



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: JOHN Q. HAMMONS HOTELS INC.
SHAREHOLDER LITIGATION

CONSOLIDATED
CIVIL ACTION NO. 758-N

**SECOND AMENDED AND SUPPLEMENTAL
CONSOLIDATED CLASS ACTION COMPLAINT**

Plaintiffs allege on information and belief, except for those allegations which pertain to plaintiffs which are alleged upon personal knowledge, as follows:

THE PARTIES

1. Plaintiffs Jolly Roger Fund LP and Jolly Roger Offshore Fund, Ltd. were at all relevant times the owners of approximately 435,000 shares of the outstanding shares of John Q. Hammons Hotels, Inc. ("JQH" or the "Company") Class A common stock. Plaintiff Garco Investments LLP was at all relevant times the owner of JQH Class A common stock.

2. Defendant JQH was at all relevant times a corporation organized and existing under the laws of the State of Delaware with its principal executive offices located at 300 John Q. Hammons Parkway, Suite 900, Springfield, MO 65806. JQH's principal activity was to independently own and manage affordable upscale hotels in capital city, secondary and airport markets. As of August 24, 2005, it owned 44 hotels located in 20 states in the United States, containing over 10,000 guest rooms or suites, and managed 15 additional hotels located in 9 states. The hotels operated under the Embassy Suites Hotels, Holiday Inn and Marriott trade names. Most of the hotels were located in or near a state capital, university, convention center, corporate headquarters, office park or other stable demand generator. The hotels are designed for customers such as frequent business travelers, groups and conventions and leisure travelers.

3. As of August 5, 2005, JQH had issued and outstanding 5,253,262 shares of Class A common stock (one vote per share) held by approximately 232 holders of record and 294,100 shares of Class B common stock (50 votes per share), all of which Class B Shares were owned by Mr. John Q. Hammons (“Hammons”) through a revocable trust (“Trust”) and Hammons, Inc., a Missouri corporation whose sole stockholder is the Trust. In addition, Hammons owned all of the limited partnership units of John Q. Hammons Hotels, L.P., (“Partnership”), which were convertible into JQH Class A common on a one-for-one basis. JQH was the general partner of Partnership, holding a 25% interest, while Hammons and certain Hammons-related entities held a 75% interest. Thus, Hammons’ equity interests provided him with a 79% combined equity and voting interest in JQH.

4. Defendant Hammons was at all relevant times the Chairman of the Board of JQH and its Chief Executive Officer. Hammons controlled approximately 79% of JQH, and therefore controlled all matters that required a vote of shareholders, including significant matters like the election and removal of directors, mergers, acquisitions and other business combinations.

5. Defendant John E. Lopez-Ona (“Lopez-Ona”) was at all relevant times since 1996 a JQH director. Hammons and Anvil Capital, an investment and consulting firm owned by Lopez-Ona, formed a limited liability company, through which they invested in securities of one or more companies in industries unrelated to JQH’s business.

6. Defendant Jacqueline A. Dowdy (“Dowdy”) was at all relevant times since 1994 a director of JQH and its Secretary. Dowdy has been active in JQH’s hotel operations since 1981. Dowdy was a 50% owner with Hammons in an entity which owns a hotel managed, but not owned, by JQH, and was also the 9% owner of another Hammons’ affiliated company which leases space to JQH.

7. Defendant Daniel L. Earley (“Earley”) was at all relevant times since 1994 a director of JQH. Earley was the President, Chief Executive Officer and a director of First Clermont Bank, a community bank in Milford, Ohio, owned by Hammons.

8. Defendant William J. Hart (“Hart”) was at all relevant times since 1994 a director of JQH and a member of the law firm of Hirsch & Eppenberger, which performed legal services both for JQH and personally for Hammons, including tax advice.

9. Defendant Donald H. Dempsey (“Dempsey”) was at all relevant times since 1999 a director of JQH. From 1993 to December 1997, Dempsey was the Senior Vice President and Chief Financial Officer of Promus Hotel Corporation (“Promus”), a subsidiary of Embassy Suites, which in turn was a subsidiary of The Promus Companies. From 1983 to 1993, Dempsey was an officer of Promus, including Vice President of Franchising and Development for the Hampton Inn division of Promus. Between 1969 to 1983, Dempsey held various corporate and financial management and administrative positions with Holiday Inns, the predecessor company to Promus.

10. Defendant David C. Sullivan (“Sullivan”) was at all relevant times since 1999 a director of JQH. From 1990 to 1997, Sullivan was an officer at Promus, and from 1990 to 1991 was the Vice President of Development of the Hampton Inn division of Promus.

11. Defendant James F. Moore (“Moore”) was at all relevant times since 1995 a director of JQH.

12. The defendants named above in paragraphs 4 through 11 (the “Individual Defendants”), as officers and/or directors of the Company, owe the highest fiduciary duties of good faith, loyalty, fair dealing, due care, and candor to plaintiffs and the other members of the Class (as defined below).

13. Defendants JQH Acquisition, LLC (“Acquisition”) and JQH Merger Corporation (“Merger Sub”) were respectively a Delaware limited liability company and Delaware corporation,

respectively, formed to facilitate the acquisition of JQH Class A common stock. The principal of Acquisition is Jonathan D. Eilian (“Eilian”); Merger Sub is a wholly-owned subsidiary of Acquisition. Acquisition and Merger Sub are named herein as aiders and abettors to the breaches of fiduciary duty described herein.

CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other Class A common stockholders of the Company as of August 5, 2005, the record date for stockholders to vote on the transaction described herein (except the defendants herein and any persons, firm, trust, corporation, or other entity related to or affiliated with them) and their successors in interest, who were injured by defendants’ actions, as more fully described herein (the “Class”).

15. This action is properly maintainable as a class action for the following reasons:

A. The Class is so numerous that joinder of all members is impracticable. In its proxy statement dated August 24, 2005 (“Proxy”), the Company estimated that there were approximately 232 shareholders of record and over 1,000 beneficial owners of its Class A common stock.

B. There are questions of law and fact which are common to the Class including, *inter alia*, the following:

1. whether the defendants engaged in a plan and scheme to benefit themselves at the expense of the members of the Class;
2. whether the defendants fulfilled their fiduciary duties to plaintiffs and the other members of the Class, including their duties of fair dealing, loyalty, good faith, due care, and candor;

3. whether the defendants disclosed all facts material to Class members' voting and appraisal decisions concerning the Merger (defined below in paragraph 58).

16. The claims of plaintiffs are typical of the claims of the other members of the Class in that all members of the Class will be damaged alike by the wrongs complained of herein.

17. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs are adequate representatives of the Class.

18. The prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudications would establish incompatible standards of conduct for the class or be dispositive of the interests of the other members not parties to the adjudication.

BACKGROUND AND SUBSTANTIVE ALLEGATIONS

The Original Offer

19. On October 18, 2004, JQH issued a press release announcing that Barcelo Crestline Corporation ("Barcelo") had submitted a proposal to acquire all outstanding shares of Class A common stock of JQH for \$13.00 in cash per share (the "Original Offer"). Significantly, the Original Offer had the approval of Hammons, JQH's controlling shareholder.

20. Unlike the minority shareholders who were to receive \$13.00 per share as part of the Original Offer, Hammons personally would receive a significant equity stake in Barcelo, pursuant to an agreement between Hammons with Barcelo announced in conjunction with the Original Offer.

21. Following the announcement of the Original Offer, JQH began trading over the \$13 offer price, indicating the market viewed the Original Offer as inadequate.

22. On October 20, 2004, the first meeting was held of a special committee formed by the JQH Board of Directors ("Board"). Initially, the Special Committee consisted of defendants

Sullivan, Dempsey, Moore, Hart and Lopez-Ona. The Special Committee was not authorized to conduct an auction of JQH or pursue alternatives, but was formed to review and evaluate the Original Offer, negotiate price and terms and make a recommendation to the Board.

23. However, at this October 20, 2004 meeting, after discussing their various relationships with the Company and Hammons, defendants Lopez-Ona and Hart offered to withdraw from the committee in light of potential questions that could be raised as to their independence. The remaining members of the Special Committee accepted this offer but requested that defendant Hart remain involved in an “advisory capacity given his familiarity with the company and understanding of the tax and estate planning considerations from Mr. Hammons’ perspective.” As described below, the Special Committee was conflicted from the outset and thus was incapable of acting impartially with respect to Hammons.

24. Indeed, defendant Hart, a longtime advisor to Hammons, participated in and attended virtually every subsequent Special Committee meeting, which fact was never disclosed to JQH public stockholders.

25. From the outset, it should have been apparent that the process was flawed, and that Hammons’ dictates were to be followed. At an October 25, 2005 Special Committee meeting, Bruce Wardinski (“Wardinski”), a representative of Barcelo, advised the Special Committee that the agreement with Hammons was designed to defer any taxable gain for a substantial period of time, most likely until after Hammons’ death, but would allow Hammons to access the capital necessary for him to develop a “significant” number of new projects. In developing the terms of the Original Offer, Hammons had provided to Barcelo a copy of the Company’s 2005 internal projections. However, at this time, the agreement between Hammons and Barcelo had not been provided to the Special Committee or its advisors.

26. On October 26, 2004, JQH announced that it had formed the Special Committee to review the Original Offer, comprised of defendants Sullivan, Dempsey and Moore. The Special Committee subsequently retained Lehman Brothers ("Lehman") as its investment advisor. According to the Proxy, the Special Committee was empowered to review, evaluate, negotiate and make a recommendation to the Board on the Original Offer. Subsequently, the Special Committee's powers were expanded to consider offers from other parties.

27. As subsequently revealed in the Proxy, the Original Offer contemplated that Hammons was interested in pursuing a transaction with Barcelo which would provide Hammons with capital for development of new hotel properties. Included in the Original Offer were substantial benefits for Hammons not shared by JQH's public stockholders, including:

- a. equity interest of 5% in a Barcelo affiliate, with a liquidation preference of \$300 million paid, under various circumstances, between years seven and thirteen after closing;
- b. a \$100 million to \$250 million line of credit for Hammons secured by his 5% equity interest in the Barcelo affiliate and personal guaranty, to be used solely for future hotel developments;
- c. funding of his equity interest by rolling over certain Class A common stock of JQH at \$13 per share; and
- d. valuable property, then held by John Q. Hammons Hotels Two, L.P. ("Two"), a subsidiary of Partnership, known as the Chateau on the Lake Resort in Branson, Missouri, would be distributed to Hammons after the consummation of the deal with an assumption of a portion of its debt obligation by Hammons.

28. On November 10, 2004, JQH issued a press release announcing its financial results for the quarter ended October 1, 2004. The Company reported quarterly revenues of \$110.4 million and EBITDA of \$32 million versus revenues of \$107.7 million and EBITDA of \$31 million for the

same period in 2003. Net income for the quarter was \$1.7 million, compared to net income of \$0.2 million for the 2003 quarter.

29. According to the November 10, 2004 press release, revenue per available room (“RevPAR”) and EBITDA were above 2003 levels.

30. On November 10, 2004, JQH stock traded over \$14 per share, further demonstrating the inadequacy of the consideration in the Original Offer.

31. On November 12, 2004, JQH filed a Form 10-Q for the period ended October 1, 2004. In the Form 10-Q, and ostensibly as a result of claims asserted in this litigation, it was announced that Barcelo had reaffirmed its Original Offer in a letter to the Special Committee and sought approval of the agreement between it and Mr. Hammons, the full terms of which had not been disclosed. Barcelo indicated in its letter that the previously announced agreement with Mr. Hammons had been “terminated”, which obviated the need for the agreement to be disclosed in any filing with the Securities and Exchange Commission, such as an Form 8-K or Schedule 13D. By separate letter, however, according to the Form 10-Q, Hammons advised the Special Committee that he was interested in entering into such an agreement with Barcelo previously discussed on October 18, 2004, subject to approval by the Board. As revealed in the minutes of the November 3, 2004 Special Committee meeting, Barcelo was attempting to ensure that it did not become an interested stockholder under Section 203, a fact not disclosed in the Proxy.

32. On November 18, 2004, at the request of the Special Committee, counsel for plaintiffs herein met with the Special Committee and its advisors and provided them with plaintiffs’ views as to price, process and disclosure issues.

33. On November 29, 2004, Lehman advised the Special Committee of certain issues with respect to the projections provided to Lehman by Company management. The Special Committee indicated that it could encourage company management not to make “unrealistically

pessimistic assumptions.” Defendants Sullivan and Dempsey indicated at this meeting they had discussed similar concerns with defendant Earley, a Board member. Accordingly, on December 6, 2004, the Special Committee was advised that management had made “revisions” to certain assumptions in the Company projections. The Proxy does not discuss the nature of the changes made to the projections.

34. Between November 18, 2004 and December 7, 2004, the price of JQH Class A common stock traded between \$14.25 and \$14.75 per share.

35. Thus, the Special Committee, even though beholden to Hammons for their positions, had no choice but to reject the Original Offer. On December 7, 2004, JQH announced that the Special Committee had reported to the Board that the \$13 consideration in the Original Offer was an “unacceptable price.” In addition, the Special Committee noted there were “a number of deficiencies” in the proposed agreement between Barcelo and Hammons. The Special Committee, however, did not disclose the terms of the agreement, despite repeated requests from plaintiffs’ counsel herein.

36. The December 7, 2004 press release also stated that the Special Committee had received a proposal from “another party that also would involve a change in control” but would not require Class A stockholders to sell their shares unless they so chose (“Second Proposal”). The identity of the offeror and the terms of the Second Proposal were not disclosed at that time, but subsequently, in February, 2005, was revealed to be from Acquisition, whose principal, in a November 17, 2004 presentation to the Special Committee, valued JQH’s share price potential between \$30.00 and \$63.56 per share based upon publicly available 2004 EBITDA and funds from operations (“FFO”).

37. On December 9, 2004, JQH stock closed at \$18 per share, representing a 28% increase over the \$13 Original Offer.

38. Hammons initially strenuously resisted the Second Proposal advanced by Eilian, advising Sullivan that he would not do a deal with Eilian and advising JQH's General Counsel not to provide Eilian with due diligence materials he sought. It was clear who was dictating the course of the negotiation process; indeed, at a December 16, 2004 Special Committee meeting, Wardinski of Barcelo advised the members of the Special Committee that Barcelo was prepared, in the face of the Second Proposal, to come back with a price in the \$18-20 per share range, but expressed concern that as the transaction with Hammons got more expensive, it might result in Barcelo's offering a price below \$20 to the public stockholders. This information was never disclosed in the Proxy.

39. Despite the existence of the Second Proposal, on December 29, 2004, JQH announced that its Board, the majority of whom were patently conflicted by virtue of their business and/or personal relationships with Hammons, and all of whom were, nominated and approved to serve on the Board by virtue of Hammons' majority voting power, agreed to negotiate exclusively with Barcelo through January 31, 2005 with regard to a possible merger, as had Hammons. The decision was based upon the recommendation of the Special Committee after Barcelo reportedly increased its Original Offer from \$13 per share to \$21 per share. Barcelo also agreed that, if requested by the Special Committee, any merger vote would require the approval of the majority of the Class A shares voting on the matter, other than shares held by Hammons and his affiliates, in addition to the majority of the voting power of all Class A and Class B shares, voting collectively as a single class.

40. According to the Proxy, Lehman preliminarily opined on December 29, 2004 that Barcelo's \$21 offer was "fair" from a financial point of view and that the allocation of consideration between JQH's public stockholders and Hammons was reasonable. This was not unexpected, given that throughout October – December 2004, Hammons advised both the Board and the Special Committee that he preferred Barcelo over the offeror of the Second Proposal.

41. The Board and the Special Committee abdicated their fiduciary responsibilities during the course of the negotiations with Barcelo, failed to provide any disclosure to the Class about the terms of the Second Proposal, and instead entered into this improper exclusivity arrangement with Barcelo, Hammons' preferred bidder.

42. However in meetings on January 27-28, 2005, according to the Proxy, Hammons expressed reluctance to continue to pursue a transaction with Barcelo primarily due to the uncertainty that the Barcelo line of credit to him would remain available for a sufficient period of time. However, the actual minutes of the January 28, 2005 meeting state that while Barcelo was offering a three year guarantee on a line of credit to Hammons, from Hammons' perspective this was a primary issue, and he would not accept less than a guarantee for a full 13 year term. Hammons, in a snit, advised the Special Committee that he was inclined to let the exclusivity period with Barcelo lapse. And, the Special Committee acceded to Hammons' desires. Thus, Hammons' sole consideration was protection of his own disparate benefits, not the proper exercise of his fiduciary obligations to JQH's public stockholders.

43. On or about February 1, 2005, JQH announced that the exclusivity period with Barcelo had ended without resolution on the terms of any merger. However, the Company reaffirmed the authority of the Special Committee to continue to negotiate the terms of a transaction with Barcelo, or any other viable alternative, in part upon the Special Committee's receipt of "another unsolicited proposal."

44. Subsequently, on February 1, 2005, Barcelo announced that it would not continue to pursue an acquisition of JQH.

The Second Bidder and Other Interested Parties Emerge

45. On February 2, 2005, the terms of the Second Proposal for JQH were made public in a Schedule 13D amendment ("13D") filed by certain stockholders of the Company.

46. The Second Proposal was from Acquisition, the principal of which is Eilian, and contemplated a fully financed acquisition of JQH Class A common stock at a price not less than \$24 per share. In order to assure that any deal with Acquisition was viewed favorably by the Company and Hammons, Acquisition entered into agreements with certain JQH shareholders holding approximately 1,147,723 shares of Class A common stock, representing approximately 23% of the Class A common stock held by unaffiliated shareholders and approximately 5.7% of the total votes to be cast by Class A and Class B stockholders, who had previously met with the Special Committee and indicated that they valued JQH at between \$24.13 to \$34.54 per share, based on various assumptions. The agreements constrained these shareholders to vote in favor of any Acquisition proposal and against any other competing proposal, even if a higher price was offered by another party, and also provided that if their JQH stock was sold in excess of \$24 per share, they would pay Acquisition 20% of the price over \$24 per share.

47. Eilian had been in discussions with Hammons about the possible acquisition of JQH and/or Hammons' interest in the Company since March 2004, and had contacted the Special Committee in October 2004 after the Original Offer was announced.

48. According to the Proxy, Eilian initially proposed to invest capital into JQH, leave the public shares outstanding and engage in a transaction with Hammons that would have provided Hammons with "some liquidity to continue his hotel development activities." Thus, from the outset, Acquisition (*i.e.*, Eilian and his related entities) was fully cognizant that Hammons wanted to pursue his business activities without regard to the maximization of shareholder value. This was no surprise, indeed; the Original Offer received the approval of Hammons initially for the same reason, despite the low price offered to public stockholders.

49. However, on the same day the terms of the Second Proposal were revealed, in an article contained in a local Missouri newspaper, Springfield News-Leader, Hammons noted that Barcelo's departure opened JQH up to "other offers", stating

I've had inquiries for a long time. We have a great company ... I know there's three (interested parties) out there trying to get their foot in the door.

50. Thus, JQH was in play, and defendants' fiduciary duties required them to take all steps appropriate to maximize shareholder value.

51. On February 4, 2005, JQH announced that it and Hammons had agreed to negotiate exclusively with Acquisition through February 28, 2005. This exclusivity period was twice extended, continuing through May 24, 2005. JQH's press releases issued during the exclusivity period indicated that a significant area of negotiation again concerned "various arrangements . . . between the investor group and Mr. Hammons . . ."

52. On May 5, 2005, plaintiffs herein made a demand for books and records pursuant to Section 220 of the DGCL, which JQH refused. On May 16, 2005, plaintiffs filed a complaint pursuant to 8 Del. C. § 220 seeking the production of limited documents to ascertain whether Hammons' conduct was in violation of the fiduciary duties owed to public stockholders.

53. According to the Proxy, yet another unidentified party contacted Lehman, the Special Committee's advisor, prior to February 3, 2005 but the Board concluded that because, among other reasons, the bidder did not come forward "soon after the exclusivity period with Barcelo expired," the Board did not view the candidate as serious. As previously described, the exclusivity period ended with Barcelo on February 1, 2005; the exclusivity period began with Acquisition on February 4, 2005. Thus, this explanation defies logic, and demonstrates that despite knowledge of the existence of other interested parties, the Board and Special Committee sought to grant exclusivity periods to bidders favored by Hammons.

54. On May 25, 2005, after both numerous extensions of the exclusivity period with Acquisition and the filing of plaintiffs' § 220 complaint, JQH announced that the Special Committee had approved a transaction agreement between Acquisition and Hammons ("Transaction Agreement").

55. The Transaction Agreement obligated all Hammons-related entities to vote their equity interests in favor of, and support Acquisition in connection with its merger proposal, and generally provided, as set forth in JQH Form 8K filed with the SEC on May 25, 2005, for a short-term credit line, various option agreements, real estate sales, a "Chatcau Agreement", a right of first refusal on the sale of certain properties, a non-compete agreement, and various other unspecified arrangements which were listed collectively as "(a)" through "(y)" for Hammons.

56. The Special Committee met on June 14, 2005 to make recommendations with respect to the proposed merger agreement which embodied the final terms of the Second Proposal and Transaction Agreement. At this meeting, Lehman provided a presentation to the Special Committee, which was based on the December 29, 2004 written presentation with a verbal "update" which incorporated the information contained in a June 14, 2005 Lehman Presentation to the Special Committee.

57. The minutes of the June 14, 2005 Special Committee meeting indicate that Lehman "stressed" the difficulty of deriving a set value for the numerous unquantifiable benefits provided to Hammons such as the long-term line of credit, the right of first refusal on various properties and the non-solicitation agreement.

58. Thereafter, on June 15, 2005, JQH announced the execution of a merger agreement with Acquisition, which contemplated the acquisition of publicly-held JQH shares at \$24 per share ("Merger Agreement"), and set forth the precise terms of the Transaction Agreement (collectively, "Merger") including:

- (a) as of June 14, 2005, iStar, financier of the merger, would provide Hammons with an initial short term \$25 million line of credit;
- (b) Hammons would buy undeveloped parcels of property currently owned by Two in Omaha, Nebraska and Cary, North Carolina at fair market value;
- (c) Hammons would receive the Chateau Lake Property, after transferring certain assets and related liabilities to an Acquisition-related affiliate;
- (d) the Partnership interests of Hammons in Partnership would be converted into a \$7 million preferred interest in a newly recapitalized partnership with a liquidation preference of \$328 million;
- (e) Hammons would be indemnified from certain tax liabilities if certain of 36 properties owned by JQH Partnerships sold during Hammons' lifetime;
- (f) Acquisition would have a right of first refusal to purchase any of twelve properties controlled by Hammons;
- (g) Hammons would receive an aggregate long term line of credit of up to \$275 million;
- (h) Each outstanding share of Class B stock owned by Hammons would remain outstanding as one share of common stock of the corporation surviving the transaction, providing Hammons with a solo interest in the new JQH entity; and
- (i) Hammons' affiliates would continue to provide management services for the Company's hotels after the merger pursuant to a management agreement.

59. In return, Hammons agreed to certain conditions such as voting his interests in favor of the merger, and a no shop provision, which provided that he would support the merger even if a higher bid emerged.

60. The Merger Agreement also provided, among other things, that the merger was to be approved by a majority of Class A and Class B shares voting as one class, and a separate majority

vote by Class A stockholders. Although the Special Committee retained authority to waive the latter vote, it did not do so.

61. In addition, the Merger Agreement contained a no shop provision that prohibited JQH from engaging in discussions with third parties unless the Board determined it would be inconsistent with fiduciary duties, a termination fee of up to \$20 million if the merger was not consummated and matching rights for Acquisition on any higher proposal by a third party.

62. On August 22, 2005, JQH filed a Schedule 13-e-3, Amendment 2 ("13e3") which contained a Lehman presentation to the JQH Special Committee dated as of June 14, 2005 ("Lehman Presentation"). The Lehman Presentation contains only actual financial results through April 1, 2005.

63. On August 24, 2005, JQH filed the Proxy for a special shareholder meeting for September 15, 2005 to vote on the Merger Agreement.

64. At a meeting held on September 13, 2005, just two days prior to the shareholder vote on the Merger, the Special Committee was advised that the Transaction Agreement with Hammons had been revised. That information was never disclosed in any supplement to the Proxy. Indeed, the revised Transaction Agreement was not executed until September 16, after the Merger was consummated. Although the general terms were described in Amendment 2 to Schedule 13D filed September 19, 2005, the actual revised documents were not filed. Thus, JQH shareholders approved the Merger on September 15, 2005 without knowledge of changes to a material component of the Merger. Indeed, there is no indication that Lehman undertook any analysis of the revised Transaction Agreement to determine whether the changes affected any portion of their conclusions, as described in the Proxy.

65. According to the Minutes of the September 13, 2005 Special Committee meeting, counsel for the Special Committee, Katten Muchin Rosenman LLP, described the revisions to the

Transaction Agreement, which provided that: the partnership agreement of Hotels Two would be amended to prevent its dissolution upon the sale of its assets; as part of a debt tender offer, Acquisition would have Partnership and Hotels Two form four new subsidiaries that would be the borrowers from Goldman Sachs Mortgage Company as part of the new financing for the debt tender offer; four additional new subsidiaries would be formed as taxable REIT subsidiaries that would be parties to certain leases, the revenue sharing agreement and management services agreement contemplated by the original Transaction Agreement; Partnership would issue a promissory note to Trust in the principal amount of \$607,393.00 to reflect the balance of the \$2 million of capital expenditures that JQH had agreed to make to the Chateau property prior to the closing of the Merger; and “other notable changes set forth” in the revised Transaction Agreement. Although counsel concluded that no changes appeared to affect the value to be received by the public stockholders or change in material respect the allocation of merger consideration to be received by Hammons and the public stockholders, Lehman representatives, although in attendance on September 13, 2005, did not make any presentation or update their fairness opinion prior to the vote on September 15, 2005.

66. On September 15, 2005, JQH stockholders, without knowledge of all critical material facts, approved the Merger Agreement, and on September 16, 2005, the Merger was consummated.

THE DEFENDANTS BREACHED THEIR FIDUCIARY DUTIES

The Process Was Flawed

67. The Special Committee that was established was fatally flawed and conflicted.

68. Both defendants Dempsey and Sullivan spent many years working for the hotel division of Promus, which resulted from a reorganization of the Holiday Inn business with Embassy Suites, Hampton Inn and Harrah’s casino entertainment business. From 1983 to 1993, Dempsey was a Vice President of Promus’ Hampton Inn branch. From 1993 to 1995, he served as Vice

President of Finance and Administration of Promus' hotel division. From 1990 to 1997 Sullivan held various management positions with Promus, including serving as director, executive vice president and COO from April 1995 to December 1997.

69. Promus derives its revenues by selling its Embassy Suites and Hampton Inn brands and in some situations operating hotels under a franchise or management agreement. Meanwhile, JQH owned and managed the majority of its hotels under the Embassy Suites, Holiday Inn and Marriott trade names, most of which were acquired prior to 2000, and thus enjoyed a long relationship with Promus by virtue of the contractual arrangements with Embassy Suites and Holiday Inn, the predecessor to Promus. Consequently, Promus and Hammons enjoyed a mutually beneficial relationship: most of the license agreements contained 20 year terms, with rights of renewal.

70. In February, 1992, when both Sullivan and Dempsey were senior executives of Promus, Promus and Hammons entered into a 20-year limited partnership agreement, with rights of renewal for an additional 30 years, called the Des Plaines Development Limited Partnership ("Joint Venture"). The Joint Venture provided for the development of a riverboat gambling casino in Joliet, Illinois with a subsidiary of Promus as an 80% general partner, and Hammons a 20% limited partner. The Joint Venture was so successful that it opened a second riverboat.

71. Hammons hand-picked Defendants Sullivan, Dempsey and Moore as JQH directors and re-elected them each year through his voting control.

72. Thus, the members of the Special Committee were not impartial and capable of acting in the best interests of JQH's stockholders and independent of the wishes of Hammons, who negotiated the terms of his own deal to the detriment of JQH's public stockholders.

73. Indeed, the Proxy acknowledged the limitations of the Individual Defendants when it noted that the Special Committee did not have authority to "broadly market" JQH in light of

Hammons' ability to reject any transaction and the fact that Hammons' interest would be influenced not only by the economic terms of any transaction, but also by its tax implications, which were personal to Hammons.

74. Moreover, the Proxy noted that Hammons advised the Special Committee that he preferred that the Company be privately-held following any transaction.

75. From the time the Special Committee was established until the Merger was approved on September 15, 2005, the processes of the Special Committee were "policed" by the presence of Hart, Hammons' long time tax and estate advisor, at virtually every Special Committee meeting. Thus, the ostensible purpose of the Special Committee (to operate in the best interests of the minority shareholders) was overridden by Hammons' desire to maximize the benefits of any transaction to satisfy his own desires.

76. Hammons dictated every move, obtaining exclusivity from bidders he favored, and denying exclusivity when it became apparent he could not achieve his goals with a bidder.

77. Lehman, the Special Committee's investment advisor, was similarly conflicted, as Lehman has performed services in the past for both JQH and the Partnership, (of which Hammons owns all the limited partnership units) for which it has received substantial compensation directly from Hammons. Moreover, Lehman served as the underwriter in connection with a 2002 bond offering by JQH. Lehman therefore could not act with the requisite impartiality.

78. Lehman provided the Special Committee with an opinion to the effect that the \$24 per share merger consideration was fair to JQH's public stockholders (having preliminarily opined that Barcelo's \$21 per share price was fair) and that the allocation of consideration as between Hammons and the public stockholders was also fair. Lehman's presentation underlying its fairness opinion was flawed and stale:

- (a) In its comparable companies' analysis, Lehman determined the Company's peer group EBITDA multiples ranged from 10.4 - 11.9x. If applied to JQH, their multiples yield a range of values of \$27.84 to \$35.95 per JQH share, exclusive of any control premium, based upon estimated 2005 EBITDA of \$126.3 million. However, Lehman rejected the peer group EBITDA multiple range, stating that it believed the Company's multiples were lower than the public valuation multiples. Lehman instead applied a multiple range of 9.0 - 10.0x projected 2005 EBITDA, which yields a range of value of \$20.28 - \$25.69.
- (b) In addition, Lehman derived a revenue per available room (RevPAR) peer growth rate of 4.3% to 11.1%, but did not apply these growth rates in its analyses, noting that JQH's RevPAR was only 2.3% as of June 10, 2005.
- (c) In its comparable transactions analyses, Lehman analyzed nine transactions announced between April 1999 and March 2005 and determined that the last twelve months ("LTM") EBITDA multiples ranged from 7.4x to 13.8x with a mean of 10.6x and a median of 10.4x. This indicated a range of value of \$22.75 to \$27.86 per JQH share. However, in the acquisition of Wyndham Intl, Inc. by the Blackstone Group, JPMorgan utilized a range of 11.00-12.5x derived from recent hotel industry acquisitions, which multiple would yield higher values for JQH.
- (d) Lehman's DCF analysis assumed revenue growth started at 6% and declined to 3.1% from 2005 through 2010, while EBITDA growth would be approximately 5.5%, declining to 4% per annum. However, comparable company growth rates, for both revenue and EBITDA, were previously projected by analysts to be between 5-10%.

- (e) Lehman also attempted to determine the “reasonableness” of the allocation of the consideration between Hammons and JQH’s public stockholders, and ultimately determined the allocation was reasonable. However, Lehman admitted that there were certain “non-quantitative terms,” including the tax indemnity agreement, rights of first refusal, non-competition agreements and the line of credit provided to Hammons. Indeed, the Proxy concedes, “A number of the terms in the transaction agreements may either add to or subtract from the net realized value realized by [Hammons] in the transaction.”
- (f) Lehman’s analyses do not include JQH’s favorable financial results for the period ended July 1, 2005 which were announced on August 10, 2005.

79. JQH’s financial results announced on August 10, 2005 demonstrate how much Lehman miscalculated the value of the Company. JQH announced six months revenue for the period ended July 1, 2005 of \$228.9 million, an increase of 4.4% compared to the same period in 2004. Additionally EBITDA from continuing operations for the six months of 2005 were \$66.6 million, up 6.9% compared to \$62.3 million in 2004. 2005 reported earnings for the six months were \$1.56, compared to \$.34 for the same period in 2004, with net income of \$8.5 million, compared to \$1.7 million for 2004.

80. The August 10, 2005 press release also announced that the Average Daily Room rate for 2005 increased 6.2%, or was \$107.42 for the six months versus full year projection of \$103.95. RevPAR for the first six months was up 4.8%, an increase from an estimate of 2.3% for the year. RevPAR for the quarter ended July 1, 2005 was up 7.3% from the same period in the prior year.

81. JQH stated in its August 10, 2005 press release:

We expect the industry to continue its recovery during 2005, generating RevPAR and EBITDA above our 2004 levels. This

recovery should continue to enhance our cash generation and produce favorable results as we focus on operational efficiencies into 2005.

82. JQH's actual EBITDA margin for the six month period was 29%, compared to an estimate of 27.6% for the year. This 29% margin ranks JQH the third highest company considered in Lehman's comparable companies' analysis, thereby confirming that Lehman should not have considered JQH at the lower end of range of EBITDA multiples.

83. The Lehman presentation also considered transactions prior to 2002 in its comparable transactions analyses, which were not relevant for purposes of valuing the merger. If transactions between 2002 to present were the only ones considered, the average of those six deals would yield a multiple of 11.5x, which if applied to JQH, would result in a \$33.97 value. The median of the six deals was even higher – 12.4x. Thus, the Lehman presentation, upon which the Special Committee and Board relied, failed to value JQH accurately.

84. The Lehman fairness opinion rendered in June, 2005 were purportedly based on projections based on Company Management's best estimates as of June 9, 2005. Thus, it is unclear if the projections still contained "pessimistic assumptions" that were the subject of discussion in November, 2004. Further, the projections were not subsequently updated to reflect JQH's actual results issued in August, 2005.

85. Moreover, no effort was undertaken prior to the Merger vote to determine, how the revisions to the Transaction Agreement described to the Special Committee on September 13, 2005 affected the allocation of value between JQH public stockholders and Hammons.

86. JQH's public stockholders were deprived of critical, material information in the Proxy which may have affected their voting and appraisal decisions, including:

- (a) Hammons dictated the entire process;

- (b) Hart participated in virtually every Special Committee meeting to ensure that Hammons' tax and estate benefits were maximized;
- (c) JQH's management projections were unduly pessimistic to the point that Lehman questioned the accuracy of the projections;
- (d) Hammons, acting in his own interest, had initially provided Company projections early in process to Barcelo and thus, skewed the process by giving Barcelo non-public information;
- (e) Acquisition and certain shareholders had valued JQH shares in excess of \$24 per share;
- (f) Hammons attempted to foreclose bidders and, in fact, had instructed the General Counsel of JQH not to provide certain requested due diligence materials to Acquisition at a time when Hammons favored Barcelo;
- (g) Barcelo was balking at the "expensive" level of Hammons' desire in any transaction and expressed the belief that it might result in less money being offered to JQH public stockholders;
- (h) Barcelo was ultimately spurned because Hammons could not get them to agree to guarantee his requested line of credit for a full 13-year term;
- (i) Lehman "stressed" to the Special Committee that its fairness opinion on the allocation between public stockholders and Hammons was difficult, not knowing Hammons' tax basis and how to value numerous unquantifiable benefits;
- (j) the Transaction Agreement was re-negotiated and the Special Committee advised two days before the vote on the Merger occurred, but no disclosure was made to the public until after the Merger approved, and no analysis undertaken by Lehman.

87. A sale of the Company imposed heightened fiduciary duties on the Individual Defendants to maximize shareholder value.

88. The Individual Defendants' fiduciary obligations under these circumstances required them to:

- (a) actively engage in procedures designed to obtain the best value for JQH's public shareholders, and consider all bona fide proposals elicited as a result of any such process; and
- (b) act independently so that the interests of JQH's public shareholders would be protected and enhanced, and not to further the interests of Hammons to the detriment of public stockholders.

89. Hammons was intent on benefiting himself, to the detriment of minority shareholders, even though Hammons and the other defendants were duty-bound to maximize shareholder value.

90. The Individual Defendants breached their fiduciary duties to the Company's shareholders, by allowing Hammons to actively control the course of negotiations in the sale of the Company, despite their knowledge that he was negotiating substantial benefits for himself in addition to consideration for his stock, which would not be received by JQH's public stockholders. The Individual Defendants then unanimously approved a transaction which unfairly conferred disparate and additional benefits on Hammons.

91. Defendants Acquisition and Merger Sub aided and abetted the breaches of fiduciary duty described herein. Acquisition and Merger Sub: (a) knew or should have know that the Individual Defendants and Hammons owed fiduciary duties to JQH's public stockholders, which they breached by favoring Hammons' desires over maximizing shareholder value in a change-of-control; (b) ensured that the Second Proposal would be consummated by (i) locking in the votes of

other shareholders even if a higher offer emerged; and (ii) securing the approval of Hammons by providing Hammons with the Transaction Agreement which allowed Hammons to pursue his own business ventures; and (c) caused damages to JQH's public stockholders. As such, Acquisition and Merger Sub are liable to JQH's public stockholders.

92. Indeed, Acquisition and Merger Sub initially sought only to conclude a deal with Hammons, without acquiring the interests of JQH's public stockholders. Thus, the acquisition of the public holdings of JQH was merely incidental to the original desires of Acquisition and Merger Sub.

93. By reason of the foregoing acts, practices, and course of conduct by defendants, plaintiffs and the other members of the Class have been be damaged because they have not received their fair proportion of the value of JQH's assets and business and have been prevented from obtaining fair consideration for their shares of JQH Class A common stock.

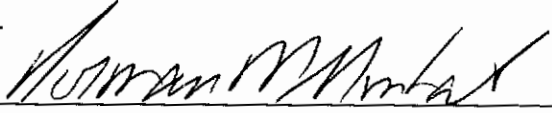
94. Plaintiffs and the other members of the Class have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring this to be a proper class action and naming plaintiffs as Class representatives;
- B. Rescinding the transaction and awarding necessary damages;
- C. Ordering defendants to pay to plaintiffs and to other members of the Class all damages suffered and to be suffered by them as the result of the acts and transactions alleged herein;
- D. Awarding plaintiffs the costs and disbursements of the action including allowances for plaintiffs' reasonable attorneys and experts fees; and
- E. Granting such other and further relief as may be just and proper.

Dated: October 3, 2006

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