

BUSINESS OPPORTUNITIES **AS A COMPANY ASSET**

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Company Balance Sheet

Assets		Liabilities	
Current Assets:		Current Liabilities:	
Cash	\$ 50,000	Short-term debt	\$ 30,000
Accounts Receivable	\$ 40,000	Accounts payable	\$ 50,000
Merchandise Inventory	\$100,000	Salaries	\$ 110,000
Total Current Assets	\$190,000	Total Current Liabilities	\$ 190,000
Plant & Equipment:		Long-term debt	\$ 20,000
Equipment	\$ 30,000	Total Liabilities	\$ 210,000
Less: Accumulated Depreciation	\$ (2,000)	Owner's Equity	\$ 8,000
Total Assets		Total Liabilities & Owner's Equity	
		Owner's Equity	\$ 218,000
		Equity	\$ 218,000

Corporate Opportunity Doctrine

- Miller v. Miller
 - Minnesota Supreme Court, 1974
- Triple Five
 - 8th Circuit, 2005

Miller v. Miller Process

1. Is it a Corp. Opportunity (flexible test)
 - Any Contract right?
 - Is it essential, necessary or desirable?
 - Is it an area adaptable to Co's biz?
 - Is it competitive to Co's biz?
 - Does Co. have financial ability to pursue?
 - Does Co. have practical ability to pursue?
 - Burden on Corp.

Miller v. Miller Process.

- 2. Fairness Test.
 - Relationship to management and control
 - Capacity in which it was presented
 - Prior disclosure to Co.
 - Were Co. facilities, assets or people used?
 - Harm to Co.
 - All other facts and circumstances
 - Burden on insider.

Triple Five

- Minnesota imposes the highest duty of integrity and good faith on partners in their dealings with each other.
- Partner may not appropriate a business opportunity which rightly belongs to partnership
- An opportunity that is closely related to the entity's existing or prospective line of business, would competitively advantage the partnership, and is one that the partnership has the financial ability, knowledge and experience to pursue is a partnership opportunity.
- Determination of whether an opportunity rightly belongs to the partnership is necessarily one of fact.

Remedies

- Constructive Trust
- Accounting
- Consequential Benefits

Constructive Trust

- Purpose: To ensure that profits inure to Co's Benefit
- Tangible and intangible property
- Tracing available.

Accounting

- Imposed when property subject to Constructive Trust produces profits while in defendant's possession.
- Disgorge profits.
- Need not be able to trace.
- Burden on defendant.
- Tie goes to the plaintiff.

Consequential Benefits

- Restitutory measure of damage.
- Measured by the gain/unjust enrichment received by the defendant.
- Measured not just on date of wrongful misappropriation, but includes increase in value in defendants' hands thereafter.
- But if value goes down, take value on date of misappropriation.

Who Can be Liable?

- Officers
- Directors
- Agents
- Employees
- Successors in interest

Minn. Stat. 181.78 Subd. 1

Inventions not related to employment. [P]rovision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer shall not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (1) which does not relate (a) directly to the business of the employer or (b) to the employer's actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the employer. .

How to Avoid Liability

- Disclosure/Ratification
- Model Business Corporation Act §8.70