<u>QUESTION 12</u> THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

In 2000, Roger Smith purchased 500 shares of stock in Big Loans Are Us (BLAU), a publicly traded Michigan corporation. The purchase price was $10 a share. As residential real estate loans became more readily available through the 2000's, BLAU revenues dramatically increased, as did its stock value. Indeed, by January 2008, the value had skyrocketed to $50 a share, and there seemed to be no end in sight to the good fortunes of BLAU and its stockholders. Because the number of loan applications more than quadrupled during this same time frame, BLAU increased the number of entry-level employees and management-level employees. By the end of 2007, BLAU had 250 management-level employees.

At the start of 2008, new loan and refinance requests started to decline. Nevertheless, to reward the hard work of its management-level employees, and in recognition of the financial success of recent years, the BLAU board of directors decided to grant each management-level employee 1,000 shares of BLAU stock. Thus, the board approved the issuance of 250,000 new shares, which doubled the number of outstanding shares.

Meanwhile, in the next few months, loan and refinance applications continued to decline. Layoffs ensued. Within five months of the decision and issuance of the shares, BLAU's stock price spiraled downward, reaching $20 by June 1, 2008. Roger Smith was furious, as he had planned on selling his 500 shares at $50 a share and paying for part of his granddaughter's college education. As a retired CPA for a Fortune 500 company, Smith believed that the decision to issue so many new shares diluted the value of all outstanding shares, and was done at a time when the overall economy and BLAU's business was on a clear downturn. He was so upset with the decision that he sent a letter to the board on June 15, 2008, asking that the board reverse its decision to grant the stock.

Not having heard back from the board, and after dropping off his granddaughter at college, on September 30, 2008, Smith sued the board of directors for breach of the duty of loyalty and good faith, while also naming BLAU as a defendant. Smith sought to recover the lost stock value he suffered, to set aside the stock issuance, and for other damages against the board. The case proceeded through some limited discovery, including Smith's deposition. During the deposition Smith became so frustrated with BLAU, that he sold his stock the next day, November 15, 2008, for $8 a share.

Defendants have now filed a motion to dismiss, which only addresses Smith's ability to bring these claims. It does not

address the merits of the claims. You are the clerk to the local circuit court judge. Prepare a memo describing whether Smith can bring these claims in any capacity. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD *GO* IN BLUEBOOK IV*******