Buyout Remedy for Oppressed Minority Shareholders

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NOTE

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Joshua M. Henderson*

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* A.B. 1992, Davidson College; J.D. 1995, University of South Carolina. The author would like to thank Dr. Gregory Adams, University of South Carolina School of Law, and Mark R. Bernstein, of Parker, Poe, Adams & Bernstein, Charlotte, N.C., for helpful comments on earlier drafts.
I. INTRODUCTION

Forsaking his previous employment with Sunbeam Breads, Tom Maddox entered into a bakery business, Piedmont Bakeries ("Piedmont"), with John Robbie and Rachel Foster in 1977, in Greenville, South Carolina. Each individual made an initial contribution of $15,000 cash to the capital buildup of the company and personally guaranteed loans totalling an additional $50,000. At the inception of the venture, the three organized Piedmont as a partnership and entered into a partnership agreement. Each was to be actively employed by the company, with Robbie acting as president and CEO, Foster as secretary and CFO, and Maddox as manager of sales and marketing. Under the agreement, profits were to be divided equally among the three partners.

In 1981 Piedmont was incorporated under South Carolina’s Business Corporations Act. Robbie, Foster, and Maddox each received 300 shares of common stock in Piedmont. They retained the same positions they had held under the partnership and elected themselves to the company’s three directorships. The following year, in an effort to strengthen the company’s capital base, the three shareholders invited Roger Bowlen and Hope Jackson, both former business associates of Robbie, to join Piedmont as shareholders. In exchange for each newcomer’s contribution of $95,000, the company issued each of them 300 shares, thereby resulting in each Piedmont shareholder possessing equal voting rights and an equal right to dividends. At the time Bowlen and Jackson joined Piedmont, it was informally agreed that they would be investors only, and would not participate in the company’s management.

Despite the economic recession of the early 1980s, Piedmont fared quite well, and by 1988, Robbie, Foster, and Maddox were each drawing approximately $40,000 as a base salary, $20,000 in director’s fees, and an additional $5000 in dividends annually. Bowlen and Jackson also received $5000 in dividends annually. Unfortunately, differences in management philosophies began to surface among the investors. As sales manager, Maddox had seen first-hand the success the company experienced in the Asheville, North Carolina area. He felt that Piedmont should concentrate on opening an additional plant at that location to meet the demand for the company’s products. Maddox wanted to reinvest most of Piedmont’s profits back into the company in order to facilitate this expansion. The other shareholders, however, content with the level of operations at Piedmont and not finding any need for expansion, favored distributing profits among the shareholders.

1. The names and facts presented in this hypothetical are purely fictitious.
2. The Business Corporations Act is codified at Title 33 of the South Carolina Code.
As a result of these differences, the shareholders voted to remove Maddox from the board of directors in 1990, and Bowlen was elected to fill the vacancy. This move fueled further animosity among the parties, and the working relationship between Maddox and the other two officers, Robbie and Foster, started to deteriorate. In February of 1991, Robbie informed Maddox that he was being terminated from his position with Piedmont.

Maddox consulted his attorney about his options for obtaining relief from this treatment. He complained that the majority shareholders had essentially squeezed him out of participating in the corporation. Maddox’s attorney contacted the other shareholders, complaining that Maddox was being prevented from obtaining a fair return on his investment and that Maddox had entered the venture with the expectation of sharing equally in the profits. Robbie responded that Maddox would still receive his twenty percent of the profits in the form of dividends. He further contended that Maddox could not receive the same compensation he had been receiving because he no longer worked for the company.

In 1991, 1992, and 1993, Maddox received only $1000 in dividends from Piedmont. In the meantime, Piedmont’s board of directors, consisting of Robbie, Foster, and Bowlen, appointed Jackson manager of sales and marketing. Maddox was not only disturbed by the reduction in dividends, but also suspected that the board had increased the directors’ fees and salaries and that the others were absorbing most of the excess profits through that conduit.

Does the law afford any remedy to a minority shareholder in Maddox’s position? Maddox no longer receives a significant return from his twenty percent interest in the company he helped start. He also lost his job, and as a result, lost both his primary source of income and the primary source of return on his investment. Nonetheless, Maddox was removed because Piedmont’s majority shareholders were concerned about his unwillingness to support their plans for the future of Piedmont. In light of this fact, should the

3. Although Maddox had cumulative voting rights as provided by statute, see S.C. CODE ANN. § 33-7-280 (Law. Co-op. 1990 & Supp. 1994) (providing for cumulative voting unless the articles of incorporation otherwise provide), he was unable to prevent his removal because there were only three directorships but four shareholders voting in favor of removal.

Under the removal procedures outlined in the South Carolina statutes, when cumulative voting is authorized a director may not be removed if the number of votes necessary to elect him are voted against his removal; as a result, a director has the power to prevent his own removal if he has sufficient votes to elect himself. S.C. CODE ANN. § 33-8-108 (Law. Co-op. 1990).

In the present scenario, Maddox would not have had a sufficient number of votes to block his removal. If the shareholders were electing directors, Robbie, Foster, Bowlen, and Jackson would possess enough votes between them to fill the three directorships from among themselves. Robbie, Foster, and Bowlen could cast their 900 votes for themselves, and Jackson could cast 300 votes for each of them. As a result, Robbie, Foster, and Bowlen would win the directorships with 1200 votes each, while Maddox would come in fourth with the 900 votes he cast for himself.
company be sanctioned for a decision which, although seemingly unfair to a minority shareholder, was arguably in the company's best interest?

Minority shareholders in Maddox's position often pursue remedies afforded under their state's judicial dissolution statutes. These statutes permit a shareholder to seek dissolution of the corporation, but most also permit actions for alternative, less drastic remedies.

This Note explores the range of remedies available to a minority shareholder under the South Carolina statutory scheme. Part II examines judicial dissolution, focusing on the grounds for judicial dissolution and the legal standard necessary to invoke this remedy. Part III analyzes the numerous lesser remedies available to a minority shareholder, particularly a buyout of the minority interest holder's shares. Because the valuation of a minority interest can be a crucial determinant of the ultimate efficacy of a buyout remedy, this valuation process is discussed in Part IV. Each of these parts contains a summary and application section, allowing the reader to track Tom Maddox's fortunes as the law is applied to this scenario.

II. JUDICIAL DISSOLUTION

A. Grounds for Judicial Dissolution

Section 33-14-300 of the South Carolina Code permits an oppressed minority shareholder to bring an action for judicial dissolution. This section provides:

The circuit courts may dissolve a corporation . . . (2) in a proceeding by a shareholder if it is established that . . . (ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder (whether in his capacity as a shareholder, director, or officer of the corporation).4

The Official Comments to this provision point out:

The application of these grounds for dissolution to specific circumstances obviously involves judicial discretion in the application of a general standard to concrete circumstances. The court should be cautious in the application of these grounds so as to limit them to genuine abuse rather than instances of acceptable tactics in a power struggle for control of a corporation.5

B. "Oppression" Standard

Like that of most other states, South Carolina's judicial dissolution provision is derived from the Model Business Corporations Act. To obtain relief under the South Carolina statute, the complainant must show that the majority shareholders acted in an "illegal, fraudulent, oppressive, or unfairly prejudicial" manner. This standard is similar to that of the Model Act. By including "oppressive" conduct as a ground for dissolution, the South Carolina statute broadens the scope of actionable conduct by providing the frozen-out minority shareholder a right of action based on conduct by the majority shareholders which might not rise to the level of illegality or fraud.7

The Virginia Supreme Court, construing its judicial dissolution statute, which is also based on the Model Act, has defined the term "oppressive" as "conduct by corporate managers toward stockholders which departs from the standards of fair dealing and violates the principles of fair play on which persons who entrust their funds to a corporation are entitled to rely."8 The court stressed that "oppressive" is not merely a synonym for the other statutory terms "illegal" and "fraudulent,"9 thus reinforcing the notion that "oppressive" has a separate and independently significant meaning.

Not all states have adopted the Model Act standard. The North Carolina judicial dissolution statute, for instance, provides that dissolution may be granted when it is "reasonably necessary for the protection of the rights or interests of the complaining shareholder."10 The North Carolina legislature adopted this standard because it ostensibly provides greater protection for minority shareholders than the Model Act; however, there has been debate over which standard is, in fact, more liberal because the word "oppressive"

6. S.C. CODE ANN. § 33-14-300(2)(i) (Law. Co-op. 1990). There are, of course, other grounds on which a shareholder can seek judicial dissolution, including when there is a deadlock in the management of the corporation or the voting power of the shareholders; when corporate assets are being misapplied or wasted; when the corporation has abandoned its business; and when the corporation's period of duration has expired. See S.C. CODE ANN. § 33-14-300(2)(i), (iii)-(vi) (Law. Co-op. 1990).

7. It is noteworthy that the South Carolina statute adds to the Model Act by providing that "unfairly prejudicial" conduct is also a ground for a shareholder action for dissolution. The South Carolina Reporters' Comments to § 33-14-300(2)(i) state that this section has broadened the Model Act standard "to follow the formula used in Section 33-21-150(4) of the 1981 South Carolina Business Corporation Act . . . ." S.C. CODE ANN. § 33-14-300 reporters' cmt. (Law. Co-op. 1990).

It is therefore arguable that the "unfairly prejudicial" standard gives more protection to the minority shareholder than even the "oppressive" standard. Indeed, it almost appears that each successive standard, i.e., illegal, fraudulent, oppressive, or unfairly prejudicial, is more generous to the shareholder than the preceding one.

9. Id.
from the Model Act standard has been given such a broad reading in many cases.\footnote{11}{See Russell M. Robinson, II, Robinson on North Carolina Corporation Law § 28.11, at 477 & n.5 (1990).}

In \textit{Meiselman v. Meiselman}\footnote{12}{307 S.E.2d 551 (N.C. 1983).} the North Carolina Supreme Court determined that the “rights or interests” of a complaining shareholder, as set forth in the North Carolina statute, include the “reasonable expectations” the shareholder has in the corporation. The court continued:

These “reasonable expectations” are to be ascertained by examining the entire history of the participants’ relationship. That history will include the “reasonable expectations” created at the inception of the participants’ relationship; those “reasonable expectations” as altered over time; and the “reasonable expectations” which develop as the participants engage in a course of dealing in conducting the affairs of the corporation. The interests and views of the other participants must be considered in determining “reasonable expectations.” The key is “reasonable.” 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.” Only expectations embodied in understandings, express or implied, among the participants should be recognized by the court.\footnote{13}{Id. at 563.}

The court ultimately held that relief should be granted to a minority shareholder “‘whenever corporate managers or controlling shareholders act in a way that disappoints the minority shareholder’s reasonable expectations, even though the acts of the managers or controlling shareholders fall within the literal scope of powers or rights granted them by the corporation act or the corporation’s charter or bylaws.’”\footnote{14}{Id. (quoting F. Hodge O’Neal, \textit{Close Corporations: Existing Legislation and Recommended Reform}, 33 Bus. Law. 873, 886 (1978)).} The court noted that the trial court had erroneously focused on the conduct of the defendant rather than on the “rights or interests” of the plaintiff, stating that it was error for the trial court to apply such standards as “oppression” and “overreaching” to the defendant’s conduct.\footnote{15}{Id. at 566-67.}

Although the \textit{Meiselman} court indicated that oppression by the majority shareholder is an incorrect standard to use in an action for dissolution, courts that have construed the oppressive conduct standard of the Model Act have found that this standard, like the standard applied in \textit{Meiselman}, also implicates the reasonable expectations of the minority shareholder. In \textit{In re...
Kemp & Beatley, Inc. the court stated that the reasonable expectations of the complaining shareholder should be used "as a means of identifying and measuring conduct alleged to be oppressive." The court in Landorf v. Glottstein observed that the facts of that case, as alleged by the plaintiff, amounted to a claim that the defendants had frustrated his reasonable expectations of sharing in the profits and management of the corporation. The court said that these allegations, if proven, might meet the standard of oppressive conduct referred to in the statute. Likewise, in Brenner v. Berkowitz the court recognized that "oppression has been defined as frustrating a shareholder's reasonable expectations." South Carolina courts have yet to address the significance of the shareholder's reasonable expectations in the context of an action for judicial dissolution. In fact, no real working definition has been developed to help the courts apply the oppressive conduct standard. Rather, the courts appear to operate on a case-by-case basis, determining whether the conduct complained of is sufficiently egregious and unfair to warrant relief or whether the conduct is justified in light of some legitimate corporate objective. The cases which follow illustrate this approach.

C. What Conduct Constitutes Oppression?

Cases in which courts have found oppressive conduct on the part of majority shareholders frequently involve similar factual circumstances. Typically, the complaining shareholder will claim that she has been "frozen out" or "squeezed out" by the majority, which often means that the shareholder's employment with the company has been terminated, compensation (in the form of salary or dividends) has been cut off, and the shareholder generally has been excluded from participating in the management of the company.

1. In South Carolina

Several South Carolina cases have addressed the question of what conduct is sufficiently oppressive to warrant dissolution, a forced buyout, or other relief. In an early case, Towles v. South Carolina Produce Ass'n, the plaintiffs brought an action seeking dissolution of a corporation in which they
owned a minority interest. The plaintiffs sought relief under a dissolution statute on the ground that the corporation had not paid dividends for a period of three years. The court found that dividends had not been paid because the majority stockholders were attempting to rehabilitate the corporation from a weak financial position. The court thus concluded that dissolution was inappropriate. In support of its holding, the court stated:

While this statute was undoubtedly intended to afford minority stockholders a method of relief against mismanagement of a corporation by majority stockholders, or the suspension of dividends for the purpose of freezing out minority stockholders, or depressing the market value of the stock of the corporation, it was never intended that the mere fact that a corporation could not pay a dividend for three years, time to be computed from three years after it has begun business, would ipso facto entitle minority stockholders to have such corporation dissolved, and a Receiver appointed therefor.

In a more recent case, Segall v. Shore, the court found that the conduct of two controlling shareholders had been sufficiently oppressive to justify a forced buyout. Concerning the conduct of these defendants, the master found that they had misappropriated over $1,000,000 of the profits from one of the corporations, that they had continued this course of action even after the supreme court (in an earlier opinion) had directed them to “restore profits and to account,” and they had even withdrawn an additional $175,000 from the corporation to pay their income taxes. The court found that the master’s conclusions that the defendants had acted oppressively and unfairly were supported by the record, and thus, the court held that a redemption of the plaintiffs’ shares pursuant to the dissolution statute was appropriate.

Two recent oppression cases have involved claims by minority shareholders that certain corporate actions diluted their interests in the corporations. In Hite v. Thomas & Howard Co., the plaintiff, a minority shareholder, alleged that a share exchange plan between the corporation and the majority shareholder, which was also a corporation, had reduced his ownership in the

23. S.C. CODE § 7725 (1932). This section granted stockholders owning one-fifth or more of a corporation’s stock the right to seek dissolution of the corporation if the corporation had not paid dividends over a three-year period.
25. Id. at 295, 197 S.E. at 307.
27. Id. at 36, 236 S.E.2d at 318.
28. Id. at 37, 236 S.E.2d at 318. The controlling statute was S.C. CODE § 12-22.15 (Supp. 1975), which is comparable to the current dissolution statute, S.C. CODE ANN. § 33-14-300 (Law. Co-op. 1990).
first corporation from 33 1/3% to 11.5%. The court held that the plaintiff was not entitled to pursue an action for dissenter's rights because he held an interest in the acquiring corporation, and the statute only permitted a shareholder in the acquired corporation to seek dissenter's rights. However, the court determined that the plaintiff was entitled to maintain the claim he asserted pursuant to the judicial dissolution statute, section 33-14-310, and that the plaintiff could properly request a buyout directly under the statute, rather than asking for dissolution. The court thus affirmed the denial of the defendants' motion to dismiss the claim.

A second oppression case involving allegations that the minority shareholders' interests were diluted is *Roper v. Dynamique Concepts, Inc.* In that case, a corporation had been organized "to develop and market a revolutionary type of pump" which had been invented by one of the shareholders. The corporation met with financial difficulties, and as a result, the controlling shareholders voted to issue a substantial number of additional shares to raise capital for the corporation. The issuance of additional shares afforded the minority shareholders preemptive rights, which they, however, failed to exercise. Subsequently, the minority shareholders brought an action seeking dissolution, alleging that the majority shareholders had acted in a manner intended to dilute the minority shareholders' interest in the corporation and to squeeze them out. The court found, however, that "the record clearly reflects [that the corporation] was in serious financial trouble, and the additional stock issue was a last ditch effort to save the corporation." Thus, the court found that the majority shareholders had acted in good faith in voting to issue additional stock and upheld the trial judge's denial of judicial dissolution. As in *Towles*, the court indicated that a good faith justification for certain corporate actions will overcome a claim of oppression by dissatisfied minority shareholders.

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30. *Id.* at 361, 409 S.E.2d at 342.
31. *Id.* at 362-63, 409 S.E.2d at 342-43. The dissenter's rights statute that the court construed was S.C. CODE ANN. § 33-13-102(2) (Law. Co-op. 1990). This statute would allow a shareholder who dissents to certain corporate actions to sell her shares back to the corporation.
32. *Id.* at 363-64, 409 S.E.2d at 343-44.
33. *Id.* at 364, 409 S.E.2d at 344.
34. *Id.* at __, 447 S.E.2d 218 (Ct. App. 1994).
35. *Id.* at __, 447 S.E.2d at 220.
36. *Id.* at __, 447 S.E.2d at 221-22.
37. *Id.* at __, 447 S.E.2d at 226.
38. *Id.* at __, 447 S.E.2d at 226.
39. *Roper*, __ S.C. at __, 447 S.E.2d at 226; *see supra* notes 22-25 and accompanying text for a discussion of *Towles*. 
2. In Other Jurisdictions

Several cases from other states give further insight into conduct that constitutes oppression by majority shareholders. In Meiselman v. Meiselman, for example, the plaintiff argued that a mandatory buyout was necessary to protect his "rights or interests" in the corporation because he had been fired, his fringe benefits had been terminated, and he had been denied participation in management decisions of the company. The defendants contended that the plaintiff was entitled to relief only if his traditional rights as a shareholder had been infringed, such as the right to notice of shareholders' meetings, the right to compel payment of dividends, and so on. The court disagreed with the defendants and held that the plaintiff's reasonable expectations were not limited to these traditional rights. The court ultimately remanded the case for a determination of what reasonable expectations the plaintiff held and whether he was entitled to relief.

In Balvik v. Sylvester the court found that the defendant majority shareholder had engaged in oppressive conduct. The plaintiff had quit his former employment to join with the defendant in an electrical contracting business. The plaintiff made a substantial investment in the business and relied on his involvement with the business as his primary source of income. Disputes eventually arose between the plaintiff and the defendant regarding their differing business philosophies. As a result, the plaintiff was fired and thereby lost his primary means of obtaining a return on his investment. He was later removed as a director and officer of the corporation. The court found that the plaintiff had received nothing from the corporation since his removal and that "the possibility of a declaration of dividends in the near future appears remote" because the defendant had apparently decided to reinvest profits into the corporation. In explaining the means by which minority shareholders are sometimes "frozen out," the court stated:

"A variety of freeze-out techniques exist, with the withholding of dividends being by far the most commonly applied technique. This technique is often combined with the discharge of the minority shareholder from employment and removal of the minority shareholder from the board of directors. If the minority shareholder is employed by the corporation full time, as is typical, and if she relies on her salary as her primary means of obtaining a return on her investment, as is typical, she is suddenly left with little or no income and little or no return on her investment. The

40. 307 S.E.2d 551 (N.C. 1983).
41. Id. at 564-65.
42. Id. at 567.
43. 411 N.W.2d 383 (N.D. 1987).
44. Id. at 384-88.
controlling shareholders may effectively deprive the minority shareholder of every economic benefit that she derives from the corporation.\textsuperscript{45}

The court concluded that the plaintiff clearly had been frozen out and was entitled to relief.\textsuperscript{46}

Denying minority shareholders a return on their investment was found to constitute oppressive conduct in \textit{In re Kemp & Beatley, Inc.}\textsuperscript{47} In that case the plaintiffs, two minority shareholders, ended their long-term employment with the corporation. During the time they had been employed, the company had a policy of awarding de facto dividends, based on stock ownership, in the form of "extra compensation bonuses."\textsuperscript{48} After the plaintiffs left the corporation's employ, the policy was changed so that the "extra compensation" was awarded on the basis of services rendered to the corporation. In affirming the lower court, the New York Court of Appeals held that "[i]t was not unreasonable for the fact finder to have determined that this change in policy amounted to nothing less than an attempt to exclude petitioners from gaining any return on their investment through the mere recharacterization of distributions of corporate income."\textsuperscript{49}

In another dissolution action brought by minority shareholders, \textit{Giannotti v. Hamway},\textsuperscript{50} the court found that certain conduct on the part of the majority shareholders, including the failure to pay adequate dividends, was oppressive. On the issue of dividends, the plaintiffs showed that over ten years the defendants' compensation (including salaries and director's fees) totalled almost $2.8 million, while the plaintiffs had received only $50,000 in common stock dividends.\textsuperscript{51} The plaintiffs also alleged that the compensation received by the majority shareholders was excessive in light of their services performed and that the majority had engaged in certain improper transactions. The court determined that the evidence supported the chancellor's findings that the defendants had been guilty of oppressive conduct which had "effectively [frozen] out plaintiffs from a reasonable opportunity to receive a reasonable return on their investment."\textsuperscript{52}

\textsuperscript{45} Id. at 387 (quoting D. Charles MacDonald, \textit{Corporate Behavior and the Minority Shareholder: Contrasting Interpretations of Section 10-19.1-115 of the North Dakota Century Code}, 62 N.D. L. Rev. 155, 164-65 (1986)).

\textsuperscript{46} Id. at 388.

\textsuperscript{47} 473 N.E.2d 1173 (N.Y. 1984).

\textsuperscript{48} Id. at 1180.

\textsuperscript{49} Id.

\textsuperscript{50} 387 S.E.2d 725 (Va. 1990).

\textsuperscript{51} Id. at 729, 732.

\textsuperscript{52} Id. at 730 (quoting from the findings of the chancellor below).
Due to a difference in business philosophies, the majority shareholders of Piedmont Bakeries have frozen Tom Maddox out of the company by removing him from the board of directors and terminating his employment. Instead of the salary, director's fees, and dividends Maddox used to receive for his involvement with Piedmont, he now receives only dividends, and the amount of these dividends has been reduced. In light of these facts, has Maddox been oppressed in such a manner that he is entitled to relief?

Where is the proper balance between the competing interests of the minority shareholder and the corporation under the standard set forth in section 33-14-300? In some cases oppression is obvious. For example, Segall v. Shore\(^5\) presents an easy case; when controlling shareholders misappropriate corporate assets, the court will find no difficulty in awarding relief. Indeed, such conduct is illegal and fraudulent, as well as oppressive. However, many cases present a much more difficult question. When persons in control of a corporation act within their legal rights in the corporate structure and for legitimate purposes, it is more difficult to characterize their conduct as oppressive even if it appears to be unfair to the minority shareholder.

As described earlier, one approach courts have taken in defining oppression has been to focus on the reasonable expectations of the minority shareholder.\(^5\) The conduct of the controlling shareholders is considered oppressive when it frustrates these reasonable expectations. This approach implicates notions of equity in that it potentially gives greater weight to the expectations of the shareholder than to the legitimate business objectives of the corporation.

Under the reasonable expectations analysis, the conduct of Piedmont's majority shareholders likely would be considered oppressive. Maddox entered the business with Robbie and Foster with the understanding that each would be employed by the company and would share equally in the company's profits. Maddox's expectations of employment and a proportionate share of the profits were not altered when Bowlen and Jackson joined the corporation. Moreover, Maddox's expectations were known to Robbie and Foster because they had essentially the same expectations.

The North Carolina Supreme Court expounded on the reasonable expectations approach in Meiselman\(^6\) by stating that the court should focus on the interests of the plaintiff rather than the conduct of the defendants. Under this rule, if Maddox's expectations were in fact reasonable, he probably

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55. Id.
would be entitled to relief even if the majority shareholders had removed him because of genuine differences in business philosophies. This emphasis on the minority shareholder’s position tips the balance in favor of the shareholder in close cases.

A second approach courts have taken in defining oppression is to hold that oppression means denying the shareholder a reasonable return on his investment. This approach may tie in with the shareholder’s reasonable expectations because what kind of return is considered reasonable may depend on what the shareholder expected from his investment.

This analysis was used in Balvik v. Sylvester, a case in which the plaintiff found himself in a position similar to Maddox’s. The plaintiff had quit his former job to start a business with the defendant, but he was later fired by the defendant. The court held that because the plaintiff had lost his salary and also was not receiving dividends from the corporation, he had been denied a return on his investment and was thus entitled to relief. Similarly, because Maddox started out with such a large stake in Piedmont, a court might find that the nominal dividends Maddox is now receiving do not constitute a reasonable return.

These two theories of oppression, though protective of minority shareholder interests, certainly will not help the shareholder whose presence is affirmatively damaging to the corporation. If the minority shareholder were incompetent or unethical in performing his responsibilities within the company, the court would not find that his removal from the company was oppressive. Perhaps an incompetent or unethical shareholder should not reasonably expect that his tenure with the company would continue.

The South Carolina courts have not addressed the notions of reasonable expectations or reasonable investment return as a basis for defining oppression. However, the cases do indicate that oppression will not be found when the controlling shareholders have acted in good faith. In Roper v. Dynamique Concepts, Inc., for example, the court of appeals held that the issuance of additional shares, although diluting the interests of the minority shareholders, did not constitute oppression because it was done as a good faith attempt to raise capital for the corporation. Defining oppression as the failure to act in good faith would provide greater protection for the corporation’s legitimate business decisions. Even if a corporate decision were contrary to the reasonable expectations of the minority shareholder, such action would not be considered oppressive so long as the decision was made in good faith.

57. Id.
58. Id. at 387-88.
Thus, because a difference in business philosophy is probably a good faith (albeit not very strong) reason for removing Maddox from the management of Piedmont, under the good faith analysis this reason would outweigh any countervailing expectations Maddox might have. On the other hand, if Maddox had been removed merely because Robbie wanted to clear a position on the board for his son who had recently graduated from college, this would not constitute a good faith business decision. Under this analysis, the motivations behind the corporate actions, rather than the interests of the minority shareholder, are of paramount importance. Consequently, the balance is more likely to lean in favor of the corporation than it would under the reasonable expectations analysis.

III. AVAILABILITY OF BUYOUT AND OTHER ALTERNATIVE REMEDIES

A. In South Carolina

1. Chapter 14, Business Corporation Act

Under the South Carolina Business Corporations Act of 1988, an oppressed minority shareholder has alternative remedies available in addition to dissolution. Indeed, most courts recognize that dissolution is a drastic remedy and that other, less severe remedies are appropriate in certain cases. Section 33-14-310(d) of the South Carolina Code sets forth four less drastic remedies which the court, in its discretion, may order as alternatives to dissolution. These remedies include (1) altering the articles of incorporation or bylaws, (2) altering any corporate act or resolution, (3) directing or prohibiting any act of the shareholders, directors, officers or other parties, and (4) ordering a purchase at fair value of the shares of any shareholder. The section provides that the list of remedies is merely representative and that the court retains authority to order any other appropriate relief not specifically listed. Subsection (e) provides that "the relief authorized in subsection (d) may be granted as an alternative to a decree of dissolution or may be granted whenever the circumstances of the case are such that the relief, but not dissolution, is appropriate." Thus, under the South Carolina statute, alternative relief may be granted regardless of whether the oppression by the

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majority shareholders is sufficiently egregious to warrant dissolution.\textsuperscript{64} Moreover, several South Carolina cases point out that the judicial dissolution statute does not limit a plaintiff to seeking dissolution, but rather permits the plaintiff to request directly any alternative form of relief.\textsuperscript{65}

The South Carolina statute thus affords the court great flexibility in fashioning remedies for an oppressed shareholder. The South Carolina Reporters' Comments to section 33-14-310 point out that subsections (d) and (e) were added to the standard Model Act provisions in order to "continue the explicit statement of the court's inherent equitable powers found in Section 33-21-155 of the 1981 South Carolina Business Corporation Act. The net effect of these changes is that the new provision is quite similar to prior South Carolina law."\textsuperscript{66}

\textit{2. Chapter 18, Business Corporations Act (Statutory Close Corporation Supplement)}

As with the Business Corporations Act, the South Carolina Statutory Close Corporation Supplement\textsuperscript{67} also provides an oppressed shareholder a right of action to seek dissolution or some other remedy.\textsuperscript{68} In practice, these procedures for judicial dissolution operate in a similar manner;\textsuperscript{69} however, the framework of the judicial dissolution provisions under the Statutory Close Corporation Supplement is more effective in expressing the policies which underlie the statute.

Section 33-18-400(a) provides:

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64. Compare the South Carolina provision with the parallel section of the North Carolina General Statutes. In North Carolina, if the court first finds that dissolution would be appropriate in a particular case, the corporation is then permitted to elect between dissolution and a buyout of the plaintiff's shares. N.C. GEN. STAT. § 55-14-31(d) (1990). The present version of the North Carolina statute differs from the South Carolina version by "(a) requiring, instead of just permitting, the court to give the corporation an alternative to involuntary dissolution, (b) limiting the alternative to a mandatory buyout at fair value, and (c) requiring a level of proof sufficient to justify involuntary dissolution." RUSSELL M. ROBINSON, II, ROBINSON ON NORTH CAROLINA CORPORATION LAW § 28.12, at 481 (1990). Under the South Carolina statute, the court is less restricted in determining the appropriate relief for an oppressed minority shareholder.

65. See Hendley v. Lee, 676 F. Supp. 1317, 1324 (D.S.C. 1987) (stating that the dissolution statute is jurisdictional and that "asking for dissolution is merely a prerequisite to obtaining other forms of relief under [the statute]"); Hite v. Thomas & Howard Co., 305 S.C. 358, 364, 409 S.E.2d 340, 343-44 (1991) (holding that a shareholder alleging a legitimate ground for dissolution "need not demand dissolution but may seek the alternative relief available under [the statute]").


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Subject to satisfying the conditions of subsections (c) and (d), a shareholder of a statutory close corporation may petition the circuit court for any of the relief described in sections 33-18-410, 33-18-420, or 33-18-430 if: the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer of the corporation.  

The Supplement establishes a "tiering" of the remedies provided in sections 33-18-410, -420, and -430, ranking the available remedies according to a preference for less drastic remedies. Section 33-18-410(a) grants the court the authority to order one or more types of "ordinary relief" if it finds that a ground for relief is present. The section lists nine types of relief available to the court, including an alteration of the articles of incorporation or bylaws, removal of any officer or director, appointment of a provisional director, an order to compel payment of dividends, and other forms of relief. According to the Official Comment, the purpose of listing the relief available is "to overcome the reluctance some courts have shown in the past to ordering anything other than dissolution, or possibly a buy-out." Section 33-18-410 does not provide whether or not the enumerated forms of relief are exclusive. Presumably, because of the policy in South Carolina of recognizing the courts' "inherent equitable powers" to fashion alternative remedies, a court in this state would not be limited to the types of relief listed in this section.

Section 33-18-420, entitled "Extraordinary relief: share purchase," states that if the court finds the ordinary relief afforded under section 33-18-410 to be inappropriate in resolving the dispute, the court may order dissolution "unless the corporation or one or more of its shareholders purchase all the

70. S.C. CODE ANN. § 33-18-400(a) (Law. Co-op. 1990). The conditions set forth in subsections (c) and (d) provide, respectively, that the shareholder must first pursue any nonjudicial remedies (i.e., arbitration) to which she has agreed in writing, and that the shareholder must file the action before the time required to give notice of intent to demand payment if she is entitled to dissenter's rights. S.C. CODE ANN. § 33-18-400(c)-(d) (Law. Co-op. 1990). The latter condition is designed to prevent a shareholder who has foregone her dissenter's rights from being able to block the proposed transaction using this section. S.C. CODE ANN. § 33-18-400 cmt. (3) (Law. Co-op. 1990).


73. See S.C. CODE ANN. § 33-14-310(d)-(e) & reporters' cmts. (Law. Co-op. 1990). Subsections (d) and (e) of § 33-14-310 state that a court may order any appropriate relief as an alternative to judicial dissolution. These subsections were added to the Model Act provision to make clear the court's equitable power to order remedies outside the statute. See id. reporters' cmts. However, § 33-18-410 has not been altered significantly from the language of the Model Act. Thus, although the Model Act itself does not address in either section the question of whether the statutory remedies are exclusive, because the General Assembly altered § 33-14-310, it is reasonable to assume the same flexibility should apply when operating under § 33-18-410.
shares of the shareholder for their fair value and on terms determined under subsection (b).”74 Subsection (b) grants the court power to establish the terms of the share purchase, including the authority to determine the fair value of the shares by considering factors such as the corporation’s going concern value, the terms of any shareholders’ agreements, or recommendations of court-appointed appraisers.75

Section 33-18-430, “Extraordinary relief: dissolution,” provides that the court may order dissolution if it finds grounds for judicial dissolution and that any other relief ordered by the court under sections 33-18-410 and -420 has proven ineffective to resolve the dispute.76 Thus, the framework developed by sections 33-18-400 through -430 encourages the court to consider first the “ordinary relief” described in section 33-18-410. If these remedies prove inadequate, the court may move on to consider a mandatory buyout and then dissolution; the statute makes clear that dissolution is the least favored remedy and should be ordered only after all other available remedies have been considered and rejected. The South Carolina Reporters’ Comments indicate that “[t]his tiering of remedies is consistent with existing case law under . . . the 1981 South Carolina Business Corporation Act.”77 The Statutory Close Corporation Supplement thus makes explicit an order of preference that also exists under the judicial dissolution provisions of Chapter 14.

3. Chapter 43, Limited Liability Company Act

The judicial dissolution provision under the newly enacted South Carolina Limited Liability Company Act78 does not follow the approach to judicial dissolution established under Chapters 14 and 18. Section 33-43-902, “Judicial dissolution,” provides that “on application by or for a member, the court of common pleas in the county of the principal place of business may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business of the limited liability company.”79

Limited liability company statutes generally do not incorporate the dissolution provisions set forth in the business corporations statutes because

75. S.C. CODE ANN. § 33-18-420(b) (Law. Co-op. 1990). The Official Comment adds that “Fair value is to be determined under principles developed in dissenters’ rights and other valuation cases.” The South Carolina Reporters’ Comments state that “going concern value” was included as a factor for determining fair value to ensure that courts would not use liquidation value. S.C. CODE ANN. § 33-18-420 cmt. & reporters’ cmt. (2) (Law. Co-op. 1990).
limited liability companies (LLCs) are based primarily on a partnership model. LLC statutes in most jurisdictions provide that members may withdraw and receive the value of their percentage interest in the investment; moreover, withdrawal of a member typically results in dissolution of the LLC unless the members agree to the contrary. These provisions afford the members greater liquidity in their investment and permit the LLC to be characterized as a partnership for tax purposes.80

LLCs are similar to closely held corporations in that both organizational structures typically place restrictions on the transferability of an investor's interest. Under most LLC statutes, however, members have an automatic right to leave the LLC and to receive compensation for their interest. This scenario obviates the need for the protections afforded by the judicial dissolution provisions that apply to closely held corporations and would explain the seemingly simplistic form of the LLC judicial dissolution provisions. Ribstein and Keatinge, two leading commentators on the subject of LLCs, suggest that corporate judicial dissolution cases should not carry much precedential weight when a court is asked to apply the LLC provisions because judicial dissolution serves a different purpose in the context of LLCs:

In a close corporation, [judicial dissolution] may fill a gap in the parties' agreement that exists because the parties simply neglected to anticipate difficulties down the road. In LLCs, on the other hand, judicial dissolution is significant only where the agreement affirmatively limits the parties' statutory default right to dissolve at will by withdrawing. Accordingly, judicial dissolution ordinarily will not merely fill gaps in the agreement, but may override its express provisions. Thus, judicial dissolution should be employed much more cautiously in LLCs than in close corporations.81

South Carolina's LLC Act has been somewhat modified from the standard model. This modification may necessitate future changes in the LLC judicial dissolution provision. Section 33-43-802(A)(1) of the LLC Act provides that when a "member withdraws by voluntary act from the limited liability company," this constitutes an event of dissociation;82 section 33-43-901(C) provides that the LLC dissolves upon "an event of dissociation of a member," unless a "majority in interest of the remaining members" agree within ninety days to continue the LLC and at least two members remain.83

81. Id. § 11.15, at 11-45 (citation omitted).
Section 33-43-602 sets forth the dissociating member’s right to receive compensation for her interest. It provides that if the member dissociation does not result in winding up, the member is entitled to receive any distribution to which she was entitled prior to the dissociation as well as any amount provided by the operating agreement. If the operating agreement does not provide for the amount of such distribution, the member is entitled to the fair value of her interest in the LLC as determined from the date of dissociation. The section thus presents an impediment to the member receiving the value of her interest in that the member’s right to compensation may be limited by the operating agreement.

A further problem for the dissociating LLC member is that if the member “wrongfully dissociates,” as explained in section 33-43-803, she is liable to the LLC for damages caused by the dissociation. Sections 33-43-803(B) and 33-43-602(C) provide that these damages must be offset against the buyout price to which the dissociating member would otherwise be entitled. Section 33-43-803(A)(2) provides that a voluntary withdrawal under section 33-43-802(A)(1), cited above, is wrongful unless the withdrawal “follows the dissociation of another member which results in a dissolution” or “is permitted by a written provision of the operating agreement.” Thus, in many circumstances members who elect to withdraw from an LLC may be liable for damages which could reduce the net compensation from their buyout.

Because of the potential difficulties LLC members may face in attempting to leave the LLC and receive compensation for their interests, courts will undoubtedly find the need to resort to the judicial dissolution provision found in section 33-43-902. Consequently, this section should be developed further to explain the circumstances in which dissolution or a court-ordered buyout would be appropriate. The current standard for dissolution, “not reasonably practicable to carry on the business of the [LLC],” is certainly broad enough to permit courts to follow the principles established in the corporate judicial dissolution statutes if they should choose to do so; however, it is inadequate insofar as it fails to provide a reasoned method for determining when judicial intervention is appropriate.

85. Id.
B. In Other Jurisdictions

Many states’ corporate dissolution statutes do not expressly provide for any remedies other than dissolution. In most of these states, however, the courts have found equitable power to fashion remedies not expressly created by statute. For example, the Supreme Court of North Dakota has held that the remedies available to an oppressed minority shareholder are not limited to the statutory remedy of dissolution. In *Balvik v. Sylvester* 88 the defendant corporation fired the plaintiff and removed him from the board of directors. The plaintiff brought an action seeking dissolution of the corporation or a court-ordered buyout of his shares. The plaintiff alleged that the majority shareholder had breached a fiduciary duty and that he had engaged in oppressive conduct. 89 The court upheld the trial court’s finding of oppression but reversed its decision to dissolve the corporation. 90 The court noted that dissolution is a drastic remedy that should only be granted with caution. The controlling statute only specified dissolution as the remedy available to an oppressed minority shareholder. The court found, however, that the statute allowed alternative equitable remedies that were not specifically mentioned, and then listed ten possible alternatives, including a mandatory buyout. 91 The court held that the trial court had erred by ordering dissolution which, in this case, was an unduly harsh remedy. Because the plaintiff, in his complaint, sought a buyout as an alternative remedy, the court held that a buyout was appropriate and remanded the case for a determination of the value of the plaintiff’s shares. 92

In *Stefano v. Coppock* 93 the lower court found that the defendants, controlling shareholder-directors in a close corporation, had engaged in oppressive conduct. Although the lower court awarded a buyout to the minority shareholder, the defendants argued on appeal that dissolution was the only available remedy because it was the only remedy mentioned in the statute. 94 The Alaska Supreme Court responded that the involuntary

88. 411 N.W.2d 383 (N.D. 1987).
89. Id. at 384-85.
90. Id. at 388, 389.
91. Id. at 388-89. Other possible remedies which the court suggested might be appropriate in certain situations included an order for dissolution at a future date that would become effective only if the parties did not reach a resolution, the appointment of a receiver, an order for an accounting, the issuance of an injunction, an order for a declaration of dividends, and an award of damages. Id. (citing Baker v. Commercial Body Builders, Inc., 507 P.2d 387, 395-96 (Or. 1973)).
92. Id. at 389.
94. Id. at 445 n.2. The Alaska statute used the term “liquidation” instead of dissolution. Id.
dissolution statute was remedial in nature and that "courts retain equitable authority to fashion a less drastic remedy [than dissolution] to fit the parties' situation." The court held that the buyout remedy was appropriate under the facts of the case, despite the majority shareholders' contention that a buyout was actually a more drastic remedy than dissolution because it was more costly to them.

The New Jersey Supreme Court construed its state corporate dissolution statute in Brenner v. Berkowitz. The statute provided for a court-ordered buyout as an alternative to dissolution. A buyout order could occur, however, only upon a motion by the prospective purchaser and after a determination by the court that a buyout would be fair to all involved. The court thus concluded that the language of the statute only specifically authorized voluntary purchases by a shareholder or by the corporation. Nevertheless, the court determined that the statute did not displace the court's equitable powers, and added that it would be illogical for the court to possess the power to order dissolution but not the lesser power to order a mandatory buyout: "Accordingly, although the statute authorizes only voluntary purchases of stock, we are persuaded that in appropriate circumstances a court exercising its equitable powers, as an alternative to dissolution, could compel the purchase of a shareholder's stock by the corporation . . . ." The court noted, however, that caution should be exercised in ordering a mandatory buyout and that the remedy should be reserved primarily for instances in which dissolution is the only alternative.

In contrast to the opinions discussed above, some courts have held that a complaining minority shareholder is limited to the remedies expressly provided in the dissolution statute. In Jordan v. Bowman Apple Products Co. the plaintiff shareholder brought an action for common law oppression and sought a mandatory buyout of her shares. The defendants claimed, however, that the relevant statute limited the plaintiff's remedies to dissolution. The federal district court, after examining several state court opinions, concluded that the statute "supersedes the common law right of action for oppression and limits a plaintiff's remedies to those available under the statute, namely dissolution or the appointment of a custodian." The plaintiff also argued that, despite the language of the statute, the court still maintained equitable jurisdiction to

95. Id.
96. Id. at 446 (citations omitted).
97. Id.
98. 634 A.2d 1019 (N.J. 1993).
99. Id. at 1031.
100. Id.
101. Id.
103. Id. at 415.
grant the relief she sought. The court rejected this argument and found that it was precluded from taking equitable jurisdiction because the plaintiff had a “full, complete and adequate remedy at law” under the statute. In Giannotti v. Hamway the Supreme Court of Virginia, interpreting the same statute, stated that “[t]he remedy specified by the legislature, while discretionary, is ‘exclusive,’ and does not permit the trial court to fashion other, apparently equitable remedies.” Despite these cases, the Virginia courts appear to be in the minority on this issue.

C. Summary and Application

Assuming a court would find that Piedmont’s majority shareholders had acted oppressively, the court might be more likely to award Maddox a buyout of his interest rather than order a complete dissolution of the company. Dissolution is considered a drastic remedy and is typically reserved for only the most extreme circumstances. South Carolina Code section 33-14-310(d) authorizes the court to award several alternative, less drastic remedies, including a court-ordered buyout, if the circumstances justify it. Section 33-18-420 permits the court to award a buyout to a shareholder in a statutory close corporation. Under both statutes, the buyout remedy, though not applied

104. Id. at 416.
106. Id. at 733 (citing White v. Perkins, 189 S.E.2d 315, 320 (Va. 1972)).
107. Virginia and Minnesota appear to be the only states which have held that the statutory remedies are exclusive. See Robert B. Thompson, The Shareholder’s Cause of Action for Oppression, 48 BUS. LAW. 699, 722-23 (1993). The Minnesota Court of Appeals, in Sundberg v. Lampert Lumber Co., 390 N.W.2d 352 (Minn. Ct. App. 1986), held that the buyout remedy, which was provided by statute only in the close corporation setting, would not be applied in other settings because to do so would make the statute superfluous. Sundberg, 390 N.W.2d at 356; see also Robert S. McLean, Survey, Minority Shareholders’ Rights in the Close Corporation Under the New North Carolina Business Corporation Act, 68 N.C. L. REV. 1109, 1120 (1990) (arguing that North Carolina’s adoption of a new corporations act was intended to restrict courts' statutory power to grant some forms of alternative relief).


when a lesser remedy is more appropriate, has been a popular alternative to dissolution.

IV. Valuation Methods and Discounts

A. Valuation Rules

1. Chapter 14, Business Corporations Act

If the court grants the plaintiff shareholder a buyout, what method will the court employ in valuing the plaintiff’s shares? South Carolina law does not provide a clear answer to this question. Section 33-14-310 states that the court may order the purchase of the plaintiff’s shares at their “fair value” but provides no further guidance in determining fair value.

Only two South Carolina dissolution cases address the problem of valuing shares in the context of a forced buyout. Neither case establishes a clear valuation rule. The first case, Segall v. Shore, involved two officer-shareholders who misappropriated money from the corporation for their personal use. The remaining shareholders brought an action seeking dissolution or, in the alternative, a forced purchase of their shares. The court upheld the master’s finding that the defendants had acted oppressively and unfairly and determined that a buyout was appropriate. The court, however, disagreed with the trial judge’s use of a “liquidation appraisal.” In determining the liquidation value of the plaintiff’s stock, the trial judge deducted from the stock’s value an amount equal to the tax liability that would be incurred if the corporation were liquidated. The court stated that there was “no reason to presuppose the liquidation of [the company]” and that the judge’s ruling had subjected the plaintiffs to a tax that might never arise in reality. Instead, the court indicated that the corporation should be valued as a going concern and that, consequently, no deduction should be made for tax liability that would arise upon liquidation.

110. Nor is the term “fair value” defined elsewhere in the chapter covering dissolution (Chapter 14). Nevertheless, fair value is defined in the dissenters’ rights chapter (Chapter 13) at § 33-13-101(3). Although the definitions listed in § 33-13-101 technically apply only to the sections in Chapter 13, it is likely that the definition of fair value would be applied in dissolution cases as well. See infra note 135 and accompanying text.
112. Id. at 36-37, 236 S.E.2d at 318.
114. Segall, 269 S.C. at 37, 236 S.E.2d at 318.
115. Id. The court noted that it had “discussed the appraisal of stock at length” in Santee Oil
The second dissolution case addressing the valuation of stock is a federal district court case, *Hendley v. Lee.* In that case, the shareholders became deadlocked because of disagreements regarding the management of the company. The parties brought an action seeking to have the dispute resolved. Initially, both the plaintiffs and the defendant sought to purchase the other parties' shares, but later each party sought to sell their own shares. Ultimately, the plaintiffs asked the court for an equitable division of the company, which would have essentially allowed the corporation to continue operating, but in two parts. However, the court determined that a buyout was appropriate and that the plaintiffs were better suited to make the purchase.

The court then turned to the question of valuing the defendant's shares. As a preliminary matter, the court stated that the value of the shares should be determined as of the time of the trial; the court noted, however, that “[i]n cases of minority stockholder oppression, the date of ouster seems appropriately used.” In determining the value of the corporation, both parties' experts employed a capitalization of earnings approach, in which the corporation's "adjusted pretax income" for the most current fiscal year was multiplied by an "earnings multiplier." The adjusted pretax income was determined by adding the amount of "non-functional" compensation paid to the company's officers to the pretax income. The earnings multiplier that the

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Co. *v.* Cox, 265 S.C. 270, 217 S.E.2d 789 (1975), a dissenter's rights case. *Id.* This comment suggests that the valuation principles applied in dissenter's rights cases would be equally applicable in dissolution cases.


117. Deadlock among the shareholders or directors is another ground for judicial dissolution. S.C. CODE ANN. § 33-14-300(2)(f) (Law. Co-op. 1990); see also S.C. CODE ANN. § 33-21-150(a)(1)-(2) (1976) (earlier version of statute applied in *Hendley*). *Hendley* did not involve any allegations of oppression on the part of either party.

118. *Hendley,* 676 F. Supp. at 1327. The court considered a number of factors in determining which party should be forced to purchase the other party's shares. For example, the court found it important that the plaintiffs were financially better able to purchase the shares, that no undue hardship would be imposed on the plaintiffs by requiring the purchase, that the defendant was capable of adapting to another vocation, and that the defendant would have a smaller tax liability from selling than would the plaintiffs. *Id.* at 1325-27. The court's analysis illustrates that, under the judicial dissolution statute, either party to the action may be required to purchase the other party's shares; the defendant will not always be required to make the purchase.

119. *Id.* at 1327. The court recognized that "there is little case authority setting the proper date of valuing a company in a buyout situation." *Id.* It appears that the court used the date of trial because there were no significant events in the facts of the case, such as the ouster of an oppressed shareholder, from which the date could be set. Even in an oppression case, however, it could be difficult to determine a precise date of ouster, as oppression often occurs incrementally. Thus, the date of trial may be used as a default date for valuation purposes if no single significant date can be determined.

120. *Id.*

121. Nonfunctional compensation means that part of an officer's salary which is not intended
court accepted (4.48) was calculated by dividing the value of the company in 1984 by the company’s adjusted pretax income in that year.\textsuperscript{122} The primary debate between the parties’ experts concerned the amount of nonfunctional compensation that had been paid by the company in the most recent fiscal year. After resolving this question, the court calculated the company’s value by adding the pretax income and non-functional compensation, and then multiplying this sum by the earnings multiplier.\textsuperscript{123}

Aside from \textit{Segall} and \textit{Hendley}, no other South Carolina cases brought pursuant to the judicial dissolution statutes give further explanation as to the means of valuing stock in a forced buyout setting. This dearth of dissolution cases raises the question of whether South Carolina courts would apply the same valuation principles in a dissolution proceeding as in a dissenter’s rights proceeding. The \textit{Segall} opinion suggests that the same valuation methods should be applied in both types of cases, in that the court cites \textit{Santee Oil Co. v. Cox},\textsuperscript{124} a dissenter’s rights case, in its discussion of the appraisal of stock.\textsuperscript{125}

Several courts from other jurisdictions have found that the nature of the proceeding, whether dissolution or disserter’s rights, does not affect the valuation analysis. In \textit{Columbia Management Co. v. Wyss},\textsuperscript{126} a dissenter’s rights action, the Oregon Court of Appeals relied on a number of dissolution cases in holding that a minority discount should not have been applied. The court stated that the slightly different context did not change the analysis because the statutory standard (“fair value”) was the same for both.\textsuperscript{127} A

\begin{align*}
\text{to compensate for services performed for the company, but which is better characterized as a distribution of profits.} & \quad \text{Id.} \\
\text{\textsuperscript{122} The court found it significant that the 1984 valuation of the company had been determined} & \quad \text{Id. at 1329.} \\
\text{and agreed upon by the shareholders themselves, and at a time when they were “still on amicable} & \quad \text{Id.} \\
\text{terms.”} & \quad \text{Id. at 1329.} \\
\text{\textsuperscript{123} \textit{Hendley,} 676 F. Supp. at 1329. The court also added to adjusted pretax income a 2} & \quad \text{Id.} \\
\text{percent allowance for growth of the company during the current year. The calculations were as} & \quad \text{Id. at 1327.} \\
\text{follows:} & \quad \text{Id.} \\
203,971.00 & \quad \text{pretax income for most recent fiscal year} \\
+ 4079.42 & \quad \text{2\% allowance for 1987 growth} \\
+ 93,813.00 & \quad \text{non-functional income paid to Dick Hendley} \\
+ 75,000.00 & \quad \text{non-functional income paid to Terry Lee} \\
376,863.42 & \quad \text{4.48} \\
\times 4.48 & \quad \text{earnings multiplier} \\
\$1,688,348.12 & \quad \text{Id.} \\
\text{The defendant held a one-half interest in the company.} & \quad \text{Id. at 1327.} \\
\text{\textsuperscript{124} 265 S.C. 270, 217 S.E.2d 789 (1975).} & \quad \text{Id.} \\
\text{\textsuperscript{125} Segall v. Shore, 269 S.C. 31, 37, 236 S.E.2d 316, 318 (1977). However, the valuation} & \quad \text{Id.} \\
\text{rule set forth in \textit{Santee Oil} has been superseded by a 1988 amendment to the dissenter’s rights} & \quad \text{Id.} \\
\text{statutes. See infra notes 144-46 and accompanying text.} & \quad \text{Id.} \\
\text{\textsuperscript{126} 765 P.2d 207 (Or. Ct. App. 1988), \textit{review denied}, 771 P.2d 1021 (Or. 1989).} & \quad \text{Id. at 1327 n.8.} \\
\text{\textsuperscript{127} \textit{Id.} at 213 n.8.} & \quad \text{Id. at 213 n.8.}
\end{align*}
New York court, in *Blake v. Blake Agency, Inc.*,\(^{128}\) commented that courts should look to appraisal rights cases for guidance in valuing stock in dissolution proceedings.\(^{129}\) Likewise, the Minnesota Court of Appeals, in *Pooley v. Mankato Iron & Metal, Inc.*,\(^{130}\) stated that “this court’s rationale in [two earlier cases] regarding the determination of ‘fair value’ in dissenter’s rights cases also applies to the determination of ‘fair value’ in buy-out situations under [the judicial dissolution statute].”\(^{131}\) In *Charland v. Country View Golf Club, Inc.*,\(^{132}\) however, the Rhode Island Supreme Court stated that determining the fair value of shares in a dissenter’s rights proceeding and in a dissolution proceeding were separate issues.\(^{133}\) Despite this holding, most courts have applied the statutory standard of fair value in both types of proceedings. Moreover, the fact that the fair value standard is used in both the South Carolina dissenter’s rights and judicial dissolution statutes is further indication that the valuation rules from dissenter’s rights cases may be applied in dissolution cases.\(^{134}\)

Prior to a statutory amendment in 1988 which provided an express definition of fair value,\(^{135}\) several South Carolina dissenter’s rights cases had established a relatively straightforward procedure for valuing stock. In *Santee Oil Co. v. Cox*\(^ {136}\) a corporation brought an action to determine the fair value of stock belonging to a shareholder who had dissented to a merger transaction involving the corporation. The court noted that no prior South Carolina cases had effectively construed the meaning of fair value, but that the Delaware courts “have had fairly frequent occasion to define and apply such term under corporation law similar to ours.”\(^ {137}\) Citing several cases from Delaware, the court stated that the fair value standard does not limit an appraising court to using any single valuation method.\(^ {138}\) The court continued:

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129. Id. at 347.
130. 513 N.W.2d 834 (Minn. Ct. App. 1994).
131. Id. at 838.
133. Id. at 611 n.5.
137. Id. at 273, 217 S.E.2d at 791.
138. Id. (citing Application of Delaware Racing Ass’n, 213 A.2d 203, 211 (Del. 1965) and Chicago Corp. v. Munds, 172 A. 452, 457 (Del. Ch. 1934)).
Under the weight of authority the three major factors to be considered are: (1) net asset value; (2) market value; and (3) the earnings or investment value of the dissenting stock. There are, of course, sub-factors involved in each of the major factors, . . . [including] [t]he nature of the enterprise, i.e., a regulated closed-end investment company; leverage; discount; net asset value; market value; management; earnings and dividends; expenses of operation; particular stockholdings in . . . portfolio; and . . . tax situation. 139

The court further stated that "[a]fter these various factors have been considered and determined in a given case they should then be weighed as to their relative bearing upon the ultimate question of the fair value of the dissenting stock." 140

The court proceeded to determine the value of the corporation under each of the three enumerated factors. The court took the average of several appraisals of the net asset value of the corporation to determine the value of this factor. To find the corporation's market value, the court used the price a willing buyer had paid for ten percent of the corporation's stock nine months prior to the merger. To determine the earnings value, the court multiplied the company's average earnings for the previous three years by a multiplier (or price-earnings ratio) of twelve; the court determined that twelve was the appropriate multiplier because it had been a figure commonly used in the sale of other oil stocks during the period. 141 The court did not give a detailed analysis of the weights that should be assigned to each factor, but simply noted that while "greater weight should be given to the net asset value factor than any other factor, . . . the other factors have a real impact upon what in truth was the fair value of appellant's shares of stock." 142 The court held that it was error for the trial court only to consider asset value, but found that the

139. Id. at 274, 217 S.E.2d at 791-92 (quoting Tri-Continental Corp. v. Battye, 74 A.2d 71, 73 (Del. Ch. 1950)).
140. Id. at 274, 217 S.E.2d at 792 (citing Application of Delaware Racing Ass'n, 213 A.2d 203, 211 (Del. 1965) and Francis I. Du Pont & Co. v. Universal City Studios, Inc., 312 A.2d 344, 346, 352 (Del. Ch. 1973), aff'd, 334 A.2d 216 (Del. 1975)).
141. Santee Oil, 265 S.C. at 275-77, 217 S.E.2d at 792-93.
142. Id. at 276, 217 S.E.2d at 793. Merely for the purpose of showing that the trial court's valuation was not against the clear weight of the evidence, the court calculated the company's value as follows:

| Net asset value | 1,122,666 x 70% = | $785,866.00 |
| Market value    | 931,603 x 15% =   | 139,740.00 |
| Capitalized earnings | 644,976 x 15% = | 96,746.00 |

Total value of corporation stock $1,022,352.00

Id. at 277, 217 S.E.2d at 793.
trial court’s ultimate determination of value was not against the clear weight of the evidence. 143

The valuation method developed in Santee Oil for dissenter’s rights cases was replaced in 1988 by the statutory definition of fair value found in section 33-13-101(3). This section provides:

“Fair value,” with respect to a dissenter’s shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable. The value of the shares is to be determined by techniques that are accepted generally in the financial community. 144

The definition was taken directly from the Model Act, except that the last sentence was added to make clear that the Delaware Block (i.e., Santee Oil) method would no longer be controlling. The South Carolina Reporters’ Comments suggest that the Delaware Block method was discarded because it artificially produces “values lower than those that would be used in a voluntary sale of the shares.” 145 The end result is that the current definition provides a much less restrictive method for determining fair value by simply directing that the valuation methods used in the financial community be followed. 146

143. Id. at 275, 217 S.E.2d at 792. In Santee Oil, therefore, the South Carolina Supreme Court endorsed the use of the “Delaware Block” valuation method for valuing stock in a dissenter’s rights case. Under the Delaware Block method, the market, asset, and earnings values of a corporation’s stock are determined. A percentage weight is then assigned to each of the three values, depending on the type of business involved, its objectives, and so on. The sum of these three calculations gives the total value of the corporation’s stock. Two later dissenter’s rights cases, Metromont Materials Corp. v. Pennell, 270 S.C. 9, 239 S.E.2d 753 (1977), and Dibble v. Sumter Ice & Fuel Co., 283 S.C. 278, 322 S.E.2d 674 (Ct. App. 1984), provided further instruction on the appropriate weights to be assigned each of the component calculations in the Delaware Block method.

As noted elsewhere, the Delaware Block method has been superseded by the statutory definition of fair value enacted in 1988. See S.C. CODE ANN. § 33-13-101(3) & reporters' cmts. (Law. Co-op. 1990).


146. The South Carolina Reporters’ Comments explain that this language was taken from a Delaware case, Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983) (en banc). Id. The Weinberger court held that the Delaware Block method would “no longer exclusively control” in stock valuation cases. Weinberger, 457 A.2d at 713. In its place, the court adopted a “more liberal approach” which would permit “proof of value by any techniques or methods which are generally considered acceptable in the financial community.” Id. at 713.
Although the definitions in section 33-13-101 expressly apply only to dissenter’s rights cases, it seems likely that the definition of fair value described above would also be used in dissolution cases. First, the statutory standard (fair value) is the same for both types of valuations; thus, in looking for a definition of fair value in a dissolution case, a court might logically turn to the dissenter’s rights definition. Moreover, in Segall v. Shore, a dissolution case, the South Carolina Supreme Court pointed to Santee Oil Co. v. Cox, a dissenter’s rights case, for a discussion of stock appraisal (although both cases were decided before the 1988 statutory amendments). Lastly, in Weinberger v. UOP, Inc., the case from which the definition of fair value in section 33-13-101(3) is taken, the Delaware Supreme Court stated that the new, liberal approach to stock valuation is appropriate in “appraisal [dissenter’s rights] and other stock valuation cases,” which would presumably include dissolution cases.

2. Chapter 18, Business Corporations Act (Statutory Close Corporation Supplement)

The buyout provisions in the Statutory Close Corporation Supplement give additional instruction concerning how to determine the fair value of stock. Section 33-18-420(b)(1) provides:

(b) If the court orders a share purchase, it shall: (1) determine the fair value of the shares, considering among other relevant evidence the going concern value of the corporation, any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose, the recommendations of any appraisers appointed by the court, and any legal constraints on the corporation’s ability to purchase the shares.

This approach to valuation, though still somewhat open-ended, provides more direction than the “financial community” standard of the dissenter’s rights statute. Nonetheless, the Official Comment to this section states that “[f]air value is to be determined under principles developed in dissenters’ rights and other valuation cases.” Therefore, in cases involving statutory close corporations, South Carolina courts should regard the financial community

147. 269 S.C. 31, 37, 236 S.E.2d 316, 318 (1977).
149. 457 A.2d 701 (Del. 1983) (en banc).
150. Id. at 713 (emphasis added).
standard as a broad outline within which they can use the sources noted in section 33-18-420(b)(1) to fill in the details.\footnote{For example, the court in Hendley v. Lee, 676 F. Supp. 1317, 1327-28 (D.S.C. 1987), determined the earnings value of the corporation on the basis of a prior agreement between the shareholders concerning the value of the corporation. Section 33-18-420(b)(1) provides that shareholder agreements may be used in the valuation process.}

3. Chapter 43, Limited Liability Company Act

Section 33-43-602(A) of the Limited Liability Company (LLC) Act provides that dissociating members are entitled to the fair value of their interest, but only if the operating agreement does not establish the amount of the distribution to be made.\footnote{S.C. CODE ANN. § 33-43-602(A) (Law. Co-op. Supp. 1994).} Section 33-43-602(B) defines fair value as "the amount that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell, and with knowledge of all relevant facts."\footnote{S.C. CODE ANN. § 33-43-602(B) (Law. Co-op. Supp. 1994).} This is, of course, the classic formulation of fair market value. The definition is peculiar because the term used by the section is fair value, not fair market value.\footnote{In fact, the use of the term fair value instead of fair market value has been put forth as a reason for rejecting the application of a minority discount to a member's interest. \textit{See} Ribe\textsc{t}i\textsc{n} & \textit{K}ea\textsc{t}i\textsc{n}g\textit{e}, supra note 80, at 11-8, and the discussion concerning minority discounts, \textit{infra} part IV.B.2.} Ribstein and Keatinge suggest that courts should evaluate the LLC's going concern value, as opposed to its book value, when determining the value of the dissociating member's interest.\footnote{Ribe\textsc{t}i\textsc{n} & \textit{K}ea\textsc{t}i\textsc{n}g\textit{e}, \textit{supra} note 80, at 11-8.}

B. Discounts

In the context of valuation proceedings, the issue often arises as to whether certain discounts should be applied to the value of the stock in question. These discounts result in a reduction in the stock's value and arise due to certain negative qualities of the stock. For example, stock in a close corporation is generally held to be less valuable than comparable stock in a public corporation because there typically is not a ready market for closely held stock; publicly traded stock has much greater liquidity. The rule on the applicability of these discounts varies from jurisdiction to jurisdiction.

1. Key Man Discount

The key man discount is the only type of discount that has been directly considered in South Carolina. A key man discount simply involves a
reduction in the value of stock when the transaction involves the departure of a significant executive, or "key man," from the company. In Hendley v. Lee,\textsuperscript{158} discussed above, the court ordered the plaintiffs to purchase the defendant's one-half interest in the corporation. After determining the value of the corporation, the court noted that its calculations assumed there would be no "slippage" in the corporation's earnings after the defendant had been bought out. The court acknowledged, however, that the defendant had been a key man in the corporation in that he had been primarily responsible for its management.\textsuperscript{159} Because the defendant's departure presumably would be detrimental to the company's profitability, the plaintiffs argued that the value of the defendant's stock should be reduced to account for a key man discount.\textsuperscript{160}

Ultimately, the court found that a key man discount was inappropriate under the facts of the case. The key man discount normally applied "in cases where the executive has already left the company and the company is unable to find a suitable replacement."\textsuperscript{161} The court pointed out that the defendant was still employed with the company, and that even if he left, the plaintiffs would be able to effectively manage the company themselves. Although the plaintiffs had stated that they would not continue to employ the defendant, under the court's order they had the opportunity to retain the defendant through any transition period. The court thus concluded that it would be unfair to discount the defendant's stock on the basis of an event "which is speculative and which, at any rate, is under the control of the plaintiffs."\textsuperscript{162}

The court opined that discounts are properly applied in the context of a "willing buyer/willing seller" transaction. However, discounts should not be applied when the transaction involves a court-ordered sale between insiders. Because the purchasers in this case were insiders, they already had the benefit of an established presence in the industry and would likely be able to recover from any temporary slippage in profitability. The court further observed that any discount in the value of the defendant's stock would be offset by the fact that the plaintiffs would have a controlling interest in the corporation after the purchase (when they previously controlled only fifty percent).\textsuperscript{163}

Hendley thus leaves open the possibility that key man discounts or other discounts might be appropriate in certain factual settings. However, the broad statement made by the court that discounts should not be applied in forced sale

\textsuperscript{159} Id. at 1330.
\textsuperscript{160} Id. at 1329-30.
\textsuperscript{161} Id. at 1330 (citing Harry J. Haynsworth, \textit{Valuation of Business Interests}, 33 MERCER L. REV. 457 (1982)).
\textsuperscript{162} Id. at 1330-31.
\textsuperscript{163} Hendley, 676 F. Supp. at 1330.
transactions between insiders lends support to the argument that discounts are never appropriate in oppression cases.

2. Minority and Marketability Discounts

Questions concerning the applicability of minority and marketability discounts often arise in the context of oppression cases. A minority discount is sometimes applied to stock that represents a noncontrolling interest in a corporation because the purchaser of such stock does not acquire the power to control the corporation. A marketability discount, briefly described above, is applied to stock in a closely held corporation because such stock often has no ready market and is subject to transfer restrictions.

South Carolina courts have not discussed the applicability of these discounts in dissolution or dissenter’s rights cases. Most courts from other jurisdictions that have considered the issue have determined that minority discounts should not be applied to minority shares that a corporation elects or is compelled to purchase in the context of a dissolution proceeding. However, a few of these courts have held that marketability discounts may be appropriate.164

The rationale for rejecting the minority discount in the dissolution setting is that the minority shareholder would receive her full, pro rata share of the corporation’s net assets if dissolution were ordered instead of a buyout. Moreover, when a party already in control of the corporation purchases minority shares, as occurs in a court-ordered buyout, it is irrelevant that the shares represent a noncontrolling interest; minority shares are not worth less to the majority because the majority already possesses the power to control the corporation. In jurisdictions where the dissolution statute permits the majority shareholders to elect a buyout as an alternative to dissolution, the courts sometimes point out that the majority should not be allowed the benefit of a discount by making such an election.165

Several courts from other jurisdictions have considered the applicability of discounts in the context of dissolution proceedings. In Raskin v. Walter Karl, Inc.166 the court distinguished between minority discounts and marketability discounts, holding that only the latter was appropriate in a dissolution proceeding in which the corporation had elected to buy out the minority shareholder. The trial court had refused to apply a discount in determining the value of the plaintiff’s shares. In reaching its decision, the trial court relied

164. See Christopher Vaeth, Annotation, Propriety of Applying Minority Discount to Value of Shares Purchased by Corporation or its Shareholdersfrom Minority Shareholders, 13 A.L.R.5TH 840 (1993).
165. Id. at 850.
on a line of cases which held that minority discounts were improper in a forced buyout setting. On appeal, the court agreed that a minority discount should not be applied because "[t]o do so would defeat the purpose of the [dissolution statute] to protect a minority shareholder from any unjust exercise by the majority shareholders of their greater power."¹⁶⁷ The court continued, "However, a discount for lack of marketability accurately reflects the lesser value of shares that cannot be freely traded, whether they be a minority or a majority of the shares, and as such is an appropriate adjustment."¹⁶⁸ Finding that the defendants' proposed discount of thirty-five percent was excessive because it was partly based on a minority discount, the court concluded that a discount of not greater than ten percent was proper under the circumstances.¹⁶⁹

The Rhode Island Supreme Court, in Charland v. Country View Golf Club, Inc.,¹⁷⁰ held that neither a minority nor a marketability discount should apply when a corporation elects to buy out a shareholder who has petitioned for dissolution. The court separately discussed the reasons for not applying either discount. Concerning minority discounts, the court noted that few jurisdictions have addressed the issue, but that most of those that had addressed it determined that minority discounts were inappropriate in this setting.¹⁷¹ The court discussed the case Brown v. Allied Corrugated Box Co.¹⁷² as a leading case on the issue of minority discounts. The Brown court cited several reasons for rejecting minority discounts: the non-controlling status of minority shares is insignificant when the corporation, instead of a third party, purchases the shares; the plaintiffs had proven their case for dissolution and would have been entitled to the pro rata value of their shares had the corporation not elected to purchase the shares; and, moreover, it would be unfair to allow the majority to use oppressive conduct to incite a petition for dissolution and then purchase the minority's shares at a discount.¹⁷³ The Charland court agreed with this rationale and adopted the rule that minority discounts do not apply when a corporation elects to buy out a shareholder's stock pursuant to the dissolution statute.¹⁷⁴

The Charland court next addressed the issue of marketability discounts, noting that courts were divided on this question. Citing Brown, the court observed that California courts had rejected marketability discounts because, as in the context of a minority discount, the shares are being sold to the

¹⁶⁷ Id. at 122 (citations omitted).
¹⁶⁸ Id.
¹⁶⁹ Id.
¹⁷¹ Id. at 611.
¹⁷³ Id. at 176.
¹⁷⁴ Charland, 588 A.2d at 612.
corporation and not on the open market where the discount would legitimately apply.\(^ \text{175}\) New York courts, however, had determined that marketability discounts should apply because the shares of a close corporation cannot readily be sold on the public market.\(^ \text{176}\) The Charland court found that the difference in the two approaches arose partly from the difference in the states' statutes. The California statute provided that the fair value of the minority's shares should be based on the liquidation value of the corporation, while the New York statute simply provided that the minority shareholder should be paid a fair value for his shares.\(^ \text{177}\)

The court, in holding that the marketability discount should not apply, distinguished its Rhode Island statute from the similar provisions of the New York statute.\(^ \text{178}\) The court further stated, however, that it would reject the marketability discount even if there were no discrepancies between the Rhode Island and New York statutes. A minority shareholder seeking dissolution must show that the majority has engaged in some form of unfair conduct. The court concluded that it would be unfair for a shareholder who has proven a case for dissolution to have the value of his shares discounted for the purposes of an elected buyout, when the shareholder would have received full value under a dissolution of the corporation.\(^ \text{179}\) Arguably, this rationale would not apply in a case in which the court awarded a buyout as a less drastic remedy because the facts were not strong enough to warrant dissolution.

In Chiles v. Robertson\(^ \text{180}\) the court held that the trial court had properly refused to apply either minority or marketability discounts. The court commented:

This is not a sale by a willing seller to a willing buyer, and defendants should not benefit from reductions in value that are based on such a sale. We require defendants to purchase plaintiffs' interests because of their breach of duty to plaintiffs. The purchase is a judicial remedy to compensate plaintiffs for the damage resulting from defendants' wrongs, not a market transaction.\(^ \text{181}\)

\(^ {175}\) Id.
\(^ {176}\) Id.
\(^ {177}\) Id.
\(^ {178}\) Id. at 613. The Rhode Island statute provided that fair value would be determined from the day the petition for dissolution was filed, while the New York statute provided that fair value would be determined from the day before the petition was filed. Id.
\(^ {179}\) Charland, 588 A.2d at 613.
\(^ {181}\) Id. at 926 (citation omitted).
The court also recognized that if the discounts were applied the plaintiffs would receive less than if the corporation were dissolved, a result the court felt would not be appropriate "in light of our finding of defendants' oppressive conduct." 182

In McCauley v. Tom McCauley & Son, Inc. 183 the court held that the use of discounts in determining fair value was within the trial court's discretion and thus upheld the application of a minority discount. 184 The plaintiff contended that if the trial court had ordered dissolution, she would have received the full value of her shares. She also argued that the defendants should not be allowed to benefit from their oppressive conduct by obtaining such a discount. The court rejected the plaintiff's arguments, stating that the trial court had discretion in choosing an appropriate remedy and in finding a "fair and reasonable" price for the plaintiff's shares. 185 The court noted that the noncontrolling nature of minority shares diminishes their value and found that there was sufficient evidence to support the application of a minority discount in this case. 186

Other cases have also addressed the issue of how to determine the value of minority shares under involuntary dissolution statutes, including In re Pace Photographers, Ltd., 187 in which the court stated,

Value "should be determined on the basis of what a willing purchaser, in an arm's length transaction, would offer for the corporation as an operating business, rather than as a business in the process of liquidation." In reaching such a determination, the court obviously may take into account the shareholders' agreement provisions regarding value, petitioner's own offer to buy, the corporation's alleged efforts to sell the business earlier, and any other pertinent evidence. 188

C. Summary and Application

If the court orders the majority shareholders or the corporation to purchase Maddox's interest, the court will probably employ the definition of

182. Id.
184. Id. at 244.
185. Id. at 243.
186. Id. at 244.
188. Id. at 718-19 (citations omitted); see also Hughes v. Sego Int'l Ltd., 469 A.2d 74, 79 (N.J. Super. Ct. App. Div. 1983) (stating that trial court "could make adjustments to the fair value to reflect the equities of the case and in so doing could appropriately consider the shareholders' agreement."); In re Joy Wholesale Sundries, Inc., 508 N.Y.S.2d 594, 596 (App. Div. 1986) (mem.) (holding that marketability discount of 10% should have been applied by trial court).
fair value set forth in section 33-13-101(3) to determine the fair value of Maddox's interest. Although the definition expressly applies only to dissenter's rights cases, it is likely that it would also be employed in the context of a court-ordered buyout.

After the value of Maddox's stock has been calculated, the majority shareholders may claim that certain discounts should be applied to reduce the final value of the stock. The court would reject the application of a key man discount because the corporation voluntarily terminated Maddox's employment with the company and thus would not be able to contend that Maddox's departure damaged the company. The court might consider the applicability of a minority or marketability discount, although the language from one federal district court case\(^\text{189}\) suggests that no discounts would be appropriate in the context of a court-ordered buyout.

V. CONCLUSION

Under the South Carolina judicial dissolution statute, a court has great flexibility in awarding relief to minority shareholders who claim oppression by control persons. The comments instruct the court not to intervene in legitimate power struggles within the corporation.\(^\text{190}\) When, however, the conduct of the persons in control of the corporation rises to the level of oppression, the court is authorized to order dissolution, a buyout, or a number of other less drastic remedies. The oppression standard is an important aspect of the statute because it allows the court to grant relief based on conduct which is less egregious than illegality or fraud. The judicial dissolution statute thus grants the court a large, but appropriate, amount of discretion in reaching the proper balance between the interests of controlling and minority shareholders.
