IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOANNA SWOMLEY and
LAWRENCE BROCCHINI,

Plaintiffs below,
Appellants,

v.

MARTIN SCHLECHT, JOSEPH
MARTIN, KENNETH BRADLEY,
and SYNQOR HOLDINGS, LLC,

Defendants below,
Appellees.

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No. 180, 2015

On Appeal from
C.A. No. 9355-VCL
in the Court of Chancery
of the State of Delaware

APPELLANTS' REPLY BRIEF

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PRELIMINARY STATEMENT[1]

The issue presented by this appeal is relatively simple. Whether the Complaint here "plead[s] a reasonably conceivable set of facts showing that any or all" of *Kahn v. M & F Worldwide Corp.*'s six enumerated conditions "did not exist[.]" 88 A.3d 635, 645 (Del. 2014) *aff'g In re MFW S'holders Litig.*, 67 A.3d 496 (Del. Ch. 2013). In their opening brief on appeal, Plaintiffs showed that the detailed factual pleadings of the Complaint, at a minimum, made it reasonably conceivable that: (i) the controller here did not originally condition the procession of the transaction on the approval of a majority of the minority stockholders; (ii) the Special Committee was not independent; (iii) there was coercion of the minority; and, perhaps most importantly, (iv) the Special Committee did not meet "its duty of care in negotiating a fair price[.]" *See id.*

In their answering brief, Defendants focus on form over substance, addressing each of Plaintiffs' challenges to the Merger process in isolation while failing to address the sum and substance of the Merger as a whole. The Complaint is not premised on mere "quibbles" as Defendants argue. Nor does it allege a few small, isolated concerns with the process. Rather, the Complaint alleges an interconnected series of deficiencies, which, combined, show that the Special

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1 Capitalized terms used herein have the same meaning ascribed to them in Appellants' Opening Brief ("OB"). Appellees' Answering Brief is cited to herein as "AB."

Committee failed to fulfill its objective under the unified standard to obtain a fair price for the Company's minority stockholders when they were squeezed out by the controller.

Specifically, the Complaint alleges facts demonstrating that the Special Committee never informed itself whether, or on what terms, the Merger would actually be in the minority stockholders' best interests. Instead, the Special Committee focused on trying to make the deal happen so long as the price was above the very bottom of its financial advisor's facially depressed fairness range. The Special Committee might have achieved the best possible price the Founder Group was willing to pay (perhaps), but the Committee should have said "no" to a deal while it labored under an informational imbalance. It should have said "no" to an untimely deal instead of working with its financial advisor to keep reducing its valuation and then revealing its bottom line so the Founder Group knew what mark it had to hit. And perhaps most importantly, the Complaint alleges substantial, specific facts showing that the price—the substance—of the Merger fell well short of being fair.

ARGUMENT

I. Plaintiffs Alleged Facts Showing that the Elements of *M & F Worldwide* Were Not Satisfied and Entire Fairness Remained the Standard of Review Applicable to the Merger.

A. The Committee Failed to Meet Its Duty of Care in Negotiating a Fair Price.

1. The Merger Price Was Unfair, Which Raises the Inference that the Process Was Substantively Unfair.

Plaintiffs state a claim for relief if they "plead a reasonably conceivable set of facts showing that" that the Special Committee failed to "meet[] its duty of care in negotiating a <u>fair</u> price. . . ." *M & F Worldwide*, 88 A.3d at 645 (emphasis added). The standard is not, as Defendants suggest, that Plaintiffs must plead facts showing that "the Committee breached its duty of care in negotiating price." AB 22. In so stating, Defendants omit the critical word "fair" from the standard. Yet, *M & F Worldwide* makes clear that Defendants must show that "a fair price was achieved by an empowered, independent committee that acted with care"—not just the price obtained or even the best price the controlling stockholder is willing to offer. *See* 88 A.3d at 645.

The inclusion of the word "fair" in the unified standard is meaningful—it was one of the words that this Court added to the original formulation by the Court of Chancery. *Compare MFW*, 67 A.3d at 524-25 *with M & F Worldwide*, 88 A.3d at 645.[2] The inclusion of a fair price as part of the unified standard recognizes the preeminent importance of substance over bare process.

Furthermore, this Court's inclusion of the word "fair" in the test serves to reiterate two well-settled propositions of Delaware law. First, a plaintiff states a conceivable claim for the unfairness of the process by which a self-dealing merger was negotiated and approved by alleging facts from which it may be inferred that the price resulting from that process was unfair. *M & F Worldwide,* 88 A.3d at 645 n.14 ("allegations about the sufficiency of the price call into question the adequacy of the Special Committee's negotiations"); *see, e.g.*, *Bomarko, Inc. v. Int'l Telecharge, Inc.*, 794 A.2d 1161, 1183 (Del. Ch. 1999) ("the unfairness of the process also infects the fairness of the price"), *aff'd*, 766 A.2d 437 (Del. 2000). Second, an entire fairness complaint may not be dismissed unless the complaint itself negates the entire fairness claim as a matter of law.

Accordingly, under *M & F Worldwide*, if Plaintiffs can articulate facts showing that the price negotiated is unfair, then they have met their pleading burden and the Complaint survives a motion to dismiss. In arguing against this standard, Defendants warn that "creative plaintiffs can always challenge some

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2 The Court of Chancery acknowledged that this "element of the MFW standard … was added by the Delaware Supreme Court in Kahn and was not part of Chancellor Strine's formulation in this court[,]" but focused on process rather than substance, stating that "the question is whether the special committee meets its duty of care." OB Ex. A at 11.

aspect of a valuation analysis[,]" AB 18, and so the Court must not have meant to require a controller to establish such a condition up front. In other words, Defendants in effect assert that the Court ought to disregard the reasonable inferences that flow from allegations about the unfairness of the price so long as Defendants can point to untested assertions in the proxy materials demonstrating a process that checks all of the boxes under the unified standard.

As discussed in their opening brief, however, Plaintiffs have met the actual pleading burden here. The Complaint does not contain creative challenges to valuation, or mere "quibbles" with the work of Shields, AB 30-31, but rather allegations of specific facts demonstrating substantive deficiencies in the fairness of the Merger price and the analyses relied on to reach that price.

Taken as true at this stage, as they must be, the allegations of the Complaint raise an inference that the Special Committee was either trying to achieve something for the controller or thought its duty was to get some deal done, instead of protecting the minority holders, given how many value-depressing steps were taken in the valuation analysis. *See* OB 13-15, 22-23.[3] Although each

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[3] Defendants tout the $0.973 per share paid to one common stockholder at the end of 2012 as evidence of the fairness of the $1.35 per share merger price in 2014 (AB 10-11), but fail to point out that the stockholder was also paid additional consideration once the Company received proceeds from the '497 Litigation. *See* A045-46 ("[T]he Company also repurchased 552,096 shares of Common Stock from a stockholder for $0.973 per share (<u>plus a supplemental amount per share resulting from the Company's receipt of the payment of damages awards under the '497 case</u>)…." (emphasis added); A060 (noting a "reserve for payment of additional purchase price to a former stockholder in connection with the prior repurchase of 552,096 shares of

individual decision that Shields' made in its analysis might have been acceptable had they been committed in isolation, the combined effect of all those value-depressing steps, plus the omission of any value related to the '054 Litigation and the patent portfolio as discussed below, gives rise to an inference of an infected process such that the controlling stockholder cannot escape the entire fairness standard on a motion to dismiss.

2. The Special Committee Failed to Replicate Arm's-Length Bargaining.

Defendants contend that the Special Committee's proper functioning is shown by the number of times it met, the advisors it consulted and its rejection of the Founder Group's first three offers such that Plaintiffs only raise "mere quibbles with *how* the Committee negotiated. . . ." AB 25. The unified standard is an exacting one, however, and it examines the actual functioning of the special committee. *M & F Worldwide*, 88 A.3d at 646. Defendants cannot carry that burden in the face of allegations to the contrary simply by pointing to the number of meetings that the Special Committee held without reference to the substance of its efforts. *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1240-41 (Del. 2012).

Common Stock which is payable in as a result of the receipt of the '497 damage award"). The Company did not identify in its Proxy Statement the amount of supplemental consideration provided to this stockholder, but it is a reasonable inference that it is on the order of the \$0.87 per share tax-adjusted proceeds from the '497 litigation. If that is the case, then the \$1.35 per share merger price was actually \$0.49 *less* than the total per share consideration that one common stockholder received (\$0.973 + \$0.87).

Rather, Defendants must show that the Committee "conduct[ed] themselves as 'advocates' who are 'committed' to 'the minority's true interests.'" *See Frank v. Elgamal*, 2014 WL 957550, at *29 (Del. Ch. Mar. 10, 2014) (quoting *Strassburger v. Earley*, 752 A.2d 557, 571 (Del. Ch. 2000)). The Complaint alleges numerous facts showing that the Special Committee was not a fully-functioning substitute for arm's-length bargaining when it negotiated the Merger.

a. The Special Committee Failed to Obtain Any Value for the '054 Litigation.

First, the Merger included no value for the '054 Litigation. Defendants contend that was justified and not indicative of a lack of care because "the Committee appropriately negotiated for certain value now, rather than speculative contingent value later." AB 27. Defendants further contend that the '054 Litigation "was early in the pretrial stage" and thus not amenable to being valued at all at the time. *Id.* at 28. Defendants' argument runs contrary to the pled facts. The Complaint alleges that valuing the '054 Litigation was not too speculative of an exercise for the Special Committee to undertake, and the failure to value it not only means that the Merger price is unfair, but also that the Committee failed to act with due care by making insufficient inquiry into its value and giving that litigation asset to the Founder Group for free.

Specifically, the Complaint demonstrates that at the time the Merger was approved, the Company had spent three years and over $3 million dollars on the

‘054 Litigation. *See* A267-69 ¶¶ 40-44. The Complaint also alleges facts showing that the ‘054 Litigation is of comparable value to the ‘497 Litigation. A279-80 ¶¶ 72-73. Plaintiffs get the benefit of competing facts at this stage of the litigation.

Furthermore, not only is it at least reasonably conceivable that the ‘054 Litigation could have been valued, it is likely that SynQor management—that is, the Founder Group—actually did value it. *See* A294 ¶ 103. It is not reasonably conceivable that SynQor spent millions on the litigation without making *any* assessments about its prospects for recovery—the only alternatives are that management spent this money without being reasonably informed about the prospect of recouping the expenditures or, worse, committed waste.

Even accepting Defendants’ assertion that the Company could not value the ‘054 Litigation does not lead to the conclusion that giving the minority no value was fair. Pending litigation is a Company asset, and like any other Company asset, the minority stockholders were entitled to receive fair value for it in the Merger. *See In re Primedia, Inc. S’holders Litig.*, 67 A.3d 455, 486 (Del. Ch. 2013); *Del. Open MRI Radiology Assocs., P.A. v. Kessler*, 898 A.2d 290, 312-13 (Del. Ch. 2006). Just because an asset’s value is contingent, or difficult to ascertain, does not make its fair value zero. If the Special Committee was prevented from valuing this litigation asset because of a protective order, then it lacked material information that it needed to make an informed judgment about the value of the

Company. The stockholders invested millions in the '054 Litigation and to claim that it was too hard to value as an excuse for giving it to the Founder Group for free was not the act of faithful fiduciaries bargaining carefully at arm's-length.

Defendants also argue that the failure to value the '054 Litigation is not indicative of a lack of due care because the Special Committee actually saved the minority stockholders from the theoretical downside of '054 litigation. AB 15 ("given the theoretical risk of an adverse ruling and significant, ongoing expenses, the expenses could exceed any recovery"); *id*. at 27-28. This argument, however, flies in the face of Defendants' assertion that the '054 Litigation was so speculative that it could not be valued. The Special Committee could have made a determination that the litigation has negative value to the Company and thus allowing the Founder Group to purchase it for nothing was a fair exchange. But they did not; they claim instead to have made no judgment about its value at all. *Defendants may not receive business judgment protection for their conduct based on a conclusion that they did not actually reach*.

The assertion that the '054 Litigation has potentially negative value is also factually unsupported on this record. Defendants highlight that "SynQor did not choose to file the 054 Case; it was initiated by Cisco and Vicor." AB 28; *see also id.* at 29 n.22 ("SynQor had to defend itself in litigation initiated by Cisco and Vicor."). What Defendants fail to mention, however, is that Cisco and Vicor only filed their complaints *after* SynQor made claims to the Texas District Court that gave Cisco and Vicor the "reasonable apprehension" that SynQor was about to sue them for infringement.[4]

Cisco and Vicor are the natural defendants in the '054 Litigation, and Defendants' emphasizing that Cisco and Vicor filed their cases first serves only to underscore that the '054 Litigation is closely related to the valuable '497 Litigation. Cisco and Vicor filed their complaints on January 26, 2011 seeking declarations of non-infringement and invalidity of certain IBA patents, including the ones that were at issue in the '497 Litigation, and did not seek any damages from SynQor. *See* B1-B21. Just two days later, on January 28, 2011, SynQor filed its 27 page complaint in the Eastern District of Texas, noting that Cisco and Vicor filed their complaints in the other jurisdictions because of a "reasonable apprehension" that SynQor would initiate litigation against them for infringement

[4] *See* B3 ¶ 9 (In the '497 litigation, "SynQor alleged that Cisco's suppliers were indirect infringers, and that Cisco and other customers of these suppliers were the direct infringers, of many of the claims of the Patents-in-Suit it asserted in that lawsuit."); B4 ¶ 10 ("On January 20, 2011, SynQor alleged to the Texas court that Cisco was intending to infringe the Patents-in-Suit on an ongoing basis based on purchases of products from entities that were not defendants in that lawsuit, including Ericsson Inc."); B5 ¶ 20 ("Cisco has a reasonable apprehension that SynQor will initiate litigation asserting a claim that systems or services offered for sale and sold by Cisco that contain or implement systems supplied to Cisco by its suppliers infringe the '190 Patent."); B13 ¶¶ 13-14 ("SynQor made allegations, and presented testimony purporting to show, that the SynQor patents would also be infringed if Vicor's own bus converter products … were used in place of the Texas defendants' bus converter modules in an Intermediate Bus Architecture. Vicor has also been informed by a customer that SynQor has alleged that Vicor's bus converter products infringe the SynQor patents."); B306-307 ¶¶ 31-32.

of the same IBA patents that were successfully litigated to over a $100 million verdict in the '497 Litigation. B306-307 ¶¶ 31-32. Thus, Cisco and Vicor filed first in an attempt to avoid litigating claims that SynQor was certain to bring in a jurisdiction where SynQor had already been successful.

b. The Special Committee Failed to Obtain Any Standalone Value for the Patent Portfolio.

Plaintiffs also allege that the minority was given no value for the Company's patent portfolio. A281 ¶ 74; A293 ¶ 101. Defendants dismiss this as "yet another disagreement with the Committee's negotiating strategy and the Shields' valuation. . . ." AB 29. But it is not just a disagreement with strategy. It is a fact: the Special Committee did not inform itself of the value of the Patent Portfolio before selling it to the Founder Group despite the Company's financial advisor "comment[ing] on the importance of valuing the Company's technology and patent portfolio." A281 ¶ 74. Once again, this is not the action of a duly careful committee negotiating at arm's-length.

Defendants justify this failure by claiming that it was not necessary to value the patent portfolio separately from the operating business because Shields captured value from the patents by including their cash flows in its DCF analysis. AB 29-30. That argument fails at this stage because it is contrary to Plaintiffs' allegations that the patent portfolio has standalone value apart from the Company's operations, which would include "(a) estimates of economic damages, (b) measures of potential reasonable royalties, (c) estimates as to the size of the relevant markets, and (d) estimates of historical and prospective sales and uses that SynQor believes may be potentially infringing." A293 ¶ 101; *see also* A281 ¶ 74 ("[T]here is no indication that the Special Committee sought to have management compensate the minority stockholders <u>for the value of SynQor's patent applications and patent portfolio that are not reflected in its projections</u> (at least one of which issued since January 2011and has a life of eighteen years). . . . Such property was developed by the Company, is among its property and should have been included in any valuation." (emphasis added)).

The Special Committee's failure to value the patent portfolio separately means both that the Merger price is unfair and that the Special Committee failed to act with due care when it gave the patent portfolio to the Founder Group without first extracting any additional consideration for the minority stockholders.

B. The Special Committee's Empowerment Was Hamstrung by the Founder Group.

While the Special Committee was empowered to hire its own advisors as Defendants assert, AB 20, it is "a *danger signal*" that the Founder Group co-opted the Company's legal and financial advisors for its own use thus adding to its informational advantage and further undermining negotiations with the Special Committee. *See* Leo E. Strine, Jr., *Documenting the Deal: How Quality Control and Candor Can Improve Boardroom Decision-Making and Reduce the Litigation*

Target Zone, 70 Bus. Law. 679, 686 (2015) (emphasis in original). At the time of the Merger, the Company's outside counsel was Nutter, McClennen & Fish LLP. A046. The Founder Group engaged Nutter, McClennen & Fish as its counsel for the Merger negotiations, A131, thus depriving the Special Committee from using counsel who knew the Company best during negotiations. Similarly, the Founder Group used the Company's regular valuation firm as its financial advisor in the negotiations. A046. In addition, from the first overture of the Founder Group on May 29, 2013, the Board "authorized and directed" the Special Committee "to approve and authorize payment by the Company of all fees, expenses and disbursements of such legal counsel, financial advisors, consultants and agents that the Founders [sic] Group may retain…." A017. The Special Committee later approved payment of the Founder Group's legal fees. A275 ¶ 57; *see also* A083 (noting that all fees and expenses incurred in connection with the Merger will be paid by SynQor whether or not the Merger is consummated).

The situation in which the Special Committee found itself has been described as "[t]he worst of all worlds. . . for independent directors to wake up one day, and find that they not only cannot rely upon the impartiality of management, but that management has also co-opted the company's long-standing financial and legal advisors, so all of the most knowledgeable sources of advice are suspect." *Documenting the Deal*, 70 Bus. Law. at 686. When found in this situation, the

Special Committee should have disqualified the Company's counsel from acting on behalf of the controller in order to "set the CEO or controller back on his heels[,]" so that the Special Committee can exercise its real leverage to say no. *Id.* The Special Committee here failed to take advantage of its ability to disqualify the Founder Group's advisors and instead approved payment to them by the Company in order to make the process as easy as possible for the Founder Group.

Defendants also claim that the Committee was adequately empowered to explore alternatives, but chose not to engage in a futile exercise given the Founder Group's statement that it would not consider selling in a third-party transaction or engaging in an IPO. *See* AB 25-26. The reasons why the Special Committee failed to make use of its power to explore alternatives has not been tested in discovery. Instead, Defendants rely on the claims of their own Proxy Statement and treat them as settled fact. Even accepting the assertion at this stage, it does not overcome the other deficiencies in the process and only highlights another piece of material information that the Special Committee lacked, namely whether there was any interest in the Company in the market. If there was, that fact might have created valuable leverage over the Founder Group.

Defendants also assert that one of the reasons the Special Committee chose the \$1.35 Merger over a dividend of \$0.87 is because of the potential tax advantages of a merger over a dividend to the stockholders. AB 26-27. That argument appears to be wholly a litigation invention. The list in the Proxy Statement of material factors that the Special Committee considered in making its determination and recommendation does not include potential tax savings in the Merger compared to that from a dividend. *See* A049-50. Thus, that "fact" exists nowhere but in Defendants' version of events in the briefing and is outside the pleadings for purposes of a motion to dismiss. *See Orman v. Cullman*, 794 A.2d 5, 28 n.59 (Del. Ch. 2002) ("Briefs relating to a motion to dismiss are not part of the record and any attempt contained within such documents to plead new facts or expand those contained in the complaint will not be considered.").[5] Moreover, it is unclear under the current iterations of the tax code whether there would be an appreciable difference in the tax treatment for capital gains versus a dividend that would outweigh the potential upside to the minority stockholders from remaining part of SynQor in the future.

C. The Complaint Raises Sufficient Challenges to the Special Committee's Independence.

Defendants contend that Plaintiffs fail to raise any actionable challenges to the Special Committee's independence because "directors are presumed to be independent even when elected by a controlling stockholder." AB 19. Plaintiffs agree that the appointment to the Board by the Founder Group alone would be

[5] Similarly, Defendants' assertion that SynQor "is not an attractive candidate for acquisition or an IPO," AB 26 n.20, is invented, unfounded and outside the pleadings for purposes of this appeal.

insufficient to raise a doubt about the independence of Messrs. Bradley and Martin, but Plaintiffs allege additional evidence which combines to make it reasonably conceivable that the Special Committee was not independent. *See, e.g.*, *In re W. Nat'l Corp. S'holders Litig.*, 2000 WL 710192, at *15 (Del. Ch. May 22, 2000) ("The fact that a company's executive chairman or a large shareholder played some role in the nomination process should not, *without additional evidence*, automatically foreclose a director's potential independence." (emphasis added)). Here, the additional evidence alleged is (i) the directors' over a decade of service on the Board without ever standing for election or calling an annual meeting, (ii) the failure to have the Company ever communicate with the stockholders about the Company's finances or prospects, and (iii) the Committee's conduct in connection with the Merger, including authorizing the payment of legal fees thus eliminating any downside to the controller's pursuit of the transaction.

Defendants attempt to minimize the significance of the outside directors' inaction, arguing that there is no requirement that the independent directors communicate with the stockholders. AB 20 n.15. That is correct, but misses the point. There certainly are good reasons for the directors to cause the <u>Company</u> to provide information to the stockholders. Indeed, what is the point of having "independent" directors if they merely accede to management's wishes and do nothing to help the stockholders? Here Defendants' argument fails to recognize that the so-called independent directors made up at least two-thirds of the Board throughout their years of service, meaning those directors could have acted to require management to communicate with the stockholders or actually hold a stockholders' meeting. But that never happened and the Committee members laid dormant instead, content to let Mr. Schlecht run his fiefdom as he saw fit. And one reasonable inference of their twelve long years of dormancy is that Messrs. Martin and Bradley saw their job as aiding Mr. Schlecht and not looking out for the minority stockholders with whom they never communicated.

The fact that Messrs. Bradley and Martin never apparently did anything to protect the Company's minority stockholders also contributed to the informational vacuum that Defendants use to support their claim that Messrs. Bradley and Martin are independent. On the contrary, these facts bespeak the need for careful scrutiny of the independence of Messrs. Martin and Bradley as opposed to the reflexive conclusion that they must be independent solely because they were not part of management. In sum, the Complaint's allegations raise the "additional facts" needed to mount a conceivable pleadings-stage challenge to the independence of Messrs. Bradley and Martin.

D. The Merger Was Not Conditioned on Approval by a Majority of the Unaffiliated Stockholders from the Time of the Founder Group's First Overture.

Defendants take a "no harm, no foul" approach to the Founder Group's failure to disable itself from the outset by making a binding commitment that any transaction would be conditioned upon the approval of a majority of the unaffiliated stockholders. *See* AB 32-33. But in order for business judgment review to apply to a controlling stockholder merger, that condition must be in place "from the time of the controller's first overture. . . ." *MFW*, 67 A.3d at 502. That standard is unequivocal. It does not say "from the time of the first binding offer," nor does it say "from the time negotiations begin in earnest." The conditions supporting application of the unified standard must be in place "from the time of the controller's first overture," and Defendants cannot dispute that the non-binding term sheet presented to Messrs. Martin and Bradley on May 29, 2013—the Founder Group's first overture to purchase the Company—stated that the majority-of-the-minority vote condition might be waivable. A022. Even if the non-waivability condition was not traded for any merger consideration (and we do not know one way or the other since the Proxy Statement does not say), the Founder Group did not have that condition in place when they first approached the Board on May 29, and therefore the unified standard is not satisfied.

E. The Minority Stockholders Were Coerced.

Defendants dispute Plaintiffs' ability to argue that the Merger was coercive due to threats of retributive dilution because the Complaint "never alleges this theory." AB 33. Defendants rely on *Orman*, 794 A.2d at 28 n.59, to support their position, but that authority supports Plaintiffs' claims. Briefs, of course, cannot allege new facts that are outside the Complaint or the documents incorporated therein by reference, but the facts supporting Plaintiffs' coercion theory—the Founder Group's statement that it might seek to increase its stake in the Company if the Merger were not approved—is taken directly from the Proxy Statement, which is incorporated by reference into the Complaint and before the Court. *See id.* (noting that the briefs cannot allege new facts, but finding that "the Proxy Statement, which is incorporated by reference into the complaint. . . *is* a proper document for consideration") (emphasis in original); A050; A302 at Count III. Indeed, "[a] complaint in a civil action need only give defendant fair notice of a claim and is to be liberally construed." *Michelson v. Duncan*, 407 A.2d 211, 217 (Del. 1979). A plaintiff "need not announce with any greater particularity the precise legal theory he is using" so long as facts are alleged from which a claim can be inferred and the plaintiff "makes a specific claim for the relief he hopes to obtain…." *Id.*

CONCLUSION

For the foregoing reasons and those set forth in Appellants' Opening Brief, the Court of Chancery erred in finding that Plaintiffs failed to allege facts showing that the Merger should be subjected to entire fairness review and that business judgment review was restored under *M & F Worldwide.* The order of the Court of Chancery should therefore be reversed.

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2015, a copy of the Public Version of Appellants' Reply Brief was caused to be served upon the following counsel of record by File & ServeXpress.

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