

1 SAN JOSE, CALIFORNIA

JULY 2ND, 2008

2
3 P R O C E E D I N G S

4 (WHEREUPON, COURT CONVENED AND THE
5 FOLLOWING PROCEEDINGS WERE HELD:)

6 THE COURT: CALL THE NEXT MATTER.

7 THE CLERK: CALLING CASE NUMBER 07-1389,
8 THE FACEBOOK, INC., VERSUS CONNECTU, ET AL.

9 CALLING NONPARTY CNET'S MOTION TO UNSEAL
10 FILINGS AND TRANSCRIPT.

11 FIFTEEN MINUTES EACH SIDE.

12 COUNSEL, COME FORWARD AND STATE YOUR
13 APPEARANCES.

14 MS. SUTTON: GOOD MORNING, YOUR HONOR.
15 THERESA SUTTON FOR ORRICK, HERRINGTON & SUTTON FOR
16 COUNSEL TO THE PLAINTIFFS THE FACEBOOK AND MARK
17 ZUCKERBERG.

18 MR. MYERS: GOOD MORNING. ROGER MYERS ON
19 BEHALF OF HOLME, ROBERTS & OWEN ON BEHALF OF CNET.

20 THE COURT: MR. MYERS, IS THERE ANYTHING
21 MORE YOU WOULD WISH TO SAY TO THE COURT WITH
22 RESPECT TO THE MOTION TO INTERVENE FOR A LIMITED
23 PURPOSE AND THE MOTION TO UNSEAL DOCUMENTS?

24 MR. MYERS: ONLY A COUPLE OF THINGS, YOUR
25 HONOR. FIRST I WANT TO THANK THE COURT FOR SETTING

1 THIS ON AN EXPEDITED BASIS SO WE CAN HAVE IT HEARD
2 TODAY WITH THE OTHER MOTION.

3 I THINK THE PARTIES HAVE AGREED IN THEIR
4 BRIEFS ON SEVERAL THINGS: ONE, THAT THE MOTION TO
5 INTERVENE SHOULD BE GRANTED; AND, TWO, THAT THE
6 TRANSCRIPT OF THE HEARING ON JUNE 23RD, AND THE
7 MOTION THAT WAS AT ISSUE IN THAT HEARING AND ALL OF
8 THE PAPERS RELATED TO THAT MOTION SHOULD BE
9 UNSEALED, ALTHOUGH THE PARTIES DISAGREE ON WHETHER
10 EITHER THE TRANSCRIPT OR ANY OF THE PAPERS SHOULD
11 BE REDACTED.

12 THE PARTIES ALSO AGREE THAT THE REMAINDER
13 OF THE RECORDS COULD BE REFERRED TO A MAGISTRATE
14 JUDGE AND ALTHOUGH WE DISAGREE ON THE PROCEDURES
15 AND THE REQUIREMENT THAT WOULD BE SHOWN THERE.

16 ON THE TRANSCRIPT AND BOTH -- AND
17 ACTUALLY THE MOTION AS WELL, I DON'T THINK THERE'S
18 ANY REASONABLE DISPUTE THAT THE MOTION WAS A
19 DISPOSITIVE MOTION AND THAT IT, IF GRANTED, AND IT
20 HAS BEEN GRANTED, WILL TERMINATE THE CASE.

21 AS A RESULT, ALL OF THE MOVING PAPERS AND
22 THE PAPERS RELATED TO THAT MOTION HAVE TO MEET THE
23 COMPELLING NEEDS TEST.

24 THAT REQUIRES THAT THEY DO MORE THAN COME
25 IN AND SAY THERE IS CONFIDENTIAL INFORMATION HERE.

1 THE CASE THAT THEY PRIMARILY RELY ON,
2 WHICH IS THE ENCYCLOPEDIA BROWN CASE, SPECIFICALLY
3 TALKS ABOUT THAT ISSUE AND SAYS THAT WITH RESPECT
4 TO CONFIDENTIAL INFORMATION, FIRST IT SAYS
5 BASICALLY IT HAS TO BE AKIN TO A TRADE SECRET BUT
6 THEN IT HAS TO BE PROOF OF COMPETITIVE HARM, AND
7 WITH RESPECT TO COMPETITIVE HARM VAGUE AND
8 CONCLUSORY ALLEGATIONS WILL NOT SUFFICE.

9 MOVANT MUST PROVE THAT DISCLOSURE WOULD
10 WORK, A CLEARLY DECLINED AND VERY SERIOUS INJURY.

11 AND IN THAT CASE TESTIMONY WAS ACTUALLY
12 PRESENTED TO SHOW THAT THE INFORMATION WOULD WORK
13 IN COMPETITIVE HARM.

14 IN THIS SITUATION ALL WE GOT IN RESPONSE
15 TO OUR MOTION WAS AN OPPOSITION BRIEF WITHOUT ANY
16 DECLARATIONS OR TESTIMONY OR ANY EXPLANATION ABOUT
17 HOW KEEPING ANY PART OF THE PAPERS THAT WERE FILED
18 WITH RESPECT TO THE MOTION TO ENFORCE THE
19 SETTLEMENT WOULD ACTUALLY WORK A COMPETITIVE HARM.

20 NO, NO PROOF, NO SHOWING, JUST THE
21 ASSERTIONS, THE CONCLUSORY ALLEGATIONS WHICH THE
22 NINTH CIRCUIT, JUDGE PATEL IN THE MCCOY CASE,
23 VIRTUALLY EVERY COURT THAT HAS LOOKED AT THIS HAS
24 SAID THAT IS NOT ENOUGH.

25 WITH RESPECT TO THE TRANSCRIPT, THAT HAS

1 TO MEET UNDER PHOENIX NEWSPAPERS THE NINTH CIRCUIT
2 SAID WHEN YOU HAVE A TRANSCRIPT OF A HEARING TO
3 WHICH THE PUBLIC HAS THE RIGHT OF ACCESS, THE FIRST
4 AMENDMENT TEST HAS TO BE APPLIED WHEN YOU'RE
5 TALKING ABOUT RELEASING THE TRANSCRIPT.

6 WE THINK, AND I'M HAPPY TO ANSWER ANY
7 QUESTIONS ON THIS, WE THINK IT'S PRETTY CLEAR THAT
8 THE FIRST AMENDMENT RIGHT OF ACCESS ATTACHES TO A
9 MOTION TO ENFORCE OR TO APPROVE A SETTLEMENT.

10 I MEAN, JUDGE PATEL SAID SO IN THE MCCOY
11 CASE. YOU HAVE THE BANK OF AMERICA CASE OUT OF THE
12 THIRD CIRCUIT IN WHICH THE COURT SAID THAT A MOTION
13 TO ENFORCE A SETTLEMENT IS PUBLIC.

14 YOU HAVE THE JESSUP CASE FROM JUDGE
15 POSNER IN THE SEVENTH CIRCUIT IN WHICH THE COURT
16 SAID THAT A MOTION SEEKING JUDICIAL APPROVAL OF A
17 SETTLEMENT IS PUBLIC.

18 YOU EVEN HAVE THE GLENN FALLS CASE IN THE
19 SECOND CIRCUIT THAT THE PLAINTIFFS HAVE CITED IN
20 WHICH THE SECOND CIRCUIT DISTINGUISHED DISCUSSIONS
21 ABOUT A DRAFT TO SETTLEMENT WHICH COULD BE HELD IN
22 CHAMBERS WITH A MOTION TO ENFORCE OR REJECT THE
23 SETTLEMENT WHICH THE SECOND CIRCUIT HAS SAID HAD TO
24 BE HELD IN OPEN COURT.

25 SO WE THINK IT'S CLEAR THERE WAS A FIRST

1 AMENDMENT RIGHT OF ACCESS ON THE 23D AND THAT MEANS
2 THEY HAVE TO MEET THE COMPELLING INTEREST TEST AND
3 IF THEY HAVEN'T MET THE COMPELLING NEEDS TEST, THEY
4 CERTAINLY HAVEN'T MET THE COMPELLING INTEREST TEST.

5 I DON'T KNOW IF YOU WANT TO HEAR ANYTHING
6 WITH RESPECT TO THE REFERRAL TO THE MAGISTRATE
7 JUDGE. I THINK IT'S PRETTY CLEAR THAT THEY HAVE
8 THE BURDEN AND THEY HAVE TO CARRY THEIR BURDEN AND
9 SO WE'RE FINE WITH REFERRING IT TO A MAGISTRATE
10 JUDGE TO REVIEW.

11 WE WOULD LIKE TO BE QUICK BECAUSE OF THE
12 TIMELINESS FACTOR AND THE NEWSWORTHINESS FACTOR.
13 AND WE WOULD ALSO LIKE THE COURT TO BE CLEAR IN ITS
14 REFERRAL ORDER THAT THEY HAVE TO CARRY THEIR
15 BURDEN.

16 THERE WAS AN ORDER IN THE SUN VERSUS
17 MICROSOFT CASE THAT JUDGE WHYTE HAD IN THIS
18 COURTROOM. AND A SIMILAR THING HAPPENED WHERE A
19 LOT OF DOCUMENTS WERE UNSEALED AND THE MEDIA
20 INTERVENED AND JUDGE WHYTE IN THAT CASE ACTUALLY
21 REFERRED IT TO A SPECIAL MASTER AND HE APPOINTED
22 FORMER JUDGE RENFREW AS A SPECIAL MASTER PAID FOR
23 BY SUN AND MICROSOFT.

24 AND I THINK USING A MAGISTRATE JUDGE IS
25 PROBABLY MORE EFFICIENT FOR THE PARTIES, AND WE'RE

1 FINE WITH THAT, BUT IN THAT CASE THERE WAS AN ORDER
2 MODIFYING THE STIPULATED PROTECTIVE ORDER REQUIRING
3 THAT THE PARTIES COME IN AND MAKE A SHOWING TO
4 JUSTIFY THE SEALING, THE CONTINUED SEALING OF ANY
5 DOCUMENTS OR THE REDACTIONS AND AS A RESULT MOST OF
6 THE DOCUMENTS WERE UNSEALED ONLY WITH LIMITED
7 REDACTIONS AND WE WOULD ASK THAT A SIMILAR
8 PROCEDURE BE EMPLOYED IN THIS CASE.

9 THE COURT: VERY WELL. MS. SUTTON.

10 MS. SUTTON: THANK YOU, YOUR HONOR. IF I
11 COULD WORK BACKWARDS REAL QUICKLY, IN TERMS OF THE
12 REFERRAL TO THE MAGISTRATE JUDGE, MR. MYERS
13 SUGGESTED THAT IT HAPPEN QUICKLY. I'M NOT SURE
14 WHAT THAT MEANS. THE RECORD IS VOLUMINOUS, AND WE
15 WOULD REQUEST A REASONABLE AMOUNT OF TIME TO GO
16 THROUGH AND ANALYZE THE DOCUMENTS THAT HAVE
17 PREVIOUSLY BEEN UNDER SEAL.

18 THIS CASE HAS BEEN GOING ON THREE AND A
19 HALF YEARS. SO IT'S GOING TO TAKE SOME TIME TO
20 PARSE THROUGH THE RECORD AND THEN PREPARE ANY
21 DECLARATIONS THAT THE COURT MIGHT DEEM NECESSARY TO
22 MEET A DIFFERENT BURDEN.

23 THE RECORDS THAT WERE FILED IN THE
24 SUPERIOR COURT, MR. MYERS DOESN'T DISCUSS WHETHER
25 OR NOT HE WANTS TO GO BACK TO THE BEGINNING OF THE

1 CASE OR JUST TO WHEN THE CASE WAS REMOVED BUT IN
2 THE SUPERIOR COURT IN 2001 THE JUDICIAL COUNSEL
3 INSTITUTED NEW PROCEDURES IN WHICH THE PARTIES WERE
4 COMPELLED -- WERE REQUIRED TO MEET A COMPELLING
5 INTEREST STANDARD IN GETTING ANYTHING SEALED.

6 SO TO THE EXTENT THAT DOCUMENTS WERE
7 SEALED IN SUPERIOR COURT, THOSE DOCUMENTS AND
8 MOTIONS HAVE ALREADY BEEN PREPARED.

9 I MEAN, WE CAN SUBMIT THOSE TO THE COURT.

10 IN TERMS OF AFTER REMOVAL, IF THERE'S
11 ANYTHING THAT THE COURT DEEMS IS INSUFFICIENT,
12 PLAINTIFFS ARE CERTAINLY HAPPY TO GO BACK AND
13 PREPARE DECLARATIONS WITH MORE DETAIL IF THE COURT
14 SO DESIRES JUST TO JUSTIFY THE CONCEALING OF THE
15 DOCUMENTS.

16 TO BE CLEAR, THIS IS AN IP CASE LARGELY,
17 SO WE'RE TALKING ABOUT DOCUMENTS THAT REVEAL SOURCE
18 CODE, BOTH PLAINTIFFS AND DEFENDANTS, TRADE SECRET
19 SOURCE CODE AND OTHER CONFIDENTIAL PROPRIETARY
20 INFORMATION.

21 PART OF THIS CASE IS ABOUT CONNECTU AND
22 ITS RELATED PARTIES HACKING INTO FACEBOOK SERVERS
23 AND STEALING DATA AND THEN SPAMMING USERS.

24 SO SOME OF THE DOCUMENTS THAT ARE
25 ATTACHED OR INCLUDED IN THE RECORD ARE DOCUMENTS

1 THAT SHOW WHAT SECURITY MEASURES FACEBOOK TOOK TO
2 PREVENT FURTHER ACTIONS THAT THE DEFENDANTS TOOK.

3 SO, SO -- WE CAN SHOW COMPELLING REASONS
4 TO KEEP THIS INFORMATION SEALED.

5 SOME OF THE OTHER INFORMATION INCLUDES
6 FINANCIAL INFORMATION OF A PRIVATE COMPANY.
7 FACEBOOK IS PRIVATELY HELD. IT IS NOT HELD TO THE
8 SAME STANDARD OF A PUBLIC COMPANY WHERE IT'S
9 REQUIRED TO MAKE PUBLIC DISCLOSURES FOR SECURITIES
10 REASONS OR OTHER FINANCIAL INFORMATION.

11 THE INFORMATION HAS BEEN KEPT PRIVATE BY
12 FACEBOOK AND FACEBOOK WOULD JUST LIKE TO CONTINUE
13 TO KEEP THAT PRIVATE FOR A VARIETY OF REASONS, NOT
14 THE LEAST OF WHICH IS COMPETITIVE HARM THAT IT
15 MIGHT FACE. AND SO WE WOULD BE PREPARED TO FILE
16 DECLARATIONS IN SUPPORT OF THAT AS WELL.

17 THERE'S ALSO PRIVATE COMMUNICATIONS AMONG
18 SOME OF THE PRINCIPALS AT FACEBOOK AND THEIR
19 FORENSIC COLLEGIANS AND OTHER FAMILY MEMBERS AND
20 THOSE HAVE A CONSTITUTIONAL RIGHT OF PRIVACY THAT
21 WE WOULD LIKE TO PROTECT AND AGAIN WE COULD SUBMIT
22 A DECLARATION DETAILING THAT AS WELL.

23 IN TERMS OF THE TRANSCRIPT, WHILE THE
24 RIGHT MAY HAVE A GENERAL RIGHT TO ACCESS TO PUBLIC
25 PROCEEDINGS, IT IS NOT ABSOLUTE. IT IS A QUALIFIED

1 RIGHT.

2 AND IN ORDER TO HAVE WHOLESALE UNSEALING
3 OF THE RECORD, THEY NEED TO SHOW THAT THAT -- THAT
4 THE SEALING DID NOT, DID NOT SERVE A COMPELLING
5 INTEREST AND THAT THERE WAS NO ALTERNATIVE MEANS.

6 AND THE PROPOSED TRANSCRIPT THAT THE
7 COURT HAS OFFERED IS NARROWLY TAILORED TO PROTECT
8 FACEBOOK'S AND DEFENDANT'S, QUITE FRANKLY, PRIVATE
9 INFORMATION FROM THE SETTLEMENT AGREEMENT AND THE
10 SETTLEMENT DISCUSSIONS.

11 IT'S, IT'S VERY NARROWLY TAILORED SO AS
12 NOT TO UNNECESSARILY IMPEDE ON FREE ACCESS TO WHAT
13 HAD HAPPENED AT THE HEARING. SO TO ARGUE THAT NO
14 MORE OF IT NEEDS TO BE RELEASED THEN THE COURT HAS
15 PROPOSED.

16 THE MOTION IN THE RELATED PAPERS WE
17 READILY ADMITTED IN OUR OPPOSITION THAT WE WOULD BE
18 HAPPY TO GO BACK AND UNSEAL MANY OF THE DOCUMENTS.

19 AT THE OUTSET, WHEN THE MOTION TO ENFORCE
20 WAS FILED, THE PARTIES HAD AT THAT TIME AGREED TO
21 KEEP EVERYTHING CONFIDENTIAL. THIS CASE HAS GOTTEN
22 WIDE MEDIA ATTENTION AND IN ORDER TO FACILITATE A
23 WRAP-UP OF EVERYTHING AND GET THE DISMISSAL ON
24 FILE, THE PARTIES HAD AGREED TO KEEP EVERYTHING
25 CONFIDENTIAL SO EVERYTHING GOT PUT UNDER SEAL.

1 AND THERE'S OBVIOUSLY LOTS OF EXHIBITS
2 AND THINGS THAT CAN BE UNSEALED AT THIS POINT NOW
3 THAT THE SETTLEMENT IS OUT AND THE AGREEMENT HAS
4 LARGELY BEEN RELEASED TO THE PUBLIC AS WELL.

5 BUT THERE ARE STILL DOCUMENTS THAT ARE
6 APART OF THAT RECORD THAT NEED TO REMAIN SEALED,
7 AGAIN IT'S PRIVATE INFORMATION BELONGING TO
8 FACEBOOK THEY WOULD HAVE NEVER RELEASED TO THE
9 PUBLIC BUT FOR THEIR NEED TO DEFEND THEMSELVES IN
10 THIS MOTION TO ENFORCE AND THEY RELIED ON THE
11 PROTECTIVE ORDER IN RELEASING SOME OF THE
12 INFORMATION.

13 AND WHAT I'M THINKING OF IN PARTICULARLY
14 IS THE PRIVATE VALUATION OF THE COMPANY AS WELL AS
15 AN INTERNAL COMMON STOCK AGREEMENT THAT FACEBOOK
16 USES WITH ITS EMPLOYEES.

17 THOSE ARE NOT DOCUMENTS THAT WOULD HAVE
18 BEEN RELEASED INTO THE PUBLIC BUT FOR THE MOTION TO
19 ENFORCE AND A RELIANCE ON A PROTECTIVE ORDER.

20 THERE ALSO ARE SOME DECLARATIONS THAT
21 CONNECTU PUT INTO THE RECORD THAT DISCLOSED THINGS
22 THAT HAPPENED AT THE MEDIATION OR PURPORTEDLY
23 OCCURRED AT THE MEDIATION AND THOSE HAVE THEIR OWN
24 PROTECTIONS UNDER A.D.R. LOCAL RULE 6-11.

25 THE PARTIES ARE NOT PERMITTED TO

1 DISCLOSE, TO DISCLOSE WHAT HAPPENED OR WHAT WAS
2 SAID AT THE MEDIATION AND CONNECTU IMPROPERLY PUT
3 THOSE INTO THE RECORD. AND SO TO UNSEAL THEM WOULD
4 NOT ONLY VIOLATE THE MEDIATION PRIVILEGE, IT GOES
5 AGAINST THE PARTY'S AGREEMENT TO KEEP THINGS
6 CONFIDENTIAL BUT ALSO VIOLATES A.D.R. LOCAL RULE
7 6-11 AND SO WE WOULD ASK THAT THOSE REMAIN SEALED.

8 AND AGAIN, WE ARE HAPPY TO GO BACK AND
9 PREPARE DECLARATIONS DESCRIBING THE INFORMATION WHY
10 THIS INFORMATION SHOULD BE SEALED.

11 THE COURT: VERY WELL. ANYONE ELSE WANT
12 TO SPEAK TO THIS MATTER?

13 MR. MYERS: YOUR HONOR, COULD I BRIEFLY?
14 I'M SORRY, GO AHEAD.

15 MR. BARRETT: YOUR HONOR, DAVID BARRETT
16 FROM BOIES, SCHILLER & FLEXNER REPRESENTING
17 CONNECTU AND I WILL SPEAK BRIEFLY AND IN RESPONSE
18 TO A COUPLE OF THINGS THAT MS. SUTTON SAID.

19 CONNECTU IS NOT REQUESTING THAT THE COURT
20 REDACT ANY MORE THAN WE UNDERSTAND THE COURT IS
21 PREPARED TO DO.

22 CONNECTU IS TAKING NO POSITION ON WHETHER
23 THE REDACTIONS THAT THE COURT WE UNDERSTAND MAY BE
24 MAKING ARE APPROPRIATE BECAUSE WE UNDERSTAND THAT
25 THAT DETERMINATION INVOLVES BALANCING BY THE COURT

1 OF CONFIDENTIALITY RIGHTS AND PUBLIC INTERESTS.

2 WE DID NOTE THAT, THAT SOME OF THE
3 REDACTIONS IN THE TRANSCRIPT SEEM TO GO BEYOND THE
4 REDACTIONS THAT THE COURT HAD MADE IN THE TERM
5 SHEET AND INDEED I THINK GO SOMEWHAT BEYOND WHAT
6 MS. SUTTON WAS SUGGESTING FACEBOOK WAS SEEKING IN
7 TERMS OF REDACTION.

8 AS THE COURT WILL RECALL, WHEN YOU
9 REDACTED THE TERM SHEET IN YOUR ORDER LAST WEEK,
10 ESSENTIALLY THE ONLY THINGS THAT WERE REDACTED WERE
11 NUMBERS.

12 AND AS WE UNDERSTAND THE PROPOSED
13 REDACTIONS IN THE TRANSCRIPT, THEY GO BEYOND
14 NUMBERS AND COVER, I BELIEVE IT'S FAIR TO SAY, SOME
15 SUBSTANTIVE ARGUMENTS.

16 MS. SUTTON REFERRED TO THE PRIVATE
17 VALUATION OF THE COMPANY. THAT'S OBVIOUSLY A
18 NUMBER. I'M NOT SURE WHAT SHE MEANT BY INTERNAL
19 COMMON STOCK AGREEMENT.

20 OBVIOUSLY THE TERM SHEET, WHICH IS
21 ALREADY PUBLIC, DOES IDENTIFY SOME RESTRICTIONS
22 THAT WILL GO WITH THE STOCK IF THE SETTLEMENT
23 AGREEMENT IS ULTIMATELY ENFORCED.

24 AND THE THIRD THING SHE MENTIONED IS
25 DISCLOSURE OF EVENTS RELATING TO THE MEDIATION, AND

1 I DID JUST WANT TO SAY A WORD ABOUT THAT BECAUSE
2 SHE SAID THAT CONNECTU IMPROPERLY PUT THOSE MATTERS
3 RELATING TO THE MEDIATION INTO THE RECORD.

4 AND I DO DISAGREE WITH THAT FOR TWO
5 REASONS.

6 FIRST OF ALL, AS WE ARGUED, ALTHOUGH I
7 UNDERSTAND THE COURT WAS NOT PERSUADED IN ITS
8 OPINION, AS WE ARGUED, THERE IS AN EXCEPTION TO THE
9 MEDIATION PRIVILEGE THAT IS EXPRESSED IN THE LOCAL
10 A.D.R. RULE.

11 WE ALSO ARGUED THAT IT CAN BE OVERCOME OR
12 IS OVERCOME BY THE SECURITIES ACT OF 1934 BY
13 PROVISIONS OF THAT ACT BARRING SECURITIES FRAUD.
14 SO WE THINK IT WAS NOT IMPROPER FOR THAT REASON.

15 AND SECONDLY, SECONDLY, IN PARTICULAR, IN
16 THIS CASE, AS WE ARGUED, AND THE REASON THAT WE PUT
17 IN THE SECOND DECLARATION FROM MR. WINKLEVOSS,
18 WHICH DID DISCUSS MATTERS IN THE MEDIATION, WAS
19 BECAUSE IN FACEBOOK'S REPLY BRIEF IN SUPPORT OF THE
20 MOTION TO ENFORCE, THEY MADE THE STATEMENT THAT,
21 THAT CONNECTU HAD NOT MADE ANY PROFFER OF WHAT
22 HAPPENS IN THE MEDIATION AND THAT WE WOULD LIKE TO
23 SHOW THE COURT IN ORDER TO FURTHER SUPPORT OUR
24 CLAIM OF SECURITIES FRAUD.

25 AND, YOUR HONOR, I WOULD SUBMIT THAT WHEN

1 FACEBOOK MADE THAT STATEMENT IN EFFECT SAYING ONE
2 OF THE REASONS THAT YOU SHOULD REJECT OUR DEFENSE
3 WAS BECAUSE WE HADN'T TOLD YOU ANYTHING THAT
4 HAPPENED IN THE MEDIATION THAT WOULD SUPPORT A
5 SECURITIES FRAUD CLAIM, THAT WAS A -- IN FACT, THEY
6 SAID, THEY SAID, YOUR HONOR, WE HAVE NO EVIDENCE OF
7 ANYTHING THAT HAPPENED IN THE MEDIATION THAT WOULD
8 SUPPORT A SECURITIES FRAUD CLAIM.

9 WHEN THEY MADE THAT ARGUMENT, THAT WAS
10 EFFECTIVELY A WAIVER AND WE WERE ENTITLED TO DEFEND
11 AGAINST THAT ARGUMENT BY PUTTING IN THAT EVIDENCE.

12 THAT'S, PERHAPS, A BIT OF A LONG WINDED
13 WAY OF SAYING THAT I DON'T THINK THAT THERE WAS
14 ANYTHING IMPROPER ABOUT THAT DECLARATION BEING PUT
15 IN, IN LIGHT OF THE -- IN LIGHT OF THOSE FACTORS.

16 NOW, THAT MAY BE A DIFFERENT QUESTION
17 FROM WHETHER THE COURT BELIEVES AT THIS STAGE OF
18 THE PROCEEDINGS AND IN LIGHT OF CNET'S MOTION,
19 WHETHER IT IS APPROPRIATE TO DISCLOSE INFORMATION
20 ABOUT WHAT OCCURRED IN THE MEDIATION AND I
21 RECOGNIZE THAT THAT'S A DIFFERENT ISSUE.

22 BUT EVEN HAVING SAID THAT, IT DID APPEAR
23 THAT SOME OF THE REDACTIONS IN THE TRANSCRIPT
24 WERE -- DID NOT INVOLVE MATTERS THAT HAD ANYTHING
25 TO DO WITH THE MEDIATION. THEY INVOLVED

1 SUBSTANTIVE MATTERS THAT CAN BE DISCUSSED WITHOUT
2 ANY DISCLOSURE OF WHAT HAPPENED IN THE MEDIATION.

3 THANK YOU, YOUR HONOR.

4 THE COURT: BRIEFLY.

5 MR. MYERS: YES, YOUR HONOR. IT'S NOT
6 OUR BURDEN; IT'S THEIR BURDEN. AND I'M ONLY NOW
7 TALKING ABOUT THE TRANSCRIPT AND THE MOTION AND I'M
8 NOT TALKING ABOUT ALL THE OTHER RECORDS -- WE CAN
9 TALK ABOUT -- NOBODY WANTS THEIR SOURCE CODE.

10 WHEN THIS GETS REFERRED TO THE MAGISTRATE
11 AND THEY SUBMIT A DECLARATION SAYING DOCUMENT XX
12 CONTAINS OUR SOURCE CODE AND WE WANT IT REDACTED,
13 AND THAT'S FINE. THAT HAPPENED IN THE SUN
14 MICROSOFT CASE. THAT'S A TRADE SECRET, AND NO ONE
15 HAS A PROBLEM WITH THAT.

16 IT GETS A LITTLE SQUISHY WHEN YOU TALK
17 ABOUT CONFIDENTIAL INFORMATION BECAUSE I IMAGINE
18 FROM THE COURT'S OWN EXPERIENCE IT KNOWS THAT THE
19 PARTIES TEND TO BE OVERZEALOUS IN DEFINING WHAT
20 THEY BELIEVE TO BE THEIR CONFIDENTIAL INFORMATION.

21 AND THAT IS WHY THE COURTS REQUIRE A
22 SHOWING, THE COMPELLING INTEREST TEST, FOR THE
23 TRANSCRIPT AND THE COMPELLING NEEDS TEST, WHICH
24 REQUIRES A SHOWING OF -- NOT JUST THAT IT'S
25 CONFIDENTIAL BUT COMPETITIVE HARM AND THEY CAN'T

1 JUST COME IN AND SAY, WELL, WE'LL DO IT. THEY HAD
2 A CHANCE TO DO IT AND IN WHAT THEY FILED ON MONDAY.
3 THEY HAD THE WEEKEND. THEY COULD HAVE PUT THE
4 DECLARATION IN. THEY DIDN'T.

5 THEY COULD HAVE PUT ONE IN BEFORE THE
6 HEARING WAS CLOSED, AND THEY DIDN'T DO THAT EITHER.
7 THERE'S BEEN NO SHOWING THAT WOULD JUSTIFY ANY
8 REDACTION OF THE HEARING OR ANY REDACTION OF THE
9 PAPERS REGARDING THE MOTION TO ENFORCE.

10 AND EVERYTHING ELSE WE AGREE CAN BE
11 REFERRED TO THE MAGISTRATE AND THEY CAN MAKE A
12 SHOWING ON THOSE DOCUMENTS.

13 WITH RESPECT TO TIMING, WE PROPOSE
14 TWO WEEKS. WE'RE FINE WITH BIFURCATING THAT AND
15 NOT DEALING WITH ANY OF THE DOCUMENTS THAT WERE IN
16 THE SUPERIOR COURT BEFORE IT WAS REMOVED.

17 NOW WE CAN MAYBE DO THAT LATER, ANOTHER
18 TWO WEEKS DOWN THE ROAD, BUT WE PROPOSE TWO WEEKS.

19 AND THE A.P. CASE THAT WE CITED, THE
20 NINTH CIRCUIT CASE WE CITED IT GAVE THE PARTIES
21 THREE DAYS BECAUSE THE COURT HAD SEALED EVERYTHING.

22 IT SAID YOU SHOULDN'T BE DOING THIS AND
23 YOU HAVE TO GO BACK AND LOOK AT THIS. WE'RE GOING
24 TO FILE MOTIONS TO JUSTIFY THE SEALING BUT YOU HAVE
25 THREE DAYS. SO WE'RE PROPOSING TWO WEEKS.

1 THEY, I THINK, HAVE NOT PROPOSED ANY
2 TIMEFRAME SO WE'RE OPEN TO TALKING ABOUT IT, BUT WE
3 WOULD PROPOSE TWO WEEKS.

4 THE COURT: WELL, I -- UNLESS YOU HAVE
5 SOMETHING THAT IS BURNING, I THINK I HAVE A, A --
6 WELL, I SHOULDN'T SAY SOLUTION. I HAVE AN ORDER
7 THAT I CAN MAKE THAT IN MY MIND DOES A PROPERLY, A
8 PROPERLY BALANCE AND MR. BARRETT'S COMMENT THAT
9 BALANCING IS THE WATCH WORD OF THIS WHOLE PROCESS
10 AND I'LL ISSUE THAT AS SOON AS I LEAVE THE BENCH.

11 IN THAT ORDER I DO RECOGNIZE THE NEED FOR
12 BALANCING BECAUSE THERE ARE COMPETING INTERESTS
13 HERE.

14 AND I THINK AS THE PARTIES HAVE
15 ADEQUATELY POINTED OUT, THERE ARE DIFFERENT
16 CONCERNS THAT ATTACH TO A CONFIDENTIALITY THAT IS
17 INHERENT IN TRADE SECRETS AND THE TRADITIONAL KINDS
18 OF MATERIAL THAT CAN BE HELD IN CONFIDENCE, EVEN IN
19 THE CONTEXT OF A LITIGATION IN A PUBLIC FORUM SUCH
20 AS THIS COURT.

21 THE REASON THIS CASE IS ONE THAT I HAVE
22 GIVEN A GREAT DEAL OF ATTENTION TO IS BECAUSE AS A
23 COURT WE ENCOURAGE PARTIES TO ENGAGE IN MEDIATION
24 AND RESOLUTION OF DISPUTES.

25 THE PUBLIC HAS A DIRECT BENEFIT IN THAT

1 PROCESS. AND SO COURT ANNEXED MEDIATION IS A VERY
2 IMPORTANT PART OF HOW WE DO BUSINESS AS A COURT AND
3 MY PREDECESSOR -- I ACTUALLY TOOK THE SEAT OF
4 ROBERT PECKHAM. I'M HONORED TO HAVE DONE SO. HE
5 PIONEERED COURT ANNEXED MEDIATION AND IN THE
6 INTEREST OF THIS COURT IN THE ALTERNATIVE DISPUTE
7 RESOLUTION.

8 SO WHEN THE PARTIES GO OUT TO A.D.R. AND
9 COME TO WHAT THEY REGARD AS A CONFIDENTIAL
10 SETTLEMENT AND COME BACK TO THE COURT WITH A MOTION
11 TO ENFORCE THAT CONFIDENTIAL SETTLEMENT, IT'S PART
12 OF WHAT WE DO AS A COURT IS TO RESPECT THAT
13 CONFIDENTIALITY.

14 AND I HAVE BEEN MOTIVATED BY A REQUEST BY
15 THE PARTIES TO RESPECT THE CONFIDENTIALITY OF THE
16 SETTLEMENT.

17 AT THE SAME TIME IT'S NECESSARY TO INVADE
18 SOME OF THE DETAILS OF THAT SETTLEMENT IN ORDER TO
19 DO WHAT THE PARTIES HAVE ASKED THE COURT TO DO AND
20 THAT IS TO ENFORCE THE SETTLEMENT.

21 IT IS TRUE THAT THERE HAS BEEN A
22 DISPOSITIVE MOTION MADE TO THE COURT IN THE FORM OF
23 THIS MOTION TO ENFORCE THE SETTLEMENT, BUT THE CASE
24 HAS NOT BEEN DISPOSED OF BY THE MOTION BECAUSE AS I
25 LOOK AROUND THE ROOM I DON'T HAVE AGREEMENT FROM

1 EVERYONE THAT WHAT I'M DOING IS THE CORRECT THING.
2 SO THE WHOLE LITIGATION MAY RESUME AND IF I TAKE
3 ACTION IN THE COURSE OF THIS, WHICH OPENS UP TO
4 PUBLIC SCRUTINY MATTERS THAT THE PARTIES HAVE
5 SOUGHT TO SHIELD IN THE COURSE OF THEIR LITIGATION,
6 I, PERHAPS, WILL PUT THEM IN A DISADVANTAGE IF THE
7 LITIGATION WERE TO CONTINUE.

8 ONE OF THE THINGS THEY SOUGHT TO PROTECT
9 IN THEIR CONFIDENTIAL SETTLEMENT, I PRESUME, IS ANY
10 PUBLIC DISCOURSE ABOUT THEIR MOTIVATION TO SETTLE
11 AND ANY CHARACTERIZATION OF ONE OR THE OTHER.

12 BUT IN THE COURSE OF THE MOTION TO COMPEL
13 THE MOTION OF NECESSITY, I HAD TO ASK QUESTIONS
14 ABOUT MATTERS THAT THEY OTHERWISE WOULD KEEP
15 CONFIDENTIAL.

16 AND, AGAIN, I AM MINDFUL OF THAT WITH
17 RESPECT TO A MOTION SUCH AS THE ONE BEING MADE BY
18 THE COURT TO UNSEAL SO THAT THE PUBLIC CAN GET INTO
19 THOSE PRIVILEGED MATTERS THAT THEY OTHERWISE WOULD
20 KEEP CONFIDENTIAL AND THE PARTIES COULD HAVE CHOSEN
21 TO ENFORCE THEIR SETTLEMENT BY GOING TO FURTHER
22 PRIVATE MEDIATION AND KEPT IT OUT OF THE PUBLIC
23 FORUM ALL TOGETHER.

24 BUT HAVING CHOSEN THE COURT, THEY HAVE
25 ACTUALLY CHOSEN A PUBLIC FORUM, BUT AT THE SAME

1 TIME I THINK WE CAN RECONCILE THE INTEREST OF THE
2 PUBLIC THROUGH THE MEDIA OR OTHERWISE TO HAVE
3 ACCESS TO INFORMATION THAT DOESN'T VIOLATE THE KIND
4 OF PRIVILEGE THAT THE PARTIES THOUGHT THEY WERE
5 ENJOYING BY COMING TO A CONFIDENTIAL SETTLEMENT.

6 AND SO I WILL PARSE BETWEEN THE VARIOUS
7 MATTERS HERE. THE TRANSCRIPT I HAVE GONE THROUGH
8 AND REDACTED PORTIONS OF IT WHICH SPEAK TO THE
9 FINANCIAL DISCLOSURES THAT THEY MADE TO EACH OTHER
10 ON A CONFIDENTIAL BASIS.

11 BUT TO MR. BARRETT'S POINT THAT MY
12 REDACTIONS ARE MORE EXTENSIVE THAN THAT, WHAT I
13 HAVE TRIED TO DO WAS TO PROTECT THE CONFIDENTIALITY
14 OF THE GIVE AND TAKE IN THE SETTLEMENT DISCUSSIONS
15 AND SO I -- MY REDACTIONS WERE REFLECTIVE OF AN
16 ATTITUDE THAT UNTIL THE PARTIES THEMSELVES
17 VOLUNTARILY DECIDE THAT THOSE MATTERS SHOULD BE PUT
18 IN THE PUBLIC RECORD, I HAVE BEEN MORE -- I HAVE
19 BEEN CAUTIOUS ABOUT PUTTING THOSE MATTERS INTO THE
20 PUBLIC.

21 THAT TRANSCRIPT WAS ONE WHERE I INVITED
22 THE PARTIES TO COME TO COURT AND SPEAK TO ME
23 CANDIDLY IN A CLOSED FORUM ABOUT WHAT HAD HAPPENED.
24 AND I GUESS NOW I HAVE TO ASSURE THEM THAT I WOULD
25 RESPECT THE CONFIDENTIALITY THAT I TOLD THEM THAT I

1 WOULD GIVE THEM IN HAVING THAT HEARING AND IT PUTS
2 THE COURT IN A DIFFICULT POSITION TO BE NOW MAKING
3 A JUDGMENT THAT, WELL, I TOLD YOU IT WAS
4 CONFIDENTIAL AND SEALED BUT NOW I'M GOING TO MAKE
5 IT PUBLIC.

6 THE INTEGRITY OF THE COURT CAN BECOME
7 INVOLVED IF PARTIES WHO GO BEFORE THE COURTS ARE
8 ASSURED THAT IT'S A SEALED CONFIDENTIAL PROCESS
9 ONLY TO LATER FIND THAT IT IS NOT.

10 NOW, THE LAW ALLOWS THE COURT TO EXERCISE
11 ITS DISCRETION WITHIN LIMITS.

12 THERE ARE STANDARDS AND I DO INTEND TO
13 RESPECT THOSE STANDARDS IN WHAT I, WHAT I -- IN THE
14 ORDER THAT I'M GOING TO MAKE WITH RESPECT TO THIS
15 MATTER.

16 SO YOUR ARGUMENT THAT I SHOULD ACT
17 QUICKLY IS ONE THAT I AM MINDFUL OF.

18 MR. MYERS, I WILL, AS I SAID, ISSUE MY
19 ORDER AS SOON AS I'M OFF THE BENCH.

20 I WILL DIRECT THE COURT REPORTER TO FILE
21 A REDACTED TRANSCRIPT SO THAT THAT IS AVAILABLE AND
22 WITH RESPECT TO THE PREMOTION MATTERS THAT WERE
23 FILED UNDER SEAL, AT THE ORDER OF OTHER JUDGES, I
24 GOT THIS CASE ON THE MOTION WITH RESPECT TO THE
25 SETTLEMENT AND THESE ORDERS WERE MADE PRIOR TO MY

1 INVOLVEMENT IN THE CASE AND I DON'T HAVE A BASIS
2 FOR, AT THIS POINT, MAKING ANY JUDGMENT ABOUT THOSE
3 MATTERS.

4 THERE ARE STANDARDS THAT AFFECT THAT, AND
5 I DO INTEND TO REFER THOSE MATTERS TO A MAGISTRATE
6 JUDGE TO -- IF THERE ARE FURTHER REQUESTS MADE FOR
7 OPENING TO PUBLIC SCRUTINY THE DOCUMENTS THAT HAVE
8 BEEN PREVIOUSLY SEALED BY THE COURT.

9 SO WITH THAT THE MOTION TO INTERVENE FOR
10 THE LIMITED PURPOSE OF MAKING THIS MOTION IS
11 GRANTED.

12 AND THE MOTION TO UNSEAL WILL BE GRANTED
13 TO THE LIMITED EXTENT THAT I HAVE NOW INDICATED.

14 MR. MYERS: CAN I ASK A POINT OF
15 CLARIFICATION?

16 THE COURT: CERTAINLY.

17 MR. MYERS: WITH RESPECT TO THE DOCUMENTS
18 THAT HAVE BEEN FILED, IS THE COURT TREATING THE
19 MOTION --

20 THE COURT: WHICH DOCUMENTS?

21 MR. MYERS: WELL, THAT'S MY QUESTION. IS
22 THE COURT TREATING THE MOTION TO ENFORCE THE
23 SETTLEMENT AS PART OF ALL OF THE OTHER RECORDS THAT
24 WILL BE REFERRED TO THE MAGISTRATE OR ARE THOSE
25 GOING TO BE RELEASED WITH THE TRANSCRIPT OR SHORTLY

1 THEREAFTER?

2 THE COURT: WELL, GOOD QUESTION. I DON'T
3 KNOW. I WOULD REGARD THE MOTION THAT WAS FILED
4 UNDER SEAL IN A DIFFERENT CATEGORY THAN THE OTHER
5 RECORDS BECAUSE IT WAS FILED PARTICULARLY WITH
6 RESPECT TO A CONFIDENTIAL SETTLEMENT.

7 AND THAT HAS A PRIVILEGE THAT ATTACHES TO
8 IT THAT IS DIFFERENT THAN THE PRIVILEGES THAT MIGHT
9 APPLY TO OTHER MATTERS.

10 SO I DO INTEND TO TREAT IT DIFFERENTLY.

11 I HAVEN'T DECIDED WHETHER OR NOT I WILL
12 GIVE THAT TO THE MAGISTRATE JUDGE OR KEEP IT MYSELF
13 BUT THE TRANSCRIPT WILL -- THE REDACTED TRANSCRIPT
14 WILL BE AVAILABLE.

15 MR. MYERS: AND THAT WILL GO TO THE
16 PUBLIC COURT FILE? THEY WILL BE ABLE TO GET IT
17 FROM THE FILE?

18 THE COURT: THE COURT REPORTER HAS A
19 PROCESS THAT SHE USES TO MAKE THAT AVAILABLE TO THE
20 PUBLIC AND I WILL DIRECT HER TO, TO FILE -- IT'S
21 DONE THROUGH SOME ELECTRONIC FORM AND YOU NEED
22 ACCESS TO IT, BUT I'LL DIRECT HER TO FILE A
23 REDACTED TRANSCRIPT.

24 MR. MYERS: THANK YOU, YOUR HONOR.

25 THE COURT: THANK YOU ALL.

1 WE'LL GO NOW TO THE OTHER MOTION THAT IS
2 BEFORE THE COURT HAVING TO DO WITH THE ORDER TO
3 SHOW CAUSE WHY A JUDGMENT SHOULD BE ENTERED OR NOT
4 BE ENTERED AS THE CASE MAY BE.

5 AND WITH RESPECT TO THAT, I RECEIVED
6 SUBMISSIONS FROM BOTH SIDES. I PRESUME THAT THE
7 SUBMISSION BY THE DEFENDANTS CONNECTU AND OTHERS
8 ARE SUBMITTED WITHOUT WAIVING YOUR OBJECTION TO MY
9 ORDER IN THE FIRST PLACE.

10 MR. BARRETT: THAT IS CORRECT. THANK
11 YOU. WE ARE, YOUR HONOR, AS YOU SAY, ADDRESSING
12 THE FORM OF THE JUDGMENT AND WE RESERVE OUR RIGHTS
13 TO CONTEST THE ORDER AND THE JUDGMENT AS MAY BE
14 APPROPRIATE.

15 THE COURT: HERE'S WHAT I INTEND TO DO,
16 AND MAYBE THAT WOULD BE FASTER TO HAVE YOU ADDRESS
17 WHAT I INTEND TO DO AS OPPOSED TO WHAT YOU WOULD
18 WANT ME TO DO.

19 I HAVE READ YOUR SUBMISSIONS. THEY ARE
20 SUBSTANTIALLY THE SAME. AND SO THE FORM OF THE
21 JUDGMENT I THINK COULD COMPLY WITH YOUR
22 SUBMISSIONS.

23 THERE ARE A COUPLE OF ASPECTS OF IT THAT
24 I WANT TO ADDRESS.

25 FIRST, IT WILL BE NECESSARY FOR SOME

1 INTERMEDIARY TO ACT IN A CAPACITY TO COLLECT
2 INFORMATION AND MOVE THINGS AROUND AND TO DO
3 CERTAIN THINGS TO CARRY OUT THE COURT'S JUDGMENT.

4 RATHER THAN ACCEPT THE SUBMISSION BY ONE
5 OF THE PARTIES THAT A PARTY SELECT THAT PERSON AND
6 PAY FOR THAT PROCESS, MY INTENT IS TO APPOINT A
7 SPECIAL MASTER WHO WOULD BEHOLDEN TO THE COURT,
8 TAKE DIRECTIONS FROM THE COURT AND NO ONE ELSE,
9 WITH RESPECT TO A COLLECTION OF THE VARIOUS
10 DEPOSITS MANDATED BY THE JUDGMENT AND WITH RESPECT
11 TO ANY DISBURSEMENTS OR FILINGS THAT WOULD COME
12 ALONG WITH THAT AND HAVE THE PARTIES PAY THE COST
13 OF THAT PROCESS EQUALLY.

14 IT IS ALSO MY INTENT TO THEN HAVE THE
15 JUDGMENT REQUIRE THE MASTER TO COLLECT THE VARIOUS
16 CERTIFICATES OR CASH OR OTHER CONSIDERATION TO
17 COLLECT RATHER THAN DEEM THAT THERE HAS BEEN
18 RELEASES TO ACTUALLY COLLECT A SUBMISSION OF A
19 RELEASE.

20 I DO INTEND TO PROVIDE THAT THAT RELEASE
21 HAS TO BE SUBMITTED TO THE COURT FOR ITS APPROVAL
22 AND THEN IT WOULD BE DEPOSITED WITH THE MASTER SO
23 THAT WOULD LEAVE TO THE COURT AND NO ONE ELSE THE
24 DETERMINATION AS TO WHETHER OR NOT THE RELEASE IS
25 CONSISTENT WITH THE LANGUAGE OF THE SETTLEMENT

1 AGREEMENT WHICH PROVIDES AS BROAD AS POSSIBLE. I
2 CAN'T RECALL THE EXACT WORDS.

3 I WOULD ALSO HAVE THE PARTIES SUBMIT A
4 LEGALLY SUFFICIENT DISMISSAL OF ALL CASES AND THEN
5 I WOULD MAKE SUBSEQUENT ORDERS WITH RESPECT TO THEN
6 WHAT THE MASTER DOES WITH RESPECT TO THE EXCHANGE
7 OF THOSE DOCUMENTS.

8 THERE IS A LEGEND WHICH WAS SUGGESTED BY
9 ONE OF THE PARTIES WHICH WOULD BE PLACED ON STOCK
10 CERTIFICATES AND SO I NEED TO HEAR FROM THE PARTIES
11 WITH RESPECT TO WHETHER YOU HAVE ANY OBJECTION TO
12 THE JUDGMENT AND INCORPORATING THAT LEGEND.

13 THERE IS A REQUEST IN THE VARIOUS
14 SUBMISSIONS THAT THE COURT SPEAK TO VARIOUS ASSETS,
15 PARTICULARLY WEB SITES AND THOSE TYPES OF THINGS.
16 THERE WAS NOTHING ABOUT THAT IN THE SETTLEMENT
17 AGREEMENT ITSELF, AND SO THE COURT IS DISPOSED TO
18 LEAVE THAT TO MATTERS OF ORDINARY BUSINESS
19 TRANSACTIONS THAT FOLLOW THE ENFORCEMENT OF THE
20 SETTLEMENT AND THE EXCHANGES THAT ARE REQUIRED IN
21 THE SETTLEMENT.

22 I AM CONCERNED THAT IN ORDER TO BE
23 EFFECTIVE IN ITS ENFORCEMENT, THE COURT SHOULD
24 IMPOSE ON THE PARTIES A REQUIREMENT THAT THEY NOT
25 TAKE ANY ACTION WHICH WOULD INTERFERE WITH THE

1 ABILITY TO FULFILL THE TERMS OF THE AGREEMENT AND I
2 DIDN'T KNOW HOW FAR TO GO WITH RESPECT TO THAT.

3 AND THEN THE COURT DOES INTEND TO RETAIN
4 JURISDICTION TO ENFORCE THE JUDGMENT, AND I THINK
5 THAT IS ALSO INHERENT IN THE AGREEMENT ITSELF TO
6 RETAIN JURISDICTION GIVEN TO IT BY THE PARTIES TO
7 ENFORCE THE TERMS OF THE AGREEMENT ITSELF.

8 ALL RIGHT. SO WITH THAT LET ME PAUSE AND
9 SEE IF THE PARTIES WISH TO SPEAK FURTHER.

10 MR. CHATTERJEE: YOUR HONOR, IF I MAY.
11 NEEL CHATTERJEE FOR FACEBOOK AND MARK ZUCKERBERG.
12 WE ALSO DIDN'T DO APPEARANCES FOR THIS MOTION.

13 I SAW YOU MIGHT HAVE LOOKED COMPLEX AT
14 THE GENTLEMAN STANDING RIGHT NEXT TO ME AND I
15 THOUGHT IT MIGHT BE GOOD TO HAVE APPEARANCES.

16 MR. VAN DALSEM: BRUCE VAN DALSEM FROM
17 QUINN EMANUEL. WE'RE LIEN CLAIMANT IN THE CASE.

18 THE COURT: I APPRECIATE THAT YOU ARE NOW
19 IDENTIFYING YOURSELF. I DID NOT INTEND TO IN MY
20 STATEMENT SAY ANYTHING ABOUT THE LIEN CLAIMANT THAT
21 HAS COME TO MY ATTENTION.

22 SO FAR AS THE COURT IS KNOWLEDGEABLE,
23 THERE HAS BEEN A NOTICE OF A LIEN THAT I HAVE SEEN,
24 BUT I DON'T KNOW THE BONA FIDES OF IT. IT DOES
25 SEEM TO ME THAT ANY EFFECT THAT THAT WOULD HAVE ON

1 MY JUDGMENT, IT HAS TO BE SOMEHOW ADJUDICATED IN
2 SOME WAY, UNLESS THE PARTIES STIPULATE TO HOW TO
3 HANDLE IT.

4 I DO INTEND THAT HAVING FILED IT, YOU MAY
5 INTERJECT YOURSELF IN THE PROCESS SOMEHOW.

6 I HAVEN'T FIGURED OUT WHAT THAT IS FOR
7 PURPOSES OF MAKING SURE THAT, THAT ANY, ANY -- THAT
8 OUR DISBURSEMENTS ARE CONSISTENT WITH ANY CLAIM
9 THAT YOUR CLIENT WOULD MAKE.

10 MR. VAN DALSEM: YOUR HONOR, IF THE COURT
11 WOULD ENTERTAIN IT, I WOULD LIKE TO SPEAK TO THOSE
12 ISSUES WHEN APPROPRIATE.

13 THE COURT: SURE, IN DUE COURSE. AND
14 MAYBE THIS IS THE POINT, BUT I WANTED TO GIVE AT
15 LEAST THE PARTIES TO THE LITIGATION AN OPPORTUNITY
16 TO COMMENT ON THE FORM OF THE JUDGMENT I INTEND TO
17 FILE.

18 MR. CHATTERJEE: THANK YOU, YOUR HONOR.
19 AND THE ONE OTHER THING I JUST WANTED TO RAISE IS
20 THAT I DID RECEIVE AN E-MAIL TWO DAYS AGO FROM THE
21 FINNEGAN HENDERSON FIRM MAKING AN ASSERTION THAT
22 THEY MAY ALSO FILE FOR A LIEN AGAINST ANY PROCEEDS
23 IN THIS CASE. THEY HAVEN'T FILED ANYTHING WITH THE
24 COURT, BUT IT'S OF CONCERN TO US BECAUSE FACEBOOK
25 WANTS TO MAKE SURE THAT ONCE THEY HAVE GIVEN THE

1 CONSIDERATION, THERE IS NOTHING HANGING OUT THERE
2 AND SOMEONE CAN TRY ASSERT AGAINST FACEBOOK AND THE
3 OTHER INDIVIDUALS WHO ARE SETTLING IN THIS CASE.

4 PERHAPS -- I SEE MR. MOSKO STANDING UP.
5 PERHAPS HE CAN ADDRESS THAT ISSUE.

6 THE COURT: COUNSEL.

7 MR. MOSKO: YES, SCOTT MOSKO, YOUR HONOR,
8 REPRESENTATIVE OF ALL OF THE DEFENDANTS HERE AS
9 WELL AS ONE OF THE PARTNERS AT FINNEGAN HENDERSON.

10 THE COURT SHOULD BE AWARE THAT, IN FACT,
11 FINNEGAN HENDERSON HAS PERFECTED LIENS WITH RESPECT
12 TO THIS MATTER.

13 FINNEGAN HENDERSON IS NOT TAKING THE SAME
14 POSITION AS QUINN EMANUEL.

15 I UNDERSTAND THE COURT DOES NOT INTEND TO
16 MAKE ANY REFERENCE TO THE LIENS IN THE JUDGMENT AND
17 WITH RESPECT TO THAT FINNEGAN HENDERSON IS FINE.

18 WE INTEND TO WORK CLOSELY WITH OUR CLIENT
19 AND BELIEVE THAT THAT MATTER WILL BE RESOLVED
20 WITHOUT ANY KIND OF A REFERENCE TO THE LIENS IN THE
21 JUDGMENT. AND WITH RESPECT TO THAT, I HAVE NOTHING
22 MORE TO SAY.

23 MR. CHATTERJEE: SO, UM -- THANK YOU.

24 YOUR HONOR, AS TO THE ESCROW AGENT OR
25 SPECIAL MASTER, WHICH I'LL ADDRESS -- IS THE POINT

1 I'LL ADDRESS FIRST.

2 THE STRUCTURE THAT WAS PUT IN PLACE, AT
3 LEAST FROM FACEBOOK'S PERSPECTIVE AS FAR AS HAVING
4 THIS SPECIAL MASTER ADMINISTER HOW TO RELEASE FUNDS
5 OR STOCK AND HOW TO RELEASE OTHER KINDS OF
6 CONSIDERATION IN THE TRANSACTION, WAS REALLY
7 BECAUSE OF THE FACT THAT THERE WAS THIS NOTICE OF
8 LIEN HANGING OUT THERE.

9 IT WAS REALLY TO MAKE SURE THAT THE
10 SPECIAL MASTER OR WHOEVER THE NEUTRAL WAS THAT WAS
11 HOLDING ON TO THE PROPERTY WAS -- HOLD ON TO IT
12 ESSENTIALLY IN TRUST TO MAKE SURE THAT THE PROCEEDS
13 WERE DISTRIBUTED ACCORDINGLY AND THAT FACEBOOK
14 WOULD NO LONGER HAVE TO DEAL WITH ANY ISSUES
15 ASSOCIATED WITH THIS NOTICE OF LIEN.

16 I THINK YOUR HONOR IS CORRECT, WE DON'T
17 KNOW ANY OF THE PARTICULARS OF IT SO WE DON'T WANT
18 TO HAVE AN UNKNOWN CLAIM AGAINST A COMPANY THAT WE
19 BELIEVE WE NOW OWN HANGING OUT THERE AGAINST IT.

20 AND THEY FILED A NOTICE. WE HAVE TO
21 PROTECT OUR INTEREST. BUT REALLY THE ESCROW
22 PROPOSAL THAT BOTH PARTIES MADE AT LEAST FROM OUR
23 PERSPECTIVE WAS TO DEAL WITH THAT ISSUE.

24 IF YOUR HONOR WERE TO RULE THAT
25 FACEBOOK/CONNECTU, ONCE IT'S IN THE HANDS OF

1 FACEBOOK AND THE OTHER INDIVIDUALS WHO ARE ON OUR
2 SIDE OF THE CASE WHO HAVE SETTLED OUT, DON'T REALLY
3 HAVE ANY RESPONSIBILITIES AS TO THE NOTICE OF LIEN
4 THAT HAS BEEN FILED, THAT ACTUALLY MAKES THE
5 JUDGMENT CONSIDERABLY SIMPLER.

6 AND, AND IT'S -- FROM OUR PERSPECTIVE AT
7 THAT POINT IT'S JUST A TIMING QUESTION AND WE
8 BELIEVE THAT, THAT THEY SHOULD JUST BE ORDERED TO
9 HAND US ALL OF THE STOCK TO THE COMPANY WITHIN
10 30 DAYS OF ENTRY OF JUDGMENT. WE DON'T NEED AN
11 ESCROW AGENT AT ALL.

12 THERE IS KIND OF A LINGERING TIMING
13 ISSUE, EVEN WERE A SPECIAL MASTER TO BE APPOINTED.
14 IF A SPECIAL MASTER WERE TO BE APPOINTED, WE DO
15 HAVE TO ANSWER THE QUESTION OF WHO IS GOING TO
16 CONTINUE TO MAINTAIN THE CONNECTU BUSINESS FROM THE
17 TIME OF ENTRY OF JUDGMENT UNTIL WHATEVER TIME THOSE
18 PROCEEDS ARE DISTRIBUTED.

19 CONNECTU DOES HAVE A BUSINESS AND IT HAS
20 A WEB SITE AND IT HAS OPERATING EXPENSES. I DON'T
21 BELIEVE IT HAS EMPLOYEES, BUT IT CERTAINLY HAS
22 PEOPLE DOING WORK ON ITS BEHALF.

23 ONE OF THE THINGS WE WERE TALKING ABOUT
24 AS WE WERE TRYING TO WORK UP THE JUDGMENT ON OUR
25 SIDE OF THE CASE IS THAT IF WE DON'T GET THE

1 COMPANY WITHIN A VERY SHORT TIME PERIOD AND WE HOLD
2 ON -- OR A SPECIAL MASTER OR SOMEONE WERE TO HOLD
3 ON TO IT THROUGH THE FINAL PIECES OF THE APPEALS OR
4 THE FINAL COURT AND HOW IS THAT PIECE GOING TO BE
5 MANAGED?

6 PERHAPS THE SPECIAL MASTER IS GOING TO DO
7 IT. HOW IS THAT GOING TO BE FUNDED? AND THAT'S A
8 DIFFICULT QUESTION IN OUR VIEW.

9 AND OUR PREFERENCE IS TO HONOR THE
10 SETTLEMENT AGREEMENT AND WE GET CONTROL OF THE
11 COMPANY THROUGH OWNING THE SHARES AND WE WILL
12 CONTINUE TO OPERATE IT AND THE REST OF THE ASSETS
13 OF THE COMPANY AS IS NECESSARY.

14 THE ISSUE OF COST FOR THE SPECIAL MASTER
15 IS AN IMPORTANT ISSUE FROM OUR PERSPECTIVE BECAUSE,
16 AGAIN, FROM OUR PERSPECTIVE THE ONLY REASON THAT A
17 SPECIAL MASTER OR A COURT APPOINTED PERSON WOULD
18 HAVE THIS KIND OF A ROLE WOULD REALLY BE BECAUSE OF
19 A DISPUTE BETWEEN QUINN EMANUEL AND THE CONNECTU
20 FOUNDERS.

21 WE REALLY AREN'T INVOLVED IN THAT, AND WE
22 DON'T THINK WE SHOULD HAVE TO PAY FOR A FIGHT
23 BETWEEN THOSE PARTIES.

24 THE COURT: WELL, I DON'T AGREE THAT'S
25 THE ONLY REASON. THE REASON THAT I'M CONTEMPLATING

1 IS THAT YOU ALL WERE UNABLE TO DO IT ON YOUR OWN
2 AND YOU CAME TO THE COURT AND ASKED ME TO ENFORCE
3 IT AND IN THE ENFORCING OF IT, IT REQUIRES STEPS.

4 AND IT'S NOT A MATTER THAT I CAN DO
5 WITHOUT PUTTING SOMEONE IN THE MIDDLE TO COLLECT
6 THINGS IN ORDER TO MAKE SURE EVERYTHING IS, IS,
7 IS -- GOES ACCORDING TO THE AGREEMENT.

8 SO THAT'S WHY I'M CONTEMPLATING REQUIRES
9 THE MASTER IN THE FIRST PLACE AND ALSO REQUIRING
10 THAT THE PARTIES SHARE THE COST OF THAT.

11 I DON'T CONTEMPLATE THAT IT WOULD BE A
12 LONG DRAWN OUT AFFAIR, ALTHOUGH THINGS CAN OVERTAKE
13 THE TIMING THAT I ACTUALLY DON'T CONTEMPLATE HERE,
14 NOR DO I CONTEMPLATE THAT THE COST OF SOMEONE TO DO
15 THIS WOULD BE PROHIBITED.

16 MR. CHATTERJEE: THANK YOU, YOUR HONOR.
17 THE ONLY CAVEAT TO THAT POINT IS IF QUINN EMANUEL
18 IS GOING TO SEEK TO INTERVENE IN THAT TRANSACTION
19 AND PROLONG THE SPECIAL MASTER'S ROLE AND INCREASE
20 THE EXPENSE, WE THINK THEY SHOULD HAVE TO
21 PARTICIPATE IN THE COST OF IT.

22 THE COURT: WELL, THAT'S A FAIR POINT.

23 MR. BARRETT: YOUR HONOR, IF I COULD
24 SPEAK TO A COUPLE OF THOSE POINTS. DAVID BARRETT
25 FOR FACEBOOK.

1 MR. UNDERHILL: NO, FOR CONNECTU.

2 MR. BARRETT: I'M SORRY. DAVID BARRETT
3 FOR CONNECTU.

4 WE CERTAINLY WOULD BE SUPPORTIVE OF THE
5 IDEA OF AN ESCROW AGENT APPOINTED BY THE COURT.

6 ONE ASPECT OF THE PROPOSED JUDGMENTS ON
7 WHICH THE PARTIES ARE IN AGREEMENT, YOUR HONOR, IS
8 THAT BOTH OF THE FORMS OF JUDGMENT THAT THE PARTIES
9 SUBMITTED TO THE COURT INDICATED THAT THE CLOSING,
10 IF YOU WILL -- I'M PUTTING TO ONE SIDE THE QUINN
11 EMANUEL ISSUE FOR THE MOMENT -- BUT JUST THE
12 DEPOSIT OF THE SHARES OF STOCK WITH THE RESPECTIVE
13 COMPANIES AND THE CASH WOULD OCCUR EITHER AFTER
14 CONNECTU IRREVOCABLY WAIVED ITS RIGHT TO APPEAL THE
15 JUDGMENT OR WITHIN FIVE DAYS AFTER ANY APPEALS THAT
16 ARE TAKEN BECOME FINAL.

17 THE COURT: I SAW THAT IN AT LEAST ONE OF
18 THE PROPOSALS.

19 IT CREATED FOR ME A PROBLEM BECAUSE THERE
20 CAN -- AN ARGUMENT CAN BE MADE THAT A JUDGMENT IS
21 NOT APPEALABLE UNTIL THE FINAL ACT REQUIRED UNDER
22 THE JUDGMENT TAKES PLACE WHICH MAKES IT A
23 CIRCUITOUS SITUATION BECAUSE JUST MY MAKING A
24 JUDGMENT IF I SET UP A SITUATION THAT HAS TO TAKE
25 PLACE AND PEOPLE SAY I DON'T REALLY HAVE TO APPEAL

1 THAT UNTIL I'M REQUIRED TO TAKE THAT ACT, WHICH
2 MEANS THAT IT NEVER COMES, PERHAPS.

3 MR. BARRETT: I THINK THERE ARE PROBABLY
4 TWO WAYS OUT OF THAT, YOUR HONOR. ONE IS THAT THIS
5 IS THE FUNCTIONAL EQUIVALENT OF A STAY.

6 THE OTHER IS THAT THE COURT'S PROPOSED
7 SOLUTION, WHICH AS I NOW UNDERSTAND WHAT YOU'RE
8 SAYING IS, WHICH IS THAT THE, THAT THE
9 CONSIDERATION WOULD GO INTO THE CONTROL OF THE
10 SPECIAL MASTER WITHIN SOME RELATIVELY BRIEF PERIOD
11 OF TIME AND THEN, YOU KNOW, WHAT WE'RE CONCERNED
12 ABOUT, YOUR HONOR, AND BOTH SIDES ARE PROBABLY
13 CONCERNED ABOUT, IS THAT EACH SIDE IS GIVEN
14 CONSIDERATION HERE.

15 THERE IS A POSSIBILITY THAT THE JUDGMENT
16 WOULD BE REVERSED ON APPEAL AND IF YOU HAVE DONE
17 THINGS LIKE GET RELEASES, DISMISSED CASES NOT JUST
18 IN THIS CASE BUT IN THE MASSACHUSETTS COURT, HAND
19 OVER THE COMPANY AND HAND OVER CASH FOR THAT
20 MATTER, UNSCRAMBLING THAT IN THE EVENT OF A
21 REVERSAL COULD BECOME, YOU KNOW, MUCH MORE
22 COMPLICATED THAN JUST SITTING THERE AND MAINTAINING
23 THE STATUS QUO, ALTHOUGH I THINK I WOULD LIKE TO
24 CONSULT WITH MY COLLEAGUES ON THIS, BUT I THINK IF
25 THE STATUS QUO IS MAINTAINED ESSENTIALLY BY A

1 SPECIAL MASTER SITTING THERE WITH THE ASSETS DURING
2 THE APPEAL PROCESS, AND WE CAN TALK ABOUT MANAGING
3 OF THE CONNECTU ASSET, I DON'T THINK THAT IS GOING
4 TO BE ANY SIGNIFICANT PROBLEM, YOUR HONOR.

5 I THINK IT CAN -- WE ARE HAPPY TO HE --
6 AND MR. UNDERHILL CAN DISCUSS THIS FURTHER IF YOU
7 WOULD LIKE -- WE'RE HAPPY TO MAINTAIN AND CONTINUE
8 TO RUN THAT BUSINESS ESSENTIALLY THE WAY THAT IT
9 HAS BEEN RUN AND NOT TO DO ANYTHING AS YOUR HONOR
10 INDICATED THAT WOULD MATERIALLY AFFECT IT IN A
11 NEGATIVE WAY OR TAKE ON OBLIGATIONS THAT WOULD BE
12 INAPPROPRIATE AND WE CAN KEEP, YOU KNOW, FACEBOOK
13 INFORMED ABOUT THAT.

14 I DON'T THINK THAT THAT SHOULD BE A
15 PROBLEM. AND WE'RE ALSO HAPPY TO PURSUE THE
16 APPELLATE PROCESS AS EXPEDITIOUSLY AS THE NINTH
17 CIRCUIT WOULD ALLOW US.

18 THERE ARE ALSO A COUPLE OF OTHER ITEMS
19 THAT YOUR HONOR RAISED. I DON'T KNOW IF YOU WANT
20 TO TALK ABOUT THOSE AT THIS POINT.

21 THE COURT: MY FOCUS IS ON THE FORM OF
22 THE JUDGMENT AS I OUTLINED IT. IF YOU WANT TO
23 ADDRESS THOSE MATTERS FURTHER.

24 IT DOES SEEM TO ME THAT THERE IS GOING TO
25 BE -- THE REASON I'M PUT IN THIS POSITION IS THAT

1 THERE WILL BE THE NECESSITY OF THE COURT TAKING
2 FURTHER ACTION TO ENFORCE THE JUDGMENT ONCE THE
3 JUDGMENT IS IN PLACE THAT I CAN'T CONTEMPLATE
4 THE -- THOSE ORDERS AT THIS POINT.

5 AND IT COULD BE THAT I'LL HAVE TO AMEND
6 THE JUDGMENT AND DO OTHER THINGS TO TAKE THOSE
7 ADDITIONAL STEPS.

8 SO MY FOCUS IS ON SHOW ME WHY I SHOULDN'T
9 ENTER THE JUDGMENT AS I OUTLINED JUST TO GET THIS
10 PROCESS STARTED?

11 MY GOAL WOULD BE TO PUT IN PLACE A
12 JUDGMENT WHICH WOULD ENFORCE THE SETTLEMENT
13 AGREEMENT AND IF THERE ARE APPEALS OR CHALLENGES TO
14 IT THAT DEAL WITH THAT AS A CIVIL PROCEDURE MATTER
15 IN THE ORDINARY COURSE OF EVENTS, IF THAT SHOULD
16 COME.

17 BUT IF THERE IS SOMETHING ELSE ON THE
18 FORM THE JUDGMENT, SPEAK NOW.

19 MR. BARRETT: YES, YOUR HONOR. YOU
20 RAISED THE QUESTION ABOUT THE LEGEND ON THE -- THE
21 FACEBOOK SHARES THAT WILL BE PROVIDED AS PART OF
22 THE JUDGMENT AND THE LEGEND, THE FORM OF LEGEND
23 THAT IS ATTACHED TO EACH SIDE PROPOSED JUDGMENT IS
24 IDENTICAL, EXCEPT IN ONE RESPECT BUT IT IS A
25 SIGNIFICANT RESPECT.

1 AND THOSE LEGENDS APPEAR IN EXHIBIT B OF
2 DEFENDANT'S PROPOSED JUDGMENT AND IN EXHIBIT 3 OF
3 FACEBOOK'S PROPOSED JUDGMENT. AND, AND THE -- WHAT
4 I'M REFERRING TO IS THAT OUR PROPOSED JUDGMENT HAS
5 IT IN A PART OF THE LEGEND THE STATEMENT THAT THE
6 HOLDERS OF SUCH SHARES ARE ENTITLED TO THE SAME
7 ANTI-DILUTION RIGHTS AFFORDED TO THE ISSUERS SERIES
8 D PREFERRED STOCK AS PROVIDED IN THE TERM SHEET AND
9 SETTLEMENT AGREEMENT.

10 FOR REASONS -- I'M NOT SURE, MAYBE IT WAS
11 NOT INTENTIONAL, THE LEGEND THAT FACEBOOK PROPOSES
12 OMITS THAT SENTENCE ENTIRELY.

13 AND CONSISTENT WITH EXACTLY WHAT YOUR
14 HONOR SAID THAT THIS, THAT THIS SETTLE -- THAT THIS
15 JUDGMENT IS GOING TO ENFORCE PRECISELY THE TERMS
16 THAT THE PARTIES AGREED TO ON THE TERM SHEET, WE
17 BELIEVE THAT THAT LANGUAGE SHOULD BE IN THERE.
18 IT'S RIGHT ON THE SECOND PAGE.

19 I BELIEVE OURS IS ALMOST VERBATIM FROM
20 THE SECOND PAGE OF THE HANDWRITTEN TERM SHEET.

21 YOU KNOW, FIRST IT SAYS THAT THE SHARES
22 SHALL BE VOTED IN ACCORDANCE WITH THE BOARD OF
23 DIRECTORS RECOMMENDATIONS. THAT'S IN BOTH
24 VERSIONS.

25 BUT FOR SOME REASON THE FACEBOOK VERSION

1 DROPS THE SECOND PART OF THAT SAME SENTENCE WHICH
2 SAYS, "SUBJECT TO THE SAME ANTI-DILUTION
3 PROTECTIONS AWARDED TO SERIES D PREFERRED STOCK."

4 SO WE THINK THAT THAT NEEDS TO BE IN
5 THERE AND IT SHOULD ALSO BE CLEAR I THINK, YOUR
6 HONOR, BUT I JUST WANT TO MAKE SURE THAT THE RECORD
7 REFLECTS THIS, THAT THOSE RESTRICTIONS THAT WERE
8 SET FORTH IN THE TERM SHEET ARE THE ONLY
9 RESTRICTIONS OF ANY KIND OTHER THAN THOSE THAT,
10 THAT FLOW FROM THE FACT THAT THIS IS A PRIVATE
11 COMPANY, AND, THEREFORE, THE SECURITIES ARE
12 UNREGISTERED.

13 THOSE ARE THE ONLY RESTRICTIONS THAT
14 SHOULD ATTACH TO THIS STOCK.

15 AS YOUR HONOR MAY RECALL, THERE IN THE
16 NEGOTIATIONS THAT THE PARTIES HAD SUBSEQUENT TO THE
17 SIGNING OF THE TERM SHEET THERE WERE DISCUSSIONS OF
18 OTHER POSSIBLE RESTRICTIONS SUCH AS THE RIGHT OF
19 FIRST OFFER AND A LOCK UP AND THOSE ARE NOT
20 RESTRICTED IN THE TERM SHEET.

21 AND AS YOUR HONOR SAID VERY CLEARLY AT
22 PAGE 60 OF THE TRANSCRIPT FROM LAST MONDAY, "THIS
23 IS, THIS IS COMMON STOCK. IT DOESN'T SAY ANYTHING
24 ABOUT IT BEING LETTERED STOCK IN ANY WAY. IT OUGHT
25 TO BE FREELY TRADED."

1 AND I BELIEVE THAT THAT IS ACCOMPLISHED
2 BY THIS LANGUAGE THAT WE HAVE HERE AND -- BUT I
3 JUST WANT TO BE CLEAR AND THAT THE COURT IS CLEAR
4 THAT THOSE RESTRICTIONS OR STIPULATIONS THAT WE
5 HAVE OUTLINED TO GO ON THE STOCK ARE THE ONLY ONES.

6 LET ME SEE IF THERE ARE ANY OTHERS.

7 THE COURT: WHILE YOU'RE DOING THAT, LET
8 ME JUST CHECK, IS THERE ANY OBJECTION TO INCLUDING
9 THE ADDITIONAL LANGUAGE IN THE EXHIBIT B SUBMITTED
10 BY CONNECTU?

11 MR. CHATTERJEE: YOUR HONOR, THE ONLY
12 POINT I'LL MAKE IS THAT I DON'T THINK IT'S
13 NECESSARY YOU'RE ENFORCING THE TERM SHEET AND
14 SETTLEMENT AGREEMENT. IT HAS THE PROVISION IN
15 THERE. AND IT DOESN'T SEEM LIKE IT'S NECESSARY OR
16 LEGALLY REQUIRED ON THE LEGEND. THAT WAS THE ONLY
17 POINT THAT I WAS GOING TO MAKE, BUT I'LL DEFER TO
18 THE COURT'S JUDGMENT ON WHICH LEGEND IS
19 APPROPRIATE.

20 THE COURT: VERY WELL. IT IS A RIGHT
21 THAT SEEMS TO BE INHERENT IN THE STOCK AND THE
22 CERTIFICATE ITSELF BEARING IT, SINCE I PRESUME
23 THESE ARE NEGOTIABLE, BEARING IT WOULD CARRY THOSE
24 RIGHTS. SO I WOULD ADD IT.

25 DID YOU COME UP WITH OTHER MATTERS?

1 MR. BARRETT: UM, UM -- YOUR HONOR, I
2 JUST THINK ONE OTHER SIGNIFICANT ONE WHICH IS YOUR
3 HONOR INDICATED THAT ONE OF THE DOCUMENTS THAT THE
4 SPECIAL MASTER WOULD COLLECT WOULD BE RELEASES.

5 OUR, OUR -- I THINK THAT WE CAN SIMPLIFY
6 THIS AND I DON'T REALLY THINK THAT THAT IS
7 NECESSARY OR EVEN NECESSARILY CONSISTENT WITH BOTH
8 WHAT MR. CHATTERJEE REPRESENTED TO THE COURT LAST
9 MONDAY AND REALLY THE SPIRIT AS I UNDERSTAND IT OF
10 THE COURT'S ORDER FOR THE FOLLOWING REASON:

11 WHAT MR. CHATTERJEE TOLD THE COURT AND
12 WHAT HE WAS ASKING AND WHAT I THINK THE COURT DID
13 AT PAGE 12 OF THE TRANSCRIPT TO ENTER A JUDGMENT
14 TELLING THE PARTIES TO COMPLY WITH THE TERM SHEET
15 AND SETTLEMENT AGREEMENT AND ESSENTIALLY STAPLE IT
16 ONTO THE JUDGMENT.

17 AND I THINK WHAT WE WERE TRYING TO DO IN
18 OUR PROPOSED SETTLEMENT IS TO ADHERE AS CLOSELY AS
19 WE COULD TO THAT WHERE IT WAS POSSIBLE.

20 NOW, IT'S OBVIOUSLY NOT POSSIBLE. YOU
21 HAVE TO GET A RULE 41 DISMISSAL AND FILE IT IN
22 COURT WITH RESPECT TO THE LEGEND ON THE STOCK.
23 IT'S NECESSARY TO DO THAT BECAUSE YOU'RE ACTUALLY
24 CREATING AN INSTRUMENT THAT IS, AS THE COURT SAID,
25 A NEGOTIABLE INSTRUMENT THAT IS PART OF THE

1 CONSIDERATION. SO IT'S NECESSARY TO DEFINE WHAT
2 THAT INSTRUMENT SAID.

3 BUT BEYOND THAT, AND PARTICULARLY WITH
4 RESPECT TO THE RELEASE, I DON'T REALLY THINK THAT
5 IT'S NECESSARY OR CONSISTENT WITH, AGAIN, THE IDEA
6 THAT THE COURT EXPRESSED AT PAGE 60 THAT YOU CAN
7 ENFORCE THIS AGREEMENT AND NOTHING MORE.

8 WITH RESPECT TO THE RELEASES, YOUR HONOR,
9 THAT'S AN ISSUE ON WHICH THE PARTIES HAVE GONE BACK
10 AND FORTH. THEY WENT BACK AND FORTH FOR TWO MONTHS
11 AFTER THE TERM SHEET. WE HAVE GONE BACK AND FORTH
12 IN THE LAST COUPLE OF DAYS.

13 WE HAVE GOTTEN CLOSER, BUT WE STILL DON'T
14 HAVE AN AGREEMENT ON IT.

15 AND IT SEEMS TO ME THAT, THAT WHAT YOU
16 HAVE REALLY GOT HERE IS YOU HAVE GOT A RELEASE IN
17 PARAGRAPH 2.

18 IT SAYS ALL PARTIES GET MUTUAL RELEASES
19 AS BROAD AS POSSIBLE. THAT'S WHAT THE PARTIES
20 NEGOTIATED. THAT'S IN THERE. IT IS MEANINGFUL
21 LANGUAGE.

22 IF ONE OF US EVER SUES THE OTHER ONE WITH
23 RESPECT TO A RELEASE CLAIM, THE PARTY THAT HAS BEEN
24 SUED, IF THEY THINK IT'S A GOOD DEFENSE, CAN GO
25 INTO THAT COURT AT THAT TIME AND SAY --

1 THE COURT: WELL, LET ME -- I HEAR YOUR
2 ARGUMENT AND I DON'T ACCEPT IT, BUT I DO PROPOSE
3 THAT IN THE FORM OF THE JUDGMENT, BECAUSE I WILL
4 MAKE A JUDGMENT ABOUT THAT, YOU WILL BE ABLE TO
5 MAKE THIS ARGUMENT AT A LATER TIME.

6 IN OTHER WORDS, WHAT I HEAR YOU SAYING IS
7 THAT THE PARTIES, I SHOULD NOT REQUIRE A SIGNED
8 RELEASE BECAUSE THE SETTLEMENT AGREEMENT IS A
9 SIGNED RELEASE AND I SHOULD INTERPRET THE WORD GET
10 RELEASED AS ARE RELEASED. AND I'LL LISTEN TO THAT
11 ARGUMENT. IT'S JUST AT THIS POINT MY JUDGMENT WILL
12 REQUIRE THAT THE RELEASE BE SUBMITTED AS APPROVED
13 OF THE COURT.

14 IF I DECIDE THAT THE AGREEMENT IS
15 SUFFICIENT, AND I'LL ORDER THAT TO BE DEPOSITED AND
16 THAT WILL BE SUFFICIENT.

17 PART OF WHAT I ANTICIPATE IS AN ARGUMENT
18 BY ONE OR BOTH PARTIES THAT SUBSEQUENT LITIGATION
19 VIOLATES WHAT WAS BEING RELEASED, AND I WANT TO, IN
20 TRUE TO THE ROLE THAT YOU HAVE GIVEN ME TO ENFORCE
21 THE AGREEMENT, IS TO ENFORCE THE RELEASE.

22 AND PART OF THAT WILL BE TO UNDERSTAND
23 WHAT WAS RELEASED AND THAT IS BETTER DONE LATER ON.

24 SO LET ME RESPOND TO YOUR ARGUMENT IN
25 THAT WAY AND ASK YOU IF THERE ARE OTHER PARTS OF IT

1 THAT YOU WANT TO SPEAK TO.

2 MR. BARRETT: AND AGAIN, YOUR HONOR, I
3 THINK A LITTLE BIT OF THE CONFUSION HERE DOES ARISE
4 FROM THE TIMING ISSUE.

5 FOR EXAMPLE, IF THE RELEASE BECAME
6 EFFECTIVE, LET'S SAY AFTER ALL APPEALS HAVE BEEN
7 EXHAUSTED, THEN IT MAKES SENSE TO RELEASE, FOR
8 EXAMPLE, OUR FRAUD DEFENSE, OR OUR FRAUD CLAIM
9 BASED ON WHAT HAPPENED IN THE MEDIATION.

10 I DON'T THINK IT MAKES SENSE, AND I DON'T
11 THINK THE COURT WOULD REQUIRE US TO RELEASE THAT
12 CLAIM NOW.

13 MAYBE I'M MISTAKEN ABOUT THAT. IN OTHER
14 WORDS, WE SHOULDN'T HAVE TO FACE AN ARGUMENT OR AT
15 LEAST ANYMORE, AN ARGUMENT THAN WE ALREADY HAVE TO
16 FACE THAT, THAT BY SIGNING THIS DOCUMENT WE DIDN'T
17 RELEASE A CLAIM THAT THE TERM SHEET ITSELF WAS
18 PROCURED BY FRAUD IN THE INDUCEMENT.

19 THE COURT: WELL, I DON'T KNOW THE ANSWER
20 TO THAT, BUT I DO KNOW THAT THAT IS A LEGITIMATE
21 QUESTION TO ASK WITH RESPECT TO WHAT I TAKE AS THE
22 SUBMISSION.

23 IT SEEMS TO ME THAT MY JUDGMENT THAT I'M
24 INTENDING TO ENTER RULES AGAINST SOME OF THAT
25 CLAIM.

1 MR. BARRETT: UH-HUH.

2 THE COURT: WHICH IS WHY YOU CAN APPEAL
3 IT?

4 MR. BARRETT: TRUE.

5 THE COURT: AS OPPOSED TO YOUR LATER
6 ABILITY TO BRING IT.

7 BUT I DON'T WANT TO DO THAT AT THIS POINT
8 BECAUSE I HAVE NOT PUT MYSELF IN A POSITION WHERE I
9 KNOW ENOUGH TO MAKE A JUDGMENT ABOUT THAT.

10 MR. BARRETT: AND, YOUR HONOR, ANOTHER
11 QUESTION ABOUT THE TIMING. OBVIOUSLY I THINK EVEN
12 MR. CHATTERJEE AND I CAN PROBABLY AGREE ON THE
13 TERMS OF WHAT RULE 41 DISMISSAL FOR THE CASES WOULD
14 LOOK LIKE AND INDEED IT SETS FORTH HERE, "DISMISS
15 WITH PREJUDICE. EACH SIDE TO BEAR THEIR OWN COSTS
16 AND ATTORNEYS' FEES."

17 THE COURT: THE PARTIES ARE FREE TO
18 STIPULATE, AFTER I ENTER MY JUDGMENT TO THE -- THAT
19 THEY HAVE DONE WHATEVER THEY WANT, BUT I'M NOT
20 GOING TO RELY UPON THAT PROPOSED STIPULATION
21 BECAUSE IT'S A PROPOSED STIPULATION THAT I HAVEN'T
22 SEEN THE PARTIES PUT TOGETHER JUST YET.

23 MR. BARRETT: SURE. YOUR HONOR, MY --
24 I'M SORRY -- MY QUESTION IS NOT ABOUT THE TERMS OF
25 IT BECAUSE I THINK ON THAT WE'RE PROBABLY BOTH

1 PRETTY CLEAR.

2 MY QUESTION IS, AGAIN, PURELY ONE OF
3 PROCEDURE AND TIMING.

4 I THINK IT WOULD BE BOTH DIFFICULT AND
5 PROBABLY INCONVENIENT FOR THE COURTS TO, TO -- FOR
6 US TO FILE A STIPULATION OF DISMISSAL, FOR EXAMPLE,
7 WHILE THIS JUDGMENT IS UNDER APPEAL.

8 IT WOULD MAKE A LOT MORE SENSE TO WAIT
9 UNTIL.

10 THE COURT: I DON'T INTEND TO HAVE IT
11 FILED. MY FOCUS IS THAT IT HAS TO BE DEPOSITED.

12 MR. BARRETT: SURE. OKAY. THAT'S --

13 THE COURT: I'LL JUDGE WHEN IT -- MY
14 PROPOSED JUDGMENT WOULD SAY THAT IT'S UP TO THE
15 COURT TO SAY TO THE MASTER "NOW, SEND THESE THINGS
16 FORWARD."

17 MR. BARRETT: UH-HUH.

18 THE COURT: AND, AND -- BUT I UNDERSTAND
19 YOUR POINT.

20 MR. BARRETT: YEAH. SO, YOU KNOW, AGAIN,
21 IN THAT REGARD, YOUR HONOR, WE, WE BELIEVE, AND I
22 BELIEVE AGAIN THAT THE PARTIES ARE IN AGREEMENT
23 THAT THAT SENDING FORTH, AS YOUR HONOR DESCRIBED
24 IT, SHOULD AWAIT. THAT CAN COME IMMEDIATELY AFTER
25 THE FINALITY OF ANY APPEALS PROCESS.

1 THE COURT: WELL, EVEN THAT IS SOMETHING
2 THAT I'M NOT ADDRESSING IN MY JUDGMENT. I
3 APPRECIATE YOUR HELPFUL SUGGESTION THAT MAYBE THE
4 WAY AROUND THIS IS TO ENTER THE JUDGMENT AND STAY
5 AN EXECUTION OF IT UNTIL SOME APPROPRIATE TIME.

6 MY PROPOSED LANGUAGE IS THAT THE COURT
7 WILL APPOINT A SPECIAL MASTER TO ACCEPT AND
8 MAINTAIN THE DEPOSITS MANDATED BY THIS JUDGMENT AND
9 TO TAKE ACTIONS WITH THE DEPOSITS AS THE COURT FROM
10 TIME TO TIME WILL ORDER.

11 IN OTHER WORDS, I JUST WANT TO PUT IT
12 SOMEPLACE SO I CAN MAKE SURE THAT EVERYTHING THAT
13 IS NECESSARY TO EXECUTE THE AGREEMENT IS IN ONE
14 PLACE AND THEN TO HAVE, FROM THERE, SUBJECT ONLY TO
15 THE ORDER OF THE COURT, THE ABILITY TO AFFECT THE
16 EXECUTION SO THAT I DON'T HAVE TO GO ANY PLACE TO
17 GET IT DONE.

18 THAT WAS MY GOAL.

19 MR. BARRETT: RIGHT.

20 MR. CHATTERJEE: AND -- GO AHEAD.

21 MR. BARRETT: I'M SORRY. ONE OTHER
22 THING. IN THE PLAINTIFF'S PROPOSED FORM OF
23 JUDGMENT THERE IS ALSO A PARAGRAPH THAT SAYS THAT
24 THEY MAY FILE A MOTION FOR ATTORNEYS FEES OR BILL
25 OF COST.

1 THE COURT: I HAVE NOT INCLUDED THAT.

2 MR. BARRETT: THANK YOU.

3 MR. CHATTERJEE: YOUR HONOR, AS TO THE
4 PERFORMANCE ISSUES, THERE ARE A COUPLE OF DETAILS
5 THAT I THINK ARE IMPORTANT.

6 ONE, ON THE ISSUE OF TIMING, WE WOULD
7 AGREE WITH YOUR HONOR THAT THERE IS AN ISSUE AND IT
8 OCCURRED TO US AFTER WE SUBMITTED THIS. AND I TOLD
9 MR. BARRETT THAT IT WAS AN ISSUE FOR US YESTERDAY
10 ABOUT WAITING UNTIL THE JUDGMENT IS FINAL AND NOT
11 APPEALABLE.

12 WE THINK THAT IT SHOULD HAPPEN QUICKLY.

13 NOW, PERHAPS THAT'S SOMETHING BETTER LEFT
14 FOR THE SPECIAL MASTER TO DECIDE ON THE TIMING TO
15 REPORT TO THE COURT ON WHAT TO DO.

16 BUT IF THEY WANT TO STAY EXECUTION OF THE
17 PROCEEDINGS, WE THINK TYPICALLY WHEN THEY TRY AND
18 FILE A STAY OF EXECUTION OF A JUDGMENT, THEY NEED
19 TO FILE A BOND SO WE CAN MAKE SURE THAT THE ASSETS
20 THAT WE'RE PURCHASING ARE PROTECTED.

21 THAT'S A COLLATERAL ISSUE.

22 THE COURT: THAT'S WHY I THINK THE RULES
23 OF CIVIL PROCEDURE WILL TAKE CARE OF ANY
24 POST-JUDGMENT PROBLEM.

25 MR. CHATTERJEE: THE SECOND ISSUE, YOUR

1 HONOR, IS AS TO THE STOCK SHARES. THE, THE -- ONE
2 OF THE ISSUES, AND PERHAPS THIS IS SOMETHING THAT
3 THE SPECIAL MASTER CAN WORK OUT, IS AS LONG AS WE
4 HAVE THE LIEN ISSUE UNRESOLVED AND HANGING OUT
5 THERE, RIGHT NOW WE DON'T KNOW WHO TO WRITE THE
6 STOCK CERTIFICATES TO.

7 DO WE LIST THE THREE -- OR I GUESS THE
8 FOUR SHAREHOLDERS IN CONNECTU CURRENTLY OR DO WE
9 INCLUDE QUINN EMANUEL ON THE SHARES?

10 WE WILL NEED SOME GUIDANCE AS TO HOW TO
11 DO THAT.

12 THE COURT: THAT'S A DETAIL THAT THE
13 MASTER CAN WORK OUT.

14 MR. CHATTERJEE: OKAY. THANK YOU, YOUR
15 HONOR.

16 THE COURT: YES.

17 MR. VAN DALSEM: IF I MAY, BRUCE VAN
18 DALSEM ON BEHALF OF QUINN EMANUEL.

19 THERE ARE A COUPLE OF POINTS THAT I WOULD
20 LIKE TO RAISE WITH RESPECT TO THE COURT'S JUDGMENT.

21 BOTH PROPOSED FORMS OF JUDGMENT FROM THE
22 PLAINTIFF AND THE DEFENDANT HAD MADE A PROVISION,
23 ALBEIT IN DIFFERENT WAYS, TO SECURE THE LIEN AND
24 THEY PROPOSED -- CONNECTU PROPOSED BASICALLY
25 ESCROWING THE MAXIMUM AMOUNT OF THE FEE CLAIM AND

1 FACEBOOK PROPOSED ESCROWING ALL OF IT.

2 THIS IS AN UNUSUAL CASE IN THE CONTEXT OF
3 A LIEN BECAUSE WHAT WOULD NORMALLY HAPPEN IN A
4 SITUATION WHERE AN ATTORNEY FILES A NOTICE OF LIEN
5 IS THAT WHEN THE DEFENDANT, ASSUME AN ALL CASH
6 DEAL, WHEN A DEFENDANT GOES TO WRITE A CHECK, THEY
7 INCLUDE THE LIEN CLAIMANT'S NAME ON THAT CHECK AND
8 THE PARTIES EITHER WORK IT OUT OR IT GETS ESCROWED
9 UNTIL THE MATTER IS LITIGATED OR THE PARTIES REACH
10 SOME FORM OF RESOLUTION.

11 AND CALIFORNIA LAW PROVIDES THAT A
12 DEFENDANT, SUCH AS FACEBOOK, WHO IS ON NOTICE OF
13 THE LIEN, IS ON NOTICE OF OUR CLAIM TO A
14 CONTRACTUAL RIGHT TO A FEE AND IF THEY FAIL TO
15 INCLUDE THE FORMER LAW FIRM'S NAME AS A PAYEE ON
16 WHATEVER PAYMENT INSTRUMENT IS ISSUED, THEY FACE
17 POTENTIAL LIABILITY FOR INTERFERING WITH OUR
18 CONTRACTUAL RIGHT AND THERE ARE CALIFORNIA CASES
19 EXPLAINING ALL OF THAT.

20 SO IN THE NORMAL CASE AN ATTORNEY'S LIEN
21 IS SORT OF EFFECTUATING BECAUSE WELL REPRESENTED
22 DEFENDANTS SIMPLY WILL NOT TURN OVER THE MONEY TO A
23 PLAINTIFF WITHOUT MAKING PROVISIONS FOR THAT LIEN.

24 SO WHAT WE WANT TO AVOID IS ANY PROCEDURE
25 WITH THE SPECIAL MASTER THAT WOULD EXONERATE

1 FACEBOOK AND WE HAVE BEEN IN CONTACT WITH
2 FACEBOOK'S COUNSEL AND HAVE EXPLAINED WHAT I JUST
3 EXPLAINED TO THE COURT AND I THINK THAT LED TO
4 FACEBOOK PROPOSING THAT ALL OF THE MONEY BE
5 BASICALLY SEQUESTERED UNTIL SUCH TIME THAT THE LIEN
6 CLAIM IS LITIGATED AND RESOLVED OR RESOLVED TO
7 AGREEMENT.

8 OUR FIRM HAS THE RIGHT TO HAVE THE
9 ENTIRETY OF THE SETTLEMENT AGREEMENT SEQUESTERED
10 UNTIL SUCH TIME AS OUR CLAIM FOR ATTORNEYS' FEES IS
11 PAID, AND SO WE WOULD WANT TO ENSURE THAT THE
12 JUDGMENT WOULD NOT REMOVE ANY PROTECTION THAT WOULD
13 OTHERWISE BE AFFORDED BY CALIFORNIA LAW AS I HAVE
14 OUTLINED.

15 THE COURT: LET ME SPEAK JUST BRIEFLY TO
16 THAT. FIRST, I DON'T INTEND TO TAKE ANY ACTION
17 WITHOUT HEARING FURTHER FROM THE LEAD CLAIMANTS.

18 SECOND, IT WAS IMPOSSIBLE FOR ME TO TAKE
19 ANY ACTION WITH RESPECT TO IT UP TO NOW BECAUSE IT
20 WAS AN UNLIQUIDATED NUMBER.

21 IT WAS ACTUALLY WHAT I SAW HAD NO NUMBER
22 ON IT.

23 I COULDN'T TELL WHETHER IT WAS \$1 OR
24 WHATEVER NUMBER.

25 IT WAS JUST A NOTICE, A NOTICE OF A LIEN.

1 IT DIDN'T HAVE -- IT WASN'T ANYTHING MORE THAN
2 THAT.

3 AND AS I SAID EARLIER, I HAVE NOT GONE
4 THROUGH THE TROUBLE AT THIS POINT OF FIGURING OUT
5 WHETHER OR NOT THE LIEN HAS BEEN PERFECTED IN A WAY
6 THAT THE COURT IS OBLIGATED TO ENFORCE IT.

7 I PRESUME THAT IT WILL BE IF IT HASN'T
8 BEEN ALREADY.

9 IT DOES SEEM TO ME THAT THIS IS NOT AN
10 UNCOMMON PROBLEM SO IT'S GOING TO BE EASY TO SOLVE
11 IT.

12 I DO ENCOURAGE THE PARTIES TO BE IN
13 CONVERSATION ABOUT IT AND SUGGEST WAYS OF DEALING
14 WITH IT AS A GROUP.

15 AS I UNDERSTAND IT, THE CLAIM AS YOU JUST
16 SAID MAY AFFECT THE STOCK CONSIDERATION AS WELL AS
17 CASH, AND I DON'T KNOW WHAT TO MAKE OF THAT AT THIS
18 POINT.

19 I HAVEN'T SEEN THE OTHER CLAIM LIEN AT
20 THIS POINT SO I DON'T KNOW WHAT TO MAKE OF THAT AS
21 WELL.

22 I DON'T KNOW WHAT THE PRIORITIES ARE
23 AMONG YOU ALL AND SO ALL THAT I WOULD DO IS TO
24 ALLOW YOU, AT SOME APPROPRIATE POINT, TO MAKE YOUR
25 POSITIONS KNOWN WITH RESPECT TO THE ACTUAL

1 DISBURSEMENTS FROM THE DEPOSIT THAT THE COURT IS
2 SETTING UP AND TO ASSERT YOUR RIGHTS.

3 MR. VAN DALSEM: SO MY SUGGESTION ON HOW
4 TO SOLVE THIS PARTICULAR ISSUE -- WELL, FIRST OF
5 ALL, LET ME SPEAK TO THE TIMING ISSUE AND THEN I'LL
6 SPEAK TO PRACTICALLY HOW I ENVISION IT WORKING.

7 WE BELIEVE THAT THE SETTLEMENT
8 CONSIDERATION SHOULD BE TENDERED FORTHWITH
9 REGARDLESS OF WHAT HAPPENS WITH AN APPEAL BECAUSE
10 THERE'S AN ISSUE OF INTEREST. AND BECAUSE THERE'S
11 A SUM OF CASH AND THAT CASH SHOULD BE EARNING
12 INTEREST, AND CERTAINLY IT'S OUR POSITION WITH
13 RESPECT TO OUR FEE CLAIM THAT WE'RE ENTITLED TO THE
14 MONEY ON THAT AND SO IF IT'S NOT PAID UNTIL AFTER
15 AN APPELLATE PROCESS AND CONNECTU HAS LOST THE
16 OPPORTUNITY TO EARN INTEREST ON THAT MONEY.

17 WE HAD CONCERNS WITH THE ESCROW PROCESS,
18 BUT I AM SURE THAT IS GOING TO BE WORKED OUT WITH
19 THE SPECIAL MASTER IN TERMS OF PRUDENT INVESTMENTS
20 NOT ENCUMBERING THE ASSETS WHILE THEY'RE SITTING IN
21 WHAT IS ESSENTIALLY AN ESCROW, DETAILS LIKE THAT
22 THAT I ASSUME WOULD BE ADDRESSED.

23 BUT WE BELIEVE THE ACTUAL SETTLEMENT
24 CONSIDERATION SHOULD BE TRANSFERRED FORTHWITH SO
25 THAT IT HAS AN OPPORTUNITY TO EARN INTEREST.

1 WITH RESPECT TO OUR LIEN CLAIM, THE WAY I
2 BELIEVE IT CAN BE RESOLVED IS AFTER THOSE FUNDS,
3 WHATEVER THAT CONSIDERATION CONSISTS OF, IS
4 TRANSFERRED TO THE SPECIAL MASTER, WE BELIEVE THAT
5 THE JUDGMENT SHOULD PROVIDE THAT THERE BE NO
6 DISBURSEMENT WITHOUT FURTHER ORDER OF THE COURT
7 FOLLOWING ANY LIEN CLAIMANT OR ANYONE ELSE THAT
8 FILES A CLAIM BECAUSE ONCE THAT MONEY IS DISBURSED
9 THERE'S NO SECURITY INTEREST. THE MONEY HAS LEGS
10 AND IT CAN GO ANYWHERE INSTANTLY AND OUR PROTECTION
11 IS LOST THE MINUTE THAT MONEY IS NO LONGER SUBJECT
12 TO THE SPECIAL MASTER'S CONTROL.

13 THE COURT: DO YOU SEE ANY REASON WHY I
14 CAN'T, SINCE I SET UP THE DEPOSIT AND SAY I'M
15 CONTROLLING IT IN A SUBSEQUENT ORDER, ADDRESS LIEN
16 CLAIMANTS BECAUSE THIS MAY GO AWAY?

17 THERE MAY BE NO LIEN CLAIMANTS OR THERE
18 MAY BE MULTIPLE LIEN CLAIMANTS. I HAVE NO IDEA WHO
19 MAY ACTUALLY ASSERT A RIGHT TO THESE FUNDS AND AS
20 COUNSEL FOR FACEBOOK INDICATED, AT THIS POINT
21 THERE'S NO DIRECTION AS TO IN WHOSE NAME THE
22 VARIOUS SHARES SHOULD BE MADE OR ANY OF THAT.

23 MR. VAN DALSEM: AS I UNDERSTAND IT,
24 FACEBOOK'S OBLIGATION ONLY EXISTS TO A PRESENT LIEN
25 CLAIMANT AND THERE'S ONLY ONE LIEN CLAIMANT AND

1 THAT'S MY LAW FIRM QUINN EMANUEL.

2 SO WHAT I WOULD SUGGEST IS THAT YOU
3 DIRECT THE SPECIAL MASTER TO TAKE CONTROL OF THESE
4 ASSETS AND PROVIDE THAT -- AND NONE OF THE ASSETS
5 BE PROVIDED TO THE PARTIES AND WITHOUT CONSENT OF
6 OR NOTICE OF AN OPPORTUNITY TO BE HEARD BY QUINN
7 EMANUEL SO THAT WE CAN MAKE SURE THAT OUR RIGHTS
8 ARE PROTECTED AS NORMALLY WOULD BE THE CASE IN A
9 SELF-EFFECTUATING LIEN.

10 THE COURT: WHY DO I HAVE TO SAY THAT
11 BECAUSE YOU HAVE TO COME BEFORE ME BEFORE YOUR LIEN
12 IS RECOGNIZED.

13 MR. VAN DALSEM: THAT WOULD WORK AS WELL.

14 THE COURT: ALL RIGHT.

15 MR. VAN DALSEM: LET ME RAISE ONE
16 PRACTICAL PROBLEM THAT I SEE. IF A JUDGMENT ISSUES
17 AND IT IS APPEALED, THERE IS A RISK THAT THE COURT
18 WILL BE DIVESTED OF JURISDICTION FOR FURTHER ORDERS
19 PENDING THAT APPEAL AND IF WE HAVE ALL OF THESE
20 ISSUES WITH THE SPECIAL MASTER AND WE CAN'T DO
21 ANYTHING WITH THEM WITHOUT FURTHER ORDER OF THE
22 COURT THAT NO LONGER HAS JURISDICTION AND THERE
23 WILL BE A PROCEDURAL PROBLEM THERE.

24 THE COURT: THERE WILL BE A COURT WITH
25 JURISDICTION. IT MAY NOT BE ME, BUT THERE WILL BE

1 A COURT WITH JURISDICTION FROM WHOM ACTION CAN BE
2 TAKEN.

3 MR. VAN DALSEM: VERY WELL. SO THAT'S
4 WHAT I HAVE TO ADD. THANK YOU.

5 THE COURT: WELL, ALL OF THIS DOES
6 HIGHLIGHT HOW IMPORTANT IT IS THAT WE MOVE
7 EXPEDITIOUSLY, DEFINITELY, AND THAT THE PARTIES,
8 IF THEY HAVE RIGHTS THEY WANT TO ASSERT, ASSERT
9 THEM IN A WAY THAT WILL MOVE THE MATTER ALONG.

10 IT ALSO POINTS OUT, PERHAPS, HOW
11 IMPORTANT IT IS IF THESE PARTIES STILL HAVE THE
12 INCENTIVE TO RESOLVE THIS MATTER TO CONTINUE TO
13 WORK TO RESOLVE IT.

14 I AM GOING TO OPERATE UNDER THE
15 ASSUMPTION THAT THEY HAVE ALREADY COME TO THE
16 AGREEMENT THAT THEY WISH TO ENFORCE, BUT I WILL
17 HAVE MY EYES AND EARS OPEN FOR ANY FURTHER
18 SUBMISSIONS FROM YOU ALL THAT TELL ME TO GO INTO A
19 DIFFERENT DIRECTION BECAUSE YOU AGREE THAT IT WILL
20 RESOLVE ALL OF THE VARIOUS DISPUTES THAT HAVE COME
21 UP SINCE THE SIGNING OF THE AGREEMENT.

22 DID YOU STAND TO SPEAK TO THE COURT?

23 MR. HAWK: MY NAME IS ROBERT HAWK, AND
24 I'M WITH THE HELLER EHRMAN LAW FIRM AND WE
25 REPRESENT EDUARDO SAVERIN, WHO IS NOT A PARTY TO

1 THIS LITIGATION BEFORE YOUR HONOR BUT IS A PARTY TO
2 THE DISTRICT COURT LITIGATION IN THE DISTRICT OF
3 MASSACHUSETTS.

4 THE COURT: IS HE A PLAINTIFF OR A
5 DEFENDANT?

6 MR. HAWK: HE'S A DEFENDANT. AND, YOUR
7 HONOR, THE REASON I ASK YOUR INDULGENCE TO HEAR ME
8 EVEN THOUGH WE'RE NOT A PARTY TO THIS CASE IS THAT
9 IN SOME OF THE -- IN AT LEAST ONE FORM OF THE
10 PROPOSED JUDGMENT THAT WAS TENDERED TO YOUR HONOR,
11 WE HAVEN'T BEEN SERVED WITH THOSE AND I SHOULD SAY
12 UP-FRONT THAT WE DON'T MEAN TO WAIVE ANY PERSONAL
13 JURISDICTIONAL ARGUMENTS BY MY POSITION BY MY
14 ADDRESSING THE COURT THIS MORNING, YOUR HONOR.

15 BUT WE HAVE RECEIVED COURTESY COPIES OF
16 CERTAIN OF THE PLEADINGS BEFORE YOUR HONOR AND AT
17 LEAST ONE OF THOSE PROPOSED JUDGMENTS WOULD
18 INDICATE THAT IT WOULD BIND NOT ONLY THE PARTIES TO
19 THIS LITIGATION BUT IT WOULD BIND THE PARTIES TO
20 THE DISTRICT COURT LITIGATION IN MASSACHUSETTS.

21 AND SO THAT'S A -- THAT'S THE REASON THAT
22 I WANT TO ADDRESS YOUR HONOR.

23 THE COURT: HERE'S -- LET ME TELL YOU MY
24 UNDERSTANDING. MY UNDERSTANDING IS THAT THE
25 PARTIES TO THE AGREEMENT AGREED THAT CASES WOULD BE

1 DISMISSED.

2 I HAVE NOT -- I RAISED THIS QUESTION WITH
3 MY LAW CLERK, BUT I HAVE NOT AT THIS POINT MADE A
4 JUDGMENT WITH RESPECT TO THE EFFECT OF THAT, OF
5 THAT ON ANY NONPARTY TO THE AGREEMENT WHO ARE
6 PARTIES TO THE OTHER LITIGATIONS.

7 IF THE CASE IS DISMISSED AS OPPOSED TO
8 THEIR CLAIMS OR WHATEVER, IT MAY HAVE AN EFFECT ON
9 MR. SAVERIN OR MS. SAVERIN BECAUSE IT DOES MEAN
10 THAT A NONPARTY TO THE AGREEMENT IS AFFECTED BY
11 SOMETHING THAT THE PARTIES DO WITH RESPECT TO THAT
12 LITIGATION.

13 BUT WHETHER -- WHAT THAT IS MIGHT BE A
14 MATTER WITHIN THE JURISDICTION OF THE MASSACHUSETTS
15 COURT AND IT MIGHT BE SOMETHING THAT IS BROUGHT TO
16 ME.

17 WHAT IS IT THAT YOU WOULD WISH ME TO DO
18 TODAY, IF ANYTHING?

19 MR. HAWK: WELL, FIRST OF ALL, LET ME
20 JUST SAY THAT WHAT YOU JUST EXPRESSED IS CONSISTENT
21 WITH OUR VIEW -- WITH MR. SAVERIN'S VIEW OF THE
22 EFFECT OF THIS AGREEMENT.

23 MR. SAVERIN WAS NOT A SIGNATORY TO THE
24 AGREEMENT. HE WAS NOT PART OF THE MEDIATION, BUT
25 HE IS A DEFENDANT IN THAT CASE.

1 THE AGREEMENT ON ITS FACE CALLS FOR A
2 DISMISSAL, A FINAL DISMISSAL OF THAT CASE IN
3 MASSACHUSETTS.

4 SO HE WOULD BE AFFECTED BY THAT.

5 AND THAT'S ALL GOOD. HE'S A DEFENDANT IN
6 THAT CASE. AND, AND SO --

7 THE COURT: NO COUNTERCLAIMS BEING
8 ASSERTED.

9 MR. HAWK: NO COUNTERCLAIMS BY
10 MR. SAVERIN.

11 MR. CHATTERJEE: YOUR HONOR, AT THAT --
12 AT THE POINT THE CASE WAS DISMISSED IN
13 MASSACHUSETTS, IT WAS NOT YET AN ISSUE. THERE ARE
14 MOTIONS TO DISMISS PENDING. SO THERE HAD NOT YET
15 BEEN COUNTERCLAIMS ASSERTED BY ANY OF THE
16 DEFENDANTS.

17 THE COURT: SO THAT CASE HAS BEEN
18 DISMISSED?

19 MR. CHATTERJEE: IT HAS NOT. THERE WERE
20 MOTIONS TO DISMISS PENDING, YOUR HONOR.

21 THE COURT: OR WHERE THE MOTIONS WERE
22 MADE. I SEE.

23 MR. CHATTERJEE: CORRECT.

24 THE COURT: AND SO THE COURT THERE HAS
25 STAYED THE LITIGATION?

1 MR. CHATTERJEE: YES, YOUR HONOR. JUST
2 TO GIVE YOU AN IDEA OF THE STATUS, IN OCTOBER OF
3 LAST YEAR THERE WERE SEVERAL MOTIONS TO DISMISS
4 THAT WERE HEARD AND THAT WERE PENDING UPON
5 NOTIFICATION OF SETTLEMENT.

6 THE COURT ADMINISTRATIVELY TERMINATED
7 THEM. THERE WAS SOME, SOME FOLLOW-ON LITIGATION
8 ASSOCIATED WITH THESE PROCEEDINGS WHERE THE COURT
9 ISSUED A WRITTEN ORDER ABOUT WHY THEY DID WHAT THEY
10 DID AND WE FILED THE NOTICE WITH THE BOSTON COURT
11 ABOUT YOUR HONOR'S ORDER.

12 THE COURT: WHO IS YOUR JUDGE THERE?

13 MR. CHATTERJEE: IT'S JUDGE WOODLOCK AND
14 I BELIEVE, YOUR HONOR, HE SENT YOU BOTH A
15 TRANSCRIPT --

16 THE COURT: I REMEMBER THAT NOW.

17 MR. CHATTERJEE: AND, YOUR HONOR, THE
18 DISMISSAL, ACTUALLY TO MR. BARRETT'S POINT, I THINK
19 THE DISMISSALS REALLY GO MUCH MORE TO THE BOSTON
20 PROCEEDINGS THAN THE CALIFORNIA PROCEEDINGS BECAUSE
21 WE HAD TO SEEK TO ENFORCE THE DISMISSAL HERE.

22 THERE IT WOULD JUST BE FILING THE
23 STANDARD DOCUMENTATION.

24 MR. HAWK: SO, YOUR HONOR, TO GET BACK TO
25 YOUR QUESTION ON WHY I'M STANDING UP HERE

1 ADDRESSING THE COURT, WE ARE, WE ARE -- MR. SAVERIN
2 IS FINE WITH THE DISMISSAL OF THE LAWSUIT AS A
3 RESULT OF THIS AGREEMENT AND IN MASSACHUSETTS.

4 HE ALSO TO THAT EXTENT IS A FULL
5 SUPPORTER, EVEN THOUGH HE'S NOT PART OF AND A
6 SIGNATORY TO THE SETTLEMENT AGREEMENT, A SUPPORTER
7 OF THAT AGREEMENT AND IN AGREEMENT WITH YOUR
8 HONOR'S RULING AND ENFORCING THE SETTLEMENT
9 AGREEMENT.

10 AND HE REALLY IS, AS FAR AS A RELEASE, IF
11 THERE'S SOME DECISION THAT HE NEEDS OR SHOULD SIGN
12 A RELEASE OR THERE'S A DESIRE THAT HE SIGN A
13 RELEASE OF THE CONNECTU PARTIES, THAT'S ALL -- I'M
14 CONFIDENT THAT THAT COULD BE WORKED OUT.

15 THE ONLY ISSUE THAT I WANTED TO RAISE IN
16 FRONT OF YOUR HONOR ARISES FROM A CONFIDENTIALITY
17 PROVISION IN THE HANDWRITTEN SETTLEMENT AGREEMENT.

18 THE PROPOSED FORM OF ORDER THAT WAS
19 SUBMITTED TO YOUR HONOR, ONE OF THEM SAID THAT IT
20 WOULD, IT WOULD COMPEL OR REQUIRE ALL PARTIES,
21 INCLUDING THE PARTIES TO THE MASSACHUSETTS
22 LITIGATION, TO RESPECT AND TO ABIDE BY THIS
23 CONFIDENTIALITY PROVISION.

24 THAT SAID, MY CLIENT IS, AND HAS ONLY
25 WISHES TO BE HEARD TO STATE HIS UNDERSTANDING OF

1 THAT CONFIDENTIALITY PROVISION BECAUSE ALTHOUGH
2 IT'S A NARROW CONCERN OF HIS, IT IS AN IMPORTANT
3 CONCERN.

4 MY CLIENT, MR. SAVERIN, IS IN LITIGATION
5 WITH FACEBOOK. AND ANYWAY, WITH REGARD TO THE
6 CONFIDENTIALITY PROVISION, WHAT HE UNDERSTANDS THAT
7 PROVISION TO SAY, AND TO MEAN, IS THAT THERE WILL
8 NOT BE PUBLIC COMMENT OR DISCLOSURE ABOUT THE
9 SPECIFIC CLAIMS IN THE CONNECTU VERSUS FACEBOOK,
10 VERSUS SAVERIN, VERSUS ZUCKERBERG LITIGATION; NOT
11 THAT THIS IS A CONFIDENTIALITY PROVISION THAT WOULD
12 PROHIBIT ANY KIND OF PUBLIC COMMENT GOING FORWARD
13 ON THE MORE GENERAL MATTERS ON THE FOUNDING OF
14 FACEBOOK, THE RELATIONSHIPS BETWEEN THE FOUNDERS
15 AND MATTERS OF A MORE GENERAL NATURE.

16 AND THAT IS THE ONLY ISSUE THAT I WANTED
17 TO RAISE HERE TODAY.

18 THE COURT: WELL, I WON'T RULE ON THAT
19 BECAUSE IT'S NOT BEFORE ME, BUT THAT IS THE KIND OF
20 THING THAT, PERHAPS, IF YOU WOULD COMMUNICATE, IF
21 YOU HAVEN'T, TO THE VARIOUS PARTIES TO THE
22 AGREEMENT AND OTHERS TO SEEK THEIR RESPONSE, THAT
23 WOULD INFORM YOUR CLIENT AS TO WHAT THEIR RESPONSE
24 IS.

25 BUT IT DOESN'T APPEAR THAT IT'S THE KIND

1 OF THING THAT I WOULD USE IN THE JUDGMENT OR
2 MENTION IN THE JUDGMENT AT THIS POINT.

3 IT COULD BE THE SUBJECT OF POST-JUDGMENT
4 PROCEEDINGS IN THE ENFORCEMENT IF IT BECOMES A
5 PROBLEM FOR ENFORCEMENT, BUT OTHERWISE I WOULD
6 ADVISE YOU TO MAKE KNOWN THOSE CONCERNS AND SEE
7 WHAT RESPONSE YOU GET AND COME TO A PROPER COURT,
8 EITHER HERE OR MASSACHUSETTS, IF YOU'RE NOT
9 SATISFIED.

10 MR. HAWK: THANK YOU, YOUR HONOR. THAT
11 WAS REALLY THE MAIN INTENT OF MY STANDING UP AND
12 SAYING THIS IN FRONT OF THE PARTIES AND THE COURT
13 THIS MORNING.

14 MR. CHATTERJEE: YOUR HONOR, JUST ONE
15 FINAL THING.

16 FOR YOUR HONOR'S JUDGMENT, I THINK IT IS
17 VERY IMPORTANT, GIVEN THE NOTICE OF LIEN THAT HAS
18 BEEN FILED, MR. MOSKO'S REPRESENTATION THAT THEY
19 HAVE PERFECTED A LIEN THAT THE PROCEEDS THAT
20 FACEBOOK GIVES TO THE SPECIAL MASTER SHOULD NOT BE
21 DISBURSED WITHOUT THE CONSENT OF THE LIEN HOLDERS.

22 AND I'M VERY FOCUSSED ON THIS ISSUE OF
23 POTENTIAL EXPOSURE FOR FACEBOOK WHEN IT PERFORMS AS
24 IT SAID IT WOULD IN THE AGREEMENT, WHEN IT AT LEAST
25 HAS SOME KIND OF NOTICE, PERHAPS NOT SUFFICIENT

1 NOTICE, BUT SOME KIND OF NOTICE OF POTENTIAL LIENS
2 HANGING OUT THERE.

3 THE COURT: ARE YOU NOT SATISFIED IF I
4 SAY NO DISBURSEMENTS WITHOUT FURTHER ORDER OF THE
5 COURT?

6 MR. CHATTERJEE: "WITHOUT FURTHER ORDER
7 OF THE COURT"? YOUR HONOR, I DON'T THINK THAT DOES
8 THAT BECAUSE I THINK THEY NEED TO BE HERE AND MAKE
9 SURE THEY GET SERVED WITH NOTICE OF THE COURT'S
10 PROCEEDINGS.

11 THE COURT: WHAT I INTEND TO DO IS TO
12 FIGURE OUT THIS LIEN. I HAVEN'T SEEN IT. SOMEONE
13 SHOWED ME SOMETHING THAT WAS -- LET ME SEE IF I
14 COULD FIND WHAT I WAS LOOKING AT.

15 MR. CHATTERJEE: IT WAS LIKE A TWO-PAGE
16 DOCUMENT, YOUR HONOR.

17 THE COURT: YES. IT IS A NOTICE OF
18 ATTORNEY'S LIEN FILED ON THE CASE NUMBER THAT IT
19 WAS WHEN IT WAS PENDING BEFORE JUDGE SEEBORG. IT
20 INCLUDED LIEN OVER CLAIMS, CAUSES OF ACTION,
21 JUDGMENT, SETTLEMENT OR OTHER RECOVERY PAID TO
22 CONNECTU PARTIES, WHOEVER THAT IS, BUT THAT IS AN
23 IDENTIFIED TERM, OR ANY OF THEM OR THEIR SUCCESSORS
24 OR ASSIGNEES IN CONNECTION WITH THIS ACTION, WHICH
25 I PRESUME TO BE THE CALIFORNIA ACTION, FOR THE

1 PURPOSE OF SECURING PAYMENT OF ATTORNEYS' FEES,
2 COSTS, EXPENSES ON ACCOUNT OF ITS REPRESENTATION OF
3 THE CONNECTU PARTIES.

4 MR. CHATTERJEE: YOUR HONOR, THERE WAS A
5 VIRTUALLY IDENTICAL ONE ALSO FILED IN BOSTON.

6 THE COURT: ALL RIGHT. THEN THAT WOULD
7 TAKE CARE OF THAT.

8 AND SO, PERHAPS, WHAT SHOULD HAPPEN IS
9 THE PARTIES SHOULD TENDER TO ME WHATEVER YOU WANT
10 IN TERMS OF A POST-JUDGMENT ORDER THAT WOULD SAY
11 WHAT SHOULD HAPPEN WITH RESPECT TO THAT
12 DISBURSEMENT THAT RESPECTS THIS.

13 BUT I AM CONCERNED THAT IF I PUT THIS IN
14 THE JUDGMENT, I AM DOING SOMETHING THAT THE PARTIES
15 DIDN'T AGREE TO IN THEIR SETTLEMENT AGREEMENT.

16 I'M TRYING TO STICK, FOR PURPOSES OF
17 ANYONE QUESTIONING MY ROLE HERE IN ENFORCING THE
18 SETTLEMENT AGREEMENT AND GIVING A JUDGMENT, THAT IF
19 I START ADDING THINGS THAT ARE OUTSIDE THE CONFINES
20 OF THAT SETTLEMENT AGREEMENT, I'M NOW DOING
21 SOMETHING BEYOND ENFORCEMENT.

22 AFTER I GIVE THAT JUDGMENT, I CAN DO
23 THINGS THAT WILL RESPECT THE VARIOUS ECONOMIC
24 INTERESTS OF THE PARTIES TO CARRY THAT OUT, BUT I
25 WAS CONCERNED ABOUT PUTTING IT IN THE JUDGMENT.

1 IF YOU ALL STIPULATE THAT I CAN PUT IT IN
2 THE JUDGMENT SO AS TO NOW NOT MAKE THAT A SOURCE OF
3 APPEAL, THEN I WILL CONSIDER THAT STIPULATION.

4 I MAY REJECT IT, BUT I WILL CONSIDER IT
5 SO THAT'S ONE THING THAT YOU CAN DO THAT WOULD
6 AFFECT IT.

7 BUT I GIVE YOU MY ASSURANCE THAT THIS
8 ISSUE OF THE LIEN OR LIENS, AS THE CASE MAY BE,
9 WILL BE ADDRESSED BY THE COURT BEFORE THERE'S ANY
10 DISBURSEMENT AND BY THE, BY THE -- MAYBE I CAN PUT
11 IN THE JUDGMENT NO DISBURSEMENT WITHOUT FURTHER
12 ORDER OF THE COURT WHICH SHALL ADDRESS ALL LIENS
13 AND MAKE SURE THAT EVERYTHING IS RESOLVED.

14 BUT I THINK THAT THAT IS ADDING LANGUAGE
15 THAT IS TOTALLY, TOTALLY UNNECESSARY.

16 ONCE I HAVE THE MATTER HERE YOU WOULD BE
17 ABLE TO COME HERE, AS WELL AS THE LIEN CLAIMANT,
18 AND ARGUE ABOUT THAT, BUT I'LL TAKE THAT INTO
19 CONSIDERATION IN MY LANGUAGE.

20 MR. VAN DALSEM: MAY I POSE A QUESTION?

21 THE COURT: CERTAINLY.

22 MR. VAN DALSEM: WITH RESPECT TO THE CASH
23 THAT THE SPECIAL MASTER WOULD BE HOLDING ONTO, IS
24 THE JUDGMENT GOING TO ADDRESS THE NAME OF THE
25 DEPOSITOR?

1 THE COURT: NO. I WOULD LEAVE THAT TO
2 THE MASTER. I DON'T KNOW ENOUGH ABOUT WHAT WOULD
3 HAVE TO HAPPEN IN THAT LEVEL OF DETAIL THAT I WOULD
4 PUT IT IN THE JUDGMENT.

5 MR. VAN DALSEM: VERY WELL. BECAUSE IF
6 YOU WERE, I WOULD REQUEST THAT OUR FIRM BE LISTED
7 AS ONE OF THE CO-DEPOSITORS IN ORDER TO PROTECT
8 THAT INTEREST.

9 BUT IF YOU'RE NOT GOING TO PUT THAT IN.

10 THE COURT: WELL, THAT'S FURTHER TO WHAT
11 I HAVE JUST SAID.

12 IN OTHER WORDS, YOU'RE NOT A PARTY TO THE
13 SETTLEMENT AGREEMENT, AND I'M NOT GOING TO REQUIRE
14 AS A PART OF THIS JUDGMENT THAT YOU DEPOSIT
15 ANYTHING BECAUSE YOU HAVEN'T AGREED TO DEPOSIT
16 ANYTHING AS FAR AS THE SETTLEMENT.

17 YOU'RE IMPOSING YOURSELF LEGALLY ON A
18 JUDGMENT AND JUST AS I WOULD ENTER A JUDGMENT AFTER
19 A TRIAL THAT WOULDN'T SPEAK TO THAT, MY JUDGMENT
20 WOULD BE ENTERED AND YOU WOULD IMPOSE YOUR LIEN ON
21 THAT JUDGMENT SO THAT IN THE EXECUTION OF THE
22 JUDGMENT, THOSE FOLLOW-ON PROCEEDINGS, THAT LIEN
23 WOULD BE RECOGNIZED IN SOME WAY.

24 AND SO IT SEEMS TO ME THAT THE RULES TAKE
25 CARE OF THAT AND I DON'T NEED TO INCLUDE IT IN THE

1 JUDGMENT.

2 MR. BARRETT: YOUR HONOR, I WOULD ASSUME
3 THAT THE ACCOUNT, IF YOU WILL, THE DEPOSIT ACCOUNT,
4 OR THE TREASURY BILLS, OR WHATEVER THE INVESTMENT
5 IS, WOULD BE IN THE NAME OF THE TRUSTEE OR SPECIAL
6 MASTER AND PERHAPS THAT'S THE SAME WAY TO HANDLE
7 THE STOCK CERTIFICATES, TOO, JUST MAKE THEM PAYABLE
8 TO THAT PERSON AND HE OR SHE TRANSFERS THEM ON.

9 THE COURT: WELL, THE CERTIFICATES, IF
10 IT'S NECESSARY TO PUT THEM IN A NAME AND YOU CAN'T
11 COME TO SOME INSTRUCTION TO ME AS TO WHAT NAMES
12 THEY SHOULD BE IN BECAUSE OF THIS PROBLEM, I'M
13 GOING TO ACTUALLY HAVE SUBSEQUENT PROCEEDINGS TO
14 ACTUALLY ASK THAT.

15 I SHOULD TELL YOU I HAVE AN ANNUAL LEAVE
16 AND I'M GOING TO BE OUT OF THE DISTRICT FOR ABOUT
17 30 DAYS SO THERE COULD BE -- IF YOU ALL ARE
18 THINKING THAT THINGS WOULD HAPPEN QUICKLY AS YOU
19 ARE USING THE WORD, AND IT COMES WITHIN THAT PERIOD
20 OF TIME, THERE WILL BE A LOGISTICAL PROBLEM, BUT
21 I'LL GIVE SUFFICIENT INSTRUCTIONS TO THE MASTER TO
22 GET EVERYTHING MOVING AND TO MOVE IT AS QUICKLY AS
23 I CAN, SOME OF THIS BEING SUBJECT TO THIS QUESTION
24 OF WHETHER OR NOT THERE WILL BE APPEALS AND STAYS
25 AND THAT SORT OF THING.

1 MR. BARRETT: UH-HUH.

2 THE COURT: DO I NEED TO HEAR ANYTHING
3 MORE?

4 MR. VAN DALSEM: YOUR HONOR, A PRACTICAL
5 SUGGESTION, PERHAPS.

6 ASSUMING YOUR HONOR ISSUED A JUDGMENT
7 TODAY, THEORETICALLY IT COULD BE APPEALED TOMORROW
8 AND THEN I BELIEVE THIS COURT WOULD BE WITHOUT
9 JURISDICTION.

10 I SIMPLY RAISE THE PRACTICAL ISSUE THAT
11 THE ISSUE OF THE JUDGMENT SHALL BE HELD IN ABEYANCE
12 UNTIL SUCH TIME AS EVERYTHING IS SET OR AT LEAST --

13 THE COURT: WELL, I HAVEN'T THOUGHT
14 THROUGH THAT. IT SEEMS TO ME THAT THAT INVITES
15 FURTHER DELAY. I'M NOT WILLING TO ACCEPT THAT MY
16 LOSS OF JURISDICTION OVER THE ISSUE OF WHETHER THE
17 JUDGMENT SHOULD BE ENTERED DEPRIVES ME OF
18 JURISDICTION TO DO CERTAIN THINGS UNDER THE
19 JUDGMENT.

20 THERE ARE A LOT OF THINGS THAT COURTS DO
21 WHILE THE MERITS ARE APPEALED. AND IT SEEMS TO ME
22 THAT IF AN APPEAL WERE TAKEN, THE SUGGESTION THAT
23 MAYBE A SUPERSEDING BOND WOULD BE POSTED WITH ONE
24 AND A HALF TIMES THE AMOUNT OF THE OTHERWISE
25 JUDGMENT, WHICH IS DIFFICULT TO VALUE GIVEN THE

1 FACT THAT THIS IS A COMBINATION OF CASH AND OTHER
2 CONSIDERATION, WOULD BE SOMETHING THAT I FACE IN
3 THE FUTURE.

4 SO THANK YOU FOR THE SUGGESTION, BUT I
5 MIGHT NOT TAKE IT.

6 MR. BARRETT: AND, YOUR HONOR, AS I
7 INDICATED EARLIER WITH RESPECT TO A BOND, I BELIEVE
8 THAT THE, THAT THE RULE 62, AS IT --

9 THE COURT: I JUST MENTIONED IT BECAUSE
10 IT GOT MENTIONED. I HAVEN'T COME TO THAT.

11 MR. BARRETT: I THINK THERE WOULD BE
12 OTHER WAYS TO DEAL WITH THAT BESIDES A BOND.

13 THE COURT: ANYTHING FURTHER?

14 MR. CHATTERJEE: THANK YOU FOR YOUR TIME,
15 JUDGE.

16 MR. BARRETT: AND, YOUR HONOR, WITH
17 RESPECT TO THE SPECIAL MASTER, IS THAT -- WOULD IT
18 BE APPROPRIATE AT SOME POINT IF THE COURT HASN'T
19 DECIDED WHO THAT MIGHT BE TO GIVE THE PARTIES SOME
20 NOTICE BEFORE THAT, BEFORE THAT --

21 THE COURT: WELL, MY NORMAL PRACTICE IS
22 TO DO AN ORDER SETTING UP THE POWERS AND THEN TO
23 NOMINATE SOMEONE TO SERVE IN THAT CAPACITY TO ALLOW
24 THE PARTIES TO MAKE ANY OBJECTIONS TO THE
25 INDIVIDUAL BEFORE THAT PERSON THEN SIGNS THE FORMS

1 THAT ARE NECESSARY TO TAKE ON THE RESPONSIBILITY AS
2 A MASTER.

3 I, I -- AND THAT'S THE PRACTICE THAT I
4 INTEND TO FOLLOW.

5 MR. BARRETT: THANK YOU.

6 MR. CHATTERJEE: THANK YOU, YOUR HONOR.

7 MR. VAN DALSEM: THANK YOU VERY MUCH,
8 YOUR HONOR.

9 (WHEREUPON, THE EVENING RECESS WAS
10 TAKEN.)