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BY RONALD R. CARPENTER

SUPREME COURT OF THE STATE OF WASHINGTON

SOUND INFINITI, INC., d/b/a INFINITI OF KIRKLAND, a Washington corporation; ex rel AFSHIN PISHEYAR, a shareholder thereof; INFINITI OF TACOMA AT FIFE, INC., a Washington corporation, ex rel AFSHIN PISHEYAR, a shareholder thereof; S&I OF WA L.L.C., a Washington limited liability company, ex rel AFSHIN PISHEYAR, a member thereof; RDA PROPERTIES, LLC, a Washington limited liability company, es rel AFSHIN PISHEYAR, a member thereof; and AFSHIN PISHEYAR, an unmarried individual,

Appellant/Cross-Respondent,

v.

RICHARD M. SNYDER and JEANNE C. SNYDER, husband and wife, and their marital community; RICHARD M. SNYDER as Trustee of the SNYDER CHILDREN'S IRREVOCABLE TRUST FOR THE BENEFIT OF ZACHARY SNYDER and the SNYDER CHILDREN'S IRREVOCABLE TRUST FOR THE BENEFIT OF TRAVIS SNYDER; and DAVID HANNAH and MARTH M. HANNAH, husband and wife, and their marital community,

Respondents/Cross-Appellants.

APPELLANT'S ANSWER TO AMICUS BRIEF OF
ASSOCIATION OF WASHINGTON BUSINESS

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I. INTRODUCTION

The Court of Appeals' decision in *Sound Infiniti, Inc. v. Snyder*, 145 Wn. App. 333, 186 P.3d 1107 (2008), effectively eliminates shareholder derivative lawsuits in the State of Washington. If the decision is affirmed, then any time a minority shareholder brings claims against majority shareholders, they can simply squeeze out the minority owner and have the claims dismissed as "derivative." Not only could a minority shareholder be forced out of a corporation in retaliation for filing a lawsuit, the excluded shareholder could be barred from pursuing any claim for breach of fiduciary duty or minority oppression. Instead, the minority shareholder's sole remedy would be payment for the involuntarily lost shares. It is not surprising that the Association of Washington Business ("AWB") supports *Sound Infiniti*, because the decision allows those in control (whom AWB represents) to eliminate an unwanted shareholder and a lawsuit at the same time.

II. ARGUMENT

A. WASHINGTON LAW PROTECTS MINORITY SHAREHOLDERS.

It has never been the law or the policy in Washington to limit the remedies of a minority shareholder who has been forced out of a corporation for the sole purpose of eliminating his ownership interest,

after the minority shareholder brought claims against the majority for self-dealing and other wrongful conduct. Yet, the Court of Appeals dismissed all of Afshin Pisheyar's claims on the grounds that his damages arose out of his ownership in the corporations, and that once deprived of that ownership, his sole remedy was payment for his shares. *Sound Infiniti*, 145 Wn. App. at 352.

AWB argues that this holding should be affirmed based on our state's public policy; that is, AWB contends the legislature intended to limit the remedies of a squeezed-out minority shareholder to payment for shares, regardless of whether the squeeze-out was in response to a minority shareholder lawsuit. *Brief of Amicus Curiae Association of Washington* ("AWB Brief"), p. 1. This argument ignores the fact that Washington law has historically protected minority shareholders from self-dealing and oppressive conduct by controlling shareholders.

1. **Washington's Legislature Did Not Intend To Abrogate Fiduciary Duties or Protections of Minority Shareholders.**

At common law, unanimous shareholder approval was required for fundamental corporate actions, such as mergers. *Voeller v. Neilston Warehouse Co.*, 311 U.S. 531, 536 n.6, 61 S. Ct. 376, 85 L.Ed. 322 (1941). This gave a minority shareholder disproportionate power, because a single individual could block such changes, despite valid economic

business purposes. State legislatures responded by amending the law to permit such actions by majority vote. *Voeller*, 311 U.S. at 536 n.6. However, because this allowed a majority to make fundamental changes without regard for the wishes of minority owners, “dissenters’ rights” were adopted “to provide an exit to those minority shareholders who chose not to go along with a fundamental change in the operation of the business in which they invested.” O’Neal and Thompson’s Oppression of Minority Shareholders and LLC Members, § 5:33 (2009). Washington adopted such a rule in RCW 23B.13.020.

The purpose of the statute was to protect minority shareholders who dissented from a valid corporate action, not to further empower controlling shareholders. Nor is there any reason to believe that by adopting dissenters’ rights, the Washington Legislature intended to immunize majority shareholders from either derivative shareholder actions or claims for breach of fiduciary duty and oppression of a minority shareholder. Yet that is exactly what AWB urges this court to do by supporting the rule established in *Sound Infiniti*.

2. Our Common Law Protects Minority Shareholders.

AWB’s argument also ignores the long-standing common law of our state. Washington has never allowed controlling shareholders and directors to act out of self-interest rather than the economic benefit of the

corporation. *State ex. Rel. Hayes Oyster Co. v. Keypoint Oyster Co.*, 64 Wn.2d 375, 381, 391 P.2d 979 (1964). Moreover, Washington has long held that shareholders owe a fiduciary duty to minority shareholders. *Wool Growers Service Corp. v. Ragan*, 18 Wn.2d 655, 691, 140 P.2d 512 (1943). Affirming the decision in *Sound Infiniti* would vitiate a court's ability to fashion remedies for self-dealing and breach. Rather than creating a "clear, stable body of corporate law," AWB Brief, p. 2, affirming *Sound Infiniti* would undo decades of protection for minority shareholders in our common law.

The *Sound Infiniti* decision is also contrary to the body of corporate law developed in Delaware, to which this state has often looked for guidance. *See, e.g., In re F5 Networks, Inc.*, 166 Wn.2d 229, 207 P.3d 433 (2009). Delaware law would allow Pisheyar to proceed with a separate lawsuit for damages based on breaches of fiduciary obligations, as the Court of Appeals acknowledged. *Sound Infiniti*, 145 Wn. App. at 346, n. 3 (citing *Rabkin v. Philip A. Hunt Chem. Corp.*, 498 A.2d 1099, 1103-04 (Del. 1985)). Delaware courts have repeatedly confirmed that appraisal may not adequately redress issues such as self-dealing by majority shareholders. *Rabkin*, 498 A.2d at 1104-5 (discussing *Weinberger v. UOP, Inc.*, 457 A.2d 701 (Del.1983)). *See also Cede & Co. v. Technicolor, Inc.*, 542 A.2d 1182 (Del. 1988).

Instead of balancing the interests of controlling and minority owners, the *Sound Infiniti* rule advocated by AWB would effectively end all shareholder derivative actions in Washington. There would be little reason to file such an action if controlling shareholders could retaliate by forcing the plaintiff out of the company and then dismissing the suit for lack of standing. Majority control would be even more effective if it could not only avoid derivative actions, but could also characterize any claims arising out of the plaintiff's former shareholder status as "derivative" and avoid them, too. Yet this is the rule in *Sound Infiniti*, 145 Wn. App. at 337.

This case illustrates the compelling reasons for reversing the rule created by the Court of Appeals in *Sound Infiniti*. Afshin Pisheyyar was a founder with a substantial minority interest in two closely held corporations. CP 443. After the two majority shareholders secretly took money from the corporations for their own purposes, Pisheyyar filed suit on behalf of himself as well as the corporations. CP 1-11. In response, the majority shareholders adopted reverse stock splits for the sole purpose of squeezing Pisheyyar out of the companies.¹ The trial court then dismissed most of Pisheyyar's claims based on loss of standing, a ruling the Court of

¹ See Report of Proceedings ("RP") 11/17/05, p. 109, l. 19- p. 110, l. 20; RP 12/8/05, p. 32, l. 1-5, p. 85, l. 14 – p. 87, l. 1, P. 89, l. 5 – p. 92, l. 11.

Appeals affirmed and expanded to include all of Pisheyar's claims. *Sound Infiniti*, 145 Wn. App. at 352.

Thus, the *Sound Infiniti* decision effectively overturned this state's rich history of protection from abuse of power by controlling shareholders. The decision may create a "stable rule," but it does so at the price of allowing majority shareholders to avoid their duties to the corporation and its shareholders.

B. THE COURT OF APPEALS AND AWB MISREAD THE DISSENTERS' RIGHTS STATUTE.

In dismissing Pisheyar's individual claims, the Court of Appeals relied on the appraisal remedy created in Washington's dissenters' rights statute. The court held that once Pisheyar was forcibly deprived of his ownership, his sole remedy was payment for the lost shares. AWB argues that this rule does not leave oppressed minority shareholders without recourse, because majority misconduct can be litigated in an appraisal action. AWB Brief, p. 4, quoting *dicta* in *Sound Infiniti*, 145 Wn. App. at 349. This argument ignores both the purpose and the plain language of the statute.

1. The Legislature Did Not Infringe on the Court's Role of Construing Washington Law.

When the legislature intends to abrogate the common law, it must do so explicitly. *Potter v. Washington State Patrol*, 165 Wn.2d 67, 76-77, 196

P.2d 691 (2008). Here, the legislature has given no indication that it intended to eradicate the long-standing common law as to remedies for breach of fiduciary duties or oppressive conduct, and limit minority shareholders who are squeezed out to payment for their shares.

The Washington Business Corporation Act (WBCA) does not limit the court's ability to intervene in corporate wrongdoing and to fashion appropriate remedies. For example, courts may dissolve a corporation when those in control "have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent," or "corporate assets are being misapplied." RCW 23B.14.300 (2) (b), (d). As to what constitutes "oppressive" action, it has been described as "a violation by the majority of the reasonable expectations of the minority." *Scott v. Trans-System, Inc.*, 148 Wn.2d 701, 711, 64 P.3d 1 (2003) (citing *Robblee v. Robblee*, 68 Wn.App. 69, 76, 841 P.2d 1289 (1992)). Among the "reasonable" expectations of a founder is continued ownership. *Id.* Oppressive conduct may take the form of "a lack of fair dealing in the affairs of a company to the prejudice of some of its members," or "a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely." *Id.* at 711 (citations omitted). It is up to the courts to determine, by a fact-driven analysis, whether conduct is oppressive in a particular context.

That a corporation with a valid business purpose may legally engage in a reverse stock split does not mean the action may not breach a fiduciary duty, or be used as an instrument of oppression. *Shivers v. Amerco*, 670 F.2d 826 (9th Cir. 1982) (reversing summary judgment to defendants in a minority shareholder suit for breach of fiduciary duty, in light of questions of fact as to compelling business reasons for reverse stock split and other actions). *See also Rabkin v. Philip A. Hunt Chemical Corp.*, 498 A.2d 1099 (Del. 1985) (“inequitable conduct will not be protected merely because it is legal”) (citations omitted).

Washington’s statute adopting an appraisal remedy for minority shareholders who dissent from fundamental changes provides that a shareholder is not barred from challenging the change itself, when the change “is fraudulent with respect to the shareholder.” RCW 23B.13.020. The context and purpose of the statute, as well as the law and policy of our state, all support a finding that Snyder’s and Hannah’s use of a reverse stock split was fraudulent as to Pisheyar.

When the sole purpose of a reverse stock split is to eliminate a minority shareholder who brought claims of self-dealing against the majority, the reverse stock split may be challenged as part of the shareholder’s lawsuit. Snyder’s and Hannah’s action to deprive Pisheyar of his stock in the closely held corporations had no other purpose than to

eliminate both an unwanted shareholder and an unwanted plaintiff. Nothing in our state's law or policy supports a rule that would allow controlling defendant shareholders to use the appraisal remedy to avoid an oppressed minority shareholder's claims in these circumstances.

Nor is our state policy unique in this regard. Almost every state allows a minority shareholder to pursue claims for breach of fiduciary duty or minority oppression outside the context of an appraisal statute, either by describing in their statutes when appraisal is not appropriate or exclusive,² or by construing the law to allow for a just result.³ This is also true in states which, like Washington, omit the word "unlawful" when providing exceptions to the exclusivity of an appraisal remedy.⁴

² For example, California provides that appraisal is not an exclusive remedy when a party on one side of a fundamental corporate change is controlled by another. Cal. Corp. Code §1312. Other states provide that appraisal is not exclusive in a conflict setting. *See* 805 ILCS §5/11.65(b) (Illinois); Iowa Code § 901.1302; Miss. St. § 79-4-13.40.

³ *See, e.g., Borghetti v. System & Computer Tech, Inc.*, 199 P.3d 907 (Utah 2008) (a suit based on lack of fairness to minority shareholder has different purpose and remedies from appraisal proceeding); *Williams v. Stanford*, 977 So.2d 722 (Fla. App. 1 Dist. 2008) (statutory exception for fraud essentially synonymous with unfair dealing); *McMinn v. MBF Operating Acquisition Corp.*, 164 P.3d 41 (N.M. 2007) (term "fraudulent" in dissenters' rights context encompasses breach of fiduciary duty); *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 728-29 (Nev. 2003) ("fraudulent" in appraisal statute encompasses fiduciary duty); *Coggins v. New England Patriots Football Club, Inc.*, 492 N.E.2d 1112, 1117-18 (Mass. 1986) (appraisal statute does not divest courts of equitable jurisdiction to assure controlling shareholders do not violate fiduciary duty).

⁴ *See Sifferle v. Micom Corp.*, 384 N.W.2d 503, 507 (Minn. App. 1986) (omission of "unlawful" suggests "fraudulent" encompasses breach of fiduciary

The Washington Legislature intended “to recognize and preserve” the common law principles developed in Delaware and elsewhere with regard to the effect of dissenters’ rights on other remedies of dissident shareholders.”⁵ Senate Journal 51st legis. 3087-88 (1989), at 13.020-3 to 13.020-4 (citing *Weinberger v. UOP, Inc.*, 457 A.2d 701 (Del. 1983), among others). In the pivotal *Weinberger* case, Delaware replaced “business purpose” as a measure of a controlling shareholder’s compliance with fiduciary duties in favor of an “entire fairness” test. Later cases confirmed that appraisal should not be the exclusive remedy “for any claim alleging breach of the duty of entire fairness.” *Glassman v. Unocal Exploration Corp.*, 777 A.2d 242, 247 (Del. 2001) (citing *Rabkin*, 498 A.2d 1099); *Kahn v. Lynch Communications Systems, Inc.*, 638 A.2d 1110, 1116-17 (Del. 1994).

Regardless of the method used to achieve a fair result, the analysis should reflect the strict scrutiny traditionally extended to conflict transactions in a corporate setting, as well as the duties of care, loyalty, and good faith owed among owners of a closely held corporation. This

duty); *Grace Bros., Ltd. v. Farley Indus., Inc.*, 450 S.E.2d 814, 816 (Ga. 1994) (exclusivity provision does not apply to shareholder oppression, applying Georgia Code 14-2-1302).

⁵ The Court of Appeals urges Washington to disregard the Delaware approach and look instead to New York, but there is no reasonable basis for doing so. *Sound Infiniti*, 145 Wn. App. at 346 n. 3.

Court should reverse *Sound Infiniti* because, among other reasons, the appraisal remedy in the dissenters' rights statutes was not designed to address claims such as those at issue here.

2. **Appraisal Action Determines Share Value Immediately Prior to the Action Triggering Dissenters' Rights.**

Similarly, the suggestion that an appraisal remedy will adequately protect oppressed minority shareholders, AWB Brief, p. 4, is also contrary to the express language of the statute. The dissenters' rights statute defines "fair value" as the value "immediately before" the action triggering the right. RCW 23B.13.010 (3). To "effect the purpose of the statute" to protect the minority shareholder, shares are valued as if the change at issue had not occurred. *In re West Waterway Lumber Co.*, 59 Wn.2d 310, 367 P.2d 807 (1962). However, the statute does not provide for adjustments to share value to account for misconduct that may not have directly impacted share price or that occurred at a point in time other than the immediate past. The statute provides:

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

RCW 23B.13.010 (emphasis added).

Despite the legislature's use of the word "immediately," AWB argues that a court's appraisal "may account for all prior reductions" in share value caused by breaches of fiduciary duty or self-dealing by those in control. AWB Brief, p. 4 (emphasis added) (quoting *dicta* in *Sound Infiniti*, 145 Wn.2d at 349).

Although no appraisal was before the Court of Appeals, it went to some lengths to articulate its view that issues of majority misconduct may be litigated in appraisal actions rather than shareholder derivative or other lawsuits. *Sound Infiniti*, 145 Wn. App. at 349. Such a rule is not only contrary to the plain language of the statute, it would be bad policy. The purpose of an appraisal action is to allow a minority shareholder who dissents from fundamental corporate changes to receive fair value for his or her shares. The court's authority in an appraisal action is "exclusive and plenary" solely as to the subject matter before it: determining the fair value of shares at the specified point in time. The variety of wrongdoing that may arise in the corporate arena cannot effectively be litigated in an appraisal forum.

3. **The Dissenters Rights Statute Only Pertains to the Reverse Stock Split, Not to the Prior Self-Dealing.**

Even if this Court were to affirm the narrow definition of fraudulent advocated by AWB, the statute would still not apply to the actions of

Snyder and Hannah that predate the final oppressive action: the squeeze out itself. Even under AWB's approach, the appraisal remedy is limited to challenges to the corporate action that triggers dissenters' rights: in this case, the reverse stock split. Yet, the court in *Sound Infiniti* did not limit its dismissal to Pisheyar's challenge of the reverse stock split; it also dismissed the preexisting claims.

Washington's statute, like other dissenters' rights statutes, applies only to limited actions that may significantly impact a minority owner, which history has shown are fertile grounds for abuse. Only in the case of fundamental corporate changes can a dissenter require a corporation to buy back shares, and have the court set the price of those shares as if the change had not occurred. RCW 23B.13.020, 23B.13.300. In such cases, the dissenter may not prevent the change from occurring unless it is fraudulent with respect to the shareholder.

In other words, the statute's application is limited to a challenge to the action that triggered the dissenters' rights:

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.900 through 25.10.955, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

RCW 23B.13.020 (2) (emphasis added). In this case, Pisheyar had already brought most of the claims at issue, well before the reverse stock split that squeezed him out. In fact, the reverse stock split was brought by the majority in response to, and to defeat these preexisting claims. Expanding the concept of exclusivity of an appraisal to bar challenges to Snyder's and Hannah's prior conduct is not supported by the plain language of the statute.

The cases cited by AWB do not support such an expansion, because they only involved efforts to set aside a fundamental corporate change. AWB Brief, p. 4 (citing *Matteson v. Ziebarth*, 40 Wn.2d 286, 242 P.2d 1025 (1952) and *Matthews v. Wenatchee Heights Water Co.*, 92 Wn. App. 541, 963 P.2d 958 (1998)). In *Matteson*, the court construed an earlier Washington statute and declined to invalidate a merger. In the later case, an individual sued to set aside the dissolutions of private companies formed for the purpose of providing water to shareholders. *Matthews*, 92 Wn. App. at 544. The private water companies were acquired by a municipal corporation, which dissolved the private companies. *Id.* Although the plaintiff accepted a water rights contract in exchange for his shares, he later sought to set aside the dissolutions on the grounds that a municipal corporation lacked authority to own stock in private companies, and so could not dissolve them. *Id.* at 546. In other words, the plaintiff

challenged a fundamental corporate action, from which he had not even dissented. Neither *Matthews* nor *Matteson* supports AWB. There is no basis in the language of the dissenters' rights statute to expand its application to prohibit all complaints against majority shareholders.

C. PISHEYAR'S CLAIMS AGAINST SNYDER AND HANNAH ARE CENTRAL TO BOTH DERIVATIVE AND INDIVIDUAL CLAIMS.

Pisheyar's claims against Snyder and Hannah, for oppression of a minority shareholder and breach of fiduciary duty, are not "collateral," AWB Brief, p. 4, 5, but rather go to the very heart of the lawsuit. By focusing on the final oppressive action, which took place during the course of the lawsuit, AWB (along with Snyder and Hannah) attempts to gloss over Pisheyar's preexisting claims and characterize them as "collateral" to the central issue. This transparent attempt highlights the nature of minority oppression, which typically involves a series of acts or a pattern of conduct with a cumulative, overall effect of freezing out a minority shareholder. *Hendrick v. Hendrick*, 755 A.2d 784, 792 (R.I. 2000). See also *Mueller v. Cedar Shore Resort, Inc.*, 643 N.W.2d 56, 64-65 (S.D. 2002) (actions not inherently oppressive may become so when part of a pattern of conduct, particularly when actions may be retaliatory).

Many of the damages asserted by Pisheyar have both an individual and a derivative aspect. For example, Snyder and Hannah taking around

\$900,000 from the corporations to start a new dealership excluding Pisheyar gave rise to a shareholder claim, because it caused the corporations to be undercapitalized, and to individual claims for breach of contract among the shareholders, and breach of fiduciary duty owed to Pisheyar. CP 562-68, 681-86, 730-33. Pisheyar's claims of self-dealing arose from the totality of the circumstances--the entire course of conduct of Snyder and Hannah, culminating when they retaliated in the form of reverse stock splits that deprived him of his ownership.

D. WASHINGTON VESTS AUTHORITY TO CHALLENGE SELF-DEALING IN INDIVIDUAL SHAREHOLDERS OF A CLOSELY HELD CORPORATION.

AWB advocates giving maximum discretion to a corporation's officers and directors, with a possibility of challenge by a shareholder "only in exceptional circumstances." AWB Brief, p. 7. However, none of the cases AWB cites in support involves a shareholder derivative action. *Id.* (citing cases referencing authority to manage daily business affairs).

Particularly in the context of a closely held corporation, the minority shareholder may be the only party available to object to self-dealing by the majority. Moreover, whether a claim is derivative or individual is less distinct in this context. *Enfission, Inc. v. Leaver*, 408 F.Supp.2d 1093, 1097 (W.D. Wash. 2005) (in closely held corporations, a derivative action "effectively determines the rights of individuals")

The Washington rule governing shareholder derivative actions requires that the plaintiff represent the interests of “similarly situated” shareholders--which may be a group of one. The rule states, in pertinent part:

. . . (a) that the plaintiff was a shareholder or member at the time of the transaction of which he complains . . . The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. . . .

Civil Rule 23.1.

Where two shareholders collude to oppress and ultimately squeeze out a third, the excluded shareholder continues to represent the interests of the oppressed minority after the involuntary loss of his or her shares. In fact, in that situation there is no other shareholder available to represent the rights of the oppressed minority. The squeezed-out shareholder’s loss of shares is part and parcel of the oppression of the minority shareholder. As the Delaware Supreme Court explained, “No one would assert that a former owner suing for loss of property through deception or fraud has lost standing to right the wrong that arguably caused the owner to relinquish ownership or possession of the property.” *Cede & Co.*, 542 A.2d at 1188. The lines are simply not as bright as AWB contends. As the Delaware Supreme Court explained in another decision:

where the shareholder's individual interests are directly and equally implicated ... the distinction between individual and representative claims may become blurred. Indeed, the same wrong may give rise to both an individual and derivative action.

Tandycrafts, Inc. v. Initio Partners, 562 A.2d 1162, 1166 (Del. 1989).

AWB focuses on the Court of Appeals' observation that few states have yet expressly adopted the rule propounded by the American Law Institute, that a shareholder who is involuntarily deprived of shares does not lose standing to maintain an existing derivative action.⁶ However, it is not necessary to expressly adopt this rule to find that Pisheyar did not lose standing to pursue the claims at issue here. It is generally regarded as fraudulent to squeeze out a plaintiff for the sole purpose of avoiding a lawsuit. *See Lewis v. Anderson*, 477 A.2d 1040, 1047, n. 10 (Del. 1984) (noting that recognized exception to loss of standing rule did not apply because the plaintiff had not asserted that the merger had been perpetrated to deprive a party of its claim). The name given to the doctrine is less important than the substance of the analysis, and whether it achieves a just result in light of the facts presented.

III. CONCLUSION

Washington has a long and rich history of protecting minority shareholders. The legislature did not vary from this policy when it adopted

⁶ See discussion in Pisheyar's Petition for Review, pages 18-20.

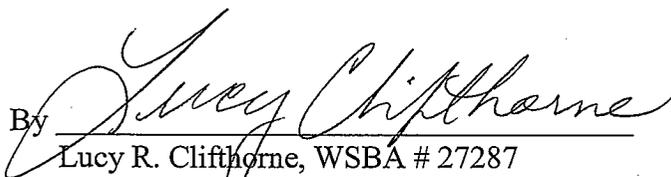
a method by which a minority shareholder who dissents from a fundamental corporate change can leave the corporation without incurring a monetary loss. When majority shareholders adopt a reverse stock split for no other purpose than to squeeze out a minority shareholder and thereby eliminate a plaintiff who brought claims against them for self-dealing and other wrongdoing, the reverse stock split is fraudulent as to the minority shareholder. The defensive remedy of appraisal for a dissenter's shares should not be used as sword to dismiss a claim by a minority shareholder, brought to address a pattern of minority oppression that preexisted the action that triggers the dissenter's right to appraisal.

The decision in *Sound Infiniti* should be reversed because it overturns the long-established principles of protecting minority rights and corporate governance in this state.

RESPECTFULLY SUBMITTED this 9th day of November, 2009.

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