

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

BREMER FINANCIAL CORPORATION,
RONALD JAMES, JEANNE H. CRAIN,
MARY BRAINERD, GLENN D. MCCOY,
KEVIN A. RHEIN, WENDY SCHOPPERT, and
CHARLES WESTLING,

Plaintiffs,

v.

S. BRIAN LIPSCHULTZ, DANIEL C.
REARDON, and CHARLOTTE S. JOHNSON,
individually and in their capacity as Trustees of
the Otto Bremer Trust

Defendants.

Court File No. 62-CV-19-8203

AMENDED COUNTERCLAIM

Charlotte Johnson, S. Brian Lipschultz and Daniel C. Reardon, solely in their capacities as trustees of the Otto Bremer Trust (“OBT” and, such trustees, the “OBT Trustees”), for their Amended Counterclaim against Bremer Financial Corporation (“BFC”), Ronald James, Jeanne H. Crain, Mary Brainerd, Glenn D. McCoy, Kevin A. Rhein, Wendy Schoppert, and Charles Westling (the “BFC Individual Defendants” and, together with BFC, “Counterclaim Defendants”), allege as follows:

INTRODUCTION

1. OBT has been the principal owner of BFC for seventy-five years. Unfortunately, OBT has now suffered massive damages—hundreds of millions of dollars—because the BFC Individual Defendants willfully and wrongfully interfered with OBT’s rights to sell its interest in BFC. The BFC Individual Defendants have a personal interest in entrenching themselves so that they continue to receive director fees in excess of \$117,000 per year—and in Jeanne Crain’s case a newly and sharply expanded compensation package. To protect those personal interests, they

have interfered with OBT's (i) efforts to explore a sale of its BFC shares, (ii) efforts to explore a sale of BFC, (iii) sale of a small portion of its BFC shares to several independent investors, and (iv) efforts to call a special meeting that would likely have resulted in the removal of the BFC Individual Defendants as directors of BFC. In doing so, the BFC Individual Defendants have breached their duties of loyalty to OBT and deprived OBT of shareholder rights that OBT uniquely possesses under the terms of the 1989 Plan of Reorganization that governs OBT's ownership of BFC.

2. As outlined below, the harm to OBT from the misconduct of the BFC Individual Defendants has been devastating. The opportunities that OBT had in 2019 to sell its OBT shares at a multi-billion dollar valuation before the BFC Individual Defendants wrongly thwarted that opportunity no longer exist given the pandemic. Having breached the duties they owe to OBT, the BFC Individual Defendants should now be held personally liable for the hundreds of millions of dollars in damages they have caused OBT to incur—harm that directly curtails the level of charitable support that OBT is able to provide to its local communities at the time of their most pressing and challenging need.

3. There is no question about willfulness. It has been clear since the inception of OBT, and reaffirmed during the restructuring of OBT's ownership of BFC in 1989, that OBT has the right to pursue opportunities to sell its BFC shares in order to carry out OBT's charitable purposes. In advance of the execution of the Plan of Reorganization in 1989, BFC senior management and lawyers from Winthrop & Weinstine—the architects of the Plan of Reorganization and counsel to BFC then and now—explained that, following the implementation of the Plan of Reorganization:

THE TRUSTEES OF THE OTTO BREMER FOUNDATION
HAVE AN ONGOING FIDUCIARY RESPONSIBILITY TO
MAINTAIN THE FOUNDATION'S CHARITABILITY BY
PROTECTING AND ENHANCING THE FOUNDATION'S

ASSETS AND INCREASING THE GRANT DISTRIBUTION IF POSSIBLE.

TRUSTEES HAVE A RESPONSIBILITY TO CONSIDER ANY VALID OFFER AND IF OF SUCH SIZE AND TERMS AS TO ENHANCE THE FOUNDATION'S GRANTMAKING CAPACITY AND FURTHER ENHANCE ITS CHARITABILITY, IT MUST ACCEPT SUCH AN OFFER.

(Ex. A, at 20 (capitalization in original).)

4. Similarly, in a June 23, 1988 memorandum, then BFC President Terry Cummings, who later served as BFC's CEO and as a member of its board for at least twenty-five years, explained to BFC's executive officers that the OBT Trustees have the right under the Plan of Reorganization to determine if and when BFC will be sold:

In the event of the sale of all or substantially all of the shares of Class B Common Stock which is owned by the Foundation, there are certain options and rights for the sale of the Class A Stock. Such a sale is in the control of the Foundation since they have a right to vote in this type of transaction and should they vote to sell the entire organization, the Foundation itself, its assignee, or the buyer of the Corporation has the option to purchase all of the Class A Common outstanding. In other words, the Foundation, in negotiating with a potential acquiror, has the ability to deliver to the acquiror 100% of the ownership of the Corporation, including all of the Class A Common outstanding in the hands of the employees.

....

It should also be noted that while the Plan of Reorganization will meet the divestiture requirements of the Tax Reform Act of 1969, the organization continues to operate in a banking environment that is seeing more and more consolidations, mergers, acquisitions, etc. *The Plan of Reorganization does not preclude the Foundation from receiving an offer to sell in the near future or any time in the long term and with ownership of 92% of the economic value of the Corporation, they have the power to vote whether to accept or decline such an offer.* No assurances can be made that an offer would not occur in the very near future.

(Ex. B, at 4, 5, 6 (emphases added).)

5. Over the years, there have been a number of changes in circumstances that were unforeseen when Otto Bremer created OBT in 1944. These include changes in tax law, and, recently, rapid and deep-seated changes in the competitive environment for mid-sized banking organizations such as BFC, as well as the misguided efforts of BFC's management to merge BFC into a third party in a no premium transaction. While OBT, in the past, had considered a sale of some or all of BFC, OBT had not seriously considered or explored a sale of its BFC interests in the last twenty-five years. Yet, the occurrence of additional unforeseen circumstances in 2019—including the ill-advised effort by BFC's CEO to merge BFC with another bank in a transaction that would have caused hundreds of millions of dollars or more in losses for OBT given that bank's substantial stock drop, and a subsequent offer to buy BFC at a substantial premium—compelled the Trustees' conclusion that it had become necessary and proper to evaluate a potential sale of BFC or some or all of OBT's interests in BFC.

6. The very scenario that BFC's management and its outside counsel at Winthrop & Weinstine identified *as early as 1988*—in which the OBT Trustees had the right and the obligation to substantially enhance the Trust's assets through a sale of OBT's BFC stock—came to pass in 2019 in the form of a transaction that could have perhaps doubled the value of OBT's charitable assets and thereby allowed OBT to increase its charitable giving by \$50 million per year. By interfering unlawfully in OBT's efforts to explore this sale and to act before the COVID-19 pandemic and before the value of bank stocks declined precipitously, the BFC Individual Defendants caused hundreds of millions of dollars in damage to OBT and its ability to support the beneficiaries it serves in its four-state region.

7. As a consequence of the BFC Individual Defendants' interference with the OBT Trustees' efforts to explore a potential sale of OBT's 92% ownership of BFC, including by instructing management and employees of BFC not to cooperate in any such efforts, in October

2019, OBT sold a portion of its BFC shares to new, third-party investors, as it was entitled to do. Immediately thereafter, the OBT Trustees, both in their capacities as directors of BFC and on behalf of OBT as a BFC shareholder, called a special meeting of the shareholders of BFC in accordance with Minnesota law and BFC's governing corporate documents to allow BFC's shareholders to consider removing the BFC Individual Defendants from BFC's board of directors.

8. Continuing their improper efforts to entrench and enrich themselves, and in derogation of their fiduciary duties to OBT and OBT's specific rights, the BFC Individual Defendants have refused to (i) recognize OBT's sale of BFC stock to these third parties, (ii) recognize the new investors as the rightful owners of their purchased stock, and (iii) set record and meeting dates for the special meeting of BFC's shareholders called by the OBT Trustees.

9. The BFC Individual Defendants, who are acting without the OBT Trustees' consent to control BFC, have no legitimate basis for their actions. The OBT Trust Instrument, to which BFC is not a party, makes clear that the "Trustee's opinion" governs the issue of "unforeseen circumstances" and "necessary and proper," and therefore if, when, and on what terms OBT will sell some or all of its interest in BFC. When Mr. Bremer created the Trust, he left no room for the BFC Board to second-guess this decision by the OBT Trustees. This alone should end the analysis, and should have caused the BFC Individual Defendants to adhere to their fiduciary and contractual obligations toward OBT, including not impeding OBT's efforts to evaluate whether to sell its shares and, thereafter, recognizing OBT's October 2019 sale of stock. Any possible doubt is eliminated by the contemporaneous views of BFC's counsel and President.

10. Counterclaim Defendants' actions violate Minnesota law, BFC's governing corporate documents—including the Plan of Reorganization, which establishes BFC's capital structure and was agreed to by all BFC shareholders—and OBT's unique rights as a shareholder. By these Counterclaims, the OBT Trustees seek, among other things, to recover personally from

the BFC Individual Defendants damages for the vast harm that they have inflicted unlawfully and self-servingly on OBT, as well as a declaration as to the illegality of each Counterclaim Defendants' actions under Minnesota law. Any recovery by OBT will in turn benefit the numerous charitable organizations that OBT supports. The OBT Trustees also ask the Court to declare the rights of the parties and direct Counterclaim Defendants specifically to perform their clear administrative obligations so as to enable BFC's lawful shareholders to exercise their rights.

PARTIES

11. OBT is a charitable trust formed under Minnesota law that is exempt from federal income tax as a private foundation described in Section 501(c)(3) of the Internal Revenue Code. It is also a bank holding company within the meaning of the Bank Holding Company Act, 12 U.S.C. §§ 1841 *et seq.* OBT was formed pursuant to an Agreement and Declaration of Trust dated May 22, 1944, by and between Otto Bremer, as trustor, and Paul G. Bremer and George J. Johnson, as original trustees, as later amended (the "Trust Instrument"). OBT's annual earnings come primarily from the dividends it receives from its subsidiary, BFC, in amounts equal to a minimum of 5% of BFC's book value. Since its founding, OBT has provided more than \$750 million in charitable grants and program-related investments to non-profit organizations in Minnesota, Montana, North Dakota and Wisconsin. In the wake of the Covid-19 pandemic, OBT has established one of the first and largest emergency funds in the country, which has already distributed grants and loans to hundreds of non-profits organizations throughout Minnesota, Montana, North Dakota and Wisconsin.

12. Counterclaim Plaintiff Charlotte Johnson is Co-CEO and a trustee of OBT, and was a member of BFC's board at the time of the events giving rise to this Counterclaim.

13. Counterclaim Plaintiff S. Brian Lipschultz is Co-CEO and a trustee of OBT and a member of BFC's board.

14. Counterclaim Plaintiff Daniel C. Reardon is Co-CEO and a trustee of OBT and a member of BFC's board.

15. BFC is a regional financial services company with assets greater than \$12 billion; among those assets is Bremer Bank, N.A. BFC currently has a nine-member board of directors (the "BFC Board"). The OBT Trustees are currently two of those nine members. Until April of this year, when Counterclaim Plaintiff Charlotte Johnson reached mandatory retirement age and did not stand for re-election to the BFC board, the BFC Board had ten members of which the OBT Trustees were three.

16. Counterclaim Defendant Ronald James is and, for the relevant period was, Chair of the BFC Board.

17. Counterclaim Defendant Jeanne Crain is and, for the relevant period was, the Chief Executive Officer and President of BFC and a member of the BFC Board.

18. Counterclaim Defendant Wendy Schoppert is, and for the relevant period was, a member of the BFC Board.

19. Counterclaim Defendant Kevin Rhein is, and for the relevant period was, a member of the BFC Board.

20. Counterclaim Defendant Mary Brainerd is, and for the relevant period was, a member of the BFC Board.

21. Counterclaim Defendant Glenn McCoy is, and for the relevant period was, a member of the BFC Board.

22. Counterclaim Defendant Charlie Westling is, and for the relevant period was, a member of the BFC Board.

FACTS

23. Until 1989, OBT was the sole owner of BFC. As a result of certain tax law changes, including passage of the Tax Reform Act of 1969, OBT had to reduce its voting control of BFC to 20% by May 1989. For several years prior to 1989, OBT pursued a number of options to meet its divestiture obligations under the tax laws. Among other things, OBT pursued the potential sale of BFC to a third party.

24. While OBT continued to evaluate options for a potential sale of BFC, in March 1988, OBT sought a letter ruling from the Internal Revenue Service that the restructuring of OBT's ownership of BFC ultimately set forth in the Plan of Reorganization would comply with tax laws and regulations. In an April 1988 letter ruling, the Internal Revenue Service confirmed that the contemplated Plan of Reorganization, which had already been drafted and provided to it, would comply with the divestiture requirements in the tax code. In a series of *contemporaneous* written documents, BFC and its counsel confirmed that the Plan of Reorganization would reduce OBT's ownership interest in BFC to comply with the tax laws, but that the decision to sell OBT's stock, or to sell BFC itself, was for OBT alone to make. On June 23, 1988, for example, a presentation to select members of BFC management authored by BFC senior management and Winthrop & Weinstine, the architects of the Plan of Reorganization who counseled both BFC and OBT regarding the restructuring, explained, among other things:

- In the restructuring, 8% of OBT's shares would be sold to some combination of employees or "A LIMITED NUMBER OF PRIVATE INVESTORS PURSUANT TO EITHER A PUBLIC OR PRIVATE STOCK OFFERING;"
- Following the Plan of Reorganization, OBT "IS POSITIONED FOR NOW AND IN THE FUTURE TO MAINTAIN ITS CHARITABILITY AND FULFILL ITS FIDUCIARY RESPONSIBILITY . . . INCREASED GRANTMAKING VIA OWNERSHIP OF AN ENHANCED BANK HOLDING COMPANY OR *SALE* OF IT AT AN *ADVANTAGEOUS* PRICE AT A LATER DATE."
- As a final "WORD OF CAUTION!," that:

THE TRUSTEES OF THE OTTO BREMER FOUNDATION HAVE AN ONGOING FIDUCIARY RESPONSIBILITY TO MAINTAIN THE FOUNDATION'S CHARITABILITY BY PROTECTING AND ENHANCING THE FOUNDATION'S ASSETS AND INCREASING THE GRANT DISTRIBUTION IF POSSIBLE.

AN OFFER TO BUY OR MERGE COULD BE RECEIVED NEXT YEAR . . . FIVE YEARS FROM NOW . . . NEXT WEEK . . . OR NEVER!

TRUSTEES HAVE A RESPONSIBILITY TO CONSIDER ANY VALID OFFER AND IF OF SUCH SIZE AND TERMS AS TO ENHANCE THE FOUNDATION'S GRANTMAKING CAPACITY AND FURTHER ENHANCE ITS CHARITABILITY, IT ***MUST ACCEPT SUCH AN OFFER.***

(Ex. A, at 19-20 (capitalization in original; italics added).)

25. Similarly, in an accompanying June 23, 1988, memorandum to BFC executive management, BFC's then-President and subsequent CEO and long-time Board member Terry Cummings precisely articulated OBT's and BFC's rights and obligations under the Plan of Reorganization as follows:

Class B Common can be converted into Class A Common at the election of a holder of Class B Common upon the transfer of Class B Common from the Foundation to a third party. This is basically to handle the situation where the organization receives an offer to be purchased, which is an event that the Foundation can vote, and the *Foundation elects to sell the organization*. Conversion rights *allow the Foundation to deliver voting control of the corporation to an acquiror*. Upon sale, the shares are transferred and they are converted to voting and the special structure that has been set up to meet divestiture is no longer in effect.

. . . .

In the event of the sale of all or substantially all of the shares of Class B Common Stock which is owned by the Foundation, there are certain options and rights for the sale of the Class A Stock. Such a sale is in the control of the Foundation since they have a right to vote in this type of transaction and should they vote to sell the entire organization, the Foundation itself, its assignee, or the buyer of the Corporation has the option to purchase all of the Class A Common outstanding. In other words, the Foundation, in negotiating with a potential acquiror, has the ability to deliver to the acquiror 100%

of the ownership of the Corporation, including all of the Class A Common outstanding in the hands of the employees.

....

It should also be noted that while the Plan of Reorganization will meet the divestiture requirements of the Tax Reform Act of 1969, the organization continues to operate in a banking environment that is seeing more and more consolidations, mergers, acquisitions, etc. *The Plan of Reorganization does not preclude the Foundation from receiving an offer to sell in the near future or any time in the long term and with ownership of 92% of the economic value of the Corporation, they have the power to vote whether to accept or decline such an offer.* No assurances can be made that an offer would not occur in the very near future.

(Ex. B, at 4, 5, 6 (emphases added).)

26. Nowhere in this document or anywhere else is there the slightest recognition of any right of BFC or its directors to refuse to recognize or to second-guess a judgment of the OBT Trustees to sell OBT's shares in BFC, or to refuse to carry out BFC's ministerial obligations to register a sale by OBT of its shares.

27. As planned, on February 8, 1989, OBT and BFC entered into the Plan of Reorganization, as earlier drafted. OBT elected not to seek private investors, and instead sold eight percent of its ownership position to directors and employees of BFC through employee stock ownership and 401(k) plans.

28. As a result of the Plan of Reorganization, at all times since 1989 OBT has owned 1,200,000 shares of Class A common stock in BFC, which, until October 25, 2019, represented 20% of the issued and outstanding Class A common stock. Until October 25, 2019, OBT also owned 10,800,000 shares of Class B common stock in BFC, representing 100% of the issued and outstanding Class B common stock. Together, these Class A and Class B stockholdings constituted 92% of the total equity interests in BFC.

29. Pursuant to BFC's Restated Articles of Incorporation, Class A common stock carries with it the right to vote on all matters, including the election of directors. Class B common stock does not carry with it a right to vote on the election of directors or other routine matters, but only on certain extraordinary matters, such as a sale of all or substantially all the assets of the company or a merger transaction (in which case holders of Class B common stock have the right to vote on an equivalent per share basis with holders of Class A common stock). However, upon the sale by OBT of any Class B shares to a third party, each such share of Class B common stock is convertible as of right to Class A common stock having full voting rights at such third party's unilateral election.

30. As BFC recognized at the time of the Plan of Reorganization, the OBT Trustees have an obligation to manage OBT's assets prudently for the benefit of OBT's many charitable pursuits in and around Minnesota, Montana, North Dakota and Wisconsin. In fulfilling their duties as trustees of OBT (duties BFC recognized while drafting the Plan of Reorganization), the OBT Trustees have concluded that it is incumbent upon them, as fiduciaries of OBT, to consider OBT's options with respect to its majority ownership interest in BFC, including with respect to a potential strategic transaction involving BFC.

31. Likewise, as current and former directors of BFC, the OBT Trustees believe it is in the best interests of BFC and its shareholders to explore BFC's strategic alternatives, including a potential strategic transaction involving BFC. Again, as BFC and its counsel recognized, "[s]uch a sale is *in the control of* the Foundation" (*i.e.*, OBT).

32. The circumstances facing OBT, as the substantial majority-owner of BFC, which has historically comprised over 90% of OBT's assets, and BFC, as a privately-held regional financial institution, have shifted dramatically in recent years. Among other things, the business

of banking, in general, and the business of BFC, in particular, has changed substantially due to consolidation, advances in technology, and shifts in consumer preferences. The banking business is increasingly concentrated with large nationwide and super-regional banks with greater scale. Consumer financial services have shifted online, enabling banking customers to make deposits and withdrawals, pay bills, borrow money, obtain mortgages, make loan payments, purchase and sell securities, and conduct every other type of banking business remotely and at all hours. This trend has been accelerated by the ubiquity of the smartphone, which provides customers even greater flexibility to manage accounts and conduct transactions through conveniently accessible online banking applications. Historic low interest environments have caused an unprecedented contraction in net interest margins, the principal source of bank profitability. As a result of these circumstances, traditional brick-and-mortar banks are at risk of deterioration of their financial and competitive positions. Moreover, additional threats to traditional banks are proliferating in the form of online-only banks, digital banking services, robot-advisors, payment apps and software, bitcoin and other virtual currencies, and other alternative financial technologies.

33. Early last year, management of BFC pursued a potential no-premium merger into another institution. After questions were raised by the OBT Trustees about the desirability and wisdom of such a combination, BFC management informed the board of its ongoing discussions, which included executive positions for BFC management, and enthusiastically endorsed pursuing that transaction, as a result of which OBT would become a minority owner of what the OBT Trustees were concerned was a deteriorating publicly traded company.

34. The BFC board, at the urging of the OBT Trustees, ultimately did not pursue that merger proposal. Nevertheless, the values ascribed to BFC implied a valuation for OBT's interests in BFC substantially above the carrying value of those shares on OBT's financial statements and

tax filings. That circumstance had potentially significant implications for OBT and the OBT Trustees.

35. Under the Trust Instrument, the Trustees have the unilateral power to sell stock if, “in the opinion of the Trustee, it is necessary or proper to do so owing to unforeseen circumstances.” The recent, revolutionary changes in the banking industry and the threats they pose to BFC and similar financial institutions are circumstances that were unforeseen to Otto Bremer in 1944, as was the tax law change in 1969 that occasioned the Plan of Reorganization in 1989. Also unforeseen was management’s willingness to support a no-premium merger. The substantial increase in implied value for OBT’s holdings in BFC, and the impact that might have on BFC’s ability to sustain dividends at the level required for OBT to meet the level of charitable giving mandated by tax law, was yet another unforeseen circumstance presented to the OBT Trustees.

36. OBT had not seriously considered or suggested a sale of BFC in the last twenty-five years. However, following the unacceptable no-premium merger proposal, and in furtherance of their fiduciary duties under the Trust Instrument, the OBT Trustees began to explore, on behalf of OBT, as one possible response to these unforeseen circumstances, whether a sale of BFC was possible. Within a short time after the OBT Trustees began to explore the possibility of such a transaction, a publicly traded financial institution made an offer to acquire BFC at a substantial premium.

37. The BFC Individual Defendants, however, refused to consider the offer. Instead, over the objection of the OBT Trustees (in their capacity as BFC directors), BFC Individual Defendants caused the BFC Board to pass resolutions refusing to further evaluate a sale and directing management to refrain entirely from participating in any future discussions or due diligence related to such a transaction. Indeed, even though BFC’s own documents and the views

of its own longtime law firm, which had devised the Plan of Reorganization, make clear that OBT had the contractual right, and potentially the obligation, to sell its shares in BFC—indeed, to cause the sale of 100% of BFC if it wished—the BFC Individual Defendants intentionally blocked that express right by refusing to provide assistance to or cooperate with OBT in any independent sale of its BFC shares.

38. Unlike the provisions that limit OBT's voting rights as a shareholder on day-to-day matters to 20%, under the Plan of Reorganization OBT is empowered to vote its entire equity interest in BFC—92% until October 2019—on a strategic transaction. This right, which was an integral element of the Plan of Reorganization, gave (and as reflected in contemporaneous documents was intended to give) the OBT Trustees absolute control over any question of if, when, and on what terms BFC would be sold based on their judgments of what was in the interests of OBT.

39. Had the BFC Individual Defendants not thwarted OBT's clear rights to explore a sale of BFC as the OBT Trustees might determine to be in OBT's interests, the OBT Trustees would have been free to exercise OBT's contractual rights and their fiduciary duties as Trustees. Instead, the BFC Individual Defendants acted intentionally and unlawfully to interfere with OBT's contractual and statutory rights, and deprived OBT of the opportunity to pursue a beneficial sale of BFC at a substantial premium.

40. As noted above, the proposed no-premium merger itself and price it implied for OBT's shares created another unforeseen circumstance at the time: a dramatic increase in OBT's legally required charitable distributions without BFC being able to provide the necessary cash return on the fair market value of OBT's investment in the stock. Under federal tax laws, OBT must distribute a minimum of 5% of the fair market value of its assets every year.

41. Under the Plan of Reorganization, OBT is entitled to convert its Class B common stock to Class A voting common stock if BFC fails to provide a dividend equal to at least 5% of BFC's year-end book value. Thus, the Plan of Reorganization was designed so that the cash flow to support OBT's distributions would come from BFC dividends, but OBT would have options to act on its own if BFC were potentially unable to provide that sufficient cash flow. However, as a bank holding company, BFC is subject to capital distribution and capital level requirements under federal banking laws, regulations, and regulatory guidance, including limitations on BFC's ability to pay dividends. Given the values ascribed to BFC based on the potential transactions that the BFC Individual Defendants prevented OBT from pursuing, it would almost certainly be impossible for BFC to pay dividends over a sustained period of time at a level that would be sufficient to enable OBT to comply with its own mandatory 5% minimum distribution rule without violating such capital-based requirements or, at the very least, suffering long-term and material deterioration in the value of BFC and, in turn, OBT. As a result, the OBT Trustees determined it was necessary to continue to explore the potential for a value-enhancing strategic transaction for BFC.

42. Under the Plan of Reorganization as well as BFC's Restated Articles of Incorporation, OBT has the right to sell its Class B common stock to any third party (other than a disqualified person with respect to the Trust under Section 4946(a) of the Internal Revenue Code). The BFC Individual Defendants know this. Indeed, OBT sold shares of BFC before as part of the Plan of Reorganization. This Court approved those sales in an order dated November 8, 1991. The petition for that order was drafted by the same counsel advising BFC then and now. The Plan of Reorganization and BFC's Restated Articles of Incorporation additionally grant the purchaser of any Class B common stock sold by OBT the absolute right to convert those shares into an equivalent number of Class A shares.

43. Under the Trust Instrument, the OBT Trustees have the power to sell stock if, “in the opinion of the Trustee, it is necessary or proper to do so owing to unforeseen circumstances.” The Trust Instrument makes the OBT Trustees’ judgment regarding the existence of unforeseen circumstances a matter within their sole discretion. In July 2019, Trustees determined that a number of unforeseen circumstances warranted a sale of OBT’s shares in BFC. These circumstances (which are described in the preceding paragraphs) include, but are not limited to: changes in federal tax law that prevent charitable private foundations from owning more than 20 percent of the voting stock of a business, and the resulting need for OBT to sell 80% of its voting stock; changes in federal tax law requiring minimum charitable distributions each year; BFC’s recent exploration of a change-in-control transaction; the third-party expressions of interest in acquiring or merging with BFC; the threats facing BFC due to recent, revolutionary changes in the banking industry; BFC’s continued declining performance relative to its peers; recent actions by the BFC Individual Defendants adverse to the interests of OBT; the significantly higher value OBT would realize in a strategic transaction involving BFC; the substantial increase in OBT’s valuation of its assets necessitated by the purchase offers made for BFC; and the resulting impact on OBT’s charitable-distribution requirements under federal tax law, pursuant to which OBT must distribute at least five percent of the fair market value of its assets annually. After considering these unforeseen circumstances, among other things, the OBT Trustees decided that a sale of certain BFC shares was necessary and proper.

44. Ultimately, on October 25, 2019, OBT sold approximately seven percent of its Class B common stock to eleven separate unrelated and independent investors (the “Third Party Buyers”). In total, OBT sold 725,000 shares of its Class B common stock to the Third Party Buyers. In advance of selling those shares, the OBT Trustees consulted with, among others, the Minnesota Attorney General’s Office.

45. The Third Party Buyers are the lawful transferees and holders of the Class B common stock each purchased from OBT, as evidenced by the assignment separate from certificate delivered by OBT to each Third Party Buyer.

46. Pursuant to the Plan of Reorganization and the Restated Articles of Incorporation, the Third Party Buyers each had the right to convert the Class B common stock to Class A common stock, share for share, by surrendering the certificates to BFC accompanied by written notice of the election to convert.

47. On October 28, 2019, the OBT Trustees provided a written notice to BFC of the sales, surrendered the original stock certificate representing its shares of BFC's Class B common stock and the assignments separate from certificate evidencing the assignment of the shares it sold to the Third Party Buyers, and requested, among other things, that BFC issue and deliver new stock certificates to the Third Party Buyers for the number of shares of Class B common stock each purchased.

48. On information and belief, on or about October 28, 2019 the Third Party Buyers each surrendered to BFC its assignment separate from certificate evidencing the shares of Class B common stock it purchased from OBT accompanied by a written notice of its election to convert such shares of Class B common stock to shares of Class A common stock.

49. Also on October 28, 2019, the OBT Trustees, acting in their capacity as directors of BFC and on behalf of OBT, a shareholder of BFC, gave written notice to BFC in accordance with BFC's bylaws and Minn. Stat. §302A.433 calling a special meeting of shareholders for the purpose of voting on the removal of the BFC Individual Defendants from BFC Board and a reduction in the number of directors of BFC to three or more directors.

50. BFC, at the direction of the BFC Individual Defendants, has taken unlawful steps to impede the sale of shares by OBT, to disregard the actions of the OBT Trustees as directors and on behalf of OBT as a shareholder in calling a special meeting, and to preclude the Third Party Buyers from exercising their lawful rights as shareholders. These steps have included, among other things:

- refusing to recognize the transfers of Class B common stock from OBT to the Third Party Buyers and refusing to register the Third Party Buyers as the owners of record of those shares;
- refusing to deliver to the Third Party Buyers certificates reflecting the number of full shares of Class A common stock issuable upon such conversion to which each Third Party Buyer is entitled; and
- refusing to call a special meeting of shareholders as required by Minn. Stat. §302A.433, or to fix a record date for that meeting.

51. As a result of these actions, BFC has prevented the Third Party Buyers from exercising their lawful rights to vote their shares.

52. By refusing to recognize OBT's sale of Class B common stock and to convert those shares to Class A common stock on the election of each Third Party Buyer, even though the Plan of Reorganization expressly allowed such sales and conversion, the BFC Individual Defendants are unlawfully frustrating OBT's right to sell its Class B common stock, and thereafter to participate in a meaningful vote that includes all shareholders entitled to vote. The BFC Individual Defendants are doing so in order to entrench themselves and BFC's incumbent management. The improper conduct of the BFC Individual Defendants has sharply reduced the value of OBT's remaining common stock in that their actions defeated OBT's efforts to pursue a sale of BFC before the market for bank stocks plummeted following the outbreak of COVID-19.

53. By refusing to set a record date and a meeting date for the special meeting of BFC's shareholders called by the OBT Trustees in their capacities as directors of BFC and on behalf of

OBT, the BFC Board is unlawfully depriving OBT and the new investors of the right to vote at such special meeting in order to thwart their lawful exercise of the shareholder franchise.

54. On November 8, 2019, the BFC Individual Defendants, acting by written consent, purported to pass a resolution creating a separate committee, consisting exclusively of themselves, with broad and ill-defined powers to act on BFC's behalf, thereby largely excluding the OBT Trustees from their rights as directors of BFC. At the same time, the BFC Individual Defendants, breaching their duty of loyalty, voted to indemnify themselves (and only themselves) from potential claims that might be asserted against them. Although the written action was clearly precipitated by one or more formal or informal meetings of the BFC Board (whether in person or by means of remote communication), the OBT Trustees did not receive any notice of these meetings, as required by law and BFC's bylaws, and accordingly were given no opportunity to participate. The BFC Individual Defendants arrogation of power to themselves is unlawful and *ultra vires*.

55. The adoption of special indemnity provisions in the circumstances here is the epitome of a breach of the duty of loyalty. The directors have sought to protect themselves from action that is directly contrary to the views of BFC's predominant shareholder, its counsel (then and now), and its former President (and later CEO and long-standing Board member). The BFC Individual Defendants were totally conflicted as their sole motivation was to shift their personal liability for willfully violating the rights of OBT back to OBT.

56. Acting through this unlawful special committee, and also purporting to have the right to act retroactively, the BFC Individual Defendants have hired multiple law firms to pursue meritless litigation that flatly contradicts the rights and obligations set out in the Plan of Reorganization, as confirmed in contemporaneous documents authored by the very law firm that drafted the Plan of Reorganization and continues to this day to represent BFC. In effect, the BFC

Individual Defendants have given themselves the authority to use OBT's own money (as the predominant owner of BFC) to try to prevent OBT from selling its shares, offering only factual and legal theories entirely at odds with BFC's own lawyers and the contemporaneous writings of its then President (and later CEO and long-serving director). This flagrant breach by the BFC Individual Defendants of their obligations to their principal shareholder renders them liable for all of the damages they have caused and are continuing to cause. The BFC Individual Defendants cannot hide behind their own attempts to rewrite history or seek to use their office as BFC directors to misappropriate OBT's money to indemnify themselves from their own breaches of fiduciary duty that have, among other things, cost OBT hundreds of millions of dollars in charitable assets.

COUNT I
(Declaratory Judgment)
(Against BFC)

57. The OBT Trustees incorporate the allegations contained in Paragraphs 1-56 as if fully set forth herein.

58. Given the state of affairs, there exists a concrete dispute that can be resolved only by an expedited declaration from this Court, pursuant to Minn. Stat. §§ 555.01, 555.03, and Minn. R. Civ. P. 57, that BFC's actions are unlawful.

59. Expedition is necessary because Counterclaim Defendants both (i) continue to direct the actions of BFC in disregard of and contrary to the interests of OBT, its predominant shareholder, thereby threatening OBT with continued value dissipation, and (ii) refuse to acknowledge the lawful owners of BFC shares, thereby preventing valid shareholder action from occurring and improperly entrenching themselves.

60. The OBT Trustees seek a declaratory judgment that:

- a) The sales of Class B common stock to the Third Party Buyers were valid transactions by which the Third Party Buyers became the lawful owners of the shares each purchased;

- b) The Third Party Buyers are entitled to be registered as the record owner of the shares each purchased, effective as of the date of the purchase;
- c) The Third Party Buyers are entitled to convert the Class B common stock each purchased to Class A common stock, share for share, effective as of the date of the election;
- d) The Third Party Buyers are entitled to vote their Class A common stock at an upcoming special meeting of shareholders; and
- e) OBT and the OBT Trustees have properly called a special meeting of shareholders with which BFC must comply.

COUNT II
(Violation of Fiduciary Duties)
(Against the BFC Individual Defendants)

61. The OBT Trustees incorporate the allegations contained in Paragraphs 1-60 as if fully set forth herein.

62. The BFC Individual Defendants' actions in (a) interfering with efforts by the OBT Trustees to explore a sale of OBT's shares of BFC, including a sale that might have resulted in a sale of BFC itself, (b) causing BFC not to recognize the sales to the Third Party Buyers, and not to convert those shares to Class A common stock with voting privileges, (c) advancing frivolous litigation asserting factual and legal claims at odds with their own and their lawyers' contemporaneous explanation of the Plan of Reorganization that these same lawyers (BFC's longtime counsel at Winthrop & Weinstine) drafted, (d) causing BFC to refuse to set the meeting and record dates for a duly called special meeting for shareholders to vote on removing the BFC Individual Defendants from office, (e) taking self-serving actions to enrich and entrench themselves at OBT's expense, are in bad faith and in breach of their fiduciary duty of loyalty to OBT and in derogation of shareholder rights unique to OBT. They also are in violation of Minn. Stat. §§302A.251 and 302A.445 in that the actions have thwarted OBT's ability to participate in a

meaningful vote, which includes all shareholders, on the removal of incumbent directors opposed to any exploration of a strategic transaction.

63. The BFC Individual Defendants' actions have caused, and will continue to cause, great financial harm to OBT, a charitable trust. Their conduct destroyed the opportunity for OBT to secure an attractive price for its shares, causing OBT hundreds of millions of dollars in damages from lost sale opportunities—money that OBT could have used to enhance its charitable activities—for which the BFC Individual Defendants should be held personally liable. The BFC Individual Defendants' misconduct was and is in bad faith and motivated by their own self-interests, for which they are entitled to neither exculpation nor indemnification.

64. In addition to damages, pursuant to Minn. Stat. § 302A.467, the OBT Trustees are entitled to equitable relief to remedy the continuing effects of these violations. The BFC Individual Defendants are acting to control BFC. The Court accordingly should direct the BFC Individual Defendants immediately to act as follows:

- a) To cause BFC to register each Third Party Buyer as the owner of record of the Class B common stock purchased, effective as of the date of the purchase;
- b) To cause BFC to recognize the Third Party Buyers' conversions of the Class B common stock purchased to Class A common stock, share for share, effective as of the date of the election;
- c) To cause BFC to deliver to each Third Party Buyer a certificate representing the number of Class A shares to which each is entitled;
- d) To set the meeting date and the record date for a special meeting of BFC shareholders in accordance with the proper demand from the OBT Trustees that BFC do so; and
- e) To permit the Third Party Buyers to vote their Class A common shares at such a special meeting of shareholders.

WHEREFORE, the OBT Trustees pray for judgment on their Counterclaims as follows:

- A. Entering the requested declaratory relief;

B. Entering the requested injunctive relief;

C. Finding Counterclaim Defendants in breach of BFC's governing corporate documents, Minnesota statutory law, and, in the case of the BFC Individual Defendants, their fiduciary duties;

D. Awarding Counterclaim Plaintiffs money damages for all losses, damages, or diminution in value of OBT's shares proximately caused by the BFC Individual Defendants' breaches of duty and violations of law, which damages will be specified at trial but will be in excess of \$50,000;

E. Awarding Counterclaim Plaintiffs their costs and, pursuant to Minn. Stat. § 302A.467, their attorneys' fees; and

F. Such other and further relief as the Court may deem just and equitable.

Dated: May 13, 2020

STINSON LLP

s/ Todd A. Noteboom

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Attorneys for Defendants

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat.
§ 549.211.

s/ Todd A. Noteboom
Todd A. Noteboom (#0240047)

EXHIBIT A

OTTO BREMER FOUNDATION

BREMER FINANCIAL CORPORATION

PLAN OF REORGANIZATION

Presentation to Executive Officers

June 23, 1988

Material Not Intended for Distribution

**OTTO BREMER FOUNDATION
BREMER FINANCIAL CORPORATION**

- The Foundation has an alternative in conforming to the Tax Reform Act of 1969 in regard to divestiture.
- Purpose of today's meeting is to explain that alternative, or Plan of Reorganization.
- The Plan of Reorganization involves restructuring the outstanding shares of Capital Stock of Bremer Financial Corporation

AND

- The Plan of Reorganization involves substantial employee ownership of Bremer Financial Corporation.
- The Internal Revenue Service has issued a private ruling to the Otto Bremer Foundation stating the Plan of Reorganization will satisfy the divestiture requirements of the Tax Reform Act of 1969.

WHY DIVEST?

TAX REFORM ACT OF 1969

- Applies to all private foundations.
- Private foundations not allowed to own more than 20% of a business enterprise.
- Transitional rules apply
 - Bremer 50% by May 1989
20% by May 2004

HOW DO YOU DIVEST?

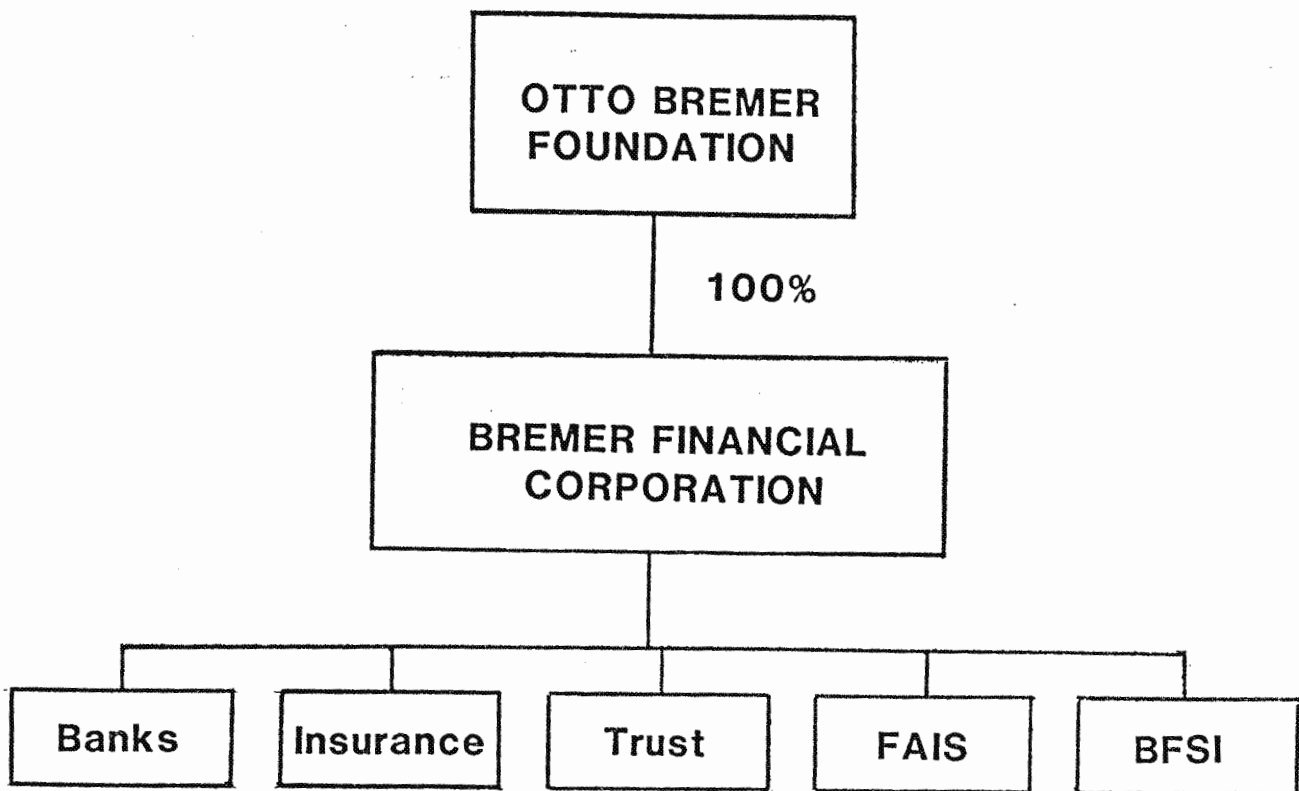
- TRUSTEES HAVE SOUGHT MEANS TO KEEP BANKS TOGETHER AS A GROUP UNDER SAME MANAGEMENT AND STILL MEET DIVESTITURE REQUIREMENTS.

- Special ruling in 1974
- Public offering
- Federal legislation
- 1984 special regulation
- Enabling legislation in 3 states
- Private investors
- Private ruling by IRS NEW

IRS has approved our Plan of Reorganization as satisfying the divestiture requirements.

- HERE'S HOW THE NEW ALTERNATIVE PLAN OF DIVESTITURE WILL WORK AND HOW THE BANKS WILL CONTINUE TO OPERATE MUCH THE SAME AS THEY ARE NOW.

CURRENT STRUCTURE



THE OTTO BREMER FOUNDATION OWNS 100% OF THE ECONOMIC VALUE AND VOTING CONTROL OF BREMER FINANCIAL CORPORATION. AS OF 12/31/87 THIS OWNERSHIP CONSISTS OF THE FOLLOWING :

Total Equity Capital (in thousands)	\$121,702
Voting common stock authorized	17,395 shares
Voting common stock issued and outstanding	7,273 shares
Book value outstanding shares	\$16,734 per share

BREMER FINANCIAL CORPORATION

PLAN OF REORGANIZATION

Step One

- Amend Articles of Incorporation to Restructure Common Stock.
- Cancel all existing authorized capital stock.
- Authorize 12,000,000 shares Class A Common.
- Authorize 10,800,000 shares Class B Common.

BREMER FINANCIAL CORPORATION

PLAN OF REORGANIZATION

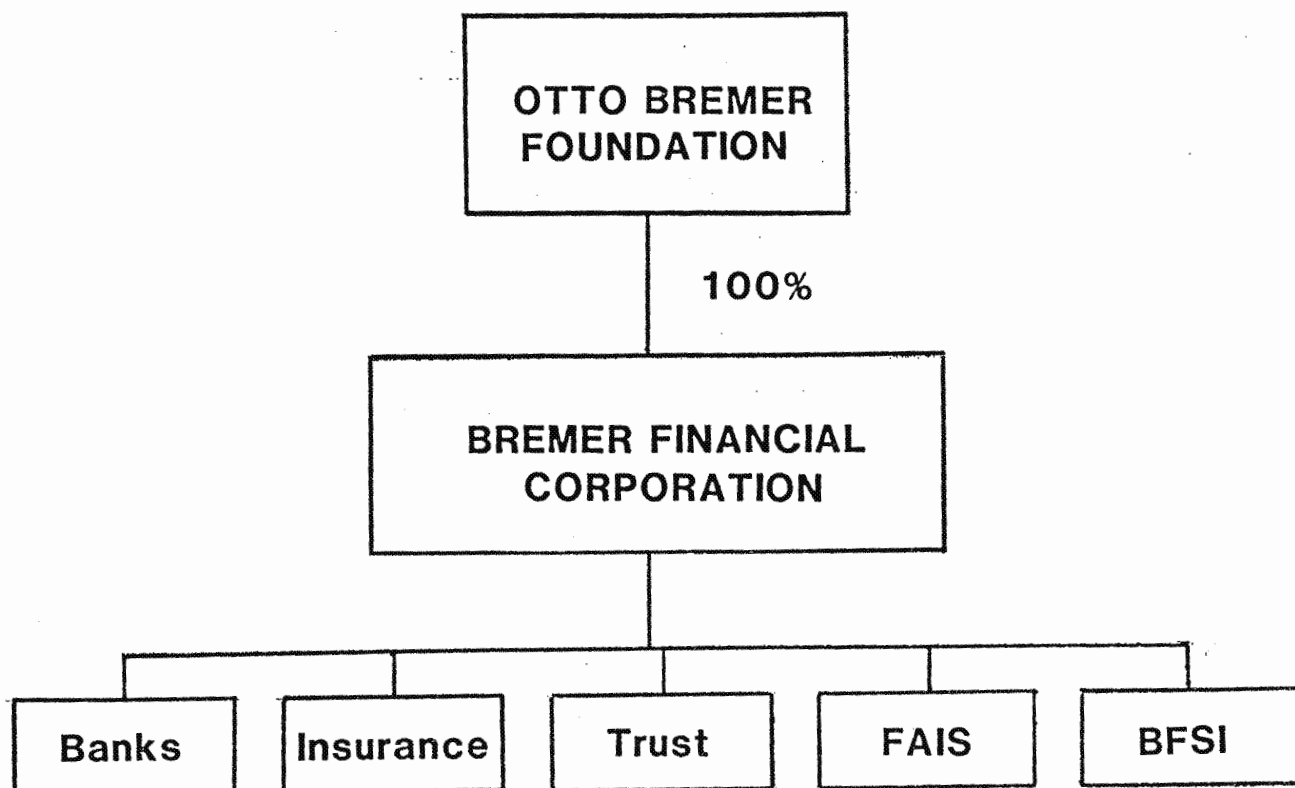
Step Two

- RECAPITALIZE BREMER FINANCIAL CORPORATION
 - Otto Bremer Foundation exchanges its existing 7,273 shares of Bremer Financial Corporation stock for 1,200,000 shares of newly authorized Class A Common Stock and 10,800,000 shares of newly authorized Class B Common Stock.

RIGHTS OF CLASS A COMMON AND CLASS B COMMON

- EXCEPT AS SPECIFICALLY PROVIDED BELOW, THE CLASS A COMMON AND CLASS B COMMON HAVE THE SAME RIGHTS AND PRIVILEGES AND SHALL RANK EQUALLY, SHARE RATABLY AND BE IDENTICAL IN ALL RESPECTS AS TO ALL MATERS, INCLUDING THE RIGHT TO SHARE EQUALLY IN ANY DIVIDENDS DECLARED BY THE CORPORATION AND THE RIGHT TO SHARE EQUALLY IN LIQUIDATION PROCEEDS.
- Class A Common has full shareholder voting rights.
- Class B Common has no shareholder voting rights except relative to an Extraordinary Transaction as specifically defined later.

STRUCTURE AFTER RECAPITALIZATION



The Otto Bremer Foundation still owns 100% of the economic value and voting control (Class A Common) of Bremer Financial Corporation. The ownership consists of the following, using 12/31/87 values

	<u>Authorized</u>	<u>Unissued</u>	<u>Issued</u>
Class A Common Stock—Shares	12,000,000	10,800,000	1,200,000
Class B Common Stock—Shares	10,800,000	—	<u>10,800,000</u>
Total Shares Issued—A and B			<u><u>12,000,000</u></u>
Total Equity Capital (in thousands)			<u><u>\$121,702</u></u>
Book Value Total Outstanding Shares			\$10.14 per share

BREMER FINANCIAL CORPORATION

PLAN OF REORGANIZATION

Step Three

- OTTO BREMER FOUNDATION SELLS 960,000 SHARES OF CLASS A COMMON STOCK, REPRESENTING 80% OF THE TOTAL AMOUNT OF CLASS A COMMON ISSUED AND OUTSTANDING.
- SALE IS TO SOME COMBINATION OF THE FOLLOWING INDIVIDUALS, GROUPS OR ENTITIES, TO BE DETERMINED:
 - Employees of Bremer pursuant to either a public or private stock offering.
 - Employees of Bremer by permitting individuals to purchase with a portion of their vested proceeds in Profit Sharing Plan.
 - To an employee stock ownership plan established by Bremer for the exclusive benefit of its employees ("ESOP").
 - Possibly to a limited number of private investors pursuant to either a public or private stock offering.

BREMER FINANCIAL CORPORATION

STRUCTURE AFTER RECAPITALIZATION AND SALE OF CLASS A COMMON

Shares Outstanding

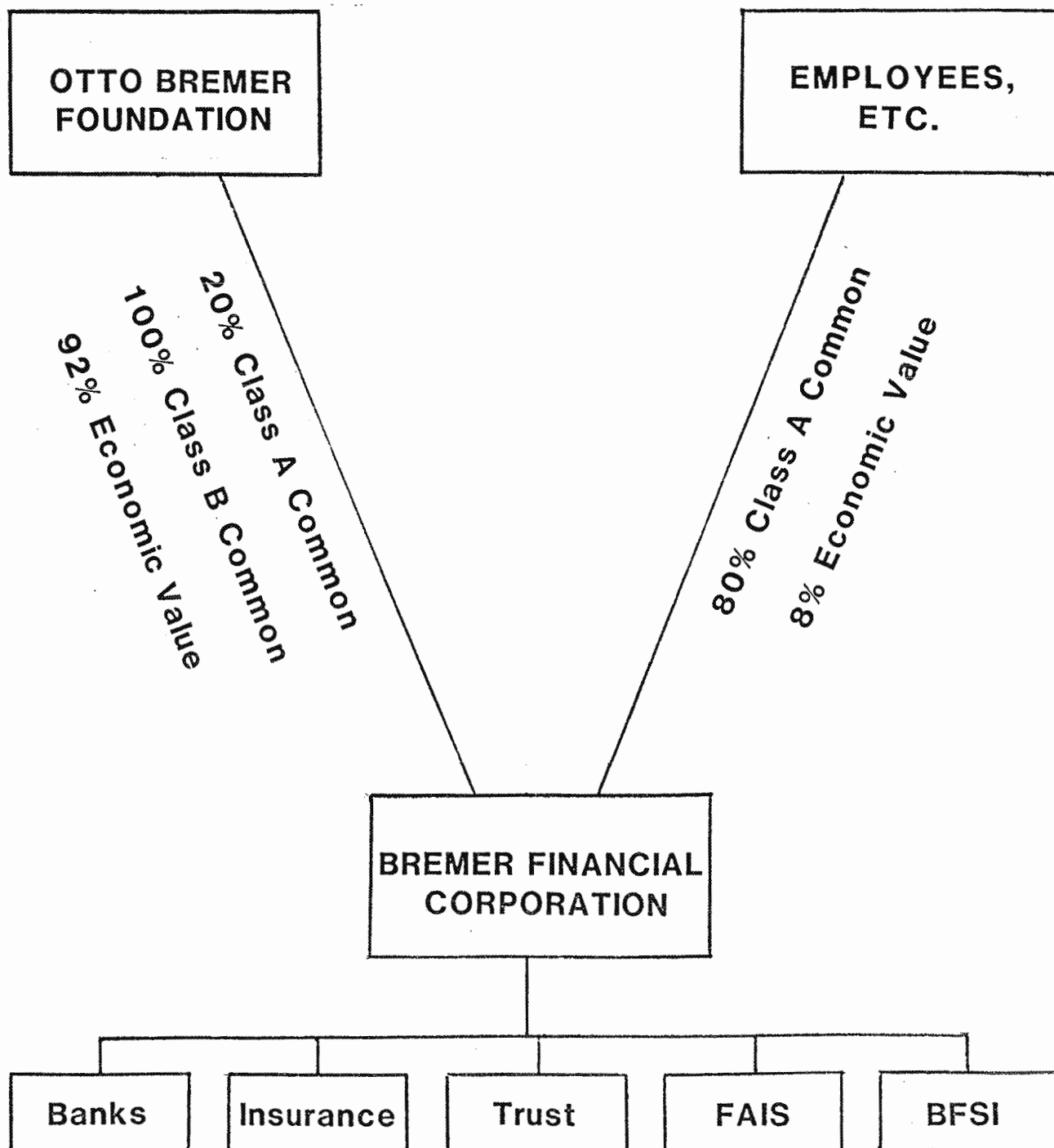
Class A Common - Voting	Issued	Percent
Owned by Otto Bremer Foundation	240,000	20%
Owned by Employees, ESOP , possible private investors, etc.	<u>960,000</u>	<u>80%</u>
Total	<u>1,200,000</u>	<u>100%</u>
Class B Common - Nonvoting		
Owned by OBF	<u>10,800,000</u>	<u>100%</u>

Economic Value Based on Book Value 12/31/87

Class A Common - Voting	Amount (in thous)	Percent
OBF 240,000 x \$10.14	\$2,434	2.0%
Employees, Etc. 960,000 x \$10.14	9,736	8.0%
Class B Common - Nonvoting		
OBF 10,800,000 x \$10.14	<u>109,532</u>	<u>90.0%</u>
Total	<u>\$121,702</u>	<u>100.0%</u>

The Otto Bremer Foundation continues to own 92% of the economic value of Bremer Financial Corporation but only 20% of the voting control. Divestiture has been achieved !

STRUCTURE AFTER RECAPITALIZATION



BREMER FINANCIAL CORPORATION

**THE CLASS A COMMON AND THE CLASS B
COMMON BOTH HAVE CERTAIN RIGHTS,
RESTRICTIONS, LIMITATIONS AND OPTIONS
WHICH ARE SUMMARIZED IN THE
FOLLOWING.**

CLASS B COMMON - NONVOTING

- Holders of Class B Common shall not be entitled to vote on any issue properly subject to vote by the shareholders of the Corporation, except with respect to a vote relative to an Extraordinary Transaction as described below.
- Extraordinary Transaction – Holders of Class B Common shall have the right to vote on an equivalent per share basis with the holders of Class A Common with respect to the following Extraordinary Transactions:
 - (i) any vote of the shareholders relative to a merger, consolidation, liquidation, dissolution of the Corporation or a proposed sale of all or substantially all of the assets of the Corporation;
 - (ii) any vote relative to the amendment of the Restated Articles purporting to change the capital structure of the Corporation or the voting power of the Class A Common or the Class B Common.

CLASS B COMMON - NONVOTING CONVERSION RIGHTS

- EACH SHARE OF CLASS B COMMON SHALL BE CONVERTED INTO ONE SHARE OF CLASS A COMMON UPON THE OCCURRENCE OF ANY OF THE FOLLOWING EVENTS (THE "CONVERSION EVENTS").
 - At the election of the transferee, upon the transfer of Class B Common from the Foundation to any third party or entity.
 - At the election of the holder of Class B Common if cash dividends in any fiscal year are below the "Minimum Annual Return".
 - 5% of previous year end's book value.

CLASS A COMMON - VOTING RESTRICTIONS - LIMITATIONS - OPTIONS

- Bremer Financial Corporation's Option to Purchase
 - Occurrence of "Option Events"
 - Holder of Class A Common proposes to transfer to third party .
 - Holder of Class A Common dies.
 - If Holder of Class A Common is an employee
 - RETIREMENT
 - TERMINATION OF EMPLOYMENT
- Cash Purchase Price – Book Value
 - End of preceding fiscal quarter.

CLASS A COMMON - VOTING RESTRICTIONS - LIMITATIONS - OPTIONS

- IN THE EVENT OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE SHARES OF CLASS B COMMON HELD BY FOUNDATION
 - Foundation, its Assignee or Buyer – – Option to Purchase
 - Cash Purchase Price – Greater of
 - Book Value – end of preceding fiscal quarter
 - Average price per share realized by Foundation
 - Special Rules for ESOP
 - Holder of Class A Common – Right to Sell to Foundation or Assignee
 - Cash Purchase Price
 - Average price per share realized by Foundation.

CLASS A COMMON - VOTING RESTRICTIONS - LIMITATIONS - OPTIONS

- Holders of Class A Common – Right to Sell to Bremer Financial Corporation or assignee.

- Occurrence of Certain Events – "Put Events"
 - If Holder of Class A Common is Employee
 - Death
 - Permanent Disability
 - Retirement

- Cash Purchase Price
 - Book Value – end of preceding fiscal quarter
 - Special rules for ESOP

BREMER FINANCIAL CORPPORATION

THE MATERIAL IS INTENDED FOR INFORMATION PURPOSES ONLY. THE FINAL DETAILS ON ALL ASPECTS OF THE RECAPITALIZATION HAVE NOT BEEN FINALIZED AND ARE SUBJECT TO SLIGHT MODIFICATION. THIS MATERIAL IS NOT INTENDED FOR USE IN CONNECTION WITH AN OFFER TO SELL STOCK. ADDITIONAL AND FINAL INFORMATION WILL BE PROVIDED AS PLANS ARE FINALIZED.

WHAT IS THE NET RESULT OF THE PLAN OF REORGANIZATION?

- FOUNDATION MEETS THE STATUTORY REQUIREMENTS OF DIVESTITURE BY MAY OF 1989.
- FOUNDATION IS POSITIONED FOR NOW AND IN THE FUTURE TO MAINTAIN ITS CHARITABILITY AND FULFILL ITS FIDUCIARY RESPONSIBILITY INCREASED GRANTMAKING VIA OWNERSHIP OF AN ENHANCED BANK HOLDING COMPANY OR SALE OF IT AT AN ADVANTAGEOUS PRICE AT A LATER DATE.
- BANKS AND MANAGEMENT ARE KEPT TOGETHER AS A VITAL ECONOMIC FORCE IN THE 3 STATE AREA AND IN THEIR COMMUNITIES.
- EMPLOYEE OWNERSHIP PROVIDES INCENTIVE FOR GOOD PERFORMANCE AND AWARDS THROUGH INCREASED VALUE OF STOCK, A MARKET FOR THE STOCK, AND GOOD DIVIDENDS.

A WORD OF CAUTION !

THE TRUSTEES OF THE OTTO BREMER FOUNDATION HAVE AN ONGOING FIDUCIARY RESPONSIBILITY TO MAINTAIN THE FOUNDATION'S CHARITABILITY BY PROTECTING AND ENHANCING THE FOUNDATION'S ASSETS AND INCREASING THE GRANT DISTRIBUTION IF POSSIBLE.

- AN OFFER TO BUY OR MERGE COULD BE RECEIVED NEXT YEAR . . . FIVE YEARS FROM NOW . . . NEXT WEEK . . . OR NEVER!
- TRUSTEES HAVE A RESPONSIBILITY TO CONSIDER ANY VALID OFFER AND IF OF SUCH SIZE AND TERMS AS TO ENHANCE THE FOUNDATION'S GRANTMAKING CAPACITY AND FURTHER ENHANCE ITS CHARITABILITY, IT MUST ACCEPT SUCH AN OFFER.
- ALL SHAREHOLDERS OF ALL CLASSES OF STOCK WILL HAVE THE OPPORTUNITY TO SELL AT THE SAME PRICE.

EXHIBIT B




Bremer Financial Services, Inc.

Member Bremer Financial Corporation

Suite 700
55 East Fifth Street
St. Paul, Minnesota 55101
(612) 227-7621
FAX (612) 227-2522

Date June 23, 1988

To Executive Officer Addressed

From Terry Cummings 

Subject Supplemental Information - Recapitalization
 Divestiture Alternative

The purpose of this memo is to supplement the information presented at the chief executive officers meeting held in St. Paul on Thursday, June 23, 1988. The information contained in this memo complements the information presented on overheads and should be used in conjunction with the copy of the overheads provided each executive officer.

The Foundation has recently received a private ruling issued by the Internal Revenue Service which confirms that an alternative plan of the Foundation to meet the divestiture requirements of the Tax Reform Act of 1969 will indeed satisfy those requirements. The plan involves a reorganization through the restructuring of the outstanding shares of capital stock of Bremer Financial Corporation and involves substantial employee ownership of Bremer Financial Corporation.

The Tax Reform Act of 1969 does not apply strictly to the Otto Bremer Foundation, but applies to all private foundations. In essence, private foundations are not allowed to own more than 20% of a business enterprise and to the extent that a Foundation exceeded this allowable percentage at the time the law was passed there were certain transitional rules which allowed for a specific timeframe in which an orderly disposition could occur. These transitional rules as they apply to Bremer require that the ownership of Bremer Financial Corporation by the Foundation needs to be reduced to not more than 50% by May of 1989 and eventually to 20% by the year 2004. Bremer's problem has been making an orderly divestiture in a regulated industry which limits sales of banks or bank holding companies across state lines and at the same time allowing the Foundation to realize the value of the organization. A forced sale in a restricted market is not conducive to maximizing value.

The Trustees have sought many means to meet this divestiture over the last several years and the plan of reorganization as recently approved by the Internal Revenue Service provides an attractive alternative.

As you all know, the current structure of the organization involves the Otto Bremer Foundation owning 100% of Bremer Financial Corporation; owning 100% of the voting control of the Corporation as well as 100% of the economic value of the Corporation. The number of shares outstanding, while immaterial in a single ownership structure, results in a book value per share as of 12/31/87 of \$16,734.00 for each of the 7,273 shares outstanding.

The Plan of Reorganization calls for an amendment of the Articles of Incorporation to cancel the current authorized capital stock of Bremer Financial Corporation and in its place authorize 12,000,000 shares of Class A Common Stock and 10,800,000 shares of Class B Common Stock. The Otto Bremer Foundation would then exchange its existing 7,273 shares of stock, representing all of the current outstanding shares of common stock of Bremer Financial Corporation, for 1,200,000 shares of the newly authorized Class A Common Stock and 10,800,000 shares of the newly authorized Class B Common Stock. By changing the authorized and outstanding capital structure of Bremer Financial Corporation, we have replaced one class of stock with two classes of stock, Class A and Class B. These shares have identical rights and privileges and share equally in everything, with the exception that Class A has full shareholder voting rights and Class B has no shareholder voting rights, except in certain specific items which are referred to as extraordinary transactions which will be defined later.

After the recapitalization and the exchange of stock, the Otto Bremer Foundation continues to own 100% of Bremer Financial Corporation, exactly as before, but their ownership is now represented by 1,200,000 shares of Class A Stock and 10,800,000 shares of Class B Stock. In total, A and B, there are 12,000,000 shares outstanding and as explained before, these shares have exactly the same rights and privileges with the exception of voting. Using 12/31/87 values, the book value per share, including Class A and Class B, equals \$10.14 a share. At this point the only thing we have changed is the number of shares outstanding and owned by the Foundation. There are two different classes of stock now outstanding, all owned by the Foundation, and the book value per share has gone from \$16,734.00 a share to \$10.14 per share as a result of a lot more shares outstanding. However, the Foundation still owns 100% of Bremer Financial Corporation, both its economic value and its voting control, which is now represented by the Class A Common.

The next step in the Plan of Reorganization involves a sale of 960,000 shares of Class A Common Stock, or 80% of the total voting shares outstanding. The Foundation will sell these shares primarily to employees and possibly to a limited number of private investors should additional shareholders be needed to accomplish the sale of 80% of the voting stock. The sale will be to employees through a

number of vehicles, including a direct offering to all employees of Bremer through either a public or a private stock offering, by permitting individuals an investment alternative of Bremer Financial Corporation Class A Common Stock for investing their profit sharing funds, and through the issuance of stock through an employee stock ownership plan (ESOP) for the exclusive benefit of Bremer employees.

After completing the sale of 960,000 shares, or 80% of the total Class A Voting Shares outstanding, the ownership structure of Bremer Financial Corporation will change. Of the 1,200,000 Class A Common Voting Shares outstanding, the Otto Bremer Foundation will continue to own 240,000 shares, or 20%. The employees, the ESOP and possible private investors will own 960,000 of the Class A Common Voting Shares, or 80% of the total Class A Common Voting Shares outstanding. 100% of the Class B Common Shares outstanding will continue to be owned by the Foundation.

From a standpoint of voting control, except in regard to specific extraordinary transactions to be described later, the voting control of the organization rests in the hands of the employees and the private investors, with 80% of the Class A Common. The economic value which is represented by both Class A Common and Class B Common combined, continues to be 92% owned by the Foundation as they own 2% of the total economic value as represented by the 240,000 shares of Class A and 90% of the economic value as represented by the 10,800,000 shares of Class B Common.

It is at this point that divestiture per the Tax Reform Act of 1969 has been met and the private ruling from the Internal Revenue Service confirms this fact. Divestiture triggers on voting control, not economic value, and since the Foundation has reduced their voting control down to 20%, with the exception of extraordinary transactions, they have, in fact, met divestiture.

After recapitalization and subsequent sale to employees of 80% of the Class A Common Stock, Bremer Financial Corporation will be partially owned by the Otto Bremer Foundation and partially owned by the employees and possibly private investors. The Foundation continues to own 92% of the economic value represented by 100% of the Class B Common and 20% of the Class A Common. The employees and possible private investors own 8% of the economic value of the Corporation; however, they control 80% of the Class A Common Stock and have voting control.

Class A Common and Class B Common both have certain rights, restrictions, limitations and options which are covered in the overheads.

As mentioned previously, Class B shall not be entitled to vote on any issues properly subject to vote by the shareholders, except with respect to extraordinary transactions. Extraordinary transactions are defined as follows:

- A. A shareholder vote relative to a merger, consolidation, liquidation, dissolution, or proposed sale of the company. The Otto Bremer Foundation, since they own 92% of the economic value of the Corporation, retains the right to vote on a major sale, merger, etc. of the Corporation. They will have the final say in this type of transaction and properly so since they own 92% of the economic value.
- B. Any vote by the shareholders relative to an amendment of the restated Articles of Incorporation purporting to change the capital structure of the Corporation or the voting power of Class A or Class B. The capital structure was restated to specifically allow for divestiture and contained certain rights and privileges as part of a master plan of reorganization. Any adjustments to this plan which could be to the detriment of the Otto Bremer Foundation, which owns 92% of the economic value of the company, would need their approval.

Each share of Class B Common contains certain rights to convert into Class A Common upon the occurrence of certain events. If you will recall, after recapitalization there are 10,800,000 shares of Class B Common issued and outstanding and an exact number of Class A Common unissued. This is by design and Class A unissued shares are being held available to be issued pending conversion of the exact number of Class B Common outstanding.

Class B Common can be converted into Class A Common at the election of a holder of Class B Common upon the transfer of Class B Common from the Foundation to a third party. This is basically to handle the situation where the organization receives an offer to be purchased, which is an event that the Foundation can vote, and the Foundation elects to sell the organization. Conversion rights allow the Foundation to deliver voting control of the corporation to an acquiror. Upon sale, the shares are transferred and they are converted to voting and the special structure that has been set up to meet divestiture is no longer in effect.

In addition, the holders of Class B Common, which is the Foundation, can convert their shares into Class A if the cash dividends in any fiscal year are below 5% of the previous year end's book value. This is to give the Foundation some control in case the dividends from the Corporation are not sufficient to meet their payout requirement as required by the Tax Reform Act of 1969.

The Class A Common has certain restrictions, limitations, options and rights also. Bremer Financial Corporation has a right to purchase these shares in the case of certain option events. These option events are as follows:

- A. If a holder of Class A Common, an employee or an investor, wishes to transfer his stock, Bremer Financial Corporation has an option to purchase it; in other words, the stock is not a freely traded stock at the option of

the holder. Should the holder wish to sell his stock, Bremer Financial Corporation has the first shot at it with their option to purchase.

- B. If the holder of the Class A Common dies, Bremer Financial Corporation also has that option.
- C. If the holder of Class A Common is an employee, of which most of the Class A is anticipated to be, upon retirement, Bremer Financial Corporation has an option to purchase. It is not the intention of the Corporation to purchase the stock at retirement, but merely to have that option. It is assumed that retirees could keep their stock; nevertheless, the Corporation wishes to have that option. If employment were terminated for whatever reason, Bremer Financial Corporation again has the option to purchase the stock.

The purchase price Bremer Financial Corporation must buy the stock for is book value computed at the end of the preceding fiscal quarter.

In the event of the sale of all or substantially all of the shares of Class B Common Stock which is owned by the Foundation, there are certain options and rights for the sale of the Class A Stock. Such a sale is in the control of the Foundation since they have a right to vote on this type of transaction and should they vote to sell the entire organization, the Foundation itself, its assignee, or the buyer of the Corporation has the option to purchase all of the Class A Common outstanding. In other words, the Foundation, in negotiating with a potential acquiror, has the ability to deliver to the acquiror 100% of the ownership of the Corporation, including all of the Class A Common outstanding in the hands of the employees. The cash purchase price for this option is the greater of book value at the end of the preceding fiscal quarter or the average price per share that's realized by the Foundation for the sale of their shares. In other words, if any premium is being paid to the Foundation for their shares, that exact same premium must be paid for the shares of the Class A stock should the buyer want to exercise his option. Employees will share in any premium received by the Foundation.

Even if the Foundation or the buyer declines to exercise their option, the holder of Class A Common has a right to sell to the Foundation for a cash purchase price equal to the average price per share realized by the Foundation. In other words, upon a sale of the entire company, the purchaser has a right to purchase all of the shares of Class A outstanding, but he must pay the same price as he paid the Foundation and/or the holders of Class A Common Stock also have a right to put their stock to the Foundation at the same average price per share realized by the Foundation.

There are also rights of the holders of Class A Common Stock to sell to Bremer Financial Corporation in the event of certain events. If the holder of Class A is an employee, upon the employee's death his estate has a right to sell back to Bremer Financial Corporation;

in the case of permanent disability or in the case of retirement, the employee has the right to sell the stock back to Bremer Financial Corporation. The cash purchase price is equal to book value at the end of the preceding fiscal quarter. This allows the holder of Class A Common a market for their stock should events transpire that may change their financial position and require additional liquidity. It also guarantees a price equal to book value.

Again, this material is intended for information purposes only and is intended to share with you the ruling by the Internal Revenue Service and the Plan of Reorganization that the Foundation and Bremer Financial Corporation can utilize to meet the divestiture requirements. The information presented is not intended to be absolute and is not intended for use in connection with an offer to sell the stock. Slight modification can occur as the final plans are put together. The material presented is not intended for distribution.

It should also be noted that while the Plan of Reorganization will meet the divestiture requirements of the Tax Reform Act of 1969, the organization continues to operate in a banking environment that is seeing more and more consolidations, mergers, acquisitions, etc. The Plan of Reorganization does not preclude the Foundation from receiving an offer to sell in the near future or any time in the long term and with ownership of 92% of the economic value of the Corporation, they have the power to vote whether to accept or decline such an offer. No assurances can be made that an offer would not occur in the very near future. Should such an offer occur subsequent to completion of the recapitalization, the rights and privileges of the Class A Common Shareholders will come into play as outlined in the overheads.

If any questions arise concerning the Plan of Reorganization, please direct them to Terry Cummings or, in his absence, Bob Reardon. Again, the information provided is for the purpose of giving you preliminary information regarding this plan and much more detailed information will be made available and will be distributed when the actual plans become more finalized.

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