Original – Court

| STATE OF MICHIGAN<br>6TH JUDICIAL CIRCUIT<br>COUNTY OF OAKLAND | NOTICE OF ASSIGNMENT TO THE BUSINESS COURT | CASE NO.<br>2016-151583-CB<br>JUDGE ALEXANDER |
|---|---|---|

**Court address**
1200 N Telegraph Rd Pontiac, MI 48341

**Court telephone no.**
248-858-0345

| Plaintiff's name(s), address(es), and telephone number(s) | | Defendant's name(s), address(es), and telephone number(s) |
|---|---|---|
| Van E. Conway | v | Joseph M. Geraghty, Donald S. MacKenzie, Gregory A. Charleston, John T. Young, Jeffrey Zappone, and Conway MacKenzie, Inc. |
| Plaintiff's attorney, bar no., address, telephone no., and email address<br>Rodger D. Young (P22652), Young & Associates, 27725 Stansbury Blvd., Suite 125, Farmington Hills, MI 48334, 248.353.8620, efiling@youngpc.com | | Defendant's attorney, bar no., address, telephone no., and email address |

The ☒ Plaintiff ☐ Defendant requests assignment of the above captioned matter to the Business Court. The case qualifies for the Business Court and the matter should be identified as Business Court eligible pursuant to MCL 600.8031, MCL 600.8035, and LAO 2013-xx as indicated below. (Check all that apply.)

The case is a qualifying business or commercial dispute as defined at MCL 600.8031(c): as

- ☐ All of the parties are business enterprises;
- ☒ One or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships;
- ☐ One of the parties is a nonprofit organization and the claims arise out of that party's organizational structure, governance, or finances;
- ☐ It involves the sale, merger, purchase, combination, dissolution, liquidation, structure, governance, or finances of a business enterprise.

The business or commercial dispute involves:

- ☐ Information technology, software, or website development, maintenance or hosting;
- ☒ The internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers;
- ☐ Contractual agreements or other business dealing, including licensing, trade secrets, intellectual property, antitrust issues, securities, non-compete agreements, non-solicitation agreements, and confidentiality agreements, if all available administrative remedies are completely exhausted, including, but not limited to alternative dispute resolution processes prescribed in the agreements;
- ☐ Commercial transactions, including commercial bank transactions;
- ☐ Business or commercial insurance policies; and/or
- ☐ Commercial real property.
- ☐ Other:(Please explain)

February 17, 2016
Date

/s/ Rodger D. Young (P22652)
Name

Attorney for: Plaintiff, Van E. Conway

STATE OF MICHIGAN
IN THE CIRCUIT FOR THE COUNTY OF OAKLAND

VAN E. CONWAY, an individual,

Plaintiff,

v.

JOSEPH M. GERAGHTY, an individual, DONALD S. MACKENZIE, an individual, GREGORY A. CHARLESTON, an individual, JOHN T. YOUNG, an individual, JEFFREY ZAPPONE, an individual, and CONWAY MACKENZIE, INC., a Michigan Corporation,

Defendants.

Case No. 2016- ~~-CK~~
2016-151583-CB

Hon. JUDGE ALEXANDER

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# VERIFIED COMPLAINT & JURY DEMAND

Plaintiff, Van E. Conway, by his attorneys, Young & Associates and Varnum LLP, for his Complaint against Defendants Joseph M. Geraghty, Donald S. MacKenzie, Gregory

A. Charleston, John T. Young, A. Jeffrey Zappone and Conway MacKenzie, Inc., states as follows:

## OVERVIEW

1. This Complaint arises out of the violations of Plaintiff Mr. Van E. Conway's ("Mr. Conway's") statutory and contractual rights by certain Directors of Conway MacKenzie, Inc. ("CM") and/or those in control of Conway MacKenzie, Inc. (may be collectively referred to as CM and/or the "Defendant Directors.")[1] Mr. Conway was CM's co-Founder, CEO, Chairman of the Board, President, shareholder and firm leader for over 28 years. This dispute arose when the Defendants took the illegal actions detailed herein in an attempt to terminate Mr. Conway without paying any consideration and sanctioning his rights to restrict his future income.

2. The Defendant Directors embarked on a series of wrongful actions beginning in at least October 2015 when they ***purported to remove Mr. Conway as the firm CEO while he was on a medical leave of absence.*** At that very time, Mr. Conway was lying in a hospital bed, heavily sedated, trying to recover from a double knee replacement surgery and the resultant life-threatening cardiac complications that unexpectedly followed.

3. CM and/or certain Defendant Directors quickly followed up on Mr.

[1] The Defendant Directors of Conway MacKenzie, Inc. who were in control of and otherwise undertook the adverse actions against Mr. Conway are: Joseph M. Geraghty, Donald S. MacKenzie, Gregory A. Charleston, John T. Young and A. Jeffrey Zappone. The entirety of the Conway MacKenzie, Inc. Board of Directors may be referred to as the "Board" or "Board of Directors." References to CM also may include the Board.

Conway's removal as CEO by ***cutting his compensation by approximately 80%*** from his prior year's income. Replacement CEO, Defendant Director Mr. Donald S. MacKenzie, then ***materially misrepresented the facts*** of Mr. Conway's removal to the other shareholders for over three months after Mr. Conway was removed from the office in an attempt to justify his actions and obscure the fact that he was actively trying to take control of CM and divert compensation due to Mr. Conway, to himself and other Defendants. At the same time, the Defendant Directors claimed that Mr. Conway was prohibited from working based on limited restrictions in an alleged "agreement."

4. There is no justifiable or reasonable business purpose for the Defendant Directors' and CM's conduct, nor do they purport to have a valid reason for such conduct. The Defendant Directors' and CM's wrongful conduct is a clear violation of Mr. Conway's rights. Moreover, the actions by the Defendant Directors and CM disproportionately impacted Mr. Conway's rights as a shareholder and have caused, and will continue to cause, substantial damages to Mr. Conway.

## PARTIES, JURISDICTION AND VENUE

5. Plaintiff, Mr. Conway is a co-Founder and shareholder of CM. Prior to CM's actions as described herein, Mr. Conway was the firm's CEO, Chairman of the Board, President, Director and employee of CM for over 28 years. He resides in Franklin, Oakland County, Michigan.

6. Defendant Joseph M. Geraghty is an individual who serves as a Senior Managing Director of CM. He resides in Ohio.

7. Defendant Donald S. MacKenzie is an individual who serves as the CEO and Senior Managing Director of CM. He resides in Florida.

8. Defendant Gregory A. Charleston is an individual who serves as a Senior Managing Director of CM. He resides in Georgia.

9. Defendant John T. Young is an individual who serves as a Senior Managing Director of CM. He resides in Texas.

10. Defendant A. Jeffrey Zappone is an individual who serves as a Senior Managing Director of CM. He resides in Illinois.

11. Defendant CM is a Michigan corporation with its principal place of business in Birmingham, Oakland County, Michigan. CM specializes in providing a range of professional financial advisory services, including turnaround management, restructuring and litigation services.

12. This Court has jurisdiction over this business dispute because the case involves an Oakland County corporation and state law claims properly heard in this Court.

13. This Court has personal jurisdiction over the Defendants pursuant to MCL 600.701 and 600.711 because the Defendants are either based in this County or serve as Managing Directors and members of the Board of Directors of a corporation based in this County.

14. Venue is proper in this Court pursuant to MCL 600.1627 and the Michigan Business Corporation Act because the plaintiff and defendant are based in this County, the dispute arose in this County, and the case involves statutory claims which must be resolved

in this County.

## GENERAL ALLEGATIONS

15. In 1987, Mr. Conway, together with Defendant Donald S. MacKenzie ("Mr. MacKenzie"), founded CM by opening an office in Birmingham, Michigan with five professionals. Previously, Mr. Conway was a Partner at Deloitte where he specialized in attestation services, debt and equity capital raising, bankruptcy, insolvency, litigation, and mergers and acquisitions. Mr. Conway was ranked as one of Deloitte's top performers in the country. Mr. MacKenzie was recruited out of college by Mr. Conway and worked for Mr. Conway from 1979 to 1987. When Mr. Conway started the company with bank debt he arranged and asked Mr. MacKenzie to join him.

16. Mr. Conway is nationally recognized in the fields of insolvency/bankruptcy; financing, reorganization and management of troubled companies; mergers and acquisitions; debt restructuring, business valuations and litigation support. Mr. Conway has been recognized as a Certified Public Accountant in the State of Michigan for 40 years. He is certified by virtually every organization possible related to his range of services.

17. Mr. Conway has received numerous national awards including the Worldwide Organization, M&A Advisors giving Mr. Conway the Leadership Achievement Award in 2015 and inducted into the Hall of Fame in 2014.

18. Mr. Conway has a stellar business reputation and thus, his CEO compensation from CM has always been based on the profitability of CM, new business generated and billings.

19. Mr. Conway has devoted the entirety of his professional and personal life into managing and building CM into a nationally-recognized multi-faceted financial powerhouse advisory firm. Today, primarily due to his driving force, leadership and devoted efforts, the firm has grown to eight offices and employs over 100 employees. CM is the largest and oldest middle market debtor advisory firm in the United States. CM has received numerous national awards under his leadership.

## THE BOARD USES MR. CONWAY'S MAJOR SURGERY AND MEDICAL LEAVE AS AN OPPORTUNITY TO THROW HIM OFF BOARD AND REMOVE HIM AS CEO

20. On October 23, 2015, Mr. Conway advised CM (and specifically its Board of Directors), that he needed double knee replacement surgery and would be taking a temporary leave of absence in order to properly rehab his legs. Mr. Conway suggested to the Board that during his medical leave his responsibilities should be handled by someone else. Mr. Conway urged the Board to pass this information along to the firm's shareholders and employees. The Board never did.

21. On October 26, 2015, Mr. Conway had surgery to replace both of his knees. Mr. Conway experienced cardiac complications following the double knee replacement surgery, which required him to be sequestered and led to an 11-day hospital stay. Mr. Conway was medicated for severe pain for much of this time.

22. Only three days after his major surgery, on October 29, 2015, while Mr. Conway lay in the hospital attempting to recover, Mr. MacKenzie called an unscheduled Board of Directors meeting. The CM Board meeting minutes detail the extensive

discussions the Board had regarding Mr. Conway and his role as the CEO -- a position for which he had then held for over 28 years.

23. The Board meeting minutes stated that Mr. Conway was taking a "***leave of absence for an undetermined length of time due to health issues.***" (Emphasis added.) However, Mr. Conway's October 23rd email stated a 12 - 52 week recovery period which was based on various medical opinions. Those minutes also confirm that certain of the Defendant Directors discussed the situation involving Mr. Conway the day before the Board meeting on October 28th, including whether there should be a "permanent change" in Mr. Conway's role as CEO.

24. Mr. MacKenzie initiated the October 29th Board meeting by sharing his frustration in the way the firm was currently governed (i.e., by Mr. Conway), and that Mr. MacKenzie "would like to see the ***frustration eliminated.***" (Emphasis added.) As the discussions ensued, certain of the Defendant Directors expressed various views about Mr. Conway and whether Mr. MacKenzie should replace him as CEO on an interim or permanent basis. Note that the company is headquartered in Michigan and Mr. MacKenzie resides on an island off of Miami, Florida. The practicality of his residence to running a firm based in Michigan and from an area where we do not even have an office was not discussed.

25. Defendant Director Joseph Geraghty expressed a similar view to that of Mr. MacKenzie's in that he felt the firm needed a "new view."

26. Mr. MacKenzie likewise stated that the vote on Mr. Conway is really a

referendum on "business as usual or do we enact change now" (i.e., eliminate Mr. Conway from his leadership role).

27. Non-defendant Director, Steven R. Wybo, cautioned the Defendant Directors that Mr. Conway's leave of absence was not Mr. Conway giving up (his CEO role), but rather his way of handing over the outstanding and forthcoming issues. Mr. Wybo also said he would not accept Mr. Conway's proxy, nor vote for him, as "it was not appropriate now." Mr. Wybo has repeatedly voiced disagreement with the Board's decision.

28. Mr. MacKenzie initially indicated that when Mr. Conway is "appropriately healthy we will sit down with him and discuss the issues." That view quickly changed.

29. After additional discussion on the issues, Defendant Director A. Jeffrey Zappone brought a motion to the Board that" "[Mr. MacKenzie] step in and ***assumes the role*** of Chief Executive Officer ***while [Mr. Conway] is out on medical leave***." (Emphasis added.) All of the Board members in attendance voted yes to this motion. Mr. Wybo did not vote Mr. Conway's proxy. He was extremely bothered that the meeting was called when Mr. Conway was in the hospital.

30. Immediately after the vote, even though he voted in favor of the motion, Mr. MacKenzie expressed his displeasure with serving as an "interim" CEO and said he was not interested in doing so. Mr. MacKenzie, in revealing his true intent, said the "interim title" would be for "***messaging purposes only***." (Emphasis added.) Thus, despite a clear vote authorizing Mr. MacKenzie to only "assume the role" of CEO while Mr. Conway was

out on ***medical leave***, Mr. MacKenzie had far different intentions of how he would take over the CEO role.

31. While the Board's vote was clearly limited in nature, the Board's "interim" label was a subterfuge for the Defendant Directors removing Mr. Conway permanently as CEO and to oust him from CM. Mr. MacKenzie, admitted as much when he told his fellow Defendant Directors that "it is undetermined at this time" as to whether Mr. Conway ***will be Chairman of the Board or even on the Board.***

32. Defendant Director Mr. Geraghty confirmed that Mr. Conway's surgery and resultant medical leave of absence was the opening for the Defendant Directors to take adverse actions against him: "[Mr. Conway's] knee surgery was scheduled previously. He has put us into this decision and ***now we need to act.***" (Emphasis added.) Mr. Conway certainly did not approve or authorize the Defendant Directors to proceed to effectively terminate him while he was on a medical leave of absence.

33. The Defendant Directors also engaged in significant discussions about the form and timing of any announcement regarding any change in leadership; and it was understood that a clear announcement would be made to those within CM.

34. Other than a couple vague (and inconsistent) comments at the firm's annual mid-December meetings ***over six (6) weeks later***, on February 8, 2016, such written announcement to CM shareholders and all employees was not made for well over three months. It was only made in response to an email that was sent to all employees of the firm by Mr. Conway the evening of February 7, 2016. When it was eventually made by Mr.

MacKenzie on February 8, 2016, such announcement was materially inaccurate and misleading to the shareholders and all employees of the firm, including that Mr. MacKenzie ***failed to indicate*** he was authorized by the Board only to assume the role of CEO while Mr. Conway was on medical leave.

35. At the same time, however, CM continued to advertise Mr. Conway's role as CEO and otherwise market his name and take advantage of his reputation and professional goodwill. Thus, as of the date of this filing, CM's website still advertises that Mr. Conway is the CEO.

36. At some point after the October 29, 2015 Board of Directors meeting, the Defendant Directors also purported to remove Mr. Conway from the Board and prevent him from being involved in Board matters. CM confirmed this action in a written communication to Mr. Conway on February 8, 2016. There are approximately 25 non-Board shareholders in the firm who have paid millions of dollars for their equity and not once in over 3 months were they advised that they were terminating the CEO and Founder. Clearly there was a disclosure requirement that was legally owed by the Board to the non-Board shareholders, but Mr. MacKenzie had no intention to disclose the adverse actions due to the risk of a shareholder upheaval that could ruin his plan to get Mr. Conway out of the firm.

37. Under the Shareholder Agreement, Mr. Conway shall be and will remain on the Board of Directors as a Founding Shareholder (as he and Mr. MacKenzie collectively

own greater than 10% of CM). See Section 7.1, as amended in the Fourth Amendment.[2] Thus, CM's removal of Mr. Conway from the Board (as affirmed by it on February 8, 2016) is a material breach of the Shareholder Agreement. Id.

38. In November and December of 2015, Mr. MacKenzie discussed with Mr. Conway his "new role" with the firm. Such role was vague, confusing, and failed to provide any details for term, compensation, title, etc. In addition, while the minutes indicated that the Defendant Directors would discuss the role of Mr. Conway with him, only Mr. MacKenzie discussed such matter with Mr. Conway. When Mr. Conway did not agree with the handling of his role and the direction of the firm, CM and the Defendant Directors retaliated against him to force him out of the firm.

## IN FURTHERANCE OF THE PLAN TO OUST HIM, CM AND CERTAIN OF THE DEFENDANT DIRECTORS SLASH MR. CONWAY'S TOTAL COMPENSATION BY 80%

39. At the end of December 2015, CM's Compensation Committee ("CC") determined the firm's performance bonuses for its shareholders and all other employees. The CC had historically consisted of Messrs. Conway, MacKenzie and Geraghty.

40. Mr. Conway and others in the firm thought that it was time that Mr. Geraghty be replaced by someone else as Mr. Geraghty's performance has been declining for years.

[2] The Shareholder Agreement contains highly confidential information and will be appended to this pleading with the appropriate confidentiality protection, either as agreed to between the parties or under seal by the Court. In any event, all of the parties and persons involved in this action have the controlling Shareholder Agreement, as amended, in their possession and control.

Mr. Conway recommended Mr. Wybo replace Mr. Geraghty on the CC, but instead, Mr. Conway was replaced by Mr. Zappone and Mr. Geraghty remained on the CC. Such action was another component of the plan to strip Mr. Conway of all authority as part of forcing him out of the firm.

41. With Mr. Conway on medical leave, Mr. MacKenzie, Mr. Zappone and Mr. Geraghty determined bonus compensation amounts for all employees and shareholders of the firm.

42. The firm's historical practice was, generally, to contact any employee or shareholder who was expecting a bonus, yet as to whom the CC determined no bonus would be paid, and explain the reasons behind the decision, preferably in person. Historically, Mr. Conway handled these meetings.

43. Firm policy is for all professionals to submit a memorandum on their performance for the CC to consider. In Decmeber of 2015, in keeping with that policy, Mr. Conway submitted his memorandum to Mr. MacKenzie, which detailed the range of amounts he thought his bonus should be based on his 2015 personal performance (as well as the firm's performance). Mr. Conway's 2015 performance justified a performance bonus in the range of $400,000 to $700,000. His 2014 bonus was approximately 300% greater than what Mr. Conway requested for 2015, yet he received a zero bonus.

44. ***Without any notice to or discussion with*** Mr. Conway, and despite his performance justifying a performance bonus, ***CM not only did not pay Mr. Conway any of the bonus compensation that he had earned for 2015*** but he was never afforded the courtesy

and basis for such decision.

45. Mr. Conway had previously received performance bonus payments for roughly the prior 25 years and always received a bonus when the firm was profitable. The positive cash flow available for bonus and equity distributions in 2015 was approximately 14 million dollars.

46. Upon learning of CM's decision to deny him a bonus, Mr. Conway asked Mr. MacKenzie whether those in control of allocating bonus monies had seen his memorandum in support of a bonus. Mr. MacKenzie told Mr. Conway that the memorandum was submitted to those decision-makers; later Mr. Conway was told it was not.

47. CM's and the Defendant Directors involved in the decision to deny Mr. Conway his bonus compensation did so in bad faith and without any attempt to deal with Mr. Conway in a fair and reasonable manner. Such decision to zero out Mr. Conway's bonus was a continuing part of the plan to force Mr. Conway out of the firm.

48. Not satisfied with removing Mr. Conway as CEO and ***cutting his bonus compensation by 100%,*** CM decided to further cut his pay.

49. On January 15, 2016, Mr. Conway reviewed his first paystub and without any prior notice from those in control of CM or the CC, Mr. Conway learned that his ***base pay had been cut, resulting in an approximate 60% reduction*** as compared to his 2015 base pay, which had not been changed since it was established in January 2007. Not one of the Defendant Directors communicated this drastic cut in base pay to him personally.

50. In the history of the Company spanning over 28 years, not one employee,

including any shareholder, had their base pay reduced but for a one time across the board shareholder base pay cut in 2010. In this one instance in ever cutting base pay, Mr. Conway's self-imposed pay cut as the CEO was approximately ten times the pay cut of the other shareholders. Also, at the end of that year, all base pay levels were reinstated to their original amount.

51. CM's scheme to reduce Mr. Conway's base pay by 60%, coupled with the failure to pay him his performance bonus, ***reduced Mr. Conway's overall compensation from the prior year by approximately 80%.***

52. Upon information and belief, the Defendants withheld Mr. Conway's earned compensation in order to divert it to themselves.

53. Indeed, there is no reasonable basis or justification for concluding that Mr. Conway's value to the firm decreased approximately 80% in one year's time.

54. The Defendants' withholding of Mr. Conway's compensation and unilateral base compensation cut was done in bad faith and was part of the plan to force Mr. Conway to say that he "resigned."

## CM'S WRONGFUL CONDUCT CONTINUED TO MANIFEST ITSELF IN OTHER WAYS

55. The Defendants' bad acts went even further. For example, in order to keep Mr. Conway from exercising his rights, the Defendants ***stopped providing notices to Mr. Conway*** of Board meetings – even though he was still a member of the Board. Similarly, Mr. Conway was ***removed from the CC*** on which he had served since the firm established

the CC in 2006. To add further insult to Mr. Conway, his removal from the CC was never officially noticed to him by Mr. MacKenzie or any member of the Defendant Directors.

56. Even more serious was the increase of CM's line of credit without any notice or approval from Mr. Conway. This was particularly egregious as Mr. Conway has personal exposure on the line of credit due to his guarantee. The past policy of the Board was to seek Board approval for any increase in the line of credit greater than 2.5 million. Those in control of CM thus unilaterally increased Mr. Conway's personal risk and exposure without any notice to or approval from him. .

57. On or about January 25, 2016, CM called a shareholder meeting for the afternoon of January 25th. Mr. Conway had a follow-up semi-emergency surgery scheduled for that day caused by leg flexion failure of both legs. Therefore, Mr. Conway asked CM if it could move the meeting to that evening so he could attend. The Defendant Directors and the Vice President of Operations were fully aware of this surgery and intentionally scheduled the shareholder call knowing Mr. Conway could not attend.

58. CM and/or those in control rejected Mr. Conway's request for an accommodation due to his follow-up semi-emergency surgery and advised him "there were too many conflicts" to move the meeting. Mr. Conway did not see any email or documents that supported such a contention. His request to delay the call was sent to ALL shareholders and the Vice President of Operations that morning when he was notified of the call.

59. CM and/or those in control proceeded with the shareholder meeting without

Mr. Conway in attendance, except for the final minutes of the call. Mr. Conway desired to be a part of the meeting, particularly in light of the adverse employment actions that CM and the Defendant Directors had handed out to Mr. Conway as described above. Interesting to note that Mr. Conway learned from a fellow shareholder that, while the call lasted over an hour, Mr. MacKenzie as the CEO never mentioned once any update on Mr. Conway's situation even though Mr. Conway was the Founder and CEO for over 28 years. Somewhat shocking to withhold a disclosure to the non-Board shareholders and owners of the firm that the long standing CEO and Founder was possibly leaving the Firm when in fact, less than two weeks later, Mr. Conway was terminated from the firm. Of course, Mr. MacKenzie never intended to tell the non-Board shareholders and owners, anything until Mr. Conway's forced departure from the firm due to the ongoing, horrific treatment.

60. In addition, all shareholders of the firm receive a "Liquidity Report" every Friday. This report details the work in progress, cash and billing status, and is important to a shareholder in assessing the status of his or her ownership interest. Thus, receiving the Liquidity Report is an important CM shareholder right.

61. Beginning on or about February 12, 2016, CM ceased providing Mr. Conway with the report. Mr. Conway understands that all shareholders other than himself received the Liquidity Report.

## CM Mischaracterizes the Truth Behind Its Actions against Mr. Conway

62. On February 7, 2016, after effectively being terminated in his various roles at

CM through an 80% pay reduction and being improperly stripped of his authority, Mr. Conway circulated a letter to all of the firm's employees expressing his sincere disappointment of his forced departure from the firm he built from scratch. Mr. Conway shared his feelings that he felt the Board never had a sincere desire to have him remain with the firm.

63. The next morning, on February 8th, Mr. MacKenzie attempted to characterize its coup and Mr. Conway's resultant forced departure as a "resignation." Mr. MacKenzie also indicated that Mr. Conway was no longer an employee or director effective as of February 7th. Mr. MacKenzie also pointed out that Mr. Conway had to sell his shares in CM within 90 days.

64. Also on February 8th, the Board of Directors (from Mr. MacKenzie's email address), now having "eliminated their frustration" from the firm, wrote a letter to all firm members explaining his view of Mr. Conway's "decision to move on." The Board's letter misrepresented, or was misleading as to, many material facts, including :

A. Implying that Mr. Conway's medical leave of absence was for inappropriate "personal reasons," rather than specifying it was for a necessary double knee replacement surgery which was intentionally misleading;

B. Stating that the vote to replace Mr. Conway was "unanimous" when it was not, and omitting that the Board vote only allowed Mr. MacKenzie to assume the role of CEO while Mr. Conway was on medical leave – not on a permanent basis; and,

C. Stating that the Board made Mr. Conway a "generous offer" to stay with the firm, when in fact a true good faith "offer" was never made and the concept floated by CM to Mr. Conway reflected a ***40% pay cut***

***to his base salary and an overall reduction in compensation of 80%.***

65. Mr. MacKenzie and/or the Board's letter was clear about one thing to the shareholders and employees of the firm: Mr. Conway's "departure ***will not*** deflect Firm management from proceeding with our business plans for 2016 and beyond." (Emphasis added.) In other words, the anticipated contribution in 2016 and beyond by Mr. Conway is insignificant. Further, not all of the Defendant Directors agreed with Mr. MacKenzie's letter although he put all their names on the letter.

66. Once Mr. MacKenzie confirmed Mr. Conway's "resignation" and misled CM non-Board shareholders and employees as to the truth surrounding his departure, Mr. MacKenzie even attempted to prevent Mr. Conway from working in the industry, inaccurately claiming he was prevented from doing so.

67. In that regard, on February 9th, Mr. MacKenzie threatened Mr. Conway that he had certain alleged restrictions on his ability to work in the industry and/or solicit CM employees based on an alleged "agreement." Mr. MacKenzie and other CM leaders including Mr. Conway have never threatened resigning shareholders who were not terminated, like they threatened Mr. Conway, and all of these departed shareholders have joined very large competitors.

68. The overthrow was complete. Mr. Conway was stripped of his roles and authority while he lay in a hospital bed, effectively terminating his employment; had his compensation slashed by approximately 80% from the prior year without any notice or explanation; and then those in control failed to involve Mr. Conway or provide notice of

firm activities in which he should have known about either as a Board member or shareholder.

69. As clearly shown, Mr. MacKenzie and the Defendant Directors engaged in a series of wrongful and willfully unfair and oppressive acts designed to force Mr. Conway's departure from the firm that he created and ran successfully for over 28 years (the Firm grew every year since 1987 except for two years!). Collectively, ***or individually***, these acts are actionable. In summary, such acts include, but are not limited to:

A. Cutting Mr. Conway's annual base compensation of the last nine (9) years by approximately 60% without any notice and against CM's past practices and in bad faith under the firm's Shareholder Agreement;

B. Failing to pay Mr. Conway significant 2015 earned bonus compensation, without regard to his performance, without any notice and against CM's past practices. The overall effect of reducing Mr. Conway's base salary and not paying him his bonus was ***an approximately 80% overall reduction in compensation from the prior year***;

C. Failing to provide notice of certain actions to CM's Shareholders, including Mr. Conway; and when notice eventually was provided, materially misrepresenting the facts and circumstances to attempt to justify running Mr. Conway out of the firm;

D. Failing to provide notice of certain actions against the Founder and CEO for over 28 years of successful leadership to Mr. Conway of Board of Directors and Executive committee meeting and of material changes to the firm's finances including the firm's line of credit (for which he has personal exposure);

E. Misrepresenting to Mr. Conway that he could not work with a candidate, when CM had months earlier concluded it had no interest in and would not hire the candidate;

F. Removing Mr. Conway as a Director, in direct violation of the Shareholder Agreement; and,

G. Removing Mr. Conway from the Compensation Committee without notice or reason.

## COUNT I:
## SHAREHOLDER OPPRESSION/WILLFULLY UNFAIR AND OPPRESSIVE CONDUCT (MCL § 450.1489)

70. Mr. Conway incorporates the allegations contained in the foregoing paragraphs as if stated fully herein.

71. MCL § 450.1489 provides that "[a] shareholder may bring an action . . . to establish that the acts of the directors or those in control of a corporation are . . . willfully unfair and oppressive to the corporation or to the shareholders."

72. As described herein, Mr. MacKenzie and the Defendant Directors engaged in conduct that was willfully unfair and oppressive to Mr. Conway, as a shareholder, and deprived him of his rights as a CM shareholder. Among other things, CM and the Board:

A. Failed to provide Mr. Conway notice of Board of Director and/or shareholder meetings, to which Mr. Conway was entitled to attend;

B. Prevented Mr. Conway from exercising his rights and duties as a member of the Board of Directors;

C. Failed to provide Mr. Conway with weekly Liquidity Reports provided to all shareholders;

D. Failed to comply with the Company's bylaws and corporate governance documents;

E. Wrongfully prevented Mr. Conway from attending a shareholder meeting;

F. Deprived Mr. Conway of his voting rights as a CM shareholder;

G. Deliberately scheduled a Board of Director meeting at a time in which the Defendant Directors knew that Mr. Conway was hospitalized recovering from a major surgery and was unable to attend; and,

H. Executed a scheme to force Mr. Conway to leave the Company by, among other things, removing him as Chairman of the Board of Directors, terminating his position as CEO, and slashing his compensation by 80 percent.

73. Mr. MacKenzie and the Defendant Directors have willfully, unfairly and oppressively acted against the interests of Mr. Conway as a shareholder by engaging in the systematic actions described herein. Those actions have been intended to drive Mr. Conway from his position in CM and inflict significant economic damage on him as a shareholder and employee.

74. Mr. MacKenzie and the Defendant Directors engaged in this deliberate conduct, knowing that it would lead to Mr. Conway's forced departure from the Company. Such acts constitute a continuing course of conduct or series of actions that have substantially interfered with Mr. Conway's interests as a shareholder and have impacted CM's ability to operate. Even individually, such individual acts constitute willfully unfair and oppressive conduct.

75. As a shareholder, Mr. Conway has the right to (a) review company records; (b) be involved in Company decision making; (c) a fair share of profits and financial benefits; (d) vote at shareholder meetings; and (e) be free from negative employment action that disproportionately interferes with his shareholder interests and/or rights contained in the Shareholder Agreement. He is currently being deprived of all of these rights and

interests.

76. Mr. MacKenzie and the Defendant Directors conduct interfered with Mr. Conway' rights as a shareholder. Such actions also have limited Mr. Conway's employment benefits, including his rights to compensation and life insurance, and will substantially interfere with distributions that he is entitled to receive. As to the life insurance proceeds to which his family is entitled, Mr. MacKenzie has leveraged the insurance proceeds over Mr. Conway's family to get him to succumb to the termination.

77. Mr. Conway has incurred damages, and will continue to incur damages, as a result of CM's actions.

WHEREFORE, the Mr. Conway respectfully requests that this Court enter Judgment in his favor and against the Company and the Defendant Directors as follows:

A. In an amount exceeding $25,000, plus all interest, attorneys' fees and costs;

B. Ordering the Company to cease using Mr. Conway's name as part of its business, and remove all references to Mr. Conway from its website, marketing materials, and the like;

C. Dissolve or otherwise liquidate the assets of the Company, and pay Mr. Conway the fair value for his shareholder interest;

D. Rescind, cancel or otherwise amend any alleged agreement, if any, purporting to limit Mr. Conway's employment rights or his ability to work in the industry;

E. Award any additional relief this Court deems just and equitable.

## COUNT II:
## BREACH OF FIDUCIARY DUTY

**(COMMON LAW AND MCL 450.1541A)**

78. Mr. Conway incorporates the allegations contained in the foregoing paragraphs as if stated fully herein.

79. The individual Defendants, as members of the CM Board, owed common law and statutory fiduciary duties to all shareholders, including Mr. Conway.

80. The Defendants breached those duties by placing their personal interests ahead of the Company and its shareholders.

81. The Defendants did not exercise reasonable business judgment in taking the actions at issue in this suit. Out of personal animus, the Defendant Directors removed Mr. Conway from his position as Chairman of the Board and CEO, despite the fact that, through his leadership and direction, since the inception equity program established in January 2007, the shareholder stock price has grown approximately 233%.

82. The Defendants did not have any reasonable business justification for their actions. This is best demonstrated by two key facts: (1) the Defendants implemented their scheme when they knew Mr. Conway was recuperating from surgery and unable to provide input or object to their conduct, and (2) there was never any disclosure to the non-Board shareholders about the situation with Mr. Conway, including their plan to get rid of Mr. Conway;, and then they lied to CM non-Board shareholders about the true reason for Mr. Conway's departure.

83. In fact, by removing Mr. Conway from the Board and as CEO, and through their other actions leading to Mr. Conway's constructive termination, the Defendants

caused significant harm to CM's and all shareholders' value.

84. The Defendants' actions constitute a breach of their fiduciary duties.

85. Mr. Conway has suffered, and will continue to suffer, damages as a result of the Board's breach of their fiduciary duties.

86. WHEREFORE, Mr. Conway respectfully requests that this Court enter judgment in his favor and against the Board and those in control of CM in the amount sufficient to compensate him for all of his losses and damages incurred as a result of the Board's breach of their fiduciary duty, and for all other relief to which he may be entitled, including reasonable attorneys' fees and expenses.

## COUNT III:
## BREACH OF SHAREHOLDER AGREEMENT

87. Mr. Conway incorporates the allegations contained in the foregoing paragraphs as if stated fully herein.

88. Mr. Conway entered into a Shareholder Agreement with the other shareholders of the Company and the Company.

89. Mr. Conway performed his obligations under the Shareholder Agreement.

90. Mr. MacKenzie and the Defendant Directors breached the Shareholder Agreement by, among other things, failing to follow corporate procedures and purposefully depriving him of the opportunity to exercise his right as a shareholder and/or to participate in shareholder meetings.

91. Mr. MacKenzie and the Defendant Directors also breached the Shareholder

Agreement by removing him as a member of the Board.

92. Mr. Conway suffered damages as a result of Mr. MacKenzie and the Defendant Directors breach of the Shareholder Agreement.

WHEREFORE, Mr. Conway respectfully requests that this Court enter judgment in his favor and against the Board in the amount sufficient to compensate him for all of his losses and damages incurred as a result of the Board's breach of their fiduciary duty, and for all other relief to which he may be entitled, including reasonable attorneys' fees and expenses.

Respectfully submitted,

**YOUNG & ASSOCIATES**

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Date: February 17, 2016

## VERIFICATION

I, Van E. Conway, being first duly sworn, declare that the statements above are true to the best of my information, knowledge, and belief.

Van E. Conway

Subscribed and sworn to before me
this 17th day of February, 2016

Amy Drewno, Notary Public
Wayne County, Michigan
My Commission Expires: June 19, 2017
Acting in Oakland County

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

VAN E. CONWAY, an individual,

Plaintiff,

v.

JOSEPH M. GERAGHTY, an individual,
DONALD S. MACKENZIE, an individual,
GREGORY A. CHARLESTON, an individual,
JOHN T. YOUNG, an individual,
JEFFREY ZAPPONE an individual, and
CONWAY MACKENZIE, INC. a Michigan Corporation,

Defendants.

Case No. 2016- -CK

Hon.

Business Court Eligible, MCR 2.112(O)

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## JURY DEMAND

Plaintiff Mr. Van E. Conway, through his counsel, demands a trial by jury of all issues so triable.

Respectfully submitted,

**YOUNG & ASSOCIATES**

/s/ Rodger D. Young

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Dated: February 17, 2016