

ANSWER TO QUESTION NO. 10

Recourse against Candy Coffman: As an officer and director of FPC, Candy Coffman is required to discharge her 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 she reasonably believes to be in the best interests of the corporation. MCL 450.1541a(1)(a)-(c). Certainly, Candy would argue that she acted in good faith by entering into the contract because she believed that the price of salt would skyrocket, and that a long-term contract fixing the price would be advantageous to the company.

In exercising her business judgment and discharging her duty to the corporation, Candy is entitled to rely upon "information, opinions, reports, or statements," if prepared or presented by, among others, "[l]egal counsel, public accounts, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence." MCL 450.1541a(2)(b). However, a director may not rely on such information if the director has knowledge of the matter that makes otherwise permissible reliance "unwarranted." MCL 450.1541a(3). In this case, Candy relied upon several investment reports and trade articles predicting a steep rise in the price of salt. In all likelihood, her reliance on these sources will be deemed reasonable. Moreover, the facts do not indicate that Candy has any actual knowledge regarding salt speculation or future salt shortages. Therefore, it is unlikely that legal recourse may be sought against Candy Coffman.

Shareholder's Meeting: Even if the corporate bylaws do not provide for special meetings of the shareholders, MCL 450.1403 grants the circuit court of the county in which the principal place of business or registered office is located the authority to order a special meeting of shareholders. The court may order the special meeting "for good cause shown," upon application of "not less than 10% of all the shares entitled to vote at a meeting."

Under Michigan law, unless otherwise provided for in the articles of incorporation, "each outstanding share is entitled to 1 vote on each matter submitted to a vote." MCL 450.1441.

Greta Goulet, who possesses 11% of FPC's stock, may not independently "compel" a special shareholder's meeting. However, because she owns "not less than 10% of the shares entitled to vote,

she may petition the court for a special shareholder's meeting, and the court may exercise its discretion in granting the meeting "for good cause shown."

Whether it is possible to remove Amanda and Candy as directors: The facts indicate that the five minority stockholders collectively control 55% of the FPC stock. Pursuant to MCL 450.1511, shareholders may remove directors "with or without cause," and removing a director requires a majority of the shares entitled to vote, not merely a majority of the votes cast. Therefore, assuming a special meeting of the shareholders is called, and assuming that Amanda or Candy would not vote to oust the other, each of the five minority shareholders must vote in favor of removing Amanda and Candy in order for the ouster to occur.

Greta or another of the minority shareholders may argue that a voting agreement representing 55% of the voting FPC stock was created on the conference call among the minority shareholders, and thus this is enforceable at a meeting to oust Amanda and Candy. Under Michigan law, voting agreements between two or more shareholders are "specifically enforceable" if the voting agreement is "in writing and signed by the parties." MCL 450.1461. The facts indicate that the agreement was reached over a telephone conference call, and does not indicate that the agreement was reduced to a signed writing. Therefore, the verbal voting agreement is not enforceable, and Nancy Nome is free to vote as she sees fit. Unless Nancy changes her mind, Amanda and Candy will not be removed as directors.