Deadlock and Dissolution in the Close Corporation: Has the Sacred Cow Been Butchered?

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Comment

Deadlock and Dissolution in the Close Corporation: Has the Sacred Cow Been Butchered?

Once it be granted that the participants in a close corporation should be permitted, as between themselves, to impose personal vetoes on the powers usually vested by our corporate statutes in majorities, it seems clear to the writer that a simple and flexible remedy for deadlock or stalemate must be provided, and that the untouchability of the sacred cow must not be permitted to impede its exercise. Too precise definition, too onerous requirements as to who may seek relief, and too much rigidity of available remedy will do social harm. What we need is faith in the sensitivity of the Chancellor's foot, and to permit him, with due dignity, and in a proper case to apply the boot to the sacred cow of corporate existence.1

I. INTRODUCTION

The general rule at common law was that in the absence of specific statutory authority, a court of equity had no power to dissolve a solvent corporation in a suit brought by a minority stockholder.2 The major reason provided for the rule was that the corporation was a creature of the state. Thus, it was reasoned that only an agent of the state should have the power to dissolve the corporation.3 That reason, however, was given at a time when corpora-

1. Israels, The Sacred Cow of Corporate Existence: Problems of Deadlock and Dissolution, 19 U. Chi. L. Rev. 778, 793 (1952). In this classic presentation written 26 years ago, Mr. Israels called for a reform of corporations law to better meet the needs of the closely held corporation. Traditionally, statutes have provided for perpetual corporate existence; consequently, courts generally have refused to destroy the legislatively created corporation. "[T]his sacred cow has all too often been an effective road block in cases where the overall best interests of the owners of the enterprise call for its dissolution or liquidation." Id. at 778.


3. See Comment, Dissolution at Suit of a Minority Stockholder, 41 Mich. L. Rev. 714 (1943). For a study of judicial approach to this reason, compare Thwing v.
tions were created by special charters conferring exclusive privileges. With the subsequent movement to legislatively created corporations, the reason underlying the common law rule no longer carried any force.

In addition, courts have refused to aid aggrieved shareholders because of a general reluctance to interfere in business affairs of corporations. By invoking either the business judgment rule or

Minowa Co., 134 Minn. 148, 152, 158 N.W. 820, 822 (1916) ("When it has become impossible to accomplish the purpose for which the corporation was chartered or organized, or when failure or ruin is inevitable, the courts may intervene and wind up its business . . . .") with Manufacturers' Land & Improvement Co. v. Cleary, 121 Ky. 403, 406, 89 S.W. 249, 249 (1905) ("The corporation owns its property. . . . No court is ever permitted to interfere with an owner's control of his property so long as it is lawful, no matter how foolish it may be.").

4. Hornstein, A Remedy for Corporate Abuse—Judicial Power to Wind Up a Corporation at the Suit of a Minority Shareholder, 40 COLUM. L. REV. 220, 223 (1940). In Goodwin v. Von Cotzhausen, 171 Wis. 351, 358-59, 177 N.W. 618, 621 (1920), the court stated:

[The common law] rule had its origin at a time when corporations were created by special charters the grants of which conferred valuable and exclusive franchises upon their grantees, and it was considered that, as the franchises were granted by the state, they could be vacated or forfeited only in a proceeding by the state; that their lives depend upon the action of the state or the stockholders as a whole. The reason for this rule has entirely ceased in respect to the ordinary business corporation formed under general laws, the privileges conferred upon which are open to all who comply with statutory conditions, which conditions are simple and formal in character and may readily be complied with by any who desire to associate themselves for the prosecution of any business venture.

5. See Green v. National Advertising & Amusement Co., 137 Minn. 65, 162 N.W. 1056 (1917) (power to dissolve a corporation created pursuant to statute is analogous to the power to dissolve partnerships which also arises pursuant to statute).


7. See Note, The Continuing Viability of the Business Judgment Rule As A Guide for Judicial Restraint, 35 GEO. WASH. L. REV. 562 (1957). Compare Issner v. Aldrich, 254 F. Supp. 696 (D. Del. 1965) (necessary to show that directors have been guilty of misconduct) and Fornaseri v. Cosmosart Realty & Bldg. Corp., 96 Cal. App. 549, 556, 274 P. 597, 600 (1929) (in absence of fraud, breach of trust or ultra vires acts, directors are not subject to attack by minority for discretionary acts performed in good faith) and Sinclair Oil Corp. v. Levien, 280 A.2d 717 (Del. 1971) (in absence of fraud or gross overreaching, majority's decision to expand was a business judgment with which court could not interfere) with Burt v. Irvine Co., 237 Cal. App. 2d 828, 853, 47 Cal. Rptr. 392, 408 (1965) ("A director cannot close his eyes to what is going on about him in the conduct of the business of the corporation and have it said that he is exercising business judgment. . . . [T]hat means an honest, unbiased judgment, is reasonably exercised by them . . . ") (quoting Casey v. Woodruff, 49 N.Y.S.2d 625, 643 (1944)). For additional cases discussing the business judgment rule, see Phinizy v. Anniston City Land Co., 195 Ala. 656, 71 So. 469 (1916); Graham-Newman Corp. v. Franklin County Distilling Co., 26 Del. Ch. 233, 27 A.2d 142
the principle of majority rule in corporation management, they effectively prevented shareholders from obtaining relief by dissolution. Professor O'Neal has suggested, however, that neither of these judicial theories are appropriately suited to the special needs of the closely held corporation or its shareholders, and for that reason should be applied with the utmost discrimination. A review of the case law of the last seventy years reveals that the general rule existing at common law has been substantially abrogated and that courts, pursuant to the principles of equity, do dissolve solvent corporations in suits by minority shareholders.

In addition to judicial equitable remedies, virtually every state has enacted legislation which permits involuntary dissolution of corporations pursuant to actions brought by minority shareholders. The statutory schemes vary widely as to prerequisites for action and matters of proof. They do, however, represent a concerted effort and recognition by the states that the perpetual existence of the corporate structure at common law is ill suited to the functional realities of the closely held corporation.

(1942); Stockholders of Jefferson County Agric. Ass'n v. Jefferson County Agric. Ass'n, 155 la. 634, 136 N.W. 672 (1912); Stott Realty Co. v. Orloff, 262 Mich. 375, 247 N.W. 698 (1933).

8. But see Standard Int'l Corp. v. McDonald Printing Co., 13 Ohio Op. 2d 333, 159 N.E.2d 822 (1959) (sustaining the minority's issuance of additional stock pursuant to a power contained in the articles of incorporation, an act which effectively blocked the sale of the corporation proposed by majority shareholders).

9. See F. O'NEAL, supra note 6, § 9.04.

10. See note 2 & accompanying text supra.

11. See § II of text infra.

12. See § IV of text infra. Section 94 of the Model Business Corporation Act, which has been adopted by a majority of the states, permits the state attorney general to bring a quo warranto action for involuntary corporate dissolution when it is established that

(a) The corporation has failed to file its annual report within the time required by this Act, or has failed to pay its franchise tax on or before the first day of August of the year in which such franchise tax becomes due and payable; or

(b) The corporation procured its articles of incorporation through fraud; or

(c) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(d) The corporation has failed for thirty days to appoint and maintain a registered agent in this State; or

(e) The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the Secretary of State a statement of such change.


13. See § IV of text infra.

This comment discusses involuntary dissolution of the closely held corporation\(^\text{15}\) in shareholder suits based on deadlock\(^\text{16}\) or disension among the directors or the shareholders of the corporation. A discussion of three general areas will be used to present a practical view of the current state of the law regarding deadlock and involuntary corporate dissolution: (1) dissolution of the corporation under principles of equity, (2) state legislative response to the problem of deadlock; and (3) an analysis of deadlock under the statutes.

II. BACKGROUND

In this comment, a closely held corporation\(^\text{17}\) is defined as "a corporation where management and ownership are substantially identical to the extent that the independent judgment of directors is, in fact, a fiction."\(^\text{18}\) The term deadlock as used in this comment will refer to two situations that arise often in the close corporation.\(^\text{19}\) The first situation occurs when an even-numbered board of directors is equally divided on management issues and an impasse results. This form of deadlock is made complete when the share-
holders are also equally divided and unable to terminate the management stalemate. The second deadlock situation is caused by a "hold-over" board of directors. In this situation, the board of directors has an uneven membership with the majority, of course, controlling the corporate management. When the shareholders are evenly divided and are unable to vote in a new board of directors, the faction represented by the existing majority of directors continues to control the corporation indefinitely.

As the foregoing situations demonstrate, deadlock can be especially disabling in the closely held corporation in which management and investors are generally the same individuals. Typically, shareholders invest their total assets in the corporation. Quite naturally, they have a paramount concern in the vitality of the business and expect to address this concern by active participation in corporate management. This factor, coupled with the fact that shareholders are generally employees of the corporation, intensifies the interest of the parties. An organizational structure of this nature—in which the investment interests are interwoven with continuous, often daily, interaction among the principals—necessarily requires substantial trust among the individuals. Once this cooperation has been undermined, the tensions are aggravated because of the need for continued contact to promote business and to protect financial investments. The statutorily imposed perpetual existence of the corporation becomes clearly abhorrent in this situation and some means of extraction becomes necessary.

In contrast to the rights given partners under the Uniform Partnership Act, shareholders do not have powers to dissolve the en-

20. Id. In J. Tingle, supra note 2, at 75-76, the author draws a distinction between incomplete and complete deadlock. Incomplete deadlock occurs when the stockholders control the majority of an odd-numbered board of directors. The corporation continues to function, representing the controlling faction and perpetuating itself at each election of the board. Complete deadlock occurs when there is an even-numbered board and shareholders and directors divide equally on corporate decisions.

21. See 1 F. O'Neal, supra note 18, § 1.07.


23. For a discussion of the factors that cause dissension, see F. O'Neal & J. Derwin, Expulsion or Oppression of Business Associations §§ 2.01 to 2.19 (1961).

24. (1) On application by or for a partner the court shall decree a dissolution whenever:
   (a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,
   (b) A partner becomes in any other way incapable of performing his part of the partnership contract,
   (c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,
terprise and redeem their investments. While the usual way of ending a relationship with the corporation is to sell one's interest, the close corporation shareholder is at a disadvantage because such interests are generally unmarketable. Moreover, the lack of an available market for the shares may be intensified if the dissen sion motivating the sale is apparent to the prospective buyer. Shareholders are further restrained from selling their investments in the corporation if they do not own a controlling share of the business. In addition, they may have contractually restricted the alienation of the shares, effectively reducing the number of potential purchasers. Because of the unique character of the close corporation and its shareholders, there is an obvious need to restructure the law and its judicial application to provide a remedy for shareholders who, because of deadlock or dissension, now risk the loss of their investments in an enterprise that no longer functions in the manner originally contemplated.

The corporate structure is a popular and commonly used form of organizing business interests. Its benefits are limited liability accorded the principals and possible tax advantages. Unfortunately, the corporate structure which best suits the needs of the publicly held corporation has distinct disadvantages when applied to the closely held corporation. As a result, numerous commentators have devoted substantial time to suggesting reforms that would retain the benefits, yet better adapt the corporate form to the special needs of the closely held corporation which is in effect a "partnership type" business. Of particular interest are the rec-

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss,

(f) Other circumstances render a dissolution equitable.

UNIFORM PARTNERSHIP ACT § 32(a)-(f) (1969). See In re Pivot Punch & Die Corp., 15 Misc. 2d 713, 714-15, 182 N.Y.S.2d 459, 462 (1959). In Hanes v. Watkins, 63 So. 2d 625 (Fla. 1953), the court initially addressed whether the business arrangement was a partnership or a corporation. If it was the latter, the facts did not support dissolution under the more stringent standard for corporate dissolution. See note 68 infra.


26. 1 F. O'Neal, supra note 18, § 1.07.

27. Id.

28. Id. § 1.12.

29. Hetherington, Special Characteristics, Problems, and Needs of the Close Corporation, 1969 U. ILL. L.F. 1; Hornstein, supra note 4; Israels, supra note 1; Comment, Dissolution at Suit of a Minority Stockholder, supra note 3; Note, Relief to Oppressed Minorities in Close Corporations: Partnership Precepts and Related Considerations, 1974 Ariz. St. L.J. 409; Note, Deadlock and Disso-
ommendations for agreements among the shareholders at or prior to incorporation that provide for a specific course of action in the event of deadlock. These prior agreements are, of course, advantageous because they provide an orderly and non-litigious means of effecting the shareholders' expectations at times of deadlock when the making of such agreements would ordinarily be impossible.

Generally, judicial dissolution of the corporation has been viewed as drastic and, therefore, a remedy of last resort. While dissolution was a necessary judicial response, and more recently a legislative response, to serious corporate dysfunction, it is a remedy that requires the court to carefully scrutinize the facts. The effects of dissolution on all parties of the corporation are usually harsh. There are generally no winners in the financial sense. This is especially true since the value of the on-going business typically exceeds the value received on liquidation, and its dissolution may have a negative effect on the local economy. As a result, several states have enacted statutes authorizing alternatives to dissolution. Nevertheless, dissolution is an appropriate response to some cases of corporate dysfunction. It is an effective device for remedying the occasional misuse of the corporate form to defraud,


30. __See also 2 F. O'NEAL, supra note 18, §§ 9.03 to 9.11.__

31. The topic of discussion in this comment, however, is the situation in which these prior agreements have not been made between the principals, and the shareholders of a deadlocked corporation must necessarily look to equitable principles or state statutes for relief.

32. __See Hockenberger v. Curry, 191 Neb. 404, 215 N.W.2d 627 (1974). In Hockenberger, the court stated:__

The Business Corporation Act has given to the courts the power to relieve minority shareholders from oppressive acts of the majority, but the remedy of liquidation is so drastic that it must be invoked with extreme caution. The ends of justice would not be served by too broad an application of the statute, for that would merely eliminate one evil by substituting a greater one—oppression of the majority by the minority.

__Id. at 406, 215 N.W.2d at 628 (quoting Polikoff v. Dole & Clark Bldg. Corp., 37 Ill. App. 2d 29, 36, 184 N.E.2d 792, 795 (1962)). See State ex rel. Makar v. St. Joseph County Circuit Court, 242 Ind. 339, 347, 179 N.E.2d 285, 289-90 (1962) (court was reluctant to appoint a receiver because "[t]he action affects one of man's most cherished and sacred rights guaranteed by the United States Constitution—the right to be secure in his property"). See also Stott Realty Co. v. Orlaff, 262 Mich. 375, 381, 247 N.W. 698, 699 (1933) ("The ultimate test of dissolution is that, with any other remedy, the corporation cannot be made to function for the purpose of its creation.").__

33. __See, e.g., Lebold v. Inland S.S. Co., 82 F.2d 351 (7th Cir. 1936).__

III. INVOLUNTARY CORPORATE DISSOLUTION IN THE COURTS OF EQUITY

Prior to the development of specific dissolution statutes, the aggrieved shareholder’s recourse was to petition a court of equity for relief. Until the late nineteenth century, however, the shareholder was precluded from obtaining dissolution because of the common law rule that, absent statutory authority, a court of equity had no power to dissolve a solvent corporation.37

In 1892, in the landmark case Miner v. Belle Isle Ice Co.,38 the Michigan Supreme Court rejected the common law rule and held that when a corporation has “utterly failed at its purpose, not because of matters beyond its control, but because of fraudulent mismanagement and misappropriation of its funds,”39 a court of equity may wind up a solvent corporation. The holding in Miner was grounded on the principle that to continue a corporation whose purpose could no longer be attained was a breach by the majority of the charter contract.40 The court cited authority which held that majority shareholders had a duty to terminate the enterprise when, due to external conditions, its chartered purposes could not

35. In addition to deadlock, MODEL ACT § 97(a) (2), (4) provides for dissolution in cases of fraud, oppression, and misapplication of assets. This comment will be concerned with these grounds only to the extent that the courts require the presence of these factors before dissolution is granted on deadlock grounds. See note 72 & accompanying text infra.


36. Hornstein, supra note 4, at 249.
37. See note 2 & accompanying text supra.
39. 93 Mich. at 117, 53 N.W. at 224. In Miner, plaintiff and defendant, partners in an ice selling business, formed a corporation. During a period of growing disension, defendant purchased enough shares to gain majority control. Defendant forced plaintiff from his position as president, terminated dividends, substantially increased his own salary and entered into a favorable contract with the corporation.
40. Id. at 113, 53 N.W. at 223.
be attained. By an extension of that principle, the court in Miner created a jural relationship—a fiduciary duty running from the majority to the minority shareholders to wind up the corporation when the majority or the controlling faction makes it impossible to attain the corporation's original purposes. Modifications of this rule have been applied in cases subsequent to Miner to empower a court of equity to involuntarily dissolve a corporation.

In some jurisdictions a shareholder could sue in equity for a distribution of the corporate assets where the corporation's purposes had completely failed. However, the bill to dissolve was considered by some courts insufficient if it did not contain an allegation that a prior demand had been made on the majority to correct the wrongs. It was clear, however, that the fact that a

41. Authority for the court's holding was Ervin v. Oregon Ry. & Nav. Co., 27 F. 625 (S.D.N.Y. 1886). In Ervin, the majority shareholders rather than the minority sought to dissolve the corporation. While there was statutory authority in Oregon for this action, "nevertheless [the majority] had no right to exercise their control over the corporate management for purposes of appropriating the property or its assets to themselves, to the exclusion of a minority, or without rendering them a fair return." Id. at 625. Quoting Ervin, the court in Miner stated:

Plainly, the defendants have assumed to exercise a power belonging to the majority, in order to secure personal profit for themselves, without regard to the interests of the minority. They repudiate the suggestion of fraud, and plant themselves upon their right as a majority to control the corporate interests according to their discretion. They err if they suppose that a court of equity will tolerate a discretion which does not consult the interests of the minority. It cannot be denied that minority stockholders are bound hand and foot to the majority in all matters of legitimate administration of the corporate affairs; and the courts are powerless to redress many forms of oppression, practiced upon the minority under a guise of legal sanction, which fall short of actual fraud. This is a consequence of the implied contract of association, by which it is agreed in advance that a majority shall bind the whole body as to all transactions within the scope of the corporate powers. But it is also of the essence of the contract that the corporate powers shall only be exercised to accomplish the objects for which they were called into existence, and that the majority shall not control those powers to pervert or destroy the original purposes of the corporators . . . .


42. See J. TINGLE, supra note 2, at 36.

43. Ross v. American Banana Co., 150 Ala. 268, 43 So. 817 (1907); Noble v. Gadsden Land & Improvement Co., 133 Ala. 250, 31 So. 856 (1902); Bowen v. Bowen-Romer Flour Mills Corp., 114 Kan. 95, 217 P. 301 (1923); Thwing v. Minowa Co., 134 Minn. 148, 158 N.W. 820 (1916). Noble involved a corporation organized to build a town on a piece of land it owned. When adverse economic conditions occurred, plans for the town went awry. The cost to the shareholders of maintaining the idle land was substantial.

44. Ross v. American Banana Co., 150 Ala. 268, 43 So. 817 (1907); Ulmer v. Maine Real-Estate Co., 93 Me. 324, 45 A. 40 (1899); Hyman Mercantile v. Kiersky, 192
corporation had not paid dividends was not sufficient to grant dissolution; the corporation had to have failed in the purposes for which it was chartered.\textsuperscript{45} This failure could be evidenced by a failure to call shareholder meetings for five years prior to dissolution.\textsuperscript{46} One jurisdiction held that if the objects of the corporation were no longer attainable \textit{and} if the continued operation would be ruinous to the investors, a shareholder could obtain dissolution.\textsuperscript{47}

While the failure of corporate purposes had been held sufficient grounds for dissolution, "[i]t [was] not enough that the past prosecution of the corporate enterprise or business ha[d] been a financial failure, nor [was] it enough that its future prosecution [would] probably be devoid of profit, however strong the probability [might] seem."\textsuperscript{48} The court refused to inject its business judgment into a going concern so long as the original corporate purposes were being pursued.\textsuperscript{49} This rule was in accord with other holdings that a court of equity has no power to dissolve a corporation merely because of minority dissatisfaction and differences of opinion as to management of a failing business.\textsuperscript{50} Upon becoming a shareholder, the minority impliedly agreed that man-

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\textsuperscript{45} Central Land Co. v. Sullivan, 152 Ala. 360, 44 So. 644 (1907). The court distinguished this case from \textit{Noble}. In \textit{Noble} the cost of maintaining the idle land was to sacrifice the assets of the corporation. In \textit{Central Land Co.} the income was considered the same as the cost. It was clear, however, that the court looked to the future when the cost would eventually exceed the income. 152 Ala. at 365, 44 So. at 645. The rule applied in \textit{Noble, Ross, and Central Land Co.} (permitting dissolution by the minority shareholder when the corporate purposes were no longer fulfilled whether or not solvent) was in accord with the rule existing prior to \textit{Miner}; there was a duty to dissolve the corporation when due to external conditions, the original purposes of the charter could no longer be fulfilled.

\textsuperscript{46} Central Land Co. v. Sullivan, 152 Ala. 360, 366, 44 So. 644, 645 (1907).

\textsuperscript{47} Brennan v. Rollman, 151 Va. 715, 145 S.E. 260 (1928).


\textsuperscript{49} \textit{See} note 7 \& accompanying text \textit{supra}.

\textsuperscript{50} \textit{See} Platner v. Kirby, 133 Ia. 259, 115 N.W. 1032 (1908); Theodora Holding Corp. v. Henderson, 257 A.2d 398 (Del. Ch. 1969); Troutman v. Council Bluffs Street Fair & Carnival Co., 142 Ia. 140, 120 N.W. 730 (1909) (suit to wind-up a corporation must be for the benefit of the corporation and not to assert a shareholder's individual right).
agement of corporate affairs would be with the majority.\textsuperscript{51} Nevertheless, it has been held that a court may dissolve a corporation where its affairs have been so mismanaged that failure or ruin is inevitable.\textsuperscript{52} In addition, courts have approved dissolution of a losing business when it was found that the majority had violated its fiduciary duty in refusing to dissolve the hopeless business which had been kept alive solely for the continued pecuniary benefit of the majority.\textsuperscript{53} This is in accord with the rule that members of the controlling faction become trustees of the property for the benefit of the minority when they act fraudulently by diverting the corporate assets to themselves.\textsuperscript{54} Similarly, dissolution has been held appropriate on a showing of gross mismanagement of


\textsuperscript{52} Taylor v. Decatur Mineral & Land Co., 112 F. 449 (N.D. Ala. 1901); Hall v. Nieuwkirk, 12 Idaho 33, 85 P. 485 (1900); Graham v. McAdoo, 135 Ky. 677, 123 S.W. 260 (1909); Ulmer v. Maine-Real-Estate Co., 93 Me. 324, 45 A. 40 (1899); Hyman Mercantile Co. v. Kiersky, 192 Miss. 195, 4 So. 2d 881 (1941) (for a minority shareholder to put an end to a corporation there must be either insolvency or mismanagement which leads to insolvency).

\textsuperscript{53} Kroger v. Jaburg, 231 A.D. 641, 248 N.Y.S. 387 (1931). See Tansey v. Oil Producing Royalties, Inc., 36 Del. Ch. 472, 133 A.2d 141 (1957). In Tansey, the court appointed a liquidating receiver. The corporation, the basic purpose of which was to purchase and retain oil royalties, held $20,000 worth of such royalties. However, it had been 25 years since the last purchase and the corporation had been kept alive as a vehicle for the majority's personal convenience in handling financial affairs.

\textsuperscript{54} Morse v. Metropolitan S.S. Co., 87 N.J. Eq. 217, 221, 100 A. 219, 221 (1917). The court stated that under ordinary circumstances the majority may vote as self-interest requires. In these instances, the fiduciary relationship does not apply. However, the majority's power is not unlimited and that relationship will be invoked when the majority divides among themselves the corporate property to the exclusion of the others.
business affairs and misappropriation of corporate property to the
majority—necessarily jeopardizing the shareholders' interests.\textsuperscript{55}
In contrast, a court has held that absent allegations of mismanage-
ment or fraud, dissolution was inappropriate in the case of a sol-
vent going concern merely because of the minority's complaint
about procedures for electing the board of directors.\textsuperscript{56}

Generally, courts, in the absence of specific statutory authority,
have refused to decree dissolution solely on the grounds of dead-
lock or dissension existing among directors or shareholders.
"Bickerings and disputes" between two factions each owning fifty
percent interests in an effectively operating company fell "far
short of demanding the intervention of the court to protect the
stockholders' interests."\textsuperscript{57} This is consistent with the holding of

55. Thwing v. Minowa Co., 134 Minn. 149, 158 N.W. 820 (1916); Brent v. B.E. Brister
Sawmill Co., 103 Miss. 876, 60 So. 1018 (1913); Ponca Mill Co. v. Mikesell, 55
Neb. 98, 75 N.W. 46 (1898); Exchange Bank v. Bailey, 29 Okla. 246, 116 P. 812
(1911). \textit{But see} Stott Realty Co. v. Orloff, 262 Mich. 375, 247 N.W. 698 (1933). In
\textit{Stott} dissolution was held inappropriate in a suit brought by shareholders
owning less than two-sevenths of the stock. The majority did not act fraudu-
ently, misappropriate corporate assets, manage incompetently, nor fail to
continue the corporate purpose. That the majority did not foresee the onset
of the depression was excusable; "hard times" are not a ground for dissolu-
tion.

it difficult to reconcile the holding. In this case, the shares were equally di-
vided between the Miller and Hepner families. Lillian Hepner and A.J. Hep-
nor served as president and secretary-treasurer respectively. O.L. Miller was
vice-president. Dissension arose between the two families so that in the
years 1951 and 1952 there was an even division of the votes in the election of
the board of directors. In 1952, Miller received notice from A.J. Hepner that
he was removed as corporate manager, and the bank in which the corporate
funds were placed was notified that Miller had no authority to withdraw
them. As half owners, the Millers were denied any voice in management.
The court denied dissolution because there was no allegation of mismanage-
ment or fraud. Dissolution was disfavored because it bore "the same rela-
tionship to a corporation that a sentence of death bears to a natural person."
\textit{Id.} at 247, 274 P.2d at 819.

dissension extended over five years. In 1942, defendant began to take over
the running of the business, refusing to discuss policy matters with plaintiffs.
Defendant's conduct of "running the show was further illustrated by humili-
ating the plaintiff in the presence of employees, indicating that he, the de-
fendant, was "the boss." 54 A.2d at 762. \textit{But see} Johnston v. Livingston Nurs-
ing Home, Inc., 282 Ala. 309, 211 So. 2d 151 (1968). In \textit{Johnston}, there was sub-
stantial dissension between two sisters regarding the management of a
nursing home. The interests were split equally—50 shares to Johnston and 49
shares to Vick plus 1 share to Vick's husband. The court found no fraud or
oppression and held the quarrels to be "an expression of human nature" that
"are temporary and are ironed out with the passing of time." \textit{Id.} at 312, 211
So.2d at 154. The dissension alone was not sufficient for dissolution.
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the Delaware Supreme Court that "[m]ere dissension among corporate stockholders seldom, if ever, justifie[d] the appointment of a receiver for a solvent corporation."\textsuperscript{58} Trivial disagreements as to maintenance, customer relations, job assignments, and entertainment were not enough to decree dissolution when the corporation had not "practically discontinued all of its business."\textsuperscript{59}

It has also been held that in the absence of irreparable injury to the corporation, dissolution will not be granted on grounds of deadlock.\textsuperscript{60} In addition, it has been held that the beneficial interests of the shareholders must be served by the appointment of a receiver before the court will act; the existence of deadlock by itself is not sufficient for dissolution.\textsuperscript{61} It was considered that if some hope existed that the corporation would become profitable, it would not serve the interests of the shareholders to grant dissolution.\textsuperscript{62}

Recognizing that deadlock and dissension are generally the first steps in corporate turmoil, some jurisdictions have permitted dissolution when deadlock and dissension have been coupled with one faction's oppressive control over management or use of exclusionary techniques against the minority.\textsuperscript{63} Similarly, when dissen-

\textsuperscript{58} Hall v. John S. Isaacs & Sons Farms, Inc., 39 Del. Ch. 244, 250, 163 A.2d 288, 293 (1960). The court went on to say that the shareholder's remedy was to sell his interest, \textit{id.}, a dubious solution considering the special problems of closely held corporations. See note 25 & accompanying text \textit{supra}. In \textit{Hall} the issue of deadlock had become moot at the time of trial. Therefore, there was no discussion of the facts under the relevant Delaware statute authorizing dissolution in instances of deadlock.

\textit{See also} Murray-Baumgartner Surgical Instr. Co. v. Requardt, 180 Md. 245, 23 A.2d 697 (1942). In \textit{Murray}, the court distinguished between a deadlocked corporation and a situation of mere dissension. The former occurs when, as a result of shareholder decision or indecision, the corporation cannot conduct its affairs. \textit{id.} at 253, 23 A.2d at 700. As long as there were no allegations of fraud or illegality, and the corporation was functioning, the court would not provide a remedy.

\textsuperscript{59} Freedman v. Fox, 67 So. 2d 692, 693 (Fla. 1953).

\textsuperscript{60} Lush'us Brand Distrbs., Inc. v. Fort Dearborn Lithograph Co., 330 Ill. App. 216, 224, 70 N.E.2d 737, 741 (1947).

\textsuperscript{61} Reid Drug Co. v. Salyer, 268 Ky. 522, 530, 105 S.W.2d 625, 629 (1937). In \textit{Reid Drug Co.}, the two plaintiffs purchased a half interest in a drug store with the balance of the interests in the hands of the two defendants. When the drug store proved unprofitable, plaintiffs petitioned for dissolution because of mismanagement. \textit{id.} at 526, 105 S.W.2d at 627. There were no allegations of fraudulent mismanagement.

\textsuperscript{62} \textit{id.} at 530, 105 S.W.2d at 629.

\textsuperscript{63} Bowen v. Bowen-Romer Flour Mills Corp., 114 Kan. 95, 217 P. 301 (1923): If Plaintiffs do not constitute a majority of the stockholders, neither are they a minority. Because the stockholders are in a deadlock, the vacancy in the board of directors cannot be filled. Because of the deadlock in the board, the corporation has no managing body, as the law requires. No lawfully authorized and directed step can be taken
sion and deadlock have coexisted with fraudulent mismanagement and misappropriation of assets by the majority, dissolution has been granted. Moreover, evidencing a retreat from the fraud and mismanagement standard adopted in many jurisdictions, it has been held that dissension coupled with financial loss, deadlock, mismanagement and deterioration of property was sufficient for a court to decree dissolution. While it was generally recognized that deadlock and dissension alone were insufficient for dissolution, when these factors were so serious as to result in the failure of corporate functions or purposes, a court could grant dissolution of the corporation in a suit by a minority shareholder.

...to achieve the corporate purposes. One group of belligerents has possession of the corporate property and control of its business affairs, and is taking advantage of the opportunity to oppress the other group. Must this situation continue until the period of corporate existence expires, or until Bowen, unable to stand the financial strain, must sell his stock to Romer at Romer's price, and so be frozen out?

Id. at 98-99, 217 P. at 303.

64. Green v. National Advertising & Amusement Co., 137 Minn. 65, 162 N.W. 1056 (1917). The court described the incomplete deadlock as follows: This [costly litigation] apparently has led to irreconcilable differences, mutual hostility and enmity even between brother and sister, plaintiff and Mrs. Barnet, disclosing a situation which will preclude an amicable operation of the affairs of the corporation in the interests of all concerned. This is shown by the arbitrary action of the defendants in taking and receiving excessive compensation for their services, as well as their apparent determination wholly to exclude plaintiff from the company. They were elected managing officers at a time when the friction was less intense, and by reason of the equal division of the stock they are secure in their positions, and in the right to continue the management of the company to the exclusion of plaintiff, unless the court shall step in and relieve the situation.

Id. at 68, 162 N.W. at 1057.


67. Flemming v. Heffner & Flemming, 263 Mich. 561, 568, 248 N.W. 900, 902 (1933). See Hammond v. Hammond, 216 S.W.2d 630 (Tex. Civ. App. 1949). Hammond was an unusual case because the Hammonds had been divorced and the decree had awarded them each a 50% interest in the corporation. The court disallowed dissolution at the time of the appeal with an order to see if the differences between the Hammonds could be resolved. However, if the dissension could not be resolved and it was of "such nature as [to] seriously threaten to impair the successful operation of the corporation," dissolution would be permitted at that time. 216 S.W.2d at 634. See Cowin v. Salmon, 248 Ala. 580, 28 So. 2d 633 (1946); Guaranty Laundry Co. v. Pulliam, 200 Okla. 185, 191 P.2d 974 (1948); Wood v. Myers Paper Co., 3 Tenn. App. 128 (1926). In Pulliam the court stated:

...There is no question but that the management of the company is hopelessly deadlocked. Both parties are in agreement on this. The dissension between the two groups of stockholders is such that directors' meetings are not called, and the board could not function if meetings were held, by reason of the equal division in voting...
DEADLOCK AND DISSOLUTION

The deviation of the equity courts from the rule existing at common law illustrated not only a rejection of the old principle that a corporation could only be dissolved by an agent of the state, but also showed an increasing awareness that the operation of corporations, and especially close corporations, presented special problems that no longer were adequately addressed by the common law rule.

III. DEADLOCK STATUTES

A. The First Statutes and The Model Act

In a response to the growing number of exceptions to the rule that a court of equity has no power absent statutory authorization to dissolve a solvent corporation, states began to adopt provisions delineating the specific grounds for judicially imposed corporate dissolution. New York's legislature addressed very early the problem of dissolution upon deadlock of a corporation. Prior to 1933,

strength. It is clear that the governing body is in such condition that it is presently impossible for the company to carry on its business advantageously to the stockholders. Although now a solvent concern, this situation cannot long prevail in the face of internal troubles known to the public, and seriously affecting the company affairs as well as the public exploitation.

Id. at 191, 191 P.2d at 981. See also State ex rel. Conlan v. Oudin & Bergman Fire Clay Mining & Mfg. Co., 48 Wash. 196, 93 P. 219 (1908). The litigation in Oudin represented the eighth appeal to the same court by the parties because of dissension. The court saw "no reason for not dissolving this corporation, which for over four years has been impotent and unable to legally transact any business on account of the controversy and ill feeling existing between the parties who own, each, half of the stock." Id. at 198, 93 P. at 220. In Hanes v. Watkins, 63 So. 2d 625, 628 (Fla. 1953), the court held dissolution inappropriate because there was no evidence "that there [was] such a deadlock between stockholders that the affairs of the corporation may not be legally transacted." The real concern was over the dissension, not the deadlock, existing between two shareholders, one of which owned 51% and the other 49% of the business. Under this split of ownership, the business could continue to flourish as it had done, clearly indicating no failure of corporate purposes.

68. The initial response of state legislatures was to create statutes that were generally more tailored to the considerations of the large publicly held corporations. Because of the striking differences in organization and operation between publicly held and close corporations, the latter's problems were mishandled or unanswered. See 1 F. O'Neal, supra note 18, § 1.13. By 1960, states began adopting statutory provisions which guaranteed a new flexibility in corporate form, an element greatly needed because of the partnership characteristic of the close corporation. Id. § 1.14.

69. 1876 N.Y. Laws ch. 442. This statute enacted in 1876 read:

Whenever the trustees of a corporation . . . shall consist of an even number of persons, and they shall be equally divided as to the management of the affairs of said corporation, and the whole stock of such corporation, at the time of such disagreement, shall be owned
Illinois permitted involuntary dissolution if the amorphous standard of "good cause" could be shown. In 1933, having repealed the prior law, Illinois enacted a statute which became the forerunner of the Model Business Corporation Act. The deadlock provision of this legislation read:

by the persons being the trustees, or so divided that one half thereof be owned or controlled by persons favoring the course of half the number of trustees, and the other half thereof by persons favoring the course of the other half of the number of trustees, the supreme court is hereby authorized in its discretion, upon the application of the trustees or any or either of them, either upon petition or by action, to dissolve said corporation, and to take charge of and wind up its affairs, and for that purpose to appoint one or more receivers thereof.

The New York legislature in 1896 amended the statute to cover incomplete deadlock:

[O]r if the stock is so divided that one-half thereof is owned or controlled by persons favoring the course of part of the trustees or directors and one-half thereof is owned by persons favoring the course of the other trustees or directors the trustees or directors or stockholders or one or more of them may present a petition as prescribed in the last section.

1896 N.Y. Laws ch. 569. See J. TINGLE supra note 2, at 129.

1871 Ill. Laws § 25, at 302, repealed 1919 Ill. Laws, at 349. See Note Deadlock and Dissolution: Problems in the Closely Held Corporation in Illinois, 56 N.W. U. L. Rev. 525, 528 n.12 (1961), (stating that the good cause standard was given a very strict interpretation as "the doing or refraining from doing some act which shall subject the corporation to a forfeiture of its charter or corporate power") (quoting Bixler v. Summerfield, 195 Ill. 147, 152, 62 N.E. 849, 851 (1902)). Deadlock was not covered by the "good cause" statute. See Gidwitz v. Cohn, 238 Ill. App. 227 (1925). See also Bator v. United Sausage Co., 138 Conn. 18, 21, 81 A.2d 442, 443 (1951). In Bator, the court interpreted CONN. GEN. STAT. § 5226 (1949), which permitted dissolution "whenever any good and sufficient reason exists for dissolution." Under this provision dissolution could be granted if dissension among the corporation members was so severe as to make it impossible to achieve the corporate purposes.


72. The courts shall have full power to liquidate the assets and business of a corporation;

(a) In an action by a shareholder when it is established;

(1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(4) That the corporate assets are being misapplied or wasted.

MODEL ACT § 97(a)(1)-(4).
Courts of equity shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is made to appear:

(1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof . . . .

In 1951 the statute was amended by the Illinois legislature to add the following provision permitting dissolution on proof of deadlock: "(2) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose term has expired or would have expired upon the election of their successors . . . ." As amended the Illinois statute was identical to the Model Business Corporation Act which has become the basis for involuntary corporate dissolution legislation in the majority of the states. Section (a) (1) of the current Illinois statute represents the legislative solution to situations of complete deadlock, i.e., an even-numbered board of directors with the voting powers evenly split between two factions of shareholders.

Section (a) (3) of the Illinois statute represents a solution to incomplete deadlock which arises in the close corporation with equally divided shareholder interests, but an odd-numbered board of directors. When the evenly divided voting shares cannot agree on the election of a new board, the holdovers, representing the controlling faction’s interests, continue to manage the corporation. Both forms of deadlock seriously threaten the right to corporate management which is a right perceived by the investor to be his upon entry into the business.

B. Variations on the Model Act

Virtually every state has enacted a statute permitting a minority shareholder to petition for dissolution of the corporation. The
provisions for dissolution on deadlock as stated in the Model Business Corporation Act have been widely enacted by the states. The statutes differ, however, to the extent that dissolution is provided as a remedy for either complete or incomplete deadlock or both. Statutes also differ on the need to demonstrate irreparable injury to the corporation in either or both forms. In addition, a number of states have statutes which bear little resemblance to the language of the Model Act, and two states provide no specific recourse for dissolution by the shareholder of the deadlocked corporation.

For a complete discussion of the present status of corporate deadlock litigation, it is important to analyze the current state statutory schemes for dissolution. The exact language of the Model Business Corporation Act provision on complete and incomplete deadlock has been adopted in seventeen states. The Illinois statute discussed above is representative of this language. It is helpful to note that under the section pertaining to complete deadlock, dissolution is available as a remedy only if the petitioning shareholder demonstrates that irreparable injury to the corporation is either occurring or is threatening to occur. In the provision applicable to incomplete deadlock, two consecutive annual shareholder meetings must have passed without the election of new directors. However, irreparable damage to the corporation need not be alleged in situations of incomplete deadlock.

Twenty-one states have enacted altered variations of the Model Act provisions. For example, Georgia's statute, which otherwise employs identical language to the Model Act, permits dissolution in cases of complete deadlock only if it is impractical for the court to appoint a provisional director. The Arkansas and Florida

82. See notes 84-85 & accompanying text infra.
83. ALASKA STAT. § 10.05.540(1),(3) (1968); COLO. REV. STAT. § 7-8-113(2)(a) (1973); ILL. ANN. STAT. ch. 32, § 157.86(a)(1)-(2) (Smith-Hurd Supp. 1978); IOWA CODE ANN. § 496A.94(1)(a)-(b) (West Supp. 1978); KY. REV. STAT. § 271A.475 (1) (a)(1), (3) (Baldwin Supp. 1976); MISS. CODE ANN. § 79-3-193(a)(1), (3) (1972); MONT. REV. CODES ANN. § 15-2290(a)(1), (3) (1967); NEB. REV. STAT. § 21-2096 (Reissue 1970); N.M. STAT. ANN. § 51-29-16(1)(a), (c) (Supp. 1975); N.D. CENT. CODE § 10-21-16(1)(a)-(b) (1976); OR. REV. STAT. § 57.595(1)(a)(A), (C) (1977); S.D. COMPIL. LAWS ANN. § 47-7-34(1), (3) (1967); UTAH CODE ANN. § 16-10-92(a)(1), (3) (1973); VT. STAT. ANN. tit. 11, § 2067(a)(1)(A), (C) (1973); WASH. REV. CODE 23A.28.170(1)(a), (c) (1974); WIS. STAT. ANN. § 180.771(1)(a)(1), (4) (West 1957); WYO. STAT. § 1-614(a)(1)(A), (C) (1977). Tennessee has reorganized its language, but the substance is the same. TENN. CODE ANN. § 48-1008(1)(a)(i)-(ii) (1964). See note 72 supra.
84. See notes 73-80 & accompanying text supra.
85. GA. CODE § 22-1317(a)(1)(A), (C) (1977). Arizona's approach is similar to Georgia's with regard to the appointment of a conservator. Under the Arizona scheme, a conservator may be appointed in cases of deadlock upon the application of any investor. ARIZ. REV. STAT. § 10-214 (1977). However, if the
deadlock of the internal affairs impairs or threatens to impair the value of the assets and it would appear useless to invoke section 10-214, the superior court has full power to liquidate. Id. § 10-215(1)(b).


complete deadlock when "the business can no longer be conducted to the advantage of all the shareholders," there is no requirement of irreparable injury to the corporation. Maine and South Carolina have incorporated North Carolina's approach, but added the irreparable injury test for complete deadlock cases. Massachusetts, on the other hand, requires neither the benefit to shareholders nor irreparable injury tests for complete deadlock nor that there be two voteless annual shareholder meetings for incomplete deadlock. Instead, it requires the shareholder who brings the petition to own not less than forty percent of the outstanding stock and be entitled to vote. New York restricts the right to petition for dissolution in cases of complete deadlock or serious internal dissension to holders of one-half of the outstanding shares, but this prereq-

92. N.C. GEN. STAT. § 55-125(a)(1) (1975). In addition, North Carolina's incomplete deadlock provision tracks exactly the Model Act except dissolution is not allowed where deadlock has resulted from "special provisions or arrangements designed to create veto power among the shareholders." Id. § 55-125(a)(2).

93. ME. REV. STAT. tit. 13-A, § 1115(1)(A)-(C) (1974); S.C. CODE § 33-21-150(a)(1) (1976). The South Carolina and Maine provisions on incomplete deadlock track the Model Act. In addition, both states have added a third deadlock section which reads: "The shareholders are so divided respecting the management of the business and affairs of the corporation that (A) the corporation is suffering or will suffer irreparable injury, or (B) the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally." S.C. CODE § 33-21-150(1)(3) (1976).

94. MASS. GEN. LAWS ANN. ch. 156B, § 99(b)(1)-(2) (West 1970):

A petition for dissolution of a corporation may be filed in the supreme judicial court in the following cases:

(b) Such a petition may be filed by the holder or holders of not less than forty per cent of all the shares of its stock outstanding and entitled to vote thereon, treating all classes of stock entitled to vote as a single class for the purpose of determining whether the petition is brought by the holders of not less than forty per cent of the outstanding shares as aforesaid, if:

(1) the directors are deadlocked in the management of corporate affairs, and the shareholders are unable to break the deadlock; or

(2) the shareholders are deadlocked in voting powers and have failed to elect successors to directors whose terms have expired or would have expired upon the election of their successors.

95. N.Y. BUS. CORP. LAW § 1104(a)(1)-(3) (McKinney 1963):

(a) Except otherwise provided in the certificate of incorporation under section 613 (Limitations on right to vote), the holders of one-half of all outstanding shares of a corporation entitled to vote in an election of directors may present a petition for dissolution on one or more of the following grounds:

(1) That the directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained.
DEADLOCK AND DISSOLUTION

uisite is not carried over to the incomplete deadlock provision. Maryland requires that the petitioning shareholder own twenty-five percent of the voting power in cases of complete deadlock. However, under the Maryland scheme, any shareholder entitled to vote may petition for dissolution when there is an incomplete deadlock.

A number of other states permit involuntary dissolution in complete and incomplete deadlock situations via approaches distinguishable from the language of the Model Act. California's statute addresses, in separate provisions, the deadlock of uneven and even boards of directors. In addition, the statute expressly recognizes that internal dissension is a factor to be considered in deadlock. Delaware's statutory scheme is substantively the same as the Model Act, providing for the appointment of a receiver or custo-

(2) That the shareholders are so divided that the votes required for the election of directors cannot be obtained.

(3) That there is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders.

The New York statute permits, however, a petition for dissolution to be brought by the holders of more than one-third of the outstanding stock, if the certificate of incorporation provides that the proportion of votes needed for election of directors is greater than the two-thirds requirement of section 1001. 

96. Id. § 1104(b).
97. MD. CORP. & ASS'NS CODE ANN. § 3-413(a)(1)-(2) (1975).
98. Id. § 3-413(b)(1).
99. CAL. CORP. CODE § 1800(b)(2) (West 1977):

(b) The grounds for involuntary dissolution are that:

(3) The corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired or lost, and the holders of the voting shares of the corporation are so divided into factions that they cannot elect a board consisting of an uneven number.

The 1976 amendment to this statute addressed the special needs of the close corporation by providing that any shareholder of a close corporation may file a complaint for dissolution. Id. § 1800(a)(2). See also id. § 308 (allowing for the appointment of a provisional director in cases of complete deadlock upon the petition of any director or a shareholder owning at least 33½% of the shares or in cases of incomplete deadlock upon the petition of shareholders owning at least 50% of the voting power).

100. Id. § 1800(b)(3). This section states that dissolution may be granted when "[t]here is internal dissension and two or more factions of shareholders in the corporation are so deadlocked that its business can no longer be conducted with advantage to its shareholders . . . ." This language is also contained in Minnesota's provision for deadlock dissolution. MINN. STAT. ANN. § 301.49(4) (West 1969). Unlike California, however, Minnesota has only one provision for deadlock.
dian in either complete or incomplete deadlock.\textsuperscript{101} Oklahoma\textsuperscript{102} and Ohio\textsuperscript{103} also provide for dissolution in these two instances, but neither require a showing of benefit to the shareholders or irreparable damage to the corporation. In Ohio, the action must be brought by at least one-half of the directors or shareholders possessing one-half of the voting power. Narrowing the eligibility of petitioning shareholders, Kansas provides for dissolution of a corporation having only two shareholders, each of whom own fifty

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(a) The Court of Chancery, upon application of any stockholder, may appoint 1 or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

(1) At any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

(2) The business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate the division . . . .


The district court of the county in which the registered office is located may, upon petition being filed, entertain proceedings for the involuntary dissolution of a domestic corporation when one or more of the following circumstances is made to appear:

(4) That the number of directors is even and they are equally divided respecting the management of the corporate affairs, and, when the voting power of all shareholders is equally divided into two independent ownerships or interests, that one-half thereof favor the course of part of the directors, and one-half favor the course of the other directors, or the holders of such equal parts of the voting power are unable to agree on the election of the board of directors consisting of an uneven number . . . .

Under \textit{Okla. Stat. Ann.} tit. 18, § 1.196(a)(1)-(2) (West Supp. 1977) the petition for involuntary dissolution may be filed by directors or shareholders who have been registered owners for at least six months and own at least 10% of the outstanding shares.


(A) A corporation may be dissolved judicially and its affairs wound up:

(4) By an order of the court of common pleas of the county in this state in which the corporation has its principal office, in an action brought by one-half of the directors when there is an even number of directors or by the holders of shares entitling them to exercise one-half of the voting power, when it is established that the corporation has an even number of directors who are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock or when it is established that the corporation has an uneven number of directors and that the shareholders are deadlocked in voting power and unable to agree upon or vote for the election of directors as successors to directors whose term would normally expire upon the election of their successors.
percent of the stock. The statute permits either shareholder to petition the court to dissolve in accordance with an agreed upon plan of distribution.

Several states have no express statute dealing with dissolution upon deadlock. For example, New Hampshire's statute permits the court to dissolve the corporation upon the petition of "stockholders holding $\frac{1}{4}$ of its stock whenever actual or impending insolvency or other cause renders its liquidation reasonably necessary for the protection of the rights of the stockholders." Similarly, Nevada permits shareholders owning ten percent of the outstanding stock to petition in cases of insolvency or impending insolvency for an injunction and appointment of a receiver. West Virginia permits a petition for dissolution from shareholders owning not less than one fifth of the interest in the corporation. The court is authorized to "proceed according to principles and usages of law and equity" to determine whether dissolution is appropriate. Finally, Texas and Idaho provide no direct shareholder action for judicial dissolution on any grounds.

104. KAN. STAT. § 17.6804 (1974). Additionally, under id. § 17.6812(b), the court is empowered to wind up the affairs of any corporation whose charter has been revoked and to decree any remedies that shall "be just and equitable respecting its affairs and assets and the rights of its stockholders and creditors."


106. NEV. REV. STAT. § 78.630(1) (1973). More specifically, creditors or stockholders may bring an action "[w]henever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been or is being conducted at a great loss and greatly prejudicial to the interest of creditors or stockholders." Under NEV. REV. STAT. § 78.650(1)(a)-(j), the holder of one-tenth of the outstanding stock may seek dissolution if

- (a) The corporation has willfully violated its charter; or
- (b) Its trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs; or
- (c) Its trustees or directors have been guilty of misfeasance, malfeasance or nonfeasance; or
- (d) The corporation shall be unable to conduct the business or conserve its assets by reason of the act, neglect or refusal to function of any of the directors or trustees; or
- (e) The assets of the corporation are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or otherwise; or
- (f) The corporation has abandoned its business; or
- (g) The corporation has not proceeded diligently to wind up its affairs, or to distribute its assets in a reasonable time; or
- (h) The corporation has become insolvent; or
- (i) The corporation, although not insolvent, is for any cause not able to pay its debts or other obligations as they mature; or
- (j) The corporation is not about to resume its business with safety to the public.


108. IDAHO CODE § 8-602 (1948); TEX. BUS. CORP. ACT ANN. art. 2.30-5 (Vernon
IV. ANALYSIS OF DEADLOCK UNDER THE STATUTES

The issue that remains to be addressed is whether the sacredness of corporate existence is assailable in any greater degree when there is specific statutory authority to dissolve a corporation on grounds of deadlock or dissension than under traditional equitable principles. In other words, will deadlock or dissension be sufficient or will the petitioner need to prove some extenuating circumstances in order to persuade the court to dissolve the corporation? Have the courts in construing the statutes moved from the earlier rule applied in the majority of cases that deadlock and dissension alone were not sufficient reasons to grant dissolution?

There is an unmistakable need for "freeing the incorporated partnerships of the unnecessary corporate constructions" when trust, congeniality and confidence cease to exist among the principals. When the parties cannot agree on corporate affairs, when one shareholder is dissatisfied with management and wishes to redeem his or her investment, or when it is unpleasant to work together in close proximity, there appears to be little justification for the continued forced existence of the "partnership-like" corporation. Of course, the application of this policy, which would arguably enhance the desirability of the corporate structure for the small business, cannot be viewed in a vacuum. If inequities to any of the parties would result from dissolution, they must be considered by the courts in reaching the ultimate decision and in applying the statute. Whether or not the petitioner is required to show irreparable injury to the corporation, benefit to the shareholders, or simply the jurisdictional facts of deadlock will for the most part produce varied results from the same facts.

For those states which do not provide for direct action by the shareholders on grounds of deadlock, the common law dissolution remedy would be available to the aggrieved shareholder. In states which permit a direct shareholder remedy for corporate dis-

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110. See note 68 & accompanying text supra.
112. See notes 32-35 & accompanying text supra.
solution in cases of deadlock or dissension, the reasoning applied and the results reached have been varied. Interpreting the Delaware deadlock statute, the court in *Paulman v. Kritzer Radiant Coils, Inc.* held that "a bare showing of failure to elect directors for two successive annual meetings because of stockholder deadlock is not sufficient to require the court to appoint a receiver, under the language of the statute." The statute in question used "the permissive word 'may' rather than the mandatory 'shall'" in describing the court's power to appoint receivers. The fact that deadlock could go on indefinitely was an insufficient justification to appoint a receiver under the statute. In the court's opinion, the family members in *Paulman* had "‘agree[d] to disagree’" when they arranged the stock ownership in a fifty-fifty fashion. The court would not act where there was not "the slightest challenge to the efficiency of the management and no suggestion that it [was] deliberately being operated so as to solely benefit the stockholder who [was] in control. There [was] no deadlock on the board or in the operation of the business." Although the Delaware shareholder-deadlock statute contains no express requirement of irreparable injury or shareholder benefit, it is clear that the Delaware court required more than a "bare showing of shareholder deadlock" before it would grant dissolution.

The court in *Reynolds v. Special Projects, Inc.* applied section 4651(d) of the California Corporation Code and held that disso-

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114. DEL. CODE tit. 8, § 226(a)(1)-(2) (1975). See note 100 & accompanying text supra.
116. 37 Del. Ch. at 350, 143 A.2d at 273 (emphasis added).
117. Id.
118. Id. at 351, 143 A.2d at 274. The ownership in *Paulman* was split between the plaintiffs, two sisters who owned 50%, and their brother, the defendant, who owned the balance.
119. *Id.* The board contained three positions, one of which had remained empty for four years. The remaining two members were controlled by the defendant, a 50% shareholder who as president controlled the operation of the corporation. The fact that defendant had failed to have new certificates with financial information issued to the plaintiffs was not sufficient to decree dissolution. Neither was dissolution justified by the fact that defendant refused plaintiffs representation on the board. The court took the view that plaintiffs were simply unhappy because defendant was "making a living from the business," whereas they were receiving no return on their investment. *See Hall v. John S. Isaacs & Sons Farms, Inc.*, 39 Del. Ch. 244, 163 A.2d 288 (1960) (dissolution asked under section 226, but by time of trial, the issue of deadlock had become moot since one faction gained substantial control).
120. DEL. CODE tit. 8, § 226(a)(1)-(2) (1975).
122. CAL. CORP. CODE § 4651(d) (West 1955) (repealed 1975 Cal. Stats., ch. 682, § 6; effective Jan. 1, 1977). This section read the same as the current law except that the provision—"or the shareholders have failed at two consecutive an-
olution was appropriate upon a showing of internal dissension coupled with a failure of corporate purposes. The purpose of the corporation was to market the name of Debbie Reynolds. The dissension existing between the two principals centered on (1) the length of the defendant's license to market the name, and (2) the improper diversion of corporate funds to the defendant. The court did not state whether these disagreements would have been sufficient for dissolution under the "internal dissension" language of section 4651(d). The dissolution appears to have turned on the fact that the trial court found Reynolds' cancellation of defendant's license valid. The dissolution terminated defendant's right to market the name; thus, no business purpose remained to continue the corporation. In *Fuimaono v. Samoan Congregational Christian Church*, the California Supreme Court held that the same statute required plaintiff to plead and prove "internal dissension and [that] two or more factions of shareholders . . . are so deadlocked that its business cannot longer be conducted with advantage to its shareholders."

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124. In *Reynolds* the plaintiff was issued 73 shares of stock of Special Projects, Inc. Two shares went to a William Reynolds with the balance of 75 shares to the defendant, Saperstein.
126. CAL CORP. CODE § 4651(d) (West 1955) (repealed 1975 Cal. Stats. ch. 682, § 6). In *Fuimaono*, plaintiffs were 40% of the membership and alleged both deadlock and dissension. The dissolution had begun when the minister favored by plaintiffs was summarily dismissed. The court ordered dissolution of this religious non-profit corporation because the business of the church could not be carried on to the advantage of any member of the church. While it was the specific holding in *Fuimaono* that both dissension and deadlock must be proved, the court does not specifically state how the deadlock over business affairs was manifested in this case. It was clear, however, that the dissension was substantial as evidenced by arguments over the physical assets of the church, interference with the church's incoming mail, the fact that the factions would not worship together and a street confrontation between the two factions. 66 Cal. App. 3d 80, 135 Cal. Rptr. 799 (1977).
127. See *Stumpf v. C.E. Stumpf & Sons, Inc.*, 47 Cal. App. 3d 230, 120 Cal. Rptr. 671 (1975). In *Stumpf*, there were no findings of mismanagement, unfairness or deadlock. The issue before the court was whether section 4651(f) (now section 1800(b)(5)) of the California Corporation Code, which stated that dissolution would be granted if "[t]he liquidation is reasonably necessary for
DEADLOCK AND DISSOLUTION

Interpreting the Minnesota statute, which contains the same language as its California counterpart, the court in In re Lakeland Development Corp. held that dissolution could not be permitted without a determination that there was an irreconcilable deadlock. Even if such a determination had been made, irreconcilable deadlock alone was not sufficient without a further finding that the "business accordingly cannot longer be conducted with advantage to its shareholders." The protection of the rights or interests of any substantial number of the shareholders, or the complaining shareholders, was applicable in the absence of mismanagement, unfairness or deadlock. The court held that if evidence supported a finding under subsection (f), dissolution would be appropriate without a finding on the other factors, because that was what the legislature intended and there was no fear of minority abuse. Id. at 235, 120 Cal. Rptr. at 674.

129. MINN. STAT. ANN. § 301.49(4) (West 1969).
131. 277 Minn. 432, 152 N.W.2d 758 (1967).
132. Id. at 440, 152 N.W.2d at 764. "Advantage" affirmitively connotes elements of opportunity, benefit, or profit, and negatively suggests absence of sacrifice, harm or loss." Id. at 445, 152 N.W.2d at 767. The holding in Lakeland appears consistent on its facts with the equitable nature of the dissolution remedy. 277 Minn. at 436, 152 N.W.2d at 761-62. While at the time of trial there were just two shareholders, each owning an equal interest in the business, there were two younger brothers claiming an interest in the corporation. Upon the death of the father of the four brothers, claims against his estate had exceeded the cash assets. Petitioner sold the decedent's 20 shares of Lakeland Co. to the objecting shareholder with the agreement that the objecting shareholder would sell the petitioner 10 shares. The two younger brothers claimed that if it had not been for this sale, the stock would have been divided equally among the four sons. If these interests proved valid in other litigation, the deadlock would probably be broken because there was evidence that the two younger brothers would vote with the objecting shareholder. On these facts, the court appropriately raised the irreconcilibility issue, although it is clear that such a prerequisite is not expressly stated in the statute. Further, there was proof that the business could be continued to the advantage of the shareholder. This is assuming that benefit is measured solely in financial terms with no regard to physical or mental benefits, as recognized by the New York courts. See In re Surchin, 55 Misc. 2d 888, 286 N.Y.S.2d 590 (1967). In Lakeland the principal asset of the corporation was eighteen acres of land. As such, inaction resulting from the deadlock between the two shareholders who disagreed over whether to retain the land or sell it immediately would probably result in appreciation in the land value rather than diminution. See also In re Hedberg-Freidman & Co., 233 Minn. 534, 47 N.W.2d 424 (1951). In Hedberg-Freidman, the court held that when "differences between two equally divided factions in a corporation are irreconcilable and the dissensions between them incurable so as to make the continuance of the corporation unprofitable to its shareholders," the court may dissolve on that ground alone. Id. at 539, 47 N.W.2d at 428. The dissension between the shareholders had started in 1935, and had intensified to the point that they no longer talked to one another at work. Id. at 537, 47 N.W.2d at 426.
In re Sheridan Construction Corp. concerned a "complete frustration and standstill in board action" and "no hope of reconciliation between [the] two brothers in the foreseeable future." The New York court dissolved the corporation under section 1104 of the New York Business Corporation Law. The test applied by the court was "whether judicially-imposed death "will be beneficial to the stockholders or members and not injurious to the public." The court in Sheridan found that because dissolution would put an end to the losses which had continued since 1958, it would be beneficial to the parties. The court in In re Surchin relied heavily on the analogy between close corporations and partnerships. It held dissolution appropriate under the New York statute for a close corporation consisting of two shareholders, each of whom owned one-half interest. While the facts supported dissolution on all three grounds, the court stated dissolution could be granted if the facts supported just one ground. There was deadlock in the directorate and between the shareholders. Of interest is the fact that the court found not only that dissolution would benefit the shareholders financially, but that the stress on the physical and mental well-being of the petitioning shareholder would be relieved.

134. Id. at 391, 256 N.Y.S.2d at 212.
135. Id. at 392, 256 N.Y.S.2d at 212.
137. 22 A.D.2d 392, 256 N.Y.S.2d 212 (quoting from In re Radom & Neidorff, Inc., 307 N.Y. 1, 7, 119 N.E.2d 563, 565 (1954)). See also In re Surchin, 55 Misc. 2d 888, 892, 286 N.Y.S.2d 580, 584 (1967) ("the benefit to the shareholders of a dissolution is of paramount importance").
141. 55 Misc. 2d at 891, 286 N.Y.S.2d at 583.
142. The court stated:

I find as a fact that there is serious internal dissension between the two shareholders, that there are two factions of shareholders, and that dissolution would be beneficial to them, individually and together. And here I consider the statutory word "beneficial" to be applicable both in respect of the mental and physical well-being of a shareholder as well as financial gain to him. I will say that I cannot believe that I would not be authorized by this statute to direct a dissolution of a close corporation, when one of the two active shareholders, who is an active director and active officer of the corporation, issues threats of personal violence, listens in surreptitiously on his associate's telephonic talks, seizes and cuts telephone wires, acts in the presence of employees so as to demean his associate as an employer in the corporation, takes trips at corporate expense without...
Affirming the liberalization of the New York view on dissolution law, the court in Weiss v. Gordon held that "when a point is reached where the shareholders who are actively conducting the business of the corporation cannot agree, it becomes in the best interests of those shareholders to order a dissolution." This rule does not require an inquiry into why the deadlock exists, but merely a finding that it does exist.

North Carolina permits statutory dissolution in cases of complete deadlock if "the business can no longer be conducted to the advantage of all the shareholders." This statute was applied in Ellis v. Civic Improvement, Inc., in which the two shareholders, a doctor and a dentist, had formed a corporation in 1966 for the advance mutual consent, leaves the shop inadequately manned, and engages in other activities as if he were the sole owner of the business. And I would say that dissolution would be in order even if money were being made quite fully and readily by the corporation under such conditions—which is not the case here.

Id. at 892, 286 N.Y.S.2d at 584.


Id. at 281, 301 N.Y.S.2d at 842. See In re Goldstone, 40 A.D.2d 971, 338 N.Y.S.2d 755 (1972).

This analysis was also used by the court in In re Miller, 1977 2 CORP. LAW (CCH) ¶ 11,256 (N.Y. Sup. Ct., Feb. 23, 1977). There was no examination of the petitioner's motives; the existence of deadlock was sufficient for dissolution. This rule is not, however, without exception. In Wollman v. Littman, 35 A.D.2d 935, 316 N.Y.S.2d 526 (1970), the court held that when there exists an equal division in the board of directors, each side representing a separate function in the corporation, dissolution is inappropriate when it would place one faction at a distinct disadvantage. Dissolution would not only squeeze out the faction resisting it, "but would require the receiver to dispose of the inventory with the (other faction) the only interested purchaser financially strong enough to take advantage of the situation." Id. at 935, 316 N.Y.S.2d at 527.

See also Siegel v. 141 Bowery Corp., 80 Misc. 2d 255, 362 N.Y.S.2d 897 (1974), 51 A.D.2d 209, 38 N.Y.S.2d 232 (1976) (dissolution stayed). In Siegel, the two shareholders had entered into an arbitration agreement which covered the issues that resulted in the dissension, and the court required that the arbitration go forward.

See also In re Wainstock, N.Y.L.J. 15 (March 15, 1977). In Wainstock dissolution was held inappropriate under section 1104(3) of the New York Business Corporation Law because

[petitioner has not shown that deadlock even exists, must less that any disagreement has affected the functioning of either corporation. The petitioner is apparently in complete control and it appears there has been no opportunity as yet for deadlock to arise and affect the conduct of the corporation's business.

The petitioner had sought on the death of the other 50% shareholder to purchase the shares. This was refused by the distributees of the estate. Id.


purpose of maintaining the only assets of the corporation, a lot and building. The building was rented by the shareholders for professional office space. In 1968, plaintiff moved to another city and terminated any payment of rent. Subsequently, defendant took over the vacated area, but continued to pay the same amount in rent. The court stated that under the statute, irreconcilable deadlock was not sufficient for dissolution; there must be a further finding that the corporation cannot be conducted to the advantage of all the shareholders. The court held that the continued operation of the corporation could not be to the advantage of all the shareholders since defendant had continued to pay rent on the original two-thirds apportionment while receiving the benefit of the use of the total building.

The approach taken by the Missouri court in Gonseth v. K. & K. Oil Co., in applying the state's dissolution statute, illustrates a more stringent approach. The Missouri statute requires a finding of irreparable injury to the corporation. The court found no irreparable injury because "the books show[ed] that the corporation prospered" during the time of the deadlock. Rejecting the view taken by the New York courts, the court in Gonseth stated "[t]he actions to which Gonseth objects—being deprived of her weekly salary as secretary and reduction in the rent she received—are matters which affected her personally, not matter which have injured the corporation." In Goldstein v. Stud-
ley, another Missouri case, the four member board of directors was equally divided. Since the directors were also the four shareholders owning equal interests, there was no hope of breaking the stalemate in management. This deadlock and animosity, manifested in the substantial drop in sales, failure to act on accounts receivable or to file an income tax return, caused irreparable injury to the corporation. Consistent with the holding in Gonseth and the Missouri statutory language, dissolution in Goldsmith was premised only on the harmful effects to the business enterprise and not the harm to the individual shareholder.

Under the Illinois deadlock provision, it was held in Ward v. Colcord, that a court may find deadlock and grant dissolution where one of the defendants refuses to perform business duties and the by-laws require unanimous consent of the board of directors. Ward was a dissolution action brought by a fifty percent shareholder against two other shareholders, each of whom owned a twenty-five percent interest. Because the dissolution determination was grounded on the complete deadlock provision, no proof of irreparable injury to the corporation was needed. It was sufficient to prove the jurisdictional facts that deadlock existed among both the board and the shareholders.

In Jackson v. Nicolai-Neppach Co., the Oregon Supreme Court construed its shareholder deadlock statute, which, like that of Illinois, mirrors the Model Act. Although the provision contains no language requiring benefit to the shareholders, the court in Jackson held that it was plaintiff's burden to show not only facts demonstrating deadlock among the shareholders, but

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158. 452 S.W.2d 75 (Mo. 1970).

159. 452 S.W.2d at 80. There had been one shareholder meeting in 10 years. Because of dissension and the equal split of ownership, "[t]he shareholders then departed without having transacted any business." Id. at 77.

160. Id. at 80. For the first nine months of 1968 sales were shown to be about $4850 whereas for 1966 corporate sales were $126,650.

161. See notes 153-57 supra.


163. 110 Ill. App. 2d 68, 249 N.E.2d 137 (1969). In Ward, the original majority shareholder brought an action by which the two defendant shareholders bought into the company.

164. The defendant shareholder had refused to either sign checks or pay the corporate bills. It had necessitated a court order to ensure these duties were carried out. Id. at 71, 249 N.E.2d at 139.


167. OR. REV. STAT. § 57.595 (1) (a) (C) (1977).

168. See notes 74, 156-58 & accompanying text supra.
also equitable reasons illustrating some actual benefit to the shareholders to be obtained from dissolution. Because of the dissen-
sion existing between the two fifty percent shareholders in *Jackson*, no new directors were elected for the years 1953 through 1956. Under the language of the statute, plaintiff argued that as a matter of right, dissolution should be granted. The court reviewed the equitable nature of the common law history of involuntary corporate dissolution and determined its task to be purely discretion-
ary, and not mandated on the bare showing of facts of shareholder deadlock. Dissolution was held to be an inappropriate remedy in *Jackson* because the board was not paralyzed, but legally function-
ing, the company was very prosperous, the principals chose to have a board of three, the company employed sixty-five people and the public interest needed to be considered, and plaintiff possessed the power to set defendant's salary. On these facts the court found that dissolution would not be beneficial to all the shareholders:

> We think an equitable adjustment will be reached by denying rather than granting dissolution in this case. To decree liquidation would give Hazel Jackson a club to hold over the head of Herbert Jackson. To deny liquidation imposes upon each party a certain amount of burden and uncertainty so long as their differences continue. There is a possibility that Hazel and Herbert Jackson may compose their differences amicably—it does not ap-
pear so far that either has attempted to oppress or unfairly deal with the other. If they can not settle their disagreement, then we think that denial of relief at the present time may well lead to a fairer buy-sell agreement than the remedy of enforced liquidation, a remedy which might destroy the going concern value of the plant and give both parties an unduly small return for the value of their investment.

In *Strong v. Fromm Laboratories* the Wisconsin Supreme Court interpreted section 180.771(1)(a)(4), a shareholder dead-
lock provision identical to that of Oregon, and came to a result opposite to that of the court in *Jackson*. Stating that it was not plaintiff's burden to demonstrate that dissolution would be beneficial to the shareholders, the court held:

> Because of the extensive research made by the committee of eminent Wisconsin corporation lawyers . . . we must assume that its members were familiar with the New York and Minnesota deadlock statutes and

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169. 219 Or. at 586, 348 P.2d at 21.
170. The interests were as follows: Herbert Jackson, 24 1/2 shares; Eva Jackson, 1 share; Hazel Jackson, 25 1/2 shares. Herbert and Eva were married and cast their votes together. Hazel was the plaintiff in *Jackson*.
171. 219 Or. at 586-87, 348 P.2d at 21-22.
172. *Id.* at 587, 348 P.2d at 22.
173. 273 Wis. 159, 77 N.W.2d 389 (1956).
The court found that the trial court had no discretionary power not
to dissolve where a new director had not been elected because of a
voting deadlock following the death of a director. Section 180.30 of
the Wisconsin statutes required that “[t]he business and affairs of
a corporation shall be managed by a board of directors.”

Because of a peculiar by-law of Fromm Laboratories, Inc., which “ex-
pressly prohibit[ed] the board of directors of such corporation
from transacting any business after a vacancy occur[red] on the
board, except to call a meeting of the stockholders to elect a suc-
cessor director, until such vacancy has been filled,” the Fromm
board had been acting without legal power for nearly a decade.

Stating that while the statutory provision may appear discretion-
ary on its face, the court held the provision mandatory when “there
is no alternative corrective remedy.” In Fromm the court saw no
alternative other than dissolution which would permit Fromm Lab-
oratories, Inc. to function and be legally managed as required
under section 180.30.

Distinguishing Fromm, the court in Jack-
son v. Nicolai-Neppach Co. stated:

[Whether by act of the legislature or by virtue of the by-laws of the com-
pany—which, it is unnecessary to decide—the board of directors of Nico-
lai-Neppach Co. in office at the time of the deadlock continued to function
legally thereafter. Strong v. Fromm Laboratories held, on the other hand,
that under Wisconsin law the by-laws of a company may be drawn so as to
paralyze effectively the corporate function.

Finally, the Nebraska Supreme Court in Kollbaum v. K. & K.

176. 273 Wis. 171-72, 77 N.W.2d at 395.
178. 273 Wis. at 172, 77 N.W.2d at 395.
179. Id. at 173, 77 N.W.2d at 396 (emphasis added by Fromm court) (quoting In re
Collins-Doan Co., 3 N.J. 382, 396, 70 A.2d 159, 166 (1949)). Following is the full
text of the quote from Collins-Doan Co.:

And, if the statutory authority be deemed discretionary in essence,
there is no ground for withholding its affirmative exercise here, for
there is no alternative corrective remedy. Redress for the corporate
omissions may be had only by dissolution. The dissension is such as
to defeat the end for which the corporation was organized. The dead-
lock in the corporation’s internal management is fatal to its exist-
ence.

3 N.J. at 396, 70 A.2d at 166.
180. 273 Wis. at 173, 77 N.W.2d at 396.
182. Id at 579, 348 P.2d at 18.
Chevrolet, Inc.\textsuperscript{183} held dissolution appropriate for a corporation where "the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and . . . irreparable injury to the corporation is being suffered . . . ."\textsuperscript{184} Defining a deadlocked corporation as one which "because of decision or indecision of the stockholders, cannot perform its corporate powers," the court found the corporation to fit within the definition.\textsuperscript{185} Substantial dissension and stalemate over corporate decisions resulted in the corporation losing the Chevrolet franchise. Subsequent to this, the petitioner terminated his employment with the corporation and opened up his own repair shop on a portion of the corporate property. The court concluded: "It is undisputed that hard feelings exist between the shareholders and this litigation demonstrates that the corporation can no longer function in a viable fashion."\textsuperscript{186}

V. CONCLUSION

The evolution of corporate existence from the time of the common law rule to the present day deadlock statutes illustrates that over the years both courts and legislatures have progressed in their willingness to address the special needs of the close corporation. It is the conclusion of this comment, however, that the problem of corporate dissolution in cases of deadlock cannot and will not be fully handled without the adoption of the partnership analogy to the involuntary dissolution of the close corporation. While the sacredness of corporate existence has been partially removed, there still remains the influence of the common law rule which generally precludes a resolution which is directed more to the shareholders' interests than to the sanctity of the corporate body.

\textsuperscript{183} 196 Neb. 555, 244 N.W.2d 173 (1976).
\textsuperscript{184} Id. at 562, 244 N.W.2d at 177 (quoting Neb. Rev. Stat. § 21-2096(1)(a) (Reissue 1975)).
\textsuperscript{185} Id. In Kollbaum one of the plaintiffs, Kollbaum, and Kamrath had been employees at a Chevrolet dealership in Ponca, Nebraska. Following the death of the owner, the two employees entered into a contract with the heirs to purchase the property. Finding that they did not have enough money, the two employees brought in Engel who agreed to provide $18,100 if the enterprise was incorporated and he was issued 55\% of the interest. This was done. In addition, Kamrath was given 25\% and Kollbaum 20\%. Kamrath died two years later. The administrator of his estate joined Kollbaum as plaintiff. On Kamrath's death, Engel wanted another party, Wentz, to become the new dealer and purchase Kamrath's shares. Kollbaum, who wanted to be the new dealer, refused Engel's proposition. When Engel and Kollbaum could not agree, the corporation lost the Chevrolet franchise. While the court clearly found deadlock to exist, it is unclear how the deadlock occurred since Engel possessed 55\% and Kollbaum 20\% of the stock.
\textsuperscript{186} Id. at 562, 244 N.W.2d at 177.
A just and equitable solution to deadlock in the corporation cannot exist if the reality that a close corporation is functionally "an incorporated partnership" is ignored by the judiciary. If the view of a partnership analogy is adopted, then as Mr. Israels stated, it can be shown that

"... deadlock or stalemate in a close corporation is as completely socially undesirable as in partnership or in a marriage, and that corporate contract is not a holy sacrament. The remedy in the partnership case is beautifully simple and over the years courts of equity appear to have administered it satisfactorily. ... The interesting analogy lies in the fact that it is possible for any general partner, by his express will, to bring about a dissolution at any time regardless of the expiration of the term. The statute gives a list of causes which will justify an order of dissolution."\(^{187}\)

A review of the most recent cases decided under specific deadlock statutes illustrates that those courts which permit dissolution on the bare showing of the jurisdictional facts of deadlock\(^{188}\) coupled with a measurement of benefit to the shareholder in terms of physical, mental\(^{189}\) or simple financial advantage\(^{190}\) resemble most closely the approach used in dissolving a partnership.

The prerequisite of showing irreparable injury to the corporation may in some instances coincide with dissolution permitted under the benefit to the shareholder standard. However, to require a showing of irreparable injury necessarily directs the inquiry away from the circumstances of the petitioning shareholder. The existence of the close corporation should not be so sacred as to ignore the interests of the shareholder who has invested substantial assets in a corporate form of enterprise with the expectation that his or her relationship with the other investors and the management of business affairs will be like that in a partnership.

_Diane K. McDonald '79_

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\(^{187}\) Israels, _supra_ note 1, at 789. _See_ note 24 & accompanying text _supra_.

\(^{188}\) _See_ Weiss v. Gordon, 32 A.D.2d 279, 301 N.Y.S.2d 839 (1969). _See also_ notes 143-46 & accompanying text _supra_.

\(^{189}\) _See In re Surchin_, 55 Misc. 2d 883, 286 N.Y.S.2d 580 (1967). _See also_ notes 139-42 & accompanying text _supra_.

\(^{190}\) _See_ Ellis v. Civic Improvement, Inc., 24 N.C. App. 42, 209 S.E.2d 873 (1974). _See also_ notes 147-51 & accompanying text _supra_.