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Case No. 4390-CS

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February 20, 2012

**VIA LEXIS NEXIS FILE & SERVE AND HAND DELIVERY**

The Honorable Leo E. Strine, Jr.  
Court of Chancery of the State of Delaware  
New Castle County Courthouse  
500 North King Street  
Wilmington, DE 19801

**Re: Auriga Capital Corp., et al. v. Gatz Properties, LLC, et al., C.A. No. 4390-CS**

Dear Chancellor:

On behalf of the Plaintiffs in the referenced action, we write to request that the Court enter the [Proposed] Final Order and Judgment enclosed with this letter.

Following several days of trial, the Court issued its Opinion in this case on January 27, 2012 and awarded damages to Plaintiffs in the amount of \$776,515.00, pre-judgment interest at the statutory rate (compounded monthly) starting on January 1, 2008, and half of the reasonable attorneys' fees and costs incurred by Plaintiffs. With regard to the award of attorneys' fees and costs, the Court directed Plaintiffs' counsel to submit an affidavit to Defendants setting forth said amount. (Opinion, p. 73, n. 184.) On February 3, 2012, Plaintiffs' counsel submitted the required affidavit to Collins J. Seitz of Seitz Ross Aronstam & Moritz LLP ("Seitz Ross") and Steven L. Caponi of Blank Rome LLP ("Blank Rome"), both counsel of record for Defendants. (*See Ex. A hereto.*) Mr. Seitz promptly thereafter informed Plaintiffs' counsel that Defendants intended to challenge the reasonableness of Plaintiffs' fees and costs.

By letter to Plaintiffs' counsel dated February 10, 2012, Elizabeth A. Sloan from Blank Rome represented the following:

"Given the Court's January 27, 2012 [sic], directing Defendants to pay half of Plaintiffs' reasonable attorneys' fees and costs, Defendants are prepared to submit half of the amount of Defendants' invoices, or \$327,503.94. Please let us know if you agree to accept this amount by the close of business, Monday February 13, 2012. If you do not agree, we will be forced to file an opposition to your proposed fee amount."

(Ex. B hereto) (emphasis added.)



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To start, the Court awarded half of Plaintiffs' fees and costs, not half of Defendants' fees and costs. Defendants' fees and costs are certainly an indication of type of representation Defendants had in this case, but they are not the best indication of the reasonableness of Plaintiffs' fees and costs given the vastly different result achieved by Plaintiffs' counsel. Moreover, it is apparent from Ms. Sloan's letter that Defendants have already made a determination that Plaintiffs' fees are unreasonable even though they have yet to review them. That determination is presumably based solely on a comparison of the different totals incurred by each side.

Defendants' premature position is not what prompted this letter, however. The Court's Opinion also stated that upon review of the affidavit from Plaintiffs' counsel, unless Defendants' counsel "fully produces their own billing records in full in support of an argument that the Minority Members' bills are too high, I shall consider the Minority Members' amount sought to be reasonable." (Opinion, p. 73, n. 184 (emphasis added).) In purported compliance with the Court's directive, Ms. Sloan's February 10 letter enclosed what was represented to be all the fees and costs incurred by Defendants, which supposedly totaled \$655,007.88. Upon further inquiry (though Plaintiffs' counsel should not have had to ask), Plaintiffs discovered that the fees of one of the defense counsel (Ronald Fisher) were discounted 10% and that discount was not reflected in the total or indicated on the enclosures to Ms. Sloan's letter. More importantly, Defendants' counsel refuses to produce the Seitz Ross invoices. By email dated February 16, 2012, Ms. Sloan stated as follows:

As for your other inquiries, we do not think that it is necessary or that we are required to include the Seitz Ross bills with the invoices submitted by Defendants. Mr. Seitz was engaged in order to protect Mr. Gatz against any possible conflict of interest. Although this was technically related to the litigation, Mr. Seitz was not engaged to perform litigation-related tasks. Additionally, his bills were paid by Blank Rome, not Mr. Gatz. Therefore, we will not be producing such invoices.

(Ex. C hereto) (emphasis added.)

Defendants' position makes no sense. Mr. Seitz filed his entry of appearance with a cover letter that described his firm as "co-counsel for the defendants in this case" (I.D. 40500731), and both his name and his firm's name appear on the Opinion. Did Mr. Seitz authorize his name to be placed on the post-trial briefing without reading the briefs? That is doubtful; and what was the purpose of the entry of appearance if no "litigation-related" services were being performed?



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Clearly, Defendants have not complied with the Court's instruction that they "*fully* produce their own billing records *in full* ...," and therefore, Plaintiffs respectfully request that the Court "consider the Minority Members' amount sought to be reasonable." (Opinion, p. 73, n. 184.) Besides Defendants' recalcitrance and failure (yet again) to take the Court seriously, the entry of Plaintiffs' [Proposed] Final Order and Judgment is warranted for additional, independent reasons as well:

- *First*, on two occasions since the Court issued its Opinion, Mr. Seitz has represented to the undersigned that the Defendants intend to file for bankruptcy. Defendants' should not be allowed to cause Plaintiffs to incur additional fees and costs while they present a fee challenge in order to buy more time to prepare a bankruptcy filing.
- *Second*, after the filing of the Amended Complaint in December 2010, the Court requested (and was provided in writing) an assurance that the litigation would be supervised by senior counsel for each side (the undersigned for Plaintiffs and Mr. Caponi for Defendants). A review of Blank Rome's bills reveals that during the months of December 2010, January (when the Answer and frivolous Counterclaims were filed), February, March and April of 2011, Mr. Caponi billed zero (0) hours. During May 2011, he billed 4.3 hours and he billed just 1.2 hours in June 2011 (a month or so away from the then scheduled trial date). In July 2011, when the pre-trial briefs were filed and other critical events were occurring, Mr. Caponi billed 9.7 hours.<sup>1</sup> That's a whopping 15.2 hours from the time he entered his appearance until the month of trial (August 2011). It's little wonder Defendants' bills are smaller than Plaintiffs' bills. Blank Rome supposedly had a wealth of experience that could have been brought to this case,<sup>2</sup> but instead, the

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<sup>1</sup> In comparison, the undersigned billed 18 hours during the month of July 2011 and the Plaintiffs' team had a Counsel and a mid/senior-level associate who could confer with one another.

<sup>2</sup> For example, Blank Rome's website states as follows:

"Blank Rome attorneys have *extensive experience* in providing corporate counseling and litigation services in connection with the affairs of Delaware corporations. We regularly appear before all Delaware courts in matters involving takeover battles, proxy contests, stockholder appraisal proceedings, class and derivative actions asserting breaches of fiduciary duty, fraud, product liability, and other matters under the Delaware corporate and other business-entity statutes. This experience allows us to fully understand the complex regulatory environment and issues unique to



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case was run almost entirely by a junior/mid-level associate. The consequences flowing from the lack of supervision and judgment should be borne entirely by Defendants.

- *Third*, the amount of fees and costs sought by Plaintiffs' is in line with similar amounts for similar litigation Your Honor has deemed reasonable in the past. (*See, e.g.*, Comments to Ex. D hereto.)

In conclusion, if the Court is not inclined to enter the enclosed proposal, Plaintiffs respectfully request that Defendants be ordered to promptly produce the Seitz Ross bills and that they be ordered to pay that portion of Plaintiffs' fees and costs they deem reasonable (\$327,503.94) before proceeding with a fee challenge.

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every business transaction. *Our litigators have a wealth of trial experience and Blank Rome's attorneys regularly appear before Delaware's Court of Chancery.*" (From Blank Rome's Wilmington office description found on the firm's website) (emphasis added.)

"For over a decade, Blank Rome has sought to meet the needs of its clients by *maintaining a significant practice before the Court of Chancery and Delaware Supreme Court. Our attorneys regularly appear before these courts and are familiar with the individual practices of the jurists who serve on them.* This includes extensive experience in matters involving takeover battles, proxy contests, stockholder appraisal proceedings, class and derivative actions asserting breaches of fiduciary duty, fraud, and all matters under the Delaware corporate and other business entity statutes.

Blank Rome's *extensive experience* in Delaware and the depth of the Firm's resources, promote efficiency, cost effectiveness and enhance our lawyers' ability to achieve a favorable outcome (verdict or settlement). In addition to serving as lead counsel for its clients, the Delaware office of Blank Rome often is called upon by other law firms from across the country and the world to serve as local or special counsel in cases pending in Delaware. In fact, the Delaware office *regularly partners with many of the largest national and international law firms on cases pending in Delaware's courts* on a variety of matters." (From Blank Rome's Litigation Services description found on the firm's website) (emphasis added.)



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We apologize for the fact that this case continues to be unnecessarily contentious and are available at the Court's convenience.

Respectfully submitted,

*/s/ John L. Reed*

John L. Reed (I.D. No. 3023)

Exhibits and Enclosure

cc: Steven L. Caponi (w/exhibits and enclosure)  
Elizabeth A. Sloan (w/exhibits and enclosure)  
Collin J. Seitz (w/exhibits and enclosure)