



The Minority Oppression Statute

In 1972, the New Jersey Legislature amended N.J.S.A. 14A:12-7 (also known as the “Minority Oppression Statute”) which enables minority shareholders to protect themselves from oppressive majorities in closely held corporations. A minority shareholder petitioning a Court to employ one or more of the remedies available under N.J.S.A. 14A:12-7(1)(c) must demonstrate a “triggering” event. To “trigger” the remedies afforded under the Minority Oppression Statute, a minority shareholder must show by a preponderance of the evidence that the majority has acted illegally, oppressively, unfairly or has interfered with the “reasonable expectations of the shareholder.”

Examples of minority oppression include:

- terminating the minority’s employment
- reducing the minority’s compensation
- terminating the minority’s children’s employment
- refusing to allow the minority to review the company’s books and records
- forming new companies with company resources and not giving the minority ownership in the newly created companies
- Not including the minority in the decision making processes of the company.

Minority oppression cases are extremely fact-sensitive, and there are no hard and fast rules as to what constitutes minority oppression.

On the one hand, majority shareholders in closely held companies owe fiduciary duties to the minority shareholders. However, on the other hand, majority shareholders sometimes may effectively evoke the protections afforded by the “business judgment rule.” The business judgment rule provides that, once the shareholders approve or ratify a proposed corporate action, a Court’s scope of review of the transaction is limited. Under the business judgment rule, there is a rebuttable presumption that good-faith to seizures of a Corporate Board of Directors are valid and not subject to attack by shareholders, absent fraud, self-dealing or unconscionable conduct.

“Traditionally, American courts have been reluctant to interfere in the internal affairs of corporations when dissension develops between shareholders or even when minority shareholders claim they have suffered injustices.” O’Neal & Thompson’s *Oppression of Minority Shareholders and LLC Members*, Vol 2, §10:4 (2011). The business

judgment rule is based on the Court’s concern that the directors’ decisions are based on complex and in depth considerations. Additionally, the Courts do recognize that they are often unqualified to make those complex considerations, and moreover, Courts also realize that they may not have enough information to second guess those generally charged with making those decisions.

The business judgment rule is often times based on a Court’s desire to avoid “strike suits,” or frivolous litigation. In these cases, Courts recognize that minority shareholders sometimes file litigation seeking to restrain the majority from engaging in the lawful operation of the business. The business judgment rule protects the majority and the corporation from having to litigate decisions which were made in good faith without the intention to oppress the minority.

The Legislature, in enacting the Minority Oppression Statute, recognized that the business judgment rule should not be an absolute bar to the minority’s assertion that the majority has acted unfairly, oppressively, illegally or interfered with the minority’s reasonable expectations as a shareholder. But rather, the Minority Oppression Statute offers oppressed minority shareholders an opportunity to assert that the opportunistic or oppressive conduct is a misuse of the majority’s centralized powers.

In minority oppression litigation, Courts need to consider the witness testimony in order to determine whether or not the minority’s complaints are oppressive or the reasonable good faith operation of the closely held business which is the subject of the litigation. For example, in a case where the minority shareholder asserts that the majorities have awarded themselves excessive compensation, the majority probably will assert the opposite—that the salary is not excessive. The majority would assert that the compensation is subject to the “business judgment rule.” Again, that is because if the Defendant can evoke the “business judgment rule,” they will enjoy the presumption that their compensation is fair and reasonable.

At trial, the disputing parties will seek to prove or disprove that the compensation is excessive. Because of the large number of objective factors involved in setting an employee’s compensation package, Courts have not set forth an exact formula or set rules used in determining what is and what is not excessive. In general, Courts have considered some of the following factors when arriving at the conclusion of what is reasonable compensation:

- the employee's qualifications and abilities
- the qualities and quantity of services rendered for the benefit of the corporation
- the amount of time the employee devotes to the corporation
- the difficulties involved and responsibilities assumed
- the successes achieved by the individual
- the profits resulting to the corporation from the employee's direct and indirect contributions
- the size and complexity of the business
- the number of people the employee is charged with training, mentoring and/or supervising
- the corporation's financial conditions
- the prevailing economic conditions
- the compensation over the past few years (also considering factors which could have effected previous year's compensation)
- a comparison of the compensation of the company's other employees
- a comparison of the compensation of others who work in similar companies

Minority oppression litigation will often times come down to the majority's contention that it is governing or making decisions in the best interest of the corporation versus the minority's assertions that those decisions were made in order to oppress the minority. So as to avoid minority oppression litigation, or to place the majority in the best possible light should litigation be commenced, majority shareholders should consider and document the business reasons behind their decisions. They should also be cognizant that the business judgment rule is not an absolute bar to the majority's decisions. Decision makers should consider the duties they owe to the corporation and the minority shareholders when they make decisions which could affect either, or both. ■

Scott I. Unger is a Shareholder and member of Stark & Stark's Litigation Group. He may be reached at sunger@stark-stark.com, or by calling 609.219.7417.

PRIOR ♦ NAMI

BUSINESS SYSTEMS

"Dependable Service Since 1910"

609-584-5252 | www.priornami.com

**Mercer County's
authorized Canon dealer**



Canon

**The area's leading full service
office equipment provider.**

Digital copiers
Facsimile
Printers
Paper Shredders
Computers
Laptops
Networks
Postage Machines



Mark Nami
General Manager

 KONICA MINOLTA    At your side 

YOUR ONE-SOURCE SOLUTION TO MANAGING YOUR FINANCIAL MILESTONES.

As your trusted financial advisers, we work with you to navigate lifetime planning. At Mercadien, we understand the importance of living for today and planning for tomorrow.

Individual Services Include:

- Milestone Planning
- Tax Compliance & Planning
- Fiduciary Services
- Estate Planning
- Wealth Management

 **MERCADIEN**
Leading by example.

MERCADIEN.COM • 609-689-9700



Call Marguerite Mount
at 609-689-2303 or email
mmount@mercadien.com

**CERTIFIED PUBLIC ACCOUNTANTS • CONSULTANTS
TECHNOLOGY • WEALTH MANAGEMENT**