

TABLE OF CONTENTS

Dedication	iii
Acknowledgments.....	v
Introduction	vii

CHAPTER 1

Overview of Shareholder Derivative Litigation

§ 1.01	The Shareholder of the Modern Corporation	1-2
§ 1.02	The Shareholder Derivative Action: Definition	1-8
	[1] A Working Example of Shareholder Litigation.....	1-8
	[2] Defining the Derivative Suit and Distinguishing It from the 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	1-30
	[1] The Private Securities Litigation Reform Act (PSLRA).....	1-30
	[a] Purposes of the Reform Act	1-31
	[b] Provisions of the Reform Act	1-32
	[i] Reduction of Abusive Litigation	1-32
	[ii] Reduction of Coercive Settlements	1-42
	[iii] Auditor Disclosure of Corporate Fraud	1-43
	[c] Evaluating the Impact of the PSLRA	1-45

SHAREHOLDER DERIVATIVE LITIGATION

	[2] Securities Litigation Uniform Standard Act (SLUSA) of 1998	1-47
	[3] The Sarbanes-Oxley Act of 2002	1-48
	[4] The Dodd-Frank Wall Street Reform and Consumer Protection Act	1-51
	[5] Corporate Bylaws	1-53
§ 1.05	Nature of the Derivative Suit	1-54.4

CHAPTER 2**The Role of the Delaware Court of Chancery in Shareholder Derivative Litigation**

§ 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	2-6
	[1] Influence of English Courts of Equity	2-6
	[2] Establishment and Growth of Equity Jurisprudence in Delaware	2-8
§ 2.04	Conclusion	2-16

CHAPTER 3**The Role of the Business Judgment Rule in Derivative Suits**

§ 3.01	In General	3-2
	[1] The Business Judgment Rule Defined	3-2
	[2] The Entire Fairness Standard	3-7
	[3] Escaping Entire Fairness Review	3-11
	[a] Shareholder Ratification Under the <i>Corwin</i> Doctrine	3-11
	[b] Use of an Independent Committee	3-17
	[4] The Contemporary Reexamination of the Business Judgment Rule	3-18
§ 3.02	Rationale for the Business Judgment Rule	3-20.3
§ 3.03	Elements of the Business Judgment Rule	3-20.5
	[1] Exercise of Business Judgment	3-20.5
	[2] The Duty of Loyalty	3-20.6
	[a] Disinterestedness	3-20.7
	[b] Independence	3-24
	[3] The Duty of Due Care	3-26
	[3A] The Duty of Oversight	3-30
	[a] Caremark Claims	3-30

TABLE OF CONTENTS

	[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]	“Good Faith” or “In the Best Interests of the Corporation”	3-47
	[a]	Waste	3-49
§ 3.04		Fiduciary Duties in Context of Change of Corporate Control	3-52.1
	[1]	<i>Unocal</i> and the Creation of the Change of Control Doctrine	3-52.1
	[2]	The <i>Revlon</i> Duties	3-52.3
	[3]	<i>Toys “R” Us</i>	3-62.1
	[a]	Background of the Case	3-62.1
	[b]	Reasonable Deliberative Process	3-62.2
	[c]	Reasonable Basis for Protective Measures	3-64
	[4]	Confidentiality Agreements— <i>Martin Marietta Materials, Inc. v. Vulcan Materials Co.</i>	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]	Shareholder Protective Measures in Response to Activist Investors	3-78
§ 3.05		Fiduciary Duties and Controlling Stockholders	3-81
	[1]	What Qualifies as “Controlling”?	3-82
	[2]	The Evolution of Entire Fairness Review in Controlling Shareholder Transactions	3-85
	[a]	Mergers with Controlling Shareholders: Shifting the Burden Under <i>Lynch</i>	3-85
	[b]	Departing from <i>Lynch</i> via Tender Offers	3-89
	[c]	Questioning <i>Lynch</i> ’s Approach	3-92
	[d]	Adopting the Unified Standard: <i>In re MFW Shareholders’ Litigation</i> and Its Progeny	3-101
	[e]	Applying the <i>MFW</i> Framework Beyond Controlling Shareholder Freeze-Out Transactions	3-106

SHAREHOLDER DERIVATIVE LITIGATION

	[f] Conditioning a Transaction on the <i>MFW</i> Procedures	3-108
	[3] Derivative or Direct Claims	3-110.1
	[4] Entire Fairness Review in Non-Merger Transactions with Controlling Shareholders	3-110.3
§ 3.06	The Business Judgment Rule in the Context of Derivative Litigation	3-111

CHAPTER 4**The Demand Requirement and Other Prerequisites
to Shareholder Derivative Litigation**

§ 4.01	In General	4-2
§ 4.02	Purpose of the Demand Requirement	4-6
§ 4.03	Adequacy of the Demand	4-8
	[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
	[1] Stock Ownership at the Time Suit Is Commenced	4-42
	[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	4-51
	[a] Statutory	4-51
	[b] Continuing Wrong Doctrine	4-53
	[4] Equitable Standing	4-56

TABLE OF CONTENTS

xv

	[a]	Standing for Corporate Directors in Derivative Actions?	4-56
	[b]	Derivative Actions Filed on Behalf of Limited Liability Companies.	4-57
[5]		Effect of Merger on Standing to Sue Derivatively.	4-60
[6]		Effect of Bankruptcy on Shareholder Standing	4-72
[7]		Shareholder Standing Following Initial Public Offering	4-75
[8]		Minimum-Stake-to-Sue Bylaws	4-76
[9]		Double (and Multi-Tier) Derivative Actions	4-76
	[a]	Rationale for Double Derivative Actions	4-77
	[b]	The Requirement of Injury to the Parent Corporation	4-78
	[c]	Ownership Requirements.	4-79
	[d]	Demand in Double Derivative Lawsuits	4-81
§ 4.09		Fair and Adequate Representation.	4-83
	[1]	In General.	4-83
	[2]	Factors Considered.	4-86
	[a]	The “Professional Plaintiff”.	4-86.3
	[b]	Simultaneous Prosecution of Class and Derivative Actions.	4-86.7
	[c]	The “Fast-Filer” Presumption	4-86.10
§ 4.10		Security-for-Expense Statutes.	4-91
§ 4.11		Corporation’s Ability to Recover Expenses.	4-95

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]	<i>Aronson v. Lewis</i> : Action by Board of Directors	5-11
	[b]	Reasonable Doubt.	5-12
	[c]	The First Prong of the <i>Aronson</i> Test	5-13
	[i]	Interestedness	5-13
	[ii]	Independence	5-14

SHAREHOLDER DERIVATIVE LITIGATION

	[d]	The Second Prong of the <i>Aronson</i> Test: Valid Business Judgment . . .	5-16
	[e]	<i>Rales v. Blasband</i> : Non-Action by Board of Directors	5-17
	[f]	Moving Towards a New Test: Comparing <i>Aronson</i> and <i>Rales</i> . . .	5-18
	[g]	A Sea Change: Delaware's Single, 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
	[4]	The Indiana Test	5-31
§ 5.04		Common Grounds for Allegations of Demand Futility	5-33
	[1]	Naming Directors as Defendants	5-33
	[2]	Approval or Acquiescence of the 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
	[9]	Failure of Oversight (<i>Caremark</i> Claims). . .	5-62
	[a]	<i>Caremark's</i> First Prong: Board-Level Oversight and Controls	5-63
	[b]	<i>Caremark's</i> Second Prong: Ignoring Red Flags.	5-71
	[10]	Engaging in Illegal Conduct	5-86
	[11]	Insured Versus Uninsured Exclusion.	5-86.6
	[12]	Claims of Waste.	5-87
	[13]	Activity After Suit Is Filed.	5-90.3
§ 5.05		Effects of a Demand Futility Dismissal.	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 Determinations	5-90.27
§ 5.07		Demand Futility and the 2008 Financial Crisis	5-92
	[1]	<i>Citigroup</i> and the Failure to Monitor Risks.	5-92

TABLE OF CONTENTS

[2] *Dow, Goldman Sachs, and the Reaffirmation of the Business Judgment Rule* 5-97

[3] *Increased Oversight of Executive Compensation* 5-101

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 Requestor’s Identity 6-26.1

[a] Section 220 Demand by Requestor 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 Cases 6-26.4

[d] Section 220 Demand by Corporate Director 6-26.8

[6] Books and Records Demands in Other Jurisdictions 6-26.9

§ 6.04 The Modified Business Judgment Rule in Wrongful Refusal Cases 6-26.11

§ 6.05 Demand as Concession of Independence 6-26.14

§ 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

[3] Independence of Counsel 6-40

§ 6.07 Use of a Committee to Review Demand 6-44.1

§ 6.08 Consideration of Factors Other Than the Merits in Reviewing a Demand 6-50

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 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	<i>In re Walt Disney Company Derivative Litigation</i>	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	<i>In re Emerging Communications, Inc. Shareholders Litigation</i>	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 and Loyalty	8-10
§ 8.04	<i>Integrated Health Services, Inc. v. Elkins</i>	8-13
	[1] Outside Director Misconduct and Personal Liability	8-13
	[2] Duty of Loyalty	8-13
§ 8.05	<i>In re Oracle Corporation Derivative Litigation</i>	8-16
	[1] Misappropriation of Inside Information	8-16
	[2] Heightened Scrutiny	8-16
§ 8.06	<i>Disney's Impact on Settlements of Shareholder Derivative Litigation</i>	8-18
	[1] <i>Enron</i>	8-19
	[2] <i>Worldcom</i>	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 General	9-1
§ 9.02	Federal Subject Matter Jurisdiction	9-2
	[1] Diversity Jurisdiction	9-2
	[2] Amount in Controversy for Purposes 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	Statutes of Limitations	9-20

CHAPTER 10

An Overview of the Attorney-Client Privilege and Work Product Doctrine

§ 10.01	Setting the Stage	10-2
§ 10.02	The Attorney-Client Privilege: Background and Definition	10-4

§ 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 in the Corporate Context	10-10
[a]	The Control Group Test	10-13
[b]	The Subject Matter Test	10-15
[c]	Hybrid Approaches	10-16
[3]	Directors' Access to Privileged Information	10-18
[4]	Attorney-Client Privilege for Communications That Include an Investment Banker	10-20.1
§ 10.04	Exceptions to the Attorney-Client Privilege	10-20.3
[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 Product Doctrine	10-56
[1]	Exceptions to the Work Product Doctrine	10-56
[2]	Waiver of Work Product Protection	10-58
§ 10.08	The Self-Evaluative or Self-Critical Analysis 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

§ 11.03 Application of the Fiduciary Exception 11-8
[1] Generally 11-9
[2] Expansion of the *Garner* Fiduciary
Exception Beyond Derivative Actions. 11-11
[3] Criticism of the *Garner* Fiduciary
Exception 11-16
§ 11.04 Application of the Fiduciary Exception in
the Derivative Context 11-20
§ 11.05 Application of the Fiduciary Exception in
the Class Action Context 11-24
[1] Distinguishing Derivative Actions
from Class Actions. 11-24
[2] Invocation of the Exception by
“Purchasers” as Opposed to
Shareholders 11-25
§ 11.06 Invoking the Protections of Either the
Attorney-Client Privilege or the Work
Product Doctrine in the Derivative Context. 11-27
[1] Mandated Disclosure 11-27
[2] Privilege Considerations Following
a Special Litigation Committee’s
Investigation 11-30

CHAPTER 12

Indemnification

§ 12.01 In General 12-2
§ 12.02 Statutory Indemnification 12-5
[1] Indemnification Statutes Generally. 12-5
[2] Prerequisites to Statutory
Indemnification. 12-7
[a] Who May Be Indemnified. 12-7
[b] Proceedings Covered 12-9
[3] Mandatory Indemnification by Statute. 12-10
[a] Degree of Success Required 12-10
[b] Nature of the Success Required 12-11
§ 12.03 Mandatory Indemnification by Charter,
By-law, or Agreement 12-15
§ 12.04 Permissive Indemnification. 12-17
[1] Conditions Precedent to Permissive
Indemnification. 12-17
[2] Limitations on Permissive
Indemnification. 12-18
[3] Corporate Authorization of
Indemnification. 12-20

§ 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
	[1] The Insuring Clauses	13-7
	[2] “Claims-Made” Policy	13-8
§ 13.04	Defined Terms	13-12
	[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 Excess Coverage 13-41
§ 13.09 Cancellation and Rescission 13-43
 [1] Cancellation 13-43
 [2] Rescission 13-43
§ 13.10 Liability Limiting Statutes 13-45

CHAPTER 14

Settlement

§ 14.01 In General 14-2
§ 14.02 Notification of Shareholders 14-5
 [1] Notification Requirement 14-5
 [2] Adequacy of Notice 14-6
§ 14.03 Preclusive Effect of Settlement 14-9
§ 14.04 Objectors 14-10.1
 [1] Standing of Shareholders to Object
 and Appeal 14-10.1
 [2] Discovery by Objector 14-11
§ 14.05 Legal Standards for Reviewing Proposed
 Settlements 14-13
 [1] Establishing a Presumption of Fairness 14-14
 [a] Absence of Collusion 14-15
 [b] Experienced Counsel 14-16
 [c] Sufficient Discovery 14-16.1
 [d] Reaction of Shareholders 14-16.1
 [2] Factors to Be Considered When
 Settlement Is Accorded Initial
 Presumption of Fairness 14-17
 [a] Benefit to the Corporation 14-20
 [b] Likelihood of Success on
 the Merits 14-23
 [c] Complexity, Expense, and State
 of Litigation 14-24
 [d] Reaction of Shareholders 14-25
§ 14.06 Attorneys' Fees and Incentive Awards 14-26
 [1] Attorneys' Fees in General 14-26
 [2] Making Plaintiff's Counsel Earn
 Their Fees 14-32
 [3] Attorneys' Fees When Defendants'
 Action Renders the Litigation
 Moot 14-40
 [4] Allocating Attorneys' Fees Among
 Plaintiffs' Counsel 14-44.1

SHAREHOLDER DERIVATIVE LITIGATION

	[5]	Incentive Awards to Plaintiffs	14-46.1
	[6]	<i>In re Riverbed Technology: A Sea Change in Shareholder Litigation Settlements?</i>	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
	[2]	The Need for Separate Corporate and 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 Consider a Demand	15-10
§ 15.06		Formation of a Committee of the Board After a Lawsuit Is Filed with No Pre-Suit Demand Having Been Made	15-12
§ 15.07		The Investigation of the Committee of the Board	15-14
	[1]	Retention of Counsel	15-14
	[2]	Scope of the Committee's Review	15-16
	[3]	Role of the Committee in the Investigative Process	15-17
	[4]	Document Collection and Review	15-18
	[a]	Identifying the Essential Documents	15-18
	[b]	Collecting and Processing Relevant Documents	15-19

TABLE OF CONTENTS

xxv

	[5] The Witness Interview	15-20
	[a] Opening Remarks	15-20
	[b] Memorializing the Witness Interview	15-21
§ 15.08	Meeting with Shareholder’s Counsel	15-23
§ 15.09	Reporting the Results of the Committee’s Investigation	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	Conclusion of a Derivative Proceeding	15-30
	[1] Conclusions of the Board After the Recommendation Is Made by an Evaluation Committee	15-30
	[2] Conclusions of an Empowered Committee	15-31
§ 15.11	Settlement 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 Agreement	15-39
	[b] Contingencies and Other Miscellaneous Provisions to Be Included in the Settlement Agreement	15-41
	[6] Notice to Shareholders	15-43
	[a] When to Provide Individual Notice	15-43
	[b] Dispatching Notice to Shareholders	15-44
	[c] Form of Individual Notice	15-45
	[d] Notice by Publication	15-46
	[7] Obtaining Final Approval of the Settlement	15-47
§ 15.12	Insurance Considerations	15-49

Appendices

APPENDIX A: Derivative Action Flow Chart	A-1
APPENDIX B: Federal Rule of Civil Procedure 23.1 Derivative Action by Shareholders	B-1
APPENDIX C: State Derivative Action Statutes and Rules	C-1
APPENDIX D: Selected Provisions from the Model Business Corporation Act	D-1
APPENDIX E: Selected Provisions from the American Law Institute’s Principles of Corporate Governance: Analysis and Recommendations	E-1
APPENDIX F: Selected Provisions from the Sarbanes-Oxley Act of 2002	F-1
APPENDIX G: Memorandum of Understanding	G-1
APPENDIX H: Settlement Documents	H-1
Appendix H-1 Stipulation of Settlement	H-3
Appendix H-2 Notice of Proposed Settlement	H-18
Appendix H-3 Summary Notice	H-29
Appendix H-4 Order Certifying a Settlement Class	H-31
Appendix H-5 Order of Notice Hearing and Administration	H-33
Appendix H-6 Order and Final Judgment	H-39
Appendix H-7 Order Awarding Attorneys’ Fees	H-43
TABLE OF CASES	TC-1
TABLE OF ABBREVIATIONS	TA-1
INDEX	I-1