

JOHN M. FRIEND

THE PENNSYLVANIA AVENUE FUNDS, )  
Individually and on Behalf of All Others )  
Similarly Situated, )

Plaintiff )

vs. )

INFOGROUP INC., VINOD GUPTA, BILL L. )  
FAIRFIELD, ROGER S. SIBONI, GEORGE )  
H. KRAUSS, GARY E. MORIN, BERNARD )  
W. REZNICEK, LEE D. ROBERTS, JOHN N. )  
STAPLES III, THOMAS L. THOMAS, )  
CLIFTON T. WEATHERFORD and CCMP )  
CAPITAL ADVISORS, LLC, )

Defendants. )

DOC. 1164 NO. 822 MAR 09 2010

CLASS ACTION

COMPLAINT BASED ON  
SELF-DEALING AND BREACH  
OF FIDUCIARY DUTY

Assigned to Judge Coffey

COMES NOW the plaintiff, The Pennsylvania Avenue Funds, and for its claims against the defendants, states and alleges as follows:

SUMMARY OF THE ACTION

1. This is a shareholder class action brought by a shareholder of infoGROUP Inc. ("infoGROUP" or the "Company") on behalf of the holders of infoGROUP common stock. The action is brought against the members of the Company's Board of Directors ("Board") arising out of their breaches of fiduciary duty in connection with their attempts to complete the sale of infoGROUP to private equity firm CCMP Capital Advisors, LLC ("CCMP") via an unfair process and at an unfair price (the "Proposed Acquisition"). The Board was aided and abetted at all time by the Company and CCMP. This action seeks equitable relief only.

2. infoGROUP is a Delaware corporation headquartered in Omaha, Nebraska. Founded in 1972, infoGROUP is the leading provider of data-driven and interactive resources for targeted sales, marketing and research solutions for businesses all over the globe. With thirty-one

independent businesses, infoGROUP is the largest player in the database and direct marketing arena, with more than 4,700 employees and revenues of \$499.9 million for the fiscal year 2009. infoGROUP is a competitively positioned company in many areas. For example, infoGROUP powers 95% of Fortune 500 companies, powers the top 5 Internet search engines, is used in 90% of in-car navigation systems in North America, deploys 30 billion emails annually on behalf of its clients, partners with CNN on its exclusive CNN/Opinion Research Poll, and has more than 4 million global customers.

3. Unfortunately for the Company's shareholders, the Company's share price does not reflect its position as a global powerhouse. infoGROUP has, in the last four years, been embroiled in controversy and bad publicity stemming from the misconduct of defendant Vinod Gupta ("Gupta"), the Company's founder, who destroyed enormous value for the Company's shareholders by improperly spending millions of dollars of infoGROUP's money on extravagances such as jet travel, vacation homes, a yacht, country club memberships and a collection of luxury automobiles. Gupta's misconduct led to the filing of two shareholder suits in 2006 (the "Derivative Litigation"), a Securities and Exchange Commission ("SEC") investigation, an internal investigation by and a restructuring of the Company, which additionally cost the Company millions in expenses.

4. In or around the fall of 2008, the Company settled the Derivative Litigation, announced a tentative settlement with the SEC, and removed Gupta as CEO. Shares of infoGROUP began to rally after the Company announced Gupta's diminished role within the Company. In fact, shares of infoGROUP have more than doubled over the past year. And, in January of this year, the Company announced a reorganization plan for the Company under which the Company's businesses would be consolidated – a move analysts touted as one that would solidify the Company's leadership position.

5. Unfortunately for the Company's shareholders, again, they have been blocked from being able to receive a substantial premium for their infoGROUP shares. On March 8, 2010, infoGROUP announced that it had agreed to be acquired by private equity firm CCMP for approximately \$635 million, including debt. Under the terms of the deal, infoGROUP shareholders will receive a paltry \$8.00 in cash for each infoGROUP share that they hold – a price that is a 2% discount from where the shares were most recently trading before the announcement. The Proposed Acquisition is expected to close early this summer.

6. The Proposed Acquisition as currently constituted is unfair to shareholders because it represents no premium for shareholders. The consideration offered in the Proposed Acquisition is \$0.16 less than the price the Company's stock was trading at on the last trading day before the announcement. It is also 11% less than the price infoGROUP shares traded at as recently as November 10, 2009.

7. The Proposed Acquisition is also the product of an unfair sales process, designed not to maximize value for the Company's shareholders, but to benefit Company insiders such as Gupta. Gupta pushed for a sale of the Company, which would finally close the troubled chapter of his controversial spending of the Company's money and transform his illiquid holdings in the Company into cash to pay off his debt under the settlement of the Derivative Litigation.

8. Furthermore, the unfair sales process was tailored to the specifications of CCMP, a financial buyer that, as defendants are well aware, is likely to retain existing Company management. In directing the sales process towards CCMP, defendants eschewed more potentially lucrative opportunities for shareholders presented by strategic buyers in infoGROUP's industry.

9. Defendants have exacerbated their breaches of fiduciary duty in the sales process by agreeing to lock up the Proposed Acquisition with preclusive and onerous deal protection devices.

Although defendants have provided “window dressing” for the Proposed Acquisition by announcing a 21-day “go shop” provision that ostensibly allows the Company to seek out competing bidders, the “go-shop” period is far too short to allow potential buyers the time to conduct the due diligence necessary to formulate a competing bid. Defendants then plan to shut the door forever on the sales process at the conclusion of the go-shop period, by providing for: (i) a no-solicitation clause that prevents the Company from communicating with or providing confidential Company information to competing bidders; (ii) voting agreements with Company insiders that lock-up 36% of the Company’s voting stock in favor of the Proposed Acquisition; (iii) termination and expense reimbursement fees that total \$17.847 million, payable by the Company in the unlikely event a superior proposal does emerge; and (iv) a “matching rights” provision that allows CCMP five business days to match any competing proposal.

10. In pursuing the unlawful plan to sell infoGROUP, each of the defendants violated applicable law by directly breaching and/or aiding the other defendants’ breaches of their fiduciary duties of loyalty, candor, due care, independence, good faith and fair dealing. Instead of attempting to negotiate a contract reflecting the highest price reasonably available for the Company’s shareholders, defendants spent substantial effort tailoring the Proposed Acquisition to meet their own specific needs and those of CCMP.

11. Immediate judicial intervention is warranted here to rectify existing and future irreparable harm to the Company’s shareholders. Plaintiff, on behalf of the Class, seeks to ensure that if shareholders are to be ultimately stripped of their respective equity interests through the Proposed Acquisition, that the Proposed Acquisition is conducted in a manner that is not overtly improper, unfair and unlawful and is conducted in a manner that maximizes shareholder value.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over defendants because they conduct business in Nebraska and/or are citizens of Nebraska. This action is not removable.

13. Venue is proper in this Court because the conduct at issue took place and had an effect in this County. infoGROUP's principal place of business is located at 5711 South 86th Circle, Omaha, Nebraska 68127.

## PARTIES

14. Plaintiff The Pennsylvania Avenue Funds is, and at all times relevant hereto was, a shareholder of infoGROUP.

15. Defendant infoGROUP is a Delaware corporation headquartered in Omaha, Nebraska. infoGROUP is the leading provider of data-driven and interactive resources for targeted sales, marketing and research solutions for businesses all over the globe. With thirty-one independent businesses, infoGROUP is the largest player in the database and direct marketing arena, with more than 4,700 employees and revenues of \$499.9 million for the fiscal year 2009.

16. Defendant Gupta is a director of the Company. Gupta is the founder, and former CEO and Chairman of the Board who resigned as a result of the Derivative Litigation.

17. Defendant Bill L. Fairfield ("Fairfield") is the Chief Executive Officer, President and a director of the Company.

18. Defendant Roger Siboni ("Siboni") is Chairman of the Board, a director of the Company and a member of the Mergers and Acquisitions Committee.

19. Defendant George Krauss ("Krauss") is a director of the Company.

20. Defendant Gary Morin ("Morin") is a director of the Company and a member of the Mergers and Acquisitions Committee.

21. Defendant Bernard W. Reznicek ("Reznicek") is a director of the Company.

22. Defendant Lee D. Roberts (“Roberts”) is a director of the Company and a member of the Mergers and Acquisitions Committee.

23. John N. Staples III (“Staples”) is a director of the Company.

24. Defendant Thomas L. Thomas (“Thomas”) is a director of the Company and a member of the Mergers and Acquisitions Committee.

25. Defendant Clifton T. Weatherford (“Weatherford”) is a director of the Company.

26. Defendant CCMP is a leading global private equity firm specializing in buyouts and growth equity investments in companies ranging from \$500 million to more than \$3 billion in size. CCMP focuses on five primary industries: Consumer/Retail, Industrial, Energy, Healthcare, and Media. Selected investments under management include: ARAMARK Corporation, Edwards Limited, Generac Power Systems, Grupo Corporativo ONO, LHP Hospital Group, Quiznos Sub and Warner Chilcott. CCMP’s founders have invested over \$12 billion since 1984. CCMP’s latest fund, CCMP Capital Investors II, L.P., closed in September 2007 with commitments of \$3.4 billion. CCMP has offices in New York, Houston and London.

27. The defendants identified in ¶¶16-25 collectively constitute the entirety of the Company’s Board. These individuals are hereinafter referred to as the “Individual Defendants.”

#### FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

28. By reason of defendants’ positions with the Company as officers and/or directors, said individuals are in a fiduciary relationship with plaintiff and the other public stockholders of infoGROUP and owe the Company, as well as plaintiff and the other members of the Class, a duty of highest good faith, fair dealing, loyalty and full, candid and adequate disclosure.

29. The claims are brought under Delaware state law. Under Delaware law, in any situation where the directors of a publicly traded corporation undertake a transaction that will result in either (i) a change in corporate control, or (ii) a break up of the corporation’s assets, the directors

and officers have an affirmative fiduciary obligation to obtain the highest value reasonably available for the corporation's shareholders, and if such transaction will result in a change of corporate control, the shareholders are entitled to receive a significant premium. To diligently comply with these duties, the directors and officers may not take any action that:

- (a) adversely affects the value provided to the corporation's shareholders;
- (b) will discourage or inhibit alternative offers to purchase control of the corporation or its assets;
- (c) contractually prohibits them from complying with their fiduciary duties;
- (d) will otherwise adversely affect their duty to search and secure the best value reasonably available under the circumstances for the corporation's shareholders; and/or
- (e) will provide the directors with preferential treatment at the expense of, or separate from, the public shareholders.

30. In accordance with their duties of loyalty and good faith, and in connection with negotiating and agreeing to the Proposed Acquisition, defendants, as directors and/or officers of infoGROUP, were obligated to refrain from:

- (a) participating in or permitting any transaction where the directors' or officers' loyalties are divided;
- (b) participating in or permitting any transaction where the directors or officers receive or are entitled to receive a personal financial benefit not equally shared by the public shareholders of the corporation;
- (c) unjustly enriching themselves at the expense or to the detriment of the public shareholders, or permitting other officers or directors to do so;

(d) structuring a sales process for the Company to favor directors, officers and/or other Company insiders for reasons unrelated to the directors' duty to seek the best price available for the Company's shareholders;

(e) engaging in any conduct in the context of a sales process for the Company that favors one bidder for the Company over another in derogation of the directors' duty to seek the best price available for the Company's shareholders; and

(f) failing to disclose and/or misrepresenting material information about the Company, the sales process for the Company and the Company's financial prospects going forward when seeking shareholder support of a merger transaction.

31. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the proposed sale of infoGROUP, are violating the fiduciary duties owed to plaintiff and the other public shareholders of infoGROUP, including their duties of loyalty, good faith and independence. By virtue of their positions as directors, and/or officers of infoGROUP and/or their exercise of control and ownership over the business and corporate affairs of infoGROUP, the Individual Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause infoGROUP to engage in the practices complained of herein. Each Individual Defendant herein is sued individually and as an aider and abettor and in his or her capacity as a director of infoGROUP. The liability of each of the defendants arises from the fact that they have engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

#### CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action individually and as a class action pursuant to R.R.S. Neb. §25-319 on behalf of all holders of infoGROUP stock who are being and will be harmed by



defendants' actions described below (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

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

34. The Class is so numerous that joinder of all members is impracticable. According to infoGROUP's Securities and Exchange Commission ("SEC") filings, as of February 19, 2010, the Company had outstanding more than 57 million shares of common stock.

35. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, inter alia, the following:

(a) whether defendants have breached their fiduciary duties of undivided loyalty, independence or due care with respect to plaintiff and the other members of the Class in connection with the Proposed Acquisition;

(b) whether the Individual Defendants are engaging in self-dealing in connection with the Proposed Acquisition;

(c) whether the Individual Defendants are unjustly enriching themselves and other insiders or affiliates of infoGROUP;

(d) whether defendants have breached any of their other fiduciary duties owed to plaintiff and the other members of the Class in connection with the Proposed Acquisition, including the duties of good faith, diligence, candor and fair dealing, including their duty to disclose all material information to shareholders about the Proposed Acquisition;

(e) whether the defendants, in bad faith and for improper motives, have impeded or erected barriers to discourage other offers for the Company or its assets; and

(f) whether plaintiff and the other members of the Class would suffer irreparable injury were the transactions complained of herein consummated.

36. Additionally, plaintiff's claims are typical of the claims of the other members of the Class and plaintiff does not have any interests adverse to the Class. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class.

37. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class.

38. Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

39. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

#### BACKGROUND TO THE PROPOSED ACQUISITION

40. Founded in 1972, infoGROUP is the leading provider of data-driven and interactive resources for targeted sales, marketing and research solutions for businesses all over the globe. With thirty-one independent businesses, infoGROUP is the largest player in the database and direct marketing arena, with more than 4,700 employees and revenues of \$499.9 million for the 2009 fiscal year. infoGROUP is a competitively positioned company in many areas – for example, infoGROUP powers 95% of Fortune 500 companies, powers the top 5 Internet search engines, is used in 90% of in-car navigation systems in North America, deploys 30 billion emails annually on behalf of its

clients, partners with CNN on its exclusive CNN/Opinion Research Poll, and has more than 4 million global customers.

41. Unfortunately for the shareholders of infoGROUP, the Company's share price does not reflect its position as a global powerhouse. Over the last four years, infoGROUP has been embroiled in controversy and bad publicity stemming from the misconduct of defendant Gupta, who destroyed enormous value for the Company's shareholders by improperly spending millions of dollars of infoGROUP's money on extravagances such as jet travel, vacation homes, a yacht, country club memberships and a collection of luxury automobiles.

42. In 2006, the Derivative Litigation was filed alleging breach of fiduciary duty and misuse of corporate assets based on Gupta's spending. Subsequently, the Company conducted an internal investigation that confirmed that Gupta had, in fact, improperly spent millions of dollars of infoGROUP's money on extravagances.

43. Also, based on the charges, the SEC conducted a two-year investigation that probed related-party transactions, expense reimbursement and other expenditures at infoGROUP. As a result, infoGROUP announced some fairly hefty recalculations of the value of benefits founder Gupta had received. For instance, the value placed on his 2008 use of the company yacht was originally zero. After consulting with the SEC, the number was changed to \$873,078. Earlier yacht use, personal jet use, and expense reimbursements all swelled in similarly dramatic fashion under the government's scrutiny.

44. On August 20, 2008, the Company entered into a settlement agreement with Gupta and the parties to the Derivative Litigation. In connection with this settlement agreement, Gupta resigned as the Company's CEO (along with two directors who resigned from the infoGROUP

board). infoGROUP paid Gupta \$10 million in severance – \$5 million was paid on October 17, 2008 and the second severance payment of \$5 million was paid on October 30, 2009.

45. On October 20, 2009, the Company announced it had reached an agreement in principle to resolve the SEC's investigation.

46. The Company suffered substantial losses in legal and other expenses associated with the Derivative Litigation and the SEC investigation. Legal and professional fees related to the SEC investigation and the Derivative Litigation were \$8.5 million in 2009 and \$24.0 million in 2008. Restructuring and severance charges, including facility closure costs and severance to former executives, were \$14.1 million in 2009 and \$18.5 million in 2008. Specifically for Gupta, during the year ended December 31, 2009, the Company paid approximately \$4.5 million of his litigation expenses.

47. After the Company announced that it had removed Gupta as CEO, shares of infoGROUP began to rally. In fact, shares of infoGROUP have more than doubled over the past year.

48. In January of this year, the Company announced a reorganization plan for the Company, under which the Company's businesses would be consolidated. Analysts touted this move as one that would solidify the Company's leadership position. Gupta, however, publicly disapproved of the Company's consolidation efforts. Instead, Gupta pushed for a sale of the Company.

#### THE PROPOSED ACQUISITION

49. On March 8, 2010, infoGROUP announced that it had agreed to be acquired by private equity firm CCMP for approximately \$635 million, including debt. Under the terms of the deal, infoGROUP shareholders will receive a paltry \$8.00 in cash for each infoGROUP share that

they hold – that price is a 2% discount from where the shares were most recently trading before the announcement. The Proposed Acquisition is expected to close early this summer.

50. The Proposed Acquisition as currently constituted is unfair to shareholders because it represents no premium for shareholders. The consideration offered in the Proposed Acquisition is \$0.16 less than the price the Company's stock was trading at on the last trading day before the announcement. It is also 11% less than the price infoGROUP shares traded at as recently as November 10, 2009.

51. The Proposed Acquisition is also the product of an unfair sales process, designed not to maximize value for the Company's shareholders, but to benefit Company insiders such as Gupta. Gupta pushed for a sale of the Company, which would finally closing the troubled chapter of his controversial spending of the Company's money.

52. Moreover, pursuant to the settlement terms of the Derivative Litigation, Gupta must pay the Company \$9.0 million incrementally over four years. Payments are due from Gupta as follows: \$2.2 million in January 2011, \$1.2 million in January 2012, and \$1.2 million in January 2013. The Proposed Acquisition will transform Gupta's illiquid holdings in the Company into cash to pay off his debt under the settlement of the Derivative Litigation.

53. Furthermore, the unfair sales process was tailored to the specifications of CCMP, a financial buyer that, as defendants are well aware, is likely to retain existing Company management. In directing the sales process towards CCMP, defendants eschewed more potentially lucrative opportunities for shareholders presented by strategic buyers in infoGROUP's industry.

54. The likelihood that members of management will retain their positions is troubling indeed and indicates a sales process fraught with conflicts of interest. Such problems were

highlighted in a September 8, 2006 Wall Street Journal article entitled “In Some Deals, Executives

Get a Double Payday.” That article stated:

Private-equity firms have notched seven of the 10 largest leveraged buyouts of all time this year. For the top executives of the target companies, such deals could be the difference between being rich and being very rich.

That is because in many cases the executives are both buying and selling the company. Consider a trio of massive deals: The bids for HCA Inc., Kinder Morgan Inc. and Aramark Corp., valued at more than \$40 billion combined, all have involved top executives teaming up with private-equity firms to buy their own companies and to continue running them.

As increasing numbers of executives heed the siren call of private-equity firms, the dynamic pitting shareholders against management is bound to intensify. (Private-equity firms buy companies or divisions using vast amounts of debt and later sell them or bring them public.)

In such cases, management, with all its detailed knowledge of the company, goes from being a seller striving for a high price to being a buyer looking for an attractive price. Usually the sale of a public company involves an auction or a competitive-bidding process. But when management joins the private-equity buyers, there often isn't such an open procedure, and the process is especially fraught with potential conflicts of interest.

“Every private-equity firm markets itself to its potential investors on the basis of its access to deals, preferably exclusive access to deals” without competitive bidding, says Douglas Cifu, a merger-and-acquisition lawyer with Paul, Weiss, Rifkind, Wharton & Garrison LLP. “But when you are a public company, you have a fiduciary obligation to maximize the value of the company.”

“The strength of the private-equity firms is their high-powered compensation,” says Josh Lerner, a professor at Harvard Business School. “Can it lead to the temptation of being bought out so management can get the pot of gold?”

55. The article continued:

Managements that team up with private-equity firms typically make buyout offers that are acceptable – though not necessarily blowout deals for shareholders. In fact, a rhythm has developed around the classic management buyouts. Managers make their proposal, and a few months later the two sides agree to a slightly higher new price. In the Aramark deal, the per-share price for Aramark ended up at \$33.80, up from the original offer of \$32.

While some boards are diligent in vetting deals, the process sometimes is skewed in favor of a sale. For example, there usually is a period when other bidders

can come forth with offers. But if that window is short, the likelihood of a rival bid emerging isn't large, since potential buyers won't have time to perform due diligence. Special committees charged with weighing deals also can set breakup fees that make rival bidders pay dearly to get rid of the original buyer.

56. That is exactly what is happening here.

57. In another article, entitled "Investors, Watch Your Wallets if Managers Lead the Buyout," in The New York Times July 30, 2006 edition, Andrew Ross Sorkin noted: "Despite all the excitement over these . . . management-led buyouts, they actually tend to be poor deals for shareholders – except perhaps for the insiders who increasingly appear to be buying their own companies at steep discounts."

58. In an editorial dated September 3, 2006, in The New York Times, Ben Stein addressed the issue of management buyouts and the inherent conflicts that ensue:

The managers do these deals only to make money. It's business, after all. They do them to make money off the assets of the stockholders. They could, if they wished, sell off the assets or otherwise manage them for the good of the stockholders. (Again, the assets of public companies do belong to the stockholders as basic law.) Instead, they buy the assets on the cheap and sell them off for their own management benefit, or they manage the company differently for the benefit of themselves and their buyout partners.

But as a matter of basic fiduciary duty law, managers are bound to put the interests of stockholders ahead of their own, in each and every situation. By buying the assets on the cheap and then reaping the benefits, management is breaching that fiduciary duty, or so it seems to me. Likewise, if the managers can run the company more profitably, they owe it to the stockholders to do that for them.

Then there is the matter of conflict of interest. Management, as a matter of course, is supposed to avoid any conflict of interest with its trustors, the public shareholders, or even the appearance of it. But in a management buyout, management is seeking to pay the least it can get away with for the assets of the public holders, while the public holders want the most they can get.

59. Defendants have exacerbated their breaches of fiduciary duty in the sales process by agreeing to lock up the Proposed Acquisition with preclusive and onerous deal protection devices. Although defendants have provided "window dressing" for the Proposed Acquisition by announcing

a 21-day “go shop” provision that ostensibly allows the Company to seek out competing bidders, the “go-shop” period is far too short to allow potential buyers the time to conduct the due diligence necessary to formulate a competing bid. Defendants then plan to shut the door forever on the sales process at the conclusion of the go-shop period, by providing for: (i) a no-solicitation clause that prevents the Company from communicating with or providing confidential Company information to competing bidders; (ii) voting agreements with Company insiders that lock-up 36% of the Company’s voting stock in favor of the Proposed Acquisition; (iii) termination and expense reimbursement fees that total \$17.847 million, payable by the Company in the unlikely event a superior proposal does emerge; and (iv) a “matching rights” provision that allows CCMP five business days to match any competing proposal.

#### SELF-DEALING

60. By reason of their positions with infoGROUP, the Individual Defendants are in possession of non-public information concerning the financial condition and prospects of infoGROUP, and especially the true value and expected increased future value of infoGROUP and its assets, which they have not disclosed to infoGROUP’s public shareholders. Moreover, despite their duty to maximize shareholder value, the defendants have clear and material conflicts of interest and are acting to better their own interests at the expense of infoGROUP’s public shareholders.

61. The proposed sale is wrongful, unfair and harmful to infoGROUP’s public shareholders, and represents an effort by defendants to aggrandize their own financial position and interests at the expense of and to the detriment of Class members. The Proposed Acquisition is an attempt to deny plaintiff and the other members of the Class their rights while usurping the same for the benefit of defendants and CCMP on unfair terms.

62. In light of the foregoing, the Individual Defendants must, as their fiduciary obligations require:



- Withdraw their consent to the sale of infoGROUP and allow the shares to trade freely, without impediments, including, but not limited to, removal of any and all deal protection devices, and undertake a fair and open sales process directed towards maximizing shareholder value.
- Act independently so that the interests of infoGROUP's public shareholders will be protected, including, but not limited to, the retention of truly independent advisors and/or the appointment of a truly independent Special Committee and require that any buyout proposal be approved by a majority of the minority shareholders.
- Adequately ensure that no conflicts of interest exist between defendants' own interests and their fiduciary obligation to maximize stockholder value or, if such conflicts exist, to ensure that all conflicts be resolved in the best interests of infoGROUP's public shareholders.
- Fully and fairly disclose all material information to the Company's shareholders.

### CAUSE OF ACTION

#### Claim for Breach of Fiduciary Duties and Aiding and Abetting on Behalf of Plaintiff and the Class

63. Plaintiff repeats and realleges each allegation set forth herein.

64. The Individual Defendants, aided and abetted by infoGROUP and CCMP, have violated and have aided and abetted the violation of their fiduciary duties of care, loyalty, candor, good faith and independence owed to the public shareholders of infoGROUP and have acted to put their personal interests ahead of the interests of infoGROUP's shareholders.

65. By the acts, transactions and courses of conduct alleged herein, the Individual Defendants, individually, aided and abetted by infoGROUP and CCMP, and acting as a part of a common plan, have violated their fiduciary duties by entering into a transaction with CCMP without regard to the fairness of the transaction to infoGROUP's shareholders.

66. As demonstrated by the allegations above, the Individual Defendants, aided and abetted by infoGROUP and CCMP, failed to exercise the care required, and breached their duties of loyalty, good faith, candor and independence owed to the shareholders of infoGROUP because, among other reasons:

- (a) they failed to properly value infoGROUP;

(b) they failed to properly maximize the value of infoGROUP common shares;  
and

(c) they ignored or did not protect against the numerous conflicts of interest resulting from their own interrelationships in connection with the Proposed Acquisition.

67. Because the Individual Defendants dominate and control the business and corporate affairs of infoGROUP, and are in possession of private corporate information concerning infoGROUP's assets, business and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of infoGROUP which makes it inherently unfair for them to pursue any proposed transaction wherein they will reap disproportionate benefits to the exclusion of maximizing stockholder value.

68. By reason of the foregoing acts, practices and course of conduct, the Individual Defendants, aided and abetted by infoGROUP and CCMP, have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward plaintiff and the other members of the Class. As a result of defendants' actions, plaintiff and the Class have been and will be harmed.

69. The Individual Defendants, aided and abetted by infoGROUP and CCMP, are engaging in self dealing, are not acting in good faith toward plaintiff and the other members of the Class, and have breached and are breaching their fiduciary duties to the members of the Class.

70. Unless the Proposed Acquisition is enjoined by the Court, the Individual Defendants, aided and abetted by infoGROUP and CCMP, will continue to breach their fiduciary duties owed to plaintiff and the members of the Class, will not engage in arm's length negotiations on the Proposed Acquisition terms, may consummate the Proposed Acquisition, which will exclude the Class from its fair share of infoGROUP's valuable assets and businesses, will not supply to infoGROUP's shareholders sufficient information to enable them to cast informed votes on the Proposed

Acquisition, and/or will benefit defendants in the unfair manner complained of herein, all to the irreparable harm of the members of the Class.

71. Plaintiff and the members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiff and the Class be fully protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

#### PRAYER FOR RELIEF

WHEREFORE, plaintiff demands preliminary and permanent relief, in its favor and in favor of the Company and Class and against defendants as follows:

- A. Declaring that this action is properly maintainable as a class action;
- B. Declaring and decreeing that defendants' conduct has been in breach of the fiduciary duties owed by the Individual Defendants to the Company's public stockholders;
- C. Declaring and decreeing that the Proposed Acquisition is in breach of the fiduciary duties of the defendants and is therefore unlawful and unenforceable;
- D. Enjoining defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Acquisition, unless and until the Company adopts and implements a procedure or process to obtain the highest possible price for shareholders;
- E. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction which is in the best interests of infoGROUP's shareholders;
- F. Rescinding, to the extent already implemented, the Proposed Acquisition and proposals, including termination fees, associated therewith;
- G. Prohibiting defendants from entering into any contractual provisions which harm infoGROUP or its shareholders or prohibit defendants from maximizing shareholder value, including any confidentiality agreement or contract designed to impede the maximization of shareholder value;

H. Prohibiting defendants from adopting, implementing, instituting or enforcing any defensive measure that has or is intended to have the effect of making the consummation of an offer to purchase the Company more difficult or costly for a potential acquiror;

I. Awarding plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

J. Granting such other and further equitable relief as this Court may deem just and proper.

THE PENNSYLVANIA AVENUE FUNDS,  
Individually and on Behalf of All Others Similarly  
Situated, Plaintiff

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