

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE JEFFERIES GROUP, INC.: Consolidated  
SHAREHOLDERS LITIGATION : Civil Action No. 8059-CS

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Chancery Courtroom No. 12A  
New Castle County Courthouse  
500 North King Street  
Wilmington, Delaware  
Monday, November 4, 2013  
10:07 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 DEFENDANTS'  
MOTION TO DISMISS

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CHANCERY COURT REPORTERS  
New Castle County Courthouse  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801  
(302) 255-0524

## 1 APPEARANCES:

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-and-

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Friedman, Jefferies Group Inc., JSP Holdings,  
Inc., and Jasper Merger Sub, Inc.

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2                   THE COURT:   Okay.  I know we can never  
3 get enough of Lynch or evolutions in the Lynch  
4 doctrine, but I'm not sure that this motion really  
5 turns at all on Lynch, although there was some  
6 interesting briefing about it, and I understand why  
7 there was.

8                   But, you know, procedural framework is  
9 incredibly important in law.  And, you know, the  
10 procedural standard that applies often determines  
11 whether a motion is going to be successful.  And we're  
12 in the context where our Supreme Court has reminded us  
13 in Central Mortgage that the only burden on the  
14 plaintiff is to plead nonconclusory facts that support  
15 a rational inference that a reasonably conceivable set  
16 of circumstances in which -- exists in which  
17 defendants Handler, Friedman, Cumming, Steinberg, and  
18 Leucadia committed a nonexculpated breach of fiduciary  
19 duty.

20                   Now, it's not surprising to me that  
21 the defendants largely grounded their motion in the  
22 reality that there were four members of the Jefferies  
23 board who didn't suffer from any conflict of interest.  
24 And then they argue that the plaintiffs have failed to

1 prove that the remaining four directors, Cumming and  
2 Steinberg, who are principals of Leucadia, and Handler  
3 and Friedman, who were executive officers at  
4 Jefferies, were aligned as a solid block and had a  
5 sufficient array of voting and managerial clout to  
6 constitute a controlling stockholder of Jefferies.

7           The problem for the defendant is it's  
8 just not necessary to find that these four directors  
9 with Leucadia constituted a controlling stockholder  
10 block to conclude that the plaintiffs have satisfied  
11 their burden to plead facts supporting a nonexculpated  
12 claim for breach of fiduciary duties.

13           For starters, at the pleading stage,  
14 the defendants' arguments about drawing arguable  
15 conclusions from undisputed fact pleadings are not  
16 ones that can sustain their motion. And the  
17 defendants make a lot of factual arguments about  
18 inferences, arguable inferences, that one could draw  
19 from undisputed facts. But they're just that.  
20 They're one of the inferences one could draw. At this  
21 stage the only inferences that can be drawn are the  
22 ones that can rationally be drawn in favor of the  
23 plaintiffs. The facts here have to be construed in a  
24 plaintiff-favorable way and reasonable inferences

1 drawn in their favor. When that lens is applied,  
2 certain permissible inferences exist that are  
3 disquieting at the pleading stage.

4           First, the complaint pleads with  
5 particularity in paragraphs 40 to 43 and 47 that there  
6 were personally important mutual back-scratching --  
7 that there was personally important mutual  
8 back-scratching that went on between Cumming and  
9 Steinberg, on the one hand, and Handler on the other.  
10 These include Handler's facilitation of Jefferies'  
11 purchase of tens of millions of dollars' worth of  
12 stock from Cumming and Steinberg and their families  
13 personally. This favor was returned when Handler was  
14 in a personal financial crisis and Cumming and  
15 Steinberg caused Leucadia to buy over \$25 million in  
16 stock from Handler.

17           Now, the defendants argue "This is not  
18 personally beneficial. They were just basically at  
19 market." Really? Well, then why didn't they go to,  
20 you know, Charles Schwab -- why not? -- and just make  
21 a sale on the market? Well, at a pleading stage, I  
22 think there's a permissible inference that's drawn.  
23 It's perhaps because they would have suffered a block  
24 discount or some other problem. These are large --

1 and they are large. I mean, I understand people are  
2 rich. But 25 million bucks was real money to  
3 Mr. Handler. He was in a personal financial crisis.  
4 And he admitted that. And Cumming and Steinberg and  
5 Leucadia got him out of it. Cumming, Steinberg have a  
6 lot of money. But they chose to have their money --  
7 their stock personally purchased by Jefferies.

8                   These are large, unusual personal  
9 transactions that show a thickness in the relationship  
10 between Cumming and Steinberg on the one side and  
11 Handler on the other. Honestly, they also indicate  
12 that these folks had a lot of clout over their  
13 respective organizations, because there are  
14 transactions which a lot of independent directors  
15 might say, "What are we doing this for?"

16                   Now, it's also -- second, although  
17 it's true that other transactions identified in the  
18 complaint could have been mutually beneficial to both  
19 corporations, the plaintiffs have pled that there was  
20 an unusual pattern of back-scratching between the two  
21 companies.

22                   For example, paragraphs 35 to 38  
23 allege that in 2006 Jefferies made an introduction  
24 that resulted in Leucadia investing over \$400 million

1 in an Australian iron ore company. And when Leucadia  
2 was ready to exit that investment, Jefferies purchased  
3 the equity that Leucadia had received from its  
4 investment for 1.25 billion. The Jefferies board  
5 delegated the sole responsibility for reviewing the  
6 fairness of that equity purchase to Handler. This is  
7 another contribution to the thickness of a  
8 relationship between these fellows.

9 Third, the defendants put down  
10 Handler's e-mail communications to Cumming and  
11 Steinberg as just being the sort of fatuous bull that  
12 a business guy uses to get his way. That may be so,  
13 but another inference can be drawn from e-mails quoted  
14 in the complaint at paragraphs 70 and 71. And these  
15 e-mails say things such as, "you have to know how much  
16 I care, respect, worship, and yes even love you (and  
17 Ian)" and "I consider you both two of the most  
18 important mentors in my professional life."

19 Then there's another quote. "... the  
20 most important thing in the world to me is that both  
21 of my friends/mentors/idols feel the same way about me  
22 as I do about them."

23 Now, the reality is humans react for a  
24 variety of reasons, not just lucre. And it's not

1 consistent with the pleading standard to ignore the  
2 possibility that Handler's own words regarding his  
3 feelings for Cumming and Steinberg were, in fact,  
4 sincere. As important, if the defendants are arguing  
5 that what Handler was mostly trying to do was to  
6 secure for himself, by personal flattery and  
7 obsequiousness toward Cumming and Steinberg, the CEO  
8 role at a combined Leucadia-Jefferies, that inference  
9 is no more helpful to them.

10           Fourth, although I concede that it  
11 would be difficult to conclude that Leucadia's  
12 influence over Jefferies rose to the level of a  
13 controlling stockholder under Lynch and its progeny,  
14 that does not mean Leucadia was not an unusually  
15 influential stockholder who was interested in the  
16 outcome of a merger. For starters, its voting power  
17 wasn't a trifle. 28 percent is a substantial block  
18 and would be a large barrier to entry to any possible  
19 rival seeking to acquire Jefferies. That's pretty  
20 good blocking power.

21           Leucadia also had two of the eight  
22 board seats at Jefferies and was coequal owner of the  
23 Jefferies High-Yield Holdings subsidiary, a joint  
24 venture that, according to paragraph 34 of the

1 complaint, was responsible for 10 percent of  
2 Jefferies' earnings. Any rival acquirer will, thus,  
3 have to deal with Leucadia as a potential partner.

4 Fifth, the merger negotiation process  
5 is one that raises pleading-stage questions about  
6 disloyalty. According to the complaint, four  
7 directors of Jefferies, the two Leucadia affiliates,  
8 Cumming and Steinberg, and the two management  
9 directors, Handler and Friedman, discussed a  
10 combination of Jefferies and Leucadia for over three  
11 months -- I repeat, over three months -- without  
12 informing the independent directors of Jefferies of  
13 that reality.

14 The complaint alleges that discussions  
15 regarding a possible merger between Leucadia and  
16 Jefferies began in early April 2012 when Handler met  
17 Cumming at Cumming's home to see whether he was  
18 interested in doing a deal. All of the independent  
19 directors were kept completely in the dark. Handler,  
20 Friedman, Cumming, and Steinberg then began hammering  
21 out the details of a deal.

22 It's alleged that the four men decided  
23 what the leadership structure of the combined company  
24 would be, with Handler aggressively pursuing the CEO

1 job for himself and the president position for  
2 Friedman, his second in command. During this time  
3 Handler and Friedman also directed Jefferies to  
4 provide Leucadia with nonpublic due diligence without  
5 receiving board approval and, according to  
6 paragraph 76 of the complaint, even leaked Jefferies'  
7 financial results for the second quarter of 2012 to  
8 Leucadia before they were made available to the  
9 public.

10                   Now -- and I'll deal with this recusal  
11 later, but Cumming and Steinberg are on the board.  
12 This is fiduciary acts. They might have been playing  
13 for Leucadia, but they were directors of Jefferies.  
14 They did not go to the independent directors at this  
15 time and say "Is it okay for us to receive this  
16 information and use it for our purposes, contrary to  
17 Jefferies' interest?" They did not tell any of the  
18 independent directors that this was going on. And  
19 they were cutting managerial deck chairs. They were  
20 fiduciaries of Jefferies. Fiduciaries have duties to  
21 speak.

22                   The complaint alleges that it was not  
23 until July 20th, 2012, that the independent directors  
24 were finally informed of the fact that there were

1 ongoing deal discussions with Leucadia. And even then  
2 the information that the independent directors  
3 received was cursory. Even after learning that  
4 Handler and Friedman had been discussing a possible  
5 combination of Leucadia, the independent directors  
6 took no action. In August, without informing the  
7 independent directors or receiving any input or  
8 oversight from them, Handler, Friedman, Cumming, and  
9 Steinberg supposedly finalized the leadership  
10 structure -- and I'll come back to that -- and visited  
11 Standard & Poor's and Moody's to discuss the effect of  
12 a potential merger on their two companies ratings. So  
13 they went to the rating agencies for the two companies  
14 without talking to the independent directors about  
15 that.

16 Sixth, the complaint alleges in  
17 paragraph 91 that it wasn't until September 19th,  
18 2012, five months after the merger discussions first  
19 began -- again, five months after the merger  
20 discussions first began -- that the board was formally  
21 notified of the discussions at a board meeting. It  
22 was not until that meeting that a transaction  
23 committee was formed, but this newly formed  
24 transaction committee hardly responded in a way that

1 creates an indisputable pleading-stage inference of  
2 the satisfaction of the due care. Although Handler,  
3 Friedman, Cumming, and Steinberg had already been  
4 discussing the deal for five months at the time the  
5 transaction committee was formed, the complaint  
6 alleges in paragraph 101 that the transaction  
7 committee waited for another entire month before it  
8 held its first meeting on October 20th, 2012. The  
9 committee also waited until that meeting to discuss  
10 retaining a financial advisor and did not engage its  
11 financial advisor until the next day.

12           The transaction committee did not do  
13 any negotiating of its own. Instead, it sent out  
14 Handler and Friedman to negotiate with Cumming and  
15 Steinberg over the price. Thus, despite the fact that  
16 the full board should have been involved in April by  
17 the four directors who had conflicts of interest, when  
18 the transaction committee was finally formed, it  
19 reverted immediately to allowing the same conflicted  
20 directors to do the price negotiations.

21           Now, admittedly, the defendants argue  
22 that the transaction committee gave Handler and  
23 Friedman a range within which to negotiate; but the  
24 plaintiff pleads, among other things, that the

1 transaction committee was not given management's best  
2 estimates of Jefferies' cash flows, that the cash  
3 flows the transaction committee financial advisor used  
4 were low in comparison to Jefferies' historical growth  
5 rates and -- and I think this is important at a  
6 pleading stage -- had been prepared in an artificially  
7 compressed time frame between their hiring on  
8 October 21st and the price negotiations on  
9 November 9th and that those did not reflect that  
10 Jefferies' investment in Knight Capital was getting  
11 ready to take off because of an acquisition that  
12 Handler and Friedman knew was going to happen.

13 I have to say I concede  
14 Mr. Allerhand's point about the use of the word  
15 "Jefferies." When I read the complaint and the briefs  
16 contextually, I had read it as saying that this  
17 process was not informed by the potential Knight  
18 situation. I had read it that as the two managers  
19 knew what was going on but that the special committee  
20 and its advisors had not baked that into their  
21 analysis.

22 And the plaintiffs also make the case  
23 that the exchange ratio -- these were not  
24 hammer-and-tong negotiations -- or maybe they were,

1 but it was a -- a very compressed hammer-and-tong  
2 session. It wasn't something that was done over a  
3 period of weeks. It was done in one meeting.

4           Now, the most important thing is  
5 that -- and I think this is where the defendants  
6 resist this part of the plaintiffs' pleading, but it's  
7 plainly there. The plaintiffs are not saying that the  
8 transaction committee was not aware that Handler and  
9 Friedman wanted to have those management positions.  
10 What they say is that what the transaction committee  
11 was not aware of was the fact that Cumming and  
12 Steinberg had been suggesting that there might be a  
13 need to retrade the management deck chair seating  
14 arrangements in a way that was inconsistent with  
15 Handler's desire to be CEO and to have Friedman as the  
16 second in command. Those were communications that  
17 were made in a contemporaneously relevant time frame.  
18 They were not, as Mr. Allerand suggested, simply back  
19 in July. These were pre-Halloween communications.

20           And I do not accept that, at a  
21 pleading stage, it is permissible for the Court to  
22 suspect that the only communications are those e-mails  
23 and that there weren't other conversations about this.  
24 Those e-mails of late October clearly made Mr. Handler

1 insecure. His own reactions in his words can only be  
2 read as insecure and as upset that what he thought he  
3 had firmly secured was now up for grabs.

4           And whether these suggestions were  
5 sincere or not, right, doesn't really help the  
6 defendants. Let's assume that they were insincere,  
7 that Cumming and Steinberg actually had no intention  
8 to really alter the deck chair arrangement. Does that  
9 help the defendants? Not at this stage. And perhaps  
10 not even at trial if that turns out to be true.  
11 Because the important thing is that there's an  
12 inference that Cumming and Steinberg were playing on  
13 Handler's and Friedman's personal desires for  
14 managerial clout in order to soften them up as  
15 negotiators on a matter of great importance to Jeffrey  
16 stockholders, which was the exchange ratio in the  
17 merger, which is if you know that Handler and Friedman  
18 really, really care and this is what they mostly care  
19 about and you're going into price negotiations, it's  
20 kind of a good strategy to remind them that you don't  
21 have to do the deal, that you have stockholders, too,  
22 and that maybe your stockholders aren't really that  
23 thrilled with the Jefferies management and want some  
24 continuing role for you. It's kind of a good tactic.

1           And, see, the problem for which -- and  
2 this is the problem with the whole recusal strategy  
3 is -- these two fellows, they didn't go to the  
4 independent directors in April and say, "Take command  
5 of this process. Here are the facts. Form a  
6 transaction committee. Form somebody to negotiate  
7 with us."

8           They were fiduciaries of Jefferies.  
9 They got nonpublic information of Jefferies from the  
10 managers without telling the full board. They went to  
11 the rating agencies without telling the full board.  
12 They discussed very important things about the future  
13 of Jefferies' management without telling the full  
14 board. There's no indication in this record that when  
15 those two managers were sent out to negotiate price  
16 that the transaction committee was told that the deck  
17 chair arrangements had been put in play. But Cumming  
18 and Steinberg knew that they had been put in play.  
19 And they were fiduciaries of Jefferies.

20           You can't recuse -- they didn't resign  
21 from the board. They had an ongoing obligation of  
22 disclosure to their fellow nonconflicted directors.  
23 And the complaint suggests that there were material  
24 facts that were not shared with the entire transaction

1 committee.

2           And, of course, we don't know about  
3 how the negotiations occurred, because the special  
4 committee -- the transaction committee did things that  
5 in best practice, things all the advisors in the room  
6 would say you don't do, which is the transaction  
7 committee did not send, did not monitor the  
8 negotiations, apparently. The financial advisor was  
9 not there. The negotiations were between the four  
10 people who had kept the board in the dark for four  
11 months.

12           If you would have thought at a  
13 pleading stage -- I don't think that, again, the  
14 defendants get credit for this. You would think that  
15 any transaction -- the transaction committee that  
16 would be most sensitive to retaining direct control  
17 over negotiations would be one that is told many  
18 months after the fact that a 28 percent stockholder's  
19 representative have been discussing a strategic merger  
20 of equals and the two key managers own the company had  
21 been discussing their managerial futures with that  
22 large stockholder and the independent directors had  
23 not been told. And, frankly, unless the Jefferies  
24 board has a material lighter meeting schedule than

1 most public company boards have, there were board  
2 meetings and committee meetings that were going on  
3 probably between April and July at which there would  
4 have been an opportunity to apprise the board of this  
5 minor development.

6                   And in terms of the -- what harm? I  
7 think the plaintiffs -- again, this is at an early  
8 stage. The plaintiffs allege, as we said, the  
9 compression of the process, which means that the  
10 transaction committee's view on the exchange ratio  
11 was -- was not well-developed; that management did not  
12 provide -- was not required to, and did not provide, a  
13 full set of projections and that this Knight Capital  
14 thing was not put in the mix; and, as a result,  
15 something that would have been a hugely beneficial  
16 negotiating fact for Jefferies in discussing the  
17 exchange ratio was not used as leverage and that the  
18 benefits of that were shared with the buy side.

19                   So for all these reasons at a pleading  
20 stage, I can't rule out the possibility that the  
21 exchange ratio was suboptimal to Jefferies because the  
22 negotiation process was compromised by the conflicts  
23 of interest suffered by the four directors. These  
24 directors half-baked a merger before telling the other

1 directors. And when the other directors got in the  
2 game, a plausible inference exists that they did so  
3 without adequate effectiveness. They were slow to get  
4 organized. They refused to participate directly in  
5 negotiations and, instead, left the terms of the deal  
6 to be worked out by the very fiduciaries who had  
7 inexcusably left them in the dark for months while  
8 materially important matters were being discussed.

9           And to the extent that the defendants  
10 point out that this is a non-Revlon deal, then things  
11 like managerial succession they're conceding are  
12 incredibly material. And instead of those things  
13 being discussed openly and under the supervision of  
14 the independent directors, this was done by the  
15 conflicted parties. And, frankly, without getting  
16 back into the Lynch thing, that's behavior indicative  
17 of a controlled board, a controlled corporation more  
18 than a -- a public corporation, because, again, I  
19 thought we had things like independent nominating  
20 committees and executive compensation committees which  
21 are usually charged with coming up with succession  
22 planning and other kinds of stuff. And you would  
23 think that those organs of the board would have been  
24 engaged. And under the listing requirements, those

1 organs of the board have to be comprised of entirely  
2 independent directors. And so topics of conversation,  
3 which are ordinarily for the independent directors,  
4 were conducted without their presence.

5 I won't get much into the deal  
6 protections, although I note that in the briefs, the  
7 defendants talk about the ordinary nature of the deal  
8 protections. I agree with Mr. Allerhand if you accept  
9 the notion that nobody was -- this is just -- "We  
10 weren't going to accept another deal," that's fine.  
11 But that doesn't mean -- you can't take any comfort in  
12 the deal protections, because the reality is that the  
13 board did nothing to create a welcoming environment  
14 for any other topping bidder. And, thus, the  
15 stockholders should have had no reason to believe that  
16 this is a deal that could have been competed for  
17 because when you put together Leucadia's coownership  
18 with the voting power -- and I concede that I -- I  
19 give the defendants that it's only 3 percent. But  
20 when you still have a 31 percent stockholder who is  
21 saying it's a buyer, not making any sign that it's a  
22 seller, and has a 50 percent controller of an -- of a  
23 very important subsidiary of the company, I don't know  
24 any of the -- the -- we got very talented

1 management-side advisors in the room. If any of them  
2 were engaged to make a bid, I'm sure they would say  
3 "I'll take your money to advise you to make a bid if  
4 you're really insistent on it."

5           But the price that you're going to  
6 have to pay to outbid them is going to be -- have to  
7 be pretty seismically high because you're in a bidding  
8 contest with somebody who owns a third of the entity.  
9 Certainly private equity is not going to be in that  
10 kind of game. And so I don't think the modest deal  
11 protections really do anything to help.

12           And so we're down to just -- as I  
13 said, I've already dealt with the recusal thing. I  
14 think the case law is fairly legion by now that simply  
15 not voting is not a free card to dismissal. I would  
16 agree with Mr. Allerhand if in April his clients had  
17 gone directly to the full board and said, "Frankly, we  
18 just had this" -- "somebody" -- "the CEO came to our  
19 office. You-all need to know about this. He came to  
20 my house, and he talked to me about this. I said to  
21 him, 'Until we can' -- 'we cannot deal with you until  
22 we set up a process that I'm comfortable with. We are  
23 going to be on the Leucadia team. We are going to be  
24 out of this.' But you need to know about this."

1           You get that kind of process going.  
2 They get a transaction committee going, and the  
3 transaction committee or the independent directors are  
4 doing it, I think it has a big effect on the  
5 individual responsibility of these two as directors.  
6 But that's not what's pled here. What's pled here is  
7 they got material nonpublic information of Leucadia  
8 from Jefferies while knowing that the nonconflicted  
9 members of the board were unaware of it, that they  
10 went to the bond rating agencies without the  
11 nonconflicted directors knowing about it; that they  
12 discussed things material to Jefferies' future while  
13 knowing that the nonconflicted directors of Jefferies  
14 -- and I take public -- I'll take notice of knowing  
15 the exchange listing rules -- the committees that  
16 probably are supposed to be dealing with these things  
17 had no knowledge of it.

18           Simply not voting at the end is not a  
19 safe harbor at this stage if the -- and also  
20 negotiating openly for Leucadia with negotiators who  
21 you're softening up when it's -- when you haven't been  
22 plain with the transaction committee about how you're  
23 softening them up is not a safe harbor.

24           And, again, this is pleading stage

1 stuff. We get to -- but that's where defendants -- I  
2 always urge people -- when I talk to law students,  
3 "Yeah, got to be careful about, you know, when you  
4 come to court because you're usually" -- "if you come  
5 at a dismissal stage, you're usually stuck with a lot  
6 of facts that you don't like, precisely because your  
7 adversary wrote the thing."

8                   So for all these reasons, I conclude  
9 that the complaint pleads facts that support an  
10 inference that it's reasonably conceivable that  
11 defendants Handler, Friedman, Cumming, and Steinberg  
12 breached their duty of loyalty. I'm going to,  
13 therefore, deny the motion to dismiss as to them.

14                   In terms of Leucadia, what I'm going  
15 to do is I do not believe -- for the reasons the  
16 defendants argued, I don't believe that Leucadia can  
17 be directly responsible for breach of fiduciary duty  
18 because I don't believe that the complaint makes out  
19 under our law that Leucadia was a controlling  
20 stockholder within the meaning of Lynch and its  
21 progeny. I believe that its voting power is -- falls  
22 below that level and its managerial control falls  
23 below that level; but that does not mean that Leucadia  
24 is out of the case for the reasons -- reason I will

1 give, which is I'm going to give the plaintiffs leave  
2 to replead and reinstate the more difficult theory  
3 under which they could hold Leucadia responsible,  
4 which is aiding and abetting.

5           The knowledge of Cumming and Steinberg  
6 is fairly attributable to Leucadia. To the extent  
7 that it's proved out that Cumming and Steinberg knew  
8 that they were dealing with vulnerable negotiators  
9 whose self-interest they were playing on in order to  
10 extract a better deal for Leucadia, to the extent that  
11 they knew that and they knew that the transaction  
12 committee was sending these compromised negotiators  
13 out to deal with the price, to the extent they knew  
14 that, that knowledge is attributable to Leucadia.

15           Given the fiduciary capacity in which  
16 Cumming and Steinberg were acting, if those facts pan  
17 out -- and, again, I remind everybody, you know, this  
18 is the pleading stage. So I'm just accepting the  
19 rendition of facts as true. If that's the case, then  
20 it would make out the elements of aiding and abetting  
21 because they would be knowingly complicitous to a  
22 breach of fiduciary duty. I don't think, though, that  
23 the pure theory of them being a direct fiduciary pans  
24 out under Lynch.

1           So I'm going to allow for the  
2 reinstatement of the aiding and abetting claim, but  
3 I'm going to dismiss the direct fiduciary duty claim  
4 against them for the reasons I've given.

5           So the plaintiffs, upon notice as to  
6 form to the defendants, can simply submit an order  
7 indicating that I've done what I've done for reasons  
8 that in two years I'll remember if someone gives me  
9 the transcript and I can read it again but otherwise  
10 will probably not be able to recall. But I think  
11 that's an age thing that most of the excellent lawyers  
12 in the room can identify with. We're at a point where  
13 we have to press empty on some things in the past in  
14 order to remember what we're supposed to be doing in  
15 the present.

16           It's been a very interesting argument.  
17 It's a pleasure to have lawyers so prepared. And I'm  
18 sorry to disappoint if I haven't made any -- haven't  
19 used this as the occasion for landmark law-making. It  
20 may be that we do get to the case and it's summary  
21 judgment or a trial stage where there will be some  
22 novel ruling. I don't -- I don't consider myself to  
23 have made any today, but simply to have applied the  
24 procedural standard.

1                   So why don't you-all discuss what an  
2 appropriate schedule is going forward and advise me  
3 when you think it's the right time in terms of putting  
4 in place a scheduling order.

5                   Thank you all.

6                   MR. ALLERHAND: Thank you, Your Honor.

7                   (Court adjourned at 11:44 a.m.)

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CERTIFICATE

I, NEITH D. ECKER, Chief Realtime 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 26 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 4th day of November 2013.

/s/ Neith D. Ecker  
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Chief Realtime Court Reporter  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Delaware Notary Public