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In a Sale Gone Awry, A Lesson for Other Deal Makers

By Jacqueline Alas, J.D. Candidate 2017 | February 27, 2017

According to Reuters, GFI Group supported brokerage, trading, and clearing services, and traded technologies to global markets. In 2016, the GFI board sold GFI to CME—a global derivative market focused on trading, clearing, and regulation—even though at the end of the bidding war, CME offered a lower bid of $5.85 per share. Meanwhile, the competing buyer, BGC, a global brokerage company, offered $6.10 cash per share. This sale to CME was approved when the board overruled the decision of a committee of independent directors.

GFI Group shareholders filed a 10b-5 securities class action suit in Delaware. At the crux of the litigation was the shareholders' claim that the GFI board made material misstatements that were not mere puffery, and caused shareholder losses.

Namely, the shareholders claimed that they were misled to prematurely sell their shares during the bidding war because they were led to believe that the CME offer was the highest bid. In *Gross v. GFI Corp., Inc.*, the court denied GFI board's motion to dismiss the shareholder lawsuit in a two-pronged approach.

First, the court rejected the GFI board's claims that their statements to shareholders were mere "puffery" – words that were so non-specific that no reasonable shareholder would think it was specific. These words are generally optimistic, and over-advertise the success of a sale. Unlike puffery, Michael Gooch, the founder and largest shareholder, told shareholders that the CME bid was "a singular and unique opportunity to return value."

Second, the court affirmed that the shareholders adequately alleged loss causation—economic harm from a detrimental securities transaction—because Gooch told shareholder that CME's offer was the best offer to "optimize their shares," while concealing that GFI's shares were undervalued.

Potentially, GFI board viewed CME as a white knight, a term coined for a favorable buyer that might protect the interests of the board by not dissolving the company and keeping the board intact. Even while offering to sell GFI, the GFI board and Gooch benefited themselves by selling the GFI's brokerage business to itself for a cash payment of $165 million. Yet, even CME has curbed Gooch's power when Gooch agreed not to sell his interest for a year.

Despite the GFI board interests at hand, the *Gross* decision protects the board's fiduciary duty to its shareholders to act in the best interest of the shareholders by maximizing shareholder value.