Legal and Strategic Issues Embodied in and raised by the Attempted Takeover of the Dayton Hudson Corporation by the Dart Group Corporation

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LEGAL AND STRATEGIC ISSUES IN THE ATTEMPTED TAKEOVER OF DAYTON HUDSON BY THE DART GROUP

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by
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LEGAL AND STRATEGIC ISSUES IN THE ATTEMPTED TAKEOVER OF DAYTON HUDSON BY THE DART GROUP

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OVERVIEW OF THE ISSUES PRESENTED

In the 1980s, takeovers were surrounded with controversy over whether they should be more regulated with laws, and they were becoming very complex as target companies learned how to defend themselves better. One takeover that illustrated both the complexity and the controversy was the attempted takeover of the Dayton Hudson Corporation by the Dart Group during the summer of 1987.

There are two points that I intend to prove in this paper that I believe were demonstrated in this attempted takeover. The first point is that the Dart group, which was controlled by the Haft family, was only interested in gaining control of Dayton Hudson had the stockmarket not crashed. Many people doubted their intentions and believed the Hafts only wanted greenmail. Prior to this takeover, they had had a history of attempting takeovers and failing to gain control. They would still walk away with a profit after selling back stock that had been acquired cheaply. As a result, they had a reputation for only initiating takeovers in order to gain a profit and not gain control of the company. The second and most important point is that Dayton Hudson was defending itself correctly and Dart was using the best options available to it in its pursuit of Dayton Hudson. At the time the stockmarket crashed, both sides still had a chance at being successful.

At the time, takeovers were occurring in an environment brimming with controversy over state laws and potential federal regulation. States were beginning to pass laws that protected local companies, and these laws made takeovers more difficult for raiders. The first state to pass such a law was Indiana, and its law was upheld by the Supreme Court in 1986. There was a large push for the federal government to adopt uniform laws to regulate takeovers. Supporters pointed out how raiders were pursuing targets in order to make a profit whether the company was taken over or not and how target companies accumulated large amounts of debt defending themselves. Opponents of
federal regulation argued that the market was efficient and would regulate itself. Passing laws would only protect management from having to respond to market pressures.

Target companies could take steps to protect themselves that could make a takeover very difficult to accomplish. The best defense was a corporate board that represented the shareholders' interests. Such a board should have consisted of people from outside the company; insiders were more likely to worry about personnel or company assets when making decisions and not consider what steps were best from a shareholder's point of view. Shareholders were important because they were the ones that the raider would try to get to support a takeover in order to gain control. The shareholders also had the power to remove the board of directors if it was not representing their interests and replace it with one that would. They even had the power to institute a board that would support the raider's policies. A target company had to take steps to make removal of the board difficult such as staggering board elections or requiring a supermajority of stockholders to have to agree to remove the board.

The attempted takeover of Dayton Hudson by the Dart Group contained a large controversy concerning Minnesota's interfering in the attempted takeover by passing laws to protect Dayton Hudson and how that interference would determine how the attempted takeover would progress. The Haft family wanted a retail chain to operate. They chose Dayton Hudson because it was a successful retail corporation. Dayton Hudson was able to get set up a defense using its influence in Minnesota. The Minnesota legislature passed six amendments to a 1983 anti-takeover law at Dayton Hudson's request. These six amendments dictated how Dart would have to proceed to acquire control of Dayton Hudson and made its attempted takeover very difficult.
PART I:
THE ENVIRONMENT
TAKEOVERS IN THE 1980s

The takeovers of the early and mid-1980s were surrounded in controversy as the stakes rose each year. The danger of a company being threatened with a takeover grew as the early-1980s progressed. The players who had been involved in takeovers for years were experienced and had a good understanding of how to attack. There were many new ones joining their ranks as well, such as the Hafts. In 1980 there were 1500 takeover attempts, and by 1985 that number had increased to 3000. As the attempts increased, so did the amount of money involved. The cost in 1980 topped $40 billion and would increase to $173 billion by 1985 (Housemann 44).

In the early 1980s a new trend in takeovers developed. There were fewer unfriendly offers in large part because the odds of a hostile bid being successful had decreased. In such a situation, the raider generally pushed the target company to the point of finding a white knight. A good bid for a company was hard to defend against if the raider pursued the end aggressively and knew the legalities involved. The raids of the 1980s were generally "more carefully priced, timed, structured, and conceived" (Boisi 25). The players in the game consisted of fewer corporations and more financial entrepreneurs who were willing to speculate. Such a person had a short-term outlook and would not be affected as much by short-term inflation as a corporation would that had to be concerned about the long-term. The entrepreneurs were investing someone else's money as well as looking to get in, make a profit, and get out as quickly as possible. The profitable success that could and did result even from failures during that era resulted in plenty of speculative capital being available for their use (Boisi 25-30).

Companies were still involved in some takeovers, but their approach was very different. They would go after a company only when it looked like a good investment and success was very possible. The bid would be friendly unless the target company never
even entered into negotiations when approached. However, a hostile takeover would usually only be a last resort because of the low chances of success that accompany such an action. Before the hostile attempt was initiated though, all possible risks would be looked at and assessed. If success was almost impossible, the attempt would be abandoned. The corporations would pursue such courses of action because they felt that the shareholders' interests would be best served this way (Boisi 38-40).
INDIANA'S ANTI-TAKEOVER LAW

In 1986, states began passing laws to protect companies located within them against takeovers; the state that set the precedent was Indiana. The law required a corporate raider to ask the company to call a shareholders' meeting once it had announced its intentions to buy 20% or more of the company's stock. The company had 50 days to organize the meeting so that all the shareholders, except for the raider and its affiliates, could decide whether the raider could vote with its shares (Bartlett 179). The Indiana law only applied to companies "with a substantial presence in that state--either 10% or 10,000 shareholders who reside there or firms where Indiana residents hold 10% of the stock" (Verespej 24).

The legality of the Indiana law was challenged all the way to the Supreme Court. The Court upheld the law on April 21, 1987 and in essence allowed states "sweeping authority to restrict hostile merger bids" ("The High Court's" 170). There have been many issues raised by this event and the passage of similar laws in other states. Some have criticized the Supreme Court for upholding such a law. In 1982, the Court ruled against an Illinois law containing rules on tender offers that favored management. The Court said that the law violated standards of neutrality and conflicted with federal securities law as a result. The opponents of the newer ruling felt the court has gone against its own neutral stance and made an economic decision instead of a legal judgment. The Court said the rights of shareholders had to be protected. The fact that states could regulate corporations was not an issue. The concern was whether "they and the high court have the right or the wisdom to intervene in the national market for corporate control" ("The High Court's" 170). The action was praised by some especially the companies, workers, and communities that would suffer in the event of a takeover ("The High Court's" 170).
Indiana passed its law due to political motivation that supported protecting businesses located there from takeovers that could result in losing jobs, closing plants, dismantling companies, and so on. The statute was set up to deter corporate raiders. The period of tender was extended by 30 days instead of the previous 20. The tender offer could remain open even longer if the courts became involved perhaps even 150 days. The longer duration of time allowed the targets time to put stock in friendly hands (Bartlett 182). The raider also had to arrange financing for a longer period of time for the stock purchases (Verespej 24). Indiana had some ground to stand on now and could amend statutes if necessary to make a takeover even more difficult. Even if the amendments were challenged in court, the process would be lengthened even more then. Legislatures were much more responsive to the needs of a company with a stake in the state. When a legislature looked at a company located in its state it saw "customers, vendors, employees, and taxes; the unions see jobs" (Bartlett 182).

The Indiana law may not have been as positive for the home-based targets as it was intended to be. There were advantages for raiders in the law also. Good offers would not be slowed down by the law in the first place. The law took away the control the target company's management and board of directors had over voting. The voting power was placed in the hands of those who would not have a stake other than what they would receive for their shares and would be more interested in short-term gains. These people would be more likely to vote in favor of the corporate raider. The extended period of time the company had to arrange a vote would allow arbitrageurs to accumulate stock as well, and they would support the raider too. The raider would also be able to go to court to get additional restrictions placed upon the target company until the vote took place that could hinder the target's defense such as limiting possible defensive maneuvers or not allowing the company to take action to lower the stock's value (Verespej 24-25).
THE DEBATE OVER REGULATION OF TAKEOVERS

With states enacting anti-takeover laws, there was a push for the federal government to institute uniform laws throughout the country that would regulate takeovers, and a huge debate erupted over whether such laws were necessary or not. Advocates of federal regulation argued that the raiders were destroying wealth despite the money that they made, hurting target companies, and allowing abuses to occur in the takeover process. Opponents did not feel that regulation was necessary even if they believed that there were problems with takeovers. They wanted takeovers to be allowed to continue occurring without interference; federal regulation would give management too much protection from the market forces of the economy.

Supporters of regulation pointed to how a raider would pursue a company aggressively only to sell out at the last minute for a large profit. "This perversion of financial instruments has no redeeming social value and certainly creates no real wealth" (Mercer 14). An advantage the raiders had was that many were able to operate as limited partnerships. That status prevented them from having to follow the laws, rules, and regulations that many of the companies they were going after were forced to follow. Many in corporate America felt that such laws were only serving as protectionist laws and that the playing field was not level (Mercer 14). In addition, "takeovers are inefficient: they generate obscene investment banking and legal fees" (Lee 2).

There were three key arguments used to argue the necessity of federal regulation of takeovers. The arguments were "(1) hostile takeovers are socially and economically detrimental; (2) credit markets are negatively affected by 'nonproductive' merger activity; and (3) abuses have crept into the takeover process" (Weidenbaum, "Responding to" 26). Hostile takeovers were viewed as detrimental, as in the first argument, because they could leave companies weak and highly in debt due to forced liquidations or restructuring. The
people running the target companies were forced to concentrate on the short-term to keep stock prices high causing long-term growth and investment potential to be neglected. The second argument was made because of the end results of a takeover. The companies were usually left with a weak balance sheet and a precarious loan portfolio after the takeover was given up or completed. The cost of the takeover would drain financial resources from the company that could have been invested for growth. Financial institutions could be hurt as well if junk bonds were used to finance the takeover and the holders defaulted. The final non-productive result of takeovers was the enormous transaction costs involved, and the ones benefitting would be lawyers, investment bankers, and accountants (Weidenbaum, "Responding to" 27).

The third argument made in support of federally regulating takeovers was that abuses had crept into the process. One attorney summed up the state of takeovers at the time stating, "We have entered the era of the two-tier, front-end loaded, bootstrap, bust-up, junk-bond takeover" (Weidenbaum, "Responding to" 27). In this view, the economic power held by management and raiders had grown while the flow of information was impeded. Investment bankers were opposed to a raider being able to begin a takeover without having the appropriate finances committed and in place. As a result of such actions, arbitrageurs and speculators would buy up many shares of a target company, and the news of a possible takeover would make headlines. Then when the raider was ready to purchase stock, there would be many stockholders wanting to sell. The target company would be weakened by the raider having the advantage of new stockholders wanting the company to be taken over. In addition, there was always the possibility that the raider would not be able to obtain the necessary financing. Another abuse that many pointed to was the way many companies were put into "play." There would be deliberate leaks of information concerning a possible takeover to get arbitrageurs and speculators to buy up the target company's stock and support a takeover (Weidenbaum, "Responding to" 28).
There were two particular recommendations that advocates for federal regulation of takeovers suggested; they wanted to force a raider to have to take certain steps at particular times during a deal. The first proposal involved requiring raiders accumulating 5% or more of a company's stock to have disclose their holdings within 24 hours instead of 10 days. The feeling was that raiders would be less likely to announce their intentions of taking over companies if they did not have at least 10%-20% of the stock when they had to make the disclosure. With the lack of time that a raider would have to disclose their holdings, arbitrageurs would have less time to accumulate stock to sell to the raider. Some of them "might be more inclined to 'park' stock with friendly investors" (Lee 3). The second suggestion was to force a bidder to have to make an offer for a company after a certain percentage of a company's stock had been acquired, perhaps 10% or 20% (Lee 3).

The opposing point of view did not want takeovers regulated because that would protect management too much from the market and competition. Many economists and other scholars contend that many companies needed a shakeup in their management. There were many cases where management had "not enhanced shareholder value and that is their job" (Lee 1). If takeovers were made too difficult due to federal regulation, poor management could continue to run the company and have nothing to fear. The company would only run into more trouble then. Takeovers were viewed as a new form of competition and a way of replacing top executives. The competition encouraged efficiency and innovation (Samuelson D1). The board and the executives were the ones who were unprepared in many cases for a takeover. They focused on the company's public image and charitable contributions and forgot that they had a corporation to run that was "designed to provide goods and services for consumers in order to benefit the shareholders" (Weidenbaum, "Responding to" 26).

Corporate executives disagreed that takeovers were positive for management, but there was evidence to support their opponents. The executives "contend that the threat of being taken over distracts them from running their businesses and, thereby, subverts U.S.
competitiveness" (Samuelson D6). Their contention could not be proven. In fact amidst the numerous threats of takeovers that executives were faced with during the 1980s, manufacturing productivity was at its highest since the 1960s, corporate research and development spending was increasing much faster than it had in the 1970s, and "business investment (as a proportion of gross national product) is at its highest level since World War II" (Samuelson D6). Companies were worth more as a result, and the investment could prove profitable for the raider whether the company was broken up and sold off or kept together and run by the raider.

Another argument made against takeovers to support the need for federal regulation that was not entirely true was that they were not good for the economy. The claim made was that takeovers only resulted in profits for speculators and did not produce productivity gains. That may not have been entirely true. If a takeover succeeded, the purchaser had to make the company worth more than the price paid for it. "That's the ultimate source of profits and the pressure to break up unwieldy conglomerates, cut costs and operate more efficiently" (Samuelson D6).

New laws for takeovers were not supported by economists who assumed that the market was efficient. They argued that mergers "provide economic gains in the form of economies of scale, better management, and more productive allocation of resources" (Weidenbaum, "Responding to" 27). In addition, they felt the threat of a takeover helped keep management disciplined. Granted, jobs were lost in the process and communities hurt especially by restructuring, but the assets of the company were still present in the economy. Economists felt that mergers created real value for the bidder and the shareholders. The response to these economists was that "a gain in the share value of the merged company does not necessarily prove that expected efficiency increases are responsible. The key factor may be a reduction in taxes, which reflects neither improved efficiency in the use of resources nor benefits to the economy" (Weidenbaum, "Responding to" 27).
M.S. Forbes Jr., the Deputy Editor-in-Chief of *Forbes*, was asked in the fall of 1987 to give his opinion on the potential takeover laws that were being discussed in Washington. He stated that "the movement was ill-conceived. It is bad news for stockholders and for the American economy" (Forbes 25). If laws were passed, they would be passed because they had political appeal and would carry harmful effects. He felt stockholders' rights would be violated because they could not sell their stock without some type of interference. Management would obtain protection and isolation from not having to be accountable to market forces. "Such protectionism can breed complacency, insularity, and mediocrity" (Forbes 25). Management should have to respond to market pressures. The economy was not going to wait for them. It was constantly changing, and management should be expected to respond. Forbes pointed out that the claim that takeovers distract management from the long-term was not necessarily true. There was evidence that takeover victims were not known for their ability to plan for the future. In the meantime, takeovers benefited the stockholders of the target companies in many cases by saving them from bad managements. Forbes was not promoting insider trading, greenmail, or golden parachutes either. "Anti-takeover laws protect the interests of a handful of entrenched executives. And this is not in the interests of an American economy in an increasingly competitive, fast-changing world" (Forbes 25).

There was not much data at the time to support either side; few studies had been done. There was one 1986 study that looked at what had occurred to twenty-five target companies since being taken over in 1965. The findings were that thirteen were still held by their acquirers, 10 had been divested, one had been dissolved, and the remaining one was for sale. The evidence suggested that the acquired businesses had not been managed any better than others in their respective industries were and had not experienced great improvements in their profits. What makes takeovers worth the raider's efforts to go to all the trouble and to pay an above-market price? The shareholders of the raider usually did not benefit, so the raider would not be doing it for them. One logical answer, showing
how a raider could benefit, would be that "there must be large rents (extraordinary gains) available from control and management of large enterprises" (Weidenbaum, "Responding to" 27).

There appeared to be no agreement and no perfect solution available. The problem was not as serious as some felt though. There were many takeovers occurring involving millions of dollars, but most of them were friendly. There were few hostile takeovers, but those were the ones that drew the most attention. Generally, both companies cooperated with the boards talking and negotiating (Weidenbaum, "Responding to" 28).

The debate over takeover laws was very heated, but the possibility of legislation being passed at that time was remote. The Reagan Administration supported a hands-off approach to takeovers. In addition, many politicians were going to be facing elections in 1988. "A number of politicians will be mindful of Wall Street's traditional generosity as a provider of campaign funds" (Lee 3). By October 1987, fifty bills had been introduced in Congress dealing with mergers and acquisitions, and over twenty hearings had been held on the subject by nine different committees. None of the legislation came close to passing (Weidenbaum 26).
PART II:
TAKEOVER STRATEGIES
HOW A TAKEOVER WOULD BEGIN

A corporate takeover involved strategy and planning by the raider and the target. No one simply went after a company without devising a strategy first. A lot of preparation was done and tactics were developed long before the first move was ever made. The target company had no forewarning. The only precautions it could take against such an occurrence was to develop a plan ahead of time on how it could deal with the threat of a takeover and to be aware of the defensive actions it could take. Defenses were "designed to help shareholders by protecting the target company in the short term while it tries to maximize value over the long term through the implementation of its strategic plan" (Boisi 34). However, once the attempted takeover was underway, things did not usually go as expected, and new courses of action had been taken.

The takeover business could be viewed as a game. There was an offense and a defense. The game began when the offense made the first move. The raider would usually buy a small percentage of stock. Word would spread quickly then about a potential takeover. Many investors would know of the raider's intentions before there was ever anything printed about a possible takeover (Housemann 44). Insider trading was illegal, but that did not mean that valuable tips would not surface. Before a raider or a target company could even make an announcement, the stock price of the target company would have increased. The investors responsible for the increase were not in for the long-term though. Their intention was to sell their shares when the rest of the world found out what they already knew and rushed to buy the stock. They would then leave with their profit in hand (Housemann 44-45).
FORMS OF TAKEOVER OFFERS

There were two types of real offers that a raider could make. One form was known as a "friendly" offer in which the target company could accept or reject the raider's offer or even enter into negotiations. If the offer was accepted, the transfer of ownership was peaceful, and top management and the board of directors did not have to worry about losing their positions. The other type was an unfriendly offer in which the target company did not want to be taken over so the raider would attempt to gain control of the company by making an attractive offer to stockholders to get them to sell their stock. The raider's goal was to purchase enough stock to assume control of the target company. In this case, the target company could only try to defend itself. The target company's leadership feared an unfriendly offer being successful because that would most likely mean the end of their jobs. Lower-level employees generally had to worry no matter what form the offer takes. Top-level people could take measures to protect themselves. They could set up conditions known as "golden parachutes" that entitled them to salary and other severance arrangements should they lose their jobs after a takeover occurred. Under this arrangement, losing their jobs would have made them very wealthy, and the raider would have had to pay out a lot of money (Houseman 45).

There was another type of offer that could be made that is not a serious offer and was intended to force the target company to pay the raider "greenmail." A raider could also put forth a "tender offer" in which an offer for the company was put forth with no intention of ever taking it over. The objective was to threaten the target company through legal and financial maneuvering. In the end, the raider would withdraw in exchange for greenmail, a pay off where the target company would buy back the raider's stock for a premium above the market value. Generally, the raider would agree to not attempt such a takeover of the company again for a number of years. Many hostile takeover attempts
ended in greenmail. It was very costly for the target. To buy back the stock, the company would have to sell off assets, go heavily into debt, or both. The company was greatly weakened as a result. Meanwhile, the raider went on to new targets after earning a healthy profit (Houseman 45-46).

Greenmailers used to be very easy to distinguish especially after they bought 5% of a company’s stock, but around 1986 they became much more invisible. The number of deals had decreased as a result of rising stock prices, but there were still many deals being done. Depressed markets, such as energy and metals, offered easier prey. There were also at least 100 undervalued public companies that were running behind the market according to Don Carter, president of the Carter Organization, a proxy solicitation company. Many corporate managers facing takeovers were beginning to hide greenmail so they would not be accused of caving in. One way was to buy stock back at a price below market price. For example, a raider had purchased 4.7% of Arvin Industries Inc. at $21 a share. The stock was bought back at $25 a share which was way below the market price. Why would the raider agree to such a cheap price? Arvin also bought part of the raider’s company for $39 million. By keeping greenmail below the 5% mark, the raider does not have to file a 13(D) automatic-disclosure trigger which would make the greenmail known to the public. The target and the raider can conduct "business in the shadows, away from the prying eyes of shareholders and the SEC" (Nussbaum 105).
FINANCING TAKEOVERS IN THE 1980S

Most takeovers that did succeed were leveraged buy-outs. A leveraged buy-out was "any acquisition of a company which leaves the acquired operating entity with a greater than traditional debt-to-equity ratio" (Houseman 46). Secured or unsecured financing could be used in the process. The tendency in the 1980s was towards the latter due to "increasingly loose and ungovernable financial markets" (Houseman 46). One of the arrangements a leveraged buy-out could involve that was also popular at the time was a company "going private." The company's stock was bought up completely on the stockmarket by a small group of people consisting of investors, bankers, and company officials. The stock was bought with money raised from investors and the company going into debt. "Going private" was the ultimate defense against future takeovers. The company did not have stock that could be bought by a raider and could not be taken over (Housemann 46).

A costly form of financing that became popular and necessary during the takeovers' heyday in the early and mid-1980s was "junk bonds." They existed prior to this period but had not been important in security markets until. Junk bonds were high-yield, extremely risky bonds. Prior to this time, they were generally used to give a failing company one final chance at becoming profitable by allowing it to borrow at high rates of interest. Banks generally held these bonds and were the best equipped because they could allow some leeway and survive if a bond-floating company ran into some rough times. Junk bonds became popular in the 1980s because hostile takeovers and many leveraged buy-outs generally involved asset liquidation to get out of debt quickly. The holders of the bonds expected that rapid return as well and were not as understanding as banks if problems were incurred. A company with a large debt in junk bonds was likely to go under if it ran into trouble. The rules of purchasing the bonds required that they could be issued "on the
strength of only 10 percent of their capital value" (Houseman 47). A new rule of purchase took effect January 1986 as a result of a compromise between the Reagan Administration and Federal Reserve Board Chairman Paul Volcker after he suggested a margin requirement of 50 percent for all junk bonds issued and the Administration objected. The new rule was that only if a hostile takeover was involved 50 percent of the bond's capital value would be required. The percentage remained 10 for friendly mergers and leveraged buy-outs (Houseman 46-47).
DEFENDING A TARGET COMPANY

A company could not relax and assume it won't not face an attempted takeover especially if it was successfully run. The usual target was a company that was well-run and was committed to the long-term. These types of companies were more valuable because they were generally stronger financially and more profitable; that made them attractive to a raider. They were also more attractive to the financiers of the takeover. A raider going after an unprofitable company would have had a lot more trouble finding financing (Mercer 14).

A target company had two options: it could accept the raider's offer or defend itself. If the company opted to defend itself, it had have a plan of how to do so. The first step in any takeover was to not panic and to look at where the company stands. The company's situation had to be determined and the aggressor's position ascertained in order to decide what options were available to the company. The company had to be able to assess its strengths and weaknesses and prepare accordingly (Boisi 36).

The company should have taken precautions to protect its board of directors. "The foundation of the defense lies in the terms of the company's governing documents" (Koeppel 38). One serious threat to a target company was a proxy fight that could result in the company's board of directors being dismissed. If the board was resisting the takeover, the raider could use a proxy fight to attempt to institute a new board of directors that would approve the takeover. There were steps that can be taken to attempt to avoid a proxy fight. One thing a company could do would be to "stagger" the terms of the board members. It could divide the terms up so that only one-third is up for election each year and a term would last three years. Only one-third of the directors would face an outside challenge then. A dissident stockholder could not replace all the directors at an annual meeting with a board under one's own control. Another way to control the influence of such a
stockholder on the board was by limiting that person's ability to remove those incumbent directors. A staggered board would be of no value if the stockholder could call a special meeting of the stockholders to remove the directors. Some companies only required a small percentage of stockholders to vote for such a meeting to be called. A company could require that for a special meeting of stockholders to be called a "supermajority" voting margin of stockholders had to agree. That could mean requiring even 75% or more of them to consent. The company could also forbid a director's removal unless there is cause to do so (Koeppel 38).

The board of directors of any company had to remember that they held all corporate power and were expected to act as fiduciaries of the shareholders. The best way to prevent any takeover attempts was to respond to the desires of the stockholders. They were the owners of the business. Stockholders were constantly casting their votes in dollars. Corporate executives and the board tended only to remember this when the company's stock was put in play. In addition the board had to learn how to say no to "capital investments whose yield is below the cost of capital" (Weidenbaum, "Responding to" 29). Directors could not be allowed to have a free rein for their pet projects. Inside directors should have been checked by outside directors. Outside directors should not have allowed inside directors to indulge in actions that benefit them but hurt the company. These actions could include such things as acquiring assets which would increase an executive's compensation because it was related to the size of the company or making a large donation to a cause that would benefit an executive's social life. "The challenge to many boards is to pay out more cash for shareholders and to reduce outlays for low-yield projects" (Weidenbaum, "Responding to" 29). If the board did not prevent and correct such abuses, then the shareholders would. There were always takeover artists who were willing to raise the company's value. The challenge was not met by the board if a raider was given that opportunity (Weidenbaum, "Responding to" 29).
Accusations launched at corporate boards who were accused of ignoring shareholders were "that they knuckle under to the chief executive and that they are plagued with conflicts of interest" (Weidenbaum, "The Best Defense" 21). The view of boards typically held by academics and business journalists was that they did a poor job of representing shareholders, which should be their main responsibility. Quite a few shareholders felt neglected as well. A survey by the National Association of Corporate Directors showed that only 53% of shareholders thought that their interests were being considered by boards when acting on mergers. The lack of attention given to shareholders and their concerns would leave companies vulnerable to raiders. Raiders were able to appeal directly to many dissatisfied shareholders as a result. Companies would not have been so vulnerable if they considered shareholders' interests even in the day-to-day operations of the company. There would be costs involved of course. "The chief executive officer must then share some of his authority. And boards, more conscious of the desires of stockholders, will at times reach conclusions different from those management prefers" (Weidenbaum, "The Best Defense" 21).

A corporate board intended to represent the stockholders should consist of outsiders. These outsiders should have been completely independent and not represent banks, customers, or even the community nor should they be retired executives. The chairman should also have been an outsider, in order to enhance the independence of the board. The independence of the directors would have been best in the case of a tender offer. Management would probably have been more prone to oppose the raider and not consider the offer while ending up paying out greenmail to the raider. The company would have been out a lot of money then, and the shareholders would have been deprived of selling their stock at a premium. An outside board resisting a takeover could also protect shareholders. For example, too low a price could have been offered. By defending the company against the raider, the board would probably have been able to obtain a higher price for the stock for the shareholders. The outside board members would then consider a
higher offer, whereas insiders would have been more likely to keep on defending the company (Weidenbaum, "The Best Defense 21).

The board's responsibility to look after the interests of shareholders would not mean only protecting the interests of the largest shareholders. There was one case where the larger shareholders could benefit more than smaller shareholders. Bidders would at times make a two-tiered offer. They would offer a larger price for a portion of the company's stock, and the remaining shares would have been purchased at a lower price. Such an offer was intended to appeal to large investors in the first tier. A bidder making a two-tiered offer was not concerned about the smaller shareholders who would have been left selling their stock in the second tier. The board was responsible for ensuring that such an offer was not accepted because all shareholders were not being treated alike because the board was expected to look after the interests of all shareholders (Weidenbaum, "The Best Defense" 21).

Corporate raiders would make aggressive moves on the stockmarket that the company had to protect itself against. How could that be done though without the target having to buy up its own stock to protect itself? The company did not have to issue all voting stock on the market. The board could have the authorization to issue the shares without stockholder approval. New shares would make it even more expensive for the raider to buy control. Another alternative that was available involved placing a large block of shares in the care of an investor who would not takeover the company but would vote in support of the board. Such an investor was commonly referred to as a "white knight." Stock could be used as a delay tactic as well. The stock withheld then would be preferred stock. It could be given dividend, redemption rights, voting rights, and conversion rights to common stock. The board would have control over how the stock was used to delay the raider's acquisition of company stock or at least complicate things (Koeppel 39).

A defense the target company could employ that would be harmful to an acquiring company was known as the "poison pill." The board of directors of the target company
could adopt this plan which would allow every stockholder to buy shares of the acquiring company at a large discount. The poison pill took effect when the raider had bought a certain amount of stock such as 20%. The target's stockholders could then buy the other company's shares for a small amount, even pennies. Having such a defense in place would encourage a raider to negotiate with the board and could be an effective deterrent to a takeover (Koeppel 41).

There was another form of the poison pill possible, and it was known as "poison debt." Instead of shareholders being able to purchase a raider's stock at a large discount, they "can swap their shares for debt worth a substantial premium over the current stock price" (Greenhouse D4). The raider had to have bought a certain percentage of the target's stock, usually 20%, though for this to take effect (Greenhouse D4).

In the mid-1980s, the poison pill came under attack by raiders, investors, and the Security Exchange Commission (SEC). Raiders argued that it interfered with opportunities to buy a company cheaply and earn large profits afterward by selling it off in parts. With a poison pill present, they were unable to make tender offers and coerce a company into accepting them. Institutional investment managers did not like it because "their self-interest in showing good quarterly portfolio performance forced them to abandon long-term growth for the hope of quick speculative plans" (Lipton F2). The SEC did not approve of the poison pill because of pressure it faced from the Reagan Administration which was dominated by those who were against any restraints being placed on takeovers (Lipton F2).

There were other courses of action that a company could take to strengthen its defense that did not require relying on the board to take action. An important step that could be taken before a takeover threat ever occurred was to be aware of who was a potential threat with the help of the "the corporation's market makers" (Koeppel 40). The company should have monitored general trading activity especially where its own stock was concerned. If questions were raised regarding the trading of the company's stock and who was purchasing the stock, then they should have been looked into. Another way to watch
what was occurring with the company's stock was to know who owned the stock. A relationship should have been established with the stockholders as well (Koeppel 40).

A company could not allow itself to be open to a sneak attack under its bylaws. A raider could launch a strong sneak attack if there were no requirements in the bylaws of the company that would prevent stockholders from acting without a meeting. Otherwise, stockholders could agree by majority vote to subject the corporation to such an attack. The bylaws should have been amended so a raider could not launch a sneak attack in the fashion described so that shareholder consent action could be curtailed by a supermajority requirement or eliminated (Koeppel 38-39).

A way to tie up the company's stock was through the use of employee stock ownership plans (ESOPs). The company put a large amount of stock in the hands of its employees. An ESOP fiduciary was in charge of the plan and "must discharge his duties solely in the interest of the ESOP participants and for the exclusive purpose of providing benefits to the ESOP" (Koeppel 41). The employees' interests did not always have to be the same as management's. There was no guarantee that the fiduciary will side with management even in a hostile situation (Koeppel 41).

In sum, there were many defensive alternatives available to a target company that would strengthen it and could act as a deterrent to a raider. An important step that should have been taken was to protect the board of directors from being removed by a raider in a proxy fight, at an annual meeting, or in a special stockholders' meeting. The best way to prevent a takeover was for the board to respond to the desires of the stockholders and make their investment a profitable one. Other steps that could be taken to protect the target company included being able to release voting stock onto the market to make a takeover more expensive, placing a large amount of stock with a safe investor who would support the board's decisions, have the poison pill or poison debt in a company's bylaws, monitoring who owned stock and who was buying to stock, and tying up stock in an ESOP. A target company's best defense was to be prepared before a takeover occurred.
PART III:
THE ATTEMPTED TAKEOVER
THE HAFTS' BUSINESS AND GOAL

The Haft family has a long history in business and has climbed its way to the top through hard work and foresight. Their fortune was originally made in the drugstore business. In addition, they have been successful at real estate and retailing. They have been successful because they are not afraid to try out a new idea or take on other companies that are bigger than they are. In the 1980s, they were looking for a large business to operate, and they would attempt to takeover companies that they wanted.

The wealth that allows them to pursue takeovers has been accumulated over time. Herbert Haft built up a large chain of successful drugstores called Dart Drug. His stores attracted customers because Haft cut prices and sold everything just above cost. The good deals that resulted from discounting prices are what made Dart a success; it certainly was not its reputation among customers. The chain was known for having stores that were "understaffed, less than clean, weak on prescriptions and poorly stocked" (Nash F6).

Haft's goal was to save money. In the early 1980s, he did this by cutting back on merchandise by 33%, downsizing stores, having deliveries made once a week instead of three times a week, and ending cash refunds. The chain saved around $12 million a year at the cost of its image. The stores were sold for a large profit of $160 million in 1984 despite its bad reputation among customers. At that point the stores' assets were valued at $24 million, but with leases the stores were worth about $100 million (Saporito 70). The top executives who bought the chain paid $97 a share for stock that had been valued at only $57 a share two months before ("The House" 108).

The Hafts owned two other chains in addition to Dart Drug, Crown Books and Trak Auto. Crown Books was started in 1977 by Herbert Haft's oldest son Robert. The store sold discounted books taking 35% off of hard-cover best-sellers and 25% off of paperback best-sellers. The goal at Crown Books was to cut costs. The stores all had the
same simple design, and the chain was run with minimal management and no central computer. The chain was successful with each unit averaging around $850,000 in sales each year up through the beginning of 1987. The entire company had sales of $154 million and profits of $5.5 million after taxes (Saporito 75). Trak Auto was a chain of auto parts stores started by Herbert Haft in 1979. The stores were usually located in shopping malls, and the chain was operated very much like Crown Books was. The chain did all it could to cut costs and was run with few people in management. Trak Auto was not as successful profiting only $1.3 million on sales of $184 million in 1986 (Saporito 75).

Another component of the Haft Empire is their Combined Properties Limited Partnership under which they own extensive real estate holdings in the Washington D.C. area. The youngest Haft son, Herbert, supervised Combined Properties in 1987. At that point, the partnership owned more than four million square feet of real estate in Washington (Saporito 70). They also owned nearly twenty shopping centers (Meyers 69).

The Dart Group served as the Hafts' investment vehicle. The total wealth of the Hafts was estimated at more than $500 million in 1987. A significant portion of that wealth was tied up in the Dart Group. Dart had two forms of stock. The Class A stock was the publicly traded stock but had no voting rights. The Class B stock was the voting stock and privately held (Nash F6). The Hafts owned 25% of the nonvoting stock and 100% of the voting stock (Saporito 70). The Dart group owned 66% of Trak Auto and 34% of Crown Books (Nash F6). The total estimated worth of the Dart Group in 1987 was over $200 million ("Of Hafts" 259). In 1987, the Dart Group was profiled in the June 22 issue of Fortune as follows (Saporito 75):

**INVESTOR'S SNAPSHOT: DART GROUP (June, 1987)**

Sales (latest four quarters) $367.4 million
Change from year earlier Up 208%
Net Profit $30.7 million
Change Up 211%
Return on Common Stockholders' Equity 13%
Five-year Average 15%
Stock Price Range (past year) $178.50-$86
Recent Share Price $152
Price/Earnings Multiple 8
Total Return to Investors (past year) 18%
The Hafts began looking for a large business after the sale of Dart Drug. They said they wanted "to apply some of their cost-cutting techniques and discount-marketing strategy to a much larger organization" (Nash F6). Their takeover targets did not share their desire though. Many would rather go under than be under Haft ownership. All takeover attempts by the Hafts failed because of this. Those who opposed the Hafts' way of doing business said that the Hafts would not run a business. They would rather milk the operations of a business instead. "They say the Hafts chase acquisitions only for the fun of being bought out" (Saporito 67).

The targets were large chains of retail, drug, and grocery stores, and they all resisted the Hafts. The Hafts did not lose completely; they always came away with a profit. In the two years prior to 1987, Dart had attempted to takeover retail companies without success. Dart had "had large positions in a number of other companies...and in each case sold out its position rather than move for control" ("Dart Group CEO" 15). Even though control was not achieved, a profit was. The Dart Group gained over $200 million in its takeover attempts. The profit was achieved because stocks were purchased at low prices. The price of the stock increased when rumors of Dart's involvement circulated or another takeover offer was made to prevent the Hafts from gaining control. The stock was then sold at a higher price resulting in a large gain (Mayer, "Dayton Hudson Acts" C2).
WHY DAYTON HUDSON WAS A TARGET

Dayton Hudson was selected as the Hafts' next target because it was a successful company. The success of Dayton Hudson through the years could be attributed to its ability to meet the needs of its customers through a variety of chains. It offers department stores, discount stores, and stores that fit in between these two extremes in retailing. Dayton Hudson was able to change when necessary and recognize its customers' needs. If there were problems, they were dealt with even if doing so was costly.

The department stores were once the center of the corporation, but by 1987 their importance had diminished. By 1984, the department stores accounted for only 19% of corporate sales and 17% of operating profit (Pitzer, "Dayton Hudson Steals" 70), even though the stores were still very successful. The philosophy for the department stores had been the same from the beginning. The merchandise should be consistent and always be sold "with style and a bit of elegance" (Gelfand 44). The stores had always tried to deliver what the customer wanted, and that was a large part of their success (Gelfand 45).

Diversification into other types of stores began with Target. It was different from the department stores in the beginning and has remained so. Target was developed to be without pretense and without a lot of frivolous advertising to allow for easy shopping at discount prices. Newspaper inserts have always been the key to Target's advertising. The ads have utilized "lots of color and photographs and prices that simply can't be missed" (Gelfand 46). For many years despite the success of the stores, there was a stigma attached to them. People did not want it known that they shopped at discount stores especially those who were more upscale shoppers. The stigma had become less and less of a factor though as the stores have become more attractive, cleaner, and brighter to give the shopper a more pleasant shopping environment (Gelfand 46).

In between Target and the department stores, there was another part of Dayton Hudson that existed to meet the needs of shoppers who were more conscious about what
was fashionable but could not afford high prices and did not want to shop at discount stores like Target. These shoppers could go to Mervyn's, which was purchased by Dayton Hudson in 1978. The profile of the typical shopper at Mervyn's was someone with a family income of $26,000 a year who would "read the paper, watch TV, and know what's fashionable" (Pitzer, "Dayton Hudson Steals" 70). Mervyn's would offer family apparel and household goods. Dayton Hudson worked very hard to prevent the chain from obtaining the image of a discounter. The advertising used by the chain was very important. It was very discreet and advertised through newspaper inserts, but they were not like Target's. These advertisements used drawings and full-figured illustrations to show products and promote the newest trends and the best deals. The image that had been cultivated for Mervyn's balanced on "the fine line between economy and taste" (Gefland 47).

In 1987, the corporation was not doing as well as it had in the past. Dayton Hudson had a strong tradition of having a reliable bottom line that consistently showed sales and earnings gains. In 1986 however, DH reported an earnings decline which was its first since 1970. Revenues had climbed 12%, but net income had fallen 7.5%. Part of the problems could be found at Mervyn's. The chain had expanded into Texas and set up buying and sales offices there in 1984. The Texas economy had run into large trouble soon after as oil prices collapsed which resulted in Mervyn's sales slowing. The functions the Texas office performed were already being done at the office in Hayward, California. The Texas office was closed at the beginning of 1986. The entire experience was a very costly mistake. In addition to the office fiasco, the stores were suffering. The stores looked shabby, prices were high, and product lines were too broad. "With all the turmoil, Mervyn's executives were not minding their stores" (Pitzer, "How Three" 38).

Another area having problems was the B. Dalton Bookseller chain, established in 1962. It experienced rapid expansion in the 1970s almost always locating in malls. Then the number of malls being opened decreased in the early 1980s meaning fewer stores were
opening. The chain was hurt by being late in following the discounting trend its competitors had instituted. There were concerns about B. Dalton's financial performance leading up to 1987. The chain was still the second-largest book retailer in the country. It had operating margins between 4% and 5% which were in line with the rest of the industry. Those margins were only half of what the chain had produced three years prior. The stores were only about 3400 sq. ft. and did not fit into Dayton Hudson's strategy of operating large stores that occupied up to 100,000 sq. ft. The corporation ended up selling the chain for $275 million at the end of 1986 (Pitzer, "How Three" 38).

The ability of Dayton Hudson to sell off a branch that is not operating as well as it should or one that is a complete failure earned the corporation great praise. B. Dalton Booksellers was not the only chain it had sold. Another one that was sold was Plum's, but that chain never had success like B. Dalton's did. Plum's was an experiment in off-price fashions in the Los Angeles area. Four stores were opened in 1985 and did not do well. The stores would not survive long, so they were sold within a few months. The feeling was the Plum's would not have an impact on the corporation, and there was no sense in investing money in operation that was not going to work. The total loss on Plum's amounted to less than $5 million. Dayton Hudson's reputation was not hurt by the failed attempt either. It only enhanced its reputation as a retailer that was willing to be innovative and also willing to cut its losses when need be (Gelfand 45).

Dayton Hudson had many problems to deal with at the beginning of the 1980s, but it did have an advantage its competitors did not. Putting up new stores costs a lot of money and can be very risky. In the early 1980s, there was a lot of downsizing due to the recession. Dayton Hudson had learned how costly new stores can be if they are not successful (Greene 206). Dayton Hudson did not have too many stores at the time, but it was still affected by the recession. Retailers were facing stiffer competition and smaller profits. In addition, people were spending less money. There were other things to pay for leaving less disposable income for shopping. Profits had to be sustained somehow though.
"American retailers pushed their markups to 90% or 100% in department stores, seeking gross profit margins of 45% to 50%. Discount stores have markups of 60% and margins of 30%" (Main 63). Dayton Hudson's financial strength, marketing skill, and quality merchandise priced right allowed it to survive the period (Main 64).

The philosophy that guided Dayton Hudson's growth through the 1980s came from its chairman Kenneth A. Macke. He knew that overstoring, having too many stores for one particular market segment, was a problem, but he felt that there was an even larger problem regarding understoring. "We are still understored in the types of stores that customers want" (Main 64). The department store division would not be expanded and was put on hold. Every city had a good department store and did not need any more. The stores that customers wanted were Target and Mervyn's. These divisions were going to expand, Target adding 72 stores and Mervyn's 140 stores, at a cost of over $2.5 billion dollars in 1985 (Main 68).

New trends were affecting the retail industry as well during this time, and Dayton Hudson had to keep up with them if it wanted to remain in business. One was the growing importance of computers and the way they revolutionized the business. Stores could be operated more efficiently while occupying less space because computers could keep track of inventory and orders could be placed when items decreased to a certain point. Inventory was not being built up as a result. Before computers were used to monitor inventory amounts, many companies would overstock their inventory and then have to sell merchandise at low prices to get rid of it (Main 70). Companies, including DH, were paying much more attention to the entire balance sheet and all that affected it. One significant change was made in accounting. Companies now had to capitalize and depreciate long-term leases which they had not been required to do before. "They couldn't handle the leases off balance sheet anymore so they had to look to existing space for growth" (Greene 207). With markets so saturated and new markets being almost nonexistent, retailers had to begin planning for the long-term. There was also an emphasis
on each store producing a better return. That meant cutting back on personnel, among other things. Customers would receive less help as a result. Stores were able to cut back successfully if they paid attention to where employees were really needed. Store hours had changed as well. The busiest times were Friday night, Saturday, and Sunday; people shopped more at these times. The change in shopping times resulted from women going to work. They could not shop during the weekdays because they had to work (Greene 207).

Dayton Hudson's ability to grow and change with the times allowed it to survive as long as it had and enjoy its success. The corporation never settled for what it had achieved either; it was always examining the next step to be taken and shooting for new goals. In 1987, the goal was to reach an earnings growth target of 15% a year. The corporation was also beginning new ventures then as well. Two of those were a six-store housewares chain and a TV home-shopping program. Dayton Hudson could attribute much of its success to "solid management, a solid corporate culture, and solid businesses" (Pitzer, "How Three" 39). It ranked first among large public companies in the upper Midwest for sales in 1986 and 1987. The success of the corporation could be seen in the numbers for the two years. Revenue increased 5.3%, and net earnings experienced a 9.3% increase (Minor 86). It was this success combined with the retail divisions it controlled that made Dayton Hudson attractive to Dart.
DART GOES AFTER DAYTON HUDSON

From June to October during 1987, the Dayton Hudson Corp. faced a takeover threat from the Dart Group Corp. headed by the Haft family. Dayton Hudson was attractive because it was regarded as one of the nation's leading retailers showing profits of $225 million and revenues of $4.4 billion (Mayer, "Dayton Hudson Acts" C1). The intentions of the Dart Group were not very clear. There were questions raised as to whether Dart would seek control of Dayton Hudson or simply go after greenmail. Dart did not give up its pursuit for control despite Dayton Hudson's refusal to accept their offers time and time again. In the end, the Dart Group was prevented from taking over the corporation by forces beyond its control. The takeover bid was ended on October 20, 1987 because of the plunging stock market ("Hafts Drop" A1).

Speculation of Dart's interest in Dayton Hudson was fueled on June 9, 1987. Dayton Hudson's stock had closed sharply up that day with rumors that Dart was targeting Dayton Hudson as in its latest takeover attempt (Mayer, "Retailer's Stock Rises" F1). Dayton Hudson did not confirm that Dart was buying its stock until June 19. At that point, Dayton Hudson began taking steps to prevent such a takeover. The corporation asked for six amendments to be added to Minnesota's 1983 anti-takeover law to strengthen the law (Groves, "Targeted by Dart" 1). Among the amendments was one which would prevent the takeover company from selling off its prey's assets to raise money to pay for the takeover for at least five years. Another request was that the takeover bidder would not be allowed to vote on the proposed takeover. Dart would thus have a difficult time meeting Dayton Hudson's corporate rule that 75% of outstanding stock must approve of a merger of the company with another if the board of directors fails to do so (Mayer, "Dayton Hudson Acts" C2). The amendments were passed on June 25 following an emergency session of the Minnesota legislature (Mayer, "Minnesota Passes Bill" F1).
The new additions to Minnesota's anti-takeover law did not deter the Hafts. Herbert H. Haft, chairman of the Dart Group Corp., sent a letter to the Dayton Hudson Corp. stating a partnership under Dart's control would be informing the Federal Trade Commission of its intent to purchase Dayton Hudson stock for more than $15 million as required by federal law. The FTC must approve such action when more than $15 million of a company's stock is to be purchased by partnerships or corporations. Haft even stated it may buy 50% or more of Dayton Hudson's outstanding stock. Up to this day the Hafts holdings in Dayton Hudson were less than five percent so they had not had to file the required statement with the Securities and Exchange Commission an investor must file when acquiring a share greater than five percent. At this point, Dayton Hudson stock was trading at $52 a share, and a takeover would have cost more than $5 billion (Mayer, "Hafts Revive" C1-C2).

In mid September, Dart made an offer to Dayton Hudson worth more than $65 a share. With 97,400,000 shares outstanding, the deal was worth around $6 billion. The cash offer was for the 95 percent of the company that Dart did not own. It offered 20 percent of the company that would be formed in the merger for the remaining five percent of outstanding shares. In addition to the offer, Haft showed how serious he was about the takeover by stating "he would donate to Minnesota charities any profits we may realize from our ownership of the Company's shares if the merger is not approved" (Forman, "Dayton-Hudson Gets" 19). His statement indicated that he would not seek greenmail. Concerns of the Minnesota legislature that were raised with the passage of the additions to the anti-takeover law were addressed as well. Dart intended to keep the headquarters of Dayton Hudson where they were, offer the directors representation on the board of the new company, keep present management, and "offer 'meaningful ownership interest' in the new company and maintain current company policies regarding 'employees, management, suppliers, customers, community and corporate responsibilities and support charities'" (Forman, "Dayton-Hudson Gets" 19).
To show how serious they were about gaining control of Dayton Hudson, the Hafts began seeking public support soon after they made their offer. Herbert Haft's son Robert visited Minneapolis, met with reporters, visited stores, and talked to employees. He also pointed out how Dayton Hudson had not been as successful as it could have been the past few years. One area he brought up was how B. Dalton Bookseller's profits had declined after 1983 until Dayton Hudson sold it in 1986. He also stated that Dayton Hudson had "spent $3 billion (in expansion and remodeling) since 1982 and they've gotten virtually nothing from it" (Mayer, "Hafts Court Public" E10).

Dart's friendly offer kept it clear of the effects of the newly passed anti-takeover law in Minnesota should the deal go through. The new law blocked many ways that hostile takeovers were financed with its primary purpose being "to force an acquiring company to seek the approval of the board of the target company before instituting a tender offer" (Forman, "DH, Dart Said" 19). For example, had Dart been able to pursue a hostile takeover, it could have arranged financing easily because Dayton Hudson had sufficient cash flow at the time to cover the debt service of its $6 billion offer. The Hafts emphasized their desire to complete a friendly deal and did not have plans to sell off parts of the company. They wanted Mervyn's and Target which were similar to businesses that the Dart Group Corp. already managed (Forman, "DH, Dart Said" 19).

The Hafts' desire to control Dayton Hudson was not enough for Dayton Hudson to accept their offer. The corporation rejected the $6 billion offer on September 25. The Hafts were not discouraged by the refusal and said they would continue to pursue the takeover. Meanwhile, Dayton Hudson had other problems to face. The board did not want to accept the offer, but some stockholders did. They filed a class-action lawsuit seeking "a court order to force Dayton Hudson to 'negotiate in good faith with Dart' or others interested in a takeover bid" (Mayer, "Hafts' Bid" D10).

Shortly after hearing the refusal, Dart raised the offer from $65 to $68 a share which was a $300 million increase over the previous offer. The $3 a share increase was
not expected to have a large impact on Dayton Hudson's board, but it would increase the pressure on them to find some alternatives to a Dart takeover. The Hafts were hoping their offer would be accepted and emphasized that all terms in the latest offer were negotiable. An unfriendly takeover would have been difficult at that point because of Minnesota's anti-takeover law and the possibility that Dart's bankers could not finance an unfriendly takeover that would be more costly (Mayer, "Hafts Raise Offer" F1-F2).

For a friendly takeover to occur, Dayton Hudson's board would have to accept Dart's offer, but that did not mean that the board could not be replaced. A proxy fight was an alternative that would allow Dart to try to replace Dayton Hudson's board of directors with a board that would approve the takeover. Minnesota's anti-takeover law made waging a proxy fight easier. The new law required that only 25 percent of outstanding shares had to be cast to call a special shareholders' meeting. At such a meeting, the board can be replaced if a majority of the shareholders attending agree to that. The Hafts would have the advantage in a proxy fight because one-third of Dayton Hudson's stock had been traded in the previous three months leaving much of that third under the control of arbitrageurs and investors who were more interested in being bought out than holding onto the stock for the long term (Mayer, "Hafts Raise Bid" F2).

The Hafts decided to use the proxy fight option to put pressure on Dayton Hudson's board of directors. They filed the necessary documents with the Securities and Exchange Commission so they could initiate a proxy fight if they so desired (Mayer, "Hafts Move Toward" F8). A proxy fight would not bring about immediate change though. Under Minnesota's new law, a special shareholders' meeting could take up to three months to occur. Dayton Hudson would be allowed 30 days to set a date for the meeting after receiving proxy materials and set the date as much as 60 days in advance. If such a meeting had occurred, the shareholders would have had to consider the "financing arrangements Dart comes up with and the alternatives Dayton Hudson presents in the interim" (Forman, "Dart Launches" 2).
Before the proxy fight began, both sides sued each other. Dart's suit charged that Dayton Hudson had not provided it with all of the information necessary to proceed with a proxy fight. Dart states that not all of the information has been provided so that Dayton Hudson could stall and delay the proxy fight. The suit filed by Dayton Hudson contained more serious charges. Dayton Hudson charged Dart with buying large quantities of stock and receiving profits through the sale of the stock due to false disclosures about the reason for their stock purchases. Dayton Hudson claimed Dart had been buying stock in companies since 1984 and making false statements about wanting to take them over when Dart only wanted to profit. The corporation pointed to the failed takeovers Dart had attempted and to earnings over $200 million as a result of them. More recent claims were that between June 23 and July 2 Dart sold nearly 500,000 shares, but the sale of the shares was kept quiet to enable Dart to "be able to exploit the takeover speculation" (Rutberg, "Dayton Hudson and Dart" 2). Dayton Hudson wanted to use the suit to force Dart to sell its shares and be barred from buying anymore (Rutberg, "Dayton Hudson and Dart" 2). The lawsuits were not a surprise since such lawsuits are common during takeover battles. The only thing that they did at the time was to "escalate the war of words between the two firms that has been going on since early summer" (Mayer, "Dart Group, Dayton Sue" G1).

Due to circumstances beyond its control, the lawsuit was the last step that Dart would take in its quest to takeover Dayton Hudson. The turmoil in the stock market that appeared in mid-October during 1987 ended Dart's quest. Dow Jones Industrials fell 508 points on Monday, October 19. On October 20, Dart dropped its bid. The Hafis released a statement which said that "given current market conditions, (they) will not seek to acquire Dayton Hudson' or press ahead with a previously announced plan to launch a proxy fight to oust Dayton Hudson's board of directors" (Mayer, "Hafts Drop" A1). Early forecasts of their losses were as high as $70 million after taxes as a result of the attempted takeover. Stock in Dayton Hudson was sold. The first 1.4 million shares sold went for as little as $23.50 per share (Mayer, "Hafts Drop" A1).
CONCLUSION

The two points that I set out to prove were that the Hafts were intent on gaining control of Dayton Hudson and that both sides took steps that were very prudent and correct during the attempted takeover. Both these points contain issues that were present in the controversial environment created by the debate over takeover laws and in strategies that were available to target companies.

The first point is centered on what I believe that Hafts' intentions were regarding Dayton Hudson. The Hafts had earned over $200 million from greenmail in past attempted takeovers and had gained a reputation for only wanting greenmail and not desiring actual control of a company. However, I assert that they were only interested in gaining control of Dayton Hudson despite their reputation and past history. The Hafts went to a great deal of bother to prove that they truly wanted control of Dayton Hudson and to gain support for their side in the attempted takeover. They publically disproved charges that they were only after greenmail by announcing that all profits they could realize if the merger were unsuccessful would be donated to Minnesota charities. They addressed concerns of the Minnesota legislature and declared their future intentions if they were to gain control of Dayton Hudson by announcing that Dayton Hudson would remain a Minnesota company and that current policies and practices would be continued regarding how the company was run, its employees, and its responsibilities. They also made an effort to court public support.

The second and most important point of my thesis regards how well both sides made strategic moves. The key factor in determining the steps that would be taken was the Minnesota law and the limits it set for Dart. The controversy over regulation of takeovers was demonstrated in this attempted takeover because the law protected a target, as supporters wanted, and greatly interfered with market forces, as opponents feared would happen. The importance of strategy was demonstrated by the maneuvering Dayton
Hudson did to gain an advantage under the law to protect its board of directors and utilize its own requirement, as listed in its bylaws, that 75% of the shareholders, a supermajority, must vote in favor of a takeover for to override the board's rejection of an offer.

Dayton Hudson had nearly the best defense possible when the Minnesota legislature passed all six amendments that the corporation requested. The move was successful because of the powerful influence that Dayton Hudson possessed in Minnesota. With Dart limited to only being able to pursue a friendly deal, the Hafts had to discover a weakness in Dayton Hudson's defense. The key for Dart became to be able to force Dayton Hudson's board to accept its offer and to be able to replace the board if necessary. Dart put pressure on the board by making attractive offers that would appeal to shareholders. They were successful to an extent as shown by the lawsuit some shareholders filed to force Dayton Hudson to negotiate with Dart. Dart also attempted to garner public support. Dayton Hudson resisted the pressure and rejected Dart's offers.

Dart decided to pursue its other alternative, replacing Dayton Hudson's board of directors, through a proxy fight. Dart had two advantages. First, the anti-takeover law made it easier to wage a proxy fight by requiring only 25 percent of outstanding shares to be cast in order for a special shareholders' meeting to be called. Secondly, one-third of Dayton Hudson's stock was in the hands of arbitrageurs and investors who wanted the takeover to occur. Dayton Hudson was not backed into a corner though because it had an important advantage still. The Minnesota takeover law allowed Dayton Hudson many opportunities to stall for time which would allow the company to study its alternatives and carefully to plan its next step. At the time the stockmarket crashed, the battle was far from over, and each side was strongly positioned to continue.
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