Report of the Independent Fiduciary for the Settlement in *Hensiek v. Board of Directors of CQ Holding Co., Inc. et al.*

January 21, 2025

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I. Introduction

Fiduciary Counselors has been appointed as an independent fiduciary for the Casino Queen Employee Stock Ownership Plan (the "Plan" or the "ESOP") in connection with the settlement (the "Settlement") reached in *Hensiek v. Board of Directors of CQ Holding Co., Inc. et al.,* Case No. 3:20-cv-00377-DWD (the "Litigation" or "Action"), which was brought in the United States District Court for the Southern District of Illinois (the "Court"). Fiduciary Counselors has reviewed over 150 previous settlements involving ERISA plans.

II. Executive Summary of Conclusions

After a review of key pleadings, decisions and orders, selected other materials and interviews with counsel for the parties, Fiduciary Counselors has determined that:

- The Court has preliminarily certified the Litigation as a class action for settlement purposes, and in any event, there is a genuine controversy involving the Plan.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption ("PTE") 76-1.
- All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.
- The Plan is receiving no consideration other than cash in the Settlement.

Based on these determinations about the Settlement, Fiduciary Counselors hereby approves and authorizes the Settlement on behalf of the Plan in accordance with PTE 2003-39.

III. Procedure

Fiduciary Counselors reviewed key documents, including the First Amended Complaint ("FAC"), the Motions to Dismiss and related papers, the Court's Orders Denying the Motions to Dismiss, the Motion for Class Certification and related papers, the Court's Order Denying the Motion for Class Certification, the parties' mediation statements, the Settlement Agreement, the Motion for Preliminary Approval and related papers, the Court's Order Preliminarily Approving

Settlement, the Notice, the Plan of Allocation and the Motion for Award of Attorneys' Fees and Expense Reimbursement, Settlement Administration Expenses, and Service Awards and related papers. In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the Settlement, the members of the Fiduciary Counselors Litigation Committee conducted separate telephone interviews with counsel for the key Defendants and counsel for the Plaintiffs.

IV. Background

A. Factual Background and Procedural History of Case

Factual Background.

The ESOP is an ERISA retirement plan where the individual retirement accounts of current and former employees were invested entirely in the stock of CQ Holding Company, Inc. ("the Company" or "CQH"). CQH in turn owns Casino Queen, Inc. ("CQI"), an Illinois corporation founded by five family groups: (1) the Koman family, (2) the Bidwill family, (3) Timothy Rand, (4) the Kenny family, and (5) the Gaughan/Toti group. Leading up to the transactions at issue in this case, each of these five family groups owned an equal portion of CQI and controlled one of the five seats on the CQI Board of Directors. The members of these five family groups that owned CQI are collectively referred to herein as the "Selling Shareholders." "Casino Queen" and "the Casino" refer to both CQH and CQI.

CQI opened the Casino Queen Hotel & Casino, a riverboat gambling house, in 1993. In 2007, CQI moved the business on land to a location in East St. Louis, Illinois. Beginning in or around 2006, the Selling Shareholders tried unsuccessfully for several years to sell CQI to third party buyers. According to the Plaintiffs, the Selling Shareholders, through their family-controlled Board seats, then caused the ESOP to purchase Casino Queen for at least $170 million through a complex, integrated transaction that involved the creation of a holding company (CQH), numerous stock transfers, and the assumption of high-cost debt to cover the entire purchase price, including a $25 million loan from the Selling Shareholders themselves.

Litigation.

Plaintiffs Tom Hensiek and Jason Gill filed their original Complaint on April 27, 2020. On August 24, 2020, Defendants Board of Directors of CQ Holding Company, Inc. ("Casino Queen Board of Directors"), the Administrative Committee of the Casino Queen Employee Stock Ownership Plan, Charles Bidwill, III, Timothy J. Rand, James G. Koman, Jeffrey Watson, Robert Barrows, and John and Jane Does 1-20, filed a Motion to Compel Arbitration and the CQH Board Defendants filed a Motion to Dismiss. The parties participated in a hearing before the Court regarding these motions on December 17, 2020. On January 25, 2021, the Court denied the Motion to Compel Arbitration. Defendants appealed this decision to the Seventh Circuit. After the Seventh Circuit ruled in plaintiffs' favor on the same legal issue in another case, these defendants voluntarily

moved for dismissal of their appeals, which the Seventh Circuit granted. The Court also denied the CQH Board Defendants' Motion to Dismiss.

On April 14, 2022, Plaintiffs filed the FAC, which, among other things, named Lillian Wrobel as an additional plaintiff (collectively, with Plaintiffs Tom Hensiek and Jason Gill, "Plaintiffs") and additional defendants to the action including "Defendants",[1] "Cross-Defendants"[2], and "Third-Party Defendants"[3] (collectively, "Defendants"). The FAC alleged that Defendants violated ERISA in connection with the formation of the ESOP and the ESOP's subsequent purchase of 100% of then-outstanding shares of CQH stock on December 26, 2012 (the "2012 Transaction" or "ESOP Transaction."). The FAC also alleged that Defendants continued to violate ERISA in a 2013 sale "of all of the Casino Queen's assets to a third-party" (the "Asset Sale"). In Count I of the FAC, pursuant to ERISA § 406(a), 29 U.S.C. § 1106(a), Plaintiffs alleged that all Defendants engaged in various prohibited transactions when they caused the ESOP to purchase CQH stock in December 2012. In Count II, Plaintiffs alleged that James G. Koman, Charles Bidwill, III and Timothy Rand engaged in self-dealing through the 2012 Transaction in violation of ERISA § 406(b), 29 U.S.C. § 1106(b). In Count III, Plaintiffs alleged that, in violation of ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B), James G. Koman, Charles Bidwill, III and Timothy J. Rand (collectively, the "CQH Board Defendants"), along with Jeffrey Watson and Robert Barrows, breached their fiduciary duty to the Plan by allowing and subsequently "failing to restore the losses caused" by the 2012 Transaction. In Count IV, Plaintiffs alleged that the CQH Board Defendants, Jeffrey Watson, and Robert Barrows violated ERISA §§ 404(a)(1) and 406(a)(1)(A), 29 U.S.C. §§ 1104(a)(1) and 1106(a) by, among other things, facilitating and/or approving the Asset Sale. In Count V, Plaintiffs alleged that the CQH Board Defendants violated ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B) through a failure to monitor the ESOP's appointed fiduciaries. In Count VI, Plaintiffs alleged that, if the Court were to find the CQH Board Defendants not liable for Count V, the CQH Board Defendants would instead be liable as co-fiduciaries pursuant to ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1).

[1] Board of Directors of CQ Holding Company, Inc.; Administrative Committee of the Casino Queen Employee Stock Ownership Plan; Charles Bidwill, III; Timothy J. Rand; James G. Koman; Jeffrey Watson; Robert Barrows; Co-Trustees of the Casino Queen Employee Stock Ownership Plan; Mary C. Bidwill; Brian R. Bidwill; Patricia M. Bidwill; Shauna Bidwill Valenzuela; Karen L. Hamilton Irrevocable Trust; its Trustee; and any beneficiaries of said Trust; William J. Koman, Jr. Irrevocable Trust, its Trustee, and any beneficiaries of said Trust; William J. Koman, Sr. Living Trust, its Trustee, and any beneficiaries of said Trust; Elizabeth S. Koman Irrevocable Trustee, its Trustee, and any beneficiaries of said Trust; Janis A. Koman Irrevocable Trust, its Trustee, and any beneficiaries of said Trust; James G. Koman Irrevocable Trust, its Trustee, and any beneficiaries of said Trust, the Family Trust, its Trustee, and any beneficiaries of said Trust; the Generation Skipping Marital Trust, its Trustee, and the beneficiaries of said Trust; the Residuary Marital Trust, its Trustee, and the beneficiaries of said Trust; and CQ Holding Company, Inc.

[2] Timothy J Rand, Charles Bidwill, III, James G. Koman, Board of Directors of CQ Holding, Inc., Administrative Committee of the Casino Queen Employees Stock Option Plan, Jeffrey Watson, and Robert Barrows.

[3] Michael Gaughan, Franklin Toti, Philip B. Company Kenny, James C. Kenny, John E. Kenny, Patrick B. Kenny, Joan Kenny Rose, Mary Ann Kenny Smith (and any beneficiaries of her Estate), Casino Queen, Inc., CQ Holding Co., Inc., and GreatBanc Trust Company.

On May 19, 2022, the original Defendants filed answers to the FAC, some of which included crossclaims, counterclaims, and third-party complaints. Plaintiffs filed an answer to the crossclaims on June 10, 2022. Charles Bidwill, III and Timothy J. Rand filed two Motions to Dismiss the FAC and the Court denied both motions. The newly named Defendants filed seven Motions to Dismiss the FAC between June and October 2022 and the Court denied all of them. James G. Koman also filed a Motion for Judgment on the Pleadings, which the Court also denied. On December 16, 2022, Charles Bidwill, III and Timothy J. Rand moved to certify a class of Counterclaim Defendants, and Plaintiffs moved for Class Certification. The Court denied both Motions on February 26, 2024. Plaintiffs petitioned for permission to appeal the denial of class certification to the Seventh Circuit under Federal Rule of Civil Procedure 23(f) on March 11, 2024, ECFs 512-514, which the Seventh Circuit granted on April 8, 2024. The parties then renewed settlement negotiations.

Plaintiffs took or defended a total of fifteen depositions (eight defense witness depositions, four third-party depositions, and the depositions of all three Named Plaintiffs) and issued multiple rounds of Requests for Production of Documents, Requests for Admissions, and Interrogatories. Plaintiffs also issued numerous document subpoenas to numerous individuals and entities involved in the ESOP Transaction. Plaintiffs received over 500,000 pages in discovery. Through this discovery process, Plaintiffs obtained and reviewed discovery to fully evaluate the merits and risks of the claims asserted, including: insurance policies; the Casino Queen ESOP Plan Document and Trust agreement; the ESOP Transaction documents; documents related to the Illinois Gaming Board's approval of the ESOP Transaction; the valuation report for CQH stock prepared in connection with the Transaction; agendas and minutes for CQH and CQI Board meetings and ESOP related meetings; engagement letters for Casino Queen's advisors; financial projections; communications from third parties expressing interest in buying Casino Queen; tens of thousands of emails with CQH's senior executives and third parties; communications with ESOP participants; and information related to the valuation of CQH stock from 2012 until 2020.

Settlement and Preliminary Approval.

The parties mediated formally on three occasions and reached the settlement through informal negotiation, building on progress made in prior formal mediations. In 2021, the parties engaged in the Seventh Circuit's mandatory mediation program. In 2022, JAMS mediator Robert A. Meyer facilitated an in-person mediation between the parties. In 2023, the Hon. Michael J. Reagan facilitated another in-person mediation between the parties. After the mediation, Judge Reagan facilitated over two months of further negotiations to reach resolution, but those negotiations concluded without success in November 2023. After the Seventh Circuit granted Plaintiffs' Petition for Permission to Appeal Under Rule 23(f), the parties re-engaged in settlement discussions. On September 4, 2024, the parties signed a written Term Sheet that formally memorialized the results of the parties' negotiations.

Plaintiffs filed a motion seeking preliminary approval of the Settlement on November 12, 2024. The Court granted Plaintiffs' motion on November 14, 2024. The Court's Order (1) preliminarily certified the class for settlement purposes; (2) approved the form and method of class notice; (3) approved February 25, 2025 as the date for a Fairness Hearing; (4) approved February 4, 2025 as the deadline for objections; and (5) approved Analytics Consulting, LLC as Settlement Administrator.

Objections.

February 4, 2025 is the deadline for Class Members to file objections to the Settlement. As of the date of this report, no Class Members filed any objections.

V. Settlement

A. Settlement Consideration

The Settlement provides for a Gross Settlement Amount of $7,100,000. After deducting from the Settlement Amount (a) Court-awarded class counsel fees and expenses and service awards; and (b) all settlement administrative costs (including but not limited to the Settlement Administrator's fees and costs), and all expenses associated with the Independent Fiduciary up to and including $20,000, the remainder (known as the "Net Settlement Amount") will be distributed to the Class Members in accordance with the Plan of Allocation.

Class and Class Period

The Settlement defines the Settlement Class as follows:

> all participants in the Casino Queen ESOP, whether or not such participant had a vested account in the ESOP, and those participants' beneficiaries, excluding: Defendants and their immediate family members; any ESOP Trustee, ESOP Administrative Committee members serving in such capacity on or before December 31, 2019; the officers and directors of CQH or Casino Queen, Inc. ("CQI") serving in such capacity on or before December 31, 2019; or the officers or directors or of any other entity in which a Defendant (other than CQH or CQI) has a controlling interest; and legal representatives, successors, and assigns of any such excluded persons.

The Court has preliminarily certified the Settlement Class, for settlement purposes only.

B. The Release

The Settlement defines Released Claims as follows:

> all Claims[4] arising from the facts alleged in the pleadings (including the proposed Second Amended Complaint), or that were or could have been brought in this litigation, including but not limited to any claim that is found to be based on the same or identical factual predicate as the claims alleged in the pleadings (including the proposed Second Amended Complaint), which may include, but not be limited to: the 2012 ESOP Transaction (as defined in the First Amended Complaint); the 2013 Asset Sale (as defined in the Complaint); the value of the ESOP participants' holdings in the years following those transactions; the impact of those transactions on the ESOP, including the amount and terms of debt to fund those transactions and how the terms of those transactions impacted the amount ESOP participants received in the years following those transactions through termination of the ESOP; the information reported to participants about the ESOP; information disclosed in the ESOP's Form 5500s filed with the DOL; and/or the 2020 ESOP termination (the "Released Claims").

Plaintiffs, on their own behalf and on behalf of all members of the Settlement Class and the Plan, hereby expressly waive, release, relinquish, and discharge, any and all rights and benefits they now have, or in the future may have, respectively conferred upon them by the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other State, Territory, or other jurisdiction relating to the release of unknown Claims. Section 1542 reads in pertinent part:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The terms of the release, including the provision for the Independent Fiduciary to provide a release of claims by the Plan, are reasonable.

C. The Plan of Allocation

The Plan of Allocation provides a flat payout of $500 to each Class Member who cashed out the shares in their ESOP account prior to December 31, 2019 ("Cashed Out

[4] Claims mean any and all present or past claims, demands, debts, expenses, rights of action, suits, and causes of action of every kind and nature whatsoever—so long as they fall within the limitations set forth in this paragraph— whether under the Employee Retirement Income Security Act of 1974 ("ERISA"), the Internal Revenue Code, or any other federal, state, local or foreign law, whether based on contract, tort, statute, regulation, ordinance, the common law, or another legal or equitable theory of recovery, whether known or unknown, suspected or unsuspected, existing or claimed to exist, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, in law or equity.

Participants"); a flat payout of $50 to each Class Member who had never had vested shares in their ESOP account ("Zero-Share Participants") up to an aggregate of $100,000; and a per-share, pro rata payout of the remaining settlement funds to each Class Member who held vested shares in their ESOP account after December 31, 2019 ("Vested Participants"). This approach is designed to assure that each Class Member receives an allocation, with small allocations to Zero-Share Participants, significant allocations to Cashed Out Participants, and substantially larger allocations to Vested Participants because they still held shares when the stock price dropped dramatically.

The pro rata share of the Phase I Net Proceeds to be distributed to each Vested Participant will be calculated as follows: Each Vested Participant shall have a "Weighting Factor" applied to them. The Weighting Factor shall be calculated as follows:

$$\frac{\text{Vested Participant's Total Vested Shares}}{\text{Total Aggregate Vested Shares}}$$

The following definitions shall apply:

a. "Vested Participant's Total Vested Shares" shall mean the total number of vested shares held by a Vested Participant after December 31, 2019.

b. "Total Aggregate Vested Shares" shall mean the aggregate total sum of all Vested Participants' vested shares held after December 31, 2019.

Phase I Distributions shall be calculated as follows:

a. Cashed Out Participants shall receive $500 each, regardless of the number of shares they redeemed or the amount of the cash distribution they received.

b. Zero-Share Participants shall receive $50 each, up to an aggregate of $100,000. If the number of Zero-Share Participants is so large that a $50 per person payment would exceed $100,000, the Settlement Administrator shall distribute $100,000 per capita among the Zero-Share Participants.

c. The "Phase I Pro Rata Proceeds" are equal to the Phase I Net Proceeds, minus the amounts to be distributed to Cashed Out Participants in the Phase I Distribution as well as minus the amount to be distributed to Zero-Share Participants in the Phase I Distribution.

d. Vested Participants shall receive an amount equal to their Weighting Factor, multiplied by the Phase I Pro Rata Proceeds.[5]

[5] To the extent that a class member qualifies as both a Cashed Out Participant and a Vested Participant, they shall receive the greater of $500 or the product of their Weighting Factor multiplied by the Phase I Pro Rata Proceeds.

Phase I Distributions shall be distributed to the Authorized Claimants by the Settlement Administrator as follows:

a. Phase I Distributions shall be mailed to Authorized Claimants or sent or deposited pursuant to their Election Forms on or before the Phase I Distribution Date.

b. Authorized Claimants will receive their Phase I Distribution in the form of a check, unless they submit a completed Election Form at least twenty-one (21) days before the Fairness Hearing wherein they request that their distribution be deposited directly into or mailed via check to an individual retirement account or other eligible retirement plan.

c. All checks issued in accordance with the Phase I Distribution shall be valid for up to one-hundred-fifty (150) calendar days after their issue date, which is the "Phase I Check Expiration Date."

d. On or around thirty (30) days before the Phase I Check Expiration Date, the Settlement Administrator will send a letter to any Authorized Claimants who have not yet cashed their checks, reminding them of the Phase I Check Expiration Date.

e. If an Authorized Claimant requests that their check be reissued, the Settlement Administrator may, at the Settlement Administrator's sole discretion, reissue the check to the Authorized Claimant so long as the Phase II Distribution Date has not yet passed; once the Phase II Distribution Date has passed, no checks from the first phase of distribution may be reissued. All funds from checks that are undelivered or that are not cashed on or before the Phase I Check Expiration Date shall be distributed in the second phase of distribution.

Phase II distribution: Vested Participants are "Phase II Vested Participants" only if they are: (1) Vested Participants who cashed their checks from the first phase of distribution; (2) Vested Participants who filled out a timely and complete Election Form; or (3) Vested Participants who had their checks reissued. To receive a Phase II Distribution, this eligibility criteria must be met as of the date that falls thirty (30) days before the Phase II Distribution Date. Each Phase II Vested Participant's "Phase II Weighting Factor" shall be calculated as follows:

$$\frac{\text{Phase II Vested Participants' Total Vested Shares}}{\text{Phase II Total Aggregate Vested Shares}}$$

For purposes of this calculation, "Phase II Total Aggregate Vested Shares" shall mean the total number of all Phase II Vested Participants' vested shares in the aggregate. Each Phase II Vested Participant's "Phase II Individual Distribution" shall be calculated by multiplying their Phase II Weighting Factor by the total amount of any funds remaining

in the Settlement Fund Account as of the Phase II Distribution Date, including any funds from uncashed checks.

The Phase II Distribution Date is the date that falls thirty (30) days after the Phase I Check Expiration Date.

Phase II Distributions shall be distributed to eligible Phase II Vested Participants by the Settlement Administrator as follows:

a. On or before the Phase II Distribution Date, Phase II Distributions shall be mailed to Phase II Vested Participants either in the form of a check to the address of such person as determined by the Settlement Administrator using commercially reasonable means, or, if the Phase II Vested Participant filled out an Election Form, by deposit or check pursuant to the Phase II Vested Participant's Election Form.

b. Checks for this third phase of distribution shall expire one-hundred- fifty (150) days after their issue date, which is the "Phase II Check Expiration Date." Phase II checks may not be reissued.

c. Within fourteen (14) days of the Phase II Check Expiration Date, the Settlement Administrator shall send any residual funds remaining in the Settlement Fund Account to the *cy pres* recipient, the Pension Rights Center.

We find the Plan of Allocation to be reasonable, including:

1. the provisions that a Class Member who redeemed their shares at the higher redemption prices used prior to October 15, 2019 will receive $500; a Class Member who never held vested shares in their account will receive $50, and a Class Member who redeemed their shares at the lower redemption prices used after October 15, 2019 will receive a share of the Net Proceeds based on the proportion of the shares of Casino Queen stock they redeemed at the lower redemption prices divided by the total number of shares held by all Class Members in the Plan that were redeemed at the lower redemption prices; and

2. the provisions for payments into an individual retirement account or other eligible employer plan for those Class Members who elect a rollover or by check for those Class Members who do not elect a rollover.

The provisions are cost-effective and fair to Class Members in terms of both calculation and distribution.

D. Attorneys' Fees and Litigation Expenses

Class Counsel seek an award of attorneys' fees in the amount of $2,366,666.67, which represents one-third of the Settlement Fund of $7.1 million. Class Counsel's lodestar was

$6,839,290 through December 16, 2024, which would result in a lodestar multiplier of 0.35 if the requested $2,366,666.67 were awarded. In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases, with the most common award in similar cases equaling one-third of the settlement amount. In light of the work performed, the result achieved, the litigation risk assumed by Class Counsel, and the combination of the percentage and the lodestar multiplier, Fiduciary Counselors finds the requested attorneys' fees to be reasonable.

Class Counsel request reimbursement of $184,232.59 in litigation costs incurred to date, including expert fees ($35,000.00), mediation ($32,386.25), document hosting ($27,579.10), court reporter fees ($23,524.66), legal research ($19,681.22), process server fees ($17,523.72) and travel expenses ($18,437.22). Fiduciary Counselors finds the request for expenses to be reasonable.

Class Counsel also seek service awards of $25,000 each for Plaintiffs Tom Hensiek, Jason Gill and Lillian Wrobel for a total of $75,000. The Named Plaintiffs communicated with Class Counsel throughout the Litigation, including responding to questions, reviewing the pleadings, preparing for depositions, preparing declarations, and assessing the settlement. The Named Plaintiffs also sat for their depositions and responded to written discovery requests, including interrogatories and requests for the production of documents. Moreover, all three Named Plaintiffs understood the responsibilities as class representatives and were prepared to serve the best interests of the Settlement Class through trial, if necessary. In bringing this case, the Named Plaintiffs risked negative publicity associated with the litigation and risked adverse reactions from future potential employers. Fiduciary Counselors finds the request for the service awards to be reasonable.

In sum, although the Court ultimately will decide what attorneys' fees, expenses and service awards to approve, we find that the requested amounts are reasonable under ERISA.

VI. PTE 2003-39 Determination

As required by PTE 2003-39, Fiduciary Counselors has determined that:

- **The Court has preliminarily certified the Litigation as a class action for settlement purposes only.** Thus, the requirement of a determination by counsel regarding the existence of a genuine controversy does not apply. Nevertheless, we have determined that there is a genuine controversy involving the Plan. Based on the documents we reviewed and our calls with counsel, we find that there is a genuine controversy involving the Plan within the meaning of the Department of Labor Class Exemption, which the Settlement will resolve.

- **The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.**

The Action claims that Defendants violated ERISA in connection with the Plan's acquisition of CQ Holding Company, Inc. stock in 2012 for approximately $170 million. Specifically, the Action alleged that the Defendants violated their duties under ERISA § 404, 29 U.S.C. § 1104, § 405, 29 U.S.C. § 1105, and ERISA § 406, 29 U.S.C. § 1106, when they facilitated the sale of CQ Holding Company, Inc. stock to the ESOP for a purchase price that exceeded fair market value, and Defendants participated in a prohibited transaction in violation of ERISA § 406, 29 U.S.C. § 1106, by selling their CQ Holding, Company Inc. stock to the Plan. The Defendants denied all of the allegations in the Action, denied any wrongdoing regarding the ESOP Transaction, and have vigorously defended the Litigation.

The outcome of the Litigation was uncertain, and Plaintiffs faced considerable risks. ERISA litigation entails significant risks, and it may span years (sometimes decades) and often ends in no recovery after trial. In particular, here, there was substantial time-bar risk because the challenged transactions occurred more than six years before the filing of the case. Because the entire Class's fiduciary breach claims were arguably time-barred, Plaintiffs would have had to prove that Defendants took acts to conceal their violations of ERISA in order to obtain a recovery.

According to the CQH's counsel, there are over 600 participants who sold CQH stock at less than $20 per share, about 340 participants with zero CQH shares allocated to their accounts, and about 170 participants who cashed out their stock at more than $20 per share. Plaintiffs' valuation expert estimated a range of overpayment amounts and the bottom of that range was $35 million without prejudgment interest; thus, the $7.1 million Settlement Fund reflect 20% of the most conservative estimate of losses. In ERISA cases challenging an ESOP's purchase of privately held stock, the measure of loss is the difference between what the ESOP paid for the stock and the stock's true fair market value. *See Perez v. Bruister*, 823 F.3d 250, 270-72 (5th Cir. 2016); *Neil v. Zell*, 767 F. Supp. 2d 933, 944-45 (N.D. Ill. 2011). However, the true fair market value of privately held stock is always a hotly contested issue that turns on a battle of the experts and the Court's findings of facts and conclusions of law. Defendants have asserted that the processes followed in the 2012 Transaction and the Asset Sale were prudent and the transactions were objectively prudent. They also have asserted that the stock performed well until Casino Queen ran into acute financial difficulties arising from unforeseen events following its acquisition of another casino in a leveraged purchase in 2017, and that any losses arose from that transaction, not from the 2012 Transaction and the Asset Sale.

Finally, this case presented significant hurdles to a victory at trial for the Class, given that Plaintiffs' claims were facially time-barred, as this lawsuit was filed more than six years after the challenged Transactions. Under ERISA's statute of repose, the Class would have been required to prove that Defendants engaged in "fraud or concealment." 29 U.S.C. § 1113. Defendants strenuously argued that Plaintiffs could not make that showing. Additionally, the Court had denied class certification after finding that the proof of "fraud or concealment" would require individualized proof by each purported class member. Plaintiffs would have had to obtain a reversal on that issue to achieve class-wide relief.

A settlement avoids the risks and delays attendant with continued litigation and ensures that the Class will each receive a substantial recovery. Here, the average gross recovery for Class Members who were not able to sell their CQH stock at the allegedly inflated values is approximately $11,000, which is significant recovery in light of the potential time-bar risks and the uncertainty of ongoing litigation and trial.

The $7,100,000 Settlement Amount is a fair and reasonable recovery given the results in numerous ESOP cases in the last several years, the defenses the Defendants would have asserted, the risks involved in proceeding to trial and the possibility of reversal on appeal of any favorable judgment.

Fiduciary Counselors also finds the other terms of the Settlement to be reasonable, including the scope of the release, attorneys' fees, expenses, service awards and the Plan of Allocation.

- **The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.** As indicated in the finding above, Fiduciary Counselors determined that Class Counsel obtained a favorable agreement from Defendants in light of the challenges in proving the underlying claims. The agreement also was reached after arm's-length negotiations supervised by multiple mediators.

- **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.** Fiduciary Counselors found no indication the Settlement is part of any broader agreement between Defendants and the Plan.

- **The transaction is not described in PTE 76-1.** The Settlement did not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans, the subject of PTE 76-1.

- **All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.**

- **The Plan is receiving no consideration other than cash in the Settlement.** Therefore, conditions in PTE 2003-39 relating to non-cash consideration and extensions of credit do not apply.

- **Acknowledgement of fiduciary status.** Fiduciary Counselors has acknowledged in its engagement letter that it is a fiduciary with respect to the settlement of the Litigation on behalf of the Plan.

- **Recordkeeping**. Fiduciary Counselors will keep records related to this decision and make them available for inspection by the Plan's participants and beneficiaries as required by PTE 2003-39.

- **Fiduciary Counselors' independence**. Fiduciary Counselors has no relationship to, or interest in, any of the parties involved in the litigation, other than the Plan, that might affect the exercise of our best judgment as a fiduciary.

Based on these determinations about the Settlement, Fiduciary Counselors has determined that the Settlement meets the requirements of PTE 2003-39 and does not constitute a prohibited transaction under ERISA § 406(a). Thus, Fiduciary Counselors (i) authorizes the Settlement in accordance with PTE 2003-39; and (ii) gives a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan. Fiduciary Counselors also has determined not to object to any aspect of the Settlement.

Sincerely,

Stephen Caflisch

Stephen Caflisch
Senior Vice President & General Counsel