EFiled: Nov 09 2015 11:01PM EST
Transaction ID 58140427
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' MOTION FOR FINAL APPROVAL OF THE PROPOSED SETTLEMENT, CERTIFICATION OF THE CLASS, AND AN AWARD OF ATTORNEYS' FEES

Plaintiffs, Maurene Al-Ammary and Robert Michocki ("Plaintiffs"), respectfully move this Court for: (1) final approval of the proposed settlement (the "Settlement"), as set forth in the September 17, 2015 Stipulation and Agreement of Settlement, that will fully resolve the above-captioned action; (2) certification, for settlement purposes, of the Settlement Class; and (3) an award of attorneys' fees in the amount of $3.6 million. The grounds for this motion are set forth in the accompanying Plaintiffs' Brief in Support of Their Motion for Final Approval of the Proposed Settlement, Certification of the Class, and An Award of Attorneys' Fees, Affidavits in Support of the Plaintiffs' Application For an Award of Attorneys' Fees and Expenses from Mary Thomas, Mark Lebovitch, Michael Wagner, and Kevin Davenport, as well as the Transmittal Affidavits of Jonathan M. Kass, and the exhibits annexed thereto, all of which are being submitted herewith.

DATED: November 9, 2015

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT, CERTIFICATION OF THE CLASS, AND AN AWARD OF ATTORNEYS' FEES

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I. INTRODUCTION

"We'll see you at trial." These five words, stated repeatedly, credibly and with conviction, explain how Plaintiffs and their counsel achieved a $10.75 million ***net settlement fund for GFI stockholders*** on a claim that Defendants (and market observers of this Action) believed could, at maximum, produce a $6.1 million post-trial recovery. The case was unique from start to finish. Defendants Mickey Gooch and Colin Heffron (the "Insiders") did not just oppose BGC and its Chairman, Howard Lutnick, with the usual panoply of corporate takeover defense tactics. The Insiders fought Lutnick by playing dirty, resorting to threats and other intimidation tactics. And BGC's negotiation of the Settlement suggests that BGC and Gooch may well deserve each other. Meanwhile, GFI director Marisa Cassoni cynically aligned herself with the Insiders and against the public stockholders, while the Special Committee may have meant well but struggled to influence the process on its own. In short, Defendants did nothing for GFI's public stockholders unless forced to do so. Plaintiffs forced Defendants to act by aggressively pursuing the litigation

This case began with a deceptive announcement of a deal between GFI and CME. According to Gooch, selling GFI for CME stock worth $4.55 per share represented the best alternative for GFI stockholders, following a supposedly broad sales process. Two things drew Plaintiffs' immediate attention. ***First***, CME

agreed to "flip" GFI's brokerage business back to the Insiders at a bargain price. ***Second***, GFI and CME employed an unusual support agreement that not only required Gooch (who effectively controlled 38% of GFI's voting power through his control over JPI) to vote his shares in favor of the CME deal, but also precluded him from supporting or tendering into ***any*** competing alternative for a full year following termination of the CME deal, even if the Board's duties compelled pursuit of such alternative (the "Dead Hand Tail"). Because GFI's certificate required a supermajority to approve any merger, the Dead Hand Tail precluded any deal other than with CME, regardless of value.

Exposing some of what was false about GFI's deal announcement, BGC disclosed a recent but ignored effort to engage with GFI, as well as its intention to launch a premium price tender offer. Through the Fall of 2014, Plaintiffs pursued discovery in advance of an anticipated January 2015 preliminary injunction hearing. Plaintiffs' litigation efforts uncovered the depths to Gooch's disloyalty. Among other things, Plaintiffs learned that Gooch:

- suggested to GFI employees that BGC's Lutnick was behind the physical assault of disgruntled BGC employees;
- encouraged employees to demand value-destructive compensation packages that would render GFI unattractive to an alternative buyer;
- threatened his fellow Board members with baseless litigation if they did not accede to his wishes;

- refused to call Board meetings when he knew the Special Committee planned to press for engagement with BGC;
- refused to abstain from Board votes despite his obvious conflicts;
- refused to let the Special Committee's counsel attend meetings, silenced the Special Committee at meetings, and barred the Committee from putting items on the agenda;
- issued deceptive press releases and recommendation statements;
- prevented the Board from accepting a fully executable and non-conditional $6.20 per share BGC offer; and
- threatened to blow up the $6.10 BGC tender offer unless the Board endorsed new compensation packages for the Insiders and guaranteed that JPI could sell its shares for $6.10 (notwithstanding the Dead Hand Tail he had used as a weapon to fight off BGC).

Despite Gooch's disloyalty, Defendants believed he would not be held accountable because the difference between $6.20 and the $6.10 per share that the Gooch-controlled GFI Board ultimately approved represented only about $6 million additional to GFI's public stockholders. What Defendants did not count on was that Plaintiffs and their counsel would continue to invest time and resources in the case because holding Gooch accountable for his gross misconduct was the right thing to do, even if a verdict would not likely result in a large recovery.

Each step of the way, even on simple discovery matters, Gooch ignored his obligations until Plaintiffs went to Court. Finally, literally hours before Gooch was to be deposed a second time – and this time, based on the full and very ugly record of his disloyalty – Defendants came to the settlement table.

The Settlement will provide a $10.75 million ***net payment to GFI stockholders***. The fund will not be reduced by any award of attorneys' fees and expenses like a money judgment would have been after trial. Moreover, in what may be a first for Chancery Court litigation, ***the entire settlement payment is being borne by Gooch and JPI***, with no contribution from insurance or other persons or entities.[1] The settlement also includes additional benefits for stockholders. CME has waived the Dead Hand Tail and BGC agreed to complete the back-end merger earlier than expected.

The absolute dollar value of this Settlement is not the largest this Court has seen, but it is remarkable, both because it represents such a significant recovery relative to likely damages, and because it exists thanks to the advocacy and determined risk-taking that this Court has encouraged. For achieving the monetary fund and other benefits provided by the Settlement, Plaintiffs' Counsel seek an award of $3.6 million.[2]

[1] GFI August 28, 2015 8-K (Transmittal Affidavit of Jonathan M. Kass ("Kass Aff.") Exh. H) JPI and Gooch are also responsible for any amounts of the fee award beyond an undisclosed insurance contribution.

[2] This does not include the mootness benefits achieved during the litigation, which are more fully discussed in the separate Motion to Approve a Mootness Award of Fees.

Consistent with recent precedent,[3] when a net settlement fund is created and fees will be paid separately, the Court awards a fee as a percentage of the gross fund that would have to be created to achieve the same net outcome. Based on the net payment to stockholders of $10.75 million, plus a $3.6 million fee, the fee will represent approximately 25% of a $14.35 million gross fund.

II. FACTUAL BACKGROUND

A. GFI'S BUSINESS AND CORPORATE CONTROL

GFI provides brokerage and trade execution services, clearing services, market data and trading platforms and other software products to its customers.[4] For the three years from 2011-2013, approximately 70% of GFI's revenues were generated by its brokerage operations and approximately 20% of revenues were generated by GFI's clearing services business.

Working primarily through two successful brands: Trayport® ("Trayport") and FENICS® ("FENICS"), GFI also provides certain software, analytics, and market data services that support its customers' trading and investment activities.

[3] *In re Jefferies Group, Inc. Shareholder Litigation*, 2015 WL 3540662 (Del. Ch. June 5, 2015); *In re Arthrocare Corp. Stockholder Litigation,* 2014 WL 5930134 (Del. Ch. Nov. 13, 2014).

[4] Many of the facts contained herein have been set forth in prior pleadings and filings. Plaintiffs specifically cite primarily to evidence supporting facts that were not previously presented to the Court.

From 2011 through 2013, this software analytics business generated less than 10% of revenues.

Following GFI's January 2005 IPO, JPI (the entity through which Gooch held his GFI stake) owned more than one-third of GFI's stock. GFI's certificate of incorporation required, among other things, a two-thirds vote by GFI's stockholders for "any Fundamental Transaction," removal of directors, and amendment of many articles in the Certificate and many provisions of GFI's bylaws.

B. WITHOUT BOARD KNOWLEDGE, GFI MANAGEMENT EXPLORES BREAKING UP THE COMPANY

Without informing GFI's outside directors, Gooch, with the assistance of Jefferies – the Company's financial advisor – spent about nine months planning his acquisition of GFI's brokerage business. In February 2013, Jefferies pitched Gooch by suggesting that GFI could benefit GFI's stockholders by selling the whole Company to a competitor in the brokerage space, such as BGC, thereby unlocking millions in synergies. Without conferring with the Board, Gooch rejected any structure unless the Insiders personally acquired the brokerage business.

By April 23, 2013, when Jefferies made its next presentation to Gooch, the Insiders had already decided on a transaction structure substantially identical to the proposed CME Transaction. Specifically, the Company would be sold to a third

party, whose participation in any bidding process required prior agreement to "flip" the brokerage business back to the Insiders at a discount.

At the Board's June 6, 2013 meeting, Gooch falsely informed the Board that the Company was not considering any merger opportunities and had no plans to dispose of any assets.[5] One month later, on July 1, 2013, without the Board's knowledge, Gooch had Jefferies contact potential third-party acquirers about their willingness to pursue Gooch's self-interested structure. None of the parties Jefferies contacted had a brokerage business.

Gooch did not disclose his activities to the Board until October 2013, when he made clear he would not support any sale unless he ended up owning the brokerage business. The Board did not form the Special Committee until January 15, 2014. By then, Gooch and CME had already negotiated most of the substantive terms, including the price and the transaction structure.

Gooch undermined the Special Committee from the outset. The Special Committee wanted its financial advisor, Greenhill, to run a market check including other suitors (such as BGC). Gooch prohibited the market check, telling the Special Committee that he would not agree to sell JPI's 38% interest in any alternative transaction. With its hands tied, the Special Committee achieved no

[5] Later, when seeking stockholder approval for the CME Transaction, the Company's proxy materials would distort this fact by suggesting that Gooch provided a full summary of his exploration of strategic alternatives.

meaningful price increase from its creation on January 15, 2014 through July 30, 2014, when the merger agreement was signed.

On July 29, 2014, the Board met to approve the CME transaction. Earlier that day, however, BGC's president wrote to Gooch and Heffron, proposing to acquire GFI at "a price per share at a substantial premium to current trading prices…." Gooch presented the letter to the Special Committee, but reiterated that JPI would oppose any deal other than the CME Transaction. In other words, no matter how high a premium BGC was willing to pay, Gooch and Heffron would block any BGC offer, irrespective of their fiduciary obligation to the public stockholders to maximize value. Without letting the Special Committee deliberate on BGC's overture, the Board approved the CME Transaction.

C. GFI AND CME ANNOUNCE THEIR DEAL, BUT CONCEAL BGC'S LETTER AND THE BOARD'S REFUSAL TO ENGAGE

On July 30, 2014, GFI and CME announced their transaction, a two-step merger deal in which GFI would be sold to CME in its entirety, and the Management Consortium could acquire GFI's brokerage business for a song, without the scrutiny normally triggered by a management buyout. Each share of GFI would be exchanged for $4.55 worth of CME Class A stock, valuing GFI's equity at $580 million. The Insiders would only pay $165 million in cash and $63 million in "invested deferred compensation" to buy the brokerage business.

The Board also approved preclusive deal protections designed to ensure the success of the CME Transaction. Pursuant to the voting and support agreement between JPI and CME (the "Support Agreement"), JPI agreed to vote its 38% interest in GFI in favor of the CME Transaction. The Support Agreement precluded the Insiders from transferring their shares, including by tendering into any competing tender offer. The Support Agreement's voting restriction had a "12 month tail" that survived for 12 months following a negative stockholder vote on the CME Transaction (the "Dead Hand Tail"). Because the Insiders' voting block precluded the requisite supermajority vote, the 12-month tail effectively prevented the Company from completing any business combination for a year following a CME vote. Thus, besides the Insiders' self-interest in buying the brokerage business, the Support Agreement created a further conflict of interest because the Insiders could not participate in any alternative transaction.

Additionally, the CME Transaction contained a "fiduciary out" that required the ***Board as a whole*** to determine if an alternative bid was to be a "Superior Proposal." By mandating that the full Board act, the CME merger agreement gave Gooch a veto over efforts by the Special Committee to negotiate with BGC. This provision would prove critical when Gooch stopped abstaining from Board votes.

D. PLAINTIFFS CHALLENGE THE CME/GOOCH DEAL AND BGC LAUNCHES A TENDER OFFER

Between September 3 and September 24, 2014, five class action complaints challenging the CME/Gooch deal were filed in this Court on behalf of GFI's public stockholders.[6] Plaintiffs obtained expedited discovery over Defendants' objection.

On September 8, 2014, BGC wrote to the Board noting GFI's lack of engagement since BGC's July 29 letter, and stating that BGC would commence a cash tender offer at $5.25 per GFI share. On October 16, 2014, CME and GFI filed a Registration Statement on Form S-4 containing their joint proxy statement/prospectus (the "Original Proxy"). On October 22, 2014, BGC commenced the BGC Tender Offer at $5.25 per share (the "BGC Tender Offer"). BGC understood that even if its Tender Offer succeeded, Gooch and JPI would remain significant shareholders in GFI (and would enjoy influence over the Board) for at least a year because of the Dead Hand Tail. To protect its majority stake in GFI from a vindictive Gooch and Heffron, BGC conditioned its tender offer on obtaining two-thirds of the seats on the Board (the "Board Condition").

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[6] *Brown v. GFI Group Inc., et al.*, C.A. No. 10082-VCL, filed September 3, 2014; *Hughes vs. CME Group, Inc., et al.*, C.A. No. 10103-VCL, filed September 8, 2014; *Al Ammary v. Gooch, et al.*, C.A. No. 10125-VCL, filed September 11, 2014; *City of Lakeland Employees' Pension Plan v. Gooch, et al.*, C.A. No. 10136-VCL, filed September 16, 2014; *Michocki v. Gooch, et al.*, C.A. No. 10166-VCL, filed September 25, 2014. The cases were consolidated and the Court appointed lead counsel.

Gooch had two interrelated goals: (i) to ensure the CME Transaction's success so he could take the Brokerage Business private at a discount; and (ii) to prevent the BGC Tender Offer from putting GFI under the control of a person he personally loathed, BGC's Howard Lutnick. Gooch was determined to derail the BGC Tender Offer, primarily in four ways: (i) manufacturing and agitating employee opposition to working for BGC; (ii) repeatedly asserting that he would never work for BGC or allow GFI to be sold to BGC; (iii) refusing to call full Board meetings to act on the Special Committee's repeated recommendations concerning the BGC Tender Offer; and (iv) blocking efforts toward satisfaction of the Board Condition.

Gooch regularly communicated to employees, colleagues, board members and others his negative views of BGC and Lutnick and explained why he would never work for them. Gooch said that BGC and Lutnick are "dirtbags" and "disgusting."[7] He suggested that Lutnick had made death threats to bully employees to quit and speculated that Lutnick was behind a former BGC employee being mysteriously shot in the leg during a contract dispute with BGC.[8] He claimed that BGC and Howard "Lutnick [have] reputations [that are] the lowest

[7] GFI-MERGER-00010647. (Kass Aff. Exh. I).

[8] GFI-MERGER-00010677. (Kass Aff. Exh. J).

and worst in the industry."[9] He said (i) "we will NEVER sell the company to BGC;"[10] (ii) he would "literally comit [sic] Hara Kiri [sic] before doing business with Lutnick;"[11] and (iii) "I will never work for BGC. Lutnick is despicable."[12]

Gooch told GFI's employees that they should ignore rumors of an impending deal with BGC. Gooch reiterated that he controlled over 38% of GFI's stock and indicated the Dead Hand Tail would block BGC.[13] Gooch repeated this point a week later, reminding employees that two-thirds of GFI's stock must approve any merger and that "JPI will **not** vote for a merger with BGC."[14] (Emphasis in original.)

On November 25, GFI employee Jason Zullin ("Zullin") wrote the full Board complaining about BGC's employee equity compensation practices.[15] Zullin urged the directors to elevate the compensation concerns of GFI's employees over their fiduciary duty to the stockholders. On December 16, Gooch

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[9] GFI_SC_0007714 at 0007718. (Kass Aff. Exh. K).

[10] GFI-MERGER-00010731. (Kass Aff. Exh. L).

[11] GFI-MERGER-00010715. (Kass Aff. Exh. M).

[12] GFI-MERGER-00010740. (Kass Aff. Exh. N).

[13] GFI-MERGER-00010517 at 00010518. (Kass Aff. Exh. O).

[14] GFI-MERGER-00010517. (Kass Aff. Exh. O).

[15] GFI_SCSUP_0000073. (Kass Aff. Exh. P).

reinforced Zullin's letter in an email to his fellow directors threatening litigation by GFI employees.[16] Gooch recounted "horror stories" of past BGC acquisitions and accused BGC of attempting to poach key GFI personnel. Gooch asserted that GFI would face a mass exodus of employees that would harm the value of the Company if it sold to BGC, ignoring that such departures would be BGC's (and Gooch's) problem because GFI's public stockholders would have been cashed out at a higher price than CME was offering.[17]

On December 17, 2014, the Special Committee expressed its suspicion that employee concerns were being stirred up by "negative information about BGC and a potential BGC transaction [that] is being disseminated to employees."[18] In a December 31, 2014 email, Zullin and his attorney also threatened the Board. Notably, Gooch later wrote that, over the prior seven months, Gooch and Zullin had "sought [advice] from each other in opposing BGC's bid."[19]

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[16] GFI_SCSUP_0001958 at 0001959 (Kass Aff. Exh. Q); GFI-MERGER-00011374 at 00011375 (Kass Aff. Exh. R); GFI-MERGER at 00011376-00011377. (Kass Aff. Exh. S).

[17] GFI-MERGER-00011376 at 00011377. (Kass Aff. Exh. S).

[18] GFI_SCSUP_0001499 at 0001500. (Kass Aff. Exh. T).

[19] GFI-MERGER-00022051. (Kass Aff. Exh. U).

E. PLAINTIFFS DEVELOP THEIR INJUNCTION RECORD

On November 18, 2014, the Court entered a revised stipulated scheduling order providing for expedited proceedings and scheduling a preliminary injunction hearing for January 2015. Plaintiffs' Counsel developed a strong record in support of their motion for a preliminary injunction by reviewing 95,000 pages of documents from Defendants and third-parties and by taking eight depositions during the month of December 2014.

With Plaintiffs' injunction hearing approaching, on December 2, 2014, CME and Gooch increased the value of the CME Transaction to $5.25 per GFI share, payable either in cash or stock. The increase solely reflected Gooch paying an additional $89 million for the Brokerage Business, which was being passed through to GFI shareholders. CME did not increase ***its*** offer to GFI's stockholders.

On December 5, 2015, Cassoni resigned from the Special Committee, but retained her Board seat. From that point forward, Cassoni acted against GFI's public stockholders and did Gooch's bidding to thwart the BGC Tender Offer.

BGC raised its offer to $5.45 on December 11, 2014. The Special Committee, now *sans* Cassoni, met on December 12, 2014 and unanimously determined that the BGC proposal could reasonably be expected to lead to a Superior Proposal. The Special Committee sought a full Board meeting so that the

Board could act on its recommendation. Gooch refused to convene a meeting until December 18, 2014.

In a December 17, 2014 letter, the Special Committee complained that Management's counsel, Willkie Farr & Gallagher LLP ("Willkie"), had privately demanded that BGC's counsel, Wachtell, Lipton, Rosen & Katz ("Wachtell"), recuse themselves on account of a purported conflict.[20] The Special Committee was furious because "interfering with BGC's legal representation would impede BGC's bid and interfere with the Special Committee's ability to maximize value for stockholders."[21] The letter closed with a demand "that no action be taken that interferes with the BGC bid."[22]

The December 18, 2014 Board meeting closed without a vote on BGC's Superior Proposal. Contemporaneous emails reveal that counsel for each of the Special Committee and the Insiders engaged in a heated dispute regarding how to disclose this meeting in the Company's SEC filings. The Committee wanted to disclose that, at the start of the December 18 meeting, Gooch declared that he

[20] GFI_SCSUP_0001499. (Kass Aff. Exh. T).

[21] GFI_SCSUP_0001499 at 0001500. (Kass Aff. Exh. T).

[22] GFI_SCSUP_0001499 at 0001500. (Kass Aff. Exh. T).

would not permit a vote on the Special Committee's recommendation and that neither Gooch nor Heffron would commit to abstain from voting on the issue.[23]

The Board next met on December 20 and again refused to act on the Special Committee's recommendation. When the Board finally reconvened on December 23, 2014, eleven days after the Special Committee made its initial determination, the Board, with Gooch and Heffron abstaining, determined that BGC's $5.45 offer could reasonably be expected to lead to a Superior Proposal, thus permitting the Special Committee to enter into negotiations with BGC.

Gooch was not deterred. On December 29, 2014, the same day Plaintiffs filed their opening brief in support of their preliminary injunction motion, Gooch touted to employees that the Dead Hand Tail prevented JPI from supporting the BGC Tender Offer and "reiterate[d] that myself and JPI will not support a merger with BGC."[24]

On January 5, 2015, the Special Committee unanimously recommended that the Board effect a Change in Recommendation in favor of BGC's revised proposal. The Special Committee immediately requested that a Board meeting be set. Again, Gooch delayed scheduling a Board meeting, this time for eight days.

[23] GFI_SC_0007532 at 0007535 (Kass Aff. Exh. V); s*ee also* GFI_SC_0007502 (Kass Aff. Exh. W).
[24] GFI-MERGER-00010516. (Kass Aff. Exh. X).

Meanwhile, Gooch wrote an inflammatory email to Special Committee member Magee, raising again the specter of mass employee defections and threatening a lawsuit if the Special Committee continued to push a deal with BGC.[25] Gooch made clear why the Special Committee should reject the BGC Tender Offer, stating: "we will **NOT** work for BGC under **ANY** circumstances. Need I repeat that? Will **NOT** work for BGC under **ANY** circumstances."[26] (emphasis in original). In response, the Special Committee's Counsel emailed Gooch's counsel to complain that Gooch had been improperly interfering with the sales process. As stated in the email, "Mr. Gooch's latest correspondence is part of a troubling pattern of making unfounded accusations of wrongdoing against any perceived threat to the consummation of the CME transaction…."[27]

On January 13, 2015, CME matched BGC's $5.45 offer. The Special Committee approved another amendment to the CME Merger Agreement reflecting this price increase. BGC then increased its offer to $5.60 per share. When CME announced on January 15, 2015 that it would match BGC's $5.60 offer, BGC again responded that same day, raising its offer to $5.75. BGC also announced that it delivered an executed agreement and would increase its offer to

[25] GFI_SC_0007714 at 0007717-7719. (Kass Aff. Exh. K).

[26] GFI_SC_0007714 at 0007717. (Kass Aff. Exh. K).

[27] GFI_SC_0007714. (Kass Aff. Exh. K).

$5.85 per GFI share if GFI promptly countersigned. The Special Committee recognized that this new offer was clearly superior to CME's then-outstanding $5.60 offer.

Gooch and Heffron, recognizing that their chance of acquiring the Brokerage Business was quickly slipping away, delayed setting a full Board meeting until January 19, 2015. The Special Committee's counsel was not happy, as stated in a January 16, 2015 email:

> I do not want to get caught up in conclusory statements, so to be clear, when I refer to the record, among other things, I mean the fact that your clients NEVER made themselves available for a board meeting to act on the Special Committee's recommendation of January 5 to accept BGC's tender offer bid of $5.45. Yet, the insiders agreed to be available on January 7 to consider a shareholder rights plan if the BGC tender offer was not extended. So, the insiders' schedule permitted attendance on January 7 to take action they thought beneficial to their deal, but not to consider the Special Committee's recommendation of the competing BGC offer, which was beneficial to the disinterested stockholders. And then the insiders agreed to be available on a few hours' notice on January 13 to act on CME's matching bid of $5.45, though only after calling us to ensure that the Committee was not intending to bring up for action the BGC offer of $5.60 that had just been received. Then the insiders made themselves available just after 7am on January 15, immediately when requested by the Special Committee, to vote on CME's matching offer of $5.60, on almost no notice. Now, somehow, the insiders were unavailable last night, are unavailable today and tonight and cannot even communicate a time when they are available.
>
> The BGC offer runs on Monday at noon, so time is beyond of the essence. There is no more important matter for GFI directors than a

> Board meeting to address the BGC expiring offer. They need to treat it as such.[28]

The Committee's Counsel also observed that Gooch and Heffron's schedules should be irrelevant to scheduling a Board meeting since they ought to abstain from voting on the BGC Tender Offer anyway.[29] But when a Board meeting was finally held on January 19, 2015, Gooch and Heffron did not abstain from voting and, along with Cassoni, overruled the Special Committee's recommendation.

The next day, January 20, CME and the Insiders again increased their bid, this time to $5.85 per share. BGC increased to $6.10 per share, and committed that if the Board countersigned the executed tender offer agreement, BGC would increase the offer to $6.20 per share. Again, the Special Committee determined that BGC's latest offer was reasonably likely to lead to a Superior Proposal. Again, Gooch and the other insiders refused to call a timely Board meeting, squandering the opportunity to sell GFI for $6.20 per share or more. When the Board finally met on January 22, 2015, Gooch, Heffron, and Cassoni rejected the Special Committee's recommendation. Over the Special Committee's objections, the Board entered an amended Merger Agreement with CME at the lower per share price of $5.85.

[28] GFI_SC_0007445 at 0007447-7448. (Kass Aff. Exh. Y).
[29] *See* GFI_SC_0007445. (Kass Aff. Exh. Y).

F. PLAINTIFFS FILE A SUPPLEMENTAL COMPLAINT AND CAUSE CURATIVE DISCLOSURES

On January 13, 2015, Plaintiffs filed a supplemental complaint (the "First Supplemental Complaint") detailing Defendants' behavior over the prior months and adding disclosure claims. As detailed in Plaintiffs' mootness fee brief, Defendants made several curative, material disclosures concerning:

- Greenhill's revised DCF analysis,
- GFI Management's projected free cash flows;
- Greenhill's assumptions regarding GFI's excess cash;
- the cash that the brokerage business would have when acquired by Gooch/JPI in the CME deal;
- the Special Committee's refusal to seek a fairness opinion on the price Gooch would pay for the brokerage business;
- Jefferies' compensation and the Special Committee's refusal to permit Jefferies to act on GFI's behalf;
- additional background of Gooch's negotiations with CME;
- Gooch's misrepresentation to the GFI Board on June 6, 2013 that "the Company was not considering any merger opportunities and had no current plans to dispose of any assets"; and
- Gooch's refusal, as stated to the Board, to support the sale of the brokerage business to anyone but the Management Consortium.

G. GOOCH STILL ATTEMPTS TO THWART A DEAL WITH BGC AND CONTINUES TO MARGINALIZE THE SPECIAL COMMITTEE

On January 30, 2015, over 75% of non-JPI GFI stockholders rejected the facially inferior CME Transaction. Despite the stockholders' rejection of the CME Transaction, Gooch still undermined the BGC Tender Offer. According to

Amendment 8 to GFI's Schedule 14D-9 filed by GFI on February 5, 2015 ("Amendment 8"), the Board met on January 30 after the stockholder vote, decided to terminate the agreements with CME, and "authorized ***management*** to engage in discussions with third parties and to further explore these potential transactions." (Emphasis added.) The Board supposedly granted this authority to management despite Gooch's virulent opposition to any transaction with BGC.

Also on January 30, 2015, GFI issued a press release stating that "the Company's Board of Directors will explore strategic alternatives with any and all interested parties to maximize shareholder value for all shareholders." This press release purported to speak for the full Board. It did not. Similarly, on February 2, 2015, Gooch issued another misleading press release, urging stockholders to reject the BGC Offer.

On February 3, 2015, Plaintiffs' Counsel demanded an explanation from the Special Committee for what appeared to be its decision to "explore alternatives" when a lengthy process had already occurred. The Special Committee's Counsel revealed that Gooch had been marginalizing the Committee, and that the Special Committee did not support or authorize the recent public disclosures. Contrary to the disclosures by Gooch and his cohorts, the Special Committee opposed further solicitation of alternatives. As Special Committee member Fanzilli explained, the Insiders had no basis to oppose BGC's $6.10 offer given that they agreed to the

CME deal at $4.55 per share and were recently advocating for a CME deal at $5.85 per share.[30] In response to Plaintiffs' questioning, Special Committee Counsel disclosed that his clients had recommended a comprehensive five step process: (i) termination of the CME Merger Agreement; (ii) signing a tender offer agreement with BGC; (iii) satisfying the conditions to the BGC offer, including the Board Condition; (iv) providing BGC with necessary disclosure schedules; and (v) taking all other steps to consummate a deal with BGC, including trying to regain the $6.20 per share that had previously been on the table. Gooch and Heffron refused to permit a discussion of BGC's then-pending offer at the January 30, 2015 Board meeting. They, along with Cassoni, asserted that they did not need the votes of the Special Committee members and proceeded to simply terminate the CME Merger Agreement without acting on BGC's Tender Offer, which was scheduled to expire on February 3, 2015.

H. PLAINTIFFS RESTORE THE SPECIAL COMMITTEE'S POSITION IN THE NEGOTIATIONS

Based on this startling news from the Special Committee, Plaintiffs immediately moved for an expedited trial on the merits. During a February 6, 2015 telephonic conference with the Court, Plaintiffs shared what they knew about the GFI Board's dysfunction. At Plaintiffs' urging, Special Committee Counsel detailed the recent events for the Court, explaining why they had not sought

[30] *See* GFI_SC_0007668. (Kass Aff. Exh. Z).

injunctive relief to bar Gooch and Heffron from interfering in the Board process, yet stating that "[w]e'd love for that to happen. If that happened, I think we could pretty quickly deliver value . . . We haven't brought a claim, and we're probably not the right party to bring a damages claim. In fact, we're a defendant."[31] Later, the Special Committee's Counsel stated that "We're supportive of any kind of relief, which helps us maximize value on behalf of the disinterested shareholders."[32] The Court expressed its concern:

> Frankly, the situation Mr. Kurtz described, I agree with Mr. Lafferty, it's pretty amazing to hear that type of recitation. I don't say that because I doubt Mr. Kurtz. I just say it because it's the type of thing that is really profoundly disturbing from a corporate governance perspective. I don't doubt that he's accurately representing the views of his clients.
>
> If independent directors are going to testify that that's what has been going down and is going down in the boardroom, that is very persuasive stuff. And it's very persuasive stuff that something really bad is happening….[33]

The Court scheduled a trial to commence on February 17, 2015. As directed by the Court, on February 7, 2015, Plaintiffs filed a complaint supplement specifically identifying the relief they were seeking.

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[31] 2/6/15 Hearing Transcript at 32. (Kass Aff. Exh. AA).

[32] 2/6/15 Hearing Transcript at 36-37. (Kass Aff. Exh. AA).

[33] 2/6/15 Hearing Transcript at 48-49. (Kass Aff. Exh. AA).

Plaintiffs' efforts were finally closing off the Insiders' options for mischief. Plaintiffs' Counsel used the threat of an imminent finding of disloyalty by the Insiders, and bad faith by Cassoni, to force an agreement, ordered by the Court, requiring the Board to disclose recent misconduct in public filings and guaranteed the Special Committee's role in the sales process (the "February Order"). This measure effectively empowered the Special Committee to oversee Gooch and Heffron and ensure they did not again squander the opportunity for a deal with BGC.

I. THE DEAL IS STRUCK WITH BGC AT $6.10 PER SHARE

On or about February 19, 2015, BGC and GFI agreed to allow BGC's $6.10 per share Tender Offer (the "BGC Transaction") to proceed. The Insiders, exploiting their positions as directors and officers, negotiated side benefits for themselves (inclusion in the BGC Transaction and lucrative employment contracts). The Insiders' flagrant disloyalty harmed the stockholders in at least three ways:

First, the Insiders squandered BGC's binding offer of $6.20 per share for GFI's stockholders, which was not contingent on any non-competes or other benefits.

Second, the Insiders conditioned their support for the BGC Offer on an assurance that BGC would buy them out at the same price after the Tail's

expiration. Absent that demand, BGC could buy them out at a lower price. Thus, the Insiders redirected value to themselves from GFI's public stockholders instead.

Finally, even though Gooch would "never" work for Lutnick (as if Lutnick would want him to do so), the Insiders negotiated lucrative employment and noncompetition agreements. Rather than pay the maximum price to GFI stockholders, BGC agreed to pay the Insiders millions of dollars in annual salaries and bonuses, plus 35% of the three-year average of GFI's distributable earnings.

J. PLAINTIFFS CONTINUE FIGHTING TOWARD A NOVEMBER 2015 TRIAL

After the $6.10 Offer closed, Plaintiffs continued to pursue the litigation. On May 14, 2015, Plaintiffs filed a Motion to Compel and for a Scheduling Order (the "Motion"). The Motion sought: (1) production of final minutes from the Board's February 19, 2015 meeting approving the Tender Offer as well as Gooch's and Heffron's employment packages; and (2) a November 2015 trial date. In opposing the Motion, the Insiders represented that "the minutes from the final board meeting approving the BGC Tender Offer on February 29, 2015 will be produced momentarily."[34] They requested a May 2016 trial date. On May 20, 2015, the Court entered a scheduling order setting a November 9, 2015 trial date.

[34] Lafferty Letter at 4. (Kass Aff. Exh. BB).

Despite Defendants' assurances, Defendants did not produce the minutes, requiring Plaintiffs to renew the Motion by letter on May 29, 2015.[35] The Court ordered the parties to appear on June 3, 2015, unless the final minutes were produced. Late on June 2, 2015, the Insiders admitted that there were no final minutes and that they would be producing draft Board minutes. During the June 3, 2015 hearing, counsel for the Insiders conceded that final Board minutes were never created because the Board could not agree to their contents. The draft minutes make clear that Gooch threatened to blow up the entire Tender Offer unless his personal demands were met.

K. THE PARTIES' MEDIATION EFFORT FAILS, SO PLAINTIFFS FILE AN AMENDED COMPLAINT AND PREPARE FOR TRIAL

After the Court set the November 9, 2015 trial date, Defendants sought to mediate. That mediation was a complete diversion. On July 13, 2015, Plaintiffs filed an amended complaint ("Amended Complaint"). Plaintiffs continued preparing for trial, receiving several additional document productions. On July 22, 2015, Plaintiff again deposed Defendant Cassoni – this time concerning the events leading up to the BGC Transaction. Plaintiff prepared to depose Gooch, Heffron, the Special Committee, and Lutnick.

[35] Thomas Letter at 1. (Kass Aff. Exh. CC).

L. SETTLEMENT IS REACHED ON THE EVE OF THE GOOCH AND LUTNICK DEPOSITIONS

Literally hours before Gooch's scheduled July 28, 2015 deposition, Defendants indicated their willingness to negotiate if Plaintiffs put off the deposition. Plaintiffs' Counsel flatly refused to delay anything unless an acceptable Settlement was truly imminent. When Defendants finally offered an acceptable range - well after midnight - the parties discussed the possibility of putting off the Gooch deposition for a day. Further calls into the wee hours, however, muddied the state of play and Plaintiff's Counsel informed the parties that the deposition would proceed, albeit with a slightly delayed start time. Hours before Gooch was to be sworn in, the parties agreed instead to meet in person in order to achieve a final and comprehensive agreement. After a full day of negotiations, on July 29, 2015, the parties agreed on the net settlement fund of $10.75 million.

Negotiating the rest of the Settlement, however, was anything but simple. Defendants were at odds with each other, and backtracking after every forward step became the norm. The divergent interests of Defendants – as well as BGC – meant that, despite agreement in principle in late July, the MOU was not finalized and signed until late August. Defendants, led by BGC's in-house counsel, kept raising new impediments to settlement. Pinning Defendants to an agreement was like nailing Jell-O to a wall.

Meanwhile, Plaintiffs kept pursuing their claims, re-noticing depositions and making clear to Defendants' Counsel that their window to maintain a deal at $10.75 million was closing. Each time Plaintiffs' pressed the claims, Defendants returned to the settlement path, only to backtrack once the immediate deadline passed. During the Summer of 2015, Plaintiffs noticed Gooch's deposition four times, Fanzilli's and Magee's depositions four times, and BGC/Lutnick's deposition three times.

M. THE SETTLEMENT TERMS

On August 24, 2015, the parties finally executed an MOU documenting the terms of the Settlement. After further arduous negotiation, the MOU was converted into a Stipulation of Settlement, filed with the Court on September 17, 2015. The Settlement provides for a Settlement Fund of $10.75 million to be distributed to the Class. In addition to the Settlement Fund, the Settlement provides that all attorney fees and expenses awarded to Plaintiffs' Counsel would be paid by Defendants rather than taken from the $10.75 Settlement Fund. The Settlement terminated the Dead Hand Tail and accelerated the back-end merger.

GFI's August 28, 2015 8-K confirms that Gooch and JPI will be funding the $10.75 million settlement payment and may contribute to any fee award:

> In consideration of the Waiver and JPI's agreement to complete the Back-End Mergers in early 2016, BGC will advance to JPI $10.75 million of the previously agreed upon and disclosed merger consideration to which JPI is

> entitled in the Back-End Mergers, which JPI will contribute to the settlement fund. The Settlement Letter also includes the following agreements: (i) payment of the plaintiffs' attorneys' fees and costs in the Delaware Case first from insurance proceeds, with any excess to be paid by Messrs. Gooch and Heffron….
>
> The JPI advance of the merger consideration will be deducted from the merger consideration payable to it upon completion of the Back-End Mergers….

ARGUMENT

III. THE SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE AND ADEQUATE

A. THE STANDARD FOR APPROVING THE SETTLEMENT

Delaware law has long favored the voluntary settlement of contested claims. *See, e.g., In re Triarc Cos., Inc. Class & Deriv. Litig.*, 791 A.2d 872, 876 (Del. Ch. 2001); *Kahn v. Sullivan*, 594 A.2d 48, 58-59 (Del. 1991). In reviewing a proposed class action settlement, the Court is "not required to decide any of the issues on the merits," *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986), but instead must determine whether the settlement is fair and reasonable.

The critical "facts and circumstances" considered when assessing a settlement include: (i) strength of the claims; (ii) difficulties in enforcing the claims through the courts; (iii) delay, expense, and trouble of litigation; (iv) the amount of the compromise as compared with the amount of any collectible judgment; and (v) the views of the parties involved. *Polk*, 507 A.2d at 536; *Kahn*, 594 A.2d at 58-59. The most critical issue is the balance between the value of the

benefits achieved for class members and the strength of the claims being compromised. *Barkan v. Amsted Indus., Inc.*, 567 A.2d at 1279, 1284 (Del. 1989); *Polk*, 507 A.2d at 535.

B. ANALYSIS OF THE BENEFITS ACHIEVED THROUGH THE SETTLEMENT

If the Settlement is approved by the Court, the Class Members, whose shares of GFI common stock were exchanged for $6.10 pursuant to the Tender Offer or who will be squeezed out in the Back End Merger, will receive a *pro rata* share of the $10.75 million distribution. The $10.75 million distribution excludes attorneys' fees and expenses, as well as notice costs. In other words, the stockholders will enjoy the whole $10.75 million. Any award of attorneys' fees and expenses will be paid with additional funds from Defendants, and/or their insurers, and will not diminish the stockholders' recovery at all.

The significant $10.75 million recovery, the Dead Hand Tail waiver, and the Back End Merger acceleration reflect not only the strength of the claims, but also Defendants' recognition that Plaintiffs and their Co-Lead Counsel were determined and willing to take these claims to trial. The $10.75 million net settlement fund, when weighed against the risks of continued litigation, supports approval of the Settlement.

1. Analysis of the Strength of the Claims at Trial

Plaintiffs faced significant risks if they decided to forego settlement negotiations and continue litigating their claims. Trial in this matter was scheduled to begin on November 9, 2015.

Plaintiffs argued and would try to prove that GFI stockholders were entitled to receive not only the $0.10 left on the table ($6.20 per share rather than $6.10) as a result of the misconduct and self-dealing by Gooch and Heffron, but also a portion of the consideration the Insiders extracted for themselves and JPI in the $6.10 deal. There was no certainty that Plaintiffs would have been successful at trial, and certainly no guarantee that Plaintiffs could have obtained more than the difference between the $6.20 offer that the Insiders blocked and the $6.10 ultimately paid. Thus, while the parties clearly gave fair weight to the likelihood of a judgment for Plaintiffs, there was significant dispute about Plantiffs' ability to ever achieve more than $6.1 million (ten cents per share for each of the approximately 60 million Class shares), let alone the $10.75 million net settlement fund being paid in the Settlement.

If this case had gone to trial, Plaintiffs are confident they would have established that, because of the self-interest and misconduct of Gooch and Heffron, GFI's public stockholders lost the chance to receive $6.20 rather than $6.10 per share, approximately $6 million in damages to the Class. At trial, Defendants

would have argued that BGC's offer of $6.20 per share was illusory insofar as its contingencies could never be satisfied in the time allotted. The Special Committee, however, repeatedly called for Gooch and Heffron to make up the $0.10 per share difference. The minutes of a Special Committee meeting on February 19, 2015, state that the Special Committee resolved that it:

> recommend to the Board that Jersey Partners Inc., ("JPI") and/or its affiliates pay to the Company's non-JPI shareholders the $0.10 price difference between the $6.20 Offer Price and the Offer price.[36]

Thus, the two outside, independent members of the Board agree that Gooch's and Heffron's liability on at least $6.1 million of Plaintiffs' claim is strong.

Getting a larger award, however, would have been more of a challenge. In addition to the approximately $6 million the stockholders were short-changed through the Tender Offer, Plaintiffs would have argued at trial that part of the consideration Gooch and Heffron negotiated on behalf of themselves and JPI was misdirected away from the Class.

Defendants would have argued that GFI's public stockholders were not entitled to any portion of the consideration received for JPI's GFI holdings. They would have argued that, irrespective of the Tail, BGC's purchase of JPI's shares

[36] Similarly, the February 25, 2015 Schedule 14D-9 for the BGC deal bluntly stated that the Special Committee: ". . . recommend[ed] to the Board that JPI and/or its affiliates pay to the GFI stockholders that are not stockholders of JPI the $.10 price difference between the January 20 Tender Offer Agreement and the [BGC] Offer. …"

provided BGC with additional value that the public stockholders could not; namely, a plan for eliminating a disgruntled but large minority stockholder. Moreover, with respect to both the purchase of JPI's stock and employment agreements, Defendants would have argued that both were agreed to by the GFI Board and disclosed to investors. *See In re Dollar Thrifty S'holder Litig.*, 2010 WL 3503471, at *22 (Del. Ch. Sept. 8, 2010) (explaining that under the *Revlon* standard of review, a court must examine whether the directors were adequately informed and whether their actions were reasonable under the circumstances).

Because litigation presented a significant risk that Plaintiffs would not have recovered at all, let alone recovered more than $6.1 million for the Class, this factor supports approval of the Settlement.

2. The Opinion Of Counsel Who Vigorously Prosecuted This Case Favors Approving The Settlement

The opinion of representative Plaintiffs and their experienced counsel is entitled to weight in determining the fairness of a settlement. See, *e.g.*, *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964); *Polk*, 507 A.2d at 536 (the court considers "the views of the parties involved" in determining the "overall reasonableness of the settlement"). Lead Plaintiffs have reviewed the terms of settlement and found them to be fair and reasonable.[37] Plaintiffs' Counsel, experienced stockholder advocates, negotiated the terms of the Settlement on behalf of Plaintiffs and

[37] Kass Aff. Exs. E & F.

concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Company and its stockholders.

Plaintiffs' Counsel negotiated the Settlement only after extensive briefing, conducting significant fact discovery, and beginning trial preparation. Accordingly, they were well-aware of the strengths and weaknesses of their case, further supporting approval of the Settlement. *See Neponsit Inv. Co. v. Abramson*, 405 A.2d 97 (Del. 1979) (endorsing plaintiff's counsel's informed conclusion that the settlement was fair and in the best interests of stockholders).

Delaware courts also place considerable weight on the adversarial and vigorous nature of the settlement negotiations themselves when assessing the fairness of a class action settlement. *See, e.g.*, *In re Allion Healthcare Inc. S'holders Litig.*, 2011 WL 1135016, at *3 (Del. Ch. Mar. 29, 2011). Here, the Settlement resulted from protracted, and oftentimes heated and volatile, arm's-length negotiations between Plaintiffs' Counsel and sophisticated opposing counsel and in-house counsel.

IV. CERTIFICATION OF THE SETTLEMENT CLASS IS PROPER

Delaware courts liberally interpret Chancery Court Rule 23's requirements to favor class certification. *See Parker v. Univ. of Del.*, 75 A.2d 225, 227 (Del. 1950). This is especially so in stockholder litigation. *See, e.g.*, *Shapiro v. Nu-West Indus., Inc.*, 2000 WL 1478536, at *4 (Del. Ch. Sept. 29, 2000) ("Class

certification . . .serves judicial efficiency since it allows a single court to determine claims involving one set of actions by defendants that have a uniform effect upon a class of identically situated shareholders.").

On September 22, 2015, the Court preliminarily certified the Class to include all record and beneficial holders of common stock of GFI at any time during the period June 30, 2014 through and including the closing of the Back-End Mergers, and their transferees or successors, who were alleged to have been damaged due to Defendants' conduct alleged in the Amended Complaint (the "Class Period").[38] Excluded from the Class are (a) Defendants, GFI, and BGCP; (b) all subsidiaries of or affiliates controlled by CME during the Class Period; (c) all subsidiaries and affiliates of JPI, GFI, or BGCP during the Class Period; (d) all Officers, partners and directors of JPI, GFI, or BGCP during the Class Period; (e) the Immediate Family members of the Individual Defendants or of any other person who, during the Class Period, was an Officer, partner or director of JPI, GFI, or BGCP; and (f) the respective legal representatives, predecessors, successors in interest or assigns of, or entities or trusts controlled by, any of the foregoing in (a)-(e) above.

[38] Kass Aff. Ex. G.

Because Plaintiffs have met the requirements of Chancery Court Rules 23(a) and (b) as set forth below, the preliminarily approved Class should receive final approval for settlement purposes.

A. CERTIFICATION IS PROPER UNDER CHANCERY COURT RULE 23(A)

Chancery Court Rule 23(a) sets forth the threshold requirements that must be met for a class to be certified: (i) numerosity; (ii) common questions of law or fact; (iii) typicality; and (iv) adequacy of the representative parties.

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Ch. Ct. R. 23(a)(1). As of July 31, 2015, GFI had over 170 million shares of common stock outstanding and Plaintiffs estimate there are nearly 61 million shares belonging to the Class. Accordingly, Plaintiffs have satisfied Rule 23(a)(1)'s numerosity requirement.

2. Commonality

Rule 23(a)(2) requires common questions of law or fact before a class may be certified. Commonality exists "where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated." *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991). Here, questions of law or fact common to all plaintiffs in the Class include:

- whether the Individual Defendants breached their fiduciary duties;
- whether CME aided and abetted the Individual Defendants' alleged breaches of duty; and
- whether the Class was harmed by the alleged breaches of duty.

These questions of law and fact are common to all Class members, satisfying Rule 23(a)(2)'s "commonality" requirement.

3. Typicality

Rule 23(a)(3) requires a class representative's claims to be typical of – but not identical to – those of the class. Typicality exists where "all Class members face the same injury flowing from the defendants' conduct." *In re Talley Indus., Inc. S'holder Litig.*, 1998 WL 191939, at *9 (Del. Ch. Apr. 13, 1998). Here, if Defendants breached their duties, all GFI public stockholders were injured in similar fashion, satisfying Rule 23(a)(3)'s typicality requirement.

4. Adequacy

Rule 23(a)(4) requires a representative plaintiff to be an adequate class representative. In *Oliver v. Boston University*, 2002 WL 385553, at *7 (Del. Ch. Feb. 28, 2002), this Court explained that "a representative plaintiff must not hold interests antagonistic to the class, retain competent and experienced counsel to act on behalf of the class and, finally, possess a basic familiarity with the facts and issues involved in the lawsuit." Plaintiffs' interests are identical to those of the Class and there is no suggestion of any conflict between Plaintiffs and the Class.

Plaintiffs also retained competent counsel. Plaintiffs are, therefore, adequate representatives for the Class under Rule 23(a)(4).

B. CERTIFICATION IS PROPER UNDER CHANCERY COURT RULE 23(B)

Once the Court finds that the provisions of Rule 23(a) are satisfied, it must determine whether the action fits within the framework provided for in Rule 23(b). *Nottingham Partners v. Dana*, 564 A.2d 1089, 1095 (Del. 1989).

Rules 23(b)(1)(A) and (B) are satisfied because if separate actions were commenced by members of the Class, Defendants would be subject to the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct and would, as a practical matter, be dispositive of the interests of other Class Members. "'Delaware courts repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2).'" *In re Celera Corp. S'holder Litig.*, 2012 WL 1020471, at *17 (Del. Ch. Mar. 23, 2012) (citation omitted).

V. THE REQUESTED ATTORNEYS' FEE AND EXPENSE AWARD IS REASONABLE

For litigating the Action on a fully contingent basis and obtaining $10.75 million in additional cash compensation for stockholders, waiver of the Tail, and

an expedited Back-End Merger, Plaintiffs' counsel request an award of $3.6 million.[39]

An award of attorneys' fees is warranted where counsel's "efforts result[ed] in the creation of a common fund." *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989) (citations omitted). "The determination of any attorney fee award is a matter within the sound judicial discretion of the Court of Chancery." *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012). In exercising its discretion, the Court should consider: (i) the benefits achieved; (ii) the efforts of counsel and the time spent in connection with the case; (iii) the contingent nature of the fee; (iv) the difficulty of the litigation; and (v) the standing and ability of counsel. *Id.*; *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149-50 (Del. 1980). Each factor supports the award of counsel's requested fees here.

A. THE BENEFITS ACHIEVED

The benefit achieved through litigation is the factor accorded the greatest weight in determining an appropriate fee award. *Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. 2000) ("*Sugarland*'s first factor is indeed its most important – the results accomplished for the benefit of the shareholders. In practical terms, the benefit is the dollar amount of the fund created by the settlement. This is the heart

[39] Plaintiffs' counsel is also requesting a fee of $5 million for benefits conferred on the Class prior to the Settlement. The value of those benefits, and justification for the fee sought, is set forth in the separate brief in support of that fee.

of the *Sugarland* analysis."). Here, the proposed Settlement provides for $10.75 million to be paid to the Class, without reduction for any fee award approved by the Court. Defendants' separate contribution to attorney fees should also be viewed as having been paid for the benefit of the class. *See*, e.g., *Jefferies Group*, 2015 WL 3540662; *Arthrocare*, 2014 WL 5930134. The total value of the Settlement fund is thus $10.75 million *plus* the Fee and Expense Award. Plaintiffs' counsel's fee request in connection with the Settlement Fund means that they are seeking approximately 25% of the total $14.35 million monetary value conferred by the Settlement Fund.[40]

B. THE REQUESTED AWARD IS WITHIN THE RANGE AWARDED IN OTHER STOCKHOLDER LITIGATION

In determining the appropriate amount of fees to award, the Court typically applies a percentage to the monetary benefit obtained in the litigation. As this Court explained in *Julian v. Eastern States Construction Service, Inc.*:

> When the benefit [achieved in the litigation] is quantifiable, such as where the plaintiff's litigation secured a significant financial benefit for the corporation "that they probably could not have achieved otherwise," courts typically apply a "percentage of the benefit" approach.

[40] Plaintiffs' counsel also conferred significant non-monetary corporate benefits in connection with the Settlement. Specifically, as part of the Settlement, (1) CME waived the Tail and (2) the back-end merger will be accelerated. Plaintiffs' counsel are also entitled to a fee for achieving these corporate benefits. *See, e.g.*, *Sugarland Industries v. Thomas*, 420 A.2d 142, 150-51 (Del. 1980); *Tandycrafts Inc. v. Initio Partners*, 562 A.2d 1162 at 1165-66 (Del. 1989).

2009 WL 154432, at *2 (Del. Ch. Jan. 14, 2009) (quoting *Franklin Balance Sheet, Inv. Fund v. Crowley,* 2007 WL 2495018, at *8, 10) (Del. Ch. Aug. 30, 2007). The Court also looks to the stage at which the litigation was settled as a factor in determining the appropriate award. *In re Compellent Tech., Inc. S'holder Litig.*, 2011 WL 6382523, at *25 (Del. Ch. Dec. 9, 2011).

The requested award of $3.6 million in fees and expenses would make the total monetary benefit resulting from the Action $14.35 million, with 25% allocated to fees and expenses. This is within the parameters of awards that the Court of Chancery has found to be reasonable in other stockholder litigation. *See, e.g., Gatz v. Ponsoldt,* 2009 WL 1743760, at *3 (Del. Ch. June 12, 2009) (awarding 33% and finding that it was "within the range of reasonable fee awards in other class action cases"); *In re TD Banknorth S'holders Litig.*, C.A. No. 2557-VCL, at 12-14 (Del. Ch. June 25, 2009) (ORDER) (awarding 27.5% of the $50 million settlement fund, plus nearly $1 million in expenses for pre-trial settlement); *In re ACS S'holders Litig.*, Cons. C.A. No. 4940-VCP (Del. Ch. Aug. 24, 2010) (ORDER) and Stip. of Settlement at 16 (Del. Ch. May 19, 2010) (awarding 25% plus expenses out of $69 million settlement fund); *In re Chaparral Resources, Inc. S'holders Litig*., Cons. C.A. No. 2001-VCL (Del. Ch. Mar. 13, 2008) (ORDER) (awarding attorneys' fees of $12,250,000, or 33% of $36,780,554 settlement, and expenses of $1,089,298.10); *Del Monte,* Tr. at 57 (awarding $22.3 million in

aggregate fees and expenses, and observing that the amount "represents approximately 25 percent of the $89.4 million consideration, which is an appropriate percentage.")

1. The Efforts of Counsel

The time and effort of counsel serves as a "backstop check" on the reasonableness of a fee award. *Franklin Balance Sheet*, 2007 WL 2495018, at *14; *see also 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"). This factor has two separate components – time and effort – with effort being the more important factor of the two. *Del Monte*, 2011 WL 2535256, at *12-13.

In total, Plaintiffs' counsel here expended 7,789.5 hours in the prosecution and settlement of this Action through September 17, 2015. *See* Transmittal Affidavit of Jonathan M. Kass ("Kass Aff."), Ex. A (Affidavit of Mark Lebovitch) at ¶ 3; Kass Aff., Ex. B (Affidavit of Michael Wagner) at ¶5; Kass Aff., Ex. C (Affidavit of Kevin Davenport) at ¶¶ 3-4; Kass Aff., Ex. D (Affidavit of Mary Thomas) at ¶¶ 3-4. The services provided by Plaintiffs' counsel included: investigating the relevant facts; drafting detailed complaints; reviewing and analyzing nearly 100,000 pages of discovery from Defendants and third parties; engaging in motion practice to obtain discovery from certain third parties; researching the applicable law to formulate litigation and negotiation strategies;

working with financial and employment compensation experts to evaluate the propriety of the Tender Offer as well as the employment contracts provided to Gooch and Heffron; working extensively on an opening injunction brief and its supporting documentation; negotiating the terms of the Settlement; and preparing the Settlement documents.

As explained in *Del Monte*, more important than the hours is "what plaintiffs' counsel actually did." In that case, as in this case, "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 well-qualified and highly experienced in prosecuting stockholder litigation, particularly given the compressed schedule in which this litigation took place.

Plaintiffs' Counsel also expended their time efficiently. As reflected in the affidavits of counsel, Counsel invested substantial time and expenses to prosecute this Action, and the requested fee is reasonable when viewed in comparison to these hours and expenses. At Plaintiffs' counsel's current hourly billing rates, the "lodestar" value of their time from inception of the case is $4,195,428. *See* Kass Aff., Ex. A at ¶¶ 3-4; Ex. B at ¶¶ 5; Ex. C at ¶¶ 3-4; Ex. D. at ¶¶ 4-5.

Counting all hours spent from the inception of the case, the requested $3.6 million settlement fee award represents an effective hourly rate of $462. If

examining only the hours spent after the Tender Offer, which Plaintiffs do not believe captures all of the work leading to the Settlement, the effective hourly rate would be $1,782. Both are 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 20-25 (Del. Ch. Nov. 15, 2011) (TRANSCRIPT) (finding case was "vigorously litigated" and awarding fee which amounted to approximately $1900 per hour); *Berger v. Pubco Corp.*, 2010 WL 2573881, at *1 (Del. Ch. June 23, 2010) (awarding fee which translated to an average hourly rate of $3,450, which "is nestled within the range of hourly rates found among Court of Chancery monetary-benefit cases" and noting the benefit was realized "only at the conclusion of lengthy and thorough litigation by counsel"); *In re Genentech, Inc. S'holder Litig.*, C.A. No. 3911-VCS at 8 (Del. Ch. July 9, 2009) (TRANSCRIPT) (awarding fee of over $5,400 per hour); *Seinfeld*, 847 A.2d at 339 (finding "counsel performed at the highest professional level" and awarding in excess of $2,600 per hour). *See also Louisiana Municipal Police Employees' Ret. Syst. v. Crawford*, C.A. No. 2635-CC (Del. Ch. June 8, 2007) (ORDER) (approving $20 million attorneys' fee award, equating to lodestar multiplier of approximately 6.5 and implied hourly rate of approximately $2,783.22); *Franklin Balance Sheet*, 2007 WL 2495018, at *14 (awarding fee with implied hourly rate of $4,023); *Loventhal v. Silverman*, C.A. No. 306-N (Del. Ch. Aug. 19, 2004) (ORDER) (awarding fee and expenses implying approximately

$2,400 per hour); *In re AXA Fin. Inc. S'holders Litig.*, 2002 WL 1283674, at *7 (Del Ch. May 22, 2002) (fee award represented implied hourly rate of more than $2,630); *In re NCS Healthcare S'holders Litig.*, 2003 WL 21384633, at *3 (Del. Ch. May 28, 2003) (fee represented hourly rate of approximately $3,030 per hour); *Dagron v. Perelman*, C.A. No. 15101-CC, at 49, 51 (Del Ch. Aug. 29, 1997) (TRANSCRIPT) (awarding fee equivalent of $3,500 per hour).

Additionally, the $3.6 million fee, when compared to Plaintiffs' lodestar of $1,099,509 since the Tender Offer, represents just over a three times multiplier (3.274)[41] which is below the lodestar multiple of fees awarded by the Court of Chancery in many cases. *See, e.g., In re Genentech*, at 7, 42, 48, (TRANSCRIPT) (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"); *Louisiana Mun. Police Employees' Ret. Sys. v. Crawford*, C.A. No. 2635-CC (Del. Ch. June 8, 2007) (ORDER) (commenting on the "vigorous discovery" and the "great deal of effort" put into the case by plaintiff's counsel and awarding a lodestar multiplier of 6.5); *In re Digex, Inc. S'holder Litig.*, C.A. No. 18336, at 141-47 (TRANSCRIPT) (Del. Ch. Apr. 6, 2001) (noting that the "case involved

[41] If the combined requested mootness and Settlement fee are considered ($8.6 million), the combined fee represents approximately a two times multiple (2.05) of Plaintiffs' Counsel's (approximately $4.2 million) lodestar from the beginning of the case.

complex legal questions and required acute legal skills" and awarding a fee representing a lodestar multiplier of 9).

2. The Contingent Nature of the Fee

Plaintiffs' counsel undertook this representation on a contingency basis, with the understanding that they would devote many hours of hard work to the prosecution of this Action without any assurance of receiving compensation for their services, or even reimbursement of out-of-pocket expenses. Additionally, due to the fluidity of the takeover process and Defendants' unpredictable actions, Plaintiffs' counsel faced a very real risk that they would not recover anything. *See, e.g.*, *Del Monte*, 2011 WL 2535256, at *13 (contingency risk plaintiffs' counsel undertook in refusing the "relatively safe course of settlement routinely for disclosures" constituted the "assumption of *bona fide* contingency risk" and "supports an award at the higher end of the range'); *In re Emerson Radio S'holder Deriv. Litig.*, 2011 WL 1135006, at *6 (Del. Ch. Mar. 28, 2011) ("plaintiffs' counsel here did not get into the case with an obvious and well-marked exit in sight. The defendants litigated vigorously, had strong defenses, and could have forced the plaintiffs to go the distance. Accordingly, in undertaking this representation, plaintiffs' counsel incurred true contingent fee risk."). Delaware courts recognize that where, as here, counsel's compensation is contingent on achieving a successful result, a premium over counsel's hourly rate is appropriate.

See Chrysler Corp.v. Dann, 223 A.2d 384, 389 (Del. 1966) (affirming award of attorneys' fees in part "in consideration of the contingent nature of the litigation").

C. THE STANDING AND ABILITY OF COUNSEL

Plaintiffs' counsel are known to this Court and among the foremost firms in the nation representing stockholders in transactional and corporate governance litigation. The fees sought reflect their standing, experience and the benefits they delivered to the Class. Plaintiffs' counsel had to, and did, employ their full set of skills in hard-fought litigation against a formidable team of defense lawyers, including some of the preeminent corporate representatives in the world.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that the proposed Settlement is fair, reasonable, and adequate and should be approved. In addition, Plaintiffs' Counsel's request for a Fee and Expense Award of $3,600,000.

DATED: November 9, 2015

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GFI GROUP INC.	)	CONSOLIDATED
STOCKHOLDER LITIGATION	)	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 10,567 words, which were counted by Microsoft Word 2010.

Date: November 9, 2015

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CERTIFICATE OF SERVICE

I, Mary S. Thomas, hereby certify that, on November 9, 2015, I caused a copy of the foregoing *Plaintiffs' Motion for Final Approval of Proposed Settlement and Plan of Allocation, Certification of the Class, and An Award of Attorneys' Fees*, supporting *Brief*, and *Transmittal Affidavit of Jonathan M. Kass* to be filed and served upon the following counsel of record via File & Serve*Xpress*:

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