



## Family conflict: trial by jury

**Last October, US real estate investment company Meritex Enterprises, owned by the McNeely family, was named family business of the year by Minnesota Business Magazine.**

While it is always thrilling to be honoured, the McNeely family’s success is even more remarkable because 30 years ago the family business, then known as Space Center Inc, was the subject of a bitter lawsuit that nearly destroyed the family and the business.

Perhaps the best way to understand the scope of their troubles is to consider a story from local newspaper St Paul Pioneer Press Dispatch at the time.

In the article, ‘Court orders liquidation for city warehouse firm’ the newspaper reported that a Ramsey County District Court judge had ruled that Space Center Inc should be placed in receivership and sold to “resolve a long, bitter dispute among members of a family who control the St Paul warehouse company.”

It went on to say that the children of founder Harry McNeely Sr, who died in 1968, had been fighting for control of the company as his sons Donald G McNeely and Harry McNeely Jr, who together owned a majority of the company’s stock, were being “sued by the minority shareholders, led by their own sisters.”

The newspaper continued that the sisters “argued in court that the brothers had frozen them out of the

company’s management and any significant share of the profits, and that the brothers were running the company for their own benefit.”

“Specifically, they claimed that the brothers had ‘avoided paying significant dividends, failed to disclose required information, and misused corporate assets for their own gain.’ None of the minority shareholders has served on the company’s board.”

It was a classic family business battle of minority shareholders against majority shareholders, but with a painful sub-plot of sibling rivalry. “It’s the old story of the (family) in the business and the (family) out of the business,” said a long-time acquaintance, who later became a board member. “The people in the business say to the outside family members, ‘Why are you giving us all this trouble? You’re just sitting there collecting dividends!’ The outsiders say, ‘Well, we’re family members too...’”

Harry McNeely Jr, the youngest of the four siblings, had tried hard to reconcile his sisters, Jean and Audrey, and older brother Donald. According to Harry Jr’s children, the real conflict was between Donald — who had de facto control of the company—and his sisters over family issues not fully understood by anyone.

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The business was simply the stage on which this family struggle was played out. Even during the court proceedings, Harry Jr continued to have dinner with his sisters, and kept trying to find a way to resolve the problem.

According to one of his daughters, it was a difficult period. “It was tough for Dad because he was trying to get everybody back at the table rather than (taking the dispute to) a courtroom,” she said. “It was hard because he is a real family man, and his family was having a terrible fight. This had been going on for years, in fact. The aunts would fly in from Europe and make waves, then leave. He tried to be the peacemaker.”

There are always as many sides to a family story as there are characters in the drama. Harry Sr had taken his two sons into the company as shareholders, but decided to make provisions for his two daughters in the form of a generous cash settlement, making them completely independent (with no financial or legal ties to the family business).

At the reading of Harry Sr’s will a few days after the funeral, his daughters Jean and Audrey, realising that they had been left out of his will as he had told them they would be, hired a law firm to contest the will and sue their mother and brothers for unduly influencing their father. Their mother, facing a lawsuit from her daughters, agreed to make each of them 10 per cent shareholders.

“The two sisters’ issue was that the minority shareholders had no representation on the board,” explained one of Harry Jr’s daughters. “As a result, the company never paid dividends; they had no access to liquidity, and were never a part of planning and decision-making. They wanted to know, ‘What is the company doing? Where is it going?’ but they were ignored.

“It came down to a difference between brothers. My father tried to address those issues, but Don would not entertain any of the sisters’ grievances. He wouldn’t talk about them, refused to deal with his sisters and considered them a pain. His attitude seemed to be that they had no rights and no ability to take any action against him.

“The family members simply had different needs. You have to listen and respect those needs in a business family, but that wasn’t happening with the siblings in my father’s family. And that is what led inevitably to the lawsuit. Emotions were heightened—and then, you know how Americans are: ‘hit that speed dial to the lawyer!’”

Before initiating the lawsuit, the sisters appealed to their uncle and Paul Frenzel, Harry Sr’s retired

former business partner and long-time minority shareholder to join them. As a result, the family ownership conflict became a very public courtroom drama.

It was a terrible period for Harry Jr and his children, who watched as their family legacy burned to ashes. “I was in my office – the case was being heard at the district court nearby – when one of my colleagues walked in and said, ‘You’re never going to believe what I just heard,’” recalled Harry Jr.

“I sat down and said, ‘Okay, tell me.’ And he said, ‘Your brother Don, on the witness stand, swore under oath that he didn’t have any sisters. And they were sitting in the courtroom in front of him.’”

That was in the first 10 minutes of the trial, and it didn’t get any better. Immediately following the court decision the two McNeely brothers, who served as CEO and vice president, developed a strategy to save the business by liquidating assets and transferring property to settle the judgment.

The company survived the bitter lawsuit but it had poisoned Donald’s thinking about family businesses. He later called a meeting of his and his brother’s children to declare that Space Center was no longer a family business and that none of the third generation would be involved. This decision is reported to have been made without consulting Harry Jr.

“When you think about the generational differences and goals (between the brothers), you could look back and say we should have just ended our relationship with him right then and there. But our family tie was too strong,” stated one of Harry Jr’s daughters.

However, both Donald and Harry Jr wanted to put the lawsuit behind them and return to business as usual as soon as possible.

Soon after the lawsuit concluded, Donald started a process that would split the family business with each of the two brothers having separate holdings. The goal was to divide Space Center into two businesses. In December 1989, Space Center held its last board meeting as a family company and approved a separation into two distinct business entities. Donald used the non-family management to divide the company’s assets into two companies which were equal as possible and asked Harry Jr to choose first.

The McNeely story contains many important lessons about the power of family leadership that is driven by a meaningful family vision that is both espoused and enacted. After the businesses were split, Harry Jr still believed that the McNeelys were a business

family and that working together could create greater economic value and stronger family connections. His vision was more than an espoused dream because it was supported by several interrelated behaviours that he acted upon.

First, he realised that recreating a family business after two break-ups required the full commitment of his children – and eventually their spouses and children. This was not easy after what the family had experienced, but Harry Jr always presented family participation as an option, not an obligation.

Second, the lawsuits had clearly taught him about the difficulties of thinking as individuals, as opposed to stewards working for the interests of all the stakeholders. He taught his children to think about the future for their children and that the measure of each generation's success was their children's success.

Third, he realised that he and his siblings did not know how family businesses worked, the importance of governance structures such as boards or critical skills such as communications.

All of these weaknesses combined to create conflicts that had eventually overwhelmed the family and business. He set as one of his goals developing his children's knowledge and potential talents for family ownership and leadership.

Fourth, and perhaps most important, he learnt the importance of being authentic. Business families are often good at coming up with great ideas and talking about the family business but less good at acting on the tough decisions and plans.

Harry Jr struggled like any other senior generation family member. Becoming the CEO-owner in his late 60s meant that from his first day in charge he was past his sell by date and had to work on succession. His children also admit that there were many times when they would throw up their hands in frustration because of delays or changes in his thinking.

These struggles only served to push Harry Jr to new ways of thinking and acting. He formed a board of directors with a majority of independent directors, he hired outside advisors to help coach his family, he allowed each of his children to serve as rotating board members to experience governance first hand and he began the practice of holding family meetings where all of his children were invited to discuss issues and share their perspectives.

He even managed the succession process that resulted in his son returning to the family business after many years as a bank executive and eventually being named CEO by the independent board of directors. In the end he never gave up on his vision

for McNeely family ownership and leadership of the business his parents had founded.

The concluding part of the McNeely story goes back to beginning and the vision of the founding generation. Harry Senior and his wife created the McNeely Family Foundation to benefit the local area; for example it provides grants for education, the environment, the arts and community betterment. The foundation also matches employees' gifts to their charitable organisations, and awards educational scholarships to their children, and sponsors fund-raising for catastrophic events such as the attack of 11 September 2001.

The senior McNeelys probably never intended that their act of philanthropy would develop into a vehicle to reunite the four family branches of their own family but under Harry Jr's leadership, that is exactly what happened.

"During Harry Jr's tenure as chair of the McNeely Foundation, he continued the involvement of Donald's family branch on the foundation board, along with two of his own children. He also added the only child of his sister, who was also the heir of his other sister who was childless," explained Harry's daughter Shannon.

"In effect, he had all the descendents of his generation represented within the foundation, all working together as his generation was never able to do. I think that he satisfied not only his desire to see the extended family sharing the legacy of the foundation, but also made amends for the transgressions of his generation and their inability to mend their differences peacefully during my grandmother's lifetime.

"I know that the family lawsuit, and even more the personal bitterness among some of her children, was a source of great sadness to my grandmother until the day she died.

Our regenerated unity of families and purposes—fuelled by a son's desire on a deeply personal level to set things right for his mother—is a symbolic statement to all McNeelys and the outside world that we have moved beyond our history," she said.

Business families, especially founders, often doubt the value of family business planning tools such as a shared vision for improving business performance and strengthening family harmony and question if it really works. The McNeely family story clearly demonstrates that it not only works, it wins awards.



*This article is based on an INSEAD case study 01/2009-5208 written by Professor Randel S. Carlock, Berghmans Lhoist Chaired Professor in Entrepreneurial Leadership, and Elizabeth Florent-Treacy, Research Project Manager, both at INSEAD. This article was first published in Campden Families in Business Magazine.*

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