

**QUESTION 2 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I
OR IN EXAMPLIFY ANSWER SCREEN 2**

Peter Pettigrew owns a substantial number of shares in Voldy Serpentine Manufacturing (VSM), a Michigan Corporation that manufactures automotive belts.

In 2016, VSM had a record-breaking year, amassing 3.2 million dollars in profit. According to a report provided by a public accounting firm hired by VSM, the company pension plan was underfunded and would be insolvent by 2024 without a substantial infusion of funds. As a result, rather than distribute a record-breaking amount of dividends to shareholders, the VSM Board of Directors decided, on December 15, 2016, to put that money into the VSM retiree pension plan. This decision was disclosed in VSM's 2016 annual financial report.

Peter Pettigrew, a VSM shareholder who relies in large part upon the dividend for his income, read the VSM financial report and was furious. How could those directors side with retirees rather than the owners of the company-its shareholders?! Making matters worse, the next day Peter read in the local paper that a VSM officer, John Smith, had been charged with embezzling one million dollars from VSM, money that otherwise would have been available for allocation by the Board of Directors.

Peter filed a lawsuit in a Michigan circuit court against VSM and Smith. As to VSM, Peter alleged that the directors had breached their fiduciary duty by failing to distribute dividends. VSM responded that no corporate bylaw afforded Peter the right to the distribution of dividends, and that Peter could not establish that the directors' decision was erroneous. As to Smith, Peter alleged that Smith committed the tort of conversion by taking monies that could have been used for a dividend payment. Smith, however, argued that he could not be sued for a tort in his role as an officer of VSM.

Applying principles of Michigan Corporations Law, thoroughly discuss:

1. Whether Peter has a viable claim against VSM for breach of fiduciary duty.

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2. Assuming Peter meets the elements of a conversion claim, whether Smith can be personally sued for a tort he committed while in his role as a corporate officer.

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