

C.A. No. 2022-0778

**PUBLIC VERSION FILED
ON SEPTEMBER 7, 2022**

¹ Geneve, Lapin, Thung, and Herbert are collectively referred to as “Defendants.”

by an advisor as “Project Trifecta”—IHC would be left with:

- A massive pile of cash (worth approximately \$40 per share for a company trading around \$45 per share);
- A minority stake in the acquirer of one of the divested assets, Iguana Capital, Inc. (“Iguana Capital”); and
- A legacy segment, the “Agency Business,” that the Company’s management intended “to invest, develop and expand ... into a much larger and profitable operation.”

2. The Company never publicly provided any rationale for the Project Trifecta sales. In fact, because IHC did not hold quarterly investor calls, the Company’s last interaction with investors was its annual meeting in November 2020, where management presented a rosy picture of the business and identified no pressing strategic imperative to break up the business. IHC’s internal materials were equally opaque on the purpose of the Trifecta sales. In response to Plaintiff’s books-and-records demand, the Company produced, among other things, formal Board materials relating to the asset sales. Nowhere in those materials is there any explanation of why the Company chose to sell most of its assets, nor is there any evidence of discussions about the expected use of proceeds from those sales.

3. About three weeks after the last of the Project Trifecta sales was announced, IHC’s majority stockholder, Geneve, began speaking to lawyers about purchasing the Company.² After a few weeks of desultory back-and-forth, Geneve

² The “Geneve Buyout” and with the Project Trifecta sales, the “Transactions.”

and IHC agreed that Geneve would acquire the remaining shares of IHC that it did not already own for \$57 per share in cash.

4. Geneve conditioned its offer to buy the remaining pieces of IHC on approval by a Special Committee and a majority of the minority IHC stockholders. But this attempt at imposing *MFW* conditions was too little, too late. The Geneve Buyout was part of an integrated plan following the already-completed Project Trifecta sales, and a Special Committee should have been installed before any of those asset sales took place.

5. The definitive proxy (“Proxy”) distributed to IHC stockholders claims that Geneve’s internal consideration of a take-private transaction did not “beg[i]n” until “after” the last of the three asset sales. But that assertion is impossible to credit. In the absence of the Geneve Buyout, the Project Trifecta sales would have left IHC with an absurd level of cash (\$602 million compared to the \$21 million on its balance sheet at the end of the first quarter 2021). It defies logic that Geneve or the Board were not contemplating some further transaction beyond the Project Trifecta sales.

6. The Company’s own documents reveal that the Geneve Buyout was the final step in the privatization of IHC. The belated Special Committee’s financial advisor, Perella Weinberg Partners (“Perella Weinberg”), had originally been considered as an advisor for Geneve. After switching sides, Perella Weinberg gave a presentation to the Special Committee, describing the Geneve Buyout as the “final

step in the winding down and privatization of IHC.” The unusual structure of the Geneve Buyout—in which the merger consideration was funded entirely out of the target’s working capital—suggests that the Project Trifecta asset sales were done to fund the Geneve Buyout, consistent with regulatory leverage requirements unique to the insurance space in which IHC and Geneve both operate.

7. The stockholder vote to approve the Geneve Buyout was uninformed. In addition to its inaccurate claims that the Project Trifecta sales and Geneve Buyout were unrelated, the Proxy also failed to disclose troubling facts about how Perella Weinberg was retained, conflicts relating to Special Committee members, and material details about bonus payments to members of management that would be triggered by the Geneve Buyout.

8. For all these reasons, Defendants bear the burden of proving a fair process and fair price. They will be unable to do either. As detailed above, there were serious process concerns relating to advisor selection and fiduciary conflicts. Geneve chased away an alternate bidder who was interested in acquiring a controlling equity stake. Perella Weinberg was contingently compensated—distorting its incentives. And its fairness analysis appears to have badly undervalued

both of the Company's remaining non-cash assets after the Project Trifecta sales.

PARTIES

9. Plaintiff Lawrence Bass was, at all relevant times, a beneficial owner of shares of IHC common stock. At closing, his IHC shares were cashed out for \$57 per share.

10. Defendant Geneve Holdings, Inc. is a Delaware corporation. Geneve is a privately held holding company that, through its subsidiaries, provides various types of insurance, with a focus on life and health insurance. Geneve's predecessor entity, Netter International, Ltd., was founded by Edward Netter in 1971. Today, Edward Netter's widow, Barbara Netter, is Geneve's majority owner. Other members of the Netter family own the balance of Geneve.

11. Defendant Steven Lapin was, at all relevant times, the Vice Chairman of the Company's Board and Geneve's Chairman and CEO. The Company's public filings stated that Lapin was not "independent under the NYSE's standards."

12. Defendant Roy T.K. Thung was, at all relevant times, the Company's CEO and Chairman of the Board, as well as a director and executive officer of Geneve. The Company's public filings state that Thung was not "independent under the NYSE's standards."

13. Defendant Teresa Herbert was, at all relevant times, an IHC director. Herbert served as IHC's Chief Financial Officer from 2016 through June 30, 2021,

when she became the Company's President. At all relevant times, Herbert also served as the Vice President-Finance and Treasurer of Geneve.

OTHER RELEVANT ENTITIES AND PERSONS

14. Independence Holding was a Delaware corporation with its principal place of business in Stamford, Connecticut.³ Independence Holding was a holding company that largely distributed insurance products through its subsidiaries.

15. JAB Holdings B.V. ("JAB") is a Netherlands *besloten vennootschap* (a type of Dutch limited liability company).

16. David T. Kettig was the Company's President and Chief Operating Officer.

INCORPORATION BY REFERENCE

17. As noted above, Plaintiff sent a books-and-records demand to the Company to investigate the Transactions. In connection with that demand, Plaintiff and the Company entered into a confidentiality agreement (attached hereto as Exhibit 1) which contained the following provision:

To the extent that the Stockholder files any complaint relating to the Company, the Stockholder agrees that all of the Produced Material disclosed by the Company pursuant to this Agreement shall be deemed incorporated by reference into any such complaint, and the Stockholder shall not make any argument to the contrary in any motion or otherwise. The Stockholder further agrees to allege in any such complaint that: "One of the grounds for the Stockholder's allegations is his review of

³ This complaint refers to IHC in the past tense as the Transaction has now closed. Geneve presumably continues to operate IHC as a private, wholly owned subsidiary.

books and records produced by the Company, all of which are expressly incorporated by reference in this Complaint.” Notwithstanding the foregoing, the Produced Material shall only be incorporated in any such filing if, within five business days of completion of its production, the Company’s counsel who has overseen the collection, review, and production of the documents in response to the Demand represents, in language substantially similar to the following: “With the exception of any documents withheld or redacted for privilege, to the best of my knowledge after reasonable investigation, the Company’s production is complete with respect to” the categories of documents that the Company has agreed to produce (the “Document Representation”). Documents provided after the Document Representation will not be subject to incorporation by reference.

18. Plaintiff’s allegations below are derived, in significant part, from the documents produced by the Company in response to his books-and-records demand. The Company did not, however, make the Document Representation within five days of completing its production and, thus, pursuant to the terms of the agreement, the documents produced by the Company are not incorporated by reference in this Complaint unless Plaintiff specifically alleges otherwise.

FACTUAL ALLEGATIONS

A. Geneve Controlled IHC

19. Geneve was, at all relevant times, the Company’s majority stockholder. According to the Company’s final annual proxy, Geneve owned 62.4% of the Company’s outstanding common stock. The Company’s public filings stated that Geneve was the Company’s controlling stockholder.

20. At the beginning of 2021, the Board consisted of nine members:

- Steven Lapin;
- Roy T.K. Thung;
- Teresa Herbert;
- David Kettig;
- Larry Graber;
- Allan Kirkman;
- John Lahey;
- Ronald Simon; and
- James Tatum.

21. On June 30, 2021, Kettig stepped down from the Board and was replaced by Vincent Furfaro. The other directors remained on the Board through the close of the Geneve Buyout.

22. Three of those directors—Defendants Lapin, Thung, and Herbert—were dual fiduciaries who were also officers of Geneve. At all relevant times, two other directors were officers of IHC. Graber was the Chief Life and Annuity Actuary and Senior Vice President of IHC, Kettig was the President of IHC, and Furfaro (Kettig’s replacement) was a Senior Vice President of IHC. Upon information and belief, each of Graber, Kettig, and Furfaro depended on his role with IHC as his primary source of income, and none could act independently of Geneve as IHC’s

controller.⁴ Two other directors—John Lahey and James Tatum—had strong ties to Geneve that caused them to be removed from the Special Committee.

23. IHC operated under cost-sharing arrangements with Geneve, pursuant to which IHC paid Geneve annually for various services, including rent that IHC paid to Geneve for office space for its corporate headquarters in Stamford, Connecticut.⁵

24. In sum, Geneve held a majority of the voting power of IHC, and IHC and Geneve shared a founder, officers, directors, managers, and corporate headquarters.

B. Defendants Sold Off Large Parts Of IHC To Finance Geneve’s Eventual Buyout Of What Remained

25. At the end of fiscal year 2020,⁶ the Company operated three insurance carriers: Standard Security Life Insurance Company of New York (“Standard Security” or “SSL”), Madison National Life Insurance Company, Inc. (“Madison National” or “MNL”), and Independence American Insurance Company, which it owned through a separate entity, Independence American Holdings Corporation

⁴ In addition, Herbert’s replacement as IHC’s Chief Financial Officer (Colleen Maggi), two Corporate Vice Presidents (Brian Schlier and Maria Tyburski), and three Vice Presidents of IHC (John Casario, Paul Janerico, and John Kelly) were also employees of Geneve.

⁵ Independence Holding and Geneve were both headquartered at 96 Cummings Point Road, Stamford, CT. Geneve is still there.

⁶ IHC’s fiscal year was the calendar year.

(“Independence American” or “IAHC”). IAHC held the Company’s pet insurance division (collectively, with IHC’s majority interest in PetPartners, Inc., the “Pet Business”). Standard Security, Madison National, and the Pet Business were all sold in the Project Trifecta sales.

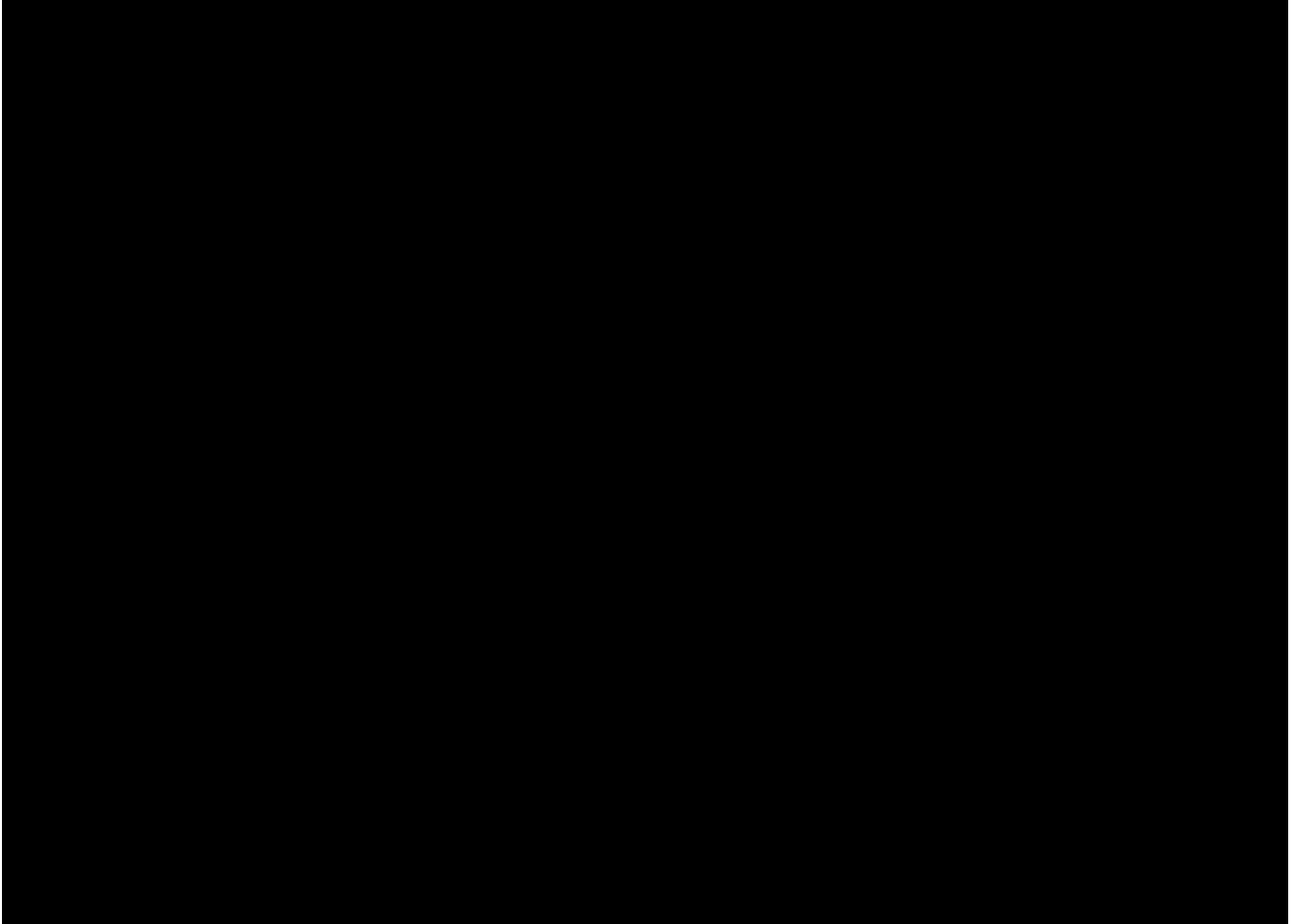
26. The Company also operated several insurance agencies that were not sold in the Project Trifecta sales, including IHC Specialty Benefits, Inc. (“IHCSB”), Independence Brokerage Group, Inc. (“IBG”), and My1HR, Inc. (“My1HR”) (collectively, the “Agency Business”). The Agency Business was comprised of traditional distribution channels through independent agents and national accounts, as well as tech-enabled distribution through call centers, career advisors, and lead generation domains.

27. In the words of the Special Committee’s financial advisor, Perella Weinberg, the Company’s three main carriers—Standard Security, Independence American, and Madison National—“formed the basis of IHC’s historic business.”

28. As set forth below, over several months in 2021, Defendants embarked on an interrelated series of transactions (the “Transactions”) to enable Geneve to take IHC private. First, Defendants caused the Company to sell Standard Security, Independence American’s Pet Business, and Madison National. In return, IHC received more than eight times the cash it had on its balance sheet at the end of 2020 and a 30% stake in the Company that acquired the Pet Business—a JAB-owned

entity called Iguana Capital, Inc. (“Iguana Capital”).

29. The below slide prepared by Perella Weinberg captures the dramatic transformation wrought by the Project Trifecta sales:



30. After the last of the Project Trifecta sales was announced, IHC and Geneve promptly negotiated the Geneve Buyout: Geneve acquiring all of the IHC shares it did not already own for \$57 per share (the “Merger Consideration”).

31. The Transactions subtracted IHC’s historic assets from the Company

one by one, as follows:



32. The Transactions were all connected. In a May 6, 2021 presentation to the Board, Raymond James—which served as the Company’s financial advisor for the Pet Business Sale—referred to the three asset sales as “Project Trifecta.” In turn, the Geneve Buyout was conditioned on the closing of (i) the Standard Security sale and (ii) the Pet Business sale. And when Perella Weinberg was brought in to advise the Special Committee, it described the Geneve Buyout as the “**final step** in the

winding down and privatization of IHC”:



33. By the time of this “final step” (*i.e.*, the Geneve Buyout), IHC’s assets were the Agency Business, the stake it retained in Iguana Capital (which had been diluted from 30% to 18%), and the hundreds of millions of dollars in cash raised through the asset sales. Following the Project Trifecta sales, IHC would be left with \$602 million in cash, or approximately \$40.07 per share; compared to the \$21 million in cash on its balance sheet at the end of the first quarter of 2021. In the absence of a subsequent strategic transaction, IHC would have also faced significant

regulatory risk of becoming an inadvertent investment company because more than 40% of its non-cash assets consisted of its minority investment in Iguana Capital, which would be deemed passive under the Investment Company Act (as the Company's stake dropped below 25%).⁷

34. It is highly implausible that the Project Trifecta sales were intended to be the end stage. Instead, the cash raised through the Project Trifecta sales was intended **to finance** the “final step”—a buyout by Geneve of IHC's minority stockholders, using the Company's working capital instead of Geneve's own cash or debt.

35. Geneve structured the Transactions this way because it would have been unable to use its own funds or raise outside debt. On information and belief, the majority of Geneve's holdings were (and are) insurance companies, which, as described below, are ill-suited to take on leverage. As a result, Geneve likely lacked sufficient borrowing capacity to fund a cash-out acquisition of legacy IHC. And, at a minimum, avoiding a cash contribution eliminated financing costs for Geneve and increased its expected returns.

36. Acquirers often use a target's balance sheet to finance a transaction—causing the target to take on leverage and using the newly borrowed cash to pay the selling stockholders (*i.e.*, a leveraged buyout or “LBO”). An LBO was not a viable

⁷ 15 U.S.C. § 80a-3(a)(1)(C); 17 C.F.R. § 248.120(h).

option for Geneve, however, because insurance companies have little or no borrowing capacity. Insurance companies are subject to strict regulatory oversight, as well as reserve requirements that limit their ability to take on debt. As explained in the Company's public filings:

IHC . . . [is] subject to regulation and supervision by multiple state insurance regulators[.] These supervisory agencies have broad administrative powers with respect to . . . reserve requirements and the types and maximum amounts of investments which may be made. Such regulation is primarily designed for the benefit of policyholders rather than the stockholders of an insurance company or insurance holding company.

37. Even if these insurance companies could borrow money, any increase in leverage would jeopardize their credit ratings, and even a minor downgrade could be catastrophic for their businesses. As explained in the Company's public filings:

If rating agencies downgrade our insurance companies, our results of operations and competitive position in the industry may suffer. Ratings are an important factor in establishing the competitive position of insurance companies and are important to maintaining public confidence in our insurance companies and our products, and our ability to market our products.

38. Meanwhile, as Perella Weinberg outlined in its November 8, 2021 presentation to the Special Committee, the Agency Business generated negative EBITDA and was similarly unfit to take on debt that could be used to fund an LBO.

39. If a traditional LBO had been an option for Geneve, Geneve could have bought IHC with its assets intact. If Geneve still wanted to sell the assets, it could have done so as a private company and negotiated the terms of those sales directly

with the buyers. Instead, Geneve caused the Company to sell off most of its assets ahead of the “final step”—while blocking alternative bidders—and funded the Geneve Buyout with the Company’s own working capital.⁸

C. The First Sale Of Project Trifecta: Standard Security

40. Standard Security was one of IHC’s three historic insurance carriers. Standard Security operates in New York and specializes in disability benefits and paid family leave.

41. In 2016, then-Governor Cuomo signed the New York State Paid Family Leave policy requiring employers to offer paid family leave for employees. The new policy had a phased rollout over four years, with the benefit level starting at 8 weeks at 50% pay in 2018 and reaching 12 weeks at 67% pay in 2021. In the Company’s November 2020 investor presentation, the Company projected that paid family leave would experience an 89% rate increase from 2020 to 2021 and that, as a result, the Company expected Standard Security’s \$115 million in revenue from premiums in 2020 to grow to \$192 million in 2021.

42. Despite this nearly 70% expected growth, on April 9, 2021, the Board approved the sale of Standard Security to Reliance Standard Life Insurance Company (“Reliance”) for \$180 million in cash. According to the minutes of the

⁸ As set forth in the Form 8-K filed by IHC on February 15, 2022: “The aggregate Merger Consideration to be paid to the holders of Common Stock ... was funded with the Company’s working capital.”

meeting, Kettig presented the proposed sale to the Board, but the minutes do not record any rationale or explanation for the timing of the sale or the amount. A single, three-sentence paragraph captures the Board’s discussion:

Proposed Sale

Mr. Kettig described the material terms of the proposed transaction in which (i) Independence Capital Corp., a direct subsidiary of the Company (“*ICC*”), will sell all of the capital stock of Standard Security Life Insurance Company of New York, its wholly owned subsidiary (“*SSL*”), to Reliance Standard Life Insurance Company (“*RS*”), and (ii) SSL will cede all of its specialty health and run-out business policies to a newly formed reinsurer (the “*Reinsurer*”) pursuant to a reinsurance agreement (the “*Reinsurance Agreement*”), all for an aggregate of \$180,000,000 in cash. Messrs. Kettig and Balzofiore and Ms. Herbert answered questions in connection therewith. There was a robust discussion among the Board with respect to the proposed transaction.

43. The minutes reflect that the Board deliberated for less than 30 minutes before voting to approve the sale. There is no reference in the minutes to the Board being advised by an outside financial advisor.

44. Five days later, the Company entered into a stock purchase agreement (amended on July 29, 2021) with Reliance to sell Standard Security to Reliance for an aggregate purchase price of \$180 million in cash—\$12 million less than Standard Security’s projected revenue in 2021.⁹

D. The Second And Third Sales Of Project Trifecta: The Pet Business And Madison National

45. On April 23, 2021, just a few days after IHC agreed to sell Standard Security to Reliance, the Company received a non-binding proposal from JAB to

⁹ The Standard Security sale closed on January 3, 2022.

acquire a controlling equity stake in the Company for \$53.50 per share in cash. According to the Proxy, however, a short time after JAB's initial proposal, it "became apparent that [JAB] ... was interested primarily in acquiring the Company's pet division and not the entire Company."

46. There is no evidence that the Company made a counterproposal to JAB relating to a sale of the entire company or that it sought other bidders. Indeed, Board minutes produced by the Company suggest that the Board was not informed of JAB's offer to buy a controlling stake in the entire Company until after management had already rejected the offer. To wit, the first Board minutes after April 23, 2021 produced by the Company were from the Board's May 3, 2021 meeting. According to those minutes:

Kettig described [a] proposed transaction in which JAB ... would acquire a 70% interest in (i) all of the Company's assets related to its pet insurance business (including its 85% equity interest in Pet Partners Inc., minority equity interests and www.petplace.com) and (ii) all of the capital stock of Independence American Insurance Company, an indirect wholly owned subsidiary of the Company ... for an aggregate purchase price of \$382 million. ... Kettig explained that there had been discussions with JAB regarding potential alternative transactions including JAB acquiring a substantial equity interest in the Company.

47. At the same May 3 meeting, Larry Graber, a director and the Company's senior Vice President, "described [a] proposed transaction in which (i) ... the Company, would sell all of the capital stock of Madison National ... to Horace Mann Insurance Company ('Horace Mann'), and (ii) Horace Mann would cause the

reinsurance of all of the in-force specialty benefits, life and annuity business of Standard Security ... all for an aggregate of \$172.5 million.”

48. The meeting minutes reflect that outside counsel from Dentons were present at the May 3 meeting. No financial advisors attended the meeting. The Board discussed, however, “the potential benefit from additional input from a financial advisor, including Raymond James ... It was noted that Raymond James was also currently acting as a financial advisor to Horace Mann in connection with the potential sale of Madison National Life. ... After full consideration of the facts presented, the Board concurred that Raymond James should make a presentation to the Board at the next scheduled meeting.”

49. The May 3 minutes state that the Board was “not asked to approve the [Madison National] transaction at this time.” Nonetheless, just two days later, the Company signed a letter of intent to sell Madison National to Horace Mann. On May 6, 2021, the Board met again, and Graber informed the directors that IHC had signed a letter of intent with Madison National the day before. According to the minutes of that May 6 meeting, the Board then discussed the proposed sale of the Pet Business and asked Kettig “if management had considered selling the entire company. ... Kettig added that he has spoken to many large insurance companies since the sale of the stop-loss business. While some expressed interests in various parts of IHC, none had ever expressed an interest in purchasing the whole.”

50. At this point, Raymond James joined the meeting. The minutes of the May 6 meeting include, as an attachment, a presentation from Raymond James titled “Project Trifecta” that calculated implied valuations for Standard Security, the Pet Business, and Madison National. According to the minutes, the Board also asked Raymond James “to address potential benefits and detriments of considering selective, independent transactions relating to portions of the Company’s business rather than a sale or other business combination involving the entire Company.”

51. A banker from Raymond James—which was, of course, fatally conflicted by its representation of Horace Mann—“responded, including explaining that based on Raymond James’s research and analytic studies and his knowledge and experience, it would be very difficult to find a single party that would be interested in delivering full value for all of the Company’s businesses.” Kettig interjected to add that two challenges to selling the full Company were that any potential buyer would have to want, among other things, “short term disability and paid family leave in New York covered by Standard Security” and the “agency business, which is currently not being considered for sale.”¹⁰ Later in the meeting, in response to a question posed to Raymond James, Kettig chimed in to “note[] that the parties that

¹⁰ Of course, as noted above, the Board had already agreed to sell most of Standard Security and, as noted below, the Board would soon agree to sell the Agency Business.

have approached the Company about acquisitions or other business combinations have only expressed an interest in acquiring certain parts of the Company, not the entire Company.”¹¹

52. On May 16, 2021, the full Board met again. Raymond James was not in attendance. The Board did not hear from any financial advisor or receive a formal fairness opinion. At the May 16 meeting, Kettig gave an overview of the proposed sale to a JAB-owned entity called Iguana Capital of (i) a controlling interest in the Company’s 85% equity interest in PetPartners, Inc. and (ii) all of the capital stock of IAHC, which then owned all of the capital stock of Independence American Insurance Company, the Company’s primary specialty health and pet insurance underwriter.¹² The consummation of both sale transactions (together, the Pet Business) would result in the Company receiving \$269 million in cash, plus a 30% interest in Iguana Capital. With Kettig abstaining, the Board voted to approve the Pet Business Sale.

¹¹ Kettig’s representations are, of course, hard to reconcile with JAB’s offer to acquire *at least* 60% of the Company referenced in the Proxy.

¹² IAHC also held some non-pet lines of insurance that were acquired by Iguana Capital, including vision, Medicare supplement, short term medical, limited medical benefit, dental, accidental death and disability, group gap, hospital indemnity, critical illness, expatriate accident and health, occupational accident and health, and other specialty health products. The Company, however, did not disclose the size or value of these non-pet products.

53. It is clear from the minutes that Kettig was the Company’s principal negotiator with JAB regarding the sale of the Pet Business. Kettig’s role in the negotiations is troubling, because he ultimately accepted a senior position at JAB in connection with the sale of the Pet Business and resigned as President and Chief Operating Officer of IHC. Kettig also stood to earn (and did earn) a \$3 million “sale bonus” for successfully completing the sale of the Pet Business to JAB.¹³ In apparent recognition of the conflict, Kettig abstained from the final vote on the sale to JAB. He did not, however, abstain from the negotiations. And, as explained above, it appears that Kettig downplayed any options other than the sale of the Pet Business *only* to JAB.¹⁴

54. On July 12, 2021, the Board met again to consider the sale of Madison National to Horace Mann. Defendant Herbert—a dual fiduciary of the Company and Geneve—gave an overview of the sale. The minutes state that:

Herbert provided a summary of the events that led to the potential sale of all of the outstanding shares of common stock of Madison National ... She explained that Raymond James, [acting as] the banker for

¹³ According to a Legal Diligence Agenda for the Pet Business sale dated May 10, 2021, there were four sale bonuses in connection with the Pet Business sale. According to an email dated May 14, 2021 from Herbert to Patricia Capel (who uses a JAB email address), there were seven sale bonuses in connection with the Pet Business sale. The Company disclosed that Herbert received a \$500,000 sale bonus for the Pet Business sale but did not disclose any other recipients.

¹⁴ On June 30, 2021, the Company completed the Pet Business sale and received 30% of Iguana Capital, plus cash. The cash proceeds were held in escrow until the sale of IAHC closed on December 20, 2021.

Horace Mann ... , approached the Company in late summer 2020 regarding the possible purchase of Madison National. ... Preliminary due diligence was commenced in fall of 2020. However, the deal was put on pause. Horace Mann re-commenced its interest in Madison National and after several rounds of negotiation, an updated letter of intent was signed for a purchase price of \$172.5 million, plus an earnout of \$12.5 million if Madison National's earnings are \$16.5 million or more.

55. After discussion, the Board approved the sale of Madison National to Horace Mann for an expected gross sales price of \$172.5 million, with the possibility of receiving an additional \$12.5 million if Madison National reached certain financial targets in 2023. The Board was not advised by any outside financial advisor and did not receive a fairness opinion.¹⁵

56. The Madison National sale was linked to the sale of the Pet Business. Specifically, Horace Mann agreed to reinsure, through Madison National, the lines or classes of business other than pet insurance that would be acquired by JAB's Iguana Capital as part of the IAHC sale through 2022 and any contractual renewals.

¹⁵ On November 21, 2021, the Company filed an Information Statement regarding the Madison National sale, explaining that because the sale “may be considered to be a sale of substantially all of the assets of the Company, the Company [] elected to obtain stockholder approval of the Sale under Section 271 of the DGCL, which requires the approval of the holders of a majority of the outstanding shares of common stock.”

Because it held a majority stake, Geneve was able to execute a written consent approving the sale of Madison Life without any participation from the Company's unaffiliated stockholders. Geneve issued its written consent on October 18, 2021. The Madison National sale closed on January 3, 2022.

E. The Board Belatedly Forms A Special Committee To Oversee The “Final Step”

57. The Proxy claims that “after the Company entered into the stock purchase agreement for the sale of Madison National Life, in late July 2021, Geneve began to consider internally, on a preliminary basis, ... whether it would be more efficient for the Company to become a privately-owned company.”

58. The suggestion that Geneve’s internal consideration of a take-private transaction did not “beg[i]n” until “after” the Madison National sale strains credulity to the breaking point. As noted above, Perella Weinberg described the Geneve Buyout as the “final step in the winding down and privatization of IHC.” And the Project Trifecta sales would make little sense on their own—they left IHC with a swollen balance sheet and, as explained above, a risk of being regulated as an inadvertent investment company. The odd structure of the Geneve Buyout—in which the merger consideration was funded entirely out of IHC’s working capital—strongly suggests that the Project Trifecta asset sales were meant to fund the Geneve Buyout.

59. The timing also suggests that the Transactions were all part of a single cohesive plan. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 16

60. The Proxy states that “[i]n August 2021, Steven B. Lapin, Chairman, Chief Executive Officer and President of Geneve and Vice Chairman of the Board of Directors of the Company, had several telephone conversations with Roy T.K. Thung, Chairman of the Board and Chief Executive Officer of the Company and a director and executive officer of Geneve, to consider whether the Company should continue as a publicly traded company or whether it was preferable that the Company become privately-owned by Geneve and, assuming the latter was preferable, how a take-private transaction should be structured.”

61. On August 24, 2021, Herbert sent Lapin contact information for Mauro Rossi, a partner at Perella Weinberg, who ultimately became the lead advisor to the Special Committee. Herbert and Lapin subsequently exchanged emails, in which

¹⁶ As executive officers of Geneve, Lapin and Thung were dual fiduciaries. They also had strong personal incentives to push for the Geneve Buyout. As documented in an appendix to the minutes of an August 29, 2021 Board meeting, Lapin and Thung had compensation agreements with Geneve that would entitle them bonuses “calculated based on a certain percentage of the increase (if any) in the stockholders’ equity of [Geneve],” which would be affected by the Geneve Buyout. Lapin, Thung, and Herbert also stood to benefit from the Geneve Buyout of IHC through their participation in Geneve’s “bonus pool,” which was also calculated based on increases in the stockholders’ equity of Geneve.

Herbert explained to Lapin that “Joseph Perella founded Perella Weinberg, but he was also a founder of Wasserstein, Perella.”

62. These emails were produced to Plaintiff only after the parties had agreed on a narrowly defined scope for a search of electronic communications to resolve the litigation that Plaintiff brought to enforce his books-and-records demand.¹⁷ Upon obtaining the emails, Plaintiff wrote to the Company (by this time, a wholly owned subsidiary of Geneve), stating that he (1) was prepared to honor his agreement to resolve the books-and-records action without seeking additional documents but (2) wanted to give fair warning that he intended to argue that there was a reasonably conceivable inference that Geneve steered the Special Committee to select Rossi and Perella Weinberg.¹⁸

63. Plaintiff invited the Company to prove him wrong:

If you believe that this inference is mistaken, we invite you to prove it by negotiating an additional search protocol for electronic communications concerning the retention of Perella Weinberg.

We make this offer because we don’t want there to be any basis for Defendants to argue—like the Defendants in *Denner*—that they would have produced additional emails, disproving our theory, if only they’d known what we planned to plead. [*Goldstein v. Denner*, 2022 WL 1671006, *21 n.7 (Del. Ch.) (“To avoid the inference that emails about the May 23 meeting do not exist, the defendants protest that they only produced Cox’s emails as part of a negotiated resolution of the Section 220 Action. They also say that they did not yet know what the plaintiff’s

¹⁷ Ex. 2 (June 27, 2022 letter from Plaintiff’s counsel).

¹⁸ *Id.*

complaint would assert.”).]. If you believe that there are exculpatory emails, proving that Geneve played no role in the selection of Perella Weinberg, you should agree to accept our offer. If you fail to do so, we will argue that the failure to produce exculpatory evidence in response to our books-and-records demand strengthens the inference we are asking for.

64. After more than a week of consideration, the Company (*i.e.*, Geneve) refused Plaintiff’s invitation.¹⁹ The Court can draw an adverse inference from that decision.²⁰

65. The Company’s explanation was not a flattering one. According to the letter sent to Plaintiff’s counsel by counsel for the Company,²¹ Herbert was sharing Rossi’s contact information because *Geneve* was considering retaining him:

We understand that following this exchange, Mr. Lapin— who, at this time, had considered the possibility of retaining a financial advisor to advise Geneve in regard to a potential transaction—opted not to reach out to Mr. Rossi, and Geneve ultimately decided against hiring any financial advisor. Accordingly, given this lack of outreach to Perella Weinberg and lack of any discussions between Geneve and Perella Weinberg during the relevant timeframe, no books and records concern those events—because they never occurred.

¹⁹ Ex. 3 (July 6, 2022 letter from Company counsel).

²⁰ *In re Boeing Co. Derivative Litig.*, 2021 WL 4059934, *1 n.1 (Del. Ch.); *Teamsters Local 443 Health Servs. & Ins. Plan v. Chou*, 2020 WL 5028065, *24 (Del. Ch.); *Hughes v. Xiaoming Hu*, 2020 WL 1987029, *16 (Del. Ch.); *In re China Agritech, Inc. S’holder Derivative Litig.*, 2013 WL 2181514, *20 (Del. Ch.); *In re Tyson Foods, Inc.*, 919 A.2d 563, 578 (Del. Ch. 2007); *In re McKesson Corp. Derivative Litig.*, 2018 WL 2197548, *7 n.1 (N.D. Cal.).

²¹ Ex. 3.

66. For avoidance of doubt, Plaintiff does not allege that the Company’s explanation is necessarily complete or accurate. Note counsel’s very careful wording: stating that *Lapin* opted not to reach out to Rossi but making no such representation as to Herbert (who sent the contact information), then referring, in the passive voice, to a “lack of outreach[—*by whom?*—]to Perella Weinberg.” Moreover, as described below, Board minutes show that the Special Committee later agreed it would “discuss the company’s thoughts on this matter [*i.e.*, advisor selection] with ... Terry Herbert,” of Geneve.

67. On August 26, 2021, Lapin sent Thung a draft of the letter he proposed to send IHC making a formal offer. On August 29, 2021, Lapin, on behalf of Geneve, sent a proposal to IHC for Geneve to acquire all the shares of common stock it did not already own for \$50 per share—\$3.50 per share lower than JAB’s prior offer for a controlling stake. Geneve’s proposal made clear that it was contingent upon the Standard Security and Pet Business sales. Geneve’s proposal stated that it was also conditioned on approval by a majority of the minority stockholders and approval by a special committee. And Geneve reiterated its position that it would not sell its stake in IHC to any third party.

68. On the day IHC received Geneve’s proposal—four-and-a-half months after the Company agreed to the first sale in Project Trifecta—IHC formed a Special

Committee to consider Geneve's proposal. The Special Committee consisted of four directors: Allan Kirkman, John Lahey, Ronald Simon, and James Tatum.

69. The Special Committee held its first meeting on August 30. According to the meeting minutes, the four Committee members focused on "selecting investment bankers and law firms[.]" According to the minutes, the Special Committee agreed it would "discuss the company's thoughts on this matter with Loan Nisser, Vice President – Legal and Secretary, and Terry Herbert, President," who was a dual fiduciary of the Company and Geneve. At the same meeting, the Committee stated its intention to have its financial advisor "opine on the fairness" of Geneve's offer and "assist in renegotiation." The reference to renegotiation suggests at least one round of negotiations with Geneve may have occurred before the Special Committee was formed.

70. On September 2, the Committee met for the second time and selected Paul Weiss as its legal counsel. The Committee met again on September 10. The Proxy explains that at that meeting, with lawyers from Paul Weiss present, all Committee members reviewed proposals from various financial advisors and decided to hire Perella Weinberg. The Proxy states that, following the meeting, "the Special Committee determined that Messrs. Lahey and Tatum would be excused from further service on the Special Committee."

71. What the Proxy does not disclose is that Lahey and Tatum were belatedly removed from the Special Committee because they were conflicted. As reflected in the minutes of that September 10 meeting, Lahey served on the board of the Alliance for Cancer Gene Therapy, a non-profit started by Netter and his wife, Barbara (now Geneve's controller). Barbara Netter also served on the board. According to the Alliance's website, Netter had invited Lahey to serve on the boards of both Geneve and Independence Holding so Lahey could "take business principles and apply them to higher education at Quinnipiac," where Lahey served as the President. According to Lahey, Netter helped him personally and professionally by "review[ing] [Quinnipiac's] endowment and [giving] [him] advice on investing."

72. Also at the September 10 Special Committee meeting, Lahey revealed that, in 2010, while he was the Quinnipiac President, Netter and his wife donated \$10 million to establish the University's medical school. This was the largest donation in the school's history, and Lahey named the medical school after Netter's cousin, Frank Netter. At the same Special Committee meeting, Lahey also disclosed that he served on the Board of the Aristotle Corporation in 2009 when Geneve, which already held 91% of Aristotle, acquired the outstanding shares it did not already own.

73. Tatum was also removed from the Special Committee due to his ties to Geneve. According to the minutes of the Committee's September 10, 2021 meeting, Tatum also served on the Aristotle board when Geneve bought it out. He was also

the Chief Investment Officer of Southern Life and Health Insurance at the time of its acquisition by Geneve in the late 1980s and continued in that role following the acquisition. Tatum also reported to the Committee that he is a trustee of the Barbara and Ed Netter Foundation, a charitable foundation founded by the Netters.

74. On September 28, Iguana Capital (the JAB-controlled entity that held the Pet Business) entered into an agreement to acquire a managing general agent²² in a cash-and-stock acquisition with the code name “Fetch.” On October 5, the Special Committee discussed the “Fetch Transaction” and its implications for IHC, given its then-30% interest in Iguana Capital. According to the Board minutes, the discussion lasted less than twenty minutes.

75. The Company ultimately contributed \$3.2 million to the Fetch Transaction and another acquisition by Iguana Capital with the code name “Neptune.” On information and belief, “Fetch” is Figo Pet Insurance LLC and “Neptune” is Cardif Pinnacle, but the names were never disclosed publicly.²³ Because of the Fetch and Neptune transactions, the Company’s equity stake in Iguana Capital was dramatically diluted from 30% to 18%. The existing record

²² A managing general agent is a type of wholesale insurance broker.

²³ See, e.g., Thomas Buckley, *JAB makes further pet insurance inroads with two acquisitions*, PROPERTYCASUALTY360 (Oct. 25, 2021), <https://www.propertycasualty360.com/2021/10/25/jab-makes-pet-insurance-inroads-with-two-acquisitions>.

regarding these transactions is very thin, but it is a reasonable inference that the Company was diluted because JAB provided almost all the equity financing for those transactions. Notably, nothing in the Company's public filings or books-and-records production explains why the Company declined to use the substantial influx of cash that it was expecting from the Project Trifecta asset sales to invest in these accretive acquisitions and maintain its stake in Iguana Capital.²⁴

76. On October 21, Perella Weinberg presented its preliminary analysis to the Special Committee, and the Special Committee discussed strategic alternatives to the Geneve Buyout, including reinvesting the sale proceeds from Project Trifecta into the Agency Business, an alternative sale to a third party, a share repurchase program, or a special dividend. As discussed above, Geneve had already made clear it would veto a sale to a third-party buyer. There is no evidence in the record to suggest that the Committee seriously investigated or pursued any of the other alternatives. For reasons that are not clear from the existing record, it appears that the Special Committee had decided to pursue a monetization event. Perella

²⁴ The October 2021 Perella Weinberg presentation to the Special Committee considered scenarios “[b]ased on 18.7% ownership [of *pro forma* Iguana Capital] assuming no additional investment [by IHC in Fetch and Neptune]; 20% ownership assuming \$8.5M investment; 30% ownership assuming \$72.1M investment.” The presentation further suggests that an investment in Iguana Capital to fund Fetch and Neptune would have been at a discount to the valuation used in the acquisitions themselves, making the expected returns all the more attractive. Yet, despite this opportunity and piles of idle cash, IHC declined to invest and was diluted.

Weinberg noted that a “Consideration” (*i.e.*, downside) of two alternatives to the Geneve Buyout—a repurchase program or special dividend—would be that these alternatives would “not monetize value of remaining business” and a third—reinvestment—would delay any such “monetization event...”

77. At the end of the meeting, the Special Committee asked Perella Weinberg to communicate to Geneve that it was unwilling to proceed with a transaction at \$50 per share and that the price should be closer to \$60 per share.

78. On October 28, Mauro Rossi from Perella Weinberg (on behalf of IHC) met with Lapin and Thung (acting as executive officers of Geneve). That same day, Paul Weiss relayed to the Special Committee that “Geneve was not willing to agree to the Committee’s request that, should the respective parties enter into a definitive merger agreement, Geneve agree to vote its shares in support of any subsequent superior acquisition proposal by a third party, should the merger agreement with Geneve be terminated in order to enter into an agreement providing for such a superior acquisition proposal.”

79. The Special Committee met on October 29 and received an update on the negotiations. On November 1, 2021, Geneve informed Perella Weinberg that Geneve was willing to increase its proposed price to \$56.00 per share. Later that day, the Special Committee met and instructed the representatives of Perella Weinberg

to tell Geneve that the Special Committee would be willing to pursue a transaction with Geneve at a price of \$57.00 per share. Geneve agreed.

80. On November 9, the Special Committee met for the final time. Perella Weinberg delivered its fairness opinion to the Committee. The Committee recommended that the Board adopt resolutions approving it. Later that day, the Board voted to approve the Geneve Buyout for \$57.00 per share. According to the Proxy, Lapin, Thung, and Herbert recused themselves from the vote, but Furfaro (who replaced Kettig on the Board and whom the Company did not consider independent) did not.

F. The Parties Agree To The Geneve Buyout; Stockholders Vote To Approve It Based On A Materially Incomplete And Misleading Proxy

81. On January 6, 2022, the Board issued the Proxy soliciting stockholder support for the Geneve Buyout. On February 15, 2022, a majority of the Company's stockholders who were not affiliated with Geneve voted to approve the Geneve Buyout. Following the stockholder vote, the Geneve Buyout closed and Geneve acquired the remaining shares of the Company that it did not already own for \$57.00 in cash. The total merger consideration paid to the Company's public stockholders was approximately \$333,109,433 and was funded with the Company's working capital.

82. The stockholder vote was not fully informed because the Proxy was materially deficient in at least four respects.

83. *First*, the Proxy was remarkably opaque about the rationale for the Project Trifecta sales. The Proxy discloses each of the sales and the fact that “[t]he completion of the [sales] would result in the Company having significantly smaller business operations.” But it fails to explain *why* the Board (or Geneve) suddenly decided to sell off the vast majority of the Company’s assets, that the three asset sales were part of a single plan, or that the Geneve Buyout was the “final step” of that plan. As set forth herein, the most natural inference—and certainly a reasonably conceivable one—is that the Project Trifecta sales were designed to finance the Geneve Buyout. More importantly, stockholders were entitled to know what the rationale was for this dramatic strategic shift.

84. *Second*, the Proxy did not disclose Geneve and management’s role in choosing the Special Committee’s financial advisor. Specifically, it did not disclose that Geneve had discussed retaining Perella Weinberg before making its proposal. Nor did it disclose that the Special Committee determined to “discuss the company’s thoughts on this matter with ... Terry Herbert[,]” a dual fiduciary of Geneve and IHC. Given these facts, it is reasonably conceivable that Geneve and/or management steered the Special Committee to select Perella Weinberg. The Proxy does not disclose that either.

85. *Third*, the Proxy disclosed that Lahey and Tatum were removed from the Special Committee—but it did not disclose *why* they were removed or any details

about their conflicts vis-à-vis Geneve. The Proxy simply stated, without explanation, that “the Special Committee ... discussed any prior relationships between the members of the Special Committee and Geneve and its affiliates,” and that “[f]ollowing the meeting and after consultation with representatives of Paul Weiss, the Special Committee determined that Messrs. Lahey and Tatum would be excused from further service on the Special Committee.” The Proxy provides no substantive information regarding Lahey and Tatum’s ties to Geneve. Given that Lahey and Tatum were present as voting members of the Special Committee when critical decisions—including the Committee’s choices of advisors—were made, their conflicts bear on the independence of the Special Committee and the fairness of the process and should have been disclosed.

86. *Fourth*, the Proxy failed to describe all material economic benefits of the Geneve Buyout for conflicted members of the Board and management. The Proxy states that:

Geneve Corporation, a wholly-owned subsidiary of Geneve and the sole stockholder of Merger Sub, has established certain incentive compensation arrangements which, subject to customary terms, entitle each of Steven B. Lapin, Roy T.K. Thung, Teresa A. Herbert and Colleen P. Maggi to receive a bonus payment based on the increase (if any) in the stockholders’ equity of Geneve over a predetermined period. The stockholders’ equity of Geneve may increase or decrease depending on various factors, including the closing of the Merger and the amount of the Merger Consideration.

87. The Proxy made no effort, however, to quantify the likely amount of those bonus payments or any of the inputs that would allow stockholders to estimate those payments.

G. The Process Was Unfair

88. Because the Special Committee was not formed until the Transactions were well underway and the vote was not fully informed, the Geneve Buyout is not cleansed under *MFW*. Defendants therefore bear the burden of proving an entirely fair process and price. They will be unable to do so.

89. The process was unfair in at least five ways.

90. *First*, the Transactions were not conditioned *ab initio* upon approval and review by a fully empowered, independent Special Committee and a majority of the minority vote. As set forth above, the *MFW* conditions were not imposed until *after* each of the Project Trifecta sales had been publicly announced. Yet it is evident that each of the Transactions were part of a single, cohesive plan for a number of reasons:

- The three asset sales—Standard Security, Pet Business, and Madison National—were all part of “Project Trifecta.” As part of the Madison National sale to Horace Mann, Horace Mann agreed to reinsure the lines or classes of business other than pet insurance that would be acquired through the Pet Business sale. Although not disclosed in the Company’s public filings, at the May 3 Board meeting, Herbert and another non-independent director (Graber) explained how, as part of the Madison National sale, Horace Mann (the buyer) would “cause the reinsurance of all of the in-force specialty benefits, life and annuity business of Standard Security[.]”

- The Geneve Buyout was conditioned on the closing of the (i) the Standard Security sale and (ii) the Pet Business sale.
- Geneve began discussing the Geneve Buyout just a week after the Board approved the sale of Madison National.
- Perella Weinberg—which had initially been considered as a financial advisor for Geneve—described the Geneve Buyout as the “final step” in the winding down and privatization of IHC.
- Negotiations over the Geneve Buyout may have taken place earlier than the Company publicly disclosed, given the Special Committee’s stated intention at the August 30, 2021 meeting to have its financial advisor “opine on the fairness” of Geneve’s offer and “assist in renegotiation” (emphasis added).
- The end result of the Project Trifecta sales, in the absence of the Geneve Buyout, would have left IHC with an absurd level of cash on its balance sheet (\$602 million, or approximately \$40.07 per share; compared to the \$21 million in cash on its balance sheet at the end of the first quarter of 2021), which would put IHC at risk of becoming subject to regulation under the Investment Company Act as an inadvertent investment company.
- The unusual structure of the Geneve Buyout—in which the merger consideration was funded entirely out of IHC’s working capital—suggests that the Project Trifecta asset sales were done to fund the Geneve Buyout consistent with regulatory leverage requirements.

91. Because *MFV* conditions were not imposed and the Special Committee was not formed until after the Project Trifecta sales, the Committee was substantially limited in its ability to protect public stockholders. By the time the Special Committee was formed, the Company had rejected, out of hand, JAB’s offer to buy a controlling stake in the Company. Instead, the Company had divested three assets that accounted for \$369 million of the Company’s \$443 million in annual revenue

in 2020. The Special Committee was left with cash and a fraction of the assets it historically held. While the Special Committee was formally empowered to consider strategic alternatives, its practical ability to do so was almost nil. As Perella Weinberg put it to the Committee in a September 2021 presentation, “Geneve’s position as controlling stockholder and its stated intention not to sell shares to a third party dictates the need for a Special Committee to evaluate a transaction between affiliated parties and without alternative bidders.” And the Special Committee’s attempts to push back were futile. As discussed above, Geneve explicitly rejected the Special Committee’s request that Geneve vote its shares in support of any superior proposal from a third-party bidder.

92. *Second*, for all the reasons detailed above, it is reasonably conceivable that Geneve and/or conflicted management steered the Special Committee’s choice of Perella Weinberg as its financial advisor.

93. *Third*, the Special Committee was not independent. As explained above, Lahey and Tatum had overwhelming ties to Geneve and did not remove themselves from the Special Committee until the Committee had already taken significant actions, including hiring its financial advisor (Perella Weinberg) and legal advisor (Paul Weiss).

94. *Fourth*, Perella Weinberg’s compensation was entirely contingent. The Special Committee agreed to pay Perella Weinberg \$2 million upon delivery of a

fairness opinion and \$1.5 million payable at closing. This created distorted incentives.

95. *Fifth*, as discussed above, even once the Company's stockholders were given the opportunity to vote on the Geneve Buyout, the vote was uninformed.

H. The Unfair Process Resulted In Unfair Terms

96. By the time the Special Committee ultimately approved the sale of IHC to Geneve, the Company consisted of: (i) an 18% stake in Iguana Capital, (ii) the Agency Business, and (iii) accumulated cash from the Project Trifecta asset sales. The Special Committee's approval was based on Perella Weinberg's fairness analysis, which significantly undervalued the first two pieces. Correcting those errors shows that the Geneve Buyout price was unfair.

a) Perella Weinberg's Valuation For The Company's Stake In Iguana Capital Was Too Low

97. In its final fairness analysis, Perella Weinberg valued IHC's 18% stake in Iguana Capital by setting a range of low and high potential valuations for Iguana Capital (\$542 million to \$902 million) that spanned more than \$350 million. The low end of the range was based on a single comparable transaction (Aflac's purchase of a stake in Trupanion as a multiple of Trupanion's last twelve months of revenue) and the high end of the range was based on a single comparable company

(Trupanion's enterprise value as a multiple of projected revenue in 2023):

Iguana Capital Financial Analysis				
	METHODOLOGY		IMPLIED VALUATION	
			100%	18%
1 Negotiated Market Values / Precedents	Iguana Transactions:			
	- Carrying value based on sale to JAB ⁽¹⁾		\$670M	\$120M
	- Value used in Fetch and Neptune valuation ⁽²⁾		\$774M	\$139M
	- Implied value in JAB offer to fund ⁽³⁾		\$678M	\$122M
	Aflac Stake in Trupanion ⁽⁴⁾ :			
	- 5.0x LTM Rev / \$109 ⁽⁵⁾		\$542M	\$98M
2 Publicly Traded Company Analysis			\$562M	\$101M
	<u>Iguana Metric</u>			
	Pet insurance (TRUP)			
	- 30-day VWAP EV / '22 Revenue: 4.6x	\$155M	\$713M	\$128M
	- 30-day VWAP EV / '23 Revenue: 3.7x	\$243M	\$902M	\$162M
	Illustrative Growth Case ⁽⁶⁾	\$279M	\$1,037M	\$186M
		Selected Range	\$542M - \$902M	\$98M - \$162M
		Median	\$678M	\$122M
Source: Company provided materials, Cap IQ as of 11/8/2021 Note: (1) \$272M for IAC and Pet MGAs, \$123.6M for PPI ex. AKC retained 4.5% stake, plus 80% value of Fetch (including contribution of growth capital) and 85% value of Neptune (2) \$272M for IAC and Pet MGAs, \$237.3M for PPI ex. AKC retained 4.5% stake, plus 80% value of Fetch (including contribution of growth capital) and 85% value of Neptune (3) Based on 17.98% ownership assuming \$3.2M additional investment; 30% ownership assuming \$84.7M investment (4) \$200.0 million cash investment by Aflac Incorporated in Trupanion's common stock at \$55.00/share; implied multiples of 3.9x NTM and 5.0x LTM revenues, respectively (5) Iguana metrics for LTM and NTM revenues represent averages of 2020/2021E and 2021E/2022E revenues, respectively (6) Assumes business exceeds 2023 revenue projections by 15%				

98. It is unclear why Perella Weinberg used a range at all, much less one that was this expansive and low. Notably, the Company had already valued Iguana Capital for purposes of the Fetch and Neptune Transactions less than two months earlier. At that time, Iguana Capital was valued at \$774 million—over 40% higher than the low end of Perella Weinberg's range. Nothing in the record explains why Iguana Capital would be worth \$232 million less by the time of Geneve's acquisition of IHC just over a month later or why Perella Weinberg considered any valuations for Iguana Capital below \$774 million.

99. Perella Weinberg also could have valued Iguana Capital using a discounted cash flow (“DCF”) analysis but did not. In its analysis of the Agency Business, Perella Weinberg noted that the “[d]iscounted cash flow valuation methodology was considered and ultimately not used given lack of meaningful cash flows in projection period,” but its analysis of Iguana Capital included no such note.

100. The valuation range Perella Weinberg set for Iguana Capital was also too low on both ends.

101. Perella Weinberg’s low value of \$542 million for Iguana Capital was based on a 5x last twelve months (“LTM”) revenue multiple from a single precedent transaction—Aflac’s \$200 million investment in Trupanion. The choice of a single comparable necessarily implies equivalence between the two companies, but that is not the case here. While Trupanion, like Iguana Capital, sells pet insurance, that is where the similarities end.

102. *First*, as shown in the Perella Weinberg presentation, Trupanion’s 2020 revenue was over five times greater than Iguana Capital’s 2020 revenue.²⁵ And, with a much smaller footprint, Iguana Capital was expected to grow over 50% faster than

²⁵ Trupanion’s 2020 revenue was \$502 million; Iguana Capital’s was \$89 million.

Trupanion over the next three years.²⁶ A core principal of relative valuation is that companies with higher growth rates should trade at higher multiples.²⁷ The low end of Perella Weinberg’s valuation range would have been higher if Perella Weinberg had applied a higher multiple that appropriately reflected Iguana Capital’s actual growth profile.

103. *Second*, at the time Geneve acquired IHC, Iguana Capital had just announced a transformative transaction between IHC and JAB. According to the May 6, 2021 Board minutes, “[r]etaining a 30% interest [in Iguana Capital] would allow IHC to participate in future growth in the value of the Pet Business, which is expected to generate considerable shareholder value as a result of the expected synergies.” Trupanion had no such transformative deal pending when Aflac made its investment. Using the same backward-looking LTM revenue multiple to value

²⁶ As shown in the same Perella Weinberg presentation, Iguana Capital had a projected compound annual growth rate (“CAGR”) of 37%, while Trupanion had a projected 24% CAGR.

Moreover, Perella Weinberg relied on only three years of projections for Iguana Capital and Trupanion. Had it used a longer discrete period, it is likely that Iguana Capital would have further outpaced Trupanion.

²⁷ See, e.g., Aswath Damodaran, *Multiples: First Principles*, “Every multiple, whether it is of earnings, revenues or book value, is a function of the same three variables – risk, growth and cash flow generating potential. Intuitively, then, firms with higher growth rates, less risk and greater cash flow generating potential should trade at higher multiples than firms with lower growth, higher risk and less cash flow potential.” <https://pages.stern.nyu.edu/~adamodar/pdfiles/papers/multiples.pdf> at 12.

Iguana Capital that was used for Trupanion gives no credit for the value the JAB transaction was expected to create (let alone additional value from the Fetch and Neptune transactions). In other words, the low end of the Perella Weinberg valuation range would have been higher if Perella Weinberg had used a forward-looking multiple that adequately captured Iguana Capital's growth prospects and synergies.

104. *Third*, Aflac's investment in Trupanion represented only a 9% stake that was contractually capped from exceeding 10%.²⁸ Such a sale is not comparable to IHC selling an uncapped 18% stake.

105. Perella Weinberg's high value for Iguana Capital of \$902 million was based on a 3.7x FY23 revenue multiple. But, like the low end, it was based on a single comparable company. And again, that company was Trupanion. The only difference is that, for the high end, Perella Weinberg calculated Trupanion's enterprise value based on its volume weighted average trading price as opposed to a single transaction. But, for the same reasons explained above, Trupanion makes a poor comparable for Iguana Capital.

106. Using only Trupanion in a comparable company analysis (and only a comparable company analysis) caused Perella Weinberg to significantly undervalue IHC's stake in Iguana Capital. The high end of Perella Weinberg's valuation range

²⁸ See Trupanion Form 8-K (Oct. 29, 2020).

would have been higher if it had included companies with growth profiles similar to Iguana Capital's in its comparables set.

107. Beyond using too low a multiple in valuing Iguana Capital at the high end of the range, Perella Weinberg's use of FY2023 revenue failed to capture significant growth likely to be generated in the out years by the Fetch and Neptune transactions. But, despite doing so for the agency business, management failed to provide projections for the pet business beyond 2023.

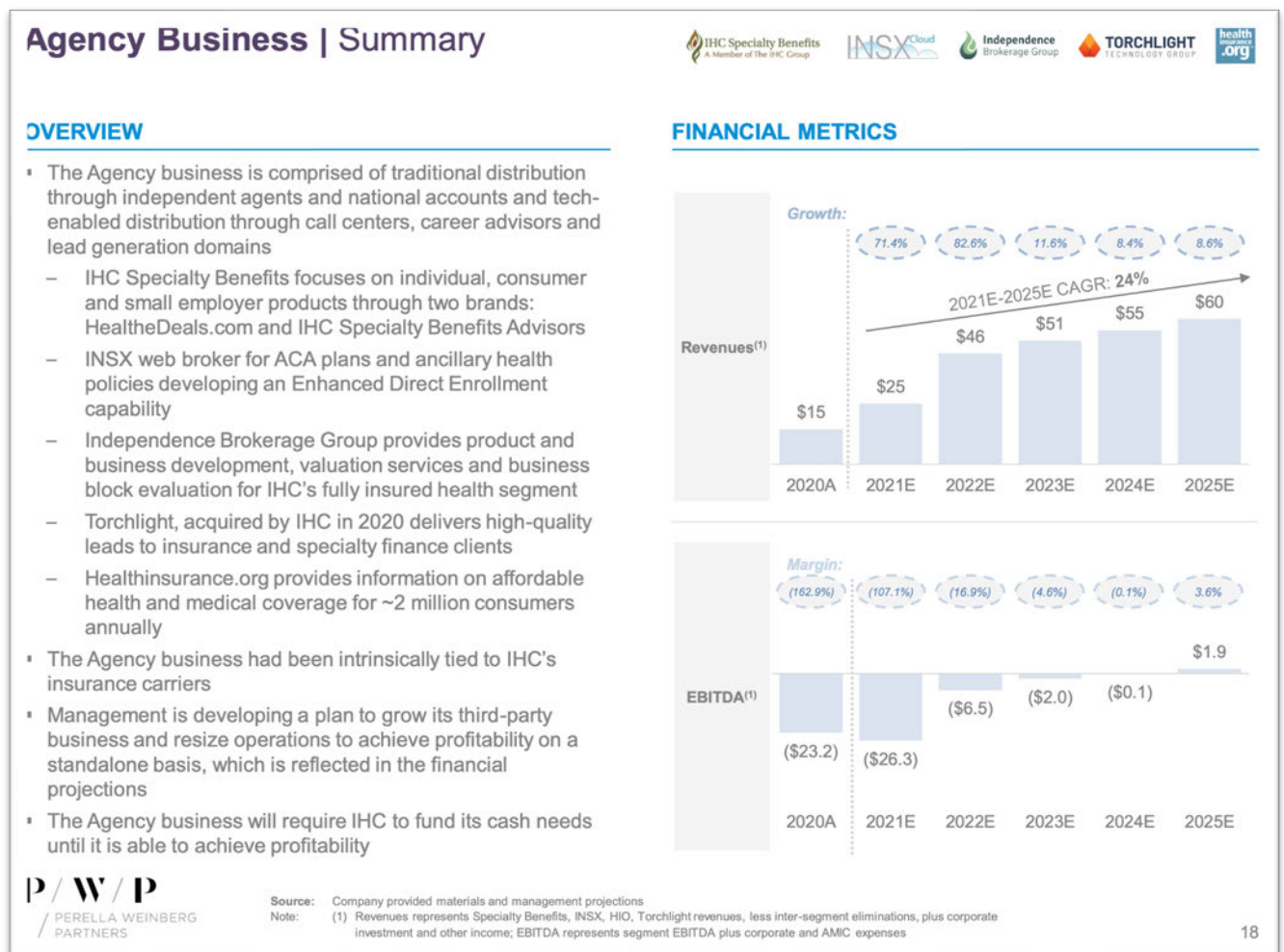
108. With the low end and high end of Perella Weinberg's valuation range for Iguana Capital both unreasonably low, it follows that the midpoint was also unreasonably low. Correcting any of the issues identified above would have raised the bottom and/or top of the \$542 million to \$902 million range for Iguana Capital on which the Special Committee based its decision to sell IHC to Geneve.

b) The Valuation Of The Agency Business Was Too Low

109. As with Iguana Capital, Perella Weinberg's valuation for IHC's Agency Business was based on a range set by high and low revenue multiples. Perella Weinberg set the bottom end using \$20 million LTM revenue and the median precedent transaction multiple of 1.8x in the lead generation and online distribution sector. It set the high end using \$46 million FY2022 revenue and a high trading comparable multiple of 1.7x in the tech-enabled life and health distribution sector. The resulting \$36 million to \$77 million value range is too low because the Agency

Business projections relied on by Perella Weinberg significantly understated its revenue.

110. The management projections that Perella Weinberg used appear to be based on increasing the Agency Business's revenue from a base of \$15 million in 2020. The five-year forecast extends through 2025 during which time revenue quadrupled to \$60 million, representing a 24% annual growth rate from 2021 to 2025:



111. The problem is that the \$15 million revenue figure for 2020 does not match what the Company has reported in its public filings. In fact, \$15 million appears to understate the Agency Business's revenue in 2020 by at least 40% and more likely 70%.

112. In describing IHC's various revenue streams, the Company's 10-K for FY2020 defines fee income as "commissions for various sales, marketing and administrative services provided by the IHC Agencies and lead generation company."²⁹ In other words, fee income is revenue generated by IHC's Agency Business. In 2020, the Company reported over \$24 million in fee income,³⁰ 60% more than the \$15 million of 2020 revenue used as the base year of the Agency Business projections.³¹

113. This number still understates actual Agency Business revenue, because the Agency Business earned more than just fee income.³² The Information Statement

²⁹ IHC Form 10-K (Mar. 16, 2021) at 37.

³⁰ IHC Form 10-K (Mar. 16, 2021) at 65.

³¹ The Perella Weinberg presentation does not explain how it reached its \$15 million figure for total revenue attributable to the Agency Business, except for a footnote stating that the amount is "less inter-segment eliminations, plus corporate investment and other income." It is unclear, however, what "inter-segment eliminations" means, because IHC had already sold off its other segments through Project Trifecta.

³² The Agency Business sold to Geneve includes Torchlight Technologies and Healthinsurance.org, which IHC includes in its Specialty Health segment and not IHC agencies. *See* IHC Form 10-K (Mar. 16, 2021) at 4.

filed by the Company on November 12, 2021 in connection with the Madison National sale provides *pro forma* financials for the Company adjusting for all three Project Trifecta divestitures. By cross-referencing these numbers with those in the Raymond James presentation, it is possible to calculate the Agency Business's annual revenue as \$47 million.

114. Specifically, the Information Statement shows \$443.8 million in total revenue and then subtracts (i) \$205.2 million in revenue, attributable to the sales of Standard Security and the Pet Business,³³ and (ii) \$191.2 million in revenue, attributable to the sale of Madison National. The Company had no other operating assets when it sold to Geneve, so the remaining \$47 million must be attributable to

³³ The table refers to Standard Security Life and the Pet Business collectively as "Other Discontinued Operations."

The Raymond James "Project Trifecta" presentation from May 2021 lists the Pet Business as having revenue of \$89 million and Standard Security having revenue of \$117 million, which, when added together, very closely matches the \$205 million adjustment to revenue from "other discontinued operations" listed on the Company's November 2021 Information Statement. (It is logical that the \$117 million could be rounded down to \$116 million for a total of \$205 million, because the \$117 million is an LTM number from May 2021, rather than the metrics from the Information Statement, which are for fiscal year 2020.)

"Other Discontinued Operations" adjusts for all the revenue attributable to the Pet Business, including IHC's stake in Iguana Capital, because the entire Pet Business would be deconsolidated from IHC's financial statements when IHC's ownership fell below 50%. The minority interest in Iguana Capital appears on the pro forma balance sheet as "Investment in Iguana Capital, Inc.," confirming it is not included in operating results. *See* IHC Information Statement (Nov. 12, 2021) at F-3.

the Agency Business:

	Historical	Other Discontinued Operations		Sale of Madison National Life		Pro Forma Adjusted
REVENUES:						
Premiums earned	\$397,530	\$(205,530)	g	\$(192,000)	b	\$ —
Net investment income	11,777	(3,957)	g	(6,752)	b	1,068
Fee income	24,137	6,304	g	1,279	b	31,720
Other income	9,074	(1,084)	g	6,575	b,f	14,565
Net realized investment gains	<u>1,346</u>	<u>(900)</u>	g	<u>(350)</u>	b	<u>96</u>
	<u>443,864</u>	<u>(205,167)</u>		<u>(191,248)</u>		<u>47,449</u>

115. After the adjusting for the sales of Standard Security Life, the Pet Business, and Madison National Life, the only remaining piece of the *pro forma* company was the Agency Business; thus, the \$47.5 million in *pro forma* 2020 revenue must belong to it. The fee income most closely associated with the Agency Business increases from \$24 million to \$32 million, likely reversing inter-segment eliminations as IHC's other segments were sold. The \$47.5 million *pro forma* revenue is over three times the \$15 million 2020 revenue number in management's projections. If Perella Weinberg had used projections with significantly higher revenue in the base year consistent with IHC's previously reported numbers, its valuation of the Agency Business and the price the Special Committee demanded from Geneve would have been higher.

116. Throughout Project Trifecta, the Agency Business was the only part of IHC that Geneve refused to sell. Although it is far from clear in the existing record how or why Geneve initiated the Transactions, it appears that Geneve's goal was always the acquisition of the Agency Business and the sale of everything else.

117. Part of the explanation may be that at the time of the Transactions, the Agency Business was executing a major strategic pivot. Historically, the Agency Business had been focused on serving IHC-owned insurance carriers, but in parallel with Project Trifecta it developed a plan to sell to third-party carriers.³⁴ Clearly, this was a much larger market opportunity with the potential to significantly upsize IHC's Agency Business. Further, the new direction for the Agency Business was centered around its cloud-based business, which would yield far higher margins than more traditional channels. According to the November 12, 2021 information statement filed by the Company in connection with the Madison National sale:

Following the closing of the pending sales of Madison National Life, Standard Security Life and Independence American Insurance Company, all of which are waiting to receive department of insurance approval, the Company intends to invest, develop and expand its agency operations into a much larger and profitable operation. The agency operations will be centered around INSXcloud.com (INSX), a CMS-approved Web Broker. The balance of the agency business includes W-2 Call Centers and a captive independent Advisors unit, both of which sell into the under/over age 65 health insurance markets.

³⁴ As set out in Perella Weinberg's fairness presentation, "The Agency business had been intrinsically tied to IHC's insurance carriers; Management is developing a plan to grow its third-party business and resize operations to achieve profitability on a standalone basis[.]"

The Company's Independence Brokerage Group recruits independent agents and agencies to sell via its platforms and contracts. The Company will also sell directly to consumers through leads generated by our web properties and affinity relationships.

118. There is nothing in the existing record to suggest that meaningful details of this plan were shared with the Special Committee or Perella Weinberg before the Geneve Buyout was agreed upon. And the Proxy, filed six weeks later, did not disclose this plan either.

119. Finally, management projections, which forecast the Agency Business' growth slowing from 80% to 10% in 2022, may not adequately reflect this opportunity for growth into a "much larger and profitable operation"—a heightened concern given the other problematic aspects of the projections discussed above.

c) Missing Value

120. Perella Weinberg's valuation of IHC was a sum-of-the-parts analysis that added together the value of the Company's interest in Iguana Capital, the Agency Business, and the cash. In addition to significantly undervaluing the first two pieces, Perella Weinberg's methodology did not include the Company's earnout on the Madison National sale. According to terms of that sale, IHC would be paid an additional \$12.5 million if Madison National's earnings exceeded \$16.5 million in 2023 or a pro-rated portion of \$12.5 million if its earnings fell between \$15.25 million and \$16.5 million. Nothing in the July 12, 2021 Board minutes (where the Board discussed this earnout) suggests that anyone thought achieving the earnout

threshold was unlikely. Yet Perella Weinberg did not factor the potential to receive this \$12.5 million payment into its valuation.

CLASS ACTION ALLEGATIONS

121. Plaintiff, a former holder of IHC common stock, brings this action individually and as a class action pursuant to Rule 23 on behalf of himself and all other stockholders whose shares of IHC common stock were exchanged for \$57.00 per share (the “Class”). The Class excludes the Defendants herein and any officer or director of the Company as of the closing of the Geneve Buyout.

122. This action is properly maintainable as a class action.

123. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

124. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands and are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

125. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

- whether Defendants owed fiduciary duties to the Plaintiff and the Class;
- whether Defendants breached their fiduciary duties to Plaintiff and the Class; and
- the extent of the Class's damages.

126. Plaintiff's claims and defenses are typical of the claims and defenses of other class members and Plaintiff has no interests antagonistic or adverse to the interests of other class members. Plaintiff will fairly and adequately protect the interest of the Class.

127. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

128. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

129. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

Count I
Individual and Class Claim for
Breach of Fiduciary Duty Against Defendants

130. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

131. The Defendants owed Plaintiff and the Class the utmost fiduciary duties of loyalty.

132. By reason of the foregoing, Defendants breached their fiduciary duties by agreeing to and entering into the Transactions without ensuring that the Transactions were entirely fair to Plaintiff and other public stockholders.

133. As a result of the foregoing, Plaintiff and the Class have been harmed.

Prayer For Relief

WHEREFORE, Plaintiff demands judgment and permanent relief, including injunctive relief, in his favor, in favor of the Class, and/or in favor of the Company and against Defendants as follows:

A. Declaring that this action is properly maintainable as a class action and certifying Plaintiff as Class Representative;

B. Declaring that Defendants breached their fiduciary duties in connection with the Transaction;

C. Awarding monetary damages to the Class, including pre- and post-judgment interest;

D. Awarding Plaintiff the costs and disbursements of this action, including attorneys' and experts' fees;

E. Granting the Company and/or Plaintiff and the other members of the Class such further relief as the Court deems just and proper.

Dated: September 1, 2022

Respectfully submitted,

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