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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

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

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Plaintiffs Maurene Al-Ammary and Robert Michocki ("Plaintiffs") submit this Second Supplemental Brief in Further Support of Class Certification, Proposed Settlement, and Proposed Fee Award and in response to the "renewed" objection of Objector Quaker Investment Trust ("Quaker").

I. QUAKER'S OBJECTION IS A MOVING TARGET THAT IGNORES THE HISTORY OF THE LITIGATION AND SUBSTANTIAL SETTLEMENT BENEFITS

Through their prosecution of this matter, Plaintiffs and their counsel achieved an exceptional result for all of GFI's public stockholders. Amidst a particularly heated litigation, most stockholder plaintiffs' lawyers would simply have stopped litigating the matter and declared victory once the GFI board of directors (the "Board") accepted BGC's $6.10 offer - a significant increase from the original CME deal the Board approved. Here though, despite sound arguments that the maximum damage award available in a post-trial judgment would be capped at approximately $6 million, Plaintiffs aggressively pursued alternative theories to increase the Insiders' and BGC's potential liability if this matter went to trial. Plaintiffs leveraged these theories to achieve highly favorable settlement terms for the Class.

The heart of Plaintiffs' case following the Board's assent to BGC's $6.10 Tender Offer was the additional ten cents that BGC had previously offered to induce the GFI Board to quickly approve the offer and expand the Board. BGC

and the Insiders jointly insisted that the higher $6.20 offer had been conditional and, therefore, not really available to GFI investors. Plaintiffs ignored that assertion, insisting that any settlement restore the full $6.20 offer, and then some.

Plaintiffs advanced the Employment Claims, demanding disgorgement of some portion of the payments to Insiders from their new employment contracts and related agreements as leverage to obtain or exceed the $0.10 per share that defendants had lost. Plaintiffs thus demanded a multiple of their most logical damages amount, supported mainly by their assertion that the Court would not only find liability, but could award a broad range of damages for the Insiders' disloyalty.

Defendants insisted that BGC had legitimate business reasons to offer contracts to Gooch and Heffron, including to prevent potential broker defections to a new competitor. Defendants also argued that because Gooch and Heffron were not positioned to receive more compensation than they had previously been receiving, Plaintiffs would have enormous difficulty establishing that Gooch and Heffron's fiduciary duties required them to take a lesser deal for themselves than they would receive through the *status quo* so that the BGC acquisition could succeed.

Plaintiffs stood firm on their position. The initial mediation went nowhere. Defendants finally made their first meaningful offer the night before Gooch's

second deposition. Plaintiffs rejected out of hand an offer many would have considered an acceptable final resolution, which prompted a much more significant offer, and led to an agreement on a ***$10.75 million net payment to the Class***.

In the end, Plaintiffs achieved a truly unique deal. On a claim that many thought could yield no more than ten cents per share even after a successful trial, Plaintiffs obtained about seventeen cents per share, to be paid to every GFI investor who tendered for $6.10 or who was squeezed out at $6.10 in the Back-End Merger. If the Court approves Plaintiffs' counsel's requested attorney fee award of $3.6 million, Plaintiffs will have achieved what would be a $14.35 million recovery. Notably, the individual wrongdoers, Gooch and Heffron (through their investment vehicle, JPI) are being held personally accountable to finance the settlement and any fee awarded.

It is against this backdrop that Quaker continues to pursue a manufactured and shifting objection to the Settlement. Quaker initially rested its objection almost exclusively on Plaintiffs' purported failure to obtain a recovery in connection with GFI's April 28, 2015 issuance of approximately 43 million shares to BGC, at the then-current market price of $5.81 per share. As explained below, this claim was exceedingly weak. Among other things, the $6.10 Back-End Merger price did not change due to the issuance. Any "dilution" could only be the marginal difference between the market price paid and a theoretical fair value as of

the date of the issuance (which closely followed a heated bidding war). And, in any event, the Court could "look through" the issuance in any appraisal action. Notably, Ms. Hilary Shane, a former objector, retained experienced Delaware counsel and obtained BGC's confirmation that the release preserves, as Plaintiffs have always asserted, the ability of appraisal petitioners to present whatever arguments they want regarding the Dilution Claims as part of the appraisal action.[1]

Having seen the weakness of its Dilution Claims, Objector switched gears, adopting as its own objections the Court's questions about the Employment Claims. But the Settlement provides a generous recovery in light of the potential value of the Employment Claims. As part of the Settlement, the Insiders are paying to GFI's public holders 100% of the difference between the $6.20 squandered offer and the $6.10 accepted Tender Offer price. On top of that, the Insiders are responsible for an additional $4.75 million to the Class, plus any fee that may be awarded. In this sense, the recovery attributable solely to the Employment Claims can be viewed as exceeding $8.5 million if the Court awards Plaintiffs' Counsel's requested $3.6 million fee award. After all, a trial verdict on the $6.20 offer claim could not exceed $6 million, and any fee award would come from that fund.

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[1] Stipulation and [] Order Clarifying Settlement (Trans. ID 5608926) (Feb. 22, 2016).

This recovery is exceptional considering the following impediments to recovery and limit on potential damages:

- The most likely value of the Employment Claims was around $15 million, as Plaintiffs explained in their December 7, 2015 Supplemental Submission.
- Imposition of liability on those claims was hardly the certainty that Quaker presumes.
- While Quaker accuses Plaintiffs of inexplicably missing a $35 million claim arising from the Retention Bonus Pool, it appears that Quaker is the one who is misinformed. There was no possibility of recovery from Defendants as a result of that pool. Not only are the Insiders ***prohibited*** from participating in the Employee Retention Pool, but the discretionary bonuses payable to the Insiders could actually be ***decreased*** on account of payments made under the Retention Bonus Pool.

Quaker's objection based on a supposed lack of typicality under Rule 23 ignores the intertwined nature of the Tender Offer and Back-End Mergers. Specifically, when the GFI Board finally accepted BGC's $6.10 per-share takeover offer, the Board properly locked in the Back-End Merger and assured that BGC would be committed to pay the same $6.10 per share to any stockholders who failed to tender into the Tender Offer. As rational long-term investors, Plaintiffs informed the Court of their intent to tender into the $6.10 Offer and, in fact, did just that, while still ensuring equal treatment in the ultimate Settlement for investors who failed to tender and for merger arbitrage investors (like Quaker). The fact that Plaintiffs rationally tendered is no reason to break up the Class,

particularly when the Settlement protects appraisal rights for those who chose not to tender.

In addition, Quaker's belated adoption of the Court's *Thorpe v. CERBCO* comment during the settlement hearing is misplaced. Those claims would be derivative and the damages would not flow to stockholders. In any event, the remedial policies underlying that case are satisfied through the Settlement here.

For these reasons, the Settlement and Plaintiffs' request for attorneys' fees of $3.6 million should be finally approved, and Quaker's objection denied.[2]

II. PLAINTIFFS PROPERLY GAVE LITTLE WEIGHT TO THE "DILUTION" CLAIMS, WHILE PRESERVING THOSE CLAIMS FOR APPRAISAL PETITIONERS

Quaker's original objection was 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***, among other things, (1) GFI had entered into the Tender Offer Agreement with BGC (setting the Back-End Merger price at the same Offer Price of $6.10 per share) and (2) BGC had announced that it might

[2] Alan Fishbein has informed Plaintiffs' counsel that he "will not be objecting in any way at this week's hearing to the Settlement as revised." Transmittal Affidavit of Michael T. Manuel ("Manuel Aff."), Ex. A [email from Alan Fishbein, Esq., to Mary Thomas, Esq., dated Feb. 21, 2016 at 12:16 p.m.]

acquire additional shares beyond those tendered in the tender offer,[3] including through market purchases or otherwise.

The issuance of stock to BGC *at the then-current market price* did not cause GFI's stock price to decline – it actually went up a few pennies. Thus, the "dilution" did not adversely affect the stock price. In terms of valuing the claim itself, one would need to determine the difference between the consideration paid (the market price) and a Court-determined true value as of the issuance itself (which closely followed the heated BGC-CME bidding war), and then determine the pro rata value difference on a per-share basis. Given these facts and the Settlement Agreement's express preservation of appraisal rights, Plaintiffs appropriately put no litigation value on Quaker's Dilution claims.[4]

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[3] Manuel Aff., Ex. B [Amended and Restated Offer to Purchase, filed Feb. 20, 2015] at 8-9.

[4] Quaker's February 16, 2016 filing incorrectly states that Lead Plaintiffs "admit they did not make any attempt to consider or value the Dilution claim that they are releasing." *Id.* at 2. Plaintiffs admitted no such thing. Plaintiffs only represented that their mediation brief did not address any potential dilution claims. The reason was not because Plaintiffs had not considered the claims. It was because Plaintiffs considered those claims exceedingly weak.

III. THE SETTLEMENT INCLUDES MORE THAN ADEQUATE CONSIDERATION FOR THE EMPLOYMENT CLAIMS

A. QUAKER HAS NO GROUNDS TO OBJECT WITH RESPECT TO THE BONUS POOLS

Quaker contends that GFI's public stockholders should have received more than BGC's $6.10 offer because money was diverted to a distributable earnings bonus pool ("DE Bonus Pool") and a retention bonus pool ("Retention Bonus Pool" and collectively with the DE Bonus Pool, the "Bonus Pools") for GFI employees. Quaker lacks standing to make this objection because Quaker admits it was not a GFI stockholder when GFI's tender offer closed. In other words, even assuming some value diversion that lowered BGC's final buyout price, Quaker was not harmed because the $6.10 per share price for the Back-End Merger was set before Quaker owned its GFI shares.

Notably, Quaker did not assert any claim regarding any DE Bonus Pool or Retention Bonus Pool in either its Complaint or its Amended Complaint. Its original objection did not assert that the Settlement provided inadequate consideration for the DE Bonus Pool claims, much less the Retention Bonus Pool claims. In all events, Quaker's current objection is tardy, disingenuous, and meritless.

B. QUAKER'S OBJECTION BASED ON THE BONUS POOLS IS MERITLESS

At the tail end of its lengthy second objection, Quaker asserts that the Settlement did not achieve a sufficient recovery on the claim Plaintiffs asserted

regarding the DE Bonus Pool.[5] Quaker states that it does not dispute "Plaintiffs' analysis of the present value of the DE Bonus Pool (before applying the litigation discount) with a range of $22 to $25 million."[6] This is a blatant misrepresentation of Plaintiffs' analysis.[7]

First, Quaker ignores that Gooch and Heffron provided lengthy non-competes in exchange for the DE Bonus Pool and that BGC had a right to pay something for those protective restrictions.[8] Second, Quaker ignores the numerous unknown and inestimable factors that may reduce the DE Bonus Pool.[9] Thus, any damages would be based on speculation about a possible future bonus pool whose size would depend on GFI's future performance over several years.[10] As Plaintiffs stated: "The bonuses are thus distant in time, contingent, unknown, and payable in securities of uncertain value and liquidity."[11] Therefore, any damages based on the DE Bonus Pool would be speculative.

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[5] Quaker Obj. at 28-29. Quaker agrees with Plaintiffs' analysis that the employment agreement claims had a nominal value. *Id.* at 27.

[6] *Id.* at 28.

[7] Plaintiffs' Supplemental Brief ("PSB") at 4-10.

[8] *Id.* at 4.

[9] *Id.* at 6-7.

[10] *Id.*

[11] *Id.* at 7.

Though Plaintiffs and their expert concluded that the numerous unknown future variables precluded any meaningful quantification of the DE Bonus Pool, Plaintiffs calculated a maximum potential class claim of $22 to $25 million, including the 30% reserved for GFI employees other than Gooch and Heffron, *i.e.* assuming the entire bonus pool was an improper diversion of value despite factors such as the non-competes.[12] The $22 to $25 million range reflected a speculative guesstimate of the maximum possible recovery under the most favorable assumptions. But Plaintiffs did not, as Quaker does, accept the validity of this most rosy scenario:

> Plaintiffs believed that there was little chance of achieving this best case valuation scenario because it was extremely unlikely that the court would rule that the entire bonus pool was improper and that neither Gooch and Heffron nor the other GFI employees had any right to any bonuses, given their agreement to lengthy restrictive covenants.[13]

Plaintiffs specifically noted that recovery of the 30% of the pool for other GFI employees was highly unlikely, so the maximum potential upside estimate was $15.5 to $17.5 million.[14]

Having grossly overstated the maximum damages and having ignored the factors that show the potential bonus-related damages might be limited, Quaker

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[12] *Id.* at 10.

[13] *Id.*

[14] *Id.* & n.15.

next assumes that liability for the maximum estimate was certain.[15] Quaker fails to respond at all to the difficulty of establishing that Gooch and Heffron, who had been highly compensated executives, were required to work for BGC and agree to restrictive covenants *for free*.[16] Quaker also does not address the problem of proving that Gooch and Heffron actually diverted money BGC would have otherwise paid to GFI's public stockholders – a proposition that BGC has denied.[17]

Quaker's representation that "lead Plaintiffs claim that the DE Bonus Pool would be subject to the business judgment rule"[18] is incorrect. Lead Plaintiffs simply pointed out that *Defendants* would have made that argument and contended that *BGC* wanted the bonus pool to keep GFI employees and obtain restrictive covenants.[19] Quaker's argument is disingenuous. Plaintiffs aggressively articulated the Employment Claims despite their challenges, and made clear that they would not settle without a significant payment for those claims. Had they not, Defendants would never have agreed to pay a Settlement that exceeds by millions of dollars the $6 million claim on the $6.20 per-share offer, plus attorneys' fees. Plaintiffs' credibility and success in negotiating cannot salvage Quaker's objection.

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[15] Quaker Obj. at 28.

[16] PSB 11-12.

[17] *Id.* at 12.

[18] Quaker Obj. at 28.

[19] PSB at 11.

C. THE "RETENTION BONUS POOL" THEORY UNDERMINES QUAKER'S GOOD FAITH

Finally, Quaker concocts a legally indefensible theory surrounding the Retention Bonus Pool.[20] Quaker's brief neglects to mention several important facts. First, Retention Bonuses were not payable to executive officers of GFI, so Gooch and Heffron were expressly precluded from participating in any such bonus. Second, Retention Bonuses are paid by GFI and the calculation of GFI's Distributable Earnings for purposes of the DE Bonus Pool in which Gooch and Heffron can participate is "adjusted upward or downward, as applicable, to reflect . . . . (iii) 50% of the amortization cost attributed to the awards pursuant to the Retention Bonus Pool established by GFI . . ."[21] Not only would Gooch and

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[20] Quaker Obj. at 29. The creation of the Retention Bonus Pool had been disclosed for some time. *See, e.g.*, Manuel Aff., Ex. B [Amended and Restated Offer to Purchase, filed Feb. 20, 2015] at 38 ("BGC and GFI have also agreed that GFI will establish a retention bonus pool for employees of GFI, which may be payable in the forms of forgivable loans and equity awards of BGC or its affiliates."); Manuel Aff., Ex. C [Tender Offer Agreement, dated Feb. 19, 2015] at 52 ("Promptly following the Offer Closing: (i) GFI shall establish the Retention Bonus Pool in accordance with the terms set forth in Exhibit D."); Manuel Aff., Ex. D [GFI Form 10-K, filed March 13, 2015] at 8 ("We and BGC have also agreed that we will establish a retention bonus pool for our employees, which may be payable in the forms of forgivable loans and equity or partnership awards of us or our affiliates."); Manuel Aff., Ex. E [GFI Form 10-Q, filed May 11, 2015] at 43 (same); Manuel Aff., Ex. F [GFI Form 10-Q , filed Aug. 10, 2015] at 43 (same).

[21] *See* Anderson Aff. (Trans. ID 58581241), Ex. I at Annex C §2(a)(iii); *see also* Thomas Aff. (Trans. ID 58257754), Exs. C and D §2(a)(iii). Plaintiffs quoted the adjustments to Distributable Earnings, including for the Retention Bonus, in their Supplemental Brief. PSB at 6-7.

Heffron *not* receive a Retention Bonus, but the amount of their DE Bonus would be *reduced* by the payment of any Retention Bonus.

Quaker's argument is nonsensical and should be rejected. Pursuing claims on the Retention Bonus Pool would not result in any disgorgement from the Insiders. Moreover, reducing the size of the Retention Bonus Pool would not have necessarily resulted in an increased price to the public stockholders. Indeed, if BGC were legally precluded from paying GFI's brokers to stay with the company, then the equity value of GFI itself might be lower. Plaintiffs were right not to challenge the Retention Bonus Pool.

IV. PLAINTIFFS HAVE STANDING TO SETTLE THE BACK-END MERGER CLAIMS

Quaker argues that Plaintiffs fail to satisfy the typicality requirements of Rule 23(a)(3) because they tendered shares to BGC in advance of the Back-End Mergers.[22] Quaker further contends that Plaintiffs' participation in the Tender Offer precludes their standing to challenge fiduciary breaches in connection with the Back-End Mergers and renders the revised Class Period here, which runs through the date of the MOU, inappropriate.[23] Quaker's arguments are incorrect and inconsistent with Delaware law.

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[22] Quaker Obj. at 17-18.

[23] *Id*. at 18-21.

Quaker fails to cite a single case reaching the conclusion that it asks this Court to reach here. Nor could it. Plaintiffs had standing to challenge the Tender Offer and Back-End Mergers because Plaintiffs were GFI stockholders at the time GFI and BGC agreed to the *two-step merger transaction*. Plaintiffs' act of tendering stock prior to the consummation of the Back-End Mergers does not alter the typicality of Plaintiffs' claims or their ability to challenge the Back-End Mergers.

As Quaker acknowledges, standing in merger-related litigation is determined based on the date when the parties agreed to the challenged transaction, rather than the date of its consummation.[24] This is because "it is the terms of the merger, rather than the technicality of its consummation, which are challenged" in the litigation.[25] It follows that a stockholder who holds stock at the time of a merger's announcement will possess claims typical of other stockholders impacted by the merger.[26] While ownership upon completion of the transaction may be favored, a stockholder-plaintiff that divests its position in a company's stock between the date

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[24] Quaker Obj. at 17-18 (citing *In re Beatrice Cos., Inc. Litig.*, 522 A.2d 865, at *3 (TABLE) (Del. 1987)).

[25] *Beatrice Cos.*, 522 A.2d 865, at *3.

[26] *See New Jersey Carpenters Pension Fund v. InfoGROUP, Inc.*, 2013 WL 610143, at *3 (Del. Ch. Feb. 13, 2013) ("Typicality is generally deemed satisfied if the representative's claim or defense arises from the same event or course of conduct that gives rise to the claims or defenses of other class members and is based on the same legal theory.") (internal citation and brackets omitted).

of a transaction's announcement and the date of its consummation can still serve as an appropriate class representative in litigation challenging the transaction.[27] Lead Plaintiffs here appropriately, openly, and with full disclosure to the Court, tendered shares while continuing their vigorous representation of a class of *all* of the company's investors.

The Tender Offer and Back-End Mergers were two steps in the same negotiated merger transaction. On February 19, 2015, BGC and GFI entered into the Tender Offer Agreement, pursuant to which BGC committed to purchase public shares of GFI at a price of $6.10 per share.[28] Section 5.16 of the Tender Offer Agreement further expressly provided for the Back-End Mergers, including the $6.10 per-share price at which BGC would cash out the remaining public shares of GFI.[29] Thus, as of February 19, 2015, the GFI Board agreed to the financial terms of the Back-End Mergers, which could not close before expiration of the Dead Hand Tail.

BGC's Tender Offer was set to expire at 5:00 PM on February 26, 2015. Accordingly, on February 25, 2015, Plaintiffs notified the Court of their intention

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[27] *In re Celera Corp. S'holders Litig.*, 59 A.3d 418, 430-31 (Del. 2012); *InfoGROUP, Inc.*, 2013 WL 610143, at *6 (rejecting objection to typicality based on stock sales prior to consummation of challenged merger).

[28] *See* Manuel Aff., Ex. C [Tender Offer Agreement, dated Feb. 19, 2015].

[29] *See id.* § 5.16.

to tender shares, noting that the parties' inability to close the Back-End Mergers until the expiration of the Dead Hand Tail contributed to their decision.[30] Plaintiffs were not alone. Following the closing of the Tender Offer, only 6.3% of GFI shares remained in the float.[31]

Under these facts, Plaintiffs' claims are sufficiently typical of the Class, and Plaintiffs could not have lost standing to challenge the Tender Offer or Back-End Mergers by tendering their shares.

This result is especially appropriate here, considering the Settlement terms Plaintiffs were able to achieve in satisfaction of their breach of fiduciary duty claims. Indeed, after tendering their shares, Plaintiffs continued to press their claims, ultimately securing a Settlement that, among other things, required: (1) the Insiders to pay an additional seventeen cents per share for every GFI share that was

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[30] *See* Manuel Aff., Ex. G [February 25, 2015 letter from M. Thomas to the Hon. J. Travis Laster].

[31] There were approximately 127.8 million shares of GFI common stock outstanding as of February 16, 2015. Manuel Aff., Ex. H [TO Amendment No. 17, filed Feb. 20, 2015]. On February 27, 2015, BGC announced that approximately 54.6 million shares were validly tendered pursuant to the tender offer. Manuel Aff., Ex. I [GFI Form 8-K, filed Mar. 4, 2015]. Prior to the tender offer, BGC held approximately 17.1 million shares of GFI common stock. *Id.* Gooch, Heffron and JPI owned approximately 48.1 million shares of GFI as of February 19, 2015. Manuel Aff., Ex. J [GFI Form 14D-9/A, filed Feb. 25 2015] at 6. Accordingly, non-tendering stockholders held, at most, 8 million shares of the total float of the Company immediately following the tender offer (i.e., 127.8 million - 54.6 million - 17.1 million - 48.1 million = 8.0 million).

either tendered or squeezed out in the Back-End Merger; (2) CME to release JPI from the Dead Hand Tail; (3) GFI, BGC, and JPI to enter into formal agreements for the Back-End Mergers by December 21, 2015; and (4) the parties to close the Back-End Mergers by January 29, 2016.[32] In addition, Plaintiffs expressly carved out from the Settlement release any claim for appraisal in connection with the Back-End Mergers.[33] Considering the relief Plaintiffs achieved here for ***all of GFI's public stockholders***, there is no principled reason to contend that Plaintiffs' breach of fiduciary duty claims are atypical of non-tendering stockholders (or their transferees).

For the same reasons, Quaker's assertion that the revised Class period should have terminated at the date of the Tender Offer, rather than the date of the MOU, is without force.[34] In *In re Philadelphia Stock Exchange, Inc.*, the Court affirmed the approval of a settlement class that included stockholders through the date of the MOU in that action, as well as the transferees of such stockholders.[35] When rejecting the objectors' challenge to this "commonplace" class definition, the Court specifically noted that the supposedly differing interests of the

[32] Stipulation of Settlement at 25.

[33] *Id*. at 15.

[34] Quaker Obj. at 20-21.

[35] 945 A.2d 1123, 1132, 1139-40 (Del. 2008).

transferees did not warrant excluding them from the class and potentially derailing the settlement.[36]

Similarly, here, Quaker's lamentations about the class definition are no grounds to reject the Settlement. The Tender Offer Agreement provided for the same per-share consideration for tendering stockholders and non-tendering stockholders later cashed out in the Back-End Mergers. The Settlement is structured to ensure that every stockholder who sold shares to BGC at $6.10 (whether in the Tender Offer or through the Back-End Merger) will share in the Settlement recovery. The availability of appraisal provides further protection for any stockholders, like Quaker, who feel that this consideration does not reflect the true value of their GFI shares. Accordingly, shortening the revised Class period or otherwise modifying the Class definition will not provide any further benefits or protections to any former GFI stockholder.

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[36] *Id*. at 1140 ("Even if true, that would not establish that the Chancellor abused his discretion by including transferees within the class of persons who would be bound by the settlement. To exclude from the class any persons who contend that they have rights in the claims being settled, would create the risk that those persons would be free to sue in another forum—a risk that the Appellees are unwilling to take.").

V. A THEORETICAL ABILITY OF THE COMPANY TO RECOVER THE SPECIAL COMMITTEE'S COSTS DOES NOT UNDERMINE THE MERITS OF THE SETTLEMENT FOR THE CLASS.

Potential derivative claims for costs associated with the Special Committee process provide no basis to reject the Settlement.[37] Such *Thorpe v. CERBCO*-style damages would flow to the Company (and BGC), not the Class, and the policies supporting the *Thorpe* analysis are already satisfied by the settlement here.

In *Thorpe*, the stockholder-plaintiff proved a breach of the controlling stockholders' duty of loyalty to the Company through their failed attempt to usurp a corporate opportunity.[38] Because the controllers could veto alternatives to their desired transaction, no transactional damages flowed from their disloyalty.[39] The Supreme Court held, however, that Delaware law is "designed to discourage disloyalty," thus making some "penalty" necessary in the absence of recoverable damages.[40] Accordingly, the Court required the controlling stockholders: (1) to disgorge to CERBCO $75,000 that the controllers received from the potential

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[37] *See* Quaker Obj. at 30 (objecting "[b]ecause Lead Plaintiffs did not consider the . . . *Thorpe v. CERBCO* damages from the special committee's attorney's fees").

[38] *Thorpe v. CERBCO, Inc.* ("*Thorpe I*"), 676 A.2d 436, 437 (Del. 1996).

[39] *Id*.

[40] *Thorpe I*, 676 A.2d at 445; *Boyer v. Wilmington Materials, Inc.*, 754 A.2d 881, 908 (Del. Ch. 1999) ("In the circumstances, our law's strong policy of discouraging acts of disloyalty . . . require[s] the imposition of some penalty to remedy the [] act of disloyalty.").

acquirer; and (2) to reimburse CERBCO for costs and expenses the company occurred incidental to the breach.[41]

It is unclear how the costs of the Special Committee process here caused "damages" for GFI or its stockholders. In *Thorpe*, CERBCO formed the special committee to evaluate a litigation demand challenging the controllers' misconduct.[42] All of the costs of the special committee process there existed due to the defendants' misconduct.

Here, in contrast, GFI formed the Special Committee to negotiate and approve a transaction with CME. The committee remained in place throughout the bidding war. While the Special Committee's advisors arguably worked harder here than in a less adversarial situation, there is no reason to believe that BGC would have paid more than $6.10 per share had the Company not incurred legal fees in connection with the Special Committee's work. Thus, unlike CERBCO and its stockholders, GFI and its stockholders benefited from the Special Committee process here more than they were damaged by its costs.

Furthermore, by placing financial liability on Gooch and Heffron, the Settlement serves the policy goals of *Thorpe* by holding wrongdoers accountable

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[41] *Thorpe I*, 676 A.2d at 445.

[42] *See Thorpe I*. 676 A.2d at 439; *Thorpe v. CERBCO, Inc.*, 1995 WL 478954, at *5 (Del. Ch. Aug. 9, 1995), affirmed in part, rev'd in part by *Thorpe I*.

for satisfying the full Settlement amount, including: (1) the $0.10 per share lost when Gooch and Heffron prevented the Board from accepting BGC's $6.20 per share offer; (2) an additional $0.07 per share in satisfaction of Plaintiffs' claims challenging the diversion of consideration through the DE Bonus Pool and employment agreements; and (3) whatever fee is awarded by the Court in connection with the Settlement. Thus, here, as in *Thorpe*, the alleged wrongdoers are personally financially responsible for their disloyalty. Unlike *Thorpe*, however, stockholders will receive the recovery. The Court should not reject a settlement that puts cash in stockholders' pockets.

VI. THE RELEASE IS APPROPRIATELY TAILORED

Quaker's objections to the scope of the Release rely heavily on Quaker's flawed arguments concerning standing and the value of the "dilution" and Employment Claims. As the underlying premise of those arguments fail, so do the related arguments concerning the scope of the Release.

And, contrary to Quaker's argument, the Release is appropriately tailored to the facts and circumstances of this case – both in terms of the breadth of the release and the released parties. In exchange for the Settlement consideration, Plaintiffs have agreed to provide the Defendants and their related persons with a customary Class release of claims that: (1) are based on the Class Member's ownership of GFI common stock during the Class Period; (2) relate to the matters that were

alleged or could have been alleged in the Pleadings filed in the Action; and (3) relate to the GFI/CME merger, the BGC Tender Offer, and the act of completing the Back-End Mergers.

In response to the Court's prior questioning and to avoid any potential ambiguity in the language of the Release, including the possibility that the Release could be read to bar claims based on conduct that had not yet occurred, the Parties agreed to amend the definition of "Settled Plaintiff Claims" to emphasize that the Class claims released under the Settlement "do not include any claims based on actions, events, or conduct occurring after August 24, 2015, except solely to the extent that such claims relate to the consummation of the Back-End Mergers."[43] In addition, the Parties agreed to amend the Stipulation such that the "Effective Date" of the Settlement would not occur until after the closing of the Back-End Mergers.[44] The Release thus ties directly to the actions challenged in the case and the consideration obtained in the Settlement.

Quaker's reliance on *In re Trulia, Inc. Shareholder Litigation*[45] is entirely misplaced. *Trulia* was a disclosure-only settlement where the Court found the disclosures neither "material [n]or even helpful to Trulia's stockholders," and, as a

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[43] *See* Amendment to Stipulation, ¶ 2.

[44] *See* Amendment to Stipulation, ¶ 3. The Back-End Mergers closed on January 12, 2016.

[45] 2016 WL 325008 (Del. Ch. Jan 22, 2016).

result, did not afford stockholders "any meaningful consideration to warrant providing a release of claims to the defendants."[46] Plaintiffs' Counsel do not interpret *Trulia* to signal a dramatic shift of Delaware law when, as here, a litigation results in meaningful benefits.[47]

The Release also appropriately extends beyond named Defendants to other individuals and entities involved in the challenged series of transactions and the negotiated resolution. Quaker's bald assertion that "Plaintiffs can only release claims . . . ***against named defendants***"[48] is not supported by *Trulia* or any other authority Quaker cites. The released parties here are either Defendants, former Defendants, or potential defendants (like BGC) who were told they would be sued if the case did not settle, and who thus participated in the negotiation process (or individuals or entities associated therewith) and are appropriately included in the Release.

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[46] *Id.* at *1.

[47] The scope of the release here – tied to the allegations of the Complaint and the consideration obtained – is consistent with the spirit of footnote 89 of *Trulia*.

[48] Quaker Obj. at 23 (emphasis added).

CONCLUSION

The objection of Quaker Investment Trust should be overruled. The Settlement should be approved, and Plaintiffs should be awarded fees of $3.6 million, inclusive of expenses.[49]

DATED: February 23, 2016

Respectfully submitted,

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[49] On February 3, 2016, the Settlement Administrator published a supplemental notice regarding, among other things, the February 26, 2016 hearing. *See* Affidavit of Ryan Kao Regarding Publication of Supplemental Notice of Settlement Hearing, filed contemporaneously herewith.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

CERTIFICATE OF COMPLIANCE WITH
TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Ct. Ch. R. 171(d)(4) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2010.

2. This brief complies with the type-volume limitation of Ct. Ch. R. 171(f)(1) because it contains 5,331 words, which were counted by Microsoft Word 2010.

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CERTIFICATE OF SERVICE

I, Mary S. Thomas, hereby certify that, on February 23, 2016, I caused a copy of the foregoing *Plaintiffs' Second Supplemental Brief in Further Support of Class Certification, Proposed Settlement, and Proposed Fee Award*, supporting *Transmittal Affidavit of Michael T. Manuel*, and *Affidavit of Ryan Kao Regarding Publication of Supplemental Notice of Settlement Hearing* to be filed and served upon the following counsel of record via File & Serve*Xpress*:

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