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# CORPORATE DISSOLUTION AND SHAREHOLDERS' REASONABLE EXPECTATIONS

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This article honors F. Hodge O'Neal for more than forty years as a teacher and scholar. The topic is one that Professor O'Neal has nurtured for some time as part of legal writings that have made him the foremost authority on close corporations and oppression of minority shareholders. Although Professor O'Neal has not been alone in writing about close corporations, he, more than anyone else, established close corporations as a separate field of academic study and led legislatures and courts to pay particular attention to the special needs of close corporations and their shareholders, especially minority shareholders. On the topic at hand, Professor O'Neal's 1975 treatise, *Oppression of Minority Shareholders*, urged the reasonable expectations of shareholders as the most reliable guide to a just resolution of disputes among shareholders.[1]

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1. F. H. O'NEAL, "SQUEEZE-OUTS" OF MINORITY SHAREHOLDERS, (1975) (commonly cited as OPPRESSION OF MINORITY SHAREHOLDERS). As the co-author of the second edition of O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS (2d 1985) [hereinafter OPPRESSION] and the third edition of O'NEAL'S CLOSE CORPORATIONS: LAW AND PRACTICE (3d 1986) [hereinafter CLOSE CORPORATIONS], the author of this article acknowledges the influence of Professor O'Neal's writings and thoughts. Some of the material in this article derives from Chapter 9 of the 3rd edition of CLOSE CORPORATIONS. Professor O'Neal's writings, particularly the earlier editions of his CLOSE CORPORATIONS treatise, were pioneering works in the area of preventive law, in contrast to the encyclopedic descriptive or narrative orientation of most writing at the time. This article focuses on an area of Professor O'Neal's writing in which preventive law is not as visible.

Within the last decade the highest appellate courts in a half dozen states have adopted the reasonable expectations standard as the basis for determining whether involuntary dissolution, a court-ordered buyout of a shareholder, or some other relief is appropriate in a corporation wracked with dissension. Lower appellate courts in other states have also adopted this approach, and two states include a reasonable expectation standard in their statutes. This article analyzes the historical development of the reasonable expectations standard and the implications for its continued use in resolving conflicts within corporations.

## I. CHANGING VIEWS TOWARD CLOSE CORPORATIONS

The last two or three decades have produced significant changes in the law of involuntary dissolution. First, the statutory grounds for judicial dissolution are now substantially broader than reasons given in earlier statutes and modern courts are more likely than their predecessors to interpret statutory grounds for dissolution in a way that provides relief for minority shareholders. Second, state legislation authorizes courts to grant more remedies as alternatives to dissolution than were heretofore provided by corporations codes, and courts are more inclined to use these alternative remedies. Indeed, courts increasingly grant alternative remedies even in the absence of specific statutory authorization.

These changes in the law may be the best illustration of the willingness of modern legislatures and courts to respond to the special needs of close corporations. The role of reasonable expectations is best understood when placed within this larger context of the change in the legal rules governing close corporations.

Traditional statutory and judicial norms of corporate law were oriented toward large, publicly held corporations and presumed a separation of function between shareholders, who provided the capital, and directors and officers who supplied management. The typical corporation statute of a generation ago centralized most corporate power in the hands of the board of directors, including decisions particularly important to minority investors in a small enterprise, such as employment, salary, and dividends. Shareholders elected directors but otherwise participated only in fundamental corporate actions, such as mergers or the sale of substantially all of the corporate assets. Holders of a majority of the voting shares could elect all or most of the board, and the board

normally acted by majority rule.[2] If a minority shareholder attempted to contract for protection against majority rule, the courts struck down the contract as an unlawful interference with the unfettered discretion that the "statutory norm" required for directors.[3]

In lieu of private contracting, the law offered minority shareholders protection in the form of the fiduciary duty that each director owed to the corporation to act in the best interests of all shareholders.[4] Although many states have now codified this duty, historically it was an obligation imposed by common law, a "fiduciary norm" to accompany the statutory norm described above. The effectiveness of this fiduciary norm in protecting minority shareholders was limited by the liberal judicial use of the business judgment rule, a doctrine which embodies a broad judicial deference to the corporation's board of directors to determine business policy and to conduct corporate affairs.[5] As pointed out by the late Professor Ballantine, courts "hesitate to substitute their judgment on complicated questions of business policy for that of the elected managers of the business and have limited the scope of judicial review which they are willing to undertake."[6]

Other traditional corporate norms presumed free transferability of shares and a corporate entity separate from its shareholders, characteristics particularly suited to larger publicly held enterprises in which ownership is separated from control.[7] The corporation, as separate from its mortal shareholders, possessed the possibility of a perpetual existence; many courts were of the view that a court lacked power to wind up a solvent corporation absent statutory authorization,[8] and the reference to

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2. *See, e.g.*, Hand v. Dexter, 41 Ga. 454, 461 (Sup. Ct. 1871) ("The very foundation principle of a corporation, is that the majority of its stockholders have a right to manage its affairs so long as they keep within their chartered rights.").

Cumulative voting, if applicable in a particular state or corporation, provides minority shareholders with the possibility of board representation but still leaves them in a minority position on the board.

3. *See, e.g.*, McQuade v. Stoneham, 263 N.Y. 323, 189 N.E. 234 (1934).

4. *See, e.g.*, Gottfried v. Gottfried, 73 N.Y.S.2d 692 (N.Y. Sup. Ct. 1947); Dodge v. Ford Motor Co., 204 Mich. 459, 170 N.W. 668 (1919).

5. *See, e.g.*, O'Neal, *Close Corporations: Existing Legislation and Recommended Reform*, 33 BUS. LAW. 873, 884 (1978) (the principle of majority rule in corporate management and the business judgment rule as the two principle conceptual barriers to the courts' granting relief to aggrieved minority shareholders).

6. H.W. BALLANTINE, BALLANTINE ON CORPORATIONS § 231, at 552 (rev. ed. 1946).

7. *See generally* Manne, *Our Two Corporate Systems: Law and Economics*, 53 VA. L. REV. 259 (1967).

8. People *ex rel.* Daniels v. District Court, 33 Colo. 293, 80 P. 908 (1905); Wallace v. Pierce-

statute meant little since few jurisdictions provided an effective judicial dissolution remedy.

The traditional corporate norms, oriented as they were toward publicly held corporations, proved unsuitable for close corporations in which there often is no separation of function between those who provide the capital and those who manage the enterprise.[9] Closely held enterprises tend to entail more intimate and intense relationships among a smaller number of participants. Such an enterprise is not just a vehicle for investment of the participants' monetary capital but also serves as a vehicle for investment of their human capital by providing everyday employment. Shareholders in a close corporation usually expect both employment and a meaningful role in management. Further, they often have additional bonds, such as family or other personal relationships, that are interwoven with business ties and influence what they hope and expect to derive from the enterprise.

In a close corporation setting, the norm of free transferability of shares is illusory. Because of the size of the business and the small number of participants there is no ready market for interests in the enterprise.[10] Indeed, because of the close personal relationship that characterizes the closely held business, the participants often affirmatively restrict who can join the enterprise in order to avoid being stuck in an intimate relationship with someone with whom they are not compatible.[11]

In this intimate, illiquid relationship the corporate norms of central-

Wallace Pub. Co., 101 Iowa 313, 70 N.W. 216 (1897); Turner v. Flynn & Emrich Co., 269 Md. 407, 306 A.2d 218 (1973); Bleck v. East Boston Co., 302 Mass. 127, 18 N.E.2d 539 (1939).

*See generally* O'Neal, *Oppugnancy and Oppression in Close Corporations: Remedies in America and in Britain*, 1 B.C. INDUS. & COM. L. REV. 1, 22-25 (1959).

Even where statutory authority for dissolution existed, courts construed statutes narrowly, seeing dissolution as drastic and expressing reluctance to interfere with majority rights to run the business.

9. While a closely held company loses the benefit of specialization of function (e.g., having to find investors with both money and a particular business talent useful in the enterprise), this combination of management and residual claimants in the same people enables close corporations to minimize agency problems. *See* Fama & Jensen, *Agency Problems and Residual Claims*, 26 J.L. & ECON. 327 (1983); Fama & Jensen, *Separation of Ownership and Control*, 26 J.L. & ECON. 301 (1983). *See also* Easterbrook & Fischel, *Close Corporations and Agency Costs*, 38 STAN. L. REV. 271, 274 (1986).

10. The lack of a ready market (1) makes valuation of shares uncertain, increasing the transaction costs of any participant seeking to sell; (2) precludes some participants from using the secondary market to provide "home-made dividends" if the corporation itself does not declare dividends, thereby increasing the likelihood of intrashareholder disputes over dividend and distribution policies; (3) precludes reliance on the stock market to monitor managers; and (4) precludes the ability of uninformed investors to rely upon the efficient market to set price instead of engaging in their own costly search for information. Easterbrook and Fischel, *supra* note 9, at 275-76.

11. *See generally* CLOSE CORPORATIONS, *supra* note 1, at § 7.02.

ized control and majority rule can easily become instruments of oppression. When harmony between participants breaks down, a minority participant may find that the majority interests can manage the affairs of the corporation in unexpected ways. For example, most participants in close corporations receive a return on their investment as salary for services rendered to the corporation instead of as dividends paid on their capital investment. Such an arrangement saves the enterprise taxes[12] and costs the participants nothing so long as the shareholders deprived of the dividends are also officers and directors who receive salaries. Yet, the employment of officers is one of those functions left to the board of directors; after a falling out, those in control of the board can terminate minority shareholders' employment as officers and thereby deprive them of a return on their investment.[13]

The permanence of the corporate existence compounds the minority's dilemma. The minority participant who has fallen out with the majority faces the prospect of the majority having indefinite use of any capital he or she has contributed to the enterprise with no immediate return. Further, the minority may get no return in the long-term if the majority is able to siphon off corporate assets in the form of salaries or rents and the courts use the business judgment rule to refrain from interfering with those decisions.[14]

Over the last thirty years, legislatures and courts have recognized the different characteristics of the close corporation and have changed the statutory and fiduciary norms. These changes can be found in the gen-

12. Money paid to participants in a close corporation in the form of salary, if reasonable, can be deducted by the corporation in calculating its taxable income and will thereby reduce the amount of income tax that the company pays. I.R.C. § 162 (1986). Money paid out to the same individuals in the form of dividends to them as shareholders, however, cannot be deducted by the corporation, so that in effect a double tax will be paid on the same business income at the corporation level and again at the shareholder level.

13. Numerous examples are set out in OPPRESSION, *supra* note 1, at § 3.06.

14. Judicially developed concepts of fiduciary duty limit the extent to which controlling shareholders can engage in such conduct. If more effective fiduciary rules are developed governing the manner in which controlling shareholders operate the on-going enterprise, there will be less need for development of a "reasonable expectations" doctrine for use in a dissolution context. Minority shareholders seeking to challenge on-going action as a breach of fiduciary duty face the hurdle of the judicial inclination to use the business judgment rule, discussed *supra* at text accompanying note 5. The minority also faces a host of complications relating to the fact that the court may require the litigation to be brought as a derivative suit; i.e., the need to make demand on directors, to post a bond, and the disincentives to bring a suit because recovery if successful is to the corporation (controlled by hostile participants), but the cost if unsuccessful (attorneys' fees) will be borne by the shareholder alone.

eral corporations codes which now provide more flexibility for participants in close corporations to contract around statutory norms,[15] in special statutory provisions which provide flexibility to defined statutory close corporations,[16] and in judicial decisions which have developed rules applicable only to close corporations.[17] Most state corporation codes now permit shareholders to limit the power of the board of directors.[18] Most importantly, jobs and salary for minority shareholders can be protected by agreement and are not left to unfettered board power.[19] High vote requirements for shareholders and director action and other veto arrangements are now generally permitted so that participants can contract around the majority rule norm and provide additional protection for minority investors.[20]

Modern corporations codes also recognize that participants in a closely held corporation want the right to pick their associates; thus, those codes generally sanction share transfer restrictions.[21] Most importantly for purposes of the current topic, modern legislatures and judges

15. *See generally* CLOSE CORPORATIONS, *supra* note 1, at § 1.14. These changes to the general corporations statutes authorize share transfer restrictions, permit shareholders to structure the control and management of their corporation in ways which depart from the statutory norms of majority rule and director control, and provide for more flexible remedies in litigation among shareholders.

16. *See generally* CLOSE CORPORATIONS, *supra* note 1, at § 1.15 These statutes do many of the same things described in the previous footnote, but the special statutes sometimes offer even more flexibility and more remedies. They apply, however only to corporations that meet the statutory definition, usually put in terms of having less than a specified number of shareholders, having shares that are not publicly traded, or having share transfer restrictions. In many states, corporations must make a specific election to come under these statutes.

17. *See generally* CLOSE CORPORATIONS, *supra* note 1, at § 1.20. Some of these judicial decisions, such as Donahue v. Rodd Electrotype Co. of New England, Inc., 367 Mass. 578, 328 N.E.2d 505 (1975), apply special rules in the form of enhanced fiduciary duties of participants in close corporations. *See infra* note 64 . But this recognition of the special needs of close corporations also occurs in other contexts. *See* Galler v. Galler, 32 Ill. 2d 16, 203 N.E.2d 577 (1964) (upholding a shareholders' agreement which provided for minimum annual dividends and for payment of salary to a deceased shareholder's widow); Zion v. Kurtz, 50 N.Y.2d 92, 405 N.E.2d 681, 428 N.Y.S.2d 199 (1980) (upholding a shareholders' agreement which provided that no corporate business could be conducted without consent of the minority shareholders).

18. *See generally* CLOSE CORPORATIONS, *supra* note 1, at § 5.20. Most statutes only expressly sanction limitations contained in the corporation's articles of incorporation. In some states, courts have enforced a limitation on board discretion found in a shareholders' agreement even though the statute only sanctions limitations which appear in the corporation's articles of incorporation. *See* Zion v. Kurtz, 50 N.Y.2d 92, 405 N.E.2d 681, 428 N.Y.S.2d 199 (1980).

19. *See generally* CLOSE CORPORATIONS, *supra* note 1, at § 5.21.

20. *See generally* CLOSE CORPORATIONS, *supra* note 1, at § 4.04.

21. Almost all states now have statutes specifically authorizing share transfer restrictions. *See* CLOSE CORPORATIONS, *supra* note 1, at § 7.07.

recognize that the intimate, illiquid close corporation investment requires some modification of the permanence normally associated with corporations. The freedom of contract concerning management arrangements that is now permitted to participants in close corporations can lead to deadlock or stalemate for which the parties did not adequately plan. In the absence of such contracts, centralized power and majority rule create a likely potential for abuse of minority shareholders. Investors often fail to anticipate the failure of their enterprise, or they demonstrate an overly optimistic trust in those with whom they are undertaking the venture.[22] The legislation and judicial decisions expanding dissolution rights and providing alternative remedies reflect this reality more accurately than the traditional statutory and fiduciary norms, which overlooked the intimacy of the participants' relationship, the illiquidity of their investment, and the inability of participants in such enterprises to plan adequately for disharmony.

## II. BROADENING GROUNDS FOR CORPORATE DISSOLUTION

Dissolution based upon frustration of a shareholder's reasonable expectations is a significant expansion of the grounds on which courts will dissolve a corporate entity. This section places that development within the larger context of the circumstances in which shareholders can seek dissolution. Corporations statutes now provide for: voluntary dissolution; dissolution on deadlock; dissolution for misconduct by those in control of the corporation; and dissolution on broader grounds not necessarily related to misconduct.[23] The last three types of provisions in part codify judicially-created exceptions to the general rule that courts lack power to dissolve solvent corporations.[24] The judicially-created exceptions still remain important in states such as Delaware, where statu-

22. *See* Bradley, *An Analysis of the Model Close Corporation Act and a Proposed Legislative Strategy*, 10 J. CORP. L. 817, 840 (1985) ("Minority shareholders should not be understood as having agreed that the venture is to be operated strictly as a majority-rule entity with the economic chips falling as they may. Rather the correct explanation is a naive complacency, an overly trusting nature, bad legal advice or a blunder.").

23. There are other grounds for dissolution which are not discussed in this article. For example, many states permit the attorney general or another state official to seek dissolution if the enterprise has failed to pay fees due to the state or has engaged in unlawful conduct. Many states also permit creditors to seek dissolution if the corporation is insolvent. *See generally* REVISED MODEL BUSINESS CORP. ACT § 14.30 (1) & (3) (1985).

24. A listing of cases in which courts used common law or equitable powers to order dissolution for reasons now contained in statutes may be found in CLOSE CORPORATIONS, *supra* note 1, at § 9.26 n. 6.

tory dissolution powers are very limited[25] and in other states if a plaintiff cannot meet the standing or other requirements for statutory dissolution.[26] The expansion of the statutory grounds, however, has generally reduced the significance of the nonstatutory grounds.

### *A. Voluntary Dissolution*

All states provide for voluntary dissolution of the corporation, usually by action of the board of directors and approval by the shareholders.[27] In most states a majority vote of outstanding shares is required to voluntarily dissolve a corporation, but in a significant number of states, a two-thirds vote is required for this fundamental corporate change.[28] A few states exclude the board from a "gatekeeper" function and permit dissolution by action of the shareholders alone.[29]

The voluntary dissolution statutes operate as a significant limitation on the permanence of the corporation, but one consistent with the traditional norm of majority control. A majority shareholder occupies a position similar to that of a partner, possessing the right to dissolve the enterprise at will.[30] A minority shareholder, however, lacks the right to dissolve possessed by a minority investor in a partnership.[31]

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25. *See* Whitman v. Fuqua, 549 F. Supp. 315, 322-23 (W.D. Pa. 1982).

26. *See* Lewis v. Jones, 107 A.D. 931, 483 N.Y.S.2d 868, 869 (N.Y. App. Div. 1985) (shareholder who lacked standing to pursue dissolution for oppression could still pursue dissolution under common law doctrine of Leibert v. Clapp, 13 N.Y.2d 313, 196 N.E.2d 540, 247 N.Y.S.2d 102 (1963)).

27. *See* REVISED MODEL BUSINESS CORP. ACT § 14.02 (1985). A listing of applicable state statutes can be found in the annotations to § 14.02 in 3d ed. MODEL BUSINESS CORP ACT. ANN. (1985). *See, e.g.*, CAL. CORP. CODE § 1900 (West Supp. 1988); DEL. CODE ANN. tit. 8, § 275 (1987); IOWA CODE ANN. § 496A.81 (West 1962).

28. *See, e.g.*, ARK. CODE. ANN § 4-26-1101 (1987); N.Y. BUS. CORP. LAW § 1001 (McKinney 1986); WASH. REV. CODE ANN. § 23A.28.030 (West 1988). The number of states requiring a two-thirds vote has been decreasing in recent years, but more than 20 still require a super-majority.

29. *See, e.g.*, ARK. CODE ANN. § 4-26-1101 (1987); LA. REV. STAT. ANN. § 12.142 (West 1988); MINN. STAT. ANN. § 302A.721 (West 1985); WIS. STAT. ANN. § 180.753 (1987).

30. *See* UNIF. PARTNERSHIP ACT § 31 (1916) [hereinafter UPA].

A partner has a right to dissolve the partnership at any time, but dissolution triggered in contravention of an agreement between the partners subjects the dissolving partner to potential financial harms. The non-defaulting partners may continue the business, and pay to the departing partner the value of his interest, but not including good will and less any damage to the copartners caused by the dissolution. *See* UPA § 38.

A majority shareholder's position is not identical to that of a partner because the majority shareholder can usually trigger dissolution without penalty. Shareholders in a corporation may agree, by charter provision, to limit the ability of a majority shareholder to petition for dissolution or require a supermajority vote for such action.

31. As discussed in the previous footnote, a minority partner who triggers dissolution in contra-

Since the voluntary dissolution statutes permit majority shareholders to accomplish dissolution without judicial approval, controversies arising out of this form of dissolution have a flavor different from disputes under the statutes in which minority shareholders must persuade a court to order dissolution. Minority shareholders sometimes complain that voluntary dissolution is being used to squeeze them out of an enterprise, especially if a company newly organized by the majority shareholders purchases the dissolving corporation's assets at what appears to be a bargain price.[32] Some courts have held that a majority shareholder's use of dissolution proceedings to accomplish this result constitutes a breach of the fiduciary duty majority shareholders owe to the corporation or the minority shareholders.[33]

### *B. Dissolution on Deadlock*

Almost all states have statutory provisions authorizing a court to dissolve a corporation upon deadlock in director or shareholder voting.[34] However, restrictions in these statutes discussed below prevent them from providing a dissolution remedy except in extraordinary situations of shareholder dissension in a close corporation.

*Deadlock, not Dissension.* The triggering event in some deadlock statutes is defined narrowly to apply to a corporation "having an even

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vention of an agreement between the partners is subject to specific costs. A minority shareholder does not have the unlimited liability of a partner, a difference which has been a focus in the debate over whether shareholders in a corporation should be able to dissolve the enterprise as freely as partners may dissolve a partnership. *See generally* Hillman, *The Dissatisfied Participant in the Solvent Business Venture: A Consideration of the Relative Permanence of Partnerships and Close Corporations*, 67 MINN. L. REV. 1 (1982). The special close corporation statutes in several states authorize statutory close corporations to include a provision in their charter permitting dissolution at will by any shareholder. *See, e.g.*, DEL. CODE ANN. tit. 8, § 355 (1983).

32. *See* OPPRESSION, *supra* note 1, at §§ 5.21-5.22.

33. *See, e.g.*, Levy v. Billeaud, 443 So. 2d 539 (La. 1983), (court found directors and liquidator breached fiduciary duty by formulating and effecting a liquidation plan unduly oppressive and unfair to minority shareholders); Kavanaugh v. Kavanaugh Knitting Co., 226 N.Y. 185, 123 N.E. 148 (1919); Theis v. Spokane Falls Gaslight Co., 34 Wash. 23, 74 P. 1004 (1904).

*But see* Dibble v. Sumter Ice & Fuel Co., 283 S.C. 278, 287, 322 S.E.2d 674, 679 (S.C. Ct. App. 1984) ("there is nothing to prevent a dissolution or freeze-out so long as adequate compensation is paid").

34. Delaware, Kansas, and Oklahoma permit involuntary dissolution on deadlock only for joint venture corporations with two 50 percent shareholders. DEL CODE ANN., tit. 8, § 273 (1983), KAN. STAT. ANN. § 17-6804 (1981), OKLA. STAT. ANN. tit. 18 § 1094 (West 1986). Nevada does not specifically mention deadlock, but has listed fairly broad grounds related to director misconduct. NEV. REV. STAT. § 78.650 (1987). All other states list deadlock of directors or shareholders although the statutes are not uniform.

number of directors who are deadlocked in the management of the corporation."[35] Such a statute may not apply to a corporation deadlocked because its charter, its bylaws or a shareholders' agreement requires unanimity or a high vote for director action, and no faction can get the necessary vote. Other statutes authorize dissolution on director deadlock without reference to an even number of directors; under this kind of statute courts have held that a deadlock resulting from a high vote requirement in a shareholders' agreement meets the statutory requirement.[36] Even these latter provisions do not help an unhappy participant who does not control a sufficient number of directors to create a deadlock under a high vote requirement.

Most state statutes now permit dissolution to be sought if there is a deadlock among shareholders, even if the directors are not deadlocked.[37] Thus, if a corporation's shares are equally divided between two shareholders or groups of shareholders, but one group has control of the board of directors, the shareholder or group out of power can petition for dissolution. A significant limitation on this right in most states is that the shareholder deadlock must have continued for a specified period of time, usually two consecutive annual meetings.[38]

*Available only to Holders of a Specified Percentage of the Corporation's Stock.* In a few states, the right to petition for dissolution because of director or shareholder deadlock is limited to holders of twenty-five percent or some higher percentage of the company's stock.[39]

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35. *See, e.g.*, OHIO REV. CODE ANN. § 1701.91 (Anderson 1987).

36. *See, e.g.*, Mordka v. Mordka Enters., Inc., 143 Ariz. 298, 693 P.2d 953 (Ariz. Ct. App. 1984); Ward v. Colcord, 110 Ill. App. 2d 68, 249 N.E.2d 137 (1969); *In re* Hy-lite Plastics, Inc., 8 Misc. 2d 101, 165 N.Y.S.2d 888 (N.Y. Sup. Ct. 1957). *But see, e.g.*, Roach v. Bynum, 403 So. 2d 187 (Ala. 1981) (refusing to grant dissolution because shareholders' agreement creating deadlock was in the form of a bylaw which could be amended by shareholders to remove deadlock).

37. More than 40 states authorize a petition for dissolution if shareholders are deadlocked. *See generally* MODEL BUSINESS CORP. ACT ANN. § 14.30 (1985).

Almost all states require a deadlock to continue for a certain period—usually two years. *See infra* note 38. A few require irreparable injury. *See infra* note 42. A few require a petitioning shareholder to have a minimum percentage of shares, usually the same as the percentage needed to petition for director deadlock. *See infra* note 39.

38. *See, e.g.*, N.J. STAT. ANN. § 14A:12-7(1)(a) (West 1988); N.C. GEN. STAT. § 55-125 (1987).

Some states either place no time requirement on the deadlock or phrase the requirement in terms of failure to elect successors. *See, e.g.*, ARK. CODE. ANN. § 4-26-1101 (1987); CONN. GEN. STAT. ANN. § 33-382 (West 1987); FLA. STAT. ANN. § 607.274 (West 1988); MASS. GEN. LAWS ANN. ch. 156B § 99 (Law Co-op 1979); N.Y. BUS. CORP. LAW § 1104(a)(2) (McKinney 1983); OHIO REV. CODE ANN. § 1701.91 (Anderson 1987).

39. *See, e.g.*, CAL. CORP. CODE § 1800 (West 1977) (33%); MD. CORPS. & ASS'NS CODE ANN.

*Irreparable Injury.* Most state statutes listing director deadlock as a reason for dissolution require that the deadlock threaten irreparable injury to the corporation.[40] The Revised Model Business Corporation Act includes an alternative standard, that "the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally,"[41] which has the potential of increasing the number of situations in which dissolution will be decreed by a court.

While the irreparable injury requirement is common for state statutes authorizing dissolution for deadlock among directors, only a few statutes impose a similar requirement for dissolution based on deadlock among shareholders.[42]

*Judicial Discretion.* A mere showing of deadlock does not result in dissolution under the dissolution-on-deadlock statutes. The statutes describe the circumstances in which courts may grant dissolution, and judges have interpreted the grant of authority as permissive rather than mandatory.[43] Courts list a number of factors they consider in exercising this discretion,[44] and the determination may well overlap factors which a court would consider in connection with irreparable injury. Profitability

§ 3-413 (1985) (25%); MASS. GEN. LAWS ANN. ch. 156B § 99 (Law Co-op. 1979) (40%); N.Y. BUS. CORP. LAW § 1104 (McKinney 1983) (50%). In New York the minimum drops to 33 percent if the corporation's charter provides for a supermajority vote for board action. *See* N.Y. BUS. CORP. LAW § 1104(b) (McKinney 1983).

40. *See, e.g.*, GA. CODE ANN. § 14-2-285 (1982); MO. ANN. STAT. § 351.485 (Vernon 1966); PA. STAT. ANN. tit. 15, § 2107 (Purdon 1967); WIS. STAT. § 180.771 (1957). For statutes that do not require irreparable injury, see CONN. GEN. STAT. ANN. § 33-382 (West 1987); LA. REV. STAT. ANN. § 12.143 (West 1988); MD. CORPS. & ASS'NS CODE ANN. § 3-413 (1985); MICH. COMP. LAWS. ANN. § 450.1823 (West 1967); MINN. STAT. ANN. § 302A.751 (West 1988); N.Y. BUS. CORP. LAW § 1104 (McKinney 1983); N.D. CENT. CODE § 10-19.1-115 (1985); R.I. GEN. LAWS § 7-1.1-90 (1985).

41. *See* Official Comment to REVISED MODEL BUSINESS CORP. ACT § 14.30(2) (1985). This language may permit the court to look at more than the corporation's profitability and encourage a focus on the effects of the deadlock on the shareholders of a still profitable corporation.

42. A few states require irreparable injury for dissolution based on shareholder deadlock. *See, e.g.*, ARK. CODE ANN. § 4-26-1101 (1987); LA. REV. STAT. ANN. § 12.143 (West 1988).

43. *See, e.g., In re* Arthur Treacher's Fish & Chips, 386 A.2d 1162 (Del. Ch. 1978) (dissolution discretionary, not automatic); Henry George & Sons, Inc. v. Cooper-George, Inc., 95 Wash. 2d 944, 632 P.2d 512 (1981) (overturning trial court, which had ordered dissolution solely because jurisdictional grounds had been met; case remanded for trial court to consider best interests of shareholders).

44. Henry George & Sons, Inc. v. Cooper-George, Inc., 95 Wash. 2d 944, 632 P.2d 512 (1981) (factors include the length of time the corporation has been in business, its stated purpose, whether one shareholder has shown a clear design to take over the business and is in a financial position to do so, the market for the corporation's business assets, whether the shareholders are in relatively equal bargaining position, and tax consequences).

has been a controversial factor. Several courts have denied dissolution largely because the corporation was operating profitably.[45] In repudiation of one such decision, the New York legislature modified its statute to provide that "dissolution is not to be denied because it is found that the corporate business has been or could be conducted at a profit."[46]

The combination of the narrow definition of deadlock, the requirements of a minimum shareholding and/or irreparable injury, and the respect for judicial discretion provide ample support for a court inclined to the traditional judicial reluctance to order dissolution. Some courts continue to view dissolution as a drastic remedy to be granted only in the strongest circumstances. An Indiana court, for example, stated that relief was appropriate "only where there is dissension between sets of shareholders owning equal amounts of stock such that there is a present danger to investors constituting a serious suspension or interference with the business resulting in an imminent danger of dissipation of the corporate assets."[47] Similarly, an Illinois court denied a request for dissolution, holding that the inability of two equal shareholders to get along did not equate with the corporation's inability to perform its functions.[48] There are, however, many examples of the willingness of modern courts to exercise their discretion to order dissolution in the context of a corporate deadlock if the shareholder's relationship has completely broken down, and there is continuous disagreement and animosity among the

45. *In re* Radom & Neidorff, Inc., 307 N.Y. 1, 119 N.E.2d 563 (1954) (profitable operation of a deadlocked corporation warrants dismissal of dissolution petition without a hearing).

*See also* Bartlett v. Caines, 363 So. 2d 574 (Fla. Dist. Ct. App. 1978) (court refused to order a corporation dissolved, finding that since the corporation was still an ongoing, solvent, viable entity there was no evidence that a deadlock existed among the corporation's shareholders).

*Cf.* Matter of Fulton-Washington Corp., 3 Misc. 2d 277, 151 N.Y.S.2d 417 (N.Y. Sup. Ct.), *aff'd mem.*, 2 A.D.2d 981, 157 N.Y.S.2d 894 (N.Y. App. Div. 1956) (The court entertained a petition for involuntary dissolution even though the corporation was continuing to operate at a profit, saying that the rule against the dissolution of profitable corporations was not applicable, as the corporation involved had been organized to buy and resell specific real estate, and the participants had from the first intended to liquidate the corporation after the resale of the realty.).

46. N.Y. BUS. CORP. LAW § 1111(b)(3) (McKinney 1983). *See* Weiss v. Gordon, 32 A.D.2d 279, 301 N.Y.S.2d 839 (N.Y. App. Div. 1969). *See also* Gillingham v. Swan Falls Land & Cattle Co., Inc., 106 Idaho 859, 683 P.2d 895 (Idaho Ct. App. 1984) (court found profitability to reflect the "best interests of shareholders" and affirmed dissolution where the corporation was achieving only a 3 percent return on assets invested).

47. Crippin Printing Corp. v. Abel, 441 N.E.2d 1002, 1007 (Ind. Ct. App. 1982).

48. Smith-Shrader Co., Inc. v. Smith, 136 Ill. App. 3d 571, 483 N.E.2d 283 (1985) (court held that dissolution was precluded because of the failure to demonstrate a legitimate shareholder deadlock and the manifest unfairness of allowing a shareholder who had breached his fiduciary duty to the corporation by forming a competing firm to force dissolution).

shareholders.[49] Any broader relief for minority shareholders, however, will likely find an outlet under other provisions of the dissolution statute.

### C. *Dissolution Based on Misconduct by Those in Control of the Corporation.*

Most American jurisdictions now permit a shareholder to petition for dissolution on grounds which involve misconduct by those in control of the corporation. Illegality, fraud, misapplication of assets or waste are listed as grounds for dissolution in most states.[50] In some states, statutes use other terms that suggest controllers' misconduct, for example, "fraud, collusion or gross mismanagement"[51] or "gross and persistent ultra vires act."[52] Most states link these grounds with oppression, a term discussed in more detail below. Terms such as misapplication of assets and waste, standing alone, have achieved little independent legal significance. By themselves, these grounds have provided unhappy shareholders with relief only in extraordinary cases of controllers' misconduct.[53]

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49. *See, e.g.*, Martin v. Martin's News Servs, Inc., 9 Conn. App. 304, 518 A.2d 951 (1986) (Connecticut statute permits winding-up for any good and sufficient reason; court recognized that disagreement and dissension are generally not sufficient but granted relief where no input from one 50 percent shareholder.); Gillingham v. Swan Falls Land & Cattle Co., Inc., 106 Idaho 859, 683 P.2d 895 (Idaho Ct. App. 1984); Fox v. 7L Bar Ranch Co., 198 Mont. 201, 645 P.2d 929 (1982); *In re* Peters, 117 Misc. 2d 21, 457 N.Y.S.2d 170 (N.Y. Sup. Ct. 1982); Ward v. Ward Farms, Inc., 283 S.C. 568, 324 S.E.2d 63 (1984).

50. *See, e.g.*, GA. CODE ANN. § 14-2-285 (1982); ILL. REV. STATS. ch.32, § 12.50 (1987); KY. REV. STATS. ANN. 271B.14-300 (Michie/Bobbs-Merrill 1981); WASH. REV. CODE 23A.28.170 (1969). More than two-thirds of the states specify misapplication of assets or waste as grounds for dissolution, and an even higher percentage number list fraud or illegality. *See generally* REVISED MODEL BUSINESS CORP. ACT § 14.30(2)(iii) & (iv) (1985).

51. *See, e.g.*, CONN. GEN. STAT. ANN. § 33-382(b) (West 1987).

52. *See, e.g.*, LA. REV. STAT. ANN. § 12:143A(7) (West 1969).

53. *See, e.g.*, Dupuy v. Riley, 492 So. 2d 215 (La. Ct. App. 1986) (where a receiver was appointed after the other shareholder withdrew all objections). *See also* Gooding v. Millet, 430 So. 2d 742 (La. Ct. App. 1983) (one-third shareholder obtained liquidation order where the two-thirds shareholders ran the corporation with a minimum of formality, completely ignoring the fact that they owned only two-thirds of the business). For cases denying relief, see King v. Coulter, 113 Ariz. 245, 550 P.2d 623 (1976) (court notes oppression not provided in statute and gives no relief); Allen v. Royale "16" Inc., 449 So. 2d 1365 (La. Ct. App. 1984); Streb v. Abramson-Caro Clinic, 401 So. 2d 410 (La. Ct. App. 1981); Gruenberg v. Goldmine Plantation, Inc., 360 So. 2d 884, 887 (La. Ct.App. 1978) (Under a statute that does not specify oppression as a grounds for relief court rejected minority shareholder effort to dissolve corporation whose only asset was sugar cane land producing little return although plaintiff charged gross and persistent ultra vires act. "Our law offers no remedy for a minority shareholder with substantial holdings who is out of control and trapped in a close corporation."); Fincher v. Clairborne Butane Co., Inc., 349 So. 2d 1014, 1018 (La. Ct. App. 1977)

The inclusion of "oppression" or similar grounds as a basis for involuntary dissolution has opened up a much broader avenue of relief for minority shareholders in close corporations wracked with dissension. Oppression as a ground for dissolution was included in the Illinois and Pennsylvania corporations acts of 1933,[54] in the Model Business Corporation Act by 1950,[55] and in the Companies Act of 1948 in the United Kingdom.[56] Thirty-seven American states now include oppression or a similar term in their corporations statutes.[57]

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(firing not enough; even lack of dividend, paying salaries to son of remaining employee, and acquisition of airplane insufficient). *See also* L.L. Minor Co., Inc. v. Perkins, 246 Ga. 6, 268 S.E.2d 637 (1980); Claire v. Rue de Paris, Inc., 239 Ga. 191, 236 S.E.2d 272 (1977). Note that the Georgia statute at issue in those cases did not specifically include "oppression" as a ground for relief. In Sax v. World Wide Press, Inc., 809 F.2d 610 (9th Cir. 1987) the court concluded that a dissolution claim based on waste should be brought as a derivative action, and thus subject to the requirements of FED. R. CIV. P. 23.1, a holding that if followed would make dissolution claim based on waste even less likely.

54. 1933 Ill. Laws, p. 308, § 86; 1933 Pa. Laws # 106, § 1107, PL. 364. Even before the Illinois and Pennsylvania laws, a 1931 California statute authorized a petition for dissolution if "the directors or those in control of the corporation have been guilty of persistent fraud or mismanagement or abuse of authority, or persistent unfairness toward minority shareholders." CAL. CIV. CODE § 404 (1931). That provision was eliminated in 1933. *See* CAL. CIV. CODE § 404 (1933). Professor Ballantine, who favored the more restrictive California standard, criticized the Illinois provision that based relief on oppression in addition to deadlock: "This confers a drastic remedy by way of involuntary dissolution in very vague and general terms which will make it easy for a single obstreperous shareholder or a small disgruntled minority to interfere with the management of the majority by creating a cash nuisance value." Ballantine, *A Critical Survey of the Illinois Business Corporation Act*, 1 U. CHI. L. REV. 357, 392 (1934).

55. *See* MODEL BUSINESS CORP. ACT § 90, in 6 BUS. LAW. No. 1 (Nov. 1950).

56. Companies Act of 1948 § 210.

57. Thirty-seven states base relief on oppression, or language that would be at least as likely to provide relief to petitioning shareholders. Thirty-two of those states include "oppression" in their statute. *See* ALA. CODE §§ 10-2A-108 (1987); ALASKA STAT. § 10.05.540 (1985); ARK. CODE ANN. § 4-27-1430 (1981); COLO. REV. STAT. § 7-8-113 (1987); GA. CODE ANN. § 14-2-940 (applicable only to statutory close corporations) (effective July 1, 1989); IDAHO CODE § 30-1-97 (1980); ILL. ANN. STAT. ch. 32, § 12.50 (Smith-Hurd 1988); IOWA CODE ANN. § 496A.94 (West 1988); MD. CORPS. & ASS'N CODE ANN. § 3-413 (1985); MICH. COMP. LAWS ANN. § 450.1825 (West 1973) (illegal, fraudulent, or willfully unfair and oppressive); MISS. CODE ANN. § 79-4-1430 (1987); MO. ANN. STAT. § 351.485 (Vernon 1966); MONT. CODE ANN. § 35-1-921 (1986); NEB. REV. STAT. § 21-2096 (1987); N.H. REV. STAT. ANN. § 293-A:98 (1987); N.J. STAT. ANN. § 14A:12-7 (West 1988) (for corporations with less than 25 shareholders); N.M. STAT. ANN. § 53-16-16 (1983); N. Y. BUS. CORP. LAW § 1104-a (McKinney 1983) (plaintiff must own at least 20% of shares, and only applies to corporations whose shares are not publicly traded); OR. REV. STAT. § 60.661 (1987); PA. STAT. ANN. tit. 15, § 2107 (Purdon 1967); R.I. GEN. LAWS § 7-1.1-90 (1985); S.C. CODE ANN. § 33-21-150 (Law. Co-op 1987); S.D. CODIFIED LAWS ANN. § 47-7-34 (1983); TENN. CODE ANN. § 48-24-301 (1987); TEX. BUS. CORP. ACT ANN. art. 7.05 (Vernon 1980) (authorizing appointment of a receiver for the assets and business of the corporation but only if all other remedies at law or in equity, including the appointment of a receiver for specific assets of the corporation, are deemed by

Some early courts interpreted "oppression" restrictively. One court read the addition of the oppression language as not indicating any intention "to extend in any material way the long standing rule of a law" that, absent extraordinary circumstances a court will not decree the dissolution of a solvent corporation on the application of a shareholder.[58] Another court adopted the most restrictive of the common law standards for relief: "the ultimate test is whether corporate ruin will inevitably follow

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the court to be inadequate); UTAH CODE ANN. § 16-10-92 (1987); VT. STAT. ANN. tit. 11, § 2067 (1984); VA. CODE ANN. § 13.1-747 (1985); WASH. REV. CODE ANN. § 23A.28-170 (1969); W. VA. CODE § 31-1-41 (1988); WIS. STAT. § 180.995(19) (1987) (applicable only to statutory close corporations); WYO. STAT. § 17-1-614 (1987).

Three additional states use "unfairly prejudicial" or similar language in place of oppression. *See* CAL. CORP. CODE § 1800 (West 1977) (persistent and pervasive fraud, mismanagement, or abuse of authority or persistent unfairness towards shareholders; can be brought by any shareholder of a close corporation or a 33-1/3 percent shareholder of another corporation); MINN. STAT. ANN. § 302A.751 (West 1988) (acting fraudulently, illegally, or in a manner unfairly prejudicial to one or more shareholders in their capacity as a shareholder, director, officer, or employee of a closely held corporation); N.D. CENT. CODE § 10-19.1-115 (1985); (similar to Minnesota). Montana includes oppression in its corporation code and adds "unfairly prejudicial" for statutory close corporations. MONT. CODE § 35-9-501.

Also, the language in the North Carolina statute seems intended to go beyond oppression in protecting shareholders. *See* N.C. GEN. STAT. § 55-125 (1987) (liquidation if reasonably necessary for the protection of the rights and interests of complaining shareholders). Connecticut's statute authorizes dissolution for fraud, collusion, or gross mismanagement in the conduct or control of the corporation. If that language were not deemed to be sufficiently broad to cover reasonable expectations, another part of the statute authorizes dissolution for "any good and sufficient reason." *See* CONN. GEN. STAT. § 33-382 (1987) (petition by 10% shareholder).

The remaining thirteen states can be classified into three groups:

(a) Those states which list illegality or fraud (but not oppression) as a grounds for dissolution. *See* HAW. REV. STAT. § 415.97; KY. REV. STAT. ANN. § 271B.14-300 (Michie/Bobbs-Merrill 1981); ME. REV. STAT. ANN. tit. 13-A, § 1115 (1981); NEV. REV. STAT. § 78-650 (1987).

*See also* FLA. STAT. ANN. § 607.274 (West 1988), which authorizes dissolution for misapplication of assets or waste but does not include oppression.

(b) States which only list deadlock as grounds for shareholder action. *See* ARIZ. REV. STAT. ANN. § 10-097 (1977); IND. CODE ANN. § 23-1-47-1 (Burns 1988); MASS. GEN. LAWS ANN. ch. 156B, § 99 (West 1979); OHIO REV. CODE ANN. § 1701.91 (Anderson 1987).

*See also* LA. REV. STAT. ANN. § 12:143 (West 1988), which authorizes relief for deadlock, if dissolution would be beneficial to the interests of the shareholders, or if the corporation has been guilty of gross and persistent ultra vires acts.

(c) States in which minority shareholders in most corporations have no statutory grounds to seek dissolution. Delaware, Kansas, and Oklahoma statutes provide no grounds for involuntary dissolution except in corporations that have two shareholders each owning 50 percent. These states do provide for alternatives remedies such as the appointment of custodians, and the first two have special statutes for electing close corporation status which provides some additional remedies.

58. Lynch v. Buchanan, 37 Md. App. 413, 417, 377 A.2d 592, 594 (1977).

continuance of present management."[59] Nevertheless, most courts called upon to interpret statutory language such as "oppression" find a broader meaning that does not carry an "essential inference of imminent disaster, but can contemplate a continuing course of conduct. The word does not necessarily savor of fraud, and even the absence of mismanagement or misapplication of assets does not prevent a finding . . . ."[60]

In defining oppressive conduct courts have used several phrasings.[61] Some courts describe oppression as "burdensome, harsh and wrongful conduct . . . a visible departure from the standards of fair dealing and a violation of fair play on which every shareholder who entrusts his money to a corporation is entitled to rely."[62] Other courts link the term directly to breach of the fiduciary duty of good faith and fair dealing majority shareholders owe minority shareholders,[63] a duty which many courts recognize as enhanced in a close corporation setting.[64] A third view ties oppression to frustration of the reasonable expectations of the shareholders. The highest courts in several states have adopted disappointment of reasonable expectations as the best guide to defining oppression, and this idea is now included in some state dissolution statutes. Because of the increasing use of this concept, the next section of this article tracks the development of the reasonable expectations standard in some detail.

These standards for determining oppression are not contradictory, as

59. Barnett v. International Tennis Corp., 80 Mich. App. 396, 417, 263 N.W.2d 908, 918 (1978).

60. *See, e.g.*, Compton v. Paul K. Harding Realty Co., 6 Ill. App. 3d 488, 499, 285 N.E.2d 574, 581 (1972).

61. *See generally* Haynsworth, *The Effectiveness of Involuntary Dissolution Suits as a Remedy for Close Corporation Dissension*, 35 CLEV. ST. L. REV. 25, 35-37 (1987) (discussing three definitions of oppression).

62. Skierka v. Skierka Bros., Inc., 629 P.2d 214, 221 (Mont. 1981). *See also* Fix v. Fix Material Co., Inc., 538 S.W.2d 351 (Mo. Ct. App. 1976) (combination of corporation's long-term management contract with controlling shareholders, corporate losses, sale of corporate assets and salary increases for those in charge comes narrowly close to oppression); Fox v. 7L Bar Ranch Co., 198 Mont. 201, 645 P.2d 929 (1982); Ski Roundtop, Inc. v. Hall, 202 Mont. 260, 658 P.2d 1071 (1983); Mardikos v. Arger, 116 Misc. 2d 1028, 457 N.Y.S.2d 371 (N.Y. Sup. Ct. 1982).

63. Kisner v. Coffey, 418 So. 2d 58 (Miss. 1982) (no relief where shareholders declined to reelect to board other directors who had left the practice and also terminated the deferred compensation of the minority); Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973).

64. *See, e.g.*, Wilkes v. Springside Nursing Home, Inc., 370 Mass. 842, 353 N.E.2d 657 (1976) (not an involuntary dissolution case); Donahue v. Rodd Electrotype Co. of New England, Inc., 367 Mass. 578, 328 N.E.2d 505 (1975) (not an involuntary dissolution case; shareholders in close corporation owe each other a strict fiduciary duty of utmost good faith and loyalty).

*See also* Orchard v. Covelli, 590 F. Supp. 1548, 1559 (W.D. Pa. 1984), *aff'd*, 802 F.2d 448 (3rd Cir. 1986).

conduct that violates one may also violate the others. Breach of a majority shareholder's fiduciary duty, for instance, is likely to be considered a departure from standards of fair dealing and also conduct which frustrates a reasonable shareholder's expectations.[65] Fiduciary duty and fairness are necessarily fluid concepts. The use of "reasonable expectations" increases the likelihood that the court, in defining oppression, will focus on specific problems inherent in a close corporation relationship.

In a few jurisdictions the statute uses terms other than "oppressive conduct" to describe action prejudicial to minority shareholders which will provide a basis for relief. Several jurisdictions use "unfairly prejudicial,"[66] picking up a change made in the United Kingdom's law on this subject.[67] The change in the United Kingdom came after some decisions in that country narrowly interpreted "oppression" to refer to conduct which is "burdensome, harsh and wrongful."[68] American courts for the most part have not adopted a narrow approach, apparently because they recognize that statutes providing for involuntary dissolution and other remedies are a legislative response to distinctive problems of close corporations and should be interpreted broadly to meet those problems.[69]

New Jersey's statute specifies that relief may be granted if directors or those in control of the corporation have "acted oppressively or unfairly

65. *See, e.g.*, Fox v. 7L Bar Ranch Co., 198 Mont. 201, 645 P.2d 929 (1982); Balvik v. Sylvester, 411 N.W.2d 383 (N.D. 1987); Masinter v. Webco Co., 164 W.Va. 241, 262 S.E.2d 433 (1980).

66. *See, e.g.*, MINN. STAT. ANN. § 302A.751 (West 1988); N.D. CENT. CODE § 10-19.1-115 (1985); S.C. CODE ANN. § 33-21-150 (Law. Co-op. 1987).

*See also* CAL. CORP. CODE § 1800(4) (West 1977) (persistent unfairness toward shareholders); MICH. COMP. LAWS ANN. § 451.1825 (West 1967) (illegal, fraudulent or willfully unfair and oppressive). "Persistent unfairness" has antecedents in California law. That term appeared in California's involuntary dissolution statute from 1931 until 1933. *See supra* note 54.

67. Section 75 of the Companies Act of 1980 (now found in § 459 of the Companies Act of 1985) replaced § 210 of the Companies Act of 1948, and adopted "unfairly prejudicial" as the standard for relief, rather than "oppression." The Jenkins Committee which initially prepared the Company Law Amendments stated that the use of the new term was intended to make clear that it is not necessary to show actual illegality or invasion of legal rights. *See* Report of the Committee on Company Law Amendments (HMSO 1962); Cmnd 1749 at para. 203.

68. *See, e.g.*, Scottish Co-op Wholesale Sec'y, Ltd. v. Meyer [1958] 3 All. E.R. 66, 71, 86; Elder v. Elder & Watson, Ltd. [1952] Sess. Cas. 49, 55. *See generally*, Furry, *The Statutory Protection of Minority Shareholders in United Kingdom*, 22 WAKE FOREST L. REV. 81 (1987) (discussing dramatic increase in willingness of courts in the United Kingdom to protect the interests of minority shareholders).

69. *See, e.g.*, Balvik v. Sylvester, 411 N.W.2d 383, 386 (N.D. 1987) (oppression "is an expansive term that is used to cover a multitude of situations dealing with improper conduct which is neither illegal or fraudulent"); Topper v. Park Sheraton Pharmacy, Inc., 107 Misc. 2d 25, 34, 433 N.Y.S.2d 359, 365 (N.Y. Sup. Ct. 1980).

toward one or more minority shareholders in their capacities as shareholders, directors, officers, or employees."[70] That phrasing should prevent a decision, such as the holding in a United Kingdom case, that the statute only protects a shareholder against oppression in his capacity as a shareholder.[71] Such a view would deny relief in the very situations in which it is most needed since termination of a shareholder's status as an employee is a much more likely means of oppression in a close corporation than is infringement of a participant's status as a shareholder.[72] Even without the additional language that appears in the New Jersey statute, American courts in other states recognize that oppressive conduct covers actions taken against a shareholder in his capacity as a director, officer, employee or as a shareholder.[73] Any other interpretation of the statute ignores the concerns of the legislatures about the plight of minority participants in close corporations.

### *D. Dissolution Based on Broader Grounds*

The increasing legislative and judicial tendency to define oppression by reference to the reasonable expectations of shareholders and to include terms like "unfairly prejudicial" in statutes have pushed the focus of the dissolution remedy beyond fault of the controlling shareholders. Some states explicitly contain "no fault" grounds for dissolution in their statutes. California[74] and North Carolina,[75] for example, authorize a petition for dissolution if necessary to protect the rights or interests of complaining shareholders. A North Carolina decision specifically used

70. N.J. STAT. ANN. § 14A:12-7(1)(c) (West 1988). *See also* MINN. STAT. ANN. § 302A.751 (West 1988) (as shareholder, director, officer, or employee of closely held corporation); N.D. CENT. CODE § 10-19.1-115 (1985) (same); S.C. CODE ANN. § 33-21-150 (Law Co-op. 1987) (as shareholder, director or officer).

71. *In re* Lundie Brothers, Ltd. [1965] 1 W.L.R. 1051 (Ch. D.); *see also* Re A Company [1983], 2 All. E.R. 36 (Ch. D.) (section 75 of Companies Act of 1980 applicable only where the company's conduct resulted in the member being unfairly prejudiced in his capacity as a member). *See generally* Afterman, *Statutory Protection for Oppressed Minority Shareholders: A Model for Reform*, 55 VA. L. REV. 1043 (1969).

72. The tax system's discouragement of dividends (*see supra* note 12) *vis a vis* salary means that most close corporations provide a return to participants in the form of salary or other employee related benefits; termination of employment often terminates any return from an investment in the enterprise.

73. Topper v. Park Sheraton Pharmacy, Inc., 107 Misc. 2d 25, 433 N.Y.S.2d 359 (N.Y. Sup. Ct. 1980). *See also* Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973); White v. Perkins, 213 Va.129, 189 S.E.2d 315 (1972).

74. CAL. CORP. CODE § 1800 (West 1977).

75. N.C. GEN. STAT. § 55-125 (1987).

the reasonable expectations of minority shareholders to determine that the court should give relief given under such a statute.[76]

Other states have broader grounds for dissolution that are not necessarily related to fault. Louisiana, for example, authorizes dissolution if the objectives of the corporation have wholly failed or are entirely abandoned, or their accomplishment is impracticable.[77] Other states permit dissolution if there is division or dissension such that the corporation's business and affairs can no longer be conducted to the advantage of shareholders generally.[78] Connecticut's statute adopts an even broader standard, permitting relief "for any good and sufficient reason."[79]

In interpreting these broad statutory grounds, an understanding of the legislative intent becomes crucial to shaping the approach that a court uses in deciding whether to exercise its discretion to order dissolution. The following section of this article suggests that dissolution statutes often reflect particular concern about the special needs of close corporations. Recognition of the intimate, illiquid relationship within a close corporation therefore provides the necessary foundation for judging whether relief should be granted and, if so, what relief is appropriate; the shareholders' reasonable expectations has become the standard which best facilitates that approach.

## III. SHAREHOLDERS' REASONABLE EXPECTATIONS AS A BASIS FOR GRANTING RELIEF TO MINORITY SHAREHOLDERS

Reasonable expectations has become a vehicle both for broadening the reach of "oppression" in involuntary dissolution statutes and for interpreting the no fault grounds for relief. Since 1980, courts in a half dozen states have adopted reasonable expectations as the basis for judicial relief, and two states have included reasonable expectations in their statutes.

The widespread use in this country in the last few years of the reasonable expectations concept can be traced to impetus from abroad two decades ago. Allen Afterman, an Australian scholar, linked reasonable expectations to oppression in a 1969 article in which he examined British and Commonwealth decisions empowering courts to order dissolution or provide alternative relief. He stated:

Oppression under Section 210 [of the Companies Act of 1948] is probably

76. Meiselman v. Meiselman, 309 N.C. 279, 307 S.E.2d 551 (1983).

77. LA. REV. STAT. ANN. § 12:143 (West 1969).

78. *See, e.g.*, ME. REV. STAT. ANN. tit. 13, § 1115 (1981).

79. CONN. GEN. STAT. ANN. § 33-382 (West 1987).

best defined in terms of the reasonable expectations of the minority shareholders in the particular circumstances at hand. While these expectations will vary, such an approach permits courts to take account of all factors relevant to a given transaction or course of conduct by the controllers.[80]

A 1972 decision by the House of Lords, *Ebrahimi v. Wesbourne Galleries Ltd.*,[81] reflects judicial use of expectations to determine whether a minority shareholder was entitled to relief. In that case the House of Lords ruled that the exercise by the majority of its legal power (under a section of the Companies Act) to remove a minority shareholder from the company's board of directors was sufficient to support a court's order to wind up a corporation under Section 222 of the Companies Act of 1948. That section, now continued in Section 517 of Companies Act of 1985, authorizes a court to order a winding up if it "is of the opinion that it is just and equitable that the company should be wound up."[82] The court applied this approach to a company formed or continued on the basis of a personal relationship, involving mutual confidence or an understanding as to the extent to which each shareholder is to participate in management.[83]

The opinions of the House of Lords reflect awareness of the special characteristics of private companies (close corporations), and the conclusion that frustration of basic expectations, such as a shareholder's expectation to participate in management as long as the business continues, can justify dissolution. Lord Wilberforce commented:

[A] limited company is more than a mere entity . . .[:] there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, *expectations* and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which the shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The "just and equitable" provision does not ... entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; con-

80. Afterman, *Statutory Protection for Oppressed Minority Shareholders: A Model for Reform*, 55 VA. L. REV. 1043, 1063-65 (1969).

81. 2 All E.R. [1972] 492, 2 W.L.R. 1289.

82. Companies Act of 1948 § 222. Section 222 does not use "oppression" as a grounds for relief, although another section (§ 210) does. In *Ebrahimi* the trial judges' ruling that requirements of § 210 had not been satisfied on the facts of that case was not before the House of Lords.

83. Ebrahimi v. Westbourne Galleries, Ltd., 2 All. E.R. 492 [1972] 2 W.L.R. 1289.

> siderations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.[84]

The first edition of Professor O'Neal's *Oppression of Minority Shareholders*, published in 1975, strongly advocated a "reasonable expectations" standard for determining proper judicial treatment of claims made by dissatisfied minority shareholders. In that treatise, Professor O'Neal wrote:

> The reasonable expectations of the shareholders, as they exist at the inception of the enterprise, and as they develop thereafter through a course of dealing concurred in by all of them, is perhaps the most reliable guide to a just solution of a dispute among shareholders, at least a dispute among shareholders in the typical close corporation.[85]

The highest appellate courts in Alaska,[86] Montana,[87] New York,[88] North Carolina,[89] North Dakota,[90] and West Virginia[91] have adopted the reasonable expectations standard. In addition it has been used by lower courts in New Jersey[92] and New Mexico.[93] These developments reflect not just the specific reasonable expectations standard discussed above, but also an adoption of a broader view of close corporations that Professor O'Neal developed over the last 40 years. One of the first judicial interpretations of the New York statute after the addition of "oppression" as a grounds for dissolution noted this effect:

> Apparently the legislators were influenced by the writings of Professor F. Hodge O'Neal, the leading authority on "squeeze-outs" . . . . Thus to a great extent, a definition of "oppressive" depends on the special nature of close corporations as understood by the Business Corporation Law, rele-

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84. *Id.* at 500.

85. F.H. O'NEAL, SQUEEZE-OUTS OF MINORITY SHAREHOLDERS 525 (1975).

86. Stefano v. Coppock, 705 P.2d 443, 446 (Alaska 1985).

87. Fox v. 7L Bar Ranch Co., 198 Mont. 201, 645 P.2d 929 (1982).

88. *In re* Kemp & Beatley, Inc., 64 N.Y.2d 63, 72-73, 473 N.E.2d 1173, 1179, 484 N.Y.S.2d 799, 805 (1984).

89. Meiselman v. Meiselman, 309 N.C. 279, 307 S.E.2d 551 (1983).

90. Balvik v. Sylvester, 411 N.W.2d 383 (N.D. 1987) (court measured majority shareholder action against fiduciary duty and reasonable expectations concepts and found oppression). North Dakota's dissolution statute now specifically refers to shareholders' reasonable expectations. *See* N.D. CENT. CODE § 10-19.1-115 (1985).

91. Masinter v. Webco Co., 164 W. Va. 241, 262 S.E.2d 433, 442 (1980).

92. Exadaktilos v. Cinnaminson Realty Co., Inc., 167 N.J. Super. 141, 400 A.2d 554 (1979), *aff'd*, 173 N.J. Super. 559, 414 A.2d 994, *cert. denied*, 85 N.J. 112, 425 A.2d 273 (1980).

93. McCauley v. Tom McCauley & Son, Inc., 104 N.M. 523, 724 P.2d 232 (N.M. Ct. App. 1986).

> vant commentators and New York case law. . . . Both O'Neal and other commentators have developed a definition for oppression in terms of the reasonable expectations of the minority shareholders in light of the particular circumstances of each case.[94]

The court recognized that shareholders' expectations in a close corporation differ from shareholders' expectations in publicly held corporations and may not always be reflected in articles of incorporation, bylaws, shareholders' agreements or other writings. Participants often expect to participate in management and that their contribution will be recognized in the form of salary even though those matters are not contained in any written document. "These reasonable expectations constitute the bargain of the parties in light of which subsequent conduct must be appraised."[95]

New York's highest court focused on the particular needs of close corporations in its use of "reasonable expectations" to interpret oppression: "The statutory concept of 'oppressive action' can perhaps best be understood by examining the characteristics of close corporations and the legislature's general purpose in creating this involuntary dissolution statute."[96] The court quoted O'Neal's treatise as to the nature of a shareholder's expectations in a close corporation and noted that majority power under the statutory norm may serve to destroy a minority shareholder's vital interest and expectations, leaving the minority shareholder unable either to benefit from his or her holdings or to sell the holdings.[97] "This predicament may fairly be considered the legislative concern underlying the provision at issue . . . ."[98]

Other states adopting a reasonable expectations standard have referred to the concerns raised by Professor O'Neal. The Montana Supreme Court, for example, in *Fox v. 7L Bar Ranch Co.*,[99] cited O'Neal's concern that dividend withholding could be a devastating squeeze-out tactic and referred to his advocacy of additional protection for shareholders in a close corporation. The North Dakota Supreme Court, in adopting a rea-

94. Topper v. Park Sheraton Pharmacy, Inc., 107 Misc. 2d 25, 32-33, 433 N.Y.S.2d 359, 364-65 (N.Y. Sup. Ct. 1980) (citing a letter from a co-sponsor of the legislation to the governor, enclosing an excerpt from an O'Neal treatise and article along with citations to O'Neal in *Zion v. Kurtz*, a recent New York Court of Appeals decision).

95. *Id.* at 34, 433 N.Y.S.2d at 365.

96. *In re* Kemp & Beatley, Inc., 64 N.Y.2d 63, 71, 473 N.E.2d 1173, 1178, 484 N.Y.S.2d 799, 804 (1984) (enactment of "oppression" statute shows legislature's "special solicitude toward the rights of minority shareholders of closely held corporations").

97. *Id.* at 71-2, 473 N.E.2d at 1178-79, 484 N.Y.S.2d at 804-05.

98. *Id.*

99. 198 Mont. 201, 645 P.2d 929 (1982).

sonable expectations standard, relied on the characteristics of a close corporation as set out in O'Neal's *Close Corporation* treatise.[100]

One of the strongest American decisions adopting the reasonable expectations doctrine is the North Carolina Supreme Court's decision in *Meiselman v. Meiselman*,[101] interpreting a statute authorizing judicial liquidation if "reasonably necessary for the protection of the rights or interests of the complaining shareholder."[102] The Court's adoption of the reasonable expectations standard reflected a focus on the impact of majority actions on minority shareholders, rather than the traditional focus on the wrongdoing by those in control. The *Meiselman* court specifically recognized the *Oppression of Minority Shareholders* treatise as an excellent articulation of reasonable expectations and relied on other writings by Professor O'Neal to illustrate that reasonable expectations within a close corporation normally include participation in management and continuing employment.[103]

In 1983, Minnesota adopted pioneer legislation which expanded the remedies available to a court in a shareholder dispute and specifically charged courts to consider shareholders' reasonable expectations in determining whether to give relief.[104] This statute specifically applies to close corporations and reflects the special vulnerability of minority shareholders in a close corporation.[105] North Dakota legislation enacted in 1986 substantially adopted the Minnesota statute.[106]

In summary, recent legislation and case law point to a developing consensus that "a definition of 'oppressive' depends on the special nature of close corporations."[107] That "special nature" of a close corporation is

100. *See supra* note 90.

101. 309 N.C. 279, 307 S.E.2d 551 (1983).

102. N.C. GEN STAT. § 55-125(a)(4) (1987).

103. *Meiselman*, 309 N.C. at 298, 307 S.E.2d at 563.

104. MINN. STAT. ANN. § 302A.751, subd. 3a (West 1988).

105. *See* Olson, *Statutory Changes Improve Position of Minority Shareholders in Closely-Held Corporations*, THE HENNEPIN LAW, Sept.-Oct. 1983; Olson, *A Statutory Elixir for the Oppression Malady*, 36 MERCER L. REV. 627, 631 (1985). Professor Olson was the draftsman of the 1983 Amendments to the MINNESOTA BUSINESS CORPORATION ACT discussed in the text. Professor O'Neal's influence was felt here as well. Professor Olson is a 1970 graduate of the Duke Law School and was a student in a corporations course that Professor O'Neal taught at Duke.

106. N.D. CENT. CODE § 10-19.1-115 (1985).

107. Topper v. Park Sheraton Pharmacy, Inc., 107 Misc. 2d 25, 321, 433 N.Y.S.2d 359, 364 (N.Y. Sup. Ct. 1980). *See also* Matter of Kemp & Beatley, Inc., 64 N.Y.2d 63, 71, 473 N.E.2d 1173, 1178, 484 N.Y.S.2d 799, 804 (1984) ("statutory concept of 'oppressive actions' can, perhaps, best be understood by examining the characteristics of close corporations and the legislature's general purpose in creating this involuntary dissolution statute"). *See also* Exadaktilos v. Cinnaminson Realty

reflected in the following characteristics:

> — participants usually expect to be employed by the corporation and to be actively involved in its management and operation;
>
> — when dissension occurs within the enterprise, those in control of the corporation may use the norms of centralized control and majority rule which underlie the state corporation codes to defeat the expectations of participants who find themselves in the minority;
>
> — the lack of a market for shares in a close corporation and share transfer restrictions commonly found in close corporations mean that a shareholder who finds himself or herself in a minority has no satisfactory way to get out of the enterprise.

The New York Court of Appeals provided an illustration of the typical close corporation problem at which the oppression statute was directed:

> A shareholder who reasonably expected that ownership in the corporation would entitle him or her to a job, a share of the corporate earnings, a place in the corporate management, or some other form of security, would be oppressed in a very real sense when others in the corporation seek to defeat those expectations and there exists no effective means of salvaging the investment.[108]

Against this background, the conclusion of the New York Court of Appeals has general applicability: "Given the nature of close corporations and the remedial purpose of the statute, . . . utilizing a complaining shareholder's 'reasonable expectations' as a means of identifying and measuring conduct alleged to be oppressive is appropriate."[109]

## IV. CONSIDERATIONS SHAPING RELIEF BASED ON REASONABLE EXPECTATIONS

As the previous section sets out, the reasonable expectations standard has secured a firm toehold as the basis by which courts determine if minority shareholders are entitled to relief after dissension arises within a close corporation. The legislative history and case law firmly tie that standard to a minority shareholders' position in a close corporation: an

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Co., Inc., 167 N.J. Super. 141, 400 A.2d 554 (1979), *aff'd*, 173 N.J. Super. 559, 414 A.2d 994, *cert. denied*, 85 N.J. 112, 425 A.2d 273 (1980) (statute designed for minority shareholder in close corporation); McCauley v. Tom McCauley & Son, Inc., 104 N.M. 523, 724 P.2d 232, 236 (N.M. Ct. App. 1986); Balvik v. Sylvester, 411 N.W.2d 383, 386 (N.D. 1987) (statutory concept is best understood by examining nature and characteristics of close corporation, quoting O'Neal's treatise).

108. *In re* Kemp & Beatley, Inc., 64 N.Y.2d 63, 72-73, 473 N.E.2d 1173, 1179, 484 N.Y.S.2d 799, 805 (1984).

109. *Id.*

intimate, illiquid investment in which the minority shareholder is vulnerable to abuse under the traditional corporate norms of centralized power and majority rule but unable or unlikely to counter that possibility effectively by price adjustment or specific private contracting. This section sets out more specific considerations which should guide a court's use of reasonable expectations consistent with the development of the standard discussed above.

*Expectations need not be evidenced by a written instrument.* In a close corporation, the parties' entire business bargain is not completely set forth in the corporation's charter or bylaws or even in a separate signed preincorporation or shareholders' agreement. As Professor O'Neal has said, the agreements "often are oral, perhaps just vague and half-articulated understandings. Even when the participants formalize their bargain in a written shareholders' agreement, their participation in the business is often grounded on assumptions that are not mentioned in the agreement."[110] Expectations, therefore, must be gleaned from the parties' actions as well as their written documents. Courts permit expectations to be established outside of formal written agreements, but the minority shareholder retains the burden of proving the existence of the expectations.[111]

*Expectations must be important to the investor's participation.* The New York Court of Appeals has stated: "oppression should be deemed to arise only when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture ... [M]uch will depend on the circumstances in the individual cases."[112]

The judicial decisions tell us that denial of a shareholder's continued employment or of a proportionate share in the return on the capital invested in an enterprise is significant enough to warrant relief if the parties' expectations were for each shareholder's active participation in the enterprise.[113] In contrast, the Oregon Supreme Court held that prevent-

110. O'Neal, *supra* note 5 at 886.

111. *See, e.g.*, Jaffee Commercial Fin. Co. v. Harris, 119 Ill. App. 3d 136, 456 N.E.2d 224 (1983); Meiselman v. Meiselman, 309 N.C. 279, 307 S.E.2d 551 (1983).

112. *In re* Kemp & Beatley, Inc., 64 N.Y.2d 63, 73, 473 N.E.2d 1173, 1179, 484 N.Y.S.2d 799, 805 (1984).

113. O'Donnel v. Marine Repair Servs., Inc., 530 F. Supp. 1199 (S.D.N.Y. 1982) (court looked to reasonable expectations as of the time shareholder became a joint owner of the corporation); *In re* Wiedy's Furniture Clearance Center Co., Inc., 108 A.D.2d 81, 487 N.Y.S.2d 901 (N.Y. App. Div. 1985) (shareholder returned to family business with reasonable expectation of being actively in-

ing a corporation's forty-nine percent owner from examining corporate records and failing to notify him of corporate meetings was not sufficiently serious conduct to justify dissolution or the granting of any equitable relief.[114] As stated by the New York Court of Appeals, "[d]isappointment alone should not necessarily be equated with oppression."[115]

*Expectations must be known to the other parties.* Frustration of subjective hopes and desires will not trigger relief. Thus, the North Carolina Supreme Court has recognized that "in order for plaintiff's expectations to be reasonable, they must be known to or assumed by the other shareholders and concurred in by them. Privately held expectations which are not made known to the other participants are not 'reasonable.' "[116]

*The relevant expectations are those that exist at the inception of the enterprise, and as they develop thereafter through a course of dealing concurred in by all shareholders.* Expectations of participants may change during the evolution of an enterprise and courts should examine the whole history of the participants' relationship. This is not to say that the primary emphasis should not be on the participants' original business bargain; in a close corporation the most significant bargaining occurs at the initial stage of the enterprise.[117] Yet, the focus in a New York decision on the petitioner's expectations at the time that he decided to join the enterprise is too narrow and may reflect the particular facts of that case.[118] Other courts, and legislatures too, have phrased the standard more broadly, looking to the shareholders' reasonable expectations as they existed at the inception of the enterprise and as they developed

volved; where shareholder was squeezed out for no legitimate reason other than family animosity, relief should be given).

*See also In re* Taines, 111 Misc. 2d 559, 444 N.Y.S.2d 540 (N.Y. S. Ct. 1981).

114. Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973).

115. *In re* Kemp & Beatley, Inc., 64 N.Y.2d 63, 73, 473 N.E.2d 1173, 1179, 484 N.Y.S.2d 799, 805 (1984).

116. Meiselman v. Meiselman, 309 N.C. 279, 298, 307 S.E.2d 551, 563 (1983).

117. Under this standard, the Court should focus on the inception of the relationship .... The original understanding of the parties is particularly relevant to an evaluation of the subsequent actions by the majority, because the initial agreement may represent the only real negotiation and bargaining between the two sides. Oppression under Section 210 [of the English Companies Act of 1948] is probably best defined in terms of the reasonable expectations of the minority shareholders in the particular circumstances at hand. While these expectations will vary, such an approach permits courts to take account of all factors relevant to a given transaction or course of conduct by the controllers.

Afterman, *Statutory Protection for Oppressed Minority Shareholders: A Model for Reform*, 55 VA. L. REV. 1043, 1063-65 (1969).

118. *In re* Kemp & Beatley, Inc., 64 N.Y.2d 63, 473 N.E.2d 1173, 484 N.Y.S.2d 799 (1984).

thereafter through a course of dealing.[119] This broader phrasing permits the reasonable expectations standard to be applied to expectations of shareholders who receive their shares by gift or inheritance as well as to new expectations which develop as the parties operate the business.

In a famous English case, *In re H.R. Harmer Ltd.*,[120] the court noted that the relationship between a father and his two sons in a family business had changed over the years, moving from the initial understanding that the father would control the business to an understanding that the sons would play a greater role in the enterprise as the father aged. The court granted relief based on these later expectations. Similarly, in a leading North Carolina case[121] the court refused to give a limited reading to the expectations of a shareholder who had inherited minority interests in family enterprises in which his brother had inherited the controlling interests. The court, in remanding the case to the trial court for reconsideration, pointed to expectations growing out of plaintiff's ownership of 30 to 40 percent of closely-held, family-run corporations worth well over $11,000,000, his employment with fringe benefits and his being allowed to participate to some extent in management decisions.[122]

If shares have been received by inheritance or gift, the donor's wishes may have some bearing on whether the donee's expectations are reasonable.[123] In any event, as the New York and North Carolina decisions illustrate, expectations of participants in close corporations continue to evolve over the course of the life of the enterprise, and courts should give protection to these expectations as they have developed.

*Expectations move the focus away from the defendant's wrongdoing and toward consideration of whether the plaintiff's rights and interests have been prejudiced.* The increasing use of the reasonable expectations standard reflects a move away from an exclusive search for egregious conduct by those in control of the enterprise and toward greater consideration of

119. *See* MINN. STAT. ANN. § 302A.751, subd 3a (West 1988); N.D. CENT. CODE § 10-19.1-115 (1985); *see also* cases cited in notes 109-112 *supra*.

120. [1958], 3 All E.R. 689 (C.A.).

121. Meiselman v. Meiselman, 309 N.C. 279, 307 S.E.2d 551 (1983).

122. *Id. See also* Fox v. 7L Bar Ranch Co., 198 Mont. 201, 214, 645 P.2d 929, 936 (1982) ("After the death of his father, [the plaintiff] had a reasonable expectation of sharing in his inheritance.").

123. *See* Ferber v. American Lamp Corp., 503 Pa. 489, 469 A.2d 1046 (1983) (court found that consideration should be given to testamentary intent of father whose will clearly indicated that benefit should flow from the family business to all children). *But see* Gimpel v. Bolstein, 125 Misc. 2d 45, 477 N.Y.S.2d 1014 (N.Y. Sup. Ct. 1984) (reasonable expectations seem inappropriate where present shareholders are two generations removed from the company's formation).

the effect of conduct on the complaining shareholder, even if no egregious conduct by controllers can be shown. The North Carolina Supreme Court articulated this approach when it modified a lower court order in *Meiselman v. Meiselman*.[124] The Court found that the trial court had applied an incorrect legal standard by focusing on possible egregious conduct by the controlling shareholder and by using terms such as "oppression," "overreaching," "gross abuse," "unfair advantage," and the like. Instead the court ruled the proper focus should be on the rights and interests of the complaining shareholder, which the court defined by reference to the reasonable expectations the participants' relationship had generated.[125]

There remains some disagreement on the extent to which plaintiffs' misconduct provides the basis for denying relief. The decisions reflect a lessening of judicial willingness to provide relief as the minority shareholder's conduct becomes more objectionable. A minority shareholder has the best chance of obtaining relief when the controlling shareholder has bungled the running of the corporation, so that there is little need to focus on the minority shareholder.[126] When majority shareholders point to the minority's conduct as the reason for the majority's act, for example, claiming that the minority shareholder was fired because of a lack of sales[127] or ineffective job performance,[128] courts nevertheless have provided some relief if termination would frustrate the parties' expectations. When the unsatisfactory job performance can be traced to more affirmative and egregious misconduct of the minority shareholder, however, courts are less sympathetic. A New Jersey court denied relief to a son-in-law who had been terminated as an employee of the family business in which he held a minority interest.[129] The court found that because the son-in-law failed to learn the business and performed in an unsatisfactory way, his firing did not violate the reasonable expectations of the parties. Similarly, a New York court refused to order the rehiring of a minority shareholder charged with embezzlement.[130]

Courts occasionally discuss the petitioner's misconduct in terms of un-

124. 309 N.C. 279, 307 S.E.2d 551 (1983).

125. *Id.*

126. *See, e.g.*, Buss v. J.O. Martin Co., 241 Cal. App. 2d 123, 50 Cal. Rptr. 206 (1966).

127. *See* Hughes v. Sego Int'l Ltd., 192 N.J. Super. 60, 469 A.2d 74 (1983).

128. *In re* Imperatore, 128 A.D.2d 707, 512 N.Y.S.2d 904 (N.Y. App. Div. 1987).

129. Exadaktilos v. Cinnaminson Realty Co., Inc., 167 N.J. Super. 141, 400 A.2d 554 (1979), *aff'd*, 173 N.J. Super. 559, 414 A.2d 994, *cert. denied*, 85 N.J. 112, 425 A.2d 273 (1980).

130. Gimpel v. Bolstein, 125 Misc. 2d 45, 477 N.Y.S.2d 1014 (N.Y. Sup. Ct. 1984).

clean hands.[131] For example, a New York court refused to grant dissolution in a case where the plaintiff's son, with his father's permission, had organized a new corporation to compete with the corporation which the father wanted to dissolve.[132]

Even when courts have found minority shareholders at fault they have been slow to rule out the possibility of any relief. The New York court, which denied relief to the shareholder whose son was competing with the corporation, recognized that future conduct by those in control might justify relief. The court specifically based its denial of relief on the assumption that the minority shareholder would continue to participate in the corporation, receive a salary and have access to the corporation's books.[133] The court that refused to require the rehiring of a minority shareholder accused of embezzlement declared that there is a limit to what the majority shareholders could do, and that even though they did not have to rehire the petitioner, they had to devise some way of providing him a return on his investment.[134] Another New York court suggested that a good business reason for terminating a petitioning shareholder's employment and misconduct by a petitioner might not be sufficient reasons to deny some kind of remedy to the petitioner, as long as a court found that the discharge and the impaired shareholder relationship severely disappointed petitioner's reasonable expectations.[135]

The role that fault should play in determining shareholder rights has been a focus of academic commentary. Professors John Hetherington and Michael Dooley found elimination of the fault principle to be absolutely essential to the statute they proposed for remedying the problem of exploitation inherent in a close corporation.[136] They proposed a statute requiring a majority shareholder to purchase the minority's interest at the request of the minority. This remedy would be subject to some safeguards, but eliminates the gatekeeper role that the court currently performs under the oppression statutes and in its place would insert a "low

131. *See, e.g.*, Gunzberg v. Art-Lloyd Metal Prods. Corp., 112 A.D.2d 423, 492 N.Y.S.2d 83 (N.Y. App. Div. 1985). *See also* Knaebel v. Heiner, 663 P.2d 551 (Alaska 1983); Jaffe Commercial Finance Co. v. Harris, 119 Ill. App. 3d 136, 456 N.E.2d 224 (1983).

132. Mardikos v. Arger, 116 Misc. 2d 1028, 457 N.Y.S.2d 371 (Sup. Ct. Kings Co. 1982).

133. 116 Misc. 2d at 1033, 457 N.Y.S.2d at 375.

134. Gimpel v. Bolstein, 125 Misc. 2d 45, 55, 477 N.Y.S.2d 1014, 1021 (N.Y. Sup. Ct. 1984).

135. Topper v. Park Sheraton Pharmacy Inc., 107 Misc. 2d 25, 28, 433 N.Y.S.2d 359, 362 (N.Y. Sup. Ct. 1980).

136. Hetherington & Dooley, *Illiquidity and Exploitation: A Proposed Statutory Solution to the Remaining Close Corporation Problem*, 63 VA. L. REV. 1, 46 (1977).

cost, convenient remedy, making exploitative behavior costly to the majority and giving the majority an incentive to conduct the affairs of the firm in a manner that retains the support and confidence of the minority."[137] They reject arguments that such a mandatory right would make creditors more reluctant to extend credit to close corporations, permit minority investors to use buyout rights to enhance their economic interests to the detriment of other investors in the enterprise, or deprive the community of viable firms.[138]

The Hetherington-Dooley proposal for mandatory buyout or dissolution has been a lightening rod which has influenced the debate over discretionary judicial dissolution under a reasonable expectations standard. In opposition to easy dissolution, Professor Robert Hillman has argued for a greater respect for the stability and permanence of close corporations.[139] He argues against any assumption that a buyout is painless; he would require that a dissolution standard consider the cost of scarce funds for a majority shareholder forced to restructure and the negative effects of easy dissolution on the entity's creditors and credit standing. Yet, even while arguing for a greater respect for permanence, Hillman would appear to leave room for judicial dissolution based on the reasonable expectations standard. He concludes that

> [e]xpectations, not culpability, should be the relevant target of inquiry in most cases in which minority participants desire dissolution. To the extent that a minority shareholder had reasonable expectations at the inception of a venture, those expectations were understood by other participants in the enterprise, and the prospect that the expectations will be realized is remote, dissolution or a mandatory buy-out of the participants' interest may represent a sensible compromise between liquidity and stability interests in the close corporation setting.[140]

Similarly, Professor Edwin Bradley is not willing to fall-in with the more far-reaching proposals for a mandatory buyout, but argues for a stronger signal to courts to provide relief.[141] He would "aggressively encourage courts to grant buyout or dissolution, not merely where minority shareholders are the victims of the unfairly prejudicial misuse of control

137. *Id.* at 47-48.

138. *Id.* at 50.

139. Hillman, *The Dissatisfied Participant in the Solvent Business Venture: A Consideration of the Relative Permanence of Partnerships and Close Corporations*, 67 MINN. L. REV. 1 (1982).

140. Hillman, *Indissoluble Partnerships*, 37 U. FLA. L. REV. 691, 728 (1985).

141. Bradley, *An Analysis of the Model Close Corporation Act and a Proposed Legislative Strategy*, 10 J. CORP. LAW 817, 840, (1985).

power by majority shareholders, but also in any circumstances where the minority shareholders are found to be in deeply embittered or grievously disappointing circumstances."[142]

Some of the criticism of dissolution-at-will, however, would seem to extend to judicially ordered dissolution. Judge Frank Easterbrook and Professor Daniel Fischel have recommended that "courts should not readily infer a right to withdraw capital from the firm on behalf of minority shareholders."[143] They conclude that such a right would provide protection against opportunistic majority behavior, but they would weigh that benefit against "greater transaction costs as deadlocks multiply, an increase in the price of equity and debt capital, and perhaps the denial of any opportunity to invest."[144]

While it is likely that most businesses will continue after a dissolution order if any of the parties desire the business to continue,[145] there undoubtedly will be transaction costs incurred in replacing the departing shareholder's capital. In many situations the new capital will come at a higher cost to the remaining shareholder or shareholders than the return that had been paid to the departing shareholder on his or her investment in the company.

The traditional legal rule favoring permanence skewed negotiations in favor of the party controlling the enterprise. The majority shareholder could virtually dictate the terms of exit, knowing that neither the market nor the courts provided any significant check on the terms. A mandatory buyback protects the minority's concern about illiquidity, but may be less able to allocate the costs of replacement capital or transaction costs related to the buyout. A mandatory buyout statute would permit any minority shareholder to impose on the majority the costs of replacing the minority's capital even if the minority had played a substantial role in bringing about the breakdown of relations. If the court continues to have discretion to order dissolution, it will be able to refuse relief if the minority seeks improperly to impose on the majority the costs of replacing assets.[146] Of course, conditioning dissolution on judicial ap-

142. *Id.* at 837.

143. Easterbrook & Fischel, *Close Corporations and Agency Costs*, 38 STAN. L. REV. 271, 290 (1986).

144. *Id.* at 290.

145. *See* Hetherington & Dooley, *supra* note 136, at 26-27, 31 (Most cases in which judicial relief was ordered resulted in one party buying out the other.).

146. Or the court can modify relief to reflect these concerns by not granting attorneys fees or interest. *See* Part V *infra*.

proval is subject to the risk that courts having a traditional view of corporate permanence, and not understanding the peculiar relationships within a close corporation, may unnecessarily strengthen the hand of a majority and lock the minority into a permanent illiquid and nonperforming investment. Yet, a continuing judicial role seems supportable, as long as courts understand the basic characteristics of a close corporation.

A judicial role would not be attractive also if the parties by private contracting could better resolve the dispute or if the possibility of later judicial interference itself created uncertainties that increased the overall costs of participating in a closely held enterprise. On the latter point, for example, a potential majority shareholder investor (or a creditor) might be reluctant to commit funds to an entity, or may seek a greater return for doing so, because of a fear that the court would too easily force a corporation to redeem a minority investment. A reasonable expectations standard does not seem to create such a risk, based as it is on the parties' understandings.

On the former point, disputes that lead to petitions for dissolution do not easily lend themselves to advance planning. Parties entering into a business relationship are not always willing to fully explore the ramifications of possible disputes if things were to go wrong. A prolonged focus on the "downside" may seem inconsistent with the mutual trust on which the business must depend.[147] For those hearty investors willing to undertake such a search, the costs can be prohibitive, both from the increased involvement of an attorney and the seemingly open-ended nature of trying to protect all participants' interests from all possible evils.[148] Items which cannot be adequately addressed *ex ante* should have some mechanism for an *ex post* resolution. The mandatory buyout arrangement suggested by Hetherington and Dooley provides one option but may unnecessarily reward obstreperous shareholders. A judicial gatekeeper function addresses this concern and will be effective, as long as

147. *See* OPPRESSION, *supra* note 1, at § 2.20.

148. *See* Hetherington & Dooley, *supra* note 136, at 37 ("Given the limitations of human foresight and knowledge, any attempt to describe the majority's duties and obligations precisely is likely to leave the minority vulnerable to some overlooked form of exploitation, while at the same time, seriously impairing the efficiency of the firm by fettering management.").

*See also* Carney, *The Theory of the Firm: Investor Coordination Costs, Control Premiums and Capital Structure*, 65 WASH. U.L.Q. 1, 59-60 (1987) ("Investors in closely held enterprises are likely to be subject to conditions of bounded rationality, under which they either fail to perceive the complete set of problems that may occur later, or underestimate the probability of their occurrence.").

courts are properly attuned to the basic organizing principles of a close corporation. This objective can be achieved by statutes such as the one in Minnesota which specifically charges courts to consider the reasonable expectations of shareholders and the fiduciary duties that shareholders in a close corporation owe to one another.[149] These two legislative directives should be coupled with an express statutory and judicial recognition that an investment in a close corporation is likely to be an intimate, illiquid investment in which the traditional corporate norms of majority rule and permanence can have tremendous adverse effects on a minority shareholder after a falling out among the participants in an enterprise.

*Corporations to which a reasonable expectations standard should be applicable.* The linking of the reasonable expectations standard (and the oppression remedy in general) and the close corporation has occurred for the most part without a specific definition of the close corporations to which the standard is to be applied. In fact, most statutes which provide "oppression" as a ground for involuntary dissolution are open to shareholders in all corporations even though the remedy is almost always used by a shareholder in a close corporation. A few of the more recent statutes restrict the oppression ground to defined close corporations. New York's oppression statute, for example, is available only in corporations whose shares are not publicly traded.[150] New Jersey's statute is limited to corporations with twenty-five or fewer shareholders.[151] The Minnesota and North Dakota statutes apply to corporations with thirty-five or fewer shareholders.[152] Wisconsin's statute, following the Model Statutory Close Corporation Supplement, applies to corporations with fifty or fewer shareholders if the corporation elects to become a statutory close corporation by amending its charter to include a provision electing the special status.[153]

Only a statute following the Model Supplement will likely have any substantial effect on the number of instances in which dissolution can be sought based on oppression. Once a corporation's shares are publicly traded, minority shareholders, even if they are also employees, are not subjected to the risks that are common to the close corporation and which inspired the modern legislative and judicial remedies. Corpora-

149. MINN. STAT. ANN. § 302A.751 (West 1985).

150. N.Y. BUS. CORP. LAW § 1104-a (McKinney 1979).

151. N.J. STAT. ANN. § 14A-12(7) (West Supp. 1988).

152. MINN. STAT. ANN. § 302A.751 (West 1985); N.D. CENT. CODE § 19.1.1-115 (1985).

153. WIS. STAT. § 180.995 (1983). *See also* GA. CODE ANN. § 14-2-940 (effective July 1, 1989).

tions with more than fifty, thirty-five, or even twenty-five shareholders are not as likely to encompass the close relationships creating expectations different from the expectations envisioned by the statutory norm.[154] But the Model Supplement threshold will have a much more significant effect. If the participants of a two- or three-person corporation do not take the necessary steps to elect to be a statutory close corporation, the oppression remedy is unavailable to them.

Empirical evidence, although admittedly scant, indicates that only a small percentage of close corporations elect to be covered by special statutes in states requiring an election.[155] Their reasons for not making the election are difficult to ascertain, but ignorance or distrust of a new law without any settled precedent would seem to be a major contributor.[156] Requiring a close corporation to elect special status is more appropriate for provisions in the special legislation which grant a closely held enterprise more flexibility in modifying the traditional statutory norms of centralized control and majority rule. In fact, most of the states that require an election are oriented toward provisions that are basically "enabling."[157] The purpose of the oppression statute is different. It does not seek to give the parties greater freedom to plan their relationship as much as it seeks to provide a statutory means to resolve conflicts unlikely to be the subject of advance planning. A statute designed to protect minority shareholders who find themselves denied effective participation and return in a close corporation should not be conditioned on an election which, in effect, assumes that minority shareholders will foresee the evils that might befall them.

*The effect of a shareholders' agreement on reasonable expectations.* As suggested in the previous paragraph, the oppression remedy and the reasonable expectations test are most useful when the parties inadequately planned for a breakdown of their relationship. The increased legislative and judicial recognition of this remedy must also consider the relationship of this statutory remedy to any planning that the parties did do and

154. If a corporation has 2 or 3 active participants and more than the 35 or 50 passive participants, an active participant who is terminated from employment may have expectations that have been frustrated. To that extent, such statutes may be under-inclusive.

155. *See* CLOSE CORPORATIONS, *supra* note 1, at § 1.18.

156. *Id.*

157. About two dozen states have special statutes applicable to statutory close corporations of which about half require an election by shareholders. These electing states tend to focus their special statutes on permitting close corporations to change their governance structure. *See* CLOSE CORPORATIONS, *supra* note 1, at §§ 1.14, 1.15.

particularly to any arrangement for which they might have bargained. The principle issues thus far litigated have been whether a petition for involuntary dissolution triggers a buy-sell agreement previously entered into between the parties and whether the buyout formula or the amount stipulated in the agreement controls the remedy to be awarded in the involuntary dissolution proceeding.

Minnesota's statute, one of the few statutes to specifically address this issue, states that if shares are subject to a share-purchase agreement, the court shall order the transfer of shares at the price set forth in the agreement, unless it determines that a transfer at that price is unreasonable under the circumstances.[158] In the absence of statute, courts appear to be applying a similar standard, based on the reasonableness or unreasonableness of a sale or purchase under the circumstances. In two cases in which courts found inequitable conduct by the controlling shareholders, they permitted the minority shareholder to petition for relief under an involuntary dissolution statute, despite an agreement obligating any party wishing to sell to offer his or her shares to other shareholders at a specified price.[159] But where shareholders voluntarily left the corporation and then sought dissolution, one court found the dissolution request triggered a right of the other shareholders under a buy-sell agreement to buy out the stock of the departing shareholders.[160]

California's statute is unusual in providing that a shareholders' agreement cannot waive a shareholder's right to seek involuntary dissolution.[161] In states without a statute like the one in California, courts should not hold that a shareholders' agreement overrides the shareholders' statutory rights to seek involuntary dissolution, a buyout, or other remedy for majority shareholder misconduct, unless the agreement contains a specific provision on this point which the shareholders have knowingly accepted. A general, purportedly all-inclusive agreement regulating transfer of a corporation's stock may well not have been intended to apply in dissolution proceedings, in court-ordered buyouts, or to other

158. MINN. STAT. ANN. § 302A.751(2) (West 1985).

159. Anderson v. Clemens Mobile Homes, Inc. 214 Neb. 283, 333 N.W.2d 900 (1983); Matter of Villa Marie, Inc., 312 N.W.2d 921 (Minn. 1981).

*See also* Hughes v. Sego Int'l Ltd., 192 N.J. Super. 60, 469 A.2d 74 (1983) (agreement did not preclude resort to dissolution because by its terms it only covered transfers on the death of a shareholder and set a first refusal price if a party desired to sell during his lifetime).

160. Skierka v. Skierka Bros., Inc., 629 P.2d 214 (Mont. 1981) (court found a clear intent for the shareholders who wished to do so to be able to continue the corporation's practice).

161. CAL. CORP. CODE § 300(C) (West Deering 1977).

remedies for oppression of minority shareholders.[162] A controlling shareholder should not be able to engage in conduct prejudicial to a minority shareholder and then force the minority shareholder to sell out at a price set in an agreement entered into when relations were harmonious and intended only to govern share transfers in other circumstances.

Courts can prevent a minority shareholder from utilizing an involuntary dissolution proceeding to circumvent a buy-sell agreement. In two cases, courts refused to order involuntary dissolution where no misconduct by majority shareholders was established and instead enforced a buy-sell agreement.[163] In a case arising under the New York statute, which requires a court in a dissolution proceeding to consider whether liquidation is the only feasible means for a shareholder to obtain a fair return on his investment, the court refused to order dissolution where the petitioner could obtain a fair return under the buyout provisions of a shareholders' agreement.[164]

## V. REASONABLE EXPECTATIONS AND ALTERNATIVE REMEDIES TO DISSOLUTION

The broadening of the grounds for involuntary dissolution has been accompanied by an increased use of remedies which are alternatives to dissolution. This linkage should not be entirely surprising; the availability of remedies perceived as less drastic than dissolution undoubtedly has contributed to the breakdown in judicial (and legislative) resistance to granting relief. Further, these alternative forms of relief spring from the same recognition of the vulnerable position of a minority shareholder in a close corporation that sparked the broadened grounds for relief. Thus, the lower threshold and the broader remedies complement one another in enabling courts to respond to the special needs of participants in close corporations.

Alternative remedies adopted by legislatures and courts include: Appointment of a provisional director, appointment of a custodian, ordering a buyout of one shareholder, or some other form of relief such as ordering a change in the corporation's charter or bylaws. Within this array of remedies the buyout has captured judicial attention and it is in this con-

162. *In re* Pace Photographers, Ltd., 71 N.Y.2d 737, 530 N.Y.S.2d 67 (1988).

163. *See* Rowland v. Rowland, 102 Idaho 534, 633 P.2d 599 (1981); Capitol Toyota, Inc. v. Gervin, 381 So. 2d 1038 (Miss. 1980).

164. Matter of Harris, 118 A.D.2d 646, 500 N.Y.S.2d 5 (N.Y. App. Div. 1986).

text that courts have most effectively used the reasonable expectations standard.

*Provisional Director.* About a dozen states authorize a court to appoint a provisional director to help resolve a shareholder dispute,[165] but this remedy likely will only be useful in a limited number of close corporation situations. Typically only the deadlock of the parties can trigger this remedy.[166] In effect, a court can impose a kind of *ex post* arbitration at the behest of one party when participants have deadlocked. Unlike arbitration, however, the provisional director lacks the authority to act alone and can only combine with other directors to create the necessary majority required for corporate action.[167] The appointment of a provisional director may provide a solution for isolated disagreements without permanently altering the corporation's structure,[168] but it is an unlikely solution for serious dissension between shareholders or groups of shareholders.

*Custodian.* Several states have added to the remedies available in an unhappy corporation by providing for the appointment of a custodian.[169] A custodian differs from a receiver in that the custodian is authorized to manage the business and affairs of the corporation rather than wind up its affairs and liquidate its assets. A custodian's power is less circum-

165. *See, e.g.*, CAL. CORP. CODE § 1802 (West Deering 1977); GA. CODE ANN. § 14-2-142 (1982); ILL. REV. STAT. ch. 32, § 12.55 (1987); ME. REV. STAT. ANN. tit. 13-A, § 1123(3)(E) (1964); N.J. STAT. ANN. § 14A:12-7(3) (West Supp. 1988); OHIO REV. CODE ANN. § 1701.911 (Anderson Supp. 1987). The right to petition for a provisional director often is conditioned upon director deadlock and may be limited to shareholders owning a stated percentage of the corporation's stock.

A second group of states makes the provisional director remedy available only to statutory close corporations. *See, e.g.*, ALA. CODE § 10-2A-171 (1975); DEL. CODE ANN. tit 8, § 353 (1983); KAN. STAT. ANN. § 17-7213 (1981); PA. STAT. ANN. tit. 15, § 1384 (Purdon Supp. 1988); TEXAS BUS. CORP. ACT ANN. art. 12.54 (Vernon Supp. 1988); WIS. STAT. § 180.995(19)(b)(7) (Supp. 1987).

166. *See* GA. CODE ANN. § 14-2-142 (West Supp. 1988). *But see* ILL. REV. STAT. ch.32, § 12.55 (1987) (omitting any deadlock requirement).

167. *But see* N.J. STAT. ANN. § 14A:12-7(3) (West Supp. 1988), providing for the appointment of more than one provisional director.

168. Folk, *Corporation Statutes: 1959-1966*, 1966 DUKE L.J. 875, 953.

169. As with the provisional director remedies, the authorization for a court to appoint a custodian is sometimes found in the general corporations codes applicable to all corporations. *See, e.g.*, DEL. CODE ANN. tit. 8, § 226 (1983); ILL. REV. STAT. ch. 32, § 12.60(h) (1987); IND. CODE ANN. § 23-1-47-3 (Burns Supp. 1988); KAN. STAT. ANN. § 17-6516 (1981); TENN. CODE ANN. § 48-24-303 (Supp. 1987); VA. CODE ANN. § 13.1-748 (1985). Sometimes this authorization is found in special statutes applicable only to statutory close corporations. *See, e.g.*, ALA. CODE § 10-2A-170 (1975); DEL. CODE ANN. tit 8, § 352 (1983), KAN. STAT. ANN. § 17-7212 (1981); PA. STAT. ANN. tit. 15, § 1383 (Purdon Supp. 1988); TEX. BUS. CORP. ACT art. 12.54 (Vernon Supp. 1988); WIS. STAT. § 180.995(19)(b)(5) (Supp. 1987).

scribed than that of a provisional director in that the custodian is empowered to act alone without the acquiescence of any board members.

The custodian remedy has potentially broader application than the appointment of a provisional director in that deadlock is not always required to trigger a custodian's appointment.[170] In some states a court may appoint a custodian if those in control of the corporation have acted fraudulently or oppressively.[171] A court, therefore, could appoint a custodian if a minority shareholder's reasonable expectations had been frustrated.[172] Yet the ultimate value of a custodian is limited because in most instances a closely held business will not prosper as well in the hands of an outside custodian. A common definition of a close corporation is one that does not separate management from ownership.[173] Sooner, rather than later, the participants will need to arrive at a better accommodation of their respective interests, or a different remedy will be required.

*Judicial Ordering of Corporate Action.* A few states have gone beyond authorizing appointment of provisional directors or custodians or authorizing court-mandated buyouts and have approved specific additional remedies.[174] These include:

— cancelling or altering any provision of the articles of incorporation or the bylaws;

— cancelling, altering or enjoining any resolution or other act of the corporation;

— directing or prohibiting any act of the corporation or of the shareholders, directors, officers or other persons party to the action;

— providing for the sale of all the property and franchises of the corpo-

170. For statutes which condition the appointment of a custodian on deadlock *see* DEL. CODE ANN. tit. 8, § 226 (1983); PA. STAT. ANN. tit. 15, § 1383A(1) (Purdon Supp. 1988).

171. N.J. STAT. ANN. § 14A:12-7(1)(c) (West Supp. 1988) (25 or fewer shareholders); PA. STAT. ANN. tit. 15, § 1513.1 (Purdon Supp. 1988); VA. CODE ANN. § 13.1-748 (1985).

*See also* DEL. CODE ANN. tit. 8, § 226(a) (1983). Since Delaware lacks a general provision permitting involuntary dissolution, the custodian remedy is the primary statutory remedy for complaining shareholders in corporations that are not statutory close corporations.

172. *See* ARC Mfg. Co., Inc. v. Konrad, 321 Pa. Super. 72, 467 A.2d 1133 (1983).

173. *See generally supra* note 9. By combining management and residual claimants in the same person, the close corporation gains certain benefits (reduced monitoring costs) but is limited in what it can do (e.g., raise substantial capital). A small corporation which separates management from residual ownership may incur additional costs while continuing to bear the usual limitations of a close corporation and thereby not be able to compete effectively with other enterprises.

174. *See, e.g.*, MICH. COMP. LAWS. ANN. § 450.1825 (West 1967); N.J. STAT. ANN. § 14A:12-7 (West Supp. 1988); N.C. GEN. STAT. § 55-125.1 (1982); S.C. CODE ANN. § 33-21-155 (Law. Co-op. 1976); ME. REV. STAT. ANN. tit. 13A, § 1123 (1964).

ration to a single purchaser.[175]

In some states the statutes specify that courts can give this alternative relief even if all the requirements for involuntary dissolution have not been met, an explicit recognition of the broadening of relief beyond the traditional grounds.[176] Reasonable expectations of minority shareholders could provide the basis of this relief which would be appropriate if the complaint of a minority shareholder is tied only to one specific act and there remains some possibility that the reversal of that act would not exacerbate tension or lead to a stalemate that would harm all the shareholders.

*Buyouts.* The increased use of buyouts as a remedy for deadlock or dissension is the most dramatic recent change in legislative and judicial thinking on close corporations problems. Legislative or judicial support for this remedy now exists in more than twenty states. In some states, buyout rights are available only at the option of the majority shareholders if the minority shareholders have petitioned for involuntary dissolution or have been successful in persuading a court to order involuntary dissolution.[177] In more recent legislation, states are authorizing buyouts in a broader range of disputes among shareholders.[178] In a third group of states, courts have ordered buyouts on the basis of their general equity powers even though the statute does not make specific reference to

175. ME. REV. STAT. ANN. tit. 13A, § 1123 (1964) includes the last reason. The other reasons are included in most of the statutes cited in note 174 *supra*.

176. *See, e.g.*, N.C. GEN. STAT. § 55-125.1 (1987); S.C. CODE ANN. § 33-21-155 (Law. Co-op. 1976).

177. In one group of states this remedy is only available to statutory close corporations. *See* ILL. REV. STAT. ch. 32, § 1214(b) (1987) (Illinois also has a broader statute); MD. CORPS. & ASS'NS CODE § 4-603 (1985); N.Y. BUS. CORP. LAW §§ 1104-a, 1118 (McKinney 1986 & Supp. 1988). In other states this remedy is available to all corporations. *See* CAL. CORP. CODE § 2000 (West Deering 1977); N.J. STAT. ANN. § 14A;12-7(8) (West Supp. 1988); R.I. GEN. LAWS § 7-1.1-90.1 (1985); W.VA. CODE § 31-1-134 (1988).

In most of these states the buyout right applies when dissolution is sought on any statutory ground, but in New York this right is available only for dissolution sought for oppression or similar conduct and not for dissolution sought under the deadlock statute. *See* N.Y. BUS. CORP. LAW § 1118 (McKinney Supp. 1988).

178. *See, e.g.*, ARIZ. REV. STAT. ANN. § 10-216 (1977) (applicable to statutory close corporation only); ILL. REV. STAT. ch. 32, Para. 12.55 (a)(3),(f), & (g) (1987); ME. REV. STAT. ANN. tit. 13A, § 1123 (1964); MICH. COMP. LAWS ANN. § 450.1825 (West 1967) (available only if dissolution sought for illegality, fraud, or willfully unfair and oppressive acts); MINN. STAT. ANN. § 302A.751, subd. 2 (West Supp. 1988) (applicable only to statutory close corporation); N.C. GEN. STAT. § 55-125.1 (1982); S.C. CODE ANN. § 33-21-155 (Law. Co-op. 1976); *Cf.* N.D. CENT. CODE § 10-19.1-115 (1985) (authorizing any equitable relief but not mentioning buyout specifically).

buyouts.[179]

A buyout of one shareholder by another is often the remedy of choice of the shareholders even when the court has ordered a dissolution. A study by Professors Hetherington and Dooley showed that in almost all cases of judicially ordered dissolution, the company was not liquidated, but rather the parties came to a contractual solution usually involving the purchase of one shareholder's interest by another.[180] The later statutes and judicial decisions, therefore, have begun to codify what appears actually to be occurring in the marketplace.

The increased use of a statutorily authorized buyout, however, raises a host of questions which often are not addressed in the statutes and are only beginning to be addressed in the case law. For example, what is fair value? States vary in the extent to which they define fair value. New York has no definition at all.[181] California refers to liquidation value as of the valuation date, but provides for taking into account the possibility of sale as a going concern.[182] Wisconsin refers to "going concern value" as a determinant of "fair value."[183]

A California court pointed out that a minority shareholder should not receive less in a buyout than he would have received if dissolution had been allowed to proceed; otherwise the majority shareholder would gain from oppressive conduct.[184]

Legislatures and courts understandably have been reluctant to specify a precise measure of value. Valuation of an interest in a close corporation has always been inexact,[185] and there is little reason to think that it can become more precise in the dissolution context. In several states, the statute authorizing a buyout refers to valuation under the appraisal stat-

179. *See, e.g.*, Belcher v. Birmingham Trust Nat'l Bank, 348 F. Supp. 61 (N.D. Ala. 1968); Orchard v. Covelli, 590 F. Supp. 1548 (W.D. Pa. 1984) *aff'd* 802 F.2d 448 (3rd Cir. 1986); Alaska Plastics, Inc. v. Coppock, 621 P.2d 270 (Alaska 1980); Sauer v. Moffitt, 363 N.W.2d 269 (Iowa Ct. App. 1984); Maddox v. Norman, 669 P.2d 230 (Mont. 1983); Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973); Delaney v. Georgia-Pacific Corp., 278 Ore. 305, 564 P.2d 277 (1977). *Contra* Corlett, Killian, Hardeman, McIntosh & Levi, P.A. v. Merritt, 478 So. 2d 828 (Fla. Dist. Ct. App. 1985).

180. *See* Hetherington & Dooley, *supra* note 136.

181. N.Y. BUS. CORP. LAW § 1118 (McKinney Supp. 1988).

182. CAL. CORP. CODE § 2000 (West Deering 1977). *See* Abrams v. Abrams-Rubaloff & Assocs., Inc., 114 Cal. App. 3d 240, 170 Cal. Rptr. 656 (1980) (appraiser took into account hypothetical that principals would not compete).

183. WIS. STAT. § 180.995(19)(e) (Supp. 1987).

184. Brown v. Allied Corrugated Box Co., 91 Cal. App. 3d 477, 154 Cal. Rptr. 170 (1979) (interpreting former § 4658 of the California law, which § 2000 replaced).

185. *See generally* Haynsworth, *Valuation of Business Interests*, 33 MERCER L. REV. 457 (1982).

ute as a guide for valuation in a buyout.[186] This reference brings in a body of case law on valuation, but the precedent is often so open-ended that it provides little guidance. In the absence of statutory reference, courts have disagreed on the usefulness of appraisal statute precedents.[187]

The most common method for determining fair value is to calculate investment value, usually based on the company's earnings. Courts agree that net asset value and market value are of little use in determining the fair value of an interest in an ongoing close corporation;[188] net asset value is generally used when an enterprise is liquidating, and market value is not available because a close corporation lacks a market for its shares. Some courts try to determine investment value by using a variety of factors,[189] but the most commonly utilized formula treats company earnings as determinant of investment value.[190] A California decision held that price-earnings ratios of similar companies whose shares have a market may be used to find investment values, but that this method is not the sole method of determining investment value.[191] A New York decision noted that in calculating the company's real earning power, it should add to reported earnings any excess compensation paid to shareholder employees and corporate officers in order to determine the company's real earning power.[192]

One of the most important questions in fixing the price of stock being transferred in a buyout is whether a court should discount the value of the stock, once determined, because the stock is a minority interest or because stock in a close corporation does not have a market. This issue

186. *See, e.g.*, MINN. STAT. ANN. § 302A.751 (West Supp. 1988); N.J. STAT. ANN. § 14A;12-7(8)(c) (West Supp. 1988).

187. *Compare In re* Fleischer, 107 A.D.2d 97, 486 N.Y.S.2d 272, (1985) (declined to apply § 623 (appraisal) to defendant exercising § 1118 option) with Blake v. Blake Agency, Inc., 107 A.D.2d 139, 486 N.Y.S.2d 341 (1985).

188. *See, e.g.*, Taines v. Gene Barry One Hour Photo Processing, Inc., 123 Misc. 2d 529, 474 N.Y.S.2d 362 (N.Y. S. Ct. 1983), *aff'd sub nom., In re* Taines, 108 A.D.2d 630, 486 N.Y.S.2d 699 (1985), *appeal dismissed*, 66 N.Y.2d 757, 488 N.E.2d 113, 497 N.Y.S.2d 367 (1985).

189. *See, e.g.*, Blake v. Blake Agency, Inc., 107 A.D.2d 139, 486 N.Y.S.2d 341 (1985) (eight factor test).

*See generally* Haynsworth, *Valuation of Business Interests*, 33 MERCER L. REV. 457 (1982).

190. *See, e.g., In re* Fleischer, 107 A.D.2d 97, 486 N.Y.S.2d 272, (1985); Taines v. Gene Barry One Hour Photo Processing, Inc., 123 Misc. 2d 529, 474 N.Y.S.2d 362 (N.Y. S. Ct. 1983), *aff'd sub nom., In re* Taines, 108 A.D.2d 630, 486 N.Y.S.2d 699 (1985), *appeal dismissed*, 66 N.Y.2d 757, 488 N.E.2d 113, 497 N.Y.S.2d 367 (1985); Blake v. Blake Agency, Inc., 107 A.D.2d 139, 486 N.Y.S.2d 341 (1985).

191. Ronald v. 4-C's Elec. Packaging, Inc., 168 Cal. App. 3d 290, 214 Cal. Rptr. 225 (1985).

192. *In re* Raskin v. Walter Karl, Inc., 129 A.D.2d 642, 514 N.Y.S.2d 120 (1987).

has arisen in other contexts, such as in dissenters' rights appraisal proceedings after a squeeze-out merger.[193] In a buyout where there is a strong likelihood of oppression or other misconduct by those in control of the corporation, decisions under the appraisal statutes should not have much precedential force. Courts in New York,[194] California[195] and elsewhere[196] have fairly consistently held that a minority discount should not be applied in a buyout resulting from an involuntary dissolution proceeding. A California court noted that such a discount would be inappropriate since the purchase is by controlling shareholders or the corporation; to apply such a discount would be to further oppress minority shareholders aggrieved by the controlling shareholders' misconduct.[197] Another California decision, however, suggested that in a converse situation, where a court orders the buy out of a controlling interest, a control premium should be added in fixing the transfer price.[198]

Even though courts generally have not discounted stock because it constitutes a minority interest, they have not demonstrated the same reluctance in applying a discount for lack of marketability. Several courts have pointed to the absence of a market as justifying a discount for any close corporation shares, whether a majority interest or minority.[199] The range of the discount for lack of marketability in the reported cases is between ten and twenty-five percent; in most cases the appellate court has applied a discount less than the discount decreed by the trial court or an appraiser and in some decisions the court has not applied or not dis-

193. *See* F.H. O'NEAL & R. THOMPSON, O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS § 5.30 (2d ed. 1985).

194. Blake v. Blake Agency, Inc., 107 A.D.2d 139, 486 N.Y.S.2d 341 (1985); *In re* Fleischer, 107 A.D.2d 97, 486 N.Y.S.2d 272, (1985).

195. Brown v. Allied Corrugated Box Co., 91 Cal. App. 3d 477, 154 Cal. Rptr. 170 (1979) (interpreting former § 4658 which preceded current § 2000).

196. Richardson v. Palmer Broadcasting Co., 353 N.W.2d 374, 379 (Iowa 1984). *Cf.* Eyler v. Eyler, 492 N.E.2d 1071 (Ind. 1986) (reversing trial court's minority reduction because shares were jointly held).

*But see* McCauley v. Tom McCauley & Son, Inc., 104 N.M. 523, 724 P.2d 232 (N.M. Ct. App. 1986) (25 percent discount for noncontrolling shares).

197. Brown v. Allied Corrugated Box Co., 91 Cal. App. 3d 477, 154 Cal. Rptr. 170 (1979).

198. Ronald v. 4-C's Elec. Packaging, Inc., 168 Cal. App. 3d 290, 214 Cal. Rptr. 225 (1985).

199. *In re* Raskin v. Walter Karl, Inc., 129 A.D.2d 642, 514 N.Y.S.2d 120 (1987) (rejects trial court's refusal to apply a discount; rejects experts' proposal for 35 percent - no more than 10 percent appropriate in this case); *In re* Joy Wholesale Sundries, Inc., 125 A.D.2d 310, 508 N.Y.S.2d 594 (1986) (hearing officer erred in failing to apply discount for lack of marketability; 10 percent discount approved); Blake v. Blake Agency, Inc., 107 A.D.2d 139, 486 N.Y.S.2d 341 (1985) (25 percent discount); *In re* Fleischer, 107 A.D.2d 97, 486 N.Y.S.2d 272, (1985) (25 percent discount).

cussed marketability discounts.[200] It seems particularly inappropriate to apply such a discount when a shareholder is selling to a person or family that owns all or most of the other shares of the corporation. While the lack of a market affects the ability to sell minority shares in a company, the market for all of a company's assets or shares or for a controlling interest operates differently and may not be adversely influenced by the fact that the company's shares are not traded on a securities market.

In some states with statutes authorizing courts to order buyouts, the court can include interest in the judgment, usually from the day the petition is filed.[201] In states without statutes on this point, courts are split on whether interest is to be allowed, with most courts allowing interest.[202] A California court's refusal to grant interest on the ground that the shareholder had continued to receive the benefit of corporate ownership appears flawed in that an oppressed minority shareholder is unlikely to be receiving dividends, salary, or any other return on his or her investment.[203]

Some statutes provide for apportionment of the costs of the proceeding,[204] and courts have apportioned those costs even in the absence of a statute.[205] Attorneys' fees ordinarily are not granted to either side,[206] but

200. Orchard v. Covelli, 590 F. Supp. 1548 (W.D. Pa. 1984), *aff'd*, 802 F.2d 448 (3rd Cir. 1986); Zokoych v. Spalding, 123 Ill. App. 3d 921, 463 N.E.2d 943, 954 n.4 (1984) (court may apply discount, but not required); Taines v. Gene Barry One Hour Photo Processing, Inc., 123 Misc. 2d 529, 474 N.Y.S.2d 362 (N.Y. S. Ct. 1983), *aff'd sub nom.*, *In re* Taines, 108 A.D.2d 630, 486 N.Y.S.2d 699 (1985), *appeal dismissed*, 66 N.Y.2d 757, 488 N.E.2d 113, 497 N.Y.S.2d 367 (1985).

201. MD. CORPS. & ASSNS. CODE § 4-603(c)(1) (1985) (as determined by the court); MINN. STAT. ANN. § 302A.751(2) subd 2 (West Supp. 1988); N.Y. BUS. CORP. LAW § 1118(b) (McKinney Supp. 1988); N.J. STAT. ANN. § 14A:12-7(8) (West Supp. 1988).

202. Orchard v. Covelli, 590 F. Supp. 1548 (W.D. Pa. 1984) (prejudgment interest for seven years); Stefano v. Coppock, 705 P.2d 443 (Alaska 1985) (interest permitted from the time the cause of action arose). New York amended its statute in 1986 to authorize interest at the court's discretion. Prior to that amendment courts often allowed interest. *In re* Joy Wholesale Sundries Inc., 125 A.D.2d 310, 508 N.Y.S.2d 594 (1986) (statutory 9 percent rate since no evidence of bad faith); *see* Blake v. Blake Agency, Inc., 107 A.D.2d 139, 486 N.Y.S.2d 341 (1985) (statutory rate of 9 percent); *In re* Fleischer, 107 A.D.2d 97, 486 N.Y.S.2d 272, (1985) (12 percent); Taines v. Gene Barry One Hour Photo Processing, Inc., 123 Misc. 2d 529, 474 N.Y.S.2d 362 (N.Y. S. Ct. 1983), *aff'd sub nom.*, *In re* Taines, 108 A.D.2d 630, 486 N.Y.S.2d 699 (1985), *appeal dismissed*, 66 N.Y.2d 757, 488 N.E.2d 113, 497 N.Y.S.2d 367 (1985) (interest but rate unspecified).

*See also* United Parts, Inc. v. Tillis, 432 So. 2d 674 (Fla. Dist. Ct. App. 1983).

203. Abrams v. Abrams-Rubaloff & Assocs., Inc., 114 Cal. App. 3d 240, 170 Cal. Rptr. 656 (1980).

204. *See, e.g.*, ILL. REV. STAT. ch. 32, § 12.55(h) (1987); MD. CORPS. & ASSN. CODE § 4-603 (1985).

205. Blake v. Blake Agency, Inc., 107 A.D.2d 139, 486 N.Y.S.2d 341 (1985); *In re* Fleischer, 107 A.D.2d 97, 486 N.Y.S.2d 272, (1985).

several statutes authorize courts to award attorneys' fees if a party's actions are arbitrary, vexatious, or not in good faith.[207] In some situations a minority shareholder has recovered attorneys fees in an action in the nature of a derivative suit where the corporation has benefitted.[208] A Michigan court found a corporate benefit in a buyout because dissolution had been avoided.[209]

In several states the statute permits a court to order a buyout with payment in installments;[210] but one court in the absence of statute ruled that deferred payments were not permitted.[211] Another possible condition to a buyout could be requiring the seller to sign a covenant not to compete with the corporation. At least one statute authorizes the courts to impose such a condition on the seller in a buyout,[212] but in the absence of statute a New York court refused to do so.[213]

## VI. CONCLUSION

The traditional corporate norms of centralized control, majority rule and a presumption of the corporation's permanence expose minority shareholders in a close corporation to possible abuse from majority shareholders, a condition which reflects the fact that the relationship among participants in a close corporation is not that contemplated by the norms. Shareholders in a close corporation usually expect an intimate, active involvement with the enterprise to which they have committed a large portion of their human and monetary capital. Their investment

206. *See* DOBBS, HANDBOOK ON THE LAW OF REMEDIES 194 (1973).

207. MINN. STAT. ANN. § 302A.751, subd. 4 (West Supp. 1988); N.J. STAT. ANN. § 14A:12-7(10) (West Supp. 1988).

208. *See, e.g.*, Sauer v. Moffitt, 363 N.W.2d 269 (Iowa Ct. App. 1984).

209. Moore v. Carney, 84 Mich. App. 399, 269 N.W.2d 614 (1978).

Some courts have awarded attorneys' fees to successful plaintiffs in involuntary dissolution proceedings. *See* Salvadore v. Conner, 276 N.W.2d 458 (Mich. App. 1978); Segall v. Shore, 269 S.C. 31, 236 S.E.2d 316 (1977).

210. ILL. REV. STAT. ch. 32, § 12.55(f) (1987); MD. CORP. & ASSN. CODE § 4-603 (1985); MINN. STAT. ANN. § 302A.751, sub.2 (West Supp. 1988). *But see* CAL. CORP. CODE § 2000 (West Deering 1977), and N.J. STAT. ANN. § 14A;12-7(8)(e) (West Supp. 1988) (requiring cash payment).

211. Taines v. Gene Barry One Hour Photo Processing, Inc., 123 Misc. 2d 529, 474 N.Y.S.2d 362 (N.Y. S. Ct. 1983), *aff'd sub nom., In re* Taines, 108 A.D.2d 630, 486 N.Y.S.2d 699 (1985), *appeal dismissed*, 66 N.Y.2d 757, 488 N.E.2d 113, 497 N.Y.S.2d 367 (1985). The New York statute now permits purchase "upon such terms and conditions as may be approved by the court."

212. *See* WIS. STAT. § 180.995(19)(e) (2) (Supp. 1987). *See also* MODEL STAT. CLOSE CORP. SUPP. § 42(b)(2) (1983).

213. *In re* Fleischer, 107 A.D.2d 97, 486 N.Y.S.2d 272, (1985). But see amendment to the New York statute discussed *supra* in note 202.

leaves them undiversified, and is also illiquid. Shareholders thus have more at risk from the conduct of those in control of the corporation without the protection and the exit option that the market offers shareholders in publicly held corporations. Recent legislative and judicial changes permitting participants in close corporations to structure their governance relations in a more flexible manner reflect a recognition of the different needs of close corporations.

The change in the law of involuntary dissolution which is the topic of this article is a necessary complement to the broad flexibility now provided to participants structuring their relationship in a corporation. The broader grounds for which courts will order judicial dissolution or a buyout of a shareholder or some alternative remedy reflect both an awareness of the effect of majority rule and corporate permanence on minority shareholders within a close corporation and also a recognition that a judicial role is a useful supplement to private ordering. In some cases this remedy aids the unsophisticated or those who enter into corporate relationships in ignorance of the power normally given controlling shareholders, but the remedy also has a broader purpose. The relationship among participants in a close corporation requires the ongoing exercise of mutual discretion for which advance planning would be impossible or prohibitively expensive. The judicial dissolution remedy, particularly if based on oppression and reasonable expectations of the parties, provides a necessary limit on corporate permanence when the controlling parties in the corporation have used their discretion in a way that runs contrary to the reasonable expectations of the parties.

There are of course other means by which the law could respond to this problem, including, for example, judicial enforcement of an enhanced fiduciary duty among participants in a close corporation. It is not entirely surprising that the enhanced fiduciary duty doctrine seems to have added appeal to courts in states which have narrow dissolution remedies.[214] This article suggests that the use of the oppression remedy for involuntary dissolution, and, in particular, the reasonable expectation standard, provides an effective response to the problems of minority

214. The leading decision applying an enhanced fiduciary duty in close corporations, Donahue v. Rodd Electrotype of New England, 367 Mass. 578, 328 N.E.2d 505 (1975) arose in Massachusetts which has a narrow involuntary dissolution statute. *See also* Estate of Schroer v. Stanco Supply Inc., 19 Ohio App. 3d 34, 482 N.E.2d 975 (1984) (applying a *Donahue* type duty; Ohio has a narrow dissolution statute).

*See* Haynsworth, *The Effectiveness of Involuntary Dissolution as a Remedy for Close Corporation Dissension*, 35 CLEVE. ST. L. REV. 25, 84, n.282 (1986-87).

shareholders because they focus a court's attention on the ways in which the expectations of participants in a close corporation differ from the shareholder expectations reflected in the statutory norms and permits courts to provide relief consistent with those expectations in situations where advance private ordering would be inadequate.