5)

======== Start of Answer #5 (953 words) ========

1. D's Rights and Remedies

a. D's Rights

Duty of Care

Duty of care requires that direcectors act as a resaonable prudent persons under the circumstances.

Here, both J and S acted as reasonable prudent persons under the circumstances because their company, O, was cashed strapped and they did what reasonable business directors do in these situations, look for strategic alliances to turn thier case flow sitiuation around for the foreseeable future. Even though the company was growing, they were still short on cash. So mcuh so that couldn't afford to pay their CEO J, but instead had to issue her stock. But how long would it be before the inability to pay J trinkles down to other employees, and because they were growing, it's reasonable to expect that they possibly hired new lower level employs to help out in operations. So, J and S likely looked for opportunities to improve O's cash situation before they didn't have enough cash to pay other employees.

Further, the fact the expansion of O's operations was with the wife of one of the director's doesn't necessary mean it was reasonable or prudent. Many times in business transactions occur because of relationships. So, it is possible that J knew and had relationship with H's wife and that's how they were able to discuss the possibility of O expanding operations strategicaly with L-Co. And, so when L-Co offered a $1 million to a company that was struggling to pay its bills, it would seem like a reasonable to prudent thing to do to survive.

Lastly, all three did their due diligence because they engaged in negotiations first before any contracts were signed, and discussed the transaction amoing themselves before coming to the conclusion that it was a good idea. Therefore, they did not breach their duty of care.

Defense: Business Judgment Rule

But even if they were found to have breached their duty of care, J, S and H could raise the BJR as a defense. The BJR requires that all decisions made be 1) informed and 2) in good faith.

Here, the decision was informed because they all knew their current situation with O, that they were growing but cash strapped and they sought an opportunity to expand and bring in some case so they could stay afloat. The decision was made in good faith because, again, they were a growning company, growing "substantially, and if they could pay their CEO, how long would it be before they could pay other empolyees. So, by expanding their operations, and partnering with L-Co, they were able to bring in some cash to keep the company moving forward. Therefore, the BJR is met.

Duty of Loyalty

Directors owe a duty of loyalty, which means they have to act in the best interest of the corporation. Here, the duty of loyalty was not violated here, especially by J, because he though she was getting paid, she still recieved stock options which often times can be more valuable than cash and increases her ownership % in the company. But she was looking out for the best interest of the company bcause at the rate the company was growing, they needed some cash, and it may not have been the absolute best deal but it doesn't have to be as long as the deal was to help the company currently.

b. D's Remedies

D does not have any remedies available to to him because based on the above diescussion none of the director's fiduciaery duties were broken. If one had of been, the remedy of Recision might have available to undo the transactions.

Conclusion

Based on the above, D has no rights and remedies against J, S, and/or H as board of directors.

2. H's Possible Ethical Violations

Duty of Loyalty

A lawyer owes a duty of loyalty to his clients. So, it there's the possibility that his representation could be materially limited by potential conflicts, the L must get informed consent or withdraw. There are two types of conflicts: Potential and Actual.

Potential Conflict

Potential conflicts require that any time a situation arise that could potentially create a conflict with a client that the L inform the client and if they want to proceed get informed consent. Here, there was a potential conflcit because O was making a deal with H's wife's company and because it was H's wife there was the conflict that things would be done properly in the tarsnaction because as a director H likely had information such as the O's current cash flow situation woudl probaly be of some value his W's in doing their transaction. And, because H didn't inform the others and get their permission to proceed he's in violation. Therefore, potential conflict is in violation.

Actual Conflict

Actual conflict requires 1) directly adverse, or 2) situation that could materially limit L's representation. Here, there is an actual conflict because H owns Tco who merged with Lco after they aquired O and the transaction was not through his wife and this was done with informing the other directors or getting their informed written consent. Even if had the reasonable belief that he could do it to O's benefit he still needed to inform the client and the client make that decision, and giveb thrie consent in writing. Therefore, actual conflict is in violation.

Business Transactions

Buesiness transactions with a client require: 1) fair terms, 2) in writing, 3) advising client to seek independent counsel, and 4) informed written consent. Here, elements 2, 3, and 4 are not met. Therefore, business tarnsactions has been violated.

Conclusion

H has committed the ethical violations of breaching his duty of loyalty and engaging in emproper business transactions with a client.

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