IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SHEET METAL WORKERS LOCAL NO. 33 CLEVELAND DISTRICT PENSION PLAN, On Behalf of Itself and All Others Similarly Situated,	:	
Plaintiff,	:	
v	:	Civil Action No. 9999-CB
URS CORPORATION, JANA PARTNERS LLC, BANK OF AMERICA CORPORATION, MERRILL, LYNCH,PIERCE, FENNER & SMITH, INC., DIANE C. CREEL, MICKEY P. FORET, WILLIAM H. FRIST, M.D., LYDIA H. KENNARD, MARTIN M. KOFFEL, TIMOTHY R. McLEVISH, JOSEPH W. RALSTON, JOHN D. ROACH, WILLIAM H. SCHUMANN, III, DAVID N. SIEGEL, DOUGLAS W. STOTLAR, V. PAUL UNRUH, AECOM TECHNOLOGY CORPORATION, ACM MOUNTAIN I, LLC, and ACM MOUNTAIN II, LLC,	:	
Defendants.	:	

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Chancery Courtroom No. 12A
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Thursday, August 28, 2014
11:05 a.m.

- - -

BEFORE: HON. ANDRE G. BOUCHARD, Chancellor.

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ORAL ARGUMENT ON PLAINTIFF'S MOTION TO EXPEDITE and RULINGS OF THE COURT

APPEARANCES:

CRAIG J. SPRINGER, ESQ.
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-and-
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DAVID J. TEKLITS, ESQ.
BRENDAN W. SULLIVAN, ESQ.
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for Defendant JANA Partners LLC

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THE COURT: Good morning, Counsel.

ALL COUNSEL: Good morning, Your Honor.

MR. SPRINGER: Good morning, Your Honor. Craig Springer of Andrews & Springer. I think it might be helpful to the Court that we maybe start off with some introductions.

THE COURT: Sure.

MR. SPRINGER: Prosecuting the case with us from Scott & Scott we have Judy Scolnick, from the Scott & Scott law firm.

THE COURT: Okay.

MR. SPRINGER: I'll briefly cede the podium to defense. They have a little more introductions than we are.

THE COURT: Are you arguing today, Mr. Springer?

MR. SPRINGER: I am, Your Honor.

THE COURT: Good morning, Mr. Moritz.

MR. MORITZ: Good morning, Your Honor. Garrett Moritz from Seitz Ross on behalf of the URS defendants. I'm joined by my colleagues C.J. Seitz --

THE COURT: Good morning.

MR. MORITZ: -- and Nick Mozal.

THE COURT: Good morning as well.

MR. MORITZ: And also, from Wachtell Lipton, Andrew Cheung.

THE COURT: Welcome.

Good morning, Mr. Seaman. How are you today?

MR. SEAMAN: Very nice to be here, Your Honor. Good morning. John Seaman, Abrams & Bayliss. We represent Bank of America Merrill Lynch. We're new to the party. I'm here with my colleague Larry Portnoy from Davis Polk.

MR. PORTNOY: Good morning, Your Honor.

THE COURT: Good morning.

Mr. DiCamillo, I know you. Is there anybody you're introducing, or you're good?

MR. DiCAMILLO: I have nobody. Well, Mr. Teklits.

MR. TEKLITS: Good morning, Your Honor.

THE COURT: No need to introduce Mr. Teklits. All right. Very good.

Mr. Springer, your motion.

MR. SPRINGER: Yes, Your Honor.

Before I begin, there is a minor housekeeping issue with regard to consolidation of the cases. I'm happy to address it now. It might be more helpful that we address it --

THE COURT: What would we be consolidating?

MR. SPRINGER: Well, if Your Honor wants to entertain it now, as you know, there is a separate group of plaintiffs that had moved for a motion to expedite before in this case.

THE COURT: I'm well aware of that.

MR. SPRINGER: And now we're at the point where they had submitted a letter to the Court informing Your Honor that they do not oppose our prosecution. They're not going to impede on our prosecution of the case, but that they were going to proceed on a mootness claim with respect to the anti-waiver provisions.

We reached out to -- and I'm just going to group them all together, because -- the Labaton Sucharow firm was leading that charge, and bases on representations from them, they were going to not stipulate to consolidation until defendants included or filed an amended registration statement

with some language acknowledging the mootness. To my knowledge that is still the case. We -- my partner, Peter Andrews, spoke with defense counsel. I'm not really sure where to proceed from there.

THE COURT: Let me ask you, are you aware that they filed last night or this morning a motion for voluntary dismissal of those six cases?

MR. SPRINGER: I am not, Your Honor.

THE COURT: I don't think you need to worry about those cases, because I'm going to enter that order. It reserves on a fee issue, and I think you're standing alone.

MR. SPRINGER: Okay.

Your Honor, we're here this morning on a motion to expedite. And it's really a type of case that we're going to start seeing more and more here in Delaware, and it's a case that we're seeing more and more in the capital markets. And that is a case that's being driven by an event-driven arbitrage activist investor that is using leverage to create a quick profit spread, taking that profit at the expense of abandoning other long-term alternatives that would create more value for shareholders.

Now, Your Honor, the standard by which

you're going to be ruling on our motion to dismiss, we're fully aware, is the colorable claim analysis. And as mentioned in our brief -- and as well as page 13 of defendants' opposition -- they admit that it's a low standard. But given our amended complaint and given our motion to expedite, we believe that we've satisfied that standard here today, Your Honor. And, really, we're here today to determine that there's material information here, Your Honor, that shareholders need to cast an informed vote on this deal.

THE COURT: So do you view the strength of your complaint to be based on the disclosure issues?

MR. SPRINGER: Well, there's really a two-pronged approach to that, Your Honor. Right now we're at the motion to expedite stage. So right now we're concerned about, really, three categories of information that pertain to disclosure. And then we have an underlying Revlon claim that will be addressed and litigated at another time.

THE COURT: Right. I'm just asking you, given what you had just said, whether you're reviewing the strength of your complaint to be the

disclosure claims or the Revlon claims or --

MR. SPRINGER: I would argue that both, Your Honor.

THE COURT: Okay.

MR. SPRINGER: And we're going to get into that today. Now, Your Honor, by way of a quick procedural summary, as Your Honor knows, on August 5 you denied a motion to expedite without prejudice. And I say a motion to expedite because my firm, as well as the Scott & Scott firm -- that was filed before we came into the case, and I was not at the argument at that particular motion.

THE COURT: Didn't somebody, though, representing this case participate in the phone call?

MR. SPRINGER: We were on the phone call on the ruling, but we did not participate in the argument, which was on the 1st.

THE COURT: All right. Did you join that motion?

MR. SPRINGER: And now, based on my review of --

THE COURT: Excuse me, Mr. Springer. Did you join that motion?

MR. SPRINGER: We did not join that

motion, Your Honor.

THE COURT: Okay. Thank you.

MR. SPRINGER: And based on my review of the transcript from the argument on August 1, the primary argument in that case was really the anti-waiver provisions. We're here today on a completely different set of issues.

Now, Your Honor, we reviewed Your Honor's ruling, we were there on the phone when Your Honor made its ruling on the motion to expedite, and we took your ruling very seriously, Your Honor. Around that time defendants filed a 375-page registration statement. My firm, along with the Scott & Scott firm, reviewed that registration statement. We thoroughly analyzed and reviewed it. And on the 21st of August, Your Honor, we filed a 79-page complaint. Filed concurrently with that amended complaint we filed a motion to expedite, which brings us here today.

Now, Your Honor, with respect to our motion to expedite, we'd like to think that we didn't take a shotgun approach to what we're seeking discovery on. Our motion to expedite really sets forth three groups or three categories of information

that we're seeking discovery on, Your Honor. The first group is JANA's incentives or motives in the URS sale.

THE COURT: Do you allege that URS or its board actually knew what those purported motives were?

MR. SPRINGER: Well, we allege, Your Honor, that -- my answer, I guess, my direct answer to that question is we don't -- we don't know. And I say that, Your Honor, because --

THE COURT: That would mean you don't allege that they did know. If you don't know, you don't allege that they did know; right?

MR. SPRINGER: Well, Your Honor, it's the pink elephant in the room that we think they can't avoid addressing in terms of -- "they," I mean the board. JANA was an aggressive arbitrage event-driven hedge fund that came in and really threatened the board to initiate a proxy fight. And this is -- this is a very successful business model that JANA partakes in. They come in, they acquire a block of shares around the -- right around the 10 percent threshold -- sometimes it's more, sometimes it's less -- and then they use that ownership to commence an activist

campaign to trigger an event, a corporate event. And that event creates an artificial spread, and they then take advantage of that spread, completely ignorant to any other possible alternatives that could maximize -- further maximize value for shareholders.

Now, Your Honor, what are those corporate events? Replacing management, replacing a director, a group of directors, forcing a sale or a divestiture of assets. It's a number of different things. But whenever they do this, Your Honor, they don't do this nicely. They come in and they say, well, if you don't do this, we're going to initiate a proxy fight. And that threat, Your Honor, creates a lot of conflict.

THE COURT: Let me ask this question, if I could.

MR. SPRINGER: Sure.

THE COURT: You're on your first disclosure claim, as I understand it.

MR. SPRINGER: Yeah.

THE COURT: Tell me the case, or the legal authority that requires a board to disclose information that it doesn't possess.

MR. SPRINGER: Well, Your Honor, we

don't know if the board possesses that --

THE COURT: I'm not asking you a factual question. I'm asking you for legal authority on an assumption.

MR. SPRINGER: Well, Your Honor, if it's assumed that the board doesn't have the information -- you have four directors that were appointed by -- by JANA. And so if the board doesn't have it, JANA would have that information. It's why they're a defendant in the case.

THE COURT: Okay. So what obligation does the board have to make inquiry of a minority stockholder concerning its motivations for Delaware law purposes to make a disclosure in connection with the proposed merger?

MR. SPRINGER: Your Honor, I'm not aware of any current authority that says you have to, and I'm not aware of any authority that says you don't have to. Because this is a pretty unique situation. I understand Chief Justice Strine's article is not binding authority on this Court, but it's pretty instructive and descriptive in terms of the conflict that's created here and the need for certain types of information, especially when it comes with respect to

this category.

THE COURT: Do you agree or disagree with the defendants' point that what the Chief Justice was advocating there was more robust disclosure as a federal matter in the 13D context?

MR. SPRINGER: I completely disagree, Your Honor. If you read the overall gist of the article, it's not for more disclosure of -- under federal securities laws. There are different points in that essay and article where he advocates for that position, but the overall view and premise of that article is for identifying this -- this same exact conflict that we have here and then advocating for more disclosure in general as a result --

THE COURT: As a matter of Delaware law?

MR. SPRINGER: Not necessarily under Delaware law, Your Honor. I think it's a little bit more broader than that.

THE COURT: Okay.

MR. SPRINGER: And it's because of this conflict that we believe shareholders are entitled to know certain types of information.

Now, with respect to this category,

Your Honor, information regarding JANA's investment positions, URS to AECOM, JANA's election, whether we know -- are they going to take the mix or are they going to elect one or the other, discussions regarding JANA's maintaining of its investment in the company. Family Dollar, which is in front of Your Honor currently, Carl Icahn in that particular case, certainly after the deal was announced, dumped 3 percent of the stock.

We don't know what JANA is going to do here, but we believe shareholders are entitled to know, if JANA is just going to come in and dump a portion or all of its stock shortly after the merger is announced, where is the -- where is the value in that for shareholders when we have -- in our complaint we go through several analysts had predicted and had stated that in 2013, and leading up to the announcement of the deal in 2014, that this deal -- I'm sorry, this company was worth in excess of $70 a share, if you decided to spin it off. And Bank of America, two days before the deal was announced, really more or less adopted these analyst positions when they said that a sale of the company, the entire company, was unlikely, and that the sale of -- or I

should say a spinoff sale was more likely.

Now, Your Honor, I think with respect to this category of information with respect to JANA, we need to keep in mind -- I know you said, you know, a minority investor. We need to keep in mind here that this isn't just an ordinary minority investor. I believe defendants, on page 2 of their opposition, Your Honor, they -- it's an interesting use of adjectives. They describe JANA as a "substantial minority investor." Well, Your Honor, if that's the case, then I'm very interested to see what the rationale was for relinquishing -- the board relinquishing so much control to this substantial minority investor. And I'll go through what they did. They gave them 33 -- for an investor that has less than a 10 percent stake in the company, they gave them a 33 percent say on the overall board, they gave them a 50 percent voting interest on the valuation committee, gave them a 50 percent interest in the CEO succession committee. They gave them the right to pick the financial advisor for the company. They ousted the CEO and --

THE COURT: Well, go back.

MR. SPRINGER: Sure.

THE COURT: The right to pick the financial advisor for the company?

MR. SPRINGER: Yes.

THE COURT: Tell me the provision that says that. Are you referring to --

MR. SPRINGER: The cooperation agreement, Your Honor.

THE COURT: Right. Doesn't that refer for valuation creation committee, though?

MR. SPRINGER: Well, Your Honor, the cooperation agreement says that it's really a joint, really, consent or agreement.

THE COURT: Okay. That's the provision that says -- I'm paraphrasing -- try to use Bank of America Merrill Lynch, but if you can't, find somebody else; right?

MR. SPRINGER: But there is -- I believe so, Your Honor. I don't have that, but there is a provision that's -- yes. I believe so. It is that provision. And then it goes on to say, or financial advisor -- and I'm paraphrasing, I'm sure defendants will correct me -- but they go on to say a financial advisor that is -- I don't think they used the words "to the liking," or I think some words -- or

to the consent of JANA and the board.

THE COURT: Right. And factually, they ended up using Citigroup and --

MR. SPRINGER: Correct.

THE COURT: -- actually, let me ask you a question. So I know there are two financial advisors on the scene, Citigroup and DBO. What is the record, in terms of were both financial advisors representing the company? Was one the committee's financial advisor? Could you just tell me what the facts are there.

MR. SPRINGER: Your Honor, I believe both advisors advised the board itself.

THE COURT: Okay.

MR. SPRINGER: Both -- both advisors were hired by the company. But like Your Honor pointed out, and like the cooperation agreement states, DBO Partners was an advisor that had been -- had a previous relationship with the company. I'm not so much aware of Citigroup's relationship with the company, but both were hired to provide --

THE COURT: All right.

MR. SPRINGER: -- a fairness opinion, financial analysis on the company.

THE COURT: Mr. Springer, just so I can like keep your points structured in my mind, I think you've been going down the road of your first disclosure argument.

MR. SPRINGER: Right.

THE COURT: Maybe you can move to your second. I think you have two more. So maybe you can move to your second and third.

MR. SPRINGER: Absolutely, Your Honor. The second point that we're looking at in terms of disclosure, Your Honor, is JANA's relationship with Bank of America. Now, I'll start with the general premise that I agree that typically in these cases the financial advisor of the acquiring company, that information's usually not fair game. But in this situation, Your Honor, we have a very --

THE COURT: JANA is not the acquiring company.

MR. SPRINGER: Bank of America -- AECOM. They were the financial advisor to AECOM.

THE COURT: Right. Understood. But what you're arguing here is there should be disclosure --

MR. SPRINGER: Right.

THE COURT: -- concerning the relationship between JANA and, right, the acquirer's financial advisor. Is there any authority where that's ever been required before?

MR. SPRINGER: I have not seen any, Your Honor. But again, as Your Honor knows, the motion to expedite hearings, they're very fact-driven and very fact-intensive. Each case is different. Each case has its own set of facts. And given the allegations here, Your Honor, we have Bank of America Merrill Lynch, where Barry Rosenstein, the founder of JANA, started his career. And we see that in the registration statement, on February 13, Bank of America and AECOM had some discussions about retention because AECOM had informed Bank of America that was interested in acquiring URS.

THE COURT: Right. So I have two questions.

MR. SPRINGER: Sure.

THE COURT: One, again, back to the question I asked you earlier in this context. Let me spit out the two questions and you can take them on.

MR. SPRINGER: Sure.

THE COURT: Question one is, again,

what do you plead factually as to whether or not URS or its board had any knowledge concerning the JANA/Bank of America relationship? Just factually what do you plead on that score? Go ahead and take that one first.

MR. SPRINGER: Sure. Your Honor, in terms of the facts as I understand your question to be, the facts as to what the board knew as to what JANA's relationship was going to be or what their motive was going to be, we plead, I think, a couple of different allegations to answer that question. The first is JANA approached the board, and they approached the board not -- in a manner that involved threatening a proxy fight. And we know that a month or so later they entered into a cooperation agreement because they didn't -- they didn't want to object to the demands of JANA.

I'm not necessarily sure, Your Honor, the exact point of your question. They knew that JANA was coming in and forcing its way in in terms of, well, if you don't sell the company we're going to issue a proxy fight. I'm not necessarily sure I understand fully, I guess, Your Honor's question.

THE COURT: Well, I mean, we're

getting back to the point before that let's assume for this question the general contours of Delaware disclosure law would be that you only disclose material information in your possession. So you have to meet the predicate. What can you demonstrate to me? You have pled factually that the board or URS, the entity, was aware of this past -- what factually were they aware of concerning this past relationship?

MR. SPRINGER: Okay. Your Honor, I think with respect to that, you have four directors that were appointed by JANA.

THE COURT: I got that point. We went down that road already in terms of making inquiry of them.

MR. SPRINGER: Okay.

THE COURT: But just what do you plead factually that they knew about that past relationship, if anything?

MR. SPRINGER: When -- we -- past relationship in terms of Bank of America's past relationship?

THE COURT: Bank of America and JANA.

MR. SPRINGER: Your Honor, I don't think -- I don't believe we've pled facts that the

board, including the direct -- the JANA directors, knew of Bank of America's prior relationship with JANA.

THE COURT: All right. I appreciate the candor.

MR. SPRINGER: Sure.

THE COURT: So let's put that issue to the side for a second. How would it be material, in any event, what the relationship was between JANA and a financial advisor, some past relationship between JANA and Bank of America, who ends up being the financial advisor for AECOM? How would that be material to stockholders of URS?

MR. SPRINGER: It's material to stockholders of URS, Your Honor, because on February 13th, we -- as I pointed out, AECOM and Bank of America, they had informed Bank of America that they were interested in acquiring URS. And then we see a month later Bank of America showing up as the preferred advisor on the cooperation agreement. It's -- it's strange, Your Honor, because had they known that, would they honestly have still been on the cooperation agreement? And we know that they -- they switched sides and went to and advised AECOM, and

they're providing their financing. But it's -- it's a red flag, Your Honor, that all of a sudden they're having discussions with AECOM. They --

THE COURT: About what?

MR. SPRINGER: About their retention and about AECOM's interest in acquiring URS. And a month later they appear on the cooperation agreement. It's -- it's bizarre, Your Honor. And then you take that and you combine it with the fact that two days before, Bank of America admits that, you know what? All these analysts that have been saying, from 2013 up to 2014, that a sale of the entire company was unlikely and that a spin-off sale was more likely, I think raises concerns for shareholders. I think that information would be material. So, really, the information here regarding close -- the close timing between those discussions and a month later the cooperation agreement, I think gives rise to a colorable claim with respect to that narrow -- that narrow issue.

Your Honor, the third -- I'll move on to the third category --

THE COURT: Yes.

MR. SPRINGER: -- of information,

which is URS's advisors, whether they considered a sum-of-the-parts analysis. And this is what we believe to be really important here, Your Honor, because defendants, in their opposition, state, "Well, we had discussions." And that's all the registration statement says. "We had discussions."

THE COURT: I'm sorry. Discussions about what?

MR. SPRINGER: Discussions about a spinoff sale and a sum of the parts. That's -- that's all we have right now. Do discussions -- does that necessarily mean -- are those reasonable steps to maximize shareholder value? I would argue that they're not.

THE COURT: Just so factually I know what you're referring to, what part of the proxy statement are you talking about that reflects these discussions?

MR. SPRINGER: Give me a minute, Your Honor. I'm going to cite --

THE COURT: Well, I'll ask the question even more specifically. Is it anything other than what's disclosed on pages 67 and 97 of the proxy statement?

MR. SPRINGER: I believe that's the correct citation, Your Honor. 67 and 97.

THE COURT: So what that disclosure reflects, right, is that the value creation committee did consider, and it explains the reasons it ruled out, both the spinoff and a sale of one or more divisions; right?

MR. SPRINGER: It says that they discussed it, Your Honor.

THE COURT: But let me just follow you here for a second.

MR. SPRINGER: Sure.

THE COURT: So I gather your point is we don't know what the financial advisors did. That's referencing a discussion by the committee and presumably by the board; right?

MR. SPRINGER: That's correct. And we also don't know did the board ask the financial advisors to conduct a sum-of-the-parts analysis? I mean, I'm not necessarily sure that a discussion just on its face is enough information. And it's material -- let's keep in mind the backdrop to this category, Your Honor, is we had, 2013 up to 2014, we had several analysts say that this company -- some

said it's worth $100. Some said it was -- a lot said it was going to be in excess of 70. If a spinoff were to occur -- and then, once again, we have Bank of America, two days before the deal was publicly announced, we have an analyst saying -- that adopts that approach.

So we think that given that information, more information regarding, as Your Honor pointed out, the financial advisors and, also, what did the board or the valuation committee actually do, other than discuss it? Did they ask -- did they go out and assertively ask the financial advisors to conduct a different analysis? I mean, if you look at page 69 of the registration statement, we have Company Y that approached the CEO, and they were interested in a spinoff. Registration says it right out, that they were interested in a spinoff.

The only information that we have, though, Your Honor, is that the CEO only wanted to pursue an entire sale of the company.

THE COURT: I have a different question for you on this issue, Mr. Springer, which is you don't know and you don't plead, as you stand here, whether or not the financial advisor did a sum of the

parts analysis; right?

MR. SPRINGER: We don't know, Your Honor, if they did or not.

THE COURT: Right.

MR. SPRINGER: And we believe that information is material.

THE COURT: Let's assume they didn't.

MR. SPRINGER: Okay. Didn't?

THE COURT: Did not.

MR. SPRINGER: Did not. Okay.

THE COURT: Would you agree with me there would be no requirement to disclose analyses you didn't do?

MR. SPRINGER: I would, Your Honor, but in that scenario I would want to know how did they come to this determination that a spinoff was not a viable option for the company. So that --

THE COURT: Well, let's look at page 67.

MR. SPRINGER: Okay.

THE COURT: I may have misremembered the page. I think it's 67. I mean, there's a sentence here where it says "The members of the Valuation Creation Committee determined that a

spin-off/sale of one or more of URS's divisions was not likely a value-enhancing option for a variety of reasons, including related tax implications, the belief that each of URS's businesses did not have a materially different valuation profile, the modest synergies ...." I mean, what more do you want?

MR. SPRINGER: Your Honor, how did they come to those conclusions? They had to have conducted some sort of analysis to get to those conclusions. And -- I -- had they done a sum of the parts analysis, it's going to show that the company was worth more than what they're selling it for.

THE COURT: And what -- what basis do you have for that assertion?

MR. SPRINGER: It's the allegations in the complaint --

THE COURT: What's the basis for that?

MR. SPRINGER: No; sure. The allegations in the complaint that pertain to the analyst articles that we cite in our complaint, Your Honor, as well as the Bank of America analyst report that was issued two days before -- two days before the deal was publicly announced.

THE COURT: Okay. Why don't we move

off of disclosure, because I want to give fair time to the defendants.

MR. SPRINGER: Sure.

THE COURT: Tell me any other points you want me to consider today.

MR. SPRINGER: Sure. I think one additional point, Your Honor. We're here on a motion to expedite here today, Your Honor, based on information that we believe is material for URS shareholders to cast an informed vote. We're not at a PI stage, we're not at a motion to dismiss stage litigating the merits of the entire Revlon claim.

Two quick points that I want to make with respect to the alignment of JANA's interests with -- or I should say the misalignment of JANA's interests with that of shareholders, because I think that's the lynchpin here, Your Honor. Defendants cite in their case the Morton Steakhouse case. And that's interesting, because at my prior firm I was actually staffed to work on that case. The case law that supports the Delaware proposition that a large shareholder, or even a minority shareholder's, interests are directly aligned with the remaining shareholders, that whole premise is based on a

majority -- almost all the cases that I'm aware of, Your Honor, are involving private equity firms. And in Morton's, in Strine's decision in Morton's, private equity firms are a much different type of an investor than an arbitrage event-driven hedge fund. I mean, they're night and day.

And so to my knowledge, and based on my research, Your Honor, there isn't any Delaware decision that really gives color on this type of issue. And it's going to be something, as I said in the beginning of my argument, Your Honor, you're going to see more and more of.

Now, defendants also cite the Mercier vs. Inter-Tel decision. But that is also a red herring, Your Honor, because in that decision, that was not a case involving an arbitrage event-driven fund that orchestrated a deal like we have here. They didn't come in and force the board to a sale. It involved a special committee that postponed a special meeting on a vote for a merger, and then you had Millennium Management, who is the investor in that case, initially object, and then come in and eventually say that the vote was okay.

Completely different case here, Your

Honor. And I'm not aware of any case that addresses the situation here today, Your Honor.

THE COURT: So are you saying I should assume that an event-driven hedge fund arbitrage firm doesn't want to maximize value on its stake in a company?

MR. SPRINGER: I think they have conflicting interests. And that --

THE COURT: What are those conflicting interests, and tell me the facts that are pled that show it in the complaint.

MR. SPRINGER: Absolutely, Your Honor. The conflicting -- let me first address the conflicting interests, and then I'll get to the allegations. The first is that the conflicting interests -- which is the precise point of Chief Justice Strine's article -- is that short-term artificial value that's created by a fund like this does not necessarily always mean maximizing value. The one -- the second sentence in that article, Your Honor, Strine talks about a separation of ownership from ownership. And that's what's developing here now, Your Honor, is that we have a separate ownership contingent: the activist funds like JANA, and then we

have everybody else. And it's that exact conflict that the short-term value, while abandoning, in this case, a spinoff or other alternatives, long-term alternatives, I would argue, Your Honor, does not -- reasonable steps were not taken to maximize the value to shareholders.

Now, in terms of the allegations of the complaint, we believe we have several allegations in our complaint that talks about this exact issue. If you look at paragraph --

THE COURT: Give me a second.

MR. SPRINGER: Sure.

THE COURT: I just need to find it. Go ahead.

MR. SPRINGER: Look at paragraph 5, Your Honor. In the beginning. If we look at --

THE COURT: This is generalized, though. It's not specific to this company. Is there anything specific to URS? Maybe your colleague could -- go ahead.

MR. SPRINGER: If we look at paragraphs 44 and 45 --

THE COURT: All right.

MR. SPRINGER: -- Your Honor.

THE COURT: All right. I've looked at those. And so I don't prolong this, you can take a look at this with your colleague --

MR. SPRINGER: Sure.

THE COURT: -- when the defendants speak. If you want to add anything else, you can just bring it to my attention on the rebuttal.

MR. SPRINGER: Absolutely, Your Honor. Yeah. I'd just ask for a minute to rebut anything --

THE COURT: You're good now?

MR. SPRINGER: I am. Thank you.

THE COURT: Very good. Thank you.

Mr. Moritz.

MR. MORITZ: Good morning, Your Honor.

THE COURT: Good morning.

MR. MORITZ: As you alluded to earlier in the argument, when you denied the first motion to dismiss you did so without prejudice, but you also told the plaintiffs to not come back with a new motion to expedite unless they had something that was truly colorable. And the other plaintiffs in the case, the six other plaintiffs, they reviewed the preliminary proxy, they determined to file the notice of dismissal. And there's good reason why they did so.

This is a premium third-party transaction. Only Sheet Metal Workers is here with its own motion to expedite, and the Court should deny the motion to expedite.

One thing that we heard a few minutes ago is that the motion to expedite and the complaint here is really new, and that it raises issues that weren't raised in the first complaint and the motion to expedite. It's true that it wasn't a focus of the motion to expedite. That hearing ended up focusing on the anti-waiver provision. But the allegations about JANA's interests as a short-termer is something that was raised before in the first complaint. It was briefed. It wasn't the plaintiffs' focus, but it was before the Court. And the Court, I believe, rejected the concept then that JANA, simply by being a hedge fund, is somehow a bad investor and that, therefore, there's a Revlon claim.

And we talked some earlier in the argument about the case law, that Delaware doesn't distinguish between good stockholders and bad stockholders. And even a hedge fund doesn't have an incentive to lose money if there's a better deal on the table. And that's the Mercier case that we cited.

And one thing about the arbitrage

incentives that they talk about in very general terms, without pointing to specifics relating to JANA, JANA here disclosed a more than 6 percent stake in URS in August, 2013. That's at page 59 of the proxy. Even the complaint says that JANA invested in URS in 2013. They've been holding this position for a long time.

There are hypothetical type distractions that --

THE COURT: One year now-a-days is a long time, huh?

MR. MORITZ: Well, compared to the arbitrage event-driven strategy, that's a long time. Maybe for my portfolio it's not a long time.

So in any event, I do think for this very-fast-trading theory --

THE COURT: Right.

MR. MORITZ: -- one year is, in that sense --

THE COURT: The August 13 disclosure, was that of their entire 9.7 percent position?

MR. MORITZ: 6.4, Your Honor.

THE COURT: 6.4 at that time? Okay.

MR. MORITZ: In any event, so the Court, I think, has addressed the basic concept

already --

THE COURT: Right.

MR. MORITZ: -- that JANA, simply by its very nature, creates a Revlon claim. I think that's not supported by Delaware law.

The plaintiffs tried to add a number of things to build up this Revlon theory, and they actually detract. We went through them in our brief. A number of theories that are really internally inconsistent with the complaint and the proxy that it relies on. Unless the Court has questions about those, I don't want to belabor them.

One thing I did want to point out, given the focus in the argument we just heard was on this notion that URS didn't sufficiently -- or, in fact, as they say, completely ignored in their brief divestiture of individual business units which plaintiffs say would have resulted in a higher unit, and they relate this to the --

THE COURT: What --

MR. MORITZ: Yes.

THE COURT: If I can just pop in there for a second. What can you tell me, though, about whether either of the financial advisors looked at a

sum-of-the-parts analysis? And just so we're clear on terminology or, for that matter, if that would not be subsumed within that term, a spinoff or a sale of a division or more than one division?

MR. MORITZ: Certainly, Your Honor. So neither of URS's financial advisors, CitiGroup or DBO -- and Citigroup was retained by the value creation committee --

THE COURT: Thanks.

MR. MORITZ: -- but it did give an opinion to the full board.

THE COURT: Okay. Was DBO just the board's?

MR. MORITZ: Correct.

THE COURT: Okay. Thanks.

MR. MORITZ: They did not do a sum-of-the-parts analysis.

THE COURT: Okay.

MR. MORITZ: And Delaware law doesn't require bankers to disclose analyses they didn't do. And we have the 3Com case on point for that.

THE COURT: Okay. Neither one did that analysis; right?

MR. MORITZ: Correct.

THE COURT: Okay. Thanks.

MR. MORITZ: What is disclosed in the proxy -- and it actually contradicts what's in their brief, that URS -- that they completely ignored a spinoff -- is fairly, you know, robust disclosures about consideration of the possibility of a spinoff. And you pointed to some of the sections in the proxy, and we cited some in our brief. But the board did consider divestitures. They asked their financial advisors for opinions and they had -- and they list several different considerations about tax effects, about other issues, and about a conclusion that it wasn't likely to increase value.

And on this, I just want to go to the analyst reports that they --

THE COURT: Well, before you go to the analyst, though, I want you to flesh out something you just mentioned a moment ago.

MR. MORITZ: Yeah.

THE COURT: Which is, I've clearly seen the disclosures that reference reasons not to do a spinoff or a sale of a division that were considered by the committee, and I assume by the board in turn. The last part of what you said, though, I just want to

be clear about. Are you suggesting, though, that the financial advisors opined on those issues? And if so, where is that in the proxy statement?

MR. MORITZ: What we have is that they provided some type of preliminary analysis. I don't have -- I don't believe they provide a formal opinion on it.

THE COURT: Okay. But is that in the proxy?

MR. MORITZ: The statement about there being a preliminary analysis is in the proxy.

THE COURT: Okay. And maybe just show me where that is, or somebody can. You don't need to do it on the spot. If somebody can find it, just tell me where it is.

MR. MORITZ: Terrific.

THE COURT: All right.

MR. MORITZ: So we'll get to that in a moment, hopefully.

THE COURT: All right.

MR. MORITZ: So to go to the two analyst reports --

THE COURT: Right.

MR. MORITZ: That they're putting so

much weight on, the Bank of America Merrill Lynch report that came out shortly before the transaction was announced, they put a lot of weight on that. That's prominently headlined in their brief, in their complaint. And they say that the analyst report from Bank of America Merrill Lynch suggests that a spinoff of URS would more likely yield greater value to stockholders. But we looked at the report instead of taking their characterization, you know, for it. And it doesn't say that. The report is attached to Exhibit 3 to Mr. Mozal's transmittal affidavit. And what it actually says is that "... when looking at particular segments of URS, we think acquisition multiples would likely be bound in the 7-8x range." And then it goes on to say at the end that the "... URS stock is trading at 7x EV/EBITDA ..." and then concludes that there was "... limited upside even if the company is able to monetize some of its assets."

THE COURT: If you could just tell me where you're reading from.

MR. MORITZ: Oh, certainly. I'm looking in Exhibit 3 to Mr. Mozal's affidavit.

THE COURT: Right. What page?

MR. MORITZ: It's titled "An outright

sale is an unlikely scenario, in our view." And I'm looking under the header on the first page, "Exit of parts of the business, but limited upside, in our view."

THE COURT: Got it. All right. I see it now. Okay.

MR. MORITZ: Now, in the motion to expedite brief, the plaintiff did not allude to this other analyst's report, but they brought up another analyst's report from Seeking Alpha, which they cite in their complaint at paragraph 108 as saying, well, that predicted a higher value on a sum of the parts basis.

But that was done on April 11, 2014. I think that's probably the reason they didn't headline it in their brief. That was a month before a major earnings miss was announced by URS on May 13, which is described on page 66 of the proxy. So that lone analyst report based on somewhat stale information, I just don't think moves the needle.

THE COURT: Can you give me a response on this issue of AECOM having Bank of America Merrill Lynch as its financial advisor, and then the name pops up in this cooperation agreement as the default banker

for the value creation committee. Tell me your response to that.

MR. MORITZ: Sure.

THE COURT: Because it is a bit odd.

MR. MORITZ: Sure. I think what it actually reflects, contrary to this theme of coordination, there's a lack of coordination. The very facts that are in the complaint and are in the proxy that are disclosed in the complaint say that Bank of America Merrill Lynch was the long-standing financial advisor for AECOM, that AECOM started talking to Bank of America Merrill Lynch about a potential URS transaction sometime in February, a month before the cooperation agreement. And then JANA, in the cooperation agreement, says, "Use Bank of America Merrill Lynch if you can. And otherwise we have to find a mutually agreeable financial advisor." That doesn't, to me, suggest some cooperation. Quite the contrary, it strongly suggests -- I think the only thing you can really take from it is that JANA didn't know what was going on with Bank of America Merrill Lynch. And in any event, all that happened was whatever the allegations are about Bank of America Merrill Lynch, they didn't advise URS.

THE COURT: Right.

MR. MORITZ: So I think it's really academic.

THE COURT: Okay. Thank you.

MR. MORITZ: I think the other disclosure claim that's left is JANA's motives and incentives. And plaintiff -- and to his credit, I think he acknowledges very candidly -- cited no Delaware case law for the concept that there is such a duty of disclosure on the part of URS's board to disclose information that it doesn't have in its possession, to go out and try to get it from JANA.

And so I think that address it, with the exception of Chief Justice Strine's article. And we do disagree with the plaintiffs' characterization there of that section of the article that they cited. It was clearly discussing Section 13(d) in The Williams Act. It wasn't discussing Delaware law. I think Chief Justice Strine, you know, is as competent as anyone in the world to talk about Delaware law if he thought it applied. But he was focusing on proposals for 13(d). So I think that that covers that disclosure.

And I wanted to see if we had that --

MR. SEITZ: Here.

MR. MORITZ: Okay. I'm looking at page 64 of the proxy. And this is to address your earlier question --

THE COURT: Right.

MR. MORITZ: -- about --

THE COURT: The preliminary analysis. Let me just -- okay. Where on 64?

MR. MORITZ: Right. In the second full paragraph, the second sentence, it says, "Representatives of Citigroup reviewed with the Value Creation Committee their preliminary analysis of strategic alternatives available to URS, including: (1) a spin-off/sale of one or more of URS's divisions ...." Then it continues.

THE COURT: Okay. I see it. Thank you.

MR. MORITZ: And then there's also, on page 65 of the proxy, the fourth full paragraph, it says "At the request of the Value Creation Committee, on April 28, 2014, Citigroup discussed with the Value Creation Committee, among other things, a preliminary financial analysis of a peer benchmarking of URS's operating divisions (based on historical and projected

results)."

THE COURT: Okay. Thank you.

MR. MORITZ: In sum, there's not a colorable Revlon claim. There's not a competing bidder here. The three disclosure claims are not supported by Delaware case law. They're not supported by the facts alleged in the complaint or that are in the proxy and other documents incorporated in the complaint, and we submit that the motion to expedite should be denied.

THE COURT: Thank you. Is anybody speaking for the alleged aiders and abettors -- I'm not sure I can recite them all -- or not?

MR. DiCAMILLO: I have nothing to add, Your Honor.

MR. PORTNOY: Nothing to add for Bank of America Merrill Lynch .

MR. TEKLITS: I have nothing to add, Your Honor.

THE COURT: Okay. Mr. Springer.

MR. SPRINGER: Just a few quick points, Your Honor, to sum up. I think you hit the nail on the head with respect to the preliminary analysis. The registration says one was done, but

where is it? It's not disclosed. With respect to the, quote, unquote, "lack of coordination" between AECOM and Bank of America, if that's the case, Your Honor, it just shows that JANA orchestrated this whole deal. And I'll come back again very quickly to the point that if JANA is such a substantial minority interest shareholder, then how do you explain all the -- everything that they gave to them?

In terms of Chief Justice Strine's article, Your Honor, the quote that we cite, the overall premise of the article is not advocating for change on the securities laws. I take it that Your Honor will understand that and understand what the main point of Chief Justice Strine's article was.

And in terms of what the board knew, I know you had asked me some questions on that in my initial argument, Your Honor. The board can't close its eyes and just allow JANA, with the threat of a proxy fight, to come in and orchestrate a deal and just abandon its Revlon duties. And that's -- you know, at this stage of a motion to expedite, Your Honor, we believe that we've pled enough to support that theory, Your Honor.

And I believe that's all I have right

now, Your Honor.

THE COURT: All right. Thank you. Counsel, I'm going to take about ten minutes and I think I'll be able to give you a ruling, but I need a few minutes to organize a few thoughts.

(Recess taken, 11:58 to 12:11 p.m.)

THE COURT: Thank you, Counsel. I appreciate a little bit of time to collect a few thoughts.

Pending before the Court is a motion to expedite proceedings. For the reasons I'm going to explain, I'm going to deny the motion.

By way of background, the underlying transaction involves a proposed merger whereby AECOM Technology Corporation will acquire all the shares of URS Corporation in exchange for a combination of cash and shares of AECOM stock.

On February 27, 2014, JANA Partners filed a Schedule 13D disclosing a 9.7 percent stake in URS and announcing its intention to have discussions with URS's representatives to look at value creation opportunities. On March 13, 2014 URS and JANA entered into a cooperation agreement whereby URS expanded its board from 10 to 14 members and added four JANA

designees. The board was later reduced to 12 members after URS's annual meeting, which was held in late May, and four of those 12 members remained designees of JANA.

Pursuant to the cooperation agreement, the URS board created a value creation committee to engage investment banks to review options for enhancing the value of URS. That value creation committee consisted of four members, two of whom were selected by JANA, and the committee selected Citigroup as its financial advisor. URS then engaged in a sales process that resulted in seven bidders entering confidentiality agreements and obtaining due diligence. The result of that process was the proposed merger transaction that we're here about today, which was announced on July 13.

Significantly, as we've had some discussion today, this is not the first case that was filed in this Court challenging this transaction. There were six other cases that were filed challenging the same transaction. The focus of those six other cases was on the anti-waiver provision in the merger agreement that prevented the URS board from waiving any confidentiality or standstill agreements. And the

theory was, in those six cases, that that provision allegedly would have prevented potential bidders from making a topping bid and would have deprived the URS board of information necessary to be fully informed and exercise their fiduciary duties.

On August 5, after the defendants had made certain representations that mooted that dispute, I denied the motion for expedition. In doing so, I noted that with the dispute over the anti-waiver provision resolved, the rest of the plaintiffs' claim failed to allege facts stating a colorable Revlon claim based on the arguments that had been made at that time. I did leave open the possibility that there could be another application for a motion for expedition because, in particular, at that time the proxy statement had not been issued, and counsel could review the proxy statement and make whatever disclosure arguments they thought were appropriate.

A couple of days later, on August 7, plaintiffs' counsel in those other cases wrote to me and indicated that they had thoroughly reviewed the proxy statement and that they intended to dismiss the six actions without prejudice if URS and AECOM adhered to the commitments that they had made concerning the

anti-waiver provision. This morning -- perhaps last night -- the plaintiffs in those six cases filed a voluntary notice of dismissal subject to reserving a right to make a fee application. Which brings us to today.

The standard for obtaining expedition is that the plaintiff has to articulate a sufficiently colorable claim and demonstrate a sufficient possibility of a threatened irreparable injury. And although that burden is not high, there is a real cost to imposing on the parties and the Court expedition in proceedings of this nature. I'm not satisfied that burden has been met here.

The contentions really break down into two categories: A Revlon claim and three discrete disclosure claims, and I'm going to address them in that order. Not much was said today about the Revlon claim, but I want to address it for completeness. The gravamen of the Revlon claim is that the board ceded complete control over the sale process to JANA and that once in control, JANA prevented the board from getting maximum value for the company by failing to consider strategic alternatives such as a spinoff or sale of one or more business divisions of URS.

The fundamental problem with this claim -- and the reason I don't believe that it is colorable -- is that the premise makes no sense to me, given certain indisputable facts. JANA owns less than 10 percent of URS stock and is plainly not a controlling stockholder. Even if I were to accept as true that JANA had a motive to sell the company for less than full value -- and I'm going to get to that in a minute -- its designees only constituted one-third of the 12 members of the URS board who approved the merger with AECOM at a premium price. Plaintiff does not challenge the independence of any of the other eight members of the board, only one of whom held a management position. Nor does plaintiff challenge the independence of URS's financial advisors, Citigroup and DBO Partners. Thus, even accepting plaintiff's allegations about JANA's motivations as true for the sake of argument, it's undisputed that the decision to enter a transaction with a third party was made by a board with a concededly independent majority of directors, using independent financial advisors.

The merger agreement, furthermore, contains relatively routine deal protections, putting

aside the anti-waiver provision, which I've already discussed and which has now been rendered moot. During the prior expedition hearing plaintiffs' counsel conceded as much with respect to the matching rights and the breakout fee provisions in the merger agreement. The plaintiff here doesn't challenge those provisions either, and I think that's for good reason.

The only challenge to a deal protection that I gleaned from the papers submitted in support of the expedition motion here, but not mentioned today, concerned the definition of a superior proposal which requires a proposal for 50 percent of URS's assets or stock. In their papers, plaintiff did not identify any legal authority calling into question a 50 percent trigger or suggesting that this provision is something exceptional or unusual. On its face the provision seems to have some contextual sensibility, since the proxy statement discloses that the value creation committee considered and determined that a spinoff and a sale of one or more of URS's divisions would not result in a superior alternative to a sale of the company.

Two other points I think bear mention on the Revlon claim that was asserted. First, I do

find baffling plaintiff's contention that JANA was somehow motivated to sell the company for less than full value. Common sense tells me -- and this assumption is supported by various authorities that were cited in defendants' papers -- that sophisticated investors like JANA don't leave money on the table. Plaintiff has not identified any specific facts to my satisfaction about JANA -- as opposed to generalized assumptions about hedge funds -- that would make me believe that JANA would not rationally seek the highest value it could for its 9.7 percent stake in the company and, in turn, for the whole company.

Second, even though the deal protections -- again putting aside the anti-waiver provision that's been mooted -- do not appear to be remarkable, no bidder has emerged for the company since the AECOM transaction was announced on July 13, which was approximately six weeks ago. So for all those reasons, I don't find the Revlon claim to be colorable.

I'm going to turn now to the disclosure claims. Everybody knows the materiality standard, so I won't dwell on that. The first disclosure claim is the argument that the URS board

failed to fully disclose all material information about JANA's motives or incentives in the URS sales process. Now, as a 13D filer, whatever obligation JANA has to disclose information in that regard is governed by federal law, but the plaintiff has cited no authority as a matter of Delaware law in support of its contention that URS was required to make disclosures of the nature it seeks here. Nor does plaintiff contend that the URS board was even aware of what these alleged motives or incentives were. As this Court stated in the Fredericks of Hollywood decision, the fiduciary duty of disclosure requires that solicitation materials disclose all information in the directors' possession that is material to the transaction at issue. So I don't view the first disclosure claim to be colorable.

In the second disclosure claim, plaintiff argues that the proxy fails to include information regarding JANA's past relationship with Bank of America Merrill Lynch, which advised AECOM in connection with the transaction. Again, it's not alleged that URS or its board had knowledge of this particular relationship. And for that reason alone, if it doesn't have knowledge of it, it doesn't have an

obligation to disclose something of which it is not aware.

Importantly, this claim does not involve alleged conflicts concerning any of the financial advisors who actually did advise the URS board or the valuation committee, which would be DBO and Citigroup. Thus, I fail to see how a past relationship between JANA and AECOM's financial advisor would be material to URS's stockholders in any event, particularly when, as I've indicated before, I think the fair assumption is that JANA was motivated to maximize the value of its own stake in URS and, by rational logic, for the company as a whole.

Finally, the plaintiff argues that the URS stockholders are entitled to know whether URS's advisors performed a sum-of-the-parts analysis. Well, we've had a representation on the record today that no such analysis was indeed performed, in terms of any final work. There are disclosures that refer to some preliminary levels of analyses that are, in fact, disclosed in the proxy statement.

The standard under Delaware law is that there is to be a fair summary of a banker's work. There is a 21-page, by my calculation, summary of the

financial analyses that both of these bankers performed. I do not believe that the obligation to give a fair summary of their work extends to providing detailed disclosures concerning every preliminary analysis that's done along the way, and certainly no authority has been provided to me to suggest that that's the extent of disclosure requirements associated with the financial advisor to a board or to a company. Therefore, I do not find this claim to be colorable, as well.

Finally, obviously, the aiding and abetting claims are not colorable in the sense that the underlying predicate of a breach of fiduciary duty has not been established with sufficient colorability.

For all these reasons, the motion to expedite is denied.

Unless counsel has any questions, we're going to stand adjourned. Does anyone have any questions?

MR. MORITZ: No, Your Honor.

MR. SPRINGER: No, Your Honor.

THE COURT: Thank you.

(Court adjourned at 12:23 p.m.)

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CERTIFICATE

I, JULIANNE LABADIA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 57 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 48 through 56, which were revised by the Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 29th day of August, 2014.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public