

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE RECEPTOS, INC. : Civil Action
STOCKHOLDER LITIGATION : No. 11316-CB

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Chancery Courtroom No. 12A
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Thursday, July 21, 2016
2:05 p.m.

- - -

BEFORE: HON. ANDRE G. BOUCHARD, Chancellor

- - -

ORAL ARGUMENT ON PLAINTIFFS' PETITION FOR AN AWARD OF
ATTORNEYS' FEES AND EXPENSES 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:

2 BRIAN D. LONG, ESQ.
Rigrodsky & Long, P.A.

3 -and-

4 PETER B. ANDREWS, ESQ.
DAVID SBORZ, ESQ.
Andrews & Springer, LLC

5 -and-

6 DONALD J. ENRIGHT, ESQ.
of the District of Columbia Bar
Levi & Korsinsky, LLP
7 for Plaintiffs

8 JON E. ABRAMCZYK, ESQ.
ZI-XIANG SHEN, ESQ.

9 Morris, Nichols, Arsht & Tunnell LLP
10 for Defendants Celgene Corporation and Strix
Corporation

11 RAYMOND J. DiCAMILLO, ESQ.
Richards, Layton & Finger, P.A.
12 for Defendants Receptos, Inc., William H.
Rastetter, Kristina Burow, Mary Lynne Hedley,
13 Richard A. Heyman, Erle T. Mast, Mary Szela, S.
Edward Torres, and Faheem Hasnain
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1 THE COURT: Good afternoon, Counsel.

2 ALL COUNSEL: Good afternoon, Your
3 Honor.

4 MR. LONG: Good afternoon, Your Honor.

5 THE COURT: Mr. Long.

6 MR. LONG: May it please the Court.

7 Brian Long from Rigrotsky & Long on behalf of
8 plaintiffs. I rise to introduce my co-counsel, Donald
9 Enright of Levi & Korsinsky.

10 MR. ENRIGHT: Good afternoon.

11 THE COURT: Good afternoon.

12 MR. LONG: Your Honor admitted him pro
13 hac vice. With your permission, he'll present today.

14 THE COURT: That's fine.

15 MR. LONG: Also we have Peter Andrews
16 and David Sborz from Andrews & Springer.

17 THE COURT: Good afternoon.

18 MR. ANDREWS: Good afternoon, Your
19 Honor.

20 MR. SBORZ: Good afternoon.

21 THE COURT: All right. I think the
22 floor is yours, Mr. Enright.

23 MR. ENRIGHT: All right. Good
24 afternoon, Your Honor. May it please the Court. As

1 Mr. Long said, I'm Donald Enright with Levi &
2 Korsinsky LLP. I'm one of the co-lead counsel for the
3 plaintiffs in this matter, and we're here on the
4 hearing on plaintiffs' motion for a mootness fee in
5 this matter.

6 By way of background, on July 14th of
7 2015, Receptos and Celgene entered into a merger
8 agreement based on a purchase price of \$232 per share
9 in cash, for an aggregate of \$7.2 billion. So this
10 was a pretty large transaction.

11 Litigation followed. Several cases
12 were filed, and the Court consolidated them and
13 appointed lead counsel. At the same time, plaintiffs
14 filed a motion for expedited proceedings and a motion
15 for a preliminary injunction before Your Honor. In
16 response, defendants agreed and stipulated to
17 expedited proceedings.

18 Defendants produced documents, and
19 plaintiffs deposed the Receptos CEO, Faheem Hasnain,
20 and a banker from Centerview, Joshua Thornton.
21 Centerview had been the financial advisor to the
22 Receptos board.

23 Based on this discovery, the parties
24 entered into an MOU for a disclosure-based settlement.

1 However, in the wake of Your Honor's ruling in the
2 Trulia matter, the parties agreed to terminate the
3 settlement and proceed instead with a mootness
4 dismissal.

5 As such, we're not asking the Court to
6 approve a settlement today. There is no release to
7 the defendants, so the Court need not apply the
8 plainly material standard that was enunciated in the
9 Trulia decision in reviewing the corrective
10 disclosures that were obtained here today, although we
11 do believe at least some of the disclosures we
12 obtained would at least arguably rise to the level of
13 being plainly material.

14 Now, under well-established Delaware
15 law, plaintiffs' counsel are entitled to a mootness
16 fee in the context of a common benefit if the claims
17 were meritorious when filed, if the claims caused a
18 beneficial remedial action on the part of the
19 defendants prior to adjudication on the merits.

20 So the first question is were there
21 meritorious claims here. And defendants don't even
22 argue that there weren't meritorious claims here, in
23 opposing our motion.

24 THE COURT: What's the standard you

1 say should apply to that factor?

2 MR. ENRIGHT: Your Honor, I would --
3 there are decisions that clearly lay out what that is.
4 It's something akin to a colorable claims analysis
5 that the Court would reach on a motion to expedite or
6 a motion to dismiss standard. Somewhere in that
7 neighborhood. The language on it has sort of
8 vacillated a little bit in the decisions over the
9 years, but it would be something akin to a claim that
10 at least one would think has a reasonable chance of
11 success. And I think we meet that here. And I would
12 argue that by stipulating to expedited proceedings in
13 this case, the defendants arguably stipulated to that
14 as well.

15 Moreover, if you look at the actual
16 complaint here, Your Honor, there were several
17 disclosure claims asserted here that I think rise to
18 the level of being, at the very least, colorable, in
19 that we alleged that employment communications were at
20 least evident, given the fact that there was an
21 agreement to have management remain with the company,
22 but there was no disclosure in the proxy as to when
23 those communications took place that led to that.

24 There was the issue of the bankers'

1 financial analyses. There were certain things that we
2 alleged were glaring and missing in the DCF analysis.
3 The financial projections, most particularly the
4 unadjusted financial projections, as well as the basis
5 for the adjustments that were made to reach the
6 adjusted projections that were depicted in the
7 proxy -- I'm sorry, the 14D-9. If I refer to it as
8 the proxy, I apologize. It's actually a
9 recommendation statement. And also, the terms of the
10 alternative proposals that the board was considering
11 at the same time. We alleged all of these, and these
12 were pretty much what we got addressed in the
13 supplemental disclosures, plus additional things that
14 we found during discovery.

15 Excuse me just one moment, Your Honor.

16 So defendants don't even argue that
17 these claims weren't meritorious, nor do they dispute
18 that this litigation and the efforts of counsel caused
19 the supplemental disclosures. That was conceded in
20 the supplemental disclosures themselves when they were
21 filed with the SEC. So that's not really in dispute
22 either.

23 So those points are conceded, and that
24 leaves us with the question of what the disclosures

1 were worth under a Sugarland analysis. And under
2 Sugarland, the primary consideration is the value of
3 the benefit. And here, that means the value of the
4 disclosures that were obtained. And I think, looking
5 at these, at least a couple of them were -- rose to
6 the level I would say of being plainly material and
7 highly valuable. And some others were at least, I
8 think, significantly helpful and arguably material.

9 And so I'll go through those, Your
10 Honor. With regard to the additional financial
11 projections, first, there is the earnings-per-share
12 projections that were prepared by management and were
13 used by the bankers in connection with their
14 discounted future share price analysis. Now, the law
15 is pretty clear that financial projections prepared by
16 management and used by bankers in connection with
17 their financial analyses used -- prepared in
18 connection with their fairness opinion are not per se
19 material, but at least there's a -- I think a strong
20 argument that under the law, that they are likely to
21 be.

22 THE COURT: Yeah, but that set of
23 projections was disclosed in full, wasn't it? I mean,
24 long before the supplemental disclosures came along,

1 wasn't the entire risk-adjusted set of projections
2 from 2015 to 2032 already disclosed?

3 MR. ENRIGHT: But not the earnings per
4 share.

5 THE COURT: Well, okay. So let's talk
6 about the earnings per share line. Isn't that just
7 math? I mean, didn't that just take the net income
8 number that was in the risk-adjusted projection and
9 divide it by some assumption about outstanding shares?

10 MR. ENRIGHT: Well, therein is the
11 rub, Your Honor, because there are all sorts of
12 assumptions of the number of shares for a
13 developmental company like this. Because a company
14 like this was likely to have to raise additional
15 equity in the future in order to --

16 THE COURT: Well, am I right about at
17 least the method? That is, to get to the EPS,
18 somebody took some assumption about outstanding shares
19 and divided the net income line for each year between
20 2015 to 2032 by that number. Isn't that right?

21 MR. ENRIGHT: Your Honor, I don't
22 think that is -- number one, I'm not sure that's
23 right. And number two, I don't think a stockholder in
24 possession of the original projections could have

1 calculated the number, the EPS numbers that were
2 ultimately reported. If --

3 THE COURT: Well, I'm asking you just
4 sort of where the information came from for a second.
5 If you know. Because I just --

6 MR. ENRIGHT: Well, I --

7 THE COURT: Hold on.

8 MR. ENRIGHT: Oh, sorry.

9 THE COURT: Because I assume you asked
10 some people in depositions about these things. I
11 mean, I just sort of worked through the numbers.
12 Seemed to me that if you divide every net income
13 number by 33.5 million, you basically got the
14 per-share number. Am I right?

15 MR. ENRIGHT: You know, Your Honor, I
16 don't think so. I think that the --

17 THE COURT: So what is the number that
18 was used to --

19 MR. ENRIGHT: I think it was changed
20 over time.

21 THE COURT: You're sure about that?

22 MR. ENRIGHT: I'm not sure.

23 THE COURT: Did you ask anybody
24 questions in deposition about that?

1 MR. ENRIGHT: I'd have to go back and
2 look, Your Honor. I assume it was, but I don't
3 recall, as I'm standing here today.

4 THE COURT: Now, I maybe only tested
5 six or seven data points, but it would just be a wild
6 coincidence if it turns out, from your perspective,
7 that it was a static number per share? A static
8 number of shares that was used for every single year
9 in that model?

10 MR. ENRIGHT: If it was, Your Honor,
11 then it was.

12 THE COURT: All right.

13 MR. ENRIGHT: I don't know -- I didn't
14 think it was, but if I'm wrong -- I could be wrong.
15 I'd have to go back and look, and I don't know the
16 answer as I'm standing here.

17 THE COURT: So if you can't even tell
18 me sort of like where that outstanding share number
19 came from, which obviously it therefore isn't
20 reflected in the supplemental disclosure, what utility
21 is it to anybody?

22 MR. ENRIGHT: Well, Your Honor, number
23 one, earnings per share were used in the discounted
24 future share price model that the --

1 THE COURT: Which one?

2 MR. ENRIGHT: The discounted future
3 share price model, which is --

4 THE COURT: Was it used in the sum of
5 the parts?

6 MR. ENRIGHT: I don't think so.

7 THE COURT: All right. So it was used
8 in the alternative one that was provided for
9 informational purposes?

10 MR. ENRIGHT: Correct, Your Honor.
11 And in the fairness presentation that was made to the
12 board. And I would note that that was --

13 THE COURT: Whoa, whoa, whoa. When
14 you say the fairness presentation that was made to the
15 board, I mean, when I read the summary of Centerview's
16 analysis, its recommendation was based on three
17 analyses.

18 MR. ENRIGHT: Right.

19 THE COURT: And this second DCF was
20 not one of those three; right? It was an additional
21 solely-for-information-purposes analysis; is that
22 right?

23 MR. ENRIGHT: I think -- I think
24 that's fair to say, Your Honor. It was called

1 illustrative.

2 THE COURT: Right.

3 MR. ENRIGHT: And it's not a second
4 DCF per se. It's a discounted future share price
5 model.

6 THE COURT: Yeah. You're right.
7 It's --

8 MR. ENRIGHT: And I'm looking at it
9 right now. It was on page 16 of the fairness
10 presentation. Immediately after this -- the selected
11 transactions analysis chart. So it was in the midst
12 of the valuation analyses in the presentation.

13 THE COURT: Is that in my materials
14 here somewhere?

15 MR. ENRIGHT: Yes, Your Honor. It is.

16 THE COURT: Where is that in these
17 exhibits?

18 MR. ENRIGHT: Mr. Long will look for
19 that. If you need to, Your Honor, I can hand this up,
20 if we have a hard time locating it.

21 Do you want me to go on, and we'll
22 come back to that?

23 THE COURT: Yeah. Why don't you go
24 on, and if Mr. Long finds it, you can just tell me

1 where it is.

2 MR. ENRIGHT: Okay. So the -- I've
3 kind of gotten off track a little here.

4 So long story short, Your Honor, there
5 were the earnings per share, which I understand you're
6 saying may be just a function of math, but because
7 they -- I would consider that projection in tandem
8 with the disclosure of the discounted future share
9 price analysis, which had been totally undisclosed.
10 Albeit labeled as illustrative in the -- in the
11 fairness presentation, we thought it was still
12 significant. So that would be one point.

13 The second point is in terms of the
14 projections, the unadjusted revenue projections, and
15 the basis for and the actual percentages applied in
16 those risk adjustments. Now, any kind of
17 developmental pharmaceuticals company, what the
18 company's really selling to its stockholders is a
19 sense of the possibility of future profit from the
20 commercialization of a product that is on its way,
21 hopefully, to being approved by the FDA and
22 commercialized.

23 Most stockholders, at least sizable
24 stockholders, sophisticated stockholders, develop a

1 pretty well-developed sense themselves of what the
2 likelihood is of that product actually reaching
3 commercialization based on their own view of the
4 clinical results. Okay?

5 To the extent that their view of the
6 likelihood of success and commercialization of this --
7 of this product going through the FDA process differed
8 from the risk adjustments that were made by the
9 bankers here, that's something that I think is of
10 exceptional value to the stockholders. Because
11 ultimately, the risk adjustments assumed only a 34
12 percent chance that this product would actually make
13 it to market.

14 THE COURT: That was only for one
15 indication. And it was 32 percent.

16 MR. ENRIGHT: Well, right. Okay. The
17 point being that these were significantly adjusted
18 downwards based on risk. And depending on the, as you
19 said, the indications you looked at. The sense was
20 that if a stockholder thought that it was more likely
21 that this drug would reach the market than those
22 assumptions, they could know that, and they should be
23 able to sort of reassess those risk-adjusted
24 projections accordingly. Again, we think that this

1 was very helpful to any stockholder who really had a
2 well-developed sense of what they thought the clinical
3 prospects of this drug, ozanimod, was, compared to
4 what the risk adjustments were that were applied.

5 And it's worth noting that the risk
6 adjustments that were applied were based on industrial
7 data and peer-reviewed articles, and were not
8 specifically based on their assessment of this
9 particular drug, based on the specific clinical data
10 to that point. It was sort of based on an industry
11 standard, based on published --

12 THE COURT: Let me just make sure I
13 got this, though. First of all, I think I misspoke.
14 It was 35 percent, not 32, for the third indication.
15 But putting that detail aside, these probabilities,
16 two questions I have about it. Number one, just to
17 make sure I have the facts, were management's best
18 estimate of the probabilities of ozanimod, if I'm
19 pronouncing it correctly, obtaining regulatory
20 approval in three different indications of interest;
21 right?

22 MR. ENRIGHT: That is my understanding
23 as well, Your Honor.

24 THE COURT: That's what I thought.

1 And two, even though they may not have been expressed
2 in the prior disclosures as such, those assumptions
3 were built into the projection, the risk-adjusted
4 projections that were fully disclosed; correct?

5 MR. ENRIGHT: Correct.

6 THE COURT: Okay.

7 MR. ENRIGHT: But what the
8 shareholders didn't know was what the un-risk-adjusted
9 projections were, which was, you know --

10 THE COURT: Why is that useful? I
11 mean, isn't that just like, wow, if everything goes
12 perfect in a world, you can have some crazy number out
13 there, but what really matters, it would seem, is what
14 people's judgment -- the people who know -- what their
15 judgment is about what's realistically possible, not
16 just some crazy idea if everything goes perfect is.

17 MR. ENRIGHT: Well, it creates sort of
18 an upper bound on what this company could be worth.
19 In other words, if a client -- I'm sorry. If a
20 stockholder thought "I think this thing is -- has a
21 very strong political profile, I think it's going to
22 get approved for all of these indications, and I think
23 it's going to do well once it does that. I want to
24 know what the management thinks the revenues will be

1 if all three of those go through, because I think they
2 are going to go through." And they couldn't assess
3 that, because everything was, number one, risk
4 adjusted, and, number two, they didn't know to what
5 extent or by what factor or what percentage they were
6 adjusted.

7 Giving the stockholders a sense of
8 that upper bound of what this could be worth if it all
9 got approved, I think that has a real value. Because,
10 listen, stockholders don't invest in a company like
11 this if they don't think that it's going to be
12 approved.

13 So again, Your Honor, I'm not saying
14 that this in particular issue was plainly material and
15 we would have won an injunction on this point before
16 Your Honor, necessarily. I do think that it is
17 clearly of substantial benefit to the stockholders to
18 know the upper bound of what this product could be
19 expected to do if it got approved on all three of
20 those indications. And that's what was obtained here.

21 And I don't think that's crazy, Your
22 Honor. I think that that's something that a
23 stockholder really would want to know, and that it
24 would change the total mix of information to know if

1 this product got approved through all three of these
2 indications, what revenues is it expected -- what kind
3 of sales is it expected to achieve. By only telling
4 them the risk-adjusted, they only knew, basically --

5 THE COURT: Well, you would agree with
6 me, knowing the risk-adjusted estimate is material?

7 MR. ENRIGHT: Oh, absolutely.

8 THE COURT: That's really important?

9 MR. ENRIGHT: Absolutely. Absolutely.
10 Because, look, it's sort of like Schrodinger's cat.
11 Today, or on that day, they didn't know if it was
12 going to be approved or not approved, and so it was
13 sort of both. And they had to value it based on that
14 nebulous status. But for stockholders who thought it
15 was going to go through, for them to know --

16 THE COURT: So you think stockholders
17 are really out there doing that, huh? You know, just
18 some average stockholder is going to do a probability
19 analysis of this drug being used for Crohn's Disease
20 and whether it's going to get regulatory approval for
21 that indication?

22 MR. ENRIGHT: I -- Your Honor, I don't
23 think a retail stockholder with 100 shares is doing
24 that.

1 THE COURT: All right.

2 MR. ENRIGHT: I think an institutional
3 investor that has a group that specializes in
4 pharmaceuticals investment, like a mutual fund that
5 has a group that specializes in pharmaceuticals
6 investment, absolutely does that.

7 THE COURT: Uh-huh.

8 MR. ENRIGHT: Absolutely does that.

9 THE COURT: And so what do they look
10 at when they do that? Long before this deal comes
11 along, what do they look at?

12 MR. ENRIGHT: They look at the
13 clinical data as it's reported by the company. And if
14 they like it, they invest in the company. If they
15 don't, they don't. Okay.

16 The point being, Your Honor, for them
17 to be able to assess if those risk adjustments
18 comported with their own sense of the likelihood of
19 approval and eventual market access for this product
20 for these three indications, that's of real value.
21 Because if they thought -- putting aside the
22 unadjusted revenue projections for a moment. Just
23 looking at the risk adjustments that were made and the
24 percentages applied. If they thought -- T. Rowe

1 Price, if they were a pharmaceuticals group, thought
2 that ozanimod had an 85 percent chance of reaching
3 market for Crohn's Disease, to use your example, then
4 they might think, well, gee, I actually think that
5 this is worth more than is, and the actual revenue
6 stream is likely to be higher than what's being
7 projected here. And that's -- having them understand
8 how the risk adjustments were performed in that regard
9 I think provides a real value.

10 Okay. Moving on. Beyond the
11 projections, we got disclosure of two financial
12 analyses that had been included in the fairness
13 presentation but which apparently we don't have a copy
14 of for Your Honor.

15 THE COURT: I didn't see it in my
16 papers, but anyway --

17 MR. ENRIGHT: If you'd like, Your
18 Honor, I can hand you up mine if you'd like. I'd be
19 happy to do that. It's a little dog-eared and has a
20 couple of --

21 THE COURT: That's all right.

22 MR. ENRIGHT: -- highlighter circles
23 on it, but I'll hand it up to you as is, if that's all
24 right.

1 THE COURT: I'll give it back to you.

2 MR. ENRIGHT: I appreciate it, Your
3 Honor.

4 THE COURT: Just give me one second.

5 MR. ENRIGHT: The page that we were
6 just talking about a moment ago was on page 16.

7 THE COURT: Let me just see something.

8 MR. ENRIGHT: I am slightly stunned
9 that it wasn't included in our filings, Your Honor. I
10 apologize.

11 THE COURT: That's all right. Yeah, I
12 haven't seen this before.

13 Donna, could you hand that back to
14 him, please. Thank you.

15 MR. ENRIGHT: Thank you, Your Honor.

16 If you'd like, I can have a copy of
17 this e-mailed to you today, or whatever you'd like.

18 THE COURT: That's not necessary.

19 MR. ENRIGHT: At any rate, so the
20 illustrative -- discounted future share price analysis
21 which we just discussed was included in the same
22 section of the presentation as the discounted cash
23 flow analysis and the selected transactions analysis,
24 et cetera.

1 And while it does say that it's
2 illustrative, so does the summary of -- the summary of
3 financial analyses calls them all illustrative, on
4 page 14. So I'm not sure how much that matters, the
5 fact of the word "illustrative" in this context.

6 The point is that they looked at the
7 future EPS of the company, applied some multiples
8 assumptions, discounted it back to the present, and
9 came up with an implied value of it. And what this
10 showed was a potential future share price as high as
11 \$356 per share, number one, based on projected 2020
12 earnings per share of \$10.18 per share.

13 But none of the discounted back prices
14 rose above \$232 per share. However, if you look just
15 one year further out, at 2021, and you look at the
16 earnings per share that were projected in the
17 supplemental projections here, and you do the same
18 analysis, apply those same multiples and discount it
19 back to the present, that yields values well above the
20 deal price here.

21 THE COURT: What's the basis for
22 picking that year?

23 MR. ENRIGHT: What's the basis for
24 picking any particular year?

1 THE COURT: Did Centerview do that?

2 MR. ENRIGHT: Excuse me?

3 THE COURT: Did Centerview do that?

4 MR. ENRIGHT: No, they didn't. But --

5 THE COURT: So in a summary of their
6 analysis, why would you be picking a number they
7 didn't analyze?

8 MR. ENRIGHT: This is the point that
9 I'm trying to make, Your Honor, is that by disclosing
10 the earnings per share projections as well as the
11 methodology that was applied here, the stockholders
12 could look at another year and say, well, okay, that's
13 just discounting from 2020. The year that you decide
14 to discount back from is kind of arbitrary. You can
15 pick any year and decide to say, okay, I'm going to
16 make that my benchmark year and discount back from
17 that.

18 THE COURT: Why did they pick 2020?
19 What did the records show?

20 MR. ENRIGHT: My understanding is
21 because it was five years out. Okay? So -- but --

22 THE COURT: That's what the Centerview
23 witness you deposed testified to?

24 MR. ENRIGHT: I don't believe -- I

1 don't recall if he was specifically asked that
2 question.

3 THE COURT: "It's five years out, so
4 that's why we picked it"?

5 MR. ENRIGHT: I think the -- my
6 understanding -- again, Your Honor, I don't have a
7 photographic memory. My understanding is that it was
8 because it was five years out.

9 THE COURT: All right.

10 MR. ENRIGHT: But the point being that
11 if you then -- if you just looked at one extra year
12 out, then the values exceed the 232 per share. And
13 I'm not saying --

14 THE COURT: What happens if you go one
15 year earlier?

16 MR. ENRIGHT: Much lower. Because
17 honestly, the company -- because it's developmental,
18 it wasn't expected to really start making earnings per
19 share for a couple years out anyway. Okay?

20 So that's that analysis. The other
21 analysis that we got disclosure of that was completely
22 undisclosed was the illustrative total company value
23 DCF sensitivity analysis. Now, the proxy had -- I'm
24 sorry. The recommendation statement had disclosed

1 that a DCF had been performed, and then it yielded a
2 range of values, and that range of values is reflected
3 on page 19 of the fairness presentation. And it came
4 out to, in the proxy -- I believe it was 176 to 214,
5 I'd have to go back and look, but it was well below
6 232 per share.

7 However, what they didn't tell the
8 stockholders is that Centerview had prepared this
9 sensitivity analysis for what would happen to the
10 present value if certain assumptions were changed.
11 And what that showed was a tremendous amount of
12 additional upside beyond the disclosed range of values
13 for the DCF analysis. If you increase the RMS POS to
14 85 percent, from 71 percent, it's an additional \$13.40
15 per share. Increase UC POS to 80 percent, from 62
16 percent, that's \$24.70 per share of additional value.
17 And then there's another one for 25.65 per share, and
18 then there's another one based on pricing that could
19 have added or subtracted 27.95 per share. And another
20 one based on peak penetration variants that would
21 increase or decrease it by \$34.95 per share.

22 So there is \$126.65 of potential value
23 that was calculated by Centerview and presented to the
24 board in this presentation that was completely

1 unreflected in how they described it in the proxy --
2 in the recommendation statement, the DCF analysis.

3 THE COURT: Is the bullet point, if
4 you will, of additional information concerning the
5 sensitivities that you obtained by way of a
6 supplemental disclosure, is that a complete statement
7 of all the sensitivities that Centerview performed or
8 just some subset of them?

9 MR. ENRIGHT: Let me turn to that,
10 Your Honor. It appears to be -- it appears to be
11 complete. Yes. Looking at the page here and looking
12 at those, the description of it here, Your Honor, it
13 does appear to be complete to me.

14 THE COURT: All right.

15 MR. ENRIGHT: Yes, it is. Okay. We
16 think that disclosure of all that additional potential
17 value was plainly material in and of itself,
18 particularly because the DCF was disclosed, the value
19 range of the DCF was disclosed. To disclose that, the
20 implied range of values yielded by the DCF, without
21 disclosing that these sensitivities were calculated
22 and presented to the board as well, is an incomplete
23 picture, a materially incomplete picture, and --

24 THE COURT: Well, this happens a lot.

1 So are you aware of some case that you're going to
2 point out to me where the failure to disclose
3 sensitivities to a DCF analysis that otherwise was
4 fully disclosed was deemed to be material?

5 MR. ENRIGHT: Your Honor, I'm not
6 aware --

7 THE COURT: I didn't see it in the
8 papers, so I figured you must not know about such a
9 case.

10 MR. ENRIGHT: I'm not aware of one.

11 THE COURT: Yeah.

12 MR. ENRIGHT: What I will say is I've
13 never seen a situation like this before, where you
14 have a page in the presentation, right after the
15 DCF -- you have the discounted cash flow laid out
16 here, and then the very next page has all these
17 sensitivities for all this additional upside that's
18 completely undisclosed and unreflected in that range
19 of potential values.

20 Normally when you have a sensitivity
21 analysis, the range of values yielded by that
22 sensitivity analysis -- which is usually reflected in
23 different assumptions of a terminal growth rate or the
24 discounted rate applied -- usually that full range of

1 values is disclosed. This is beyond -- this goes
2 beyond that, and then it changes the assumptions and
3 does essentially, essentially, a second DCF. Because
4 it does -- it calculates what the discounted -- what
5 the present value of the future cash flows from the
6 company will be based on all these different
7 assumptions. And that's completely undisclosed.
8 That's a lot of additional value that the stockholders
9 had no idea was being contemplated as being
10 potentially available to them. And so I think this is
11 extremely material.

12 And the difference between this and
13 any other case I've ever seen, Your Honor, is that
14 they didn't throw it out before they made the fairness
15 presentation. You'll see it sometimes in earlier
16 books during the course of a process where they're
17 fine-tuning their assumptions. They'll talk about
18 well, maybe this, maybe that, early on, and have a
19 very wide range of values as they're sort of taking in
20 the universe of potential outcomes. But it gets
21 narrowed down for the final fairness presentation, and
22 that's what's depicted.

23 Here, this is the -- the page that
24 immediately follows the DCF analysis in the fairness

1 presentation. I think that that's -- that's genuinely
2 material, Your Honor. Because it's -- and it's not a
3 couple dollars, Your Honor. It's as much as \$126.95
4 per share. You're talking about something that could
5 add, you know, something like -- I'd have to do the
6 math, but I think it's something like 70 percent
7 additional value above the low end of the stated
8 implied range of values in the DCF analysis. That's
9 significant, Your Honor. At the very least, I think
10 it's extremely helpful to the stockholders.

11 Okay. And, Your Honor, you asked
12 for -- you asked for case law on this issue, and I
13 don't know of any that go directly to this sensitivity
14 analysis point, but there's the Weinberger case that
15 we cited in our brief that said, look, if an analysis
16 is performed by the bankers for the purposes of
17 informing the board's assessment of the value of the
18 enterprise, it's material and should be disclosed.
19 And I think that this falls squarely under that.

20 Next, Your Honor, we have the issue of
21 the other proposals that the board was considering
22 during the process that led up to the merger
23 agreement. Now, the other proposals that they were
24 considering were primarily in the form of

1 commercialization partnerships, where another company
2 would pay the company a bunch of money, in terms of an
3 up-front payment and milestone payments, for
4 essentially the rights to commercialize and then
5 market the product for a period of time. And these
6 included potential payments as much \$2.5 billion.

7 And throughout this, the stockholders
8 would be able to maintain ownership of the company.
9 They wouldn't be selling the company, they'd just be
10 selling rights to the product for a period of time.
11 Now, the stockholders were never told the terms of
12 these other proposals. They were just told that there
13 were partnership discussions going on with these other
14 parties. They were never told the documents --

15 THE COURT: Your brief also says that
16 they were told that they would have yielded lower
17 value --

18 MR. ENRIGHT: Right.

19 THE COURT: -- that Celgene's
20 proposal; right?

21 MR. ENRIGHT: Right. Yes. But the
22 actual numbers, never disclosed. I think -- if
23 somebody's offering you -- because it's not apples to
24 apples, Your Honor. If it was just another merger

1 proposal, another acquisition proposal, and the value
2 of that acquisition proposal was much lower, perhaps
3 that's not material, because it's apples to apples,
4 and one apple is not as good as two apples, and so
5 they don't necessarily have to tell the world that the
6 value of the other offer was only one apple. They can
7 just tell them it's lower. Here, it's not apples to
8 apples. The shareholders had an opportunity to retain
9 ownership of the company and just sell rights to this
10 for a period of time.

11 THE COURT: I'm trying to understand
12 this, then. So they disclose an orange that you say
13 you can't compare to their apple. And how does that
14 help anybody?

15 MR. ENRIGHT: Because -- because if
16 the stockholders were told what the value of these
17 other proposals were, what the payments would be, they
18 could make a decision for themselves. Would I rather
19 keep control of the company and take this \$2.5 billion
20 in payments that would be coming to us, or do I rather
21 sell to the company? Without -- it's sort of like --
22 it's sort of like -- I don't know if you've ever
23 watched "The Price Is Right," Your Honor, but, you
24 know, there's a showcase showdown, and there are two

1 showcases, okay? Wouldn't it be nice if you could
2 pick which one you want after having seen them both?
3 Now, in "The Price Is Right" you can't.

4 THE COURT: That would take away the
5 drama, wouldn't it?

6 MR. ENRIGHT: Right, exactly.
7 Exactly. But this isn't a game show, Your Honor.
8 This is Delaware law. And --

9 THE COURT: We have no drama here.

10 MR. ENRIGHT: Well, I try to keep it
11 to a minimum. The point being that if you're
12 asking -- or if you want to talk about "Let's Make A
13 Deal," if we want to keep with the game show theme.
14 The point being, if you know what your two options are
15 in terms of the actual dollar value, you can make an
16 informed decision.

17 Without being told what the value of
18 these other proposals were, while also keeping control
19 of the company, the stockholders really weren't able
20 to make an informed decision. "Well, gee, you know, I
21 think I'd rather keep control of the company and be
22 able to explore other business opportunities for the
23 company and keep ownership of it and take that
24 \$2.5 billion, rather than sell it." That's an option

1 that they should have had an opportunity to make an
2 informed decision on. And because of the supplemental
3 disclosures, they did have that option.

4 So, Your Honor, this Court, I think
5 rightfully, takes a scrutinizing approach to looking
6 at disclosures to make sure that we're not just
7 inundating stockholders with useless blather. I get
8 that. But these are -- all the points I've raised
9 today I think were things that genuinely would affect
10 the way a reasonable stockholder who was really paying
11 attention would view this transaction.

12 The additional upside in the DCF
13 analysis, the earnings per share projections, which I
14 suppose maybe I'd have to go back -- as I said, you
15 have to go back and look. Maybe you can just do the
16 math yourself, but the point is every sophisticated
17 stockholder knows how to value an enterprise based on
18 earnings per share. It's one of the first metrics
19 that people look at in trying to value an enterprise.
20 Valuable for that purpose. The discounted future
21 share price analysis, at the very least, helpful to
22 stockholders. The adjustment rates that -- that
23 were -- percentages that were applied, clearly helpful
24 to let stockholders judge for themselves if the risk

1 that was being assumed in these projections comported
2 with their sense of the risk to the eventual
3 commercialization of this product. I think this was a
4 genuinely meaningful package of disclosures.

5 Now, we didn't proceed with a
6 settlement before Your Honor. We terminated the
7 settlement. Frankly, in the wake of the Trulia
8 decision and my discussions with Your Honor when I was
9 before you last at the Keurig motion to expedite
10 hearing, where, at the very end of the hearing, you
11 admonished us "Do not come back into this courtroom
12 with a disclosure settlement," we took that message to
13 heart, and we said we're not going to try the Court's
14 patience. We're going to terminate this, and we're
15 just going to proceed on a mootness basis. Despite
16 the fact that I thought that these were genuinely
17 meaningful, and some of them even plainly material
18 disclosures.

19 So based on all of that, and I think
20 based at least in part on the fact that there is no
21 release being given here, which I think also is a
22 value to the stockholders, plaintiffs have moved for
23 a -- would move the Court for an award of attorneys'
24 fees and expenses in the amount of \$350,000.

1 Now, a year ago, I would have had very
2 little consternation about applying for a number well
3 above that in this Court. But, you know, we're trying
4 to feel our way through the new paradigm that the
5 Court has laid out for us to try to follow, and that's
6 what we're trying to do. So we're asking for \$350,000
7 here, which we think is fair and reasonable under this
8 Court's precedents both before and since Trulia.

9 The \$350,000 is inclusive of \$25,000
10 in expenses, which were laid out mostly on experts and
11 things of that nature, court reporters. And the
12 remainder of the \$325,000 represents a blended rate of
13 about \$640 per hour over a course of 510 hours that
14 were expended prior to the disclosures. So I think
15 that that is a modest, and even -- or a reasonable and
16 even modest rate compared to this Court's precedents.

17 I also think it's modest when you
18 consider that the Court awarded a \$325,000 fee in the
19 BTU case recently on the strength more or less of just
20 the cash flow projections, as I understand that
21 transcript.

22 THE COURT: Well, if I recall
23 correctly, they were cash flows for the back years of
24 the projection that were actually used by the banker.

1 MR. ENRIGHT: Right. Yes.

2 THE COURT: That's what made that
3 significant.

4 MR. ENRIGHT: Understood, Your Honor.

5 THE COURT: Okay.

6 MR. ENRIGHT: So compared to BTU, as
7 you said, as I've laid out, we've got two entire
8 undisclosed banker analyses, one of which showed
9 significant potential value to the company in
10 connection with the DCF analysis that had been
11 completely undisclosed, the risk-adjustment
12 percentages, as well as the basis for those risk
13 adjustments, EPS projections, and the dollar value
14 terms of the other proposals. Comparison to earlier
15 disclosure packages that have been before this Court,
16 I think would, in the past, have justified a fee in
17 the mid to high 4s. But we're only asking for
18 \$350,000 today.

19 The defendants, for their part, urge a
20 fee of only \$75,000, which I think, frankly, in light
21 of the quality of these disclosures, is out of line
22 with this Court's precedents, and it seems to be -- to
23 stem from the fact that the settlement was terminated.
24 I guess they feel like we haven't kept up our end of

1 the bargain, and they're not happy about that. But
2 that isn't really the standard here, Your Honor, what
3 they're happy about or what I'm happy about. It's the
4 Sugarland factors. And I think under the Sugarland
5 factors, there was real value delivered here.

6 I would also note one other thing,
7 Your Honor. With regard to the contingency factor
8 here, the risk associated with these cases in the past
9 year or so for plaintiffs counsel has gone up
10 considerably. And as a result, I think when we do
11 achieve real benefits for the stockholders, that
12 warrants a higher fee than perhaps would otherwise be
13 the case. Because as our risks have gone up, when we
14 actually do achieve meaningful benefits, we should be
15 awarded accordingly, commensurate with that risk.

16 So for all those reasons, Your Honor,
17 I ask that the Court grant the motion. If you have
18 any questions for me, I'd be happy to answer them.
19 Otherwise, I'll just reserve for a brief reply.

20 THE COURT: That's fine. Thank you.

21 MR. ENRIGHT: Thank you, Your Honor.

22 THE COURT: Mr. Abramczyk.

23 MR. ABRAMCZYK: Good afternoon. Jon
24 Abramczyk for defendants. May it please the Court.

1 Really, just a few comments, I think, should do it
2 today. The real issue here on a fee app in the
3 mootness context is whether any of these supplemental
4 disclosures remedied a material omission. I know the
5 plaintiffs trip lightly over that here, but it's
6 important.

7 It's not whether these were helpful,
8 whether they were additive and, a few, whether they
9 were meaningful, as counsel for plaintiffs says. The
10 test -- and this is set out quite plainly in
11 Sauer-Danfoss and cited in our brief -- is did they
12 fix anything material? Did they fix any material
13 omission in the disclosure? It doesn't confer a
14 benefit on the stockholders that would justify a
15 mootness fee if the supplement only satisfies some
16 additional information request or adds something,
17 unless the supplemental disclosures remedy some
18 material omission.

19 And if you listened carefully to what
20 we've heard today and what you read in your papers,
21 and if you look at the disclosures, it's clear that
22 none of their disclosures here remedied any material
23 omission. And I'm happy to go through each of them,
24 just to track --

1 THE COURT: I think no need to do
2 that. Why don't you start, for example, Mr. Enright
3 seems particularly exercised, if you will, about the
4 disclosure of the sensitivity analysis.

5 MR. ABRAMCZYK: Sure.

6 THE COURT: That's one. And then
7 probably the second to address would be the disclosure
8 of the probabilities that were factored into their
9 risk-adjusted projections, the actual probabilities
10 themselves for the three indications of interest for
11 the drug at issue.

12 MR. ABRAMCZYK: Sure, Your Honor.
13 First, the sensitivity on the DCF analysis. As I
14 think some of the colloquy indicated here, sometimes
15 sensitivity is done. What's important, however, for
16 the disclosures, and what was done here, is that the
17 DCF analysis itself was fully disclosed in the
18 original 14D-9. The additive part in the supplement
19 is the sensitivity around the -- certain inputs to the
20 DCF, as they're described in the supplement, that
21 really talked about changing the probabilities of
22 success for each of the different applications of the
23 particular star drug they had here, the leading
24 candidate that might get to market.

1 It is interesting, they bring up for
2 the first time in the reply brief about just why these
3 sensitivities should be important. And I looked,
4 before coming over here, as to just what in the
5 deposition -- how did they cover this. And it looks
6 to me that it's all about, charitably speaking, maybe
7 one page of the deposition, but most focused on seven
8 lines of the deposition. Somebody at the deposition
9 on the plaintiffs' side asked -- this is at page 93,
10 line 17:

11 "On the next page, page 20, there's
12 the DCF sensitivity analysis. I think we discussed
13 this a little bit when we looked at the prior
14 presentation, but again, is there any significance to
15 the numbers they chose to increase the percentage of
16 probability to?

17 "Answer: No.

18 "Question: For instance, from 71 to
19 85?

20 "Answer: Again, my recollection is
21 just looking at the best-case scenario."

22 There wasn't really a probing
23 discussion of these sensitivities. But for good
24 reason. These are just reflections of changing these

1 probabilities in a way that really was not material to
2 any stockholders' decision, because management's best
3 estimate of what the drug was going to do were
4 included in the DCF that was disclosed. And of course
5 it's true that if you change the assumptions in the
6 DCF model, you can directionally change them to
7 increase value.

8 What the plaintiffs' counsel omitted
9 to tell the Court earlier, or simply aggregated all
10 the changes, was that, individually, if you toggle
11 just a few of the sensitivity items around percentage
12 of success for certain applications of this ozanimod
13 drug, there weren't material changes in the DCF --
14 maybe \$30 on a \$232 valuation or a valuation that
15 ranged below that. But it was not that this was some
16 increase of 70 percent unless, unless, you took the
17 aggressive assumption of all the sensitivities and
18 added them together and considered that as the best
19 estimate of what the drug would do. That would be the
20 total home run.

21 Why is that wrong here? Well, it's
22 wrong because, as you look at all of the disclosures
23 in toto, it's quite clear that for a company like
24 this, a development-stage pharmaceutical company, they

1 are in the business of trying to get a drug to market,
2 and it's a very expensive business. This is a company
3 that had never, ever, made any money. It had never
4 even gotten a revenue stream from any drug that it was
5 marketing. It hadn't taken anything to market.

6 So you cannot assume -- and this
7 applies to some of the other supplemental disclosures
8 that we'll talk about in a minute -- you can't assume
9 that this is going to be a home-run company and all
10 the applications of the drug are going to sail through
11 the testing, get commercial application, and
12 successfully be marketed. That is not the way it
13 works, and that's not the way it's presented.

14 And again, in toto, the disclosures
15 make this quite clear. The disclosures are very clear
16 about the speculative nature of the business and why
17 no stockholder should assume that every one of these
18 trials was going to work out or that the drug would go
19 to market on each of these different applications.
20 And so the sensitivity around this DCF model is not
21 material, because it's not the DCF that management
22 relied on. And in fact, the assumptions -- and
23 certainly to aggregate them only on the upside would
24 be misleading here, and misleading in a very dangerous

1 way to the stockholders.

2 So that's the DCF, the sensitivity of
3 the DCF.

4 THE COURT: Do you agree with
5 Mr. Enright that the bullet of supplemental disclosure
6 that discloses the sensitivity is all the
7 sensitivities that were in Centerview's presentation,
8 or were there others that were not included? If you
9 know.

10 MR. ABRAMCZYK: I do. I think the
11 best way to put it is it's complete only as far as it
12 goes. So I think I understand what he meant by that,
13 is when you read the supplemental disclosures, it does
14 address each of the sensitivities as to each of the
15 applications for ozanimod and when they toggled those.
16 Certainly other sensitivity analysis was done as part
17 of the overall banker work, but that was not included
18 in the supplemental disclosure, if that answers your
19 question.

20 THE COURT: Right. But he was pulling
21 out a book and saying -- I think he was essentially
22 saying all the sensitivities in this book, we got
23 included in the supplemental disclosures.

24 MR. ABRAMCZYK: No. That's certainly

1 not the case.

2 THE COURT: That's what I was
3 wondering what you --

4 MR. ABRAMCZYK: Your Honor, the
5 disclosure, at least the way I'm framing the response
6 to the question, the disclosure in the supplement is
7 this paragraph that appears -- I'm getting the page,
8 if you'll just bear with me one second -- that
9 appears --

10 THE COURT: I don't think any of these
11 pages are numbered, actually.

12 MR. ABRAMCZYK: These pages are not
13 numbered, but it's in Exhibit C, Your Honor, and it's
14 just about three pages from the back.

15 THE COURT: Yeah. I've got it.

16 MR. ABRAMCZYK: The sensitivity of the
17 sum-of-the-parts DCF analysis.

18 THE COURT: Right.

19 MR. ABRAMCZYK: And then it goes into
20 how -- if you change the probability of success here.

21 THE COURT: Right. You're telling me
22 the book, the bankers' book, had other sensitivities
23 that weren't included in the supplemental disclosure?

24 MR. ENRIGHT: Your Honor, would you

1 like me to hand this up so you can look at them side
2 by side?

3 THE COURT: Well, I'm asking
4 Mr. Abramczyk's position on it. You told me yours.

5 MR. ENRIGHT: I just figured you'd
6 rather look at them -- I'm sorry.

7 MR. ABRAMCZYK: The short answer is
8 there is sensitivity analysis, but not around this
9 disclosure.

10 THE COURT: Okay.

11 MR. ABRAMCZYK: Anyway, so on the
12 sensitivity DCF analysis, Your Honor, that's our
13 response to Mr. Enright's points.

14 Now, turning to what appears to be the
15 other favorite here this afternoon, which is the
16 non-risk-adjusted forecast. This, I must say, seems
17 like more than a small stretch to explain why giving
18 stockholders non-risk-adjusted forecasts would be
19 meaningful here and, more to the point, would actually
20 satisfy material omission here.

21 They simply don't, and here's why.
22 First of all, as the Court has already pointed out,
23 Centerview, the banker, probably used the
24 risk-adjusted forecast in its analysis. Those were,

1 without dispute, fully disclosed to the stockholders,
2 and that's really what matters. It is not the case
3 that some sophisticated holder here objected to the
4 disclosure because they were sharpening their pencil
5 coming up with different risk assessments.

6 No institutional stockholder
7 complained here about the quality of the disclosures
8 or the necessity for any supplement. And it strains
9 credulity to believe that some stockholder is going to
10 be assessing here, in a way that's, frankly, helpful
11 to the stockholder, his or her own assessment. And if
12 they do, they were free to either not tender, and
13 demand appraisal -- which no one did -- or make some
14 other assessment of this price. But the critical
15 disclosure was made here. That is, the risk-adjusted
16 revenue projections were in the original schedule 14D.

17 Again, a lot of this -- and the
18 importance of this around the risk-adjusted revenue
19 projection focuses on the speculative nature of the
20 business and why the industry standard is to present
21 the numbers this way. Because everybody needs to know
22 how, on a relative basis, the products may or may not
23 do. It's not just left to some investor to determine
24 what the probabilities are, because they're so

1 different and so fact-specific.

2 So what was disclosed was the critical
3 information. And this is not like some of the cases
4 they mentioned both here at argument today or the
5 Plato case that's in the papers, in which financial
6 projections weren't disclosed at all. That's not the
7 case here. The right projections were disclosed.
8 Management's best estimates are the risk-adjusted
9 projections, not the non-risk-adjusted projections.
10 And the disclosures make it quite clear in the 14D-9
11 that neither Centerview nor the board relied on
12 non-risk-adjusted forecasts.

13 THE COURT: So let me ask you this
14 question, then. Well, first of all, let me verify
15 something. As I understand it, before the
16 supplemental disclosures, a stockholder would not know
17 that baked into the risk-adjusted projections were the
18 assumptions of a 71, 62, and 35 percent probability of
19 obtaining regulatory approval for three indications
20 for this drug; is that right?

21 MR. ABRAMCZYK: Correct. The
22 specific -- the specific quantification --

23 THE COURT: Right.

24 MR. ABRAMCZYK: -- was not, no. It

1 was all over the disclosures that this is a very
2 speculative decision.

3 THE COURT: Right. Right.

4 MR. ABRAMCZYK: We don't know if the
5 applications will work. You know, it's at this stage,
6 it's at that stage.

7 THE COURT: Right.

8 MR. ABRAMCZYK: So all of that
9 qualitatively was presented, but the numbers were not.

10 THE COURT: All right. And I get it's
11 baked into projections. That's not lost on me. But
12 here is my question, which is, you debate how much
13 value, but is there, like, some value to the idea of,
14 you know, it's one thing to know that some projection
15 assumed a drug has a 5 percent chance versus a 95
16 percent chance. I mean, is there something to the
17 idea of some sense of order of magnitude? Wouldn't
18 that be somewhat useful?

19 MR. ABRAMCZYK: It is useful, and it
20 is disclosed here, Your Honor. They --

21 THE COURT: Well, by virtue of the
22 supplemental disclosure; right?

23 MR. ABRAMCZYK: No. No.

24 THE COURT: That's what I'm getting

1 at.

2 MR. ABRAMCZYK: Importantly, no, Your
3 Honor. The qualitative assessment that you're talking
4 about -- let me put it this way: As to a qualitative
5 assessment of the issue you're talking about, that is
6 disclosed, because the disclosures, including the
7 disclosures incorporated by the D&I and the prior Q's
8 and K's, for example, all talk with a great deal of
9 specificity about what is going on with the
10 development of ozanimod for this company at various
11 stages. And at various stages, there are assessments
12 of, you know, we think it's five years out, we think
13 this is going to happen, we think that's going to
14 happen.

15 It is true that there is no "It's a 5
16 percent, not a 95 percent," but the -- at least as you
17 read the disclosure, it becomes immediately apparent
18 that it would be very difficult for management to get
19 tighter into any sort of meaningful range on those,
20 because there are so many variables around whether the
21 drug gets over the hurdle. So they talk about it in
22 terms of what the stages of development are, and where
23 the drug is in those stages, rather than long-term
24 projections of future success numerically. That's

1 just not the way it's presented.

2 So what was done here is what the
3 stockholders -- what was disclosed here is what the
4 stockholders needed to make their assessment as to
5 whether to tender. And I would add that it's
6 important to note that even when the non-risk-adjusted
7 revenue projections were put in, they don't uncover
8 some suspicious adjustment here, or some -- raise
9 anything that's contrary to what Receptos was saying
10 about the development of its drug. In fact, they
11 really confirm that the risk adjustments seem well
12 grounded and adequate, including to the point of
13 talking about where they come from and that this is
14 what the industry does.

15 So this is, importantly, as the Chief
16 Justice, then the Chancellor, recognized, this is not
17 the kind of disclosure as to this
18 risk-adjusted/non-risk-adjusted point that comes in
19 that was contrary to what was already disclosed. This
20 is consistent with what's already in the total mix,
21 which, after all, is where the test funnels down to.
22 Does it make a difference in the total mix? The
23 non-risk-adjusted revenue forecasts do not change the
24 total mix here.

1 And just briefly to touch on some of
2 the others, I think the Court has already covered
3 quite well with the plaintiffs' counsel the relevant
4 points on the earnings-per-share analysis.

5 THE COURT: Well, do you know, can you
6 just tell me how it works? Is it the same number
7 that's being used in the denominator, I guess, to
8 calculate the EPS?

9 MR. ABRAMCZYK: I believe it is, Your
10 Honor. But one of the reasons why, and probably the
11 principal reason why the adding information about
12 earnings per share out to 2032, when you're talking
13 about 2015, is that they are so inherently
14 speculative. Number one, on the earnings side, this
15 is a company that never made any money on anything.
16 So in one sense, every projection is more speculative
17 than it would be in a company that has a steady stream
18 of cash flows from earnings.

19 Secondly, per share -- and plaintiffs'
20 counsel already covered this -- is also something
21 that's at issue in a developmental and pharmaceutical
22 company like this, because what they do is they go out
23 into the capital markets to raise more money. And
24 part of what they do is if they have access, they get

1 the equity markets, into the equity markets, and they
2 add a lot of shares, including this company. And
3 that's described in detail in the 14D-9 and the prior
4 K's and Q's. And as recently as, I think, November of
5 2014, they added 4 million shares.

6 So, you know, you have these very
7 speculative projections about both earnings and the
8 per-share denominator for that calculation, which
9 means any further refinement on that could not be, by
10 definition, satisfying some material omission. It is
11 just too speculative to make a difference here. And
12 what is important, of course, is that the company's
13 best estimate of future performance was already in the
14 14D-9. And this was not, importantly, additive.

15 So what's left? I suppose what's left
16 is what I think is probably one of the easiest
17 questions, and that is, what about these lower offers
18 from other bidders? Well, I think there is certainly
19 authority we cited in our brief that you don't, when
20 there is a lower offer from other bidders, lower than
21 the consideration ultimately offered by Celgene, under
22 Ramtron and other cases, you don't find that to
23 satisfy a material omission.

24 So this idea that "should have said

1 more about what Party A and Party C were doing on
2 collaborative efforts" really doesn't hit the mark
3 here for the plaintiffs here or create any basis on
4 which they can claim that they created a benefit or
5 deserve a fee. And again, the additional disclosures
6 here just confirmed that the deal price was the best
7 out there for the stockholders. And that's clear
8 under the analysis in the Medicis transcript ruling
9 that we included with our papers.

10 It is also important to note, I think,
11 that the disclosures around what was done with Party A
12 and Party C are extensive in the original 14D-9, and
13 all that's laid out, including a statement that the
14 company believed that Party A and Party C going away
15 on these collaborative proposals was beneficial,
16 because it allowed the company to pursue a sale of the
17 entire company, which is ultimately what happened
18 here.

19 We didn't hear anything, and I don't
20 know whether it's worth mentioning, about promise of
21 employment to -- at least I don't think we heard it.
22 Maybe we did --

23 THE COURT: There was a vague
24 reference to it.

1 MR. ABRAMCZYK: Yeah. And fortunately
2 so, Your Honor. There's just no "there" there. We go
3 over this in our papers, and I won't spend time on
4 this this afternoon. There was no promise of
5 employment. They had a supplemental sentence that was
6 from an early indication of interest from us that we
7 said we'd welcome the Receptos employees into the
8 Celgene family, or something like that. And there was
9 very affirmative not only -- not only disclosure, but
10 in the deposition testimony that the plaintiffs did
11 not include here, where the chief executive said, "We
12 did not have arrangements going forward." So there's
13 nothing -- there's nothing there.

14 I think that, again, it really comes
15 back to, you know, the Court's task today is to
16 evaluate the qualitative importance of the disclosures
17 that were obtained in the supplement. And it's only
18 compensable if the supplemental disclosures remedied a
19 material omission. Here, these disclosures don't rise
20 to the level of filling some and remedying some
21 material omission, and there really is nothing here on
22 which plaintiffs can claim they created a benefit for
23 the stockholders.

24 I don't think it's really a case that

1 the Court compares this to what would have happened in
2 other cases. It really is, as the Sauer-Danfoss case
3 describes, an inquiry into the materiality of these
4 disclosures, in the sense of did they satisfy some
5 material omission. And here, when you take them one
6 by one, you can't find a basis on which a benefit was
7 created. And therefore, there really is no
8 entitlement to a fee here. And there's nothing else
9 in the Sugarland factors here that would justify a
10 higher fee.

11 I heard plaintiffs' counsel saying
12 before he sat down that, well, the cases are now more
13 risky than they were. Well, this was filed before
14 Trulia. And so I'm not sure exactly when the period
15 he was talking about was, but this doesn't appear to
16 involve any more contingency risk than there used to
17 be, given when it was filed. And there was no
18 protracted litigation here.

19 So again, there is no disclosure here
20 that remedies some material omission here. And simply
21 by making a supplement that remedies some immaterial
22 omission through a supplemental disclosure does not
23 create a benefit for the stockholders and does not
24 provide the basis for a fee award.

1 THE COURT: All right. Thank you.

2 Mr. DiCamillo, did you have anything
3 you wanted to add?

4 MR. DiCAMILLO: I have nothing to add,
5 Your Honor. Thank you.

6 THE COURT: Thank you.

7 Mr. Enright.

8 MR. ENRIGHT: Thank you, Your Honor.
9 I will try to be brief. Brevity is not a strength of
10 mine, I apologize, but I will attempt to do my best.

11 Counsel said that the question for
12 Your Honor today is did the supplemental disclosures
13 cure a material omission. That's not the standard,
14 really. The standard is did they change the total mix
15 of information before the stockholders. And I think
16 on at least a couple of these, they did.

17 With regard to the sensitivity
18 analysis, the first thing I would say, Your Honor, is,
19 just to try to put a -- you know, nail down the --

20 THE COURT: Right.

21 MR. ENRIGHT: -- the issue. If you
22 look at the disclosure of the sensitivity analysis in
23 that bullet point in the supplemental disclosures and
24 you look at it side by side, at the -- the discussion

1 of the sensitivity analysis on page 20 of the fairness
2 presentation, each of these that are listed, and the
3 impact of them, each of them that are listed here are
4 in the proxy -- or are in the supplemental
5 disclosures. So to the extent you're asking is what
6 is on this page completely disclosed in this bullet
7 point in the supplemental disclosures, the answer is
8 yes.

9 THE COURT: And that page in the
10 fairness presentation is the only sensitivity
11 analysis; is that right?

12 MR. ENRIGHT: Yes, Your Honor.
13 Correct. Yes. The only one that was presented to the
14 board in connection with the DCF analysis. Yes.

15 THE COURT: Okay. And is it
16 correct -- I mean, I would think it probably would be
17 the case, but you got the discovery -- that there were
18 a number of other sensitivities that Centerview ran
19 before that?

20 MR. ENRIGHT: I don't know. I don't
21 know that that was asked, Your Honor. I apologize.
22 But what we do know is that what was actually
23 presented to the board in the fairness presentation --

24 THE COURT: Right.

1 MR. ENRIGHT: -- was disclosed here.

2 THE COURT: All right.

3 MR. ENRIGHT: Just to set that out.

4 THE COURT: And do you disagree with
5 the testimony from the CEO that Mr. Abramczyk read, in
6 terms of what he made of that information? I think he
7 was quoting from the transcript.

8 MR. ENRIGHT: Yeah. No, I don't
9 dispute any of that. The question was, you know, what
10 was the basis for the likelihood percentages that were
11 selected there. And I think the answer he basically
12 gave there was essentially "I don't know," more or
13 less. He seemed to say, well, it just seemed like
14 good numbers to pick. I don't dispute his testimony.
15 I just -- I think it was vague enough that it wasn't
16 particularly informative of what actually happened
17 here.

18 What we do know is that the bankers
19 took the time to conduct this analysis and present it
20 to the board.

21 THE COURT: Yeah, but that's not the
22 standard; right? I mean, part of me wishes people
23 would just staple the fairness presentation --

24 MR. ENRIGHT: Like a 13D filing for

1 everything.

2 THE COURT: -- and just end the misery
3 of having to go through this -- you know, this torture
4 every time. Because you can always find something in
5 a bankers' book that's not in the proxy.

6 But that's not the test. The test is
7 giving a fair summary of the analysis the banker
8 did --

9 MR. ENRIGHT: I agree, Your Honor.

10 THE COURT: -- that the board relied
11 on. Not every piece of minutia that's in a book.

12 MR. ENRIGHT: I agree, Your Honor.
13 The point here, though, is that they prepared an
14 entire sensitivity analysis. It isn't a line item.
15 It's not a footnote. It's an entire page that affects
16 the total -- the value of the DCF range of values
17 dramatically. And it was -- and it's not like it was
18 in an appendix, Your Honor. It was presented the next
19 page after it. It was right there.

20 THE COURT: So you got this disclosure
21 that says, you know, 71, 62, 35 percent probabilities.

22 MR. ENRIGHT: Uh-huh.

23 THE COURT: Wouldn't I just know by
24 logic, well, jeez, if I goose up each of those by 20

1 percent, this value is going way up? Wouldn't I just
2 know that?

3 MR. ENRIGHT: Sure. Sure.

4 THE COURT: Okay. And isn't that
5 essentially what that sensitivity says?

6 MR. ENRIGHT: What it does is it
7 actually -- well, a couple things. Number one, it
8 actually quantifies it.

9 THE COURT: Okay.

10 MR. ENRIGHT: And number two --

11 THE COURT: So I whip out my
12 calculator and I can quantify it.

13 MR. ENRIGHT: And number two, it says
14 that somebody thought that these were realistic enough
15 possibilities to be worth quantifying and presenting
16 to the board. And that's really --

17 THE COURT: Not the CEO, apparently,
18 according to that deposition testimony.

19 MR. ENRIGHT: Well, he said he --
20 well, he also testified that the reason why all of
21 these analyses were done was to inform the board of
22 the value of the company. That was at, I want to say,
23 page 90 of the CEO's deposition.

24 THE COURT: Well, at some level,

1 wouldn't that have to be true?

2 MR. ENRIGHT: Sure, exactly. Well,
3 and I think that's the case here.

4 THE COURT: Okay.

5 MR. ENRIGHT: The reality is, Your
6 Honor, somebody thought that these potential upsides
7 were realistic enough to be worth doing an analysis on
8 it and presenting it to the board. The mere fact that
9 they did that is of import to the stockholders.
10 Because again, this isn't a line item. It's not an
11 appendix. It's an entire slide right on the heels of
12 the main DCF analysis page. And by indicating -- and
13 if it was a couple bucks, it would be irrelevant.
14 This isn't a couple bucks. The total potential upside
15 here is gigantic. Talks about billions and billions
16 of dollars. It is certainly, I think, enough to
17 change the total mix of information.

18 And we're not saying that any of this
19 stuff was guaranteed to happen, as Mr. Abramczyk said.
20 All we're saying is that the stockholders, in
21 considering the total range of potential outcomes
22 here, had a right to know what the potential upside
23 was that the bankers were quantifying and presenting
24 to the board. And that's what we got here.

1 Now, with regard to the risk
2 adjustments, Your Honor, you know, putting aside the
3 unadjusted revenue projections, okay, which I think
4 are certainly helpful, but I think the real point here
5 is that the stockholders were told how they came up
6 with these percentages and then told what the actual
7 percentages were.

8 So, for example, if T. Rowe Price, you
9 know, Biotech Fund A has a view that this is a really
10 likely drug to be approved and be a primary indication
11 for treating Crohn's Disease, sees that it's being
12 treated here as only 34 percent probable, if they see
13 that and they think, well, gee, we actually think that
14 it's well over 50 percent chance of being approved,
15 knowing that it was discounted that much is of real
16 value to them, and it really changes the total mix of
17 information. I have a hard time understanding how
18 that wouldn't be relevant.

19 Now, again, we're not saying that you
20 should assume that those un-risk-adjusted revenues are
21 going to come to pass. Not at all. What they do have
22 a right to know is what risk is being assumed here, so
23 that they can -- they can compare that to their own
24 view of the clinical profile of the company. Because

1 as Mr. Abramczyk said, what companies like Receptos do
2 in their communications with stockholders and their
3 10-Qs and Ks and press releases is tell the market in
4 a very aggressive way what the status is of their
5 clinical development process, because that's the whole
6 ball of wax for how a company like this is going to be
7 valued.

8 So these stockholders, at least
9 sophisticated stockholders, have a very well-developed
10 view of what the likelihood of approval is. And to
11 the extent that their view differed from the
12 assumptions that the bankers applied, they should know
13 that. And we got that for them.

14 With regard to the -- and lastly, Your
15 Honor, with regard to the lower offers, they weren't
16 really lower offers. They were differently structured
17 proposals that weren't to acquire the company. And so
18 all the cases Mr. Abramczyk cited are really
19 distinguishable, because again, it's not an apples to
20 apples, you know, Company A says we'll buy you for \$5
21 a share, Company B says we'll buy you for \$10 a share.
22 Company B's offer is obviously better. They're both
23 the same kind of transaction. You don't need to know
24 all the details about what Company A did, because

1 Company B's offer is significantly better, and
2 therefore, you can just proceed on that without all
3 the minutia about what Company A did.

4 Here, because the other proposals were
5 in the form of commercialization partnerships, that is
6 a tremendous difference. And the fact that the
7 stockholders could have received these payments while
8 maintaining control of the company and maintaining
9 control of this drug and maintaining the right to --
10 at least partial rights to commercialize it in the
11 future, that's all highly important. And they had a
12 right to know what those terms were, to make an
13 informed decision as to if they wanted prize package 1
14 or prize package 2.

15 If you have any questions for me, Your
16 Honor, nothing further.

17 THE COURT: No.

18 MR. ENRIGHT: I will say, Your Honor,
19 that I do think that this was a genuinely significant
20 total package of information for the stockholders, and
21 we worked hard to get it. We are not giving up a
22 release here. A reasonable and fair fee, I think,
23 should be awarded.

24 Thank you.

1 THE COURT: Thank you.

2 Mr. Abramczyk, I'll give you the last
3 word if you had anything else. I don't know if you
4 did or not.

5 MR. ABRAMCZYK: I have nothing to add,
6 Your Honor.

7 THE COURT: Thank you, Counsel, for
8 the arguments. I've thought about this a lot in
9 preparing for today, and I had put together some
10 notes. What I heard from the arguments essentially
11 confirms where I was at to begin with, so I'm going to
12 provide you with my ruling at this time.

13 This ruling addresses the petition of
14 plaintiffs' counsel for an award of attorneys' fees
15 and expenses arising out of several stockholder class
16 actions that were filed in July 2015 challenging
17 Celgene Corporation's then-proposed acquisition of
18 Receptos, Inc. for \$232 per share in cash.

19 The actions were consolidated on
20 August 4, and the parties self-expedited the case by
21 stipulation on August 13th. The very next day, on
22 August 14, the parties entered a memorandum of
23 understanding to settle the case solely for
24 supplemental disclosures. The transaction closed on

1 the terms proposed on August 27, 2015.

2 In March 2016, after Trulia was
3 issued, the parties changed course by stipulating to
4 the dismissal of the case with prejudice to the named
5 plaintiffs only and without prejudice to any other
6 putative class members. All that remains is the
7 application of plaintiffs' counsel for an award of
8 attorneys' fees. They seek \$350,000.

9 Defendants oppose this application,
10 taking the position that none of the supplemental
11 disclosures were material and that plaintiffs' counsel
12 should be awarded no more than \$75,000. I am in much
13 more agreement with the defendants' position, but I
14 will grant an award of \$100,000 in total, for reasons
15 that I will explain.

16 Today's petition is governed by the
17 mootness fee doctrine. Under Delaware law, plaintiffs
18 are entitled to an award of attorneys' fees in a
19 mooted class or derivative action under the corporate
20 benefit doctrine where they can establish that, one,
21 their suit was meritorious when filed; two, the action
22 producing a benefit to the corporation was taken by
23 the defendants before a judicial resolution was
24 achieved; and, three, the resulting corporate benefit

1 was causally related to the lawsuit.

2 As to the first factor, I am assuming
3 for today's purposes that the action was meritorious
4 when filed, although I note I've had no occasion
5 before today to consider the merits of any of
6 plaintiffs' claims. There was no motion to expedite.
7 There was no motion to dismiss. There was no motion
8 for preliminary injunction that was actually presented
9 for decision.

10 The third factor, the causal
11 relationship, is not disputed and is plainly satisfied
12 here, since the supplemental disclosures would not
13 have been made except for the plaintiffs' litigation
14 efforts.

15 What today's motion comes down to,
16 predictably, is whether the litigation produced a
17 benefit to the corporation and, by extension, to its
18 stockholders, which dovetails with the key factor of
19 the Sugarland test; namely, the quality of the benefit
20 conferred.

21 The benefit here is totally
22 therapeutic, consisting of supplemental disclosures
23 falling into three categories related to, first, the
24 company's financial projections; second, the financial

1 analysis prepared by Receptos' financial advisor,
2 Centerview; and, third, the background of the
3 transaction. None of the supplemental disclosures
4 satisfy the standard of materiality, in my view, which
5 is the reason for my ultimate conclusion that a
6 relatively modest fee award is warranted here.

7 I'll briefly address now each category
8 of the supplemental disclosures. The first category
9 of supplemental disclosures added three pieces of data
10 to a set of projections that was included in the
11 original recommendation statement. Before turning to
12 those, it's important to emphasize that the
13 recommendation statement already contained the
14 complete set of the company's risk-adjusted
15 projections for the period from 2015 to 2032,
16 including the unlevered free cash flows.

17 Significantly, this is the set of projections that
18 Centerview relied on in preparing its sum-of-the-parts
19 DCF analysis for its fairness analysis.

20 The three data points that the
21 supplemental disclosures added were, first, a line for
22 revenue in each year of the model assuming no risk
23 adjustments; second, a line to the risk-adjusted
24 projections translating the projected net income for

1 each year of the model into an earnings-per-share
2 figure; and, third, Receptos' management's estimated
3 probability of success in obtaining regulatory
4 approval of ozanimod for three indications of
5 interest. In my opinion, the third data point
6 provided some useful, but not material, information of
7 some value, but the other two data points added
8 nothing of meaningful value.

9 Before going through these, let me
10 start with some nomenclature. When I refer to
11 "risk-adjusted projections," what I am referring to is
12 the set of projections into which management's
13 estimated probability of success in obtaining
14 regulatory approval of ozanimod for various
15 indications of interest was built in. These are the
16 projections that matter, because they reflect
17 management's best estimate of what was achievable. As
18 such, it's logical that these are the projections that
19 Centerview used in its analysis, and as I already
20 stated, these were the projections that were fully
21 disclosed in the original recommendation statement.

22 With that background, let me turn to
23 the three additional data points. The first data
24 point is the addition of a revenue line for ozanimod

1 containing no risk adjustments. This information, in
2 my view, has no real value, because it's information
3 of the "pie-in-the-sky" variety that assumes that
4 everything goes perfectly with ozanimod, which does
5 not reflect the real-world reality of the risks of
6 obtaining regulatory approval.

7 The second data point is the EPS line.
8 This information appears to be a simple mathematical
9 calculation where the already-disclosed net income is
10 divided each year by a certain outstanding share
11 assumption that remains static. I think it was 33.5
12 million. I could be wrong about that. That's not
13 terribly relevant, at the end of the day.

14 The only relevance of the added EPS
15 line, though, pertains to an illustrative analysis
16 that Centerview did for informational purposes. As
17 I'll discuss in a minute, that analysis doesn't have
18 any meaningful value, in my view, negating the
19 theoretical importance of the added earnings-per-share
20 line.

21 The third data point, which is
22 management's best estimate of the probabilities of
23 regulatory approval for three indications of interest,
24 is the most useful piece of information, in my view,

1 because it gives stockholders some feel for
2 management's estimate of the likelihood of approval.
3 The probabilities were 71, 62, and 35 percent for the
4 three different indications of interest.

5 Because these probabilities were
6 already built into the projections, I don't think
7 calling them out separately alters the total mix of
8 information in a significant way. Nevertheless,
9 seeing them has some value, in my opinion, to get some
10 sense of the order of magnitude of management's
11 confidence in obtaining regulatory approval for
12 various indications.

13 I am now turning to the second
14 category of supplemental disclosures, which concerns
15 the summary of Centerview's analysis. Again, it's
16 important to put things in context. The
17 recommendation statement originally disclosed the
18 three analyses that were the basis of Centerview's
19 recommendation to the board: the selected public
20 company analysis, the selected precedent transaction
21 analysis, and the sum-of-the-parts discounted cash
22 flow analysis. This is the kind of information that
23 is important to satisfy the requirement of Delaware
24 law to provide a fair summary of the basis for a

1 financial advisor's advice to the board. There is no
2 obligation under Delaware law to disclose every piece
3 of information that a financial advisor conveys to a
4 board, nor would such a standard make any sense.

5 The second category of supplemental
6 disclosures added two pieces of information that I
7 view as the "tell-me-more" variety that are not
8 material. The first piece of information describes an
9 illustrative discounted future share price analysis.
10 Notably, plaintiffs, who deposed a representative of
11 Centerview and the CEO of Receptos, provided no
12 evidence that either Centerview or the board relied on
13 this particular analysis.

14 In my view, this information did not
15 significantly add to the total mix of information and
16 had questionable value because it was a secondary
17 piece of information provided to the board solely for
18 informational purposes and because it merely confirmed
19 the fairness of the transaction price, in any event.
20 The range from that analysis ranged from \$139 to \$195
21 per share.

22 The second piece of information
23 discloses some sensitivities associated with changing
24 certain assumptions in the sum-of-the-parts DCF

1 analysis. This information did not significantly
2 alter the total mix of information, in my view,
3 because it just confirms what should be self-evident,
4 which is if you modify certain assumptions in the
5 projections up or down, the value derived from a DCF
6 based on the projections will change one way or the
7 other.

8 Finally, the third category of
9 supplemental disclosures concerned two items
10 pertaining to the background of the transaction. The
11 first item concerns the disclosure of certain payments
12 that were part of collaboration proposals from Party A
13 and Party C. The original recommendation statement
14 discussed these proposals, and as plaintiffs admit --
15 this is at page 21 of their brief -- disclosed that
16 they yielded a lower value than the Celgene proposal.
17 Thus, the additional information was confirmatory of
18 the fairness of the Celgene proposal and did not, in
19 my view, alter the total mix of information in a
20 significant way.

21 Finally, the second item consists of a
22 single sentence stating, and I'm now quoting, but I
23 substitute the word "Celgene" for "parent" -- "In its
24 preliminary indication of interest, [Celgene] also

1 referenced the importance of welcoming the Company's
2 employees to [Celgene's] organization in the event a
3 transaction were consummated."

4 Plaintiffs argue that this sentence
5 was material -- and I'm now quoting again from page 22
6 of their brief -- "because it revealed for the first
7 time that Receptos management had an expectation
8 throughout the negotiation process that they would be
9 welcomed into lucrative positions with the combined
10 company after a transaction had been consummated."

11 This is frivolous. The added sentence
12 is a vague statement that was, at most, an expression
13 of good will. Completely missing from the
14 supplemental disclosures is any hard information
15 demonstrating that management had negotiated
16 undisclosed pay packages for themselves or suffered
17 from any genuine conflict of interest.

18 To be complete, let me mention the
19 other Sugarland factors briefly. There's no question
20 this case was done on a contingent basis, that the
21 plaintiffs' lawyers have experience with this kind of
22 case, and that they expended time and effort. On the
23 other hand, the issues in this case were relatively
24 straightforward. The case settled very early, and the

1 amount of heavy lifting in the case was actually very
2 modest. But most importantly, it comes down to the
3 issue of the benefit conferred. All these other
4 factors really are secondary to the benefit conferred,
5 which is the primary consideration.

6 As I stated at the outset, none of
7 these additional pieces of information was material,
8 in my view. And I'll add that a lesson to take away
9 from this application today is that contingent cases
10 are risky. They're meant to be risky. There is no
11 right to cover one's supposed time and expenses just
12 because you sue on a deal, and plaintiffs should not
13 expect to receive a fee in the neighborhood of
14 \$300,000 for supplemental disclosures in a post-Trulia
15 world unless some of the supplemental information is
16 material under the standards of Delaware law. That
17 did not happen here, although some of the supplemental
18 information was of some value, for the reasons I've
19 explained.

20 Accordingly, I am granting a fee and
21 expense award in a total amount of \$100,000.

22 I think the order is on the system,
23 and I can enter it that way. Is it, Mr. Long?

24 MR. LONG: I'm not sure it is, Your

1 Honor. If I --

2 THE COURT: Do you have one?

3 MR. LONG: What I'd like to do is
4 confer with defendants, present them with a copy, and
5 maybe in a day or two we can present Your Honor with
6 an agreed form.

7 THE COURT: That's fine. If I see it
8 on the system, I'll enter it. If I don't, I'll wait
9 to get it from you.

10 MR. LONG: Okay.

11 THE COURT: All right. Thank you very
12 much, Counsel.

13 (Court adjourned at 3:36 p.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 77 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 66 through 76, which were revised by the Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 27th day of July, 2016.

/s/ Julianne LaBadia

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