

April 2021

## Book Review: Expulsion or Oppression of Business Associates

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### Recommended Citation

Claude M. Maer, Jr., Book Review: Expulsion or Oppression of Business Associates, 39 Dicta 130 (1962).

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## BOOK REVIEW

### *EXPULSION OR OPPRESSION OF BUSINESS ASSOCIATES.*

By F. Hodge O'Neal and Jordan Derwin, Durham, North Carolina: Duke University Press. 1961. Pp. 263. \$10.

This timely work bears the subtitle, "'Squeeze-Outs' in Small Enterprises," which describes in colloquial terms the subject of the volume. This work was prepared by Duke University under the Small Business Administration Management Research Grant program with Professor O'Neal acting as project director and his co-author designated the research associate.

The style of writing is such that it will be equally valuable for both the lawyer and his businessman client in studying the problems caused by business conflicts between majority and minority groups in both corporations and partnerships. Following the opening chapter devoted to a description of the scope of the study and the general background of the problems involved, Professor O'Neal launches into an interestingly documented discussion of the underlying causes of squeeze-outs. Some of the chapter subtitles indicate a discussion of problems frequently encountered in Colorado business practice, such as §2.03—"The inactive shareholder," §2.04—"The decease of founder and other key shareholders," §2.08—"Disregard of corporate ritual and failure to keep proper records," §2.10—"Viewing incorporated enterprise as a 'partnership' or 'family business'," §2.15—"Inability of minority shareholder in close corporation to dispose of his interest," and §2.16—"Difficulty of valuing a business interest." The authors needed the legal profession a bit under §2.19—"Businessmen's failure to obtain preventive legal services and inability of many lawyers to supply adequate preventive services."

Three chapters are devoted to a detailed discussion of squeeze-out techniques, including a discussion of the rather unlikely situation of a squeeze-out of the majority by a minority group.

Chapter 6 is devoted to squeeze-outs in partnerships and contains an interesting commentary on the relative possibility of a squeeze-out in a partnership as compared to a corporation. On page 142 it is stated:

The inherent simplicity of the partnership form results in fewer opportunities (as compared with the corporation) for subtlety or sophisticated dealings in effecting a squeeze-play. Consequently, many partnership squeeze cases involve outright fraud, close approximations to it, or flagrant appropriations of partnership assets or business opportunities. Because of the more highly developed concept of fiduciary duty applied to partnership relations and the ease of dissolution, the partnership is not as amenable as the corporation to some of the squeeze-out techniques. A wide-awake partner, with the aid of timely and competent advice, often can more easily prevent or thwart a squeeze-out than can a corporate shareholder under similar pressure.

Thus, in a situation where there is some likelihood of conflict between the business associates, the attorney may well want to advise the use of a partnership rather than a corporation.

A chapter is devoted to arrangements which avoid squeeze-outs. These include buy-out arrangements, the advantages of arbitration and other arrangements for settling disputes, shareholder agreements, provisions requiring the declaration of dividends, employment contracts, use of the provision, new to Colorado corporation law with the 1958 Act, permitting the requirement of higher than majority votes for corporate action by inclusion of such requirement in articles of incorporation or by-laws, and other similarly useful devices.

Finally, Professor O'Neal includes a chapter discussing legislative measures and other possible changes in the law which might tend to reduce or alleviate the problems created by business conflicts. A comparison of English and Irish laws on this subject is made and specific statutes throughout the United States are discussed.

An appendix includes detailed briefs of four typical squeeze-out cases, a comprehensive table of cases keyed to applicable portions of the text, and a complete index.

All in all, this is a very useful study, and lawyers representing businessmen would do well to have this volume on their shelves.

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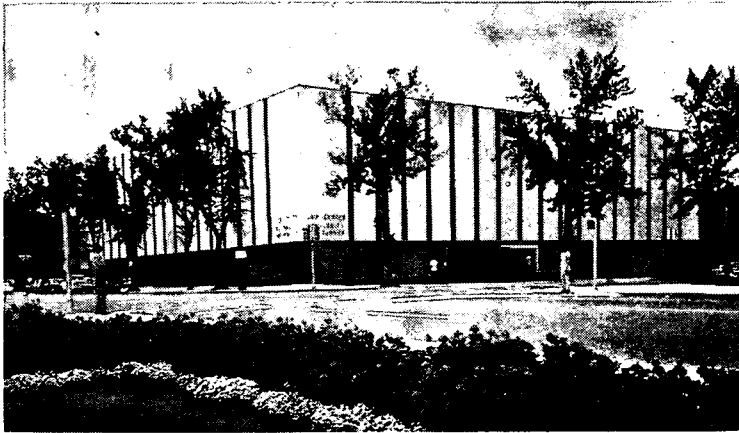
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