



Minority Oppression in Limited Liability Companies: The Birth of a New Claim or a Hole in the Law?

By Douglas B. Hargett and G. Bartley Loftin, III

“I don’t like to think of laws as rules you have to follow, but more as suggestions.”

George Carlin

George Carlin’s clever one-liner about his approach to everyday life is not only followed by free-spirited comedians, but it is also the mantra of some business owners. Take a business that begins with a brilliant idea, a cutting-edge product or a unique service developed by two business partners who decide to form a company. For different reasons, ownership of the company is split 60/40, creating majority and minority owners. The majority owner assumes the roles of company president and chair of the board of directors. Everything is going great, until one day the owners disagree on a big decision, and then later, several smaller decisions. Things snowball, and the majority owner begins to unilaterally run the company, terminates the minority’s employment, stops sharing the company’s profits and cuts off the minority’s access to credit cards and bank accounts. The minority owner has no control, needs a paycheck and has no way to sell his minority interest to anyone other than the majority owner, who is happy to buy the same at a deep discount. This is a clear-cut example of how a majority owner can use his or her control to oppress and squeeze out a minority owner. It happens every day, regardless of laws designed to prevent it. Those laws are many times considered, in George Carlin’s words, mere suggestions to majority owners.

Minority shareholders in closely-held corporations can file a claim for corporate oppression and squeeze-out against abusive majority shareholders to remedy these actions. In Alabama, however, no clear legal precedent can be found, neither statutory nor common law, authorizing minority members of a limited liability company (LLC) to pursue an oppression claim under Alabama law. Alabama caselaw discussing oppression in LLCs is non-existent, which the Alabama Supreme Court alluded to in *DGB, LLC v. Hinds*.¹ Caselaw addressing LLC member disputes where oppression might have been raised is scarce. Alabama trial courts are left considering competing arguments in different cases involving oppression in LLCs, which has and will continue to lead to inconsistent rulings throughout the state at the trial level. This article discusses many of the arguments for and against the recognition of an oppression claim in the LLC context, taking into consideration standing precedent in closely-held corporation oppression cases.

What is Minority Oppression And Squeeze-Out?

The genesis of corporate oppression or squeeze-out can be found in the 1978 decision of the Alabama Supreme Court in *Burt v. Burt Boiler Works, Inc.*² The claim has evolved over the last 37 years, but the basic tenets of a corporate oppression claim set out in *Burt* remain intact: “Majority shareholders owe a duty to at least act fairly to the minority interests, and the majority cannot avoid that duty merely because the action taken was legally authorized.”³ Majority shareholders cannot “deprive the minority shareholders of their just share of the corporate gains.”⁴ Oppression typically occurs when majority shareholders assume the multiple roles of owners, directors and officers, creating the perfect environment for majority dominance over the minority. The only thing needed is a catalyst (*e.g.*, disagreement, greed or something else) to trigger the majority to abuse their power. This scenario leads to minority shareholders being denied a “voice in the operation of the business,” deprived of “income from their interest in the business” and “holding stock which pays no dividends and which cannot, as a practical matter, be sold.”⁵ As the terms suggest, majority shareholders can use their control to “oppress” (*i.e.*,

unfairly or unjustly use authority or power to prevent others from enjoying their rights) or “squeeze out” (*i.e.*, actions taken in an attempt to eliminate or reduce an interest) minority shareholders.⁶

Because closely-held companies are owned or controlled by a few individuals, unlike public or widely-held corporations, oppression in closely-held corporations was established in “recognition that a close corporation enterprise often ‘acquires many of the attributes of a partnership or sole proprietorship and ceases to fit neatly into the classical corporate scheme.’”⁷ Shareholders in closely-held corporations view themselves as business partners who will share in the company’s gains; however, majority shareholders and members can systematically discriminate against the minority by refusing to pay distributions, bonuses and salaries, excluding the minority from positions and eliminating other privileges and benefits.⁸ Oppression claims are often evaluated by comparing the benefits received by the majority to the benefits distributed to the minority to determine whether the company’s gains have been proportionately shared.⁹

Oppression’s Growing Pains: More Questions than Answers

There has been much debate about the nature of a shareholder oppression claim, leading to more questions than answers. Oppression is now almost four decades old in Alabama. By legal standards, oppression is still in its infancy when compared to other claims that have developed since the formation of Alabama’s judiciary system two centuries ago. Oppression has had its fair share of growing pains since *Burt*. Considerable time has been spent by practicing attorneys, legal scholars and Alabama courts attempting to develop a workable, consistent body of law by reviewing and, in many instances, adopting oppression precedent from other jurisdictions, and comparing and contrasting oppression with similar causes of action in Alabama. Some early questions concerned whether oppression was a contract or tort claim, whether oppression was a derivative claim that must be brought on behalf of the company or a direct claim that can be asserted by and against an individual shareholder and whether a separate claim for oppression was necessary because the claim arguably falls under the umbrella of

established breach of fiduciary duty law.¹⁰ Even with decades of legal precedent, there are still conflicting answers to these questions. The side of the case an attorney represents (plaintiff or defendant, minority or majority, company or shareholder) will likely determine the answers he or she gives when arguing these issues before trial and appellate courts, and there is legal authority to support most positions taken.

This is not the case in the LLC context. To the contrary, there is no direct legal authority in Alabama that can be used to analyze a claim for oppression of a minority member of an LLC because this claim has not yet been formally recognized by Alabama appellate courts. Common sense and general principles of fairness and equity lead to the conclusion that the tactics used by majority shareholders in closely-held corporations can also be used by majority or controlling members of LLCs to oppress and squeeze out minority members. If a claim for minority oppression of LLC members is authorized in Alabama, existing corporate oppression law can be borrowed and tweaked by courts to resolve future cases and ease the growing pains associated with this new claim. However, the statutory framework governing LLCs, which does not contain an express duty owed by the majority to the minority, combined with the overtly contractual nature of the LLC entity, may lead courts to altogether dismiss this claim.

DGB, LLC v. Hinds: A Hole in The Law and Need for Clarity

Both proponents and opponents of a cause of action for minority oppression of LLC members frequently cite *Hinds*, a June 30, 2010 decision of the Alabama Supreme Court. In *Hinds*, three individual investors

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owned a 100 percent interest in DGB, LLC. DGB, LLC, in turn, owed a 40 percent minority member interest in Bon Harbor, LLC. The controlling 60 percent majority ownership interest of Bon Harbor, LLC was owned by other members. DGB, LLC and its three members asserted a cause of action for what they called “shareholder oppression” related to oppressive actions allegedly taken by the majority members of Bon Harbor, LLC that harmed the minority’s interest in a multi-million dollar real estate development.¹¹ In support of their oppression claim, DGB, LLC and its three members relied on § 10-12-21(h), the predecessor to § 10A-5-3.03(h), arguing that “[a] member shall discharge the duties to a member-managed company and its other members under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.” Refusing this argument and affirming the trial court’s dismissal of the oppression claim, the Alabama Supreme Court stated that the “investors have not cited any Alabama authority showing that § 10-12-21(h) applies ... or that 10-12-21(h) supports a claim of ‘shareholder oppression.’”¹²

In its analysis and holding, the court’s silence is deafening. The court did not hold in favor of or against the recognition of a claim for minority oppression of LLC members in Alabama. The court did not decide in the affirmative or negative that majority LLC members owed a duty to act fairly to the interests of minority LLC members. Rather, the court was silent on these issues, and limited its reasoning for affirming the dismissal of the oppression claim, stating: “It is not the function of this court to do a party’s legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.”¹³ This conclusion revealed the gaping hole in the law when it comes to oppression in

LLCs. In effect, the Alabama Supreme Court in *Hinds* left the door open for minority LLC members to pursue a cause of action for oppression and squeeze-out in future cases if additional or different legal arguments are made, but would not assume that an actionable claim existed.

Three weeks before *Hinds* was decided, the United States Bankruptcy Court for the Northern District of Alabama reached an entirely different conclusion in *In re Dixie Pellets, LLC*.¹⁴ There, minority members of Dixie Pellets, LLC filed a lawsuit against the majority, controlling member, Harbert DP, LLC, in Alabama state circuit court. Dixie Pellets, LLC later filed a voluntary petition for relief with the bankruptcy court, resulting in the state court lawsuit being removed to bankruptcy court and pursued in an adversary proceeding. The minority members of Dixie Pellets, LLC alleged that the majority member oppressed and attempted to squeeze them out of the LLC by allowing additional capital to be infused into Dixie Pellets, LLC that required repayment at an excessive rate of interest. In its motion to dismiss the oppression claim, the majority member argued that the minority members' claim was derivative in nature and could not be asserted by the individual LLC members as a direct action. Without addressing whether there is a valid cause of action for oppression in the LLC context or pointing to a specific fiduciary duty as the court did in *Burt*, the bankruptcy court simply cited to longstanding closely-held corporation law, stating: "Alabama courts 'recognize oppression and squeeze-out as a distinctly individual and direct cause of action.'"¹⁵ By taking this approach, in stark contrast to the Alabama Supreme Court, the bankruptcy court put less emphasis on the type of entity and owners involved in the alleged oppression, and placed greater weight on the alleged conduct of the majority and oppressive impact on the minority. Moreover, unlike the Alabama Supreme Court in *Hinds*, the bankruptcy court in *Dixie Pellets* considered the oppression claim asserted by minority LLC members without determining

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whether such a claim had been formally authorized by Alabama appellate courts in the LLC context.

Hinds and *Dixie Pellets* were decided in different jurisdictions with neither case setting binding precedent for the other to follow, but the complete opposite outcomes reached by the two courts illustrate the recurring conflict that state trial court judges and practicing attorneys face when a minority oppression claim is alleged by an LLC member. With the *Hinds* conclusion on oppression in LLCs remaining unaddressed, uncertainty will continue until the issue is settled by Alabama appellate courts or by the Alabama legislature. Until clarified,

trial court judges must continue to sort through the arguments made on each side, leaving attorneys to argue their cases to the benefit of one client and other times failing to another client's detriment, even though the cases present virtually indistinguishable facts and the same legal question—does a cause of action for minority oppression exist in LLCs?

Silence of the LLC Statutes And Limit of Fiduciary Duties

LLCs and closely-held corporations are creatures of statute, meaning that the formation and governance of these entities are controlled by the applicable sections of the *Alabama Code*.¹⁶ *Alabama Code* § 10A-2-8.31 of the Alabama Business Corporation Law, *Alabama Code* §§ 10A-2-1.01, *et seq.*, states that: "shareholders exercising control ... whether by reason of ownership of a majority, or other controlling, interest" have "fiduciary obligations" to minority shareholders, and damages, an injunction and other relief may be awarded to prevent or remedy "oppression" by majority or controlling shareholders.¹⁷ The language in this statute conveys a clear message: in corporations, majority shareholders' feet can be held to the fire if they oppress minority shareholders. There is an express statutory basis created by the legislature protecting minority shareholders from oppression and imposing

a fiduciary duty on majority or controlling shareholders to treat minority shareholders fairly. The language of this statute first appeared in *Alabama Code* § 10-2B-8.31, the predecessor to § 10A-2-8.31, in 1994, and codified the shareholder oppression cause of action established in *Burt*. The second comment to § 10-2B-8.31 stated the reason for statutorily adopting minority shareholder oppression as follows:

It is noteworthy that the provision applies to majority or controlling shareholders, to the extent fiduciary duties may be imposed upon them, as well as directors, officers, and employees of a corporation. There is a recent line of cases involving protection of minority holders against “freeze-out” activities by the majority, where, in small, closely-held corporations, a standard breach of fiduciary duty closer to that of partners is suggested.¹⁸

Thus, the “recent line of cases” (*i.e.*, common law created by Alabama courts prior to 1994) led the legislature to create a statutory fiduciary duty in favor of minority shareholders because the relationship between shareholders in closely-held corporations was, for all practical purposes, a partnership. The legislature’s motivation for recognizing oppression in closely-held corporations by statute is important because the initial Alabama LLC Act also went into effect in 1994, creating the LLC entity in Alabama to offer business owners “the corporate characteristic of limited liability combined with the favorable tax treatment afforded to partnerships.”¹⁹ However, no anti-oppression statute was inserted into the Alabama LLC Act in 1994, and one has not been included in subsequent versions.

The current Alabama Limited Liability Company Law (ALLCL), Alabama Code §§ 10A-5-1.01, *et seq.*, provides that “[a] member owes to the company or its other members the duty of loyalty and duty of care”²⁰ None of the LLC statutes impose a duty on a majority member to consider the effect of his or her actions on a minority member before acting, and the word “oppress” is not used in any form. In fact, § 10A-5-3.03(i) states that a “member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member’s conduct furthers the member’s own interest.” An oppression claim would seem to conflict directly with this subsection of the statute. Moreover, the Alabama

Supreme Court previously held in *Hinds* that the duty of “good faith and fair dealing” set out in *Alabama Code* § 10A-5-3.03(h) did not, standing alone, create a claim for minority oppression in the LLC context. Proponents arguing for a cause of action for minority oppression in LLCs, therefore, find little help in the plain language of the ALLCL, and will find no additional assistance in the new ALLCL of 2014.²¹

Common “Seeds” of Oppression in LLCs and Other Closely-Held Businesses

While there is not a statutory duty forbidding majority or controlling LLC members from oppressing minority LLC members, make no mistake that LLCs, just like closely-held corporations, are equally susceptible to oppression. The chosen legal structure does not lessen the likelihood of oppression in a small company, irrespective of whether the entity is an LLC, closely-held corporation, partnership or sole proprietorship. The leading treatise on oppression, *O’Neal and Thompson’s Oppression of Minority Shareholders and LLC Members*, sums up the dilemma faced by minority owners of LLCs and other small businesses as follows:

LLCs are now set up to follow the experience of close corporations where participants similarly chose the corporation for liability and tax reasons and encountered unexpected problems down the line after a falling out among the parties when the corporate norms led to uses of centralized power that did not match the expectations of the parties. ‘In short, the factors that contribute to a failure to effectively contract for protection in the close corporation are likely to produce the same outcome in the LLC. Those factors stem primarily from the traits of small business owners and the small business setting itself, rather than from characteristics of the legal structure that is used to conduct the business.’

* * * * *

[C]ourts regularly refer to both partnership and corporate precedents in interpreting LLC statutes. . . . It is not unusual for courts to simply

apply corporate law precedent and actually label the LLC as a corporation without acknowledgment of the difference.... LLCs have the same ‘seeds’ of oppression discussed elsewhere in this treatise—a lack of market for ownership interests and no exit via the statute, an intimate multifaceted relationship between the parties and statutory norms or contractual settings permitting exclusive majority control that may be difficult to square with parties’ expectations. To that extent, oppression discussions common to close corporations recur in LLCs.²²

Every small or closely-held business having more than one ownership group that is divided into majority and minority classes is susceptible to oppression—a reality accepted by different jurisdictions around the country.²³ This provides a strong, common-sense reason for acknowledging a cause of action for oppression in the LLC context.

“Specific Type” of Fiduciary Duty Owed by Majority to Minority Members

Burt was the seminal case in Alabama establishing a claim for shareholder oppression, and has served as the foundation and jumping-off point for the analysis of subsequent oppression cases. To understand oppression law in Alabama and determine if it should apply to LLCs, one must look to the reasoning of the Alabama Supreme Court at the time the cause of action was created. The court in *Burt* defined oppression as a breach of fiduciary duty—then a common law, judicially-created fiduciary duty owed by majority shareholders to minority shareholders—in the following manner:

‘Where several owners carry on an enterprise together (as they usually do in a close corporation), their relationship should be considered a fiduciary one similar to the relationship among partners. The fact that the enterprise is incorporated should not substantially change the picture.... [C]ontrolling shareholders, in some circumstances at least, owe fiduciary duties to the minority shareholders ... and the courts will require them (whether they act in their capacity as shareholders or through directors or officers whom they control) to observe accepted

standards of business ethics in transactions affecting rights of minority shareholders.’ The majority has the right to control; but when it does so, it occupies a fiduciary relation toward the minority, as much so as the corporation itself or its officers and directors.”²⁴

In *Brooks v. Hill*, the Alabama Supreme Court expounded upon the fiduciary duty created in *Burt*, stating that the oppression claim was meant to be a remedy for “a more specific type of unfairness” than that of a standard breach of fiduciary duty by an officer or director.²⁵ Thus, a run-of-the-mill breach of fiduciary duty claim against officers or directors for violating the duties of loyalty and care, which could be brought on behalf of the corporation derivatively or in some circumstances as a direct claim, was deemed insufficient to address the harms caused by oppression. This is because oppression results from a unique, specific “fiduciary duty running directly from shareholder to shareholder in a close corporation,” resulting in direct injury to a minority owner.²⁶

It is important to keep in mind that, when analyzing whether a minority oppression claim should be accepted in the LLC context, a cause of action for minority oppression is in the same legal family as breach of fiduciary duty. Alabama courts have, on several occasions, allowed a direct cause of action for breach of fiduciary duty against majority or controlling LLC members in cases where a claim for minority oppression could have been asserted but, for whatever reason, was not.²⁷ While none of these cases went so far as to adopt a claim for minority oppression in the LLC context, Alabama appellate courts in *Harbison v. Strickland* and *Polk v. Polk* borrowed from *Brooks* and *Fulton v. Callahan*, foundational shareholder oppression cases in Alabama, as well as general closely-held corporation law, to reach the conclusion that the controlling member of an LLC owed fiduciary duties to the non-controlling member comparable to the fiduciary duties owed in corporations, partnerships and limited partnerships.²⁸

The court in *Harbison* stuck to the fiduciary duties stated in the LLC’s operating agreement, and the duties of loyalty, care and good faith and fair dealing that the court deemed implicitly incorporated into the operating agreement from the *Alabama Code*. Had a minority oppression claim been asserted in *Harbison*, it may have provided the Alabama Supreme Court

with a prime opportunity to resolve this issue in the LLC context.

In *Hinds*, the Alabama Supreme Court dismissed the minority oppression claim for lack of supporting legal arguments, but it reversed the trial court's dismissal of the breach of fiduciary duty claim, finding that a special "fiduciary and confidential relationship" exists between LLC members "as reasonably to inspire confidence that [a controlling member] will act in good faith for the other's interests," particularly where the controlling member has "influence or superiority over the other," "the parties do not deal on equal terms," "an unfair advantage is possible" and "dominion may be exercised by one person over another."²⁹ This language is remarkably similar to that used by Alabama courts to describe oppression and the relationship between majority and minority business owners. The court in *Hinds* went beyond simply citing to the fiduciary duties in the operating agreement and the implicit duties of loyalty, care and good faith and fair dealing, and extended the fiduciary duties of LLC members described in *Harbison* to include new common law duties. The language used to explain the "fiduciary and confidential relationship" between majority and minority LLC members in *Hinds* is virtually identical to the "specific type" of fiduciary duty described in the long line of shareholder oppression cases beginning with *Burt*.

Courts in other jurisdictions have reached similar conclusions, allowing direct claims by minority LLC members against majority or controlling members. In a Utah case, *Banyan Inv. Co., LLC v. Evans*, the majority member of an LLC argued that the minority should not be allowed to pursue a direct action against individual officers because Utah's closely-held corporation exception allowing a direct action by a minority shareholder

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against a majority or controlling shareholder (equivalent to shareholder oppression in Alabama) did not apply to LLCs.³⁰ The Utah Court of Appeals shot down the majority member's argument, noting that while a standard breach of fiduciary duty claim is derivative in nature and belongs to the corporation, an LLC member should be allowed to pursue a direct action when the injury is "distinct" from that suffered by the company, just like shareholders of closely-held corporations, because the "similarities between corporations and LLCs makes it illogical to limit the exception to corporations."³¹

future LLC cases. Good arguments can be made for and against a new claim to benefit oppressed, minority LLC members. The close legal relation between LLCs and other closely-held businesses that already allow a cause of action for oppression, combined with the significant overlap of language used by courts to describe the relationship of minority and majority owners across different entities, will make it difficult for Alabama courts to draw a distinction and avoid adopting minority oppression in LLCs. Regardless of the ultimate decision by

against a majority or controlling shareholder (equivalent to shareholder oppression in Alabama) did not apply to LLCs.³⁰ The Utah Court of Appeals shot down the majority member's argument, noting that while a standard breach of fiduciary duty claim is derivative in nature and belongs to the corporation, an LLC member should be allowed to pursue a direct action when the injury is "distinct" from that suffered by the company, just like shareholders of closely-held corporations, because the "similarities between corporations and LLCs makes it illogical to limit the exception to corporations."³¹

The Road Ahead For Minority LLC Members

As Alabama law currently stands, minority LLC members cannot pursue a cause of action for minority oppression against a controlling or majority member. An oppressed LLC member is limited to asserting claims for breach of the operating agreement, statutory violations of the duties of loyalty, care and good faith and fair dealing and breach of fiduciary duty against officers or directors. *Hinds* left the door open for Alabama appellate courts to recognize a cause of action for minority oppression in

Alabama appellate courts, the need for clarification is obvious. The rights and interests of minority and majority LLC members alike are being decided inconsistently every time a motion to dismiss or motion for summary judgment is granted or denied by trial courts throughout Alabama who view minority oppression in the LLC context differently and have no clear precedent to follow. ▲

Endnotes

1. *DGB, LLC v. Hinds*, 55 So. 3d 218, 232-33 (Ala. 2010).
2. *Burt v. Burt Boiler Works, Inc.*, 360 So. 2d 327 (Ala. 1978). Earlier references to “oppression,” “squeeze out” and “freeze-out” can be found in Alabama caselaw prior to 1978, but *Burt* was the first case to formally establish a separate cause of action.
3. *Id.* at 331.
4. *Id.* at 332; see also *Brooks v. Hill*, 717 So. 2d 759, 765 (Ala. 1998) (minority shareholders have a “right to fairness by the majority” and “basic expectation to share proportionally in corporate gains”).
5. *Galbreath v. Scott*, 433 So. 2d 454, 457 (Ala. 1983) (quoting *Burt*).
6. OPPRESSION & SQUEEZE-OUT, Black’s Law Dictionary (10th ed. 2014).
7. *Brooks*, 717 So. 2d at 764-66; *Galbreath*, 433 So. 2d at 457; *Stallworth v. AmSouth Bank of Alabama*, 709 So. 2d 458, 467 (Ala. 1997).
8. See, e.g., *Ex parte Brown*, 562 So. 2d 485, 493-94 (Ala. 1990); see also O’NEAL AND THOMPSON’S OPPRESSION OF MINORITY SHAREHOLDERS AND LLC MEMBERS §§ 3:02, 3:7 & 3:8 (2008) (describing oppression and squeeze-out techniques).
9. *Ex parte Brown*, 562 So. 2d at 494.
10. See generally Andrew P. Campbell, *Litigating Minority Shareholder Rights and the New Tort of Oppression*, 53 Ala. Law 108 (1992); Michael E. DeBow, “Oppression” of Minority Shareholders: *Contract, Not Tort*, 54 Ala. Law 128 (1993).
11. *Hinds*, 55 So. 3d at 221-22.
12. *Id.* at 233.
13. *Id.* (citing *Jimmy Day Plumbing & Heating, Inc. v. Smith*, 964 So. 2d 1, 9 (Ala. 2007)).
14. *In re Dixie Pellets, LLC*, No. 09-05411, 2010 WL 2367326 (Bankr. N.D. Ala. June 9, 2010) (unreported) (citing *Davis v. Dorsey*, 495 F. Supp. 2d 1162, 1168 (M.D. Ala. 2007)).
15. *Dixie Pellets*, at *4-5.
16. See Ala. Code §§ 10A-5-1.01, *et seq.* (“Alabama Limited Liability Company Law” or “ALLCL”); Ala. Code §§ 10A-2-1.01, *et seq.* (“Alabama Business Corporation Law”).
17. Ala. Code § 10A-2-8.31.
18. Ala. Code § 10-2B-8.31, cmt. 2 (citing pre-1994 oppression cases: *Burt*, *Galbreath* and *Ex parte Brown*).
19. See Laurel Wheeling Farrar and Susan Pace Hamill, *Dissociation from Alabama Limited Liability Companies in the Post Check-The-Box Era*, 49 Ala. L. Rev. 909, 910 (1998) (discussing history of LLCs in Alabama).
20. Ala. Code § 10A-5-3.03(e).
21. The ALLCL of 2014, Ala. Code §§ 10A-5A-1.01, *et seq.*, which repeals the current ALLCL effective January 1, 2015 (for LLCs formed on or after this date), and January 1, 2017 (for LLCs formed under the current ALLCL), does not contain an anti-oppression provision, and limits the fiduciary duties of LLC members to those of loyalty and care. The ALLCL of 2014 states in the comments that one of the significant features of the new law is that “[t]he Act focuses on the contractual nature of the [LLC].” Because there is not an anti-oppression provision, a strong argument can be made that it was the legislative intent to preclude minority oppression claims in

the LLC context and limit duties of members to those set out in the statute or bargained for by the parties in the contractual formation documents.

22. O’NEAL at §§ 6:2 and 6:3.
23. 2 CLOSE CORP AND LLCs: LAW AND PRACTICE § 9:18 (Rev. 3d ed.) (including chart of all 50 states treatment of breach of fiduciary duty and minority oppression claims).
24. *Burt*, 360 So. 2d at 332 (citing *Southern Pacific Co. v. Bogert*, 250 U.S. 483, 487-88 (1919)). It would be logical to argue that the “accepted standards of business ethics” referred to in *Burt* is tantamount to the duty of “good faith and fair dealing” in the ALLCL.
25. *Brooks*, 717 So. 2d at 765.
26. Douglas Moll, *Minority Oppression and the Limited Liability Company: Learning (Or Not) From Close Corporation History*, 40 Wake Forest L. Rev. 883, 892-95 (2005).
27. See *Harbison v. Strickland*, 900 So. 2d 385, 386 (Ala. 2004) (reversing summary judgment in favor of LLC’s controlling member-manager, who atypically was the minority member, and allowing majority, non-controlling member to maintain breach of fiduciary duty claim on remand); *Polk v. Polk*, 70 So. 3d 363, 370-72 (Ala. Civ. App. 2010) (citing closely-held corporation law to support individual cause of action for breach of fiduciary duty against controlling, majority member of LLC); see also *Love v. Fleetway Air Freight & Delivery Service, LLC*, 875 So. 2d 285, 289-91 (Ala. 2003) (reversing to allow direct claims against controlling, majority members of LLC, though neither oppression nor breach of fiduciary duty was alleged).
28. *Harbison*, 900 So. 2d at 389 (citing *Brooks*, 717 So. 2d 759, 764 (Ala. 1998) and *Fulton v. Callahan*, 621 So. 2d 1235, 1246-47 (Ala. 1993)); *Polk*, 70 So. 3d at 371 (citing portions of *Harbison* that refer to breach of fiduciary duty analysis in *Brooks* and *Fulton*).
29. *Hinds*, 55 So. 3d at 233-34 (citing *Bank of Red Bay v. King*, 482 So. 2d 274 (Ala. 1985)); see also *Belcher v. Birmingham Trust National Bank*, 348 F. Supp. 61, 89-90 (N.D. Ala. 1968) (pre-*Burt* federal court decision cited by *Brooks* and *Fulton* describing “confidential relationship” among business partners and duty of “good faith and fair dealing,” particularly when one partner is in position to exert influence over another).
30. *Banyan Inv. Co., LLC v. Evans*, 292 P.3d 698 (Utah App. 2012); see also *George Wasserman & Janice Wasserman Goldstein Family, LLC v. Kay*, 14 A. 3d 1193, 1218-19 (Md. App. 2011) (minority LLC members may bring individual claims for majority’s abuse of control).
31. *Banyan*, 292 P.3d at 703.

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