

## Shareholder & Partnership Disputes

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### Related Services

Corporate Governance

Employment, Labor & Benefits

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We represent majority owners in some cases, minority owners in other cases, and the company itself or its directors/officers in still other cases. In every case, we work with our clients to determine their goals and then to devise the best strategy to achieve those goals.

### Areas of Expertise

- Board/shareholder/partner deadlock
- Buy-Sell agreements
- Corporate waste
- Creditor claims
- Dissenters' rights
- Dissolution
- Fiduciary duty
- Fraud
- Liquidation
- Merger & acquisition disputes
- Merger disputes
- Mismanagement
- Piercing the corporate veil
- Proxy fights
- Shareholder abuse claims
- Shareholder control agreements
- Stock options
- Valuation of companies/stock

While the fact patterns may vary, the legal issues generally break down into two groups. First, the parties and the court will contend with the issue of liability—has there been a breach of fiduciary duty at common law or a breach of statutory duty as contained in the corporate statutes? In determining whether the corporation or the majority are liable in some way, the court will generally examine the relationship among the shareholders as it existed at the time the company was created and as it evolved over time. The court will also look at the parties' agreements, as well as the conduct of the parties toward one another.

If liability is found, then the second legal issue arises—what remedy should be applied? While courts have free reign to craft equitable remedies, the most common remedy is a buy-out at “fair value.” As lawyers, our job is to present evidence and expert appraisal testimony that will help the court determine the fair value of the company. That determination gives rise to questions of proper appraisal of valuation (income, market, cost, etc.) and the applicability of any discounts. In the course of working on these valuation questions, we have worked with most local appraisers and many national appraisers.

## Experience

### Representative Cases

- **Company vs. Former Shareholder:** Represented a physician-owned medical group in a lawsuit brought by one of its former shareholders. The shareholder unsuccessfully alleged, among other things, that the medical group’s shareholders breached their fiduciary duties to him by failing to exercise due care in negotiating contracts with its vendors. He claimed he had suffered millions of dollars in damages as a result of the alleged breaches of fiduciary duties. The Court granted summary judgment in favor of our client and dismissed all claims brought by the former shareholder.
- **Company vs. Former Shareholder:** Represented a medical group that had terminated the employment of one of its shareholders based on fiduciary duty violations. We positioned the dispute for an early mediation by aggressively investigating his claims for relief as a minority shareholder and asserting counterclaims against him based on his conduct. The matter was settled on favorable terms to our client within four months of the service of his complaint.
- **Minority Shareholders vs. Company:** Represented a minority member of a closely-held corporation following the controlling members’ attempt to seek court-ordered dissolution of the limited liability companies they jointly owned. We asserted counterclaims on behalf of our clients and opposed the dissolution of the closely-held corporations. Following the controlling members’ unsuccessful effort for appointment of a receiver, we were able to negotiate a very successful mediated settlement of the dispute.
- **Minority Shareholders vs. Company:** Represented former owners, directors, and officers of a family-owned closely held corporation in a suit alleging statutory minority shareholder claims and common law breach of fiduciary duty claims. The matter was settled for a small fraction of the claimed damages following a mediation.
- **Breach of Fiduciary Duty and Fraudulent Inducement Claims:** Represented BioE Defendants in *Holdahl v. BioErgonomics, Inc.*, a class action brought by shareholders of BioE asserting 13 claims (including fraudulent transfer and breach of fiduciary duties) against BioE’s board and BioE’s successor. When BioE became insolvent in November 2009, the company surrendered its assets to its secured creditors, which formed the successor entity. Plaintiffs claimed that the

assets were worth more than the debt at the time of the transfer. The District Court granted motions by our clients and by the successor entity for summary judgment on the grounds that the plaintiffs' appraisal of the value of the assets was "mere speculation" without any probative value. *Holdahl v. BioErgonomics, Inc.*, No. 27-CV-10-24236 (Henn. Co. Dist. Ct. Feb. 8, 2012); *aff'd*, No. A12-1495 (Minn. Ct. App. Feb. 4, 2013).

- **Dissenters' Rights Case:** Represented minority shareholders in a dissenters' rights proceeding where they were being squeezed out of a telecommunications company. After trial, the court awarded our clients more than 7 times what the company had paid them, plus an award of costs, attorneys' fees, and expert witness fees. On appeal, the judgment was affirmed. *American Sharecom, Inc. v. LDB International Corporation*, 1995 WL 321540 (Minn. Ct. App.) *pet. for review denied* (Aug. 3, 1995).
- **Company vs. Former Shareholder:** Represented a group of physicians who had terminated the employment of one of their colleagues. After we investigated and presented the multiple grounds for the termination to the lawyer for the former colleague, the former colleague brought no claim.
- **Company vs. Shareholder:** Represented an electrical supply and contracting company and six shareholders after they terminated the employment of the seventh shareholder. We negotiated the purchase of the seventh shareholder's stock and thereby avoided a lawsuit.
- **Business Deadlock:** Represented a 50% shareholder in a lawsuit brought by the other 50% shareholder in a business involving granite and marble building materials. The parties agreed to expedited discovery and settled the case with a buy-out of our client's interest well before the case would have gone to trial.
- **Company vs. Founder, Shareholder, Officer (Minnesota State Court):** Represented company in litigation against one of its co-founders who resigned and took reams of confidential and trade secret information, and successfully enforced restrictive covenants in co-founder's employment agreement. Negotiated resolution of asserted counterclaims. Case involved voluminous e-discovery data and computer forensics.
- **Founder vs. Company (Minnesota State Court):** Represented founder of Company in a 2-week jury trial involving officer and director indemnification and interpretation of payment formula under a phantom stock agreement.
- **Company vs. Former Shareholder:** Represented company defending claims by former shareholder that he had been bought out at too low of a price. Company successfully avoided suit.
- **Fraudulent Inducement Claims:** Represented shareholders in evaluation of claims related to interpretation of stock buy-out agreement, and potential fraud in connection with negotiation (and subsequent calculation of) earn-out provisions dependent on company performance.
- **Minority Shareholder vs. Company:** Represented a minority shareholder who was managing the Minnesota division of a multi-state tire and automobile servicing chain. We guided the shareholder's breach of fiduciary duty and buyout

claim through summary judgment, including the shareholder's claim for continued employment. As a result, the shareholder received a substantial settlement.

- **Shareholders vs. Boardo:** Represented shareholders in a derivative action against the managers and board of a cooperative regarding their alleged mismanagement. The litigation resulted in a substantial settlement for the shareholders.
- **Shareholders vs. Officers:** Represented two of the largest financial contributors to a project to build a beef-processing facility in Huron, South Dakota. Bringing both direct and derivative claims, the contributors alleged that the defendants misled investors, misused investor funds, and mismanaged the financing and construction of the plant. The litigation resulted in a substantial settlement that allowed the contributors to recoup a very high percentage of their investment in and loans to the project.
- **Minority Shareholder vs. Company:** Represented the minority unitholder in a limited liability company. Through preparing a detailed complaint and tough negotiations, we were able to get the minority shareholder's entire investment back.