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Valuing Minority Interests in Closely-Held Farming Operations – The "Reasonable Expectations" Theory

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Overview

Minority shareholders in a small, close-held farming corporation are in a precarious position. They have no control over management of the corporation and, for example, can't force dividends to be paid or force a corporate liquidation. The majority shareholders owe the minority certain fiduciary duties such as acting in good faith, but the majority also has the right to operate the corporation as they see fit under the "business judgment rule."[1]

Under the facts of a recent case decided by the Iowa Supreme Court,[2] a minority shareholder who wanted the corporation to buy-out his interest, never invoked a 1984 buy-out provision *that was adopted at his request*, but demanded that his interest be bought out at a price he deemed acceptable. The majority shareholders attempted to negotiate with the minority shareholder in good faith, but the parties couldn't agree on the "process" for valuing the shares that the minority shareholder could agree to before he sued for "oppression." While the minority shareholder never established that the majority breached any fiduciary duties with respect to the shareholder, and the corporation was operated in an efficient manner that dramatically increased its value (and, hence, the value of the minority shareholder's stock interest), the minority shareholder claimed that the majority undervalued his interest by taking into account a minority interest discount and never paying him a dividend. That, the minority shareholder claimed, constituted oppression, and he sued seeking an order that either the corporation be dissolved or that his shares be bought-out at fair market value.

Facts of the Case

Under the facts of the case, two brothers formed a farm corporation in 1966. The purpose of forming the corporation was to keep the land in the family and to facilitate succession of the farming operation to family members interested in farming. Only one of the brothers had a son who wanted to farm, so that brother's estate plan was drafted such that the son would receive majority control of the business. That son became the defendant (along with the corporation) in this case. The other brother initially owned 48.49 percent of the corporation and his interest ultimately passed (or was gifted) to his two sons, one of which was the plaintiff in this case who received a 26.29 percent interest. Ultimately, majority control passed to the on-farm heir upon the death of the founding brother that had majority control. Eventually, the plaintiff's nephew took over as farm manager in 2005.

The minority shareholder was a member of the corporate Board of Directors when the original corporate bylaws were adopted. Under those bylaws, the corporation had the right to buy back shares for $100 per share. In 1984, the bylaws were amended at the minority shareholder's request (the minority shareholder was a member of the corporate Board of Directors at the time) and required a shareholder wanting to sell shares to first offer them to the corporation or the other shareholders, with the price of the shares to be pegged at book value as of the close of the fiscal year unless the parties agreed on a different price. The amended bylaw established the book value at $686 per share.

> **Note:** A corporation's book value can be the corporation's shareholders' equity. It can also be the market value of the corporate stock. An asset's initial book value is its acquisition cost or cash value.

Shortly after his parents died (in 1989 and 1990), the minority shareholder began demanding that either the corporation or the defendant buy his stock.[3]

> **Note:** At no time did the minority shareholder follow the 1984 amended bylaws (which were amended at his request) by offering his shares to the corporation or other shareholders for acquisition at book value. As a member of the Board of Directors, he was aware of the restrictions on sale of his stock and testified at trial that he believed the restrictions were reasonable.[4]

Negotiations concerning a buy-out of the minority shareholder's stock occurred on two occasions. In 1992, the corporation offered to buy the minority shares for $261,464 which included a 21 percent discount from the book value of the shares to reflect the minority shareholder's 26 percent interest in the corporation. The minority shareholder did not specify an acceptable price for his interest until 1996 when he said that $600,000 would be acceptable. But, negotiations stalled when a letter from the plaintiff's attorney indicated to the corporation (and the defendant) that negotiations were over. Later, in August of 2007, the defendant (majority shareholder) asked the plaintiff what price he would accept for his stock. In response, the plaintiff replied that a price of $1,825,000 would be acceptable The defendant and corporation replied that they would respond by December 1. However, the plaintiff sued in early October on the grounds that the majority had breached their fiduciary duties owed to him and had oppressed him.[5] He sought either dissolution of the corporation or payment of his interest in the corporation plus damages. He alleged that he was removed as an officer by the defendant,[6] that he had no control or minimal involvement in the corporation's day-to-day functioning, that he had never been issued payment for dividends[7] and never saw a return on his ownership interest. Basically, he alleged that his cousin's conduct was designed to "freeze out a minority shareholder." He further argued that his cousin breached fiduciary duties by engaging in corporate waste when he took a salary (even though he was not full time), using a corporate vehicle, buying corporate meals and expanding the board of directors to increase his own authority.[8] At its core, however, the minority shareholder simply disagreed with the decision of the majority to acquire more farmland and build a cattle shed because it would diminish the capital the corporation had available to buy him out.[9]

The corporation sought dismissal of the claims. The minority shareholder acknowledged that he had no right to force dissolution or a buy-out of his interest. He also acknowledged that he had not complied with the 1984 buy-out provision and that the defendant and the corporation had dealt with him *in good faith* on the two occasions he made a demand for his stock interest to be bought-out.

The buy-out value, the majority shareholder pointed out, necessarily included a discount to reflect the minority interest and a discount to reflect the tax the corporation would incur upon liquidation.

> **Note:** While the plaintiff argued that his interest shouldn't be subject to a discount to reflect its minority interest, he refused to buy-out the majority shareholder at its

undiscounted value.

In addition, the corporation argued that the lawsuit on the other claims was not filed within the five-year statute of limitations. The trial court agreed that the suit had not been filed in a timely manner, and dismissed the case.

On appeal, the court noted that a corporation may be judicially dissolved if a shareholder establishes that a director is acting in a manner that is illegal, oppressive, and fraudulent. The court went on to define oppressive conduct as a violation of fiduciary duties owed by a majority shareholder to the minority shareholders that violates the "reasonable expectations" of the minority shareholders *when they have committed capital and labor to the enterprise*- essentially a freeze out. But, under the facts of this case, the minority shareholder received his interest in the corporation by gift and inheritance. He never committed capital to the corporation and only worked on the farm for a short time before going to law school and becoming a lawyer.

> **Note:** The minority shareholder was admitted to practice in 1966, the year that the corporation in this case was formed. He practiced law for a brief period of time, and later formed his own company which he sold upon his retirement in 2004.

In Iowa, oppressive conduct has traditionally been shown through a total waste or depletion of corporate assets, or perhaps, payment of salary or dividends "grossly out of proportion to the profits of the corporation." An attempt to "freeze out" a minority shareholder consists of repeated efforts to "hold the minority shareholder hostage" by taking away their ready access to sell their stock in the marketplace. Ultimately, the appellate court reversed the trial court on the basis that the evidence showed that the minority shareholder proposed a specific price for buyout of his shares several times[10] and that a minority interest discount was not appropriate via Iowa Code §490.1301(4)(c). Indeed, the court reasoned that discounting stock to reflect a minority interest could, in itself, constitute oppressive conduct.

As for the five-year statute of limitations, the court reasoned that the attempt to negotiate a price for the shares that included a valuation discount could be found to constitute a continuing wrong such that the statute was never tolled.

> **Note:** The appellate court reached this conclusion in spite of the fact that negotiations only occurred on two isolated occasions. There were no continual negotiations over any sustained length of time.

Ultimately, the appellate court sent the case back to the trial court to determine the extent of the on-farm heir's "oppressive conduct."

Procedural matters. At the second go-around at the trial court, the corporation filed for summary judgment, but it was denied on the basis that the trial court's initial decision and the appellate court's decision indicated that factual questions remained on the issue of whether the majority shareholder breached fiduciary duties. The trial court ultimately determined, however, that the minority shareholder had completely failed to present any evidence that the majority shareholder or the corporation had breached any fiduciary duties or acted in an oppressive manner. The trial court dismissed the case.

However, the minority shareholder filed a procedural motion claiming that the court didn't make factual findings "concerning the basis of the petition."[11] In other words, the minority shareholder disagreed with the trial court's findings and wanted them to "do it over" and find that the corporation and the majority shareholder had engaged in oppressive conduct by not paying dividends and asserting that his minority interest should be discounted. He wanted the trial court to give specific reasons why there was no oppression, rather than simply issue a two-sentence calendar entry granting the defendant's motion to dismiss and entering judgment for the defendant. The trial court denied the motion, and the minority shareholder appealed. The corporation moved for dismissal on the basis that the minority shareholder was merely challenging the trial court's decision to grant the corporation a judgment as a matter of law and he was not entitled to a "do-over" by making the court tell him why oppression had not occurred rather than simply ruling that he had failed to prove its existence. However, the Iowa Supreme Court granted de novo review.

The Iowa Supreme Court – Jurisdictional Issue

The Court asserted that it had subject matter jurisdiction over the matter because it construed the minority shareholder's motion that the trial court explain why the corporation's failure to pay dividends and let the minority shareholder participate in decision making was not oppressive conduct as a motion that fell within Iowa Rule of Appellate Procedure 1.904(2).

> **Note:** Neither the corporation nor the majority shareholder ever made any claim that the issue involved the Court's subject matter jurisdiction. Instead, the issue actually involved jurisdiction of the appeal, which the Court dismissed.

The Court also determined that the trial court's oral explanation of the lack of the plaintiff's evidence on the oppression issue constituted findings of fact to which Rule 1.904(1) applied.

Rule 1.904(2) allows a motion to be filed seeking findings and conclusions of the trial court to be enlarged or amended and the judgment or decree to be modified. It's a motion that is available in non-jury trials like occurred in this case, and applies only to factual issues (just like Rule 1.904(1)).

Importantly, the trial court granted judgment for the corporation *at the close of the minority shareholder's case* because the minority shareholder failed to present any evidence of oppressive conduct. The case was never submitted for a ruling. Rule 1.904(1) (and, consequently, Rule 1.904(2)) only applies when a court rules on the merits of a case after trial. That didn't happen in this case, and the procedural rules the plaintiff cited should have been determined inapplicable.

> **Note:** The Court cited *Batliner v. Sallee*[12] for its reasoning on the jurisdictional issue. However, that case involved the defendant *choosing* not to present evidence and then moving to dismiss the case. Ultimately, that case was submitted for a final ruling on the merits. The procedural posture of *Batliner* is completely different than the present case where the trial court clearly granted the defendant's motion at the conclusion of the plaintiff's case due to a complete failure of the plaintiff's evidence on the oppression issue.

The Merits

On the merits, the Court noted that the minority shareholder's claim was that the corporation be dissolved or that his shares be bought-out at fair market value. The Court referenced Iowa Code §490.1430, and noted that under subsection (2)(b) a corporation can be dissolved if the controlling shareholders act in a manner that is illegal, oppressive or fraudulent. There was no claim that illegal or fraudulent conduct had occurred, so the matter turned on whether the controlling shareholders had acted in an oppressive manner towards the minority shareholder. The Court noted that the interpretation of "oppression" was a matter of first impression. The Court noted that courts in other jurisdictions have given the term an expansive definition that is generally subsumed under the overall fiduciary duties that the majority shareholders owe the minority, and can include the reasonable expectations of the minority.[13] The court cited numerous *non-farm corporation cases* for the notion that minority shareholders could have a reasonable expectation of a *return on equity*.

The court also noted that transfer price restriction agreements could amount to oppressive conduct, again focusing on the notion that a minority shareholder is entitled to a "fair return on their investment." While the Court noted that Iowa law[14] allows corporate documents to establish transfer price restrictions, such restrictions must not be "manifestly unreasonable." Again, the Court focused on the notion that a minority shareholder should receive "fair value," referencing Iowa Code §490.1434(1). The Court read that statute to mean that "every shareholder may reasonably expect to share proportionally in a corporation's gains," and that when that "reasonable expectation is frustrated, a shareholder-oppression claim may arise."

The Court characterized its holding as the adoption of a "reasonable expectations standard" for the adjudication of minority shareholder claims of oppression in Iowa. In essence, the Court wrapped this standard into the overall fiduciary duties that controlling shareholders owe minority shareholders. Reasonable expectations of minority shareholders, according to the Court, include a *return on equity* and payment of "fair market value" for their interest in the corporation upon a buy-out.

> **Note:** There are two sources to a shareholder's equity in a corporation. One source is the money that was originally invested in the company coupled with any additional investments that are made at a later date. Another source is derived from retained earnings that the corporation accumulates over time. Under the facts of the case, the minority shareholder *never invested anything in the corporation*, so the sole source of his equity was as a result of the investment of *others* and corporate retained earnings which were the result of the efforts of *others* in profitably running the farming business.[15]

The Court did not enforce the 1984 buy-out provision that was adopted at the plaintiff's insistence and with which he did not comply. The Court cited an Iowa Court of Appeals decision from 1988 as the basis for not enforcing the provision.[16] However, in that case, the court only refused to enforce the bylaw provision to the extent that the court determined that the parties had waived an appraisal that was required when the parties couldn't agree on valuation of the stock. Importantly, the court in that case approved the trial court's valuation of the stock in accordance with book value as adjusted for fair market value. *The court did not depart from the bylaw provision.* That is a completely different outcome than what the Court took in the present case where the Court refused to uphold the bylaw provision where the minority shareholder simply ignored it.

> **Note:** The Court simply assumed, without support, that the corporation would not be able to calculate book value in order to effectuate a buyout under the 1984 bylaw provision that was amended at his request. Again, the minority shareholder never properly invoked the bylaw provision. He simply demanded to be bought out at a price he would accept irrespective of the buy-out's impact on the corporation.[17]

Ultimately, the Court determined that the record was insufficient to determine whether the price that the corporation offered for the minority shareholder's shares was low enough, when combined with no "return on investment" (as the Court characterized it) to constitute oppression. Thus, because the trial court dismissed the case before the corporation presented evidence as to the "fair market value" of the minority shareholder's interest, the trial court didn't make the necessary factual findings. As a result, the Court reversed the trial court's dismissal of the case and remanded the case. The trial court was instructed to apply the "reasonable expectations" standard to the minority shareholder's oppression claim.

The "Reasonable Expectations" Standard – Implications

The Court's ignoring of a contractual bylaw that established a procedure for buying a shareholder's stock (that was adopted when the minority shareholder was a member of the Board of Directors) and utilization of a policy-based "reasonable expectations" standard for evaluating the presence of oppression with respect to valuation of minority interests in closely-held corporations raises numerous questions.

The trial court clearly believed that no oppression had occurred. After all, what are the reasonable expectations of a minority shareholder in a small, closely-held farming corporation? Those expectations include: (1) that the corporation will likely never pay a dividend; (2) that the minority shareholder will not be able to participate in managerial decisions; and (3) that the value of the minority shareholder's interest will be discounted on buy-out to reflect the fact that it is a minority interest and that the buy-out price will also include a discount to reflect the tax imposed on the corporation due to the buy-out of the minority shareholder.[18]

Do Farm Corporations Pay Dividends? The vast majority of farming corporations do not pay dividends. Instead, funds are simply plowed back into the corporation. That is not unreasonable and is beneficial to the shareholders.

> **Note:** The minority shareholder never requested that the corporation pay him dividends, and testified that the payment of a dividend by a closely-held corporation would generally *not be a good idea*.[19] The minority shareholder was also unable to identify any available corporate funds that could be distributed as dividends.[20]

The Internal Revenue Code imposes a penalty on corporations that unreasonably accumulate earnings.[21] However, an unlimited amount of accumulations can occur to allow the corporation to buy land, self-insure, buy-out a competitor, upgrade facilities and equipment and otherwise improve the corporation.[22] In this case, that is exactly what the corporation did with the accumulated earnings. Indeed, the Court noted that from its creation, the corporate assets had increased anywhere from fivefold to sevenfold. Clearly, *it is not reasonable* for a minority shareholder in a closely-held farming corporation in Iowa to expect dividends to be paid and the minority shareholder in this case testified that payment of a dividend would be improper. However, the Court grounded its policy-based argument on the notion that the minority shareholder could reasonably expect a fair return on his "investment" and that the lack of dividend payment did not provide a fair return over time. The Court even bootstrapped on court opinions (not involving farm corporations) from other states to support its thesis.

> **Note:** As noted earlier, the minority shareholder did not make any investment in the corporation. He received his corporate stock interest entirely by gift and inheritance.[23] In reality, the Court is saying that the minority shareholder is entitled to a fair return on his *inheritance*, not investment. That runs counter, however, to the minority shareholder's testimony that he believed his stock was worthless to an outsider at the time he received it and that he knew he would never receive a return on it.

Keeping Off-Farm Heirs Out of Managerial Decisionmaking. A large part of estate/business planning in the farm context concerns planning in the context of family operations that have both on-farm and off-farm heirs. Indeed, entity planning involves separating out the interests of the on-farm and off-farm heirs. Often, the goal is to ensure that the off-farm heirs have no input in decision making. One approach to accomplishing that goal is to establish off-farm heirs as minority shareholders. *Accordingly, a minority shareholder cannot reasonable expect to have any part in managerial decision making.*

> **Note:** The evidence in the case clearly showed that the corporation was formed to keep the land in the family and facilitate succession planning by keeping control in the hands of heirs interested in farming, and that the minority shareholder

never had any expectation of or interest in personal managerial control.

Determining "Fair Market Value." As for a reasonable buy-out price, a minority shareholder can expect that a minority interest will *not* be valued equivalent to its proportionate part of the corporation's net worth. However, the Court stated that, "We hold 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."[24]

> **Note:** The Court's holding establishes an amorphous standard for establishing shareholder oppression with oppression becoming whatever the Court says that it is.

But, what is "fair value"? In essence, the key question is what a willing buyer would pay for the minority interest.[25] On this point, Iowa law does not prohibit the discounting of a minority interest in the event a minority shareholder attempts to force a corporate redemption by claiming oppression.[26] While the Court reached the opposite conclusion, it did so by relying on prior Iowa cases that decided the issue of "fair value" under Iowa Code §490.1301(4). But, that section only applies to appraisal rights that are triggered when a corporation commits any act enumerated in Iowa Code §490.1302 – none of which applied in this case. Iowa Code §490.1301(4) does not apply when, as in this case, a minority shareholder seeks a buy-out of his ownership interest via judicial dissolution by claiming oppression.

In addition to the Iowa statutory provisions which the Court misapplied, it is clear that a willing buyer would demand a discount to reflect the non-control position of the minority interest. Indeed, *the discounted value is the fair market value of a minority interest in a closely-held corporation*.[27] To not discount a minority interest results in the interest being valued at above the market value for the interest. In recent years, the courts have routinely recognized a minority interest discount in the 30-40 percent range.[28] Likewise, in a case involving a special use valuation election[29] on a minority interest in a farming limited partnership, the U.S. Circuit Court of Appeals for the Tenth Circuit held that fair market value of the minority interest "necessarily incorporates" the minority interest discount.[30] That court noted, for estate tax purposes, without a special use valuation election, the value of the property would have been included in the estate at its discounted value – the true fair market value of the interest.

> **Note:** In this case, the Court did not mention any of these points. Nor did the Court, in this case, mention how the minority shareholder's interest would be valued if the minority shareholder were to die. In that event, his estate most assuredly would argue for a substantial discount from fair market value to reflect the minority interest in the corporation.

Also not mentioned by the Court is the fact that if the corporation were to liquidate to facilitate a buy-out of the minority shareholder's interest, the corporation would face a built-in-gains (BIG) tax on the appreciation in value of the corporate assets (which the Court pointed out had appreciated substantially). This tax applies to C corporations (or an S corporation that has recently converted from a C corporation). When a C corporation holds an asset that has appreciated in value, the corporation incurs a BIG tax when the asset is sold.

> **Note:** Post 1986, the BIG tax is a major component in C corporation valuations involving, among other things, shareholder disputes. The Court's opinion is completely devoid of any analysis of how the BIG tax would impact the corporation's buy-out of the minority shareholder's interest.

In recent years, courts have recognized a discount for the full amount of built-in gain tax that a corporation would incur on liquidation when valuing corporate interests.[31] That's in addition to a discount to reflect minority position. While the Court doesn't mention whether the corporation at issue is a C or S corporation, one can surmise that it is a C corporation because the corporation, in its negotiations over the years with the minority shareholder, apparently attempted to apply a discount for the BIG tax. Such a discount is entirely appropriate and does not constitute oppression. Indeed, to *not* apply the discount would constitute oppression *by the minority shareholder on the majority*.

> **Note:** The BIG tax can be avoided by the C corporation electing S corporation status and not liquidating for a specified period of time (the timeframe is presently five years, but has varied between five and 10 years in the recent past). In this case, an S election could have been made and the waiting period could have been satisfied before any sale of assets or liquidation. However, all shareholders must consent to the S election. While not discussed by the Court why an S election was not made, it is possible that the minority shareholder refused to consent.

Conclusion

It may be too early to tell what needs to be done either legislatively or from a practitioner's standpoint to deal with the Court's opinion. Clearly, the Court has separated breach of fiduciary duties from a claim of oppression with respect to minority shareholders in a corporate context and has created an oppression standard that is whatever the Court deems it to be.

In one of the leading cases on shareholder stock redemption agreements, the Supreme Court of Pennsylvania approved a price fixed at "par" – the equivalent of book value of the corporation.[32] That is precisely what was involved in this case. Importantly, the minority shareholder in this case *was a member of the Board of Directors and approved the initial bylaw and the 1984 amendment was made at his request. The bylaw change was not implemented by the unilateral action of the majority shareholders.*

This case did not involve any attempt by the majority to "freeze out" the minority shareholder. There simply was a complete absence of evidence of ill-will or evil intent by the majority against the minority shareholder. The buy-out provision, as amended, was part of the corporate structure. The minority shareholder played a not insignificant role in developing that corporate structure, and it cannot reasonably be claimed that somehow that structure is the fault of the majority. It is not oppressive for the majority shareholders to negotiate a price exceeding that indicated by the bylaws. The court has manufactured a limitation through an ambiguous standard of "reasonable expectations" that is contrary to the majority's control of the corporation as exercised in a manner that is consistent with state law.

However, the case isn't over. As noted above, the Court remanded the case for a determination of oppression under the "reasonable expectations theory." While the defendant filed a motion for reconsideration on June 28, that motion was denied on July 15.[33]

But, as noted above, the Court's decision is seriously flawed in numerous respects and it is not at all unlikely that the trial court could determine (even using the "reasonable expectations theory") that the corporation did not engage in oppressive conduct and that the minority shareholder's expectations in this case were unreasonable.

The Court's refusal to reconsider its opinion leaves significant questions involving the drafting of buy-sell agreements, the need to pay dividends, and how to handle appropriate discounts in corporate documents and whether consents by all shareholders are necessary. The fact-based scenario for shareholder oppression practically guarantees an increase in litigation involving shareholder disputes in closely-held corporations.

[1] The "business judgment rule" is a common-law concept in corporate under which it is presumed that corporate directors are presumed to conduct the corporation in the best interests of the corporate stockholders. To successfully challenge directors' conduct under the rule, it must be established that the directors breached a fiduciary duty of good faith, loyalty or due care. In Iowa, one of the grounds for judicial dissolution of a corporation if it can be proven that the controlling directors have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent. Iowa Code §490.1430(2)(b).

[2] Baur v. Baur Farms, Inc., No. 11-0601, 2013 Iowa Sup. LEXIS 73 (Iowa Sup. Ct. Jun. 14, 2013), *rev'g., and rem'g.,* 780 N.W.2d 249 (Iowa Ct. App. 2010).

[3] The author has often pointed out, based on experience, that while a child may appear to get along well with other family members, once the parents are gone matters can often change. The stabilizing presence of the parents in family farm operations is very real and its absence can result in the deterioration of family relationships that can disrupt the family business.

[4] The minority shareholder testified that he had forgotten about the buy-out provision until he was reminded of it during preparation for trial.

[5] The land in the corporation continued to increase in value during the years that negotiations over a buy-out price continued.

[6] The plaintiff was removed as an officer in 1997 upon his refusal to sign corporate documents that would authorize the defendant's borrowing authority necessary for the continuing operation of the corporation.

[7] The minority shareholder did receive $5,000 annually for his service as a member of the Board of Directors.

[8] The minority shareholder eventually abandoned any claim that the majority shareholders received excessive compensation or unreasonable perquisites from the corporation. The plaintiff also object to the corporation paying $180 for a birthday party for his disabled brother even though the corporation offered to pay the same amount for a birthday party for the plaintiff. The plaintiff also complained about the defendant having prestige in the local community due to the defendant's association with the corporation.

[9] The plaintiff testified that the "big abuse" was the building of the cattle shed in 1984 which occurred at a time when his father and aunt held majority control of the corporation. Neither his father nor his aunt object to the building of the cattle shed.

[10] Apparently, the court believed that two occasions sufficed for "several times."

[11] The plaintiff claimed that Iowa Rule of Civil Procedure 1.904(1) requires a court, when sustaining a motion to dismiss in a non-jury trial, to make written findings of fact and conclusions of law.

[12] 118 N.W.2d 552, 254 Iowa 561 (1962).

[13] The court cited a treatise by O'Neal and Thompson, "Oppression of Minority Shareholders and LLC Members," (Rev. 2d Edition 2012) which ties oppression to the "reasonable expectations" of the minority.

[14] Iowa Code §490.627(1).

[15] The Court made no mention of this fact in its opinion and simply treated the minority shareholder as an "investor" in the corporation. The minority shareholder never contributed to the success of the corporation.

[16] Maschmeier v. Southside Press, LTD, 435 N.W.2d 377 (Iowa Ct. App. 1988).

[17] It is important to note that the minority shareholder, as a member of the corporation's Board of Directors, owed the corporation and other shareholders certain fiduciary duties to act in a manner that was not harmful to the corporation or the other shareholders. The Court failed to address this point.

[18] Under I.R.C. §331, a liquidating distribution is considered to be full payment in exchange for the shareholder's stock. It is not treated as a dividend distribution. The shareholders generally recognize gain (or loss) in an amount equal to the difference between the fair market value (FMV) of the assets received (whether they are cash, other property, or both) and the adjusted basis of the stock surrendered. If the corporation sells its assets and distributes the sales proceeds, shareholders recognize gain or loss under I.R.C. §331 when they receive the liquidation proceeds in exchange for their stock. If the corporation distributes its assets for later sale by the shareholders, the assets generally "come out" of the corporation with a basis equal to FMV. As a result, the tax consequences of a subsequent sale of the assets by the shareholder should be minimal. The result of these rules is double taxation. The corporation is treated as selling the distributed assets for FMV to its shareholders, with the resulting corporate-level tax consequences. Then, the shareholders are treated as exchanging their stock for the FMV of the assets distributed in complete liquidation, with the resulting gains or losses at the shareholder level.

[19] The minority shareholder also testified that he owned stocks in other corporations that never paid a

dividend and never would be anticipated to pay a dividend.

[20] Indeed, the subject of payment of a dividend was discussed at a 2007 meeting of the Board of Directors (of which the minority shareholder was a member) and the minority shareholder did not express any interest in having a dividend be paid.

[21] I.R.C. §531.

[22] *See, e.g.*, Gustafson's Dairy, Inc. v. Comr., T.C. Memo. 1997-519 (accumulated earnings tax inapplicable to fourth generation dairy operation with one of the largest herds in the United States at one location; accumulations of up to $4.6 million for herd expansion, $1.6 million for pollution control, $8.2 million to purchase equipment and vehicles, $2 million to buy land, $3.3 million to retire a debenture, and $1.1 million to self-insure against loss of herd not unreasonable and dairy had specific, definite or feasible plans to use the accumulations.

[23] One prominent commentator on corporate oppression has stated, "Receiving shares by gift, including the donor's wishes, are important in "shaping" reasonable expectations." O'Neal & Thompson, Oppression of Minority Shareholders and LLC Members, §7:12 at 7.124-7:125 (Rev. 2d Ed. 2012).

[24] The court misconstrued the facts on this point. The minority shareholder only made two isolated demands over a 15-year period requesting that his stock interest be bought out. On neither occasion did the minority shareholder follow the bylaw provision for having his stock purchased.

[25] For tax purposes, fair market value (as defined by the U.S. Supreme Court) is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. United States v. Cartwright, 411 U.S. 546 (1973).

[26] Iowa Code §490.1430.2(b).

[27] *Id.* United States v. Cartwright, 411 U.S. 546 (1973).

[28] *See, e.g.*, Estate of Kelley v. Comr., T.C. Memo. 2005-235 (interest in family limited partnership valued under net asset value method with 35 percent discount; Estate of Watts v. Comr., T.C. Memo. 1985-595 (35 percent discount for 15 percent partnership interest for non-marketability for federal estate tax purposes); Peracchio v. Comr., T.C. Memo. 2003-280 (gifts of FLP interests discounted 6 percent for minority interest and 25 percent for lack of marketability).

[29] I.R.C. §2032A.

[30] Hoover v. Comr., 69 F.3d 1044 (10th Cir. 1995).

[31] *See, e.g.*, Estate of Jelke III v. Comr., 507 F.3d 1317 (11th Cir. 2007)(in determining the estate tax value of holding company stock, the company's value is to be reduced by the *entire* built-in gain as of the date of death); Estate of Litchfield v. Comr., T.C. Memo. 2009-21(dollar-for-dollar discount allowed in case involving C corporation with marketable securities); Estate of Jensen v. Comr., T.C. Memo. 2010-182 (court allowed full dollar-for-dollar discount attributable to built-in gain when valuing an estate's 82 percent controlling interest in a closely-held C corporation holding real estate); Estate of Dunn v. Comr., 301 F.3d 339 (5th Cir. 2002)(in determining asset-based value of decedent's 62.96 interest in corporation, court allowed reduction equal to 34 percent of assets' built-in capital gains).

[32] In re Mather Estate, 189 A.2d 586, 410 Pa. 361 (1963).

[33] Baur v. Baur Farms, Inc., No. 11-0601, 2013 Iowa Sup. LEXIS 86, (Iowa Sup. Ct. Jul. 15, 2013).