

QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

Sandy Smith established a charter fishing company to pursue his lifelong dream of being a fishing guide. Sandy purchased a boat, and then created and filed the articles of incorporation for his new Michigan corporation, "Fish-On Charters, Inc."

In order to have complete control over the company, Sandy decided that Fish-On's board of directors would consist of himself, his wife Betty, his mother-in-law Barbara, and his stepson Bobby. Each had an equal vote on the board, and each was granted one share in the corporation. Sandy believed that since he was the only fisherman of the four, the others would defer to him and that he would basically run the business on his own. Betty, Barbara and Bobby attended the annual board meetings at Sandy and Betty's house, and at the first meeting they approved the purchase of liability insurance for the directors of the company. Sandy was the only corporate employee and the only one to receive a salary. Sandy and Betty also convinced Barbara and Bobby to allow Sandy to have complete control over the financial books, including the checking account, for convenience sake.

The first few years of business were profitable for Fish-On, and Sandy received the total net profits -- \$75,000.00 -- as his salary. This salary was approved by the board, as was the decision to not invest any money back into the company. This same pattern was repeated for each of the next four years. Record keeping was not a priority for anyone involved, so only corporate tax returns were filed each year. Additionally, to save a few dollars, Sandy decided after the second year, and without the knowledge of the other directors, to cancel the corporate and director liability insurance. By the fifth year, however, the customer base had dwindled, and the boat was worn, outdated, and leaky. Sandy, however, chose not to make repairs, and unilaterally decided to start pocketing the revenue from every third guided trip, hoping to lift his salary back up to the \$75,000.00 range. Sandy also began to put the boat to personal use.

A customer, Jane Doe, sued Fish-On Charters, Inc. and its shareholders/directors for a personal injury she suffered as a result of falling on the wet floor of the dilapidated boat. However, Jane also discovered that, because of decisions made over the years, Fish-On Charters had no insurance and no assets except the old worn-out boat worth a paltry \$5,000. Jane, therefore, also seeks to hold Sandy, Betty, Barbara and Bobby liable individually

for her damages. All defendants filed motions for summary disposition, arguing that Jane's efforts to hold the four shareholders individually liable should be rejected.

You are the law clerk to the local circuit judge. Prepare a bench memorandum on the issues raised, and discuss their proper resolution.

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