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Transaction ID 71186676
Case No. 2022-0778-JTL

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

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| LAWRENCE BASS,<br><br>Plaintiff,<br><br>v.<br><br>GENEVE HOLDINGS, INC., STEVEN B. LAPIN, ROY T.K. THUNG, and TERESA HERBERT,<br><br>Defendants. | : | C.A. No. 2022-0778-JTL<br><br>**PUBLIC VERSION**<br><br>Filed: October 24, 2023 |

**PLAINTIFF'S VERIFIED SUPPLEMENTAL COMPLAINT**

Pursuant to the Stipulation and [Proposed] Order Governing Limited Scope Discovery (Trans. ID 70037538; the "Limited-Discovery Stipulation") and Rule 15(d), Plaintiff Lawrence Bass files this Verified Supplemental Complaint, which should be read together with Plaintiff's Verified Class Action Complaint (Trans. ID 68015752; the "Complaint"). The allegations of this Supplemental Complaint are derived from the discovery taken in connection with the Limited-Discovery Stipulation.[1] Defined terms have the same meaning as used in the Complaint.

1. As set forth below, the limited-scope discovery vindicated Plaintiff's theory of the case and destroyed Defendants' arguments. The discovery showed that:

i. Contrary to the express claim in the Proxy that Geneve did not begin

[1] The Supplemental Complaint repeats certain allegations from the Complaint to give the reader context and chronology.

considering a take-private sale of IHC until after the Madison National sale was agreed to in late July 2021, Geneve actually began to have internal discussions about a take-private sale of IHC in April 2021. Two Special Committee members—James Tatum and Allan Kirkman—testified that the asset sales and Geneve Buyout happened because the principals running the Company were getting old and the asset sales were needed to fund the Buyout. And Raymond James' engagement letter with IHC for the asset sales contemplated a fee in the event of a take-private sale.

ii. Contrary to Defendants' earlier claims that Geneve never communicated with Perella Weinberg before Perella's retention by the Special Committee, Geneve and Perella spoke multiple times about [redacted] a potential transaction in which [redacted] would acquire assets from IHC. Neither Geneve nor Perella Weinberg disclosed those discussions to the Special Committee.

iii. Contrary to the Proxy's claim that the Special Committee was fully empowered to "establish the terms of engagement" for its advisors, discovery revealed that Geneve steered the unsophisticated Committee members toward cheap, low-end advisors, the Special

Committee "[had] to get IHC [*i.e.*, management's] approval for the dollar amount," and it kept undesirable advisors "in the mix in case [another advisor's] price tag [was] deemed too high by IHC."

iv. The Special Committee selected Perella—which, in its own words, did not [redacted]—from a list of cheap, inexperienced advisors largely compiled by Herbert. The price-constrained Special Committee never considered the elite boutiques that Perella Weinberg believed to be its most likely competition (Moelis, Centerview, Evercore, and PJT).

v. Contrary to Defendants' assertion that the information was immaterial, the Special Committee found the incentive compensation arrangements for Thung, Lapin, and Herbert to be highly material in evaluating potential conflicts.

vi. Two of the four members of the Special Committee that selected Perella Weinberg destroyed emails, despite being advised that the transaction was likely to lead to stockholder litigation.

## I. Geneve Discussed A Take-Private Of IHC Before The Sales Of The Pet Business And Madison National

2. Contrary to the claims set forth in the Proxy, Geneve began to consider a take-private of IHC in April 2021 **before** selling the Pet Business and Madison

National. The relevant timeline for the asset sales was as follows:

i. On April 14, 2021, IHC agreed to sell Standard Security to Reliance.

ii. On May 5, 2021, IHC signed a letter of intent to sell Madison National to Horace Mann.

iii. On May 16, 2021, the full Board approved the sale of the Pet Business (including Independence American Insurance Company or "IAIC") to Iguana Capital.

iv. On July 12, 2021, the Board approved the sale of Madison National to Horace Mann.

3. The Proxy stated 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 the Company should continue as a publicly traded company … or whether it would be more efficient for the Company to become a privately-owned company."[2] Similarly, in earlier briefing in support of their motion to dismiss, Defendants argued that "[un]nable to challenge the Merger head-on, Plaintiff instead targets three separate, unconflicted transactions in which the Company ultimately sold its three main insurance carriers to three different unaffiliated third parties (as defined below, the 'Asset Sales'), which—as

[2] Proxy at 13 (emphasis added).

the Proxy expressly disclosed—were agreed to by the Company and the counterparties ***before*** Geneve even began ***considering*** making a take-private proposal."[3]

4. The limited-scope discovery proved these statements false.

5. Teresa Herbert—Geneve's Rule 30(b)(6) designee—testified that, in fact, she (a Geneve officer), Thung (another Geneve officer), and Kettig (an IHC officer) participated in discussions in the **first** half of 2021 about "the possibility of a take-private" of IHC.[4] Herbert testified that there were "two to three" of these discussions, with the earliest discussion taking place at the end of April 2021 (*i.e.*,

[3] Trans. ID 68425556 at 2–3 (emphasis original); *see also* Trans. ID 69178173 at 3 ("Plaintiff alleges no well-pleaded facts that contradict the Proxy's express disclosure that Geneve only ***began*** consideration of making its take-private proposal ***after*** the final Asset Sale was agreed upon.") (emphasis original).

[4] Ex. 1 ("Herbert") 74–76 ("Q… And in 2021--let's say the first half of 2021, so prior to that kind of mid-July period, had there been general discussions that one alternative for IHC, if and when the three asset sales closed, would be to sell the rest of the business to Geneve? A. Not to sell the business to Geneve but the possibility of a take-private, yes. Q. Okay. Was there a buyer other than Geneve that had been discussed? A. No. Q. … Other than a take-private, had there been a general discussion about other alternatives for IHC and in particular all the cash that was on its balance sheet? A. Yes, we generally spoke about a tender offer for shares or a cash dividend to shareholders. Q. … And we have been saying "we," and I've been doing it too. Who specifically was participating in these discussions? A. IHC. Q. What human—what human--what human being? A. The CEO of IHC and the president of IHC, myself, not -- not directors. … The CEO was Mr. Thung, and Mr. Kettig was president at the time."); *id.* 76–77 ("Q. Let me just ask a couple of follow-ups on these discussions regarding the options, take-private, cash dividend, and tender. How many discussions do you recall between January and June? A. Maybe two to three discussions. Q. Do you recall when the discussions were? A. I would say the earliest was the end of April.").

after the sale of Standard Security but before the sales of the Pet Business or Madison National).[5] They did not discuss a buyer other than Geneve.[6]

6. The Proxy did not disclose these discussions. That was a material omission, given the Proxy's false statement that Geneve did not begin to consider a take-private until after entering into the agreement to sell Madison National in late July 2021.

7. As further evidence that the Proxy was materially incomplete and misleading, two of the four members of the Special Committee testified that IHC's 2021 asset sales were designed to fund the Geneve Buyout.

8. **Tatum** testified that "as happened," IHC had "to begin to liquidate parts of the company so that there would be funds available" for a take-private because "nobody was getting any younger":[7]

> Q. Mr. Tatum, can you just identify with any more specificity, you know, when you started thinking that the company might be bought out by Geneve?
>
> A. I don't know that I could address a specific time frame from my personal point view, you know, a number of the actors weren't getting any younger, and at some point, my feeling certainly was the company was going to need to be taken private, or as happened, we were going to have to begin to liquidate parts of the company so that

[5] *Id.*

[6] *Id.*

[7] Ex. 2 ("Tatum") 22–23.

there would be funds available to do so.

So we sold both of our insurance subsidiaries, Standard Security Life and Madison National Life, and that really set the -- accelerated the process of taking the entire company private.

After that happened, there was no need to remain a public company, at least that's – I'm speaking for myself.

Q. Understood. At this August 29--

A. Nobody was getting any younger either, or I'd add that.

9. Tatum testified further that "Project Trifecta" referred to the "process of, you know, taking the company private, how we had to deal with various parts, so forth and so on."[8]

10. **Kirkman** agreed. He testified that it was "correct" to say that "parts of the company had to be liquidated in order to generate funds that would be available for Geneve to then take the company private," and that "absent this transaction, the shareholders would have faced considerable risk" because of the "age of the principals involved" (Thung, Herbert, and Lapin):[9]

Q. … There is an allegation in this case that the asset sales were meant to fund the Geneve buyout of IHC. What is your reaction to that allegation?

A. I think that the sale of the assets improved the financial profile of the company by reducing the risk on the

[8] Tatum 64.

[9] Ex. 3 ("Kirkman") 108–09.

company and that that liquidity enabled the company to repay debt and be in a much sounder financial position.

Q. And to put a finer point on it, were the asset sales -- was the purpose of the asset sales to fund the take private by Geneve of IHC?

A. Well, the asset sales obviously provided some of the funding which enabled the buyout of the minority shareholders to proceed. But in my view, this was the only way the minority shareholders were going to be able to maximize their investment in IHC. No shareholder lost money on this transaction, $57 a share. And I think absent this transaction, the shareholders would have faced considerable risk in two areas; one is the age of the principals involved, and I mean Roy [Thung], Terry [Herbert], and Steve [Lapin]; and I think they faced incredible uncertainty as to what happens with Geneve's position in IHC upon the passing of Barbara Netter.

Q. One last question for me. If someone were to say that the parts of the company had to be liquidated in order to generate funds that would be available for Geneve to then take the company private, what would be your reaction to that statement?

A. Well, I think that's correct. But again, the independent directors are looking after the minority shareholders, and I think those sale transactions helped that objective be achieved. [10]

[10] The third member of the Special Committee, Simon, disputed Kirkman and Tatum's testimony. Ex. 4 ("Simon") 107 ("Q. There's an allegation in the case that asset sales were meant to fund the Geneve buy out of IHC. Was that consistent with your recollection? A. No.").

The fourth, Lahey, had no idea either way. Ex. 5 ("Lahey") 68–70 ("Q. There's an allegation in this case that those asset sales were meant to fund the Geneve buyout. What is your reaction to that allegation? A. Again, the -- you know, the work on the special committee is -- is what I can speak to at this time. I -- all of the other activities that involve

11. None of this was disclosed in the Proxy. That was a material omission.

12. Additionally, Raymond James' pitch deck to the Special Committee in connection with the Geneve Buyout stated that its past work on the asset sales would be "consistent with the provision of advisory services to the Special Committee as in both cases we are seeking to provide advice for the benefit of the Company and its shareholders and [advising on a take-private] was, in fact, contemplated in our existing engagement letter."[11]

13. In discussions on August 30, Herbert, Loan Nisser (in-house counsel at IHC), and the Company's outside counsel from Dentons exchanged emails about the fact that Raymond James' engagement letter with IHC contemplated Raymond James being paid a fee of [redacted] of transaction value on a take-private sale of the Company.[12] As Dentons explained, "you do not have to engage [Raymond James].

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different parts of Independence Holding Company and exactly where they were in terms of closings or other things, I can't sit here and tell you. Again, you're talking years back now. And I certainly don't want to incorrectly state what is clearly on the record already. So whatever Geneve was offering to purchase or whatever was available for them to ultimately purchase in this going private at the time that they made their offer is what existed at IHC. And that was the offer that we were looking at. I can't give you the specifics on every piece, but I assume there's a record and the record is the accurate answer to your question. I'm just not in a position to give it to you at this time. Q. So if someone were to say that parts of the company had to be liquidated in order to generate funds that would be available for Geneve to then take the company private, what would your reaction be to that statement? A. I have no knowledge of that whatsoever.").

[11] Ex. 6 at '140.

[12] Ex. 7; Ex. 8.

The more complicated answer is that you will likely be paying them a fee of [redacted] of the deal value if you don't engage them."[13] Herbert testified that [redacted][14]

14. None of this was disclosed in the Proxy. That was a material omission.

## II. Herbert Spoke With Perella And Rossi About A Transaction With [redacted] In 2020 And Again In June 2021

15. Geneve had multiple communications with Perella about a potential transaction involving IHC and [redacted] before the Special Committee retained Perella.

16. In earlier briefing in support of their motion to dismiss, Defendants argued that: "[w]holly absent from the Complaint are any well-pleaded factual allegations supporting a reasonable inference that … Lapin, or anyone else at Geneve, communicated with [Mauro] Rossi, or anyone else at Perella, at any point before Perella's retention by the Special Committee" and that "there were," in fact, "no discussions between Geneve and Perella during this timeframe. … Accordingly, no books and records concern those events—because they never occurred."[15] The limited-scope discovery proved that argument false and the Proxy materially

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[13] Ex. 9.

[14] Herbert 30 ("Q. [redacted]").

[15] Trans. ID 68425556 at 48–49.

incomplete.

17. Herbert and Mauro Rossi of Perella both testified that in June 2020, Rossi met with Herbert and Kettig along with senior executives of [redacted].[16] Rossi testified that the 2020 meeting involved a discussion of a potential acquisition by [redacted] of Madison National from IHC.[17] Rossi and Perella were acting on behalf of [redacted],[18] although Perella had not been formally retained.[19] Neither Perella nor Herbert disclosed the discussions about [redacted] to the Special Committee.[20]

18. On June 4, 2021—after the announcement of the Standard Security and Pet Business sales—Rossi sent the following email to Raymond James about IHC: "I received an inbound inquiry from a strategic that would be interested in a pre-emptive approach on the remaining businesses. Do you have a target closing date for SSL [Standard Security] and IAIC [Independence American Insurance Company]? It could make it easy for you to complete the IHC trifecta!"[21] Rossi testified that the "strategic" he referenced was [redacted].[22]

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[16] Herbert 4244; Ex. 10 ("Rossi") 1516.

[17] Rossi 16.

[18] Herbert 27.

[19] Rossi

[20] Herbert 5053; Rossi 2122; Simon 66; Lahey 61; Tatum 103; Kirkman 75.

[21] Ex. 11.

[22] Rossi 1213.

19. Herbert testified that Raymond James did not share this information with IHC or Geneve.[23] But it seems implausible that Raymond James would have concealed this information from IHC management. In any event, on June 21, 2021, Rossi wrote directly to Herbert: "Hi Terry, I hope you are doing well. I've seen the announcements around the IHC transformation - congratulations on all the progress! At David Kettig's suggestion, I was hoping to have a quick phone call with you to share some feedback I've received on IHC's go-forward business."[24] Herbert and Rossi spoke the next day.[25]

20. Herbert's contemporaneous notes reflect a discussion about [redacted][26]

[redacted]

[23] Herbert 69–70.

[24] Ex. 12.

[25] Herbert 40–41.

[26] Ex. 13.

21. Herbert testified that during the June 22, 2021 call, Rossi "wanted to talk about the agency business that we had, our insurance agency and still the possibility of [redacted] maybe being interested in it."[27] By contrast, Rossi testified that "the discussion had always been around Madison National" and denied that [redacted] had ever expressed an interest in the agency business.[28] Either way, neither Herbert or Perella ever disclosed these conversations to any members of the Special Committee.[29]

22. On August 24, 2021, Herbert sent Lapin contact information for Mauro Rossi. In a July 6, 2022 letter sent to Plaintiff's counsel about that email, Defendants' counsel from Paul Weiss stated that "Lapin … at this time, had considered the possibility of retaining a financial advisor to advise Geneve in regard to a potential transaction."[30] Yet, at her deposition, Herbert denied that Geneve had ever considered hiring Perella.[31] The Special Committee members were also unaware of Geneve's supposed consideration of Perella, and Kirkman testified that he would have considered it a "negative factor" in the "conflict equation" during advisor

[27] Herbert 41.

[28] Rossi 17–20.

[29] Herbert 5053; Rossi 2122; Simon 66; Lahey 61; Tatum 103; Kirkman 75.

[30] Compl., Ex. 2.

[31] Herbert 33 ("Q. … Was Geneve considering hiring Perella Weinberg to represent Geneve in connection with a potential acquisition of IHC? A. No. We never considered them.").

selection.[32]

23. None of these discussions regarding [redacted] or Geneve considering hiring Perella itself were disclosed in the Proxy. That was a material omission.

## III. The Special Committee Needed IHC/Geneve's Approval For The Advisor Fee, And Geneve Steered It To Cheap, Inexperienced Options

24. As Rossi would later testify, IHC's outside directors were unsophisticated and had little understanding of the public company M&A process.[33] Indeed, Kirkman testified that he and Simon believed they were "not to be actively involved in the negotiation with Geneve."[34] Geneve would take advantage of the Special Committee's naivete and steer it to cheap, inexperienced financial advisors.

25. The Special Committee held its first meeting at 10:00 a.m. on August 30, 2021. 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,

[32] Kirkman 72 ("Q: Was Geneve considering retaining Perella in connection with the sale of IHC? A: I don't know. Q: If so, is that information you would have wanted to have at the time you were selecting a financial advisor? A: Yes. Q: Why? A: Because it would have to be factored into the conflict equation. Q: In what way would you have factored it into the conflict equation? A: I would have considered that a negative factor.").

[33] Rossi 25 ("Q. Would you agree with me that the members of the IHC board were not very sophisticated? A. I think that they were not sophisticated in the sense that they did not have a lot of experience in public company take private situations.").

[34] Kirkman 89–90.

President."[35]

26. Early that afternoon, Simon emailed the other members of the Special Committee, noting that he had solicited advice on law firms from Nisser and advice on financial advisors from Herbert and Larry Penn of Ellington Financial (another company at which Simon was a director).[36] Simon's email emphasized a rush to complete the transaction by year-end, stating that he and Nisser "discussed the timing issue. … She will consult with Steve [Lapin] and Geneve attorneys about the scheduling issues and get back to us. It is going to be tight to get everything done before year end but it is important that we try and do so."[37]

27. Simon also wrote that Herbert had tried to steer the Special Committee toward a cheap option: "Terry had suggested that perhaps all we ask for is a valuation, such as was done in the case of taking AMIC private, rather than a fairness opinion, as a means of keeping the cost down."[38]

28. That evening, Herbert sent Rossi's contact information to Simon.[39] Also on August 30, Herbert sent Simon contact information for Duff & Phelps,

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[35] Ex. 14.

[36] Ex. 15.

[37] *Id.*

[38] *Id.*

[39] Ex. 16.

Raymond James, Deloitte, and TD Securities.[40] And on August 31, Simon wrote to the other Special Committee members that "Terry also had an unsolicited request from Piper Sandler who asked to be considered for the investment adviser role."[41]

29. In an email to the other Special Committee members sent on August 30, Simon wrote that Larry Penn of Ellington had also suggested Keefe, Bruyette & Woods, Moelis & Company, and Houlihan Lokey. With respect to Moelis, Simon noted "I am afraid they would be extremely expensive."[42] The Special Committee did not discuss or consider Moelis further.[43] Simon also testified that the Special Committee didn't consider any bulge-bracket banks because they would have been "too expensive."[44]

30. There is other evidence in the record that the Special Committee felt price-constrained by the need to get Geneve/IHC management's approval for the financial advisor's fee. The first Special Committee member to testify, Tatum, gave

[40] Ex. 17.

[41] Ex. 18.

[42] Ex. 19.

[43] At his deposition, Simon was unable to name any factor other than cost to explain the Special Committee's decision not to consider Moelis. Simon 101.

[44] Simon 102. According to Kirkman, what stood out to him about the qualifications of Perella was the fact that one of the Perella bankers "had worked for a number of years as an M&A person at Morgan Stanley." Kirkman 91. But when asked whether the Special Committee considered Morgan Stanley as a potential advisor, Kirkman testified "[t]heir name never came up." Kirkman 91–92.

equivocal testimony on this subject:[45]

> Q. John Lahey e-mailed Ron Simon on September 5th of that year saying … We have to get IHC approval for the dollar amount to pay the financial adviser. Do you have any idea why he would have written that?
>
> A. I guess--no. I don't know specifically. I don't know why he would have written that, but it had to be along the lines of you know, if we agree to pay some enormous fee here, there's going to be some pushback by Geneve. I mean, I don't know why he wrote that. Maybe he had suspicions that others of us didn't have. I have no idea.
>
> Q. What kind of suspicions?
>
> A. That they would object to a high fee.

31. The other three Special Committee members (each of whom testified after Tatum and each of whom was, like Tatum, represented by Defendants' counsel from Paul Weiss) flatly denied that the Special Committee's choice of financial advisor was subject to approval by IHC.[46] But the contemporaneous record suggests that, in fact, the Special Committee's choice of advisors was driven by a fear that IHC management would not approve a more expensive advisor.

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[45] Tatum 110111.

[46] Simon 102103 ("Q. Was the committee required to get approval from IHC management for the fee that it was agreeing to pay to its financial advisor? A. No."); Kirkman 97 ("Q. Did you have to get approval from IHC for the final cost for the financial advisor to the Special Committee? A. No."); Lahey 79–80 ("Q. So as of the date of this email, you believed that you had to get IHC approval for the dollar amount for the financial advisor? A. No.").

32. In particular, on September 5, 2021, Lahey wrote to Simon, "Ron, I have read all of the proposals and I would strongly support any of these 3 firms: Piper Sandler, PWP or KBW. The total fees for the first two including the fairness opinion would be around [redacted] while it looks like KBW might be closer to [redacted]. **Since we have to get IHC approval for the dollar amount we might want to keep KBW in the mix in case the [redacted] price tag is deemed too high by IHC.** I would not support Raymond James or Houlihan Lokey over any of my above three choices."[47]

33. Lahey's testimony trying to explain away this email required him to deny that the email said what it said.

| Lahey Testimony[48] | Lahey Email[49] |
|---|---|
| Q. Did you need to get approval from IHC for the dollar amount for retaining the legal advisor?<br><br>A. Again, just to go back to your question, this sentence does not say what you're stating**. I didn't say we had to get their approval.** We did have to give them information ultimately.<br><br>My words are that we ought to keep somebody in the mix in case the | **Since we have to get IHC approval for the dollar amount** we might want to keep KBW in the mix in case the [redacted] price tag is deemed too high by IHC. |

[47] Ex. 20 (emphasis added).

[48] Lahey 84 (emphasis added).

[49] Ex. 20.

| | |
|---|---|
| price is deemed too high.<br>…<br>**It doesn't say it has to have IHC approval…** | |

34. Simon's testimony was equally incredible:[50]

> Q. Was Mr. Lahey simply wrong in stating that the committee had to get IHC approval for the dollar amount?
>
> A. I absolutely believe that.
>
> Q. Okay. Did you tell him that?
>
> A. No. Why would I bother?

35. The Proxy claimed that the Special Committee was empowered to "interview, select and retain, at the Company's expense, such financial advisors, legal counsel and other advisors as the Special Committee deems appropriate, including an investment bank to deliver a fairness opinion, if requested by the Special Committee, in connection with a potential transaction with Geneve [and] establish the terms of engagement of each such advisor."[51] The Proxy did not disclose that, in fact, the Special Committee was required to get IHC's approval for the fee paid to its financial advisor, which could deem that fee too high. The failure to disclose that the Committee was required to "get IHC approval for the dollar

[50] Simon 104.

[51] Proxy at 17.

amount" rendered the Proxy materially misleading.

## IV. The Special Committee Chose Perella From A List of Bad Options Largely Compiled by Herbert

36. Late on the evening of August 30, Simon emailed Rossi, stating "I got your name from Terry Herbert," and asking for Perella to send a proposal.[52] Simon's email emphasized time pressure: "[i]f your firm is interested in acting as the committee's financial advisor, we will need to hear from you quite quickly, as we are hoping to complete the transaction during 2021, to get it closed in advance of potential changes in tax laws."[53]

37. Perella was concerned about its lack of qualifications relative to likely competitors. In an email sent on September 2, discussing whether to add a slide about precedent squeeze-outs to their pitch deck, Rossi wrote, [redacted][54] Kirkman testified that although he did not know at the time whether "Perella had experience advising on transactions with insiders,"

[52] Ex. 21.

[53] *Id.*

[54] Ex. 22.

knowing about this lack of experience would have been important "[b]ecause it might have impugned [Perella's] ability to give sound advice."[55]

38. On September 3, Simon emailed Rossi to ask for a letter disclosing any conflicts vis-à-vis IHC, Geneve, or JAB.[56] In a subsequent internal exchange at Perella, one of Rossi's senior colleagues speculated that Perella would be going head-to-head with elite (and expensive) boutiques like Centerview, Evercore, Moelis, or PJT Partners, or even bulge-bracket advisors like Goldman Sachs, JPMorgan, Citi, Barclays, or Morgan Stanley:[57]

> Interesting. Since they had been already been contacted by the client when we gave them the heads up that we put their name forward, wonder if some other firm did the same. [Paul Weiss] is reasonably close to Centerview … would they be among the three banks baking off? Mauro, it may make Sense for you to reach out to Ariel [Deckelbaum of Paul Weiss] to poke around. We definitely want to call for their support.
>
> Re the question on JAB, we have no conflict but have worked across from JAB many times. Sadly, that is probably also true for Centerview, EVR, Moelis and PJT
>
> if jab is a real conflict, a number of firms will be not qualify, including GS, JPM, Citi, Barclays, MS.

39. A few hours later, Rossi shared a very happy surprise with his

[55] Kirkman 84–85.

[56] Ex. 23.

[57] *Id.*

colleagues. Perella's competitors were not high-end boutiques; they were low-end advisors with no special committee experience that Paul Weiss viewed as non-credible contenders:[58]

> Spoke to Ariel [Deckelbaum of Paul Weiss] –
>
> Jeff Marell [of Paul Weiss] will be working on it, not Ariel.
>
> **Bad news is that there are 3 other banks, not 2.**
>
> **Good news is that the other banks are Houlihan Lokey, Stiefel [*sic*] and KBW**[59]
>
> **Jeff agrees that none of these are that credible in SC experience**. [redacted]
>
> KBW has good middle market insurance M&A creds but zero SC work (that I'm aware of).

40. Later that day, a Perella banker wrote that Perella should not "hold out for some major bump" in negotiations: "the opening salvo is decent and I would not hold out for some major bump, unless the market valuation is completely off the mark. The suggested total fee quantum looks fine but would go with a flat transaction fee. HL, Stiefel and KBW will go with low FO fees — probably around [redacted]."[60]

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[58] Ex. 24 (emphasis added).

[59] Rossi was confused; KBW is a Stifel subsidiary. Stifel was not pitching separately. The Special Committee also received proposals from Piper Sandler and Raymond James.

[60] Ex. 25.

41. On September 8, Simon emailed Rossi a set of questions that further evidenced the Special Committee's lack of sophistication and experience:[61]

> In order to move our process forward, Allan Kirkman (one of our Committee members and a long-time director of IHC) and I would like to have a conversation with you today or tomorrow morning to discuss some issues relating to the prospective assignment.
>
> - The process you will follow to get to a "fairness opinion." What are the major determinants of fairness?
> - Timing to prepare the fairness opinion.
> - **In your experience, what are we likely to see happen once the fairness opinion is rendered? Reaction of the buyer and subsequent behavior? What role will you expect to play in the negotiation that follows?**
> - Fee structure and amount
> - Anything else you think would be useful

42. The bolded questions above betray Simon's lack of sophistication about the M&A process. As Rossi testified, a director with any M&A experience would know that a fairness opinion is rendered at the end of negotiations, not the beginning.[62]

43. On September 9, 2021, Simon and Kirkman met by phone with Perella Weinberg. Simon sent a summary of that call to the other members of the Special

[61] Ex. 26 (emphasis added).

[62] Rossi 27–28.

Committee, which stated, in relevant part:

- "The fairness opinion is a result of analysis – an assurance to the special committee that the transaction passes muster from a financial fairness point of view – the process of getting to a fairness opinion is part of what we do to handle potential shareholder litigation"
- "After the proxy is out, one can expect lawsuits. The process and analysis that got us to that point is very important- everything has to be squeaky clean. We have to be able to show that the process and the substance are important."
- "They believe we can meet the year-end target – failure to do so would be a result of things that we cannot control"
- "In response to Allan [Kirkman]'s question about relationship with Paul Weiss, they indicated that they have a close relationship, and in particular cited Jeff Marell."
- "We concluded with a discussion of the fee. They have asked for [redacted] upon delivery of the fairness opinion, and [redacted] on the closing of the transaction. We said that is much more than we were expecting to pay, based on discussions with other firms."[63]

44. The Special Committee met on September 10 to decide on a financial advisor. At that meeting, the Special Committee discussed Lahey and Tatum's conflicts vis-a-vis Geneve and the Netters that would later cause their removal from the Special Committee.[64] All four members of the Special Committee, including Lahey and Tatum, then voted to approve the selection of Perella Weinberg.[65]

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[63] Ex. 27.

[64] Ex. 28; *see* ¶¶71-73 of the Complaint.

[65] Lahey 93–94 ("I certainly remember voting on Perella Weinberg, all four of us did[.]").

## V. The Special Committee Thought Management's Incentives Were Relevant To Evaluating Conflicts

45. In briefing in support of their motion to dismiss, Defendants argued that "[g]iven that the Company's stockholders do not require or have insight into the Geneve executives' [*i.e.*, dual fiduciaries Lapin, Thung, and Herbert] base salary or ordinary-course compensation from Geneve (the disclosure of which Plaintiff does not contend is required), providing information regarding a potential bonus that may or may not be triggered could not possibly be material."[66] Discovery proved that the Special Committee found this information highly material to its consideration of potential conflicts.

46. 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. The full IHC Board met that day and formed the Special Committee, consisting of Simon, Kirkman, Tatum, and Lahey. With the proposal, Lapin included information about Geneve's compensation arrangements with Lapin, Thung, and Herbert, including that their compensation could be affected by the sale of IHC to Geneve.[67]

47. The members of the Special Committee found this information material

[66] Trans. ID 68425556 at 61.

[67] Ex. 29, Annex B.

when evaluating relevant conflicts. On August 30, 2021, Lahey wrote to Simon: "With respect to Geneve being the buyer, several IHC directors also have positions with Geneve so I think the distinction between Geneve and IHC is in some respects a distinction without a difference. Also, several of these same directors have separate compensation incentives with Geneve—take another look at the compensation arrangement sheet that Steve [Lapin] sent us with his going private proposal dated August 29, 2021— I'll be shocked if a law firm reading this will conclude that Geneve and IHC are completely distinct entities."[68] Similarly, on September 1, 2021, Kirkman wrote to the other members of the Special Committee: "Due to the new Geneve incentive plan, IHC's consistent use of [Duff & Phelps] over the years should disqualify them as a choice for the committee."[69]

## VI. Two of the Four Special Committee Members Spoliated Emails

48. Two of the four members of the Special Committee that selected Perella Weinberg destroyed all of their emails from the relevant period.

49. In the course of limited-scope discovery, Defendants' counsel from Paul Weiss agreed to accept subpoenas seeking documents from all four members of the Special Committee: Simon, Tatum, Kirkman, and Lahey. In a telephone call on July 7, 2023—subsequently memorialized in an email on August 7—Paul Weiss

[68] Ex. 30.

[69] Ex. 31.

disclosed that (i) Tatum and Lahey had both deleted all of their emails from the relevant period and (ii) Geneve had not issued litigation holds until March 9, 2022 (more than two months after Plaintiff sent his books-and-records demand): [70]

> As we affirmatively raised during our July 7 discussion in the interest of full transparency, we understand that neither James Tatum nor John Lahey maintain potentially responsive documents for the time period addressed by the Limited Scope Discovery (including Plaintiff's proposed more expansive time period). As you have requested, we summarize the related background below.
>
> We conducted interviews with each of Messrs. Tatum and Lahey on June 6, 2023, during which we discussed each of their practices for document management and retention as well as any sources or repositories of potentially responsive documents. Based on our custodial interviews, we understand that Messrs. Tatum and Lahey each had deleted their emails from 2021 long ago, and that each believes he did so before receipt of the initial litigation hold notice concerning these matters issued on March 9, 2022.

50. Plaintiff was later able to recover some (though perhaps not all) of Lahey's emails via a subpoena to Quinnipiac University.[71] All of Tatum's emails were permanently lost (to the extent that they were not in the files of other custodians).[72]

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[70] Ex. 32 at 3; Ex. 33 (books-and-records demand, sent December 30, 2021).

[71] Geneve produced responsive emails sent to Lahey (from the files of other custodians) that Quinnipiac did not. *See, e.g.*, Ex. 34.

[72] Bizarrely, Lahey and Tatum both denied, during their depositions, that they ever spoke to Paul Weiss about deleting emails. Tatum 130 ("Q. Did you ever discuss this deletion practice with anybody at the company around or on the special committee? A. No. Q. What about with Paul Weiss? A. No, absolutely not."); *id.* at 137–38 ("Q. I just want to—I think

51. Contemporaneous emails show that Lahey and Tatum would have reasonably anticipated litigation at the time that they were deliberating over the selection of a financial advisor in late August/early September 2021. For example, on September 1, 2021, a partner at Mayer Brown (one of the law firms that the Special Committee was considering) advised the Special Committee that its team would include a litigation partner to "provide the committee the best possible protection from the inevitable lawsuits that will be filed if and when a transaction is announced."[73] Similarly, Mauro Rossi of Perella Weinberg testified that he expected that Perella told the Special Committee that there would likely be shareholder litigation following the announcement of the transaction.[74] Simon documented this advice in a contemporaneous email sent on September 9, 2021, summarizing Perella's advice: "After the proxy is out, one can expect lawsuits."[75]

52. The Court can—and should—draw an adverse inference from the

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there may have been a confusing answer. I just want to make this clear for the record. Have you been in discussion with the Paul Weiss law firm recently about what documents may exist? A. No."); Lahey 108 ("Q. When did you first discuss your past deletion of emails with Paul Weiss? A. I don't believe I ever discussed my past deletion of emails with. You mean any emails? Q. Yeah. A. I don't know that I ever discussed it with them."). For avoidance of doubt, Plaintiff's counsel believe Paul Weiss.

[73] Ex. 34.

[74] Rossi 29 ("Q. Is it true that Perella told the Special Committee that there would likely be shareholder litigation following the announcement of this transaction? A. I don't recall that, but I would expect that we would have said that, yes.").

[75] Ex. 27.

deleted emails, particularly given that Geneve waited over two months to issue litigation holds after receiving Plaintiff's books-and-records demand.[76]

Dated: October 17, 2023

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[76] *Harris v. Harris*, 2023 WL 193078, at *20 (Del. Ch. 2023).

## CERTIFICATE OF SERVICE

I, Kimberly A. Evans, do hereby certify that, on October 25, 2023, I caused a copy of *Public Version of Plaintiff's Verified Supplemental Complaint* to be served via File and Serve*Xpress* upon the following counsel of record:

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