

Litigating Shareholder Disputes

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I. Introduction.

Many family businesses in Minnesota are structured as closely held corporations or limited liability companies.¹ Closely held corporations are defined by the Minnesota Business Corporations Act ("MBCA") as corporations that have no more than 35 shareholders. Minn. Stat. § 302A.011, subd. 6a. Minnesota law provides broad protections and remedies to minority shareholders in closely held corporations. Lawyers representing family businesses or their shareholders (whether controlling or minority shareholders) will serve their clients well by understanding the rights and obligations between and among such shareholders.

The reasons for the legal protections afforded minority shareholders in closely held corporations are fairly straightforward. These minority shareholders lack control and they lack liquidity. As minority owners, they generally cannot control the management or operations of the company. But unlike shareholders in public corporations, their stock is illiquid -- there is generally a very limited market -- if any market at all -- for their stock. Close corporation minority shareholders who disagree with the way the controlling owner(s) are running the company cannot sell their shares at the going market price as can shareholders in public companies. The lack of control paired with the illiquidity of stock makes minority shareholders in closely held companies vulnerable to exploitation or oppression by the majority owners. The controlling shareholders can use their control position to "effectively hold the minority shareholders' investments hostage." Berremán v. West Publishing Co., 615 N.W.2d 362, 368 (Minn. Ct. App. 2000). In light of the vulnerable position of minority shareholders in closely

¹ These materials will focus primarily on closely held corporations, governed by Minnesota Statutes Chapter 302A. However, most of the legal rights and obligations of corporate shareholders also apply to members in limited liability companies, which are governed by Minnesota Statutes Chapter 322B.

held corporations, both the MBCA and common law provide protections designed to prevent such mistreatment or to provide a remedy to minority shareholders when oppression occurs.

II. Relationships Among Shareholders In Closely Held Corporations.

A. Common Law Fiduciary Duty

Much of the law governing shareholder disputes in closely held corporations is grounded in the fiduciary duty owed by shareholders in such corporations to one another.² Minnesota courts have recognized that the relationships between owners of close corporations are similar to those between partners in a partnership. Westland Capital Corp. v. Lucht Engineering, Inc., 308 N.W.2d 709, 712 (Minn. 1981) (describing close corporation as "a partnership in corporate guise"). As a result, Minnesota law imposes on such shareholders "the highest standards of integrity and good faith in their dealings with each other." Evans v. Blesi, 345 N.W.2d 775, 779 (Minn. Ct. App. 1983). This common law fiduciary duty includes both substantive obligations that focus on outcomes of shareholder conduct and procedural obligations that focus on process. Gunderson v. Alliance of Computer Professionals, Inc., 628 N.W.2d 173, 185 (Minn. Ct. App. 2001).

B. The Key Statutes: Minn. Stat. §§ 302A.751 And 302A.467.

The fiduciary duties that are applicable to shareholders in closely held corporations are reflected in the statutes that provide remedies to shareholders whose rights are violated. The most important statute in most shareholder disputes is Minn. Stat. § 302A.751 (Section 751).³

² Although "closely held" corporations are statutorily defined to include only those with no more than 35 shareholders, shareholders in private companies with more than 35 shareholders may be subject to common law fiduciary duties, as they are in closely held corporations. Berremán, 615 N.W.2d at 370.

³ The parallel provision governing member disputes in limited liability companies is Minn. Stat. § 322B.833.

Entitlement to relief under Section 751 is predicated on the establishment of the existence of one or more triggering events. Section 751 authorizes a court to grant "any equitable relief it deems just and reasonable in the circumstances" in any one of several circumstances, including:

- the directors or those in control of the corporation have acted in a manner "unfairly prejudicial" toward a shareholder.
- the directors or those in control of a corporation have acted fraudulently or illegally toward a shareholder.
- the directors are deadlocked and the shareholders cannot break the deadlock.
- corporate assets are being misapplied or wasted.

Most minority shareholder litigation focuses on whether the controlling owners have engaged in "unfairly prejudicial" conduct toward a minority shareholder. Courts have held that even a single instance of such conduct may justify relief to a minority shareholder. Sawyer v. Curt & Company, Inc., 1991 WL 65320 (Minn. Ct. App. Feb. 12, 1991). The scope of potential remedies under Section 751 is very broad, and discussed in more detail below. Often, the remedy of choice is a corporate divorce, under which the complaining minority shareholders is awarded a "fair value" buy-out of the shareholder's stock.

Another statute that can be important in shareholder litigation is Minn. Stat. § 302A.467 (Section 467). Under this provision, if a corporation or its officers or directors violate a provision of Chapter 302A, the court may, in an action brought by a shareholder:

- "grant any equitable relief it deems just and reasonable in the circumstances;" and or
- award attorneys' fees and litigation expenses.

C. Enforcing Reasonable Expectations.

In determining whether to order relief under Section 751, courts are directed to consider "the reasonable expectations of all shareholders as they exist at the inception and develop during

the course of the shareholders' relationship with the corporation and with each other." Section 751, subd. 3a. In light of this statutory direction, "unfairly prejudicial" conduct has been interpreted to mean conduct that frustrates the reasonable expectations of shareholders. Berreman, 651 N.W.2d at 374; Gunderson v. Alliance of Computer Professionals, Inc., 628 N.W.2d 173, 184 (Minn. Ct. App. 2001). While what constitutes "reasonable expectations" will depend upon the facts and circumstances of each case, a shareholder's reasonable expectations may often include a job, a salary, and a significant place in management. Sawyer, 1991 WL 65320; McCallum v. Rosen's Diversified, Inc., 153 F.3d 701, 704 (8th Cir. 1998) (reasonable expectations often include a "significant voice in management and an opportunity to work"); Haley v. Forcelle, 669 N.W.2d 48, 59 (Minn. Ct. App. 2003) (shareholders in closely held corporations typically have an expectation of continuing employment).

Courts will consider a number of factors in determining whether a shareholder's "reasonable expectations" have been violated. First, under the express terms of Section 751, written agreements are presumed to reflect the parties' reasonable expectations.

For the purpose of this section, any written agreements, including employment agreements and buy-sell agreements, between or among shareholders or between one or more shareholders and the corporation are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements.

Section 751, subd. 3a (emphasis added). Note that even as to matters expressly addressed in a written agreement, the agreement is only presumed to reflect reasonable expectations. Such agreements are not always dispositive in determining shareholder expectations. Haley v. Forcelle, 669 N.W.2d at 58; Gunderson, 628 N.W.2d at 186. There may be expectations that contradict a written agreement. Or, the written agreements may not expressly apply to the circumstances giving rise to the dispute.

Shareholder expectations often arise from understandings that are not expressly stated in the corporation's agreements or governance documents. Therefore, courts look to other factors or touchstones in determining the parties' reasonable expectations, including:

- a course of dealing that implies an agreement. Gunderson, 628 N.W.2d at 185.
- an assessment of the understandings that would be expected to result from "associative bargaining." Gunderson, 628 N.W.2d at 185; Berremman, 615 N.W.2d at 374. In other words, what would the parties have agreed to had they bargained over how their investment would be protected?
- the fiduciary duties owed by shareholders to one another -- including substantive obligations, such as withholding dividends or using corporate assets preferentially, and procedural obligations, such as refraining from engaging in oppressive or unfair negotiation tactics or arbitrarily exercising discretion or veto power. Gunderson, 628 N.W.2d at 185-86.

Corporate governance rules can also form the basis for reasonable expectations, the violation of which can give rise to minority shareholder relief. Violations of Chapter 302A can give rise to a remedy under Section 467 and can also be a triggering event for relief under Section 751. See Henrickson v. Big League Game Co., 1995 WL 550935 (Minn. Ct. App. Sep. 19, 1995) (violation of Minn. Stat. § 302A.401, involving issuance of stock without authority, and § 302A.551, involving distribution of corporate funds without authorization of the Board, constituted breach of fiduciary duty and justified buy-out under Section 751). However, the Court of Appeals has held that breach of a company's bylaws, as opposed to a violation of Chapter 302A, does not trigger relief, at least under Section 302A.467. Isaacs v. American Iron, 690 N.W.2d 373, 379 (Minn. Ct. App. 2004).

III. Shareholder Claims

A. Conduct Giving Rise To Minority Shareholder Disputes.

There are many ways in which majority owners of a corporation can exercise the levers of control in ways that are detrimental to the interests of a minority shareholder. The Minnesota

Court of Appeals has identified the following non-exhaustive list of ways majority shareholders can "freeze out" minority shareholders:

- refusing to employ them.
- refusing to declare dividends.
- siphoning off company profits through excessive salaries to officers or self-dealing leases or other contracts.
- selling business assets to majority shareholders or their affiliates.
- forcing redemption of shares.
- cashing out minority shareholders at an unfairly low price through a merger.

Berreman, 615 N.W.2d at 368, citing D. Kleinberger, Why Not Good Faith? The Foibles of Fairness in the Law of Close Corporations, 16 Wm. Mitchell L. Rev. 1143, 1152 (1990). These and other techniques -- including withholding company information -- are discussed at length in O'Neal and Thompson's Oppression of Minority Shareholder and LLC Members, Ch. 3 (Thomson/West Rev. 2d ed. 2007 and 2008 Supp).

B. Claims Based On Expectations Of Employee-Shareholder.

In closely held companies, the right to employment may be the most valuable expectation that comes with share ownership. Minnesota courts have noted that shareholders commonly have an expectation to a job, a salary, and a place in management. Sawyer, 1991 WL 65320; McCallum, 153 F.3d at 704; Haley, 669 N.W.2d at 59; Gunderson, 628 N.W.2d at 189 (citations omitted). Termination of employment or other actions to reduce a shareholder's role or compensation are common precursors to shareholder litigation.

The rights and remedies of a shareholder-employee may be based on their contractual relationship with the company and/or the statutory and common law protections afforded shareholders in closely held corporations. As a result, the analysis of the rights and remedies available to a terminated employee may depend upon which hat he or she is wearing -- employee or shareholder. Where an employee (in his capacity as employee) claims wrongful termination,

the threshold question is whether a contractual agreement or promise inducing reliance existed which is breached by the termination. Gunderson, 628 N.W.2d at 190. However, a shareholder-employee also has the protections of the shareholder oppression doctrine. The threshold question in the context of a shareholder oppression claim based on termination of employment is whether a minority shareholder's expectation of continuing employment is reasonable. Id.

Minnesota courts have articulated several principles in assessing the reasonableness of a claimed expectation to continued employment.

- An expectation of continuing employment is reasonable in the first instance if continued employment can fairly be characterized as part of the shareholder's investment return -- e.g., where the shareholder's salary and benefits constitute (at least in part) de facto dividends or where employment was a significant reason for investing in the business. Gunderson, 628 N.W.2d at 191; Haley, 669 N.W.2d at 59.
- To be reasonable, an expectation of continuing employment must be known and accepted by other shareholders. Subjective hopes and desires alone are insufficient. Gunderson, 628 N.W.2d at 191; Haley, 669 N.W.2d 59.
- An expectation of continued employment must be balanced against the need for flexibility in running the business in a productive manner and, therefore, such an expectation is not reasonable where the shareholder-employee's own misconduct or incompetence causes the termination. Gunderson, 628 N.W.2d at 192; Haley, 669 N.W.2d at 60.
- Shareholders who sign buy-sell agreements permitting termination of employment for any reason and obligating the sale of shares to the corporation upon termination of employment "would not likely" be able to establish a reasonable expectation to continued employment. Gunderson, 628 N.W.2d at 190.
- An employee who makes no capital investment but buys a small percentage of stock through periodic offerings or receives a small percentage of stock as part of a compensation package probably lacks a reasonable expectation of continued employment. Gunderson, 628 N.W.2d at 190; see also Harris v. Mardan Business Systems, Inc., 421 N.W.2d 350, 353 (Minn. Ct. App. 1988) (no fiduciary duty owed to minority shareholder).

C. Other Unfairly Prejudicial Conduct/Violations Of Reasonable Expectations.

Of course, termination of employment is not the only conduct that can give rise to shareholder oppression claims. A non-exhaustive list of other conduct that can violate reasonable expectations and give rise to claims under Section 751 and/or for breach of fiduciary duty includes the following:

- Removal from Board of Directors. Even where a shareholder-employee is properly terminated as an employee for bad conduct, removal of the shareholder as a director and/or officer may violate the shareholder's reasonable expectation, as a founder and significant shareholder, to remain on the Board to participate in the business. Pooley v. Mankato Iron & Metal, 513 N.W.2d 834 (Minn. Ct. App. 1994).
- Demotion that removed management responsibilities of founding shareholder could constitute unfairly prejudicial conduct and breach of fiduciary duty, even where employment is not terminated and salary remained unchanged. O'Neil v. U.S. Spring Specialties, Inc., 1998 WL 128756 (Minn. Ct. App. Mar. 24, 1998).
- Given the duty of shareholders to act with complete candor in negotiations, failure to disclose material information may give rise to relief. Swanson v. Upper Midwest Industries, Inc., 2002 WL 857744, *11. (Minn. Ct. App. May 7, 2002) (misrepresentation that led to employee's waiver of right to object to corporate action frustrated shareholder's reasonable expectations). Berreman, 615 N.W.2d at 371 (fiduciary duty of shareholders include duty to disclose material information about the corporation; Trenholme v. QRS Diagnostics, LLC, 2006 WL 2601664 (Minn. Ct. App. Sep. 12, 2006).
- Withholding dividends or using corporate assets preferentially may violate a controlling shareholder's substantive obligation of fairness. Gunderson, 628 N.W.2d at 185.
- Use of a buy-sell agreement manipulatively to force the sale of shares of a minority shareholder may violate the minority shareholder's reasonable expectations. Gunderson, 628 N.W.2d at 187.
- Withholding financial information. In addition to the obligation of candor and disclosure described above, each shareholder has substantive rights to obtain certain corporate information. Minn. Stat. § 302A.461. Refusal to provide such information may be remedied through Section 467 and/or Section 751.
- Withholding commissions earned by a minority shareholder and withdrawal of company funds by controlling shareholder has been held to constitute unfairly

prejudicial conduct. Billigmeier v. Concorde Marketing, Inc., 2001 WL 1530356 (Minn. Ct. App. Dec. 4, 2001).

D. Remedies In Shareholder Disputes.

As reflected by the broad language of Section 751 and Section 467 – providing for “any equitable relief” the court finds to be “just and reasonable” under the circumstances – the range of potential remedies available to a court to resolve shareholder oppression claims and other shareholder disputes is exceedingly broad. While a “fair value” buy-out is often the remedy sought in Section 751 cases, courts can (and do) grant other relief instead of or in addition to a buy-out remedy.

1. Dissolution.

Historically, the Minnesota corporate code provided for dissolution as the primary remedy for resolving disputes involving serious oppression of minority shareholders or irreconcilable deadlock. See, Minn. Stat. § 301.49 (repealed 1981). But even before the adoption of Section 751, courts recognized that involuntary dissolution was a drastic remedy to be used with great caution. Generally, dissolution was ordered based on deadlock that was irreconcilable, under circumstances that made continuation of the business no longer advantageous to the shareholders. E.g., In re Lakeland Development Corp., 152 N.W.2d at 758, 764 (Minn. 1967); In re Villa Maria, Inc., 312 N.W.2d 921, 923 (Minn. 1981); In re Hedberg-Freidheim & Co., 47 N.W.2d 424, 427 (Minn. 1951).

The adoption of Chapter 302A in the early 1980s was direction from the legislature that courts should consider less drastic remedies. As stated in the Reporter’s Notes to Section 751, dissolution can be a “drastic remedy,” and one purpose of Section 751 was to cause courts to consider remedies with less drastic effects than dissolution while protecting the interests of shareholders seeking relief. Section 751 expressly directs that in deciding whether to order

dissolution, the court “shall consider whether lesser relief, suggested by one or more parties, such as any form of equitable relief, a buy-out, or a partial liquidation, would be adequate to permanently relieve the circumstances [establishing the triggering event(s)].” Section 751, subd. 3b (emphasis added).

While involuntary dissolution is not a common remedy, courts will still order dissolution in some cases, generally in cases involving deadlock. Johnson v. Dolphin, 1990 WL 194991 (Minn. Ct. App. Dec. 11, 1990) (dissolution ordered where 50/50 owners were deadlocked); Signal Bank, N.A. v. Kemnitz Sand & Gravel, Inc., 2002 WL 31415422 (Minn. Ct. App. Oct. 29, 2002) (dissolution ordered where there was conflicting testimony regarding ownership and distribution of shares, the two owners were deadlocked, and the corporation was insolvent with creditor suits imminent).

2. “Fair Value” Buy-Out.

The remedy of choice under Section 751 in most cases is a “fair value” buy-out of the complaining shareholder’s stock in the corporation.⁴ The issue for the court is one of fairness based upon the circumstances – the court can order a buy-out “if the court determines in its discretion that an order would be fair and equitable to all parties under all the circumstances of the case.” Section 751, subd. 2 (emphasis added).⁵ The issues relating to a buy-out – whether there is a right to a buy-out and, if so, the amount and terms of the buy-out – are central issues in most minority shareholder lawsuits.

⁴ It is usually the plaintiff minority shareholder (or 50% owner) who seeks to have his/her shares purchased by the company and/or the controlling shareholder(s). However, under Section 751, the court can order the sale of shares held by either a plaintiff or a defendant shareholder to the corporation or the opposing shareholder(s). Section 751, subd. 2.

⁵ Fair value buy-outs under Section 751 are awarded based upon a finding of unfairly prejudicial conduct toward a minority shareholder or any of the other triggering events under Section 751. Another situation in which a fair value buy-out is an issue is the under dissenter's rights statute. In the event of certain fundamental corporate actions, such as a merger or changes to preferential rights of shares, a shareholder may dissent and obtain fair value for his or her shares. The procedures for exercising dissenter's rights and determining fair value, which may involve litigation to determine fair value, are set forth in Minn. Stat. §§ 302A.471 - .473.

a. Procedure.

The court may order a buy-out upon the establishment of any of the triggering events identified in subd. 1 of the statute. While usually ordered following a trial, Section 751 also authorizes a buy-out on motion (subd. 2). The Minnesota Court of Appeals has held that the court can order a buy-out on motion upon a showing of “at least one uncontroverted incident of unfairly prejudicial conduct . . . toward a shareholder.” Sawyer v. Curt & Co., Inc., 1991 WL 65320 (Minn. Ct. App. 1991) (buy-out on motion granted where shareholder’s reasonable expectations were frustrated by termination of her employment without any attempt to compensate her for the loss of status within the corporation). If the court orders a buy-out on motion, the parties have the opportunity to agree on the price and terms of the buy-out. If they cannot agree within 40 days of entry of the buy-out order, the court will determine the “fair value of the shares.” Section 751, subd. 2.

The court “may appoint appraisers to receive evidence on and to assist by recommending the amount of the fair value of the shares.” Minn. Stat. § 302A.473, subd. 7 (incorporated by reference in Section 751, subd. 2). While the court can rely on the expert’s opinion in making the ultimate determination of value, a judge cannot “delegate [to the appraiser] the court’s equitable power” to determine fair value. Zenanko v. Vukelich, 1991 WL 6379 (Minn. Ct. App. Jan. 22, 1991); see also, Schaub v. Kortgard, 372 N.W.2d 427 (Minn. Ct. App. 1985).

b. Valuation Methods/Factors.

The statutes give the trial court broad discretion in determining fair value. The Reporter’s Notes to Minn. Stat. § 302A.473 (the dissenter’s rights statute, the valuation provisions of which are incorporated into Section 751) put it this way:

The court has complete control of the proceedings and may use any valuation method or combination of methods it sees fit, as long as the

court finds the result to be the fair value of the shares as of the effective date of the action. No method is recommended because the different methods of measuring value (market, book, replacement, capitalization of earnings, etc.) are neither right nor wrong, but merely appropriate in different situations.

The Minnesota Supreme Court has stated that fair value can be calculated by “any technique that is generally accepted in the relevant financial community.” Advanced Communication Design, Inc. v. Follett, 615 N.W.2d 285, 290 (Minn. 2000); see also, Rainforest Cafe, Inc. v. State of Wisc. Inv. Board, 677 N.W.2d 443, 450 (Minn. Ct. App. 2004).

Some courts have looked to the Minnesota Supreme Court’s marital dissolution decision in Nardini v. Nardini, 414 N.W.2d 184 (Minn. 1987), for guidance in determining value. Based upon Revenue Ruling 59-60, which addresses valuation for estate and gift tax purposes, the Nardini court identified the following factors to be considered in valuing a business:

- a. The nature of the business and the history of the enterprise from its inception;
- b. The economic outlook in general and the condition and outlook of the specific industry in particular;
- c. The book value of the stock and financial condition of the business;
- d. The earning capacity of the company;
- e. The dividend paying capacity;
- f. Whether or not the enterprise has good will or other intangible value;
- g. Sales of the stock and the size of the block of stock to be valued; and
- h. The market price of stocks of corporations engaged in the same or a similar line of business having their stocks traded in a free and open market.

414 N.W.2d at 190.

According to the Minnesota Supreme Court, a “sound valuation” involves not only consideration of the relevant facts but also application by the trial court of “common sense, sound and informed judgment, and reasonableness to the process of ‘weighing those facts and determining their aggregate significance.’” Id. (citations omitted). The statutory scheme in governing court-ordered buy-outs provides the court with “maximum flexibility” to fashion a remedy that is “fair and equitable to all parties.” Advanced Communication Design, Inc. v. Follett, 615 N.W.2d 285, 292 (Minn. 2000), quoting Minn. Stat. § 302A.751, subd. 2. See also, Diebold v. Diebold, 1997 WL 309366 (Minn. Ct. App. June 10, 1997) (broad discretion of trial court to determine fair value).

Fair value is usually the subject of competing testimony by experts in shareholder cases. Consistent with the flexibility and discretion afforded trial court judges, Minnesota courts do not require the trial judge to choose between the competing expert valuation opinions. Rather, the valuation statute (Section 473) specifically permits the court to reject both (or all) expert valuation opinions if the court determines that the opinions are not helpful because they are overly optimistic or overly pessimistic. Rainforest Cafe, Inc. v. State of Wisc. Inv. Board, 677 N.W.2d 443, 451 (Minn. Ct. App. 2004) (relying on Section 473, subd. 7, which calls on the court to determine fair value taking into account all factors deemed relevant, "whether or not used by the corporation or the dissenter").

c. What Is “Fair Value?”

- Fair value is generally defined as a shareholder’s “pro rata share of the value of the corporation as a going concern without discount for lack of marketability [absent extraordinary circumstances].” Advanced Communication Design, Inc. v. Follett, 615 N.W.2d 285, 290 (Minn. 2000).
- A fair value buy-out must be “fair and equitable to all parties.” Section 751, subd. 2. According to Hennepin County Judge Richard Solum (Retired), in an in-depth analysis of Section 751 liability and valuation issues in

Minnesota, this means the determination of fair value is “to protect the true value of the [minority shareholder’s] shares, it [is] not to bestow at Company expense, windfalls never achievable to other shareholders in the real world.” Jundt Associates, Inc. v. Knappenberger (Henn. Cty. File No. 95-1498), Order and Memorandum, dated Sept. 13, 1997, at 34.

- Discounts. One Minnesota court identified four discounts commonly used in valuation proceedings: minority discount; marketability discount; key person discount; and discount for contingent liabilities. Doerr v. Arundel (Henn. Cty. File EM 97-013502), Order dated October 1, 1999, at 14 (Judge William R. Howard).
- Minority discounts are not allowed in determining fair value. See, MT Properties, Inc. v. CMC Real Estate Corp., 481 N.W.2d 383 (Minn. Ct. App. 1991); Pooley v. Mankato Iron & Metal, Inc., 513 N.W.2d 834 (Minn. Ct. App. 1994). While minority status of shares has a real world impact on the value of the shares, and is therefore relevant to a determination of value, such a discount is disallowed because applying a minority discount would be contrary to the aim of the statute to protect minority shareholders. MT Properties, 481 N.W.2d at 387; Jundt Associates at 51-52.
- Discounts for lack of marketability (DLOM) are only allowed in “extraordinary circumstances.” Follett, 615 N.W.2d 285. This extraordinary circumstances exception applies where failing to apply a marketability discount would result in an unfair wealth transfer from the remaining shareholders to the departing shareholder. Follett, 615 N.W.2d at 292. In assessing whether extraordinary circumstances exist, the court is to exercise “maximum flexibility” by taking into account factors relevant to fair value, including:

whether the buying or selling shareholder has acted in a manner unfairly oppressive to the other or has reduced the value of the corporation, whether the oppressed shareholder has additional remedies such as those available pursuant to Minn. Stat. § 302A.467 (1998), or whether any condition of the buy-out, including price, would be unfair to the remaining shareholders because it would be unduly burdensome to the corporation.

Follett, 615 N.W.2d at 292-93.

In Follett, a marketability discount was allowed because: rejecting the discount would result in a valuation of the minority shareholder’s stock at more than five times the net worth of the company and almost seven times its average annual cash flow, and the company’s policy of reinvesting cash flows to finance growth was a primary consideration in the appraisers’ valuation of

the company. Id., at 293. Rejecting a marketability discount therefore would give the plaintiff value for his stock based on past growth, while leaving the remaining shareholders with stock in a corporation with extremely doubtful prospects for growth. Id.

When a marketability discount does apply, it can be significant – the Supreme Court in Follett directed the trial court to apply a marketability discount in the range of 35% to 55%. Id. On remand, the trial court applied a 35% marketability discount, and this was affirmed on appeal. Advanced Communication Design, Inc. v. Follett, 2001 WL 569013 (Minn. Ct. App. May 29, 2001). See also, Jundt Associates, supra at 23 (marketability discount of 20% applied where most, but not all, evidence indicated no likelihood of a future liquidity through a sale or public offering of the company).

- Other Discounts?

While most judicial attention has focused on minority discounts and marketability discounts, courts have addressed other discounts and adjustment in determining fair value. One such discount is the so-called “key person” discount, designed to recognize the risk associated with heavy dependence upon a key person in the company. In Billigmeier v. Concorde Marketing, Inc., 2001 WL 1530356 (Minn. Ct. App. Dec. 4, 2001), the trial court applied, and the court of appeals affirmed, a 10% “key-person discount” and a 40% discount based on the fact that revenues generated by the company were concentrated with a narrow group of vendors. Other courts in shareholder cases have discussed, but declined to apply, a key person discount. Doerr, supra, at 15; Jundt Associates, supra, at 24. The appropriateness of a key-person discount has also been addressed by Minnesota courts in marital dissolution cases. E.g., Feldick v. Feldick, 2004 WL 1093501 (Minn. Ct. App. May 18, 2004) (denying key-person discount), Tourniar v. Tourniar, 2002 WL 2004645 (Sep. 3, 2002) (district court did not abuse its discretion by denying use of the key-person discount); Georges v. Georges, 1992 WL 138614 (Minn. Ct. App. June 23, 1992) (no error where court denied a key-person discount); Nelson v. Nelson, 411 N.W.2d 868 (Minn. Ct. App. 1987) (30% discount for key-man/marketability was arbitrarily low); Rogers v. Rogers, 296 N.W.2d 849 (Minn. 1980) (marital property limited to that portion of the value of the company not dependent upon the continued service of appellant, who was the key-man on which much of the corporation’s profitability was dependent).

The Court of Appeals has also permitted a discount or reduction in value (approximately 33%) for contingent corporate liabilities based on concerns over possible labor and environmental litigation not reflected

on the corporation's financial statements. MT Properties, 481 N.W.2d at 389.

- Other Equitable Valuation Adjustments.

Courts have utilized their equitable authority in the basic calculations of value. For example, in Foy v. Klapmeier, 992 F.2d 774 (8th Cir. 1993), one of two shareholders had transferred a product line to a separate corporation in which the plaintiff shareholder had no interest. Relying upon its broad authority to grant equitable relief under Section 467, the court ordered that the diverted business be treated as if it were a division of the main business for the purposes of valuation.

d. Valuation Date.

The presumptive valuation date under Section 751 is “the date of the commencement of the action.” However, the court may utilize another valuation date “found to be equitable by the court.” Section 751, subd. 2. An alternative to the presumptive date is sometimes the date when the parties' relationship was effectively terminated (e.g., the date of termination). Pooley v. Pooley, 513 N.W.2d 834 (Minn. Ct. App. 1994) (valuation date was date plaintiff was voted off the Board and removed as an officer); Jundt Associates, supra (valuation date was date parties reached oral agreement under which one shareholder would resign and the other would buy him out); Billigmeier, 2001 WL 1530356 (valuation should, to the extent possible, reflect value on the date the plaintiff was terminated). In determining value, courts may exclude post-valuation date evidence, particularly where there is a concern that defendants could manipulate financial performance and/or the company is in a market that is constantly changing. American Sharecom, Inc. v. LDB International Corp., 1995 WL 321540 (Minn. Ct. App. May 30, 1995).

e. Terms/Security/Interest.

In addition to the determination of the buy-out price, the court can determine the terms of the buy-out. The court has explicit authority to provide that the payments for the purchase of the departing shareholder's stock be made in installments over time and to require the payment of

prejudgment interest. If the judge orders installment payments, the selling shareholder does not lose his rights or status as a shareholder (and/or officer or director) until the company or purchasing shareholder posts a bond “in adequate amount with sufficient sureties or otherwise satisf[ies] the court that the full purchase price of the shares, plus additional costs, expenses, and fees as may be awarded, will be paid when due and payable.” Section 751, subd. 2.

f. The Effect Of A Valuation Formula Under An Existing Buy-Sell Agreement.

One limit on the court’s ability to order a “fair value” buy out is contained in Section 751, subd. 2:

The purchase price of any shares so sold shall be the fair value of the shares as of the date of commencement of the action or as of another date found equitable by the court, provided that, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, or otherwise, the court shall order the sale for the price and on the terms set forth therein, unless the court determines that the price or terms are unreasonable under all the circumstances of the case. (emphasis added).

Even this directive to apply governing contracts relating to a buy out price allows the court to use its equitable powers to reject the contractual valuation if it is not fair. A number of cases address the applicability of contractual buy out formulas in Section 751 cases. See, e.g., Gunderson v. Alliance of Computer Professionals, Inc., 628 N.W.2d 173 (Minn. Ct. App. 2001); Drewitz v. Walser, 2001 WL 436223 (Minn. Ct. App. May 1, 2001); Miller Waste Mills v. Mackay, 520 N.W.2d 490 (Minn. Ct. App. 1994); Dullea v. Dullea Company, 1991 WL 271479 (Minn. Ct. App. Dec. 24, 1991).

3. Sale Of Company.

In some cases, both sides may have the interest in continuing to operate the company (without the other), and the ability to purchase the other’s interest. In that situation, the court may consider conducting a sale or auction under which any of the parties (or even a third party)

could bid on the purchase of the company, with the highest bidder buying out the interest of the other party. See, Afremov v. Amplatz, et al. (Henn. Cty. File No. CT02-017734) Order, dated Aug. 3, 2004. Under this approach, there is no battle of the experts over valuation, and value is instead determined by the value placed on the company by the parties themselves. Id., at 6.

4. Breach Of Fiduciary Duty “Damages.”

Minnesota courts have relied upon the “any equitable relief” provisions in Section 751 to award what is, in reality, akin to money damages. In the well known case of Pedro v. Pedro, one of three brothers who owned and operated a family business was fired after he raised issues about apparent financial discrepancies in the company’s books. The shareholders were party to a stock retirement agreement containing a formula purchase price of 75% of net book value. The terminated shareholder/employee was awarded the contract value for his shares. However, since fair value was substantially greater than the purchase price under the share retirement agreement, he was also awarded the difference between fair value and contract value as breach of fiduciary duty damages. In addition, the plaintiff was awarded lost wages through the age of 72.

Although the court concluded that under the unique facts of the case, the plaintiff essentially had an agreement to lifetime employment, the court of appeals also concluded that the award of future damages for lost wages “is wholly consistent with the court’s broad equitable powers found in § 302A.751, subd. 3a.” Pedro v. Pedro, 489 N.W.2d 798, 803 (Minn. Ct. App. 1992); see also, Pedro v. Pedro, 463 N.W.2d 285 (Minn. Ct. App. 1990).

5. Injunctive Relief.

In some cases, a court will consider entering temporary injunctive relief to avoid irreparable injury during the course of the lawsuit. For example, in Haley v. Forcelle, 669 N.W.2d 48 (Minn. Ct. App. 2003), Haley was removed from the board and demoted from his

officer position to a lower level staff position, and subsequently terminated altogether. Not only did Haley lose his sole source of income, he lost the ability to manage and watch over the company he had founded. He was subject to financial hardship that would likely force him to sell his shares. In addition, Haley had personally guaranteed \$4.3 million of company debt in a company in which he no longer had any voice. Under these circumstances, the trial court applied a Dahlberg analysis and entered a temporary injunction, affirmed on appeal, requiring the company to continue to employ Haley and pay him a salary, and to make a monthly accounting to Haley.

Similarly, the trial court in Afremov v. Amplatz, 2004 WL 77851 (Minn. Ct. App. Jan. 13, 2004), issued a temporary injunction, pursuant to Section 751, restraining the defendants from creating and/or transferring any of the company's assets or operations to any other entity without certain conditions being met. The trial court subsequently modified the order by appointing a receiver to take action where the shareholders could not agree. The Court of Appeals affirmed the injunctive relief in light of the trial court's broad authority under Section 751 (although the Court of Appeals held that the trial court abused its discretion by not addressing the issue of security under Rule 65.03.)

In another case, the Rice County District Court ordered injunctive relief requiring the defendant to return to the plaintiff those shares that she fraudulently induced plaintiff to transfer to her. Markegard v. Van Ruden (Rice Cty. File CX-01-1797), Order dated Jan. 7, 2004.

6. Appointment Of Receiver, Custodian, Or Provisional Director.

Injunctive relief can include the appointment of a receiver or custodian to liquidate and/or oversee some or all of the operations of the company. A court order requiring dissolution of a corporation will often be accompanied by the appointment of a receiver. 2 R. Thompson,

O'Neal and Thompson at §7.15. Minnesota statute expressly authorizes appointment of a receiver, either on a preliminary basis until a hearing can be held or after a full hearing. Minn. Stat. § 302A.753. Such a receiver generally will be authorized to continue the operation of the business, and preserve and then sell or otherwise dispose of the company's assets. Id., subds. 1 and 2.

In one fairly recent decision, Hennepin County Judge Diana S. Eagon appointed a receiver without dissolving the company. Beutler v. Dekker (Henn. Cty. File No. 05-2368), Order Appointing Receiver, dated May 26, 2005. Judge Eagon recognized that it is not common to appoint a receiver without a pending dissolution. However, the court concluded that it was necessary and appropriate to appoint a receiver during the pendency of the litigation to preserve the corporate assets and, if possible, to continue the ongoing business given the impasse between the two 50/50 owners. The court relied upon Section 751, subd. 1(b)(1) as authority for its decision.

Similarly, in Afremov v. Amplatz, supra, a receiver was appointed in connection with the issuance of a temporary injunction. Essentially, the injunction prohibited the parties from taking corporate actions unless all the shareholders agreed. If there was no unanimity, the receiver was required to evaluate the proposed action and authorize the action if the receiver decided it was in the best interests of the company. The court of appeals held that the trial court did have authority under Section 751 to appoint the receiver.

In another case, following trial, the court enjoined the defendant shareholders from transferring assets – both company assets and personal assets – until the full award to the plaintiff shareholders was fully paid and satisfied. Billigmeier, 2001 WL 1530356.

7. Other Equitable Relief.

There is a wide range of other equitable relief that can be considered by the court, including:

1. an accounting;
2. ordering access to company records (See, Minn. Stat. § 302A.461);
3. requiring declaration of dividends;
4. rescinding corporate actions;
5. enjoining continuing acts of oppressive conduct;
6. defining as constructive dividends amounts paid to controlling shareholder(s) as salary or otherwise;
7. ordering stock to be cancelled or redeemed; and
8. permitting a minority shareholder to purchase additional shares.

See generally, O’Neal and Thompson, § 7:24.

8. Attorneys’ Fees.

A statutory award of attorneys’ fees can be an important and significant remedy in Section 751 cases. Under Section 751, subd. 4, the court can award attorneys’ fees if it finds that a party has acted arbitrarily, vexatiously, or otherwise not in good faith. Section 751, subd. 4. Likewise, under Section 467, the court can award attorneys’ fees upon a finding that there has been a violation of any provision of Chapter 302A. For cases discussing the right to an award of attorneys’ fees, see, Pedro, 489 N.W.2d at 804 (award of fees within trial court’s discretion where there is a finding that defendants’ breached their fiduciary duty and acted arbitrarily, vexatiously, and/or not in good faith); Swanson v. Upper Midwest Industries, Inc., 2002 WL 857744 (Minn. Ct. App. May 7, 2002) (fee award within court’s discretion for conduct in the litigation and/or underlying conduct before filing of suit); Mooney v. Burtress, 1998 WL 218189 (Minn. Ct. App. May 5, 1998) (attorneys’ fees awarded where there was “an air of bad faith” surrounding shareholder’s conduct throughout the action, shareholder had not properly investigated claims, and shareholder had acted contrary to his own assertions in the litigation).

9. Punitive Damages.

There is some precedence for allowing punitive damages in shareholder litigation. In Evans v. Blesi, 345 N.W.2d 775 (Minn. Ct. App. 1984), the court allowed an award of punitive damages where a shareholder had used intimidating tactics to get his co-shareholder to transfer shares to give him majority control and then forced the co-shareholder's resignation. See also, Markegard, supra, Orders dated Jan. 7, 2004 and Dec. 17, 2004 (plaintiff shareholder awarded \$50,000 in punitive damages in Section 751 case as a result of defendant's fraud in inducing plaintiff to transfer shares to defendant and other willful misconduct). Punitive damage claims are, of course, governed by Minn. Stat. §§ 549.191 and 549.20.

10. Joint And Several Liability.

Considering the broad discretion given to the trial court under Section 751, courts have in some cases ordered that any liability to the complaining minority shareholder should be joint and several, meaning that both the corporation and its majority owner(s) are liable for the obligation. E.g., Billigmeier v. Concorde Marketing, Inc., 2001 WL 1530356 (Minn. Ct. App. Dec. 4, 2001). The Court in Billigmeier went so far as to impose a constructive receivership to the majority owner's personal assets and permanently enjoined him from transferring any company or personal assets until the judgment was satisfied, and this was affirmed on appeal. Id. See also, Henricksen, 1991 WL 550935 (affirming joint and several liability for buy out against corporation and its officers/directors); Pooley v. Mankato Iron & Metal, Inc., 513 N.W.2d 834 (Minn. Ct. App. 1994) (company and defendant shareholder ordered to buy out minority shareholder); Foy v. Klapmeier, 992 F.2d 774 (8th Cir. 1993) (finding that company and shareholder liable for award to dissenting shareholder); Pedro, 489 N.W.2d at 803; Ness v. North Star Imaging, Inc. (Ramsey Cty. File C9-99-2158), Order dated March 29, 2000.

11. Equitable Remedies Against Minority Shareholders.

While claims under Section 751 and Section 467 usually involve a minority shareholder seeking relief from the company or majority shareholder(s), wrongdoing minority shareholders may also be exposed to liability. Bolander v. Bolander, 703 N.W.2d 529 (Minn. Ct. App. 2005). In Bolander, a minority shareholder had been terminated as President, and was awarded severance under an employment agreement in a jury trial. Following a subsequent bench trial on shareholder claims, the court found that the plaintiff had himself acted contrary to the best interests of the company and inconsistent with his own statutory and common law duties by unilaterally taking large amounts of money out of the company at a time when it was struggling financially. Noting the broad latitude a court of equity has in fashioning remedies to meet the needs of each case, the Minnesota Court of Appeals reversed dismissal of the claim by the majority shareholders for relief under Section 467. The appellate court directed the trial court to enter relief against the plaintiff, which “may include, but is not limited to, equitable forfeiture” of the contractual severance payment awarded to the plaintiff as a result of the termination of his employment. Id., at 548-49. Even where there is clear fault by the minority shareholder, however, courts are slow to deny a shareholder a buy-out where he has been squeezed out of any meaningful involvement in the corporation. Pooley v. Mankato Iron & Metal, Inc., 513 N.W.2d 834 (Minn. Ct. App. 1994) (shareholder given fair value buy-out even though he was convicted of assaulting his co-shareholder and intentionally damaging a customer’s truck).

E. Indemnification Obligations In Shareholder Disputes.

Because claims are often asserted by or against individuals who serve as corporate directors, officers and/or employees, consideration must be given to whether such persons may have a right to indemnification or an advance of defense costs in connection with such disputes.

1. Corporate Indemnification Obligation.

Minn. Stat. § 302A.521 addresses the rights of directors, officers and employees to indemnification and/or advance of defense costs. Under this statute, indemnification is mandatory for "a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person" if the person:

1. has not been indemnified by another organization;
2. acted in good faith;
3. received no improper personal benefit and section 302A.255 (relating to approval of interested director transaction), if applicable, has been satisfied;
4. in the case of criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
5. the person reasonable believed that the conduct was in the best interests of the corporation.

Minn. Stat. § 302A.521, subd. 2. "Official capacity" generally refers to actions taken in the person's capacity of a director, officer, and/or employee. Id., subd. 1(c).⁶

2. Attorney Fee Advances.

In addition to indemnification for liability, a person meeting the requirements for indemnification is entitled to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees, incurred in advance of the final disposition of the dispute. Id., subd. 3. To obtain such advances, the director/officer/employee must make a written request to the corporation that affirms a good faith belief that the criteria for indemnification have been satisfied and undertakes to repay all advances if it is ultimately determined that the criteria for indemnification have not been satisfied. Id.

3. Determining Eligibility.

Often, the persons seeking indemnification and/or advances are members of the Board and therefore have a conflict in deciding for the corporation whether they are entitled to

⁶ Indemnification obligations under the statute may be prohibited or limited by corporate articles or bylaws. Minn. Stat. § 302A.521, subd. 4.

indemnification or advances. Therefore, the statute requires determinations regarding entitlement to indemnification or advances to be made in one of the following ways:

1. By a majority of the Board, if the members who are not parties are not counted for determining a majority or the present of a quorum;
2. If a Board quorum cannot be obtained, by a majority of a committee of the Board consisting solely of 2 or more directors not parties to the proceeding;
3. By special legal counsel;
4. By shareholder vote, but shares held by parties to proceeding cannot be considered in determining presence of a quorum and cannot vote;
5. If no decision can be made under (1)-(4), by a court.

Id., subd. 6.

IV. Shareholder Derivative Claims.

In assessing potential shareholder claims, it is important to distinguish between direct shareholder claims and shareholder derivative claims. Derivative claims are claims brought by a shareholder on behalf of the corporation to vindicate a primary right of the corporation. Such claims can be asserted by a shareholder when the corporation does not pursue the claim, often because those in control of the corporation are the alleged wrongdoers against whom a claim would be brought. The distinction between direct and derivative claims is important because of the different procedural rules applicable to them.

A. Identifying Derivative Claims.

In general, derivative claims are those based upon injury to the corporation, such that any injury to a shareholder is indirect and is the same injury as that suffered by all shareholders. The Minnesota Supreme Court has stated that in determining whether a claim is derivative, courts should "look not to the theory in which the claim is couched, but instead to the injury itself."

Wessin v. Archives Corp., 592 N.W.2d 460, 464 (Minn. 1999). Thus, claims for misappropriation and waste of corporate assets are traditional derivative claims. Id., at 465. The

Court has rejected arguments that the derivative pleading rules are not applicable in closely held corporations or do not apply in Section 751 cases. *Id.*, at 466-67.

B. Requirements For Derivative Claims.

For claims that are derivative, there are a number of procedural requirements designed to make sure that corporate decisions regarding whether to pursue a claim are made by the board of directors or a majority of shareholders. Specific pleading requirements for derivative claims are set forth in Minn. R. Civ. P. 23.09, which states as follows:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interest of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

See also Fed. R. Civ. P. 23.1. Thus the following requirements must be met for a shareholder to pursue a derivative claim.

1. Contemporaneous Ownership.

The shareholder must have been a shareholder at the time of the transaction complained of (or the shares devolved to the plaintiff shareholder by operation of law).

2. Demand Requirement/Futility Exception.

Before initiating a derivative claim, a shareholder must first make a demand upon the Board of Directors to pursue the claim. Winter v. Farmers Educ. & Coop. Union, 107 N.W.2d 226, 233 (Minn. 1961). That allows management the opportunity to consider the merits of the dispute and determine whether it might be disposed of without the expense and delay of litigation. Id., at 233.

The demand requirement may be excused if making the demand on the corporation would be futile. This exception may apply when the directors on whom the demand is made have a conflict of interest, perhaps because they are the individuals against whom the claims would be asserted. A Minnesota federal court has stated that demand should be excused only when there is no possibility that a resolution could be reached if demand is made. Reimel v. MacFarlane, 9 F. Supp. 2d 1062, 1066 (D. Minn. 1998).

3. Adequate Representations Of Shareholders.

As stated in Rule 23.09, a derivative action may not be maintained if the plaintiff does not "fairly and adequately represent the interests of the shareholders . . . similarly situated in enforcing the rights of the corporation"

C. Independent Litigation Committees.

Minnesota corporate law authorizes corporations to form "special litigation committees ... to consider the legal rights or remedies of a corporation and whether those rights and remedies should be pursued." Minn. Stat. § 302A.241, subd. 1. A special litigation committee must be made up of one or more independent directors or other independent persons. Id. Since derivative claims are claims asserted on behalf of and to vindicate the rights of the corporation, and since such claims are often asserted against persons who are members of the board of

directors (such that the board is not in a position to make a disinterested decision as to whether the corporation should pursue the claim), special litigation committees may be formed to investigate shareholder claims to determine on behalf to the corporation whether there are corporate rights and remedies that should be pursued.

Under the business judgment rule, judicial review of a committee determination is limited to a review of (1) whether the committee possessed a disinterested independence and (2) whether the committee's investigative procedures and methodologies are adequate, appropriate, and pursued in good faith. In re UnitedHealth Group Incorporated Shareholder Litigation, ____ N.W.2d ____, 2008 WL 3467254 (Minn. Aug. 14, 2008) (involving committee decision to settle a derivative lawsuit); Janssen v. Best & Flanagan, LLP, 662 N.W.2d 876, 888 (Minn. 2003); Drilling v. Berman, 589 N.W.2d 503, 506-07 (Minn. Ct. App. 1999). If the initial committee investigation and recommendation fail to satisfy the standard, the derivative suit proceeds on the merits with no opportunity to rectify the deficiencies. United Health, 2008 WL 3467254, citing Janssen, 662 N.W.2d at 889.

V. Settlement Considerations.

A. Tax Allocation Issues.

The characterization of claims and settlement payments can have a significant impact on the after-tax cost to the company and after-tax benefit to the selling shareholder.

1. For the corporation, is the settlement (or any portion of it) deductible?
 - Damage claims v. stock purchase
 - use of non-competes and consulting agreements
 - attorneys' fee payments
2. For the shareholder, is the payment treated as ordinary income or capital gain?
3. Tax treatment of payment for attorneys' fees?

B. Tax Issues Relating To Timing Of Settlement.

If the company is a Subchapter S corporation or limited liability company, parties settling a shareholder dispute should consider the tax impact on the departing shareholder during the year of the settlement. Generally, Subchapter S corporations and LLCs distribute funds sufficient to cover the tax liability of company income that flows through to the tax return of the individual owners. If no provision is made in the settlement agreement, the departing shareholder may be exposed to substantial tax liability due to income attributable to him during the year of the settlement, but not have any money to pay the tax liability on that income. (Likewise, he could be the beneficiary of losses suffered by the company.) Addressing this in the settlement agreement will eliminate that uncertainty.

C. Continuing Indemnification.

Under Minn. Stat. § 302A.521, officers and directors are entitled to indemnification and payment of attorneys' fees with respect to certain claims against them in their capacity as officers or directors. Although these protections may well continue after a minority shareholder receives a buy-out and has departed the company, the very broad releases written into most settlement agreements may allow the company to argue that a former officer/director has no indemnification rights as to claims asserted in the future. To eliminate this potential ambiguity, attorneys representing parties to a settlement agreement should consider including an explicit provision in the agreement with respect to continuing indemnification rights.

D. Special Consideration For Settling Claims By A Shareholder-Employee.

If the shareholder dispute includes any potential for discrimination claims, one should consider whether it is necessary or appropriate to include in a settlement agreement and release

certain statutory rescission rights. See, Age Discrimination in Employment Act (“ADEA”) 29 U.S.C. § 621-634 and Minnesota Human Rights Act, Minn. Stat. § 363.031, subd. 2.