COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALFRED DELDUCO, Individually and Derivatively on Behalf of Nominal Defendant Boykin Lodging Company	:	CASE NO.
Plaintiff,	:	Judge ____________________
v.	:	
ALBERT T. ADAMS, ROBERT W. BOYKIN, LEE C. HOWLEY, JR, JAMES B. MEATHE, MARK J. NASCA, WILLIAM H. SCHECTER, IVAN J. WINFIELD AND NOMINAL DEFENDANT BOYKIN LODGING COMPANY,	:	**CLASS ACTION AND VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR DAMAGES INJUNCITIVE RELIEF**
Defendants.	:	

NATURE OF THE ACTION

1. Plaintiff Alfred Delduco, by his attorneys, files this action on behalf of all shareholders of, and derivatively on behalf of, Boykin Lodging Company, Inc., and for his Complaint against Defendants Albert T. Adams ("Adams"), Robert W. Boykin ("Boykin"), Lee C. Howley, Jr. ("Howley"), James B. Meathe ("Meathe"), Mark J. Nasca ("Nasca"), William H. Schecter ("Schecter"), Ivan J. Winfield ("Winfield") (Collectively "Individual Defendants") and nominal Defendant Boykin Lodging Company ("the Company"), alleges the following based upon personal knowledge of Plaintiff, and on information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of Defendant's public documents, public announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press

releases published by and regarding the Company, and information readily obtainable on the Internet.

2. This class action and shareholder derivative action is based upon a proposed merger agreement between the Company and Braveheart Holdings, LP, ("Braveheart"). The transaction is valued at approximately $416 million, including the assumption of debt. Each holder of the Company's common stock will receive $11 per share and each holder of the Company's preferred stock will receive $25 per share, plus all accrued and unpaid dividends, whether declared or not.

3. Immediately prior to the closing date, Defendant Boykin through entities he controls, gets to purchase from the Company, the Company's interests in Pink Shell Beach Resort and Spa ("Pink Shell") and the Banana Bay Resort & Marina – Marathon ("Banana Bay") for consideration that is substantially lower than the value of those assets. Specifically, Defendant Boykin is purchasing the Company's interests in these two resorts for a reported $14.6 million.

4. Currently, Defendant Boykin owns, either directly or beneficially, 10.6% of the outstanding shares of the Company's common stock. The extraordinary benefit inuring to Defendant Boykin in the proposed transaction will not be shared by the other holders of the Company's common stock. Additionally, by virtue of the exclusion of these assets from the merger transaction with Braveheart, the Company's shareholders are not realizing the maximum value of their interest in the Company. Also, the proposed merger agreement will trigger certain other compensation and benefits in favor of Defendant Boykin related to his employment agreement and management contracts held by BMC, a company controlled by Defendant Boykin.

THE PARTIES

5. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-4 as if fully restated herein.

6. Plaintiff Alfred Delduco ("Plaintiff") is the owner of 1,000 shares of common stock of the Company and has been the owner of such shares continuously since prior to the wrongs complained of herein.

7. Nominal Defendant Boykin Lodging Company is a corporation duly existing and organized under the laws of the State of Ohio, with its principal executive offices located at 45 West Prospect Avenue, Guildhall Building Suite 1500, Cleveland, Ohio. The Company is a real estate investment trust ("REIT") for purposes of federal tax law, which as of March 2, 2006, owns interests in 21 hotels throughout the United States.

8. Defendant Boykin is and at all times relevant hereto the, Chief Executive Officer, and Chairman of the Board of Boykin. Defendant Boykin, along with his brother, John E. Boykin, owns Boykin Management Company Limited Liability Company ("BMC"). BMC and certain of its subsidiaries manage 20 of the 21 hotels in which Boykin has an ownership interest for which BMC receives fees from Boykin.

9. Defendant Howley is and at all times relevant hereto has been a director of the Company. Howley is also Owner and President of Howley & Company, a real estate investment company.

10. Defendant Meathe is and at all times relevant hereto has been a director of the Company. Meathe is also managing partner of Walloon Ventures, a real estate development company.

11. Defendant Nasca is and at all times relevant hereto has been a director of the Company. Nasca is also Senior Vice President and Principal of JDI Realty, LLC a real estate investment and finance company.

12. Defendant Adams is and at all times relevant hereto has been a director of the Company. He is also a partner at the law firm of Baker & Hostetler, LLP, ("Baker") and has a personal financial interest in the transactions referred to herein because Baker is providing legal services to the Company in conjunction with the proposed transactions.

13. Defendant Schecter is and at all times relevant hereto has been a director of the Company. He is also President of National City Capital Corporation and Senior Vice President of National City Corporation, which has a financial interest in the transaction through the appointment of National City Bank as the Paying Agent for the transaction and due to the fact that it holds all 181,000 shares of the 10-1/2% Class A Cumulative Preferred Shares, Series 2002-A that will be converted into the right to receive $25 per share (plus all accrued and unpaid dividends, whether or not declared).

14. Defendant Winfield is and at all times relevant hereto has been a director of the Company.

15. By reason of the above Individual Defendants' (¶¶ 8-14) positions with the Company as officers an/or directors, said individuals are in a fiduciary relationship with plaintiff and the other public stockholders of the Company, and owe Plaintiff and the other members of the class the highest obligations of good faith, fair dealing, due care, loyalty and full, candid and adequate disclosure.

CLASS ACTION ALLEGATIONS

16. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-15 as if fully restated herein.

17. Plaintiff brings this action on his own behalf and as a class action, pursuant to Rule 23 of the Ohio Rules of Civil Procedure, on behalf of himself and on behalf of the holders of the Company's common stock (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with any of the defendants.

18. This action is properly maintainable as a class action.

19. The Class is so numerous that joinder of all members is impracticable. As of May 23, 2005, there were approximately 17.69 million shares of the Company's common stock outstanding.

20. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class members. The common questions include, *inter alia*, the following

(a) whether the proposed transactions complaint of herein are unfair to the Class;

(b) whether defendants have breached their fiduciary and other common law duties owed by them to plaintiff and the other members of the Class; and

(c) whether plaintiff and the other members of the Class would be irreparably damaged were the transactions complained of herein consummated.

21. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other

members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

22. Plaintiff anticipates that there will be no difficulty in the management of this litigation.

23. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

SUBSTANTIVE ALLEGATIONS

24. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-23 as if fully restated herein.

25. The Company's properties have, at all relevant times, been managed by BMC, an entity controlled by Defendant Boykin and his brother. In 2005, BMC received $5.635 million in management fees from the Company. For the three months ended March 31, 2006 and 2005, respectively, BMC earned management and other fees from the Company totaling $1.748 million and $1.681 million, respectively.

26. On May 22, 2005, the Company announced that it has entered into a definitive merger agreement (the "Merger Agreement") with Braveheart Holdings LP, an affiliate of Westmont Hospitality Group and Cadim Inc., a division of Caisse de depot et placement du Quebec (collectively, the "Buyout Group") pursuant to which the Buyout Group will acquire the Company in a transaction valued at approximately $416 million, including debt (the "Merger").

Pursuant to the terms of the Merger, each outstanding share of common stock of the Company will be purchased for $11 per share in cash.

27. Also in connection with the Merger, each outstanding depositary share, representing a 1/10 fractional interest in a share of the Company's 10-1/2% Class A Cumulative Preferred Shares, Series 2002-A will be converted into the right to receive $25 per share (plus all accrued and unpaid dividends, whether or not declared).

28. Immediately prior to and contingent upon the closing of the Merger, the Company's interests in Pink Shell and Banana Bay will be sold to entities controlled by Defendant Boykin for a purchase price of approximately $14.6 million, to be adjusted based upon the cash flows of such interests from April 1, 2006 through the actual closing date (the "Boykin Asset Purchase").

29. As previously announced by the Company, the Company has agreed to sell its Radisson Suite Beach Resort - Marco Island to an unidentified third party for $58 million (the "Radisson Sale").

<u>Pink Shell Beach & Spa Resort</u>

30. The Company acquired a 100% equity interest in Pink Shell in 1998 for $19.25 million. The Pink Shell acquisition included 1500 feet of beachfront and a bay-front Marina and the development rights to add approximately 5000 ft. of meeting space and additional condominium units. At the time of the purchase, Defendant Boykin commented that: "The Pink Shell is a beautiful beach resort and an exceptional investment opportunity … the acquisition will be accretive to our earnings, and we are pleased to be acquiring such an irreplaceable asset at an attractive net price to us."

31. Pink Shell is unique in that the Company has developed the property as a condominium hotel project. According to the Company's promotional materials, "A condominium hotel is similar to and operates like any other hotel. The primary difference is that individuals own the guestrooms and suites in the condominium hotel." Individual unit purchasers actually own the fee interest in the Pink Shell condominium real estate but contractually agree that the Company (or its affiliate) has the right to rent out unused room nights as hotel rooms with a portion of gross rental income remitted back to the owner while another portion of the gross rents (i.e. residual interest) is earned by the Company. For example, according to the Company's 2005 10-K:

> *"Sales of condominium units* – During 2001, we completed a renovation of a 60-unit tower at the Pink Shell Beach Resort. These renovated units were sold as Sanibel View Villas Condominiums; the revenue related to the sales was recorded upon closing of the sales. ***As of December 31, 2003, we had closed on the sale of all 59 of the available units within the tower and all of the unit owners had contracted with us to allow their unused room nights to be rented out as hotel rooms.***
>
> ***The related gross rental income generated by the units put back to the resort by contract is recorded by the resort and included in hotel revenues within the consolidated financial statements. Under the terms of their contracts, a percentage of the gross rental income of each unit is to be remitted to the respective unit owner. The remitted amounts are recorded as expenses within the property taxes, insurance and other line of the consolidated financial statements."*** (Emphasis added).

32. Since its acquisition, the Company has divided Pink Shell into condominium hotels in three distinct project phases, the first of which was a 60 unit tower, Sanibel View Villas, which sold out during 2003, followed by the 92 unit White Sand Villas, sold out in 2004, and the 43 unit Captiva Villas project which is currently being developed and sold. The purchaser/owners, in virtually all of these condo sales, have "put back" to the Company the exclusive right to an override

on gross rents during those rentals attributable to non-owner occupancy. Meanwhile, the condo owner provides a significant subsidy in the form of payments to absorb property expenses. This, in effect, provides the Company with the benefits of hotel ownership without the incurrence of significant related expenses and is a feature unique to condo hotel projects.

33. According to promotional materials, the Company retains as much as 60% of the rental income for the hotel condominium during the period of time that it is rented out to a non-owner occupant. The Company restricts the amount of days that the owner may occupy the unit (e.g. 14 days during busy season at 14 days during non-busy season). Hence the Company enjoys a substantial override on gross rents for the property during the majority of the year.

34. This "residual interest" is a substantial asset which will be transferred to Defendant Boykin, pursuant to the agreement with Braveheart LP. Indeed, according to the Pink Shell Profit and Loss Statement attached to the Limited Liability Company Interest and Asset Purchase Agreement published with the Company's 8-K, this rental override amounted to "adjusted income" to Boykin Hotel Properties ("BHP") of $626,277 during the first quarter of 2006.

35. Annualizing this first quarter 2006 “adjusted income” figure, the Pink Shell property’s contribution to the Company becomes more than $2.5 million. This amount, which appears to be net of expenses, would be a significant contributor to the Company's net operating income ("NOI"). This Pink Shell Resort contribution would be particularly significant because the Company NOI, according to the 2005 10-K, amounted to only $977,000 for the year ended 2005.

36. The 2005 Company 10-K indicates that, with respect to the condo hotel units, "The related gross rental income generated by the units put back to the resort by contract for use as hotel rooms and the units owned by Boykin is recorded by the resort and included in hotel revenues

within the consolidated financial statements. Under the terms of the contract, a percentage of the gross rental income of each unit is to be remitted to the respective unit owner."

37. According to an analysis undertaken by investment analysts, Freidman Billings Ramsey, and corroborated by the Company's investment banker, Stifel Nicolaus, a multiple of 14 applied to consensus EBITDA is a reasonable proxy for the Company's sale price. Accordingly, based on annualized Pink Shell adjusted income to Boykin Hotel Properties ("BHP") of approximately $2.5 million, the value attributable to the Pink Shell condominium hotel units would be approximately $35 million. This number does not include the expected profit from condo sales relating to the 43 condo hotel units which have already commenced construction relating to the Pink Shell sub development, Captiva Villas, and which are scheduled to be completed in early 2007; nor does it take into consideration profit from condo hotel sales at Banana Bay. According to the Company's 2005 10-K, "A Boykin subsidiary has entered into 37 sales contracts for the sale of Captiva Villas hotel condominium units at the Pink Shell Beach Resort and Spa … Currently, the subsidiary anticipates that the project will be substantially complete during the first quarter of 2007." The value of the Pink Shell carve-out is well in excess of the slightly less than $10.7 million purchase price indicated in the Company's Limited Liability Company Interest in Asset Purchase Agreement included in the Company's 8-K.

38. Profits from the sale of the 43 condo hotel units in the soon-to-be completed Captiva Villas development at Pink Shell have been realized to date on the percentage of completion method by the Company. Such accounting methodology recognizes the income related to condo sales before the actual proceeds of sale have been realized by the Company. Defendant Boykin stands to receive the lion's share of profits from the already contracted sale of the units, while the

Company and its shareholders would receive none of these sale proceeds. The Company's disclosures also failed to indicate the character or quantity of this inappropriate remuneration to Defendant Boykin.

39. Further, pursuant to the agreement with Braveheart, the contract to manage Pink Shell currently with BMC, an entity wholly owned by Defendant Boykin, would be terminated with a penalty fee paid to BMC. This penalty has no business purpose since, BMC's owner, Defendant Boykin will control the property after the sale and possess the power to continue BMC's management contract. The only purpose for such "termination fee" would be to remunerate Defendant Boykin.

Banana Bay Resort

40. In January 2006, the Company announced that it acquired a 50% interest in Banana Bay in a $12 million acquisition. Banana Bay is a 65-room, 10-acre property located on the Gulf of Mexico, and includes a pool, whirlpool, tennis courts, marina and launching ramp, conference rooms and a wedding gazebo. The Company acquired its interest in a joint venture in order to redevelop the property as a condo-hotel project.

41. Pursuant to the proposed terms of the transaction between the Company and Boykin, Boykin is paying $14.6 million for both Pink Shell and Banana Bay. The purchase agreements relative to Pink Shell and Banana Bay reveal that Boykin is paying $10,686,324 for Pink Shell and $3,913,566 for Banana Bay.

42. Having paid $6 million for its 50% interest in Banana Bay merely six months ago, the Company, through its Board of Directors, has agreed to sell its 50% stake in Banana Bay for a

discount of over $2 million. In addition, Boykin will acquire the right to sell the condos, obtain the override premium, and the management agreement to operate the facility.

43. Also, due to the Merger, the management agreement currently in place between Banana Bay and BMC, one of Boykin's other owned entities, will terminate and result in a penalty being paid by the Company to BMC.

44. Defendant Boykin is receiving a special deal in being permitted to acquire the Company's interests in Pink Shell and Banana Bay. The Merger and sale of Pink Shell and Banana Bay to Defendant Boykin, if allowed to proceed, will be substantially deleterious to the interests of the shareholders because the apparent *quid pro quo* for the carve-out of Pink Shell and Banana Bay, was the undervalued purchase of the remaining Company assets by Braveheart. Accordingly, defendants should be enjoined from consummating this transaction unless and until the Company adopts and implements a procedure or process, such as an auction, to obtain the highest possible price for the Company properties; all salient terms and conditions of the transaction are disclosed, and found to be consistent with the interests of the shareholders.

Robert Boykin Severance Package

45. As party to the Braveheart acquisition, Defendant Boykin stands to benefit from a multimillion dollar severance package composed of cash remuneration and other perquisites. The Company's 2006 Proxy Statement articulates the various "severance benefits" to which Defendant Boykin is entitled pursuant to a change in control of the Company.

46. Defendant Boykin entered into an employment contract with us in connection with our November 1996 initial public offering. The agreement provides for a two-year term that is automatically extended for an additional year at the end of each year of the agreement, subject to the

right of either party to terminate the agreement by giving one year prior written notice. Defendant Boykin is prohibited from competing with the Company during the term of his employment agreement and for two years thereafter. The agreement also provides that Defendant Boykin will be paid a minimum annual base salary, a bonus and certain other benefits and compensation. Defendant Boykin's employment contract provides that if he is terminated for a reason other than for "cause," resigns for "good reason" or elects to terminate his employment following a change of control, he is entitled to receive an amount equal to three multiplied by the sum of (i) his current base salary and (ii) his current base salary multiplied by his target bonus percentage.

47. Based upon the preceding language, Defendant Boykin's 2005 base salary of $431,748, and his "target bonus percentage" of 115% it appears that his cash severance package following his resignation as part of a change in control would amount to approximately $2.78 million.

48. In addition to this $2.78 million cash severance package, Defendant Boykin would also receive numerous entitlements triggered by his resignation following a change in control. The Company 2006 Proxy described these additional severance benefits.

> Upon such termination [including his resignation following a change in control], Mr. R.W. Boykin would also be entitled to receive, at no cost to him (a) the continuance of all benefits paid to him under his employment contract for a three year period commencing upon the termination of his employment with the Company and (b) office space and a full time-secretary until the earlier to occur of his death or his commencement of full-time employment with another company.

49. The foregoing relevant excerpts taken from the Company's Proxy Statement, poignantly demonstrate that defendant Boykin looks to benefit from millions of dollars in severance payments as part of the Merger transaction.

Vesting of the "Unvested"

50. As part of the Merger Agreement between the Company and Braveheart, Defendant Boykin stands to personally benefit from the immediate vesting of all his unvested "Restricted Common Shares". The Merger Agreement filed on Form 8-K dated May 22, 2006 at page 40 states in relevant part:

> (f) Incentive Options, Restricted Common Shares and Share Units.
>
> (i) Prior to the REIT Effective Time, the Board of Directors of the Company shall adopt resolutions by written action to:
>
> (A) provide that each In the Money Option granted under the Long-Term Incentive Plan that is outstanding immediately prior to the REIT Effective Time (whether vested or unvested) shall be canceled as of the REIT Effective Time in exchange for a lump sum cash payment from Parent to the holder of such In the Money Option in an amount equal to the excess, if any, of $11.00 over the applicable per share exercise price for such In the Money Option;
>
> (B) provide that each Incentive Option that is outstanding immediately prior to the REIT Effective Time that is not an In the Money Option shall be cancelled and no consideration shall be paid or issued in respect thereof; and
>
> (C) vest and make transferable all restricted Common Shares granted under the Long-Term Incentive Plan.

51. Accordingly, pursuant to the 2006 Company Proxy Statement, Defendant Boykin's 113,272 restricted common shares became fully vested and transferable as part of the Merger. Multiplying Defendant Boykin's aggregate number of restricted common shares by the Merger

price of $11.00 per common share, Defendant Boykin stands to receive an additional $1.25 million in personal remuneration as part of the buyout transaction.

The Stock Cash Out

52. While the $11.00 per share purchase price offered as part of the Merger Agreement is wholly inadequate to individual investors, the transaction is overly generous for the common stock beneficially owned by Defendant Boykin considering the panoply of benefits he is receiving as part of the buyout. As if the severance package and the vesting of all Defendant Boykin's restricted common shares were not enough, Defendant. Boykin will also be permitted to "lock in" a sales price for his 10.68% "economic beneficial ownership" of Company common shares. Without this buyout Defendant Boykin would have faced a likely substantial diminution in the price he would have received for his Company stock if he tried to liquidate his entire ownership position in the Company. The markets would likely have become skittish over the CEO and 10% shareholder in the Company "dumping" his stock and would interpret these facts as an indicator Company stock was overpriced with a concomitant reduction in the price of Company common shares. With this buyout, Defendant Boykin has been guaranteed a fixed $11.00 per share sale price for his entire ownership position which would amount to approximately $18.9 million, plus the opportunity to acquire significant Company assets at a discount. Accordingly, Defendant Boykin will be able to avoid the substantial discount which would have undoubtedly been engendered by the block liquidation of his common stock interests.

Boykin Management Company Termination Fees

53. Defendant Boykin will personally benefit through a number of BMC "termination payments" that will be triggered as part of the Merger. The Company 2006 Proxy states in relevant part:

> Under the terms of the Radisson Suite Beach Resort — Marco Island and Pink Shell Beach Resort management agreements, BMC is entitled to a base management fee of 3%. The Radisson Suite Beach Resort management agreement provides for the base management fee plus an incentive management fee of 15% of gross operating profit in excess of budget up to a maximum of an additional 1.125% of hotel revenues. Under the Pink Shell Beach Resort management agreement, BMC receives 50% of any excess cash flow after fixed charges (before debt service) until it receives an incentive fee of 2% of hotel revenues. Thereafter, BMC receives 25% of any additional excess cash flow. We may terminate the Radisson Suite Beach Resort management agreement at any time without penalty upon 90 days' notice. The Pink Shell Beach Resort management agreement can be terminated by us upon the payment of a specific termination fee which declines over time. If the Pink Shell Beach Resort management agreement is terminated by us prior to October 23, 2006, the termination fee will be two times the actual management fees paid in calendar year 2005. If the management agreement is terminated after October 23, 2006, the termination fee will be equal to the management fee paid for the previous full calendar year. The remaining terms of the management agreements for Radisson Suite Beach Resort and Pink Shell Beach Resort are approximately eight months and six years, respectively.

54. Since all of the Management Agreements BMC has with the Company will be terminated as part of the Merger Agreement, BMC will be entitled to this payment.

55. In addition to the aforementioned "termination fee" associated with Pink Shell described within the Company's 2006 Proxy Statement, the Purchase Agreement of Pink Shell by Defendant Boykin appears to require yet another "pay off" to BMC. Page 12 of the Pink Shell Purchase Agreement states,

> Management Agreement Termination Fee. At Closing, Seller shall pay to Buyer, or Buyer shall receive as a credit against the Purchase Price, an amount equal to the termination fee contemplated by Section 17 of that certain Hotel Management Agreement, dated October 24, 2002, between BeachBoy LLC and Boykin Management Company Limited Liability Company, relating to the Property.

56. Besides the preceding two "termination fees" paid relating to the Pink Shell Resorts Management Agreement it appears that BMC would receive additional compensation associated with the termination of all the BMC Management Agreements, *en masse*.

> Parent, Boykin Management Company Limited Liability Company ("BMC"), an entity controlled by Mr. Boykin, and Mr. Boykin have entered into a letter agreement which provides that the management agreements between the Company and BMC will terminate at the effective time of the Mergers, without the provision of 90 days prior notice as required by the terms of the management agreements or the payment of fees for such period. The letter agreement also provides for the mutual release of certain obligations under the management agreements. As part of the agreement, Parent will cause the Company to transfer certain assets to BMC after the effective time of the Mergers. The letter agreement further provides for certain changes to the non-competition provisions of Mr. Boykin's employment agreement after the effective time of the Mergers. The letter agreement will terminate if the Merger Agreement is terminated.

57. As if these Management Agreement "termination payments" are not enough, it appears that BMC is relieved of its responsibility to provide employee healthcare obligations upon the completion of the buyout.

> The participation by employees of the Company and its Subsidiaries in employee benefits plans, programs or arrangements sponsored by BMC shall terminate effective as of the Closing Date. Effective as of the Closing Date, Parent shall provide, or cause its Subsidiaries to provide, group health plan continuation coverage that is comparable to the group health plan continuation coverage provided for under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and Sections 601 through 608 of ERISA ("Group Health Continuation Coverage") (as applied without regard to the exception for small-employer plans under Treasury Regulation Section

> 54.4980B-2) to all employees and former employees of the Company and its Subsidiaries and their dependents who, as of the Closing Date, have coverage under a BMC group health plan or are eligible to elect to receive Group Health Continuation Coverage under a BMC group health plan.

58. While these payments/benefits provided to BMC could amount to millions of dollars, the Merger Agreement/Purchase Agreement documents do not clearly articulate what benefits will be provided, much less their value. If these are legitimate costs associated with the Braveheart buyout, then Defendant Boykin should have no problem providing the necessary documents for the Plaintiffs' to determine whether or not shareholders are being hurt because of these payments paid to BMC/Defendant Boykin.

59. If the Merger Agreement is terminated pursuant to certain other customary termination provisions, including a failure to obtain the required shareholder approval for the Merger, the Company must pay $8 million to the Buyout, less any reimbursed expenses.

FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

60. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-59 as if fully restated herein.

61. Plaintiff brings this claim both directly on behalf of the class and derivatively on behalf of the Company.

62. By the acts, transactions and courses of conduct alleged herein, defendants, individually and as part of a common plan and scheme or in breach of their fiduciary duties to plaintiff and the other members of the Class, are attempting to provide benefits directly to

Defendant Boykin and to unfairly deprive plaintiff and other members of the Class of the true value of their investment in the Company.

63. The Company's shareholders will, if the transaction is consummated, be deprived of the opportunity for substantial gains which the Company may realize.

64. By reason of the foregoing acts, practices and course of conduct, defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward plaintiff and the Company's other public stockholders.

65. As a result of the actions of defendants, plaintiff and the other members of the Class have been and will be damaged in that they have not and will not receive their fair proportion of the value of the Company's assets and businesses and will be prevented from obtaining appropriate consideration for their shares of the Company's common stock.

66. Unless enjoined by this Court, Defendants will continue to breach their fiduciary duties owed to Plaintiff and the other members of the Class, and may consummate the proposed transaction which will exclude the Class from its fair proportionate share of the Company's valuable assets and businesses, and/or benefit them in the unfair manner complained of herein, all to the irreparable harm of the Class, as aforesaid.

67. Plaintiff and the Class have no adequate remedy at law.

DEMAND WOULD BE FUTILE

68. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-67 as if fully restated herein.

69. In addition to asserting direct claims on behalf of the class, Plaintiff also brings this action derivatively in the right and for the benefit of the Company to redress injuries suffered and

to be suffered by the Company as a result of the improper and illegal conduct engaged in by the Company which constitutes breaches of fiduciary duty and concealment and/or omission of material information by the Individual Defendants. This is not a collusive action to confer jurisdiction on this Court which it would not otherwise have.

70. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

71. Plaintiff is an owner of the Company's common stock and was an owner of Boykin common stock at all times relevant to the Individual Defendants' wrongful course of conduct alleged herein.

72. Derivative Plaintiff has not made a demand on the Board of Directors to bring these causes of action because such a demand would be futile. At the time these derivative actions were commenced, the Board of Directors consisted of seven members: Albert T. Adams, Robert W. Boykin, Lee C. Howley, Jr., James B. Meathe, Mark J. Nasca, William H. Schecter, and Ivan J. Winfield. The Directors unanimously voted in favor of the Merger and Special Deal; thus, it would futile to demand that they enjoin the Merger and Special Deal from going further. As detailed below, each of the Directors are subject to substantial liability on these derivative claims and are therefore in no position to render a disinterested judgment on whether the Company should bring them, and/or lack sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants. Further, the Individual Defendants benefited financially from the improper and illegal conduct.

73. All of these Directors face a substantial likelihood of liability in this action because of their failure, as Directors, to assure that all of the shareholders, including the minority

shareholders', rights and interests were protected. The dramatic breakdowns in the oversight of the negotiation the Merger and Special Deal, including but not limited to, the failure to retain an outside appraiser to value the properties being acquired by Defendant Boykin in the Special Deal, were so widespread and systematic that the entire Board faces substantial exposure to liability, under the Caremark doctrine, for their total abrogation of their duty of oversight.

74. Because of the risks inherent to the glaring conflict of interest between Defendant Boykin and the Company, the Company's articles of incorporation and corporate governance guidelines require that a majority of its directors be independent. The articles of incorporation also require that any determination to be made by the Board in connection with any matter presenting a conflict of interest for any officer of the Company, or for any Company director who is not an independent director, be made by the independent directors. Here, the all Directors unanimously voted in favor of the Merger and Special Deal. Thus, a demand on these same directors to enjoin the same Merger and Special Deal is futile.

THE DIRECTORS OF THE COMPANY LACK INDEPENDENCE

75. Defendant Boykin stands to gain millions of dollars in connection with the Special Deal, which is part of the Merger, and therefore, he lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

76. Defendant Schecter is a Senior Vice President of National City Corporation, National City is the paying agent involved with the Merger. Significantly, National City is the owner of all of the preferred stock, which is has been valued at $25 a share under the terms of the Merger. Because National City stands to gain substantially from the Merger, Director Defendant

Schecter lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

77. Defendant Meathe lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

78. Defendant Howley lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

79. Defendant Winfield lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

80. Defendant Adams is a managing partner in the law firm of Baker & Hostetler LLP in Cleveland, Ohio, the same law firm that performs the legal work for the Company, including the work connected with the Merger. As a partner in a law firm that stands to earn several thousands of dollars in legal fees in connection with the Merger, Adams lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

81. Defendant Winfield is a retired partner from the firm of Coopers & Lybrand, LLP, the same firm where the Company's President and Chief Operating Officer, Mr. Richard Conti, was a Principal and Director. As a result of this connection with Conti, Defendant Director Winfield lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

82. Defendant Boykin recommended Defendant Nasca to the Corporate Governance and Nominating Committee as a nominee for election as a director. The Corporate Governance and Nominating Committee nominated Mr. Nasca for election to the Board of Directors in 2004. As a result of this alliance and loyalty to Boykin, Defendant Director Nasca lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

83. Should the Individual Defendants decide to bring claims against themselves, that would likely trigger an "insured vs. insured" exclusion which is typical for D&O insurance policies, which would make D&O insurance coverage unavailable to them.

84. In addition, demand would be a futile and useless for the additional following reasons:

a. Director Defendants, because of their inter-related business, professional and personal relationships, have developed debilitating conflicts of interest that prevent the Board members of the Company from taking the necessary and proper action on behalf of the Company as requested herein;

b. The Director Defendants of Boykin, as more fully detailed herein, participated in, approved and/or permitted the wrongs alleged herein and participated in efforts to conceal or disguise those wrongs from Boykin's stockholders or recklessly and/or negligently disregarded the wrongs complained of herein, and are therefore not disinterested parties. Each of the Director Defendants exhibited a sustained and systemic failure to fulfill their fiduciary duties, which could not have been an exercise of good faith business judgment and amounted to gross negligence and extreme recklessness;

c. In order to bring this suit, a majority of the Directors of the Company would be forced to sue themselves and persons with whom they have extensive business and personal entanglements, which they will not do, thereby excusing demand;

d. The acts complained of constitute violations of the fiduciary duties owed by the Company's officers and directors and these acts are incapable of ratification; and

e. The Company will be exposed to significant losses due to the wrongdoing complained of herein, yet the Individual and Director Defendants and current Board have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for the Company any part of the damages the Company will suffer thereby.

83. Plaintiff has not made any demand on the shareholders of the Company to institute this action since demand would be a futile and useless act for the following additional reasons:

a. Boykin is a publicly held company with approximately 17.69 million shares of common stock outstanding, and thousands of shareholders;

b. Making demand on such a number of shareholders would be impossible for Plaintiff, who has no way of finding out the names, addresses or phone numbers of all the shareholders; and

c. Making demand on all shareholders would force Plaintiff to incur huge expenses, assuming all shareholders could be individually identified.

WHEREFORE, plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor and in favor of the Class and against defendants as follows:

A. Declaring that this action is properly maintainable as a class action;

B. Declaring and decreeing that the Merger Agreement was entered into in breach of the fiduciary duties of the Individual Defendants and is therefore unlawful and unenforceable;

C. Enjoining defendants from proceeding with the Merger Agreement and the Boykin Asset Purchase;

D. Enjoining defendants from consummating the Merger, or a business combination with a third party, unless and until the Company adopts and implements a procedure or process, such as an auction, to obtain the highest possible price for the Company and/or any of its assets;

E. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction which is in the best interests of shareholders until the process for the sale or auction of the Company is completed and the highest possible price is obtained;

F. Rescinding, to the extent already implemented, the Merger Agreement and/or the Boykin Asset Purchase, or any of the terms thereof;

G. Awarding plaintiff and the Class appropriate damages;

H. Awarding plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts, fees;

I. Granting such other and further relief as this Court may deem just and proper.

DATED: June __, 2006

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