He said that "the status of its financing" -- this letter -- "was an exceptionally fuzzy, inconclusive, alarming statement, that at that late date they still did not have their financing in place after all that had gone on, after two months, after having raised their tender offer that very week, that they still did not have their financing in place." He said, "That was very, very disturbing to me." And the testimony is that other directors very, very much shared this concern.

If Forstmann Little should go away, we had questions asked. Mr. Stargatt asked Mr. Glucksman on deposition -- "Well," he said, "isn't the offer going to expire next week," of course, ignoring the fact that it was solely within Pantry Pride's discretion whether they wanted to extend the expiration date. He said, "Why don't you find out in ten days from now or eight days from now whether you have the financing or not." And Mr. Glucksman's answer was a self-obvious one. "Sure I will find out. That is wonderful. Suppose it turns out they don't have the financing after Forstmann Little has walked away? What have I done for the shareholders then?"

So with the contingent financing even at that late date was their final response where they stood. Forstmann Little's financing was firm, in place. They had it. They were prepared to go forward on an expedited basis and close the transaction in 35 days.

Then they have the question -- they are being asked for the lock-up -- are they foreclosing the bidding. And there is no question, everybody recognized that the effect of the lock-up is at least to discourage on-going bidding. It doesn't foreclose it but it chills it. No question. The board knew that. The board was told that.

Well, the logical thing that a board then asks itself is, if we are chilling on-going bidding, what is the reasonable prospect that we are going to get more. Do we already have a full price, or is there another 10 or 20 there that we are likely to be foreclosing? And the board asked itself this question, and the board concluded that the auction had essentially run its course. They were already at the top, which is proved in court this morning when they come in and they are not prepared to go any higher, not even by a penny, but are actually staying

lower. They are not even upping a quarter this time.

But let's go back to where we were on Saturday. The board looked at the matter. The price had gone from $42 to $56. Pantry Pride had not said 60, 62. They came in with another 25 cents. Now Forstmann Little was offering the equivalent of $59.25. Was there any reasonable higher bid to be expected?

The testimony shows the company had struck out on looking for a white knight. The company had been in play for two months. Every company around knew it was in play. They had been contacting people. They could not get a white knight. No one had come forward.

There was this feeler from Mr. Wasserstein that Mr. Lipton fully told the board about at the time so the board would be fully advised. It turned out not to be real. Mr. Wasserstein's client was not, indeed, interested in acquiring the company. He was only interested in negotiating with Forstmann Little for a piece of the company.

So the real question was, was there

any more room to go. The price was right up at the ceiling of the Lazard estimates of what was reasonably to be attained, and Forstmann Little was saying, "We don't have any more room to go any further whatsoever. We have stretched, we have pushed. This is our best conceivable price."

So the question the board had to ask itself is, are we cutting off a meaningful auction or has this auction already run its course. And the board concluded that the auction essentially had run its course.

Conversely, the board had to consider where did it stand if it refused the lock-up and if Forstmann Little went away. Forstmann Little was offering $59, $59.25 combined value on the shares and the notes. Where would the shareholders, where would the noteholders, where would the company be if Forstmann Little walked away? And it was told it had no assurance whatsoever that Pantry Pride would even stay at the $56.25. Obviously, Pantry Pride would have no incentive to go higher than 56.25. Why should it if it is now the sole player on the field?

But more to the point, the board reasoned and its advisors reasoned that there was a

very, very strong prospect that Pantry Pride would not even stay at the $56.25 but if Forstmann Little was removed from the scene would go right back down again.

Mr. Rohatyn of Lazard told the board, "Pantry Pride had never hesitated to lower the price on its bid when it saw it was in a position to do so." It was an absolute, unacceptable risk for the company to face Pantry Pride alone without Forstmann Little and that he did not believe that without Forstmann Little there would be a $56 a share bid from Pantry Pride and that Pantry Pride might very well likely lower its bid.

And that is also the testimony in the affidavit of Judge Rifkind. Judge Rifkind said this concern was shared by all the directors. The choice was between 59 or 59.26, certain, sure, positive, yes, maybe 35, 45 days down the road, or 56.25 which could go down. And the 56.25 wasn't here and now. We have heard a lot about the time value of money on the Forstmann Little deal. Pantry Pride was telling the board it didn't even have the money. There was no assurance when Pantry Pride would be prepared to close at 56.25, even if the board should seek to

facilitate the deal.

So given the fact that the Forstmann Little transaction was 3.25 better than the last price offered by Pantry Pride, given the fact that they had to make the decision then and if they turned down Forstmann Little, they would not even be sure, not only -- they wouldn't even be sure of getting the 56.25, because once the company was naked against Pantry Pride, Pantry Pride had every incentive to go right back down in price, and you would never get Forstmann Little back into the picture again. They would be off acquiring somebody else. That is their business.

The board had to decide what is the best thing to do. The price of keeping the 59.25 deal, nailing it down and having it, was giving the option. They asked themselves, "Is Forstmann bluffing us? Are we really facing this deadline?"

Glucksman testified, "Lipton told me at the board meeting I was facing this deadline. We had to decide here and now. I wasn't so sure. I wanted to hear it from Forstmann itself. I wanted to look the man in the eye and see whether he really had to act at the board meeting." He said, "Forstmann

came in. I looked the man in the eye. He said he meant it. He gave me the reasons. I thought about it. I realized he was right. He was not bluffing. If I was in his shoes, it was the only position he possibly could take."

So the board did not just say, "Oh, well, you say we have to deal you with you tonight. It means we have to deal with you tonight." They didn't want to deal if they had a choice. They did not have a choice. It was bird in the hand against God knows what out in the bush. Not two birds out in the bush; a lesser bird in the bush.

The price was the option. Let's talk about the option. Is it that horrendous? There was some difference of opinion among the investment bankers as to the fair values of the two divisions subject to the option price. Goldman Sachs, which was Forstmann Little's -- let me start with Lazard.

Lazard's prices were higher. Lazard had thought that they could sell those two divisions for 600 to 700 million. That wasn't money in the bank. It was an estimate. But the board knew that. And Lazard was its investment banker, and it certainly is going to give an awful lot of credence

to what its own investment banker said.

On the other hand, there was a difference of opinion here. Goldman Sachs, which is also a very, very reputable investment banker, which was advising Forstmann Little, apparently in good faith, not as a negotiating tactic, had valued these divisions substantially less, and the $525 million price was very much within the range of values that Goldman Sachs had placed on these same two divisions.

And it now turns out -- and actually, I think this is set forth in the papers of the Goldman Sachs partners submitted by my friend Mr. Cherno. It now turns out that Pantry Pride's own investment banker, Morgan Stanley, was likewise in the lower range, that both Morgan, their investment banker, and Forstmann's investment banker were both in the low range, and it was only the company's investment banker that had a higher price tag on these particular assets.

Was the 525 favorable to Forstmann Little? Yes, it was favorable, but it was not an unfair price. Mr. Glucksman testified it was low but it was fair. It was not a give-away. It was at the low range. It was cheaper than he would like to

sell it for if he is selling it as an isolated transaction, but it is not an isolated transaction. It had to be viewed as part of the totality of what was being proposed.

It was the means to get an additional $100 million in values for the shareholders by means of raising the price from $56.25 to $59.25.

Moreover, Your Honor, the expectancy of the board -- and we are talking about what is reasonable in business men's minds when they are dealing -- is that the option would never be executed. And this is critical, Your Honor. Not only does the option get a higher price for the shareholders but the reasonable expectancy is, it will never be executed. Forstmann Little has a very, very high price on the merger, and the board is saying to themselves, we don't think there is any room, option or no option, for anybody anybody else to come in and top it. A fortiori no one is going to top it if the option is in place. Therefore, the merger deal is going to go. And the option price becomes essentially academic. No one is ever going to sell those two divisions to Forstmann Little for

$525 million.

THE COURT: If that is the case, why don't you make the option higher?

MR. WACHTELL: Because it is negotiation, Your Honor.

THE COURT: Where is there negotiation? As I read the minutes, I don't see any negotiation.

MR. WACHTELL: Oh, yes. The affidavit showed that Forstmann Little came in and said they wanted to get it for 505 million. It is in the affidavit, Your Honor. Absolutely, absolutely. There was a negotiation that took place the previous day at which that price was hammered out. That was as far as Forstmann Little was willing to go.

THE COURT: Well, the minutes --

MR. WACHTELL: Because that is where it was at the time of the board meeting. The negotiation had arrived at the $525 million. That was the end product of the negotiation, Your Honor.

THE COURT: Mr. Loomis advised the board on Page 22, I assume -- is that the board receiving his view of the $525 million, which is

favorable from the perspective of Forstmann Little but Lazard's own estimate was six or seven million?

MR. WACHTELL: Absolutely, Your Honor.

THE COURT: Is that the first time the board is hearing that?

MR. WACHTELL: No. The board had had Lazard's estimates of the value before, Your Honor. This company had done interminable estimates of value as part of its decisions of every possible plan of liquidation, this alternative, that alternative. The question is, this was not just a fiat and Forstmann Little set $528. That was result the of negotiations between the advisors the previous day and that day. Forstmann Little wanted a lower option price, and the $526 million, the affidavit shows, was a negotiation. And that is the point of all this, Your Honor.

We are dealing with real life directors, business men, who are not dealing with abstractions. They are dealing with realities. They are dealing at a arm's length with Forstmann Little. Management had stepped out. Management no longer had anything to do with the Forstmann Little side of the

deal. This is a completely arm's-length transaction, with the board, as at any time two people sit down to contract -- would they like to make a better deal? Of course, they would like to make a better deal. No one who ever enters into any contract would not like to make a better deal.

If I buy a house and somebody offers me a price, I would like to get it cheaper, but it doesn't mean if I finally agree to his price or a median price or something that I am not acting in a reasonable way.

And you have to look at this total transaction here. The total transaction is one where the board was saying to itself, "We are getting $59 and 59.25 for the shareholders," which is a massive premium over the last Pantry Pride price. It is a very, very full price. And that was the testimony of Mr. Glucksman. He said, "That was a very, very good price. I was very happy with the price." There is no prospect of getting a meaningful price higher from anybody else, and that has been proved out in this courtroom this morning.

But not only was the board acting reasonably but, with the benefit of hindsight, the

board was right, that even now, as they are grasping, trying to get back into the ball game, trying to get this Court to take the unprecedented step of setting aside reasonable board action taken by a board in the exercise of its reasonable business judgment, even groping as they are to get back in this ball game, they don't come forward with a higher price. They come forward with a lower price.

So the board said, "This is a very reasonable price, a very high price. It is certain. We have to give up the option. We would prefer not to give up the option, because the option price is low. It is favorable to Forstmann Little. But it is not an unreasonable price." The testimony is they were told by the investment bankers it was a fair price, low but fair. And they say to themselves, 99 percent likelihood it will never be exercised. It will be a historical footnote what the price was. No one will ever care. It is the means to getting the money for the shareholders.

THE COURT: You keep saying, you keep putting in the fact of the price factor, The 2 a share to the other shareholders. Don't you have a class problem here? There are noteholders. The

existing shareholders have a right to have management make their deal for a tender offer regarding those shares. Now, I know you feel some obligation -- you said management had a moral obligation to the notes holders

MR. WACHTELL: I think they had a legal obligation, Your Honor. They had a legal obligation --

THE COURT: That is what the other side says.

MR. WACHTELL: No, not a legal obligation for fraud. The other side said there is a lawsuit saying you committed fraud. That was nonsense. But they had a fiduciary obligation to deal reasonably with the covenants.

THE COURT: But they made their deal. They made their deal on August 29 when they said they would exchange --

MR. WACHTELL: And they did not waive the covenants at that time, Your Honor. They declined to do so, Your Honor.

THE COURT: Aren't you jeopardizing the interests of the existing shareholders by carving out for those noteholders another $2 a share out of

lawsuits with merit or without merit against the company for having issued these notes --

THE COURT: Or against the directors.

MR. WACHTELL: Or against the directors. But the directors are indemnified, Your Honor, by the company, so it all amounts to the same thing in the long run. If there were going to be lawsuits with or without merit, and they would, indeed, be without merit, one of the things a responsible board does is to say, "We don't need the expense, the headache, the nuisance of litigation."

But then the board also had not only a moral but a fiduciary obligation to act responsibly with respect to the covenants. And the situation had now changed, where there was going to be a highly leveraged deal, and the board did not want to just blithely waive the covenants without doing what was right for the shareholders, for the noteholders.

THE COURT: Let me ask you this: As of October 12 had any suits been filed by any noteholder against Revlon.

MR. WACHTELL: Your Honor, I am not sure. The answer is, there was a suit that I think

came across everybody's desk on Monday or Tuesday, and I don't literally know whether it had been filed before Saturday, but I don't think anybody knew about it. So I frankly don't know whether it was filed, but I think nobody knew about it at the time. I think it hit the desk or was served or something Monday or Tuesday.

But, you know, it is fair to say -- as Mr. Glucksman testified, he was sure there were going to be suits. You put out notes and they are trading down at 86 two weeks after they are issued; he said, "In all my history, you know, merit or no merit, automatically, the lawsuits are going to come in from the sharks out there."

There is no question. He didn't think there was any liability. He said they would be nonsense lawsuits because they didn't have any merit. But that wasn't what was motivating the board. What was motivating the board was a feeling that they had just put out these notes for 150 million shares to their own shareholders, telling them they would trade at par. There was immediately thereafter a change of circumstance and they are trading markedly lower.

And the board feels -- and part of the reason, the major reason they are trading markedly lower is the board is obviously going to have to waive the covenants in favor of a highly leveraged transaction, one transaction or the other. And the board feels it has a responsibility here. I don't care whether you call it moral or legal. It is a legitimate responsibility, particularly when the people you are talking about are largely the shareholders themselves, with very little movement in those notes in the approximately two-week period.

THE COURT: It does make a difference whether you call it moral or legal. The board can't sustain its action on moral grounds. It has to sustain its action on legal grounds.

MR. WACHTELL: Let me put it this way.

THE COURT: I don't mean to be cynical about it.

MR. WACHTELL: I understand exactly what you are saying, Your Honor. Let me put it this way. Maybe that is an argument for another day, and I don't think I have to undertake that.

The board basically had a

responsibility with respect to the notes, with respect to the covenants, "The people were, indeed, the shareholders. Lawsuits were clearly going to be coming in which would probably get in the way of any deal. If you had a liability hanging out there, it obviously was going to impede any deal. It would be an out even under the previous merger agreement. It would be an out under their tender offer. In this kind of a circumstance you do not want to have multi-million dollar liability claims with or without merit hanging against the company when you are in the process of trying to sell the company.

The responsible thing you do is solve the problem. And whether we call it -- it is the reasonable business judgment thing for a board to do, to take care of that problem. And I just don't think they could conceivably be faulted on it.

THE COURT: I don't intend to cut you short, but if we are going to give Mr. Cherno an opportunity, I think we ought to --

MR. WACHTELL: Your Honor, I am not going to talk about the rights. I think they are academic. I am not going to talk about the rights ab initio. You have the brief on this subject. I just

don't think they are in the case. Maybe another day we will have the pleasure on that.

I think what this comes down to, this is not some vague exercise in what Mr. Mitchell is trying to paint it, who can be harmed, why don't we open the bidding, negotiate. That is not what we are here for. You have to deal with the facts. And this is precisely what the ENSTAR case holds. You have to deal with the situation as it existed before the board and did the board act in reasonable business judgment. And unless there is no -- what are the words? No rational purpose whatsoever, this can be attributed to the board.

No one could conceivably say that here, where this board is getting another $100 million of value for the shareholders and the noteholders for the price of giving up an option which their reasonable judgment tells them is never going to be exercised anyway -- there is just no way to fault that board on the facts that were before it.

And this is the unique case where the proof of the pudding is not that, oh, well, with the benefit of hindsight maybe we would have done it

differently. Here with the benefit of hindsight it turns out they were absolutely right. There is, indeed, no higher bid.

Your Honor, I think the ENSTAR case controls here. The ENSTAR case, I may say, had no consideration whatsoever. Mr. Stargatt in answer to one of Your Honor's questions said I don't think there has ever been a case where there wasn't fair consideration. In ENSTAR there was no fair consideration for the voting rights other than getting the deal. Thank you very much, Your Honor.

THE COURT: Mr. Cherno, before you begin, I would like to ask you how much more time you will go. We have been going for two hours.

MR. CHERNO: I will try, Your Honor, to hold to the 15 minutes that Mr. Wachtell and I allocated between us.

MR. STARGATT: Your Honor, I think it might be that we would require just a few minutes of reply, and I when say a few minutes, I guess I am apt to be maybe 10. I don't think I used the full hour and tried to purposely reserve some time for a reply.

THE COURT: Let's take a five-minute

break.

(Recess taken.)

THE COURT: Mr. Cherno.

MR. CHERNO: Your Honor, I think there is a fundamental point that is at issue in this case, and that is that you can start a bidding process with inducements, such as asset options, cancellation fees, a process which would only start, as I will show you, once those inducements are given. Get the bidding way up, getting hundreds of millions of dollars into the hands of shareholders, and then take away and invalidate the very inducements that got the process started in the first place. That is what Pantry Pride is asking you to do. That is not a level playing field, Your Honor. That is the most unfair process that I can think of. It would be unfair. It would be unconscionable, and it would end the white knight bidding process as the financial community knows it today.

They are saying get a Forstmann Little which only comes in with inducements, cancellation fees, with asset options. Get the price way up and then take what got them into the process away to start with.

Your Honor, the process would never, never start. If these were the rules, if you were to retroactively take away the inducements that start the process, in this case the Revlon shareholders would now have $42.50 and Pantry Pride would have the company. That is not a level playing field, Your Honor. That is unfair and it is unconscionable, and it would be a startling result.

Asset options, Your Honor, are given everyday. Mr. Stargatt said there aren't many asset option cases. But, Your Honor, there are many, many asset options. And the reason why there aren't many cases is that the investment community knows that they are a valid, essential way of producing a bidding contest.

Your Honor, I can tell you -- it is not in our papers, but I can just list to you some of the companies who have given asset options to white knights in recent deals. Northwest Energies, SCM, Richardson-Vicks, Macon, Pneumo Corporation, SCA Services, Continental Group, CooperVision, Stokely-Van Kamp, Marathon, Carter Hawley Hale, Host, Liggett, Pullman, company after company. Those directors, Your Honor, can no more be charged with

violations of their fiduciary duties than the Revlon directors can. Those directors did just what the Revlon directors did: They gave asset options to white knights to induce a bidding contest and to get the best deal they could for their shareholders.

And after these people come into the fray, you just can't stop the process, say, "Okay, Mr. White Knight, I know you are here now, but now we are going to cut your legs off." You can't do that. The process won't work, Your Honor. There won't be white knights. There won't be Forstmann Littles. There will only be initial bidders at minimal prices getting bargain basement steals from shareholders. That is what will happen if this asset option and asset options like that are invalidated. That is as clear as could be. I would give you more companies, Your Honor, but I don't think you need them.

Let's talk about the expert testimony that is in this case, the expert testimony from the investment banking community, no one with an ax to grind, no one that is being paid to give opinions on values, as to how asset options work and what will happen if they are taken away, what will happen if they are enjoined, what will happen if the Court sa[illegible]

they are no good.

Let's talk -- we have here Salomon Brothers, the most reputable of investment bankers. What does Salomon Brothers say? "In order for potential white knights to come forward, to commit to necessary financing and to make increased offers which enhance value for all shareholders, it has become almost customary in the last few years for a target company's board of directors to offer them inducements in the form of options on stock, options on assets, and/or break-up fees." And this is what I want to talk about." "If such inducements are enjoined by the courts, it will constitute a severe abrogation of the free market principles that apply to these transactions and redound to the substantial detriment of all shareholders. The already difficult process of securing increased value for shareholders in a tender offer context will in many instances become nearly impossible."

Your Honor, Salomon Brothers is not a party in this case. They don't represent anybody. They are not being paid fees. That is the way the investment community works. That is how bidding contests take place. Without them they don't

happen.

We have here another leveraged buy-out house that buys companies like Forstmann Little. Gibbon Green van Amerongen, they come in and also enter into these bidding contests, paying increased high prices to shareholders once an initial bidder comes on the scene.

What does Mr. van Amerongen say about asset options? He says, "My firm and others participating in such transactions are usually unwilling to consider making a bid for a public company and to undertake the enormous commitments of funds, time and resources and the exposure to possible adverse publicity and litigation that participation therein entails without the assurance that we will have something to show for our efforts or that there is a reasonable likelihood of success. Participants in leveraged buy out transactions are unwilling to undertake such commitments, only to end up in the position of a stalking horse for other bids," and stalking horse for people who will raise you a nickel and a dime.

Companies are not going to come in under those circumstances. That is what Mr. van

Amerongen says. That is what Salomon Brothers says. That is what Kidder Peabody says. That is what Dillon Read says. That is what Alex. Brown says. And if it would have been more than one day, I would have 20 more of them.

The process will not work if asset options are enjoined. You can't start the process off, get people into it and cut the legs off of the white knight. There will be no white knights. People will stay out of this fray, Your Honor. And that is as clear as can be. And that is the principle that is at stake in this case. The Forstmann Little's will go away. They will never come in. And there is no controverting testimony or expert testimony from anyone else in this case.

And Morgan Stanley, the investment bankers for Pantry Pride, they know it. Half of those companies that I mentioned that gave out white knight options were represented by Morgan Stanley. They know exactly what options are and why they are necessary. Indeed, Pantry Pride knows it. When they acquired a client of ours, Video Corporation of America, as a white knight last year, they got one of those stock options that Mr. Stargatt talked about.

THE COURT: Mr. Cherno, why don't you deal with the fairness in this specific situation rather than the general --

MR. CHERNO: Your Honor, I think the process in itself is intrinsically fair. An asset option is designed to induce a white knight to come into the case. It is not an inducement if the asset option is at a higher value than those assets. That is not an inducement. It is an inducement if that asset option is at a value which is at least within the low range of what people estimate those values might be. I agree with you, even though ENSTAR said an asset option was okay if it is for nothing, just sign it away, that is not what happened here. What happened here was an asset option within the range of the differing values that people put on these assets.

Goldman Sachs, s it is well within the range of Goldman Sachs. It is well within the range, Your Honor, of Morgan Stanley and Pantry Pride's own valuations of these assets before this litigation started. You will see annexed to the Forstmann Little affidavit, to Mr. Forstmann's affidavit, their own valuations when there wasn't any

interest in creating a litigation position. And those valuations, Your Honor, are lower than the $525 million of this asset option price. You will see that, too, Your Honor. And let me tell you something else.

We had discussions with Pantry Pride as to what the value of these assets were, these discussions that are now revealed in this Perelman affidavit that shows up in court today. We didn't think it was right or proper to disclose those discussions, because in those discussions Pantry Pride put a value on those assets. Pantry Pride has now disclosed those discussions in this Perelman affidavit. And I can tell you that Pantry Pride in an effort to resolve and to split up the company said they will sell us these assets at $557 million. So now they are talking 680, 700 million. Those are fanciful numbers for litigation. When things were on the line, Pantry Pride said $680 million, 557. Is that a big difference from 525? Does that invalidate an entire process which produces white knight bids and highest money for shareholders? I don't think so, Your Honor.

And you asked Mr. Wachtell, was there

a negotiating process. Was this 525 just a number that Forstmann Little put on the table and the board just had to meekly accept. Not at all. Forstmann Little started it for a hundred. Negotiations went up to 425, 450. It was 512 at around October 3. It ended up at 525. It was an arm's-length negotiating process, just like this entire deal was an arm's length negotiating process. And if the courts start enjoining deals that are result of an arm's-length negotiating process, the business judgment rule I think as we know it will be substantially changed and substantially altered. And this asset price was arm's-length negotiated just like the remainder of this transaction, Your Honor.

You asked Mr. Stargatt during his argument can a court say to management walk away from the table, there is someone else out there, or is management entitled to make a deal. The answer to that is as clear as can be in the cases, Your Honor.

There comes a point in time when management is entitled, the board is entitled to sit down with all of the factors in front of it, whatever deals are on the table, and choose the deal that they think in the exercise of their business judgment is

the best transaction for their shareholders and their other constituencies.

And let me say for a minute about other constituencies, the board is not only entitled to consider other constituencies, they are duty-bound to under the Unocal case.

What the Unocal case said was that the board can properly consider shareholders, creditors, customers, employees and the community generally in considering how to react to tender offers. That is the law in Delaware and it is good law, Your Honor. The board has the broad power and broad authority to consider a host of constituencies, and they fulfilled that power and they fulfilled that authority in this case.

But coming back to the theme, Your Honor, there comes a time when a board, a company, is entitled to sit down and consider all the facts and make the best business judgment that they can and make a deal. That is what the business judgment rule is all about. That is the essence of it. That is the kernel of it. If you take that away from the board, I don't know what the business judgment rule means.

And there are a couple cases precisely on point on that, Your Honor. And they are in our brief, and I will just call them to your attention. One is the Pay Less case. That is a famous case. I think it represents the law as I understand it to be. It is on Page 20 and 21 of our brief, 22 of our brief. And I would just like to, with your indulgence, read you an excerpt or two from it.

"To permit a board of directors to decide that a proposed merger transaction is in the best interests of its shareholders at a given point in time and to agree to refrain from entering into competing contracts until the shareholders consider the proposal does not conflict in any way with the board's fiduciary obligation. A potential merger partner may be reluctant to agree to a merger unless it is confident that its offer will not be used by the board simply to trigger an auction for the firm's assets. Therefore, an exclusive merger agreement may be necessary to secure the best offer for the shareholders of a firm."

It goes on, "It is true that in certain situations shareholders may suffer a lost

opportunity as a result of the board's entering into an exclusive merger agreement."

And let me interpolate now in this case, there is no lost opportunity here. It is just a lost opportunity to get a lower deal, as Mr. Wachtell pointed out. I never heard someone come in and challenge an option without coming in and saying they are not going to top the deal. They come in and top the deal by saying they are going to lower it. That is incomprehensible.

But to go back to the Pay Less case, "As the District Court took great pains to point out, subsequent to a contractual commitment unanticipated business opportunities and unexigencies of the marketplace may render a proposed merger less desirable than when originally bargained for. But all contracts are formed at a single point in time and are based on the information available at that moment."

That is the law, Your Honor, and it ought to be the law. And it is the law in Delaware, too. It is the law in the Simkins case, where the Chancellor rejected the plaintiffs' argument and said, "Plaintiffs, in seeking injunctive relief, have

asked that defendants be required by this Court to conduct its proposed sales of its assets as if defendant were a government agency, namely on the basis of sealed bids or by court regulated competitive bidding and ask that defendants be enjoined" from doing it elsewhere. The Court rejected that and no court has ever accepted it, Your Honor. It is not the law.

You can't take an auction process and say at the end of it, "Okay, now we will have an auction." The process would never start if these inducements and these options aren't given. That is, Your Honor, the uncontroverted fact in this case. And there is not a word that Pantry Pride has ever said in all of these papers that are piled up on your desk to the contrary.

And if you enjoin this asset option, not only will you be flying in the face, I submit, of the business judgment rule, of an arm's-length transaction between two independent companies. This isn't a poison pill. This isn't a golden parachute. This isn't a self-tender. This is two independent companies sitting down without self-interest, making a deal. That is what the business judgment rule is

all about. That is what the business judgment rule protects.

If you enjoin that, Your Honor, I submit that would be flying in the face of the business judgment rule, and if you enjoin an asset option like this, given in an arm's-length situation, the bidding process as it is carried on today for the benefit of the shareholders in all of the target companies that I mentioned and more would be irreparably, unalterably changed for the worse. Thank you.

THE COURT: Mr. Brown

MR. BROWN: Your Honor, I am hesitant to interrupt. May I respectfully inquire as to whether or not counsel for Adler & Shaykin would be permitted to be heard in this proceeding. And I base that request on the letter and enclosures that I sent to the Court and counsel late yesterday afternoon. If we are, Your Honor, we would be very brief.

THE COURT: Well, I think that, as Mr. Stargatt indicated, the Court is not now being asked to do anything definitively with respect to the rights of Adler & Shaykin with respect to the Beauty

Group sale. I don't know whether the Court will find it necessary to do so, but it is not my practice to grant relief that hasn't been asked for.

MR. BERNICK: Your Honor, if I could just address that so we are clear, if I understood Mr. Stargatt this morning, I understood him to say that the specific request for injunctive relief that was being sought that involved the Adler & Shaykin transaction was being withdrawn. Am I correct, Mr. Stargatt?

MR. STARGATT: I think I said I didn't remember it being in the complaint. But if it is, we are certainly not pressing it at this stage. And it comes up only in the way that I told the Court this morning. We are not trying to enjoin the Adler & Shaykin transaction at all. It may be at some future time some action will be taken, but it won't be on the present posture of the record.

MR. BERNICK: Well, that raises my concern. I think Mr. Stargatt did still indicate that he was asking the Court to make a determination that the Adler & Shaykin transaction was nonetheless subject to shareholder approval. And that is something that does concern us, because it leaves us

at risk. If we proceed without that shareholder approval, Mr. Stargatt has just as much said that when his client, if successful in this offer, takes over, they are going to take the position that that shareholder approval was required and because it wasn't obtained or because they are not going to give it, all we are going to be entitled to is what he believes to be some kind of liquidated damage figure under our contract.

So we are really on the horns of a dilemma at this point if we don't get a resolution of this issue. I am prepared to address it now.

THE COURT: I don't see the need at this time within the confines of the preliminary injunction request to deal with any type of finality concerning the rights of Adler & Shaykin. And nothing that I will rule upon will in any way restrict the rights nor define the rights of any of the parties. And if any further request for relief is sought, there will be opportunity for argument.

MR. BROWN: I apologize for the way it came up, but speaking was David M. Bernick, a member of the firm of Kirkland & Ellis in Chicago, representing Adler & Shaykin. I will not move for

his admission in view of Your Honor's comments.

THE COURT: I would like to say we will see you on another day, but I really hope not.

MR. STARGATT: Your Honor, I find Mr. Cherno's presentation, which is most recently ringing in our ears, to be incredible. Our proposition was not that lock-ups are bad or per se that there is anything the matter with them. I tried to make in a plain in the brief and orally. They do happen.

What we tried to say is that a lock-up at an egregiously low price as here is unfair and unlawful where it is used as a mechanism to try to deter a competing bidder.

Mr. Cherno with waves of his hands and references to canned affidavits refers to affidavit after affidavit that says that if lock-ups are not permitted, there will be a real inhibition on white knights entering the picture. Not one of those affidavits talks about asset locks-ups at unfair prices. The investment bankers whose affidavits he has, presumably because they are good investment bankers, couldn't bring themselves to say such a thing.

He cited a string of names, most of which are unfamiliar to me, saying that there was a lock-up in this case and there was a lock-up in that case and there was a lock-up in the other case, again not addressing himself to price.

But one of the cases I do have some knowledge about, had a little bit of involvement in it, and it is a reported decision, and that is the Liggett case. On that long list it was the only one I recognized. And the Liggett case wasn't a lock-up case at all.

In Liggett Grand Met was tendering for Liggett. And Liggett owned a subsidiary called Austin Nichols. In fact, it was now-Lawyer Brown's case, then Chancellor Brown's, a good decision.

In order to fend off Grand Met, not lock up, in order to fend off Grand Met, Liggett sold the Austin Nichols subsidiary for 900-odd million dollars, I think. When you have too many zeros on -- it could have been 97 million. The zeros I sort of get lost with. But in that neighborhood.

Grand Met tried to restrain the sale on the theory that it wanted to acquire the company with Austin Nichols. Liggett took the position that

it felt like its stockholders would be better off, because it didn't know what Grand Met would do with Austin Nichols once it took over, if it was sold at a high price then.

The sale was attacked. It was not a lock-up. It was approved. And it was approved because the price was more than fair, and I believe the Court said in its opinion that the valuation was an influential factor in supporting a sale because Grand Met when it took over -- and it ultimately did take over -- instead of having Austin Nichols it would have 900 million or whatever the figure was in cash, or 90 million.

Addressing myself to the comments made by Mr. Wachtell, Your Honor was obviously interested in the conflict point with him, as you were with me. And I was interested in his responses to Your Honor's questions.

First of all, he said in response to Your Honor's question about the $59.50, for which he claimed credit is going to the stockholders of Revlon, he indicated that they are the same people or, as he allowed, I think, mostly the same people, because he said there hasn't been much trading.

I suggest to Your Honor that there has been tremendous trading since August in Revlon stock. And the record doesn't give figures, but the Court knows on the basis of its own experience that the arbitrage interest in companies of this sort is enormous. So it is reasonable to infer that the same people who owned stock at the time of the exchange offer in August to a large degree, although unquantifiably, do not now own Revlon stock and that the classes of people are in substantial part different.

He also said, and I found this superficially attractive, that all we wanted to do was solve the problem with respect to the noteholders. But whose problem was it? It wasn't Forstmann Little's problem, because they weren't trying to solve it. They were going to be taking over the company, and it wasn't at their instance that the so-called problem was to be solved. As a takeover person of Revlon they didn't think it was going to be a Revlon problem to be solved. We didn't initiate any discussion on solving that problem. The people who wanted to solve that problem wanted to solve the problem for themselves, and they were the

Revlon directors. And they were conflicted. They were in a situation where, as our brief makes plain, they ran into potential liability and they had to solve their problem, and between October 3 and October 12 in that one-week period they decided to exact a solution to the problem from Forstmann.

The problem was anticipatable. In the October 3 minutes -- and Your Honor has obviously read these things perhaps more thoroughly than I have in the welter of paper -- Mr. Lipton stated that "The waiver of the covenants" -- this is the covenants being waived in the original merger agreement for Forstmann Little. And I am referring to Page 18 -- "...and the LBO capital structure would adversely affect the market price of the 11.75 percent notes, but this had been provided for in the documents which fully disclosed the possibility of waiver."

So on October 3, when they waived for the LBO, they knew that there was a chance, and I suggest a good chance, that the price of the notes was going to go down. They got themselves into some soup, and they recognized it at the October 12 meeting from which Your Honor has already read. They

recognized it before the October 12 meeting.

And in his responses about knowledgeability about the possibility of suit I thought that Mr. Wachtell was perhaps somewhat less than definite. But The Wall Street Journal article on October 10, an article that is attached to our appendix, says that some of these institutions owning at this point the notes and larger holders have already asked several attorneys to consider legal action against Revlon and at least a few institutions say they may ask a court to block the settlement of the new securities pending trial.

So the directors knew they were having a problem as of October, at least October 10, I suggest after October 3. And they carried water on both shoulders, in effect. After all, if the effort were really to get more money for the stockholders, if that were really the purpose, get Forstmann Little to give two more dollars to the stockholders. Leave the noteholders out there. But they were in a dilemma of their own making, and they were conflicted, and in order to resolve the conflict and get bailed out by a sweetheart negotiator that they had had friendly contact with, they got them to load

the consideration on the noteholders' side, and they gave them a lock-up which was, from our side, unconscionable.

I keep hearing from my friends about the absolute certainty of the $57.25 offer and the uncertainty of our $56.25 offer, almost rhapsody about how sure their deal is to go ahead and how uncertain we are.

We have our financing in place and we are ready to close on Monday if the impediments to our closing are removed. They do not have their financing in place. The Court will look in vain in this record for any definitive financing documents on their part. We have supplied affidavits with respect to our financing. They do not have their financing in place, and they did not have their financing in place -- they weren't certain enough about their financing being in place last Sunday to represent that they had financing in place.

All that the amendment to the merger agreement does is provide best efforts that they would get their financing, no more. In fact, the amendment explicitly inserts the words "best efforts" that they will get their financing. So to suggest

that their financing is a certainty is to suggest something that is contrary to fact. It is a fact that -- I believe it to be a fact that their financing is still uncertain and not our closing are removed. They do not have their financing in place. The Court will look in vein in this record for any definitive financing documents on their part. We have supplied affidavits with respect to our financing. They do not have their financing in place, and they did not have their financing in place -- they weren't certain enough about their financing being in place last Sunday to represent that they had financing in place. All that the amendment to the merger agreement does is provide best efforts that they would get their financing, no more. In fact, the amendment explicitly inserts the words "best efforts" that they will get their financing. So to suggest that their financing is a certainty is to suggest something that is contrary to fact. It is a fact that -- I believe it to be a fact that their financing is still uncertain and not in place.

Mr. Wachtell and Mr. Cherno keep saying, is 56.25 better than 57.25. Well, it all

depends. It all depends if the $7.25 ever materializes and when it materializes. Our suggestion, our prayer, what we are here for, is to let the market decide that question. Let the stockholders decide whether they would rather take our $56.25 now, Monday, or wait to see what is going to materialize on the $56.25 side. Our belief is that the stockholders will tender to us.

In terms of negotiations, my friend said, and Your Honor had asked on the subject of negotiations, the market is a place in which negotiations can occur. If they wished to change their merger offer into a tender offer, they can do so, could have done so before and topped us. But there does have to come a point at which things end. And our suggestion is, this is that point.

A red herring, a palpable red herring that appears in the briefs, and Mr. Wachtell again repeated it, ran along this line: Forstmann told us that if we didn't accept his new deal, he would walk away. That would leave us at Pantry Pride's mercy, which might even reduce its tender offer. That is the way the argument went. And it is absolute hogwash.

Forstmann is bound by the October 3 agreement, was bound by the October 3 agreement, didn't have any right to get out of the October 3 agreement. It could be terminated from the October 3 agreement with a payment of $25 million, but it did not have a right to abandon the October 3 agreement. That placed a floor on the stock at $56 a share. Unless it wanted a breach or unless the Revlon board, because of their friendly relationships with it, wanted to allow them to walk away, he could not walk away. And as long as that $56 was there, although Pantry Pride never expressed an interest in dropping, there was a built-in floor in the market.

Finally, on the lock-up point, there have been a lot of figures thrown around about the lock-up point, and I want to come back to earth about it. Lazard, who is Revlon's investment banker, opined that the lock-up assets were worth $600 million to $700 million. Goldman -- and all we know about it is what the minutes say. Goldman said that the $525 million price was fair to Forstmann, to Forstmann. Never gave an opinion that it was fair to Revlon.

Morgan Stanley in almost a

back-of-the-envelope note to us had given a lower than $600 million figure, lower than the figure that Lazard had given. But Morgan never had access to any of the figures of these divisions. We had been completely shut out. Morgan's back-of-the-envelope analysis to us wasn't an opinion or anything of the sort. It has got its nose up against the window looking in at people who best know what this asset is worth: Lazard.

Let me wind up by saying, Your Honor, that our request is that Your Honor remove the impediments before us, as has been done for the Forstmann offer voluntarily and allow the market to decide whether on Monday the Revlon shareholders wish to tender their shares to us for $56.25 or to wait for the later uncertain offer.

MR. CHERNO: Your Honor, may I respond to just the factual grounds.

MR. WACHTELL: May I impose upon the Court for 45 seconds.

MR. CHERNO: Can I get my --

THE COURT: Be my guest.

MR. WACHTELL: You have just been told that it was not the case that Forstmann had its

financing in place. That is completely, totally contrary to the record. The minutes at Page 40 reflect that Mr. Forstmann came before the board -- I think it is Page 40. I think I am reciting the right page, Your Honor. You can see that "Mr. Forstmann stated that this was correct and the financing commitments covered the money required for this revised proposal as well."

I quote from Mr. Glucksman's testimony at Page 27. "I was completely satisfied that the Forstmann group had definitive financing to complete this transaction." At Page 26, "I did not have any problem at all in considering that when Forstmann reassured us that the financing was in place, that it was, indeed, in place and that there were no pieces to be added." That is what the board was told, and that is what the board reasonably -- a reasonable business man is entitled to believe. He said these are people of very high repute. He would not say it otherwise.

You were told that Forstmann Little did not think that the potential of lawsuits from notsholders was a problem. That is contrary to the record. The record shows that Forstmann Little

insisted on having in the -- Forstmann Little did not want a contingent liability here if they were going to take over Revlon. Forstmann Little -- you know, lawsuits get brought. People may think they have no merit whatsoever, but Forstmann Little as a factual matter insisted on having a provision in the merger agreement -- it is at Page 60 and 61 -- a very lengthy provision, that they would get firm opinions of counsel, either my firm or the Paul, Weiss firm, that everything in the exchange offer had been absolutely accurate, that there were no material omissions; in other words, that there was no conceivable basis of any liability to noteholders. This was a matter of very marked concern to Forstmann Little. And they, too, had an interest in seeing this problem out of the way.

Your Honor, I think I may have not quite understood the thrust of Your Honor's questions before when you were questioning me about interest and we have been talking about conflict as a result of the notes. May I just very, very briefly just point out a couple of things here.

In the first place, as I understand the law in Delaware from the Aronson case and all of

the other case law, the mere fact that a litigation is threatened against a director or even brought against a director does not constitute interest. I mean, it is only if it turns out that there is a massive liability or something of that sort. And that is absolute --

THE COURT: Doesn't that stand for a direct involvement in that litigation?

MR. WACHTELL: I think it stands for the direct involvement in that litigation, but I think it also stands for the basic proposition that people sling lawsuits around all of the time. It stands for a common-sense proposition, Your Honor, that the fact that someone threatens or even brings litigation against a director does not mean that a director then ipso facto becomes interested and you should presume that everything he is doing is an attempt to solve a problem of the lawsuit, unless there is some evidentiary showing that that is, indeed, the case, that that is, indeed, what is motivating the director.

Yes, in the context of Aronson it comes up in that litigation. But it is just the reflection of common sense. People bring lawsuits

all the time without merit, unfortunately. And you can not say that the mere filing or the threat of a lawsuit against a director ipso facto makes him "interested."

Now, what is the record here? The uncontradicted record as to whether these directors feared any liability from the threat of any lawsuits from the noteholders, the uncontradicted record is that, in the first place, the directors were told at the meeting that there was no liability. He was told by my partner, Mr. Lipton, there was absolutely nothing wrong with the exchange offer documents, and there was no prospect of liability. And, indeed, in the previous merger agreement it had been said there would be a formal opinion to that effect. I can tell you, we would not likely give an opinion to that effect nor would Paul, Weiss if we had any question in our mind on the subject whatsoever. So the directors were told there was no liability.

Mr. Gluckman testified -- this is uncontradicted testimony. Mr. Gluckman testified at Page 156 of the transcript of his deposition, "I have talked in my deposition concern about an obligation to noteholders, not because of fear of litigation but

what I looked on as the equity of the situation."

He then went ahead to set forth what the problems were. He was asked specifically on deposition what his view was as to whether there was any merit to the litigation, and he testified expressly -- I refer Your Honor to Page 140 of his transcript -- "By the way, I did not think that absent the inconvenience of litigation that we had a financial liability."

And he was asked by counsel, "You thought that you had no financial liability to the noteholders?

"Answer: Absolutely. A liability under a settlement of a case in court. When you start talking about a liability to noteholders, moral liability, legal liability, I did not think we had a liability that would be asserted against us in an actionable case.

"Did not think you had a legal liability to the noteholders?

"Answer: I did not." Why? Because the notes had been issued in good faith and there were no misrepresentations of any sort whatsoever.

So the uncontradicted record in this

matter is that the directors were told there was no liability. They believed there was no liability, and that was not a motivation whatsoever. And the mere fact that people are threatening lawsuits does not constitute interest.

But more fundamentally, Your Honor, there is something -- I heard the word "red herring" used. There is something, I submit, that is a little bit an Alice in Wonderland about this argument being made about supposed conflict in general by the notes. This is not an action where anybody is coming into court saying that the 59.25 consideration should have been allocated differently. They are not coming in and saying you took the money from the shareholders, you gave it to the noteholders. That isn't the issue in this litigation. The board was acting here totally at arm's length to get the highest possible values. They have now got up in court after the fact and said they would do the same thing for the noteholders that Forstmann Little did, so they can't very well be complaining about the allocation.

This whole issue is a total red herring of whether the 2.25 went to the noteholders,

who were also the shareholders, or went to the shareholders.

THE COURT: Well, it is not if you look at it in terms of a quid pro quo for the lock-up.

MR. WACHTELL: It is if you look at it in terms of quid pro quo for the lock-up, Your Honor. The board was getting the highest total package of values, no matter how it was allocated. That is precisely what I am saying, Your Honor. It does not provide any conceivable motivation to give the lock-up. The board wanted to get the highest conceivable package of values. It was getting that. It was getting a package that was worth $3 or more premium over their last offer. I submit the issue of allocation has nothing whatsoever to do with the question here.

And the uncontradicted evidence is that the board was not remotely motivated by any fear of liability in litigation. That was not what this was all about. What this was about was to solve a problem, act responsibly to a constituency of people who had just taken the notes, who were themselves -- I heard the argument there had been a lot of heavy

trading in the stock since August. That isn't the trading we are talking about. The exchange offer closed, the 10 million shares, on midnight, September 12. And then the notes were supposed to be issued as soon as practicable after the final proration took place.

We are not talking about trading in the stock in the summertime. We are talking about whether there was any trading to the extent of trading in the notes between midnight, September 3, a period of four weeks, for most of which the notes weren't even in the hands of the shareholders, because they hadn't even been physically issued.

And the uncontradicted record is, there was a very thin market, that very few of those notes were trading; in other words, that the body of noteholders was essentially identical to the body of shareholders.

And that was what was motivating the board. They did not want to see the shareholders who had in good faith tendered in 10 million shares immediately be hurt. They wanted them to get the value and they wanted to act responsibly on the covenants.

There is not a scintilla of evidence here, Your Honor, -- I mean, we talk about -- you know, we have all of these cases, I know Your Honor has written on it in Moran, at what point do you flip a presumption of reasonableness and so you have to justify a transaction as being reasonable and go beyond the reasonable business judgment rule. In this case we are dealing with a situation where the board is dealing absolutely at arm's length. It has no motivation. The evidence here shows that the sole preoccupation of the directors was how best to achieve the highest values. They weren't trying to keep the company independent. They weren't engaging in defensive tactics. They were trying to get the highest values from the prospective bidders. A very sophisticated board, a board of unimpeachable integrity, and they had no motivation to do other than what was the best thing.

And I think that for this -- I think it would be absolutely unthinkable to say that people such as Judge Rifkind, the other distinguished members of this board, who -- this board is not to be criticized. This board took an offer of $42, which these people put on the table, and by using

covenants, using lock-ups, translated that and got 59.25, a massive increase in the negotiating process. The process worked here. This is a board that should be given this Court's medal, Your Honor.

THE COURT: I agree with you. It reminds me of a story that ends with the line, "What have you done with for me lately?"

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

MR. CHERNO: Your Honor, three simple facts. No rhetoric.

On our financing, it was in place, it was committed and it is in the record. It is in Mr. Forstmann's affidavit, on Page 15, twice. "Forstmann Little's proposed $57.25 price per share to Revlon's common shareholders represents not only the highest price being offered to shareholders but is backed by committed financing.

"Forstmann Little has committed 445 million of its own money and has commitments for the balance of the financing required." That was true. That is what we told the board. It is in the record. And it is uncontroverted.

On Saturday night a little part of it

was an oral commitment. It soon became writing, and there was a written commitment, and there was never any question in our mind or in the boards mind that it was absolutely committed financing to do this entire transaction, and there is just no possible fact to the contrary.

Second, under the merger agreement we had -- they say 56 is a floor. We couldn't get out of it. There are outs as there are in every merger agreement. One out, the litigation out, had already been triggered by lawsuits they had brought. If we wanted to get out of that agreement, we could have gotten out of it. 56 is not by any means a floor.

Finally, the value of the optioned assets. They say -- now they admit for the first time that their own values were in the 400, 500, 600 range, 400 to 500 range for awhile.

There are other values in the record, too. Goldman Sachs, there is an affidavit in the record from Mr. Herbst indicating that the 525 price is right in the range of Goldman Sachs' values.

And I repeat finally that Pantry Pride when they were offering to divide the company with us offered to sell us these assets for $557

million. Thank you.

MR. STARGATT: Your Honor, bear with me. I hate to do this, but I have been urged to and probably should say one thing.

On this financing point, which I am not sure is the most important point that has been talked about now, but we are at odds on that, and Mr. Cherno and Mr. Wachtell have told you one thing, and I have told you another.

All I can respectfully request you do is take a look at the amendment to the merger agreement, which contains only a best efforts undertaking. And there has been handed to me a copy of Schedule 14D-9, Amendment 8, which was telecopied, and it is dated October 15, which I guess is today -- I am sorry. I am looking at the wrong page. The 18th. Filed today. The last sentence of the first full paragraph on Page 4, describing the financing, I believe describing the financing -- I have looked at it not carefully enough to represent that, but I am told describing the financing -- ends with the phrase that "the banks referred to "will use their best efforts to arrange a syndicate of commercial banks to provide the balance of up to $400 million." And I am

told that the $400 million, even though it is the balance, has to be available before anything becomes available.

So I really don't think that glibness on this subject should succeed. I would suggest there is strong evidence that the Forstmann financing, which has never been put of record here, while I am sure they hope they are going to get it, is not now in place.

THE COURT: All right. Thank you for the vigorous argument. I think it is only fair to tell you that I don't believe that I can have a decision in this case by the 21st, for whatever effect that has on the parties. I have got a weekend coming up, and it is just a physical --

MR. STARGATT: Your Honor, could you give us some indication -- when this case became as complicated as it did after a weekend with the new offer, I think we all of us talked among ourselves as to whether, having had the trouble we had mastering the facts working day and night, the Court without the same amount of help would be able to render its decision as rapidly.

THE COURT: Well, I am going to try

to have something by the middle of next week. It is now after 2:00 on Friday afternoon, and ---

MR. STARGATT: Without putting excessive pressure on the Court, because in terms of our own offer, we will make sure that events don't pass us by.

THE COURT: If I were sitting on the Supreme Court, I would take a recess and come back and announce a result and give you an opinion five months later. That is not to be repeated. But I don't wear that hat right now. I have got to act like a Chancellor and do this thing on my own with a certain amount of deliberation. So I will do the best I can.

MR. WACHTELL: Thank you very much for hearing us, Your Honor

MR. STARGATT: Thank you, Your Honor.

MR. GOLDMAN: Thank you, Your Honor.

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(Court adjourned at 2:15 p.m.)

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