IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE NYSE EURONEXT : Consolidated
SHAREHOLDERS LITIGATION : Civil Action No. 8136-CS

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Chancery Courtroom No. 12A
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Friday, May 10, 2013
9:34 a.m.

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BEFORE: HON. LEO E. STRINE, JR., Chancellor.

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RULINGS OF THE COURT FROM ORAL ARGUMENT ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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CHANCERY COURT REPORTERS
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THE COURT: In a large record case like this, it's, you know, not always clear what one should do; but I -- I am clear what to do. And I'm not going to, either, pretend that it's a procedural context. It's not. This is a motion for a preliminary injunction. It's not a motion for summary judgment. It's not -- certainly not a post-trial opinion. This is a provisional remedy that can be granted in sparing circumstances when there's a probability of success on the merits for the plaintiffs and that the plaintiffs face irreparable injury and that the irreparable injury they face is a greater danger to them than the harms that would be presented if an injunction was granted.

I don't think -- I -- I can't in good conscience enjoin this deal on the current record. I'll give you some reasons. They are oral reasons. And one thing that's really important about transcript rulings that people seem to be -- to lose sight of is that judges give transcript rulings for a few important reasons. One, if you don't give transcript rulings when you can, you can't issue timely written decisions in the other cases that require them, and

you can't make all the decisions that the interests of justice require you to make when you're managing cases. And you issue transcript rulings when you're not making law.

There's another context besides not making law that you issue them in. There's -- there are situations where you're going to come back to a case. I suppose I may have later -- it depends what the plaintiffs decide to do with this learning.

You have another chance to rule in the case, which is often why, when a judge denies a dispositive motion, you know, if you have to assume all the facts pled by the plaintiff as true and you deny a dispositive motion, do you need to write an opinion about people in the world based on a set of hypothetical facts? No. You'll get a chance to judge for yourself what you think the real facts are. That doesn't mean they're the real facts, either. It's just a human effort, but you actually do it on a record. So oftentimes when you deny a dispositive motion, judges don't write.

The other is when you don't have time to give a written ruling. And if you don't have time to give a written ruling, that's the least reliable

way to make new contributions to the fabric of the common law. And they should be taken as provisional. When people cite me back my transcript rulings, it's like -- I'm, like, well, I -- who cares? It's, sort of -- what you say, you try to do your best. You do case-specific justice; but if you think that that's an inhibiting effect because somebody issued a transcript ruling at some point in time, it's not.

So I -- I issue that caveat because, you know -- it's now become the new samizdat literature. And that's really important in the Soviet era because that's the only literature you could really rely upon. We do do written decisions, many of them. And our Supreme Court in particular does decisions, and they're binding precedent. Like, I can't set aside things like the Arnold-Bancorp by a transcript ruling. It's not my idea of precedent or respect for authority, and I'm not going to do that.

So that's a long way of prefacing with saying here is some case-specific justice on a particular motion that's a preliminary motion.

The big theory of the plaintiffs is, first they say that Revlon applies. I don't believe under the binding precedent of our Supreme Court

Revlon does apply. I think if you look at the Bank of Boston case and if you put the Santa Fe case in, this does not fit under the QVC change-of-control test. 67 percent of them, merger consideration is stock. In the Santa Fe case, the Supreme Court held where -- that where the consideration was two-thirds stock, Revlon did not apply.

For the reasons we've discussed in colloquy, the Bank of Boston case suggests just because a board is open to a possible cash deal does not put them in Revlon mode. I will indicate I do think if a board is in a situation like a solvency situation or when a board has clearly committed itself to an auction, a, sort of, current value-maximizing mode, the fact that they come out with a auction -- out of an auction where most of what they were looking for was current value maximization, they come out with an all-stock deal that happens to be the highest bid, I think it would be fairly odd not to impose -- you know, subject folks to Revlon.

But, you know, I don't have to decide that because that isn't the situation here. I mean, really, the circumstances of the ICE approach are really the kinds of circumstances that give rise to

stock-for-stock mergers that are not subject to Revlon. This was a strategic overture. It was originally premised as more of a market-to-market kind of deal. And the fact that the NYS board actually pressed for a substantial premium and didn't go into, kind of, social negotiations about how many directors they would get and where the headquarters would be, where the quarterly meetings would be, who would be the CFO in 2024, who would be the GC in 2036, would Mr. Niederauer have a chairman emeritus status for a decade, would Mr. Hessels, you know, be given some sort of knighthood by European royalty, I don't think that that gets you in Revlon, the fact that you actually do the right thing. So I don't think that Revlon applies.

Obviously it's a deal, and Unocal has bite, and you can't have unreasonable deal protections. And boards have to be open at all times to doing what is right for their stockholders. I think that's just the basic fiduciary duty of loyalty.

But the plaintiffs' Unocal -- and even if Revlon applied, their Revlon claims don't, in my view, have a reasonable probability of success on the merits. The theory of the plaintiffs is that

Mr. Niederauer somehow is just heckbent for leather to do a deal with ICE. It just doesn't -- there's no resonance in the record of that.

I mean, for one thing, we start with some mundane facts that are easy to forget. This is the kind of board that institutional investors supposedly dream of. 14 of the 16 directors are independent. The chairman is independent of the CEO. The deal that was done, the CEO didn't talk compensation or his own arrangements until the end. He refused to do that. He appears not to have been a particularly good or, frankly, avid negotiator for himself. He took a rather modest position, and he's going to fade out. If he wished to be on television and do that, he could have just suggested to the board, pursue the stand-alone option.

The plaintiffs begrudgingly -- I think not by intention, but they begrudgingly praise Mr. Niederauer in this sense, of saying, "Well, whatever they didn't like about him in the past, they appeared to be executing their game plan pretty well now. So if that was the case, what was the urgency? Most of the compensation he gets out of this deal is based on the price, and a higher price would give him

more compensation."

There's also -- so there's nothing -- there's nothing in this that suggests in any way, shape, or form he got something special from ICE that he couldn't have gotten from somebody else or a much better deal.

Honestly, the best play for someone like Mr. Niederauer would probably be something like sell part or, frankly, sell to private equity. Best deal for him is sell to private equity. That's their mode, you know. They love CEOs a little bit more than everybody else. And they didn't do that. And, in fact, what did he do at ICE? Did he run into the arms of ICE? No. Did they take their initial bid? No. Did they take their next bid? No. And he -- what did Mr. Niederauer do? He advised the board to tell them no and to shut them down.

And, actually, as I discussed -- and Mr. Kriner did an excellent job, which is characteristic of him of making his point but being very scrupulous with the record, which the Court admires and respects very much -- the e-mail that the plaintiffs talk about about Mr. Niederauer, which, by the way, if it's true, that he likes to be in Davos on

TV, that distinguishes him from absolutely no corporate executive in America and, frankly, no deal lawyer can tell.

I mean, if -- you know -- by the way, CNBC is in the hallway. You're all, like, getting nervous; right? Who's going to be out there first?

Is -- that e-mail was not sent by CME. It wasn't about resistance to a deal by -- with CME. It was an e-mail by ICE expressing frustration, because even when they had increased their merger consideration to a huge level, NYS was still resisting among key issues like the reverse termination fee, which is incredibly important in this context as is seen by the industry dynamic, the NYS not being able to get its deal done with the Deutsche Bourse.

Frankly, the plaintiffs' suggestion that somehow they could have gotten a deal done with NASDAQ, I mean, that's, sort of, funny to me. I mean, if you can't get a deal done with the Deutsche Bourse, I don't think NY -- maybe -- at least -- at least maybe in five years; but an NYSE, NASDAQ, the other merger, the idea that was going to get regulatory approval in two continents, pretty difficult.

So regulatory risk is real important.

The board got a lot more protection out of that from ICE.

The clearing negotiations -- and we'll get to that. But there's one in terms of Unocal. There's no evidence in the record that presents a barrier to any serious acquirer. They needed to be a clearing solution. If the board was going to do this kind of strategic transaction, the record seems to be undisputed that it was difficult for them to do their own clearing implementation because the customer approvals and cooperation you would need would be hard to get in the midst of proposing another deal. You also had to deal with the regulators and getting approval from them.

There's no dispute -- again, Mr. Kriner's candor and -- and fidelity to the record is admirable here; but that this is an issue of tens of millions of dollars, if you actually are buying someone out, you play Let's Make a Deal with ICE and you buy them out of that contract or, frankly, you just make clear to them they better be a great clearinghouse, call the customers and everybody; they're looking at you for 18 months. I would bet you could probably play Let's Make a Deal. And for

everybody concerned, there would be an economic solution.

But if you look at the things that constitute under Unocal analysis an actual barrier to the arising of a higher price offer, this just doesn't rise to that. And the testimony of Mr. Duffy himself, he says, "I looked at it first, and I thought, that's not the issue. The issue here is the premium they're paying."

So that issue of the so-called crown jewel isn't there.

There's been a lot of talk about the recommendation clause. I -- like the plaintiffs, I, sort of, share the plaintiffs' high regard for these sort of provisions. What I think is different than the plaintiffs' view of the world is the view that I have about my role as a judge. There is no set of circumstances in the real world that requires me to address this provision at this point in time. There is no vote lockup that is connected to this recommendation clause, such that anyone in the position of CME would believe that there isn't a chance for the stockholders to consider their bid. If there was a vote lockup, it might be a different

circumstance. Even then, I think the defendants would say, "Well, you'd still come forward with your bid, and then you would litigate about it yourself."

And there is something to that. In Revlon, Ron Perelman did not just put his own money into a deal; he actually hired his own lawyers. By the way, the same lawyers who advised CME.

So people who have real money are actually capable of hiring lawyers to litigate about these things themselves.

If there was a set of circumstance in which a real condition was on the table that could, arguably, be affecting the recommendation of the NYS board but for this contractual provision and someone was going to litigate about it, that's really the context in which this Court should consider granting an injunction. I'm being asked to grant an injunction. I'm not in a -- a declaratory judgment about the validity of a provision.

Something else is very important here, and I think we adverted to it in colloquies on both sides -- on several sides.

Sometimes when you accede to a contractual provision, you're not acceding to that

provision at all because you think it in isolation is a sound provision or even one that you think is intelligent in any circumstance. You're acceding to it because the other side of the negotiation is demanding it and you say there's parts of this meal that are really tasty and there's parts that are unsavory.

But if it turns out that the little part that's unsavory, you can swallow real quick and then there's a delicious bone-in, 28-ounce rib eye perfectly prepared, grill marks, Pittsburgh rare, totally grill marks but nice pink, warm center, and that's what your stockholders get in order if you swallow this thing and you realize that if you swallow this thing, if somebody has actually a 48-ounce rib eye, equally well-prepared but with a jumbo lump crab cocktail to start, plus a delicious ice-cold martini, you get to have that, if it's better, yeah, you might just take down the little pill. And you do that because what you're saying there is -- this is where you get the severability clause.

Now, there is the bilateralism that Mr. Frawley introduced. That's an interesting dynamic, but I think it actually makes the point even

more, because there -- you've -- the board's decision, in terms of its fiduciary judgment in dealing with a contract, can't be just isolated provision by provision. And in terms of what the NYS board got in the overall contract with ICE, I cannot conclude probabilistically that there's anything that constitutes a breach of fiduciary duty.

The substantial price that was procured, the substantial regulatory risk protection in the form of a very substantial reverse termination fee, the clear attempts to make sure that the clearing arrangements were sound and that -- I understand that they change if the deal goes away; but there's no argument, really no basis in the record to conclude that they're worse than market. Those evidence the effort by the board to get a -- the best deal it could for the stockholders. And that is really the core duty, even if Revlon applies.

And so I can't in this context take a hypothetical about conditions that the plaintiffs don't suggest even exist, which is someone in the real world making an offer for part or all of the business -- or no. Part is their thing because you can't make -- the European derivatives and make it the

basis of an injunction. And no, I'm not willing -- I don't have the intellectual confidence, nor do I have a bank account to put behind it, you know, what would happen when you pick out a deal. I am more skeptical than perhaps some judges about the ability to pull a thread in a merger agreement and still bind the buyer. I think judges have to be mindful of that risk. And that's part of why -- and, especially, again, when you don't have an actual offer on the table. It's one thing to issue an injunction if somebody in the real world were making an unconditional offer to buy the company or to buy part of the company. The injunction -- and when they seek an injunction, you can actually seek -- think about an injunction bond or something like that against them.

Here, all the risk is taken by the stockholders who are free -- this, again, gets to the situation, 4. -- there's nothing here in the world if CME comes back with an offer of $7 billion for the European derivatives business by the end of the business day. If they're on CNBC while we speak, if Jim Cramer says booyah to that offer, there is nothing, regardless of the recommendation made by the NYS board, there's nothing that precludes anybody from

voting this down, nor is there anything that precludes CME from hiring the very able litigators at the big firm that they supposedly consult, to actually bring a real lawsuit and to themselves seek a real-world injunction based on a real set of facts.

I'm not going to get into a hypothetical one. I don't think it's an appropriate role for the Court, despite the fact that I share the plaintiffs' skepticism that contractual promises to lie in the future have any real commercial utility. I'm not sure what buyers think they're getting by creating litigable risk about their deals. But, you know as Mr. Savitt points out, we have only the window into the case that we have. And the world is a dynamic place, and there are other circumstances where such a freaky promise may make sense. And I'm just not going to judge it.

In terms of the whole idea of the CME, was there some sort of -- is this deal tainted by a breach of fiduciary duty because of something about the interactions with CME, that's where I just think, unfortunately, for the plaintiffs, really cool potential facts don't always come to fruition. There's nothing about the record that suggests that

Mr. Duffy doesn't know how to play this game, in the sense of if he knew -- if he was seriously interested in making a real overture that was based on a real desire to engage in an M&A transaction with NYS, that he did not have the opportunity to do that free and clear of any deal protections. And that's one thing that is forgotten often in dynamics, which is when you have a look before deal protections, you're in a more -- you're in a poorer position to claim that you are inhibited by them.

Mr. Duffy's job, as the CEO of CME, is to help CME kick butt. When he was meeting with Mr. Niederauer, Mr. Niederauer met with him. Mr. Niederauer is absolutely right to be cautious. NYS is engaging in a major strategic initiative to do its own clearing. Mr. Duffy's testimony is so humorous -- I mean, it really -- I mean, the guy is good at what he does. He says basically that "We proposed" -- "We said" -- "We proposed that if he had any interest in doing a commercial arrangement with clearing in Europe, that we would be interested."

So he causes to have a meeting with Mr. Niederauer and then says to Mr. Niederauer, "If you have any interest in us doing a commercial

arrangement with clearing, you know, let us know. The ball's in your court. I put the ball in his court. Right. So you asked me to come to a meeting to tell me that if you want to do something with commercial clearing in Europe, which, by the way, we know you've announced a major initiative to do the clearing for yourself. You know, ball's in your court, pal."

Now, he says from his 33 years of experience that when somebody proposes a very specific -- frankly, I wouldn't call it -- if you want to -- like, the level of economics firms are as, like, microeconomic -- let's assume firm-level transactions here are macroeconomic. Like, did he want to supply, like, pencils to the European clearing operations? What everybody knows in 33 years, that if you go to, for example, the head of the GM and say that you want to supply -- you want to supply rubber to the tire manufacturer, that means you want to buy all of GM.

That's what Mr. Duffy says; right? That everybody knows that when you talk about a very specific targeted thing, it means you want to buy the whole thing.

Well, he knew Mr. Niederauer didn't get the message. And when he meets him in December,

he, sort of, says, "Well, you know, we might want to buy" -- "do the some or the whole." He says he felt like he wasn't being allowed to talk; but Mr. Niederauer just raised concerns but, sort of, didn't say anything.

Well, again, who asked for the meeting? Duffy. I'm sorry. When you make -- one of the things that you always have to realize when you do business, negotiate legislation, do anything like that, you got to think how most people think in the world. And if you're Niederauer looking at Duffy and Niederauer is talking to Bednar and Moelis, who didn't just fall off a vegetable truck, Duffy, if he's got something to say, is supposed to say it. He's the one asking for the meeting.

When people ask for meetings and they don't say the role, it's natural for people to infer that they're playing games, that they're trying to extract information about you, especially when they're your competitor.

Now, of course, it turns out that there was a very good reason why Mr. Duffy didn't say anything. Why? Because he didn't have any Eric Cartman. He never even bothered to go to his board.

Now, I think the Skadden firm will be very -- I'm an alumnus of the Skadden firm. They will be flattered to know that it's more important for a CEO to talk to Skadden about some issues of regulatory risk than to go to a board. I think traditionally, as a Delawarean about corporate law hierarchy, we tend to think CEOs should go to their board and get actual authority to make an M&A overture. Mr. Duffy seems to believe his legal service provider is not as important as the board, because when he was asked about whether he put any terms or conditions or anything even around the thing, he said, basically, "Heavens, no, I didn't. How do I do that?

"In the entire autumn where I was playing games with Niederauer, the one group of people I never bothered to engage and to discuss whether we could buy something, like, a multibillion-dollar European derivatives thing or, frankly, the world's most -- still most famous stock exchange, the one group of people I never bothered to actually discuss it with, in even a passing way, would be my own board of directors. And having not talked to them, when I met with Mr. Niederauer in December at our second meeting, just really hadn't had anything to say but I

was willing to listen to anything of Mr. Niederauer, who didn't ask for the meeting, had to say to me."

I mean, I don't know about any of you; but being called to a meeting by someone else who then says, "Well, what do you have to say?," that would -- that's kind of an annoying thing. "Well, wait a minute. This is your meeting."

And so I'm not -- when I look at -- what was the report about? Mr. Hessels' deposition is unfortunate. It is. But I don't see the conspiracy. I don't get it, because there's the October thing, which I actually think Mr. Niederauer was more forthcoming with the board than Mr. Duffy testifies that he was with Mr. Niederauer. Mr. Niederauer teased "They might be sniffing around to buy the European derivatives business." If you read Mr. Duffy's thing, he doesn't come close to saying that he actually even had the gumption to say those words.

There's e-mails continually by Niederauer to the two major bankers. Again, I'm not saying that bankers, you know -- that just telling your bankers is always the thing, but he's telling two independent bankers, very senior bankers. He's telling his head of M&A. I don't see any reason to

doubt that he did tell Mr. Hessels.

And I have to say to the plaintiffs, I mean, the reality is when you have a structure like this, where the CEO is not the chairman of the board and the chairman of the board is an independent director, if the CEO talks to the chairman of the board, the chairman of the board, it's really kind of his call about how far to take it next. I think it would have been cleaner.

I think it's a good learning lesson to document this in some way and put on the table that there was another approach; but I'm trying to figure out what you would except -- the way the board minutes would read is, "Duffy called us again. Seems to be poking around to get under the tent. Told him if he had something to specific say. Told him the same thing since in October. He never said anything."

That's what it would say. Is that material? I think there's a long line of securities disclosure law that says that doesn't even get -- come close, that when companies have an NDA with somebody and a confidentiality agreement in place and they're negotiating and sharing nonpublic confidential information, you don't necessarily have to disclose it

unless you have an agreement.

And what's even more is, I don't see, again -- there's no indication -- I don't think it's fair for Mr. Niederauer to say, given these kind of dynamics put people's reputational risks in play, I don't see anything on this record that probabilistically leads me to believe that Mr. Niederauer did anything but try to do what was best for his stockholders. He can't go away and give -- you know, give away the trade secrets to a competitor.

And making it even more real is, Mr. Duffy, again, I think his deposition is admirably candid. I'm not critical of him in any way, shape, or form. It's a real authentic deposition by a real sophisticated person. The least, though, credible part of it is where he suggests he somehow couldn't get words out of his mouth, that somehow Niederauer was keeping him from talking. I doubt the meeting was that long because there wasn't that much to say. Niederauer was actually in a position where any faithful board of directors and investment bankers and lawyers would have told him to be very careful about you talking. You listen. Chuck Duffy knows that.

His supposed advisors at Skadden know that. It was Duffy's call to talk. Duffy says Niederauer was keeping him from talking, except then Duffy is a very candid guy. He seems very straightforward. His deposition is admiral. When he's asked about really why he didn't say anything, he was honest. He didn't have anything to say. He had no offer to make, no authority to make it, no terms in mind.

Now, then, was he inhibited by deal protections? No. Why? Because he came out of the meeting and said, "I think Niederauer's being cautious because I think they're cooking something up. I get the sense that they're doing something real that we probably won't like because if they like it, that means it's bad for us." Right? "If it's good for NYS stockholders and it makes them more competitive, that's bad for us."

Does he call his board? Does he do anything? No.

So it goes public. And, by the way, in M&A time, he had plenty of time. Could he have screwed up this deal by sending in a Build-a-Bearhug letter? Yeah, he could have. December 17th he sends in a serious expression of interest. Would that have

delayed the process? Undoubtedly so. He knows that. Certainly Skadden would have told him that they could have. But he didn't do anything. And then when the deal comes out, he looks at the clearing arrangement. Is that the inhibited? No. What is? The price. He didn't want to pay that price.

So, I mean, it was an admirably candid deposition. The problem from the plaintiffs' side, for all the reasons they thought it was cool -- and I agree with them. That's where I would have searched, too -- is did they somehow fend him off. There's no indication of Niederauer thought he was going to get a better deal for himself from ICE than from CME. He didn't get any great deal from ICE. He met with them twice. He informed the key bankers. Could they have minuted it? I guess they could have; but that is not, in my view, the stuff of which a determination that someone reasonably -- with reasonable probability breached their fiduciary duties is made.

For that reason alone -- too, I'll deal with the disclosure point -- what would you disclose? I just don't get what would be disclosed. That a strategic competitor was messing around in the fall, not acting like a serious M&A bidder, appeared

to be seeking out information, never made a specific proposal, was so unserious that he never sought authority from his board. That doesn't come close to changing the mix of information, except if you think the mix of information needs to be changed to confirm that CME really did not have a serious interest as an acquirer in the autumn of 2012. I don't think that that changes the mix of information.

So on the key merits determinations, I don't think there's a probability of success on the merits. The plaintiffs have admirably focused today on these issues. There are some other disclosure things. I don't find any of the disclosures about Perella Weinberg disturbing.

And I also -- I understand that there's some view that nobody in the world is ever supposed to know anything that was outside the original proxy statement. The key information about Perella Weinberg, the fact that they'll get, you know, incentive competition if the deal goes through is disclosed. I also don't find their arrangements that troubling. It indicates that if they sell something less, it will be subjected to discussions. In the banking world, that doesn't mean you don't get any

fee. If they sold the European derivatives business for $6 billion, I would suspect that they would get a very healthy fee. It would probably not be as big as selling the entire company, but it would be pretty cool. And it would also be Miley Cyrus pretty cool that you would still have the ability to represent the remaining entity and the possibility for future investment banking work.

Now, the key information I'm saying, I don't get the Morgan Stanley claim, the fact that Morgan Stanley is representing the NYS about some sale -- some possible purchase of part of another business. I don't know how that provides them with any material insight that they wouldn't have had. The main thing that they would have material insight into NYS about would be that they represent NYS in the sale of -- the potential sale of the whole enchilada to Deutsche Borse. And that seems to have been fairly well disclosed.

So I don't see any allegation by the plaintiffs of a piece of information that is missing from the mix that is material or a misstatement.

And that is also true of the description of the Company A. Again, I have a

fundamentally different view of the world than perhaps plaintiffs have. But when it's disclosed that Company A made a proposal and they never improved it, that's true. I know plaintiffs seem to think if somebody -- if you reject something at 27, that you have a duty to put a specific -- not only do you have a duty to reject it at 27, you have a duty to put a specific number that you would accept on the table. That can be a contextually nonstupid way of negotiating. It can be.

Often in the -- in the initial stages of a deal, I think a lot of seasoned negotiators would say "Not at the first level. Somebody expresses an interest at 27, your best move is to say 'Doesn't come close to getting there.'" You don't tell them what does. You make them come back."

And, frankly, that seems to have been how it went down with ICE. And if the first time when ICE comes at no market, if you had said 30.24, you might not be at 33, because sometimes that second bid is a lot higher than you expected it would come in, but you don't know that if you've already -- the plaintiffs' bar -- and I remember the old "cap the market price," that once you put the price out there,

well, that's also in the negotiating dynamic.

So with respect to Company A -- honestly, I'm not going to talk about what they are. But the -- the record rings true that Company A is the kind of company that they'll come in and talk turkey with you and they'll say, "A deal makes sense at this level. If that sounds good to you or around that level, we'll talk. If you're talking materially higher than that level, that's just not the kind of buyer that we are. We don't do that. We don't play games. We don't" -- "We're not dying to buy anybody in particular."

And so the rendition that's in the proxy statement, to me, on a probabilistic level, rings true. And -- and so for all those reasons, I don't think on the merits the plaintiffs have satisfied.

On the balance of the harms, the stockholders have the free ability to choose for themselves this deal. There's no vote lockup. I don't believe there's any inhibiting deal protection. And, thus, to my mind, the balance of the hardships weighs entirely against taking it out of the people whose actual money is at stake and having a judge

enjoin this.

And so for all those reasons, I'm going to deny the injunction.

I appreciate the skillful advocacy on the other side. Particularly, it's always the hardest to be on the losing end of these things. And it's hard for me as a judge, when I see excellent lawyers who engaged in advocacy, have to go home. I hope the spring weather is some consolation. And in terms of the plaintiffs losing, the actual plaintiffs are stockholders. And at least the price of the deal seems to have gone up some from when the briefs were originally drafted.

So have a good week, everybody.

ALL COUNSEL: Thank you, Your Honor.

(Court adjourned at 12:42 p.m.)

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CERTIFICATE

I, NEITH D. ECKER, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 4 through 32 contain a true and correct transcription of the rulings 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.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 13th day of May 2013.

Official Court Reporter
of the Chancery Court
State of Delaware

Certificate Number: 113-PS
Expiration: Permanent