STATE OF NORTH CAROLINA — IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF GUILFORD — 14 CRS 8130

DR. ROBERT CORWIN AS TRUSTEE FOR THE BEATRICE CORWIN LIVING IRREVOCABLE TRUST, on Behalf of a Class of Those Similarly Situated,

Plaintiff,

vs.

BRITISH AMERICAN TOBACCO PLC; REYNOLDS AMERICAN, INC.; SUSAN M. CAMERON; JOHN P. DALY; NEIL R. WITHINGTON; LUC JOBIN; SIR NICHOLAS SCHEELE; MARTIN D. FEINSTEIN; RONALD S. ROLFE; RICHARD E. THORNBURGH; HOLLY K. KOEPPEL; NANA MENSAH; LIONEL L. NOWELL, III; JOHN J. ZILLMER; and THOMAS C. WAJNERT,

Defendants.

TRANSCRIPT, Volume I of I
(Pages 1 - 74)

Friday, February 12, 2016

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Guilford County Greensboro Business Court

February 12, 2016 Session

The Honorable James L. Gale, Judge Presiding

(Revised)
Partial Settlement

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I N D E X

(Thereupon, the following proceedings were held on Friday, February 12, 2016 at 10:00 a.m.)

THE COURT: Good morning everyone.

I thought what we might do, after I thank the court reporter and -- and the sheriff's office for being here, I very much appreciate that, is -- is we'll make appearances, and I thought I would make some opening comments that perhaps you can then take into consideration as -- as you make your presentations this morning.

I know that we have several students here. I don't know how long this will go. I know y'all have classes. So, you're certainly free to come and go as long as you do it quietly. As it turns out more come in and you need to use the jury room up here at that point, that would be fine.

Everybody please remember to silence your cell phones or anything else that goes buzz this morning so we don't have to deal with that.

So, let's just start out -- and, Madam Court Reporter, thank you so very much for being here. Someone else was going to come this morning, there was a rumor there was bad weather, so -- so we were lucky to have someone that was here in Guilford County to come join us on short notice, and we very much appreciate it.

Let's go ahead.

And then for the plaintiff, Mr. Duncan.

MR. DUNCAN: Your Honor, Alan Duncan on behalf of the Plaintiff.

MR. RUSSELL: Steve Russell for Plaintiff.

MR. FLEMING: Joel Fleming for the Plaintiff.

THE COURT: I'm not sure -- you need to probably speak up just a little bit. I'm not sure she --

MR. FLEMING: Joel Fleming for the Plaintiff.

Good morning.

THE COURT: Thank you.

MR. DAVIS: Good morning, Your Honor. Ron Davis for Defendants Reynolds, Cameron, Daly, Withington, Scheele, Feinstein, and Rolfe.

THE COURT: Let me take a point of personal privilege since he's from Womble Carlyle to, one, say, Mr. Davis, that -- that I and everyone else here joins in best wishes for your wife.

MR. DAVIS: Thank you very much.

THE COURT: And there is an extern for the court that has accepted an offer with Womble Carlyle, been going to law school at Wake Forest, been completely screened off from this matter, but -- but since it's a matter of public hearing I gave him permission to observe this morning, but he will not be working on the file.

MR. DAVIS: Thank you, Your honor.

I have two of my colleagues here with me here today too.

MR. DEAN: James Dean, Your Honor.

MR. COPENHAVER: Andrew Copenhaver, Your Honor.

THE COURT: And, Mr. Dean, I'm disappointed that we don't have your -- your -- your standard compatriot that we always enjoy having.

MR. DEAN: She's -- she's -- she's aging out of this kind of work. There will be a few more hearings --

THE COURT: If it makes you feel any better, I have an eight-week-old Labrador puppy in training at home right now. She's -- she's telling me the good thing for me to give up for Lent is sleep.

Mr. Nebrig?

MR. NEBRIG: Good morning, Your Honor.

Mark Nebrig for the other director defendants.

THE COURT: Great.

And I indicated that counsel for BAT did not need to come since they are -- they are -- they're not involved in today's proceedings.

Let me -- the -- the comments, I think I want to start by recognizing Ms. Klein who's made appearance of counsel of record for Objector James Snyder.

Ms. Klein, while you're not a party, I go ahead and call upon you now to make an appearance and state your

client.

MS. KLEIN: Thank you, Judge Gale.

Beth Klein here on behalf of James Snyder who's an individual member of this settlement class.

THE COURT: There was a -- there was a telephone hearing earlier in the week where Mr. Snyder had made an objection and asked for today's hearing to be continued.

I did not issue a written order. It's obvious that since we're all here today, that I did not continue that hearing. And I kind of left open exactly where things would go. Since that time the Objector, Mr. Snyder, has filed an affidavit by Professor Griffith.

And -- and while the question as to what effect, if any, the expiration of this court's term end of February had on the motion to continue, that was really not what was animating my decision to go forward with the hearing and the filing of the affidavit.

Frankly, it affirms and amplifies what I thought to be the case; and that is, one of the primary underlying bases for asking for the continuance was to take into consideration not only the decision of the Delaware Chancery Court in In re: Trulia, spelled T-R-U-L-I-A, but -- but the factors on which that case was based.

And I had made the comment during the telephone hearing on, I believe it was, Tuesday that I thought that

Trulia was certainly a significant opinion, but I -- I did not consider it a surprise necessarily.

And that's because the factors underlying that decision, and the courts look in Delaware with an increased scrutiny on what's referred to as disclosure settlements, has -- has been an issue that's been brewing for some time. And that one of the -- the -- one of many scholars, but certainly one of the leading scholars arguing for increased scrutiny was for Mr. Griffith.

And -- and the court has -- I won't say that I'm a student of his, but certainly familiar with at least some of his articles.

And those factors that he pointed out and amplified in his affidavit were evident in Trulia were factors that the court had in its mind and considered and consulted when making rulings in this case on the -- on the motion for everything in discovery that came in early, that -- on a motion for preliminary injunction that had been fully briefed before the case was settled. And that point in time the adversary process was very much in play.

And so now that the affidavit's been filed, it -- it demonstrated to me, and -- and it was an affidavit that was -- that was thorough and prepared on short notice, but brought forward those factors and then leads to the question of how do those factors play in this particular case, which

is what we're hearing today.

So, I've left open what I'll hear, but -- but it affirmed my instinct that we probably, without the need of any substantial extension, know what those issues are before us to address today.

And so, I'll -- I'll be open to what you say needed to be supplemented for the record, but I'll start with the inclination that the record's sufficiently complete for me to make a determination which is called upon me to make in this hearing.

I do think because of the fact that there's a matter of -- a fair amount of public attention paid to Trulia and -- and -- and the objections said that perhaps this case has taken on national significance because it's the first case to consider a fairness determination after Trulia, I would say this case had significant national attention before Trulia.

And I think it's not irrelevant that the transaction underlying this has been the subject of a fair amount of public scrutiny by the FTC, and otherwise it's a -- it's a heavily-regulated industry. A lot of attention paid on this -- suit. The idea that something that would bubble up that hasn't bubbled up before is a little bit different in this case than it would be in some other instances.

I think it's important to recognize what Trulia does and how it -- how it has an impact, but yet also needs to be considered distinct from this case in this regard.

What Trulia does is it addresses the intersection between what is a longstanding principle favoring settlement of litigation and a recognized principle premised on due process, that the court has to be very careful in entering a settlement that binds members -- absent members of -- of a class action.

And -- and those -- those issues were that intersection, and the collision of those issues was before the Chancellor Bouchard in Trulia. And it's important to recognize, I think, in some respects that Trulia is a forward-looking decision.

It was -- it was written to announce that going forward there will be an increased scrutiny and an open recognition by the chancellor that the prior decisions of the Court of Chancery had encourage a disclosure settlement.

There's been great debate as to whether disclosure settlements would have taken on as much significance as they have had there been more active, aggressive enforcement at the SEC. That's a debate that I don't have to get into at this point in time.

But I think even Delaware would recognize that

it -- it's cautious to change any rules of the game if the settlement was negotiated in contemplation of the rules of the game before deciding. I don't take that really as a critical point here, but I believe that would be based on my regular reading of -- of opinions of the Court of Chancery. It would be likely the way the Delaware court would go.

But the -- the -- another point I think about Trulia is it comes down, and what it says, it really prefers for fairness -- for the fairness of a disclosure settlement to be brought forward in the posture where the adversary system is fully at work.

And so the two potential manners of doing that in that case were, one, in a fully contested motion for preliminary injunction, Rule 16, to enjoin a shareholder vote based on inadequacy of disclosures. That's where we were in January of 2015 in this case.

The second, and what he referred to is -- is apparently the emerging preferred method in Delaware is -- is a situation in which they kind of refer to as a mootness hearing. And that is where a -- a challenge is made in litigation about the inadequacy of disclosures.

The corporation makes the disclosures without there having been a release, without there having been a settlement.

And then there is the litigation of the plaintiff's

counsel seeks the award of attorney's fees because of the claim that the litigation brought forward the disclosures that were material benefit to the class. And that is possible to do in Delaware.

It may not be possible to do in North Carolina. And that's a significant factor and that's one of the factors I was addressing in my recent decision in Raul vs. Burke. And that is because there's -- there's a debate yet to be fully resolved.

But, generally speaking, there's a strong argument that a disclosure claim; that is, a claim that there's been adequate information being given to a shareholder to have an informed vote at -- at a meeting to include a transaction, is a direct claim brought by the shareholder and not a derivative claim brought by the corporation.

And if that turns out to be the final resolution in the -- in the North Carolina courts, that then triggers a separate issue of the fact that North Carolina, unlike Delaware, rejects the notion of the award of attorney's fees under a common benefit doctrine.

So that in Delaware if you go forward with the preferred method that Chancellor Bouchard mentioned, the court has the authority to make a determination that the disclosures were of benefit to shareholders and common benefit to the shareholders, and therefore justifies the

award of attorney's fees under the Common Benefit Doctrine because of it.

And -- and, frankly, I think there are a couple of circumstances that brings to bear that ties in again the other policy of approving the settlements of controversies.

I think preliminarily a lot of this is going to play out, but -- but, frankly, there's a bit less of a contingent risk to a law firm in Delaware to bring a direct action class action than there is in North Carolina, because there's assurance that you get the benefit, you have the ability to seek an award of fees.

This case was clearly brought. The plaintiff made no doubt -- no -- no bones about the fact that this was brought as a direct action and not as a derivative action, and until recently there was not appellate authority.

This court had predicted that there might be, but there was not appellate authority that clearly said that parties, private parties to settlement, could have vest the court with authority to grant attorney's fees based on agreement in a direct action.

That was suggested in the first Ehrenhaus opinion but was not -- was not fully stated. It has since been affirmed by the court of appeals that there -- that private parties who reach an agreement that there can be an award of attorney's fees vest the court with authority to proceed to

do so.

There's still unsettled law as to whether or not the agreement has to be not only as to the fact to award the fees but as to the amount. And that issue, frankly, is on appeal from this court in four consolidated cases pending before the supreme court now in the In re: Pike litigation where I made the ruling that I believe that once there's an agreement to pay fees, that the court is then vested with the authority to determine a reasonable amount even where the parties did not agree as to the amount.

And I held open the fact that the parties could agree to cap an amount or -- as long as it fell within the range of reasonableness. But the court believes it has the authority as it -- it would have today, approves the settlement, to proceed under factors of Rule 1.5, the Rules of Professional Responsibility, to determine that amount.

So, the point of all that is, is that -- that -- that the court is aware of Trulia, that the court's aware of the factors leading to Trulia, and aware of the fact that justice -- I mean -- Chancellor Bouchard mentioned before turning to the specific factors in that case, he acknowledged the concern that -- that the increased scrutiny in Delaware may lead to a movement where Delaware corporation would be sued in a jurisdiction that would have a more relaxed standard.

I also am aware of the significance when we talked about forum selection and all the things that come from the Chevron litigation and the Boilermakers litigation on how to control itself. But -- but let me suffice it to say is I'm not in the least bit concerned that folks are going to be running to the North Carolina Business Court because of its relaxed approached to the settlement of class actions.

And so, I think today that leads us to where we know what the factors are. The factors that this court is going to consider are the same factors that the Delaware court would; and that is, what is the balance between the relief sought and the release given in terms of fairness to a class?

And if I get to the point where the settlement's fair, do I then want to award attorney's fees; and if so, in what amount?

And as we then turn to this particular case, I pointed out the fact that it's difficult in North Carolina to have the other approach, but I think that having looked at the affidavit by Professor Griffith, looking at the matters that were addressed in Mr. Snyder's objection, and going back and reading the briefs that were on the record at the time the preliminary injunction motion was at play, that there's a tremendous similarity and overlap between the factors in -- in Mr. Griffith's affidavit and the fully

litigated issues that were fully briefed as to the materiality of the disclosures at place.

I don't expect the defendants today to -- to accede to any of the material, but I do believe that the settlement reflects that the defendants recognize that there was some legitimacy to being able to litigate those if it wasn't settled. And that's what settlements are all about when you reach them.

So, I hope those introductory comments are useful to you in terms of framing where we are today. I think that the -- the -- and I -- I'm prepared to hear from the -- I assume that where we would go is that I would hear from the plaintiffs as to the adequacy of the settlement.

I would allow the defendants to amplify anything they -- they want to, although I suspect they are deferring to the plaintiff to justify the settlement. That's fine.

I would hear from you on behalf of the objectors, and I would also hear from -- from -- from the other defendants in the case. And we'll just proceed with as many times as going back and forth until I feel like the court is fully informed with your respective positions.

But what I want to hear about is whether it's the materiality of the consideration underlying the settlement and actually against the scope of relief being given and why you believe it is or it is not fair to the class. And I

think that's the issue first as to fairness, and then separately we'll address the issue of attorneys' fees.

Mr. Duncan, I'll leave to you to decide whether you want to address both of those issues at one time or you want to go fairness followed by fees and make them separate arguments. I'll leave them to.

MR. DUNCAN: I'm glad to go through all at one time, Your Honor. It might be easier for responders rather than breaking it up, if that's all right with the court.

THE COURT: Yes, sir.

MR. DUNCAN: Thank you for the opportunity to be heard and thank you for that introduction, which I think is helpful to all of the parties in terms of the framing the -- to be made today.

Couple of preliminary matters, if I could.

I first want to say that one of the counsel in this case, Jason Leviton, is not here today. Unfortunately he had another court proceeding at the same time. He very much wanted to be here, and I wanted to express his regret to the court that he's not here. Of course, his partner Joel Fleming or his colleague Joel Fleming is here.

THE COURT: And in that regard, oftentimes that would be more of a problem than it is here. The court is -- is often in a situation where the North Carolina counsel role is more limited than it's been in this case and fully

dependent on out-of-state counsel. There's been a balance in this case. So -- but I appreciate his desire to be here but I don't think --

MR. DUNCAN: Thank you, Your Honor. And there has been, as Your Honor has observed, we have worked very closely together and it's been truly a collaborative effort in this case.

Also as a housekeeping matter, just want to note for the court the status of the appeal on the remaining fairness issues that the court ruled upon last August.

The brief has been fully filed, appellant's brief has been fully filed some time ago. The appellees' responsive briefs were filed on Wednesday, and we now have 12 days to file reply briefs at which point we would expect it to be scheduled before the court of appeals for hearing sometime in the appropriate course thereafter.

I also as the last preliminary matter want to note the court -- the court sometimes will make inquiry. We have received calls. As Your Honor will recall, the notification indicating if there's any need for calls for someone to get further clarity. We have received calls.

We've got a, you know, file record of either telephone calls or e-mail inquiries. There have been some days, you know, as many as 10, other days lesser number. But we have received a large number of inquiries, however

you want to classify them large. I would say somewhere in the area of between a hundred and 150 and --

THE COURT: And in that regard, the notice that went out would have included Reynolds' shareholders before the transaction and those former Lorillard shareholders who -- who became owners of Reynolds' stock as a result of the transaction?

MR. DUNCAN: Apparently, yes, Your Honor, was the way it was done. Reynolds provided the information to Ms. Swanson whose affidavit reflects a little over a quarter of a million notices sent out and apparently was done in that way. And I will further address that point which the court highlighted, I think, in your opening remarks as we go forward.

I would say that Mr. Snyder was one of the callers. He had two or three conversations with Mr. Leviton in terms of his caller's inquiries, and these all occurred before the time an objection was filed. The --

THE COURT: I think I'd stated it in a hearing that was -- was transcribed by telephone that you had made a representation to the court that the call was made on the 20th of January and the objection, I think, was filed on the 27th or 28th of January.

MR. DUNCAN: That sounds like the approximate correct time frame, Your Honor.

And I will say that we didn't receive any other calls from any person who suggested that they were intending to file an objection. And I say that to the court just because we received inquiries.

In fact, the vast majority of the callers thanked us for responding to their inquiries and for many -- and many times for the work on the case just as a brief summary of the calls.

Today the court's asked to do three things. I think the first one is certify a settlement class, the second one is to approve the partial settlement that's before the court, and the third thing would be, if inclined to do so, to approve an award of attorneys' fees.

THE COURT: And each of those were laid out in the notice of the hearing for today, and so those are within -- within the agenda. I think the notice laid out five matters being compressed to those three.

MR. DUNCAN: I think that's exactly right, Your Honor.

So, starting with class certification, I -- I don't think the certification question itself has been controversial in any of the comments that have been made.

As set out in our papers, North Carolina courts have routinely recognized it's appropriate to certify a non-opt-out class for the purpose of effectuating

disclosure-based settlement in merger-related litigation.

The cases that you've already mentioned, Ehrenhaus, Nakatsukasa, which I hope I pronounced both correctly, PokerTek and Harris Teeter are examples of that. There are others --

THE COURT: Those -- those are at trial court levels, and Ehrenhaus opinion, of course, makes it clear at the appellate level.

MR. DUNCAN: Yes, Your Honor.

So, the only difference between those cases and the cases before the -- the court, and it's actually a fairly significant difference, is that our release is much narrower than in any of those cases. Our release preserves the fairness claims to be litigated.

As Your Honor knows, they have been vigorously litigated --

THE COURT: And let me just pause, if I may, and ask you -- I'm -- I'm, of course, concentrating on the case that was brought in my court to look at. I'm aware generally but not specifically that there was separate litigation on behalf of the Lorillard shareholders in the Delaware courts.

And I know you've carved that out as far as the release is concerned, but has there been any actual or threatened securities litigation pending for them?

MR. DUNCAN: Not to our knowledge, Your Honor.

And to provide an update, and I will refer further at one point given some of the -- Professor Griffith's comments in the affidavit. Whether they were timely or not is a separate question. But we still should address them is our view and we will address them with the court --

THE COURT: Right.

MR. DUNCAN: -- be glad to do that.

THE COURT: Madam Court Reporter, are you able to hear Mr. Duncan?

Can you hear him okay?

THE COURT REPORTER: Yes, sir.

MR. DUNCAN: Should I move this mic over?

THE COURT: Why don't you move it over a little bit, because the people in the back may not be able to hear you.

MR. DUNCAN: With respect to the Delaware -- Your Honor will recall, there were approximately eleven lawsuits that were filed. There was a memorandum of understanding that was consummated sometime shortly before the shareholders' meeting. That has not come up for approval as we -- that we checked the docket. There's been no activity at all since the time of -- of that occurrence.

THE COURT: Okay.

MR. DUNCAN: And so that's the status as we know

it. And we're not aware of any securities-related litigation anywhere in the country with respect to this transaction, if you will, Your Honor.

So, moving then to --

THE COURT: And there was a FTC inquiry obviously to approve the transaction?

MR. DUNCAN: Yes, Your Honor.

THE COURT: Was there any SEC investigation at all by -- by the agency?

MR. FLEMING: I mean, the SEC would review the proxy which is why --

THE COURT: Right.

MR. FLEMING: -- there's a preliminary, and to our knowledge there was no sort of subsequent SEC investigation.

THE COURT: Thank you.

MR. DUNCAN: So, I'd like to address two issues in connection with the certification class that the Objector Mr. Snyder has raised.

And the first one, and I think these go to points that are important to the court and have been touched upon by the court.

The first one goes to adequacy of the notice. The Objector has complained that he did not receive the notice until January 19, 2016.

THE COURT: I'll cut this short as to say that I

think that the timing may be relevant as to whether or not the -- object, but I don't see any question as to the adequacy of notice.

The court has long -- the court decisions have long recognized that notice to the beneficiary holder, it has to go through a -- a broker. And in this case it may be an unfortunate consequence to Mr. Snyder, had to operate on a short fuse, but I do not believe that questions the adequacy notice.

MR. DUNCAN: Thank you, Your Honor, and that was the point that we were going to make as we have made in writing, Your Honor. So, thank you for cutting that short.

The second issue that was raised by the Objector has to do with what I'll call the class definition is a generic way to talk about it. And the court has indicated an interest in discussing this.

So, it's whether Mr. Snyder and other former Lorillard shareholders who received stock in Reynolds on the date of closing, whether they're a part of the class.

And I'll say first that on our side of the table we do not intend to be including these people within the scope of the class; that is, the people who are Lorillard shareholders and only acquired any interest in Reynolds with the -- I think it's .2929 interest in -- in shares for each share of stock that was held.

We do not intend those to be part of this settlement. It was certainly never a topic of conversation during our negotiations and I do not recall if it was an express topic of conversation that we would ever suggest that that would be part of the class to the court. If the court has a different recollection, I'd be glad to discuss that.

THE COURT: No. And I'm not sure it's determinative, how I read the definition. Clearly, you would have wanted to pick up anybody who bought Reynolds stock on the morning before the transaction was -- was approved, but I don't -- I never really had thought about us litigating claims that -- that people who had brought after the transaction. And I thought for Lorillard-based claims were before the Delaware court and not before this court.

MR. DUNCAN: Your Honor has essentially cut through what I was about to say and made the point. That's exactly what he would have believed. And so, although we recognize one could argue there's some ambiguity in the language in the sense that --

THE COURT: Well, I guess the question at this point in time -- I'm hearing the plaintiffs say that -- that if the court approves the release as to be limited as to what you thought, you would be comfortable with the scope of that release. Obviously, the defendants are a party to the

settlement as well and I'm happy to have them say whether or not --

MR. DUNCAN: We would certainly welcome whatever input they provide to that analysis. But if the court decides that that would be consistent with our intent, and I believe the court's intent was supposed to be inclusive for the exact shareholders as Your Honor described; that is, they were before the transaction was consummated on that last day, but it was not intended to bring people such as Mr. Snyder into place where they would be one of the members of the class. That was not how we were operating.

The memorandum of understanding, which is incorporated, defines the class to include record and beneficial holders of Reynolds for the period from including July 14, 2014 through and including the effective date of the merger.

Now, this is where --

THE COURT: And I honestly don't know.

Does anybody know, is there enough of a security expert to tell me whether or not people like Mr. Snyder who then had to trade in their Lorillard shares become owners of the Reynolds' shares as well as cash consideration, would they be deemed to be recordholders on the day of the transaction?

MR. DUNCAN: I think Mr. Davis might be --

MR. DAVIS: Your Honor, we've looked into it. We can address it right now or whenever you would like.

THE COURT: Go ahead. I think if Mr. Duncan --

MR. DUNCAN: I think that's fine, Your Honor.

MR. DAVIS: Sorry.

We -- the short answer is we don't know. We -- we understand that what happened was that the Reynolds' shares went to the Depository Trust Company on the 12th and that the DTC has an approximately three- to five-day settlement window process.

So, one of the things we were interested in when Mr. Snyder filed his papers were was he a member of the class?

The short answer is we couldn't tell for sure. We think probably not because --

THE COURT: I mean, Charles Schwab indicates that the date of the transaction was the closing date.

MR. DAVIS: Right.

THE COURT: That would be the effective date, but whether or not it's actually heard in terms of recordholders -- because normally you have a three-day settlement period.

MR. DAVIS: So, we -- we looked into it but we could not tell for sure.

THE COURT: What is your position about whether or

not you would believe that the settlement would have been fully approved by the court and effectuated if the court defines the class to be those shareholders of Reynolds' stock at or before the approval of the transaction -- consummation of transaction?

MR. DAVIS: (Indicating.)

THE COURT: Yes, sir.

MR. DAVIS: Is that question addressed to me?

Our job is to get as broad a release as possible, and that's what we did. And we want it as broad as possible. And whoever qualifies on the 12th, we want them bound by that release.

MR. DUNCAN: And I understand that would be the position that the defendants would take. And I'm not sure that that forecloses, however, the notion that Lorillard, a shareholder, who only at the time of the transaction with the passage of time described --

THE COURT: What I think -- what I -- what it would mean is, the way I'm interpreting it is, first, what Mr. Davis I think said is that if I were to change the term to say only beneficial holders who owned before the actual consummation of transaction, that that would be different than the settlement he entered into, which would mean that we would have a whole different proposition as to whether or not -- of settlement.

But if I were to approve it as it's written, that doesn't mean that someone who later came and tried to say I've got a claim that has not been released, they would have to demonstrate that they were not -- that they -- so -- so someone could come in and demonstrate they did not become a Reynolds shareholder until the day after the transaction, and they would have proven that they're not bound by the release.

MR. DUNCAN: That's completely accurate, Your Honor.

MR. DAVIS: I think that's right, Your Honor.

MR. DUNCAN: So, the -- the released claims are defined in the MOU under paragraph 3E. And those -- that says that they are defined as those that arise from --

THE COURT: And let me make a last comment.

MR. DUNCAN: I'm sorry.

THE COURT: I apologize for interrupting.

But as I look at it from the fairness standpoint, we -- we may get to the point when I look at the scope of the release, but in terms of I haven't yet in my own mind fathomed how a Lorillard shareholder that was not a Reynolds shareholder part of the transaction would have any culpable disclosures.

MR. DUNCAN: We have not been able to fathom that either, Your Honor. We have characterized it in the spirit

of what the clear language intent was. It would not come within the aegis of the language that's been utilized and the other terms of the MOU.

As I said, 3E -- paragraph 3E in the MOU describes as having the status of a Reynolds stockholder. Paragraph 17 perhaps significantly -- even more significantly, and Your Honor has already alluded to this, it expressly carves out the claims that were at the time being actively litigated by Lorillard shareholders in Delaware. That action is not resolved.

I would suggest that if Mr. Snyder believes he truly has a claim that is appropriate, his recourse is in Delaware, not in North Carolina.

THE COURT: And the Delaware action, of course, is just claims against the Lorillard directors and the Lorillard, not against Reynolds' directors.

MR. DUNCAN: That's correct, Your Honor, yes.

So -- and any claims that he would have would derive around his status as a Lorillard shareholder, not as a Reynolds shareholder, and I think that's the key point.

Reading most consistently with the parties' intent, then, I think Mr. Snyder has to be considered a Lorillard shareholder for purposes of this disclosure proceeding and not a Reynolds shareholder and would be also --

THE COURT: I'll -- I'll put it this way.

MR. DUNCAN: -- status.

THE COURT: I'm going to allow Mr. Snyder to be heard and then have considered Mr. Griffith's affidavit as factors that might be relevant as I consider what the effect is on the people that clearly are within the definition, but that doesn't mean that I'm agreeing that he is or is not a member of the class.

MR. DUNCAN: And I think that's an observation that's helpful, Your Honor, in terms of having to go forward.

And I was going to say, obviously regardless, right along what Your Honor's saying, I think you're several steps ahead of me all day. But regardless of what Mr. Snyder's status is one way or the other, the points he raised are points that should be addressed by the court.

And so, we intend to address them regardless of whether he appropriately was intended within the spirit of the class or not. We nonetheless feel like we should address and will address those points.

THE COURT: And I would say to you that I would have addressed them if he had not objected.

MR. DUNCAN: And I'm sure that's the case, Your Honor.

So, then, let's move to the second area, which is final approval. The -- the three sections we're going to

talk about, the final approval, is the next issue. And I guess, again, one of the things that's been raised here is the Griffith affidavit.

So, I think it's appropriate as we go through the final approval process, he raises a number of issues related to whether final approval should be there. And perhaps that's one of the ways, one of the prisms that we can look at this question through. That's again something I believe the court --

THE COURT: Yeah.

And, again, I think those -- I think those issues in large part were there if you go back and look at the briefs in favor of, in opposition to the motion preliminary injunction --

MR. DUNCAN: Yes, Your Honor.

So, the -- the brief that was filed by Mr. Snyder relied heavily on Trulia. And since then obviously we have Mr. Griffith's affidavit, just recently received professor at Fordham Law School. And he has focused, again, heavily on Trulia and factors related to Trulia.

One thing, just for the record, I feel obliged to say, that we would have to object to this affidavit. Whether or not the court recognizes that objection or not is for the court to decide obviously, but we would have to object in the sense that it doesn't add factual material to

this case. It provides a number of opinions.

It's -- it's essentially a legal brief in the form of an affidavit, including 26 footnotes, numerous case citations, numerous -- numerous legal periodical -- periodical citations, including, in fact, even to himself periodical citations. So --

THE COURT: More than once.

MR. DUNCAN: Yes; yes, several times, Your Honor.

It's also untimely. It's after the objection deadline. It also raises one issue that was not raised within the objection timeline. That would be the securities claim issue about whether or not that was released.

Again, even though it's not timely released --

THE COURT: And -- and --

MR. DUNCAN: -- we still intend to address that.

THE COURT: -- and -- yeah.

And -- and the court -- and the court, so you know, was familiar with -- got to be careful with that term familiar -- a student of -- fully versed in would be going a little bit far, but familiar with the -- the premises of Mr. Griffith's journal article.

I had read before this -- I had read -- I had read the -- the Texas Law Review, I had heard other professors, professors from Columbia, professors from Duke, discuss his position which is known. He has a strong favor in saying

that -- that the securities laws and the securities claims are to be an effective matter of the regulation of the marketplace.

These are matters that -- that -- I think what I'm telling you is I would understand the argument objecting to the timeliness of it all, but I do not want there to be any argument that from the due process standpoint I didn't try to consider everything that was thrown at me. But I was not surprised by the affidavit and I wasn't surprised by -- by Trulia.

MR. DUNCAN: And we were not either. And so even though we didn't consider it timely, we still think it's within the scope of what the court would be considering --

THE COURT: Great.

MR. DUNCAN: -- and so we would intend to address it.

I also note that in addition to filing a brief in the Trulia case --

THE COURT: I do not mean to rule against your ability to argue should it become necessary at the appellate court, but that's a matter that should not be properly considered. But I will tell you that I would consider those matters irrespective of the objection.

MR. DUNCAN: Thank you, Your Honor.

And -- and we have -- I think you -- I -- I know

you would have and you have that duty and I know you would have. And we merely filed it or stating the objection for purposes of making it clear --

THE COURT: I'm sure.

MR. DUNCAN: -- in terms of the procedural process or status here.

THE COURT: I understand.

MR. DUNCAN: So, Mr. Griffith had been involved both in Trulia, Riverbed, another case where he's involved. In fact, in that case after the announcement of the transaction bought shares for the purpose of being able to object.

So, I say that only to say he clearly has an agenda about this, and Your Honor is well-familiar with it and well-read on it.

So --

THE COURT: As I look at the various credibilities of the parties at issue and what the motivations are, I certainly would have to acknowledge that Mr. Griffith has been on the forefront of trying to minimize the number of disclosure settlements that would be approved by the courts in Delaware or otherwise.

MR. DUNCAN: So, that being said, the court still in our view, regardless of how -- whether Mr. Griffith is involved or not, still has to weigh the gives and the gets

in this case which is terminology sometimes that's used by the Delaware courts and certainly was referred to in the affidavit of Mr. Griffith; that is, what did the shareholders get and what are the shareholders giving up for that -- disclosure settlement context?

Another way of saying it is the court must weigh was there value to the disclosures to the shareholders in any way?

So, we think it's important to talk about the disclosures, the value, and then what it is balanced against that was given up by the shareholders.

So, there's three significant areas of material disclosures. The court's well-acquainted with them. We spent -- as Your Honor indicated vigorously advocated for these. It was vigorously opposed by counsel for the defendants.

I think to say that it was anything other than fully adversarial would be to underestimate the quality of the work that was done by the parties on all sides, which I have great respect for. Even if I did not agree with it, I have great respect for the work done by our opposition. And I feel that we also worked very hard to represent the interest of the shareholders --

THE COURT: I remember sitting out, looking at the snow outside the windows of the mountains over the Christmas

holidays as you argued those positions to us.

MR. DUNCAN: So, the first area, as Your Honor knows, the unlevered free cash flow projections for Reynolds and Lorillard. Mr. Griffith indicates that there was information available otherwise.

In a shorthand matter, we would suggest two things. One is we got the unlevered free cash flow projections for both Reynolds and Lorillard. We got them through 2023 instead of through 19 -- excuse me -- through 2019 or 2020, which is the way they were before.

Even more importantly, the unlevered free cash flow projections were not available prior to this lawsuit and the disclosures that were being sought.

There's a number of Delaware -- there was information -- there was even information, there was -- there were other measures, but those measures, which are considered critical by many in terms of true evaluation because you have to take into account the capital expenditures in order to get a true assessment, as Your Honor well knows, that information wasn't available otherwise.

And, also, there were some years, particularly 2019 through 23 and 2020 through 23 for Lorillard where there's no information at all available.

As Chancellor Bouchard himself, the Trulia author,

noted in TW Telecom decision where a proxy discloses some years of projections but not all, it's impossible to tell how much of the overall DCF valuation is packed into the terminal period.

And, in fact, here we were able to get significant disclosures. We have cited the case that's well-recognized in Delaware that that is considered a significant disclosure and of value to shareholders --

THE COURT: I think Delaware law essentially is that things vary from a case-by-case basis, that ultimately what you look at is there a fair summary and is the additional information going to materially affect the total mix of information that allows someone to make an informed judgment as to whether or not -- and that's -- I think it's -- it's -- people try to compress it to say one case -- as to another, but I think that -- that North Carolina and Delaware both say it is a very particularized fact -- case-by-case basis.

MR. DUNCAN: I think that's fair, Your Honor. And I think North Carolina law reflects that it is referred -- these are referred to also in some of the North Carolina cases that have analyzed it in our business court. So, I think the same thought process --

THE COURT: Right.

MR. DUNCAN: -- in play here.

So, let's move to the second area then, which is the technology-sharing agreement and --

THE COURT: And -- and I -- I'll go ahead and tell you from -- from my perspective and I'll tell you when we finish, the factors that I consider to be the most significant and I'll talk about is the technology initiative issue.

MR. DUNCAN: As do we.

I cited the cash -- unlevered cash -- cash flow first because there's case law. This is unique to this case, the technology-sharing agreement.

As Your Honor knows -- well, let me just say in fairness to Mr. Griffith with respect to his affidavit, I don't know that he necessarily knew the full background. He was not involved in the case then. He didn't have the -- he didn't live with the chronology as things moved forward in terms of the changes --

THE COURT: Yeah. And, in fact -- in fact, I think now -- I put it in context, the -- the part of my opinion that he quoted in his affidavit.

And -- and as I recall the context, what ended up happening was this case came to me. It was filed unlike many times. This was the only case, the one and only case from the Reynolds side.

So, I didn't have to deal with all of the

preliminary issues about choosing competing lead counsel, et cetera. And it came to me with a motion to expedite discovery. And you asked for broad discovery in various matters including the bankers books and other matters.

And I looked at it from the standpoint of saying that -- that -- again, this is where I used the relatively aggressive view as to what it is that you were doing from the plaintiff's side, because I placed great significance on not taking away a shareholder vote if there's any risk at all of impacting the ability of the transaction to go forward. That's a very serious consideration to the court.

And so, I looked and -- and -- and -- and said that I came to a more narrow part of discovery that I was going to allow. And I allowed and tried to frame it in such a way that it would be time efficient to say that I wanted to know about the technology agreement and whether or not the parties to the transaction had placed any economic valuation that was measured or impacted by the existence or nonexistence of technology-sharing agreement.

I ended up with an affidavit that says there is none. But the reason I got to there was because I also recognized that some of the press inquiries seemed to think that there was a material value to a -- to the fact that an agreement had been reached.

And so, I said, If it -- if it has -- if there is

an agreement and if it's been looked at from a material standpoint by Reynolds as part of factoring the equation, tell me so. And that is -- that is what is the context that came to the decision that is quoted from in -- in the affidavit Mr. Griffith filed. And it could be Dr. Griffith, I don't really know -- I don't know the right way of referring to him as Professor Griffith.

But the -- the -- and it became -- became clear that we move forward and we got the affidavit. And there wasn't a lot of discovery. And I remember saying that it was challenged by that. And I said, Frankly, if you got -- you got a CFO of a company comes out and files a public affidavit with the court that says no agreement, later turns out there's agreement, there's also remedies they put in place there.

So, without -- without having to say that the technology agreement was, in fact, a material issue because it turns out there was no agreement, I was concerned that there had been statements made, not in the prospectus but in the public arena that -- that caused that to question.

And -- and -- and it -- and -- and I'm predisposed to believe that making it clear one way or the other may have been a sufficient material factor to -- to -- to lead to the additional disclosure -- disclosure settlement without having to find that the -- that the existence of

technology agreement had a thing to do with settling the valuation of this case. That's --

MR. DUNCAN: Thank you, Your Honor, and I'll try to pick up on that and short-circuit then some of the discussions.

But adding to the contextual issue, it was interesting in Mr. Griffith's affidavit that he focused on language in the press release from Reynolds which highlighted the -- the highlight parts of the transaction. These were the highlighted parts and it included --

THE COURT: Yeah, the -- the place where I would perhaps disagree with Professor Griffith is when he says it was absolutely clear that no agreement had been reached. I -- I did not read the multiple press releases to lead me to the inescapable conclusion of no the agreement.

MR. DUNCAN: It led us to believe that one had been reached. And that was added by and this was left out of Mr. Griffith's affidavit. He included the language about where Ms. Cameron said our agreement would be -- to jointly pursue development of new tobacco products holds great promise for global growth in these categories. But he then omitted the sentence that follows shortly thereafter, which was this will certainly enhance value of all shareholders.

That was -- that and many other statements, including some statements that were made in press releases,

again, highlighting the transaction by British American Tobacco, left pretty clear in our view that there was an agreement and that somehow it was going to enhance values for shareholders. And so, certainly the shareholders needed some indication.

More importantly, that that's how it struck us, that's how it struck the financial press. Because, as Your Honor knows, we submitted large numbers of documents. The financial press wrote it that way and understood it that way, as did many investor groups that then were doing analysis for shareholders and/or customers within their groups.

And so, it was a significant issue at the time as we take ourselves back in chronology to the time when this was occurring, as Your Honor said.

So, the supplement -- supplemental disclosure indicates there was no certainty that a new technology-sharing agreement between RAI and BAT would be reached, nor was there certainty -- certainty regarding the scope or terms of such an agreement or the extent to which an agreement would enhance shareholder value. That's very different than the information that was out before.

And so we would submit without beating this point that Your Honor already has made, that this is -- it was highly material to the transaction and information that the

shareholders definitely needed to have available to them as they made --

THE COURT: Let me -- let me -- let me state it a different way, the way I hear the argument; and that is, whether or not the technology agreement was material to the actual valuation of the transaction, I don't have to go there. And I recognize the defendants say it was not and ultimately the affidavit said it was not.

The issue here is whether or not there was a perhaps inadvertent impression created by press statements where people read them broader than Reynolds intended them to be read as to whether or not it was technology that was part of the excitement and reason to enter this as to the value and that -- that what you ultimately clarify and says, well, that is not the underlying factor.

So, the materiality is a little bit different. It's not materiality as to whether the two who are part of the transactions. Materiality is to the mindsight of the people that were voting on the transaction.

And so, I don't -- I fully recognize that the defendants take issue with -- with the concept the technology agreement was a material factor. That's not what I have to look at.

MR. DUNCAN: No. We agree with that, Your Honor. Our focus is from the focus of the shareholders, our

client.

THE COURT: Nor do I need to find and nor would I find that -- that Reynolds intentionally intended to mislead with those press statements. I think it was in the context of an overall enthusiasm and comments that -- that took on a meaning much --

MR. DUNCAN: So, if I could close out this point by picking up something Your Honor said. So, I don't think I need to make Your Honor live through this -- these discussions, these developments. And so, I don't know that I need to make --

THE COURT: And I don't think we have to get every one of those findings into the record as a part of my opinion to protect you should we go to the appellate court. The record is what it is.

MR. DUNCAN: And I think the record is very complete on the factual background on that.

But I do want to pick up on one comment that Your Honor made, and this goes to the adversarial process and how fully litigated it was. Your Honor will recall well, I know, that we wanted discovery on this and we wanted more discovery than Your Honor was willing to give us and we, of course, honored the court's ruling.

THE COURT: I don't think -- I don't think I could suggest that there's any lawyer in this room that's agreed

with everything I've done in this case.

MR. DUNCAN: That probably would not have been possible. But I -- I do want to point out that we very vigorously advocated for more discovery on those points. And Your Honor recognizes and knows that. And we would have liked to have gotten more discovery on the case.

On the other hand, the court made rulings and you've already explained the basis of those rulings. And so we did what professional lawyers do. We work within the court's ruling.

And I believe we still, even working within the court's rulings, which were not as broad as we would have liked on that, I still think we very clearly went out and we pointed out from the shareholders' perspective there was a real problem with respect to the -- that information on the technology-sharing agreement.

The third and last point has to do with the menthol disclosures, and those disclosures were not as lengthy as other disclosures were. And I think they still had a key point, however, because BAT had, through the use of their veto power, had it so that there could not be any backing out of the transaction by Reynolds.

So, if, for example, before the closing date on June 12 there had been some further regulation of menthol, for example, allow menthol cigarettes not to go forward,

shareholders were bound into that transaction, you know, at that point.

And so, if he makes it, it's very relevant points, since it went from 1.4 billion to 5.4 billion projected sales on the menthol side of -- that's a $4 billion annual issue.

So, it's not an insignificant part of the agreement. It was important that there be a further development of that.

THE COURT: Now, I guess -- I guess the -- the question the court has to weigh in on it is -- is in terms of that disclosure the potential that something could have happened before the closing that didn't happen is that material the shareholders clearly could have taken in consideration had that occurred.

So, I -- I recognize your argument and it goes into the mix of things, but it's not one that I think is the strength --

MR. DUNCAN: And I -- I understand that, Your Honor. And I'll just say two last things about it.

One of them -- one of the two things that I would say is that the company itself said Ms. Cameron was quoted as saying that the company is confident that the review of the menthol category underway at the FDA will result in reasonable science-based regulatory decisions. And whether

or not there was any countervailing view on that was important to put out to the shareholders, number one.

And, number two, in lieu of the proxy statement, it appears pretty clear that the other or outside directors had real issues about this concern and whether or not what the information was with respect to the outside directors then becomes a greater significance in these cases. They are alleged independent directors in connection with this.

So, those are the last two points that I would --

THE COURT: Let -- let me -- let me back up just because I want the record to be clear and -- and no more -- and I'm going back to the technology issue.

I am not making a finding that anyone was misled by a press statement. And that was not what I said; and if that's what I said, I didn't -- that's not what I meant to say.

What I said was when I looked into the question I've got two people knocking -- fighting with each other as to what's material or not. I will look at it from the standpoint of was Reynolds exposed to the possibility that you in an adversary evidentiary proceeding would be able to demonstrate that someone -- all I look at is -- is in terms of the legitimacy of whether there was a real fight and whether it was really being advocated or not.

So, to the extent that you're suggesting that I

said that someone misled, I didn't say that. I said there was enough that I found in terms of the press situation to believe that there was a claim that you were aggressively pursuing that would be as a litigant on the defendants' side looking at an adversary and a claim to be resolved. That's -- that's what I was saying there. And I certainly do not want to be heard to say anybody was ever misled at all.

I am comfortable, I believe, that even if you came forward on that and proved that, that -- that I did not see evidence that was very suggestive of me that there was any intent on Reynolds' part to lead someone to that.

MR. DUNCAN: Again, Your Honor, in accordance with our argument in the case, it's not our -- and I did not mean to -- I don't think --

THE COURT: No, no, no. I'm -- I'm more concerned about -- I'm more concerned about what someone would make more out of my statement than needed to, and I'm being very careful.

MR. DUNCAN: Understandably.

Again, we're advocating on that from the shareholders standpoint in terms of misunderstanding. I think that's the point --

THE COURT: I need -- I -- one of the things I have to look at as the court is whether there's a settlement that

was a genuine dispute that was litigated over what is included in the settlement and release, and I am finding that there was a serious dispute over it.

MR. DUNCAN: Yes, Your Honor.

So -- and the last thing on menthol is in -- in counterposition to Ms. Cameron's statement that -- that the FDA action will result in reasonable science-based regulatory decisions, the supplemental disclosure is not nearly so certain. It says -- the quote from that is not possible to predict whether or when the FDA will take any regulatory action with respect to menthol.

So, it placed it in a better context, and that's all I needed to say about that issue, which Your Honor is well familiar with.

So, then we move to the get. That's the give. What -- what is the get in this case?

And so this is a very narrow release in compared to disclosure claims that have come before this court typically and certainly before many courts that are cited in this case relating to Delaware decisions.

So, it reaches only claims that, one, are against Reynolds or the director defendants. There's no release about BAT in here at all. It's just Reynolds or the director defendants.

Two, it reaches only claims that are based on

disclosures, duty to disclose about this transaction.

Three, it arises from class members' status as Reynolds shareholders, which we've discussed in some detail -- already.

And then, four, currently existed or previously existed at the time of settlement.

And this is by far the narrowest release in any of the disclosure-based settlements that we have seen that's come before this court based on our review of the published decisions of the business court decisions.

Snyder's objection in Griffith's affidavit raised different issues with this release. What's notable about it, however, is they haven't identified any actual, existing, or valuable claim that is being extinguished. They're not asking to take over the case or to carve it out some claim that they want to litigate themselves.

They complain about unwinding or rescinding the transaction that we, quote, gave away as part of the release. The -- the fact that the transaction could go forward with respect to the disclosure claims, we preserve the right to pursue the fairness claims.

So, with respect to that we've showed in -- in response to that objection that such a claim would have been illusory. As Your Honor expressed just a few moments ago, the courts are very, very, very -- probably add five more

verys -- reluctant to enter into the notion of unwinding or rescinding a transaction, particularly a $29 billion transaction. That's not where courts seek to go.

They particularly don't seek to go there if, in fact, there is a financial remedy that would still be available. We recognize the case law and took the position that knowing BAT has -- is a $70 billion company with several billion dollars in cash on its transaction sheets, that this is a transaction where, if we are successful, we can recover either from BAT and/or Reynolds. And they have a sufficient equity position and insurance.

In addition to that, there's some insurance that covers these claims, that it was the appropriate thing to do. And we were not going to be successful in suggesting to a court that we can come back and unscramble this -- this whole transaction. The court's not going to want to get into that. And we have -- all of us have been at this long enough that I think we recognize both the practicalities of that, moreover we recognize the case law that applies to it.

So, in -- in response to that objection we would have those comments. We cited a number of cases along those lines to the court.

With respect to the federal securities claims, which were the ones that were raised for the first time in the Griffith affidavit, I'd like to stop and address those

as the court has suggested we should.

Griffith does not address the release of the claim to unwind that transaction instead focusing -- specifically instead focuses on the federal securities claims issues.

And the court has repeatedly approved settlements that release federal securities claims. This court has, and I'll use PokerTek as an example of that as a case where that was --

THE COURT: Yeah, let's blame it on Judge Bledsoe.

MR. DUNCAN: I thought that was very wise, but, of course, if we're in front of Judge Bledsoe we might pick another case.

But if Snyder has any federal securities claims related to disclosures, he has those claims in his capacity as a Lorillard shareholder, which is why it becomes important to note that those claims have been carved out; that is, the Lorillard claims are carved out. He still has those claims if he has such a claim.

The court raised the issue of standing on the telephone, and I think we've already discussed that. I think the key point here is if that Snyder has any true complaint with the folks who settled the claims in Delaware, he should go and object in Delaware with respect to that. This is not the proper place for Mr. Snyder to have his objections about that.

Anyone who bought into the stock after the MOU was on notice of the terms of the settlement. In addition, the MOU paragraph 3E(iv) or little four, release only for securities claims that were pre -- they "previously existed or currently existed." None existed and none have been identified since that time.

And one of the things, then, that you would move to is you'd have to show loss causation, even if there -- to -- to create a premise for a securities claim.

We have prepared a diagram that I think the court would find helpful. But, first of all, there's been no announcement made by Reynolds that would serve as or otherwise disclose through some other form that otherwise would indicate that there has been an adverse or failure to disclose something that would cause or affect the stock status.

And so if I could approach --

THE COURT: You may.

MR. DUNCAN: -- Your Honor?

THE COURT: Ms. Klein may want one as well.

MR. DUNCAN: I will.

THE COURT: Thank you.

MR. DUNCAN: From the time the MOU's signed, and we have adjusted this, by the way, for the split that took place after the merger. So, that's reflected in the -- in

the prices that are used.

But, as you can see, from the time the MOU was signed, there were, generally speaking, increases with normal kinds of market fluctuations. At the time the transaction was closed, there had been ongoing increases through the time that the stipulation was signed.

There's not been an adverse event to cause a loss or a resulting loss that would bring about the underlying -- one of the essential elements of the securities claim. It doesn't exist as you look at the stock direction as it's been during these critical time periods.

There's no corrective disclosure that's occurred of which we are aware and there's no concomitant drop in stock. So, that makes it clear there wasn't a current claim pending nor was there previously existing a claim.

Now, one of the cases cited by Mr. Griffith in his affidavit was the Wilmington Trust case. He cites that in Footnote 1 of his affidavit for the proposition that federal securities claims can never be released. It was pending federal securities litigation in federal court in that case.

So, first of all, we don't agree with the proposition that the federal securities claims can never be released. But, in any event, the case he cited to, if you look at transcript at 26, it referenced federal securities

claims are now pending in the District of Delaware.

So, in fact, there were pending securities claims in that case. It's a very different situation than this case, which there are no such pending claims. And if there were, I'm sure Reynolds' counsel would quickly correct the record, but we're not aware of any and that's because, you know, we've looked and there are none to our knowledge.

So, the release in Wilmington Trust expressly included claims coming into existence in the future. And so, that's -- it had to be adjusted appropriately. Well, that's already in the language of our MOU in paragraph 3E.

So, the allegations about somehow there's a release of securities claims that somehow is no -- is acting adverse to the position of the shareholders is not borne out by the record in this case, either by the activity of the stock or by the language or quality of the release. Both of those do not take away a claim that might come to exist but doesn't exist during the relevant time periods.

Finally, in this area does the claim break down the adversary process?

And I'm just going to cut through that by saying the court has observed the level of advocacy in the nature of the adversary process here. And I'm satisfied the court can come to its own conclusion with respect to whether or not there has been a fully -- fully adversary process that's

taken place.

Have great respect for other counsel in this case. I believe that's mutual, and I think all of us would say we negotiated every last comma of anything that was agreed to with respect to this disclosure. And there probably was frustration on both sides periodically with respect to any of that. It was extremely -- it's been a pleasure to work with lawyers in this case because they're so good and they're so professional.

THE COURT: Some -- some of whom are in the courtroom and some of whom are not.

MR. DUNCAN: Yes.

THE COURT: Very significant national counsel who are not here today but don't need to be here, but the court is quite impressed with the advocates here on behalf of all parties.

MR. DUNCAN: And -- and the hard work that was done on the benefit -- for the benefit of their clients. And so I will leave it at that, Your Honor.

THE COURT: As I'm impressed with the speed and adequacy of the -- the speed with which the Objector has been able to come in notwithstanding the time period. So, the advocacy across the board is --

MR. DUNCAN: Yes, Your Honor. Thank you.

So, that leads us into the last area of the fee

request.

THE COURT: And you can make as much argument as you want, I'm not going to cut you short, but I am fully -- I've read the affidavits. I've read the supplements to the affidavits.

I'm aware of the fact that the amount that was -- went out in the notices is now almost 50 percent more than -- doubled what is being asked for at this point in time. Further reflective, the advocacy has gone on in terms of the fees.

And so make as much of a presentation as you want to, but you don't -- you don't -- you probably don't need to say very much to get the court --

MR. DUNCAN: Thank you, Your Honor, and I was not intending to say very much. Because what I heard the Objector to say, he's not really objecting specifically to target the amount of the fee requested. They're suggesting there should be no fee at all, it's been their request.

And so there's not much we can respond to in that, other than to say from Ehrenhaus and a litany of other decisions it is, in fact, the law in North Carolina that such fees --

THE COURT: And this is, again, where I think that there is a distinction, you know, the various factors that they have to look at in North Carolina. And this, of

course, is governed by North Carolina law, not Delaware law.

But among those factors I have to look at is the -- is the question of whether it was contingent or not, but -- which is basically looking at the risk factor to the plaintiff's counsel taking on the matter. And that deals with, you know, what is the fair rate, the amount, et cetera. And that's where I do think there is a difference in terms of the risk in North Carolina than there is in Delaware because of our rejection of the common benefit doctrine so that was the purpose of my making that comment earlier.

MR. DUNCAN: Thank you, Your Honor.

The agreed-upon fee and expense request, we believe, is very conservative and certainly fair and we intend it to be.

THE COURT: What, based on the reduced-down amount that the defendants have agreed not to contest and you've now not gone beyond that amount in your request, what is the implied hourly rate?

MR. DUNCAN: $325.04 per hour.

THE COURT: And I'll certainly make a finding for litigation of this type that's well within the -- the range of hourly rates that would be without needing to be adjusted for the -- for the contingency of the matter.

MR. DUNCAN: Thank you, Your Honor. And I'll say no further on that.

And I could cite for you the factors under -- under Rule 1.5. We've done that in the brief. I don't want to be repetitious.

THE COURT: I don't think so and I -- and I think I'll -- I'm going to ask but -- are the defendants and the plaintiff as well satisfied that the findings reflected in the proposed order -- revised proposed order that Mr. Russell filed yesterday, do you believe those to be adequate to satisfy the appellate requirement for the record?

I believe them to be.

MR. DUNCAN: We believe so, Your Honor.

So, thus, at this point we would ask the court to certify a class pursuant to the -- a class settlement, rather, pursuant to the notice that went out to give final approval of this partial settlement of the disclosure claims part of the case and to approve an award of attorneys' fees as the court deems to be appropriate.

Thank you, Your Honor.

THE COURT: Thank you.

But -- but going -- go ahead. You may be seated.

Before going any further to -- to go around, I should have asked earlier and I did not, is there any

objector in the courtroom other than Mr. Griffith -- than Mr. Snyder who's represented by Ms. Klein?

Okay. Do any of the defendants wish to be heard?

MR. DAVIS: Yes, Your Honor.

Ron Davis. I won't have a lot to say, but I -- I would like to say a few things. We fully support the settlement and our -- our clients do, the certification of the class, the final court approval of the settlement dismissal with prejudice of the disclosure claims.

And, as the court knows, we have entered into a stipulation where we agreed not to oppose the fee award that's roughly $380,000 --

THE COURT: Reduced from 770,000.

MR. DAVIS: -- reduced further from $842,000, which was sent out in the notice and the $35,000 in expenses.

So, with regard to those three points, we're all in accord just for the record.

I will say that the way the conversation has gone today, I will say -- I would like to point out a few aspects on the disclosure discussion.

Our clients entered into the settlement to mitigate the considerable expense and uncertainty associated with the litigation and also to achieve closing certainty and to secure the release. Those were the motivating factors.

Now, with regard to the disclosures, we think we

wrote a darn good prospectus and presumed that the plaintiff's read I suspect, all 400-something pages to try to come up with the best disclosure claims that they could come up with, we believe those claims were meritless and we advocated that with the court.

Now, I recognize the court did make a ruling in the discovery phase that potentially it could have been -- the technology-sharing agreement could have been factored into --

THE COURT: And -- and I think I pointed out to you today, Mr. Davis, that I was measured more by what was said out in the press, out in the environment than what was in the disclosure. I don't think you've heard me say and take much issue with -- with a strong position that the prospectus itself was deficient. What it was really measured by was what the -- the reaction was, Mr. Davis.

MR. DAVIS: Right. I understood, Your Honor, and I appreciate that distinction.

And we -- we -- we -- so if the -- if the disclosures might be a little bit thin, I would say that's because the claims were thin from our perspective and -- but nevertheless, though, the business realities of getting the deal closed --

THE COURT: And there is a certain reality of the facts that the -- the -- the equation that results of the

numerator of 380,000 and the denominator 29 billion is a relatively small fraction.

MR. DAVIS: I would say that was a major factor in the evaluation from our clients' perspective.

So, I do -- I would agree that the issue of the technology-sharing agreement was extensively and very adversarially fought.

We pointed out different earnings call statements, we pointed out the language agreement in principle to pursue that's not an agreement, and understand and appreciate the court's view in that -- on those discussions, but -- which were ultimately resolved by the Adams affidavit.

But we just -- from our perspective, if the disclosures are thin, well, that's because the claims were thin.

The -- with regard to the issue that the court was asking the plaintiff's counsel about on the court finding that the June 12th date, whether it was before the June 12th date, I'm not sure based on my understanding that the court can sort of rewrite the agreement of the parties --

THE COURT: I cannot.

MR. DAVIS: Okay. That's my understanding.

THE COURT: I cannot. That's the reason I asked you, Did you want to insulate any questions about the adequacy and the objections? I was giving you the

opportunity if you wanted to to modify the release and not decide a settlement, but -- but I certainly don't have the authority to.

MR. DAVIS: With all due respect --

THE COURT: I understand.

MR. DAVIS: -- and the court obviously can approve things and suggest things to counsel and parties, but that's my understanding.

THE COURT: No, I -- I do not -- I do not suggest at all that I have the authority to.

MR. DAVIS: And we also grappled with the concept of how a Lorillard shareholder who became a Reynolds shareholder could have a disclosure claim ex post facto six months earlier when they couldn't vote. That's conceptually hard to get your head around but --

THE COURT: No. I think in that regard to the extent that -- that -- I really don't think that the -- the Lorillard shareholder is giving up much in terms of the disclosure claim when they didn't have the right to vote is the question that you have to work your way through.

Is there some securities claim that they might have that's not dependent on the disclosure claims so that the release is going broader than -- than -- than the claim asserted?

But -- but -- but I understand why Reynolds would

take the position that if you were going under any settlement agreement, we would have the -- as broad as it is. I understand.

MR. DAVIS: Exactly, Your Honor. I think that's about all I have to say regarding it.

Thank you very much for your time.

THE COURT: Yes, sir, Mr. Nebrig?

MR. NEBRIG: Thank you, Judge.

Again, Mark Nebrig for the other directors. And -- and, again, I will not unless the court invites me to build a further record than Mr. Davis has with regard to my clients' opinions of the disclosure claims as they were made. I think our papers were clear on the preliminary injunction. And, again, to the extent that the courts need anymore record built today, I'm happy to discuss any of those --

THE COURT: Only -- only to the extent I -- it would be my view that if you get to the situation where you're before the appellate court and you want to present all of this, that the positions that have been advocated up to this point in time would be already a part of the record. If there's a concern issue that you need to do it for appellate purposes, then I'll entertain you saying anything more than that.

But I believe looking at the proposed order and

then maybe a paragraph I need to add in there about what we're going to do as far as the -- the objection and response to it, but unless y'all have a concern about the adequacy of the records certainly from the individual court's perspective, I believe the record is -- is crystal clear as to what I need to have to balance with what the competing interests are here.

And I'm fully satisfied that -- that -- that much of this was in the context of a -- a fully, wide-open litigated adversarial process.

MR. NEBRIG: Thank you, Your Honor.

I guess two very small points, again, I believe just since we are here and according to --

THE COURT: And let me answer this, Mr. Nebrig, is -- I don't know, and I'm going to ask the parties something at the conclusion of all this, but -- but I really don't think -- again, this is where you get into the consideration of how hard fought the claims were and -- and you get into the equation of the numerator, denominator, amount of fees in this transaction and going back to Trulia.

Even if I approve this settlement as being fair, reasonable and approve the fees as requested, I do not -- I would not take this as an open invitation to the -- to the bar around the country to say, Well, you go -- you need to

go down there in North Carolina, it's so easy to get rich down there.

Frankly, litigating the case against the quality of the advocacy on the defense side of this table in -- in hope of a return for something less than $350 an hour is not an equation I expect many people would be interested in.

MR. NEBRIG: Well, Judge, I appreciate you saying that in court and I appreciate that being on the record for anybody to read this transcript.

THE COURT: Well, I mean, I'm only doing that because everybody says, Okay, this is going to be so important because it's the first case considered after Trulia, national importance, et cetera, like this is -- is -- is that -- to the extent anybody thinks that if I approve this, that it's -- it's an invitation that -- that Delaware is so much harder than North Carolina, I -- this court is pretty strict on these things.

MR. NEBRIG: The only thing other, Judge, is as a clarification, I think it's been clear in the papers and it would be clear probably in a proposed order is that the -- the certification of the class is for settlement purposes only --

THE COURT: Sure.

MR. NEBRIG: -- and that all the defendants have preserved their rights to the extent necessary to fight any

class certification issue going forward particularly with regard to the fairness claims.

THE COURT: I understand. This is -- this is a -- a -- solely for purposes of the claims -- and I looked at that this morning and satisfied myself and to get to the point that -- that Mr. Duncan and his team are able to reverse my position on the -- on the fairness; and if you come back, it's a wide-open issue as to whether the class is going to get certified --

All right. Anyone else want to speak before the Objector?

MR. DAVIS: Your Honor, I'd just like to also echo Mr. Nebrig's appreciation for the court saying that --

THE COURT: Well -- and I think from the plaintiff's perspective, I think it's not just you. I want to -- to the extent everybody is looking at what it means is if I approve the settlement, it's because I'm satisfied in this particular case with these particular facts there's a fair balance between the consideration received and -- and the release being given. And it is done so under strict scrutiny standard, not under some rubber stamp standard.

That's all I want to be understood is the -- is the plaintiffs have done their work, the defense has done their work, and I believe the court's done its work.

Ms. Klein?

MS. KLEIN: Thank you, Your Honor.

I am actually probably going to be equally as brief as both Mr. Davis and Mr. Nebrig.

At this point, Your Honor, you have made it clear, especially in your introduction, that you have considered the affidavit of Professor Griffith and truly at this point that is what Mr. Snyder is seeking, is that the conclusions, the analysis that Professor Griffith provided is taken into account when this court is deciding whether or not to certify the settlement.

THE COURT: All right.

MS. KLEIN: That's all.

THE COURT: And in that regard I have taken into consideration what Mr. Griffith -- Professor Griffith had pointed out. And -- and -- and the court doesn't mind expressing the fact that it -- it remains open and is not in the least bit intolerant of -- of objections to class -- that's what the class action procedure is all about. That's what notice is designed to do.

I do think it relevant that the number of inquiries were made had resulted in one objection. And -- and I do think I recognize and, frankly, I don't know that I disagree with Professor Griffith's motion that on a go-forward basis disclosure settlements need to be looked at more strictly than perhaps they have been by some courts in the past. I

don't have a dissent from that to get where I need to go.

I'm not so sure how strongly my disagreement is with him in terms of -- nor the defendants necessarily agree with Professor Griffith in terms of how strong were the disclosures going forward, et cetera.

I do disagree, I think, with Mr. Griffith's effort to say and to minimize the significance of the technology initiative and the understanding is as far as the marketplace is concerned.

So, since there has been no further suggestion that I should hold these matters open to receive additional materials, and I -- again, even though I realize there was some personal inconvenience to Mr. Snyder because of his plans and -- and Mr. Rossabi who came in on short notice that I could not accommodate all the persons' schedules, but in light of the notice had gone to 250,000 people today, et cetera, I felt like we should go ahead and proceed.

I've not heard anything said today that suggests to me that the record needs to be held open, and I am going to find that the settlement as written is fair and reasonable and that the settlement class should be certified, and that I've got the proposed order.

And, Mr. Russell, I will invite you to -- you left open one paragraph as to what you might say in regard to the objection. And just for shared workload, if you don't mind,

I'm going to leave with you the proposed subsequent paragraph consistent with what we talked about today.

Can I see counsel at the bench for a moment?

(Thereupon, off-the-record bench conference from 11:24 a.m. to 11:25 a.m.)

THE COURT: And -- and that I'm approving the requested fees as being appropriate under all the factors of Rule 1.5 and the decision to make.

Before we -- before we close the -- before we close the matters down, I believe all counsel -- Ms. Klein, have you been able to -- to observe on the court file the proposed order that was submitted as well? It's --

MS. KLEIN: I have not, Your Honor.

THE COURT: It's -- it's been there for you to review.

You just haven't had a chance to read it?

MS. KLEIN: Yes, sir.

THE COURT: All right. But -- but the -- let me ask from the defendants' perspective, is there -- I recognize fully that -- that you disagree with some of the assertions that the plaintiffs have made, but as to the form of the order itself do -- do you have any suggestions?

MR. DAVIS: No, Your Honor. We -- we do not object to -- we don't think there's anything factually erroneous in the -- in the order, proposed order. Obviously there are

things, the advocacy and some of the contents of it we don't agree with --

THE COURT: Right.

MR. DAVIS: -- but we certainly understand how the court could enter it in -- consistent with the court's determination that the settlement is intrinsically fair and reasonable.

THE COURT: Right.

And -- and I think I've made it clear during the hearing this morning that I don't believe the court needs to make a finding as to whether or not the disclosures were totally deficient in the first instance, whether the claims would have been meritorious, but I needed to find out whether or not there was a fair fight going on and -- and that there was a non-collusive settlement and that all things considered given the advocacy on both sides of the table, the give and the get, that they're appropriate. The bare result of this was a settlement that closes the matter in the form provided by the memorandum of understanding. That's the extent of the court's matter.

And so -- and I don't believe my signing the order in the form that's proposed to me makes me find anything more than that.

MR. DUNCAN: We agree with that, Your Honor.

THE COURT: I mean, I haven't ruled in plaintiff's

favor, I haven't ruled adverse -- in the defendants' favor. I think I've ruled that there's a controversy --

MR. DUNCAN: We obviously disagree with the characterization of the disclosures being thin, but that probably goes to illustrate the adversarial nature of the case which will probably continue into infinity, but we -- we -- we don't disagree with that.

THE COURT: The only one thing I suspect that I can always get us to agree on is that all of us as litigants in court wishes that we personally were thinner.

All right. Anything more to bring to the court's attention this morning?

All right. Then, the court will be adjourned.

(Thereupon, the proceedings concluded at 11:30 a.m.)

CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing amended transcript of proceedings taken at the February 12, 2015 Session of Guilford County Greensboro Business Court is a true and accurate transcript of the proceedings as reported by me and transcribed by me or under my supervision.

I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This 28th day of February, 2016.

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