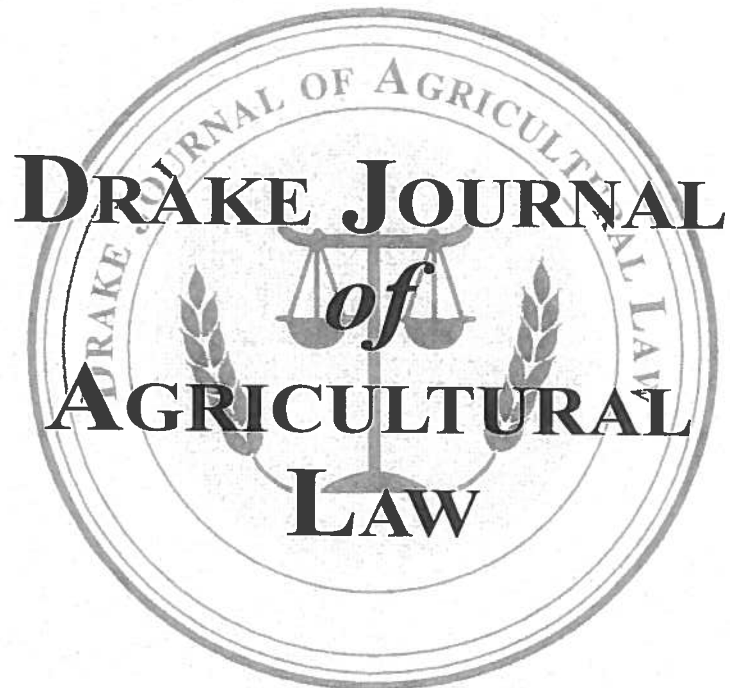

How You Gonna Keep 'Em Down on the Farm after Baur v. Baur Farms, Inc.? An Analysis and Defense of the "Reasonable Expectations" Standard for Iowa Oppression Cases

Matthew G. Doré, Neil D. Hamilton,
Allan W. Vestal, and David S. Walker

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Matthew G. Doré, Neil D. Hamilton, Allan W. Vestal, and David S. Walker[*]

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> Toward dusk, I began going around and picking up paper plates, and I noticed a little group, including Rose and Caroline, as well as Ty and Pete, clustered on Harold's back porch, with my father talking earnestly at the center. I remember Rose turned and looked at me across the yard, and I remember a momentary inner clang, an instinctive certainty that wariness was called for, but then Caroline stood up and smiled, waved me over. I went and stood on the bottom step of the porch, plates and plastic forks in both hands. My father said, "That's the plan."
>
> I said, "What's the plan, Daddy?"
>
> He glanced at me, then at Caroline, and, looking at her all the while, he said, "We're going to form this corporation, Ginny, and you girls are all going to have shares, then we're going to build this new Slurrystore, and maybe a Harvestore, too, and enlarge the hog operation." He looked at me, "You girls and Ty and Pete and Frank are going to run the show. You'll each have a third part in the corporation. What do you think?"[1]

I. INTRODUCTION

The fictional farm corporation plan chronicled in Jane Smiley's Pulitzer Prize-winning novel, *A Thousand Acres*, ended badly. The family patriarch, Larry Cook, regretted ceding control of his Iowa farm to younger generations and lost his sanity. Dark secrets, sibling rivalries, and financial over-extensions exacerbated by the 1980s farm crisis tore Cook's family apart, destroying lives and a century-old farm enterprise in the process.[2] By comparison, the farm corporation plan that led to the Iowa Supreme Court's recent decision in *Baur v. Baur Farms, Inc.*[3] did not produce a Shakespearean tragedy. But the case nonetheless offers important and timely lessons for family farm entities and for other closely-held businesses in Iowa.

In the 1980s, John ("Jack") Baur and other relatives succeeded to ownership of a family farm corporation that Jack's father and uncle had organized in the 1960s.[4] Jack, a minority shareholder, was not involved in day-to-day farm operations. Although the farm corporation was profitable over most of the ensuing decades, the majority shareholder family members who managed the farm made no distributions to off-farm shareholders and instead used most available corporate funds to acquire new farmland and other farm business property. For years, Jack tried to persuade the majority to repurchase his shares, but the majority was willing to do so only if Jack would sell his interest at a substantial discount. Jack's situation was exacerbated by a bylaw provision that established a

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1. JANE SMILEY, A THOUSAND ACRES 18–19 (1991).
2. *See id.*
3. Baur v. Baur Farms, Inc., 832 N.W.2d 663 (Iowa 2013).
4. *See infra* Part II, where the facts of the case and its procedural history are set forth in greater detail.

corporate right-of-first-refusal option for his shares at "book value"[5] in the event he attempted to sell his shares to a third party.

Jack invoked the Iowa Business Corporation Act's oppression remedy, but the district court concluded that the parties' failure to agree on terms for the purchase of Jack's shares did not constitute oppression.[6] On appeal, the Iowa Supreme Court reversed and remanded the case for reconsideration, stating: "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."[7]

Baur sheds much needed light on the Iowa Business Corporation Act's oppression remedy and, inferentially, on the parallel cause of action for oppression that is now available under Iowa's Revised Uniform Limited Liability Company Act. Neil Harl, a leading agricultural law expert, has praised the decision.[8] But other commentators have suggested that *Baur* may be cause for concern—for example, that the case inappropriately limits the management prerogatives of majority owners of family farms and other closely-held Iowa businesses,[9] or might constrain the permissible scope of control, buy-sell, or estate-planning arrangements for such businesses.[10]

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5. *See infra* Parts II.A, V.C.1, where the bylaw valuation formula, "book value per share . . . as determined by the Board of Directors, for internal use only, as of the close of the most recent fiscal year," is discussed in more detail.

6. Baur, 832 N.W.2d at 667.

7. *Id.* at 674.

8. Neil E. Harl, *Ignoring Reality: Iowa Supreme Court Decides Case Involving "Oppression" by Majority Shareholder in Farm Corporation*, 24 AGRIC. L. DIG. 113, 114 (July 26, 2013) ("The facts of the case cried out for relief and the reasoning of the court is consistent with the progressive trend to recognize the position of economic disadvantage inherent in minority-majority power struggles.").

9. *See, e.g.*, ROGER MCEOWEN, CTR. FOR AGRIC. L. AND TAX'N, IOWA ST. UNIV., VALUING MINORITY INTERESTS IN CLOSELY-HELD FARMING OPERATIONS—THE "REASONABLE EXPECTATIONS" THEORY 8 (last updated July 19, 2013), *available at* http://www.calt.iastate.edu/system/files/CALT%20Legal%20Brief%20-%20Valuing%20Minority%20Interests%20in%20Closely-Held%20Farming%20Operations.pdf (stating that, as a result of *Baur*, "questions [may arise] 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"); *see also* Marc Ward & Allison M. Lindner, *Iowa Supreme Court Opens the Door to Minority Shareholder Oppression Claims*, WARD ON IOWA LIMITED LIABILITY COMPANY LAW (June 20, 2013, 7:51 PM), http://www.iowallcblog.typepad.com/iowa_limited_liability_co/2013/06/iowa-supreme-court-opens-the-door-to-minority-shareholder-oppression-claims.html (stating that the case "raises concerns for . . . closely-held entities [when the company does] not pay out dividends and shareholders do not in fact share in the profits, when profits stay in the company").

10. *See, e.g.*, Marc Ward, *Time to Re-evaluate Buy-Sell Agreements*, DES MOINES REGISTER, July 26, 2013 (stating that "it is not a stretch to interpret the [*Baur*] court's decision to

The purpose of this Article is to evaluate *Baur* in light of these and other potential criticisms. Part II provides the factual background and procedural history of the case. Part III describes *Baur*'s broader legal context and Part IV describes *Baur*'s holding and rationale. Part V considers and responds to criticisms of the decision. Finally, Part VI offers concluding remarks and reflects on *Baur*'s broader policy implications.

As will be explained in Part II, *Baur* raises interesting and important issues relating to management and ownership of farms and other closely-held Iowa businesses—issues that merit attention in agricultural and business planning. If available appellate reports are any indication, disputes over control and ownership of closely-held businesses, both farm and non-farm, are increasingly commanding courts' attention, and the need for a workable framework to resolve them is greater than ever.[11] Moreover, because much of the Midwest's farmland remains in the hands of an increasingly aging population,[12] there is an especially pressing need for workable succession plans in closely-held farming enterprises.[13] *Baur* represents a positive development on both fronts.

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mean that book value may not be an appropriate measure" for valuation of shares in a buy-sell agreement).

11. A recent sampling of decisions from states covered by the Northwest Reporter includes the following cases where the principal subject of the litigation concerned the ownership and/or management of family farm business entities: Hillman v. Cannon, 810 N.W.2d 25 (Iowa Ct. App. 2011) (suit to determine whether husband and wife dairy farm operators inadvertently formed a partnership with their son-in-law); Heidecker Farms, Inc. v. Heidecker, 791 N.W.2d 429 (Iowa Ct. App. 2010) (litigation among siblings over management of trust and corporation that held family farm assets); *In re* Involuntary Dissolution of Wiles Bros., 830 N.W.2d 474 (Neb. 2013) (suit seeking judicial dissolution of family farm corporation); Robertson v. Jacobs Cattle Co., 830 N.W.2d 191 (Neb. 2013) (dissociation, dissolution, and fiduciary litigation in family farm partnership); Baker v. Baker, No. A-10-901, 2011 WL 3505500 (Neb. Ct. App. Aug. 9, 2011) (affirming trial court's grant of summary judgment for majority shareholder defendants on oppression claims brought by minority shareholders of a family farm corporation); Knudson v. Kyllo, 831 N.W.2d 763 (N.D. 2013) (action by stepfather against stepson seeking an accounting and dissolution of farm partnership). Recent appellate reports from the same region reveal that disputes in closely-held non-farm enterprises are also quite common. *See, e.g.*, Lee v. Meloan, 787 N.W.2d 479 (Iowa Ct. App. 2010) (interpreting a closely-held corporation's buy-sell agreement and finding oppression by the president and de facto controlling shareholder); Madugula v. Taub, No. 298425, 2012 WL 5290285 (Mich. Ct. App. Oct. 25, 2012) (affirming jury verdict finding oppression of minority shareholder in closely-held software development firm); Trapp v. Vollmer, No. 297116, 2011 WL 2423884 (Mich. Ct. App. June 16, 2011) (affirming summary judgment dismissal of minority shareholder's oppression claims); N. Air Serv., Inc. v. Link, 809 N.W.2d 900 (Wis. Ct. App. 2012) (determining proper damages measure for minority shareholder's breach of fiduciary duty claim against majority shareholders of closely-held family business).

12. *See, e.g.*, MICHAEL DUFFY ET AL., IOWA ST. UNIV. EXTENSION, FARMLAND OWNERSHIP AND TENURE IN IOWA 2007, at 11 (2008) (survey of farmland ownership in Iowa showing that over fifty-five percent of farmland is owned by persons over age sixty-five).

13. The trend to put farmland in business entities or trusts appears to be on the rise. The most recent farm ownership data from Iowa reveals that nearly one-third of farms are operated

As Part III of the Article explains in more detail, lawmakers and courts in nearly all states, including Iowa, have long recognized that special considerations apply in the closely-held business context because there is no meaningful market available for minority owners who want to sell their interests in the firm. Closely-held business owners, including farmers, can and should address this issue through binding control and buy-sell agreements that comply with Iowa's business entity statutes, which are intentionally designed to facilitate such plans.[14] But when these contractual planning arrangements are absent, ambiguous, or insufficient, minority owners of farms and other closely-held businesses may find themselves trapped and mistreated by majority owners. Although the Iowa Supreme Court has repeatedly held that, in closely-held firms, majority owners owe fiduciary duties to the minority,[15] the Court's decisions to date have not clearly defined what those duties require. Nor has the Iowa Supreme Court ever established standards for application of the statutory remedy of judicial dissolution for minority owner "oppression," a remedy that has been available in Iowa and most other states for decades.

The *Baur* decision addresses the latter omission, and thereby relieves some of the pressure for further development of Iowa's fiduciary duty jurisprudence in the closely-held business context. As described in Part IV, the Iowa Supreme Court adopted the most widely-accepted definition of "oppression": majority shareholder conduct that frustrates the objectively reasonable expectations of minority shareholders.[16] So defined, the oppression inquiry requires courts to consider all relevant facts and circumstances, including not only the majority owners' legitimate business objectives, but also the interests of minority owners in receiving a return on their investment.[17] The Court thereby clarified a well-established statutory remedy and struck a blow for minority owners of closely-held firms.

While some commentators have questioned *Baur*'s holding, Part V of the Article concludes that the Iowa Supreme Court's decision provides no cause for concern. The Court's oppression definition does not require majority owners of closely-held Iowa enterprises to cede control of those businesses to minority

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through trusts, partnerships, corporations, or limited liability companies. MICHAEL DUFFY, 2012 IOWA FARMLAND OWNERSHIP SURVEY: PRELIMINARY RESULTS, IOWA ST. UNIV. EXTENSION 6 (May 22, 2013), *available at* http://www.ucs.iastate.edu/mnet/_repository/2013/soilmanagement/pdf/Duffyjensen.pdf.

14. *See e.g.*, IOWA CODE §§ 489.110, .502(6) (2013) (providing broad flexibility for limited liability company operating agreements and for agreements restricting transfer of transferable interests in limited liability companies); IOWA CODE §§ 490.627, .732 (providing broad flexibility for agreements restricting share transfers and for agreements governing the control of closely-held corporations).

15. *See e.g.*, Cookies Food Prods., Inc. v. Lakes Warehouse Distrib., Inc., 430 N.W.2d 447, 451 (Iowa 1988); Linge v. Ralston Purina Co., 293 N.W.2d 191, 194 (Iowa 1980).

16. *See* Baur v. Baur Farms, Inc., 832 N.W.2d 663, 674 (Iowa 2013).

17. *See generally id.* at 673–74.

owners or to satisfy minority owners' subjective beliefs about what constitutes "fair treatment." *Baur* requires majority owners to accommodate minority owner expectations, whether concerning returns on investment or otherwise, only if those expectations are objectively reasonable considering all of the circumstances. Moreover, the Court's decision in no way interferes with Iowa laws that permit closely-held business owners to design their own management arrangements, buy-sell agreements, or estate plans. To the contrary, *Baur* highlights the advisability of unambiguous advance planning that reasonably accommodates the interests of both majority and minority owners.

Finally, and as explained in Part VI, to the extent *Baur* promotes fair treatment of all participants in a closely-held Iowa enterprise, the decision represents a sound public policy choice. Only a tiny fraction of Iowa businesses are publicly-traded companies where dissatisfied minority owners can readily sell their interests. While closely-held business owners can and should contract for similar outlets, the sad truth is that most do not. The legal principles that Iowa courts apply to closely-held business disputes must recognize this fact. Thus, while planning is to be encouraged, *Baur*'s "reasonable expectations" standard for oppression accommodates both majority and minority interests, and thereby provides an appropriate judicial tool for resolving the inevitable disputes between majority and minority owners that arise when planning arrangements are lacking or inadequate.

II. *BAUR*: FACTUAL BACKGROUND AND PROCEDURAL HISTORY[18]

A. *The Facts*

Two brothers, Merritt and Edward Baur, founded Baur Farms, Inc. in 1966. The brothers had previously farmed Baur family land together as partners. Merritt's son, Jack, and Edward's son, Bob, were among the corporation's original directors. During the 1970s and 1980s, Merritt gave most of his shares in the farm to Jack and to his other son, Dennis. Jack inherited a few additional shares when Merritt died in 1989. Edward's shares were eventually transferred to Bob.

Because Merritt's shares were divided between his two sons, Jack and Dennis, they became minority owners, each owning a little more than twenty-five percent of Baur Farms' shares. Edward's son, Bob, and eventually Dennis' son,

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18. Drawn primarily from the *Baur* Court's statement of the facts and case procedural history; for purposes of this Article, the authors accept the Court's summary of the trial record. *See* Baur, 832 N.W.2d at 665–68 (the following facts are all taken from the page span listed). The Appellees' Petition for Rehearing challenged the Court's statement of facts in several respects. *See* Appellees' Petition for Rehearing at 6–10, Baur v. Baur Farms, Inc., 832 N.W.2d 663 (Iowa 2013) (No. 11-0601).

James, replaced Merritt and Edward as active managers of the corporation. Although Jack remained a director and, for a time, served as a corporate officer, he left the farm to pursue a legal education and full-time business career. Baur Farms never paid dividends to its shareholders but did pay a salary to Bob while he was involved in farm operations, and presumably also to James and others who actively managed the farm.

Starting in the early 1990s and continuing into 2007, Jack expressed his desire to sell his shares back to the corporation but was unable to reach an accommodation with Baur Farms or with Bob, its majority shareholder. Several issues made it difficult for the parties to reach agreement.

In addition to disputes about land values and other corporate assets, one source of difficulty was a stock transfer restriction that had been added to the corporation's bylaws in 1984. The amended bylaw provided that a shareholder wishing to sell his shares must first offer them to the corporation or the other shareholders. Unless agreed otherwise, the purchase price was to be the "book value per share . . . as determined by the Board of Directors, for internal use only, as of the close of the most recent fiscal year." The 1984 bylaw amendment set this book value at $686 per share, based on data from the 1983 fiscal year, but the Board never thereafter established a new value.

Thus, one negotiating position available to Bob and the corporation was that, if the parties could not reach a different agreement, Jack should not expect to sell his shares at a price other than that provided under the 1984 bylaw, even though the value of the corporation's land and other assets soared in later years.

Jack never tendered his shares for sale to the corporation under the 1984 bylaw, however, and the defendants never formally invoked it. Moreover, the parties' course of conduct in periodic share purchase negotiations over the two decades that followed suggest that the bylaw was not necessarily intended or understood to freeze the value of Baur Farms' shares for purposes of purely internal transfers. Indeed, Jack and the majority faction obtained a number of competing appraisals of Baur Farms over the years as they engaged in sporadic negotiations for the purchase of Jack's shares.

A key obstacle to consummation of a purchase remained, however. Bob and Baur Farms repeatedly insisted that a minority discount should apply to any repurchase of Jack's shares. Their rationale for the discount was two-fold: first, Jack owned only a minority interest in the corporation, so its market value should reflect Jack's lack of control as minority shareholder; second, Baur Farms would incur taxes if it sold appreciated assets, like farmland, in order to generate funds to buy Jack's shares, so the amount of those taxes should reduce the value of his interest.

Jack refused to accept the majority's discounted purchase offers and sought to break the impasse in 2007 by suing for judicial dissolution of the corporation, alleging oppression by Bob and Baur Farms as the basis for relief. In

support of his oppression claims, Jack cited various decisions by the corporation's Board of Directors, which Bob and his wife controlled two-to-one. These decisions included: (1) the Board's failure to reappoint Jack as corporate vice president in 1997 or thereafter, thus freezing him out of the corporation's day-to-day activities; (2) the Board's continued refusal to provide returns to non-employee shareholders; and (3) Bob's and the corporation's insistence that Jack's shares should be repurchased only at a substantial minority discount. Jack also alleged that Bob had taken inappropriate distributions from Baur Farms over the years, but dropped those claims by the time the case was appealed to the Iowa Supreme Court.

B. *Procedural History*

Bob and Baur Farms defended the oppression suit on limitations grounds, contending that any alleged oppressive acts had occurred outside the five-year statute of limitations.[19] The district court agreed and granted summary judgment in their favor. The Court of Appeals reversed, concluding that, under a "continuing wrong" theory, limitations might not bar all of Jack's oppression complaints, and that some of those complaints, including the majority's continued insistence on a minority discount, might be grounds for an oppression finding.[20] On remand, the district court again ruled in the defendants' favor, entering judgment at the close of Jack's case without hearing evidence from Bob or the corporation.[21] The court stated that it: "[could not and did] not find that the inability of these parties to reach an agreement regarding a purchase price constitutes oppressive conduct under these circumstances."[22] The stage was thus set for the Iowa Supreme Court's review.[23]

C. *Contentions of the Parties on Appeal to the Iowa Supreme Court*

Jack had sought relief in the district court under Iowa Business Corporation Act (IBCA) section 490.1430(2)(b).[24] That section provides that a district court may dissolve a corporation in a proceeding initiated by a shareholder who establishes that "[t]he directors or those in control of the corporation have acted .

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19. Baur, 832 N.W.2d at 667.

20. The Court of Appeals' decision in *Baur* was unpublished. *See* Baur v. Baur Farms, Inc., No. 09-0480, 2010 WL 447063, at *7–8 (Iowa Ct. App. Feb. 10, 2010).

21. Baur, 832 N.W.2d at 667.

22. *Id.* at 669.

23. The Supreme Court dismissed a threshold appellate jurisdiction issue relating to the timeliness of Jack's notice of appeal. *Id.* at 668–69.

24. IOWA CODE § 490.1430(2)(b) (2013).

. . in a manner that is illegal, oppressive, or fraudulent."[25] Neither the IBCA nor the Model Business Corporation Act provision on which this dissolution remedy is based defines "oppressive." Jack contended on appeal that Bob and Baur Farms' "failure to provide a return on his shareholder equity interest over the years and . . . refusal to offer a price for his shares fairly approximating their true value" constituted oppression.[26] Bob and Baur Farms responded that the majority's corporate stewardship had not harmed Jack but had instead increased the value of his shares, and that Jack should not reasonably expect to sell his shares at a price other than book value, as contemplated in the corporation's bylaws.[27]

III. The Context of the Oppression Remedy

Before evaluating *Baur*'s interpretation of the oppression remedy, some context and background may be instructive. Consider the situation of a minority shareholder in a closely-held corporation. If the majority faction adopts business practices that adversely impact the minority shareholder, like terminating the shareholder's employment with the corporation or refusing to pay dividends or make other distributions, what avenues for relief are available?

A. *The Minority Shareholder's Limited Rights under General Corporate Law Principles*

Under general corporate law principles, a minority shareholder has little hope of successfully challenging any such decisions. Procedural hurdles associated with derivative suits make it very difficult for minority shareholders to get corporate management practices before a court in the first place.[28] And even if a minority shareholder overcomes that obstacle, the business judgment rule presents another. Majority shareholders control the composition of the corporation's board of directors, and so long as board members refrain from conflicts of interest or other obvious duty of loyalty violations, and otherwise follow a reasonable decision-making process, the business judgment rule precludes meaningful substantive review of any business decision the board might make.[29]

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25. *Id.*
26. Baur, 832 N.W.2d at 669.
27. *Id.* at 669–70.
28. *See, e.g.*, MODEL BUS. CORP. ACT § 7.42 (2011) (imposing universal demand requirement for shareholder derivative suits); MODEL BUS. CORP. ACT § 7.44 (providing for dismissal of derivative suits on the basis of recommendations by special litigation committees); MATTHEW G. DORÉ, 5–6 IOWA PRACTICE SERIES—BUSINESS ORGANIZATIONS §§ 39:8–:12 (West 2013) [hereinafter DORÉ] (explaining identical derivative suit procedures as codified in the IBCA).
29. *See* AM. L. INST., PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 4.01(c) (1994) (stating that a corporate director satisfies the fiduciary duty of

Because there is no market for shares of a closely-held corporation, the minority shareholder is well and truly stuck. The minority owner cannot force dissolution of the corporation as a partner traditionally could do in the partnership context.[30] Nor can she require the corporation to repurchase her interest if she elects to depart, as modern partnership law provides.[31]

B. *Bargaining for Protection*

Of course, the minority shareholder could have bargained in advance for protection of her interest through control or buy-sell agreements. But as a practical matter, this rarely happens. One Iowa attorney recently invoked the movie *Groundhog Day* to describe his repeated encounters with closely-held business clients who failed to plan adequately for majority-minority disputes.[32] This failure of planning is not simply an Iowa phenomenon. One of the nation's leading oppression scholars, Professor Douglas Moll, has evaluated the self-protection argument and concludes that the "systemic failure [of closely-held corporation shareholders] to 'self-protect' exacerbates the oppression problem and underscores the need for a judicial response."[33]

Of course, even if one accepts that few minority owners negotiate for protection of their interests, one might still wonder *why* that is the case. There are a number of plausible reasons for this phenomenon. As others have explained, minority shareholders often lack bargaining power, are typically unable

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care when the director makes a "business judgment in good faith" and "is not interested in the subject of the business judgment," so long as the director "is informed with respect to the subject of the business judgment to the extent the director . . . reasonably believes to be appropriate under the circumstances" and "rationally believes that the business judgment is in the best interests of the corporation"); DORÉ, *supra* note 28, § 28:6 (discussing the business judgment rule as defined under Iowa law).

30. As under the Model Business Corporation Act, the IBCA requires that fundamental transactions, like a corporate dissolution, must be approved by both directors and shareholders. *See generally* IOWA CODE § 490.1402 (2013) (describing requirements for voluntary dissolution of a corporation). In contrast, under default principles of the Uniform Partnership Act (1914), initially adopted by nearly all states, including Iowa, a single partner could trigger partnership dissolution in a variety of scenarios. *See* UNIF. P'SHIP ACT § 31 (1914).

31. The Uniform Partnership Act (1997), now in effect in more than thirty states, including Iowa, makes it more difficult for a single partner to trigger partnership dissolution than does the 1914 Act. However, the 1997 Act's default rules provide that a partner who dissociates from (leaves) the partnership is generally entitled to payment of fair value for the partner's proportionate share of the partnership's value as a going concern. *See* UNIF. P'SHIP. ACT § 701 (1997).

32. Michael J. Dayton, *The Punxsutawney Phil Problem—Drafting a Business Structure That Makes Owner Disputes a Little Less Painful*, IOWA LAW., Feb. 2013, at 10.

33. Douglas K. Moll, *Minority Oppression and the Limited Liability Company: Learning (or Not) From Close Corporation History,* 40 WAKE FOREST L. REV. 883, 916 (2005) [hereinafter Moll, *Minority Oppression*].

to appreciate the risks of investment in a closely-held firm, or simply do not anticipate the possibility that business relationships among friends and family (the typical investment partners for minority shareholders) can break down over time.[34] In addition, where shares are acquired by gift or inheritance, as in *Baur*, there may be no opportunity for a minority shareholder to negotiate for protection.[35] And even when lawyers are involved in planning for majority-minority disputes, minority owners may not retain separate counsel and, thus, either be unrepresented or have only limited joint representation that may not truly protect their interests.[36]

C. *The Shareholder Fiduciary Duty Response*

Courts in Iowa and most other jurisdictions have constrained the conduct of majority shareholders by holding that they owe fiduciary duties to minority shareholders and that minority shareholders may seek judicial relief when such duties are breached.[37] As the Iowa Supreme Court explained in *Linge v. Ralston Purina Co.*:[38]

> We have not had occasion to decide whether majority shareholders owe a fiduciary duty to minority shareholders . . . . However, our cases have recognized the fiduciary duty of officers and directors in dealing with the corporation and its shareholders . . . . The same reasoning supports recognition of a fiduciary duty between a dominant shareholder and minority shareholders. By being in a position to manage corporate affairs through control of the board of directors, a majority shareholder is in the same relationship to minority shareholders as the directors themselves.[39]

Professor Franklin Gevurtz, author of a leading corporation law hornbook,[40] offers a slightly different justification for shareholder fiduciary duties in the closely-held corporation when analyzing landmark decisions on this topic from Massachusetts, including *Donahue v. Rodd Electrotype Co.*[41] and *Wilkes v.*

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34. *See* Meiselman v. Meiselman, 307 S.E.2d 551, 558–59 (N.C. 1983) (making these observations and collecting supporting authorities).

35. *Id.*

36. *See* MODEL RULES OF PROF'L CONDUCT R. 1.7, Cmt. 28 (common representation permissible where clients' interests are not fundamentally antagonistic, giving an example of two clients forming a business organization).

37. *See generally* DORÉ, *supra* note 28, § 31:10.

38. Linge v. Ralston Purina Co., 293 N.W.2d 191 (Iowa 1980).

39. *Id.* at 193–94 (internal citations omitted).

40. *See generally* FRANKLIN A. GEVURTZ, CORPORATION LAW (2d ed. 2010).

41. Donahue v. Rodd Electrotype Co., 328 N.E.2d 505, 512 (Mass. 1975) (holding that closely-held corporation shareholders owe one another fiduciary duties akin to those applicable in partnerships, and that majority shareholder family members breached this duty by failing to accord the non-family minority shareholders the same opportunity to re-sell shares to the corporation that was provided to the founding majority shareholder).

Springside Nursing Home, Inc.[42] Shareholder fiduciary duties make sense, Professor Gevurtz explains, because business judgment rule protections for directors pose special dangers for minority shareholders in the closely-held corporate environment:

> [T]he justifications for the traditional corporate fiduciary principles [applicable only to directors] seem geared to a model of a firm with larger numbers of passive owners who delegate management. In the widely held corporation, attempting to impose a duty upon how the shareholders vote their stock is unworkable. Also, in the widely held corporation, board decisions on dividends and termination of employment typically do not present a danger of significantly shifting the financial benefits of the corporation from one set of shareholders to another. Hence, in the widely held corporation context, rules which refuse to impose on shareholders any duties in voting their stock, and which generally give deference to board decisions on dividends and termination of employment, make sense. Looking at the situation in [a typical closely-held corporation], however, shows that the assumptions justifying the traditional approach do not apply.[43]

D. *The Iowa Law on Shareholder Fiduciary Duties and the Statutory Oppression Alternative*

While Iowa and many other states have followed Massachusetts' lead in imposing fiduciary duties on closely-held corporation shareholders,[44] the Iowa case law on shareholder fiduciary duties is not particularly well-developed.[45] In the handful of cases that have reached the Iowa Supreme Court, the Court has typically concluded that majority shareholders have, in their capacity as directors or officers of a closely-held corporation, committed fraud or breached duty of loyalty obligations they owed *to the corporation* by misappropriating corporate

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42. Wilkes v. Springside Nursing Home, Inc., 353 N.E.2d 657, 661–64 (Mass. 1976) (applying *Donahue* principles to a closely-held nursing home corporation and finding breach of fiduciary duty by shareholders who formed a majority coalition and terminated the minority shareholder's employment with the corporation, effectively preventing him from receiving any returns from the corporation).

43. GEVURTZ, *supra* note 40, at 477.

44. The case law on shareholder fiduciary duties is particularly well-developed in Massachusetts, where the issue has reached the state's highest court numerous times. *See id.* (discussing *Donahue*, *Wilkes*, and other leading Massachusetts cases); *see also* Hollis v. Hill, 232 F.3d 460, 468 (5th Cir. 2000) (predicting that Nevada courts would follow Massachusetts and recognize fiduciary duties among closely-held corporation shareholders and applying that duty to co-founders of closely-held corporation); Pedro v. Pedro, 489 N.W.2d 798, 802 (Minn. Ct. App. 1992) (holding that shareholders who force a minority shareholder out of closely-held corporation may be liable for breach of fiduciary duty); *see generally* 18 C.J.S. *Corporations* § 379 (2007 & Supp. 2013).

45. For a comparison of the Iowa precedents to leading cases from Massachusetts and other states, *see* DORÉ, *supra* note 28, § 31:10.

assets or engaging in self-dealing.[46] Such limited analyses have effectively short-circuited the development of majority-minority shareholder fiduciary duty case law in Iowa. As a result, the state's appellate courts have never clearly articulated the parameters of majority shareholder fiduciary duties and have not defined in precise terms what remedies are available to minority shareholders when those duties are breached. Shareholder fiduciary duties therefore provide, at best, an uncertain avenue for relief when minority shareholders of a closely-held Iowa corporation are harmed by the management practices of the majority.

Iowa's statutory remedy of judicial dissolution for oppression offers minority shareholders a parallel remedial route, however, and with a few noticeable improvements. Since the remedy is statutory, there can be no doubt about an Iowa court's *authority* to provide relief to minority shareholders who establish that "[t]he directors or those in control of the corporation have acted . . . in a manner that is illegal, oppressive, or fraudulent."[47] In addition, the remedial provisions of the statute provide guidance on a number of important issues. The

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46. In *Linge v. Ralston Purina Co.*, the minority shareholder's suit against the majority was tried solely on grounds of fraud, and as a result, the Iowa Supreme Court did not consider any separate breach of fiduciary duty claims that might have been raised. 293 N.W.2d 191, 195–96 (Iowa 1980). In *Cookies Food Prods., Inc. v. Lakes Warehouse Distrib., Inc.*, a minority shareholder challenged the terms of transactions between the corporation, on one side, and the majority shareholder and companies he controlled, on the other. 430 N.W.2d 447, 451 (Iowa 1988). The Court acknowledged *Linge*'s holding that Iowa law imposes the same fiduciary responsibilities on majority shareholders that it does on majority directors, but the Court analyzed the case solely in terms of the majority shareholder's fiduciary duties as a corporate director. *Id.*

Nor was shareholder fiduciary duty a decision point in two other important Iowa Supreme Court decisions involving claims of minority shareholders against the majority. *See* Holi-Rest, Inc. v. Treloar, 217 N.W.2d 517, 527 (Iowa 1974) (awarding only derivative relief in favor of the corporation on the ground that the freeze out tactics by the majority shareholder had injured the corporation as well as the minority shareholder); Holden v. Constr. Mach. Co., 202 N.W.2d 348, 360 (Iowa 1972) (awarding both derivative relief in favor of the corporation against the majority shareholder for misappropriation of corporate assets and direct relief in favor of the minority shareholder against the corporation for breach of an oral employment agreement). *See also* Sauer v. Moffitt, 363 N.W.2d 269, 275 (Iowa Ct. App. 1984) (finding that majority shareholders who controlled farm corporation breached fiduciary duties to the corporation by committing intentional acts of fraud).

The Court actually ruled on a breach of fiduciary claim by a minority shareholder in *Bump v. Stewart, Wimer & Bump, P.C.*, where a lawyer/shareholder complained about his termination from a law firm that was organized as a professional corporation. 336 N.W.2d 731 (Iowa 1983). The court rejected the lawyer's claim, concluding that the majority's decision to fire him was made as a last resort in order to alleviate tension within the law firm and did not breach any majority-minority shareholder fiduciary duties. *Id.* at 738. For a more complete discussion of Iowa's shareholder fiduciary duty jurisprudence, *see* DORÉ, *supra* note 28, § 31:10.

47. IOWA CODE § 490.1430(2)(b) (2013). While courts in most states also provide relief to minority shareholders on a fiduciary duty theory, some jurisdictions do not. *See, e.g.*, Nixon v. Blackwell, 626 A.2d 1366, 1380–81 (Del. 1993) (finding that majority shareholders owe no special fiduciary duties to minority shareholders). *See also* Hollis, 232 F.3d at 472–73 (Jolly, J. dissenting

court, sitting in equity, may order dissolution of a corporation if it concludes that the minority shareholder has established oppression or other statutory grounds for relief and may appoint receivers or custodians as necessary for that purpose.[48] In addition, both newer IBCA provisions and older Iowa precedent authorize additional alternative remedies for oppression, including minority shareholder buy-outs at fair value.[49]

There is one problem, however. Petitioning shareholders typically do not seek relief on grounds that directors or those in control of the corporation have acted in a manner that is "illegal" or "fraudulent," but instead on the ground that such persons have acted in an "oppressive" manner. And as explained in the next section of this Article, it is not entirely clear what "oppressive" conduct means.

IV. *BAUR*: OPPRESSION HOLDINGS AND RATIONALE

In construing "oppressive" conduct under Iowa Code section 490.1430(2)(b), or "oppression," to use the more common term, the *Baur* Court was writing on a mostly blank slate as far as Iowa law was concerned. Starting in 1959, the former Iowa corporation code included a provision authorizing judicial dissolution of a corporation on a showing of oppression.[50] However, prior to *Baur*, few Iowa appellate decisions had interpreted either that provision or the current IBCA oppression remedy, and there were no Iowa Supreme Court cases applying them.[51]

A. *Oppression Standards from Other Jurisdictions*

The *Baur* Court concurred with the Iowa Court of Appeals' assessment in *Maschmeier v. Southside Press, Ltd.*[52] that oppression is "'an expansive term

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from decision predicting that Nevada courts would impose fiduciary duties on shareholders of closely-held Nevada corporations).

48. *See* IOWA CODE §§ 490.1430–.1432 (2013).

49. *See* DORÉ, *supra* note 28, § 31:11 (discussing fair value litigation alternatives under Iowa Code section 490.1434 and judicial precedent authorizing court-ordered buy-outs).

50. IOWA CODE § 496A.94(1)(b), *repealed by* Acts 1989 (73 G.A.) ch. 288, § 195.

51. Although the Iowa Supreme Court did not address the meaning of "oppression" prior to *Baur*, the Iowa Court of Appeals has done so. In *Maschmeier v. Southside Press, Ltd.*, the Court of Appeals adopted a broad definition of "oppression" that simultaneously encompasses both lines of authority that other courts have developed defining the term. 435 N.W.2d 377 (Iowa Ct. App. 1989); *see infra* Part IV.A. The Iowa Court of Appeals has recently decided several more oppression cases, including an earlier appeal in *Baur*, but all of those decisions are unpublished. *See* DORÉ, *supra* note 28, § 31:11 (discussing the unpublished cases).

52. Maschmeier, 435 N.W.2d 377.

used to cover a multitude of situations dealing with improper conduct [by majority shareholders] which is neither illegal nor fraudulent.'"[53] The Court also acknowledged that other jurisdictions had "developed several sometimes overlapping standards" for defining oppression,[54] including "burdensome, harsh[,] and wrongful conduct;" conduct that violates "standards of fair dealing and . . . fair play;" and conduct that violates "the fiduciary duty 'of utmost good faith and loyalty' owed by shareholders to each other in close corporations."[55]

The Court then described an alternative test for oppression that asks whether the majority has managed the corporation in ways that defeat the "reasonable expectations" of minority shareholders.[56] A New Jersey court explains this approach to oppression as follows:

> The special circumstances, arrangements[,] and personal relationships that frequently underl[ie] the formation of close corporations generate certain expectations among the shareholders concerning their respective roles in corporate affairs, including management and earnings. . . . Accordingly, a court must determine initially the understanding of the parties in this regard. Armed with this information, the court can then decide whether the controlling shareholders have acted in a fashion that is contrary to this understanding or in the language of the statute, 'have acted oppressively . . . toward one or more [] shareholders.'[57]

A categorization of oppression decisions by Professor Gevurtz helps put the competing approaches to oppression into better perspective. As he explains it, American jurisdictions divide roughly along two lines.[58] Some courts apply oppression as a subjective, fault-based standard that focuses on whether there has been bad faith, breach of fiduciary duty, or similar wrongful conduct by the majority shareholder directed towards a minority shareholder.[59] According to Gevurtz, "while the reach of oppression under this view is broader than breaches of traditional [corporate] fiduciary duties, the focus remains on bad actions by the defendant(s)."[60] In contrast, Gevurtz explains, courts adopting the reasonable expectations test "shift[] the focus from a subjective, fault oriented[] approach [] to an approach rooted in notions of implied contract."[61] Or, as another authority

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53. Baur v. Baur Farms, Inc., 832 N.W.2d 663, 670 (Iowa 2013) (quoting Maschmeier, 435 N.W.2d at 380).

54. *Id.* at 670.

55. *See id.* (citing and quoting various formulations used in other jurisdictions).

56. *Id.* at 670–71 (collecting authorities).

57. Exadaktilos v. Cinnaminson Realty Co., 400 A.2d 554, 561 (N.J. Super. Ct. Law Div. 1979) (quoting the New Jersey oppression provision).

58. *See* GEVURTZ, *supra* note 40, at 492–93.

59. Professor Gevurtz offers as an example the Oregon Supreme Court's decision in *Baker v. Com. Body Builders, Inc.* 507 P.2d 387 (Or. 1973); GEVURTZ, *supra* note 40, at 493.

60. GEVURTZ, *supra* note 40, at 493.

61. *Id.*

puts it, "[i]n effect, courts [adopting the reasonable expectations standard use] the dissolution remedy to enforce unwritten agreements by close corporation participants . . . ."[62]

Professor Moll divides oppression cases along similar lines.[63] He explains that some courts apply a "majority perspective" that finds oppression only when majority shareholders offer no legitimate business purpose for their actions.[64] Other courts adopt what Moll characterizes as a "minority perspective" on oppression that is less concerned with business justifications at the corporate level and more concerned with the effect that the majority's decisions have on minority shareholders.[65] Moll puts the "reasonable expectations" cases in the latter camp.[66]

B. *The "Reasonable Expectations" Oppression Standard Adopted in Baur*

The *Baur* Court noted that the "reasonable expectations" test for oppression now appears to be "the most widely adopted" across American jurisdictions.[67] *In re Kemp & Beatley, Inc.*,[68] a case cited in *Baur*, illustrates a common fact pattern where courts have employed this oppression standard. Two minority shareholders had invested in a closely-held corporation where they were employed, and for years the corporation compensated its investors, including the minority shareholders, through actual dividends or constructive dividends—salary bonuses that were proportionate to share ownership.[69] The corporation changed

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62. ALAN R. PALMITER, CORPORATIONS 575 (7th ed. 2012).

63. *See* Douglas K. Moll, *Shareholder Oppression in Close Corporations: The Unanswered Question of Perspective*, 53 VAND. L. REV. 749 (2000) [hereinafter Moll, *Perspective*].

64. Moll lumps shareholder fiduciary duty and statutory oppression claims under the broad umbrella of "oppression," and offers Zidell v. Zidell, Inc., a shareholder fiduciary duty case, as an example of the majority perspective of oppression. 560 P.2d 1086 (Or. 1977); Moll, *Perspective*, *supra* note 63, at 766. As Moll explains, the *Zidell* court found no breach of fiduciary duty by majority shareholders who offered business justifications for their decision to withhold dividends, even though the practice deprived the minority shareholder of any financial returns from the corporation. *Id.*

65. Moll offers *In re Topper* as an example of a minority perspective on oppression. 433 N.Y.S.2d 359 (Sup. Ct. 1980); Moll, *Perspective*, *supra* note 63, at 768. As Moll explains, the majority shareholders of a closely-held corporation discharged Topper for cause, and the court concluded that such business justifications were irrelevant if the termination defeated Topper's reasonable expectations of continued employment. *Id.*

66. *See* Moll, *Perspective*, *supra* note 63, at 768–69.

67. Baur v. Baur Farms, Inc., 832 N.W.2d 663, 670 (Iowa 2013). Not all jurisdictions endorsed the "reasonable expectations" oppression standard, however. *See* Kiriakides v. Atlas Food Sys. & Servs., Inc., 541 S.E.2d 257, 265 (S.C. 2001) (refusing to adopt the standard as "simply inconsistent with [the South Carolina oppression] statute").

68. In re Judicial Dissolution of Kemp & Beatley, Inc., 473 N.E.2d 1173, 1175–77 (N.Y. 1984).

69. *Id.*

this policy shortly after one of the minority shareholders retired and the other was dismissed from the corporation, effectively precluding both minority shareholders from receiving any further return on their investment.[70] Although the business judgment rule would have protected the new policy on distributions and bonuses, the New York Court of Appeals found that the practice defeated the minority shareholders' "reasonable expectations" of receiving a return on their investment and thereby constituted oppression.[71] *Kemp & Beatley* is a classic example of a court applying the reasonable expectations oppression standard to protect a minority shareholder's "specific" expectation that he will receive a return on his investment in the corporation through annual distributions or employment.

Courts also apply the reasonable expectations standard to protect the "general" reasonable expectations of a minority shareholder—those expectations ordinarily associated with a person's status as an owner of corporate stock. A stockholder's right to share corporate profits proportionately with other stockholders is a critical component of these expectations. As the Alabama Supreme Court noted in *Michaud v. Morris*, "[c]ertain basic expectations of investors are enforceable in the courts, and among those is a right to share proportionately in corporate gains."[72] Courts protect this expectation by finding oppression in the context of corporate freeze-outs or squeeze-outs, where majority shareholders decline to approve general corporate distributions but simultaneously use employment with the corporation or similar means to tap corporate profits for themselves.[73] Professor Moll expresses the concept this way:

> Every shareholder reasonably expects that her commitment of capital entitles her to a proportionate share of the corporate earnings. Oppression liability should arise, therefore, whenever this 'general' reasonable expectation is frustrated—i.e., whenever controlling shareholders squeeze-out a minority shareholder from the business returns but continue to share in corporate earnings themselves.[74]

It is thus significant that the *Baur* Court cited not only *Kemp & Beatley*, a case where minority shareholders established a *special* expectation that they

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70. *Id.*

71. *Id.* at 1180–81 ("It was not unreasonable for the fact finder to have determined that this change in policy amounted to nothing less than an attempt to exclude petitioners from gaining any return on their investment through the mere recharacterization of distributions of corporate income. Under the circumstances of this case, there was no error in determining that this conduct constituted oppressive action . . . .").

72. 603 So. 2d 886, 888 (Ala. 1992).

73. As the South Dakota Supreme Court observed in *Landstrom v. Shaver*, "Typically, relief has been granted in non-fraud oppression cases where the majority has engaged in a freeze-out or squeeze-out conduct." 561 N.W.2d 1, 10 (S.D. 1997).

74. Douglas K. Moll, *Shareholder Oppression v. Employment at Will in the Close Corporation: The Investment Model Solution*, 1999 U. ILL. L. REV. 517, 553 (1999) [hereinafter Moll, *Shareholder Oppression in the Close Corporation*].

would receive regular distributions, but also cases like *Bonavita v. Corbo*,[75] which protect a minority shareholder's *general* expectations of sharing proportionately in corporate gains, and thus find oppression "when the effect of a majority shareholder's conduct is to deprive a minority shareholder of any return on shareholder equity."[76] *Bonavita* applied the reasonable expectations standard and found oppression where shareholders controlled a closely-held jewelry store corporation and received income from the business through salary payments, but continually refused to authorize dividends or other distributions that would permit the remaining shareholders to receive any return.[77]

After citing these authorities, and stressing that every shareholder of an Iowa corporation has implicit reasonable expectations that include the right to "share proportionately in a corporation's gains,"[78] the *Baur* Court endorsed the "reasonable expectations" standard for Iowa oppression cases:

> The determination of whether the conduct of controlling directors and majority shareholders is oppressive . . . must focus on whether the reasonable expectations of the minority shareholder have been frustrated under the circumstances. We need not catalogue here all the categories of conduct and circumstances that will constitute oppression frustrating the reasonable expectations of minority shareholders' interests. 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.[79]

C. *"Reasonable Expectations" as Applied in Baur*

The *Baur* Court provided a tentative analysis of how the reasonable expectations standard might apply to a closely-held corporation shareholder like Jack Baur. In essence, the Court acknowledged that a corporate freeze-out can be oppressive even if there is no wrongful intent on the part of majority shareholders who orchestrate it.

The Court did not actually label the majority's conduct as a "freeze-out," but described Jack's situation in similar terms, emphasizing that, although Jack

75. 692 A.2d 119 (N.J. Super. Ct. Ch. Div. 1996).

76. Baur v. Baur Farms, Inc., 832 N.W.2d 663, 671 (Iowa 2013).

77. Bonavita, 692 A.2d at 126 ("Given the effect of those actions on plaintiff, and regardless of whether defendants' actions might otherwise be termed 'wrongful' or 'illegal,' there is no question that defendants' conduct has destroyed any reasonable expectation that plaintiff may have enjoyed respecting her stock interests. As such, it is clear . . . that defendants' acts do indeed constitute 'oppression.'").

78. Baur, 832 N.W.2d at 673 (noting that IBCA provisions like Iowa Code § 490.1434, which offer "fair value" purchase alternatives for resolving oppression claims, are extensions of this principle).

79. *Id.* at 674.

owned over twenty-five percent of Baur Farms, "[he had] drawn no salary from [Baur Farms] for approximately fifty years."[80] The Court also pointed out that during the twenty-year period while Jack negotiated unsuccessfully with the corporation and its majority shareholders for the sale of his shares, the appraised value of the corporation's assets "increased between fivefold and sevenfold to approximately [six million dollars]," yet the corporation had "never paid a dividend and, given the nature of its business and the variability of its cash flow, might never do so."[81] Thus, while Jack had no basis for a corporate breach of fiduciary duty claim against the majority, whether concerning their management of Baur Farms' assets or the compensation they had received while working for the corporation,[82] Jack also had no access to his proportionate share of the resulting corporate profits.

The issue of Jack's exit rights—his ability to sell his shares—was, of course, relevant to this question, and the Court recognized that the right of first refusal provision in Baur Farms' bylaws presented serious difficulties. The bylaw's default "book value" purchase price formula failed to address several key questions relating to valuation,[83] and, assuming the provision were ever invoked, a Board of Directors controlled by the corporation's majority shareholder would have the final word on "book value."[84] Moreover, the Board's most recent "book value" determination dated from 1983, and Jack was powerless to cause the directors to revisit the issue or to reestablish "a book value that [was] reasonably related to the fair value of the company's assets" as of the end of the most current fiscal year.[85] Thus, the only potential outlet for the sale of Jack's shares was the corporation and/or its shareholder majority, but they had offered to purchase Jack's shares only if he would accept a substantial discount from fair value.[86] The question to be resolved, the Court concluded, was "whether the price offered by [Baur Farms] for the purchase of Jack's shares [was] so inadequate under the circumstances as to rise—when combined with the absence of a return on investment—to the level of actionable oppression."[87]

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80. *Id.*
81. *Id.*
82. *Id.* at 670 n. 6, 674 n. 7 (noting that Jack had "abandoned any claim that Bob or any other shareholder took excessive compensation or unreasonable perquisites" and that Jack made "no claim that [Baur Farms'] other directors and its officers . . . . mismanaged the business of the corporation, wasted its assets, or engaged in self-dealing in violation of their duties of care and loyalty to the company or its shareholders").
83. *Id.* at 674.
84. *See id.* at 676.
85. *Id.*
86. *Id.*
87. *Id.* at 677.

Despite its detailed assessment of the record, the *Baur* Court did not hold that Jack had actually established oppression by the Baur Farms' shareholder majority, noting that the district court had not taken evidence from the defendants on the value of Jack's shares, had not made separate findings of fact and conclusions of law, and may not have understood "oppression" to require a "reasonable expectations" analysis.[88] The Court stated that it:

> express[ed] no view on the question of whether the last position taken by [the corporation and its majority shareholders] during negotiations on the price offered for Jack's interest in the corporation was outside the range of fair value and incompatible with the reasonable expectations of a shareholder in Jack's position under the circumstances[,] including a history of no return on shareholder equity during the several decades of the corporation's existence.[89]

The Court instead remanded the case for further consideration under the new "reasonable expectations" standard.[90]

V. *BAUR*: CRITIQUE AND RESPONSES

As reflected in *Baur* and in secondary sources cited therein, courts in many other jurisdictions have previously adopted and repeatedly applied "reasonable expectations" oppression standards, and there is ample support for those decisions in scholarly and professional literature.[91] Nonetheless, as noted in Part I, some have questioned *Baur*'s holding that oppression may occur when a majority shareholder's conduct frustrates the reasonable expectations of the minority shareholder under applicable circumstances.[92] The following discussion addresses these and other potential concerns with the Court's ruling.

A. *"Reasonable Expectations" and Interference with Majority Prerogatives*

Since internal disputes over management of a corporation are ordinarily resolved by majority vote, it might fairly be asked whether *Baur*'s adoption of

88. *Id.*

89. *Id.*

90. *Id.* at 677–78. The Court stated: "If, after taking additional evidence bearing on this question and applying the reasonable expectation standard set forth above, the district court finds [that the corporation and majority shareholder] acted oppressively under the circumstances, the court [may provide relief]." *Id.* at 677.

91. *Id.* at 670–71 (collecting cases and secondary authorities, including F. HODGE O'NEAL & ROBERT B. THOMPSON, O'NEAL AND THOMPSON'S OPPRESSION OF MINORITY SHAREHOLDERS AND LLC MEMBERS § 7:11 (2d rev. ed. 2013), and Douglas K. Moll, *Shareholder Oppression & Dividend Policy in the Close Corporation,* 60 WASH. & LEE L. REV. 841, 853–58 (2003). *See also* DORÉ, *supra* note 28, § 31:11 (discussing the reasonable expectations standard).

92. *See supra* notes 10–11 and accompanying text.

the "reasonable expectations of the minority" standard will threaten majority owners' ability to manage closely-held Iowa corporations. In reaction to the case, for example, Bob Baur's attorney, David Charles, stated to a reporter:

> The issue here is, what does the minority shareholder who is given or inherited shares have right to demand of [the] majority which might affect or change the whole business? . . . The minority has never before been given the ability to direct how the business is run in Iowa. The implications of this are far-reaching.[93]

The *Baur* Court acknowledged a similar concern, cautioning that when courts determine relief for oppression, they "must be careful . . . to avoid giving the minority a foothold that is oppressive to the majority."[94]

It is certainly the case that the "reasonable expectations" standard injects a minority perspective into the oppression inquiry, such that pure corporate level business justifications for majority actions may not be sufficient to sustain decisions that adversely impact a minority shareholder. But if the shareholder expectations analysis is qualified by "objective reasonableness" limitations similar to those that other courts have applied in oppression cases, then Iowa courts should be able to protect the interests of both majority and minority shareholders. In this regard several points are important to understand.

1. *Business Judgment Rule Review is Not Necessarily Appropriate for All Decisions*

In providing judicial review of majority owners' business decisions that adversely impact minority owners in a closely-held enterprise, the statutory oppression remedy and related fiduciary duty concepts restore a measure of balance to deferential business judgment review standards that work well in most, but not all, corporate contexts. As explained earlier,[95] the business judgment rule sustains virtually any business decision the majority owner might make, absent a conflict of interest, as long as the decision was at least "rational" and regardless of its effect on other shareholders. In a public corporation, disgruntled shareholders can simply turn to the market, sell their shares, and "get out." In the close corporation context, however, shareholders who are adversely impacted by majority decisions have no market escape route. Through shareholder fiduciary

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93. *Iowa Supreme Court Ruling Gives More Clout to Minority Shareholders,* OMAHA WORLD-HERALD, June 15, 2013, http://www.omaha.com/article/20130615/NEWS/706159926; *see also* MCEOWEN, *supra* note 9, at 6 (noting that estate/business planning in the farm context often limits the role of off-farm heirs and arguing that "[a]ccordingly, a minority shareholder cannot reasonabl[y] expect to have any part in managerial decision making").

94. Baur, 832 N.W.2d at 678.

95. *See supra* Part III.B.

duty case law and the statutory remedy of judicial dissolution for oppression, corporate law recognizes that majority owners of a closely-held business may sometimes act in ways that frustrate the legitimate interests of minority owners, and that minority owner interests may, in some cases, outweigh the majority's asserted business justifications. These fiduciary duties and oppression remedies do *not* restrict majority discretion with respect to decisions that do not affect minority shareholders, like choosing among competing business opportunities for the corporation.[96] Nor do these duties or remedies prevent the majority from contracting with the minority shareholder for greater discretion.[97]

2. *Standards Exist for Establishing a Minority Shareholder's "Reasonable Expectations"*

The judicial standards for determining a minority shareholder's reasonable expectations are fairly clear. Courts applying the standard emphasize that a minority shareholder must present specific evidence concerning the facts that gave rise to her claimed expectations, such as a promise of employment.[98] But, as explained earlier,[99] in addition to protecting these informal bargains, courts applying the reasonable expectations standard will also protect a minority shareholder's "general" reasonable expectations—those expectations that arise from the mere status of being a shareholder. A shareholder need not necessarily produce evidence to support the latter expectations, which include, to use the *Baur* Court's language, "the principle that every shareholder may reasonably expect to share proportionally in a corporation's gains."[100]

That is not to say that a majority shareholder will never be able to produce evidence that specific understandings of the parties have negated those general expectations, or that extraordinary circumstances somehow justify the majority's departure from them. For example, if a minority shareholder understood at the time of investment, or agreed explicitly, that future corporate earnings would not be distributed and that shares could be sold or redeemed only under limited conditions, then the "general" expectations described above might not be objectively reasonable expectations. Thus, a recent unpublished decision by the Iowa Court of Appeals rejected claims by a member of a nonprofit hunting club that the other members of the club had acted oppressively when the members refused

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96. *See* Moll, *Perspective*, *supra* note 63, at 821 (making this argument in defense of his recommended approach to oppression analysis).

97. *Id.*

98. *See, e.g.*, Boehringer v. Konkel, 404 S.W.3d 18, 26 (Tex. App. 2013).

99. *See supra* Part IV.B.

100. Baur v. Baur Farms, Inc., 832 N.W.2d 663, 673 (Iowa 2013). *See also supra* notes 63–71 and accompanying text.

to amend original article and bylaw provisions that restricted transfer of membership interests and that provided for redemption of a deceased member's interest for a price based on the member's capital investment.[101]

3. *Oppression Protects Only Objectively Reasonable Expectations*

While oppression standards generally require consideration of the impact that majority shareholders' management decisions have on minority owners, the statutory oppression remedy does not protect a minority owner's *subjective* expectations concerning "fair" treatment by the majority, no matter how sincerely held the minority owner's beliefs may be. As the New York Court of Appeals stated in a passage that has since been widely cited: "[O]ppression 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."[102]

What constitutes a "reasonable expectation" will vary from case to case. Precedent suggests that if allegedly oppressive action is triggered by the minority shareholder's own wrongful conduct, is the result of changed conditions not anticipated by the parties, or is otherwise reasonable under the circumstances, the court may decline to provide relief. Thus, where a minority shareholder employee is terminated from corporate employment for misconduct or incompetence, most courts have concluded that an expectation of continued employment is unreasonable.[103] Courts have similarly rejected minority shareholder claims of

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101. Jochimsen v. Wapsi Hunting Club, Inc., No. 10-1430, 2011 WL 2695272, at *6–7 (Iowa Ct. App. July 13, 2011). The court stated:

> [S]ince incorporation, the members have known they could not transfer their interest and for decades, the members have reasonably expected to receive what they paid into the corporation—nothing more. Moreover, the record suggests that paying the liquidation value of the members' certificates would be unsustainable and would cause [the nonprofit corporation's] existence to end. In light of these observations, we cannot conclude the members engaged in oppressive conduct by carrying these provisions forward into their 2008 amended articles and bylaws.

102. In re Judicial Dissolution of Kemp & Beatley, Inc., 473 N.E.2d 1173, 1179 (N.Y. 1984).

103. *See, e.g.*, Exadaktilos v. Cinnaminson Realty Co., 400 A.2d 554, 561–62 (N.J. Super. Law Div. 1979) (no oppression where minority shareholder was discharged for unsatisfactory job performance and was denied a right to participate in corporate management because he failed to learn its business); Gimpel v. Bolstein, 477 N.Y.S.2d 1014, 1019–20 (N.Y. Sup. Ct. 1984) (no oppression where discharged minority shareholder stole from corporation). *See also* Willis v. Bydalek, 997 S.W.2d 798, 802–03 (Tex. App. 1999) (holding that oppression did not occur when a closely-held corporation and its majority shareholder continually lost money and attempted to stem the tide of red ink by firing a minority shareholder who was an at-will employee). *But see* In re

guaranteed lifetime employment, as in *Ford v. Ford*, a Pennsylvania case cited in *Baur*.[104]

The Iowa Supreme Court's decision in *Bump v. Stewart, Wimer & Bump, P.C.*[105] may be a relevant precedent along these same lines. Bump, a lawyer/shareholder, was terminated from a law firm organized as a professional corporation and then compensated for the value of his shares.[106] Bump sued the firm and his fellow shareholders, contesting not only the amount of his share compensation but also the termination itself.[107] Bump invoked majority shareholder fiduciary duties in the closely-held corporation (rather than oppression) as one of the bases for the employment claim.[108] On *de novo* review of the trial court's decision, the Iowa Supreme Court agreed with the defendants that the majority's decision to fire Bump was made only as a last resort in order to alleviate tensions threatening the law firm's very existence, and thus did not breach any majority-minority shareholder fiduciary duties.[109] An oppression claim by Bump would presumably have come out the same way under the reasonable expectations standard. The law firm paid Bump for his interest in the firm after terminating him, thus satisfying his general expectation of receiving a proportionate share of firm profits. If Bump's conduct at the law firm made his termination the only reasonable course of action the majority could take to preserve the firm's existence, then Bump could not have had any reasonable specific expectation of a right to continued employment. Put differently, for the same reasons there was no breach of fiduciary duty by the majority, the majority had not acted in an "oppressive" manner towards Bump.

4. *The Importance of Perspective*

Perspective matters, of course. As Professor Moll has cautioned, a pure minority perspective which considers only the impact that a business decision has

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Topper, 433 N.Y.S.2d 359, 362 (N.Y. Sup. Ct. 1980) (majority shareholders of a closely-held corporation discharged minority shareholder for cause and court concluded that such business justifications were irrelevant if the termination defeated the shareholder's reasonable expectations of continued employment).

104. 878 A.2d 894, 904 (Pa. Super. Ct. 2005) (holding that while minority shareholders could expect to receive "*some* benefit from their minority shares," they could not reasonably expect the corporation to guarantee them lifetime employment) (emphasis added). For a more detailed discussion of minority shareholder oppression claims in the context of terminations from employment, s*ee also* Moll, *Shareholder Oppression in the Close Corporation*, *supra* note 74.

105. 336 N.W.2d 731, 734 (Iowa 1983).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id*. at 735, 738 ("[W]e find that Stewart and Wimer took the course they thought best for the corporation and all individuals involved.").

on the minority shareholder is not likely to produce satisfactory outcomes in all oppression cases.[110] But, he also cautions, a pure majority perspective that finds no oppression when the majority offers a business justification for its action is not satisfactory either.[111] The latter perspective rests on a "flawed . . . implicit assumption that reasonable close corporation shareholders are solely concerned with maximizing the profits of the business."[112] Moll argues that oppression standards should reflect a "modified minority" approach.[113] Where the majority shareholder's management practices defeat the parties' original understandings about minority owner rights, he argues, such conduct should be prohibited, even if it is "profitable" and "legal" corporate conduct, unless compelling new circumstances justify a decision to modify those understandings.[114] The same should be said for management practices that defeat a closely-held corporation shareholder's fundamental right and implicit expectation that she will share proportionately in the corporation's gains, and *Baur* should be understood as expressing that principle.

It might have been helpful if the *Baur* Court had offered procedural guidance for future oppression cases, as some other courts have done for shareholder fiduciary duty litigation. In *Wilkes v. Springside Nursing Home, Inc.*,[115] for example, the Supreme Judicial Court of Massachusetts suggested the following approach for closely-held corporation cases where the minority shareholder claims that majority shareholder business practices violate shareholder fiduciary duties. The majority must demonstrate a legitimate business purpose for the challenged conduct, and, if the majority does so, the minority shareholder must be given an opportunity to show that the majority could have achieved its business purpose through means that were less disruptive to the minority's interests as shareholder.[116] A similar approach might be helpful for resolving cases where the minority shareholder contends that majority shareholders have acted oppressively.

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110. Moll, *Perspective*, *supra* note 63 at 767 ("[T]he pure minority perspective is wholly unconcerned with the propriety of the majority's conduct. Such a perspective is premised upon safeguarding the minority shareholder and its sole concern is the absolute protection of the minority's reasonable expectations. Any majority actions that harm those expectations—even actions justified by a legitimate business purpose—will trigger oppression liability.").

111. *Id.* at 766, 770–72 ("[T]he detrimental effects of majority conduct on minority interests are of no relevance to a pure majority court. Minority interests, in other words, are not considered at all.") (footnote omitted).

112. *Id.* at 754.

113. *See id.*

114. *Id.* at 815–16.

115. Wilkes v. Springside Nursing Home, Inc., 353 N.E.2d 657 (Mass. 1976).

116. *Id.* at 663.

5. *Lessons from Baur*

For majority owners of closely-held corporations or their counsel, the lessons of *Baur* are fairly clear. The case holds that a court applying a "reasonable expectations" analysis may find oppression when majority shareholders of a profitable family farm corporation refuse to provide an off-farm minority shareholder with any return on investment over a substantial period of time and simultaneously reject that minority shareholder's repeated offers to sell his shares for fair value.[117] As described in Part II.A, the Baur Farms, Inc. Board of Directors authorized no dividends or other meaningful distributions to Jack as minority shareholder during a period that extended over several decades, and the majority offered to repurchase Jack's shares only if he would sell them at a substantial discount from fair value.[118] During this same time frame, the majority shareholders controlled all of the farm corporation's decisions about capital investments and other expenditures, including payments to majority shareholders that Jack did not challenge.[119] Jack's only apparent option was to accept the majority's offer to redeem his shares at a substantial discount.

Even assuming this freeze-out was not malicious in any way, and that all of the majority's business decisions were made in good faith and were entirely reasonable at the corporate level, if the purpose of a closely-held business extends beyond simple operation as a profitable enterprise, such conduct may be oppressive to the minority. Without some prospect of distributions from Baur Farms or redemption of his interest in the company at fair value, Jack may have been denied his right to share proportionately in the corporation's gains because the freeze-out situation persisted not just for months or years, but over a period of decades, and with no end in sight given the parties' impasse over the appropriate redemption price for Jack's shares.

Had the Baur Farms, Inc. majority not discontinued the corporation's initial practice of compensating directors with meaningful payments, authorized even modest distributions to shareholders, or offered any prospect that Jack's shares might eventually be repurchased at a price approximating fair value, his oppression case would not have been nearly as strong.[120] Or to put the point in agricultural terms, the adage "Pigs get fat, and hogs get slaughtered!" is surely relevant when majority shareholders exercise control of a closely-held corporation in ways that adversely impact minority shareholders.

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117. *See* Baur v. Baur Farms, Inc., 832 N.W.2d 663, 673–74 (Iowa 2013).

118. *Id.* at 673–77.

119. *Id.* at 670 n.6, 674 n.7.

120. *Id.* at 674. When Jack was terminated as a corporate officer in 1997, Baur Farms changed its prior practice of compensating Baur Farms directors with a $5000 per year salary and thereafter paid directors only $250 annually. *Id.*

It bears repeating that, in these situations, the court must always balance the expectations of the minority shareholder against the corporation's legitimate objectives. A member of a non-profit corporation may have no reasonable expectation of sharing in corporate gains, as evidenced by the Iowa Court of Appeals' recent decision in *Jochimsen v. Wapsi Hunting Club, Inc.*[121] Even in a for-profit corporation, if the expectation in question is the one at issue in *Baur*—the shareholder's right to share proportionately in corporate earnings and other gains—a court must consider the corporation's need for capital, including necessary expenses and maintaining or developing reserves for planned capital expenditures. A minority shareholder who insists on employment, other forms of distribution, or an immediate buy-out in the face of such corporate objectives might have unreasonable expectations.

It depends on the circumstances. Assume a family business that occasionally harvests timber from corporate-owned real estate. That firm might realize profits only infrequently and thus not be in a position to make regular distributions to shareholders or to finance a buy-out. On the other hand, a family farm corporation that grows and sells grain on an annual basis might be able to make distributions in profitable years without compromising liquidity, including redeeming shares with borrowed funds or seller-financing.

B. *"Reasonable Expectations" of Shareholders in the Gift-Inheritance Context*

A common oppression scenario where courts have provided relief under the reasonable expectations standard is as follows: the majority shareholder terminates a founding minority shareholder's employment with the corporation and thereafter fails to provide dividends or any other means for the minority shareholder to receive a return on investment.[122] An implied contract analysis based on reasonable shareholder expectations works fairly well in this situation if one can ascertain the parties' original intentions concerning management participation and distributions.[123] But what about a minority shareholder who did not voluntarily invest in the corporation? Can it fairly be claimed, as some have asserted, that a minority shareholder like Jack Baur has no reasonable expectation of receiving any return on investment because he "received his interest in the corporation by gift and inheritance?"[124]

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121. Jochimsen v. Wapsi Hunting Club, Inc., No. 10-1430, 2011 WL 2695272 (Iowa Ct. App. July 13, 2011) (discussed in Part V.A.2).

122. *See, e.g.*, In re Judicial Dissolution of Kemp & Beatley, Inc., 473 N.E.2d 1173 (N.Y. 1984).

123. *See* Boehringer v. Konkel, 404 S.W.3d 18 (Tex. App. 2013).

124. *See* MCEOWEN, *supra* note 9, at 3.

1. *General Expectations and Specific Expectations*

Surely most owners of interests in family businesses would dispute that proposition. This group should include the majority shareholders in *Baur*, who also received their interest in Baur Farms, Inc. through gift and inheritance. The contention that one who inherits or receives her interest by gift cannot reasonably expect to participate in profits would undoubtedly be inconsistent with the relevant intentions of many donors and testators who pass on corporate shares, presumably with the intention of conferring tangible benefits on the recipients. At the very least, heirs and donees have the same general reasonable expectations as any owner of corporate stock, and these include the expectation of sharing proportionately in corporate gains. As one agricultural planning expert recently explained when counseling a fourth generation family farm shareholder who was troubled by a sister's request that the corporation purchase twenty-five percent of her shares:

> The drive to build for future generations has always served as proof for entrepreneurs and business builders, a purpose that nourishes and supports them through the struggle. These are powerful, positive drives. Yet, by their very strength, they make it too easy to forget that assets are means—not ends—and that future generations are composed of real people, each with individual dreams, values, and needs . . . [A]ssets can be structured so owners can get income from property or can set a conservative cash distribution policy. Why not adjust the business model to meet today's human needs for tangible returns rather than force heirs to choose between bearing burdens without reward or giving up those assets in order to get any return at all?[125]

Although Jack Baur did not expect or seek to be employed by Baur Farms, some heirs and donees may also have specific reasonable expectations concerning their role in a closely-held corporation. Rather than assume that a shareholder in such a corporation has no such expectations with respect to shares acquired by gift or inheritance, courts have examined the development of shareholders' relationships *over time*, an analysis akin to a course-of-dealing inquiry in contract interpretation cases. For example, what have the founding shareholders done in the past when next-generation members have sought employment with the firm? Have there been board policies, bylaws, or other communications addressing the issue of employment of founders' children? As the North Carolina Supreme Court put it when deciding a case involving two feuding brothers who both acquired their shares by gift and inheritance:

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125. Donald J. Jonovic, *When a Major Shareholder Wants to Sell: Can Their Problem be Solved?*, AGRICULTURE.COM (Sept. 10, 2013, 12:04 PM) http://www.agriculture.com/family/estate-planning/when-a-maj-shareholder-wts-to-sell_343_ar-33740.

> '[R]easonable expectations' are to be ascertained by examining the entire history of the participants' relationship. That history will include the 'reasonable expectations' created at the inception of the participants' relationship; those 'reasonable expectations' as altered over time; and the 'reasonable expectations' which develop as the participants engage in a course of dealing in conducting the affairs of the corporation.[126]

Professor Moll has also suggested that gift, inheritance, and similar situations where shareholder relations evolve over time should be viewed over "the entirety of the shareholders' relationship" in order to adequately protect the minority shareholder's stake in the corporation.[127]

2. *Application in Baur and Lessons for Corporate Planners*

One should start from the proposition recognized in *Baur*, and applied by many other courts, that every shareholder has a general reasonable expectation of sharing proportionately in the corporation's gains.[128] The shareholder need not produce evidence of any specific expectations in this regard, so the presence or absence of this expectation should not depend on how shares were acquired. This is what the Iowa Supreme Court rightly concluded in *Baur*. Special circumstances might negate the reasonableness of this expectation. However, by adopting a case-specific approach to oppression—whether "the reasonable expectations of the minority shareholder have been frustrated *under the circumstances*"[129]—the *Baur* Court comfortably accommodates all facts that might be relevant to an expectations analysis in the gift/inheritance scenario.

In many profitable closely-held corporations it would ordinarily be entirely reasonable for a minority shareholder like Jack, whose shares represented over twenty-five percent of the firm's capital, to expect at least *some* return on his equity over the course of several decades, regardless of how the shares were acquired. On the other hand, assume an oppression claimant acquired shares as part of an estate plan that was intentionally designed to prevent distributions to minority shareholders. While such a plan might promote discord among family

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126. Meiselman v. Meiselman, 307 S.E.2d 551, 563 (N.C. 1983).

127. Douglas K. Moll, *Shareholder Oppression & Reasonable Expectations: Of Change, Gifts, and Inheritances in Close Corporation Disputes*, 86 MINN. L. REV. 717, 722 (2002).

128. *See supra* Parts IV.B and V.A.2.

129. Baur v. Baur Farms, Inc., 832 N.W.2d 663, 674 (Iowa 2013) (emphasis added).

members who are employed and those who are not employed and thus be inadvisable,[130] that history might be "relevant circumstances" for purposes of the reasonable expectations analysis.[131] *Baur*'s broader lesson for corporate planners is that if the majority wants to act in ways that defeat general reasonable expectations shared by every shareholder, including the shareholder's right to share proportionately in the gains of a profitable corporation, then the majority should explicitly contract for the right to do so. That may be done in a closely-held corporation with unanimous shareholder consent.[132]

C. *"Reasonable Expectations" and Interference with Corporate Planning Arrangements*

Planning goes both ways, of course. While corporate oppression litigation can produce reasonable outcomes for closely-held corporation shareholders, the financial and other costs to the corporation and the shareholders—who will usually be friends or family in this context—overwhelmingly make it a far better course for majority and minority shareholders to plan in advance about how to handle corporate control and shareholder buy-outs. The IBCA provides ample tools for this purpose, authorizing virtually any control arrangements the parties may agree upon, as well as buy-sell agreements and other stock transfer restrictions that are "not manifestly unreasonable."[133]

In *Baur*, a 1984 bylaw amendment required that any Baur Farms shareholder proposing to sell shares must first offer them to the corporation. This right of first refusal provision established "book value . . . as determined by the Board of Directors, for internal use only, as of the close of the most recent fiscal

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130. *See infra* Part V.C, discussing corporate planning arrangements. Another note of caution: if a donor makes it impossible for the donee to receive any economic benefit from a minority interest in a closely-held business, that gift may not qualify for the federal gift tax annual exclusion. Hackl v. Comm'r, 335 F.3d 664, 667–68 (7th Cir. 2003) (stating that "restrictions on the transferability of the [donees' interests in an LLC] meant that [the transferred interest was] without immediate value to the donees").

131. *See* GEVURTZ, *supra* note 40, at 492–97 (suggesting that the donor's intentions may be relevant to a reasonable expectations analysis when shares are acquired by gift or inheritance). *But see* Harl, *supra* note 8, at 114 ("Some have commented that there should have been more attention given to the intent of the two brothers who set up the corporation [in *Baur*]. The fact that their decisions (or lack of action) led to untold family turmoil for three decades substantially undercuts any inclination to attempt at this late date to ascertain what their intent might have been."). *See also* Gimpel v. Bolstein, 477 N.Y.S.2d 1014 (N.Y. Sup. Ct. 1984) (declining to apply reasonable expectations analysis to ascertain intentions of founding corporate shareholders in oppression dispute involving second-generation heirs).

132. *See* IOWA CODE § 490.732(b) (2013).

133. *See, e.g.*, IOWA CODE §§ 490.732 (authorizing contractual control arrangements by shareholders in closely-held corporations), 490.627 (authorizing corporate and/or shareholder implementation of share transfer restrictions).

year" as the default price.[134] Thus, Bob and Baur Farms argued that Jack had "no reasonable expectation of redemption at a price other than book value as contemplated in [the corporation's] bylaws."[135] A critic of *Baur* might ask: how can oppression occur if a majority shareholder simply insists upon enforcement of previously agreed understandings? This question was among the most difficult of all those the *Baur* Court confronted, because courts *are* supposed to respect closely-held corporation shareholder agreements that comply with IBCA requirements. And no one could argue that such agreements are not relevant to the reasonable expectations inquiry.

1. *The Baur Farms, Inc. Bylaw Did Not Control Jack's Oppression Claims*

The 1984 Baur Farms, Inc. bylaw was a default right of first refusal price provision (failing the parties' agreement) that did not unambiguously establish a redemption price for shares. The bylaw authorized Baur Farms' Board of Directors to determine the book value of the corporation's shares "for internal use only" on an annual basis, but "book value" was not defined. Reference to revaluation "for internal use only" and recalculation "as of the close of the most recent fiscal year" strongly suggest that historical cost—standard accounting practice for recording assets on the books of a corporation—was not intended to be controlling. Moreover, the bylaw did not clearly require annual valuation determinations. Bob, the majority shareholder, controlled the Board of Directors, and the Board never recalculated "book value" after 1983, so that the fair value of Jack's shares over the ensuing decades far exceeded the bylaw's default price.

Not surprisingly, Jack never formally tendered his shares for sale to the corporation under the 1984 bylaw. For reasons not made clear in the *Baur* opinion, the corporation apparently never invoked the provision either. Instead, the course of dealing pursued by Bob (representing Baur Farms) and Jack seems to confirm that the bylaw's valuation formula was not dispositive of Jack's claim. As the parties negotiated over purchase of Jack's shares, both sides tendered expert appraisals of the corporation's assets that were not tied to "book value" as it would have been determined under generally accepted accounting principles. Each side pressed its appraisal of the current value of Jack's interest but, as described in Part II.A, these negotiations ultimately floundered over the issue whether the "fair value" of Jack's interest should reflect a substantial minority discount.

The critical point is that the *Baur* Court did *not* decline to enforce the Baur Farms, Inc. bylaw. Neither of the parties invoked it, and both sides negotiated for decades as if the bylaw did not control. If the reasonable expectations

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134. Baur, 832 N.W.2d at 666.
135. *Id.* at 670.

standard protects implied and informal understandings in addition to express arrangements, this shareholder conduct over the course of two decades strongly suggests that the 1984 bylaw was not dispositive. Insofar as the bylaw was relevant to the fair value of Jack's shares, an issue discussed in more detail in Part V.D *infra*, the Court might have justifiably concluded that the majority's failure to make any new determination of "book value" of Baur Farms shares over more than two decades was a violation of the duty of good faith and fair dealing that is part of every contract.[136] But the Court's decision was far more limited: the Court noted only that the 1984 bylaw was ambiguous concerning the meaning of "book value" and procedures for its determination and that the parties could not agree on its implementation.[137] Given this context, the *Baur* Court's oppression ruling did not override the parties' agreed arrangements.

2. *Enforceability of Harsh Buy-Sell Agreements*

Although the *Baur* Court did not rule on the enforceability of the 1984 bylaw, the Court did emphasize that there were outer limits to pricing provisions in buy-sell agreements and similar transfer restrictions. The *Baur* Court pointed out that IBCA section 490.627 sanctions restrictions on the transfer of shares in closely-held corporations, but only if those restrictions are "not manifestly unreasonable."[138] The Court also noted that courts in other jurisdictions have declined to enforce closely-held corporation share transfer restrictions that established unreasonably low prices in relation to the shares' true value.[139] The Court cited *Swanson v. Shockley*, a pre-IBCA decision denying enforcement of a corporate bylaw that would have enabled a minority shareholder to purchase the majority owner's shares at approximately eight percent of their value.[140] The *Swanson* decision declined to enforce the bylaw on the ground that it had been repealed, albeit over the minority shareholder's dissent.[141] While *Swanson* might come out differently under the IBCA,[142] the case reflects an understandable reluctance by courts to enforce contractual provisions that border on the unconscionable.

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136. *See* RESTATEMENT (SECOND) OF CONTRACTS § 205 (1973); Harvey v. Care Initiatives, Inc., 634 N.W.2d 681, 684 n. 4 (Iowa 2001) (citing section 205 and noting that "[i]t is generally recognized that there is an implied covenant of good faith and fair dealing in a contract").

137. Baur, 832 N.W.2d at 674–75. Had the valuation formula been fair, perhaps the Court would have been more forgiving of ambiguity, as in Lange v. Lange, 520 N.W.2d 113 (Iowa 1994), where the Court enforced a buy-sell provision that appeared consistent with the desires of the participating shareholders, even though the agreement was so poorly worded as to raise questions about its meaning.

138. *Id.* at 672 (citing IOWA CODE § 490.627(4)(c) (2013)).

139. *Id.* at 671–72 (collecting authorities providing such relief).

140. *Id.* at 671 (citing Swanson v. Shockley, 364 N.W.2d 252, 255–56 (Iowa 1985)).

141. *Id.*

142. *See* DORÉ, *supra* note 28, § 31:8.

Some commentators have suggested that *Baur*'s dicta concerning valuation approaches may mean shareholders of Iowa corporations may not craft buy-sell agreements that utilize "book value" or other formulae that do not reflect the true value of shares.[143] But the *Baur* decision does not go that far. The Court's discussion of valuation can more plausibly be read as a signal that the terms of buy-sell agreements, like the terms included in other contracts, are subject to an outer limit of unconscionability.[144]

In application, American courts generally afford parties substantial leeway on the issue of valuation in buy-sell agreements. As one authority notes: "Many cases hold that a share transfer restriction is valid even though it compels a shareholder to sell shares at an arbitrary price that may not reflect the real value of the shares."[145] The Iowa courts have certainly taken that approach in other cases. A good example is *In re Estate of Frink*, a recent unpublished Iowa Court of Appeals decision.[146] The *Frink* buy-sell formula, applicable upon the death of a shareholder, provided: "[t]he purchase price for such stock shall be the book value as of the date of death as determined by the [corporation's] accountant . . . ."[147] When the majority shareholder died, the value of his shares under this formula was far less than the stock's market value, and the shareholder's heirs and executor resisted enforcement.[148] They disputed the meaning of "book value" under the agreement and contended that a transfer of shares at the accountant's calculation of book value ($900,000) would be unconscionable.[149] The district court rejected both challenges.[150] The Iowa Court of Appeals affirmed, agreeing with the district court's assessment that:

> [A]lthough none of the parties disagree that there is a gross disconnect between the book value of the corporation and its actual economic value, the shareholders and

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143. *See* Ward & Lindner, *supra* note 9.

144. *See* Casey v. Lupkes, 286 N.W.2d 204, 207 (Iowa 1979) ("We hold that the defense of unconscionability is available in any contract action").

145. ROBERT W. HAMILTON ET AL., CASES AND MATERIALS ON CORPORATIONS, INCLUDING PARTNERSHIPS AND LIMITED LIABILITY COMPANIES 453 (11th ed. 2010). Professor Hamilton lists the following authorities as examples: Unigroup, Inc. v. O'Rourke Storage & Transfer Co., 980 F.2d 1217, 1221 (8th Cir. 1992) (applying Missouri law and upholding corporate bylaw establishing "book value" repurchase price); In re Estate of Mather, 189 A.2d 586, 589–89, 591–92 (Pa. 1963) (upholding a per share repurchase price of one dollar for shares allegedly worth $1060 per share); Allen v. Biltmore Tissue Corp., 141 N.E.2d 812, 816 (N.Y. 1957) (upholding repurchase of shares at original issuance price).

146. In re Estate of Frink, No. 05-1674, 2006 WL 3018160 (Iowa Ct. App. Oct. 25, 2006).

147. *Id.* at *1.

148. *See id.* at *2.

149. *See id.*

150. *See id.*

> directors were entitled to adopt any benchmark they chose for the corporation's purchase of its stock, and if they chose to weight the benchmark in favor of the corporation instead of the individual shareholders, it was not only within their discretion to do so but there are substantial reasons why the shareholders and directors of a closely held corporation would choose to do so.[151]

3. *Lessons for Corporate Planners*

Baur offers a valuable lesson for corporate planners. There are myriad considerations which parties and those drafting buy-sell agreements will take into account, one of which should be the formula and procedure for determining any buy-out price. Since the participants in a closely-held corporation will not know in advance to whom the formula and procedure will apply first, they will typically want to include fair and reasonable valuation procedures in their buy-sell arrangements. But, they are not legally required to do so; if the parties consent in advance to sell shares for less than fair value, nothing in the *Baur* opinion prohibits them from doing so.

The Court's focus on parties' reasonable expectations in light not only of text but also circumstances and course of dealing over time, and the Court's determination not to apply a bylaw that it concluded was ambiguous, emphasize anew for corporate planners that their buy-sell provisions should be clear in this regard. Courts are loathe to enforce arrangements that border on the unconscionable, and ambiguity will impair prospects for enforcement. Agreements that allow one party to unilaterally establish share valuations that are prejudicial to the other are also suspect. While a fairer buy-sell arrangement might have been preferable, if Baur Farms, Inc. had established an unambiguous pricing formula for share repurchases under its bylaws—preferably a formula to be applied by persons other than those who would benefit under the arrangement—the corporation could presumably have invoked and enforced the provision, even if it required a shareholder to sell for less than fair value. Thus, if the Baur Farms bylaw had expressly provided the recalculated "book value" to be subject to a specified "minority discount," there is no reason to believe that the Iowa Supreme Court would not have enforced the bylaw as written.

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151. *Id.* at *5 (quoting the district court's finding). The Iowa Court of Appeals decision in *Jochimsen,* is fully consistent with *Frink*. Jochimsen v. Wapsi Hunting Club, Inc., No. 10-1430, 2011 WL 2695272, at *7 (Iowa Ct. App. July 13, 2011). In *Jochimsen*, discussed in Part V.A.2, *supra*, the court refused to find oppression when members of a non-profit hunting club refused to amend corporate articles and bylaws that provided for redemption of a member's interest on death based on the member's capital contribution—a value far less than the member's share of the corporation's liquidation value. *Id.*

D. *"Reasonable Expectations," Minority Discounts, and Fair Value*

The Baur Farms bylaw did not require a minority shareholder to sell his shares at a "minority discount," of course, but that did not prevent the Baur Farms majority from arguing that such a discount was appropriate. As discussed in Part II.A, the majority shareholders insisted that any purchase offer for Jack's shares should reflect a substantial minority discount due to Jack's minority ownership stake and because the corporation would incur taxes on gains if it sold corporate property to raise funds to redeem Jack's shares. Apparently rejecting this position, the *Baur* Court's remand instructions require the district court to determine:

> whether the last position taken by [Baur Farms] during negotiations on the price offered for Jack's interest in the corporation was outside the range of fair value and incompatible with the reasonable expectations of a shareholder in Jack's position under the circumstances[,] including a history of no return on shareholder equity during the several decades of the corporation's existence.[152]

This "fair value versus minority discount" issue raises a number of questions.

1. *Minority Discounts and Oppressive Conduct*

Emphasizing that Jack owned only a minority interest and that the corporation would incur taxes if it sold appreciated assets in order to redeem Jack's shares, one critic of *Baur* sides with the majority, contending that:

> [T]he reasonable expectations of a minority shareholder in a small, closely-held farming corporation [should] include . . . 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.[153]

There are a number of problems with this position. In appraisal proceedings, a remedy available only where corporate shares are not publicly-traded, both Iowa corporate statutes and case law define "fair value" of shares in terms that do *not* include minority discounts or deductions for taxes.[154] Perhaps more important, the classic oppression scenario is one where the majority makes a lowball share purchase offer to a minority shareholder who has previously been softened up by a lengthy distribution freeze-out. As the Massachusetts Supreme Judicial Court observed in the landmark case of *Donahue v. Rodd Electrotype Co.*:

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152. Baur v. Baur Farms, Inc., 832 N.W.2d 663, 677 (Iowa 2013).

153. McEowen, *supra* note 9, at 5.

154. *See* Iowa Code § 490.1301(4)(a) (2013); Nw. Inv. Corp. v. Wallace, 741 N.W.2d 782, 786–88 (Iowa 2007) (interpreting section 490.1301).

"[t]o cut losses, the minority stockholder may be compelled to deal with the majority. This is the capstone of the majority plan. Majority 'freeze-out' schemes which withhold dividends are designed to compel the minority to relinquish stock at inadequate prices."[155]

By refusing to offer the minority a price reflecting its proportionate share of firm value and offering to purchase shares only at a substantial discount, especially after decades of withholding distributions, a majority shareholder may be attempting to culminate just such a plan. The *Baur* Court's remand instructions appropriately encompass that possibility.[156] In any event, the availability of a corporate purchase alternative falling within a "range of fair values" would certainly be relevant to the ultimate oppression question: whether the majority permanently denied Jack any access to the value of his investment in Baur Farms.

To the extent the *Baur* Court's admonitions concerning fair value relate to a court-ordered buy-out as a remedy for oppressive conduct, the clear weight of authority holds that minority discounts are *not* appropriate.[157] There are important policy justifications for this result. Oppression remedies are not designed to replicate willing buyer and seller markets, but rather to redress improper conduct by majority shareholders. If the corporation were to dissolve, its assets would be sold at current values, and a minority shareholder would receive as a distribution her share of the corporation's net worth without any discount for minority status. Where a court orders a buy-out of the minority's interest instead of dissolution of the corporation, the buy-out price should likewise enable a minority shareholder to be paid free of any minority discount. Moreover, given marketability problems associated with closely-held corporations, a third party would likely be willing to pay very little for a minority interest that has been oppressed, making such valuation comparisons problematic at best. In short, although the *Baur* Court did not call attention to this distinction, if courts are to provide meaningful relief in oppression cases, it is necessary and appropriate to distinguish *fair value*—the IBCA's benchmark for share valuation—from *fair market value*.[158]

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155. Donahue v. Rodd Electrotype Co., 328 N.E.2d 505, 515 (Mass. 1975).

156. Baur, 832 N.W.2d at 677.

157. *See* DOUGLAS K. MOLL & ROBERT A. RAGAZZO, THE LAW OF CLOSELY HELD CORPORATIONS 8-35 to 8-36 n. 112 (Supp. 2013) (collecting cases); *see generally* Douglas K. Moll, *Shareholder Oppression and 'Fair Value': Of Discounts, Dates, and Dastardly Deeds in the Close Corporation*, 54 DUKE L.J. 293 (2004).

158. *Cf.* MODEL BUS. CORP. ACT § 14.34, cmt. 4b (2011) (stating that "fair value" should be determined "with reference to what the petitioner would likely receive in a voluntary sale of shares to a third party, *taking into account* [*his*] *minority status*") (emphasis added) (this comment does not explain the apparent conflict with "fair value" as expressly defined under the statutory appraisal standard, and the IBCA does not codify Model Act comments in any event).

2. *Minority Discounts in Voluntary Negotiations*

This is not to say there is no room for minority discounts or deductions, for tax expenses, in negotiations over share purchases within a closely-held corporation. Of course there is. Outside the context of appraisal proceedings, oppressive freeze-outs or remedies for oppressive conduct, a shareholder of a closely-held corporation is free to sell shares at whatever price she chooses. If a potential buyer, including the corporation, wants to justify discounted purchase offers based on the shareholder's minority interest or other reasons, that buyer should likewise be free to do so.

3. *Minority Discounts in Estate Planning*

Share value determinations for purposes of estate and gift taxation, including the availability of minority discounts, are governed by provisions of the Internal Revenue Code, IRS Regulations, and interpretive case law.[159] In family farm enterprises, as with other closely-held businesses, applicable discounts may be based in part on lack of marketability and lack of control by the holder of a minority interest.[160] Estate planners may therefore be concerned that the IRS will challenge minority discounts for interests in Iowa businesses on the ground that *Baur* too readily or easily provides minority shareholders relief for "oppression" by majority owners, including dissolution and alternative fair value buy-out remedies for minority shareholders.

Whether and how calculation of discounts under the tax laws might be influenced by the availability of the statutory oppression remedy, as construed in *Baur*, is beyond the scope of this Article. But several points can be made. First, to the extent that minority discounts are premised on factors other than the risk of oppression, the availability of oppression relief should be irrelevant. Moreover, drafters of modern business entity laws, like limited liability company statutes, have intentionally included exit right restrictions (e.g., restrictions on transferability and capital lock-in provisions) that facilitate minority discounts for tax purposes.[161] Nonetheless, the most prominent uniform version of these laws, the

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159. *See, e.g.*, 26 U.S.C. §§ 2701–2704 (1996); Treas. Reg. §§ 20.2031-1(b)–20.2031-2(e) (as amended in 1965); Rev. Rul. 59-60, 1959-1 C.B. 237; Estate of Bright v. U.S., 658 F.2d 999 (5th Cir. 1981).

160. Neil E. Harl, *Claiming Entity Discounts in Addition to Special Use Valuation,* 20 AGRIC. L. DIG. 41, 41–42 (2009).

161. F. HODGE O'NEAL & ROBERT B. THOMPSON, O'NEAL'S CLOSE CORPORATIONS: LAW AND PRACTICE § 2:7, at 2-56 to 2-57 (3d rev. ed. 2013); Moll, *Minority Oppression*, *supra* note 33, at 936 (stating that "the movement to restrict exit rights appears to be motivated primarily by a desire to make the family-owned LLC an attractive business structure for estate and gift tax purposes").

Uniform Limited Liability Company Act, now includes an oppression remedy.[162] Obviously that Act's drafters did not consider oppression relief to foreclose minority discounts.

Second, if it turns out that minority discounts are at risk because oppression relief is available in Iowa, then the policy choice will be clear. Are tax avoidance schemes more important than fairness considerations? We agree with the view urged by Professor Moll: "For an issue as important as exit rights, legislative decisions should be premised on what is sensible business policy for investors in the aggregate, rather than what is sensible tax policy for a mere subset of investors."[163] If planners need a business entity option that provides capital lock-in with no oppression escape hatch, the limited partnership is available.[164]

Third, the *Baur* opinion cannot fairly or reasonably be read as making the remedy of judicial dissolution or buy-out on account of oppression too readily or easily available. The opinion canvassed and is solidly grounded in precedent from within Iowa and across the nation. Those cases make clear that the standard for oppression relief is a demanding one.

4. *Lessons from Baur on Minority Discounts*

The lesson to be drawn from *Baur*'s admonitions concerning the majority's discounted purchase offers is a simple one: such offers may be strong evidence of oppression in the context of a long-term corporate freeze-out. The Court was not making any new law in this regard, since low-ball share purchase offers have long been associated with freeze-out tactics for which courts have provided relief. Nor does *Baur* interfere with minority discounts in voluntary purchase or agreed buy-sell arrangements. Whether the case reduces the availability of minority discounts for gift tax and estate planning purposes remains to be seen, but that prospect does not seem likely.

E. *Implications for Limited Liability Companies*

Iowa is one of nearly a dozen states that have adopted the Revised Uniform Limited Liability Company Act. The act includes a provision authorizing

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162. UNIF. LTD. LIAB. CO. ACT § 701(a)(5) (2006).

163. Moll, *Minority Oppression*, *supra* note 33, at 974.

164. Iowa has adopted the latest version of the Uniform Law Commission's Uniform Limited Partnership Act, which provides no default distribution or redemption rights for partners. *See* IOWA CODE § 488.504 (2013) (partners of a limited partnership are entitled to distributions only to the extent the partnership agreement provides for them). *See also* IOWA CODE §§ 488.602(1)(c), 488.605(1)(e) (limited and general partners become transferees of their partnership interests upon dissociation).

judicial dissolution of a limited liability company, or other relief, if a member establishes "illegal, fraudulent, or oppressive acts" by those in control of the company.[165] Iowa courts will likely adopt *Baur*'s "reasonable expectations" standard for determining the existence of oppression in these limited liability company cases.

Because the "reasonable expectations" oppression standard adopted in *Baur* allows participants in a closely-held firm to enforce informal, unwritten, and implied contractual understandings, the standard is clearly consistent with two important features of the Iowa Revised Uniform Limited Liability Company Act. First, the Iowa Act is premised on the theory that a limited liability company is primarily a creature of contract.[166] Second, and more importantly, the Act broadly defines the key term "operating agreement" to mean "the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all of the members of a limited liability company . . . ."[167]

But the very existence of contractual understandings in limited liability companies may also circumscribe the reasonable expectations of limited liability company participants. An interpretive comment prepared by the Uniform Limited Liability Company Act drafters, which may soon be added to the Act's oppression provision, provides as follows:

> Courts have extrapolated close corporation doctrine to unincorporated organizations.
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> * * *
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> However, applying close corporation law to limited liability companies requires some caution. Close corporation law developed in part because the standard corporate governance structure exalts majority power and does not presuppose contractual relationships among the shareholders.
>
> In contrast, while an LLC depends on the sovereign for legal existence and the all-important liability shield, LLC governance is fundamentally contractual. Therefore, in most situations, the operating agreement should reflect and comprise members' reasonable expectations. As a result, a court considering a claim of oppression by an LLC member should consider, with regard to each reasonable expectation invoked by the plaintiff, whether the expectation: (i) contradicts any term of the operating agreement or any reasonable implication of any term of that agreement; (ii) was central to the plaintiff's decision to become a member of the limited liability company or for a substantial time has been centrally important in the member's continuing membership; (iii) was known to other members, who expressly or impliedly

165. *See* IOWA CODE § 489.701(1)(e).

166. *See* DORÉ, *supra* note 28, § 13:16 ("[A]s stated in the comments to NCCUSL's version of [the Iowa Act]: 'A limited liability company is as much a creature of contract as of statute.'").

167. IOWA CODE § 489.102(15).

> acquiesced in it; (iv) is consistent with the reasonable expectations of all the members, including expectations pertaining to the plaintiff's conduct; and (v) is otherwise reasonable under the circumstances.[168]

While most features of a limited liability company law treat the company as a creature of contract, and while operating agreements are obviously central to the rights of participants in such companies, the emphasis on contract in the quoted comment may be overstated. First, courts must always construe operating agreements consistently with the non-waivable obligation of good faith and fair dealing.[169] In addition, empirical evidence suggests that many limited liability companies result from understandings that are no more heavily negotiated than in closely-held corporations, where it has long been recognized that the owners fail to properly plan for control and exit rights.[170]

It should also be noted that Iowa extends the oppression remedy to "transferees" of a limited liability company membership interest, a provision unique in U.S. limited liability company laws.[171] The authors are divided concerning the potential import of this provision. Professor Walker and Dean Vestal are wary of the extension of oppression relief to transferees, while Professor Doré is less concerned. Professor Hamilton is agnostic.

Walker and Vestal would note that transferees do not succeed to their transferor-member's management rights[172] and, like members, have no default right to distributions from an Iowa limited liability company prior to dissolution.[173] If a court provides oppression relief to such claimants, that court may upset the reasonable expectations of other company members that member capital was to be "locked in" until company management decided otherwise. And if courts are properly reluctant to provide oppression relief in transferee cases, those oppression precedents may diminish or confuse the prospects for relief in more deserving scenarios. Walker and Vestal also find it significant that transferees may include a limited liability company member's commercial creditor

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168. E-mail from Daniel S. Kleinberger, Co-reporter, Uniform Limited Liability Company Act, to Matthew G. Doré (July 8, 2013, 21:11 CST) (on file with author).

169. *See* IOWA CODE § 489.409(4).

170. *See* Sandra K. Miller, *What Fiduciary Duties Should Apply to the LLC Manager After More Than a Decade of Experimentation?*, 32 J. CORP. L. 565, 584 (2007) (reporting results of empirical studies).

171. IOWA CODE § 489.701(1)(e). Many state limited liability company laws provide an oppression remedy for members, but the authors have been unable to find any laws (other than Iowa's) that extend this remedy to transferees.

172. *See* DORÉ, *supra* note 28, § 13:28–:29.

173. *See* IOWA CODE § 489.404(2); *see generally* DORÉ, *supra* note 28, § 13:26.

who has succeeded to the member's interest through foreclosure of a charging order.[174] Many such creditors could have secured or otherwise guaranteed repayment of the member's obligation by other means.

Doré believes that oppression relief is important for transferees of a limited liability company membership interest because transferees are particularly vulnerable to freeze-out tactics. Creditors of members who hide their assets in single-member limited liability companies will readily attest to this fact.[175] While a creditor or other transferee of a member's interest will not likely have the same specific expectations that a member might have (e.g., an expectation that the company will provide returns through employment), a transferee *is* the successor to the member's financial rights in the limited liability company. A transferee should therefore have the same general expectations as a member does to share proportionately in company gains. If the persons in control of an Iowa limited liability company defeat this expectation through unjustified freeze-out tactics, the oppression remedy will afford the transferee a means to invoke judicial review to determine whether the freeze-out is justified. Doré believes that the "reasonable expectations" oppression lens may be as well-suited to this task as equitable remedies that other commentators have suggested.[176]

VI. CONCLUSION

Only a tiny fraction of Iowa businesses are publicly-traded companies where dissatisfied minority owners can readily sell their interests.[177] For the remaining enterprises, the *Baur* decision highlights the importance of planning, including acceptable distribution mechanisms and buy-sell arrangements that pre-

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174. *See* IOWA CODE § 489.503; *see generally* DORÉ, *supra* note 28, § 13:29.

175. *See generally* Thomas Earl Geu et al., *To Be or Not to Be Exclusive: Statutory Construction of the Charging Order in the Single Member LLC*, 9 DEPAUL BUS. & COM. L.J. 83 (2010). It should be noted that the Uniform Law Commission recently revised section 503 of the Revised Uniform Limited Liability Company Act to include a new subsection, section 503(f), which allows judgment creditors that foreclose on charging orders against the interest of the *sole member* of a limited liability company to obtain the member's entire interest, not just the member's transferable interest, in the company. UNIF. LTD. LIAB. CO. ACT § 503(f) (amended 2013) (copy on file with authors).

176. *See id.* at 110–17 (discussing reverse-piercing and other equitable remedies).

177. For example, a recent report from the Iowa Secretary of State's office showed that, as of July 2013, 55,364 for-profit corporations were organized under Iowa law. Email from Karen Ubaldo, Iowa Secretary of State's Office, to Matthew G. Doré (July 15, 2013, 16:17 CST) (copy on file with author). Of these corporations, only about fifty are publicly-traded companies. *See Iowa Stocks*, SMALL CAP REVIEW, http://www.smallcapreview.com/Iowa%20Stocks.htm (last visited Jan. 7, 2014).

serve harmony and prevent litigation among business participants, including family members.[178] Indeed, *Baur* encourages attention to planning. In negotiating and drafting a buy-sell arrangement, for example, parties are well-advised to adopt an arrangement that will operate fairly, because they cannot know for certain who will invoke it.

Because it accommodates both majority and minority interests, *Baur*'s reasonable expectations standard for oppression reflects a similar perspective of fairness. The Court held that oppression relief may be available when a majority owner frustrates a minority owner's "reasonable expectations," including the minority's expectation of receiving a return on its proportionate share of the equity in a profitable closely-held business. Such reasonable expectations are to be evaluated in light of all facts and circumstances and over time. That holding is appropriate and follows mainstream American corporate law trends. The ruling is also timely, as minority interests are likely to proliferate along with ongoing intergenerational transfers of Iowa farms and other business assets held by closely-held firms.

The *Baur* Court's call for reasonable accommodation of competing interests in closely-held firms should have particular resonance for owners of family farm enterprises. As reflected by events in *Baur*, as farms are passed to succeeding generations, tensions will predictably surface between family members who want to preserve or expand historic family landholdings at all costs and those who prefer that the farm provide a meaningful return on investment to its owners.

To the extent *Baur* promotes fair treatment of all participants in closely-held enterprises, the decision represents a sound public policy choice. While closely-held business owners can and should contract over control and distribution issues, the sad truth is that most do not. It has been ever thus. While planning is surely advisable and to be encouraged, the "reasonable expectations" standard for oppression provides a necessary judicial backstop that protects the rights of participants in closely-held businesses when planning is lacking or unclear.

178. *See, e.g.*, Cyndia Zwahlen, *A Buy-Sell Pact Can Protect Family Businesses Amid Feuds*, L.A. TIMES, March 24, 1999, http://articles.latimes.com/print/1999/mar/24/business/fi-20449.