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Certified Public Accountants and Consultants

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## *Corporate Divorce – Shareholder Disputes*

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## *Corporate Divorce – Shareholder Disputes*

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### INTRODUCTION

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## *Corporate Divorce – Shareholder Disputes*

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### INTRODUCTION

- **A corporate divorce situation can cause financial/business losses as well as personal suffering if left unattended**



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### INTRODUCTION

- **The trouble/issues can begin at the inception of the business undertaking**
  - *Multi-owner businesses often formed by individuals with prior relationships, including family members*
    - Important not to overlook the drafting of organizational documents addressing technical, legal and accounting issues
    - Inherent trust of parties based on the relationships often leads to “looseness” in organization



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### INTRODUCTION

- **Planning at inception allows for easier resolution of issues if/when they occur over the business lifecycle**
  - How equity interests will be valued (and related issues)
  - Employment, operational issues and job expectations
  - Compensation, bonuses, vacations, benefits, expenses, etc.



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### INTRODUCTION

- **Transferability of equity interests, including funding and restrictions**
- **Dispute resolution alternatives**



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### INTRODUCTION

- **Specific resolution details for each potential issue need not be addressed at inception, but it is important to have a basic framework for dealing with future challenges**



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### INTRODUCTION

- **Provisions set forth in initial agreements are subject to change (usually by majority vote of owner group)**
- **All documents should be periodically reviewed and updated throughout the course of the business lifecycle**



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### INTRODUCTION

- **Overview of this program**
  - *Chapter I: Causes of Corporate Divorce*
  - *Chapter II: Corporate Divorce Resolution Alternatives*
  - *Chapter III: Documents in Equity Owner Dispute Resolution*
  - *Chapter IV: Role of Independent Financial Specialists*



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### INTRODUCTION

- **Overview of this program**
  - *Chapter V: Valuation Issues*
  - *Chapter VI: Forensic Issues*
  - *Chapter VII: Case Law Update*
  - *Conclusion and Practical Considerations*



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### CAUSES OF CORPORATE DIVORCE

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### CAUSES OF CORPORATE DIVORCE

- **Discord among equity ownership groups can arise from any number of circumstances**
  - *Some are real...and some are perceived*

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### CAUSES OF CORPORATE DIVORCE

- **Key to quick resolution is proper guidance within governing documents and open communication**
- **Denial and refusal to communicate are not the answer**



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### CAUSES OF CORPORATE DIVORCE

- **Understanding capital structure can shed light on real or perceived abuses**
  - *Controlling/Noncontrolling Owners*



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### CAUSES OF CORPORATE DIVORCE

- **Examples of actions giving rise to shareholder/equity owner disputes**
  - *Can vary widely*



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### CAUSES OF CORPORATE DIVORCE

- **Personal Use of the Assets and Income of the Business by an Equity Owner**
  - *Alleged or proven to have misappropriated corporate monies for own enrichment*
  - *Most often, misdirection of assets or overstating expenses, etc.*





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### CAUSES OF CORPORATE DIVORCE

- **Personal Use of Business Assets/Income**
  - *Common occurrence; issue raised in nearly every case*
  - *Often starts small due to insufficient internal controls*
  - *Loss of trust often more damaging to business than actual monetary damage*

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### CAUSES OF CORPORATE DIVORCE

- **Personal Behaviors of a Civil and Criminal Nature**
  - *Civil*
    - Income tax improprieties, improperly reporting expenses and financial information
    - Fraudulent misrepresentation of business to lenders, auditors, regulatory bodies
    - Inappropriate personal conduct: sexual harassment/other (can be criminal in some cases)

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### CAUSES OF CORPORATE DIVORCE

- **Personal Behaviors of a Civil and Criminal Nature**

- *Criminal*

- Various activities undertaken outside the business
    - DUIs or other offenses that tarnish reputation of business and force other owners to take action against offender

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### CAUSES OF CORPORATE DIVORCE

- **Use of Business to Advocate Personal Interests**

- *Examples:*

- Excessive funds/services given to an elite school with the motivation of the business owner's child being accepted
    - Hiring individuals with personal relationships to the owner instead of more-qualified professionals

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### CAUSES OF CORPORATE DIVORCE

- **Financial Success/Distress in the Business**
  - *Disagreements over how profits should be spent (i.e., reinvest in business or pay distributions to owners)*
  - *Each owner cannot always have his/her wishes met – must stay focused on objectives of business not individuals*
  - *Issues are even more difficult when business is struggling*
  - *Bad feelings often arise due to financial pressure and blame*

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### CAUSES OF CORPORATE DIVORCE

- **Personal Causes of Corporate Divorce**
  - *Marital Dissolution*
  - *College Funding*
  - *Illness*
  - *Retirement*
  - *Alternate Investment*
  - *S Corp Election*

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### CAUSES OF CORPORATE DIVORCE

- **Shareholder/Equity Owner Freeze Out**
  - *Not necessarily caused by malfeasance*
  - *Transactions take many forms but intend to force shareholders/equity owners to sell their ownership interests*
  - *Often used to unburden the majority ownership of problematic shareholders/equity owners*

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### CAUSES OF CORPORATE DIVORCE

- **Shareholder/Equity Owner Freeze Out**
  - *Accomplished by:*
    - Issuance of additional equity ownership shares to the majority owners; dilutes ownership/devalues interest of owners being pushed out; results in sale to preserve value
    - Limitation on cash distributions imposed by majority equity owners to force owners to sell shares to pay taxes

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### CAUSES OF CORPORATE DIVORCE

- **Determining Value**
  - *Any successful resolution requires a valuation of subject interest under question*
  - *Requires team of professionals led by legal counsel*
  - *Can be made easier if the process is defined in documents adopted at inception of business*
  - *Ultimate goal of process is fairness to all parties*

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### CAUSES OF CORPORATE DIVORCE

- **Concluding Thoughts**
  - *Process can be very expensive and time-consuming*
  - *Conflict resolution alternatives can ease the process, though fast, easy solutions are rare*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Attributes for Fair Resolution**
  - *Open communication*
  - *Lowest level of formality possible*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Internal Equity Owner Meetings – without Advisors**

- *Starting point for resolution is for all parties to meet and talk*

- Allows owners to vent and speak freely without formality of including advisors/attorneys
    - Historical relationships can lead to reasonable discussions and sense of common interest
    - Goal is to create framework for formal resolution

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Internal Equity Owner Meetings – without Advisors**

- *Can also lead to negative results*

- Possibility of revealing information that could later be detrimental to owners' position
    - Nonsensical/impossible agreements made between parties
    - Owners should speak with advisors in advance to prepare for meetings to prevent negative outcomes

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Internal Equity Owner Meetings – without Advisors**
  - *Success in this process requires objective and thoughtful discussion from all parties*
  - *Emotions must be overcome to attain resolution*

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## ***Corporate Divorce – Shareholder Disputes***

### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Internal Equity Owner Meetings – with Legal Counsel/Advisors**
  - *Benefits from more-formal atmosphere*
    - Minimization of emotional exchanges
    - Business-like environment initially created
    - Expertise on hand to assist; more streamlined
    - More formality might lead some to be more defensive

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Mediation Alternative**

- *Used as a means to bring parties closer to agreement*
- *Issue of trust is irrelevant since mediator is independent*
- *Mediator able to remain objective since he/she has nothing to gain from decision*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Mediation Alternative**

- *Mediators bring a variety of skills to the table*
  - Ability to work through relationships and emotions to keep focus on issues at hand
  - Important to choose a mediator with the technical expertise required for the specific situation

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Use of a Trusted Advisor**

- *Advisor can be attorney, accountant, close friend, outside consultant or any other trustworthy individual*
- *Key elements to consider when choosing advisor(s)*
  - Qualifications
  - Ability to maintain independence and objective attitude
  - No conflicts of interest

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Engagement of Outside Management**

- *Replacement of entire management team is rare in situations of corporate divorce*
- *May be beneficial to add a few outside parties to the Board of Directors or management team to gain an unbiased view*
- *In order to be a useful option, all equity owners must agree to consider recommendations from person(s) selected*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Business Reorganization**

- *Can be an option if business has at least two operational divisions that can be completely separated*
- *Allows multiple parties to “win” by leaving the process with equity ownership in a company*
- *To succeed, owners must have interest in dividing company and required skills to manage the separate entity*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Sale of Business**

- *May seem extreme but sometimes can be the only option*
- *Completed transaction is negotiated by third parties*
- *Can be achieved in a taxable transaction or tax-free basis*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Single Equity Owner Buy Out**
  - *Most-common alternative – exiting owner’s shares are repurchased by remaining ownership group*
  - *Exiting owner receives valuable consideration on investment*
  - *Remaining shareholders no longer need to deal with him/her*
  - *Issues- valuation and payment*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Arbitration**
  - *Goal is to push to quick resolution without high cost*
  - *Can be voluntary or mandatory; binding or non-binding*
  - *Non-binding arbitrator remains removed from process – only determines liability and amount of damages (if applicable)*
  - *Clauses directing arbitration often in governing documents*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Resolution in Court**

- *Courts do not want to address disputes among business owners*
- *Few tools available for resolution*
- *Only become involved in limited situations*
- *Courts can appoint a custodian to run the business in place of the individuals involved in the dispute (not common)*

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### CORPORATE DIVORCE RESOLUTION ALTERNATIVES

- **Concluding Thoughts**

- *To minimize pain, important for affected owners to address issues in a timely manner and handle difficulties quickly*
- *Resolving the situation before entering the court system benefits all involved*

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### DOCUMENTS IN EQUITY OWNER DISPUTE RESOLUTION

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### DOCUMENTS IN EQUITY OWNER DISPUTE RESOLUTION

- **Resolution begins with gathering of information**
  - *Starting point is legal statute and law*
  - *Second part of analysis is judicial precedent*
  - *Third component is documents governing operation of the business (created at inception; amended over time)*
    - Can be the most critical piece of the historical analysis process

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## ***Corporate Divorce – Shareholder Disputes***

### DOCUMENTS IN EQUITY OWNER DISPUTE RESOLUTION

- Always best to request a broad range of organizational and operational documents
- Numerous types documents can be used in valuation and forensic procedures (*see page 21*)
- Documents can spell out process to resolve disputes or provide methods for valuation and/or terms for repurchase of shares
- Often outdated/unclear documents interfere with resolution

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## ***Corporate Divorce – Shareholder Disputes***

### DOCUMENTS IN EQUITY OWNER DISPUTE RESOLUTION

#### **Example:**

- Buy-sell agreements provide example of issues that can be found and addressed in organizational documents
- Many benefits, as well as detriments are possible
- Uncertainty in valuation process to determine price of owner's shares can be eliminated if agreement addresses specifics
- Other documents can also have effect on issue resolution

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### DOCUMENTS IN EQUITY OWNER DISPUTE RESOLUTION

- **Other Documents**
  - *Shareholder Agreements*
    - Restrictions and Transfers
    - Rights of First Refusal



## *Corporate Divorce – Shareholder Disputes*

### DOCUMENTS IN EQUITY OWNER DISPUTE RESOLUTION

- **Concluding thoughts**
  - *Governing documents are often the most significant element of guidance in addressing shareholder disputes.*





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### ROLE OF INDEPENDENT FINANCIAL SPECIALISTS

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### ROLE OF INDEPENDENT FINANCIAL SPECIALISTS

- **Type of dispute influences the assignment(s) requested of the financial specialist**
- **Specialist should have clear understanding of dispute**
- **Specialist will work closely with legal counsel**
  - *Can be engaged as consulting or testifying expert*
- **Role of specialist can include business valuation, forensic accounting, consulting and/or litigations support services**

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## *Corporate Divorce – Shareholder Disputes*

### ROLE OF INDEPENDENT FINANCIAL SPECIALISTS

- **Business Valuation Expert**
  - *Engaged to provide an independent opinion of value*
  - *Must have clear understand of how shareholder dispute impacts all facets of the assignment*
  - *Will look to agreements and organizational documents for guidance in the process*
  - *May need guidance from legal counsel for judicial precedent*

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### ROLE OF INDEPENDENT FINANCIAL SPECIALISTS

- **Forensic Accounting Expert**
  - *Engaged for matters that extend beyond determining value*
  - *Perform in-depth review of financial records, internal control systems and operating policies of company*
  - *Various types of forensic services can be required*

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### ROLE OF INDEPENDENT FINANCIAL SPECIALISTS

- **Other Consulting Services**
  - *Review of shareholder and employment agreements*
  - *Assistance with settlement negotiations*
  - *General litigation support*
  - *Additional services may be required from other specialized experts (IT, real estate, specialty appraisers, etc.)*



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### VALUATION ISSUES



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### VALUATION ISSUES

- Valuation poses one of the most critical issues
- Aspects of valuation are unique to equity owner disputes
- Failure to consider nuances can create issues
- Lack of a quality valuation can prove to be a costly misstep



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### VALUATION ISSUES

- Critical to engage a qualified valuation expert
  - *Qualified to perform the necessary analysis and formulate a meaningful opinion*
  - *Valuator should offer reliable and relevant analysis and opinions*
  - *Credibility with the court*
  - *Refrain from advocacy*



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### VALUATION ISSUES

- **Purpose of valuation**
  - *Integral to every valuation assignment*
    - Assist in offering a reasonable price
    - Negotiate with the selling equity holder
    - Resolve a dispute relative to value



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### VALUATION ISSUES

- **Existence of a buy-sell agreement**
  - *Documents how the value of the ownership interest should be determined*
    - Agreed-upon value
    - Formula approach
    - Hire a third-party valuator



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### VALUATION ISSUES

- **Existence of a buy-sell agreement**
  - *It is common for the agreement to include:*
    - Date of valuation
    - Standard of value
    - Premise of value
    - Use of valuation discounts



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### VALUATION ISSUES

- **Valuation date**
  - *Any conclusion of value is effective on a single date*
  - *Influences the information available*
  - *Issues arise when parties do not agree on the date*
  - *In all instances the date is derived from legal counsel*



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### VALUATION ISSUES

- **Standard of value**
  - *One of the most controversial aspects of the valuation*
  - *Must fully understand the ramifications and implications of definition of each standard*
  - *Value can take on different meanings depending on the context of the assignment*



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### VALUATION ISSUES

- **Standard of value**
  - *Fair market value*
  - *Fair value*
    - Financial reporting
    - State statutory
  - *Investment value*
  - *Intrinsic/fundamental value*



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### VALUATION ISSUES

- **Fair value**
  - *Most states (including PA) use fair value to resolve shareholder disputes*
  - *Defined in the Revised Model Business Corporation Act*
  - *Some courts do not equate fair value to fair market value*

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### VALUATION ISSUES

- **Fair value**
  - *Differences Between Fair Market Value and Fair Value<sup>2</sup>*

<u>Fair Market Value</u>	<u>Fair Value</u>
Willing buyer	Not always a willing buyer
Willing seller	Not a willing seller
Neither under compulsion	Buyer not always compelled; seller under compulsion
Assumes a typical hypothetical buyer and seller	The impact of the proposed transaction is not considered; the concept of fairness to the seller is a possible consideration
A price equitable to both	A concept of “fairness” to the seller, considering the inability to keep the stock

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### VALUATION ISSUES

- **Fair value**

*Differences Between Fair Market Value and Fair Value<sup>2</sup>*

Fair Market Value	Fair Value
Assumes buyer and seller have equal knowledge	No such assumption
Assumes reasonable knowledge of both parties	No such assumption
Applicable to both controlling interests and minority blocks	Applicable only to minority blocks
Applies to all federal tax valuations	The most common value standard in state dissenting and oppressed shareholder statutes

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### VALUATION ISSUES

- **Standard of value dictates the methodologies that will be performed**
  - *Most states (including PA) use fair value to resolve shareholder disputes*
  - *Defined in the Revised Model Business Corporation Act*
  - *Some courts do not equate fair value to fair market value*

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### VALUATION ISSUES

- **Premise of value**
  - *Assumption of the most likely set of transactional circumstances*
    - Going concern
    - Liquidation – orderly or forced



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### VALUATION ISSUES

- **Valuation adjustments**
  - *Valuator must carefully scrutinize the specific investment characteristics*
  - *Valuator must understand the mechanics of the valuation methodologies*
  - *Modifications can be made to value when investment characteristics resulting from the method applied do not match the specific investment*



## *Corporate Divorce – Shareholder Disputes*

### VALUATION ISSUES

- **Valuation adjustments**
  - *Buy-sell agreement may speak to the standard of value which will impact application of discounts*
  - *Valuator should be cautious when interpreting the terms of the agreement*
  - *Application of discounts in a fair value context*

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### VALUATION ISSUES

- **Valuation adjustments**
  - *Depending on the jurisdiction the following has been observed in applying fair value*
    - Disallowing both discounts
    - Allowing both discounts
    - Allowing a discount for lack of control only
    - Allowing a discount for lack of marketability

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### FORENSIC ISSUES

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### FORENSIC ISSUES

- **Oppression**

- *Interpreted broadly among states*

- Most protect minorities and non-controlling equity ownership positions
    - Also possible to see actions brought in equal ownership arrangements

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### FORENSIC ISSUES

#### ▪ **Role of the Forensic Specialist**

– *Dependent on types of actions at issue in case*

- Procedures most often applied are ones dealing with fraud type and investigatory analysis
- Increasingly critical when offending party attempts to cover tracks

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### FORENSIC ISSUES

#### ▪ **Types of Malfeasance**

– *Financial Statement Improprieties*

- Deliberate misrepresentation of financial information via intentional misstatements or omissions
- Expense reports
- Improper accounting

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### FORENSIC ISSUES

- **Types of Malfeasance**
  - *Financial Statement Improprieties*
    - Improve/smooth financial results
      - Income, earnings per share or EBITDA
      - Misstate assets or liabilities



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### FORENSIC ISSUES

- **Types of Malfeasance**
  - *Asset Misappropriation*
    - Most common category of improprieties
    - Encompasses the misuse, theft and misdirection of an organization's assets



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### FORENSIC ISSUES

- **Types of Malfeasance**

- *Asset Misappropriation*

- Start with smaller amounts and build to larger
    - Most often turn to a diversion of funds



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### FORENSIC ISSUES

- **Types of Malfeasance**

- *Fraudulent Disbursements*

- Encompasses excessive reimbursements, payments by company for personal expenses and bonuses, commission payments made for “overstated” performance.



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### FORENSIC ISSUES

#### ▪ **Forensic Accounting and Fraud Engagements**

##### – *Approach of Forensic vs. Audit Engagement*

- Auditor's job is to express opinion on financial statements based on audit and overall financial statement presentation.
- Forensic Account's job is to be more specific/focused with a general goal of defending and/or refuting in an advocacy arena rather than form an opinion.

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### FORENSIC ISSUES

#### ▪ **Forensic Accounting and Fraud Engagements**

##### – *Selecting an Accountant for Forensic and/or Fraud Services*

- Specialized knowledge and prolific skill set
- Ability to make a complex subject understandable to the person trying the case
- Also can be used in a preventative role due to qualifications in assisting companies in being proactive by implementing measures to deter fraud from occurring

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### FORENSIC ISSUES

- **Concluding Thoughts**

- *Forensic analysis is a complex undertaking requiring an intense commitment of resources, both in terms of time and money.*



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### RECENT COURT CASES



## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Madugula v. Taub, 2012 WL 5290285***  
(Mich. Ct. App. October 25, 2012)
  - *Three shareholders entered into a stockholders’ agreement which included a supermajority provision for material changes in the nature of the business*
  - *Complaint asserted counts of shareholder oppression, breach of duty of good faith and common law fraud and misrepresentation*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Madugula v. Taub, 2012 WL 5290285***  
(Mich. Ct. App. October 25, 2012)
  - *Court entered judgment in Madugula’s favor awarding damages and required Taub to buy the stock*
  - *On appeal, the court affirmed decision concluding that Taub’s behavior was willfully unfair and oppressive*

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### RECENT COURT CASES

- ***Ballard v. Robertson, 733 S.E.2d 107 (S.C. 2012)***
  - *Four shareholders entered into a stock purchase agreement*
  - *Articles of incorporation authorized issuance of 100,000 shares*
  - *Ballard was removed as a director and asked to cease involvement with the company’s development project*
  - *Three shareholders approved issuance of an additional 900,000 shares thereby diluting the shares of Ballard*



## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Ballard v. Robertson, 733 S.E.2d 107 (S.C. 2012)***
  - *Court found sufficient evidence of oppression and ordered the three shareholders to purchase Ballard’s stock at fair market value*
  - *On appeal, the circuit court’s decision was affirmed*



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### RECENT COURT CASES

- ***Colgate et al v. The Disthene Group, Inc., 2013 WL 691105, 85 Va. Cir. 286***
  - *Minority shareholders alleged that the majority shareholders engaged in a pattern of oppressive and fraudulent conduct designed to disadvantage the minority shareholders and misapplied and wasted corporate assets*
  - *Majority shareholders relied on the business judgment rule*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Colgate et al v. The Disthene Group, Inc., 2013 WL 691105, 85 Va. Cir. 286***
  - *Judge found that the majority shareholders engaged in a long-standing practice of oppression and engaged in misrepresentations and half truths with respect to efforts of some minority shareholders to redeem their shares*
  - *Opinion was devoted to setting forth and analyzing common techniques of oppression*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Owen v. Cannon, C.A. No. 8860-CB (Del. Ch. June 17, 2015)***
  - *Cannon replaced Owen as president of the company in 2009 but continued making significant profit distributions to Owen after he no longer had a role in day-to-day operations*
  - *Cannon was interested in effecting the merger to stop the payment of the distributions*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Owen v. Cannon, C.A. No. 8860-CB (Del. Ch. June 17, 2015)***
  - *After the merger was completed Owen brought action seeking appraisal of his 35% ownership stake and asserted claims for breach of fiduciary duty against Cannon*
  - *Both sides agreed to apply a discounted cash flow model to determine fair value, however, they disagreed on the inputs*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Owen v. Cannon, C.A. No. 8860-CB (Del. Ch. June 17, 2015)***
  - *Court accepted projections used by Plaintiff as they had been developed prior to the litigation*
  - *Court decided the merger was not the result of fair dealing*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Adler v. Tauberg, 881 A.2d 1267 (Pa. Super. 2005)***
  - *Adler alleged illegal, oppressive and fraudulent conduct causing assets to be misapplied and wasted*
  - *Further alleged Defendants wrongly attempted to issue stock and change the rules of governance of the corporation to Adler's detriment*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Adler v. Tauberg, 881 A.2d 1267 (Pa. Super. 2005)***
  - *Trial court found that a 50% owner was an oppressed minority shareholder and was being controlled by the other two shareholders who collectively owned the remaining 50%*
  - *Court noted that oppressive conduct took the form of freezing out a minority shareholder*
  - *A custodial receiver, Adler, was appointed pursuant to PA law*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Adler v. Tauberg, 881 A.2d 1267 (Pa. Super. 2005)***
  - *PA Appellate Court upheld the order of the trial court appointing Adler as custodian to manage the business affairs of the corporation*
  - *The Superior Court used the “reasonable expectations of the shareholder” test when determining oppression*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Staiger v. Holohan, 100 A.3d 622 (Pa. Super. 2014)***
  - *Both parties to the litigation formed two PA LLCs*
  - *Operating agreements of the LLCs were identical noting decisions of a majority are controlling*
  - *Both agreed in 2006 to dissolve their partnership but they were unable to negotiate a buyout*

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## ***Corporate Divorce – Shareholder Disputes***

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### RECENT COURT CASES

- ***Staiger v. Holohan, 100 A.3d 622 (Pa. Super. 2014)***
  - *Defendant unilaterally operate both LLCs and did not provide Staiger with information regarding operations or any money from the business*
  - *Court ordered a dissolution pursuant to PA law as there was a “deadlock” amongst the members and neither member could unilaterally make management decisions without running afoul of the operating agreements requiring majority rule*

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## *Corporate Divorce – Shareholder Disputes*

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### RECENT COURT CASES

- *Staiger v. Holohan*, 100 A.3d 622 (Pa. Super. 2014)
  - Appellate court found that trial court could order the dissolution of a profitable PA LLC
  - Court did not permit the oppressor to use the fact that the LLCs were profitable to bar dissolution

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## *Corporate Divorce – Shareholder Disputes*

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### CONCLUSION AND PRACTICAL CONSIDERATIONS

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## ***Corporate Divorce – Shareholder Disputes***

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### CONCLUSION AND PRACTICAL CONSIDERATIONS

- **Remember that successful resolution of shareholder/equity owner disputes is as much about the journey as it is about the destination**



## ***Corporate Divorce – Shareholder Disputes***

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### CONCLUSION AND PRACTICAL CONSIDERATIONS

- **Successful resolution requires careful planning and research, strategy development and facilitation of that strategy**
  - *Financial experts can, and should, assist in strategy development*



## ***Corporate Divorce – Shareholder Disputes***

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### CONCLUSION AND PRACTICAL CONSIDERATIONS

- **Tactical options must be evaluated as part of the overall strategy development**
  - *See page 57 for partial listing of tactics*



## ***Corporate Divorce – Shareholder Disputes***

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### CONCLUSION AND PRACTICAL CONSIDERATIONS

- **As with all contentious issues –**
  - *Flexibility*
  - *Careful assessment of strengths, weaknesses, opportunities and threats of BOTH sides of issue*



## *Corporate Divorce – Shareholder Disputes*

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### CONCLUSION AND PRACTICAL CONSIDERATIONS

- **Corporate divorce and shareholder/equity owner disputes offer an opportunity to deal with a wide variety of business and personal issues.**
- **While the opportunity can prove rewarding, it also presents substantial challenges for practitioners.**



## *Corporate Divorce – Shareholder Disputes*

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### CONCLUSION AND PRACTICAL CONSIDERATIONS

- **Questions?**