# INVOLUNTARY DISSOLUTION OF CLOSE CORPORATIONS FOR MISTREATMENT OF MINORITY SHAREHOLDERS

Protection of minority shareholders[1] in close corporations[2] is a vital concern. Although owners of a minority interest in any business enterprise stand in an inferior position to the majority, the minority share-

1. Professors Hetherington and Dooley explain the distinction between minority and majority shareholders as follows:

> [T]he terms "majority" and "minority" are used to distinguish those shareholders who possess the actual power to control the operations of the firm from those who do not. Although control is most often determined by the size of shareholdings, it does not depend upon 51% ownership. For example, control might be exercised by a non-majority shareholder who has special skills upon which the business depends.

Hetherington & Dooley, *Illiquidity and Exploitation: A Proposed Statutory Solution to the Remaining Close Corporation Problem,* 63 VA. L. REV. 1, 5 n.7 (1977).

2. A close corporation is a "corporation whose shares are not generally traded in the securities markets." 1 F. O'NEAL, CLOSE CORPORATIONS § 1.02, at 3-4 (2d ed. 1970). Professor O'Neal states that the following are typical characteristics of a close corporation:

> (1) the shareholders are few in number, often only two or three; (2) they usually live in the same geographic area, know each other, and are well acquainted with each other's business skills; (3) all or most of the shareholders are active in the business, usually serving as directors or officers or as keymen in some managerial capacity; and (4) there is no established market for the corporate stock, the shares not being listed on a stock exchange or actively dealt in by brokers; little or no trading takes place in the shares.

*Id.* § 1.07, at 21 (footnotes omitted). *See also* Alaska Plastics, Inc. v. Coppock, 621 P.2d 270, 273, 276 (Alaska 1980); Donahue v. Rodd Electrotype Co., 367 Mass. 578, 585-86, 328 N.E.2d 505, 511 (1975); 61 MASS. L.Q. 219, 219 (1977); Comment, *Oppression of Minority Shareholders: A Proposed Model and Suggested Remedies,* 47 MISS. L.J. 476, 489 n.55 (1976).

Traditionally, the same laws have governed both close and publicly held corporations. Recently, however, courts and commentators have noted that the close corporation requires special attention. *See* Galler v. Galler, 32 Ill. 2d 16, 29-31, 203 N.E.2d 577, 585 (1965); Skierka v. Skierka Bros., __ Mont. __, __, 629 P.2d 214, 221 (1981); McCallum v. Gray, 273 Or. 617, 627, 542 P.2d 1025, 1030 (1975) (Tongue, J., concurring specially); O'Neal, *Close Corporations: Existing Legislation and Recommended Reform,* 33 BUS. LAW 873, 873 (1978); Note, *Mandatory Arbitration as a Remedy for Intra-Close Corporate Disputes,* 56 VA. L. REV. 271, 272-73 (1970); Comment, *Relief to Oppressed Minorities in Close Corporation: Partnership Precepts and Related Considerations,* 1974 ARIZ. ST. L.J. 409, 413-14. *See generally* 1 F. O'NEAL, *supra* note 2, at §§ 1.01-1.16.

Sixteen states have even adopted special legislation for close corporations. *See* ARIZ. REV. STAT. ANN. §§ 10.201-218 (1977); CAL. CORP. CODE § 158 (Deering Supp. 1980); DEL. CODE ANN. tit. 8 §§ 341-356 (1974); FLA. STAT. ANN. § 607.107(2) (West 1977); ILL. ANN. STAT. ch. 32, §§ 1201-1216 (Smith-Hurd Supp. 1979); KAN. STAT. ANN. §§ 17-7201 to -7210, 17-7212 to -7216 (1974 & Supp. 1979); ME. REV. STAT. ANN. tit. 13-A, § 102(5) (West 1974); MD. CORP. & ASS'NS CODE ANN. §§ 4-101 to -303, 4-401 to -504, 4-601 to -603 (1975 & Supp. 1979); MICH. COMP. LAWS ANN. § 450.1463 (1973 & Supp. 1980); N.J. STAT. ANN. § 14A: 5-21 (West Supp. 1979-80); N.Y. BUS. CORP. LAW § 620(b) (McKinney Supp. 1980); N.C. GEN. STAT. § 55-73(b) (1975); PA. STAT. ANN. tit. 15, §§ 1371-1386 (Purdon Supp. 1980); R.I. GEN. LAWS § 7-1.1-51 (1969); S.C. CODE § 33-11-220 (1976); TEX. BUS. CORP. ACT ANN. arts. 2.30-1 to .30-5 (Vernon 1980). For a

holder in a close corporation is left with few options when he is dissatisfied with corporate management[3] or is the subject of exploitation[4] or oppression[5] by the controlling faction.

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critical analysis of close corporation legislation, see Karjala, *A Second Look at Special Close Corporation Legislation,* 58 TEX. L. REV. 1207 (1981).

Most recently, the American Bar Association Committee on Corporate Laws approved a supplement to the MBCA for close corporations. ABA Comm. on Corporate Laws, *Proposed Statutory Close Corporation Supplement to the Model Business Corporation Act,* 37 BUS. LAW. 269 (1981). Section 16 of the proposal deals with judicial power to dissolve corporations for minority mistreatment, which is the subject matter of this Note. *Id.* at 300.

3. For examples of cases in which the minority shareholder was dissatisfied with the management of the corporation, see Rowland v. Rowland, 102 Idaho 534, 633 P.2d 599 (1981) (plaintiff claimed that defendant followed illegal corporate procedures at meetings, entered transactions without corporate purpose, and operated corporation unprofitably); Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 184 N.E.2d 792 (1962) (defendant allegedly spent $60,000 on rehabilitation of corporation's major asset when good possibility that mortgage on property would be foreclosed); *In re* Villa Maria, Inc. v. Mondati, 312 N.W.2d 921 (Minn. 1981) (plaintiff complained that defendant controlled corporation without regarding plaintiff's interest, held no annual meetings, and caused the corporation to buy defendant's own land); Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976) (defendants allegedly voted themselves 20 year employment contracts and wage increases and sold corporate assets); White and P & W Oil Co. v. Perkins, 213 Va. 129, 189 S.E.2d 315 (1972) (plaintiff complained when defendant ordered expensive equipment for corporation when corporation financially unstable).

4. For a discussion of exploitation by majority shareholders, see Hetherington & Dooley, supra note 1, at 5.

5. For examples of cases in which the minority shareholder claimed that he was subjected to the oppressive acts of controlling shareholders, see Gidwitz v. Lanzit Corrugated Box Co., 20 Ill. 2d 208, 170 N.E.2d 131 (1960) (plaintiff claimed that defendant, without board approval, organized another corporation with the defendant-corporation's funds, made deductions from the plaintiff's salary, borrowed large amounts of money for the corporation, and failed to consult with other directors and officers on corporate policy for ten years); Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 405 N.E.2d 839 (1980) (defendants allegedly conspired against plaintiff, wrongfully accused him of theft, and barred him from the corporate business); Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 285 N.E.2d 574 (1972) (defendant allegedly failed to call board of director meetings or consult with minority shareholders regarding management decisions and responded to minority requests with arrogance and indifference); Ross v. 311 North Central Ave. Bldg. Corp., 130 Ill. App. 2d 336, 264 N.E.2d 406 (1970) (plaintiff claimed that defendant borrowed corporate funds for his own corporation without plaintiff's assent or knowledge, telling plaintiff the money was for a second mortgage that the defendant never produced); Skierka v. Skierka Bros., ___ Mont. ___, 629 P.2d 214 (1981) (plaintiff-widow complained that defendant evaluated plaintiff's deceased husband's shares at less than defendant's shares, giving defendant corporate control which he exercised to the exclusion of plaintiff); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 400 A.2d 554 (Law. Div. 1979) (plaintiff brought action when defendant discharged plaintiff as corporate employee), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 433 N.Y.S.2d 359 (Sup. Ct., Special Term 1980) (plaintiff claimed that defendant acted oppressively by discharging plaintiff as corporate employee, terminating his salary, removing him as officer and cosignatory at bank, and by changing locks on corporate offices to deny plaintiff access); Baylor v. Beverly Book Co., 216 Va. 22, 216 S.E.2d 18 (1975) (plaintiff alleged that defendant failed to hold shareholder and director meetings,

A disgruntled shareholder in a publicly held corporation can easily withdraw his investment by selling his stock.[6] This remedy is rarely available to the close corporation minority shareholder, however, because investors are seldom willing to purchase less than a controlling interest in a close corporation.[7] In addition, because majority shareholders already maintain control of the corporation, they have little to gain from buying out the minority shareholder. As a result, controlling shareholders typically make a "take it or leave it" offer to the minority that is substantially lower than the market value of the minority interest.

Unlike a partner in a partnership,[8] a minority shareholder has no

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refused to follow accepted corporate procedure, and made interest-free loans to self while corporation borrowed with interest); White and P & W Oil Co. v. Perkins, 213 Va. 129, 189 S.E.2d 315 (1972) (plaintiff complained when defendant refused to pay defendant dividends, causing plaintiff to pay taxes under subchapter S for money he was not receiving, and when defendant removed plaintiff as officer but increased number of board members to include defendant's wife, son, and attorney). *See generally* Hetherington & Dooley, *supra* note 1; Pachman, *Divorce Corporate Style: Dissension, Oppression and Commercial Morality,* 10 SETON HALL L. REV. 315 (1979); Comment, *Relief to Oppressed Minorities in Close Corporations: Partnership Precepts and Related Considerations, supra* note 2; Comment, *Oppression as a Statutory Ground for Corporate Dissolution,* 1965 DUKE L.J. 128; Comment, *Oppression of Minority Shareholders: A Proposed Model and Suggested Remedies, supra* note 2.

6. Donahue v. Rodd Electrotype Co., 367 Mass, 578, 591, 328 N.E.2d 505, 514 (1975); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 152, 400 A.2d 554, 560 (Law Div. 1979), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); Hetherington & Dooley, *supra* note 1, at 7; Comment, *Relief to Oppressed Minorities in Close Corporations: Partnership Precepts and Related Considerations, supra* note 2, at 418; Comment, *Oppression of Minority Shareholders: A Proposed Model and Suggested Remedies,* supra note 2, at 489-90. *See generally* F. O'NEAL, "SQUEEZE-OUTS" OF MINORITY SHAREHOLDERS § 2.15, at 42 (1975).

7. Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 152, 400 A.2d 554, 560 (Law Div. 1979), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 35, 433 N.Y.S.2d 359, 366 (Sup. Ct., Special Term 1980). *See generally* Note, *Minority Dissolution of the Close Corporation,* 35 GEO. WASH. L. REV. 1068, 1077 (1967); Comment, *Oppression of Minority Shareholders: A Proposed Model and Suggested Remedies, supra* note 5, at 489-90.

8. The similarity of situation, common interests and expectations, and necessity for true cooperation among owners causes some courts and commentators to consider the close corporation more similar to a partnership than a corporation. *See, e.g.,* Donahue v. Rodd Electrotype Co., 367 Mass. 578, 586-87, 328 N.E.2d 505, 512 (1975); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 153, 400 A.2d 554, 560 (Law Div. 1979), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 32-33, 433 N.Y.S.2d 359, 364-65 (Sup. Ct., Special Term 1980); Hornstein, *A Remedy for Corporate Abuse—Judicial Power to Wind Up a Corporation at the Suit of a Minority Stockholder,* 40 COLUM. L. REV. 220, 250 (1940); Note, *Minority Dissolution of the Close Corporation,* 35 GEO. WASH. L. REV. 1068, 1068 (1967); Comment, *Relief to Oppressed Minorities in Close Corporations: Partnership Precepts and Related Considerations, supra* note 2, at 411-13; Comment, *Oppression as a Statutory Ground for Corporate*

right to dissolve the firm by the mere withdrawal of his interest.[9] Absent state[10] or judicial[11] intervention, corporate dissolution[12] occurs only by written consent of all shareholders.[13] Thus, the close corporation minority shareholder can be trapped in a frustrating situation.[14]

Once attempts to reconcile differences have failed, filing for involuntary dissolution[15] may be the minority shareholder's only defense against mistreatment[16] by the majority.[17] A minority shareholder may seek to protect his investment through actual dissolution, receiving his

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*Dissolution, supra* note 5, at 138. *Cf.* Green v. National Advertising & Amusement Co., 137 Minn. 65, 70, 162 N.W. 1056, 1058 (1917) (court found difference in corporations and partnerships insufficient to deny shareholders same relief afforded partners). *But cf.* Baker v. Commercial Body Builders, Inc., 264 Or. 614, 630, 507 P.2d 387, 394 (1973) (rejects concept that close corporation is so much like a partnership that minority shareholders should have same right to dissolve business as a partner). *See generally* Hetherington & Dooley, *supra* note 1, at 1-3; Comment, *Exploitation Among Close Corporation Shareholders: A Philosophical Change and its Consequences,* 16 LAND & WATER L. REV. 747, 747-54 (1981).

9. *See* UNIFORM PARTNERSHIP ACT §§ 29, 31(1). These sections stipulate that a partner may dissolve the partnership by withdrawing his interest. Nearly every state has adopted the Uniform Partnership Act. For a listing of those states and the statutory citations for their partnership provisions, see R. HAMILTON, CASES AND MATERIALS ON CORPORATIONS 1-2 (2d ed. Statutory Supp. 1981). *See also* Hetherington & Dooley, *supra* note 1, at 3; Leffler, *Dispute Settlement Within Close Corporations,* 31 ARB. J. 254, 255 (1976). *See generally* F. O'NEAL, *supra* note 6.

10. *See infra* notes 57-72 & 134-56 and accompanying text. Section 94 of the MBCA provides in part:

> A corporation may be dissolved involuntarily . . . by the Attorney General when
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> . . . .
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> (a) The corporation has failed to file its annual report . . . or has failed to pay its franchise tax on or before the first day of August . . .; or
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> . . .
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> (c) The corporation has failed for thirty days after change of its registered office or registered agent to file . . . a statement of such change.

MODEL BUSINESS CORP. ACT § 94 (1980 version). Over 36 states have adopted or patterned their corporation statutes after the Model Act. *See generally* R. HAMILTON, *supra* note 9, at 56.

11. *See infra* notes 26-56, 59-68, 75-133, 144-48 & 154-56 and accompanying text. *See also infra* note 70.

12. There are three kinds of dissolution: voluntary dissolution, forfeiture, and involuntary dissolution awarded by the court upon the suit of creditors or shareholders. Gusky, *Dissolution, Forfeiture, and Liquidation of Virginia Corporations,* 12 U. RICH. L. REV. 333, 333 (1978).

13. *See* MODEL BUSINESS CORP. ACT §§ 83, 84(a) (1980 version).

14. The court in Gruenberg v. Goldmine Plantation, Inc., 360 So. 2d 884, 886 (La. Ct. App. 1978) referred to the minority shareholder who lacks control in a close corporation as "trapped." *See also* Donahue v. Rodd Electrotype Co., 367 Mass. 578, 592, 328 N.E.2d 505, 515 (1975). Others describe close corporation minority shareholders in this situation as being "locked in." *See, e.g.,* Hetherington & Dooley, *supra* note 1, at 42; Note, *supra* note 2, at 272.

15. Involuntary dissolution refers to mandatory dissolution by court order rather than voluntarily requested dissolution by a majority of corporate shareholders. *See infra* note 20 and accompanying text.

16. The general term "mistreatment" serves to encompass all majority acts that leave minor-

share of corporate assets,[18] or he may strategically initiate a dissolution suit to pressure the majority into either ceasing oppressive practices or buying the minority interest at a reasonable price.[19]

All states presently recognize the necessity for an involuntary dissolution remedy for minority shareholders of close corporations.[20] As the case law illustrates, however, that remedy may be difficult to attain.[21] The law governing such relief remains in flux, and even when courts do grant dissolution,[22] they apply various standards and reach inconsistent

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ity shareholders at a disadvantage. "Mistreatment" as used in this Note is broader in scope than the commonly used term "oppression." *See infra* notes 69-74 and accompanying text.

17. Professor O'Neal stated:

> If the strife among the participants has been so long and bitter that the former relationship of congeniality and trust cannot be re-established, there is little left that an unhappy shareholder can do except sell out or bring about the dissolution of the business; and . . . he may not be in a position to dispose of his shares without heavy financial loss. Even if a business is still making profits, a dissatisfied shareholder may be wise to force a dissolution and withdraw his accumulated assets from the risks of the enterprise.

2 F. O'NEAL, *supra* note 2, § 9.03, at 9. *See also In re* Radom & Neidorff, Inc., 307 N.Y. 1, 119 N.E.2d 563 (1954). Some commentators state that dissolution is an ineffective and unnecessary remedy for the dissatisfied minority shareholder. *See, e.g.,* Hetherington & Dooley, *supra* note 1, at 26-34.

18. Professors Hetherington & Dooley concluded, however, that even though a court may order corporate dissolution, the business of the corporation usually continues because of shareholder buy-out or sale to a third party. Hetherington & Dooley, *supra* note 1, at 29-32, 64-75.

19. Donahue v. Rodd Electrotype Co., 367 Mass. 578, 592, 328 N.E.2d 505, 515 (1975). For a discussion of suggested methods by which the minority shareholder can achieve the objectives of dissolution without actually pursuing that remedy, see Hetherington & Dooley, *supra* note 1, at 27.

20. *See infra* notes 57-72 & 134-56 and accompanying text. In addition, states usually provide dissolution statutes outlining procedures by which a corporation can voluntarily dissolve. For an example of such legislation, see MODEL BUSINESS CORP. ACT §§ 82-94. For an example of an involuntary dissolution statute, see MODEL BUSINESS CORP. ACT §§ 94-103. This Note is concerned only with court-ordered dissolution in suits brought by minority shareholders for the prejudicial acts of controlling shareholders.

21. Reluctance to dissolve corporations is evident not only in the judiciary, *see infra* notes 22 & 166-89, but also in state legislation. New York legislators, for example, provide that in determining whether to dissolve a close corporation, the court should consider:

> (1) Whether liquidation of the corporation *is the only feasible means* whereby the petitioners may reasonably expect to obtain a fair return on their investment; and
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> (2) Whether liquidation of the corporation *is reasonably necessary* for the protection of the rights and interests of any substantial number of shareholders or of the petitioners.

N.Y. BUS. CORP. LAW § 1104-a(b)(1), (2) (McKinney Cum. Supp. 1981-82) (emphasis added). The Texas statute pertaining to judicial dissolution of close corporations provides that corporations may be dissolved only if "all other remedies in law or in equity . . . are inadequate." TEX. CORP. & ASS'NS CODE ANN. art. 12.52 (Vernon 1981). *See generally* Hetherington & Dooley, *supra* note 1, at 17-18; O'Neal, *supra* note 2, at 882.

22. Courts frequently state that involuntary corporate dissolution is a drastic remedy and should be considered only as a last resort. *See, e.g.,* Alaska Plastics, Inc. v. Coppock, 621 P.2d

results,[23] leaving plaintiffs with unclear guidelines upon which to base a claim.

This Note discusses the equitable and statutory grounds for involuntary dissolution that courts and legislatures have made available to mistreated minority shareholders of close corporations.[24] Along with this discussion, the Note describes typical judicial interpretations and illuminates current standards for granting dissolution. The Note demonstrates the kind of prejudicial acts performed against minority shareholders of close corporations that have justified the remedy of involuntary dissolution. An examination of the case law illustrates the obstacles a minority shareholder may encounter in seeking the dissolution remedy. This Note attacks the validity of the sources of these ob-

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270, 274 (Alaska 1980); Central Standard Life Ins. Co. v. Davis, 10 Ill. 2d 566, 576, 141 N.E.2d 45, 50 (1957); Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 300, 405 N.E.2d 839, 844 (1980); Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 36, 184 N.E.2d 792, 795 (1962); Streb v. Abramson-Caro Clinic, 401 So. 2d 410, 414 (La. Ct. App. 1981); Barnett v. International Tennis Corp., 80 Mich. App. 396, 417, 263 N.W.2d 908, 918 (1978); *In re* Application of Topper, 107 Misc. 2d 25, 28, 433 N.Y.S.2d 359, 362 (Sup. Ct., Special Term 1980); Delaney v. Georgia-Pacific Corp., 278 Or. 305, 325, 564 P.2d 277, 288 (1977); Masinter v. Webco, 262 S.E.2d 433, 438-39 (W. Va. 1980). *See also* N.J. STAT. ANN. § 14A:12-7(1)(c), comment at 38 (West Cum. Supp. 1981-82); 2 F. O'NEAL, *supra* note 2, § 9.03, at 9; Hetherington & Dooley, *supra* note 1, at 26; Hornstein, *supra* note 8, at 236; Note, *supra* note 8, at 1069; Comment, *Oppression as a Statutory Ground for Corporate Dissolution, supra* note 5, at 130, 135-36.

Professor O'Neal criticized judicial reluctance to order dissolution. F. O'NEAL, *supra* note 6, § 9.05. One commentator, however, commends this reluctance.

> The courts may well be more perceptive than [commentators favoring dissolution,] for their reluctance suggests their recognition that dissolution irrevocably ends a formerly viable concern, which might have been revived if the corporation's life had continued and the deadlock broken. In general, the judicial opinions indicate a deep disquiet and disinclination to rely too much on dissolution as the way out.

Folk, *Corporation Statutes: 1959-1966,* 1966 DUKE L.J. 875, 952. *See also* Comment, *Exploitation Among Close Corporation Shareholders: A Philosophical Change and its Consequences, supra* note 8.

23. Judicial power to dissolve corporations is purely discretionary. As Professor Hornstein explained,

> [t]he existence of a statute [which confers jurisdiction upon the courts to decree dissolution] . . . eliminates only the problem of whether action can be taken "in the absence of statute." The statute does not command the court to act, and is of little aid in determining whether the corporation *should* be wound up. That decision rests in the sound discretion of the court, which must consider the facts in the given case and determine what is best for all concerned.

Hornstein, *supra* note 8, at 244 (footnotes omitted) (emphasis in original). *See also* Comment, *supra* note 7, at 495-96.

24. For a discussion of the equitable grounds for involuntary dissolution, see *infra* note 26 and accompanying text. For discussion of statutory grounds for involuntary dissolution, see *infra* notes 57-80 and accompanying text.

stacles and recommends legislative action to remedy the situation.[25]

## I. INVOLUNTARY DISSOLUTION AS AN EQUITABLE REMEDY

The general rule at common law was that, absent statutory authority, courts had no jurisdiction to grant dissolution at the request of a minority shareholder.[26] Exceptions to the rule began to develop,[27] in 1892 with *Miner v. Belle Isle Ice Co.*,[28] in which the Michigan Supreme Court exercised its general power in equity to dissolve a corporation on the basis of fraud.[29] Subsequently, courts began to grant dissolution upon showings of dissension,[30] deadlock,[31] abuse to minority shareholders,[32] or gross mismanagement.[33] As exceptions began to envelope the general rule, a new rule emerged, providing courts with equity jurisdiction to dissolve corporations.[34] Although many courts now recog-

25. *See infra* notes 168-201 and accompanying text.

26. Rowland v. Rowland, 102 Idaho 534, 633, P.2d 599 (1981); Lynch v. Buchanan, 37 Md. App. 413, 377 A.2d 592 (1977); Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976). *See generally* 2 F. O'NEAL, *supra* note 2, § 9.27, at 95; Comment, *Deadlock and Dissolution in the Close Corporation: Has the Sacred Cow Been Butchered?*, 58 NEB. L. REV. 791, 791 (1979).

27. *See generally* 2 F. O'NEAL, *supra* note 2, § 9.27, at 96-97; Hornstein, *supra* note 8, at 232-33; Note, *Minority Dissolution of the Close Corporation*, 35 GEO. WASH. L. REV. 1068, 1069 (1967).

28. 93 Mich. 97, 53 N.W. 218 (1892).

29. The court in *Miner* stated:

> This corporation has utterly failed of its purpose . . . because of fraudulent mismanagement and misappropriation of its funds . . . . [A] court of equity, under the circumstances of this case, in the exercise of its general equity jurisdiction, has the power to grant to this complainant ample relief, even to the dissolution of the trust relations.

*Id.* at 117, 53 N.W. at 224.

30. *See, e.g., In re* St. Clair Estate Co., 66 Cal. App. 2d 964, 153 P.2d 453 (1944); Liddell v. Smith, 43 Ill. App. 2d 57, 193 N.E.2d 45 (1963); Flemming v. Heffner & Flemming, 263 Mich. 561, 248 N.W. 900 (1933); Edison v. Edison United Photograph Co., 52 N.J. Eq. 620, 29 A. 195 (Ch. 1894).

31. *See, e.g.,* Saltz v. Saltz Bros., 84 F.2d 246 (D.C. Cir. 1936); Campbell v. Pennsylvania Indus., Inc., 99 F. Supp. 199 (D. Del. 1951); *In re* Hedberg-Friedheim & Co., 233 Minn. 535, 47 N.W.2d 424 (1951). For examples of recent cases in which the plaintiff sought dissolution because of corporate deadlock, see Alkire v. Interstate Theatres Corp., 379 F. Supp. 1210 (D. Mass. 1974); Gruenberg v. Goldmine Plantation, Inc., 360 So. 2d 884 (La. Ct. App. 1978); Henry George & Sons v. Cooper-George, Inc., 632 P.2d 512 (Wash. 1981).

32. *See, e.g.,* Hill v. Bellevue Gardens, Inc., 190 F. Supp. 760 (D.D.C. 1960), *aff'd,* 297 F.2d 185 (D.C. Cir. 1961); Green v. National Advertising & Amusement Co., 137 Minn. 65, 162 N.W. 1056 (1917); Patton v. Nicholas, 154 Tex. 385, 279 S.W.2d 858 (1955). For examples of recent cases where minority shareholders sought dissolution, asserting abuse by majority shareholders, see *infra* note 74.

33. *See, e.g.,* Bernstein v. New Jersey Bankers Sec. Co., 109 N.J. Eq. 233, 156 A. 768 (1931); Klugh v. Coronaca Milling Co., 66 S.C. 100, 44 S.E. 566 (1902).

34. *See generally* Hornstein, *supra* note 8, at 220; Comment, *supra* note 7, at 494; Comment, *supra* note 26, at 793.

nize an inherent power to dissolve,[35] others continue to cling to tradition, refusing to exercise equity jurisdiction to grant involuntary dissolution.[36]

The general inquiry for the exercise of equity jurisdiction is whether controlling shareholders are operating the corporation in good faith to advance its purposes and best interests.[37] If the court finds that they are, it will not grant dissolution. Courts have applied this test broadly, dissolving few corporations on equitable grounds. Thus, although equity theoretically provides relief as justice demands, the minority shareholder is seldom successful in acquiring a dissolution order[38] solely on this ground.[39] Even courts that recognize their equitable power to dissolve corporations hesitate to do so absent complementary statutory support.[40]

35. *See, e.g.,* Rowland v. Rowland, 102 Idaho 534, 633 P.2d 599 (1981); *In re* Villa Maria, Inc. v. Mondati, 312 N.W.2d 921 (Minn. 1981); Leibert v. Clapp, 13 N.Y.2d 313, 196 N.E.2d 540, 247 N.Y.S.2d 102 (1963); Masinter v. Webco Co., 262 N.E.2d 433 (W. Va. 1980). *Cf.* Grant v. Allied Developers, Inc., 44 Md. App. 560, 564-65, 409 A.2d 1123, 1125 (1980) (inherent power to appoint a receiver to preserve a solvent corporation).

36. *See, e.g.,* Alkire v. Interstate Theatres Corp., 379 F. Supp. 1213-14 (D. Mass 1974); Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 31, 184 N.E.2d 792, 792 (1962); Central Standard Life Ins. Co. v. Davis, 10 Ill. 2d 566, 572, 141 N.E.2d 45, 49 (1957); Ellis v. Civic Improvement, Inc., 24 N.C. App. 42, 209 S.E.2d 873 (1974), *cert. denied,* 286 N.C. 413, 211 S.E.2d 794 (1975). *Cf.* King v. Coulter, 113 Ariz. 245, 247, 550 P.2d 623, 625 (1976) (courts have equitable jurisdiction only in extraordinary circumstances); Fix v. Fix Material Co., 538 S.W.2d 351, 361 (Mo. Ct. App. 1976) (failure to fulfill corporate purpose is not an equitable ground; continued existence of corporations without reasonable possibility for profit may be valid ground for equity jurisdiction). *See generally* Hornstein, *supra* note 8, at 220-25.

37. One court stated that "[i]n determining whether to grant dissolution under either the common law or statute, the principal inquiry appears to be whether dissolution would be beneficial to the shareholders and not injurious to the public." Henry George & Sons v. Cooper-George, Inc., 632 P.2d 512, 515 (Wash. 1981) (citing 2 MODEL BUSINESS CODE ANN. § 97).

38. Professors Hetherington and Dooley note that "[t]he equitable power to dissolve solvent corporations has not contributed significantly to the solution of oppression . . . in close corporations . . . ." Hetherington & Dooley, *supra* note 1, at 8.

39. The most common equitable grounds asserted by minority shareholders when seeking involuntary dissolution of a corporation are fraud, gross mismanagement, oppression or abuse of minority shareholders, shareholder or director deadlock or dissension, and impossibility of attaining corporate objectives or operating at a profit. 2 F. O'NEAL, *supra* note 2, § 9.27, at 96.

40. Only three courts within the last 30 years have liquidated a corporation solely on equitable grounds. *See* Bellevue Gardens, Inc. v. Hill, 297 F.2d 185 (D.C. Cir. 1961); Levand v. Kowal, 350 Mich. 232, 86 N.W.2d 336 (1957); Liebert v. Clapp, 13 N.Y.2d 313, 196 N.E.2d 540, 247 N.Y.S.2d 102 (1963). Within the same period, over ten times that many courts dissolved corporations on statutory grounds. *See, e.g.,* McLeod v. Stevens, 617 F.2d 1038 (4th Cir. 1980); Stumpf v. C.S. Stumpf & Sons, 47 Cal. App. 3d 230, 120 Cal. Rptr. 671 (1975); Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 405 N.E.2d 839 (1980); Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 285 N.E.2d 574 (1972); Gidwitz v. Lanzit Corrugated Box Co., 20 Ill. 2d 208, 170 N.E.2d 131

Courts are more willing to exercise their equity jurisdiction to dissolve a corporation, however, when there is a strong showing that corporate managers have run the business solely for their own benefit.[41] In *Hill v. Bellevue Gardens, Inc.*,[42] for example, the defendants were controlling shareholders of several close corporations. Plaintiffs, who sought dissolution of two of the corporations in which they possessed a minority interest, asserted that defendants diverted approximately $90,000 from plaintiff's corporation to satisfy debts of defendants' other corporations.[43] The Court of Appeals for the District of Columbia affirmed a lower court finding that the controlling shareholders had acted for their own benefit and had seriously prejudiced the minority shareholders' rights and interests. The court held that the cumulative effect of the defendants' acts[44] warranted equitable dissolution.[45]

The New York Court of Appeals applies a typically narrow standard for equitable dissolution, requiring a showing of wrongful intent by majority shareholders.[46] This intent requirement was hinted at in *Leibert v. Clapp*,[47] in which the court dissolved a corporation after the

(1960); *In re* Villa Maria, Inc. v. Mondati, 312 N.W.2d 921 (Minn. 1981); Skierka v. Skierka Bros., __ Mont. __, 629 P.2d 214 (1981); *In re* Application of Topper, 107 Misc. 2d 25, 433 N.Y.S.2d 359 (Sup. Ct., Special Term 1980); Baylor v. Beverly Book Co., 216 Va. 22, 216 S.E.2d 18 (1975); White and P & W Oil Co. v. Perkins, 213 Va. 129, 189 S.E.2d 315 (1972).

41. *See* Green v. National Advertising & Amusement Co., 137 Minn. 65, 162 N.W. 1056 (1917) (court granted dissolution, finding that defendant ran the corporation "solely in his own interests" by giving himself an excessive salary and denying access to corporate records); Leibert v. Clapp, 13 N.Y.2d 313, 196 N.E.2d 540, 247 N.Y.S.2d 102 (1963) (court granted dissolution upon finding that defendant looted corporate assets and perpetuated corporate existence solely for own benefit). *Cf. In re* Villa Maria, Inc. v. Mondati, 312 N.W.2d 921 (Minn. 1981) (court relied on the state dissolution statute to dissolve the corporation but found that because the controlling shareholder ran the corporation as he pleased, dissolution could have been granted in equity).

42. 297 F.2d 185 (D.C. Cir. 1961).

43. Plaintiffs also claimed that defendants unduly depressed the market value of the plaintiffs' stock. Hill v. Bellevue Gardens, Inc., 190 F. Supp. 760, 768-69 (D.D.C. 1960), *aff'd*, 297 F.2d 185 (D.C. Cir. 1961).

44. Some courts that decide dissolution cases on a statutory basis also examine the cumulative effect of majority acts to determine whether to grant dissolution. *See infra* notes 93-108 and accompanying text.

45. 297 F.2d at 187.

46. *See generally* 2 F. O'NEAL, *supra* note 2, § 9.27, at 97-98; Note, *Corporate Dissolution in New York: The* Leibert *Standard and its Application Today*, 23 SYRACUSE L. REV. 873 (1972).

47. 13 N.Y.2d 313, 196 N.E.2d 540, 247 N.Y.S.2d 102 (1963). *See generally* 2 F. O'NEAL, *supra* note 2, § 9.27, at 97; Note, *supra* note 46; Comment, *New York Broadens Availability of Involuntary Dissolution as Remedy for Intracorporate Oppression of Minority Shareholders*, 39 N.Y.U. L. REV. 697 (1964).

majority shareholders looted corporate assets.[48] The court found that the controlling shareholders intentionally perpetuated the corporate existence under these circumstances to coerce the minority to sell out at a depreciated price.[49]

In *Kruger v. Gerth*,[50] the New York Court of Appeals applied the intent requirement that was implicitly set forth in *Leibert* by mandating a showing of bad faith for dissolution, even when minority shareholders receive no benefit from their corporate interest. In *Kruger*, the operation of the corporation benefitted only the majority shareholder, who was the sole corporate employee, providing him with a salary and bonuses. The court of appeals denied dissolution,[51] relying on the trial court's finding that the defendant did not intend to use the corporation or its assets solely for his own benefit.[52]

Similarly, in *Nelkin v. H.J.R. Realty Corp.*,[53] the New York Court of Appeals denied dissolution of a corporation which existed without benefit to minority shareholders. Pursuant to an agreement by the incorporators, shareholder-tenants paid very low rents to the corporation, leaving it essentially without profit. The two plaintiff-minority shareholders no longer benefitted from their corporate interest after moving from the rental property. Finding no wrongful intent by the majority shareholders, the court stated that plaintiffs voluntarily terminated their benefit and were not entitled to dissolution relief to escape a bad bargain.[54]

Other jurisdictions also require a showing of intent as a prerequisite

48. The court noted that a shareholder derivative action would have been inadequate:

> [T]he charges leveled against the directors . . .—that they are continuing the existence of the corporation solely for their own benefit at the expense of the minority shareholders, to force such shareholders to sell their holdings . . . at a sacrifice and to freeze them out of the corporation—go far beyond charges of waste, misappropriation and illegal accumulations of surplus, which might be cured by a derivative action.

13 N.Y.2d at 316, 196 N.E.2d at 542, 247 N.Y.S.2d at 105.

49. *Id.* at 315-16, 196 N.E.2d at 542-43, 247 N.Y.S.2d at 104.

50. 16 N.Y.S.2d 802, 210 N.E.2d 355, 263 N.Y.S.2d 1 (1965). *See generally* 2 F. O'NEAL, *supra* note 2, § 9.27, at 98; Note, *supra* note 46; 32 BROOKLYN L. REV. 405 (1966); 51 CORNELL L. REV. 538, 539-40 (1966); 19 VAND. L. REV. 485 (1966).

51. 16 N.Y.S.2d 802, 803-04, 210 N.E.2d 355, 355, 263 N.Y.S.2d 1, 1-2 (1965).

52. The trial court in *Kruger* also noted that the plaintiff's motives in seeking dissolution were suspect because he owned a competitor of the defendant corporation. Kruger v. Gerth, 22 A.D.2d 916, 917-18, 255 N.Y.S.2d 498, 501-02 (1964), *aff'd mem.*, 16 N.Y.2d 802, 803-04, 210 N.E.2d 355, 355, 263 N.Y.S.2d 1 (1965).

53. 25 N.Y.2d 543, 255 N.E.2d 713, 307 N.Y.S.2d 454 (1969).

54. *Id.* at 549, 255 N.E.2d at 716, 307 N.Y.S.2d at 458-59. *See generally* 2 F. O'NEAL, *supra* note 2, § 9.27; Note, *supra* note 46.

to equitable dissolution of close corporations. In its recent decision in *Rowland v. Rowland*,[55] for instance, the Idaho Supreme Court held that the majority shareholders' removal of the minority shareholders' veto power did not warrant dissolution when there was no evidence that the majority acted intentionally to oppress the minority.[56]

## II. INVOLUNTARY DISSOLUTION STATUTES

### *A. Statutory Dissolution on Grounds Other Than Oppression or Specific Acts of Minority Mistreatment*

The dissolution statutes in seventeen states do not include mistreatment or oppression of minority shareholders as grounds for involuntary dissolution.[57] These statutes do grant dissolution on other grounds however. Several state statutes provide minority relief through dissolution when corporate managers perform illegal or fraudulent acts.[58] Many of the oppressive acts of majorities, although technically legal, are extremely prejudicial. Because the statutes that prohibit illegal or fraudulent acts fail to cover such situations, they afford insufficient protection to oppressed minorities.

Another group of statutes in this category provides protection for shareholders as a whole without affording relief specifically for a majority's prejudicial acts against a minority.[59] Applying this kind of stat-

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55. 102 Idaho 534, 633 P.2d 599 (1981).

56. *Id.* at 541, 633 P.2d at 606.

57. *See* ARIZ. REV. STAT. ANN. § 10-097 (1977); CONN. GEN. STAT. § 33-382 (1981); FLA. STAT. ANN. § 607.274 (West 1977); GA. CODE ANN. § 22-1317 (1977); HAWAII REV. STAT. § 416-128 (1976); IND. CODE ANN. § 23-1-7-3 (Burns 1972); KY. REV. STAT. ANN. § 271A.475 (Baldwin 1973); LA. REV. STAT. ANN. § 12:143 (West 1969 & Cum. Supp. 1981-82); ME. REV. STAT. ANN. tit. 13A, § 1115(1) (West 1974); MASS. ANN. LAWS ch 156, § 99 (Michie/Law Co-op 1979); NEV. REV. STAT. § 78.650 (1979); N.H. REV. STAT. ANN. § 294.97 (1977); N.C. GEN. STAT. § 55-125 (1975); OHIO REV. CODE ANN. § 1701.91 (Page 1978); OKLA. STAT. ANN. tit. 18, § 1.195 (West 1953); TEX. BUS. CORP. ACT ANN. art. 7.05 (Vernon 1980); WIS. STAT. ANN. § 180.771(1)(a) (West 1957).

58. *See* GA. CODE ANN. § 22-1317(a)(1)(B) (1977); KY. REV. STAT. ANN. § 271A.475(1)(a)(2) (Baldwin 1973); ME. REV. STAT. ANN. tit. 13A, § 1115(1)(D) (West 1974); WIS. STAT. ANN. § 180.771(1)(a) 2 (West 1957). These statutes also allow dissolution upon a minority suit for corporate deadlock. *See infra* notes 64-65 and accompanying text.

59. *See* LA. REV. STAT. ANN. § 12:143(A)(3) (West 1969 & Cum. Supp. 1981-82) ("when . . . beneficial to the interests of the shareholders that the corporation should be . . . dissolved"); N.H. REV. STAT. ANN. § 294.97 (1977) ("whenever . . . cause renders . . . liquidation reasonably necessary for the protection of the rights of stockholders"); OHIO REV. CODE ANN. § 1701.91(A)(3) (Page 1978) ("when . . . beneficial to the shareholders that the corporation be judicially dissolved"); OKLA. STAT. ANN. tit. 18, § 1.195(3) (West 1953) ("when . . . beneficial to the interest of

ute, the court in *Gruenberg v. Goldmine Plantation, Inc.*[60] refused to expand its jurisdiction to protect oppressed minority shareholders from corporate decisionmakers.[61] The minority shareholders in *Gruenberg* sought dissolution when the controlling shareholders continued to operate the corporate sugar-cane plantation at a low return to minority shareholders and refused to accept an offer to sell at a substantial profit. Although the corporation's income was slight, the court denied relief, finding that dissolution was not "beneficial to the interests of the shareholders"[62] because corporate assets had appreciated.[63]

Deadlock[64] is the most common ground for involuntary dissolution in statutes not providing a dissolution remedy for minority mistreatment or oppression.[65] As typified by *King v. Coulter*,[66] courts narrowly interpret the statutory ground of deadlock, rejecting attempts to extend

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the shareholders that the corporation should be . . . dissolved"). *See generally* Hetherington & Dooley, *supra* note 1, at 17 n.45. For similar statutory language under which the minority shareholder may seek protection, see CAL. CORP. CODE § 1800(b)(5) (Deering 1977) ("when . . . reasonably necessary for the protection of the rights and interests of the complaining shareholder"); N.C. GEN. STAT. § 55-125(a)(4) (1975) ("when . . . reasonably necessary for the protection of the rights or interests of the complaining shareholder").

60. 360 So. 2d 884 (La. Ct. App. 1978).

61. The *Gruenberg* court stated:

> We appreciate the frustrations of the minority who are locked into a financial situation in which they have a substantial interest but no control . . . . Our substantive law provides for involuntary dissolution but offers no remedy for the minority shareholder with substantial holdings who is out of control and trapped in a closed corporation. We will not abrogate the legislative function to provide relief.

*Id.* at 887.

62. LA. REV. STAT. ANN. § 12:143A(3) (West 1969 & Cum. Supp. 1981-82).

63. The court found that dissolution was not more beneficial to the shareholders because the appreciation of corporate assets offset the corporation's past low returns. In addition, the court determined that completion of a nearby bridge would increase the value of the corporate property even more. 360 So. 2d at 886.

64. ARIZ. REV. STAT. ANN. § 10-097 (A)(1)(a), (b) (1977) provides a typical reading of a deadlock statute. The Arizona statute grants courts

> full power to liquidate . . . a corporation . . . :
> 1. . . . when it is established that either:
> (a) The directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock . . . .
> (b) The shareholders are deadlocked in voting power and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired . . . .

*Id. See* MODEL BUSINESS CORP. ACT § 97, *infra* note 70.

65. *See supra* note 64. *See also* CONN. GEN. STAT. § 33-382(a)(2)(i), (ii) (1981); FLA. STAT. ANN. § 607.274(1)(a)(1), (2) (West 1977); HAWAII REV. STAT. § 416-128(a)(1), (2) (1976); IND. CODE ANN. § 23-1-7-3(a)(5) (Burns 1972); LA. REV. STAT. ANN. § 12:143(4), (5) (West 1969 & Cum. Supp. 1981-82); MASS. ANN. LAWS ch. 156, § 99(A)(b)(1), (2) (Michie/Law Co-op 1979); OHIO REV. CODE ANN. § 1701.91(A)(4) (Page 1978); OKLA STAT. ANN. tit. 18, § 1.195(4) (West

its scope to include protection against unfairness to or oppression of minorities.[67] The plaintiff in *King* sought dissolution, asserting that majority shareholders removed him as president, more than doubled their salaries, employed family members, and loaned $80,000 of corporate money to their own company. The Arizona Supreme Court denied dissolution, finding that the plaintiff's assertions fell outside the deadlock statute.[68]

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1953); TEX. BUS. CORP. ACT ANN. art. 7.04(A)(1)(b), (e) (Vernon 1980 & Cum. Supp. 1982, at art. 12.52(A)(6)).

Nevada and New Hampshire do not provide a remedy for corporate deadlock. *See* NEV. REV. STAT. § 78.650 (1979); N.H. REV. STAT. ANN. § 294.97 (1977).

Deadlock is a common ground for dissolution in states that provide relief specifically for minority shareholders as well as in those that do not. *See* ALA. CODE § 10-2A-195(a)(1) (a), (c) (1975); ALASKA STAT. § 10.05.540(1), (3) (1968); ARK. STAT. ANN. § 64-908(A)(1), (3) (1980); CAL. CORP. CODE § 1800(b)(2), (3) (Deering 1977); COLO. REV. STAT. § 7-8-113(2)(a) (Cum. Supp. 1980); IDAHO CODE § 30-1-97(a)(1), (3) (1980); ILL. ANN. STAT. ch. 32, § 157.86(a)(1), (2) (Smith-Hurd Cum. Supp. 1981-82); IOWA CODE ANN. § 496A.94(1)(a), (b) (West Cum. Supp. 1981-82); MD. CORP. & ASS'NS CODE ANN. § 3-413(a)(1), (2) (1975); MICH. STAT. ANN. § 302A.751(b)(1), (3) (West Supp. 1981); MISS. CODE ANN. § 79-3-193(a)(1), (3) (1972); MO. REV. STAT. § 351.485 1(1)(a) (1969); MONT. REV. CODE ANN. § 35-2-711(a)(i), (iii) (1981); NEB. REV. STAT. § 21-2096(1)(a) (1943); N.J. STAT. ANN. § 14A: 12-7(1)(a), (b) (West Cum. Supp. 1981-82); N.M. STAT. ANN. § 53-16-16(A)(1)(a), (c) (1978); N.Y. BUS. CORP. LAW § 1104(a)(1), (2) (McKinney 1963); N.C. GEN. STAT. § 55-125(a) (1), (2) (1975); N.D. CENT. CODE § 10-21-16(1)(a), (c) (1976); OR. REV. STAT. § 57.595(1)(a)(A), (C) (1979); PA. CONS. STAT. ANN. § 2107(A)(4) (Purdon 1967); R.I. GEN. LAWS § 7-1.1-90(a)(1), (3) (1969); S.C. CODE § 33-21-150(a)(1), (2) (Cum. Supp. 1981); S.D. COMP. LAWS ANN. § 47-7-34(1), (3) (1967); TENN. CODE ANN. § 48-1008(1)(a)(i), (ii) (1979); UTAH CODE ANN. § 16-10-92(a)(1), (3) (Supp. 1981); VT. STAT. ANN. tit. 11, § 2067(a)(1)(A), (C) (1973); VA. CODE § 13.1-94(a)(1), (3) (1978); WASH. REV. CODE ANN. § 23A.28.170(1)(a), (c) (1969); W. VA. CODE § 31-1-41(a)(1), (3) (1975); WYO. STAT. § 17-36.86(a)(1), (3) (1965).

66. 113 Ariz. 245, 550 P.2d 623 (1976).

67. *See also* Alkire v. Interstate Theatres Corp., 379 F. Supp. 1210 (D. Mass. 1974) (federal district court narrowly interpreted statute as granting power to dissolve for deadlock to only the Massachusetts Supreme Judicial Court).

68. 113 Ariz. at 247, 550 P.2d at 625. The court examined three Arizona statutes before reaching its decision. ARIZ. REV. STAT. ANN. § 10-381 (repealed 1975) (current version at § 10-094 (1977)), allowed corporate dissolution in actions of the attorney general for certain acts of the corporation that affected the state. The court reviewed the revision of that statute, ARIZ. REV. STAT. ANN. § 10-094 (1977), which was to come into effect a few weeks after trial, finding the new version substantially the same as its predecessor. The plaintiff's claim clearly fell outside the terms of both statutes. ARIZ. REV. STAT. ANN. § 10-097 (1977), also not effective at the time of trial, allows dissolution in a suit by a minority shareholder whenever the plaintiff could show deadlock. 113 Ariz. at 247, 550 P.2d at 625.

The court also noted that the factual circumstances were not sufficiently extraordinary to warrant equitable dissolution. *Id.*

### *B. Statutory Dissolution for Oppression of Minority Shareholders*

The Illinois legislature adopted "oppression" as a ground for granting involuntary dissolution to a minority shareholder in 1933.[69] The Illinois legislation served as forerunner to the current Model Business Corporation Act (MBCA). The MBCA grants jurisdiction to the judiciary to liquidate corporate asssets[70] when the majority's actions are "illegal, oppressive or fraudulent."[71] Responding to the needs of mistreated minority shareholders, twenty-six states have adopted provisions identical or similar to those of the Model Act.[72] The broad nature

69. *See* ILL. ANN. STAT. ch. 32, § 157.86(a)(3) (Smith-Hurd 1954) (amended 1971). *See generally* Comment, *supra* note 26 at 805-07. The court in Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976), noted a consensus among Illinois courts that " 'oppression' is, in and of itself, an independent ground for relief not requiring a showing of fraud, illegality, mismanagement, wasting of assets, nor deadlock, though these factors are frequently present." *Id.* at 358.

70. Section 97 of the MCBA provides in part:

> The _____ courts shall have full power to liquidate the assets and business of a corporation:
>
> (a) In an action by a shareholder when it is established:
>
> (1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
>
> (2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
>
> (3) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
>
> (4) That the corporate assets are being misapplied or wasted.

MODEL BUSINESS CORP. ACT § 97 (1980 version).

71. *Id.* § 97(a)(2).

72. *See* ALA. CODE § 10-2A-195(a)(1)(b) (1975); ALASKA STAT. § 10.05.540(2) (1968); ARK. STAT. ANN. § 64-908(A)(2) (1980); COLO. REV. STAT. § 7-8-113(2)(a) (Cum. Supp. 1980); IDAHO CODE § 30-1-97(a)(2) (1980); ILL. ANN. STAT. ch. 32, § 157.86(a)(3) (Smith-Hurd Cum. Supp. 1981-82); IOWA CODE ANN. § 496A. 94(1)(c) (West. Cum. Supp. 1981-82); MD. CORP. & ASS'NS CODE ANN. § 3-413(b)(2) (1975); MISS. CODE ANN. § 79-3-193(a)(2) (1972); MO. REV. STAT. § 351.485 1(1)(b) (1969); MONT. REV. CODE ANN. § 35-2-711(a)(ii) (1981); NEB. REV. STAT. § 21-2096(1)(b) (1943); N.M. STAT. ANN. § 53-16-16(A)(1)(b) (1978); N.Y. BUS. CORP. LAW § 1104(a)(1), (2), 1104-a(a)(1) (McKinney 1963 & Cum. Supp. 1981-82); N.D. CENT. CODE. § 10-21-16(1)(b) (1976); OR. REV. STAT. § 57.595(1)(a)(B) (1979); PA. CONS. STAT. ANN. § 2107 A(2) (Purdon 1967); R.I. GEN. LAWS § 7-1.1-90(a)(2) (1969); S.D. COMP. LAWS. ANN. § 47-7-34(2) (1967); TENN. CODE ANN. § 48-1008(1)(a)(iii) (1979); UTAH CODE ANN. § 16-10-92(a)(2) (Supp. 1981); VT. STAT. ANN. tit. 11, § 2067(a)(1)(B) (1973); VA. CODE § 13.1-94(a)(2) (1978); WASH. REV. CODE ANN. § 23A. 28.170(1)(b) (1969); W. VA. CODE § 31-1-41(a)(2) (1975); WYO. STAT. § 17-36.86(a)(2) (1965).

Although the following statutes are substantially the same as § 97(a) of the Model Act, they have notable variations. ALA. CODE § 10-2A-195(a)(1) (1975) (corporate insolvency is additional ground for dissolution); MD. CORP. & ASS'NS CODE ANN. § 4-602(a) (1975) (internal dissension preventing operation of the corporation for shareholder advantage is additional ground for disso-

of the term "oppressive" potentially includes a wide range of majority actions.[73] To obtain dissolution based on statutory grounds, minority shareholders frequently assert that controlling shareholders have acted oppressively.[74]

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lution); MO. REV. STAT. § 351.485 1(1)(6) (1969) (shareholder deadlock not ground for dissolution); MONT. REV. CODE ANN. § 35-2-711(a) (1981) (failure to carry out corporate purposes is additional ground for dissolution); N.Y. BUS. CORP. LAW § 1104(a)(1), (2) (McKinney 1963 & Cum. Supp. 1981-82, at § 1104-a(a), (b)) (no dissolution unless only feasible way for petitioner to obtain fair return on investment and reasonably necessary to protect minority shareholder rights and interests); PA. CONS. STAT. ANN. § 2107(A) (Purdon 1967) (failure or abandonment of corporate purpose is additional ground for dissolution; shareholder deadlock not grounds for dissolution; and dissolution must be beneficial to shareholders if basis for relief is illegal, oppressive, or fraudulent acts or misapplication or waste of corporate assets); TENN. CODE ANN. § 48-1008(1)(a) (1979) (internal dissension additional ground for dissolution when beneficial to shareholders; dissolution granted when corporation has ceased doing business and majority is withholding from the minority their rightful share of corporate assets; dissolution based on any ground available only if no other satisfactory relief).

73. One student author noted that although the common-law grounds for involuntary dissolution, such as gross mismanagement or director misconduct or abuse, *see supra* note 39, are not specifically included in the Model Act, the term "oppressive" may serve to encompass those common-law grounds. Comment, *Oppression as a Statutory Ground for Corporate Dissolution, supra* note 5, at 130. The Montana Supreme Court, however, observed that all jurisdictions provide only limited definitions for the term "oppressive." Skierka v. Skierka Bros., __ Mont. __, __, 629 P.2d 214, 221 (quoting MODEL BUSINESS CORP. ACT ANN. § 97 at 554).

74. *See, e.g.,* Rowland v. Rowland, 102 Idaho 534, 633 P.2d 599 (1981) (plaintiff claimed defendant acted oppressively when defendant made board decisions without formal meetings and voted to remove plaintiff's veto power); Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 405 N.E.2d 839 (1980) (defendants allegedly acted oppressively when they conspired against plaintiff, wrongfully accused him of theft, and barred him from the corporate business); Ross v. 311 N. Cent. Ave. Bldg. Corp., 130 Ill. App. 2d 336, 264 N.E.2d 406 (1970) (plaintiff claimed defendant acted oppressively when defendant authorized loan for defendant's own corporation without plaintiff's knowledge, asserting that money was for a second mortgage that defendant never produced); Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 184 N.E.2d 792 (1962) (plaintiff sought dissolution on grounds of oppression when defendant drew money from financially troubled corporation, caused corporation to borrow money from assets as security, and left defendant's family as beneficiaries in event of foreclosure on mortgage); Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976) (plaintiffs claimed that defendants acted oppressively when defendants arranged employment contracts to control management for 20 years, sold corporate assets, and increased own salaries despite heavy corporate losses); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 400 A.2d 554 (Law Div. 1979) (when defendants discharged plaintiff from employment plaintiff sought dissolution on grounds of oppression), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 433 N.Y.S.2d 359 (Sup. Ct., Special Term 1980) (plaintiff sought dissolution for oppression when defendants fired plaintiff, terminated his salary, and changed locks on corporate office to prevent plaintiff from participating in management); Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973) (defendant allegedly acted oppressively when he prevented plaintiff from examining corporate records and failed to notify plaintiff of corporate meetings, falsifying records to show otherwise); White and P & W Oil Co. v. Perkins, 213 Va. 129, 189 S.E.2d 315 (1972) (plaintiff claimed oppression when defendant caused plaintiff to sustain tax losses under subchapter S by refusing to

Courts face the problem of deciding what acts are oppressive and on what basis to determine the existence of oppressive acts. Courts typically adopt one of two methods for determining oppression. A court applying the first method will initially define or characterize the general qualities of oppression that trigger dissolution,[75] then, proceeding on a case by case basis,[76] determine whether a particular set of facts falls within the terms of the enunciated definition.[77] Variations on this

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pay plaintiff dividends, removed plaintiff as corporate officer, and ordered new equipment for defendant's own business without plaintiff's knowledge or consent); Masinter v. Webco Co., 262 S.E.2d 433 (W. Va. 1980) (plaintiff sought dissolution for oppression when defendants removed plaintiff from board, discontinued his salary, and caused the corporation to borrow $700,000, without plaintiff's approval).

75. For examples of cases that set forth at least one definition for oppression, see Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 298-99, 405 N.E.2d 839, 843 (1980) (may be continuous course of conduct, and is not synonymous with "illegal" or "fraudulent"); Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 499, 285 N.E.2d 574, 581 (1972) (same); Gidwitz v. Lanzit Corrugated Box Co., 20 Ill. 2d 208, 212, 170 N.E.2d 131, 135 (1960) (same); Jackson v. St. Regis Apartments, Inc., 565 S.W.2d 178, 183 (Mo. Ct. App. 1978) ("suggests harsh, dishonest, or wrongful conduct and a visible departure from the standards of fair dealing which inure to the benefit of majority and to the detriment of the minority"); Fix v. Fix Material Co., 538 S.W.2d 351, 358 (Mo. Ct. App. 1976) (" 'burdensome, harsh and wrongful conduct, a lack of probity and fair dealing' "; the cumulative effect of many such wrongful acts may constitute oppression); Skierka v. Skierka Bros., __ Mont. __, __, 629 P.2d 214, 221 (1981) (" 'not requiring a showing of fraud, illegality, mismanagement, wasting of assets, nor deadlock . . . [but] suggests a visible departure from the standards of fair dealing, and a violation of fair play' "); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 151-52, 400 A.2d 554, 559-60 (Law Div. 1979) (" 'can contemplate a continuous course of conduct' "; " 'visible departure from the standards of fair play. . . . [and] a lack of probity and fair dealing' "), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 34, 433 N.Y.S.2d 359, 365 (Sup. Ct., Special Term 1980) (" 'burdensome, harsh, and wrongful conduct, a lack of probity and fair dealing' "); Baker v. Commercial Body Builders, Inc., 264 Or. 614, 628-29, 507 P.2d 387, 393-94 (1973) (same; closely related to "the fiduciary duty of good faith and fair dealing" owed to the minority, but single or continuous breaches of that duty do not always warrant dissolution unless loss to minority is disproportionate); White and P & W Oil Co. v. Perkins, 213 Va. 129, 134, 189 S.E.2d 315, 319-20 (1972) (can contemplte a continuing course of conduct, is not synonomous with "illegal" or "fraudulent", and is a "visible departure from fair dealing and a violation of fair play' ").

76. For example, the court in Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976), stated that oppression should be decided "on a case-by-case basis." *Id.* at 358.

77. *See, e.g.,* Jackson v. St. Regis Apartments, Inc., 565 S.W.2d 178 (Mo. Ct. App. 1978) (defendant's refusal to amend rental or service charge structure held not oppressive); Skierka v. Skierka Bros., __ Mont. __, 629 P.2d 214 (1981) (defendant acted oppressively by evaluating shares of plaintiff's deceased husband at less than defendant's, giving defendant corporate control); Baylor v. Beverly Book Co., 216 Va. 22, 216 S.E.2d 18 (1975) (court found that failure to hold shareholder and director meetings, refusal to follow accepted corporate procedure, and making of interest free loans to self when the corporation borrowed with interest constituted oppression); White and P & W Oil Co. v. Perkins, 213 Va. 129, 189 S.E.2d 315 (1972) (defendant acted oppressively by refusing to pay dividends to plaintiff at great loss to plaintiff, removing plaintiff as

procedure occur when a court determines the existence of oppressive conduct without first supplying a general definition,[78] or when a court finds the behavior in question within the stipulated meaning of oppression but requires an accumulation of oppressive acts before granting dissolution.[79] Pursuant to the second method, a court will award dissolution on the basis of oppression when the actions of controlling shareholders thwart the reasonable expectations of minority shareholders.[80]

### *1. The Case by Case Method*

Courts have long struggled with defining the scope of oppression,[81] relying almost exclusively on a definition borrowed from English cases.[82] The English courts suggest that oppressive behavior[83] is "burdensome, harsh and wrongful," visibly departing from "standards of fair dealing" to the prejudice of the minority.[84] The Montana Supreme Court, in *Skierka v. Skierka Brothers*,[85] quoted the English definition[86] and reached its conclusion solely by comparing the facts of the case before it to the terms of the definition.[87] The *Skierka* court found that

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officer, and increasing number of board members to include defendant's wife, son, and attorney). *See infra* notes 81-108 and accompanying text.

78. *See infra* notes 89-92 and accompanying text.

79. *See infra* notes 93-108 and accompanying text.

80. *See infra* notes 109-33 and accompanying text.

81. *See generally* Pachman, *supra* note 5, at 326-30; Comment, *supra* note 73, at 130-41.

82. *See* Fix v. Fix Material Co., 538 S.W.2d 351, 358 (Mo. Ct. App. 1976); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 151-52, 400 A.2d 554, 559-60 (Law Div. 1979), *aff'd*, 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 34, 433 N.Y.S.2d 359, 365 (Sup. Ct., Special Term 1980); Baker v. Commercial Body Builders, Inc., 264 Or. 614, 628-29, 507 P.2d 387, 393-94 (1973); White and P & W Oil Co. v. Perkins, 213 Va. 129, 134, 189 S.E.2d 315, 319-20 (1972); Masinter v. Webco Co., 262 S.E.2d 433, 440 (W. Va. 1980). *See also* Jackson v. St. Regis Apartments, Inc., 565 S.W.2d 178, 183 (Mo. Ct. App. 1978).

83. Oppression is also a statutory ground warranting involuntary dissolution under The [British] Company Act of 1948, 11 & 12 Geo. 6, ch. 38, § 210.

84. Scottish Co-op v. Meyer [1958] 3 All. E.R. 66, 71 [H.L.]; Edler v. Edler [1952] Sess. Cas. 49, 55. The *Edler* court stated that oppression "involve[s] a viable departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely." *Id.* The court in *Scottish Co-op* later observed that oppression "suggests . . . a lack of probity and fair dealing in the affairs of a company to the prejudice of some portion of its members." Scottish Co-op v. Meyer [1958] 3 All. E.R. 66, 86 [H.L.].

85. __ Mont. __, 629 P.2d 214 (Mont. 1981).

86. *Id.* at __, 629 P.2d at 221. The *Skierka* court quoted the English definition as set forth in the Missouri case of Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976).

87. The *Skierka* court noted that it broadly construed oppression statutes for close corporations. Some controversy exists over whether dissolution statutes should be narrowly or broadly

although the defendant may have dealt fairly with the plaintiff, the effect of his actions was prejudicial. Focusing on the prejudicial effect, the court determined that the defendant acted oppressively when he excluded the plaintiff-widow of his deceased partner from all participation in corporate management and, when incorporating the former partnership, he fixed plaintiff's stock valuation at less than his own to assure himself a majority interest.[88]

Occasionally, a court will decide whether majority conduct is sufficiently oppressive without applying a specific standard or definition for oppression.[89] In *Baylor v. Beverly Book Co.*,[90] for example, the plaintiff asserted that the controlling shareholder failed to hold shareholder and director meetings, operated the corporation for his own benefit, and loaned corporate funds to himself without interest when the corporation was paying interest to its lenders. The Virginia Supreme Court remanded the case for a hearing on the merits,[91] holding that if the lower court found the plaintiff's assertions true, then dissolution was warranted on the ground of oppression.[92] The state supreme court, however, failed to provide the trial court with guidelines on which to bring the facts within the statutory ground.

Moreover, some courts that use the case by case method find the majority's acts oppressive but nevertheless hold that there is an insufficient basis for dissolving the corporation under an "oppression" statute.[93] Although the Illinois Supreme Court found no oppression in *Central Standard Life Insurance Co. v. Davis*,[94] the court paved the way for the adoption of a stricter standard for acquiring dissolution even where op-

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construed. *Compare* Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 36, 184 N.E.2d 792, 795 (1962) *with* Baylor v. Beverly Book Co., 216 Va. 22, 24, 216 S.E.2d 18, 19 (1975). *See infra* notes 164-65 and accompanying text.

88. __ Mont. at __, 629 P.2d at 220-22. The court remanded the case to the trial court to consider dissolution in light of other circumstances in the case.

89. *See, e.g.*, Lynch v. Buchanan, 37 Md. App. 413, 377 A.2d 592 (1977); O'Farrell v. Steel City Piping Co., 266 Pa. Super. Ct. 219, 403 A.2d 1319 (1978).

90. 216 Va. 22, 216 S.E.2d 18 (1975).

91. *Id.* at 24, 216 S.E.2d at 20. *Baylor* was before the Virginia Supreme Court on the question of whether the plaintiff was precluded from bringing dissolution proceedings because the defendant was willing to buy plaintiff's interest as provided in the corporate bylaws. The court held that he was not. *Id.*.

92. *Id.* at 23, 213 S.E.2d at 19.

93. *See, e.g.*, Alaska Plastics, Inc. v. Coppock, 621 P.2d 270 (Alaska 1980); Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976); Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973).

94. 10 Ill. 2d 566, 141 N.E.2d 45 (1957).

pressive conduct is evident. The *Central Standard Life* court stated that the term "oppressive," as provided in the dissolution statute, does not necessarily infer "imminent disaster." Rather, it may "contemplate a continuing course of conduct."[95] In subsequent decisions, the Illinois Supreme Court has relied heavily on its *Central Standard Life* characterization of oppression,[96] arguing that involuntary dissolution for oppression is justified only after the accumulation of oppressive acts over a period of time.[97]

In *Gidwitz v. Lanzit Corrugated Box Co.*,[98] for example, the corporate president, holder of a fifty percent interest in the corporation, remained in control of corporate management because the shareholders were unable to break the ten-year deadlock and elect new directors.[99] During those ten years the defendant-president held no annual stockholder meetings and ran the company virtually as sole proprietor, refusing to consult other directors. The court ignored the clear deadlock situation as a ground for dissolution,[100] basing its decision instead on the ground of oppression. The court held that the defendant's continuing control

95. *Id.* at 573, 141 N.E.2d at 50. For examples of other cases that adopted this language, see Notzke v. Art Gallery, Inc. 84 Ill. App. 3d 294, 298, 405 N.E.2d 839, 843 (1980); Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 499, 285 N.E.2d 574, 581 (1972); Ross v. 311 N. Cent. Ave. Bldg. Corp., 130 Ill. App. 2d 336, 348, 264 N.E.2d 406, 413 (1970); Gidwitz v. Lanzit Corrugated Box Co., 20 Ill. 2d 208, 214, 170 N.E.2d 131, 135 (1960); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 151, 400 A.2d 554, 559 (Law Div. 1979), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); White and P & W Oil Co. v. Perkins, 213 Va. 129, 134, 189 S.E.2d 315, 319 (1972). *See also* Fix v. Fix Material Co., 538 S.W.2d 351, 358 (Mo. Ct. App. 1976); Baker v. Commercial Body Builders, Inc., 254 Or. 614, 630, 507 P.2d 387, 394 (1973).

96. The *Central Standard Life* court also noted that majority actions need not be fraudulent or illegal to be oppressive. 10 Ill. 2d at 573-74, 141 N.E.2d at 50. *See also* Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 299, 405 N.E.2d 839, 843 (1980); Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 499, 285 N.E. 574, 581 (1972); Gidwitz v. Lanzit Corrugated Box Co., 20 Ill. 2d 208, 215, 170 N.E. 2d 131, 138 (1960); Jackson v. St. Regis Apartments, Inc., 565 S.W.2d 178, 183 (Mo. Ct. App. 1978); Fix v. Fix Materials Co., 538 S.W.2d 351, 358 (Mo. Ct. App. 1976); *In re* Application of Topper, 107 Misc. 2d 25, 34, 433 N.Y.S.2d 359, 365 (Sup. Ct., Special Term 1980); White and P & W Oil Co. v. Perkins, 213 Va. 129, 134, 189 S.E.2d 315, 319 (1972).

97. *See, e.g.,* Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 405 N.E.2d 839 (1980); Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 285 N.E.2d 574 (1972); Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 184 N.E.2d 792 (1962).

98. 20 Ill. 208, 170 N.E.2d 131 (1960). *See generally* 56 Nw. U.L. Rev. 525, 530-34 (1961); 74 Harv. L. Rev. 1461, 1461 (1961).

99. The two families in the close corporation each held 50% interest. The vote on every resolution was split.

100. For a discussion of deadlock as a ground for dissolution, see *supra* notes 64-68 and accompanying text.

was oppressive[101] because it deprived the other shareholders of their rights and privileges as fifty percent owners of the corporation. Finding no indication that the defendant's oppressive behavior would subside, the court ordered dissolution.[102]

Other jurisdictions have adopted Illinois' accumulation of oppressive acts standard, requiring more than a single showing of oppression to warrant dissolution.[103] In *Fix v. Fix Material Co.*,[104] the Missouri Court of Appeals reached a harsh result in its application of the standard. The *Fix* court held that the combination of twenty-year employment contracts and salary increases to the majority shareholders, along with heavy losses to the corporation and sale of corporate assets came "narrowly close" to the level of oppression required for dissolution. Although the behavior in question had occurred for nine years, the court denied relief. The court warned, however, that continuation of such conduct might lead to dissolution in a future action.[105]

The Oregon Supreme Court acknowledged an exception to the accumulation of oppressive acts standard in *Baker v. Commercial Body Builders, Inc.*[106] The court in *Baker* noted that a single oppressive act

101. The court stated that the defendant's behavior was "arbitrary and high-handed." 20 Ill. 2d 208, 220, 170 N.E.2d 131, 138 (1960). In two other Illinois cases the court found controlling shareholders' conduct oppressive, stating that it was "arbitrary, overbearing and heavy-handed." Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 299, 405 N.E.2d 839, 843 (1980); Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 499, 285 N.E.2d 574, 581 (1972).

102. 20 Ill. 2d 208, 220, 170 N.E.2d 131, 138 (1960). Two years later an Illinois court denied dissolution in Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 184 N.E.2d 792 (1962), finding the majority acts a "far cry" from the abuse and denial of rights in *Gidwitz*. *Id.* at 37, 184 N.E.2d at 796. The *Polikoff* court held that the defendant's decisions to limit advertising, increase salaries, and initiate a major rehabilitation project were exercises of business judgment and free from court interference, regardless of the dubious financial state of the business. *Id.* at 38, 184 N.E.2d at 796. *See generally infra* notes 179-84 and accompanying text. The court refused to grant dissolution even though the defendant breached his fiduciary duty to the corporation by causing it to borrow $60,000 from his wife, leaving her with a mortgage and the possibility of acquiring all corporate assets through foreclosure. The court held defendant's behavior to be an insufficient ground for granting dissolution. *Id.* *See generally* Comment, *supra* note 7, at 482-85. Furthermore, the court in *Polikoff* noted that when investors purchase stock in a corporation they implicitly agree to be bound by the acts of the majority of shareholders. *Polikoff*, 37 Ill. App. 2d at 35-36, 184 N.E.2d at 795 (quoting Wheeler v. Pullman Iron & Steel Co., 143 Ill. 197, 207, 32 N.E. 420, 4223 (1892)).

103. *See, e.g.*, Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973); O'Farrell v. Steel City Piping Co., 266 Pa. Super. Ct. 219, 403 A.2d 1319 (1978); White and P & W Oil Co. v. Perkins, 213 Va. 129, 189 S.E.2d 315 (1972).

104. 538 S.W.2d 351 (Mo. Ct. App. 1976).

105. *Id.* at 361.

106. 264 Or. 614, 507 P.2d 387 (1973). *See generally* Comment, *supra* note 7, at 486-88.

may be sufficient to warrant dissolution if the act is a serious breach of trust.[107] The court found that the controlling shareholders' refusal to allow minority shareholders to examine corporate records, in addition to their failure to notify the minority shareholders of corporate meetings, constituted oppressive behavior. The court denied dissolution, however, holding that such behavior was not serious enough to fall within the exception because it occurred for only one year with no indication that it would continue.[108]

### *2. The Reasonable Expectations Standard*

Under the reasonable expectations standard of review, courts find majority behavior oppressive if it is repugnant to the reasonable expectations of the minority.[109] The expectations of shareholders vary greatly between close and publicly held corporations.[110] The shareholder in a publicly held corporation is usually a passive investor, interested only in realizing a profit on his investment.[111] In contrast, the close corporation shareholder frequently expects to participate in management[112] or to derive income from the business as a corporate officer

107. *Id.* at 630, 507 P.2d at 394. *See also* 538 S.W.2d at 358 ("evidence of irreparable injury, imminent danger of loss or miscarriage of justice" may be sufficient to trigger the exception). *See generally* Pachman, *supra* note 5, at 327-28.

108. 264 Or. at 638, 507 P.2d at 397-98.

109. Professor O'Neal stated that "[m]any close corporations are companies based on personal relationships that give rise to expectations that the legislatures and court might well protect." O'Neal, *supra* note 2, at 885-88. *See generally* F. O'NEAL, *supra* note 6, § 7.15.

110. Alaska Plastics, Inc. v. Coppock, 621 P.2d 270, 273-74 (Alaska 1980); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 153, 400 A.2d 554, 560-61 (Law Div. 1979), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 35, 433 N.Y.S.2d 359, 365 (Sup. Ct., Special Term 1980). *See generally* Hetherington & Dooley, *supra* note 1, at 36.

111. Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 153, 400 A.2d 554, 560 (Law Div. 1979), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980).

112. *See* Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 405 N.E.2d 839 (1980) (plaintiff expected to manage corporation's cocktail lounge); Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 285 N.E.2d 574 (1972) (plaintiff expected to participate in management of corporation's real estate business); Gidwitz v. Lanzit Corrugated Box Co., 20 Ill. 2d 208, 170 N.E.2d 131 (1960) (holder of 50% of corporate stock expected to have say in corporate business); *In re* Hedberg-Friedheim & Co., 233 Minn. 435, 47 N.W.2d 424 (1951) (50% shareholder who had specific duties regarding the corporate business expected to have some input regarding management of business); Capital Toyota, Inc. v. Gervin, 381 So. 2d 1038 (Miss. 1980) (plaintiff expected to manage retail car dealership); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 400 A.2d 554 (Law Div. 1979) (plaintiff expected to gain experience as restaurant employee and later to participate in management of corportion's restaurant business), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 433 N.Y.S.2d 359 (Sup. Ct., Special Term 1980) (plaintiff-pharmacist expected employment and active management position after

or employee.[113] Unlike the shareholder in a publicly held corporation who rarely knows the identity of fellow investors, the close corporation shareholder generally expects to have immediate contact with fellow shareholders through common ownership and management. As a result, maintaining a trusting and loyal relationship among owners is important to the shareholders of the close corporation.[114]

In recent years, courts have recognized that corporate directors owe a fiduciary duty not only to the corporation[115] but to minority shareholders as well.[116] This duty grew out of the majority's inherent obligation

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buying into new drug store business with defendants). *But see* Ross v. 311 N. Cent. Ave. Bldg. Corp., 130 Ill. App. 2d 336, 264 N.E.2d 406 (1970) (plaintiff did not anticipate an active role in management); *In re* Villa Maria, Inc. v. Mondati, 312 N.W.2d 921 (Minn. 1981) (parties contemplated that defendant would actively manage building and operation of nursing home); Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976) (plaintiff took deceased husband's interest in corporation but did not actively participate in management of construction supply business). *See generally* Masinter v. Webco Co., 262 S.E.2d 433, 440-41 (W. Va. 1980); Comment, *supra* note 73, at 141.

113. *See, e.g.,* Stumpf v. C.S. Stumpf & Sons, Inc., 47 Cal. App. 3d 230, 120 Cal. Rptr. 671 (1975); Notzke v. Art Gallery, Inc., 84 Ill. App. 3d 294, 405 N.E.2d 839 (1980); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 400 A.2d 554 (Law Div. 1979), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 433 N.Y.S.2d 359 (Sup. Ct., Special Term 1980). See Donahue v. Rodd Electrotype Co., 367 Mass. 578, 328 N.E.2d 505 (1975). *See generally* Masinter v. Webco Co., 262 S.E.2d 433, 440-41 (W. Va. 1980); F. O'NEAL, *supra* note 6, § 7.15, at 526.

Some investors actually depend on their interest in a close corporation as "their sole source of employment and income as well as their major capital investment." Comment, *Relief to Oppressed Minorities in Close Corporations: Partnership Precepts and Related Considerations, supra* note 2, at 412. *See* Note, *supra* note 2, at 272.

114. *See* Hetherington & Dooley, *supra* note 1, at 2-3, 36; Leffler, *supra* note 9, at 255.

115. Corporate directors have always owed a fiduciary duty to the corporaton. H. HENN, LAW OF CORPORATIONS § 235 (2d ed. 1970). *See also* Johnston v. Livingston Nursing Home, Inc., 211 So. 2d 151, 156 (1968) (directors occupy "quasi fiduciary relation to the corporation"). Similarly, the members of a partnership have a fiduciary duty to their other partners. *Id.* § 22, at 54; R. SUGARMAN, SUGARMAN ON PARTNERSHIPS §§ 92-99, at 121-29 (4th ed. 1966).

116. *See, e.g.,* Alaska Plastics, Inc. v. Coppock, 621 P.2d 270, 276 (Alaska 1980); Wilkes v. Springside Nursing Home, Inc., 353 N.E.2d 657, 663 (Mass. 1976); Donahue v. Rodd Electrotype Co., 328 N.E.2d 505, 515 (Mass. 1975); Green v. National Advertising & Amusement Co., 137 Minn. 65, 69, 162 N.W. 1056, 1958 (1917); Delaney v. Georgia-Pacific Corp., 278 Or. 305, 311, 564 P.2d 277, 281 (1977); Zidell v. Zidell, 277 Or. 413, 418, 560 P.2d 1086, 1089 (1976); Masinter v. Webco Co., 262 S.E.2d 433, 440 (W. Va. 1980). *Cf.* Fix v. Fix Material Co., 538 S.W.2d 351, 358 (Mo. Ct. App. 1976) (majority shareholders not fiduciaries in strict sense but principles of fiduciary law useful in determining whether majority conduct warrants minority relief). *See generally* Carpenter & Vick, *Recent Developments in Missouri: Corporate Law—A Continuing Evolution,* 48 U.M.K.C. L. REV. 545, 584 (1980); Hornstein, *supra* note 2, at 278-79; Comment, *supra* note 73, at 132-33. The court in *Masinter v. Webco Co.* pointed out, however, that "[w]hile the existence of the fiduciary duty rule is widely acknowledged, it does not mean that the officers and directors are

to exercise good faith and fair dealing toward minority shareholders.[117] As courts began to recognize this general duty, several commentators asserted more specifically that the majority's frustration of a minority shareholder's opportunity to achieve his reasonable expectations in a close corporation constitutes a breach of trust. They argued that if this breach of trust is severe, it will constitute oppression, thereby giving rise to a cause of action for dissolution.[118]

Only recently have courts begun to follow the recommendation of these commentators by adopting the reasonable expectations test[119] for determining oppression of minority shareholders.[120] For example, the New York County Supreme Court, Special Term, used the reasonable expectations test to dissolve a corporation in *In re Application of Topper*.[121] The plaintiff in *Topper* left his job of twenty-five years and

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not accorded a rather broad latitude in the conduct of corporate affairs." Masinter v. Webco Co., 262 S.E.2d 433, 438 (W. Va. 1980) (footnotes omitted).

117. Masinter v. Webco Co., 262 S.E.2d 433, 438 (W. Va. 1980).

118. *See, e.g.*, Afterman, *Statutory Protection for Oppressed Minority Shareholders: A Model for Reform*, 55 VA. L. REV. 1043, 1063-66 (1969); O'Neal, *supra* note 2, at 885-88; Comment, *supra* note 113, at 422; Comment, *supra* note 73, at 141.

119. Professor O'Neal states the underlying principle of the reasonable expectations test as follows:

> [I]n a corporation based on a personal relationship a court should give relief, dissolution or some other remedy, to a minority shareholder whenever corporate managers or controlling shareholders act in a way that disappoints the minority shareholder's reasonable expectations, even though the acts of the managers or controlling shareholders fall within the literal scope of powers or rights granted them by the corporation act or the corporation's charter or bylaws.

F. O'NEAL, *supra* note 6, § 7.15, at 525.

Courts that apply the reasonable expectations test must examine the original understanding between the parties to determine what each party expected—and knew the other to expect—from its relationship with the corporation. Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 155, 400 A.2d 554, 561 (Law Div. 1979), *aff'd*, 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 35, 433 N.Y.S.2d 359, 366 (Sup. Ct., Special Term 1980). *But see infra* note 131 (court should examine whole history of relationship of parties). *See generally* F. O'NEAL, *supra* note 6, § 7.15.

120. *See, e.g.*, Capital Toyota, Inc. v. Gervin, 381 So. 2d 1038 (Miss. 1980); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 400 A.2d 554 (Law Div. 1979), *aff'd*, 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 433 N.Y.S.2d 359 (Sup. Ct., Special Term 1980); Masinter v. Webco Co., 262 S.E.2d 433 (W. Va. 1980). *See generally* Comment, *supra* note 7, at 480.

When controlling shareholders deny plaintiff his reasonable expectations with a legitimate business purpose, courts find no breach of fiduciary duty. *See* Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 400 A.2d 554 (Law. Div. 1979) (no breach of fiduciary duty when majority shareholders discharged plaintiff whose work was dissatisfactory), *aff'd*, 173 N.J. Super. 559 (App. Div. 1980). For a discussion of *Exadaktilos*, see *supra* notes 125-26 and accompanying text.

121. 107 Misc. 2d 25, 433 N.Y.S.2d 359 (Sup. Ct., Special Term 1980). The court in Masinter

traveled from Florida to New York to enter into business with defendants, investing his life savings in the new venture. The defendants were fully aware that the plaintiff expected to continue as an active participant in the business. The court held that by discharging the plaintiff as a corporate employee and officer, terminating his salary, and changing office locks to prevent the plaintiff from participating in the management, the majority shareholders had caused severe damage to the plaintiff's reasonable expectations.[122] Finding the effect oppressive, the *Topper* court stated that it would not inquire whether the defendants acted in good business judgment[123] or for cause.[124]

The New Jersey Superior Court, in *Exadaktilos v. Cinnaminson Realty Co.*,[125] limited the scope of the reasonable expectations test by refusing to award dissolution when the close corporation minority shareholder's reasonable expectations were thwarted through his own conduct. The court found that the plaintiff's understanding that he would someday participate in managing the company restaurant was defeated because he failed to learn the business. The court held that plaintiff's discharge from employment constituted a legitimate business purpose and was therefore not oppressive.[126]

In *Capital Toyota v. Gerwin*,[127] the Mississippi Supreme Court adopted a stricter version of the reasonable expectations test. The court

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v. Webco, 262 S.E.2d 433, 441-43 (W. Va. 1980), discussed the reasonable expectations test in a manner consistent with the application of the test in *Topper*. Because of insufficient facts, however, the *Masinter* court failed to decide the case on its merits.

122. 107 Misc. 2d at 26-27, 433 N.Y.S.2d at 361-62.

123. *See generally infra* notes 179-84 and accompanying text.

124. 107 Misc. 2d at 28, 433 N.Y.S.2d at 362. The *Topper* court found Professor O'Neal's comments on the reasonable expectations test particularly helpful. In his treatise on minority oppression, O'Neal posited a hypothetical situation almost identical to the *Topper* facts:

> If a person gives up employment . . . to "go in business for himself" and . . . buys a minority interest in a close corporation . . . in which [he] contemplate[s] that each one of the shareholders will be an officer or key employee and share in the control . . . , obviously it is unjust to permit majority shareholders to oust the minority shareholder from the directorate and cause the corporation to discharge him from employment, especially if the corporation is paying no dividends, as is usually the case.

F. O'NEAL, *supra* note 6, § 7.15, at 526.

125. 167 N.J. Super. 141, 400 A.2d 554 (Law Div. 1979), *aff'd*, 173 N.J. Super. 559 (App. Div. 1980). *Exadaktilos* was based on the class of statutes discussed in Part II(C) of this Note rather than statutes in Part II(B) that use the language of MBCA. Like the MBCA, however, the New Jersey statute in *Exadaktilos* includes oppression as a ground for involuntary dissolution.

126. *Id.* at 155-56, 400 A.2d at 561-62. The *Exadaktilos* court noted that the business judgment rule should not always apply because the rule too frequently allows majority shareholders to abuse their authority at the expense of minority shareholders. *Id.* at 154, 400 A.2d at 561.

127. 381 So. 2d 1038 (Miss. 1980).

required that before it could grant dissolution, minority expectations must be "grossly" thwarted.[128] The court held that discharging the minority shareholder for inadequate performance as corporate general manager did not justify dissolution on the ground of oppression, even though the incorporation agreement specified that he would manage the business.[129]

Courts generally do not require that the reasonable expectations be in writing. Although the Mississippi court in *Capital Toyota* relied on the shareholders' written agreement to establish the parties' reasonable expectations, it did not mandate such evidence.[130] Similarly, the decisions in *Exadaktilos* and *Topper* reveal a judicial willingness to determine the reasonable expectations of shareholders without evidence of a written agreement between the parties.[131] The *Exadaktilos* court inferred shareholder expectations from their conduct.[132] In *Topper*, the court went one step further by stating specifically that a written agreement was not necessary to prove reasonable expectations.[133]

### C. *Statutory Dissolution for Specific Acts of Mistreatment Toward Minority Shareholders*

The final category of state dissolution statutes is more expansive than the current MBCA[134] in protecting mistreated minority shareholders. Three of the five statutes in this category retain oppression as a ground for dissolving corporations,[135] and all five statutes provide additional, more specific grounds[136] upon which dissolution may be ordered.[137]

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128. *Id.* at 1039. In arriving at its conclusion, the court in *Capitol Toyota* relied heavily on the decision in *Exadaktilos*.

129. The court stated that plaintiff's performance as a manager was "reasonably good, but not outstanding." *Id.* at 1939. *See id.* n.1 for further detail on plaintiff's management performance.

130. 381 So. 2d at 1038.

131. Professor O'Neal recommends that courts "put primary emphasis on expectations generated by the participants' original business bargain . . . . However, . . . a court should examine the whole history of the participant's relationship as expectations alter and new expectations develop over the course of the participants' cooperative efforts in operating the business." F. O'NEAL, *supra* note 6, § 7.15, at 527.

132. 167 N.J. Super. at 155-56, 400 A.2d at 561-62.

133. 107 Misc. 2d at 27, 433 N.Y.S.2d at 362.

134. *See supra* note 70, at § 97(a)(2).

135. *See* MICH. STAT. ANN. § 21.200(825)(1) (1974) ("wilfully unfair and oppressive"); N.J. STAT. ANN. § 14A:12-7(1)(c) (West. Cum. Supp. 1981-82) ("acted oppressively or unfairly"); S.C. CODE § 33-21-150(a)(4)(B) (Cum. Supp. 1981-82) ("oppressive or unfairly prejudicial").

136. California provides for involuntary dissolution when:

(4) Those in control of the corporation have been guilty of or have knowingly counte-

Most of these specific statutory grounds for involuntary dissolution are common to two or more statutes.[138] "Unfairness" toward minority shareholders is the only ground for dissolution shared by all five statutes.[139] No jurisdiction, however, has yet developed a standard for determining what constitutes an unfair act.[140]

The California, Minnesota, and Michigan dissolution statutes qual-

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nanced persistent and pervasive fraud, mismanagement or abuse of authority or persistent unfairness toward any shareholders . . . .

(5) In the case of any corporation with 35 or fewer shareholders . . . , liquidation is reasonably necessary for the protection of the rights and interests of the complaining shareholder.

CAL. CORP. CODE § 1800(b)(4), (5) (Deering 1977).

The Michigan statute allows dissolution when "the acts of . . . those in control of the corporaton are illegal, fraudulent or wilfully unfair and oppressive to the . . . [complaining] shareholder." MICH. STAT. ANN. § 21.200(825)(1) (1974).

Minnesota provides for involuntary dissolution when "[t]he directors or those in control of the corporation have acted fraudulently, illegally, or in a manner persistently unfair toward one or more minority shareholders." MINN. STAT. ANN. § 302 A.751(b)(2) (West Supp. 1981).

The New Jersey involuntary dissolution statute provides for liquidation when:

in the case of a corporation having 25 or less shareholders, the directors or those in control have acted fraudulently or illegally, mismanaged the corporation, or abused their authority as officers or directors or have acted oppressively or unfairly toward one of more minority shareholders in their capacities as shareholders, directors, officers, or employees.

N.J. STAT. ANN. § 14A:12-7(1)(c) (West Cum. Supp. 1981-82).

South Carolina provides for involuntary dissolution when "[t]he acts of the directors or those in control of the corporation . . . are oppressive or unfairly prejudicial either to the corporation or to any shareholder whether in his capacity as a shareholder, director, or officer of the corporation. S.C. CODE § 33-21-150(a)(4)(B) (Cum. Supp. 1981).

137. California provides minority shareholder relief on broad as well as specific grounds, granting dissolution when "reasonably necessary for the protection of rights and interests of the complaining shareholder." CAL. CORP. CODE § 1800(b)(5) (Deering 1977). *See also* N.C. GEN. STAT. § 55-125(a)(4) (1975) (dissolution statute has broad provision for protection of minority shareholders, but no provision for specific acts). *But see supra* note 59 and accompanying text (dissolution statutes providing protection for shareholders as a whole, not just minority shareholders).

138. Two statutes, however, provide grounds unique in their state. *See* CAL. CORP. CODE § 1800(b)(5) (Deering 1977) ("reasonably necessary for the protection of the rights and interests of the complaining shareholder"); S.C. CODE § 33-21-150(a)(4)(B) (Cum. Supp. 1981) ("unfairly prejudicial").

139. *See* CAL. CORP. CODE § 1800(b)(4) (Deering 1977) ("persistent and pervasive . . . abuse of authority or persistent unfairness"); MICH. STAT. ANN. § 21.200(825)(1) (1974) ("willfully unfair and oppressive"); MINN. STAT. ANN. § 302A.751(b)(2) (West Supp. 1981) ("in a manner persistently unfair"); N.J. STAT. ANN. § 14A:12-7(1)(c) (West Cum. Supp. 1981-82) ("abused authority . . . or . . . acted oppressively or unfair"); S.C. CODE § 33-21-150(a)(4)(B) (Cum. Supp. 1981-82) ("oppressive or unfairly prejudicial").

140. One New Jersey court noted that there was also no legislative indication of what constitutes unfairness. Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 150, 400 A.2d 554, 560 (Law Div. 1979), *aff'd*, 173 N.J. Super. 559 (App. Div. 1980).

ify their unfairness provisions. The Michigan statute, for example, grants dissolution only when the conduct of majority shareholders is "wilfully unfair."[141] Michigan courts, however, have not yet considered a dissolution suit based on a charge of willful unfairness.[142] Both California and Minnesota permit corporate dissolution for "persistent unfairness" by controlling shareholders.[143] In *Buss v. Martin Co.*,[144] the California District Court of Appeals defined "persistent" as denoting a course of action that continues despite opposition.[145] The *Buss* court granted dissolution, holding that the majority stockholder acted with persistent unfairness[146] by providing himself with an excessive salary, by refusing plaintiffs access to corporate books, records, and property,

141. *See supra* note 136 for the language of MICH. STAT. ANN. § 21.200(825)(1) (1974).

142. Although the plaintiff in Barnett v. International Tennis Corp., 80 Mich. App. 396, 263 N.W.2d 908 (1978), sought dissolution on the grounds of wilful unfairness and oppression, the court denied dissolution without considering these grounds. Instead, the *Barnett* court stated that the test was whether continuation of the same management would cause inevitable ruin. *Id.* at 417, 263 N.W.2d at 918.

143. The New Jersey legislature recognized that "California and Minnesota add[ed] the concept of abuse of authority and unfairness toward minority shareholders [to the MBCA]." N.J. STAT. ANN. § 14A-12-7, comment (West Cum. Supp. 1981-82).

144. 241 Cal. App. 2d 123, 50 Cal. Rptr. 206 (1966).

145. *Id.* at 134, 50 Cal. Rptr. at 214. The *Buss* court relied on the dictionary definition of persistent: "continuing in a course of action without regard to opposition or previous failure; tenacious of position or purpose: inclined to persist . . . existing for a long or longer than usual time or continuously: ENDURING, LINGERING." *Id.* at 134, 50 Cal. Rptr. at 214 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY).

146. The court in *Buss* based its decision on CAL. CORP. CODE § 4651(e), (f) (1955) (current version at CAL. CORP. CODE § 1800(b)(4), (5) (Deering 1977), which provides for dissolution when "[t]he directors or those in control of the corporation have been guilty of persistent fraud, mismanagement, or abuse of authority, or persistent unfairness toward minority shareholders . . . ." *Id.* For the language of the current version of the same provisions, see *supra* note 136. The current version retains the ground of "persistent unfairness" as a basis for granting involuntary dissolution. Since the effective date of the statutory revision, however, no California case has been decided on that ground. *See* Stumpf v. C.S. Stumpf & Sons, 47 Cal. App. 3d 230, 234, 120 Cal. Rptr. 671, 673 (1975) (court of appeals noted that lower court "specifically found that there had been no . . . unfairness").

Similarly, no Minnesota court has dissolved a corporation on the "persistent unfairness" ground, even though the provision has withstood an amendment. *See generally* MINN. STAT. ANN. § 301.49(b)(3) (repealed 1981, effective Jan. 1, 1984) (current version at MINN. STAT. ANN. § 302A.75(b)(2) (West Supp. 1981)). When the Minnesota Supreme Court recently dissolved a corporation on the statutory ground of abuse of authority by the controlling shareholder, the court stated that it was unnecessary to decide whether the defendant's behavior was also persistently unfair. *See In re* Villa Maria, Inc. v. Mondati, 312 N.W.2d 921, 923 (Minn. 1981). The new Minnesota involuntary dissolution statute, MINN. STAT. ANN. § 302A.75 (West Supp. 1981), no longer includes "abuse of authority" as a ground for dissolution.

and by causing the corporate business to deteriorate[147] to the detriment of minority shareholders.[148]

The South Carolina statute represents another variation on the unfairness ground,[149] granting courts the right to dissolve corporations on a showing of "unfairly prejudicial" acts by majority shareholders.[150] South Carolina courts, deciding what acts fall within this provision according to the facts of each case, have not yet developed a working definition of the statutory language.[151]

Two of the five states in this category, California and New Jersey, allow involuntary dissolution on a showing of "abuse of authority" by controlling shareholders.[152] Minnesota had included abuse of authority as a ground for dissolution until the Minnesota Business Corporation Act of 1981 took effect.[153] Although neither California nor New Jersey have decided a dissolution suit on the basis of the majority's abuse of authority,[154] the Minnesota Supreme Court, in *Villa Maria, Inc. v. Mondati*,[155] dissolved a corporation on that ground six months

147. The court in *Buss* found that the defendant lost steady customers and key employees by his offensive behavior. 241 Cal. App. 2d at 135, 50 Cal. Rptr. at 214.

148. *Id.* Although *Buss* was decided on statutory grounds, the actions of the defendant in running the corporation for his own benefit are similar to those which have given rise to a cause of action in equity. *See supra* notes 41-45 and accompanying text.

149. For the language of the South Carolina statute, see *supra* note 136.

150. *Id.* New Jersey specifies that a court should consider injury to the petitioner "whether [sustained] in his capacity as a shareholder, director, or officer of the corporation." S.C. CODE § 33-21-150(a)(4)(B) (Cum. Supp. 1981). Similarly, New Jersey considers mistreatment to "minority shareholders in their capacities as shareholders, directors, officers, or employees." N.J. STAT. ANN. § 14A:12-7(1)(c) (West Cum. Supp. 1981-82). *See generally* Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 153, 400 A.2d 554, 560 (Law. Div. 1979), *aff'd*, 173 N.J. Super. 559 (App. Div. 1980); N.J. STAT. ANN. § 14A:12-7(1)(c), comment (West Cum. Supp. 1981-82).

151. *See, e.g.*, Segall v. Shore, 269 S.C. 31, 236 S.E.2d 316 (1977) (court provided no rationale in holding that by withdrawing over one million dollars from the corporation for their own use, the controlling shareholders not only misapplied corporate assets but also "have acted oppressively and unfairly to the interests of the plaintiffs and to their prejudice"). *Id.* at 37, 236 S.E.2d at 318.

152. *See* CAL. CORP. CODE § 1800(b)(4) (Deering 1977); N.J. STAT. ANN. § 14A:12-7(1)(c) (West Cum. Supp. 1981-82). For the language of the California and New Jersey statutes, see *supra* note 136.

153. *See* MINN. STAT. ANN. § 301.40(3) (repealed 1981, effective Jan. 1, 1984) (current version at § 302A.751(b)(2) (West Supp. 1981)). *See supra* note 136 for Minnesota's new statutory language.

154. The court in *Exadaktilos* decided the case on grounds of oppression but noted that "freeze out maneuvers in close corporations constitute an abuse of corporate power." 167 N.J. Super. 141, 154, 400 A.2d 554, 561 (Law Div. 1979), *aff'd*, 173 N.J. Super. 559 (App. Div. 1980).

155. 312 N.W.2d 921 (Minn. 1981).

before the new Minnesota Act abolished it.

The *Villa Maria* court found that the defendant had caused the corporation to do business with another corporation owned solely by the defendant without acquiring the consent of the other shareholder or providing him with notice. Because the controlling shareholder ran the corporate business for his own benefit, without regard for the other shareholder's substantial financial interest in the company, the court held that his conduct was "tantamount to an abuse of authority."[156]

## III. Consideration of Present Obstacles in Acquiring Involuntary Dissolution

Although all states presently have involuntary dissolution statutes,[157] some of these statutes provide minority shareholders with insufficient grounds for acquiring dissolution for mistreatment by controlling shareholders.[158] While such minority shareholders potentially have a remedy at law, the limited scope of the legislation offers them little hope of bringing their claims within the statutory terms.[159]

Most dissolution statutes, however, provide adequate grounds for obtaining relief.[160] Furthermore, most minority shareholders may assert an equitable remedy,[161] notwithstanding the provisions of their particular state's legislation.[162] Whether they seek relief in equity or at law, however, judicial reluctance to dissolve corporations inevitably presents a great obstacle to minority shareholders.[163]

Judicial reluctance is most formidable, however, when courts interpret and apply involuntary dissolution statutes. Although some courts liberally construe dissolution statutes, finding them remedial in nature,[164] most dissolve corporations only if the alleged grounds fall

156. *Id.* at 922.

157. *See supra* notes 57, 72 & 136 and accompanying text.

158. *See supra* notes 57-58 and accompanying text.

159. *See, e.g., supra* text accompanying notes 66-68.

160. *See supra* notes 69-156 and accompanying text.

161. *See supra* notes 26-56 and accompanying text.

162. The Pennsylvania legislature noted that the state involuntary dissolution statute did not limit the existing equity power of the courts. PA. CONS. STAT. ANN. § 2107 A(2), comment, at 623 (Purdon 1967).

163. *See supra* note 22.

164. *See, e.g.,* Baylor v. Beverly Book Co., 216 Va. 22, 24, 216 S.E.2d 18, 19 (1975). *Cf.* Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 41, 184 N.E.2d 792, 797 (1962) (Burman, J., dissenting) (courts should broadly construe statute when misconduct involves the corporation's sole asset); Skierka v. Skierka Bros., __ Mont. __, __, 629 P.2d 214, 221 (1981) (interprets statutory

within the narrow statutory terms.[165] Furthermore, while dissolution statutes grant courts full power to dissolve a corporation in certain circumstances, they do not mandate the exercise of that power.[166] Thus, many courts use their discretion to deny dissolution even where it is permitted explicitly by statute.[167]

There are four policy rationales that courts implicitly or explicitly assert as justification for their reluctance to grant involuntary dissolution in minority shareholder suits.[168] Each of these rationales falters under close scrutiny. First, courts reason that it is not their role to extinguish legislatively created entities.[169] Every state legislature, however, through the enactment of involuntary dissolution statutes,[170] has granted its courts full power to dissolve corporations. By strictly applying the dissolution statutes, courts have failed to effectuate the legislative intent that corporate entities be extinguished in certain instances. Furthermore, courts have an inherent power in equity to provide fair results within the spirit of the law. When courts refuse to dissolve a

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ground of oppression broadly when applied to close corporations); White and P & W Oil Co. v. Perkins, 213 Va. 129, 135, 189 S.E.2d 315, 320 (1972) (although court should broadly construe statute, alternate remedies are available). *See supra* note 81 and accompanying text. *See also* Henry George & Sons v. Cooper-George, Inc., 632 P.2d 512, 517 (Wash. 1981) (quoting 16A W. FLETCHER, PRIVATE CORPORATIONS § 8034.1 (1979) (courts should construe and apply statutes according to equitable principles).

165. *See, e.g.,* Streb v. Abramson-Caro Clinic, 401 So. 2d 410, 414 (La. Ct. App. 1981) (Louisiana dissolution statute provides specific and limited grounds for dissolution and that an alleged breach of fiduciary duty is insufficient to warrant dissolution under the Louisiana statute); Turner v. Flynn & Emrich Co., 269 Md. 407, 410, 306 A.2d 218, 219 (1973) (refused to extend terms of statute that provided the dissolution remedy to holders of shares to income beneficiaries of testamentary trust).

166. *See supra* note 23.

167. *See, e.g.,* Alaska Plastics, Inc. v. Coppock, 621 P.2d 270, 274 (Alaska 1980). *See also supra* text accompanying notes 103-08.

168. For examples of cases in which the court implicitly relied on a policy argument in denying dissolution, see Polikoff v. Dole & Clark Corp., 37 Ill. App. 2d 29, 184 N.E.2d 792 (1962) (majority rule); Gruenberg v. Goldmine Plantation, Inc., 360 So. 2d 884 (La. Ct. App. 1978) (business judgment rule and preservation of legislatively created entity); *In re* Radom & Neideroff, Inc., 307 N.Y. 1, 119 N.E.2d 563 (1954) (avoidance of injury to public). *See generally infra* text accompanying notes 168-87. For examples of cases in which the court explicitly asserted a policy rationale as justification for denying dissolution, see cases cited *infra* notes 169, 174, 179, 182 & 185-86.

169. *See* Alkire v. Interstate Theatres corp., 379 F. Supp. 1210, 1214 (D.C. Mass. 1974); Callier v. Callier, 61 Ill. App. 3d 1011, 1013, 378 N.E.2d 405, 408 (1978); Feess v. Mechanics' State Bank, 84 Kan. 828, 834-35, 115 P. 563, 565-66 (1911). *See generally* Comment, *Dissolution at Suit of a Minority Stockholder,* 41 MICH. L. REV. 714, 714 (1943).

170. *See supra* notes 57, 72 & 136 and accompanying text. *But cf. supra* note 21 (some legislation provides for involuntary dissolution only when other remedies are unavailable).

corporation even to achieve fairness, they avoid their responsibilities, and defeat the purposes of equity. Finally, judicial reluctance to disturb legislatively created entities for minority mistreatment[171] or deadlock[172] seems misplaced when state officials readily terminate corporations for failure to comply with simple legal formalities.[173]

A second rationale that courts commonly assert in denying dissolution stems from the corporate doctrine of majority rule.[174] This doctrine provides that an investor impliedly consents to corporate policies as determined by the majority.[175] A shareholder's right is generally proportionate to his interest in the corporation. By purchasing less than a majority interest, a shareholder arguably waives his right to assert a claim of dissatisfaction with majority management. Nevertheless, while a minority shareholder may consent to majority rule, he does not thereby agree to become the subject of abuse. A minority shareholder reasonably expects the person to whom he entrusts his money to treat him fairly,[176] whether out of an inherent sense of obligation or because of a legally imposed fiduciary duty.[177] Because the principle of majority rule assumes that minority shareholders implicitly surrender control of their investments to the majority, the rule conflicts with the realities of close corporations, in which most shareholders expect to participate in corporate management.[178]

A third explanation that courts offer for their reluctance to dissolve

171. *See, e.g.,* Capital Toyota v. Gerwin, 381 So. 2d 1038 (Miss. 1980) (court denied dissolution even though defendant discharged plaintiff in violation of incorporation agreement); Fix v. Fix Material Co., 538 S.W.2d 351 (Mo. Ct. App. 1976) (court denied dissolution but warned that if defendant's oppressive conduct continued plaintiff might obtain relief in future); Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973) (although court found that defendant acted oppressively it denied dissolution because no indication that conduct would continue).

172. *See, e.g., In re* Radom & Neideroff, Inc., 307 N.Y. 1, 119 N.E.2d 563 (1954).

173. *See supra* note 10. *See also* Stumpf v. C.S. Stumpf & Sons, 47 Cal. App. 3d 230, 235, 120 Cal. Rptr. 671, 674 (1975); Hornstein, *supra* note 8, at 245.

174. *See, e.g.,* Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 35-36, 184 N.E.2d 792, 795 (1962); Central Standard Life Ins. Co. v. Davis, 10 Ill. App. 2d 245, 250, 134 N.E.2d 653, 656 (1956), *aff'd,* 10 Ill. 2d 566, 141 N.E.2d 45 (1957).

175. Gidwitz v. Lanzit Corrugated Box Co., 20 Ill. 2d 208, 215, 170 N.E.2d 131, 135. *See generally* O'Neal, *supra* note 2, at 884; Note, *Minority Dissolution of the Close Corporation,* 35 GEO. WASH. L. REV. 1068, 1068 (1967); Note, *Standards of Management Conduct in Close Corporations: A Transactional Approach,* 33 STAN. L. REV. 1141, 1146 (1981); Comment, *supra* note 7, at 492-93.

176. *See supra* note 114 and accompanying text.

177. *See supra* notes 115-16 and accompanying text.

178. *See supra* notes 112-13 and accompanying text. *See generally* F. O'NEAL, *supra* note 6, § 9.04, at 582-83.

corporations is that management decisions are traditionally protected by the business judgment rule, which affords corporate management wide discretion in decisionmaking.[179] Embodying the presumption that controlling shareholders act in the best interest of the corporation,[180] the business judgment rule[181] protects management from harrassment by discontented shareholders and from undue interference by the judiciary.[182] By deferring to the judgment of controlling shareholders, however, courts often fail to restrain abuse of power by the majority.[183] Moreover, although courts may not be qualified to consider the propriety of the complex business decisions of publicly held corporate directors, decisions facing close corporation directors are usually well within the scope of judicial understanding.[184]

A final rationale offered by courts for their unwillingness to grant

179. *See, e.g.,* Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 35-36, 184 N.E.2d 792, 795 (1962) *See generally* F. O'NEAL, *supra* note 2, § 3.03, at 59.

180. The court in Maldonado v. Flynn, 413 A.2d 1251 (Del. Ch. 1980), *rev'd sub nom.* Zapata Corp. v. Maldonado, 430 A.2d 779 (Del. Sup. 1981) stated that "the business judgment rule protects the directors from liability by a presumption that the decision is proper." *Id.* at 1255.

181. *See generally* Arsht, *The Business Judgment Rule Revisited,* 8 HOFSTRA L. REV. 93 (1979); Block & Prussin, *The Business Judgment Rule and Shareholder Derivative Actions: Viva* Zapata*?,* 37 BUS. LAW. 27 (1981); Brown & Phillips, *The Business Judgment Rule:* Burks v. Lasker *and Other Recent Developments,* 6 J. CORP. LAW 453 (1981); Note, *The Business Judgment Rule in Derivative Suits Against Directors,* 65 CORNELL L. REV. 600 (1980); Note, *The Continuing Viability of the Business Judgment Rule as a Guide for Judicial Restraint,* 35 GEO. WASH. L. REV. 562 (1967); Note, *Standards of Management Conduct in Close Corporations: A Transactional Approach,* 33 STAN. L. REV. 1141 (1981); Note, *The Business Judgment Rule in Derivative Suits Against Directors,* 6 U. DAYTON L. REV. 263 (1981); Comment, *supra* note 7; Comment, *The Business Judgment Rule: A Guide to Corporate Directors' Liability,* 7 ST. LOUIS U.L.J. 151 (1962); 38 LA. L. REV. 214 (1977); 25 VILL. L. REV. 551 (1979-80).

182. Johnston v. Livingstone Nursing Home, Inc., 211 So. 2d 151, 155 (Ala. 1968); Alaska Plastics, Inc. v. Coppock, 621 P.2d 270, 278 (Alaska 1980); Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 38, 184 N.E.2d 792, 795 (1962); Lakeland Dev. Corp. v. Anderson, 277 Minn. 432, 445, 152 N.W.2d 758, 767 (1967); Jackson v. St. Regis Apartments, Inc., 565 S.W.2d 178, 182 (Mo. Ct. App. 1978); Horne v. Radiological Health Services, Inc., 83 Misc. 2d 446, 451, 371 N.Y.S.2d 948, 957 (N.Y. Sup. Ct. 1975), *aff'd mem.,* 51 App. Div. 2d 544, 379 N.Y.S.2d 374 (1976). *But see, e.g.,* Gray v. Hall, 10 Ill. App. 3d 1030, 1034, 295 N.E.2d 506, 509 (1973) (questions continued validity of business judgment rule in Illinois in certain instances); Wilkes v. Springside Nursing Home, Inc., 353 N.E.2d 657, 662 (Mass. 1976) (court willing to substitute its judgment for judgment of corporate managers); Exadaktilos v. Cinnaminson Realty Co., 167 N.J. Super. 141, 154, 400 A.2d 554, 561 (Law Div. 1979) (majority freeze-out maneuvers cannot be immune from scrutiny under the business judgment rule), *aff'd,* 173 N.J. Super. 559 (App. Div. 1980); *In re* Application of Topper, 107 Misc. 2d 25, 433 N.Y.S.2d 359, 362 (Sup. Ct., Special Term 1980) (court disregarded whether discharge of plaintiff from employment was good business judgment).

183. *See supra* note 126.

184. *See* F. O'NEAL, *supra* note 6, § 9.04, at 584. *See generally id.*, § 9.04.

dissolution is that the remedy may have adverse effects on the community, eliminating corporate jobs and depriving consumers of essential goods and services.[185] A dissolution order, however, does not necessarily result in liquidation of the corporate business. A shareholder or third party may purchase the entire business, leaving little or no interruption in business operations.[186] Furthermore, public policy demands minority shareholder protection to encourage the growth of new business.[187] Prospective investors may choose not to invest in a close corporation that might have provided the community with new jobs, goods, and services rather than risk becoming locked in without recourse against possible majority mistreatment.

Thus, none of the judicial rationales for reluctance to involuntarily dissolve corporations withstands close analysis. Similarly, the standards that courts presently employ in determining whether to grant dissolution are often inadequate or misapplied. For instance, in applying the case by case method,[188] courts tend to curtail the effectiveness of the

185. *See, e.g.,* Belcher v. Birmingham Trust Nat'l Bank, 348 F. Supp. 61, 152 (N.D. Ala. 1968); Jackson v. Nicolai-Neppach Co., 219 Or. 560, 586, 348 P.2d 9, 22 (1959); Henry George & Sons v. Cooper-George, Inc., 632 P.2d 512, 515 (Wash. 1981).

Courts are especially reluctant to dissolve profitable corporations. *See* Johnston v. Livingston Nursing Home, Inc., 211 So. 2d 151, 155 (Ala. 1968); Theodora Holding Corp. v. Henderson, 257 A.2d 398, 406 (Del. Ch. 1969); Lakeland Dev. Corp. v. Anderson, 277 Minn. 432, 445, 152 N.W.2d 758, 767 (1967). *But see* Kruger v. Gerth, 22 A.D.2d 916, 917, 255 N.Y.S.2d 498, 500 (1964) (court denied dissolution in equity because no showing of bad faith even though corporation operated without a profit), *aff'd mem.,* 16 N.Y.2d 802, 210 N.E.2d 355, 263 N.Y.S.2d 1 (N.Y. 1965).

Two commentators observed that courts perceive public interest as dictating their reluctance to dissolve solvent or profitable corporations. Hetherington & Dooley, *supra* note 1, at 27. Professors Hetherington and Dooley, however, suggest that this reasoning is faulty because the practical effect of a dissolution order does not usually result in the termination of an ongoing business. To the contrary, one of the parties to the suit usually buys out the other and continues business after dissolution of the corporate entity. *See id.* at 28, 32-33, 65-75 app.

The Rhode Island legislature guarded against judicial reluctance to involuntarily dissolve a profitable corporation by specifying that courts could dissolve a corporation in a minority shareholder's action "whether or not the corporate business has been or could be operated at a profit." R.I. GEN. LAWS § 7-1.1-90(a)(2) (1969).

186. *See supra* note 18.

187. Professor Hornstein encouraged dissolution for the public benefit in some instances. He stated:

> Not only private rights and elemental principles of contract, but also the economic health of the country and consequently the public interest call for the winding-up of a corporation when it is just and equitable. It may be anticipated that, with the separation of corporate ownership from control, the need for this remedy will become greater, both as a matter of immediate justice and as a deterrent to others.

Hornstein, *supra* note 8, at 249.

188. *See supra* notes 81-108 and accompanying text.

well-established ground of oppression, which potentially allows dissolution for a wide range of majority acts.[189] A case by case analysis of oppression leads to vague and inconsistent results, providing the minority shareholder with few guidelines on which to base a claim.[190] Courts that expand this test by requiring an accumulation of oppressive acts allow minority mistreatment to continue too long before allowing relief.[191]

The reasonable expectations test,[192] on the other hand, is a more promising test for minority shareholders seeking dissolution for mistreatment. Courts adopting this test recognize that close corporations, unlike public-issue corporations, are frequently based on personal relationships in which individual expectations reasonably extend beyond mere profit-making.[193] Moreover, application of the reasonable expectations test is consistent with the current trends toward acknowledgement of the existence of a fiduciary duty between majority and minority shareholders[194] and the need for special treatment of close corporations.[195] Courts that narrowly apply the test, however, diminish its effectiveness.[196]

## IV. CONCLUSION

The few statutes that expand present MBCA provisions to provide more specific guidelines for the courts[197] potentially afford the greatest protection for mistreated minority shareholders. By listing specific majority shareholder acts warranting dissolution, legislators grant courts unquestionable authority to dissolve corporations in a variety of particular instances, thus encouraging judicial activity.[198] Broad statutory

189. *See supra* notes 73-74 and accompanying text.

190. *See, e.g.,* cases cited *supra* notes 81-92 and accompanying text.

191. *See, e.g.,* cases cited *supra* notes 93-108 and accompanying text.

192. *See supra* notes 109-33 and accompanying text.

193. *See supra* notes 110-14 and accompanying text. *See also supra* notes 2 & 6-8 and accompanying text.

194. *See supra* notes 115-16 and accompanying text.

195. *See supra* note 2.

196. *See, e.g.,* case discussed *supra* notes 127-29 and accompanying text.

197. *See supra* notes 134-56 and accompanying text. *See generally* Hornstein, *supra* note 8, at 250-51; Comment, *supra* note 73, at 141. Professor Hornstein warns, however, against too much specificity in stating the available grounds for acquiring dissolution for it encourages defendants to "get around the law" by asserting that their actions have been outside the statutory terms. Hornstein, *supra* note 8, at 250.

198. In its report on the new Minnesota Corporation Act, effective July 1, 1981, the Advisory

grounds, in contrast, only enhance judicial reluctance by providing courts with too much discretion in ordering dissolution.[199]

Judicial reluctance to dissolve corporations, however, continues to limit the effectiveness of even the most liberal dissolution legislation.[200] Equity has similarly failed to establish a basis on which courts will freely grant dissolution.[201] Leaving courts with wide discretion simply has not worked. Minority shareholders of close corporations cannot hope to receive adequate protection against the oppressive majority until all states pass legislation providing courts with specific guidelines under which to proceed. More importantly, for such legislation to be effective, it must be mandatory rather than permissive in nature, requiring that courts impose the dissolution remedy when appropriate.

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Task Force referred to the new involuntary dissolution statute and stated: "Fraudulent or illegal acts continue to be a ground, but dissolution should be granted more frequently to minor shareholders who have been treated inequitably by management." ADVISORY TASK FORCE ON MINN. CORP. LAW, REPORT TO THE MINNESOTA SENATE (1981), *reprinted in* Preface to MINN. STAT. ANN. § 302A.751 (West Supp. 1981), at XXV-XXVI.

The Commissioner's comments following the 1972 amendments to New Jersey's involuntary dissolution statute state that "in the context of a closely-held corporation [New Jersey] courts should be free to look beyond direct harm to the value of a shareholder's investment and to consider all pertinent factors." N.J. STAT. ANN. § 14A:12-7(1)(c), comment (West Cum. Supp. 1981-82).

199. *See supra* notes 59-133 and accompanying text.

200. *See, e.g.*, case cited *supra* note 142.

201. *See supra* notes 37-56 and accompanying text.