STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

LOREN E. PITSCH, JR.; and
GARY L. PITSCH,

Plaintiffs,

vs.

PITSCH HOLDING COMPANY, INC.; STEVEN B. PITSCH; LAURA M. PITSCH; and LEWIS D. PITSCH,

Defendants.
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Case No. 07-04719-CR

HON. CHRISTOPHER P. YATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

Not since Cain and Abel have siblings battled with the ferocity of the Pitsch family. More than nine years ago, on May 7, 2007, Plaintiffs Loren Pitsch, Jr., and Gary Pitsch filed this lawsuit against three of their siblings, Defendants Steven Pitsch, Laura Pitsch, and Lewis Pitsch, as well as the main family business, Pitsch Holding Company, Inc. ("Pitsch Holding"). On January 20, 2010, the Court rendered findings of fact, conclusions of law, and a verdict finding that Laura Pitsch had no right to vote on matters of Pitsch Holding corporate governance, so the other four siblings found themselves in a 2-to-2 deadlock. Nevertheless, the Court permitted the existing management team consisting of the individual defendants to operate Pitsch Holding. Consequently, the plaintiffs added grievances about ongoing management practices to the numerous claims of malfeasance set forth in their complaint. Now, after hearing testimony and arguments for 14 more days, the Court concludes that none of the plaintiffs' claims warrants a finding of liability or an award of damages against any of the defendants.

I. Introduction

In 1958, Loren Pitsch started a demolition-contracting business that evolved into an array of corporate entities at the heart of this case. The business began as a partnership between the parties' parents – Loren and Arlene Pitsch – and it started its operations on Wilson Avenue in Byron Center. By all accounts, the parties' parents were both successful and generous people. They not only built the business into a multi-million dollar enterprise, but also encouraged their children to take active roles in the business and ensured the financial security of the children through the business. In 1974, Plaintiff Gary Pitsch became the first child to join the business on a full-time basis. Soon thereafter, Defendant Lewis Pitsch signed on with the family business, and other siblings then followed.

By the mid-1980s, patriarch Loren Pitsch decided to reduce his role in the business and turn the operations over to his children. By 1986, the business had been reorganized into a collection of corporate entities. From 1986 until Pitsch Holding was formed in 1993, the eldest child – Plaintiff Gary Pitsch – served as president of the various corporate entities. At that point, most of the Pitsch children – including Plaintiffs Gary Pitsch and Loren Pitsch, Jr., and Defendant Lewis Pitsch – were working for the family business in a variety of capacities. In due course, Defendants Steven Pitsch and Laura Pitsch likewise assumed active roles in the family business.

Ultimately, friction developed among the siblings about the management of Pitsch Holding. On March 13, 2000, Defendant Laura Pitsch joined Defendants Lewis Pitsch and Steven Pitsch to install Steven Pitsch as president of Pitsch Holding in place of Plaintiff Gary Pitsch. In February of 2006, the Pitsch Holding board of directors voted 3-to-2 to terminate Gary Pitsch's employment and to remove him as an officer and director of the company. In December 2006, the management team terminated Loren Pitsch, Jr. Although the parties tried to negotiate an agreement that would end the

entire dispute among themselves, they reached an impasse, which prompted Gary and Loren Pitsch to file this case on May 7, 2007. In a seven-count complaint, the plaintiffs accused their siblings and Pitsch Holding of fraud and mismanagement, improper wage withholding, and minority shareholder oppression.[1] For 14 days, the Court heard testimony and arguments at a bench trial. Now, the Court must render findings of fact, conclusions of law, and a verdict on the plaintiffs' claims.

II. Findings of Fact

The family business started by the parties' parents operates on a model that generates profit from every aspect of its operations. First, the business receives compensation for demolition work. Whenever a landowner needs to clear property for future development, the Pitsch family business can supply equipment and workers to tear down existing structures on the property. Then, once the existing structures are torn down, the Pitsch family business sells much of the resulting scrap metal and other byproducts of the demolition process. Because of its ability to generate revenue from the sale of scrap, the Pitsch family business does not even need to make money for the demolition work itself in order to turn a profit. Beyond that, the Pitsch family business has landfill capacity not only for the unsaleable byproducts of its demolition work, but also for others willing to pay for disposal of refuse. Finally, the Pitsch family business has expanded into other ventures, including operating an apartment complex in the Upper Peninsula. As all of these various components of the business's activities came into existence, the Pitsch family set up a corporate structure to compartmentalize its activities. See Defendants' Exhibit T (Flow Chart Structure of the Various Pitsch Entities).

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[1] The complaint also contains a claim seeking a remedy for deadlock, but that matter was not in issue at the most recent trial. In addition, the complaint includes a claim requesting enforcement of a purported settlement agreement, but the Court has already decided that issue against Defendants Gary and Loren Pitsch. Simply put, the parties never reached an enforceable settlement agreement.

Many of the Pitsch family business's operations are run through Defendant Pitsch Holding and a group of five subsidiaries. See Defendants' Exhibit T. Apart from that, two landfills exist as freestanding entities owned by Pitsch Sanitary Landfill, Inc., and Pitsch Recycling & Disposal, Inc. See id. Finally, a hodgepodge of activities such as land development take place through a collection of entities known as Pitsch Realty, LLC, Dorr Development, LLC, Division & 54th, LLC, and the Pitsch Children's Trust. See id. But because ownership and management of those entities are not concentrated in the hands of the three siblings named as defendants in this case, those entities have only a tangential relationship to the plaintiffs' claims. Accordingly, the Court shall focus primarily upon the operations of Pitsch Holding, its subsidiaries, the landfills, and an entity called Richmond Transfer Station, LLC ("Richmond Transfer"), whose ownership and control are the same as that of Pitsch Holding. Indeed, the plaintiffs' claims in the most recent trial arise almost exclusively from the manner in which those entities have interacted with one another over the past decade.[2]

Much of the most recent trial generated more heat than light. Because both of the plaintiffs have been frozen out of management decisions at Pitsch Holding for more than a decade, they have only been able to observe the business's operations through a glass, darkly. Thus, although both of the plaintiffs harbor deep suspicions about the activities of the company, they were not able to offer substantial evidence of the defendants' alleged misconduct. Similarly, Defendants Laura and Lewis Pitsch have largely deferred to their brother, Defendant Steven Pitsch, in matters of management and governance of Pitsch Holding, so they were unable to furnish the Court with much insight about how

[2] Although the defendants have complained bitterly about the Court's willingness to consider events that occurred after the plaintiffs filed their complaint in 2007, the Court regards all of those events as part and parcel of the plaintiffs' claims. Thus, the Court shall consider the entire range of activities that have transpired since this litigation began as well as everything that took place before the plaintiffs filed suit in 2007.

the family business has been run. Accordingly, the Court must look first and foremost to Defendant Steven Pitsch for a meaningful understanding of the operations of the family business. Although the plaintiffs have heaped calumny upon Steven Pitsch, the Court concludes that his testimony largely squares with the documentary evidence in the record, which leads ineluctably to the conclusion that Pitsch Holding and its related entities have been well-run under his stewardship. To make that point clear, the Court must review the evidence in some detail.

The plaintiffs' allegations of fraud, mismanagement, and oppression can be divided into four groups of alleged activities. First, the plaintiffs contend that Defendants Steven Pitsch, Laura Pitsch, and Lewis Pitsch have used corporate funds to reimburse themselves for personal expenses. Second, the plaintiffs assert that Steven Pitsch, Laura Pitsch, and Lewis Pitsch have enriched themselves by selling off valuable scrap for personal gain and taking company cash. Third, the plaintiffs insist that Steven Pitsch, Laura Pitsch, and Lewis Pitsch have impermissibly manipulated the books of Pitsch Holding, its subsidiaries, and its related entities by engaging in improper inter-company transfers. Fourth, the plaintiffs claim that they have been oppressed through the denial of access to the books and records of Pitsch Holding and its subsidiaries, the shabby working conditions assigned to them, and the hostile behavior of Steven Pitsch, Laura Pitsch, and Lewis Pitsch. The Court will consider the viability of each of these theories in its conclusions of law. But, first, the Court must discuss the evidence that bears upon each one of the plaintiffs' four categories of grievances.

The broadest category of the plaintiffs' claims comprises a myriad of accusations that each of the three individual defendants has routinely used company funds or obtained reimbursement for personal expenditures. To be sure, Laura Pitsch testified that she and Lewis Pitsch have company cars for which the company also supplies gas. She also admitted that she routinely took her "Uncle

Wally" out for meals because the company compensated him with food and beverages, as opposed to any salary or hourly pay. In addition, Lewis Pitsch has used corporate funds to make a substantial number of charitable contributions to recipients ranging from the Van Andel Institute to the Ruffed Grouse Society. See, e.g., Plaintiffs' Exhibit 44 (credit card statements at SPIT000218, 316 & 500). Similarly, Steven Pitsch charged donations to his company credit card for causes such as Pheasants Forever and Safari Club International. See id. (credit card statements at SPIT000417-419). Beyond that, Steven, Laura, and Lewis Pitsch received large bonuses in the wake of Gary and Loren Pitsch's terminations in 2006, see Trial Tr Vol XI (July 21, 2015) at 133-134; Trial Tr Vol X (July 20, 2015) at 169-170, but those bonuses – as well as cost-of-living increases – ended shortly after this lawsuit began. See Trial Tr Vol XI (July 21, 2015) at 135.

The plaintiffs devoted a substantial amount of time and effort to adducing evidence about the sale of scrap. In addition to the detailed accounts of scrap sales, see, e.g., Plaintiffs' Exhibits 111, 112 & 113, the plaintiffs presented evidence that Wallace Pitsch – affectionately known as "Uncle Wally" – sold large amounts of scrap. See Plaintiffs' Exhibits 105, 106 & 107. Additionally, James Nickels not only testified that he once saw Uncle Wally sell a load of scrap for $16,000, but also said that he ran across Uncle Wally at a bar with Defendant Laura Pitsch, who had a large wad of cash from the sale of copper. But Defendant Steven Pitsch emphatically testified that, since the expulsion of Plaintiffs Gary and Loren Pitsch in 2006, nobody within the family business has exchanged scrap for money that has not been entered on the company books. See Trial Tr Vol XI (July 21, 2015) at 116. Indeed, as a general proposition, the family business's revenue from the sale of scrap *increased* dramatically after Gary and Loren Pitsch were expelled from Defendant Pitsch Holding in 2006. See Defendants' Exhibit BB.

With respect to inter-company transfers, the evidence plainly establishes that the practice has gone on without interruption under the leadership of Plaintiff Gary Pitsch and then Defendant Steven Pitsch. Christian Holt, who has performed audit and review work for Defendant Pitsch Holding and is quite familiar with the company's practices, explained that the business has routinely engaged in both inter-company transfers under the Pitsch Holding umbrella and related-party transactions with Pitsch entities outside the Pitsch Holding umbrella. Those lending and borrowing relationships have historically been maintained by Pitsch Holding's controllers, David Cole and then Tina Tankersley, who have consistently made journal entries for all loan obligations among the various Pitsch entities. Today, Tankersley has unfettered discretion to engage in such transactions to address imbalances in cash flow among the Pitsch entities. In 2008, Steven Pitsch paid the inter-company loan obligations down to less than $100,000, see Trial Tr Vol XI (July 21, 2015) at 57, but that amount of the inter-company loan obligations has since grown to more than $2 million. Id. at 59. Nevertheless, Steven Pitsch made clear that the loan obligations among the Pitsch entities are recognized on the entities' books and will all be repaid over time. See id.

On the final subject of concern, the defendants undoubtedly have made life difficult in some ways for Plaintiffs Gary and Loren Pitsch, who have suffered small indignities like the deprivation of Christmas turkeys that were given to everyone else affiliated with Defendant Pitsch Holding. In addition, the Court has had to prod the defendants to allow Gary and Loren Pitsch reasonable access to the Pitsch entities' books and records based upon their status as shareholders and directors of the entities. But Gary and Loren Pitsch have also enjoyed substantial benefits that nobody else in the Pitsch entities has received. In the wake of their terminations, Gary and Loren Pitsch were allowed to keep their company vehicles, see Trial Tr Vol XI (July 21, 2015) at 41, and Gary Pitsch kept his

company-funded laptop computer. Id. More significantly, for nearly a decade, both Gary and Loren Pitsch have received the cash equivalent of their net pay as well as company-funded health-insurance coverage. See id. at 40. Thus, Pitsch Holding has expended enormous sums of money each year to pay Gary and Loren Pitsch for doing nothing for the Pitsch entities.[3] Those periodic payments have continued unabated even though a jury has ruled in a separate case that Gary Pitsch's new company impermissibly competed against Pitsch Holding. See Pitsch Holding Co, Inc v Pitsch Enterprises, Inc, No 315800 (Mich App Aug 7, 2014) (unpublished decision).

As the Court's recitation of the basic facts illustrates, the defendants' conduct can be utilized to plausibly support either of two diametrically opposite conclusions. That is, the defendants – and especially Defendant Steven Pitsch – have run the company in an efficient manner that has yielded substantial benefits for Plaintiffs Gary and Loren Pitsch, or the defendants have cut corners for their own benefit and to the detriment of Gary and Loren Pitsch. As the Court's conclusions of law shall make clear, the Court holds the unshakable view that the defendants – and particularly Steven Pitsch – have been good stewards of the family business, so no basis exists to find them liable for any of the misdeeds alleged by Gary and Loren Pitsch.

III. Conclusions of Law

Five of the seven counts set forth in the plaintiffs' complaint require conclusions of law. The other two counts – deadlock (Count Two) and enforcement of a settlement agreement (Count Seven) – are not within the scope of the issues presented at the most recent trial. Plaintiffs Gary and Loren Pitsch have pleaded claims for fraud and mismanagement (Count One), improper wage withholding

[3] The Court recognizes that Defendant Pitsch Holding hopes to recover all of that money by treating the cash payments as advances, but that result is certainly not a foregone conclusion.

(Count Three), and minority shareholder oppression (Count Four) that the Court must consider. In addition, the plaintiffs have contested indemnification (Count Five) and called for the removal of each of the individual defendants as directors of Defendant Pitsch Holding (Count Six) based upon alleged misconduct. The Court shall address these five claims *seriatim*.

A. Count One – Fraud and Mismanagement.

The claim in Count One for fraud and mismanagement includes a mélange of allegations that involve impermissible theft of company equipment, labor, cash and scrap, see Complaint, ¶¶ 12-15, wrongful termination of Plaintiffs Gary and Loren Pitsch, see id., ¶¶ 19-23, financial chicanery that could jeopardize the health and even the continued viability of the Pitsch entities, see id., ¶¶ 24-28, usurpation of corporate opportunities by Defendant Lewis Pitsch, see id., ¶¶ 29-31, and disregard of the fundamental requirements of corporate governance. See id., ¶¶ 32-33. As a threshold matter, many of these claims concern victimization of the Pitsch entities, rather than the individual plaintiffs. "In Michigan, the law treats a corporation as entirely separate from its shareholders, even where one person owns all the corporate stock." Belle Isle Grill Corp v City of Detroit, 256 Mich App 463, 473 (2003). Thus, "[t]he doctrine of standing provides that a suit to enforce corporate rights or to redress or prevent injury to a corporation, whether arising from contract or tort, ordinarily must be brought in the name of the corporation, and not that of a stockholder, officer, or employee." Id. at 474. That principle forecloses Gary and Loren Pitsch from pursuing the vast majority of their allegations under the heading of fraud and mismanagement.[4]

[4] That principle does not prevent Plaintiffs Gary and Loren Pitsch from seeking relief on their separate claim for minority shareholder oppression under MCL 450.1489. Estes v Idea Engineering and Fabricating, Inc, 250 Mich App 270, 277-278 (2002). The plaintiffs also could have pursued a shareholder-derivative action. See MCL 450.1491a, MCL 450.1492a & MCL 450.1493a.

Even assuming, *arguendo*, that Plaintiffs Gary and Loren Pitsch can seek relief on their claim for fraud and mismanagement, the record lacks evidence to support a verdict in their favor. First, with respect to the plaintiffs' allegations that Defendants Steven Pitsch and Laura Pitsch have taken equipment, labor, cash, and scrap from the Pitsch entities, the record does not bear out the plaintiffs' allegations. The Court neither heard nor saw any evidence about the use of company resources "to build a personal residence" for Steven Pitsch, as alleged in paragraph 12 of the complaint, so that aspect of the plaintiffs' claim utterly fails. With respect to the accusations that Steven, Laura, and Lewis Pitsch took cash from the Pitsch entities, see Complaint, ¶¶ 13-14, Tina Tankersley described the process for handling cash in an appropriate manner, and Steven Pitsch stated unequivocally that the practice of cash distributions predated his involvement in the family business, but he stopped that practice after Gary Pitsch's termination in February 2006. See Trial Tr Vol XI (July 21, 2015) at 103-104. The plaintiffs have presented nothing to contradict that testimony. Finally, the plaintiffs' attempt to establish misuse of scrap fell flat at trial. Steven Pitsch and Christian Holt both explained that scrap is kept off the books until it is sold, and then the scrap sales are recorded. See Trial Tr Vol XI (July 21, 2015) at 116. In addition, Steven Pitsch testified without hesitation that nobody in the Pitsch family business has taken scrap from the company and sold it for personal gain since he has been in charge of Defendant Pitsch Holding. Id. That assertion is borne out by the fact that revenue from scrap increased substantially in 2006 and in every year thereafter. See Defendants' Exhibit BB. Thus, the plaintiffs' allegation about scrap in paragraph 15 of the complaint is unfounded.

The plaintiffs cite fraud and mismanagement in their terminations, see Complaint, ¶¶ 19-23, but the Court finds no basis to rule in their favor. The defendants all voted to terminate Gary Pitsch in the wake of his involvement in a physical altercation with Defendant Lewis Pitsch for which Gary

Pitsch was arrested, prosecuted, and convicted on a disorderly-conduct charge. The defendants enjoy an absolute privilege for statements they made to law-enforcement authorities in reporting that crime, see Eddington v Torrez, 311 Mich App 198, 202 (2015), and the plaintiffs cannot claim impropriety in the termination of Gary Pitsch for engaging in criminal conduct with respect to a fellow employee on company property. While the termination of Loren Pitsch does not stand on ground quite as solid as the basis for Gary Pitsch's termination, the defendants had ample justification for the termination of Loren Pitsch as well. The letter dated November 27, 2006, from Loren Pitsch to the defendants illustrates the animosity between Loren Pitsch and his siblings. See Plaintiffs' Exhibit 118. Thus, the defendants' termination letter to Loren Pitsch on December 4, 2006, was perfectly predictable. See Plaintiffs' Exhibit 119. The plaintiffs contend that Loren Pitsch's termination required approval of Defendant Pitsch Holding's board of directors, see Complaint, ¶ 23, but the termination letter did nothing more than end Loren Pitsch's "employment with the Companies[.]" See Plaintiffs' Exhibit 119. Under Michigan law, termination of an employee typically does not require the approval of a company's board of directors.[5] Thus, Loren Pitsch has no basis to contest his termination.

The plaintiffs' final claim concerning fraud and mismanagement relates to Defendant Lewis Pitsch's alleged usurpation of corporate opportunities. See Complaint, ¶¶ 29-31. This claim rings hollow in light of a jury verdict in a separate case establishing that Plaintiff Gary Pitsch engaged in improper competition with Defendant Pitsch Holding Company. Pitsch Holding Co, Inc v Pitsch Enterprises, Inc, No 315800 (Mich App Aug 7, 2014) (unpublished decision). Beyond that, although

[5] Our Court of Appeals has held, albeit in an unpublished decision, that board approval can be required for termination if an employer gives an employee an express assurance that termination can only be accomplished by board action. See Bondie v Saltsman, No 257218, slip op at 2-4 (Mich App Feb 23, 2006) (unpublished decision). But nothing in the trial record demonstrates that Plaintiff Loren Pitsch received such an assurance.

Michigan recognizes a claim for usurpation "of a corporate opportunity by an officer or director[,]" see Production Finishing Corp v Shields, 158 Mich App 479, 485-486 (1987), such a claim belongs to the corporation itself, rather than a disgruntled director or employee of the corporation. Moreover, the work performed by Lewis Pitsch's company was not something that Pitsch Holding or its related entities could do, so the Court finds that Lewis Pitsch did not engage in an impermissible usurpation of a corporate opportunity. See SCD Chemical Distributors, Inc v Medley, 203 Mich App 374, 380-381 (1994). In sum, the Court concludes that the plaintiffs have failed to establish their fraud and mismanagement claim set forth in Count One of their complaint.

B. Count Three – Improper Wage Withholding.

From the plaintiffs' blunderbuss attack in Count One upon a sweeping range of practices, the Court must turn to Plaintiff Loren Pitsch's precise claim in Count Three that the defendants engaged in improper wage withholding in violation of MCL 408.477. According to Loren Pitsch, Defendant Steven Pitsch deprived him of two specific wage payments: $1,510.40 due on November 17, 2006; and $8,813.91 on December 8, 2006. See Complaint, ¶ 49. In simple terms, Loren Pitsch contends that Steven Pitsch recorded those payments in the books and records of Defendant Pitsch Holding, but never paid the money to Loren Pitsch. And, in fact, Loren Pitsch introduced a Pitsch Leasing Company check dated December 8, 2006, that includes a deduction for "Employee AR" that reduced the net pay to "0.00." See Plaintiffs' Exhibit 127.

Although MCL 408.477(2) forbids an employer to take deductions from an employee's pay without the employee's written consent in most circumstances, see Duffy v Gainey Transportation Services, Inc, 193 Mich App 221, 223-224 (1992), both of the payments at issue in Count Three do

not run afoul of that prohibition. The check issued on November 17, 2006, to Plaintiff Loren Pitsch contains only the usual, permissible deductions such as FICA, Friend of the Court, and income tax to the State of Michigan and City of Grand Rapids. See Defendants' Exhibit N. Thus, the net pay of $1,021 comports with the requirement of MCL 408.477(2). The deduction from the check issued by Pitsch Leasing Company to Loren Pitsch on December 8, 2006, appears to present a much more serious problem because the "current earnings" of $8,813.91 are completely offset by the "current deductions" of $8,813.91 to yield net pay of "0.00." See Defendants' Exhibit N; Plaintiffs' Exhibit 127. A category entitled "Employee AR" makes up the bulk of the deductions, *i.e.*, $7,738.32. See Defendants' Exhibit N; Plaintiffs' Exhibit 127. But as Loren Pitsch conceded, that category called "Employee AR" referred to an account receivable for each Pitsch sibling arising from a loan back to the Pitsch companies in conjunction with a profitable sale to Waste Management. In other words, Loren Pitsch owed money to the Pitsch companies in precisely the same manner as his siblings, and his obligation on the loan was treated precisely the same as that of his siblings. Therefore, the Court finds no impropriety in the treatment of Loren Pitsch's paychecks in November and December of 2006, notwithstanding the allegations in Count Three of the complaint.

C. Count Four – Minority Shareholder Oppression.

Count Four of the complaint sets forth a claim for shareholder oppression based upon MCL 450.1489, which "allows a shareholder to bring suit against the directors or those in control of the corporation for fraud, illegality, or oppressive conduct." See Madugula v Taub, 496 Mich 685, 707 (2014). As an initial matter, however, MCL 450.1489 only creates "a statutory cause of action for 'oppression' in favor of *minority* shareholders who are abused by 'controlling' persons[.]" Estes v

Idea Engineering & Fabricating, Inc, 250 Mich App 270, 278 (2002); see also Madugula, 496 Mich at 708, quoting Miner v Belle Isle Ice Co, 93 Mich 97, 114 (1892). In this case, Plaintiffs Gary and Loren Pitsch hold 50 percent of the voting stock in Defendant Pitsch Holding. Defendants Steven and Lewis Pitsch hold the other 50 percent of the voting stock, but their interest is insufficient to put the plaintiffs in the position of minority shareholders. Indeed, the Court eventually must make some decision to break that deadlock. In the meantime, neither the plaintiffs nor their siblings can claim the status of minority shareholders, so neither voting block can pursue relief under MCL 450.1489.[6] See Estes, 250 Mich App at 278.

Beyond that, the plaintiffs' claims of oppression extend well beyond indignities purportedly visited upon them in their capacity as shareholders of Defendant Pitsch Holding. Our Legislature, however, has amended MCL 450.1489 "to explicitly state that minority shareholders [can] bring a suit for oppression only for conduct that 'substantially interferes with the interests of the shareholder *as a shareholder*.'" Franchino v Franchino, 263 Mich App 172, 185 (2004); MCL 450.1489(3). To be sure, "[w]illfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder." See MCL 450.1489(3). But even after their terminations, Plaintiffs Gary and Loren Pitsch have been treated virtually the same as the other shareholders of Pitsch Holding. That is, they have been afforded substantial access to the company's books and records, their ownership interest in Pitsch Holding has not been diluted,

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[6] The plaintiffs recognize this problem in paragraph 56 of their complaint, which makes the claim that, "[s]hould Laura M. Pitsch be found to have voting rights, the actions of Steven B. Pitsch Lewis D. Pitsch, and Laura M. Pitsch constitute shareholder oppression" in several respects. But the Court's rejection of Laura Pitsch's claim to voting status in the opinion issued on Jaunary 20, 2010, renders moot the plaintiffs' allegations of oppressive conduct by the defendants.

and the current management team has even increased the value of their shares by operating Pitsch Holding in a profitable manner. Although the management team chose to terminate Gary and Loren Pitsch in 2006, those terminations have not adversely interfered with their distributions because the company does not make – and has never made – distributions to its shareholders in the routine course of its business operations.[7] In sum, with the exception of Pitsch Holding's failure to regularly hold meetings of its shareholders and its board of directors, the current management team has taken no actions that have disadvantaged Gary and Loren Pitsch in their capacity as shareholder.[8] Therefore, the Court has no basis to impose liability upon the defendants or award damages to the plaintiffs on their claim in Count Four for shareholder oppression.

D. Count Five – Indemnification.

In Count Five of the complaint, Plaintiffs Gary and Loren Pitsch demand an order prohibiting Defendant Pitsch Holding from providing indemnification to the individual defendants for their costs incurred in defending this lawsuit. The statutory scheme at issue, MCL 450.1561, *et seq*, generally empowers corporations to offer indemnification to corporate officers and directors who are sued for their work on behalf of the corporation. Indeed, according to MCL 450.1563, "[t]o the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of an

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[7] Even the sizable management bonuses that Defendant Pitsch Holding paid to Defendants Steven, Laura, and Lewis Pitsch for two years ended in 2008. Since that time, all of the defendants have received compensation that the Court finds remarkably modest. As a result, Pitsch Holding has taken steps to provide real value to its shareholders – including Plaintiffs Gary and Loren Pitsch – by keeping down costs such as executive compensation, stanching the outflow of money from scrap, and retaining nearly all of its earnings.

[8] The Court intends to address the absence of those meetings – which have been an exercise in futility as a result of the deadlock among the four voting shareholders – shortly after the issuance of this opinion. The Court's next task involves devising some solution to break the deadlock.

action, suit, or proceeding" like the instant case, "the corporation shall indemnify him or her against actual and reasonable expenses, including attorneys' fees, incurred by him or her in connection with the action, suit, or proceeding . . . ." Given the Court's resolution of the parties' dispute in favor of the defendants, the individual defendants may very well be entitled to indemnification as a matter of law. In any event, the Court has no basis to direct Pitsch Holding to deny indemnification to the individual defendants, so the Court must resolve Count Five in favor of Defendants Steven Pitsch, Laura Pitsch, and Lewis Pitsch.

E. Count Six – Removal of Directors.

The most drastic remedy sought by Plaintiffs Gary and Loren Pitsch takes the form of Count Six, which seeks removal of Defendants Steven Pitsch, Laura Pitsch, and Lewis Pitsch as directors of Defendant Pitsch Holding. Remarkably, MCL 450.1514 empowers a circuit court to "remove a director of the corporation from office . . . if the court finds that the director engaged in fraudulent, illegal, or dishonest conduct, or gross abuse of authority or discretion . . . and removal is in the best interest of the corporation." But the Court has not found a single decision, published or unpublished, that has employed this drastic remedy. Therefore, the Court must act cautiously in wading into such a sensitive area of corporate governance.

In contrast to the disturbing allegations in the complaint, the evidence developed at trial leads ineluctably to the finding that Defendant Pitsch Holding is run in a much cleaner manner today under Defendant Steven Pitsch's leadership than it was when Plaintiff Gary Pitsch was at the helm. There have been bumps along the road, as a 2003 memorandum from controller David Cole reveals. See Plaintiffs' Exhibit 137. But the altercation between Gary Pitsch and Defendant Lewis Pitsch, which

was followed by the terminations of Gary Pitsch in February of 2006 and then Plaintiff Loren Pitsch in December of 2006, seemed to bring more order to the family business. Then, after two years of large bonuses in 2007 and 2008, the management team at Pitsch Holding tightened the company belt and began running the family business in a fiscally sound manner. At trial, Christian Holt testified that he had no concerns about Pitsch Holding's operations and its financial statements, that nothing suspicious had occurred at the company since 2005, and that Pitsch Holding's books are relatively clean today. The company's controller, Tina Tankersley, provided an encouraging assessment of the company's financial operations, leading the Court to conclude that the individual defendants have run Pitsch Holding efficiently, effectively, and profitably for years. Therefore, the Court has no basis whatsoever to remove any of the directors of the company.

IV. Verdict

The Court's findings of fact and conclusions of law will surely be a source of frustration for Plaintiffs Gary and Loren Pitsch, who firmly believe their siblings have engaged in improprieties in managing Defendant Pitsch Holding. But two trials and a careful review of a mountain of evidence have led the Court to conclude that Pitsch Holding is well-managed and profitable due to the sound decisions of the management team, so the Court shall render a verdict in favor of the defendants on Counts One, Three, Four, Five, and Six of the complaint.

IT IS SO ORDERED.

Dated: May 31, 2016

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge