IN THE IOWA DISTRICT COURT FOR CARROLL COUNTY

WILLIAM VAN HORN and JUNE LINDNER, **Plaintiffs,** **vs.** **R.H. VAN HORN FARMS, INC., et al.,** **Defendants.**	**CASE NO. LACV 39149** **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came on for trial before the court on December 5-8 and 12-13, 2016 as previously scheduled. The parties and their respective counsel of record were present and personally participated throughout trial. Upon consideration of the evidence and arguments offered at trial, the court makes the following findings and conclusions:

FINDINGS OF FACT

On December 13, 1976, the articles of incorporation for R.H. Van Horn Farms, Inc. (hereinafter "the corporation" or "the farm corporation") were filed with the offices of the Iowa Secretary of State. The corporation was formed by its namesake, Robert (R.H.) Van Horn, to convert his farming operation into a family farm corporation in order to avoid inheritance taxes. As R.H. testified repeatedly during trial, his objective in incorporating the farming operation was to ensure that it would stay in the family and allow the farm to be passed down from generation to generation. The immediate members of the Van Horn family were designated in the articles as directors: in addition to R.H. and his wife Phyllis, the four Van Horn children were designated as directors: William, John, June and Jane. In addition to designating the family members as directors, the articles designate two classes of stock: Class A (voting) and Class B (non-

voting); dividends were to be paid equally for each class of stock. The articles specified that stock ownership in the corporation was "restricted to R.H. Van Horn, his wife Phyllis Van Horn and their direct lineal descendants." At the time of the effective date for the corporation (January 1, 1997), stock ownership was as follows:

	Class A	Class B
R.H. Van Horn	260	102
Phyllis Van Horn	10	352
William Van Horn	50[1]	20
John Van Horn	10	20
June (Van Horn) Lindner	10	2
Jane Van Horn	10	-0-

The initial shareholders' and directors' meeting for the corporation was held on January 1, 1977. At the shareholders' meeting, it was unanimously decided to elect operation as a subchapter S corporation, and that "farm business be on cash basis of accounting and not on accrual basis." During the directors' meeting that took place following the shareholders' meeting, there was a discussion regarding the subchapter S election and the two classes of stock called for in the articles. Because a subchapter S corporation can only have one class of stock, the directors agreed "that all of the stock of the farm corporation shall be the same class of stock and that no matter whether stock states Class A or Class B it shall all be the same class even though their (sic) are differences in voting rights by different stock classifications and outside of voting differences all stock shall have the same rights and responsibilities and be the same class." The initial officers for the corporation were R.H. as president, John as vice-

[1] William testified that he received more shares at inception than the other children because of his financial contribution toward one of the parcels that was transferred to the corporation. There is a notation in the beginning balance sheet that references this transaction, but R.H. denied any such contribution by William in his trial testimony; he testified that William received more shares in the beginning because he was the oldest child.

president and Phyllis as secretary-treasurer. It was also decided at the initial directors' meeting that R.H. was authorized as president of the corporation to "negotiate terms of salary and conditions of employment with prospective employees…, to employ such individuals as shall be deemed necessary for operation of the corporation, to establish compensation rates and conditions of employment, and to enter into agreements therefor on behalf of the corporation as are appropriate under the circumstances." The directors also voted at this meeting to require that R.H. (as president and farm manager) live on the farm and to take his meals there "because of the responsibilities in connection with the livestock operation and the management in general which requires his presence on the farm."

The by-laws for the corporation were adopted and approved during the initial meetings on January 1, 1977 as well. The by-laws stated in pertinent part that each share of Class A stock would be entitled to one vote, while Class B shares would have no voting rights. In addition, the by-laws specified that the number of directors of the corporation shall be 3 or more, that no loans were to be contracted on behalf of the corporation unless authorized by or under the authority of a resolution of the board of directors, and that the by-laws could be revised or amended by a majority vote of the shareholders at any legally called shareholders' meeting.

When the corporation was initially formed, assets totaling $423,500 in value were transferred to its ownership, including 640 acres of land, livestock, grain and $30,000 in cash. During the first years of operation, R.H. was designated as the farm manager and the corporation relied primarily on hired labor or tenant farmers who farmed under a crop-share arrangement. During the early years, the corporate minutes reflect that both

R.H. and Phyllis transferred small amounts of non-voting shares in the corporation (consistent with the limit for gift tax liability) to the four children. The record-keeping of these transfers was spotty, with the transactions not always noted in the corporate minutes and the stock certificates transferred to the children not placed in their actual possession (they appear to have been initially kept in safe deposit boxes which may not have been initially accessible by the children). By 1986, according to a record maintained by John, the total stock ownership in the corporation (not differentiated by voting rights) was as follows: R.H.—168, Phyllis—138, William—172, June—114, John—132, Jane—112 and 10 shares to various grandchildren.

R.H. and Phyllis separated and ultimately entered in to a stipulation in their dissolution proceedings on December 15, 1986. That stipulation contains the following provision:

> The Petitioner, Phyllis Arlene Van Horn, is to receive her stock in R.H. Van Horn Farms, Inc. and the Respondent, Robert Howard Van Horn, is to receive all of his stock in R.H. Van Horn Farms, Inc. All of the stock of R.H. Van Horn Farms, Inc. is to be made voting on or prior to December 31, 1986.

R.H. testified at the present trial that he entered into this stipulation with no intention to perform on this part of it, as he refused to relinquish the voting majority he held at the time. It is undisputed that no formal corporate action took place after the stipulation was entered into to effectuate the transition of all stock to voting.[2] On April 20, 1988, R.H. and Phyllis entered into an amendment to their 1986 stipulation in which Phyllis agreed to transfer her stock in the corporation to her children or grandchildren,

[2] In a document authored by John entitled, "The History of Stock Transfers," (Exhibit 47), reference is made to a shareholders' meeting dated December 13, 1986 in which "all stock was changed to voting." The actual minutes of that meeting (Exhibit 10) are void of any reference to such action.

prior to March 15, 1991 (the final date for payment by R.H. on a revised property settlement). The amended stipulation makes no mention regarding the earlier language concerning voting rights in the corporation stock. While the dissolution proceeding between R.H. and Phyllis was pending and thereafter, Phyllis was replaced as secretary by John. All of the minutes of corporate meetings going forward were prepared by John.

As each of three oldest children (William, June and John) became adults, they left home to pursue postsecondary education: William and June at the United States Air Force Academy and John at the University of Oklahoma.[3] William and June have pursued careers in both the public and private sectors, and have not returned to Iowa except for family visits. John returned to Iowa in the fall of 1990 to resume farming in the area where he grew up. He began farming land owned by the corporation at this time, along with other local farmland, all on a 50/50 crop share arrangement; at some point after he returned to the area, he began living on the former "tenant house" on the farm. He acquired machinery from the prior tenant (who had died) with the help of a bank loan. By 1994, John was farming the majority of the corporation's land as a tenant; however, he found himself in financial straits due to poor yields and excessive debt. On January 20, 1995, John entered into an agreement with R.H. individually (and not with the corporation) which provided that R.H. would purchase John's machinery, grain, hay and cattle, the indebtedness would be secured by John's stock in both the farm corporation and a bank holding company owned by the family (Glidden First National Holding Company[4]), and the understanding that John would be paid a salary from R.H.[5] No

[3] The youngest child, Jane, went to live with her mother when her parents separated while she was still a minor. Her 164 shares in the corporation were sold back as part of a settlement between Jane, R.H. and the bank holding company in 1996, and eventually cancelled in 1997.
[4] This holding company owned all of the shares of First Bank & Trust in Glidden.

repayment schedule was set forth in this agreement, only that John could repurchase the machinery and one-half of the cattle once they were fully depreciated, assuming he met certain goals for the operation of the farm, including having a "good attitude." This agreement was entered into on the same day as the annual shareholders' and directors' meeting; nothing was discussed regarding the agreement from a reading of the minutes from those minutes. Regardless of the particulars, it is clear that John began working as a full-time employee of the corporation at or about the time of his agreement with R.H., and at about this time took over the job of farm manager from R.H.

At the annual shareholders' meeting on February 20, 1996, each shareholder was allowed to vote their shares (whether authorized as voting or not) on the contested issue of who would be a director. As far as the court can tell from the record before it, this is the only reference in the corporate minutes to this being done (all prior votes being essentially non-contested).[6] This meeting concluded with a motion by Jane (seconded by June) that "no dividends be paid by the Farm Corporation until all outstanding debts are paid;" this motion was approved by an unspecified vote. At the ensuing directors' meeting, it was reported that the corporation owed just under $1.12 million to R.H. by virtue of several loans extended between 1983 and September of 1995, and that this amount "is to be repaid to him after other outstanding debts are paid, but before any dividends."[7]

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[5] The exact source of the funds use to finance this agreement is unclear. While the agreement does not reference the corporation, various loan schedules for the corporation indicate that as of the time of the agreement the corporation had loaned John a total of $235,000 and it received a credit against that balance in the amount of just under $150,000 based on the value of the equipment transferred by John.

[6] The only other reference to all of the corporation's shares having voting rights can be found in the annual reports of the bank holding company for years 2000 through 2002 (Exhibit 49), which shows each family member owning 25% of the "voting common stock."

[7] At the directors' meeting the previous year (on January 20, 1995), the minutes include a similar report, except that the total owed to R.H. at that time was just under $1 million. The 1995 minutes also conclude

At the shareholders' meeting held on January 16, 1998, it was noted that as a result of a variety of transfers and cancellations of stock previously held by R.H., each shareholder owned an equal number of shares in the corporation (170). At the directors' meeting held later that day, a report was made regarding "several land transactions" that were "in the works." The directors agreed to the purchase of one of the parcels in question, along with blanket approval to the officers (R.H. as president and treasurer, and John as vice president and treasurer) "to negotiate for the purchase of the above mentioned pieces or any other land that may come up for acquisition, and to arrange appropriate financing for their purchase." Between 1998 and 2008, seven additional farms or parcels were acquired by the corporation; some were purchased with borrowed funds, most were paid for in cash and the rest through a combination of loans and cash (Exhibit 45).

Typically, William and June were kept apprised regarding the operation of the farm corporation through a combination of the transmittal of financial and tax documents at the end of the tax year, and information supplied after the fact during shareholders' and directors' meetings. On January 4, 2000, John sent William and June a variety of tax forms for both the farm corporation and the bank holding company, along with a detailed transmittal letter which included the following observations regarding the corporation's income and expenses:

> [The income statement] is also a rather inaccurate document produced primarily to fill out the tax returns. Since the Farm Corp is on a cash basis we can manipulate revenues and expenses from year to year to produce what income we desire. Second, while the Farm Revenues are fairly accurate, many of the expenses are what I would

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with the same proviso as the 1996 minutes; namely, that R.H. was to be repaid before any dividends were to be paid.

> consider non-farm expenses, including nearly all household expenses that Dad & Sally[8] have including all utilities, house repairs, and even house cleaning. In addition, major renovations at both Dad's and my house are either directly expensed or capitalized and expensed as depreciation over the next several years. While these assorted expenses may or may not be legitimate expenses for tax purposes, they are not direct farm production expenses, and thus greatly distort the reported income. This does not bother me, as long as you guys do not take the income statement too seriously. Using some new tools at my disposal, I am going to attempt to keep much better track of the assorted cost and profit centers in the farming operation (such as corn, soybeans and cattle), to have a better idea how we're doing.
>
> We have pretty much finished the new Trophy Room at Dad's place, at a cost of around $165,000, paid for by the Farm Corporation. So while we do send a lot of money on things like farmland and equipment, we also spend money on other things too. Just keep that in mind if you hear too many complaints about how much we're spending.

The letter also clarified the financial relationship between the bank holding corporation (in which both R.H. and the three oldest children continue to have ownership stakes) and the farm corporation: the bank would pay a "large dividend" to the holding company, which would in turn make a "sizable distribution" to R.H. and the children; this distribution would be used to pay taxes and inject capital into the farm corporation to make debt payments, with the balance (estimated by John to be approximately $10,000 per shareholder) available for personal use.[9] An additional distribution would be made each quarter toward estimated taxes.

[8] R.H., married his second wife, Marcella (Sally) in September of 1987.

[9] Between January of 1999 and September of 2001, William and June were credited with shareholder contributions to the corporation in the amount of $300,811.58 and $287,613, respectively. John had received the same distribution in January of 1999 as William and June ($159,400), but had used $117,678.73 to reduce his loan balance with the corporation rather than provide operating capital. Ultimately, when William and June objected in late 2002, John made an accounting entry converting the transaction from a loan repayment to a shareholder contribution.

In July of 2000, R.H. and Sally separated; the resulting dissolution trial took place in January of 2001, with a decree being entered in March of that year. Among the contested issues at trial were the value of the loans owed by the corporation to R.H. and two life estates that Sally had received from the corporation in 1988 and 1993.[10] As to the loans, R.H. claimed he was owed only $301,100 (a figure that is consistent with a register maintained by John in Exhibit 40), but the court found R.H.'s figures to not be credible, instead relying on the minutes from the February 20, 1996 shareholders' meeting which put the figure at $1,119,993; adjusting for additional loans and repayments in the interim prior to trial, the judge placed the value of the loans to R.H. at $1,033,930. Sally was awarded one-half of this marital asset ($516,965). As to the life estates, the court determined that they were not subject to division as a marital asset, but Sally was entitled to the income generated from them; beyond that, the court determined that the life estates were "a subject of negotiation between Sally and the farm corporation."

Up to this point, there appears to have no meaningful disagreement among the family members regarding the operation of the farm corporation; R.H. and John were involved in the day-to-day operation of the farm (with R.H. retaining control over the corporation checkbook), with William and June being kept informed as outlined above (typically after the fact at directors' meetings and through the transmittal of financial and tax documents). Conflict within the family began to emerge by the summer of 2001 related to the financial stability of the bank in Glidden. In a letter to William and June dated July 4, 2001, John reports that while things are going "generally good on the farm,"

[10] It appears that the first life estate was authorized by the corporation at the directors' meeting held on December 9, 1989. The court could find no record of any corporate action regarding the second life estate within the present record.

the bank had encountered "some very bad problems" related to some very large losses from bad loans. Both federal and state examiners were involved in investigating the bank's operations, and John had taken on more day-to-day responsibilities to placate their demands. John also reported to William and June that R.H. had marshalled all of the stock in the bank holding company (due to him being named along with each of the children) to use as security for an appeal bond from his dissolution trial, and that R.H. had become "somewhat irate" when confronted about this by John. Ultimately, John leaned toward the option of selling the bank in an effort to extricate the family from the issues raised by the bank examiners and allow R.H. to retire; John also made the following comment regarding the impact of the sale of the bank:

> We will not have our personal incomes inaccurately inflated each year by the Bank's income. We will have ample money to pay off all the farm debt (why pay interest), continue to support Dad in the appeals process, if necessary help him to pay off Sally; and if necessary pay off Sally for the Life Estates. We will still have a lot of money left over for the important things in life….

William, June and John met in the summer of 2001 in Dallas to discuss the issues related to the bank. It was decided among the three children (who held a total of 93.9% of the voting stock, each in equal shares of 31.3%) that the bank holding company would no longer make distributions or transfers to the farm corporation; this was described by William in his trial testimony as an "ultimatum" from the bank examiners. R.H. was very upset by this development, to the point that he reversed a reimbursement from the holding company to John's personal account for expenses related to the Dallas trip (without authorization from John) and reduced John's contribution to the farm corporation instead. Ultimately, at a subsequent shareholders' meeting of the bank

holding company, William and June (who collectively held 62.6% of the stock) voted in favor of selling the bank; John abstained from the vote to avoid further repercussions from R.H.

These simmering tensions were still present when the family gathered on January 12, 2002 for the annual meetings of the farm corporation. For the first time since 1994, the minutes from the shareholders' meeting reflected not just the total shares held by each family member, but differentiated between voting and non-voting; while each family member held the same total number of shares (170), R.H. retained voting control with 170 of the 308 voting shares. The minutes went out of their way to reflect that this distinction had been in place since the corporation's formation in 1977, and that a subchapter S corporation can differentiate between voting rights in the single class of stock allowed for such an entity. At the subsequent directors' meeting held on January 12, a discussion was initiated by William and June to have the corporation pay an obligation owed by John to Phyllis which went back to the disposition of Phyllis' stock following the dissolution of her marriage to R.H. This proposal was opposed by both R.H. and John; the minutes reflect that "[d]uring discussion of this issue, the meeting collapsed into total disarray and broke up" without a formal motion to adjourn. John and June testified that R.H. walked out of the meeting during this discussion; R.H. could not recall the particulars. Although not reflected in the minutes, it appears that a distribution in the amount of $66,000 ($22,000 to each of the children) was authorized to allow for interest payments to be made to Phyllis.

On December 17, 2002, a shareholders' meeting of the corporation was held via conference call, with William and June calling in and John and Russ Wunschel appearing

as proxy for R.H. As had been done in the prior meeting, voting and non-voting shares were delineated in the minutes (although each family member was shown to have six less shares of voting stock than what had been reported at the 2002 meeting (284 total, with R.H. having 164).[11] William and June objected to the roll call of shares, because they believed that all shares were voting. A motion was made during this meeting to amend the by-laws to change the minimum number of directors from 3 to 2. The motion passed, based on the total number of voting shares cast by John and on behalf of R.H. The number of directors were formally set at two, with R.H. and John elected as directors.

William tried to introduce several action items during the meeting, which was complicated because of the telephone connection. At John's request, William sent a detailed list of these items (Exhibit 16[12]), which included the following: 1) the discovery of John's use of a portion of his 2001 bank holding company distribution to pay down his debt to the corporation rather than show it as a contribution, with a request that William and June be paid back for their "unmatched capital infusions" of $217,668.73 each; 2) his objection to R.H.'s debt to the farm corporation being reported in 1995 at almost $1 million, as a misrepresentation orchestrated by R.H. to keep the net value of his holdings artificially low while he was involved in litigation with Jane; and 3) a clarification of the prior year's minutes to reflect that R.H. "stomped out" of the meeting in disagreement

[11] It is unclear where this discrepancy originated, as the 2003 minutes indicate that its totals are the same as reflected in the 2002 minutes; the earlier minutes have handwritten notations that adjust the voting stock totals as ultimately reported in 2003. However, the "History of Stock Transfers" (Exhibit 47) indicate no stock transfers were undertaken after 1998. A listing of stock holdings as of March 25, 2015 (Exhibit 56) reflects that each family member held 170 shares before an adjustment in February of 2015 which resulted in Jane receiving 9 shares from R.H., June and John (3 shares from each). The discrepancy appears to have been rectified through a correction of several years' minutes made during the 2006 shareholders' meeting (Exhibit G4).

[12] From the format of this exhibit, it appears that William was working off a transcript of a recording of the meeting; the minutes do reflect that John advised everyone in attendance that he was recording the meeting.

over using corporation funds to pay back money owed to Phyllis, with no action being taken on the motion to do so.

About a month later, John sent an email to the corporation's CPA to discuss the possible conversion of the bank holding company from a subchapter S to a subchapter S corporation. In the email, John made the following statements:

> On a related issue, we are contemplating changing our Family Farm Corporation from Subchapter S (which it has been since 1977) for the sole purpose of totally taking my Brother and Sister out of the loop—we have already removed them from the Board of Directors. We have the votes to do this. The Farm Corporation is basically not profitable, and I don't foresee paying any distributions in the foreseeable future.

In his letter transmitting financial and tax documents to William and June dated February 21, 2003, John made note of the reinstatement of his receivable to the corporation in the amount of $117,678.73 as requested by William and June earlier; the letter concludes with the following sarcastic jab:

> I do realize that reporting this loss [the pass-through loss from the farm corporation] on your personal Income Taxes may cause you undo (sic) hardships, such as not allowing your children to receive certain scholarships because you don't make enough money, or rom having the increased stress of figuring out what to do with your tax refunds. I apologize for this and will continue to work diligently in the future to make this business more profitable in order to elevate such problems in the future.

On February 24, 2003, William and June advised R.H. and John by a letter sent via registered mail that it was their intention "to seek a final determination of the stock ownership of the Bank Holding Company and dissolve the R.H. Van Horn Farms, Inc. and partition the remaining farm assets." On December 15, 2003, a shareholders' meeting of the corporation was held; only R.H. and John attended. The minutes of that

meeting reflect only the delineation of voting and non-voting shares and that the directors would continue to be set at two (again, R.H. and John). A special meeting of the corporation (presumably a directors' meeting) was held on February 23, 2004, for the sole purpose of approving the sale of Van Horn Insurance Agency by R.H. to the corporation for the total price of $150,000, with the effective date of the purchase being made retroactive to January 1, 2004.

A shareholders' meeting was held on December 14, 2004. R.H. and John appeared in person; William and June were allowed to participate by telephone. John reported regarding the farm's operations during the meeting (typically in the past, this had been done during directors' meetings); this report included loans made by R.H. during the previous year totaling $200,000 and the overall impression that "the Farm Corporation is expected to about break-even for tax purposes for the year." A motion was made to increase the number of directors from two to four, which was approved; William and June were then added to the board. In his letter of February 9, 2005 transmitting tax and financial documents to William and June, John summarized the significant financial transactions for the previous year and advised that they would "most likely receive substantial tax refunds" based on the corporation's performance and making estimated payments based on the prior year's income.[13] John advised his siblings that they should "[e]xpect income from both the Holding Company and Farm Corporation to be significantly higher in 2005."

In 2004, R.H. had instituted a federal court action to block the sale of the bank holding company, claiming that he had sole ownership of the shares in that entity. The

[13] Maintaining the sarcastic tone from his 2003 letter, John inserted the following comment regarding the anticipated tax refunds, "I expect that you will find this to be objectionable as well."

issues raised in the lawsuit were referred to arbitration; in the arbitrator's decision dated August 21, 2005, David Blair determined that the primary basis for R.H.'s position ("long form" minutes of the holding company which purport to provide R.H. with unfettered discretion regarding ownership and transfer of shares) were "violative of the by-laws, ineffective without resolution and vote, of dubious origins, and wholly beyond the ability of the directors to promulgate" and that each child owns 38,500 of the 123,000 outstanding shares (31.3%) in the bank holding company. This award was confirmed by Judge Mark Bennett on October 20, 2005, in a detailed ruling finding the dispute to be "reminiscent of the family fracas depicted in Shakespeare's King Lear." The sale of the bank closed in September of 2006, which each child receiving $2,117,500 and R.H. receiving $412,500 (Exhibit S23).

A shareholders' meeting was held on December 15, 2005; only the children participated (William and June by phone, John acting on his own behalf and as proxy for R.H.). The minutes from that meeting once again list out voting and non-voting shares and the objection to that depiction by William and June. The same directors were retained for the coming year; William inquired as to when a directors' meeting would be held (the last such meeting was in 2002) and specifically requested that such a meeting be held in March of 2006.

On December 1, 2006, John made separate but identical written offers to purchase William and June's shares in the corporation for $100,000 each. The offers were contingent on the selling party not bringing any legal action against either John or R.H. arising out of their involvement on behalf of the corporation, or directly against the corporation. The offer expressly stated that it was "not subject to negotiation." Neither

William nor June responded to the offer, and it expired on its own terms on December 14, 2006.

The next directors' meeting was not held until January 5, 2007; however, in the shareholders' meeting held that date just prior, the number of directors was again reduced from four to two, with R.H. and John being elected as those directors.[14] During the 2007 shareholders' meeting, a motion was made by John to change the tax status of the corporation from subchapter S to subchapter C. The justification for the motion was stated in the minutes as follows:

> John Van Horn pointed out that the Farm Corporation had substantial debt of around $1.5 million. He stated that while the Farm Corporation would likely show income in the future, such income would be low, and it would take a very long time to pay off the debt. He further stated that no distributions would be made until the debt was paid off. In a subchapter S corporation, the shareholders have to pay taxes on their proportionate share of any income, regardless of any distributions made. John Van Horn stated that he felt that he would rather not subject the shareholders to any undue financial hardship by having to pay taxes without cash distributions to make those tax payments, thus the need to change the tax status.

The motion failed, as all shares were required to be voted on this issue (resulting in a 340-340 vote, with R.H. and John in favor, and William and June against).

During this meeting, it was brought up that John had recently purchased the two life estates previously granted to Sally, and that John had sold those life estates back to the corporation.[15] John also informed William and June that his loans to the corporation

[14]A motion was also passed at this meeting to require all shareholders to attend in person (either the shareholder or by proxy).

[15] The actual agreement reached between John and Sally (dated June 22, 2006) also included the release of any and all claims for spousal support Sally otherwise may have had as a result of the dissolution decree entered in 2001 (including any future claims to modify that award); of the total consideration for the agreement of $550,000, it appears that the present value of the two life estates was placed at $290,000 (Exhibit L9). The funds for this agreement came from the imminent sale of John's bank stock. John took a

totaled $840,000,[16] and that he was receiving annual interest payments at the rate of 6%.[17] William questioned the validity of these loans, as they had been taken out without notification to the other shareholders or directors, as well as the "conflict of interest" created by John selling an asset to the corporation.[18]

The directors' meeting held on January 5, 2007 appears to have taken up only one substantive item (beyond the approval of the minutes from the last meeting in 2002 and the retention of R.H. and John as officers); it was agreed that the corporation would pay for the supplemental health insurance premiums for R.H. and his wife (Mary) as well as reimburse John and his wife for their health insurance. The minutes specifically note that

> Robert Van Horn does many things for the Farm Corporation, including checking and helping at calving, handling payment of bills and other financial matters, and doing regular chores and maintenance. He does not receive a salary for these duties.

These minutes also lay out in considerable detail the "significant events" that had occurred since the last directors' meeting. Under the category, "Debt and Financial

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note from the corporation in this amount when he sold the life estates back to it in July of 2006; he also took a personal note from R.H. in the same amount in October for the repayment of that portion of the agreement dealing with the released alimony claims; this note bears no interest and is not payable until R.H.'s death (Exhibit 78). It is unclear from the minutes whether the alimony portion of the agreement was discussed at the shareholders' meeting.

[16] Of this amount, $450,000 was to pay off debts of the corporation held by Farm Credit, $290,000 were for the aforementioned life estates and $100,000 were for "general expenses." Exhibit 42.

[17] The minutes of the shareholders' meeting do not discuss any other repayment terms of the loans made by John to the corporation. However, the minutes of the directors' meeting held later that day (at which William and June were not present because they were no longer directors) states that these loans did not provide for a "fixed payment schedule."

[18] William was allowed to provide supplemental statements that were incorporated into the minutes from this meeting. It appears from the way William's statements are worded that he was recalling what was said at the meeting. John responded in his own supplemental statement which addressed the issue of the purchase and resale of the life estates and his loans to the corporation; this statement reads more like new information that may not have been shared at the meeting. Regardless, John relied on the legitimate nature of the loans (the purchase of machinery, facilities and other assets and general operations), the fact that R.H. had previously loaned the corporation large sums of money (and that the officers were authorized to do so) and that the interest rate had been the subject of discussions between himself and R.H. and were at a fair rate. Regarding the life estates, John stated that his dealings with Sally were completely separate from his role with the corporation

Transactions," the loans by John were detailed, as well as the transaction pertaining to the life estates. It was also noted that R.H. was still owed $439,000 by the corporation for loans he had made over the years (the number shown in the loan register maintained for the corporation by John [Exhibit 40] is $464,000). Finally, it was noted that in October of 2005, the corporation had sold the insurance agency purchased from R.H. in 2004 to two employees of the agency for $100,000; the value of the asset had been written down at the time of the sale to the employees, resulting in no gain or loss. It was reported that R.H. was still owed $155,000 from the corporation associated with the purchase of the agency and the corporation was still owed $33,000 from the sale to the employees.[19]

On May 13, 2010, John renewed his offer to purchase William and June's shares in the corporation for $100,000 each, with an effective date of January 1, 2010 (with John being responsible any interim losses or income). In the letter that accompanied the renewed offer (and which transmitted the corporation's 2009 financial statements), John summarized the status of the corporation: it experienced a net loss of $56,508.57 in 2009, several significant capital purchases were made or contemplated for 2010, the debt owed to him was now up to more than $1,400,000, with $472,000 elsewhere ($372,000 to R.H. alone), and that it was "[his] hope that we will be seeing some profits on paper in the future, but it is an uphill battle." He summarized the situation as follows:

> The bottom line is even should the Farm Corporation show a profit, outstanding debts, including what is owed to me, will need to be paid before there are any distributions to stockholders. Due to the high debt load and low profits, I do not expect that there will be any such distributions for a very long time.

[19] R.H.'s tax returns appear to have erroneously shown the installment income from his sale of the agency to the corporation coming directly from the agency. That contract appears to have been paid off sometime in 2013. Exhibit 134, p. VH00695.

John concluded his letter by referencing his renewed offer to purchase William and June's shares:

> This offer gains me nothing financially, and actually costs money I could use elsewhere. However, I am willing to do this for the peace of mind of having you out of the picture. I dislike having to live under the constant threat of you folks filing further lawsuits against me. You gain a significant immediate windfall where otherwise you receive nothing….

Between April 14, 2011 and November 13, 2013, the parties entered into a series of tolling agreements, whereby it was agreed that any applicable limitations period would be suspended in order to facilitate settlement discussions and a hoped-for resolution. The parties exchanged settlement offers between April and July of 2013. The significant portions of William and June's initial proposal was that 1) new stock be issued for the corporation, with all four family members receiving an equal amount of voting stock; 2) any contemplated legal action be postponed until at least 9 months after R.H.'s death; 3) R.H. be paid a monthly salary of $5,000 (with other compensation, including John's wages as an employee, to be set annually by the board); 4) life estates be extended to R.H. and Mary in the house where they resided; 5) the board to be expanded to four members, with each shareholder allowed to elect one director, and that there be quarterly board meetings; 6) all material financial transactions were to be approved by the board; 7) the corporation would "pay dividends annually sufficient to pay income taxes related to income passed through to the shareholders by the Farm Corporation;" and 8) that all parties' attorney fees be paid by the corporation.

This demand was rejected as "one-sided,…unworkable or not advisable;" a counter-proposal was extended which provided in pertinent part as follows: 1) R.H.'s

stock be placed in an irrevocable trust, to be received by John upon R.H.'s death; 2) upon R.H.'s death, updated appraisals[20] be obtained for the corporation's assets and shares, all at the cost of the corporation; 3) William and June's shares would be redeemed for cash, payable within one year of receipt of the updated appraisals; 4) until the death of R.H., the corporation be allowed "to continue to function as it has in the past," with no litigation at any time; and 5) distributions paid to cover taxes incurred as a result of any pass-through income. These and similar efforts at negotiation failed to make progress, and William filed his petition in LACV 39149 on November 27, 2013; June followed suit in EQCV 39487 on December 2, 2015.[21]

The record is less than clear as to how many meetings of either the directors or shareholders were held subsequent to January 5, 2007. Included within the record are minutes of directors' meetings held on December 15, 2011 (which reference a prior meeting of December 15, 2010) and February 27, 2016 (which reference a prior meeting on February 21, 2015), as well as minutes of shareholders' meetings held on February 22, 2014 (which reference a prior meeting on December 15, 2012), July 17, 2014 (which reference special meetings held February 28, 2013 and either January or February 4, 2014) and February 27, 2016 (which reference a meeting held on February 21, 2015).[22] From the available minutes, the following highlights can be gleaned: 1) John agreed at the December 15, 2011 meeting to reduce the interest rate on the loans owed to him by the corporation from 6% to 3%; 2) there was a lengthy discussion during the February 22,

[20] Appraisals had previously been commissioned from Vander Werff & Associates, Inc. (land and chattels) and BCC Advisers (shares). Those appraisals yielded the following results: the land owned by the corporation was valued in the aggregate at $12,760,000 (as of March 1, 2012), the chattels were valued at $993,000 (as of February 27, 2012) and the shares were valued at $10,970 per share (voting) and $10,641 per share (non-voting), as of December 31, 2011.

[21] The cases were ultimately consolidated for trial by agreement of the parties.

[22] There is also a notice of a shareholders' meeting scheduled for December 15, 2007; the court was unable to locate any corresponding minutes from that meeting.

2014 meeting regarding the lawsuit commenced by William, which prompted unsuccessful motions by William and June to fire John as farm operator after the 2014 crop year, obtain an outside audit of the corporation financial records and to spend no money on inputs for the 2015 crop year without William and June's permission[23]; 3) motions were approved at the July 17, 2014 meeting to provide the directors with income statements (beginning with 2013) using the accrual method of accounting, while retaining the cash basis for the corporation's tax returns, and to allow Mary to live in her home rent-free should R.H. predecease her;[24] 4) a motion passed at the February 27, 2016 shareholders' meeting amending the by-laws to allow a director to have at least five shares of voting stock (down from the earlier limit of ten), which would allow Jane to become eligible to be a director; 5) a motion brought by William and June at this same meeting to make all stock in the corporation voting failed; and 6) a distribution of $60 per share was approved at the February 27, 2016 directors' meeting to cover the taxes resulting from a capital gain which came about following the sale of Exxon stock owned by the corporation to generate cash to pay legal fees.[25]

The financial statements for the corporation from 2002 through 2015[26] show the following net income figures:

2002 ($158,736.32)

[23] William and June were successful in passing a motion to set the number of directors at four; R.H. voted in favor of the motion, due to his belief that adding William and June to the board "would provide the impetus for William Van Horn to drop his lawsuit."

[24] There was also discussion at this meeting regarding legal fees, setting the interest rate for loans owed to shareholders by the corporation to track with CD rates, revisiting the notion of using an outside auditor and farming the land owned by the corporation on a cash rent basis. No formal action was proposed on any of these issues.

[25] This motion passed 3 to 2; R.H. voted against the distribution because the corporation was experiencing large operating losses caused in part by the legal fees associated with the present litigation, while William voted against the motion as he felt the distribution was not large enough. R.H., John and Jane expressed their intention not to accept the distribution, but instead donate it back to the corporation as a shareholder contribution.

[26] The information for 2015 comes from the corporation's tax return for that year (Exhibit 107).

2003	No information available
2004	($ 2,884.23)
2005	$ 16,299.59
2006	$ 2,240.39
2007	($ 82,317.53)
2008	($135,320.09)
2009	($ 56,508.57)
2010	$ 23,363.45
2011	($108,917.08)
2012	$227,986.76
2013	$ 41,242.96
2014	($ 40,722.23)
2015	($ 29,262.62)

Of the expenses taken that resulted in these net income figures, depreciation would have been included as follows:

2002	$116,901.23
2003	No information available
2004	$135,729.44
2005	$115,035.55
2006	$ 93,634.53
2007	$112,228.87
2008	$119,293.78
2009	$149,030.34
2010	$172,632.87
2011	$188,772.36
2012	$191,274.15
2013	$184,050.15
2014	$144,127.90
2015	$121,223.18

Once the corporation approved the use of the accrual method for financial statements, adjusted financials for the years 2013 through 2015 show the following net income figures: $268,609.33, ($4,926.06) and $135,367.03, respectively. The cash balances (as of June 30) for the corporation from 2008 through 2015 were as follows: $41,597.45, $48,659.37, $84,878.59, $81,030.37, $213,960.50. $270.791.10, $136,994.70 and $49,758.89, respectively. The corporation received a significant crop insurance recovery in 2013 ($275,000), which John testified was the primary reason the corporation

showed a profit for that year. In addition to the distribution paid in 2016 (as noted above), the corporation also paid distributions in 2012 and 2013; John testified that these distributions were approximately $50,000 in total for 2012 and approximately $3,000 to $4,000 per shareholder for 2013.

In addition to the parties, the court received testimony from three expert witnesses: Mark Gannon and David Hove for the plaintiffs, and Telford (Ted) Lodden for the defendants.[27] Gannon is a real estate consultant and appraiser who was retained to analyze the corporation's production and financial records from 2002 through 2014; from that review, he was of the opinion that the corporation was not operating the farm in an efficient, profitable manner. Specifically, he felt that the crop yields lagged behind other operations in the county with comparable CSR (corn suitability ratings) and that it would have more efficient to cash rent the farmland.[28] Based on Gannon's calculations, the corporation would have yielded $4.1 million over these years on a cash rent basis (with no responsibility for inputs or equipment), as compared to $3.2 million actual total net farm income for those years.

Hove is a certified public accountant who specializes in tax accounting and consulting. Based on his review of a variety of documents, he was of the opinion that the use of the cash method of accounting for the corporation's financial statements did not measure its "true economic income" as compared to the accrual method, because of what

[27] The defendants also called Dr. Mitch Hiscocks, a local veterinarian, who testified generally regarding the cattle operation of the corporation. Although he was not designated as an expert by the defendants, the court considers his testimony to be of an expert nature, as defined in Iowa Rule of Evidence 5.702. He testified generally that the cattle operation was well-run and that both R.H. were involved.

[28] A cash rent arrangement differs from the crop-share arrangement used previously by the corporation (prior to John becoming an employee) in terms of the financial commitment of the landowner. In a cash rent arrangement, the landowner assumes no responsibility for the implementation and cost of inputs and merely receives the agreed-to rent each year. On the other hand, a crop-share arrangement obligates the landowner to make decisions regarding inputs and contribute the agreed-to percentage toward those costs, while the tenant takes on the responsibility for all labor; the resulting profit is then divided accordingly.

he described as a "mismatching of expenses and income." He was also critical of the use of the cash method as inconsistent with generally accepted accounting principles (GAAP). He was also critical of including the corporation's deductions over the years for depreciation of the homes on the farm where R.H. and John live, as well as the remodeling of those residences (including the remodeling of a "trophy room" in R.H.'s home used to display big game trophies) and a variety of personal expenses of both R.H. and John (including rent-free homes, utilities, house repairs, housekeeping, health insurance and potentially legal fees). He was of the opinion that these expenses were non-deductible by the corporation and could be deemed a distribution to R.H. and John, jeopardizing the subchapter S status of the corporation. Hove was also critical of the debt load accumulated by the corporation over the years, most of it held by either R.H. or John. From his review, he felt that the corporation had sufficient cash and liquid assets to cover the cost of inputs without borrowing from shareholders. He also felt that, even with the debt taken on by the corporation, there were sufficient cash reserves to allow for distributions to the shareholders every year. He also shared Gannon's concerns that the farm had been mismanaged to the detriment of outside shareholders (William and June) because of the lost profit maximization from operating on a cash rent basis.[29] He felt that a receiver should be appointed to oversee the operation of the farm on a more efficient, profitable manner.

Hove also analyzed the tax impact on the dissolution of the corporation; he estimated that the liquidation resulting from a dissolution would result in significant capital gain, with the estimated taxes due each shareholder to be $812,936 (with a total

[29] Hove was particularly critical of the sale of the corporation's Exxon stock in 2016 to generate cash for legal fees; he felt this decision was not warranted due to the significant capital gain that resulted and the existence of sufficient cash reserves to pay these fees.

tax liability of $3,252,745). As an alternative to dissolution and liquidation, Hove was of the opinion that the farm operation could be divided pursuant to §355 of the Internal Revenue Code; this would result in the creation of a new subsidiary of the corporation which would be owned by the plaintiffs; they would exchange their stock in the corporation for shares in the new enterprise. As proposed by Hove, the operation could be divided in a way that R.H. and John could continue to live in their current residences and continue to maintain the cattle operation. This would be a tax-free transaction, "[a]s long as the two corporations were continued to be operated to meet the continuity of business requirement" of §355. As Hove testified, this requirement would require William and June, as the owners of the new subsidiary, to be actively involved in the business; he was of the opinion that a crop-share arrangement would satisfy this requirement. He acknowledged that if the §355 split-off were disallowed because of issues with continuity of business, the transaction would be treated as a liquidation and taxed as outlined above.

Lodden is also a certified public accountant who specializes in forensic accounting and valuations, and who has represented a number of farm corporations (30 to 40 by his estimate) over his 41-year career. He was also asked to review a number of documents to determine whether "there were any unusual practices," whether the corporation's status under subchapter S was jeopardized as a result, whether the loans to R.H. and John were reasonable and to respond to the suggested remedy of a §355 spin-off. He found the bookkeeping records of the corporation to be typical for this type of operation, as well as "clean, well-organized, explained and documented." He had no criticism of the use of the cash method of accounting for the corporation's financial

statements, and noted that all but one of his farm clients uses the cash method; he felt that it was easier for laypeople to understand and afforded these clients a better opportunity to minimize taxes. He also saw no need for a family farm operation to generate financial statements consistent with GAAP, either through the use of the accrual method or otherwise. He noted that the only difference between the cash and accrual statements for 2013-2015 "was simply timing of the transactions" shown as income and expenses.

Lodden was also not critical of those operational decisions of R.H. and John that resulted in less profit, such as putting land into the Conservation Reserve Program (CRP) and continuing to raise cattle; in Lodden's experience, this operation was similar to other family farm corporations he has represented, in that the founder (in this case, R.H.) was not motivated by profit maximization, but rather "enjoyment of life," proper stewardship of the land and keeping the farm in the family after his death. Lodden also focused on the cyclical nature of farming, in that a cash rent arrangement will not always be profitable and rents will likely begin to decline as lower commodity prices and high input costs continue. He also noted that Gannon's analysis of increased profit from cash renting did not take into account the value of acquired assets and carried crops resulting from the current style of operation.

Lodden was not critical of the loans to the corporation from R.H. and John. He has found such loans to be typical of such enterprises, and found the loans in question to be reasonable as both related to legitimate business expenses and necessary in spite of the corporation's cash balances. His review of the financial statements allowed him to come to the conclusion that the cash balances shown on June 30 of each year would be needed to fund the ongoing operation through harvest. He was not critical of a lack of

amortization of these loans (primarily John's) as such flexibility is common within family businesses, and would not have been possible with the corporation's cash flow. He concluded that the interest rates on John's loans were competitive with what was available from financial institutions, and that it was "a good business move" to obtain financing for equipment and other assets at a lower rate of interest.

Lodden was of the opinion that certain expenses that the corporation had been paying for R.H. and John should have been included as income to them on a W-2 each year, but that such payments would probably not jeopardize the subchapter S status of the corporation; he has never seen this happen in his career.[30] He felt the benefits paid to R.H. and John were appropriate in amount and were earned by both men through their involvement in the operation of the farm. He concluded from his on-site visits to the farm that neither home being maintained for R.H. and John was "fancy," and the remodeling of each residence would not be considered extravagant or lavish. He was not critical of the sale of Exxon stock, as oil stocks had been performing poorly at the time. He saw no need for the appointment of a receiver to manage the farm operation.

Lodden was highly skeptical of the §355 spin-off proposed by Hove as an "extremely difficult" manner of dividing the farm on a tax-free basis. This, like Hove's testimony, focused on the continuity of business requirement which mandates the new owners make operational decisions and not delegate such decisions to a tenant. As a result, Lodden was of the opinion that the use of a cash rent arrangement in any new subsidiary created in a §355 spin-off would be a "deal-breaker" resulting in the

[30] Apparently as the result of Lodden's involvement in this case, both R.H. and John now have included in their W-2s from the corporation an amount attributed to the benefits they receive in rent-free housing. Amended W-2s have been filed for tax years 2011 through 2015 showing additional income to John of $7,200 per year and to R.H. of $6,000 per year. Their anticipated W-2s for 2016 will show similar additional income.

transaction being set aside by the Internal Revenue Service and ultimately taxed as a liquidation. He was also skeptical of the use of a crop-share arrangement by the new subsidiary, but testified that it might suffice if other indicia of continuity were established.

Both R.H. and John testified that cash renting the farmland was inconsistent with the expectations for the farm operation when the corporation was formed in 1977. R.H. testified that maximizing profit was never his goal, as he was more focused on being a good steward of the land and involving the family in the operation; John echoed those sentiments as well. John remains actively involved in all aspects of the farm operation, both on a day-to-day basis as employee and farm manager, but also in his capacity as a corporate officer and director. R.H. remains involved in certain aspects of the farm operation, most notably the cattle operation (especially during calving), and maintains the corporate checkbook as the corporate treasurer; he has been the corporate president since inception and remains, according to John, "the ultimate decision-maker." John currently receives an annual salary of $50,000 (it was increased in 2000 from $30,000, primarily at June's insistence) from the corporation, along with the aforementioned rent-free housing, medical insurance and the use of a vehicle. Both R.H. and John were of the opinion that if a remedy were forthcoming from this litigation, they would prefer liquidation over the §355 spin-off; John was skeptical that the proposed division would be fair in terms of the quality of land allocated to the defendants and whether the cattle operation could be maintained, and both men testified that there would not be enough land retained by the corporation to continue farming. R.H. testified that the business decisions made over the years were geared to grow the farming operation in terms of land and equipment; he was

of the opinion that the corporation would need at least 1,000 acres of farmland to go forward.

CONCLUSIONS OF LAW

The plaintiffs seek two judicial determinations following trial: 1) that all of the shares in the corporation are voting; and 2) that the defendants engaged in conduct that was oppressive to the plaintiffs' position of minority shareholders in the corporation, necessitating one or more appropriate remedies, including judicial dissolution of the corporation, the appointment of a receiver and the §355 spin-off suggested by their experts.

Voting rights. The plaintiffs argue that all shares in the corporation should be deemed voting, for the following reasons: 1) all shares were voted in meetings prior to 2002; 2) the stipulation reached in R.H.'s first dissolution action; and 3) the references to the shares being voting in the annual reports of the bank holding company to the Federal Reserve.[31] For the reasons noted below, the court disagrees with the plaintiffs and concludes that the distinction between voting and non-voting shares as reflected in the corporate minutes and other documents shall stand.

First, the plaintiff's contention that there was a "decades-long practice of treating all shares as [voting]" is simply not borne out by the record. There is no delineation between voting and non-voting stock until the shareholders minutes of January 26, 1994 (the shares are improperly labelled in those minutes as "preferred" and "common"); furthermore, there appear to have been no contested votes of the corporation until

[31] The plaintiffs also rely on the aforementioned "History of Stock Transfers" (Exhibit 47) referencing a shareholder meeting in 1986 in which all shares were changed to voting. As mentioned earlier, there is no record of such action being taken at this meeting; accordingly, the court places no weight on this exhibit for purposes of the issue of voting rights.

December of 2002, with no actual vote totals listed in any of the minutes. As a result, there is no way to tell whose shares were actually voted; it is true that all shares were voted during the February 20, 1996 shareholders' meeting on various issues; this singular event falls far short of a "decades-long practice," however.

Regarding the 1985 stipulation reached between R.H. and Phyllis in their dissolution action, the court accepts John's explanation that the language regarding the change of all shares to voting contained therein was taken out when that stipulation was amended in 1988. It should be remembered that the original stipulation contemplated that R.H. and Phyllis would each retain their respective shares in the corporation, while the amended stipulation required Phyllis to transfer her shares back to her children and grandchildren. It is logical that the language regarding the change from non-voting to voting would be included in a stipulation wherein Phyllis would retain her shares; it is equally logical that there is no need for such a provision once that scenario was altered in the 1988 amendment.

Even if that portion of the original stipulation between R.H. and Phyllis regarding voting rights were to be deemed to have survived the 1988 amendment, it is undisputed that no formal corporate action was ever taken to effectuate it. The stipulation standing alone is insufficient to make the change in voting rights sought by the plaintiffs; under the statutory scheme for business corporations in effect at the time the stipulation was executed, such a change would have required an amendment to the articles of incorporation, see Iowa Code §496A.55(7) (1985); it appears undisputed that the statutory procedure for such an amendment was ever attempted, let alone completed. See

id. at §496A.56.[32] This lack of corporate action also resolves the plaintiffs' claim that the statements in the annual reports to the Federal Reserve regarding all shares being voting should somehow be given sufficient weight to justify their requested declaratory relief. If the as of yet unspoken premise of plaintiffs' argument is that the defendants are somehow equitably estopped from denying that all shares are now voting by virtue of the actions relied upon, despite the lack of corporate formalities, that argument must fail as well; the plaintiffs have failed to identify how or in what manner they detrimentally relied upon these actions. Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 163, 180 (2006) (elements of equitable estoppel). The plaintiffs' request for a declaration that all shares of the corporation are voting is denied.

Shareholder oppression claim. The plaintiffs seek the judicial dissolution of the corporation pursuant to Iowa Code §490.1430, which provides for such a remedy if "[t]he directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent." Iowa Code §490.1430(1)(b)(2) (2017). There is no claim of illegal or fraudulent conduct, so the sole basis for the plaintiff's action is one of claimed oppression by the defendants of the plaintiffs' position as minority shareholders. The standard for establishing such oppression is whether the actions of the defendants have frustrated the reasonable expectations of the minority shareholders. Baur v. Baur Farms, Inc., 832 N.W.2d 663, 674 (Iowa 2013) (Baur II). The obligation to not act toward minority shareholders in a manner that would otherwise be oppressive is linked to the fiduciary duty owed by corporate directors and majority shareholders to both the company and the other shareholders. Id. at 673-74 (citation

[32] The defendants' position that Iowa Code §490.732(1)(d) and (2)(a)(1)(2) are somehow applicable to resolve this issue is rejected, as these provisions were not adopted as part of the current business corporation statute until 2002.

omitted). "The fiduciary duty also mandates that controlling directors and majority shareholders conduct themselves in a manner that is not oppressive to minority shareholders." Id. at 674; see also Balvik v. Sylvester, 411 N.W.2d 383, 387 (N.D. 1987) ("Because of the predicament in which minority shareholders in a close corporation are placed by a 'freeze out' situation, courts have analyzed alleged 'oppressive' conduct by those in control in terms of 'fiduciary duties' owed by the majority shareholders to the minority and the 'reasonable expectations' held by the minority shareholders in committing their capital and labor to the particular enterprise"). Minority shareholders' expectations must, however, be balanced against the corporation's ability to exercise its business judgment and run its business efficiently. Muellenberg v. Bikon Corp., 143 N.J. 168, 179, 669 A.,2d 1382, 1387 (1996).

The court in Baur II did not "catalogue…all the categories of conduct and circumstances that will constitute oppression frustrating the reasonable expectations of minority shareholders' interests." 832 N.W.2d at 674. A case cited by the Iowa Supreme Court in Baur II, Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (1973), provides some guidance in this area:

> Thus, an abuse of corporate position for private gain at the expense of the stockholders is oppressive conduct. Or the plundering of a close corporation by the siphoning off of profits by excessive salaries or bonus payments and the operation of the business for the sole benefit of the majority of the stockholders, to the detriment of the minority stockholders, would constitute such oppressive conduct as to authorize a dissolution of the corporation….

Id. at 629, 507 A.2d at 394 (internal quotation marks and citation omitted). As applied to the facts and circumstances of Baur II, the court concluded in that decision that "majority shareholders act oppressively when, having the corporate financial resources to do so,

they fail to satisfy the reasonable expectations of a minority shareholder by paying no return on shareholder equity while declining the minority shareholder's repeated offers to sell shares for fair value." 832 N.W.2d at 674.[33]

The timing and manner in which the minority shareholders obtained their interest is relevant in determining their reasonable expectations. An early New York case which addressed the reasonable expectations standard for oppression discussed it in terms of what the known expectations were at the time the minority shareholders entered the enterprise in question:

> A court considering a petition alleging oppressive conduct must investigate what the majority shareholders knew, or should have known, to be the petitioner's expectations in entering the particular enterprise. Majority conduct should not be deemed oppressive simply because the petitioner's subjective hopes and desires in joining the venture are not fulfilled. Disappointment alone should not necessarily be equated with oppression.
>
> Rather, oppression should be deemed to arise only when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture.

In re Matter of Kemp & Beatley, Inc., 64 N.Y.2d 63, 73, 473 N.E.2d 1173, 1179 (1984) (cited in Baur II, 832 N.W.2d at 671)); see also Baker, 264 Or. at 630, 507 P.2d at 394 ("[L]iquidation is not available upon a showing of mere vague apprehensions of possible future mischief or injury or to extricate minority stockholders from an investment that turns out to be a bad bargain"). Likewise, whether an interest in a corporation was

[33] Baur II makes it clear that at least in the abstract, "every shareholder may reasonably expect to share proportionally in a corporation's gains…[and] [w]hen this reasonable expectation is frustrated, a shareholder-oppression claim may arise." Id. at 673 (citations omitted).

acquired as the result of a gift is an appropriate consideration in gauging the reasonable expectations of the minority shareholder:

> Additionally, someone who buys a minority interest in a closely held corporation has made a business decision to take a minority position. Whereas a minority shareholder who receives shares by gift or inheritance does not make a similar business or investment decision, and may have different expectations.

Baur v. Baur Farms, Inc., 2010 WL 447063 *9 (Iowa Ct.App., Case No. 09-0480, filed February 10, 2010) (Baur I), rev'd and remanded on other grounds in Baur II, 832 N.W.2d at 677 (internal citation omitted).

A leading commentator on shareholder oppression has noted that a strict application of the "time of investment" model announced in Kemp and referenced in Baur I fails to account for close corporation shareholders who have made no investment in the company, such as stockholders who receive their shares as gifts or inheritances and may lead to a conclusion that no specific reasonable expectations exist at all. Moll, Shareholder Oppression & Reasonable Expectations: Of Change, Gifts, and Inheritances in Close Corporation Disputes, 86 Minn.L.Rev. 717, 720 (2002).[34] Ultimately, the author concludes that the non-investing stockholder "should be treated equivalently to stockholders who actually contribute their own capital to the venture" by being allowed to prove any specific reasonable expectation; such an expectation would require proof "that a majority shareholder and a particular minority shareholder reached a mutual understanding about an entitlement the minority is to receive in return for its investment in the business." Id. at 778, 789.

[34] "Specific" reasonable expectations are defined in this article as "refer[ring] to these 'extra' components of the close corporation shareholder's investment return—'extra' to the extent that they are in addition to the stockholder's entitlement to a proportionate share of the company's earnings." Id. at 766.

Whether the majority or controlling shareholders have engaged in oppressive conduct is a fact intensive inquiry requiring an examination of the objectively reasonable expectations of the complaining shareholder and the actions of the defendants measured in terms of their fiduciary duties and in light of the totality of the circumstances. Cochran v. L.V.R. & R.C., Inc., 2005 WL 2217067 *5 (Tenn.Ct.App., Case No. M2004-01382-COA-R3-CV, filed Sept. 12, 2005). Whether certain acts constitute oppressive conduct is generally a question of law for the court. Baur I, 2010 WL 447063 at *10.

In analyzing the alleged acts of oppression, the court agrees with the defendants that only those acts that occurred within the applicable limitation period (five years prior to the execution of the first tolling agreement, or after April 14, 2006). The court is not convinced that the "continuing wrong" doctrine should apply to the facts and circumstances of this case, allowing for acts outside the limitations period to be considered. See Hegg v. Hawkeye Tri-County REC, 512 N.W.2d 558, 559 (Iowa 1994) ("[W]here the wrongful act is continuous or repeated, so that separate and successive actions for damages arise, the statute of limitations runs as to these latter actions at the date of their accrual, not from the date of the first wrong in the series"). Rather, the alleged instances of oppressive conduct should be considered as separate and distinct acts which could have been challenged when they occurred, thus rendering the doctrine inapplicable. See Roemmich v. Eagle Eye Dev., L.L.C., 526 F.3d 343, 350 (8th Cir. 2007) (cited with approval in Baur I, 2010 WL 447063 at *7) ("Some of the acts about which John complains…were discrete acts that could have been challenged by a plaintiff when they occurred").[35]

[35] The court is mindful that the Iowa Court of Appeals in Baur I ultimately reversed the trial court's entry of summary judgment on the issue of the applicable statute of limitations because the defendant's insistence

Although the alleged acts of oppression will be viewed only from and after April 14, 2006, the issue of the plaintiff's reasonable expectations requires an examination of the facts and circumstances prior to that date. Specifically, the plaintiffs contend that their expectations "changed" following the contributions made on their behalf to the corporation from 1999-2001 with funds they received as distributions from the bank holding company. On this record, it is frankly unclear what the plaintiffs' prior expectations had been; there is no evidence that there was any agreement between then and the defendants on a particular entitlement at any point in time prior to these contributions were made; thus, there is no evidence of any specific expectations beyond receipt of a proportionate share of the corporation's profits.

To the degree that the change in expectations means that the plaintiffs expected regular distributions as a consequence of their contributions, such an expectation must be measured by the clear policy formulated by the corporation at its February 20, 1996 meeting that "no dividends be paid by the Farm Corporation until all outstanding debts are paid;" the record is undisputed that this has remained the policy of the corporation up to the present time. See In re Matter of Smith, 154 A.D.2d 537, 539, 546 N.Y.S.2d 382, 384 (1989) (failure to declare dividends did not constitute oppression in absence of policy of declaring same). Accordingly, the issue of alleged oppression should be addressed in terms of whether the ongoing indebtedness incurred by the corporation over the years (again, within the applicable limitations period) was improvidently approved not for legitimate business purposes, but rather for "the siphoning off of profits by excessive salaries or bonus payments and the operation of the business for the sole benefit of the

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on a minority discount for the plaintiff's shares could be considered a continuing wrong. Id. at *8. Unlike Baur I, however, this court has a fully developed record and is in a position to conclude that the defendants' acts herein are discrete acts and not merely evidence of a continuing wrong.

majority of the stockholders, to the detriment of the minority stockholders" which is indicative of oppressive conduct. Baker, 264 Or. at 629, 507 P.2d at 394; see also Muellenberg, 143 N.J. at 180, 669 A.2d at 1388 ("Ordinarily, oppression by shareholders is clearly shown when they have awarded themselves excessive compensation, furnished inadequate dividends, or misapplied and wasted corporate funds").

It is clear that the vast majority of the debt taken out by the corporation since 2006 was extended by John; his first loan to the corporation was in June of 2006 and he was owed $1,624,500 by December 31, 2010; that principal balance remains the same (Exhibit 42). R.H. extended additional loans to the corporation totaling $125,000 after 2006; however, his loan balance has been consistently reduced and stood at $69,371.44 by December 11, 2014 (down from $491,000.53 in June of 2006) (Exhibit 40). Plaintiffs take fault with a number of transactions that were either the subject of some of these loans or represent a claimed unwarranted drain on the corporation's cash flow: 1) a $203,000 loan from John in December of 2010 for the remodeling of the house in which he and his family lives on the farm; 2) John's purchase of Sally's' life estates in 2006 and the subsequent sale of those estates back to the corporation for $290,000 (the amount paid to Sally); 3) the payment by the corporation of housing and living expenses of both R.H. and John; and 4) the acquisitions of new or updated equipment and facilities for the farm, when simply operating under a cash rent arrangement would have been more efficient and profitable.

On the whole, the court is not convinced that the expenditures of the corporation from and after April of 2006 are indicative of the defendants' desire to improperly siphon off corporate income to their benefit to the detriment of the plaintiffs. The court accepts

the testimony of the defendants and Lodden that the remodeling of John's house (undeniably a corporate asset) was necessary and by no means extravagant. Likewise, the purchase of the life estates back from Sally (through John) allowed for a merger of title and effectuated the resolution of the "corporate obligation" identified in the decree of dissolution between R.H. and Sally.[36] As to the payment of certain expenses for R.H. and John, it must be remembered that they are involved in the day-to-day operations and management of the corporation; at the time that entity was created, R.H. (as president) was authorized to negotiate appropriate terms of employment. To the degree that these arrangements have not always satisfied the requirements of the tax code (the omission of a reasonable rent and other living expenses on R.H. and John's W-2s, for example), appropriate remedial measures have been implemented. As with the issue of the remodeling expenses, the court finds no basis to conclude that either R.H. or John have positioned themselves to lead an extravagant lifestyle at the expense of the plaintiffs.

Finally, the court rejects the notion that the farm operation should have been converted to being run on a cash rent basis as a means to run a more lean business that would have been better able to pay distributions more frequently. In this regard, it must be remembered that the reasonable expectations of the plaintiffs in this regard must be measured or balanced against the desire of the defendants (most notably R.H.) to run the corporation in a manner that is consistent with their own business judgment. That judgment has always been exercised with a desire to have the family actively involved in the day-to-day operation of the farm, with the ultimate goal being growth of the operation and improvement of the quality of the land and facilities over mere maximization of

[36] There appears to be no objection to the calculation of the present value of Sally's life estates which resulted in the $290,000 purchase price.

profit. Operating under a cash rent arrangement flies in the face of that intent. The defendants' steadfast refusal to entertain such an arrangement cannot be considered oppressive under the totality of the circumstances.[37]

The court readily acknowledges that the plaintiffs have a reasonable expectation regarding distributions as a way to proportionately share in the profits of the corporation; the holding of Baur II makes this point non-debatable. However, the mere existence of that expectation does not exist in a vacuum; it must be considered along with the legitimate goals of the defendants as the persons tasked with the day-to-day operations of the corporation's farming activities. Taking the record as a whole, the court cannot conclude that the actions of the defendants have frustrated the plaintiffs' reasonable expectations: the corporation has turned a profit in only a handful of years and has paid distributions in the two most profitable years, and the plaintiffs have failed to prove that the defendants have diverted corporate resources away from possible distributions in order to improperly benefit themselves. As a result, the plaintiffs' claims arising from any alleged oppression of their interests as minority shareholders of the corporation must fail. This obviates the need to address any of the plaintiffs' proposed remedies.

IT IS THEREFORE ORDERED that the claims of the plaintiffs are dismissed with prejudice, and that the costs of these proceedings are assessed 50% to plaintiff William Van Horn and 50% to plaintiff June Lindner.

[37] The plaintiffs' objections to the corporation's use of the cash method of accounting for financial statements are equally unpersuasive on the issue of oppression. Not only does the court find Lodden's testimony regarding the prevalence of the cash method among similar enterprises persuasive, it must be remembered that the use of this method was memorialized in the minutes of the first shareholders' meeting in 1977. The court finds nothing sinister in the ongoing use of the cash method for both tax returns and financial statements, and likewise gives such evidence no weight on the issue of claimed oppression.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
LACV039149	WILLIAM VAN HORN V. R.H. VAN HORN FARMS ETAL J(HUPPERT)

So Ordered

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa