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FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

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PATRICIA PRESLEY, COURT CLERK
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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

NEW ORLEANS EMPLOYEES' RETIREMENT SYSTEM, Derivatively on Behalf of CHESAPEAKE ENERGY CORPORATION,	**Case No. CJ-2009-3983**
Plaintiff,	**<u>DERIVATIVE ACTION</u>**
v.	**CORRECTED VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR BREACH OF FIDUCIARY DUTIES, WASTE, UNJUST ENRICHMENT, AND INSIDER SELLING**
AUBREY K. McCLENDON; RICHARD K. DAVIDSON; BURNS HARGIS; FRANK KEATING; BREENE M. KERR; CHARLES T. MAXWELL; PETE MILLER, JR.; DONALD L. NICKLES; and FREDERICK B. WHITTEMORE;	
Defendants; and	
CHESAPEAKE ENERGY CORPORATION,	
Nominal Defendant.	

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Plaintiff the New Orleans Employees' Retirement System ("Plaintiff" or "NORS") for the benefit of Nominal Defendant Chesapeake Energy Corporation ("Chesapeake" or the "Company") and Chesapeake's shareholders, by its attorneys, makes the following allegations against Chesapeake's board of directors (the "Board" or "Director Defendants") in support of Plaintiff's claims.[1]

SUMMARY OF THE ACTION

1. This shareholder derivative action, filed on behalf of Chesapeake, is brought against the Company's Chief Executive Officer ("CEO"), Defendant Aubrey K. McClendon ("McClendon") and the Chesapeake Directors (as defined below) to rescind an unjustified and unearned $75 million cash bonus award granted to McClendon, in breach of their fiduciary duties, in a now-admitted "executive bailout," for the benefit of McClendon.

2. Chesapeake was co-founded by McClendon in 1989 and is in the business of acquiring, exploring and developing properties for the production of crude oil and natural gas. Currently, the Company has a market capitalization of about $12.5 billion and owns interests in approximately 41,200 natural gas and oil wells throughout the United States.

3. Despite Chesapeake's dismal performance in 2008, and unbeknownst to Chesapeake shareholders, the Company's CEO and largest individual shareholder, McClendon, monetized virtually his entire position in Chesapeake stock by using it as collateral for hundreds of millions, if not billions, of personal loans. As Chesapeake's stock value plummeted in the second half of 2008 from a high of $74.00 per share in July 2008 to a low of $9.84 in December 2008, McClendon's self-interested practice of using Chesapeake stock to borrow backfired when on October 8, 9, and 10, 2008, the CEO received three consecutive margin loan calls. In total, these three margin loan calls forced McClendon to sell 94% of his overall position in Chesapeake stock – approximately 31.5 million shares, or nearly 6% of the Company, worth over $640 million at the time and over $2 billion at their peak.

[1] The "Director Defendants" as defined herein, include Defendants Aubrey K. McClendon, Richard K. Davidson, Burns Hargis, Frank Keating, Breene M. Kerr, Charles T. Maxwell, Pete Miller, Jr., Donald L. Nickles, and Frederick B. Whittemore.

4. On October 10, 2008, Chesapeake made the startling public announcement that McClendon, "involuntarily sold substantially all of his shares of Chesapeake common stock over the past three days in order to meet margin loan calls." Within just four days prior to the public announcement, Director Defendants Whittemore, Nickles, and Maxwell, evidently while in possession of materially adverse non-public information regarding McClendon's loans secured by Chesapeake stock and the margin loan calls, sold over $5.2 million of their own personally-held Chesapeake stock.

5. In order to help their CEO dig himself out of his financial hole stemming from the October margin loan calls, the Director Defendants "renegotiated" McClendon's employment contract, despite the fact that it was still in the first of a five-year term. On January 7, 2009, Chesapeake announced that the Director Defendants granted their financially troubled CEO a new five-year employment contract ***which included a staggering $75 million bonus award*** (the "$75 Million Bonus").[2] By comparison, McClendon received a bonus of only $1.83 million for his achievements in 2007, when the Company performed far better.

6. ***The $75 Million Bonus represents a 433% increase to McClendon's total compensation, and an over 4000% increase to his bonus compensation from the previous year.*** The Board's Compensation Committee approved and recommended the $75 Million Bonus after only one day of consideration and without consulting or relying upon any compensation experts. Indeed, McClendon himself (along with the Chief Financial Officer ("CFO") and Chief Operating Officer ("COO")) is responsible for making recommendations to the Compensation Committee for compensation to executives, including himself. The Director Defendants granted the $75 Million Bonus in breach of their fiduciary duties and in violation of the Company's own compensation policies, which mandate that CEO compensation be supported by the Company's performance.

7. Although the Company attempted to justify the $75 Million Bonus as a "reward," or alternatively, an "incentive," as detailed below, neither explanation is supported. In truth, as

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[2] McClendon's new employment agreement was memorialized as the Second Amended and Restated Employment Agreement (the "Amended McClendon Agreement").

the Company has now admitted in response to an inquiry by the U.S. Securities and Exchange Commission ("SEC"), McClendon's forced liquidation of substantially all of his Chesapeake holdings ***motivated the Director Defendants' decision to grant the $75 Million Bonus***.

8. Indeed, Chesapeake's dismal performance in 2008 did not warrant the Director Defendants gifting McClendon an additional 433% "reward." Chesapeake performed far worse in 2008 compared to previous years. Earnings per share fell to $1.16 compared to $2.69 in 2007. Its stock price at the conclusion of 2008 reflected the Company's poor performance, beginning 2008 at $39.20 and ending the year substantially lower at $16.17.

9. The Board's other claim – that the $75 Million Bonus is justified as an "incentive" for McClendon to stay at the Company and maximize shareholder value – is likewise unsupported. As an initial matter, McClendon had already disputed any notion that he would leave the Company prematurely. Moreover, by requiring McClendon to use the $75 Million Bonus to cover his personal investment costs ("Well Costs") incurred by investing in the Company's future gas wells through Chesapeake's "Founders Well Participation Program" ("FWPP"), the Company contradicted representations made to the SEC. Specifically, in recent communications to the SEC, Chesapeake claimed that the revenue and asset proceeds McClendon received by investing in the FWPP were "personal" in nature and not tied to the CEO's job performance because McClendon paid his own Well Costs.

10. By structuring the $75 Million Bonus as a net credit against future billings for McClendon's Well Costs, the Director Defendants also directly contradicted the Company's 2005 proxy representations to shareholders. Specifically, in obtaining shareholder approval for the FWPP, the Board represented that the FWPP served to align McClendon's interest with shareholders because he would assume the investment risk by paying his own Well Costs. By paying for McClendon's Well Costs with the $75 Million Bonus, the Director Defendants have now broken their promise to shareholders and turned the FWPP into a massive corporate giveaway, in breach of their fiduciary duties.

11. Plaintiff has not made a demand on the Chesapeake Board (which is comprised entirely of the Director Defendants whose average annual compensation for serving on the

Chesapeake Board exceeds $500,000) to institute this action against McClendon and the other Director Defendants. Such demand would be futile and useless, and is thereby excused. As detailed below, each of the current Chesapeake Directors suffers from irreconcilable conflicts of interest arising from one or all of the following: (1) their personal benefit from the disputed transactions; (2) the substantial likelihood of their liability based on their unusual and suspicious insider trading; (3) a familial relationship with McClendon and/or business relationship with Chesapeake; (4) a business relationship or interest with Chesapeake; and (5) the substantial likelihood of their liability based on the breach of fiduciary duty claims, especially with respect to the members of the Compensation Committee.

12. Further, demand is excused because the Board has already exhibited antipathy toward investigating or prosecuting this corporate wrongdoing, following inquiries by both the SEC and another shareholder. In addition, there is at least a reasonable doubt as to whether the Board's decisions were the product of a valid exercise of business judgment amounting to a waste of corporate assets because the decisions were devoid of legitimate corporate purposes and without any consideration to the Company.

13. Consequently, Plaintiff, on behalf of Chesapeake, respectfully requests that the Court order rescission of the Amended McClendon Agreement, including the $75 Million Bonus, and to order disgorgement of the insider trading profits of Director Defendants Whittemore, Nickles, and Maxwell.

JURISDICTION AND VENUE

14. This Court has jurisdiction over all causes of action asserted herein pursuant to the Oklahoma Constitution, Article VII, § 7, because this case is a cause not given by statute to other trial courts, Title 12, § 2004 of the Oklahoma Code of Civil Procedure and Title 18, § 2059 of the Oklahoma Corporations Code.

15. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that does sufficient business in Oklahoma, or an individual who has sufficient minimum contacts with Oklahoma, to render the exercise of jurisdiction by the

Oklahoma courts permissible under traditional notions of fair play and substantial justice. All of the defendants conduct business and/or maintain offices in Oklahoma, and Chesapeake's headquarters is located in Oklahoma City, Oklahoma. Also, many of the defendants (as defined below) reside in Oklahoma.

16. Venue is proper in this Court because a substantial portion of the wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein in violation of their fiduciary duties, occurred in this County, and the defendants have received substantial compensation in this County by doing business here and engaging in numerous activities which had an effect in this County. Venue is also proper in this Court because many of those affected by defendants' conduct reside in this County, and many of the potential witnesses reside or work in this County.

THE PARTIES

17. Plaintiff New Orleans Employees' Retirement System ("Plaintiff" or "NORS") is a defined-benefit pension fund established for the benefit of city employees of the city of New Orleans. The fund has approximately $355 million in net assets. Plaintiff currently owns shares of Chesapeake common stock, owned shares while the events and transactions complained of herein transpired, and will continue to own Chesapeake common stock throughout this litigation. Plaintiff is a citizen of the state of Louisiana.

18. Nominal Defendant Chesapeake is an Oklahoma corporation with its principal place of business located at 6100 North Western Avenue, Oklahoma City, Oklahoma 73154. Chesapeake's business is the exploration for and production of natural gas.

19. Defendant Aubrey K. McClendon ("McClendon") is the CEO and Chairman of the Board of Directors of Chesapeake. Defendant McClendon has served as a director and CEO of Chesapeake since co-founding the Company in 1989. As detailed below, since Chesapeake was founded in 1989, McClendon has acquired working interests in virtually all of the Company's natural gas and oil properties by participating in its drilling activities under the terms of the FWPP and predecessor participation arrangements provided for in McClendon's

employment agreements.

20. Defendant Frederick B. Whittemore ("Whittemore") has served as a member of Chesapeake's Board of Directors since 1993, and served on the Board's Compensation Committee since at least 1996. As detailed below, evidently while in possession of materially adverse non-public information and just four days prior to Chesapeake's negative public disclosure on October 10, 2008, that McClendon was forced to sell approximately 31.5 million shares of Chesapeake stock, Defendant Whittemore himself liquidated 200,000 shares at $25.09 for a total market value of over $5 million. This sale was suspicious in both time and amount, and uncharacteristic of Whittemore's prior sales. Defendant Whittemore received annual average compensation of $470,359 from 2006 to 2008 for serving on Chesapeake's Board of Directors, consisting of an annual retainer and meeting fees, as well as restricted stock awards.

21. Defendant Charles T. Maxwell ("Maxwell") has served as a member of the Board of Directors of Chesapeake since 2002, and has served on the Board's Compensation Committee since 2006. As detailed below, evidently while in possession of materially adverse non-public information and just one day prior to Chesapeake's negative public disclosure on October 10, 2008, Defendant Maxwell himself sold 2,000 shares for proceeds of $34,460. As further alleged herein, the timing of this sale was suspicious because it was the first time he had ever reportedly sold Chesapeake stock as a director. Defendant Maxwell received annual average compensation of $442,147 from 2006 to 2008 for serving on Chesapeake's Board of Directors, consisting of an annual retainer and meeting fees, as well as restricted stock awards.

22. Defendant Donald L. Nickles ("Nickles") has served as a member of Chesapeake's Board of Directors since January 2005. As detailed below, evidently while in possession of materially adverse non-public information and just one and two days prior to Chesapeake's negative public disclosure on October 10, 2008, Defendant Nickles himself sold 9,375 shares for proceeds of $212,463. The timing of these two sales was suspicious because it was the first time he had ever reportedly sold Chesapeake stock as a director. Nickles received annual average compensation of $534,131 from 2006 to 2008 for serving on Chesapeake's Board of Directors, consisting of an annual retainer and meeting fees, as well as restricted stock awards.

23. Defendant Breene M. Kerr ("Kerr") has served as a member of the Board of Directors of Chesapeake since 1993. Defendant Kerr is Defendant McClendon's first cousin. As detailed below, in March 2007, several trusts benefiting Defendant Kerr's siblings sold to Chesapeake oil and gas royalty interests on more than 5,750 net mineral acres in Eastern Oklahoma for a total value of $6,387,400. Defendant Kerr received annual average compensation of $544,989 from 2006 to 2008 for serving on Chesapeake's Board of Directors, consisting of an annual retainer and meeting fees, as well as restricted stock awards.

24. Defendant Frank Keating ("Keating") has served as a member of the Board of Directors of Chesapeake since June 2003, and served on the Board's Compensation Committee since 2003. Defendant Keating's son, Chip Keating, and daughter-in-law, Brittney Keating, are both employed by Chesapeake. Defendant Keating received annual average compensation of $550,047 from 2006 to 2008 for serving on Chesapeake's Board of Directors, consisting of an annual retainer and meeting fees, as well as restricted stock awards.

25. Defendant Pete Miller, Jr. ("Miller") has been a director of Chesapeake since January 2007. Defendant Miller is Chairman, President and CEO of National Oilwell Varco, Inc. ("National Oilwell"), a supplier of oilfield services, equipment and components to the oil and natural gas industry, including Chesapeake. Chesapeake has had a business relationship with National Oilwell, having purchased oilfield equipment and services from National Oilwell in 2005, 2006 and 2007. Defendant Miller received $546,776 from 2007 to 2008 for serving on Chesapeake's Board of Directors, consisting of an annual retainer and meeting fees, as well as restricted stock awards.

26. Defendant Burns Hargis ("Hargis") was appointed to Chesapeake's Board of Directors in September of 2008. Hargis is the President of Oklahoma State University, the beneficiary of over $1.2 million in contributions and athletic ticket purchases by Chesapeake in 2008, alone.

27. Defendant Richard K. Davidson ("Davidson") has served as a member of the Board of Directors of Chesapeake since March 2006. Davidson received annual average compensation of $484,979 for serving on Chesapeake's Board in 2006 and 2007, consisting of an

annual retainer and meeting fees, as well as restricted stock awards.

28. Defendants McClendon, Davidson, Hargis, Keating, Kerr, Maxwell, Miller, Nickles, and Whittemore, collectively constitute the entirety of the Company's Board. These individuals are hereinafter referred to as the "Board" or the "Chesapeake Board" or the "Individual Defendants" or the "Director Defendants" or the "Chesapeake Directors." Defendants Whittemore, Maxwell, and Keating are also referred to herein as the "Compensation Committee."

29. By virtue of their positions as directors and/or officers of Chesapeake and/or members of the Compensation Committee or other Board committees, and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each Director Defendant owed and owes Chesapeake and its shareholders fiduciary obligations of candor, due care, good faith, and loyalty and were and are required to: (1) use his ability to control and manage Chesapeake in a fair, just, and equitable manner; (2) act in furtherance of the best interests of Chesapeake and its shareholders; (3) act to maximize shareholder value in connection with any contract or agreement to the extent consistent with governing statutes; (4) govern Chesapeake in such a manner as to heed the expressed views of its public shareholders; (5) refrain from abusing their positions of control; and (6) not favor his personal interests, or any third persons' interests, at the expense of the Company and its public shareholders.

30. Each defendant herein is sued individually, and as an aider and abettor, in his capacity as a director of Chesapeake.

FACTUAL BACKGROUND ALLEGATIONS

A. Chesapeake Energy Corporation Background

31. Defendant McClendon founded Chesapeake in 1989 along with the Company's former President and Chief Operations Officer, Tom L. Ward ("Ward"). In February 1993, the Company completed an initial public offering ("IPO") at a split-adjusted price of $1.33 per share.

Chesapeake, now with $12.5 billion in market capitalization and over 624 million shares outstanding, is in the business of acquiring, exploring and developing properties for the production of crude oil and natural gas. The Company owns interests in approximately 41,200 natural gas and oil wells that are producing over 2 billion cubic feet of natural gas per day.

32. Chesapeake currently operates in three business segments: marketing, exploration and production, and service operations. The Company's marketing segment provides marketing services, including commodity price structuring, contract administration and nomination services. Exploration and production includes the production of crude oil and natural gas from underground reservoirs. The service operations include a trucking business utilized primarily to transport drilling rigs for both Chesapeake and third parties. Chesapeake's major properties are located in Oklahoma, Texas, Arkansas, Louisiana, Kansas, Montana and Colorado.

33. Effective February 10, 2006, Mr. Ward resigned from all positions with Chesapeake, including positions as an officer and director, thereby leaving Director Defendant McClendon as the sole remaining Chesapeake employee eligible to invest in the Company's gas wells through the FWPP.

B. <u>The Founders Well Participation Program</u>

34. In its early years, the Company routinely sold leasehold interests in drilling prospects it had developed to Chesapeake's founders, Defendant McClendon and Mr. Ward (the "Founders") and to third parties. Under their employment agreements, the Founders were also permitted to invest in the wells developed by the Company during each calendar quarter during the term of their employment. For each well in which a Founder invested, Chesapeake billed the Founder for his proportionate share of the drilling and operating costs incurred in drilling the well, together with certain leasehold costs (previously defined herein as "Well Costs"). In exchange, the Founders received a proportionate share of revenue from the well, in addition to an ownership interest in the wells and their gas reserves.

35. In 2005, the Company obtained shareholder approval for this program, termed the "Founders Well Participation Program" or FWPP, through a proxy solicitation and vote.

According to the Company's 2005 Proxy Statement, Chesapeake's Board at the time believed the FWPP aligned the interests of the Founders with those of the Company because the Founders were investing, and sharing the risks and rewards of drilling, on the same basis as the Company. The directors also believed, according to the proxy, that side-by-side participation encouraged the Founders to make decisions that would benefit the Company and its public shareholders. Of course, the Founders' existing fiduciary duties already required as much.

36. The Founders reportedly invested in all wells drilled by the Company, to the extent participation was permitted, since its IPO in February 1993, except during the five quarters from January 1, 1999 to March 31, 2000. Reportedly, expenditures and revenue from January 1, 1994 to December 31, 2004, totaled approximately \$116 million and \$88 million, respectively. Through the FWPP, the Founders obtained a large number of ownership interests in Chesapeake's gas wells as non-operators and, as of December 31, 2004, the Company disclosed that the Founders believed the value of their respective gas reserves assets was approximately \$85 million.

37. From the time of the 2005 Proxy Statement up until this year, Chesapeake refused to disclose McClendon's FWPP revenues or the fair value of his gas reserves assets obtained through the FWPP. At the insistence of the SEC, however, the Company finally made such disclosures in its 2009 Proxy Statement, as follows:

> The following table sets forth, with respect to Mr. McClendon's FWPP interests (including interests from participation programs that were predecessors to the FWPP), the revenues he received, lease operating expenses he paid, the resulting net cash flow before capital expenditures, the capital expenditures he paid and net cash flow after capital expenditures during the first quarter of 2009 and each of the three years in the period ended December 31, 2008.

	2009 – 1Q	2008	2007	2006
Natural gas and oil revenues	26,099,144	171,513,367	92,817,072	75,280,747
Lease operating expenditures	(5,255,850)	(22,617,688)	(13,676,003)	(9,686,087)
Net cash flow	20,843,294	148,895,679	79,141,070	65,594,659
Capital expenditures	(53,143,816)	(212,634,566)	(170,659,274)	(99,024,585)
Net after capital expenditures	(32,300,522)	(63,738,887)	(91,518,204)	(33,429,926)

> While FWPP participation expenditures have significantly exceeded revenues to date, Mr. McClendon believes the present value of the future net revenue (pre-tax) of the estimated proved developed producing reserves attributable to his FWPP interests in Company wells at December 31, 2008, discounted at 10% per year and based on prices and costs in effect at such date, was approximately $191 million.

See Chesapeake's Schedule 14A Preliminary Proxy Statement filed April 20, 2009, at 64-65.

38. According to Chesapeake's recent disclosure, by investing in the Company's gas wells through the FWPP, ***McClendon currently owns proved developed producing gas reserves with an estimated fair value of approximately $191 million.***

C. <u>Chesapeake Performed Poorly In 2008</u>

39. Without question, Chesapeake performed worse in 2008 than in prior years. Earnings per share fell to $1.16 compared to $2.69 in 2007 and the Company's earnings per share growth rate for year-end 2008 (-56.4%) was significantly worse than at the close of the preceding two years: 2007 (-39.85) and 2006 (73.55). Moreover, Chesapeake's enterprise value was significantly lower in 2008, falling from an estimated $32 billion in enterprise value in 2007 to just under $23 billion in 2008.[3]

40. Chesapeake's stock price at the conclusion of 2008 reflected the Company's poor performance. The stock began 2008 trading at $39.20 but ended the year substantially lower at $16.17, with an intra-year high of $74.00 and an intra-year low of $9.84. The Company's Form 10-K issued in February 2009 disclosed net income for 2008 of only $723 million compared to the $1.45 billion recorded in 2007. Other key financial indicators show that Chesapeake performed poorly in 2008, as demonstrated below:

Key Ratios	12/31/06	12/31/07	12/31/08	5 Year Average
% Return on Assets	9.9	5.3	**2.1**	6.6
% Return on Investment	10.9	5.7	**2.3**	7.4
% Return on Equity	27.4	12.0	**4.6**	18.2

[3] Enterprise Value of "EV" is a measure of a company's value, often used as an alternative to straightforward market capitalization and is calculated as market cap plus debt, minority interest and preferred shares, minus total cash and cash equivalents.

41. With its focus on a highly volatile, cyclical and capital-intensive segment of the energy industry, Chesapeake's stock has a history of extreme volatility. For example, during 2005, Chesapeake's stock traded at a 52-week low of $15.06 and a high of $40.20 with a year-end price of $31.73. Further, during 2006, the stock traded at a low of $26.81 and a high of $35.57, closing with an end of year price of $29.05. In 2007, Chesapeake's stock traded at a high of $41.19, a low of $27.27 and concluded the year at $39.20.

D. Unbeknownst To Shareholders, CEO McClendon Monetized Virtually His Entire Chesapeake Holdings

42. Unbeknownst to Chesapeake shareholders, Chesapeake's CEO McClendon monetized virtually his entire position in Chesapeake stock by using the stock as collateral for loans.[4] Even though McClendon was the Company's largest individual shareholder for the previous three years, and the CEO regularly boasted about the fact that he had never sold any Chesapeake shares as evidence of his belief in the Company, the Board did not disclose the astonishing magnitude of the CEO's use of Chesapeake stock as collateral for personal loans.

43. In 2008, Chesapeake's stock dropped from a July 2, 2008 high of $74.00 per share to a four-year low of $9.84 on December 5, 2008. During this fall, McClendon's risky practice of over-leveraging Chesapeake stock backfired when, on October 8, 2008, he received the first of three consecutive margin loan calls.[5] In total, these three margin loan calls forced McClendon to sell 94% of his Chesapeake stock – approximately 31.5 million shares, or nearly 6% of the Company, worth over $640 million at the time and over $2 billion at their peak. According to public records, McClendon was forced to make the following sales to repay debts incurred as a result of over-leveraging his Chesapeake securities:

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[4] Corporate executives may at times choose to borrow against their portfolios to either access cash without having to sell shares or to use cash borrowed against their portfolio to add to their holdings (referred to as "buying on margin"). Brokerage firms allow investors to borrow against their own stock portfolios, but investors must have a cushion, or margin, of typically at least one-third of the value of the loan.

[5] A margin call is a securities broker's demand on an investor using margin to deposit additional money or securities so that the margin account is brought up to the minimum maintenance margin or liquidate his portfolio to pay back the loan. Margin calls occur when an account value depresses to a value calculated by the broker's particular formula.

Date Of Sales	Sales Price	Shares Sold	Proceeds ($)
10/08/08	$22.33	4,645,026	111,387,724
10/09/08	$17.09	11,401,200	273,742,812
10/10/08	$12.07	15,476,697	258,770,374
TOTALS		**31,522,923**	**$643,900,909**

44. The Company has not disclosed the amount of money McClendon borrowed for personal use by pledging his personal Chesapeake shares. Based on the fact that McClendon was forced to sell approximately 31.5 million shares, for over $640 million, McClendon's borrowings are estimated to be well over $640 million.

45. On October 10, 2008, Chesapeake made the startling announcement to the public that McClendon, "involuntarily sold substantially all of his shares of Chesapeake common stock over the past three days in order to meet margin loan calls." McClendon's margin calls had a negative impact on Chesapeake's stock, which was down approximately 38% in late October, 2008 while the Standard & Poor's 500-stock index was down only 15.5%.

E. Certain Director Defendants Unlawfully Sold Chesapeake Stock With Inside Information

46. Just prior to the Company's October 10, 2008 announcement concerning McClendon's margin loan calls, certain Director Defendants placed their own financial interests ahead of shareholders by selling Chesapeake stock with inside adverse information. Specifically, between October 6 and October 9, 2008, Defendants Whittemore, Nickles, and Maxwell, evidently while in possession of materially adverse non-public information regarding McClendon's loans secured by Chesapeake stock and the October margin loan calls, sold over $5.2 million in Chesapeake stock, as demonstrated below:

Defendant	Date Of Sales	Shares Sold	Proceeds ($)
Whittemore, Frederick	10/06/08	200,000	5,017,660
Nickles, Donald	10/08/08	6,250	140,838
Maxwell, Charles	10/09/08	2,000	34,460
Nickles, Donald	10/09/08	3,125	71,625
TOTALS		**211,375**	**$5,264,583**

47. At the time of the stock sales set forth above, Defendants Whittemore, Nickles, and Maxwell each possessed knowledge regarding McClendon's loans secured by Chesapeake stock and the margin loan calls, which was adverse material non-public information, and sold

Chesapeake common stock on the basis of such information. Defendants Whittemore, Nickles, and Maxwell gained such knowledge as a result of their positions as members of Chesapeake's Board of Directors and/or the Board's Compensation Committee. Moreover, the Director Defendants owed fiduciary duties to Chesapeake's shareholders to adequately inform themselves of such potentially adverse information. Defendant McClendon, as CEO and a director of Chesapeake, was obligated to inform the Chesapeake Board of this potentially adverse information.

48. On October 6, 2008, just four days before the Company announced that McClendon had received the first of three margin loan calls which forced him to sell approximately 31.5 million shares of Chesapeake stock, Whittemore liquidated 25% of his position in Chesapeake stock (200,000 shares) at $25.09 for a total market value of $5,017,660. This sale was suspicious in timing and amount and was completely uncharacteristic of Whittemore's prior and subsequent transactions, as demonstrated below:

Defendant	**Date Of Sales**	**Shares Sold**	**Proceeds ($)**	**% of Holdings Sold**
Whittemore, Frederick	06/07/06	25,000	750,500	2.69%
Whittemore, Frederick	06/16/06	5,000	150,000	0.55%
Whittemore, Frederick	12/04/07	30,000	1,121,400	3.25%
Whittemore, Frederick	12/18/07	20,000	761,800	2.24%
Whittemore, Frederick	01/04/08	8,300	327,850	0.95%
Whittemore, Frederick	01/08/08	31,700	1,243,908	3.66%
Whittemore, Frederick	01/28/08	20,000	732,400	2.40%
Whittemore, Frederick	09/05/08	40,000	1,776,224	4.84%
Whittemore, Frederick	**10/06/08**	**200,000**	**5,017,660**	**25.42%**
Whittemore, Frederick	03/24/09	25,000	500,000	10.79%

49. Similarly, the sales by Defendant Nickles (on October 8 and 9) and Maxwell (on October 9) were also completely uncharacteristic and suspicious in timing. For each of them, this was the first time he had ever sold Chesapeake stock as a director.

50. The sales of Chesapeake common stock by Defendants Whittemore, Nickles, and Maxwell evidently while in possession and control of material adverse non-public information regarding McClendon's loans secured by Chesapeake stock and the margin loan calls, were not only unlawful insider trading, but a breach of their fiduciary duties of due care and loyalty.

F. The Board Granted CEO McClendon An Unearned $75 Million "Bail Out" Bonus Despite Chesapeake's Dismal 2008 Performance

51. Despite Chesapeake's dismal performance in 2008 and despite the fact that McClendon was only in the first year of his five-year contract, on January 7, 2009, Chesapeake announced that the Board granted McClendon a new five-year employment contract, ***which included the staggering $75 Million Bonus award***. By comparison, McClendon received a cash bonus of only $1.83 million for his achievements in 2007. According to the terms of his new employment contract, McClendon must use the $75 Million Bonus to cover his Well Costs incurred by investing in the Company's future gas wells through the FWPP.

52. The bonus increased McClendon's compensation for 2008 dramatically when compared both to his previous compensation, as well as the compensation of his fellow officers at the Company, as demonstrated in the following chart prepared from information disclosed in the Company's 2009 Proxy Statement:

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)	Option Awards ($)	All Other Comp ($)	Total ($)	Change from Prior Year
McClendon - Chairman and CEO	**2008**	**975,000**	**76,951,000**	**20,342,384**		**1,800,817**	**100,069,201**	**433%**
	2007	**975,000**	**1,826,000**	**14,398,233**	**294,020**	**1,271,231**	**18,764,484**	**24%**
	2006	**975,000**	**1,581,000**	**9,288,550**	**1,412,612**	**1,819,698**	**15,076,860**	
Rowland - EVP Finance and CFO	2008	844,769	1,331,000	5,976,985		1,164,406	9,317,160	-24%
	2007	787,500	1,201,000	9,371,017	35,200	941,855	12,336,572	169%
	2006	675,000	1,051,000	2,016,652	164,794	679,841	4,587,287	
Dixon - EVP Operations and COO	2008	844,769	1,331,000	4,209,405		664,571	7,049,745	40%
	2007	787,500	1,201,000	2,442,059	21,104	579,431	5,031,094	58%
	2006	671,875	1,053,986	966,919	98,130	384,512	3,175,422	
Jacobson - EVP Acquisitions	2008	787,308	1,151,000	9,668,499		482,920	12,089,727	102%
	2007	737,500	1,001,000	3,789,447	18,686	449,998	5,996,631	111%
	2006	637,500	851,000	974,154	81,340	302,032	2,846,026	
Lester - EVP Exploration	2008	762,365	1,066,250	5,403,174		540,954	7,772,743	-17%
	2007	732,500	966,000	7,203,335	21,104	475,952	9,398,891	186%
	2006	637,500	851,000	1,322,385	98,130	376,156	3,285,171	

53. In addition to the over $100 million in disclosed compensation for McClendon listed above for 2008, the CEO also received stock option grants that had not vested. These grants included 330,000 on January 2, 2008, and 290,000 on July 1, 2008, with a combined value as of April 22, 2009 ($19.54 per share) of approximately $12.1 million. Thus, the CEO's combined total compensation for 2008 exceeded $112 million.

54. Also in December 2008 (after McClendon received the October margin calls), the Board authorized the Company to buy from McClendon an "extensive collection of historical maps of the American Southwest, together with certain books, watercolors and photographs" for $12.1 million.

55. The $75 Million Bonus was granted to bail the CEO out of his self-generated personal financial crisis arising from the October 2008 margin loan calls. Indeed, in responding to the SEC's January 30, 2009 inquiries into why the Board determined to enter a new five-year employment agreement with McClendon, merely one year into his pre-existing five year agreement, and to grant him the $75 Million Bonus at this particular time, the Company admitted on February 13, 2009:

> The forced liquidation of Mr. McClendon's company stock holdings in October 2008 ***was a factor that motivated the Compensation Committee to seek a five-year employment commitment from Mr. McClendon and to link the commitment to the incentive award through the clawback.***

56. By contrast, according to Chesapeake's initial disclosures regarding the $75 Million Bonus, however, it was purportedly granted to McClendon as a "reward" for past performance and as an "incentive" for retention and to better align the CEO's interests with those of shareholders.

57. *The Wall Street Journal* reported on the announcement:

> Chesapeake Energy Corp. Chief Executive Aubrey McClendon agreed to remain at the helm of the natural gas producer for at least five years, under a new employment contract that provides him a $75 million bonus.
>
> Mr. McClendon was one of the most prominent executives swept up in a wave of margin calls last fall, which forced him to sell 94% of his Chesapeake holdings, worth more than $2 billion at their peak.

* * *

> Under the new contract, Mr. McClendon, who last fall had dismissed talk of his departure, promised not to resign for five years.
>
> * * *
>
> The contract guarantees Mr. McClendon, who also serves as Chesapeake's chairman, a $75 million one-time bonus. That money . . . is meant to cover Mr. McClendon's costs under a program that allows him to personally own up to a 2.5% stake in future wells. The company does not disclose Mr. McClendon's earnings from his ownership stake, because it does not consider it to be compensation, the regulatory filing said.

See Casselman, Ben, Chesapeake Energy Chief To Remain, *The WSJ,* Jan. 7, 2009.

58. The Chesapeake Board tried to justify the $75 Million Bonus, in part, as a "reward" by claiming that its Compensation Committee considered the role McClendon played in several transactions during 2008 involving agreements with various entities, including Plains Exploration, BP America and StatoilHydro USA. The Director Defendants, however, failed to provide adequate details regarding these transactions or explain how they mitigated Chesapeake's dismal financial performance in 2008. Masked as a "reward" for good performance, the $75 Million Bonus admittedly served as an "executive bailout" for McClendon, whose risky Chesapeake stock margin loans placed the CEO in a significant personal financial hole.

59. The Chesapeake Board also attempted to justify the $75 Million Bonus as a retention "incentive" for McClendon to remain at the Company and by claiming that the bonus "served to align his economic interests with those of the company" because it was tied to his Well Costs for the FWPP. McClendon, however, had already "dismissed talk of his departure." Moreover, as explained in more detail below, obligating McClendon to use the $75 Million Bonus to cover Well Costs did not provide the CEO with incentive to increase shareholder value because, as the Company represented to the SEC, McClendon's investments in the FWPP were personal in nature and were not linked to his job performance. Significantly, the Company made these statements in response to the SEC's inquiry regarding why Chesapeake did not record McClendon's FWPP revenues as a compensation expense.

60. Finally, while the Company has disclosed that the $75 Million Bonus represented the projected future costs that CEO McClendon would be required to pay in Well Costs for 2009, Chesapeake's recent Form 10-K disclosed that ***McClendon elected to use about half the net amount of the bonus to pay his outstanding bill for the fourth quarter of 2008.*** [6] As stated in the Company's Form 10-K filed March 2, 2009:

> Upon receipt of the company's monthly invoice for joint interest billings in mid-January 2009, Mr. McClendon elected to apply approximately $19 million of the drilling credit against his December 2008 FWPP joint interest billings, leaving $25 million available as a credit against future billings. Based on our current development plans and Mr. McClendon's election under the FWPP to participate with a 2.5% working interest during 2009, the well costs under the FWPP are expected to exceed the amount of the entire FWPP credit in early 2009.

See Form 10-K, filed March 2, 2009, at 56.

61. Further, according to the Company's 2009 Preliminary Proxy Statement, despite the fact that the $75 Million Bonus was purportedly structured to be paid in five annual payments, McClendon has already accessed the full net amount of the $75 Million Bonus:

> Mr. McClendon utilized the FWPP Credit by notifying our Chief Accounting Officer of his intention to designate a specified amount of the FWPP credit to all or part of any unpaid FWPP billing issued by the Company. As of the record date, the full amount of the net incentive award had been credited to Mr. McClendon's FWPP billings from the Company since December 31, 2008.

See 2009 Proxy filed April 20, 2009, at 43.

62. Thus, despite the Director Defendants representations that the $75 Million Bonus served to provide McClendon "incentive" to remain at the Company for five more years (by paying out $15 million per year), McClendon has already apparently benefitted from the full net amount of the $75 Million Bonus, at the Company's (and shareholders') expense.

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[6] The "net amount" of the $75 Million Bonus was reported by Chesapeake to be just under $44 million after applicable taxes were withheld.

BREACH OF FIDUCIARY DUTIES SUMMARY

A. Chesapeake's Dismal 2008 Performance Did Not Warrant A $75 Million Bonus "Reward" To CEO McClendon

63. The $75 Million Bonus was granted in breach of the Director Defendants' fiduciary duties because it was unjustifiable as a "reward" under the Company's own compensation policies.

64. The Chesapeake Board's Compensation Committee is required to "[r]eview and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and set the CEO's compensation level based on this evaluation." According to the Company's 2009 Proxy Statement the "corporate goals and objectives" by which the CEO's performance shall be determined include, *inter alia*, "[f]inancial performance of the Company, with respect to our cash flow, net income, cost of capital, general and administrative costs and common stock price performance." None of these metrics warranted the Director Defendants approving a 433% increase in total compensation to McClendon as a "reward" for the Company's dismal performance. As previously alleged herein, Chesapeake's performance in 2008 was far worse than in previous years.

65. Notably, the Compensation Committee is expressly authorized by its Charter with "sole authority" to retain a compensation consultant "to be used to evaluate director, CEO or executive officer compensation." The Compensation Committee failed to do so, and, indeed, according to both its 2008 and 2009 Proxy Statements, the Company "has not utilized any specific tools or contracted for services to benchmark its total compensation, or any material element of compensation, to peer companies or other benchmarks." Rather, as admitted in the Company's 2008 and 2009 Proxy Statements, McClendon (along with the CFO and the COO) is granted the authority to analyze, develop and recommend compensation with respect to executive officers, ***including himself***.

66. As admitted in the Company's response to an SEC inquiry, and apparently in response to McClendon's own recommendation, the Compensation Committee spent only ***one day*** considering and deciding on an amendment to McClendon's employment agreement, despite

the facts that: (i) Defendant McClendon had served only one year of a five-year contract; (ii) Defendant McClendon's $75 Million Bonus represented approximately 41 times his prior year bonus of $1.826 million; and (iii) the $75 Million Bonus was being granted in violation of the Company's own compensation policies.

67. Although the Compensation Committee attempted to justify the bonus based on four transactions, in truth, the Compensation Committee was (now-admittedly) motivated by the members' desire to bail McClendon out from his self-inflicted personal financial crisis.

68. Ultimately, in violation of the Company's own policies, and in violation of their fiduciary duties, the Compensation Committee recommended, and the Director Defendants approved, the $75 Million Bonus to McClendon.

B. The $75 Million Bonus Does Not Serve <u>As A Proper "Incentive" To CEO McClendon</u>

69. The Director Defendants attempt to justify the $75 Million Bonus as "incentive." As an initial matter, McClendon had four years remaining on his existing five-year employment contract and had previously dismissed notions that he may leave the Company. In addition, the Company's statement that an "incentive" was created by limiting McClendon's use of these funds to pay for his Well Costs incurred while investing in the FWPP directly contradicts Chesapeake's representations made to shareholders in a 2005 proxy vote to obtain approval of the FWPP. Indeed, Chesapeake gained shareholder approval of the FWPP for McClendon by assuring shareholders that McClendon would personally assume the risk of investing in the program. Chesapeake's 2005 Proxy Statement told shareholders that they should vote to approve the FWPP because the board of directors at the time believed that the "participation program aligned the interests of the Founders with those of the Company ***because the Founders were investing, and sharing the risks and rewards of drilling, on the same basis as the Company.***"[7] *See* Chesapeake's 2005 Proxy Statement, Voting Item 3 – Proposal to Approve the Founder Well Participation Program (emphasis added).

70. Chesapeake's shareholders ultimately approved the FWPP on the condition that

[7] The "Founders" were defined previously as Defendant McClendon and Mr. Ward.

the Founders, including CEO McClendon, would pay their own Well Costs should they choose to participate in the FWPP. Now, by structuring the $75 Million Bonus as a net credit against billings for McClendon's Well Costs, ***the Director Defendants have violated this condition,*** in breach of their fiduciary duties.

71. Moreover, in recent communications to the SEC, Chesapeake contradicted the Board's "incentive" justification for the $75 Million Bonus by claiming that the revenue and asset proceeds McClendon received from investing in the FWPP were "personal" in nature and not linked to job performance because the CEO paid his own Well Costs. Specifically, in a November 7, 2008 letter responding to an inquiry by the SEC concerning the FWPP, the Company stated:

> We concluded that the participation right provided by the FWPP could be characterized as a perquisite or other personal benefit applying the factors set out in the Commission's 2006 Executive Compensation Disclosure adopting release (Rel. No. 33-8732A): That is, ***the FWPP is not integrally and directly related to the performance of Mr. McClendon's duties, and it confers a direct or indirect benefit that has a personal aspect.***

See Response Letter dated November 7, 2008, from Chesapeake to the SEC Staff, Division of Corporation Finance.

72. Accordingly, Chesapeake admits that the FWPP is not directly tied to CEO McClendon's job performance and thus does not necessarily provide him with additional incentive to increase shareholder value. It follows, then, that providing McClendon the $75 Million Bonus to cover the CEO's costs incurred to continue investing in the FWPP does not further benefit shareholder interests or align McClendon's interest with those of shareholders.

73. Finally, as explained above, it appears McClendon has already used some of the $75 Million Bonus to pay past Well Costs for 2008, not future Well Costs for 2009. The Company disclosed that while the $75 Million Bonus represented the projected costs that McClendon would be required to pay this year; its recent Form 10-K disclosed that the CEO elected to use about half the net and after-tax amount of the bonus to pay his bill for the fourth quarter of 2008. Further, according to the Company's 2009 Preliminary Proxy Statement, despite the fact that the $75 Million Bonus was purportedly structured to be paid in five annual

payments, McClendon has already apparently been credited the full net amount of the $75 Million Bonus towards Well Costs since December 31, 2008.

74. In short, the Chesapeake Board breached their fiduciary duties by granting McClendon the unearned and unjustified $75 Million Bonus with no real benefit to the Company.

C. The Director Defendants Acted In Bad Faith Disregard Of Their Duties To The Company And Shareholders By Allowing McClendon To Continue Investing In The FWPP

75. The Director Defendants breached their duties of due care, good faith, and loyalty by fronting McClendon's Well Costs with the $75 Million Bonus so that the CEO can continue his risky practice of investing in the FWPP. The Director Defendants, in doing so, favored McClendon's interests over those of Chesapeake's shareholders, by allowing him to usurp valuable corporate opportunities through the FWPP while improperly shifting his costs (and therefore risk) to Chesapeake and its shareholders.

76. As disclosed in the Company's 2009 Preliminary Proxy Statement, McClendon has obtained considerable assets by investing in the FWPP: "Mr. McClendon believes the present value of the future net revenue (pre-tax) of ***the estimated proved developed producing reserves attributable to his FWPP interests in Company wells at December 31, 2008 . . . was approximately $191 million.***"

77. To the extent McClendon is unable to pay for his own Well Costs, the Director Defendants should have required McClendon to transfer to the Company and its shareholders his $191 million worth of gas reserves, rather than front him additional Well Costs *via* the $75 Million Bonus. Chesapeake, and its shareholders, would fare better by partnering with third-parties who, unlike McClendon, can cover their own Well Costs with their own money.

78. Accordingly, the Director Defendants breached their fiduciary duties by failing to adequately assess and disclose the risks to Chesapeake associated with McClendon's continued participation in the FWPP, as he remains responsible for 2.5% of the costs of Chesapeake's wells.

D. The Chesapeake Board Failed To Assess And Disclose The Risk Associated With McClendon's Margin Loans

79. The Director Defendants breached their fiduciary duties by failing to assess and disclose the risks McClendon's margin loan practices imposed upon the Company, and by failing to take appropriate measures to mitigate the risk, such as forbidding or limiting margin loans on Chesapeake stock by key executives. Under similar circumstances, such disclosures are required. For example, under SEC regulations, executives are typically required to disclose insider sales within two days of making them and indicate why they were sold, including as a result of a margin call. Also, in proxy contests or tender offers, investors who buy more than five percent of a security are required to disclose their pledged positions.

80. The Director Defendants should have realized that if McClendon was forced to sell at an inopportune time, such margin calls could potentially have an adverse impact on the Company and its shareholders. The Chesapeake Board should have been fully aware of the amount of Chesapeake stock McClendon had placed as collateral for margin loans considering McClendon was: (1) Chesapeake's largest individual shareholder for the last three years; (2) the co-founder and CEO of the Company; (3) a fellow director; and (4) liable as a co-owner for up to 2.5% of the costs of Chesapeake's gas wells, pursuant to his participation in the FWPP. In addition, the Compensation Committee was charged with establishing and monitoring compliance with stock ownership guidelines for the Company's directors and officers.

DERIVATIVE ACTION ALLEGATIONS

81. Plaintiff brings this action derivatively on behalf and for the benefit of Chesapeake to redress injuries suffered, and yet to be suffered, by the Company as a direct and proximate result of the breaches of fiduciary duties, corporate waste, unjust enrichment, and other legal violations alleged herein. Chesapeake continues to be harmed, and has yet to be fully and completely harmed, by the Director Defendants' decision to grant Defendant McClendon the $75 Million Bonus to cover Well Costs under the FWPP.

82. Chesapeake is named as a Nominal Defendant solely in a derivative capacity. The wrongful acts complained of herein subject, and will persist in subjecting, Chesapeake to

continuing harm because the adverse consequences of the injurious actions are still in effect.

83. Plaintiff is a shareholder of Chesapeake common stock who will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights. Plaintiff intends to retain shares in Chesapeake throughout the duration of this litigation. Plaintiff was a shareholder at the time of the transactions or any part thereof, complained of herein.

84. In addition, Plaintiff brings this action on behalf of Chesapeake because:

(a) There is a strong prima facie case in favor of the claims asserted on behalf of the Company;

(b) Plaintiff acquired the shares before there was disclosure to the public or to Plaintiff of the wrongdoing of which Plaintiff complains;

(c) Unless the action can be maintained, Defendant McClendon will retain a gain derived from the Director Defendants' willful breach of fiduciary duties;

(d) Unless the action can be maintained, Defendants Whittemore, Nickles, and Maxwell will retain gains derived from improper insider selling; and

(e) The requested relief will not result in unjust enrichment of Chesapeake or any shareholder of Chesapeake.

85. The wrongful actions complained of herein were concealed from Chesapeake's shareholders. The first public information about the Director Defendants' decision to reimburse Defendant McClendon for his losses came on or about January 7, 2009, when the Company publicly disclosed it had approved the Amended McClendon Agreement.

DEMAND EXCUSED ALLEGATIONS

86. Plaintiff has not made a demand on the Chesapeake Board (which is comprised entirely of the Director Defendants) to institute this action in connection with the wrongs alleged herein. Such demand would be futile and useless, and is thereby excused, because the Chesapeake Board is incapable of making an independent and disinterested decision to institute

and vigorously prosecute this action against themselves, and because there is at least a reasonable doubt that the Board's decisions were the product of a valid exercise of business judgment.

87. As of the filing of this Complaint, Chesapeake's Board consists of nine current Chesapeake Directors, all of whom are named herein as Director Defendants. As detailed below, each of the current Chesapeake Directors suffers from irreconcilable conflicts of interest arising from: (1) their personal benefit from the disputed transactions (McClendon); (2) the substantial likelihood of their liability based on their unusual and suspicious insider trading (Whittemore, Maxwell, and Nickles); (3) a familial relationship with McClendon and/or business relationship with Chesapeake (Kerr and Keating); (4) a business relationship or interest with Chesapeake (Miller and Hargis); (5) the substantial likelihood of their liability based on the breach of duty claims (McClendon, Whittemore, Maxwell, Nickles, Davidson, Hargis, Keating, Miller, and Kerr), especially with respect to the members of the Compensation Committee (Maxwell, Keating, and Whittemore); and (6) their personal interest in retaining their lucrative compensation and prestige as Board members (annual average of over $500,000).

88. Further, demand is excused because the Board has already exhibited antipathy toward investigating or prosecuting this corporate wrongdoing, following inquiries by both the SEC and another shareholder. In addition, there is at least a reasonable doubt as to whether the Board's decisions were the product of a valid exercise of business judgment amounting to a waste of corporate assets because the decisions were devoid of legitimate corporate purposes and without any consideration to the Company.

A. Defendant McClendon Is Unquestionably Conflicted

89. There can be no question that Defendant McClendon is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action. McClendon personally gained, and continues to gain, from the disputed transactions, which were conducted with no benefit to the Company.

90. Defendant McClendon is the CEO and Chairman of the Board of Directors of

Chesapeake. McClendon has been a director and CEO of Chesapeake since co-founding the Company in 1989. McClendon is the recipient of the $75 Million Bonus and the lone remaining Founder entitled to participate in the FWPP, both of which are at issue here. Since Chesapeake was founded in 1989, McClendon has acquired working interests in virtually all of the Company's natural gas and oil properties by participating in its drilling activities under the terms of the FWPP and predecessor participation arrangements provided for in McClendon's employment agreements. Defendant McClendon personally benefitted from revenue received and assets obtain through his participation in the FWPP, which the Chesapeake Board chose not to report as compensation expense for the Company. Moreover, it was McClendon's risky and undisclosed practice of over-leveraging his shares in Chesapeake stock that caused him to liquidate 94% of his position as a result of three margin calls in October of 2008 and which motivated the Board to grant him the $75 Million Bonus. Accordingly, Defendant McClendon is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action.

B. Demand Is Excused Because Board Members <u>Face Liability Related To The Illegal Insider Selling</u>

91. Demand on the Board is excused because, as detailed below, at least three additional members of the Board (not including McClendon, discussed above) engaged in insider selling, which is not only improper, but also a breach of their fiduciary duties.

92. Just days prior to the Company's October 10, 2008 announcement concerning McClendon's margin loan calls, at least three additional Director Defendants (two of whom were members of the Compensation Committee and thus charged with monitoring McClendon's compensation and such transactions) sold Chesapeake stock based on materially adverse non-public information. Between October 6 and October 9, 2008, Defendants Whittemore, Nickles, and Maxwell, evidently while in possession of materially adverse non-public information regarding McClendon's loans secured by Chesapeake stock and the margin loan calls, sold over $5.2 million in Chesapeake stock. Specifically:

(a) Defendant Whittemore, who served on the Compensation

Committee, liquidated 25% of his position in Chesapeake on October 6, 2008, just four days prior to Chesapeake's October 10 public disclosure. Evidently while in possession of adverse material non-public information, Defendant Whittemore sold 200,000 shares at $25.09 for a total market value of $5,017,660. This sale was suspicious in both time and amount, and completely uncharacteristic of Whittemore's prior sales as detailed above.

(b) Defendant Maxwell, also a member of the Compensation Committee, likewise sold 2,000 shares on October 9, 2008 – just one day prior to the public disclosure – for proceeds of $34,460. This sale was suspicious because this was the first time he had ever sold Chesapeake stock as a Company director.

(c) Defendant Nickles sold 6,250 shares on October 8, 2008, and 3,125 more shares on October 9, 2008 – just one day prior to the public disclosure – for proceeds of $212,463. These sales are suspicious because this was the first time he had ever sold Chesapeake stock as a Company director.

93. At the time of the stock sales set forth above, Defendants Whittemore, Nickles, and Maxwell each possessed knowledge regarding McClendon's loans secured by Chesapeake stock and the margin loan calls, which was adverse material non-public information, and they sold Chesapeake common stock on the basis of such information. Defendants Whittemore, Nickles, and Maxwell apparently gained such knowledge as a result of their positions as members of Chesapeake's Board of Directors and/or the Board's Compensation Committee. In particular, Defendants Whittemore and Maxwell were two of the three members of the Compensation Committee, which were responsible for evaluating and overseeing the CEO's stock ownership and compensation in light of Company goals and objectives. As a result of their improper insider trading resulting in unjust enrichment and breaches of fiduciary duties, Defendants Whittemore, Nickles and Maxwell are incapable of independently and disinterestedly

considering a demand to commence and vigorously prosecute Plaintiff's claims.

C. Demand Is Excused Because Board Members Have Conflicting Family And Business Relationships With McClendon And Chesapeake

94. Certain members of the Board are further conflicted because of their familiar and/or business relationships with McClendon and/or Chesapeake. These familiar and/or business relationships make them incapable of making an independent and disinterested decision to institute and vigorously prosecute this action against their interests. Specifically,

(a) In December 2008 (after McClendon received the October margin calls), the Board authorized the Company to buy from McClendon an "extensive collection of historical maps of the American Southwest, together with certain books, watercolors and photographs for $12.1 million. According to the Company's 2009 Proxy, the "Board of Directors authorized the transaction following review and approval by the Audit Committee and required that the Company's purchase price be applied as a credit to McClendon's future FWPP costs.

(b) Defendant Kerr is McClendon's first cousin. In March 2007, several trusts benefiting the siblings of Kerr sold Chesapeake oil and gas royalty interests on more than 5,750 net mineral acres in Eastern Oklahoma. The Company's purchases totaled $6,387,400. This included payments of $1,555,121 to William G. Kerr and Jo Arthur G. Kerr, Trustees of the William Grayce Kerr Revocable Trust; $1,555,121 to Kay E. Adair, Trustee of the Kay E. Adair Revocable Trust; and $1,555,121 to Loualma C. Kerr, Trustee of the Robert S. Kerr, Jr. Revocable Trust in Administration. Additionally, payments of $575,016 were made to the Bank of Oklahoma, N.A., Trustee of the Grayce B. Flynn Testamentary

Trust No. 4 f/b/o William G. Kerr, the Bank of Oklahoma, N.A., Trustee of the Grayce B. Flynn Testamentary Trust No. 3 f/b/o Kay E. Adair, and UMB Bank, N.A., Trustee of the Grayce B. Flynn Testamentary Trust No. 1 f/b/o the descendants of Robert S. Kerr, Jr.

(c) Defendant Miller is Chairman, President and CEO of National Oilwell Varco, Inc., a supplier of oilfield services, equipment and components to the worldwide oil and natural gas industry. Chesapeake has had a business relationship with National Oilwell Varco, Inc., having purchased oil field equipment and services from the company in 2005, 2006 and 2007.

(d) Defendant Keating's son, Chip Keating, and daughter-in-law, Brittney Keating, are both employed by Chesapeake. Chip Keating, has served as a Manager of Real Estate Development for Chesapeake since August 2008. Prior to that, he served as a Chesapeake Land Negotiator from January 2008 to August 2008 and as an Associate Landman from March 2007 to January 2008. Chip Keating's total cash compensation for 2008 was $135,242.

(e) Defendant Hargis is the President of Oklahoma State University, itself the beneficiary of over $1.2 million in contributions and athletic ticket purchases by Chesapeake in 2008 alone.

D. Demand Is Excused Because Board Members, Especially Compensation Committee Members, Face A Substantial Likelihood Of Liability On The Claims For Breaches Of Fiduciary Duties

95. As explained above, each of the nine Director Defendants faces a substantial likelihood of liability on the claims that he or she breached his or her fiduciary duties of candor, due care, good faith and loyalty. Indeed, each of the Director Defendants played a direct role in: (1) approving the $75 Million Bonus in order to personally bail out McClendon from his

financial woes; (2) approving the Amended McClendon Agreement which links the $75 Million Bonus to cover McClendon's FWPP Well Costs; and (3) the failure to disclose the risk and amount of McClendon's margin loans secured by Chesapeake stock.

96. The members of the Board's Compensation Committee face an increased likelihood of liability. According to the Company's January 7, 2009 Form 8-K announcing McClendon's new employment agreement, including the $75 Million Bonus, the Compensation Committee (consisting of Maxwell, Keating and Whittemore[8]) directly determined "the amount and the form of the incentive award to Mr. McClendon and the amendments to Mr. McClendon's prior employment agreement." Indeed, according to the Company's Charter, the Compensation Committee is charged with establishing and monitoring the Company's compensation system. In particular, the Compensation Committee is required to "[r]eview and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and set the CEO's compensation level based on this evaluation." According to the Company's 2008 and 2009 annual Proxy Statements, the corporate goals and objectives by which the CEO's performance shall be determined include, *inter alia,* "[f]inancial performance of the Company, with respect to our cash flow, net income, cost of capital, general and administrative costs and common stock price performance."

97. The Compensation Committee is further required to "[e]stablish and monitor compliance with stock ownership guidelines for directors and executive officers," and to "[r]eview compliance with and make recommendations to the Board regarding the participation of the CEO in accordance with the Founder Well Participation Program."

98. The Compensation Committee is expressly authorized by the Charter with "sole authority" to retain a compensation consultant "to be used to evaluate director, CEO or executive

[8] Further demonstrating his expertise and knowledge in financial products and securities trading, in particular, as explained above, Defendant Whittemore has also been an advisory director of Morgan Stanley since 1989 and was a managing director or partner of the predecessor firms of Morgan Stanley from 1967 to 1989. From 1982 to 1984, Whittemore was Vice-Chairman of the American Stock Exchange.

officer compensation." The Compensation Committee failed to do so, and, indeed, according to both its 2008 and 2009 Proxy Statements, the Company "has not utilized any specific tools or contracted for services to benchmark its total compensation, or any material element of compensation, to peer companies or other benchmarks." Notably, as admitted in the Company's 2008 and 2009 Proxy Statements, McClendon (along with the CFO and COO) is "responsible for analyzing, developing and recommending base salary adjustments, cash bonuses and restricted stock awards with respect to the executive officers, ***including themselves***, for review, discussion and approval by the Compensation Committee at its regularly scheduled meets in June and December of each year."

99. As admitted in the Company's response to the SEC inquiry, and apparently in response to McClendon's own recommendation, the Compensation Committee spent only ***one day*** considering and deciding on an amendment to McClendon's employment agreement, despite the facts that: (i) Defendant McClendon had served only one year of a five-year contract; (ii) Defendant McClendon's $75 Million Bonus represented approximately 41 times his prior year bonus of $1.826 million; and (iii) the $75 Million Bonus was being granted in violation of the Company's own compensation policies, as discussed above.

100. In addition, although the Compensation Committee attempted to justify the bonus based on four transactions, in truth, the Compensation Committee was (now-admittedly) motivated by the members' desire to bail McClendon out from his "forced liquidation." Moreover, this improper motivation further evidences that the Compensation Committee members failed to comply with the Company's own policies to set the CEO's compensation based on an evaluation of, *inter alia,* the "[f]inancial performance of the Company, with respect to our cash flow, net income, cost of capital, general and administrative costs and common stock price performance."

101. Ultimately, in violation of the Company's own policies, and in violation of their fiduciary duties, the Compensation Committee members (Defendants Maxwell, Keating and Whittemore) recommended and approved Defendant McClendon's $75 Million Bonus.

E. Demand Is Excused Because The Board Members Are Interested In Retaining Their Lucrative Compensation And Prestige As Board Members

102. Demand is also excused because, in addition to McClendon's extraordinary compensation, each Board member received his or her own lucrative compensation and other emollients that render him or her incapable of considering the transactions challenged herein. According to the Company's 2009 Proxy Statement, the full Board, rather than the Compensation Committee, is responsible for establishing and approving director cash compensation.

103. Further, according to the Company's proxy statements, Defendant Whittemore received annual average compensation of $470,359 from 2006 to 2008 for serving on Chesapeake's Board of Directors; Defendant Keating received an annual average of $550,047 from 2006 to 2008 for serving on Chesapeake's Board of Directors; Defendant Maxwell earned an annual average of $442,147 from 2006 to 2008 for serving on Chesapeake's Board of Directors; Defendant Kerr received an annual average of $544,989 from 2006 to 2008 for serving on Chesapeake's Board of Directors; Defendant Nickles received annual average compensation of $534,131 from 2006 to 2008 for serving on Chesapeake's Board of Directors; and Defendant Miller earned an average of $546,776 for serving on Chesapeake's Board of Directors for 2007 and 2008. These amounts consisted of cash compensation in the form of an annual retainer and meeting fees, as well as restricted stock awards.

104. In addition, each Director Defendant is allowed to use the "company aircraft" for personal and business travel, for themselves and their families in North America, the Caribbean and Mexico.

F. Demand Is Excused Because The Board Members Have Already Exhibited Antipathy Toward Investigating Or Prosecuting The Corporate Wrongdoing

105. The Board's granting of the unjustified $75 Million Bonus award also raised the attention of the SEC. Beginning at least as early as September 2008, and continuing through the present, the SEC has specifically inquired about, *inter alia:* (i) why the Company refuses to disclose FWPP revenues received by McClendon as compensation; (ii) why the Board

determined to enter a new five-year employment agreement with McClendon; (iii) why the Board determined to grant McClendon an incentive award; (iv) whether McClendon's forced liquidation of his holdings was a factor; and (v) and the purported rationale for McClendon's incentive award and structure.

106. Notably, the Board's antipathy towards shareholders is so striking that even the SEC has taken action. Nevertheless, Chesapeake has responded only that its actions were justified.

107. In addition, on March 26, 2009, another Chesapeake shareholder, the Louisiana Municipal Police Employee Retirement System ("LMPERS"), wrote to Chesapeake requesting the right to inspect and make copies of certain books and records of the Company (the "Books and Records Case"), in order to determine whether the Company's officers and directors breached their fiduciary duties in entering into the new employment agreement with McClendon and, in particular, by granting the $75 Million Bonus. In response, Chesapeake sent a letter dated March 23, 2009, stating only that there is a "substantial question" whether the request states a "proper purpose," and concluding that "we are continuing to look into these matters and will provide a further response once we have completed our review of the relevant information." According to the Petition in the Books and Records Case, Chesapeake has "completely refused to provide any documents" responsive to LMPERS' request.

108. The Director Defendants' repeated resistance to investigating the alleged misconduct and mismanagement at Chesapeake further demonstrates that a demand on the Board to take action with respect to the conduct challenged herein would be futile.

G. Demand Is Excused Because There Is At Least Reasonable Doubt Whether The Board's Decisions Were The Product Of A Valid Exercise Of Business Judgment Amounting To A Waste Of Corporate Assets

109. Demand is further excused because Defendant McClendon's $75 Million Bonus – a now-admitted "executive bailout" from his self-generated financial crisis – qualifies as an instance in which a transaction is so egregious on its face that Board approval cannot meet the test of business judgment. This is especially true in light of the fact that the Director Defendants

failed to adequately assess and disclose to shareholders the risk of McClendon's over-leveraged position in Chesapeake securities.

110. The fact that the $75 Million Bonus is restricted to cover McClendon's Well Costs incurred as a result of risky investments in the Company's future gas well drillings pursuant to the FWPP makes the transaction even more problematic. This is because the Company, in seeking shareholder approval for the FWPP in 2005, represented that McClendon would pay for his own Well Costs. As recently as November 7, 2008, the Company made a similar representation to the SEC as justification for not disclosing and reporting McClendon's revenues as Company compensation expense.

111. After obtaining shareholder approval of the FWPP in 2005, the Director Defendants refused to disclose the revenues and assets obtained by McClendon as a result of his participation in the FWPP. This refusal prompted a review by the SEC in 2008, which resulted in the Company finally agreeing to make such disclosures commencing in 2009.

112. Accordingly, these facts, as alleged herein, provide sufficient particularity to establish that making a demand upon Chesapeake's Board to initiate this litigation would have been futile because: (1) at least a majority of the Chesapeake Board members are incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action due to specific irreconcilable conflicts of interest arising from certain transactions and relationships; and (2) there is at least a reasonable doubt that the Board's decisions were the product of a valid exercise of business judgment.

FIRST CAUSE OF ACTION

BREACH OF FIDUCIARY DUTIES OF DUE CARE & LOYALTY
(Against The Director Defendants)

113. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

114. The Director Defendants, as Chesapeake's Directors, owe the Company and its shareholders the utmost fiduciary duties of due care, good faith and loyalty. As alleged herein, the Director Defendants breached these fiduciary duties by *inter alia*:

(a) Granting Defendant McClendon the $75 Million Bonus as part of the Amended McClendon Agreement;

(b) Failing to adequately assess the level of additional risk that McClendon's practice of leveraging his personal Chesapeake stock holdings placed upon the Company;

(c) Failing to forbid or limit company executives from leveraging excessive amounts of Chesapeake stock on margin loans;

(d) Permitting McClendon to continue his risky practice of participating in the FWPP despite his current financial condition;

(e) Fronting McClendon's Well Costs via the $75 Million Bonus so that McClendon can continue his risky investments in the FWPP;

(f) Approving the Amended McClendon Agreement which contradicts, as alleged herein, the Company's representations to shareholders during the 2005 proxy vote justifying the FWPP on grounds that the Founders would pay for their own Well Costs; and

(g) Representing to shareholders that the $75 Million Bonus would better align McClendon's interests with those of shareholders only two months after representing to the SEC that McClendon's benefits from the FWPP were personal in nature and not performance based, and therefore did not warrant reporting by the Company as a compensation expense.

115. The Director Defendants breached their duty of due care, good faith and loyalty in agreeing to pay McClendon the $75 Million Bonus. This significant increase in the CEO's compensation was unjustified as a "reward" based upon the Company's poor performance in 2008. Despite the Company having a far worse year in 2008 than in 2007, the Director Defendants increased McClendon's total reported bonus from $1,826,000 in 2007 to $76,951,000 (consisting of the $75 Million Bonus plus an additional $1,951,000 cash bonus) for 2008.

116. In light of Chesapeake's (and McClendon's poor performance in 2008), the $75 Million Bonus violated Chesapeake's established compensation policies and practices. Specifically, the Compensation Committee is required to "[r]eview and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and set the CEO's compensation level based on this evaluation." According to the Company's 2009 Proxy Statement the "corporate goals and objectives" by which the CEO's performance shall be determined include, *inter alia*, "[f]inancial performance of the Company, with respect to our cash flow, net income, cost of capital, general and administrative costs and common stock price performance."

117. The $75 Million Bonus was unjustifiable as an "incentive." As an initial matter, McClendon had four years remaining on his existing five-year employment contract and had previously dismissed notions that he may leave the Company. In addition, the Company's statement that an "incentive" was created by limiting McClendon's use of these funds to pay for his Well Costs incurred while investing in the FWPP directly contradicts Chesapeake's representations made to shareholders in a 2005 proxy vote to obtain approval of the FWPP.

118. Moreover, in recent communications to the SEC, Chesapeake contradicted the Board's "incentive" justification for the $75 Million Bonus by claiming that the revenue and asset proceeds McClendon received from investing in the FWPP were "personal" in nature and not linked to job performance because the CEO paid his own Well Costs. It follows, then, that providing McClendon the $75 Million Bonus to cover the CEO's costs incurred to continue investing in the FWPP does not further benefit shareholder interests or align McClendon's interest with those of shareholders.

119. McClendon has already used some of the $75 Million Bonus to pay past expenses, not future Well Costs. The Company disclosed that while the $75 Million Bonus represented the projected costs that McClendon would be required to pay this year; its recent Form 10-K disclosed that the CEO elected to use about half the net amount of the bonus to pay his bill for the fourth quarter of 2008. Despite the Director Defendants representations that the $75 Million Bonus served to provide McClendon "incentive" to remain at the Company for five more years

(by paying out $15 million per year), McClendon has already benefitted from the full net amount of the $75 Million Bonus, at the Company's (and shareholders') expense.

120. The Director Defendants breached their duties of due care, good faith, and loyalty by fronting McClendon's Well Costs with the $75 Million Bonus so that the CEO can continue his risky practice of investing in the FWPP. The Director Defendants, in doing so, favored McClendon's interests over those of Chesapeake's shareholders, by allowing him to usurp valuable corporate opportunities through the FWPP while improperly shifting his costs (and therefore risk) to Chesapeake and its shareholders.

121. The $75 Million Bonus should be returned because it was granted in violation of the Company's compensation policies and in breach of the Director Defendants' fiduciary duties, and as such, the Amended McClendon Agreement is invalid.

122. By reason of the foregoing acts, practices and course of conduct, the Director Defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations towards Chesapeake and its public shareholders.

123. As a direct and proximate result of the Director Defendants' breach of fiduciary duties, the Company has sustained, and will continue to sustain, substantial harm.

124. The Director Defendants are liable to Chesapeake for damages as a result of the acts alleged herein.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY OF CANDOR
(Against The Director Defendants)

125. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

126. The Director Defendants owe the utmost fiduciary duties of candor, due care, good faith, and loyalty. As such, the defendants are bound by their fiduciary duties to employ all measures necessary to provide shareholders with all information material information concerning their investment in Chesapeake. Full disclosure serves the best interest of the Company, as well as its shareholders.

127. The Director Defendants breached their fiduciary duty of candor relating to Defendant McClendon's margin loan calls on October 8, 9, and 10, 2008, by failing to adequately disclose to shareholders the amount of Chesapeake stock the Company's CEO had put up as collateral for margin loans.

128. The Director Defendants breached their duty of candor by failing to inform Chesapeake's shareholders that the CEO of the Company they had invested in decided to over-leverage his Chesapeake holdings. Such information is material to investors because when an executive receives a margin call, he or she will be forced to sell at an inopportune time, which could have an adverse impact on the Company and its shareholders.

129. The Chesapeake Board, and especially the Compensation Committee members, should have been fully aware of the amount of Chesapeake stock McClendon had placed as collateral for margin loans considering McClendon was: (1) Chesapeake's largest individual shareholder for the last three years; (2) the co-founder and CEO of the Company; (3) a fellow director; and (4) owed 2.5% of the Company's well costs.

130. The Director Defendants breached their fiduciary duties by failing to assess and disclose the risks imposed upon the Company by McClendon's risky margin loan practices.

131. The Director Defendants also breached their fiduciary duties by failing to adequately assess and disclose the risks to Chesapeake associated with McClendon's continued participation in the FWPP, as he remained responsible for 2.5% of the costs of Chesapeake's wells.

132. By reason of the foregoing acts, practices and course of conduct, the Director Defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations towards Chesapeake and its public shareholders.

133. As a direct and proximate result of the Director Defendants' breach of fiduciary duties, the Company has sustained, and will continue to sustain, substantial harm.

134. Because of the Director Defendants breach of the duty of candor as alleged herein, the Company is entitled to damages and appropriate equitable remedies.

THIRD CAUSE OF ACTION

AIDING AND ABETTING BREACH OF FIDUCIARY DUTIES
(Against The Director Defendants)

135. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

136. The Director Defendants, by reason of their positions as fiduciaries of the Company, owed duties of candor, due care, good faith, and loyalty to Chesapeake's shareholders. The Director Defendants violated and breached these duties.

137. By virtue of their role with regard to granting the $75 Million Bonus, failing to assess, limit, and disclose the risk associated with McClendon's margin loans, permitting McClendon to usurp valuable corporate opportunities and assets through continued participation in the FWPP, approving the Amended McClendon Agreement, which obligates Chesapeake to cover McClendon's FWPP Well Costs in contradiction to representations made to both Chesapeake's shareholders and the SEC, as alleged herein, each Director Defendant aided and abetted one another in their breach of fiduciary duty.

138. As a direct and proximate result of the Director Defendants' aiding and abetting one another's breach of fiduciary duty, the Company has sustained, and will continue to sustain, substantial harm.

139. The Director Defendants are liable to the Company for damages as a result of the acts alleged herein.

FOURTH CAUSE OF ACTION

CORPORATE WASTE
(Against The Director Defendants)

140. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

141. As a result of their conduct as alleged above, and by failing to properly consider the interests of Chesapeake and its shareholders, the Director Defendants have caused Chesapeake to waste valuable corporate assets by granting Defendant McClendon the $75

Million Bonus and approving the Amended McClendon Agreement, by failing to assess, disclose, and mitigate the risks to the Company of McClendon's margin loans on Chesapeake stock, and by allowing Defendant McClendon to usurp valuable corporate opportunities by fronting the CEO's Well Costs with the $75 Million Bonus.

142. As a result of the waste of corporate opportunities and assets, the Director Defendants are liable to the Company.

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY FOR UNLAWFUL INSIDER SELLING
(Against Defendants Whittemore, Nickles & Maxwell)

143. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

144. Despite receiving three separate margin loan calls on October 8, 9, and 10, 2008, Chesapeake did not publicly disclose McClendon's stock sales until October 10, 2008. Thus, the investing public was unaware of McClendon's three margin loan calls prior to October 10, 2008.

145. Between October 6 and October 9, 2008, Director Defendants Whittemore, Nickles, and Maxwell, evidently while in possession of materially adverse non-public information regarding Defendant McClendon's margin loan calls, sold over $5.2 million in Chesapeake stock, as demonstrated below:

Defendant	Date Of Sales	Shares Sold	Proceeds ($)
Whittemore, Frederick	10/06/08	200,000	5,017,660
Nickles, Donald	10/08/08	6,250	140,838
Maxwell, Charles	10/09/08	2,000	34,460
Nickles, Donald	10/09/08	3,125	71,625
TOTALS		**211,375**	**5,264,583**

146. These sales of Chesapeake common stock by Defendants Whittemore, Nickles, and Maxwell evidently while in possession and control of material adverse non-public information concerning the status of McClendon's margin loan calls were uncharacteristic and suspicious in timing and amount.

147. At the time of the stock sales set forth above, Director Defendants Whittemore, Nickles, and Maxwell each possessed knowledge of Defendant McClendon's impending margin loan calls, which was adverse material non-public information, and sold Chesapeake common stock on the basis of such information. Director Defendants Whittemore, Nickles, and Maxwell likely gained such knowledge as a result of their positions as members of Chesapeake's Board of Directors and/or the Board's Compensation Committee. Moreover, the Director Defendants owed fiduciary duties to Chesapeake's shareholders to adequately inform themselves of such potentially adverse information. Defendant McClendon, as CEO and a director of Chesapeake, was obligated to inform the Chesapeake Board of such potentially adverse information.

148. The sales of Chesapeake common stock by Defendants Whittemore, Nickles, and Maxwell, evidently while in possession and control of material adverse non-public information as alleged herein, was a breach of their fiduciary duties of loyalty and good faith.

149. Because the use of the Company's proprietary information for their own personal gain constitutes a breach of the Director Defendants' fiduciary duties, the Company is entitled to damages and appropriate equitable remedies.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT
(Against Defendants McClendon, Whittemore, Nickles & Maxwell)

150. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

151. As a direct and proximate result of the acts alleged herein, the Director Defendants wrongfully deprived the Company of substantial wealth and unjustly enriched Defendant McClendon through the Amended McClendon Agreement, including the $75 Million Bonus and the FWPP.

152. As a direct and proximate result of the insider selling acts alleged herein, Defendants Whittemore, Nickels and Maxwell were unjustly enriched.

153. Defendants McClendon, Whittemore, Nickles and Maxwell are liable to the Company as a result and should be required to disgorge their unjust gains and return them to the

Company.

154. As a direct and proximate result of the Director Defendants' breach of fiduciary duties, the Company has sustained, and will continue to sustain, substantial harm.

155. The Director Defendants are liable to Chesapeake as a result of the acts alleged herein. These Director Defendants should be required to disgorge the gains which they have and/or will otherwise unjustly obtain at the expense of Chesapeake. A constructive trust for the benefit of the Company should be imposed thereon.

WHEREFORE, Plaintiff demands judgment as follows:

(a) Declaring Plaintiff a proper derivative representative of Chesapeake;

(b) Declaring that making a demand upon the Chesapeake Board is excused;

(c) Awarding to the Company money damages against all Director Defendants, jointly and severally, for all losses and damages suffered as a result of the acts and transactions complained of herein;

(d) Awarding to the Company restitution from Director Defendants and ordering disgorgement of all profits, benefits, and other compensation obtained by the Director Defendants McClendon, Whittemore, Nickles and Maxwell as a result of the acts and transactions, including but not limited to improper insider selling, complained of herein;

(e) Rescission of the Amended McClendon Agreement, including the $75 Million Bonus, as a result of the acts and transactions complained of herein;

(f) Rescission of the FWPP described herein in its entirety; or in the alternative, modification of the FWPP to: (1) preclude the Company from reimbursing any participant, including Defendant McClendon, for expenses incurred, including Well Costs, as a result of participating in the FWPP; and (2) prohibit McClendon from retaining any gas reserves assets obtained from the FWPP as a result of the Company paying for McClendon's Well Costs;

(g) An Order requiring the Company to adopt a policy that forbids the Company's senior officers from using shares of Chesapeake securities as collateral for margin loans; or in the alternative, a policy that requires the Company to promptly disclose to the Company's shareholders any pledge of Company securities to serve as collateral for loans by its senior officers;

(h) Awarding punitive damages against the Director Defendants;

(i) Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

(j) Granting such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

Dated: April 29, 2009

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

NEW ORLEANS EMPLOYEES' RETIREMENT SYSTEM, Derivatively on Behalf of CHESAPEAKE ENERGY CORPORATION, Plaintiff, vs. AUBREY K. McCLENDON; RICHARD K. DAVIDSON; BURNS HARGIS; FRANK KEATING; BREENE M. KERR; CHARLES T. MAXWELL; PETE MILLER, JR.; DONALD L. NICKLES; and FREDERICK B. WHITTEMORE, Defendants; and CHESAPEAKE ENERGY CORPORATION, Nominal Defendant.	)	**Case No.** ____________________ **<u>DERIVATIVE ACTION</u>** **VERIFICATION**

STATE OF LOUISIANA)
) ss.
PARISH OF ORLEANS)

I, Jerome Davis, Chairman of the City of New Orleans Employees' Retirement System, being duly sworn, depose and say that I am authorized to make this verification on behalf of Plaintiff, that I have reviewed the foregoing Verified Shareholder Derivative Complaint in detail, and that the factual statements contained therein are true to the best of my knowledge, information and belief.

Jerome Davis
JEROME DAVIS

Sworn to and subscribed before me
this 27th day of April, 2009.

____
Notary Public