

IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT IN  
AND FOR BROWARD COUNTY, FLORIDA

ALLUVIAL FUND, LP, derivatively on  
behalf of Nominal Defendant EACO Corp.,

Plaintiff,

v.

GLEN F. CEILEY, WILLIAM L. MEANS,  
STEPHEN CATANZARO, ELLEN S.  
BANCROFT, and DONALD S. WAGNER,

Defendants,

EACO CORPORATION, a Florida  
Corporation,

Nominal Defendant.

Case No. CACE 24-012180

Judge: Jack B. Tuter, Jr.

**DEMAND FOR JURY TRIAL**

**VERIFIED AMENDED SHAREHOLDER DERIVATIVE COMPLAINT**

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Plaintiff Alluvial Fund, LP (“Alluvial” or “Plaintiff”), through its undersigned counsel, submits this Verified Amended Shareholder Derivative Complaint (“Amended Complaint”) pursuant to Fla. Stat. § 607.0742 derivatively on behalf of Nominal Defendant EACO Corporation (“EACO” or the “Company”) and against the defendants named herein for (a) violations of Fla. Stat. § 607.0832 through a director conflict of interest transaction that was unfair to the Company as to price and process, (b) breaches of the fiduciary duties of loyalty and care owed by defendants in their capacities as directors, officers, and/or controlling shareholders of EACO, and (c) aiding and abetting violations of Fla. Stat. § 607.0832 and breaches of fiduciary duties.

The allegations of the Amended Complaint are made upon Plaintiff’s knowledge as to itself and, as to all other matters, upon information and belief, including the investigation of counsel, and the review of filings by and concerning the defendants with the U.S. Securities and Exchange Commission (“SEC”), press releases and news articles issued by or concerning the defendants, and other publicly available information.

In addition, Plaintiff states, as required by the Confidentiality and Non-Disclosure Agreement between EACO, Plaintiff, and Plaintiff’s counsel, dated February 1, 2024, “One of the grounds for Plaintiff’s allegations is its review of books and records produced by EACO Corporation [pursuant to Plaintiff’s December 11, 2023 demand to inspect EACO’s books and records pursuant to Fla. Stat. § 607.1602 (the “Demand”)], all of which are incorporated by reference in this [Amended] Complaint.”

## **I. INTRODUCTION**


1. Plaintiff is bringing this case because Defendant Glen Ceiley, EACO’s controlling shareholder, CEO, and Chairman of the Board, cheated the Company out of approximately \$15 million to \$20 million, to the detriment of the Company, Plaintiff, and all other minority shareholders.

2. Until recently, Glen Ceiley's Trust owned an 80,000 square foot office and warehouse (the "Hunter Property") that was under a long-term lease to a subsidiary of the Company.

3. The Company leased the building in 2019, and by 2023 the rent payments called for in the lease were far below market rates.

4. The lease ran for another 11 years. Thus, the far-below-market long-term lease was a substantial and valuable asset of the Company. Moreover, because the Hunter Property was encumbered by a long-term, far-below-market lease, its fair market value in an arm's length transaction was substantially less than it otherwise would have been if the building had been rented at market rates.





13. The three directors who approved the transaction abdicated their responsibilities because of their long-time personal and business connections to Ceiley, which they elevated above the fiduciary duties they owed to the Company and its minority shareholders.

14. As a result of the wrongdoing described above, Ceiley, Wagner, and the other three directors are liable to the Company for the approximately \$15 million to \$20 million that the Company overpaid to Ceiley when it bought the Hunter Property.

## **II. PARTIES AND RELEVANT NON-PARTIES**

15. Plaintiff Alluvial is a limited partnership organized under the laws of the state of Delaware. Plaintiff was a shareholder of Nominal Defendant EACO when the conduct giving rise

to this action occurred and has continually been a shareholder of EACO from that time through the date of the filing of this Amended Complaint.

16. Nominal Defendant EACO is a corporation organized and existing under the laws of the State of Florida. EACO is a holding company, and is primarily comprised of the operations of its wholly-owned subsidiary Bisco Industries, Inc. (“Bisco”).

17. Bisco is a distributor of electronic components and fasteners with 51 sales offices and seven distribution centers located throughout the U.S. and Canada, and one other sales office in the Philippines. Bisco supplies parts used in the manufacture of products in a broad range of industries, including the aerospace, circuit board, communication, computer, fabrication, instrumentation, industrial equipment, and marine industries.

18. Defendant Glen F. Ceiley is, and at all times relevant to this Amended Complaint was, the Chief Executive Officer (“CEO”) of the Company and the Chairman of the Board of Directors of the Company (“Board”). Ceiley has served as a director of EACO since 1998, and as EACO’s CEO and Chairman of the Board (“Chairman”) since 1999. Ceiley is also the CEO and chairman of the Board of Directors of Bisco (“Bisco Board”) and has held those positions since he founded Bisco in 1973. He also served as President of Bisco prior to June 2010.

19. Ceiley is, and at all times relevant to this Amended Complaint was, the controlling majority shareholder of EACO and beneficially owned or controlled at least 95.9% of EACO’s outstanding voting stock.

20. Ceiley is, and at all time relevant to this Amended Complaint was, a member of Bisco’s steering committee, which handles the day-to-day operations of the Company, and was intimately involved with decision-making that directly affects the financial statements of EACO.

21. The Glen F. Ceiley and Barbara A. Ceiley Revocable Trust (the “Trust”) is, and at all times relevant to this Amended Complaint was, the grantor Trust of Ceiley. At all times relevant to this Amended Complaint, Ceiley was a Trustee of the Trust and beneficially owned and/or controlled the Trust.

22. Defendant William L. Means is, and at all times relevant to this Amended Complaint was, a Director of EACO. Means has served as a director of the Company since 1999. Means was employed continuously by Bisco for at least 21 years, from 1989 to June 2010. Means served as Director of Management Information Systems of Bisco from 1989 to October 1997, Vice President of Corporate of Bisco Development from November 1997 to 2001, and Vice President of Information Technology of Bisco from 2001 until his retirement in June 2010.

23. Defendant Stephen Catanzaro is, and at all times relevant to this Amended Complaint was, a Director of EACO. Catanzaro has served as a director of the Company since 1999. Catanzaro was employed by Bisco for at least 10 years from 1992 to 2002. Catanzaro served as Controller of Bisco from August 1992 to August 1995, and as Chief Financial Officer (“CFO”) of Bisco from August 1995 to March 2002.

24. Defendant Ellen Bancroft is, and at all times relevant to this Amended Complaint was, a Director of EACO. Bancroft has been a director of EACO since July 2022.

25. Defendant Donald S. Wagner is, and at all times relevant to this Amended Complaint was, the President and Chief Operating Officer (“COO”) of Bisco. Wagner has served as the President of Bisco since June 2010 and as its COO since November 2007. Prior to his promotion to President, Wagner also held the title of Executive Vice President of Bisco since November 2007. Wagner has worked for Bisco since 1994, or for the past 30 years, in a number of other capacities, including as Vice President of Product Management.



26. At all times relevant to this Amended Complaint, Wagner's supervisor, superior, and/or manager was Ceiley. Further, at all times relevant to this Amended Complaint, Ceiley determined Wagner's compensation.

### **III. JURISDICTION AND VENUE**

27. Venue is proper in this Circuit because Bisco has an office for the transaction of its customary business in this Circuit at 4101 Ravenswood Road, Fort Lauderdale, Florida, 33312. EACO's Registered Agent for service of process, as registered with the Florida Department of State, is also located in this Circuit at C T Corporation System, 1200 South Pine Island Road, Plantation, FL 33334.

28. This Court has personal jurisdiction over EACO pursuant to Fla. Stat. § 48.193(1)(a)(1) because EACO is a corporation organized and existing under the laws of the State of Florida, has an office for the transaction of business in this State, has an agent for service of process located in this State, and is operating, conducting, engaging in, or carrying on a business or business venture in this State.

29. This Court has personal jurisdiction over Ceiley, Wagner, Means, Catanzaro, and Bancroft pursuant to Fla. Stat. § 48.193(1)(a)(1) because they are officers, directors, and/or employees of EACO, a Florida Corporation, or Bisco, and therefore are operating, conducting, engaging in, or carrying on a business or business venture in this State.

### **IV. FACTUAL BACKGROUND**

#### **A. Ceiley Takes Control of EACO**

30. EACO was formerly known as Family Steak Houses of Florida, Inc. ("FSH").

31. In 1997, Ceiley and Bisco engaged in a proxy contest with FSH and conducted a tender offer for FSH shares. Ceiley and Bisco's proxy proposed Catanzaro and Ceiley for election to the Board of Directors of FSH ("FSH Board"). At that time, Ceiley already controlled Bisco.

32. The tender offer was withdrawn, and the proxy contest was eventually resolved via a settlement agreement pursuant to which Bisco purchased shares sufficient to increase its ownership to 19.9% of FSH's outstanding shares of common stock, and FSH appointed Ceiley and Jay Conzen to the FSH Board.

33. In 1999, Ceiley and Bisco engaged in another proxy contest with FSH and nominated four directors to the FSH Board: Ceiley, Conzen, Catanzaro, and Means. Ceiley's letter included with the Bisco proxy stated that "Steven Catanzaro and William L. Means [] are both experienced business executives whom I have known for many years." Form DFRN 14A filed with the SEC by Bisco on June 8, 1999.

34. At FSH's annual meeting of shareholders on or about July 21, 1999, Ceiley, Means, Catanzaro, and Conzen were elected as directors of FSH.

35. On or about June 17, 2004, the name of the Company was changed to EACO Corporation.

36. From July 21, 1999 to March 15, 2020, the FSH Board and then the Board was composed of four directors: Ceiley, Means, Catanzaro, and Conzen.

37. On March 15, 2020, Conzen unexpectedly passed away. From that time to July 2022, the Board was composed of three directors: Ceiley, Means, and Catanzaro.

38. From July 2022 to present, the Board was composed of four directors: Ceiley, Means, Catanzaro, and Bancroft.

**B. Ceiley Becomes a 95% Controlling Majority Shareholder of EACO Through Rights Offerings, Share Issuances, and a Merger With Bisco**

39. From October 2001 to December 2008, through open market purchases and a series of rights offerings and private placements of common and convertible preferred stock approved by the Board, which included Catanzaro and Means, Glen Ceiley increased his beneficial

ownership and control of the Company's common stock to approximately 73.4% on a fully-converted basis.

40. In December 2008, Bisco and Ceiley proposed that EACO and Bisco merge via EACO issuing new shares to Bisco's owners, *e.g.*, Ceiley. In January 2009, the Board established a purportedly independent Special Committee of the Board ("2009 Special Committee") comprised of Conzen and Catanzaro to review and evaluate Bisco's offer and negotiate and approve the terms and conditions of any merger.

41. EACO retained Dorsey & Whitney LLP as its legal counsel to advise the Board with respect to its fiduciary duties and, if required, to represent EACO in connection with the merger transaction. Defendant Bancroft was one of the attorneys at Dorsey & Whitney LLP who represented EACO, and is listed in the Agreement and Plan of Merger between EACO and Bisco as a person to receive copies of notices directed to EACO or the post-merger surviving corporation.

42. In December 2009, the 2009 Special Committee and then the full Board agreed to a merger between Bisco and EACO.

43. Approval of the merger was conditioned on a majority vote of all outstanding shares of EACO common stock. There was no condition that a majority vote of minority shareholders (those other than Ceiley and his affiliates) were required to approve the merger. Therefore, given Ceiley's then-majority control of EACO voting shares, Ceiley was able to approve the merger through a vote of the shares that he owned or controlled.

44. On March 24, 2010, the merger was completed and Bisco became a wholly owned subsidiary of the Company. As a result of the EACO common stock issued in the merger to Ceiley as a former Bisco stockholder, Ceiley beneficially owned and controlled approximately 98.9% of the outstanding shares of EACO common stock on a fully converted basis.

45. After the merger, Bisco's operations became the principal operations of EACO's.

46. According to EACO's annual report on Form 10-K for the fiscal year ended August 31, 2023, filed with the SEC on November 22, 2023 ("2023 10-K"), as of October 31, 2023, Ceiley beneficially owned or controlled 4,702,813, or 95.9%, of the 4,861,590 outstanding shares of EACO common stock.

47. Further, according to the 2023 10-K (at 7):

Glen Ceiley, our Chairman and CEO, beneficially owns or controls approximately 96% of our outstanding voting stock. As such, Mr. Ceiley is able to exert significant influence over the outcome of almost all corporate matters, including the election of the Board of Directors and significant corporate transactions requiring a stockholder vote, such as a merger or a sale of the Company or our assets. This concentration of ownership and influence in management and board decision-making could also harm the price of our common stock by, among other things, discouraging a potential acquirer from seeking to acquire shares of our common stock (whether by making a tender offer or otherwise) or otherwise attempting to obtain control of the Company.

48. EACO repeated this statement (at 8) in its annual report on Form 10-K for the fiscal year ended August 31, 2024, filed with the SEC on November 29, 2024 ("2024 10-K").





**D. Bisco Leases the Hunter Property from the Trust**

55. On July 26, 2019, Bisco and the Trust entered into a Commercial Lease Agreement (“Lease”) for the Hunter Property.

56. The Lease was executed by Wagner, in his capacity as President and COO of Bisco, and by Ceiley, as Trustee for the Trust. Lease at 12.

57. EACO moved its corporate headquarters to the Hunter Property in March 2020.

58. As of the date of this Amended Complaint, EACO still uses the Hunter Property as its corporate headquarters.

59. The Lease commenced on September 2, 2019, and was for a ten-year term ending on August 31, 2029. *Id.* ¶ 6.

60. The Lease required payment of “Base Rent” of \$66,300 per month for the first year of the Lease, stated that the monthly Base Rent would increase 2.5% per year, and set forth the monthly rent for years 1 through 10 of the Lease at the 2.5 per year increase (*Id.* ¶ 9, 11):

<b>Lease Year</b>	<b>Term</b>	<b>Monthly Base Rent Set Forth in the Lease</b>	<b>Yearly Base Rent (Monthly Rent x 12)</b>
1	9/2/2019 – 9/1/2020	\$66,300	\$795,600
2	9/2/2020 – 9/1/2021	\$67,957.50	\$815,490.00
3	9/2/2021 – 9/1/2022	\$69,656.40	\$835,876.80
4	9/2/2022 – 9/1/2023	\$71,397.80	\$856,773.60
5	9/2/2023 – 9/1/2024	\$73,182.70	\$878,192.40
6	9/2/2024 – 9/1/2025	\$75,012.30	\$900,147.60
7	9/2/2025 – 9/1/2026	\$76,887.60	\$922,651.20
8	9/2/2026 – 9/1/2027	\$78,809.80	\$945,717.60
9	9/2/2027 – 9/1/2028	\$80,780.00	\$969,360.00
10	9/2/2028 – 8/31/2029	\$82,799.50	\$993,594.00

61. The Lease also required Bisco to pay any “Additional Rent,” but no such additional amounts were required, and thus the total “Rent” (Base Rent plus Additional Rent) under the Lease was the Base Rent.

62. The Lease was a triple net lease, where Bisco was responsible to pay for insurance, utilities, and maintenance for the Hunter Property. *Id.* ¶¶ 26-30, 40-42; 2023 10-K at 29. The Lease required Bisco to pay taxes related to its business, but did not require Bisco to pay real estate taxes on the Hunter Property. Lease ¶ 9. These additional payments were not made to the Trust, and therefore were not Additional Rent.

63. The Lease provided Bisco with the right to renew the lease for an additional five-year term, or through August 31, 2034, and provided that “[a]ll terms of the renewed lease will be the same except for any signing incentives/inducements and this renewal clause.” *Id.* ¶ 25.

64. If the five-year extension clause was exercised by Bisco, then the annual 2.5% Base Rent increases would continue through the extended five-year term of the Lease. While the Lease did not set out the Base Rent for those additional 5 years (years 11 through 15), the monthly and yearly base rent for the extended five years, at the 2.5% per year increase set forth in the Lease, would be as follows:

<b>Lease Year</b>	<b>Term</b>	<b>Monthly Base Rent (2.5% Increase over Prior Year)</b>	<b>Yearly Base Rent (Monthly Rent x 12)</b>
11	9/1/2029 – 8/31/2030	\$84,869.49	\$1,018,433.88
12	9/1/2030 – 8/31/2031	\$86,991.22	\$1,043,894.70
13	9/1/2031 – 8/31/2032	\$89,166.01	\$1,069,992.06
14	9/1/2032 – 8/31/2033	\$91,395.16	\$1,096,741.87
15	9/1/2033 – 8/31/2034	\$93,680.03	\$1,124,160.41

65. The Lease also granted Bisco the option to purchase the Hunter Property at any time after September 2, 2019 and prior to the end of the initial term of the lease in August 2029 (*id.* ¶ 16), at a value set by the average of three independent appraisals:

Provided the Tenant [the Company] is not currently in default in the performance of any term of this Lease, the Tenant will have the option to purchase (the "Option") the Premises at fair market value as determined by the average of three independent appraisals made within 15 days of exercising the Option (the "Purchase Price"). The Landlord [the Trust] and Tenant will each select their own appraiser. If this option has been exercised, the Parties to this Lease may enter into a separate agreement to purchase the Premises. This agreement will incorporate all the key points provided in this option. [*Id.* ¶ 15.]



66. The Lease did not allow the Trust to terminate the Lease if the Trust sold the Hunter Property during the term of the Lease. Therefore, the Lease was a binding encumbrance on the property that would have to be assumed by any buyer, regardless of whether the rent the buyer would obtain under the Lease was far below market rates.





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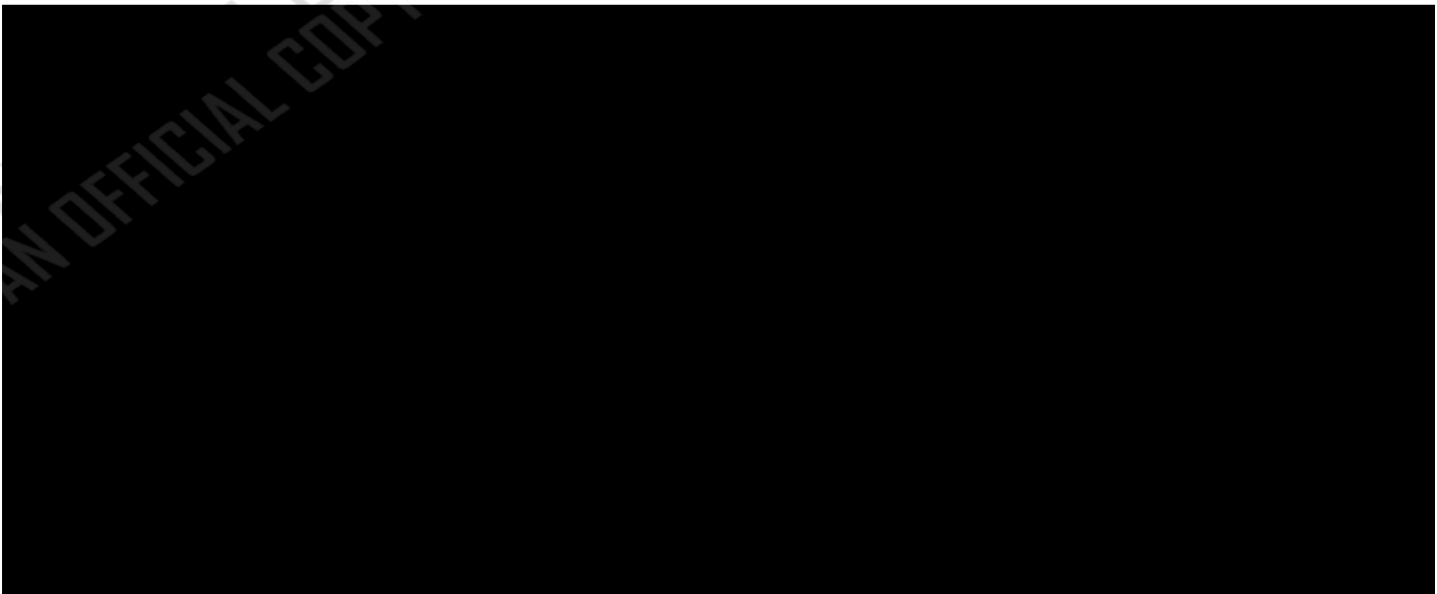
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3. The Bank Orders an Appraisal for the Purpose of Loan Underwriting, and Informs the Appraiser That the Hunter Property Is Fee Simple, Ignoring the Terms of the Lease
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81. The Appraisal Engagement Letter stated that “[t]he function of this appraisal is for use by Citizens Business Bank, for loan underwriting. If [sic] may be used in connection with the acquisition, disposition, portfolio monitoring and/or financing of the property.” *Id.* at EACO\_0000110.

82. The Appraisal Engagement Letter instructed the Appraiser to “make contact with the Don Wagner [] within the first five days of receiving the assignment, regardless of the property type. This ensures that our borrowers know that the appraisal has been assigned and that there is advancement in the loan process.” *Id.*

83. The Appraisal Engagement Letter stated that the Appraiser was to estimate the value of the Hunter Property using two scenarios: (1) “Market Value,” on an as-is basis and with a fee simple interest, and (2) “Insurance Value,” on an insurable cost basis. *Id.* at EACO\_0000109.

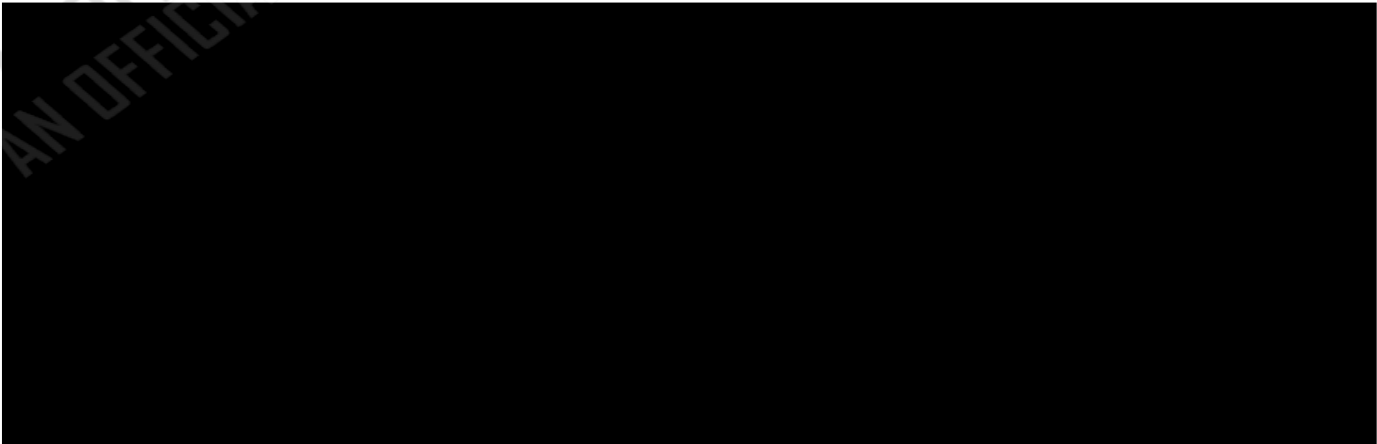
84. The Trust did not own a fee simple interest in the Hunter Property because the Hunter Property was subject to the Lease, whose term did not expire until August 31, 2029, and could be extended at any time by the Company for an additional five years, or through August 31, 2034.





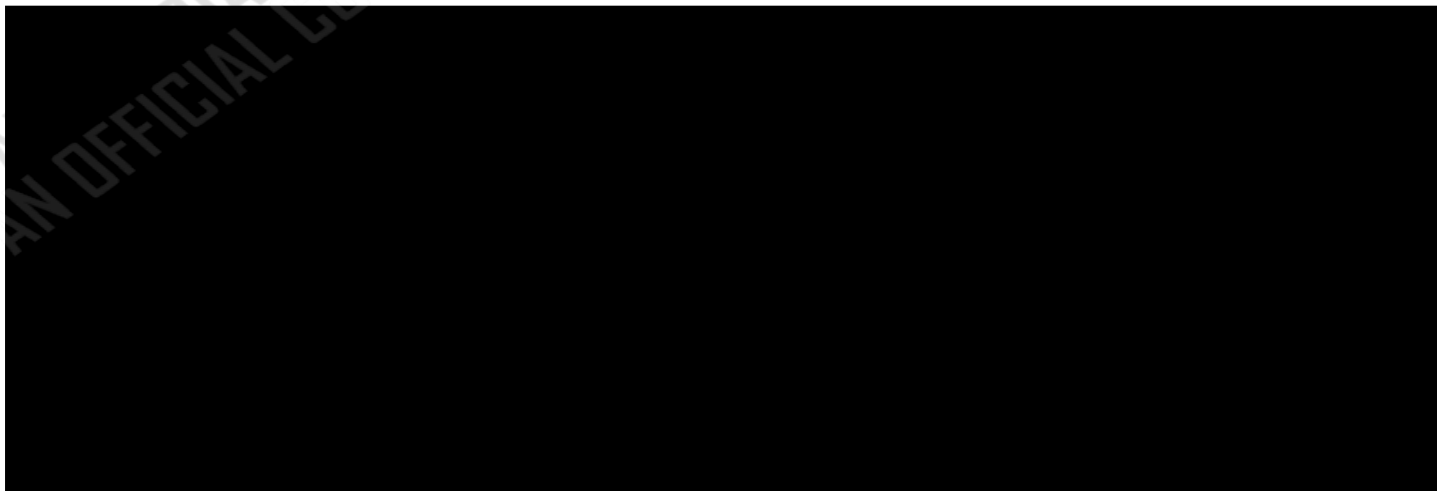
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4. **The Appraisal Report Ignores the Lease and, as a Result, Overvalues the Hunter Property**





5. The Board Approves the Hunter Property Purchase for \$31 Million Without Proper Oversight or Review





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**6. The Hunter Property Purchase is Finalized**

120. On October 5, 2023, the Company, through Bisco, entered into a Purchase Agreement for Real Property and Escrow Instructions with the Trust (“the Purchase Agreement”) to purchase the Hunter Property for \$31 million (the “Hunter Property Purchase”).

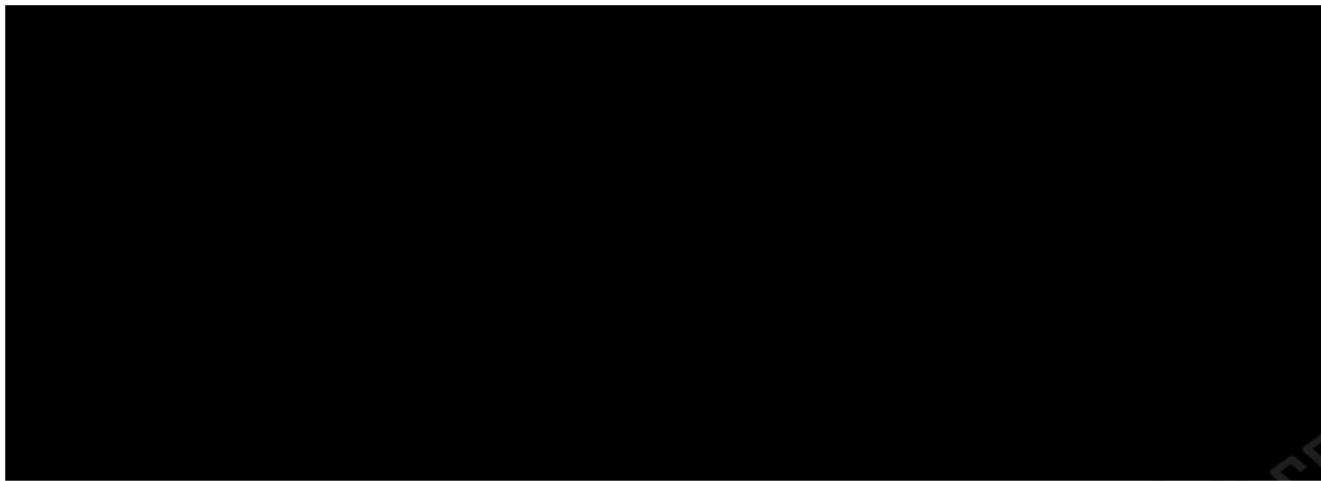
121. The Purchase Agreement was executed by Wagner as President and COO of Bisco, and Ceiley and Barbara Ceiley as Trustees for the Trust. Purchase Agreement at 13.

122. On October 20, 2023, the Hunter Property Purchase closed.

123. The \$31 million purchase price was paid by cash, funded by EACO’s available cash accounts and liquidated securities.

**7. The Defendants Justified the \$31 Million Price of the Hunter Property Purchase With the Appraisal Report**





V. **THE HUNTER PROPERTY PURCHASE WAS NOT FAIR TO EACO AS TO PRICE OR PROCESS**

A. **The Hunter Property Purchase Was a Director Conflict of Interest Transaction Under Fla. Stat. § 607.0832**

128. Pursuant to Fla. Stat. § 607.0832(1)(a), a “Director’s conflict of interest transaction” means

a transaction between a corporation and one or more of its directors, or another entity in which one or more of the corporation’s directors is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a shareholder of the corporation, and has a direct or indirect material financial interest or other material interest.

129. Pursuant to Fla. Stat § 607.0832(1)(f), “Material financial interest” or “other material interest” means “a financial or other interest in the transaction that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action on the authorization of the transaction.”

130. The Hunter Property Purchase was a “director’s conflict of interest transaction” because (i) it was between the Company and the Trust, which is an entity in which Ceiley has material financial interest, and (ii) the \$31 million purchase price was large enough that it would reasonably be expected to impair Ceiley’s objectivity.

131. Fla. Stat. § 607.0832(2) requires that “director’s conflict of interest transactions” be “fair to the corporation at the time it is authorized, approved, effectuated, or ratified.”

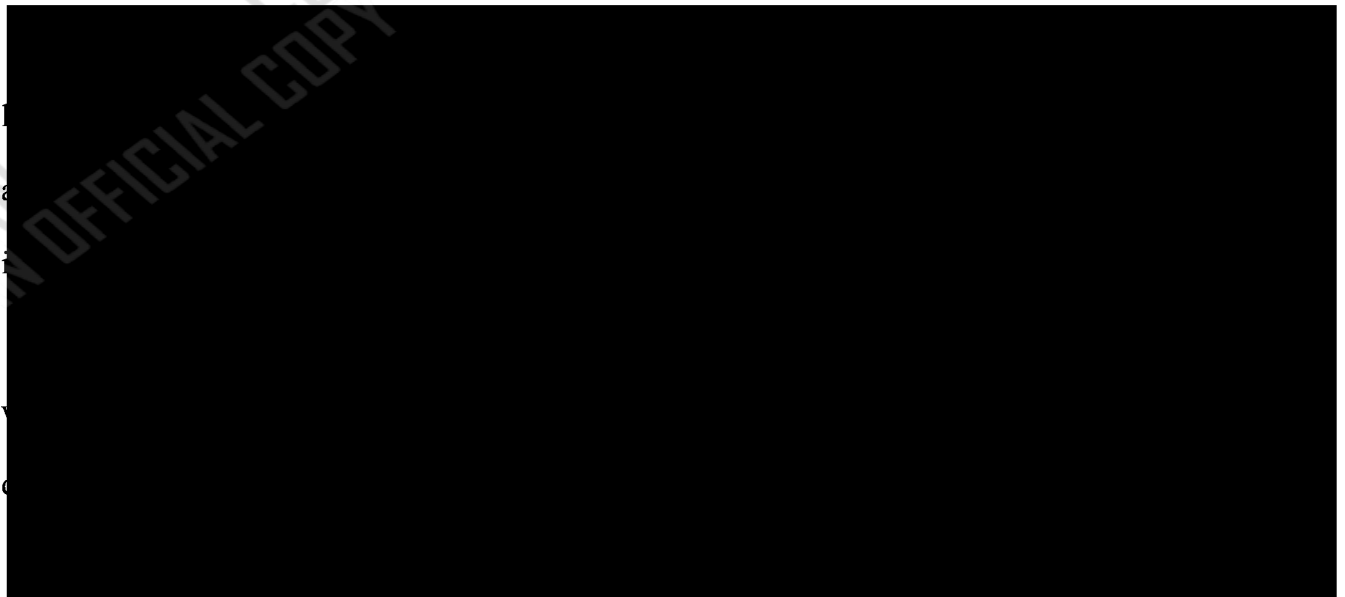
132. Pursuant to Fla. Stat § 607.0832(1)(b), “Fair to the corporation” means that the transaction, as a whole, is beneficial to the corporation and its shareholders, taking into appropriate account whether it is: 1. Fair in terms of the director’s dealings with the corporation in connection with that transaction; and 2. Comparable to what might have been obtainable in an arm’s length transaction.

133. Accordingly, the Hunter Property Purchase was a “director’s conflict of interest transaction” and violates Florida law unless it was “fair to the corporation.”

134. The Hunter Property Purchase was not “fair” to EACO because (i) what the Company paid was not comparable to what EACO would have paid in an arm’s length transaction, and (ii) it was not fair in terms of the Ceiley’s dealings with the Company in connection with the transaction.

**B. The \$31 Million Purchase Price Was Not Comparable to What EACO Would Have Paid in an Arm’s Length Transaction**

135. In an arm’s length transaction, the buyer of a building would take into account any existing lease on that building when determining what the building is worth and, therefore, how much to pay for it, as any such lease is a material fact and negatively impacts the market value of the building if the lease is for below market rent.





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158. But in fact the Hunter Property was not a “fee simple estate.” Instead, it was merely a leasehold, or leased fee, estate encumbered by the Company’s long-term and far-below-market Lease.

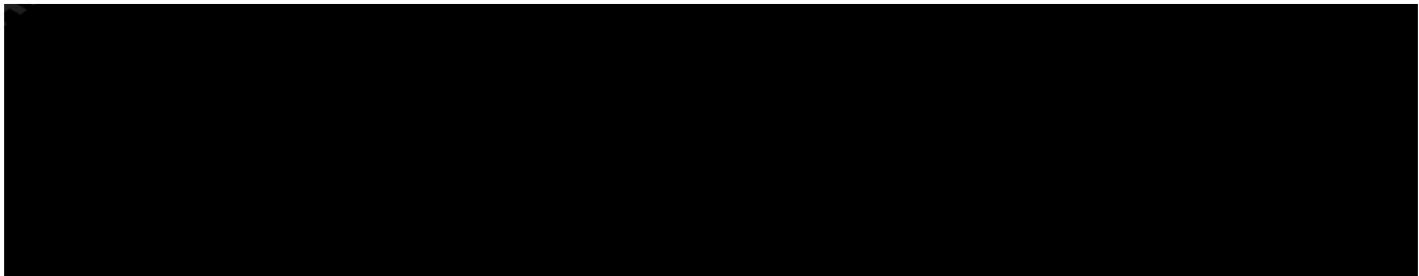


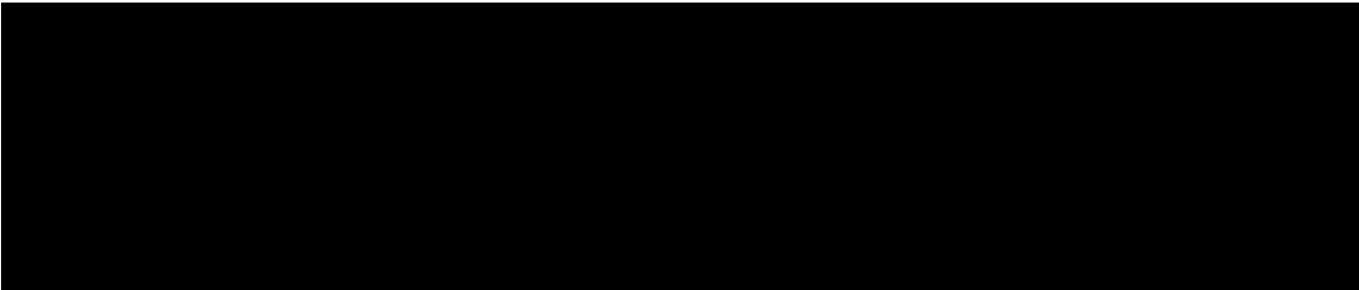




C. The Hunter Property Purchase Was Not Fair in Terms of Ceiley's Dealings With the Company

1. The Defendants Were Aware of, and Ignored, the Rent, and Its Impact on the Value of the Hunter Property





168. Ceiley owned the Hunter Property through the Trust, and Wagner and Ceiley signed the Lease.


169. Ceiley, Means and Catanzaro signed EACO's annual reports on Form 10-K filed with the SEC for the fiscal years 2017 through 2022.

170. Ceiley, Means, Catanzaro, and Bancroft all signed EACO's Form 10-K for fiscal year 2023.

171. Each of the seven annual Form 10-Ks from 2017 to 2023 disclosed the terms of the Lease and that the owner of the Hunter Property was the Trust.

172. The Lease was a hyperlinked Exhibit to the Form 10-Ks, and was a publicly available document. *See* Ex. 10.21 to 2021 10-K.

173. Wagner, Ceiley, Means, Catanzaro, and Bancroft were therefore aware of the Lease, its terms, the Rent paid by Bisco for the Hunter Property, and the option for Bisco to purchase the Hunter Property at a value set by the average of three independent appraisals.





[REDACTED]

182. A cap-rate calculation, which is simple math the Voting Directors would be able to complete (especially Catanzaro, who had an accounting background, was chairman of the Board's Audit Committee at the time, and had previously served as Bisco's CFO), reveals that the cap rate for the \$31 million purchase price compared to the Rent Bisco was paying for the Hunter Property was 2.76% ( $\$856,773.60 / \$31 \text{ million}$ ).

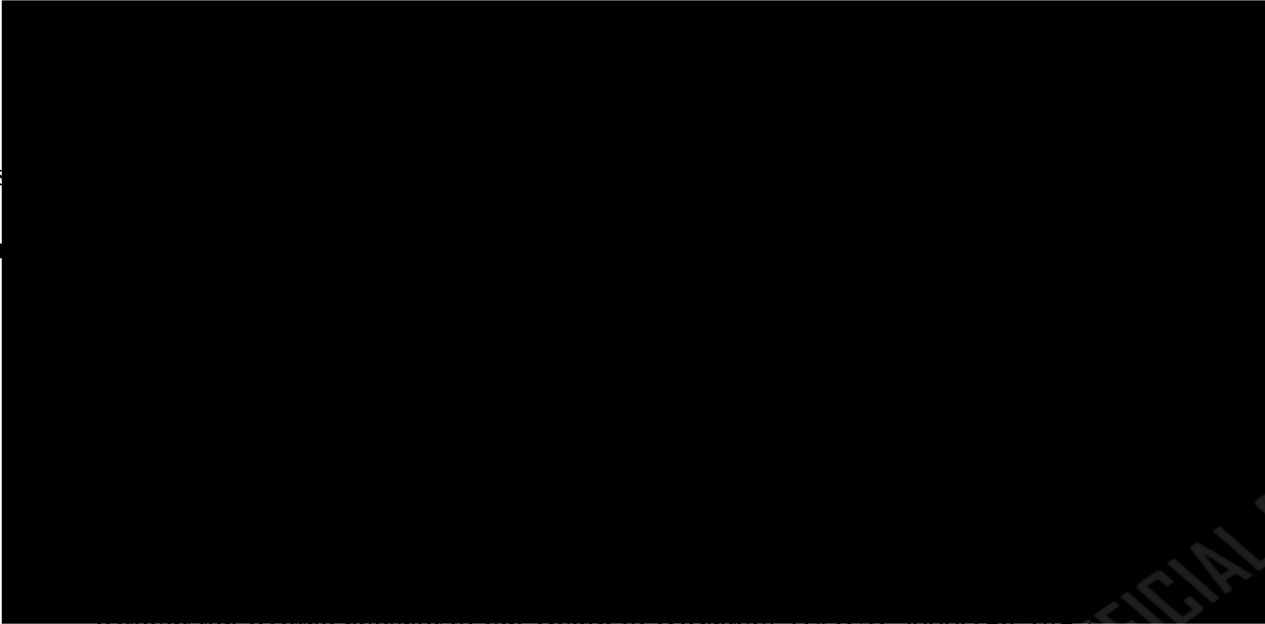
[REDACTED]

2. **The Defendants Relied on an Appraisal Report That Was Not Prepared with EACO's Interests in Mind**

[REDACTED]


**3. Ceiley Negotiated the Hunter Property Purchase Directly with Wagner, His Subordinate, Without Voting Director Supervision**

190. Any transaction involving Ceiley, on the one hand, and the Company, on the other hand, is subject to a conflict of interest in that Ceiley is the Chairman, CEO, and controlling majority shareholder of EACO, and can exert undue influence in the transaction and make the transaction unfair to EACO and unfairly beneficial to Ceiley.



192. Transactions between Ceiley and the Company therefore must be structured so that the process (and the price) equal how a non-conflicted arm's length transaction would operate.

193. The Hunter Property Purchase was not structured so that the process (and the price) equal how a non-conflicted arm's length transaction would operate.



196. Means and Catanzaro are familiar with conflicted transactions and the Board's responsibility to ensure conflicted transactions are fair to EACO because they were both members of the Board that created the 2009 Special Committee to consider Ceiley's proposal to merge Bisco with EACO, which was a conflicted transaction between EACO and Ceiley, and Catanzaro served on the 2009 Special Committee.

197. Bancroft was a transactional lawyer at large national law firms for decades and represented EACO in connection with the merger with Bisco. Bancroft was therefore also aware of the 2009 Special Committee created to consider that conflicted transaction and the duty of the Board to ensure the transaction was fair to EACO and did not favor Ceiley.





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**VI. DEMAND ON THE BOARD IS FUTILE**

208. Plaintiff did not make a demand that the Board institute this lawsuit to recover damages to EACO from the Defendants prior to filing this lawsuit.

209. A pre-suit demand is futile, and therefore unnecessary, if there are not sufficient Board members who could properly evaluate the demand.

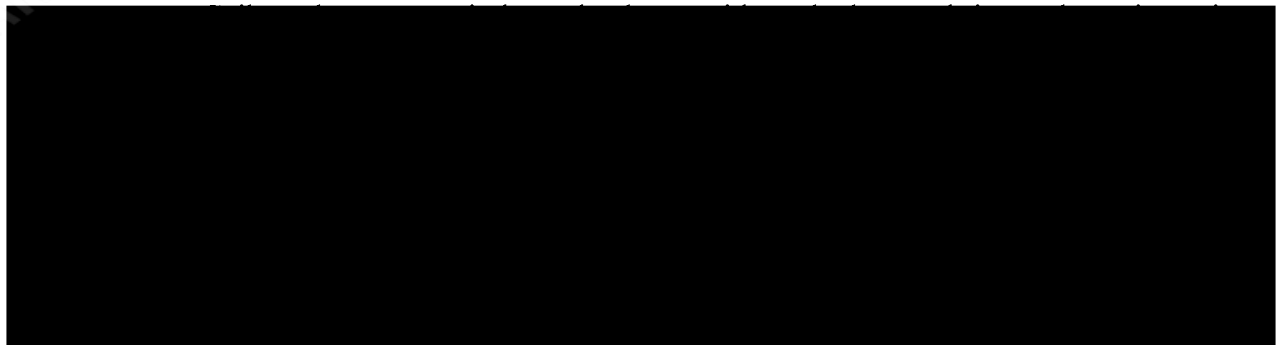
210. All current members of the Board – Ceiley, Means, Catanzaro, and Bancroft – are not independent and therefore cannot properly consider whether to institute this lawsuit.

**A. Demand on Ceiley is Futile Because He Received a Material Personal Benefit from the Alleged Misconduct and Faces a Substantial Likelihood of Liability**

211. Ceiley received a material personal benefit as a result of the Hunter Property Purchase – *i.e.* the Trust, which he beneficially owns and controls, was paid approximately \$15 million to \$20 million more than the market value for the Hunter Property in connection with the Hunter Property Purchase.

212. As alleged herein, Ceiley faces a substantial likelihood of liability for breach of Fla. Stat. § 607.0832 and breach of his fiduciary duties of loyalty, care, and good faith as a director, officer, and controlling stockholder of the Company in connection with the Hunter Property Purchase.

213. Ceiley cannot independently consider whether to bring a lawsuit against himself to recover up to \$21.7 million.



215. Ceiley is not independent and is not qualified to make any decision concerning the Hunter Property Purchase, including whether to institute a lawsuit against himself or any other party to recover damages related to the Hunter Property Purchase. Any such lawsuit would concede that the \$31 million purchase price paid for the Hunter Property was inflated far above what the Company would have paid in an arm's length transaction, and improperly benefited Ceiley and the Trust at the expense of EACO.

216. Ceiley is also a director as to whom the Hunter Property Purchase is a director's conflict of interest transaction. Therefore he is not a qualified director to make any decision concerning this lawsuit pursuant to Fla. Stat. § 607.0143(1)(b).

217. Ceiley has a material interest in the outcome of any legal proceeding related to the fair price and fair process of the Hunter Property Purchase. Therefore he is not a qualified director to make any decision concerning this lawsuit pursuant to Fla. Stat. § 607.0143(1)(a).

**B. Demand on Means, Catanzaro, and Bancroft is Futile Because They Lack Independence from Ceiley**

218. Means, Catanzaro, and Bancroft are not independent to consider whether to institute a lawsuit against Ceiley, or any defendant concerning the Hunter Property Purchase.

219. Means, Catanzaro, and Bancroft each have a material relationship with Ceiley, who is a director as to whom the Hunter Property Purchase is a director's conflict of interest transaction, and who has a material interest in the outcome of any proceeding related to the Hunter Property Purchase. Therefore Means, Catanzaro, and Bancroft are not qualified directors to make any decision concerning this lawsuit pursuant to Fla. Stat. §§ 607.0143(1)(a) or 607.0143(1)(b).

220. Means, Catanzaro, and Bancroft all have long-standing professional and/or personal relationships with Ceiley that preclude them from making an independent decision on whether to bring suit against Ceiley.

221. Means worked for Ceiley as an executive at Bisco for 21 years, from 1989 to 2010, and has been a Board member of EACO since 1999. *See* ¶ 22. Means was also one of Ceiley’s Board nominees in the 1999 proxy contest with FSH, and has served on the Board ever since. *See* ¶¶ 33, 36-38.

222. Catanzaro worked for Ceiley as an executive at Bisco for 10 years, from 1992 to 2002. *See* ¶ 23. Catanzaro was also one of Ceiley and Bisco’s Board nominees in the 1997 and 1999 proxy contests with FSH, and has served on the Board since 1999. *See* ¶¶ 31, 33, 36-38.

223. Means and Catanzaro still have close relationships with the Company, and therefore its controlling majority shareholder Ceiley. In 2021, Bisco created a “Hall of Fame” to, according to a Bisco press release, “recognize outstanding performers that have positively impacted the development and success of [Bisco].” In 2023, Means was inducted into the Hall of Fame, and in 2024, Catanzaro was inducted into the Hall of Fame. There are only seven members of the Hall of Fame, including Means, Catanzaro, Ceiley, and Ceiley’s wife Barbara Ceiley. The Hall of Fame voters are Bisco’s higher management (i.e. the CEO Ceiley).

224. Bancroft was a partner at the law firm of Morgan, Lewis & Bockius LLP from 2013 to 2021, and a partner at the law firm of Dorsey & Whitney from 2003 to 2013. Bancroft represented EACO as outside counsel in 2009 and 2010 in connection with EACO’s merger with Bisco. Dorsey & Whitney represented EACO’s subsidiary Bisco in litigation in 2012 in *Birsa v. Bisco Industries, Inc.*, No. 12-cv-317 (W.D. Pa.). Morgan, Lewis & Bockius represented Bisco in litigation in 2017 through 2018 in *Bisco Industries, Inc v. Bright Lights USA, Inc.*, No. 17-cv-00549 (C.D. Cal.). Upon information and belief, Bancroft represented EACO as outside counsel until she left private practice in 2021.

225. Ceiley is able to exert significant influence over the outcome of almost all EACO corporate matters.

226. Means, Catanzaro, and Bancroft also owe their current positions as directors on the Board to Ceiley, whose majority ownership of EACO shares allows him to nominate and elect all members of the Board.

227. Since approximately April 2002, when Ceiley became the majority owner of the Company, Ceiley has been able to nominate and elect Means and Catanzaro to the Board through a vote of Ceiley's shares alone.



230. Means, Catanzaro, and Bancroft are therefore unable to make an independent evaluation of whether to bring suit against Ceiley related to the Hunter Property Purchase.

231. For the same reasons that Means, Catanzaro, and Bancroft are unable to make an independent evaluation of whether to bring suit against Ceiley, they are unable to make an independent evaluation of whether to bring suit against Wagner or any other party, including themselves, related to the Hunter Property Purchase. Any such lawsuit would concede that the \$31 million purchase price paid for the Hunter Property was inflated far above what the Company would have paid in an arm's length transaction, and improperly benefited Ceiley and the Trust at the expense of EACO.


**C. Demand on Means, Catanzaro, and Bancroft is Futile Because They Face a Substantial Likelihood of Liability on the Claims Alleged Herein**

232. As alleged herein, Means, Catanzaro, and Bancroft face a substantial likelihood of liability for aiding and abetting Ceiley's breach of Fla. Stat. § 607.0832 and for breach of their fiduciary duties of loyalty, care, and good faith as directors of the Company in connection with the Hunter Property Purchase.





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240. For the reasons discussed herein, each of the Voting Directors breached his or her duties of loyalty, good faith, and care, consciously disregarded the best interests of EACO, and engaged in willful misconduct by approving the Hunter Property Purchase. Thus, each of the Voting Directors is personally liable pursuant to Fla. Stat. § 607.0831(1) to EACO for the losses it suffered as a result of the Hunter Property Purchase.

241. Accordingly, the Voting Directors could not properly evaluate a demand that EACO sue the Voting Directors (themselves) for these actions and to recover the millions of dollars the Company overpaid for the Hunter Property.

## **VII. CAUSES OF ACTION**

### **First Cause of Action Violation of Fla. Stat. § 607.0832 Director Conflict of Interest Transaction Against Defendant Ceiley**

242. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

243. The Hunter Property Purchase is a Director Conflict of Interest Transaction, as defined by Fla. Stat. § 607.0832.

244. As alleged herein, the Hunter Property Purchase was not fair to the Company, as defined in Fla. Stat. § 607.0832, because it was not fair in terms of Ceiley's dealings with the Company in connection with the Hunter Property Purchase and it was not comparable to what EACO would have paid in an arm's length transaction.

245. Ceiley's actions in connection with the Hunter Property Purchase constitute conscious disregard for the best interest of EACO and/or willful or intentional misconduct.

246. EACO is therefore entitled to damages from Ceiley in an amount to be determined at trial.

247. Pursuant to Fla. Stat § 607.0832(3)(a):

In a proceeding challenging the validity of a director's conflict of interest transaction or in a proceeding seeking equitable relief, award of damages, or other sanctions with respect to a director's conflict of interest transaction, the person challenging the validity or seeking equitable relief, award of damages, or other sanctions has the burden of proving the lack of fairness of the transaction if:

1. The material facts of the transaction and the director's interest in the transaction were disclosed or known to the board of directors or committee that authorizes, approves, or ratifies the transaction and the transaction was authorized, approved, or ratified by a vote of a majority of the qualified directors even if the qualified directors constitute less than a quorum of the board or the committee; however, the transaction cannot be authorized, approved, or ratified under this subsection solely by a single director; or
2. The material facts of the transaction and the director's interest in the transaction were disclosed or known to the shareholders who voted upon such transaction and the transaction was authorized, approved, or ratified by a majority of the votes cast by disinterested shareholders or by the written consent of disinterested shareholders representing a majority of the votes that could be cast by all disinterested shareholders....



250. Therefore, under the Director's Conflict of Interest Transaction statute, Defendants bear the burden of proving that the Hunter Property Purchase was fair to EACO.

**Second Cause of Action**  
**Aiding and Abetting Violation of Fla. Stat. § 607.0832**  
**Director Conflict of Interest Transaction**  
**Against Defendants Wagner, Means, Catanzaro, and Bancroft**

251. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

252. Through their actions alleged herein, Means, Catanzaro, Bancroft, and Wagner provided substantial assistance and/or encouragement to the completion of the Hunter Property Purchase at an inflated price to the benefit of Ceiley.

253. Means, Catanzaro, Bancroft, and Wagner therefore aided and abetted Ceiley's violation of Fla. Stat. § 607.0832.

254. Means's, Catanzaro's, and Bancroft's actions in connection with the Hunter Property Purchase constitute conscious disregard for the best interest of EACO and/or willful or intentional misconduct.

255. EACO is therefore entitled to damages from Means, Catanzaro, Bancroft, and Wagner in an amount to be determined at trial.

**Third Cause of Action**  
**Breach of Fiduciary Duty**  
**Against Defendants Ceiley, Means, Catanzaro, and Bancroft**

256. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

257. Ceiley, as a director, the Chairman, CEO, and controlling majority shareholder of EACO, owed the fiduciary duties of loyalty and care to EACO and its shareholders.

258. Ceiley, as the controlling majority shareholder of EACO, had a fiduciary duty not to utilize his control of EACO to his advantage and to the detriment of minority shareholders of EACO.

259. As directors of EACO, Means, Catanzaro, and Bancroft all owed EACO the fiduciary duties of loyalty and care to EACO and its shareholders.

260. Fla. Stat. § 607.0830 requires directors to act “(a) In good faith; and (b) In a manner he or she reasonably believes to be in the best interests of the corporation.”

261. The duty of loyalty mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director, officer or controlling majority shareholder and not shared by the shareholders generally.

262. The duty of care requires that directors use that amount of care which ordinarily careful and prudent men would use in similar circumstances, and consider all material information reasonably available in making business decisions.

263. As alleged herein, Ceiley acted in bad faith, did not act in a manner he reasonable believed to be in the best interests of the Company, did not act with reasonable care, was grossly negligent in agreeing to and effecting the conflicted director transaction Hunter Property Purchase, utilized his control of EACO to his advantage and to the detriment of minority shareholders of EACO, and breached his duties of loyalty and care to EACO and its minority shareholders.

264. As alleged herein, Means, Catanzaro, and Bancroft did not act in good faith, did not act in a manner they reasonable believed to be in the best interests of the Company, did not act with reasonable care, were grossly negligent in approving and effecting the conflicted director transaction Hunter Property Purchase, and breached their fiduciary duties of loyalty and care to EACO and its minority shareholders.

265. Means, Catanzaro, and Bancroft put Ceiley's interests above the interests of EACO and EACO's minority shareholders in approving the Hunter Property Purchase without independent oversight or investigation.

266. Ceiley's, Means's, Catanzaro's, and Bancroft's breaches of fiduciary duty and other wrongful acts alleged herein constitute conscious disregard for the best interest of EACO and/or willful or intentional misconduct.

267. EACO is therefore entitled to damages from Ceiley, Means, Catanzaro, and Bancroft in an amount to be determined at trial.

268. The Hunter Property Purchase was a transaction between EACO and the Trust, which is owned and controlled by Ceiley.

269. The Hunter Property Purchase is subject to entire fairness review because EACO's controlling majority shareholder, Ceiley, stood on both sides of the transaction.

270. The Hunter Property Purchase was not conditioned from the outset by approval of an independent special committee of the Board or a vote of the majority of EACO's minority shareholders.

271. Thus, it is the Defendants burden to prove that the Hunter Property Purchase was entirely fair as to price and process.

**Fourth Cause of Action**  
**Aiding and Abetting Breach of Fiduciary Duty**  
**Against Defendant Wagner**

272. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

273. Through his actions as alleged herein, Wagner provided substantial assistance and/or encouragement to Ceiley's, Means's, Catanzaro's, and/or Bancroft's breaches of fiduciary duty and other wrongful actions alleged herein.

274. Wagner therefore aided and abetted Ceiley's, Means's, Catanzaro's, and Bancroft's breaches of the duty of loyalty and duty of care and other wrongful actions alleged herein.

275. EACO is therefore entitled to damages from Wagner in an amount to be determined at trial.

### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Alluvial respectfully demands relief as follows:

A. Issuance of an Order finding the Hunter Property Purchase to be a director conflict of interest transaction that was unfair to EACO in violation of Fla. Stat. § 607.0832;

B. Issuance of an Order finding that Ceiley violated Fla. Stat. § 607.0832 through the unfair Hunter Property Purchase;

C. Issuance of an Order finding that and Wagner, Means, Catanzaro, and Bancroft aided and abetted Ceiley's violations of Fla. Stat. § 607.0832;

D. Issuance of an Order finding that Ceiley, Means, Catanzaro, and Bancroft breached their fiduciary duties to EACO and its minority shareholders, acted in bad faith, and/or acted not in the best interests of EACO, in connection with their actions and/or inactions related to the Hunter Property Purchase;

E. Issuance of an Order finding that Ceiley, Means, Catanzaro, and Bancroft's actions constitute conscious disregard for the best interest of the Company, or willful or intentional misconduct.

F. Issuance of an Order finding that Wagner aided and abetted Ceiley's, Means's, Catanzaro's, and Bancroft's breaches of their fiduciary duties to EACO and its minority

shareholders, bad faith actions, and/or actions that were not in the best interests of EACO, in connection with their actions and/or inactions related to the Hunter Property Purchase;

G. An award of damages to EACO in an amount to be determined at trial;

H. An award to Alluvial costs of suit, including reasonable attorneys' fees and expenses and expert fees; and

I. Such further relief as the Court may deem just and proper.

**IX. JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Dated: December 19, 2024  
Plantation, Florida

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