



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALAN KAHN,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2021-0103-PAF
)	
JAMES G. GIDWITZ, RALPH W.)	
GIDWITZ, STEVEN GIDWITZ,)	PUBLIC VERSION
SCOTT GIDWITZ, THEODORE R.)	
TETZLAFF, DARRELL M. TRENT,)	
PETER E. THIERIOT, RYAN)	
SULLIVAN, BEE STREET)	
HOLDINGS LLC, and BEE STREET)	
II, INC.,)	
)	
Defendants.)	

VERIFIED STOCKHOLDER CLASS ACTION COMPLAINT

Plaintiff Alan Kahn (“Plaintiff”), by and through his undersigned attorneys, submits this Verified Stockholder Class Action Complaint against the defendants named herein, and alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, a review of public filings, press releases and reports, an investigation undertaken by Plaintiff’s counsel, and documents produced by Continental Materials Corporation (“CMC” or the “Company”) pursuant to Plaintiff’s demand for inspection pursuant to 8 *Del. C.* § 220 as follows:

NATURE OF THE CASE

1. This is a stockholder class action brought by Plaintiff on behalf of CMC's former public minority stockholders, alleging breaches of fiduciary duty by the Company's board of directors (the "Board") and its controlling stockholders (the "Control Group") in connection with a going-private transaction (the "Buyout") in which the Control Group cashed out public minority stockholders for \$9.50 per share.

2. The Buyout was structured as a tender offer directly to public stockholders, followed by a second step short form merger. While Delaware law provides ample guidance to controllers on how to engage in two-stage going-private transactions on non-coercive terms that will protect public stockholders and avoid entire fairness review, the Control Group chose not to follow that path. Instead, the Control Group: (i) declined to adopt a non-waivable majority of the minority tender condition, (ii) [REDACTED] and refused to allow the formation of a special committee, (iii) instructed the directors not to communicate outside of formal Board meetings (with the controllers present), (iv) browbeat the two directors that were not aligned with the Control Group into staying neutral and refraining from making any recommendation, and (iv) failed to disclose material information to public stockholders.

3. The Buyout was required to be entirely fair to CMC's public stockholders. It was not.

4. The Buyout was not entirely fair as to price. The price was based in part on financial projections that were [REDACTED] by the Company's President after he and the Company's CEO had already planned to take CMC private. After the Board accepted the pulled back projections, the projections were then revised downward twice, although the Company internally recorded [REDACTED]
[REDACTED] Also, CMC stock was thinly traded in an inefficient market that did not reflect fair value.

5. The Buyout was also not entirely fair as to process. The Control Group's own lawyers [REDACTED]
[REDACTED]
That advice then changed and the Control Group browbeat the other directors into avoiding a special committee process and staying neutral with no recommendation. When CMC's own lawyers [REDACTED]
[REDACTED], the Board unanimously rejected that advice and accepted the Control Group's preferred path.

6. All Defendants had a fiduciary duty to ensure that the Buyout was procedurally and financially fair to CMC's public stockholders. Defendants

breached those fiduciary duties, and now cannot meet their burden to show that the Buyout process and the Buyout price were entirely fair.

JURISDICTION

7. Defendants are current and/or former officers, directors, or controlling stockholders of CMC, a Delaware corporation. This Court has jurisdiction over all Defendants under 10 *Del. C.* §3104 and/or 10 *Del. C.* §3114.

8. This Court has jurisdiction under 10 *Del. C.* §341.

THE PARTIES

9. Plaintiff was a continuous record owner of 200 shares of CMC common stock at all relevant times until the completion of the Buyout on October 15, 2020.

10. Defendant James G. Gidwitz (“James”)¹ served as a director of CMC since 1978 and Chairman and CEO since 1983. James is the son of Gerald S. Gidwitz (“Gerald”), one of the founders of the Company. James is also the CEO and a member of the board of managers of Bee Street Holdings LLC (“Bee Street”), which is the entity through which the Control Group and other members of the Gidwitz family aggregated their 61.3% collective ownership of CMC stock for purposes of completing the Buyout.

¹ The first names of the members of the Gidwitz family are used herein for ease of identification. No disrespect is intended.

11. Defendant Ralph Gidwitz (“Ralph”) served as a director of CMC since 1984 and is a member of the board of managers of Bee Street. Ralph is the son of Joseph L. Gidwitz (“Joseph”), the other founder of the Company. Gerald and Joseph are brothers, such that James and Ralph are first cousins.

12. Defendant Steve Gidwitz (“Steve”) served as a director of CMC since 2018 and is a member of the board of managers of Bee Street. Steve is James’s nephew.

13. Defendant Scott Gidwitz (“Scott”) served as a director of CMC since 2018 and is a member of the board of managers of Bee Street. Scott is also James’s nephew.

14. Defendant Theodore R. Tetzlaff (“Tetzlaff”) served as a director of CMC since 1981. Tetzlaff is a lawyer. Since 2012, Tetzlaff has worked at the Tetzlaff Law Offices, LLC and has represented the Company in legal matters and has represented members of the Gidwitz family in legal matters apart from CMC-related actions. Tetzlaff’s firm billed CMC approximately \$474,000 during fiscal year 2018 and approximately \$826,210 during fiscal year 2019. Tetzlaff was Chairman of CMC’s Compensation Committee responsible for awarding compensation to James.

15. Defendant Peter E. Thieriot (“Thieriot”) served as a director of CMC since 2001. CMC’s SEC filings represented that Thieriot was an independent director of the Company.

16. Defendant Darrell M. Trent (“Trent”) served as a director of CMC since 1997. CMC’s SEC filings represented that Trent was an independent director of the Company.

17. Defendant Ryan Sullivan (“Sullivan”) was CMC’s President and COO and an “operating partner” of Hiniker Company Inc. (“Hiniker”) at all relevant times. Hiniker manufactures and sells snow plows and salt and sand spreaders. Hiniker is a privately held entity controlled by James. CMC has never disclosed in its SEC filings that Sullivan worked for Hiniker while also working for CMC as President and COO.

18. Defendant Bee Street is a Delaware limited liability company that owned approximately 61.3% of CMC’s outstanding shares just prior to the Tender Offer. Effective as of February 13, 2020, James, Ralph, Steve, Scott, and other members of the Gidwitz family contributed their shares of CMC stock to Bee Street for purposes of the Buyout. James, Ralph, Steve, Scott, and another relative, Nancy Gidwitz, became the members of the board of managers of Bee Street and appointed James as Bee Street’s CEO.

19. Defendant Bee Street II, Inc. (“Acquisition Subsidiary”) is a Delaware corporation and the wholly owned acquisition subsidiary of Bee Street Holdings LLC used to complete the Buyout.

20. The “Control Group” refers collectively to defendants James, Ralph, Steve, Scott, Bee Street, and Acquisition Subsidiary.

21. The “Board” refers collectively to defendants James, Ralph, Steve, Scott, Tetzlaff, Thieriot and Trent.

22. The “Defendants” refers collectively to defendants James, Ralph, Steve, Scott, Bee Street, Acquisition Subsidiary, Tetzlaff, Thieriot, Trent, and Sullivan.

THE BUYOUT IS AN ENTIRE FAIRNESS *AB INITIO* TRANSACTION AND WAS NOT ENTIRELY FAIR

Background of the Company and Control by the Gidwitz Family

23. CMC’s operating subsidiaries fall into two industry groups: Heating, Ventilation and Air Conditioning (HVAC) and Construction Products. In the HVAC group, the Company produces and sells gas-fired wall furnaces, console heaters, fan coils, and evaporative coolers. The Construction Products group sells concrete, aggregates, construction supplies, doors and door frames and related hardware, lavatory fixtures, and electronic access and security systems. Prior to completion of the Buyout, CMC common stock traded on the NYSE under the symbol “CUO.”

24. Members of the Gidwitz family have controlled CMC since it was founded in 1954. Prior to the Tender Offer, CMC was controlled by the Control Group though the Control Group's equity control of approximately 61.3% of CMC's outstanding shares; management control through James's position as Chairman and CEO; and Board control where a majority of the members of CMC's Board were also members of the Control Group.

James and Sullivan Lay the Groundwork for the Buyout

25. James and Sullivan were exploring plans for the Buyout by October 2019.

26. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

○

[2]

■

■

■

■

² Peter Carmody resigned from the Board on November 19, 2019.

27.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. CMC's total equity value at the time was roughly \$14 million.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. In furtherance of the Buyout plans,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. [REDACTED] was responsible for organizing the December 5, 2019 meeting.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. Bee Street's Tender Offer filings disclose that the December 5, 2019 meeting took place but omit that [REDACTED].

The Tender Offer filings also fail to disclose the existence of the [REDACTED]

[REDACTED]

36. With the plans for a Buyout underway, Sullivan chose to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], and thus lower the price that the Control Group would have to pay public stockholders.

37. The Board met on [REDACTED]
[REDACTED]. In developing projections for FY 2020, Sullivan told the Board that he [REDACTED]
[REDACTED]

38. Just weeks after presenting [REDACTED]
[REDACTED]
[REDACTED]

39. When Duff & Phelps [REDACTED]
[REDACTED]
[REDACTED]

40. The Company quickly outperformed the [REDACTED]
[REDACTED] presented to the Board and the [REDACTED]
[REDACTED] presented to Duff & Phelps.

41. At the end of January 2020, [REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED].

43. [REDACTED]. For the four-week period ended February 22, 2020 (four days after Bee Street commenced the Tender Offer), [REDACTED]:

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

44. CMC for the February recording period reported [REDACTED]

[REDACTED]

[REDACTED]

45. Sullivan also pressed for [REDACTED]

[REDACTED] following the Buyout. On [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Neither the 14D-9 nor Bee Street's Tender Offer filings disclose [REDACTED]

46. Having proposed a [REDACTED]

[REDACTED] its market purchases of CMC stock under the Company's buyback program, so as to buy shares held by the public at prices below \$9.50 per share. Between December 29, 2019 and February 14, 2020, CMC bought 37,870 shares through the buyback program, reducing the public float by over 6%.

47. Sullivan and Ainsworth also pressed to roll [REDACTED]

[REDACTED]

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. [REDACTED]

[REDACTED] but neither the Tender Offer filings nor the 14D-9 disclosed the planned

50. Indeed, although President of CMC and having no official role at Bee

Street, Sullivan was nonetheless the [REDACTED]

[REDACTED]

51. Sullivan acted as [REDACTED].

Sullivan negotiated the terms of [REDACTED]

[REDACTED]

[REDACTED] Sullivan

also arranged the terms [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Bee Street Commences the Tender Offer

52. Bee Street commenced the Tender Offer before the opening of trading on February 18, 2020, offering \$9.50 cash per share for all common shares not held by Bee Street and set to expire on March 17, 2020.

53. The closing price of CMC common stock on Friday, February 14, 2020 (the last trading day before commencement of the Tender Offer) was \$9.35 per share, such that the Tender Offer represented a 1.6% premium over the market price. Bee Street filed a 13D after the close of trading on February 14, 2020, to disclose its aggregated holdings of CMC stock received from the members of the Gidwitz family. Prior to commencing the Tender Offer on the morning of February 18, 2020, [REDACTED] saw that pre-market trading as of 7:43 a.m. indicated prices for CMC stock at \$13 per share, reflecting the market expectation following the Bee Street 13D disclosure. In response, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Tender Offer was scheduled to expire on March 17, 2020.

54. CMC also filed an 8-K on February 18, 2020 to disclose its unaudited financial statements for FY 2019. Those financial statements had previously been provided to James and were included in Bee Street's Tender Offer filings.

55. The Tender Offer was subject to a waivable Minimum Tender Condition and a waivable Majority Minority Condition. The Minimum Tender Condition, unless waived, required the valid tender of public shares needed for Bee Street to meet the 90% ownership threshold to complete a short form merger under 8 *Del C.* §253. The Majority Minority Condition, unless waived, required the valid tender of a majority of the common shares not already owned by Bee Street. Bee Street stated that it “does not intend to waive the Majority Minority Condition” but did not commit itself to an unwaivable Majority Minority Condition.

56. Bee Street acknowledged in the Tender Offer filings that the Tender Offer was the first step of a going private transaction and that it may waive the Minimum Tender Condition, close the Tender Offer and acquire additional shares in the future to reach the 90% ownership requirement needed for a second step short form merger.

57. Bee Street did not disclose when the Tender Offer commenced that it planned to [REDACTED]. Bee Street had [REDACTED] and received commitments from its lender, CIBC, that financing would be provided if Bee Street achieved 85% ownership through the Tender Offer. [REDACTED]

58. CIBC agreed to provide funding to Bee Street and committed to fund at an 85% ownership threshold. That financing would be secured by CMC's assets.

[REDACTED] At the time, CIBC was also a lender to CMC through a \$20 million facility. As part of the agreement to provide \$8.5 million in financing to Bee Street, Bee Street [REDACTED] to approve the \$8.5 million financing to Bee Street.

59. Bee Street did not make any statement in its Tender Offer filings regarding any expectation that CMC would form and empower a special committee to consider the Company's response to Tender Offer and the Tender Offer was not subject to any special committee approval or Board recommendation. Instead, before the Board had met to consider the Tender Offer, James emailed Tezlaff, Thieriot, and Trent (the non-Bee Street directors of CMC) to inform them of the Tender Offer and warn those CMC directors not to conduct any discussions regarding the Tender Offer outside of Board meetings (that would include the Bee Street directors):

The SEC's tender offer rules also require that CMC make a statement on Schedule 14D-9 whether CMC recommends "for" or "against" the Offer, or is "expressing no opinion and is remaining neutral" toward the Offer, or is "unable to take a position" regarding the Offer. CMC is required to make this statement within 10 business days of the Offer – that is, by Tuesday, March 3.

As I know you are aware, it is important that all meetings of directors be conducted with proper notice to all directors and memorialized with appropriate minutes. Let's be mindful to ***assure discussions among directors regarding CMC's response to this tender offer occur at duly called and convened Board meetings.*** (Emphasis added.)

Bee Street Concedes that Entire Fairness Review Applies and Browbeats the Rest of the Board into Silence

60. The Board formally met on February 20, 2020 by telephone. The meeting included Sullivan, Ainsworth, and lawyers from Taft, as counsel for Bee

Street, and lawyers from Polsinelli PC (“Polsinelli”), which was outside counsel for CMC.

61. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. At the February 20, 2020 Board meeting, [REDACTED] stated Bee Street’s desire for the Board not to make a recommendation to stockholders in response to the Tender Offer and not form a special committee. According to the meeting minutes:

[REDACTED]

62. CMC’s 14D-9 Solicitation/Recommendation Statement filed with the SEC describes the meeting in slightly different terms. According to the 14D-9:

Bee Street had identified, through interviews between Mr. Gidwitz and Taft, potential conflicts of interest involving each of the Company’s directors....

[I]n light of the potential conflicts of interest which Bee Street had identified, Bee Street was requesting that the Company’s board express no opinion and remain neutral in response to the Offer as is permitted under the rules of the SEC and consistently with precedent of the Delaware court of chancery *[sic]*.

63. Neither the minutes nor the 14D-9 include any description of “the potential conflicts of interest which Bee Street had identified” or the lack of [REDACTED] of the non-Bee Street members of the Board. CMC in its SEC filings claimed that Thieriot and Taft were independent directors and the public record does not indicate any connections between Thieriot and Taft and the members of the Control Group apart from their role as non-management directors of CMC.

64. Sullivan previously requested that [REDACTED]

[REDACTED]

[REDACTED]

65. While the meeting minutes include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], although the Company already had

determined that Thieriot and Trent were independent under NYSE rules. The [REDACTED] does not identify the “potential conflicts of interest” Bee Street identified, as reported in the 14D-9.

66. The [REDACTED] was designed for James to cajole Theirot and Trent into avoiding a special committee process and the possibility of a negative recommendation. The [REDACTED] included the following:

○

[REDACTED]

○

[REDACTED]

•

[REDACTED]

•

[REDACTED]

•

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67. The [REDACTED] also included [REDACTED]

[REDACTED]

[REDACTED]

68. The [REDACTED] included [REDACTED]

[REDACTED] should they engage in a special committee process and/or adopt a negative recommendation:

[REDACTED]

69. While Bee Street's lawyers from Taft were working hard to avoid the Board's formation of a properly empowered special committee, CMC's lawyers from Polsinelli [REDACTED]

[REDACTED]

70. The Polsinelli lawyers pointed out that [REDACTED]

[REDACTED]

[REDACTED]

71. No final determinations were made at the meeting and the Board agreed to reconvene on February 25, 2020.

72. During the February 25 meeting, it was James's turn to browbeat the rest of the Board into avoiding a recommendation and avoiding a special committee. According to the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73. Neither the minutes, the script nor the 14D-9 identify in any way the conflicts or potential conflicts of interest among the Board members, as expressed at this Board meeting or any other time.

74. At the conclusion of the February 25, 2020 meeting, the Board (including Thieriot and Trent) unanimously agreed to remain neutral and not make any recommendation to stockholders in connection with the Tender Offer, thus accepting the desires of Bee Street and rejecting the [REDACTED]

[REDACTED]

75. Although CMC's Board unanimously agreed to remain neutral and not express an opinion on the fairness of the Tender Offer, Bee Street's Tender Offer filings included the representation that "Bee Street and its management [*i.e.*, CMC directors James, Ralph, Steven, and Scott] believe that the Offer is both financially and procedurally fair to holders of Shares that are not affiliates of Bee Street[.]"

76. While the Board unanimously agreed to forgo a special committee process, the Board at the February 25 meeting agreed that the members of the Audit

Committee (Thieriot and Trent) could select a financial advisor (but not independent counsel) to conduct an analysis (but no fairness opinion) for the Board and dissemination to public stockholders. The [REDACTED]

[REDACTED]

[REDACTED]

77. The Board next met on March 2, 2020 by telephone, which included Sullivan, Ainsworth, and the Taft and Polsinelli lawyers. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78. The resolutions also limited the costs of the financial advisor to

[REDACTED].

79. The new financial advisor would be selected by the Audit Committee and retained by the Company.

80. The 14D-9 does not disclose that the financial advisor was authorized on the condition that its analysis would not [REDACTED]

[REDACTED] and does not disclose that the Board limited [REDACTED]
[REDACTED]

81. [REDACTED]
[REDACTED].

82. The Board next met on [REDACTED]
[REDACTED]

[REDACTED] According to the meeting minutes, [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] The minutes do not provide any description of [REDACTED]
[REDACTED]. The minutes only state that [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] The 14D-9 does not disclose that [REDACTED]
[REDACTED]

83. On March 18, 2020, Trieriot and Trent, as CMC's Audit Committee, retained Value Incorporated ("VI") as the advisor to provide a report to the full Board. VI's retention conformed to the limitations imposed the Board (including Trieriot and Trent): VI would receive a fee of \$240,000 for its work, inclusive of expenses; VI would not provide any opinion on fairness; and VI's analysis would not [REDACTED].

84. Also on March 18, 2020, Bee Street extended the expiration of the Tender Offer to April 3, 2020.

85. On April 3, 2020, VI's report was publicly disclosed as an exhibit to an amended 14D-9 filing. The report shows that VI's analysis was based in part on what VI called "Modified Management Projections" from CMC management. The Modified Management Projections were created by CMC specifically for use by VI and were lower than the [REDACTED] projections [REDACTED] and lower than the [REDACTED] projections [REDACTED] provided to Duff & Phelps. The Modified Management Projections used the [REDACTED] [REDACTED] projections and then assumed an additional 15% across the board drop in revenue from all of the Company's operating segments. As expected, VI's report included lower value ranges of \$7.95 to \$11.10 per share based on the Modified Management Projections.

86. On April 6, 2020, Bee Street extended the expiration of the Tender Offer to April 14, 2020.

87. On April 7, 2020, Bee Street announced that it was waiving the Minimum Tender Condition for the Tender Offer. Bee Street disclosed that the shares validly tendered would bring Bee Street's ownership to 85.6%. Bee Street also disclosed that if it did not reach the 90% needed to effect a short form merger, "Bee Street would advocate, as the Company's overwhelming majority stockholder after the completion of the Offer, for the Company to 'go dark' and cease to be a public company by de-listing the Shares from the NYSE American Stock Exchange" and ending SEC reporting requirements, further pressuring public stockholders to accept the Tender Offer rather than be stuck with shares in a thinly traded 85%+ controlled dark company with no reporting obligations.

88. On April 15, 2020, Bee Street announced that it completed the Tender Offer on April 14, 2020, having received validly tendered shares that would bring Bee Street's ownership to approximately 89% ownership. Bee Street repeated its plans to take CMC dark and announced a two-day subsequent offering period, expiring April 17, 2020.

89. On April 20, 2020, with the subsequent offering period completed, Bee Street announced that it was still at the 89% ownership level and could not yet complete the short form merger.

90. On April 20, 2020, CMC issued an 8-K announcing several developments that materially benefitted the Company. First, CMC announced that on April 14, 2020 the Company received a \$5,487,000 loan under the Paycheck Protection Program. Second, CMC announced a series of contracts, all dated April 16, 2020, whereby buyers had agreed to acquire certain real estate relating to CMC's aggregates businesses for \$8.8 million in cash paid to CMC.

91. On April 20, 2020, CMC issued a separate 8-K announcing that it had begun the process to delist its common stock from the NYSE.

92. CMC shares were delisted and the Company went dark on May 11, 2020.

93. After going dark, Bee Street acquired sufficient shares to reach the 90% threshold and on October 14, 2020 effected the short form second step merger under 8 *Del. C.* §253, thus completing the Buyout. Plaintiff and all other remaining public stockholders were cashed out involuntarily at the same \$9.50 cash per share paid in the Tender Offer.

The Buyout was not Entirely Fair

94. The Buyout was a controlling stockholder freeze out of the minority interest in CMC, completed through a two-step process of a Tender Offer followed by a short form merger. The Buyout is subject to entire fairness review and was not entirely fair.

95. The Buyout was not entirely fair as to price; CMC common stock was worth much more than \$9.50 per share.

96. The Buyout price was based in part on financial analyses using deliberately depressed financial projections designed to yield lower, inaccurate value ranges instead of presenting a fair estimate of the Company's future financial performance.

97. Duff & Phelps used [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] projections used by Duff & Phelps in its presentation materials, which were disseminated to public stockholders in the Tender Offer. When the Board agreed to permit the Audit Committee to hire a financial advisor, CMC management lowered the projections for a third time by imposing a 15% across the board reduction in projected revenue. CMC's recurrent cuts to Company's projected revenues were immense:

	2020(P) Net Revenue	2021(P) Net Revenue	2022(P) Net Revenue
CMC projections in Duff & Phelps's [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CMC's [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CMC's [REDACTED] projections to Duff & Phelps (publicly disclosed as CMC's official projections on February 18 2020)	\$133.2 million	\$141.1 million	\$149.1 million
CMC's "modified" projections provided for Value Incorporated's April 2, 2020 report	\$113.2 million	\$127.0 million	\$141.7 million

98. Lowering the projections was also inconsistent with the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

99. Correcting the financial analyses used by Duff & Phelps and VI for more accurate projections yields price ranges far higher than the Buyout price, and closer to the Company's \$21 book value per share.

100. Also, the Buyout was not entirely fair as to process. There was no special committee process, no independent representation for public stockholders,

and no other process that came close to replicating any bargaining with the Control Group on an arms' length basis. CMC's lawyers at Polsinelli recommended that [REDACTED]

[REDACTED]

[REDACTED]; the Board (including Thieriot and Trent) [REDACTED].

101. The Buyout was structurally unfair because the Control Group refused to agree to an unwaivable Majority Minority Condition.

102. In addition to the complete lack of any independent representation for the interests of public stockholders, the Tender Offer filings and the 14D-9 Recommendation Statement also failed to include many material facts, including the following:

a. There was no disclosure of the "potential conflicts of interest" that Bee Street and/or Taft had identified and reported to the Board members and upon which the Board based its determination not to form a special committee and not express an opinion on the Tender Offer.

b. While the 14D-9 disclosed the presentation from Bee Street's lawyers at the February 20, 2020 meeting that the Board should remain neutral and not form a special committee, there was no disclosure that [REDACTED]

[REDACTED]

[REDACTED], which advice was not attorney-client privileged because it was disclosed to Bee Street's lawyers.

c. There was no disclosure that the Audit Committee's selection of a financial advisor was subject to certain conditions, including that the advisor's analysis [REDACTED] the Board's determination to remain neutral.

d. There was no disclosure that the [REDACTED] Board meeting took place, nor any disclosure that Thieriot and Trent (the Board members charged with selecting a financial advisor) wanted the Board to [REDACTED]

[REDACTED]

[REDACTED]

e. There was no disclosure that Sullivan, in addition to his role as President and COO at CMC, was also employed by Hiniker, a privately held entity controlled by James. (CMC has never disclosed this in any of its public filings).

f. There was no disclosure that Sullivan [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

g. There was no disclosure of the agreement [REDACTED]

[REDACTED]

[REDACTED] post-Buyout.

h. There was no disclosure that the Company's projections had been lowered and/or that management, [REDACTED] [REDACTED] method of projecting CMC's future financial performance.

CLASS ACTION ALLEGATIONS

103. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other public holders of CMC common stock who were cashed out in the Tender Offer and/or upon completion of the Buyout, except Defendants and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest.

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

105. The Class is so numerous that joinder of all members is impracticable. Prior to completion of the Tender Offer, there were roughly 547,000 shares of CMC common stock owned by public stockholders not aligned with the Control Group.

106. There are questions of law and fact common to the Class including, *inter alia*, whether:

a. The Defendants breached their fiduciary duties in connection with the Buyout;

b. The Defendants acted in furtherance of the Control Group's interests or their own self-interests to the detriment of the Class; and

c. Plaintiff and the other members of the Class have been injured by the wrongful conduct alleged herein and, if so, what is the proper remedy and/or measure of damages.

107. Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

108. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class.

COUNT I

Claim for Breach of Fiduciary Duties Against the Board

109. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

110. The members of the Board have violated the fiduciary duties owed to the public stockholders of CMC and have acted to put the interests of the Control Group, and consequently their personal interests, ahead of the interests of the Company's public stockholders, or acquiesced in those actions by fellow Defendants. The members of the Board failed to take adequate measures to ensure that the interests of CMC's public stockholders were properly protected.

111. By the acts, transactions, and courses of conduct alleged herein, the members of the Board, individually and acting as a part of a common plan, unfairly deprived Plaintiff and other members of the Class of the true value of their CMC investment in completing the Buyout, which was not entirely fair as to price and/or process.

112. By reason of the foregoing acts, practices, and courses of conduct, the members of the Board have breached their fiduciary obligations owed to Plaintiff and the other members of the Class.

113. As a result of the actions of the members of the Board, Plaintiff and the Class have been damaged in an amount to be determined at trial.

COUNT II

Claim for Breach of Fiduciary Duties Against Sullivan

114. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

115. Sullivan, who was President and COO of CMC, violated the fiduciary duties he owed to the public stockholders of CMC and acted to put the interests of the Control Group and his personal interests ahead of the interests of the Company's public stockholders. Sullivan was an executive of CMC but acted as an agent of the Control Group.

116. By the acts, transactions, and courses of conduct alleged herein, Sullivan, individually and acting as a part of a common plan with other Defendants, unfairly deprived Plaintiff and other members of the Class of the true value of their CMC investment in completing the Buyout, which was not entirely fair as to price and/or process.

117. By reason of the foregoing acts, practices, and courses of conduct, Sullivan breached his fiduciary obligations owed to Plaintiff and the other members of the Class.

118. As a result of Sullivan's actions, Plaintiff and the Class have been damaged in an amount to be determined at trial.

COUNT III

Claim for Breach of Fiduciary Duties Against Bee Street and Acquisition Sub

119. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

120. As the controlling stockholder of CMC, Bee Street owed the Company and its public stockholders, fiduciary duties of care and loyalty.

121. As set forth herein, Bee Street, though Acquisition Sub, breached its fiduciary duties to Plaintiff and the other members of the Class by effecting self-dealing transactions that froze out Plaintiff and Class members' public interest in CMC on terms that were not entirely fair as to price and/or process.

122. By reason of the foregoing, Bee Street and Acquisition Sub have been unjustly enriched and the Class has been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class and against the Defendants as follows:

A. Certifying this case as a class action, certifying Plaintiff as Class representative and his counsel as Class counsel;

B. Awarding Plaintiff and the Class all damages suffered by them resulting from Defendants' wrongful conduct alleged herein;

C. Awarding Plaintiff the costs, expenses, and disbursements of this action, including any attorneys' and experts' fees and expenses and pre-judgment and post-judgment interest; and

D. Awarding Plaintiff and the Class such other relief as this Court deems just, equitable, and proper.

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