

Avoid Minority Shareholder Suppression Claims with a “Business Divorce Audit”

Article By:

David C. Roberts

The only thing better than winning business divorce litigation is avoiding it altogether; and making sure that you, as the majority shareholder, treat the minority shareholders fairly is the best way to do that.

Business owners, seeking to watch the “bottom line,” tend to avoid legal fees like the plague. Often that makes sense. But having a seasoned business divorce lawyer “stress test” your company for potential minority shareholder oppression claims could be a wise investment, spending fees now to save them later.

For instance, when you take a significant corporate action, could a minority shareholder successfully challenge it? Have you sufficiently documented your valid business reasons for engaging in the transaction? Are you paying yourself too much – in either salary or bonus? Are you vulnerable to attack because you have not issued shareholder distributions or dividends in years? Have you properly documented the reasons for not making distributions to the extent the company theoretically could have done so financially? Are you providing enough financial information to the minority shareholders, or otherwise keeping them informed about the company? How much information is enough, and how much is simply not necessary? How are your communications with minority shareholders? Do they seem happy or hostile? Do you even know?

Or there could be a situation where a minority shareholder is acting in such a way as to harm the company, which could give rise to the company itself having rights to stop the offending action. If the harm is bad enough, the minority shareholder, in some limited cases, might be forced by a court to sell his shares.

A “business divorce audit” – for lack of a better term – could pinpoint an issue before it becomes acute and sets your company on an inevitable path towards litigation. In the past, they have prevented litigation because we were able to uncover issues and suggest reasonable improvements in minority shareholder interactions that cost little upfront but eliminated constant litigation threats. As a side bonus, if business divorce litigation becomes a reality and you are sued, the fact that you consulted a lawyer to ensure you are treating minority shareholders fairly may be a very powerful defense argument. Of course, if you actually take such a prophylactic measure, you’ll need to pay attention to your lawyer’s suggestions. If your lawyer says you are likely paying yourself too much

and might get sued for it, that advice probably would not be discoverable, as it would be protected by the attorney-client privilege. But unless you take corrective action, it just might be an omen of what is to come.

©2025 Norris McLaughlin P.A., All Rights Reserved

National Law Review, Volume XII, Number 151

Source URL: <https://natlawreview.com/article/avoid-minority-shareholder-suppression-claims-business-divorce-audit>