EFiled: Feb 06 2025 12:03PM EST
Transaction ID 75590593
Case No. 2022-0778-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LAWRENCE BASS, Plaintiff, v. GENEVE HOLDINGS, INC., STEVEN B. LAPIN, ROY T.K. THUNG, and TERESA HERBERT, Defendants.	:	C.A. No. 2022-0778-JTL **PUBLIC VERSION** Filed: February 6, 2025

PLAINTIFF'S BRIEF IN SUPPORT OF THE PROPOSED SETTLEMENT, CLASS CERTIFICATION, AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES

Kimberly A. Evans (#5888)
BLOCK & LEVITON LLP
222 Delaware Avenue, Suite 1120
Wilmington, DE 19801
(302) 499-3600

Dated: January 30, 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

INTRODUCTION

Plaintiff seeks approval of an $11 million all-cash Settlement[1] resolving Class claims challenging controlling stockholder Geneve's acquisition of IHC (the "Geneve Buyout" or the "Transaction"). The Settlement follows full briefing on two motions to dismiss, oral argument on one motion to dismiss, and Court-ordered limited merits discovery, in which Plaintiff sought to establish that the Geneve Buyout failed to comply with *MFW*.[2]

As explained below, the Settlement constitutes an exceptional result when considered: (i) as a premium to the Transaction price; (ii) against the risks of continued litigation, including forthcoming summary judgment motions; and (iii) as a percentage of Plaintiff's risk-adjusted outcome at any trial (even assuming a full victory).

Plaintiff also seeks approval of a $2.58 million all-in Fee and Expense Award, constituting 23.5% of the cash Settlement Fund. As explained below, Plaintiff's request is in line with this Court's precedent and, if approved, would fairly

[1] Unless otherwise noted, all defined terms have the meaning ascribed in the Amended Stipulation and Agreement of Settlement, Compromise, and Release (Trans. ID 75108191) (the "Stipulation"), all emphasis is added, and all internal citations and quotation marks are omitted. Citations to "Compl." refer to the Verified Class Action Complaint (Trans. ID 68015752) (the "Complaint").

[2] *Kahn v. M & F Worldwide Corp.* ("*MFW*"), 88 A.3d 635 (Del. 2014).

compensate Plaintiff's Counsel for the fully contingent work performed on behalf of the Class.

STATEMENT OF FACTS

I. BACKGROUND

Independence Holding Company ("IHC" or the "Company") was an insurance holding company that, through its subsidiaries, sold various insurance products to consumers.[3] At all relevant times, IHC was controlled by Defendant Geneve, a diversified financial holding company.[4] Geneve and IHC shared directors and officers, including:

- Defendant Steven Lapin, Vice Chairman of the Company's board of directors (the "Board") and President and CEO of Geneve.[5]
- Defendant Roy T.K. Thung, the Company's CEO and Chairman of the Board, as well as a director and executive officer of Geneve.[6]

[3] Independence Holding Company Proxy Relating to Merger, Schedule 14A (Jan. 6, 2022) ("Proxy") at 55.

[4] *Id.* ("Geneve holds in the aggregate approximately 62.0% of the Company's outstanding Common Stock as of December 31, 2021.").

[5] *Id.* at 14.

[6] *Id.* at 59.

- Defendant Teresa Herbert, an IHC director, IHC's Chief Financial Officer from 2016 through June 30, 2021, and Vice President-Finance and Treasurer of Geneve.[7]

Prior to the Geneve Buyout, IHC operated three insurance carriers: Standard Security Life Insurance Company of New York ("Standard Security"), Madison National Life Insurance Company, Inc. ("Madison National"), and Independence American Insurance Company, which it owned through a separate entity, Independence American Holdings Corporation ("Independence American").[8] In addition to these subsidiaries, IHC also operated a pet division (the "Pet Business") and an insurance agency business (the "Agency Business").[9]

II. DEFENDANTS SELL MOST OF IHC'S ASSETS TO FUND A TAKE-PRIVATE.

In June 2020, Herbert, IHC President, Chief Operating Officer and then-director David Kettig ("Ketting"), and Perella Weinberg Partners ("Perella") partner Mauro Rossi ("Rossi") met with [redacted] regarding [redacted] potential interest in the acquisition of Madison National.[10] This conversation was not disclosed in the Proxy.

---

[7] *Id.* at 56.

[8] *Id.* at 19.

[9] *Id.* at 13, 19.

[10] Deposition Transcript of Mauro Rossi ("Rossi Tr.") at 15–16; Deposition Transcript of Teresa Herbert ("Herbert Tr.") at 26–27.

Over the course of barely two months in the spring of 2021, the Company sold virtually all its assets in rapid succession through a series of purportedly coincidental transactions. *First*, on April 14, 2021, the Company agreed to sell Standard Security to a third party for $180 million in cash.[11] *Second*, just over a week later, on April 23, 2021, the Company received a non-binding proposal from JAB Holdings B.V. ("JAB") to acquire a controlling equity stake in the Company for $53.50 per share in cash.[12] Geneve did not wish to sell its stake in IHC and JAB instead formed an affiliated entity, Iguana Capital, Inc. ("Iguana Capital"), to pursue an acquisition of only the Pet Business.[13] On May 17, 2021 the Board approved the sale of Independence American and the Pet Business to Iguana Capital,[14] with IHC retaining a 30% interest in the acquiror.[15] And *third*, less than two weeks after the sale of the Pet Business, on May 5, 2021, the Company signed a letter of intent to sell Madison National to another third party.[16]

---

[11] Proxy at 13.

[12] *Id.*; IHC 00000101 at -102–03.

[13] Proxy at 13.

[14] Iguana Capital later changed its name to Independence Pet Holdings, Inc. *Id.* at 4.

[15] *Id.* at 13. IHC's stake in Iguana Capital was subsequently diluted to 18%. *Id.* at 33.

[16] Independence Holding Company Information Statement, Schedule 14C at 8 (Nov. 12, 2021). The Company finalized this sale in the form of a stock purchase agreement on July 14, 2021. Proxy at 13.

Also in April 2021, Herbert began discussing a take-private of IHC with Thung and Kettig.[17] The sales of Standard Security, the Pet Business, and Madison National (collectively, the "Asset Sales") were always intended to fund the Geneve Buyout.[18] Herbert, Thung, and Kettig did not discuss a buyer other than Geneve.[19] The Proxy did not disclose these conversations.[20] Nor did the Proxy disclose that Raymond James undertook work on the Asset Sales with an understanding that it would also work on the Geneve Buyout.[21]

On June 22, 2021, after the Company had committed to the Asset Sales but before Geneve made an offer to take IHC private, Herbert and Rossi met to discuss [redacted] continued interest in IHC's assets, with Rossi speaking on behalf of [redacted].[22] Herbert testified that the discussion concerned the Agency Business, which Geneve subsequently acquired in the Geneve Buyout.[23] Herbert kept

[17] Herbert Tr. at 74–77.

[18] Tatum Tr. at 22–23; Deposition Transcript of Allan Kirkman ("Kirkman Tr.") at 108–09.

[19] Herbert Tr. at 74–76.

[20] The Proxy instead misleadingly stated that Geneve only "began" considering a take-private in "late July 2021." Proxy at 13.

[21] QUINNIPIACO000135 at -140.

[22] Herbert Tr. at 41; Rossi Tr. at 17–20.

[23] Herbert Tr. at 41.

[redacted] interest in the very asset Geneve was about to acquire to herself—this conversation was not disclosed in the Proxy or to the Special Committee.[24]

III. IHC Belatedly Forms A Conflicted And Inexperienced Special Committee Which Retains An Inexperienced Financial Advisor.

On August 29, 2021, the Board received a take-private offer of $50 per share from Geneve.[25] It was only at this point, after IHC had committed to the Asset Sales, that Geneve committed to requiring a majority-of-the-minority stockholder vote and special committee approval as conditions of the Geneve Buyout.[26]

Even though the Asset Sales were an integral part of the Geneve Buyout plan, the Board did not establish a special committee until August 29, 2021, on the same day it received the take-private offer from Geneve.[27] James Tatum ("Tatum"), Allan Kirkman ("Kirkman"), John Lahey ("Lahey"), and Ronald Simon ("Simon") comprised the special committee (the "Special Committee").[28] The Special

[24] Herbert Tr. at 50–53; Rossi Tr. at 21–22; Deposition Transcript of Ronald Simon ("Simon Tr.") at 66; Deposition Transcript of John Lahey ("Lahey Tr.") at 61–63; Tatum Tr. at 103; Kirkman Tr. at 75.

[25] Proxy at 14.

[26] *Id.*

[27] *Id.*

[28] *Id.* Tatum and Kirkman subsequently stepped down from the Special Committee due to their close relationships with Geneve, as discussed further below.

Committee retained Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss") as legal counsel and Perella as its financial advisor.[29]

Testimony from two Special Committee members confirmed that the Asset Sales were intended to fund the Geneve Buyout. Tatum testified that because "[n]obody was getting any younger," IHC "ha[d] to begin to liquidate parts of the company so that there would be funds available" for IHC "to be taken private."[30] Tatum also confirmed that the term "Project Trifecta," which the Company's financial advisor Raymond James used to refer to at least the Asset Sales, included not just the Asset Sales but also the Geneve Buyout.[31] Kirkman similarly testified that it was "correct" that "parts of the company had to be liquidated in order to generate funds that would be available for Geneve to then take [IHC] private[.]"[32] The fact that the Asset Sales were intended to fund the Geneve Buyout was not disclosed in the Proxy. The Proxy also wrongly states that the Geneve Buyout was the consequence, rather than the cause, of the Asset Sales.[33]

---

[29] *Id.* at 14–15.

[30] Tatum Tr. at 22–23.

[31] *Id.* at 64.

[32] Kirkman Tr. at 108–09.

[33] *See* Proxy at 13 ("The completion of the sale transactions described above would result in the Company having significantly smaller business operations. *Consequently*, 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.").

The Special Committee not only suffered from conflicts impairing their independence in selecting Perella as its financial advisor but also was pressured by conflicted Company management to keep advisor costs down. Herbert, a dual IHC and Geneve fiduciary, suggested to Simon that the Special Committee not even obtain a fairness opinion.[34] Simon also excluded one financial advisor candidate due to cost concerns[35] and testified that he did not consider any bulge-bracket banks to act as the Special Committee's advisor because they would have been "too expensive."[36] Lahey also told Simon in a September 5, 2021 email that the Special Committee would "have to get IHC approval for the dollar amount" and that a $4 million advisor fee could be "deemed too high by IHC."[37] This interference in the Special Committee's selection of a financial advisor was not disclosed in the Proxy.

Herbert steered the Special Committee to retain Perella, which lacked experience advising on squeeze-outs. Herbert sent Lapin contact information for Rossi on August 24, 2021.[38] On August 30, 2021, Simon emailed Rossi asking for

---

[34] GENEVE_00000046.

[35] QUINNIPIAC0000001; Simon Tr. at 101.

[36] Simon Tr. at 102.

[37] QUINNIPIAC0000203.

[38] IHC 00000220. Plaintiff learned during the Section 220 investigation that Herbert did this because Geneve was considering retaining Perella, a fact which Kirkman testified would have been material to him in selecting a financial advisor, and a fact which was not disclosed in the Proxy. Compl. ¶65; Kirkman Tr. at 72.

Perella to send a proposal and indicating he received Rossi's name from Herbert.[39] Perella admitted internally that it lacked relevant qualifications[40] and celebrated the news that it would not be competing with top-tier advisors.[41]

On September 10, 2021, all four Special Committee members voted to retain the Perella team led by Rossi.[42] Only after that decision were Lahey and Tatum removed from the Special Committee due to conflicts.[43] Both Tatum and Lahey had close ties to the Netter family, which controlled Geneve.[44] The Netters donated $10 million to establish a new medical school at Quinnipiac University while Lahey was its president; Lahey also served on other Geneve or Netter-affiliated boards.[45] Tatum had been 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 and served as a trustee of the Netter's charitable foundation.[46] These conflicts were not disclosed in the Proxy. Despite these

---

[39] PWP_IHC_00000168.

[40] PWP_IHC_00000661; Kirkman Tr. at 84–85 (Kirkman testified that he did not know this, but that it would have been important "[b]ecause it might have impugned [Perella's] ability to give sound advice.").

[41] PWP_IHC_00000398.

[42] Proxy at 15; Lahey Tr. at 93–94 ("I certainly remember voting on Perella Weinberg, all four of us did[.]").

[43] Proxy at 15.

[44] IHC 00000004.

[45] *Id.*

[46] IHC 00000004.

conflicts, Lahey and Tatum voted to select Perella as the Special Committee's financial advisor.[47]

The remaining members of the Special Committee, Simon and Kirkman, lacked the expertise or the will to meaningfully negotiate on behalf of public stockholders. By way of example, Simon asked Rossi about the effect that Perella's fairness opinion would have on subsequent negotiations with Geneve, betraying a basic misunderstanding of the M&A process where the fairness opinion is issued at the end of negotiations.[48] Kirkman testified that he and Simon believed they were "not to be actively involved in the negotiation with Geneve."[49] Simon also testified that considering alternatives "wasn't [the Special Committee]'s purview[,]" directly contradicting the Proxy's disclosure that "the Board duly established the Special Committee and delegated to it the power and authority, among other things, to . . . consider and review potential alternatives to a transaction with Geneve[.]"[50] And Perella did nothing to mitigate the Special Committee's listlessness, discussing internally that it would not "hold out for some major bump" in the Transaction price.[51]

---

[47] Lahey Tr. at 93–94.

[48] Rossi Tr. at 27–28.

[49] Kirkman Tr. at 89–90.

[50] Simon Tr. at 80; Proxy at 17.

[51] PWP_IHC_00000746.

IV. THE REMAINING MEMBERS OF THE SPECIAL COMMITTEE QUICKLY ACCEDE TO GENEVE'S DEMANDS.

The Special Committee's performance did not exceed the low expectations set by its retention of an inexperienced advisor, belated removal of half its membership due to conflicts, and apparent misunderstanding of its own mandate. On October 21, 2021, the Special Committee met and agreed to counter Geneve's August 29, 2021 offer of $50 per share with a request for a proposal "closer to $60.00 per share . . . ."[52] On November 1, 2021, Geneve increased its offer to $56 per share.[53] The Special Committee countered with $57 per share, which Geneve accepted.[54]

The Special Committee met for the final time on November 9, 2021, received Perella's fairness opinion, and voted to approve the Geneve Buyout.[55] Plaintiff alleges that Perella's fairness opinion, and therefore the Special Committee, significantly undervalued IHC's remaining assets, including the Agency Business and IHC's remaining stake in the Pet Business, resulting in an unfair price for the Transaction.[56] The Complaint alleges that Perella used improper comparable companies for its valuation analysis, understated the revenue of the Agency

[52] Proxy at 15–16.

[53] *Id.* at 16.

[54] *Id.*

[55] *Id.* at 16–17.

[56] Compl. ¶¶96–120.

Business, and failed to account for the value of an earn-out included in the sale of Madison National.[57]

Later on November 9, 2021, the Board met and approved the Geneve Buyout,[58] which closed on February 15, 2022.[59] Lapin, Thung, and Herbert received incentive bonuses through their roles with Geneve in connection with the Geneve Buyout, which the Proxy failed to quantify.[60] Members of the Special Committee recognized that these bonuses created a material conflict of interest.[61]

V. PROCEDURAL HISTORY

On December 30, 2021, Plaintiff served the Company with an inspection demand pursuant to 8 *Del C.* § 220. On February 14, 2022, Plaintiff filed a Verified Complaint to Compel Inspection of Books and Records Under 8 *Del. C.* § 220.[62]

---

[57] *Id.*

[58] Proxy at 17.

[59] Independence Holding Co., Form 8-K (Feb. 15, 2022).

[60] Proxy at 47 ("Geneve Corporation, a wholly-owned [sic] 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.").

[61] GENEVE_00000888; QUINNIPIAC0000035.

[62] *Lawrence Bass v. Independence Holding Company*, C.A. No. 2022-0147-JTL (Del. Ch. Feb. 14, 2022).

Following multiple document productions by IHC, Plaintiff dismissed his inspection action on July 27, 2022.[63]

On September 1, 2022, Plaintiff filed the Complaint against Defendants, commencing the Action. On May 1, 2023, following briefing,[64] the Court held oral argument on Defendants' Motion to Dismiss the Complaint (the "Original Motion to Dismiss") and, at the hearing, deferred ruling on the Original Motion to Dismiss, suggesting the parties engage in limited discovery concerning the retention of Perella (the "Limited Scope Discovery").[65]

On May 17, 2023, Plaintiff and Defendants entered into a Stipulation and Order Governing Limited Scope Discovery.[66] From May 15, 2023 to October 6, 2023, the parties engaged in the Limited Scope Discovery. Plaintiff served document requests and interrogatories upon Defendants[67] and served subpoenas on Perella and all four members of the Special Committee.[68] After learning that Tatum

---

[63] *Id.*, Trans. ID 67864328.

[64] *See* Trans. ID 68425556 (Defendant's Motion to Dismiss); Trans. ID 68720867 (Plaintiff's Answering Brief in Opposition to Defendants' Motion to Dismiss); Trans. ID 69178173 (Defendants' Reply Brief in Further Support of their Motion to Dismiss the Complaint).

[65] Trans. ID 70047692 (Transcript of May 1, 2023 Oral Argument on Defendants' Motion to Dismiss the Verified Class Action Complaint) ("MTD Tr.") at 63–66.

[66] Trans. ID 70036023. The Court granted this order on May 18, 2023. Trans. ID 70037538.

[67] Trans. ID 70083112.

[68] Trans. ID 70084365.

and Lahey had deleted all of their emails from the relevant period, Plaintiff obtained some of the missing emails by subpoenaing the administrator of Lahey's email account, Quinnipiac University.[69] In sum, Plaintiff received 736 documents (2,524 pages) from Defendants and third parties from the Limited Scope Discovery.[70] Defendants provided privilege logs in connection with their productions.[71] Plaintiff's Counsel deposed six witnesses, three of whom were deposed in both their individual and Rule 30(b)(6) designee capacities.[72]

On October 17, 2023, Plaintiff filed the Supplemental Complaint incorporating the new facts learned through the Limited Scope Discovery process.[73] On January 5, 2024, Defendants filed a Motion to Dismiss the Supplemental Complaint (the "Supplemental Motion to Dismiss" and together with the Original Motion to Dismiss, the "Motions to Dismiss"), which was accompanied by a Supplemental Opening Brief in Support of their Motion to Dismiss the Complaint and Supplemental Complaint.[74] On February 23, 2024, Plaintiff filed a Supplemental Answering Brief in Opposition to Defendants' Motion to Dismiss the

[69] *See* Trans. ID 70574880.

[70] Stipulation at 4.

[71] *Id.*

[72] *Id.*; *see* Rossi Tr.; Herbert Tr.; Simon Tr.; Kirkman Tr.; Lahey Tr.; Tatum Tr.

[73] Trans. ID 71120543.

[74] Trans. ID 71750946.

Complaint and Supplemental Complaint.[75] On April 15, 2024, Defendants filed a Supplemental Reply Brief in Further Support of their Motion to Dismiss the Complaint and Supplemental Complaint.[76] The hearing to consider Defendants' Supplemental Motion to Dismiss was scheduled for October 21, 2024 at 1:30 p.m.[77]

On September 25, 2024, the parties reached an agreement in principle to settle the Action. On September 26, 2024, the parties jointly informed the Court of the Proposed Settlement and requested a stay of further proceedings pending submission of the Settlement for Court approval. On November 27, 2024, the parties filed the Stipulation with the Court. On December 4, 2024, the Court granted the Scheduling Order and scheduled the Settlement approval hearing for March 14, 2025.[78] On January 9, 2025, the parties filed an amended Scheduling Order moving up the filing deadline for this application,[79] which was granted that same day.[80]

[75] Trans. ID 72131035 ("Supp. Ans. Br.").

[76] Trans. ID 72749255.

[77] Trans. ID 73657062. This hearing was originally scheduled for July 15, 2024 but was rescheduled due to illness of arguing counsel. Trans. ID 72495316.

[78] Trans. ID 75132034.

[79] Trans. ID 75399944.

[80] Trans. ID 75401273.

ARGUMENT

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

When deciding whether to approve a proposed settlement of a stockholder class action, the Court need not decide issues on the merits but rather looks to the facts and circumstances upon which the plaintiff's claims are based and exercises its informed judgment as to whether the proposed settlement is fair and reasonable.[81] In making this determination, the Court considers the *Polk* factors, including the: (i) probable validity of the claims; (ii) apparent difficulties in enforcing the claims through the courts; (iii) collectability of any judgment recovered; (iv) delay, expense, and trouble of litigation; (v) amount of the compromise as compared with the amount of any collectible judgment; and (vi) views of the parties involved.[82]

The Court's "principal focus" is comparing the benefits achieved against the nature and merits of the released claims.[83] The Court will weigh the "give" (*i.e.*, the value of the claims released) against the "get" (*i.e.*, the value of the consideration

---

[81] *Prezant v. De Angelis*, 636 A.2d 915, 921 (Del. 1994); *see also Wayne v. Util. & Indus. Corp.*, 1979 WL 2699, at *3 (Del. Ch. July 19, 1979) ("The function of this Court in reaching a decision as to whether or not to approve a proposed settlement of a derivative stockholders' action in a situation in which the intrinsic fairness of the settlement must be tested, is to exercise its business judgment.").

[82] *Polk v. Good*, 507 A.2d 531, 535–36 (Del. 1986) (citing *In re Ortiz Est.*, 27 A.2d 368, 374 (Del. Ch. 1942); *Perrine v. Pennroad Corp*., 47 A.2d 479, 488 (Del. 1946); *Krinsky v. Helfand*, 156 A.2d 90, 94 (Del. 1959)).

[83] *Baupost Ltd. P'ship 1983 A-1 v. Providential Corp.*, 1993 WL 401866, at *2 (Del. Ch. Sept. 3, 1993).

obtained) to "'determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept.'"[84]

As detailed below, under this standard, the Proposed Settlement is fair, reasonable, and adequate. Plaintiff respectfully requests its approval.

A. The $11 Million Cash Settlement Is A Significant Recovery For The Class In Exchange For A Standard Release Of Claims.

The all-cash Proposed Settlement provides an "obvious and self-pricing benefit" for the Class.[85] This Court "considers the premium to the deal price as a rough proxy for the strength of the settlement"[86] and has noted that an average settlement is "1 to 2 percent of equity value."[87]

Here, the Proposed Settlement provides an approximately 3.3% premium to the $57.00 per share Geneve Buyout price.[88] Plaintiff submits that the Proposed

---

[84] *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1043, 1064 (Del. Ch. 2015) (quoting *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013)).

[85] *In re Orchard Enters., Inc. S'holder Litig.*, 2014 WL 4181912, at *5 (Del. Ch. Aug. 22, 2014).

[86] *Garfield v. BlackRock Mortg. Ventures, LLC*, C.A. No. 2018-0917-KSJM, at 24 (Del. Ch. Feb. 11, 2021) (TRANSCRIPT).

[87] *In re Dell Techs. Inc. Class V S'holders Litig.*, Consol. C.A. No. 2018-0816-JTL, at 41 (Del. Ch. Apr. 19, 2023) (TRANSCRIPT) ("*Dell* Tr.") ("I think it's fair to say that 1 to 2 percent of equity value, particularly as the deal sizes get larger, is where things settle out. An exceptional result is at around the 5 percent level . . . .").

[88] ($11,000,000 Proposed Settlement / $333,109,433 total Transaction price) = 3.3%. *See* Independence Holding Co., Form 8-K (Feb. 15, 2022). The Proposed Settlement provides the Class with an approximately 4% premium to the Geneve Buyout Price. The parties

Settlement is a strong result for the Class and is in line with or above the premia obtained in recent settlements of entire fairness cases in this Court.[89]

The release of claims provided in exchange for that benefit is also reasonably tailored to the claims in this Action and is consistent with recent settlements.[90]

---

estimate that there are approximately 4,889,308 shares in the proposed Class. *See* Stipulation at 9. ($11,000,000 Proposed Settlement / 4,889,308 Class Shares) = $2.25/share; ($2.25 / $57.00) * 100 = 3.94%.

[89] *See, e.g., In re Golden Nugget Online Gaming, Inc. S'holders Litig.*, C.A. No. 2022-0797-JTL (Del. Ch. July 9, 2024) (3% transaction premium); *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 725 (Del. Ch. 2023), as revised (Aug. 21, 2023) (4.2% transaction premium)*; Makris v. Ionis Pharms., Inc.*, 2022 WL 7074257 (Del. Ch. Oct. 11, 2022) (2.8% transaction premium); *In re AVX Corp. S'holders Litig.*, Consol. C.A. No. 2020-1046-SG (Del. Ch. Dec. 27, 2022) (Trans. ID 68736272) (4.8% transaction premium) (ORDER); *Hawkes v. Toronto-Dominion Bank*, 2022 WL 4378531 (Del. Ch. Sep. 21, 2022) (0.12% transaction premium); *Hollywood Firefighters' Pension Fund v. Malone*, 2021 WL 4863103 (Del. Ch. Oct. 18, 2021) (1.49% transaction premium); *In re Pivotal Software, Inc. S'holders Litig.*, 2022 WL 5185565 (Del. Ch. Oct. 4, 2022) (3.0% transaction premium); *In re Amtrust Fin. Servs., Inc. Appraisal & S'holder Litig.*, 2021 WL 5495707 (Del. Ch. Nov. 22, 2021) (3.8% transaction premium).

[90] *See In re Hemisphere Media Group, Inc. S'holders' Litig.*, Consol. C.A. No. 2023-0555-JTL (Sep. 12, 2024) (Trans. ID 74302083) (STIPULATION); *In re Sculptor Cap. Mgmt. Inc. S'holder Litig.*, Consol. C.A. No. 2023-0921-SG (Del. Ch. Jan. 22, 2024) (Trans. ID 71843143) (STIPULATION); *In re Amtrust Fin. Servs., Inc. Appraisal & S'holder Litig.*, Consol. C.A. No. 2018-0396-LWW (Del. Ch. Aug. 30, 2021) (Trans. ID 66890145) (STIPULATION); *Makris v. Ionis Pharms., Inc.*, C.A. No. 2021-0681-LWW (Del. Ch. July 5, 2022) (Trans. ID 67788436) (STIPULATION); *Ark. Tchr. Ret. Sys. v. Alon USA Energy, Inc.*, C.A. No. 2017-0453-KSJM (Del. Ch. Jun. 18, 2021) (Trans. ID 66691110) (STIPULATION).

B. The Proposed Settlement Fully Reflects The Strength Of Plaintiff's Claims Weighed Against The Risk Of Further Litigation.

1. Defendants' *MFW* Defense

While the Geneve Buyout involved a controlling stockholder standing on both sides, entire fairness was not a silver bullet for Plaintiff, even assuming it does apply.[91] At the May 1, 2023 hearing on Defendants' Original Motion to Dismiss, the Court indicated that the Complaint's allegations likely supported additional discovery concerning Geneve's influence on the Special Committee's selection of Perella as its financial advisor[92] but suggested that Plaintiff take the Limited Scope Discovery and move for summary judgment at the end of that limited discovery period.[93]

Following the Limited Scope Discovery, Plaintiff believed that he had a realistic shot at defeating Defendants' Motions to Dismiss. The Limited Scope Discovery uncovered strong evidence showing that Defendants failed to implement

---

[91] *See, e.g., In re Cysive, Inc., S'holder Litig.*, 836 A.2d 531 (Del. Ch. 2003) (finding of fairness after trial); *In re Tesla Motors Inc. S'holder Litig.*, 2023 WL 3854008 (Del. June 6, 2023) (affirming same).

[92] MTD Tr. at 60 (". . . why doesn't what [Plaintiff has] shown support an inference that a conversation occurred such that they should be entitled to some discovery into the content of that conversation? . . . [Plaintiff's] argument is a little bit more complex. It's the V-card plus the indication that there was going to be a conversation with the committee members and plus, one week later, the actual hiring of [Rossi from Perella]."); *Id.* at 62 ("Let's also intersect this with the timing of the two folks leaving the committee. And I know that you argue that their conflicts are dubious, but that puts a potential fourth link in the chain where they have these three connections, and the Perella gets hired before the two folks leave.").

[93] MTD Tr. at 63, 65–66.

the *MFW* conditions *ab initio*. Specifically, Plaintiff uncovered additional evidence supporting that the Asset Sales and the Geneve Buyout were components of a *single* planned transaction, initiated in the spring of 2021 with the singular goal of permitting Geneve to take the Company private.[94] The Limited Scope Discovery also uncovered further support for Plaintiff's allegations that the Special Committee was ineffective, conflicted, and unable to freely select its own advisors, including record evidence revealing the Special Committee was cost constrained in its selection of advisors by conflicted Company management.[95] Lastly, the Limited Scope Discovery provided additional support for Plaintiff's argument that the stockholder vote to approve the Geneve Buyout was not fully informed due to material omissions in the Proxy related to the interconnected nature of the Asset Sales and the Geneve Buyout,[96] conflicted IHC management's interference in the

[94] The Limited Scope Discovery revealed that Geneve and IHC officers discussed the Geneve Buyout as they were planning the Asset Sales, and two Special Committee members unequivocally confirmed that the Asset Sales were intended to fund the Geneve Buyout. Herbert Tr. at 74–76; Tatum Tr. at 22–23, 64; Kirkman Tr. at 108–09.

[95] The Limited Scope Discovery revealed that IHC's conflicted management imposed a restrictive budget on the Special Committee and steered its selection of Perella. QUINNIPIAC0000203; Simon Tr. at 102. The Special Committee was thus pressured by the Company to retain advisors who were not only conflicted, but unqualified—Perella, by its own admission, had no experience advising on squeeze-out transactions. PWP_IHC_00000661. Moreover, the Special Committee members themselves believed that they were not supposed to be involved in the negotiations, leaving them to the ineffectual Perella. Kirkman Tr. at 89–90.

[96] *Compare* Proxy at 13 ("The completion of the sale transactions described above would result in the Company having significantly smaller business operations. Consequently, after the Company entered into the stock purchase agreement for the sale of Madison

Special Committee's choice of advisors,[97] and the special payouts to IHC management following the Geneve Buyout,[98] among other omissions.[99]

Although Plaintiff believed that the newly uncovered discovery was sufficient to defeat Defendants' Motions to Dismiss, this outcome was not certain. The Limited Scope Discovery did not yield any "smoking gun" evidence showing that Geneve dictated the Special Committee's selection of Perella as an advisor.[100] And should the Asset Sales be considered distinct from the Geneve Buyout, Defendants had non-frivolous arguments that the Geneve Buyout complied with *MFW*'s conditions. Plaintiff therefore faced a legitimate risk that the Court could dismiss the case based on a finding that business judgment protection applied to the Geneve Buyout.

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.") *with* Tatum Tr. at 22–23 (testifying that because "[n]obody was getting any younger," IHC "had to begin to liquidate parts of the company so that there would be funds available" for IHC "to be taken private.").

[97] QUINNIPIAC0000203.

[98] GENEVE_00000888; QUINNIPIAC0000035.

[99] *See generally* Supp. Ans. Br. at 41–49.

[100] While the Limited Scope Discovery confirmed that Herbert recommended Rossi and Perella to Simon and that at least one member of the Special Committee thought that IHC had to approve the Special Committee's choice of advisor, Plaintiff did not uncover evidence that Herbert or any other Defendant directly instructed the Special Committee to choose Perella. *See* PWP_IHC_00000168; QUINNIPIAC0000203.

2. Even If The Geneve Buyout Were Reviewed For Entire Fairness, Defendants May Have Prevailed.

Even if Plaintiff had overcome the Motions to Dismiss and potential summary judgment, an entire fairness trial is not a low-risk proposition. As this Court noted in *In re Dell Technologies Inc. Class V Stockholders Litigation*, in the years since the plaintiffs' trial victory in *Americas Mining Corp. v. Theriault*,[101] "there have been at least ten post-trial decisions in entire fairness cases where the defendants prevailed, plus three more where the court awarded only nominal damages of $1.00."[102] Even if Plaintiff did win at trial, he would have faced "significant risk on appeal" given the reality that, in the six post-*Americas Mining* appeals from post-trial damages awards in which representative plaintiffs obtained cash recoveries and defendants challenged the liability determination that the Supreme Court has heard, "[t]he high court affirmed the first two and reversed the next four."[103] Here, Plaintiff faced meaningful risk on both the fair process and fair price aspects of the entire fairness inquiry.

First, Defendants may have proven that the Transaction process was fair. Fair process "embraces questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the

[101] 51 A.3d 1213 (Del. 2012).

[102] 300 A.3d at 709–10 (collecting cases).

[103] *Id.* at 710.

directors and the stockholders were obtained."[104] Defendants would have had plausible arguments that the Transaction process was entirely fair because there was a fully empowered and independent Special Committee that retained independent advisors and acted independently.[105]

While Plaintiff argued that the Special Committee improperly allowed Defendants to control its selection of financial advisors and was conflicted and ineffectual, guided by an equally ineffective and inexperienced advisor, Defendants would have argued that the Special Committee oversaw and directed negotiations relating to the Geneve Buyout over numerous meetings (as reflected in meeting minutes) and thus Plaintiff cannot show the Special Committee acted with gross negligence.[106]

Plaintiff further alleged that that Geneve contaminated every aspect of the process, including by ensuring from the outset that the Asset Sales were part of a

---

[104] *Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983).

[105] *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1172 (Del. 1995) (arm's length negotiations through a special committee provides "strong evidence that the transaction meets the test of fairness") (quoting *Weinberger*, 457 A.2d at 709–10 n.7).

[106] *See Flood v. Synutra Int'l, Inc.,* 195 A.3d 754, 767–68 (Del. 2018) ("'[D]isagree[ing] with the [special] committee's strategy' is not a duty of care violation.").

As suggested by the Court at the Original Motion to Dismiss hearing and echoed by Defendants, the evidence supporting Geneve's influence on the Special Committee's selection of Perella, without more, may not have been sufficient for Plaintiff to overcome Defendants' Motions to Dismiss (*see* MTD Tr. at 63), and as explained *supra*, the Limited Scope Discovery did not uncover sufficient evidence to confirm Plaintiff's theory that any Defendant directed the Special Committee to select Perella.

larger plan to take IHC private and ensure the remaining Agency Business was left for Geneve. But Defendants would have argued at summary judgment and/or trial that (i) the Asset Sales and the Geneve Buyout were unrelated, such that *MFW*'s *ab initio* requirement would not apply to the Asset Sales and the Geneve Buyout, and (ii) the Proxy disclosed all pertinent information related to the Geneve Buyout.

Second, Defendants might have been able to prove that the Geneve Buyout price was fair. 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 Asset Sales and other sources.[107] Plaintiff's strongest evidence of unfair price was Perella's significant undervaluation of the first two pieces and its failure to incorporate the value of an earnout from the sale of Madison National.[108] And in valuing the Agency Business, Perella used management projections that appeared to be unreasonably low, based on revenue projections for the Agency Business of $15 million for FY 2020 despite that figure dramatically diverging from what the Company reported in its public filings, which was at least 40% (if not 70%) higher.[109]

---

[107] *See* Proxy at 33 (noting that sum-of-the-parts analysis included IHC's Iguana Capital stake, the Agency Business, and the Company's net cash balance).

[108] Compl. ¶¶97–120.

[109] Compl. ¶¶110–115.

Although Plaintiff believes the errors contained in Perella's internal valuation provided strong evidence of an unfair price, Defendants would have pointed to myriad pieces of market-based evidence supporting the fairness of the Transaction price at trial, including that it offered a 36% premium to the unaffected trading price. Defendants undoubtedly would have argued that Plaintiff was misinterpreting internal valuation documents and, given the many cases in which the Court has declined to award higher damages derived from competing internal indications of value, Plaintiff heavily discounted the prospect that a damages model based on IHC's internal valuation would have been accepted without scrutiny.[110]

C. Comparing The Settlement To The Likely Amount Of Provable Damages Supports Approval Of The Proposed Settlement.

The Proposed Settlement also compares favorably to the potential trial outcome (on a risk-adjusted basis). Based on corrections to Perella's valuation analysis,[111] Plaintiff estimates potential Class damages in the $20–$30 million

[110] *See, e.g., In re Mindbody, Inc., S'holder Litig.*, 2023 WL 2518149, at *46 (Del. Ch. March 15, 2023) (subsequent history omitted) (declining to award damages based on the maximum price that bidder was authorized to offer); *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214, at *45 (Del. Ch. Aug. 27, 2015) (declining to award damages that would have required court to "treat all of the upside from those initiatives [that controller Murdoch had concealed from the special committee] as certain").

[111] Plaintiff hired a valuation expert to assist with this analysis, along with analyzing damages generally.

range.[112] The Proposed Settlement provides approximately 37%–55% of Plaintiff's estimated provable damages (without applying any risk-adjustment).

Comparing the trial risk discussed above to this certain recovery supports Plaintiff's belief that the Proposed Settlement is an outstanding result.[113]

D. The Settlement Was Reached Through Arm's-Length Negotiations.

In assessing whether a proposed settlement is fair, Delaware courts place considerable weight on whether it was reached through arm's-length negotiations.[114] Here, the parties conducted several months of arm's-length negotiations, which ultimately led to the parties' agreement on the Proposed Settlement.

E. The Experience And Opinion Of Counsel Favor Approving The Proposed Settlement.

The opinion of Plaintiff's Counsel is also entitled to weight in determining the fairness of a settlement.[115] Here, Plaintiff's Counsel are experienced stockholder

---

[112] These changes include: correcting the value of IHC's remaining stake in Iguana Capital to reflect IHC's own actual calculation, rather than Perella's range based on improper comparators (Compl. ¶¶97–108); valuing the Agency Business using a proper accounting of its revenue (*id.* ¶¶109–119); and including the value of an earnout connected to the Madison National Sale (*id.* ¶120). These estimated damages do not take into account any potential damages theories related to the consideration received from any of the Asset Sales.

[113] *See In re Pivotal* (9% of potential recovery); *In re AmTrust* (9.3% of potential recovery); *Ark. Tchr.* (14% of potential recovery).

[114] *See, e.g.*, *In re Activision Blizzard*, 124 A.3d at 1067 ("The diligence with which plaintiffs' counsel pursued the claims and the hard fought negotiation process weigh in favor of approval of the Settlement") (citation omitted).

[115] *See, e.g.*, *Polk*, 507 A.2d at 536 (noting the court's consideration of "the views of the parties involved" when determining the "overall reasonableness of the settlement"); *Doe v.*

advocates known to the Court. Through their experience, as well as the discovery conducted in the Action, Plaintiff's Counsel were well positioned to assess the strengths and weaknesses of Plaintiff's claims when they negotiated the Proposed Settlement. Plaintiff's Counsel's view that the Proposed Settlement is in the best interests of the Class supports final approval.[116]

F. The Plan of Allocation Should Be Approved.

A proposed "allocation plan must be fair, reasonable, and adequate."[117] The plan of allocation here—which adheres to guidance from *In re PLX Technology Inc. Stockholders Litigation*[118]—entails distributing settlement proceeds, *pro rata*, directly to the Class members, excluding Defendants and their affiliates.[119] The plan avoids the "relatively high administrative costs" and "unknown distributional

---

Bradley, 64 A.3d 379, 396 (Del. Super. 2012) ("It is appropriate for the Court to consider the opinions of experienced counsel when determining the fairness of a proposed class action.").

[116] *See Neponsit Inv. Co. v. Abramson*, 405 A.2d 97, 99 (Del. 1979) (affirming approval of settlement based, in part, on Plaintiffs' counsel's conclusion, reached after conducting pretrial discovery, that the settlement was fair and in the best interests of the class).

[117] *Schultz v. Ginsburg*, 965 A.2d 661, 667 (Del. 2009), *overruled on other grounds by Urdan v. WR Cap. P'rs, LLC*, 244 A.3d 668 (Del. 2020).

[118] 2022 WL 1133118 (Del. Ch. Apr. 18, 2022).

[119] As of the date of this filing, it is Plaintiff's understanding that Defendants have provided all Excluded Share information, which is being identified and confirmed by the Settlement Administrator.

effects" of a claims process by providing for a direct distribution to Class members through the Settlement Administrator, which the Court has endorsed.[120]

II. THE CLASS SHOULD BE PERMANENTLY CERTIFIED.

"Certification of a class under Court of Chancery Rule 23 . . . requires that the purported class meet all four criteria within Court of Chancery Rule 23(a) and at least one of the criteria within Court of Chancery Rule 23(b)."[121]

The Amended Scheduling Order,[122] entered by the Court on January 9, 2025, defines the "Class" as follows:

> All record holders and beneficial owners of shares of IHC common stock whose shares were exchanged for or who had the right to receive in exchange $57.00 per share in cash at the closing of the take-private transaction between IHC and Geneve on February 15, 2022 (the "Closing"), including each such Class Member's heirs, successors, successors in interest, transferees, and assigns.
>
> Excluded from the Class are: (i) Defendants; (ii) any person who was a Geneve officer or director at Closing; (iii) members of the Immediate Family of any of the foregoing, and (iv) any entity in which any of the Defendants has a controlling interest (each of (i)-(iv), an "Excluded Person").[123]

---

[120] *See Montgomery v. Erickson Inc.*, C.A. No. 8784-VCL, at 16 (Del. Ch. Sept. 12, 2016) (TRANSCRIPT); *PLX*, 2022 WL 1133118, at *5–6.

[121] *In re Ebix, Inc. S'holder Litig.*, 2018 WL 3570126, at *1 (Del. Ch. July 17, 2018).

[122] Plaintiff filed the Amended Scheduling Order to provide members of the proposed Class with additional time to review the Proposed Settlement prior to the Court-ordered objection deadline.

[123] Trans. ID 75401273 ¶3.

Final Class certification is appropriate here because this Action satisfies Rule 23(a) and fits "within the framework provided for in subsection (b)" of Rule 23.[124]

A. The Class Satisfies The Requirements Of Rule 23(a).

Under Rule 23(a), a class must meet four requirements: (i) it is so numerous that joinder of all members is impracticable; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (iv) the representative parties will fairly and adequately protect the class's interests.

1. Numerosity

When a class is composed of common stockholders of a publicly traded company, the numerosity requirement is readily satisfied.[125] That is the case here.

The proposed Class consists of all record holders and beneficial owners of shares of IHC common stock who received (or had the right to receive) the Transaction Consideration at Closing, except certain enumerated "Excluded Persons."[126] As indicated in the Stipulation, the Parties estimate that the class

---

[124] *Nottingham P'rs v. Dana*, 564 A.2d 1089, 1095 (Del. 1989).

[125] *Zimmerman v. Home Shopping Network, Inc.*, 1990 WL 118363, at *12 (Del. Ch. Aug. 30, 1990).

[126] "Excluded Persons" are defined as "(i) Defendants; (ii) any person who was a Geneve officer or director at Closing; (iii) members of the Immediate Family of any of the foregoing, and (iv) any entity in which any of the Defendants has a controlling interest." Trans. ID 75401273 ¶3.

consists of approximately 4.9 million shares.[127] Therefore, there are likely thousands of potential Class members, making joinder impracticable.

2. Commonality

Commonality is satisfied when "the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated."[128]

The Action presents factual and legal issues common to all Class members, including whether the Defendants breached their fiduciary duties to the Class, and the appropriateness and amount of any relief, including damages. This Action asserts claims that "implicate the interests of all members of the proposed class of shareholders," and thus meets the commonality requirement.[129]

3. Typicality

The Court generally finds typicality where, as here, the class representative's claims "arise[] from the same event or course of conduct that gives rise to the claims [or defenses] of other class members and [are] based on the same legal theory."[130]

---

[127] Stipulation at 9.

[128] *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991) (citations omitted).

[129] *In re Lawson Software, Inc. S'holder Litig.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011).

[130] *N.J. Carpenters Pension Fund v. infoGROUP, Inc.*, 2013 WL 610143, at *3 (Del. Ch. Feb. 13, 2013) (second alteration in original).

Plaintiff's claims challenged Defendants' actions in connection with the Geneve Buyout. All stockholders (excluding Defendants and their affiliates) were affected by the alleged course of wrongful conduct in a manner similar to Plaintiff. Thus, Plaintiff's legal and factual positions are consistent with, and create no conflicts among, the Class.

4. Adequacy

Rule 23(a)(4) requires that the class representatives will "fairly and adequately protect the interests of the class."[131] Class representatives are generally adequate if (i) there is no "economic antagonism[] between the representative and the class," and (ii) the class representatives are represented by "qualified, experienced, and competent" counsel capable of prosecuting the litigation.[132] This Court has previously noted that "[t]he requirements for an 'adequate' class representative are not onerous."[133]

Rule 23(a)(4) is readily satisfied. There are no conflicts between the interests of Plaintiff and the Class, and Plaintiff is a typical member of the Class he seeks to represent. In addition, Plaintiff selected counsel with significant experience litigating stockholder representative matters.

---

[131] *Nottingham P'rs*, 564 A.2d at 1094–95 (quoting Ch. Ct. R. 23(a)).

[132] *N.J. Carpenters Pension Fund*, 2013 WL 610143, at *3 & n.24.

[133] *O'Malley v. Boris*, 2001 WL 50204, at *5 (Del. Ch. Jan. 11, 2001).

B. The Class Satisfies The Requirements Of Rule 23(b)(1) And (b)(2).

In addition to the requirements of Court of Chancery Rule 23(a), a class may be certified only if "it fits into one of the three categories specified in Court of Chancery Rule 23(b)."[134] "Delaware courts 'repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2).'"[135]

1. Certification Under Rule 23(b)(1) Is Appropriate.

Rule 23(b)(1) provides for class certification where the prosecution of separate actions would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the party opposing the class, or adjudications that would be dispositive of the interests of other class members.[136] Here, Plaintiff's claims challenged a course of conduct that affected all Class members in the same manner. Defendants would have been liable to each Class member or none of the Class. If other actions regarding the challenged conduct could proceed, the risk of "inconsistent or varying adjudications" would exist, and

---

[134] *In re Ebix*, 2018 WL 3570126, at *4.

[135] *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 432–33 (Del. 2012) (internal citations omitted).

[136] *In re Countrywide Corp. S'holders Litig.*, 2009 WL 846019, at *11 (Del. Ch. Mar. 31, 2009).

decisions could be "dispositive" of, and "substantially impair or impede" the rights of, other Class members.[137]

2. Alternatively, Certification Pursuant to Rule 23(b)(2) Is Appropriate.

When particular facts of any one stockholder would have no bearing on the appropriate remedy, Rule 23(b)(2) certification is appropriate.[138] If the defendants are alleged to have engaged in a single course of conduct generally applicable to the Class, certification under Rule 23(b)(2) is also appropriate even if there is simply monetary recovery.[139]

Here, Plaintiff alleged that Defendants breached their fiduciary duties and that conduct harmed all Class members. Thus, certification under Rule 23(b)(2) is appropriate here, where Defendants' conduct generally applied to the Class and the Class is treated fairly with respect to the application of the relief.

C. The Remaining Requirements Of Court Of Chancery Rule 23 Are Satisfied.

Plaintiff and Plaintiff's Counsel meet the remaining requirements of Court of Chancery Rule 23. Plaintiff Lawrence Bass has submitted a Rule 23(f)(2)(a)

---

[137] Ct. Ch. R. 23(b)(1).

[138] *See Hynson v. Drummond Coal Co.*, 601 A.2d 570, 575–77 (Del. Ch. 1991).

[139] *See In re Del Monte Foods Co. S'holders Litig.*, C.A. No. 6027-VCL, at 48–49 (Del. Ch. Dec. 1, 2011) (TRANSCRIPT) ("The idea that a court can't certify a class under (b)(2) simply because it involves monetary damages is . . . based on an overly cramped and unpersuasive reading of *Shutts* and *Wal-Mart*.").

affidavit in support of the Proposed Settlement.[140] As directed in the Amended Scheduling Order, Notice of the Proposed Settlement was provided through: (i) U.S. first-class mail, with the Settlement Administrator mailing the Notice to each potential Class Member identified through reasonable effort at the corresponding last known address appearing in the stock transfer records maintained by or on behalf of IHC; (ii) posting the Notice and Stipulation on a website established by the Settlement Administrator for the Proposed Settlement; (iii) publication of the Summary Notice in *Investor's Business Daily*; and (iv) transmission of the Summary Notice over the *PR Newswire*. Pursuant to the Court's Amended Scheduling Order, Plaintiff will file the required proof of mailing of the Notice and publication of the Summary Notice at least seven calendar days prior to the Settlement hearing.

As set forth herein, the Proposed Settlement also meets the requirements of Rule 23(f)(5) and Rule 23.1(d)(5):

- Rule 23(f)(5)(A) is satisfied because, as set forth *supra* at Section II.A.4, Plaintiff and Plaintiff's Counsel have adequately represented the proposed Class;
- Rule 23(f)(5)(B) is satisfied because, as set forth *supra* at Section II.C—and as will be further detailed in the Affidavit of Notice—adequate notice of the Settlement hearing has been provided;
- Rule 23(f)(5)(C) is satisfied because, as set forth *supra* at Section I.D, the Proposed Settlement was negotiated at arm's-length; and

[140] *See* Affidavit of Lawrence Bass in Support of the Proposed Settlement, Class Certification, and an Award of Attorneys' Fees and Expenses.

- Rule 23(f)(5)(D) is satisfied because, as set forth *supra* at Section I.A–B, the relief provided to the proposed Class falls within a range of reasonableness taking into account (i) the strength of the claims; (ii) the costs, risks and delay of trial and appeal; (iii) the scope of the release; and (iv) any objections to the Proposed Settlement.

III. THE FEE AND EXPENSE AWARD SHOULD BE GRANTED.

This Court may award attorneys' fees and expenses to counsel whose efforts have created a common fund.[141] "The percentage awarded as attorneys' fees from a common fund is committed to the sound discretion of the Court of Chancery."[142] In exercising its discretion, the Court looks to the factors in *Sugarland Industries, Inc. v. Thomas*.[143] Of the *Sugarland* factors, Delaware courts have assigned the greatest weight to the benefit achieved in the litigation.[144] Secondary factors are the contingent nature of the litigation, the complexity of the litigation, the time and effort expended by counsel, the quality of the work performed, and the standing and ability of the lawyers involved.

Here, Plaintiff's Counsel seek an all-in Fee and Expense award of $2.58 million, or 23.5% of the common fund, which is supported by each of the *Sugarland* factors.

---

[141] *See Ams. Mining*, 51 A.3d at 1255.

[142] *Id.* at 1261.

[143] 420 A.2d 142, 147–50 (Del. 1980).

[144] *Ams. Mining*, 51 A.3d at 1255 ("[T]he first and most important of the *Sugarland* factors [is] the benefit achieved . . . .").

A. The Proposed Settlement Confers A Substantial Benefit.

This Court recognizes that the "dollar amount of the [payment] created . . . is the heart of the *Sugarland* analysis."[145] "When the benefit is quantifiable . . . by the creation of a common fund, *Sugarland* calls for an award of attorneys' fees based upon a percentage of the benefit."[146]

Here, the $11 million benefit achieved by Plaintiff and his counsel is concrete and meaningful.[147] The requested Fee and Expense Award is fair and reasonable given the financial benefits achieved, the stage of the litigation at which the Proposed Settlement was reached, and the litigation efforts of Plaintiff's Counsel.[148] Here, Plaintiff's Counsel (1) filed a 57-page plenary Complaint; (2) filed a 62-page opposition brief to Defendants' Original Motion to Dismiss; (3) prepared for and provided oral argument on the Original Motion to Dismiss; (4) propounded discovery requests, negotiated the scope of the Limited Scope Discovery, and reviewed the resulting document productions; (5) took six fact depositions (with three deponents also serving in a Rule 30(b)(6) capacity); (6) filed a 29-page Supplemental Complaint incorporating the information learned through the Limited

---

[145] *Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. 2000).

[146] *Ams. Mining*, 51 A.3d at 1259.

[147] *See supra* Section I.A.

[148] *See supra* Section I.B.

Scope Discovery; and (7) filed a 54-page opposition brief to Defendants' Supplemental Motion to Dismiss.

Because Plaintiff "engaged in meaningful litigation efforts . . . including multiple depositions and some level of motion practice," the all-in Fee and Expense award representing 23.5% of the common fund is reasonable and supported by this Court's precedent.[149] For example, in *Handy & Harman*, the Court awarded 25% of the settlement fund after counsel completed seven depositions and two expert reports but "had not finished discovery and not gone through dispositive motion practice, motion for summary judgment, and were not yet on the eve of trial."[150] Similarly, in *Goldstein v. Denner*, this Court awarded 23.8% of the settlement fund where counsel completed multiple depositions but had not yet exchanged expert reports.[151] Additional precedent also supports Plaintiff's request:

[149] *Ams. Mining*, 51 A.3d at 1259–60.

[150] C.A. No. 2017-0882-LWW at 54–55 (Del. Ch. Nov. 14, 2019) (TRANSCRIPT).

[151] C.A. No. 2020-1061-JTL (Del. Ch. Sep. 13, 2023) (TRANSCRIPT).

Case Name	Settlement Amount	Awarded Fee Percentage	Stage of Litigation
In re Cornerstone Therapeutics Inc Stockholders Litigation, Consol. C.A. No. 8922-VCG (Del. Ch. Jan. 26, 2017) (TRANSCRIPT)	$17,881,555	28%	Motion to dismiss denied, eight depositions, no expert reports exchanged
Firefighters' Pension System of the City of Kansas City, Missouri Trust v. Presidio, Inc., et.al., C.A. No. 2019-0839-JTL (Del. Ch. Nov. 7, 2022) (TRANSCRIPT); *id.*, (Del. Ch. Nov. 18, 2022) (ORDER).	$21,625,000	24.7%	Motion to dismiss denied in part, four depositions, no expert reports
Voigt vs. Metcalf, C.A. No. 2018-0828-JTL (Del. Ch. Jan. 19, 2022) (TRANSCRIPT)	$100,000,000	23.5%	Motion to dismiss denied in part, twelve depositions, no expert reports

Case Name	Settlement Amount	Awarded Fee Percentage	Stage of Litigation
Garfield v. Blackrock Mortg. Ventures, LLC, C.A. No. 2018-0917-KSJM (Del. Ch. Feb. 11, 2021) (TRANSCRIPT)	$6,850,000	23%	Filed complaint and amended complaint, survived motion to dismiss, reviewed approximately 38,000 documents, some motion practice, no depositions
In Re Calamos Asset Management Inc. Stockholder Litigation, Consol. C.A. No. 2017-0058-JTL (Del. Ch. Apr. 25, 2019)	$22,376,083	22%	Filed complaint, no motion to dismiss, document discovery and six depositions, no expert reports filed

B. The Secondary *Sugarland* Factors Support The Fee And Expense Award.

1. The Contingent Nature Of The Litigation Supports The Requested Fee Award.

The contingent nature of the representation is the "second most important factor considered by this Court" in awarding attorneys' fees.[152] "It is consistent with the public policy of Delaware to reward [] risk-taking in the interests of

[152] *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Mar. 4, 1992).

shareholders."[153] Accordingly, "[t]his Court has recognized that an attorney may be entitled to a much larger fee when the compensation is contingent than when it is fixed on an hourly or contractual basis."[154] The Court assesses litigation contingency risk as of the outset of the litigation.[155]

Here, counsel vigorously prosecuted this case on a fully contingent basis, investing considerable time and resources. Plaintiff's Counsel incurred $58,420.00 in expenses and invested nearly 1,000 hours researching, developing, and prosecuting this Action.[156] Plaintiff's Counsel have not received any payment for their work in this Action and have not been reimbursed for any costs or expenses. This factor thus weighs in favor of the requested Fee and Expense Award.

2. The Efforts Of Plaintiff's Counsel Support The Requested Fee Award.

"The time and effort expended by counsel serves [as] a cross-check on the reasonableness of a fee award.[157] "[M]ore important than hours is 'effort, as in what

---

[153] *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005).

[154] *Ryan v. Gifford*, 2009 WL 18143, at *13 (Del. Ch. Jan. 2, 2009); *see also Seinfeld,* 847 A.2d at 337 (recognizing that when the compensation of plaintiffs' counsel is contingent on recovery, an award of a risk premium and an incentive premium on top of their standard hourly rates is appropriate).

[155] *See, e.g.*, *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1140 (Del. Ch. 2011).

[156] *See* Affidavit of Kimberly A. Evans in Support of the Proposed Settlement, Class Certification, and an Award of Attorneys' Fees and Expenses ("Evans Aff.") ¶¶3, 5.

[157] *Sauer-Danfoss*, 65 A.3d at 1138.

Plaintiffs' counsel actually did[,]'"[158] and counsel is not to be punished for achieving victory efficiently.[159]

Plaintiff's Counsel spent 988.5 hours litigating the Action from inception to September 26, 2024—the date the parties informed the Court that an agreement in principle to settle the Action had been reached—resulting in a total lodestar of $712,541.50 at their currently applicable hourly rates.[160] The requested award represents a 3.62 lodestar multiple, and the implied hourly rate is $720.83.[161] This implied hourly rate is reasonable compared to the non-contingent hourly rates of experienced and qualified counsel who practice before this Court and is consistent with effective hourly rates approved by this Court in other similar cases litigated on a contingent basis.[162]

---

[158] *Ams. Mining*, 51 A.3d at 1258 (citation omitted).

[159] *See Olson v. ev3, Inc.*, 2011 WL 704409, at *15 (Del. Ch. Feb. 21, 2011).

[160] *See* Evans Aff. ¶3.

[161] *Id.*

[162] *See, e.g., Ark. Teacher Ret. Sys. v. Alon USA Energy, Inc., et al.*, C.A. No. 2017-0453-KSJM (Del. Ch. Oct. 29, 2021) (ORDER) ¶13, (Del. Ch. Oct. 1, 2021) (BRIEF) at 62 (awarding $860.43 hourly rate); *Chester Cnty. Emps.' Ret. Fund v. KCG Holdings, Inc., et al.*, C.A. No. 2017-0421-KSJM (Del. Ch. Apr. 2, 2020) (ORDER) ¶10, (Del. Ch. Mar. 10, 2020) (BRIEF) at 51 (awarding $1,162.04 hourly rate); *Sciabacucchi v. Salzberg,* 2019 WL 2913272, at *6 (Del. Ch. July 8, 2019), *judgment entered*, (Del. Ch. 2019), *vacated on other grounds*, (Del. Ch. 2020) (awarding $11,262.26 hourly rate); *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1252, 1257–58 (Del. 2012) (affirming award of $35,000 hourly rate).

Plaintiff's Counsel's deposition efforts yielded strong evidence in support of Plaintiff's claims, leading to an excellent Settlement and justifying a fee at the high end of the *Americas Mining* range for a mid-stage settlement. Two members of the Special Committee conceded that Plaintiff's key allegation, that the Asset Sales were intended to fund the Geneve Buyout, was accurate.[163] The Chair of the Special Committee also testified that the Special Committee was not properly empowered to consider alternatives to the Geneve Buyout.[164] The strength of this and other evidence elicited in the Limited Scope Discovery allowed Plaintiff to obtain a Proposed Settlement for the Class representing a recovery of approximately 37%–55% of Plaintiff's estimated potential damages, an exceptional result.

Further, the costs and expenses incurred by Plaintiff's Counsel, which form part of the requested all-in Fee and Expense Award, are reasonable and represent typical costs incurred in litigation. Most of these unreimbursed expenses consist of (i) discovery-related expenses, including deposition fees, (ii) court filing fees, and (iii) expert expenses.[165]

---

[163] Tatum Tr. at 22–23, 64; Kirkman Tr. at 108–09.

[164] Simon Tr. at 80.

[165] *See* Evans Aff. ¶5.

3. The Standing And Ability Of Plaintiff's Counsel Supports The Requested Fee And Expense Award.

Under *Sugarland*, the Court should also consider the "standing and ability of Plaintiff's counsel."[166] Plaintiff's Counsel are well known to this Court for their experience in successfully prosecuting derivative and class actions. They have amassed an extensive track record of significant recoveries for their clients, securing hundreds of millions of dollars in class and derivative recoveries in the last few years.[167] Plaintiff's Counsel's record and expertise favor granting the requested Fee and Expense Award.

The Court may also consider the standing and ability of opposing counsel when awarding attorney fees.[168] Defendants are represented by experienced, skillful, and well-respected law firms who vigorously defended their clients'

---

[166] *Sauer-Danfoss*, 65 A.3d at 1140.

[167] *See Sciabacucchi v. Liberty Broadband Corp.*, C.A. No. 11418-VCG ($87.5 million settlement); *In re Madison Square Garden Entertainment Corp.*, Consol. C.A. No. 2021-0468-KSJM) ($85 million settlement); *Witmer v. H.I.G. Capital, L.L.C.*, C.A. No. 2017-0862-LWW ($45 million settlement); *In re Pilgrim's Pride Corp. Deriv. Litig.*, Consol. C.A. No. 2018-0058-JTL ($42.5 million settlement, plus therapeutics); *In re Pivotal Software, Inc. S'holders Litig.*, Consol. C.A. No. 2020-0440-KSJM ($42.5 million settlement); *In re Golden Nugget Online Gaming, Inc. S'holders Litig.*, C.A. No. 2022-0797-JTL ($22 million settlement); *Assad v. TPG Inc.*, C.A. No. 2023-0096-LWW ($19.5 million settlement); *Lao v. Dalian Wanda Group, Co.*, C.A. No. 2019-0303-JTL ($17.375 million settlement); *In re Hemisphere Media Group, Inc. S'holders Litig.*, Consol. C.A. No. 2023-0555-JTL ($15 million settlement); *In re Tangoe, Inc. S'holders Litig.*, C.A. No. 2017-0650-JRS ($12.5 million settlement).

[168] *See Joseph v. Shell Oil Co.*, 1985 WL 150466, at *5 (Del. Ch. Apr. 22, 1985).

interests. The ability of opposing counsel enhances the significance of the benefit achieved for the Class.

CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests that the Court approve the Proposed Settlement, certify the Class, and grant the Fee and Expense Award.

Dated: January 30, 2025

BLOCK & LEVITON LLP

/s/ Kimberly A. Evans
Kimberly A. Evans (#5888)
Lindsay K. Faccenda (#5772)
Irene R. Lax (#6361)
Robert Erikson (#7099)
222 Delaware Avenue, Suite 1120
Wilmington, DE 19801
(302) 499-3600
kim@blockleviton.com
lindsay@blockleviton.com
irene@blockleviton.com
robby@blockleviton.com

Attorneys for Plaintiff Lawrence Bass and the Class

Words: 10,060 (of 14,000 limit)

OF COUNSEL:

Jason Leviton
BLOCK & LEVITON LLP
260 Franklin Street, Suite 1860
Boston, MA 02110
(617) 398-5600