IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GLOBE SPECIALTY METALS, INC.: CONSOLIDATED
STOCKHOLDERS LITIGATION : C.A. No. 10865-VCG

- - -

Court of Chancery Courthouse
34 The Circle
Georgetown, Delaware
Wednesday, August 26, 2015
9:54 a.m.

- - -

BEFORE: HON. SAM GLASSCOCK, III, Vice Chancellor.

- - -

ORAL ARGUMENT ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0522

APPEARANCES:

MICHAEL HANRAHAN, ESQ.
CORINNE ELISE AMATO, ESQ.
KEVIN H. DAVENPORT, ESQ.
Prickett, Jones & Elliott, P.A.
-and-
PETER B. ANDREWS, ESQ.
Andrews & Springer LLC
-and-
JEROEN van KWAWEGEN, ESQ.
CHRISTOPHER J. ORRICO, ESQ.
of the New York Bar
Bernstein, Litowitz, Berger & Grossmann LLP
-and-
MICHAEL C. WAGNER, ESQ.
JUSTIN O. RELIFORD, ESQ.
of the Pennsylvania Bar
Kessler, Topaz, Meltzer & Check, LLP
-and-
A. RICK ATWOOD, JR., ESQ.
of the California Bar
Robbins, Geller, Rudman & Dowd LLP
-and-
JOHN A. BLYTH, ESQ.
of the New York Bar
Hach, Rose, Schirripa & Cheverie LLP
for Plaintiffs

RAYMOND J. DiCAMILLO, ESQ.
ELIZABETH A. DeFELICE, ESQ.
SHAWNA C. BRAY, ESQ.
Richards, Layton & Finger, P.A.
-and-
SAMUEL B. ISAACSON, ESQ.
RUSSELL MANGAS, ESQ.
BRADLEY C. FARIS, ESQ.
of the Illinois Bar
Latham & Watkins LLP
-and-
BLAIR CONNELLY, ESQ.
of the New York Bar
Latham & Watkins LLP
-and-

(continued ...)

APPEARANCES (... continued)

SARAH E. DIAMOND, ESQ.
of the California Bar
Latham & Watkins LLP
for Defendants Globe Specialty Metals, Inc., Alan Kestenbaum, Stuart Eizenstat, Frank Lavin, Donald Barger, Jr., Alan Schriber, Bruce Crockett, and Jeff Bradley

WILLIAM M. LAFFERTY, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
ROBERT H. BARON, ESQ.
of the New York Bar
Cravath, Swaine & Moore LLP
for Defendants Grupo FerroAtlantica, S.A.U., Grupo Villar Mir, S.A.U., VeloNewco Limited, and Gordon Merger Sub, Inc.

- - -

THE COURT: Good morning. Thank you all for making the trek down to Georgetown. I have expressed many times before, and I do it again, I appreciate it very much. It's a huge help to me, and it's a pleasure to see you all.

Good morning.

MR. DiCAMILLO: Good morning, Your Honor. I stand at this time to make a few -- actually, maybe more than a few -- introductions on my side.

From Latham & Watkins, Sam Isaacson, Blair Connelly, Russell Mangas, Sarah Diamond.

THE COURT: Welcome.

MR. DiCAMILLO: In the back we have Brad Faris, also from Latham & Watkins; and also, from the company, the general counsel, Stephen Lebowitz.

THE COURT: Welcome.

MR. DiCAMILLO: You will probably see two very stressed-out women coming in who are caught up in traffic, Elizabeth DeFelice and Shawna Bray from my office, will be appearing in the back, hopefully in a few minutes.

THE COURT: All right. If you are willing to proceed without them, we will go ahead and

do that. But it's a tough time of year to get up and down.

MR. DiCAMILLO: We are willing to proceed, Your Honor.

MR. LAFFERTY: Your Honor, I am here on behalf of FerroAtlantica; and my colleague, Bob Baron from Cravath, is going to speak on behalf of our clients to the extent we have anything to add today.

THE COURT: All right. I will be happy to hear from Mr. Baron if he needs to speak.

Mr. Hanrahan, good morning.

MR. HANRAHAN: Sorry, Your Honor. I didn't realize they hadn't announced their full roster. Let me turn to our roster.

THE COURT: It doesn't look like you are undermanned, either.

MR. HANRAHAN: Well, with me today are Jeroen van Kwawegen.

THE COURT: Good morning.

MR. HANRAHAN: And I already alerted him that I would mispronounce his name. C.J. Orrico. And they are of the Bernstein Litowitz firm.

THE COURT: Welcome.

MR. HANRAHAN: Michael Wagner and

Justin Reliford from the Kessler Topaz firm. John Blyth from the Hach Rose firm. Peter Andrews is here from Andrews & Springer. And Corinne Amato, Kevin Davenport, and John Day from my firm.

THE COURT: Welcome.

MR. HANRAHAN: And a little sort of housekeeping before we begin. I know there were various things sent to the Court last night, and I just -- I have hard copies of the letter and the three exhibits that we sent in last night. There was also an 8-K and letter from defendants. I have those in case the Court doesn't have them readily available.

THE COURT: That would be helpful. I will just ask the clerk to hand them right up.

MR. HANRAHAN: And then secondly, Your Honor, when I came in today, I noticed all these boxes and things here, and I thought maybe I had it wrong and we were going to trial. But what we have also done is taken selected portions of exhibits that I may refer to in the argument and put them in a binder, along with a couple of charts that relate the information between the exhibits, so that the Court doesn't have to rummage through these transmittal affidavits with 52 exhibits in them.

THE COURT: That will be very helpful. Have you given a copy of that to the defendants as well?

MR. HANRAHAN: Yes, we have.

THE COURT: Thank you.

If you could clarify for me, obviously the request for injunctive relief is first and foremost, but what other disputes are there out there as far as confidentiality and expedited discovery. I know there were a few things that were still unresolved.

MR. HANRAHAN: Your Honor, there is our motion to shorten time, and that goes to the record date and meeting date issue. The defendants filed a letter yesterday, and we do not believe that the fact that Globe apparently completely redacted and then -- and claimed privilege and did not produce the resolutions that it now claims were attached to the February 22nd minutes justifies denying our request for discovery into whether the record date and meeting date were properly fixed. And so we would ask the Court to grant our motion to shorten time so that we can get the documents that would be relevant to that, and perhaps everything will prove to be just as they

say.

THE COURT: But the purpose would be to supplement the record for the preliminary injunctive relief request?

MR. HANRAHAN: That's right, with respect to the record date.

THE COURT: Right. No; I get it.

MR. HANRAHAN: I think there are various confidentiality objections.

THE COURT: Can we set those aside. What I really want you to tell me, Mr. Hanrahan, is -- don't concern yourself so much with those today. We can work those out.

MR. HANRAHAN: Yes; I did not plan to get into those today. What I do plan to get into is why the Globe directors have violated Revlon in this case.

Directors, of course, have an affirmative fiduciary obligation --

THE COURT: Before you do that, could you just clarify for me, the injunctive relief you are looking for at this point, I take it, is simply to enjoin the meeting until a trial on the merits could be held on an expedited basis so I can determine

whether fiduciary duties were broken or whether any additional disclosures need to be made in light of the merger?

MR. HANRAHAN: That's correct, Your Honor.

THE COURT: All right. And if I were to do that, how long would it take the plaintiffs to be ready to go to a trial on the merits?

MR. HANRAHAN: Well, we've already taken considerable discovery. There would need to be some, presumably, additional discovery. But we think that trial could occur in October. And, of course, the exact scheduling of the trial may depend on defendants providing further information on where the schedule actually stands right now.

As we understand it, there's a timing agreement with the Department of Justice, because there has been a second request made for information, and that timing agreement extends, I think, until October 15th. So we know that there wouldn't be a closing, certainly, before the second half of October, and it may well extend later into the year.

Presently, I think the defendants simply say that they expect the transaction to close

sometime in the fourth quarter. That takes in several months. But we believe we would be able to fashion a schedule to have a trial on what would be, we think, fairly limited issues prior to the time that the transaction would close.

THE COURT: All right. Thank you.

MR. HANRAHAN: Under Revlon, the Court has recognized that it's especially important for the Court to enforce the affirmative fiduciary obligation of the board to further protect the stockholders' interests in the context of a sale of control of a company. The special circumstances of this case, this sale of control, make enforcement of that obligation to advance and guard the stockholders' interests particularly necessary.

The sale of control here is not a transfer of 100 percent of the company for cash, where the value of the merger consideration is clear and there's no continuing involvement at the stockholder, board, and senior management levels. The Globe stockholders are not cashing out their Globe shares. They are not even going to receive shares of a widely held and publicly traded stock of an existing U.S. company. Their Globe shares would be exchanged for a

minority interest in a new English company with different assets and a foreign control group. The Globe stockholders will receive a 43 percent interest in Ferroglobe, which, as the name indicates, combines the businesses of FerroAtlantica, who I will call Ferro, and Globe Specialty Metals. Ferro's parents, another privately held Spanish company, will control 57 percent of Ferroglobe's stock, a majority of the seats on Ferroglobe's board, and several of the senior management positions, including vice chairman and CEO.

So determining whether the Globe board maximized value for the Globe stockholders in this context involved not only considering the value of Globe's stock, but also the value of FerroAtlantica and the value of the minority shares of a foreign controlled non-U.S. company. And that's what constitutes the merger consideration. There is no market price for the stock of FerroAtlantica or Ferroglobe; therefore, there is no real market indicator for the value of the merger consideration except for the market price of Globe stock.

Now, in most Revlon cases, Your Honor hears about the target's market price reflecting that the stockholders are being offered a healthy premium

for their stock, and the Court takes that as an indicator that the board maximized value.

Here, Globe stock has been trading recently at prices well below the 15.37 closing price on February 20, the last day before the transaction was announced. It closed yesterday at $12.16, more than 20 percent below the preannouncement price. That market price does not support the Globe board's contention that they maximized value for the Globe stockholders, and it surely does not support their claim that the market will reflect $5.50 per share in synergies that Globe projected would result from the business combination.

Now, in most control cases there's a debate about the size of the premium relative to the market price. Here, even defendants' expert could not show a premium to market price. He asserted only a modest premium to what defendants say is Globe's fair value. However, the market price of Globe's stock prior to the announcement was higher than defendants' fair value calculation. So defendants are asking the Court to believe that the market was substantially overvaluing Globe.

Plaintiffs' expert has shown in two

reports that the merger consideration will represent a substantial discount to the value of Globe's stock. The market price supports his analysis.

Now, another factor that's different in this case is that, as Goldman recognized in its February 3rd presentation, a similar transaction would really not make sense for the limited number of alternative partners given the unique structure. You are not talking about just buying the company for cash; you are talking about putting companies together and having a continuing involvement. So a lot of the sort of usual things that the Court may look to as indicators that the board maximized value are just not present in this case.

There are further questions. Grupo VM's majority ownership raises questions about whether the Globe directors protected the Globe stockholders by ensuring they will be compensated for their loss of voting control and being relegated to minority stockholders of a controlled English company. Not only the Globe stockholders, but a majority of Globe's board and senior management will have continuing involvement in the combined company. This places them in a different position than when a company is just

sold to a third party for cash and the directors, senior officers, and stockholders all walk away. Mr. Kestenbaum has special interests because he will be executive chairman of Ferroglobe, will receive $42 million in increased and virtually guaranteed bonuses, and have a right to a large termination payment if his employment is not renewed in 2016.

THE COURT: What would be the detriment to Mr. Kestenbaum, under your expert's calculation, of the value of a share of Ferroglobe as opposed to a share of Globe, given the size of his holding?

MR. HANRAHAN: Well, Your Honor, it's a little bit different in this case than in some others. The --

THE COURT: What I'm trying to do, and maybe it's clear, but I'm just trying to get a feel for what his interest is that is allied with the other stockholders, as opposed to what his interest is that you have alleged is adverse to the stockholders.

MR. HANRAHAN: Yes. And the defendants have characterized it at 40 million, that -- comparing it in their brief, saying, "Oh, he would be giving up 40 million in value" based on our

expert's analysis, which they dispute.

And, of course, here, unlike in a situation -- for example, they cite the Cogent case. There, the founder owned a 38 percent block and the company was being sold to 3M for cash. So you could look at his block of stock and the merger price and conclude, "Okay. If it was -- 10.75 was the merger price and there had been an indication of interest at $11, his interest would be X dollars."

It's a little different and more complicated here, because you don't have a clear value of what the merger consideration is. Their value is based on supposed synergies, which, of course, you can't take those to the grocery store and spend them.

THE COURT: No, but I'm not really talking about the up side. I'm talking about the down side that -- I'm trying to weigh whether it makes sense to say that a 12 percent holder would be getting enough additional value from a deal that he wouldn't be sharing with the other stockholders to make it worthwhile for him to do the things that you've said.

MR. HANRAHAN: Yes. Well, we think it would, because he gets a larger and virtually guaranteed bonus. That's $42 million. He can walk

away at the end of 2016 with $48 million. The benefits and --

THE COURT: And there are registration rights.

MR. HANRAHAN: And there are registration rights, Your Honor. And those are extremely valuable.

The merger itself is not a liquidity event for either Mr. Kestenbaum or Globe's other stockholders because they are not going to get any cash. But he will get shares of a new larger company where control is passed, and he gets both demand and piggyback registration rights, which will enable him to sell stock in the secondary market.

Now, it would be difficult right now for Mr. Kestenbaum to liquidate, without a significant discount, a 12.6 percent stake in Globe. Beyond that, if the founder were selling off a lot of his Globe stock, that could adversely affect the market price and send a very negative signal to the market. But with the business combination, there will be more than twice as many shares outstanding. Control will have already passed to a new majority stockholder, and Mr. Kestenbaum's stake will be only 6 percent. So the

sale of some stock will not be as dramatic an event, and he can then effect the sale through a secondary offering without a blockage discount, which can be 10 percent or more.

So that when you look at -- and the Court in Rural Metro, it cites a number of cases. It's at 102 A.3d at 257, and there are cases cited at Note 32. They establish that a desire to gain liquidity can cause a director to manipulate the sale process, breach his duty of loyalty, and sacrifice value in a sale of the company to achieve his liquidity goal. And we think that's exactly what happened here, Your Honor.

THE COURT: Well, let's assume that Mr. Kestenbaum had divided loyalties and, in fact, wanted the deal to go through and that he misled the rest of the board as to the value of Ferro, and perhaps the value of Globe as well, so that their approval of the February meeting was not based on full information.

Why isn't that cured by the August meeting review that the board undertook?

MR. HANRAHAN: If I may just grab a glass of water, Your Honor, for a moment.

THE COURT: Sure. Dry work.

MR. HANRAHAN: Let me turn to why the August 7, 2015, board meeting was not successful to fix the breach of fiduciary duty. There are five reasons.

First, there is no evidence the board shared the information presented at the August 7 meeting with their financial advisor, Goldman Sachs, consulted with Goldman, or asked if Goldman's fairness opinion was still good in light of that information.

Second, the record does not show that the board made a determination of whether it would be a breach of fiduciary duty to maintain its recommendation.

Third, the board could not use its prior failure to be informed and act reasonably when it approved the transaction in February 2015 as a basis for changing its recommendation.

Fourth, the board was still not fully informed of all reasonably available information at the August 7 board meeting.

Fifth, the board did not act reasonably in simply doing nothing but polling the individual directors on whether they wished to propose

that the board consider a change in recommendation.

The board was not writing on a clean slate on August 7, 2015. Van Gorkom held that where there is a binding merger agreement, the board cannot reverse its recommendation without risk of suit. The business combination agreement contains only narrow grounds for changing the board's recommendation.

THE COURT: So let me stop you for a second. If that's true, then what is the remedy here? How is there ever -- if it's your belief that the board was not fully informed at the February meeting and that there are structural problems that make a subsequent review and potential withdrawal of the recommendation such that it's unlikely to happen in the best interest of stockholders, what is the ultimate remedy that would allow the stockholders to achieve the value from this transaction, if there is any?

MR. HANRAHAN: Your Honor, I mean, first they would have to satisfy the requirements under Section 7.4 of the business combination agreement, which requires consulting Goldman, providing Goldman with the advice, and asking Goldman to indicate whether its fairness opinion is still

good. It's interesting --

THE COURT: I understand. I guess my question -- and I wasn't clear about it, Mr. Hanrahan. But what I'm getting at is: If the board can't ever make a free determination, once the board has said, "Yes, we recommend," then it gets more information, and the case law you are citing indicates that a continued recommendation in favor of a transaction is tainted by the fear of litigation if the board reverses itself, what's the remedy? What do you do?

MR. HANRAHAN: Well, Your Honor, I think that taint is not necessarily irreversible.

I think, in this circumstance, it has not been done correctly. And I think, also, what the Court can do is enjoin the transaction, and then it's up to the defendants to decide whether the board needs to reconsider its recommendation. And to do that, they've got to consult Goldman. They've got to see whether Goldman's fairness opinion is still valid given, for example, Ferro's first-half-of-2015 results and how they compare to the projections.

And, I mean, it's telling that in May they went back to Goldman and said, "Oh, we think the financial synergies are going to be $16 million less.

Is your fairness opinion still good?"

But with all of the circumstances going on on August 7, including that Ferro's six-month results are way below what Globe projected, the projections that the board relied on, and actually are pretty close to the Ferro projections that the board did not see, you know, would Goldman under those circumstances and with five criminal investigations, would they still stand behind their fairness opinion?

THE COURT: And just so I understand, your argument, in part, is that the contractual out that the board had required Goldman to change its fairness opinion?

MR. HANRAHAN: Explicitly. It said after consultation with legal counsel and their financial advisor. And then once they do that, then it says that the board makes a determination as to whether maintaining its recommendation would be inconsistent with their breach of fiduciary duty. And they didn't do that, either. So the board has not taken the steps that would be necessary.

And then they'll have to at some point decide whether the contract precludes them. And then if the contract is so preclusive, that may present a

further issue, as it did, for example, in QVC, where the Court concluded that, under the circumstances, all of the different lockup and other devices and the -- you know, keeping in mind the extent of the fiduciary out, maybe it's insufficient. But we haven't gotten there yet because they haven't even taken the steps that under their own agreement would be necessary for them to do so.

And, again, I think one of the difficulties, we don't have the full record. But that's at their feet. They chose to put in one document, the August 7 minutes in heavily redacted form. That's all -- have they established that there is a -- that we have not shown a reasonable probability that at a final hearing we would be able to show that the August 7 meeting was not effective? Well, they sure haven't done it on this record, where there is no evidence that they ever consulted Goldman and there is no evidence of any determination as to whether there has been a breach of fiduciary duty; partly because they redacted all the legal advice in the minutes. That's their choice. There's nothing in the record as to whether the board got legal advice as to -- that their -- maintenance of their

recommendation would or would not be a breach of fiduciary duty under the circumstances here.

And at the end of the day, Your Honor, you know, this Court is charged under Revlon to determine whether the board acted reasonably. And we submit that in the unusual circumstances here, the board did not act reasonably on August 7, in a situation where they now know -- they probably should have known a lot sooner. But they now know of at least five criminal investigations, four of them involving Mr. Lopez Madrid, the other one involving his father-in-law, Mr. Villar Mir. And their attitude toward it is, "Well, maybe we can do something later on if it gets any more serious."

It kind of reminds me of the movie Breaker Morant, where the guy is on trial for murder and he makes a comment and the judge says, "You find that funny? You know, you will be in serious trouble." And he says, "Well, I was just wondering, how much more serious could it get?"

You know, I've never seen anything like it, and they just blow past it. They get financial figures on Ferro that show that what Ferro was predicting the results were going to be, Ferro was

pretty accurate. It shows that Globe is way off, the projections the board relied on on February 22nd are way off. Now -- and the board just goes forward.

I think it's part of this Court's job, and not just leave it to the stockholders or whatever, but to look at that and say, "Was that a reasonable decision for the directors to make under this set of circumstances?" which are unlike anything I've ever seen.

Let me then step back in time to the board's approval of the business combination agreement in the first place. The board was not fully informed of all reasonably available information when it approved the business combination back in February 2015. I think the August 7 meeting essentially admits that.

First, the Globe board was not provided with the projections for Ferro that were prepared by Ferro in the ordinary course of its business. Instead, the board received projections for Ferro prepared by Globe management. Those projections were not only unrealistic, as Ferro's management told them, but they were incorrect and based on the untenable assumption that Ferro would somehow

dramatically increase EBITDA while revenues and gross profits were declining.

Now, they say, "Oh, Ferro's projections that were shared with Fitch in September of 2014 were stale." But Mr. Kestenbaum used the Fitch projections in his model in January of 2015. So they somehow between, say, mid-January and late January, they suddenly got stale. No; what it was, was those projections didn't make the numbers come out to support the 57/43 split that Mr. Kestenbaum had already agreed to.

Second, the Globe board did not have Ferro's projections of the synergies that were achievable in the business combination. Since many of the synergies were related to the operation of Ferro's business, Ferro's views of what synergies were realized were important.

THE COURT: Did Mr. Kestenbaum have those?

MR. HANRAHAN: Yes, he did.

THE COURT: But he didn't share them with the board before the February meeting?

MR. HANRAHAN: No.

THE COURT: All right.

MR. HANRAHAN: The Globe board relied, instead, on much higher synergy projections prepared by Globe management, without being told that Ferro believed that those projections were impossible. At one point, the CEO of Ferro referred to them as rubbish.

Now, what's very interesting is that the day after the Globe board relied on those unrealistic projections from Globe, the same Globe management mutually agreed on February 23rd with Ferro that the synergy projections prepared by Ferro represented the achievable facilities, and they adopted Ferro's synergy projections in the joint press release announcing the transaction. So the board is told one thing. The very next day they agree to different synergy projections.

Third, the Globe board did not have the MorganFranklin due diligence report on Ferro, which was particularly significant because Ferro is a private company.

Fourth, the board --

THE COURT: Now, wasn't it summarized to the board?

MR. HANRAHAN: Well, no. There are

affidavits that are put in after the fact. And we have addressed that in our brief, as to what weight the Court can give those. We don't think much, because it's an after-the-fact explanation. It's clear the report wasn't given to them.

Now, they say there was some summary of due diligence. There's nothing in the minutes that references the MorganFranklin report or the issues that it raised.

Fourth, the Globe board was woefully underinformed about the four pending criminal investigations. And I will discuss those further, but it's apparent now from Grupo VM's interrogatory answers, which the Court ordered them to serve last Friday, that Mr. Lopez Madrid knew a lot more about four pending investigations that were pending in February of 2015 than what he told Mr. Kestenbaum and the Globe board. He claims he told them about two out of the four. Globe says he only told them about one out of the four, that he told them about the Bankia credit card investigation. But he admittedly didn't tell them about -- that he was imputado in the Pinto Romero investigation and had a restraining order entered against him. And he didn't tell them about

the Infoglobal investigation. And according to Globe, he didn't tell them about the Bankia IPO investigation.

And the other thing about it, I think, Your Honor, is that the information on these investigations was widely available. They could have found it the same way we found some of it; people did Google searches, and then you went and got public documents.

Where was the board in this? Once you get wind that somebody is the subject of one criminal investigation, where was the check on, well, what else is there? That's the natural thing for a board to do. They didn't do it.

THE COURT: Can you explain to me your understanding of the ability of the Ferroglobe board going forward to either prevent the seating of or provide for the removal of Mr. Madrid's board membership or status as a vice executive of the combined entity. I am a little confused as to whether they have contractually through this, what I will loosely call a morals clause, given themselves an ability to prevent him from being seated or remove him if these allegations are proved.

MR. HANRAHAN: Well, Your Honor, these provisions in the Section 1.11 of the business combination agreement and Ferroglobe's articles, there is nothing in those that says that the Globe board, which won't exist anymore, has any right to block or remove Lopez Madrid.

THE COURT: How is that executed? How is that provision to be executed?

MR. HANRAHAN: That's a good question, Your Honor. One thing that's clear is it doesn't give that power to the Globe board to just say it. And, remember, the Globe board made its deal with the devil in February, when they learned about the credit card investigation and Kestenbaum went to Lopez Madrid and Lopez Madrid had a fit about it and threatened to walk away and what have you. And what they did is they agreed to expand the board to nine, there would be one more director from Globe who gets a guaranteed board seat indefinitely; and that there would be no moral or legal veto over Lopez Madrid being executive chairman and being on the board. And that's confirmed by, I believe it's the July 13, 2015, 8-K and press release announcing Mr. Lopez Madrid as the executive vice chairman of Ferroglobe.

And remember, Grupo is going to own 57 percent of the stock. They can block anything at a stockholder level. They're going to have five of the nine seats on the board. They can block anything at the board level. So the idea that at some undefined point in the future there would be some effective ability to insulate the stockholders from Lopez Madrid is incorrect.

Beyond that, the harm is already started. In today's world -- you know, maybe at one time corporate executives having different sorts of indiscretions would have gone unnoticed. But not today. The articles are already out there linking Lopez Madrid's criminal problems to, "Oh, he's the executive vice chairman of Ferroglobe." And that's going to continue. And so to say, "Well, we'll wait and see if" -- "you know, in a few months, or whatever, maybe some of these things will work out." And beyond that, is it really reasonable to do that?

Now, as I recall my high school math class on probabilities, if there are four criminal investigations where Lopez Madrid is imputado, or a suspect, now, if there is a 50 percent chance he would be charged in each of those four investigations, then

there would be a 1 in 16 chance, or a 6.25 percent chance, that he won't be charged in any of the four cases; and there would be a corresponding 15 out of 16, or 93.75 percent, chance that he would get charged at least once. Now, you can play around with the probabilities and say, "Well, maybe it's only 25 percent. Maybe it's 60 percent. What are the odds of conviction?" Or whatever. But when you -- just as a matter of probability, there is a significant risk that this man will face criminal charges and that he may be convicted. Now, is it a 90 percent risk? No. But it's a very substantial risk that he will be charged, and there is a significant risk that he may be convicted.

And what is the -- what are the Globe directors, two of whom will have ridden off into the sunset and the other three will be there as minority members of the board, what are they going to do about it then? So the idea that, "Oh, you know" -- and it's just let's ignore it and hope it will go away. I don't think that's discharging their fiduciary duty to the stockholders, Your Honor.

Let me turn back, if I may --

THE COURT: Sure. I never thought I

would have an attorney stand in my courtroom and flit around the term "imputado" with complete abandon.

MR. HANRAHAN: You learn a lot of interesting things in this business.

We were -- I think had concluded what the board didn't know on February -- in February of 2015. Now let me turn to some information that they did have and what they did with that information or, perhaps more accurately, what the board directed management to do with that information to justify the 57/43 split Kestenbaum had already agreed to.

My focus is on the February 2nd and 3rd board meetings, because that is where the outside directors' sin goes from one of omission to commission, from a breach of duty of care to a breach of loyalty.

The proxy statement on page 73 provides a brief description of Goldman's financial presentations at the February 2 and 3, 2015, Globe board meetings. And that's found in the selected exhibits that -- at Tab A. We have printed out what was said in the proxy statement. The description of the -- of Goldman's February 2 financial presentation and related discussion consists of three sentences,

which are set out here. And, you know, essentially, there was review, including underlying assumptions. They review the pro forma operating model as prepared by management. And then it says, "The Globe Board requested that management update the financial projections to reflect input from the directors in the meeting."

The proxy statement's description of Goldman's February 3rd financial presentation consists of a single sentence. Well, when you compare the proxy statement's uninformative descriptions with the discussion in the February 2nd and 3rd minutes, it shows two important things. First, the proxy statement does not provide a full and fair summary of these critical presentations at those critical meetings. Second, the board failed to maximize value for the Globe stockholders and, instead, directed Globe management to change the assumptions and alter the projections to justify Kestenbaum's agreement to a 57/43 split.

Heading into the February 2 board meeting, Goldman's February 1 financial draft analysis, which is Exhibit C to the letter that we filed last night, at Section 3 on page 17, it showed

that based on estimated 2014 EBITDA and 2014 and 2015 estimated free cash flow, the 57/43 split would be a negative premium and a discount to the market price for the Globe stockholders.

THE COURT: Where is this?

MR. HANRAHAN: This is Tab C to the letter that we sent. It's not in the -- I'm sorry for the confusion.

THE COURT: I'm easily confused, as you are probably aware, Mr. Hanrahan.

MR. HANRAHAN: I am as well, Your Honor. And in that regard, let me note that on our selected portions, despite our best efforts, we realized that the table of contents was slightly incorrect, so we have handwritten in to make it clear what we are referring to. And I will try to provide a good road map. But we have two different things that were put in.

What you have in these three exhibits that were attached to the letter, you've got Goldman's February 1 draft presentation, and that shows negative premium discount to market based on the most recent EBITDA figures. What A and B show is that on the afternoon of February 1 --

THE COURT: I'm sorry, once again, to try to clarify; but these are EBITDA figures for Ferro or for Globe?

MR. HANRAHAN: These are figures examining -- they have projections for Globe, projections for Ferro, and then an analysis of how the 57/43 split.

THE COURT: All right. I'm asking you which one changed? Was it the Ferro EBITDA or the Globe EBITDA that changed?

MR. HANRAHAN: Ultimately -- and we are moving on to February 2nd and February 3rd -- ultimately, what first happens, Your Honor, is that Kestenbaum and Goldman decide to omit Sections 3 to 5 of Goldman's presentation and not present that at the February 2nd board meeting and to, instead, sequence Goldman's presentations so they just present projections to the Globe board on February 2nd. And then they say, "Oh, we think we need to revise the projections." And then on February 3rd, Goldman is going to redo the financial analysis after they change the assumptions and change the projections to get the outcome that they want.

So they were basically, on February 1,

setting up a rewrite of the projections on February 2 so that Goldman could then rely on the changed projections on February 3 to support the 57/43 split in Ferro's favor.

The minutes of the February 2nd meeting show how Goldman and the board decided to change the projections to support the 57/43 division. And that is in the selected exhibits Tab B as the February 2nd minutes. First it says that "Mr. Smith provided an overview of the assumptions that were used in preparing the Projections with respect to the Corporation, and then reviewed the Projections with respect to the Corporation." And then it says there are questions asked about the assumptions regarding silicon metal and commodity prices, selling, general, and administrative expenses. "Following the discussion, management agreed to revise the assumptions to reflect the points discussed at the meeting and present revised Projections to the Board at the next meeting of the Board."

Now, that's different than what the proxy statement says. The proxy doesn't say anything about "at the next meeting." And it says "update the projections." That makes it sound like you are just

taking more recent data. It doesn't say, "No, we're going back and we're changing assumptions and we're changing numbers in order to get the outcome we want."

The board also told them to revise the assumptions for the Ferro projections and present the revised projections at the next meeting. And then it says, "Well, there was a presentation on the potential synergies." And lo and behold, those are to be changed to reflect the different numbers for Globe and Ferro.

So at the February 2 board meeting, Globe management was directed by the board to revise the assumptions for the Globe projections and the Ferro projections, create revised projections, and then revise the synergy projections to reflect the changed projections for Globe and Ferro.

And if we go to Tab C in the selected exhibits, those are the minutes for the February 3rd meeting, or the portion of the minutes that deals with Goldman's presentations. And it says, "Mr. Smith focused on the changes" -- and I think this may be on, say, the --

THE COURT: I have it.

MR. HANRAHAN: Okay.

THE COURT: On page 2 of what you gave me.

MR. HANRAHAN: Yeah. "... focused on the changes to these projections made in response to questions and comments from the Board at the prior meeting." And he talks about capex assumptions and certain revenue adjustments. And they then note that the projections for the pro forma operating company have been changed to give effect to the changes to the projections for Globe and Ferro. And then the minutes just say, "After discussion, the Board approved the revised projections, as presented at the meeting, for use by [Goldman Sachs] in its financial [presentations]."

When you compare the pertinent pages of Goldman's February 2 presentation -- and that's at Tabs G and H -- with the pertinent pages from the February 3 presentations, which are at Tabs I and J, the impact of the changes in assumptions and revision of projections is clear. The EBITDA in free cash flows for Ferro decreased very modestly. However, Globe's EBITDA and free cash flows declined significantly in each year.

In Table E, Tab E, we have indicated

the differences between the February 2 and February 3 numbers for Globe and Ferro in EBITDA and free cash flow. And basically EBITDA goes down by $85 million between February 2nd and February 3rd. Free cash flow goes down by $60 million for Globe. Overall, between February 2 and February 3, you have a decrease that then results in under 24 hours the value of Globe decreasing by more than $170 million, more than 10 percent.

So it's no surprise that on February 3rd Goldman was able to present valuation analyses which had been deleted from its February 2 presentation that supported the 57/43 split. I mean, in the key year of 2015 -- and this is Tab D -- projected EBITDA decreases by $15 million overnight, an 8.2 percent decrease. So instead of maximizing stockholder value, the directors chose in the February 2nd and 3rd board meetings to change the numbers to justify Kestenbaum's 57/43 split. And then they later issued a proxy statement that contains misleading partial disclosure that is not a fair summary of what the board management and Goldman did at those meetings.

Now, the board also failed to protect

the Globe stockholders as minority stockholders of the combined company. Now, Globe says there is no authority, that failure to obtain minority stockholder protections is a breach of duty in a change-of-control transaction. That is not correct. Paramount vs. QVC, 632 A.2d at 42 and 43, which is cited in both our opening and reply briefs, recognize that where majority control is transferred to a single entity, there is a significant loss to the voting rights of the stockholders as to election of directors and approval of transactions.

Here, there is a total loss. They don't elect any directors. They don't control the vote on any transactions. QVC recognized that absent effective protections for the minority stockholders, stockholder votes are likely to become mere formalities. So the merger consideration must provide a control premium which recognizes not only the value of the control block, but also compensates the minority for their resulting loss of voting power to influence corporate direction through the ballot. The terms of the transaction here do not protect any voting power of the minority. There are no protective devices of significant value to compensate for the

loss of voting control.

In QVC, the Supreme Court noted that absent effective provisions protecting the voting power and rights of the minority, "... minority stockholders must rely for protection solely on the fiduciary duties owed to them by the directors and ... majority stockholder ...." However, the proxy statement acknowledges that the stockholders will not have standing under English law to protect themselves through a stockholder suit. And even if the many restrictions on the ability to bring a derivative suit could be surmounted, such a suit is unlikely to achieve effective and enforceable relief because of the need -- you would have to sue in England, and there is real questions as to whether you would be able, for example, to enforce a judgment against Grupo VM, which is over in Spain.

In addition to the lack of protection at the stockholder level, the purported protections at the board and management level are illusory. Kestenbaum and Grupo can satisfy any two-thirds director vote, and the standstill, as we have explained in our brief, has more holes in it than Swiss cheese.

Then you have the rollover directors. Well, first of all, the stockholders have not even been told who those directors will be. So, oh, you are going to rely on somebody whose identity you don't even know. Moreover, those directors will be elected by Grupo and they will be selected by the rollover directors themselves. They will have no special duty to, will not be elected by, and will not be accountable to the former Globe stockholders. And beyond that, they will be outvoted on the board anyway. So that's not effective protection for the Globe stockholders.

Let me turn quickly to disclosure, Your Honor. There was an 8-K submitted last night that disclosed the existence of the August 7 meeting and the Ferro first-half results. But we understand that the 8-K will not be delivered to the stockholders; it's simply going to be filed with the SEC. Putting the information in an 8-K effectively concedes its materiality. However, it does not provide an acceptable substitute for providing the information directly to the stockholders.

We have cited the Trans World opinion. There are later opinions, such as the ODS Technologies

opinion, that recognize that simply because some energetic stockholder with nothing better to do than read 8-Ks, the fact that somebody might uncover it is just not the same as making the disclosure to the stockholders. They sent the misleading and incomplete proxy statement to the stockholders. They ought to be required to at least send the 14A amendment to the stockholders.

Now, I've talked about the investigations some. Let me touch briefly on disclosure concerning that. The proxy statement says that Lopez Madrid and Villar Mir advised Globe of the five criminal investigations and that they denied the allegations. But neither the proxy statement nor the new 8-K discloses when they did so. Grupo's recent interrogatory answers finally reveal that -- when Grupo claims to have disclosed the investigations to Globe. However, the Globe stockholders don't have that information. And it's material.

In the interrogatory answers, Lopez Madrid claims, as I said, he disclosed both Bankia investigations. Globe's documents indicate he only disclosed one. He admits that he may have disclosed that he was being harassed by Dr. Pinto Romero before

the transaction occurred, but he didn't inform Kestenbaum of the criminal investigation in that matter, where he was imputado and a restraining order had been entered against him. He didn't inform Globe of the Infoglobal investigation until August 4, six months later. That investigation was pending well before February 2015.

Now, to a reasonable stockholder, the delayed timing and begrudging manner of Lopez Madrid's disclosure of these serious criminal matters might suggest a shocking lack of candor. He provided only partial and belated disclosures of the various investigations, all of whom were pending back in February. A reasonable stockholder would be concerned not only with the existence and seriousness of the investigation, which involve alleged dishonesty as a director and as a seller of stock and offensive and violent conduct, but also by Lopez Madrid's failure to be forthcoming with Globe about these matters. These things implicate his trustworthiness, his honesty, and his fitness to be an officer, director, and majority stockholder of Ferroglobe. They are important. You know, the stockholders are being asked to essentially turn over control to this guy. If he has not been

candid with Globe about these serious criminal investigations and he delayed disclosure, he gave partial disclosure, that is material in assessing his -- whether you want to turn over this company to that man.

Now, perhaps if he wasn't already imputado in four investigations and Mr. Villar Mir wasn't imputado in the Punica investigation, the further allegations about his yacht and possible contract fixing in the Punica investigation might not be material. But once you had to go down a road of saying he's imputado in five -- four investigations, I think complete disclosure requires that you say, "Oh, and by the way, there are these other allegations as well." You've got to give the stockholders the total picture.

You know, similarly, the revelations about the Bankia investigations make the facts concerning the Bankia bailout, 19 billion euros, after it had gone public in July of 2011, and by May of 2012, during the time of Lopez Madrid's ten months on the board, the bank goes belly up, stockholders ought to know that.

Finally, we have pointed out that

there are various partial disclosures that -- regarding the investigations, particular aspects. I won't go into those here.

We -- the defendants dispute whether there's improper disclosure at page 89 of the proxy statement on Ferro's terminal year cash flow. The simple fact is the proxy statement says Globe's management projected 191 million in Ferro cash flow for 2019, when the actual projection was only 155 million. And then the proxy statement fails to disclose that the discrepancy between the 191 million figure that Goldman used and the 151 million figure that was projected was a result of Goldman eliminating from management's calculation $36 million for increased working capital. That makes the disclosure doubly misleading, Your Honor.

We've already talked about the change to Globe management's projections in the context of the February 2-February 3 meetings, and we have covered that disclosure point in our briefs as well, so let me pass on.

And I think on synergies, the fundamental problem here is that on the one hand, they disclose the -- that the projections that Globe

management did that the board relied on in February 22nd, and then there is the Ferro projections that Globe management agreed to on February 23rd, and then there's disclosure relating to the $16 million in financial synergies I referred to earlier; and they say in that context that it's represented to Goldman that other than that $16 million, the synergies have not changed from the synergies that Goldman relied on and the board relied on on February 22nd. The problem with that is they agreed to different synergies on February 23rd.

THE COURT: More than just the 16?

MR. HANRAHAN: Oh, way more than just the 16, Your Honor. For example, Globe is saying $200 million in working capital release. That gets reduced to $100 million in working capital release. And that $100 million difference is, of course, much more significant than the 16 million. They go back to Goldman about the 16 million, but they never go back to them about the 100 million, say, "Oh, does that affect your fairness opinion?" I have a sneaking suspicion why they didn't go back to Goldman, because Goldman -- it's interesting, though. Goldman assumes that those Globe management synergy projections that

the board relied on on February 22nd, that those were still management's best estimates on February 23rd, the date of Goldman's written fairness opinion. But on February 23rd, management had agreed with Ferro and publicly announced the Ferro synergy projections. So to say those were still their best projections, now, you are basically saying, "Well, then, they didn't tell the truth to the public and the stockholders on February 23rd, when they issued that joint press release."

Your Honor, I think we have covered irreparable harm. We have touched the usual bases: disclosure, inadequacy of money damages, 102(b)(7), et cetera. But I think there are a couple of unique factors here: The Lopez Madrid factor and what that could do to the company; the collectability or enforceability of judgments because of English and Spanish law; and the fact that, you know, while we can assert and have asserted an aiding and abetting claim against Grupo, those, I think the Court knows, are difficult claims to prove, and so that may not be an adequate remedy in these circumstances.

THE COURT: What is the aiding and abetting claim against Grupo that has been briefed?

MR. HANRAHAN: We have not briefed it, Your Honor. And the reason for that is that in the context of a preliminary injunction hearing --

THE COURT: I am not suggesting you waived it. I just wanted to make sure I didn't miss anything, Mr. Hanrahan.

MR. HANRAHAN: No, you did not.

So unless Your Honor has questions, we would just ask that the preliminary injunction motion be granted and an injunction be issued.

THE COURT: But you have also asked me to expedite discovery on the meeting date and the record date, and I assume that would require some additional time and a further submission.

MR. HANRAHAN: Your Honor, we would ask -- and we don't know how promptly they can produce, you know, documents. We would think -- we are talking about a very limited number of documents here -- that that ought to be done promptly.

The meeting date is September 10. So, you know, if the Court does not rule from the bench today and is going to write an opinion, we would think that there would be time between now and the time the Court would issue its opinion to get those documents,

determine what they show, and in some instances, perhaps, it will all check out the way they say.

But things like not having a document control number and page number on the signature pages, we have been down this road in the Staples case, and sometimes things are not as they appear. And not necessarily because anybody was being fraudulent. Sometimes just in the way these things go, mistakes are made.

We would think that Globe would have a keen interest in making sure that there wasn't -- that there is no question that a mistake was made, because the effect could be quite significant. Because it could essentially invalidate the meeting. So we would think they would want to resolve this issue promptly. They seem to think that they can just keep following their usual process of, "Well, we'll give you one document. Here's the consent. Oh, we refer to res -- oh, we say the board who authorized it. Oh, well, we just happened to redact all the resolutions that were attached." How those are privileged, I don't know. But we think we are entitled to get some clarity on that by getting -- and all we have asked for is document production.

Thank you, Your Honor

THE COURT: All right. Thank you. Let's take a ten-minute recess, and then we will come back and I will hear from the other side.

(A recess was taken from 11:01 a.m. to 11:14 a.m.)

THE COURT: Please proceed.

MR. DiCAMILLO: Your Honor, Mr. Isaacson and I are going to divide the presentation on behalf of the Globe defendants. Mr. Isaacson will first talk about the Revlon issues, and then I will follow and discuss the disclosure issues and maybe touch on the irreparable harm aspects.

THE COURT: I will be happy to hear from you in that order. Thank you.

Mr. Isaacson, welcome.

MR. ISAACSON: Thank you very much, Your Honor.

THE COURT: I must say, as I look around at this packed gallery, I probably should have had sense enough to schedule this in Wilmington. And I do feel kind of bad at the amount of legal talent that was wasted on the round trip driving down here,

and I do apologize. I probably should have considered moving this to Wilmington. But, at any rate, you are here now.

MR. ISAACSON: Well, thank you, Your Honor. I must say, I enjoyed the ocean last night.

THE COURT: Well, then I don't feel so bad.

MR. ISAACSON: No complaints.

THE COURT: But, you know, a dip in the Delaware River in Wilmington can also be --

(Laughter)

MR. DiCAMILLO: We're glad we are here, Your Honor, if that was an option.

MR. ISAACSON: Your Honor, plaintiffs are before the Court today asking this Court for extraordinary relief to enjoin a shareholder vote. Essentially, they are asking this Court to take a very important decision involving a transformational transaction out of the hands of shareholders. And I would submit to the Court that plaintiffs have not met their evidentiary burden to demonstrate a reasonable probability of success on the merits, whether it be under Revlon or whether it be as a matter of disclosure. And I say this even though the plaintiffs

in this particular matter had the benefit of 180,000 documents and five depositions. So the record has been well developed here.

I think the Court's analysis must begin with the composition of the Globe board of directors. As Mr. Hanrahan pointed out, five of the six members of that board are independent directors. Plaintiffs do not make any serious challenge whatsoever to their independence and disinterest in connection with this particular transaction. These are mature, sophisticated, and experienced individuals. And I think it's very important that the Court have an appreciation for the stature of this particular board. Stuart Eizenstat is a senior counsel at Covington & Burling in Washington, D.C. He is a former U.S. Ambassador to the European Union. He is a former Under Secretary of Commerce for International Trade. Bruce Crockett is chairman of Invesco Mutual Funds Group. Franklin Lavin is a former U.S. Ambassador to Singapore and Under Secretary of Commerce for International Trade. Alan Schriber is an assistant professor of economics and a chair of the Public Utilities Commission in Ohio. Don Barger, who is the chair of the compensation committee

and the audit committee and was heavily involved in negotiating adversely to Mr. Kestenbaum during the relevant period, is a former CFO of public companies Hillenbrand and Worthington Industries. There is absolutely no reason in this particular record why these five directors would essentially, according to the plaintiffs, destroy their reputations to accomplish a deal that was a bad deal in their judgment.

The plaintiffs also ignore critical aspects of Mr. Kestenbaum's interests, which are very, very important in this case. He is the founder of Globe Specialty Metals. He built the company over ten years from $200 million in committed capital to north of a billion dollar equity market cap today. He owns 12.6 percent of the outstanding shares, which is a very inconvenient fact that plaintiffs ignored in their opening brief. They don't mention it. It's as if he is just a small stockholder. He is the largest stockholder who has the most to gain or lose from a bad deal. His stock was valued at $140 million on the date prior to the announcement. He has a very strong incentive to maximize the value of the stock for himself and for all of the other stockholders of

Globe.

As this record makes abundantly clear, Mr. Kestenbaum believes firmly that this transaction will create value for all Globe stockholders. There's no suggestion otherwise in his deposition. He is completely and thoroughly committed to this particular transaction because he believes that it will be, over the long-term, a value-creation transaction for himself and for all other Globe stockholders.

It is irrational in the extreme for the plaintiffs to make the assertion that Mr. Kestenbaum would sacrifice $40 million of his equity in order to accomplish a transaction in the pursuit of some employment benefits under the thumb of a different owner, a majority owner in Ferroglobe. The Ferroglobe compensation committee is not even in any manner constituted or controlled by the Globe independent directors. It will be a three-person committee. Two of those three individuals will be Grupo Villar Mir designees. So he is in every respect at arm's length in his new employment relationship, and it remains to be seen whether he has any employment relationship when his existing agreement expires at year-end 2016, which is a very short time

away.

That's all he's got in this deal. And I would submit to the Court, nothing that he's getting by way of compensation would possibly compromise for the loss of $40 million of stockholder value, of equity value in his own shares. And those are the plaintiffs' numbers. Mr. Hanrahan didn't want to own up to it in his argument, but those are the plaintiffs' numbers. All we have done is taken the plaintiffs' expert's analysis, which concludes that the stock is being sold for a 28 percent discount to Globe stand-alone value, and applied it to $140 million of equity and you are at $40 million.

THE COURT: You indicate in the briefing that your expert feels this is a value-enhancing transaction. The plaintiffs say that your expert concedes that it is being traded at a discount to value. Can you reconcile those two?

MR. ISAACSON: Yes. The experts in this case, Your Honor, have analyzed DCF value -- have analyzed value relative to Globe's stand-alone value and not to the market price of the stock.

The plaintiffs' own expert, Mr. Jeffers, in his opening report said the relative

analysis is to Globe's fair value based upon a DCF. He ignored the market price of the stock. Our own expert developed his own analysis, as did Goldman, based upon DCF value. Only once Mr. Jeffers was backed into a corner, when we pointed out that under his own analysis, DCF analysis, this transaction was -- implied a premium, did he then quickly pivot and say the relative metric is not DCF for Globe stock but, rather, the unaffected stock price.

THE COURT: So the market had overvalued Globe?

MR. ISAACSON: Theoretically, yes.

THE COURT: And the market price has dropped once the deal announced. Correct?

MR. ISAACSON: I believe it increased over time. Today, it's dramatically lower than it was when the deal announced. But the commodity markets generally are in a state of turmoil, as Your Honor, no doubt, is aware. So the drop in stock price cannot be attributed to a loss of confidence in the transaction in any way but, rather, to the macroeconomic conditions affecting the entire industry.

THE COURT: What was the immediate market reaction in terms of the stock price?

MR. ISAACSON: I believe it went up. But I would have to check that, Your Honor.

Mr. DiCamillo is stating that the stock price rose to $22 a share.

THE COURT: From?

MR. ISAACSON: From 15.37.

THE COURT: Thank you.

MR. ISAACSON: Now, you know, in the face of the economics of Mr. Kestenbaum's situation, where he is going to be executive chairman under essentially an extension of his existing employment agreement to December 31, 2016, the economics of that situation are relatively unchanged from where he was. He has an existing incentive plan with Globe. That existing incentive plan is going to roll over at Ferroglobe for a period while he is executive chair of the company. If he maxes out under that plan -- and that's an if -- and if the compensation committee does not exercise any negative discretion, he will make $14 million under that plan. Historically, he's made 6 to $8 million under that plan, and twice the compensation committee has exercised negative discretion to reduce the amount that he would otherwise be entitled to receive under the metrics set

forth in that plan.

So, again, it's an incentive plan. It is subject to compensation committee oversight and review. And it would be irrational in the extreme for Mr. Kestenbaum to trade $40 million of equity in the hope that he could pick up $8 million under his equity incentive plan. No one would do that.

You know, plaintiffs focus on the fact that under his extension agreement, if his agreement is not renewed at year-end 2016, he will be entitled to a severance payment. Again, on this record, the compensation committee of Globe thought very hard about structuring a long-term agreement for Mr. Kestenbaum. Mr. Barger, the chair of the comp committee, very much wanted a long-term agreement for Mr. Kestenbaum that would entice him and incentivize him to stay with this company over the very long term to realize the synergies that are available in this transaction. He negotiated -- Mr. Barger and Mr. Kestenbaum negotiated for a new incentive plan. They negotiated for the level-one plan. They negotiated employment agreement -- a long-term employment agreement.

When all of those terms were presented

to FerroAtlantica, as Mr. Barger and Mr. Kestenbaum always knew they needed to do to get input and buy-in from their new partner, FerroAtlantica was uncomfortable with those arrangements. FerroAtlantica asked that those arrangements be deferred, and Mr. Kestenbaum readily agreed. All that he asked is that if he is going to remain with the company post transaction -- post closing, that his agreement be extended to 12/31/16 and that he receive severance benefits, essentially, if his employment is not renewed after that date, which was a very reasonable request.

Now, plaintiffs also ignore another major fact in this case, and that is that even though this deal has been public for six months, six months, no other bidder has come forward. No other parties expressed an interest in negotiating with Globe to buy the company. And this would include parties with whom Globe had had negotiations prior to signing this particular BCA. It includes Elkem, with whom Globe had extensive discussions and negotiations and extensive due diligence between the parties, including term sheets. Globe concluded in that particular negotiation that the terms being proposed by Elkem

were not favorable. They included a $1.3 billion cash payment, debt, and an unfavorable equity split. But even after Elkem, and the market has been well informed of this particular transaction with extensive disclosures in an F4, not a peep. Nobody has expressed interest.

So what the plaintiffs are really asking this Court to do is enjoin this transaction, which is the only transaction that is on the table, in favor of what? They haven't said what the "what" is. This is a decision that should be made by the stockholders of Globe.

THE COURT: Well, I have not been shy in opinions that involve single-bidder transactions, and nor have other members of this Court, to say that really what tends to be most important to the stockholders is looking at what they are getting and what they are giving up, and that informed decision from the stockholders is not only preferable to Court intervention, but that it would be hubris, to use the former Chancellor's words, to interrupt the process and take that matter away from the stockholders.

This case, it seems to me, is a little different. Because if you have got a cash purchase, a

stockholder can look at whether he's getting a 25 percent premium to market and decide whether he wishes to give up his stock for that or not. But in this case, the difference is between keeping your stock in a corporation which has a widely distributed ownership structure in an American corporation or having a share of stock in a larger corporation that is controlled by interests that are not diverse and they are not distributed that is subject to foreign law. And the stock that one would be getting involves ownership in an entity that doesn't publicly trade. So the only way a stockholder can know which is a better deal here is to rely on the recommendation of the board, its disclosures, and its financial advisors' fairness opinion.

So this, it seems to me, raises heightened matters of disclosure and process that are not typically present in a single-bidder transaction where, as you say, no one has appeared and the decision for the stockholder is keep my stock or sell it at a premium.

MR. ISAACSON: I appreciate the Court's observation. Nevertheless, I think under, you know, the disclosures that have been made, where the

stockholders have all the information before them, all of the projections that plaintiffs claim are the right projections, the FerroAtlantica 2015 numbers, the fairness opinion as presented by Goldman, there's no basis to take the vote away from the stockholders. Not on this record, anyway.

THE COURT: The other difference here, it seems to me, between this and a typical transaction is that an injunction always runs the risk of the buyer pulling out of the transaction, taking that potential premium away from the stockholders.

Here, however, as I understand it -- and please correct me if I'm wrong -- preliminary injunctive relief will not end the obligation of Ferro to enter into this transaction, and there is fairly ample time for resolution of the issues at a trial and still have a stockholders' meeting in a timely way to approve this transaction, is there not? This isn't really a "Gosh, Your Honor, if you temporarily enjoin this matter, the stockholders are going to lose their opportunity because the buyer can walk away."

MR. ISAACSON: Well, the drop-dead date is November 28th.

THE COURT: Isn't it extendable by

either side for 180 days?

MR. ISAACSON: Yes, it is.

THE COURT: So the real drop-dead date is six months after that date. Correct?

MR. ISAACSON: If the parties were to extend it, yes. Yes.

You know, just to conclude my point on no one else coming forward, I also want to emphasize that the deal protection devices in this particular transaction are extremely mild. Plaintiffs don't make any serious attack upon them. There is a $25 million termination fee, a 48-hour matching rights provision, and, contrary to plaintiffs' argument, a very broad fiduciary out. Under the fiduciary-out clause in this transaction, there may not be an intervening event, and the board can change its recommendation, not only to pursue a superior proposal, but, in addition, if the board determines in good faith that the failure to change its recommendation will be inconsistent with its fiduciary duties.

THE COURT: It doesn't have to consult with its financial advisors to do that?

MR. ISAACSON: Yes.

THE COURT: Why wasn't Goldman

involved in the August board meeting?

MR. ISAACSON: It wasn't involved in the August board meeting because the board had decided, based upon the information before it, that it did not wish to reconsider its recommendation in support of the transaction. And it made that decision as a matter of its own business judgment with all of the information that plaintiffs claim should have been presented to it.

If the board concluded that it wanted to consider a change in recommendation, then, of course, there would be subsequent meetings and will be subsequent meetings, and Goldman would be consulted in that process. But I don't know of any rule of law that would require the board to involve Goldman every time it considers some element of the transaction. It wasn't considering at that time a change in its projections. It wanted to understand the projections, it got an update on actual performance for FerroAtlantica versus the projections, but there was no abandonment of the Globe management projections at that meeting.

THE COURT: All right. Fair enough.

MR. ISAACSON: Your Honor, I believe

the record in this case is extensive in terms of the board meetings and Mr. Kestenbaum's interactions with the board over a lengthy period of time, beginning in early 2014, leading up through the transaction. I believe that the record shows, and does show very well, that the board was very well informed of material aspects of this transaction and, indeed, of Mr. Kestenbaum's discussions with potential buyers.

He was charged with the responsibility by the board to seek out opportunities, to present those opportunities to the board, and to pursue and execute on those ideas as authorized by the board. That's what he did in this particular transaction.

The board heard from Mr. Kestenbaum on May 2nd, 2015, in connection with Mr. Kestenbaum's discussions with Elkem and in connection with his discussions with FerroAtlantica's Javier Lopez Madrid. Mr. Kestenbaum informed the board, according to his notes, that the main emphasis at that time, his main emphasis was on seeking out larger deals that would increase size and float for -- which he believed to be beneficial for all shareholders. The notion that by increasing size and float he's acting in a self-interested way to the detriment of stockholders

is erroneous. I think, as he explained in his deposition and as Goldman banker Luke Gordon explained in his deposition, increasing the interest of investors in a company, increasing float is good for market multiples. And there's no evidence in this case to the contrary, that moving into a larger company, increasing float, increasing size, attracting more institutional investors would in some manner be adverse to the interests of other stockholders.

In August of 2014, there was another board meeting. At that time, again, Mr. Kestenbaum reported to the board that the Elkem discussions were progressing. He also advised the board that there had been no significant discussions with FerroAtlantica. He provided an update on another transaction involving Georgian American Alloys. He also had hired -- Globe management had hired financial and legal advisors to assist on Elkem.

The Elkem discussions remained ongoing into September and October. They ended at a point when Elkem had proposed a valuation that would value out Elkem at 30 times 2014 EBITDA and Globe at 10 times 2014 EBITDA. That would also require the substantial cash payments and debt. Moelis advised in

connection with that particular transaction, and Moelis advised that it did not see that deal progressing. The board was so informed on November 5th, 2014.

After that meeting, Mr. Kestenbaum continued discussions with Elkem, and in November, given the status of those negotiations, he met with Grupo Villar Mir's chairman, Mr. Villar Mir, on November 19th. They discussed the business, they discussed the respective businesses, and they discussed synergistic benefits of potential combination.

It was Mr. Villar Mir and not Mr. Kestenbaum who proposed that Mr. Kestenbaum serve on the board of Ferroglobe. Thereafter, in the week of November 21st or 22nd, Grupo Villar Mir provided Globe with certain financial information concerning the FerroAtlantica business. That financial information included what has become known in this case as the Fitch presentation. The Fitch presentation included projections that had been prepared by Grupo Villar Mir for FerroAtlantica in February of 2014.

Mr. Kestenbaum and other members of

management reviewed the Fitch presentation and prepared for a meeting on November 30 and December 1st between Mr. Kestenbaum and Mr. Lopez Madrid. At that initial meeting, Mr. Lopez Madrid proposed a 65/35 split in FerroAtlantica's favor. And as the record shows, even though that split was in line with an earlier illustrative value prepared by Nomura, who had been advising since January in connection with potential opportunities, Mr. Kestenbaum rejected it.

There was then vigorous negotiation and discussion on November 30th and December 1st between Mr. Kestenbaum and Mr. Lopez Madrid. Mr. Lopez Madrid proposed again a 65/35 split, even though -- and it was hard -- it's been described as hard negotiations. The parties initialed a nonbinding term sheet which ultimately reflected a preliminary split of 57/43. The parties in the preliminary, nonbinding term sheet specifically stated that it would be subject to further negotiation, diligence, and board approval, and it was.

The next -- the board was fully informed of those discussions on December 18th. The Globe board met, Mr. Kestenbaum explained the rationale for a deal with FerroAtlantica and described

the preliminary, nonbinding term sheet. Latham & Watkins presented to the board regarding its fiduciary duties in the context of evaluating the combination. And the board authorized Mr. Kestenbaum to continue negotiations and to engage a financial advisor to assist the board.

As instructed by the board, and as anticipated by the preliminary, nonbinding term sheet, Mr. Kestenbaum continued negotiations with Mr. Villar Mir and Mr. Lopez Madrid on December 22nd, a few days after the board meeting. Mr. Villar Mir argued that the 57/43 split was very unfavorable to FerroAtlantica and very favorable to Globe. He argued the split should be 65/35. Mr. Kestenbaum threatened to walk away. Now, if Mr. Kestenbaum were truly motivated by employment in a larger company, he would not have threatened to walk away. He was obviously negotiating to get the best terms reasonably available for Globe. Ultimately, Mr. Villar Mir agreed to pursue a transaction based upon the 57/43 split.

On January 15, the board met again, after Goldman had been engaged earlier that month. And Goldman was engaged after the board heard presentations from both Goldman Sachs and Nomura. On

January 15, the board met with management, with Goldman, and with Latham & Watkins. The board was briefed by Goldman on the transaction structure and the key terms. Goldman also discussed strategic alternatives at that meeting. Latham discussed corporate governance of the new entities. The minutes reflect the board asked questions and was very engaged. They asked questions about transaction structure, corporate governance, expectations of FerroAtlantica with respect to sale of shares of the combined company after the transaction, and other matters.

The next meeting occurred on February 2nd. And there, Goldman reviewed draft financial projections prepared by management for the purpose of informing the board's analysis of the transaction. Goldman reviewed the process by which management prepared the projections for both Globe and FerroAtlantica. Goldman also reviewed the pro forma operating model for Ferroglobe that was prepared using the projections and potential synergies for the combined company.

Now, at that meeting, again showing active engagement by the board, the board asked for

certain updates in those particular projections, and they were made. The minutes reflect that the Globe projections were revised to address assumptions regarding silicon metal and commodity prices generally and assumptions regarding SG&A and capex.

With respect to the FerroAtlantica projections, questions were asked and discussions ensued, including the assumptions regarding SG&A expenses and Flash's energy business. Following the discussion, management determined to revise the assumptions to reflect the points discussed at the meeting and present revised projections to the board. This is exactly what you would hope.

Plaintiffs are saying, as I understand the argument this morning, they are suggesting that because the Globe board did not receive the relative contribution analysis when it was considering the projections, that some default occurred. In fact, this is exactly what you would want. You would want the board to review projections, to analyze projections, and to approve them before it is presented with a relative contribution analysis or a fairness analysis of any kind. And that was the process that was employed here.

The notion that this board, who was actively engaged and thoughtful and deliberate in reviewing projections and is considering the inputs and the assumptions and asking for changes, is somehow complicit in a nefarious conspiracy to engineer a result is utter and complete speculation. There is nothing in this record to suggest that this board was motivated by anything other than proper intentions on February 2 and 3, nothing whatsoever.

Discussions also occurred at that time regarding the achievability of the synergies. Mr. Hanrahan, you know, has overlooked that the projections that were in front of the board on February 2 and 3 reflected 2014 estimated EBITDA. And to the extent that there were drafts being circulated any earlier among management, those 2014 estimated EBITDA numbers were not current based upon 2014 actual data. And adjustments were made to reflect 2014 estimated EBITDA in the projections, and it turns out that the adjusted projections are very much in line with actual performance for 2014. So I -- the record is very clear that the 2014 numbers are in line with actual performance, which was then being developed and presented.

The board met again on February 3 and continued discussions regarding the strategic benefits of the transaction, including the opportunity to realize synergies that would represent additional value to Globe stockholders. Goldman again discussed strategic alternatives, including maintaining Globe's current strategy as a stand-alone company or pursuing a sale of the company to another strategic or financial buyer. Goldman's view throughout and advice throughout is that it would be very unlikely that any other financial buyer would come forward, because they could not value the company based upon the anticipated synergies.

Now, with respect to the Javier Lopez Madrid matters that plaintiffs have focused on, this, too, was the subject of a board meeting. The February 2nd board meeting, the -- and 3rd board meeting, the board was informed that management had learned of a credit card investigation, essentially, in which Mr. Javier Lopez Madrid had been called as imputado. He's not been indicted for anything. He has not even been charged with anything.

The record in this case is -- and we have an affidavit in our record on preliminary

injunction motion from a Spanish lawyer at Jones Day, and he explains that under Spanish law, being called as imputado is not a charge; it's not an indictment; it's certainly not a conviction. It's a notice to an individual that an investigation has been opened and they have the right to participate in the investigation.

The Globe board was informed of these matters and in response to them -- again, very active board -- sought protections under the business combination agreement. Those protections include what Your Honor has referred to as a morals clause, where any director of the company must meet standards of good judgment, character, and integrity.

THE COURT: How is that executed? How is it enforced?

MR. ISAACSON: It would be enforced in -- I believe there is a right of removal from the Ferroglobe board. Two-thirds of the board can vote to remove. Conflicted directors would not be entitled to vote.

THE COURT: Is that a removal clause that applies generally?

MR. ISAACSON: Yes.

THE COURT: All right.

MR. ISAACSON: Yes, it is.

THE COURT: So what is the add to have the, what I will call the morals clause? What protection does that add for Globe stockholders?

MR. ISAACSON: Well, it enables Ferroglobe's board to exercise rights to remove -- A, either not to nominate or, B, to remove a director who isn't qualified.

THE COURT: But didn't you tell me that two-thirds could remove without cause?

MR. ISAACSON: Yes.

THE COURT: Then I'm still struggling to see what it adds to have that morals clause, what rights or protections it extends to Globe stockholders to have the morals clause.

MR. ISAACSON: Well --

THE COURT: I mean, if the board determined that a director were unfit because of lack of morals, lack of judgment, lack of honesty, I assume they would have a fiduciary duty to remove her or him in any case, whether or not there was some morals clause in the combination agreement, would they not?

MR. ISAACSON: If they were engaged in

illegal activity, yes. But this clause is very, very broad and it speaks to character, integrity, judgment in both professional and personal matters. I don't -- you know, there is -- the fiduciary common law duties would not necessarily make such a person unfit. The market would speak to that. The market would certainly conclude that such a person is unfit if they were convicted of a crime, and perhaps even if they are charged with a crime. But that's not our situation.

THE COURT: All right. So you are telling me it's more likely that an individual would be removed from the board because of this morals clause than if it didn't exist?

MR. ISAACSON: Yes. It's a right, and it's a contractual right. It's set forth in the parties' agreements, and the board negotiated for it and thought it was meaningful in the context of this particular transaction in light of the information that it was receiving.

And I also would point out that as a 57 percent majority owner, we think it's, you know, it's speculative and very unlikely to -- that one could conclude that Grupo Villar Mir would allow

someone who has been indicted or convicted of a crime to remain on the board. How would that advance the interests of the company?

THE COURT: It would only advance the interests of Mr. Villar Mir and his son-in-law.

MR. ISAACSON: Not necessarily Mr. Villar Mir. I don't know that --

THE COURT: Well, I am talking about the family interests of Mr. Villar Mir and his son-in-law.

MR. ISAACSON: Yes, there is a family interest. But I don't know that that family interest would override.

THE COURT: I don't know that it would, either. I don't know that it would, either.

MR. ISAACSON: Yes.

The board next met on February 22nd.

THE COURT: But I would be much less concerned about whether it would override if it weren't for the fact that Mr. Madrid is the son-in-law of Mr. Villar Mir. Isn't that a fair observation?

MR. ISAACSON: The family relation? Your Honor, I don't know what their true relationship is. But I appreciate what you are saying, yes. The

fact that there is a familial relationship between Mr. Villar Mir and his son-in-law, of course --

THE COURT: I mean, I'm not saying that it's dispositive in any way. I'm just saying it would be material to me, I would think, as a stockholder to know that the son-in-law of the controller or the -- the son-in-law of the controller has certain significant, at least, legal concerns; but that because of that familial relationship, may be placed in a position to influence my interests going forward, nonetheless. Isn't that a material -- and I'm not saying there hasn't been sufficient disclosure.

MR. ISAACSON: Yeah.

THE COURT: But it's something that a stockholder would be interested in understanding. More than just, "Well, they have somebody in mind that they may have to replace if these legal troubles become more concrete."

MR. ISAACSON: Yes, a fair observation. And we have disclosed all of the investigations and done so -- and done so in a very robust and thorough manner.

The board met on February 22nd again.

Latham reviewed again the board's fiduciary duties in connection with the transaction. Latham and Goldman reviewed the business combination agreement and related transaction documents. Management reported to the board on its business, legal, financial, and accounting due diligence.

The report -- Your Honor asked was the MorganFranklin report identified or summarized in the February 22nd meeting. It was. The minutes specifically reference the MorganFranklin due diligence report as having been summarized by Mr. Ragan, the CFO, at that meeting.

At the February 22nd meeting, Goldman presented its analysis of potential strategic alternatives and again reviewed the Elkem proposal, which was the most concrete alternative transaction that had been developed as of that time. Goldman pointed out that Elkem's proposal represented a significant discount relative to a contribution of Globe's EBITDA to the combined company.

Goldman pointed out that although theoretically possible, it is not likely that a private equity sponsor could structure a transaction with Globe on terms consistent with or more favorable

than those offered in this transaction.

Goldman presented its financial analysis at that meeting of the merger, including illustrative contribution analyses, DCF analysis of Globe and FerroAtlantica, and sensitivities in the discounted cash flow analyses due to changes in commodity pricing. Goldman delivered its opinion that the exchange ratio was fair from a financial point of view to the Globe stockholders.

Your Honor, I think that the record is very clear that this board was fully informed when it made its decision. In an attempt to turn this record on its head, plaintiffs have focused on a few things that they claim were material to the board's decision and were withheld from the board at the time of the recommendation and approval for the transaction.

The MorganFranklin report, this is a due diligence report of accounting and quality of earnings of FerroAtlantica. This report was, in fact, discussed at the February 22nd board meeting. The minutes of that meeting state that Mr. Ragan summarized the accounting, finance, and quality-of-earnings due diligence review. He informed the board that MorganFranklin provided the accounting

on quality of earnings and due diligence. Latham's own presentation at the same board meeting reflected that MorganFranklin performed the accounting due diligence.

Plaintiffs chose in this case not to take Mr. Ragan's deposition. They had the ability to request a fourth Globe deponent. They chose not to, so they only took three depositions. That was a tactical decision on their part. But the plaintiffs' tactical decision does not mean that Mr. Ragan's testimony can't be heard here. We have submitted his affidavit. He states in his affidavit that on February 22nd he informed the board that although there are inherent risks with a foreign privately owned company, he had not identified material issues in due diligence that would present a material impediment to the transaction or impair the value ascribed to FerroAtlantica in the transaction.

Mr. Ragan states that MorganFranklin did not present, in his judgment, any red flags suggesting that the transaction should be abandoned or pursued on other terms. Globe management was already very familiar with many of the issues that had been identified by MorganFranklin. Those issues include

FerroAtlantica's control environment. We understood that FerroAtlantica is a foreign privately owned company, is not subject to Sarbanes Oxley compliance. Globe management understood there would be a transitional period when its control environment would be augmented and supplemented.

Plaintiffs also note that the MorganFranklin report does not address its concerns regarding related-party transactions. Again, related-party transactions were heavily negotiated in this transaction, and all related-party transactions on the FerroAtlantica side have been terminated unless specifically scheduled under the business combination agreement.

In any event, on August 7th there was another board meeting, and at the August 7th meeting the MorganFranklin report was presented to the board. Mr. Ragan again gave an update on due diligence, presented the MorganFranklin report to the board in the materials submitted to the board. And based upon the discussion at that board meeting, even Mr. Barger, who testified in his deposition that he would like to know more about the MorganFranklin observations, was satisfied with what he had heard.

The MorganFranklin report is a red herring in this case. It does not support a finding that plaintiffs have shown or could show a substantial likelihood of success on the merits.

FerroAtlantica's Fitch presentation projections is the next argument that plaintiffs make. They insist that the board had to have reviewed the Fitch presentations to fulfill its fiduciary duties. Those forecasts were prepared in February 2014. The evidence in this case from all the deponents, including Javier Lopez Madrid, is that those numbers were not current as of the time that Globe management began to prepare its own projections. The numbers were stale according to FerroAtlantica's testimony; they were stale according to Goldman's testimony; they were stale according to the individual at Globe -- Globe's averments in his affidavit -- Gaurav Mehta, who said they were stale as of the time he began to prepare projections for FerroAtlantica.

And they were stale because the macroeconomic environment had changed dramatically between February 2014 and January and February of 2015. The record evidence in this case is the commodity price environment had changed dramatically

in that period, as had foreign exchange rates.

Mr. Mehta also explained that for purposes of building Globe's FerroAtlantica's projections, the summary detail in the Fitch projections did not reconcile to the cost detail that he was looking at in the FerroAtlantica monthly quarterly production reports. He had more current information than the Fitch presentation numbers and he used that information, which was detailed cost data, to develop projections for FerroAtlantica.

The plaintiffs' argument would have it that Mr. Gaurav Mehta, who is the so-called in-house investment banker at Globe, who was charged with working with Goldman to develop the projections, somehow swung the projections. Again, he is another individual whom plaintiffs chose not to depose in this case; but if they had, they would have heard his testimony and his explanations, which are now set forth in his affidavit, on the key assumptions that he utilized and his good-faith, reasonable belief that those projections are Globe's best estimate projections for FerroAtlantica as of the date they were prepared.

On the argument about the August 7th

meeting, with the plaintiffs, you can't win -- if you don't have any update meeting, you lose there; and if you have an update meeting, you lose there.

Your Honor recognized, what is the remedy in this particular situation? The answer is the stockholders should get to decide whether or not to vote the transaction up or down based upon a fully informed vote. And the August 7th meeting has been disclosed. The details of that meeting have been disclosed. The information presented to the board at that meeting have been disclosed to the stockholders.

And I point out, there is and was no reason as of August 7th for the company to commission Goldman to prepare a new fairness opinion based upon the Fitch numbers. The testimony in this case is that the Fitch numbers were stale. We did not rely upon them. Globe management did not rely upon them. They were not approved by the Globe board. The Globe board approved its own set of projections for FerroAtlantica and has never abandoned that set of projections. It's Globe management's set of projections that continue to -- that the company continues to rely upon in connection with this transaction.

Plaintiffs also in their brief argue

that the Globe management team withheld the FerroAtlantica budget from Goldman. Goldman, in fact, has produced two copies of the budget from its own files in this particular litigation, and I'm happy to hand this up to the Court if the Court would like

THE COURT: If you wish to, I will be happy to have it.

Mr. Hanrahan, have you seen this?

MR. HANRAHAN: I have not been provided with a copy.

THE COURT: I apologize. Let me hand that back. I mean, is this a representation that you are making for the first time here, Mr. Isaacson?

MR. ISAACSON: It is, because it's an issue that came up in plaintiffs' reply brief.

THE COURT: All right. I'm not sure I need to -- the important thing, I assume, is not that I review the budget, but that it was available to Goldman.

MR. ISAACSON: Correct.

THE COURT: So I don't really need it in hand.

MR. ISAACSON: Correct. Yes.

THE COURT: Thank you.

MR. ISAACSON: With respect to synergies, Your Honor, and plaintiffs' argument that the board changed its views or management changed its views on the synergies, that, again, is not supported by the record in this case.

The record shows that the Globe management team had a very good understanding of synergies and thought that the synergy estimates that it was presenting to the board were readily achievable. Globe did extensive due diligence on the synergies. Gaurav Mehta, the in-house banker, had conversations with FerroAtlantica and understood the data. When FerroAtlantica questioned Globe's assumptions, Gaurav sought additional data from his own management team. When Gaurav Mehta told Mr. Kestenbaum that FerroAtlantica was questioning certain synergies, Mr. Kestenbaum welcomed the challenge, stating they add comfort to the assumptions. Globe management has complete confidence in the synergy numbers that have been presented to the board in this transaction.

Plaintiffs suggest, nevertheless, something nefarious in disagreements between Globe and FerroAtlantica on synergies and the fact that the

synergies in the press release were more conservative than Globe's internal estimate. There is nothing nefarious about that at all. Globe management has a very high degree of confidence in the synergy numbers presented to the board. It continues to believe in those numbers. That's the testimony in this case.

For purposes of issuing a joint press release with FerroAtlantica, it was necessary for the parties to agree what synergies both parties -- in this situation, FerroAtlantica -- believed were achievable. And it then issued -- the parties issued a joint press release stating those numbers.

The Goldman banker testified that it is typical that numbers released to the market around synergies are more conservative than what management believes may be internally achievable. And Mr. Kestenbaum testified that Globe management agreed to accept FerroAtlantica's more conservative estimates for the synergies because he didn't want to embarrass them by arguing with them. Even Mr. Lopez Madrid testified that his internal management team was being subjective and, in some measure, defensive about its synergies, about its ability to realize synergies, which is understandable given that they did not want

to engage in self-critical commentary.

The --

THE COURT: I don't understand that comment. Could you explain what you mean by that?

MR. ISAACSON: Well, there was some -- there's -- the testimony in the case is that FerroAtlantica's CEO was being subjective, he didn't want to take a hard look at the synergies and in operational improvements, in particular, that could be realized in the FerroAtlantica business that he had been running. And rather than --

THE COURT: Now I get it.

MR. ISAACSON: And rather than acknowledge that there was a lot -- a great deal of area for improvement, he --

THE COURT: I got it. The idea that there are high synergies would mean that he had not been properly doing his job.

MR. ISAACSON: Yes.

THE COURT: That's what you are suggesting?

MR. ISAACSON: Yes. I also note that the analyst reports that came out after the deal was announced stated that the synergy estimates in the

press release appear to be conservative.

Your Honor asked a question about premiums, and I want to ...

(Hands document to the clerk of the Court)

MR. ISAACSON: Plaintiffs have rested their case on inflated synergies and inflated Globe projections for FerroAtlantica and argued that there is a different set of projections that should be used.

We took the Fitch presentation, the projections prepared by FerroAtlantica that was stale and prepared in February of 2014, as well as FerroAtlantica's synergy estimates and ran them through Goldman's model. When we did that, the Goldman model showed that the transaction created and will create a 32 percent premium against Globe's stand-alone DCF value, as compared to 40 percent using the projections prepared by Globe management.

Even if you use the plaintiffs' expert's analysis, Mr. Jeffers' analysis, and you substitute the Ferro synergy numbers into his own model, which basically scrap everything that Goldman did, you end up with a 6 percent premium. So the only way that this becomes a negative premium deal,

according to Mr. Jeffers' own report, is if you essentially scrap not only Globe's synergies, but also the lower FerroAtlantica synergies and insert his own synergy estimates into his own model. And I would submit to the Court he is in no manner qualified or better positioned than the two management teams to analyze the potential synergies of this transaction.

Your Honor, there has also been some discussion about the standstill agreement that's in place or will be in place. These standstill provisions are not meaningless, as plaintiffs suggest. They are very, very significant. They essentially provide a bar to any tender exchange offer, merger, or other business combination. The exception that everyone seems to be focused on is that after the third anniversary of the effective date, an acquisition of shares for cash pursuant to a takeover offer may be made. But even there, it is subject to a nonwaivable condition to be accepted by the holders of a majority of the minority non-GVM shares.

So there are very significant restrictions that prevent FerroAtlantica or GVM from increasing its share ownership above 57 percent. There is proportionate representation on the board.

There are restrictions on stock transfers throughout the agreement. These were heavily negotiated terms and are designed to protect the non-GVM shareholders from allowing GVM to walk off into the sunset with a control premium by selling its own stake. The structure of this agreement is to provide meaningful balance between Grupo Villar Mir and non-GVM stockholders of Ferroglobe.

With that said, Your Honor, I will now turn it over to Mr. DiCamillo.

THE COURT: Thank you, Mr. Isaacson. I will be happy to hear from Mr. DiCamillo.

Good afternoon, Mr. DiCamillo

MR. DiCAMILLO: Good afternoon, Your Honor. Since I am going to be primarily addressing disclosures, if it will be helpful to Your Honor, I have copies of the proxy statement, which I will probably reference a few times.

THE COURT: Sure. I will be happy to have one on the bench.

MR. DiCAMILLO: Your Honor, before turning to the specific disclosure claims the plaintiffs make, I think it's important to focus on the legal standard for disclosure claims. And I'm

quoting from the Supreme Court's opinion in Skeen vs. Jo-Ann Stores. And the standard that the Delaware Supreme Court has set is "... 'a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'"

I think sometimes plaintiffs ignore and sometimes maybe in our thinking we gloss over two very important words in that standard, "substantial" and "significant." And the Supreme Court in Jo-Ann Stores also went on to say, if "The complaint alleges no facts suggesting that the undisclosed information is inconsistent with, or otherwise significantly differs from the disclosed information," the omitted information is immaterial.

So what the law requires is a comparison of what has been disclosed to what plaintiffs argue should have been disclosed. And in order for the Court to find a disclosure in violation, the Court has to conclude that disclosure of that fact would have significantly altered the total mix of information. And the standard is the same whether it's a cash deal, stock deal, mix of cash and stock.

There is no different legal standards for a stock transaction than a cash transaction.

And I will address, maybe not all of them, but certainly most of plaintiffs' disclosure claims. But there is a common theme that runs through all of them. Plaintiffs essentially argue that if you disclose a topic, you have to disclose every fact about that topic. And if you disclose something about a board meeting, you have to disclose everything that occurred or was said at that board meeting. That has never been the law. If it were, instead of writing background merger sections in proxy statements, people would just attach board minutes. That's not what the law is.

Focusing first on the August 7th meeting, there was disclosure of that fact in an 8-K, which we sent to the Court last night. It was submitted to EDGAR last night. It didn't actually appear on EDGAR until this morning. But as of this morning, the facts regarding the August 7 meeting are publicly available.

I understand plaintiffs' only quibble with that at this point is the fact that it was not mailed. And the law does not require a mailing. We

have -- for years, this Court has approved disclosure settlements with broad releases based on supplemental disclosures that were put out by an 8-K. There is no reason that this supplemental disclosure that was made this morning has to be mailed to the stockholders. In today's world, I think it's far more likely that stockholders are looking at the Internet and looking at press releases and 8-Ks than they are opening every piece of mail that they get. The only legal citation that plaintiffs offer for the fact that it has to be mailed is, one, the Trans World case, which was decided in 1988. I was in college in 1988, Your Honor. We have had not one, but two George Bushes in the White House since 1988. The world has changed since 1988. And maybe in 1988 a mailing was required. It's not today. They also cite the ODS case. That's a little bit newer, but it's still 2003, 12 years ago.

In today's world, as this Court has recognized, 8-K filings are sufficient to inform stockholders. I understand there has been a debate recently about disclosure settlements in this Court, but the debate has been about the quality of the information, not the method of disseminating the information. So the information about the August 7th

meeting is out there.

There's also an argument in the brief, which we didn't hear much about this morning, about Ferro's information: budget information, rejection information, actual information. The facts are that all that information is out there, Your Honor.

Ferro's first-half results are disclosed on page 200 of the proxy statement. The second-half results were disclosed in the 8-K, which was made available this morning. FerroAtlantica's unaudited projections which were prepared by Globe are disclosed on page 82 of the proxy statement. The Fitch projections in the 2015 budget prepared by FerroAtlantica are disclosed on pages 84 to 85 of the proxy statement. FerroAtlantica actual results for 2012, 2013, 2014 are disclosed on page 169 of the proxy statement. All of the information -- all the material information that stockholders need to know about FerroAtlantica when deciding whether or not they want to accept FerroAtlantica's stock in exchange for the Globe stock that they currently hold is in the proxy statement or was disclosed in the 8-K this morning.

I think it's fair to say that the

primary disclosure claim that plaintiffs make has to do with the investigations regarding Mr. Lopez Madrid and Mr. Villar Mir. I don't think there is an argument that there is disclosure or not disclosure about those facts in the proxy statement. The proxy statement discloses on page 73 what was discussed with the board at the February 2nd and February 3rd meetings regarding the Bankia credit card investigation. Disclosure about the other investigations is found on pages 193 to 194 of the proxy statement.

Plaintiffs want more. There can always be more. There can always be other facts that can be added to a proxy statement, a different way to say something. But that is not the legal standard. What plaintiffs have to show, that the more that they want is inconsistent with or significantly differs from what is already in there. Plaintiffs have not satisfied this standard.

They argue that there is no disclosure of the timing of the disclosure of these investigations to the Globe board. We heard Mr. Hanrahan talk a lot this morning when he was talking about disclosure about what a reasonable

stockholder would conclude or what a reasonable stockholder would want to know. A reasonable stockholder reading the proxy statement would conclude that what the board knew about before it approved the transaction was the Bankia credit card investigation. The disclosure regarding that investigation is on page 73 of the proxy statement. That's in the background of the merger, because the board was informed and knew about that investigation prior to it approving the transaction. The other legal matters are disclosed in a section entitled "Other Legal Matters," which is on pages 193 to 194 of the proxy statement. So a reasonable stockholder would conclude what the facts actually are, that the board knew about the Bankia credit card investigation before it approved the deal on February 23rd, did not know about the other ones until sometime subsequent.

Now, plaintiffs say that's a horrible fact. Well, they ignore certain facts that make it really not so horrible, Your Honor.

The Punica investigation that we have heard a lot about, Grupo became aware of that investigation on July 29th, 2015, after board approval of the transaction. Mr. Villar Mir was notified that

he was imputado in that investigation on August 6th, again after the approval. Those facts are disclosed in Grupo VM's answers to the interrogatories.

The Infoglobal investigation -- and this is disclosed in the proxy statement -- there was an investigation that was being conducted in 2014. The trial court in that investigation, or the investigating court, dismissed that case in December of 2014. So at the time the board was considering this transaction in February of 2015, there was nothing for Grupo to have disclosed to the Globe board. What happened was it went up on appeal and an appellate court ordered that the investigation be reopened. That happened on February 23rd, 2015, the day after the board approved the transaction, but it was after the board approved the transaction.

So let me go into -- dive in a little bit to some of the things that plaintiffs say they want disclosed.

THE COURT: Let's step back for just a second --

MR. DiCAMILLO: Certainly, Your Honor.

THE COURT: -- to the Lopez Madrid and Villar Mir disclosures.

You say that a reasonable investor -- first of all, I have not heard you say that a reasonable investor would not find it material that the board didn't know about these other investigations at the time it rendered its decision. What you've said is that an investor reading the proxy would be able to figure that out from the way it's laid out.

Do you agree that that is something that a reasonable investor would find material? That the board had in front of it only one of these areas of investigation when it approved the deal, not the entire panoply.

MR. DiCAMILLO: I don't think I'm willing to make that concession, Your Honor. And here is why. We -- and certainly plaintiffs have portrayed it this way. What plaintiffs have portrayed is almost that Mr. Lopez Madrid and Mr. Villar Mir have been indicted or are -- or there is a conclusion that they are guilty. We are far from that.

THE COURT: I understand that. But the reality of the situation is that the plaintiffs -- the stockholders are about to go from ownership in a company with a diffuse ownership interest to control by the Villar Mir interests. And it seems to me, in

this situation, they probably would have an interest in knowing just what they were getting into with that Villar Mir interest, would they not?

MR. DiCAMILLO: I agree with that, Your Honor. And that's -- I think, you know, my point is that the -- this notion that there are -- that everything that has happened here is nefarious is a conclusion that or an inference that I'm not sure is necessarily reasonable to draw.

THE COURT: But from the point of view of a stockholder seeking to be informed about a transaction where there is not a simple market calculation he can make or she can make as to the give and the get, or at least the get, whether it's nefarious or not is not really the question, is it? It's what is known now and what portion of what is known now is material to the stockholders. And if there is some subset that is material to the stockholders, has it, in fact, been disclosed. That's really the question for me on disclosures. Correct?

MR. DiCAMILLO: That's correct, Your Honor. And to maybe go back to a question that Your Honor asked maybe one or two ago. Would stockholders be interested in this? Absolutely. I'm not going to

stand here and tell you that stockholders would not be interested in these disclosures. I believe they would. The fact is --

THE COURT: Even if -- I'm sorry. I didn't mean to interrupt you. But even if the directors are independent, disinterested, and have acted in good faith, that doesn't mean that, having learned certain information, it doesn't need to be disclosed to stockholders who are about to make a decision on which the future of their investment will rest.

MR. DiCAMILLO: I agree with that, Your Honor.

THE COURT: And that's only to respond to your point about nefariousness or the lack thereof.

MR. DiCAMILLO: Certainly, Your Honor.

Getting back -- so I'm trying to close the circle here. Would stockholders be interested in this information when making this decision? I agree that they would be. The information is there. So they -- there is not a question that stockholders don't have this information available to them.

THE COURT: Well, I'm just a little concerned, and that's what started -- to close the

circle, as you say, my concern was aroused with the argument that, "Well, if you read the proxy reasonably, even though it doesn't say 'Here's what we were aware of at the time we approved and here's what we have been made aware of subsequent to that,' the stockholder could figure it out from the way the proxy is structured."

And I am not disputing that. I have to go through the proxy to determine that. But I am a little concerned that it isn't just stated in there rather than the stockholder having to be able to tease out that information from the structure of the proxy.

MR. DiCAMILLO: And I understand that concern, Your Honor. And I don't think it's -- this is not -- a lot of times you have situations where corporations, defense counsel in my situation will say, "Well, look, if you look at page 1 and then you look at page 16 and then you look at page 193 and then look at page 256 and piece together this, that, the other thing, you get the conclusion."

This is much simpler than that, Your Honor. And, in fact, the way it is laid out in the proxy statement, what the board knew before it approved the deal is laid out in the background of the

merger. That's really the way it had to be laid out. Because if you had put in those facts in the background of the merger, that would be misleading, because the board was not aware of that. The other facts are set forth in the "Other Legal Matters."

THE COURT: It would be easy to say, "Subsequent to the board's recommendation or determination that the combination would be in the interest of stockholders, the board has learned the following." That wouldn't have been too difficult.

MR. DiCAMILLO: I agree, Your Honor, it would not have been too difficult. But I think the question that ultimately Your Honor is going to have to decide is: The absence of a sentence that says the board didn't know about these things at the time, does that significantly alter the total mix of information?

THE COURT: I agree absolutely. That is the question.

MR. DiCAMILLO: When everything is there. And I contend that the addition of that sentence would not significantly alter it.

THE COURT: All right. I understand your argument.

MR. DiCAMILLO: I do think it's

important to spend a couple of minutes on some of the extra things that plaintiffs want about the investigations. They complain that with respect to the Punica or OHL investigation, there is no disclosure -- while there is disclosure about Mr. Villar Mir, there is not any disclosure about Mr. Lopez Madrid. But Mr. Lopez Madrid's involvement in this, in the Punica or OHL is pure speculation. He hasn't been called as imputado. He has not been called as a witness, and the Court has never spoken to him about this investigation.

With respect to Bankia, they want more about Bankia. It's not exactly clear to me what more they want about Bankia, but what they say is, "Well, the stockholder should know that the bank collapsed and was subject to a government bailout." Bankia's collapse and subsequent bailout have nothing to do with this business combination. To the extent that anything about Bankia is relevant to the Globe stockholders' consideration of this transaction, it's Mr. Lopez Madrid's alleged conduct as it relates to Bankia. And the board -- the proxy statement discloses Mr. Lopez Madrid's alleged involvement and misrepresentations made in connection with Bankia's

IPO and alleged misuse of the corporate credit cards by Mr. Lopez Madrid. That's disclosed. Nothing more should be required.

I think that's all I have about the investigations, unless Your Honor has any further questions about it.

THE COURT: No. Thank you.

MR. DiCAMILLO: There is also a claim asserted about a disclosure regarding Ferro's cash flow in the terminal year as utilized by Goldman Sachs. And this is one, Your Honor, where I think it might be helpful to look at what is actually disclosed. It's a very simple explanation, but it takes a little bit to get to.

So if we look first on page 89 of the proxy statement, you see the section under the chart entitled "Illustrative Discounted Cash Flow Analysis," Your Honor.

THE COURT: Yes, I do.

MR. DiCAMILLO: So if you go down two paragraphs, what's disclosed is for the discounted cash flow analysis of FerroAtlantica, Goldman Sachs first calculated a range of illustrative implied enterprise values for FerroAtlantica by discounting to

present value as of January 1st, 2015, using: One, discount rates ranging from 10.25 percent to 12.25 percent reflecting estimates of FerroAtlantica's weighted average cost of capital; two, the projected unlevered free cash flows for FerroAtlantica for the years 2015 through 2019 using the forecasts; and, three, the terminal year estimate of FerroAtlantica's cash flow using the forecasts of 191 million using a range of perpetuity growth rates ranging from 1 percent to 3 percent.

So what plaintiffs focus on is the $191 million number, which is described as the terminal year estimate of FerroAtlantica's cash flow. And in their brief they cite to page 82 of the proxy statement. And if you look at page 82 of the proxy statement, in the chart on the bottom, the last line is free cash flow. Do you see that, Your Honor?

THE COURT: I have it.

MR. DiCAMILLO: And they go to the last number on that chart, which is the estimated free cash flow for 2019, it's 155. They say 155 is not 191; there's a mistake. But what they are confusing is the difference between 2019 and the terminal value. They aren't the same. The terminal year. They aren't

the same thing.

2019, this 155, is the final year of the explicit projection period. Going back to page 89, 191 is the estimate of the free cash flow in the terminal year. And there's two ways I can demonstrate that 2019 is different from the terminal year. One, just looking at page 89. And number two, in the section that I read, it talks about the projected unlevered free cash flows for FerroAtlantica for the years 2015 through 2019. So that include, that 2019 there is the 155 number, the 155 million number that plaintiffs say is the right number. But number three is the terminal year estimate, which is different from the explicit forecast periods for 2015 through 2019. And then it is more -- becomes somewhat clearer, if I could pass up another document, Your Honor.

THE COURT: Sure.

MR. DiCAMILLO: What I have passed up, Your Honor, is a page from Goldman Sachs' February 22nd presentation to the board. It's found, for purposes of the record, in corrected DeFelice Affidavit Exhibit 12. And if you look at the free cash flow line in this chart, you see there's a number for 2015, a number for 2016, 2017, 2018, 2019. 2019

number is 155 million, which matches up with the disclosure on page 182 of the proxy statement. Then the terminal year estimate is 191 million.

So the plaintiffs' complaint is just a confusion between the terminal year and 2019. They are not the same thing. They are something different. The disclosure is accurate.

The next category of disclosure claim has to do with changes to the Globe management projections from February 2nd to February 3rd. Again, if you read the description of the February 2nd meeting and the February 3rd meeting that are found in the background of the merger on page 73, it clearly discloses that draft projections were presented to the board on February 2nd and that the board requested that changes be made to those projections. That's clearly in there. Any reasonable stockholder can see it reading page 73 of the proxy statement.

So I think what their claim comes down to is that while the proxy statement says "update the projections," the February -- the February 2nd minutes say "update the projections." So their entire claim is that the difference between "update" and "revise" significantly alters the total mix.

The words are different. I concede that. But they are not meaningfully different, and certainly they are not different enough that the -- what plaintiffs are saying, if you had the word "revise" in there instead of "update," that would significantly alter the total mix of information that the stockholders were considering.

THE COURT: Well, I think their argument is a little better than that. I think their argument is that if you describe the revisions that were being directed, it would be clear to stockholders that this wasn't just a bringdown of data; it's a wholesale change in the analysis that led to a different result and a result much more favorable to the deal than the one that was disclosed, and that stockholders would then want to know why those revisions were made. That's the argument, I think. It's not just that one word should be changed.

MR. DiCAMILLO: I think it's a little bit of both, Your Honor. I agree with that. And let me respond to that point.

It's clear from the proxy statement that the board requested revisions to what is described and what, in fact, were on February 2nd

draft projections. They were still being worked on. And as Mr. Isaacson referred to, talked about, the fact that the board was involved in the development of those projections should be a good thing. It should give comfort to the Court that the board was not merely accepting what management put in front of it and then approved the deal on that basis.

And I think it's also important to remember that February 2nd and February 3rd are not when the board approved this deal. The board approved it on February 22nd, after receiving the final fairness presentation from Goldman. But let's get back to the changes.

So it is clear from the proxy statement, if you just read the words, that changes were being made to those projections. The law does not require and has not required disclosure of changes that have been made to projections or fairness presentations as they are being made. What the law has required is disclosure of what the banker relied upon in making its final fairness presentation to the board.

Now, they cite Topps in their brief for the proposition that you have to disclose changes.

Topps actually, I think, helps us and supports what Mr. Isaacson said and what I just repeated.

What happens in Topps was there were -- there was something presented to the board, and then later on, a couple weeks later, there was another presentation to the board, and the presentations were different. The numbers were different. The Court focused on two things. And this was our current Chief Justice deciding this case.

He said, you know, "In that interim period, management made changes to the projections. I don't have a problem with that. That's what I would expect management to be doing as this evolved, so I don't have a problem with management changing the hard numbers in some of the projections as they get more information."

What troubled the Court in Topps was not management making changes to the projections but -- and I am making up these numbers, but let's assume that the banker in the early presentation was using a 9 percent discount rate. If you increase that discount rate, the value of the company goes down. So you have 9 in week one. Week three, the banker is now using a 12 percent discount rate, which was

unexplained, and there would be no reason for the changes. And that's a number that wouldn't necessarily be reflected or impacted by the underlying changes to the projections. So what troubled the Court in Topps is not the management making changes to the projections. In fact, the Court said, "That's perfectly fine. That's what I expect." It was bothered by the fact that the banker was making changes to numbers that if you manipulate them just for the sake of manipulating them, you can drive the value down. And that's what the Court said should have been disclosed in Topps.

Here, we're very different, because it is changes to draft projections that are being developed, and the board was very involved in it, and that's disclosed and is a good thing.

We had a lot of talk about the synergies and the synergies that the board relied on and the synergies that were disclosed in the joint press release between Grupo and FerroAtlantica. I'm not going to rehash that. But for disclosure purposes, I think what is important for the Court is that everything is in the proxy statement. The synergy estimates that the board relied on are

disclosed on page 83. They have to be disclosed because they were the basis for Goldman's fairness opinion and the board's approval. And the more conservative estimates that were agreed upon with FerroAtlantica after the board approved the deal are disclosed on page76. So it's all there for the stockholders to consider.

In the opening brief, the plaintiffs complained that there was a lack of disclosure about current stock prices. We subsequently put those in the proxy statement, so I understand that claim to be withdrawn. But Your Honor did ask questions about what the stock price did after the announcement of the transaction. And when Your Honor is going back over this information, the current stock prices are disclosed, lots of stock prices are disclosed on pages 64 and 65. And in the second quarter of 2015, the stock reached a high of 21.99, which is the $22 that Mr. Isaacson referred to; and the low was $17.41. And in July of 2015, the high was $18, with the low of $14.83. So that information is available to the stockholders and to Your Honor when considering plaintiffs' application.

THE COURT: How much longer do you

expect your presentation to take?

MR. DiCAMILLO: A few minutes.

THE COURT: Okay.

MR. DiCAMILLO: I'm done with the disclosure points, unless Your Honor has any questions.

THE COURT: No; I understand.

MR. DiCAMILLO: Let me spend a minute or two on irreparable harm and the balance of the equities.

Plaintiffs have not and cannot meet their burden here of showing irreparable harm. There has been no demonstration that money damages would not be an adequate remedy here. They say damages would be imprecise. Damages are imprecise in every case. There are very few cases where damages can be calculated with precision. But here, we have, you know, not one, but two expert reports, who, while the expert was not making damage calculations -- I agree with that assertion that they make in their brief -- the experts certainly were putting numbers around the situation. And there's no reason that if we tried this case post closing, if the Court found a reason to, that the Court could not fashion an appropriate

damage award. I don't think there is a basis for a damage award, but to the extent the Court disagrees with that, certainly the Court could fashion an appropriate remedy.

And the fact that damages -- we've heard in the brief and here today, we've got 102(b)(7), we have got 141(e), we have got foreign defendants. There are all these problems. There are problems in every case. The Supreme Court in C&J recognized that. The Supreme Court said, in reversing this Court's granting of an injunction, said, "We are mindful that an after-the-fact ... damages case is an imperfect tool ..." but -- and that was a quote. Now I'm talking. But we're not going to enjoin this deal unless plaintiffs can satisfy their burden of showing irreparable harm. And the Supreme Court in C&J concluded that the plaintiffs had not done that. This Court should reach the same conclusion here. There has been really no showing that money damages would not be an adequate remedy.

On the balance of the equities, there is -- what they are asking the Court to do is enjoin a $3.1 billion transaction where there is no poss -- not a possibility, but no other bidder has emerged in the

six months since this deal has been announced. Now, they say, "Look, this is not a situation where the drop-dead date is tomorrow or a situation where the buyer can walk." The C&J Court addressed that notion as well. And what the Supreme Court said in C&J is "... almost any judicial injunction, much less one of this unusual kind, creates a greater risk that the underlying transaction might not be available to stockholders after the injunction is lifted." So the Supreme Court recognized the mere fact of injunction imposes risk on the deal.

THE COURT: C&J involved a positive injunction. That's the extraordinary kind that was just referred to. Correct?

MR. DiCAMILLO: Correct.

THE COURT: And C&J, as I understand it -- and maybe I'm wrong -- did not involve a deal that had the rather unusual specific provision that anticipated preliminary injunctive relief and provided that that would not be a cause for withdrawal from the deal, did it?

MR. DiCAMILLO: I'm not sure. Maybe Mr. Lafferty remembers, because he was involved in that case. But I think you are right about that, Your

Honor. This deal does not have preliminary injunction --

THE COURT: I mean, the parties anticipated this. Specifically contracted for it, the possibility of a preliminary injunction, and decided that wouldn't be cause for withdrawal from the deal.

MR. DiCAMILLO: That's correct.

THE COURT: So, I mean, sure, any delay in consummating a deal raises the possibility, increases the possibility that the deal won't go through. If that's your point, I take it.

MR. DiCAMILLO: That is the point, Your Honor. And the point is that, again, that plaintiffs have to earn an injunction. It's not enough to say, "Well, you know, an injunction is not going to be that bad." They have got to earn it.

THE COURT: That's absolutely true. But, on the other hand, when I balance equities, that's what balancing equities means. Right? It means if this is improvidently granted, here are what the consequences could be and here is the likelihood. So you are right, if they haven't earned the injunction, I never even have to get to the balancing of the equities. But it seems to me it has to play

some role, if I do get to the balancing of the equities, that the parties anticipated preliminary injunctive relief and decided it would not terminate their agreement.

MR. DiCAMILLO: That is a relevant fact; no doubt about it, Your Honor. But in balancing the equities, this Court has been reluctant to enjoin transactions and take the decision away from stockholders to decide for themselves, particularly in the absence of a competing bidder.

And just one last factual point on this regarding the drop-dead date in the merger agreement. The date is November 23rd. There is the possibility of an 180-day extension, but it's not automatic.

THE COURT: All right. Well, explain that to me, because I thought it was at the unilateral request of either party.

MR. DiCAMILLO: It can be. It's a unilateral request. It doesn't require that both parties agree to it. But another condition of it is that all other closing conditions have to be satisfied or waived.

THE COURT: All right.

MR. DiCAMILLO: And that's described in Section 9.1(b)(2) of the merger agreement, and the proxy statement description is page 114.

THE COURT: And how would that as a practical matter apply here?

MR. DiCAMILLO: Well, here, it's hard to say, Your Honor. Because we are not there. We are not at a point where closing conditions have been satisfied. But it is certainly not the case that come November 23rd -- it's not the case that, sitting here today, we can say that once November 23rd comes, either party can automatically extend this 180 days.

THE COURT: What I'm trying to understand is: How would the application of injunctive relief determine whether the closing conditions had been met? I mean, if the closing conditions are not met, then you can't go forward with the consummation of the transaction in any event. Correct?

MR. DiCAMILLO: That's correct, Your Honor.

THE COURT: So what you are really saying is, what the provision really says is: You can extend the closing date so long as you would have been

able to consummate the transaction as of the original closing date?

MR. DiCAMILLO: That's correct.

THE COURT: All right. I understand.

MR. DiCAMILLO: And plaintiffs' point is there's so much time, Your Honor, we've got 180 days from November 23rd. My point is that's not necessarily the case.

THE COURT: I've got that. To be fair to Mr. Hanrahan, I think that was my point and not his. So maybe I should keep my mouth shut.

MR. DiCAMILLO: Oh, no, it was a point he made in his brief, and I think he did make today.

Let me address for a second the additional discovery about the meeting. I think they have got all they need. They have got the resolutions. They have got the written consent. Their only beef seems to be that the signature pages don't have a document stamp on them, which shouldn't come as any surprise to anybody because you have got to give the actual signature pages to the directors and they have got to print them out. So I don't think any further discovery is warranted.

If Your Honor disagrees and thinks

there is further discovery, I would ask that it just be extremely limited, because I think it's a very simple issue.

THE COURT: All right. Thank you.

Would you like -- and then we are going to take a break, but I will be happy to hear from you, Mr. Lafferty.

MR. LAFFERTY: I apologize. I think I originally said Mr. Baron would do the talking, but the point I wanted to --

THE COURT: You promised me I would hear from Mr. Baron.

MR. LAFFERTY: You know, he's a great person to hear from, but I am going to steal his thunder.

There was a question Your Honor had asked of Mr. Isaacson where you had made the point that -- you said something to the effect that this case -- isn't this case different than other single-bidder cases because here the Globe shareholders are getting stock, as opposed to cash, and that stock is not going to be publicly traded.

THE COURT: No, no. Has not historically been publicly traded. There is not a

price that you could look at as an historically traded price.

MR. LAFFERTY: Right. To the extent there was any confusion on Your Honor's part about that, the shares that the Globe -- what the Globe stockholders are going to get is shares that --

THE COURT: I understand they will be publicly traded going forward. My point was you can't look back at a clear-air price and say, "Okay. The Ferro stock was worth more than the Globe stock."

MR. LAFFERTY: I just wanted to make sure that was clear in Your Honor's mind, because they are expected and, in fact, it's a condition, one of the conditions is that they will be approved for listing on NASDAQ.

THE COURT: No; I understand. But I thank you for the clarification.

MR. LAFFERTY: The only other point is the issue from C&J. The injunction, the provision in the contract there, as I recall it, did not give the parties the right to walk, either. So it's not the same as it is in this case. Mr. DiCamillo has explained, I think, how it works here. But there, the parties also had the ability to extend out the closing

date from what was anticipated, at the time we had the injunction hearing in November, to be December 31st of last year. The parties ultimately exercised the right to extend that by three months, as I recall. I think it was to March 31st. So there were some similarities to it, but there was no ability to get out for just the granting of an injunction in that case.

THE COURT: All right. Was there a specific provision that said notwithstanding any preliminary injunctive relief, the parties will be bound, as there is here?

MR. LAFFERTY: I don't think it was that specific.

THE COURT: It's an unusual provision, is it not?

MR. LAFFERTY: I don't think the provision was the same in that case.

THE COURT: Have you seen that provision in a merger agreement before?

MR. LAFFERTY: The answer is I have seen it before, but I don't think I've seen it litigated before or addressed in litigation.

THE COURT: Thank you. That's very helpful.

Let's take a brief break, and then I will hear any responses.

(A recess was taken from 1:01 p.m. to 1:12 p.m.)

THE COURT: Yes, Mr. DiCamillo.

MR. DiCAMILLO: Your Honor, may I make one point before Mr. Hanrahan?

THE COURT: Sure.

MR. DiCAMILLO: It's good to have the corporate lawyers in the courthouse because they can point things out to you.

Getting back to the discussion Your Honor and I were having about the extension of the termination date of November 23rd, I pointed out to Your Honor that a party can only do that if all the closings conditions have been satisfied. One of the closing conditions is stockholder approval. So if the stockholder meeting has not occurred or approval has otherwise not been obtained, neither party has the right.

THE COURT: It's very helpful to understand that. Thank you, Mr. DiCamillo. I appreciate the clarification.

Mr. Hanrahan.

MR. HANRAHAN: Your Honor, let me turn first to a point that my younger, smarter colleagues raised. Your Honor asked about the good character requirement and how that would apply. And specifically, the focus here is on Lopez Madrid. And under Article 8(a), that has the good character requirement; but (b) refers to the nominating committee, but it only has power with respect to qualified directors, which would not include Mr. Lopez Madrid, because he is an inside director from Grupo Villar Mir. And those provisions are also in the Grupo Villar Mir shareholder agreement.

And I would also add -- Your Honor raised the idea of, "Well, would they remove him when he is the son-in-law?" But there is another factor. Mr. Villar Mir is also imputado in an investigation. So he just might not want to say getting charged or getting indicted is grounds for being taken off the board when he, himself, is under investigation. And that would suggest that if that happened to him, it would be very, very serious.

Of course, we hear, as we always do, about taking the decision away from the stockholders. And certainly it's important that the stockholders

have their say. But as Van Gorkom recognized, there are two levels. And it's only when the board has done its job that then the stockholders should act. The board can't punt to the stockholders, and I don't think the Court can, either. If the directors here have not done their job, then the Court should enter an injunction in order to stop the thing and not just say, "Well, let's see how the stockholder vote turns out." Because the stockholders haven't necessarily been presented with the best deal, the best information. And, you know, the directors have to actually do their job. Van Gorkom, again. "Oh, they" -- long recitation of the directors' credentials. Sure they have great credentials. But what did they actually do here?

With respect to Mr. Kestenbaum, there was discussion about his interests in getting the best consideration. No mention of the liquidity angle, and we think that is clear here, both for him and for Grupo Villar Mir. All along, in term sheets on through to the signing of the registration rights agreement, they both have the ability for demand registration rights. Goldman is already -- it's mentioned about them being involved in a secondary

offering.

So looking at what Mr. Kestenbaum is doing, well, he might have been willing to trade off a little -- a few percentage points here or there in terms of what Grupo got, as long as he was going to get the ability to sell some of his shares. And one hand washes the other. Grupo Villar Mir gets enough above 50 percent that it can sell some off and still retain majority control. And I was really struck when Mr. Isaacson used the phrase about Kestenbaum being under the thumb of Grupo Villar Mir. But that's -- boy, if he is under the thumb, the Globe stockholders are really going to be under the thumb of Grupo Villar Mir if this deal goes through.

As to whether Mr. Jeffers made reference to the market price, his opening report on pages 4 and pages 54 to 56 indicated there was a negative premium, both to the DCF and to the market price, as opposed to this. Where's the market price on here? They claim, "Oh, there's some premium if you look at what we've concocted that comes up with something that's less than the market price. Then we say there's a premium." But it's not a premium to the market. Never was. Isn't now.

And they indicate that there has been no loss of confidence reflected in the stock price. The stock price has been dropping steadily since May. And that says -- proxy statement, preliminary proxy statement, then another preliminary proxy statement and other information comes out. And they can say all they want about commodity prices or whatever. The fact of the matter is you've got a stock price that's now at $12.16, and they're saying that that reflects $5.50 worth of synergies. That would mean that Globe's stock, in their view, would only be worth $6.66 now, even though it was trading at $15.37 before the deal was announced.

With respect to other bidders, well, one of the possibilities here is this company was trading at $15.37. Now, they say the market doesn't know what it's talking about. Well, most people feel the market does know what it's talking about. Most defendants feel it knows what it's talking about when there is a real premium. Here, there isn't.

Now, let's turn to --

THE COURT: I'm not so much concerned here. I mean, no one has come forward, and it may be that this is the best deal other than staying an

independent corporation. But that doesn't mean it's better than staying an independent corporation.

MR. HANRAHAN: That's exactly my point, Your Honor. That's exactly my point.

I'm not sure I followed the explanation of why Goldman was not at the August 7 meeting, but it sounded like they were saying, "Well, because the board had already decided that it wasn't going to reconsider its recommendation; therefore, it wasn't necessary to have Goldman there." But that's just the point. They are the financial advisor. You've got to talk to them. That's why you have to consult them. Not say -- because what that suggests is the board already made up its mind before they held the meeting. So since the outcome was foreordained, I guess they figure, "Well, we didn't have to talk to Goldman because we knew what we were going to do anyway." I think this just is an instance of being just a little too clever.

And they talk about, well, at the August 7 meeting how, oh, they discussed the projections and they understand the projections. Where is the financial advisor? Isn't that Goldman's job, to help the board understand the projections and

what the implications are? But Goldman is absent.

They claim that, "Oh, one of the benefits here is there will be an increase in float." No; that's a result of the business combination agreement. Why? Because it's one for one on the shares of Globe, and the other 57 percent is going to be held by Grupo Villar Mir. The only increase in float is going to come if, as is apparent, there is going to be a sale of shares by Grupo Villar Mir and by Kestenbaum in order to get liquidity.

On Elkem, we have already made the point that it seems like the negotiations broke down there when it became apparent Mr. Kestenbaum was not going to be executive chairman. And then he promptly says, oh, well, there is an agreement he will be, and he pursues with Villar Mir instead.

They point out that the 57/43 split agreed to last fall was preliminary. It never changed. It stayed the same month after month after month. What they did was they changed the numbers instead in order to keep the split that Kestenbaum had already agreed to.

There's a lot of talk about the board being engaged at the February 2nd meeting. Now -- and

here's the board talking about assumptions. Now, it just struck me as odd, Your Honor, that these directors -- and I'm sure they have great credentials and what have you, and they have been on the board, but they knew more about what the assumptions should be than Globe management that prepared the projections. And suddenly the board is there questioning the assumptions and saying, "Why don't you assume this about silicon prices and assume that." That just doesn't add up to me.

And they had the Globe projections. Why didn't -- did anyone on the board ask for Ferro's? They didn't know they existed. Why weren't they disclosed to the board? And they say, "Our projections are better." But wouldn't a reasonable director -- when you are being asked to examine what the performance of Ferro's business is going to be over the next five years, wouldn't a reasonable director want to know what Ferro thinks its performance is going to be over the next five years? And I'm reminded -- it's both with respect to the Ferro projections and the synergy projections, you know, wouldn't the board want to know both what Globe thought the synergies were going to be and what Ferro

thought the synergies were going to be?

It takes me back to Lynch v. Vickers, back just before I started practicing law, and the idea being that, okay, you've got two sets of numbers. Now, you can explain why one is better than the other, but you've got to disclose both of them. And they should have both been disclosed to the directors; and if there was an explanation of why Globe's were better, then fine, give that to the directors. But don't withhold the information from them.

As far as the right to remove directors, again, it's a two-thirds vote. Well, Grupo controls two-thirds of the vote. I mean, controls the majority of the board, so you are not going to get any two-thirds vote without their directors.

The Fitch presentation. On September 14, the Ferro projections are used in the Fitch presentation. On January 15, Kestenbaum uses them in the Kestenbaum model. Just exactly when did they become stale? Was it overnight? It looks like they became stale, like, right before they were going to the board with the projections. And was it that they were stale or is it that, as the Kestenbaum model shows, they did not support the 57/43 split so,

therefore, you had to get rid of those projections?

And the fact that on the projections, the fact that Ferro did not agree, why wasn't the board told that? Again -- and they end up saying, "Well, these are Globe's best estimate." And on the synergies they say, "Well there was resistance from Ferro's CEO." Well, Ferro's CEO is the guy who is going to be the CEO of Ferroglobe. So they are basically saying he doesn't know how to run his business. They are putting him in charge of the combined business as CEO.

I did not hear any explanation of why the 8-K is not being sent to the stockholders. It obviously would be more effective disclosure and consistent with sending the proxy statement to them if that was sent as well.

On the other disclosure points, my friend Mr. DiCamillo says, "Oh, you don't have to disclose every fact." We are not saying that, Your Honor. With respect to the February 2nd and February 3rd board meetings, no, you don't have to send them the whole chunk of the minutes. But what you do have to do, particularly since you made reference to it in your proxy statement, so you've

made partial disclosure, you need to provide a full, fair, and accurate summary. And one sentence on the February 3rd meeting, the critical meeting where the -- and one sentence that doesn't tell the stockholders that the projections being discussed are different than the projections that were discussed in the preceding paragraph, that's not good enough.

On the investigations, I think it's the same kind of problem that Your Honor has pointed out. That is, you can't expect the stockholders to go through a 250-page document and figure out things. The reference to the Bankia credit card investigation on page 73 is in the context of the background of the merger describing various board meetings and what have you. To expect the stockholder to be able to go through and then somehow relate that back to something that's disclosed on page 193 and 194 and then leap to the conclusion that, "Well, if this happened to be mentioned in a passing reference on page 73 describing a particular board meeting, that must mean that these other things weren't known at that time," I think that's too much to ask. I think Your Honor makes the right point, which is you could have simply told them, and that would be much more informative.

On the Punica thing, they say, well, that one they didn't know about the investigation of Mr. Villar Mir until recently. We accept that. But what about all these others with Lopez Madrid? They have been around for a while. And they say, "Well, one of them was on appeal at the time the board was considering this." Well, that still means it's out there. You know, it wasn't finally concluded.

Mr. Lopez Madrid knew that that was on appeal. So why didn't he tell Globe, "Well, look, there is this investigation, but it was dismissed, it's on appeal, and don't know when I'm going to get the decision." And then did he contact them on February 23rd and say, "Oh, guess what? It was reversed, and so now the investigation is going forward." Does he contact them on February 23rd? No, he contacts them on August 4th, apparently. So he waits, like, six months. That's not candor, and I think the stockholders are entitled to know that.

As far as Lopez Madrid not having any connection to the Punica, leaving aside the yacht and that stuff, Lopez Madrid's position as a director of OHL, which is a subject of the investigation, that's not speculation, he is a director of the company where

his father-in-law is imputado on allegations of contract fixing and he is a director, his wife is a director. So the idea that his affiliation is not significant, yes, it is.

Bankia bailout, he was a director. A reasonable stockholder would think it's significant when you are being asked to basically turn your company over to the control of this guy. Well, he was a director of a bank, a conglomerate bank that went belly up in less than a year after its IPO. Does that mean it was all his fault? No. But it's something that a reasonable stockholder would want to know in evaluating this guy's track history.

On the cash flow, again, I think it's the same problem of Mr. DiCamillo says, "Well, a stockholder could look at page 89 and see 191 million, and then if they went to page 82 and saw 155 million, they would somehow know why there was a difference." Well, the 191 million on page 89, what it says -- he tries to say, "Well, it's a difference between what's a terminal year and 2019." Well, 2019 is -- and you use the cash flow from that last projected year to come up with the terminal year value. Well, it says terminal year value using the forecast of 191 million.

So it's telling the stockholders that the forecast is 191 million, and that's just flat-out wrong. And that needs to be corrected.

Beyond that, it's doubly misleading, because what Mr. DiCamillo handed to the Court, what it does is show that what Goldman did was it took the $36 million item for increase in working capital, because if the business expands you need more capital to run it, and Goldman just takes that out. And that's how they come up with 191 million. 155 million plus the 36 comes out to 191.

THE COURT: That's how I see it.

MR. HANRAHAN: And they made that adjustment, but they didn't -- the proxy statement doesn't reflect that. And instead, it misleads by saying that the projection was 191 million. It was not.

I thought it was interesting in discussing the references to projections in the February 2nd description in the proxy statement that Mr. DiCamillo kept saying "They were draft projections. They were draft projections." But let's look at the history. Why were they draft projections? Because, as we've shown, the plan was to take those

projections into the meeting and then doctor them up. And that's why they're called draft, because the intention all along was "We're going to change these projections to get the outcome that we want."

Thank you, Your Honor, unless the Court has further questions.

THE COURT: Thank you, Mr. Hanrahan. I appreciate your presentation.

Anything from the defendants?

MR. ISAACSON: Thank you, Your Honor.

I just wanted to respond to really one point, and that is that I believe Mr. Hanrahan said, "No one said this is better than stand-alone." And that statement is not correct. Goldman, of course, made a thorough and complete fairness opinion and concluded that this deal offers substantial premium against DCF stand-alone value. And it made that conclusion whether we are in up commodity price markets or in down commodity price markets. And that's slide 25 of the February 22 presentation.

THE COURT: Thank you. Anything else from anyone?

(No response)

THE COURT: Counsel, I appreciate the

argument. It is a perquisite of my job to get to hear really fine argument from superb lawyers, and all I can say about the argument today is that I'm glad that my outgoing clerk got to hear such a fine argument in the last week of her tenure and that my incoming clerk got to hear it right at the beginning. That's good for them, and it was a help to me, and I appreciate all of the work, not only from those who presented, but from those who didn't, including the associates who have toiled on this and who have produced a very high level of briefing and argument on an expedited basis. I appreciate that, and I am well aware of how much work goes into such a presentation.

I am going to reserve decision, but I do want to say a couple of things about the second and third prongs of preliminary injunctive relief. As you are all aware, there is a three-headed analysis. The first prong is whether there is a reasonable probability of success on the merits. The second is whether, absent injunctive relief, irreparable harm will result. And the third involves a balancing of the equities. And the last two are related, and it is quite frequent, in cases where there is a sole potential buyer, for the Court to be reluctant, and

quite properly so, to insert itself between the stockholders and the exercise of their franchise to accept what is usually a premium over the market price. The stockholders can look at what they are being offered, they can look at the clear-air price of their stock and make a determination. And, of course, it is important that they have a disclosure of all relevant information in that situation. But it is also possible that they will, if the Court should enter an injunction, lose that opportunity. And that is something that is hard to contemplate as a trial judge.

This case, it seems to me, is significantly different and unusual, at least in my experience, in that what is being given up is -- and I have already stated this once, but I'm going to say it again. What's being given up is a stock in which there is a broad distribution of voting power that trades on the market, and what is being proposed to be received are shares that will be traded but are valued in existing shares that are not freely traded, with control vesting in a controller and a corporation which will be subject to an administration of fiduciary duties that is significantly different from

the current regime, which is a corporation founded under our laws, and with respect to which transaction there will be no appraisal rights.

So in that situation, it seems to me, despite the fact that no one has come forward and the decision here is really between remaining independent or taking the deal, the stockholders are unusually, almost uniquely, reliant on the advice of the board, which is in favor of this transaction; and on the quality of the work done by the bankers, which is itself reliant on the projections that the bankers have received from management. So in that kind of a case, it seems to me, both potential disclosure violations and potential process violations do bear the risk of what is largely irreparable harm. Of course, there can always be some determination of damages; but in this case, where what is being received is of a quantity that has to be measured through financial experts, it seems to me particularly likely that there could be irreparable harm, assuming the first prong is met.

And with respect to the balance of the equities, I take the point of Mr. Isaacson and Mr. DiCamillo that there is always some possibility if

there is injunctive relief that a deal will dissipate. And that is something the Court must always be aware of. On the other hand, this is a case where the parties have provided in their agreement, have recognized that there may be a possibility of preliminary injunctive relief and have decided that that is not a release, won't provide a release from the deal. So in that situation, it seems to me, while I am aware that any delay in the course of human affairs can always have unintended consequences, it seems to me that the consequences of a preliminary injunction here are perhaps not as deleterious, potentially deleterious, even if it should prove to have been improvidently granted.

So what I am saying is that the second and third prongs in the analysis tend to favor the plaintiffs here in a way that is not typically the case in a cash-out merger situation. So that leaves the first prong, which is success on the merits. As I said, I'm going to reserve on that.

The allegation here that I have to decide on, and that's going to require significant parsing of the record and the proxy, is whether Mr. Kestenbaum had an incentive not shared by the

stockholders in general to promote this deal and whether that incentive caused him to either withhold or manipulate information that was given to the board. And that, regardless of whether the board acted in good faith, could have caused the board to issue a recommendation that was not based on full information. If I were to find that's the case, then I have to look to see whether that's been cured by the board's actions since. And even if that's the case, whether there has been a disclosure of how that happened, because that would certainly be material, I think, to the stockholders.

The other disclosures that I think I need to take a look at are whether the stockholders have a material understanding of the Villar Mir and Lopez Madrid situation with respect to a variety of alleged and potential offenses in light of the fact that they are giving up diverse control and will be controlled by those interests.

So those are the issues for me going forward. I have by no means made a determination of them. I plan to do so, obviously, on an expedited basis. What I would propose is to either release a written decision or get you back together on the phone

and give a bench decision by a week from Friday. But I wanted to give you my preliminary assessment not of the first factor, because I haven't reached any decision on it, but of the second and third factors, which I think, in light of the peculiar circumstances here, may not follow the typical pattern of similar merger transaction challenges.

Does that timetable cause any concern for anyone, a week from Friday?

MR. HANRAHAN: No, Your Honor. We would simply hope that we might get the documents relating to the record date, meeting date, and time to provide the Court.

THE COURT: And just what documents are you looking for, Mr. Hanrahan?

MR. HANRAHAN: Well, Your Honor, I think we were specifically focused on the consents and how were they transmitted, when were they transmitted, how were they signed. And that's one area.

I think we have asked for communications with Broadridge, and what have you. I don't think those are critical in this situation, at least not from what we have seen so far.

There are various possible

explanations for what happened, and one of the things we're trying to do is eliminate those. And so far, we've got two documents. They eliminate certain possibilities and suggest others. And so we're really focused on -- obviously, the original authorization, we now have some resolutions. We don't -- were there draft resolutions that were circulated? So I think focusing on the resolutions, focusing on the consents and how those came about, that's really what we're mainly interested in at this point.

THE COURT: I'm not going to expedite anything on the resolutions, but how about the consents, Mr. DiCamillo, can those be provided?

MR. DiCAMILLO: Your Honor, we have no problem providing it. What it sounds like is Mr. Hanrahan, assuming there was an e-mail that went to the people who signed the consents, he would like that e-mail. To the extent there was, we are happy to produce that. And I don't know the answer to the question. I don't know if there was an e-mail. Maybe it was handed to them. We can provide some kind of affidavit if there is not a document.

THE COURT: That would be helpful.

MR. HANRAHAN: And, Your Honor, in

that regard, we are interested in drafts of the consent, including any drafts that maybe did not have the dates filled in. And we're interested in any metadata that would indicate when those consents were drafted, when they were revised, so that we can make a determination of whether or not the signature pages really match up with the events. And Your Honor's -- bear with me. I will just lay it out. Sometimes what happens in these situations is somebody can sign a signature page and it's given to management, and then later on management fills in the date in the consent, puts the signature pages on it. Did the directors unanimously consent to those dates? No; the dates were put in later.

I don't know that that's the scenario, but that's one scenario. And we have seen things similar in Staples and other cases in the past where these things happened. And that's what we're trying to figure out.

THE COURT: This is all I'm going to do, Counsel. Mr. DiCamillo, it sounds to me as though you are willing to attempt to satisfy the plaintiffs that these acts were valid. Try to get together and provide whatever information you can, including

affidavits, to do that. If you can't work it out, because this has to come in quickly, obviously, if I'm going to consider it in the submission, if you can't do that, then the two of you can get back to me and I will get you on the phone. But I suspect you can work this out. I don't expect it to be an open-ended quest to find out whether there was something more than meets the eye, but I don't want to foreclose anything. So see if you can't work it out.

MR. DiCAMILLO: Understood, Your Honor. I think Mr. Hanrahan and I will be able to work it out.

THE COURT: I suspect so, as well.

As far as the timeline of a decision of a week from Friday, is that satisfactory to the defendants?

MR. DiCAMILLO: Yes, Your Honor.

THE COURT: All right. Anything else from anyone?

(No response)

THE COURT: Once again, it was a great pleasure to have you. I hope the trip wasn't too onerous, and I look forward to any further submissions you make. Otherwise, you can consider this submitted,

and I will either reconvene us or give you something in writing by a week from Friday.

Thank you, all.

(Court adjourned at 1:48 p.m.)

- - -

CERTIFICATE

I, DEBRA A. DONNELLY, RMR, CRR, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 4 through 150 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, Delaware, this 27th day of August, 2015.

/s/ Debra A. Donnelly

Debra A. Donnelly, RMR, CRR
Official Chancery Court Reporter
Registered Merit Reporter
Certified Realtime Reporter