

Don't Focus On Who the Majority Shareholders Hire to Defend Your Business Divorce Litigation

Article By:

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Clients in business divorce litigation often place tremendous emphasis on things that may not matter much in the long run – like who the majority shareholders use as their attorney.

Majority Shareholders' Attorney

Quite often, when I file a shareholder oppression action against the majority shareholders and the company, the attorney who has represented the company for years will wind up representing the defendants, and my minority shareholder clients often object. If that attorney has previously represented them or been given personal information that can now be used against them, the objection may make sense. But when the other side uses the company counsel, it can often be a good thing.

The identity of the attorney on the other side can be important, but often not for the reasons clients initially believe. The truth is, there is no greater ally in litigation than an adversary who understands the case, understands their own client's weaknesses, and – most importantly – has their client's trust.

Potential Outcomes

The worst kind of adversary is one who does not even realize the trouble their client faces. After all, if they can't recognize it, how can they convey it to the client? But when an attorney is fair and reasonable (yes, they do exist), and realizes what their client has done, that attorney can become your most important ally when it comes to settling the case.

No attorney is going to admit that “you got us.” But when an attorney realizes there was no justification for the compensation paid to the majority; or that perhaps the 51% owner should not have used company monies to build a house in St. Croix (actually happened!); or that there really was no justification to have the company pay for treatments at an “anti-aging center” (again, actually happened!); and they have the ear of their own client, you stand to save substantial legal fees because the enhanced possibility of an early, successful (to you) settlement increases.

And no attorney has a better chance of having their adversary's ear in a business divorce litigation

than the long-standing, trusted advisor who has been representing the company, and working closely with the majority shareholder, for years.

Clients in these cases should attempt to see actions by “the enemy” through the prism of “how does this affect me?” If it could help you, who cares that they are using someone they are comfortable with? Let them – and then, hopefully, reap the benefit.

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National Law Review, Volume XI, Number 334

Source URL: <https://natlawreview.com/article/don-t-focus-who-majority-shareholders-hire-to-defend-your-business-divorce-0>