EFiled: Nov 19 2015 09:36PM EST
Transaction ID 58187110
Case No. 10136-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GFI GROUP INC.	)	CONSOLIDATED
STOCKHOLDER LITIGATION	)	C.A. No. 10136-VCL

PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF CLASS CERTIFICATION, PROPOSED SETTLEMENT, AND PROPOSED FEE AWARD

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Mark Lebovitch
David Wales
Edward G. Timlin
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

Co-Lead Counsel for Plaintiffs

GRANT & EISENHOFER P.A.
Stuart M. Grant (#2526)
Mary S. Thomas (#5072)
Jonathan M. Kass (#6003)
123 Justison Street
Wilmington, DE 19801
(302) 622-7070

Co-Lead Counsel for Plaintiffs

KESSLER TOPAZ MELTZER & CHECK, LLP
Marc A. Topaz
Lee D. Rudy
Michael C. Wagner
Leah Heifetz
Justin O. Reliford
280 King of Prussia Rd.
Radnor, PA 19087
(610) 667-7706

Co-Lead Counsel for Plaintiffs

PRICKETT, JONES & ELLIOTT, P.A.
Michael Hanrahan (#941)
Paul A. Fioravanti, Jr. (#3808)
Kevin H. Davenport (#5327)
1310 N. King Street
P. O. Box 1328
Wilmington, Delaware 19899-1328
(302) 888-6500

Executive Committee Member

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

I. THE COURT SHOULD APPROVE THE SETTLEMENT

The Settlement of this Action provides an exceptional result for all Class members, resulting from a thoughtful and well-informed analysis of the risks and rewards of continued litigation by Plaintiffs' Counsel, and should be approved.

There was one timely objector, Quaker Investment Fund, who owns no GFI stock. Two late objectors, Alan Fishbein and Hillary Shane, are personal acquaintances whose views of the Settlement have veered from vigorous support, to an unfounded concern that appraisal rights would not be preserved, to the current focus on challenging the Back End Merger. None of these objections warrant rejecting the Settlement or terminating it by allowing opt-outs, which would deprive the entire Class of the benefits of the Settlement.

The Objectors are not long term stockholders. Their objections concede that all of their GFI shares were purchased after the BGC/GFI February 19, 2015 Tender Offer Agreement between GFI and BGC, which provided for the Back End Merger where any GFI stockholders other than BGC and dissenters would receive $6.10 per share. They also purchased with knowledge of the risk of dilutive stock issuances once BGC took control. They also knew appraisal rights would be available in the Back End Merger.

The "dilution" claim the objectors raise is weak and of limited value at best, because BGC paid the then-current market price for the GFI shares it acquired in April 2015. The monetary recovery, waiver of the Dead Hand Tail by CME, and the acceleration and certainty of the Back End Merger provided by the Settlement are ample consideration for a dilution claim that was not likely to result in any meaningful recovery.

Finally, the late Objectors complain that this Monday, BGC announced a "$650 million sale" of the Trayport business. Whether or how much the Trayport sale shows that GFI has increased in value since the conclusion of the takeover battle is a debate that can be had in appraisal proceedings to follow the Back End Merger.[1] The Settlement fully preserves the Objectors' right to seek appraisal. In that appraisal, they can argue about GFI's current value, and claim that BGC's purchase of GFI stock last April should be disregarded or otherwise taken into account in assigning value. In short, if the Objectors truly believed their own rhetoric, they would exercise their appraisal remedy, rather than seeking to deprive all the other class members of the benefits of the Settlement.

[1] The Objectors attempt an "apples to oranges" comparison to the CME transaction that ignores such issues as assumed debt and tax treatment.

A. QUAKER'S OBJECTION IS WITHOUT MERIT

1. Quaker Lacks Standing to Object

Quaker Investment Trust ("Quaker") lacks standing to object or to maintain the suit it belatedly filed. The scheduling order requires that any objection "include documentation sufficient to prove that the objector is a member of the Class." Scheduling Order ¶12. Quaker's objection ("Quaker Obj."), along with its complaint, are in the name of Quaker Investment Trust, while the Brundage Affidavit attaches an account statement of "Quaker Event Arbitrage Fund", not Quaker Investment Trust.[2] Quaker has provided no information as to its relationship with Quaker Event Arbitrage.

Quaker has also provided conflicting information as to its purported GFI share holdings. The objection asserts that Quaker purchased 257,083 shares from March 27, 2015 to June 17, 2015. Quaker Obj. at 11. Yet in its original complaint, filed on August 25, 2015, Quaker alleged, under oath, that it "currently holds almost 1.2 million shares of GFI." Quaker Original Compl. ¶15. In a September 2, 2015 email, Quaker's counsel represented that "Quaker owns over a million shares." Andersen Aff. Ex. B. Nevertheless, the account statement provided with

[2] *See* Transmittal Affidavit of Eric M. Anderson, dated November 13, 2015, Exhibit A.

the objection confirms that Quaker Investment Trust—the plaintiff in C.A. No. 11427-VCL and objector in this action – owns zero shares of GFI.[3]

Quaker's objection can thus be denied solely on its failure to demonstrate membership in the Class or satisfy the requirements of the Court's order. Quaker's objection must be denied.[4]

2. The Settlement Provides Ample Consideration for the Release of Quaker's Dubious Claims

Through months of tough litigation and negotiation, Plaintiffs achieved a settlement where (i) current holders of GFI stock (other than BGC and Defendants) are assured of the right to receive, on a date certain, the same $6.10 per share as stockholders who tendered to BGC in the tender offer, while expressly preserving their appraisal rights if they believe more value exists; and (ii) those current stockholders, as well as the overwhelming majority of the Class members who

[3] Plaintiff also notes that despite the clear requirements of the scheduling order, Quaker fails to provide the "address and telephone number of the person or entity objecting." Scheduling Order ¶12.

[4] Quaker complains that the parties did not provide it with discovery, including confidential mediation documents. Putting aside that the Quaker entity requesting the discovery is not a stockholder, Quaker's response to being told by Plaintiffs they could not produce the mediation statements without Defendants' consent was silence, rather than any identified request of Defendants, or a request for judicial relief. Similarly, Quaker complains that it does not have a "Settlement Letter" among Gooch, Heffron, JPI, BGC and GFI, yet it quotes a page and a half single-spaced description of that letter. Quaker at Obj.17-19. Plaintiffs surmise that Quaker was content to use its failure to press for discovery as a basis for delaying consideration of the Settlement, rather than trying to establish to the Court in advance its need for discovery to support its objection.

tendered, will receive an additional net cash payment of $0.17 per share ($10.75 million total). Quaker admits that the Class fund is the "get" of the settlement that supports the "give" of a general release.[5] Yet Quaker seeks to deprive all these Class members of the monetary and other benefits of the Settlement in the hope extracting special benefits for itself.

Quaker seeks to represent a class of GFI minority stockholders owning eight million shares. Quaker acknowledges that it is "commonplace" for the Court of Chancery to include "transferees, successors and assigns" and "persons having weak claims in a settlement class."[6] Unlike the overwhelming majority of settled cases, where little or no consideration is paid to late purchasers with weak claims, as a result of the Settlement, the holders Quaker seeks to represent will (i) receive promptly $48.8 million in merger consideration because of the waiver of the Dead Hand Tail and acceleration of the Back-End Merger and (ii) participate in the $10.75 million Net Settlement Fund. This is certainly sufficient consideration for the release of the weak claims Quaker asserts, including the "dilution" claim discussed below.

Quaker's Amended Complaint also includes allegations concerning Gooch and Heffron's negotiations with BGC for employment and non-compete

[5] Quaker Obj. at 20.

[6] Quaker Obj. at 24, 25.

agreements.[7] Those claims were already part of the Action, as Plaintiffs challenged the agreements[8] in their pleadings.[9] Plaintiffs settled the case for $10.75 million, or approximately $0.17 per share to the Class. Plaintiffs' claim for the difference between BGC's unaccepted $6.20 offer and the ultimate $6.10 tender offer price was worth, at most $0.10/share, so Plaintiffs were able to obtain millions of dollars for their claims on the compensation agreements. These particular claims would have been difficult to prove at trial because Gooch and Heffron were not required to work for free or agree to refrain from competing for nothing. The Settlement and release of claims for a cash payment of millions of dollars to the Class is fair and reasonable.

Quaker's challenge to the scope of the release is without merit, and the cases it relies upon are inapposite.[10] Quaker's brief admits that the claims carved out of the release in *In re Freeport-McMoRan Copper & Gold, Inc. Derivative Litig.*, C.A. No. 8145 (Del. Ch. Apr. 7, 2015), were compensation claims that had no relation to the transaction challenged in that action.[11] Both *In re Trulia, Inc.*

---

[7] Quaker Am. Compl. ¶¶5, 22, 25, 47, 62.

[8] These agreements were reflected in Exhibits F and G to the Tender Offer Agreement dated February 19, 2015—when Quaker did not even own any GFI stock.

[9] Am. Compl. ¶¶18-19, 74, 110, 116-17, 127, 135.

[10] "Quaker Obj." at 2.

[11] *Id.* at 2 & n.2.

S'holder Litig., C.A. No. 10020-CB (Del. Ch. Aug. 7, 2014) and *In re Aruba Networks, Inc. S'holder Litig.*, C.A. No. 10765-VCL (Del. Ch. Oct. 9, 2015), involved proposed "disclosure only" settlements providing broad releases.[12]

Most importantly, as Quaker acknowledges, the release does not include appraisal claims.[13] Thus, if Quaker Event Arbitrage Fund or any other current GFI stockholder (including the other objectors) believes the fair value of GFI is greater than the $6.10 merger price, it can pursue that claim in an appraisal action. And nothing stops anyone asserting dissenters' rights from contending that the shares issued to BGC in the supposed "Dilution" should be excluded from the appraisal denominator, or that any underpayment for those shares (despite BGC paying the then-current market price) should otherwise be credited when determining GFI's value at the time of the Back End Merger.[14]

---

[12] *See Trulia*, C.A. No. 10020-CB Tr. at 40 & 44 (questioning why a release of unknown claims made sense where the only settlement consideration was disclosure); *Aruba*, C.A. No. 10765-VCL tr. at 73-74 (rejecting proposed settlement because the complaint was not meritorious when filed, the settlement consideration consisted solely of supplemental disclosures, plaintiffs were inadequate representatives and the Court concluded the plaintiffs were simply harvesting the case for a fee).

[13] Quaker Obj. at 3, 25-26.

[14] The notice of settlement was not required to provide legal advice on this unripe issue.

3. Quaker Event Arbitrage Fund's Speculation in GFI Stock Is No Basis to Reject the Settlement

Quaker has filed an objection based on a purported "dilution" claim that allegedly arose while Quaker Event Arbitrage Fund was buying GFI stock in the spring and summer of 2015, ***after***:

- Quaker Event Arbitrage Fund purchased GFI shares in January 2015 and then sold its ***entire*** position at a short-term profit of $79,287.29 in February 2015 before BGC's $6.10 tender offer closed.[15]
- GFI had entered into the February 17, 2015 Tender Offer Agreement with BGC, providing for the Back-End Merger in which each share of outstanding GFI common stock not held by BGC or a dissenting holder would be converted into the right to receive in cash the Offer Price of $6.10 per share.[16]
- BGC announced on February 20, 2015 that it might acquire additional shares beyond those tendered in the tender offer, including through market purchases or otherwise.[17]

---

[15] Quaker Event Arbitrage Fund bought its shares at approximately $5.60 and $5.70 per share and sold them at approximately $6.05 per share. Andersen Aff. Ex. A.

[16] Tender Offer Agreement, §§ 1.2(a), 5.16(b). The Tender Offer Agreement included Exhibit J providing for the structure of the Back-End Mergers.

[17] BGC TO-A17 (Exh. A) (Feb. 20, 2015).

- BGC's tender offer closed, giving BGC ownership of 56.3% of GFI's stock and BGC and Gooch a combined 94% of GFI's stock.
- GFI had publicly announced the delisting of its stock.[18]

Quaker's own complaint alleges that BGC disclosed its supposed dilution plan in the February 20, 2015 Amendment 17 to its tender offer schedule and that "[s]oon after the close of the Tender Offer," the BGC controlled Board of GFI "set out to pursue this path to dilute."[19] On March 13, 2015, GFI filed a 10-K that acknowledged BGC's control, indicated BGC's control could be disadvantageous to other stockholders, and cautioned that future sales of GFI common stock, including the issuance of a large number of shares, could adversely affect GFI's common stock.[20] Quaker was thus on notice of BGC's supposed dilution plan, ***before*** Quaker Event Arbitrage Fund first bought back into GFI on March 27, 2015.

Anyone buying GFI shares after the Board decided to let the $6.10 Tender Offer proceed knew that the remaining GFI stockholders would ultimately receive the same $6.10 per share, subject to appraisal rights. The Settlement expedited the timing of the Back End Merger, but also preserved those appraisal rights.

---

[18] GFI 8-K filed March 20, 2015.

[19] Quaker Compl. ¶¶9, 51.

[20] GFI 10-K pp. 52, 54.

Quaker Event Arbitrage Fund chose to buy GFI stock at its market price on eight separate dates from late March to late June 2015. Six of these purchases occurred ***after*** the alleged dilution occurred on April 28, 2015, when BGC purchased from GFI approximately 43 million GFI shares for $250 million. Quaker admits the $5.81 per-share price BGC paid was the closing market price of GFI's stock on April 28, 2015.[21] Moreover, the issuance of stock to BGC did not cause GFI's stock price to decline – it actually went up a few pennies. Thus, the "dilution" Quaker complains of did not adversely affect the stock price, nor did it deter Quaker Event Arbitrage Fund from buying more stock—six times—at roughly the same price BGC itself paid.

Quaker's further assertion that BGC's $250 million note is "no consideration" for the GFI stock is simply wrong.[22] Section 152 now permits any form of tangible or intangible property to serve as consideration for stock.[23] Therefore, cases suggesting that a promissory note may not be valid consideration for stock are no longer valid in light of the 2004 amendments.[24]

---

[21] Quaker Compl. ¶¶12, 57.

[22] Quaker Obj. at 12; Quaker Compl. ¶¶12, 57, 58, 62.

[23] D. Drexler, L. Black & A.G. Sparks III, *Delaware Corporation Law and Practice*, §17.02.

[24] *Id.;* 1 F. Welch, R. Saunders & J. Voss, *Folk on the Delaware General Corporation Law*, §152.02 [6th ed.].

4. Quaker's Argument That Plaintiffs Lack Standing Is Unsupported and Incorrect

Quaker baldly asserts, with no authority, that Plaintiffs lost standing to represent the Class after tendering their GFI shares into the tender offer.[25] By tendering their shares to BGC, however, Plaintiffs did not release their claims against Defendants, or cease to be typical of Class Members (particularly since the overwhelming majority of holders at that time also tendered).

Merely because a stockholder plaintiff tenders into a tender offer does not deprive that stockholder of standing to press a breach of fiduciary duty claim. *See, e.g.*, *In re Best Lock Corp. S'holder Litig.*, 845 A.2d 1057, 1082 (Del. Ch. 2001) (holding stockholder plaintiffs did not lose standing to challenge merger by tendering their shares and accepting the merger consideration); *see generally* D. Wolfe & M. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* §11.04[b] (2015) (discussing fact-specific nature of acquiescence defense in challenges to corporate transactions). Indeed, Quaker's argument was rejected by the Delaware Supreme Court in *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 430-31 (Del. 2012), where the Court held that the class representative retained standing to represent a settlement class despite selling its shares before submitting the settlement stipulation. Similarly, Plaintiffs have standing here because they owned stock on the date the Tender Offer Agreement (which

[25] Quaker Obj. at 1, 11, 14, 20, 22, 24, 26, 29, 33, 38.

included the Back-End Merger at $6.10 per share) was approved by the GFI board.[26]

Consistency does not seem to be a priority for Quaker, which seeks to represent a class of "non-tendering stockholders" even though neither Quaker nor Quaker Event Arbitrage Fund is a "non-tendering stockholder."[27] Quaker Event Arbitrage Fund sold all its GFI shares before the BGC tender offer closed, then bought GFI shares during the four months after the tender offer closed.[28]

In short, it is Quaker who lacks standing—to object to this Settlement or to maintain the weak claims in its complaint. The Settlement consideration, including $10.75 million in cash, waiver of the Dead Hand Tail, and the rapid and certain completion of the Back-End Mergers, is substantial consideration for the release of claims, including the weak claims Quaker proffers.

---

[26] *See Johnson v. Shapiro*, 2002 WL 31438477, at *6 (Del. Ch. Oct. 18, 2002) (observing that fiduciary relationship to tendering stockholders exists at least until the time the acquirer became "absolutely obligated to accept and pay for the tendered shares" and a substantial probability that the fiduciary relationship terminated when payment was actually made for the shares). The shares tendered into the BGC tender offer were accepted on February 26, 2015.

[27] The volume of trading in GFI's shares since the closing of the BGC tender offer far exceeds the 8 million shares Quaker claims remain in the hands of investors other than BGC and JPI. Even allowing for the imprecision of volume figures and multiple trades of the same shares, it is likely that few shares remain in the hands of "non-tendering stockholders".

[28] Quaker Obj. at 10, 11.

B. THE FISHBEIN AND SHANE OBJECTIONS ARE WITHOUT MERIT

The letter submitted on behalf of Alan Fishbein and the "joinder" of Hilary Shane filed on November 18, 2015 are untimely, largely rehash the Quaker objection, and should be summarily rejected.

Mr. Fishbein's complaint of not receiving notice is disingenuous, as he fails to disclose that he spoke with class counsel about the settlement on October 30, 2015 and exchanged numerous emails with counsel.[29] Mr. Fishbein's suggestion that he was unaware of the settlement hearing and impending objection deadline rings hollow.[30]

Mr. Fishbein presents no credible basis to dispute that the notice procedures complied with Court of Chancery Rule 23(e) and due process. And Mr. Fishbein has not demonstrated good cause for his delay. Plaintiffs complied fully with the

[29] Mr. Fishbein called Bernstein Litowitz Berger & Grossmann LLP on October 30, 2015 and spoke with John Vielandi, Esquire.

[30] Moreover, it appears Mr. Fishbein purchased GFI shares with full knowledge of the material terms of the Settlement. Mr. Fishbein acquired the 15,000 shares in his individual Charles Schwab account on September 1 and September 21, 2015 – after the Settlement was announced. As to the Schwab account for Fishbein's IRA Rollover account, he attaches a page of an account statement that indicates he acquired 5,377 shares on March 31 and April 1, 2015. But the statement shows the IRA held a total of 40,960 shares as of October 31, 2015. So Mr. Fishbein deliberately withheld the page of the account statement showing when the other 35,583 shares in the account were purchased. Those shares, like the shares in his individual Schwab account, may well have been acquired after the Settlement was announced. Mr. Fishbein provides no information as to when the GFI shares in the two Dittotrade accounts were acquired.

Court's September 22, 2015 Scheduling Order, requiring that notice be "mailed by first-class mail to record holders who are potential Class members." Scheduling Order ¶6(b). Pursuant to the Scheduling Order, the settlement administrator mailed notice to record holders on October 13, 2015, which is consistent with the Court's general practice of providing class members 30 to 45 days notice prior to the settlement hearing.[31] In addition, the settlement administrator transmitted the Notice to *PR Newswire* and published the Summary Notice in *Investor's Business Daily*. *See* Affidavit of Stephanie A. Thurin Regarding Mailing of Notice and Publication of the Summary Notice ¶9 (attached as Exhibit G to the Transmittal Affidavit of Jonathan M. Kass in Support of Plaintiffs' Motion for Final Approval of Proposed Settlement and Plan of Allocation, Certification of the Class, and an Award of Attorneys' Fees). And, though not required by the Scheduling Order, the Settlement Administrator also caused notices to be mailed to 1,636 mailing records contained in its own list of the largest and most common banks, brokers and nominees, including Charles Schwab where Fishbein had accounts. *Id.* ¶4.[32]

Under well-established Delaware law, mailing notice to all shareholders of record satisfies both Court of Chancery Rule 23(e) and the demands of due

[31] *In re Coleman Co., Inc. S'holders Litig.*, 750 A.2d 1202, 1210 (Del. Ch. 1999).

[32] Though not required by the Scheduling Order, the Settlement Administrator also sent a follow-up email to each of the eleven largest institutions on its broker mailing list reminding them of their obligation to forward the Notice to beneficial owners.

process. *See, e.g.*, *In re M & F Worldwide Corp. S'holder Litig.*, 2002 WL 32151542, at *1 (Del. Ch. Oct. 1, 2002) (approving settlement and finding "notice to all holders of record" was "adequate and sufficient"); *In re Fort Howard Corp. S'holders Litig.*, 1989 WL 997167, at *1 (Del. Ch. Sept. 29, 1989) (approving settlement and finding notice mailed "to all holders of record" was "best practicable notice under the circumstances and in full compliance with Rule 23 of the Court of Chancery and the requirements of due process"). Moreover, the notice was mailed to brokers, including Charles Schwab, one of Mr. Fishbein's brokers. Mr. Fishbein bears any risk of not receiving the notice from his broker.[33]

Hillary Shane, who claims to own 2,007,622 shares of GFI stock in three separate accounts, admits all her shares were acquired after the BGC tender offer closed.[34] Accordingly, like Quaker, she was on notice of the Tender Offer Agreement, the supposed dilution plan, and the $6.10 Back-End Merger before she bought any GFI shares.

Neither Ms. Shane's "joinder" in Quaker's Objection, nor the heavily redacted account statements she attached, indicate on what dates or at which prices she acquired her shares. Ms. Shane's account statements list only the quantity of

[33] *See In re Dataproducts Corp. S'holders Litig.*, 1991 WL 165301, at *7 n.6 (Del. Ch. Aug. 22, 1991); *American Hardware Corp. v. Savage Arms Corp.*, 136 A.2d 690, 692 (Del. 1957)

[34] Shane Joinder at 1.

GFI shares as of October 31, 2015; the "Price" column has been blocked out. Ms. Shane has not provided statements showing her transactions in GFI stock, including dates purchased, number of shares purchased and purchase price. While Ms. Shane claims that BGC's purchase of 43 million shares of GFI stock was dilutive, she does not say how many of the 2 million GFI shares she claims to own were purchased after the supposed "dilution."

The Court has good reason to be cynical concerning Ms. Shane. In May 2005, Shane, then a hedge fund manager, entered into a deferred prosecution agreement, was permanently barred from associating with any NASD firm, and paid more than $1.45 million to settle NASD and Securities and Exchange Commission charges of fraud and insider trading in connection with her fund's participation in a confidential Private Investment in a Public Offering ("PIPE") sale by CompuDyne that would be dilutive.[35] She then shorted CompuDyne's stock to take advantage of the upcoming dilutive offering.[36]

---

[35] FINRA Press Release "Hedge Fund Manager Hillary Shane Barred, to Pay $1.45 Million to Settle NASD, SEC Fraud and Insider Trading Charges Related to Purchase and Sale of CompuDyne PIPE Shares" (May18, 2005) (Exh. B); U.S. Securities and Exchange Commission Litigation Release No. 19227 (May 18, 2005) (Exh. C); *Securities and Exchange Commission v. Hillary L. Shane*, S.D.N.Y., C.A. No. 05 civ. 4772; Morgan Bettex "Ex-Hedge Fund Mgr. Inks Deal to Avoid Prosecution" (Aug. 19, 2008) (Exh. D).

[36] Ms. Shane's improper exploitation of a <u>below</u> market dilutive stock sale renders her criticism of BGC's "dilutive" purchase of GFI stock <u>at the market</u> price highly ironic.

Another reason to be skeptical of Ms. Shane is that she was initially enthusiastic about the settlement and even suggested to Plaintiffs' counsel that she should write a letter in support of the Settlement.

The repeated references to appraisal in Mr. Fishbein's letter demonstrate that the remedy he wants is not released by the Settlement. He simply wants the Court to defer decision on the Settlement and instead provide advisory opinions on "ambiguities" that may affect an appraisal valuation. Similarly, Ms. Shane's primary objection is that the impending sale of GFI's Trayport asset shows that GFI's shares are worth more than $6.10 per share, "likely more than $12 per share."[37] If Ms. Shane and Mr. Fishbein truly believe their own rhetoric about GFI being worth more than $6.10 per share, they have a ready remedy in an appraisal action. Accordingly, their efforts to destroy the Settlement should be rejected.

II. ONLY BGC HAS OBJECTED TO THE FEE REQUEST RELATED TO THE $10.75 MILLION NET SETTLEMENT FUND; BGC'S POSITION IGNORES ECONOMICS AND DELAWARE LAW

The objectors to the Settlement do not object to the fee request related to the $10.75 million net Settlement Fund. Only BGC has challenged Plaintiffs' fee requests. While most of BGC's brief addresses the mootness fee, it does contain a short argument that the fee for the Settlement should be calculated on a net, rather

[37] Shane Joinder at 2-4 and n3.

than a gross basis.[38] Plaintiffs' counsel created a Net Settlement Fund, consisting of $10.75 million, for the benefit of the Class. This entire fund, minus modest administrative costs and taxes, will be paid to the Class. Any award of attorneys' fees would not deplete this fund. A fee award of $3.6 million is appropriate because it represents approximately 25% of the $14.35 million gross fund needed to net a $10.75 million class payment.

Presenting an argument that sounds like it comes from BGC's executive offices and not its outside litigators, BGC asserts that the fee award should be 25% of the Net Settlement Fund, disregarding that the vast majority of settlements create a gross fund from which fees are first paid, thus netting a smaller amount for the Class. Opp. at 7 (if the Court awards 25% of the benefit, "the fee award should be $2,687,500 (*i.e.*, 25% of the $10.75 million).")[39]

Chancellor Bouchard rejected BGC's argument a mere five months ago, in *In re Jefferies Grp., Inc. S'holders Litig.*, 2015 WL 3540662 (Del. Ch. June 5, 2015) ("*Jefferies*"). As the Chancellor noted, the "issue is easily resolved."[40] According to the Chancellor, "this Court traditionally has granted fee awards in

[38] Brief of Certain Defendants and Non-Parties GFI Group, Inc. and BGC Partners, Inc. in Support of the Proposed Settlement and in Opposition to Plaintiffs' Application for a Total Fee Award of $8.6 Million, at 6-7.

[39] BGC presented no argument why the fee awarded should be less than 25%.

[40] *Jefferies* at 2.

common fund settlements based on a percentage of the gross settlement value."[41] As is the case here, the "Defendants [in *Jefferies*] were unable to identify a single case in which this Court made a considered judgment to award a fee based on a percentage of the net recovery that stockholders would receive in a common fund case."[42] The Defendants' assertion that Plaintiffs' Counsel's fee request ought to be determined as a percentage of the net payment to Class members is simply inconsistent with Delaware precedent. The Net Settlement Fund warrants a fee award of $3.6 million.

CONCLUSION

For the reasons stated above and in Plaintiffs' opening papers, the non-opt out Class should be certified, the Settlement should be approved, the objections should be denied and the request for a $3.6 million Settlement fee should be granted.

[41] *Id.*

[42] *Id.*

DATED: November 19, 2015

GRANT & EISENHOFER P.A.

/s/ Mary S. Thomas
Stuart M. Grant (#2526)
Mary S. Thomas (#5072)
Jonathan M. Kass (#6003)
123 Justison Street
Wilmington, DE 19801
(302) 622-7070

Co-Lead Counsel for Plaintiffs

BERNSTEIN LITOWITZ
BERGER & GROSSMANN LLP
Mark Lebovitch
David Wales
Edward G. Timlin
1251 Avenue of the Americas
New York, NY 10020

Co-Lead Counsel for Plaintiffs

KESSLER TOPAZ MELTZER
& CHECK, LLP
Marc A. Topaz
Lee D. Rudy
Michael C. Wagner
Leah Heifetz
Justin O. Reliford
280 King of Prussia Rd.
Radnor, PA 19087
(610) 667-7706

Co-Lead Counsel for Plaintiffs

PRICKETT, JONES & ELLIOTT, P.A.
Michael Hanrahan (#941)
Paul A. Fioravanti, Jr. (#3808)
Kevin H. Davenport (#5327)
1310 N. King Street
P. O. Box 1328
Wilmington, Delaware 19899-1328
(302) 888-6500

Executive Committee Member

CERTIFICATE OF SERVICE

I, Mary S. Thomas, hereby certify that, on November 19, 2015, I caused a copy of the foregoing *Plaintiffs' Reply Brief in Further Support of Class Certification, Proposed Settlement, and Proposed Fee Award*, and supporting *Transmittal Affidavit of Jonathan M. Kass* to be filed and served upon the following counsel of record via File & Serve*Xpress*:

William M. Lafferty, Esq.
Leslie A. Polizoti, Esq.
Lindsay M. Kwoka, Esq.
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market Street
Wilmington, Delaware 19899-1347

Samuel A. Nolen, Esq.
Kevin M. Gallagher, Esq.
Rachel E. Horn, Esq.
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square, 920 North King Street
Wilmington, Delaware 19801

Edward P. Welch, Esq.
Edward B. Micheletti, Esq.
Jenness E. Parker, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
920 North King Street
Wilmington, Delaware 19899-0636

C. Barr Flinn, Esq.
Kathleen S. McCormick, Esq.
Paul J. Loughman, Esq.
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square, 1000 North King Street
Wilmington, Delaware 19801

Kevin R. Shannon, Esq.
Jaclyn C. Levy, Esq.
POTTER ANDERSON & CORROON LLP
1313 North Market Street
Wilmington, DE 19801

David A. Jenkins, Esq.
Kathleen M. Miller, Esq.
SMITH, KATZENSTEIN & JENKINS LLP
1000 West Street, Suite 1501
Wilmington, DE 19899

Eric M. Andersen, Esq.
ANDERSEN SLEATER LLC
3513 Concord Pike, Suite 3300
Wilmington, DE 19803

Kevin G. Abrams, Esq.
ABRAMS & BAYLISS LLP
20 Montchanin Road, Suite 200
Wilmington, DE 19807

/s/ Mary S. Thomas
Mary S. Thomas (Del. ID #5072)