

Table 1

Definitions of Oppression by Jurisdiction

Alabama	<p><u>Stallworth v. AmSouth Bank of Alabama</u>, 709 So.2d 458 (Ala. 1997). Majority shareholders in a close corporation “owe a duty to at least act fairly to the minority interests.” <u>Id.</u> at 467. Quoting <u>Burt v. Burt Boiler Works, Inc.</u>, 360 So.2d 327 (Ala. 1978). In a close corporation a minority shareholder could have a reasonable expectation of continuing employment by the corporation, or of a continuing right to take part in management decisions. <u>Id.</u> at 467-68. However, even if such an expectation is legitimate, it may not be sufficient to maintain an action for oppression. <u>Id.</u> Citing <u>Michaud v. Morris</u>, 603 So.2d 886 (Ala. 1992) (Minority shareholder who may have had reasonable expectation of employment, and whose employment was terminated, could not maintain an action for oppression considering the poor financial state of the corporation).</p>
Alaska	<p><u>Stefano v. Coppock</u>, 705 P.2d 443 (Alaska 1985). The Supreme Court of Alaska found oppressive actions “to refer to conduct that substantially defeats the ‘reasonable expectations’ held by minority shareholders in committing their capital to the particular enterprise... A shareholder who reasonably expected that ownership in the corporation would entitle him or her to a job, a share of corporate earnings, a place in corporate management or some other form of security would be oppressed in a very real sense when others in the corporation seek to defeat those expectations and there exists no effective means of salvaging the investment.” <u>Id.</u> at 446. Citing <u>In re Kemp & Beatley Inc.</u>, 473 N.E.2d 1173 (N.Y. 1984).</p>
Arkansas	<p><u>Smith v. Leonard's Hardware Inc.</u>, 876 S.W.2d 266 (Ark. 1994). The Supreme Court of Arkansas adopted the New York Court of Appeals definition of oppression: “Defining oppressive conduct as distinct from illegality in the present context has been considered in other forums. The question has been resolved by considering oppressive actions to refer to conduct that substantially defeats the ‘reasonable expectations’ held by minority shareholders in committing their capital to the particular enterprise.” <u>Id.</u> at 272. Citing <u>In re Kemp & Beatley, Inc.</u>, 473 N.E.2d 1173 (N.Y. 1984).</p>
California	<p><u>Bauer v. Bauer</u>, 46 Cal. App. 4th 1106 (Cal. Ct. App. 1996). In <u>Bauer</u>, the court disregarded the notion that the term ‘persistent unfairness’ should be interpreted according to the reasonable expectations of the minority shareholder. <u>Id.</u> at 1114. Rather, the focus should be on the misconduct of the controlling shareholders. <u>Id.</u></p>
Colorado	<p><u>Colt v. Mt. Princeton Trout</u>, 78 P.3d 1115 (Colo. Ct. App. 2003). The Court of Appeals recognized the definition of oppressive conduct is intended to be broad and flexible. <u>Id.</u> at 1118. Furthermore, “[i]n the context of a close corporation, oppressive conduct of those in control is closely related to breach of the fiduciary duty owed to minority shareholders.” <u>Id.</u> Citing <u>Polk v. Hergert Land & Cattle Co.</u>, 5 P.3d 402, 404-405 (Colo. Ct. App. 2000). Therefore, evidence of a breach of fiduciary duty may be evidence of oppressive conduct. <u>Id.</u> Oppressive</p>

	conduct is generally defined as: “burdensome, harsh and wrongful conduct; a lack of probity and fair dealing in the affairs of the company to the prejudice of some of its members; or a departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely”. <u>Id.</u>
Connecticut	<u>Morrow v. Prestonwood</u> , 2001 Conn. Super. LEXIS 3613 (Conn. Super. Ct. 2001). The Superior Court of Connecticut looked to New York law, and found oppression to be determined by the reasonable expectations of the minority shareholders. <u>Id.</u> at 10. The court also referred to Oregon and found oppressive conduct to be closely related to the fiduciary duty of good faith and fair dealing owed by the majority to the minority shareholders. <u>Id.</u> at 17.
Illinois	<u>Gidwitz v. Lanzit Cor. Box Co.</u> , 170 N.E.2d 131 (Ill. 1960). “[T]he word ‘oppressive’...does not carry an essential inference of imminent disaster; it can contemplate a continuing course of conduct. The word does not necessarily savor of fraud, and the absence of ‘mismanagement, or misapplication of assets,’ does not prevent a finding that the conduct of the dominant directors or officers has been oppressive.” <u>Id.</u> at 135. “[T]he minority of stockholders is not to be deprived of the opportunity of exhibiting their corporate desires and directives by the exercise to participate in the election of directors.” <u>Id.</u>
Iowa	<u>Maschmeier v. Southside Press, Ltd.</u> , 435 N.W.2d 377 (Iowa Ct. App. 1988). The Iowa Court referred to the North Dakota Supreme Court definition of oppression finding, “[t]he alleged oppressive conduct by those in control of a close corporation must be analyzed in terms of ‘fiduciary duties’ owed by majority shareholders to the minority shareholders and ‘reasonable expectations’ held by minority shareholders in committing capital and labor to the particular enterprise, in light of the predicament in which minority shareholders in a close corporation can be placed by a ‘freeze-out’ situation.” <u>Id.</u> at 380. Citing <u>Balvik v. Sylvester</u> , 411 N.W.2d 383, 386-87 (N.D. 1987). The court also looked to the Oregon definition of oppressive conduct: “burdensome, harsh and wrongful conduct; a lack of probity and fair dealing with the affairs of a company to the prejudice of some of its members, or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.” <u>Id.</u> Quoting <u>Baker v. Commercial Body Builders</u> , 507 P.2d 387, 393 (Or. 1973).
Louisiana	<u>Levy v. Billeaud</u> , 443 So. 2d 539 (La. 1983). In Louisiana, the courts are authorized to prevent the majority’s action to dissolve the close corporation, if dissolution would oppress the minority shareholders. <u>Id.</u> at 543. The Supreme Court of Louisiana found a prima facie case of oppressive conduct when the majority shareholders dissolved the company without giving the minority a distribution of their proportionate share of the dissolved company’s assets, or payment of the fair value of their shares. <u>Id.</u> at 544. The minority shareholders were oppressed because the actions of the majority gave them no other option but to reinvest their money into the new majority’s new corporation. <u>Id.</u>
Massachusetts	<u>Donahue v. Rodd Electrotpe Co. of New England, Inc.</u> , 328 N.E.2d 505 (Mass. 1975).

	<p>“Stockholders in close corporations must discharge their management and stockholder responsibilities in conformity with this strict good faith standard. They may not act out of avarice, expediency or self-interest in derogation of their duty of loyalty to the other stockholders and to the corporation.” <u>Id.</u> at 515.</p>
Michigan	<p><u>Franchino v. Franchino</u>, 687 N.W.2d 620 (Mich. App. 2004). The applicable Michigan Statute defines ‘willfully unfair and oppressive conduct’ as “a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder.” <u>Id.</u> at 627. Citing MCL 450.1489(3). The court noted that when determining whether the minority has been oppressed, the Michigan statute focuses on the actions of the majority, not the expectations of the minority. <u>Id.</u> at 630.</p>
Minnesota	<p><u>Berremman v. West Publishing Co.</u>, 615 N.W.2d 362 (Minn. Ct. App. 2000). Review denied (Minn. Sept. 26 2000). The court found the ‘reasonable expectations’ approach as most consistent with the Minnesota legislature’s intent in adopting the ‘unfairly prejudicial’ language in the applicable statute. <u>Id.</u> at 374. “[U]nfairly prejudicial conduct...is conduct that frustrates the reasonable expectations of shareholders in their capacity as shareholders or directors of a corporation that is not publicly held or as officers or employees of a closely held corporation.” <u>Id.</u></p>
Mississippi	<p><u>Kisner v. Coffey</u>, 418 So.2d 58 (Miss. 1982). The Supreme Court of Mississippi relied on the observations made by the Oregon Supreme Court in <u>Baker v. Commercial Body Builders</u>, 507 P.2d 387 (Or. 1973). <u>Id.</u> at 61. “The question of what is oppressive conduct by those in control of a ‘close’ corporation as its majority stockholders is closely related to what we agree to be the fiduciary duty of good faith and fair dealing owed by them to its minority stockholders” <u>Id.</u> Furthermore, oppressive conduct is “burdensome, harsh and wrongful conduct, a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its members; or a visible departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.” <u>Id.</u></p>
Missouri	<p><u>Jackson v. St. Regis Apartments, Inc.</u>, 565 S.W.2d 178 (Mo. Ct. App. 1978). “There is no clearly identifiable standard by which to judge when a vote of the majority amounts to oppression.” <u>Id.</u> at 183. “[C]onduct by the majority shareholder to be oppressive need not be fraudulent or illegal. The existence of oppression must be determined on a case by case basis taking into account the specific facts of each case. In general, however, the term oppression suggests harsh, dishonest or wrongful conduct and a visible departure from the standards of fair dealing which inure to the benefit of the majority and to the detriment of the minority.” <u>Id.</u> Citing <u>Fix v. Fix Material Co., Inc.</u>, 538 S.W.2d 351 (Mo. Ct. App. 1976).</p>
Montana	<p><u>Fox v. 7L Bar Ranch Co.</u>, 645 P.2d 929 (Mont. 1982). The Supreme Court of Montana noted the definition for oppression is determined “in terms of the ‘reasonable expectations’ of the minority shareholders in light of the particular circumstances of each case.” <u>Id.</u> at 933. Quoting <u>Application of Topper</u> (1980) 433 N.Y.S.2d 359, 365. In 2004, the Supreme Court of Montana</p>

	<p>recognized the definition of oppression as “harsh, dishonest or wrongful conduct and a visible departure from the standards of fair dealing which inure to the benefit of the majority and to the detriment of the minority.” <u>Pankratz Farms, Inc. v. Pankratz</u>, 95 P.3d 671, 685 (Mont. 2004).</p>
New Jersey	<p><u>Brenner v. Berkowitz</u>, 634 A.2d 532 (N.J. 1993). The Supreme Court of New Jersey recognized that oppressive conduct should be determined by looking at the reasonable expectations of the minority shareholders. <u>Id.</u> at 1028. The court specifically recognized that “termination of a shareholders status as an employee is a much more common means of oppression in a close corporation than is infringement of his status as a shareholder.” <u>Id.</u> However, the court will look to the specific facts of each case to determine whether the exercise of corporate business judgment should be overturned. <u>Id.</u> at 1033.</p>
New Mexico	<p><u>McCauley v. Tom McCauley & Son, Inc.</u>, 104 N.M. 523, 724 P.2d 232 (N.M. Ct. App. 1986). The New Mexico Court of Appeals noted that oppressive conduct “is an expansive term that is used to cover a multitude of situations dealing with improper conduct.” <u>Id.</u> at 236. “The absence of a rigidly defined standard for determining what constitutes oppressive behavior enables courts to determine, on a case-by-case basis, whether the acts complained of serve to frustrate the legitimate expectations of minority shareholders, or whether the acts are of such severity as to warrant the requested relief.” <u>Id.</u> The court then cited standards for what constituted oppressive conduct in other jurisdictions, without further defining the term in New Mexico. <u>Id.</u> at 237-38.</p>
New York	<p><u>In re Kemp & Beatley</u>, 473 N.E.2d 1173 (N.Y. 1984). The New York Court of Appeals held, “[o]ppression should be deemed to arise only when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture. [In determining whether conduct is oppressive] much will depend on the circumstances in the individual case.” <u>Id.</u> at 1179 Where there was a reasonable expectation for the minority shareholder to be awarded dividends, the majority not making such an award was oppressive behavior. <u>Id.</u></p>
North Carolina	<p><u>Meiselman v. Meiselman</u>, 307 S.E.2d 551 (N.C. 1983). The Supreme Court of North Carolina noted the specific language of the applicable statute focused on the ‘rights or interests’ of the complaining shareholder. <u>Id.</u> at 562 In a close corporation, such rights and interests include the reasonable expectations the complaining shareholder has in the corporation. <u>Id.</u> at 563. However, “privately held expectations which are not made known to the other participants are not reasonable.” <u>Id.</u></p>
North Dakota	<p><u>Balvik v. Sylvester</u>, 411 N.W.2d 383 (N.D. 1987). The Supreme Court of North Dakota referred to oppressive conduct as an expansive term used to cover a multitude of situations dealing with improper conduct that is neither illegal nor fraudulent. <u>Id.</u> at 385. Oppressive conduct by those in control of a close corporation is analyzed in terms of fiduciary duties owed by majority shareholders to minority shareholders, and reasonable expectations</p>

	held by minority shareholders in committing capital and labor to the particular enterprise, in light of the predicament in which minority shareholders in a close corporation can be placed by a freeze-out situation. <u>Id.</u> at 387-88.
Ohio	<u>Crosby v. Beam</u> , 548 N.E.2d 217 (Ohio 1989). While the Supreme Court of Ohio did not explicitly define oppression or oppressive conduct, it generally equated oppression of the minority shareholder with a breach of the majority's fiduciary duty to the minority. <u>Id.</u> at 221. The court further gave examples of oppressive conduct as "the majority or controlling shareholders may refuse to declare dividends, may grant majority shareholders-officers exorbitant salaries and bonuses, or pay high rent for property leased from the majority shareholders." <u>Id.</u> at 220. Citing <u>Donahue v. Rodd Electrotype Co. of New England, Inc.</u> , 328 N.E.2d 505 (Mass. 1975).
Oregon	<u>Baker v. Commercial Body Builders</u> , 264 Or. 614, 507 P.2d 387 (Or. 1973). The Oregon Supreme Court recognized oppressive conduct as "burdensome, harsh and wrongful conduct; a lack of fair dealing in the affairs of a company to the prejudice of some of its members; or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely." <u>Id.</u> at 628-29. Furthermore, "oppressive conduct...is closely related to what we agree to be the fiduciary duty of good faith and fair dealing owed by them to its minority stockholders." <u>Id.</u>
Pennsylvania	<u>Adler v. Tauberg</u> , 2005 Pa. Super. LEXIS 2234 (2005). The Superior Court of Pennsylvania noted the comments to the applicable statute recognized oppressive conduct "often takes the form of freezing-out a minority shareholder by removing him from his various offices or by substantially diminishing his power or compensation." <u>Id.</u> at 6. Citing 15 Pa.C.S. § 1767 amended comment--1990. Adopting the New York definition of oppression, the Superior Court found "[o]ppressive actions refer to conduct that substantially defeats the 'reasonable expectations' held by minority shareholders in committing their capital to the particular enterprise." <u>Ford v. Ford</u> , 2005 Pa. Super. LEXIS 1572, 10 (2004).
Rhode Island	<u>Hendrick v. Hendrick</u> , 755 A.2d 784 (R.I. 2000). The Supreme Court of Rhode Island did not specify whether it was adopting a 'reasonable expectations' test, or a heightened fiduciary duty test for determining whether actions of the majority were oppressive. <u>Id.</u> at 792. However, the court was mindful that "oppression within a closely held corporation can manifest itself as a series of acts or a pattern of conduct by majority shareholders that can have the cumulative, overall effect of freezing out or depriving the minority shareholder of a voice in the corporation, as well as manifesting itself in more distinct, identifiable actions." <u>Id.</u>
South Dakota	<u>Landstrom v. Shaver</u> , 561 N.W.2d 1 (S.D. 1997). The Supreme Court of South Dakota followed New York to find oppression as being derived from the reasonable expectations of the minority shareholder. <u>Id.</u> at 8. "[O]ppression should be deemed to arise only when the majority conduct substantially defeats the expectations that, objectively viewed, were both reasonable under the circumstances and were central to the minority shareholder's decision to join the venture." <u>Id.</u> citing <u>Matter of Weidy's Furniture</u>

	<p><u>Clearance Center</u>, 487 N.Y.S.2d 901 (1985). The court also noted that the reasonable expectations must be balanced against a corporation's ability to exercise its business judgment and run its business efficiently. <u>Id.</u></p> <p><u>Mueller v. Cedar Shore Resort, Inc.</u>, 643 N.W.2d 56 (S.D. 2002). The Supreme Court of South Dakota emphasized that South Dakota is an at-will employment state. <u>Id.</u> at 65. Therefore, without a contract for employment or an indication in either the bylaws or shareholders agreement that the minority is entitled to employment, the minority shareholders would not be oppressed if discharged as employees. <u>Id.</u> The court also adopted a decency standard of good faith and fair dealing for determining whether the majority has breached the fiduciary duty to the minority shareholders. <u>Id.</u> at 67.</p>
Texas	<p><u>Willis v. Bydalek</u>, 997 S.W.2d 798 (Tex. App. 1999). Oppression is defined as “1) majority shareholders’ conduct that substantially defeats the minority’s expectations that, objectively viewed, were both reasonable under the circumstances and central to the minority shareholder’s decision to join the venture; or 2) burdensome, harsh, or wrongful conduct; a lack of probity and fair dealing in the company's affairs to the prejudice of some members; or a visible departure from the standards of fair dealing and a violation of fair play on which each shareholder is entitled to rely.” <u>Id.</u> at 801. Citing <u>Davis v. Sheerin</u>, 754 S.W.2d 375, 381-82 (Tex. App. 1988).</p>
Virginia	<p><u>Giannotti v. Hamway</u>, 387 S.E.2d 725 (Va. 1990). “[O]ppressive’ means conduct by corporate managers toward stockholders which departs from the standards of fair dealing and violates the principles of fair play on which persons who entrust their funds to a corporation are entitled to rely. The term does not mean that a corporate disaster may be imminent and does not necessarily mean fraudulent conduct. Indeed, ‘oppressive’ is not synonymous with the statutory terms ‘illegal’ or ‘fraudulent.’ The term can contemplate a continuous course of conduct and includes a lack of probity in corporate affairs to the prejudice of some of its shareholders.” <u>Id.</u> at 730-31. Citing <u>White v. Perkins</u>, 213 Va. 129, 134, 189 S.E.2d 315, 319 (Va. 1972).</p>
Washington	<p><u>Scott v. Trans-System, Inc.</u>, 64 P.3d 1 (Wash. 2003). The Supreme Court of Washington recognized that two tests can be used for determining whether the actions of the majority are oppressive. <u>Id.</u> at 6. The first defines oppression as a “violation by the majority of the reasonable expectations of the minority.” <u>Id.</u> “Application of the reasonable expectations test is most appropriate in situations where the complaining shareholder was one of the original participants in the venture - one who would have committed capital and resources.” <u>Id.</u> The second test describes oppression as: “burdensome, harsh and wrongful conduct; a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its members; or a visible departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.” <u>Id.</u> Quoting <u>Gimpel v. Bolstein</u>, 125 Misc. 2d 45, 477 N.Y.S.2d 1014 (N.Y. Sup. Ct. 1984). In Washington, these two tests are not mutually exclusive “and one or both may be used in the same case, depending on the facts.” <u>Id.</u> at 6.</p>

West Virginia	<p><u>Masinter v. WEBCO Co.</u>, 262 S.E.2d 433 (W. Va. 1980). Oppressive conduct is “burdensome, harsh and wrongful conduct; a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its members; or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely. We agree, however, that the question of what is ‘oppressive’ conduct by those in control of a ‘close’ corporation as its majority stockholders is closely related to what we agree to be the fiduciary duty of a good faith and fair dealing owed by them to its minority stockholders.” <u>Id.</u> at 440. Citing <u>Baker v. Commercial Body Builders</u>, 507 P.2d 387 (Or. 1973). “Thus, we conclude that our cases involving the fiduciary duty owed by majority shareholders, officers and directors of a corporation embrace the same standard which other courts have evolved under the term ‘oppressive conduct.’” <u>Id.</u></p>
Wisconsin	<p><u>Jorgensen v. Water Works, Inc.</u>, 582 N.W.2d 98 (Wis. Ct. App. 1998). The Wisconsin Court of Appeals adopted the Oregon definition of oppressive conduct: “burdensome, harsh and wrongful conduct; a lack of fair dealing in the affairs of a company to the prejudice of some of its members; or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.” <u>Id.</u> at 107. “[T]his definition is intended to be broad and flexible.” <u>Id.</u> Furthermore, “in the context of a close corporation, oppressive conduct of those in control is closely related to breach of the fiduciary duty owed to minority stockholders.” <u>Id.</u></p>