

# Hendry-Glades Sunday News

March 2, 2008

## Clewiston's Secrets

In the mother of all Clewiston secrets, the Mott Foundation is alleged to have secretly directed U.S. Sugar Corp. executives to deprive the employees of the rising value of their Company retirement-account stock and buy it back cheap.

1. **Soap-opera Scandal Unfolding as Sugar Subsidy is Up for a Vote**
2. **50% more Retirement Benefits at Stake in Suit**
3. **Chronologically**
4. **The U.S. Sugar Employee Stock Ownership Plan**
5. **Case Filing**

## Soap-opera Scandal Unfolding as Sugar Subsidy is Up for a Vote

BY RAOUL BATALLER

CLEWISTON, FL (Friday, Feb. 29)

Twenty years ago when U.S. Sugar went private, concealing its stock value from its employee stockholders, the No. 1 show internationally was "Dynasty." That show had nothing on the slide into soap opera tragedy that today befalls The Company, with perhaps the exception that on television betrayal, greed and the "keep-your-distance" theme ended in everyone being mowed down by machine-gun fire.

Today's is a puppet show with Flint, Michigan heir William S. White, manager of the Mott Foundation's \$2.6 billion, who no longer owns but still somehow runs The Company, allegedly plundering them all over the edge down a bottomless legal entanglement into a potentially vast waste of company time and resources.

Well, nothing is bottomless and in this case bottomless could be all the way up to the top, the Supreme court, over Employee Retirement Income Security Act issues governing employee stockholder plans everywhere.

For the company's brand new state-of-the-art plant, new refinery and fine 160,000 acres of water-filled fields and crops draw lawyers like blood in the water, and they will fancy a defense of employee stockholder rights that pits The Company inwardly against itself, fellow workers against fellow workers.

That siege can assume a life of its own, possibly consume most of the next decade until dismemberment runs its course, and possibly costs every last penny that The Company has. Most importantly it puts at risk the magic bullet of the sugar industry, its key to prosperity, and among farmers a unique assurance of predictable finances, the federal subsidy.

The lawsuit may raise new questions about enriching the Mott-White family's alleged trunkful of plunder that were not entertained in prior debates over the sugar subsidy.

Today in its final stages of House and Senate conference review, the five-year Ag bill will surely bring under stern reevaluation continuation of a sugar subsidy. After all, the final defense of the subsidy has been the benefit of federal millions to farmers and employees.

Intervention possibility

The most likely messenger in the House Ag committee might be Rep. Tim Mahoney, whose knowledge of ag issues has grown impressively in the short time since he went to Washington.

Unable to intervene in pending litigation, he can certainly carry Congress's assessment of what Sugar's board of directors must now do — or which of its members must depart— if they want further subsidy.

Without subsidy, The Company confronts a future as if off to a crap shoot. To prepare for subsidy-less operations, The Company closed an efficient Bryant sugar house and built an efficient Clewiston plant that cut travel expenses and payroll.

If positions harden and affect the subsidy, unfolding events may leave people wondering what reason any longer remains for the community of Clewiston to exist at all. Such stakes may make the \$150 million in compensatory damages plus punitive damages sought by the plaintiffs to appear reasonable by comparison.

At which point the executives allegedly perpetrating this, at the zenith of the \$575 million (plus debt payoff, at last offer, totaling an informally projected \$1.5 billion)

U.S. Sugar empire's value, power and prospects, most of whom are near retirement age, shall have departed (one has already been observed to slip out of the picture with a scheduled \$10 million bonus). All from a single perpetration of the arrogant executive lie, affecting retirement nest eggs of their 4,000 employees on a massive scale, a robbery of one third the value of their stock.

Not neighbor against neighbor, though. At this point, most company executives have relocated to Wellington, except CEO Robert Buker, who still attends church in Clewiston.

What a way to go. Martha Stewart had nothing on this, baby. She, at least, gives a damn about her people.

## **50% More Retirement Benefits at Stake in Suit**

SPECIAL TO THE SUNDAY NEWS  
CLEWISTON, FL (Friday, Feb. 29)

According to a \$150 million class-action lawsuit filed this month against U.S. Sugar's board of directors, nearly 80% of the employee shareholders who stand to benefit in the suit are hourly employees, and a majority of them are relatively low paid farm workers, equipment operators and mechanics.

“Due to their relatively low total compensation, a large percentage of these workers have very modest retirement savings or incomes. The difference in retirement income based on the Employee Stock Ownership Plan (ESOP) value of \$194.10 to \$204.10 per share that the employees were paid by U.S. Sugar and the retirement income the employees would have been paid based on the \$293 per share from the Lawrence Group’s offer is approximately 50% higher.

“For example, a typical employee might receive \$800 per month in retirement income from the sale of his shares through the ESOP at the \$194.10 price, but would have received \$1,208 per month if he or she had sold at the \$293 price offered by the Lawrence Group.

“That additional \$408 per month is enough to make the difference between meeting basic needs and not, and enough to result in a significant difference in the quality of life for those lower paid employees.”

## **Chronologically**

SPECIAL TO THE SUNDAY NEWS  
CLEWISTON, FL (Friday, Feb. 29)

In the summer of 2005 Robert Dolson was winding up a successful half-decade as CEO of U.S. Sugar under a successful board of directors led by an unpopular William White, in-law to the heir to the Mott fortune.

White saw to it that the board of directors represented interests of the Mott foundation and family, but that the 4,000 employees of U.S. Sugar had no say on the board, although they held 38% of the company’s stock.

With nothing to lose, Dolson gambled on a deal to sell the company to a firm that would remove White and the Mott family.

According to a class-action lawsuit filed this month against White and his board and some company executives, the Mott family’s transaction in the 1980s in which U.S. Sugar “went private,” allowed the Mott Family to cash in “a substantial part of their holdings while still effectively controlling the company.”

In 2005 patterns of procurement indicated a scheme by White to reacquire shares of the employees stock cheaply by making sure that the employees were kept in the dark about the true value of the stock. By that time, perhaps the most important means of control over profits remaining to the Mott-White family had shifted from outright investment-ownership of stock to reliance on the communications patterns within The Company.

Observing the culture of teamwork in Clewiston, the foundation may well have concluded that to make inordinate profits one need not actually own large portions of The Company, but merely keep a willing workforce in an exaggerated sense of discrete corporate awareness, heightened by the solitude of outpost Clewiston, letting the loyal Clewiston teamwork allow The Company’s directors and management to grow the company in value until an opportunity presented itself to fleece the increasingly unwitting workforce.

Quite easily, the employees were simply made to understand, the complaint asserts, that “As a private company, there is no public market for U.S. Sugar shares and no publicly available means to determine the value of those shares, because the company does not make any public disclosures of financial information.”

Time and again are avowals made by employees that they knew the executives personally as friends and did not believe them capable of direct, personal fraud of retirement funds.

But time was not on the side of stability. The management team that increased the worth of The Company perhaps fivefold after decades of service was nearing retirement age, and could not help observe that Dolson was contractually walking away with \$10 million (an agreed amount upon his scheduled retirement).

The management team’s historic paternal affection for the Clewiston workforce turned to some bitterness as they relocated their families almost as a body to Wellington, 48 miles away, and at one point launched a contemptuous attack against the local effort to sustain Hendry Regional Medical center. And ultimately with time, the formula under which huge growth in value of the company would mean doubling, tripling or more the value of stock paid to these same employees appear to have become to White and perhaps the executives increasingly unrealistic, almost fantastic.

The lawsuit alleges that White caught onto Dolson, in a showdown fired him, and as the two parted Dolson got his \$10 million and White got Dolson’s promise not to tell the employee stockholders how valuable their stock was.

The employees were convinced that their stock was worth \$194.10 per share when those retiring employees could have received almost 51 % more had the Lawrence Group’s offer been taken, or more had a counteroffer been made.

Clumsily, sugar executives led by new CEO Robert Buker, an attorney, sought to justify refusal of the Lawrence offer by commissioning an appraisal of Company holdings that indicated in January ‘06 that the property was so valuable that employees should receive for their stock not 51% more but four times what they were getting. That appraisal, too, was kept secret from the employees as Sugar’s directors issued a report with feigned sadness noting that stock values dropped into the \$190s.

Logically, either the appraisal or the report to employees was a lie; both could not be true. The lawsuit alleges that the appraisal was “bogus.” It also notes that no counteroffer to Lawrence was offered by the directors.

The lawsuit also alleges that the Lawrence offer increased the value of Sugar stock “\$140 per share more than what the Mott Foundation was stating on its filings with the IRS (signed under penalty of perjury) as the Fair Market Value of the same shares.” A trustee exists for the employee stockholders’ protection.

The complaint observes, “The only way for the employee shareholders to sell their shares is to sell them back to U.S. Sugar under the terms of the ESOP at the “fair market value” — a price that is supposed to be determined by the Trustee of the ESOP and is defined as “the price at which an asset would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell,

and both parties are able, as well as willing, to trade and are well informed about the asset and the market value of the asset.” The price paid by U.S. Sugar to purchase these shares has ranged from a low of \$194 per share to a high of \$204 per share from 2005 to 2007.

The trustee, United States Trust Company, NA., also is now a defendant in the case.

## **The U.S. Sugar Employee Stock Ownership Plan**

The lawsuit describes the U.S. Sugar Employee Stock Ownership Plan (ESOP) as “a noncontributory, defined contribution retirement benefit plan covering substantially all of the employees of U.S. Sugar and is subject to the provisions and protections of the Employee Retirement Income Security Act (ERISA).

“The ESOP is an individual account plan under which a stock account and a non-stock account are established, as applicable, for each participant. U.S. Sugar is the Plan Sponsor.

Overall responsibility for administering the ESOP rests with a Trustee and an ESOP Committee, both of which are selected by the Board of Directors of U.S. Sugar.

60. At all relevant times, the Trustee of the U.S. Sugar ESOP was U.S. Trust. The Employee Shareholders are the beneficial owners of the U.S. Sugar shares held by the ESOP. All of the shares allocated to participants are voted by the ESOP Trustee in accordance with the directions received from each such shareholder.

“When an offer like the Lawrence Group’s offer is made, the terms of the offer should be conveyed to each Employee Shareholder, and each Employee Shareholder must be given the opportunity to sell or not to sell his or her shares. It is not a decision for the Trustee to make, and certainly not a decision for the Mott White Family or the Board of Directors of U.S. Sugar to make.

“Every employee shareholder who has reached the age of 55 has the right to retire and to sell his or her shares to U.S. Sugar for their Fair Market Value. Every employee shareholder who has reached the age of 55 also has the right to diversify his or her ESOP account by selling a portion of his shares at the Fair Market Value to U.S.

Sugar and investing the proceeds in certain approved funds within the ESOP. Under the circumstances of this case, every employee shareholder, regardless of age, should have been given the opportunity to sell their shares in response to the Lawrence Group’s offers.

“The only way the Employee Shareholders can sell these shares, in the absence of an outside offer, is to sell the shares back to U.S. Sugar under the terms of the ESOP plan documents at the “Fair Market Value” based upon an appraised value obtained by U.S. Sugar and the ESOP Trustee. No sales to third parties have ever occurred in the history of the ESOP.

The shareholders who are not participants in the ESOP have no market or viable means by which they can sell their shares, “The Trustee of the ESOP determines the Fair Market Value of the shares held by the ESOP and is permitted to rely in part upon an appraisal. The appraisals for the shares are performed twice annually, as of April 30 and October 31 each year.

Houlihan, Lokey, Zukin & Howard (“Houlihan Lokey”), a nationally-recognized appraisal firm and largest appraiser of ESOP’s in the United States, was selected by U.S. Sugar in 1983 and continues to be the appraiser to this day. Houlihan Lokey bases its appraisals almost totally upon information provided to it and controlled by the executive management of U.S. Sugar.

One of the primary factors used by any appraiser in determining the Fair Market Value of a non-public stock is whether any offers from third parties for those shares have been made or whether any other valuations or appraisals of the corporation’s assets have been performed.”

## **Complete Text of Employee Lawsuit Against U.S. Sugar**

### **INTRODUCTION**

United States Sugar Corporation (“U.S. Sugar”) holds itself out as one of the country’s largest producers of sugar cane and refined cane sugar and is one of Florida’s major producers of oranges and orange juice products, U.S. Sugar publicly claims that its “value system” requires that “communication must be direct, open, honest and timely,” that “information is openly shared,” and that “we trust and respect all of our fellow employees.”

As will be described below, U.S. Sugar, its Chairman William S. White, its President and Chief Executive Officer Robert H. Buker, Jr., its Board of Directors and others have cast that “value system” aside when it comes to the treatment of their shareholders, many of whom are also their employees.

2. Since its founding in 1931 by Charles Stewart Mott (“C.S. Mott”), U.S. Sugar has always been associated with his lineal descendants (the “Mott Family”). However, the largest single block of shareholders of U.S. Sugar is comprised of thousands of its employees and former employees, who owned approximately 38% of the outstanding shares through the U.S. Sugar Employee Stock Ownership Plan (the “ESOP”) as of October 31, 2005 (the “Employee Shareholders”). U.S. Sugar’s workforce ranges from farm field workers to the administrative staff at the headquarters in Clewiston, Florida. Their shares in U.S. Sugar are the primary source of retirement benefits for a large number of these employees.

3. The ESOP was formed as part of a transaction in the 1980s in which U.S. Sugar “went private,” and the Mott Family cashed in a substantial part of their holdings while still effectively controlling the company. As a private company, there is no public market for U.S. Sugar shares and no publicly available means to determine the value of those shares, because the company does not make any public disclosures of financial information. The only way for the Employee Shareholders to sell their shares is to sell them back to U.S. Sugar under the terms of the ESOP at the “Fair Market Value” — a price that is supposed to be determined by the Trustee of the ESOP and is defined as “the price at which an asset would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are wellinformed about the asset and the market value of the asset.” The price paid by U.S. Sugar to purchase these shares has ranged from a low of \$194 per share to a high of \$204 per share from 2005 to 2007. The shareholders have never had an opportunity to cash out of their shares in a sale to a third party.

4. On August 4, 2005, Gaylon M. Lawrence, Sr. and Gaylon M. Lawrence, Jr. (the "Lawrence Group"), the owners of extensive agricultural, banking and industrial operations, provided just such an opportunity when they reached an agreement with U.S. Sugar's Chief Executive Officer, Robert Dolson, for the purchase of U.S. Sugar for five hundred and seventy five million dollars (\$575,000,000) in cash or \$293 in cash per share. This offer was the first time that the shareholders would have had the opportunity to cash out of their shares in a sale to a third party. The Lawrence Group's offer was an extraordinarily valuable offer for the shareholders of U.S. Sugar by any reasonable standard - not the least of which was the fact that the offer was at a premium price 50% higher than the Trustee for the ESOP had determined the Fair Market Value to be, and 91% higher than the Fair Market Value declared by certain charitable shareholders in filings with the Internal Revenue Service ("IRS").

5. U.S. Sugar's CEO Dolson told the Lawrences that the shareholders would surely accept the offer and promised to follow through with the deal to closing. Upon information and belief, after taking the offer to William S. White (the Chairman of Board of Directors of U.S. Sugar and a member of the Mott Family), White promptly terminated Dolson between August 5 and August 7, 2005, and decided that same weekend to permanently hide the offer from the shareholders. A few days later, Dolson received a ten million dollar (\$10,000,000) payment from the company - money, Plaintiffs believe and allege, that was intended to keep him quiet about the existence of the purchase offer and keep him from communicating it to the shareholders.

6. William S. White then installed Robert H. Buker, Jr. as CEO and took control of the deal with the Lawrence Group. White had no interest in accepting the Lawrence Group's offer, as it would mean he, his wife Claire Mott White, and their branch of the Mott Family (the "Mott White Family") would lose control of the business and their positions of power. The Mott White Family owns less than 4% of the shares of U.S. Sugar, but as will be described below, has control of the company through their positions of power and appointments to certain boards. It would also mean that White's scheme, also described below, for increasing the size and value of the family's ownership interest in U.S. Sugar by purchasing and retiring employees' shares, would come to an end.

7. White and Buker proceeded to throw up obstacle after obstacle to the sale of U.S. Sugar for seven long months. Eventually, White had the Board of Directors of U.S. Sugar formally reject the offer on March 14, 2006. U.S. Sugar also summarily rejected a second offer by the Lawrence Group for the purchase of U.S. Sugar for \$575,000,000 in cash (\$293 in cash per share) in January 2007.

8. The shareholders (other than the Defendants) were never told about either of the Lawrence Group's offers - as they should have been. The decision to sell or not to sell here was a decision that rested with the shareholders, including the Employee Shareholders, and not with the Mott White Family and the Board of Directors. The Board was controlled by the Mott White Family, who were merely minority shareholders and did not represent the interests of the majority of the shareholders; they had a conflict of interest in that they wanted to perpetuate their own control of the company and increase their ownership of the company, at the expense of the shareholders, as opposed to looking out for the best interests of the shareholders in seeking to maximize shareholder value. Under this conflict of interest, the Mott White Family and the Board could not simply decide to reject the Lawrence Group's premium offers without giving the shareholders the right to make that decision for themselves. Had the offer been accepted, the Employee Shareholders alone stood to receive nearly two hundred twenty million dollars (\$220,000,000) for their shares.

9. Not only did William S. White and the other Defendants keep the shareholders from learning of the \$293 per share purchase offer, they also proceeded to have the company represent to the shareholders that the share value was declining so that it could continue to buy shares back from the employees for prices under \$200/share. In other words, while a third party buyer was ready, willing and able beginning in August 2005 to pay \$293 per share for every single share, U.S. Sugar was paying its Employee Shareholders almost \$100 per share less than that amount. The Employee Shareholders' loss was the Defendants' gain. Every time U.S. Sugar purchased shares from its employees at this price, the ownership interests of each member of the Mott Family increased, both in size and in value, without costing them a penny.

10. To redress these wrongs, this lawsuit is brought as a class action on behalf of all shareholders of U.S. Sugar, including all of the Employee Shareholders, against the company, its Board of Directors, certain of its officers, its controlling shareholders, and the Trustee of the U.S. Sugar ESOP. This action seeks damages and other relief for the Defendants' fraud, conversion, breaches of their fiduciary duties and other misconduct.

11. The class members are entitled to compensatory damages in excess of \$150 million plus punitive damages.

#### JURISDICTION AND VENUE

12. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity jurisdiction), because this is a class action and members of the class of Plaintiffs are citizens of a state different from that of any of the Defendants, and the matter in controversy exceeds the sum of five million dollars (\$5,000,000), exclusive of interest and costs. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 29 U.S.C. § 1132(e), as certain of Plaintiffs' causes of action arise under the Employee Retirement Income Security Act ("ERISA"), and has supplemental jurisdiction pursuant to 28 U.S.C. § 1332 over Plaintiffs' other causes of action.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claims herein occurred in this District, because a large percentage of the Employee Shareholders live and work in this District, and because a large portion of the assets of U.S. Sugar are located in this District.

#### PARTIES

A. U.S. Sugar Shareholders.

14. Plaintiff Diallo Johnson is a resident of Philadelphia, Pennsylvania. Johnson was employed as a commodities analyst at U.S. Sugar. Johnson owns shares of U.S. Sugar as a participant in the U.S. Sugar ESOP and would have sold them at \$293 per share. Johnson has suffered damages as a result of the Defendants' conduct by being denied the opportunity to sell his shares for \$293 per share.

15. Plaintiff Mary Rafter is a resident of Broward County, Florida. Rafter was employed as a secretary and an administrative assistant at U.S. Sugar for 12 years. Rafter directly owns shares of U.S. Sugar and would have sold them at \$293 per share. Rafter has suffered damages as a result of the Defendants' conduct by being denied the opportunity to sell her shares for \$293 per share.

16. Plaintiff Linda Stanley is a resident of Palm Beach County, Florida. Stanley was employed as a secretary and cost analyst at U.S. Sugar for 45 years. Stanley owned shares of U.S. Sugar as a participant in the U.S. Sugar ESOP, and U.S. Sugar agreed to purchase those shares back from her at the price of \$194. 10 per share. Stanley has suffered damages as a result of the Defendants' conduct by having her shares purchased at the artificially low price paid by U.S. Sugar in light of the Lawrence Group's offer of \$293 per share.

17. The Mott Children's Health Center (the "Children's Health Center") is a Michigan public charity founded by C.S. Mott in 1939. It owns approximately 22% of the outstanding shares of U.S. Sugar. The mandate of the Children's Health Center is to provide primary health care to the large number of children living below the poverty line in Genesee County, Michigan, which includes the city of Flint. A very substantial portion of the assets of the Children's Health Center (41% based on a value of \$293 per share) are tied up in shares of U.S. Sugar - shares that cannot be sold on any public market and that earn only approximately 2% in dividends each year.

#### B. The Defendants.

18. Defendant U.S. Sugar is a privately- held Delaware corporation with its principal place of business at 111 Ponce De Leon Avenue, Clewiston, Florida. U.S. Sugar farms on nearly 200,000 acres in Florida, primarily in Palm Beach County, as well as in Hendry and Glades County. U.S. Sugar is registered to do business and does business in the State of Florida. U.S. Sugar is subject to personal jurisdiction in this Court pursuant to Fla. Stat. § 48.193(l)(a), (1)(b) and (2).

19. Defendant Charles Stewart Mott Foundation (the "Mott Foundation") is a private foundation and nonprofit corporation organized under the laws of Michigan with its principal place of business at 503 South Saginaw Street, Suite 1200, Flint, Michigan. The Mott Foundation owns approximately 19% of the shares of U.S. Sugar, and is a principal means through which William S. White, Claire Mott White and their family exercise control over U.S. Sugar. The Mott Foundation is controlled by the seven Members of the Corporation (the "Controlling Members"), who are identified directly in its Articles of Incorporation. The Controlling Members, in turn, are controlled by William S. White, Claire Mott White, their daughter Tiffany' White Lovett, and William H. Piper (who owes his position as Vice Chairman of the Mott Foundation and his position as a Director of U.S. Sugar to William White and Claire Mott White). Defendant William S. White is the President and CEO of the Mott Foundation and the Chairman of its Board of Trustees, Chairman of its Executive Committee, and Chairman of its Investment Committee. Defendant William H. Piper serves as Vice Chairman of the Mott Foundation's Board of Trustees. The Controlling Members elect the Board of Trustees. The Mott Foundation, directly and through its agents William S. White, Claire Mott White, Ridgway White and William H. Piper, (a) committed tortious acts within this state, and/or (b) is engaged in substantial and not isolated activity within this state, sufficient to subject itself to personal jurisdiction in this Court pursuant to Fla. Stat. § 48.193(l)(a), (1)(b) and (2).

20. Defendant William S. White is a resident of Michigan and has a residence in Florida as well. William S. White is a member of the Mott Family by marriage to Claire Mott White, a daughter of Harding Mott. Harding Mott was one of six children of C.S. Mott. At all relevant times, William S. White was the principal actor in the events described below, and with the help of his wife and family exercised absolute control over U.S. Sugar and the Mott Foundation. Through his positions of control at U.S. Sugar, the Mott Foundation, and the Mott Family Office (a corporation formally known as MFO Management, Inc. that manages a large portion of the

assets of the Mott Family), White exercises actual direction and control over the conduct of U.S. Sugar and its Board of Directors and acts for the benefit of the Mott White family. William S. White is Present in this state, and/or (a) committed tortious acts within this state, and/or (b) is engaged in substantial and not isolated activity within this state, sufficient to subject itself to personal jurisdiction in this Court pursuant to Fla. Stat. § 48.193(l)(a), (1)(b) and (2).

21. Defendant Claire Mott White is a resident of Michigan and has a residence in Florida as well. She is a daughter of Harding Mott and a granddaughter of C.S. Mott. Claire Mott White inherited a large block of U.S. Sugar stock from her father. Upon information and belief, Claire Mott White directly or through trusts for herself and her children, owns approximately 3.5% of the outstanding shares of U.S. Sugar. The \$2.5 billion Mott Foundation owns 19% of U.S. Sugar. The Mott Foundation is controlled by its Controlling Members, who are identified directly in its Articles of Incorporation. The Controlling Members, in turn, are controlled by William S. White, Claire Mott White, their daughter Tiffany White Lovett, and William S. Piper (who owes his position as Vice Chairman of the Mott Foundation and his position as a Director of U.S. Sugar to William White and Claire Mott White). The Controlling Members serve for life, and their number cannot be increased without a 75% vote of the Controlling Members. The only way to dilute the control of Claire Mott White over the Mott Foundation would be to increase the number of Controlling Members. Given the fact that any two Controlling Members can block the addition of more Controlling Members, there is no way to reduce or diminish Claire Mott White's control of the Mott Foundation. William S. White became Chairman of U.S. Sugar, solely as the result of being married to Claire Mott White. Through these positions and relationships, Claire Mott White together with her husband William S. White not only controls the Mott Foundation but U.S. Sugar as well. Claire Mott White, directly and through her agents, (a) committed tortious acts within this state, and/or (b) is engaged in substantial and not isolated activity within this state, sufficient to subject itself to personal jurisdiction in this Court pursuant to Fla. Stat. § 48.193(l)(a), (1)(b) and (2).

22. Defendant Robert H. Buker, Jr. is a resident of Florida. Upon the termination of Robert Dolson on or about the weekend of August 5-7, 2005, Buker was installed by William S. White as President and CEO of U.S. Sugar. Buker subsequently became a member of the Board of Directors and of the Executive Committee of U.S. Sugar as well. Buker was responsible for all day-to-day operational decisions of U.S. Sugar as well as implementation of all initiatives and business plans established and approved by White and the Board of Directors. Buker is subject to personal jurisdiction in this Court pursuant to Fla. Stat. § 48.193(l)(a), (1)(b) and (2).

23. At various time relevant to this action, the Board of Directors of U.S. Sugar consisted of William S. White, his son Ridgway White, C.S. Mott's great grandson John Butler, Frederick Kirkpatrick, Roy E. Peterson, W. Archibald Piper, William H. Piper, Lloyd E. Reuss, Horace Wilkins, and President and CEO Robert H. Buker, Jr. (collectively the "Director Defendants"). Meetings of the Board of Directors, including meetings relevant to the conduct at issue in this Complaint, took place in this District, among other locations. Each of the Director Defendants, directly and through their agents, (a) committed tortious acts within this state, and/or (b) is engaged in substantial and not isolated activity within this state, sufficient to subject itself to personal jurisdiction in this Court pursuant to Fla. Stat. § 48.193(l)(a), (1)(b) and (2).

24. Defendant Ridgway H. White is a resident of Michigan. Ridgway White is the son of William S. White and Claire Mott White and the greatgrandson of C.S. Mott. In October 2006, at the age of only 27 and without any noteworthy business experience, William S. White and Claire Mott White made their son Ridgway White a Director of U.S. Sugar. Ridgway White is also a Director of the Mott Family Office, and an employee of the Mott Foundation.

25. Defendant John Butler is a resident of Minnesota. Butler is a great grandson of C.S. Mott. He is the grandson of Aimee Mott Butler, who inherited a large block of U.S. Sugar stock from her father, C.S. Mott. At all relevant times, John Butler was a member of the Board of Directors of U.S. Sugar.

26. Defendant Frederick S. Kirkpatrick is a resident of Michigan. At all relevant times, Kirkpatrick was a member of the Board of Directors of U.S. Sugar and is currently the Vice Chairman of the Board of U.S. Sugar. Kirkpatrick is also the Chief Operating Officer and a Director of the Mott Family Office.

27. Defendant William H. Piper is a resident of Michigan. At all relevant times, Piper was a member of the Board of Directors of U.S. Sugar. He was also one of the Controlling Members and a member of the Executive Committee of the Mott Foundation, as well as a member and Vice Chairman of the Board of Trustees of the Mott Foundation,

28. Defendant Horace Wilkins is a resident of Texas. At all relevant times, Wilkins was a member of the Board of Directors of U.S. Sugar. Prior to becoming a Director of U.S. Sugar, Wilkins served as a Director of a privately-held company owned by the Mott Family and controlled by William S. White and Claire Mott White.

29. Defendant Lloyd E. Reuss is a resident of Michigan. At all relevant times, Reuss, a longtime friend of William S. White, was a member of the Board of Directors of U.S. Sugar.

30. Defendant Roy E. Peterson is a resident of Michigan. At all relevant times, Peterson was a member of the Board of Directors of U.S. Sugar. Peterson is the former President of the Children's Health Center.

31 . Defendant W. Archibald Piper is a resident of Michigan. At all relevant times, Piper was a member of the Board of Directors of U.S. Sugar. He is a medical doctor and a member of the Board of Directors of the Children's Health Center and the past Chairman of that Board.

32. Defendant Gerard Bernard is a resident of Wellington, Florida. Bernard is the Chief Financial Officer ("CFO") and a Senior Vice President of U. S. Sugar. Bernard is subject to personal jurisdiction in this Court pursuant to Fla. Stat. § 48.193(l)(a), (1)(b) and (2).

33. Defendant United States Trust Company, N.A. ("U.S. Trust") is a Delaware corporation with its principal place of business at 114 West 47th Street, New York, New York. At all relevant times, U.S. Trust was the Trustee of the U.S. Sugar ESOP and a named fiduciary of the U.S. Sugar ESOP. U.S. Trust, directly and through its agents, (a) committed tortious acts within this state, and/or (b) is engaged in substantial and not isolated activity within this state, sufficient to subject itself to personal jurisdiction in this Court pursuant to Fla. Stat. § 48.193(l)(a), (1)(b) and (2).

## GENERAL ALLEGATIONS

### A. U.S. Sugar and its Shareholders.

34. The Mott White Family is in control of U.S. Sugar. They accomplish this through their direct and indirect holdings in U.S. Sugar stock, through the Mott Foundation's holdings in U.S. Sugar stock, and through William S. White's positions of power and control. The Mott White Family

directs its dealings through U.S. Sugar's Chairman, William S. White, who exercises actual direction and control over the conduct of the corporation and its Board of Directors and acts for the benefit of the Mott White Family.

35. Of the Directors, (a) Frederick Kirkpatrick, Robert H. Buker, Jr. and William H. Piper each answer to William S. White on U.S. Sugar's Board of Directors and owe their positions and employment at U.S. Sugar and other Mott Family-controlled organizations to White, (b) Ridgway White is the son of William S. White and Claire Mott White, and (c) John Butler is the cousin of Claire Mott White. All of the Directors, including Horace Wilkins, Lloyd E. Reuss, Roy Peterson and W. Archibald Piper, each owe their positions on the Board to White. Through the selection process, White controls the appointment of every member of the Board of Directors.

36. The largest group of shareholders in U.S. Sugar is its employees, who in 2005 owned approximately 38% of the company through the ESOP. The Employee Shareholders consist of more than 4,000 employees and former employees who each own shares intended for their retirement. Despite being the largest single group of shareholders, the Employee Shareholders have no representation on U.S. Sugar's Board of Directors.

B. The Lawrence Group's Offer to Buy the Shares of U.S. Sugar.

37. The Lawrence Group is worth more than one billion dollars (\$1,000,000,000). It owns diverse business holdings that range from more than 150,000 acres of agricultural land in Mississippi, Missouri, Arkansas and elsewhere and 30,000 acres of orange groves in Florida, to controlling interests in industrial corporations and regional banks.

38. In June 2005, the Lawrence Group entered into negotiations with Robert Dolson, the CEO of U.S. Sugar, to discuss the possible acquisition of U.S. Sugar. The Lawrence Group was willing to buy all of the shares of U.S. Sugar, but was also willing to buy as little as 5 1 % of the shares, which would have given it control of the company. Dolson, however, said that a purchase offer would only be considered if the Lawrence Group agreed to purchase all of the shares of U.S. Sugar. The Lawrence Group was ready, willing and able to meet that requirement.

39. Negotiations continued throughout the month of July 2005. On August 4, 2005, after careful financial analysis by the Lawrence Group, the Lawrence Group met again with Dolson and reached agreement on a purchase price and a timetable for definitive documentation and closing. The agreement provided that the Lawrence Group would purchase all of the shares of U.S. Sugar for five hundred seventyfive million dollars (\$575,000,000) in cash or \$293 per share in cash, subject to routine due diligence. The Lawrence Group also agreed to put up 5% of this sum, twenty-seven million five hundred thousand dollars (\$27,500,000), on October 3, 2005 as a deposit towards closing, which was expected to take place by October 31, 2005.

40. Dolson assured the Lawrences, that he could deliver all the shares in the company at that price. Dolson made this assurance on more than one occasion, including at the meeting on August 4, 2005, where agreement was reached on the purchase price. Dolson knew that the shareholders would accept the offer, because it was not only an extraordinary price, but it was also the first time in decades that the shareholders, who had frequently expressed a need to sell their shares, would have an opportunity to do so. Dolson, who was scheduled to retire at the end of October 2005, told the Lawrence Group that he would see the deal through to its end. At the time, Dolson had been CEO and President of U.S. Sugar for five years and on its Board of Directors for eleven years, and had decades of experience working for the Mott Family in other

capacities, giving him intimate knowledge of the U.S. Sugar shareholders and their desire and need to sell their U.S. Sugar shares.

41. The offer made by the Lawrence Group was an extraordinary offer by any reasonable measure. It was the only outside offer for the corporation that had been made in over twenty years. As will be discussed below, it represented a premium of approximately \$ 100 per share more than what U.S. Sugar had been paying its employees for the same shares - an amount that was supposed to represent the Fair Market Value for the shares. And it was \$140 per share more than what the Mott Foundation was stating on its filings with the IRS (signed under penalty of perjury) as the Fair Market Value of the same shares.

42. Nearly 80% of the Employee Shareholders are hourly employees, and a majority of them are relatively low paid farm workers, equipment operators and mechanics. Due to their relatively low total compensation, a large percentage of these workers have very modest retirement savings or incomes. The difference in retirement income based on the ESOP value of \$194.10 to \$204.10 per share that the employees were paid by U.S. Sugar and the retirement income the employees would have been paid based on the \$293 per share from the Lawrence Group's offer is approximately 50% higher. For example, a typical employee might receive \$800 per month in retirement income from the sale of his shares through the ESOP at the \$194. 10 price, but would have received \$1,208 per month if he or she had sold at the \$293 price offered by the Lawrence Group. That additional \$408 per month is enough to make the difference between meeting basic needs and not, and enough to result in a significant difference in the quality of life for those lower paid employees.

### C. William S. White Rejects the Offer in Order to Keep Control of U.S. Sugar

43. After the meeting on Thursday, August 4, 2005, Dolson presented the agreement with the Lawrence Group to William S. White. While the purchase offer would have been a great benefit to the shareholders, it would have meant the Mott White Family losing their power and control over U.S. Sugar.

44. After presenting the agreement to William S. White, Dolson was promptly terminated.# White was the only individual with the power to fire Dolson. White fired Dolson because he knew a majority of the shareholders would accept the offer, and because he made the decision to keep the offer from the shareholders.

45. A few days later, ten million dollars (\$10,000,000) was wired from U.S. Sugar to Dolson. This was an extraordinarily large and highly unusual payment, particularly in light of the fact that during Dolson's presidency the total market value of U.S. Sugar had sharply declined in value. Upon information and belief, the pay-off to Dolson was directed by White without having obtained the authorization of U.S. Sugar's Board. Upon information and belief, the pay-off to Dolson was designed to keep him quiet about the Lawrence Group's \$293 per share offer and keep him from disclosing it to the shareholders.

46. Around this same time, Dolson told the Lawrence Group that he would no longer be involved in the transaction, but that Buker knew the shareholders needed to sell as much as he (Dolson) did. William S. White also knew that a majority of the shareholders would accept the offer, but was unwilling to relinquish his family's control of U.S. Sugar. White has been increasing the Mott Family's percentage ownership of U.S. Sugar at the expense of the Employee Shareholders for years. Specifically, every time U.S. Sugar purchased and cancelled shares from the Employee Shareholders, the Mott Family's stake in U.S. Sugar grew both in size and value. Moreover, the

Mott Family paid nothing to accomplish this themselves. Instead, they were content to have U.S. Sugar pay retiring employees \$194.10 per share when those retiring employees could have received almost 5 1 % more from the Lawrence Group's offer.

47. As a condition to beginning the negotiations in the summer of 2005, U.S. Sugar required the Lawrence Group to sign a confidentiality agreement that included a provision that barred them from contacting the shareholders of U.S. Sugar directly or disclosing that there were any negotiations underway. The agreement also required the Lawrence Group to make any and all communications and inquiries regarding the transaction directly to Dolson (and later Buker). After firing Dolson, this allowed White to tightly control the information about the existence and amount of the Lawrence Group's offer.

48. With Dolson's termination, White and Buker took control of the deal with the Lawrence Group. While White and Buker dragged the process out for a lengthy period of time before the offer was formally rejected, the conclusion was preordained. Exemplary of this decision was a statement made when William S. White introduced his son Ridgway White to the Lawrences after a meeting on August 10, 2005 and stated that Ridgway did not want to sell the company - a remark indicative of the Mott White Family's intent to continue their own control and their willingness to usurp a decision that U.S. Sugar's shareholders should have been permitted to make. The following year, Ridgway White was appointed to the Board of Directors of U.S. Sugar by his father William S. White.

49. In another telling statement, U.S. Sugar's own investment bankers from Harris Nesbitt subsequently told the Lawrence Group's investment bankers that "the Board is the Lawrence Group's biggest competitor and not an offer from a third party." Directors, of course, are not supposed to be in competition with an offer to shareholders; they are supposed to carry out their fiduciary duties to the company's shareholders.

50. At a meeting of the Board of Directors of U.S. Sugar on January 20, 2006, William S. White had the Board put off deciding what to do about the Lawrence Group's offer of \$293 per share, purportedly in order to wait for the Board's consideration of another valuation of the assets (principally the land) owned by U.S. Sugar. This new valuation was bogus and obtained at this late date solely to give White cover to reject the Lawrence Group's offer. Upon information and belief, the new, bogus valuation was more than four times what U.S. Sugar was paying its retiring employees. This bogus valuation was manufactured entirely for the purpose of providing a basis to reject the Lawrence Group's offer.

51. Notably, at the same time the Board of Directors of U.S. Sugar was aware of a bogus valuation report for a value purportedly much, much higher than \$293 per share, the Employee Shareholders were told in a February 16, 2006 letter that their shares had taken "a step backward in value" to \$199.10 per share.

52. On March 14, 2006, the Lawrence Group's offer of \$293 per share was formally rejected. Buker wrote to the Lawrence Group on behalf of the Board of Directors that "the Company is not for sale." Buker stated that, at the Board meeting of March 13, 2006, "[b]ased on the condition and prospects of the assets and business of the Company, the Board of Directors has decided that the best interest of the shareholders will be served by maintaining ownership." See Exhibit A.

53. Under the circumstances of this case, the decision to sell or not to sell is a decision that rested solely with the shareholders and not with the Board of Directors of U.S. Sugar or the Mott

White Family. The Board was controlled by the Mott White Family, who acted as individuals to advance their own personal interests. The Mott White Family were merely minority shareholders and did not represent the interests of the majority of the shareholders. The Mott White Family had a conflict of interest in that they wanted to perpetuate their own control of the company and increase their ownership of the company, at the expense of the shareholders, as opposed to looking out for the best interests of the shareholders in seeking to maximize shareholder value. Under this conflict of interest, the Mott White Family and the Board of Directors of U.S. Sugar could not simply decide to reject the Lawrence Group's premium offers without giving the shareholders the right to make that decision for themselves.

54. At no time did William S. White, Robert Buker or the Board of Directors of U.S. Sugar seek a higher or better offer from the Lawrence Group (or from anyone else). White was simply not going to let the shareholders sell U.S. Sugar.

D. The Lawrence Group's Second Offer to Buy U.S. Sugar for \$293 per share.

55. On January 8, 2007, the Lawrence Group made a second offer to U.S. Sugar to buy all of the stock of U.S. Sugar for \$293 per share. See Exhibit B.

56. Upon information and belief, the second offer was not taken to the Board of Directors of U.S. Sugar. Instead, White and Buker summarily rejected the offer just two weeks after receiving it. See Exhibit C.

57. Throughout this "process," the shareholders (other than the Mott White Family and its related interests) were never informed of the Lawrence Group's offers, never given an opportunity to consider them, and never given an opportunity to exercise their right to sell their shares to the Lawrence Group. Worse still, as will be discussed below, they were effectively tied to about it.

58. The failure to provide the shareholders with the opportunity to sell or not to sell their shares in response to the Lawrence Group's offers is particularly noteworthy in light of the fact that White, speaking on behalf of the Mott Foundation and the entire Mott Family, did not speak for a majority of the shares of U.S. Sugar. The Employee Shareholders, when combined with other shareholders (excluding the Mott White Family and their interests) in fact held a significant majority of the shares that would have controlled the decision of whether U.S. Sugar was sold to the Lawrence Group. In fact, the appraisers for the U.S. Sugar shares held through the ESOP appraised those shares as the controlling interest in U.S. Sugar and so stated in their appraisal reports.

D. The U.S. Sugar ESOP.

59. The U.S. Sugar ESOP is a noncontributory, defined contribution retirement benefit plan covering substantially all of the employees of U.S. Sugar and is subject to the provisions and protections of the Employee Retirement Income Security Act ("ERISA"). The ESOP is an individual account plan under which a stock account and a nonstock account are established, as applicable, for each participant. U.S. Sugar is the Plan Sponsor. Overall responsibility for administering the ESOP rests with a Trustee and an ESOP Committee, both of which are selected by the Board of Directors of U.S. Sugar.

60. At all relevant times, the Trustee of the U.S. Sugar ESOP was U.S. Trust. The Employee Shareholders are the beneficial owners of the U.S. Sugar shares held by the ESOP. All of the

shares allocated to participants are voted by the ESOP Trustee in accordance with the directions received from each such shareholder.

61. When an offer like the Lawrence Group's offer is made, the terms of the offer should be conveyed to each Employee Shareholder, and each Employee Shareholder must be given the opportunity to sell or not to sell his or her shares. It is not a decision for the Trustee to make, and certainly not a decision for the Mott White Family or the Board of Directors of U.S. Sugar to make.

62. Every employee shareholder who has reached the age of 55 has the right to retire and to sell his or her shares to U.S. Sugar for their Fair Market Value. Every employee shareholder who has reached the age of 55 also has the right to diversify his or her ESOP account by selling a portion of his shares at the Fair Market Value to U.S. Sugar and investing the proceeds in certain approved funds within the ESOP. Under the circumstances of this case, every employee shareholder, regardless of age, should have been given the opportunity to sell their shares in response to the Lawrence Group's offers.

63. The only way the Employee Shareholders can sell these shares, in the absence of an outside offer, is to sell the shares back to U.S. Sugar under the terms of the ESOP plan documents at the "Fair Market Value" based upon an appraised value obtained by U.S. Sugar and the ESOP Trustee. No sales to third parties have ever occurred in the history of the ESOP. The shareholders who are not participants in the ESOP have no market or viable means by which they can sell their shares,

64. The Trustee of the ESOP determines the Fair Market Value of the shares held by the ESOP and is permitted to rely in part upon an appraisal. The appraisals for the shares are performed twice annually, as of April 30 and October 31 each year. Houlihan, Lokey, Zukin & Howard ("Houlihan Lokey"), a nationally-recognized appraisal firm and largest appraiser of ESOP's in the United States, was selected by U.S. Sugar in 1983 and continues to be the appraiser to this day. Houlihan Lokey bases its appraisals almost totally upon information provided to it and controlled by the executive management of U.S. Sugar. One of the primary factors used by any appraiser in determining the Fair Market Value of a non-public stock is whether any offers from third parties for those shares have been made or whether any other valuations or appraisals of the corporation's assets have been performed.

#### E. The Misrepresentations and Omissions to the Shareholders

65. Remarkably, at the same time it was supposedly considering the adequacy of the \$293 per share offer, U.S. Sugar continued to pay its Employee Shareholders almost \$100 less per share. In a February 16, 2006 letter written on U.S. Sugar letterhead, Buker wrote to his "Fellow Employees," to inform them that the value of their shares of U.S. Sugar (as of October 31, 2005) was \$ 199. 10 per share and to explain to them why there had been "a step backward in value."

66. A similar representation was made to all shareholders in the company's 2005 Annual Report, which disclosed nothing about the Lawrence Group's offer and instead stated that "as expected, the ESOP share price has fallen with the weather- driven decline in profitability."

67. In other words, while the Board of Directors of U.S. Sugar purportedly continued to consider the merits of the Lawrence Group's offer for \$293 per share, U.S. Sugar was telling its Employee Shareholders (and all shareholders) that the shares were worth only \$199.10 per

share. The Lawrence Group's offer was thus almost 50% higher than the price U.S. Sugar was paying its Employee Shareholders.

68. In addition, at the same time, the Mott Foundation, in its Form 990 tax filings made under penalty of perjury to the IRS, was valuing its U.S. Sugar shares at a "fair market value" of \$153 per share. (Since the Mott Foundation owned approximately 365,542 shares of U.S. Sugar in 2005, this means an understatement of the fair market value of more than \$51.1 million to the IRS, in light of the Lawrence Group's \$293 per share offer.) Yet William S. White and the U.S. Sugar Board of Directors unilaterally decided it was not in the best interest of the shareholders to sell at \$293 per share - a price close to double the amount that the Mott Foundation was telling the IRS its shares were worth.

69. Every time U.S. Sugar bought back Employee Shareholders' shares at the \$199.10 per share price and redeemed the shares, the Mott Family's interests in U.S. Sugar increased as a percentage of the total outstanding shares - for free. To illustrate this point, as the ESOP participants' shares were purchased by U.S. Sugar, the percentage of U.S. Sugar owned by each member of the Mott White Family increased between 2000 and 2005 by 19.4% without them having to buy a single share or pay a penny.

70. Houlihan Lokey, the appraisers for the ESOP, routinely ask as a part of every appraisal evaluation (a) whether there have been any offers for the stock, (b) whether there have been any thirdparty or internal valuations of U.S. Sugar's assets, (c) whether there have been any forecasts of future performance presented to the Board of Directors, and (d) whether there have been any sales of stock. Upon information and belief, Houlihan Lokey was never told about the Lawrence Group's \$293 per share offer.

71. The Employee Shareholders are not the only shareholders that have been harmed by the Defendants' actions (and inactions). All of the other shareholders have also been denied the opportunity to sell their U.S. Sugar shares for \$293 per share. The effect of this on the charitable shareholders is noteworthy. The Mott Foundation and other charitable shareholders determined that the fair market value of their U.S. Sugar shares was \$153 per share in their Form 990 tax filings with the IRS for 2005. The Lawrence Group's offer thus presented the opportunity to receive 91% more than that amount. Moreover, the Children's Health Center and the other charities are receiving extremely low returns on their shares in U.S. Sugar in the form of a dividend of less than 2% per year. If those charities had sold their shares in U.S. Sugar and invested them in a diversified portfolio earning a normal longterm return, those charities' income from their funds tied up in U.S. Sugar shares would have increased by more than 500%.

#### F. The Misrepresentations and Omissions Continue

72. In May 2006, less than two months after U.S. Sugar's Board of Directors had rejected the \$293 per share offer, the appraisers visited U.S. Sugar to review its financials and perform their routine investigations and inquiries to determine the share values for the ESOP as of the period ending April 31, 2006.

73. Upon information and belief, the appraisers were again intentionally not informed of the \$293 per share offer by defendants Robert Buker and Gerard Bernard at the direction of William S. White. The continued concealment of the Lawrence Group's offer was necessary to perpetuate White's scheme to keep the Lawrence Group's offers from the shareholders, to insure that future appraisals did not include any disclosure of the original offer, and to insure

that the Employee Shareholders' shares could continue to be purchased at a price far below what the Lawrence Group offered.

74. As a result, U.S. Trust actually lowered the valuation to \$194.10 per share as of April 30, 2006, less than two months after William S. White had ordered Buker to tam down an offer more than 50% higher. The \$194.10 per share valuation set by the Trustee was the correct Fair Market Value of U.S. Sugar but for the fact of the Lawrence Group's offers. The Lawrence Group's offers were not disclosed to the Trustee or the appraisers, making them unable to incorporate the offers as a component of the appraisal. As a result, beginning on July 1, 2006, U.S. Sugar began paying its Employee Shareholders the even lower price of \$194.10 per share, misrepresenting to the Employee Shareholders that this was the Fair Market Value by failing to include the Lawrence Group's offers.

75. The Lawrence Group's offer was 51% higher than the price U.S. Sugar was paying its Employee Shareholders for their shares. These employees would have and should have received almost \$100/share more to fund their retirement, invest or spend however they chose. Most of the Employee Shareholders of U.S. Sugar have very modest retirement savings or income where a difference of a few hundred dollars per month would have a substantial impact on their financial well being. By contrast, with every share U.S. Sugar bought back from these employees, William S. White, Claire Mott White, and the Mott Family (a family controlling billions of dollars in assets) benefited - at the expense of the employees.

76. In January 2007, the Lawrence Group made their second offer for \$293 per share, informing U.S. Sugar that they remained ready, willing and able to purchase a majority or all of the shares of U.S. Sugar for the price of \$293 per share. White and Buker rejected the offer outright just two weeks later. At the same time, U.S. Sugar was purchasing shares from its Employee Shareholders for only \$194.10 per share.

77. Three weeks after the Lawrence Group made their second offer for \$293 per share, the valuation for the ESOP shares as of October 31, 2006 was released and was \$204.10 per share. When this valuation was released in late January 2007, U.S. Sugar began paying its Employee Shareholders just \$204.10 per share, continuing to misrepresent to the Employee Shareholders that this was their Fair Market Value (and again failing to include the Lawrence Group's offers as a component in the valuation).

78. A similar representation was made to all shareholders in the U.S. Sugar's 2006 Annual Report for the year ending October 31, 2006, which again disclosed nothing about the Lawrence Group's offers and instead stated that "providing we can avoid major weather events, we hopefully will see the share price continue to increase although the rate at which it increases is likely to be modest." Shortly after the release of the 2006 Annual Report, U.S. Sugar began buying the shares of Employee Shareholders at a new appraised price of \$195.40 per share (the price set as of April 30, 2007). By contrast, an increase from the \$195.40 per share paid by U.S. Sugar to the \$293 per share offered by the Lawrence Group (a 51% increase) would have been very far from "modest." And, if the bogus valuation used to reject the Lawrence Group's offer had been incorporated in the appraised valuation, the increase would have been extraordinary.

79. Again, these employees would have and should have received almost \$90 per share more to fund their retirement, invest, or spend however they chose. Instead, with every share U.S. Sugar bought back from these employees, William S. White, Claire Mott White, and the Mott Family benefited - at the expense of the employees.

80. Likewise, all those employees eligible to retire were provided with fraudulent information regarding the Fair Market Value of their retirement holdings (their shares in U.S. Sugar). The 50% higher value, and the certainty of cashing in on their shares at that price, would have made a material difference in the retirement (and diversification) decisions of those Employee Shareholders.

81. The misrepresentations to the shareholders have continued to this day, in that, upon information and belief, the Lawrence Group's offers have never been disclosed. A valuation of the ESOP shares was released as of April 30, 2007 at only \$195.40 per share. In a June 29, 2007 letter written on U.S. Sugar letterhead, Buker wrote to the Employee Shareholders to inform them that the value of their shares of U.S. Sugar (as of April 30, 2007) was only \$195.40 per share and to explain to them why there had been "a step backward in value."

82. The huge difference between what U.S. Sugar paid its Employee Shareholders as the fair market value (and what the Mott Foundation represented to the IRS as the Fair Market Value of their shares ) and what the shares could actually be sold for is set forth in the following chart:

83. In addition, to the extent the Director Defendants had the bogus valuation suggesting that the U.S. Sugar shares were worth even more than \$293 per share as a basis for rejecting the Lawrence Group's offer, then their wrongdoing is compounded, as the shares held by the Employee Shareholders were potentially of even greater value.

84. Recently, in a continuing erosion of retiree benefits, William S. White had the Board of Directors of U.S. Sugar end all retiree health care benefits, something it had provided for more than fifty years to its employees. Now U.S. Sugar retirees, many already struggling to meet basic needs, must provide their own medical care on that same low retirement funding.