TABLE OF CONTENTS

	on ledgments. lion	iii v vii
	CHAPTER 1	
	Overview of Shareholder Derivative Litigation	
§ 1.01 § 1.02	The Shareholder of the Modern Corporation The Shareholder Derivative Action:	1-2
	Definition	1-8
	Litigation	1-8
	Direct Action	1-9
§ 1.03	History	1-17
	[1] Early History	1-17
	[2] Derivative Suits Today	1-25
§ 1.04	Statutes Affecting Derivative Lawsuits [1] The Private Securities Litigation	1-30
	Reform Act (PSLRA)	1-30
	[a] Purposes of the Reform Act	1-31
	[b] Provisions of the Reform Act [i] Reduction of Abusive	1-32
	Litigation [ii] Reduction of Coercive	1-32
	Settlements	1-42
	Corporate Fraud [c] Evaluating the Impact of	1-43
	the PSLRA	1-45

xii	SHAREHOLDER DERIVATIVE LITIGATION	1
	[2] Securities Litigation Uniform Standard Act (SLUSA) of 1998	. 1-47
	[3] The Sarbanes-Oxley Act of 2002 [4] The Dodd-Frank Wall Street Reform	
	and Consumer Protection Act	
§ 1.05	[5] Corporate Bylaws	
	CHAPTER 2	
	The Role of the Delaware Court of Chancery i Shareholder Derivative Litigation	n
§ 2.01	Introduction	. 2-1
§ 2.02	The Birth of Delaware's General Corporations Law	. 2-3
§ 2.03	The Role of the Delaware Court of Chancery	
Ü	[1] Influence of English Courts of Equity	
	[2] Establishment and Growth of Equity	2.0
§ 2.04	Jurisprudence in Delaware Conclusion	
	CHAPTER 3	
	The Role of the Business Judgment Rule	
	in Derivative Suits	
§ 3.01	In General	. 3-2
	[1] The Business Judgment Rule Defined	
	[2] The Entire Fairness Standard	
	[3] Escaping Entire Fairness Review [a] Shareholder Ratification Under the	. 3-11
	Corwin Doctrine	. 3-11
	[b] Use of an Independent Committee	
	[4] The Contemporary Reexamination of	
\$ 2.02	the Business Judgment Rule	
§ 3.02 § 3.03	Rationale for the Business Judgment Rule Elements of the Business Judgment Rule	
g 5.05	[1] Exercise of Business Judgment	
	[2] The Duty of Loyalty	
	[a] Disinterestedness	
	[b] Independence	. 3-24
	[3] The Duty of Due Care	
	[3A] The Duty of Oversight	. 3-30
	[a] Caremark Claims	. 3-30

		7	TABLE OF CONTENTS	xiii
		[b]	Fairness Opinions and the	
			Engagement of Financial	
			Advisors	3-34
		[c]	Conflict of Interest	3-35
		[d]	Regulating Conflicts of Interest	3-44
	[4]	"Go	od Faith" or "In the Best Interests	
		of	the Corporation"	3-47
		[a]	Waste	3-49
§ 3.04	Fidu		Outies in Context of Change of	
3			te Control	3-52.1
	[1]		cal and the Creation of the Change	0 02.1
	[+]		Control Doctrine	3-52.1
	[2]		Revlon Duties	3-52.3
	[3]		"R" Us	3-62.1
	[3]			3-62.1
		[a]	Background of the Case	
		[b]		3-62.2
		[c]		2.64
	F 43		Measures	3-64
	[4]		fidentiality Agreements—Martin	
			arietta Materials, Inc. v. Vulcan	
			aterials Co	3-65
		[a]	Background of the Case	3-65
		[b]	The Parties' Legal Arguments	3-69
		[c]	The Chancery Court's Legal	
			Analysis	3-71
		[d]	The Chancery Court Grants	
			Injunctive Relief	3-76
	[5]	Shar	reholder Protective Measures in	
			esponse to Activist Investors	3-78
§ 3.05	Fidu		Outies and Controlling Stockholders	3-81
3 5.00	[1]		at Qualifies as "Controlling"?	3-82
	[2]		Evolution of Entire Fairness	3 02
	[~]		eview in Controlling Shareholder	
				3-85
			ansactions Mergers with Controlling	3-03
		[a]		
			Shareholders: Shifting the	2 05
		F1-3	Burden Under <i>Lynch</i>	3-85
		[b]	Departing from <i>Lynch</i> via Tender	2.00
			Offers	3-89
		[c]	Questioning <i>Lynch</i> 's Approach	3-92
		[d]	Adopting the Unified Standard:	
			In re MFW Shareholders'	
			Litigation and Its Progeny	3-101
		[e]	Applying the MFW Framework	
			Beyond Controlling Shareholder	
			Freeze-Out Transactions	3-106
				(Rel. 21)

xiv	SHAREHOLDER DERIVATIVE LITIGATION	
	[f] Conditioning a Transaction on the MFW Procedures	
§ 3.06	The Business Judgment Rule in the Context of Derivative Litigation	
	CHAPTER 4	
T	he Demand Requirement and Other Prerequisites	
	to Shareholder Derivative Litigation	
§ 4.01	In General	
§ 4.02	Purpose of the Demand Requirement	
§ 4.03	Adequacy of the Demand 4-8	
Ü	[1] Alerting the Board of Directors 4-10	
	[2] Content of the Demand 4-12	
	[3] Assistance of the Shareholder 4-14	
	[4] Time to Respond to the Demand 4-14	
§ 4.04	Demand on Shareholders 4-16.1	
§ 4.05	Choice of Law Considerations 4-19	
· ·	[1] Federal Court Actions 4-19	
	[2] State Court Actions 4-23	
	[3] Choice of Law Issues Surrounding	
	Demand on Shareholders 4-26	
	[4] Effect of Forum Selection Bylaws on	
	Derivative Plaintiffs 4-26	
	[5] Choice of Law Issues for Hedge Funds 4-32.2	
§ 4.06	Survey of State Demand Requirements 4-32.4	
§ 4.07	The Universal Demand Requirement. 4-33	
§ 4.08	The Standing Requirement. 4-38	
3	[1] Stock Ownership at the Time Suit	
	Is Commenced	
	[2] Stock Ownership at the Time of the	
	Conduct Being Challenged 4-45	
	[a] Generally 4-45	
	[b] Choice of Law Issues Regarding	
	Stock Ownership 4-49	
	*	
	[3] Exceptions to the Contemporaneous Ownership Rule	
	[4] Equitable Standing. 4-56	

	TABLE OF CONTENTS	XV
	[a] Standing for Corporate Directors in Derivative Actions?	4-56
	of Limited Liability Companies [5] Effect of Merger on Standing to Sue	4-57
	Derivatively	4-60
	[6] Effect of Bankruptcy on Shareholder	4-70
	Standing	
	Public Offering	4-72.1 4-72.2
	[9] Double (and Multi-Tier) Derivative	4-/2.2
	Actions	4-72.3
	[a] Rationale for Double Derivative	
	Actions	4-72.4
	[b] The Requirement of Injury to the	4 70 5
	Parent Corporation	4-72.5 4-72.6
	[c] Ownership Requirements	4-72.6
	Lawsuits	4-72.7
§ 4.09	Fair and Adequate Representation	4-73
3	[1] In General	4-73
	[2] Factors Considered	4-76
	[a] The "Professional Plaintiff"	4-79
	[b] Simultaneous Prosecution of Class	4.02
	and Derivative Actions	4-83
e 4 10	[c] The "Fast-Filer" Presumption	4-86
§ 4.10 § 4.11	Security-for-Expense Statutes Corporation's Ability to Recover Expenses	4-91 4-95
y 1 .11	Corporation's Ability to Recover Expenses	4-73
	CHAPTER 5	
	Demand Futility	
§ 5.01	In General	5-2
§ 5.02	Pleading Demand Futility	5-4
§ 5.03	Applicable Legal Standards	5-9
	[1] The Delaware Test	5-10
	[a] Aronson v. Lewis: Action by	
	Board of Directors	5-11
	[b] Reasonable Doubt[c] The First Prong of the <i>Aronson</i>	5-12
	Test	5-13
	[i] Interestedness	5-13
	[ii] Independence	5-14

xvi	SHAREHOLDER DERIVATIVE LITIGATION	
	[d] The Second Prong of the <i>Aronson</i> Test: Valid Business Judgment	5-16
	[e] Rales v. Blasband: Non-Action by	5 15
	Board of Directors	5-17
	[f] Moving Towards a New Test: Comparing Aronson and Rales	5-18
	[g] A Sea Change: Delaware's Single,	J=10
	Three-Prong Test	5-23
	[h] Determining Which Board to	
	Evaluate	5-27
	[2] The New York Test	5-29
	[3] The Maryland Test	5-30
e <i>5</i> 0.4	[4] The Indiana Test	5-31
§ 5.04	Common Grounds for Allegations of	5-33
	Demand Futility	5-33
	[2] Approval or Acquiescence of the	3-33
	Challenged Transaction	5-34
	[3] Financial Interest and Director	
	Compensation	5-34.2
	[4] Entrenchment	5-39
	[5] Domination and Control	5-43
	[6] Personal Friendships	
	and Other Relationships	5-47
	[7] Philanthropic Ties	5-52
	[8] Threat of Personal Liability	5-54 5-62
	[9] Failure of Oversight (<i>Caremark</i> Claims) [a] <i>Caremark</i> 's First Prong:	3-02
	Board-Level Oversight	
	and Controls	5-63
	[b] Caremark's Second Prong:	
	Ignoring Red Flags	5-71
	[10] Engaging in Illegal Conduct	5-85
	[11] Insured Versus Insured Exclusion	5-86.4
	[12] Claims of Waste	5-87
e <i>5</i> 0 <i>5</i>	[13] Activity After Suit Is Filed	5-90.3
§ 5.05	Effects of a Demand Futility Dismissal [1] Demand Futility Allegations and Issue	5-90.5
	[1] Demand Futility Allegations and Issue Preclusion	5-90.6
	[2] Privity Between Multiple Shareholders	5-90.8
	[3] Adequacy of Representation	5-90.16
§ 5.06	Appellate Review of Demand Futility	
J	Determinations	5-90.27
§ 5.07	Demand Futility and the 2008 Financial Crisis	5-92
	[1] Citigroup and the Failure to	
	Monitor Risks	5-92

	TABLE OF CONTENTS	xvi
	[2] Dow, Goldman Sachs, and the Reaffirmation of the Business Judgment Rule	5-97
	[3] Increased Oversight of Executive	5-101
	Compensation	3-101
	CHAPTER 6	
	Board Responses in	
	Demand-Required Cases	
§ 6.01	In General	6-2
§ 6.02	The Wrongful Refusal Rule	6-3
§ 6.03	Inspection of Books and Records Under	
	Section 220	6-8
	[1] Proper Purpose	6-10
	[2] Scope of Inspection	6-14.2
	[3] Standing	6-23
	[4] Judicial Limitations on Books and Records Actions	6-25
	[5] Effect of Section 220 Demand	0-23
	Requestor's Identity	6-26.1
	[a] Section 220 Demand by Requestor	0 20.1
	Not Involved in Pending	
	Derivative Litigation	6-26.1
	[b] Section 220 Demand by Plaintiff	
	in Pending Derivative	
	Litigation	6-26.3
	[c] Section 220 in Demand-Refused	6.06.4
	Cases	6-26.4
	[d] Section 220 Demand by Corporate Director	6-26.8
	[6] Books and Records Demands in	0-20.8
	Other Jurisdictions	6-26.9
§ 6.04	The Modified Business Judgment Rule in	0 20.9
0	Wrongful Refusal Cases	6-26.11
§ 6.05	Demand as Concession of Independence	
§ 6.06	Lack of Due Care or Good Faith as a Basis	
	for Wrongful Refusal	6-31
	[1] Reasonableness of Investigation	6-31
	[2] Good Faith	6-39
8 6 07	[3] Independence of Counsel	6-40
§ 6.07 § 6.08	Use of a Committee to Review Demand Consideration of Factors Other Than the	6-44
y 0.00	Merits in Reviewing a Demand	6-50
	manu	0-30

SHAREHOLDER DERIVATIVE LITIGATION

CHAPTER 7

Board Responses in Demand-Excused Cases: The Special Litigation Committee

§ 7.01	In General	7-2
§ 7.02	Judicial Treatment of Special Litigation	
	Committees	7-5
	[1] The New York Rule	7-5
	[2] The Delaware Rule	7-10
	[3] The Massachusetts Approach	7-19
	[4] The Second Circuit Approach	7-22
	[5] The Iowa Rule	7-25
	[6] The North Carolina Rule	7-26
	[7] The New Jersey Rule	7-27
§ 7.03	The Theory of Structural Bias	7-30
§ 7.04	Statutory Responses to Special Litigation	= 0.4
	Committees	7-34
§ 7.05	Independence, Good Faith, and Due Care:	
	Characteristics of an Adequate Special	
	Litigation Procedure	7-37
	[1] Independent Committee	7-37
	[2] Adequate Procedures	7-42
	[3] Thorough Consideration of Potential	
	Claims	7-50
	[4] Stays and Timing of the Special	
	Litigation Committee's Review	7-52.1
§ 7.06	The ALI Approach and the Future of	
	the Delaware Two-Step	7-59
	CHAPTER 8	
	Special Issues with	
	Outside Director Liability	
§ 8.01	Introduction	8-2
§ 8.02	In re Walt Disney Company Derivative	
	Litigation	8-4
	[1] Breach of Fiduciary Duty	8-4
	[2] Allegations of Egregious Director	
	Misconduct	8-4
	[3] Exception to the Business Judgment	
	Rule	8-5
§ 8.03	In re Emerging Communications, Inc.	
	Shareholders Litigation	8-9
	[1] Theory of the Case: Fairness Standard	
	of Review	8-9

	TABLE OF CONTENTS	xix
	[2] Unfair Dealing: Specialized Financial	
	Expertise	8-9
	[3] Breaches of Fiduciary Duty	0.10
0.004	and Loyalty	8-10
§ 8.04	Integrated Health Services, Inc. v. Elkins	8-13
	[1] Outside Director Misconduct and	0 12
	Personal Liability	8-13 8-13
§ 8.05	In re Oracle Corporation Derivative	0-13
8 0.03	Litigation	8-16
	[1] Misappropriation of Inside Information	8-16
	[2] Heightened Scrutiny	8-16
§ 8.06	Disney's Impact on Settlements of Shareholder	0 10
3	Derivative Litigation	8-18
	[1] Enron	8-19
	[2] Worldcom	8-20
§ 8.07	The Road Forward: Recent Conceptions of	
	Outside Directors' Liability	8-22
	CHAPTER 9	
	Procedural Issues in Derivative Litigation	
§ 9.01	In Ganaral	9-1
§ 9.01 § 9.02	In General	9-2
8 9.02	[1] Diversity Jurisdiction	9-2 9-2
	[2] Amount in Controversy for Purposes	<i>)-<u>L</u></i>
	of Diversity Jurisdiction	9-4
	[3] Ripeness	9-5
§ 9.03	Personal Jurisdiction	9-7
§ 9.04	Venue and Process	9-8.2
§ 9.05	Verification of the Complaint	9-9
§ 9.06	Right to a Jury Trial	9-11
§ 9.07	Discovery	9-13
§ 9.08		9-20
	CHAPTER 10	
	An Overview of the Attorney-Client Privilege	
	and Work Product Doctrine	
§ 10.01	Setting the Stage	10-2
§ 10.01	The Attorney-Client Privilege: Background	10 2
··· -	and Definition	10-4

XX	SHAREHOLDER DERIVATIVE LITIGATION	
§ 10.03	The Attorney-Client Privilege in the	
	Corporate Context	10-8
	[1] Application of the Attorney-Client	
	Privilege to Corporations	10-8
	[2] Scope of the Attorney-Client Privilege	10 10
	in the Corporate Context	10-10
	[a] The Control Group Test	10-13 10-15
	[b] The Subject Matter Test [c] Hybrid Approaches	10-13
	[3] Directors' Access to Privileged	10-10
	Information	10-18
	[4] Attorney-Client Privilege for	10 10
	Communications That Include	
	an Investment Banker	10-20.1
§ 10.04	Exceptions to the Attorney-Client Privilege	10-20.3
3	[1] The Fiduciary Exception	10-20.3
	[2] The Crime-Fraud Exception	10-20.3
	[3] Other Exceptions	10-23
§ 10.05	Waiver of the Attorney-Client Privilege	10-25
_	[1] The Corporate Client	10-25
	[2] Implied Waiver in General	10-28
	[3] Disclosure to Government Agencies	10-29
	[4] Disclosure to Insurance Carriers	10-39
	[5] Disclosure to Outside Auditors	10-41
	[6] Inadvertent Disclosure	10-42
	[7] Reliance on Advice of Counsel	10-47
	[8] Effect of Waiver by Corporation on	
	Corporate Officers or Employees	10-50
§ 10.06	The Work Product Doctrine	10-52
§ 10.07	Exceptions to and Waiver of the Work	40
	Product Doctrine	10-56
	[1] Exceptions to the Work Product	10 76
	Doctrine	10-56
0 10 00	[2] Waiver of Work Product Protection	10-58
§ 10.08	The Self-Evaluative or Self-Critical Analysis	10 (2
	Privilege	10-63
	CHAPTER 11	
	Special Issues Regarding the Attorney-Client	
	Privilege and Work Product Doctrine in	
	Shareholder Derivative Litigation	
§ 11.01	In General	11-1
§ 11.02	Development of the Fiduciary Exception	11-4

	TABLE OF CONTENTS	xxi
§ 11.03	Application of the Fiduciary Exception [1] Generally [2] Expansion of the <i>Garner</i> Fiduciary	11-8 11-9
	Exception Beyond Derivative Actions [3] Criticism of the <i>Garner</i> Fiduciary	11-11
§ 11.04	Exception	11-16
§ 11.05	the Derivative Context	11-20
	the Class Action Context	11-24
	from Class Actions	11-24
§ 11.06	Shareholders	11-25
	Product Doctrine in the Derivative Context	11-27
	[1] Mandated Disclosure	11-27
	Investigation	11-30
	CHAPTER 12	
	Indemnification	
§ 12.01	In General	12-2
§ 12.02	Statutory Indemnification	12-5
	[1] Indemnification Statutes Generally[2] Prerequisites to Statutory	12-5
	Indemnification	12-7
	[a] Who May Be Indemnified	12-7
	[b] Proceedings Covered	12-9
	[3] Mandatory Indemnification by Statute	12-10 12-10
	[a] Degree of Success Required [b] Nature of the Success Required	12-10
§ 12.03	Mandatory Indemnification by Charter,	12-11
	By-law, or Agreement	12-15
§ 12.04	Permissive Indemnification	12-17
	Indemnification	12-17
	Indemnification	12-18

xxii	SHAREHOLDER DERIVATIVE LITIGATION	
§ 12.05	Non-Exclusivity Provisions and the Public	
	Policy Limitation	12-23
§ 12.06	Court-Ordered Indemnification	12-29
§ 12.07	Disclosure of Indemnification	12-32
§ 12.08	Indemnification and the Federal Securities	
	Laws	12-33
§ 12.09	Advancement of Expenses	12-36
	[1] Timing of Advancement	12-39
	[2] Non-Exclusivity of Advancement	
	Rights	12-44
§ 12.10	Advancement of Expenses to Former Officers	
	and Directors	12-46
	CHAPTER 13	
	D&O Liability Insurance	
§ 13.01	In General	13-2
§ 13.02	Enabling Statutes	13-5
§ 13.03	Basic Features of a D&O Liability Policy	13-7
U	[1] The Insuring Clauses	13-7
	[2] "Claims-Made" Policy	13-8
§ 13.04	Defined Terms	13-12
Ü	[1] "Wrongful Act"	13-12
	[2] "Loss"	13-14.1
§ 13.05	Exclusions	13-15
	[1] Insured Versus Insured	13-15
	[2] Antitakeover Exclusion	13-24
	[3] Prior or Pending Litigation	13-25
	[4] Fraud	13-26.1
§ 13.06	Reporting and Notice	13-27
	[1] Claim Reporting Requirement	13-27
	[2] The Occurrence Exception to the	
	Claims-Made Rule	13-28
	[3] Discovery Period	13-29
§ 13.07	Defense of Actions	13-31
	[1] Advancement of Defense Expenses	13-31
	[2] Allocation of Settlement Costs and	
	Defense Expenses	13-35
	[a] The Relative Exposure Analysis	13-37
	[b] The Larger Settlement Rule	13-38
	[c] The Reasonably Related Test	13-40
	[3] Settlement	13-40
	[4] Recoupment of Defense Costs	13-40.1

TABLE OF CONTENTS		xxiii
§ 13.08 § 13.09	Excess Coverage	13-43 13-43
§ 13.10	Liability Limiting Statutes	
	CHAPTER 14	
	Settlement	
§ 14.01	In General	
§ 14.02	Notification of Shareholders	
	[1] Notification Requirement	
0.14.02	[2] Adequacy of Notice	14-6
§ 14.03	Preclusive Effect of Settlement	
§ 14.04	Objectors	14-10.1
	and Appeal	14-10.1
	[2] Discovery by Objector	
§ 14.05	Legal Standards for Reviewing Proposed	
3 1	Settlements	14-13
	[1] Establishing a Presumption of Fairness	
	[a] Absence of Collusion	
	[b] Experienced Counsel	
	[c] Sufficient Discovery	
	[d] Reaction of Shareholders	14-16.1
	[2] Factors to Be Considered When	
	Settlement Is Accorded Initial	14.15
	Presumption of Fairness	
	[a] Benefit to the Corporation	14-20
	[b] Likelihood of Success on	14.22
	the Merits	14-23
	[c] Complexity, Expense, and State	14-24
	of Litigation	14-24
§ 14.06	Attorneys' Fees and Incentive Awards	
y 14.00	[1] Attorneys' Fees in General	
	[2] Making Plaintiff's Counsel Earn	14-20
	Their Fees	14-32
	[3] Attorneys' Fees When Defendants'	1.32
	Action Renders the Litigation	
	Moot	14-38.2
	[4] Allocating Attorneys' Fees Among	
	Plaintiffs' Counsel	14-42

xxiv	SHAREHOLDER DERIVATIVE LITIGATION	
	[5] Incentive Awards to Plaintiffs[6] In re Riverbed Technology: A Sea Change in Shareholder Litigation	14-46.1
e 14 07	Settlements?	14-46.1
§ 14.07	Special Settlement Committees and Board Decisions to Settle	14-47
§ 14.08	Considerations Regarding Representation in Settlement Negotiations	14-49
	[1] The Need for Separate Corporate and Individual Counsel in Derivative	
	Actions	14-49
	Individual Counsel in Successive	
	Representations	14-54
	CHAPTER 15	
	Practical Considerations	
§ 15.01	Introduction	15-2
§ 15.02	Identifying a Derivative Demand	15-4
§ 15.03	Initial Response to a Demand Letter	15-6
	[1] Notification of the Company's	
	Insurance Carrier	15-6
	[2] Communicating with the Demanding	
	Shareholder	15-8
§ 15.04	An Overview of the Formation of a	
	Committee of the Board to Consider	
	Derivative Claims	15-9
§ 15.05	Formation of a Committee of the Board to	
0.1506	Consider a Demand	15-10
§ 15.06	Formation of a Committee of the Board After	
	a Lawsuit Is Filed with No Pre-Suit	15.10
e 15.07	Demand Having Been Made	15-12
§ 15.07	The Investigation of the Committee of	15 14
	the Board	15-14
	L 3	15-14 15-16
	[2] Scope of the Committee's Review [3] Role of the Committee in the	15-16
	[3] Role of the Committee in the Investigative Process	15-17
	[4] Document Collection and Review	15-17
	[4] Document Confection and Review	13-10
	Documents	15-18
	[b] Collecting and Processing	13-10
	Relevant Documents	15-19

		TABLE OF CONTENTS	XXV
	[5]	The Witness Interview	15-20 15-20
		[b] Memorializing the Witness	
		Interview	15-21
§ 15.08	Mee	ting with Shareholder's Counsel	15-23
§ 15.09		orting the Results of the Committee's	
	Ĩn	vestigation	15-24
	[1]	Reporting in the Demand-Required	
		Context	15-24
		[a] Report of Counsel to the	
		Evaluation Committee	15-26
		[b] Report of the Evaluation	
		Committee to the Board	15-27
		[c] The Board Meeting	15-28
		[d] The Board Resolution	15-28
	[2]	Reporting in the Demand-Excused	
		Context	15-29
§ 15.10		clusion of a Derivative Proceeding	15-30
	[1]	Conclusions of the Board After the	
		Recommendation Is Made by an	1 20
	F07	Evaluation Committee	15-30
	[2]	Conclusions of an Empowered	15.01
0.45.44	G1	Committee	15-31
§ 15.11		ement of a Derivative Proceeding	15-33
	[1]	Structuring a Settlement	15-34
	[2]	The Memorandum of Understanding	15-35
	[3]	Involvement of the Insurance Carrier	15-37
	[4]	Conducting Confirmatory Discovery	15-38
	[5]	The Final Settlement Agreement	15-39
		[a] The Basic Terms of the Settlement	15 20
		Agreement	15-39
		[b] Contingencies and Other	
		Miscellaneous Provisions to	
		Be Included in the Settlement	15-41
	Γ 4 1	Agreement	
	[6]	Notice to Shareholders[a] When to Provide Individual	15-43
		[a] When to Provide Individual Notice	15-43
			13-43
		[b] Dispatching Notice to Shareholders	15-44
		[c] Form of Individual Notice	15-45
		[d] Notice by Publication	15-45
	[7]	Obtaining Final Approval of	15-40
	[/]	the Settlement	15-47
§ 15.12	Incii	rance Considerations	15-49
8 15.12	11154		15-47

SHAREHOLDER DERIVATIVE LITIGATION

Appendices

APPENDIX A: Deri	vative Action Flow Chart	A-1
APPENDIX B: Fede	ral Rule of Civil Procedure 23.1	
Deri	vative Action by Shareholders	B-1
APPENDIX C: State	Derivative Action Statutes	
and	Rules	C-1
APPENDIX D: Selec	cted Provisions from the Model	
	ness Corporation Act	D-1
APPENDIX E: Selec	eted Provisions from the American	
Law	Institute's Principles of Corporate	
	ernance: Analysis and	
	ommendations	E-1
	eted Provisions from the	
	anes-Oxley Act of 2002	F-1
	norandum of Understanding	G-1
	ement Documents	H-1
	H-1 Stipulation of Settlement	H-3
	H-2 Notice of Proposed Settlement	H-18
	H-3 Summary Notice	H-29
Appendix I	H-4 Order Certifying a Settlement	
	Class	H-31
Appendix I	H-5 Order of Notice Hearing and	
	Administration	H-33
	H-6 Order and Final Judgment	H-39
Appendix I	H-7 Order Awarding Attorneys'	
	Fees	H-43
TABLE OF CASES		TC-1
TABLE OF ABBRE	VIATIONS	TA-1
		I-1
11 (1) 12/1		1-1