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<th>In Re CNL HOTELS &amp; RESORTS, INC. Securities Litigation</th>
<th>Case No. 6:04-cv-1231-Orl-31KRS (Consolidated with 6:04-cv-1341-Orl-19JGG)</th>
<th>CLASS ACTION</th>
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DECLARATION OF NICHOLAS E. CHIMICLES IN SUPPORT OF FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION AND AWARD OF ATTORNEYS' FEES AND EXPENSES.
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1. I am a partner of the firm of Chimicles & Tikellis LLP, and I submit this declaration in support of Plaintiffs’ Memorandum of Law in Support of Final Approval of the Class Action Settlement, Plan of Allocation and Award of Attorneys’ Fees and Expenses (“Plaintiffs’ Memorandum”).

2. I am admitted to practice in the Commonwealth of Pennsylvania and before a variety of federal courts. I have been admitted pro hac vice in connection with the above captioned action.

3. The following Exhibits are submitted in support of Plaintiffs’ Memorandum.

Attached hereto is a true and correct copy of the following:

<table>
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<tr>
<th>Exhibit</th>
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<tr>
<td>A</td>
<td>April 24, 2006 Order Granting Preliminary Approval of the Class Action Settlement</td>
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<td>B</td>
<td>Affidavit of James M. Vodola in Support of (i) The Settlement and (ii) Plaintiffs’ Counsel’s Application for Attorneys’ Fees and Reimbursement of Expenses (“Vodola Aff.”)</td>
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<td>Affidavit of Lawrence A. Sucharow in Support of Joint Petition for Attorneys’ Fees and Expenses Filed on Behalf of Labaton Sucharow &amp; Rudoff, LLP.</td>
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<td>Affidavit of Lawrence P. Kolker in Support of Joint Petition for Attorneys’ Fees and Expenses Filed on Behalf of Wolf Haldenstein Adler Freeman &amp; Herz LLP</td>
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<td>Affidavit of George E. Ridge in Support of Joint Petition for Attorneys’ Fees and</td>
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<td>Affidavit of Leigh R. Lasky in Support of Joint Petition for Attorneys’ Fees and</td>
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<td>Affidavit of Thomas C. Michaud in Support of Joint Petition for Attorneys’ Fees and</td>
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<td>Chimicles &amp; Tikellis LLP Lodestar Report</td>
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<td>Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (“Final</td>
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<td>Judgment”)</td>
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<td>X</td>
<td>May 23, 2006 Objection Filed by Joffre Duran and Mirta Duran</td>
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4. This Declaration also catalogues the vigorous prosecution of this Action by Plaintiffs’ Counsel.

A. **Background of the Company**

1. **Nature of Business**

5. Defendant CNL Hotels was formed in 1996 and is primarily engaged in the acquisition, development and ownership of interests in hotel and resort properties including limited service hotels, extended stay hotels, and full service hotels and resorts (collectively, “Properties”). (Complt, ¶ 49). From its formation through September 30, 2004, CNL Hotels raised approximately $3.1 billion from the investing public, who have purchased approximately

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1 Unless otherwise indicated, all capitalized terms used herein have the same meaning as in the Consolidated Second Amended Class Action Complaint filed in this Action on October 10, 2005 (“Complaint” or “Complt”) and in the Stipulation of Settlement dated April 3, 2006 (“Stipulation”).
308,000,000 shares via small broker dealers at a pre-reverse split price of $10 a share. (Complt, ¶ 50).

6. CNL Hotels is a real estate investment trust ("REIT") that combines the capital of many investors to own and, in most cases, operate income-producing real estate. As a REIT, CNL Hotels is not treated for federal income tax purposes as a corporation, and thus, is not taxed at the corporate level on its "real estate investment trust taxable income" that is distributed to shareholders. (Complt, ¶ 52). CNL Hotels thereby eliminates "double taxation" on its earnings. (Id.)

7. In addition, CNL Hotels is a publicly held unlisted REIT, meaning that, (1) it is public because it is registered with the SEC, can sell to the investing public rather than only to "qualified investors" and is required to file reports with the SEC; and (2) it is unlisted because its securities are not listed on a national stock exchange. (Complt, ¶ 54) Similar to many unlisted public REITs, CNL Hotels has a fixed life – if its stock is not listed on a national securities exchange or over-the-counter market by December 31, 2007, CNL Hotels must sell its assets and distribute the proceeds. (Id) ¶ 55). Prior to such time, if an investor wants to cash out, he may be able to sell his shares back to CNL Hotels ("CNL Redemption Plan") or on a secondary market. (Id.).

2. The Advisor

8. CNL Hotels is also an externally managed REIT, which means that an external business entity has been employed or contracted with by CNL Hotels to "direct[] or perform[]

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2 On June 21, 2006, CNL Hotels completed the Merger of the Company and the Advisor, pursuant to the terms of the Amended Merger Agreement, New Proxy and shareholder approval thereof. See ¶ 176, below. Thus, statements herein concerning the Advisor or the Company’s status as an externally-managed REIT refer to the conditions that existed prior to the merger.
the day-to-day business affairs” of CNL Hotels. (Complt ¶ 58). Defendant CNL Hospitality Corp., a Florida Corporation, organized on January 7, 1997 is CNL Hotels’ Advisor (the “Advisor”). (Id. ¶ 57).

9. The Advisor is owned directly or indirectly by several individual defendants, including James M. Seneff, Jr., Robert Bourne, Griswold and Hutchison, and all of the officers and a majority of the directors of the Advisor are CNL Hotels’ officers and directors, see ¶ 12, below. The Advisor provides management, advisory and administrative services to CNL Hotels as well as assists in developing and identifying for acquisition Properties for CNL Hotels and its subsidiaries. (Complt, ¶¶ 57, 62-65). With no employees of its own, CNL Hotels is effectively run, with many of its essential business functions including responsibility for CNL Hotels’ accounting, financial and regulatory compliance reporting and stockholder distributions and reporting being performed, by the Advisor. (Id.)

10. For its services, pursuant to the Advisory Agreement, the Advisor receives certain fees. (Complt, ¶ 66):

a. Management Fee: For managing the assets, a fee calculated monthly in an amount equal to one-twelfth of 0.60% of the total amount invested in the Properties, exclusive of acquisition fees and acquisition expenses, plus one-twelfth of 0.60% of the outstanding principal amount of any mortgage loans, as of the end of the preceding month. (“Asset Management Fee”).

b. Acquisition Fee: For identifying the Properties, structuring the terms of the acquisition and leases of the Properties and structuring the terms of the mortgage loans, the Advisor receives an acquisition fee of 4.5% of gross proceeds from the offerings, loan proceeds from permanent financing and a portion of CNL’s revolving line of credit that is used to acquire Properties. (“Acquisition Fee”). It was stated that the Acquisition Fees “shall be reduced to the extent that, and if necessary to limit, the total compensation paid to all persons involved in the acquisition of any Property to the amount customarily charged in arm’s-length transactions by other persons or entities rendering

being effectuated on June 21, 2006.
similar services as an ongoing public activity in the same geographical location and for comparable types of Properties, and to the extent that other acquisition fees, finder's fees, real estate commissions, or other similar fees or commissions are paid by any person in connection with the transaction."

c. **Development Fee:** For its services, the Advisor receives fees in connection with the financing, development, construction or renovation of a property. These fees are generally 4.5% of the total project cost ("Development Fees").

11. Since 1997, the Advisor has earned more than $270 million in fees in connection with the acquisitions, development, securing of permanent financing on properties and monthly asset management fees (Complt, ¶ 67). In addition, in connection with CNL Hotels’ Offerings, the Advisor received substantial additional fees and compensation. (Id. ¶ 68).

3. **Officers and Directors – Individual Defendants**

12. CNL Hotels’ executive officers and directors wore multiple hats in connection with their dealings with CNL Hotels. The decision-makers at CNL Hotels were also the owners and managers of the Advisor, stockholders of the Advisor and played active roles in CNL Hotels’ Offerings and in the Original Proxy solicitation that sought, among other things, to effect the merger of the Advisor into the Company:

   a. Defendant James M. Seneff, Jr. ("Seneff") serves, among other things, as Chairman of the Board of Directors of CNL Hotels and is intimately involved with the Advisor as a director, chairman of the board of directors and chief executive officer of the owner of the Parent of the Advisor ("CFG"), and as a direct owner of approximately 15.3% of outstanding common stock of the Advisor. If the Original Merger were consummated as proposed, he would have received a financial windfall — indirect beneficial ownership of over approximately 20 million of CNL Hotels’ common shares. (Complt, ¶¶ 79-84).

   b. Defendant Robert A. Bourne ("Bourne") serves, among other things, as Vice-Chairman of the Board of Directors of CNL Hotels and is intimately involved with the Advisor as the president and treasurer of CFG, and as a direct owner of approximately 15.3% of outstanding common stock of the Advisor. If the Original Merger were consummated as proposed, he would have received 4.5 million shares of CNL Hotels’ common stock. (Complt, ¶¶ 85-89).
c. Defendant Thomas J. Hutchison III ("Hutchison") served at various times, among other things, as Chief Executive Officer, President, and Executive Vice President of CNL Hotels and served as an officer and director to the Advisor. If the Original Merger were consummated as proposed, he would have received 0.9 million shares of CNL Common Stock. (Complt, ¶¶ 90-94).

d. Defendant John A. Griswold ("Griswold") has served at various times, among other things, as a member of the board of directors, President and Chief Operating Officer of CNL Hotels and has served as a director and President of the Advisor. If the Original Merger were consummated as proposed, he would have received 0.4 million shares of CNL Common Stock. (Complt, ¶¶ 95-99).

e. Defendant Charles E. Adams ("Adams") served as a director of CNL Hotels and as a member of its Audit Committee. (Complt, ¶¶ 100-101).

f. Defendant Lawrence A. Dustin ("Dustin") served as a director of CNL Hotels. (Complt, ¶¶ 102-103).

g. Defendant Craig M. McAllaster ("McAllaster") served as a director of CNL Hotels, as Chair of the Audit Committee and Nominating and Corporate Governance Committee. (Complt, ¶¶ 104-105).

h. Defendant Robert E. Parsons, Jr. ("Parsons") served as a director of CNL Hotels and on the Audit Committee. (Complt, ¶¶ 106-108).

4. Investing in CNL Hotels

13. Nearly 75% of the more than $3.1 billion in investor capital raised by CNL Hotels was invested through stock offerings made since 2001. (Complt, ¶ 130).

14. On July 9, 1997, CNL Hotels commenced its Initial Offering of Shares of Common Stock and completed that “Initial Offering” on June 17, 1999 with subscriptions for 15,007,264 Shares totaling $150,072,637 in gross proceeds, including $72,637 (7,264 Shares) through CNL Hotels’ Reinvestment Plan. (Complt, ¶ 132).

15. Following the successful completion of its Initial Offering, the Company commenced even larger subsequent Offerings:
a. “1999 Offering”: CNL Hotels filed with the SEC a Registration Statement (No. 333-67787) on Form S-11 covering 27,500,000 of its Shares to be offered to the public. The 1999 Offering terminated on September 14, 2000.

b. “2000 Offering”: CNL Hotels filed with the SEC a Registration Statement (No. 333-89691) on Form S-11 covering 45,000,000 of its Shares to be offered to the public. The 2000 Offering commenced upon the termination of the 1999 Offering, and terminated on April 22, 2002;

c. “2002 Offering”: CNL Hotels filed with the SEC a Registration Statement (No. 333-67124) on Form S-11 covering 45,000,000 of its Shares to be offered to the public. The 2002 Offering commenced upon the termination of the 2000 Offering and terminated on February 4, 2003;

d. “2003 Offering”: CNL Hotels filed with the SEC a Registration Statement (No. 333-98047) on Form S-11 covering 175,000,000 of its Shares to be offered to the public. The 2003 Offering commenced upon the termination of the 2002 Offering and terminated on March 12, 2004.

(Compl., ¶¶ 134-136).

16. As of February 12, 2006, there were approximately 102,370 stockholders of record of CNL Hotels common stock, and over $3 billion of capital had been raised. (Compl., ¶¶ 4, 81; CNL Hotels’ Form 10-K for Fiscal Year Ended December 31, 2005).

17. CNL Securities Corp., CNL Hotels’ managing dealer, is an affiliate of CNL Hotels, the Advisor and Individual Defendants Seneff and Bourne (“Managing Dealer” or “CNL Securities Corp.”). Shares in CNL Hotels were sold in the Offerings by the Managing Dealer. (Compl., ¶¶ 72-75).

18. The Offering Documents set forth that CNL Hotels’ primary investment objectives are to preserve, protect, and enhance our assets, while, among other things, making distributions. (Compl., ¶ 145). Capital appreciation is also a factor for the Advisor to consider when determining the precise timing and terms of Property Sales. (Id. ¶ 146).

19. **Invested Capital** — The Investors were told that the per share amount, $10 per
share, that they invested in CNL Hotels would be their Invested Capital, reduced by only limited circumstances, and assiduously preserved, for calculating their 8% return. (Compl., ¶¶ 147-148).

Thus, CNL Hotels’ Offering Documents presented its stock (if Listing were to not occur) as a solid investment generating 8% annual returns on the Investors’ Invested Capital of $10 per share.

20. Receipt of Distributions -- In order to qualify as a REIT for federal income tax purposes, CNL Hotels is obligated to distribute at least 90% of its taxable income. (Compl., ¶ 149). CNL Hotels’ stock was sold based on statements concerning annual distributions and that since at least 2000, that these distributions have represented a historical return of at least 7.38%. (Id.). On November 9, 2004 (almost 3 months after the filing of the Initial Complaint) CNL Hotels’ 10-Q for the period ended September 30, 2004 (“2004 3d Q 10-Q”) set forth that reduced distributions to stockholders may occur as early as the first quarter of 2005. (Id. ¶ 254).

Then, in CNL Hotels’ Form 10-Q/A, filed on March 25, 2005 (Amendment No. 1 to the Registrant’s Quarterly Report on Form 10-Q for the three month period ended March 31, 2005) CNL reported that “[a]s of the date of this filing, based on current estimates of our sources of liquidity, we expect to reduce our distribution rate per share as early as the end of the second quarter of 2005.” (Emphasis added). (Id. ¶ 255). Since that time, the distribution rate per share has been 5%.

v. Illiquidity Of CNL Hotels’ Stock

21. Currently, there is no public trading market for selling CNL Hotels’ stock. Because CNL securities have never been listed on any securities exchange, it operates outside the realm of a public market that responds to market conditions and analysts’ commentary, and its investors are entirely reliant on the accuracy and completeness of the financial and other
disclosures provided in CNL Hotels’ prospectuses, supplements and annual and quarterly SEC filings for information about the Company, its business, its finances and the value of its securities. (Complt, ¶ 256-257).

22. Furthermore, since CNL Hotels’ securities are unlisted and relatively illiquid, institutional investors such as mutual funds, pension funds and other investors that purchase large volumes of securities do not typically purchase CNL Hotels’ stock. Id. As such, independent information for the CNL investors is limited and void of the type of in-depth analysis that institutions generate about market-traded securities. As so aptly noted in a July 30, 2004 Report on CNL Hotels by GreenStreet Advisors, Inc. (“GreenStreet”), a nationally-recognized firm with an expertise in real estate investments, “[i]t is no wonder that these entities [such as CNL] seek out retail investors, as most institutional investors would more thoroughly scrutinize the value of the shares.” (Complt ¶ 258)

23. CNL Hotels has a fixed life – pursuant to its Charter and By-laws, if its stock is not listed on a national securities exchange or over-the-counter market by December 31, 2007 (“Listing”), CNL Hotels must sell its assets and distribute the proceeds (“Liquidate”), with the objective being giving CNL Hotels’ stockholders liquidity for their investments. (Complt, ¶ 259).

B. The Original Merger and the Original Proxy

24. In a Form S-3 filed with the SEC on April 30, 2004 and as subsequently amended, CNL Hotels announced that it was going to engage in the Underwritten Offering and Listing. (Complt, ¶¶ 259-260).

25. In addition, in connection with the possible Listing and Underwritten Offering, CNL Hotels sought shareholder approval, via the Original Proxy, to become a self-advised REIT through the merger of the Advisor into a wholly owned subsidiary of CNL Hotels (“Original
26. Under the terms of the Original Merger, all of the outstanding shares of capital stock of the Advisor were to be purchased by CNL Hotels for a total consideration of $308 million, comprised of $267.3 million in CNL Hotels' common shares, $29.7 million in cash, and the assumption of a note in the approximate amount of $11 million issued by the Advisor to Five Arrows Realty Securities II, LLC. (the "Original Merger Consideration"). (Complt, ¶ 262).

27. On July 30, 2004 and August 27, 2004, the proposals set forth in the Original Proxy were approved by a vote of CNL Hotels' shareholders. (Complt, ¶ 264-265).

28. In addition, as part of the approved Charter Amendments, the name of CNL Hospitality Properties, Inc. was changed to CNL Hotels & Resorts, Inc. (Complt, ¶ 266).

29. CNL Hotels had stated that it expected to sell 35 million shares of common stock in the Underwritten Offering at a price range between $19 and $21 (the $20 average being the pre-reverse split adjusted price paid by members of the Purchaser Class) and list the 151.8 million (post-reverse split) existing but previously unlisted shares. (Complt, ¶ 268). In commenting on the pricing of the Underwritten Offering, several stock analysts observed that the price was too high and might be lowered at the last minute. (Complt, ¶ 268-270).

C. The Original Merger, Underwritten Offering And Listing Were Postponed

30. The Underwritten Offering was expected to be priced on August 3, 2004. (Complt, ¶ 267). Late that day CNL Hotels abruptly postponed the Underwritten Offering and Listing, noting the cause as "market conditions." (Id.).

31. However, market conditions were generally favorable as the Bloomberg REIT Hotels Index ("BBG REIT Hotel Index") exhibited a general upward trend from mid- March
2003 to November 30, 2004, with only a minor and brief decline in April and May 2004.

(Complt, ¶ 272). Attendant to the proposed Listing and Underwritten Offering, independent
securities analysts and investment bankers scrutinized CNL Hotels’ business operations which
revealed that in the market’s opinion, CNL Hotels stock, taking into account the cost of the
proposed Original Merger, was worth approximately 20-40% less than the $10 (pre-reverse split)
offering price. (Complt, ¶¶ 269-270).

D. Pre-Complaint Activities.

32. At the behest of investors, my Firm, along with Labaton Sucharow & Rudoff,
LLP and Wolf Haldenstein Alder Freeman & Herz LLP (collectively referred to herein as “Co-
Lead Counsel”) began investigating the non-listed REIT industry in mid-2003, gathering and
analyzing financial data and SEC filings.

1. Partners Advisory Services Corp. (“PASCORP”)

33. In this endeavor, we engaged Partners Advisory Services Corp. (“PASCORP”),
and its founder and President James M. Vodola, CPA, to assist us. Attached to this Declaration
as Exhibit B is the Affidavit of James M. Vodola in Support of (i) The Settlement and (ii)
Plaintiffs’ Counsel’s Application for Attorneys’ Fees and Reimbursement of Expenses. (“Vodola
Aff.”).³

34. Since 1992, PASCORP has served as an expert consultant, providing valuation
and forensic accounting services to investors and their counsel, in matters involving hundreds of

³ As detailed in ¶ 21 of Vodola Aff., PASCORP submitted invoices to Co-Lead Counsel on
a current basis at an hourly rate that was materially less than PASCORP’s then current rate. This
arrangement facilitated Co-Lead Counsel’s management of the significant costs and expenses
anticipated to be involved in the prosecution of this Action. This arrangement was undertaken
with the understanding that, regardless of the outcome of the litigation, PASCORP would be
compensated upon the completion of this litigation for all time expended, charged at
public limited partnerships, real estate investment trusts ("REIT") and other public and private investment vehicles. (Vodola Aff. ¶ 2). PASCORP specializes in the analysis and evaluation of real estate and other businesses that operate within a partnership, REIT, or similar structure, and serves as an expert witness and consultant for attorneys representing investors in many of the largest limited partnership and REIT litigation matters over the past 14 years. (Vodola Aff. ¶ 3).

35. CNL Hotels became a focal point of this investigation during the winter 2003-2004, as it became apparent that financial results of the enterprise could not support the distribution levels that either had been presented in the Offerings to the investors or that had been paid to investors since at least 2001. (Vodola Aff. ¶ 8). Moreover, this condition existed at a time that the hotel industry was experiencing a significant resurgence following the sharp drop in business as a result of the events of September 11, 2001.

36. Co-Lead Counsel retained PASCORP, to review the accuracy and completeness of CNL Hotels' public disclosures of its financial and business statements, to review the performance of CNL Hotels, to evaluate the quality and sustainability of its distributions, to assess the value of the Company and its stock, and to review statements made in the Offering Documents. (Vodola Aff. ¶ 9).

37. In April 2004, Co-Lead Counsel expanded its investigation of CNL Hotels upon the filing of a preliminary proxy (Schedule 14A) with the SEC concerning the Original Merger Agreement, and expanded the scope of PASCORP's engagement to include the analysis and review of the terms of the Original Merger Agreement, the Advisory agreements, and the proffered valuation of the Advisor. (Vodola Aff. ¶ 10).

PASCORP's then-standard hourly rates. (Id.).
2. **Co-Lead Counsel & PASCORP’s Investigation**

38. Co-Lead Counsel extensively investigated possible claims in this action based on defendants’ conduct in connection with the Offerings and the proposed Original Merger.

39. Co-Lead Counsel, working with PASCORP, conducted an extensive survey of the non-listed REIT industry, the attendant industry accounting practices and the process of internalizing an affiliated Advisor through its merger with the REIT.

40. In addition to working with PASCORP and reviewing PASCORP’s work-product, Co-Lead Counsel’s investigation included:

   a. Review of accounting rules, regulations and Generally Accepted Accounting Principles (“GAAP”)

   b. Review of CNL Hotels’ SEC Filings, including all Form S-3s, Form 10-Ks, Form 10-Qs and Form 8-Ks for 1999 to present.

   c. Review and analysis of SEC Filings by other REITs in the non-listed REIT industry, including the financial statement portions of their Form 10-Ks.

   d. Review and analysis of CNL Hotels’ preliminary and Original Proxy, and supplements thereto.

   e. Review and analysis of all of the Offering Documents for the 2000, 2002 and 2003 Offerings.

   f. Review and analysis of offering documents utilized by other REITs in the non-listed REIT industry.

   g. Review of the Advisor’s Agreements with CNL Hotels

   h. Review of related non-listed REIT industry and CNL Hotels specific news articles, news commentary and market reports.
1. Research and analysis of applicable federal securities laws and state laws.

3. **Rachlin Cohen & Holtz LLP**

41. James Vodola of PASCORP is a certified public accountant and performed, in connection with the review of the above listed materials, forensic accounting analysis for Co-Lead Counsel. Despite this expertise, both Co-Lead Counsel and Vodola decided in the Spring 2004 to secure the accounting services of a firm that had expertise in the hotel industry to assist them in the preparation of the complaint in this Action. (Vodola Aff. ¶ 30).

42. In July 2004, Co-Lead Counsel conferred with and retained the Florida-based accounting firm, Rachlin Cohen & Holtz LLP ("Rachlin Firm") and its partner, Laurie S. Holtz, to assist them in fully assessing CNL Hotels’ accounting treatment of various material transactions and financial statement reporting items. In addition, Co-Lead Counsel discussed with the Rachlin Firm the possibility of engaging them at the appropriate time to provide testifying expert witness services in connection with this Action.

43. The Rachlin Firm advised Co-Lead Counsel on various accounting principles and pronouncements that could be deemed applicable to the various financial reporting mechanisms of the Company. The Rachlin Firm’s review of CNL Hotels’ financial statements and attendant disclosures identified various generally accepted accounting principles (GAAP), Financial Accounting Standard Board ("FASB") Statements, Statements of Financial Accounting Concepts, and Emerging Issues Task Force Pronouncements ("EITF") which could arguably govern the presentation and accounting treatment of at least the following matters which were part of the Purchaser Class Claims in this Action:

a. **Credit Enhancements**

44. Co-Lead Counsel, PASCORP and the Rachlin Firm worked together to identify
the appropriate accounting principles and pronouncements that should govern a fair and transparent presentation of Credit Enhancements to the investors. (See ¶ 63, below). It was our contention that it was improper under GAAP to book guarantee payments (credit enhancements) as revenue; and rather, such amounts should be accounted for as an adjustment to the basis of the Properties. (Complt, ¶ 168-176). Our position was that including Credit Enhancements as revenue distorts the realizable cash flow from the Properties because these payments are being made to support the stabilized cash flow of the Properties. *Id.*

45. The Rachlin Firm identified a comparable situation in the context of “master leases,” when the purchasers of multi-tenant properties obtain guarantee payments from the developer, which are designed solely to support a rental stream through the use of master lease arrangements. (Complt, ¶ 172). These arrangements provide that the seller lease vacant space from the purchaser and pay market rent until that space is leased to third-parties. *Id.* These payments are not cash flow from the properties, but rather payments by the lessee to cover yet-to-be leased space in these multi-tenant properties. *Id.* Specifically, the Rachlin Firm identified the accounting industry’s Emerging Issues Task Force pronouncement No. 85-27 (“EITF No. 85-27”) as being pertinent to proper financial disclosures of relevant transactions. EITF No. 85-27 states that “any payments received in respect of a master lease, designed to support a rental stream should be considered reduction of basis, not income.” Such position and EITF supported Plaintiffs’ position that the Credit Enhancements required identical accounting treatment. (Complt., ¶ 168-174). Accounting pronouncement EITF No. 85-27 served to direct the proper accounting treatment of such payments, which amount to a return of capital by the guarantor, by setting forth that they are to be considered a reduction of selling price or basis.

46. In CNL Hotels’ 2004 Form 10-K, CNL Hotels altered its accounting presentation
of Credit Enhancements and abandoned their treatment as income. (Complt, ¶ 174). The 2003 Form 10-K states that: “Funding under these guarantees is either recognized as other income, as reductions in base management fees or as liabilities by the Company, depending upon the nature of each credit enhancement agreement and whether the funded amounts are required to be repaid by the Company in the future.” (Id.) CNL Hotels’ 2004 Form 10-K did not recognize Credit Enhancements as income; rather CNL Hotels treated Credit Enhancements as “reductions of operating expenses” or “reductions in hotel and resort management fees.”

47. With the agreement of their independent accountants, PricewaterhouseCoopers, CNL Hotels based their “recategorization of credit enhancement funding to a reduction of operating expenses,” rather than as a reduction of basis, by reference to EITF 02-16, which “addresses the accounting of a vendor for consideration given to a customer.”

b. Asset Impairment

48. In connection with reviewing the impact of Credit Enhancements on CNL Hotels’ Properties, Co-Lead Counsel, PASCORP and the Rachlin Firm, also undertook to review other transactions by CNL Hotels that may have impaired investor’s capital and stock value, including the KSL Transaction (Complt, ¶ 336(i), (v)) and deals with Marriott (Complt, ¶ 336(v)). Credit Enhancements and these transactions were reviewed for asset impairment pursuant to Financial Accounting Standard Board Statement No. 144 (“FASB 144”).

49. The Rachlin Firm identified FASB 144 (and its predecessor FASB 121) as addressing financial accounting and reporting for the impairment or disposal of long-lived assets, and that such impairment of an asset occurs when the carrying amount of the asset exceeds its fair value. According to FASB 144, long-lived assets are required to be tested for recoverability when circumstances indicate that the carrying value may not be recoverable.
50. It was Plaintiffs' contention that at least the potential of such impairment was not made known by CNL Hotels to the Purchaser Class.

c. **Joint Ventures**

51. Plaintiffs identified related party transactions involving Desert Ridge and WB Joint Ventures (Complt, ¶ 230-252), about which material disclosures were not made until after the filing of the initial complaint in this Action, in CNL Hotels 2004 Form 10-K. (Id.). Co-Lead Counsel and the Rachlin Firm reviewed the Desert Ridge and WB Joint Venture transactions. Co-Lead Counsel determined that certain aspects of these transactions were not appropriately disclosed in accordance with Item 404 of SEC Regulation S-K. (Id. ¶¶ 242-245).

52. Furthermore under GAAP, the Rachlin Firm identified the financial statements contained in the Offering Documents as incomplete in this regard because they failed to contain all material information required to represent validly the underlying events and conditions under Statements of Financial Accounting Concepts 2, ¶ 79, and that the failure to include such material facts in the Offering Documents left the Purchaser Class without knowing the “financial effects” of the Desert Ridge and WB transactions, in contravention of Statement of Financial Accounting Concepts 1, ¶ 21. (Complt, ¶ 246).

d. **PricewaterhouseCoopers**

53. CNL Hotels' independent accountant during the relevant time period was PricewaterhouseCoopers ("PwC"). In light of the various accounting practices challenged by this Action, the Rachlin Firm and Co-Lead Counsel undertook an analysis as to whether the Purchaser Class could assert a colorable accounting claim against PwC.

54. As evidenced by PwC's agreement with CNL Hotels' use of EITF 02-16 in connection with the reporting of Credit Enhancements, the applicability of certain accounting
principles (GAAP or otherwise) are not always straightforward and clear cut, and although Co-Lead Counsel believed that CNL Hotels' accounting presentation was misleading, it did not have direct evidence that PwC's agreement with the accounting presentation utilized by CNL Hotels directly violated a clear accounting principle or generally accepted accounting standards. Thus, Co-Lead Counsel determined that, in light of such situation and the due diligence defense available to PwC to negligence claims made against it under Section 11, it was not appropriate to join PwC as a defendant in this Action.

E. The Action.

1. Filing of the Action— the Original Complaint

55. On August 16, 2004, on behalf of individuals who invested in CNL Hotels (Compl., ¶¶ 42-44), Co-Lead Counsel filed a class action complaint against CNL Hotels, its affiliates and certain of its present and former officers and directors, captioned Campbell v. CNL Hotels & Resorts, Inc., et al., Case No. 6:04-cv-1231-Orl-31KRS (the “Campbell Action”). The Campbell Action alleged violations of the federal securities laws, including violations of Sections 11, 12(2) and 15 of the Securities Act of 1933 (“Securities Act”), Sections 14 and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and breaches of fiduciary duty under state law.

56. Subsequently, on or about September 8, 2004, a class action complaint captioned Wong v. CNL Hotels & Resorts, Inc., et al., Case No. 6:04-cv-01341-PCF-JGG (the “Wong Action”) was filed with the Court alleging substantially similar facts and claims.

57. By Order of the Court dated November 10, 2004, the Campbell Action and the Wong Action were consolidated for all purposes under the caption In re CNL Hotels & Resorts, Inc. Securities Litigation, Case No. 6:04-cv-1231-Orl-31KRS (the “Action”).
2. **Lead Plaintiffs and Lead Counsel Appointed.**

58. On December 21, 2004, pursuant to the Private Securities Litigation Reform Act, Plaintiff Macomb County Employees’ Retirement System (“Macomb”) was appointed Lead Plaintiff for the Proxy Class; Plaintiff Elizabeth Hawkins Barack Revocable Living Trust (“Barack Trust”) was appointed as Lead Plaintiff for the Purchaser Class. (Complt, ¶ 48)

59. Chimicles & Tikellis LLP (“C&T”) was appointed as Lead Litigation Counsel and Co-Lead Counsel, Labaton Sucharow & Rudoff LLP (“LSR”) was appointed as Co-Lead Counsel for Macomb, and Wolf Haldenstein Adler Freeman & Herz LLP (“WHAFH”) was appointed as Co-Lead Counsel for the Barack Trust (collectively referred to as “Co-Lead Counsel”).

60. Throughout the pendency of this Action, Co-Lead Counsel have cooperated and worked together to prosecute this Action effectively, while avoiding undue duplication of effort. The efforts of Co-Lead Counsel are detailed herein.

3. **Summary of Claims Asserted in the Action**

   a. **Purchaser Claims**

61. The Action asserted that CNL Hotels’ financial statements and various financially-related narrative portions of the Offering Documents materially misstated the financial condition and performance of the Company. The false and misleading statements consisted of two basic elements: (1) inflation of cash flow, and (2) concealment of shareholders’ capital impairment. The alleged false and misleading statements in the Offering Documents included the following:
62. The Action alleged that CNL Hotels’ cash provided by operating activities (“CFO”) was inflated in the Offering Documents and in the financial statements incorporated therein by reference. Inflated CFO, coupled with the juxtaposition of CFO and cash available for distribution in the Offering Documents, signified to investors that their cash distributions would approximate cash from operations, which it did not. In addition, since reported CFO was inflated, CNL Hotels’ reported asset value, which is based in material part as a multiple of CFO, was also inflated, thereby enabling CNL Hotels to continue to sell its stock at an inflated $10 per share (pre-reverse stock split price) during the Class Period. The Action alleged that CFO was inflated in four principal ways:

63. “Credit Enhancements” (Compl, ¶¶156-176). CNL Hotels’ “credit enhancements” were payments received from tenants or other guarantors during a property’s stabilization period. The Offering Documents and financial statements incorporated by reference therein are alleged to have improperly booked these payments as revenues on CNL Hotels’ income statement. Instead, these Credit Enhancements, which were not revenue, should have been accounted for as a reduction of basis, and not income. The recognition of so-called credit enhancements as part of CFO inflated 2003 CFO by at least 28% from $88 million to $113 million (and perhaps by as much as nearly 60% from $71 million to $113 million)) and

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4 CNL Hotels reported sources and uses of cash in its Consolidated Statement of Cash Flows which is among the quarterly and annual financial statements issued by the Company. Net cash provided by operating activities is reflected on the Consolidated Statement of Cash Flows. It represents the cash generated by operating activities of the Company, and is calculated by adjusting Net Earnings for non-cash items included in Net Earnings. CFO is also referred to as cash from operations. (Compl, ¶ 10, fn. 2).
2002 CFO by at least 15% from $66.3 million to $76.7 million). Moreover, the Action alleged that other statements in the Offering Documents concerning the Credit Enhancements were materially incomplete.

64. **FF&E Reserves Income** (Compl., ¶¶ 185-196). FF&E Reserves income constituted restricted cash, kept in segregated accounts, to be used for one purpose, the replacement of furniture, fixtures and equipment ("FF&E Reserves") in hotels leased to third parties. The Action alleged that FF&E Reserves income should have been charged as a reduction of GAAP income to arrive at CFO for purposes of determining CNL Hotels' cash available for distribution, which they were not. By not adjusting CFO for FF&E Reserves income, the Action alleged that CFO was artificially inflated by nearly $37 million in 2004, $20 million in 2003, and $4.2 million in 2002, and that, from 1998 to 2001, the FF&E Reserves income improperly inflated CFO by $8.7 million.

65. **Joint Ventures** (Compl., ¶¶ 174-184). The Action alleged that funds received from the Desert Ridge and WB Joint Ventures were improperly included in CFO. In 2002 and 2003, these two Joint Ventures were suffering operating cash deficits of $12.1 million and $19.3 million, respectively. However, in those years, CNL Hotels improperly reported as CFO "distributions" from those joint ventures totaling $5.5 million and $7.7 million, respectively. The Action alleged that these "distributions" were actually a recycling to CNL Hotels of monies that it had invested in the joint ventures, and therefore a return of capital, not CFO. In addition to challenging the financial presentation of the distributions, the Complaint also challenged Defendants’ failure to make material disclosures in the Offering Documents about related party

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5 Preferably, FF&E Reserves income should have been a reduction of GAAP net income in computing CFO.
transactions dating back to 2001 involving WB and Desert Ridge. These transactions were not disclosed in the Offering Documents during the Class Period in alleged violation of Item 404 of SEC Regulation S-K.

66. **Borrowings** (Complt, ¶¶ 197-205). The Action alleged that cash distributions were inflated and sustained by improper borrowings which had the net effect of returning Invested Capital to the stockholders. The Action alleged that the Offering Documents clearly stated that borrowing to fund distributions was limited to circumstances where such “distributions [were] required in order to enable the Company to qualify as a REIT for federal income tax purposes.” The borrowings that inflated CFO are not consistent with or in conformity with the limited circumstance of preserving CNL Hotels’ status for federal income tax purposes (e.g., in 2003, the distribution to stockholders was more than triple the amount necessary to maintain CNL Hotels’ status as a REIT).

ii. **Impairment Of Invested Capital And Stock Value** (see Complt, ¶¶ 144-148)

67. CNL Hotels’ primary investment objective was the preservation and protection of assets. Cash flow and CFO (and, by implication cash available for distribution) were materially misrepresented in the Offering Documents and CNL Hotels’ financial statements incorporated by reference therein. Thus, the Action claimed that investors were not given an accurate picture of the condition of CNL Hotels’ assets and the source of the monies paid to CNL shareholders as distributions. The Offering Documents informed the Purchaser Class that their distributions were being “treated as a return of capital on a GAAP basis.” However, it was alleged in the Action that such a statement does not address the material difference between return of capital determined in accordance with GAAP and return of capital and preferred distribution on a cash
basis, when, in fact, the latter, not the former, is the measure of Invested Capital under CNL Hotels' Charter. In fact, CNL Hotels' distributions constituted a return of Invested Capital (as defined in its Charter) in contravention of the statements made in the Offering Documents that: “The Company has not treated such amounts [Distributions] as a return of capital for purposes of calculating Invested Capital and the Stockholders’ 8% Return.”

iii. **Advisor’s Fees** *(see Compl, §§ 206-219).*

68. The Action alleged that the Offering Documents did not disclose that the Advisor’s Acquisition Fee, which was equal to 4.5% of gross proceeds from the offerings, loan proceeds from permanent financing and a portion of CNL Hotels’ revolving line of credit that is used to acquire Properties (“Acquisition Fee”) was not reduced, as was required by the Advisory Agreement, to limit compensation to the Advisor “to the amount customarily charged in arms-length transactions by other persons or entities rendering similar services...” The difference between 4.5% and the average industry rate of 2.41% (2.18%, if CNL Hotels and affiliated entities are not included) for acquisition fees was alleged to be material.

b. **Proxy Claims**

69. The Proxy Class Claims included allegations that in respect of the Original Merger and other matters, defendants disseminated the Original Proxy to its shareholders seeking their approval, which Original Proxy was materially false and misleading in violation of Sections 14(a) and/or 20(a) of the Exchange Act. *(See above Section E.3.b §§ 24-29).*

70. Among other things, the Action asserted that the Original Proxy sought and obtained approval from the Proxy Class to purchase the affiliated Advisor for materially more than its value. *(Compl, ¶¶ 284-295).* The Action asserted that, in this regard, the Original Proxy was materially false and misleading concerning the value of the Advisor because the value was
premised on an income stream that was historically inflated, prospectively speculative and lacking a reasonable basis. (Complt, ¶ 285-295).

71. A significant portion of the Advisor’s purported value in the Original Merger (the portion alleged in this Action to be speculative) was derived from fees that the Advisor was to receive from providing advisory services to a yet-to-be operating entity, CNL II. (See Complt, ¶ 288, 291). The dependence of the Advisor’s supposed “value” on this projected future income stream was not disclosed in the Original Proxy, nor was the attendant risk that the CNL II offering might be aborted or materially modified. Indeed, that risk, in fact, materialized since CNL II did not break escrow and there is no indication when or if it ever will.

72. In addition, another significant portion of the Advisor’s purported value in the Original Merger (the portion alleged in this Action to be historically inflated) was derived based on Acquisition Fees calculated at an above-market rate of 4.5% of total proceeds. (See Complt, ¶ 292, 294) The dependence of the Advisor’s supposed “value” on an historical income stream that was improperly inflated because it was calculated based on a substantially above-market rate which was not allowed under the existing Advisory agreement, was not disclosed in the Original Proxy. (See Complt, ¶ 295).

73. In addition, the Advisor’s historical income levels were not the correct measure as to the Advisor’s future profitability since, as the Advisor of CNL II, it would receive steeply reduced fees in connection with its Advisory services because under the proposed agreement with CNL II the Acquisition Fee payable to the Advisor by CNL II was only 1.5%, which stands in stark contrast to the Advisor’s 4.5% Acquisition Fee. (Complt, ¶¶ 218, 291)

c. **Fiduciary Duty Claims**

74. The Amended Complaint also asserted breach of fiduciary duty claims under state
law, alleging that certain relationships and transactions between CNL Hotels and the Advisor were not arms-length or in conformity with CNL Hotels’ Charter (“Fiduciary Duty Claims”). (Complt, ¶¶ 313-341).

75. While the Individual Defendants and the Advisor were to serve in a fiduciary capacity to CNL Hotels (and the Individual Defendants to the stockholders), the Action had alleged that such defendants failed in their capacity as fiduciaries and the operations of the Advisor became a vehicle for self-dealing. (Id.).

76. The Action alleged that the Advisor garnered excessive Acquisition Fees (see Section E.3.a ¶ 68, above) in breach of their fiduciary duties, and that certain Defendants, who owed fiduciary duties to CNL Hotels and the shareholders, breach their fiduciary duties by permitting the Advisor to charge and collect excessive Acquisition Fees. (Complt, ¶¶ 323-333).

77. In addition, the Action alleged that the $83 million fee purportedly owed to the Advisor in connection with the KSL Transaction (“KSL Fee”) was not a legitimately earned or owed because: the loans upon which the $83 million fee was calculated was not permanent financing (not permanent because the loan’s duration was only 2 years, the extensions were highly conditioned and not absolutes, and the loans had a floating rate); and this was not new financing, but rather a refinancing or restructuring of $794 million of the $1.5 billion existing KSL Loan, which was obtained from the same lender who was owed the existing KSL Loan. (Complt, ¶¶ 337-341).

F. The Prosecution of the Action and Related Events.

1. Uncertainty About Original Merger, Underwritten Offering and Listing Occurring.

78. The Underwritten Offering and Listing did not occur by November 30, 2004, so,
according to the Original Proxy, the Merger would not be completed absent waiver of certain pre-conditions upon the written consent of certain CNL Hotels' directors and Defendant Seneff. (Complt, ¶ 273).

79. In early November and early December 2004, CNL Hotels announced that:
   a. "there can be no assurance that the merger will be consummated or if consummated, the terms or the timing thereof." (2004 3Q Form 10-Q, filed on November 9, 2004); (Complt, ¶ 274); and
   b. "As of the date hereof, under the terms of the merger agreement, either party may terminate the merger agreement, although neither party has done so. Completion of the merger with [the Advisor] will require the waiver of certain conditions contained in the merger agreement. There can be no assurance that the merger will be consummated, or if consummated, the terms and conditions or timing thereof." (Form 8-K, filed December 7, 2004); (Id.).

2. The Amended Complaint is Filed.


81. Consistent with the Original Complaint, but providing additional factual allegations for the underlying claims, the Amended Complaint alleged claims on behalf of the Purchaser Class and the Proxy Class, see Section E.3. a and b, above.

82. Specifically, the allegations in the Amended Complaint included the following
detailed statements concerning the bases for the Class' claims with respect to the Advisor:

a. **Inflated Acquisition Fee.** The Advisor was collecting an inflated, above market Acquisition Fee calculated at a rate of 4.5%, which stood in stark contrast to the average industry rate of 2.41%. (Compl, ¶ 214-218). Plaintiffs’ analysis, reflected in the Amended Complaint’s allegation, consisted of a detailed review of the non-listed traded REIT market and the attendant acquisition fees. Such analysis, supported by PASCORP (Vodola Aff. ¶19), revealed that CNL Hotels' acquisition fees were substantially out of line with the comparable market rate. Prior to Plaintiffs’ analysis and the publicizing of the analysis in the Amended Complaint, commentators had only noted that general acquisition fees, not those specific to the non-listed REIT market, were in a lower basis point range.

b. **Grossly Inflated Valuation.** The Amended Complaint challenged the valuation of the Advisor as grossly inflated specifically because it was based entirely on speculative cash flow projections. (Compl, ¶ 285-295).

c. **Improper KSL Acquisition Fee.** The Amended Complaint challenged the $83 million of Acquisition Fees associated with the KSL Loan, that were claimed to be due to the Advisor, as improper. (Compl, ¶¶ 337-341).

83. The Amended Complaint also asserted direct breach of fiduciary duty claims under state law, alleging that certain relationships and transactions between CNL Hotels and the Advisor were not arms-length or in conformity with CNL Hotels’ Charter.

3. **Motion to Dismiss the Amended Complaint.**

84. Defendants moved to dismiss the Amended Complaint in its entirety on February 11, 2005 pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) and the Private Securities Litigation Reform Act (“PSLRA”).
85. Defendants' motions made the following arguments which Co-Lead Counsel vigorously opposed:

a. **Proxy Claims.** Defendants asserted that, even though they would not void the challenged shareholders' vote, but simply since the Original Merger had not been effectuated yet, the Proxy Claims as asserted in the Amended Complaint was premature, not ripe of adjudication and the investors had not suffered any harm or loss. In addition, Defendants asserted that the Proxy Claim was not pleaded with the requisite particularity required by Fed. R. Civ. P. 9(b) and the PSLRA, in that it did not plead particular facts that gave rise to a strong inference of negligence on the part of each defendant concerning the Proxy Claim. Furthermore, certain Defendants challenged the Amended Complaint's naming of them as having violated Section 14 of the Securities Act, and the rules promulgated thereunder, because they were only identified in the Original Proxy but were not alleged to have solicited it. Finally, Defendants asserted that the misstatements alleged to violate Section 14 were not material and not required to be disclosed, and all material information was, in fact, disclosed.

b. **Purchaser Claims.** Defendants asserted that the Amended Complaint sounded in fraud and therefore did not allege the Purchaser Claims with the requisite particularity required by Fed. R. Civ. P. 9(b) and the PSLRA, and improperly utilized group pleading. In addition, Defendants asserted that the Amended Complaint did not allege that the investors had suffered any harm, because there had been no recognized loss, nor a demonstrated

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6 Co-Lead Counsel retained GlenDevon Group, Inc. (“GDG”) in March 2005 to assist Co-Lead Counsel with respect to (a) certain financial statement analysis in connection with Co-Lead Counsel’s opposition to Defendants’ motions to dismiss the Amended Complaint; and (b) constructing and analyzing certain industry trends. See, ¶ 120, below; and Exhibit C hereto, Affidavit of Kathleen P. Chimicles, ASA In Support of The Settlement and (ii) Co-Lead Counsel’s Application for Attorneys’ Fees and Reimbursement of Expenses, “KPC Aff.” ¶¶ 4, 6-7.
decrease in CNL Hotels' share price. Furthermore, certain Defendants challenged whether they could be held liable under Sections 11 and 12, asserting that they were not enumerated as potential violators under the applicable law. Finally, Defendants asserted that the material misstatements alleged to violate Section 14 were not material and not required to be disclosed, and all material information was, in fact, disclosed.

c. **Fiduciary Duty Claims.** Defendants asserted that the Amended Complaint asserted claims for harms allegedly inflicted on CNL Hotels and not for harms suffered individually by the investors, so the allegations were improperly pled as direct, rather than as derivative, claims for breaches of fiduciary duty.

4. **Changes in Disclosures in CNL Hotels' 2004 Form 10-K.**

86. On March 16, 2005, subsequent to the filing of Defendants' motions to dismiss, an undertaking which required Defendants and their counsel to take a very close look at the allegations in the Amended Complaint, CNL Hotels filed with the SEC its Form 10-K for the period ended December 31, 2004 (“2004 Form 10-K”). The 2004 Form 10-K contained the first audited financial statements issued by CNL Hotels since the filing of the Original Complaint.

87. Abandoning the prior financial presentation of Credit Enhancements as income, which was challenged by the Action as being an improper and misleading financial presentation of the financial condition of CNL Hotels (Complt, ¶¶ 156-176), in the 2004 Form 10-K, CNL Hotels treated the Credit Enhancements as other income, as reductions in base management fees or as liabilities by the Company, depending upon the nature of each credit enhancement agreement and whether the funded amounts are required to be repaid by the Company in the future. (Complt, ¶ 174).

88. The 2004 Form 10-K also made, for the first time, material disclosures about
related party transactions dating back to 2001 involving the WB and Desert Ridge Joint Ventures (Compl ¶¶ 230-252), informing the investors that affiliated parties received a loan from Marriott to make their investments in the Joint Ventures. The 2004 Form 10-K also makes additional disclosures about the loan and the affiliated parties’ failure to pay interest under the loan and the impact of that failure. However, the 2004 Form 10-K still failed to disclose the identity of the affiliated party. (Id.)

89. In addition, the 2004 Form 10-K revealed for the first time that the Properties required $184 million of accumulated capital improvements, which materially exceeded the amount of CNL Hotels’ reserves, which, as of December 31, 2004, totaled only $79 million. These reserves and capital improvements were related, in part, to FF&E Reserve income, which was alleged in the Action to have been improperly utilized, instead of being reserved, to inflate distributions. (Compl, ¶ 194).

5. Advisor’s Acquisition Fee Revisited

90. On April 6, 2005, also subsequent to the filing of Defendants’ motions to dismiss, again, an undertaking which required defendants and their counsel to take a very close look at the allegations, CNL Hotels filed a Form 8-K with the SEC announcing that, in connection with the renewal of the Advisory Agreement, independent members of CNL Hotels’ board of directors were in discussions with the Advisor to determine the comparable current market percentage rate for calculating the Acquisition Fee. (Compl, ¶¶ 324). This advisory fee rate was precisely the rate focused on by this Action: (i) as part of the Proxy Claim and Fiduciary Duty Claim, because the rate was excessive and above-market; and (ii) as part of the Purchaser Claim because Defendants had failed to disclose that the rate was above market, when investors were contemporaneously being told that the rate would be reduced to market. (Compl, ¶¶ 214-
6. Abandonment of Original Merger Agreement.

91. On April 8, 2005, just days prior to the April 13, 2005 hearing on Defendants’ motions to dismiss the Amended Complaint, CNL Hotels announced that a special committee of CNL Hotels’ board of directors was in discussions with the Advisor regarding the possible amendment of the Original Merger Agreement. (Complt, ¶¶ 275-276).

92. Although CNL Hotels and its shareholders had previously approved the terms of the Original Merger pursuant to the Original Proxy, CNL Hotels was now announcing that the terms of the Original Merger were the subject of new discussions between a committee of Independent Directors and the Advisor’s owners and stated for the first time that the “Merger Agreement will not be consummated on its present terms.” (Id.). Moreover, CNL Hotels went on to commit that if an Amended Merger Agreement results from discussion by the companies, the Amended Merger will be submitted for stockholder approval. (Id.)

7. April 13, 2005 Hearing on Motions to Dismiss Amended Complaint.

93. On April 13, 2005, the Court held the hearing on Defendants’ motions to dismiss the Amended Complaint.

94. The afternoon prior to the April 13 Hearing, the Court had ordered that Plaintiffs should be prepared to point out to the Court, with specific reference to the CNL Hotels’ registration statement filed with the SEC on January 29, 2003, (1) those statements which Plaintiffs claim are materially false and misleading; and (2) that information which Plaintiffs claim should have been disclosed in order to make the statements therein not misleading (“April 12 Order”).
95. At the April 13 Hearing, Co-Lead Counsel made oral presentations in support of Plaintiffs’ opposition to Defendants’ motions to dismiss, including a presentation to the Court in accordance with the Court’s April 12 Order. The Court indicated that it would issue rulings on the Purchaser Claims and Fiduciary Duty Claims.

96. In addition, based on Defendants’ representations to the Court that certain of the Defendants and other REIT affiliates were in discussions regarding the possible amendment of the Original Merger Agreement and on CNL Hotels’ April 8 Form 8-K filing with the SEC, the Court deferred consideration of the motion to dismiss the Proxy Claim (Count III of the Amended Complaint) at the April 13 Hearing.\(^7\)

97. Subsequent to the April 13 Hearing, CNL Hotels filed a Form 10-K/A with the SEC which reiterated that defendants are “in discussions” “regarding the possible amendment of the Existing Merger Agreement and that, although the Existing Merger Agreement remains in effect, it is currently contemplated that the merger will not be consummated on its present terms. . ." (Compl ¶ 278).

8. Court’s Rulings on Motions to Dismiss Amended Complaint.

98. The Court issued rulings on May 9, 2005 denying in part and granting in part Defendants’ motions to dismiss the Amended Complaint, and afforded Plaintiffs the opportunity to file a First Amended Complaint.

99. Specifically, as to the Fiduciary Duty Claim, the Court granted leave to amend to assert it as a derivative claim. Thereafter, Plaintiffs undertook to analyze whether a shareholder demand on the Board (composed as of the time the Original Complaint was filed) was futile.

\(^7\) Subsequently, the Court scheduled a hearing on the Proxy Claim for May 31, 2005, and then granted the continuation of that hearing until June 24, 2005.
because a majority of CNL Hotels' directors were interested or otherwise disqualified from action on such a demand.

100. The Court dismissed all claims under Sections 11, 12 and/or 15 of the '33 Act against peripheral defendants, CNL Hotels' operating partnerships, CNL LP and RFS, the Advisor, CFG, CREG, and Five Arrows, holding that those particular defendants were not adequately alleged to have violated or to be properly held liable for violating the '33 Act.

101. In addition, as to the Purchaser Claims, the Court ordered Plaintiffs to omit all references in the complaint to “intent to deceive” and fraud, and replead the Purchaser Claims as follows:

a. Designate the representations and omissions which pertain to all the issuing documents, clearly delineate the representations and omissions in each document, and separate those that are specific to a particular issue.

b. Link particular defendants with particular registration statements and specify the material misstatements or omissions contained there.

c. Link the Individual Defendants to the particular documents they signed and specify the misstatements or omissions contained therein.

d. Link each Individual Defendant with the particular false or misleading documents filed during their respective tenures as controlling persons.


103. The First Amended Complaint removed dismissed parties, conformed the allegations to be in accordance with the Court’s May 9, 2005 Order (see ¶¶ 98-101, above), alleged the Fiduciary Duty Claim as derivative, and brought all factual allegations up-to-date:

a. Count I of the First Amended Complaint asserted claims against CNL Hotels and Individual Defendants, and against the Advisor and Individual Defendants as controlling persons, pursuant to Sections 11 and 15 of the '33 Act;

b. Count II of the First Amended Complaint asserted claims against CNL Hotels, CSC, and the Individual Defendants, and against the Individual Defendants as controlling persons, pursuant to Sections 12(a)(2) and 15 of the '33 Act;

c. Count III of the First Amended Complaint asserted claims against CNL Hotels, CSC, the Advisor and the Individual Defendants under Section 14(a) of the '34 Act, and Rule 14 promulgated under the '34 Act, and against the Advisor and Individual Defendants as controlling persons pursuant to Section 20(A) of the '34 Act.

d. Count IV of the First Amended Complaint asserted a shareholder derivative claim against the Advisor and Individual Defendants for breach of fiduciary duty.

104. The First Amended Complaint added detailed allegations challenging the methodology utilized to derive the value of the Advisor in connection with the Original Merger and Original Proxy. In this regard, the First Amended Complaint alleged that:

a. The future income stream projected by the Advisor was substantially based on advisory services to be provided to CNL Hospitality Properties II (a CNL affiliated entity, which has never broken escrow, and thus, could not generate
any revenue that could ever inure to the benefit of CNL Hotels or the Advisor.  
(see above at ¶ 71, 73).

b. The Advisor’s income from continued operations (amounts are roughly 
equivalent to EBITDA, the commonly utilized measure of performance) was 
used as the principle measure of profitability to value the Advisor by doing a 
comparable company analysis using EBITDA multiple range of 6.1x and 
11.3x. However, such income itself was inflated by the unjustified 4.5%
Acquisition Fee rate (Compl't, ¶¶ 289-290), the use of which then resulted in a 
grossly inflated value for the Advisor.

c. Despite being asked to vote for a self-dealing, non-arms length transaction, in 
which various Defendants would receive almost $300 million for their 
interests in the Advisor, the Proxy Class was never given the material 
information necessary concerning the Advisor’s past performance based on 
industry and role specific criteria, in order to make an informed decision 
concerning the Original Merger.

105. On July 22, 2005, Defendants moved to dismiss the First Amended Complaint:

a. As to the Purchaser Claims, Defendants asserted for the first time that the then 
named plaintiff, the Barack Trust, lacked standing to assert certain of the 
Purchaser Claims which challenged the statements made in the Offering 
Documents for the 2000, 2002, and 2003 Offerings. Defendants moved to 
dismiss claims asserted under the 2000 and 2003 Offerings because there was 
not a named plaintiff alleged to have purchased pursuant to those Offerings.

b. In addition, Defendants again resurrected their challenge to the Purchaser
Claims on the ground that CNL Hotels did not have a duty to disclose the omitted information or that the information that was disclosed was not materially misleading as a matter of law.

c. As to the Proxy Claims, Defendants asserted that the Original Proxy contained all material disclosures and the First Amended Complaint failed to allege the bases on which it was alleged that the Advisor valuation was unreasonable.

d. As to the Fiduciary Duty Claims, Defendants asserted that the First Amended Complaint’s allegations on the futility of making a demand on CNL Hotels’ board were insufficient to satisfy the requirements of Maryland Law.

e. Finally, the Advisor and CSC asserted that they were not properly named as Defendants in the Action.

106. Plaintiffs filed extensive briefing opposing Defendants’ motions. Oral argument on the motions was scheduled for September 9, 2005.

10. September 1, 2005 Announcement Concerning the Original Merger Agreement

107. On September 1, 2005, CNL Hotels issued a press release and filed a Form 8-K with the SEC that stated that, although the Original Merger Agreement remained in effect, the special committee of the board of directors of CNL Hotels and the Advisor were seeking to negotiate revised terms of the merger and that “If an agreement cannot be reached on revised terms, including an amount of consideration materially more favorable to the Company than previously proposed in the Merger Agreement, the Merger Agreement will be terminated.” This was the first time CNL Hotels’ shareholders were informed that the Original Merger Agreement would be terminated if the amount of consideration for the Advisor was not materially more
favorable to the Company than previously proposed.

11. September 9, 2005 Hearing and Court’s Rulings on Motion to Dismiss the First Amended Complaint

108. At the September 9 Hearing and on September 13, 20, and 21, 2005, the Court issued rulings that denied in part and granted in part Defendants’ motions to dismiss the First Amended Complaint. In these rulings, the Court dismissed:

   a. All claims against CSC on the ground that the First Amended Complaint did not allege sufficient facts to hold CSC liable under Section 12 of the Securities Act as a seller of CNL Hotels’ stock.

   b. The Proxy Claim as moot, without prejudice. Based on the language in CNL Hotels’ September 1, 2005 statement (above at ¶ 107), that the Original Merger Agreement would be terminated unless there was a material reduction in the consideration flowing to the Advisor, with the agreement of the parties the Court observed that the Proxy Claim was moot, since the Merger was not going forward on terms that the shareholders had approved pursuant to the challenged Original Proxy.

   c. The Fiduciary Duty Claims, with prejudice, adopting Defendants’ position that Plaintiffs failed to satisfy a prerequisite to a shareholder’s right to assert a derivative claim, that is, to demonstrate that a demand on the board of directors to act would have been futile.

109. Importantly, as to the Purchaser Claims, which Defendants moved to dismiss with respect to the challenged statements made in the Offering Documents for the 2000 and 2003 Offerings, in the face of Plaintiffs’ argument that the Lead Plaintiff for the Purchaser Class could
represent investors who purchased in Offerings pursuant to substantially similar Offering Documents), the Court ordered that Plaintiffs could add additional named plaintiffs who purchased in the 2000 and 2003 Offerings in a subsequently filed complaint, in order to cure any possible standing deficiency.

110. The Court upheld the remaining claims, and, in addition, in deciding what is essentially an issue of first impression (whether an Advisor of a REIT is a control person of the REIT for purposes of the federal securities law), the Court, adopting Plaintiffs’ position, held that the First Amended Complaint stated a claim against the Advisor as a controlling person of CNL Hotels under Section 15 of the Securities Act.

12. **Operative Complaint Filed and Defendants Moved to Dismiss the Operative Complaint, In Part.**

111. On October 10, 2005, Plaintiffs filed the Consolidated Second Amended Complaint seeking damages for alleged violations of the federal securities laws and state common law (“Operative Complaint”).

112. In accordance with the Court’s rulings on the First Amended Complaint concerning standing to assert the Purchaser Claims, the Operative Complaint added named plaintiffs who purchased during the 2003 Offering. (Compl ¶¶ 45-47). However, the Operative Complaint did not add a named plaintiff who purchased during the Class Period in the 2000 Offering.

113. Plaintiffs also conformed the allegations in the Operative Complaint to the Court’s rulings on Defendants’ motions to dismiss the First Amended Complaint, and included factual allegations relating to the Original Merger and the Original Proxy as material background information.
114. On November 9, 2005, Defendants moved to dismiss the Operative Complaint, in part, on the following grounds: (a) Allegations related to the Proxy Claim, the Fiduciary Duty Claim and CSC should be stricken because those claims, and CSC, were previously dismissed; (b) none of the named plaintiffs have standing to bring Purchaser Class claims related to the 2000 Offering; (c) and, again, the Purchaser Class claims related to the 2002 and 2003 Offerings should be dismissed for the reasons set forth (and unsuccessfully argued) in Defendants’ prior motions to dismiss.

115. In response, Plaintiffs asserted that: (a) allegations about CSC, the Original Merger and the Original Proxy remained material and pertinent to the Action, and thus should not be stricken or dismissed; (b) as previously argued, a named plaintiff who has standing to assert claims under the 2002 or 2003 Offerings has standing to assert claims on behalf of purchaser in the 2000 Offering, because the disclosures, the Offering Documents and claims were substantially similar; and (c) the Court had already ruled that the other Purchaser Class Claims were sufficient.

G. Settlement Negotiations

116. On December 6, 2005, Defendants for the first time seriously broached the topic of settlement with Co-Lead Counsel.

117. The initial discussions between counsel about the subject of settlement led immediately to Co-Lead Counsel’s mobilization of the necessary experts to assist them in the negotiations. The areas for which expertise was needed included:

a. assessing the proposals that Defendants would be making concerning the negotiated terms of the Merger between the Advisor and the Company;

b. assessing the proposals that Defendants would be making concerning the
payment of past and future advisory fees to the Advisor;

c. structuring of a settlement of the Purchaser Class Claims that used consideration other than cash, such a distinct possibility was suggested by Defendants’ Counsel in initial communications with Co-Lead Counsel, thus it was imperative for Co-Lead Counsel to be in a position to value any financial instrument (debt, equity or derivative) that the parties discussed as possible settlement consideration; and

d. the development of a preliminary plan of allocation for the Purchaser Class.

1. Partners Advisory Services Corp. (“PASCORP”)

118. Co-Lead Counsel sought the immediate assistance of PASCORP (see above, Section D.1 ¶ 34) in the settlement negotiations. As a consultant on these matters, PASCORP provided substantial and necessary assistance to Co-Lead Counsel because of its significant familiarity with CNL Hotels’ business, assets, structure and financial condition.

119. In connection with settlement negotiations, PASCORP consulted with Co-Lead Counsel regarding the following: (a) creation of a settlement framework that would compensate members of the Purchaser Class without impairing their investment in CNL Hotels; (b) creation of a new security to benefit members of the Purchaser Class while preserving CNL Hotels’ assets and capital structure; (c) the review and analysis of the terms of, and underlying financial valuations and backup to, the New Agreements; and (e) the participation in confirmatory discovery, distilling for Co-Lead Counsel documents concerning CNL Hotels’ accounting procedures and the New Agreements. (Vodola Decl. ¶¶ 34-45). Vodola participated in and attended four settlement meetings in New York, Orlando, and Washington, D.C. (Vodola Decl. ¶ 38).
2. *GlenDevon Group, Inc.* ("GDG").

120. Co-Lead Counsel also retained GlenDevon Group, Inc. ("GDG") to provide Co-Lead Counsel with assistance in settlement negotiations. Kathleen P. Chimicles, to whom I am married, is the founder and President of GDG. After having been the Financial Specialist of Chimicles & Tikellis LLP from 1992 through 2004, Ms. Chimicles established GDG in January 2005 to provide forensic investigation, damages analyses and expert services for complex litigation cases including structured allocation plans. Attached to this Declaration as Exhibit C is the Affidavit of Kathleen P. Chimicles, ASA In Support of The Settlement and (ii) Co-Lead Counsel’s Application for Attorneys’ Fees and Reimbursement of Expenses ("KPC Aff.").

121. In connection with settlement negotiations, Co-Lead Counsel retained GDG to assist Co-Lead Counsel in (a) creation of derivative financial instruments and other settlement structures; (b) structuring a plan of allocation; and (c) assessing the shareholder data requirements to effect the plan of allocation. (KPC Aff. ¶ 5, 8-15, 16-34).

122. In addition, on behalf of Co-Lead Counsel, GDG identified and negotiated an engagement agreement with Write Capital Management ("WCM"). WCM is an options specialist firm. Attached as Exhibit D hereto is the company resume of WCM. At the direction of Co-Lead Counsel, GDG and WCM evaluated, structured and provided a preliminary estimate of the value created by several option structures considered by Co-Lead Counsel as part of a structure of proposed settlement scenarios. (KPC Aff. ¶ 11-12).

123. Co-Lead Counsel and PASCORP immediately drafted requests for information (to be sent to Defendants), concerning, among other things, financial data being used by the Special Committee and financial advisors to evaluate fairness of any revised offers for Advisor and terms of revised Merger, and information related to: any income stream to the Advisor from CNL II; the $83 million KSL Fee; the Deferred Fees\(^8\); the status of the existing Advisory Agreement; the WB and Desert Ridge Joint Ventures; and the value of CNL Hotels’ stock. In addition, the request sought operating budgets and statements for CNL Hotels for 2005 and 2006, a schedule of CNL Hotels’ assets, and schedules concerning Credit Enhancements. These, in addition to the other documents requested by Co-Lead Counsel at this early stage of settlement negotiations, were important to establish a common foundational understanding of the financial resources, business plan and prospects of CNL Hotels.

124. On December 9, 2005, in response to Plaintiffs’ initial request, Defendants began to produce documents concerning proposed revised terms to the Original Merger Agreement, proposed terms with respect to Deferred Fees, historic and future advisory fees, and foundational documents for WB and Desert Ridge Joint Ventures.

125. Based on Co-Lead Counsel’s and its consultants’ review of these documents, Co-Lead Counsel propounded additional requests for documents on Defendants, including schedules of Advisory Fees, back-up for 2006 EBITDA figures that were used in negotiating the revised terms of the Original Merger Agreement. Defendants continued production of these requested

\(^8\) The Original Merger Agreement provided that under certain circumstances the Advisor would not be paid certain fees that would otherwise have been payable to the Advisor pursuant to the applicable Advisory Agreement prior to the anticipated closing of the Merger (other than asset management fees, development fees, or reimbursable expenses) (the “Deferred Fees”).
documents on December 12-13, 2005.

126. Among the initial documents requested by Co-Lead Counsel were any insurance policies that may provide coverage for the claims asserted in the Action. In response, Defendants produced three policies, evidencing a total of $30 million in coverage, that could apply to claims in this Action:


127. The Parties held the first in-person settlement discussions on December 14, 2005 in New York City. The focus of the December 14 settlement meeting was the Proxy Claims. Co-Lead Counsel presented a possible settlement framework involving revised terms to the Original Merger Agreement, revised advisor fees, KSL Fees, corporate governance policies, and aspects of the WB and Desert Ridge Joint Ventures.
128. Also during the December 14 settlement meeting, Co-Lead Counsel were informed that certain of CNL Hotels’ insurers were disclaiming coverage of this Action.9

129. On December 16, 2005, at the request of the parties, the Court adjourned any hearings on the Motions to Dismiss because the parties to the Action had entered into serious settlement discussions.

130. Co-Lead Counsel, in consultation with James Vodola of PASCORP and Kathleen Chimicles of GDG, reviewed and analyzed the documents provided to Co-Lead Counsel by defendants in response to the initial and supplemental requests for information and documents. In addition, Co-Lead Counsel and its consultants undertook independent factual research and legal research to support the settlement frameworks proposed to Defendants. Such work included:

a. Analysis of the WB and Desert Ridge Joint Venture Documents to determine structure of the Joint Ventures, investors in the Joint Ventures, the individuals who were affiliated with Defendants, the Individual Defendants who held direct or indirect interests in the Joint Ventures and how they came about to acquire such interests, and the amount of any monetary gain or loss that any Individual Defendant who had invested in the Joint Ventures was likely to realize from such investment.

9 On March 13, 2006, CNL Hotels filed a lawsuit against Twin City Fire Insurance Company, Houston Casualty Company and Landmark American Insurance Company for declaratory judgment, breach of contract, attorneys’ fees and other relief (the “D&O Action”) under three Directors, Officers and Company liability insurance policies issued to CNL Hotels (collectively, the “Insurance Policies”) with stated aggregate limits of $30 million. The D&O Action seeks, among other things, reimbursement of CNL Hotels’ costs incurred in connection with the Action, including defense costs and payments contemplated by the Settlement, to the fullest extent of the Insurance Policies and as otherwise permitted by law.
b. Research on scope of accountant malpractice claims under Florida law.

c. Analysis and understanding of CNL Hotels' Stock Redemption Plan, and the impact the Stock Redemption Plan on any proposed settlement and plan of allocation.

d. Extensive research on warrants and similar securities (including issues involving strike prices, market prices, valuation, and the effect of dividends) that were being considered as potential non-cash settlement consideration that could be used to settle the Purchaser Class claims. Since the value of any newly issued Company security was dependent on the Company's operations and prospects, Co-Lead Counsel and their experts also scrutinized all relevant financial data and projections provided by Defendants.

131. In-person negotiations ensued on December 22, 2005 in Orlando, Florida. Co-Lead Counsel, along with James Vodola of PASCORP, attended the meeting and conducted negotiations with Defendants' Counsel. Also in attendance at this meeting were Defendants' Officers: Mark E. Patten (Senior VP and Chief Accounting Officer of CNL Hotels and Senior VP and Chief Accounting Officer of the Advisor); Greerson G. McMullen (Senior VP, Chief General Counsel and Secretary of CNL Hotels); Mark Scimeca (Senior VP and Deputy General Counsel of CNL Hotels); and C. Brian Strickland (attended via phone, Executive VP, CFO, Treasurer and Secretary of CNL Hotels and Executive VP and CFO of Advisor).

132. The December 22, 2005 settlement discussions began with defendants making a presentation on CNL Hotels' business and projected future financial condition ("December 22 Presentation"). The goals and objectives of the December 22 Presentation were to give Co-Lead Counsel and their advisors an overview of CNL Hotels' historical and future business plans, an
overview of the current state of the hotel industry, the strategic view for CNL Hotels, and projected financials for CNL Hotels.

133. The December 22 Presentation began with a discussion concerning CNL Hotels’ raise of capital, the acquisitions made by the Company until early 2004, and the strategic view for CNL Hotels for 2006. Co-Lead Counsel were apprised of CNL Hotels’ 2005 and 2006 business plans, which included an overview of the hotel industry, projected occupancy and revenue streams for the Company, detailed discussions and presentations about portfolio diversification, projected dividend reduction, the prospect of bringing to market CNL II (a new non-listed hotel REIT whose proposed use of the Advisor was used as part of the justification for the merger consideration to be paid under the Original Merger Agreement), pricing of the Original Merger Agreement, and the related party transactions involving CNL Hotels’ assets, including the Desert Ridge and WB Joint Ventures. Concerning CNL Hotels’ projected financials, Defendants gave an overview of CNL Hotels’ projected funds from operations (“FFO”) and cash available for distribution (“CAD”).

134. After the December 22 Presentation, Defendants’ counsel also made a presentation on the merits of the Action, and the parties engaged in a series of settlement proposals, and counter-proposals, including discussions of the use of issuing warrants or other securities as part of a settlement framework. The parties expressed their dissatisfaction and difficulties with the other side’s proposals. While maintaining a position that a cash settlement was not desirable, Defendants also were opposed to the degree of impact that certain terms of the settlement and form of non-cash settlement consideration proposed by Co-Lead Counsel could

10 CNL Hotels sold WB in the fourth quarter of 2005 and acquired its Joint Venture partners’ interests in Desert Ridge in the first quarter of 2006.
have on CNL Hotels’ financial condition and its ability to list its securities on a national exchange before December 31, 2007.

135. Defendants continued to insist throughout the December 2005 discussions, that it was not desirable to use cash as the settlement consideration for the Purchaser Class claims. Co-Lead Counsel’s efforts, therefore, focused on utilizing creativity and formulating a proposal that employed a newly-issued security that would be used, in whole or part, as settlement consideration.

136. Taking into account all of the parties’ positions and the goal to settle the Action in a manner that was mutually acceptable, and that would not hinder CNL Hotels’ business plan, or any possible listing of its stock, Co-Lead Counsel worked intensely with GDG, PASCORP and WCM to assess the viability of creating an alternative security (warrant, options or preferred stock) that would provide measurable and valuable benefits to the members of the Purchaser Class, while minimizing the dilutive effect to current and future shareholders of the Company. (See GDG Aff. ¶¶ 11-12). GDG, PASCORP and WCM met in-person and via telephone several times starting late-December through early January, discussed the features and objectives for an alternative security to be proposed by Co-Lead Counsel, the viability of each alternative security, how the value would be calculated and the features impacting value, and a range of estimate value created by each alternative security. Specifically considered were the following:

a. the real and measurable value to the Purchaser Class at time of issuance;
b. avoid performing a highly complicated and subjective valuation of CNL Hotels or its stock during the negotiations;
c. minimize dilution to existing shareholders’ equity;
d. a structure that would avoid a negative pricing impact on the CNL Hotels’ stock upon any offering or listing and the timing of issuing an alternative
security in relation to any listing;

e. use of securities that have laddering or lookback features, which have the ability to enhance the upside potential and value of the newly issued securities; and

f. whether the alternative security should require the investment of new capital by the Purchaser Class members.

137. With the assistance and advice of its consultants, Co-Lead Counsel identified several possible structures for an alternative security, however, Co-Lead Counsel was consistently confronting the Hobson’s choice of (i) insisting on the issuance of a magnitude of securities to provide an aggregate settlement value sufficient to resolve the Purchaser Class Claims and (ii) assessing the dilutive effect of such securities issuance on the current and future pricing of CNL Hotels’ stock.

138. Defendants proposed, as an alternative to, or in conjunction with, the issuance of a new security, the payment of a highly contingent cash component. This cash would be paid depending upon the Company’s future performance and its meeting certain revenue and income thresholds. Co-Lead Counsel and their experts expended considerable time in evaluating this contingent cash proposal, which required scrutinizing historical and projected financial results as well as industry trends and prospects.

139. On January 5, 2006, the parties met in New York City to continue with settlement negotiations. Based on the December 22 Presentation, review of documents produced by Defendants, and independent research and investigation by Co-Lead Counsel and our consultants, Co-Lead Counsel made a comprehensive proposal to Defendants to address the resolution of this matter. Such proposal comprised: (a) a revised Merger Agreement and the reduced Advisory Fees; (b) Co-Lead Counsel’s review of and comment on the New Proxy; (c)
utilization of the Stock Repurchase Program; (d) issuance of an alternative security (cumulative, convertible preferred stock or warrants) with enhancement features; and (e) the adoption of corporate governance provisions. The parties did not reach a resolution on any of these proposals.

140. On January 13, 2006, settlement discussions continued in an intensive session in Orlando, Florida. In preparation for this meeting, Co-Lead Counsel expended considerable time and effort, with their consultants, evaluating financial securities that would provide immediate and future realizable economic benefit to the members of the Purchaser Class, while preserving CNL Hotels’ assets and capital structure in the short term. During this negotiation session, the parties made several proposals and counter-proposals for settlement. The discussions failed.

141. On January 17, 2006, two days before the deadline set by the Court for apprising it on the status of the discussions, Co-Lead Counsel, certain of Defendants’ officers (see ¶ 131 above) and Defendants’ Counsel reconvened in Washington, D.C. to resume settlement negotiations.

142. In anticipation that there may be a break-through in the offing, Co-Lead Counsel drafted and brought with them to the January 17, 2006 meeting, a memorandum of understanding memorializing various proposed settlement terms that had been discussed and negotiated up to that point. Among the provisions of the draft MOU were proposed corporate governance provisions that had been discussed among counsel for the Parties during the prior negotiations. Co-Lead Counsel had impressed upon Defendants that certain corporate governance provisions were appropriate in order to (i) afford greater investor protection in the event there was a delay in the Listing of the Company’s stock and there was a request by the directors to postpone the mandatory liquidation provisions of the Charter and (ii) avoid the kind of related party
transactions and inadequate disclosures that characterized the WB and Desert Ridge Joint Ventures.

143. A sea change emerged during the January 17 meeting. Settlement consideration for the members of the Purchaser Class veered from use of an alternative security or highly contingent and performance-driven cash to unconditional, non-contingent cash, a much more preferable form of consideration from the Purchaser Class’ standpoint. Although the Settlement ultimately did not include an alternative security, it was Co-Lead Counsel’s insistence throughout the December-January negotiations that the use of an alternative security or contingent cash must deliver real and significant value to the Purchaser Class that ultimately brought about the settlement of the Purchaser Class Claims for $35 million in cash. If Co-Lead Counsel had not insisted on settlement consideration with real and significant value and if they had not been assisted by key consultants who had the expertise to evaluate more speculative proposals and counterproposals, this Settlement for $35 million in cash would never have been accomplished.

144. After all-day negotiations and break-out sessions, the parties reached a settlement-in-principle late in the day on January 17. The settlement-in-principle proposed to resolve this Action in its entirety, while enhancing important goals of positioning the Company to continue operations with the prospect of listing its stock on a national stock exchange, and achieving outstanding and substantial benefits for CNL Hotels’ investors and the Company.

145. Once the settlement-in-principle was reached, Co-Lead Counsel and Defendants’ Counsel negotiated the terms of Co-Lead Counsel’s fees.

a. As to the Proxy/Fiduciary Duty Claims, the parties agreed that Plaintiffs’ Counsel would seek Court approval for the payment of attorneys’ fees to
Plaintiffs’ Counsel by CNL Hotels in the amount of $5.5 million, inclusive of reimbursement of expenses allocated to the prosecution of the Proxy Class Claims. CNL Hotels would pay $5.5 million (inclusive of fees and a portion of expenses incurred and allocated to the Proxy Class and Fiduciary Duty Claims) on account of the benefits conferred by virtue of the Settlement, in particular the benefits resulting from, without limitation, the modifications to the Advisor fees, the revised Merger terms, and the provisions relating to corporate governance. Settling Defendants also agreed not to oppose Plaintiffs’ Counsel’s application for attorneys’ fees and expenses related to the Proxy/Fiduciary Duty Claims in an amount not to exceed $5.5 million.

b. As to the Purchaser Claims, Settling Defendants agreed not to oppose Plaintiffs’ Counsel’s application for attorneys’ fees equal to 25% of all amounts paid into and earned by the Settlement Fund Account, plus reasonable expenses, including, but not limited to, expert fees, and costs and expenses incurred by or in connection with, experts, consultants, claims administration, and notice, which fees and expenses would be sought by Plaintiffs’ Counsel with respect to obtaining the Cash Settlement Fund for the benefits for the Purchaser Class.

146. Subsequent to such negotiations about Co-Lead Counsel’s fees, Co-Lead Counsel delivered to Defendants and their counsel the draft memorandum of understanding that they had prepared before the January 17 negotiations.

147. In lieu of a written submission by the parties on January 19, the Court heard from the parties during a conference with parties on January 23, 2006. At that time the parties
informed the Court of the settlement-in-principle and that the parties were in the process of drafting the memorandum of understanding. At the conclusion of the January 23 conference with the Court, the Court set another status conference for March 8, 2006, which was thereafter rescheduled by the Court to March 13, 2006.

H. Memorandum of Understanding.

148. The parties immediately commenced with negotiating the terms of the memorandum of understanding ("MOU") which contains the principal terms of the proposed settlement and received client approval.

149. The Parties had several disagreements about the terms of the MOU, and negotiations about, and drafting of, the terms of the MOU commenced on January 18 and did not conclude until the morning of February 7.

150. On January 30, Defendants provided a version of the MOU revised substantially from Co-Lead Counsel's January 17 version.

151. Co-Lead Counsel immediately commenced a thorough review of the terms of Defendants' proposed MOU, and identified areas about which there remained substantive disagreement between the parties.

152. At the direction of their respective parties, Kimberly M. Donaldson of Chimicles & Tikellis LLP and Toby Soli of Greenberg Traurig, continued the negotiations and drafting of the terms of the MOU. Areas about which the parties had substantive disagreements, included, among other things, various terms of the corporate governance provisions, scope of confirmatory discovery, scope of the settled claims, events triggering termination of the Settlement and MOU, and the role of Defendants' insurance carriers.

153. On the morning of February 7, 2006, all Counsel signed the MOU.
I. Confirmatory Discovery.

154. Concomitant with negotiation and drafting of the MOU, and consistent with Co-Lead Counsel's right under the MOU to undertake confirmatory discovery, Co-Lead Counsel prepared a detailed document request, which was presented to Defendants' Counsel on February 7, 2006.

155. Co-Lead Counsel requested, and Defendants promptly produced, documents concerning the following:

a. CNL Hotels' Board of Directors meeting(s), Special Committees and the Special Litigation Committee, including documents prepared by and for those Committees.

b. Proposed or actual level of Acquisition Fees payable to the Advisor under any Advisory Agreement, including the rates utilized by other advisors in the REIT industry.

c. Coverage for liability by any insurance policy for any or all claims asserted in this Action.

d. Communications with the SEC with regards to any claim alleged in this Action, the Offering Materials, the Listing, the Underwritten Offering and the Company's Audited Financial Statements.

e. Accounting treatment and the Financial Statement presentation of credit enhancements (as that term is utilized in CNL's SEC Filings).


g. Accounting treatment and the Financial Statement presentation of FF&E Reserve Income and FF&E Accounts.

h. Accounting treatment and the Financial Statement presentation of cash from operations and net cash provided by operating activities (as those terms are utilized in CNL's SEC Filings).

i. Accounting treatment, the Financial Statement presentation, and the calculation of the Company's distributions, distribution shortfalls and the
funding of the distributions.

j. Reclassification of credit enhancement funding (as was set forth in Note 2 to CNL’s Consolidated Financial Statements in CNL’s Form 10-K for the Fiscal Year Ended December 31, 2004).

k. Amounts or fees paid or payable to the Advisor in connection with the refinancing and replacement of the Existing KSL Loan.

l. Pricing of CNL stock in the Underwritten Offering and Listing.

m. Value, and any valuation, of the Advisor.

n. WB and Desert Ridge Joint Ventures.

156. At the same time, Co-Lead Counsel also requested documents that would provide confirmation of, and additional information on, the background of CNL Hotels and its business, including:

a. Organizational charts for CNL Hotels and the Advisor;

b. Employment agreements of key persons;

c. Minutes from CNL’s Board of Directors meeting(s)

d. General communications concerning this Action.

e. Documents drafted, prepared and/or used in the sale and/or marketing of the Offerings, Listing and the Underwritten Offering.

f. Managing Dealer and each Soliciting Dealer Agreements

g. A summary chart/spreadsheet reflecting the amount of sales of CNL stock effectuated by each Soliciting Dealer.

h. Relevant press releases issued by the Defendants, media coverage or industry coverage concerning the Offerings, the Listing, and the Underwritten Offering.

157. On February 7, 2006 in New York City, defense counsel Soli of Greenberg Traurig, made a presentation concerning discovery and the Action to Plaintiffs’ Counsel
Soli’s February 7 Presentation outlined Defendants’ position with respect to the accounting treatment and disclosures made to the investors concerning Credit Enhancements, FF&E Reserves and distributions (See Section E.3.a.¶ 61-67, above). In addition, in response to Plaintiffs’ requests for production of documents (¶¶ 155-156, above), Defendants produced over a quarter million pages of documents. At the conclusion of Soli’s February 7 presentation, Plaintiffs’ Counsel received 5 CD-ROMs containing documents pertaining to the following:

a. Purchase Agreements & Appraisals for each Property
b. Management Agreements and Credit Enhancement Agreements
c. Investment Opportunity Packages (information presented CNL Hotels’ Board of Directors for consideration in connection with the purchase of a property);
d. Financial Information
e. Source Documents;
f. Memos prepared by CNL Hotels’ accountants concerning the accounting issues raised in the Action.

Co-Lead Counsel immediately convened with its consultant, PASCORP, and Plaintiffs’ Counsel, and commenced an orderly and thorough review and analysis of the documents produced by Defendants.

Defendants’ production of documents was ongoing throughout the period for confirmatory discovery. During that time, Co-Lead Counsel made several additional and follow-
up requests of Defendants for documents and information pertaining to various issues asserted in
the Action.

161. In addition to the review of documents, Defendants' Counsel verbally presented
information concerning CNL Hotels' business and accounting practices. On February 17, 2006,
Co-Lead Counsel, along with James Vodola of PASCORP, were given a presentation by
Kenneth Lapatine of Greenberg Traurig and Scott Schreiber of Arnold & Porter LLP,
concerning CNL Hotels' financial accounting and the Joint Ventures.

162. In connection with Co-Lead Counsel's and PASCORP's review of the documents
produced pertaining to the Desert Ridge and WB Joint Ventures, including analyses of the
affiliates' investments in the Joint Ventures, Co-Lead Counsel secured the following
representations from Defendants' Counsel:

a. The source(s) of Defendants Seneff and Bourne's direct or indirect investment
in Desert Ridge Resort, Ltd. in the amount of $1,447,369 ("Desert Ridge
Investment") were solely the assets of Defendants Seneff and Bourne and
CNL Hotels did not reimburse Defendants Seneff and Bourne for the Desert
Ridge Investment nor make any loans to Defendants Seneff and Bourne that
constituted the source of the Desert Ridge Investment.

b. The source(s) of Defendants Seneff and Bourne's direct or indirect investment
in Waikiki Beach Resort, Ltd. in the amount of $6,479,150 ("WB
Investment") were solely the assets of Defendants Seneff and Bourne and that
CNL Hotels did not reimburse Defendants Seneff and Bourne for the WB
Investment nor make any loans to Defendants Seneff and Bourne that
constituted the source of the WB Investment.
163. Plaintiffs' Counsel spent hundreds of hours analyzing the content of the production and the substance of the information contained in the documents produced as part of confirmatory discovery. Confirmatory discovery was concluded on March 10, 2006.

J. Stipulation of Settlement.

164. Drafting of the Stipulation of Settlement and related papers, including the notes, escrow agency agreement, proposed orders, class notice and summary class notice, began in mid-February 2006.

165. On March 10, 2006, the Parties began extensive and intense negotiations as to the terms of the Stipulation of Settlement.

166. There were several substantive areas about which Co-Lead Counsel and Defendants disagreed. At times, the parties faced the very real possibility that agreement and compromise on the terms of the Stipulation could not reached. Among other things, the parties had extensive negotiations about:

a. Definitions of the various terms used throughout the Stipulation;

b. The scope of the settled claims;

c. The scope of the releases;

d. The terms of the Promissory Notes evidencing the obligation to make the cash installment payments;

e. Various representations, including those concerning share data;

f. Counsel’s role in connection with the New Proxy

g. Timing, and duration, of the corporate governance policies

h. Language in the Class Notice.

167. On March 13, 2006, the Court held a conference during which the parties
informed the Court on the status of the negotiations and the drafting of the Stipulation of Settlement. The Court then ordered the parties to file the Stipulation of Settlement, and motion for preliminary approval of the settlement of this Action, by March 31, 2006.

168. After several exchanges of drafts of the Stipulation and telephonic conferences, Co-Lead Counsel and certain of Defendants' counsel convened an in-person meeting on March 22, 2006 in New York City to continue negotiations on the terms and language of the Stipulation of Settlement. During the March 22 meeting, resolution on various items was reached, and drafts of the Stipulation and related papers, incorporating such resolutions, were circulated among the parties March 24 through March 28, 2006.

169. However, on March 29, 2006, it became apparent that there were still disagreements regarding the language in the Stipulation and the Class Notice.

170. Facing the Court's deadline of March 31, 2006 for the filing of the Stipulation of Settlement, on March 30, 2006, Donaldson and Soli, met in New York City and embarked on a negotiation and drafting session that lasted approximately an uninterrupted 48 hours. In addition, during this time frame, Co-Lead Counsel convened several conference calls with each other and with Defendants' counsel to address various outstanding matters and unresolved disagreements. The terms of the Stipulation and the substantive terms of the accompanying documents were finalized on March 31, 2006.11

11 On March 31, 2006, Defendants' Counsel requested an extension for the filing of the Stipulation of Settlement until April 3, 2006, which request the Court granted.
K. **New Proxy Review.**

171. On April 12, 2006, in accordance with paragraphs II.F.2 and 3 of the Stipulation of Settlement, Defendants provided Co-Lead Counsel with a draft of the New Proxy for Co-Lead Counsel’s review and comment.

172. In conjunction with PASCORP, Co-Lead Counsel undertook an expedited, extensive and comprehensive review of the New Proxy. Under the terms of the Stipulation, any reasonable comments by Co-Lead Counsel on the New Proxy would be taken under consideration by CNL Hotels in its sole discretion.

173. On April 18, Co-Lead Counsel conveyed in writing to Defendants a number of observations and suggestions that they believed would improve the quality and completeness of the New Proxy, including the description of this Action, the dilutive effect of the Amended Merger, and revisions and clarifications to some of the financial presentations. The New Proxy was modified to largely reflect or adopt Co-Lead Counsel’s comments.

174. Based on the foregoing, Co-Lead Counsel agreed to fully support shareholder approval of the merger of the Advisor into CNL Hotels and the Charter Amendments set forth in the New Proxy, as being fair and reasonable, and in the best interests of CNL Hotels and its shareholders.

175. The definitive New Proxy was filed with the SEC on May 12, 2006 and thereafter disseminated to CNL Hotels’ shareholders for their review and vote. Defendants also filed supplemental proxy materials with the SEC which Co-Lead Counsel expeditiously reviewed in accordance with the terms of the Stipulation of Settlement.

176. On June 20, 2006 CNL Hotels announced preliminary voting results pertaining to the Company’s Special Meeting of Stockholders held on June 20, 2006 concerning the Amended
Merger Agreement and the related Charter Amendments. The Amended Merger Agreement was approved with approximately 86,212,249 votes, or about 92 percent of the shares voted in favor thereof. On June 21, 2006, CNL Hotels completed the merger of the Company and the Advisor, whereby the Advisor was merged with and into a wholly-owned subsidiary of the Company on the terms set forth in the Amended Merger Agreement.

L. **The Plan of Allocation and Claims Administration**

177. In connection with the administration of the terms of the Settlement, and specifically in connection with the creation of the $35,000,000 Cash Settlement Fund, Co-Lead Counsel undertook to formulate a plan to allocate the Cash Settlement Fund to the members of the Purchaser Class ("Plan of Allocation").

178. Co-Lead Counsel engaged GDG to assist Co-Lead Counsel in developing a Plan of Allocation which utilized an Investment Data Form process and drafting claim processing forms which would be provided to the members of the Purchaser Class. The use of an Investment Data Form (pre-printed form with each Class Member's purchase history) significantly increases the number of class members who receive a settlement distribution because the class member has no burden to provide copies of investment records to the claims administrator and has no burden to return the IDF Form if the information is correct. In contrast, a Proof of Claim requires each class member to submit his/her/its investment information including evidence of purchase such as confirmation slips and copies of the original subscription agreement to demonstrate his/her/its entitlement to share in the Cash Settlement Fund. *(See KPC Aff. ¶¶ 16-19).*

179. Co-Lead Counsel sought GDG's expertise in this area because the Investment Data Form process requires considerable data analyses prior to approval of the plan of allocation.
and precise correlation among the plan of allocation provisions, the Investment Data Form, and
the data models developed by the claims administrator. Kathleen Chimicles of GDG has
considerable expertise in developing and implementing complex plans of allocation, including
the plan of allocation implemented to distribute more than $100 million in cash and additional
benefits to more than 100,000 class members in In re PaineWebber Limited Partnerships
Litigation, 94 Civ. 8547 (SHS) (S.D.N.Y.) and the plan of allocation adopted to distribute more
than $50 million to approximately 20,000 class members in In re Real Estate Associates Limited
Partnership Litigation, Case No. CV 98-7035 DDP (C.D. Cal.).

180. The Purchaser Class is defined as: pursuant to Fed. R. Civ. P. 23(a) and (b)(3), a
class of all persons who purchased or otherwise acquired CNL Hotels’ securities issued or
offered pursuant to or by means of CNL Hotels’ registration statements and/or prospectuses
effective between August 16, 2001 and August 16, 2004, inclusive (the “Purchaser Class”).

181. The Plan of Allocation was developed according to the following criteria flowing
from the legal interpretation of the Purchaser Class definition.

a. Shares must have been purchased between August 16, 2001 and August 16,
2004. Because the CNL Hotels engaged in sequential public offerings
throughout the Purchaser Class Period and investors in earlier public offerings
were offered the opportunity to invest in subsequent public offerings through
CNL Hotels’ dividend reinvestment plan, a shareholder may be considered a

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12 The “Class” collectively includes the Purchaser Class defined above and the Proxy Class
certified by stipulation for purposes of this Settlement only and defined pursuant to Fed. R. Civ.
P. 23(a) and (b)(2), as a class of all stockholders of CNL Hotels who were entitled to vote on the
proposals presented in the proxy statement, dated June 21, 2004, as amended or supplemented by
the additional proxy solicitation materials filed on July 7, 8, and 20, 2004.
Purchaser Class member with respect to some of the shares purchased but not with respect to any shares purchased prior to or after the Purchaser Class Period.

b. Shares transferred for zero consideration (termed “by operation of law”) whether by gift or bequest, pursuant to marriage or divorce, or by a change in account type transfer the right to the settlement consideration from the transferor to the transferee. However, the date of the original purchase by the transferor is controlling to determine whether such shares were purchased during the Purchaser Class Period.

c. Shares that were purchased during the Purchaser Class Period but were sold during the Purchaser Class Period are eligible to be considered to receive a settlement distribution, however, such settlement distribution is to be mitigated by the proceeds received from the sale of the shares.

182. Co-Lead Counsel consider those shareholders who purchased CNL Hotels’ stock in the secondary market between August 16, 2001 and August 16, 2004 to be Purchaser Class members with respect to the shares purchased during the Purchaser Class Period. See e.g. Lee v. Ernst & Young LLP, 294 F.3d 969, 976-977 (8th Cir. 2002) (a claim under § 11 “exists for any person who purchased a security that was originally registered under the allegedly defective registration statement-so long as the security was indeed issued under that registration statement and not another.”); DeMaria v. Andersen, 318 F.3d 170, 175-178 (2d Cir. 2003); Hertzberg v. Dignity Partners, Inc., 191 F.3d 1076, 1080 (9th Cir. 1999); Davidco Investors, LLC v. Anchor Glass Container Corp., 2006 WL 547989, *23 (Bucklew, J.)(M.D. Fla. March 6, 2006). Such shares, however, are subject to a mitigation formula where the settlement distribution allocated
to a share is apportioned between the buyer and the seller according to a transaction price-based weighting formula. In summary, the weighting formula proves a higher allocation percentage to the seller if the seller sold below the original offering price of the shares and a higher allocation to the buyer if the buyer’s purchase price approximates the original offering price of the shares.

183. The KPC Aff. ¶¶ 25-28 and Exhibit B, thereto, provides substantial additional information about the Plan of Allocation, negotiations and requests to Defendants’ Counsel concerning shareholder data, and the claims process, and should be read in conjunction with this portion of this Declaration.

184. On February 7, 2006, Co-Lead Counsel requested that Defendants produce documents, which were necessary for Co-Lead Counsel and GDG to make an initial assessment and preliminary formulation of the Plan of Allocation, the claims administration process and Class Notice dissemination. Co-Lead Counsel also requested that Defendants make available for discussions with Co-Lead Counsel and GDG the person or persons most knowledgeable about these documents and information. In light of the expedited time frame during which Co-Lead Counsel needed to develop a Plan of Allocation, it was important for Co-Lead Counsel and GDG to have access to such person(s) who would have the information necessary to apprise Co-Lead Counsel and GDG on the shareholder data kept by CNL Hotels. Without such education, Co-Lead Counsel and GDG would neither be able to formulate the Plan of Allocation nor be able to determine whether Co-Lead Counsel could implement the claims process by using an Investment Data Form.

185. On March 2 Defendants began to provide spreadsheets purportedly responsive to Co-Lead Counsel’s initial request on February 7. Co-Lead Counsel and GDG reviewed all data provided in a timely manner and provided Defendants with further data requests or clarifying
questions. Additional information and responses were received from Defendants over the following two weeks. Despite repeated requests, Defendants refused to make available for discussions with Co-Lead Counsel and GDG the person or persons, (other than Defendants' counsel) most knowledgeable about these documents and information. Defendants' counsel insisted that all data requests and responses be forwarded through Defendants' counsel.

186. During a March 22 meeting between the parties' counsel concerning the drafting of the Stipulation of Settlement (see ¶168 above), Co-Lead Counsel provided Defendants with a comprehensive list of outstanding items (questions and information requests) related to the Plan of Allocation.

187. Based on the information received as of March 31, 2006 and with the assumption that Defendants would timely provide all the data included in the then outstanding requests, Co-Lead Counsel and GDG finalized a proposed Plan of Allocation, which was submitted to the Court for preliminary approval with the Stipulation of Settlement on April 3, 2006.

188. On April 6 and April 7, 2006, Co-Lead Counsel and GDG conducted extensive conference calls with Defendants' counsel to sort through the data received to date, and to pose and secure answers to various outstanding questions concerning the share data. Defendants' counsel indicated that the data production obligations had been fulfilled and they were not inclined to provide any further data reports. Despite these efforts, there was insufficient information about the share data for Co-Lead Counsel to ensure that the Plan of Allocation, as then proposed, could be implemented utilizing the Investment Data Form.

189. On April 11, 2004, this Court conducted a hearing on the Motion for Preliminary Approval. ("April 11 Hearing"). During the April 11 Hearing, Plaintiffs' counsel discussed the possibility of needing to simplify the initial Plan of Allocation because of the significant
limitations that existed with respect to the information and data contained in CNL Hotels' stock transfer records that had been provided to Plaintiffs and the Claims Administrator. Also discussed was the desirability of mailing, by May 12, 2006, both the Class Notice as well as the Investment Data Form and Proof of Claim to Class members. Co-Lead Counsel reiterated to the Court that it was an important goal of the claims process to provide Investment Data Forms that would contain each Class member's individual identification and CNL Hotels' stock transaction information, which would eliminate or, at a minimum, significantly reduce, the need for most Class members to take any action in order to receive a distribution from the Net Settlement Fund. However, Co-Lead Counsel reiterated that the feasibility of the Investment Data Form process was totally dependent upon the quality and functionality of CNL Hotels' stock transfer records, and the data and reports provided by CNL Hotels prior to the April 11 Hearing.

190. Co-Lead Counsel and GDG had prepared outlines of two alternative Plan of Allocation structures, one assuming no further data would produced by Defendants and a second which required two additional reports be produced by Defendants.

191. Following the April 11 Hearing, Co-Lead Counsel and GDG were able to secure additional data and reports very promptly from CNL Hotels, and, based on the direction from the Court, prepared and submitted a revised Plan of Allocation (that retained the basic structure of the initial Plan of Allocation to the Court April 3, 2006) which the Court preliminarily approved on April 24, 2006. Co-Lead Counsel also promptly prepared corresponding changes to the portion of the Class Notice describing the Plan of Allocation to the members of the Purchaser Class. (See KPC Aff. ¶ 33)

192. In accordance with the Court's April 24, 2006 Preliminary Approval Order, Lead Litigation Counsel retained Complete Claim Solutions, LLC ("CCS") to assist in the process of
providing notice to the potential members of the Class and other related parties in this Action. (Exhibit F, hereto, Affidavit of Dawn E. Addazio Re: Mailing of Notice of Pendency and Proposed Settlement of Class Action, Investment Data Form and Proof of Claim. ("Addazio Aff.").) Specifically, CCS was retained to upload and analyze data provided by Defendants in this Action, cause the Notice Packets to be printed, and to thereafter mail the Notice packets to potential members of the Class and other related parties. (Exhibit F, Addazio Aff. at ¶ 2).

Beginning April 4, 2006 and continuing through May 8, 2006, Lead Litigation Counsel and GDG provided CCS with eleven (11) data files containing the names, addresses and transactional history of potential members of the Class. (See id. at ¶ 3).

193. CCS uploaded the data into a segregated database (the “CCS Mailing Database”) to be used for mailing the Notice Packets to members of the Class, and electronically scrubbed certain files of data to ensure adequate address formatting and to eliminate duplicative records. CCS also ran a series of queries against the various data files to properly identify and categorize Class Members. Class Members were categorized as follows: Non Purchaser Class Members, Direct Purchase and Hold Group, and Transaction Group. (See Exhibit F, Addazio Aff.. ¶¶ 4-5).

194. The Plan provides for a weighting formula that will fairly and equitably distribute the Per Share Allocation to members of the Transaction Group based on the sale or purchase price of each Third Party Transaction for which an approved Proof of Claim is filed.

195. During the weeks of April 24 and May 1, 2006, subsequent to the Court’s preliminary approval of the Plan of Allocation, Co-Lead Counsel, GDG and the Claims Administrator worked diligently to cure various inconsistencies and deficiencies in the share data, in an effort to finalize the pre-printed Investment Data Forms and Class Notices, which were mailed to the Class on May 12, 2006.
196. In accordance with the Preliminary Approval Order, CCS caused almost 107,000 Notice Packets to be mailed on May 12, 2006 to the Class Members at their last known addresses, via first-class mail. (Exhibit F, Addazio Aff. ¶ 7). In addition, in accordance with ¶12 of the Preliminary Approval Order, CCS contracted with Kinsella/Novak Communications of Washington, D.C. to publish the Summary Notice on May 19, 2006 in *The New York Times*. (Exhibit F, Addazio Aff. ¶ 8).

197. Moreover, in accordance with ¶15 of the Preliminary Approval Order, CCS leases and maintains a Post Office Box and the website [www.chimiclessettlements.com](http://www.chimiclessettlements.com) for the receipt of all communications necessary to the administration of the Settlement. (Exhibit F, Addazio Aff. ¶ 9) CCS also acted as a repository for inquiries and communications received in this Action, and mailed additional Notice Packets as a result of change(s) of address.

198. The success of the Investment Data Process and the diligence and expertise of Co-Lead Counsel, GDG and the Claims Administrator is evidenced by the fact that as of July 10, 2006, of the 107,000 Notice Packets mailed to Class Members, CCS has received only approximately 1,500 Investment Data and Proofs of Claim forms (Exhibit F, Addazio Aff. ¶ 11). which were only required to be submitted in the event the shareholder data was incorrect or the shareholder was a member of the Transaction Group.¹³ Thus the overwhelmingly majority of Purchaser Class members will receive an allocation of the Cash Settlement Fund without being required to file a proof of claim or submit evidence of their purchase.

¹³ A majority of the IDF and Proof of Claim forms submitted as of July 10, 2006 inform the Claims Administrator of address changes. The deadline for submitting Proof of Claim forms is
M. Industry Reaction to the Litigation and its Impact on the Non-Listed REIT Industry.

199. Upon the filing of the Original Complaint, the non-listed REIT industry sat up and took notice of the Action’s allegations and the proceedings in this Court. The non-listed REIT industry raised in excess of $20 billion from 2000 to present from investors, some of whom were presented with similar statements concerning a company’s source of distributions in those company’s offering documents and audited financial statements. Indeed, each non-listed REIT is managed by affiliated advisors who not only receive Advisory Fees, including Acquisition Fees, but by advisors who may need to be internalized (as CNL Hotels’ proposed in the Original Merger) with the company prior to any listing by that company of its stock on a national stock exchange.

200. Moreover, Co-Lead Counsel (Kimberly M. Donaldson of Chimicles & Tikellis LLP) and James Vodola of PASCORP, through their attendance at various industry conferences came to gauge the impact this Action had on this multi-billion dollar industry. (See also, Vodola Aff. at ¶¶ 46-48). Co-Lead Counsel and PASCORP’s time and expenses incurred in attending these industry conferences were not included in time, lodestar or expenses charged to this Action.

201. Kimberly M. Donaldson attended the West Coast Non-Traded & Private REIT Symposium (October 27-29, 2005) in Southern California. The agenda for the October 2005 Symposium included: (a) General discussion about non-traded REIT characteristics; (b) Discussion about the future of the market, including how to address and respond to pressures concerning the broker/dealer commission structure and dividends and the Return of Capital
(specifically, how to disclose and communicate correctly that these REITs are returning capital); 

(c) State regulators’ concerns with investors exit strategies (listing or liquidating).

202. An entire panel discussion during the October 2005 Symposium was dedicated to “Internalizing an Affiliated Advisor: Are these Transactions in the Best Interests of the Investors?” This panel was dedicated to addressing the precise issues raised in this Action in connection with the Proxy Claims, and a Managing Director of Legg Mason, one of CNL Hotels’ financial advisors on the Original Merger Agreement, was a panelist. In fact, CNL Hotels was addressed as part of the “case study” portion of the discussion. Concerning internalizing the advisor, the panel discussion included the following points:

   a. General discussion about external advisors, lessons learned and best practices.
   b. When is internalizing an affiliated advisor appropriate, and does it matter if the non-traded REIT is going to list or liquidate?
   c. Valuing the Advisor when proposing a transaction to the shareholders by which the advisor becomes internalized with the REIT. Discussions concerning the use of a static formula to value the Advisor versus negotiating the value for the advisor, which was recognized by the panelist to be a difficult process and its inherent affiliated nature will not be well received by shareholders in the future.
   d. Method of Acquiring the Advisor is a huge consideration, and the market will demand that the advisor’s owners take stock. If the perception is that management is cashing out, that will not fly.
   e. **Case Study.** In referring to the transactions sought to be consummated by Defendants in mid-2004, including the Original Merger Agreement, pursuant
to the Original Proxy, one panelist noted that “no one will ever internalize and do IPO at the same time.” The Managing Director of Legg Mason also noted that the “[CNL Hotels] Litigation changed dynamics of the deal” and the attendees “can’t imagine what the Board thinks is a right price now...it is very difficult now.”

f. **Best Practices for Internalizing an Advisor.** The panel also discussed the “best practices” for internalizing the advisor which specifically included: “Get fair advisor valuation” and to be “Fair, Transparent, and Communicate.” Also, the panel noted that it does not behoove advisors to extract a lot of money, because of the need to protect the brand.

203. In addition, another panel at the October 2005 Symposium addressed financial reporting practices of non-listed REITs, including evaluating FFO, dividends, tenant improvements, and “other hot button issues.” James Vodola of PASCORP was a panelist for this discussion which included reference to: (a) FFO and its relevance to a REIT’s ability to pay dividends; (b) making an accurate presentation of cash from operations and ability to pay dividends; and (c) accounting practices that can be utilized to inflate FFO.

204. Finally, another panel at the October 2005 Symposium addressed corporate governance and evaluating board of director issues and managing conflicts of interest cause by fees paid to advisors and their affiliates. The panelists indicated that independent directors are giving a harder look at advisory agreements, making annual reviews of advisory contracts and considering caps on acquisition fees and expenses.

205. Kimberly M. Donaldson also attended the East Coast Non-Traded & Private REIT Symposium (May 8-9, 2006) in New York City. The agenda and discussions during the May
2006 Symposium tracked those of the October 2005 Symposium. *(See also, Vodola Aff. ¶ 47).*

206. This reaction by the non-listed REIT industry to this Action is important. Noted Columbia law professor John C. Coffee, Jr., in a forthcoming article entitled “Reforming the Securities Class Action: An Essay on Deterrence and its Implementation,” wrote

> This article is skeptical of both those who claim that securities litigation is vexatious and frivolous and those who claim that it has been seriously chilled, but it will advance an even more fundamental critique: the securities class action is not currently fulfilling its deterrent purpose... Deterrence, it will be argued, is the only rationale that can justify the significant costs – both public and private – that securities class actions impose on both investors and the judiciary. Today, private securities class actions in fact represent the principal means by which financial penalties are imposed in cases of securities fraud and manipulation, overshadowing the aggregate penalties imposed by federal and state authorities and by self-regulatory organizations. *(footnotes omitted).* *(Draft, pp. 2-3).*

Achieving the goal of deterrence is a critical by-product of this case. The non-listed REIT industry, although having raised many billions of dollars in investor capital, has received little scrutiny from regulators or financial analysts. To my knowledge, no other private securities class action has been brought against a non-listed REIT industry member to address the various claims asserted in this Action. This is unsurprising, if not expected, given the inherent attribute of the industry – namely, unlisted stock.

207. This Action has caused the non-listed REIT industry (as well as the Defendants themselves) to self-evaluate, among other things:

a. The valuation of the external advisor when it is to be merged or internalized;

b. The timing of the internalization of an advisor in relation to the listing the company’s stock;

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14 This paper was discussed during the 12th Annual Institute of Law and Economic Policy Conference held May 5, 2006.
c. The proper handling of obvious conflicts of interest when, as is most often the use, insiders are the owners of the advisor; and

d. The role of independent directors in transactions such as the internalization of an external advisor.

That consequence is critical for the protection of hundreds of thousands of investors in the non-listed REIT industry. It is a direct consequence of this Action.

N. Calculation of Benefit of New Agreements.

208. Plaintiffs calculate the benefit conferred on CNL Hotels’ investors and the Company by the New Agreements to be approximately $225,000,000.

209. In sum, this benefit can be determined as follows:
i. **Advisor Merger Consideration:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Merger Agreement</td>
<td>$308,000,000</td>
</tr>
<tr>
<td>Less Fees related to KSL, Del Coronado, and DRP</td>
<td>- $82,730,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$225,270,000</strong></td>
</tr>
<tr>
<td>Amended Merger Agreement</td>
<td>($80,000,000)</td>
</tr>
</tbody>
</table>

*Savings between Amended and Original Merger Agreement*  

$145,270,000

ii. **Advisory Fees:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees related to KSL, Del Coronado, and DRP Fees</td>
<td>$82,730,000</td>
</tr>
<tr>
<td>Waived Advisory Fees from 1/1/2006 – 6/30/2006</td>
<td>$12,100,000</td>
</tr>
<tr>
<td>Waived Acquisition Fees from 1/1/2006-6/30/2006</td>
<td>$24,540,000</td>
</tr>
</tbody>
</table>

**Total Fees Allegedly Payable to the Advisor**  

$119,370,000

Actual Fees payable to the Advisor Under the December 2005 Advisory Fee Agreement  

($37,000,000)

*Amount of Reduced Advisory Fees to be Paid to the Advisor*  

$82,370,000

iii. **Total Savings from Amended Merger Agreement and Reduced Advisory Fees:**  

$227,640,000

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15 The analysis reflected here necessarily compares the Original Merger Agreement (which in one composite document addressed both the merger consideration and certain advisory fees) to the two agreements that replaced it. This is the reason that nearly $83 million in advisory fees are “backed-out” of the Original Merger Agreement Consideration so an apples-to-apples comparison can be made.
210. Based on the number of shares outstanding as of April 2006 (approximately 152.8 million), this price differential represents a benefit or equity enhancement of about $1.49 per share.¹⁶

211. In arriving at the terms of the Amended Merger Agreement, CNL Hotels' financial consultants used the methodologies advanced by Plaintiffs in this Action. The original $300 million valuation was predicated on projected EBITDA of approximately $40 million, derived primarily from an inflated and unsupportable Acquisition Fee Arrangement with a proposed, but not yet operational REIT, CNL II (see above ¶¶ 71, 73). Such prior projection assumed that the Advisor would continue to receive fees at the same pace and percentage (4.5%) as it did as the Advisor of the Company. In this regard, the Complaint specifically set forth that the Advisor could not be valued based on a projected fee stream from advising an entity (CNL II) that was not yet operating, as such assumption was too speculative, and, in fact, did not reflect the reality that the Advisor was to receive steeply reduced fees in connection with its Advisory services to CNL Hotels. (see above ¶¶ 70-73).

212. In addition, the Complaint alleged (see above ¶ 68) that the projected fee stream was excessive as it was based on the 4.5% rate which was substantially above market and contrary to the rate permitted to be charged by the Advisor to the Company. Under the Amended Merger Agreement, the consideration to be paid for the Advisor is based on a substantially reduced EBITDA of $17.2 million, which is calculated based primarily on the Advisor's Asset Management Fees and an Acquisition Fees, calculated at a reduced rate. In addition, the

¹⁶ This figure differs from the lesser amount set forth in the Class Notice ($1.31 per share) because the calculation in the Class Notice was based on an approximate price differential of $200 million.
significant reduction of the advisory fees obligation from $119 million to $37 million was predicated on precisely the same grounds as propounded by Plaintiffs in this Action: a reduction in the $83 million KSL Fees which this Action alleged to be an improper, above-market, payment to the Advisor (see above ¶ 77); a waiver of prospective Acquisition Fees, in the approximate amount of $36.6 million, which addresses, the allegations in this Action that the Advisor was not entitled to additional fees in its fees had already been calculated at an inflated rate (see above ¶¶ 70-73) and it had poorly performed (see Compl. ¶¶ 333-336); and a reduction of the rate used to calculate the Advisor’s Acquisition Fee by one-third – from 4.5% to 3.0%, which was challenged in this Action as starkly inflated above the market rate (see above at ¶ 68).

O. Plaintiffs’ Counsel’s Lodestar and Expenses.

213. I also submit this declaration in support of Plaintiffs’ Counsel and my Firm’s application for an award of attorneys’ fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by my Firm in connection with this litigation.

214. The Settlement contemplates that Plaintiffs’ Counsel shall be paid separately fees and expenses for their prosecution of the Proxy Class Claims and Fiduciary Duty Claims and the Purchaser Class Claims.

215. With respect to prosecuting the Purchaser Class Claims and obtaining for the benefit of the Purchaser Class the Cash Settlement Fund of $35,000,000, Plaintiffs’ Counsel is seeking an award from the Court of reasonable attorneys’ fees equal to 25% of the Cash Settlement Fund ($8,750,000 of the Cash Settlement Fund), plus an award of expenses allocable to the Purchaser Class claims ($686,554.91). The awarded fees shall be paid from the Settlement Fund Account, as each installment of the Cash Settlement Fund is received and deposited in the Settlement Fund Account. The expenses awarded by the Court with respect to the Purchaser
Class claims shall be reimbursed to Plaintiffs' Counsel from the 2006 Cash Consideration, to be paid by CNL Hotels in January 2007 or after the Effective Date of this Settlement, whichever is later.

216. With respect to prosecuting the Proxy Class and Fiduciary Duty Claims and obtaining for the Class the Settlement benefits described above at ¶ 208-212 and in Plaintiffs’ Memorandum, Plaintiffs’ Counsel will seek from the Court an award of attorneys’ fees and expenses allocable to the Proxy Class and Fiduciary Duty Claims in an amount not to exceed $5,500,000, to be paid by CNL Hotels upon the Effective Date of the Settlement. This amount, as is awarded by the Court, will be paid by CNL Hotels and will not affect or diminish any other part of the Settlement.

217. In addition, Plaintiffs’ Counsel have incurred a total of $944,621.98 in litigation expenses (“Total Expenses”). (See Exhibit U, hereto, Summary Report of Plaintiffs’ Counsel’s Total Expenses). All such expenses were incurred by Plaintiffs’ Counsel on a totally contingent basis and either have been paid or are obligated to be paid by Plaintiffs’ Counsel.

218. Below at ¶ 237, Plaintiffs’ Counsel has reasonably allocated the Total Expenses between the Proxy Class and Fiduciary Duty Claims (in the amount of $258,067.07) and the Purchaser Class Claims (in the amount of $686,554.91) based upon whether the expense was incurred principally in prosecuting one or both sets of claims. This allocation was necessary because of the separate fee expense awards for the settlements achieved with respect to the Proxy Class and Fiduciary Duty Claims, and the Purchaser Class Claims.

219. The Class Notice informed the Class that the total litigation expenses incurred by Plaintiffs’ Counsel on a contingent basis in the prosecution of this case did not exceed $1,250,000. In fact, the total litigation expenses equal $944,621.98, which does not include the
costs of Notice (see ¶ 238, below) or claims administration. As reasonably allocated by Co-Lead Counsel, $258,067.07 of these litigation expenses is attributable to the Proxy Claim and will be paid from the requested fee award of $5,500,000 related to those claims. The expenses attributable to the Purchaser claims equal $686,554.91, or less than 2% of the $35,000,000 Cash Settlement Fund.

1. Plaintiffs' Counsel.

220. My Firm was appointed as Lead Litigation Counsel and Co-Lead Counsel in this Action. This Declaration, above, catalogues the multiple tasks undertaken by my Firm in connection with the initiation, investigation, prosecution and settlement of this Action. My Firm was integral to the prosecution of this Action, as demonstrated by the preceding paragraphs.

221. My Firm was appointed and served as Co-Lead Counsel along with:

(1) Labaton Sucharow & Rudoff LLP ("LSR"). LSR was appointed as Co-Lead Counsel for Macomb and the Proxy Class. Submitted herewith as Exhibit G is the Affidavit of Lawrence A. Sucharow in Support of Joint Petition for Attorneys’ Fees and Expenses Filed on Behalf of LSR.

(2) Wolf Haldenstein Adler Freeman & Herz LLP ("WHAFH"). WHAFH was appointed as Co-Lead Counsel for the Barack Trust and the Purchaser Class. Submitted herewith as Exhibit H is the Affidavit of Lawrence P. Kolker in Support of Joint Petition for Attorneys’ Fees and Expenses Filed on Behalf of WHAFH.

222. In conjunction with Co-Lead Counsel, the following law firms served as Plaintiffs’ Counsel in this Action:

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17 Notice expenses were anticipated not to exceed $250,000, and, as discussed below at ¶ 238 were advanced, on a non-recourse basis, by Defendants in accordance with the Stipulation of
Submitted herewith as Exhibit I is the Affidavit of George E. Ridge in Support of Joint Petition for Attorneys' Fees and Expenses Filed on Behalf of Cooper, Ridge & Lantinberg, P.A.

Submitted herewith as Exhibit J is the Declaration of Peter A. Binkow in Support of Joint Petition for Attorneys' Fees and Expenses Filed on Behalf of Glancy, Binkow & Goldberg LLP.

Submitted herewith as Exhibit K is the Affidavit of Marc L. Newman in Support of Joint Petition for Attorneys' Fees and Expenses Filed on Behalf of The Miller Law Firm.

Submitted herewith as Exhibit L is the Affidavit of Leigh R. Lasky in Support of Joint Petition for Attorneys' Fees and Expenses Filed on Behalf of Lasky & Rifkind, Ltd.

Submitted herewith as Exhibit M is the Affidavit of Thomas C. Michaud in Support of Joint Petition for Attorneys' Fees and Expenses Filed on Behalf of VanOverbeke, Michaud & Timmony P.C. (“VMT”).

Throughout the pendency of this action, Plaintiffs' Counsel have cooperated and

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VMT is outside counsel to Macomb, which was appointed as Lead Plaintiff for the Proxy Claim (see ¶ outside, above), but is not the sole named plaintiff in the Action. By agreement reached after the Settlement, VMT is to receive 15% of the fees awarded by the Court in connection with prosecution of the Proxy Claims. This fee share is principally a referral fee although, as set forth in the VanOverbeke Affidavit, VMT performed various tasks in connection with the Action. As set forth in the VanOverbeke Affidavit, the fee VMT is to receive:

a. will not be in whole or in part, directly or indirectly, paid to any person outside of VMT.

b. has been disclosed to Macomb’s Board of Trustees.

c. Is not prohibited under any applicable state or federal law, disciplinary rule or regulation.
worked together to prosecute this Action effectively, while avoiding undue duplication of effort.

2. **My Firm’s Lodestar and Expenses.**

224. The schedule attached hereto as Exhibit N (Chimicles & Tikellis LLP Lodestar Report) is a detailed summary indicating the amount of time spent by the attorneys and professional support staff of my Firm who were involved in this litigation, and the lodestar calculation based on my Firm’s current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my Firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

225. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit N are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other securities or shareholder litigations, including *In re Freeport-McMoran Sulphur, Inc. Shareholder Litigation*, C.A. No. 16729, Delaware Chancery (2006); *In re Reckson Realty Federal Shareholder Litigation*, Case No. 03-CV-4917 (TCP), United States District Court, Eastern District of New York (2005); *I.G. Holdings Inc., et. al. v. Hallwood Realty, LLC, et. al.*, C.A. No. 20283, Delaware Chancery (2004), and *In re Real Estate Associates Limited Partnership Litigation*, Case No. CV 98-7035 DDP, United States District Court, Central District of California (2003);

226. As reflected on Exhibit N, the total number of hours expended on this litigation by my Firm is 4,854.50 hours. The total lodestar for my Firm as of June 30, 2006 is $2,127,622.50, consisting of approximately $2,038,438.75 for attorneys’ time and $89,183.75 for
professional support staff (paralegal, law clerk, and legal assistant) time.\textsuperscript{19} My firm’s lodestar figures are based upon the firm’s billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm’s billing rates.

227. As detailed in Exhibit O (Chimicles & Tikellis LLP Expenses Report), my Firm has incurred a total of $85,697.76 in unreimbursed expenses in connection with the prosecution of this litigation. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

228. With respect to the standing of counsel in this case, attached hereto as Exhibit S is a brief biography of my Firm and attorneys in my Firm who were principally involved in this Action.

3. \textit{Summary of Lodestar and Expenses Incurred by Plaintiffs’ Counsel.}

229. Attached hereto as Exhibit Q (Summary Report of Plaintiffs’ Counsel’s Lodestar) is a summary indicating the amount of time spent by the attorneys and professional support staff of Plaintiffs’ Counsel who were involved in this Action. The total number of hours expended on this litigation by Plaintiffs’ Counsel is 10,270.66 hours. The total lodestar for Plaintiffs’ Counsel is $4,489,648.85.

230. Attached hereto as Exhibit R (Summary Report of Plaintiffs’ Counsel’s Out of

\textsuperscript{19} Professional support staff time includes “Attorneys & Staff with Less Than $1,000 of Lodestar - Aggregated” in the amount of $14,203.79, as reflected on Exhibit N. We anticipate that our Firm will generate an additional $75,000 - $100,000 of additional lodestar after June 30, 2006 in connection with finalizing the Settlement papers, attending the July 26, 2006 Hearing and claims administration.
Pocket Expenditures), is a summary of Plaintiffs' Counsel's out-of-pocket expenses, in the amount of $250,049.96.

231. In addition, Plaintiffs' Counsel have incurred and are obligated to pay $694,572.02 additional in expenses, detailed as follows:

   a. The amount of $552,800 to Partners Advisory Services Corp., as set forth in the Vodola Aff. ¶¶ 49-50, Exhibit B, hereto.

   b. The amount of $16,472.02 to Rachlin Cohen & Holtz, as set forth in the Rachlin Firm's final invoice attached hereto as Exhibit T.

   c. The amount of $125,300 to GlenDevon Group, Inc., as set forth in the KPC Aff. ¶ 35, Exhibit C, hereto.

232. Thus, Plaintiffs' Counsel have incurred Total Expenses of $944,621.98 in connection with the prosecution of this Action. See Exhibit U, hereto.

4. Litigation Fund.

233. My Firm maintained and administered the Litigation Fund for this Action from which certain expenses were paid throughout the prosecution of this Action. Co-Lead Counsel funded the Litigation Fund through multiple assessments, reflected in each Co-Lead Counsel's respective exhibit detailing the expenses incurred in connection with the prosecution of the Action, and summarized in footnote 1 on Exhibit Q (Summary Report of Plaintiffs' Counsel's Lodestar).

234. Attached as Exhibit P is a reconciliation of the Litigation Fund. There is a balance in the Litigation Fund in the amount of $538.40, which was deducted from the total of out of pocket expenses incurred by Plaintiffs' Counsel as reflected on Exhibit R, hereto.
5. **Allocation of Expenses.**

235. Plaintiffs' Counsel have incurred Total Expenses of $944,621.98. *(See ¶¶ 230-232 above; and, Exhibit U, hereto).* Those expenses were incurred by Plaintiffs' Counsel on a totally contingent basis.

236. As was set forth in the Class Notice, Co-Lead Counsel have allocated the litigation expenses between the Proxy/Fiduciary Duty Class Claims and the Purchaser Class Claims. This allocation is necessary because of the separate fee expense awards for the settlements achieved with respect to the Proxy Class and Fiduciary Duty Claims, and the Purchaser Class Claims.

237. This allocation is based on Co-Lead Counsel’s best and most reasonable estimate as to whether the expenses were incurred in prosecuting one or both sets of claims, and if the latter, in what proportion such jointly incurred expenses should be shared:
## ALLOCATION OF DISBURSEMENTS FROM LITIGATION FUND

<table>
<thead>
<tr>
<th>Expenses Paid to:</th>
<th>Amount</th>
<th>Purchaser Class Claims</th>
<th>Proxy Class/Fiduciary Duty Claim Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>PASCORP</td>
<td>$124,168.80</td>
<td>70% $86,918.16</td>
<td>30% $37,250.64</td>
</tr>
<tr>
<td>BUSINESS INTELLIGENCE ASSOCIATES</td>
<td>$1,382.50</td>
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<td>50% $691.25</td>
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<tr>
<td>COMPLETE CLAIM SOLUTIONS INC</td>
<td>$8,970.00</td>
<td>50% $4,485.00</td>
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<tr>
<td>FASSETT ANTHONY &amp; TAYLOR, P.A.</td>
<td>$1,725.00</td>
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<td>50% $862.50</td>
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<tr>
<td>RACHLIN COHEN &amp; HOLTZ(^{20})</td>
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<td>0% 0.00</td>
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<tr>
<td>VANOVERBEKE MICHAUD &amp; TIMMONY PC(^{21})</td>
<td>$524.53</td>
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<tr>
<td>WRITE CAPITAL MANAGEMENT LLC(^{22})</td>
<td>$5,000.00</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>$158,531.60</td>
<td>$114,717.68</td>
<td>$43,813.92</td>
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</table>

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\(^{20}\) As discussed above at ¶ 42-43, Rachlin served as a consultant to Co-Lead Counsel on the Purchaser Class Claims and thus, all costs and expenses for Rachlin are attributable to the Purchaser Class Claims.

\(^{21}\) As discussed above at footnote 18, VMT served primarily as Liaison Counsel for Macomb, Lead Plaintiff for the Proxy Class and thus, all expenses are attributable to the Proxy Class Claims.

\(^{22}\) As discussed above at ¶ 122, Write Capital Management was retained to assist Co-Lead Counsel in evaluating alternative securities in connection with the proposed settlement of the Purchaser Class Claims.
### ALLOCATION OF EXPENSES NOT INCLUDED IN LITIGATION FUND

<table>
<thead>
<tr>
<th>Expenses:</th>
<th>Amount</th>
<th>Purchaser Class Claims</th>
<th>Proxy Class /Fiduciary Duty Claim Claims</th>
</tr>
</thead>
<tbody>
<tr>
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<td>70% $386,960.00</td>
<td>30% $165,840.00</td>
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<tr>
<td>GLEN DEVON GROUP, INC.</td>
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<td>10% $12,530.00</td>
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<tr>
<td>RACHLIN COHEN &amp; HOLTZ&lt;sup&gt;23&lt;/sup&gt;</td>
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<td>100% $16,472.02</td>
<td>0% 0.00</td>
</tr>
<tr>
<td>VANOVERBEKE MICHAUD &amp; TIMMONY PC&lt;sup&gt;24&lt;/sup&gt;</td>
<td>$371.89</td>
<td>0% 0.00</td>
<td>100% $371.89</td>
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<tr>
<td>LASKY &amp; RIFKIND LLP&lt;sup&gt;25&lt;/sup&gt;</td>
<td>$833.60</td>
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<td>0% 0.00</td>
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<tr>
<td>LABATON SUCHAROW &amp; RUDOFF LLP&lt;sup&gt;26&lt;/sup&gt;</td>
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<td>0% 0.00</td>
<td>100% $13,344.70</td>
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<tr>
<td>WOLF HALDENSTEIN ADLER FREEMAN &amp; HERZ&lt;sup&gt;27&lt;/sup&gt;</td>
<td>$31,963.18</td>
<td>100% $31,963.18</td>
<td>0% 0.00</td>
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<tr>
<td>THE MILLER LAW FIRM, P.C.&lt;sup&gt;28&lt;/sup&gt;</td>
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<tr>
<td>GLANCY BINKOW &amp; GOLDBERG LLP&lt;sup&gt;29&lt;/sup&gt;</td>
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<tr>
<td>COOPER, RIDGE &amp; LANTINBERG, P.A.&lt;sup&gt;30&lt;/sup&gt;</td>
<td>$1,705.35</td>
<td>50% $852.67</td>
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<td>CHIMICLES &amp; TIKELLIS LLP&lt;sup&gt;31&lt;/sup&gt;</td>
<td>$42,627.76</td>
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<td>50% $21,313.88</td>
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<tr>
<td><strong>TOTAL</strong></td>
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<td><strong>$571,837.23</strong></td>
<td><strong>$214,253.15</strong></td>
</tr>
</tbody>
</table>

<sup>23</sup> As discussed above at ¶42-43, the Rachlin Firm served as a consultant to Co-Lead Counsel on the Purchaser Class Claims and thus, all costs and expenses for the Rachlin Firm are attributable to the Purchaser Class Claims.

<sup>24</sup> As discussed above at footnote 18, VMT served primarily as Liaison Counsel for Macomb, Lead Plaintiff for the Proxy Class and thus, all expenses are attributable to the Proxy Class Claims.

<sup>25</sup> Expenses were incurred in connection with Confirmatory Discovery conducted by this firm and such Confirmatory Discovery was related to the Purchaser Class Claims.

<sup>26</sup> As discussed above at ¶ 59, LSR was appointed as Co-Lead Counsel for the Proxy Class and thus, all expenses incurred (aside from that Firm’s assessments made to the Litigation Fund)
238. In addition, pursuant to Section III ¶ 6 of the Stipulation of Settlement (Exhibit E, hereto), CNL Hotels deposited $250,000 into the CNL Hotels' Settlement Fund Account, for costs and expenses relating to Class Notice and the Summary Notice. In May 2006, the Claims Administrator, Complete Claim Solutions, Inc. ("CCS") submitted an invoice in the amount of $207,361.36, for expenses incurred by CCS in connection with the publication and mailing of the Class Notice and Summary Notice ("May 2006 Invoice") (see Exhibit V, hereto). Payment of the May 2006 Invoice was made from the $250,000 paid into the Settlement Fund Account, which amount was an advance made by Defendants on the fee award Plaintiffs' Counsel receives in connection with the settlement of the Proxy / Fiduciary Duty Claims. (See ¶ 216, supra). Thus, CNL Hotels will pay $250,000 less than the Proxy Claim fee awarded by this Court, as provided for in paragraph 24 of the Final Judgment (attached hereto as Exhibit W). Co-Lead Counsel have determined that it is reasonable for the Class Notice costs to be borne equally by the Proxy Class and Purchaser Class fee and expenses awards.

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27 As discussed above at ¶ 59, Wolf Haldenstein was appointed as Co-Lead Counsel for the Purchaser Class and thus, all expenses incurred (aside from that Firm's assessments made to the Litigation Fund) are attributable to the Proxy Class Claims.
28 Expenses were incurred in connection with Confirmatory Discovery conducted by this firm and such Confirmatory Discovery was related to the Purchaser Class Claims.
29 Expenses were incurred in connection with Confirmatory Discovery conducted by this firm and such Confirmatory Discovery was related to the Purchaser Class Claims.
30 The Cooper Ridge firm served as Local Counsel for the Action, thus all expenses incurred are equally attributable to the Proxy and Purchaser Class Claims.
31 As discussed above at ¶ 59, my Firm was appointed as Lead Litigation Counsel and thus, all expenses incurred (aside from my Firm's assessments made to the Litigation Fund) are attributable to both the Purchaser and Proxy Class Claims.
I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of July, 2006.

[Signature]

Nicholas P. Chimicles