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Economic and Legal Considerations in Shareholder/Equity Owner Oppression



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Economic and Legal Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Shareholder/Equity Owner Oppression***
 - Actions undertaken by majority owners that are found to defeat the “reasonable expectations” of the owners of the minority interests in making their decisions to invest in the enterprise



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Key Elements in Oppression Cases***
 - Control, legal or defacto
 - Actions of the majority ownership alleged to be contrary to giving minority ownership their rightful share of the corporate benefits



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Oppression Matters***
 - Arise most commonly in the context-of privately-held companies
 - Often family-owned businesses
 - Similar perceptions of management decisions defeating minority ownership's reasonable expectations can arise in publicly-held companies, but such instances are exceedingly rare
 - Due to regulatory oversight and ready market



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Risk-assessment for investors in privately-held businesses***
 - Decision to invest in a non-controlling, minority equity interest must include assessment of inherent risks:
 - Lack of regulatory oversight
 - Lack of a ready market
 - Lack of control



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Due diligence efforts protect against investment risk***
 - Any equity investment, minority or otherwise, requires sufficient due diligence to identify and quantify risk
 - In privately-held companies, these due diligence efforts are often thwarted by:
 - Availability of necessary information
 - Personal confidence and trust
 - Familial relationships



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Due diligence efforts protect against investment risk***
 - At the end of the day, even the most comprehensive due diligence procedures cannot predict certain investment risks, including majority owner actions undertaken to defeat the reasonable expectations of the minority owners



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Shareholder/equity owner oppression actions***
 - Various state and jurisdictional statutes, as well as developed case law, provide additional protections to minority equity owners, thus usurping majority owner rights to undertake such actions



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Common alleged actions of shareholder oppression***
 - A failure by the company to declare or pay dividends, make distributions or pay “agreed-upon” compensation or other monetary remuneration to minority equity owners;
 - Withholding of critical operating, financial or business information from minority equity owners;
 - Dismissal of minority equity owners as employees or members of the board of directors of the company;



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Common alleged actions of shareholder oppression***
 - A failure by the majority shareholders to notify the minority shareholders of meetings that they are entitled to attend;
 - Taking actions that allow for unjust enrichment of the majority owners; and
 - Attempts by the majority equity owners to push the minority equity owners out of the company.



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Role of GYF in oppressed shareholder actions***
 - Assist counsel in determining economic effects of oppression
 - Provide services for both plaintiffs and defendants
 - Valuations performed to assess economic impact of alleged action, generally using a “fair value” standard of value



Considerations in Shareholder/Equity Owner Oppression

INTRODUCTION

- ***Topics to be discussed***
 - Causes of Action
 - General Concepts & Role of Experts
 - Case Law Examples
 - Valuation in Oppression Actions
 - Conclusion & Practical Considerations



Economic and Legal Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Fiduciary responsibility of majority shareholders***
 - Owe a duty to minority shareholders to ensure the “reasonable expectations” of these investors are met
 - Protections available under the business judgment rule generally do not extend to decisions found to be adverse to meeting the reasonable expectations of minority equity owners



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Per Pennsylvania case law, oppressive actions by the majority shareholders are those actions, and conduct that***

“substantially defeats the reasonable expectations held by the minority shareholders in committing their capital to the particular enterprise.”

Bair v. Purcell (pg. 6)



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Per Pennsylvania case law,***

“the majority have a duty not to use their power in a way [so as] to exclude minority shareholders from their proper share of benefits accruing from the enterprise.”

Ford v. Ford (pg. 6)



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Failure to pay dividends or make distributions***
 - Minority equity owners expect a return on their investments to compensate for the attendant risk
 - Failure must be evaluated based on “dividend-paying capacity” of the company
 - Must always be assessed in conjunction with the company’s need to retain earnings for other purposes and in light of other payments and perquisites directed by majority equity owners



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Failure to pay “agreed-upon” compensation or other monetary remuneration***
 - Lack of payment for services can represent breach of duty
 - Often easy to determine based on details set forth in contracts or other agreements
 - Lacking sufficient detail, determination of unpaid amounts is based on facts and circumstances, which vary widely



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Withholding critical operating, financial or business information***
 - Shareholders have statutory rights to request to examine corporate records and accounting information
 - Demands to review information do not need to be related to allegation of fraud, mismanagement or oppression
 - Lack of access to information prevents minority shareholders from properly evaluating return on investment



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Dismissal as employee***
 - Often used as a means for the majority shareholder to remove the minority shareholder from day-to-day operations
 - If found to be unjustified, can lead to claims for lost income and financial benefit associated with the position



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Dismissal as member of board of directors***
 - Used to deny minority equity owners access to board decisions, as well as the financial/operational reasons for the decisions
 - Removes minority equity owners from oversight of corporate officers, their responsibilities and compensation
 - This lack of knowledge prevents minority equity owners from being able to evaluate the propriety of management decisions, and can also result in loss of compensation or other benefits



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Failure to notify minority shareholders of meetings that they are entitled to attend***
 - PA Consolidated Statutes set requirements for timing, actions taken and rules for notifying shareholders of the meetings
 - Also provide that a sufficient number of shareholders must attend, and a majority vote is required to constitute a quorum



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Failure to notify minority shareholders of meetings that they are entitled to attend***
 - If minority equity owners are not aware of meetings, they cannot participate in corporate governance
 - Adds investment risk by limiting external oversight of majority owner actions and operating decisions



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Taking actions that allow for unjust enrichment of the majority owners***
 - Excess compensation paid to majority shareholders
 - Employment and disproportionate pay for family members
 - Payment of excess personal expenses of majority equity owners
 - Overcharging company for services from a related entity
 - Misappropriation of corporate funds to purchase assets that benefit majority shareholder more than business entity



Considerations in Shareholder/Equity Owner Oppression

CAUSES OF ACTION

- ***Attempting to push minority shareholder out of the company***
 - Referred to as “freeze out” or “squeeze out” transactions
 - Allow majority owners to obtain remaining equity ownership from the minority owners, often at a cost less than fair value
 - Valuation must be performed to determine economic effects
 - Courts make determinations based on “overall fairness” of such transactions, which often requires expert testimony



Economic and Legal Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS





Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ ***Capital structure determines viability of oppression action***

- Various levels of ownership interests and attributes of control can impact shareholder's ability to impact corporate decision-making

100% ownership
Less than 100%, more than that required for majority
Less than supermajority control, more than 50%
50% ownership
Less than 50%, largest ownership block of stock
Less than 50%, in a swing vote position
Less than 50%, not a swing vote position



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ ***Capital structure determines viability of oppression action***

- Concept of "minority" can be interpreted broadly by the Courts
 - In Baron v. Pritzler, a 50% shareholder was found to have been oppressed by another 50% shareholder
 - Other similar cases to be discussed in next section



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ *Determination of Ownership*

- Minority equity owner must be able to prove ownership
- Problems often stem from equity programs associated with employee relationships with alleged oppressing shareholders
- In Willis v. Donnelly, State Supreme Court reversed ruling in favor of oppressed minority shareholder because he had never been issued shares when action occurred, thus, he was not a shareholder and was owed no fiduciary duty by majority



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ *Business Judgment Rule*

- Protects certain actions made by directors, if they are undertaken in good faith and on an informed basis
- Pennsylvania Business Corporation Law focuses on two foundational responsibilities owed to shareholders
 - Duty of Care: act in good faith and with the degree of care that an ordinarily prudent person would use under similar circumstances
 - Duty of Loyalty: act in good faith and for the benefit of the corporation and its shareholders



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ *Duty of Care*

- Most often requires that actions undertaken by defendants under a prudent or reasonable person standard
 - Assumes a normal, average level of care, skill and judgment



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ *Duty of Loyalty*

- Majority owners must act in good faith, without self-interest, for the overall benefit of the corporation and all equity owners
- The Pennsylvania Supreme Court further explained the application of this standard in *Cuker v. Mikalauskas* (pg. 15)



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ *Cuker v. Mikalauskas*

- A corporate officer is not liable for the consequences of his/her decision if all of the following criteria apply:
 - Corporate officer had no personal interest
 - He/she is reasonably informed
 - He/she rationally believed the decision was in the best interest of the corporation
 - It was a business decision
 - The decision was made in good faith



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ *Financial Expert Involvement*

- Economic and financial experts can help attorneys to defend claims against majority shareholders accused of oppression or to support minority plaintiff claims



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ *Financial Expert Involvement*

- Forensic procedures used to evaluate and quantify the overall detrimental economic effect (if any) of the alleged oppressive action
- Extensive analysis and research may be required to support either plaintiffs or defendants



Considerations in Shareholder/Equity Owner Oppression

GENERAL CONCEPTS & ROLE OF EXPERTS

▪ *Difficulties experienced by financial experts*

- Availability/accessibility of adequate historical information
- “Start and stop” nature of overall legal process requires additional time for expert to re-familiarize with facts of case
- Lack of time to properly perform the services/procedures



Economic and Legal Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

- ***Sampling of minority oppression cases decided primarily in the Commonwealth of Pennsylvania***
 - Pennsylvania has adopted the “reasonable expectations” test to define oppression
 - Remedies can include: judicial dissolution, appointment of a custodian, appointment of a receiver and ordered buy-out of minority shareholders at “fair value”
 - Trends in these matters exist regardless of where the issue is litigated



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Adler v. Tauberg***

- Case came before the Superior Court of Pennsylvania Appellate Court, wherein 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 the detriment of both Adler and the corporation



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Adler v. Tauberg***

- Defendants requested Adler to retire from the practice and resign his position as president
- Modified Adler's compensation and diverted patients from him
- Defendants fired corporation's legal counsel and replaced him with their attorney; personal legal fees paid by corporate funds
- Removed Adler's power to write checks



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

- ***Adler v. Tauberg***

- 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



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

- ***Adler v. Tauberg***

- 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



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Viener v. Jacobs***

- Case came before the Superior Court of Pennsylvania Appellate Court wherein the trial court determined Defendant's conduct in freezing out Viener was outrageous and oppressive
- Viener formed an S corp. with Defendant and another shareholder; Viener served as president/secretary/treasurer
- All three shareholders were party to a shareholder agreement



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Viener v. Jacobs***

- Defendant authorized questionable cash payments to a subcontractor
- Viener was demoted to vice president against his wishes and later voted out of his position as vice president
- Viener's participation on the board was severely limited including exclusion from voting on issues of employee compensation



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

- ***Viener v. Jacobs***

- Following Viener's termination, sales declined and the company incurred losses; after quality control concerns, the viability of the company was in question
- The company eventually ceased operations
- The trial court refused to apply the business judgement rule to Defendant's conduct



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

- ***Viener v. Jacobs***

- Appellate court affirmed the trial court's finding that, under the direction of Defendant, the company's assets and opportunities were squandered through mismanagement and conduct designed to benefit Defendant
- Court found that the expert relied upon by the trial court in determining damages did not have sufficient factors on which to base his opinion of value and remanded for a proper assessment



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Ford v. Ford***

- Case came before the Superior Court of Pennsylvania Appellate Court wherein the trial court determined Defendant acted oppressively toward minority shareholders by engaging in self dealing and excluding the minority from any benefits of the company
- The minority shareholders filed multiple complaints against Defendant



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Ford v. Ford***

- The subject company operated a golf course, and Defendant began operating a golf cart business and pro shop as sole proprietorships
- The sole proprietorships were staffed with employees of the company without reimbursement
- Grounds around Defendant's home were maintained by the company's employees



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Ford v. Ford***

- After becoming president of the company, Defendant fired his sister, a minority shareholder, and hired his wife and son
- The trial court found, and the decision was affirmed on appeal, that Defendant financially benefited to the detriment of the minority shareholders by effectively siphoning off income that should have inured to the company as a whole



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Leech v. Leech***

- Plaintiff initiated the action for the appointment of a custodian, which was appointed by the trial court
- Two brothers owned 50% of the stock of the subject company and were the only directors and officers
- Upon a disagreement among the children of both parties, Plaintiff opted to leave the company without discussion as to what his departure meant



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Leech v. Leech***

- Plaintiff claimed he was quitting his employment and not resigning from his position as officer (secretary/treasurer); he returned one year later
- During his separation from the company, Plaintiff was unable to perform his duties as treasurer due to actions taken by Defendant
- Plaintiff did not receive any distributions upon resignation



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Leech v. Leech***

- Defendant argued that Plaintiff could not be oppressed because they were equals, and there was no need to appoint a custodian as Defendant had no opportunity to overreach his powers
- The trial court found they were no longer equal in their share of control over the company, and Defendant's actions during the time Plaintiff left his position were an unjust exercise of authority



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

- ***Leech v. Leech***
 - Appellate court concluded that Defendant's actions did constitute oppression, and the trial court did not abuse its discretion in appointing a custodian



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

- ***Staiger v. Holohan***
 - 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



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Staiger v. Holohan***

- Defendant unilaterally operated 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



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ ***Staiger v. Holohan***

- 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



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ *Colgate et al v. The Disthene Group*

- 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
- Minority shareholders sought the extraordinary remedy of corporate dissolution
- Majority shareholders relied on the business judgment rule



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ *Colgate et al v. The Disthene Group*

- The Supreme Court of Virginia has held that in this context, “oppressive” means “a visible departure from the standard of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely”
- The Disthene Group was a successful and diversified Virginia-based holding company with an estimated value of approximately \$200 million



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ *Colgate et al v. The Disthene Group*

- The court found that the controlling shareholders engaged, for decades, in the following breach of fiduciary duties:
 - Provided misrepresentations and half-truths with respect to the value of the stock
 - Favored the interests of their own family members at the expense of the nonvoting shareholders



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

▪ *Colgate et al v. The Disthene Group*

- The court found that the controlling shareholders engaged, for decades in the following breach of fiduciary duties:
 - Materially increased compensation for certain controlling owners
 - Reduced dividends paid to minority shareholders in retaliation against filing an earlier lawsuit
 - Misused or wasted corporate assets by using them for personal purposes



Considerations in Shareholder/Equity Owner Oppression

CASE LAW EXAMPLES

- ***Colgate et al v. The Disthene Group***
 - The court agreed to provide the remedy mandated by Virginia law by ordering a judicial dissolution
 - The controlling shareholders appealed, but the case settled before the Virginia Supreme Court could review the matter
 - The settlement resulted in a buyout of the minority shareholders for approximately \$77 million



Economic and Legal Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS





Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS

- *Valuation poses one of the most critical issues*
- *Aspects of valuation that 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*



Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS

- *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



Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS

▪ *Standard of Value*

- Fair market value
- Investment/strategic value
- Fair value
 - For financial reporting
 - Under state statutes
- Intrinsic/fundamental value



Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS

▪ *Fair Value*

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



Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS

▪ *Differences between fair market value and fair value*

Fair Market Value	Fair Value
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



Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS

▪ *Differences between fair market value and fair value*

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



Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS

- ***Differences between fair market value and fair value***
 - Fair market value is objective standard, while fair value is an equitable standard
 - Using fair value rather than fair market value standard will result in a higher value to the minority shareholder, but it will still be less than using strategic or synergistic value
 - Selecting the correct standard and applying it properly is critical to yield the appropriate opinion of value



Considerations in Shareholder/Equity Owner Oppression

VALUATION IN OPPRESSION ACTIONS

- ***Date of Valuation***
 - Any conclusion of value is effective on a single date
 - Influences the information available
 - Guidance from: governing documents, state statutes, the court
 - Issues arise when parties do not agree on the date



Considerations in Shareholder/Equity Owner Oppression

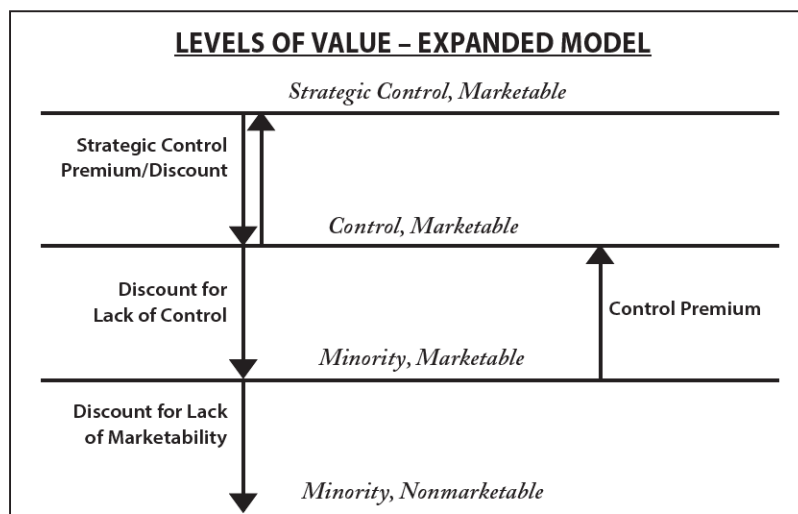
VALUATION ISSUES

▪ *Premise of Value*

- Assumption of the most-likely set of transactional circumstances that may apply to the subject valuation
 - Going concern – existing management will remain into the future and will maintain character and integrity of company
 - Liquidation (orderly or forced) – business will be dissolved and assets sold piecemeal
- The going concern premise of value is generally utilized



LEVELS OF VALUE – EXPANDED MODEL





Considerations in Shareholder/Equity Owner Oppression

VALUATION ISSUES

- ***Valuation Adjustments (normalization adjustments)***
 - Valuator must carefully scrutinize the specific investment characteristics and calculate the value using the appropriate mechanics and methodologies
 - Modifications can be made to value when investment characteristics resulting from the method applied do not match the specific investment
 - Normalization adjustments will determine the resultant level of value



Considerations in Shareholder/Equity Owner Oppression

VALUATION ISSUES

- ***Common Control Adjustments***
 - Adding back excess compensation paid to controlling shareholder
 - Adding back compensation paid to a related party who is not active in the operation of the business
 - Adding back fringe benefits outside normal compensation plan
 - Adding back rent paid to related party that is above market value



Considerations in Shareholder/Equity Owner Oppression

VALUATION ISSUES

- ***Valuation Adjustments (discounts/premiums)***
 - The standard and level of value will impact the applicability of discounts/premiums
 - Valuator must consider specific ownership attributes to determine whether to apply discounts or premiums under each of the valuation approaches
 - Most commonly addressed attributes are lack of liquidity or marketability for the minority interest



Considerations in Shareholder/Equity Owner Oppression

VALUATION ISSUES

- ***Valuation Adjustments (discounts/premiums)***
 - If governing documents specify a fair market value standard of value to be used, discounts for lack of control and lack of marketability may be applied to minority equity interest
 - If no standard is specified in documents, state statutes determine the standard of value to be used, and application of discounts can vary from state to state
 - In most fair value cases, discounts are not applied



Considerations in Shareholder/Equity Owner Oppression

VALUATION ISSUES

- ***Valuation Adjustments (discounts/premiums)***
 - 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
 - In Pennsylvania, neither discount is generally employed



Economic and Legal Considerations in Shareholder/Equity Owner Oppression

CONCLUSION & PRACTICAL CONSIDERATIONS





Considerations in Shareholder/Equity Owner Oppression

CONCLUSION & PRACTICAL CONSIDERATIONS

- *Disputes involving acts of oppression can result in expensive and time-consuming litigation or dispute resolution processes*
- *Additional toll on human capital, customer relations, employees, operations and reputations of a business*
- *Potential negative impact on long-term relationships*



Considerations in Shareholder/Equity Owner Oppression

CONCLUSION & PRACTICAL CONSIDERATIONS

- ***Ritchie v. Rupe (Texas)***
 - Expanded view of investors' "reasonable expectations"
 - Two types of shareholder oppression:
 1. "specific expectations" that require facts to give rise to expectations in a particular case
 2. "general expectations" that arise from the status of being a shareholder and belong to every shareholder



Considerations in Shareholder/Equity Owner Oppression

CONCLUSION & PRACTICAL CONSIDERATIONS

- ***Rights of majority equity owners***
 - Allow them to operate the business as they deem appropriate without interference from non-controlling equity owners
 - Fundamental rights of majority owners are not superseded by those same rights of minority owners
 - Actions by majority owners that are reasonable, prudent and well-informed business undertakings are permissible, even if minority owners don't agree with those decisions



Considerations in Shareholder/Equity Owner Oppression

CONCLUSION & PRACTICAL CONSIDERATIONS

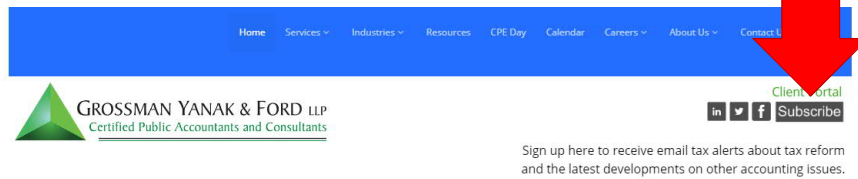
- ***Services GYF provides in shareholder oppression matters***
 - Forensic procedures to identify and quantify theft, misuse, fraud and malfeasance
 - Valuations of equity and business interests, analysis of economic impact of governing documents, quantification of discounts, analysis of employment/non-compete agreements
 - Expert witness services and testimony



Considerations in Shareholder/Equity Owner Oppression

CONCLUSION

- ***Please go to our website to subscribe to receive timely updates about accounting topics, tax reform legislation and other issues***



Considerations in Shareholder/Equity Owner Oppression

FINAL QUESTIONS?

THANK YOU!