THOMAS E. RUTLEDGE, Stoll Keenon Ogden PLLC, Louisville, Kentucky.

State Law & State Taxation Corner

Judicial Expulsion of a Member: What We Have Learned from All Saints University of Medicine Aruba, IE Test *and* Kenny v. Fulton Associates

By Thomas E. Rutledge

A previous column, after mentioning the provisions of partnership and LLC law which at times enable the expulsion of a partner/member, discussed a number of the issues incident to contractual provisions in an operating agreement for the expulsion of a member.[1] This column focuses upon judicial expulsion, reviewing the rather limited available case law. Still, that case law is illuminating. In one of the leading cases, *I.E. Test*,[2] the court held that the standards for judicial expulsion had not been satisfied. Conversely, in *All Saints University of Medicine Aruba*,[3] the court authorized judicial expulsion of members who had engaged in egregious conduct. In the last decision herein reviewed, *Kenny v. Fulton Associates, LLC*,[4] judicial expulsion was effected against a member who had acted unreasonably and in opposition to the operating agreement with respect to the admission as members of certain assignees.

The Various Statutes

As previously noted, certain LLC Acts provide a mechanism for judicial expulsion of a member.[5] In the absence of either a contractual or statutory mechanism for expulsion, there is no right to do so.[6] A pair of recent cases, coincidentally both from New Jersey, identified perhaps the two bookends to the application of the statutory provisions. A third decision, it from Illinois, explores a mid-point fact pattern and what some may think a questionable application of the judicial expulsion tool.

I.E. Test LLC v. Carroll

In August 2016, the New Jersey Supreme Court held, on the facts of this particular case, that the standard for judicial expulsion of a member from an LLC had not been satisfied.[7] This decision has ramifications in all states that have adopted either the Uniform Limited Liability Company Act, Revised Uniform Limited Liability Company Act or the Revised Prototype Limited Liability Company Act, all containing these same standards for judicial expulsion.

This case involved a three-member LLC. All three members, to different degrees, had been involved in a predecessor organization in the same line of business; that entity went into bankruptcy, causing one of the members, the defendant Carroll, to lose in excess of $2.5 million. With respect to the new LLC, the three members did state their intention to enter into an operating agreement for the LLC, IE Test, LLC, acknowledging in the meantime that "the Members of the Company and their LLC Percentage Interest have been and are: Kenneth Carroll (33%), Pat Cupo (34%) [and] Byron James (33%)."[8] It was with coming to consensus on that operating agreement that the relationship between the members broke down.

Cooper and James were actively involved in the management of IE Test. Carroll, in contrast, was not involved in day-to-day management and had minimal involvement with the company beyond a single sales call.[9] Cooper and James drew "salary" and "benefits" from the LLC while Carroll was not similarly compensated. Still, Carroll continued to feel the sting from the $2.5 million loss he had suffered with respect to the predecessor entity. While there was agreement that IE Test LLC was not responsible on that loss, Carroll proposed an operating agreement pursuant to which he would receive certain payments intended to in part make him whole on the loss. Cooper and James were unwilling to agree to those terms. Believing that the relationship with Carroll would be irrevocably broken consequent to their refusal to agree to those terms, they sought to judicially expel Carroll from the LLC.

Alleging all of breach of fiduciary duty of loyalty, breach of the fiduciary duty of care, breach of contract and breach of the implied covenant of good faith and fair dealing, the LLC filed an action against Carroll seeking his judicial expulsion pursuant to a provision of the New Jersey Limited Liability Company Act, which provides:

> On application by the limited liability company or another member, the member's expulsion by judicial determination because:
>
> (a) the member engaged in wrongful conduct that adversely and materially affected the limited liability company's business;
>
> (b) the member willfully or persistently committed a material breach of the operating agreement; or
>
> (c) the member engaged in conduct relating to the limited liability company business which makes it not reasonably practicable to carry on the business with the member as a member of the limited liability company.[10]

On motions for summary judgment, the trial court rejected the effort to expel Carroll based upon subsection (a) of the statute, finding that Carroll's insistence upon compensation did not constitute "willful misconduct" within the meaning of the statute. While those demands may have been unreasonable, they were not of themselves unlawful and they inflicted no harm on the LLC.[11] The trial court did, however, find that Carroll could be expelled under subsection (c) on the basis that was no longer "reasonably practicable" for the three members to coexist in the LLC and that further controversy and litigation was likely to result.[12] The determination would be affirmed by the Appellate Division.[13]

A different outcome resulted on review of the question by the New Jersey Supreme Court. Looking first to the "not reasonably practicable" language of (c) in the statute quoted above, the Court began by noting that "not reasonably practicable" is not defined in the LLC Act. Still, as the conduct at issue must be "relating to the limited liability company business," the Court held that the "Legislature clearly did not intend that disagreements and disputes among LLC members that bear no nexus to the LLCs business will justify a member's expulsion under subsection 3(c)."[14] Expanding on this theme, the Court wrote:

> Significantly, the Legislature did not authorize a court to premise expulsion under subsection 3(c) on a finding that it would be more challenging or complicated for other members to run the business with the LLC member than without him. Nor does the statue permit the LLC members to expel a member to avoid sharing the LLC's profits with that member. Instead, the Legislature prescribed a stringent standard for prospective harm: the LLC member's conduct must be so disruptive that it is "not reasonably practicable" to continue the business unless the member is expelled.[15]

In applying this test, "the court [is] to evaluate the LLC member's conduct relating to the LLC, and assess whether the LLC can be managed notwithstanding that conduct, in accordance with the terms of an operating agreement or the default provisions of the statute."[16] Detailing the factors to be considered in that analysis, the Court wrote:

> In that inquiry, a trial court should consider the following factors, among others that may be relevant to a particular case: (1) the nature of the LLC member's conduct relating to the LLC's business; (2) whether, with the LLC member remaining a member, the entity may be managed so as to promote the purposes for which it was formed; (3) whether the dispute among the LLC members precludes them from working with one another to pursue the LLC's goals; (4) whether there is a deadlock among the members; (5) whether, despite that deadlock, members can make decisions on the management of the company, pursuant to the operating agreement or in accordance with applicable statutory provisions; (6) whether, due to the LLC's financial position, there is still a business to operate; and (7) whether continuing the LLC, with the LLC member remaining a member, is financially feasible.[17]

In this instance, as the New Jersey LLC Act has a default rule of majority rule, and as the respective ownership percentages of the members had been determined, but for narrow actions that by default require the unanimous approval of the members, the Court found that IE Test, LLC could operate. Carroll's conduct did not affect the LLC *vis-à-vis* third-parties, and it continued to financially flourish. For those reasons, the trial court's grant of summary judgment to IE Test LLC was reversed.

All Saints University of Medicine Aruba

If *IE Test* is one bookend of the application of the rules for judicial expulsion, *Medical College of Aruba* is the other. While Carroll's actions were not iminicable to the long-term success of IE Test, LLC, those considered and condemned in *All Saints University of Medicine Aruba* clearly and intentionally interfered with the LLC's potential success.

The dispute arising out of All Saints University of Medicine Aruba has to date yielded three decisions from the Appellate Division of the Superior Court of New Jersey.[18] Without delving too deeply into the somewhat convoluted factual background of this dispute, it essentially boiled down to the fact that two of the LLCs members, Paulpillai and Yusuf, utilized its assets for individual purposes. In consequence to these and similar acts, the LLC required significant cash contributions from Chilana in order to satisfy current obligations, including payroll withholding obligations. After a trial, the trial court determined that Paulpillai and Yusuf had engaged in conduct justifying their dissociation from the company.[19] The balance of the dispute has revolved primarily around the appropriate remedy. The trial court, having dissociated each of Paulpillai and Yusuf, as well ordered a redemption of their interests in the company, finding the value thereof to be zero, a value that was consequent to their misconduct. Whether the statute, in addition to providing for dissociation, as well provided for the redemption of the financial interest in the LLC, or rather left a dissociated member as a mere assignee in the LLC, became the issue. It would ultimately be determined, in *Aruba III*, that the court could order a liquidation of the financial interest in the LLC; doing otherwise would allow the disloyal members, Paulpillai and Yusuf, to participate in any post-turnaround value.[20]

Kenny v. Fulton Associates, LLC

Kenny v. Fulton Assocs., LLC[21] involved two businesses owned by two long-term friends, Eugene Callahan and Gerard Kenny. The first business, organized as an Illinois general partnership, owned a parking lot. The second, organized as an Illinois limited liability company, owned a building. As is entirely typical, the agreements governing the LLC and the partnership restricted transfers of, respectively, the LLC and partnership interests. There was, however, a carve-out for interfamily transfers.[22] Kenny was the LLC's manager, but Callahan handled day-to-day matters. Callahan, in 2009, transferred his interest in the partnership to a trust. His spouse, Kathleen, was the initial member in the LLC; in 2009, she transferred the LLC interest to the same trust. On August 10, 2009, loans on the two properties were refinanced. The loan documents required the mortgage holders' consent to an interest transfer.[23] That same day, Kenny sold his interest in the LLC and the partnership to his sons.[24] Callahan refused to acknowledge the transfer and began making all decisions unilaterally. He began as well to pay personal expenses out of the company accounts and transferred those accounts to banks Kenny and his sons could not access. Then, he amended the LLC's articles to name himself as the manager.[25]

The sons filed a declaratory judgment action seeking judgment that the transfer was proper.[26]

The relevant provision of the partnership agreement provided as to a transfer to immediate family members:

> Neither of the Partners shall sell, assign, convey, pledge, hypothecate, encumber, exchange or otherwise transfer for consideration, or gift or otherwise transfer for no consideration, their Interest in the Partnership other than to the other Partner, or to immediate members of their family (defined as spouses or children or grandchildren) or to a trustee for the benefit of the immediate members of their family, without the written consent of both Partners, in which event [the] other Partner shall have the option of purchasing the interest of the Transferring Partner upon the applicable terms and conditions set forth below.[27]

In a similar manner, the limited liability company agreement restricted the transfer of the Member's interests, except to immediate family members, as follows:

> None of the Members shall sell, assign, convey, pledge, hypothecate, encumber, exchange or otherwise transfer for consideration, or gift or otherwise transfer for no consideration, their Membership Interest, which transfer shall include such Member's Economic Interest, in the Company other than to Members of the Company or to immediate family (defined as spouses or children or grandchildren of Members of the Company) or to a trustee for the benefit of the immediate family members of their family, without the written consent of Members holding at least one hundred percent (100%) of the Percentage Interest of the Company, unless they give written notice of such desire to each of the other Members, in which event the other Members, or the Company, shall have the option of purchasing the interest of the Transferring Member upon the applicable terms and conditions set forth below.[28]

While Illinois has adopted the Revised Uniform Limited Liability Company Act, the Illinois statute has some significant differences from the Uniform Act, including a provision to the effect that a LLC member who exercises managerial authority is subject to fiduciary duties.[29] It also provides that a member or manager must "deal fairly" with the company on behalf of a party having an interest adverse to the company.

The Kenny brothers prevailed at trial, including as to Callahan's breach of fiduciary duties both as a member exercising managerial control and as the attorney for the venture.[30] Callahan refused to act in accordance with the decision, and a series of requests for relief were entered against him.

The court affirmed the dissociation of Callahan under the LLC act and the partnership act, which contain similar provisions permitting involuntary dissociation (expulsion) of a member when there has been wrongful conduct that "adversely and materially affected" the business; when there is a persistent breach of the operating or partnership agreement or when it is no longer "reasonably practicable" to carry on the business with the individual as a partner or member.

Focusing here only upon the question of disassociation from the LLC, the appellate court affirmed that there were grounds for dissociation under all three statutory criteria, including the breach of duty in refusing to honor the transfer of partnership and LLC interests, various wrongful acts committed by Callahan and his demonstrated refusal to work with the Kenny brothers by his unilateral management of the company and refusal to provide documents and information about the business.

As for the operating agreement, it was clear that the transfer to the Kenny brothers was "plain and unambiguous"; the fact that it might have violated other agreements such as the mortgage only created a right in the counterparties and was not a basis for Callahan to refuse to recognize the transfer. Callahan's fiduciary duties, arising out of exercising actual control of the ventures, were clear.

> Callahan's breach, as the trial court concluded, began with his refusal to recognize Kenny's transfer to his sons. Callahan's contention that he was acting in good faith, because the transfer gave Whoriskey and Cadlerock grounds for taking legal action against Fulton, is not credible, particularly given that Callahan made a similar transfer to the Callahan Trust without objection or consent from Kenny.
>
> And, again, as the trial court concluded, Callahan's subsequent breaches stem from this initial breach. Because he refused to acknowledge the proper transfer of membership interest, he unilaterally made unauthorized decisions to the detriment of the other partners. Specifically, he hired attorneys and paid them with Fulton funds, he raised his managerial fee, he falsified articles of amendment to name himself as manager, he opened bank accounts with company funds that were only accessible by him and his son, he directed the accountant to file tax returns for Fulton that failed to show Michael's and Christopher's interest, and he failed to notify the other members that Access, the sole tenant, had terminated its lease. All of these constituted breaches of fiduciary duty by Callahan, who was exercising managerial authority over Fulton.[31]

As for his duties as an attorney:

> Thus, in his role as an attorney for Fulton and Canal, he breached his duties to those entities by refusing to acknowledge the transfer and then took actions contrary to his duties as an attorney, including executing false articles of amendment, opening bank accounts with Fulton funds over which only he and his son had control, and unilaterally paying himself attorney's fees.[32]

Turning to Callahan's dissociation from each of the partnership and the LLC:

> The trial court agreed with the plaintiffs that dissociation on all three bases was warranted as to both Fulton and Canal. The preponderance of the evidence established that Callahan's unauthorized actions subjected the company and the partnership to substantial attorney's fees, Callahan breached his fiduciary duty to the other members and partners, and he expressed an absolute unwillingness to work with the Kenny brothers. The court rejected Callahan's request for dissolution, finding that the facts required that the Callahan Trust be dissociated from Fulton and Canal.[33]

Private Reordering of the Standard of Expulsion

Various LLC acts provide that particular provisions are not subject to contrary private ordering.[34] Seldom are these limitations implicated in published decisions. An exception is *CCD, LLC v. Millsap*,[35] wherein the court was able to ignore a provision in the operating agreement that appeared to bar the expulsion of a member on the basis that the LLC Act provided that the provision enabling a member's judicial expulsion was not subject to modification in the operating agreement.[36] In other words, notwithstanding private ordering to the contrary, the *CCD* court determined it retained the faculty to expel a member based upon conduct implicating the statutory expulsion standard.

In *Holladay v. Storey*,[37] the defendant alleged his judicial expulsion was invalid in that it was based on facts predating the then operative amended operating agreement and were therefore forgiven. This argument was not considered as it had not been presented to the trial court. Still, in drafting an operating agreement, a statement as to whether prior misconduct may or may not serve as the basis for expulsion will avoid another LLC having to litigate the question.

Problems with Judicial Expulsion

If nothing else, the decisions rendered in *I.E. Test* and in *All Saints University of Medicine Aruba* identify the problems that arise with respect to reliance on statutory provisions, rather than customized contractual provisions, in the area of expulsion. In the instance of the *I.E. Test* case, some 10 years lapsed from Carroll's purported expulsion from the company and the ultimate determination by the New Jersey Supreme Court that, in fact, the grounds for expulsion were not satisfied. For those 10 years there existed a dispute as to who are the members in the company, what are their respective sharing ratios with respect to tax allocations, and what are their rights to receive distributions. I have been advised by a reliable source that a stay had been in place this entire time, and assuming that to be the case I.E. Test LLC and its members are not faced with the need to unravel a decade of transactions. Assume, however, that the New Jersey Supreme Court had gone the other way, and upheld Carroll's expulsion from the LLC. The stay order would have maintained a status quo that, over the last decade, would have needed to be unwound. While I.E. Test LLC may have been able to survive this level of uncertainty, it is a fair bet that few other ventures would be so fortunate. Simply put, the timeline for resolution of these matters in litigation is simply not practicable.

> *Just as important is to keep in mind statutory limitations on, for example, "varying the right" to expel a member, and being clear that the right is not modified and that the additional provisions, such as for redemption of the expelled member's interest, do not alter the core right to effect an expulsion.*

From *All Saints University of Medicine Aruba* there are at least two significant takeaways. First, even in the face of clearly egregious conduct, it can take years to effectuate a member's expulsion. Second, the statutory remedy, namely disassociation, is clearly insufficient. Merely stripping malefactors of the right to participate in management, but leaving them with economic rights in the venture, permits a bad actor to share in the ultimate, after turnaround, gain.[38] Although the *All Saints Medical University of Aruba* court, in *Aruba III*, was able to come to the conclusion that there was a right to compel a buyout, in this instance at a price of $0, that may not always be the case. While, post-disassociation, the remaining members likely have the right to amend the operating agreement to create a buyout right with respect to the economic interests of the now disassociated member,[39] in many instances doing so will simply engender another round of litigation.

The statues are typically silent, and it may be argued are agnostic, as to the manner in which judicial intervention will be sought. For example, the LLC could expel a member and, coincident with doing so, bring a declaratory judgment action seeking confirmation that the expulsion was justified.[40] Alternatively, a company could expel a member and then the expelled member could initiate an action against the LLC seeking a determination that the expulsion was invalid on the basis that the standards were not satisfied. An operating agreement may address and clarify these points.

Just as important is to keep in mind statutory limitations on, for example, "varying the right" to expel a member, and being clear that the right is not modified and that the additional provisions, such as for redemption of the expelled member's interest, do not alter the core right to effect an expulsion.

Still, it may be the *Kenny* decision that is ultimately the most interesting of this trio of cases. The other cases involve what may be the bookends to the range of activities and fact patterns in which judicial expulsion will be applied. In contrast, the *Kenny* decision is based upon a fact pattern that all too commonly arises. The willingness of the court to both award damages for breach of fiduciary duty as well as order the judicial expulsion of that member from the LLC serves as a potent reminder that members need to carefully consider and satisfy their obligations. It is as well a reminder that deciding "I'm in charge" and not communicating may be a recipe for expulsion.

All in all, as previously suggested,[41] member expulsion should be a matter of careful contractual drafting, and the issue should not be left to statutory defaults.

ENDNOTES

1 *See* Rutledge, *It's Not Me, It's You—Planning for Expulsion of Members from LLCs*, J. PASSTHROUGH ENTITIES, July/Aug. 2016, at 43.

2 *I.E. Test*, 140 A3d 1268 (N.J. 2016).

3 *All Saints University of Medicine Aruba v. Chilana*, 2012 WL 6652510 (N.J. App. Div. Dec. 24, 2010) ("*Aruba I*").

4 *Kenny v. Fulton Associates, LLC*, 2016 IL App (1st) 152536, 2016 WL 7470006 (Dec. 27, 2016).

5 *See, e.g.,* REV. PROTOTYPE LLC ACT §602(e), 67 BUS. LAW. 117 at 169 (Nov. 2011); REV. UNIF. LTD. LIAB. CO. ACT (2006) §602(5), 6B U.L.A. 502 (2008); KY. REV. STAT. ANN. §275.172. *Accord* UNIF. LTD. PART. ACT §603(5), 6A U.L.A. 453 (2008). With respect to this topic generally, *see also* 2 Robert R. Keatinge, Larry E. Ribstein, and Thomas E. Rutledge, RIBSTEIN AND KEATINGE ON LIMITED LIABILITY COMPANIES §14.2, at 235–239 (2nd ed. June 2019); *id.*, Appendix 14-3.

6 *See, e.g., Page v. ADS Investments, LLC*, C.A. No. NM-2006-0334 (R.I. Super. Ct. Aug. 5, 2014) ("absent a provision in an operating agreement allowing for the involuntary removal of members, the parties seeking removal are left to the default rules [of the LLC Act]."); *Man Choi Chiu v. Chiu*, 896 NYS2d 131, 132 (Sup. Ct. App. Div. 2 2010) (provision of LLC Act addressing expulsion of a member only indicated that operating agreement could provide for expulsion; absent having done so there is no right to expel a member); *Brazil v. Rickerson*, DC-MO, 268 FSupp2d 1091, 1099 (2003); *David Mortuary, LLC v. David*, 194 So2d 826 (La. Ct. App. 3rd Cir. 2016) (in the absence of a statute or a provision of the operating agreement authorizing expulsion of a member, no right to effect expulsion existed); *Walker v. Resource Development Group Co., L.L.C., (DE)*, 791 A2d 799 (Del. Ch. 2000) (Delaware LLC Act does not provide for expulsion of LLC member even in response to allegations of breach of fiduciary duty). *See also* KY. REV. STAT. ANN. §275.003(2) ("A written operating agreement may provide ….").

7 *IE Test, LLC v. Carroll*, 140 A3d 1268 (N.J. 2016). This decision reversed both the trial court and the Appellate Division (2014 WL 8132907).

8 140 A3d at 1272.

9 *Id.*

10 N.J. CODE §42:2B-24(b)(3). *Accord* REV. PROTOTYPE LLC ACT §602(e), *supra* note 5 at 170; REV. UNIF. LTD. LIAB. CO. ACT §602(5), 6B U.L.A. 502 (2008).

11 140 A3d at 1273.

12 140 A3d at 1274.

13 This case, through the decision of the Appellate Division, has been reviewed by Peter Mahler in his blog *New York Business Divorce* in a posting titled *Involuntary Member Dissociation Under RULLCA* (Sept. 28, 2015), available at *www.nybusinessdivorce.com/2015/09/articles/compulsory-buyout-2/involuntary-member-dissociation-under-rullca/*. Peter's review of the New Jersey Supreme Court's decision was titled *New Jersey Supreme Court Raises the Bar for Judicial Expulsion of LLC Members* (Aug. 8, 2016), available at *www.nybusinessdivorce.com/2016/08/articles/deadlock/new-jersey-supreme-court-raises-bar-judicial-expulsion-llc-members/*.

14 140 A3d at 1278.

15 *Id.* (citation omitted).

16 140 A3d at 1279.

17 *Id.* (footnote omitted).

18 *All Saints University of Medicine Aruba v. Chilana*, 2012 WL 6652510 (N.J. App. Div. Dec. 24, 2010) ("*Aruba I*"); *All Saints University of Medicine, Aruba v. Chilana*, 2015 WL 6456117 (N.J. App. Div. Oct. 27, 2015) ("*Aruba II*"); *All Saints University of Medicine, Aruba v. Chilana*, 2015 WL 11254290 (N.J. App. Div. Aug. 5, 2016) ("*Aruba III*").

19 *Aruba I*, 2012 WL 6652510, *9.

20 *Aruba III*, 2015 WL 11254290, *4.

21 *Kenny v. Fulton Assocs., LLC*, 2016 IL App (1st) 152536, 2016 WL 7470006 (Ill. App., 2016).

22 *See Kenny*, 2016 WL 7470006, *2 (partnership agreement; transfer subject to ROFR except transfer "to the other Partner, or to the immediate members of [the Partner's] immediate family"); *id.* (operating agreement; transfer subject to ROFR except transfer "to Members of the Company or to immediate family … or to a

trustee for the benefit of the immediate family members [of the Member]").

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *See id*., *4:

> On April 10, 2012, Michael, Christopher, and Gerard Kenny, filed a five-count first amended complaint against Eugene Callahan individually and as trustee of the Callahan Trust, and Fulton and Canal, seeking declaratory relief and damages for breach of fiduciary duty and common law fraud. Specifically, in count I, plaintiff asked the court to declare that the Kenny brothers rightfully purchased, under the terms of the Fulton Operating Agreement, 50% of Fulton Associates on August 10, 2009, and are the rightful owners of 50% of Fulton since that date. They also asked that Fulton Associates be ordered to pay all distributions due since August 10, 2009, which had not yet been paid and to file amended 2009 tax returns showing the August 10, 2009 ownership interest transfer. In count II, plaintiffs asked the court to declare that the Kenny brothers rightfully purchased, under the terms of the Amended and Restated Partnership Agreement of Canal Partners, 50% of Canal on August 10, 2009, and are the rightful owners of 50% of Canal since that date. They also asked that Canal be ordered to pay all distributions since August 10, 2009 that had not been paid and to file amended 2009 tax returns showing that August 10, 2009 ownership interest transfer. In count III, plaintiff asked the court to declare Kenny the sole manager of Fulton Associates and order Callahan to cease and desist from identifying himself as a manager. They also asked the court to order Callahan to return all money he unrightfully paid to himself as manager. In count IV, Michael and Christopher alleged that Callahan breached his fiduciary duties to them as members of Fulton and asked for damages and a disgorgement of all payments made to Callahan or his family since the breaches began. Count V alleged common law fraud against Callahan by paying himself a $45,000 bonus.
>
> Two additional counts added later, VI and VII, asked the court to dissociate Callahan from Fulton Associates under section 35-45(6) (West 2014)) and from Canal Partners under section 601 of the Uniform Partnership Act (805 ILCS 206/601 (West 2014)).

[27] 2016 WL 7470006, *2.

[28] *Id.*

[29] 2016 WL 7470006, *10, citing 805 ILCS 180/15-3(g)(3).

[30] 2016 WL 7470006, *6.

[31] *Id*., *11.

[32] *Id*.

[33] *Id*., *12.

[34] *See*, *e.g.*, Rev. Prototype LLC Act §§110(b), (c), *supra* note 5 at 136; Rev. Unif. Ltd. Liab. Co. Act §§110(c), (d) 6B U.L.A. 442 (2008); Colo. Code §§7-80-108(2), (3). *See also* Unif. Ltd. Part. Act §110, 6A U.L.A. 378 (2008).

[35] *CCD, LLC v. Millsap*, 116 P3d 366 (Utah 2005).

[36] 116 P3d at 370.

[37] 307 P3d 584, 589 (Utah Ct. App. 2013).

[38] Other cases addressing this challenge include *Headfirst Baseball LLC v. Elwood*, 239 FSupp3d 7, 19 (D. D.C. 2017) (applying D.C. LLC Act and holding that willful and material breaches of operating agreement justified judicial disassociation; date of valuation of the expelled member's interest would be the date suit was filed); *Demike v. Cupo*, 926 A2d 869 (N.J. App. Div. 2007), *reversed on other grounds*, 958 A2d 446, 456 (N.J. 2008); *Holladay v. Storey*, 307 P3d 584, 594 (Utah Ct. App. 2013) ("Here, by backdating Storey's expulsion and the valuation of his interest to December 31, 2005, the trial court prevented Storey from reaping the benefits of the increased profits the Company enjoyed after his wrongful acts were discovered and stopped but before judicial expulsion could be accomplished. Accordingly, the trial court denied Storey the windfall he would have obtained had his interest been valued as of the date of the trial court's determination of expulsion in 2009.").

[39] *See also Shapiro v. Ettenson*, 45 N.Y.S.3d 439, 146 A.D.3d 650 (2017); *Daniel v. Ripoli*, 2016 IL. App. (1st) 122607-W, 2016 WL 6823424 (Nov. 6, 2016); Thomas E. Rutledge and Katharine M. Sagan, *An Amendment Too Far? Limits on the Ability of Less Than All Members to Amend the Operating Agreement*, 16 Florida State University Business Review 1 (Spring 2017).

[40] Unless otherwise mandated by the operating agreement, it may not be necessary that a member receive notice that expulsion is being considered. *See*, *e.g.*, *Paul v. Delaware Coastal Anesthesia, LLC*, No. 7084-VCG, 2012 WL 1934469 (Del. Ch. May 29, 2012); Ky. Rev. Stat. Ann. §275.175(7) (action of the members by written consent); *Leigh v. Crescent Square, Ltd*., 608 NE2d 1166 (Ohio Ct. App. 1992).

[41] *See supra* footnote 1 and accompanying text.