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## Doctrine of Corporate Opportunity Applied to Interlocking Directorates

George W. Hopper

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this type from being submitted to the jury merely by stating that he had further assets not taken into consideration by the Government, yet refusing to disclose them, enforcement of the tax evasion provision of the Internal Revenue Code would be completely frustrated. Congress has relied for the collection of income tax largely upon the taxpayers own disclosures. The Government should be allowed to use all legal evidence available to it in determining if the taxpayer's representations accurately reflect his financial history. In view of its widespread use, the Government deems the net worth method useful in enforcement of its income tax laws. Nevertheless, the courts should carefully scrutinize all aspects of a case in which circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation.

DEAN BORTHWICK

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### DOCTRINE OF CORPORATE OPPORTUNITY APPLIED TO INTERLOCKING DIRECTORATES

The practice of energetic businessmen accepting directorates in several corporations during the same period of time is not a novel situation. However, with the upsurge in uranium activity, concurrent directorships are becoming even more common. In many cases an individual is not only a director in several corporations, but it is also found that the corporations in which he is a director have identical purposes, i.e. the exploration for and production of uranium ore, or oil, or other minerals.

Consider the following hypothetical. P, a promoter of uranium ventures, discovers certain uranium deposits. In an effort to develop these deposits, P organizes a corporation for the purpose of raising the necessary money from the sale of the corporate stock. Since P was instrumental in organizing the corporation, he will ordinarily be offered the position of director if not that of officer. Over a period of years the average promoter will repeat this procedure many times, and as a consequence will find that he is an active director in several corporations with similar if not identical purposes.<sup>1</sup> Because the stock for the several corporations is normally sold publically and at different times, the stock ownership of the various corporations will generally be vested in separate groups of stockholders whose interests are in competition. What is P to do when in the usual course of his business he obtains knowledge of a newly discovered uranium deposit which is likely to prove of great value? If the doctrine of corporate opportunity<sup>2</sup> is applied, it would appear that P has the duty of

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1. *Olson v. Basin Oil Co. of California*, 288 P.2d 952 (Cal. 1955). This is a recent illustration of a promoter who became a director and officer in several corporations with similar corporate purposes.
  2. *Blaustein v. Pan American Petroleum & Transport Co.*, 263 App.Div. 97, 31 N.Y.S.2d 934, 962 (1941); *Turner v. American Metal Co.*, 36 N.Y.S.2d 356, 370 (1942). These cases state the doctrine of corporate opportunity as follows: ". . . one who occupies a fiduciary relationship to a corporation may not acquire, in opposition to the corporation, property in which the corporation has an interest or tangible expectancy

making the newly discovered deposit available to the corporation in which he is a director. But, since P is a director in several corporations, all of which have similar purposes, to which corporation should he make the opportunity available? Should it be the biggest corporation, the first corporation, should the opportunity be made available proportionately to the several corporations, or should the doctrine of corporate opportunity be applied at all?

In deciding when the doctrine of corporate opportunity should apply, the courts have taken what appear to be two different courses. One line of decisions supports the view that the corporation should have the advantage of a given opportunity only if the corporation has an interest, actual or in expectancy, in the opportunity.<sup>3</sup> The other line of cases adopts the criterion of good faith and asserts that if a director is acting in good faith, he is not precluded from engaging in distinct enterprises of the same general nature as that in which the corporation is engaged.<sup>4</sup> However, on a close examination of many of these cases, it is revealed that the general concept of good faith is merely one test by which the courts determine whether the corporation has an interest, either actual or in expectancy, in a given opportunity.<sup>5</sup> The Supreme Court of New Hampshire recently supported this conclusion, that good faith is not an absolute criterion, by stating that bad faith is not essential to the establishment of a duty on a director to make a given opportunity available to his corporation.<sup>6</sup> Notwithstanding the aforementioned tests, it should be recognized that the question of a director's duty to his corporation should not be determined on narrow and technical grounds, but rather upon broad considerations of corporate duty and policy.<sup>7</sup> There is no hard and fast rule for determining under what circumstances the doctrine of corporate opportunity applies, but rather each case must be classified on its own individual facts.<sup>8</sup>

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or which is essential to its existence." And see also *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203, 214 (1940); *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 510 (1939); 31 Cal. L. Rev. 188 (1943); 54 Harv. L. Rev. 1191 (1941).

3. *Colorado & Utah Coal Co. v. Harris*, 97 Colo. 309, 49 P.2d 429 (1935); *Carper v. Frost Oil Co.*, 72 Colo. 345, 211 Pac. 370 (1922); *Zeckendorf v. Steinfeld*, 12 Ariz. 245, 100 Pac. 784 (1909), in which case it was stated, "Whether in any case an officer of a corporation is in duty bound to purchase property for the corporation, or to refrain from purchasing property for himself, depends upon whether the corporation has an interest, actual or in expectancy, in the property."
4. *Bump Pump Co. v. Waukesha Foundry Co.*, 238 Wis. 643, 300 N.W. 500, 505 (1941); *Carper v. Frost Oil Co.*, 72 Colo. 345, 211 Pac. 370 (1922). It should be noted that the *Carper* case mentions both the good faith test and also the actual or expectant interest test. And see also *Red Top Cab Co. v. Hanchett*, 48 F.2d 236 (D.C.N.D. Cal. 1931); *Barr v. Pittsburgh Plate Glass Co.*, 51 Fed. 33 (C.C.W.D. Pa. 1892); *Southwest Pump & Machinery Co. v. Forslund*, 225 Mo.App. 262, 29 S.W.2d 165, 169 (1930); *Alexander Co. v. Trinkle*, 311 Ky. 635, 224 S.W.2d 923, 926 (1949); *Turner v. American Metal Co.*, 268 App.Div. 239, 50 N.Y.S.2d 800, 812 (1944); *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 510 (1939); *Young v. Columbia Oil Co.*, 110 W.Va. 364, 158 S.E. 678, 681 (1931); *Greer v. Stannard*, 85 Mont. 78, 277 Pac. 622 (1929); *New York Automobile Co. v. Franklin*, 49 Mis.Rep. 8, 97 N.Y.S. 781, 785 (1905).
5. *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203 (1940).
6. *Rosenblum v. Judson Engineering Corp.*, 109 A.2d 558, 563 (N.H. 1954).
7. *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 511 (1939).
8. *Pioneer Oil & Gas Co. v. Anderson*, 168 Miss. 334, 151 So. 161 (1933); *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203, 214 (1940).

Whether or not an expectancy arises in favor of a corporation is for the most part determined by the facts of each case.<sup>9</sup> There are extreme cases which have found no expectancy.<sup>10</sup> But generally, evidence of no expectancy includes those cases in which a corporation is unable to avail itself of a particular business opportunity because of financial inability, legal restrictions, settled policy of the corporation not to engage in the particular line of business, or the transaction, being *ultra vires*, is beyond the corporate powers.<sup>11</sup> In addition, there is no evidence of an expectancy if the other party to the transaction refuses to deal with the corporation but will deal with the director as an individual,<sup>12</sup> or if the corporation has declined the opportunity for business reasons,<sup>13</sup> or if the fundamental fact of good faith is determined in favor of the director,<sup>14</sup> or the director, by embracing the opportunity, is not brought into direct competition with the corporation.<sup>15</sup>

On the other hand, evidence of an expectancy includes cases in which the director either had the duty<sup>16</sup> or undertook<sup>17</sup> to negotiate on behalf of the corporation, or the director knew the corporation needed the opportunity,<sup>18</sup> or the opportunity was proved by the corporation to be of practical and not merely theoretical value to it.<sup>19</sup> Also, there is evidence of an expectancy if the corporation already held some interest in the opportu-

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9. *Industrial Indemnity Co. v. Golden State Co.*, 117 Cal.App.2d 519, 256 P.2d 677, 687 (1953); *Alexander v. Trinkle*, 311 Ky. 635, 224 S.W.2d 923, 926 (1949); *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 511 (1939).
  10. *In Citizens Trust & Deposit Co. v. Tompkins*, 97 Md. 182, 54 Atl. 617 (1903) the president of a trust company, who was receiving a salary, obtained an appointment as trustee for an estate in his individual capacity. The corporations' funds had been expended and its influence used to secure the appointment, and in return for this, the president agreed to make all profits which he received as a consequence of his appointment available to the corporation. Notwithstanding all of the equities in favor of the corporation, the court permitted the president to keep the profits for his individual benefit.
  11. *Alexander Co. v. Trinkle*, 311 Ky. 635, 224 S.W.2d 923, 926 (1949); *Jasper v. Appalachian Gas Co.*, 152 Ky. 68, 153 S.W. 50, 54 (1913); *Lancaster Loose Leaf Tobacco Co. v. Robinson*, 199 Ky. 313, 250 S.W. 997, 999 (1923); *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203, 215 (1940).
  12. *Ibid.*
  13. *Ibid.*
  14. *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203, 215 (1940).
  15. *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203, 215 (1940); *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 513 (1939); *Turner v. American Metal Co.*, 268 App.Div. 239, 50 N.Y.S.2d 800, 813 (1944). *Contra*, *Lagarde v. Anniston Lime and Stone Co.*, 126 Ala. 496, 28 So. 199, 201 (1900); *Colorado & Utah Coal Co. v. Harris*, 97 Colo. 309, 49 P.2d 429, 431 (1935); *Pioneer Oil & Gas Co. v. Anderson*, 168 Miss. 334, 151 So. 161 (1933). The writer feels, that with the exception of cases involving mineral problems, the decisions which are indicated to be *contra* would receive criticism similar to that found of the *Lagarde* case in *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 511 (1939). In mineral controversies the decisions indicate a more lenient attitude. *Infra* notes 38 and 39.
  16. *Alexander Co. v. Trinkle*, 311 Ky. 635, 224 S.W.2d 923, 926 (1949); *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 511 (1939).
  17. *Litwin v. Allen*, 25 N.Y.S.2d 667, 686 (1940).
  18. *Litwin v. Allen*, 25 N.Y.S.2d 667, 686 (1940); *Golden Rod Mining Co. v. Bukvich*, 108 Mont. 659, 92 P.2d 316, 320 (1939); *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203, 215 (1940).
  19. *Colorado & Utah Coal Co. v. Harris*, 97 Colo. 309, 49 P.2d 429, 431 (1935).

ity,<sup>20</sup> or the opportunity is within the scope of corporate activities and is advantageous to the corporation,<sup>21</sup> or the opportunity was seized and developed at the expense and with the facilities of the corporation.<sup>22</sup>

Good faith of a director depends upon whether the director's competing business cripples or injures the business of his corporation,<sup>23</sup> but differences appear among the courts as to what constitutes an injury.<sup>24</sup> If funds or resources of a corporation are used in acquiring an opportunity,<sup>25</sup> and especially if the opportunity is secretly acquired,<sup>26</sup> or if the opportunity is acquired through the use of confidential information secured from the corporation as a consequence of the director's position,<sup>27</sup> it will be held that the corporation is injured. Also, a director will be guilty of bad faith if he uses his position as a director so as to prevent the corporation from seeking business in competition with his individual interests,<sup>28</sup> or a new corporation is formed for the purpose of taking the business of the original corporation even though the president of the original corporation was a drunkard and was dissipating the corporate assets.<sup>29</sup>

As indicated above, it is a question of fact as to whether an expectancy exists in favor of a corporation, or whether a director acted in good faith in taking for himself a business opportunity.<sup>30</sup> But as of what point in time should the determination of fact be made? The courts are in full accord that the facts in each case should be examined as of the time the offer is presented to the director without regard to subsequent events.<sup>31</sup>

There has been an analogy drawn between the duty of a director to his corporation and the duty of a fiduciary. Statements that officers and

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20. *Lincoln Stores v. Grant*, 309 Mass. 417, 34 N.E.2d 704, 707 (1941); *Lagarde v. Anniston Lime and Stone Co.*, 126 Ala. 496, 28 So. 199, 201 (1900); *Young v. Columbia Oil Co.*, 110 W.Va. 364, 158 S.E. 678, 681 (1931); *Tierney v. United Pocahontas Coal Co.*, 85 W.Va. 545, 102 S.E. 249, 257 (1920).
21. *Lutherland, Inc. v. Dahlen*, 357 Pa. 143, 151, 53 A.2d 143, 147 (1947); *Central Ry. Signal Co. v. Longden*, 194 F.2d 310, 319 (7th Cir. 1952).
22. *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203, 215 (1940); *Litwin v. Allen*, 25 N.Y.S.2d 667, 686 (1940).
23. *Hall v. Dekker*, 45 Cal.App.2d 783, 115 P.2d 15, 17 (1941); *Colorado & Utah Coal Co. v. Harris*, 97 Colo. 309, 49 P.2d 429, 430 (1935); *Golden Rod Mining Co. v. Bukvich*, 108 Mont. 659, 92 P.2d 316, 320 (1939); *Bump Pump Co. v. Waukesha Foundry Co.*, 238 Wis. 643, 300 N.W. 500, 505 (1941); *Jasper v. Appalachian Gas Co.*, 152 Ky. 68, 153 S.W. 50, 55 (1913); *Hussong Dyeing Machine Co. v. Morris*, 89 Atl. 249 (N.J. 1913); *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 510 (1939); *Industrial Indemnity Co. v. Golden State Co.*, 117 Cal.App.2d 519, 256 P.2d 677, 686 (1953); *Red Top Cab Co. v. Hanchett*, 48 F.2d 236 (D.C.N.D. Cal. 1931); *Young v. Columbia Oil Co.*, 110 W.Va. 364, 158 S.E. 678, 681 (1931); *Lincoln Stores v. Grant*, 309 Mass. 417, 34 N.E.2d 704, 707 (1941).
24. *Ibid.* But see *Lagarde v. Anniston Lime and Stone Co.*, 126 Ala. 496, 28 So. 199 (1900).
25. *Rosenblum v. Judson Engineering Corp.*, 109 A.2d 558, 563 (N.H. 1954).
26. *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 515 (1939).
27. *Rosenblum v. Judson Engineering Corp.*, 109 A.2d 558, 563 (N.H. 1954).
28. *Singer v. Carlisle*, 26 N.Y.S.2d 172, 181 (1940).
29. *Duane Jones Co. v. Burke*, 281 App.Div. 622, 121 N.Y.S.2d 107 (1953).
30. *Supra* note 9.
31. *Turner v. American Metal Co.*, 268 App.Div. 239, 50 N.Y.S.2d 800, 812 (1944); *Solimine v. Hollander*, 128 N.J.Eq. 228, 16 A.2d 203, 216 (1940); *Guth v. Loft, Inc.*, Del.Ch. 255, 5 A.2d 503, 513 (1939).

directors of a corporation act in a trust capacity to the shareholders are not uncommon.<sup>32</sup> One court set forth the relation very succinctly when it stated, "The fiduciary relation of a director demands something more than the morals of the market place."<sup>33</sup> In addition, it has been indicated that the fiduciary duty will tend to be greater if the director is receiving a salary.<sup>34</sup> Associated with the fiduciary concept is the principle of conflict in interest. Courts have often held that an officer or director may not assume a position which creates a conflict between self interest and duty,<sup>35</sup> and he must subordinate his personal interests to the interests of the corporation should there be a conflict.<sup>36</sup> Still, it certainly should not be assumed that merely because one is a director or officer, and thus under a fiduciary relationship toward the corporation, that he is precluded from entering into an independent business similar to that of the corporation.<sup>37</sup>

Curiously enough, it appears that in mineral cases the courts tend to be more liberal and do not impose as strict a duty upon directors. In cases involving the acquisition of leases by directors in their individual capacity, the courts seem to agree that a very definite agreement to refrain from leasing except for the corporation must be made before the director will be prohibited from leasing on his own behalf.<sup>38</sup> One case held that even though a director gained all of his knowledge through his corporation, and the corporation was negotiating in a general way to purchase certain mineral interests, something more was required to establish the necessary expectancy and bar the director from acquiring the same interests individually.<sup>39</sup>

Naturally there are decisions which have held it improper for a director to engage in the mineral business in competition with his corporation,<sup>40</sup> but bad faith tends to be extreme in such decisions. Bad faith

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32. *Rosenblum v. Judson Engineering Corp.*, 109 A.2d 558, 562 (N.H. 1954); *Red Top Cab Co. v. Hanchett*, 48 F.2d 236 (D.C.N.D. Cal. 1931); *Central Ry. Signal Co. v. Longden*, 194 F.2d 310 (7th Cir. 1952); *Bliss Petroleum Co. v. McNalley*, 254 Mich. 569, 237 N.W. 53, 55 (1931).
  33. *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545, 62 A.L.R. 1 (1928); *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 515 (1939).
  34. *Pioneer Oil & Gas Co. v. Anderson*, 168 Miss. 334, 151 So. 161, 164 (1923).
  35. *Guth v. Loft, Inc.*, 23 Del.Ch. 255, 5 A.2d 503, 515 (1939); *Alexander Co. v. Trinkle*, 311 Ky. 635, 224 S.W.2d 923, 926 (1949).
  36. *Southwest Pump & Machinery Co. v. Forslund*, 225 Mo.App. 262, 29 S.W.2d 165, 169 (1930); *Lancaster Loose Leaf Tobacco Co. v. Robinson*, 199 Ky. 313, 250 S.W. 997, 999 (1923).
  37. *Red Top Cab Co. v. Hanchett*, 48 F.2d 236 (D.C.N.D. Cal. 1931); *New York Automobile Co. v. Franklin*, 49 Misc.Rep. 8, 97 N.Y.S. 781 (1905); *Young v. Columbia Oil Co.*, 110 W.Va. 364, 158 S.E. 678, 681 (1931); *Colorado & Utah Coal Co. v. Harris*, 97 Colo. 309, 49 P.2d 429, 430 (1935); *Lancaster Loose Leaf Tobacco Co. v. Robinson*, 199 Ky. 313, 250 S.W. 997, 999 (1923); *Greer v. Stannard*, 85 Mont. 78, 277 Pac. 622, 64 A.L.R. 772 (1929).
  38. *Colorado & Utah Coal Co. v. Harris*, 97 Colo. 309, 49 P.2d 429 (1935); *Greer v. Stannard*, 85 Mont. 78, 277 Pac. 622, 64 A.L.R. 772 (1929); *Carper v. Frost Oil Co.*, 72 Colo. 345, 211 Pac. 370 (1922); *Lagarde v. Anniston Lime and Stone Co.*, 126 Ala. 496, 28 So. 199 (1900); *Pioneer Oil & Gas Co. v. Anderson*, 168 Miss. 334, 151 So. 161 (1933); *Olson v. Basin Oil Co. of California*, 288 P.2d 952 (Cal. 1955).
  39. *Colorado & Utah Coal Co. v. Harris*, 97 Colo. 309, 49 P.2d 429, 431 (1935); *Pioneer Oil & Gas Co. v. Anderson*, 168 Miss. 334, 151 So. 161, 164 (1933).
  40. *Zeckendorf v. Steinfeld*, 12 Ariz. 245, 100 Pac. 784 (1909).

does exist if an officer or agent, who has the specific duty of selecting<sup>41</sup> or purchasing<sup>42</sup> mineral interests, and has been expressly forbidden by his corporation from purchasing interests in his own behalf, does in fact purchase for his own benefit. In addition, it was held to be bad faith for a director to purchase interests in order to obstruct the operations of his corporation and thereby force the corporation to pay an excessive price for his interest.<sup>43</sup> A good statement of the typical attitude which courts have taken in connection with mineral corporations is that found in the Montana case of *Greer v. Stannard*:

There is nothing in the law or in equity to prevent a man from going into as many 'wildcat' oil ventures as his inclination, credulity, and finances will permit, so long as he does not betray any such one in which he has become a director or officer, to his own or another's profit. . . . the fact that a person is a director in one such corporation should raise no presumption, or even suspicion, of intended wrongdoing in simultaneously aiding in the organization of a second company, in the days of oil excitement.<sup>44</sup>

Notice to the corporation and its stockholders, that a director is entering into business enterprises similar to those engaged in by the corporation, is a very important factor in determining whether an expectancy should arise in favor of the corporation.<sup>45</sup> It is possible that some courts might infer notice if the director is openly engaging in a competing business.<sup>46</sup> But, if dual interests are to be served, the disclosure to be effective must lay bare the truth without ambiguity or reservation.<sup>47</sup> Therefore, the only safe approach is to definitely place the corporation on notice by such a method as insisting upon an express agreement from the corporation. The agreement should be a condition precedent to the director's acceptance of the directorship, and it should provide that the director shall be permitted to engage in business which is in competition with the business of the corporation.<sup>48</sup> But should it happen that the corporation will not agree to such an absolute reservation, the director could compromise and use the judicially favored arbitration agreement.<sup>49</sup>

In answer to the hypothetical posed at the beginning of this note, the law gives no clear and concise solution. If an attorney is merely advising a prospective director as to what course should be pursued, the client should be advised to make express provision, at the time the director assumes his

41. *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952).

42. *Russell v. Republican Production Co.*, 112 F.2d 663 (5th Cir. 1940).

43. *Golden Rod Mining Co. v. Bukvich*, 108 Mont. 659, 92 P.2d 316 (1939).

44. 85 Mont. 78, 277 Pac. 622, 626, 64 A.L.R. 772, 781 (1929).

45. *Young v. Columbia Oil Co.*, 110 W.Va. 364, 158 S.E. 678 (1931). In this case, which involved oil and gas lands near Basin, Wyoming, the court allowed recovery against the directors as to those shareholders who did not have notice of the directors' outside activities; but as to shareholders who knew of the outside activities, the directors were not held liable.

46. *Thilco Timber Co. v. Sawyer*, 236 Mich. 401, 210 N.W. 204 (1926).

47. *Wendt v. Fischer*, 243 N.Y. 439, 443, 154 N.E. 303, 304 (1926); *Central Ry. Signal Co v. Longden*, 194 F.2d 310 (7th Cir. 1952).

48. *Anderson v. Dunnegan*, 217 Ia. 672, 250 N.W. 115, 120 (1933); *Olson v. Basin Oil Co. of California*, 288 P.2d 952 (Cal. 1955).

49. *Simonson v. Helburn*, 198 Misc.Rep. 430, 97 N.Y.S.2d 406, 414 (1950).

position, that he reserves the right to engage in enterprises which are similar and in competition with the business of the corporation.<sup>50</sup> Notice of this agreement should be made available to as many shareholders as is practical,<sup>51</sup> and if the circumstances permit, it is preferable not to provide for a salary.<sup>52</sup>

But, an attorney, who is confronted with the problem of litigating the issue raised by the hypothetical, will find that he is delegated to the task of sifting overlapping cases which deal with the very general principle of good faith. His search will be to find cases which involve facts similar to those with which he must deal. However, if the case involves a director of a mineral corporation, bad faith must be very apparent before the doctrine of corporate opportunity will be applied. Certainly, in the case of an honest promoter, there should be no application of the doctrine,<sup>53</sup> and therefore a promoter should be permitted to participate in as many corporations as he desires.

GEORGE W. HOPPER

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### EXCLUSIVE WORKMEN'S COMPENSATION ACTS AND CONFLICT OF LAWS

The recent decision of *Carroll v. Lanza*<sup>1</sup> brings little stability to a rather confused field of law. This is so because it is subject to different interpretations. By some it will probably be praised because it wipes away some of the overly-technical rules which have prevailed for a number of years in the field of workmen's compensation and the conflict of laws. By others it will probably be criticized because it burdens parties with too much guess-work as to how the forum will exercise a choice of rules given it by the United States Supreme Court. The purpose of this note is to look closely at the decision in relation to past decisions and to try to determine the rationale of the court.

A look at the facts in the case sufficiently presents the problem. The employee Carroll and the employer Hogan were both residents of Missouri and they entered into an employment contract there. Hogan in turn contracted to do a painting job in Arkansas for Lanza, a Louisiana contractor. While in Arkansas on the job, Carroll was injured. Hogan's insurer voluntarily began paying Carroll under Missouri's Workmen's Compensation Law,<sup>2</sup> which provided that the rights and remedies would

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50. *Olson v. Basin Oil Co. of California*, 288 P.2d 952, 955 (Cal. 1955). The contract in this case provided: "Mr. Willis shall be free to operate in his individual capacity as a petroleum engineer and as an oil operator without any obligation to account to this corporation for any advantage, benefit, or profit, financial or otherwise, which he may obtain as the result of his operations therein."

51. *Supra* note 49.

52. *Pioneer Oil and Gas Co. v. Anderson*, 168 Miss. 334, 151 So. 161, 164 (1933).

53. *Olson v. Basin Oil Co. of California*, 288 P.2d 952 (Cal. 1955).

1. *Carroll v. Lanza*, 349 U.S. 408, 75 S.Ct. 804, 99 L.Ed. 722 (1955).

2. R.S. Mo. 1949, § 287.010.