

TIME 11:07  
DATE 7/18/89

Richards, Layton &amp; Finger

## IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

## IN AND FOR NEW CASTLE COUNTY

PARAMOUNT COMMUNICATIONS :  
INC. and KDS ACQUISITION :  
CORP., :

Plaintiffs, :

vs. : Civil Action  
No. 10866

TIME INC., et al., :

Defendants. :

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LITERARY PARTNERS, L.P., :  
et al., :

Plaintiffs, :

vs. : Civil Action  
No. 10935

TIME INCORPORATED, et al., :

Defendants. :

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IN RE TIME INCORPORATED : Consolidated Civil  
SHAREHOLDERS LITIGATION : Action No. 10670

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Chancery Court Chambers  
Public Building  
Wilmington, Delaware  
Monday, July 17, 1989  
12:10 p.m.  
- - -BEFORE: HON. JACK B. JACOBS, Vice Chancellor.  
  
- - -TELECONFERENCE ON FORMS OF ORDER AND BOND

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CHANCERY COURT REPORTERS  
135 Public Building  
Wilmington, Delaware 19801  
(302) 571-2447

## 1 APPEARANCES (by telephone):

2 DAVID C. McBRIDE, ESQ.  
Young, Conaway, Stargatt & Taylor

3 -and-

4 MELVYN L. CANTOR, ESQ. and  
MARY ELIZABETH McGARRY, ESQ., of the  
New York Bar  
5 Simpson Thacher & Bartlett  
for Plaintiffs in Civil Action No.  
6 10866

7 EDWARD M. McNALLY, ESQ.  
Morris, James, Hitchens & Williams  
8 for Plaintiffs in Civil Action No.  
10935

9 GARY W. ABER, ESQ.  
10 Heiman, Aber & Goldlust  
for Plaintiffs in Civil Action No.  
11 10670

12 LAWRENCE A. HAMERMESH, ESQ.  
Morris, Nichols, Arsht & Tunnell  
13 for Defendant Time

14 KENNETH B. FORREST, ESQ., of the  
New York Bar  
15 Wachtell, Lipton, Rosen & Katz  
for Defendant Warner

16 DONALD J. WOLFE, JR., ESQ.  
17 Potter, Anderson & Corroon

-and-

18 JANE W. PARVER, ESQ.,  
LYNN TOBY FISHER, ESQ. and  
19 AARON STIEFEL, ESQ., of the  
New York Bar  
20 Kaye, Scholer, Fierman, Hays &  
Handler  
21 for Intervenors Chris-Craft and BHC

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1                   THE COURT: We are now on a  
2 speakerphone. Let me just state for the record that  
3 before the court reporter arrived counsel had  
4 identified themselves, and it was decided that the  
5 two issues that are pending before me would be taken  
6 up in the following order: First, the issue relating  
7 to the form of the bond; and second, the issue  
8 relating to the form of the order providing for an  
9 injunction pending appeal insofar as BHC is  
10 concerned. And I understand, Mr. McBride, that you  
11 were in the midst of the beginning of your  
12 presentation when I interrupted you.

13                   MR. MCBRIDE: Thank you, Your Honor.  
14 At least as I understand the purpose of the language  
15 being proposed by Time and Warner, it is to provide  
16 that if the Supreme Court affirms the decision of  
17 this Court of July 14, that liability under the bond  
18 will exist, and then the only question would be what  
19 if any damages are appropriate to be awarded.

20                   The language that Paramount has  
21 proposed is the traditional bond language for  
22 preliminary injunctions and temporary restraining  
23 orders. In our view, that language is really neutral  
24 with respect to the two issues that Time and Warner

1       posed in terms of the form of the bond.

2                       By that I mean under our proposed  
3       language or the traditional language, I think it is  
4       open to Time and Warner, and I will agree that they  
5       can argue that under that language, once there is an  
6       affirmance, there is liability under the bond, and we  
7       would be free to argue to the contrary.

8                       There is a second issue that is  
9       raised by the language proposed by Time and Warner,  
10      and that issue is that under the language that they  
11      have proposed, it would appear that liability under  
12      the bond would exist prior to a final determination  
13      of the merits of this action. And again, we think  
14      our language is neutral on that point and would allow  
15      both parties to make their respective arguments when  
16      and if it ever becomes material.

17                      I have tried to cut the knot on this  
18      thing simply by conceding that we will not take the  
19      position that our language precludes them from making  
20      those arguments, so that we don't need to resolve all  
21      of these issues, and maybe some we don't even  
22      anticipate we are resolving at this point, on some  
23      few hours' notice after having done legal research  
24      through the course of the night while we are trying

1 to prepare Supreme Court briefs.

2 In any event, having said all that, I  
3 will turn to the merits of the dispute. From our  
4 side, we believe that the affirmance by the Supreme  
5 Court if it happens does not in and of itself create  
6 liability under the bond. And I say that for two  
7 reasons. One is that in pursuit of the cases that we  
8 have cited to the Court in our opening letter, the  
9 mere affirmance on the appeal does not establish that  
10 the injunction itself was wrongfully issued. And we  
11 would take the position when and if we ever get to  
12 this issue that something more is required in order  
13 to establish that there is liability under the bond.  
14 And again, I think our language leaves that issue  
15 open.

16 The second issue is that the  
17 affirmance by the Supreme Court will simply be an  
18 interlocutory affirmance of a denial of a preliminary  
19 injunction. And for liability to arise under the  
20 bond at this stage of the litigation would result in  
21 the possibility of damages being paid to parties who  
22 might be unjustly enriched by that. For instance, if  
23 at the final stage it were determined that the  
24 plaintiffs were correct in this litigation, the

1 damages that would have been paid over pursuant to  
2 the bond would have only unjustly enriched perhaps,  
3 if they are used for this purpose, the Warner  
4 shareholders, who should have never received the  
5 tender offer in the first place.

6 So I guess in summary our position is  
7 that the way in which Time and Warner seek to resolve  
8 these issues at this instant is wrong, and in any  
9 event, the language that we have offered to the  
10 Court, which is the traditional language, keeps these  
11 issues open, and the Court can address them when and  
12 if it becomes material and on a fuller record.

13 MR. CANTOR: Vice Chancellor, this is  
14 Mel Cantor in New York. Just to add one minor  
15 footnote to what David has said, lest you think that  
16 litigation would become moot if Paramount loses in  
17 the Supreme Court, you should remember that there are  
18 also shareholder litigations pending both by class  
19 plaintiffs and by the Besses, and should the Supreme  
20 Court affirm and should the deal go ahead and close,  
21 there are going to be substantial damage actions  
22 pending, and the matter will not be moot. And,  
23 indeed, it is certainly conceivable that Chancellor  
24 Allen would be convinced to change his mind at the

1 mind at the end of the day. So this isn't simply an  
2 academic question. It is a real one.

3 THE COURT: All right. Is there  
4 anyone else on the plaintiffs' side?

5 MR. McNALLY: This is Ed McNally.  
6 No, I don't have anything to add, Your Honor.

7 MR. HAMERMESH: Your Honor, hearing  
8 nothing further from the plaintiffs -- this is Larry  
9 Hamermesh speaking for Time and its directors -- let  
10 me first speak to the way Mr. McBride framed the  
11 issue, which I think is fair.

12 He is concerned that language of the  
13 sort we have proposed in the form of bond would  
14 fasten some sort of strict liability upon the  
15 plaintiffs if it turns out that Time, Warner or their  
16 respective shareholders are damaged on account of the  
17 delay in completion of Time's tender offer for Warner  
18 by the 10-day period of the injunction pending  
19 appeal. That's exactly what the language we  
20 suggested is intended to do, so Mr. McBride is  
21 correctly framing the issue.

22 We believe that the bond ought to  
23 serve that purpose, because had the injunction  
24 pending appeal not been granted, that tender offer

1     for Warner would have closed tonight, and it is only  
2     by virtue of that injunction pending appeal that it  
3     is not closing. This is not the same kind of  
4     situation to which a preliminary injunction bond is  
5     addressed. And all of the cases that are cited by  
6     Paramount in its submission to the Court deal with  
7     bonds arising in that context. And in that context,  
8     of course, the Court has found irreparable injury  
9     and, at present more important, has also found a  
10    likelihood of success on the merits.

11                   Here, of course, the Court has found  
12    neither. And, indeed, as I think we mentioned in our  
13    letter to Your Honor this morning, and as Your Honor  
14    undoubtedly heard on Friday afternoon, Chancellor  
15    Allen was remarking upon the irony of the fact that  
16    having determined not to enjoin the transaction, he  
17    determines to do it so an appeal can go forward.

18                   In that circumstance we suggest that  
19    the appropriate analogy is not to a preliminary  
20    injunction bond but, as we said in our papers, to a  
21    supersedeas bond, which is designed to secure the  
22    appellees, the interests of the appellees, pending  
23    the appeal and to protect them from damages due to  
24    delay arising during the course of that appeal. And



1       that's why the language that we have cited is derived  
2       from the form of supersedeas bond which appears as  
3       Form J to the Supreme Court rules. And that bond  
4       specifically calls for liability for costs, interest  
5       and damages for delay. And if it turns out that the  
6       appeal --

7                       THE COURT: Mr. Hamermesh, let me  
8       interrupt you for a minute

9                       MR. HAMERMESH: Certainly.

10                      THE COURT: Does the fact that both  
11       sides seem to be arguing by analogy to these two  
12       different types of bonds mean that neither side or at  
13       least your side does not have authority in the form  
14       of precedent for its position?

15                      MR. HAMERMESH: I think that's fair  
16       to say for both sides, Your Honor. I don't think I  
17       can cite to the Court any case law or even any  
18       official forms that speak to what the appropriate  
19       form of bond for an injunction pending appeal is.

20                      THE COURT: And you are not aware of  
21       any previous injunction pending appeal where a bond  
22       of the kind that you are advocating has been entered  
23       or required?

24                      MR. HAMERMESH: No, I am not, Your

1 Honor, nor am I familiar with bonds of the sort that  
2 resemble the preliminary injunction bond.

3 I do know in terms of precedent,  
4 though, as we pointed out in the letter, that the  
5 form of preliminary injunction bond to which  
6 Mr. McBride points out in his submission is derived  
7 in its language from Rule 65(c). And, of course, as  
8 we pointed out, the rules relating to injunctions  
9 pending appeal are different and, indeed, derive  
10 ultimately, I think, from a constitutional provision  
11 that contemplates that appellees will be secure and  
12 not be injured through delay as a result of an effort  
13 to appeal.

14 And frankly, if the form of bond  
15 simply gave protection in the event that the  
16 injunction pending appeal was somehow wrongful in  
17 some way that I really don't understand at this point  
18 and I haven't heard articulated, then I would suggest  
19 that it is really not protection at all. And it was  
20 my understanding that the purpose of the injunction,  
21 or the bond on the injunction pending appeal, rather,  
22 was precisely to protect Time, Warner and their  
23 stockholders from damages due to the fact that the  
24 offer had been put off by 10 days.

1                   And if some further element of an  
2                   undescribed nature of wrongfulness must be shown at  
3                   some point -- and I really don't think the bond is a  
4                   meaningful exercise at all -- I don't understand what  
5                   kind of showing would have to be made in order to  
6                   achieve the liability that we think the bond is  
7                   designed to impose.

8                   This is not, to address Mr. McBride's  
9                   threshold point, a matter that can sort of await  
10                  further deliberation, at least as far as we are  
11                  concerned. I understand that Paramount has said that  
12                  perhaps it is willing to let the matter be argued at  
13                  some later time and no one's position is going to be  
14                  prejudiced by going forward with the language it has  
15                  proposed. I don't understand the surety to be saying  
16                  that, and the surety's obligation is defined by the  
17                  four corners of the bond. And they are not before  
18                  the Court, and I don't want to hear at some point  
19                  when an application is made on the bond that the  
20                  language is ambiguous and the surety here is not able  
21                  to tell us that that, in fact, is not going to be a  
22                  problem.

23                  It seems to me the sensible thing to  
24                  do is to define right here and now going in the

1 nature of the protection that the bond is intended to  
2 afford and to make the bond read in a way that  
3 affords that protection.

4 I believe, Your Honor, in one way or  
5 another I covered the points that I intended to,  
6 unless Your Honor has any questions.

7 THE COURT: Just one. This may be  
8 something I ought to know, but I don't. Is the  
9 argument that is scheduled in the Supreme Court an  
10 argument on the merits of the appeal or will it be an  
11 argument restricted to whether or not the injunction  
12 pending appeal should be continued?

13 MR. HAMERMESH: I understand it to be  
14 on the merits.

15 THE COURT: All right.

16 MR. McBRIDE: Your Honor, this is  
17 David McBride.

18 MR. FORREST: David, excuse me. Ken  
19 Forrest. Can I have an opportunity first?

20 MR. McBRIDE: Sure.

21 MR. FORREST: Thank you, Your Honor,  
22 for hearing us on a conference call today. I think  
23 it was my idea, and I am probably to blame for all  
24 the problems with the phone line also.

1           Early this morning when everybody was  
2     writing letters, we were trying to find some  
3     analogous case law. And there is analogous case law  
4     under Rule 65 in the federal courts not dealing with  
5     injunction pending appeal but dealing with the  
6     underlying purpose of the bond. And let me quote to  
7     you from a case called Wainwright in the Southern  
8     District of New York, construing Rule 65(c), which is  
9     at 80 FRD 103, Page 107. "The purpose of an  
10    injunction bond is not simply to protect the enjoined  
11    party from injury suffered because the trial court  
12    may have abused its discretion in granting a  
13    preliminary injunction, but to indemnify the enjoined  
14    party if ultimately it is held that that party had at  
15    all times the right to do the enjoined act." And I  
16    think that that quotation is right on all fours with  
17    what we are talking about here.

18           The issue here is not whether  
19    Chancellor Allen blew it when he granted a 10-day  
20    interim injunction pending appeal. The issue here is  
21    whether Time and Warner, as Chancellor Allen has  
22    held, had the right to go forward with their  
23    transaction. They are now being restrained for the  
24    benefit of permitting an appeal to go forward for a

1 10-day period when it has already been determined  
2 that they were perfectly lawful in what they did and  
3 that they were able to go forward.

4 The bond is to protect the Warner  
5 stockholders, Warner and Time, in the event that it  
6 is ultimately determined by the Supreme Court that,  
7 in fact, Chancellor Allen was right and they were  
8 lawfully entitled to go forward.

9 The concept that is being injected  
10 into Paramount's order that the issue here is whether  
11 this interim injunction was properly granted or not  
12 just misses the point entirely.

13 Now, the other point that was made is  
14 that somehow damages under the bond has to be  
15 determined by a final judgment on the merits, and I  
16 don't think that is true at all. This is an  
17 injunction pending appeal, the purpose of which is to  
18 permit an appeal from an 80-page decision on a  
19 preliminary injunction motion. And the position we  
20 would take is that if it is ultimately determined  
21 that that decision on that preliminary injunction  
22 motion was correct and that nevertheless Time and  
23 Warner were restrained, so that tonight at midnight  
24 the Warner stockholders are not getting \$7 billion

1 but instead hopefully, from my perspective, it  
2 happens next Monday night, that in that instance we  
3 would be entitled to claim the damage.

4 This whole thing revolves around a  
5 preliminary injunction motion. And to now inject the  
6 notion that we are going to have to wait until  
7 shareholder plaintiffs suits for damages are resolved  
8 I think is something that has nothing to do with what  
9 Chancellor Allen indicated he was doing on Friday  
10 when he granted the injunction pending appeal.

11 So I think that basically there is  
12 two points here. It is just not consistent with what  
13 Chancellor Allen did to agree to the Paramount form  
14 of bond, which has language which really is extremely  
15 narrow and really cannot on its face be properly  
16 construed if you read it in the context of the case  
17 law.

18 I do understand Mr. McBride's point,  
19 that he is willing for this instant to permit the  
20 issue of what it means be left open, and I appreciate  
21 that. I think that is a step in the right direction,  
22 but it doesn't resolve the fundamental problem; and  
23 secondly, that the notion that we have to wait for  
24 the conclusion of these damages cases just is not the

1 appropriate standard to be used here.

2 MR. McBRIDE: Your Honor, this is  
3 Dave McBride again. Let me respond. First of all, I  
4 have an answer to a question Your Honor raised about  
5 authority. In the little bit of time we have had, at  
6 least I -- and I was the one doing it -- wasn't able  
7 to locate a case directly on point with respect to an  
8 injunction issued pending an appeal. But I will say  
9 that -- and I cited to the Court the various legal  
10 encyclopedias -- there were, I would say, at least  
11 dozens of cases that supported the propositions that  
12 I outlined in the letter, and it may well be that on  
13 fuller examination we would be able to find a case on  
14 point.

15 In any event, let me turn to the  
16 proposition which I also addressed in my reply  
17 letter, that this injunction and this bond is  
18 something comparable to a supersedeas bond. And as I  
19 pointed out in the letter, a supersedeas bond is used  
20 to secure a judgment and is used to secure the  
21 plaintiff who is stayed from executing on that  
22 judgment pending the appeal. And there is logic and  
23 policy reasons why, once the appeal of a final  
24 judgment is ultimately resolved in favor of the



1 appellee, that liability on that bond would exist  
2 without some further showing that the appeal was  
3 wrongful. But here there is no underlying judgment,  
4 and perhaps even more importantly, a supersedeas bond  
5 arises in the context of a final judgment and a final  
6 resolution of the issues on appeal, which is far from  
7 what we have here.

8 Also, Mr. Hamermesh makes a point  
9 about the surety. I think that is no problem. But  
10 if it is a concern that the surety will abide by the  
11 representations that I make today, I am sure we can  
12 obtain those assurances.

13 Finally, two more points. One, I  
14 failed to mention that the language that has been  
15 included in Mr. Hamermesh's latest letter, which is  
16 not what was given to me yesterday, also touches the  
17 question of what damages are recoverable. It has  
18 language in there that says that you can recover  
19 damages including damages for delay. And if Your  
20 Honor will recall, there was an argument made on  
21 Friday which the Chancellor never decided, which is  
22 that Time could make the Warner shareholders whole  
23 simply by escrowing the funds. So whatever the  
24 merits of that argument -- and I think there are

1 merits or potential merits to it -- this proposed  
2 language would appear to be an attempt to cut off  
3 that argument.

4 Finally, Mr. Forrest's point I think  
5 really made the point I am making. He is relying  
6 upon cases under Rule 65(c), which is the Rule that  
7 contains the very language we propose to put in the  
8 bond. All of these issues, all of these arguments,  
9 can be made under that language and have been made in  
10 the past, and they can be addressed when the Court  
11 has an opportunity to address them on a fuller record  
12 and in a more considered manner.

13 THE COURT: All right.

14 MR. McBRIDE: And that's all I have,  
15 Your Honor.

16 THE COURT: Thank you. All right.  
17 Gentlemen, having considered the submissions of  
18 counsel in writing and the arguments, I conclude that  
19 the most prudent step to take in these circumstances  
20 is to approve the form of bond submitted by  
21 Mr. McBride and the parties aligned with him.

22 In order to rule in favor of the  
23 contrary position, it would have been necessary to  
24 persuade me that the type of strict liability that is

1 urged here is required as a matter of law, and that  
2 showing just hasn't been made on this record. And I  
3 am not persuaded one way or the other as to whether  
4 that is a legal requirement.

5 I am moved primarily by the argument  
6 advanced by the plaintiffs that the positions that  
7 both Mr. Hamermesh and Mr. Forrest are advancing are  
8 positions that will be preserved by the plaintiffs'  
9 form of order, and if those positions are valid, that  
10 that can be established at a later stage. And it is  
11 for that reason that the form of bond on injunction  
12 pending appeal submitted by the plaintiffs will be  
13 the form of bond in these proceedings.

14 MR. CANTOR: Thank you, Your Honor.

15 MR. HAMERMESH: Thank you,  
16 Chancellor.

17 THE COURT: All right. We now have  
18 the BHC question.

19 MR. WOLFE: This is Don Wolfe, Your  
20 Honor, at Potter, Anderson. I want to state for the  
21 record that I have with me Lynn Fisher and Aaron  
22 Stiefel of the Kaye, Scholer firm, and I hope also  
23 patched in from New York Jane Parver, who has been  
24 admitted in this proceeding previously and to whom I

1 will yield, if Your Honor permits.

2 THE COURT: All right.

3 MS. PARVER: Good afternoon, Your  
4 Honor. This is Jane Parver.

5 THE COURT: Good afternoon.

6 MS. PARVER: We have an application  
7 on the form of the order. Does Your Honor want to  
8 hear it now?

9 THE COURT: That's what we are up to,  
10 yes.

11 MS. PARVER: Okay. I didn't know  
12 whether you wanted to hear from counsel for the other  
13 side first.

14 THE COURT: Well, I have read  
15 Mr. Wolfe's letter, and I have examined the proposed  
16 form of order. I do need some enlightenment on  
17 precisely what it would do.

18 MS. PARVER: Certainly. I might say,  
19 Your Honor, that I think certain portions of both of  
20 the proposed orders may now be mooted. My  
21 understanding before this conference call took place  
22 was that Time had now extended its offer until July  
23 24 at 5:00 p.m. So that the provisions in both of  
24 the proposed orders that the stay be in effect only

1 during the pendency of any interlocutory appeal it  
2 seems to me are somewhat mooted by the fact that Time  
3 itself has now extended the offer to 5:00 p.m.

4 THE COURT: So what is left?

5 MS. PARVER: Our difficulty, Your  
6 Honor, is the fact that normally the offer would have  
7 expired at midnight. And, of course, Chancellor  
8 Allen stayed the expiration of the offer for 10 days.  
9 For some reason Time and Warner have inserted in the  
10 proposed order to you a 5:00 p.m. dissolution time  
11 for the stay. That is what puts BHC in a very  
12 untenable position. That is because we hold our  
13 Warner stock in the form of preferred. The tender  
14 offer itself does not --

15 THE COURT: I understand that you  
16 have preferred and you would have to convert --

17 MS. PARVER: Right.

18 THE COURT: (Continuing) -- before  
19 you could tender.

20 MS. PARVER: And our problem is that  
21 under our contract with Warner, if we give proper  
22 notice of conversion on a business day, we are deemed  
23 to have converted as of the close of business.

24 THE COURT: So you would have to

1       convert the day before you tender; is that --

2                   MS. PARVER: Well, we certainly don't  
3       want to be at risk of Warner and Time subsequently  
4       arguing that. That would call for us to have to --  
5       under that theory, we would have to convert on the  
6       Friday before. Obviously, if we convert, we forever  
7       lose our preferred status. And if the Supreme Court  
8       subsequently holds for Paramount, we will have lost  
9       all of our preferred rights.

10                   All we are asking is that Your Honor  
11       either adhere to the intent of Chancellor Allen's  
12       stay, which would be to extend it to midnight, which  
13       would be the effect of a 10-day stay -- that would,  
14       of course, enable us to convert and tender without  
15       any problem or subsequent litigation with Time and  
16       Warner.

17                   Alternatively, if Time and Warner are  
18       willing to state right now that they accept the  
19       proposition, as, indeed, I believe they should, that  
20       we can convert and tender simultaneously, we are  
21       prepared to live with a 5:00 p.m. expiration.  
22       Otherwise, Your Honor, we are harmed irreparably.

23                   MR. CANTOR: Your Honor, this is Mel  
24       Cantor in New York. I should say that we, too, have

1     gone along with the 5:00 p.m. cutoff. We are not  
2     seeking an 11:59 p.m. cutoff. And the 10 days ran  
3     from the 14th -- that was made fairly clear at the  
4     hearing -- not from the 17th. The original cutoff  
5     was midnight on the 17th, but the 10 days ran from  
6     the 14th.

7                     You know, I appreciate Ms. Parver's  
8     concern or her clients' concern, and I hope she can  
9     work it out with Time. But our concern is if the  
10    ruling is adverse and if at the end of the day  
11    liability and damage on the bond is shown, we don't  
12    want to have exposure for an extra day because of  
13    BHC's problem. And the difference between 5:00 p.m.,  
14    which will give the Supreme Court time to decide  
15    whether it wants to rule in our favor or extend the  
16    stay or rule against us -- I guess those are the  
17    three choices of what it could do on the 24th. From  
18    our perspective, 5:00 p.m. is sufficient amount of  
19    time to let them make that decision.

20                    MS. PARVER: Well, I would only add,  
21    Your Honor, that I certainly never argued nor did I  
22    intend to suggest that the Chancellor started the  
23    stay running from the 17th. However, what he did do  
24    was to stay Time from consummating the offer for 10

1 days. And that offer initially expired at midnight,  
2 and certainly the intent was just to extend that 10  
3 days through the midnight close.

4 THE COURT: Ms. Parver, I am not  
5 certain of all the things that you are asking me to  
6 do. I understand that you want the order to provide  
7 for the stay to remain in effect until midnight of  
8 the --

9 MS. PARVER: Until midnight on the  
10 24th.

11 THE COURT: All right. What else?

12 MS. PARVER: Nothing other than that.  
13 What I was going to suggest, Your Honor, is that if  
14 Time and Warner were prepared right now to state that  
15 they were not going to contest our ability to convert  
16 and tender simultaneously, then we would withdraw our  
17 objection to the insertion of the 5:00 p.m. time.  
18 Other than that, if they take the position, however,  
19 that we have to convert the business day before,  
20 which would be Friday, the 21st, we would urge Your  
21 Honor to make the order extending the stay until  
22 11:59 p.m. or midnight on the 24th. Otherwise, we  
23 are at risk for over a billion dollars.

24 MR. CANTOR: Can I ask Ms. Parver



1       whether if they are at risk for over a billion her  
2       client will agree to indemnify Paramount if it has to  
3       pay an extra million and a half dollars.

4               MS. PARVER: I really think that's  
5       not a question to ask me now. I certainly have no  
6       instructions from my client. And having spoken with  
7       me earlier today, it seems to me that Mr. Cantor  
8       should have raised that then. But I am not prepared  
9       to address that now.

10              THE COURT: All right. The request  
11       that the order remain in effect and not to expire  
12       until 11:59 on the 24th is covered in your Paragraph  
13       2; that is, Paragraph 2 of your proposed form of  
14       order. Is that right?

15              MS. PARVER: Yes, it is, Your Honor.

16              THE COURT: And my question is, what  
17       happens to Paragraph 3. Is that no longer in issue?

18              MS. PARVER: Now that Time is -- and  
19       I would just ask that Mr. Hamermesh confirm that Time  
20       has extended its offer now to the 24th.

21              MR. HAMERMESH: My understanding,  
22       Your Honor, is that it has been or is about to be  
23       extended until 5:00 p.m. on Monday, the 24th.

24              MS. PARVER: If that is so, then we

1 would no longer need the Paragraph 3, Your Honor. We  
2 would just need the 11:59 p.m.

3 THE COURT: All right. Then that's  
4 the sole issue.

5 MS. PARVER: Yes, sir.

6 THE COURT: We are talking about  
7 seven hours.

8 MS. PARVER: Which is quite crucial  
9 to us, yes.

10 THE COURT: All right. Who will  
11 speak on behalf of the other side?

12 MR. HAMERMESH: Your Honor, let me  
13 unburden myself of a couple points. I know  
14 Mr. Forrest has a few more. But I now understand  
15 that we are just talking about seven hours, as the  
16 Court points out. The premise for that is one that  
17 escapes me.

18 I understood the Chancellor to have  
19 addressed the point specifically on Friday with  
20 Mr. Cantor. In fact, Mr. Cantor points out that the  
21 stay would expire at the close of business on Monday,  
22 the 24th. What BHC is, in effect, seeking here is a  
23 further stay on a basis of which I don't perceive. I  
24 don't understand aside from some claimed convenience

1     about making a conversion decision that there is any  
2     legal foundation for requiring Time to extend beyond  
3     its offer beyond the time at which the Court of  
4     Chancery has already directed it through the  
5     injunction pending appeal to extend its offer.

6                 Mr. Forrest may have some comments  
7     about the mechanics by which BHC can, in effect,  
8     exercise its conversion right, but quite apart from  
9     that, which is really not a matter for Time itself, I  
10    don't understand the legal theory on which Time would  
11    be further restrained from completing its tender  
12    offer by this additional seven-hour period.

13                THE COURT: As I understand it,  
14    Ms. Parver is arguing that Chancellor Allen had  
15    indicated that the stay would go -- I guess go  
16    through all the way to midnight. I may be incorrect  
17    about that, but --

18                MR. HAMERMESH: I think that is  
19    Ms. Parver's claim. I think Mr. Cantor has correctly  
20    pointed out that that is not what the Chancellor  
21    said. The matter was raised specifically when we  
22    spoke to Mr. McBride yesterday about it. We all  
23    ultimately agreed that it should run to 5:00 and no  
24    further, and the Chancellor did not direct that a

1 stay last until midnight. It was a 10-day stay to  
2 run from Friday, the 14th, and it was not a stay that  
3 ran in reference to any time set under the original  
4 offer.

5 MR. CANTOR: Larry, let me, since I  
6 asked the question of the Chancellor -- this is Mel  
7 Cantor -- I will tell you exactly what I had in mind.  
8 He ordered a 10-day stay, and I was confused because  
9 the original offer didn't expire until midnight on  
10 the 17th. So I wanted to know whether the 10 days  
11 began to run on the 17th or on the 14th. And,  
12 indeed, there was a little colloquy about it being  
13 Bastille Day and, therefore, it would expire on the  
14 24th.

15 I don't know that he ever expressed  
16 himself directly on the time, but my understanding  
17 was that it was going to run for 10 days from the  
18 time that he granted our motion, which was around  
19 4:30 in the afternoon. So it was my understanding  
20 certainly that it would expire at the close of  
21 business on the 24th, and that was sufficient for our  
22 purposes, particularly since the Supreme Court has  
23 ordered argument for the morning of the 24th.

24 MS. PARVER: Your Honor, I am glad

1       that Mr. Cantor has now corrected, because I  
2       certainly never heard any 5:00 p.m. time stated.  
3       Indeed, I never would have argued the point had the  
4       Chancellor so stated.

5                       So that I think it is clear that all  
6       of the parties initially understood that it was going  
7       to be at midnight, because all of the initial  
8       proposed orders that were being circulated and were  
9       being prepared by the various parties all had the  
10      11:59 in them. It was only subsequently that this  
11      was changed to 5:00 p.m.

12                   MR. HAMERMESH: Well, Your Honor, let  
13      me speak to that. No paper came across my desk to  
14      which I ever consented with an 11:59 time in it.  
15      When I saw that proposal, I immediately said I didn't  
16      think that was the understanding. We took it up with  
17      counsel for Paramount, and they agreed that 5:00 was  
18      the appropriate time.

19                   I think Mr. Cantor is correct when he  
20      says that it was the understanding -- at least it was  
21      my understanding at the conference on Friday that it  
22      was to run until the close of business. Indeed,  
23      there may have been some specific reference to that  
24      deadline. But that's neither here nor there even.

1                   I think the important point is on  
2 what basis can Time be compelled to extend its offer  
3 beyond that.

4                   MR. FORREST: Your Honor, Ken  
5 Forrest. Let me give my recollection, because we  
6 don't have a transcript, I don't think, and so  
7 obviously people's recollections become important. I  
8 believe I remember a number of references by  
9 Mr. Cantor in speaking with Chancellor Allen where he  
10 made it quite clear, Mr. Cantor did, that his  
11 understanding was that this was the close of business  
12 on the 24th. And nothing was said by anyone,  
13 including counsel for Chris-Craft, which was in the  
14 courtroom, which intervened in the action, to take  
15 issue with that concept. Indeed, I would note that  
16 the form of order that came across my desk yesterday  
17 did say 11:59, and within five minutes I had a call  
18 in to Dave McBride telling him that that was not my  
19 understanding.

20                   Now, going beyond Larry Hamermesh's  
21 point that there is no legal requirement here, I  
22 understand that Warner has been extremely cooperative  
23 regarding the mechanics of Mr. Stiefel's Chris-Craft  
24 conversion and that it can be done very, very

1 quickly --

2 THE COURT: Well, let me just  
3 interrupt you there, because is it correct that if  
4 there could be some agreement between BHC -- is it  
5 CHC or BHC?

6 MS. PARVER: BHC, Your Honor.

7 THE COURT: All right. Thank you.  
8 And Warner, that there could be a more or less  
9 simultaneous conversion and tender, that basically  
10 eliminates this problem, doesn't it?

11 MS. PARVER: Yes. That then puts us  
12 into the same position as any other shareholder who  
13 wishes to tender, Your Honor.

14 THE COURT: All right. Well, before  
15 we -- and I apologize to you, Mr. Forrest, for this  
16 interruption, but I just want to make sure this is  
17 firmly in my understanding. Is it clear that that is  
18 a matter that cannot be agreed on or has there been  
19 any discussion about it?

20 MR. FORREST: It is the first time I  
21 have heard the suggestion, Your Honor. I am  
22 certainly not in a position to give an answer on the  
23 telephone.

24 THE COURT: All right.

1                   MR. FORREST: I haven't spoken to my  
2 client about it. I thought we were arguing today  
3 about 24-hour extension, and a lot of this is  
4 surprising.

5                   MR. CANTOR: Your Honor, would it  
6 solve the problem if the order were entered until  
7 5:00, and then if Chris-Craft can't work this out  
8 with Time and Warner, they could make an application  
9 for an additional seven-hour extension, which would  
10 take us off the hook of any potential liability, and  
11 let them work it out?

12                  MR. FORREST: I have one other point  
13 that I would like to make at this point. I would  
14 just like to complete my statement, and then I will  
15 shut up.

16                   You know, there has been a lot of  
17 other discussion in the letters about the Warner  
18 stockholders. This has been obviously an extremely  
19 contentious matter, with TRO lawsuits and  
20 applications filed all over the place. And I really  
21 think that if the Supreme Court affirms on Monday  
22 from the bench, given that it was people's  
23 understanding that the injunction pending appeal  
24 should be lifted at 5:00 p.m., that there really is



1 an issue here as to the potential harm to  
2 stockholders if even another seven-hour injunction is  
3 granted, especially on the basis of this two-page  
4 letter showing that has been made. I think that  
5 really is something that cries out for a substantive  
6 showing and not just a statement, well, in terms of  
7 our mechanics, we need to have a little more time.

8 And I am quite concerned -- you know,  
9 I am prepared to argue this in the context of a  
10 24-hour extension, but even a seven-hour extension, I  
11 am quite concerned given the care that Chancellor  
12 Allen took with respect to all of his rulings, to now  
13 say, well, we will put it over for another 24 hours  
14 or seven hours or something, it is just not that  
15 simple.

16 MS. PARVER: Well, Your Honor, I  
17 think the problem is this: I think Mr. Forrest is  
18 just assuming and asking Your Honor to assume that  
19 Chancellor Allen specifically said 5:00 p.m. and that  
20 we are now asking to go beyond the order. That just  
21 simply is not so.

22 My recollection of the discussion  
23 that was had about close of business was actually had  
24 about the time at which Mr. Cantor had to post the

1     bond, and there was a lot of discussion that ensued  
2     about whether they could buy stock during that period  
3     or not. And that, I think, was the whole discussion  
4     about close of business, was when -- I think they had  
5     until the close of business today to post the  
6     collateral for the bond.

7                     We are not asking as far as my  
8     recollection goes, Your Honor, for any extension of  
9     Chancellor Allen's order but instead an  
10    implementation of his order to protect our rights.  
11    That was the whole purpose of intervening should any  
12    kind of interlocutory or injunctive relief be  
13    granted.

14                    MR. FORREST: Your Honor, on the  
15    subject, is Ms. Parver saying that they are going to  
16    post the bond for the seven hours? I mean --

17                    MS. PARVER: Well --

18                    MR. FORREST: Excuse me.

19                    MS. PARVER: We don't have to post a  
20    bond if we are not asking for an extension of the  
21    stay that has already been ordered by the Court.

22                    MR. FORREST: Well, you know, my  
23    point is that if you had any question, you should  
24    have stood up and said it on Friday. And

1 Mr. Cantor's statement was not limited anyhow to  
2 posting a bond. It was specific reference by  
3 Mr. Cantor to his understanding that the deal could  
4 close if there was an affirmance at close of  
5 business. I have a firm recollection on that, just  
6 as I have a firm recollection of a specific mention  
7 made about whether the 10 days expired on the 24th or  
8 the 27th, and it was the 24th.

9 And you were there. You could have  
10 raised it at that time. You didn't. Everybody's  
11 understanding is to the contrary. And I just think  
12 the application should be denied.

13 MS. PARVER: Your Honor, I think the  
14 mere fact that Paramount and now Time and Warner said  
15 they did not agree, but certainly the mere fact that  
16 Paramount's initial order itself, proposed order, had  
17 the midnight deadline in there is the most dramatic  
18 proof of what people's recollections really are.

19 And I think that what Time and Warner  
20 are now trying to do is to put BHC in the position  
21 where they can -- the stay expires at the same time  
22 as they close the offer, and we are in the position  
23 of having been shut out of being able to tender. And  
24 I do not believe that that was Chancellor Allen's

1 intent in letting us intervene and in hearing us and  
2 trying to accommodate the form of any order to  
3 protect our rights.

4 THE COURT: Well, Ms. Parver, suppose  
5 the Supreme Court rules on the 24th to affirm  
6 Chancellor Allen's order and it does so at 1:00 in  
7 the afternoon. Would that not give your client  
8 enough time to convert and to tender and still meet  
9 the 5:00 deadline?

10 MS. PARVER: Your Honor --

11 THE COURT: I don't know what kind of  
12 real problem we have here, and that's --

13 MS. PARVER: Well, I think that the  
14 real problem is the timing of any decision from the  
15 Supreme Court and the position that Warner, given the  
16 long history of very contentious relationships  
17 between Warner and BHC, is going to take when we seek  
18 to convert and tender.

19 I mean, indeed, Your Honor, it was  
20 necessary, in light of certain representations that  
21 Warner had started to make last Friday, to publicly  
22 protest initial statements by Warner representatives  
23 that indicated they were not going to cooperate with  
24 any kind of conversion, and now since they have given

1 us the letter we initially requested and they  
2 originally refused to give us, which was a promise  
3 with respect to certain conversion.

4 My corporate partner is with you in  
5 Delaware, Your Honor, and she can tell you the  
6 precise times that we are worried about. And I  
7 agree. My understanding is, if we do hear from the  
8 Court by 1:00 p.m., I don't believe there would be a  
9 problem. But, Lynn, is that accurate?

10 MS. FISHER: No, Jane. Your Honor,  
11 this is Lynn Fisher speaking from Kaye, Scholer.

12 The problem is that under our  
13 contract with Warner we are deemed to convert as of  
14 the close of business on the day that we deliver our  
15 notice. So if the Supreme Court rules at 1:00 and we  
16 immediately delivered our notice of conversion, we  
17 would not be deemed to have converted until the close  
18 of business on Monday. There is no definition of  
19 what close of business is in our contract.

20 If Time purports to close the tender  
21 offer at 5:00 p.m. and if we assume that that's the  
22 close of business, we are in the peculiar position of  
23 having converted simultaneously with the closing of  
24 the offer. And without prior agreement of Warner or

1 Time, we presumably would have a litigation issue  
2 whether we had properly converted and tendered  
3 simultaneously.

4 MR. McBRIDE: Your Honor, this is  
5 Dave McBride. And I hate to interrupt, but if I  
6 could follow up on a point Mr. Cantor made and try to  
7 take Paramount out of the loop on this, it seems to  
8 me that, first of all, that this issue as to whether  
9 the injunction will extend to 5:00 or to midnight  
10 does not need to be resolved at precisely this moment  
11 and, indeed, may be mooted out if Chris-Craft or BHC  
12 and Warner and Time can negotiate some practical  
13 resolution.

14 Mr. Cantor's suggestion was to enter  
15 the order in its current form. If BHC then wants to  
16 move for an extension of that order and take on the  
17 responsibility and any potential liability for that  
18 extension, that can be presented to Your Honor later  
19 this week if they can't work it out otherwise with  
20 Time and Warner. But it doesn't seem to me that our  
21 order and our bond ought to be paying the freight for  
22 this fight.

23 MS. PARVER: Well, Your Honor, we  
24 would object to Mr. McBride's suggestion only

1       because, again, he is treating our application as if  
2       it were a new one that seeks to embroider upon  
3       Chancellor Allen's order. And all we are seeking to  
4       do is implement it.

5                   MR. CANTOR: Jane, you are the only  
6       person who has that recollection.

7                   MS. PARVER: Well, I guess the  
8       transcript will say, but I think it is quite telling  
9       that initially your order had the 11:59 in there.

10                  THE COURT: Excuse me. We won't --

11                  MR. CANTOR: Your Honor, this is Mel  
12       Cantor.

13                  THE COURT: Excuse me, Mr. Cantor.  
14       What I was going to say was, we don't have a  
15       transcript of that particular portion of the  
16       colloquy, and I don't think that we are going to be  
17       able to obtain one because of the difficulty of the  
18       court reporter in hearing everything the Chancellor  
19       had to say.

20                  MR. CANTOR: But I guess I just  
21       wanted to go back, Your Honor, to underline what  
22       Mr. McBride said. And this is obviously extremely  
23       remote and hypothetical. But if Paramount otherwise  
24       had no exposure, let's assume, on the bond but

1 something happened between 5:00 p.m., which is all we  
2 are seeking and all Time wants, and 11:59 p.m., we  
3 are on the hook for \$15 million. And the reason we  
4 are on the hook is to accommodate another party that  
5 is not putting up a nickel on the bond. And that to  
6 me simply doesn't make any sense.

7 If they want to make an application  
8 to go beyond 5:00 and they want to post a bond with  
9 respect to that, that's fine, but --

10 MS. FISHER: Your Honor, this is Lynn  
11 Fisher speaking. It doesn't need to be until  
12 midnight. If the parties would agree that 5:00 p.m.  
13 is the close of business for all purposes, if it were  
14 5:30, 5:45, it would be sufficient. It would also be  
15 sufficient if Warner would agree that we can do it  
16 simultaneously. We are not seeking to delay the  
17 expiration date just for the sake of delaying it.

18 MS. PARVER: It seems to me, Your  
19 Honor, this is something that Mr. Forrest should be  
20 able to take instructions from his client on within  
21 the next half hour, and we could get back to you. It  
22 is obviously an issue that the inside people at  
23 Warner certainly are conversant with and will be able  
24 to give him a decision on within the next half hour.



1                   MR. FORREST: It is a lot more  
2 complicated than that, because it also implicates  
3 Time and the time that Time would close its offer.

4                   I would also point out, Your Honor,  
5 that we have now gone from 24 hours to midnight to 45  
6 minutes. Now, I mean, who is kidding who here? I  
7 mean, we got a letter yesterday that it had to be --  
8 earth would fall apart if there wasn't a 24-hour  
9 extension. Now we are told when Ms. Parver opens her  
10 call that it can be until midnight. Now I am told by  
11 her corporate partner, who is in Delaware, that 5:45  
12 or 5:30 is okay. Do we want to go for 5:03?

13                  MS. FISHER: This is Lynn --

14                  MR. FORREST: The point is that if  
15 the Supreme Court in Delaware affirms this, there is  
16 no reason and no showing has been made why there  
17 should be any injunction. Now, the injunction  
18 pending appeal says 5:00, and there is no reason why  
19 there should be any injunction at that point. And if  
20 you have an application to make with respect to that  
21 that can cite case law and make a showing as to why  
22 there should be, that's fine. And I am happy at the  
23 appropriate time to tell my client that the  
24 appropriate person should talk to the appropriate

1 person at your place, if you will make the phone  
2 call, and discuss mechanics. I understand we have  
3 been very cooperative on that.

4 But I don't believe that what you are  
5 saying here makes any sense, and I frankly am very  
6 fearful about continued injunctions after the Supreme  
7 Court of Delaware has said it is okay. Our  
8 shareholders' \$7 billion is at risk, and your client  
9 is not the only one. And I don't think it is  
10 appropriate to come in here. If you wanted to raise  
11 this, you could have raised it. You are not willing  
12 to give any support to back things up, and I don't  
13 think even that is satisfactory.

14 The reality is that we have a lawsuit  
15 here, and the lawsuit has been resolved by Chancellor  
16 Allen on a preliminary injunction basis, and if the  
17 Supreme Court says that we are okay, we are behind  
18 the game six days. And I think that this should be  
19 denied.

20 And if you want to have a discussion  
21 about working out the logistics, I will tell my  
22 client that the appropriate person should make a  
23 phone call, should take every step to act reasonably  
24 to try and resolve this issue.

1 MS. PARVER: Your Honor, Chancellor  
2 Allen specifically recognized that BHC had special  
3 rights which in light of the acrimonious relationship  
4 between Warner and BHC might not adequately be  
5 protected by Warner. I think this is just such a  
6 case.

7 With respect to Mr. Forrest's  
8 apparent frustration that our requests to implement  
9 the order are decreasing in time, which I certainly  
10 don't understand, clearly, before Time announced that  
11 it was firmly extending its tender offer to July 24  
12 at 5:00 p.m. there were other considerations which  
13 warranted the request for the 24 hours. That is now  
14 moot. I can't answer for when Time decides to  
15 announce things.

16 With respect to our request for 11:59  
17 p.m., that has always been our request, because we  
18 believe that implements Chancellor Allen's order.  
19 And nobody, even people with all their recollections,  
20 have been able to say that he firmly said at the  
21 close of business.

22 Now, what Ms. Fisher is trying to do  
23 is to indicate that to solve everyone's problems, we  
24 need not even go as far as we believe Chancellor

1 Allen did and extend it to midnight. Indeed, only 45  
2 minutes additional time would be necessary or to 6:00  
3 p.m because of the unclear contractual language.

4 But I think to leave it to further  
5 "discussion" between the parties when an order has  
6 already been entered would be fruitless, because our  
7 history of relationships with Warner indicates that  
8 they will not so discuss.

9 I think if they are under a gun to  
10 discuss it where everyone has to report back to Your  
11 Honor within a half an hour, an hour, so Your Honor  
12 can rule, I think we will have prompt answers, and  
13 perhaps this can all be resolved.

14 THE COURT: All right.

15 MS. PARVER: And I really don't  
16 understand, you know, why Mr. Forrest can't seek to  
17 accomplish that.

18 THE COURT: All right. I have heard  
19 enough at this point. I think that given the  
20 representation that BHC's problem could be  
21 accomodated if there were a 45-minute or a 30-minute  
22 extension beyond 5:00, and also because there has  
23 been raised the possibility of an agreement that a  
24 conversion and a tender could be accomplished

1 simultaneously, it seems to me that it would be  
2 productive if the principals of the clients or their  
3 representatives could discuss these matters further  
4 to see whether the need for any extension beyond 5:00  
5 in an order would be required.

6 What I will do is not rule on this  
7 matter but will ask the parties to reconvene the  
8 conference call at 2:15.

9 MS. PARVER: Thank you, Your Honor.

10 MR. HAMERMESH: Thank you, Your  
11 Honor.

12 MR. FORREST: Thank you, Chancellor.

13 (Luncheon recess taken at 1:03 p.m.)

14 AFTERNOON SESSION

15 (Reconvened at 2:20 p.m.)

16 MR. HAMERMESH: Your Honor, this is  
17 Larry Hamermesh. I think we have the same  
18 participants this morning other than Libby McGarry,  
19 substituting for Mel Cantor of Simpson Thacher.

20 THE COURT: All right.

21 MR. FORREST: Your Honor, this is Ken  
22 Forrest. I have consulted with the people at Warner,  
23 and we are prepared to satisfy the concerns which  
24 Chris-Craft has indicated that it has. Can everybody

1       hear me?

2                       MS. PARVER:  No.  You are sort of  
3       going in and out.

4                       MR. FORREST:  There is a lot of noise  
5       in the connection.  I am speaking loudly into the  
6       phone.

7                       (Discussion off the record.)

8                       MR. FORREST:  If a proper conversion  
9       notice is delivered and proper notice of guaranteed  
10      delivery by 5:00 p.m. on July 24, then Chris-Craft  
11      will be deemed to have converted and tendered  
12      effective prior to 5:00 p.m., and the close of  
13      business for these purposes be 5:00 p.m.  And I think  
14      that satisfies the concern that Ms. Parver indicated  
15      in the prior call.

16                      MS. PARVER:  I have a little  
17      difficulty because, of course, you were fading in and  
18      out.  I think the only -- Lynn Fisher --

19                      MS. FISHER:  Yes.

20                      MS. PARVER:  (Continuing) -- maybe  
21      you could talk to what Mr. Forrest has suggested.

22                      MS. FISHER:  Ken, two points.  One  
23      is, you say that if we have covered everything by  
24      5:00 p.m., the close of business for these purposes

1 shall be deemed 5:00 p.m. Can we say close of  
2 business for these purposes shall be deemed  
3 immediately prior to 5:00 p.m.?

4 MR. FORREST: No. I think the close  
5 of business is 5:00 p.m., but you will have been  
6 deemed to have converted and tendered effective prior  
7 to 5:00 p.m. I think that satisfies any conceivable  
8 concern.

9 MS. FISHER: Okay. The next question  
10 that I have, will Warner permit us to deliver our  
11 conversion notice together with our proper notice of  
12 guaranteed delivery at one place, and that would  
13 obviously have to be the depository?

14 MR. FORREST: Listen, Lynn, I don't  
15 really intend to negotiate every last detail of this  
16 on a conference call with the Vice Chancellor. No  
17 one asked me to talk to where your delivery is going  
18 to be made. I understand that there were extensive  
19 discussions on this subject last week, and you could  
20 talk to, you know, Pat Vlahakis or the other  
21 corporate people involved who you dealt with before  
22 on this issue.

23 Really, it is not something I am  
24 prepared to talk to. I am sure the people will be

1 cooperative. Everybody is trying to make it --  
2 Warner has instructed us to try and make it feasible  
3 for you to do what you are trying to do to the extent  
4 reasonable and proper, and we are taking those steps.

5 MS. PARVER: All right. It is not  
6 necessary to have to -- I think the problem is -- I  
7 mean, we are all trying to work to accomplish  
8 everyone's goal, and our only concern, I gather, is  
9 that -- I gather that our only concern is that if the  
10 stipulation that you are suggesting does not provide  
11 that delivery may be to the depository  
12 simultaneously, you are getting into one of those  
13 situations which engenders litigation, where people  
14 are running around the city and someone says, "No,  
15 you served this at 5:05 and, you know, you have lost  
16 all your rights."

17 MR. FORREST: Well, this is really --  
18 you know, I think this is really very unfair. You  
19 know, I am not going to spend the next several days  
20 between now and Monday on conference calls to the  
21 Vice Chancellor over every detail that you have a  
22 problem with.

23 Now, you know who the lawyers are  
24 both at Wachtell, Lipton and at Paul, Weiss who are



1     working on this matter. If you have a mechanical  
2     concern like that, pick up the phone, and people will  
3     cooperate with you. I really don't think it is  
4     appropriate what you are doing here. And we have  
5     agreed to what you indicated before was your concern,  
6     and I am just not going to conduct a negotiation like  
7     this with you on such a conference call. I don't  
8     think it is appropriate.

9             MS. PARVER: It is not a negotiation.  
10    This is all part and parcel of the precise problem  
11    that we were in court to address. I am not asking  
12    for --

13            MR. FORREST: You did not raise it  
14    before.

15            MS. PARVER: (Continuing) -- for  
16    anything more, which is why I suggested to you when I  
17    called 10 minutes ago to see if we were going to be  
18    able to finally work this out that the corporate  
19    lawyers --

20            MR. FORREST: Excuse me, Jane. That  
21    is just incredibly disingenuous. I asked you to put  
22    it on a piece of paper --

23            MS. PARVER: We did.

24            MR. FORREST: (Continuing) -- which I

1 received one minute ago, you know. And it is  
2 incredibly disingenuous to say --

3 MS. PARVER: Well, I don't think the  
4 name-calling is necessary.

5 MR. FORREST: It is not name-  
6 calling. I think we have resolved the issue as far  
7 as it was raised in the prior conference, and I think  
8 we ought to let the Vice Chancellor enter the order.  
9 And if you have any additional concerns, you know who  
10 to call. We will cooperate in trying to work out all  
11 these mechanical details.

12 MS. PARVER: Ken, the difficulty is  
13 that we don't, that this is one problem, and it only  
14 gets addressed and the only reason why it is being  
15 addressed now is because your client knew you had to  
16 report back at 2:15. I called you several times  
17 during that period of time. I understand that you  
18 have to talk to your client, but I would like to  
19 resolve this all at once. I don't want to have  
20 piecemeal negotiations.

21 MR. FORREST: Well, I am sorry --

22 MS. PARVER: That's not what we are  
23 here for.

24 MR. FORREST: I am very sorry. I am

1 not in a position to respond to you on five seconds'  
2 notice.

3 MS. PARVER: Your partner Pat  
4 Vlahakis is there, and she can respond.

5 THE COURT: Excuse me. This is Vice  
6 Chancellor Jacobs. I am not going to sit here and  
7 preside over these negotiations. It seems to me that  
8 the main consideration has been satisfied. And I do  
9 agree that this is a mechanical detail that should be  
10 resolved among counsel, and it seems to me that one  
11 way or another it will be.

12 All I want to know is, am I free now  
13 to sign the form of order that was submitted by  
14 Mr. McBride or will there be another form of order.

15 MR. McBRIDE: Your Honor, this is  
16 Mr. McBride. My understanding is that based on Your  
17 Honor's determination that BHC's concerns expressed  
18 this morning have been resolved, we are in a position  
19 to have the form of order I submitted signed.

20 MS. FISHER: I believe, David, that  
21 Paragraph 2 should now say -- the language with  
22 respect to the pendency of the appeal should be  
23 deleted. It should merely say that this order shall  
24 remain in effect until 5:00 p.m. on Monday, July 24.

1                   MR. FORREST: I don't think that's  
2 correct. I mean, we have agreed to what we have  
3 agreed to, and they have an expiration date now of  
4 5:00 p.m. But in terms of an injunction pending  
5 appeal, should a court -- it is pending the appeal.  
6 Should the appeal be dismissed earlier than that,  
7 should the Supreme Court earlier than that say that  
8 the appeal is resolved, then I don't know why there  
9 should be an injunction.

10                   I mean, there still will be a 5:00  
11 time by virtue of the extension, and the statement we  
12 just made about your tendering we do not intend to  
13 withdraw. But I don't see why the parties should be  
14 under an injunction once the appeal is resolved. I  
15 don't think that is proper at all.

16                   MS. PARVER: Okay. I think we are  
17 all dealing with extreme hypotheticals. But, Your  
18 Honor, if possible, I would like to embody the  
19 representations of Warner which Mr. Forrest was kind  
20 enough to give us today. I would like to have them  
21 put on the record, if possible. And I would also ask  
22 for an opportunity, which I certainly hope we do not  
23 have to avail ourselves of, but I would like to have  
24 an opportunity to apply back to Your Honor if for any

1 reason the parties are unable to agree upon the final  
2 details.

3 THE COURT: Well, first of all, the  
4 representations that were made by Mr. Forrest are on  
5 the record. We have a transcript of what he said.

6 MS. PARVER: Okay.

7 THE COURT: And that will be made  
8 available to any counsel, provided someone orders a  
9 copy of the transcript. As far as the form of order  
10 is concerned, it is my intention to sign the form of  
11 order submitted by Mr. McBride. And, of course, it  
12 will be with the understanding that there will be  
13 perhaps some more formal form of agreement of the  
14 kind that was described by Mr. Forrest, but that will  
15 not necessarily be embodied in the order.

16 Should there be a problem in reducing  
17 the agreement that has been reached to writing, then  
18 I assume that whoever is aggrieved by it can come  
19 back to the Court. I don't invite you to do it.

20 MS. PARVER: I understand, Your  
21 Honor. I appreciate that. And hopefully, we won't  
22 need to.

23 THE COURT: All right. It seems to  
24 me that the order that was submitted by Mr. McBride

1       ought to protect the rights of the parties provided  
2       that everyone understands that there will be an  
3       agreement entered into I take it within the next few  
4       days that embodies the arrangements that have been  
5       described by Mr. Forrest and that will be negotiated  
6       more finally.

7                       MS. PARVER:   Thank you, Your Honor.

8                       MR. HAMERMESH:   Thank you, Vice  
9       Chancellor.

10                      MS. PARVER:   And we would like to  
11       order a copy of the transcript.

12                      THE COURT:   Before you get off the  
13       phone, let me just advise all of you that I have  
14       signed the form of order submitted by Mr. McBride.  
15       That doesn't have a space for a date, but I am  
16       putting on it today's date.

17                      And I also would like to know from  
18       the parties who are to be involved in this temporary  
19       restraining order proceeding that was scheduled for  
20       this Thursday whether there will be a proceeding or  
21       whether that can be taken off the calendar, what the  
22       status is.

23                      MS. PARVER:   Your Honor, you are  
24       talking about the Warner-Time-BHC-Chris-Craft?

1 THE COURT: That's correct.

2 MS. PARVER: My understanding is we  
3 still have then an application for a stay of the  
4 expiration of the 30-day period of time, which --

5 THE COURT: All right.

6 MS. PARVER: (Continuing) -- my  
7 understanding was would be argued before the Court on  
8 Thursday.

9 THE COURT: All right. My question,  
10 not very well presented, was whether the recent  
11 developments, including what I have just decided,  
12 obviates the need for that hearing, and your position  
13 is that it does not.

14 MS. PARVER: If only that were so,  
15 Your Honor. Unfortunately, they really are quite  
16 distinct --

17 THE COURT: All right.

18 MS. PARVER: (Continuing) -- and  
19 really have unfortunately nothing to do with one  
20 another.

21 THE COURT: All right. Very well.

22 MS. PARVER: Then we shall see you on  
23 Thursday. Thank you, Your Honor.

24 MR. HAMERMESH: Thank you, Your

1 Honor.

2 MR. McBRIDE: Thank you, Your Honor.

3 THE COURT: Good afternoon, counsel.

4 - - -

5 (Court adjourned at 2:35 p.m.)

6 - - -

7 CERTIFICATE

8 I, LORRAINE B. MARINO, Official  
9 Reporter for the Court of Chancery of the State of  
10 Delaware and Notary Public, do hereby certify that  
11 the foregoing pages numbered 3 through 55 contain a  
12 true and correct transcription of the proceedings as  
13 stenographically reported by me at the hearing in the  
14 above cause before the Vice Chancellor of the State  
15 of Delaware, on the date therein indicated.

16 IN WITNESS WHEREOF I have hereunto  
17 set my hand at Wilmington, this 17th day of July,  
18 1989.

19  
20  
21 \_\_\_\_\_  
22 Official Reporter for the  
23 Court of Chancery of the  
24 State of Delaware