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
   [2] Defining the Derivative Suit and Distinguishing It from the Direct Action .... 1-9
§ 1.03 History ......................................... 1-17
   [1] Early History .................................... 1-17
§ 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 |
| [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 |
| [2] The Entire Fairness Standard | 3-7 |
| [3] The Effect of Shareholder Ratification on Entire Fairness Analysis | 3-10 |
| § 3.02 Rationale for the Business Judgment Rule | 3-16.5 |
| § 3.03 Elements of the Business Judgment Rule | 3-16.7 |
| [a] Disinterestedness | 3-17 |
| [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

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>[b]</td>
<td>Fairness Opinions and the Engagement of Financial Advisors</td>
<td>3-34</td>
</tr>
<tr>
<td>[c]</td>
<td>Conflict of Interest</td>
<td>3-35</td>
</tr>
<tr>
<td>[d]</td>
<td>Regulating Conflicts of Interest</td>
<td>3-44</td>
</tr>
<tr>
<td>[4]</td>
<td>“Good Faith” or “In the Best Interests of the Corporation”</td>
<td>3-46.1</td>
</tr>
<tr>
<td>[a]</td>
<td>Waste</td>
<td>3-48</td>
</tr>
</tbody>
</table>

§ 3.04 Fiduciary Duties in Context of Change of Corporate Control.......................... 3-52.1

[1] *Unocal* and the Creation of the Change of Control Doctrine .................. 3-52.1

[2] The *Revlon* Duties ............................................. 3-52.3

[3] *Toys “R” Us* .................................................. 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


  [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

§ 3.05 Fiduciary Duties and Controlling Stockholder Freeze-Outs .......................... 3-79

[1] What Qualifies as “Controlling”?................................ 3-80


  [a] Mergers with Controlling Shareholders: The *Lynch* Test .... 3-82
  [b] Departing from *Lynch* via Tender Offers .................. 3-87
  [c] Questioning the Dual Approach: *Pure Resources* ........ 3-91
  [d] Toward a Unified Standard: *In re Cox Communications* .... 3-94
  [e] Adopting the Unified Standard: *In re MFW Shareholders’ Litigation* and Its Progeny .... 3-98

[3] Derivative or Direct Claims .................................. 3-104
SHAREHOLDER DERIVATIVE LITIGATION


§ 3.06 The Business Judgment Rule in the Context of Derivative Litigation ........................................... 3-108

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
§ 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
  [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
    [a] Standing for Corporate Directors in Derivative Actions? ........................................... 4-56
### TABLE OF CONTENTS

[1] In General .................. 4-73
[2] Factors Considered ............ 4-76
  [a] The “Professional Plaintiff” ...... 4-79
  [b] Simultaneous Prosecution of Class and Derivative Actions ............. 4-83
  [c] The “Fast-Filer” Presumption ...... 4-86

§ 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 ...................... 5-3
§ 5.03 Applicable Legal Standards .................. 5-7

[1] The Delaware Test: Aronson and Rales ........................................ 5-8
  [a] Aronson v. Lewis: Action by Board of Directors ......................... 5-8
  [b] Reasonable Doubt .................. 5-10
  [c] The First Prong of the Aronson Test ........................................ 5-10.1
    [i] Interestedness .................. 5-10.1
    [ii] Independence ................. 5-11
SHAREHOLDER DERIVATIVE LITIGATION

1. Rales v. Blasband: Non-Action by Board of Directors 5-14
2. Comparing Aronson and Rales 5-15
3. Determining Which Board to Evaluate 5-20
4. The New York Test 5-21
5. The Maryland Test 5-22
6. The Indiana Test 5-23

§ 5.04 Common Grounds for Allegations of Demand Futility 5-25
1. Naming Directors as Defendants 5-25
2. Approval or Acquiescence of the Challenged Transaction 5-26
3. Financial Interest and Director Compensation 5-27
4. Entrenchment 5-31
5. Domination and Control 5-35
6. Personal Friendships and Other Relationships 5-38
7. Philanthropic Ties 5-42
8. Threat of Personal Liability 5-43
9. Failure of Oversight (Caremark Claims) 5-48
  a. Caremark’s First Prong: Board-Level Oversight and Controls 5-49
  b. Caremark’s Second Prong: Ignoring Red Flags 5-51
10. Engaging in Illegal Conduct 5-61
11. Insured Versus Insured Exclusion 5-64
12. Claims of Waste 5-66
13. Activity After Suit Is Filed 5-70.1

§ 5.05 Effects of a Demand Futility Dismissal 5-70.3
1. Demand Futility Allegations and Issue Preclusion 5-71
2. Privity Between Multiple Shareholders 5-72
3. Adequacy of Representation 5-79

§ 5.06 Appellate Review of Demand Futility Determinations 5-90

§ 5.07 Demand Futility and the 2008 Financial Crisis 5-92
1. Citigroup and the Failure to Monitor Risks 5-92
# TABLE OF CONTENTS

[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 | 6-7 |
| [1] | Proper Purpose ....................................... | 6-9 |
| [2] | Scope of Inspection .................................. | 6-14 |
| [3] | Standing ............................................... | 6-23 |
| [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 | 6-26.2 |
| [c] | Section 220 in Demand-Refused Cases | 6-26.4 |
| [d] | Section 220 Demand by Corporate Director | 6-26.8 |
| § 6.04 | The Modified Business Judgment Rule in Wrongful Refusal Cases | 6-26.10 |
| § 6.05 | Demand as Concession of Independence | 6-26.12 |
| § 6.06 | Lack of Due Care or Good Faith as a Basis for Wrongful Refusal | 6-31 |
| [1] | Reasonableness of Investigation | 6-31 |
| [3] | Independence of Counsel | 6-40 |
| § 6.07 | Use of a Committee to Review Demand | 6-44 |
| § 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
  [2] The Delaware Rule ............................... 7-10
  [5] The Iowa Rule ..................................... 7-25
§ 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 ............................. 7-41
  [3] Thorough Consideration of Potential
      Claims ............................................. 7-48
  [4] Stays and Timing of the Special
      Litigation Committee’s Review ............... 7-52
§ 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
      of Review ....................................... 8-9
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>[3]</td>
<td>Breaches of Fiduciary Duty and Loyalty</td>
<td>8-10</td>
</tr>
<tr>
<td>§ 8.04</td>
<td>Integrated Health Services, Inc. v. Elkins</td>
<td>8-13</td>
</tr>
<tr>
<td>[1]</td>
<td>Outside Director Misconduct and Personal Liability</td>
<td>8-13</td>
</tr>
<tr>
<td>§ 8.05</td>
<td>In re Oracle Corporation Derivative Litigation</td>
<td>8-16</td>
</tr>
<tr>
<td>[1]</td>
<td>Misappropriation of Inside Information</td>
<td>8-16</td>
</tr>
<tr>
<td>[2]</td>
<td>Heightened Scrutiny</td>
<td>8-16</td>
</tr>
<tr>
<td>§ 8.06</td>
<td>Disney’s Impact on Settlements of Shareholder Derivative Litigation</td>
<td>8-18</td>
</tr>
<tr>
<td>[1]</td>
<td>Enron</td>
<td>8-19</td>
</tr>
<tr>
<td>§ 8.07</td>
<td>The Road Forward: Recent Conceptions of Outside Directors’ Liability</td>
<td>8-22</td>
</tr>
</tbody>
</table>

## CHAPTER 9

Procedural Issues in Derivative Litigation

| § 9.01  | In General                                                          | 9-1   |
| § 9.02  | Federal Subject Matter Jurisdiction                                 | 9-2   |
| [2]     | Amount in Controversy for Purposes of Diversity Jurisdiction       | 9-4   |
| [3]     | Ripeness                                                            | 9-4   |
| § 9.03  | Personal Jurisdiction                                              | 9-6   |
| § 9.04  | Venue and Process                                                   | 9-7   |
| § 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  |
SHAREHOLDER DERIVATIVE LITIGATION

§ 10.03 The Attorney-Client Privilege in the Corporate Context ......................... 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

§ 10.04 Exceptions to the Attorney-Client Privilege ........................................ 10-20
   [1] The Fiduciary Exception ........................................... 10-20
   [3] Other Exceptions ................................................. 10-23

§ 10.05 Waiver of the Attorney-Client Privilege ............................................. 10-25
   [2] Implied Waiver in General ....................................... 10-28
   [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

§ 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 ................................................................. 11-2
§ 11.02 Development of the Fiduciary Exception ........................................... 11-4
§ 11.03 Application of the Fiduciary Exception .......................................... 11-8
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>[3]</td>
<td>Criticism of the <em>Garner</em> Fiduciary Exception</td>
<td>11-16</td>
</tr>
<tr>
<td>§ 11.04</td>
<td>Application of the Fiduciary Exception in the Derivative Context</td>
<td>11-20</td>
</tr>
<tr>
<td>§ 11.05</td>
<td>Application of the Fiduciary Exception in the Class Action Context</td>
<td>11-24</td>
</tr>
<tr>
<td>[1]</td>
<td>Distinguishing Derivative Actions from Class Actions</td>
<td>11-24</td>
</tr>
<tr>
<td>[2]</td>
<td>Invocation of the Exception by “Purchasers” as Opposed to Shareholders</td>
<td>11-25</td>
</tr>
<tr>
<td>§ 11.06</td>
<td>Invoking the Protections of Either the Attorney-Client Privilege or the Work Product Doctrine in the Derivative Context</td>
<td>11-27</td>
</tr>
</tbody>
</table>

### CHAPTER 12

**Indemnification**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12.01</td>
<td>In General</td>
<td>12-2</td>
</tr>
<tr>
<td>§ 12.02</td>
<td>Statutory Indemnification</td>
<td>12-5</td>
</tr>
<tr>
<td>[1]</td>
<td>Indemnification Statutes Generally</td>
<td>12-5</td>
</tr>
<tr>
<td>[2]</td>
<td>Prerequisites to Statutory Indemnification</td>
<td>12-7</td>
</tr>
<tr>
<td>[a]</td>
<td>Who May Be Indemnified</td>
<td>12-7</td>
</tr>
<tr>
<td>[b]</td>
<td>Proceedings Covered</td>
<td>12-9</td>
</tr>
<tr>
<td>[a]</td>
<td>Degree of Success Required</td>
<td>12-10</td>
</tr>
<tr>
<td>[b]</td>
<td>Nature of the Success Required</td>
<td>12-11</td>
</tr>
<tr>
<td>§ 12.03</td>
<td>Mandatory Indemnification by Charter, By-law, or Agreement</td>
<td>12-15</td>
</tr>
<tr>
<td>§ 12.04</td>
<td>Permissive Indemnification</td>
<td>12-17</td>
</tr>
<tr>
<td>[1]</td>
<td>Conditions Precedent to Permissive Indemnification</td>
<td>12-17</td>
</tr>
<tr>
<td>[2]</td>
<td>Limitations on Permissive Indemnification</td>
<td>12-18</td>
</tr>
<tr>
<td>§ 12.05</td>
<td>Non-Exclusivity Provisions and the Public Policy Limitation</td>
<td>12-23</td>
</tr>
</tbody>
</table>

(Rel. 13)
SHAREHOLDER DERIVATIVE LITIGATION

§ 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
        [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
§ 13.04 Defined Terms .............................. 13-12
§ 13.05 Exclusions .................................. 13-15
        [1] Insured Versus Insured ............... 13-15
        [3] Prior or Pending Litigation ........... 13-25
§ 13.06 Reporting and Notice ......................... 13-27
        [2] The Occurrence Exception to the
            Claims-Made Rule .................... 13-28
§ 13.07 Defense of Actions .......................... 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
§ 13.08 Excess Coverage ............................ 13-41
TABLE OF CONTENTS

§ 13.09 Cancellation and Rescission ............................. 13-43
[1] Cancellation ............................................. 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
[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
[3] Attorneys’ Fees When Defendants’ Action Renders the Litigation Moot ........................................ 14-38.2
[4] Allocating Attorneys’ Fees Among Plaintiffs’ Counsel ........ 14-42
[5] Incentive Awards to Plaintiffs ............................. 14-46.1

(Rel. 13)
SHAREHOLDER DERIVATIVE LITIGATION


§ 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


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


[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


[a]  Identifying the Essential Documents ................ 15-18

[b]  Collecting and Processing Relevant Documents .................. 15-19
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>[a]</td>
<td>Opening Remarks</td>
<td>15-20</td>
</tr>
<tr>
<td>[b]</td>
<td>Memorializing the Witness Interview</td>
<td>15-21</td>
</tr>
<tr>
<td>§ 15.08</td>
<td>Meeting with Shareholder’s Counsel</td>
<td>15-23</td>
</tr>
<tr>
<td>§ 15.09</td>
<td>Reporting the Results of the Committee’s Investigation</td>
<td></td>
</tr>
<tr>
<td>[1]</td>
<td>Reporting in the Demand-Required Context</td>
<td></td>
</tr>
<tr>
<td>[a]</td>
<td>Report of Counsel to the Evaluation Committee</td>
<td>15-24</td>
</tr>
<tr>
<td>[b]</td>
<td>Report of the Evaluation Committee to the Board</td>
<td>15-27</td>
</tr>
<tr>
<td>[c]</td>
<td>The Board Meeting</td>
<td>15-28</td>
</tr>
<tr>
<td>[d]</td>
<td>The Board Resolution</td>
<td>15-28</td>
</tr>
<tr>
<td>§ 15.10</td>
<td>Conclusion of a Derivative Proceeding</td>
<td>15-30</td>
</tr>
<tr>
<td>[1]</td>
<td>Conclusions of the Board After the Recommendation Is Made by an</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Evaluation Committee</td>
<td>15-30</td>
</tr>
<tr>
<td>§ 15.11</td>
<td>Settlement of a Derivative Proceeding</td>
<td>15-33</td>
</tr>
<tr>
<td>[1]</td>
<td>Structuring a Settlement</td>
<td>15-34</td>
</tr>
<tr>
<td>[3]</td>
<td>Involvement of the Insurance Carrier</td>
<td>15-37</td>
</tr>
<tr>
<td>[a]</td>
<td>The Basic Terms of the Settlement Agreement</td>
<td>15-39</td>
</tr>
<tr>
<td>[b]</td>
<td>Contingencies and Other Miscellaneous Provisions to Be Included in the Settlement Agreement</td>
<td>15-41</td>
</tr>
<tr>
<td>[a]</td>
<td>When to Provide Individual Notice</td>
<td>15-43</td>
</tr>
<tr>
<td>[b]</td>
<td>Dispatching Notice to Shareholders</td>
<td>15-44</td>
</tr>
<tr>
<td>[c]</td>
<td>Form of Individual Notice</td>
<td>15-45</td>
</tr>
<tr>
<td>[d]</td>
<td>Notice by Publication</td>
<td>15-46</td>
</tr>
<tr>
<td>[7]</td>
<td>Obtaining Final Approval of the Settlement</td>
<td>15-47</td>
</tr>
<tr>
<td>§ 15.12</td>
<td>Insurance Considerations</td>
<td>15-49</td>
</tr>
</tbody>
</table>

(Rel. 13)
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