

GOODBYE AND GOOD LUCK: MEMBER DISSOCIATION BY JUDICIAL ORDER UNDER IOWA’S REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

ABSTRACT

How should Iowa courts apply the “not reasonably practicable” standard in the context of judicial dissociation of a Limited Liability Company (LLC) member under Iowa’s Revised Uniform Limited Liability Company Act (RULLCA)? This Note first provides an overview of Iowa’s enactment of RULLCA in response to the Uniform Law Commission’s 2006 promulgation of the model act of the same name. The Note then proceeds to outline RULLCA’s member dissociation provisions and the impact of an LLC’s operating agreement on the default statutory dissociation standards. Next, the Note highlights case law from other jurisdictions interpreting RULLCA’s language in the context of partnership dissolution, partner dissociation, and limited liability company dissolution. Finally, the Note advocates a restrained approach to member dissociation by judicial order due to the contractual nature of LLCs, the severity of dissociation to the dissociated member, and a general interest in promoting non-judicial resolution of disputes.

TABLE OF CONTENTS

I. Introduction	536
II. Background.....	538
A. RULLCA’s Progenitor: The Uniform Law Commission’s 2006 Uniform Act	538
B. Iowa’s Enactment of RULLCA	540
III. Member Dissociation Provisions.....	542
A. Member’s Power to Dissociate—Wrongful Dissociation.....	545
B. Events Causing Dissociation	547
C. Effect of Person’s Dissociation as Member	550
D. Member’s Power to Dissociate Under Certain Circumstances.....	550
IV. Interplay of the Operating Agreement and Member Dissociation Provisions.....	552
A. The Operating Agreement	552
B. Management Structure Classification.....	556
V. Member Dissociation by Judicial Order.....	557
A. The “Not Reasonably Practicable” Standard.....	560

B.	Cases from Other Jurisdictions	563
1.	The “Not Reasonably Practicable” Language in the Partnership Dissolution Context	563
2.	The “Not Reasonably Practicable” Language in the Partnership Dissociation Context	565
3.	The “Not Reasonably Practicable” Language in the LLC Dissolution Context	567
C.	Arguing for a Restrained Approach to the “Not Reasonably Practicable” Standard in the Context of Judicial Dissociation	574
VI.	Conclusion	587

I. INTRODUCTION

In *Estate of Countryman v. Farmers Cooperative Ass’n*, Justice Cady offered the following preliminary observations on the limited liability company (LLC) as an unincorporated business entity:

The limited liability company, “LLC” as it is now known, is a hybrid business entity that is considered to have the attributes of a partnership for federal income tax purposes and the limited liability protections of a corporation. As such, it provides for the operational advantages of a partnership by allowing the owners, called members, to participate in the management of the business. Yet, the members and managers are protected from liability in the same manner shareholders, officers, and directors of a corporation are protected.

The LLC first emerged as a business organization in 1977 and has now been adopted by statute in every state in the nation. Iowa joined the trend in 1992 with the passage of the Iowa Limited Liability Company Act (ILLCA).¹

1. *Estate of Countryman v. Farmers Coop. Ass’n*, 679 N.W.2d 598, 602 (Iowa 2004) (citations omitted); *see also, e.g., Lieberman v. Wyoming.com LLC*, 11 P.3d 353, 356–57 (Wyo. 2000) (“Wyoming initiated a national movement in 1977 when it adopted the first limited liability company act in the United States. As a business entity, limited liability companies are a conceptual hybrid, sharing some of the characteristics of partnerships and some of corporations. In general, the purpose of forming a limited liability company is to create an entity that offers investors the protections of limited liability and the flow-through tax status of partnerships.” (citations omitted) (quoting Jonathan R. Macey, *The Limited Liability Company*:

In 2008, the Iowa General Assembly replaced ILLCA with the Revised Uniform Limited Liability Company Act (RULLCA).² RULLCA—fully effective as to all Iowa limited liability companies as of January 1, 2011³—contains explicit provisions regulating dissociation of an LLC member.⁴ One such provision allows for expulsion of an LLC member by judicial order because the member “[h]as engaged in, or is engaging in, conduct relating to the company’s activities which makes it not reasonably practicable to carry on the activities [of the LLC] with the person as a member.”⁵

This Note begins by outlining Iowa’s adoption of RULLCA based upon the Uniform Law Commission’s 2006 promulgation of the model act of the same name,⁶ highlights RULLCA’s member dissociation provisions,⁷ and examines the general impact the operating agreement may have on member dissociation.⁸ The Note then specifically focuses on member dissociation by judicial order⁹ and argues from a contractarian perspective that this provision should be employed by courts sparingly—if at all—given the inherently contractual nature of LLCs, the severity of this judicial remedy to the expelled member, and the inherent risk of a “race to the courthouse” that an unrestrained approach to the “not reasonably practicable” standard may produce.¹⁰

Lessons for Corporate Law, 73 WASH. U. L.Q. 433, 434 (1995)) (internal quotation marks omitted)).

2. Revised Uniform Limited Liability Company Act, ch. 1162, 2008 Iowa Acts 616 (codified at IOWA CODE §§ 489.101–.1304 (2011)).

3. IOWA CODE § 489.1304(2) (“[O]n and after January 1, 2011, [chapter 489] governs all limited liability companies.”).

4. *See id.* §§ 489.601–.604.

5. *Id.* § 489.602(5)(c).

6. *See infra* Part II. *Compare* IOWA CODE §§ 489.101–.1304 (Iowa’s version of RULLCA), *with* REVISED UNIF. LTD. LIAB. CO. ACT §§ 101–1106, 6B U.L.A. 425, 425–543 (2008 & Supp. 2012) (National Conference of Commissioners on Uniform State Law’s (NCCUSL) model version).

7. *See infra* Part III; *see also* IOWA CODE §§ 489.601–.604.

8. *See infra* Part IV.A.

9. *See infra* Part V; *see also* IOWA CODE § 489.602(5)(c).

10. *See infra* Part V; *see also* Mark J. Loewenstein, *Fiduciary Duties and Unincorporated Business Entities: In Defense of the “Manifestly Unreasonable” Standard*, 41 TULSA L. REV. 411, 413 (2006) (noting that “contractarians” argue for a “robust application of freedom of contract” (internal quotation marks omitted)).

II. BACKGROUND

A. *RULLCA's Progenitor: The Uniform Law Commission's 2006 Uniform Act*

In 1994, as a response to the varied state approaches to LLC legislation, the National Conference of Commissioners on Uniform State Law (NCCUSL) adopted its original Uniform Limited Liability Company Act (ULLCA).¹¹ The ULLCA underwent revision and was first promulgated in 1996.¹² Because the majority of states already had legislation governing the formation and conduct of LLCs,¹³ only eight states—Alabama, Hawaii, Illinois, Montana, South Carolina, South Dakota, Vermont, and West Virginia—and the Virgin Islands enacted an LLC statute modeled after the 1996 Uniform Act.¹⁴

According to the drafters of the 2006 uniform law, “[m]uch has changed” since the NCCUSL first considered and approved the 1996 Act:

11. See REVISED UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. 407, 408 (2008 & Supp. 2012) (noting that the ULLCA was first adopted in 1994, at which “time, nearly every state had adopted an LLC statute,” but each state’s statute “varied considerably in both form and substance”); UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. 545, 546–47 (2008 & Supp. 2012) (“Since [1977], every State has adopted or is considering its own distinct limited liability company act, many of which have already been amended one or more times. . . . All state limited liability company acts contain provisions for a liability shield and partnership tax status. Despite these two common themes, state limited liability company acts display a dazzling array of diversity. . . . Accordingly, uniform legislation in this area of the law appeared to have become urgent.”). The NCCUSL is also known as the Uniform Law Commission (UCL). See *About the ULC*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Nov. 30, 2012).

12. See UNIF. LTD. LIAB. CO. ACT §§ 101–1206, 6B U.L.A. 555, 555–652 (2008 & Supp. 2012); REVISED UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. at 409 (noting that the “ULLCA was revised in 1996 in anticipation of the ‘check the box’ regulations and has been adopted in a number of states”).

13. *Limited Liability Company (Revised) Summary*, UNIFORM L. COMMISSION, [http://www.uniformlaws.org/ActSummary.aspx?title=Limited%20Liability%20Company%20\(Revised\)](http://www.uniformlaws.org/ActSummary.aspx?title=Limited%20Liability%20Company%20(Revised)) (last visited Nov. 30, 2012) (“The great wave of statutes preceded the promulgation of the 1996 Uniform Act.”).

14. ALA. CODE §§ 10A-5-1.01 to -9.06 (LexisNexis 2009); HAW. REV. STAT. §§ 428-101 to -1302 (2004); 805 ILL. COMP. STAT. 180/1-1 to 180/60-1 (2010 & Supp. 2012); MONT. CODE ANN. §§ 35-8-101 to -1307 (2011); S.C. CODE ANN. §§ 33-44-101 to -1208 (2006 & Supp. 2011); S.D. CODIFIED LAWS §§ 47-34A-101 to -1207 (2007 & Supp. 2012); VT. STAT. ANN. tit. 11, §§ 3001–3162 (2010 & Supp. 2012); V.I. CODE ANN. tit. 13, §§ 1101–2203 2006; W. VA. CODE ANN. §§ 31B-1-101 to 31B-13-1306 (LexisNexis 2009 & Supp. 2012).

All states and the District of Columbia have adopted LLC statutes, and many LLC statutes have been substantially amended several times. LLC filings are significant in every U.S. jurisdiction, and in many states new LLC filings approach or even outnumber new corporate filings on an annual basis.

....

However, state LLC laws [remain] far from uniform.¹⁵

Consequently, and because nearly twenty years had passed since the Internal Revenue Service ruled that an LLC would be taxed as a partnership,¹⁶ the NCCUSL deemed it “an opportune moment to identify the best elements of the myriad ‘first generation’ LLC statutes and to infuse those elements into a new, ‘second generation’ uniform act.”¹⁷

Like its forbearer, state legislatures have been slow to abandon their existing LLC statutes in favor of the 2006 Act.¹⁸ Thus far, only seven states—California, Idaho, Iowa, Nebraska, New Jersey, Utah and Wyoming—plus the District of Columbia, have enacted some version of the 2006 uniform law.¹⁹ Additionally, two states—Kansas and Minnesota—

15. REVISED UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. at 409.

16. See Rev. Rul. 88-76, 1988-2 C.B. 360, 1988 WL 546801.

17. REVISED UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. at 409; see also *Limited Liability Company (Revised) Summary*, *supra* note 13 (“Because of its utility, the law of limited liability companies is very dynamic. New ideas and features seem to appear yearly with the objective of enhancing this form of business organization. The many developments since 1996 have led the Uniform Law Commission to reconsider the Uniform Act. The result is the 2006 Uniform Limited Liability Company Act.”). The drafting process itself, overseen by former Dean of Drake Law School David Walker, “spanned three years and included ten drafting committee meetings, six drafts, and consideration by the entire Conference at four consecutive annual meetings.” Daniel S. Kleinberger & Carter G. Bishop, *The Next Generation: The Revised Uniform Limited Liability Company Act*, 62 BUS. LAW. 515, 517–18 (2007) (footnotes omitted). For the provisions of the 2006 RULLCA, see REVISED UNIF. LTD. LIAB. CO. ACT §§ 101–1106, 6B U.L.A. 425, 425–543 (2008 & Supp. 2012).

18. Compare *Limited Liability Company (Revised) Summary*, *supra* note 13 (“[T]he 1996 Uniform Act has been enacted in only nine [jurisdictions] by 2006.”), with *Legislative Fact Sheet—Limited Liability Company (Revised)*, UNIFORM L. COMMISSION, [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Limited%20Liability%20Company%20\(Revised\)](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Limited%20Liability%20Company%20(Revised)) (last visited Nov. 30, 2012) (reflecting eight enactments of the 2006 revised uniform act and two additional introductions in state legislatures as of 2012).

19. D.C. CODE §§ 29-801.01 to -810.01 (LexisNexis 2010 & Supp. 2012);

have introduced bills that seek to adopt some permutation of the more recent model act.²⁰

B. Iowa's Enactment of RULLCA

In 2008, the Iowa General Assembly enacted Iowa's RULLCA.²¹ Codified at Iowa Code chapter 489,²² RULLCA replaced ILLCA, which was previously found in Iowa Code chapter 490A.²³ Iowa's version of RULLCA parallels the model law of the same name drafted and promulgated by the NCCUSL in 2006.²⁴

In a March 2009 article for *The Iowa Lawyer* introducing chapter 489, Drake Law School Professor Matthew Doré highlighted the rationale

IDAHO CODE ANN. §§ 30-6-101 to -1104 (Supp. 2012); IOWA CODE §§ 489.101–.1304 (2011); NEB. REV. STAT. ANN. §§ 21-101 to -197 (LexisNexis Supp. 2012); UTAH CODE ANN. §§ 48-3-101 to -1405 (LexisNexis Supp. 2012); WYO. STAT. ANN. §§ 17-29-101 to -1105 (2011). The California Revised Uniform Limited Liability Company Act, signed into law on September 21, 2012, will be added to the California Corporations Code as Title 2.6 and will become operative on January 1, 2014. California Revised Uniform Limited Liability Act, S.B. 323, 2011–2012 Sess. (Cal. 2012), available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB323&search_keywords=; Keith Paul Bishop, *California's New LLC Act—Call Me Laocoon, But I Foresee a Mess!*, CAL. CORP. & SEC. L. (Sept. 24, 2012), <http://calcorporatelaw.com/2012/09/californias-new-llc-act-call-me-laocoon-but-what-a-mess/>. The New Jersey Revised Uniform Limited Liability Company Act, enacted September 19, 2012, will go into effect on March 18, 2013, and will be effective as to all LLCs beginning April 1, 2014. Revised Uniform Limited Liability Company Act, A. 1543, ch. 50, Pamphlet Laws 2012 (N.J. 2012), available at http://www.njleg.state.nj.us/2012/Bills/AL12/50_.HTM; Rachel Lilienthal Stark, *Modernizing the New Jersey Limited Liability Company Act*, NEW JERSEY L. BLOG (Sept. 27, 2012), <http://www.njlawblog.com/2012/09/articles/business-corporate/modernizing-the-new-jersey-limited-liability-company-act/>.

20. H.B. 2261, 2011 Leg., Reg. Sess. (Kan. 2011); H. File 1274, 87th Sess. (Minn. 2011).

21. Revised Uniform Limited Liability Company Act, ch. 1162, 2008 Iowa Acts 616 (codified at IOWA CODE §§ 489.101–.1304 (2011)).

22. IOWA CODE §§ 489.101–.1304.

23. See *id.* §§ 490A.100–.1701 (2009), *repealed by* Revised Uniform Limited Liability Company Act, ch. 1162, § 153, 2008 Iowa Acts at 671 (“[Chapter 490A] [wa]s repealed on December 31, 2010.”).

24. See Matthew G. Doré, *Iowa's Revised Uniform Limited Liability Company Act: An Introduction and Overview*, 69 IOWA LAW. 8, 8 (2009) (“Iowa's version of [RULLCA] closely tracks the uniform model.”). Compare IOWA CODE §§ 489.101–.1304 (2011) (Iowa's RULLCA), with REVISED UNIF. LTD. LIAB. CO. ACT §§ 101–1106, 6B U.L.A. 425, 425–543 (2008 & Supp. 2012) (NCCUSL's 2006 Uniform Act).

2013]

Goodbye and Good Luck

541

behind the General Assembly's transition from ILLCA to RULLCA:

Since its enactment in 1992, the Iowa Limited Liability Company Act ("ILLCA," codified as Iowa Code Ch. 490A) has been revised numerous times. . . . One would think that with [more than ninety amendments] over the ILLCA's 17-year history the act would now be settled in for the long haul.

Think again! In 2008 the legislature approved an entirely new Iowa Limited Liability Company Act based on NCCUSL's Revised Uniform Limited Liability Company Act.

. . . .

David Walker, then Dean of Drake Law School, chaired [the 2006 uniform act's] drafting committee and was therefore intimately familiar with the new act's innovations. At Dean Walker's urging, The Iowa State Bar Association's Business Law Section, acting through its LLC Committee, carefully compared [the 2006 uniform act] to the ILLCA. After nearly a year of study, the LLC Committee unanimously recommended that Iowa adopt [the 2006 uniform act], which ultimately became part of The Iowa State Bar Association's successful 2008 legislative agenda.²⁵

Initially, and as of its effective date of January 1, 2009, RULLCA was applicable only to those LLCs formed on or after January 1, 2009, or those pre-existing LLCs that elected to be subject to the provisions of chapter 489 rather than the provisions of chapter 490A.²⁶ As of January 1, 2011, however, RULLCA governs all Iowa limited liability companies regardless of when they were formed.²⁷

Due to its relatively recent enactment, there is currently a dearth of Iowa case law—either state or federal—interpreting or applying the provisions of chapter 489.²⁸ Moreover, and at least relevant in the early

25. Doré, *supra* note 24, at 8.

26. IOWA CODE § 489.1304(1) ("Before January 1, 2011, [chapter 489] govern[ed] all of the following: [a] limited liability company formed on or after January 1, 2009 [and] . . . [a] limited liability company formed before January 1, 2009, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to [chapter 489].").

27. *Id.* § 489.1304(2) ("[O]n and after January 1, 2011, [chapter 489] govern[ed] all limited liability companies.").

28. See Doré, *supra* note 24, at 8 ("Because Iowa is only the second state to adopt [RULLCA] (Idaho was first), Iowa practitioners are now in uncharted

years after RULLCA's passage, chapter 489 "does not affect an action commenced, proceeding brought, or right accrued" before chapter 489 took effect.²⁹ Therefore, and assuming similarity between the provisions of the two statutes, decisions under ILLCA will likely continue to have precedential value.³⁰ Additionally, because chapter 489 substantially parallels the uniform law, Iowa courts will also likely be inclined to look to the official comments of the NCCUSL drafting committee as persuasive authority when construing RULLCA's newer provisions.³¹ Finally, case law from other jurisdictions, specifically those that have adopted a form of the Uniform Law Commission's 2006 Act,³² will also likely have persuasive influence as Iowa courts apply RULLCA in emergent LLC litigation.³³

III. MEMBER DISSOCIATION PROVISIONS

Both the 1996 and 2006 model LLC acts contain member dissociation provisions.³⁴ According to ULLCA's drafters, "[t]he term 'dissociation'

territory.").

29. IOWA CODE § 489.1303; *see, e.g.*, *Farm & Ranch Servs., Ltd. v. LT Farm & Ranch, LLC*, 779 F. Supp. 2d 949, 961 n.18 (S.D. Iowa 2011) (applying ILLCA because the relevant portions of chapter 490A were "in effect at the time of the events in issue").

30. *See generally* *Miller v. Westfield Ins. Co.*, 606 N.W.2d 301, 306 (Iowa 2000) ("Clearly, adherence to precedent has value.").

31. *See, e.g.*, *Meyer v. City of Des Moines*, 475 N.W.2d 181, 184 (Iowa 1991) (explaining that when a section of the Iowa Code is substantially identical to a provision of a uniform law, the court will "consider the language of [the uniform law] and the comments to it as a persuasive authority on legislative intent" (citing *Slager v. HWA Corp.*, 435 N.W.2d 349, 352 (Iowa 1989)); *Slager v. HWA Corp.*, 435 N.W.2d 349, 352 (Iowa 1989) (noting that when a statute is patterned after a uniform law, the court "consider[s] the official comments to the Uniform Act to have persuasive influence" (citing 2A N.J. Singer, *Sutherland Statutory Construction* § 52.05, at 546 (revised ed. 1984))); *see also* *Doré, supra* note 24, at 8 (noting that because Iowa's version of RULLCA closely parallels the model act, "the section-by-section explanatory comments in [the NCCUSL's 2006 uniform act] offer excellent guidance").

32. *See* D.C. CODE §§ 29-801.01 to -810.01 (LexisNexis 2010); IDAHO CODE ANN. §§ 30-6-101 to -1104 (Supp. 2012); NEB. REV. STAT. §§ 21-101 to -197 (Supp. 2012); UTAH CODE ANN. §§ 48-3-101 to -1405 (Supp. 2012); WYO. STAT. ANN. §§ 17-29-101 to -1105 (2011).

33. *See, e.g.*, *Stuart v. State ex rel. Jannings*, 253 N.W.2d 910, 913 (Iowa 1977) ("[A]bsent prior pertinent decisions by this court we look to relevant holdings in other jurisdictions." (citations omitted)). *But cf.* *Handeland v. Brown*, 216 N.W.2d 574, 577 (Iowa 1974) ("Although cases from other states may be persuasive authority, they have no greater cogency than the reasoning by which they were decided.").

34. *See* REVISED UNIF. LTD. LIAB. CO. ACT §§ 601-03, 6B U.L.A. 425, 502-05 (2008 & Supp. 2012); UNIF. LTD. LIAB. CO. ACT §§ 601-03, 6B U.L.A. 555, 607-12

refers to the change in the relationships among the dissociated member, the company and the other members caused by a member's ceasing to be associated in the carrying on of the company's business."³⁵ Similar to the multitudinous state approaches prompting the NCCUSL to draft the model law in the first instance,³⁶ state laws in effect prior to ULLCA:

accord[ed] vastly different treatment to the effect of member dissociation on the dissociating member (purchase of interest and management rights) and its separate effect on the business continuity of the limited liability company (dissolution). Because each state act is an amalgam of general and limited partnership and corporate laws, the results are far from uniform.³⁷

As a result, member dissociation provisions under ULLCA, like the general impetus behind ULLCA itself, were intended to "foster certainty and predictability and increase the precedential value of case law developed state by state."³⁸ Statutory standardization of both the antecedents for and consequences of member dissociation reflected an attempt by ULLCA's drafters to "stabilize[] the effects of member dissociation on the member's buyout rights and the effect on the business continuity of the company."³⁹

Thus, ULLCA's drafters drew their primary inspiration for the 1996 ULLCA's dissociation provisions from the Uniform Law Commission's previously promulgated Revised Uniform Partnership Act (RUPA).⁴⁰ In

(2008 & Supp. 2012).

35. UNIF. LTD. LIAB. CO. ACT § 601 cmt., 6B U.L.A. at 608.

36. See UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. 545, 547 (2008 & Supp. 2012) ("Since most state limited liability company acts are in their infancy, little if any interpretative case law exists. Even when case law develops, it will have limited precedential value because of the diversity of state acts. Accordingly, uniform legislation in this area of the law appeared to have become urgent.").

37. Carter G. Bishop, *Treatment of Members Upon Their Death and Withdrawal from a Limited Liability Company: The Case for a Uniform Paradigm*, 25 STETSON L. REV. 255, 260 (1995).

38. *Id.* at 263 (footnote omitted); see also Fred H. Miller, *The Future of Uniform State Legislation in the Private Law Area*, 79 MINN. L. REV. 861, 867 & n.23 (1995) (noting that "uniform laws tend to distill the experience of early experimentation in the various states" and highlighting ULLCA as "[a] good example of allowing states to experiment prior to the adoption of a uniform law").

39. Bishop, *supra* note 37, at 263.

40. *Id.* at 265 n.30 ("The primary source for ULLCA's dissociation concept is RUPA § 601."). Compare UNIF. LTD. LIAB. CO. ACT §§ 601-03, 6B U.L.A. at 607-12 (Member's Dissociation), with UNIF. P'SHIP ACT §§ 601-03, 6 U.L.A. 58, 163-74 (2001

contrast, and while maintaining some of ULLCA's dissociation language, the reconstituted NCCUSL drafting committee looked to the more recently propounded Uniform Limited Partnership Act (ULPA)⁴¹ to modify certain dissociation provisions in the 2006 uniform version of RULLCA.⁴² According to the drafter's commentary, the source for RULLCA section 601—Member's Power to Dissociate; Wrongful Dissociation—was ULPA section 604, which itself was based on RUPA section 602.⁴³ Section 602—Events Causing Dissociation—was predicated upon ULLCA section 601, RUPA section 601, and ULPA sections 601 and 603.⁴⁴ Finally, RULLCA section 603—Effect of Person's Dissociation as Member—was influenced by ULPA section 605, “which [itself] was drawn from RUPA Section 603(b).”⁴⁵

Although member dissociation is a new addition to Iowa's revised LLC statute,⁴⁶ the concept itself is not unknown in Iowa statutes governing

& Supp. 2012) (Partner's Dissociation).

41. UNIF. LTD. P'SHIP ACT §§ 601–07, 6A U.L.A. 354, 450–60 (2008 & Supp. 2012).

42. See REVISED UNIF. LTD. LIAB. CO. ACT §§ 601–03 cmts., 6B U.L.A. 425, 502–05 (2008 & Supp. 2012) (highlighting ULPA as a source for sections 601, 602, and 603).

43. *Id.* § 601 cmt., 6B U.L.A. at 502. Compare *id.* § 601, 6B U.L.A. at 502 (Member's Power to Dissociate; Wrongful Dissociation), with UNIF. LTD. P'SHIP ACT § 604, 6A U.L.A. at 455–56 (Person's Power to Dissociate as General Partner; Wrongful Dissociation), and UNIF. P'SHIP ACT § 602, 6 U.L.A. at 169 (Partner's Power to Dissociate; Wrongful Dissociation). The drafters further noted that while, “ULLCA § 602 is functionally identical in some respects [to ULPA § 604, it] is not a good overall source, because that section presupposes the term/at-will paradigm.” REVISED UNIF. LTD. LIAB. CO. ACT § 601 cmt., 6B U.L.A. at 502.

44. REVISED UNIF. LTD. LIAB. CO. ACT § 602 cmt., 6B U.L.A. at 504. Compare *id.* § 602, 6B U.L.A. at 502–04 (Events Causing Dissociation), with UNIF. LTD. LIAB. CO. ACT § 601, 6B U.L.A. at 607–08 (Events Causing Member's Dissociation), and UNIF. P'SHIP ACT § 601, 6 U.L.A. at 163–64 (Events Causing Partner's Dissociation), and UNIF. LTD. P'SHIP ACT §§ 601, 603, 6A U.L.A. at 450–51, 453–54 (Dissociation as Limited Partner and Dissociation as General Partner respectively).

45. REVISED UNIF. LTD. LIAB. CO. ACT § 603 cmt., 6B U.L.A. at 505. Compare *id.* § 603, 6B U.L.A. at 504–05 (Effect of Person's Dissociation as Member), with UNIF. LTD. P'SHIP ACT § 605, 6A U.L.A. at 456–57 (Effect of Dissociation as General Partner), and UNIF. P'SHIP ACT § 603(b), 6 U.L.A. at 172 (Effect of Partner's Dissociation).

46. 5 MATTHEW G. DORÉ, IOWA PRACTICE SERIES § 13.32 (West 2011) (noting that “[m]ember ‘dissociation[.]’ [is] a new concept in Iowa limited liability company law under [RULLCA]”). Compare IOWA CODE §§ 489.601–604 (2011) (detailing member dissociation provisions), with *id.* §§ 490A.100–1701 (2009)

unincorporated business entities given the Iowa General Assembly's previous enactments of modified versions of both RUPA and ULPA.⁴⁷ Additionally, and although chapter 490A was technically silent as to member dissociation, some argue member dissociation under RULLCA "is the rough equivalent of member 'withdrawal' under the ILLCA."⁴⁸

Regardless, and like its uniform law progenitor, Iowa Code chapter 489's member dissociation provisions now outline: (1) wrongful dissociation and a member's power to dissociate;⁴⁹ (2) specific events causing dissociation;⁵⁰ and (3) the effect of a person's dissociation as a member.⁵¹ Unlike its uniform law counterpart, however, Iowa's RULLCA also includes an additional provision governing a member's power to dissociate under certain statutorily-defined circumstances.⁵² Each of these sections is addressed in greater detail below.

A. Member's Power to Dissociate—Wrongful Dissociation

Under Iowa Code section 489.601, a person has the power to dissociate as a member at any time by withdrawing as a member by express

(repealed 2010) (lacking provisions explicitly addressing member dissociation).

47. See IOWA CODE §§ 486A.601–.603, 488.601–.607 (2011) (setting forth dissociation provisions from Iowa's Uniform Partnership Act and Iowa's Uniform Limited Partnership Act respectively).

48. 5 DORÉ, *supra* note 46, § 13.32; see also Marc Ward, *Existing LLCs Under the New Iowa LLC Law*, WARD ON IOWA LIMITED LIABILITY COMPANY L. (June 19, 2008), http://www.iowallcblog.typepad.com/iowa_limited_liability_co/2008/06/existing-operat.html ("Dissociation is a new concept introduced in Chapter 489, although Chapter 490A concepts of withdrawal, termination and cessation of membership (see in particular 490A.712) are similar."). Ward, an attorney at Dickinson, Mackaman, Tyler & Hagen, PC served as chair of the Iowa State Bar Association's Limited Liability Companies Committee at the time of RULLCA's enactment, and he also chaired the 1992 committee that drafted ILLCA. *Attorney Profiles: J. Marc Ward—Introduction*, DICKINSONLAW, http://www.dickinsonlaw.com/attorney_profile/j-marc-ward/ (last visited Nov. 30, 2012). For the provisions regarding member withdrawal under the ILLCA, see IOWA CODE §§ 490A.704–.704A, .712 (2009) (repealed in 2010).

49. IOWA CODE § 489.601 (2011); REVISED UNIF. LTD. LIAB. CO. ACT § 601, 6B U.L.A. at 502.

50. IOWA CODE § 489.602; REVISED UNIF. LTD. LIAB. CO. ACT § 602, 6B U.L.A. at 502–04.

51. IOWA CODE § 489.603; REVISED UNIF. LTD. LIAB. CO. ACT § 603, 6B U.L.A. at 504–05.

52. IOWA CODE § 489.604.

will under section 489.602(1).⁵³ A “person” maintains this power regardless of whether the dissociation is rightful or wrongful.⁵⁴ Iowa Code section 489.102 expansively defines “person” to include “an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.”⁵⁵

A person’s dissociation is wrongful only if the dissociation:

- (a) [i]s in breach of an express provision of the operating agreement[; or] . . .
- (b) [o]ccurs before the termination of the company, and . . .
 - (1) [t]he person withdraws as a member by express will[; or]
 - (2) [t]he person is expelled as a member by judicial order under section 489.602, subsection 5[; or]
 - (3) [t]he person is dissociated under section 489.602, subsection 7, paragraph “a”, by becoming a debtor in bankruptcy[; or]
 - (4) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.⁵⁶

The impact of a wrongful dissociation is outlined in section 489.601(3).⁵⁷ A wrongfully dissociating member is liable to the LLC and, subject to a direct action brought pursuant to section 489.901,⁵⁸ to the other

53. *Id.* §§ 489.601(1), 489.602(1); *see also* REVISED UNIF. LTD. LIAB. CO. ACT §§ 601(a), 602(1), 6B U.L.A. at 502.

54. IOWA CODE § 489.601(1) (noting that “[a] person has the power to dissociate as a member at any time, *rightfully or wrongfully*” (emphasis added)); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 601(a), 6B U.L.A. at 502.

55. IOWA CODE § 489.102(17); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 102(15), 6B U.L.A. at 429.

56. IOWA CODE § 489.601(2); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 601(b), 6B U.L.A. at 502.

57. IOWA CODE § 489.601(3); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 601(c), 6B U.L.A. at 502.

58. IOWA CODE § 489.901(1)–(2). Under section 489.901(1), which authorizes a direct action by a member, “a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member’s rights and otherwise protect the member’s interests, including rights and interests under the operating agreement or [chapter 489] or arising independently of the membership

members “for damages caused by the dissociation.”⁵⁹ This liability under section 489.601(3) is “in addition to any other debt, obligation, or other liability of the member to the company or the other members.”⁶⁰

B. Events Causing Dissociation

Iowa Code section 489.602 details fourteen distinct events causing member dissociation:⁶¹

(1) The LLC receives notice of the person’s “express will to withdraw as a member;”⁶²

(2) An event occurs that is stated in the operating agreement as causing the dissociation;⁶³

(3) The person is expelled as a member under the terms of the operating agreement;⁶⁴

relationship.” *Id.* § 489.901(1). To maintain a direct action against another member, a manager, or the LLC, a member “must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.” *Id.* § 489.901(2); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 901(a)–(b), 6B U.L.A. at 522.

59. IOWA CODE § 489.601(3); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 601(c), 6B U.L.A. at 502.

60. IOWA CODE § 489.601(3); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 601(c), 6B U.L.A. at 502.

61. IOWA CODE § 489.602(1)–(14); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(1)–(14), 6B U.L.A. at 502–04.

62. IOWA CODE § 489.602(1); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(1), 6B U.L.A. at 502. Section 489.601(2)(b)(1)–(4) determines whether this termination by express will is considered rightful or wrongful. IOWA CODE § 489.601(2)(b)(1)–(4); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 601(b)(2)(A)–(D), 6B U.L.A. at 502.

63. IOWA CODE § 489.602(2); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(2), 6B U.L.A. at 503. The LLC’s operating agreement “governs . . . [r]elations among the members as members and between the members and the limited liability company.” IOWA CODE § 489.110(1)(a); REVISED UNIF. LTD. LIAB. CO. ACT § 110(a)(1), 6B U.L.A. at 442.

64. IOWA CODE § 489.602(3); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(3), 6B U.L.A. at 503. As will be discussed in Part IV, an LLC’s operating agreement is of paramount importance in determining the scope of relations between the LLC’s members. *See infra* Part IV.A; *see also* IOWA CODE § 489.110(1)(a); REVISED UNIF. LTD. LIAB. CO. ACT § 110(a)(1), 6B U.L.A. at 442; Matthew D. Maser & Joseph R. Hefflinger, *Nebraska’s New Limited Liability Company Act: A Welcome Improvement for Legal Guidance Concerning Limited Liability Companies*, 89 NEB. L. REV. 470, 472–73 (2011) (summarizing Nebraska’s new LLC statute that, like

(4) The person is expelled as a member by the unanimous consent of the other members for any one of a number of statutorily-specified reasons;⁶⁵

(5) On the company's application, the person is expelled as a member by judicial order for engaging in statutorily specified conduct;⁶⁶

(6) In the case of an individual, the person dies, or, in the case of a member-managed LLC, a guardian or general conservator for the person is appointed or there is a judicial order determining that the person has otherwise become incapable of performing the person's duties as a member under chapter 489 or the operating agreement;⁶⁷

RULLCA, was modeled on the 2006 uniform act, and stating “[o]ne of the major improvements of the New LLC Act is that it is expressly a default statute, meaning most matters will be governed by an operating agreement entered into by the members of the LLC (with certain enumerated exceptions), and the New LLC Act will govern when the operating agreement is silent. Therefore, the operating agreement will be the controlling document between the members of the LLC, with certain exceptions, and the New LLC Act will control only where the operating agreement is silent.” (footnote omitted); Kleinberger & Bishop, *supra* note 17, at 520–21 (stating that an “operating agreement is an LLC’s foundational accord” and noting that an “operating agreement’s domain is very broad, and the agreement is the first place to look for the ‘deal’ among the members.” (footnotes omitted)).

65. IOWA CODE § 489.602(4); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(4), 6B U.L.A. at 503. These reasons are:

- (a) It is unlawful to carry on the company's activities with the person as a member.
- (b) There has been a transfer of all of the person's transferable interest in the company
- (c) The person is a corporation, and within ninety days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated.
- (d) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up.

IOWA CODE § 489.602(4)(a)–(d); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(4)(A)–(D), 6B U.L.A. at 503.

66. IOWA CODE § 489.602(5); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(5), 6B U.L.A. at 503. The specified reasons for member dissociation by judicial order are discussed in detail later in this Note. *See infra* Part V.

67. IOWA CODE § 489.602(6); *see also* REVISED UNIF. LTD. LIAB. CO. ACT

2013]

Goodbye and Good Luck

549

(7) In a member-managed LLC, the person becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, or seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;⁶⁸

(8) A person is a trust, or is acting as a member by virtue of being a trustee of a trust, and the trust's entire interest in the company is distributed;⁶⁹

(9) A person is an estate, or is acting as a member by virtue of being a personal representative of an estate, and the estate's entire transferable interest in the LLC is distributed;⁷⁰

(10) A member that is not an individual, partnership, LLC, corporation, trust, or estate, is terminated;⁷¹

(11) The LLC participates in a merger governed by chapter 489, article 10, and the company is not the surviving entity or the person ceases to be a member as a result of the merger;⁷²

(12) The LLC participates in a conversion under chapter 489, article 10;⁷³

(13) The LLC participates in a domestication under chapter 489, article 10, and the person ceases to be a member as a result of the domestication;⁷⁴ or

(14) The LLC terminates.⁷⁵

§ 602(6), 6B U.L.A. at 503.

68. IOWA CODE § 489.602(7); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(7), 6B U.L.A. at 503–04.

69. IOWA CODE § 489.602(8); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(8), 6B U.L.A. at 504.

70. IOWA CODE § 489.602(9); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(9), 6B U.L.A. at 504.

71. IOWA CODE § 489.602(10); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(10), 6B U.L.A. at 504.

72. IOWA CODE § 489.602(11); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(11), 6B U.L.A. at 504.

73. IOWA CODE § 489.602(12); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(12), 6B U.L.A. at 504.

74. IOWA CODE § 489.602(13); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(13), 6B U.L.A. at 504.

75. IOWA CODE § 489.602(14); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(14), 6B U.L.A. at 504.

C. Effect of Person's Dissociation as Member

Iowa Code section 489.603 outlines four effects of a person's dissociation from membership in an LLC.⁷⁶ First, upon dissociation, "[t]he person's right to participate as a member in the management and conduct of the company's activities terminates."⁷⁷ Second, in a member-managed LLC, the dissociated member's fiduciary duties end in relation to matters and events arising and occurring after that person's dissociation.⁷⁸ Third, and subject to certain other statutory provisions relating to transferrable interests, mergers, conversions, and domestications,⁷⁹ any transferrable interest owned by the dissociated person in their capacity as member immediately before dissociation is deemed owned by the dissociated person solely as a transferee.⁸⁰ Finally, according to section 489.603(2), "[a] person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member."⁸¹ The drafters of the uniform act provide a concrete example of this fourth effect:

In a member-managed limited liability company, the obligation to safeguard trade secrets and other confidential or proprietary information is incurred when a person is a member. A subsequent dissociation does not entitle the person to usurp the information or use it to the prejudice of the LLC after the dissociation.⁸²

D. Member's Power to Dissociate Under Certain Circumstances

Iowa Code section 489.604—of which the uniform act contains no comparable counterpart⁸³—gives a member the power to dissociate upon

76. IOWA CODE § 489.603; *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 603, 6B U.L.A. at 504–05.

77. IOWA CODE § 489.603(1)(a); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 603(a)(1), 6B U.L.A. at 504–05.

78. IOWA CODE § 489.603(1)(b); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 603(a)(2), 6B U.L.A. at 504–05.

79. *See* IOWA CODE §§ 489.504, .1001–.1019; *see also* REVISED UNIF. LTD. LIAB. CO. ACT §§ 504, 1001–15, 6B U.L.A. at 501, 527–40.

80. IOWA CODE § 489.603(1)(c); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 603(a)(3), 6B U.L.A. at 504–05.

81. IOWA CODE § 489.603(2); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 603(b), 6B U.L.A. at 504–05.

82. REVISED UNIF. LTD. LIAB. CO. ACT § 603(b) cmt., 6B U.L.A. at 505.

83. *See id.* §§ 601–03, 6B U.L.A. at 502–05.

2013]

Goodbye and Good Luck

551

the adoption of an amendment to either the operating agreement or certificate of organization, which, over the member's written dissent, "adversely affects the rights or preferences of the dissenting member's transferable interest" by:

- (a) alter[ing] or abolish[ing] a member's right to receive a distribution;
- (b) alter[ing] or abolish[ing] a member's right to voluntarily dissociate;
- (c) alter[ing] or abolish[ing] a member's right to vote on any matter, except as the rights may be altered or abolished through the acceptance of contributions or the making of contribution agreements;
- (d) alter[ing] or abolish[ing] a member's preemptive right to make contributions;
- (e) establish[ing] or chang[ing] the conditions for or consequences of expulsion; or
- (f) waiv[ing] the application of [section 489.604] to the limited liability company.⁸⁴

Any prior agreement by members not to withdraw is inapplicable, and a member dissociating under section 489.604 is not liable for the breach of any such agreement.⁸⁵ Additionally, and once again recognizing the preeminent position of the LLC's operating agreement in structuring the relations of the members, the operating agreement "may waive the applicability of [section 489.604] to the company and its members."⁸⁶

84. IOWA CODE § 489.604(1)(a)–(f). Section 489.604 is derived in predominant part from ILLCA section 490A.704A(3)–(5). Compare *id.* § 489.604 (Member's Power to Dissociate Under Certain Circumstances), with IOWA CODE § 490A.704A(3)–(5) (2009) (repealed in 2010) (Resignation or Withdrawal of Member).

85. See IOWA CODE § 489.604(2) (2011). Section 489.604 applies to LLCs that filed original articles or certificate of organization with the secretary of state on or after July 1, 1997. *Id.* § 489.604(3). For LLCs that filed original articles of organization on or prior to June 30, 1997, the LLC may elect through its operating agreement to be subject to this section. *Id.* § 489.604(4).

86. *Id.* § 489.604(5).

IV. INTERPLAY OF THE OPERATING AGREEMENT AND MEMBER DISSOCIATION PROVISIONS

A. *The Operating Agreement*

Despite the comprehensive nature of its statutory provisions, Iowa's RULLCA—as well as its 2006 uniform law precursor—gives broad effect to an LLC's operating agreement.⁸⁷ RULLCA's definition of the term “operating agreement” is expansive:

“*Operating agreement*” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in section 489.110, subsection 1. The term includes the agreement as amended or restated.⁸⁸

According to the uniform law's prefatory note, “[l]ike the partnership agreement in a general or limited partnership, an LLC's operating agreement serves as the foundational contract among the entity's owners.”⁸⁹ Additionally, the drafter's emphasized “a limited liability company is as much a creature of contract as of statute.”⁹⁰ RULLCA's emphasis on the operating agreement as the controlling and foundational document aligns with the general view courts have taken when interpreting LLC statutes within their respective jurisdictions.⁹¹ For example, in *Historic*

87. See, e.g., *id.* § 489.110 (outlining the scope, functions, and limitations of an operating agreement); REVISED UNIF. LTD. LIAB. CO. ACT § 110, 6B U.L.A. at 442–44 (providing uniform provisions regarding the scope, functions, and limitations of the operating agreement); see also REVISED UNIF. LTD. LIAB. CO. ACT § 110 cmt., 6B U.L.A. at 444 (“The operating agreement is pivotal to a limited liability company, and Sections 110 through 112 are pivotal to this Act. They must be read together, along with Section 102(13) (defining the operating agreement).”).

88. IOWA CODE § 489.102(15); see also REVISED UNIF. LTD. LIAB. CO. ACT § 102(13), 6B U.L.A. at 429.

89. REVISED UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. 407, 410 (2008 & Supp. 2012).

90. REVISED UNIF. LTD. LIAB. CO. ACT § 110 cmt., 6B U.L.A. at 445 ; see also Kleinberger & Bishop, *supra* note 17, at 521 (“The operating agreement's domain is very broad, and the agreement is the first place to look for the ‘deal’ among the members.” (footnotes omitted)).

91. See, e.g., *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 880 (Del. Ch. 2009) (“Limited liability companies are creatures of contract, and the parties have broad discretion to use an LLC agreement to define the character of the company and the rights and obligations of its members.”); *Investcorp, L.P. v. Simpson Inv. Co.*, 85

Charleston Holdings, LLC v. Mallon, the South Carolina Court of Appeals stated:

Members of limited liability companies may enter into an operating agreement that outlines the procedures governing the affairs of the company. Operating agreements are binding contracts that are superior to statutory authority where they are in place. However, to the extent that the operating agreement is silent as to some matter, statutory law will apply. Thus, courts deciding a controversy between members must first evaluate a limited liability company's operating agreement regarding a particular procedure prior to supplementing any areas not covered by the agreement with statutory law.⁹²

Among other facets of LLC organization and behavior,⁹³ under RULLCA, the operating agreement governs relations among the members as members, relations between the members and the LLC, and both the activities of the company and the conduct of those activities.⁹⁴ Thus, subject to certain exceptions,⁹⁵ it is only when the operating agreement fails to

P.3d 1140, 1147 (Kan. 2003) (noting the Kansas Revised Limited Liability Company Act “give[s] the maximum effect to the principle of freedom of contract, and to the enforceability of operating agreements” (quoting KAN. STAT. ANN. § 17-76, -134(b) (Supp. 2003)) (internal quotation marks omitted)); *see also* 51 AM. JUR. 2D *Limited Liability Companies* § 4 (2011) (“An operating agreement is contractual in nature; thus, it binds the members of the limited liability company as written and is interpreted pursuant to contract law. The operating agreement is the essential contract that governs the affairs of a limited liability company. . . . The parties have broad discretion to use an LLC agreement to define the character of the company and the rights and obligations of its members.” (footnotes omitted)).

92. *Historic Charleston Holdings, LLC v. Mallon*, 617 S.E.2d 388, 393 (S.C. Ct. App. 2005) (citing S.C. CODE ANN. § 33-44-103 (Supp. 2004)), *rev'd on other grounds*, 673 S.E.2d 448 (S.C. 2009); *see also* *Kinkle v. R.D.C., L.L.C.*, 889 So. 2d 405, 409 (La. Ct. App. 2004) (“An operating agreement is contractual in nature; thus, it binds the members of the LLC as written and is interpreted pursuant to contract law.” (citations omitted)); *Blewater Logistics, LLC v. Williford*, 55 So. 3d 148, 162 (Miss. 2011) (“An LLC operating agreement is contractual in nature and binding on the members of the company.” (footnote omitted)).

93. *See* IOWA CODE § 489.110(1)(b), (d) (stating that the operating agreement also governs the rights and duties of a person in the capacity of manager and the means and conditions for amending the operating agreement); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(a)(2), (4), 6B U.L.A. at 442.

94. IOWA CODE § 489.110(1)(a), (c); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(a)(1), (3), 6B U.L.A. at 442.

95. *See* IOWA CODE § 489.110(3)(a)–(k) (restricting the ability of members to alter various aspects of RULLCA's default rules); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(c)(1)–(11), 6B U.L.A. at 442–43. For example, the operating agreement

address an issue that may properly be characterized as falling under one of section 489.110(1)'s inclusionary categories that the provisions of chapter 489 control.⁹⁶ The provisions of chapter 489, therefore, predominantly serve as "gap-fillers," functioning as default provisions when the operating agreement fails to deal with one of RULLCA's specified issues.⁹⁷ Consequently, the operating agreement should be viewed as "the exclusive consensual process for modifying th[e] Act's various default rules pertaining to relationships *inter se* the members and between the members and the limited liability company."⁹⁸

Because "[t]he term 'dissociation' refers to the change in the relationships among the dissociated member, the company and the other members,"⁹⁹ it seems reasonable to conclude that member dissociation falls under section 489.110(1)(a)'s alterable category of "[r]elations among the members as members and between the members and the limited liability company."¹⁰⁰ As a result, members may use the operating agreement to alter, restrict, expand, or limit those default provisions which govern member dissociation.¹⁰¹

cannot: (1) vary an LLC's capacity to sue or be sued in its own name, (2) eliminate the duties of loyalty and care or any other fiduciary duty (subject to certain exceptions); or (3) unreasonably restrict the right of a member to maintain either a direct action against another member or derivative action on behalf of the LLC. *See* IOWA CODE § 489.110(3)(a), (d), (i); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(c)(1), (4), (9), 6B U.L.A. at 442-43.

96. *See* IOWA CODE § 489.110(1); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(a) & cmt., 6B U.L.A. at 442, 445 (Section 110(a)(1)-(4) "describes the very broad scope of a limited liability company's operating agreement, which includes all matters constituting internal affairs" (internal quotation marks omitted)).

97. IOWA CODE § 489.110(2) ("To the extent the operating agreement does not otherwise provide for a matter described in [§ 489.110(1)], this chapter governs the matter."); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(b), 6B U.L.A. at 442.

98. REVISED UNIF. LTD. LIAB. CO. ACT § 110 cmt., 6B U.L.A. at 445; *see also* 5 DORÉ, *supra* note 46, § 13.16 ("Thus, like the ILLCA, [RULLCA] is primarily a default statute. Unlike the ILLCA, however, [RULLCA] contemplates that modifications to default rules will be made through the *operating agreement* rather than the articles (now 'certificate') of organization.").

99. UNIF. LTD. LIAB. CO. ACT § 601 cmt., 6B U.L.A. 555, 608 (2008 & Supp. 2012).

100. *See* IOWA CODE § 489.110(1)(a); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(a)(1), 6B U.L.A. at 442; Ward, *supra* note 48 (recommending that attorneys perform an operating degree audit in advance of RULLCA's effective date and stating, "Dissociation is a new concept introduced in Chapter 489. . . . How is dissociation dealt with in the operating agreement? Are there any gaps that need to be addressed?").

101. *See* IOWA CODE § 489.604(1); REVISED UNIF. LTD. LIAB. CO. ACT

This interpretation is further supported by section 489.602(2), which dissociates a person as a member from an LLC when “[a]n event stated in the operating agreement as causing the person’s dissociation occurs,”¹⁰² and by section 489.604(5), which states “[t]he operating agreement of a limited liability company may waive the applicability of [section 489.604] to the company and its members.”¹⁰³ Moreover, member dissociation provisions are not included in section 489.110(3)’s comprehensive list of those aspects of RULLCA that may not be modified, amended, or eliminated by the LLC’s operating agreement.¹⁰⁴ Thus, by the standard principle of statutory interpretation that the legislature’s express mention of one thing implies the exclusion of other things not mentioned, parties appear to be able to structure their operating agreement’s dissociation provisions as they see fit.¹⁰⁵ Interestingly, in both Iowa’s Uniform Partnership Act and its uniform law antecedent, the right of a court to expel a partner was nonwaivable in the partnership agreement.¹⁰⁶

The default nature of RULLCA’s provisions is therefore implicated in the context of member dissociation, which has the potential to produce unintended results for LLC members in the absence of contrasting provisions in the operating agreement.¹⁰⁷ For example, if the operating

§ 603(a)(3) cmt., 6B U.L.A. at 505 (“Like most *inter se* rules in this Act, [section 603(a)(3)] is subject to the operating agreement.”); *see also* Matthew D. Maser et al., *Nebraska’s Adoption of the Revised Uniform Limited Liability Company Act: Brief Overview and Practical Considerations*, 13 NEB. LAW. 21, 24 (2010) (“The New Act has detailed default provisions governing the withdrawal or dissociation of a member and the resulting consequences. Practitioners should review these provisions and modify them as desired in the Operating Agreement.” (footnote omitted)).

102. IOWA CODE § 489.602(2).

103. *Id.* § 489.604(5).

104. *See id.* § 489.110(3)(a)–(k); REVISED UNIF. LTD. LIAB. CO. ACT § 110(c)(1)–(11), 6B U.L.A. at 442–43.

105. *See, e.g.,* Marcus v. Young, 538 N.W.2d 285, 289 (Iowa 1995) (stating that in interpreting statutes, Iowa courts “are to be guided by the maxim ‘expressio unius est exclusio alterius,’—expression of one thing is the exclusion of another. This expresses the well-established rules of statutory construction that legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned.” (citations omitted)).

106. *See* IOWA CODE § 486A.103(2)(g) (noting that “[t]he partnership agreement shall not . . . [v]ary the right of a court to expel a partner”); UNIF. P’SHIP ACT § 103(b)(7), 6 U.L.A. 58, 73–74 (2001 & Supp. 2012) (noting that “[t]he partnership agreement may not . . . vary the right of a court to expel a partner”).

107. *See* IOWA CODE § 489.110(2) (“To the extent the operating agreement does not otherwise provide for a matter described in [section 489.110(1)], this chapter governs the matter.”); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(b), 6B U.L.A.

agreement of an LLC formed prior to RULLCA's initial effective date of January 1, 2009,¹⁰⁸ was silent as to member dissociation, and the parties failed to amend that operating agreement to alter RULLCA's dissociation provisions, the LLC members will be governed by the provisions of sections 489.601–.604.¹⁰⁹ Such a consequence demonstrates the necessity of performing “an operating agreement audit” for LLC clients in order to address any gaps in the operating agreement in relation to the new statutory provisions.¹¹⁰

B. Management Structure Classification

Under RULLCA, the applicability of certain dissociation provisions is also impacted by the classification of the LLC's management structure.¹¹¹ According to section 489.102(14), a “member-managed” LLC is any LLC that is not “manager-managed.”¹¹² Section 489.407(1) determines whether an LLC qualifies as “manager-managed” and indicates an LLC will be deemed “member-managed” *unless* the operating agreement expressly provides that the company is “manager-managed,” “managed by managers,” the management of the company “is or will be vested in managers,” or the operating agreement “includes words of similar import.”¹¹³ Thus, absent this or any similar triggering language in the operating agreement, RULLCA assumes an LLC is “member-managed” for the purposes of any provisions in which such a distinction is relevant.¹¹⁴

For LLCs formed prior to January 1, 2009, “language in the limited liability company's articles of organization designating the limited liability

at 442.

108. See IOWA CODE § 489.1304(1)–(2) (outlining the effective dates and applicability of RULLCA based on when an LLC was formed).

109. See *id.* § 489.110(2); see also REVISED UNIF. LTD. LIAB. CO. ACT § 110 cmt., 6B U.L.A. at 444 (noting that section 110(b) “establishes this Act as comprising the ‘default rules’ (‘gap fillers’) for matters within the purview of the operating agreement but not addressed by the operating agreement”).

110. Ward, *supra* note 48.

111. See IOWA CODE §§ 489.602(6)(b), .602(7), .603(1)(b) (detailing certain dissociation provisions in a member-managed LLC); see also REVISED UNIF. LTD. LIAB. CO. ACT §§ 602(6)(B), 602(7), 603(a)(2), 6B U.L.A. at 503–05.

112. IOWA CODE § 489.102(14); REVISED UNIF. LTD. LIAB. CO. ACT § 102(12), 6B U.L.A. at 429.

113. IOWA CODE § 489.407(1) (internal quotation marks omitted); see also REVISED UNIF. LTD. LIAB. CO. ACT § 407(a), 6B U.L.A. at 483.

114. IOWA CODE § 489.407(1); see also REVISED UNIF. LTD. LIAB. CO. ACT § 407(a), 6B U.L.A. at 483.

company's management structure operates as if that language were in the operating agreement."¹¹⁵ Further, the drafters of the uniform law indicated that, similar to the majority of the uniform act's provisions, these management structure rules are default provisions that parties may alter or change in whole or in part through the operating agreement.¹¹⁶ According to the drafters, the uniform law "retains the manager-managed and member-managed constructs as options for members to use to structure their *inter se* relationship."¹¹⁷ Despite being relevant to a select number of dissociation provisions, the classification of an LLC's management structure is most significant to a determination of which standards of section 489.409 govern the conduct of members and managers.¹¹⁸

V. MEMBER DISSOCIATION BY JUDICIAL ORDER

Iowa Code section 489.602(5) provides for judicial expulsion of an LLC member under three specific statutorily-prescribed circumstances.¹¹⁹ The statute provides:

On application by the company, the person is expelled as a member by judicial order because the person has done any of the following:

- a. Has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities[;]
- b. Has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 489.409 [regarding standards of conduct for members and managers;]
- c. Has engaged in, or is engaging in, conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member.¹²⁰

115. IOWA CODE § 489.1304(3)(b).

116. REVISED UNIF. LTD. LIAB. CO. ACT § 407(a) cmt., 6B U.L.A. at 485.

117. *Id.*

118. See IOWA CODE § 489.409(1)–(7) (providing standards of conduct for members in a member-managed LLC); *id.* § 489.409(8) (detailing standards of conduct that apply in a manager-managed LLC); see also REVISED UNIF. LTD. LIAB. CO. ACT § 409, 6B U.L.A. at 488–89.

119. IOWA CODE § 489.602(5); see also REVISED UNIF. LTD. LIAB. CO. ACT § 602(5), 6B U.L.A. at 503.

120. IOWA CODE § 489.602(5); see also REVISED UNIF. LTD. LIAB. CO. ACT

Dissociation under any of the subsections of this provision requires application be made to the court by the company.¹²¹ Section 489.602(5) thus implicates the derivative action provision of section 489.902.¹²² In the context of a derivative action brought by a member of an LLC to enforce a right of the LLC, the petitioning member must first make a demand—on the other members in a member-managed LLC, or the managers in a manager-managed LLC—“requesting that they cause the company to bring an action to enforce the right.”¹²³ The petitioning member may maintain the derivative action if: (1) approval is not given by the other members or managers within ninety days; (2) the petitioning member “has earlier been notified that the demand has been rejected by the company”; or (3) “irreparable injury” would result by waiting for the ninety-day period to expire prior to filing the action.¹²⁴ A derivative action may also be sustained if making a demand under section 489.902(1) would be futile.¹²⁵

Section 489.903 determines who constitutes a “[p]roper plaintiff,” requiring the petitioning individual or entity in a derivative action to be a member of the LLC when the action is commenced and remain a member throughout the pendency of the action.¹²⁶ Section 489.904 supplants Iowa’s more generous notice-pleading standard.¹²⁷

§ 602(5), 6B U.L.A. at 503.

121. IOWA CODE § 489.602(5); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(5), 6B U.L.A. at 503.

122. IOWA CODE § 489.902; *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 902, 6B U.L.A. at 523. For a discussion and critique of the rationale behind transplanting derivative actions from the corporate into the LLC context, *see* Larry E. Ribstein, *Litigating in LLCs*, 64 BUS. LAW. 739, 743–47 (2009).

123. IOWA CODE § 489.902(1); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 902(1), 6B U.L.A. at 523.

124. IOWA CODE § 489.902(1); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 902(1), 6B U.L.A. at 523.

125. *See* IOWA CODE § 489.902(2); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 902(2), 6B U.L.A. at 523.

126. IOWA CODE § 489.903(1); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 903(a), 6B U.L.A. at 523.

127. *See, e.g.,* *Cemen Tech, Inc. v. Three D Indus., L.L.C.*, 753 N.W.2d 1, 12 (Iowa 2008) (“In Iowa, ‘notice pleading’ is all that is required. Under notice pleading, a petition need only give notice of the incident giving rise to the claim and the general nature of the claim. A plaintiff is not required to set forth specific legal theories for recovery.” (citing *Roush v. Mahaska State Bank*, 605 N.W.2d 6, 10 (Iowa 2000))); *Schmidt v. Wilkinson*, 340 N.W.2d 282, 283 (Iowa 1983) (“We interpret our cases to mean that ‘notice pleading’ does not require the pleading of ultimate facts that support the elements of the cause of action; however, facts sufficient to apprise the defendant of the incident must be included in the petition in order to provide ‘fair notice’ of the

In a derivative action under section 489.902, the complaint must state with particularity any of the following:

1. The date and content of the plaintiff's demand and the response to the demand by the managers or other members.
2. If a demand has not been made, the reasons a demand under section 489.902, subsection 1, would be futile.¹²⁸

Thus, in bringing an application for expulsion of a member by judicial order under section 489.602(5), the petitioning member must plead with particularity either that a demand has been made and responded to under section 489.902(1) or that a demand would be futile.¹²⁹ Because a petitioning member would essentially be asking another member for permission to seek the judicial expulsion of that member, a demand under section 489.902(1) would inherently appear futile from the outset.¹³⁰

In *Berger v. General United Group, Inc.*, the Iowa Supreme Court addressed a similar pleading burden when pleading futility in the context of corporate shareholder derivative actions.¹³¹ The court noted, "Iowa decisions indicate this court has not imposed onerous restraints in derivative actions," and the court was ultimately persuaded that in pleading futility, "a general allegation of futility of demand is sufficient if other assertions of fact in the petition are detailed enough to demonstrate a demand would have been unavailing."¹³² The *Berger* court's position on this particularity of pleading standard will likely have precedential value to applications for member expulsion under RULLCA given the analogous

claim asserted.").

128. IOWA CODE § 489.904; *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 904(1)–(2), 6B U.L.A. at 524.

129. IOWA CODE § 489.904; *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 904, 6B U.L.A. at 524.

130. *See* IOWA CODE § 489.902; *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 902, 6B U.L.A. at 523.

131. *Berger v. Gen. United Grp., Inc.*, 268 N.W.2d 630, 635–37 (Iowa 1978). At the time of the suit, Iowa Rule of Civil Procedure 44 provided,

Shareholders in an incorporated or unincorporated association, who sue to enforce its rights because of its failure to do so, shall support their petition by affidavit, and allege their efforts to have the directors, trustees or other shareholders bring the action or enforce the right, or a sufficient reason for not making such effort.

IOWA R. CIV. P. 44 (1977).

132. *Berger*, 268 N.W.2d at 636 (citations omitted).

nature of the pleading requirement at issue in *Berger*—Iowa Rule of Civil Procedure 1.279—to that imposed under section 489.902.¹³³

A. *The “Not Reasonably Practicable” Standard*

While sections 489.602(5)(a) and (b) address judicial expulsion for wrongful conduct and material breach of the operating agreement by an LLC member,¹³⁴ the expulsion-constituting conduct in section 489.602(5)(c) must only be such as to permit the court to deem it “not reasonably practicable to carry on the activities [of the LLC] with [that] person as a member.”¹³⁵ The commentary of drafters of the uniform law provides no additional guidance to courts as to this justification for judicial expulsion of a member.¹³⁶

Although ILLCA contained similar statutory language in the context of judicial *dissolution* of an LLC, this provision was never interpreted by Iowa courts.¹³⁷ Language nearly identical to that contained in ILLCA section 490A.1302 governing judicial dissolution is also present in RULLCA section 489.701(1)(d)(2), which provides for district court *dissolution* of an LLC on application by a member on grounds that “[i]t is not reasonably practicable to carry on the company’s activities in conformity with the certificate of organization and the operating agreement.”¹³⁸

133. Compare IOWA CODE § 489.904, and REVISED UNIF. LTD. LIAB. CO. ACT § 904, 6B U.L.A. at 524 (detailing pleading requirements of a derivative action in the LLC context), with IOWA R. CIV. P. 1.279 (2011), and IOWA R. CIV. P. 44 (1977) (shareholder’s actions).

134. IOWA CODE § 489.602(5)(a), (b); see also REVISED UNIF. LTD. LIAB. CO. ACT § 602(5)(A), (B), 6B U.L.A. at 503.

135. IOWA CODE § 489.602(5)(c); see also REVISED UNIF. LTD. LIAB. CO. ACT § 602(5)(C), 6B U.L.A. at 503.

136. See REVISED UNIF. LTD. LIAB. CO. ACT § 602 cmt., 6B U.L.A. at 504.

137. See IOWA CODE § 490A.1302 (2009) (repealed 2010) (“On application by or for a member, the district court . . . may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.”); 5 DORÉ, *supra* note 46, § 13:32(3) (“The ILLCA included the ‘not reasonably practicable’ ground, but it was never the subject of interpretation by the Iowa courts.”).

138. IOWA CODE § 489.701(1)(d)(2) (2011); see also REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(4)(B), 6B U.L.A. at 506. Compare IOWA CODE § 489.701(1)(d)(2) (Events Causing Dissolution), with IOWA CODE § 490A.1302 (2009) (repealed 2010) (Judicial Dissolution).

Iowa's Uniform Partnership Act¹³⁹ contains language pertaining to dissociation of a partner by judicial determination which parallels the language used in RULLCA section 489.602(5)(a)–(c).¹⁴⁰ Just as RULLCA was modeled after the NCCUSL's uniform law, so too was Iowa's Uniform Partnership Act predicated on the NCCUSL's promulgation of RUPA in 1997.¹⁴¹ Dissociation of a partner under the model version of RUPA was, according to the NCCUSL drafters, “[a]n entirely new concept . . . used in lieu of the [original partnership act’s] term ‘dissolution’ to denote the change in the relationship caused by a partner’s ceasing to be associated in the carrying on of the business.”¹⁴² Conceptually, dissolution was retained in the uniform version of RUPA¹⁴³—and was subsequently carried forward into the 2006 uniform LLC law¹⁴⁴—“but with a different meaning.”¹⁴⁵ Thus, in addition to the use of the “not reasonably practicable” wording in its partner dissociation provisions,¹⁴⁶ Iowa's Uniform Partnership Act uses the same language in section 486A.801 pertaining to events causing the dissolution and winding up of partnership business.¹⁴⁷

139. Uniform Partnership Act, ch. 1201, 1998 Iowa Acts 585 (codified at IOWA CODE §§ 486A.101–.1302).

140. Compare IOWA CODE § 489.602(5)(a)–(c) (2011) (providing member dissociation provisions of RULLCA), with *id.* § 486A.601(5)(a)–(c) (containing partner dissociation provisions of Iowa's Uniform Partnership Act).

141. See UNIF. P'SHIP ACT, prefatory note, 6 U.L.A. 1, 1 (2001 & Supp. 2012). Compare IOWA CODE §§ 486A.101–.1302 (detailing Iowa's Uniform Partnership Act), with UNIF. P'SHIP ACT §§ 101–1211, 6 U.L.A. at 60–274 (NCCUSL's 1997 uniform act).

142. UNIF. P'SHIP ACT § 601 cmt., 6 U.L.A. at 164.

143. *Id.* § 801, 6 U.L.A. at 189–90.

144. See REVISED UNIF. LTD. LIAB. CO. ACT § 701, 6B U.L.A. 425, 506 (2008 & Supp. 2012).

145. UNIF. P'SHIP ACT § 601 cmt., 6 U.L.A. at 164.

146. IOWA CODE § 486A.601(5)(c).

147. *Id.* § 486A.801(5)(b)–(c). Section 486A.801(5) provides a partnership is dissolved if, on application by a partner, a judicial determination concludes that:

(a) The economic purpose of the partnership is likely to be unreasonably frustrated.

(b) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner.

(c) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

Id. § 486A.801(5); see also UNIF. P'SHIP ACT § 801(5), 6 U.L.A. at 189.

Given this transplantation of the “not reasonably practicable” language from dissolution to dissociation provisions of both partnership and LLC statutes, courts of other jurisdictions have necessarily looked to dissolution case law in order to interpret and apply the “not reasonably practicable” standard to judicial dissociation.¹⁴⁸ For example, in *Brennan v. Lehn*, in considering the defendants’ counterclaim for judicial dissociation of the plaintiff-partner, the Superior Court of Connecticut stated:

Connecticut’s partnership statutes were dramatically changed upon the adoption of the Revised Uniform Partnership Act in 1997. These changes brought about the concept of dissociation, which previously did not formally exist in our law. Therefore, the paucity of case law (both in Connecticut and other jurisdictions) discussing and applying the dissociation provisions of the UPA is not surprising. As both parties have noted, however, the statutory dissociation language in General Statutes § 34-355 is very similar to the dissolution provisions embodied in General Statutes § 34-372. The Comment to § 601 of the U.L.A. Uniform Partnership Act (which is the source of General Statutes § 34-355) confirms that the dissociation provisions were based upon the preexisting grounds for dissolution under the UPA. Therefore, decisional law addressing the analogous UPA dissolution provisions is probative in analyzing the defendants’ dissociation claim.¹⁴⁹

Ultimately, and despite the presence of the “not reasonably practicable” language in some capacity in ILLCA,¹⁵⁰ RULLCA,¹⁵¹ Iowa’s Uniform Partnership Act,¹⁵² and Iowa’s Uniform Limited Partnership Act,¹⁵³ Iowa courts have apparently had little occasion to interpret or apply the “not reasonably practicable” standard.¹⁵⁴ Thus, select cases from other

148. See, e.g., *Brennan v. Lehn*, No. X10UWYCV044010222S, 2006 WL 2949111, at *12 (Conn. Super. Ct. Sept. 28, 2006).

149. *Id.* (citing UNIF. P’SHIP ACT § 601 cmt., 6 U.L.A. at 164).

150. IOWA CODE § 490A.701(d)(2) (2009) (repealed 2010).

151. IOWA CODE §§ 489.602(5)(c), .701(1)(d)(2) (2011); see also REVISED UNIF. LTD. LIAB. CO. ACT §§ 602(5)(c), 701(a)(4)(B), 6B U.L.A. 425, 503, 506 (2008 & Supp. 2012).

152. IOWA CODE §§ 486A.601(5)(c), .801(5)(b)–(c); see also UNIF. P’SHIP ACT §§ 601(5)(iii), 801(5)(ii)–(iii), 6 U.L.A. at 163, 189.

153. IOWA CODE §§ 488.601(2)(e)(iii), .603(5)(c), .802; see also UNIF. LTD. P’SHIP ACT §§ 601(b)(5)(C), 603(5)(C), 802, 6A U.L.A. 354, 450–51, 453–54, 468 (2008 & Supp. 2012).

154. See 5 DORÉ, *supra* note 46, § 13:32(3) (“The ILLCA included the ‘not reasonably practicable’ ground, but it was never the subject of interpretation by the

jurisdictions, interpreting and applying the “not reasonably practicable” language in both the partnership and LLC contexts, may be instructive.¹⁵⁵

B. *Cases from Other Jurisdictions*¹⁵⁶

1. *The “Not Reasonably Practicable” Language in the Partnership Dissolution Context*¹⁵⁷

In *Horizon/CMS Healthcare Corp. v. Southern Oaks Health Care, Inc.*, Horizon and Southern Oaks entered into several partnership and management contracts for the ownership of a new 120-bed nursing home facility and a preexisting facility formerly owned by Southern Oaks.¹⁵⁸ Three years into the twenty-year partnership, Southern Oaks sued alleging numerous defaults and breaches by Horizon, including “Horizon’s refusal to pay Southern Oaks according to the terms of the contracts.”¹⁵⁹ Horizon claimed irreconcilable differences between the two entities as to how profits should be divided and apparently sought dissolution of the partnership under both an express provision of the partnership agreement and Florida’s version of RUPA.¹⁶⁰

Iowa courts.”); *id.* § 8:2 (noting there are few reported cases from Iowa or elsewhere interpreting the Iowa Uniform Partnership Act’s dissociation provisions).

155. See, e.g., *Acuff v. Schmit*, 78 N.W.2d 480, 484 (Iowa 1956) (noting that Iowa courts will “give careful consideration to the decisions of other jurisdictions,” but finding that the court’s “ultimate duty is to adopt that rule best supported by logic and sound reasoning, and in accord with the spirit of [Iowa’s] own legislative expression”); 20 AM. JUR. 2D *Courts* § 143 (2005) (highlighting that while “[t]he decision of a state court does not have stare decisis effect in a court of another state . . . such decisions may guide a state court’s decision and may be followed where the other court’s reasoning is persuasive” (footnotes omitted)).

156. See also the Supreme Court of South Dakota’s survey and collection of cases from other jurisdictions interpreting the “not reasonably practicable” standard in *Kirksey v. Grohmann*, 754 N.W.2d 825, 828–30 (S.D. 2008).

157. See also *Owen v. Cohen*, 119 P.2d 713 (Cal. 1941), for an early seminal case dealing with partnership dissolution. In *Owen*, the court found dissolution to be warranted “from the evidence that there was very bitter, antagonistic feeling between the parties” regarding “the handling of the partnership business.” *Id.* at 716. The court also noted that “the duties of these parties required cooperation, coordination and harmony; and that under the existent conditions the parties were incapable of carrying on the business to their mutual advantage.” *Id.*

158. *Horizon/CMS Healthcare Corp. v. S. Oaks Health Care, Inc.*, 732 So. 2d 1156, 1157 (Fla. Dist. Ct. App. 1999).

159. *Id.* at 1157–58.

160. *Id.* Under section 7.3 of the partnership agreement, the partnership would be dissolved if, among other eventualities, “either Partner elects to dissolve the

After finding largely in favor of Southern Oaks, the trial court ordered dissolution of the partnership “finding that the parties to the various agreements which are the subject of this lawsuit are now incapable of continuing to operate in business together.”¹⁶¹ The Florida Court of Appeals affirmed, noting the dissolution fell within the scope of paragraph 5(c) of Florida Statute section 620.8801(5), permitting judicial dissolution of a partnership when “[i]t is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.”¹⁶² Although the issue on appeal largely centered around Southern Oaks’ entitlement to damages for lost future profits, and Southern Oaks did not seek reversal of the trial court’s dissolution decree,¹⁶³ the court of appeals noted that “[w]hile ‘reasonably practicable’ is not defined in RUPA, the term is broad enough to encompass the inability of partners to continue working together, which is what the [trial court] found.”¹⁶⁴

Finding Michigan’s Uniform Partnership Act was silent as to the definition of “reasonably practicable,”¹⁶⁵ the Michigan Court of Appeals in *Taki v. Hami* looked to the plain and ordinary meaning of the words.¹⁶⁶ After consulting dictionary definitions, the *Taki* court concluded “reasonably practicable may properly be defined as capable of being done

Partnership on account of an Irreconcilable Difference which arises and cannot, after good faith efforts, be resolved.” *Id.* at 1158 (quoting section 7.3 of the contract titled “Causes of Dissolution”) (internal quotation marks omitted). Additionally, judicial dissolution was possible under Florida’s version of RUPA. FLA. STAT. § 620.8801(5) (1993 & Supp. 2001) (including among events causing dissolution and winding up of partnership business, three circumstances under which judicial dissolution could occur).

161. *Horizon*, 732 So. 2d at 1157 (internal quotation marks omitted).

162. *Id.* at 1160–61 (quoting FLA. STAT. § 620.8801(5)(c)) (internal quotation marks omitted).

163. *Id.* at 1161 n.8.

164. *Id.* at 1160.

165. Michigan Compiled Law section 449.32(1) provides in pertinent part:

On application by or for a partner the court shall decree a dissolution whenever . . . [a] partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him.

MICH. COMP. LAWS ANN. § 449.32(1)(d) (West 2002 & Supp. 2012).

166. *Taki v. Hami*, No. 219307, 2001 WL 672399, at *2–3 (Mich. Ct. App. May 4, 2001).

logically and in a reasonable, feasible manner.”¹⁶⁷ Under this definition, the court went on to find the trial court’s dissolution of Taki and Hami’s partnership was appropriate because the partners had not spoken in several years, the partners had filed three separate lawsuits against each other, and Taki feared “violence because Hami was carrying a firearm when he was planning on meeting with Taki.”¹⁶⁸

In *PC Tower Center, Inc. v. Tower Center Development Associates Ltd. Partnership*, the Delaware Chancery Court construed a Delaware statute permitting the Chancery Court to “decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.”¹⁶⁹ In response to PC Tower Center’s petition for judicial dissolution of the limited partnership, the respondents argued the “not reasonably practicable” language in section 17-802 should be construed narrowly to require that the purpose of the partnership be “completely frustrated” before judicial dissolution would be an appropriate remedy.¹⁷⁰ The Chancery Court disagreed, stating “If I were to adopt respondents’ interpretation of [section] 17-802, it would be in opposition to the plain language of the statute. The standard set forth by the Legislature is one of reasonable practicability, not impossibility.”¹⁷¹ Thus, the court accepted PC Tower Center’s argument that dissolution was proper when the business could only be operated at a loss, the purpose of the limited partnership—“to invest in, hold, own, operate . . . and otherwise use the Project . . . *for profit and as an investment*”¹⁷²—had been completely defeated, and the partners were in deadlock.¹⁷³

2. *The “Not Reasonably Practicable” Language in the Partnership Dissociation Context*

In *Brennan v. Brennan Associates*, the Supreme Court of Connecticut

167. *Id.* at *3 (quoting MICH. COMP. LAWS ANN. § 449.32(1)(d)) (internal quotation marks omitted).

168. *Id.*

169. *PC Tower Ctr. v. Tower Ctr. Dev. Assocs. Ltd. P’ship*, CIV. A. No. 10788, 1989 WL 63901, at *5 (Del. Ch. June 8, 1989) (quoting DEL. CODE ANN. tit. 6, § 17-802 (1985)) (internal quotation marks omitted).

170. *Id.* (internal quotation marks omitted).

171. *Id.* at *6.

172. *Id.* (alteration in original) (quoting the partnership agreement in question) (internal quotation marks omitted).

173. *Id.*

affirmed the lower court's judicial dissociation of the plaintiff-partner.¹⁷⁴ The applicable Connecticut statute provided for a partner's expulsion by judicial determination on application by the partnership or another partner because "the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner."¹⁷⁵ The lower court held that in light of the plaintiff's moral turpitude, criminal fraud, and failure to be honest with the other partners about the extent of a prior criminal conviction, the "partners cannot trust [the plaintiff] with the finances of [the partnership]."¹⁷⁶ Further:

In light of the animosity that [the plaintiff] harbors towards his partners, his distrust of them (which distrust is mutual) and his suspicion that [another partner] committed a fraud, it is not reasonably practicable for him to carry on business with them. The court finds that [the other partners] gave [the plaintiff] the benefit of every consideration He has rewarded them with nothing but suspicion and acrimony. Moreover, the partnership has reached an impasse regarding important business issues because of [the plaintiff's] veto power. The court finds that the defendants have proven that it is deleterious to the partnership for [the plaintiff] to remain as their partner under [the not reasonably practicable provision].¹⁷⁷

On appeal, the plaintiff argued his expulsion was improper because although "the inability of one partner to work with the other partners because of acrimony and mistrust that has developed can be a proper basis for *dissolution*, it is not a proper basis for *dissociation* of the one partner who is the source of these problems."¹⁷⁸ The Supreme Court of Connecticut disagreed, rejecting the plaintiff's contention that despite its identically worded language, the dissociation provision in some way imposed a higher burden of proof than the dissolution provision.¹⁷⁹ Because the case law relied upon by the trial court, as well as that revealed in the court's own

174. *Brennan v. Brennan Assocs.*, 977 A.2d 107, 115 (Conn. 2009); *see also* *Brennan v. Lehn*, No. X10UWYCV044010222S, 2006 WL 2949111, at *13 (Conn. Super. Ct. Sept. 28, 2006).

175. *Brennan*, 2006 WL 2949111, at *12 (quoting CONN. GEN. STAT. § 34-355(5)(C) (1995)) (internal quotation marks omitted).

176. *Id.* at *13.

177. *Id.*

178. *Brennan Assocs.*, 977 A.2d at 118.

179. *See id.* at 121–22.

research,¹⁸⁰ “confirm[ed] that an irreparable deterioration of a relationship between partners is a valid basis to order dissolution,” such an “irreparable deterioration” necessarily constituted an equally valid basis for judicial dissociation of a partner.¹⁸¹ Finding no textual basis for the distinction the plaintiff sought to impose on the “not reasonably practicable” language, the court similarly dismissed the plaintiff’s contention that “because dissociation connotes wrongdoing by the ousted partner, whereas dissolution does not, the ground for dissociation . . . should be construed more strictly.”¹⁸²

3. *The “Not Reasonably Practicable” Language in the LLC Dissolution Context*¹⁸³

In *Spires v. Lighthouse Solutions, LLC*, Spires brought a petition seeking the judicial dissolution of Lighthouse Solutions, LLC following disagreements concerning Lighthouse’s business and operations, and after failed discussions between Spires and the other members regarding Spires’ departure and the surrender of his interest in the LLC.¹⁸⁴ Spires alleged “his passwords no longer worked to access the computer servers, databases, equipment and bank accounts of Lighthouse, and that he was

180. *See id.* at 121 n.14 (noting cases and other evidence found sufficient for judicial dissolution of a partnership under the “not reasonably practicable” standard).

181. *Id.* at 120.

182. *Id.* at 121–22.

183. For additional guidance on the application and interpretation of the “not reasonably practicable” standard in the context of LLC dissolution, see *Rapoza v. Talamo*, No. 062779BLS1, 2006 WL 3292632, at *4 (Mass. Super. Ct. Oct. 10, 2006) (finding it was “not reasonably practicable to carry on” the company’s business because the LLC was “not able to function in the manner intended and there is a clear and total deadlock between the sole two managers and members” who each had 50% ownership interests (internal quotation marks omitted)), *Darwin Limes, LLC v. Limes*, No. WD-06-049, 2007 WL 1378357, at *6 (Ohio Ct. App. May 11, 2007) (finding it was reasonably practicable to carry on the business of the LLC even if the appellant dissociated because the operating agreement provided for continuation of the LLC unless only one member remained), *Haley v. Talcott*, 864 A.2d 86, 98 (Del. Ch. 2004) (finding judicial dissolution of the LLC appropriate under the “not reasonably practicable” provision, despite a detailed exit remedy in the LLC agreement, because the exit mechanism “does not equitably effect the separation of the parties”), and *McConnell v. Hunt Sports Enterprises*, 725 N.E.2d 1193, 1221 (Ohio Ct. App. 1999) (finding judicial dissolution a proper remedy under the “not reasonably practicable” language of the Ohio LLC statute when the reason for the LLC’s existence—“investing in and operating an NHL franchise”—no longer existed).

184. *Spires v. Lighthouse Solutions, LLC*, 778 N.Y.S.2d 259, 261–62 (Sup. Ct. 2004).

denied access to the premises by a change to the key to the Lighthouse premises.”¹⁸⁵ After rejecting Spires’ argument that the LLC should be dissolved under partnership rather than LLC law,¹⁸⁶ the court noted a judicial dissolution decree was possible “whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.”¹⁸⁷

The court went on to note, “when there is no Operating Agreement, or such agreement does not address certain subjects, then the entity is bound by the minimum requirements set forth in the Limited Liability Company Law.”¹⁸⁸ Because Lighthouse Solutions had no operating agreement—at least relevant to the applicability of judicial dissolution¹⁸⁹—the default “statutory provisions of the Limited Liability Company Law become the ‘Operating Agreement’ of the limited liability company.”¹⁹⁰

Thus, under its “applicable statutory Operating Agreement,”¹⁹¹ Spires could not withdraw as a member of Lighthouse “prior to the dissolution

185. *Id.* at 262.

186. *Id.* at 262–63. Spires argued that partnership law, rather than LLC law, was applicable to the dissolution because the members failed to adopt an operating agreement for Lighthouse. *Id.* at 262. The court rejected this argument finding “no provision in the Limited Liability Company Law imposing any type of penalty or punishment for failing to adopt a written operating agreement.” *Id.* Rather, under New York law, the filing of an LLC’s articles of organization “is conclusive evidence of the formation of the limited liability company.” *Id.* at 263. Because there were no allegations that Lighthouse’s articles of organization were not properly filed, the court “conclude[d] that Lighthouse Solutions, LLC is a limited liability company and is governed by the Limited Liability Company Law.” *Id.*

187. *Id.* (quoting N.Y. LTD. LIAB. CO. LAW § 702 (1994)) (internal quotation marks omitted).

188. *Id.* at 265–66.

189. *See id.* at 266. The court had previously considered whether certain Lighthouse documents—a “Certification of Authority of Lighthouse Solutions LLC”; a “Lighthouse Solutions, LLC Operating Agreement Amendment”; and an “LHS Partner’s Interim Voting Agreement”—constituted operating agreements under New York law. *Id.* at 264–65. Of these, only the Interim Voting agreement qualified as an operating agreement; however, this agreement only dealt with voting-related matters for a specified eight-month period. *Id.* at 265. The Lighthouse Solutions, LLC Operating Agreement Amendment expired by its own terms in 2002. *Id.* at 264–65. Accordingly, “there was no Operating Agreement covering the majority of other issues effecting a limited liability company. Therefore, the business operation of the limited liability company, Lighthouse, was and is bound by the statutory default provisions of the Limited Liability Company Law.” *Id.* at 266.

190. *Id.*

191. *Id.* at 267.

and winding up of the limited liability company.”¹⁹² The court further found it undisputed that “all three [members] wanted the business relationship to end, but they could not reach a consensus as to how to accomplish Spires leaving Lighthouse.”¹⁹³ Consequently, and because (1) the parties all sought Spires’ removal;¹⁹⁴ (2) “[t]he *only* mechanism” for avoiding the stringent language of section 606(a) was to alter this default provision in the operating agreement;¹⁹⁵ and (3) Lighthouse failed to adopt an operating agreement altering this provision,¹⁹⁶ the court concluded it was not reasonably practicable for Lighthouse to carry on its business in conformity with the statutory operating agreement.¹⁹⁷

Interestingly, the court alluded to the potential for a different result under the “not reasonably practicable standard” had it not been bound by the strict language of Lighthouse’s statutory operating agreement.¹⁹⁸ Lighthouse’s other members argued dissolution was not warranted because Spires had not responded to settlement proposals and because a “third-

192. *Id.* at 266 (quoting N.Y. LTD. LIAB. CO. LAW § 606(a) (1994)) (internal quotation marks omitted). In *Horning v. Horning Construction, LLC*, a case heard by the same court two years later, the court rejected the dissolution-seeking LLC member’s argument that “*Spires* stands for the proposition that, whenever presented with a member’s ‘expressed desire to sever his relationship with . . . [the] LLC,’ due to ‘untenable circumstances,’ . . . § 606(a) requires dissolution if there is no operating agreement.” *Horning v. Horning Constr., LLC*, 816 N.Y.S.2d 877, 881 (Sup. Ct. 2006) (alterations in original) (citations omitted). Instead, the court held that rather than being decided under section 606, *Spires* was properly decided under section 702 “because the [not reasonably practicable] standard of the latter provision on the record in *Spires* unquestionably was met.” *Id.* at 881 n.1. The court went on to hold:

Despite petitioner’s stated frustration with the failure of the members to reach terms on an operating agreement, he was happy to keep doing business through the LLC until he unsuccessfully proposed a buyout to respondents in 2005, the company’s most successful year. Only then did he seek dissolution. The company continues to thrive in the ups and downs of the construction business.

Id. at 884. Thus, on the evidence presented by the petitioning member, the court in *Horning* found dissolution to be an inappropriate remedy. *See id.* at 885.

193. *Spires*, 778 N.Y.S.2d at 267. The court noted, “*Spires* wanted to withdraw as a member of Lighthouse and/or that [the other members] wanted to remove *Spires* as a member of the LLC.” *Id.*

194. *Id.*

195. *Id.* at 267 n.3.

196. *Id.*

197. *Id.* at 267.

198. *See id.* at 267 n.4.

party evaluator could be appointed to determine a proper valuation of Lighthouse and each [member's] interest in the company."¹⁹⁹ Therefore, the members reasoned that such an approach, despite leading to the same result as dissolution, would permit Lighthouse to continue to function as an entity.²⁰⁰ In rejecting this assertion, the court stated that while "[t]hese are worthy arguments in settlement negotiations . . . the Court is bound by the statutory provisions upon the hearing and determination of the formal application for dissolution."²⁰¹

The New York Supreme Court Appellate Division's application of the "not reasonably practicable" standard²⁰² led to the opposite result in *In re Dissolution of 1545 Ocean Avenue, LLC*.²⁰³ In that case, Crown Royal Ventures, LLC and Ocean Suffolk Properties, LLC formed 1545 Ocean Avenue, LLC in order to "purchase [1545 Ocean Avenue], rehabilitate an existing building, and build a second building for commercial rental."²⁰⁴ Each member contributed 50% of the capital, which was used to purchase the property.²⁰⁵ The LLC had two managers, one from each of the member-companies.²⁰⁶ Following a series of disagreements between the two managing members, Crown Royal petitioned the court for judicial dissolution of the LLC, asserting deadlock between the managing members arising from one managing member's alleged violations of various provisions of the operating agreement.²⁰⁷

The court began its analysis of section 702 by noting that the legislature failed to provide a definition of "not reasonably practicable" in the context of LLC dissolution.²⁰⁸ The court went on to hold that under the statute, "the dissolution of a limited liability company . . . is initially a contract-based analysis" and that, because deadlock itself is not an

199. *Id.*

200. *Id.*

201. *Id.*

202. *See* N.Y. LTD. LIAB. CO. LAW § 702 (McKinney 2007 & Supp. 2012) ("On application by or for a member, the supreme court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.").

203. *In re* Dissolution of 1545 Ocean Ave., LLC, 893 N.Y.S.2d 590, 595–97 (App. Div. 2010).

204. *Id.* at 592.

205. *Id.*

206. *See id.*

207. *See id.* at 592–94.

208. *Id.* at 594.

independent ground for dissolution under section 702, “the court must consider the managers’ disagreement in light of the operating agreement and the continued ability of 1545 [Ocean Avenue,] LLC to function in that context.”²⁰⁹ Thus, the court’s examination of the operating agreement “in light of the circumstances presented” would assist the court in determining “whether it is or is not ‘reasonably practicable’ for the limited liability company to continue to carry on its business in conformity with the operating agreement.”²¹⁰

In this particular instance, the court found the operating agreement between the members specifically authorized a single manager’s unilateral action in furtherance of the LLC’s business.²¹¹ Thus, the purpose of the LLC, as provided for in the operating agreement was “feasibly and reasonably being met.”²¹² The court went on to hold in applying the “not reasonably practicable” standard under section 702:

[T]he petitioning member must establish, in the context of the terms of the operating agreement or articles of incorporation, that (1) the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved, or (2) continuing the entity is financially unfeasible.²¹³

In *Dunbar Group, LLC v. Tignor*, the Virginia Supreme Court considered whether it was reasonably practicable for XpertCTI, LLC to carry on its business following the judicial dissociation of a member owning a 50% interest in the LLC.²¹⁴ Xpert was formed by Dunbar Group, LLC and Archie Tignor in March 2000 to provide “computer telephony integration (CTI) software to dealers and manufacturers for installation in certain telephone systems and equipment.”²¹⁵ Dunbar Group and Tignor were each 50% owners.²¹⁶ Edward Robertson was the sole member and manager of Dunbar Group.²¹⁷ Under the operating agreement, Dunbar

209. *Id.* at 596.

210. *Id.* at 595–96 (citing *Spires v. Lighthouse Solutions, LLC*, 778 N.Y.S.2d 259, 267 (Sup. Ct. 2004)).

211. *Id.* at 597.

212. *Id.* at 596.

213. *Id.* at 597–98.

214. *Dunbar Grp., LLC v. Tignor*, 593 S.E.2d 216, 219 (Va. 2004).

215. *Id.* at 216 (internal quotation marks omitted).

216. *Id.*

217. *Id.* at 216–17.

(i.e., Robertson) and Tignor were the sole managers of Xpert.²¹⁸

By September 2002, “[c]ertain disputes arose between Robertson and Tignor over matters primarily related to the management and disbursement of Xpert’s assets” leading Dunbar, Xpert, and Robertson—in his capacity as manager—to seek judicial dissociation of Tignor as a member of Xpert.²¹⁹ Tignor filed a separate action for judicial dissolution of the LLC.²²⁰ After a consolidated trial, the chancellor both dissociated Tignor and granted Tignor’s request for dissolution.²²¹ Dunbar appealed arguing dissolution was improper because there was insufficient evidence that Tignor’s involuntary dissociation made it not reasonably practicable to carry on Xpert’s business.²²²

According to the court, evidence introduced at the consolidated trial tended to show that Tignor: (1) commingled Xpert’s funds with those of another company of which Tignor was president; (2) provided inaccurate information to Robertson regarding this commingling; (3) used Xpert’s funds to pay the expenses of his unrelated entity; (4) “authorized a change in the status of Xpert’s checking account that prevented checks from being written on the account;” (5) restricted Robertson’s ability to test Xpert’s products; and (6) terminated Robertson’s e-mail account, creating confusion among Xpert’s customers and “giving the appearance that Xpert had gone out of business.”²²³ The trial court thus ruled “Tignor’s actions had been contrary to Xpert’s best interests and had adversely affected Xpert’s ability to carry on its business,” resulting in Tignor’s immediate expulsion as an active member of Xpert.²²⁴ Tignor did not appeal this decision and Dunbar did not challenge the chancellor’s dissociation of

218. *Id.* at 217.

219. *Id.*

220. *Id.* at 218.

221. *Id.*

222. *Id.* at 218–19.

223. *Id.* at 218 (internal quotation marks omitted).

224. *Id.* (internal quotation marks omitted). Thus, although not explicitly indicated, it would appear that Tignor was dissociated under section 13.1-1040.1(5)(a) of the Code of Virginia that permits judicial dissociation when “[t]he member engage[s] in wrongful conduct that adversely and materially affect[s] the business of the limited liability company,” rather than section 13.1-1040.1(5)(c) that permits judicial dissociation when “[t]he member engage[s] in conduct relating to the business of the limited liability company which makes it not reasonably practicable to carry on the business with the member.” VA. CODE ANN. § 13.1-1040.1(5)(a), (c) (2011 & Supp. 2012).

2013]

Goodbye and Good Luck

573

Tignor.²²⁵

The court did, however, review the chancellor's determination that dissolution was proper under Virginia Code section 13.1-1047(A), providing that: "[o]n application by or for a member, the circuit court . . . may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement."²²⁶ The court found the language of section 13.1-1047(A) to be plain and unambiguous and went on to state:

The statutory standard set by the General Assembly for dissolution of a limited liability company is a strict one, reflecting legislative deference to the parties' contractual agreement to form and operate a limited liability company. Only when a circuit court concludes that present circumstances show that it is not reasonably practicable to carry on the company's business in accord with its articles of organization and any operating agreement, may the court order a dissolution of the company.²²⁷

The court further determined the chancellor should have evaluated the request for dissolution in light of the fact that Tignor had been expelled:

Although Tignor's actions . . . had created numerous problems in the operation of Xpert, his expulsion as a member changed his role from one of an active participant in the management of Xpert to the more passive role of an investor in the company. The record fails to show that after this change in the daily management of Xpert, it would not be reasonably practicable for Xpert to carry on its business pursuant to its operating authority.²²⁸

Additionally, the chancellor's own dissolution decree required Xpert to continue operating for as long as it took to fulfill an outstanding contract it had with Samsung.²²⁹ Thus, by its own terms, the dissolution decree contemplated that despite Tignor's dissociation, it was reasonably practicable for Xpert to continue operating "for an extended period of

225. *Dunbar Grp.*, 593 S.E.2d at 218.

226. *Id.* at 219–20 (alteration in original) (quoting VA. CODE ANN. § 13.1-1047(A)) (internal quotation marks omitted).

227. *Id.* at 219.

228. *Id.*

229. *Id.*

time.”²³⁰ Therefore, the court reversed the chancellor’s dissolution order.²³¹

Finally, in *In re Arrow Investment Advisors, LLC*, the Delaware Court of Chancery entertained a petition for judicial dissolution under Delaware Code section 18-802.²³² Reflecting both the importance Delaware places on freedom of contract²³³ and the “extreme nature” of judicial dissolution thereby rendering it a limited remedy,²³⁴ the court offered the following explication of the “not reasonably practicable” standard:

The court will not dissolve an LLC merely because the LLC has not experienced a smooth glide to profitability or because events have not turned out exactly as the LLC’s owners originally envisioned; such events are, of course, common in the risk-laden process of birthing new entities in the hope that they will become mature, profitable ventures. In part because a hair-trigger dissolution standard would ignore this market reality and thwart the expectations of reasonable investors that entities will not be judicially terminated simply because of some market turbulence, dissolution is reserved for situations in which the LLC’s management has become so dysfunctional or its business purpose so thwarted that it is no longer practicable to operate the business, such as in the case of a voting deadlock or where the defined purpose of the entity has become impossible to fulfill.²³⁵

C. Arguing for a Restrained Approach to the “Not Reasonably Practicable” Standard in the Context of Judicial Dissociation

Iowa courts should exhibit considerable restraint in the utilization of their discretion under Iowa Code section 489.602(5)(c) to dissociate a member by judicial order based upon a determination that it is “not reasonably practicable” to carry on the LLC’s activities with that person as

230. *Id.*

231. *Id.* at 219–20.

232. *In re Arrow Inv. Advisors, LLC*, C.A. No. 4091-VCS, 2009 WL 1101682, at *1–2 (Del. Ch. Apr. 23, 2009); see DEL. CODE ANN. tit. 6, § 18-802 (2005) (“On application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.”).

233. See, e.g., *Pers. Decisions, Inc. v. Bus. Planning Sys., Inc.*, C.A. No. 3213-VCS, 2008 WL 1932404, at *6 (Del. Ch. May 5, 2008) (“Delaware is a freedom of contract state, with a policy of enforcing the voluntary agreements of sophisticated parties in commerce.” (footnote omitted)); *Haley v. Talcott*, 864 A.2d 86, 96 (Del. Ch. 2004) (“The Delaware LLC Act is grounded on principles of freedom of contract.”).

234. *In re Arrow Inv. Advisors*, 2009 WL 1101682, at *2.

235. *Id.* (footnotes omitted).

2013]

Goodbye and Good Luck

575

a member.²³⁶

First, the foundational concept of limited liability companies is that they are contractual in nature.²³⁷ As New York's Surrogate Court, Kings County stated in *Sealy v. Clifton L.L.C.*,

[t]he first principle [underlying LLC law] is that members are permitted broad flexibility in structuring the limited liability company pursuant to an operating agreement. The second principle is that the provisions of [New York's LLC law] provide default procedures for a limited liability company, which apply unless the operating agreement clearly provides otherwise.²³⁸

ULLCA's drafters, while highlighting that "[t]he allure of the limited liability company is its unique ability to bring together in a single business organization the best features of all other business forms . . . a corporate-styled liability shield and the pass-through tax benefits of a partnership," implicitly recognized an additional appeal when they stated, "[t]his Act is flexible in the sense that the vast majority of its provisions may be modified by the owners in a private agreement."²³⁹ The drafters of the 2006 uniform law expressed similar sentiments, stating "an LLC's operating agreement serves as the foundational contract among the entity's owners,"²⁴⁰ "[a] limited liability company is as much a creature of contract as of statute,"²⁴¹ and "[section 110(a)] describes the very broad scope of a limited liability company's operating agreement, which includes all matters constituting internal affairs."²⁴²

The inherent contractual nature of an LLC should therefore be sufficient in and of itself to militate in favor of a cautious approach to judicial disruption of a relationship parties have freely contracted for.

236. IOWA CODE § 489.602(5)(c) (2011).

237. *See, e.g.*, Kahn v. Portnoy, C.A. No. 3515-CC, 2008 WL 5197164, at *1 (Del. Ch. Dec. 11, 2008) ("Limited liability companies are primarily creatures of contract, and the parties have broad discretion to design the company as they see fit in an LLC agreement.").

238. *Sealy v. Clifton L.L.C.*, 933 N.Y.S.2d 805, 810 (Sur. Ct. 2011) (citing *Spires v. Lighthouse Solutions, LLC*, 778 N.Y.S.2d 259, 263–64 (Sup. Ct. 2004)).

239. UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. 545, 546–47 (2008 & Supp. 2012).

240. REVISED UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. 407, 410 (2008 & Supp. 2012).

241. REVISED UNIF. LTD. LIAB. CO. ACT §§ 101–1106, 6B U.L.A. 425, 445 (2008 & Supp. 2012).

242. *Id.* § 110(a) cmt., 6B U.L.A. at 445 (internal quotation marks omitted).

Delaware law, for example, makes this notion explicit in its statutory code: “It is the policy of [Delaware’s LLC Act] to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.”²⁴³ Although RULLCA does not contain a parallel express provision, a similar notion is implicit in the default nature of RULLCA’s provisions under Iowa Code section 489.110(2)²⁴⁴ and the fact that the vast majority of RULLCA’s provisions may be waived or altered in the operating agreement.²⁴⁵

Admittedly, Iowa Code section 489.602(5)(c) does not qualify its “not reasonably practicable” standard²⁴⁶ with the same language—“in conformity with the articles of organization or operating agreement” for example—that many of the statutes cited in the previously mentioned cases utilize.²⁴⁷ However, given the assertion of the uniform law drafters that “[t]he operating agreement is the exclusive consensual process for modifying [the uniform act’s] various default rules,”²⁴⁸ Iowa courts should conclude, as the *1545 Ocean Avenue* court did, that “the court must first examine the limited liability company’s operating agreement to determine, in light of the circumstances presented, whether it is or is not ‘reasonably practicable’ for the limited liability company to continue to carry on its business in conformity with the operating agreement.”²⁴⁹ Such an inquiry should also properly consider that an LLC “may have any lawful purpose,”²⁵⁰ there is no formal requirement that the operating agreement

243. DEL. CODE ANN. tit. 6, § 18-1101(b) (2005).

244. IOWA CODE § 489.110(2) (2011) (“To the extent the operating agreement does not otherwise provide for a matter described in [section 490.110(1)], this chapter governs the matter.”); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(b), 6B U.L.A. at 442.

245. *See* IOWA CODE § 489.110(3) (detailing only eleven aspects of RULLCA the operating agreement may not vary, eliminate, or unreasonably restrict); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 110(c), 6B U.L.A. at 442–43.

246. IOWA CODE § 489.602(5)(c) (noting judicial dissociation is proper when the person “[h]as engaged in, or is engaging in, conduct relating to the company’s activities which makes it not reasonably practicable to carry on the activities with the person as a member”); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 602(5)(C), 6B U.L.A. at 503.

247. *See, e.g., In re* Dissolution of 1545 Ocean Ave., LLC, 893 N.Y.S.2d 590, 594 (App. Div. 2010) (quoting N.Y. LTD. LIAB. CO. LAW § 702 (1994)) (internal quotation marks omitted).

248. REVISED UNIF. LTD. LIAB. CO. ACT § 110 cmt., 6B U.L.A. at 445.

249. *In re 1545 Ocean Ave.*, 893 N.Y.S.2d at 595–96 (citing *Spire v. Lighthouse Solutions, LLC*, 778 N.Y.S.2d 259, 263–64 (Sup. Ct. 2004)).

250. IOWA CODE § 489.104(2); *see also* REVISED UNIF. LTD. LIAB. CO. ACT

expound upon this purpose,²⁵¹ and the breadth of RULLCA's definition of "operating agreement," which includes "the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof."²⁵²

Second, judicial expulsion of a member is an arguably more drastic remedy than judicial dissolution—at least from the perspective of the dissociated member given that they are the only party being expelled.²⁵³ Similar to the judicial dissolution context, member dissociation by judicial order should also be viewed as vested by the statute within the sound discretion of the court entertaining the petitioning member's application for relief.²⁵⁴ In *Haley*, for example, the court emphasized, "even if [the court] find[s] that there are no facts under which the LLC could carry on business in conformity with the LLC Agreement, the remedy of dissolution . . . remains discretionary."²⁵⁵

In what way is judicial dissociation a severe remedy for the expelled member? First, there is the potential for judicial expulsion to intrude upon the freely negotiated bargain the parties have entered into.²⁵⁶ An analogy may be drawn here from the court's reasoning in *Haley* when it considered whether judicial dissolution was proper in light of a detailed exit provision

§ 104(b), 6B U.L.A. at 437.

251. See IOWA CODE § 489.201 (not requiring a statement of purpose in the certificate of organization which must be filed with the secretary of state to form an LLC); *id.* § 489.110–112 (detailing the provisions governing the LLC's operating agreement and nowhere requiring that a statement of purpose be included in the operating agreement).

252. *Id.* § 489.102(15); see also REVISED UNIF. LTD. LIAB. CO. ACT § 102(13), 6B U.L.A. at 429.

253. Cf. *In re 1545 Ocean Ave.*, 893 N.Y.S.2d at 598 ("Dissolution is a drastic remedy." (citing *In re Arrow Inv. Advisors, LLC*, C.A. No. 4091-VCS, 2009 WL 1101682, at *2 (Del. Ch. Apr. 23, 2009))); *In re Arrow Inv. Advisors*, 2009 WL 1101682, at *2 ("Given its extreme nature, judicial dissolution is a limited remedy that this court grants sparingly." (footnote omitted)).

254. See, e.g., *In re Extreme Wireless, LLC*, 750 N.Y.S.2d 520, 521 (App. Div. 2002) ("The appropriateness of an order of dissolution of a limited liability company is vested in the sound discretion of the court hearing the petition." (citing N.Y. LTD. LIAB. CO. LAW § 702 (1994))).

255. *Haley v. Talcott*, 864 A.2d 86, 93 (Del. Ch. 2004) (footnotes omitted).

256. See, e.g., *Related Westpac LLC v. JER Snowmass LLC*, C.A. No. 5001-VCS, 2010 WL 2929708, at *8 (Del. Ch. July 23, 2010) ("The Operating Agreements [at issue in the case] represent an example of the contractual freedom parties can use under our law to craft an approach to operating an entity that fits their own needs." (footnote omitted)).

in the operating agreement of the LLC at issue in the case.²⁵⁷ The court stated:

The Delaware LLC Act is grounded on principles of freedom of contract. For that reason, the presence of a reasonable exit mechanism bears on the propriety of ordering dissolution When the agreement itself provides a fair opportunity for the dissenting member who disfavors the inertial status quo to exit and receive the fair market value of her interest, it is at least arguable that the limited liability company may still proceed to operate practicably under its contractual charter because the charter itself provides an equitable way to break the impasse.

. . . .

[S]o long as Haley can actually extract himself fairly, it arguably makes sense for this court to stay its hand in an LLC case and allow the contract itself to solve the problem.²⁵⁸

The *Haley* court's argument further highlights the need for parties to consider the all-too-real risks of future deadlock or dissension and thereby craft an operating agreement so as to provide a reasonable and equitable exit mechanism.²⁵⁹ Although the future will often appear bright at the commencement of any business venture, anticipating future crises and preemptively contracting for these eventualities—by altering or amending

257. *Haley*, 864 A.2d at 96–98.

258. *Id.* at 96. The court ultimately found, however, the exit remedy provided in the operating agreement was an insufficient alternative to dissolution. *Id.* at 97–98. The court reasoned,

Haley and Talcott created the LLC together and while the detailed exit provision provided in the formative LLC Agreement allows either party to leave voluntarily, it provides no insight on who should retain the LLC if both parties would prefer to buy the other out, and neither party desires to leave.

Id. at 97. Further, and perhaps most importantly in this case, the mutually agreed upon exit mechanism “would not relieve Haley of his obligation under the personal guaranty that he signed to secure the mortgage from [the bank].” *Id.* at 97–98. Haley would have been left “holding the bag on the guaranty” for any future default by an LLC over which he could no longer exercise any control. *Id.* at 98 (footnote omitted).

259. *See id.* at 96–98 (considering whether dissolution may not be proper in the face of an operating agreement's detailed exit mechanism in light of the contractual nature of LLCs); *see also* Maser et al., *supra* note 101, at 22 (cautioning practitioners to review statutory default provisions in detail when aiding clients in the drafting of operating agreements).

those default dissociation or dissolution provisions that are waivable through the operating agreement²⁶⁰—will assist a court in staying its hand and will often justify a restrained approach to the “not reasonably practicable” standard of dissociation or dissolution.

For example, in finding dissolution of XpertCTI, LLC to be improper following the judicial expulsion of Tignor, the *Dunbar* court noted:

Xpert’s operating agreement provided a procedure for a company member to assert a breach of the agreement by another company member. The agreement specified that if the breach was not timely cured by the defaulting member, the complaining member had the “right to petition a court of competent jurisdiction for dissolution of the Company.” The agreement also stated that the “dissolution of a [m]ember or occurrence of any other event that terminates the continued membership of a [m]ember in the Company *shall not* cause the dissolution of the Company.”²⁶¹

Although the court did not explicitly cite this provision of Xpert’s operating agreement as a rationale for its holding that dissolution following Tignor’s dissociation was not necessary, it is reasonable to conclude it did not hurt Dunbar’s argument given that the parties themselves had contemplated through their operating agreement that it would be reasonably practicable to carry on the activities of the company following a member’s termination.²⁶²

Second, the consequences of dissociation also emphasize the severity of judicial expulsion under Iowa Code section 489.602(5)(c) to the member whose membership interest has been terminated.²⁶³ Under Iowa Code section 489.601, the member’s dissociation by judicial order under section 489.602(5)—if occurring prior to the termination of the LLC—is deemed wrongful.²⁶⁴ Wrongful dissociation leaves the expelled member liable to the

260. See IOWA CODE § 489.110 (2011) (detailing the provisions of chapter 489 that the operating agreement may alter and those that are not waivable by the parties); see also REVISED UNIF. LTD. LIAB. CO. ACT § 110, 6B U.L.A. 425, 442–44 (2008 & Supp. 2012).

261. *Dunbar Grp., LLC v. Tignor*, 593 S.E.2d 216, 217 (Va. 2004) (alteration in original) (emphasis added) (quoting the XpertCTI, LLC operating agreement) (internal quotation marks omitted).

262. See *id.* at 219.

263. See IOWA CODE § 489.603 (stating the effects of dissociation on a member).

264. IOWA CODE § 489.601(2)(b)(2); see also REVISED UNIF. LTD. LIAB. CO. ACT § 601(b)(2)(B), 6B U.L.A. at 502.

LLC and potentially to the other members—through the direct action provisions of section 489.901—“for damages caused by the dissociation.”²⁶⁵ This liability “is in addition to any other debt, obligation, or other liability of the member to the company or the other members.”²⁶⁶

Once dissociated, “[t]he person’s right to participate as a member in the management and conduct of the company’s activities terminates.”²⁶⁷ Further, the dissociation “does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.”²⁶⁸ Most significantly, “any transferable interest owned by the person immediately before dissociation in the person’s capacity as a member is owned by the person solely as a transferee.”²⁶⁹

Under section 489.502(1)(c), a transferee is not entitled to participate in the management or conduct of the company’s activities or have access to records or other information concerning the company’s activities.²⁷⁰ As a transferee, the dissociated member does retain, however, the right to receive the distributions to which they would otherwise have been entitled when they were a member.²⁷¹ If entitled to a distribution, the dissociated member-transferee is entitled to the status of, and all remedies available to, a creditor of the LLC.²⁷²

265. IOWA CODE § 489.601(3); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 601(c), 6B U.L.A. at 502.

266. IOWA CODE § 489.601(3); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 601(c), 6B U.L.A. at 502.

267. IOWA CODE § 489.603(1)(a); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 603(a)(1), 6B U.L.A. at 504–05.

268. IOWA CODE § 489.603(2); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 603(b), 6B U.L.A. at 505.

269. IOWA CODE § 489.603(1)(c); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 603(a)(3), 6B U.L.A. at 504–05.

270. IOWA CODE § 489.502(1)(c); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 502(a)(3), 6B U.L.A. at 496.

271. IOWA CODE § 489.502(2); *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 502(b), 6B U.L.A. at 496; IOWA CODE § 489.404(1) (“Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members”); REVISED UNIF. LTD. LIAB. CO. ACT § 404(a), 6B U.L.A. at 480. *But see* IOWA CODE § 489.404(2) (“A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person’s dissociation does not entitle the person to a distribution.”); REVISED UNIF. LTD. LIAB. CO. ACT § 404(b), 6B U.L.A. at 480.

272. IOWA CODE § 489.404(4); *see also* REVISED UNIF. LTD. LIAB. CO. ACT

Unlike Iowa's Uniform Partnership Act, however, if the member's dissociation does not result in the dissolution and winding up of the LLC, RULLCA does not require the LLC to purchase the dissociated member's interest.²⁷³ Thus, absent a provision in the operating agreement, the dissociated member's capital contributions essentially become locked into the LLC until the LLC dissolves, winds up, and terminates.²⁷⁴

Even more worrisome perhaps to the dissociated member-transferee is the reality that a member's judicial expulsion does not work to freeze the operating agreement in place for the remaining member or members.²⁷⁵ Under section 489.112(2):

The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. . . . [A]n amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.²⁷⁶

Lastly, under the 2006 uniform law, a transferee is not entitled to petition the court for judicial dissolution of the LLC, as those provisions authorizing judicial dissolution place that right exclusively in the hands of members.²⁷⁷ Perhaps providing some solace to judicially dissociated

§ 404(d), 6B U.L.A. at 480.

273. Compare IOWA CODE § 486A.701(1) ("If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business . . . the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to [section 486A.701(2)]"), and UNIF. P'SHIP ACT § 701(a), 6 U.L.A. 58, 175 (2001 & Supp. 2012), with IOWA CODE §§ 489.101–.1304 (containing no comparable provision), and REVISED UNIF. LTD. LIAB. CO. ACT §§ 110–1106, 6B U.L.A. at 425–543.

274. See IOWA CODE § 489.404(2) ("A person's dissociation does not entitle the person to a distribution."); see also REVISED UNIF. LTD. LIAB. CO. ACT § 404(b), 6B U.L.A. at 480.

275. See IOWA CODE § 489.112(2) (detailing the effect of an amendment to the operating agreement on a transferee or dissociated member); see also REVISED UNIF. LTD. LIAB. CO. ACT § 112(b), 6B U.L.A. at 450.

276. IOWA CODE § 489.112(2); see also REVISED UNIF. LTD. LIAB. CO. ACT § 112(b), 6B U.L.A. at 450.

277. REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(4), (5), 6B U.L.A. at 506 (noting, among other things, that "[a] limited liability company is dissolved, and its activities must be wound up, upon the occurrence of [an] application by a member"

member-transferees, however, the Iowa General Assembly altered one of these dissolution provisions to permit the transferee to petition for dissolution of the LLC.²⁷⁸ Section 489.701(1)(e) provides for the dissolution of an LLC if:

On application by a member or transferee, the entry by a district court of an order dissolving the company on the grounds that the managers or those members in control of the company have done any of the following:

- (1) Have acted, are acting, or will act in a manner that is illegal or fraudulent.
- (2) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.²⁷⁹

Thus, given the severe consequences of judicial dissociation for the judicially dissociated member-transferee, the wisdom of judicial restraint militates in favor of a sparing application of the court's discretionary power to expel.

Finally, one is led to wonder whether a more relaxed approach to judicial dissociation would give parties less motivation to seek an agreeable resolution through negotiation and compromise, thereby avoiding the costs of litigation altogether and would instead engender a "race to the courthouse" mentality with deadlocked or otherwise feuding members seeking to judicially dissociate one another for actions they believe are hindering the conduct of the LLC's activities. Consider, for example, the following factual scenario drawn from *Related Westpac LLC v. JER Snowmass LLC*.²⁸⁰

In *Related Westpac LLC*, two members, Related Westpac LLC and

(emphasis added)).

278. Compare IOWA CODE § 489.701(1)(e) (permitting application for dissolution by a member or transferee), with REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(4), (5), 6B U.L.A. at 506 (permitting application for dissolution by a member only).

279. IOWA CODE § 489.701(1)(e). Note, however, that only a member may petition for dissolution under section 489.701(1)(d) on the grounds that: (1) "The conduct of all or substantially all of the company's activities is unlawful"; or (2) "It is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement." *Id.* § 489.701(1)(d).

280. *Related Westpac LLC v. JER Snowmass LLC*, C.A. No. 5001-VCs, 2010 WL 2929708 (Del. Ch. July 23, 2010).

JER Snowmass LLC,²⁸¹ formed two LLCs for the purpose of developing “the vacation destination of Snowmass Village, Colorado,” which “would include ‘condominiums, luxury hotels, retail and community recreation facilities, skier services, and office and commercial facilities’ that would transform Snowmass Village into a world-class tourist destination.”²⁸² The operating agreement provided that Related Westpac was to be the operating member of the LLC, responsible for the supervision of “day to day activities.”²⁸³ The operating agreement also stipulated that Snowmass’s consent, “was required for any of the 23 ‘Major Decisions’ defined in the Operating Agreements.”²⁸⁴

Assume that Related Westpac, as operating member, issued a capital call to the LLC members as per its authority under the operating agreement. Assume further that a call for capital contributions constitutes a “Major Decision” as that term is defined in the operating agreement, such that approval by Snowmass would be required. Additionally, assume that Snowmass repeatedly refuses to consent to Related Westpac’s request for an additional capital contribution.²⁸⁵ Finally, assume that Related Westpac, as operating member “with the right, authority and duty to supervise the day to day activities”²⁸⁶ of the LLC, finds such repeated refusals by Snowmass make it not reasonably practicable to carry on the LLCs’ activities.²⁸⁷

281. A third party passive minority investor who was not a party to the lawsuit but was also involved in the formation of the LLCs is ignored for the purposes of this hypothetical. *See id.* at *2.

282. *Id.* (quoting the filed complaint) (internal quotation marks omitted).

283. *See id.* (quoting the operating agreement) (internal quotation marks omitted).

284. *Id.*

285. This was, in fact, the dispute that arose between the parties. *See id.* at *3. Consequently, Related Westpac filed suit alleging breach of contract and breach of fiduciary duty arguing that Snowmass “unreasonably withheld its consent” to the various “Major Decisions.” *Id.* at *1–3, 5. Related Westpac also asserted “Snowmass breached the Operating Agreements because JER Snowmass frustrated the purpose of the LLCs to develop one of the most unique opportunities in the United States.” *Id.* at *5 (quoting the filed complaint) (internal quotation marks omitted). Member dissociation was not an issue in the case.

286. *Id.* at *2 (quoting the filed complaint) (internal quotation marks omitted).

287. *See id.* at *4 (“Related claims that JER Snowmass’s refusal to consent has caused the LLCs harm because . . . the LLCs lost seven properties because they were unable to refinance and extend their \$110 million loan which thus went into default. More generally, Related says that the ability of the LLCs to proceed with their

Under such a factual scenario, a less constrained application of the “not reasonably practicable” standard could potentially motivate Related Westpac to seek the dissociation of Snowmass. Related Westpac would essentially argue that by withholding consent, Snowmass was unreasonable and that its actions, insofar as they were frustrating the economic and overarching purposes of the LLCs, made it not reasonably practicable to conduct the redevelopment activities of Snowmass Village.²⁸⁸ In its most literal application, Related Westpac’s argument is inherently both logical and appealing. Snowmass’s conduct is clearly related to the company’s activities.²⁸⁹ If additional capital contributions were required to advance the redevelopment purposes of the LLC and Snowmass was withholding its consent to the funding of such additional calls, then, facially at least, it would appear that such conduct makes it not reasonably practicable to carry on the activities of the LLCs. Given the inherent appeal of getting Snowmass out of both the LLC and the operating member’s way, Related Westpac may have all the motivation it needs to apply to the court for the dissociation of Snowmass, rather than attempting to reach a compromise resolution that is agreeable to both parties.

As the *1545 Ocean Avenue* court argued—albeit in the dissolution context and under a statute that clearly required it—the appropriate place to begin its analysis is with the parties’ operating agreement.²⁹⁰ Have Related Westpac and Snowmass, through their operating agreement,

development plans has been hindered because of the loss of important properties and JER Snowmass’s unwillingness to make large capital infusions. In addition, Related argues that it was unfairly and wrongly forced to make a large number of capital infusions into the LLCs because JER Snowmass did not answer capital calls.” (footnotes omitted)).

288. The other grounds provided in Iowa Code section 489.602(5) for judicial dissociation of a member would appear to be inapplicable under this factual scenario. See IOWA CODE § 489.602(5)(a)–(b) (2011). Snowmass’s refusal is neither “a material breach of the operating agreement” nor is its conduct “wrongful.” *Id.*

289. See IOWA CODE § 489.602(5)(c) (requiring that the petitioning member demonstrate that the member whose dissociation is being sought “[h]as engaged in, or is engaging in, conduct relating to the company’s activities”); see also *Brennan v. Brennan Assocs.*, 977 A.2d 107, 119 & n.12 (Conn. 2009) (discussing the “relating to” requirement).

290. *In re Dissolution of 1545 Ocean Ave., LLC*, 893 N.Y.S.2d 590, 594–96 (App. Div. 2010) (“On application by or for a member, the Supreme Court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company *whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.*” (quoting N.Y. LTD. LIAB. CO. LAW § 702 (1994)) (internal quotation marks omitted)).

already contracted for the resolution of this dispute?²⁹¹ Have Related Westpac and Snowmass used their operating agreement to alter, restrict or eliminate the court's power to judicially expel a member?²⁹² Does the operating agreement contain a mechanism by which "the dissenting member who disfavors the inertial status quo" may exit the LLC "and receive the fair market value of her interest?"²⁹³ Have the parties attempted in good faith to negotiate a resolution to the dispute?²⁹⁴

Absent such a prearranged dispute resolution mechanism, is Snowmass using its business judgment to exercise a freely bargained for right under the operating agreement? As previously noted, under the operating agreement, consent by Snowmass was required "for any of the 23 'Major Decisions' defined in the Operating Agreements that Related made in its capacity as Operations Manager."²⁹⁵ Thus, it would appear the parties, as sophisticated business entities, freely negotiated a decision-making structure that contemplates deadlock in that unanimity between the two members was required for actions constituting "Major Decisions."²⁹⁶ Consequently, and giving due accord to the parties' agreement and "the

291. In the actual lawsuit, the Delaware Chancery Court found this to be the case, and it rejected Related Westpac's attempt "to have the court impose a contractual reasonableness overlay on a contract that is clearly inconsistent with the parties' bargain." *Related Westpac*, 2010 WL 2929708, at *1. The court stated:

Under the plain terms of the operating agreements, the defendant member had bargained for the right to give consents to decisions involving material actions or not, as its own commercial interests dictated. Having bargained for that freedom and gained that concession from the operating member, the defendant member is entitled to the benefit of its bargain and the operating member cannot attempt to have the court write in a reasonableness condition that the operating member gave up.

Id. Further, the operating agreement outlined the sole remedy for a member should another member refuse to consent to a capital call. *Id.*

292. See IOWA CODE § 489.110(2) (indicating the largely default nature of RULLCA's provisions); see also REVISED UNIF. LTD. LIAB. CO. ACT § 110(b), 6B U.L.A. 425, 442 (2008 & Supp. 2012).

293. *Haley v. Talcott*, 864 A.2d 86, 96 (Del. Ch. 2004).

294. *But cf. Spires v. Lighthouse Solutions, LLC*, 778 N.Y.S.2d 259, 267 n.4 (Sup. Ct. 2004) (rejecting the nonpetitioning members' argument "that dissolution was unwarranted where Spires has not responded to settlement proposals or where a third-party evaluator could be appointed to determine a proper valuation of [the LLC] and each [member's] interest in the company").

295. *Related Westpac*, 2010 WL 2929708, at *2.

296. See *id.*

freedom of parties in commerce to strike bargains,”²⁹⁷ the court should exercise its discretion to deny Related Westpac’s request for the expulsion of Snowmass. The chancery court’s statement in dismissing Related Westpac’s actual suit, which again did not involve a request for dissociation, would be equally applicable in a court’s restrained approach to an application for judicial dissociation:

Although Related may regret the freedom of action it granted to JER Snowmass in the Operating Agreements to refuse consents to Major [Decisions] involving Material Actions, and the limitations on remedial actions those Agreements set forth as to any failure on JER Snowmass’s part to fund capital calls, Related cannot alleviate its regret by seeking relief clearly contrary to the . . . Operating Agreements [of the LLCs].²⁹⁸

If the parties are currently or continue to be in a state of intransigent deadlock with no contractual means of extricating themselves from the impasse, judicial dissolution, rather than the forced expulsion of the dissenting member, may in fact be the more appropriate remedy. As the *Arrow Investment Advisors* court noted:

[D]issolution is reserved for situations in which the LLC’s management has become so dysfunctional or its business purpose so thwarted that it is no longer practicable to operate the business, such as in the case of a voting deadlock or where the defined purpose of the entity has become impossible to fulfill.²⁹⁹

A restrained approach to the “not reasonably practicable” judicial dissociation standard, coupled with the potential threat of judicial dissolution, which would have an adverse effect on both members rather than just one member, should work to disincentivize Related Westpac in its race to dissociate Snowmass. Instead, such an approach would promote the parties’ own resolution of the dispute, the continued existence of the entities they have formed, and the achievement of the LLCs’ overriding business purposes.

297. *Id.* at *6.

298. *Id.* at *8.

299. *In re Arrow Inv. Advisors, LLC*, C.A. No. 4091-VCS, 2009 WL 1101682, at *2 & nn.14–15 (Del. Ch. Apr. 23, 2009) (footnote omitted) (citing cases in which the court either declined or granted judicial dissolution).

2013]

Goodbye and Good Luck

587

VI. CONCLUSION

Ultimately, a restrained interpretation of the “not reasonably practicable” language in Iowa Code section 489.602(5)(c) by Iowa courts advances “legislative deference to the parties’ contractual agreement to form and operate a limited liability company.”³⁰⁰ The Iowa General Assembly chose to adopt an LLC statute modeled on a uniform act, which itself emphasizes the overarching contractual nature of limited liability companies.³⁰¹ Thus, adherence to a “robust application of freedom of contract,”³⁰² both the severe and discretionary nature of judicial expulsion, and the risk that feuding LLC members will race to the courthouse rather than attempt to reconcile differences, all counsel in favor of a general wariness towards judicial dissociation under the “not reasonably practicable” standard of Iowa Code section 489.602(5)(c).

*Patrick Shanahan**

300. Dunbar Grp., LLC v. Tignor, 593 S.E.2d 216, 219 (Va. 2004).

301. See REVISED UNIF. LTD. LIAB. CO. ACT prefatory note, 6B U.L.A. 407, 410 (2008 & Supp. 2012) (“Like the partnership agreement in a general or limited partnership, an LLC’s operating agreement serves as the foundational contract among the entity’s owners.”); see also REVISED UNIF. LTD. LIAB. CO. ACT § 110 cmt., 6B U.L.A. 425, 445 (emphasizing that a limited liability company is “as much a creature of contract as of statute”).

302. See Loewenstein, *supra* note 10, at 413.

* B.A., Elmira College, 2004; M.B.A., Barry University, 2009; J.D. Candidate, Drake University Law School, 2013.