

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE ARUBA NETWORKS, INC. : CONSOLIDATED
STOCKHOLDER LITIGATION : C.A. No. 10765-VCL

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Chancery Courtroom No. 12C
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Friday, October 9, 2015
10:00 a.m.

- - -

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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SETTLEMENT HEARING and RULINGS OF THE COURT

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
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1 APPEARANCES:

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Andrews & Springer LLC

3 -and-

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Rigrodsky & Long, P.A.

-and-

5 DONALD J. ENRIGHT, ESQ.
of the District of Columbia Bar

6 Levi & Korsinsky, LLP

-and-

7 GREGORY MARK NESPOLE, ESQ.

8 KEVIN COOPER, ESQ.

of the New York Bar

9 Wolf Haldenstein Adler Freeman & Herz, LLP

for Plaintiffs

10 BRADLEY D. SORRELS, ESQ.

Wilson Sonsini Goodrich & Rosati, PC

11 for Defendants Aruba Networks, Inc., Dominic

P. Orr, Keerti Melkote, Bernard Guidon,

12 Emmanuel Hernandez, Michael R. Kourey, Willem

P. Roelandts, Juergen Rottler, and Daniel

13 Warmenhoven

14 ANDREW S. DUPRE, ESQ.

McCarter & English, LLP

15 -and-

16 MARC J. SONNENFELD, ESQ.

LAURA McNALLY, ESQ.

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17 Morgan, Lewis & Bockius LLP

18 for Defendants Hewlett-Packard Company and

Aspen Acquisition Sub, Inc.

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1 THE COURT: Welcome, everyone.

2 ALL COUNSEL: Good morning, Your
3 Honor.

4 MR. ANDREWS: Good morning, Your
5 Honor. Peter Andrews, Andrews & Springer. We're here
6 today for the final approval of settlement in the
7 Aruba Networks consolidated litigation.

8 I'll make some introductions. To my
9 left, with your permission, Mr. Nespole will be
10 arguing from Wolf Haldenstein.

11 MR. NESPOLE: Good morning, Your
12 Honor.

13 MR. ANDREWS: To his left is Mr. Don
14 Enright from Levi & Korsinsky.

15 THE COURT: Good to see you.

16 MR. ENRIGHT: Good morning, Your
17 Honor.

18 MR. ANDREWS: Mr. Kevin Cooper from
19 Wolf Haldenstein, and my esteemed colleague, Brian
20 Long from Rigrodsky & Long.

21 MR. LONG: Good morning, Your Honor.

22 THE COURT: Welcome to all of you.
23 I'm happy to get under way unless --

24 MR. SORRELS: Your Honor, good

1 morning.

2 THE COURT: Good morning.

3 MR. SORRELS: Brad Sorrels from Wilson
4 Sonsini Goodrich & Rosati on behalf of Aruba Networks
5 and the director defendants.

6 MR. DUPRE: Hello, Your Honor. Andrew
7 Dupre, McCarter & English for Hewlett Packard. And I
8 have with me, from Morgan Lewis & Bockius, Marc
9 Sonnenfeld and Laura McNally.

10 THE COURT: Good morning,
11 Mr. Sonnenfeld. How have you been?

12 MR. SONNENFELD: Well, Your Honor.
13 Good morning.

14 THE COURT: Things still chugging
15 along up there?

16 MR. SONNENFELD: Very well.

17 THE COURT: Good.

18 MR. NESPOLE: Your Honor, may I
19 approach?

20 THE COURT: You may.

21 MR. NESPOLE: Good morning, Your
22 Honor. This is the time Your Honor set aside to
23 decide whether to grant plaintiffs' request for final
24 approval of the proposed settlement and our request

1 for fees in the Aruba Networks litigation.

2 May it please Your Honor, I'd like to
3 address a few housekeeping matters before we get to
4 the substance of the discussion, including what Your
5 Honor put in the scheduling order about the Aeroflex
6 decision, which we're prepared to discuss at length.
7 First, Your Honor, you entered a scheduling order on
8 July 17. Notice was in fact issued. I think over
9 60,000 notices went out. We have the affidavit that
10 notice was done properly. We have no objectors,
11 albeit one issue where one firm did contact us and
12 request information, the Bernstein Litowitz firm. We
13 responded. We haven't heard from them again.

14 THE COURT: You call that the Grant &
15 Eisenhofer firm in your brief.

16 MR. NESPOLE: Both. Both firms
17 working together, apparently, in an appraisal action
18 as well. And we did provide them with our depositions, our
19 docs, other documents. Haven't heard from them again,
20 and I don't think they're here and did not lodge a
21 formal objection.

22 With respect to class certification, I
23 think, Your Honor, it's a prototypical situation.
24 It's appropriate under Delaware Chancery rules. So

1 unless Your Honor wants to sort of discuss the issues
2 on class, I'd like to get to the issues with respect
3 to the case and take on, Your Honor, issues with
4 respect to Aeroflex and the release.

5 Your Honor, this case, to me, was
6 rather interesting, because it had a personal piece to
7 it. When I learned that HP was buying Aruba, I had
8 known of Aruba for quite a long time based upon my
9 working in public school systems as a volunteer.
10 Aruba was part of a process and a program to build
11 what they call the E-Rate system, which was going to
12 bring internet wireless capacity into public schools;
13 in particular, less-advantaged schools. And people
14 were waiting for it, and so was Aruba. They were
15 waiting for government approval. They also had this
16 very interesting technology, the wand technology,
17 which was ostensibly to turn the internet from a
18 two-lane highway to a four-lane highway. My sons, I
19 think, can explain it better.

20 But the point is, through one point
21 you can operate all sorts of devices. And the folks
22 at Aruba really were on the cutting edge of developing
23 that technology, as well as being, really, one of the
24 choice entities to go to to put in the wireless

1 capacity in malls, hotels, universities, both in the
2 United States and China.

3 So I had serious concerns, I did, from
4 the outset, with respect to pricing. Because I
5 thought this company had a tremendous future. We
6 filed an action on behalf of our investor, our client.
7 We did, in fact, move to expedite, premised upon what
8 I perceived as initial pricing concerns.

9 THE COURT: So just pricing initially?

10 MR. NESPOLE: Initially just pricing,
11 because I hadn't yet seen the definitive -- I hadn't
12 seen the proxy. Where the process concerns came to
13 light --

14 THE COURT: So it was a 34 percent
15 premium. What did you think the pricing ought to be?

16 MR. NESPOLE: I thought, actually,
17 based upon what I had read about, that the upside on
18 the E-Rate program, and what I had read from a number
19 of analysts, is what they called the Osborne effect.
20 Namely, that folks were waiting to make orders,
21 holding back their orders from Aruba until they saw if
22 Aruba got the deal from the government; that there was
23 a lot of pressure in the pipeline; that going forward
24 in the next two to three years, Aruba would be worth a

1 lot more money. I'm not a banker, I'm not an analyst,
2 but that was my reading of both the analyst reports,
3 the company's press releases about their future.

4 THE COURT: So why would pricing
5 issues have given rise to a litigable claim?

6 MR. NESPOLE: At that juncture, I
7 thought the price wasn't high enough.

8 THE COURT: Why would that give rise
9 to a litigable claim?

10 MR. NESPOLE: Well, it could if you
11 don't think that, for example, they went out and they
12 looked for anyone else other than HP.

13 THE COURT: Ah, but that's a different
14 issue. That's a process issue; right?

15 MR. NESPOLE: And that --

16 THE COURT: And you said at the time
17 you filed you didn't know anything about the process.

18 MR. NESPOLE: Not very much. Not
19 until the proxy came out. When the proxy came out, we
20 had even greater concerns.

21 THE COURT: So focusing just on the
22 pricing issue, and not on anything that you learned
23 later, at the time you filed, why would a pricing
24 issue give rise to a claim?

1 MR. NESPOLE: Pricing issue give rise
2 to a claim? Because frankly, I thought it was
3 probably a breach of their duty to take the price that
4 they were offered, given what I thought and what the
5 analysts seemed to say the company was worth over the
6 next several years.

7 THE COURT: So analyze that for me.
8 Which duty was breached?

9 MR. NESPOLE: I think the breach of
10 the duty of care.

11 THE COURT: You think it was a care
12 issue?

13 MR. NESPOLE: Initially. Which I
14 think might have been not exculpated if we got behind
15 the scenes and saw they thought about really only
16 doing a deal with HP, which is what we thought early
17 on. They were focused on HP.

18 May I? Dealing -- so we continued the
19 process. We got expedited discovery. We got
20 documents and began to take depositions. I took
21 Dominic Orr's deposition, the CEO of the company. And
22 it became apparent to me quite quickly that they had a
23 lot of problems. They had headwinds. They had a very
24 big problem. It was Cisco. And that this company,

1 while it appeared to have, going forward, the best
2 mousetrap for wireless capacity, they lacked a
3 switching partner. And they needed to find a
4 switching partner to grow.

5 And based upon my analysis,
6 discussions with our expert, reading more about the
7 company, I was fairly convinced that they probably
8 were capped, going out over the next few years, unless
9 they found some sort of partner to provide it with the
10 switching they needed to bring the wireless capacity
11 that they were developing. Not yet fully developed.

12 THE COURT: So you described, on page
13 14 of your brief, the discovery that you conducted as
14 involving extensive document review and deposition
15 taking. Does the modifier "extensive" apply to both
16 document review and deposition taking?

17 MR. NESPOLE: Took two depositions
18 before -- before the signing of an MOU.

19 THE COURT: So you see where I'm going
20 with this. That's what you call "extensive"?

21 MR. NESPOLE: I think 12,000
22 documents, on an expedited basis, taking two
23 depositions within a week of getting the documents,
24 one of them being someone like George Boutros of

1 Qatalyst -- who is a very, very smart man. It was a
2 tough deposition. I think that's extensive work.

3 THE COURT: All right. That's --
4 look, it's good to know what you think is extensive.
5 That's what I'm asking.

6 MR. NESPOLE: I agree with you.
7 There's --

8 THE COURT: No, look --

9 MR. NESPOLE: There's all sorts of
10 degrees of extensive. But I think during the
11 truncated period of that, where I was running around
12 the country taking the deps, writing the briefs on the
13 plane, dealing with guys like Boutros at Qatalyst --
14 who is not an easy guy to depose. In fact, we
15 videotaped it, because he and I have had some very
16 interesting depositions.

17 THE COURT: I read it. I'm glad you
18 videotaped it.

19 MR. NESPOLE: Okay.

20 THE COURT: So what I'm hearing you
21 say is that the 12,000 documents and --

22 MR. NESPOLE: Pages. Pages, Your
23 Honor. Not documents.

24 THE COURT: 12,000 pages. Okay.

1 Yeah.

2 MR. NESPOLE: The record should be
3 clear. It wasn't --

4 THE COURT: 12,000 pages and two
5 depositions is supportive of your characterization of
6 that as "extensive"?

7 MR. NESPOLE: Coupled with the two
8 thereafter depositions of an outside director and
9 Mr. Francis of Evercore, who was critical --

10 THE COURT: Well, page 14 was talking
11 about your pre.

12 MR. NESPOLE: I then stand by it. I
13 think that the two depositions taken in that truncated
14 period, the document review, the analysis of the
15 company's documents -- because the 12,000, I think, is
16 not inclusive, for example, of thumbing through all
17 their Q's and K's.

18 Your Honor, I --

19 THE COURT: Was it all internal
20 documents that they produced?

21 MR. NESPOLE: They probably, as always
22 is the case, produced the merger agreement, which one
23 can get off the SEC. So in terms of netting out of
24 the 12 what I could have probably found in the public

1 domain, I can't tell you. But for the most part, no.
2 Of course it was bankers' books, it was e-mails, it
3 was correspondence, it was presentations to the board.

4 They -- they know that we're capable
5 of going on the SEC website and finding those
6 materials, and they're not going to necessarily Bates
7 stamp them and send them to us. But they have -- I
8 mean, I can't remember exactly if they gave me the
9 MOU -- excuse me, the merger agreement. They probably
10 did. And so 150 pages, of the 12.

11 But if I may, when -- sorry.

12 THE COURT: I'd actually like to know.
13 Defendants --

14 MR. SORRELS: Yes.

15 THE COURT: Was it all internal
16 documents?

17 MR. SORRELS: So I guess if the
18 question is was it limited to documents that were back
19 and forths with the bidder, it's not. It --

20 THE COURT: No. Mr. Nespole -- we
21 started this dialogue -- I'm sorry. I always
22 pronounce the "e," and apparently I shouldn't.
23 Mr. Nespole told me that, basically, the 12,000 pages
24 of documents should be viewed favorably as supporting

1 a characterization of "extensive" because it was
2 really all internal documents. And I'm curious about
3 that.

4 I know that there is the customary
5 production, but I also know that it's nice to be able
6 to cite big numbers. And so one of the things that
7 people do is they produce a lot of documents,
8 including stuff that can be described as chaff. And
9 so what I am trying to find out here is did you
10 guys -- and if you did, that's great. If you did,
11 it's consistent with Mr. Nespole's representation. If
12 you did, did you only produce internal documents that
13 couldn't otherwise be located, like the proxy
14 statement or the merger agreement or things like that?

15 MR. SORRELS: Yeah. I can confirm
16 there was no chaff. It's possible, as Mr. Nespole
17 mentioned, that we produced the merger agreement,
18 but --

19 THE COURT: I'm calling it chaff. Did
20 you produce --

21 MR. SORRELS: We produced all internal
22 documents.

23 THE COURT: It was all internal?

24 MR. SORRELS: That's correct.

1 THE COURT: All right. Great.

2 MR. NESPOLE: May I?

3 THE COURT: Yeah. You don't have to
4 ask me every time.

5 MR. NESPOLE: I'm not sure if you want
6 me to continue or there's another question.

7 So I did take Mr. Orr's deposition.
8 During the course of it, I learned quite quickly they
9 had a problem. They had a probably which actually
10 augered against my thought the price ultimately should
11 have been higher. The problem was that over the next
12 couple years, they were going to tap themselves out.
13 They did not have a switching partner. Hence, the
14 reason why they were seeking someone else.

15 I remember asking in the deposition,
16 "Who is your biggest competitor," and Mr. Orr said
17 "Cisco, Cisco, Cisco." I think I even asked, sort of
18 with a smile on my face, "Did you ever think about
19 merging with Cisco?" And the thought of it was
20 abhorrent to him, so they sought a merger partner --
21 indeed, HP -- because they needed an HP to grow.

22 That gave me some pause. Gave me some
23 pause on the pricing issue. But during the course of
24 this deposition, and then when we received --

1 obviously we received the proxy before -- an
2 interesting disclosure issue, an interesting conflict
3 issue arose. For some reason, Your Honor, in the
4 middle of the process, though Qatalyst was engaged,
5 Mr. Stu Francis of Evercore -- used to be at
6 Barclays -- was retained to be the face, to be the
7 front person, to be the negotiator.

8 And the proxy was pretty silent with
9 respect to why that suddenly happened. There was just
10 a note in the proxy that there was a statement during
11 a board meeting whereby the decision was made to
12 retain Evercore, Mr. Francis. And that became
13 something I thought was interesting. Did it have an
14 effect on price? And we had some initial concerns
15 that the people at HP, premised upon the deposition of
16 Mr. Orr, had said, "We're not negotiating with
17 Qatalyst," for whatever reason.

18 THE COURT: That's what they did say,
19 right, based on the deposition of Mr. Orr?

20 MR. NESPOLE: Pretty much, yeah.
21 Pretty much. And the reasons we found out was there
22 was bad blood. They went back to probably
23 Ms. Whitman's tenure at eBay.

24 THE COURT: That's what you were told

1 in the deposition. So, I mean, why are you qualifying
2 this as suspicions and probably? That's actually what
3 the answers were in the --

4 MR. NESPOLE: Well, because I --
5 that's what they told me. And there was also, I
6 guess, some static and some stress concerning the
7 Autonomy transaction, and we explored that. And the
8 concern was that, premised upon that issue, was HP
9 exerting unnecessary and undue pressure on Aruba to
10 get a better price? And I think that was a reasonable
11 concern.

12 But when you look closely at the proxy
13 and do the math, after they retained Francis -- and we
14 did ask those questions, "Did you vet Francis with
15 Whitman and her team?" And Aruba was very -- very
16 specific, as was Qatalyst, "No. We informed them we
17 were retaining this person, this bank, and that was
18 it." Mr. Francis came in, and in the nine or ten days
19 he was there, I believe that the ultimate price
20 achieved was, I think, \$108 million more that was on
21 the table than before Mr. Francis came.

22 We also continued to explore what
23 happened. Qatalyst remained behind the scenes. It
24 took the company around to different potential

1 partners. It ran analyses on possible stand-alones,
2 which was not a viable option, given what we just
3 discussed. They needed a partner. We explored
4 whether or not Mr. Francis's prior relationship with
5 Barclays, who was the banker to HP on this deal, was
6 potentially a conflict. My deposition of Qatalyst and
7 Mr. Orr, and thus confirmed later with Mr. Francis,
8 convinced me it wasn't, and Mr. Warmenhoven, who was
9 an outside director, who really was very much the
10 business person who was working with Mr. Orr, who
11 really is a brilliant engineer.

12 And I was fairly convinced. I was
13 convinced that that had no effect on price. And
14 frankly, at the end of the day, Your Honor, it was
15 very interesting, should have been disclosed, but was
16 probably more deal-book chatter than it was
17 necessarily a governance issue. But it should have
18 been disclosed and it was disclosed.

19 And indeed, what we achieved -- our
20 disclosures are, I think, three-pronged. One of them
21 is greater disclosure with respect to why the folks at
22 Aruba went out and retained Mr. Francis and Evercore.
23 Secondly, disclosure with respect to Evercore's
24 prior -- excuse me, Barclays' prior relationship with

1 Mr. Francis and HP.

2 But then the other thing that was very
3 interesting that we unearthed during discovery, and
4 particularly Mr. Orr's deposition and in the docs,
5 which was not in the proxy at all -- the proxy led one
6 to believe that they only began negotiating Mr. Orr's
7 and his inner circle's retention with HP sort of right
8 at the end of the process, when they asked in February
9 of '15 to amend a confi so that HP could speak to
10 Mr. Orr and his guys and gals. And then it says in
11 the proxy that after the deal was announced, they had
12 more formalized discussions.

13 Well, we found that that was -- it was
14 inaccurate; that from day one, back in '14, when HP
15 and Ms. Whitman and Mr. Neri, I believe, her
16 assistant, began speaking to Orr and his group, it was
17 apparent that HP wanted Orr and his group, because
18 they needed their expertise. Now wait. Why is that
19 actually important in this, as opposed to any other
20 case where, "Okay. Great, great. You got a
21 disclosure that they spoke to this guy earlier on"?

22 Well, the real reason why HP wanted
23 this company -- other than the tech, which is still in
24 development -- is the people. Because HP could buy

1 this business, but they couldn't develop this
2 business. They couldn't develop this line of
3 technology. They needed Orr and his people from day
4 one.

5 And I thought it was important the
6 proxy actually disclose that that was a consideration
7 from day one, that HP was looking to buy the company
8 and retain these people to develop the company's tech.
9 So I thought that was a little bit more substantial,
10 Your Honor, than, "Oh, we just got more color with
11 respect to when discussions happened."

12 I think here we got more color as to
13 when they had begun and why it was significant that
14 they began then. Because from day one, everyone at HP
15 knew the only way to get this deal done was to find a
16 way to do it to keep Orr and his people. Orr had sold
17 other companies, had retired before, had gone into
18 private equity; I think actually took a year or two
19 off and taught. So there was some concern that he was
20 going to sell and leave. And that, I think, was not
21 viable for HP. I mean, they need him to develop.
22 They're not in this business per se. They needed him.
23 So I thought that was significant.

24 So we got more color, I think

1 significant color, on that issue. I think we vetted
2 and had disclosed more detail with respect to what
3 initially looked really suspicious -- i.e., Qatalyst
4 and Ms. Whitman -- but I think, at the end of the day,
5 again, it was just more it wasn't that -- it was
6 interesting, but I don't think it really changed the
7 landscape. And as I said before, I think Francis came
8 in and helped get more money for Aruba stockholders.
9 That sort of augers against the theory that Francis
10 wasn't -- and Evercore wasn't really working hard for
11 the people at Aruba.

12 We also got additional disclosures,
13 Your Honor, on some of the comparables. It's -- there
14 was the medians and the means were disclosed, but we
15 got more granular detail, as one can see in the 8-K,
16 about the comps that were used, and there's more
17 detail. For example, some comps were not -- their
18 details weren't necessarily implied -- excuse me,
19 implied into the analysis, and we got that disclosed.
20 I think that's okay. I'm not going to tell you that's
21 an A plus disclosure, Your Honor. I'm just not --
22 I've read the case law. It's not. But I think it was
23 important.

24 But I think the other two were

1 significant, given the case here. One, we recognized
2 that we had, I think, some issues proving that the
3 price was ultimately unfair. I think the price fell
4 within the realm of fairness. I think Mr. Boutros was
5 very clear with respect to that. He explained away,
6 quite frankly, one of the issues that several arbs
7 have called me about; namely, why Qatalyst uses such a
8 high dilution factor in its DCF -- and they do.
9 They're known throughout the industry as doing that --
10 I think a 29 percent dilution factor, which obviously
11 lowers the overall cash flow figure. When you bring
12 it out and you bring it back, you have this lower
13 range. He explained it very well why they do it.

14 THE COURT: Actually, he spent most of
15 the time telling you that you didn't understand it.

16 MR. NESPOLE: But that's the fourth
17 time in a deposition he's told me that. And -- and --

18 THE COURT: I mean, it wasn't like he
19 sat down and explained it. He didn't parse through a
20 bunch of issues. I mean, you just said he explained
21 it very well.

22 MR. NESPOLE: I understood it when he
23 was done. And I think that it was -- I understood it,
24 why he did it. And I think when he says that in their

1 professional judgment at Qatalyst and Quattrone and
2 the guys who invented it, it's tough to say that I, or
3 anyone else necessarily, can look at Frank Quattrone
4 and the guys at Qatalyst and say, "All right. In your
5 professional judgment, you shouldn't do it that way."
6 It's a high figure. I've seen it --

7 THE COURT: So you think they invented
8 the idea of handling dilution that way?

9 MR. NESPOLE: No. I don't think they
10 invented it.

11 THE COURT: You said they invented it.

12 MR. NESPOLE: They said they invented
13 it?

14 THE COURT: No. You said.

15 MR. NESPOLE: They invented it using a
16 higher figure than I've seen other people use. And
17 their view is in the tech business, the tech industry,
18 where they are focused out in San Francisco, for the
19 most part, that remuneration is mostly in the form of
20 stock. And these types of companies require that type
21 of dilution figure. It's not a -- you know, it's not
22 a -- it's not General Electric. It's not even
23 Microsoft anymore, which doesn't remunerate people
24 like that so much.

1 His view is these tech companies do it
2 that way. And he did it in this case, and he did it
3 in the case earlier in the summer where I deposed him.
4 I probably shouldn't get -- because it's not in front
5 of Your Honor. I don't think it's in front of Your
6 Honor. And they used the same percentage in that case
7 with another tech company on the West Coast.

8 THE COURT: Who are your financial
9 experts?

10 MR. NESPOLE: We used -- was it Nat
11 Morris or Travis Keath?

12 MR. ENRIGHT: I believe it's Travis
13 Keath.

14 MR. NESPOLE: Travis Keath from Value,
15 Inc., in Texas. He's very smart. He does a lot of
16 these cases.

17 THE COURT: The stipulation refers to
18 "experts" in plural.

19 MR. NESPOLE: Yeah. I -- we also
20 spoke to other people. We spoke to an accountant, who
21 I spoke to to help me go through some of the numbers,
22 which wasn't -- he wasn't remunerated. We have an
23 in-house financial analyst from Wharton at Wolf
24 Haldenstein who helped me break down these books. So

1 yeah, I would deem, for example, that gentleman as an
2 expert on, for example, reading Q's and K's.

3 But Mr. Keath is the person who really
4 broke down the books.

5 THE COURT: But if I were reading the
6 paragraph in the stipulation that says that you
7 engaged and consulted extensively, "The Plaintiffs
8 engaged and consulted extensively with their
9 respective financial experts," plural, the financial
10 expert that you engaged was singular. This guy with
11 the very fine name Travis.

12 MR. NESPOLE: Well, it's poor
13 wordsmanship, and I apologize.

14 THE COURT: Well, no. It's a
15 representation about what you did, and it has to be
16 accurate. Because it's not poor wordsmanship to imply
17 that you engaged and consulted extensively with
18 multiple financial experts if, in fact, you engaged
19 one and, you know, happened to have these other guys
20 around.

21 MR. NESPOLE: I would say we retained
22 and remunerated one and we consulted with others. And
23 I suppose you're right, that's not engagement. I
24 apologize to the Court.

1 THE COURT: Well, look, I just want to
2 understand what happened. And that's one thing that
3 jumped out at me, and so I'm glad that's your answer
4 on it.

5 MR. NESPOLE: Not to fence with Your
6 Honor but, you know, Keath does have staff. He's not
7 the only person we worked with there on the matter.
8 There are also accountants and the like. But I
9 understand your point.

10 THE COURT: Keath?

11 MR. NESPOLE: Travis Keath, the Value,
12 Inc. fellow. But I understand your point, and it's --
13 it's well -- it's understood.

14 If I may talk a little bit about why I
15 think we're very different here than Aeroflex, if this
16 is the appropriate time. The release that we
17 negotiated is -- is very carefully worded. It is only
18 on behalf of stockholders for a very limited period of
19 time. It is not going to eliminate any securities
20 fraud claims --

21 THE COURT: So you didn't compare the
22 language of the stockholder reference in your release
23 to the language in other releases, including the
24 Aeroflex release. Is it different?

1 MR. NESPOLE: Is it different? I
2 can't tell you offhand, standing right here, word for
3 word if it's different.

4 THE COURT: So how do you know that by
5 saying "stockholders" in this case, you actually
6 achieved something different and more limited than
7 what's in virtually every release we see?

8 MR. NESPOLE: Because we actually, I
9 think, closely vetted whether or not there were
10 "unknown claims," even though I --

11 THE COURT: That's a different issue.
12 Right now we're talking about your first argument
13 which was, "Hey, we're doing a good job, Your Honor,
14 because we set out and we limited the release only to
15 capacity of stockholders." And so what I asked you
16 is, focusing on that issue, how is that different from
17 other releases out there? Not if we shift to another
18 issue, as to unknown claims, but focusing on that
19 issue.

20 MR. NESPOLE: I suppose the language,
21 then, is probably quite close to other releases that
22 are before Your Honor. But I think the background --
23 I think the work to get to that language, what we did
24 to make sure that language was appropriate, I think,

1 sets it apart.

2 THE COURT: Elaborate on that for me.

3 MR. NESPOLE: Yeah, sure. With
4 respect to what might constitute -- we're very careful
5 to, again, make sure that the language, whether or not
6 it comports with this release or that release, dealt
7 only with this case. But --

8 THE COURT: But we're shifting now to
9 the scope.

10 MR. NESPOLE: I --

11 THE COURT: But as to stockholders, as
12 to the focus on stockholders, what you basically gave
13 me on stockholders is, "Hey, Your Honor tried to
14 explain in Activision the limitation of the
15 stockholder concept."

16 MR. NESPOLE: Uh-huh.

17 THE COURT: And so I'm focusing right
18 now on the stockholder chunk of the release. I'm not
19 focusing on the unknown claim chunk of the release.
20 I'm not focusing on the laundry list of items,
21 romanettes (i) through whatever, that define the scope
22 of the release as it applies to this case. I'm
23 focusing on what your first argument was to me, which
24 was, "Hey, Your Honor, we did a great job here,

1 because we took to heart the need to limit these
2 things by focusing on what it meant to sue in the
3 capacity of stockholders."

4 MR. NESPOLE: Right.

5 THE COURT: And that's what I want to
6 know. I mean, did you limit anything there, or is
7 this the same type of language I see in all these?

8 MR. NESPOLE: I think it's the same
9 type of language, but --

10 THE COURT: So why did you tell me you
11 limited it?

12 MR. NESPOLE: Because we limited it --
13 I can't speak to the other -- in this, it's limited to
14 stockholders for a very specific period of time with
15 respect to the merger claims.

16 THE COURT: So now we're going to
17 shift to the other two. So let's shift --

18 MR. NESPOLE: I'm sorry I'm conflating
19 them. I am.

20 THE COURT: Well, there are three
21 issues in your brief. When you put your brief in
22 front of me, your brief makes three separate
23 arguments. And your first argument, which is one of
24 the most -- you know, certainly it gets equal weight,

1 is, "Hey, Your Honor, it's all good here, because we
2 read Your Honor's decision in Activision and that
3 alleviates any concern we might have had about broader
4 releases. Because by definition, a release that's
5 limited to stockholders can't release these securities
6 claims, can't release these other things, so it's all
7 great."

8 So that's what I'm trying to push on.
9 I'm trying to push on is this, like, undiscovered
10 wisdom, that we have been worried about this aspect of
11 this release for a long time and, really, because of a
12 trial court decision -- because remember, that's a
13 trial court decision. It's not Delaware Supreme
14 Court. That's one member of this Court. Because one
15 member of this Court tries to reason through, in
16 Activision, what it means for Delaware stockholder
17 claims to pass from one to the other, this is now sort
18 of the insight that solves the problem.

19 MR. NESPOLE: Your Honor, Aeroflex,
20 Aeroflex -- we're saying Activision, but we're --

21 THE COURT: Yeah. Because you cited
22 Activision.

23 MR. NESPOLE: Oh, I see. I see.

24 THE COURT: Activision is the case

1 that you relied on.

2 MR. NESPOLE: Uh-huh.

3 THE COURT: To say, "Your Honor,
4 'stockholders' is no longer a problem anymore because
5 it's 'capacity as stockholders.'" Is that new to you?

6 MR. NESPOLE: No, no. It's not new to
7 me, Your Honor. I think -- and I'll say it again. I
8 think you're right. The language of this release
9 probably comports with the language of the releases
10 Your Honor has seen in this courtroom for years. But
11 given what I have read, especially in Aeroflex, is the
12 concerns as to why a release should be entered into.
13 The relief that one achieves to justify the release,
14 the looking behind the scenes with respect to the
15 possibility of unknown claims and other claims that
16 might be released by something where I have not
17 necessarily achieved what might be perceived as a
18 tremendous result for class -- namely, a price bump --
19 that all of that, the fact that -- yes, that language
20 probably does comport with the other language you've
21 seen.

22 THE COURT: Okay. Great. Then we can
23 move off that.

24 MR. NESPOLE: Fine, then. Fine.

1 THE COURT: See, I'm going through the
2 issues in your brief and trying to perceive where
3 you're coming from on them. So we can take that issue
4 and we can set it aside. And we can accept that, for
5 that one, there's actually no difference.

6 So now let's move to the second one
7 which you want to talk about, which is the narrowing
8 of the scope. And the limiting to what was at issue
9 in this case. Tell me about that one.

10 MR. NESPOLE: We were very careful,
11 again, with the definition of the class. The class
12 period, what was --

13 THE COURT: How does the definition of
14 the class period differ from what I understand?

15 MR. NESPOLE: I would think the class
16 period on an M&A case is almost always similar, but I
17 have seen efforts in other courts to -- other courts,
18 not Delaware -- to try to open up that class, to try
19 to get people who have had other claims pending out
20 there swept in.

21 THE COURT: I don't think you've ever
22 seen that in Delaware.

23 MR. NESPOLE: Not in Delaware. Not in
24 Delaware. I've seen it elsewhere.

1 THE COURT: I've seen it a lot in
2 Delaware. I've seen defendants reaching back to the
3 start of the earliest date referenced in the proxy,
4 and I see plaintiffs signing off on it. Again, you
5 didn't do it in this case.

6 MR. NESPOLE: I haven't done it.
7 Ever.

8 THE COURT: I'm not saying you have
9 done it. You said that you've never seen it in
10 Delaware.

11 MR. NESPOLE: I've never seen it
12 because I haven't done it. I haven't done it.

13 THE COURT: That's great. All right.
14 So relative to the overreach, but in terms of what
15 your date range would be in an M&A case, what did you
16 guys use?

17 MR. NESPOLE: I think we used the --
18 what? The date of the announcement to date of the
19 final close. I need to check.

20 THE COURT: So how does that differ
21 from other releases I've seen?

22 MR. NESPOLE: Other releases have
23 tried to open up well before when there was an
24 earlier -- for example, in this case there was a

1 negotiation as early as 2014. And one could try to
2 say there might have been some sort of
3 misrepresentation back then concerning what was said
4 during that process. I mean, the proxy is pretty
5 clear they were talking. I'm not trying to release
6 anything with respect to that.

7 THE COURT: Is it narrower? Did
8 you -- again, the premise, at least I thought, was
9 "Hey, we did something narrower here." So your point
10 is you didn't overreach, but did you carve back on
11 what would be customary?

12 MR. NESPOLE: What would be customary
13 for me, no.

14 THE COURT: Okay. So now let's go to
15 the third one. Is the third one scope of unknown
16 claims?

17 MR. NESPOLE: We can finally get to
18 that, yeah.

19 THE COURT: Why don't we talk about
20 that.

21 MR. NESPOLE: We analyzed that
22 closely. We took depositions. I took depositions of
23 people who, frankly, if there was a reason to think
24 there was a serious fraud claim out there, I think I

1 would have unearthed it. Because, frankly, I've done
2 10b-5 cases for a long time. I went back into the
3 company's stock price, looked for anything that looked
4 like inflation premised on misstatement. Couldn't
5 find any. There were no curative disclosures with
6 respect to what looked like malfeasance. There was a
7 drop a few months back in the stock's price, but it
8 was a function of earnings.

9 The statement before that drop in the
10 earnings was not overly bullish. It didn't even, you
11 know, rise to puffery. So I could find no -- and
12 there was no offerings to give rise to a 33 claim. A
13 derivative claim obviously would be extinguished.
14 There was no reason to think there was any sort of
15 double-derivative or anything else out there. There
16 was no antitrust claims that we're aware of.

17 With respect to any patent litigation
18 these people may have at Aruba -- and there's a -- I'm
19 sure there's a few of them, I think -- we're not
20 releasing those. We were careful to make sure that
21 any language that we put in the release had nothing to
22 do with that. Indeed, I'm sure if we had tried, there
23 would have been a great deal of noise from all sorts
24 of different angles.

1 But, you know, we -- I did it. I went
2 back and I looked carefully to make sure there was
3 nothing there.

4 THE COURT: I just want to understand
5 what the argument is.

6 MR. NESPOLE: Your Honor -- I'm sorry.

7 THE COURT: The argument is not that
8 your definition of unknown claims is tighter or
9 different. The argument is that you believe that you
10 investigated?

11 MR. NESPOLE: Your Honor, that's
12 correct.

13 THE COURT: All right.

14 MR. NESPOLE: And I -- I think I did.
15 I know I did. That's how we got to that release. And
16 it was hard-fought. It was --

17 THE COURT: So it's not that you
18 tailored the release. It's that you used the same
19 release, but you think you diligenced the case?

20 MR. NESPOLE: Yeah, Your Honor. I
21 think that's fair.

22 THE COURT: All right. Because, I
23 mean, the brief I got said you guys tailored the
24 release. And so I spent time thinking about whether

1 you actually tailored the release.

2 MR. NESPOLE: I apologize to the
3 Court. It --

4 THE COURT: No, look --

5 MR. NESPOLE: If it wasn't written
6 well, I do -- if it wasn't written well --

7 THE COURT: It's not a case of whether
8 it's written well or not. It's the case of actually
9 telling me what you did.

10 MR. NESPOLE: See -- may I? Having
11 read Aeroflex closely a couple of times, it seemed to
12 me as if it wasn't just a mechanical analysis of
13 "There's the release, this is what was achieved." It
14 struck me as if the whole process now here, it was
15 bigger. It was a -- this whole concept, you had to
16 take it all in at the same time. You had to assess
17 the release, the language, relative to what you
18 learned during the case, what you should have learned
19 during the case; what, if you were diligent, you
20 should have learn during the case.

21 And then, when I came to you and said,
22 "Your Honor, we achieved something here" -- not to get
23 up on a box and say, "Oh, we gave you the sun and the
24 moon." I read very carefully the references to

1 transmissions and tires. But to come to Your Honor
2 and say, "We achieved, I think, some significant
3 things. That's what we got for the stockholders."

4 In exchange, we gave these people a
5 release. And the release wasn't just automatically a
6 function of what we got for the stockholders. It was
7 also a function of our diligence, to make sure that we
8 weren't giving anything away that, frankly, they
9 didn't deserve.

10 And also, I read Aeroflex to -- and
11 I'm told by some of my colleagues I'm reading it too
12 far, and I guess I'll find out. But in Aeroflex there
13 was an argument that doesn't happen here, that the
14 relief brought in support of the settlement was, I
15 think, two prongs. It was matching rights and
16 reducing a topping fee, when the motion to expedite
17 argued that there was a controlling stockholder and
18 there was a third party that was locked up. He was
19 shackled.

20 So when counsel walked in here and
21 said, "I have this relief for you and I want 800 and
22 some-odd thousand dollars for it" -- big number. Big
23 number. "And the relief is these two things." And
24 Your Honor said to him, "That's great."

1 Congratulations. But there's only one person in the
2 world that could avail himself of that, or itself of
3 that, and you didn't do anything to unshackle that
4 investor. You left him tied to that confi, that
5 nondisclosure, whatever he was tied to. So thanks.
6 You brought the stockholders this terrific relief.
7 You want a release. You want to get paid. But nobody
8 can avail themselves of it."

9 I was mindful of that from day one. I
10 think what we got here -- see, that's why I combined
11 the concept of the release and the relief. Here, what
12 we got that we're giving them a release for actually
13 has value. Is it the most significant result in the
14 history of M&A litigation in this courthouse? I'm not
15 going to tell you it is. One day I might, in another
16 case. But I'm not. And that's why I asked for I
17 think what is a modest fee, in terms of what the fees
18 are in this state. I didn't come in here and ask for
19 something ridiculous, because I was mindful of what we
20 achieved.

21 THE COURT: Look, I think you're
22 reading Aeroflex correctly in terms of it's a holistic
23 analysis. Where I think you're perhaps not reading it
24 sufficiently is part of the problem in Aeroflex was

1 those guys didn't tell me about the controller. They
2 presented it as if it was an open shopping process.
3 And part of what you guys --

4 MR. NESPOLE: I -- please.

5 THE COURT: -- part of what the
6 generalization of the plaintiffs bar needs to
7 recognize is you actually have to be accurate in your
8 papers. And what I repeatedly see -- and it dates
9 back to the first time I came down on you guys for it,
10 which was the Revlon situation -- what I repeatedly
11 see is people saying things in their stips that aren't
12 accurate, and then I get briefs that aren't accurate.
13 And they're either not accurate in an affirmative
14 sense, in terms of saying things that aren't true, or
15 there are big omissions. And the big omission in that
16 case was the controller situation.

17 So are you right to draw the holistic
18 inference? Yeah. But what you ought to be drawing is
19 also what I've been calling you on, which is this
20 stuff has to be right. And it's not just
21 wordsmithing. You're actually here presenting me with
22 a factual record on which I am supposed to make a
23 decision as to whether this is in the best interests
24 of the class.

1 And so I agree with you in terms of
2 holistics, agree with you in terms of your assessment
3 of distinctions between this case and Aeroflex. The
4 parallel that you didn't mention, which I would hope
5 you would draw, and your colleagues at the tables
6 would draw going forward, is this stuff better be
7 right.

8 MR. NESPOLE: I -- I'm sorry. I'm
9 ashamed. I'm embarrassed. I really thought it was
10 right. But you're right, the -- the word "experts,"
11 "consultants" is not --

12 THE COURT: If a knucklehead like me,
13 who knows nothing about the facts --

14 MR. NESPOLE: Sorry?

15 THE COURT: If a knucklehead like me,
16 who knows nothing about the facts, can pick out
17 errors, I think what would happen, if you actually had
18 somebody on the other side -- like, think if this were
19 actually an adversarial proceeding where, you know,
20 Mr. Sonnenfeld was coming at you hammer and tongs.
21 When I see little errors, it makes me suspect that
22 there's actually really big errors in here, and that
23 if I had the voice of the defendants, they would rip
24 this thing apart. Because again, if somebody like me,

1 operating in an informational vacuum, finds mistakes,
2 it is a huge red flag.

3 But as to the holistic thing, you're
4 spot on.

5 MR. NESPOLE: I -- again, I am sorry.
6 I'm sorry. We -- it's taken to heart. And it's not
7 something I'm very proud of. But --

8 THE COURT: Let me --

9 MR. NESPOLE: But I hope that it
10 doesn't necessarily reflect poorly upon the entire
11 body of work we tried to do here, including work
12 closely to understand how to deal with issues raised
13 in Aeroflex and what has become a very difficult area
14 of the law to litigate.

15 So again --

16 THE COURT: All right. Well, thank
17 you.

18 MR. NESPOLE: Thank you, Your Honor.

19 MR. ENRIGHT: Your Honor, might I
20 speak briefly? Because I feel like there's a couple
21 of issues that were just raised that I think --

22 THE COURT: Yeah. Come on up,
23 Mr. Enright.

24 MR. ENRIGHT: -- I might be able to

1 elucidate on.

2 THE COURT: When I saw you getting pro
3 hac'd, I thought you were going to be talking today,
4 so I shouldn't deny you the opportunity.

5 MR. ENRIGHT: I got pro hac'd just in
6 case, and I see that it may have been a good idea.

7 Your Honor, candidly, any errors in
8 the brief were my fault. Okay? But I'm not sure that
9 they were errors. When we hire an expert firm like
10 Value, Inc., which has a lead expert like Travis Keath
11 working on it, and then he has a staff of other people
12 with CFAs that are working on it with him, we call
13 them our experts. That is the normal nomenclature
14 that I use.

15 THE COURT: Don't do that. Because,
16 you know, when you're dealing with somebody who, in
17 the litigation context -- had this gone forward and
18 you had designated an expert, you would not have
19 designated ten people at Value, Inc.

20 MR. ENRIGHT: Absolutely correct, Your
21 Honor.

22 THE COURT: Right? So when I read
23 "experts" plural, I think, all right, these guys
24 talked to multiple guys.

1 MR. ENRIGHT: And to some extent we
2 did, as Mr. Nespole said. But that language was
3 really supposed to capture our experts at Value, Inc.
4 To the extent that that common nomenclature, which I
5 use often, is troubling to Your Honor, I hereby
6 undertake to stop it right now.

7 THE COURT: Let's just be more
8 accurate about it.

9 MR. ENRIGHT: Absolutely.

10 THE COURT: And the same thing. It's
11 the pattern of overstatement. And I finally -- it
12 took about three years, but I finally got you guys to
13 stop telling me that you had "mastered complex
14 financial information," when you hadn't done anything
15 to master complex financial information. So then we
16 worked on "vigorously," and I got you guys to back off
17 that everything you did was vigorous.

18 In this one, it seems to be
19 "extensive." "Extensive," to me, actually means you
20 did a lot. Two is not a lot. Two is two. Three is
21 three. Three to fourteen is a few. Two is a couple.
22 You know? It's not extensive. It's a couple. We
23 didn't take "extensive" depositions. We took a couple
24 of depositions.

1 And you're dealing with somebody who,
2 for better or for worse, reads this stuff. The
3 problem is -- and I think all my colleagues, I think
4 all judges, read this stuff. It's how quickly you
5 read it. And if you're reading through something and
6 blowing through it -- not blowing through it, but
7 reading more rapidly because you don't have an
8 adversarial presentation, it's really easy to get
9 suckered in by plurals like "experts," by puff words
10 like "extensive." And then, when you actually go and
11 look at the depositions and things, you get a
12 different picture.

13 And so what I can't stress enough for
14 you guys is particularly -- and don't forget, there is
15 a heightened professional conduct obligation of
16 disclosure when you are in an ex parte context. And
17 this is not a true ex parte context, the defendants
18 are sitting here, but they have agreed not to oppose
19 the settlement. So you are the speakers. You are the
20 mouthpiece. Unless I break protocol, as I did today,
21 and look at the defendants and ask them something, or
22 unless they feel the settlement going down the tubes
23 and they want to stand up and try to defend it, they
24 don't say anything.

1 So you guys have a heightened
2 obligation to actually be accurate. And as people who
3 are dedicated -- I mean, the way you guys read proxy
4 statements, I know you are dedicated to accuracy. You
5 are dedicated to accuracy and thoroughness. You are
6 not people that believe that things ought to be
7 glossed over. You are not people that believe that
8 things ought to just be sort of referred to. You
9 don't get to turn that stuff on when you're focusing
10 on these guys and then turn it off when you're doing
11 your own work. All right? You're either going to
12 live up to a standard or you're not. And so, that's
13 what I'm saying. And actually, the obligation is
14 higher once you get to this context, because these
15 guys are turned off.

16 So that's why I keep getting up on my
17 soap box. I've been doing it since I got here. This
18 stuff has to be truthful. And I'm not saying that you
19 guys are consciously saying, "Oh, I'm going to lie to
20 Laster." I don't think you'd do that for a second.

21 MR. ENRIGHT: No.

22 THE COURT: I think there's a degree
23 of laxity that comes from presenting these things on a
24 relatively recurring and formulaic basis. And as a

1 result, I get stuff that, when I read it, it doesn't
2 hold true to me. And then I ask you guys about it. I
3 give you guys credit. I give Mr. Nespole credit.
4 Now, I like it that you take responsibility for it.
5 That's not enough. It's not enough. It's got to be
6 accurate from the get-go.

7 MR. ENRIGHT: Your Honor, I can tell
8 you that we are all extremely mindful of our
9 obligation to be not just truthful, but direct and
10 candid with the Court.

11 THE COURT: I didn't get it in
12 Aeroflex. I got no reference at all to the
13 controller.

14 MR. ENRIGHT: Your Honor --

15 THE COURT: And I know it wasn't your
16 case.

17 MR. ENRIGHT: -- I was not in that
18 case.

19 THE COURT: It wasn't your case. I'm
20 just saying. So what I see is I see patterns of
21 practice. And certainly, when I get in here, I will
22 take comfort if Mr. Enright's getting up to make
23 statements, because, you know, you've been in front of
24 me a lot, and you've taken the hit at times. And

1 then, after you've taken the hit on one thing, I
2 actually see changes in your behavior. Very positive.

3 MR. ENRIGHT: I try very hard to, Your
4 Honor.

5 THE COURT: That's a good thing,
6 right? That's a good thing.

7 So I'm more speaking as to the
8 impression -- and I want you guys to hear it. This
9 stuff has got to be right.

10 MR. ENRIGHT: So --

11 THE COURT: So what else do you want
12 to cover? You stood up to cover the expert. It's a
13 fair point on the expert.

14 MR. ENRIGHT: Sure.

15 THE COURT: Please don't do that
16 anymore.

17 MR. ENRIGHT: Absolutely.

18 THE COURT: What else is on your list?

19 MR. ENRIGHT: Similarly with the
20 "extensive" thing. I apologize for that. That's, you
21 know --

22 THE COURT: Advocacy.

23 MR. ENRIGHT: Yeah. Advocacy that,
24 frankly, in this context, I understand, Your Honor,

1 our obligation of candor to the Court, particularly in
2 this context, requires us to be more careful, and we
3 will be.

4 THE COURT: Yeah. It was better than
5 if you said "vigorous and extensive," but I --

6 MR. ENRIGHT: We will be mindful of
7 this, Your Honor. I can tell you for certain, I will
8 make sure that we're more mindful of this, at least in
9 my cases, in the future.

10 With regard to the release, Your
11 Honor, I wrote that section of the brief personally.
12 And I did not intend, in that brief, to give the
13 impression that we did something -- oh, that we saw
14 what happened in Aeroflex and we did something
15 different. I'm pretty sure that the release that we
16 negotiated here was negotiated before Aeroflex
17 happened, so we could not have done that. Okay? And
18 so I wasn't trying to say in the brief there that,
19 "Oh, we saw what you said and we negotiated a more
20 narrow release here." Because frankly, Your Honor,
21 that's not what happened.

22 What happened here was, number one --
23 I'm going to blow my own horn for a second here. I
24 am, in general, I think, more mindful about releases

1 than most of my colleagues in the plaintiffs bar.
2 I've always paid attention.

3 THE COURT: You were early on the
4 securities law carve-out. I'll give you that. Again,
5 you can blow your own horn, and Mr. Nespole afterwards
6 will be like, "Ah, come on, man. What pile of
7 you-know-what was that?" But regardless, you were
8 early on the carve-out for securities, and I
9 appreciate it.

10 MR. ENRIGHT: And that's one thing
11 that actually came to Your Honor's attention. That's
12 just one thing. I actually pay attention to this
13 language, and I always actually -- almost always push
14 back on release language when we're negotiating with
15 defendants in these contexts. That said, this was not
16 trying to -- we did not try to narrow this in response
17 to Aeroflex or any other decisions. This was, I
18 think, a fairly standard release that was negotiated
19 here. It is different from Aeroflex in some respects.
20 Not with regard to the "in capacity of stockholders"
21 language, because that was present in Aeroflex.

22 THE COURT: Yeah.

23 MR. ENRIGHT: Okay? It is somewhat
24 different in terms of the scope of the claims release,

1 the limitations, as far as in relation to the merger,
2 et cetera. I think that language is actually a little
3 bit broader in Aeroflex. I don't think it makes a
4 huge practical difference.

5 THE COURT: That's what I was going to
6 tell you.

7 MR. ENRIGHT: No, I --

8 THE COURT: I think it's the
9 equivalent of having a list of ten synonyms and
10 cutting it back to a list of six synonyms.

11 MR. ENRIGHT: And you know, Your
12 Honor, this is the thing about these releases that I
13 really -- the whole reason I put my pro hac in is
14 because I wanted to have a chance to get up and talk
15 about this. I don't think this release is
16 intergalactic. I don't. It has a lot of words. It's
17 hard to parse, but it's not impenetrable. And when
18 you actually analyze it, what ends up ultimately being
19 released here is really what we investigated and
20 prosecuted and litigated. Derivative claims are
21 extinguished already. I don't believe the 10b-5
22 claims are released here. And even if they would be
23 covered by this release language, we looked. There
24 are no lost causation -- Dura Pharmaceuticals lost

1 causation events here that could give rise to a 110b-5
2 claim, and because the stock no longer trades, none
3 can happen in the future. So I don't see anything
4 being released here. I guess 220 actions -- the
5 company no longer exists. 220 actions are gone.

6 So what's really being released here?
7 Direct stockholder claims in connection with the
8 merger. And that's what we litigated here. So I
9 don't think that this is an intergalactic release. I
10 think it's a release that is poorly worded with too
11 many synonyms, as you say. It's hard to parse, but at
12 the end of the day, when you really do analyze it, the
13 release is what we litigated here.

14 And what really, I think,
15 differentiates this case from Aeroflex is not the
16 release so much, or the wording of the release, but,
17 as Mr. Nespole said, what we did beforehand and the
18 quality of the consideration. It's not so much the
19 give that's different. It's just that the get here
20 actually made a difference in terms of the quality of
21 the disclosure. Where, as you said in Aeroflex that
22 the disclosures there were immaterial and that the
23 therapeutics were unhelpful, here we actually obtained
24 disclosures that would have been injunction worthy, in

1 my opinion. We filed our PI brief here. We were
2 ready to bring them before Your Honor in argument.
3 You know, I -- I sort of even like to do that.

4 And I actually did win an injunction
5 from Your Honor on that same exact issue regarding the
6 employment communications, in Complete Genomics, that
7 is present here. And I think that that -- here, it's
8 arguably an even bigger get than in Complete Genomics,
9 because here, this wasn't just supplemental. This was
10 corrective. I believe the proxy, before we fixed it,
11 was actually, arguably, misleading; whereas now it's
12 truthful.

13 And these issues, again, involving
14 Qatalyst being pushed into the background, that
15 bespeaks a power dynamic in those negotiations with
16 HP, but the shareholders really should have known,
17 particularly given the fact that they then were
18 talking about hiring Evercore, mentioned that to HP,
19 got the thumb's up on it from HP.

20 Whether or not that was, you know,
21 just a stray conversation or an intentional trial
22 balloon to get a reaction, I don't know. But that
23 power dynamic, again, a truly material fact that I
24 think the shareholders needed to have here to

1 understand what actually transpired here.

2 And with regard to the other thing,
3 the multiples -- well, and then the fact that
4 Mr. Francis had actually been with Barclays, HP's
5 banker, until five months earlier, as the head of the
6 practice group that they were negotiating against,
7 also obviously material in my view.

8 And then, with regard to the
9 multiples, the issue there was that some of the
10 comparable companies that were listed, they didn't
11 actually get multiples from and plug them in. So
12 listing those and then giving a mean and median,
13 without disclosing that there were no multiples
14 derived from some of the companies on the list, giving
15 that mean and median, and without giving that
16 information, it's misleading as to what that mean and
17 median actually constitute. And so that's why I think
18 we actually got real, corrective, important stuff here
19 that just wasn't there in Aeroflex, and that's the
20 difference between the cases. And that's why this
21 case, this settlement, should be approved.

22 And that was really what I wanted this
23 brief to convey to Your Honor. And the fact that
24 it -- that it gave a different impression, I

1 apologize. That really was not what I intended.

2 THE COURT: No. You know, if there's
3 one thing that was obvious to me, both in practice and
4 certainly on the bench, is I am no less fallible than
5 anybody else. And so I can misread things just like
6 anybody else. I think the difference, the only
7 difference, when I come out and berate you guys in
8 these settlement hearings is when I feel like you're
9 not even trying or when I feel like you're telling me
10 things that aren't accurate. Because I may get a lot
11 of stuff wrong, but one thing that I do know -- and
12 again, I have a privileged perspective into what I do.
13 I know how much time I put in reading this stuff and
14 running this stuff down and trying to figure out what
15 went on, despite the fact that I've got a one-sided
16 presentation. And so it bothers me when, based on
17 that, I feel like I'm getting inaccuracies.

18 Now, obviously, I don't have the same
19 privileged viewpoint into how much you guys prepare.
20 You-all may come in with exactly that same type of
21 effort and feel, therefore, unjustly beaten about the
22 head and shoulders by me when I come in. But that's
23 the disconnect that you're hearing from me this
24 morning, and other people have heard from me in other

1 cases. When I feel like I see something where people
2 are, at least in the first instance, somewhat going
3 through the motions, and then, in the second instance,
4 telling me stuff that, when I look at it, I'm like,
5 "This is not fairly reflecting what went on."

6 So that's what generates ire from this
7 side of the podium. And it's probably unfair to
8 you-all, but that's the origin of it.

9 MR. ENRIGHT: Your Honor, I certainly
10 do not want to earn your ire. Quite the contrary.
11 But one thing I can tell you is that these little
12 items -- and I shouldn't call them little. These
13 items of concern that you raised, the multiple of
14 experts and "extensive," and things of that nature,
15 I'm going to undertake to make sure that that doesn't
16 happen. Not just in front of you, but in general, in
17 the future. I'm going to genuinely take that to
18 heart.

19 THE COURT: The great thing is you've
20 got with you Delaware guys who probably have a
21 majority of the market share. So at least in terms of
22 Delaware, you have the ability to fix this.

23 MR. ENRIGHT: Absolutely.

24 THE COURT: They do. So these are not

1 things that ought to be recurring.

2 MR. ENRIGHT: But what you said
3 earlier was that when you see little things like that,
4 it makes you think that there are big things lurking
5 in the background. Your Honor, I'm telling you, we
6 might slip on a piece of puffery, like saying
7 "extensive" where maybe that word isn't entirely
8 appropriate -- although I do think that the discovery
9 we took here is fully appropriate, maybe "extensive"
10 isn't the right word. I mean, I've been in -- Greg
11 Nespole and I did a nine-year 10b-5 case together in
12 which we reviewed 2 million documents and took 30
13 depositions --

14 THE COURT: That's extensive.

15 MR. ENRIGHT: -- and, you know,
16 recovered \$45 million.

17 THE COURT: That's good. That's real
18 money and that's extensive.

19 MR. ENRIGHT: So in the context -- but
20 what I want to express is that we slipped by saying
21 "extensive" there, and I apologize for that. And the
22 nomenclature of referring to our experts at Value,
23 Inc., when, you're right, if we actually designated an
24 expert from Value, Inc., it would be one guy. It

1 would be Travis Keath. I apologize for that.

2 But there are no big issues lurking
3 out there here. We take our job seriously. And I
4 don't know if this will comfort you or not. When
5 we're in front of you, we are really extra careful
6 because, frankly, we're all scared of you and of --
7 and of doing something that will earn your ire,
8 frankly. So we really, we did this carefully. I
9 apologize for those two errors, but there aren't those
10 big issues lurking from the background.

11 THE COURT: Well, I will try to be
12 kinder.

13 MR. ENRIGHT: No, Your Honor. I don't
14 mean that as a criticism.

15 THE COURT: I know.

16 MR. ENRIGHT: I don't. I mean simply
17 to say we don't want to screw up in front of you, and
18 we're very careful to try not to.

19 THE COURT: I appreciate that. Thank
20 you.

21 MR. ENRIGHT: I have nothing further,
22 Your Honor.

23 THE COURT: All right. Well, I
24 appreciate everyone's presentations today.

1 I am not going to approve this
2 settlement. First of all, I don't think the case was
3 meritorious when filed. At the time it was filed,
4 what the market evidence suggested was an arm's-length
5 strategic buyer, a 34 percent premium to unaffected
6 market price, and an even higher premium based on
7 other metrics. Qatalyst was involved. If anybody has
8 a reputation for driving price up as the inheritors of
9 the "bid-them-up Bruce" appellation, it's Qatalyst.
10 Price alone isn't a claim. You have to have something
11 that suggests a lack of reasonableness, some type of
12 conflict. You don't just get to come in and say
13 "Price inadequacy. Therefore, gross negligence."
14 That is not a claim.

15 Once the proxy comes out, the
16 background of the merger section -- and here is
17 another beef for you-all. Give me the proxy when you
18 are presenting a settlement. You guys did attach it
19 to the affidavit filed in support of your preliminary
20 injunction. And so, yeah, when we couldn't find --
21 and I use the "we" to refer to my clerks and me --
22 when we couldn't find the proxy statement in the
23 materials that you guys gave me for purposes of the
24 settlement, then we went back and pulled it. But what

1 you gave me was the Hewlett Packard 10-K. It's nice
2 and beefy. You gave me the supplement. You gave me a
3 few other things. The first thing I read is the
4 proxy. The first thing I read is the background of
5 the merger in the proxy.

6 So anyway, when I went back and pulled
7 the proxy and read the background of the merger, it
8 was not suspicious. These were facts that were, as
9 far as price claims, confirmatory. You had outgoing
10 calls pre-deal. You had a board that actually wasn't
11 single-mindedly focused on the deal. They took a
12 mid-process pause that refreshes, to consider whether
13 they should be remaining in stand-alone, before they
14 went back and talked more to HP. It was cash, so
15 there were appraisal rights available as a back-end
16 check. This just wasn't something that I can
17 understand how it attracted a type of filing that is
18 all too common.

19 Then did something fall in your lap?
20 Yeah. Something fell in your lap. You got an
21 indication in discovery -- you got direct evidence in
22 discovery, in the form of these e-mails -- that the
23 proxy was materially inaccurate and misleading as to
24 the timing of the executive talks. That was a get.

1 That was something that would support a
2 disclosure-based injunction. I actually think it
3 might support even more meaningful relief. I mean,
4 people just don't get to put incorrect stuff into a
5 proxy statement. And when you're signing onto that
6 and saying it's true, I don't think the remedy is
7 just, "All right. Well, tell the truth the next time
8 around."

9 Now, is it necessarily a deal-bump
10 remedy? A price bump-up remedy? I hadn't thought so
11 coming in. But what Mr. Nespole explained this
12 morning is, yeah, it could have been, because this was
13 a situation where management was important, and
14 management really made this a private-value situation,
15 and so maybe it was potentially a post-closing damages
16 situation.

17 But remedies aren't all-or-nothing
18 things. Part of what a court of equity can do is
19 tailor remedies. I just had a case where people
20 asked -- belatedly, so I didn't give it to them,
21 because it was too late in the process. They asked
22 for it post-trial, which is a little late -- but they
23 asked for disgorgement of some compensation based on
24 what the trial record showed.

1 Well, if you're going to include false
2 statements -- and I don't know what the mental state
3 was, I don't know what the scienter was behind this --
4 but I do know that there was something that, in the
5 proxy statement, implied something directly contrary
6 to what the record showed about when the employment
7 negotiations took place. Why wouldn't there be some
8 possibility for some other remedy, other than just
9 "Well, tell the truth next time"?

10 So I think about those things. I did
11 think that the Qatalyst issue was more of a "tell me
12 more" variety. I didn't think that that one could
13 support money coming in. Right now, perhaps it could.
14 It could lead to some disgorgement. I mean, maybe you
15 require the second banker fees to come out, because
16 they were essentially insisted upon by HP. I don't
17 know. It would all depend upon what was proved at
18 trial. But there are ways here to potentially get
19 things for stockholders based on what you uncovered,
20 other than the ephemeral benefits of information.
21 Important information? Sure, but not actually
22 anything tangible.

23 So what I have here, when I think
24 about it -- and I do approach this holistically. I

1 do. I think Mr. Nespole is exactly right on that --
2 but I have a situation, when I look at it, it looks
3 like a harvest. And when I think about why it looks
4 like a harvest, I get initial indications of no claim.
5 Then I thought the discovery record here was really
6 weak. I really did.

7 Mr. Nespole, I know you are very
8 experienced, but I couldn't tell what you were trying
9 to do in that Boutros deposition. I read it. And I
10 am not the world's greatest deposition taker -- never
11 was -- and I know depositions are not a series of
12 Perry Mason moments. But I couldn't tell if you were
13 taking that like a discovery deposition, where you
14 were trying to exhaust the witness and pin him down on
15 what he potentially could say in terms of an affidavit
16 or at trial. In fact, I think you affirmatively
17 weren't doing that, because you seemed to be very
18 targeted.

19 As to the things you were targeted on,
20 I don't really get why you were being targeted.
21 You're targeted with third-party witnesses that are
22 not likely to come to trial. This guy was likely to
23 put in an affidavit, if there were further
24 proceedings, or, if there was a merits hearing, come

1 to trial. And the things you were targeted on,
2 perhaps there's other areas where you do a better job
3 questioning witnesses, but it wasn't a deposition that
4 gave me comfort.

5 Nor did the other depositions give me
6 much comfort. And so, having read those, when I
7 juxtaposed those with the types of descriptions that
8 I've now already discussed with you-all, in terms of
9 "extensive" document production and "extensive"
10 depositions, that was a red flag for me.

11 In terms of the presentation, there
12 were other red flags for me. Again, nobody bothers to
13 give me the proxy. I get a canned brief. I mean,
14 read the statement of facts in your brief, after we
15 get out of here, and go back and also read the Tripodi
16 affidavit and highlight the things in there that are
17 deal specific, like actual background fact type stuff
18 that allows me to assess the claims you've made, as
19 opposed to being essentially a recitation of docket
20 entries. I think you'll find a complete absence of
21 deal-related facts. There's deal-related facts later
22 in the brief. There's deal-related facts in the back
23 end of the brief. But they're not in the statement of
24 facts.

1 Then, in terms of the release, I
2 probably did misinterpret you. I thought you guys
3 were telling me that this was a narrower,
4 non-intergalactic release. What I understand you are
5 telling me from this morning is actually you disagree
6 with the term "intergalactic" and that really, unless
7 people are being overzealous and reaching back into
8 earlier time periods, M&A releases themselves are not
9 intergalactic. To use Vice Chancellor Glasscock's
10 term, perhaps they're Jovian. To use the term we all
11 used to use, before we ventured into interstellar
12 space and beyond, perhaps they are simply global.

13 Basically what this pitch was is "You
14 don't need to really worry about anything you've been
15 worried about." Again, I'm not buying that. I think
16 that we have reached a point where we have to
17 acknowledge that settling for disclosure only and
18 giving the type of expansive release that has been
19 given has created a real systemic problem. We've all
20 talked about it now for a couple years. It's not new
21 to anybody. But when you get the sue-on-every-deal
22 phenomenon and the cases-as-inventory phenomenon, it
23 is a problem. It is a systemic problem. And so when
24 you're faced with that systemic problem, to me, it is

1 not a convincing response to say, "It's cool. This
2 release actually isn't a big deal."

3 I think that if you'd only released
4 disclosure claims, I would have given you that. Why
5 would I have given you that? I would have given you
6 that because then, if somebody decides later on, "You
7 know what? We read these disclosures and it actually,
8 we think, was wrong, absolutely wrong, and a diversion
9 of merger proceeds. And, therefore, it gives rise to
10 a direct claim for actually money, for somebody to
11 have essentially lined up employment at the start. We
12 want to sue on that." With a disclosure-only release,
13 they could do that and sue.

14 Now, I think that, again, the
15 disclosures were something. You got disclosures. So
16 release the disclosures. I don't know why you get to
17 release for nothing these other claims. The
18 historical basis for this has just been the
19 defendants' desire for complete peace. I would like
20 complete peace. I would like peace in our time,
21 without appeasement. But just because you want it
22 doesn't mean you get it.

23 The question is, is what you're giving
24 enough for the Court, in its evaluation, to sign off

1 on it? Here, I don't think it is. I don't think the
2 idea that derivative claims have -- I'm going to read
3 directly from the brief. "Any Aruba derivative claims
4 have been extinguished by consummation of the
5 Transaction, so there are no longer any derivative
6 claims that could be asserted." I don't think you can
7 say that after Countrywide, the Supreme Court's two
8 decisions in Countrywide. And you guys cite
9 Countrywide. You cite the two earlier decisions in
10 Countrywide. You don't cite the Supremes.

11 What happened in Countrywide was a
12 disclosure-only settlement released all claims. The
13 argument was made and accepted by the Court of
14 Chancery, "hey, don't worry here, because the
15 derivative claims are gone. It's all good. The
16 merger is extinguishing standing. No problem.
17 They're valueless, et cetera."

18 What we later find out from the
19 Delaware Supreme Court in Arkansas Teachers II was
20 that those derivative claims for purposes of the
21 merger became direct claims and were released by the
22 global release. Now, I don't know what derivative
23 claims are here, but you don't just get to say, after
24 Arkansas II, "Hey, don't worry about derivative

1 claims. Standing, is extinguished." Because we know
2 from Arkansas Teachers II this global release of
3 direct claims is covering all of those formerly known
4 as derivative claims that could be used by someone to
5 attack the merger under Parnes. At least that's what
6 I read from it. The Delaware Supreme Court enforced
7 the global release and said, "You people that were
8 suing elsewhere, you can't bring these claims anymore
9 because they really were direct, and they got traded
10 away for zero." It actually wasn't traded away for
11 zero. It was traded away for supplemental
12 disclosures.

13 I appreciate the representations that
14 have been made about people diligencing these things.
15 In the context of a settlement hearing, where there is
16 only a one-sided presentation, I am not going to rely
17 on that. It's not because I don't believe you guys.
18 It's not because I don't think you-all are great 10b-5
19 lawyers. It's because of the dynamics of this
20 process.

21 I have no independent source of
22 information. I can't go look up the Kelly Blue Book
23 value of the released claims, when you're telling me
24 that these claims really were junkers and worth

1 nothing. I have been told a lot of glowing things in
2 the context of settlements that are less than
3 reliable. And I don't think you're doing it
4 consciously. I think it is the dynamic here, because
5 the path to getting paid is to reassure me. One thing
6 we know is when people have a path to getting paid,
7 behavior starts to reflect how one gets paid.

8 There's actually something I heard
9 about this week in social science called Campbell's
10 Law, developed in 1976 by Donald T. Campbell, a social
11 psychologist. What it says is this: "The more any
12 quantitative social indicator (or even some
13 qualitative indicator) is used for social
14 decision-making, the more subject it will be to
15 corruption pressures and the more apt it will be to
16 distort and corrupt the social processes it is
17 intended to monitor."

18 So before anybody gets fired up, I am
19 not saying anybody is consciously corrupt. The point
20 is, when he uses "corrupting" in this context, he is
21 talking about biasing the process because we are all
22 imperfect and subjectively limited humans. I
23 certainly fall into that category.

24 An obvious example of this in practice

1 is teaching to the test. A test is a great metric
2 when you have ordinary teaching, but once people start
3 teaching to the test, it loses its efficacy. You can
4 think about it for short-termism with quarterly
5 numbers and the stock price. You can find business
6 cases like Sears Auto Centers. They were once the
7 go-to place for reliable repairs. Then they started
8 focusing on sales targets. It generated a big scandal
9 around sales targets, because they were driving sales
10 at the expense of quality. The indicator that was
11 being used for social decision-making got corrupted.

12 The social decision-making context
13 here is resolving cases and adjudicating settlements.
14 That's the social decision that I have to make. It's
15 whether to approve a settlement. The duty of
16 disclosure is obviously important. You can grant
17 injunctions based on disclosure. But once disclosure
18 becomes the be-all and end-all measure for this form
19 of social decision-making, then you start to get this
20 repeat-process phenomenon and the indicator is no
21 longer reliable. Parties respond strategically. You
22 end up with a misshapen legal regime. So no. And
23 it's not because I don't think you guys are nice
24 people, but I am not comfortable simply taking the

1 word of someone who says, "Yeah, I looked at it," when
2 I know it's the path to your payday.

3 Don't tell me. Show me. And what you
4 showed me in this case was a discovery record where --
5 again, I've already insulted Mr. Nespole about this,
6 so I'll say it again -- I wasn't impressed with it. I
7 didn't find it reassuring.

8 The last thing I'll talk about is this
9 idea of expectations and whether there's a reliance
10 interest in the past practice of granting these types
11 of releases, such that I should give it to you today
12 because you've been able to do this in the past. For
13 better or for worse, I don't think you had that
14 reliance interest from me. I've been giving these a
15 hard look for a while now.

16 And why do I know you-all know that?
17 Because I hear you-all complaining about it. I hear
18 the defense lawyers complaining about it, because they
19 recommend these settlements to their clients and then
20 they don't get approved and then they look bad. I
21 hear the defense lawyers complaining about it because
22 they've negotiated a fee, they want to get this thing
23 resolved, and then, again, they look bad and it's
24 uncertain going forward.

1 Clearly the plaintiffs lawyers don't
2 like it. You guys aren't happy. I understand that.
3 And I see the responsive behavior. I would say I
4 probably have the highest incidence of settlements in
5 other jurisdictions. Litigation gets filed here and
6 then gets settled in other jurisdictions. I would say
7 I also have, by far, the highest incidence of assign
8 and dismiss. So seven or eight cases will get filed
9 on a deal. The Chancellor -- who gets sole discretion
10 over which cases get assigned to whom -- assigns it to
11 me. Boom. I see seven notices of dismissal.

12 Now, I'm not offended by that. That
13 is perfectly fine with me. I actually don't like
14 dealing with junky things, and I would prefer to
15 devote judicial resources to real litigation, not
16 pseudo-litigation. So I'm not crying the blues. It's
17 my job to do this. I do have empathy for you-all, but
18 I still have to consider these things. I'm saying
19 this now because I don't think you had the expectation
20 that you had a reliance interest from me, and so I
21 don't think I am disappointing your reliance interest
22 by doing this.

23 Now, the next question comes. What
24 grounds am I not going to approve this settlement?

1 The grounds tend to align, because if you don't have
2 an adequate get for the give, the settlement itself
3 falls outside the range of reasonableness. And you
4 also then have a question about adequacy of
5 representation that infects the class certification
6 decision. So it's all connected.

7 I think the best way to deal with
8 this -- and I have passed on this before. I have not
9 gone the inadequacy of the representation route
10 before. This time I'm going to, and I will not
11 certify the class on that basis. I will not approve
12 the settlement on that basis. And I will dismiss as
13 to the named plaintiffs on that basis. And I say that
14 because this does look to me like a
15 harvesting-of-a-fee opportunity. It looks to me like
16 it was set up as a harvest case, because there wasn't
17 a basis to file in the first place. Then, once you
18 guys actually had something fall into your lap, in
19 terms of a litigable "something", it was just dealt
20 with through the disclosure and the fee.

21 I'm not telling you you're bad people.
22 I write decisions that get reversed. I write
23 decisions that get criticized. I could probably be
24 cited in those instances for inadequacy of judicial

1 representation. Everybody makes mistakes. But this
2 one, I am not going to pass on. So as I say, because
3 I think it was inadequate, I am going to dismiss as to
4 all the named plaintiffs. So this will resolve this
5 case, because I am not going to let the named
6 plaintiffs go forward, based on the inadequacy to
7 date.

8 What you should infer from that is I'm
9 also not going to sign off on any mootness fee. If
10 the defendants want to pay some mootness fee out of
11 the goodness of their hearts and disclose it and then
12 have the potential knock-on challenges that Chancellor
13 Bouchard has discussed, that's fine with me. I'm not
14 going to get involved in that. But if it comes to me,
15 in terms of a dispute over the mootness fee, I will
16 not give one. And I will not give one because I have
17 people in front of me who believe in the benefits of
18 disclosure, and I have people in front of me who
19 believe that disclosure is a valuable benefit.

20 I have just compensated you with
21 lengthy disclosure about this case, so you've gotten
22 now what you got for the class. I would not
23 personally give you any more. It may not be
24 disclosure you like, just like a lot of times, when I

1 get objections from class members, they look at the
2 disclosure that you guys got for them and say, "What
3 is this about? We don't need this. This is not
4 helpful at all." You probably don't think what I've
5 told you is helpful at all. That's fine. But you've
6 had the benefit of disclosure.

7 So I will enter an order to this
8 effect. Thank you all for coming in. I appreciate
9 you-all listening to me. I apologize to the extent
10 that I've had to be blunt in this setting but, again,
11 that's just the function of the job. I'm confident
12 that there are situations -- in fact, I know of many
13 situations -- where the people involved on the
14 plaintiffs' side in this case have done a very good
15 job. So this is not an indictment of you for all
16 time, any more so, I hope, than the fact that I get
17 reversed is an indictment of my ability to judge. It
18 may be. It may well be as to me. But this is not
19 intended as such as to you. It's intended as an "in
20 this case I'm not buying it." In other cases you guys
21 might do a great job.

22 We stand in recess.

23 (Court adjourned at 11:23 a.m.)

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CERTIFICATE

I, JULIANNE LABADIA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 58 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 58 through 75, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 9th day of October, 2015.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public