

# The Case Of The Provisional Director



**Problem:**

**Need for Provisional Director in Shareholder Dispute Situations**

In many cases, deadlocked and disputing equal shareholders turn to the courts for dispute resolution and assistance. In three different cases (2001-2003), we have been appointed and approved by the court and shareholders to serve as a Provisional Director pursuant to California Corporations Code (CCC) Section 2000. In fact, it has been our experience to date that this process is “better” than a 3rd-party receivership or the stalemate that has resulted from the shareholder dispute / differences in opinion.

**Clients’ Situations**

In each of our appointments we were interviewed by the shareholders and then approved by the Court. Though the initial suggestion of our appointment came from the court, in our opinion it was important to involve the shareholders and have them confirm our involvement. By design and statute, a provisional director only votes when the shareholders deadlock.

Our experiences have resulted in some observations and opinions:

- (1) At one time or another, each shareholder will be “upset” with our tie-breaking vote.
- (2) Progress toward resolution and effective interim operations result.
- (3) After a while, creative solutions and compromise occur.

**ABA Solution**

As a provisional director it has been our experience that we are first asked to resolve job duties, responsibilities and related fair market compensation. Concurrently, we often address the “issues” each party has with the other. After issue resolution and some management and reporting structure has been implemented, operations actually improve. More important, employee morale and corporate atmosphere improve as shareholders work through the Board toward resolution.

Our executive and valuation skills are particularly relevant to the corporate governance process and integral to the often pending or threatened CCC Section 2000 appraisal process. In each instance, we have been asked to expand our role and assist in deal making settlement discussions. Our knowledge of the various tax, structuring, GAAP accounting and related standard and customary deal terms has been valuable to the parties and counsel.