, the party on whose behalf the subpoena was issued may file a petition in the court for an order requiring compliance.
- (2) The amount and manner of payment of the referee's compensation shall be determined by agreement between the referee and the parties, subject to the court's allocation of compensation between the parties at the end of the proceeding pursuant to equitable principles, notwithstanding section 774.
- (3) The referee shall do all of the following:
- (a) Make a record and reporter's transcript of the proceeding.
  - (b) Prepare a report, including proposed findings of fact and conclusions of law, and a recommended judgment.
  - (c) File the report with the court, together with all original exhibits and the reporter's transcript of the proceeding.
- (4) Unless the court provides for a longer period, not more than 45 days after being served with notice of the filing of the report described in subsection (3), any party may serve written objections to the report upon the other party. Application to the court for action upon the report and objections to the report shall be made by motion upon notice. The court, after hearing, may adopt the report, may receive further evidence, may modify the report, or may recommit the report to the referee with instructions. Upon adoption of the report, judgment shall be entered in the same manner as if the action had been tried by the court and shall be subject to review in the same manner as any other judgment of the court.

**450.1774. Appraisal proceeding; determination of costs; assessment of costs, fees, and expenses**  
Sec. 774.

- (1) The court in an appraisal proceeding commenced under section 773 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 772.
  - (2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable in the following manner:
    - (a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 764 through 772.
    - (b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this act.
  - (3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to those counsel reasonable fees paid out of the amounts awarded the dissenters who were benefited.
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