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In representing owners of a minority interest in a business, who have been victims of “squeeze out” techniques by majority owners, we have developed the following analysis outline:

Re: Abuse of Minority Shareholder

Documents to review:

Articles of Incorporation and By-laws
Is this a statutory Close Corporation? (See remedies and dissolution)
Shareholder agreement
Employment agreement with majority shareholder
Other contracts defining the relationship of the parties and contributions to capital
Leases and contracts with controlled corporations and vendors
Financial statements for last 5 years and/or tax returns
Shareholders Minutes for same
Notices of Shareholders' Meetings
Directors Minutes if available
Correspondence showing attempts to obtain information by minority shareholder

Squeeze-Out techniques and issues to consider:

1. No dividends
2. Elimination from Board of Directors
3. Exclusion from company employment
4. Siphoning off earnings by high compensation to majority shareholder or relatives
5. Sale of corporate assets to other insiders
6. Withholding information
7. Leases and loans favorable to majority shareholder
8. Other enterprises controlled by majority shareholder that perform services for company
9. Appropriation of assets, contracts, or credit for personal use
10. Usurping corporate opportunities
11. Issuance of additional stock to dilute minority interest
12. Self-dealing in general

Remedies

1. Dissolution

-based upon illegality, fraud, misapplication of assets or waste, or “oppression”
-if a statutory “Close Corporation”, Missouri allows the majority shareholder the alternative of buying out the minority shareholder for “fair value.”

2. Receivership to liquidate and wind up the business

3. Appointment of a Custodian to take over management of the business

4. Court appointed provisional director to help resolve disputes

5. Setting aside fraudulent or abusive transactions

6. Injunctive relief to prevent future similar conduct

6. Suit for damages for:

a. Breach of contract

b. Breach of fiduciary duty

c. Damages for excessive salaries or self-dealing

d. Punitive damages against majority shareholder (to reduce the benefit he will derive by recovery by the corporation in which he owns the majority interest anyway).

Types of actions

Must distinguish between corporate rights and personal rights; the former requires a derivative suit.

1. Derivative suit on behalf of shareholders

a. Must be preceded by demand on the directors to take action to remedy the issues

b. Types of claims covered (numbers refer to same number in “squeeze out” list above)

4. Siphoning off earnings by high compensation to majority shareholder or relatives

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9. Appropriation of assets, contracts, or credit for personal use

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c. Downside

Damages are recovered for the benefit of the corporation, and hence for the partial benefit of the majority shareholder

2. Direct suit by minority shareholder, for individual claims

1. No dividends

2. Elimination from Board of Directors

- 3. Exclusion from company employment
- 6. Withholding information
- 11. Issuance of additional stock to dilute minority interest

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