

**NCEO/BEYSTER INSTITUTE 2006 EMPLOYEE
OWNERSHIP CONFERENCE**

April 27, 2006

ST. PAUL, MINNESOTA

**EQUITY COMPENSATION LITIGATION TRENDS:
EMPLOYMENT, BANKRUPTCY, DIVORCE
AND PLAN ADMINISTRATION**

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I. Employment Issues

A. Termination

- a. Sale of Subsidiary Constitutes Termination Affecting Exercise Rights
 - i) Monsanto Company v. Boustany,
45 Tex. Sup. Ct. J. 497, 73 S.W.3d 225 (2002), *rehearing overruled*, May 23, 2002
- b. At-Will Employment Status Unaffected by Future Vesting
 - i) Salsgiver v. America Online, Inc.,*
32 Fed. Appx. 894, 2002 WL 464705 (9th Cir. March 22, 2002)
- c. Conflicts of Law Affecting Option Vesting
 - i) Oracle Corporation v. Falotti,
187 F. Supp.2d 1184, 17 IER Cases 1826 (N.D. Calif. 2001)
- d. Enforceability of Option Grant in Employment Contract
 - i) Gelhaus v. Fingerhut Companies, Inc.,*
2002 WL 857835 (Minn. App. May 7, 2002)
 - ii) Hopmayer v. Aladdin Industries, LLC.,* [Contrast w/Sugerman case] 2004 WL 1283984 (Tenn. Ct. App. June 9, 2004)

B. Separation Agreement

- a. Characterized as Additional Option Grant
 - i) Cram v. Pepsico, Inc.,*
31 Fed. Appx. 39, 2002 WL 432862 (2nd Cir. March 19, 2002)
- b. Right to Exercise Options After Employment Termination
 - i) Wetterhan v. Vesta Insurance Group, Inc.,
797 So.2d 430 (S. Ct. Ala. 2001), *rehearing denied*, May 4, 2001
 - ii) Roller v. Chrysler Corporation, Inc.,*
2002 WL 1275563 (Mich. App. June 7, 2002)
 - iii) Varghese v. Honeywell International Inc.,
424 F.3d 411, 36 EBC 1505 (4th Cir. 2005)

C. Untimely Option Exercise

- a. Failure to Notify Employee of Termination
 - i) Pollen v. Aware, Inc.,
53 Mass. App. Ct. 823, 762 N.E.2d 900 (Mass.App.Ct., 2002)
- b. Precise Date of Employment Termination
 - i) Fenoglio v. Augat Inc.,
254 F.3d 368 (1st Cir., 2001)
- c. Probate Issues
 - i) Sams v. Video Display Corporation,
2 FCDR 1447, 2002 WL 908315 (Ga. App. Ct. May 8, 2002)

* Denotes unpublished decision.

II. Stock Plan Administration Issues

A. Change in Control

- a. Acceleration Upon a “Change in Control” or Company Sale
 - i) Edwards v. Schrader-Bridgeport International, Inc.,
2002 WL 1275426 (N.D.N.Y. June 4, 2002)
 - ii) Bau v. Actamed Corporation,
2 FCDR 810, 562 S.E.2d 734 (Ga. App. Ct., 2002),
reconsideration denied, March 29, 2002
 - iii) Elgaway v. Watkins-Johnson Company,*
2002 WL 1225302 (Cal. App. June 5, 2002)
- b. Circumstances Constituting “Good Cause” Termination After Change in Control
 - i) Kerkhof v. MCI Worldcom, Inc.,
282 F.3d 44 (1st Cir. 2002), *remanded to* 204 F. Supp.2d 74 (June 13, 2002)
 - ii) Becher v. Tyco International Ltd.,*
27 Fed. Appx. 48, 2001 WL 1486209 (2nd Cir. November 14, 2001)
- c. Option Conversion in Merger: Precluding Option Exercise During Black-Out Period
 - i) Applewhite v. Computer Associates International, Inc.,
2002 WL 638576 (N.D. Texas, April 18, 2002)

B. Definitiveness Requirement in Option Agreement

- i) Sugerman v. MCY Music World, Inc.,
158 F. Supp.2d 316 (S.D.N.Y. 2001) [Contrast w/Hopmayer case]

III. Bankruptcy Issues

A. Portion of Unvested Stock Includible in Bankruptcy Estate

- i) In re Wick,
276 F.3d 412 (8th Cir. 2002)
- ii) In re DeNadai,
259 B.R. 801 (D. Mass. 2001), *aff'd*, 272 B.R. 21 (D. Mass. 2001)

IV. Divorce Issues

A. Stock Options as Marital Property

- i) Henry v. Henry,
758 N.E.2d 991 (Ind. App. Ct. 2001)
- ii) In re Balanson,
2001 DJCAR 2558, 25 P.3d 28 (Colo. Sup. Ct. 2001), *modified*,
June 25, 2001

B. Division of Unvested Options

- a. Use of Time-Based Formula
 - i) In re Matter of Valance,
2002 WL 970951 (N.H. Sup. Ct. May 7, 2002)
 - ii) Baccanti v. Morton,
434 Mass. 787, 752 N.E.2d 718 (Mass. Sup. Ct. 2001)
 - iii) In re Marriage of Brogan,
2002 WL 534812 (Iowa App. Ct. April 10, 2002)

- C. Stock Options as Income
 - a. Child Support Obligations
 - i) In re Marriage of Robinson,
201 Ariz. 328, 365 Ariz. Adv. Rep. 32, 35 P.3d 89 (Ariz. Ct. App. 2002)
 - b. Recalculation of Child Support Obligations
 - i) In re Marriage of Ayyad,
110 Wash. App. 462, 38 P.3d 1033 (Wash. Ct. App. 2002),
amended, 2002 WL 450554 (Wash. App. January 28, 2002)