

## *In re Fast Acquisition Corp. Stockholders Litigation*

**COURT:** Delaware Court of Chancery  
**CASE NUMBER:** 2022-0702-PAF  
**CLASS PERIOD:** 08/25/2022 - 08/25/2022  
**CASE LEADERS:** Gregory V. Varallo  
**CASE TEAM:** Mae Oberste

On August 9, 2022, BLB&G filed a stockholder complaint in the Delaware Court of Chancery on behalf of investment company Special Opportunities Fund, Inc. and similarly situated stockholders of FAST Acquisition Corp. ("FAST"), alleging breaches of fiduciary duty against the board of directors (the "Board") and controller of FAST. This novel stockholder class action challenged the Board's failure to distribute a merger termination fee pro rata to all of FAST's stockholders, effectively keeping the termination fee to unfairly benefit FAST's controller and directors.

FAST was a special purpose acquisition corporation chartered in Delaware with the sole business purpose of finding a suitable nonpublic company to complete a merger with, within two years from its IPO. At its IPO, FAST sold 20,000,000 units, with each unit consisting of one share of Class A common stock and one-half of one redeemable warrant, for \$10 per unit. The primary purpose of the money raised in the IPO would be to complete a merger. Before the IPO, certain defendants purchased 5 million shares of Class B common stock for a capital contribution of \$25,000.

FAST entered into a merger agreement with Fertitta Entertainment, Inc. ("Fertitta"), but that deal fell through when Fertitta sent FAST a termination notice. FAST and Fertitta negotiated a merger termination agreement whereby Fertitta paid a termination fee to FAST totaling \$32 million. Because FAST did not consummate any merger within the two-year time period required by its charter, on August 26, 2022, FAST redeemed all of the outstanding shares of Class A common stock. In connection with the redemption, the Class A common stockholders received approximately \$10.0275 per share. Despite FAST's press release indicating that the \$32 million would benefit all of FAST's stockholders, none of it was included in the distribution to Class A stockholders.

Instead, FAST retained the \$32 million. Plaintiffs allege that the directors acted with the intent to distribute this amount solely to themselves. The complaint also alleges that, after FAST's directors determined that the company would liquidate and distribute its assets, the funds remaining from the termination fee (after payment of taxes and expenses) should have been distributed to Class A common stockholders. Had this action not been filed, the remainder of the termination fee would have been distributed only to holders of Class B shares, including FAST's directors.

After pursuing discovery and engaging in arm's-length negotiations, Plaintiffs and Defendants agreed to settle the action for \$12.5 million, more than two thirds of the theoretical maximum recovery at trial. On January 22, 2024, the Court approved the terms of the settlement. The Court's Order and Final Judgment can be found under the **Case Documents** section of this page. Without this litigation and settlement, FAST's Class A common stockholders would have received no part of the termination fee.

The settlement administration was completed in March 2024. On March 29, 2024, the Motion for Class Distribution Order was filed. On April 2, 2024, the Court approved the Class Distribution Order. The first distribution of the net

settlement fund occurred in June 2024. Subsequent distributions will occur on a rolling basis, provided that net settlement funds are available.

## Case Documents

- January 22, 2024 - Order and Final Judgment
- November 22, 2023 – Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear
- October 4, 2023 - Stipulation and Agreement of Settlement, Compromise, and Release
- December 27, 2022 - Amended Verified Class Action Complaint for Declaratory, Injunctive, and Monetary Relief