

9-1-1990

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Recommended Citation

Robert S. McLean, *Minority Shareholders' Rights in the Close Corporation under the New North Carolina Business Corporation Act*, 68 N.C. L. REV. 1109 (1990).

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Minority Shareholders' Rights in the Close Corporation Under the New North Carolina Business Corporation Act

The new North Carolina Business Corporation Act¹ has changed the judicial aid available to a close-corporation minority shareholder who is attempting to protect his rights and interests in the corporation from interference by a majority shareholder.² Specifically, the new Act has modified former sections 55-125(a)³ and 55-125.1,⁴ which provided for dissolution and other judicial remedies when necessary to protect the rights and interests of a minority shareholder.

A close corporation is typically a corporation owned and managed by a small group of shareholders⁵ whose shares are not traded on the public securities market.⁶ Close corporations classically include family corporations, small corporations operated like partnerships, and corporations in which the shareholders are the managers.⁷ The management of a close corporation follows the typical pattern of corporate management: the holders of a majority of voting shares control the corporation.⁸ Owners holding a majority of shares have the power to elect all of the directors, or in the case of cumulative voting, at least a majority of the directors.⁹ The directors usually are responsive to the shareholders who elected them; in a closely held corporation the majority shareholders usually elect themselves and their relatives as directors.¹⁰ Through the board of directors, the majority shareholders can determine corporate policies, select officers and employees, and supervise the normal functions of the corporation.¹¹

Under this method of corporate control, the majority shareholders can deprive a minority shareholder of any input in the operation of the business, as well as deny him employment.¹² Because the typical shareholder in a closely held corporation usually expects to receive income from the corporation in the form of a salary rather than through dividends, denying a minority shareholder employment often deprives the minority shareholder of his principal source of income.¹³ The majority shareholder can further deny the minority shareholder income by refusing to declare any dividends.

1. N.C. GEN. STAT. §§ 55-1-01 to 55-17-05 (1990).

2. *See id.* §§ 55-14-30 to 55-14-33.

3. N.C. GEN. STAT. § 55-125(a) (1982) (replaced by N.C. GEN. STAT. § 55-14-30 (1990)).

4. N.C. GEN. STAT. § 55-125.1 (1982) (replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)).

5. *See Darwin v. Belmont Indus.*, 40 Mich. App. 672, 677, 199 N.W.2d 542, 544 (1972).

6. Latty, *The Close Corporation and the New North Carolina Business Corporation Act*, 34 N.C.L. REV. 432, 438-39 (1956).

7. F.H. O'NEAL & R. THOMPSON, O'NEAL'S CLOSE CORPORATIONS § 1.02 (3d ed. 1988) [hereinafter O'NEAL'S CLOSE CORPORATIONS].

8. F.H. O'NEAL & R. THOMPSON, O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS § 1:02 (2d ed. 1985) [hereinafter O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS].

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. O'NEAL'S CLOSE CORPORATIONS, *supra* note 7, ch. 1, § 1.07, at 25.

In addition, shareholders in a closely held corporation often have difficulty withdrawing their investment. Because close-corporation stock usually is not listed on a stock exchange or actively traded by brokers, there rarely exists a ready market for close-corporation shares.¹⁴ Because there are few sales of these close-corporation shares, and therefore no established market price, valuation is difficult.¹⁵ As a result, shareholders may have trouble selling their shares, or may be able to do so only at a great loss.¹⁶ The minority share is especially difficult to sell, as few buyers are willing to step into the shoes of the minority shareholder who has had problems with a majority shareholder.¹⁷

State legislatures have recognized that minority shareholders in a close corporation have no easy way to guarantee income from the corporation or to recover their investment, so they have designed statutes that respond to the special situation of the close corporation.¹⁸ The North Carolina legislature first provided for the minority shareholder in the close corporation by enacting North Carolina General Statutes section 55-125(a)(4),¹⁹ the old dissolution section, and later enacting section 55-125.1,²⁰ the old alternative remedy section. Section 55-125(a)(4) authorized courts to dissolve a corporation when reasonably necessary to protect the "rights or interests of the complaining shareholder."²¹ Section 55-125.1 gave courts discretion to grant relief other than dissolution in an action brought by a shareholder for involuntary dissolution.²²

In July 1990 the new North Carolina Business Corporation Act became effective. The new Act incorporates the provisions of the old dissolution section²³ but does not incorporate the old alternative relief section. This Note will discuss these provisions of the old and new Business Corporation Acts and pre-

14. O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS, *supra* note 8, at § 2.15.

15. O'NEAL'S CLOSE CORPORATIONS, *supra* note 7, ch. 1, § 1.07, at 26-27.

16. *In re Estate of Block*, 186 Misc. 945, 949, 60 N.Y.S.2d 639, 642 (Surr. Ct. 1946). "[I]n view of the nature of the shares themselves, being those of a closely held corporation, having no general market and not saleable to the general public in the usual manner, it would be extremely difficult if not impossible to obtain a ready buyer for the shares." *Id.*

17. See O'NEAL'S CLOSE CORPORATIONS, *supra* note 7, ch. 1, § 1.07, at 27.

18. *Id.* ch. 1, § 1.14.

19. Act of May 26, 1955, ch. 1371, § 1, 1955 N.C. Sess. Laws 1509 (codified as amended at N.C. GEN. STAT. § 55-125(a)(4) (1982) and replaced by N.C. GEN. STAT. § 55-14-30 (1990)). In 1955, § 55-125(a)(4) was enacted in recognition of the need for more liberal allowance of dissolution in the case of close corporations. R. ROBINSON, NORTH CAROLINA CORPORATION LAW AND PRACTICE, § 29-11 (3d ed. 1983).

20. Act of May 14, 1973, ch. 469, § 41, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1 (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)).

21. Act of May 26, 1955, ch. 1371, § 1, 1955 N.C. Sess. Laws 1509 (codified as amended at N.C. GEN. STAT. § 55-125(a)(4) (1982) and replaced by N.C. GEN. STAT. § 55-14-30 (1990)). The other provisions of § 55-125(a) provide for court-ordered dissolution in the case of director deadlock, shareholder deadlock, or pursuant to an existing shareholder agreement. *Id.*

22. Act of May 14, 1973, ch. 469, § 41, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1 (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)). Section 55-125.1 allowed a court to grant discretionary remedies including, but not limited to: (1) cancelling or altering charter or bylaw provisions; (2) cancelling, altering, or enjoining corporate resolutions or acts; (3) directing or prohibiting acts of the corporation, shareholders, directors, officers, or other persons party to the action; or (4) providing for the fair-value purchase of the shares of any shareholder by the corporation or any other shareholder. *Id.*

23. N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990).

dict how the new provision will affect closely held corporations in North Carolina. The Note concludes that, under the new Act, courts will continue to apply the "reasonable expectations" test voiced by the North Carolina Supreme Court in *Meiselman v. Meiselman*.²⁴ Although the test for relief will not change, the narrower range of available remedies will work a substantial change in the law.²⁵ Under the old dissolution section, courts had the power to grant relief when relief of some kind, but not dissolution, was reasonably necessary to protect the complaining shareholder's rights and interests.²⁶ This Note argues that, because the alternative relief measures will no longer be available, courts can grant relief under the new dissolution section and *Meiselman* only when dissolution is reasonably necessary to protect the complaining shareholder's rights and interests.

When the old North Carolina Business Corporation Act was drafted, there was a "feeling, among commentators, that, notwithstanding express statutory authorization, some courts had been too hesitant to order involuntary dissolution, especially in the case of close corporations."²⁷ In response to the desire for more flexible use of judicial dissolution, the North Carolina General Assembly adopted language from a California statute²⁸ that gave courts wide authority to grant involuntary dissolution in appropriate situations.²⁹ The result was North Carolina General Statute section 55-125(a)(4), the old dissolution section, which empowered courts to dissolve a corporation when it was reasonably necessary to protect the complaining shareholder's rights and interests.³⁰

In order to provide alternatives to the severe remedy of involuntary dissolution, the general assembly later enacted North Carolina General Statute section 55-125.1, the old alternative remedy section, giving the court broad discretion to order remedies other than dissolution.³¹ In drafting this section, the Business

24. 309 N.C. 279, 307 S.E.2d 551 (1983). For a discussion of *Meiselman*, see generally Note, *Corporation Law—Meiselman v. Meiselman: "Reasonable Expectations" Determine Minority Shareholders' Rights*, 62 N.C.L. REV. 999 (1984) (analyzing *Meiselman* and concluding that the *Meiselman* reasonable expectations test falls short of protecting minority shareholders from a "squeeze-out"). The *Meiselman* court based its reasonable expectations test, which allowed relief based upon the protection of reasonable rights and interests, on the language in the old dissolution section, § 55-125(a)(4). *Meiselman*, 309 N.C. at 297-98, 307 S.E.2d at 562. The new Act includes verbatim the § 55-125(a)(4) language that authorized courts to dissolve a corporation when "reasonably necessary" to protect the "rights or interests of the complaining shareholder." N.C. GEN. STAT. § 55-14-30(2)(ii) (1990). For a further discussion of *Meiselman*, see *infra* notes 36-65 and accompanying text.

25. See *infra* note 133 and accompanying text.

26. See *Meiselman*, 309 N.C. at 300-01, 307 S.E.2d at 563-64. The *Meiselman* opinion stated that § 55-125(a)(4) and § 55-125.1 should be read in conjunction. *Id.* at 300-01, 307 S.E.2d at 563-64. To read § 55-125(a)(4) as providing relief only when liquidation was necessary would be to deny the existence of § 55-125.1. *Id.*

27. R. ROBINSON, *supra* note 19, at § 29-12.

28. CAL. CORP. CODE ANN. § 4650(f) (1955) (current version at CAL. CORP. CODE ANN. § 1800(b)(5) (West 1977)).

29. CAL. CORP. CODE ANN. § 1800 (1977) legislative committee comment.

30. Act of May 26, 1955, ch. 1371, § 1, 1955 N.C. Sess. Laws 1509 (codified as amended at N.C. GEN. STAT. § 55-125(a)(4) (1982) and replaced by N.C. GEN. STAT. § 55-14-30 (1990)). See generally Latty, *supra* note 6, at 448-49 (discussing involuntary dissolution under old Act).

31. Act of May 14, 1973, ch. 469, § 41, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1 (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)); R. ROBINSON, *supra* note 19, at § 29-12.

Corporation Act Drafting Committee followed the suggestions of Professor Ernest L. Folk, III.³² Professor Folk stated: "[D]issolution is not a wholly satisfactory remedy. Since it does irrevocably end a once viable concern which might have been revived if the stalemate could have been broken, it entails the permanent loss of going-concern values."³³ The resulting section 55-125.1³⁴ followed almost verbatim a provision in the South Carolina Business Corporation Act.³⁵

In *Meiselman v. Meiselman*³⁶ the North Carolina Supreme Court interpreted both section 55-125(a)(4) and section 55-125.1. *Meiselman* involved the typical close corporation control problem: a family-owned corporation with family-member owners who could not reconcile their differences.³⁷ Between 1951 and 1971, Mr. Meiselman, founder of several real estate and entertainment corporations, transferred stock in these corporations to his two sons, Ira and Michael.³⁸ These transfers gave Ira approximately seventy percent of the shares in the family corporations and Michael the remaining thirty percent.³⁹ Ira and Michael both worked for the family corporations, but their relationship was not harmonious.⁴⁰

In 1973, Ira formed Republic Management Corporation to serve as a management and cost allocation center for the entire family operation.⁴¹ Ira, as sole shareholder of Republic Management, enjoyed the exclusive benefit of the profits garnered from Republic's dealings with the family operation.⁴² Michael brought a shareholder derivative suit claiming that Ira's sole ownership of Republic Management constituted a breach of fiduciary duty owed to the family corporations.⁴³ In response, Ira fired Michael from the family corporations and termi-

32. Folk, *Revisiting the North Carolina Corporation Law: The Robinson Treatise Reviewed and the Statute Reconsidered*, 43 N.C.L. REV. 768, 864-71 (1965). Professor Folk argued that dissolution is such a severe measure that many courts will refrain from using it, leaving the minority shareholder's situation unchanged. *Id.* at 865. He proposed three alternative measures: the appointing of a provisional director, the compulsory buy-out of the minority shareholder's shares, and "Section 210 relief." *Id.* at 866-71. Section 210 of the English Companies Act enabled the courts to exercise broad power to grant relief when dissolution was appropriate except that it would prejudice some group of shareholders. *Id.* at 870. For example, under the act, courts could "with a view to bringing to an end the matters complained of, make such order as it thinks fit, . . . regulating the conduct of the company's affairs in future," including "any alteration in or addition to any company's memorandum of articles." Companies Act, 1948, 11 & 12 Geo. 6, ch. 338, § 210(2), (3).

33. Folk, *supra* note 32, at 865.

34. For an explanation of § 55-125.1, see *supra* note 22 and accompanying text.

35. See South Carolina Business Corporation Act of 1962, ch. 847, § 12.23, 1962 S.C. Acts (codified at S.C. CODE ANN. § 33-21-230 (Law. Co-op. 1977)); see also *Meiselman v. Meiselman*, 58 N.C. App. 758, 764-65, 295 S.E.2d 249, 254 (1982), modified, 309 N.C. 279, 307 S.E.2d 551 (1983).

36. 309 N.C. 279, 307 S.E.2d 551 (1983).

37. *Id.* at 281-87, 307 S.E.2d at 553-56.

38. *Id.* at 282, 307 S.E.2d at 553.

39. *Id.*

40. *Id.* at 282-87, 307 S.E.2d at 553-56. Michael contended that he had been systematically discouraged from contributing to the business, *id.* at 285, 307 S.E.2d at 555, while Ira characterized his brother as suffering from "crippling mental disorders." *Id.* at 287, 307 S.E.2d at 556.

41. *Id.* at 283-84, 307 S.E.2d at 554-55.

42. *Id.*

43. *Id.* The opinion does not discuss this claim, but apparently it is based upon the taking of a corporate opportunity. The corporate opportunity doctrine provides that "a corporate fiduciary may not appropriate to himself an opportunity that rightfully belongs to his corporation." *Id.* at

nated Michael's insurance policies, credit cards, and profit-sharing plan, and called due all notes that Michael owed to the corporation.⁴⁴

Michael again filed suit against Ira and the family corporations, seeking involuntary dissolution of the corporations under section 55-125(a)(4), or such equitable relief as was reasonably necessary to protect Michael's rights and interests under section 55-125.1.⁴⁵ The trial court denied relief, but the North Carolina Court of Appeals reversed.⁴⁶ The court of appeals interpreted section 55-125(a)(4) to authorize liquidation when the complaining shareholder has shown that "basic fairness" compels dissolution.⁴⁷ The court of appeals also concluded that the complaining shareholder does not have to show "bad faith, mismanagement or wrongful conduct, but only real harm."⁴⁸

The North Carolina Supreme Court affirmed the appellate court's ruling, but disagreed with its reasoning.⁴⁹ The supreme court held that section 55-125(a)(4) allows the trial court to dissolve a corporation whenever necessary to protect a shareholder's "reasonable expectations."⁵⁰ The supreme court stated that, in a suit brought under section 55-125(a)(4), a trial court is required: "(1) to define the 'rights or interests' the complaining shareholder has in the corporation; and (2) to determine whether some form of relief is 'reasonably necessary' for the protection of those 'rights or interests.'"⁵¹

In *Meiselman* the court established four requirements that the plaintiff must prove to obtain relief under the "reasonable expectations" test.⁵² First, the complaining shareholder must prove that "he had one or more substantial reasonable expectations known or assumed by the other participants."⁵³

307, 307 S.E.2d at 568 (quoting Note, *Corporate Opportunity and Corporate Competition: A Double-Barreled Theory of Fiduciary Liability*, 10 HOFSTRA L. REV. 1193, 1193 (1982)).

44. *Id.* at 283, 307 S.E.2d at 554. Actions, like Ira's, that reduce the participation or powers of a minority shareholder, diminish his claim on earnings or assets, or otherwise deny him business income or advantages are known as a minority shareholder "squeeze-out." O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS, *supra* note 8, at § 1.01.

45. *Meiselman*, 309 N.C. at 287, 307 S.E.2d at 556. For an explanation of these remedies, see *supra* note 22 and accompanying text.

46. *Meiselman v. Meiselman*, 58 N.C. App. 758, 776, 295 S.E.2d 249, 260 (1982), *modified*, 309 N.C. 279, 307 S.E.2d 551 (1983).

47. *Id.* at 766, 295 S.E.2d at 255.

48. *Id.* The court interpreted § 55-125(a)(4) to authorize liquidation when it is necessary for the protection of the complaining shareholder. *Id.* The complaining shareholder is not required to show "oppression" by the majority shareholder, but must show only that basic "fairness" compels dissolution. *Id.*; see also *infra* notes 85-89 and accompanying text (old Act did not require oppressive conduct on the part of the majority shareholder, but only infringement of minority shareholder's rights).

49. *Meiselman*, 309 N.C. at 298, 307 S.E.2d at 563.

50. *Id.* at 299, 307 S.E.2d at 563.

51. *Id.* at 301, 307 S.E.2d at 564.

52. *Id.* The court held that the reference to "rights and interests of the complaining shareholder" in § 125(a)(4) included the "reasonable expectations" the complaining shareholder has in the corporation. *Id.*

53. *Id.* The court stated:

These "reasonable expectations" are to be ascertained by examining the entire history of the participants' relationship. That history will include the "reasonable expectations" created at the inception of the participants' relationship; those "reasonable expectations" as altered over time; and the "reasonable expectations" which develop as the participants engage in a course of dealing in conducting the affairs of the corporation. The interests and

The key is "reasonable." In order for plaintiff's expectations to be reasonable, they must be known to or assumed by the other shareholders and concurred in by them. Privately held expectations which are not made known to the other participants are not "reasonable." Only expectations embodied in understandings, express or implied, among the participants should be recognized by the court.⁵⁴

Under *Meiselman*, a shareholder's reasonable expectations are determined through a case-by-case examination of the entire history of the shareholder's relationship with the corporation.⁵⁵ These reasonable expectations may include the shareholder's expectation that he will be employed by the company or participate in the management of the business.⁵⁶ The minority shareholder should set forth these reasonable expectations expressly in a well-drafted written agreement;⁵⁷ however, the *Meiselman* court noted that the minority shareholder may lack sufficient bargaining power to force the majority to agree to terms that would allow him to protect his interest.⁵⁸ For this reason, the *Meiselman* reasonable-expectations test allows the court to recognize an implied understanding among the participants.⁵⁹

The second requirement for a minority shareholder to obtain relief under *Meiselman* is a showing that his reasonable expectations have been frustrated.⁶⁰ Third, the minority shareholder must show that "the frustration was without fault of plaintiff and was in large part beyond his control."⁶¹ Finally, the shareholder must show that "under all of the circumstances of the case, plaintiff is entitled to some form of equitable relief."⁶²

In addition to voicing the reasonable expectations test, the *Meiselman* court

views of the other participants must be considered in determining "reasonable expectations."

Id. at 298, 307 S.E.2d at 563.

54. *Id.*; see also, Note, *supra* note 24, at 1016 (minority shareholder must bolster reasonable expectations with an express or implied understanding "akin to a shareholder's agreement").

55. *Meiselman*, 309 N.C. at 299, 307 S.E.2d at 563. The trial court must examine the rights and interests of each particular case because § 55-125(a)(4) refers to the rights and interests of the complaining shareholder, not to the rights and interests of shareholders in general. *Id.* Only substantial expectations should be considered, and this again is determined on a case-by-case basis. *Id.*

56. *Id.* at 289, 307 S.E.2d at 558.

57. See *Blount v. Taft*, 295 N.C. 472, 488, 246 S.E.2d 763, 773 (1978). The court in *Blount* stated: "[m]inority shareholders who would have protection greater than that afforded by Chapter 55 of the General Statutes and the judicial doctrines prohibiting breach of a fiduciary relationship must secure it themselves in the form of a 'well drawn' shareholder's agreement." *Id.* The *Blount* opinion could be read to contradict *Meiselman*'s recognition of implied shareholder agreements. See *supra* note 54 and accompanying text for an explanation of *Meiselman*'s recognition of implied shareholder agreements.

58. *Meiselman*, 309 N.C. at 291, 307 S.E.2d at 558.

59. *Id.* at 301, 307 S.E.2d at 564.

60. *Id.*

61. *Id.* Although the court did not elaborate on this requirement, in a similar situation, a New Jersey court denied relief to a principal shareholder's son, whose employment the corporation had terminated, because the son performed his managerial functions unsatisfactorily. *Exadaktilos v. Cinnaminson Realty Co.*, 167 N.J. Super. 141, 155, 400 A.2d 554, 561 (Super. Ct. Law Div. 1979), *aff'd*, 173 N.J. Super. 559, 414 A.2d 994 (Super. Ct. App. Div.), *cert. denied*, 85 N.J. 112, 425 A.2d 273 (1980).

62. *Meiselman*, 309 N.C. at 301, 307 S.E.2d at 564.

held that a trial court must read sections 55-125(a)(4) and 55-125.1 together.⁶³ The court stated that when an action is brought under section 55-125(a)(4), the trial court must examine all of the following possibilities:

(1) whether, under N.C.G.S. § 55-125(a)(4), *liquidation* is reasonably necessary; (2) whether, under N.C.G.S. § 55-125.1(a)(1)-(4), *any of the four listed alternatives* are more appropriate than liquidation; (3) whether, under N.C.G.S. § 55-125.1(b) *any other "alternative" relief* is more appropriate than dissolution; or (4) whether, under N.C.G.S. § 55-125.1(b), *any other "alternative" relief, but not dissolution*, is appropriate.⁶⁴

The supreme court stated that for a trial court to order a remedy under sections 55-125(a)(4) and 55-125.1, "it must only be 'established' under N.C.G.S. § 55-125(a)(4) that *relief of some kind*, and not just liquidation, is 'reasonably necessary' for the protection of the complaining shareholder's 'rights and interests.'"⁶⁵ Thus, section 55-125(a)(4) provided relief even when dissolution was not appropriate.⁶⁶

In *Lowder v. All Star Mills, Inc.*⁶⁷ the North Carolina Court of Appeals upheld the trial court's order of corporate dissolution under section 55-125(a)(4) using the *Meiselman* reasonable expectations test. The appellate court found that one minority shareholder of a close corporation had a reasonable expectation that he would have continued employment with a position and compensation reasonably related to his training, experience, and ownership in the companies.⁶⁸ In addition, the minority shareholders had expectations that the corporation would be managed by the controlling officer in accordance with his fiduciary obligations and the applicable law, that their equity in the companies would not be diluted by usurpation of corporate opportunities or diversion of corporate assets to other companies, and that they would have the opportunity to "realize on the value of their equity in the companies."⁶⁹ The appellate court upheld the dissolution, repeating the trial court's finding that the majority share-

63. *Id.* The court reasoned that the two statutes must be read together because, although § 55-125(a)(4) suggests that liquidation is the only relief that may be given if a remedy is "reasonably necessary" for the protection of the minority shareholder, § 55-125.1 gives the court the power to order alternative forms of relief. *Id.* Therefore, under the *Meiselman* test, in order for a complaining shareholder to obtain relief, she need prove only that she is entitled to *some form* of equitable relief, not that she is entitled to dissolution. *Id.* To hold otherwise would be to deny the existence of § 55-125.1. *Id.*

64. *Id.* at 300-01, 307 S.E.2d at 564.

65. *Id.* at 301, 307 S.E.2d at 564. Justice Martin filed a concurring opinion, joined by Chief Justice Branch and Justice Copeland. *Id.* at 314, 307 S.E.2d at 571 (Martin, J., concurring in the result). Justice Martin stated that "the interests of the other shareholders must be . . . balanced . . . in determining whether to grant relief and, if so, the nature, extent and method of relief." *Id.* at 315, 307 S.E.2d at 572 (Martin, J., concurring in the result). Justice Martin asserted that the court should consider several other factors: whether the minority shareholder has pursued all other available statutory means for relief; whether the plaintiff has acted equitably; the effect of granting relief upon the corporation; and whether the plaintiff's condition was a result of oppression by the other shareholders. *Id.* at 315-17, 307 S.E.2d at 571-72 (Martin, J., concurring in the result).

66. *Id.* at 301, 307 S.E.2d at 564.

67. 75 N.C. App. 233, 330 S.E.2d 649, *disc. rev. denied*, 314 N.C. 541, 335 S.E.2d 19 (1985).

68. *Id.* at 243, 330 S.E.2d at 656.

69. *Id.*

holders would align themselves in opposition to the minority shareholders, "making it difficult, if not impossible," for the minority shareholders to realize their reasonable expectations in the future.⁷⁰

The new North Carolina Business Corporation Act was adopted six years after the *Meiselman* ruling.⁷¹ The new Act resulted from the feeling within the general assembly that North Carolina had an "anachronistic" corporation act.⁷² This feeling apparently stemmed from the fact that North Carolina had not amended its corporation act amid the national trend toward takeovers, mergers, and buy-outs, while many neighboring states, including Tennessee, South Carolina, and Virginia had enacted the revised Model Business Corporation Act.⁷³ Thus, the North Carolina corporation act was unsatisfactory because of its age as well as its uniqueness.⁷⁴

To cure the age and uniqueness of the North Carolina statute, both the North Carolina Corporate Law Study Commission and the Business Corporation Act Drafting Committee relied on, and attempted to adopt, the revised Model Business Corporation Act.⁷⁵ Because both the Drafting Committee and the Study Commission concluded that the structure of the revised Model Business Corporation Act was superior to North Carolina's existing Chapter 55, the committee generally did not make changes for stylistic purposes.⁷⁶ The drafters compared each provision of the existing North Carolina statute with the corresponding revised Model Business Corporation Act provision, and variations of the Model Business Corporation Act enacted by Tennessee,⁷⁷ South Carolina,⁷⁸ and Virginia,⁷⁹ as well as relevant provisions from the Delaware⁸⁰ and New York⁸¹ corporate statutes.⁸²

70. *Id.* at 244, 330 S.E.2d at 656.

71. Act of June 8, 1989, ch. 265, 1989 N.C. Sess. Laws —, (codified at N.C. GEN. STAT. ch. 55 (1990)).

72. CORPORATE LAW STUDY COMMISSION, REPORT TO THE 1988 GENERAL ASSEMBLY OF NORTH CAROLINA 3 (1989) [hereinafter COMMISSION REPORT]. The General Assembly established the Corporate Law Study Commission by House Bill 1409 and Senate Bill 950, enacted as Part XIII of Chapter 873 of the 1987 Session Laws. *Id.* at 1. The commission consisted of eight members: three members of the House, three members of the Senate, and two public members. *Id.* The Corporate Law Study Commission focused on the substantive changes and policy decisions as set forth in the revision of the North Carolina Business Corporation Act proposed by the General Statutes Commission together with the Business Corporation Act Drafting Committee. *Id.* at 2.

73. *Id.* at 3; see *infra* notes 77-81 (citations to other state statutes mentioned by commission). The commission stated that the old North Carolina Business Corporation Act had many uncommon provisions that were well-intended at the time of enactment, but were outdated at the time of the study. COMMISSION REPORT, *supra* note 72, at 3.

74. COMMISSION REPORT, *supra* note 72, at 3. The commission report stated that "[t]he current climate dictates that North Carolina shed that [anachronistic] image and be recognized for having a modern and finely-tuned statutory scheme governing business corporations." *Id.*

75. *Id.* at 4.

76. *Id.* The Report stated: "There was a consensus [among committee members] that the structure of the MBCA [revised Model Business Corporation Act] was superior to existing Chapter 55." *Id.*

77. See TENN. CODE ANN. § 48-24-301(2)(B) (1988).

78. See S.C. CODE ANN. §§ 33-1-10 to 33-39-640 (Law. Co-op. 1976).

79. See VA. CODE ANN. §§ 13.1-604 to 13.1-800 (1989).

80. See DEL. CODE ANN. tit. 8 (1983).

81. See N.Y. BUS. CORP. LAW §§ 1 to 1533 (McKinney 1986 & Supp. 1990).

82. COMMISSION REPORT, *supra* note 72, at 4. Alternative provisions were drafted and re-

During the drafting and adoption process, the language of the proposed judicial dissolution section, North Carolina General Statutes section 55-14-30, was changed several times. The language contained in the drafting committee's initial version, introduced to the Senate on February 2, 1989, followed the revised Model Business Corporation Act verbatim.⁸³ The pertinent parts of the drafting committee's initial version stated:

55-14-30 GROUNDS FOR JUDICIAL DISSOLUTION.

The superior court may dissolve a corporation:

- (2) In a proceeding by a shareholder if it is established that . . . (ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent . . . (iv) the corporate assets are being misapplied or wasted⁸⁴

The drafting committee's version, like the corporate statutes of most states, followed the position of the revised Model Business Corporation Act and focused on "illegal, oppressive, or fraudulent" actions of the majority shareholder.⁸⁵ The old North Carolina dissolution section focused on the infringement of the rights and interests of the minority shareholder and did not require any illegal, oppressive, or fraudulent conduct on the part of the majority shareholder.⁸⁶ In interpreting statutes following the revised Model Business Corporation Act's "illegal, oppressive, or fraudulent" language, courts have required wrongful conduct by the majority shareholders.⁸⁷ Thus, the "majority oppression" statutes concentrate on the conduct of the majority shareholders, while under the *Meiselman* test, the trial court is to concentrate on the rights or

viewed. The Drafting committee retained the substance and, in some instances, the form of existing North Carolina provisions when they had "served the State well." *Id.*

83. S. DRS4536, 139th N.C. Gen. Assembly (1989).

84. *Id.*

85. See O'NEAL'S CLOSE CORPORATIONS, *supra* note 7, ch. 9, § 9.29, at 131; see, e.g., GA. CODE ANN. § 14-2-940(a) (1988), ILL. ANN. STAT. ch. 32, para. 12.50(b)(2) (Smith-Hurd 1985), WASH. REV. CODE ANN. § 23A.28.170 (1969).

86. See *supra* note 51 and accompanying text.

87. See *Notzke v. Art Gallery, Inc.*, 84 Ill. App. 3d 294, 299, 405 N.E.2d 839, 843 (1980) (defendants' conspiratorial action depriving plaintiff-shareholder of his share of corporate control and his managerial employment coupled with irregular equity transfers constituted "oppressive conduct"); *Compton v. Paul K. Harding Realty Co.*, 6 Ill. App. 3d 488, 499, 285 N.E.2d 574, 581 (1972) (failure to call meetings of the board of directors, failure to consult with the plaintiff, and reacting to the plaintiff's requests in a lackadaisical manner constituted oppressive conduct); *Ski Roundtop, Inc. v. Hall*, 202 Mont. 260, 277, 658 P.2d 1071, 1080 (1983) ("oppression" suggests "a visible departure from the standards of fair dealing and a violation of fair play on which every shareholder who entrusts his money to a corporation is entitled to rely"); *Baker v. Commercial Body Builders*, 264 Or. 614, 637, 507 P.2d 387, 397 (1973) (conduct of the directors preventing the plaintiffs from examining corporate records and failing to notify plaintiffs of meetings was oppressive conduct). But see *Lynch v. Buchanan*, 37 Md. App. 413, 377 A.2d 592, 596-97 (1977) (corporate loans with interest to majority shareholder, monetary bonuses paid to the majority shareholder for overtime services rendered, and large contributions to the corporate pension and profit-sharing plans of several employees after the minority shareholder left did not constitute majority oppression); *Fix v. Fix Material Co.*, 538 S.W.2d 351, 358-360 (Mo. App. 1976) (long-term management contract with majority shareholders, failure of majority shareholder to attend special meetings called by the minority shareholder, heavy losses arising from the sale of corporate assets, failure to provide monthly financial statements, and salary increases to majority shareholders did not constitute majority oppression); *Iwasaki v. Iwasaki Bros., Inc.*, 58 Or. App. 543, 547-49, 649 P.2d 598, 601-02 (1982) (failure to declare dividends, payments of excessive nature, removal of plaintiff/shareholder from the board of directors by vote, and corporate gifts to a director did not constitute majority oppression).

interests the complaining shareholder has in the corporation and whether those rights and interests are in need of protection.⁸⁸ In interpreting the word "oppressive" in the oppressive conduct requirement, most states have found that "[t]he word does not necessarily savor of fraud and even the absence of mismanagement or misapplication of assets does not prevent a finding."⁸⁹

The North Carolina Business Corporation Act Drafting Committee decided to delete the "illegal, oppressive, or fraudulent" language of the revised Model Business Corporation Act contained in its initial version, and in its place substituted language from the old dissolution section: that "liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder."⁹⁰ The committee redrafted section 55-14-30(2)(ii) to include the language of former section 55-125(a)(4) to reflect that courts should employ a balancing test when deciding whether to order dissolution.⁹¹ In addition, the committee preferred to retain the language of section 55-125(a)(4) over the language of section 14-30(2)(ii) of the revised Business Corporation Act "because courts in other states appear[ed] to be employing so broad a definition of 'oppressive' that its language now appears more permissive than North Carolina's present statute [section 55-125(a)(4)]."⁹²

Had the drafting committee's initial version been enacted, the use of the revised Model Business Corporation Act's "illegal, oppressive, or fraudulent conduct" standard might not have reduced the judicial protection afforded a minority shareholder. The New York Court of Appeals, in defining the scope of "oppressive," has said: "Given the nature of close corporations and the remedial purpose of the statute, this court holds that utilizing a complaining shareholder's 'reasonable expectations' as a means of identifying and measuring

88. *Meiselman*, 309 N.C. at 306, 307 S.E.2d at 562; see *supra* text accompanying note 51.

89. *Compton*, 6 Ill. App. at 499, 285 N.E.2d at 581 ("oppression" does not have an "essential inference of imminent disaster, but can contemplate a continuing course of conduct"); see also cases cited *supra* note 87.

90. See Business Corporation Act Drafting Committee Minutes at 11-12 (Jan. 18, 1988). The Judiciary II Committee version contained the language "rights and interests of the complaining shareholder" of § 55-125(a)(4). S. 280, Judiciary II Committee Substitute, adopted May 3, 1989, General Assembly of N.C., (1989). The pertinent part of the bill reads "The superior court may dissolve a corporation . . . [i]n a proceeding by a shareholder if it is established that . . . (ii) liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder . . . (iv) the corporate assets are being misapplied or wasted." *Id.*

91. Business Corporation Drafting Committee Minutes, *supra* note 90, at 12. Russell M. Robinson, chairman of the Drafting Committee, proposed the substitution, stating that "he liked the use of the word 'reasonably' in the present statute; he was of the opinion that a balancing test should be employed." *Id.* at 11; see *Meiselman*, 309 N.C. at 297, 307 S.E.2d at 562 (quoting *Henry George & Sons, Inc. v. Cooper-George, Inc.*, 95 Wash. 2d 944, 952, 632 P.2d 512, 516-17 (1981)) (the question of whether or not to grant relief to the complaining shareholder "is essentially one for resolution through the familiar balancing process and flexible remedial resources of courts of equity").

The committee noted that South Carolina had added the phrase "or unfairly prejudicial either to the corporation or to any shareholder (whether in his capacity as a shareholder, director, or officer of the corporation)" to the language of 14-30(2)(ii) of the revised Business Corporation Act. Business Corporation Drafting Committee Minutes, *supra* note 90, at 12; see S.C. CODE ANN. § 33-21-150(a)(4)(B) (Law. Co-op. 1976).

92. Business Corporation Drafting Committee Minutes, *supra* note 90, at 12.

conduct alleged to be oppressive is appropriate."⁹³ The North Dakota Supreme Court has ruled that oppressive conduct could be found when the minority shareholders' reasonable expectations were frustrated.⁹⁴

The change back to the "rights and interests of the complaining shareholder" language, however, was made and contained in the Judiciary II Committee substitute ratified by the general assembly on May 3, 1989.⁹⁵ The ratified version also included the revised Model Business Corporation Act language that allows dissolution when "the corporate assets are being misapplied or wasted."⁹⁶ The other dissolution provisions of the new Act are carried over from the old Act.⁹⁷ The entire general assembly ratified the Judiciary II Committee's version of section 55-14-30 as part of the new Act on June 6, 1989.⁹⁸

Including the language "liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder" in the new Act constitutes clear evidence of legislative intent to maintain the existing *Meiselman* standard.⁹⁹ That the drafting committee revised its initial version containing the "oppressive or fraudulent" language of the revised Model Business Corporation Act highlights the legislative intent to maintain the *Meiselman* standard. As a result, minority shareholders still will have relief based on the reasonable expectations test voiced in *Meiselman*.¹⁰⁰

93. *In re Kemp & Beatley, Inc.*, 64 N.Y.2d 63, 73, 473 N.E.2d 1173, 1179 (1984).

94. *See Balvik v. Sylvester*, 411 N.W.2d 383, 387-88 (N.D. 1987).

95. S. 280, Judiciary II Committee Substitute, adopted May 3, 1989, General Assembly of N.C. The pertinent part of the bill states: "The superior court may dissolve a corporation . . . [i]n a proceeding by a shareholder if it is established that . . . (ii) liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder" *Id.*

96. *Id.* The pertinent part of the bill states, "The court may dissolve a corporation . . . [i]n a proceeding by a shareholder if it is established that . . . (iv) the corporate assets are being misapplied or wasted." *Id.* In *Meiselman*, the North Carolina Supreme Court recognized that shareholders are protected from usurpation of corporate opportunities and diversion of corporate assets by a corporate fiduciary. *Meiselman v. Meiselman*, 309 N.C. 279, 307, 307 S.E.2d 551, 567 (1983) (quoting *Brite v. Penny*, 157 N.C. 110, 115, 72 S.E.2d 964, 966 (1911)) ("The law would not permit him [a corporate officer] to act in any such double capacity to appropriate business for himself belonging legitimately to his corporation and to reap the profits of it."); *see also Lowder v. All Star Mills, Inc.*, 75 N.C. App. 233, 240, 330 S.E.2d 649, 654, *cert. denied*, 314 N.C. 541, 335 S.E.2d 19 (1985).

97. *Compare* Act of May 26, 1955, ch. 1371, § 55-125, 1955 N.C. Sess. Laws 1509 (codified as amended at N.C. GEN. STAT. § 55-125(a) (1982)) with N.C. GEN. STAT. § 55-14-30(b) (1990).

98. Act of June 6, 1989, ch. 265 (codified at N.C. GEN. STAT. § 55-14-30 (1990)). The provisions of § 55-125.1 were not included in the new Act. N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990).

99. The Drafting Committee's initial version contained the "illegal, fraudulent, or oppressive" language of the revised Model Business Corporation Act, while the Committee substitute adopted on May 3, 1989 contained the language of old § 55-125(a)(4). The old statute provided that the court has the power to liquidate the corporation when it is established that "[l]iquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder." Act of May 26, 1955, ch. 1371, 1955 N.C. Sess. Laws 1509 (codified as amended at N.C. GEN. STAT. § 55-125(a)(4) (1982) and replaced by N.C. GEN. STAT. § 55-14-30 (1990)). The new statute provides the same: that the court shall have the power to dissolve the corporation when it is established that "liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder." N.C. GEN. STAT. § 55-14-30(2)(ii) (1990) (for the purposes of the statute "dissolve" is the same as "liquidate").

100. The court explained that:

For plaintiff to obtain relief under the expectations' analysis, he must prove that (1) he had one or more substantial reasonable expectations known or assumed by the other participants; (2) the expectation has been frustrated; (3) the frustration was without fault of plain-

The final part of the *Meiselman* test—the requirement that the shareholder show that he “is entitled to some form of equitable relief”¹⁰¹—will change under the new Act, however. A literal reading of the old dissolution section would have suggested that dissolution is the only relief that the trial court may give if judicial relief is “reasonably necessary” for the protection of the complaining shareholder’s “rights and interests”.¹⁰² Under the *Meiselman* ruling, however, the trial court would read the dissolution and the alternative relief sections together, allowing the court to grant relief under section 55-125.1 when some kind of relief, but not dissolution, was appropriate.¹⁰³ Because the alternative discretionary relief provisions of section 55-125.1¹⁰⁴ are not available in the new Act,¹⁰⁵ courts are empowered only to order dissolution as a remedy, and so will read the fourth part of the *Meiselman* reasonable expectations test as: “Under all of the circumstances of the case, plaintiff is entitled to *dissolution*.”

To determine whether the judicial power to render the discretionary relief measures contained in section 55-125.1,¹⁰⁶ the old alternative relief section, exists after July 1990, courts will examine the legislative intent to leave this provision out of the new statute.¹⁰⁷ The North Carolina legislature did intend to eliminate the courts’ statutory power to order the relief measures listed in section 55-125.1. A summary of the proposed new North Carolina Business Corporations Act attached as part of the May 23, 1989, Minutes of the House Subcommittee on Courts and Administrative Hearings¹⁰⁸ stated that “[t]he alternative remedies presently authorized by G.S. 55-125.1 will be replaced by a simpler provision that expressly permits the corporation to buy out the minority shareholder at a judicially determined fair value if involuntary dissolution is or-

tiff and was in large part beyond his control; and (4) under all of the circumstances of the case, plaintiff is entitled to some form of equitable relief.

Meiselman v. Meiselman, 309 N.C. 279, 301, 307 S.E.2d 551, 564 (1983); see *supra* text accompanying notes 52-66. Note that this standard has also been used where the applicable statute contains the majority shareholder oppressive conduct standard of the revised Model Business Corporation Act. See *supra* text accompanying notes 92-94.

101. *Meiselman*, 309 N.C. at 301, 307 S.E.2d at 564.

102. *Id.* at 300, 307 S.E.2d at 563.

103. *Id.* The court stated that “[t]his statute [section 55-125(a)(4)] . . . is not to be read in isolation. Under N.C.G.S. § 55-125.1, the trial court is given the power to order alternative forms of relief for actions brought under N.C.G.S. § 55-125(a).” *Id.*

104. See Act of May 14, 1973, ch. 469, § 41, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1 (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)).

105. N.C. GEN. STAT. § 55-14-30, 31 (1990); see *infra* text accompanying notes 106-33. Courts are less likely to grant dissolution than the less severe relief measures available in section 55-125.1. See *infra* text accompanying notes 143-49.

Section 55-14-31 gives the court discretion to issue injunctions, appoint receivers, and take other actions in a judicial dissolution, but this power is limited to the purpose of protecting the corporate assets and ongoing business of the corporation during dissolution. N.C. GEN. STAT. § 55-14-31(c) (1990).

106. Act of May 14, 1973, ch. 469, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1 (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)).

107. *State v. Lance*, 244 N.C. 455, 458, 94 S.E.2d 335, 338 (1956) (“the intent of the lawmaking body gives the statute its vital force”).

108. The Judiciary II Committee’s version of the proposed act was referred to the Subcommittee on Courts and Administrative Hearings by the Senate after the Senate had adopted the Judiciary II committee’s version.

dered.”¹⁰⁹ In addition, the North Carolina Commentary to section 55-14-31 states that:

Under former G.S. 55-125.1, the court was authorized to grant certain forms of relief (e.g., mandatory purchase of shares) as an alternative to dissolution when dissolution was not appropriate. The Model Act does not authorize alternative relief. This section varies from the Model Act by adding Subsection (d), which authorizes alternative relief in only one instance and then only if the court determines that dissolution would be appropriate and if the corporation elects such alternative relief.¹¹⁰

This commentary establishes that the legislature intended to eliminate the alternative relief measures of the old Act by omitting the old alternative remedy section.

This legislative intent is consistent with viewing the new dissolution section as analogous to an amendment, which can be fairly done because the new dissolution section replaces the dissolution sections of the old Act.¹¹¹ In construing an amendatory statute, the North Carolina courts follow a presumption that “the legislature intended either (a) to change the substance of the original act, or (b) to clarify the meaning of it.”¹¹² This presumption maintains that the legislature intended to change the original Act by creating a new right or withdrawing an existing right.¹¹³ Therefore, any material change in the original act presumably changes the existing legal rights.¹¹⁴ Under this presumption, a court should presume that the elimination of the alternative relief measures was intended to change existing legal rights. The obvious conclusion is that the alternative relief measures are no longer available because the section authorizing these measures has been eliminated.

Additionally, the intentions of the drafting committee of the new North Carolina Business Corporation Act fit the conclusion that the legislature purposefully withdrew the statutory power to order the equitable measures contained in the old alternative remedy section. The committee decided not to carry forward section 55-125.1(1)-(3) because it believed these sections were undesirable.¹¹⁵ In excluding section 125.1(1)-(2)¹¹⁶ from the new Act, the committee acted on its feeling that courts should not be involved in the internal affairs

109. Minutes, North Carolina House Subcommittee on Court and Administrative Hearings, May 23, 1989 at 7.

110. N.C. GEN. STAT. § 55-14-31 (1990), N.C. Comment.

111. *Id.* §§ 55-14-30 to -31 (1990), N.C. Comment.

112. *Childers v. Parker's, Inc.*, 274 N.C. 256, 260, 162 S.E.2d 481, 483 (1968).

113. *Id.* The legislature is presumed to know the prior judicial construction of the original act and an amendment to the original act indicates that a different interpretation should be given to the amendment. N. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 22-30 (4th ed. 1986). This is a rule unique to amendments or other acts purporting to change the existing statutory law. *Id.*

114. N. SINGER, *supra* note 113, at § 22-30. Note, however, that although courts conclude that every amendment has a purpose, “the presumption that a departure from the old law was intended [by the enacting of an amendment] is merely an aid to interpretation—not an absolute rule.” *Childers*, 274 N.C. at 260, 162 S.E.2d at 484.

115. Business Corporation Act Drafting Committee Minutes at 11 (January 18, 1988).

116. Act of May 14, 1973, ch. 469, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1(1)-(2) (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)).

of a corporation.¹¹⁷ Section 55-125.1(1)-(2) gave courts the power to order the cancellation or alteration of any charter or by-law provision and the power to order any canceling, altering, or enjoining of any corporate act or resolution.¹¹⁸ The drafting committee believed that when corporate matters reach a point low enough to justify judicial interference, dissolution is the appropriate remedy.¹¹⁹ The committee believed that section 55-125.1(3),¹²⁰ which allowed courts to enjoin acts of the corporation, shareholders, directors, officers, or other persons that were illegal, fraudulent, or violated a fiduciary duty, was unnecessary because such acts could be enjoined without this provision.¹²¹

The drafting committee omitted the section 55-125.1 provision for a court-ordered share buy-out¹²² because it believed that a corporate buy-out of the minority shareholder's shares should be at the option of the majority shareholders or corporation, not at the discretion of the court.¹²³ Under the new North Carolina Business Corporation Act, the corporation has the *option* to buy out the shares of the complaining shareholder under section 55-14-31(d),¹²⁴ which states:

In any proceeding brought by a shareholder under G.S. 55-14-30(2)(ii) in which the court determines that dissolution would be appropriate, the court shall not order dissolution if, after such determination, the corporation elects to purchase the shares of the complaining shareholder at their fair value, as determined in accordance with such procedures as the court may provide.¹²⁵

Note, however, that the court may authorize a buy-out only if the court has determined that dissolution would be appropriate and if the corporation elects such alternative relief.¹²⁶

Despite the clear legislative intent behind the elimination of section 55-125.1, it can be argued that North Carolina courts might retain some power to

117. Conversation with Thomas Lee Hazen, Professor of Law, The University of North Carolina at Chapel Hill, North Carolina Business Corporation Drafting Committee Member (October 2, 1989) [hereinafter Conversation].

118. Act of May 14, 1973, ch. 469, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1(1)-(2) (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)).

119. Conversation, *supra* note 117.

120. Act of May 14, 1973, ch. 469, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1(4) (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)). Section 55-125.1(4) provided that a court may issue an order "[d]irecting or prohibiting any act of the corporation or of shareholders, directors, officers or other persons party to the action."

121. Conversation, *supra* note 117.

122. Act of May 14, 1973, ch. 469, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1(4) (1982) and replaced by N.C. GEN. STAT. §§ 55-14-30, 55-14-31 (1990)). Section 55-125.1(4) provides that the court may issue an order "[p]roviding for the purchase at their fair market value of shares of any shareholder, either by the corporation or by other shareholders, such fair value to be determined in accordance with such provisions as the court may provide." *Id.*

123. Conversation, *supra* note 117.

124. N.C. GEN. STAT. § 55-14-31(d) (1990). The North Carolina Business Corporation Drafting Committee substituted the court ordered buy-out provision of § 55-125.1 with the optional buy-out provision of § 55-14-31(d) because the committee wanted to discourage minority shareholders from bringing petty suits whose only purpose is to obtain forced buy-out of complaining shareholders' shares. Conversation, *supra* note 117.

125. N.C. GEN. STAT. § 55-14-31(d) (1990).

126. *Id.*

provide alternative relief to dissolution based on the courts' inherent equitable powers. Courts in states with a statute authorizing involuntary dissolution but without provisions for alternative relief are divided on whether courts may grant an alternative remedy based on inherent equitable powers.¹²⁷ In some states where dissolution is the only remedy mentioned in the statute, courts have granted alternative relief when statutory grounds for dissolution have been shown but dissolution is too strong a remedy.¹²⁸ These courts have emphasized the severity of dissolution and have reasoned that alternative remedies give the court relief power appropriate for a wider range of situations.¹²⁹ The removal of the alternative remedies of section 55-125.1 from the new North Carolina Business Corporation Act, however, coupled with the legislative intent that these remedies no longer be available, precludes the application of these remedies under North Carolina's new Act.

In *White v. Perkins*¹³⁰ the Virginia Supreme Court construed a provision of the Virginia Code¹³¹ empowering the court, upon finding majority oppression, to decree dissolution or appoint a custodian. Interpreting the statute, the court found that the legislature intended these two remedies to be exclusive and that it could not grant alternative relief under the statute.¹³² By eliminating the alternative relief measures of the old alternative remedy section, the North Carolina General Assembly demonstrated its intent that these measures no longer be available. Therefore, the relief measures available under the new Act are restricted to dissolution of the corporation, or allowing the corporation to buy out the minority shareholders at fair value.¹³³

Under the Act, courts will be able to control the corporation indirectly through receivership. Under section 55-14-32(a)¹³⁴ of the new statute, a court in a proceeding brought to dissolve a corporation will have the power to "appoint one or more receivers to wind up or liquidate, or to manage, the business and affairs of the corporation" in a judicial proceeding brought to dissolve the corpo-

127. O'NEAL'S CLOSE CORPORATIONS, *supra* note 7, at § 9.37.

128. See, e.g., *McCauley v. Tom McCauley & Son, Inc.*, 104 N.M. 523, 527, 724 P.2d 232, 236 (1986). The court, stating that "[a]n order of corporate dissolution is a drastic remedy and should be utilized sparingly, after consideration of other alternative forms of relief," approved the trial courts' recognition of the remedies of liquidation, partition and reorganization, or purchase of the minority shareholder's outstanding shares by the corporation. *Id.*

129. *Id.*; see *infra* text accompanying notes 144-48.

130. 213 Va. 129, 189 S.E.2d 315 (1972).

131. Section 13.1-94 of the Virginia Code provides: "Any court of record, with general equity jurisdiction . . . shall have full power to liquidate the assets and business of the corporation . . . (a) In an action by a stockholder when it is established: . . . (2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent." VA. CODE ANN. § 13.1-94 (1968) (repealed 1985).

132. *White*, 213 Va. at 135, 189 S.E.2d at 320; see also *Gruenberg v. Goldmine Plantation Inc.*, 360 So. 2d 884, 887 (La. Ct. App. 1978) ("Our substantive law provides for involuntary dissolution but offers no remedy for the minority shareholder with substantial holdings who is locked out of control and trapped in a close corporation.").

133. Robinson, THE NEW NORTH CAROLINA BUSINESS CORPORATION ACT, NOTES BEARING INTEREST, North Carolina Bar Association Business Law Section Newsletter, Sept. 1989 at 4. (Russell M. Robinson II was chairman of the Business Corporation Act Drafting Committee of the General Statutes Commission, 1985-1989.).

134. N.C. GEN. STAT. § 55-14-32(a) (1990).

ration.¹³⁵ Although this provision apparently gives the court some alternative relief through management of the corporation's internal affairs, the receiver, not the court, will decide the management issues.¹³⁶

Compared with the old Act, the new North Carolina Business Corporation Act undeniably constricts the statutory relief available to the minority shareholder. Although courts will still apply the same basic *Meiselman* test¹³⁷ to determine whether a complaining shareholder's reasonable expectations have been frustrated, the new act withdraws the alternative relief measures of the old Act.¹³⁸ As a result, North Carolina courts have decreased flexibility in tailoring an appropriate remedy in shareholder disputes.¹³⁹

Under the new Act, the trial court's statutory remedies are dissolution and the optional minority share buy-out.¹⁴⁰ Because dissolution is a more severe remedy than the alternative remedies available under section 55-125.1, the trial court will be less likely to order any relief under the new statute than under the old dissolution statute.

In interpreting the old statute, the *Meiselman* court stated that, after the plaintiff had proved that his "reasonable rights and interests" were being contravened, the trial court, "in deciding whether to grant relief, 'must exercise its equitable discretion, and consider the actual benefit and injury to [all of] the shareholders resulting from dissolution' or other possible relief."¹⁴¹ The court went on to say that "[t]he question is essentially one for resolution through the familiar balancing process and flexible remedial resources of courts of equity."¹⁴² The court further stated that "[t]o hold otherwise would allow a plaintiff to demand at will dissolution of a corporation or a forced buy-out of his shares or other relief at the expense of the corporation and without regard to the rights and interests of the other shareholders."¹⁴³

Under the new dissolution section, the court has *only* the power to order dissolution. In balancing the benefits and injuries to shareholders resulting from court-ordered relief, the trial court will be less hesitant to order relief under the new dissolution section than the old dissolution and alternative relief sections

135. *Id.*

136. N.C. GEN. STAT. § 55-14-32 (1990). Under § 125.1, the court had the power to cancel, alter or enjoin by-law and charter provisions, as well as direct or prohibit any act of the corporation, or of its shareholders, directors, and officers. Act of May 14, 1973, ch. 469, § 41, 1973 N.C. Sess. Laws 557 (codified at N.C. GEN. STAT. § 55-125.1(1)-(2) (1982) and replaced by N.C. GEN. STAT. § 55-14-30 (1990)).

137. See *supra* notes 102-04 and accompanying text for an explanation of the one modification of the *Meiselman* reasonable expectations test under the new Act.

138. In addition, by withdrawing the relief measures available in § 55-125.1, the new Act changes the *Meiselman* test, requiring that liquidation, not just relief of some kind, be reasonably necessary for the protection of the complaining shareholder's rights and interests before courts will apply the new dissolution statute.

139. O'Neal, *The Charlotte Observer*, May 20, 1989, § A, at 18.

140. For a discussion of the minority share buy-out, see notes 122-26 and accompanying text.

141. *Meiselman v. Meiselman*, 309 N.C. 279, 297, 307 S.E.2d 551, 562 (1983) (quoting *Henry George & Sons, Inc. v. Cooper-George, Inc.*, 95 Wash. 2d 944, 951, 632 P.2d 512, 516 (1981)).

142. *Id.* (quoting *Henry George & Sons, Inc. v. Cooper-George, Inc.*, 95 Wash. 2d 944, 951, 632 P.2d 512, 516 (1981)).

143. *Meiselman*, 309 N.C. at 297, 307 S.E.2d at 562.

because dissolution has such severe consequences. The trial court cannot ignore the practical consequences that terminating a going business will have on the corporation's employees, suppliers, and customers.¹⁴⁴ These considerations prevent a mechanical application of dissolution.¹⁴⁵ As Illinois and Nebraska courts have stated, "the remedy of dissolution is so drastic that it must be invoked with extreme caution."¹⁴⁶

Professor Earnest L. Folk, III, in proposing alternatives to the dissolution relief measures contained in section 55-125¹⁴⁷ (at the time of writing, section 55-125.1 had not yet been enacted), stated:

[Dissolution] is thus sufficiently drastic that many courts shrink from it as court-enforced corporate suicide (or judicial murder) hoping for the impasse to break—something that can never happen if the enterprise dies by court decree. Hence the observable judicial reluctance to order dissolution, even when statutes give courts that power. Their discretion as to exercising the power tempts them to withhold it. Courts may also feel, however incorrectly, that the fighting shareholders do not in their heart of hearts wish to destroy the enterprise and will regret it if the act is done.¹⁴⁸

Under the new Act, if the trial court decides, after balancing the benefits and injuries to the shareholders, that dissolution is an appropriate remedy, the corporation still has the option to redeem the complaining shareholder's shares at their fair value, as determined in accordance with such procedures as the court may provide.¹⁴⁹ However, this procedure allows the majority shareholder to take away the minority shareholder's corporate ownership, albeit at a "fair price." The buy-out may allow the minority to realize the fair value of his shares, but by nature, it prevents the protection of his reasonable expectations as an owner.

Professor F. Hodge O'Neal,¹⁵⁰ commenting on the proposed Act which failed to include the alternative relief measures, stated:

North Carolina led the nation in 1955 by enacting pioneering legislation to protect people holding minority interests in corporations against arbitrary and oppressive action and self-dealing by directors and controlling shareholders. . . . Since 1955, these laws have preserved an appropriate balance between the majority shareholders' right to control a corporation and the protection holders of minority interests in N.C. corporations deserve against the kind of high-handed, un-

144. See Comment, *Oppression of Minority Shareholders: A Proposed Model and Suggested Remedies*, 47 Miss. L.J. 476, 496-97 (1976) (discussing cases and commentary dealing with oppression by majority shareholders, suggesting a model for determining when dissolution is an appropriate remedy, and examining various types of alternative relief).

145. *Id.*

146. *Polikoff v. Dole & Clark Bldg. Corp.*, 37 Ill. App. 2d 29, 36, 184 N.E.2d 792, 795 (1962); *Hockenberger v. Curry*, 191 Neb. 404, 406, 215 N.W.2d 627, 628 (1974) (quoting *Polikoff*, at 36, 184 N.E.2d at 795).

147. Folk, *supra* note 32, at 864.

148. *Id.* at 865-66.

149. N.C. GEN. STAT. § 55-14-31(d) (1990).

150. For other commentary by Professor O'Neal, see notes 7-8.

scrupulous abuse of power that is so widespread throughout the country.

Fair, balanced business law encourages people to invest in businesses; on the other hand, law that sets the stage for mistreatment of investors of course discourages investment. Since World War II, I have studied corporations and minority shareholder problems—16 of those years being spent in North Carolina—and I have coauthored two two-volume treatises dealing with these subjects. I am distressed that a state which has been a “shining light” may abandon minority shareholder protection that it pioneered.¹⁵¹

With the enactment of section 55-14-30 and the elimination of the old alternative remedy section, the balance of legal rights between the majority and minority shareholders of the close corporation in North Carolina has shifted. The minority shareholders no longer have access to the alternative remedies of section 55-125.1 in a squeeze-out situation; North Carolina courts are currently empowered only to grant dissolution or the buy-out of the minority shareholders shares at the option of the majority. As a result, the minority shareholder has less protection against abuse of majority share power; courts are hesitant to order dissolution and the minority share buy-out deprives the minority shareholder of continued enjoyment in the corporation's future.

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151. O'Neal, *supra* note 139, at 18.