

**IN THE IOWA DISTRICT COURT FOR  
POLK COUNTY**

KENDALL J. MEADE, individually and on behalf of all others similarly situated, )

Plaintiff, )

v. )

EMC INSURANCE GROUP INC., PETER S. CHRISTIE, STEPHEN A. CRANE, JONATHAN R. FLETCHER, BRUCE G. KELLEY, GRETCHEN H. TEGELER and EMCC CASUALTY COMPANY. )

Defendants. )

Case No. \_\_\_\_\_

CLASS ACTION PETITION

AT LAW, AND JURY

DEMAND

**COMES NOW** the Plaintiff, Kendall J. Meade (“Plaintiff”), and hereby files this Petition on behalf of himself and the former holders of the common stock of EMC Insurance Group Inc. (“EMCI” or the “Company”) against the members of the Board of Directors (collectively referred to as the “Board” or the “Individual Defendants”) of EMCI for breaching their fiduciary duties in connection with the conflicted acquisition of EMCI by its controlling shareholder Employers Mutual Casualty Company (“EMCC”) (the “Buyout”). Plaintiff also brings claims against EMCC for breaching its fiduciary duties in its capacity as controlling shareholder of the Company. Plaintiff also brings a separate claim against EMCI (together with EMCC and the Individual Defendants, the “Defendants”) for aiding and abetting the remaining Defendants’ breaches of fiduciary duty. This action seeks damages suffered by Plaintiff and the Class (as defined herein) as a result of Defendants’ wrongdoing.

The allegations of this Petition are based on Plaintiff’s knowledge as to himself, and on information and belief based upon, among other things, the investigation of counsel and publicly available information, as to all other matters.

**SUMMARY OF THE ACTION**

1. EMCC and EMCI engaged in a conflicted transaction whereby EMCI shareholders were squeezed out of their ownership interest in EMCI for a fraction of the fair value owed. EMCI is an insurance holding company created by EMCC. EMCC sold some of its shares in public offerings but remained the Company's controlling shareholder, and just prior to the Buyout owned approximately 54% of EMCI's common stock. The Company employed no staff to conduct its operations, and was entirely dependent upon EMCC's employees, facilities, and information technology systems to conduct its business. In fact, all of EMCI's corporate officers were truly EMCC employees.

2. EMCC used their business influence and power as controlling shareholder to dominate the sales process and force through the Buyout for the benefit of itself, its Board (including Individual Defendant Kelley), and its policyholders—not EMCI shareholders to whom they owed fiduciary duties. EMCC took numerous steps to eliminate any alternative to the Buyout and ensure they were the sole bidder for the Buyout. In doing so, EMCC removed all bargaining power from the equation obliterating EMCI's ability to conduct a fair sales process or negotiate in an arms-length manner.

3. Specifically, EMCC steam-rolled the entire process to accomplish their desired squeeze out by: (i) publicly announcing that they would not sell their shares in EMCI; (ii) publicly announcing their offer to Buyout EMCI with an inadequate offer; (iii) after receiving a merger offer from a third party, publicly announcing that EMCC would not participate in any transaction with a third party; (iv) rejecting the substantially more lucrative Alternative Proposal that would have provided value to all parties; (v) rejecting the Special Committee's and Sandler O'Neill's \$40 per share valuation; (vi) applying pressure to the Special Committee and forcing the Buyout

through at the inadequate Buyout Price; and (vii) working restrictive provisions into the Merger Agreement to ensure that no superior offer emerged. Simply put, EMCC rigged the game against EMCI minority shareholders to accomplish the Buyout on terms most favorable to EMCC.

4. Given EMCC's approximate 54% ownership of the Company's stock prior to the Buyout, EMCC was by definition the controlling shareholder of the Company with the power to determine the outcome of all matters submitted for approval by EMCI shareholders, including the election of Board members and the approval of corporate transactions. As the Company's controlling shareholder, EMCC owed fiduciary duties to the Company's remaining minority shareholders, which they breached by coercing them into the Buyout for the grossly inadequate Buyout Price. Therefore, the Buyout is subject to the exacting entire fairness standard of review, which requires Defendants to establish that the Buyout was the result of an entirely fair process and resulted in an entirely fair price. As set forth herein, both the Buyout Price and the process by which the Defendants agreed to consummate the Buyout were unfair to the Company's remaining shareholders.

5. Moreover, the Individual Defendants failed in their fiduciary duties to protect EMCI minority shareholder rights and interests. Instead, the Board submitted to EMCC's plan to squeeze out minority shareholder for a drastically undervalued price. On May 8, 2019, EMCI announced that it had entered into an agreement and plan of merger (the "Merger Agreement"), pursuant to which EMCC would acquire all the remaining outstanding shares of EMCI common stock not owned by EMCC and EMCI shareholders would receive \$36.00 in cash for each outstanding share of common stock they own (the "Buyout Price").

6. The Buyout Price was unfair and grossly inadequate because, among other things, the intrinsic value of EMCI common stock is materially in excess of the Buyout Price given the

Company's recent financial performance and its prospects for future growth and earnings. Indeed, the special committee of EMCI's Board (the "Special Committee") and their financial advisor, Sandler O'Neill & Partners, L.P. ("Sandler O'Neill"), determined and affirmed that fair value for the Company was \$40 per share—well above the Buyout Price. Moreover, valuation analyses from both a large, independent shareholder and Sandler O'Neill indicate that fair value for EMCI exceeds \$50 per share.

7. Exacerbating matters even further, the EMCI Board breached its duty of candor by authorizing EMCI to issue the materially incomplete and misleading Schedule 14(a) proxy statement (the "Proxy"), mailed to shareholders on or around August 14, 2019, to convince EMCI shareholders to vote in favor of the Buyout. By withholding material financial analyses performed by Sandler O'Neill, key information related thereto, and other critical information related to the Buyout from the Proxy, the Individual Defendants prevented EMCI shareholders from casting an informed vote or providing meaningful assent to the Buyout.

8. On September 18, 2019, the Company held a special meeting of shareholders to vote on the Buyout (the "Shareholder Vote"), at which the Company's minority shareholders were not fully informed of all material information regarding the unfair Buyout. The Merger Agreement was approved, and the next day, September 19, 2019, EMCI shareholders were cashed out at the grossly inadequate Buyout Price.

9. In pursuing the unfair plan to facilitate the conflicted acquisition of EMCI by EMCC for grossly inadequate consideration, through a process marred by unfairness and conflict, each of the Defendants violated applicable law by directly breaching and/or aiding and abetting the other Defendants' breaches of their fiduciary duties of due care, loyalty, and good faith.

10. For these reasons and as set forth in detail herein, Plaintiff seeks to recover damages

resulting from the Defendants' violations of fiduciary duties, in an amount to be determined at trial.

**JURISDICTION AND VENUE**

11. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that is incorporated in this State, or is an individual who is a director of a corporation incorporated in this State and otherwise has sufficient minimum contacts with Iowa so as to render the exercise of jurisdiction by the Iowa courts permissible under traditional notions of fair play and substantial justice.

12. Venue is proper in this Court because EMCI is headquartered in this County, a substantial portion of the transactions and wrongs complained of herein, including the Defendants' breaches of their fiduciary duties owed to EMCI's shareholders, occurred in this County, and Defendants have received substantial compensation in this County by doing business here and engaging in numerous activities that had an effect in this County.

**PARTIES**

13. Plaintiff Kendall J. Meade was, at all times relevant hereto, the owner of EMCI common stock.

14. Defendant EMCI is an Iowa corporation with its principal executive office located at 717 Mulberry Street, Des Moines, Iowa, 50309. EMCI is an insurance holding company that was incorporated in Iowa in 1974 by Defendant EMCC and became a public company in 1982 following the initial public offering of its common stock. The Company's common stock traded on the Nasdaq under the ticker symbol "EMCI".

15. Defendant EMCC was the controlling shareholder of EMCI. EMCC owned 54% of EMCI prior to the Buyout. EMCC is a multiple-line property and casualty insurance company

organized as an Iowa mutual insurance company in 1911.

16. Individual Defendant Bruce G. Kelley ("Kelley") was EMCI's President, Chief Executive Officer, and a member of its Board, while simultaneously operating as the President and Chief Executive Officer of EMCC and a member of EMCC's Board of Directors.

17. Individual Defendant Peter S. Christie ("Christie") was a member of EMCI's Board since November 2017.

18. Individual Defendant Stephen A. Crane ("Crane") was a member of EMCI's Board since 2009.

19. Individual Defendant Jonathan R. Fletcher ("Fletcher") was a member of EMCI's Board since 2010.

20. Individual Defendant Gretchen H. Tegeler ("Tegeler") was a member of EMCI's Board since 2007.

21. The defendants identified in paragraphs 16-20 are collectively referred to herein as the "Board" or the "Individual Defendants," and together with EMCI and EMCC, the "Defendants."

#### **THE DEFENDANTS' FIDUCIARY DUTIES**

22. By reason of the Individual Defendants' positions with the Company as officers and/or directors, said individuals were in a fiduciary relationship with Plaintiff and the Company's other shareholders, and owed Plaintiff and other members of the Class (defined herein) the duties of care, loyalty, good faith, and candor pursuant to Iowa Code § 490.830, § 490.842, and common law.

23. In light of EMCC's majority ownership of the Company's stock, EMCC was the controlling shareholder of the Company. EMCC owed fiduciary duties of care, loyalty, good faith,

and candor to the Company's remaining shareholders in their capacity as controlling shareholders of the Company. *Cookies Food Products, Inc. v. Lakes Warehouse Distributing, Inc.*, 430 N.W.2d 447, 451-53 (Iowa 1988); *Linge v. Ralston Purina Co.*, 293 N.W.2d 191, 194 (Iowa 1980).

24. Each of the Defendants is required to act in good faith, in the best interests of the Company's minority shareholders and with such care, including reasonable inquiry, as would be expected of an ordinarily prudent person.

25. The duty of loyalty mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director, officer, or controlling shareholder and not shared by the shareholders generally. When a shareholder achieves power through the ownership of stock or other mechanisms of control, and exercises that power by dictating the actions of the corporation, he assumes the duties of care and loyalty of a director of the corporation. A controlling shareholder breaches its fiduciary duties to non-controlling shareholders when it uses its control against the interests of the non-controlling shareholders.

26. In transactions where a controlling shareholder seeks to buyout the shares of minority shareholders or where dealings between corporations and their directors and officers are challenged, the controlling shareholder, directors, and officers bear the burden of establishing the "entire fairness" of the challenged transaction, and the burden is upon them to establish their good faith, honesty, and fairness. *See Atlas Coal Co. v. Jones*, 245 Iowa 506, 61 N.W.2d 663 (1953).

27. Plaintiff alleges herein that the Defendants, separately and together, in connection with the Buyout, violated duties owed to Plaintiff and the Company's other shareholders, including their duties of care, loyalty, and good faith, insofar as they, inter alia, failed to act in the face of a known duty to act, discouraged competitive offers, facilitated a process whereby the Company's minority shareholders were shortchanged for their shares, engaged in self-dealing and/or obtained

for themselves benefits, not shared equally by Plaintiff or the Company's other shareholders, and detrimentally harmed EMCI common shareholders.

**CLASS ACTION ALLEGATIONS**

28. Plaintiff brings this action pursuant to Iowa Rule of Civil Procedure 1.261 on behalf of all holders of EMCI common stock who were harmed by the Defendants' actions described herein (the "Class"). Excluded from the Class are the Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

29. This action is properly maintainable as a class action because:

- a) As of the close of business on August 8, 2019, the record date for the Buyout, there were approximately 21,674,238 shares of EMCI common stock outstanding. The actual number of public shareholders of EMCI will be ascertained through discovery.
- b) There are questions of law and fact which are common to the Class, including *inter alia*, the following:
  - (i) whether the Individual Defendants breached their fiduciary duties owed to Plaintiff and the other members of the Class in connection with the Buyout;
  - (ii) whether EMCC, in its capacity as controlling shareholder of the Company, breached its fiduciary duties owed to the Company's minority shareholders;
  - (iii) whether EMCI aided and abetted the other Defendants' breaches of fiduciary duty; and
  - (iv) whether Plaintiff and the other members of the Class have suffered

damages as a result of the Defendants' alleged wrongdoing.

- c) Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class;
- d) Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class;
- e) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class; and
- f) 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**

#### **Background**

30. EMCC was founded in 1911 by Individual Defendant Kelley's great grandfather as a means of selling insurance at attractive prices to insureds who, as policyholders, would share the benefits of owning the company.<sup>1</sup> EMCC is a multiple-line property and casualty insurance company and acts as the parent company of a group of subsidiary companies known as the EMC Insurance Companies.

31. In 1974 EMCC created EMCI as an insurance holding company. In 1982, EMCC took EMCI public through an initial public offering. In 2004, EMCI issued a secondary offering

---

<sup>1</sup> See Gregory M. Shepard's March 25, 2019 letter to the EMCI Special Committee, page 7, available at: <https://www.sec.gov/Archives/edgar/data/356130/000119312519085385/d640099dex76.htm>. ("Maximizing Value").

lowering their ownership percentage from 81% to 55%.

32. EMCI does not employ any staff to conduct its operations, nor does the Company own or lease any facilities or information technology systems necessary for its operations. The Company relies on EMCC's employees, facilities, and information technology systems to conduct its business. EMCI's property and casualty insurance operations are integrated with those of EMCC and its insurance company subsidiaries and an affiliate through participation in a reinsurance pooling arrangement under which each participant transfers all of its direct insurance business to the pool and, in exchange, receives a designated percentage of the pool's underwriting results.

33. In the time leading up to the Buyout, EMCC owned and controlled approximately 54% of EMCI common stock. This means that EMCC had the ability to determine the outcome of all matters submitted for approval by EMCI shareholders, including the election of its board of directors. In other words, EMCC directly nominated and appointed (or potentially could dismiss) each member of the EMCI Board at will.

34. Accordingly, each member of the Special Committee only sat on the EMCI Board because EMCC placed them there. Thus, each member owed EMCC for their position and knew they were likely to lose their position if they pushed back against EMCC.

35. Seats on the EMCI Board were quite lucrative positions. The four members of the Special Committee received millions of dollars in fees over their tenures with nearly 90% of compensation paid in cash. *Maximizing Value* at 2. And while they have received substantial cash fees at the behest of EMCC, the Special Committee members do not own much EMCI stock. Collectively they owned less than one-quarter of one percent of EMCI's outstanding stock despite receiving most of the non-cash compensation in the form of substantial discounts on the purchase

of EMCI common stock (a 25% discount to fair market value). *Id.* at n. 1. Therefore, the interests of the Special Committee members did not align with those of EMCI common shareholders. In other words, the Special Committee failed to and was incapable of carrying out its function as a safeguard against conflict, was substantively conflicted itself. The Special Committee was for all practical purposes illusory, as it was both conflicted and lacked any meaningful bargaining power.

36. In 2018, for the first time in more than 15 years, the Company lost money for a full year. *Id.* at 2. The Fourth Quarter was particularly bad: the quarterly operating loss was the single worst financial performance in more than twenty years. *Id.* However, some of these losses were incurred voluntarily by EMCC choosing to realize investment losses during the quarter, and the Company's long-term prospects remained strong despite the temporary blip. *Id.*

37. Thus, it was at this time of temporary weakness, when the Company was most undervalued by the market, that EMCC decided to squeeze out EMCI's minority shareholders and take from them the opportunity to participate in the Company's future growth. This predatory timing was not coincidental. It was a tactical effort designed to enable EMCC to acquire minority shareholders' shares for grossly inadequate and unfair value.

#### **The Flawed and Conflicted Sales Process**

38. In late October 2018, EMCC made the unilateral decision to purchase the publicly traded stock of EMCI it did not already own in a going-private transaction. To accomplish their goal, EMCC retained Boenning & Scattergood, Inc. ("Boenning") to provide financial analysis and assist the EMCC board of directors in their goal of the going-private transaction.

39. Shortly after, on November 15, 2018, EMCC sent a non-binding proposal letter to the Company's board offering to purchase the Company stock it did not already own at \$30 per share in a "going-private" transaction. The following day, EMCC publicly filed the letter with the

SEC and issued a press release announcing the \$30 offer.

40. In response to the offer and its publication, on November 20, 2018, the Company's board authorized the formation of the Special Committee consisting of the Company's four directors not on the EMCC board: Individual Defendants Crane, Christie, Fletcher, and Tegeler.

41. On December 11, 2018, the Special Committee retained the law firm of Willkie Farr & Gallagher LLP ("Willkie Farr") to represent the Special Committee. On December 19, 2018, the Special Committee retained Sandler O'Neill to act as financial advisor to the Special Committee.

42. On January 8, 2019, the Special Committee directed Sandler O'Neill to initiate a due diligence investigation of the Company, including requesting various business and financial information and setting up management meetings to discuss the Company's business and prospects.

43. On January 24, 2019, the Special Committee received notice of an unsolicited proposal that EMCC had received in mid-December 2018 from a group of investors regarding a potential joint venture transaction with the Company. Instead of considering the value such a proposal might bring to EMCI shareholders and discussing the opportunity with the Special Committee, EMCC's Board unanimously rejected the proposed joint venture out of hand without input or consultation from EMCI.

44. The next day, on January 25, 2019, the Company received notice of a proposal by Gregory M. Shepard ("Mr. Shepard"), a shareholder of the Company, requesting to be nominated as a candidate for election to the Company's Board and made a member of the Special Committee. On January 28, 2019, Mr. Shepard filed a Schedule 13D with the SEC reporting that he beneficially owned approximately 5.09% of the Company's common stock, and stating that he

believed the Company's common stock was significantly undervalued.

45. On January 31, 2019, to block any other potential third-party transactions from arising, EMCC publicly announced—in both an SEC disclosure and press release—that it was not willing to consider any alternative merger or transaction involving a third party. By doing so, EMCC entirely eliminated any possibility of meaningful negotiation the Special Committee could make on behalf of EMCI.

46. Without the possibility of a competing offer, a market check, or an adequate means of negotiating price with EMCC, the Special Committee held discussions with their advisors regarding the viability of an alternative counter-proposal involving structural changes to the Company's existing pooling arrangement with EMCC (the "Alternative Proposal"). The Alternative Proposal would terminate the Company's existing pooling agreement with EMCC and replace it with a quota share reinsurance agreement.

47. On February 22, 2019, Sandler O'Neill presented to the Board its initial valuation analyses for the EMCI based on the management projections at the time. Additionally, Sandler O'Neill presented financial projections and valuation analyses for EMCI pursuant to the Alternative Proposal. These alternative financial projections were based on the projections prepared by Company management and reflected management's expectations regarding premium volume and losses, but reflected a lower expense ratio for the Company that would result from the Alternative Proposal. Upon examination of the alternative projections, the Alternative Proposal appears to nearly double the value of EMCI:

**Management Financial Projections Prepared in February 2019**

	2019	2020	2021	2022	2023
Premiums earned	\$ 658,806,000	\$ 668,379,000	\$ 697,895,000	\$ 729,301,000	\$ 762,119,000
Investment income, net	50,000,000	52,600,000	53,300,000	54,300,000	56,300,000
Other income	7,473,743	7,473,743	7,473,743	7,473,743	7,473,743
Total revenue	716,279,743	728,452,743	759,168,743	791,074,743	826,392,743
Losses and settlement expense	447,996,762	449,431,091	464,530,715	484,153,018	505,939,535
Dividends to policyholders	10,595,025	10,642,380	11,109,504	11,056,600	11,554,140
Other underwriting expense	214,996,836	218,052,380	227,759,337	237,178,346	246,995,245
Interest expense	632,500	632,500	632,500	632,500	632,500
Other expense	3,700,000	3,700,000	3,700,000	3,700,000	3,700,000
Total losses & expenses	677,971,123	682,803,351	707,732,056	736,770,464	768,571,420
Non-GAAP operating income before income tax*	38,308,620	45,649,392	51,386,687	54,304,279	57,521,323
Income tax	6,254,837	7,971,713	9,174,787	10,606,694	11,150,170
Non-GAAP operating income*	\$ 32,053,783	\$ 37,677,679	\$ 42,211,900	\$ 44,197,585	\$ 46,371,153
Non-GAAP operating earnings per share*	\$ 1.47	\$ 1.73	\$ 1.92	\$ 2.00	\$ 2.09
Average shares outstanding	21,743,380	21,905,001	22,012,748	22,120,495	22,228,242
Combined ratio	102.2%	101.5%	100.5%	100.4%	100.5%

**Alternative Financial Projections Prepared by Sandler O'Neill**

	2019	2020	2021	2022	2023
Premiums earned	\$ 658,806,000	\$ 668,379,000	\$ 697,895,000	\$ 729,301,000	\$ 762,119,000
Investment income, net	50,336,851	53,334,644	55,202,655	56,596,500	58,953,862
Other income	7,473,743	7,473,743	7,473,743	7,473,743	7,473,743
Total revenue	716,616,594	729,187,387	760,571,398	793,371,243	828,551,605
Losses and settlement expense	447,996,762	449,431,091	464,530,715	484,153,018	505,939,535
Dividends to policyholders	10,595,025	10,642,380	11,109,504	11,056,600	11,554,140
Other underwriting expense	176,671,375	184,190,262	197,043,736	207,329,597	216,827,309
Interest expense	632,500	632,500	632,500	632,500	632,500
Other expense	3,700,000	3,700,000	3,700,000	3,700,000	3,700,000
Total losses & expenses	639,645,562	648,646,233	677,066,475	707,121,715	738,703,484
Non-GAAP operating income before income tax*	76,970,932	80,741,154	83,504,923	86,249,528	89,848,121
Income tax	14,373,923	15,279,033	15,919,617	17,210,196	17,938,798
Non-GAAP operating income*	\$ 62,597,010	\$ 65,462,121	\$ 67,585,306	\$ 69,039,332	\$ 71,909,324
Non-GAAP operating earnings per share*	\$ 2.88	\$ 2.99	\$ 3.07	\$ 3.12	\$ 3.24
Average shares outstanding	21,743,380	21,905,001	22,012,748	22,120,495	22,228,242
Combined ratio	96.4%	96.4%	96.4%	96.4%	96.4%

48. After further meeting on February 25, 2019, the Special Committee concluded that the Alternative Proposal would increase value for all shareholders, including EMCC, and determined to present the Alternative Proposal to the EMCC Board.

49. Also, on February 25, 2019, the Special Committee denied Mr. Shepard's request to join the Board or Special Committee.

50. On March 1, 2019, Mr. Shepard wrote a letter<sup>2</sup> to the Special Committee commenting on the underlying value of the Company, the inherently unfair direction the Board was leading the Company, and expressing interest in purchasing the Company:

At the end of the day, Mr. Kelley wants to keep control of the mutual enterprise and for good reason: it is the control that is intensely valuable. However, other significant investors and mutual insurers would jump at the opportunity to buy Mr. Kelley's 4<sup>th</sup> generation control of not only EMCC, but also the Company and the entire enterprise which he controls.

...

Assuming, that EMCI's Special Committee has been fully empowered to act on behalf, and in the best interests, of EMCI and its public shareholders to review the Proposal and consider alternatives thereto, then I would like the opportunity to engage in an open discussion with the special committee on alternative transaction structures or alternative transactions so desired by the Special Committee. I have been in contact with investor(s) with the ability to make a superior offer to your Proposal. I believe that EMCC's Proposal is considerably undervalued and is neither fair nor in the best interests of the minority shareholders. Our offer would not call for any payments from EMCC or the Company, and therefore would benefit your policyholders, agents and employees. We would also be flexible with regards to EMCI's options.

51. On March 5, 2019, representatives for EMCI and EMCC met to discuss the Alternative Proposal. Mr. Crane presented the Alternative Proposal and explained that if the Alternative Proposal were implemented, the Special Committee believed that the Company could achieve a return on equity more in-line with other companies in its publicly traded peer group. Mr. Crane and the representative from Sandler O'Neill also told Mr. Jean and Mr. Jacobs that they believed that, if the Alternative Proposal were put in place, it would result in a higher share price that would benefit the public shareholders, and would also benefit EMCC and its policyholders because the Company would have a correspondingly higher carrying value. In addition, Mr. Crane conveyed the Special Committee's view that the Alternative Proposal could continue to preserve

---

<sup>2</sup> Mr. Shepard subsequently attached the letter as an exhibit to a Schedule 13D filed with the SEC on March 4, 2019 and available at: <https://www.sec.gov/Archives/edgar/data/356130/000119312519061326/d717822dsc13da.htm>

EMCC's culture, distribution relationships and mix of business, as well as allowing the Company to remain a public company, which could create higher visibility for the EMC Insurance Companies and preserve access to public equity capital.

52. On March 13, 2019, EMCC rejected the Alternative Proposal and reaffirmed its goal of executing a going-private transaction for an inadequate price. By rejecting the Alternative Proposal, EMCC deprived EMCI shareholders of substantial value, sabotaged a meaningful alternative to the Buyout, and coerced toothless negotiations for the Buyout Price.

53. On March 20, 2019, based on financial projections provided by Company management and the alternative financial projections, the Special Committee proposed a counter-offer of \$40.00 per share. At a meeting with EMCC on March 22, 2019, Sandler O'Neill presented financial projections and multiple valuation analyses, including metrics regarding four prior acquisitions of downstream public stock subsidiaries of mutual insurance companies, two of which involved acquisitions of the mutual insurance company and the public company subsidiary by a third party, in which the average price paid was approximately two times book value, to support the Special Committee's proposed price of \$40.00 per share.

54. On March 25, 2019 Mr. Shepard sent another letter to the Special Committee—"Re: Maximizing Value for EMCI Shareholders"—a expressing his concerns about the Special Committee's independence, the control Individual Defendant Kelley and EMCC had exerted during the process, and in gross inadequacy of EMCC's offer:

Make no mistake. EMCC does not want the Company to look at its various alternatives as a way to gauge fair value. To highlight this point – and strongly discourage any other suitor from showing up – EMCC issued a "clarification" to its Proposal on January 31. In that statement, EMCC noted that, as the controlling shareholder of the Company, it is "not willing to consider" any proposal or structure other than one involving the Company and EMCC combining. In other words, no alternative suitors need apply!

This heavy-handed attempt to block a legitimate market-check, to narrow the alternatives for the Company, and to limit the price discovery that the Special Committee could otherwise conduct was clearly an effort to coerce the Special Committee and shareholders into accepting EMCC's opportunistic, low-priced offer. The Special Committee, now without the ability to shop EMCC's proposal, is left to hypothetical alternative transactions and investment banker math, instead of real, legitimate alternatives.

This is hugely disappointing because we believe a consolidation of EMCC with another mutual insurance company would not only help fulfill EMCC's stated mission — providing attractive and low-cost insurance products to insureds inside and outside of Iowa (through additional lines, lower cost of capital, a stronger balance sheet and increased diversity among other things) — it would allow the Company to achieve a significantly better outcome for shareholders than the Proposal. I have carefully followed many mutual-to-mutual consolidations and affiliations and they almost always produce excellent outcomes for all constituents, save perhaps the controlling CEO or founder of the mutual insurance company.

I believe Mr. Kelley's attempt to shut down the strategic alternatives review is a selfish act aimed at keeping tight control of EMCC and the Company. It is not in the policyholders' interests or in the interests of the Company's shareholders. And, I believe, the Company should not agree to unilateral negotiations with EMCC. Competitive bidding is the best way to determine the fair clearing price for an asset.

So, while EMCC has attempted, for its own advantage, to prohibit a competitive process, the Special Committee should nevertheless consider the structure under which the Company's value would be maximized and insist upon a price from EMCC that at least matches what could have been achieved in a properly structured process. The Special Committee should not allow EMCC to push hard on the scale and then pay the discounted price that results from the mis-measurement of the Company's opportunity and value.

\*\*\*

The Proposal is not reflective of the value of the Company to either EMCC or to another mutual insurance company that would consolidate with EMCC. In fact, the Proposal represents a mere 1.13 times price-to-book ratio on the Company's September 30, 2018 book value of \$26.63.

This is at least a full turn lower than the precedent transactions for an asset that is substantially more attractive than the public companies in most of those prior transactions.

The \$30 per share price in the Proposal is significantly below fair value.

**The Offer Premium is Misleading to Shareholders and Inadequate in Any**

## Event

EMCC touts that the Proposal represents a 26% premium to the Company's closing price on the day before the offer.

First, this too is obviously inadequate compared to the precedent transactions as shown in the table above. There is a good reason that these transactions occur at high premiums. Downstream public insurance companies always trade at a discount to their value in a consolidation because the parent mutual company controls the timing of any such go-private transaction. But, when transactions occur, those public companies rightly insist on full value for their contributions to the consolidated entity. The same should be true here.

Second, after the Company's stock has underperformed for years at the hands of EMCC, it is surely unfair to use that depressed stock price as a basis for an offer. EMCC should not be permitted to manage the Company inadequately and then to benefit from that poor performance in a takeout. Moreover, the stock price at the time of the Proposal was down significantly because of short-term issues: storms and casualties that were of unknown loss severity for the Company. (It should also be noted that the Company revised downward its earnings guidance on July 26, when the stock was trading above \$28 per share.) The Proposal represents a mere 7% premium to these late summer price levels and a discount to the then 52-week high, which was achieved in November 2017.

I am mindful as well that the Company's stock has traded at a premium to the Proposal's offer price ever since the Proposal was announced. This trading history reflects a widespread belief on the part of the Company's owners that EMCC can and should pay substantially more for the Company.

If the Special Committee were to recommend the Proposal at the offer price, it would clearly be doing so in spite of clear precedents that indicate the *fair price for the Company to be fur in excess of \$50 per share*.

*Maximizing Value* at 4, 6-7 (emphasis added).

55. On April 1, 2019, EMCC rejected the Company's \$40 counter-offer, but revised its bid to \$33.

56. On April 4, 2019, the Special Committee rejected the \$33 bid and re-affirmed that fair value for the Company was \$40 per share.

57. Impatient with anything resembling a negotiation, on April 10, 2019, EMCC put its foot down with a best and final offer of \$36.00 per share, despite the Special Committee's

continued insistence that fair value for the Company was \$40 per share. To display its strength, EMCC proceeded to threaten the Special Committee with potential risks should the going-private transaction not be completed, and firmly stated that any further counteroffers would be rejected.

58. On April 16, 2019, the Special Committee made a counter-proposal of \$38 based on the Company's promising financial results from the beginning of 2019, including the Company's positive growth in book value per share.

59. Again, EMCC rejected the counterproposal out of hand and indicated it would not pay more than \$36.00 per share under any circumstances.

60. The Special Committee made two more feeble attempts to increase the potential Buyout Price, but were unsuccessful in obtaining fair value to shareholders. On April 16, 2019, the Company asked for a \$1.00 per share special dividend to be paid in addition to the \$36.00 per share offered by EMCC. Later that day, EMCC rejected paying a \$1.00 special dividend.

61. On April 19, 2019, the Special Committee made a counteroffer of \$37.00 per share based upon the increase in the Company's book value per share as of March 31, 2019; however, once again EMCC rejected the Special Committee's valuation. Moreover, frustrated with these last gasp attempts at negotiation, EMCC set an ultimatum, stating that it would withdraw its offer of \$36 per share if the Special Committee did not accept it by 5:00 pm on Monday, April 22.

62. Faced with the ultimatum given by EMCC, on April 20, 2019, the Special Committee submitted and agreed to the \$36 Buyout Price.

63. The two parties proceeded to negotiate the terms of the Merger Agreement over the next few days. During those negotiations, EMCC ensured that a superior proposal would not emerge through the implementation of preclusive deal protection devices. On April 30, 2019, Willkie Farr informed the Special Committee that the Merger Agreement contained a "no shop"

provision which would prohibit the Company or the Special Committee from soliciting bids from other potential acquirers. On May 3, 2019, EMCC rejected a provision requiring EMCC to vote in favor of a competing proposal if the price offered were at least 110% of the Buyout Price. On May 8, 2019, the parties executed the Merger Agreement.

64. The next morning, on May 9, 2019, prior to the opening of trading on the NASDAQ, the Company and EMCC announced the Merger and issued a joint press release, in which David J.W. Proctor, Chairman of the Board of Directors of EMCC, stated:

We believe this transaction will drive enhanced value for our organization and our policyholders. The resulting simplified ownership structure will eliminate the divergent corporate financial and operational expectations of multiple stakeholders and allow us to focus solely on serving the best interests of our policyholders. The transaction will also eliminate the costs and regulatory burdens of maintaining a publicly-traded company and provide us with increased financial flexibility to more effectively deliver enhanced value for our policyholders. Additionally, we fully expect to retain our 'A' rating from A.M. Best after the completion of this transaction.

65. Throughout their plan to squeeze out EMCI minority shareholders, EMCC made clear that they were acting in the best interests of EMCC, its Board (including Individual Defendant Kelley), and its policyholders—not EMCI minority shareholders. At every turn EMCC took the action best suited to minimize value for EMCI minority shareholders: (i) EMCC publicly announced that they would not sell their shares in EMCI, sending a clear message to other interested suitors that they should not even attempt to make an alternative proposal; (ii) EMCC publicly announced their offer to Buyout EMCI at an inadequate price; (iii) after receiving a merger offer from a third party, EMCC announced that it would not participate in any transaction with a third party; (iv) EMCC rejected the substantially more lucrative Alternative Proposal; (v) EMCC rejected the Special Committee's and Sandler O'Neill's \$40 valuation; (vi) EMCC applied unreasonable pressure to the Special Committee and forced the Buyout through at the inadequate

Buyout Price; and (vii) EMCC included restrictive provisions in the Merger Agreement to ensure that no superior offer would emerge. In short, EMCC entirely abandoned the fiduciary duties it owed to EMCI minority shareholders.

66. The Individual Defendant's failure to act in accordance with their fiduciary duties cost shareholders millions of dollars. The EMCI Board had a duty to protect shareholders interests, even if that meant continuing as a standalone company, but it instead abdicated those duties, obsequiously complied with the desires of EMCC, and executed a conflicted transaction with the Company's controlling shareholder for an inadequate price.

### **The Grossly Inadequate Buyout Price**

67. On May 9, 2019, the very next day after the executing the Merger Agreement, the Company announced excellent financial results for the first quarter ended March 30, 2019. The press release stated, in part:

EMC Insurance Group Inc. (Nasdaq:EMCI) (the "Company"), today reported net income of \$33.5 million (\$1.55 per share) and a loss and settlement expense ratio of 62.7 percent for the first quarter ended March 31, 2019, compared to a net loss of \$76,000 (\$0.00 per share) and a loss and settlement expense ratio of 71.0 percent for the first quarter of 2018. Included in the net income amount reported in 2019 is a \$19.8 million pre-tax increase in unrealized investment gains on the Company's equity investments, and \$2.8 million of pre-tax realized investment gains. Included in the net loss reported in 2018 is a \$9.9 million pre-tax decline in unrealized gains on the Company's equity investments, partially offset by \$4.5 million of pre-tax realized investment gains.

Both segments reported improved underwriting results in the first quarter of 2019. The property and casualty insurance segment benefited from a significant increase in favorable development on prior years' reserves compared to the relatively low amount reported in the first quarter of 2018. In addition, the underlying loss and settlement expense ratio\* (which excludes the impact of catastrophe and storm losses and development on prior years' reserves) improved from the results reported in the first quarter of 2018, which was impacted by a high level of non-catastrophe losses. The improvement in the underlying loss and settlement expense ratio is primarily due to reductions in the current accident year ultimate loss and settlement expense ratio projections in the commercial liability and commercial automobile lines of business. This was partially offset by an increase in the projection in the

workers' compensation line of business. The improvement in the reinsurance segment is attributed to an increase in premiums earned and improved loss experience.

Non-GAAP operating income, which excludes net realized investment gains and the change in net unrealized investment gains on equity investments from net income, totaled \$15.6 million (\$0.72 per share) for the first quarter of 2019, compared to \$4.2 million (\$0.19 per share) for the first quarter of 2018. The Company's GAAP combined ratio was 95.8 percent in the first quarter of 2019, compared to 104.6 percent in the first quarter of 2018.

"Although much of the country experienced harsh winter conditions again in 2019, we did not experience a high level of non-catastrophe losses like we did in 2018," stated President and Chief Executive Officer Bruce G. Kelley. "While we are pleased with the strong start to the year, it is important to note that approximately half of the improvement over 2018 is attributed to a large increase in favorable development on prior years' reserves in the property and casualty insurance segment."

Kelley continued, "During 2018, EMCC Casualty Company began a digital transformation project to replace its legacy systems. After nearing completion of the planning stage, a vendor product has been selected and a five-year timeline has been established. We currently estimate that the Company's portion of the pre-tax expense will approximate \$28.0 million over the next five years. We anticipate beginning implementation in the third quarter."

"The transition out of personal lines business is advancing according to plan and continues to have little impact on our commercial lines business," concluded Kelley.

Premiums earned increased 7.4 percent for the first quarter of 2019. In the property and casualty insurance segment, premiums earned increased 5.2 percent. The majority of this increase is attributed to the commercial lines of business due to an increase in retained policies and small rate level increases on renewal business. Premiums earned in the personal lines of business were down 2.8 percent in the first quarter, and this decline will increase significantly during the remainder of the year as the pace of non-renewals increases. In the reinsurance segment, premiums earned increased 14.5 percent in the first quarter. This increase stems from increases in participation on existing multi-line contracts, higher estimated premiums and the addition of new business.

Catastrophe and storm losses totaled \$5.9 million (\$0.22 per share after tax) in the first quarter of 2019, compared to \$4.7 million (\$0.17 per share after tax) in the first quarter of 2018. On a segment basis, catastrophe and storm losses for the first quarter of 2019 amounted to \$5.9 million (\$0.22 per share after tax) in the property and casualty insurance segment, and \$19,000 (\$0.00 per share after tax) in the

reinsurance segment.

The Company reported \$13.3 million (\$0.49 per share after tax) of favorable development on prior years' reserves during the first quarter of 2019, compared to \$5.6 million (\$0.21 per share after tax) in the first quarter of 2018. In the property and casualty insurance segment, favorable development totaled \$9.6 million, compared to \$2.1 million in 2018. The increase in favorable development occurred across all commercial lines of business and is primarily attributed to decreases in the ultimate severity estimates for several accident years. The commercial auto liability and workers' compensation lines of business were the largest contributors to favorable development. In the reinsurance segment, favorable development totaled \$3.6 million, which is comparable to the \$3.4 million reported in the first quarter of 2018.

Net investment income increased 12.2 percent to \$12.8 million for the first quarter ended March 31, 2019, from \$11.4 million for the first quarter of 2018. This increase is primarily the result of actions taken during 2018 to sell fixed maturity securities with lower book yields and reinvest the proceeds in fixed maturity securities with similar characteristics, but higher book yields.

The pre-tax realized investment gains of \$2.8 million and \$4.5 million reported for the first quarters of 2019 and 2018, respectively, include \$938,000 of pre-tax realized investment losses and \$1.8 million of pre-tax realized investment gains, respectively, generated from changes in the carrying value of a limited partnership that helps protect the Company from a sudden and significant decline in the value of its equity portfolio (the equity tail-risk hedging strategy).

Other income totaled \$1.5 million in the first quarter of 2019, compared to \$1.6 million in the first quarter of 2018. The 2019 amount includes \$1.3 million of net periodic pension and postretirement benefit income. The 2018 amount includes \$1.9 million of net periodic pension and postretirement benefit income and \$436,000 of foreign currency exchange loss.

At March 31, 2019, consolidated assets totaled \$1.7 billion, including \$1.6 billion in the investment portfolio, and stockholders' equity totaled \$616.3 million, an increase of 8.9 percent from December 31, 2018. Book value of the Company's common stock increased 8.6 percent to \$28.44 per share from \$26.18 per share at December 31, 2018, primarily due to the net income reported for the first quarter of 2019 and an increase in unrealized investment gains on the fixed maturity portfolio attributable to a decline in interest rates during the first quarter.

Based on actual results for the first three months of 2019 and updated projections for the remainder of the year, management is reaffirming its 2019 non-GAAP operating income guidance range of \$1.35 to \$1.55 per share. This guidance is based on a projected GAAP combined ratio of 101.4 percent for the year and now includes anticipated expenses associated with EMCC Casualty Company's

(EMCC's) digital transformation project and estimated expenses to be incurred by the Company in connection with its pending going-private transaction. Nominal changes were also made to the other assumptions utilized in the projection.

68. Rather than continuing EMCI as a standalone company to build upon its bright financial prospects, the Individual Defendants capitulated to EMCC and executed the Buyout for the grossly inadequate Buyout Price. The Buyout Price is demonstrably lower than the \$40 per share price that the Special Committee and Sandler O'Neill found to represent fair value. Given the Company's recent, positive financial performance—especially in light of the predatory timing of the Buyout Process—and its prospects for future growth and earnings, the intrinsic value of EMCI common stock is materially in excess of the amount shareholders received.

69. Indeed, Sandler O'Neill presented financial projections and valuation analyses to both the Special Committee and the EMCC Board, including metrics regarding four prior acquisitions of downstream public stock subsidiaries of mutual insurance companies, two of which involved acquisitions of the mutual insurance company and the public company subsidiary by a third party, in which the average price paid was approximately two times book value, to support the Special Committee's proposed price of \$40.00 per share. In other words, \$36 was woefully inadequate.

70. Moreover, Mr. Shepard independently came to the same conclusion using a very similar precedent transactions-based analysis and came to a valuation of over \$50 per share. *Maximizing Value* at 1, 5, 7.

71. Additionally, the value of EMCI illustrated by the alternative projections and the omitted Alternative Proposal valuation analyses, discussed below, makes it clear that \$36 per share was not fair value for EMCI shareholders. In fact, the DCF performed by Sandler O'Neill using the alternative projections found the Company to be worth over \$50 per share as well.

72. In sum, the Buyout Price inadequately compensated EMCI shareholders. Given the predatory timing of the Buyout, the recent financial uptick, and the considerably higher value that the Alternative Proposal would have provided EMCI shareholders, the Buyout was far from a superior proposal, particularly in light of the fact that EMCI shareholders were asked to accept a one-time, cash payment in exchange for losing their equity interest in EMCI.

**The Proxy Omitted Material Information**

73. It was critical that shareholders received complete and accurate information about the Buyout prior to casting their votes. However, the Individual Defendants failed to provide shareholders with all such material information. As set forth in more detail below, the Proxy filed by EMCI omitted and/or misrepresented material information. Moreover, the Individual Defendants were obligated to carefully review the Proxy before it was mailed to the Company's shareholders to ensure that it did not contain any material misrepresentations or omissions. However, the Proxy misrepresented or omitted material information that was necessary for the Company's shareholders to make an informed voting decision in connection with the Buyout.

74. First, the Proxy entirely omitted the financial analyses Sandler O'Neill performed for the Company under the Alternative Proposal, despite purporting to provide a summary of the financial advisor's work. This is an incredibly important omission given the vast difference in value for the Company under the Alternative Proposal.

75. On February 22, 2019, Sandler O'Neill presented a DCF to the Board performed using the alternative projections. The results of this DCF were staggering. The DCF presented an upper valuation of EMCI under the Alternative Proposal of \$50.11—60% higher than the upper value presented by the DCF in the Proxy (\$31.35) and 39% higher than the value of the Buyout Price (\$36).

76. The astounding difference between the valuations disclosed in the Proxy and those contained in the withheld analyses would have undoubtedly been considered important information by EMCI shareholders, because it would have illustrated to them in a plain and easily understandable fashion the value taken from them by EMCC rejecting the Alternative Proposal. Any shareholder would clearly be able to tell that \$50 is significantly more than \$36.

77. Second, the Proxy disclosed three sets of management prepared financial projections: November 2018 projections, February 2019 projections, and May 2019 projections. Each iteration of the financial projections was a downward revision from the previous. However, the Proxy failed to disclose the reasoning or justification for such downward revisions. In fact, given the positive First Quarter 2019 financial results, the last downward revision is particularly alarming. This alarm is amplified given the timing of the final revision after the deal price had already been locked in and the Company was looking to justify the fairness of the inadequate Buyout Price to its minority shareholders. Further, it is important to note that the projections utilized in these valuations were prepared by EMCC, not any independent entity of EMCI. Thus, they were prepared by the very company looking to demonstrate the lack of EMCI value and acquire it as cheaply as possible. In fact, the only set of projections not prepared by EMCC were those prepared by Sandler O'Neill, which illustrate EMCI was worth nearly twice the value of the EMCC prepared projections.

78. Moreover, the Proxy failed to disclose that—only *after* it became apparent that the Special Committee was not going to be able to meaningfully negotiate with EMCC and achieve the determined fair value of \$40 per share—Sandler O'Neill significantly increased the Company's discount rate<sup>3</sup> used in its valuation analyses in order frame the inadequate Buyout Price as fair to

---

<sup>3</sup> In performing a DCF, a financial advisor must select the appropriate rate at which to discount the future cash flows back to present value. This rate is known as a discount rate, and the per share values rendered from a DCF are

EMCI shareholders. From its initial analyses through March 2019, Sandler O'Neill used a discount rate of 9%, however, the Proxy states that Sandler O'Neill used a discount rate of 12.66%. Such a significant increase—without any apparent or communicated underlying cause—would dramatically alter the value rendered by the valuation analyses and manufacture a perception of fairness.

79. The Board had a duty to review Sandler O'Neill's analyses in connection with their receipt of the fairness opinion, question Sandler O'Neill as to its derivation of fairness, be particularly attentive to the procedures followed in preparing the Proxy, and review it carefully before disseminating it to shareholders. Indeed, the Proxy at page 38 states that the Special Committee considered the financial analyses and fairness opinion of Sandler O'Neill, which the Special Committee adopted as its own. Further, the Individual Defendants were privy to and had knowledge of the projections for the Company, since they furnished Sandler O'Neill with those projections. Therefore, the Board either failed to inform itself as to valuation and properly engage Sandler O'Neill, or were aware of this substantial alteration of the discount rate and chose to conceal it from the shareholders.

80. Finally, the Proxy failed to provide adequate disclosure regarding Mr. Shepard's interest in purchasing the Company. Once a proxy statement travels down the road of partial disclosure of the history leading up to a merger, the duty of disclosure requires Defendants to provide shareholders with an accurate, full, and fair characterization of those historic events.

81. The Proxy disclosed that on March 1, 2019, Mr. Shepard sent a letter to the Board announcing his interest in making an offer for the Company. The Proxy then makes reference to the exchange of two more letters, but fails to adequately describe their nature and contents. The

---

highly sensitive to even minor changes in a discount rate. Generally, with all other variables being held equal, if the chosen discount rate utilized in a DCF is raised, the resulting per share value will decrease.

Proxy fails to disclose that Mr. Shepard requested a confidentiality agreement from the Company to exchange valuation and alternatives to the Buyout, but was rejected. Further, the Proxy describes the March 25, 2019 letter as “an analysis of why he believed EMCC's initial offer price of \$30.00 per share was inadequate and urged the Special Committee to consider alternatives to the going-private transaction” but failed to disclose the allegations of conflicts of interest and breaches of fiduciary duty by the Special Committee, Mr. Shepard's well-supported \$50 per share valuation, or the predatory timing of the Buyout.

82. When a board chooses to disclose a course of events or to discuss a specific subject, it cannot do so in a materially misleading way, by disclosing only part of the story, and leaving the reader with a distorted impression. Disclosures must provide a balanced, truthful account of all matters they disclose.

83. The omission of the above-referenced material information rendered the Proxy materially incomplete and misleading, in contravention of the Defendants' fiduciary duties. As a result of these material omissions and misleading statements, EMCI shareholders were not fully informed when they voted on the Buyout.

84. Furthermore, given that EMCC refused to allow for any alternative proposals besides the Buyout, the Buyout was coercive to minority shareholders.

85. In sum, the Defendants conducted a deeply conflicted and flawed sales process that resulted in Plaintiff and the Class receiving grossly inadequate compensation for their shares, and caused a materially incomplete and misleading Proxy to be mailed to shareholders. The Defendants prevented Plaintiff and the Class from being adequately compensated for their EMCI shares, and the Board deprived the Company's shareholders of the ability to cast a fully informed vote with respect to the Buyout. Accordingly, Plaintiff seeks monetary damages.

**FIRST CAUSE OF ACTION**

**Claim for Breach of Fiduciary Duties Against the Individual Defendants in Their Capacities as Directors and/or Officers of the Company**

86. Plaintiff incorporates by reference and re-alleges each and every allegation contained above as though fully set forth herein.

87. The Individual Defendants have breached their fiduciary duties of care, loyalty, good faith, and candor owed to the public shareholders of EMCI.

88. By the acts, transactions and courses of conduct alleged herein, the Individual Defendants, individually and acting as a part of a common plan, unfairly deprived Plaintiff and other members of the Class of the true value of their investment in EMCI. The Individual Defendants intentionally failed to act in the face of a known duty to act, demonstrating a conscious disregard for their duties.

89. As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duties of loyalty and good faith owed to the shareholders of EMCI because, among other reasons, they: (i) facilitated and oversaw a conflicted sales process and agreed to the conflicted Buyout with the Company's controlling shareholder for inadequate consideration; (ii) failed to obtain fair consideration for EMCI shareholders in connection with the Buyout; (iii) agreed to unfair provisions in the Merger Agreement that impede superior bidders from emerging; and (iv) authorized the filing of the materially incomplete and misleading Proxy.

90. The Individual Defendants controlled the business and corporate affairs of EMCI, and are in possession of private corporate information concerning EMCI's assets, business, and future prospects. Thus, there existed an imbalance and disparity of knowledge and economic power between them and the public minority shareholders of EMCI.

91. By reason of the foregoing acts, practices and course of conduct, the Individual Defendants failed to exercise ordinary care and diligence in carrying out their fiduciary obligations toward Plaintiff and the other members of the Class, and acted in bad faith in facilitating the Buyout.

92. As a result of the actions of the Individual Defendants, Plaintiff and the Class have suffered damages in that they did not receive the fair and intrinsic value of their common stock. The amount of damages will be determined at trial.

**SECOND CAUSE OF ACTION**

**Claim for Breach of Fiduciary Duties Against EMCC in its Capacity as Controlling Shareholder of the Company**

93. Plaintiff incorporates by reference and re-alleges each and every allegation contained above as though fully set forth herein.

94. EMCC exercised control over the business and affairs of the Company. As a controlling shareholder of the Company, EMCC owed fiduciary duties of care, loyalty, and good faith to the Company's minority shareholders.

95. EMCC breached its fiduciary duties owed to the unaffiliated public shareholders of EMCI. By the acts, transactions and courses of conduct alleged herein, EMCC unfairly deprived Plaintiff and the Class of the true value of their shares.

96. As demonstrated by the allegations above, EMCC failed to exercise the necessary care required, acted in bad faith, and breached their fiduciary duties as a controlling shareholder by, among other things:

a. extracting personal financial benefits for EMCC in connection with the Buyout, at the expense of the Company's minority shareholders:

- b. blocking and/or rejecting any alternative proposals, and thereby eliminating any meaningful alternative that was available to the Company's minority shareholders;
- c. failing to properly value minority shareholders' shares;
- d. failing to take all steps reasonable and necessary to obtain fair consideration for the Company's unaffiliated shareholders;
- e. failing to act independently to protect the interests of the Company's unaffiliated shareholders;
- f. failing to adequately ensure that no conflicts of interest existed between its interests and its fiduciary obligations; and
- g. failing to ensure that all conflicts of interest were resolved in the best interests of EMCI's unaffiliated public shareholders.

97. A controlling shareholder breaches its fiduciary duties to non-controlling shareholders when it uses its control against the interests of the non-controlling shareholders.

98. As a result of EMCC's breaches of fiduciary duty, Plaintiff and the members of the Class seek damages, in an amount to be determined at trial.

### **THIRD CAUSE OF ACTION**

#### **Claim for Aiding and Abetting Against EMCI**

99. Plaintiff incorporates by reference and re-alleges each and every allegation contained above as though fully set forth herein.

100. EMCI aided and abetted the remaining Defendants' breaches of their fiduciary duties owed to the public shareholders of EMCI, including Plaintiff and the members of the Class.

101. The Individual Defendants owed to Plaintiff and the members of the Class certain fiduciary duties as fully set forth herein. Additionally, EMCC owed fiduciary duties to Plaintiff

and the Class in its capacity as a controlling shareholder of the Company.

102. The officers and management of EMCI had an abounding conflict with EMCC given that they were all employees of EMCC.

103. By committing the acts alleged herein, the Individual Defendants and EMCC breached their fiduciary duties owed to Plaintiff and the members of the Class. As described above, EMCI aided and abetted the Individual Defendants' breaches of fiduciary duties, and was an active and knowing participant in the Individual Defendants' breaches of fiduciary duties owed to Plaintiff and the members of the Class. Amongst other actions, EMCI facilitated the filing and dissemination of the materially incomplete and misleading Proxy that was used to solicit shareholders to vote in favor of the Merger. EMCI is identified as the registrant in the Proxy. Additionally, the Merger Agreement was entered into by and between EMCI and EMCC.

104. As a result of the aiding and abetting of EMCI, Plaintiff and the members of the Class seek damages, in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands 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 and certifying Plaintiff as class representative and his counsel as class counsel;
- B. Awarding Plaintiff and the Class all damages suffered as a result of the Defendants' wrongdoing, including pre and post-judgment interest;
- C. Awarding Plaintiff and the Class the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and
- D. Granting such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

DATED: October 22, 2019

**LOCAL COUNSEL**

**OF COUNSEL**

**MONTEVERDE & ASSOCIATES PC**

Juan E. Monteverde  
Miles D. Schreiner  
The Empire State Building  
350 Fifth Avenue, Suite 4405  
New York, NY 10118  
Tel: (212) 971-1341  
Fax: (212) 202-7880  
Email: [jmonteverde@monteverdelaw.com](mailto:jmonteverde@monteverdelaw.com)  
[mSchreiner@monteverdelaw.com](mailto:mSchreiner@monteverdelaw.com)

**ADEMI & O'REILLY, LLP**

Guri Ademi  
Shpetim Ademi  
Jesse Fruchter  
3620 East Layton Ave.  
Cudahy, WI 53110  
Telephone: (414) 482-8000  
Fax: (414) 482-8001  
Email: [gademi@ademilaw.com](mailto:gademi@ademilaw.com)  
[sademi@ademilaw.com](mailto:sademi@ademilaw.com)  
[jfruchter@ademilaw.com](mailto:jfruchter@ademilaw.com)

*Counsel for Plaintiff*



By: \_\_\_\_\_

Gary Dickey, AT0001999  
Matthew M Sahag, AT0008849  
Dickey, Campbell & Sahag  
Law Firm, PLC  
301 E. Walnut Street, Ste 1  
Des Moines, IA 50309  
Tel: (515) 288-5008  
Fax: (515) 288-5010  
Email: [gary@iowajustice.com](mailto:gary@iowajustice.com)  
[matthew@iowajustice.com](mailto:matthew@iowajustice.com)

*Counsel for Plaintiff*