

ANSWER TO QUESTION NO. 3

Recourse Against Amber: As officers and directors of Acme Anvil, Amber and Greg are required to discharge their fiduciary duties to the corporation (1) in good faith; (2) with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he or she reasonably believes to be in the best interests of the corporation. MCL 450.1541a(1)(a)-(c). Certainly, Amber would argue that she acted in good faith by entering into the contract because she believed that the price of iron ore would skyrocket, and that a long-term contract fixing the price would benefit the company. In exercising her business judgment, Amber is entitled to rely upon information provided by consultants or experts as to matters Amber "reasonably believes are within the person's professional or expert competence." MCL 450.1541a(2)(b). In this case, Amber's psychic has no professional or expert competence regarding iron ore speculation, so it is unlikely that her reliance on the psychic's predictions will be deemed reasonable. Pursuant to MCL 450.1541a(4), an action can be filed against Amber for breach of fiduciary duty within 3 years after the cause of action accrued. Here, the cause of action is timely.

However, a suit to redress injury caused to the corporation must generally be brought in the name of the corporation rather than an individual stockholder. *Michigan Nat Bank v Mudgett*, 178 Mich App 677 (1989). Therefore, Uncle Bob will have to file a derivative action on behalf of Acme in order to seek damages for Amber's breach of fiduciary duty. Because Uncle Bob was a shareholder at the time the 2007 contract was signed, continues to be a shareholder, and "fairly and adequately represents the interests of the corporation," he is eligible to file a derivative action. MCL 450.1492a. Pursuant to MCL 450.1493a, Uncle Bob cannot commence a derivative action until he makes a written demand upon Acme Corporation to take action against Amber, and has either waited ninety days from the date the demand was made or received notice that the demand has been rejected by the corporation.

Shareholder's Meeting: Even if the corporate bylaws do not provide for an annual meeting of the shareholders, Uncle Bob can compel a meeting of the shareholders by filing an application with the circuit court of the county in which Acme Anvil's registered office is located, provided that no date for an annual meeting has been designated for 15 months after the organization of the corporation. MCL 450.1402.

The Probability of Ousting Greg and Amber: Because the nine minority stockholders collectively control 54% of the Acme Anvil stock, each minority shareholder will have to vote in favor of ousting Greg and Amber in order to install Tammy and Chris as directors. While Aunt Faye subsequently changed her mind about removing Greg and Amber, she signed a voting agreement expressly agreeing to vote for Tammy and Chris. Pursuant to MCL 450.1461, the voting agreement is "specifically enforceable." Uncle Bob and the rest of the minority shareholders will be able to specifically enforce the voting agreement, and will be able to remove Greg and Amber as directors.