IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

LOUISIANA MUNICIPAL POLICE EMPLOYEES' RETIREMENT SYSTEM, Petitioner, vs. CHESAPEAKE ENERGY CORPORATION, Respondent.	**Case No. CJ 2009-2870** **AMENDED VERIFIED PETITION FOR WRIT OF MANDATE TO COMPEL INSPECTION OF BOOKS, RECORDS AND DOCUMENTS PURSUANT TO 18 OKLA. STAT. § 1605**
LOUISIANA MUNICIPAL POLICE EMPLOYEES' RETIREMENT SYSTEM, Derivatively on Behalf of Nominal Respondent CHESAPEAKE ENERGY CORPORATION, Petitioner, vs. AUBREY K. McCLENDON, CHARLES T. MAXWELL, FRANCIS A. KEATING, FREDERICK B. WHITTEMORE, DONALD L. NICKLES, BREENE M. KERR, RICHARD K. DAVIDSON, MERRILL A. MILLER, JR., and V. BURNS HARGIS, Respondents, CHESAPEAKE ENERGY CORPORATION, Nominal Respondent.	**VERIFIED DERIVATIVE PETITION**

COUNT ONE

AMENDED VERIFIED PETITION FOR WRIT OF MANDATE

Petitioner, Louisiana Municipal Police Employees' Retirement System, for its petition for writ of mandate herein pursuant to 18 Okla. Stat. § 1605, alleges:

1. Petitioner is and at all relevant times has been a holder of shares of Chesapeake Energy Corporation common stock.

2. Respondent Chesapeake Energy Corporation ("Chesapeake" or the "Company") is an Oklahoma corporation and maintains its principal place of business at 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

3. By letter under oath dated March 13, 2009, Petitioner requested, pursuant to 18 Okla. Stat. § 1605, the right to inspect and make copies, during regular business hours, of certain books and records of the Company. The letter was sent to the corporation via certified mail. A true and correct copy of that request is attached as Exhibit 1,[1] and the signed return receipt, dated March 16, 2009, is Exhibit 2.

4. 18 Okla. Stat. § 1605 requires that the corporation respond within 5 business days of the receipt of the inspection request; the deadline for a response was therefore March 23. As of the date of the filing of this complaint, the only response received is a letter dated March 23, 2009 from Chesapeake's counsel, a true and correct copy of which is attached as Exhibit 3. The letter states that there is a "substantial question" whether the request states a "proper purpose." It concludes 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." Counsel for Chesapeake has not requested any additional time in which to respond to Petitioner's inspection demand.

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[1] All exhibits referred to herein were attached to, and filed with, the original Petition and are not being resubmitted.

5. It is too late for a "further response." The only conclusion is that Respondent has completely refused to provide any documents responsive to Petitioner's request.

6. Petitioner's primary and only purpose in making the request is to determine whether the Company's officers and directors breached their fiduciary duties in entering into a new employment agreement late last year with its Chairman, CEO and co-founder Aubrey McClendon. The Company disclosed this new agreement in an 8-K filing with the SEC, a true and correct copy of which is Exhibit 4. His pre-existing contract, signed the previous year, was a five year employment contract, so no new agreement was needed. The new agreement granted him a bonus of $75 million, and relaxed significantly the stock ownership requirement imposed by the existing contract.

7. Petitioner is seeking to determine whether the Company and its officers and directors have breached their fiduciary duties by entering into this agreement and, in particular, by granting the $75 million bonus. It is also seeking to determine whether the Company fully and accurately disclosed to shareholders the background and *reasons for the new contract*, including the bonus.

8. There is a reasonable basis to believe that Chesapeake's officers and directors may have breached their fiduciary duties to the company by approving the contract and, in particular, in granting the $75 million bonus. The agreement was approved late in 2008, after the Company's share price had dropped by over 60%, wiping out over $20 billion of shareholders' capital. The Company's 2008 10-K, issued in February of 2009, shows that net income in 2008 was $723 million, about half the $1.451 billion earned in 2007. Even worse, earnings per common share fell to $1.16, compared to $2.69 the previous year. To grant such an unprecedented bonus to Mr. McClendon at the conclusion of such a year, equal to perhaps 4 or 5

times his total annual compensation, raises questions, particularly in the wake of scandals involving excessive bonuses at such companies as AIG and Merrill Lynch.

9. The Company's attempt to explain this bonus in the 8-K is unconvincing. It said that Mr. McClendon was granted this bonus primarily as a reward for his efforts in arranging certain asset sales during 2008. The company provided no specific information about why Mr. McClendon's efforts were deemed so outstanding as to warrant such an extraordinary bonus.

10. Petitioner is concerned about the possibility that the bonus was less a reward for outstanding service than an effort to bail Mr. McClendon out of his personal financial difficulties. It has been reported in the press, and confirmed in his SEC filings, that because of a margin call last October, Mr. McClendon was forced to sell over 90% of his Chesapeake stock, at a time when the market price was at a low point. Because his existing employment agreement required him to maintain ownership of stock equal in value to 500% of his annual salary and bonus, this development put Mr. McClendon in breach of his agreement. That is no doubt why his new agreement temporarily lowers the ownership requirement to 200%; and it possibly also explains why the new agreement provided a $75 million bonus, to relieve Mr. McClendon's personal financial difficulties.

11. The $75 million bonus was reportedly tied to Mr. McClendon's other financial obligations to the company. Pursuant to the "Founder's Well Participation Program" Mr. McClendon, as co-founder of the company, is entitled to participate as part-owner (up to 2.5%) in all of Chesapeake's oil and gas wells drilled each year; and, with one exception, Mr. McClendon has elected to participate in those wells to the fullest extent allowable under the program. As a co-owner of the wells, Mr. McClendon is also required to pay his proportionate share of drilling costs. The Company has disclosed that $75 million represents the projected

costs that Mr. McClendon would be required to pay this year; however, its recent 10-K discloses that Mr. McClendon elected to use about half the net amount of the bonus to pay his bill for the fourth quarter of 2008.

12. Investigation of these matters is a proper purpose that is reasonably related to Petitioner's interests as a shareholder of Chesapeake and is not contrary to the Company's best interests. Petitioner does not seek to harass, vex or otherwise injure Chesapeake, and will not disclose any of the requested documents to any party in any other litigation involving Chesapeake, with the sole exception of any case Chesapeake may itself choose to bring after reviewing the requested documents.

13. In furtherance of these concerns, Petitioner requests the right to inspect and copy the following specifically identified, and narrowly targeted, documents:

(1) All board and compensation committee minutes addressing the $75 million bonus the Company awarded to Mr. McClendon last year as part of his new employment contract (the "bonus");

(2) All documents prepared by or submitted to the board or compensation committee concerning the bonus;

(3) All communications with Mr. McClendon or his representative(s) concerning the reasons for the bonus or for the provision in his new employment agreement that temporarily relaxes the 500% ownership requirement of his previous employment agreement;

(4) Such records as will show Mr. McClendon's total indebtedness to the company, if any, including but not limited to any unpaid bills under the Founders Well Participation Program, as of the date the 2008 employment agreement was signed;

(5) Any documents concerning Mr. McClendon's losses on his sale of Chesapeake shares in October of 2008;

(6) Notices provided to Mr. McClendon of margin calls on his Chesapeake stock during 2008; and

(7) Notice(s) provided to Chesapeake's Board that Mr. McClendon would be forced to sell or received margin calls on his Chesapeake stock.

14. In view of some of the observations of the March 23 letter of Respondent's counsel, Petitioner's above requests eliminate one of its requests contained in its demand letter and narrow another.

15. The books and records sought are narrowly tailored to serve Petitioner's purpose for serving the demand letter.

16. Pursuant to 18 Okla. Stat. § 1605, Petitioner is entitled to inspect and make copies of the books and records set forth in the demand letter.

17. Petitioner has no adequate remedy at law.

WHEREFORE, as to **COUNT ONE**, Petitioner seeks judgment in its favor requiring Chesapeake to produce, for inspection and copying, all documents requested in the demand letter, and providing such other and further relief as the Court deems proper.

COUNT TWO

VERIFIED DERIVATIVE PETITION

Petitioner, Louisiana Municipal Police Employees' Retirement System, for the benefit of Nominal Defendant Chesapeake Energy Corporation ("Chesapeake" or the "Company"), by the undersigned attorneys, submits this Verified Derivative Petition ("Derivative Petition") against the Company's current directors, and alleges upon personal knowledge with respect to itself, and upon information and belief based upon, inter alia, a review of public filings, press releases and reports, and an investigation undertaken by Petitioner's counsel, as to all other allegations herein, as follows.

NATURE OF THE ACTION

18. This Derivative Petition against current members of Chesapeake's Board of Directors (the "Board") seeks to remedy defendants' breaches of fiduciary duties, unjust enrichment, and other violations of law committed in connection with the execution of the new compensation agreement with Aubrey K. McClendon ("McClendon"), Chesapeake's co-founder, Chairman and Chief Executive Officer ("CEO").

19. Last year was not a good year for Chesapeake or its shareholders. In 2008, the Company's net income was about half of its 2007 net income and its stock price dropped 60%. Yet in December 2008, the Company entered into a new five year employment agreement with McClendon, abandoning a five year agreement that it signed *only a year earlier*, to give him a $75 million cash bonus, which represented a nearly 500% increase in his total compensation, and a staggering 4000% increase in his bonus compensation for 2007. This bonus, plus his other compensation, resulted in a $112.5 million package. Adding to this, Chesapeake paid McClendon $12.1 million for his collection of art and maps, bringing the total package to an

astounding $124.6 million. As revealed by a recent survey by the Associated Press, in 2008, McClendon was the *highest compensated* CEO among S&P's 500 companies.

20. The Board, with little deliberation, entered into the eye popping arrangement to bail McClendon out of his personal financial difficulties. Last October, after three margin loan calls, McClendon was forced to sell over 90% of his stake in Chesapeake, or nearly 6% of the Company's outstanding shares, which materially contributed to the further decline of the Company's stock price.

21. Petitioner has not made a demand on Chesapeake's Board because it would be futile to do so. Chesapeake's well compensated current directors are closely affiliated with McClendon through business and family ties, are riddled with conflicts, and there is a substantial likelihood of their liability based on their participation in the wrongdoing alleged herein. Indeed, some directors engaged in insider selling in advance of the public disclosure of McClendon's sales after his margin calls.

22. Petitioner files this Derivative Petition to avoid being prejudiced by the filing, subsequent to the March 26, 2009 filing of Petitioner's original Petition For Writ of Mandate (Count One), of derivative complaints by other shareholders based on the same core facts as the original Petition. The filing of this Amended Petition along with the Derivative Petition is not intended in any manner to prejudice the existing request for books and records, and indeed, is consistent with Delaware case law involving similar issues. *See Romero v. Career Education Corp.*, No. 793-N, 2005 Del. Ch. LEXIS 172, *8-*9 (Del. Ch. Nov. 4, 2005) (attached hereto).

JURISDICTION AND VENUE

23. This Court has jurisdiction over this action pursuant to Title 18, § 2059 of the Oklahoma Corporations Code and Title 12, § 2004 of the Oklahoma Code of Civil Procedure.

24. This Court has jurisdiction over each defendant. Chesapeake is a corporation with its principal executive office located in Oklahoma. Each individual defendant has sufficient minimum contacts with Oklahoma. Additionally, many of the defendants named herein are residents of Oklahoma.

25. Venue is proper in this Court because most of the transactions and wrongs alleged herein, including the defendants' primary participation in the wrongful acts detailed herein, occurred in this County. One or more of the defendants either resides in or maintains an executive office in this County, and defendants have received substantial compensation in this County by engaging in numerous activities and conducting business here, which has had an effect in this County.

PARTIES

26. Petitioner, Louisiana Municipal Police Employees' Retirement System, a citizen of Louisiana, was a shareholder of Chesapeake at the time of the wrongdoing alleged herein, and has been a Chesapeake shareholder continuously since that time.

27. Nominal Defendant Chesapeake, an Oklahoma corporation, maintains its principal place of business at 6100 North Western Avenue, Oklahoma City, Oklahoma. According to its public filings, Chesapeake is "the largest independent producer of natural gas in the United States." The Company focuses on the exploration for and production of natural gas. It was founded in 1989 and went public in February 1993.

28. Defendant Aubrey K. McClendon ("McClendon"), Chesapeake's CEO and Chairman of the Board, and a director, has served in these capacities since co-founding the Company in 1989.

29. Defendant Richard K. Davidson ("Davidson") has served as a director of the Company and as a member of the Audit Committee of the Board ("Audit Committee") since 2006. Davidson was also a member of the Nominating and Corporate Governance Committee of the Board ("Nominating and Corporate Governance Committee") from 2006 until December 2008.

30. Defendant V. Burns Hargis ("Hargis") has served as a director of the Company, and as a member of the Audit Committee, since September 2008.

31. Defendant Francis A. Keating ("Keating") has served as a director of the Company since June 2003, and as a member of the Compensation Committee of the Board ("Compensation Committee") since that time, and as a member of the Nominating and Corporate Governance Committee since at least 2005.

32. Defendant Breene M. Kerr ("Kerr") has served as a director of the Company since 1993, and as a member of the Audit Committee since at least 2005.

33. Defendant Charles T. Maxwell ("Maxwell") has been a director of Chesapeake since 2002, and a member of its Compensation Committee since 2006.

34. Defendant Merrill A. "Pete" Miller, Jr. ("Miller") has served as a director of the Company, and as a member of the Audit Committee, since 2007.

35. Defendant Donald L. Nickles ("Nickles") has served as a Chesapeake director since 2005 and has also served as a member of the Nominating and Corporate Governance Committee.

36. Defendant Frederick B. Whittemore ("Whittemore") has served as a director of the Company since 1993, as a member of the Compensation Committee since at least 1996, and as a member of the Nominating and Corporate Governance Committee since at least 2005.

37. The nine individuals named above in ¶¶ 28-36 constitute the entirety of Chesapeake's Board and are referred to herein as "Individual Defendants" or the "Board." Defendants Whittemore, Maxwell and Keating are also referred to as the "Compensation Committee."

38. The Individual Defendants had the power to control and influence Chesapeake and exercised that power to cause Chesapeake to enter into the wrongful conduct complained of herein. As directors, officers, or members of Board committees, the Individual Defendants owed fiduciary duties of loyalty, good faith, candor and due care to the Company; were obligated to act in the Company's and its shareholders' best interests; were required to refrain from abusing their positions of control and trust; and were prohibited from serving their own interests or that of third parties at the expense of the Company and its shareholders. The Individual Defendants, however, egregiously breached all their duties and obligations as detailed herein, and some of them further compounded their wrongdoing by engaging in illegal insider trading.

SUBSTANTIVE ALLEGATIONS

Chesapeake Performs Poorly and Shareholders Suffer

39. 2008 was a terrible year for Chesapeake. Although its competitors also suffered, Chesapeake's performance was far worse. The Company's net income in 2008 was $723 million, compared to $1.5 billion in 2007; and its net income per share was $1.16, compared to $2.69 in 2007, essentially 50% declines in both categories.

40. Chesapeake shareholders also suffered greatly. In the beginning of 2008, Chesapeake stock traded at $39.20, but ended the year at $16.17, with an intra-year high of $74.00 and low of $9.84. Thus the stock lost almost 60% its value during 2008.

McClendon Was Forced to Sell Most of His
Stake In Chesapeake As a Result of Margin Calls

41. Before last October, McClendon was the Company's largest shareholder and had repeatedly touted the fact that he had never sold any Chesapeake stock as evidence of his confidence in the Company. However, unbeknownst to investors, McClendon had leveraged nearly all his holdings, having pledged shares as collateral for personal loans.

42. McClendon's gamble imploded last October, when Chesapeake stock fell below $20 per share. McClendon received three margin loan calls and was forced to liquidate over 31.5 million Chesapeake shares for $643.9 million on October 8-10.

43. McClendon's sales were publicly disclosed for the first time on October 10, 2008, when Chesapeake announced that he "involuntarily sold substantially all of his shares of Chesapeake common stock over the past three days in order to meet margin loan calls."

44. The market reacted sharply, driving Chesapeake stock further down 38% in late October, over twice the 15.5% drop in the Standard & Poor's 500 stock index over the same period.

Insider Trading By Some Chesapeake Directors

45. While Petitioner's and other Chesapeake investors' losses were compounded by McClendon's overleveraging, some of his fellow Board members got off much easier. In the three days before the public learned about McClendon's margin calls, defendants Whittemore, Maxwell and Nickles sold over $5.2 million in Chesapeake stock, putting their own personal financial interests ahead of those of Chesapeake shareholders. Specifically:

(a) On October 6, 2008, Whittemore sold 200,000 Chesapeake shares for proceeds of over $5 million.

(b) On October 8, 2008, Nickles sold 6,250 shares for proceeds of $140,838, and the next day he sold an additional 3,125 Chesapeake shares for proceeds of $71,625.

(c) On October 9, 2008, Maxwell sold 2,000 shares of Chesapeake shares for proceeds of $34,460.

46. At the time of the above sales, Whittemore, Nickles and Maxwell had inside information about McClendon's margin calls and his need to sell Chesapeake stock, which they learned from their roles as Company directors. Whittemore's and Maxwell's positions as members of the Compensation Committee provided them with additional relevant information.

47. Whittemore's sales were particularly fortuitous. He sold 25% of his stake in Chesapeake at $25.09 per share for total proceeds of over $5 million. These sales were uncharacteristic of his previous and subsequent transactions:

Defendant	Date of Sale	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**	**24.42%**
Whittemore, Frederick	03/24/09	25,000	500,00	10.79%

48. Nickles' and Maxwell's sales were also suspicious as these directors had never previously sold any Chesapeake stock since becoming Chesapeake directors.

49. Whittemore, Nickles and Maxwell engaged in illegal insider trading and also breached their fiduciary duties of loyalty and care to Chesapeake and its shareholders, and acted in their self interest rather than in the best interests of the Company and its shareholders.

The Board Bails Out CEO McClendon By Hastily Granting Him A Huge Increase in Compensation and Purchasing His Art Collection

50. For 2006, McClendon's total compensation was $15,076,860, including a bonus of $1,581,000. For 2007, his compensation package increased by about 24%, totaling $18,764,484, including a bonus of $1,826,000. For 2008, when the Company performed abysmally and its stock dropped almost 60%, McClendon's total compensation package increased nearly seven fold, reaching $124.6 million.

51. The Board, based on the Compensation Committee's recommendation, approved:

(a) the $75 million bonus in the form of payments of expenses on wells that McClendon co-owned with the Company under the Founders Well Participation Program ("FWPP"), as detailed below;

(b) an additional $1,951,000 cash bonus;

(c) several stock option awards, which had a value of $32,737,700 as of grant dates;

(d) $1,800,817 in other compensation; and

(e) $975,000 in salary.

52. McClendon's compensation for 2008 reaches a whopping $124.6 million when the following additional payments are considered:

(a) The Board, upon its Audit Committee's recommendation, purchased for $12.1 million McClendon's collection of maps and art (which had been hanging in the Company's headquarters for years);

(b) Chesapeake paid $177,150 for catering from a restaurant which McClendon co-owns.

53. According to a recent survey by the Associated Press, McClendon was the *highest compensated* CEO among S&P's 500 companies. Significantly, the CEO of Exxon Mobil Corp., the top ranked company in the Fortune 500 list, made $22.4 million, and the median pay package for CEOs of companies in the S&P's 500 index *fell* 7 percent to $7.6 million.

54. The total package was nothing short of a hastily conceived bail out. The Board awarded the compensation package to McClendon pursuant to a five-year compensation agreement reached in December 2008. In doing so, it abandoned a five year compensation agreement that it had entered with McClendon just a year earlier in December 2007.

55. As Chesapeake acknowledged in a February 13, 2009 letter to the Securities and Exchange Commission ("SEC"), "[t]he forced liquidation of Mr. McClendon's company stock holdings in October 2008 was a factor" in reaching the new compensation arrangement with McClendon.

56. The Individual Defendants' family, business and personal relationships with McClendon, as well as huge raises they themselves received — all of which are detailed below — clouded their judgment.

57. Particularly given these circumstances, one would have expected the Board to have sought the advice of an outside consultant; but, as reflected in its 2009 Proxy Statement, it did not do so. Instead, as revealed by Chesapeake's February 13, 2009 letter to the SEC, the Compensation Committee recommended the hefty bonus after one meeting. As Greaf Crystal, a noted compensation expert has observed, Chesapeake's 2008 performance was worse than that of comparable oil and gas companies and "the case for having given McClendon an extra-ordinary reward based on his performance was exceedingly weak." The Crystal Report on Executive Compensation, *A $75 Million Consolation Prize*? (May 4, 2009).

58. The failure to seek an independent consultant's opinion was egregious for additional reasons. According to the Company's 2008 Proxy Statement, the "Compensation Committee is responsible for establishing the Company's compensation policies and monitoring the implementation of the Company's compensation system for its executives. The Committee's objective is to develop an executive compensation system that encourages both short-term and long-term performance aligned with shareholders' interests and is competitive with the Company's peers." However, as to compensation of the Company's executive officers, including McClendon, that proxy statement reveals that:

> Mr. McClendon and Mr. [Marcus] Rowland [Company's CFO] are 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....

(emphasis added.) Thus, McClendon and Chesapeake's CFO recommended their own compensation packages to the Compensation Committee.

<u>Defendants' Attempted Explanations Lack Credibility</u>

59. Defendants' post hoc explanations of the outrageous compensation award to McClendon are suspect.

60. In the new five year agreement reached in December 2008, the $75 million bonus was designated an "[i]ncentive [a]ward," which was granted to McClendon "as a deposit for credit against joint interest billings issued by the Company with respect to the Executive's interest in wells acquired through participation in the FWP [Founders' Well Participation] Program."

61. Elsewhere, in the latest proxy statement, Chesapeake described the $75 million bonus as a recognition of McClendon's "leadership role in completing . . . four transactions in 2008 . . . that were exceptionally advantageous to the Company and its shareholders"; an alignment of "his long-term financial interests with those of the Company and its

shareholders"; and as providing the incentive to McClendon to make a "long-term commitment to remain in his position as CEO."

62. Chesapeake's "retention" rationale is undermined by a number of factors. When McClendon announced his margin sales on October 10, 2008, he dismissed any talk of departure and reassured investors that: "My confidence in Chesapeake remains undiminished, and I look forward to rebuilding my ownership position in the company in the months and years ahead." Indeed, given the distressed state of the economy and energy companies, where would McClendon go? Moreover, McClendon's loses hardly left him in financial straits. As he commented: "I'm fortunate that I have other resources and I'll be fine." The Wall Street Journal, *Corporate News: Chesapeake Energy Changes Tack—To Soother Investors, Firm Will Cut Spending, Abandon New-Stock Issue*" (Oct 13, 2008).

63. The long term commitment purportedly received from McClendon is illusory for the further reason that when the new agreement was reached in December 2008, he was still in the first year of his five year contract with the Company.

64. Moreover, any suggestion that McClendon's October stock sales would have caused him to jump ship ignores the fact that he still owns valuable interests in Chesapeake's wells that he accumulated under the FWPP, which enabled him to purchase a 2½% interest in the Company's wells as they were drilled, thereby aligning his personal interests with the profitability of Chesapeake's own assets. Except for a short period from January 1, 1999 to March 31, 2000, McClendon has invested in every Company well since Chesapeake's February 1993 IPO. By his own estimate, for the wells drilled since 2005 alone, McClendon's share is worth $191 million.

65. McClendon right of participation is very uncommon in a large company. "Giving McClendon a share of gas revenue is akin to giving Steve Jobs a share of iPod sales or giving Michael Dell a percentage of computer shipments." Mitchell Schnurman, Star Telegram, *Chesapeake CEO is a Winner Either Way*" (April 25, 2009). McClendon did not need to be paid $75 million to exercise this right, of which he had taken full advantage in the past.

66. Significantly, by paying him, Chesapeake actually shattered the alignment of interests that it had used to sell the FWPP to stockholders in 2005, when it stated in its proxy statement that he would be "sharing the risks and rewards of drilling . . . on the *same basis* as the Company," that his "[p]articipation was considered superior to *non-cost bearing management* incentives," and the terms of his participation "are *no better than third party's terms* in the wells." (Emphasis added.) Significantly, the Company informed the SEC on November 7, 2008, that the well participation interest was not related to McClendon's duties as CEO.

67. Nor was the size of McClendon's raise justified by his purported "contribution" to four transactions relating to the sale of assets that occurred in late 2008 which were designed to help finance the continued development of the Company's prospects. These are the very things that CEOs are expected to do. Also, as JP Morgan analyst Joseph Allman explained, Chesapeake needed these transactions in the first place because "[i]n 2008 the company spent money like a drunken sailor (no offense to drunken sailors)." The Wall Street Journal, *Corporate News: Chesapeake Energy Changes Tact . . . .* (December 9, 2008).

68. Moreover, given that McClendon was a direct beneficiary of the four transactions that he engineered (by virtue of his co-ownership of the wells that benefited from the financing), it stands to reason that he had already received a significant benefit from these transactions and did not deserve a further reward.

69. There can be no question that Chesapeake could have used the monies it diverted to bail out its CEO much more profitably: in January and February 2009, the Company had to raise $1.425 billion additional funding from investors to "repay outstanding indebtedness."

THE FUTILITY OF DEMAND

70. Petitioner incorporates by reference each and every allegation contained in Count Two.

71. Petitioner brings this Derivative Petition on behalf of Chesapeake to seek redress for the Individual Defendants' breaches of fiduciary duties and other wrongful conduct.

72. Petitioner has owned Chesapeake common stock at all relevant times.

73. Petitioner, an institution with $1.4 billion in assets, will adequately represent Chesapeake's and its shareholders' interests.

74. Chesapeake's Board currently consists of nine directors — namely, defendants McClendon, Davidson, Hargis, Keating, Kerr, Maxwell, Miller, Nickles, and Whittemore. Petitioner has not made any demand on the Board to institute this action against the Individual Defendants because such demand would be a futile and useless act. The Individual Defendants are incapable of making an independent and disinterested decision to institute and vigorously prosecute this action and are antagonistic, adversely interested, or involved in the transactions attacked. The Individual Defendants face substantial likelihood of liability based on their breaches of fiduciary duties and waste of corporate assets, and there is a reasonable doubt as to whether their decisions concerning McClendon's compensation were a product of a valid exercise of business judgment. Certain directors face increased likelihood of liability based on additional illegal misconduct.

75. McClendon is directly interested as the recipient of the compensation package at issue here, which he apparently recommended to the Compensation Committee. The Board approved the package. Moreover, defendants Whittemore, Nickles and Maxwell engaged in the insider selling with advance, non-public information about McClendon's need to sell most of his stake in Chesapeake because of margin calls. Defendants Whittemore, Keating and Maxwell, as members of the Compensation Committee, approved McClendon's $75 million bonus and the other terms of his new five year employment agreement after one meeting. And Defendants Davidson, Hargis, Miller and Kerr, as members of the Audit Committee, recommended the Company's $12.1 million purchase of McClendon's maps, books and watercolors, a recommendation that the Board accepted in December 2008.

76. The Board has made plain that it has no interest in pursuing a derivative claim and instead has vigorously defended its award of the complained of compensation package in Chesapeake's most recent proxy statement and in other public statements.

77. Furthermore, Defendant Kerr is the first cousin of McClendon. In March 2007, Chesapeake purchased for $6,387,400 certain oil and royalty interests from several trusts benefiting Kerr's siblings. Defendant Hargis is the President of Oklahoma State University, to which Chesapeake provided $1.2 million in contributions and athletic ticket purchases in 2008 alone. Defendant Miller is Chairman, President and CEO of National Oilwell Varco, Inc., an energy company with which Chesapeake has business relationships, including purchasing oilfield equipment and services from 2005 through 2007. Defendant Keating's son, Chip Keating, and daughter-in-law are Chesapeake employees. His son's total cash compensation for 2008 was $135,242.

78. In addition to the massive compensation increase granted to McClendon, the other Board members, who were already highly compensated, awarded themselves over $1.2 million in raises in 2008:

Comparison of Directors' Compensation 2007 – 2008								
Director Name	***2007 Fees***	**2008 Fees**	***2007 Stock Awards***	**2008 Stock Awards**	***2007 Other Comp.***	**2008 Other Comp.**	***2007 Total***	**2008 Total**
Richard K. Davidson	118,000	150,500	200,825	415,552	131,908	173,621	450,733	739,673
V. Burns Hargis	N/A	57,750	N/A	383,700	N/A	38,107	N/A	479,557
Frank Keating	118,000	147,500	301,524	466,040	131,179	149,318	550,703	762,858
Breene M. Kerr	118,000	135,000	301,524	466,040	124,199	183,647	543,723	784,687
Charles T. Maxwell	115,000	141,000	301,524	466,040	17,586	13,486	434,110	620,526
Merrill A. Miller, Jr.	118,000	143,500	352,158	287,235	81,369	111,289	551,527	542,024
Don Nickles	118,000	144,000	301,524	466,040	121,361	143,339	540,885	753,379
Frederick B. Whittemore	115,000	150,500	301,524	466,040	0	56,881	416,524	673,421

CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES OF LOYALTY, CANDOR, DUE CARE AND GOOD FAITH

79. Petitioner incorporates by reference each and every allegation contained in Count Two.

80. As alleged herein, the Individual Defendants owed and owe Chesapeake fiduciary duties of loyalty, candor, due care and good faith but breached these duties in engaging in and approving the complained of transactions and failing to make necessary disclosures. Their actions could not have constituted a good faith exercise of prudent business judgment to protect and promote the Company's best interests.

CLAIM FOR WASTE OF CORPORATE ASSETS
AGAINST THE INDIVIDUAL DEFENDANTS

81. Petitioner incorporates by reference each and every allegation contained in Count Two.

82. The terms of the transactions complained of herein, including the grant of the $75 million bonus to defendant McClendon, are so one sided that no person acting in good faith pursuant to Chesapeake's interest could have approved them.

83. As a direct result of the Individual Defendants' waste of corporate assets, the Company has sustained damages.

CLAIM FOR UNJUST ENRICHMENT AGAINST DEFENDANTS
McCLENDON, WHITTEMORE, MAXWELL AND NICKLES

84. Petitioner incorporates by reference each and every allegation contained in Count Two.

85. By their wrongful acts and omissions, including McClendon's receipt of the unjustified $75 million bonus, and the insider selling by defendants Whittemore, Nickles and Maxwell, these four defendants were unjustly enriched, and it would be unconscionable to allow them to retain the benefits of their illegal conduct.

CLAIM AGAINST DEFENDANTS WHITTEMORE, MAXWELL AND NICKLES FOR
BREACH OF FIDUCIARY DUTIES IN CONNECTION WITH INSIDER SELLING

86. Petitioner incorporates by reference each and every allegation contained in Count Two.

87. Defendants Whittemore, Nickles and Maxwell engaged in insider selling while in possession of proprietary non-public information, which was an asset belonging to Chesapeake. By selling Chesapeake stock while in possession of such information, these defendants breached their fiduciary duties of loyalty and good faith, which they owed to Chesapeake.

88. Chesapeake in entitled to the imposition of a constructive trust on any profits these defendants obtained by their breach of fiduciary duties.

WHEREFORE, Petitioner demands judgment as follows for **COUNT TWO**:

A. Against the Individual Defendants and in Chesapeake's favor for the amount of damages the Company sustained as a result of their breaches of fiduciary duties and waste of corporate assets;

B. Ordering disgorgement to Chesapeake of all amounts by which certain defendants were unjustly enriched;

C. Granting appropriate equitable relief to remedy the complained of wrongdoing by the Individual Defendants;

D. Awarding to Petitioner the costs and disbursements of the action, including reasonable attorneys' fees, accountant and experts' fees, costs and expenses; and granting such other and further relief as the Court may deem just and proper.

PETITIONER DEMANDS A JURY TRIAL

Petitioner demands a trial by jury.

Dated: May 29, 2009

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