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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

PUBLIC VERSION TO BE FILED ON NOVEMBER 10, 2015

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR PETITION FOR A MOOTNESS AWARD OF ATTORNEY'S FEES

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Plaintiffs[1] submit this memorandum in support of an award of $5 million in attorneys' fees for causing, either wholly or in part, several benefits conferred on GFI stockholders through this litigation until Defendants' February 19, 2015 agreement to the $6.10 per share Tender Offer (paid out to GFI stockholders on or about March 4, 2015). This fee is related to, but distinct from, the Settlement that is the subject of the accompanying Motion for Final Approval of Proposed Settlement, Certification of the Class, and an Award of Attorneys' Fees.

I. INTRODUCTION

Other than Plaintiffs and their counsel, none of the protagonists in the battle for GFI protected GFI's stockholders. It was a lengthy battle involving: (1) faithless fiduciaries who controlled GFI (Defendants Mickey Gooch and Colin Heffron (the "Insiders")) and took action solely for their own benefit and without regard to the public stockholders; (2) outside directors (the "Special Committee") with good intentions, but who were marginalized until empowered by Plaintiffs'

[1] Defined terms used herein have the same meanings ascribed to them in Plaintiffs' Brief In Support of Motion for Final Approval of Proposed Settlement, Certification of the Class, and an Award of Attorneys' Fees. Rather than repeat herein the factual and procedural background relevant to Plaintiff's mootness fee petition, Plaintiffs incorporate herein the factual and procedural background as stated in that Memorandum of Law.

Counsel; and (3) a hostile bidder ("BGC") that chose not to litigate to support its own bid but readily exploited Plaintiffs' efforts to further its own agenda.

Unlike the "tagalong and monitoring" role of some shareholders' counsel in hostile takeover battles, here Plaintiffs' Counsel were the only ones using the threat of injunctive relief and personal liability as a lever to achieve greater value for GFI's stockholders, and at all times asserted their influence on the process. *First*, this litigation played a significant role in the Class receiving $6.10 as part of the BGC Transaction (instead of only $4.55 as part of the original deal with CME). Plaintiffs' actions – including obtaining expedited discovery in advance of a scheduled injunction hearing, pressing for and achieving a date for an expedited trial on the merits, and using the leverage posed by the imminent trial date to empower the self-described "neutered" Special Committee to keep the Insiders in line – all played a significant role in the bidding dynamic among Gooch, CME and BGC, and were a partial cause of the increased merger consideration. *Second*, this litigation forced the correction of Greenhill's DCF analysis, which had materially understated the value of GFI's businesses. The only reason Greenhill corrected these mistakes was because Plaintiffs' counsel identified defects during the Greenhill deposition. Forcing Greenhill to correct its errors was not just a matter of corrective public disclosure because Greenhill fixed the errors in multiple

subsequent Board presentations, laying the foundation for increased bids based on the higher than previously reported value of GFI's business.

Finally, this litigation caused Defendants to make multiple rounds of material supplemental and corrective disclosures concerning the tainted process leading to the CME Transaction, the value of GFI and its business segments, actions taken at Board meetings, and the Special Committee's position on various matters.

Plaintiffs' counsel is entitled to a fee for conferring these benefits, separate and apart from the fee requested for creating the $10.75 million net Settlement fund for the Class. As shown below, Plaintiffs' Counsel submit that the $5 million requested fee award is very reasonable when considering: (i) the high value of the benefits conferred; or (ii) a fee that could be supported by existing precedent under the circumstances; and (iii) the level of productive litigation activity here compared to the more traditional "monitoring" line of hostile bid cases. Plaintiffs respectfully request that the Court award an attorneys' fee of $5 million.

II. PLAINTIFFS' MOOTNESS FEE REQUEST OF $5 MILLION IS REASONABLE

A. PLAINTIFFS ARE ENTITLED TO A MOOTNESS FEE

Under Delaware law, stockholder plaintiffs are entitled to recover attorneys' fees and expenses incurred when their action has conferred a benefit on the

corporation or a stockholder class.[2] When the "corporate defendant takes steps to moot a case and in so doing produces the same or similar benefits sought by the shareholder's litigation, counsel for the plaintiff shareholder will be compensated for the beneficial results thus produced even in the absence of a favorable adjudication, ..."[3]

Plaintiffs' entitlement to an award of attorneys' fees in a mooted class action under the "common corporate benefit" doctrine includes both monetary benefits conferred on a stockholder class[4] and disclosure and other non-monetary benefits obtained during the injunction phase.[5]

When plaintiffs' claims have been mooted, plaintiffs are entitled to an award of fees if: (i) the action was meritorious when filed; (ii) the litigation conferred benefits on the corporation or the stockholders; and (iii) there is a causal

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[2] *Waterside Partners v. C. Brewer & Co.*, 739 A.2d 768, 769 (Del. 1999); *Weinberger v.UOP, Inc.*, 517 A.2d 653, 654 (Del. Ch. 1986); *Chrysler Corp. v. Dann*, 223 A.2d 384, 386 (Del. 1966).

[3] *Roizen v. Multivest, Inc.*, 1982 WL 17841, at *3 (Del. Ch. Dec. 29, 1982); s*ee also Waterside Partners*, 739 A.2d at 769; *Weinberger*, 517 at 654; *Dann*, 223 A.2d at 386.

[4] *Cal-Maine Foods, Inc. v. Pyles*, 858 A.2d 927, 928-29 (Del. 2004); *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997).

[5] *In re MoneyGram Int'l, Inc. S'holder Litig.*, 2013 WL 68603, at *1 (Del. Ch. Jan. 7, 2013).

connection between the litigation and the benefits conferred.[6] It is well settled that the Court is not required to find the causal connection with "mathematical exactitude."[7] Rather, the Court "need only conclude, . . . that the [action] was, at least in part, precipitated by the lawsuit."[8] If the litigation played any part in causing the Defendants to take action, an award of fees is warranted.[9]

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[6] *CalMaine*, 858 A.2d at 929; *Roizen*, 1982 WL 17841, at *3; *Chalfin v. Hart Holdings Co.*, 1990 WL 181958, at *2 (Del. Ch. Nov. 20, 1990) (citing *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164-65 (Del. 1989) and *Allied Artists Pictures Corp. v. Baron*, 413 A.2d 876, 878 (Del. 1980)).

[7] *Louisiana State Emps. Ret. Sys. v. Citrix Sys., Inc.*, 2001 WL 1131364, at *6 (Del. Ch. Sept. 19, 2001).

[8] *Id*.

[9] *United Vanguard Fund, Inc. v. Take Care, Inc.*, 727 A.2d 844, 854 (Del. Ch. 1998).

B. PLAINTIFFS' ACTION WAS MERITORIOUS WHEN FILED

In Delaware, an action is meritorious in a mootness context if the plaintiff possesses knowledge of provable facts which hold out some reasonable likelihood of ultimate success. It is not necessary that factually there be absolute assurance of ultimate success, but only that there be some reasonable hope.[10] Whether a lawsuit is meritorious "is properly determined as of the commencement of the lawsuit and not by developments thereafter . . . '"[11]

Here, Plaintiffs stated meritorious claims because the original Complaint, when filed, would easily have survived a motion to dismiss. Gooch, by virtue of his position of control over GFI and his agreement for the Insiders to acquire the IDB business from CME, stood on both sides of the CME Merger. Moreover, the combination of Gooch/JPI's 38% equity stake and Gooch's role as Executive Chairman of GFI render him the Company's controlling stockholder.[12] For this

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[10] *Dann*, 223 A.2d at 387; *see also Roizen*, 1982 WL 17841, at *3; *TakeCare, Inc.*, 727 A.2d at 851 (Del. Ch. 1998).

[11] *Allied*, 413 A.2d at 879.

[12] *See, e.g., In re Loral Space & Commc'ns Inc.*, 2008 WL 4293781, at *21 (Del. Ch. Sept. 19, 2008) (where shareholder has less than a majority of the shares, it will be considered a controlling shareholder where it "possesses a combination of stock voting power and managerial authority that enables him to control the corporation, if he so wishes").

reason, Plaintiffs' claims challenging the CME Merger would have survived a motion to dismiss.[13]

Defendants would not have been able to dismiss Plaintiffs' claim pursuant to *Kahn v. M&F Worldwide Corp.*[14] The CME Merger was not negotiated by a fully empowered special committee. Rather, Gooch negotiated the deal with CME – including price and structure – before the GFI Special Committee even came into existence. Unlike the special committee credited in *M&F Worldwide*, Defendants here would be unable to show that the GFI Special Committee was "fully empowered" or "function[ed] in a manner which indicates that the controlling stockholder did not dictate the terms of the transaction."[15] Indeed, Gooch actually did dictate the terms of the deal and repeatedly stated his willingness to vote JPI's controlling stake only in favor of a deal that resulted in Gooch's control of the IDB business.

Moreover, the Gooch-led sales process for GFI led to an unfair price of $4.55 per share in the CME Merger. Obviously, other suitors, such as BGC, were willing to pay far more for the entire Company than CME was willing to pay in its

[13] *See, e.g., Americas Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012).

[14] 88 A.3d 635 (Del. 2014).

[15] *Id.* at 646.

deal where the Insiders would retain the IDB business. Gooch, however, refused to deal with BGC or anyone else who would not "flip" him the IDB business.

Accordingly, Plaintiffs' initial complaint filed a "meritorious claim."

C. THE MOOTNESS FEE REQUEST IS REASONABLE

Defendants cannot show that the litigation had no causal role whatsoever in creating any of these additional benefits conferred in the litigation. While there is no scientific method to quantify the causal effect of Plaintiffs' Counsel's efforts, the circumstances support finding that those efforts had a steadily increasing role in the price offered for GFI. Thus, Plaintiffs' Counsel seek relatively modest "causation findings" with respect to the initial increase of the CME bid to $5.25 and then the joint CME/Gooch increase to $5.45 per share.

As the case came closer to injunction hearings, and Plaintiffs uncovered more and more impropriety, much of which shaped the assessments of the proxy advisors, stockholders, and bidders, Plaintiffs' Counsel's efforts were a more substantial cause of the beneficial outcomes. Thus, for the CME increases to $5.60 and finally, $5.85 per share, Plaintiffs' Counsel deserve a more substantial level of credit.

Finally, with CME out of the picture and the Insiders having rendered the Special Committee largely irrelevant, Plaintiffs' Counsel were the stockholders'

last hope. At this point, Plaintiffs' Counsel could readily claim exclusive or near exclusive causation for finally forcing the Insiders to allow BGC's $6.10 per share Tender Offer to proceed. By bringing the matter to the Court on an emergency basis, Plaintiffs' Counsel effectively cut off Gooch's remaining alternative by placing before him the threat of an imminent disloyalty finding at trial. Plaintiffs' Counsel should be rewarded accordingly.

1. The Litigation Contributed to Increased Transaction Prices

During the pendency of the litigation, the transaction price increased from $4.55 in cash and stock offered by Gooch/CME to the $6.10 in cash that BGC ultimately paid. The additional $1.55/share transaction price was worth an aggregate of $94.54 million to the about 61 million GFI shares in the Class. Plaintiffs do not claim that all additional value from the price increase was attributable to the litigation. But the Court "need only conclude . . . that the [action] was, at least in part, precipitated by the lawsuit."[16] It is well settled that the Court is not required to find the causal connection with "mathematical exactitude."[17] If the litigation played any part in causing the Defendants to take

[16] *Id.*

[17] *Citrix Sys.*, 2001 WL 1131364, at *6.

action, an award of fees is warranted.[18] Here, the litigation played a significant role in several price increases and was ultimately essential to defeating the CME/Gooch transaction and breaking Gooch's control of the process, which allowed GFI's public stockholders to accept BGC's superior tender offer.

(a) The Gooch Increase from $4.55 to $5.25

In September 2014, Plaintiffs challenged the adequacy of the $4.55 Gooch/CME deal. On December 2, 2014, Gooch/CME matched BGC's September 15, 2014 $5.25 offer. This increase of $0.60/share over the original Gooch/CME offer of $4.55 was worth an aggregate of $42.69 million to the Class.

By December 2, 2014, Plaintiffs had consolidated their actions, appointed leadership, obtained expedited proceedings and a preliminary injunction hearing, scheduled four depositions, and reviewed many thousands of pages of documents. Plaintiffs had asserted that the Gooch/CME deal was inadequate because Gooch was paying too little for the IDB Business.[19] Significantly, the increase in the Gooch/CME offer was funded by Gooch increasing the price for the IDB Business.

[18] *Take Care, Inc.*, 727 A.2d at 854.

[19] *See e.g. Michotti Complaint* at ¶ 6, 9, 43, 67, 68, 71, 91.

(b) The Gooch/CME Increases from $5.25 to $5.60

BGC increased its offer to $5.45 and then to 5.60 on January 13, 2015. Gooch/CME matched the $5.60 offer on January 15, 2015, an increase of $0.35/share or $21.34 million to the Class. Between December 2, 2014 and January 15, 2015, Plaintiffs took eight depositions, reviewed additional document productions, filed their opening preliminary injunction brief and affidavit, and filed a supplement to the Complaint which added disclosure claims.

(c) The Gooch/CME Increase from $5.60 to $5.85

BGC increased its offer to $5.75 on January 16, 2015, then to $5.85, and finally to $6.10 on January 20, 2015. BGC stated it would pay $6.20 if GFI countersigned the tender offer agreement by 11:59 p.m. on January 20, 2015. Gooch/CME increased their offer from $5.60 to $5.85, which was worth $15.2 million to the Class.[20]

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[20] Gooch and Heffron would hastily convene Board meetings to consider a revised Gooch/CME offer, but prevent meetings to consider higher offers from BGC. *See* GFI_SC_0007445-52 (Transmittal Affidavit of Jonathan M. Kass ("Kass Aff.") Ex. G (Special Committee's counsel describing how the "insider directors are available at a moment's notice for Board action in favor of their deal and totally unavailable for the third party deal" and that the insider directors never made themselves available to consider the Special Committee's January 5 recommendation to accept BGC's tender offer bid of $5.45 but were available on January 7 to consider a shareholder rights plan if the BGC tender offer was not extended); GFI_SC_0007714-19 (Kass Aff. Ex. H); GFI_SC_0007660 (Kass Aff. Ex. I) .

The litigation again played a role in causing Gooch/CME to increase their offer to $5.85. Between January 16 and 20, 2015, Plaintiffs communicated with counsel for Gooch, CME, the Special Committee, and BGC concerning the bids. Plaintiffs and the Special Committee engaged about strategies for getting the best price for stockholders. With BGC, Plaintiffs discussed ways to break Gooch's control over the process and level the playing field. The litigation activity played a more central role at this stage.

(d) Plaintiffs Help Defeat the CME Deal

The litigation also contributed to the defeat of the $5.85 Gooch/CME offer at the January 30, 2015 stockholders meeting. As discussed below, Plaintiffs forced correction and disclosure of an error in Greenhill's DCF analysis, which raised GFI's DCF value. On January 20, 2015, GFI mooted numerous disclosure claims in an amendment to the Prospectus (the "Jan. 20 Amendment").[21] On January 29, 2015, Plaintiffs filed their Second Supplement to the Complaint and sent a letter to Cassoni making clear that continued alignment with Gooch and Heffron against the public stockholders' interests would lead to powerful money damage claims against her. While many times disclosure and other non-monetary benefits do not

[21] *See* discussion of additional disclosure below.

have any financial effect, here such disclosure contributed to the rejection of a clearly inferior deal.

(e) Plaintiffs Play a Material Role in Cutting off Gooch's Options to Undermine the BGC Transaction.

After the stockholders voted down the Gooch/CME $5.85 deal, Plaintiffs spoke with BGC's counsel regarding the next steps for BGC's proposal. Gooch continued viciously to oppose a transaction with BGC. He prevented Board discussion of the BGC offer.[22] He had the Board terminate the CME merger agreement and ignored the Special Committee's recommendations regarding the BGC offer.[23] He excluded counsel for the Special Committee from Board

[22] *See* Transcript of February 6, 2015 hearing ("Feb. 6 Tr.") at 29 (Kass Aff. Ex. J) (Special Committee's counsel stating that the Special Committee sought to discuss the BGC tender offer at a Board meeting that was set to expire but Gooch refused any discussion of BGC or of terminating the CME/Gooch transaction, which was done without the Special Committee voting).

[23] GFI_SC_0007668-9 (Kass Aff. Ex. K) (Jan. 31, 2015 email from Fanzilli to the Board regarding the Jan. 30, 2015 Board meeting stating "Without any prior notice of agenda, a vote was put forward regarding the termination of the CME merger agreement. When we asked to consult with counsel, we were told that would not be allowed, and the other three board members immediately voted to terminate without discussion. We did not manage to get in a single question. . . . We were flatly dismissed when we tried to raise the [BGC tender offer] or put it to a vote. In fact, the Chairman set a meeting to discuss strategic alternatives for [Feb. 2, 2015], after the BGC tender offer expires, ignoring, and therefore blocking, a higher, competing bid"); GFI_SCSUP_0002411-12 (Kass Aff. Ex. L).

meetings.[24] He caused GFI to issue misleading press releases to deter stockholders from tendering to BGC.[25] Gooch stated that the Board sought to explore other "strategic alternatives" for GFI when he knew, of course, that because of his own

[24] *See* GFI_SCSUP_0000845-47 (Kass Aff. Ex. M) (Feb. 1, 2015 email from Fanzilli to D'Antuono (GFI's general counsel) stating "We don't agree that counsel should be barred, but I don't think you are going to change your mind, so I just want to go on record stating we don't agree. I think directors are entitled to this, and given that we are at times facing complex legal issues, we need them. I can only ask that in the future, you rethink this"); GFI_SC_0007668-9 (Kass Aff. Ex. K) (Jan. 31, 2015 email from Fanzilli to the Board regarding the Jan. 30, 2015 Board meeting stating "When we asked to consult with counsel, we were told that would not be allowed"); *See also* GFI_SC_0008069 (Kass Aff. Ex. N); s*ee also* GFI_SC_0008069-71 (Kass Aff. Ex. N) (Feb. 7, 2015 email from Fanzilli to Heffron and D'Antuono stating "It is the obligation of management and the involved board members to provide material information to us. The rest of the board did not want us to share information with our legal advisors, which we could not agree with, because it is important that we be able to obtain legal advice, so we were not provided the information").

[25] GFI_SC_0008069 (Kass Aff. Ex. N) (Feb. 7, 2015 email from Magee to Heffron and D'Antuono stating "we are troubled by the recent disclosures. We were not provided with notice of the releases or drafts, and what has been released does not accurately present our position . . . . the special Committee asked for a single course of action, involving five steps, which would include (sic) the termination of the CME deal in concert with locking in the BGC deal. We tried to raise those critical components or recommendation, Mickey said he would not permit any discussion about BGC at all. Consequently, we were unable to even vote on the termination of the CME Merger Agreement, which vote has now been characterized to the market as having been made on our recommendation. It is plainly bad board practice to issue press releases and make 14D-9 filings without advising the full board and permitting comment").

disloyalty since the process began, GFI had squandered the $6.20 bid from BGC and no "alternative" would top BGC's $6.10 per share offer.[26]

Plaintiffs broke Gooch's hijkacking of the process. On February 2, 2015, when Plaintiffs questioned Committee counsel about the recent press releases, the Special Committee informed Plaintiffs about Gooch's recent misconduct. Plaintiffs noticed the depositions of Gooch and Cassoni and promptly filed a motion to expedite and supporting brief and affidavit, including an email from the Special Committee's counsel describing Gooch's misconduct.[27] Plaintiffs sought an injunction hearing and/or trial.

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[26] MC0008093 (Kass Aff. Ex. O) (Feb. 5, 2015 email from Fanzilli to the Board stating "No one has identified a basis to support the premise that there are additional bidders for GFI stock that would match the BGC offer. We were told that there are negotiations taking place now that could prove eventful, but we do not know that anyone is willing to go forward nor at what price. If there were other interested parties, they should have emerged by now. Additionally, JPI is party to a support agreement that restricts its ability to support another transaction. We don't understand how another deal can be pursued under these circumstances").

[27] The email disclosed that the Special Committee (i) did not vote to issue a February 2, 2015 press release from GFI that urged stockholders not to tender shares to BGC, review a draft of the press release or even know that GFI intended to issue the press release, (ii) did not vote to urge stockholders not to tender into the BGC tender offer, and (iii) did not vote to explore new strategic alternatives as described in press releases on January 30, 2015 and February 2, 2015.

At a February 6, 2015 hearing on Plaintiffs' expedition motion, the Special Committee's counsel confirmed Gooch's misconduct, stating that the Special Committee had been "neutered" by Gooch and did not believe it had any legal recourse of its own.[28] Confirming Plaintiffs position that a request for meaningful relief was viable, subject to the evidence at trial, the Court ordered an expedited trial on the merits for February 17 and 18, 2015, noting that testimony by the Special Committee confirming the facts described by their counsel would be "very

[28] Feb. 6 Tr. at 27-34 (Kass Aff. Ex. J). Counsel for the Special Committee stated the following: Feb. 6 Tr. at 29-30 (the "board has silenced the special committee's personal advisors"); *id.* at 30 (stating "the last two meetings - - or at least the meeting on this Monday and the meeting before then, we were actually barred from listening or participating. The special committee members said they needed their counsel. The insiders said you can't have it . . ."). *Id.* at 27-28 (recent disclosures were not accurate, the Special Committee did not know they were going out and did not have an opportunity to comment on them); *id.* at 29 (the Special Committee did not vote on the termination of the CME/Gooch agreement because they did not have an opportunity to ask questions about it). *Id.* at 30 ("it's the insiders that are now negotiating with BGC. They haven't apprised the board of the status of those negotiations, the relevant facts, and they said they won't do that unless the committee members agreed that they won't disclose that to their personal advisors for purposes of getting legal advice. So we're really neutered, and we're really put in a difficult position"); *Id.* at 32 (Special Committee's counsel stating "We've had difficulty getting meetings scheduled. We've been able to meet almost immediately when we were supporting the CME deal, each and every time they matched, but it takes repeated requests to be able to get a meeting for BGC. And sometimes the insiders don't let the meeting take place at all"). *Id.* at 34 (the Special Committee had problems with insiders pursuing strategic alternatives because that had already been done before the CME/Gooch deal and such an approach was not feasible since JPI, a 38% stockholder, was locked up with CME for 12 months).

persuasive stuff that something really bad is happening."[29] Plaintiffs filed their Third Supplement to the Complaint, detailing Gooch's continuing misconduct, served further document requests and deposition notices, negotiated the protocol for expedited discovery, began drafting a pretrial brief, and prepared to go to trial.

i. The February 10, 2015 Order Empowers the Special Committee

Plaintiffs' aggressiveness paid off. The pressure of an imminent expedited trial and prospect of substantial monetary liability and injunctive relief caused Gooch, Heffron, and Cassoni to fold. They requested a continuance of the trial to negotiate with BGC. While the Special Committee believed a continuance would let them help to maximize value for GFI stockholders, Plaintiffs were unwilling to trust Gooch to respect the Special Committee. Accordingly, Plaintiffs conditioned their willingness to give the negotiators "breathing room" on holding the threat of civil contempt over the Insiders. Plaintiffs negotiated a short continuance in exchange for the Court's February 10, 2015 order (the "Order"), which not only required supplemental and corrective disclosures, but also specifically ensured the effectiveness of the Special Committee during the brief negotiating window, including: (i) the continuation of the Special Committee with full power to explore strategic alternatives; (ii) the right of the Special Committee to have its advisors at

[29] Feb. 6 Tr. at 48 (Kass Aff. Ex. J).

Board meetings; (iii) the Special Committee's right to participate in and finalize press releases and SEC filings and to require disclosure of the committee members' votes, positions and reasoning; (iv) the Special Committee's right to be informed about and oversee negotiations; and (v) the ability of the Special Committee to convene Board meetings and put items on the agenda.[30]

ii. The Litigation Causes BGC's $6.10 Offer to Succeed

Plaintiffs were provided with regular updates on the negotiations among BGC, the Special Committee, and Gooch between February 10 and February 19, 2015. The Order empowered the Special Committee to force acceptance of BGC's $6.10 offer. On February 19, 2015, GFI and BGC reached a consensual agreement at $6.10 per share.

The litigation was instrumental in, and arguably deserves exclusive credit for, causing this outcome. The Insiders' vicious opposition to any deal with BGC is well summarized in the accompanying Settlement Brief. What is clear is that the Special Committee, for all its good intentions, was unable on its own to get Gooch, Heffron, and Cassoni to accept ***any*** BGC offer. The additional $0.25/share that the final $6.10 price provided over Gooch/CME's $5.85 offer was worth $15.2 million to the Class.

[30] *See* 3rd Supp. ¶¶2, 6-13, 18-21, 23, 25-31, 34, 37 (Kass Aff. Ex. P).

(f) Summary of the Financial Benefits Conferred on the Class.

The following summarizes the range of the financial benefits of the higher transaction price:

Financial Benefit Conferred By The Litigation	
	Aggregate Financial Benefit to the Class
1st Increase (to $5.25)	$ 42,693,942
2nd Increase (to $5.45)	$ 12,198,269
3rd Increase (to $5.60)	$ 9 ,148,702
4th Increase (to $5.85)	$ 15,247,836
Final Deal ($6.10)	$ 15,247,836
TOTAL	$94,536,585

If, for example, the Court credited Plaintiffs with 10% of the first price increase (or $4,269,394), 20% of the second price increase (or $2,439,654), 30% of the third and fourth price increases (or $7,318,961), and 50% of the final deal price increase (or $7,623,918), Plaintiffs would have earned credit for a total of $21,651,927[31] of additional value received by the Class. Thus, even if the Court were to ignore entirely the correction of the Greenhill valuation and the

[31] The benefits are net to the stockholders because they were achieved without a settlement and release and any fee will be paid separately with no reduction in the value received by the Class. Thus, the percentage awarded should be based on the gross amount attributed to the litigation, inclusive of the awarded fee. For example, a $5 million fee award would represent 20% of a net $20 million financial benefit plus the fee amount (i.e. $25 million).

disclosures, a fee of $5 million based on the price increases alone is squarely within the 20-25% range for a fee award on a net $21.65 million benefit.

2. Requiring Greenhill to Correct Its Financial Analysis Readily Supports a Fee of $800,000 to $1,000,000.

The litigation also conferred a benefit on the Class by causing the Special Committee's financial advisor Greenhill to correct its financial analysis in December 2012. At Greenhill's deposition on December 10, 2014, Plaintiffs proved that Greenhill miscalculated GFI's weighted average cost of capital in its DCF analysis by incorrectly adding a size premium to the WACC instead of to the cost of equity. This produced a higher WACC and lower DCF values. Greenhill presented this incorrect analysis to the Special Committee in its fairness opinion presentation on July 28, 2014 and in an update on December 1, 2014. A summary of this incorrect analysis was provided to stockholders in the Proxy Statement.[32]

Several days after the deposition (and one day after BGC increased its offer to $5.45), Greenhill made a presentation to the Special Committee titled "Revisions to DCF Analysis," which fixed the error, resulting in revised DCF

[32] GFI_SC_0000143-187 at 167, 169(Kass Aff. Ex. Q); GFI_SC_0006938-82 at 6962, 6964(Kass Aff. Ex. R).

values for GFI.[33] The revised DCF analysis supported values in excess of the then pending offers from Gooch/CME ($5.25) and BGC ($5.45). On December 22, 2014, a revised Proxy Statement disclosed that Greenhill had corrected its financial analysis and provided the higher per-share values. The revised analysis was also used in subsequent presentations to the Special Committee and in amendments to the Proxy Statement. Greenhill's February 19, 2015 fairness opinion for BGC's $6.10 tender offer also relied on this corrected analysis.

Plaintiffs' correction of Greenhill's financial analysis materially benefitted stockholders. First, the Special Committee received a correct financial analysis that supported higher prices than the pending offers. Second, GFI stockholders were informed of the error and provided with the correct financial analysis. Armed with this truthful and accurate analysis, the stockholders ultimately rejected CME/Gooch's $5.85 offer. Moreover, by publishing the revised valuation that supported higher GFI valuations, both CME and BGC increased their various offers, with BGC going at least as high as $6.20 per share.

In *In re Del Monte Foods Co. S'holders Litig.*, the Court noted that fee awards for disclosures about banker analyses cluster around $400,000 to

[33] GFI_SCSUP_0002429-37(Kass Aff. Ex. S).

$500,000.[34] However, "Delaware should award higher fees when plaintiffs' lawyers uncover material information hithereto unknown to the directors themselves. Because Lead Counsel caused two corporate decision-making bodies to become informed . . . symmetry suggests an award of up to two times" the fee.[35]

Because Plaintiffs corrected Greenhill's analysis, resulting in disclosure of a higher valuation to two "corporate decision-making bodies," this benefit supports a fee of $800,000 to $1,000,000.

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[34] 2011 WL 2535256, at *11 (Del. Ch. June 27, 2011) (ruling disclosures of (i) Barclays' free cash flows, other valuation inputs and financial conflicts merited an award of $400,000-$550,000 and (ii) Perella Weinberg's valuation inputs and projections merited an award of $350,000-$400,000); *see also Maric Cap. Master Fund Ltd. v. Plato Learning, Inc.*, 11 A.3d 1175 (Del. Ch. 2010) and 2011 WL 244175 (Del. Ch. Jan. 25, 2011) (awarding a fee of $750,000 for an injunction requiring disclosure of a banker's actual WACC (and not the range disclose in the proxy) and cash flow projections and discussions between CEO and buyer); *Globis Capital Partners, LP v. SafeNet, Inc.*, CA No. 2772–VCS, at 44, 45 (Del. Ch. Dec. 20, 2007) (TRANSCRIPT) (awarding $1.2 million in fees for disclosure of investment banker presentations where no summary of the banker's analysis was previously provided and noting "You can look at it as this as a third bankers' fee perhaps caused by the first two bankers"). Greenhill was paid $4.25 million for its services.

[35] *See also In re Staples, Inc. S'holders Litig.*, 792 A.2d 934, 957 (Del. Ch. 2001) (ruling the court embraces "an approach that regards the disclosure of false information as particularly calling for correction").

3. The Litigation Caused Multiple Rounds of Additional and Corrective Disclosure, Supporting a Significant Award of Attorneys' Fees.

Corrective disclosures obtained during the injunction phase merit an award of attorneys' fees.[36] The Court has frequently awarded fees of $400,000 to $500,000 based on a few potentially material disclosures.[37] The Court has approved significantly greater fees where, as in this case, the disclosures obtained are quantitatively and qualitatively more substantial than in a run-of-the-mill disclosure settlement.[38] Importantly, the multiple disclosure benefits in this case were not the result of a settlement and the Class did not give any release to get the additional information. Moreover, the disclosures here contributed to (a) stockholders voting down the CME/Gooch deal and (b) the closing of the BGC

[36] *MoneyGram*, 2013 WL 68603, at *1.

[37] *Del Monte*, 2011 WL 2535256, at *9.

[38] *See, e.g., id.* at *14 (awarding $2.75 million for additional disclosures about banker's surreptitious conduct, fairness opinion, fees and relationships, along with disclosures about executives' incremental compensation from the merger); *Virgin Islands Gov't Employees' Ret. Sys. v. Alvarez*, C.A. No. 3976-VCS, at 8-9, 48 (Del. Ch. Dec. 2, 2008) (TRANSCRIPT) and (ORDER) ($1,250,000 awarded for obtaining additional disclosures regarding financial analysis); *Globis*, Tr. at 39-52 ($1,200,000 in fees and expenses awarded for obtaining disclosures concerning banker's analysis following injunction hearing).

tender offer. Therefore, the disclosures contributed to a financial benefit (i.e. consummation of a deal with BGC at $6.10 per share).

(a) Disclosures in the January 20, 2015 Amended Form S-4 (the "Jan. 20 Amendment").

The Jan. 20 Amendment mooted disclosure claims asserted in Plaintiffs' First Supplement to the Complaint ("1st Supplement"). The additional disclosures were made ten days before the January 30, 2015 vote on the Gooch/CME transaction. In some cases, the value of revised disclosures has been discounted because there was still a lopsided vote in favor of the transaction, despite the disclosure changes. Here, the new disclosures were substantial and the transaction was voted down after material disclosures caused by the litigation, as the Gooch/CME transaction failed to meet the supermajority of votes cast and majority of the minority shares outstanding voting requirements.

The additional disclosures in the January 20 Amendment included: (i) financial disclosures; (ii) disclosures concerning the development of the transaction; and (iii) disclosures regarding Jefferies.

i. Financial Disclosures

- The GFI stockholders were initially not provided with GFI management's cash flow projections. The Jan. 20 Amendment disclosed management's projected capital expenditures and changes in net working capital. With these additional inputs, GFI

stockholders could calculate management's projected free cash flows for the Management Case and Credit Case. (1st Supplement at ¶ 35).[39]

- The Jan. 20 Amendment disclosed that in its DCF analysis Greenhill had subtracted $34.1 million from GFI's equity value for a hypothetical "make whole" payment that was only due upon a change of control. This information was material because the make-whole assumption reduced Greenhill's DCF valuation by $0.27/share. (1st Supplement at ¶ 36).

- Greenhill's comparable companies analysis used $166 million of excess cash in calculating GFI's equity value, but Greenhill used only $35.3 million of excess cash in its DCF and Sum-of-the-Parts ("SOTP") analyses. This reduced GFI's value in the DCF and SOTP analyses. The Jan. 20 Amendment disclosed that (i) Greenhill used $35.3 million "based upon discussions with, and information provided by, GFI's management and the amount negotiated by the parties" and (ii) the excess cash in Greenhill's Comparable Companies Analysis was the "cash and cash equivalents reflected in GFI's publicly available financial statements (and not the excess cash amount utilized in the sum of the parts, discounted cash flow and precedent transactions analyses)." Thus, stockholders were informed that Greenhill used over $130 million less cash in its DCF and SOTP analyses than its Comparable Companies analysis. (1st Supplement at ¶ 37).

[39] The free cash flow projections were subsequently disclosed in GFI's Amended Schedule 14D-9 filed on February 27, 2015 (the "Feb. 27 14D"). *Plato Learning, Inc.*, 11 A.3d 1175 (enjoining merger until free cash flow projections were disclosed where the company had previously disclosed projected revenues, cost of revenues, gross profit, operating expenses, operating income, income before taxes, net income and EBITDA).

ii. Disclosures Concerning the Evolution of the Transaction[40]

The January 20 Amendment also disclosed that:

- On March 8, 2014, GFI and CME entered into a non-disclosure agreement for the purpose of considering possible strategic alternatives and that Merrill Lynch was serving as GFI's financial advisor. (1st Supplement at ¶ 12) Thus, stockholders were informed that Gooch was pursuing a transaction with CME a month before the April 18, 2014 Board meeting to discuss strategic alternatives.

- At a June 6, 2014 Board meeting, Gooch stated "the Company was not considering any merger opportunities and had no current plans to dispose of any assets." Thus, stockholders were told that Gooch had misinformed the Board that GFI was not considering strategic transactions even though he had had been pursuing a transaction with CME for months. (1st Supplement at ¶ 12).

- On October 17, 2014 Gooch told the Board that "in the event a transaction with CME came to fruition, he would have an interest in

[40] *Maric Capital Master Fund, Ltd. v. Plato Learning, Inc.*, C.A. No. 5402-VCS, at 4, 7-8 (Del. Ch. Jan. 25, 2011) (TRANSCRIPT) (awarding $750,000 for disclosures concerning, among other things, management's post-deal compensation and unique interest in consummation of the subject transaction); *In re PAETEC Holding Corp. S'holders Litig.*, 2013 WL 1110811, at *7 (Del. Ch. Mar. 19, 2013) (awarding $500,000 for supplemental disclosures explaining (i) the existence of a potential buy-side advisor conflict and (ii) the steps taken by the target board to mitigate the potential harm resulting from that conflict); *In re The Trizetto Group, Inc. S'holders Litig.*, C.A. No. 3694-VCN, at 20-23 (Del. Ch. Dec. 4, 2008) (TRANSCRIPT), 2008 WL 5048692, at *8-9 (Del. Ch. June 27, 2008) (approving uncontested fee award of $950,000 where principal benefit of settlement was disclosure of investment banker conflict after successful preliminary injunction application, as well as additional disclosure concerning background of merger negotiation process).

forming an investor group along with Messrs. Heffron and Brown to buy the IDB Business from CME and ***that, at that time, he was unwilling to support the sale of the IDB Business unless it involved his proposed investor group.***" (emphasis added) Thus, stockholders were informed that Gooch informed the Board he would not support any deal that did not involve him acquiring the IDB Business. (1st Supplement at ¶ 14).

- The IDB Business would have kept $250 million of GFI's cash when acquired by Gooch, of which $200 million related to regulatory and cash clearing requirements and $50 million related to working capital. This conflicts with certain assumptions Greenhill made. The additional disclosures provided stockholders with enough information to decide for themselves whether Gooch was getting more of GFI's cash than he actually needed to operate the IDB Business. (1st Supplement at ¶ 38)

- Several disclosures were material to a stockholder's assessment of whether the Gooch consortium was paying a fair price for the IDB Business, including (i) CME requested the Special Committee seek a fairness opinion on the price that Gooch was paying for the IDB Business, (ii) Greenhill refused to render such a fairness opinion and (iii) the Special Committee advised CME that it would not obtain such a fairness opinion. (1st Supplement at ¶ 39).

iii. Disclosures Regarding Jefferies[41]

Jefferies was initially retained to advise GFI but subsequently advised and financed Gooch's attempted acquisition of the IDB Business. The Special Committee determined that "Jefferies should no longer act on behalf of GFI in any negotiations with any third parties with respect to a potential strategic transaction involving GFI because of potential conflicts." Dec. 22 Prospectus at 68. The January 20 Amendment disclosed the fees payable to Jefferies upon the close of any strategic transaction and under the Commitment Letter for the First and Second Lien financing facilities. (1st Supplement at ¶ ¶ 30-31).

(b) February 18, 2015 GFI Amended Schedule 14D-9 (the "Feb. 18 Amendment")

The Feb. 18 Amendment mooted disclosures Plaintiffs raised (i) in their February 4, 2015 brief in support of expedited proceedings ("Exp. Brief"), (ii) at the February 6, 2015 expedited proceedings hearing, and (iii) in their Third

[41] *Del Monte*, 2011 WL 2535256, at *11-12 (noting that disclosure regarding, among other things, the target's second financial advisor's fees warranted a fee of between $350,000 to $400,000); *Augenbaum v. Forman*, 2006 WL 1716916 (Del. Ch. June 21, 2006) (awarding $225,000 for disclosure of advisor's previous work for buyers); *In re Arthrocare Stockholders Litig.*, C.A. No. 9313, at 32-35 (Del. Ch. Nov. 6, 2014) (TRANSCRIPT) (awarding $900,000 in fees for mooted disclosure concerning J.P. Morgan's conflict of interest and role in and fees for financing the transaction, the identity of a previously undisclosed investment bank (Goldman Sachs) and its role and fees paid in connection with the transaction and information concerning the initiation and negotiation of the transaction).

Supplement to the Complaint filed on February 7, 2015. These disclosures were made as a result of Plaintiffs' negotiations with Defendants to continue the expedited trial from February 18-19 until March and were required by the February 10 Order. The disclosures were made public prior to the scheduled close of BGC's tender offer. The Feb. 18 Amendment included disclosures that:

- The January 27, 2015 Schedule 14D-9 of JPI and Gooch, that recommended GFI stockholders not tender to BGC, did not represent the position of the Special Committee or Board.

- The Special Committee did not recommend, support, or vote to terminate the CME/Gooch merger in isolation and the Board ignored the Special Committee's five step resolution, which included signing an agreement with BGC before terminating the CME/Gooch merger.

- The Special Committee did not believe GFI should explore strategic alternatives and did not review or approve the January 30, 2015 GFI press release announcing the Board had decided to explore strategic alternatives.

- The Special Committee did not review, authorize or agree with the representations in the February 2, 2015 GFI press release urging stockholders to take no action and not tender shares to BGC because BGC's offer contained provisions and conditions that made its success highly unlikely.[42]

[42] *See* Feb. 6 Tr. at 9-12, 23-24, 28-29, 46-47(Kass Aff. Ex. J); 3rd Supplement ¶¶ 5-7, 10-13, 38 (Kass Aff. Ex. P).

D. THE TIME PLAINTIFFS' COUNSEL INVESTED IN THE MATTER UNTIL ACCEPTANCE OF THE $6.10 TENDER OFFER FULLY SUPPORTS AN AWARD OF $5 MILLION

As more fully described in the accompanying Settlement brief, the time and effort of counsel serves as a "backstop check" on the reasonableness of a fee award. *See, e.g.*, *In re Del Monte Foods Co. S'holders Litig.*, 2011 WL 2535256, at *12 (Del. Ch. June 27, 2011) (time and effort serves as a "cross-check").

As set forth in the accompanying Affidavits of Ms. Thomas and Messrs. Hanrahan, Lebovitch and Wagner, until the parties' February 19, 2015 agreement on the terms of the $6.10 per share Tender Offer, which is the final benefit for which Plaintiffs' counsel seeks a fee through this motion, counsel expended 5,769.55 hours in the prosecution and settlement of this Action. *See* Kass Aff. Exs. A at ¶ 4; B at ¶ 3; C at ¶ 5; D at ¶ 3.

As was the case in *Del Monte*, when asking what counsel was doing in relation to the time reported, "the answer is 'quite a bit.'" 2011 WL 2535256, at *13. Counsel respectfully submit that the services they rendered were of a high quality, and were of a sort that could have been rendered only by lawyers who are determined, creative, and aggressive about prosecuting stockholder litigation, particularly given the compressed schedule in which this litigation took place.

At Plaintiffs' counsel's current hourly billing rates, the "lodestar" value of their time through the Tender Offer is $3,100,919.40. *See* Kass Aff. Ex. A at ¶4; B at ¶ 3; Ex. C at ¶ 5; D at ¶ 3. The $5 million requested award represents an effective hourly rate of $537, which is below the implied hourly fee awards in other cases. *See, e.g., In re GSI Commerce, Inc. S'holder Litig.*, C.A. No. 6346-VCN at 23-27 (Del. Ch. Nov. 15, 2011) (TRANSCRIPT), at 20, 25 (finding case was "vigorously litigated" and awarding fee which amounted to approximately $1900 per hour). Finally, the $5 million fee represents only a 1.2 time multiple of Plaintiffs' counsel's lodestar, well below the lodestar multiple of fees awarded by the Court of Chancery in many cases. *See, e.g., In re Genentech*, (TRANSCRIPT), at 7, 42, 48 (awarding a fee where "the multiple of the lodestar is something like 11.3" following "hard fought litigation" and "in light of the difficulty of the issues").

CONCLUSION

Plaintiffs' Counsel invested time, resources and intellectual focus in this case and fought hard every step of the way, against adversaries that fought them tooth and nail. The ***only*** way to influence these Defendants was to be ready, willing, and able to hold them accountable for their misdeeds in Court. Plaintiffs recognize, of course, that in the context of competitive bidding, BGC's presence

was also a substantial reason the Insiders and CME increased their bids. While Delaware has in the past presumed some causation for stockholders' counsel who admittedly played a mere "monitoring" role in a takeover battle, the facts of this case are unique and present an exceptionally strong basis for finding Plaintiffs' Counsel's efforts to have been a significant cause of the price increases before the January 30 vote to reject the CME deal. Because Plaintiffs alone sought and obtained from the Court the imminent trial date that ultimately empowered the Special Committee and caused the Insiders to abandon their self-interested deal, a significant fee award is appropriate in connection with the acceptance of BGC's $6.10 per share bid.

Plaintiffs also forced a revision of Greenhill's analysis, helping the Committee push for higher prices and supporting the bidders in increasing their offers. Moreover, the public disclosures Plaintiffs obtained in this case were far from routine and their materiality can hardly be questioned. The disclosures informed stockholders of material information that led them to reject the CME deal.

For the reasons stated above, the Court should award Plaintiff's counsel a mootness fee of $5 million.

DATED: November 9, 2015

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CERTIFICATE OF SERVICE

I, Mary S. Thomas, hereby certify that on this 9th day of November 2015, I caused a copy of the foregoing Plaintiffs' Brief in Support of Motion for Final Approval of Proposed Settlement and Plan of Allocation, Certificate of the Class and an Award of Attorneys' Fees to be served via File & Serve*Xpress* upon the following counsel:

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