

## Derivative Litigation Review Problem

Your client, Fred, is a 30% shareholder and one of three directors of Plum, Inc. Mary is also a 30% shareholder and director. Recently Jane, who is the remaining 40% shareholder and director as well as the president of the corporation, executed on behalf of the corporation in the ordinary course of business a long-term service contract on terms highly unfavorable to the corporation. The contract is with an LLC in which Jane is a member. When Fred uncovered the transaction and complained, Jane prepared a report containing full disclosure of all material facts regarding the transaction, handed it to Mary and asked her to sign, with Jane, a Directors' Consent ratifying the transaction. Trusting that Jane would never do anything wrong, Mary signed the Directors' Consent without reading the report. Jane then immediately mailed the report and the Directors' Consent to Fred, with a cover letter informing him that the directors, by majority vote, had thereby ratified the transaction. The articles of incorporation of Plum, Inc. include only the bare essentials, plus the following provision: "The personal liability of every director and officer of this corporation to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director or officer is eliminated for all acts, omissions, or breaches of duty of any kind or nature whatsoever."

Fred comes to you for advice on the following:

- (a) May Fred reasonably assert, in his own name, any direct claims against Jane, Mary, or the LLC?**
  
- (b) What claim(s) may Fred reasonably assert on behalf of any other juridical person against the LLC, and what defenses might it reasonably assert?**
  
- (c) What claim(s) may Fred reasonably assert on behalf of any other juridical person against Jane, and what defenses might she reasonably assert?**
  
- (d) What claim(s) may Fred reasonably assert on behalf of any other juridical person against Mary, and what defenses might she reasonably assert?**