

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

In re GFI GROUP INC. STOCKHOLDER ) CONSOLIDATED  
LITIGATION ) C.A. No. 10136-VCL

**PLAINTIFFS' THIRD SUPPLEMENT TO THE VERIFIED CLASS  
ACTION COMPLAINT**

Pursuant to Chancery Court Rule 15(d), and this Court's oral ruling on February 6, 2015, Plaintiffs Maurene Al-Ammary and Robert Michocki ("Plaintiffs") hereby supplement the Verified Class Action Complaint (the "Complaint")<sup>1</sup> in this action to include additional facts and allegations about transactions, occurrences, and events that occurred since the filing of the Complaint.

1. Defendants Gooch, Heffron and Cassoni breached their fiduciary duties by acting contrary to the independent recommendations of the Special Committee, by restricting and impairing the Board's ability and opportunity to consider the BGC offer, by misleading GFI's public stockholders about the

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<sup>1</sup> All capitalized terms, unless stated otherwise, have the same meanings ascribed in the Complaint, filed on September 16, 2014 (Trans ID 55938487), in Plaintiffs' [Proposed] Supplement to Verified Class Action Complaint, filed with Plaintiffs' Motion for Leave to Supplement the Complaint on January 13, 2015 (Trans ID 56578115), which was granted by the Court on January 15, 2015, and in Plaintiffs' [Proposed] Second Supplement to the Verified Class Action Complaint, filed with Plaintiffs' Motion for Leave to File [Proposed] Second Supplement to the Verified Class Action Complaint on January 25, 2015 (Trans ID 56666544), which was granted by the Court on January 30, 2015.

Board's and Special Committee's positions concerning BGC's tender offer, by stripping the Special Committee of its ability to consider and negotiate strategic alternatives, and by handing control of the process over to GFI management – Gooch and Heffron. Defendants Gooch and Heffron have further breached their fiduciary duties by using GFI's resources to advance their personal agendas, misleading stockholders, and misrepresenting that the GFI Board recommends rejection of the BGC offer.

2. Misleading information released by Gooch and Heffron without the consent or approval of the Special Committee has altered the mix of information available to GFI's public stockholders, preventing them from making an informed decision on whether to tender their shares to BGC. Gooch, Heffron and Cassoni have prevented the Special Committee and the Board from discharging their fiduciary obligations to the stockholders. In addition, the muddled process that Gooch, Heffron and Cassoni have brought about has now led to a Fitch Ratings downgrade of the Company. Most importantly, these disloyal directors are jeopardizing the stockholders' ability to realize the 90% or greater premium for their shares that BGC is offering after an extended auction process.

### **Recent Developments**

3. After Defendants Gooch, Heffron and Cassoni voted against the Special Committee's recommendation that the January 20 Revised BGC Proposal

was likely to lead to a “Superior Proposal” at the January 22 Board Meeting, the GFI Board entered into the amended Merger Agreement with CME at a \$5.85 per share price, despite an outstanding higher offer from BGC.

4. On January 23, 2015, GFI announced that it had rescheduled the special meeting at which its stockholders would vote on the Proposed Acquisition from January 27, 2015 to January 30, 2015.

5. Gooch proceeded to author two open letters to GFI’s stockholders (the “Gooch Open Letters”). First, on January 27, 2015, JPI and Gooch filed a Schedule 14D-9 with the SEC, recommending that GFI’s shareholders not tender their stock to BGC and using GFI’s proxy solicitor, MacKenzie & Co., to help withdraw any previously tendered shares. Second, on January 29, 2015, Gooch issued a note to GFI’s public stockholders, again urging them to vote in favor of the proposed transaction with CME and again focusing on the supposed conditionality and execution risk of BGC’s offer.

6. GFI’s stockholders voted down the Proposed Acquisition at the January 30 special meeting of stockholders. CME and GFI then announced the termination of the Merger Agreement. According to Amendment 8 to the Schedule 14D-9 filed by GFI on February 5, 2015 (“Amendment 8”), after the stockholders rejected the CME Merger, the Board met later in the day on January 30 and “determined, by a majority vote of the directors upon recommendation of the

Special Committee,” to terminate the agreements related to the CME Merger. The amendment does not disclose which directors were part of that “majority vote” and misleads stockholders regarding the Special Committee’s recommendation.

7. During a February 6, 2015 telephonic conference with this Court, counsel for the Special Committee disclosed that the Special Committee had not merely recommended termination of the CME Agreements. February 6, 2015 Transcript (“Tr.”) pp. 28-29. The Special Committee actually recommended a five-step process which included termination of the CME agreement, signing of the BGC agreement, satisfaction of the BGC conditions (including the Board Control Condition (defined below)), supplying the disclosure schedules, and taking other actions to consummate the BGC deal. *Id.* After stockholders voted down the CME deal, the Special Committee wanted to negotiate BGC back to \$6.20 per share and sign up a deal with BGC. *Id.* at 34.

8. Gooch and Heffron, however, refused to allow the Special Committee to discuss BGC’s \$6.10 offer (set to expire on February 3, 2015), at the January 30, 2015 Board meeting, which lasted only five minutes. *Id.* at 29. Instead, Gooch, Heffron and Cassoni voted to terminate the CME agreements despite protestations by the Special Committee members that they could not cast an informed vote on termination if they were not allowed to ask questions. *Id.* Gooch, Heffron and Cassoni simply said that they did not need the votes of the Special Committee

members and proceeded to vote on the CME termination without the Special Committee members' participation. *Id.*

9. Later on January 30, GFI issued a press release (the "January 30 Press Release"), entitled "GFI Board Announces Exploration of Strategic Alternatives," 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."

10. The January 30 Press Release was released to the Company's stockholders (with BGC's tender offer scheduled to close on February 3, 2015) as if it represented the view of the full Board, but it did not disclose whether there had been a Board vote on exploring strategic alternatives. Similarly, Amendment 8 (filed two days after the tender offer was scheduled to close) disclosed that at the January 30, 2015 meeting "the Board also determined to explore strategic alternatives," but did not state what, if any, vote was held or whether and how Gooch, Heffron, Cassoni and the Special Committee members voted on the issue.

11. GFI issued another press release, on February 2, 2015 entitled "GFI Group Board Comments on BGC Tender Offer" (the "February 2 Press Release"). The February 2 Press Release went even further in misrepresenting the Board's position, stating:

The GFI Board urges shareholders to take no action on the BGC tender offer at this time. As announced on Friday, the GFI Board is actively engaged in a process to explore strategic alternatives with any and all interested parties to maximize shareholder value for all shareholders. These alternatives could include, among others, joint ventures, mergers and/or acquisitions. The Board has previously reviewed the unsolicited BGC tender offer, which contains provisions and conditions that make it highly unlikely to succeed in providing any value for shareholders. The Board urges GFI shareholders not to tender into the BGC tender offer and wait for the Board to conduct its strategic review.

12. This press release did not represent the views of the Special Committee, which is charged with considering and recommending strategic alternatives for GFI. On February 3, 2015, the Special Committee informed Plaintiffs that the Special Committee directors had not voted to urge GFI shareholders against tendering their stock to BGC. Nor did the Special Committee directors vote to not take any action in response to the BGC Tender Offer after the termination of the Merger Agreement with CME or to explore new strategic alternatives (with a \$6.10 tender offer from BGC set to expire on February 3, 2015). The Special Committee further informed Plaintiffs that its members had not voted to issue the February 2 Press Release, were not given a draft of the February 2 Press Release, and did not even know that GFI intended to issue the February 2 Press Release.

13. During the February 6, 2015 telephonic conference with this Court, counsel for the Special Committee confirmed that the press releases were not accurate and that the process leading to their issuance was contrary to past precedent. The Special Committee did not know the releases were to be issued and the Special Committee was not given an opportunity to comment on the releases. Tr. at 28. Thus, the Special Committee has made clear that the January 30 and February 2 Press Releases were issued unilaterally by Gooch and Heffron in an effort to influence the Company's public stockholders' decisions on BGC's offer, and that they misrepresented the Board process in order to do so.

14. Amendment 8 also confirmed the truth of the representations made by the Special Committee. Amendment 8 admitted that:

On February 2, 2015, GFI issued a press release in which the Board continued to urge GFI stockholders to take no action on the [BGC] Offer at this time and issued a letter to GFI employees that included the Board's continued recommendation against the Offer.

Amendment 8 then acknowledges that "[l]ater that day, the Board met." Thus, it is clear that the "Board" did not authorize the February 2 Press Release, the letter to employees, or the recommendations contained therein.

15. Amendment 8 further confirmed that the Special Committee disagreed with the recommendations and views set forth in the January 30 and February 2 Press Releases. Amendment 8 states:

On February 2 and February 4, 2015, the members of the Special Committee informed GFI management that they did not agree with the majority of the members of the Board in the determination to continue to urge GFI stockholders to take no action on the Offer at this time and to the issuance of the February 2 press release reflecting such position.

Thus, as the BGC tender offer approached its closing date on February 3, 2015, Gooch and Heffron issued unauthorized statements and misrepresentations regarding the Board's position and the Special Committee's position on the BGC tender offer.

16. On February 4, 2015, BGC issued a press release disclosing, among other things, that it had received tenders representing 43.3% of GFI's outstanding stockholders. Because Gooch and Heffron could not tender to BGC at any price, even if they did not personally oppose any transaction with Howard Lutnick, approximately 70% of the publicly available GFI shares have already tendered to BGC.

17. BGC's February 4, 2015 disclosure also strongly indicates that Gooch and Heffron's intentionally false January 30 and February 2 press releases actually had their intended effect of inducing GFI stockholders not to tender so as to block BGC from satisfying the minimum tender condition.

18. Amendment 8 further states that at the February 2, 2015 GFI Board meeting, the Board discussed potential strategic transactions and that "the Board

authorized *management* to engage in discussions with third parties and to further explore these potential transactions.” (Emphasis added.) Amendment 8 fails to disclose which directors on the Board gave such authorization or the existence of or bases for any objections by the members of the Special Committee to this supposed decision.

19. Gooch and Heffron, with the support of Cassoni, have stripped the Special Committee of its authority to consider strategic transactions and transferred that authority to “management” (*i.e.*, Gooch and Heffron). Gooch and Heffron have persistently opposed all offers by BGC in favor of transactions in which they have a personal financial interest adverse to the interests of GFI’s other stockholders, or in favor of backtracking from the sale process they began, because they prefer controlling GFI, regardless of where its stock trades, to becoming minority stockholders with BGC and Howard Lutnick as their controller.

20. Thus, allowing Gooch and Heffron to represent GFI in an exploration of strategic alternatives is not in good faith because they have indicated they are not willing to do a deal with Lutnick, even if doing so maximizes value for GFI’s public stockholders.

21. Moreover, no independent director can in good faith task Gooch and Heffron to negotiate with other potential acquirers as a GFI representative. In light of the Dead Hand Tail provision in the CME Support Agreement, Gooch and

Heffron are not allowed to vote their shares in favor of *any alternative deal* for a period of twelve (12) months following the January 30, 2015 termination of the CME Merger Agreement. Thus, no matter how much or little a third party offers, Gooch and Heffron have no ability to vote in favor of such transaction for a year. Gooch and Heffron's personal interest in any third party negotiations runs to their ability to maintain their jobs or other perquisites or benefits, and not to maximizing the value of their shares in a sale transaction.

**Gooch and Heffron Fundamentally Impair the GFI Board Process**

22. Gooch and Heffron have breached their fiduciary duties and violated 8 *Del. C.* §§ 141(a) and (e) by their improper conduct of Board meetings.

23. Gooch and Heffron set the agenda for Board meetings and dominate the discussions and deliberations. Tr. at 32-33. Gooch and Heffron have also sought to deny the Special Committee members full participation in recent Board meetings.

24. First they refused to allow the Special Committee's counsel to speak at the meetings. *Id.* at 29-30. More recently, they have barred the Special Committee's counsel from meetings altogether, despite the protests of the committee members that they need to consult with counsel. *Id.* at 30.

25. While the Board would meet promptly to approve CME's various bids, the Special Committee has had difficulty getting Gooch to schedule Board

meetings to consider BGC's offers. *Id.* at 32. Sometimes the insiders refuse to let a Board meeting take place at all. *Id.*

26. As long as they were able to work with CME to match the earlier BGC offers, Gooch and Heffron abstained when the Board voted on the competing transactions. Once the BGC deal price hit \$5.85 per share, however, they ceased abstaining and used their fiduciary power as directors to protect their personal financial interests without regard to what is best for GFI's public stockholders. *Id.* at 33. Clearly, BGC's bid was the maximum value available because Gooch and Heffron could no longer match on an economic basis. Thus, they deliberately chose to violate their duty of loyalty by exercising their fiduciary power for personal gain.

27. Amendment 8 also states:

**The Board has authorized the exploration of all strategic alternatives.**

The board is willing to explore all potential strategic alternatives with any and all interested parties to maximize shareholder value for all shareholders. These alternatives could include, among others, joint ventures, mergers and/or acquisitions. GFI has been approached by parties expressing interest in exploring transactions that could include a potential sale of GFI. *The Board has authorized GFI management to explore these potential transactions as well as to engage in discussions with other parties that could lead to other potential transactions.* The Board has not made a determination to enter into any transaction at this time or

in the future, and there can be no assurances that any such transaction can or will be completed. ***GFI does not intend to provide updates*** unless and until the Board approves a specific transaction or otherwise determines that disclosure is appropriate or necessary.

(Emphasis added.)

28. Thus, Amendment 8 again contains misleading and incomplete information regarding the positions of the Board, the Special Committee and the individual directors on the Board. It claims that potential purchasers have contacted GFI but fails to disclose the potential purchasers or when they contacted GFI and whom they contacted. It admits that management—Gooch and Heffron—are controlling discussions with potential transaction partners. Moreover, it says GFI does not intend to provide updates on Gooch’s conduct of these discussions.

29. Counsel for the Special Committee has confirmed that even though the Board had vested the Special Committee with exclusive power to pursue transactions, “it’s the insiders that are now negotiating with BGC.” Tr. at 30. Gooch and Heffron have not apprised the Board of the status of the negotiations and other relevant facts and will continue to refuse to do so unless the Special Committee members agree not to disclose the information to their counsel for the purpose of obtaining legal advice. *Id.*

30. Even if Gooch and Heffron were actually willing to do a deal with BGC, it is bad faith for the Board to allow those conflicted fiduciaries to lead the

discussions. As stated above, Gooch and Heffron cannot tender into *any* BGC offer, regardless of price. Thus, they have no interest in negotiating for the best possible price. BGC has already offered \$6.20 per share if the Board promptly satisfied the Board condition, and Gooch, Heffron and Cassoni prevented the Special Committee from meeting that condition, costing stockholders at least ten cents per share. Even now, with BGC offering \$6.10 per share, Gooch and Heffron would predictably negotiate for personal protections or benefits, which will either force BGC to lower the tender offer price, or will divert value to personal benefits that BGC would otherwise be able to provide to public stockholders.

31. BGC's tender offer was scheduled to close on February 3, 2015. Gooch and Heffron boxed out the Special Committee and misled stockholders on January 30, 2015 and February 2, 2015 in an effort to discourage the public stockholders from tendering.

32. On February 4, 2015, BGC extended the tender offer until February 19, 2015. BGC announced that 37.9 million shares had been tendered, which, including 17.1 million shares already owned by BGC, represented 43.3% of the outstanding shares of GFI and 70% of the shares not owned by GFI executives and directors. The only remaining conditions to BGC closing its tender offer are that at least 45% of GFI's outstanding shares be tendered and that it be able to appoint

nominees that represent two-thirds of the Board (the “BGC Board Condition”). Thus, if only 1.7% of the remaining outstanding shares tender and the Board agrees to the BGC Board Condition, the tender offer can close.

33. While Gooch, Heffron and Cassoni continue to insist BGC’s offer is conditional and to question BGC’s funding, the Special Committee disagrees with these objections. Tr. at 33. The three other Board members (i.e. Gooch, Heffron and Cassoni), however, have prevented negotiations to resolve those issues. Once BGC raised its offer to \$5.85, Gooch, Heffron and Cassoni would no longer accept the Special Committee’s conclusion that BGC’s offer was reasonably likely to lead to a Superior Proposal, thereby preventing discussions with BGC to resolve any concerns about conditionality. *Id.* at 33-34. The insiders’ contention that the BGC offer is too conditional is belied by their recent efforts, after usurping the Special Committee’s negotiating role, to attempt to negotiate \$6.10 from BGC for themselves. *Id.* at 35. If BGC’s \$6.10 offer is good enough for Gooch and Heffron to want it, then it is good enough for the disinterested stockholders. *Id.* at 36.

34. As the Special Committee has recognized, having Gooch and Heffron now explore supposed strategic alternatives at this late date makes no sense. *Id.* at 34. Gooch and Heffron spent months exploring alternatives before signing a deal with CME and creating the Special Committee a year ago. Tr. at 34-35. The

Special Committee then spent months considering alternatives and a lengthy and vigorous auction between BGC and CME/Gooch has now raged for more than five months. *Id.* at 35. Gooch and Heffron did not think a further market check was necessary when they advocated immediate acceptance of CME's \$5.85 offer, so their assertion that BGC's \$6.10 offer should be subjected to further market testing is disingenuous. *Id.* at 35. They are now demanding a new market process because the tail on the Support Agreement prevents *them* from participating in BGC's \$6.10 offer.

35. Gooch, Heffron and Cassoni's disloyal actions are actively harming the interest of GFI's public stockholders. For example, on February 3, 2015, Fitch Ratings ("Fitch") downgraded GFI's long-term Issuer Default Rating and senior unsecured debt rating to 'B' from 'BB-' and revised the Company's Rating Watch status to Evolving from Positive. Fitch cited increased professional fees related to the Proposed Acquisition by CME as a reason for the weakening of GFI's financial and credit profile over the nine months ending September 30, 2014, and noted that:

The Evolving Watch reflects Fitch's view that there are a range of potential rating outcomes that could result in higher or lower ratings for GFI. For example, if GFI was acquired by another, more highly-rated entity, this would positively impact GFI's ratings. Conversely, if GFI is unable to close on a material transaction, Fitch believes that this would call into question the long-term viability of GFI's business on a stand-alone basis, which could put further pressure on the ratings.

## **Defendants Gooch, Heffron, and Cassoni Continue To Breach Their Fiduciary Duties To GFI's Public Stockholders**

36. Gooch, Heffron and Cassoni continue to breach their fiduciary duties to GFI's public stockholders, depriving them of the opportunity to consider a value-maximizing transaction based on complete and non-misleading information.

37. Gooch and Heffron stopped abstaining from Board votes concerning potential strategic transactions, stripped the Special Committee of its authority to consider strategic transactions, and transferred that authority to themselves. Their votes, together with Cassoni's, previously prevented the Special Committee from negotiating with BGC to enhance the tender offer terms and maximize the value of GFI. Their votes will now preclude the BGC Board Condition and prevent the Company's public stockholders from selling their shares to BGC.

38. Amendment 8 also included the Gooch Open Letters in the section on "Recommendations of the Special Committee and Board." These letters were purportedly authored by Gooch "in his capacity as controlling stockholder of JPI," to the GFI stockholders "urging them not to tender their shares to BGC." Thus, Gooch used the resources of GFI to advance his personal agenda and solicit rejection of the BGC offer as a purported recommendation of the GFI Board.

39. Moreover, Gooch and Heffron have acted without authorization of the Board to mislead GFI's public stockholders about the Board's plans for the

Company in an effort to prevent GFI's public stockholders from tendering their shares to BGC. Gooch and Heffron are doing everything possible to deter stockholders from accepting BGC's \$6.10 offer, including claiming that a redundant market test is necessary, despite an extensive prior canvas of the market, a more than five month auction, and the failure of other bidders to come forward.

40. Plaintiffs have no adequate remedy at law. BGC has offered a 90% to 100% premium for GFI. Loss of the BGC offer will result in a drop of as much as 50% in the market price of GFI's stock, resulting in the loss of hundreds of millions of dollars to GFI's public stockholders. While JPI owns approximately 37% of GFI's outstanding stock, Gooch and Heffron indirectly own only about 70% of those shares. Thus, their indirect interest in GFI's stock would not be sufficient to satisfy a money judgment. Moreover, because the GFI shares are owned by JPI, the shares may not be available to satisfy a judgment. Furthermore, these GFI shares are subject to the restrictions of the tail in the Support Agreement. Therefore, damages are not an adequate remedy for loss of the BGC offer.

WHEREFORE, Plaintiffs demand judgment in their favor and in favor of the Class and against Defendants as follows:

- A. A declaration that this action is properly maintainable as a class action;
- B. A declaration that Gooch, Heffron and Cassoni have breached their fiduciary duties to GFI's public stockholders;

- C. An injunction prohibiting Gooch, Heffron and Cassoni from preventing the proper functioning of the GFI Board, including by refusing to schedule or delaying Board meetings, restricting access of the Special Committee's members to advice during Board meetings, and/or preventing discussion of the BGC offer at Board meetings;
- D. An injunction requiring Gooch, Heffron and GFI to correct the January 30, 2015 and February 2, 2015 Press Releases and Amendment 8 to provide complete and accurate disclosure of all material facts including with respect to:
  - 1. the January 30, 2015 and February 2, 2015 Board meetings,
  - 2. the basis for Gooch, Heffron and Cassoni's contention that the BGC offer is too conditional;
  - 3. the transfer of authority to negotiate strategic transactions from the Special Committee to management;
  - 4. any communications between GFI and BGC or third parties regarding a potential transaction since January 30, 2015.
- E. An injunction against Defendants Gooch and Heffron prohibiting them from representing GFI in any further communications with BGC or third parties regarding a potential transaction;
- F. An injunction against Defendants Gooch and Heffron participating in any Board vote on the BGC Board Condition;
- G. A declaration that the Special Committee has authority to negotiate and enter into a confidentiality agreement on behalf of GFI with BGC and reconfirming the Special Committee's exclusive authority to negotiate with BGC and any other potential acquirors;
- H. A declaration that it is a breach of fiduciary duty and an act of entrenchment for Gooch, Heffron and/or Cassoni to prevent an

increase in the size of the GFI Board to nine directors to permit satisfaction of the BGC Board Condition of the BGC offer;

- I. A mandatory injunction directing the GFI Board to increase the number of directors, fill the newly created directorships, and take other necessary measures to satisfy the BGC Board Condition;
- J. Awarding Plaintiffs and the Class appropriate damages, plus pre- and post-judgment interest;
- K. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and
- L. Granting other and further relief as this Court may deem just and proper.

Dated: February 7, 2015

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**CERTIFICATE OF SERVICE**

I, Mary S. Thomas, hereby certify that, on February 7, 2015, I caused a copy of the foregoing *Third Supplement to the Verified Class Action Complaint* to be filed and served upon the following counsel of record via File & ServeXpress:

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