

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

THE WAYNE L. RYAN REVOCABLE TRUST,)
STEVE RYAN and FIRST NEBRASKA TRUST,)
as co-trustees for the Wayne L. Ryan Revocable) **CASE NO.:**
Trust, and STEVE RYAN as personal)
Representative of Dr. Wayne L. Ryan,)
)
Plaintiffs,) **COMPLAINT**
v.)
)
CONSTANCE “CONNIE” RYAN, LISA)
ROSKENS, MICHAEL CASSLING, DAVID)
CONRAD, DEBORAH MacDONALD and)
STRECK, INC.,)
)
Defendants.)

Plaintiffs The Wayne L. Ryan Revocable Trust, Steve Ryan and First Nebraska Trust, as Co-Trustees for the Wayne L. Ryan Revocable Trust, and Steve Ryan as personal representative of Dr. Wayne L. Ryan, individually and derivatively on behalf of Streck, Inc., state the following as their Complaint against the Defendants, Constance Ryan (“Connie”), Lisa Roskens, Michael Cassling, David Conrad, Deborah MacDonald, and the nominal Defendant, Streck, Inc.

Introduction

1. Over 40 years ago, Dr. Wayne L. Ryan (“Dr. Ryan”) founded Streck, Inc. (“Streck” or the “Company”), a closely-held corporation, which grew to become the largest manufacturer of hematology controls in the world. At all times relevant herein, The Wayne L. Ryan Revocable Trust (“Dr. Ryan Trust”) owned 52% of the equity in Streck, and his wife Eileen’s trust, the Eileen Ryan Revocable Trust (“Eileen’s Trust”) owned 40% of the equity.
2. Dr. and Mrs. Ryan’s daughter, Connie, owns approximately 8% of the equity in Streck.
3. Streck also has voting stock, which, prior to March 2013, was owned by Dr. Ryan’s Trust (one-third), Eileen’s Trust (one-third), and Connie (one-third). Upon the death of

Eileen in March 2013, Eileen's Trust's voting stock passed to Connie, giving Connie voting control of Streck. This arrangement was put in place by Dr. Ryan and Eileen Ryan because, at the time, they believed Connie would adhere to their wishes, be a good steward of Streck, and follow Dr. Ryan's and Eileen's wishes.

4. The wishes of Eileen and Dr. Ryan are reflected in their estate documents (and related discussions with Connie and attorneys leading to their creation), the operating agreement of the Ryan Family LLC (which was formed to own the building in which Streck operates), and multiple court filings by Dr. Ryan prior to his death. It is impossible to conceive that Dr. Ryan and Eileen would have transferred any control via their estate planning to Connie had they known that Connie would not honor their wishes.

5. Dr. Ryan's and Eileen's wishes are clear and undeniable and reflect their expectations as shareholders in Streck. The Wayne and Eileen Ryan estate documents reflect a mandate for liquidity, diversification, and income of their estates.

6. Since Streck's inception and the creation of the Ryan Family LLC, never did Wayne and Eileen Ryan execute corporate policies that adversely or unfairly oppressed any individual child, or the children as a whole, or create policies to adversely affect their foundation. Their plan was clear: to treat the stakeholders of Streck and the Ryan Family LLC uniformly.

7. Connie, in her position as Streck's CEO, and through her manipulation of Streck's corporate governance structure, has prevented liquidity, diversification, and income of her parents' estates on numerous occasions. Likewise, with respect to the Ryan Family LLC ("LLC"), Connie has used her position as a manager of the LLC to deadlock Dr. Ryan's vote in circumvention of her parents' wishes.

8. Connie's actions have been intentional. In a brief recently filed in Douglas County, Connie acknowledges that her parents' intent was to treat each of their five children uniformly. But every action Connie has taken since 2013 demonstrates that she seeks to enrich herself at the expense of the Ryan Foundation (with 75% of the beneficial interest of the Ryan Estate) and her four siblings (approximately 16% beneficial interest). By doing so, she has failed to fulfill the self-evident wishes of her parents. Connie's unequal treatment of these stakeholders is adverse to Wayne and Eileen's wishes in a familial sense, but takes the form of oppression and breaches of fiduciary duty in a shareholder context.

9. Connie's acts of self-interest have taken numerous forms. She fired Dr. Ryan. She used her voting control to install her business and social acquaintances as members of the Board of Directors of Streck, and has caused her Board members to undertake actions intended to neutralize Board members supported by Dr. Ryan and to financially benefit her. For example, her Board has stated that it needs to conserve cash to purchase Dr. Ryan's (and Eileen's Trust's) shares in Streck; but that same Board has paid millions of dollars in bonuses to Connie, lent her additional millions, and wasted money on a land purchase in an attempt to create leverage for negotiations with the Ryan Family LLC.

10. Connie's principal objective is to use money otherwise distributable to Eileen's and Dr. Ryan's Trusts to purchase shares owned by those Trusts. If successful, Connie will have obtained complete ownership of Streck without expending a dime of her own money.

11. Plaintiffs believe it is in Streck's and the majority of its shareholders' best interest that Streck be sold to the highest bidder, whether that be Connie or a third party. It was Dr. Ryan's wish that the Company be sold. A sale would solve the numerous family-related disputes which have arisen in recent years. And a sale would solve the liquidity issues which have arisen upon Dr.

Ryan's passing and which hinder the ability of Eileen's Trust to pay its share of the estate tax related to his passing.

12. Connie and the Defendant Board Members have, however, ignored these requests.

13. Connie's and the Defendant Board Members' actions constitute acts of oppression and breaches of their fiduciary duties to the Company and its shareholders. Their actions pre-dating October 2014 are the subject of a previous Complaint filed in this Court by Dr. Ryan and Carol Ryan, as the then-Trustee of the Wayne L. Ryan Revocable Trust. See, *Wayne L. Ryan et al v. Connie Ryan and Streck, Inc.*, No. CI-14-1684, Sarpy County, Nebraska.

14. The allegations in this Complaint involve Defendants' acts of oppression occurring since January 2015, including the wrongful withholding of tens of millions of dollars in dividends.

The Parties, Jurisdiction and Venue

15. Dr. Ryan founded Streck in 1971. Until the time of his death in November 2017, he was the sole beneficiary of the Wayne L. Ryan Revocable Trust ("Dr. Ryan's Trust"). Through Dr. Ryan's Trust, Dr. Ryan was the beneficial owner of 52% of Streck's non-voting stock and approximately 33% of Streck's voting stock.

16. Dr. Ryan was also the income beneficiary of his late wife's, Eileen Ryan's Trust, the Eileen Ryan Marital Trust ("Eileen's Trust"). Eileen's Trust owns 40% of Streck's non-voting stock. The First National Bank of Omaha ("FNB") is currently the Trustee of Eileen's Trust.

17. Dr. Ryan lived in Douglas County, Nebraska.

18. Plaintiff Steve Ryan and First Nebraska Trust are the current Co-Trustees of Dr. Ryan's Trust. Carol Ryan ("Carol"), one of Dr. Ryan's daughters, was the Trustee of Dr. Ryan's Trust until November 2017.

19. Defendant Connie Ryan is one of Dr. Ryan's daughters and the current CEO of Streck. She resides in Douglas County, Nebraska. Connie currently holds about 8% of Streck's non-voting stock and 67% of Streck's voting stock. Because the voting shares are valued at the same amount as non-voting shares, and because the number of non-voting shares substantially exceeds the number of voting shares, Connie's current holdings represent only about 8% of the total equity value of Streck.

20. But by virtue of her ownership of 67% of Streck's voting stock, Connie has controlled the make-up of the Company's Board of Directors since mid-2013.

21. Lisa Roskens is a member of the Board of Directors of Streck. Roskens is a long-time friend of Connie. For example, Connie presented Roskens with Creighton University's first "Believe and Achieve" award. Previously, Roskens was employed by Streck's current law firm. On information and belief, Roskens resides in Douglas County, Nebraska.

22. Michael Cassling is also a member of the Board of Directors of Streck. Cassling is also a long-time friend of Connie. Cassling and Connie serve together on the Board of Directors for the Omaha Community Foundation. Cassling and Connie also serve, or have served, together on the Board of Directors of the Salvation Army, and have served as Vice Chairman and Chairperson, respectively, for the Salvation Army's Tree of Lights campaign. On information and belief, Cassling resides in Douglas County, Nebraska.

23. David Conrad is also a member of the Board of Directors of Streck. Conrad is a long-time friend of Connie. For example, Connie and Conrad served together on the Board of Directors for NUTech Ventures, at a time when Conrad was the Executive Director of NUTech Ventures. On information and belief, Conrad resides in Douglas County, Nebraska.

24. Deborah MacDonald is a former member of the Board of Directors of Streck. MacDonald is also a long-time friend of Connie. MacDonald and Connie are both trustees on the Creighton University Board of Trustees. MacDonald also serves on the Board of Directors of the Omaha Community Foundation with Connie and Cassling. MacDonald and Connie were both students at Creighton University between 1971 - 1972. On information and belief, MacDonald resides in Douglas County, Nebraska.

25. Streck is a Nebraska corporation, with its principal place of business located at 7002 S. 109th Street, La Vista, Sarpy County, Nebraska.

26. This Court has jurisdiction over the subject matter of this action pursuant to Neb. Rev. Stat. § 24-302 and jurisdiction over Defendants as citizens of Nebraska.

27. Venue is proper in this Court because Streck's principal place of business is in Sarpy County, and the actions complained of took place, and are taking place, in Sarpy County, and the effects thereof will, in large part, be felt in Sarpy County.

Background

28. Dr. Ryan was a pioneer in the field of clinical laboratory products, and in particular, control substances used in the area of hematology—the study and treatment of blood, blood-forming organs, and blood diseases.

29. From its beginning in 1971 through 2013, Dr. Ryan oversaw the growth of Streck into the world's premier manufacturer of controls for hematology laboratories. Streck was an innovator in manufacturing control substances for use in urinalysis, cell stabilization, immunology, chemistry, and point-of-care medical devices. Dr. Ryan was the inventor or co-inventor of more than 50 patents awarded to Streck.

30. In sum, Streck was Dr. Ryan's life's work for 42 years.

31. In early 2013, Dr. Ryan and his wife, Eileen, owned 92% of Streck's non-voting stock and 67% of the Streck's voting stock.

32. As the founder, CEO, director, head of Research and Development ("R&D") and Streck's largest shareholder, Dr. Ryan had complete and total access to all of Streck's financial, marketing, personnel and operational information.

33. Connie started work at Streck in 1982. In early 2013, she was the president of Streck.

Connie's Scheme to Use Streck Assets to Enhance Her Power and Wealth After Eileen's Death

34. In about 2007, Dr. Ryan and Eileen created an estate plan which provided that Eileen's voting stock would pass to Connie, with the understanding that a voting trust would be created permitting Dr. Ryan to remain in control of the Company. The estate planning counsel's primary reason for splitting control amongst the three owners of Streck was to take advantage of tax laws with regard to inheritance. The structure was never intended to prevent Dr. Ryan from selling the Company, if he chose to do so.

35. Connie participated with Dr. Ryan and Eileen Ryan in the creation of their estate plans and the related trust agreements governing Dr. Ryan's Trust and Eileen's Trust. Connie therefore knew that the estate plans called for diversification, liquidity, and the provision of income. She also knew, as reflected in pleadings filed in a separate case pending in Douglas County, that her parents' estate plans called for treating all of their children uniformly.

36. In March 2013, Eileen suddenly passed away. Immediately following her mother's death, Connie insisted that the Trustee of Eileen's Trust turn Eileen's voting shares over to Connie.

37. Upon obtaining control of Streck, Connie's behavior towards Dr. Ryan was characterized by disenfranchisement, marginalization, personal attacks, withholding of Company information and breaches of her fiduciary duties. She has also undertaken actions, and refused to take other actions, which have frustrated the estate plans of her father and mother.

38. The details of her acts of oppression prior to October 2014 are the subject of a Complaint filed in Case No. CI-14-1684 and will not be repeated here.

39. In response to the allegations made in that case, Streck's Board of Directors, acting in response to Connie's wishes, elected in January 2015 to purchase Dr. Ryan's shares pursuant to Neb. Rev. Stat. §21-2,201.

40. This Complaint seeks to remedy acts of oppression and breaches of fiduciary duty occurring since January 2015.

Streck's Refusal To Pay Dividends

41. Streck is a sub-chapter S Corporation. Its shareholders are therefore taxed on its income in proportion to their ownership interest. That tax obligation has included income tax and, in recent years, a 3.8% Medicare surcharge owed by Eileen's Trust.

42. Until Connie took over as CEO, Streck paid dividends to its shareholders sufficient to fund their entire tax obligations. In addition, it made distributions of income to its shareholders in excess of their tax obligations.

43. In recent years, Streck has not paid dividends sufficient to cover its shareholders' entire tax obligations. It has refused to pay the 3.8% Medicare surcharge obligation of Eileen's Trust, relenting only when the Trustee of Eileen's Trust, the First National Bank of Omaha, threatened to resign over the non-payment of the surcharge.

44. Streck has also refused to distribute any earnings in excess of these tax obligations, meaning that Dr. Ryan's and Eileen's Trusts have been denied the use of tens of millions of dollars. According to Streck's Board of Directors, this money is needed to fund the purchase of Dr. Ryan's shares pursuant to the election. In addition, Plaintiffs have recently learned that Streck hopes to purchase Streck shares held by Eileen's Trust, inevitably at a discount.

45. If Streck's and Connie's plan is successful, Streck will have purchased the 92% of Streck owned by Eileen's and Dr. Ryan's Trusts, leaving Connie as Streck's sole shareholder. As such, Connie will have leveraged her 8% ownership interest into a 100% ownership interest without spending a dime of her own money. Only then will Connie and the Board put Streck up for sale, leaving Connie as the sole beneficiary of the maximized price that a sales process would yield. And Eileen's and Dr. Ryan's Trusts will have been forced to redeem their shares at a substantial discount from fair value. This is hardly the uniform treatment intended by Eileen and Dr. Ryan.

46. Tellingly, at the same time Streck is claiming that it cannot afford to pay dividends, it has paid millions of dollars in bonuses to Connie and lent her additional millions of dollars. In addition, it has paid millions of dollars for undeveloped real estate for the sole purpose of creating negotiating leverage with the Ryan Family LLC regarding the potential sale of Streck's building. These expenditures of cash belie the Board's justification that Streck needs to conserve money to purchase Dr. Ryan's (and Eileen's Trust's) shares. In reality, the Board is favoring Connie while squeezing Dr. Ryan's and Eileen's Trusts, to the detriment of the Ryan Foundation and her siblings. This is not an exercise of "business judgment." It is an exercise of favoritism.

47. Streck's refusal to pay dividends has resulted in liquidity problems for Dr. Ryan's Trust and Eileen's Trust. Dr. Ryan's passing has created an estate tax liability for his estate. His

Trust Agreement requires that his estate seek reimbursement from Eileen's Trust. Eileen's Trust, however, essentially holds only Streck stock, and it does not have the liquidity to reimburse Dr. Ryan's estate for the estate taxes.

The Formation Of Board Sub-Committees

48. Connie and the Streck Board of Directors have recently created sub-committees of the Board of Directors to supplant the decision making authority of the Board of Directors.

49. While the creation of sub-committees is permitted under the Nebraska Business Corporation Act, their creation is at odds with Streck's by-laws, which require a majority of the Board of Directors to create a quorum for purposes of decision making.

50. Moreover, Connie and the Board of Directors have excluded the director who was placed on the Board through the votes of Dr. Ryan's Trust.

51. These actions were designed to further oppress Dr. Ryan and limit his say in the functioning of the Company.

COUNT I Oppressive Acts, 2015 to the Present (Against Connie Ryan)

52. Plaintiffs adopt and incorporate paragraphs 1 through 51 as if fully set forth in this paragraph.

53. Since the filing of this lawsuit, Connie, aided by the Defendant Board Members, has engaged in additional acts of oppression against Dr. Ryan. Those additional acts of oppression include the following:

- a. Failure to pay dividends to plaintiffs;
- b. The payment of dividends to Connie in the form of a "bonus";

c. The creation of sub-committees of the Board of Directors in contravention of Streck's by-laws and excluding Dr. Ryan's board representative from those committees;

d. Refusing to provide Dr. Ryan with any information about the operation or finances of Streck, other than what has been obtained through discovery;

e. Refusing to permit legitimate business issues from being discussed at annual shareholder meetings; and

f. Repeatedly refusing to provide audited financial statements at shareholder meetings and refusing to provide the identity of new shareholders.

54. These actions have damaged Plaintiffs.

COUNT II
Breaches of Fiduciary Duty, 2015 to the Present
(Against Connie and Defendant Directors)

55. Plaintiffs adopt and incorporate paragraphs 1 through 51 as if fully set forth in this paragraph.

56. The actions described in Count I also constitute breaches of the fiduciary duty that Connie and Defendant Board Members owed to Plaintiffs.

57. In addition to the actions described in Count I, Connie and the Defendant Board Members have breached their fiduciary duty to Dr. Ryan and Streck by the following acts:

a. Approving a personal loan to Connie of \$8 million with no apparent business purpose; and

b. Spending \$5 million to purchase real estate with no apparent use other than to create negotiating leverage with respect to the Ryan Family LLC.

58. These actions have damaged Plaintiffs.

59. Demand on the Board of Directors to remedy these breaches would be futile. Prior demands have been ignored, the Defendant Directors have never voted in opposition to any of Connie's demands, have never spoken to the majority shareholder at all, and are all, by Connie's own admission, her friends. Thus their decisions are not independent and the Defendant Board Members do not support or represent the other 92% of shareholders.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court enter Judgment in their favor and against Defendants Connie Ryan and Streck, and that the Court order:

- a. the sale of Streck;
- b. that a dividend be declared in an amount to be determined;
- c. that damages be awarded to Plaintiffs;
- d. that Defendants pay reasonable attorneys' fees pursuant to Neb. Rev. Stat. §21-20,201; and/or
- e. Any further relief, whether specified under Neb. Rev. Stat. § 21-20,162 and 21,201 or otherwise that the Court deems appropriate and just.

Dated: April 13, 2018

Respectfully submitted,

THE WAYNE L. RYAN REVOCABLE TRUST,
STEVE RYAN and FIRST NEBRASKA TRUST,
as co-trustees for the Wayne L. Ryan Revocable
Trust, and STEVE RYAN as Personal
Representative of Dr. Wayne L. Ryan,

By: /s/ Marnie A. Jensen

Marnie A. Jensen (#22380)
HUSCH BLACKWELL LLP
13330 California St., Ste. 200
Omaha, NE 68154

Telephone: (402) 964-5000
Facsimile: (402) 964-5050
marnie.jensen@huschblackwell.com

and

By: /s/ Richard R. Winter

Richard R. Winter (*pro hac vice* to be submitted)

Maureen Schoaf (*pro hac vice* to be submitted)

Chelsea Ashbrook McCarthy (*pro hac vice* to be submitted)

Holland & Knight LLP

131 S. Dearborn St., 30th fl.

Chicago, IL 60603

Telephone: (312) 263-3600

Fax: (312) 578-6666

richard.winter@hklaw.com

maureen.schoaf@hklaw.com

chelsea.mccarthy@hklaw.com

Attorneys for Plaintiffs