

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE FACEBOOK, INC. AND)	C-07-01389 JW
MARK ZUCKERBERG,)	
)	SAN JOSE, CALIFORNIA
PLAINTIFFS,)	
)	AUGUST 6, 2008
VS.)	
)	PAGES 1-73
CONNECTU, INC. (FORMERLY)	
KNOWN AS CONNECTU, LLC),)	
PACIFIC NORTHWEST)	
SOFTWARE, INC., WINSTON)	
WILLIAMS, AND WAYNE)	
CHANG,)	
)	
DEFENDANT.)	
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S :

FOR THE PLAINTIFF: ORRICK, HERRINGTON & SUTCLIFFE
 BY: I. NEEL CHATTERJEE,
 MONTE M.F. COOPER, AND
 YVONNE GREET
 1000 MARSH ROAD
 MENLO PARK, CALIFORNIA 94025

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (CONTINUED)

FOR THE DEFENDANT: BOIES, SCHILLER & FLEXNER, LLP
BY: D. MICHAEL UNDERHILL
5301 WISCONSIN AVENUE, N.W.
WASHINGTON, D.C. 20015

FOR INTERVENOR: O'SHEA PARTNERS, LLP
BY: SEAN F. O'SHEA AND
MARK A. WEISSMAN
90 PARK AVENUE, 20TH FLOOR
NEW YORK, NEW YORK 10016

1 SAN JOSE, CALIFORNIA

AUGUST 6, 2008

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

3 (WHEREUPON, COURT CONVENED AND THE
16:44:12 4 FOLLOWING PROCEEDINGS WERE HELD:)

16:44:12 5 THE CLERK: CALLING CASE NUMBER 07-01389,
16:44:27 6 THE FACEBOOK, INC., VERSUS CONNECTU, INC., ET AL,
16:44:27 7 ON FOR NON-PARTIES' MOTION TO INTERVENE, AND
16:44:34 8 DEFENDANT'S MOTION TO STAY EXECUTION OF JUDGMENT
16:44:35 9 PENDING APPEAL.

16:44:36 10 COUNSEL, PLEASE COME FORWARD AND STATE
16:44:39 11 YOUR APPEARANCES.

16:44:40 12 MR. O'SHEA: YOUR HONOR, SEAN O'SHEA AND
16:44:42 13 MIKE WEISSMAN FOR APPLICANT INTERVENORS.

16:44:45 14 MR. UNDERHILL: YOUR HONOR, MICHAEL
16:44:47 15 UNDERHILL FOR CONNECTU, THE DEFENDANT.

16:44:50 16 MR. CHATTERJEE: YOUR HONOR, NEEL
16:44:51 17 CHATTERJEE FOR MARK ZUCKERBERG AND FACEBOOK.

16:44:55 18 AND WITH ME IS MONTE COOPER AND YVONNE
16:44:59 19 GREER.

16:44:59 20 MR. FISHER: AND GEORGE FISHER.

16:45:01 21 THE COURT: I'M SORRY. I DID NOT GET
16:45:02 22 YOUR APPEARANCE, PLEASE. YOU'RE NEW TO THIS, SO
16:45:04 23 CAN YOU GIVE ME YOUR NAME AGAIN?

16:45:06 24 MR. O'SHEA: YES, YOUR HONOR, SEAN
16:45:09 25 O'SHEA.

16:45:10 1
16:45:10 2
16:45:12 3
16:45:12 4
16:45:15 5
16:45:17 6
16:45:21 7
16:45:23 8
16:45:26 9
16:45:29 10
16:45:32 11
16:45:36 12
16:45:39 13
16:45:45 14
16:45:48 15
16:45:54 16
16:45:56 17
16:46:03 18
16:46:07 19
16:46:12 20
16:46:14 21
16:46:20 22
16:46:24 23
16:46:32 24
16:46:34 25

THE COURT: MR. O'SHEA.

MR. O'SHEA: AND I'M HERE WITH MARK
WEISSMAN.

THE COURT: MR. WEISSMAN.

I HAVE TWO MATTERS, MAYBE MORE, BUT I HAD
TWO THAT I HAD INTENDED TO GIVE YOU SOME TIME TO
ADDRESS.

THE FIRST IS THIS MOTION TO INTERVENE,
AND THEN THE SECOND IS A MOTION TO STAY EXECUTION
OF THE JUDGMENT.

PERHAPS IT WOULD FORESHORTEN YOUR
ARGUMENT IF I COMMENT ON THIS FIRST MOTION AND TELL
YOU WHAT I HAVE AS AN INTENDED DECISION.

IT DOES SEEM -- PLEASE BE SEATED.

IT DOES SEEM TO THE COURT THAT THIS IS A
CIRCUMSTANCE WHERE THE TWO INDIVIDUALS WHO SEEK TO
INTERVENE IN THE CASE ARE IDENTIFIED IN INTEREST
SUFFICIENTLY WITH CONNECTU THAT THE COURT IS
DISPOSED TO ALLOW THEM TO INTERVENE IN THE LAWSUIT.

I HAVEN'T DONE THE INDEPENDENT LOOK THAT
I WOULD OTHERWISE WANT TO DO, BUT MY STAFF ADVISES
ME THAT THESE INDIVIDUALS WERE PREVIOUSLY BEFORE
THE COURT IN THIS ACTION AND SOUGHT TO BE DISMISSED
FROM THE ACTION ON THE GROUNDS THAT THE COURT
LACKED PERSONAL JURISDICTION OVER THEM.

16:46:36 1 I HAVEN'T LOOKED TO SEE WHETHER OR NOT
16:46:39 2 THEY ARE LITIGANTS BEFORE THE OTHER CASE THAT WAS
16:46:44 3 PENDING BETWEEN THESE PARTIES WHICH WAS INCLUDED IN
16:46:46 4 THE SETTLEMENT THAT THEY REACHED.

16:46:50 5 BUT IT CERTAINLY IS CLEAR TO THE COURT
16:46:53 6 THAT THEY HAVE A SUFFICIENT INTEREST IN THIS MATTER
16:46:57 7 THAT THEY SHOULD BE RECOGNIZED AS PARTIES TO THE
16:47:03 8 EXTENT THAT THEIR INTEREST MIGHT BE AFFECTED BY THE
16:47:08 9 CONDUCT OF THE COURT.

16:47:10 10 AND SO THAT WOULD BE THE FIRST THING I'D
16:47:12 11 WISH TO HAVE ARGUED IS WHETHER OR NOT THERE'S A
16:47:15 12 REASON TO NOT PERMIT THEM TO INTERVENE.

16:47:18 13 FOR ME, QUITE FRANKLY, THOUGH, THE MORE
16:47:20 14 IMPORTANT QUESTION IS WHETHER OR NOT THEY SHOULD BE
16:47:23 15 PERMITTED TO INTERVENE FOR ALL PURPOSES AND TO FILE
16:47:26 16 THE PROFFERED COMPLAINT IN INTERVENTION.

16:47:29 17 THE COMPLAINT IN INTERVENTION SEEKS TO
16:47:34 18 PLEAD A CLAIM THAT IS -- THAT HAS -- THAT IS
16:47:42 19 PARALLEL TO THE CASE THAT, IN THE COURT'S VIEW, IS
16:47:49 20 SUBSUMED BY THE JUDGMENT IN THIS CASE, AND IN THE
16:47:52 21 COURT'S VIEW SEEKS TO REOPEN, FOR LITIGATION
16:47:57 22 AGAINST -- I'M NOT SURE WHO THE DEFENDANT IN
16:48:00 23 INTERVENTION IS. IT SEEMS THAT THAT'S UNCLEAR TO
16:48:03 24 ME -- BUT SEEKS TO REOPEN INTO LITIGATION IN A NEW
16:48:07 25 PLEADING WITH NUANCES AND DISCOVERY AND PRESUMABLY

16:48:11 1
16:48:15 2
16:48:17 3
16:48:22 4
16:48:26 5
16:48:32 6
16:48:39 7
16:48:42 8
16:48:44 9
16:48:46 10
16:48:50 11
16:48:55 12
16:48:58 13
16:49:00 14
16:49:02 15
16:49:04 16
16:49:07 17
16:49:08 18
16:49:11 19
16:49:14 20
16:49:16 21
16:49:20 22
16:49:24 23
16:49:29 24
16:49:31 25

TRIALS, MATTERS THAT ARE -- OR AS THE COURT IS
CONCERNED, COVERED BY THE JUDGMENT.

AND SO IT IS MY INTENTION TO GRANT THE
MOTION TO INTERVENE, BUT TO ALLOW THE INTERVENTION
FOR PURPOSES OF THE APPEAL AND FOR PURPOSES OF ANY
POST-JUDGMENT PROCEEDINGS, SO THAT IF IT -- IF THE
CASE PROCEEDS ON APPEAL TO THE POINT WHERE IT'S
REMANDED BACK TO THIS COURT FOR FURTHER
PROCEEDINGS, THEY WOULD BE PARTIES FOR THOSE
FURTHER PROCEEDINGS, AND THERE MAY BE POST-JUDGMENT
MATTERS THAT COME BEFORE THIS COURT THAT ARE STILL
WITHIN THE JURISDICTION OF THE COURT WHILE THE CASE
IS ON APPEAL.

I'VE BEEN ADVISED THAT THERE'S AN APPEAL.
AGAIN, I HAVEN'T SEEN THE NOTICE OF THE APPEAL AND
I HAVEN'T -- I'VE NOT INFORMED MYSELF FURTHER WITH
RESPECT TO THAT.

SO THAT'S THE OTHER INTENT THAT I WANT TO
DISCLOSE IS AN INTENT TO PERMIT INTERVENTION, BUT
FOR A LIMITED PURPOSE.

THE QUESTION THAT I ASKED MYSELF, THOUGH,
IN THIS UNUSUAL PROCESS IS, WHAT IS -- WHAT
PROCEDURAL DEVICE DOES THE COURT NEED TO USE TO
RECOGNIZE INTERVENTION FOR THIS LIMITED PURPOSE?
HOW DO I RECOGNIZE IT?

16:49:33 1 THERE'S NO COMPLAINT IN INTERVENTION THAT
16:49:36 2 DOES IT. IT SIMPLY SEEMS TO BE AN ORDER PERMITTING
16:49:41 3 THAT INTERVENTION WITH THE IDEA THAT IF THE CASE
16:49:44 4 RETURNS TO A LITIGATED STATUS, THEN I NEED TO SORT
16:49:48 5 OUT WHETHER THEY ARE INTERVENING AS PLAINTIFFS OR
16:49:51 6 DEFENDANTS AND WHO ARE THE PARTIES AGAINST WHOM
16:49:54 7 THEY WOULD BE PURSUING THEIR CLAIMS.

16:49:56 8 LET ME PAUSE WITH THOSE INTRODUCTORY
16:49:58 9 COMMENTS AND INVITE MR. O'SHEA OR OTHERS TO COMMENT
16:50:01 10 ON THE COURT'S INTENDED DECISION.

16:50:06 11 MR. O'SHEA: THANK YOU, YOUR HONOR.

16:50:07 12 FIRST OF ALL, JUDGE, THANK YOU FOR
16:50:09 13 HEARING US ON SHORT NOTICE. WE APPRECIATE IT AND
16:50:11 14 WE ARE -- YOU'RE CORRECT THAT WE'RE NEW TO THE FRAY
16:50:15 15 HERE.

16:50:15 16 THIS INTERVENTION MOTION, YOUR HONOR, IS
16:50:17 17 STRAIGHTFORWARD. WE'RE HERE ON BEHALF OF ACTUALLY
16:50:20 18 THREE PERSONS SEEKING INTERVENTION. THE APPLICANT
16:50:22 19 INTERVENORS ARE TYLER AND CAMERON WINKLEVOSS, WHO
16:50:28 20 ARE BROTHERS, AND DIVYA NARENDRA, AS YOUR HONOR IS
16:50:31 21 AWARE, THE INDIVIDUALS WHO SIGNED THE TERM SHEET
16:50:34 22 WHICH YOUR HONOR HELD ENFORCEABLE AND THAT IS GOING
16:50:36 23 TO BE THE SUBJECT OF AN APPEAL.

16:50:38 24 ONE OF THE TERMS OF THAT TERM SHEET IS
16:50:40 25 THAT FACEBOOK GETS OWNERSHIP OF CONNECTU STOCK.

16:50:44 1 UNTIL VERY RECENTLY, JUDGE, MY CLIENTS
16:50:47 2 BELIEVED, AND HAD A SOUND BASIS FOR THAT BELIEF,
16:50:50 3 THEY BELIEVED THAT THEIR RIGHTS ON APPEAL COULD BE
16:50:52 4 ADEQUATELY PROTECTED BY CONNECTU SINCE YOUR HONOR
16:50:55 5 HAD APPOINTED A SPECIAL MASTER, MR. FISHER, WHO IS
16:50:59 6 HERE TODAY, TO MAINTAIN THE STATUS QUO, AND WE WERE
16:51:02 7 AT THAT POINT HAPPY WITH THAT, WITH THAT STATE OF
16:51:04 8 EVENTS.

16:51:05 9 SINCE THEN, YOUR HONOR, FACEBOOK HAS BEEN
16:51:07 10 ASSERTING THAT IT WILL TAKE CONTROL OF CONNECTU'S
16:51:11 11 LITIGATIONS ONCE IT TAKES CONTROL OF CONNECTU'S
16:51:14 12 STOCK, AND WE'VE BECOME VERY CONCERNED THAT WHILE
16:51:17 13 CONNECTU'S APPEAL IS PENDING IN THE NINTH CIRCUIT,
16:51:20 14 THAT FACEBOOK WILL TRY TO ASSUME CONTROL OF
16:51:23 15 CONNECTU AND ABANDON OR OTHERWISE HAMPER OR IMPAIR
16:51:26 16 THE APPEAL.

16:51:27 17 I UNDERSTAND FROM MR. UNDERHILL, WHO
16:51:29 18 REPRESENTS CONNECTU, THAT HE HAS ASKED FOR
16:51:31 19 ASSURANCES FROM MR. CHATTERJEE, FACEBOOK'S COUNSEL,
16:51:35 20 THAT MY CLIENTS' RIGHTS WILL NOT BE -- AND
16:51:38 21 CONNECTU'S RIGHTS WILL NOT BE IMPAIRED ON APPEAL,
16:51:40 22 THAT THE APPEAL WILL BE ALLOWED TO GO FORWARD.

16:51:43 23 BUT FACEBOOK HAS BEEN UNWILLING TO AGREE
16:51:45 24 TO GIVE THOSE ASSURANCES.

16:51:46 25 AND, INDEED, IN THEIR OPPOSITION TO THE

16:51:49 1
16:51:51 2
16:51:53 3
16:51:54 4
16:51:56 5
16:51:58 6
16:52:02 7
16:52:06 8
16:52:07 9
16:52:08 10
16:52:10 11
16:52:10 12
16:52:12 13
16:52:14 14
16:52:17 15
16:52:18 16
16:52:20 17
16:52:23 18
16:52:26 19
16:52:29 20
16:52:30 21
16:52:35 22
16:52:37 23
16:52:39 24
16:52:42 25

STAY MOTION, JUDGE, THEY'VE NOW SAID THAT THE APPEAL IS, IN FACT, MOOT. THEY'VE TAKEN THAT POSITION.

SO THAT'S WHY WE'RE HERE TODAY, JUDGE. WE NEED TO INTERVENE. WE NEEDED TO INTERVENE ON SHORT NOTICE SINCE MY CLIENTS NEED REALLY TO PRESERVE THEIR RIGHTS ON APPEAL.

AND TO ADDRESS YOUR HONOR'S CONCERNS ABOUT TRYING TO REOPEN OR RELITIGATE THE UNDERLYING MATTER, THAT'S NOT OUR PURPOSE BEFORE THE COURT HERE TODAY.

WHAT OUR PURPOSE IS, IS TO GET THE COMPLAINT BEFORE THE COURT SO THAT WE CAN PRESERVE OUR RIGHT TO APPEAL, AND THAT'S WHAT WE'D LIKE TO DO.

INTERVENTION IS APPROPRIATE, YOUR HONOR, AND AS YOU KNOW, THE STANDARD FOR, FOR APPLICATION OF INTERVENTION IS VERY LIBERAL. OUR -- IT'S APPROPRIATE HERE UNDER BOTH SECTIONS, SUBSECTIONS OF RULE 24.

FIRST OF ALL, FOR AN INTERVENTION AS A RIGHT, WE MEET ALL FOUR PRONGS OF THE TEST: ONE, WE'RE TIMELY; SECOND, WE HAVE A SIGNIFICANTLY PROTECTABLE INTEREST; THIRD, THE DISPOSITION OF THIS ACTION, AS A PRACTICAL MATTER, COULD IMPAIR

16:52:45 1 OUR INTERESTS; AND, FOURTH, OUR INTERESTS NOW ARE
16:52:48 2 NOT ADEQUATELY PROTECTED OR MAY NOT BE ADEQUATELY
16:52:51 3 PROTECTED BY CONNECTU.

16:52:53 4 MY CLIENTS MEET ALL FOUR PRONGS OF THIS
16:52:56 5 TEST.

16:52:57 6 AND FACEBOOK, FOR ITS PART IN ITS PAPERS,
16:53:00 7 HAS NOT CONTESTED THE SECOND OR THIRD PRONG.

16:53:03 8 SO MY CLIENTS HAVE, AS TO PRONG 2, A
16:53:08 9 CLEAR PROTECTABLE INTEREST IN THEIR OWNERSHIP,
16:53:10 10 THEIR PROPERTY INTEREST IN CONNECTU. THEY HAVE AN
16:53:12 11 INTEREST IN THE CLAIMS AGAINST FACEBOOK, AND
16:53:15 12 FACEBOOK, AGAIN, DOESN'T CHALLENGE THIS.

16:53:18 13 WE ALSO, YOUR HONOR, HAVE AN INTEREST IN
16:53:19 14 THE APPEAL IN THIS CASE.

16:53:21 15 AND FACEBOOK REALLY DOESN'T ADDRESS THAT
16:53:24 16 IN THEIR PAPERS, BECAUSE TO DO SO, I THINK, REALLY
16:53:26 17 REVEALS WHAT FACEBOOK'S TRUE PURPOSE HERE IS, AND
16:53:29 18 THAT IS TO DENY MY CLIENTS THEIR APPELLATE RIGHTS.

16:53:33 19 THE DISPOSITION OF THE ACTION, THE THIRD
16:53:35 20 PRONG, WE ALSO MEET.

16:53:36 21 YOUR HONOR, AS A PRACTICAL MATTER, THAT
16:53:39 22 WILL IMPAIR THE INTERESTS OF MY CLIENT.

16:53:41 23 YOUR HONOR'S ORDER REQUIRES THEM TO HAND
16:53:44 24 OVER THEIR STOCK TO FACEBOOK, THEIR CONNECTU STOCK
16:53:47 25 TO FACEBOOK TO EXECUTE RELEASES AND DISMISS ALL THE

16:53:50 1
16:53:51 2
16:53:53 3
16:53:55 4
16:53:58 5
16:53:59 6
16:54:01 7
16:54:05 8
16:54:07 9
16:54:09 10
16:54:11 11
16:54:14 12
16:54:16 13
16:54:19 14
16:54:21 15
16:54:24 16
16:54:26 17
16:54:28 18
16:54:28 19
16:54:31 20
16:54:32 21
16:54:34 22
16:54:37 23
16:54:40 24
16:54:43 25

ACTIONS .

SO IF YOUR HONOR'S ORDER IS UPHELD, MY CLIENTS WILL LOSE THEIR PROPERTY RIGHTS IN CONNECTU SHARES, AND THEIR INDIVIDUAL CLAIMS AGAINST FACEBOOK.

AS TO THE FOURTH PRONG, THEY -- WHETHER THE APPLICANTS' INTERESTS ARE ADEQUATELY REPRESENTED BY CONNECTU, IF FACEBOOK TAKES CONTROL, THAT WILL NOT BE THE CASE, JUDGE.

WE MEET THAT FOURTH PRONG BECAUSE OF THAT REASON, AND, AGAIN, THIS FOURTH PRONG ONLY REQUIRES A MINIMAL SHOWING.

AND A CASE THAT FACEBOOK ACTUALLY CITED IN ITS BRIEF MAKES THAT CLEAR, AND THAT'S THE UNITED MINE WORKERS CASE IN THE SUPREME COURT, AND IT SAYS THAT THE MINIMAL SHOWING IS THAT MY CLIENTS' INTERESTS MAY NOT BE ADEQUATELY REPRESENTED.

AND HERE, YOUR HONOR, WE CAN DO FAR MORE THAN THAT MINIMAL SHOWING.

AS I MENTIONED, FACEBOOK IS SEEKING TO GAIN CONTROL OF THE CONNECTU SHARES.

AND WE SUSPECT, AND HAVE A STRONG BELIEF IN THAT REGARD, IT'S BECAUSE THEY HAVEN'T BEEN SUBTLE IN THEIR ATTEMPTS TO ACTUALLY TAKE CONTROL

16:54:45 1 OF CONNECTU AND EITHER ABANDON OR OTHERWISE IMPAIR
16:54:48 2 THE APPEAL THAT CONNECTU HAS TAKEN.

16:54:50 3 THE COURT: SO LET ME INTERRUPT.

16:54:53 4 THE REASON I GAVE YOU MY INTENDED
16:54:54 5 DECISION IS TO NARROW THIS, AND I'M CONCERNED THAT
16:54:59 6 YOUR COMMENTS SEEM TO ARGUE AGAINST YOUR OPPONENT.
16:55:05 7 IT DOESN'T EMBRACE THE DIRECTION THAT THE COURT
16:55:08 8 INTENDS TO GO.

16:55:10 9 SO IF I GRANT YOUR INTERVENTION AND I
16:55:13 10 LIMIT IT TO -- FOR PURPOSES OF APPEAL AND
16:55:18 11 POST-JUDGMENT RELIEF, HOW ARE YOU HARMED?

16:55:21 12 MR. O'SHEA: JUDGE, I THINK IF, IF WHAT
16:55:23 13 YOUR HONOR AND THE COURT -- IF WHAT THE COURT'S
16:55:26 14 INTENDING TO DO IS TO ALLOW MY, MY CLIENTS TO
16:55:29 15 INTERVENE FOR PURPOSES OF THE APPEAL AND
16:55:31 16 POST-JUDGMENT, I THINK THAT'S SUFFICIENT TO PROTECT
16:55:33 17 OUR INTERESTS AT THIS POINT.

16:55:35 18 AND AS I SAY, THE COMPLAINT IS NOT AN
16:55:37 19 ATTEMPT TO REOPEN, FOR EXAMPLE, LIKE THE SNYDER
16:55:39 20 CASE WHERE SOMEONE COMES IN IN A SHAM PROCEEDING
16:55:42 21 AND ATTEMPT TO RELITIGATE THIS MATTER BEFORE YOUR
16:55:44 22 HONOR. THAT'S NOT OUR MOTIVE AT ALL.

16:55:47 23 THE COURT: WELL, WHAT I'M -- WHAT I'M
16:55:48 24 INVITING YOU TO COMMENT NEXT ON, I GUESS, IS, FOR
16:55:52 25 PURPOSES OF MY ORDER, THEN, I WOULD NOT PERMIT YOU

16:55:55 1 TO FILE YOUR COMPLAINT IN INTERVENTION BECAUSE I, I
16:55:58 2 READ IT AS OPENING UP MATTERS THAT ARE
16:56:03 3 PRE-JUDGMENT.

16:56:03 4 IT DOES NOT EMBRACE THE JUDGMENT. IT
16:56:06 5 SEEMS TO ATTACK THE JUDGMENT, WHICH IS SOMETHING
16:56:08 6 THAT COULD HAPPEN ONCE THE JUDGMENT IS SET ASIDE.

16:56:11 7 IT SEEMS TO ME NECESSARY FOR THERE TO BE
16:56:14 8 A PROCESS BY WHICH THE JUDGMENT IS SET ASIDE BEFORE
16:56:17 9 THE LITIGATION OF THE EVENTS PRE-JUDGMENT CAN COME
16:56:20 10 BACK BEFORE THE COURT.

16:56:21 11 MR. O'SHEA: I THINK YOUR HONOR IS
16:56:22 12 CORRECT. I THINK THAT IF -- IF WE FIRST HAVE TO GO
16:56:25 13 TO THE NINTH CIRCUIT AND THE NINTH CIRCUIT HAS TO
16:56:28 14 RULE ON, ON YOUR HONOR'S RULING IN THE CASE ON
16:56:30 15 ENFORCING THE TERM SHEET, THAT -- AT LEAST WE GET
16:56:34 16 TO VINDICATE OUR APPELLATE RIGHTS.

16:56:37 17 AND THEN IF WE COME DOWN HERE AND THERE
16:56:38 18 ARE OTHER THINGS TO ADJUDICATE, THEN WE CAN DO THAT
16:56:41 19 IN FRONT OF THIS COURT.

16:56:42 20 BUT I THINK IT IS SUFFICIENT FOR YOUR
16:56:43 21 HONOR TO ALLOW US TO INTERVENE AT THIS POINT ON
16:56:47 22 THIS CASE FOR APPELLATE PURPOSES.

16:56:49 23 THE COURT: ALL RIGHT. LET ME ASSUME
16:56:51 24 THAT THAT IS WHAT I WILL DO UNTIL I AM PERSUADED BY
16:56:56 25 YOUR OPPONENT OTHERWISE.

16:56:58 1
16:57:00 2
16:57:01 3
16:57:01 4
16:57:03 5
16:57:07 6
16:57:12 7
16:57:12 8
16:57:13 9
16:57:15 10
16:57:17 11
16:57:20 12
16:57:22 13
16:57:24 14
16:57:27 15
16:57:30 16
16:57:32 17
16:57:35 18
16:57:38 19
16:57:42 20
16:57:46 21
16:57:49 22
16:57:52 23
16:57:54 24
16:57:57 25

IS THERE ANYTHING MORE, INDEPENDENT OF
THE STAY QUESTION, THAT YOU WOULD WISH TO ARGUE AT
THIS TIME?

MR. O'SHEA: WELL, JUST, YOUR HONOR, THAT
I WOULD ASK FOR TIME TO, TIME UNDER RULE 4 TO, TO
FILE OUR, OUR APPEAL, AND I THINK 14 DAYS OUGHT TO
DO IT.

THE COURT: THANK YOU.

LET'S HEAR FROM ANYONE WHO OPPOSES THE
INTENDED DECISION OF THE COURT.

MR. CHATTERJEE: YOUR HONOR,
RESPECTFULLY, WE DISAGREE WITH YOU ON THIS ONE.

ONE OF THE COMMENTS YOUR HONOR MADE WHEN,
WHEN YOU WERE DISCUSSING YOUR TENTATIVE RULING WAS
YOU WEREN'T SURE IF THE THREE INDIVIDUALS WERE
PARTIES TO ANY OF THE CASES.

AND YOU MIGHT RECALL, YOUR HONOR, AT THE,
AT THE MOTION TO ENFORCE HEARING, WHICH WAS THE
HEARING BEFORE THE JUDGMENT, WE HAD A DISCUSSION,
AND THE DISCUSSION WAS -- CONNECTU WAS HERE
REPRESENTED BY MR. UNDERHILL, AND THE ISSUE WAS,
DID THREE SHAREHOLDERS HAVE NOTICE OF THE MOTION
AND AN OPPORTUNITY TO OPPOSE?

THOSE THREE SHAREHOLDERS ARE THE VERY
SAME PEOPLE WHO ARE TRYING TO INTERVENE TODAY.

16:57:59 1 THEY HAVE KNOWN ABOUT THIS MOTION, THEY SUBMITTED
16:58:02 2 DECLARATIONS IN OPPOSITION ON BEHALF OF CONNECTU,
16:58:05 3 THEY SHOWED UP IN COURT IN BOSTON, YET THEY'VE MADE
16:58:08 4 THE STRATEGIC DECISION NOT TO OPPOSE THE MOTION
16:58:12 5 THEMSELVES, AND YOUR HONOR ACKNOWLEDGED THE NOTICE
16:58:14 6 ISSUE IN YOUR ORDER ENFORCING THE JUDGMENT.

16:58:17 7 THIS IS NOT SOMEONE NEW. IT'S SOMEONE
16:58:19 8 THAT'S BEEN INVOLVED IN THIS. THEY SIGNED THE
16:58:22 9 SETTLEMENT AGREEMENT BACK IN FEBRUARY. THEY
16:58:23 10 PARTICIPATED THROUGHOUT THE PROCESS ON BEHALF OF
16:58:27 11 CONNECTU, AND THEY MADE A STRATEGIC DECISION NOT TO
16:58:31 12 GET INVOLVED IN OPPOSING IT THEMSELVES IN
16:58:33 13 CHALLENGING THE ENFORCEMENT.

16:58:35 14 YOUR HONOR, UNDER THAT CIRCUMSTANCE, THEY
16:58:36 15 DID NOT ACT PROMPTLY. THEY MADE A STRATEGIC
16:58:40 16 DECISION NOT TO GET INVOLVED, AND IN THOSE
16:58:42 17 CIRCUMSTANCES, YOUR HONOR, I DON'T THINK
16:58:43 18 INTERVENTION IS PROPER.

16:58:45 19 THE COURT: HOW IS -- HOW IS YOUR CLIENT,
16:58:48 20 OR YOUR CLIENTS, HOW ARE THEY HARMED WITH RESPECT
16:58:52 21 TO THIS MATTER IF THESE THREE INDIVIDUALS ARE
16:58:58 22 PERMITTED TO INTERVENE FOR PURPOSES OF APPEAL OR
16:59:00 23 POST-JUDGMENT PROCEEDINGS?

16:59:02 24 MR. CHATTERJEE: WELL, FIRST, YOUR HONOR,
16:59:05 25 IT WILL DELAY THINGS OBVIOUSLY. YOU JUST HEARD

16:59:07 1
16:59:10 2
16:59:11 3
16:59:14 4
16:59:15 5
16:59:17 6
16:59:19 7
16:59:22 8
16:59:26 9
16:59:29 10
16:59:31 11
16:59:34 12
16:59:36 13
16:59:38 14
16:59:41 15
16:59:43 16
16:59:44 17
16:59:46 18
16:59:49 19
16:59:52 20
16:59:53 21
16:59:55 22
16:59:56 23
17:00:02 24
17:00:09 25

MR. O'SHEA ASK FOR ADDITIONAL TIME.

THE SECOND ISSUE IS THAT IT WILL ALLOW FOR ADDITIONAL LITIGATION, MORE PEOPLE WE HAVE TO DEAL WITH AND THE LIKE.

OUR VIEW IS WE OWN CONNECTU.

CONNECTU IS THE ONLY PERSON WHO OPPOSED THE MOTION. WE EVEN SAID IN OUR OPPOSITION BRIEF, I MEAN IN OUR REPLY BRIEF THAT THEY WAIVED -- THEY SUBMITTED SURREPLIES WITH DECLARATIONS FROM CAMERON WINKLEVOSS, ONE OF THE PEOPLE SEEKING TO INTERVENE HERE, HAVING TO DEAL WITH THE COLLATERAL CONSEQUENCES OF ADDING ADDITIONAL PARTIES, WHICH HAS BEEN RECOGNIZED AS HARM UNDER, UNDER THE INTERVENTION CASE LAW, IS, IS SOMETHING THAT IS PREJUDICIAL. IT CAUSES DELAYS THAT WE SHOULDN'T HAVE TO FACE.

WE SIGNED AN AGREEMENT. THEY DON'T WANT TO HONOR IT. THEY STILL HAVEN'T PUT THEIR SHARES INTO THE ESCROW, OR INTO THE SPECIAL MASTER'S HANDS.

THE COURT: LET ME POKE AT IT IN A DIFFERENT WAY.

THIS IS A CIRCUMSTANCE WHERE THE THREE INDIVIDUALS, AT LEAST TWO OF THEM PERHAPS, SIGNED THE, THE DOCUMENT THAT CAME BEFORE THE COURT FOR

17:00:12 1
17:00:13 2
17:00:14 3
17:00:15 4
17:00:16 5
17:00:27 6
17:00:29 7
17:00:31 8
17:00:34 9
17:00:38 10
17:00:40 11
17:00:44 12
17:00:48 13
17:00:50 14
17:00:54 15
17:00:57 16
17:01:00 17
17:01:03 18
17:01:05 19
17:01:11 20
17:01:15 21
17:01:18 22
17:01:21 23
17:01:26 24
17:01:29 25

ENFORCEMENT.

MR. CHATTERJEE: ALL THREE OF THEM DID,
YOUR HONOR.

THE COURT: ALL THREE.

NOW, AT THE TIME THEY DID THAT, I DON'T
HAVE IT IN FRONT OF ME NOW, BUT THERE WAS A
QUESTION THAT CAME UP IN THE COURT'S MIND, AND I
ADDRESSED IT IN MY ORDER WITH RESPECT TO THE
OBLIGATION OF ALL SIGNATORIES, EVEN THOSE WHO WERE
NOT PARTIES TO THE LITIGATION, TO HONOR THE
AGREEMENT THAT THEY HAD MADE BECAUSE IT WAS AN
OBLIGATION TO ENFORCE THE AGREEMENT ON THE PART OF
ALL SIGNATORIES.

IT SEEMS TO ME THAT EVENTUALLY IT MIGHT
HAVE BECOME NECESSARY, IF THERE WAS NO VOLUNTARY
COMPLIANCE, FOR THE COURT TO BRING THEM INTO THE
ACTION FOR PURPOSES OF ENFORCING ITS ORDER BY WAY
OF A CONTEMPT ORDER OR WHATEVER.

AND SO I'M NOT CERTAIN I UNDERSTAND A
BASIS FOR NOT RECOGNIZING THEM, FIRST AS PARTIES
WHO ARE OBLIGATED TO ABIDE BY THE JUDGMENT OF THE
COURT; AND AT THE SAME TIME, RECOGNIZE THEM AS
PARTIES WHO MAY LEGITIMATELY ARGUE SUCCESSFULLY, OR
NOT, THAT THE COURT WAS IN ERROR IN REQUIRING THEM
TO TAKE THE ACTION THAT THE COURT REQUIRED THEM TO

17:01:32 1
17:01:32 2
17:01:33 3
17:01:35 4
17:01:39 5
17:01:40 6
17:01:42 7
17:01:45 8
17:01:49 9
17:01:50 10
17:01:51 11
17:01:54 12
17:01:56 13
17:01:58 14
17:01:59 15
17:02:01 16
17:02:04 17
17:02:07 18
17:02:08 19
17:02:12 20
17:02:13 21
17:02:16 22
17:02:17 23
17:02:19 24
17:02:21 25

TAKE .

MR. CHATTERJEE: A FAIR QUESTION, YOUR HONOR, AND I THINK THIS GOES DIRECTLY TO THE STRATEGIC ISSUE, THE STRATEGIC DECISIONS THAT THE INDIVIDUALS MADE.

RATHER THAN ENTERING INTO THE CASE AND, AND MAKING THE OPPOSITIONS AT THE TIME THEY COULD HAVE, THEY MADE THE STRATEGIC DECISION TO CHALLENGE JURISDICTION AND NOTICE.

YOUR HONOR FOUND THAT THEY SAID IN THAT AGREEMENT THAT THEY SIGNED THAT THEY WERE SUBJECT TO THE JURISDICTION OF THIS COURT.

NOW, I SEE TWO SEPARATE ISSUES ASSOCIATED WITH YOUR COMMENTS.

THE FIRST QUESTION IS, ARE THE INDIVIDUALS SUBJECT TO THE JURISDICTION OF THIS COURT FOR PURPOSES OF THE JUDGMENT THAT'S BEEN ENTERED?

YOUR HONOR DECIDED THAT THEY IRREVOCABLY SAID THEY WOULD SUBJECT THEMSELVES TO THE JURISDICTION OF THIS COURT FOR PURPOSES OF THE ENFORCEMENT OF THIS AGREEMENT.

THAT DOESN'T MEAN THEY NEED TO BE A PARTY TO THIS LITIGATION. IT MEANS THAT THEY ARE SUBJECT TO THE JURISDICTION OF THIS COURT.

17:02:23 1 THE SECOND ISSUE IS, ARE THEY A PARTY TO
17:02:25 2 THIS CASE?

17:02:25 3 THEY ARE A PARTY TO THE CASE IN BOSTON.
17:02:28 4 THAT'S BEEN RECOGNIZED.

17:02:29 5 THEY FOUGHT JURISDICTION IN THIS CASE
17:02:33 6 PRIOR TO ENTERING INTO THE SETTLEMENT AGREEMENT.

17:02:36 7 AND THEY CHOSE NOT TO BECOME PARTIES IN
17:02:39 8 OPPOSING THE, THE OP -- IN OPPOSING THE MOTION TO
17:02:43 9 ENFORCE.

17:02:43 10 THERE'S NO NEED FOR THEM TO BE REWARDED
17:02:45 11 FOR THOSE STRATEGIC DECISIONS THAT THEY MADE.

17:02:49 12 BUT THEY ARE SEPARATE ISSUES, WHETHER
17:02:51 13 THEY'RE SUBJECT TO THE JURISDICTION OF THE COURT
17:02:53 14 AND WHETHER THEY'RE PARTIES AS IT RELATES TO THE
17:02:55 15 ENFORCEMENT OF THE CONTRACT.

17:02:57 16 THEY CHOSE NOT TO BE THE LATTER.

17:03:02 17 THE COURT: IS THERE, IN YOUR MIND, A
17:03:04 18 DIFFERENCE BETWEEN THE OBLIGATION OF THE
17:03:07 19 INDIVIDUALS AND CONNECTU?

17:03:13 20 MR. CHATTERJEE: IS THERE A DIFFERENCE
17:03:14 21 BETWEEN THE OBLIGATIONS OF THE INDIVIDUALS AND
17:03:16 22 CONNECTU?

17:03:17 23 YOUR HONOR, IN YOUR JUDGMENT, YOU LISTED
17:03:19 24 ALL OF THEM AS BEING ORDERED TO DO CERTAIN ACTS AND
17:03:23 25 TO EFFECTUATE WHATEVER ACTS WERE NECESSARY IF THERE

17:03:27 1 WAS AN INVOLUNTARY SHAREHOLDER, AND TO THE EXTENT
17:03:29 2 THAT THAT JUDGMENT READS THAT THEY ALL HAVE
17:03:31 3 ESSENTIALLY THE SAME SET OF OBLIGATIONS, THEY MIGHT
17:03:34 4 INDIVIDUALLY HAVE TO DO SOME THINGS UNDER
17:03:37 5 CONNECTICUT CORPORATE LAW, BUT I READ THE JUDGMENT
17:03:39 6 AS SAYING THEY HAVE TO DO WHATEVER THEY'RE SUPPOSED
17:03:41 7 TO DO UNDER CONNECTICUT LAW.

17:03:44 8 THE COURT: WELL, I'M NOT PERSUADED THAT
17:03:46 9 THE DELAY THAT WOULD BE OCCASIONED BY ALLOWING THEM
17:03:49 10 TO INTERVENE, IF I LIMITED IT TO APPEAL, THAT
17:03:53 11 YOU'RE TALKING ABOUT, WHICH IS THEY MAY GET
17:03:55 12 ADDITIONAL TIME BEFORE THE APPELLATE COURT TO FILE
17:03:59 13 THEIR BRIEFS AND TO GET INVOLVED IN THE ACTION, NOR
17:04:01 14 THE ADDITIONAL LITIGATION THAT WOULD PERHAPS BE
17:04:04 15 CAUSED BY HAVING NOW YET ANOTHER VOICE SPEAKING ON
17:04:08 16 THIS ISSUE, IS COMPELLING ENOUGH FOR THE COURT TO
17:04:13 17 KEEP THEM OUT OF THE CASE.

17:04:15 18 MY MOTIVATION IS TO -- BECAUSE I THINK MY
17:04:21 19 JUDGMENT IS CORRECT.

17:04:22 20 MY MOTIVATION IS TO BRING THEM IN THE
17:04:24 21 CASE SO I CAN ENFORCE THE JUDGMENT AGAINST THEM,
17:04:27 22 AND IT'S COUNTERINTUITIVE TO THE COURT TO BE IN A
17:04:30 23 SITUATION WHERE THEY INITIALLY SAID "WE DON'T WANT
17:04:32 24 TO BE," AND I'M SAYING, "NO, YOU'RE REQUIRED," AND
17:04:35 25 NOW THEY'RE AGREEING, "WELL, WE WANT TO COME IN,"

17:04:36 1 AND TO SAY "NO, YOU CAN'T." IT JUST SEEMS
17:04:40 2 COUNTERINTUITIVE TO THE COURT.

17:04:41 3 I WOULD AGREE WITH YOU THAT THE
17:04:44 4 INTERVENTION, FOR PURPOSES OF NOW REOPENING THE
17:04:49 5 LITIGATION AND TREATING IT AS A PRE-JUDGMENT
17:04:51 6 LITIGATION AND NOW SERVING COMPLAINTS AND GETTING
17:04:54 7 ANSWERS AND TAKING DISCOVERY AND ALL OF THOSE
17:04:57 8 MATTERS, THAT WOULD BE A DIFFERENT KIND OF
17:04:59 9 INTERVENTION.

17:05:00 10 AND THAT'S WHY I INVITE THE PARTIES TO
17:05:03 11 ADDRESS THE COURT ON THE NATURE OF A LIMITED
17:05:06 12 INTERVENTION. IT'S -- I'VE SEEN CASES THAT
17:05:08 13 RECOGNIZE IT. IT'S JUST NOT ONE OF THOSE THINGS
17:05:12 14 WHERE THE PROCEDURAL BOOKS TALK A LOT ABOUT IT.

17:05:16 15 BUT IT SEEMS TO ME THAT THERE ARE
17:05:18 16 POST-JUDGMENT PROCEEDINGS THAT WILL NOW TAKE PLACE,
17:05:21 17 SUCH AS THE MOTION TO ENFORCE THE JUDGMENT OR THE
17:05:26 18 MOTION TO STAY EXCUSE, I'VE HEARD OF AN APPEAL FOR
17:05:30 19 WHICH THESE INDIVIDUALS, ONCE THEY'RE IN THE CASE,
17:05:33 20 CAN BE MADE THE SUBJECT OF ORDERS.

17:05:35 21 AND RATHER THAN GET AN ORDER AND THEN
17:05:39 22 LATER BRING THEM INTO THE CASE, IT SEEMS TO ME A
17:05:42 23 MORE EFFICIENT WAY IS TO BRING THEM IN NOW.

17:05:45 24 IF I'M WRONG AND THE JUDGMENT IS SET
17:05:48 25 ASIDE AND THE CASE IS BROUGHT BACK, THEY'RE IN THE

17:05:55 1 CASE FOR PURPOSES OF NOW TRYING TO FIGURE OUT WHAT
17:05:57 2 IS THE NATURE OF THIS LITIGATION.

17:05:59 3 THIS WAS A SETTLEMENT OF AN ONGOING
17:06:01 4 LITIGATION.

17:06:02 5 AND SO ONCE THEY INTERVENE, THEY'RE
17:06:05 6 INTERVENING IN THE ONGOING LITIGATION.

17:06:07 7 IF THE ARGUMENT IS THEY HAVE NO PLACE IN
17:06:09 8 THE ONGOING LITIGATION, THAT WHATEVER THEY'RE
17:06:11 9 CONTENDING ABOUT IS NOT SOMETHING THAT WAS THE
17:06:13 10 SUBJECT MATTER OF THE LITIGATION, I'M WILLING TO
17:06:16 11 LISTEN TO THAT.

17:06:17 12 BUT IT SEEMS TO ME THAT THEY'RE -- IF I
17:06:19 13 ALLOW THEM TO INTERVENE FOR PURPOSES OF A JUDGMENT
17:06:21 14 AND AN APPEAL FROM A JUDGMENT THAT FORCES THEM TO
17:06:23 15 TAKE ACTION THAT THEY'VE AGREED TO, THAT SEEMS TO
17:06:28 16 ME TO BE A LOGICAL THING TO ALLOW.

17:06:30 17 MR. CHATTERJEE: OKAY. YOUR HONOR, THANK
17:06:31 18 YOU.

17:06:32 19 I THINK THERE WERE A COUPLE CONCEPTS IN
17:06:35 20 THERE THAT ARE VERY IMPORTANT AND THAT MAYBE THERE
17:06:38 21 ARE SOME SUBTLETIES THAT WE HAVE NOT YET TALKED
17:06:40 22 ABOUT.

17:06:40 23 I UNDERSTAND WHERE YOU'RE GOING, BUT I
17:06:42 24 THINK THERE ARE A COUPLE OF IMPORTANT THINGS.

17:06:44 25 THE FIRST THING IS I BELIEVE YOUR HONOR

17:06:46 1 IS GOING TO BE AFFIRMED AT THE NINTH CIRCUIT. I
17:06:49 2 THINK IT WAS A SOUND DECISION BASED UPON NINTH
17:06:51 3 CIRCUIT LAW.

17:06:52 4 IN THE UNLIKELY EVENT THAT THERE WERE A
17:06:54 5 REVERSAL, I WOULD NOT WANT THIS INTERVENTION TO
17:06:57 6 ALLOW THEM TO GET OUT OF THE CASE IN CALIFORNIA
17:07:00 7 AGAIN.

17:07:00 8 THE COURT: TO GET OUT?

17:07:01 9 MR. CHATTERJEE: TO GET OUT, BECAUSE YOUR
17:07:03 10 HONOR SAID YOU WERE ONLY ALLOWING THEM A LIMITED
17:07:05 11 INTERVENTION. IF THEY'RE IN, THE CONSEQUENCES FOR
17:07:08 12 THAT SHOULD BE WHATEVER HAPPENS.

17:07:09 13 THE COURT: OH, YES. MY ORDER WOULD BE
17:07:11 14 TO INTERVENE FOR PURPOSES OF POST-JUDGMENT AND
17:07:13 15 APPEAL, SO THAT ONCE THEY'RE IN FOR PURPOSES OF
17:07:16 16 POST-JUDGMENT, I WOULD REGARD ANY CASE THAT WAS
17:07:19 17 BROUGHT BACK ON REMAND AS POST-JUDGMENT AND,
17:07:22 18 THEREFORE, THEY WOULD BE IN FOR PURPOSES OF THOSE
17:07:24 19 PROCEEDINGS.

17:07:25 20 MR. CHATTERJEE: THANK YOU, YOUR HONOR.

17:07:26 21 THE SECOND ISSUE IS I DO THINK THIS ISSUE
17:07:28 22 HAS TO BE DEALT WITH ON THEIR STRATEGIC DECISION
17:07:32 23 NOT TO OPPOSE THE MOTION BEFORE YOUR HONOR.

17:07:34 24 IF YOU'RE ALLOWING THEM TO INTERVENE,
17:07:36 25 WHATEVER RIGHTS THEY HAVE AT THIS POINT IN TIME,

17:07:38 1 HAVING CHOSEN NOT TO OPPOSE THE MOTION, IS WHAT
17:07:41 2 THEY HAVE. THEY CAN'T ALL OF A SUDDEN COME IN AND
17:07:43 3 STEP INTO THE SHOES OF CONNECTU.

17:07:46 4 THE COURT: I'M SORRY. SAY MORE ABOUT
17:07:47 5 THAT. WHAT MOTION?

17:07:48 6 MR. CHATTERJEE: YOUR HONOR, WHEN WE
17:07:51 7 FILED THE MOTION TO ENFORCE --

17:07:52 8 THE COURT: YES.

17:07:53 9 MR. CHATTERJEE: -- THE CONNECTU
17:07:55 10 SHAREHOLDERS, I'LL CALL THEM THE CONNECTU FOUNDERS,
17:07:58 11 DIVYA NARENDRA, CAMERON WINKLEVOSS, AND TYLER
17:08:03 12 WINKLEVOSS SUBMITTED DECLARATIONS, SOME OF THEM
17:08:05 13 SUBMITTED DECLARATIONS ON BEHALF OF CONNECTU.

17:08:07 14 BUT THEY MADE THE CHOICE NOT TO INTERVENE
17:08:10 15 THEN. THEY MADE THE CHOICE NOT TO BE PARTIES IN
17:08:12 16 OPPOSITION TO THAT ENFORCEMENT ACTION.

17:08:15 17 IF THEY DECIDE THEY WANT TO INTERVENE
17:08:18 18 NOW, AFTER JUDGMENT'S ENTERED, THEY SHOULD NOT BE
17:08:21 19 ABLE TO STEP INTO THE SHOES OF CONNECTU ON APPEAL.

17:08:24 20 WHATEVER RIGHTS THEY HAVE, HAVING MADE
17:08:25 21 THE DECISION NOT TO PARTICIPATE IN THE OPPOSITION
17:08:28 22 OF THE MOTION, THEY SHOULD BE STUCK WITH THE
17:08:30 23 CONSEQUENCES OF THAT GIVEN THEIR STRATEGIC CHOICE.

17:08:34 24 THE COURT: I'M STILL NOT UNDERSTANDING.
17:08:36 25 THE MOTION TO ENFORCE THE JUDGMENT IS THE MOTION

17:08:41 1 THAT ENDED IN A JUDGMENT.

17:08:42 2 MR. CHATTERJEE: CORRECT.

17:08:43 3 THE COURT: AND NOW THERE IS AN APPEAL.

17:08:50 4 I PRESUME THAT, IN THAT APPEAL, CONNECTU,
17:08:54 5 THROUGH ITS OFFICERS OR AUTHORIZED REPRESENTATIVES,
17:08:58 6 TAKES THE POSITION THAT THE JUDGMENT SHOULD BE SET
17:09:01 7 ASIDE.

17:09:01 8 MR. CHATTERJEE: CORRECT, YOUR HONOR.

17:09:03 9 AND LET ME JUST --

17:09:04 10 THE COURT: AND THESE INDIVIDUALS WOULD
17:09:05 11 BE TAKING A CONSISTENT POSITION.

17:09:08 12 MR. CHATTERJEE: YES, YOUR HONOR.

17:09:09 13 HOWEVER, DEPENDING ON WHAT HAPPENS WITH
17:09:11 14 CONNECTU -- I DON'T KNOW EXACTLY WHAT'S GOING TO
17:09:14 15 HAPPEN WITH THAT, BUT ON APPEAL, IF THE INDIVIDUALS
17:09:17 16 ARE THE ONLY PEOPLE LEFT -- SO, FOR EXAMPLE, THE
17:09:21 17 CONCERN THAT MR. O'SHEA HAS, IF FACEBOOK BECOMES
17:09:25 18 THE OWNER OF CONNECTU, IF IT MAKES THE DECISION
17:09:27 19 THAT IT'S NOT IN THE BUSINESS'S INTEREST TO
17:09:30 20 CONTINUE THE APPEAL, THEN THE INDIVIDUALS SHOULD
17:09:32 21 NOT BE ABLE TO ASSUME THE RIGHTS OF CONNECTU
17:09:35 22 BECAUSE THEY MADE THE DECISION NOT TO OPPOSE THE
17:09:37 23 MOTION.

17:09:38 24 THE COURT: AH, OKAY, YES. I HAVEN'T
17:09:40 25 QUITE FIGURED OUT ALL OF THE NUANCES OF THAT

17:09:43 1 PROBLEM, BUT I DID GET A LITTLE BIT OF IT.

17:09:46 2 ONE OF THE CONCERNS IS IF THE -- IF
17:09:51 3 FACEBOOK PROCEEDS TO ACQUIRE, THROUGH EXECUTION ON
17:09:55 4 THE JUDGMENT OR ENFORCEMENT OF THE JUDGMENT, THE
17:09:58 5 SHARES OF CONNECTU, WOULD THESE INDIVIDUALS, IN
17:10:03 6 SOME CAPACITY, BE ABLE TO PROCEED IF CONNECTU
17:10:08 7 DOESN'T WANT TO PROCEED?

17:10:09 8 MR. CHATTERJEE: CORRECT, AND WHAT RIGHTS
17:10:14 9 WOULD THEY HAVE.

17:10:14 10 THEY MAY BE ABLE TO PROCEED IN ANY EVENT,
17:10:16 11 BUT THEIR RIGHTS MAY BE DIFFERENT THAN THE RIGHTS
17:10:19 12 OF CONNECTU BECAUSE CONNECTU MADE THE DECISION TO
17:10:21 13 OPPOSE.

17:10:21 14 THE COURT: WELL, CAN I DEFER THAT UNTIL
17:10:24 15 I LEARN MORE ABOUT THIS QUESTION ON, ON ENFORCING,
17:10:32 16 ON STAYING THE JUDGMENT?

17:10:33 17 BECAUSE IT DOES SEEM TO ME THAT WHETHER
17:10:39 18 ACTION IS STAYED PENDING APPEAL AND HOW THAT IS
17:10:43 19 DONE IS NOW TIED IN WITH THE POWER THAT FACEBOOK
17:10:47 20 WOULD SEEK TO EXERCISE SHOULD IT BECOME, AS A
17:10:51 21 RESULT OF THIS PROCESS, THE OWNER OF CONNECTU.

17:10:54 22 AND WHAT YOU'RE ASKING THE COURT FOR IS
17:10:57 23 SOME RULING WITH RESPECT TO THE RIGHTS OF THOSE
17:10:59 24 INDIVIDUALS ONCE THAT -- IF THAT SHOULD HAPPEN.

17:11:03 25 AND I DON'T HAVE AN ANSWER TO THAT.

17:11:05 1 MR. CHATTERJEE: IT REALLY GOES TO THE
17:11:07 2 SCOPE OF THE INTERVENTION, YOUR HONOR, BECAUSE YOU
17:11:09 3 HAD STARTED BY SAYING IT'S A LIMITED INTERVENTION.

17:11:11 4 THE COURT: WELL, LET ME SEE IF I CAN
17:11:13 5 ANSWER THAT TO SEE IF THEY ARE -- MY UNDERSTANDING
17:11:16 6 IS THAT THEY ARE SEEKING TO INTERVENE AS
17:11:18 7 INDIVIDUALS AND IN THEIR INDIVIDUAL CAPACITY.
17:11:20 8 THEY'RE NOT SEEKING TO INTERVENE AS REPRESENTATIVE
17:11:22 9 OF CONNECTU OR ON BEHALF OF CONNECTU.

17:11:24 10 AND MY RULING ALLOWING THEM TO INTERVENE
17:11:27 11 WOULD BE TO INTERVENE AS INDIVIDUALS IN THEIR
17:11:29 12 INDIVIDUAL CAPACITY.

17:11:32 13 DOES THAT HELP?

17:11:33 14 MR. CHATTERJEE: I DON'T KNOW IF IT
17:11:34 15 RESOLVES THE QUESTION I WAS ASKING. IF -- BECAUSE
17:11:37 16 IT SOUNDS LIKE THE INTERVENTION IS, IS FOR ANYTHING
17:11:41 17 POST-JUDGMENT THAT OCCURS.

17:11:43 18 THE COURT: RIGHT.

17:11:44 19 MR. CHATTERJEE: AND THEN --

17:11:45 20 THE COURT: BUT IN THEIR INDIVIDUAL
17:11:46 21 CAPACITY.

17:11:47 22 IN OTHER WORDS, ONCE THEY'RE IN THE CASE,
17:11:49 23 THEY WOULD NOT BE ABLE TO SAY, "I AM NOW SPEAKING
17:11:52 24 ON BEHALF OF CONNECTU AND, THEREFORE, I TAKE THIS
17:11:56 25 POSITION ON, THIS POSITION ON BEHALF OF CONNECTU."

17:11:59 1 MR. CHATTERJEE: RIGHT. AND, YOUR HONOR,
17:12:00 2 PERHAPS IF THAT'S YOUR HONOR'S RULING, WE WOULD
17:12:02 3 LIKE GUIDANCE AS FAR AS WHAT IS IT THAT THEY'RE
17:12:06 4 ALLOWED TO INTERVENE ON?

17:12:08 5 HOWEVER, IF YOU THINK THAT'S AN ISSUE
17:12:10 6 THAT'S LEFT BETTER FOR A LATER DAY OR IN FRONT OF
17:12:12 7 THE NINTH CIRCUIT, WE CAN DEAL WITH THAT THERE.

17:12:15 8 THE COURT: WELL, LET ME HEAR FROM
17:12:17 9 MR. O'SHEA AGAIN, OR PERHAPS MR. UNDERHILL WOULD
17:12:20 10 WANT TO SPEAK TO THIS.

17:12:22 11 BUT IT DOES SEEM TO ME THAT I UNDERSTAND
17:12:24 12 THEIR DESIRE TO INTERVENE IN THEIR INDIVIDUAL
17:12:27 13 CAPACITIES AND TO TAKE WHATEVER ACTIONS
17:12:31 14 POST-JUDGMENT THAT THEY MIGHT TAKE IN THEIR
17:12:33 15 INDIVIDUAL CAPACITIES.

17:12:34 16 MR. O'SHEA: I THINK THAT'S RIGHT, YOUR
17:12:35 17 HONOR. I THINK WHAT MR. CHATTERJEE IS TRYING TO DO
17:12:38 18 IS ESSENTIALLY TRICK -- IS GIVE WITH ONE HAND AND
17:12:42 19 TAKE AWAY WITH THE OTHER.

17:12:43 20 YOU SEE, YOUR HONOR, THE REASON WHY WE'RE
17:12:45 21 SEEKING TO INTERVENE IS TO VINDICATE OUR RIGHTS.

17:12:48 22 PRIOR TO TODAY, WE WERE SATISFIED WITH
17:12:50 23 CONNECTU'S VINDICATING OUR RIGHTS, IF YOU WILL.
17:12:54 24 BUT -- AND SO WE WERE CONTENT TO SIT ON THE SIDES.

17:12:58 25 IT'S ONLY BECAUSE OF FACEBOOK'S ATTEMPT

17:13:00 1 TO DEPRIVE US OF OUR RIGHTS TO CHALLENGE THE
17:13:03 2 ENFORCEMENT OF THE TERM SHEET THAT WE'RE HERE.

17:13:05 3 IF -- IF WHAT MR. CHATTERJEE IS SAYING
17:13:07 4 IS, WELL, YOU CAN GO AHEAD AND ALLOW INTERVENTION,
17:13:10 5 BUT THEY'RE -- THEY CAN'T CHALLENGE THE TERM SHEET
17:13:13 6 BECAUSE THEY DIDN'T CHALLENGE IT BACK THEN WHEN
17:13:15 7 CONNECTU WAS CHALLENGING ON THEIR BEHALF, THAT'S
17:13:17 8 NONSENSE, JUDGE.

17:13:19 9 IT'S ALLOWING INTERVENTION.

17:13:21 10 AND I CHALLENGE MR. CHATTERJEE TO COME UP
17:13:23 11 WITH ONE CASE WHERE A COURT ALLOWED INTERVENTION
17:13:26 12 BY, BY AN INTERVENING PARTY TO PRESERVE AN APPEAL,
17:13:30 13 FOR EXAMPLE, UNITED AIRLINES, FOR EXAMPLE,
17:13:35 14 PELLEGRINO VERSUS NESBIT, WHERE THE COURT SAID,
17:13:36 15 "WE'RE ALLOWING YOU TO INTERVENE, BUT WE'RE GOING
17:13:38 16 TO CIRCUMSCRIBE THOSE RIGHTS TO INTERVENE."

17:13:41 17 I THINK WHAT YOUR HONOR INITIALLY SAID
17:13:43 18 WAS ABSOLUTELY CORRECT. WE SHOULD BE ALLOWED TO
17:13:44 19 INTERVENE POST-JUDGMENT, TO CHALLENGE THIS
17:13:46 20 COURT'S -- TO RESPECTFULLY CHALLENGE THIS COURT'S
17:13:49 21 DECISION THEN POST-JUDGMENT.

17:13:50 22 WE'RE NOT, FOR EXAMPLE, SEEKING TO REOPEN
17:13:53 23 AND RELITIGATE THE MATTER BEFORE THE COURT.

17:13:55 24 I THINK WHAT MR. CHATTERJEE IS DOING IS
17:13:58 25 CLEVER, BUT IT'S A TRICK, AND WHAT IT'S TRYING TO

17:14:00 1 DO IS GET THIS COURT TO DO SOMETHING THAT WOULD
17:14:01 2 CIRCUMSCRIBE OUR RIGHTS OF APPEAL, WHICH IS THE
17:14:05 3 PRECISE REASON WHY WE'RE HERE, YOUR HONOR.

17:14:07 4 THE COURT: IS IT TRUE THAT YOU WANT TO
17:14:09 5 CIRCUMSCRIBE HIS RIGHTS ON APPEAL?

17:14:11 6 MR. CHATTERJEE: OF COURSE, YOUR HONOR.

17:14:12 7 THE COURT: WHAT IS IT THAT YOU WOULD
17:14:13 8 WISH TO HAVE THE COURT CIRCUMSCRIBE WITH RESPECT TO
17:14:15 9 HIS APPEAL?

17:14:16 10 MR. CHATTERJEE: WE DON'T WANT THE
17:14:17 11 INDIVIDUALS TO HAVE THE RIGHT TO SEEK AN APPEAL.

17:14:20 12 IT'S NOT SIMPLE. THEY MADE THE CHOICE
17:14:22 13 NOT TO PARTICIPATE IN THE PROCEEDING, AND WE
17:14:24 14 SHOULDN'T BE PREJUDICED BY HAVING TO DEAL WITH THAT
17:14:26 15 NOW.

17:14:26 16 MR. BARRETT STOOD UP AT THE HEARING --

17:14:30 17 THE COURT: ISN'T THAT TANTAMOUNT TO
17:14:31 18 DENYING THEM THE RIGHT TO INTERVENE? BECAUSE IF I
17:14:34 19 ALLOW THEM TO INTERVENE, IT SEEMS TO ME THAT, AS
17:14:36 20 PARTIES NOW, THEY WOULD HAVE THE RIGHT TO APPEAL.

17:14:38 21 SO THAT GOES BACK TO -- YOUR ARGUMENT IS
17:14:41 22 I SHOULDN'T ALLOW THEM TO INTERVENE, BECAUSE IF I
17:14:45 23 GIVE THAT RIGHT, THEY WOULD BE PERMITTED AS PARTIES
17:14:47 24 NOW, IF THEY ARE AFFECTED ADVERSELY BY THE
17:14:50 25 JUDGMENT, TO APPEAL.

17:14:51 1 MR. CHATTERJEE: CORRECT, YOUR HONOR.
17:14:52 2 THAT'S THE ISSUE.
17:14:53 3 AND THERE'S NO TRICK HERE. WE FILED A
17:14:55 4 MOTION TO ENFORCE. WE FILED THE MOTION TO ENFORCE.
17:14:57 5 WE SERVED IT IN BOSTON. THE INDIVIDUALS HAD HAD
17:14:59 6 NOTICE AND THEY DECIDED NOT TO COME IN. THEY MADE
17:15:03 7 A STRATEGIC DECISION ON THAT.
17:15:05 8 THERE'S NO TRICK. THEY KNEW THAT THIS
17:15:07 9 WAS COMING AND WE WERE GOING TO TRY AND TAKE
17:15:10 10 CONNECTU AS A COMPANY. THEY MADE THE DECISION NOT
17:15:12 11 TO GET INVOLVED.
17:15:14 12 YOUR HONOR, I -- I DON'T KNOW WHY
17:15:15 13 MR. O'SHEA IS SO INFLAMED. THEY HAD NOTICE OF IT.
17:15:20 14 COUNSEL FOR THE WINKLEVOSS BROTHERS AND NARENDRA
17:15:23 15 STOOD UP AT THE MOTION TO ENFORCE HEARING AND
17:15:26 16 ARGUED TO YOUR HONOR -- IN BOSTON, THEY HAD A
17:15:29 17 SEPARATE PROCEEDING WHERE DIVYA NARENDRA AND
17:15:32 18 HOWARD WINKLEVOSS WERE THERE.
17:15:35 19 THEY CAN'T COME IN NOW AND SAY THIS IS A
17:15:37 20 TIMELY APPLICATION. THEY MADE A STRATEGIC DECISION
17:15:40 21 NOT TO GET INVOLVED AND THEY SHOULD HAVE TO DEAL
17:15:42 22 WITH THE CONSEQUENCES OF THAT BECAUSE THEY KNEW
17:15:44 23 WHAT THEY WERE DOING.
17:15:45 24 THE COURT: ALL RIGHT. NOW, LET ME HOLD
17:15:47 25 THIS IN ABEYANCE. I'M NOT SURE THAT THIS IS THE

17:15:50 1 TIME ON THE FIRST MOTION OR ALL MOTIONS.

17:15:52 2 I DO HAVE A CONCERN THAT MY STAFF -- I
17:15:55 3 GAVE THEM A PROMISE WE'D ONLY KEEP THIS TO ABOUT AN
17:15:58 4 HOUR, SO CAN I TURN QUICKLY NOW TO THE OTHER
17:16:01 5 MATTER, KEEPING THIS AS SOMETHING THAT I HAVE UNDER
17:16:03 6 CONSIDERATION, AND THAT IS THIS MOTION TO STAY
17:16:08 7 EXECUTION OF THE JUDGMENT.

17:16:16 8 THIS IS YOUR MOTION, MR. UNDERHILL?

17:16:18 9 MR. UNDERHILL: YES, YOUR HONOR. I'D
17:16:21 10 LIKE TO RESERVE THREE MINUTES, PLEASE.

17:16:24 11 AND, AGAIN, YOUR HONOR, I'VE GOT A LOT OF
17:16:26 12 GROUND TO COVER. IF THERE ARE SPECIFIC ISSUES THAT
17:16:28 13 YOU WANT ME TO ADDRESS, PLEASE DIRECT ME.

17:16:29 14 THE COURT: WELL, I THINK EVERY -- LET ME
17:16:32 15 COMMENT ON THAT THE WAY I DID THE OTHER ONE.

17:16:34 16 MR. UNDERHILL: SURE.

17:16:35 17 THE COURT: I THINK, FROM WHAT I CAN SEE,
17:16:36 18 EVERYBODY IS ON ALL FOURS THAT THIS IS NOT A SIMPLE
17:16:39 19 SITUATION THAT WOULD BE RESOLVABLE AS IT WOULD IF I
17:16:43 20 HAD A MONEY JUDGMENT AND YOU COULD POST A BOND.

17:16:45 21 THIS IS A SITUATION WHICH IS TANTAMOUNT
17:16:47 22 TO A SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF
17:16:52 23 CIRCUMSTANCE WHERE THE STAY HAS TO BE ADDRESSED AS,
17:16:56 24 AS YOU WOULD IF THERE WERE INDIVIDUAL ACTS THAT
17:16:59 25 HAVE TO -- THAT ARE AFFECTED BY IT.

17:17:02 1 AND IT DOES SEEM TO ME THAT, AS THE COURT
17:17:09 2 THAT ISSUED THE JUDGMENT, I HAVE TO PAY ATTENTION
17:17:12 3 TO THE FACT THAT THE VALUE OF THIS JUDGMENT TO BOTH
17:17:17 4 PARTIES, AS I SAW IT, WAS A TIMELY COMBINATION OF
17:17:24 5 EXCHANGE OF CASH AND STOCK, AND THAT IT SEEMED TO
17:17:28 6 ME THAT THE PARTIES WERE, WERE -- ARE AFFECTED BY A
17:17:31 7 DELAY WHICH MIGHT AFFECT THE VALUE OF THE
17:17:34 8 CONSIDERATION.

17:17:35 9 AND SO IF THE PARTY IS -- IF ONE PARTY TO
17:17:42 10 THIS IS NOW DISAPPOINTED AND WISHES TO APPEAL, IT'S
17:17:45 11 GOING TO AFFECT THE TIMELINESS AND THE VALUE OF THE
17:17:47 12 CONSIDERATION WITH RESPECT TO THE OTHER PARTY.

17:17:49 13 AND THAT COULD BE SAID, AT THIS POINT, BY
17:17:53 14 EITHER PARTY. EITHER ONE COULD HAVE SAID, "NO,
17:17:55 15 THIS ISN'T RIGHT, I DON'T WANT TO GO AHEAD."

17:17:58 16 AND SO TO STAY EXECUTION IS, IS SOMETHING
17:18:01 17 WHICH SAYS, "WE WANT YOU TO CHANGE THE VALUE OF THE
17:18:06 18 CONSIDERATION THAT WAS GOING ON AT THE POINT OF THE
17:18:08 19 SETTLEMENT, AND WE NEED TO HAVE YOU IGNORE THE
17:18:12 20 PARTIES' DETERMINATIONS OF THOSE VALUES AT THE
17:18:15 21 TIME," AND ALLOW THAT TO CHANGE AT, AT THE RISK
17:18:19 22 THAT IT WILL DO VIOLENCE TO THE VERY DEAL THAT THE
17:18:23 23 PARTIES PUT TOGETHER FOR A HIGHER GOOD, WHICH IS TO
17:18:27 24 SEE WHETHER OR NOT THERE REALLY WAS A SETTLEMENT.

17:18:30 25 SO THAT'S KIND OF HOW I'M APPROACHING IT.

17:18:32 1
17:18:34 2
17:18:36 3
17:18:40 4
17:18:45 5
17:18:48 6
17:18:50 7
17:18:53 8
17:18:56 9
17:18:59 10
17:19:03 11
17:19:06 12
17:19:07 13
17:19:14 14
17:19:19 15
17:19:22 16
17:19:24 17
17:19:26 18
17:19:29 19
17:19:32 20
17:19:34 21
17:19:35 22
17:19:39 23
17:19:44 24
17:19:47 25

MR. UNDERHILL: OKAY. LET ME TRY TO
JUMP, I GUESS, THEN, TO THIS IDEA OF FACEBOOK'S
INTEREST IN CONNECTU PENDING THE APPEAL.

FIRST OF ALL, YOUR HONOR, I BELIEVE IT TO
VERY MUCH BE THE CASE THAT THE VALUE THAT CHANGED
HANDS HERE WITH RESPECT TO, FROM THE FACEBOOK SIDE
TO THE CONNECTU SIDE, WAS SETTLEMENT OF AN
EXTREMELY VALUABLE CLAIM.

CONNECTU ITSELF, THE BUSINESS, IS
EXTREMELY SMALL. IT GETS ABOUT 100 HITS A MONTH.
IT PRODUCES ABSOLUTELY NO REVENUE OF ANY KIND.
NEVER HAS.

SO THE IDEA OF EXCHANGING THE STOCK WAS
AN ELEGANT -- IN RETROSPECT, NOT SO ELEGANT -- WAY
OF SETTLING THE LAWSUIT.

WE ARE MORE THAN HAPPY TO DO AN EXPEDITED
APPEAL. WE HAVE SUBMITTED PAPERS TO THE COURT WITH
RESPECT TO THE RELEASE ISSUE WHERE WE SAY WE'RE
WILLING TO DO AN EXPEDITED APPEAL.

THAT LANGUAGE WAS NOT ACCEPTABLE TO
FACEBOOK.

AND IT IS CLEAR TO US, YOUR HONOR, THAT
AT EVERY TURN, EVERYTHING POST-JUDGMENT, WHICH
OBVIOUSLY WE RESPECTFULLY DISAGREE WITH, EVERYTHING
THAT THE OTHER SIDE HAS DONE IS DESIGNED TO KEEP US

17:19:51 1 FROM HAVING A MEANINGFUL APPEAL.

17:19:53 2 AND SO THERE IS THIS THREAT THAT IF THEY
17:19:59 3 CAN GET THEIR HANDS ON CONNECTU, THEY'RE GOING TO
17:20:01 4 SHUT DOWN THE APPEAL.

17:20:03 5 WE -- WE ALSO BELIEVE WE HAVE A
17:20:05 6 MALPRACTICE CLAIM AGAINST PRIOR COUNSEL.

17:20:09 7 THERE AT LEASE IMPLICITLY, IF NOT
17:20:13 8 EXPRESSLY, IS THE IDEA THAT THEY MAY SHUT THAT
17:20:15 9 DOWN, TOO, AND EXPOSE THE INDIVIDUAL SHAREHOLDERS
17:20:18 10 TO LIABILITIES THAT THEY MIGHT NOT OTHERWISE HAVE,
17:20:21 11 IF FACEBOOK IS ABLE TO DO THAT.

17:20:23 12 SO WE'RE HERE, YOUR HONOR, TO BE THE MOST
17:20:26 13 REASONABLE THAT WE POSSIBLY CAN AND FIGURE OUT SOME
17:20:29 14 WAY TO GET AN APPEAL THAT IS PRACTICAL.

17:20:33 15 AND, YOU KNOW, POSTING A BOND OF TENS OF
17:20:36 16 MILLIONS OF DOLLARS IS SIMPLY NOT PRACTICAL TO HAVE
17:20:42 17 THE APPELLATE COURT HEAR WHAT I TRULY BELIEVE ARE
17:20:46 18 SOME PRETTY NOVEL IDEAS, AND I DO WANT TO SPEND
17:20:49 19 JUST A COUPLE OF MINUTES ON THE LAW HERE IN A
17:20:51 20 MINUTE.

17:20:52 21 BUT WE'RE WILLING TO DO ANYTHING
17:20:53 22 REASONABLE. WE'RE WILLING TO TURN THE COMPANY OVER
17:20:55 23 TO MR. FISHER. MR. FISHER CAN MAKE ANY OPERATIONAL
17:20:58 24 DECISIONS, NOT THAT THERE ARE ANY OPERATIONAL
17:21:00 25 DECISIONS.

17:21:01 1 WHAT GOES ON NOW IS THERE'S A CHECK
17:21:03 2 THAT'S WRITTEN EVERY MONTH FOR THE RENTAL OF THE
17:21:05 3 SERVER. THAT'S IT. WE'LL WRITE THE CHECK. HE
17:21:08 4 DOESN'T EVEN HAVE TO WORRY ABOUT THAT.

17:21:10 5 WE WILL NOT MAKE A SINGLE OPERATIONAL
17:21:12 6 CHANGE IN THE SLIGHTEST. YOU KNOW, WE'LL PUT IT
17:21:17 7 OUT OF OUR HANDS.

17:21:18 8 IN FACT, YOUR HONOR, WE WOULD EVEN BE
17:21:20 9 WILLING TO LET CONNECTU OPERATE THE BUSINESS.

17:21:22 10 NOW, THAT'S VERY DISTINCT, BY THE WAY,
17:21:26 11 FROM HAVING THE COMPANY. WE DON'T AGREE THAT THEY
17:21:26 12 CAN HAVE --

17:21:26 13 THE COURT: FACEBOOK.

17:21:27 14 MR. UNDERHILL: I'M SORRY?

17:21:27 15 THE COURT: YOU SAID CONNECTU.

17:21:28 16 MR. UNDERHILL: I'M SORRY.

17:21:29 17 THE COURT: YOU MEAN FACEBOOK.

17:21:31 18 MR. UNDERHILL: MY MISTAKE. I MEANT TO
17:21:33 19 SAY FACEBOOK.

17:21:35 20 OBVIOUSLY WE WILL NOT VOLUNTARILY PERMIT
17:21:37 21 THEM TO TAKE OVER OUR APPEAL BECAUSE WE DON'T THINK
17:21:39 22 THEY WOULD DO AS GOOD A JOB AS WE WILL.

17:21:39 23 WE'RE NOT GOING TO LET THEM TAKE OVER THE
17:21:39 24 MALPRACTICE CASE.

17:21:41 25 BUT IF THEY REALLY JUST WANT TO OPERATE

17:21:42 1 THIS THING, IF THEY WANT TO WRITE THE CHECK TO THE
17:21:45 2 SERVER, YOU KNOW, ONCE A MONTH, IF THEY WANT TO
17:21:49 3 REWRITE THE CODE, IF THEY WANT TO START
17:21:51 4 ADVERTISING, THEY CAN DO WHATEVER THEY WANT WITH
17:21:53 5 IT, IT'S THEIRS, AS LONG AS WE CAN KEEP OWNERSHIP
17:21:56 6 OF CONNECTU SUFFICIENT TO SATISFY AN APPEAL.

17:21:59 7 NOW, WHAT WE HEARD IN THE PRIOR MOTION IS
17:22:03 8 ONE MORE GAMUT TO TRY TO DENY US AN APPEAL.

17:22:07 9 AS MUCH AS MR. CHATTERJEE EXPRESSES
17:22:10 10 CONFIDENCE IN THE COURT'S OPINION, HE SURE IS
17:22:13 11 TRYING AWFULLY HARD TO KEEP THE NINTH CIRCUIT FROM
17:22:16 12 EVER HEARING THESE ISSUES.

17:22:17 13 THE COURT: LET ME ASK THIS, COUNSEL.

17:22:19 14 MR. UNDERHILL: YES, YOUR HONOR.

17:22:20 15 THE COURT: IF I GO ALONG WITH THIS
17:22:24 16 PROPOSAL -- I'M NOT SAYING I WILL -- AND THERE IS
17:22:29 17 AN APPEAL THAT IS PURSUED INDEPENDENT OF CONNECTU,
17:22:35 18 WHO PAYS FOR THE COST OF THE APPEAL?

17:22:38 19 MR. UNDERHILL: WE'LL TAKE CARE OF THAT,
17:22:40 20 YOUR HONOR. NO PROBLEM.

17:22:41 21 THE COURT: WHO'S "WE"?

17:22:42 22 MR. UNDERHILL: IT WON'T BE CONNECTU.
17:22:45 23 I'LL WORK IT OUT WITH THE SHAREHOLDERS.

17:22:47 24 THE COURT: AH. I SEE.

17:22:48 25 AND SO YOU'RE REQUESTING, ESSENTIALLY, TO

17:22:52 1 BE ABLE TO UNDO THE SETTLEMENT, BUT TO ALLOW THEM
17:22:58 2 TO OPERATE THE COMPANY.

17:22:59 3 NOW, WHEN THE SETTLEMENT IS UNDONE, IF IT
17:23:04 4 IS UNDONE BY A REVERSAL, YOUR UNDERSTANDING IS
17:23:07 5 YOU'D GO BACK TO THE STATUS QUO ANTE, WHICH MEANS
17:23:10 6 THAT THE COMPANY WOULD BE GIVEN BACK AND RESTART
17:23:14 7 ALL THE LITIGATION?

17:23:14 8 MR. UNDERHILL: RIGHT. AND, AND FACEBOOK
17:23:18 9 WOULD NEED TO KEEP IT SO THEY COULD GIVE IT BACK,
17:23:21 10 YOU KNOW, AT THE END.

17:23:23 11 THE -- IF WE NEED A HEARING, YOUR HONOR,
17:23:25 12 ON THE VALUE OF CONNECTU AND IS THIS AT ALL
17:23:29 13 HARMING, THAT SEEMS LIKE AN AWFUL BIG WASTE OF
17:23:32 14 TIME.

17:23:32 15 I MEAN, WHAT THIS CASE WAS ABOUT, AGAIN,
17:23:34 16 WAS SETTLING AN EXTREMELY VALUABLE CLAIM.

17:23:37 17 NOW, I WOULD LIKE TO SAY, YOUR HONOR,
17:23:39 18 THAT THE QUESTIONS THAT WE'RE GOING TO BE
17:23:40 19 PRESENTING TO THE NINTH CIRCUIT -- AND BY THE WAY,
17:23:44 20 I APOLOGIZE, YOUR HONOR. IT'S AWKWARD FOR ME. I'M
17:23:47 21 USED TO TELLING THE APPELLATE COURT WHY THE
17:23:50 22 DISTRICT COURT IS WRONG. IT'S NOT EVERY DAY WHEN I
17:23:51 23 TELL THE DISTRICT COURT WHY I THINK THE DISTRICT
17:23:53 24 COURT IS WRONG.

17:23:54 25 BUT I THINK THERE ARE DIFFICULT ISSUES

17:23:56 1 HERE WHICH, YOUR HONOR, I THINK THE LAW IS ON OUR
17:23:58 2 SIDE.

17:23:59 3 I MEAN, ONE OF THE THINGS THAT YOUR HONOR
17:24:00 4 SAID, I BELIEVE, OR AT LEAST HAS BEEN ARGUED, WAS
17:24:03 5 THAT THERE WAS NO RELIANCE, YOU KNOW, FOR THE FRAUD
17:24:06 6 THEORY.

17:24:06 7 WELL, YOUR HONOR, EVERY SINGLE CASE THAT
17:24:07 8 WE'VE BEEN ABLE TO FIND UNDER 29(B) SAYS RELIANCE
17:24:10 9 IS JUST NOT AN ISSUE. IT SAYS THAT YOU CAN VOID A
17:24:13 10 CONTRACT IF THERE IS A VIOLATION OF THE SECURITIES
17:24:16 11 LAWS.

17:24:17 12 NOW, FACEBOOK MAKES A BIG DEAL OUT OF
17:24:20 13 SAYING, OH, BUT YOU'RE SUPPOSED TO LOOK AT THE
17:24:22 14 CONTRACT, NOT THE TRANSACTION.

17:24:24 15 I DON'T EVEN UNDERSTAND THE ARGUMENT.

17:24:26 16 THE COURT: COUNSEL, I'M NOT -- I'M NOT
17:24:29 17 GOING TO ENTERTAIN AN ARGUMENT ABOUT THE ISSUES
17:24:32 18 THAT ARE ON APPEAL. THERE'S A STAY.

17:24:35 19 NOW, LET ME ASK THIS, THOUGH.

17:24:36 20 MR. UNDERHILL: YES, YOUR HONOR.

17:24:37 21 THE COURT: IT DOES SEEM TO ME THAT THE
17:24:41 22 REASON THIS SETTLEMENT WAS PUT TOGETHER WAS TO --
17:24:46 23 WAS FOR BOTH SIDES TO BUY THEIR PEACE FROM
17:24:51 24 LITIGATION.

17:24:52 25 HOW DO I -- HOW DO I NOT DO VIOLENCE TO

17:24:57 1 THAT AND, AT THE SAME TIME, DO WHAT YOU'RE ASKING
17:25:01 2 ME TO DO?

17:25:02 3 IN OTHER WORDS, ESSENTIALLY WOULDN'T I BE
17:25:04 4 UNDOING THE SETTLEMENT TO SAY, BY THE VERY NATURE
17:25:09 5 OF THIS ORDER, OKAY, NO, THE LITIGATION -- THE
17:25:12 6 SETTLEMENT MEANT NOTHING IN TERMS OF RELEASES. GO
17:25:15 7 AHEAD NOW AND GO OUT THERE AND CONTINUE TO, TO
17:25:19 8 LITIGATE.

17:25:20 9 ESSENTIALLY FACEBOOK WAS SAYING, "FOR
17:25:23 10 THIS CONSIDERATION, WE AGREE TO RESOLVE ALL
17:25:24 11 LITIGATION. THERE WILL BE NO MORE LITIGATION."

17:25:28 12 HOW DO I ENFORCE THAT?

17:25:29 13 MR. UNDERHILL: RIGHT.

17:25:30 14 YOUR HONOR, I THINK THERE HAS TO BE SOME
17:25:31 15 BALANCE HERE. I MEAN, IT IS ABSOLUTELY TRUE THAT
17:25:34 16 WHEN PEOPLE WORK OUT A SETTLEMENT AND THEY HAVE
17:25:36 17 SOME KIND OF A SIGNED DOCUMENT, YOU KNOW, THEY
17:25:38 18 THINK THEY HAVE A SETTLEMENT.

17:25:39 19 BUT THE CASES ARE LEGION THAT SOMETIMES
17:25:41 20 THEY MAY THINK IT'S A SETTLEMENT AGREEMENT, BUT
17:25:43 21 IT'S NOT, AND IT GETS BLOWN UP.

17:25:45 22 AND PEOPLE NEED TO HAVE THE OPPORTUNITY
17:25:46 23 TO BE ABLE TO LITIGATE IT WHEN THEY HAVE FRAUD
17:25:50 24 CLAIMS, OR WHEN THERE'S AN ALLEGATION THAT THE
17:25:53 25 TERMS ARE INSUFFICIENTLY VAGUE TO BE ENFORCED, AND

17:25:57 1 WE HAVE ADMISSIONS FROM FACEBOOK REFERRING TO IT AS
17:26:00 2 A TENTATIVE AGREEMENT. THEY'RE IN WRITING ON THAT.
17:26:03 3 THAT'S PART OF THE RECORD, YOUR HONOR.

17:26:05 4 AND SO THERE HAS TO BE SOME OPPORTUNITY
17:26:07 5 FOR SOMEONE TO CHALLENGE THAT AND, YOU KNOW, WE HAD
17:26:10 6 AN OPPORTUNITY WITH THE DISTRICT COURT.

17:26:12 7 BUT RESPECTFULLY, YOUR HONOR, I THINK THE
17:26:14 8 OPPORTUNITY TO CHALLENGE A SETTLEMENT AGREEMENT
17:26:16 9 ALSO INCLUDES THE RIGHT TO HAVE ANOTHER COURT LOOK
17:26:19 10 AT IT --

17:26:20 11 THE COURT: I AGREE WITH YOU.

17:26:21 12 MR. UNDERHILL: -- AND DETERMINE IF THAT
17:26:22 13 WAS RIGHT.

17:26:22 14 THE COURT: LET ME INTERRUPT YOUR
17:26:24 15 ARGUMENT --

17:26:25 16 MR. UNDERHILL: SURE.

17:26:25 17 THE COURT: -- JUST IN VIEW OF THE TIME.

17:26:27 18 I KNOW THAT THERE'S A LOT MORE TO BE SAID
17:26:30 19 AND I'LL HEAR FROM YOUR OPPONENT.

17:26:33 20 HAVE YOU TRIED THIS IDEA ON THEM THAT
17:26:35 21 YOU'VE JUST PUT TO THE COURT?

17:26:36 22 MR. UNDERHILL: I'VE TRIED VARIOUS IDEAS,
17:26:38 23 YOUR HONOR, WITH MR. FISHER, YOU KNOW, INVOLVED,
17:26:41 24 AND ALSO INDEPENDENTLY WITH MR. FISHER.

17:26:43 25 I'VE ATTEMPTED TO FLOAT THE IDEA THAT THE

17:26:45 1 SHARES WOULD BE TURNED OVER BUT WOULD BE KEPT WITH
17:26:48 2 THE SPECIAL MASTER, WOULD NOT BE RELINQUISHED
17:26:51 3 DURING THE APPEAL.

17:26:52 4 THAT WAS UNACCEPTABLE TO MR. CHATTERJEE.

17:26:53 5 I FLOATED THE IDEA THAT WE TURN OVER THE
17:26:56 6 COMPANY AND THAT HE KEEP IT SEPARATE.

17:26:57 7 THAT WAS UNACCEPTABLE TO MR. CHATTERJEE.

17:27:00 8 I'VE -- I'VE FLOATED THE IDEA THAT HE
17:27:02 9 WOULD AGREE NOT TO IMPAIR OUR APPELLATE RIGHTS AND
17:27:05 10 NOT TO IMPAIR OUR ABILITY TO BRING A MALPRACTICE
17:27:08 11 CLAIM.

17:27:09 12 THAT WAS UNACCEPTABLE TO MR. CHATTERJEE.

17:27:10 13 I MEAN, WHAT IT COMES DOWN TO -- AND I
17:27:12 14 DON'T BLAME HIM TOO MUCH, HE'S A LAWYER, HE'S JUST
17:27:16 15 TRYING TO WIN -- BUT HE'S GOT A DECISION THAT HE
17:27:18 16 LIKES AND IF HE CAN FORECLOSE THE NINTH CIRCUIT
17:27:20 17 LOOKING AT IT, OF COURSE HE'S GOING TO TRY TO DO
17:27:23 18 THAT.

17:27:24 19 BUT I DON'T THINK IT'S FAIR HERE.

17:27:25 20 THE COURT: ALL RIGHT. LET ME HEAR --

17:27:27 21 MR. CHATTERJEE: YOUR HONOR, I'M JUST
17:27:28 22 GOING TO START -- I'M NOT GOING TO SPEND A LOT OF
17:27:30 23 TIME ON THIS.

17:27:31 24 FROM BOTH COUNSELS I'M GETTING A NUMBER
17:27:33 25 OF PERSONAL ATTACKS HERE. I'M NOT GOING TO GO

17:27:36 1 THERE, BUT I DON'T APPRECIATE IT.

17:27:36 2 I JUST -- WE HAVE A CODE OF
17:27:36 3 PROFESSIONALISM HERE AND I EXPECT PEOPLE TO FOLLOW
17:27:40 4 IT AND I'D ASK YOUR HONOR TO REMIND PEOPLE OF THAT.

17:27:42 5 THE COURT: I DIDN'T HEAR THAT KIND OF
17:27:44 6 ATTACK. I THINK THAT IT WAS RESPECTFUL, BUT IT IS
17:27:46 7 RESPECTFUL TAKING ISSUE WITH YOUR POSITION, NOT
17:27:49 8 WITH YOU AS A COUNSEL, WHICH I SHOULD INDICATE I
17:27:51 9 HAVE A GREAT DEAL OF RESPECT FOR YOU AS A PERSON
17:27:53 10 WHO'S APPEARED BEFORE ME, AND SO FAR I HAVE A GREAT
17:27:57 11 DEAL OF RESPECT FOR ALL OF YOU WHO HAVE APPEARED.

17:28:00 12 SO GO AHEAD WITH THE SUBSTANCE OF YOUR
17:28:02 13 ARGUMENT.

17:28:02 14 MR. CHATTERJEE: THANK YOU, YOUR HONOR.
17:28:02 15 I APPRECIATE THAT.

17:28:04 16 THE SUBSTANCE OF THE ARGUMENT IS THIS: I
17:28:06 17 THINK YOUR HONOR IS RIGHT. WE NEGOTIATED A DEAL ON
17:28:09 18 FEBRUARY 22ND, AND THAT WAS A PEACE TREATY.

17:28:11 19 THERE WAS VALUE TO THE COMPANY THAT WE
17:28:13 20 PURCHASED. IF WE DIDN'T WANT THE COMPANY, WE WOULD
17:28:15 21 HAVE JUST SIGNED RELEASES.

17:28:17 22 BUT WE DIDN'T. WE PURCHASED THE COMPANY,
17:28:19 23 AND THERE'S A VALUE TO THE PEACE THAT WE SIGNED.

17:28:22 24 THE INDIVIDUALS, AS I SAID BEFORE, CHOSE
17:28:24 25 NOT TO OPPOSE THE MOTION TO ENFORCE. THE COMPANY

17:28:26 1
17:28:29 2
17:28:31 3
17:28:33 4
17:28:36 5
17:28:39 6
17:28:41 7
17:28:45 8
17:28:47 9
17:28:50 10
17:28:53 11
17:28:55 12
17:28:57 13
17:28:59 14
17:29:03 15
17:29:05 16
17:29:08 17
17:29:10 18
17:29:13 19
17:29:16 20
17:29:18 21
17:29:22 22
17:29:25 23
17:29:26 24
17:29:29 25

DID.

AND IF WE DIDN'T GET THE COMPANY THROUGH THE RELEASE OF SHARES AND THEY WERE ABLE TO PROCEED WITH MAJOR LITIGATION AGAINST THEIR FORMER LAW FIRM WHICH THEY, BY THE WAY, INITIATED AFTER YOUR JUDGMENT ENTERED, THEY INITIATED THE LAWSUIT IN THE NEW YORK SUPREME COURT AFTER YOUR JUDGMENT ENTERED.

AND THEY -- THE DISPUTE STARTED BEFORE, BUT THERE WAS AN ACTION IN THE NEW YORK SUPREME COURT AFTERWARDS.

THE MALPRACTICE CLAIM THAT THEY WANT TO INITIATE, I DON'T KNOW IF THEY HAVE YET OR NOT, I HAVEN'T SEEN ANYTHING INDICATING THAT THEY HAVE, ALL OF THOSE THINGS ARE DECISIONS THAT AFFECT THE VALUE OF THE COMPANY THAT WE PURCHASED.

AND FOR THEM TO COME IN HERE AND SAY, "OH, FACEBOOK CAN DO THE DAY-TO-DAY CONTROL, THEY CAN INVEST HEAVILY IN IT, THEY CAN BUILD A GREAT COMPANY IF THEY'RE ABLE TO DO IT AND MAKE A GREAT PROFIT OR DO SOMETHING TO MAKE THE COMPANY OPERATIONAL, BUT IF THE NINTH CIRCUIT REVERSES, THEN WE GET IT BACK AND WHATEVER THEY DID IS FOR NAUGHT AND WE DON'T HAVE TO WORRY ABOUT UNSCRAMBLING THAT EGG," AND IF YOUR HONOR HAS ALREADY ENTERED JUDGMENT SAYING THAT WE'RE RIGHT ON

17:29:31 1 THE ENFORCEMENT MOTION, FRANKLY, YOUR HONOR, IT'S
17:29:34 2 SOMEWHAT ABSURD TO ARGUE THAT.

17:29:36 3 WE WANT THE VALUE OF WHAT WE PURCHASED,
17:29:37 4 AND STAYING THE PROCEEDINGS IS, IS, IS TANTAMOUNT
17:29:41 5 TO NOT RECOGNIZING THE SETTLEMENT AGREEMENT.

17:29:43 6 THERE'S A PUBLIC INTEREST HERE IN
17:29:45 7 RECOGNIZING THESE AGREEMENTS THAT GETS IMPLICATED.
17:29:48 8 YOUR HONOR RECITED THAT YOURSELF AT THE JUDGMENT
17:29:51 9 HEARING.

17:29:51 10 THE ONE THING -- THE ONE OTHER POINT I
17:29:53 11 WANT TO MAKE IS, CANDIDLY, WE HAVE A BIG ISSUE WITH
17:29:56 12 THEM HAVING ANY DECISION MAKING OVER CONNECTU.

17:29:59 13 AND I'M NOT TALKING ABOUT THE LAWYERS.
17:30:00 14 I'M TALKING ABOUT THE WINKLEVOSS BROTHERS AND DIVYA
17:30:03 15 NARENDRA AND HOWARD WINKLEVOSS.

17:30:05 16 THEY INITIATED THE LITIGATION WITHOUT
17:30:07 17 EVER CONSULTING ANYBODY AFTER THE JUDGMENT WAS
17:30:09 18 ENTERED. THEY DON'T LIKE OUR COMPANY.

17:30:11 19 SO IF THINGS AREN'T GOING WELL IN THE
17:30:14 20 NINTH CIRCUIT, THEY CAN DO WHATEVER THEY WANT.

17:30:16 21 THEY HAVE NOT PUT THE STOCK INTO GEORGE
17:30:18 22 FISHER'S HANDS PER YOUR HONOR'S ORDER. THAT WAS
17:30:21 23 DUE MONDAY, AND AT 2:15, GIVE OR TAKE A FEW
17:30:25 24 MINUTES, ON MONDAY, AFTER WE HAD PUT ALL OF OUR
17:30:28 25 CONSIDERATION IN, THAT SUBSTANTIAL AMOUNT OF MONEY

17:30:31 1 AND THE SUBSTANTIAL AMOUNT OF SHARES, THEY NOTIFIED
17:30:35 2 US THAT THEY WERE GOING TO MAKE THE DECISION NOT TO
17:30:37 3 SUBMIT IT TO HIM IN VIOLATION OF YOUR HONOR'S
17:30:39 4 ORDER.

17:30:39 5 WHAT CONFIDENCE COULD WE POSSIBLY HAVE
17:30:42 6 THAT THEY ARE GOING TO PROTECT THE VALUE OF THAT
17:30:44 7 ASSET? IT'S SIMPLY NOT THERE. WE HAVE ZERO
17:30:47 8 CONFIDENCE IN THEM.

17:30:48 9 THE COURT: WELL, HERE'S THE DILEMMA THAT
17:30:51 10 I SEE. I CONTINUE TO BELIEVE THAT THE JUDGMENT WAS
17:30:53 11 PROPERLY ENTERED HERE.

17:30:54 12 BUT I ALSO BELIEVE THAT ANY JUDGMENT IS
17:31:01 13 APPEALABLE TO A HIGHER COURT, ANY JUDGMENT OF THIS
17:31:04 14 COURT.

17:31:05 15 AND I'M IN A CIRCUMSTANCE WHERE IT'S NOT
17:31:10 16 A MONEY JUDGMENT WHERE A BOND WOULD BE SUFFICIENT,
17:31:16 17 SO THAT I'M TRYING TO WALK MY WAY THROUGH A PROCESS
17:31:20 18 BY WHICH, EVEN IF I'M DISPOSED TO DENY THE STAY OF
17:31:24 19 EXECUTION, I WON'T DENY THE RIGHT TO APPEAL.

17:31:31 20 SO IF I UNDERSTAND THAT THE EXECUTION
17:31:38 21 COULD AMOUNT TO THE PLAINTIFF HERE TAKING THE
17:31:44 22 UNUSUAL STEP OF SAYING, "WELL, NOW AS THE
17:31:47 23 SHAREHOLDER, I TERMINATE THE APPEAL," THE EXECUTION
17:31:51 24 WOULD BE, IN EFFECT, A PLACING OF THE RIGHT OF
17:31:55 25 APPEAL, BUT DENYING THE RIGHT TO APPEAL. IT WOULD

17:31:59 1 TERMINATE BY THE EXECUTION.

17:32:01 2 I'VE NEVER FACED THAT SITUATION BEFORE,
17:32:02 3 AND SO IT'S UNCHARTED WATER FOR ME.

17:32:05 4 AND SO THAT'S WHAT I NEED HELP WITH,
17:32:07 5 BECAUSE UNLESS YOU CONVINCED ME THAT THERE SHOULD BE
17:32:12 6 NO RIGHT TO APPEAL, I HAVE TO PUT THE OPPOSING
17:32:14 7 PARTY TO MY JUDGMENT IN A POSITION SO THEY CAN
17:32:17 8 CHALLENGE MY JUDGMENT.

17:32:19 9 MR. CHATTERJEE: SO, YOUR HONOR, I THINK
17:32:20 10 WHAT YOU'RE IDENTIFYING IS, IS THE CONFLICT THAT WE
17:32:22 11 HAVE HERE OF HARDSHIPS.

17:32:24 12 WE PURCHASED AN ASSET. WE WANT TO GET
17:32:26 13 VALUE FOR THE ASSET.

17:32:27 14 AND WE ALSO SOUGHT PEACE, AND THERE'S A
17:32:30 15 LOT OF HARDSHIP IN NOT ACKNOWLEDGING THAT PEACE.

17:32:33 16 THEIR PURPORTED HARDSHIP IS ESSENTIALLY
17:32:35 17 THE RISK OF MOOTING AN APPEAL ON BEHALF OF
17:32:39 18 CONNECTICUT.

17:32:39 19 IF YOU ALLOW INTERVENTION, YOUR HONOR,
17:32:41 20 CANDIDLY, THAT MAY BECOME A NON-ISSUE DEPENDING ON
17:32:44 21 WHATEVER RIGHTS THE INDIVIDUALS HAVE UPON
17:32:47 22 INTERVENTION, BECAUSE AS YOUR HONOR NOTICED BEFORE,
17:32:49 23 THEY ESSENTIALLY ARE ASSERTING THE SAME SORTS OF
17:32:52 24 CLAIMS OF A THIRD PARTY COMPLAINANT.

17:32:54 25 NOW, WHEN YOU HAVE THESE TWO COMPETING

17:32:56 1 INTERESTS -- AND WE TALKED ABOUT THIS IN A FAIR
17:32:59 2 AMOUNT OF DETAIL IN OUR PAPERS -- THE VALUE OF A
17:33:01 3 STRATEGIC TRANSACTION, OR OF A CORPORATE
17:33:04 4 TRANSACTION, IS SOMETHING THAT IS LIMITED IN TIME,
17:33:06 5 AND THAT IS GIVEN A PRESUMPTION OF IRREPARABLE
17:33:09 6 HARM.

17:33:09 7 THE MOOTNESS ON APPEAL ISSUE, THERE'S A
17:33:12 8 SPLIT IN THE, IN THE COURTS OVER WHETHER THAT
17:33:14 9 CONSTITUTES IRREPARABLE HARM OR NOT, BUT THE
17:33:18 10 MAJORITY OF THE COURTS FIND THAT THAT ISN'T
17:33:21 11 IRREPARABLE HARM.

17:33:23 12 AND, YOUR HONOR, AGAIN, THEY KNEW THIS
17:33:25 13 COMING INTO THE MOTION TO ENFORCE HEARING WHEN THE
17:33:27 14 INDIVIDUALS DIDN'T OPPOSE THAT WE WERE GOING TO ASK
17:33:29 15 FOR THE COMPANY, BECAUSE THAT'S WHAT WE WERE ASKING
17:33:31 16 FOR IN THE MOTION TO ENFORCE.

17:33:36 17 THE COURT: DO YOU SEE -- WELL, I -- I
17:33:42 18 HEAR THAT AS MORE OF AN ARGUMENT TO DENY THE MOTION
17:33:46 19 TO INTERVENE, AND THAT PART I UNDERSTAND YOUR
17:33:48 20 POSITION ON. I'M NOT SURE I'LL GO ALONG WITH IT,
17:33:52 21 BUT I UNDERSTAND IT.

17:33:53 22 BUT I DIDN'T HEAR YOU RESPOND TO
17:33:54 23 MR. UNDERHILL'S CONCERN THAT IF I DON'T STAY
17:33:59 24 ENFORCEMENT AND I ORDER ENFORCEMENT, AND NOT TO BE
17:34:03 25 CONTEMPTUOUS OF THE COURT, THAT GO AHEAD AND COMPLY

17:34:07 1 AND TURN OVER THE SHARES AND THERE'S THIS EXCHANGE,
17:34:09 2 THAT WOULD PUT FACEBOOK IN A POSITION WHERE IT
17:34:11 3 COULD SAY, "AS CONNECTU, WE NOW DETERMINE TO
17:34:14 4 ABANDON THE APPEAL," AND EFFECTIVELY DENY TO THAT
17:34:18 5 LITIGANT THE RIGHT TO QUESTION MY JUDGMENT.

17:34:23 6 HOW DO YOU RESPOND TO THAT?

17:34:25 7 MR. CHATTERJEE: YOUR HONOR, I DON'T
17:34:26 8 THINK THERE'S ANY -- I DON'T THINK MR. UNDERHILL'S
17:34:28 9 MADE ANY SECRET ABOUT WHAT HE'S GOING TO DO IF YOU
17:34:30 10 ORDER ENFORCEMENT OF THE ORDER YOU'RE ALREADY
17:34:32 11 ENFORCING AND THEY HAVE TO HAND OVER THE SHARES OF
17:34:35 12 THE COMPANY.

17:34:35 13 BY THE WAY, THEY'RE NOT EVEN IN GEORGE
17:34:37 14 FISHER'S HANDS YET. THERE'S ANOTHER STEP WHERE HE
17:34:40 15 HAS TO SEEK A COURT ORDER FROM YOU TO ALLOW RELEASE
17:34:42 16 OF IT.

17:34:44 17 BUT LET'S ASSUME THAT THAT HAPPENED. I'M
17:34:46 18 FAIRLY CERTAIN THAT MR. UNDERHILL IS GOING TO BE
17:34:48 19 RUNNING TO THE NINTH CIRCUIT SEEKING A STAY OF
17:34:50 20 EXECUTION OF THAT JUDGMENT AND SEEKING NINTH
17:34:53 21 CIRCUIT INTERVENTION ON THAT.

17:34:54 22 AND SO, YOU KNOW, EITHER WAY IT'S GOING
17:34:56 23 TO BE GOING TO THE NINTH CIRCUIT FOR RESOLUTION.

17:34:58 24 THE COURT: LET ME GO BACK TO YOU,
17:35:00 25 MR. UNDERHILL, BECAUSE I EXPECTED THAT THAT WOULD

17:35:02 1
17:35:04 2
17:35:07 3
17:35:10 4
17:35:13 5
17:35:15 6
17:35:16 7
17:35:18 8
17:35:23 9
17:35:25 10
17:35:25 11
17:35:27 12
17:35:30 13
17:35:33 14
17:35:34 15
17:35:35 16
17:35:38 17
17:35:41 18
17:35:41 19
17:35:42 20
17:35:44 21
17:35:47 22
17:35:47 23
17:35:48 24
17:35:51 25

BE THE ANSWER, AND THAT IS THIS.

THIS IS SORT OF LIKE, AS I SAID, AN
INJUNCTIVE RELIEF, WHICH MEANS THAT I HAVE TO BE
CONVINCED TO STAY THIS, THAT THERE'S A LIKELIHOOD
OF SUCCESS ON THE MERITS.

MR. UNDERHILL: RIGHT.

THE COURT: AND IF I AM CONFIDENT, AS I
AM, IN MY JUDGMENT, WHAT WOULD BE THE BASIS FOR
THIS COURT STAYING EXECUTION?

MR. UNDERHILL: RIGHT.

THE COURT: AS OPPOSED TO YOUR SEEKING
SUCH A STAY FROM THE CIRCUIT, WHICH MIGHT TAKE A
DIFFERENT VIEW OF THE LIKELIHOOD OF SUCCESS ON THE
MERITS?

MR. UNDERHILL: YOUR HONOR, WITH THE
COURT'S INDULGENCE, THEN, IN RESPONSE TO THAT
QUESTION, I WOULD LIKE TO SPEND FIVE MINUTES ON THE
LAW.

THE COURT: YOU'VE GOT FIVE MINUTES AND
THEN I'M GOING TO BRING THIS TO A CLOSE VERY
QUICKLY IN DEFERENCE TO THE PROMISE I MADE TO MY
STAFF.

MR. UNDERHILL: SURE, YOUR HONOR.

IN ADDITION TO WEDDINGTON, WHICH WE
BRIEFED AND I'M NOT GOING TO TALK ABOUT BECAUSE I'M

17:35:53 1 VERY MINDFUL WHAT OF YOU JUST SAID, I WOULD LIKE,
17:35:56 2 YOUR HONOR, TO GIVE YOU TWO MORE CASES WHICH WE
17:35:58 3 THINK FOLLOW THE SAME PROPOSITION.

17:35:58 4 ONE IS IN RE: IMPERIAL CREDIT INDUSTRIES,
17:36:01 5 527 F.3D 959, IT'S A NINTH CIRCUIT CASE; AND THE
17:36:05 6 OTHER ONE IS WOLFE V. SUPERIOR COURT, 8 CALIFORNIA
17:36:09 7 REPORTER 3D 649, AT PAGES 655 TO 656, AND THAT'S
17:36:17 8 THE CALIFORNIA COURT OF APPEALS.

17:36:18 9 IN WOLFE, THE COURT SAID, "WE HOLD THAT
17:36:20 10 IT IS REVERSIBLE ERROR FOR A TRIAL COURT TO REFUSE
17:36:23 11 TO CONSIDER SUCH EXTRINSIC EVIDENCE ON THE BASIS OF
17:36:27 12 THE TRIAL COURT'S OWN CONCLUSION THAT THE LANGUAGE
17:36:30 13 OF THE CONTRACT APPEARS TO BE CLEAR AND UNAMBIGUOUS
17:36:33 14 ON ITS FACE."

17:36:34 15 AND, YOUR HONOR, THAT'S WHAT WE THINK
17:36:36 16 HAPPENED HERE. I THINK YOUR HONOR CONCLUDED THAT
17:36:38 17 THE TERM SHEET WAS CLEAR AND UNAMBIGUOUS ON ITS
17:36:42 18 FACE, DESPITE EVIDENCE THAT WE HAD SUBMITTED,
17:36:45 19 INCLUDING THE EXPERT TESTIMONY OF DONNA HITSCHERICH
17:36:49 20 THAT IT WAS INDEED UNCLEAR AS TO WHETHER IT WAS
17:36:53 21 SUPPOSED TO BE A MERGER OR A STOCK PURCHASE.

17:36:55 22 INDEED, IN THEIR OWN FILING, IN THEIR
17:36:57 23 ORIGINAL FILING WITH THE COURT WHERE THEY ASKED THE
17:36:58 24 COURT TO ENFORCE IT, THEY VARIOUSLY IN THEIR
17:37:01 25 DOCUMENTS REFERRED TO IT'S A MERGER OR A STOCK

17:37:04 1 PURCHASE.

17:37:05 2 WOLFE CLEARLY SAYS THAT YOU ARE ALLOWED
17:37:07 3 TO LOOK, AND INDEED IN THIS CASE, THE COURT ERRED
17:37:10 4 BY NOT LOOKING AT THE SUBSEQUENT EVENTS.

17:37:13 5 IN LOOKING AT THE NINTH CIRCUIT LAW THAT
17:37:15 6 I JUST GAVE YOU, THE COURT SAID, "MUTUAL INTENT IS
17:37:19 7 DETERMINED BY THE WORD 'USED' IN THE AGREEMENT, AS
17:37:22 8 WELL AS EXTRINSIC EVIDENCE OF SUCH OBJECTIVE
17:37:24 9 MATTERS AS THE SURROUNDING CIRCUMSTANCES UNDER
17:37:26 10 WHICH THE PARTIES NEGOTIATED OR ENTERED INTO THE
17:37:29 11 CONTRACT, THE OBJECT, NATURE, AND SUBJECT MATTER OF
17:37:32 12 THE CONTRACT, AND THE SUBSEQUENT CONDUCT OF THE
17:37:35 13 PARTIES."

17:37:36 14 SO, YOUR HONOR, WE BELIEVE THAT IT WAS
17:37:39 15 ERROR, UNDER CLEAR NINTH CIRCUIT AND CALIFORNIA
17:37:44 16 LAW, FOR THE COURT TO LOOK AT THE FOUR CORNERS AND
17:37:46 17 SAY, "LOOK, IT'S CLEAR AND UNAMBIGUOUS TO ME. I'M
17:37:50 18 GOING TO ENFORCE IT THIS WAY."

17:37:51 19 WITH RESPECT TO THE FRAUD CLAIM, YOUR
17:37:53 20 HONOR, THE CASE LAW IS UNDISPUTED, AS LONG -- AS
17:37:57 21 FAR AS WE KNOW.

17:37:57 22 WE FOUND TWO CASES, TWO APPELLATE CASES,
17:38:00 23 THAT SAY NO RELIANCE IS REQUIRED UNDER 29(B) WHEN
17:38:04 24 YOU'RE ALLEGING SECURITIES FRAUD.

17:38:06 25 NOW, THE COURT CITED THE PETRO-VENTURES

17:38:09 1 CASE. THAT SEEMS TO BE A VERY IMPORTANT CASE. I
17:38:12 2 WOULD RESPECTFULLY ASK, YOUR HONOR, IF PERHAPS
17:38:14 3 YOU'D TAKE ANOTHER LOOK AT IT. PETRO-VENTURES WAS
17:38:18 4 A CASE WHERE A RELEASE WAS HELD TO BAR A SECURITIES
17:38:21 5 FRAUD CLAIM.

17:38:21 6 WE HAVE NEVER SAID THAT YOU CAN'T RELEASE
17:38:23 7 A SECURITIES FRAUD CLAIM.

17:38:25 8 THE DIFFERENCE, HOWEVER, IS THAT IN
17:38:29 9 PETRO-VENTURES, THEY WERE NOT TALKING ABOUT FRAUD
17:38:31 10 IN THE INDUCEMENT. THAT WAS NOT A SITUATION WHERE
17:38:33 11 SOMEONE SAYS, "HERE'S THE SECURITIES. IN THE SAME
17:38:35 12 CONTRACT THAT I'M GIVING YOU THE SECURITIES, I WANT
17:38:37 13 YOU TO SIGN A RELEASE THAT'S GOING TO INDEMNIFY ME,
17:38:41 14 OR PROTECT ME, FROM ANY SORT OF FRAUD CLAIM."

17:38:44 15 THAT SORT OF WAIVER, YOU KNOW, IN THE
17:38:46 16 SAME CONTRACT, "HERE'S THE SECURITIES, AND BY THE
17:38:50 17 WAY, I WANT YOU TO RELEASE ME IF I'M DEFRAUDING YOU
17:38:53 18 RIGHT NOW," THAT IS NON-WAIVABLE, YOUR HONOR.

17:38:57 19 THAT'S SECTION 29(A) OF THE SECURITIES
17:38:59 20 EXCHANGE ACT OF 1934. CONGRESS PUT THAT IN THERE
17:39:03 21 TO MAKE SURE THAT SOMEBODY DRAFTING, YOU KNOW,
17:39:05 22 CONTRACTS WHERE YOU'RE SELLING SECURITIES CAN'T
17:39:08 23 STICK SOMETHING IN THERE THAT SAYS, "OH, YOU'RE
17:39:11 24 WAIVING ANY SORT OF FRAUD CLAIM."

17:39:12 25 THAT, YOUR HONOR, IS WHY WE ARE

17:39:13 1 COMPLETELY DIFFERENT FROM PETRO-VENTURES. WE ARE A
17:39:16 2 FRAUD IN THE INDUCEMENT CASE.

17:39:18 3 OUR ALLEGATION, AND OBVIOUSLY THEY DENY
17:39:20 4 IT, BUT OUR ALLEGATION IS THAT WE WERE DEFRAUDED,
17:39:23 5 WE WERE DEFRAUDED INTO ENTERING INTO THE SETTLEMENT
17:39:25 6 AGREEMENT.

17:39:26 7 THAT MAKES US COMPLETELY DIFFERENT, YOUR
17:39:28 8 HONOR, FROM PETRO-VENTURES.

17:39:31 9 THE -- THE -- AND I DO JUST WANT TO
17:39:33 10 UNDERSCORE, THEY MAKE A BIG DEAL OUT OF 29(B).
17:39:36 11 THEY SAY IT APPLIES TO CONTRACTS, NOT TRANSACTIONS.

17:39:38 12 I'M NOT EVEN SURE I UNDERSTAND IT.

17:39:40 13 BUT IF IT DOES APPLY TO CONTRACTS, WHICH
17:39:44 14 IS WHAT THEY SAY IT DOES, THAT'S WHAT WE'RE LOOKING
17:39:47 15 FOR HERE. WE ARE LOOKING TO AVOID THE EXACT
17:39:50 16 CONTRACT THAT WE BELIEVE WE WERE DEFRAUDED INTO
17:39:52 17 ENTERING INTO.

17:39:53 18 AND, YOUR HONOR, I JUST -- I DON'T SEE
17:39:55 19 HOW THE NINTH CIRCUIT COULD SEE IT DIFFERENTLY. I
17:39:59 20 SAY THAT RESPECTFULLY, YOUR HONOR.

17:40:00 21 AT THE VERY LEAST, THERE ARE, YOU KNOW,
17:40:03 22 SUBSTANTIAL QUESTIONS OF LAW HERE THAT NEED TO BE
17:40:06 23 ADDRESSED BY THE NINTH CIRCUIT.

17:40:08 24 I THINK FUNCTIONALLY WHAT THE COURT HAS
17:40:10 25 DONE IS CREATED A SETTLEMENT EXCEPTION TO

17:40:15 1 SECURITIES FRAUD. IT'S THE IDEA THAT IF YOU HAVE A
17:40:18 2 CONTRACT AND THERE'S SECURITIES FRAUD, YOU CAN'T
17:40:23 3 REMEDY IT IF IT'S A SETTLEMENT AGREEMENT.

17:40:26 4 OR -- OR STATED -- AND I DO WANT TO BE
17:40:29 5 FAIR. PERHAPS I SHOULD STATE IT DIFFERENTLY.

17:40:32 6 I'M NOT SURE IF IT'S A SETTLEMENT
17:40:33 7 EXCEPTION TO SECURITIES FRAUD OR IF IT'S LIKE A
17:40:36 8 MEDIATION EXCEPTION TO SECURITIES FRAUD, THAT IF
17:40:39 9 THERE'S A MEDIATION INVOLVED, THAT IT SOMEHOW
17:40:42 10 OBVIATES THE FRAUD.

17:40:44 11 AND, YOUR HONOR, EVEN IF THE COURT
17:40:45 12 BELIEVED THAT WERE THE CORRECT DIRECTION OF THE
17:40:48 13 LAW, I MEAN, THAT'S CONTRARY TO WHAT CONGRESS HAS
17:40:51 14 DECREED.

17:40:52 15 CONGRESS HAS SAID THAT YOU CAN VOID A, A
17:40:57 16 CONTRACT THAT IS IN VIOLATION OF THE SECURITIES
17:40:59 17 LAWS.

17:41:00 18 WE DID FIND A CASE, YOUR HONOR, WHEN YOU
17:41:03 19 REQUESTED IT, THAT DEALT WITH SETTING ASIDE A
17:41:07 20 SETTLEMENT AGREEMENT.

17:41:08 21 IN THAT SETTLEMENT AGREEMENT, THERE WERE
17:41:10 22 VIOLATIONS OF MARGIN REQUIREMENTS AND, NONETHELESS,
17:41:12 23 THE SECOND CIRCUIT SET ASIDE THE, THE CONTRACT, YOU
17:41:15 24 KNOW, WHICH WAS A SETTLEMENT AGREEMENT. THAT WAS
17:41:18 25 PEARLSTEIN, YOUR HONOR.

17:41:19 1 NOW, THE COURT -- THE OTHER SIDE HAS
17:41:21 2 NOTED THAT THAT WAS OVERRULED. IT WAS, BUT IT WAS
17:41:24 3 ON DIFFERENT GROUNDS.

17:41:26 4 EXCUSE ME.

17:41:26 5 IT WAS NOT ON THE 29(B) GROUND.

17:41:29 6 BUT THAT CASE UNAMBIGUOUSLY HELD THAT
17:41:32 7 UNDER THOSE CIRCUMSTANCES, BECAUSE THERE HAD BEEN A
17:41:35 8 VIOLATION OF THE MARGIN REQUIREMENTS, BECAUSE THE
17:41:37 9 MARGIN REQUIREMENT WAS A -- IS A VIOLATION OF
17:41:40 10 FEDERAL SECURITIES LAW, THAT THE SETTLEMENT
17:41:42 11 AGREEMENT WAS SET ASIDE.

17:41:43 12 NOW, IN THE COURT'S OPINION, THE COURT
17:41:45 13 CORRECTLY NOTED THAT THAT WAS MARGIN REQUIREMENTS,
17:41:49 14 NOT FRAUD, AND THAT'S TRUE, YOUR HONOR.

17:41:51 15 BUT THE STATUTE DOESN'T DISTINGUISH
17:41:54 16 WHATSOEVER BETWEEN FRAUD AND MARGIN REQUIREMENTS.
17:41:57 17 IT SAYS IF YOU VIOLATE THE SECURITIES LAWS, YOU CAN
17:42:00 18 VOID THE CONTRACT.

17:42:01 19 SO, I MEAN, AT THE VERY LEAST, YOUR
17:42:03 20 HONOR, I THINK WE HAVE EXTREMELY WEIGHTY ARGUMENTS
17:42:08 21 HERE.

17:42:10 22 THERE IS ALSO THE IDEA IN THE FEDERAL
17:42:12 23 RULES GOVERNING MEDIATION HERE IN THIS COURT THAT
17:42:15 24 UNDER SOME CIRCUMSTANCES, THE COURT SHOULD PIERCE
17:42:20 25 THE MEDIATION VEIL, AND WE ARGUED IN OUR PAPERS WHY

17:42:25 1
17:42:29 2
17:42:31 3
17:42:33 4
17:42:37 5
17:42:40 6
17:42:44 7
17:42:48 8
17:42:52 9
17:42:57 10
17:42:59 11
17:43:01 12
17:43:04 13
17:43:09 14
17:43:11 15
17:43:12 16
17:43:14 17
17:43:17 18
17:43:21 19
17:43:25 20
17:43:28 21
17:43:31 22
17:43:33 23
17:43:35 24
17:43:37 25

WE THOUGHT THE MEDIATION VEIL SHOULD BE PIERCED
HERE.

AND, AGAIN, UNLESS I MISUNDERSTOOD THE
COURT'S OPINION, YOUR HONOR, I THINK -- AT LEAST
THE OPINION DOES NOT REFLECT, IN ADDRESSING A
CONSIDERATION OF THE POSSIBLE EXCEPTIONS THAT WOULD
LEAD ONE TO PIERCE THE MEDIATION VEIL, EVEN THOUGH
THE FEDERAL RULES OF THIS DISTRICT SPECIFICALLY DO
ALLOW FOR EXCEPTIONS IN, IN PIERCING MEDIATION.

SO AT THE END OF -- AND ONE LAST ISSUE.
OPPOSING COUNSEL JUST REFERRED TO THIS
MOOTNESS ISSUE AND SAID THE COURTS ARE SPLIT ON
WHETHER OR NOT DENYING SOMEONE AN APPEAL IS ENOUGH
TO BE IRREPARABLE HARM.

AND, YOUR HONOR, AGAIN, WITH ALL RESPECT,
THAT'S JUST PLAIN WRONG.

I MEAN, WE HAVE FOUND SEVERAL ARTICLE III
DECISIONS THAT FLATLY HOLD THAT IF YOU'RE GOING TO
BE DENIED YOUR APPEAL, THAT IS IRREPARABLE HARM.
WE HAVE THREE OF THEM. THERE'S TWO IN THE BRIEF
AND I CAN GIVE ONE MORE CITATION ON IT. THOSE ARE
THE ONLY ONES WE FOUND.

WHEN COUNSEL SAYS THERE'S SOME SPLIT OF
AUTHORITY, WHAT HE'S REFERRING TO ARE BANKRUPTCY
COURTS, AND IN THE BANKRUPTCY COURTS -- AND EVEN

17:43:39 1 THERE THERE'S A SPLIT, IN BANKRUPTCY COURTS -- WHEN
17:43:42 2 THEY'RE TALKING ABOUT MOOTNESS, THEY'RE NOT TALKING
17:43:46 3 ABOUT CONSTITUTIONAL MOOTNESS. THEY'RE TALKING
17:43:48 4 ABOUT EQUITABLE MOOTNESS.

17:43:50 5 AND THIS IS A FEATURE WHICH IS COMPLETELY
17:43:52 6 UNIQUE TO BANKRUPTCY LAW. IT'S THE WHOLE IDEA THAT
17:43:55 7 ONE GUY SHOULD NOT BE ABLE TO CHALLENGE ON APPEAL
17:43:59 8 ONE TRANSACTION IF IT'S GOING TO BE THE THREAD THAT
17:44:02 9 PULLS APART, YOU KNOW, AN ENTIRE REORGANIZATION
17:44:05 10 INVOLVING 200, YOU KNOW, COMPANIES AND INDIVIDUALS.

17:44:09 11 SO IN THE BANKRUPTCY CONTEXT, YES, THERE
17:44:11 12 ARE SOME CASES, AND AT LEAST ONE COURT SAID IT WAS
17:44:14 13 THE MAJORITY, ALTHOUGH IT SEEMED TO ME FROM READING
17:44:16 14 THE CASE IT LOOKED PRETTY CLOSE, THAT MOOTNESS, BUT
17:44:21 15 NOT CONSTITUTIONAL MOOTNESS, IT'S THIS EQUITABLE
17:44:24 16 MOOTNESS, WOULD NOT BE IRREPARABLE HARM.

17:44:27 17 AND YOUR HONOR, IF YOU'RE INTERESTED, I
17:44:29 18 CAN CERTAINLY GIVE YOU SOME CASES ON THIS. THE
17:44:31 19 CASES THAT -- THE ARTICLE III CASES THAT SAY IT IS
17:44:36 20 IRREPARABLE HARM WE CITED IN OUR MOTION FOR A STAY
17:44:39 21 AT PAGES 5 AND 7. ANOTHER ONE IS A FIRST CIRCUIT
17:44:44 22 CASE, PROVIDENCE JOURNAL VERSUS FEDERAL BUREAU OF
17:44:44 23 INVESTIGATION AT 595 F.2D 889 AT 890.

17:44:50 24 NOW, THE BANKRUPTCY COURTS AND THE
17:44:53 25 DISCUSSION OF THESE POLICY REASONS AND THIS IDEA

17:44:55 1 THAT IN BANKRUPTCY COURT, MOOTNESS IS A VERY, VERY
17:44:58 2 DIFFERENT THING THAN IT IS IN ARTICLE III COURTS, I
17:45:02 3 WOULD REFER THE COURT TO THE NINTH CIRCUIT'S
17:45:05 4 DECISION, 2007, IN SUTER, S-U-T-E-R, VERSUS
17:45:10 5 GOEDERT, 504 F.3D 982, AND IT'S AT PAGE 986.

17:45:17 6 AND YOU ALSO WANT TO BE -- AS WE TRY TO
17:45:19 7 THINK THROUGH, YOU KNOW, HOW IS THERE SOME WAY THAT
17:45:22 8 WE CAN PRESERVE OUR APPEAL AND YET FACEBOOK GETS
17:45:25 9 WHATEVER BENEFIT THEY NOW ALLEGE IS A RESULT OF
17:45:29 10 GETTING THE COMPANY, THERE IS A DOCTRINE, IT'S
17:45:31 11 ACTUALLY MENTIONED IN FACEBOOK'S PAPERS, CALLED
17:45:35 12 DOMINIX LITIS, WHICH IS THE IDEA THAT IF ONE SIDE
17:45:38 13 CONTROLS BOTH COMPANIES AND IT -- AND IT'S FORMAL
17:45:43 14 AND ACTUAL CONTROL, I THINK IS THE LANGUAGE, THAT
17:45:46 15 IT'S MOOT, YOU KNOW, THE FED CIRCUIT, OR THE
17:45:49 16 APPELLATE COURTS WILL GET RID OF IT ON MOOTNESS
17:45:52 17 GROUNDS.

17:45:53 18 SO MY CONCERN, WHAT I DO WANT TO BE CLEAR
17:45:55 19 ABOUT HERE, IS THAT IF THEY -- IF WE TURNED IT OVER
17:45:59 20 TO FACEBOOK, EVEN IF THEY AGREED TO KEEP IT
17:46:01 21 SEPARATE, I THINK THERE WOULD BE A SERIOUS
17:46:03 22 CONSTITUTIONAL ISSUE WITH RESPECT TO WHETHER OR NOT
17:46:08 23 THEY'RE EVEN OWNING IT, THAT IS, THE COMPANY AS
17:46:11 24 DISTINCT FROM BEING ABLE TO OPERATE IT, WOULD
17:46:14 25 TRIGGER THIS DOCTRINE OF DOMINIX LITIS.

17:46:19 1 I'D ALSO LIKE TO MAKE ONE LAST POINT, AND
17:46:21 2 IT'S THIS IDEA THAT WE SOMEHOW, YOU KNOW, ADVISED
17:46:26 3 THEM FOR THE FIRST TIME AT 2:14 OR WHATEVER IT WAS,
17:46:29 4 I THINK THAT'S JUST OVER THE TOP.

17:46:32 5 AND I'M NOT SOMEONE THAT GETS OFFENDED
17:46:34 6 EASILY, BUT FROM THE VERY BEGINNING, ALL THE WAY
17:46:38 7 BACK AT ORAL ARGUMENT ON JULY 2, MY PARTNER,
17:46:41 8 DAVID BARRETT, MADE THE POINT THAT WE WERE LOOKING
17:46:43 9 FOR SOME WAY TO HOLD THE STATUS QUO.

17:46:46 10 I HAVE WORKED BOTH INDIVIDUALLY WITH
17:46:50 11 MR. FISHER, AND IN CONVERSATIONS WITH
17:46:53 12 MR. CHATTERJEE ON THE LINE WHEN MR. FISHER WAS
17:46:56 13 THERE TO TRY TO REACH SOME KIND OF A, YOU KNOW,
17:46:59 14 ACCOMMODATION WHERE WE COULD GO FORWARD.

17:47:01 15 I HAVE NEVER IN MY LIFE, YOUR HONOR, BEEN
17:47:03 16 IN CONTEMPT OF A COURT ORDER, AND IT'S NOT
17:47:05 17 SOMETHING THAT I'M GOOD AT DOING OR COMFORTABLE AT
17:47:08 18 DOING.

17:47:08 19 BUT I'VE GOT TO FIGURE OUT SOME WAY THAT
17:47:10 20 WE GET A, AN APPEAL TO THE NINTH CIRCUIT.

17:47:14 21 ONE OF THE THINGS THAT I'D LIKE TO
17:47:16 22 BRIEFLY TOUCH ON IS THE PRIOR MOTION BECAUSE I
17:47:18 23 THINK IT DIRECTLY RELATES HERE.

17:47:20 24 I DO BELIEVE MR. CHATTERJEE'S STRATEGY
17:47:24 25 IS, YOU KNOW, IF THE INDIVIDUALS HAVE TO COME IN,

17:47:27 1 THAT THEIR, THEIR ABILITY IS GOING TO BE SO
17:47:33 2 CIRCUMSCRIBED THAT BY THE TIME THEY GET TO THE
17:47:35 3 NINTH CIRCUIT, MR. CHATTERJEE IS GOING TO BE
17:47:38 4 ARGUING THAT THEY SET IT OUT IN THE DISTRICT COURT,
17:47:40 5 SO THEREFORE, THEY'RE NOT ALLOWED TO CHALLENGE ALL
17:47:42 6 THESE ISSUES I'VE BEEN TALKING ABOUT, THIS IDEA OF
17:47:44 7 HOW YOU INTERPRET 29(A), HOW YOU INTERPRET 29(B),
17:47:48 8 THE IDEA OF THE NINTH CIRCUIT LAW AND THE
17:47:50 9 CALIFORNIA REPORTER DECISION ABOUT HOW THE JUDGE IS
17:47:53 10 REQUIRED TO LOOK BEYOND THE FOUR CORNERS OF THE
17:47:56 11 AGREEMENT.

17:47:56 12 MY CONCERN IS, YOU KNOW, HIS ARGUMENT IS
17:47:58 13 GOING -- THEY DON'T EVEN GET TO MAKE THOSE
17:48:01 14 ARGUMENTS. THEY CAN ARGUE ABOUT WHETHER OR NOT THE
17:48:03 15 JUDGMENT APPLIES TO THEM, BUT THEY'RE NOT GOING TO
17:48:05 16 GET TO DO THE UNDERLYING MERITS.

17:48:07 17 AND THEN, IF YOU CAN FIGURE OUT A WAY TO
17:48:09 18 KEEP CONNECTU FROM BEING ABLE TO RAISE THOSE THINGS
17:48:13 19 AT THE NINTH CIRCUIT, HE WILL HAVE WON BY DEFAULT.

17:48:16 20 AND I'M TRYING TO PREVENT THAT, YOUR
17:48:18 21 HONOR. MY CLIENT IS OPEN TO ANYTHING TO PRESERVE A
17:48:21 22 REAL APPEAL TO THE NINTH CIRCUIT WHERE WE CAN RAISE
17:48:24 23 WHAT WE THINK ARE EXTREMELY STRONG LEGAL ARGUMENTS.

17:48:28 24 THAT'S ALL I HAVE, YOUR HONOR.

17:48:29 25 MR. O'SHEA: YOUR HONOR, YOUR HONOR --

17:48:31 1
17:48:32 2
17:48:34 3
17:48:38 4
17:48:38 5
17:48:40 6
17:48:42 7
17:48:43 8
17:48:47 9
17:48:50 10
17:48:52 11
17:48:54 12
17:48:56 13
17:48:58 14
17:49:01 15
17:49:02 16
17:49:05 17
17:49:08 18
17:49:11 19
17:49:11 20
17:49:14 21
17:49:17 22
17:49:18 23
17:49:19 24
17:49:21 25

OH, I'M SORRY.

YOUR HONOR, ON BEHALF OF THE INDIVIDUAL
SHAREHOLDERS, WE JOIN IN THE MOTION FOR A STAY.

THE COURT: THANK YOU.

MR. CHATTERJEE: YOUR HONOR, PAGE 11 OF
YOUR ORDER, THIS IS WHAT YOU SAID. "WITHOUT A
SHOWING BY DEFENDANTS OF A MATERIAL
MISREPRESENTATION OR OMISSION IN THE NEGOTIATIONS,
THE COURT FINDS NO BASIS TO DECLINE ENFORCEMENT."

THAT'S A FACTUAL FINDING, YOUR HONOR.
THERE'S NO -- THERE'S NO LEGAL, SUBSTANTIAL
QUESTION OF LAW THERE ON THE MERITS.

WE CAN GO THROUGH THE REST OF WHAT WE PUT
IN OUR BRIEF, BUT IT'S GETTING LATE IN THE DAY AND
I DON'T WANT TO SPEND TIME ON THAT.

ON THE HARM ISSUE, I'LL JUST POINT YOUR
HONOR TO PAGES 14 AND 15 OF OUR BRIEF. WE CITE ALL
THE CASES RELATED TO THIS MOOTNESS ISSUE WE'RE
DISCUSSING.

WE ARE GROSSLY OVER TIME WITH WHAT YOUR
HONOR HAD ASKED, SO I DON'T WANT TO SPEND MORE TIME
UNLESS THERE'S A QUESTION THE COURT WOULD LIKE US
TO ADDRESS.

THE COURT: NO. I WAS GOING TO PUT A
QUESTION TO MR. FISHER, SINCE I HAVE THE BENEFIT OF

17:49:23 1 HIS PRESENCE, AND THEN I WANT TO TAKE THIS UNDER
17:49:28 2 SUBMISSION AND DECIDE WHAT TO DO.

17:49:32 3 BUT ONE OF THE SUGGESTIONS THAT I'VE HAD
17:49:37 4 IS THAT YOU BE PUT IN A POSITION WHERE YOU'RE
17:49:42 5 OPERATING THIS COMPANY.

17:49:44 6 THAT'S INCONSISTENT WITH WHAT I THINK IS
17:49:47 7 ULTIMATELY TO THE BENEFIT OF THE JUDGMENT THAT'S
17:49:50 8 BEEN ENTERED.

17:49:52 9 BUT IS THAT -- THAT'S A TASK THAT I
17:49:54 10 HAVEN'T ASSIGNED TO YOU AT THIS POINT.

17:49:56 11 WHAT'S YOUR COMMENT ON YOUR WILLINGNESS
17:49:58 12 TO UNDERTAKE THAT SHOULD THE COURT FIND THAT TO BE
17:50:02 13 EFFICACIOUS?

17:50:04 14 MR. FISHER: WELL, BASED UPON
17:50:05 15 MR. UNDERHILL'S REPRESENTATION OF WHAT IT IS, I
17:50:07 16 DON'T HAVE ANY PROBLEM DOING THAT OR, YOU KNOW,
17:50:10 17 PURSUANT TO COURT ORDERS OR WITH THE CONSENT OF THE
17:50:14 18 PARTIES.

17:50:15 19 I THINK THE MAIN POINT THERE, AND IT'S
17:50:17 20 ONE THAT WE'VE COME TO LOGGERHEADS IN TRYING TO
17:50:21 21 REACH AN AGREEMENT, IS OPERATING AN EXISTING
17:50:25 22 COMPANY VERSUS CHANGES OR WHATEVER. THAT'S ONE
17:50:27 23 ELEMENT.

17:50:28 24 BUT THEN HAVING TO DO WITH THE RIGHT TO
17:50:29 25 APPEAL AND HAVING TO DO WITH THE MALPRACTICE CASE,

17:50:32 1 YOU KNOW, THOSE ARE SEPARATE. IT'S MORE OF
17:50:34 2 SEPARATION OF A BUSINESS THAN THE CORPORATE ENTITY.

17:50:38 3 SO, YOU KNOW -- AND WE EXPLORED, OR TRIED
17:50:41 4 TO EXPLORE, SOME WAYS OF, OF DEALING WITH, WITH THE
17:50:44 5 RIGHT TO APPEAL OR WITH THE MALPRACTICE CASE AND WE
17:50:49 6 DIDN'T GET VERY FAR.

17:50:50 7 SO I CAN'T HOLD OUT A WHOLE LOT OF
17:50:53 8 ENCOURAGEMENT ON WAYS TO DEAL WITH THOSE. WE COME
17:50:56 9 TO THE SAME POSITIONS THAT WE ARE IN NOW AS TO
17:50:59 10 WHETHER THERE IS A RIGHT TO APPEAL OR NOT.

17:51:01 11 MR. CHATTERJEE: YOUR HONOR, IF THE
17:51:02 12 COMPANY WERE -- THE FIRST STEP IS OBVIOUSLY TO GET
17:51:05 13 THE SHARES INTO MR. FISHER'S HANDS, AND THAT, THAT
17:51:09 14 NEEDS TO HAPPEN SOMEHOW.

17:51:10 15 BUT IF HE WERE TO OPERATE THE COMPANY, I
17:51:13 16 THINK THERE WOULD STILL BE A PRETTY SUBSTANTIAL
17:51:15 17 BOND NECESSARY BECAUSE WE WOULDN'T BE ABLE TO GET
17:51:18 18 THE VALUE THAT WE'VE PAID FOR.

17:51:20 19 WHETHER IT'S IN HIS HANDS OR IN THEIRS,
17:51:23 20 WE'RE STILL NOT GETTING THE VALUE OF WHAT WE PAID
17:51:25 21 FOR THROUGH THE SETTLEMENT.

17:51:28 22 SO I'M NOT SURE -- FROM THAT PERSPECTIVE,
17:51:32 23 I ALSO SEE A SIGNIFICANT PROBLEM.

17:51:33 24 THE COURT: DID I UNDERSTAND YOU TO SAY
17:51:34 25 THAT CONNECTU HAS INITIATED THIS LITIGATION, THIS

17:51:37 1 MALPRACTICE CASE, OR IS THAT DONE BY THE
17:51:40 2 INDIVIDUALS ONLY?

17:51:41 3 MR. CHATTERJEE: BOTH, YOUR HONOR.

17:51:42 4 MR. O'SHEA CURRENTLY REPRESENTS CONNECTU AGAINST
17:51:45 5 THE -- AGAINST THE QUINN, EMANUEL FIRM.

17:51:47 6 MR. O'SHEA: MAY I SPEAK TO THAT, JUDGE?

17:51:49 7 FIRST OF ALL, IT'S NOT TRUE.

17:51:51 8 WHAT HAPPENED IS QUINN, EMANUEL FILED AN
17:51:53 9 ARBITRATION, YOUR HONOR, AND WE MOVED TO STAY THE
17:51:57 10 ARBITRATION.

17:51:58 11 IT WAS A MOTION. IT'S NOT A -- THERE
17:52:00 12 HASN'T BEEN A MALPRACTICE ACTION FILED AT THIS
17:52:03 13 TIME.

17:52:04 14 JUSTICE LOWE, WHO WE ARGUED THE MOTION IN
17:52:06 15 FRONT OF, WAS VERY CONCERNED ABOUT QUINN, EMANUEL'S
17:52:10 16 TACTICS IN THEIR RETAINER LETTER, WHICH SHORTENS
17:52:13 17 THE TIME LIMITATIONS, THE STATUTE OF LIMITATIONS
17:52:16 18 FOR THE CLIENT, BUT NOT FOR THEM. THEY HAVE A SIX
17:52:18 19 YEAR STATUTE.

17:52:19 20 IT SHORTENS THE ALREADY SHORT STATUTE OF
17:52:23 21 THREE YEARS AGAINST THE LAWYER TO ONE YEAR, AMONG
17:52:25 22 OTHER THINGS THAT ARE IN THEIR RETAINER LETTER.

17:52:27 23 JUSTICE LOWE HAS THAT NOW UNDER
17:52:30 24 ADVISEMENT AND HE'S SAID HE WILL BE QUICK WITH A
17:52:32 25 DECISION.

17:52:33 1 BUT THE STATEMENT IS INACCURATE TO SAY
17:52:35 2 THAT WE BROUGHT AN ACTION. WE DIDN'T FIRE THE
17:52:37 3 FIRST SHOT, JUDGE.

17:52:38 4 IT WAS QUINN, EMANUEL WHO DID IT.

17:52:40 5 WE FILED A MOTION TO STAY THE ARBITRATION
17:52:42 6 BECAUSE WE OFFERED QUINN, EMANUEL -- AND I HAVE
17:52:45 7 E-MAIL EXCHANGES TO SHOW THIS -- WE OFFERED QUINN,
17:52:48 8 EMANUEL A STANDSTILL IF THEY WOULD TOLL THE STATUTE
17:52:51 9 THAT'S CONTAINED IN THEIR RETAINER LETTER THAT
17:52:53 10 WOULD HAVE EXPIRED WHILE THIS APPEAL WAS PENDING.
17:52:55 11 WE WERE VERY CONCERNED ABOUT THAT.

17:52:57 12 THEY REFUSED TO DO THAT, AND THAT'S WHY
17:52:59 13 WE MOVED TO STAY THE ARBITRATION.

17:53:01 14 AS WE STAND HERE, JUDGE, THERE IS NO
17:53:04 15 MALPRACTICE ACTION AGAINST QUINN, EMANUEL.

17:53:06 16 MR. CHATTERJEE: YOUR HONOR --

17:53:07 17 THE COURT: AND THEN I WOULD WISH
17:53:09 18 CONNECTU TO CONFIRM TO ME THAT YOU HAVE FILED, AND
17:53:13 19 THERE IS CURRENTLY PENDING, A NOTICE OF APPEAL FROM
17:53:16 20 THE JUDGMENT.

17:53:16 21 MR. UNDERHILL: THAT IS CORRECT, YOUR
17:53:18 22 HONOR.

17:53:18 23 AND OUR BRIEF, BY THE WAY, IS DUE IN THE
17:53:21 24 NINTH CIRCUIT, I THINK IT'S AUGUST 15. PLEASE
17:53:23 25 DON'T HOLD ME TO THAT, BUT IT'S SOMETHING LIKE

17:53:26 1
17:53:27 2
17:53:29 3
17:53:31 4
17:53:33 5
17:53:34 6
17:53:35 7
17:53:37 8
17:53:39 9
17:53:41 10
17:53:43 11
17:53:45 12
17:53:47 13
17:53:48 14
17:53:50 15
17:53:52 16
17:53:53 17
17:53:55 18
17:53:57 19
17:54:01 20
17:54:04 21
17:54:05 22
17:54:07 23
17:54:10 24
17:54:13 25

THAT.

AND, YOUR HONOR, MAYBE THIS IS A GOOD TIME TO BRING UP THIS EXPEDITED APPEAL THING. I'LL AGREE RIGHT NOW. WE'LL EXPEDITE IT. WE WILL PURSUE IT LIKE CRAZY.

THE COURT: THAT'S NOT SOMETHING THAT WOULD BE BENEFICIAL TO DISCUSS HERE BECAUSE THAT'S NOT SOMETHING THAT THIS COURT COULD ACCEPT OR CONTROL OR DO ANYTHING ABOUT.

MR. UNDERHILL: BUT MR. CHATTERJEE COULD IF HE WAS WILLING TO AGREE TO IT, AND HE DOESN'T.

THE COURT: BUT THIS IS THE IMPROPER FORUM FOR THAT.

MR. UNDERHILL: OF COURSE, YOUR HONOR.

THE COURT: WELL, I'VE BENEFITED FROM THE ARGUMENT.

I ALSO WANT TO KEEP TO THE TIME, SO I'M GOING TO TAKE THIS MATTER UNDER SUBMISSION.

I'LL ASSURE BOTH SIDES, OR ALL THREE SIDES I GUESS NOW, THAT I'LL MAKE A DECISION VERY QUICKLY.

I'M NOT SURE I CAN GET IT OUT -- I'M IN THE MIDDLE OF A CRIMINAL TRIAL AND THE JURY IS OUT, SO THAT'LL OCCUPY ME A LITTLE BIT TOMORROW.

BUT I DO WANT TO BRING THIS TO A QUICK

17:54:16 1 DECISION SO THAT ANY ACTION THAT YOU WANT TO TAKE
17:54:18 2 CAN BE TAKEN.

17:54:19 3 I'VE BEEN TOLD OF ONE DEADLINE THAT HAS
17:54:21 4 PASSED. WHEN IS -- WHEN IS THE NEXT EVENT THAT
17:54:24 5 NEEDS TO TAKE PLACE WITH RESPECT TO THE ORDER THAT
17:54:28 6 I PUT IN PLACE AS TO THE SEQUENCE OF EVENTS TO
17:54:31 7 CARRY OUT THE JUDGMENT?

17:54:32 8 MR. CHATTERJEE: THAT WAS THE --

17:54:33 9 MR. UNDERHILL: I THINK THAT FALLS IN
17:54:34 10 YOUR COURT, YOUR HONOR.

17:54:35 11 WITH RESPECT TO THE PARTIES' SUBMITTED
17:54:37 12 PROPOSED DRAFT RELEASES, I BELIEVE THE COURT'S
17:54:40 13 ORDER SAYS THAT THE COURT WILL THEN TAKE THOSE AND,
17:54:44 14 YOU KNOW, SUBMIT WHAT IS TO BE THE -- WHAT IS
17:54:46 15 SUPPOSED TO BE THE FINAL RELEASE.

17:54:47 16 THE COURT: OKAY. AND THEN THERE WAS
17:54:49 17 SOME MENTION OF A DEFAULT WITH SOMEBODY TO THE
17:54:52 18 SUBMISSION OF STOCK.

17:54:53 19 MR. CHATTERJEE: YES, YOUR HONOR.

17:54:54 20 THERE WERE TWO THINGS THAT WERE DUE ON
17:54:56 21 MONDAY FROM BOTH SETS OF PARTIES. ONE OF THEM WERE
17:54:59 22 THE DISMISSALS OF THE CASES, AS OPPOSED TO THE
17:55:02 23 RELEASES.

17:55:03 24 AND IN OUR CONVERSATIONS WITH MR. FISHER,
17:55:06 25 WE -- AT LEAST MR. FISHER AND I, I DON'T THINK

17:55:08 1 MR. UNDERHILL WAS ON THE PHONE -- DECIDED THAT HE
17:55:11 2 SHOULD BE THE CUSTODIAN OF THEM, RATHER THAN JUST
17:55:13 3 FILING THEM. THE ORDER WASN'T ENTIRELY CLEAR ON
17:55:16 4 THAT POINT.

17:55:16 5 AND THE SECOND WAS THE CONNECTU STOCK WAS
17:55:18 6 SUPPOSED TO BE IN HIS HANDS.

17:55:20 7 WE SUBMITTED EVERYTHING OF THOSE TWO
17:55:22 8 PIECES THAT WERE LEFT.

17:55:24 9 SO FAR CONNECTU AND THE INDIVIDUALS HAVE
17:55:27 10 SUBMITTED NOTHING.

17:55:28 11 MR. UNDERHILL: THAT'S CORRECT, YOUR
17:55:29 12 HONOR.

17:55:30 13 AND IF I MAY SPECIFICALLY SAY SOMETHING
17:55:32 14 ABOUT THE DISMISSALS, PLEASE?

17:55:33 15 THE DISMISSALS ARE FOR TWO ACTIONS.
17:55:36 16 WE'RE ON THE OFFENSE IN MASSACHUSETTS. THAT'S THE
17:55:40 17 MAIN CLAIM. THAT'S THE ONE THAT LED TO THE
17:55:42 18 SETTLEMENT.

17:55:42 19 WE'RE ON THE DEFENSE IN CALIFORNIA.

17:55:45 20 THE COURT'S ORDER HAD TO DO WITH
17:55:49 21 DISMISSALS IN BOTH ACTIONS, AND AGAIN, ALTHOUGH
17:55:50 22 MUCH OF OUR DISCUSSION HERE TODAY IS FOCUSSED ON
17:55:53 23 THE STOCK BEING TRANSFERRED, THERE ARE INCREDIBLY
17:55:56 24 SERIOUS APPELLATE ISSUES ASSOCIATED WITH THE
17:55:59 25 DISMISSALS AS WELL.

17:56:00 1 SPECIFICALLY, IF WE VOLUNTARILY GO TO
17:56:03 2 MASSACHUSETTS OR VOLUNTARILY GO WITH A GUN AT OUR
17:56:08 3 HEAD FROM AN ORDER FROM A CALIFORNIA COURT AND FILE
17:56:11 4 A STIPULATION OF DISMISSAL, AT LEAST SO FAR, YOUR
17:56:14 5 HONOR, I DON'T SEE HOW WE CAN THEN RESURRECT THAT
17:56:18 6 CASE.

17:56:19 7 AND I'M NOT CERTAIN OF THIS, AND MAYBE
17:56:20 8 THERE'S A LEGAL WAY TO DO IT, IF WE GO UP TO THE
17:56:23 9 NINTH CIRCUIT, ARE SUCCESSFUL, WE COME BACK DOWN,
17:56:26 10 THE QUESTION THEN BECOMES, YOU KNOW, WHAT HAPPENS
17:56:28 11 TO OUR OFFENSIVE CLAIMS IF INDEED WE HAVE DISMISSED
17:56:31 12 IN MASSACHUSETTS?

17:56:33 13 THE COURT: WELL, I UNDERSTAND THAT.
17:56:34 14 THAT'S WHY I INCLUDED IN MY JUDGMENT CERTAIN STEPS
17:56:38 15 WHERE YOU'D HAVE TO COME BACK TO THE COURT AND THAT
17:56:40 16 WOULD GIVE ME AN OPPORTUNITY TO DETERMINE WHETHER I
17:56:43 17 SHOULD ORDER THE PARTIES TO TAKE ANOTHER STEP.

17:56:46 18 OF COURSE, THAT IS ALL SUBJECT TO VARIOUS
17:56:49 19 APPEALS OR REQUESTS FOR WRITS DIRECTED TOWARD MY
17:56:53 20 CONDUCT.

17:56:54 21 YOU'RE DOING A GOOD JOB OF ANSWERING MY
17:56:58 22 QUESTIONS. THIS IS GOING A LITTLE BIT BEYOND IT.

17:57:01 23 SO I JUST -- IT DOES SEEM TO ME THAT WHAT
17:57:04 24 I NEED TO DO NOW IS DECIDE WHETHER OR NOT TO GRANT
17:57:06 25 THE MOTION TO STAY AND TO GRANT THIS INTERVENTION.

17:57:09 1 TO THE EXTENT THERE HAS BEEN A DEFAULT,
17:57:12 2 WHEN IT CAME TO MY ATTENTION, I ASSUMED THAT IT WAS
17:57:16 3 IN VIEW OF THESE MOTIONS AND THAT THERE IS NO
17:57:20 4 CONTEMPT OF THE COURT, IT WAS SIMPLY JUST AN EFFORT
17:57:22 5 ON THE PART OF THE PARTIES TO TAKE ADVANTAGE OF
17:57:25 6 HAVING THE COURT HEAR THESE MATTERS BEFORE TAKING
17:57:28 7 ANOTHER STEP, THINKING THAT IT WOULD BE -- THAT
17:57:31 8 THEY MIGHT WIN AND, THEREFORE, NOT BE NECESSARY TO
17:57:35 9 TAKE THE STEP.

17:57:36 10 BUT I'LL TAKE THAT INTO CONSIDERATION IN
17:57:39 11 MAKING MY RULING HERE.

17:57:40 12 MR. CHATTERJEE: YOUR HONOR,
17:57:42 13 RESPECTFULLY, I DISAGREE ON THAT ONE.

17:57:43 14 WE PUT OUR -- WE PUT A HUGE AMOUNT OF
17:57:46 15 CONSIDERATION INTO MR. FISHER'S HANDS ON MONDAY.

17:57:48 16 THE COURT: YES.

17:57:50 17 MR. CHATTERJEE: AND THEY'VE PUT NOTHING.

17:57:51 18 AND THIS ORDER SPECIFICALLY SAID UNLESS
17:57:52 19 OTHERWISE ORDERED BY THE COURT, THEY HAD TO DO IT
17:57:56 20 ON MONDAY.

17:57:56 21 THE COURT: YES.

17:57:56 22 MR. CHATTERJEE: THEY DIDN'T EVEN FILE --

17:57:58 23 THE COURT: YES, I UNDERSTAND.

17:57:59 24 IF THERE -- IF YOU WANT TO, IN DUE
17:58:00 25 COURSE, BRING SOME MATTER BEFORE THE COURT ASKING

17:58:03 1
17:58:04 2
17:58:07 3
17:58:10 4
17:58:12 5
17:58:13 6
17:58:15 7
17:58:17 8
17:58:18 9
17:58:21 10
17:58:23 11
17:58:23 12
17:58:25 13
17:58:26 14
17:58:30 15
17:58:33 16
17:58:35 17
17:58:36 18
17:58:38 19
17:58:39 20
17:58:41 21
17:58:43 22
17:58:45 23
17:58:47 24
17:58:49 25

ME TO HOLD THEM IN CONTEMPT OF THAT, YOU CAN.

BUT I THINK THAT I CAN HANDLE JUST THE,
THE DEFAULT BETWEEN WHATEVER PERIOD OF TIME THAT --
I THINK WE'RE TALKING A MATTER OF DAYS, THEN.

MR. CHATTERJEE: A MATTER OF DAYS.

THE COURT: I CAN HANDLE THAT IN SAYING
"YOU'RE EXCUSED" OR "YOU'RE ORDERED TO DO IT" AND
GIVE ANOTHER DEADLINE THAT WOULD BE REASONABLE
UNDER THE CIRCUMSTANCES.

BUT I'LL TAKE THE MATTER UNDER
SUBMISSION.

THANK YOU ALL.

MR. O'SHEA: AND, YOUR HONOR, JUST ONE --
WE WILL NEED PROBABLY THE 30 DAYS UNDER RULE 4 FOR
GOOD CAUSE SHOWN WHILE THE MATTER IS SUB JUDICE FOR
OUR MOTION TO INTERVENE.

I DON'T KNOW HOW LONG IT'LL TAKE THE
COURT TO ACT ON THAT, BUT I WOULD LIKE TO ALERT THE
COURT THAT --

THE COURT: YOU NEED 30 DAYS FOR WHAT?

MR. O'SHEA: 30 DAYS TO FILE OUR APPEAL,
BECAUSE WE HAVEN'T FILED OUR APPEAL YET BECAUSE THE
INTERVENTION HADN'T BEEN GRANTED.

THE COURT: I'M NOT SURE I CONTROL THAT.

BUT TO THE EXTENT I CONTROL IT, I THOUGHT

17:58:51 1
17:58:56 2
17:58:56 3
17:58:58 4
17:59:00 5
17:59:03 6
17:59:03 7
17:59:04 8
17:59:04 9
17:59:04 10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

YOU SAID 14 DAYS EARLIER. I HEAR YOU NOW TO SAY 30
DAYS.

MR. O'SHEA: I GUESS I THOUGHT I WAS
GOING TO GET A DECISION TODAY, JUDGE, AND I GUESS I
PERHAPS WAS OVERLY OPTIMISTIC.

THE COURT: THANK YOU.

MR. CHATTERJEE: THANK YOU, YOUR HONOR.

MR. UNDERHILL: THANK YOU.

(WHEREUPON, THE EVENING RECESS WAS
TAKEN.)