

A Gamble, but What if He Wins?

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By Andrew Ross Sorkin

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About a month and a half ago, Carl Icahn and I went to dinner at Tse Yang, an upscale Chinese restaurant in Midtown Manhattan. Mr. Icahn, the corporate raider turned activist investor, came blustering through the dimly lit restaurant about 20 minutes late, grabbed one of the waiters — they all know him — and ordered a martini.

“It’s been a very long day,” Mr. Icahn sighed as he slumped into his chair.

It is tough being the Superman of Shareholders, rescuing investors from villainous corporate boards. Or at least that’s the way Mr. Icahn, who is 72, sees himself these days.

“It’s awful the way all these entrenched boards act,” he grumbled in his raspy voice as he slurped shark fin soup. “Someone’s got to stand up and say something. That’s what I do. And maybe I’ll make a little money at it.”

If we had been having dinner last week, he might have been talking about his latest mark: Yahoo.

Mr. Icahn, who doesn’t even use a personal computer, jumped headfirst into the Microsoft-Yahoo saga by mounting a proxy contest to oust the board members of Yahoo. He has proposed replacing them with his new pals, including Mark Cuban, the billionaire owner of the Dallas Mavericks; Lucian Bebchuk, a professor at Harvard Law School who wrote the book “Pay Without Performance”; and Frank Biondi Jr., the former chief executive of Viacom and Universal Studios whom Mr. Icahn unsuccessfully tried to install as Time Warner’s chief executive two years ago.

But make no mistake: Mr. Icahn, who has been called a “savior” and “sinner” in the same breath, does not want to actually win the proxy contest he has started — not if winning means taking seats on the board.

He has no intention of running Yahoo himself. He wants to bring Microsoft, which has withdrawn its \$47.5 billion bid for Yahoo, back to the negotiating table. He said as much in a letter to Yahoo’s chairman, Roy Bostock. “I sincerely hope you heed the wishes of your shareholders and move expeditiously to negotiate a merger with Microsoft, thereby making a proxy fight unnecessary,” Mr. Icahn wrote.

For the last several years, Mr. Icahn and I have had a friendly debate about whether he is simply a quick-buck artist, jumping into stocks just to push them into the arms of a suitor and pocket the premium. He’s been quite good at it: BEA Systems and Fairmont Hotels and Resorts, among others, were sold after he started rattling the cage. He, of course, insists that he is no different than any other shareholder — just a little more vocal and with a billionaire’s bank account.

Whatever the case, his role in Yahoo is not just like any other shareholder. He's gambling that Microsoft will inevitably come back to buy Yahoo — and if it doesn't, that he will be able to use his special brand of influence to make it.

Understanding Mr. Icahn's thinking is not that complicated: "I'm a pragmatic guy," he told me during our dinner, about the way he invests. "I believe in rationality," he added. Unlike Warren Buffett, he's not looking to make 10-year bets. He's looking for a catalyst — something that will move the stock price. And he doesn't care about understanding the intricacies of the business. His great talent is for smelling blood in the water first. "I used to be a poker player," he said. "I play the odds."

In this case, he's bought 9.9 million shares of Yahoo and 50 million options — when the stock was trading at about \$25 a share — giving him the potential to own 59 million shares without having to put up all the cash up front to buy them and hedge his bet.

So far, Mr. Icahn hasn't been in touch with Microsoft — though he tried to call the company's chief executive, Steven Ballmer, through the main switchboard at Microsoft's headquarters and was turned away, according to a person briefed on the call.

But Mr. Icahn appears to have already won the first round. Only five days after he announced he was going to battle, Microsoft, which had insisted over and over that it had "moved on," returned to discussions with Yahoo, this time over a complex deal in which Yahoo would sell its search business to Microsoft, falling short of a full-scale takeover, people involved in the early talks said.

On its own, that would be a terrible result for Mr. Icahn. But Microsoft still threw this last line into its press release to keep people guessing: "Microsoft is not proposing to make a new bid to acquire all of Yahoo at this time, but reserves the right to reconsider that alternative depending on future developments."

Mr. Icahn would not comment about Microsoft or Yahoo for this article.

By Mr. Icahn's pragmatic thinking, it is hard to believe that Mr. Ballmer, who has coveted Yahoo for years, will suddenly spurn it now, especially if Mr. Icahn can deliver Yahoo on a silver platter. But if Mr. Ballmer wanted Yahoo so badly, why wouldn't he have bought it already?

Mr. Icahn may be on the right side of this fight, but it is still unclear that he will win the proxy fight — or raise the share price, which he cares about more.

Yes, most investors agree that Yahoo should have sold itself to Microsoft in the first place. Most analysts agree that all the side deals in the world with Google, AOL or even Microsoft will not get Yahoo's stock anywhere near the \$33 a share that Microsoft offered before walking away.

But the question is, what happens if Mr. Icahn can't sell Yahoo to Microsoft before the actual proxy vote on July 3, just a little over a month away?

Mr. Icahn could struggle to throw out Yahoo's entire board. That would be the equivalent of giving him control of the company for no premium. Of course, he can always reduce his slate at the 11th hour or try to reach a settlement with Yahoo to get some board seats. But at that point, it may be too late.

And will shareholders really want Mr. Icahn running a company that he himself doesn't want to run?

Activists like Mr. Icahn may be great at making money by flipping companies, but they are less great at operating them. (Just witness his problems at Blockbuster.)

The irony is that Mr. Bebchuk, who Mr. Icahn is nominating for Yahoo's board, wrote a paper in 2001 with the following conclusion: "Proxy fights unaccompanied by an acquisition often suffer from substantial shortcomings that limit the use of such contests in practice."

But then again, betting against Mr. Icahn has never been pragmatic.