



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEVEN SIMONS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2020-0841-SG
)	
BROOKFIELD ASSET)	
MANAGEMENT INC., BCP IV)	
GRAFTECH HOLDINGS LP, BPE)	PUBLIC VERSION FILED:
IV (NON-CDN) GP LP,)	October 5, 2020
BROOKFIELD CAPITAL)	
PARTNERS LTD., BCP GP)	
LIMITED, DENIS TURCOTTE,)	
JEFFREY DUTTON, DAVID)	
GREGORY, DAVID RINTOUL,)	
ANTHONY TACCONE, MICHAEL)	
DUMAS, BRIAN ACTON,)	
CATHERINE CLEGG, LESLIE)	
DUNN and GRAFTECH)	
INTERNATIONAL LTD.,)	
)	
Defendants.)	

VERIFIED INDIVIDUAL, CLASS ACTION
AND DERIVATIVE COMPLAINT

Plaintiff Steven Simons ("Plaintiff"), by and through his counsel, submits this Verified Individual, Class Action and Derivative Complaint (the "Complaint"), upon knowledge as to himself and his actions, and, as to all other matters, upon information and belief derived from the investigation of counsel, which included review of filings with the United States Securities and Exchange Commission ("SEC") and other publicly available documents and the inspection of books and

records of GrafTech International Ltd. (“GrafTech” or the “Company”) pursuant to 8 *Del. C.* § 220 (the “220 Documents”) and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff challenges (i) GrafTech’s unfair stock repurchase of 19 million shares of its stock from an affiliate of its controlling stockholder, Brookfield Asset Management Inc. (“Brookfield”), for \$250 million pursuant to a December 3, 2019 share repurchase agreement (the “SRA” and “Repurchase”) and (ii) a related block trade by Brookfield of 11.2 million GrafTech shares to Brookfield’s broker/banker (the “Block Trade”).¹ Brookfield controls GrafTech through (a) its majority stock ownership, (b) its domination and control of GrafTech’s classified board of directors (the “Board”), (c) a Stockholder Agreement, (d) GrafTech’s April 12, 2018 Amended and Restated Certificate of Incorporation (the “Certificate”) and (e) GrafTech’s Bylaws.

2. The Repurchase and Block Trade were a self-interested unified transaction that was initiated, timed and structured by Brookfield through an unfair process and at an unfair price. The process leading to the Block Trade and Repurchase did not bear any of the hallmarks of a fair process. When Brookfield

¹ Brookfield is defined to also include BCP IV GrafTech Holdings LP, BPE IV (Non-Cdn) GP LP, Brookfield Capital Partners Ltd. and BCP GP Limited.

demanded that GrafTech facilitate and pay the expenses of Brookfield's private Block Trade and then repurchase a large block of its stock from Brookfield, the Board did not create a special committee or retain independent financial or legal advisors. The Board did not consider whether the Block Trade and Repurchase were in the minority stockholders' best interests, or what effect those transactions would have on those stockholders or on the public trading price of their GrafTech stock. Even the Board's approval of the Block Trade and Repurchase was staged by Brookfield, including a supposed Audit Committee meeting, that not all Audit Committee members attended, purportedly held in the middle of the Board meeting. Because the Repurchase would preserve Brookfield's voting power, the Repurchase was primarily for the purposes of continuing Brookfield's control of GrafTech and the directors' continuing incumbency on the Board as Brookfield continued its program of disposing of huge amounts of GrafTech stock through secondary offerings, the Block Trade, repurchases and distributions to affiliates and thirty party limited partners. There was no stockholder approval and Defendants' transaction disclosure was misleading and incomplete.

3. There was no fair price. The Board did not negotiate or even determine the price of the Repurchase. Rather, the Repurchase price was determined based on the December 5, 2019 Block Trade where Brookfield sold 11.2 million GrafTech

shares at \$13.125 per share to its banker and broker, Morgan Stanley. GrafTech then paid the same \$13.125 price in the Repurchase for \$250 million of stock. Brookfield, however, could not have sold, and certainly would not have received, \$13.125 per share by selling 19 million shares into the market, particularly after Morgan Stanley flooded the market with 11.2 million shares at the same time. The Board also knew from past experiences that Brookfield's sale of over 30 million shares of GrafTech's stock would cause the market price of GrafTech stock to decline sharply when these formerly controlled shares flooded the market. This is exactly what happened after the Block Trade and Repurchase, which resulted in a significant and immediate decline in GrafTech's stock price.

4. The Repurchase also consumed the cash GrafTech had promised to return to its stockholders and depleted GrafTech's cash reserves. GrafTech's \$100 million repurchase plan for public shares came to a screeching halt. GrafTech also had no cash reserves available when the COVID-19 Pandemic broke out in February and March 2020, which resulted in further substantial declines in GrafTech's stock price, dividend cuts, layoffs and cuts in capital expenditures that GrafTech needed to sustain and grow the business. Thus, Brookfield's self-dealing transaction has harmed and continues to harm GrafTech and its minority stockholders.

PARTIES

5. Plaintiff Simons is and has continuously been a GrafTech stockholder since October 17, 2018.

6. GrafTech is a Delaware corporation with its principal place of business in Brooklyn Heights, Ohio. Its stock trades on the New York Stock Exchange under the symbol “EAF.” GrafTech is a manufacturer of graphite electrode products that are essential to the production of electric arc furnace steel and other ferrous and non-ferrous metals.

7. Brookfield is an alternative asset management company. In 2015, Brookfield acquired GrafTech for approximately \$850 million. Brookfield took GrafTech public in an initial public offering in April 2018 (the “IPO”). Brookfield sold approximately 35 million shares of GrafTech stock, retaining 87% of GrafTech’s stock after the IPO. In connection with the IPO, Brookfield entered into a stockholder rights agreement (the “Stockholder Agreement”), which, as set out below in more detail, cements Brookfield’s Board control by allowing it to designate directors, the Board Chairman, and certain committee designees. Since the IPO, Brookfield has engaged in related-party transactions with GrafTech, including the Repurchase. As of July 29, 2020, Brookfield owned 172,395,974 GrafTech shares (64.5%) after it distributed 50 million GrafTech shares, including 26,820,567

GrafTech shares to third party limited partners. GrafTech admits in SEC filings that because Brookfield owns a majority of its outstanding stock, GrafTech is a controlled company.

8. BCP IV GrafTech Holdings LP (“BCP IV”) holds and controls all of Brookfield’s GrafTech stock. It is also a party and signatory to the Stockholder Agreement.

9. BPE IV (Non-Cdn) GP LP is the general partner of BCP IV. As an indirect parent of BCP IV, BPE IV (Non-Cdn) GP LP is deemed to beneficially own the shares of common stock directly held by BCP IV.

10. Brookfield Capital Partners Ltd. is the general partner of BPE IV (Non-Cdn) GP LP. As an indirect parent of BCP IV, Brookfield Capital Partners Ltd. is deemed to beneficially own the shares of common stock directly held by BCP IV.

11. BCP GP Limited is the sole shareholder of Brookfield Capital Partners Ltd. As an indirect parent of BCP IV, BCP GP Limited is deemed to beneficially own the shares of common stock directly held by BCP IV.

12. Denis Turcotte (“Turcotte”) is a Managing Partner at Brookfield and a Class I GrafTech director. His term expires in 2022. Since the IPO, Brookfield has designated Turcotte to serve as Chairman of the GrafTech Board pursuant to the Stockholder Agreement. At Brookfield’s election, Turcotte is also the Chairman of

the GrafTech Governance and Compensation Committee (“G&C Committee”), which, among other things, (i) oversees reporting processes to the Board and Audit Committee, (ii) makes Board size and structure recommendations, (iii) recommends committee membership and leadership to the Board, (iv) considers director independence, and (v) conducts an evaluation of Chief Executive Officer (“CEO”) David Rintoul and recommends his compensation. GrafTech’s 2020 annual meeting proxy statement (the “2020 Proxy”) admits that Turcotte is not independent.

13. Jeffrey Dutton (“Dutton”) is a Managing Director of Brookfield and a Class III GrafTech director. His term expires in 2021. Brookfield has designated Dutton to serve on GrafTech’s Board pursuant to the Stockholder Agreement. GrafTech’s 2020 Proxy admits that Dutton is not independent.

14. David Gregory (“Gregory”) is a Managing Director of Brookfield and a Class II GrafTech director. His term expires in 2023. On April 29, 2019, Brookfield designated Gregory to replace Ron Bloom (“Bloom”)² and serve on GrafTech’s Board pursuant to the Stockholder Agreement. GrafTech’s 2020 Proxy admits that Gregory is not independent.

² Bloom is Managing Partner and the Vice Chairman at Brookfield. Bloom was a GrafTech director from 2017 until his April 29, 2019 resignation, when he was replaced by Gregory at Brookfield’s direction.

15. David Rintoul (“Rintoul”) is GrafTech’s President, CEO and a Class II director. His term expires in 2023. Rintoul was hired by Brookfield and made a director in March 2018 (i.e., immediately prior to the IPO). Since 2018, Rintoul earned more than \$6.8 million in total compensation (in cash, equity and other compensation). GrafTech’s 2020 Proxy admits that Rintoul is not independent. Rintoul is a Class II director whose term was set to expire at GrafTech’s 2020 annual meeting. At GrafTech’s 2020 annual meeting, Brookfield voted to re-elect Rintoul for another three-year term.

16. Anthony Taccone (“Taccone”) was selected by Brookfield to be a director pursuant to the Stockholder Agreement immediately prior to the 2018 IPO and has been a member of the Board’s Audit Committee since April 19, 2018. In 2019, he received \$125,000 in cash and stock awards for serving as a GrafTech director. Taccone is a Class III director and his term expires in 2021. Taccone is the founding partner and a co-owner of First River, LLC (“First River”), a boutique strategy consulting firm. According to its website, First River’s clients are CEOs, senior managers and boards and it considers itself “a partner to senior management.” Brookfield uses First River’s consulting services for its acquisitions of steel and steel-related companies, including in Brookfield’s 2015 acquisition of GrafTech. In 2015, First River provided Brookfield with analysis of GrafTech and assisted in

developing a presentation to GrafTech's banking syndicate after the acquisition was completed. In 2018, 2019, and 2020, GrafTech purchased access to steel industry research data from First River, as well as the consulting services provided to Brookfield. Taccone is not independent.

17. Michel Dumas ("Dumas") was selected by Brookfield to be a director pursuant to the Stockholder Agreement immediately prior to the 2018 IPO and has been a member of the Audit Committee since April 19, 2018. He is a Class I director and his term expires in 2022. Turcotte recommended Dumas to the Board, having known him for decades. Dumas was Tembec Inc.'s ("Tembec") Executive Vice President and Chief Financial Officer between 1997 and 2017. Turcotte was Tembec's Executive Vice President of Corporate Development and Strategy from 1992 to 2002. Dumas has been the Chairman of the GrafTech Audit Committee since April 19, 2018.

18. Brian Acton ("Acton") was selected by Brookfield to be a director pursuant to the Stockholder Agreement immediately prior to the 2018 IPO. Acton is a Class II director and his term expires in 2023. At GrafTech's 2020 annual meeting, Brookfield voted to re-elect Acton for another three-year term. Acton has been a member of the GrafTech Audit Committee since April 19, 2018.

19. Catherine Clegg (“Clegg”) became a director in March 2019 pursuant to the Stockholder Agreement. In accordance with the Stockholder Agreement, Clegg is a Class III director. Her term will expire at GrafTech’s 2021 annual meeting, unless Brookfield re-elects her. Clegg has been Vice President at General Motors Company since 2010. Clegg was recommended to the Board by Bloom (i.e., Brookfield), who from 2009-2011, “served as Senior Advisor to the Secretary of the Treasury . . . where he helped lead the restructuring of General Motors and Chrysler LLC, and then led the Treasury’s oversight of the companies thereafter, including General Motors’ initial public offering.”

20. Leslie Dunn (“Dunn”) was purportedly appointed to be a Class I director by the Board on August 5, 2020, after GrafTech received Plaintiff’s demand to inspect books and records pursuant to 8 *Del. C.* § 220 (the “Section 220 Demand”), which asserted GrafTech’s Board was not majority independent and disinterested and that were credible bases to believe wrongdoing by GrafTech directors. In order to try to insulate their prior actions, the Board purported to expand itself to nine members and fill that position with Dunn. Defendants claimed that with Dunn’s appointment a majority of the Board was independent. Defendants made Dunn’s appointment in order to support a contention that demand is not futile. Dunn’s appointment, however, was a breach of the other directors’ fiduciary duties

and was invalid under the Stockholder Agreement and GrafTech's Certificate. In Count III, Plaintiff seeks an interpretation of the Stockholder Agreement and GrafTech's Certificate under 8 *Del. C.* § 111, contests the validity of Dunn's purported appointment pursuant to 8 *Del. C.* § 225 and claims that Dunn's purported appointment was a self-interested attempt to avoid liability.

SUBSTANTIVE ALLEGATIONS

A. Brookfield's Control Over GrafTech

21. Brookfield acquired GrafTech for approximately \$850 million in 2015. In April 2018, Brookfield took GrafTech public again, selling some of GrafTech's stock to the public but retaining 87% of GrafTech's outstanding shares. Just prior to the IPO, Brookfield extracted \$2 billion in dividends by increasing GrafTech's debt, including a dividend to Brookfield in the form of a \$750 million promissory note (the "Brookfield Note").

22. Beyond its majority ownership, Brookfield ensured its post-IPO control by executing a Stockholder Agreement with GrafTech. Section 1.1(a) of the Stockholder Agreement required Brookfield and GrafTech to fix the size of the Board at seven. It also required (i) designating three Brookfield directors (Turcotte, Bloom, and Dutton), the Brookfield appointed CEO (Rintoul) and three purportedly independent directors (Taccone, Dumas, and Acton) as GrafTech directors, and (ii)

assigning one Brookfield designee to each of the three classes of GrafTech's classified Board. Brookfield and GrafTech must also take all "Necessary Action"³ to cause the Chairman to be a Brookfield designee. Thus, the composition of the Board is determined by an agreement between Brookfield and GrafTech.

23. The Certificate provides that the size of the Board will be subject to the provisions of the Stockholder Agreement. In Section 1.1(b) of the Stockholder Agreement, GrafTech, Brookfield, and the Board agreed that within a year of the IPO they would take all Necessary Action to set the Board size at eight members and fill the new directorship with an "Unaffiliated Independent Director" appointed as a Class III Director.⁴ The Stockholder Agreement provides for a seven member Board to be increased to eight members, but not to nine members. Under Section 5.2, the

³ "Necessary Action" is defined in the Stockholder Agreement to require "all actions, to the fullest extent permitted by applicable law, necessary to cause such result, including, without limitation, (i) voting or providing a written consent or proxy with respect to the Common Stock, (ii) causing the adoption of Stockholders' resolutions and amendments to organizational documents, (iii) executing agreements and instruments and (iv) making, or causing to be made, with any Governmental Entity, all filings, registrations or similar actions that are required to achieve such result."

⁴ An "Unaffiliated Independent Director" is defined by the Stockholder Agreement to mean "a director that satisfies both (a) the requirements to qualify as an "independent director" under the stock exchange rules of the stock exchange on which the Common Stock are then-currently listed and (b) the independence criteria set forth in Rule 10A-3 under the Exchange Act, as amended from time to time." *See also* "Independent Director."

Stockholder Agreement can only be amended or waived by the prior written consent of GrafTech and Brookfield. GrafTech has not filed any amendment to or waiver of the Stockholder Agreement allowing a nine-member Board.

24. Under Section 1.1(c) of the Stockholder Agreement, as long as Brookfield owns or controls at least 25% of GrafTech's outstanding Common Stock, Brookfield has the right to designate the higher of 37.5% of the total number of directors or three directors. At eight total directors, 37.5% would be three directors. If a nine-member Board was permissible, 37.5% of the Board would be 3.375 directors (i.e., higher than three directors) so four directors would have to be designed by Brookfield in order to satisfy Section 1.1(c).

25. Section 1.1(d) requires that one of Brookfield's designees be included in each class of directors and that the designee's relationship with Brookfield or any other actual or potential lack of independence resulting therefrom will not disqualify the Brookfield designee. Section 1.1(f) provides for Brookfield to designate replacements for its designees and forbids the Company from taking any action to remove a Brookfield designee as director "without cause without the prior written consent" of Brookfield. Under Section 1.1(f)(ii), a Brookfield designee must serve on each Board committee (excluding the Audit Committee or any committee formed

to review or approved of the transactions or matters involving conflicts of interest with Brookfield) and the Brookfield designee must be the chair of such committee.

26. In Section 2.1 of the Stockholder Agreement, GrafTech agrees to provide Brookfield with access to its officers, properties, books and records and all written information provided to the Board.

27. Under Article VI Section 1(a) of the Certificate, the size of the Board must be three to eleven members, but the exact number of directors is subject to the Stockholder Agreement (as it may be amended, supplemented, restated or otherwise modified). Article VI Section 1(b) provides for a classified Board. Under Section 2 of Article VI, if Brookfield owns at least 50% of GrafTech's outstanding stock, it can, as the holder of majority voting power, remove directors with or without cause. Thus, despite the classified board, all GrafTech directors serve at the discretion of Brookfield and are subject to removal without cause at a stroke of its pen. However, as of the date when Brookfield no longer owns at least 50% of the outstanding stock (a "Trigger Date"), directors can only be removed for cause by a 66 2/3% vote. This makes removal of the directors selected by Brookfield virtually impossible even after Brookfield owns less than a majority of the stock. Only the Brookfield dominated Board can fill new directorships and vacancies, subject to Article VI, Section 3 of the Certificate.

28. Article VIII of the Certificate (on corporate opportunities) makes any Brookfield Affiliated Person an Exempted Person who can exploit the corporate opportunities of GrafTech and be exempt from liability to GrafTech and its stockholders for breach of fiduciary duty. Section 4 of that article makes the provisions of Sections 1-3 subject to compliance with the Stockholder Agreement.

29. Article IX of the Certificate (i) permits action by written stockholder consent if Brookfield owns at least 50% of the outstanding stock but precludes action by consent if it does not, (ii) authorizes restrictions on stockholder nominations and proposals (which are contained in Article II Section 8 of the Bylaws) and (iii) if Brookfield owns at least 50% of the stock, permits a majority of the directors then in office, the Chairman (who is designated by Brookfield) or the Board at the request of Brookfield to call a special meeting of stockholders, but otherwise only allows the Board or Chairman to call such a meeting.

30. Articles X and XI of the Certificate permit amendment of the Bylaws and Certificate by majority stockholder vote if Brookfield owns at least 50% of the outstanding stock, but requires a 66 2/3% vote if it does not. Section 1 of Article XII opts out of 8 *Del. C.* § 203, but Sections 2 and 3 replicate provisions of the statute, although they exclude Brookfield and its Affiliates from the definition of Interested Stockholder.

31. Article III Section 10 of the Bylaws provides that if Brookfield owns at least 50% of GrafTech's outstanding Common Stock, a quorum for a GrafTech Board meeting requires a majority of the total number of directors and at least one Brookfield designee. Thus, Brookfield can prevent any Board action which it does not agree with by having its designees refuse to attend the meeting.

32. Prior to the IPO, GrafTech's Board included four members:

- (a) Turcotte (Brookfield's Managing Director),
- (b) Dutton (Brookfield's Managing Director),
- (c) Bloom (Brookfield's Vice Chairman), and
- (d) Rintoul (hired by Brookfield as GrafTech's President and CEO).

Pursuant to the Stockholder Agreement, the size of the Board was increased to seven members and Brookfield installed Acton, Dumas, and Taccone on the Board immediately prior to the closing of the IPO.

33. GrafTech purportedly now has a classified nine-member Board. Turcotte, Dutton, Rintoul, Acton, Dumas and Taccone remain on the Board. Clegg joined the Board in March 2019 when, pursuant to the Stockholder Agreement, the Board was expanded to eight members. Pursuant to Brookfield's right under the Stockholder Agreement, Bloom was replaced by Gregory (Brookfield Managing

Director) in April 2019. On August 5, 2020, after receiving Plaintiff's Section 220 Demand seeking to investigate wrongdoing in the Block Trade and Repurchase and after producing books and records in response to the demand, GrafTech directors purportedly increased the size of the Board to nine and appointed Dunn as a ninth Board member. GrafTech's August 5, 2020 announcement claimed Dunn's addition means that five of nine directors are "independent." The directors acted so they could claim a majority of the Board was independent, avoid a finding of demand futility and insulate their prior actions. However, as set forth below and in Count III, pursuant to the Stockholder Agreement and Certificate, the GrafTech Board is limited to eight members. Neither GrafTech's August 5, 2020 Form 8-K or press release of the same date disclosed any amendment of the Stockholder Agreement and no such amendment was disclosed in GrafTech's Form 10-Q for the quarter ended June 30, 2020, which was filed with the SEC on August 6, 2020.

34. Brookfield's influence also infects the Audit Committee, which has never functioned independently of Brookfield. For example, at least one Brookfield Board designee has attended every Audit Committee meeting since the IPO. At the first two Audit Committee meetings after the IPO, Rintoul and Turcotte attended along with Gregory (who was not a director yet) and A.J. Silber ("Silber"), a

Brookfield Vice President, who has never been a director. Silber even acted as secretary of the meetings and thus was responsible for the minutes.

B. The IPO, 2018 Promissory Note, and 2018 Brookfield Repurchase

35. Brookfield sold 35 million shares in the IPO. Because Brookfield did not allow GrafTech to sell any shares, all of the proceeds from the IPO went to Brookfield, resulting in GrafTech's public float being limited to the shares that Brookfield agreed to sell. Brookfield's decision to extract billions from GrafTech just before the IPO had consequences on the IPO. The IPO price of \$15.00/share was well below the \$21 to \$24 price that Brookfield expected. Underwriters exercised their overallotment for only 3.1 million shares even though 5.25 million were set aside. Brookfield netted approximately \$543 million in total. The disappointing IPO results left a limited public float of 38.1 million shares (12.9%) with Brookfield owning the remaining 261 million shares (87%).

36. After the IPO, Brookfield was looking to make up for the cash shortfall. On May 7, 2018, the Board determined that the conditions of the Brookfield Note were satisfied, triggering GrafTech's liability to repay it in eight years. Brookfield, however, had structured the Brookfield Note to carry such a high rate of interest that maintaining it was cost prohibitive. As a result, GrafTech increased its Senior

Secured Credit Facility by \$750 million and prepaid Brookfield \$750 million cash (plus interest).

37. That \$750 million in cash, however, was not enough for Brookfield. On August 13, 2018, less than four months after the IPO, where Brookfield struggled to sell 35 million shares for \$15.00 each, Brookfield required GrafTech to repurchase \$225 million of Brookfield's GrafTech stock through a stock repurchase agreement.

38. A draft registration statement was filed after the markets closed on August 6, 2018 for 20 million shares when GrafTech's stock price closed at \$21.98. The registration statement announced GrafTech's obligation to repurchase \$225 million of Brookfield's stock but did not disclose the price for the secondary offering or repurchase. After the markets closed on August 8, 2020, the registration statement went final and disclosed that Brookfield sold 20 million shares at \$20.00/share with \$0.75/share in underwriting fees. GrafTech's stock price immediately declined to \$19.50. GrafTech paid Brookfield \$19.25 per share for \$225 million in stock (11.7 million shares) that day.

C. Brookfield's Failed 2019 Registered Offering

39. Less than seven months later, Brookfield again sought to liquidate more shares through another registered offering (the "2019 Registered Offering"). On March 1, 2019, the Board held a telephonic meeting. The Board invited Gregory to

attend even though he was not a director. The minutes do not provide any information concerning the number of shares Gregory said Brookfield intended to sell or a price at which Brookfield intended to try to sell those shares. The Board did not retain independent financial or legal advisors to advise it on whether a third public offering by its controlling stockholder in less than seven months was in the best interest of GrafTech or its stockholders. The Board did not receive or do any of its own analysis on whether Brookfield could sell shares or what effect such sale would have on GrafTech's stock price. Nevertheless, following Gregory's presentation, the Board "determined the Secondary Offering [was] advisable and in the best interests of the Corporation and its stockholders."

40. On March 4, 2019, GrafTech filed a Form S-1 Registration Statement for Brookfield to sell 17,500,000 shares plus an overallotment of up to 2,625,000 for a total of 20,125,000 shares. The registration statement did not set the offering price but noted that the average of the high and low trading prices on March 1, 2019 was \$14.36. After the Form S-1 was filed, GrafTech's stock price immediately declined from \$14.23 on March 4 to \$12.36 on March 5 and then to \$11.61 on March 6 (down 28%).

41. The stock price did not fully recover and Brookfield's attempt to sell another 20+ million shares failed. On March 27, 2019, Brookfield caused GrafTech

to withdraw the Form S-1. The only explanation from Brookfield or GrafTech was that Brookfield determined “not to proceed with an offering due to market conditions.” GrafTech’s stock price closed at \$12.47 that day. The 2019 Registered Offering was not discussed at any subsequent Board meetings. The Board did not receive any materials from Brookfield’s underwriters, JP Morgan and Credit Suisse, regarding why they were unable to sell the shares, what price they tried to sell the shares, who they contacted or what other investor feedback was received.

42. Management admitted that the decline in GrafTech’s stock price was caused by Brookfield’s attempt to liquidate 20+ million shares. On April 17, 2019, Rintoul sent a memo to the Board, which was produced to Plaintiff almost wholly redacted, that stated “[w]hile the stock has recovered following the withdrawal of the March offering, it now appears to be capped at around \$14 to \$15 per share.”

43. The 2018 repurchase and failed 2019 Registered Offering showed that public disclosure of a substantial repurchase of stock by GrafTech from Brookfield or a substantial sale of stock by Brookfield would drive the price of GrafTech’s stock down sharply. A combination of a large sale by Brookfield at the same time as a large repurchase by GrafTech was certain to cause a significant drop in the stock price. As a result, Brookfield devised a plan to lock in a favorable price before the market became aware of the double whammy.

D. The Public Repurchase Plan

44. In its earnings releases, investor presentations and earnings calls during the second half of 2018 and the first half of 2019, GrafTech stressed its policy and key priority of returning cash to shareholders through dividends and stock repurchases. At an April 29, 2019 Board meeting, the Board discussed a potential share repurchase program and considered investor feedback that supported a buyback of public shares. On July 23, 2019, Rintoul sent a memo to the Board indicating that at its July 30, 2019 meeting the Board would discuss a potential repurchase program, noting that “a positive reaction to the share repurchase program could offset negative market reaction to Q2/2019 results.”

45. At its July 30, 2019 Board meeting, the Board approved a share repurchase plan for publicly traded shares (the “Public Repurchase Plan”). The Public Repurchase Plan provided for GrafTech to repurchase up to \$100 million shares in the market, with particular amounts dependent on GrafTech’s stock price and average trading volume. The Board directed management to execute the Plan with instructions that “no shares shall be repurchased pursuant to this authority at a price in excess of \$11.00 per share.” Thus, the Board determined that purchasing GrafTech stock above \$11.00 per share was not in the best interests of GrafTech or

its stockholders. If the stock price was lower, the Board approved greater and greater amounts of daily repurchases:

Share Price Level	Daily Repurchases (% of ADTV)	Months to Complete*
>\$11.00	0%	n/a
\$10.00 to \$11.00	10%	~3.7
\$9.00 to \$10.00	15%	~2.7
<\$9.00	20%	~2.1
*Assumes 1.3M shares average daily trading volume ("ADTV"), share price at the midpoint of range		

These figures imply that GrafTech would repurchase no more than \$1.3 to \$2.3 million worth of shares per day if the stock price was below \$11.00.

46. As shown above, even when GrafTech's stock traded below \$9.00 per share, GrafTech would not repurchase more than 20% of the management-assumed 1.3 million share average daily trading volume.

47. The Public Repurchase Plan would return capital to the public stockholders and support GrafTech's stock price. However, it was structured so GrafTech would only buy a limited number of shares at low prices.

48. GrafTech repurchased only (i) 879,134 public shares for \$9.484 million, an average price of \$10.79, in the third quarter of 2019, and (ii) 125,551 shares for \$1.384 million, an average price of \$11.01, in October 2019, for a total of

1,0004,685 shares for \$10.868 million. GrafTech repurchased no shares pursuant to the Public Repurchase Plan in November and December 2019.

49. The GrafTech Board discussed the Company's Capital Structure Management at its November 6, 2019 meeting. Based on management's presentation: "No changes [were] recommended at this time, pending results of Brookfield market activity." Thus, what Brookfield decided to do would determine what GrafTech would do.

E. The Conflicted and Unfair 2019 Brookfield Repurchase

50. The Public Repurchase Plan did not help Brookfield liquidate its GrafTech shares. Brookfield knew it could not sell more shares in a registered offering because it had already tried and failed to do so earlier in the year. Therefore, Brookfield concocted a different plan to sell 30 million shares of its GrafTech stock. The plan started on November 27, when GrafTech's stock price increased from a close of \$11.53 earlier that month to close at \$14.32. Brookfield decided to take advantage of the price rise by dumping millions of shares of GrafTech stock.

51. By late November 2019 Brookfield knew that GrafTech would have a lackluster fourth quarter with results down compared to the fourth quarter of 2018 and the third quarter of 2019. Therefore, it wanted to sell large amounts of GrafTech stock before the disappointing fourth quarter and full year 2019 results were publicly

known and caused GrafTech's price to drop. Indeed, when those results were announced on February 6, 2020, GrafTech's stock price dropped from \$11.26 on February 5, 2020 to \$10.10 on February 6, 2020.

52. On November 27, 2019, the day before Thanksgiving, Turcotte called a special Board meeting to discuss "Possible Equity Transactions" (the "November Special Meeting"). The purpose of the November Special Meeting was for Turcotte to tell the Board of Brookfield's plan to sell GrafTech stock in a block trade and a buyback by GrafTech. A two-page document related to that meeting contains only a cover page that says "Special Meeting of the Board of Directors November 27, 2019" and one page on "Possible Equity Transactions" that is two-thirds redacted as "Nonresponsive." The unredacted portion of the latter states:

Registered Block with Buyback

- Registered block trade – bid process with banks
 - Combined with direct buyback
- OR
- Block trade may be executed as Rule 144 block with direct buyback

Distribution-in-Kind with Open Market Repurchase and Buyback

- Distribution of shares held by Brookfield to limited partners
- Potential purchase of shares in open market

- Combined with direct buyback

Despite obvious conflicts of interests with these transactions, the Board did not create a special committee or hire independent legal and financial advisors.

53. On December 3, 2019 at 5:30 p.m. (EST), just two days after the Thanksgiving holiday weekend, Turcotte convened another special Board meeting (the “December Special Board Meeting”). The December Special Board Meeting was attended by all the directors, except for Dutton and Acton. Acton is a member of the Audit Committee. GrafTech’s Chief Financial Officer (“CFO”), Quinn Coburn, and Chief Legal Officer, Gina Gunning, also attended.

54. The Capital Structure Management report distributed in connection with the December 3, 2019 Board meeting stated:

- Brookfield plans to launch a **Rule 144 secondary block trade to sell up to 11M shares of GrafTech’s common stock to broker-dealer(s)**
- GrafTech would then **repurchase up to \$250,000,000 (approximately 18M shares) of common stock from Brookfield at the price per share payable by the broker-dealer(s) in the block trade**
 - Based on precedent first block trades, the expected discount to the current share price could range from approximately 2-10% with an average of 4%

- Share repurchase is contingent upon completion of a block trade of a minimum of \$50,000,000 of GrafTech common stock.

55. Significantly, while GrafTech would be obligated to do the \$250 million Repurchase even if Brookfield sold only \$50 million of stock in the Block Trade (only about a third of the 11 million shares), Brookfield was not obligated to do any Block Trade at all. Basically, if Brookfield could sell about 3,850,000 shares for a price Brookfield found acceptable, GrafTech gave Brookfield a put option that required GrafTech to buy 19 million shares at the price Brookfield found acceptable.

56. The December 3, 2019 Capital Structure Management report proposed a timeline that would have (a) Board/Audit Committee approvals and the signing of the repurchase agreement after market closed on December 3, 2019 and (b) the Block Trade and Repurchase occur after market closed on December 4, 2019. It recognized that the Block Trade shares would be placed overnight, and afterwards a press release announcing the transactions would be issued. Thus, the transactions were structured and timed to happen before the market would know Brookfield planned to and was selling 11 million shares and GrafTech was buying back another 19 million shares – information that was sure to drive the market price down.

57. The Board hastily approved Brookfield's scheme at the December Special Board Meeting. First, Coburn discussed the "potential block trade pursuant

to Rule 144 of the Securities Act and the potential direct repurchase by the Corporation of shares held by Brookfield.” Coburn, who was promoted to CFO in 2015 when Brookfield took over, presented as though he was Brookfield’s representative while Brookfield’s Managing Director, Turcotte, and Vice President, Gregory, sat in the room. The “Block Trade” referred to Brookfield’s plan to sell up to 11 million shares of GrafTech stock overnight through a broker. The Block Trade would not be publicly announced until after it was completed so that GrafTech’s stock price from before the Block Trade would not reflect the news that Brookfield was selling another large chunk of stock. Brookfield and the Board knew from their prior experiences in the 2018 secondary offering and the failed 2019 Registered Offering that any announcement regarding Brookfield selling GrafTech shares would result in a stock price decline. Unlike a registered secondary offering, a Block Trade would allow Brookfield to sell a smaller quantity of stock quickly—before the market learned of the intended sale, which would cause the Company’s stock price to crater. The December Special Board Meeting minutes state that “Members and management engaged in discussions regarding these matters” but the lawyer-drafted minutes provide no details of what was actually discussed.

58. Second, the minutes state that the Board determined the Block Trade was in GrafTech and its stockholders’ best interests and approved it. The Board did

this without *any information* on the terms of the Block Trade. The Board also did not receive any information on the differences between a block trade and a registered secondary offering, including whether one transaction would be better received by the market than another. Morgan Stanley was not present for the meeting and Coburn presented only a one-page summary that did not include any actual terms and instead merely represented:

- Based on precedent first block trades, the expected discount to the current share price could range from approximately 2-10% with an average of 4% ...

Coburn presented no analysis of what effect the announcement of the Block Trade would have on GrafTech's stock price. However, the Board knew that the last two times Brookfield sold or tried to sell stock, GrafTech's stock price sharply declined. Thus, the Board knew that when the Block Trade was announced, GrafTech's stock price would decline again. The Board also directed GrafTech to pay the expenses that were incurred in the Block Trade, including printing costs, certification fees, legal fees and expenses, accounting fees and expenses and transfer agent and registrar fees and expenses. No analysis was provided at this meeting of how much those expenses were.

59. Third, the December Special Board Meeting minutes state:

WHEREAS, the Corporation desires to repurchase (the "Repurchase") up to \$250,000,000 of shares owned by the

Selling Stockholder, from the Selling Stockholder directly, at the per share price at which the Shares offered in the Block Trades are sold to the broker-dealers in the Block Trades.

RESOLVED, the Board vests in the Audit Committee the full authority of the Board with respect to, and delegates to the Audit Committee, the determination as to whether the Corporation should conduct the Share Repurchase Agreement (the ‘Share Repurchase Agreement’) and, if the Audit Committee determines that the Share Repurchase Agreement should be entered into, to determine and approve the terms of the Share Repurchase Agreement and to authorize on behalf of the Board and the Corporation all such actions, and the execution of all such documents, as the Audit Committee may deem necessary or desirable in connection with the Share Repurchase.

60. The purported delegation of authority to the Audit Committee was a sham. The Brookfield-dominated Board had already approved the Block Trade and determined that GrafTech would repurchase \$250 million of stock from Brookfield at whatever the Block Trade price was. There was no negotiation by the Board or the Audit Committee over the terms of the Repurchase. The draft resolutions distributed before the meeting were approved at the meeting. The “**Proposed Timeline**” circulated before the meeting provided that the Repurchase would be approved at the meeting, the Share Repurchase Agreement would be signed immediately after the meeting, and the Block Trade would occur after the market closed on December 4 (i.e., the day after the meeting). There were no plans for the

Audit Committee to meaningfully consider, let alone negotiate, the terms that were in GrafTech and its minority stockholder's best interests.

61. Fourth, the December Special Board Meeting minutes state that the meeting was "temporarily adjourned" and that an Audit Committee meeting commenced at 6:00 p.m. (EST) (the "December Special Audit Committee Meeting"). Dumas and Taccone attended the meeting as members of the Audit Committee, but Acton was absent. Thus, the December Special Audit Committee Meeting was held even though not all members could attend. All of the other individuals present for the December Special Board Meeting, including Brookfield's Board representatives and management, attended the December Special Audit Committee Meeting.

62. The December Special Audit Committee Meeting minutes state that Coburn "provided details on the proposed block trade pursuant to Rule 144." Coburn had purportedly just discussed the same thing with the same individuals at the start of the 5:30 p.m. (EST) Board Meeting. Thus, the minutes falsely suggest that the same presentation was given twice, to the same individuals, within 30 minutes. The minutes also falsely suggest that Coburn provided "details" on the Block Trade but he had no details because Morgan Stanley was conducting the trade

and did not attend or provide materials for the meeting. The limited “materials” presented to the Board/Audit Committee also had no details of the Block Trade.

63. The December Special Audit Committee Meeting minutes also state that “extensive discussions” followed Coburn’s presentation. The December Special Board Meeting minutes state that those same discussions had already occurred. Thus, again, the minutes falsely suggest that the same discussion occurred twice, to make the December Special Audit Committee Meeting appear legitimate. Moreover, the 40-word description reflects no substantive discussion.

A.1 POTENTIAL REPURCHASE

Mr. Coburn provided a presentation regarding the Capital Structure Management of the Corporation. He provided details on the proposed block trade pursuant to Rule 144 of the Securities Act and the potential direct repurchase by the Corporation of shares held by Brookfield.

Members and managements engaged in extensive discussions regarding these matters.

The Audit Committee then purported to adopt the resolutions that Brookfield prepared and circulated before the meeting.

64. Despite its purported delegated authority, however, the Audit Committee did not “determine and approve the terms of the Share Repurchase Agreement” because the Audit Committee did not determine the price. Instead, the minutes state:

WHEREAS, the Corporation desires to repurchase up to
\$250,000,000 of Shares owned by the Selling Stockholder,

from the Selling Stockholder directly, **at the per share price at which the Shares offered in the Block Trades are sold to the broker-dealers in the Block Trades; . . .**

RESOLVED, that the Audit Committee hereby authorizes and approves the Share Repurchase and authorizes each of the Authorized Executive Officers to effect the Share Repurchase consistent with the terms set forth above, to enter into a Repurchase Agreement (as defined below) and to effect the Share Repurchase and to take any and all other actions as it deems necessary or appropriate in connection with the Share Repurchase;

RESOLVED, that the repurchase agreement (substantially in the form attached hereto as Exhibit B, the “Repurchase Agreement”) is advisable and in the best interests of the Corporation and that the execution, delivery, performance and consummation thereof by the Corporation is hereby authorized and approved (Emphasis added).

The resolutions admit that the Audit Committee approved the Repurchase because “the Corporation” (i.e., the Board) had already decided it desired to do the Repurchase.

65. The Share Repurchase Agreement that was attached to the Audit Committee Meeting minutes did not include the price either. Instead, it stated:

Section 1.1 Repurchase of Shares. The Selling Stockholder [Brookfield] shall sell to the Corporation and the Corporation shall purchase from the Selling Stockholder the Repurchase Shares under the terms and subject to the conditions hereof . . . at the per share price

at which the Block Trades are sold to the broker-dealer(s) (the “Per Share Purchase Price”).

66. Fifth, the December Special Audit Committee Meeting was then purportedly adjourned and the December Special Board Meeting reconvened with all the same individuals in attendance. The next matter discussed at the December Special Board Meeting was “Compensation and Related Matters.” Thus, as soon as Coburn finished presenting Brookfield’s transaction, the Board discussed his compensation.

F. Morgan Stanley Was the Broker-Dealer That Did the Block Trade

67. While materials presented to the GrafTech directors suggested that the Block Trade might be done by multiple broker-dealers engaged in a competitive bidding process, GrafTech’s December 5, 2019 press release announcing the Block Trade and Repurchase stated that Brookfield “has launched a Rule 144 secondary block trade to sell 11.18 million shares of the Company’s common stock to Morgan Stanley.” The release stated that the \$250 million Repurchase by GrafTech would be “at a price per share equal to the price per share payable by the broker-dealer in the block trade.” Thus, the Repurchase price was determined by a transaction between Brookfield and Morgan Stanley.

68. Morgan Stanley and Brookfield have had an extensive business relationship since at least 2011, when Morgan Stanley acted as an underwriter for a Brookfield affiliate in an initial public offering. In 2012, Brookfield Office Properties Inc. signed a 1.2-million square-foot lease with Morgan Stanley in New York. Since then, Morgan Stanley has advised Brookfield and its affiliates repeatedly. In 2014, Morgan Stanley advised a special committee when Brookfield took Brookfield Residential Properties Inc. private. Also in 2014, Morgan Stanley advised Brookfield Office Properties Inc. in connection with its sale to Brookfield Proper Partners L.P. More recently, Brookfield has reportedly selected Morgan Stanley as one banker to arrange a \$500 million REIT offering in India. Morgan Stanley has also invested in Brookfield and numerous Brookfield affiliates, including Brookfield Infrastructure Co., Brookfield PPTY REIT Inc., and Brookfield Business Partners. On August 14, 2020, Morgan Stanley disclosed that it increased its holdings in Brookfield by 25% and now owns more than 5.56 million Brookfield shares with a total value of \$182 million as of June 30, 2020.

G. The Block Trade and Repurchase Were Unfair

69. The Block Trade was a private transaction between Brookfield and Morgan Stanley that was initiated, timed, structured and priced to serve Brookfield's purposes. While the GrafTech Board was told the Block Trade would involve

competitive bidding by multiple brokers, GrafTech's announcement of the Block Trade revealed that the shares had simply been sold by Brookfield to a single broker—Brookfield's broker Morgan Stanley. The GrafTech Board not only approved the transaction without full information, but also agreed to pay Brookfield's expenses. Moreover, the Block Trade would obligate GrafTech to pay the same price that Brookfield and its conflicted broker/banker set in the much larger Repurchase. Because the Block Trade did not reflect fair dealing as to GrafTech or a fair price, the Block Trade was not entirely fair to the Company.

70. On December 3, 2019, Brookfield and GrafTech entered into the \$250 million Share Repurchase Agreement. This was a conflicted, unfair, and defective transaction through which GrafTech repurchased approximately 19 million of Brookfield's shares for \$13.125 after a rushed seven-day process over the Thanksgiving holiday. The Repurchase was not announced until a press release on December 5, 2019. The Board did not disclose what price GrafTech paid for the \$250 million of its stock in the December 5 press release or other typical places stockholders might look to find such information. Instead, buried in a Form 4 that GrafTech filed on December 5, 2019, the price was revealed to be \$13.125/share.

71. Brookfield was GrafTech's controlling stockholder that dominated and controlled the Board. The Repurchase was a conflicted transaction. As GrafTech's

controlling stockholder, Brookfield was required to deal fairly with GrafTech and its minority stockholders. The Repurchase was not entirely fair to GrafTech or its minority stockholders in numerous ways.

72. The Repurchase was not the product of a fair process. It was initiated and timed by Brookfield to facilitate Brookfield's desire for cash and liquidity for its GrafTech shares at a time that it knew GrafTech's stock price was inflated and going to decline. The transaction was the latest in a series of transactions where Brookfield sought to extract cash from GrafTech and sell as many of its GrafTech shares as it could. Brookfield had no public market into which it could sell millions of GrafTech shares so it used its power and influence as GrafTech's controlling stockholder and domination and control over the Board to facilitate the Block Trade and cause GrafTech to buy the stock in the Repurchase at an unfair price.

73. Brookfield initiated and timed the rushed process on Thanksgiving Eve and forced the Board and Audit Committee to approve it less than a week later. Brookfield structured the transaction so it could set the price in a smaller transaction with its own broker that could involve less than four million shares, then have a put option to sell 19 million GrafTech shares at the same price. There was no special committee. Indeed, there was no negotiation by the Board or the Audit Committee. Instead, the Board hastily approved the Block Trade, decided to do the Repurchase,

and then held a hurried Audit Committee meeting in the middle of the December Special Board Meeting to approve the transaction on terms set by Brookfield. Brookfield's Board designees and management attended the entire Audit Committee meeting and the Audit Committee did what Brookfield demanded without any independent financial or legal advice or any private deliberations. The Audit Committee only received some limited, incomplete information on block trades generally from management while Brookfield was present at the same meeting that management's compensation was discussed. The draft resolutions and Share Repurchase Agreement that Brookfield circulated before the meeting were approved at the meeting.

74. The Block Trade and Repurchase were not submitted to a stockholder vote. The materials that management purportedly presented at the December 3 meetings admitted that investors would not be pleased by a higher priced repurchase from Brookfield being prioritized over returning capital to the public stockholders through the Public Repurchase Plan.

75. The \$13.125 price that GrafTech paid was not entirely fair to GrafTech or its minority stockholders. Neither the Board nor the Audit Committee determined or negotiated the \$13.125 price that GrafTech paid for the \$250 million of stock. Instead, these fiduciaries allowed the price to be set by a Block Trade

between Brookfield and Morgan Stanley, who have an existing relationship. The Board and the Audit Committee agreed that GrafTech would pay the same price that Morgan Stanley paid in the Block Trade. They did not know what that price would be, nor could they determine it by any formula. Instead, they gave Brookfield a put option to sell 19 million shares to GrafTech at whatever price Brookfield and Morgan Stanley fixed. They did not have information as to with whom Morgan Stanley would place the stock, whether those individuals or entities were affiliated with Brookfield or what information Morgan Stanley was providing others regarding GrafTech. The Board and Audit Committee no independent legal or financial advice.

76. Morgan Stanley was hired by Brookfield, not GrafTech, to get Brookfield a price at which it was willing to sell a block of its GrafTech stock. The Board/Audit Committee had a duty to cause GrafTech to pay the lowest possible price in the Repurchase. Instead, the Board/Audit Committee allowed Brookfield and an agent of Brookfield to determine the price. The Board and Audit Committee were also misinformed and uninformed about the Block Trade process. They did not know whether the Block Trade was a bought deal, a non-risk deal or a back-stopped deal.

77. The Board and Audit Committee abdicated their duty to exercise GrafTech's statutory power to repurchase its stock by agreeing to a contract that required GrafTech to repurchase \$250 million of stock at any price negotiated between Brookfield and Morgan Stanley. Moreover, the Board and the Audit Committee knew that the price Morgan Stanley would negotiate would substantially exceed \$11.00 per share, the price above which it had already determined not to repurchase shares from public stockholders in the Public Repurchase Plan.

78. The \$13.125 price itself was a *premium* to GrafTech's opening (\$13.07) and closing (\$12.48) stock price on December 5. These market prices are the price for a single share in a liquid market and not the substantially discounted price that would have been required to sell over 19 million shares. The price was also 19% higher than the \$11.00 maximum price in the Public Repurchase Plan. Indeed, even at the potential discounts of 2% to 10% of the "current" market price that management claimed were possible in the Block Trade, the price GrafTech would pay would substantially exceed the \$11.00 threshold. Moreover, even when the public stock price was \$9.00 or less, the Public Repurchase Plan capped daily repurchases to 20% of the average daily trading volume. As such, the Board projected it would take 2.1 months to repurchase \$100 million worth of stock at that rate. The Repurchase caused GrafTech to repurchase 2.5x of that total amount, in

an instant, at a price that was 46% higher than \$9.00. GrafTech's total repurchases under the Public Repurchase Plan as of November 2017 were 1,004,685 shares for less than \$10.868 million (an average price of \$10.82 per share). GrafTech spent 23x more to repurchase 19 million shares at a 21.3% higher price (\$13.125) from Brookfield in the Repurchase. In short, the Board gave Brookfield better terms and a much higher price for far more shares than it gave the public stockholders in the Public Repurchase Plan.

79. The Board and Audit Committee also knew that GrafTech's stock price would decline as soon as the Block Trade and Repurchase were announced. In 2018, the stock price declined \$2.02 (9.4%) after the registration statement for Brookfield's secondary offering and GrafTech's \$225 million repurchased closed. When Brookfield attempted a third public offering several months later, the stock price declined by (a) \$1.87 (13.1%) the day after the registration statement was filed and (b) a total of \$2.62 (18.4%) by the end of the second day after the registration statement was filed. Despite knowing the stock price would decline upon news of the Brookfield Block Trade and Repurchase, the Board and Audit Committee approved the transactions regardless of the effect they would have on minority stockholders.

80. After the Block Trade and Repurchase were announced on December 5, 2019, the price of GrafTech stock, which had closed at \$13.77 on December 4, 2019, sharply declined and closed at \$12.48 on December 5, 2019 on volume of 9,929,400 shares. The stock fell further to \$12.15 on volume of 4,128,900 shares on December 6, 2019. In short, a substantial percentage of the public stockholders bailed out of GrafTech's stock as a result of the Block Trade/Repurchase.

81. Materials purportedly distributed at the December Special Board Meeting prove that the Board knew that it would be overpaying by tying the Repurchase price to the Block Trade price. The materials stated that based on precedent block trades, the discount "to the **current** share price could range from approximately 2-10%." (Emphasis added). The management summary assumed GrafTech would repurchase approximately 18 million shares for \$250 million, which implies \$13.89 per share in the Repurchase, or a \$0.18 premium to the \$13.71 closing price of GrafTech's stock on December 3, 2019. That share price did not reflect the information that Brookfield intended to sell over 30 million shares of GrafTech stock. Thus, the Board knew that (i) management's estimate of the price GrafTech would pay was a premium to the "current" market price, (ii) even if the discount in the Block Trade was 2-10%, it would be a discount to "current" prices, which did not reflect knowledge of the Brookfield sales and (iii) once the public

learned of the stock sales, the stock price would decline, but it would be too late for GrafTech to negotiate more favorable pricing terms because the Repurchase would have already closed. The Board intentionally proceeded in a manner that favored Brookfield's interests to the detriment of GrafTech and its minority stockholders.

82. The Board also knew that Brookfield wished to liquidate its GrafTech holdings based on Brookfield's history of extracting cash from GrafTech through dividends, share repurchases, and other attempts to dump its stock on the market. The Board also knew that Brookfield could not sell \$250 million more of GrafTech stock for \$13.125 in the public markets at the Block Trade price. Nevertheless, the Board did not use its leverage to negotiate favorable terms that were in GrafTech and its minority stockholders' best interests, but instead let Brookfield and its investment banker dictate the terms.

H. GrafTech's Stock Price Never Recovered from the Repurchase

83. The Block Trade and Repurchase of \$250 million worth of Brookfield's GrafTech stock for \$13.125 has proved to be a disaster for GrafTech. The price of GrafTech's stock fell below \$12 per share in December 2019 and below \$11 per share by the end of January 2020. At current market prices, the 19 million shares that GrafTech paid Brookfield \$250 million for in 2019 are worth approximately \$146 million.

84. Brookfield caused GrafTech to use most of its cash to fund the \$250 million Repurchase. The COVID-19 Pandemic broke out in February and March 2020 and has had serious consequences on GrafTech. During the first quarter of 2020, GrafTech repurchased 3,328,574 shares pursuant to the Public Repurchase Plan for a total of \$30.1 million, an average per share price of \$9.04. GrafTech did not repurchase any public shares during the second quarter of 2020.

85. In April, 2020, GrafTech announced that the Board had determined to cut the quarterly dividend from \$0.085/share (\$0.18 annually) by 82.3% to \$0.01/share (\$0.04 annually). GrafTech disclosed in its Quarterly Report for the three-months ended March 31, 2020 (the “Q1 Report”) that it was “reducing costs to preserve cash” and suspending the Public Repurchase Plan. GrafTech also announced that it had (i) eliminated discretionary spending, (ii) reduced headcount by 15% and (iii) reduced planned capital expenditures by 50%. GrafTech maintained the \$0.01/share dividend in the second quarter 2020 but warned that it may have to suspend the dividend entirely. The \$250 million that GrafTech used to repurchase Brookfield’s stock could have been used to maintain dividends, avoid laying off employees and continue investing in long-term growth projects but instead went to line Brookfield’s pockets. GrafTech’s stock now trades under \$8 per share,

or approximately 40% less than the \$13.125 price GrafTech paid Brookfield in the Repurchase.

CLASS ACTION ALLEGATIONS

86. Plaintiff brings Count I on his own behalf and as a class action, pursuant to Court of Chancery Rule 23, on behalf of all holders of GrafTech stock (the “Class”) on December 3, 2019, and their successors in interest. Excluded from the Class are Defendants and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants.

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

88. The Class is so numerous that joinder of all members is impracticable. As of July 31, 2020, there were more than 267 million shares of GrafTech common stock outstanding. Brookfield beneficially owned approximately 199 million shares as of March 17, 2020. Therefore, there are approximately 69 million shares in the Class. Upon information and belief, there are at least hundreds of members of the Class.

89. There are questions of law and fact that are common to the Class, including, but not limited to:

(a) Whether the Block Trade and Repurchase were entirely fair to GrafTech’s minority stockholders;

(b) Whether Defendants breached their fiduciary duties to Plaintiff and other members of the Class;

(c) The interpretation of the Certificate and Stockholder Agreement as to how many directors can be on the Board;

(d) Whether Dunn's appointment to the Board and office as a director are valid and

(e) Whether the Class is entitled to equitable relief or damages as a result of Defendants' breaches of fiduciary duties.

90. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. All members of the Class have suffered the same harm.

91. Defendants caused the same equitable harm and damages to the Class through their breaches of fiduciary duty.

92. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

93. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual Class members that would establish incompatible standards of conduct for Defendants. Adjudications with respect to individual Class members would, as a practical matter, be dispositive, or would substantially impair the interests of the Class members.

94. Defendants have also acted or refused to act on grounds that apply generally to the Class, such that declaratory relief is appropriate with respect to the Class as a whole.

95. The questions of law and fact common to the members of the Class predominate over any questions affecting only its individual members, such that a class action is superior to any other available method for fairly and efficiently adjudicating the controversy.

DEMAND FUTILITY

96. Plaintiff brings Count II derivatively on behalf of GrafTech to redress breaches of fiduciary duty by Brookfield and the GrafTech directors. Plaintiff has held GrafTech common stock continuously since October 17, 2018, including at the time of the wrongdoing alleged herein. Plaintiff will adequately and fairly represent

the interests of the Company and its stockholders in enforcing and prosecuting its rights.

97. The Board is purportedly comprised of Turcotte, Gregory, Dutton, Rintoul, Dumas, Acton, Taccone, Clegg and Dunn. Plaintiff has not made a demand on the GrafTech Board to institute this action. A demand would be futile because a majority of the Board is not capable of making an independent and disinterested decision to institute and vigorously prosecute this action.

98. Plaintiff challenges the defective and unfair Block Trade and Repurchase. The Board is dominated by three Brookfield Managing Partners—Turcotte, Gregory, and Dutton. GrafTech’s SEC filings concede that these three directors are not generally independent, nor could they be independent as to the Block Trade and Repurchase. As a result, Turcotte, Gregory, and Dutton are incapable of making an independent and disinterested decision to institute and prosecute derivative litigation against Brookfield or the Board.

99. Rintoul is GrafTech’s President and CEO and was hired by Brookfield to run the Company after Brookfield acquired it in 2016. Brookfield then appointed Rintoul to the Board just before the IPO. Rintoul’s income is primarily derived from GrafTech. Rintoul earned \$4,457,510 in total compensation (in cash, equity and other compensation) in 2018 and \$2,361,058 in total compensation in 2019.

Rintoul's compensation is set by the G&C Committee, which is chaired by Turcotte. The G&C Committee has awarded Rintoul compensation that is significantly higher than he had earned at U.S. Steel Corporation, where Rintoul earned \$1,608,300 in total compensation in 2017 as a senior executive. At GrafTech's 2020 annual meeting, Brookfield voted to re-elect Rintoul for another three-year term. GrafTech "management", which Rintoul is responsible for, purported to recommend the Repurchase and Rintoul participated in both the December Special Board and Audit Committee Meetings. Rintoul is incapable of making an independent and disinterested decision to institute and prosecute derivative litigation against Brookfield or the Board.

100. The four purportedly disinterested and independent directors who approved the Block Trade and Repurchase are guilty of non-exculpated conduct, and therefore, face a significant risk of personal liability. Their approval of "a pig in a poke" transactions where Brookfield was given a put option at a price Brookfield fixed implicates these directors' duty of loyalty and involves acts and omissions that were not in good faith and intentional misconduct.

101. Dumas has long known Turcotte, a Brookfield Managing Partner, through their five-year overlapping tenure at Tembec. Dumas was then hand-picked by Brookfield to become a director in connection with the IPO. Dumas's service on

GrafTech's Board has been his only form of employment since 2017. Dumas was paid \$140,000 in each of 2018 and 2019 for being a director. As chairman of the Audit Committee and a director, Dumas faces a substantial risk of liability as a result of the failure of the Audit Committee and Board to determine the terms of the Share Repurchase Agreement in accordance with Delaware law and purported approval of these unfair transactions without obtaining any independent financial or legal advice and without negotiating terms that were favorable to GrafTech and its minority stockholders.

102. Taccone was hand-picked by Brookfield to become a director in connection with the IPO. Since at least 2015, Taccone's firm, First River, has provided consulting services to Brookfield for its acquisitions of various steel and steel-related companies, including for Brookfield's acquisition of GrafTech. First River has also sold its products to GrafTech since 2018. On information and belief, the funds First River receives, the compensation Taccone receives as a director and First River's business relationship with Brookfield are all material to Taccone. As a member of the Audit Committee, Taccone faces a substantial risk of liability as a result of the Audit Committee's purported approval of the Block Trade and unfair Repurchase without obtaining any independent financial or legal advice or without negotiating terms that were favorable to GrafTech and its minority stockholders.

103. Acton was hand-picked by Brookfield to become a director in connection with the IPO. Although Acton was not present at the December Special Board and Audit Committee Meetings, he received the Board and Committee resolutions before the meetings and, thus, had knowledge that the Board and Audit Committee intended to approve an unfair and invalid transaction that would harm GrafTech and its minority stockholders. Acton did not attend the meetings and took no actions to protect GrafTech and its minority stockholders. Acton approved a similarly invalid and unfair repurchase transaction in 2018. Accordingly, Dumas cannot make an independent and disinterested decision to institute and vigorously prosecute this action.

104. The Board sought to add Dunn as a director on August 5, 2020 after Defendants produced documents pursuant to Plaintiffs Section 220 Demand so that they could claim a majority of the Board was independent. As alleged in Count III below, Dunn's sham appointment was a further breach of fiduciary duty and was invalid because it violated the Stockholder Agreement and GrafTech's Amended Certificate. Accordingly, Dunn cannot be considered in determining whether demand is excused.

105. Demand is excused, however, regardless of whether or not Dunn's appointment is valid because Dumas, Taccone and Acton, together with Turcotte,

Dutton, Bloom and Rintoul, are seven of nine directors and, thus, cannot make an independent and disinterested decision to institute and vigorously prosecute this action. Moreover, if the Court declares that Dunn's appointment was invalid, then even if Dumas, Taccone and Acton could make an independent and disinterested decision to institute and vigorously prosecute this action, which they cannot, demand would still be excused because those three individuals along with Clegg are still less than a majority of the eight (8) member Board.

COUNT I

Class Claim Against the Board (excluding Dunn) and Brookfield For Breach of Fiduciary Duties to GrafTech's Minority Stockholders

106. Plaintiff repeats and realleges every allegation above as if set forth here in full herein.

107. Brookfield is GrafTech's controlling stockholder and its interested transactions with GrafTech must be entirely fair to the minority stockholders. Brookfield's right to sell its GrafTech stock must be exercised within the constraints of its duty of loyalty. Because the Block Trade and Repurchase were components of a unified package that involved corporate participation, the entire fairness standard applies to both transactions. The Board owes minority stockholders fiduciary duties and must act in their best interests. Because a majority of the GrafTech Board was not disinterested and independent, the directors have the burden

of demonstrating that the Block Trade and Repurchase were entirely fair to GrafTech and its minority public stockholders.

108. As explained above, the Block Trade and Repurchase were not entirely fair to GrafTech's minority stockholders. They were initiated, timed and structured by Brookfield to favor Brookfield's interests. The terms were not negotiated by the Board or any committee thereof and neither the Board nor any committee thereof determined the price that GrafTech would pay. The Board did not hire any independent financial or legal advisors. Brookfield had no alternative for rapidly liquidating millions of shares of GrafTech stock. The Board did not consider this or use its leverage to negotiate a favorable price and terms for the Repurchase. The Board did not consider what effect the Block Trade or Repurchase would have on GrafTech's stock price, which had suffered historically sharp declines after similar transactions, and on GrafTech's minority stockholders.

109. The \$13.125/share price that GrafTech paid was determined by Brookfield and Brookfield's agent, Morgan Stanley, and was not entirely fair to GrafTech's minority stockholders. The price was greater than the \$11.00 maximum that the Board had agreed to pay for public shares in the Public Repurchase Plan and was higher than GrafTech's stock price on December 3. Brookfield could not have sold 19 million shares of GrafTech's stock at \$13.125 (\$250 million) after just

unloading 11.2 million shares for nearly \$150 million at the same per share price in the Block Trade. Brookfield and the Brookfield dominated Board, however, caused GrafTech to pay that price to the detriment of minority stockholders.

110. The Block Trade and Repurchase did not affect Brookfield like the transaction affected GrafTech's minority stockholders. *First*, the transactions returned capital only to Brookfield. *Second*, the structure limited the diminishment of Brookfield's voting percentage. If Brookfield had sold 30 million shares in the market instead of selling 19 million shares to GrafTech in the selective Repurchase, Brookfield's voting percentage would have declined significantly and minority stockholder's voting percentage would have increased significantly. *Third*, GrafTech overpaid for the \$250 million in stock, which reduced the equity value of the public shares. Since Brookfield received 100% of the overpayment, it did not suffer the same equity value dilution as minority stockholders. *Fourth*, the \$250 million was the equivalent of a special dividend paid to Brookfield but with more favorable treatment. Brookfield received a higher price for its stock than it could have obtained anywhere else, at the expense of GrafTech's cash. That cash could have been used to pay all stockholders a dividend or repurchase more public shares at market prices. *Fifth*, the minority stockholders were not given the same put option Brookfield was given to sell their stock for \$13.125 on December 5. Brookfield was

given the right to sell far more shares at a far higher price than what the public stockholders were offered in the Public Repurchase Plan.

COUNT II

Derivative Claim Against the Board (excluding Dunn) and Brookfield for Breach of Fiduciary Duties to GrafTech

111. Plaintiff repeats and realleges every allegation above as if set forth here in full herein.

112. As explained above, Brookfield, as GrafTech's controlling stockholder and the Board owed fiduciary duties to GrafTech and the Block Trade and Repurchase are subject to the entire fairness test. The Block Trade and Repurchase were not entirely fair to GrafTech. They were initiated, timed and structured by Brookfield to favor Brookfield's interests. The terms were not negotiated by the Board or any committee thereof. Brookfield and its broker/banker, Morgan Stanley, fixed the price of the transactions. Neither the Board nor any committee thereof negotiated the price that GrafTech would pay in the Repurchase. The Block Trade was a private sale by Brookfield to its broker/banker, Morgan Stanley, yet GrafTech paid the expense of the transaction. The Board and Audit Committee did not hire independent financial or legal advisors. Brookfield had no alternative for rapidly liquidating its GrafTech stock. The Board did not consider this or use its leverage

to negotiate a favorable price and terms for the Repurchase. The Board did not consider what effect the Block Trade and Repurchase would have on GrafTech.

113. The \$13.125/share price that GrafTech paid was determined by Brookfield's agent, Morgan Stanley, and was not entirely fair to GrafTech. The price was greater than the \$11.00 maximum that the Board had agreed to pay for public shares in the Public Repurchase Plan and was higher than GrafTech's stock price on December 3. Brookfield could not have sold \$250 million more of GrafTech stock than the shares sold in Block Trade at the same price it purportedly received in the Block Trade. Brookfield and the Board, however, caused GrafTech to pay that price to the detriment of GrafTech.

114. Like GrafTech's selective repurchase of stock from Brookfield, the Repurchase facilitates and extends Brookfield's continued control of GrafTech as it sells and distributes large portions of its GrafTech stock. Since the IPO, Brookfield has pursued a plan of disposing of massive amounts of GrafTech stock, including through secondary offerings, and prior repurchases. It has subsequently transferred another large block through distribution. The primary purpose of the Repurchase was to allow Brookfield to dispose of a large block of GrafTech stock while minimizing the reduction in Brookfield's voting power. Thus, the Repurchase was a defensive measure to preserve and extend Brookfield's control of GrafTech and

protect the incumbency of directors. By assisting Brookfield's continued control, the directors entrench themselves.

COUNT III

Individual and Class Claim Against the Board for Breach of Fiduciary Duty and Pursuant to 8 *Del. C.* §§ 111 and 225 Concerning the Invalid Appointment of Dunn to the Board

115. Plaintiff repeats and realleges every allegation above as if set forth here in full herein.

116. GrafTech's Certificate was amended by Brookfield on April 12, 2018, shortly before the IPO. Article VI, Section 1(a) of the Amended Certificate states:

Except as otherwise provided in this Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board consisting of not fewer than three individuals, nor more than eleven individuals Subject to the rights granted to BCP IV GrafTech Holdings LP and its affiliates and successors (collectively, "Brookfield") pursuant to the Stockholder Rights Agreement to be entered into by and between the Corporation and BCP IV GrafTech Holdings LP (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Stockholder Rights Agreement"), the exact number of directors constituting the Board shall be determined from time to time by resolution adopted by the affirmative vote of a majority of the total number of directors then in office.

Thus, the Certificate sets forth the minimum and maximum number of directors at three (3) and eleven (11). The Certificate further provides that the Board's

determination of “the exact number of directors on the Board” is “subject to” the Stockholder Agreement. Thus, the Stockholder Agreement controls the exact size of the Board. Article VI, Section 3 of the Certificate states that any vacancies on the Board resulting from an increase in the authorized number of directors must be filled subject to the requirements of the Stockholder Agreement.

117. The Stockholder Agreement is dated as of April 23, 2018 and Article I, Section 1.1 sets the exact size of the Board. Article I, Section 1.1(a) states that prior to the closing of the IPO, “the Company shall take all Necessary Action to cause the total number of directors constituting the board of directors (the ‘Board’) to be fixed at seven (7) directors as of the IPO Closing” This requirement was satisfied when Brookfield elected Acton, Dumas and Taccone to the Board in April 2018 immediately following the IPO and they joined Brookfield nominees Turcotte, Dutton, Bloom and President/CEO Rintoul on the Board.

118. The Stockholder Agreement in Article I, Section 1.1(b) provided that by a year from the IPO, the exact size of the Board should become eight (8) directors. It states that “[o]n or before the first anniversary of the IPO Closing, the Company, the Approved Holders and the Board shall take all Necessary Action to (i) cause the total number of directors constituting the Board to be increased by one (1) director to a total of (8) directors” This requirement was satisfied when the Board

appointed Clegg to the Board on March 21, 2019. Accordingly, as of March 21, 2019, the Board had taken the Necessary Action to fix the exact number of directors at eight required by Article I, Section 1.1(b) of the Stockholder Agreement. The Stockholder Agreement does not authorize the Board to increase its size beyond eight members.

119. On August 5, 2020, GrafTech announced that the Board “has increased its size to provide for an additional director” and had appointed Dunn to the Board. GrafTech stated in the press release that the “Board is now comprised of nine directors.” The Stockholder Agreement, however, does not provide for the Board to be increased to more than eight members. The Stockholder Agreement can only be amended or waived by the prior written consent of GrafTech and Brookfield and no amendment or waiver to the provisions of the Stockholder Agreement to set the exact number of directors at eight (8) members was made. The Certificate was not amended either so it continues to provide that the Stockholder Agreement will set the exact number of directors. Without an amendment to the Certificate by GrafTech’s stockholders or a written amendment or waiver of the Stockholder Agreement by GrafTech and Brookfield, the Board must consist of eight (8) members. Dunn’s appointment to the Board as its purported ninth member is invalid because it is contrary to the Stockholder Agreement and the Certificate.

120. Article I, Section 1.1(c) of the Stockholder Agreement provides for Brookfield to designate 37.5% of the Board whenever it owns or controls at least 25% of GrafTech's outstanding Common Stock. At eight total directors, 37.5% would be three directors and Brookfield has designated in Turcotte, Dutton and Bloom. With a nine-member Board, 37.5% would be 3.375 directors so Brookfield would have to designate four directors in order to comply with satisfy Section 1.1(c).

121. GrafTech's August 5, 2020 press release states that the Board appointed Dunn a director. It further stated that with Dunn's appointment, five of GrafTech's nine directors are purportedly independent. Thus, Dunn was not designated for nomination by Brookfield pursuant to Article I, Section 1.1(c) of the Stockholder Agreement. Brookfield and GrafTech did not make a prior written amendment of the Stockholder Agreement to provide for increasing the Board to nine. Nor did Brookfield sign any waiver under Article I, Section 1.1(c) waiving its right to designate 37.5% of the Board. Thus, even if the Board had properly expanded to nine directors, which it did not, Dunn's purported appointment was contrary to Article I, Section 1.1(c) of the Stockholder Agreement and is therefore invalid.

122. Under 8 *Del. C.* § 111, the Delaware Court of Chancery has jurisdiction to interpret, apply, enforce or determine the validity of provisions of a corporation's certificate of incorporation and the Stockholder Agreement. Delaware law also

provides that a stockholder may contest a director's title to office. 8 *Del. C.* § 225. The stockholder can apply to the Delaware Court of Chancery to hear and determine the appointment of any director and the right of such person to hold or continue to hold such office.

123. Here, Dunn's purported appointment to the Board on August 5, 2020 did not comply with the Stockholder Agreement and Certificate and is therefore invalid. Accordingly, Plaintiff contests that Dunn holds a valid title to office as a director of GrafTech. Plaintiff seeks a hearing for the Court to interpret the Certificate and Stockholder Agreement and a declaration that Dunn's appointment was invalid and that Dunn is not a duly appointed member of the Board.

124. Dunn's purported appointment to the Board was also a self-interested and conflicted decision by the existing directors to avoid potential liability and breached their fiduciary duties. The August 5, 2020 press release did not give a reason for Dunn's purported appointment. The appointment, however, came after Plaintiff made his demand and Defendants produced books and records that established a significant likelihood that they breached their fiduciary duties in the Block Trade and Repurchase. The August 5 press release stated that "the Board is now comprised of nine directors, of which five are independent with the addition of Ms. Dunn." Thus, the Board was attempting to protect themselves against liability

by creating an additional directorship and filling it with Dunn so that they could claim a majority of the Board is disinterested and independent and could consider a demand by Plaintiff. The appointment of Dunn was an invalid sham. By attempting to manipulate the corporate machinery to insulate themselves from liability, the Board further breached its fiduciary duties to GrafTech and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. Certifying this action as a class action;
- B. Awarding Plaintiff, the Class and GrafTech monetary, rescissory and equitable relief against Brookfield for breach of its obligation of entire fairness and the expropriation of value that Plaintiff and the Class sustained as a result of such Defendants' breaches of their fiduciary duties;
- C. Ordering rescissory relief requiring Brookfield to return the \$250 million it received from GrafTech in exchange for 19.1 million shares of GrafTech stock;
- D. Awarding Plaintiff and the Class monetary and equitable relief against the individual Defendants for their non-exculpable breaches of fiduciary duties owed to the minority stockholders;

E. Awarding GrafTech the amount of damages it sustained as a result of Defendants' breaches of fiduciary duties to GrafTech;

F. Ordering Brookfield to disgorge to GrafTech improper benefits it received as a result of the Repurchase;

G. Granting appropriate equitable relief to remedy Defendants' breaches of fiduciary duties, including rescinding the Repurchase, cancelling shares held by Brookfield, and preventing voting power dilution of the minority stockholders;

H. Declaring that the Board's appointment of Dunn as a director was invalid;

I. Declaring that Dunn does not hold a valid office as a director of GrafTech;

J. Awarding to Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

K. Granting such other and further relief as the Court deems just and proper.

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