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Transaction ID 70270454
Case No. 2023-0215-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE AMC ENTERTAINMENT HOLDINGS, INC. STOCKHOLDER LITIGATION	))))	CONSOLIDATED C.A. No. 2023-0215-MTZ

PLAINTIFFS' OPPOSITION TO ALEXANDER HOLLAND'S EXCEPTIONS TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS REGARDING MR. HOLLAND'S CORRESPONDENCE

Plaintiffs Allegheny County Employees' Retirement System and Anthony Franchi submit this response to Alexander Holland's Exception/Opposition to Report and Recommendation of Special Master Regarding Correspondence from Oheen Imara and Alexander Holland (Trans. ID 70234920) and Response and Exceptions to the Report and Recommendations of the Special Master Regarding Correspondence from Oheen Imara and Alexander Holland (Motion to Reschedule Timeline Because of Due Process Issues) (Trans. ID 70257188) (collectively, the "Exceptions").

1. On June 12, 2023, the Special Master issued the Report and Recommendation of Special Master Regarding Correspondence from Oheen Imara and Alexander Holland (Trans. ID 70178537) (the "Report"), recommending that the Court deny Holland's motion (the "Motion") seeking "a thorough investigation" surrounding mailing of notice postcards and seeking a rescheduling of the Settlement

Hearing.[1] The Special Master "recommended that the Court deny the relief . . . Holland request[s] for the reasons articulated in my May 30, 2023 Report and Recommendation of Special Master Regarding Certain Motions Filed by Jordan Affholter and Etan Leibovitz's Notice of Motion Oral Argument Requested [(the Affholter Report")] and the Court's June 8, 2023 Order Denying Exceptions" (the June 8 Order").[2] As recommend by the Special Master in the Affholter Report[3] and ordered by the Court in its Order dated June 8, 2023,[4] the motions were denied because the filers received actual notice of the settlement and, as non-lawyers, could not represent the interests of other stockholders.[5]

2. Turning to Holland's Motion, the Special Master explained that "Holland has [not] demonstrated any personal prejudice" and "had actual notice of the proposed settlement and objected by May 31, 2023."[6] The Special Master also stated that "[w]hile they raise broader notice concerns, they are not authorized to represent the interests of other stockholders."[7]

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[1] Report at 2.

[2] *Id.*

[3] Trans. ID 70101662.

[4] Trans. ID 70164824.

[5] Affholter Report 7-9; June 8 Order at 3-6.

[6] Report at 2.

[7] *Id.*

3. Holland's Exceptions provide no basis for the Court to reject the Special Master's recommendations.

4. As Plaintiffs detailed in their Reply in Further Support of Settlement, Award of Attorneys' Fees and Expenses, and Incentive Awards,[8] notice here complied with due process. The parties followed the notice process set forth in the Scheduling Order, which the Court approved as "the best notice practicable under the circumstances,"[9] and included mailed "postcard" notice and repeated publication notice. Since the filing of the Reply, Defendants have filed one affidavit attesting to compliance with the notice requirements[10] and two affidavits attesting to compliance with the mailing requirements.[11]

5. There is no system of mailed notice that is perfect. As this Court has recognized, with respect to mailed notice, brokers do not always provide timely information for all beneficial holders. To help alleviate this issue, the parties used a multi-pronged notice process. Given the unprecedented Class member interest in the proposed Settlement, it is undeniable that this multi-pronged process has been successful. As a general rule, when parties make reasonable best efforts to comply

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[8] *See* Trans. ID 70161266 at 52-54.

[9] Trans. ID 69929995, ¶11.

[10] Trans. ID 70244345.

[11] Trans. IDs 70149984, 70244345.

with ordered notice procedures (like the parties here), the Court does not block resolution of class actions due to broker inaction.[12]

6. In addition, as the Settlement Hearing is this week, it would cause undue prejudice and delay to all parties, including those Class members attending the Settlement Hearing, and the Court to reschedule the Settlement Hearing—especially given that Holland has not identified a valid reason to do so.

7. Holland does not contest that he had actual notice, nor could he possibly do so given that he submitted a timely objection.[13] Moreover, while Holland asserts that he is not seeking to represent the interests of third parties, that is exactly what he was doing in his Motion and is currently doing in his Exceptions. His characterization of his arguments as "statement[s] of fact" does not change that he is trying to argue on behalf of others. In his Exceptions, he even argues that "My uncle's and father's due process rights were violated, as both were not provided with

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[12] *See, e.g.*, *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1060-61 (Del. Ch. 2015) ("Notice need only be sent to record holders…. If an owner of stock chooses to register his shares in the name of a nominee, he takes the risks attendant upon such an arrangement, including the risk that he may not receive notice of corporate proceedings") (quoting *Am. Hardware Corp. v. Savage Arms Corp.*, 136 A.2d 690, 692 (Del. 1957));)); *In re Protection One, Inc., S'holders Litig.*, C.A. No. 5468-VCS, at 44 (Del. Ch. Oct. 6, 2010) (TRANSCRIPT) (Ex. A) (describing as "frivolous" an objector's claim that they never received mailed notice: "And then they claim they can file a late objection because they didn't get mail notice, when they never were a record holder.... That is called frivolous.").

[13] *Id.* at 2 n.10.

any resolution or response to their inquiries and appeals."[14] As the Court stated in its June 8 Order, as a non-lawyer, Holland is not permitted to represent the interests of other stockholders.[15]

8. Finally, Holland's assertion that Plaintiffs have ignored his requests is false. On June 16, 2023, Plaintiffs filed the Second Revised Transmittal Affidavit of Michael J. Barry Providing Log of Stockholder Communications, which contained revisions to the classifications of his and his daughters' letters.[16] In addition, consistent with the timeline outlined in Plaintiffs' Proposal to Protect Privacy Interests of Objector Class Members, Plaintiffs filed his objection publicly on June 22, along with 30 other objections from Class members who either submitted in-person appearance forms or, like Holland, asked for their objections to be made public.[17]

CONCLUSION

For the foregoing reasons, Holland's Exceptions should be rejected and the Court should deny his Motion as recommended by the Special Master.

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[14] Exceptions at 15 (bolding omitted).

[15] June 8 Report at 4 ("As for prejudice to other stockholders, Mr. Affholter is not an attorney; representing the interests of other stockholders in this proceeding risks committing the unauthorized practice of law." (citations omitted)).

[16] Trans. ID 70210633.

[17] Trans. ID 70241926.

Dated: June 27, 2023

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CERTIFICATE OF SERVICE

I, Daniel E. Meyer, hereby certify that, on June 27, 2023, a copy of the foregoing *Plaintiffs' Opposition to Alexander Holland's Exceptions to the Special Master's Report and Recommendations Regarding Mr. Holland's Correspondence* was filed and served electronically via File & Serve*Xpress* upon the following counsel of record:

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Exhibit A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE PROTECTION ONE, INC., SHAREHOLDERS LITIGATION) Consolidated C.A. No. 5468-VCS

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Chancery Courtroom No. 12A
New Castle County Courthouse
Wilmington, Delaware
Wednesday, October 6, 2010
10:02 a.m.

- - -

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

- - -

SETTLEMENT HEARING

- - -

APPEARANCES:

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for Objectors Glazer Capital LLC, on its behalf, and on behalf of Glazer Capital Management, LP, Glazer Qualified Partners, LP, Glazer Offshore, Ltd., HFR MA Select Opportunity Master Trust and Gottex Solutions Service Sarl

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MS. HABELOW: Good morning, Your Honor. Stephanie Habelow, Smith, Katzenstein & Furlow, on behalf of objector, Glazer Capital. I would like to introduce my cocounsel. Ximena Skovron, of Abraham, Fruchter & Twersky. With the Court's permission, she will be making the argument. Also present is Mr. Mark Ort, a representative of Glazer Capital. Thank you.

MR. HANRAHAN: I think, Your Honor probably knows everyone at our table, including Mr. Wagner of the Barroway firm, who has been here many times before.

This is the settlement hearing in the Protection One Shareholders Litigation. There are three, or perhaps four, issues before the Court: Class certification, the reasonableness of the settlement, the request for attorneys' fees. And we have an objection from only one stockholder, or at least -- or an investor, I guess they refer to themselves as.

With respect to the class certification, we think that the -- as we set forth in our brief, the requirements for class certification have been met. And so we would ask that the Court

certify the class for purposes of the settlement.

The settlement itself, we think there is no question that it is fair, reasonable and adequate. The principal benefit of the settlement is $3.25 million in cash, to be paid exclusively to the former holders of the approximately 7.7 million public minority shares. I note that the attorneys' fee that we are applying for is not to be deducted from that amount. That is paid separately and was negotiated after we had negotiated the amount for the class.

THE COURT: The fee -- there is two fees, though. Right? There is a load here, and then there is a load in Kansas?

MR. HANRAHAN: Your Honor, that is correct. Mr. Brualdi is not applying for a fee in this case, did not want to come to Delaware. He was not working with us, nor we with him. And we did not have any involvement with respect to any negotiations of any fee with respect to Mr. Brualdi.

THE COURT: What is the total amount sought for fees?

MR. HANRAHAN: Your Honor, the total amount that we were seeking is $1.4 million. And that's the application that is before the Court.

THE COURT: Mr. Brualdi is what? Seeking what?

MR. HANRAHAN: I may have to be refreshed. I think it's 900-something thousand.

MR. MICHELETTI: We have agreed not to oppose up to 900,000.

Ed Micheletti, by the way, on behalf of Protection One and GTCR.

MR. HANRAHAN: The settlement amount translates into roughly 40 cents per share. This monetary recovery is unusual in several respects.

First, the acquiror was a third party, not the controlling stockholders. It is rare for there to be a monetary recovery in a third-party transaction. Indeed, as I was reminded yesterday, it's hard to get any relief in a transaction involving a third party.

Second, the transaction was the result of an active bidding process and arm's-length negotiation. Again, it's unusual to achieve a monetary recovery in such a transaction.

And third, Your Honor, as a result of the settlement, the minority stockholders will actually receive more for their shares than the

controlling stockholders did. The controlling stockholders owned 70 percent of the company. That certainly doesn't happen very often. So we think that we have achieved a significant monetary benefit in circumstances where that is not usually the case. The disclosure benefits here were extensive and included changes to the offer to purchase, the 14D-9, and the notice of merger. We have detailed those disclosures in our brief. And Exhibits 1, 4, 5 and 6 to the affidavit that I submitted yesterday show that these improved disclosures were the direct result of the Delaware litigation.

Disclosure-based settlements seem to have been somewhat in disfavor recently, but here there are other benefits, including a monetary recovery. And this is not a run-of-the-mill disclosure settlement. The disclosures are quantitatively and qualitatively far more significant than the marginal disclosures that sometimes serve as settlement consideration in the routine case. The settlement also included an amendment to the merger agreement, to extend the period for demanding appraisal from 20 to 30 days, to provide that the top-up option, top-up shares and note would not be

considered in an appraisal, and to change the interest term of the note.

THE COURT: Well, what was the most important disclosure, in your view?

MR. HANRAHAN: I think perhaps, Your Honor, the unlevered free cash flows. That is certainly one that the Court has in the past indicated --

THE COURT: There were no cash flows disclosed originally?

MR. HANRAHAN: We had the cash flows disclosed in a table, and that had not been disclosed before.

THE COURT: None of the cash flows had been?

MR. HANRAHAN: I don't believe so, Your Honor. And, Your Honor, I can, if the Court wishes, go through the various disclosures, or maybe identify them in our brief. But as the Court will see, they were numerous, and they were about things that are important. It would include, Your Honor, the disclosure of the median levered beta, the identity of the selected public companies that were used to determine that beta in Lazard's analysis. The summary

of the precedent transactions analysis was supplemented to include all precedent transactions that were actually considered in rendering a fairness opinion. The precedent transactions analysis was also supplemented to include information respecting the last-12-month multiple in the Brinks Home Security transaction. As I mentioned, the unlevered free cash flows that were considered by Lazard were disclosed. The share price data for the 52-week period ending January 19, 2010 was corrected. The -- there was a disclosure that Lazard did not take the top-up option, top-up shares and promissory note into consideration in its analysis.

With respect to the top-up option, there was disclosure of the number of shares that could potentially be issued under the top-up option, as well as the potential impact the top-up option, top-up shares and promissory notes could have in an appraisal proceeding, although as I mentioned, there was also an agreement that as part of the settlement -- and we ask the Court to approve -- that those would not be considered in an appraisal.

There was disclosure about the merger process and J.P. Morgan's role. Those were detailed

at page 20 of our brief. There were various disclosures regarding --

THE COURT: What is the concern about these top-up options in appraisal. I'm not sure I get it. The price of the option is set as part of the transaction that gives rise to the appraisal proceeding. So the theory is that the appraisal petitioner gets harmed how?

MR. HANRAHAN: Well, Your Honor, I think the question is whether the transaction -- the top-up transaction would actually be completed prior to the consummation of the merger. Fair value is measured in appraisal as of the time of the merger. So the question would become, given the Delaware case law -- Cede, etc. -- which says that anything that is part of the operative reality of the company prior to the merger is to be -- is considered in an appraisal action. Of course, the statute says all relevant factors. We can -- we can -- I have heard both sides of the debate on it. But certainly --

THE COURT: The reason why people get top-up options is to complete sweeping out everybody.

MR. HANRAHAN: That is the reason, although yesterday's Cogent opinion suggests that even

when the top-up option is exercisable in a situation where it would not get you to 90 percent, that that may still be okay. You know, if it's sort of ally-ally in free on top-up options, I think we will have some interesting developments --

THE COURT: I have no idea what that even means.

MR. HANRAHAN: If a top-up option could be for all available authorized shares that are available for issuance, with consideration for a note that is going to disappear in the transaction, and never be repaid, if it's exercisable in whole or in part on multiple occasions and there aren't -- you -- I know the rationale, as Your Honor says: Oh, it allows for a short-form merger.

THE COURT: I mean, the reality of why it's called a top-up option was that was really what it was. It was typically done to do -- was to top somebody up to where they could do the 253 back end, and do it all. I just don't understand how it becomes part going concern value of the company. And if in the appraisal, then -- it's either not part of the going concern, the company -- because this is all essentially part and parcel of the transaction that

gave rise to appraisal in the first instance. I admit, frankly, Cede is just filled with bizarre things. I mean, it's just -- it's a 20-year -- it's a generation of incredibly goofy things it gives to the law. I have no problem saying that. I mean, it takes deeper minds -- maybe Kant could come back to life and explain some of the logic in it.

But the point is you are supposed to value the company as it was, setting aside the merger. If the top-up merger -- if the top-up option is designed essentially to effectuate the completion of the transaction, I understand it has multiple steps. But the point is, the price is set in the merger. If you are actually proving, for example, in the appraisal that the fair value of the company was less than the deal, then you can make, also, the argument that you have to value that as a derivative claim. If you want to take another theory, you have to value as a derivative claim in the merger. You prove the fair value of the company -- right? -- is 80 rather than 69. The deal was 69. The top-up option is at 69. Then you just proved that there was a derivative claim worth 11 bucks per share. You add that to the value, and you are right where you were before.

MR. HANRAHAN: Well, Your Honor, of course, you would have a question of whether you would have a derivative claim there, but you would also have the question of the -- the assumptions seem to be that the consideration was going to be worth the amount of the deal price. But when it's an unsecured note --

THE COURT: Yeah. See that is the other thing. The unsecured note that is supposed to hang out there for a millisecond, or something like that?

MR. HANRAHAN: Well, Your Honor, that is one of the questions about whether this is a -- but that is not why we are here today. I'm happy to talk to Your Honor about --

THE COURT: The problem is: How much benefit do I put on this? I understand, you know -- lawyers are among my favorite group of people, and it gets you all to think about these fascinating hypotheticals, but that's what they seem like.

MR. HANRAHAN: Well, Your Honor, the -- you know, the top-up option here was very real. You had the front end of the transaction locked up, because you had support agreements with stockholders who owned 70 percent.

THE COURT: No. No. No.

MR. HANRAHAN: You had the top-up on the back end. Where does that leave a stockholder? It's basically, "You are gone. You are history. You get no vote."

THE COURT: That's what I'm saying. What I don't understand is -- it's either -- I just really don't get the gap. You know, if you look at the spirit of Cede -- I'm not going to talk about the logic of it, because I don't believe there is any real logic to it. But if you talk about the spirit of Cede on the second-step thing, it was "nail the acquiror." You had this situation. You got the benefit from a genuine third-party acquiror's business plan during the period, because they didn't effectuate the second-step merger. Also, during that case, there was a period of months in which the argument became that the acquiror's business plan, which -- Perelman's business plan, as I remember it -- that that became the operative reality of the company, and you were subjected to it as a stockholder.

In the context of a top-up option, as here, the idea is get the top-up option, do your merger, you would be done, and people get appraisal.

It's not clear what any new business plan is. The only distorting effect is going to be arguing, "We have to look at the capitalization of the company, and now includes these shares at that price." Right? And then we have to say, "Oh, it's a separate transaction," even though it's in a contract. Right? Isn't it in the merger agreement?

MR. HANRAHAN: The top-up option?

THE COURT: Yeah.

MR. HANRAHAN: Yes, Your Honor. Yes. Just as any option would be reflected in an agreement or an instrument.

THE COURT: I agree.

MR. HANRAHAN: That would be part of --

THE COURT: It's like the silliness if somebody tried to argue that you couldn't litigate your case, or something, that your only remedy was a 253 remedy in a situation like this. I think the Court would have problems with that, because it's all under one merger agreement, essentially. Right?

MR. HANRAHAN: Yes, Your Honor. But it's basically a -- I mean, the fact that, for example, if you had an asset sale -- there are cases

beyond Cede that have dealt with -- I think we have cited some of them in our brief, where there was an asset sale that was part of -- under the merger agreement, but it occurred prior to the merger. The Court said, "Well, that was the operative reality on the date of the merger."

Now, it may be that Your Honor would disagree with that or the Supreme Court would disagree with that. Don't know. But there is that case law out there. You have a statute that says all relevant factors, and you have this option.

THE COURT: Is one relevant factor common sense?

MR. HANRAHAN: Excuse me? Well, Your Honor, that, you know --

THE COURT: I would never think in -- in the wildest dreams that you would hit an appraisal petitioner -- you would reduce the value of any award to an appraisal petitioner because of a top-up option included in a -- in the merger agreement that gave rise to the appraisal triggering event.

MR. HANRAHAN: Well, Your Honor, you know, if there are provisions in the merger agreement for the cash-out of other options, are those part of

the operative reality? Or is that not part of the operative reality because that is a transaction that is pursuant to the merger agreement; that is, where they take options that aren't vested and --

THE COURT: The issue there -- the reason why, as a practical matter, you are probably going to have to deal with them in an appraisal is because under the existing contracts, they would have a right to merger consideration, and they would -- the delta would be whatever it was under their exercise price and acceleration. There might be things like that. You know? There might be some issues if you started including people who weren't otherwise entitled to have their options turned into cash. I suppose that could be a litigable issue in an appraisal.

A 253 merger -- calling it independent, when it is the logically intended consequence of the specific terms of the 251 merger agreement, just seems a bit odd to me. And I don't really get the fear. If anybody should fear appraisal, it tends to be respondents. You know, you get these things where, pretty much, jump balls go to the petitioners. You have the theoretical ability to

take a control premium when you are a controller in Delaware, but the appraisal standard takes that away. You have got the Cede thing, which I get you, how it supports you in a sort of nominal way, but really what it says is even in a situation where there was really no expectancy of the business plan, you get the upside.

Here, I don't know. I would put on a lot of padding if I issued a ruling nailing an appraisal petitioner over a top-up option, because the ball would bounce off Dover so quickly, that opinion, and could come back and hit me. I would want to be well padded, because the impact would be dangerous to my person. I really have no doubt it would be a really rapid remand.

MR. HANRAHAN: Perhaps, Your Honor. We will see what -- maybe we will see, some day, what Dover has to say about the top-up options. But in any event, Your Honor, the bottom line is we can debate over the merits of the claim. The fact of the matter is we obtained relief with respect to it, and including a guarantee. You say, well, the respondents are really the one that has the risk, but the top-up option is not a risk to the respondent, because the

impact is likely to be, particularly if you have a promissory note as the consideration -- it's going to be the deal price or less. It's not going to be more. So it doesn't impact them. It would potentially impact someone seeking appraisal. And while we -- Your Honor may have a view that, "Oh, the risk is slight," from the standpoint of a stockholder evaluating appraisal, with all its other downsides, the delay, the cost, and what have you. Then you throw in one more element of uncertainty, and it really just adds to: "This is not a workable remedy for the stockholders."

We address that with our claims. Maybe we did the right thing, then. If Your Honor thinks so little of the top-up claims, well, we got money instead. That was our primary focus. Certainly, that is a benefit.

THE COURT: That is obviously the thing that is obviously most impressive.

MR. HANRAHAN: I mean, the defendants here agreed to expedited proceedings. They pushed settlement negotiations. They agreed to pay more money, make extensive disclosures, and to amend the merger agreement. We think that is certainly a

package of benefits that makes the settlement fair, reasonable and adequate.

And, Your Honor, the only objector that we have actually, I think, is a further recommendation for the settlement, because they are not here to protest the settlement. They are just here to claim that they should get some of the proceeds for shares that they apparently bought on the morning of June 4 or did not have in their brokerage account at the close of business on June 3rd.

So, Your Honor, we would ask that the Court approve the settlement.

THE COURT: On the -- do you want to hear from the objector first, before you respond?

MR. HANRAHAN: Your Honor, I'm happy to address the objection now, if the Court would like.

THE COURT: Sure.

MR. HANRAHAN: The objection is from an entity that has not shown it was even a stockholder at the time this suit was commenced or when the MOU was entered into. It appears, basically, Glazer Capital attempted to buy into our settlement. Now it suggests that I and members of my firm were professionally discourteous and incompetent. I think

that comes with a little ill grace. We worked hard to frame strong claims, we litigated vigorously, and we obtained a good settlement, apparently before Protection One was even a gleam in the eye of Glazer Capital. The party objection is meritless and it's cynical, Your Honor.

At the Court's request, we have pointed out, and defendants have pointed out, in written submissions numerous grounds for denial of the objection. It's late. It's speculative. But I would like to take a few moments to highlight a number of things.

First, they submit, yesterday, a letter from UBS that says that with respect to 2002, 899 shares, they were tendered into the tender offer. And presumably, UBS will pay Glazer Capital the settlement consideration with respect to those shares.

THE COURT: Was this letter delivered to chambers?

MR. HANRAHAN: It was an attachment to the motion for leave to file affidavits that the objectors filed yesterday, Exhibit B to that.

THE COURT: Is there a cover letter that indicates that it came to me?

MR. HANRAHAN: Your Honor, I don't have that in my binder, but I do not know how it came in, or whatever. We received it the end of the day yesterday. It has these proposed affidavits, one of which is largely hearsay, from supposed conversations with UBS. But they attach this letter.

It says, well, certain shares were tendered. So you assume that UBS is going to hand over whatever settlement consideration they receive to Glazer Capital. But that is a matter that is between Glazer Capital and its broker.

THE COURT: What they fault is the original notice. They say -- the original public disclosure of the settlement, it said what?

MR. HANRAHAN: What they are saying is that the MOU said "holders," instead of "record holders." Now --

THE COURT: What is a beneficial holder? Never heard of that.

MR. HANRAHAN: Your Honor, that is part of the issue.

THE COURT: You hold -- in some metaphorical --

MR. HANRAHAN: In their objection,

they conveniently go from the term "holders" to "beneficial owners." And they obviously, from the objection, Your Honor -- they don't understand what a record holder is, because they say --

THE COURT: The original MOU said --

MR. HANRAHAN: Holders.

THE COURT: Holders as of what date?

MR. HANRAHAN: As of the close of business on the day before the tender offer was to close. That is where the June 3 -- close of business on June 3rd came from, because the tender offer was then going to close.

THE COURT: What you are saying is folks who wanted to play the market by buying into the stock should have been following the deal attentively if they wished to know when the tender offer was going to exactly close? They should have made sure they were a holder of record, or that they bought from somebody, a broker, and said, "You better make sure we get the proceeds"?

MR. HANRAHAN: Yeah. Your Honor, that is basically it. And that's what we explained to Glazer Capital when they called our firm three times during the summer. We patiently explained to them why

the June 3rd date had been selected. It was not arbitrary at all. It was basically the close of business on the last date before the tender offer was going to close. And what they say is: "Well, if you purchased on June 1, 2010 or June 2, 2010, you, quote, do not technically become a record holder until days later, after June 3rd, 2010." They obviously don't understand what a record holder is, because an investor like Glazer Capital, who purchases shares through a broker, is never going to become a record holder. Their complaint about it going to record holders doesn't make any sense, because they wouldn't be a record holder, anyway.

You know, they -- they are obviously referring to the three-day rule for settlement of trades. Well, we just don't think the Court can get into refereeing.

THE COURT: What you are saying is there also has to be an end at some point in time?

MR. HANRAHAN: Yeah.

THE COURT: It's not set up, really, for -- there is a benefit to being an arb, which is -- the argument is that you would be buying from people who aren't even focused on the settlement, but you

have to do it smartly.

MR. HANRAHAN: There is nothing that they submitted that says they couldn't have bought the shares sooner. Basically, they wanted us to redo the settlement so that they could get every last dime out of their arbitrage scheme. They do it, Your Honor, based strictly on speculation. They say if the settlement distribution is made to record holders, theoretically, an investor selling shares on June 1, 2010 could receive both the benefit of the higher trading price occasioned by the settlement, as well as the settlement proceeds itself."

You go through their objection, it's just one thing after another: "Well, if this, then this could happen." They are talking about not only some theoretical possibility as to what some unidentified other investor might get -- and then it's all based on their incorrect understanding of record ownership. There is just nothing to this. And then they say, Your Honor, they want clarification that the settlement funds be distributed equitably to the investors and shareholders who held the economic interest in Protection One as of the date of tender or the cash-out date. They don't say how Your Honor

would ever do that.

I mean, this is a class action that was brought on behalf of stockholders with respect to their stock. They say they want the proceeds equitably distributed. They don't say what that means. They say the settlement should go to both investors, who apparently are something different than shareholders. Well, this suit was about shareholders. They are apparently saying that they were an investor, that they may not have owned the shares. And then they want the -- who held the economic interest in Protection One, to try to get the Court down into the gears of that, with some depository and broker and other relationships, and nominees and so on, it would be a nightmare. You have got short sales. We cite the Digex case, where I was retained to come in and ask the Court that a -- someone who had engaged in short sales should be entitled to participate in the settlement proceeds. And Chancellor Chandler basically told me what I thought he would tell me: "Sounds like a problem between your client and a broker." That's what we have here.

So there certainly was, Your Honor, no discourtesy or refusal to help by my firm at all. We

went patiently through why the June 3rd date, how the thing operated. The problem is they just didn't like the answer. Yes, we did tell them, "If you don't like the answer, your recourse could be to object," and they have done that. Unfortunately for them, Your Honor, their objection is without merit and ought to be denied. Let me --

If Your Honor will turn to attorneys' fees?

THE COURT: Yeah. Tell me. Here is my only -- I will be candid -- my only real concern. I do -- you shouldn't have any doubt I'm going to -- there is really no doubt in my mind that there are benefits to the settlement, that I'm going to approve the settlement, that I place the highest value on the cash part of it. It's refreshing to see a cash component to a settlement. I don't place -- I just don't -- I mean, reasonable minds may differ, Mr. Hanrahan. I just -- this top-up thing, it just really doesn't move me. But I give credit, if none of the projections were -- if this essentially was what justified the only disclosure of projections, I give credit to that. I give lesser credit to some of the other tweaking around banker's, you know, multiples

and stuff.

I really wouldn't even blanch in a second if I were just approving your fee, honestly. What I'm looking at, though, is a total fee of 2.3 million on a benefit -- you know, the most tangible monetary benefit to the class is the 3.25 million. Even if I were to say, "Value the rest at another million," which I have got to say is fairly -- you know, arguably generous. I will give myself some leeway. I know you may feel differently. Even if I were to move it to two and you were at 5.25 million, you would be talking about a total requested award -- this is what I want you to talk to me about, is the relationship between this and Kansas, and what my job is today -- of, you know, 2.3 million, you know, upwards of 40 percent of the value of the benefit in fees. And you know, who did what between you and the Kansas folks? How do I take that into account?

I also understand the defendants' dynamic. You guys put it sort of elegantly, that the pendency of the Kansas case complicated the negotiations. Sort of, what went on? Who did what?

MR. HANRAHAN: The first thing I would

note is because the fees are paid separately --

THE COURT: I get that.

MR. HANRAHAN: I think you would have to -- in assessing any percentage of the benefit, if you would, you would have to add in the amount of attorneys' fees before you did the percentage. I mean, that is if it was coming out of the fund itself --

THE COURT: No. You have got to be careful adding it in. Then people would just pay 10 million in attorneys' fees, three to the class so the total benefit would be 13 million. That is the role of the Court in the site of litigation. It's not our favorite role. It's probably one of our least favorite roles. We do have to act as a superintendent of the representative litigation process, which is a very important one, to make sure, frankly, it's working as intended. Although it is good that it doesn't come out of the benefit, the reality is it arguably could have been part of the benefit.

MR. HANRAHAN: Well, Your Honor --

THE COURT: I'm not saying that you -- I trust, entirely -- I'm not implying in the least that the negotiation of the fee did not follow the

thing. You get my point. From the defendants' perspective, money is money. And money that will resolve a matter, you know -- any part of this fee could have been part -- put into what was given to the stockholders and just deducted from the fee. The total load would have been fine.

What I'm saying is I have got a situation here where, honestly, I have been -- I have been pretty consistent that with respect to, for example, very big achievements by plaintiff's lawyers -- I don't do a declining percentage. I have never gotten that. I have understood that there are federal judges who say, "If you take it all the way to trial and get $250,000,000, we ought to cut your percentage, because you have got $250 million, and you took 35 depositions." That has always been to me where, frankly, you would do the highest possible percentage of the recovery, because the person took the most risk. They clearly justified it.

So when I -- I'm glad to see a monetary benefit, but honestly, when I'm looking at a fee -- a total fee load that appears to be 40-some percent of the benefit, I just am asking about that and about who did what, because it does trouble me.

As I said, if it was just you for the 1.4, which is obviously more than 33 percent of the monetary benefit, but with the settlement and all, I wouldn't have any trouble. But when I get to 2.3 million, I'm being very candid with you. I don't place as much benefit on therapeutic things. A lot of the disclosure stuff wasn't that central. I'm giving you credit, a lot of credit, for the disclosure of the projections, but we are still at a fairly -- frankly, it's 2.3 million in fees compared to 3.25 million in tangible benefits, and then the rest.

MR. HANRAHAN: Your Honor has given me much to address.

THE COURT: Right.

MR. HANRAHAN: Let me try to do it, if I can. It may not be in the right order, or whatever.

THE COURT: Take your time.

MR. HANRAHAN: I will try to address --

THE COURT: I wanted to give you what was on my mind.

MR. HANRAHAN: First of all, in terms of the percentage, my point is you can say our fee is 1.4 million of 3.25 million, but in fact, it's not

coming out of that. I don't think we should be penalized both ways. We did, in fact -- and there is a record, if you look at the documents attached to my affidavit. This is why I put them in. I thank Your Honor for having given us an alert to say, "You ought to be prepared to explain this," because I wanted it to be clear to Your Honor how this settlement got negotiated. You can track it through the documents. We suggested that there were things that the controlling stockholders were getting that ought to be given back, and that that money ought to go to the minority stockholders. They didn't like that idea.

We then said, "We want a 4 million-dollar payment to the minority shareholders." Now, maybe somebody would say, "You should have asked for eight." These are the judgments you make in a situation as to what is realistic, where the company -- there had been a bidding process and what have you. And so that's what the -- the offer we made. That got negotiated to 3.25 million. There was not any discussion whatsoever about attorneys' fees, as to whether we were getting one or what it was going to be, much less what was going to happen in Kansas.

THE COURT: Who negotiated that? You?

MR. HANRAHAN: Yes, Your Honor. Largely with Mr. Welsh.

THE COURT: What was the role of Kansas guys?

MR. HANRAHAN: I'm not aware of any role. The defendants can speak to that. I can say we weren't in touch with Mr. Brualdi at all. We were litigating our claims.

THE COURT: The MOU just -- so when you reached agreement on the 3.25 million, and then the disclosures --

MR. HANRAHAN: And the same thing with the disclosures. That is why I put this information in. Your Honor will see. First of all, a lot of the disclosures, they are items that were specifically raised in our complaint. And then there is a settlement proposal that I made in writing that identified the areas of the disclosures. And those got negotiated over. We had phone calls where we were told we couldn't get any monetary recovery. We stuck to our guns, and we got something, and we got the disclosures. They are also reflected where the defendants' drafted up a 14D-9. There is an exhibit that shows my handwritten changes, and the changes

that I gathered from my cocounsel, that ended up in the 14D-9. We did similarly with the notice of merger. We are the ones who raised disclosure in that, as well.

A lot of the disclosure claims related to things like the top-up option that weren't raised in Kansas. A lot of the relief addressed things that were not raised in Kansas. That is the point of my affidavit. That's what we are here for, is for an attorneys' fee based on the benefits that we conferred in this litigation. I'm not here to carry water for Mr. Brualdi. Nor do I think we should be penalized for having brought the action in Delaware.

THE COURT: No. No. That's what I said. I wanted to get a sense. For example, when the MOU was entered, was Mr. Brualdi part of the conversations that gave rise to the MOU?

MR. HANRAHAN: There were conversations between defendants and him, because they wanted to round him up. That is just the unfortunate reality today, is that in virtually every case, now, there are firms who will file cases on behalf of stockholders of Delaware corporations in any forum other than Delaware. That seems to be a continuing

trend. And frankly, given some recent decisions, it may be a continuing trend further on. And that is the situation we find ourselves in. But when firms do file in Delaware and you achieve a substantial result, if you are then penalized with respect to the fee award because some other firm filed somewhere else and the defendants -- you know, I understand their position.

THE COURT: What you are saying is sufficient unto the day is the evil thereof, and my judicial colleague in Kansas ought to be assessing what benefit, if anything, that action created. What you are saying to me, though, in an appropriately modest way, is from your perception, you guys were doing all the heavy lifting?

MR. HANRAHAN: Yeah. He -- there was an order in Kansas saying he could participate in our discovery. He was entitled to half the time in our depositions. Of course, we had no say in that. But we weren't litigating the case with Mr. Brualdi. I'm not going to comment on his thing, because what is in front of Your Honor --

THE COURT: Was there a motion to expedite in this case?

MR. HANRAHAN: Yes, there was, but the -- we did not have to litigate.

THE COURT: The defendants agreed?

MR. HANRAHAN: The defendants agreed to expedition, and there was expedited litigation. There was 66,000 pages of documents that were produced. There were depositions that were taken. We were juggling around depositions as we were --

THE COURT: Did you take the depositions with Mr. Brualdi?

MR. HANRAHAN: Did they show up?

MR. WAGNER: Your Honor, they were there, but they did not take the depositions, I don't believe.

THE COURT: They didn't ask any questions?

MR. WAGNER: That is my recollection, Your Honor.

MR. HANRAHAN: Your Honor, we are here for a settlement of this Delaware litigation, and with a fee request for the benefits that were conferred in this litigation. I think that is what is really in front of Your Honor. I think Your Honor has acknowledged that the benefits that we have conferred

do justify a $1.4 million fee. So we would ask that the Court grant that fee.

Thank you, Your Honor.

THE COURT: Why don't I hear from the objector, and then, Mr. Micheletti, if you and Mr. Hanrahan have anything to say in response to the objection, do that.

MS. SKOVRON: Good morning, Your Honor.

THE COURT: Good morning.

MS. SKOVRON: Ximena Skovron, for Glazer Capital LLC.

Your Honor, the motion for leave to file the affidavits of Paul Glazer and Mark Ort should have been delivered to your chambers this morning. It was filed late yesterday evening -- or afternoon, I should say -- as a result of our rather, I should say, Herculean efforts to reach out to UBS, and obtain an affidavit from them supporting their representation to us that they actually had not received notice of this settlement.

Your Honor, I have the motion here, along with the affidavits.

THE COURT: You know, I will trust

you, that that's what it says. So you are saying that UBS wasn't on the mailing list?

MS. SKOVRON: Your Honor, I'm not sure exactly what happened. I actually just want to make clear that I'm not -- our client -- my client is not disputing that due process was not -- due process procedures were not followed here.

THE COURT: You were in your original objection. Are you withdrawing that?

MS. SKOVRON: We are not withdrawing that, but we are stating that we did not receive notice.

THE COURT: Why would you have received notice?

MS. SKOVRON: From UBS. Because UBS itself did not receive notice. UBS was a record holder.

THE COURT: I get that. I'm sure UBS was a record holder.

MS. SKOVRON: Yes, Your Honor.

THE COURT: Are they on the list of record holders? Does anybody have the list?

MR. MICHELETTI: Your Honor, we don't have the list with us presently, but we do have an

affidavit from our mailing agent that said that the mailing -- the notice was mailed to all record owners as of --

THE COURT: Why isn't UBS here making the objection?

MS. SKOVRON: Your Honor, I have no idea.

THE COURT: UBS is pretty big. Ever consider the possibility they didn't take it seriously, or they lost it, or that it's somewhere in their -- what is their big building in Connecticut? It's somewhere on an elevator, riding up and down in the corner, because it dropped off a mail cart?

MS. SKOVRON: Absolutely, Your Honor.

THE COURT: How is the world supposed to work for clients like yours. Life is -- America is full of ingenious ways to make money without creating absolute -- without creating any societal value. And people make products. What is the value of a Chia Pet? Who knows? I guess it's amusing.

But your client is here. They were not the object of this lawsuit. Nobody in the world invented corporate lawsuits for after-arriving people who arbitrage settlements and buy -- I guess buy stock

on the basis that maybe other people don't know that there is a cash -- essentially, kind of a dividend coming. Right? That's what your client did. Right?

MS. SKOVRON: Your Honor, my client -- yes.

THE COURT: Your client could not have filed this lawsuit. Right?

MS. SKOVRON: Your Honor, my --

THE COURT: When this -- when the MOU was entered, your client had no standing to be a plaintiff?

MS. SKOVRON: I believe that we -- my client purchased approximately 200,000 shares prior to the June 1st dates. I'm not exactly sure what the precise date is, but it was in May. In addition, Your Honor, if I may point out, the memorandum of understanding, that was the only document available to the public concerning the terms of the settlement and was filed on May 21st. That document does not state --

THE COURT: That's what I said.

MS. SKOVRON: -- holders of record.

THE COURT: Your client filed -- your client bought a beneficial interest in shares on

June 1st?

MS. SKOVRON: Yes. That's correct.

THE COURT: Okay. I just asked you a question. Your client could not have even been a plaintiff in the lawsuit as of the time the MOU was entered. Right?

MS. SKOVRON: Your Honor, the honest answer to that question is I don't know. Here is why. There are two blocks of stock. One block of stock is not at issue here. My client purchased that back in May. Another block of stock --

THE COURT: Back in May. When was the MOU announced?

MS. SKOVRON: The 21st, I believe.

THE COURT: Was it before or after the MOU was announced?

MS. SKOVRON: My client has a representative here, Mark Ort.

THE COURT: If you don't know your case well enough, it's not the time to have someone who is not a lawyer stand up. But the point is: At the wrongs that were challenged in the complaint, your client wasn't a beneficial owner at the time the complaint was filed, right, or any of the expedited

discovery was going on?

MS. SKOVRON: With respect to the shares purchased on June 1st and 2nd, you are correct, Your Honor. He was not a beneficial owner.

THE COURT: When was the case filed?

MR. HANRAHAN: May 6th, Your Honor.

THE COURT: May 6th. There is a possibility that your client bought in May 5th, or May 4th or May 3rd or May 2nd or May 1st?

MS. SKOVRON: Yes, Your Honor. I apologize I don't have this. The partner on this case, Jeff Abraham, is --

THE COURT: What is a beneficial holder?

MS. SKOVRON: Your Honor, that is an excellent question. I'm not sure myself. I will tell you this. In the MOU that was filed on May 21st, holders of record are not actually referenced. It's, rather, holders as of a particular date. A term "holders of record" was not used.

THE COURT: What is a beneficial holder?

MS. SKOVRON: Your Honor, I don't know. I know --

THE COURT: What would holder -- what do you hold -- in what way, shape or form does it lead you to believe that the payment under the settlement would not be made to the holder of the stock?

MS. SKOVRON: Your Honor, it is our understanding from UBS that UBS does not consider our client to be a beneficial owner until the trade settles, which in this case did not occur until June 4th and June 7th.

THE COURT: That is between you and UBS.

MS. SKOVRON: Your Honor, we respectfully disagree. We understand that the case law here in the Chancery Court of Delaware --

THE COURT: How many brokers -- that is a UBS role? That is a UBS rule?

MS. SKOVRON: It seems to be a rather widespread rule in the industry, yes, Your Honor.

THE COURT: Your clients would not be aware of any such rule, right, because they are arbs? They have no idea, right, when their broker considers a trade be settled?

MS. SKOVRON: Your Honor, I believe that they were acting on the language of the MOU,

which, if I may read to you, does not speak in terms of holders of record.

THE COURT: I'm going to ask you one last time. You tell me. Right? You filed all these late -- you filed a late objection when your client clearly knew about the settlement, clearly has been monitoring it, and when you are, frankly, horsing everybody around by saying you didn't get mail notice -- no. Listen. This is the Delaware Court of Chancery. This is not the People's Court. It's not a made up court on television. It's not a prekindergarten. It's the big leagues.

There is a lot of people who have put a lot of time and attention into this, and this process is taken seriously. I'm not being discourteous to you, but when someone horses around when they are arbing a case, when they have got the MOU, when they have spoken to counsel, and then they claim they can file a late objection because they didn't get mail notice, when they never were a record holder -- that is a word that starts with an F. In the law, it is still an F word. That is called frivolous.

So you are lucky that you are here,

but don't try my patience when you have already wasted the time and money of other people. So I'm indulging because I have a role in this process. I'm indulging your merits argument. But don't tell me there was any excuse for the late filings, that there is any excuse for your clients not dealing with UBS before today, that you couldn't have delivered an affidavit, frankly, to my chambers in a timely manner.

So "holder" -- this is the question. This is the last question I ask you if you don't give me a real answer. What did you think it means? And when you answer, don't make stuff up. Tell me a rational reading of the law or any situation whereby the term "holder" misled your client.

MS. SKOVRON: Your Honor, when the decision was made to purchase the stock -- if I may actually address --

THE COURT: No.

MS. SKOVRON: -- the Court's concern?

THE COURT: You can address "holder." The idea is that it was somehow misleading because it didn't say "record holder," and that the people at Glazer Capital, who go around making these kind of opportunistic buys, were mizzled, and they were

confused, and so they went out and made a transaction in which they would not, by any dint of any meaning on the part of anybody in this room who has ever done corporate or securities law, think they became a holder. They somehow did. You are the lawyer standing before me. I guess you have been moved pro hac vice. Right?

MS. SKOVRON: Yes, Your Honor.

THE COURT: So you are going to tell me a reasoned legal and factual argument why that was misleading, because that is what you have us all here today engaged in. That's what we are waiting to hear.

MS. SKOVRON: Your Honor, when my client made the decision to purchase the stock, he believed he acquired an economic interest in the stock as of the date of the purchase.

THE COURT: Okay. And that's what I'm asking you: How did that make him, or it, or the seven different funds it is -- I mean, by the way, you didn't follow the rules, as you know. You didn't make an objection on behalf of the specific people you even claim to be the beneficial owner, and identify them by fund, and do all the things that the notice clearly said, which should have been, frankly, gate-kept by

Delaware counsel, although the first one I guess was just filed by Mr. Glazer, or something like that, with the request for his attorneys' fees.

What you just said doesn't answer my question. Holder. How would it make them a holder?

MS. SKOVRON: Your Honor, as of the date that my client made the decision to purchase the stock, he acquired -- he believed he had acquired an economic interest. And besides --

THE COURT: He did acquire an interest.

MS. SKOVRON: The 200,000 other shares in that period.

THE COURT: He did acquire an economic interest.

MS. SKOVRON: And we believe --

THE COURT: How -- no. This is a very precise question. You have alleged that the public notice that was given, by leaving out the word "record," put your clients off their game. And so what I'm asking is: Is that real, or are your clients just upset because they made a really bad business decision at the end, and they didn't deal with the broker right, and now they are hassling with UBS, and

they want to hold up a settlement and hope somebody throws some money their way, just to go away?

MS. SKOVRON: Your Honor, that is a completely valid question, and I understand the Court's concerns. Besides the language in the MOU, there are other bases for the objection. The MOU was not the crux of our argument. And in fact, my client owns approximately five percent of the minority shareholders' interest in this company. And additional --

THE COURT: Five percent of the company after the settlement?

MS. SKOVRON: Yes, Your Honor. In addition, 200,000 other shares were being traded on the same dates that my client traded. Now, if it is unclear whether these people are included in the class --

THE COURT: It's not unclear. If they are not record holders -- there is no lack of clarity. The only issue -- I'm going to conclude that there was no basis, legal or factual, for your client to conclude that it was becoming a holder.

MS. SKOVRON: Okay, Your Honor.

THE COURT: Right?

MS. SKOVRON: I am willing to agree with you on this point, but I want --

THE COURT: You don't have to agree with me on any point. We have been sitting here for about ten minutes when there has been a single question pending to you, which you have done everything other than answer, because -- may I suggest because you know that you cannot answer it in any way that is plausible, because there is no such thing as a concept that anybody has ever heard of, of a beneficial holder.

MS. SKOVRON: Your Honor, I think you misunderstand, with all due respect, the basis of our objection. I would like to -- if nothing else, I would like to emphasize to the Court that this objection was absolutely not made in bad faith. The circumstances of the objection are as follows:

THE COURT: Wait a minute. I'm just -- just so the record is clear --

MS. SKOVRON: If you wish to stay --

THE COURT: No. Wait a minute. If you wish to withdraw your argument -- I mean, you are standing here. I assume the objection before me is the one filed by Mr. Glazer. Right?

MS. SKOVRON: By Mr. Glazer, yes.

THE COURT: Bottom of page two.

MS. SKOVRON: Yes.

THE COURT: "The MOU states that holders" -- quote/unquote, holders -- "would receive a pro rata distribution of settlement proceeds rather than the pro rata distribution being restricted, as now appears to be the case, to holders of record."

So I'm not making this up. This was your argument. Okay? And when I asked you why the term "holders" is misleading, and you cannot answer it or will not answer it, you know, to then -- if you are changing the argument, tell everybody. That can be another late objection.

MS. SKOVRON: Your Honor, with all due respect, again, because of the speed and the -- with which we had to act on this matter -- because again, I have to emphasize my client did not receive notice of this settlement in any form. He did -- of the objection date. He did speak to --

THE COURT: Your client --

MS. SKOVRON: -- counsel for plaintiff, and he was given a Crash Course 101 in settlement proceedings. But he was not -- he was not

advised of the objection date.

THE COURT: Did he ask --

MS. SKOVRON: He did not receive notice until September 27th, Your Honor. September 27th. UBS --

THE COURT: Did he ask?

MS. SKOVRON: Your Honor, my client is not an attorney. He didn't know that there is such thing as a notice of pendency.

If I might say, it seems inequitable to me that everybody here is saying that the primary focus of this lawsuit is the money, and yet nobody cares where it ends up, including in the pockets of people, 400,000 shares -- that is 200,000 over and above my clients -- are not going to receive the monetary benefits of the settlement, even though they were actually purchasers. They purchased before June -- the June 3rd cutoff date. It seems inequitable to me, and it seems that this Court, acting in equity, has the obligation, or at least the discretion, to include those shareholders who rightfully belong in the class within -- within the group that will be receiving the monetary payment.

My client is a merger arbitrageur. I

admit that. I find nothing wrong with that, Your Honor. Provides valuable liquidity to the market.

THE COURT: Who said there is anything wrong with it?

MS. SKOVRON: Seems to be --

THE COURT: Wait a minute. You are saying things -- honestly, you are saying things which are utterly implausible. Is the Mr. Glazer here?

MS. SKOVRON: Mr. Glazer is not here.

THE COURT: Oh, no. It would be interesting to see whether Mr. Glazer would actually take an oath and swear that he bought five percent of a public company's stock on the basis that a settlement was coming, which means he is making decisions, he is arbing -- don't interrupt me. He is arbing legal proceedings, reads an MOU, which is the basis for his thing. Right? We don't have his testimony about his view of a holder, as opposed to a beneficial holder. But he has no idea that there will be a settlement notice. He never checks into the settlement proceeding. He calls the attorneys, but he never asks, because he is a lawyer -- he is not a lawyer. He sits around and he waits until September 27th, and then he finds out, and all of a

sudden, it's a rush, and he never knew any of it. He wasn't monitoring.

I mean, that is fine. That is the kind of stuff -- before I believe something like that, I either turn into a character played by Jim Nabors, or I see somebody survive cross-examination on that after full discovery, because right now, that makes absolutely no sense.

MS. SKOVRON: Your Honor, as to the motivations and the business decisions that my client makes, you are right. I absolutely can't speak to that. It would be for Mr. Glazer. And in fact, it was -- Mr. Ort was the one who placed those trades. I don't know if I will offer him up for testimony, but his affidavit is before the Court, in which he obtained the letter from UBS.

Again, I would like to say that this issue does affect a number of shareholders, and it would seem to me that the actual distribution of moneys in this case to these persons should be an issue that the Court and, indeed, the litigants are concerned with. Here is why. Those people who purchased on June 1st and June 2nd, are they releasing the claims in this lawsuit or not? I think not,

because they cannot release without receiving consideration. And if so, then what is this -- are we going to be facing challenges to this rather good settlement, that we would agree is --

THE COURT: Thank you. Thank you. Do you have a citation for that, for your now -- your cosmic challenge to the settlement process in the world? You do understand -- I mean, really, you have cited no law.

MS. SKOVRON: Your Honor, I have law. I would be happy to send it to the Court. I was trying to answer the Court's question. I am endeavoring to answer the Court's question. If you will excuse me, I received this case two days ago. The partner in this case is having his first child this week and was unable to attend, Mr. Abraham, but he would have liked to have been here.

THE COURT: I'm going to say something to both of the lawyers involved here, you and your Delaware counsel. Let's just consider this a law school -- like a continuation of law school. I have heard enough. This is not the way things should happen here, not at all.

I expect Delaware counsel, however new

to the bar, to consult with senior members of the firm. I believe probably both of you have been put in a very bad position by more senior members of the bar. You are saying astonishing things. They are astonishingly at odds with the settled legal authority. To tell me you are now going to hand me up precedent, when I required the lawyers, on short notice, to object to -- to respond in writing to your late objection, is disrespectful to them; it's disrespectful to this Court.

I read my mail. I am prepared for this hearing. I didn't have a chance to read your late flurry of stuff yesterday. Absent some new decision that you have, indicating that settlements have to deal with every beneficial holder in the world -- you got one from yesterday?

MS. SKOVRON: No, Your Honor.

THE COURT: Okay. Then this is nothing new. And it would not -- you would not be able to settle federal securities cases, you would not be able to settle anything, if folks like your clients were going to get to come in and talk all about the 17 people they dealt with.

You want to talk about equity? Your

clients were buying, probably, largely on the assumption that there were people miscalculating the benefits of the settlement. I'm not faulting them. They don't have any obligation. But you are coming in here with -- and suggesting some sort of cosmic unfairness by following regular orders when the marketplace got the information, when your clients acted on it, using the fact that they monitor information more closely than other people. They made trades, but they didn't do their job. I don't want to hear --

I have heard you out. I want to hear from Mr. Micheletti and Mr. Hanrahan. What I would say is late-filed notices, with implausible excuses, no update -- you are withdrawing an argument, not really replacing it with another argument, not answering my question, not delivering something even to me yesterday -- perhaps it's downstairs for me before this hearing. I have no idea. I don't know that we got a call this morning to indicate it was coming.

Frankly, the lawyers in the room shouldn't have had to be worried about after-hours deliveries last night in this case, when they might

have even -- they might even have a family life or a moment off, or they may have already prepared for the hearing. So let me hear from Mr. Micheletti and Mr. Hanrahan.

Thank you.

MS. SKOVRON: Your Honor, if I may just add one more thing?

THE COURT: I have heard more than I ever typically hear on late objections.

MR. MICHELETTI: Your Honor, Ed Micheletti, of Skadden Arps, on behalf of Protection One and GTCR. We submitted a brief in opposition to the objection. We are happy and content to rest on the arguments in that brief.

THE COURT: Do you know -- you don't know anything about this UBS thing?

MR. MICHELETTI: Well, I'm not aware of any affidavit submitted by UBS to the Court. What I am --

THE COURT: You didn't receive it, either?

MR. MICHELETTI: I didn't receive an affidavit from UBS. That's correct. What I did receive was an affidavit -- or a motion for leave to

file affidavits from Glazer Capital, one of which was an affidavit of an individual named Mark Ort, who apparently had a conversation with somebody in the prime brokerage unit of UBS; reports on that conversation; and then purports to attach a letter from UBS to Mr. Ort that said that UBS did not send -- did not send Glazer a copy of the notice.

THE COURT: It says UBS did not send. Does it say they did not receive?

MR. MICHELETTI: It does not say that. The letter from UBS does not say that. That's correct.

THE COURT: Okay. Thank you. Mr. Hanrahan?

MR. HANRAHAN: Unless Your Honor has questions, I don't have anything further.

THE COURT: I will deal with the objection first. It's late, inexcusably late. I don't even know, frankly -- it doesn't -- for something that is late, you would think it was late and it would otherwise meet the requirements for an objection. It does not. If you want to operate through multiple entities, which apparently Mr. Glazer does, then there should be proof that each of the

entities that is objecting is a stockholder. There is not.

It would probably be better, I guess, to add the word "record." We don't have it in the musical context as much, so it has a quaint thing. So we will put "record holder." A member of the bar came here prepared for an argument and was asked about the principal objection made by Mr. Glazer. Could not answer. I don't fault her. It's because there is no plausible argument.

The fact that the word "record" was not in there and it simply said "holder" does not mislead anyone at all. To be a holder you have got to be -- they talk about beneficial owners. You are not a holder. You don't have a certificate. Entities like Glazer ought to -- they play this game. And there is nothing in any of the responses to the objections or anything the Court says -- I want to be clear about this -- that implies there is something wrong with what Glazer does. But Glazer is arbing the market. Frankly, it is trying to make opportunistic profits off of its perceived knowledge of the settlement, which it believes it has got a better knowledge than the people who are selling.

Well, when you are going to play that game, you need to actually understand the rules. There is nothing new under the sun about the fact that record holders are who are defined as the class. It is, frankly, insulting to the Court and disrespectful to all counsel involved, including the plaintiff's counsel, who worked hard to get a good result in this case, to suggest that somebody is turning their back on their duty to the stockholders by not rooting -- by not representing Glazer Capital in its battle with the record holder or its broker. If Glazer wants to sue UBS, it knows where UBS is. It has buildings. It has UBS right on the side of all its buildings. That's what it should do. But to imply that what the Court or the plaintiffs in the case are supposed to do is to go out and deal with everybody who made trades during the class period and do a summing up is just nuts.

This case is about stockholders, as Mr. Hanrahan says. Glazer Capital didn't even have standing to bring this suit. At best, it might have bought something before the settlement, but it doesn't even know. This suit is about protecting the stockholders of Protection One. Glazer came in. It is entitled to do whatever it does from the record

holder. The settlement is actually clear. I have no doubt that Glazer Capital pulled the actual settlement agreement when it became available. And it says in there beneficial -- "the record holders are responsible for dealing with beneficial holders with respect to the proceeds."

Glazer may still get paid. But the point is the settlement proceeds will be paid to the class. The class has been clearly defined. There was some temporal ambiguity about when the tender offer would close, but that is not even what Glazer is talking about. The reality is the initial publication of the MOU put everyone on notice that they had be careful. The law particularly does not exist for people who want to buy in at the last nanosecond of a class period and then come and make sure they get their harvest.

You will read every corporate law treatise that is ever written, and you will find not any dilation of that -- on that principal concern, that the late-arising arb, who can't get its game together professionally, should be the object of special protection. I actually think if society thought about it, people would probably be more

interested in exploring whether there were people who sold to Glazer Capital in ignorance of the settlement. But the law doesn't put on Glazer Capital the responsibility to be forthright with the people from whom it buys. It doesn't. They don't have to say anything. They can buy on markets. That is cool.

MS. SKOVRON: Your Honor --

THE COURT: Do not interrupt my ruling. But what Glazer -- when Glazer Capital comes into this court and suggests that everyone needs to protect it from its own ignorance and its own failure of diligence, that is what Emeril Lagasse would say is one-sided cooking, one-sided-tasting food. Glazer gets to buy. It's not an issue. It doesn't have to tell people, "By the way, there is a dividend coming. By the way, if you calculate this right, you probably want to hold." No. It goes out on the market, buys five percent of a public company, but then because -- society should temper harshness. Right? We have a free lunch program. We have Head Start. We have other sorts of things. What we should do is make sure there is a subsidy for Glazer Capital at the end, so to the extent it makes mistakes by not reading documents, by not actually securing record status, by

not acting sufficiently in advance of the tender offer closing to make sure that if it wanted to be a record holder, it would become a record holder, there should be a subsidy, and we should have investigation costs, and everybody should go after UBS and hold up a class action. That is crazy.

The law is settled. You are allowed to base a settlement on record holders. That is what we look at. When you deal -- when you are a beneficial owner and you deal with a broker, you are at your own risk. If you want to get notice of a settlement, you become a record holder.

Here, I have every reason to believe Glazer had full knowledge of what was going on. If it failed to read documents or to ask for them when it spoke to counsel, that is on it. This is a frivolous, late objection. And I hope to never receive another one of its kind.

With respect to the settlement, I'm happy to approve the settlement. There are multiple benefits; principally, the monetary relief, which is substantial in light of the case. There is a lot of enhanced disclosure. I give the heaviest weight to the cash flow projections. As I said, I'm not -- I

haven't caught the top-up wave, Mr. Hanrahan, but I acknowledge it's there.

With respect to the fee -- I'm obviously going to certify the class as a quintessentially appropriate situation, to certify the class.

With respect to the fee, I will acknowledge I am troubled. And I guess I won't ask Mr. Micheletti to comment, because he has got a duty not to object. My perception from Mr. Hanrahan, and from my own perception of the case, is that the firms here in Delaware did all the heavy lifting, for the most part, and that the fee that they are requesting is entirely reasonable in light of the substantial benefits they achieved.

I am concerned about the $900,000, but I think Mr. Hanrahan -- there is much to what he says about the fact that he and his colleagues here from the Barroway firm should not be penalized by the fact that someone else brought litigation. Really, the appropriate thing is for the judge in Kansas to exercise her independent discretion. And if she believes that an award of the full $900,000 to the Brualdi firm, in light of the total benefits and in

light of the record before her, including the fact that it seems that the Delaware lawsuit really drove the results, and the efforts of the Delaware lawyers is what brought about the benefit, then -- it's really up to her to exercise her independent judicial discretion and to address that fee.

I'm not going to reduce the fee sought by the Delaware plaintiffs. I'm confident that it -- looked at in comparison to the benefits that were achieved, and the fact that they -- and I give credit that an actual monetary result was obtained. I'm going to award the full amount requested by the Delaware plaintiffs.

If Mr. Hanrahan has an implementing order, I will be happy to sign it.

MR. HANRAHAN: Your Honor, the order and final judgment does not reference the objection, but I think Your Honor has already ruled on that on the record.

THE COURT: Yes. When was the scheduling order entered?

MR. HANRAHAN: August 9, 2010.

THE COURT: That goes on the first blank. Right?

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

THE COURT: You guys decided you wanted to have as authentic an order as you could, with my indecipherable handwriting, and -- it's 1.4 inclusive of expenses? Is that right?

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

THE COURT: If the order is in two different colored inks, make nothing of it other than that the one that was blue ceased to write in the middle of me doing it. It has no -- it's no comment on the subject matter. So you will be able to get that order.

Thank you, counsel, and everybody have a good day.

(Recess at 11:25 a.m.)

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CERTIFICATE

I, WILLIAM J. DAWSON, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 66 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, this 7th day of October, 2010.

/s/William J. Dawson
Official Court Reporter
of the Chancery Court
State of Delaware