While Filing a Shareholder Oppression Claim Might Be the Last Thing on Your Mind Right Now Due to the COVID-19 Virus; Waiting to File Could Potentially Prejudice Your Valuation

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Shareholder Disputes in New Jersey

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Friday, March 27, 2020

The world has changed. The COVID-19 virus is impacting everything and everyone, and certainly only the most fortunate of businesses will not be adversely impacted.
If you as a business owner have reason to believe that you are an oppressed minority shareholder with the right to file suit against your fellow shareholder(s), it is easy to conclude that you perhaps should hold off on filing that shareholder oppression claim, at least until some semblance of normalcy has been restored. This may be a strategic mistake.

Clearly, many closely-held business owners are facing an existential crisis right now, and suing your business partner might be the last thing on earth you are worried about. But it is important to know that by waiting, you might be prejudicing yourself and negatively impacting the value you could ultimately receive.

**Filing a Shareholder Oppression Claim in New Jersey**

In New Jersey, whether the shareholder oppression claim involves a corporation or LLC, the presumptive valuation date for the company is the date the complaint is filed. It is a cardinal rule of appraisals that events that had not yet occurred as of the valuation date are not to be taken into account. Since an oppressed minority shareholder usually (but not always) seeks a buyout, the valuation date can be a critical issue.

If the suit is filed right now, a minority owner plaintiff can take the position that while the COVID-19 virus certainly exists and may have caused the business to temporarily close down, the financial impact has not yet occurred. Of course, any majority shareholder defendant will argue that the financial impact that will clearly occur later this year should – must – be taken into account in any valuation, even if the valuation date is March or April, and the full impact does not take effect until later in the year. But any plaintiff that files suit now at least has the argument that the valuation should not take the full effect into an appraisal based on the presumptive valuation date in the statute.

**COVID-19 Risk Valuation**

A proper valuation takes into account the risk that exists at the time of the valuation. Certainly, many companies right now – especially those that are currently closed – face greater known risk than they did just a month or two ago. There is no way to avoid that, but filing suit now is the best way to do everything you can to give yourself the best argument possible that the valuation should be impacted as little as possible.

This argument is bolstered if you can show that the problems you are now complaining about have been long-simmering and were not recently concocted as an attempt to cash yourself out of a business that is now facing financial hardship. Whether the prior history that exists is sufficient to establish this must be analyzed on a case-by-case basis by an experienced business divorce attorney.

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National Law Review, Volume X, Number 87