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Transaction ID 52150852
Case No. 6354-VCN

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, individually and on behalf of all those similarly situated,	:	
Plaintiff,	:	
vs.	:	Civil Action No. 6354-VCN
ERNST VOLGENAU, JOHN W. BARTER, LARRY R. ELLIS, MILES R. GILBURNE, W. ROBERT GRAFTON, WILLIAM T. KEEVAN, MICHAEL R. KLEIN, STANTON D. SLOANE, GAIL R. WILENSKY, SRA INTERNATIONAL, INC., PROVIDENCE EQUITY PARTNERS LLC, STERLING PARENT INC., STERLING MERGER INC. and STERLING HOLDCO INC.,	:	
Defendants.	:	

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Chancery Court
38 The Green
Dover, Delaware
Thursday, April 4, 2013
9:30 a.m.

- - -

BEFORE: HON. JOHN W. NOBLE, VICE CHANCELLOR

- - -

DEFENDANT VOLGENAU'S MOTION FOR SUMMARY JUDGMENT

- - -

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THE COURT: Good morning, everyone. At one time I think I harbored hopes that we might be in the new courtroom today, but it's not ready. One of these days we'll be moving.

We have summary judgment motions. Mr. Dent.

MR. DENT: Good morning, Your Honor. May it please the Court, Arthur Dent for the SRA defendants. Probably you anticipated seeing Brian Ralston at the podium this morning, and he is somewhere in depositions out of town, and he sends his regards.

THE COURT: Tell him that he's missed.

MR. DENT: If I may, Your Honor I'd like to reintroduce to the Court Jim Gillespie, Rob Gilmore and Dana Hill from Kirland & Ellis who are previously admitted in the case.

THE COURT: They are going to explain how they drove Veritas out of the process.

MR. DENT: I think they are about to do that, Your Honor. With Your Honor's permission, Mr. Gillespie will be arguing.

THE COURT: That's fine. Thank you.

MR. GILLESPIE: Thank you, Your Honor.

Your Honor, just for the record, I am Jim Gillespie representing SRA International and the individual defendants other than Doctor Volgenau. We are moving for summary judgment on Counts I, II and what remains of Count IV.

I have some slides, Your Honor, to organize my presentation. May I approach to provide them to the Court?

THE COURT: Yes, you may.

MR. GILLESPIE: Two copies and two copies for the court.

To provide the Court with a bit of a road map on how defendants intend to proceed this morning, Your Honor, I am going to review some of the factual background that's pertinent to all four counts in the complaint, and focus my legal arguments on Counts I and II, the breach of fiduciary duty counts.

My colleague, John Millian, representing Doctor Volgenau, will speak comprehensively to the charter- based claim of Count IV, and my other colleague, Maeve O'Connor, representing Providence Equity Partners will address Count III which is the aiding and abetting count against Providence Equity Partners.

With that, Your Honor, may it please the Court, the SRA defendants are entitled to summary judgment because there is no genuine evidence-based dispute about the material facts, the facts about the actual sale of SRA that prevents this Court from affording the SRA directors business judge rule deference in negotiating and approving SRA's merger with Providence Equity Partners.

The special committee led a multi-round, multi-bid sale process over the course of several months in which Providence, the ultimate winner, was repeatedly rebuffed. Ten potential financial and strategic acquirers were given access to due diligence. Five of those submitted indications of interest. Two final bidders engaged in a bidding war, and the winning bid was the highest any bidder offered to pay which represented a 52 percent premium over SRA's unaffected stock price.

None of the 50 potential bidders that were contacted in the go-shop submitted a topping bid, and 81.3 percent of disinterested minority shareholders, which was 99.7 percent of the minority shares, actually voted approved the merger.

Under Hammons and Frank where there is

a controlling shareholder who roles equity into the surviving entity, business judgment rule review is the applicable standard where the transaction is recommended by a disinterested and independent special committee and approved by stockholders in a non-waivable vote of the majority of all minority stockholders.

THE COURT: What if the stockholders aren't adequately informed?

MR. GILLESPIE: There is a requirement that the stockholders be adequately informed, and we believe, as we have laid out in the papers and I will address, that they were adequately informed here.

THE COURT: As long as you talk about that at some point, I don't want to reorganize your presentation.

MR. GILLESPIE: Sure. But even if this Court looks past the business judgment rule and questions if there is any evidence of unfairness in the SRA sales process or sales price, the SRA defendants are still entitled to summary judgment because the plaintiffs cannot identify disputes in the facts that matter in this case.

The plaintiffs has resorted to

mischaracterizing the evidence and suggesting inferences from the evidence that are wholly unwarranted and unreasonable. In this argument, I will review the material facts related to the sale of SRA that cannot reasonably be disputed; arguments that the plaintiffs make about facts, and how the law applies to the material facts demonstrating that the SRA defendants are entitled to summary judgment.

I first would like to start with the sales process and how it was run by the special committee. The special committee was a group of highly qualified independent disinterested directors, and at the outset, Your Honor, it's important to recognize that the caliber of the individuals that the plaintiffs are asking the Court to disregard --

THE COURT: Aren't you starting a little bit late in your facts? Isn't there a suggestion that Doctor Volgenau had Providence pretty much lined up even before the special committee was formed?

MR. GILLESPIE: Our colleagues focus on that, but the case law is clear that the special committee process is the important process, and as we go through the facts, we'll show that this process in

no way was geared towards Providence. There are plenty of cases, the Hammons case and others, where a controlling shareholder may have met or had preliminary discussions with a potential bidder, but that does not in any way cause the special committee process to be compromised.

In this case, Your Honor, as the facts show, Doctor Volgenau had some discussions with Providence in the first part of 2010, but those didn't lead to a sales process. Rather, the company and the board decided to form a study team at that time of the directors, and they pursued something other than a Providence transaction.

They pursued a potential bid for a division of Lockheed Martin that was EIG, and that $800 million bid would have prevented a Providence transaction. We can get to that, Your Honor, but I think that there is -- clearly, the facts here show that the special committee process was the process by which this company was sold.

Turning to the special committee, the chairman of the special committee was Michael Klein. He was a long-time mergers and acquisition partner at Wilmer, Cutler & Pickering. General Larry Ellis, a

three-star general was on the special committee. John Barter, the former CFO of Allied Signal, Miles Gilmore, the former head of M & A of America Online, and Bob Grafton, the former chairman and CEO of Andersen Worldwide.

The proxy and the papers that we provided the Court provide great detail about the accomplishments of these five distinguished directors. But, on the whole, it should be clear that these gentlemen had shown leadership abilities in their fields prior to coming to the special committee, and they also brought decades of collective experience in mergers and acquisitions and business acumen to this deal.

Now, notably, Your Honor, these directors each had restricted stock awards and stock options in SRA stock that aligned their interests with the shareholders because they were cashed out at the merger at the same price as the shareholders; 31.25.

Together, these directors received somewhat over $3.4 million when the merger closed because of the cashout. If SRA had been sold in the mid-forties as our colleagues suggest, say $43 a share, it should have been -- they would have been

paid an additional $1.2 million as part of this merger process. In other words, plaintiff's theory would mean that these directors left more than a million dollars on the table that they personally could have gotten by approving an unfairly low merger price through an unfair process.

Your Honor, in discussing the material facts that we believe cannot reasonably be disputed, I'll focus on four periods: First, in late October through December 2010 when the special committee was formed and Providence tried to formulate a preemptive bid; second, in January through early March when the special committee opened up its process, the sales process to many other bidders who engaged in an extensive due diligence, but many of whom withdrew because the price for SRA would be too high; third, later in March when Providence and Veritas engaged in a bidding war after submitting bids in the middle of March, and, finally, after the deal was executed when no bidders topped the 31.25 sales price in the go-shop process and the shareholders overwhelmingly approved the merger.

Now, as the Court noted, before we turn to the special committee formation, the

plaintiff's focus in this case has been what has happened prior to the formation of the special committee, and then they essentially ignore what went on during the process that SRA was sold, and then focus on events after the merger agreement was signed in the summer of 2011.

But we believe that the Court, and the material undisputed facts that entitle us to summary judgment, can be focused in this time period when the sales process occurred. On October 28th, Doctor Volgenau invited Providence to give a presentation to that SRA study team I referenced earlier that had been considering the strategic options of SRA that had pursued an EIG bid to the exclusion of a Providence transaction, but the bid had come up short.

At that time, they found out in October that the EIG transaction wasn't going to go through. Their testimony is unrebutted in the record that if the transaction had gotten through with EIG, there would be no Providence deal, the transaction would be too large, the company would become too large for Providence to pursue.

So the Providence group came to the study team meeting and gave a preliminary indication

of interest that it would acquire SRA for up to $28 a share subject to due diligence, of course, but they didn't make an offer. It was a preliminary indication of interest.

In response to that presentation, the SRA board formed a special committee which retained legal and financial advisors; Kirkland & Ellis and Houlihan Lokey. On December 1st, while the special committee is getting up and running, hiring advisors, SRA received an unsolicited offer from a British government contractor called Serco in the range of $29 to $31 a share.

The special committee responded to that offer by letting Serco know that the company had formed a special committee, and SRA was considering its strategic options. But it also used that Serco offer to attempt to get Providence to raise their indication of interest because they knew they were going to come and give a more firm indication of interest at the end of the month.

So what happened was Mr. Klein and others, Mr. Klein at this point, went to Providence and Miss Richardson, the point person at Providence who was leading their team, and let her know that the

company had received a strategic offer, a bidder indication of interest where both ends of the range were above the preliminary 28 price that plaintiffs had offered, or that Providence had offered.

However, that attempt to drive up Providence didn't work, because, in late December, Providence came back and gave a firmer indication of interest at 27.25.

Now, the special committee was disappointed with that indication of interest at 27.25. In response to that, it opened up its process to an additional five financial bidders and one strategic bidder. The special committee decided initially to focus mostly, but not entirely, on financial bidders because they were concerned about leakage of confidential information that it would share with competitors.

THE COURT: How do you balance the concern about sharing confidential information against the fact that strategic bidders for something like this were likely to pay more?

MR. GILLESPIE: Well, I guess a couple of other points is the premise of that is not what they were getting advice about both from their board

members and from their investment banker. Initially, at the time when they had this mix of five bidders and one strategic, the advice they had gotten from Houlihan Lokey at that time was that in several recent auctions, financial bidders had outbid strategics.

In fact, Mr. Gilburne testified at his deposition that at this point in early January that he felt, and others felt, that it would be more logical for SRA to be bought by a financial buyer than a strategic buyer. The reason for that was SRA was struggling.

As Mr. Gilburne testifies, they were losing re-competes and contracts. They were losing turnover. They were having higher than average turnover, and they simply weren't executing well. So that they were in a part of the value chain that were commoditizing. They were trying to get out of that.

At that point in the process, they figured they would broaden it out, focus on financial bidders but have one strategic in. As the Court knows, the process was later broadened in February to include even more strategics and focus the process broadening on strategics.

Now, also during January, Your Honor,

another important thing happens. The market starts to speculate that SRA may be in play and the stock rises all through January. By late January, there is an inaccurate report that Serco, a strategic, had offered $2 billion; $35 a share.

Now, Serco had made an unsolicited offer. It was just at a significantly lower amount. But, again, the public is being told that a strategic is looking at SRA. So, in response to this market speculation, the special committee, working with Houlihan Lokey, puts out a press release, and in that press release, SRA announces to the world that Houlihan Lokey has been retained because there had been a series of inquiries regarding the company's willingness to consider offers.

Now, put simply, Your Honor, the market is signalled that SRA is considering offers; financial, strategics. They all have that information. If they wanted to come in, they have that notice.

Now, the next thing that happens, Your Honor, as I alluded to, is as January turns to February, the special committee broadens its process again, this time focusing on strategics. And so four

strategic bidders are coming in, and one more financial bidder is being invited into the process.

In total, Your Honor, during the sales process, SRA had contact with 31 total potential bidders; some solicited, some not solicited. So the process enters the due diligence phase in February.

Four strategic bidders, CGI, Boeing, Serco and L-3 and 6, financial bidders Veritas, Carlyle, Hellman & Friedman, Bain, GTCR and Providence sign confidentiality agreements and receive access to an electronic data room.

That due diligence process is quite extensive as this slide illustrates. This is from a March 21 Houlihan presentation to the special committee. Boeing, for example, obviously a prime strategic, devoted a massive amount of resources to this process. They had 16 diligence calls, seven diligence meetings, 341 diligence requests, and had 119 company and advisor personnel accessing the data room. They hired investment bankers, law firms to look at this.

Now, as the diligence process continued, and it's an expensive, time-consuming resource, intensive process, the special committee

received pressure from Providence and other bidders that they wanted to enter into negotiations exclusively with SRA. And the SRA special committee denied all such requests.

That discussion is in a February -- memorialized in the February 21 special committee minutes. At that meeting, the lead investment banker, Miss Antenucci of Houlihan Lokey, summarized that there were five indications of interest: CGI, Boeing Veritas, Carlyle and Providence, and that those indications of interest were between 29 and $33 a share.

The analysis of Houlihan Lokey and the special committee was none of those were distinguished by being a preemptive bid. So the fact is that every request for exclusivity was something that the special committee was not interested in granting because they were distinguished. They were not preemptive enough.

Now, in particular, Miss Antenucci highlighted the fact that Providence had submitted an exploding offer that was contingent on receiving exclusivity.

Now, this wasn't the first time that Providence had asked for exclusivity in the process.

In early December 2010 when the initial up to $28 a share preliminary indication of interest from Providence is on the table, Miss Richardson approached Mr. Klein and asked for exclusivity to pursue that transaction.

As the testimony is undisputed, Mr. Klein said "No, the special committee will not give you exclusivity." In fact Mr. Klein testified that this request in December was the first of many, all of which were turned down.

Then, in late December, there was another request for exclusivity in conjunction with Providence's disappointing bid of 27.25. And the special committee, as I related, and it's undisputed, did not think that the 27.25 offer was very good.

So what Mr. Klein said when he denied exclusivity in late December to Providence is that he wanted Providence to feel that they had "just failed to meet the standard that was necessary to commence the process that she," meaning Miss Richardson, on behalf of Providence "wanted. She had the nerve to lower her price, and again, ask us for exclusivity."

So Providence is not getting their way in this process at all. They're being rebuffed

because the special committee believes they're not bidding high enough in order to get a process of exclusivity that they want.

Now, turning back to late February when the third time comes that Providence asks for exclusivity is rebuffed, the so-called exploding offer, what happens? Providence withdraws from the auction process.

Miss Antenucci records in her email of February 23, 2011 that Miss Richardson went back and forth but ultimately decided that without a clear path to exclusivity, Providence would not compete, continue to participate in this process.

So the due diligence of Providence stopped by Houlihan Lokey. Miss Richardson put it even clearer in her deposition testimony. In late December, Providence withdrew from the process because they thought they were being used, that they were wasting their time trying to buy SRA because the special committee was pushing them off and using them to try to get, in Miss Richardson's words, higher bids from others.

Now, during this time frame in late February into March, Your Honor, it isn't only that

Providence is withdrawing from the process. As this slide shows from a Houlihan Lokey presentation in March, many bidders that have come in and done some or a fair amount of due diligence, management meetings, accessing the data room, they're leaving the process because they think SRA's expected valuation is going to be too high. The margins and the growth aren't there in a government contracting environment that is shrinking and contracting with the federal spending cuts.

Some examples, Your Honor. The private equity firm GTCR made clear that once it had a meeting with SRA's management and got a better understanding of the business components and drivers of growth for the company, they didn't think that they were going to be buyers of the premium where the market is today.

So the GTCR rep tells Houlihan Lokey "We just don't see getting to the growth multiples likely to win the day given what we've learned about the business." So they're not willing to participate because of SRA's uncertain business prospects.

The Canadian strategic CGI also withdrew in this time period from the process. CGI

had recently acquired another U.S. government contracting firm, Stanley. They were integrating that acquisition. They were interested in SRA, but as the government specs and service sector was shrinking and the prospect was for more shrinking because of decreases in federal government spending, SRA decided not to pursue -- CGI decided not to pursue SRA.

Then, by mid-March, Boeing came to the same conclusion. Boeing said, "We've done our financial assessment and we just don't have confidence in the ability to generate an attractive return by purchasing SRA at the prices that were being talked about." And Boeing's concerns were about the risks in the government service industry that drove their decision to withdraw from the process.

That concern, Your Honor, is well founded. As we've cited in our papers, and I'm sure the Court is aware just from reading from the press, the federal government spending has been cut substantially. Federal government contractors are suffering. The country and Congress is under sequester.

So the concerns about the down turn that led to the withdrawal of these multiple bidders

were well founded and materialized.

Now, during this time frame, Your Honor, when the due diligence process is going, Providence and Veritas and all the other bidders are going through their due diligence process. SRA and the special committee need to get bids in.

So, in late February, they send out a bid package, and they send out a bid package requesting bids by March 18th to the five entities that had given indications of interest, even though some of those entities such as Providence had withdrawn from the process.

Now, during that time, the bid packages went out, and March 18th rolls around, and SRA receives only one bid from Providence at $30 a share. So SRA, at that point, in order to keep a competitive process, is told by Veritas that Veritas is going to withdraw, but SRA and the special committee asked Veritas to come into the process notwithstanding their intent to withdraw and gives them a two-day extension to March 20th to submit a bid.

So SRA was confronted with Veritas saying "We're not going to submit a bid on the bid

deadline of March 18th." They contact SRA and ask them to come back in the process and submit a bid, which they do two days after the deadline, but they were granted an extension.

Now, the reason for granting the extension, as reflected in the proxy, is that the special committee wanted to keep a competitive bidding process going. With only a Providence bid, there wouldn't have been a competitive bidding process.

Now, when the $30 a share offers from both Providence and Veritas are in, they enter into discussions with Doctor Volgenau about structuring their bid. Initially, Veritas discusses with Doctor Volgenau having a rollover of about $100 million.

Now, if they try to escalate their bid, they indicate -- Veritas indicates that Doctor Volgenau would raise his rollover from 100 to $150 million and they would be able to bid higher. Doctor Volgenau agrees to this.

Providence asks Doctor Volgenau to roll over $150 million of his SRA shares, but in exchange for ultimately $120 million of rollover stock plus a $30 million contingent non-recourse note. Doctor Volgenau again agreed to do that.

It's undisputed that Doctor Volgenau's agreement to both Veritas and Providence's requests allowed both Providence and Veritas to increase their cash offers to the shareholders. As the process wears on during the latter stage of March, on March 30, Veritas eventually bids 31.25 a share with the request for exclusivity. The special committee granted that request until the next day.

But SRA and Veritas were not able to reach a deal during this exclusive discussion point. During this time, my firm, Kirland & Ellis, the advisor to the special committee, determined that Veritas did not have the consents of its partners to commit capital to the transaction. And the unrebutted testimony of several SRA directors is that this financing issue was a significant concern to the company and to the special committee. This concern was communicated to Veritas.

After the period of exclusivity ended Providence submitted an offer of 31.25. So at that point, Providence and Veritas had 31.25 bids on the table. The special committee directs Houlihan Lokey to advise both to submit their highest and best offer at that point.

Veritas, however, does not bid further. It withdraws and makes a decision it does not want to continue in the auction. At that point, the only offer left is Providence. The special committee accepts the Providence offer of 31.25 which was the highest best and only offer left for the special committee to accept.

So, on March 31st, the board approves the merger. The merger agreement is signed and we head to the go-shop and shareholder approval period. During the 30-day go-shop period that followed, some 50 potential bidders were contacted. None submitted a topping bid.

Plaintiff withdrew its motion for preliminary injunction thereafter and the shareholder vote occurred. SRA's shareholders overwhelmingly approved this deal on July 15th, 2011. It wasn't just SRA shareholders that approved this merger. Many independent and informed observers thought that this merger was a very, very good deal for the shareholders. ISS, Glass Lewis, the proxy services, recommended it. 97 percent of analysts believed that this merger presented a fair price or better to the shareholders.

As we note in the slide, Your Honor, overwhelming categories of each of the stockholders approved it. 94.7 percent of all outstanding votes approve. 81.3 percent of total outstanding disinterested shares approve. 99.7 percent of disinterested shares that voted approved of the deal.

Now, it isn't a mystery why this merger received such uniform support. As we discussed in our papers, the Muoio v. Hallmark Entertainment case has two very important lessons, we believe, for this case. The first is that real world valuations, especially by people in the third party buyers bidding process, are the best source of economic information about the value of the company.

And second, when a litigation expert says a company was sold at a massive discount but the most knowledgeable and sophisticated buyers in the industry decided not to submit a topping bid, that expert opinion can't be credited in the face of overwhelming real world valuation evidence.

How does that apply here? Well, Your Honor, we've excerpted from one of our -- from Doctor Cornell, one of our experts reports, an exhibit showing why 31.25 was such a good deal. The purple

ranges represent real world trading prices both before the speculation started about a merger and the run up to the merger and after. In the gold bars it represents the conduct of bidders. All of this shows that the 31.25 price was a very, very good deal for shareholders.

Now, the plaintiff's expert says that SRA was actually worth ten to $14 a share more. That means that SRA was supposedly sold at a discount of 600 million to $840 million. But here are the companies that passed on making a topping bid of such a supposedly massively undervalued company; strategic bidders who were contacted in the go-shop, asked to submit a bid, the most sophisticated government contractors in the world, financial sponsors, the most sophisticated financial entities who know a good deal when they see it. None of them attempted to take advantage of a situation where a company was being sold at a massive discount.

THE COURT: But they all realized that if Doctor Volgenau wanted Providence to be the ultimate acquirer, they had no hope of prevailing.

MR. GILLESPIE: Well, I don't know that they necessarily realized that, Your Honor.

Doctor Volgenau did have a controlling share, but there is no evidence in the record that these potential topping bid financial sponsors or strategics didn't believe they should take the chance, investigate it.

As the case law makes clear, I think it's the Chancellor's opinion that entities like Goldman Sachs or Raytheon, they're not nervous school children, middle schoolers unafraid to make an offer or to pursue what is a clearly economically attractive proposition to at least see if they could do a deal.

There's strategics who pursued before the transaction. The fact that there was no attempt to come in, our view, Your Honor, is that clearly shows that there wasn't a massive discount here. That's the reason why the strategics didn't come in, and that's what the case law supports when that activity does not occur; the real world economic evidence that Muoio endorses that this deal was fairly priced based on the actions of the potential bidders in the go-shop period.

Now, the plaintiffs would have the Court believe that this auction and go-shop process that I've just reviewed was all a sham, it was a

farce.

Plaintiff's theory of the case is that Doctor Volgenau, as the Court suggested, controlled the sales process to reach a supposedly preordained deal for Providence. Now, in this elaborate theory, it's a conspiracy theory that Doctor Volgenau was able to accomplish this because Michael Klein, chairman of the special committee, was complicit, and the four other members of the special committee were compliant, and they allowed Mr. Klein just to run a one-man committee and do whatever he wanted.

As best as we can tell, the plaintiff's principal argument as to why Mr. Klein would risk personal liability and professional reputation was to increase charitable contributions that may on1 day be given to a charity such as the Shakespeare Theater Company.

The idea is that Mr. Klein, who would have stood to gain hundreds of thousands of dollars if SRA -- personally would have gained hundreds of thousands of dollars if SRA was sold in the range plaintiffs suggest it should have been sold, somehow or other was motivated just to throw that all away to do some compromise in the auction process in order to

get some charitable donations.

That's the theory. But plaintiffs cannot offer evidence to support these wild claims. In the Western National case, it is a useful reminder that at summary judgment, the plaintiff must affirmatively state facts, not guesses, not innuendo, not speculation, not unreasonable inferences. But that's how plaintiff is attempting to bridge the gap between the evidence and their litigation theories. It's guesses. It's innuendo. It's speculation.

Now, our reply briefs, Your Honor, review at length the opposition distortion of the record evidence. I'd like to cite a few examples. The first example I'd like to review is the way the plaintiffs, in the opposition, characterize the handling of the Serco bid.

The plaintiff's opposition alleges that Mr. Klein drove the transaction toward Providence by keeping Miss Richardson informed when Serco approached. The plaintiff's theory is that Mr. Klein somehow was secretly helping Providence by tipping Serco.

Plaintiff cites this email as evidence for this theory. This email is the one I referenced

before, Your Honor, where Mr. Klein informed Miss Richardson that an unidentified strategic buyer prospect had approached SRA with an interest in acquiring the company where the price range was going to be -- both ends of which were above the number she had mentioned, and without any financing contingency which obviously was important.

So Mr. Klein, the plaintiffs say, was tipping. But if you look at this email, it reveals that this claim is untenable. Mr. Klein was pushing Providence to bid more, not trying to get them to bid less. Mr. Klein wasn't doing this secretly without the knowledge of the special committee which is what the allegation is.

Mr. Klein, through this contemp-oraneous transmittal email sends, on December 9th, that email to Miss Richardson, and then he immediately forwards the email he had just sent to Miss Richardson on to the other members of the special committee.

That transmittal email reflects that they had discussed this strategy of trying to use the Serco bid to push Providence higher amongst the special committee. It wasn't some sort of secret Klein one-man special committee. This was a strategic

move that the special committee deliberated over and endorsed.

So after receiving that email, two members of the special committee, Mr. Barter and Mr. Ellis, General Ellis, make clear that this was a very good move that they had agreed with. Mr. Klein wasn't alone among the special committee members trying to use that Serco bid to get Providence to bid higher.

Mr. Gilburne, a fourth member of the special committee weighing in on this, in early January was approached by Dick Parsons, the former CEO of Time Warner, and Mr. Parson was, at that point, a representative of Providence, and he approached Mr. Gilburne about trying to enter into exclusive negotiations with the bid they had on the table at that time, 27.25.

Mr. Gilburne recounts in an email that he sends to Mr. Parson that he had shared the conversation with the special committee, and the special committee's message that they were sending back was that the 27.25 bid was not even arguably preemptive, telling Providence that their bid was too low. And one reason why it was too low, the example

Mr. Gilburne gives, is that they have received a communication -- SRA has received a communication from a credible party with an opening bid north of $30. That's the Serco bid.

So the idea that the handling of the Serco bid suggests that Mr. Klein was secretly tipping and trying to help Providence is unsustainable. It's impeached by this evidence. The entire special committee tried to use this Serco bid as a way to cause Providence to bid higher.

The next example I'd like to review, Your Honor, is the plaintiff's claims about Doctor Volgenau's interactions with strategic bidders. The gravamen of the plaintiff's complaint is that Doctor Volgenau, in unmonitored meetings with strategics during the sales process, steered away or drove away strategic buyers because they were disfavored.

What does the evidence show? Well, the plaintiffs never went to Boeing or to CGI, the companies that had the meetings with Doctor Volgenau and tried to develop evidence about what happened; "were you driven away by Doctor Volgenau."

Well, we did. As the Court knows, Boeing and CGI submitted affidavits on summary

judgment that completely refute the plaintiff's claim that these strategics were driven away by Doctor Volgenau. These strategics have testified that Doctor Volgenau's meetings with them were productive, they were constructive, and they in no way prevented them from bidding on SRA.

What prevented them from bidding on SRA, as we reviewed, is that they just didn't believe SRA was going to be worth the price that was going to be asked for in the auction.

The last point I'd like to make, Your Honor, about plaintiff's mischaracterization of the sales process evidence is that plaintiffs have characterized the sales process as being designed to deliver the deal to Providence, the overarching claim obviously.

There are allegations, and the opposition is that the whole process was geared to deliver a deal to Doctor Volgenau. Well, what does the evidence say? The evidence cannot be read to support that. It's undisputed.

First off, as we discussed early on, Your Honor, even before the sales process began, Providence did approach Doctor Volgenau, as other

potential suitors do, and commonly do with a CEO and founder, in the first half of 2010. SRA formed a study team. They didn't engage in a discussion with Providence at that point to do a deal. They said, "Okay, we hear what you're saying."

Doctor Volgenau reported to the board, and a study team was formed to consider strategic options. Over the summer of 2010, that study team decides "We're not going to do a deal with Providence or anybody else. We're going to pursue a transformative acquisition at a $800 million bid with EIG in an attempt to get out of that part of the value chain that Mr. Gilburne was concerned about."

But that bid didn't succeed. So, by October, when the bid doesn't succeed, that's when the special committee is formed to deal with the potential sale.

Second, SRA announced that it was reviewing acquisition proposals to the world. We've reviewed the press release from late January 2011 where SRA announced Houlihan Lokey was retained to provide advice about potential offers.

So if there was some sort of fix in for Providence, and they didn't want potential bidders

coming in and interloping, they wouldn't have announced to the world that Houlihan Lokey was providing them advice about potential transactions and offers being made.

SRA repeatedly told Providence that its bid was too low. Several times during this process, it pushed back against Providence. SRA, as we reviewed, twice expanded the sales process after Providence's bids could not be regarded as preemptive both in early January and early February. And that expansion was for both strategics and financials.

As we reviewed, SRA repeatedly refused Providence requests for exclusivity, and that resulted in Providence withdrawing from the auction process in February of 2011.

Doctor Volgenau increased his roll-over to keep Veritas bidding. So the idea is Doctor Volgenau only wants to do a Providence bid, but he agreed to increase his rollover from 100 to 150 million to allow Providence to stay in this process. The testimony is unrebutted that that's what happened.

The testimony is also unrebutted -- we don't have this up here because we ran out of space

with all the evidence, but that on March 18th, Veritas withdrew from the bidding process because it didn't want to submit a bid by the bid deadline, but the special committee, in order to keep a competitive process going, gave them a two-day extension.

If they were trying to drive Veritas out of the process, on March 18th they had the perfect opportunity because Veritas withdrew. But the special committee said, "No, we'll give you two extra days because we want somebody bidding against Providence." They gave them two extra days and a new bid came in which allowed that bidding war.

While we're talking about the bidding war, the overarching point, Your Honor, is Providence's bid, during the sales process, went from 27.25 a share to 31.25 a share increasing the value, increasing the cash to SRA stockholders by $234 million. If the fix was in to Providence, the shareholders wouldn't have got that money. This is a robust, competitive process.

The last point, Your Honor, is SRA conducted a go-shop with some 50 potential bidders, so even when Providence signed up their deal they were subject to a go-shop.

THE COURT: What do I do with the email from Mr. McKeon to Doctor Volgenau which is highly critical of the process and the unfairness of it and why he felt that he was driven out? It's Exhibit 53 to Mr. Naylor's affidavit.

I was a little surprised you didn't put that up there just to talk about it, but you know what I'm asking about.

MR. GILLESPIE: I know. On that email, a couple of points. One is it's a sour grapes email. They had been in an exclusive negotiation period where they wanted to close a bid at 31.25. That bid -- they weren't successful in that.

The email is vague about what he thinks was wrong in the process. But it doesn't show that he was driven out, or Veritas was driven out, because the undisputed evidence is that Veritas was asked to submit another bid. Veritas chose to leave rather than submit another bid.

Providence did submit another bid of 31.25. So the shareholders got the benefit of the 31.25 increase. But Mr. McKeon wasn't driven out of the process. He chose to leave. There is no evidence in the record that if he had not left that Veritas

either, A, would have bid higher -- in fact, the evidence is to the contrary. They didn't want to bid more. They would have addressed their financing contingency that was of concern to the board.

Again, if the special committee was trying to drive Providence out of this process, they would have said -- Veritas, I'm sorry, out of this process, on March 18th they had the perfect opportunity because Veritas withdrew without submitting a bid by the deadline, but the special committee gave them a two-day extension so that they could bid and continue on the bidding process.

That's undisputed, Your Honor. It's in the proxy, and there's no contrary evidence. So on that record, Your Honor, I don't think that there's a genuine issue of material fact that somehow or other the handling of Veritas corrupted this process.

Now, turning to how the law applies to material facts, it's clear that business judgment rule review is warranted here. Now, the Court is quite familiar, I know, with the Hammons and Frank standards for applying the business judgment rule in this circumstances with the controlling shareholder.

Plaintiff has claimed that the

business judgment rule can't apply under Hammons and Frank for three reasons. The first is the plaintiff argues that the rule of Hammons does not apply because Doctor Volgenau supposedly stood on both sides of the transaction. But the plaintiff does not contend that Doctor Volgenau had a financial interest in Providence.

Rather, the plaintiff contends that Doctor Volgenau can be considered affiliated with Providence because the plaintiff says he demonstrated a preference for Providence. There's no legal support for this position. Under Hammons, because Doctor Volgenau did not have a financial interest in Providence, he's not considered affiliated with Providence.

Second, plaintiff theorizes that the Court cannot apply the business judgment rule because Doctor Volgenau and my client dominated and controlled the special committee. Now, the plaintiff hasn't identified any evidence that Doctor Volgenau controlled the special committee, so the plaintiff has to hang its hat on the theory that Mr. Klein had some secret interest in pleasing Doctor Volgenau by delivering a Providence deal.

This theory fails in all respects. First off, Mr. Klein wasn't conflicted. He was motivated both economically and as a matter of professional reputation, potential personal liability to obtain the best price for shareholders.

Plaintiffs say that it was a secret self interest. That just means they don't have any evidence of what that is. The most the plaintiffs can point to is that post hoc request for additional charitable contributions and recognition of Mr. Klein's work, but that didn't make him conflicted. In any event, the request wasn't granted.

Now, turning to the other special committee members, the plaintiffs don't question the independence of the majority of the special committee. So to discount approval of the special committee process and the special committee approval, plaintiff must show not only that Mr. Klein was conflicted but Mr. Klein dominated the special committee to deliver a deal to Providence in order to do Doctor Volgenau's bidding; that Mr. Klein dominated the special committee to deliver a Providence deal to Doctor Volgenau.

The indisputable evidence that we just

reviewed shows that there was no such dominance or control, no such fix in for Providence on the deal.

Lastly, the plaintiffs say the Court can't apply the business judgment rule because the shareholder vote was not informed by the proxy. Defendants' briefs have fully addressed these in our reply point by point.

There's two overarching points I have to emphasize here, Your Honor, and I'm happy to answer any questions the Court may have. As an initial matter, the fact that plaintiff's proxy claims are make weight is apparent by the litigation. All the disclosure points that the plaintiffs raise now -- all the disclosure points in the operative complaint are mooted by the shareholder vote.

Much of the information plaintiff now says should have been included in the proxy was available to plaintiffs prior to the shareholder vote: The first half of 2010 SRA Providence meetings, the Veritas withdrawal from the bidding.

If plaintiff thought the additional information was necessary for shareholders to vote on the merger, surely it should have raised that at the preliminary injunction phase or at least amended their

complaint. Instead, the plaintiffs chose to raise these disclosure theories in an opposition brief as a last ditch attempt to avoid summary judgment.

In any event, the opposition identifies nothing that is missing from the proxy that is inconsistent with or otherwise significantly differing from what has been disclosed in the proxy. And under Skeen, as the Court knows, that's the standard for material omission.

For these reasons, the defendants are entitled to summary judgment on Counts I and II. But even if the Court looks beyond business judgment review and examines the fairness of the transaction, the Court can grant summary judgment under that standard.

First, Your Honor, there's no evidence that the process was unfair. There was an independent special committee that was advised by experienced, outside consultants. The sales process, as we reviewed, was months long involving many strategic and financial bidders, and there's a multi-round auction that was made possible by the special committee's effort to bring Veritas back into the auction process after it withdrew.

There's no evidence that Doctor Volgenau dominated the special committee process. And there was a post-signing go-shop. And there was overwhelming support for the merger by minority stockholders.

There's also no evidence that the price was unfair. We reviewed these points. It was a 52.8 percent premium over the stock price before it was affected by merger discussions. It was a 31.25 share price that was the highest price any bidder offered. In the real world valuations, third party bidding conduct, trader conduct, it demonstrates the fairness of this transaction and this price.

Finally, Your Honor, turning to Count IV, my colleague Mr. Millian will address the count more in detail, but there are two points I'd like to emphasize. First, the SRA calculated Doctor Volgenau's rollover and promissory note with Providence with reference to the same 31.25 share price that the shareholders received in the cashout. Nothing more was required of SRA or its directors to comply with the charter.

Second, the record evidence demonstrates Doctor Volgenau's willingness to take

non-cash consideration, roll over the contingent note, and increase the price that the minority shareholders received for the SRA shares.

Unless the Court has any questions, that concludes my remarks.

THE COURT: Thank you. I have no further questions at this point.

MR. TEKLITS: Good morning, Your Honor. On behalf of Doctor Volgenau, I just want to reintroduce to the Court John Millian from the Gibson Dunn office in Washington D.C. Mr. Millian will make remarks on behalf of Doctor Volgenau today.

THE COURT: Good morning.

MR. MILLIAN: Good morning, Your Honor. I'm going to begin by apologizing in advance if you see me perspiring this morning. I'm taking some medication for a back problem. It is a side effect.

THE COURT: My condolences. If the back doesn't feel good, nothing else much matters.

MR. MILLIAN: There is that, there's no question.

I will, as just mentioned, Your Honor -- first of all, John Millian representing

Doctor Volgenau. I'm going to focus on the charter claim advanced by plaintiffs which is Count IV of the second amended complaint, and then probably offer a couple of kind of overarching comments as well at the end of my remarks.

First of all, let me address -- before I turn to that, let me address a point that the Court raised in one of its earlier questions, and that concerns the time period to focus on here. You said, well, what about all the discussions that took place with Providence before the special committee process began, why aren't we focusing on that.

Certainly you will hear a great deal about that from the plaintiffs. But let me submit, if I may, Your Honor, what all of that adds up to. What does it show. And then what is the significance of that.

What the evidence shows -- first of all, I think the plaintiffs significantly overstate some of the elements of the communications between Doctor Volgenau and Providence, and if you go back and look at the actual underlying evidence that they cite, in many cases it does not really support the factual proposition in their briefs.

But honestly, having said that, it's really more about a dispute at the margins, I think, than the fundamental question of the significance of those communications.

So what happened? Providence approached Doctor Volgenau repeatedly. They got him interested in the possibility of a sale to Providence. Plainly, they got him interested in that idea. They courted him. They went out and they got former SRA employees to advise them and help them figure out the best way to approach Doctor Volgenau, and there's no question that they courted him and they got him interested.

But Doctor Volgenau did not march in to the board and say "Here's a deal I have with Providence. I would like you to approve it."

What, in fact, happened was initially SRA went off in a different direction and pursued an acquisition of EIG that it recognized, if it was successful in that venture, meant there would not be any transaction with Providence or anybody else, at least in the short term.

And Doctor Volgenau's testimony was that he thought it would be at least a year after any

such acquisition before the company could consider another transaction.

The EIG effort was not successful. SRA was outbid. Providence came back and again began courting Doctor Volgenau. As I mentioned before, they had gotten him interested before. They got him interested again, and he essentially introduced Providence to SRA's board.

Providence made a presentation, and a decision was made, based in part on that, and in part on other considerations that are laid out in the briefs, to form a special committee and consider strategic options of which one would be a possible sale to Providence.

And at that point, Doctor Volgenau stepped back. And the evidence, his testimony -- and he talks about it in his book, is that he was informed and understood at that point that by turning over this process to the special committee, he was giving up his own role in negotiating a transaction.

At the same time, he understood he always had veto power at the end of the day as controlling shareholder, but he turned over the process to the special committee.

THE COURT: But didn't he, I hate the phraseology, stick his nose under the tent from time to time when he probably shouldn't have?

MR. MILLIAN: I don't agree with that. Certainly there were a handful of places where he had some involvement in the process, but they were very limited. By and large, they were instances where his involvement was needed.

And there's no indication at the end of the day that it really affected the process. He met with prospective acquirers because they asked to meet with him. That's the testimony. He didn't reach out to them and ask to meet with them. They said, as part of their diligence process, they wanted to talk to him. And he agreed to meet with them.

The only evidence in the record about those meetings is that he was courteous, forthcoming and positive in those meetings. And Doctor Volgenau's own testimony -- that's the affidavits that have been submitted by the SRA defendants that make that point.

Doctor Volgenau's own testimony is that while he had had great concern about what could happen to SRA if it was sold to a "sausage factory," that he came around after having talked to some of

these companies. And at least some of them were perfectly acceptable to him.

So it is not the case that the bidding process was technically, or, as a practical matter, limited only to financial buyers. And there were strategic buyers that were contacted. There were strategic buyers who came in.

As Mr. Gillespie indicated, Boeing put in an enormous amount of work on due diligence. They had 80, 100 people or something accessing information in the data room. They conducted many, many meetings apart from their discussion with Doctor Volgenau. And their decision ultimately not to move forward had nothing to do with, as far as the record is concerned, and as far as any of us are aware, had nothing to do with the concern that Doctor Volgenau was unwilling to sell to them.

If I may, let me go back to Providence again for a moment. When things were turned over to the special committee, it's important to understand the discussions with Providence were still at a very early stage. No specifics had really been discussed. No price was on the table. Doctor Volgenau didn't take a transaction to the board and say "I want you to

approve this."

All you have is a suitor came and romanced the majority shareholder, got him interested, and then the process was turned over to a special committee. I submit, Your Honor, that it is not the law, and it cannot be the law, that with that story, the analysis is any different when it comes to the special committee process and whether it was conducted appropriately, whether the robust procedural protections were in place.

That story is no different because somebody came in and got the majority shareholder interested in the first place, unless there is some actual evidence that that really affected the special committee process in some improper way. And there is no such evidence in this case.

The other piece that the plaintiffs point to is that Doctor Volgenau received an article about Veritas that was negative and he passed it on to the special committee. But there is nothing in the record, nothing, that suggests either that that influenced what the special committee did that was understood by them as a signal from Doctor Volgenau not to move forward with Veritas.

There's nothing in the record that even indicates that that upset Doctor Volgenau. His testimony was he was comfortable with Veritas. What is he supposed to do? Information comes in to him. He sends it on to the special committee. That, in fact, happened repeatedly throughout this process. When people contacted him, he put them in touch with the special committee. He passed on the information to the special committee. That is what he is supposed to do in these circumstances.

Your Honor, I'd like to echo Mr. Gillespie's suggestion here not that there's any reason not to look at what happened before the special committee process began. The plaintiffs can try to make all they want of that. But it's just the setup for what actually matters, which is how was the process conducted.

And in looking at how the process was conducted, certainly you can take into account what the genesis of the transaction was. But the question still is was the process a proper one, was it handled correctly, were the disclosures accurate.

I think that's the legal question ultimately for the Court to resolve. On that score,

Your Honor, there is precious little the plaintiffs even have to complain about with respect to the special committee process. There's nothing to suggest that the directors on the special committee were not disinterested.

The fact that Mr. Klein wanted more money for himself is of no moment at the end of the day. Nothing in that suggests that that gave him an incentive to do anything improper. The fact that he didn't get what he asked for is wonderful evidence of the independence of the board as a whole.

So I think that the handful of things that the plaintiffs complain about add up to nothing. The overwhelming evidence is that it was a very robust process, properly handled, and led to a very good result with a very large premium for the shareholders.

So, with that, let me turn to the charter claim. Count IV asserts a violation of Article 9 in SRA's charter which states that in the event the company is sold, the holders of each class of common stock will be entitled to receive equal per share payments or distributions. Equal per share payments or distributions.

Now, this provision of the charter, as

the Court will recall, was the subject of a motion for judgment on the pleadings previously filed by the SRA defendants and addressed by the Court in its ruling of August 31st of last year. In that ruling, just to briefly set the stage, Your Honor, the Court interpreted Count IV as presenting two claims: First, that the merger was invalid under that provision in the certificate; and, second, that by approving a merger that allegedly violated the equal payments or distributions provision, the individual defendants have breached their fiduciary duty of loyalty.

The Court dismissed the claim that the transaction was invalid, and there was an analysis of 8 Delaware Code Section 124 about "no act by the corporation shall be invalid but can be challenged by," and there were several options, none of which apply here.

So that argument is gone. But the Court declined to dismiss, on the pleadings, the claim that by approving the merger allegedly in violation of that provision the defendants breached their fiduciary duty of loyalty. And the Court noted in its opinion that it need not decide whether a decision to cause a corporation to engage in an act that violates its

charter should be viewed as a potential breach of the duty of care or as a potential breach of the duty of loyalty, but indicated that it likely should be analyzed as a question of whether the duty of loyalty had been breached.

That's the way the plaintiffs articulate the claim again in their brief, which is the way we've addressed it. I do think it's the correct way to analyze it. It's no surprise the plaintiffs frame it that way given the exculpation clause in the charter which essentially obviates any claim for breach of the duty of care, and the only place they can go is to assert a breach of the duty of loyalty.

Now, the reason, Your Honor, why the defendants are entitled to summary judgment on this claim is that the undisputed evidence shows there was no breach of loyalty with respect to the charter provision, or put differently, there is no evidence in the record that could possibly support a decision by a tryer of fact that there was a breach of the duty of loyalty by agreeing to a transaction that violated this charter provision.

I think the Court needs to address

three questions to resolve that issue. The first is what does Article 9 mean, what does it mean to say that "each class of common stock will be entitled to receive equal per share payments or distributions."

The second question is did the transaction violate that provision. And the third question, which is the critical one here, I think in many respects, is if there was any such violation, was it the result of a breach of the duty of loyalty, was it the result of conduct by the directors that was not in good faith, or it was intentional misconduct, or was a knowing violation of the law.

It's not enough just to say, "Well, today I look at it and I measure the consideration that was given, and I conclude that what Doctor Volgenau received was more than what the public shareholders received."

You've got to connect it up to the concept of loyalty which takes you ultimately to did those directors have some reason to believe or actually believe that that was happening.

In fact, as I think we've shown in our briefs, Your Honor, the evidence is clearly that Doctor Volgenau received less consideration than the

public shareholders did. But ultimately where I am going in this argument is you don't need to decide that. You don't need to get into any battle of the experts or analysis of that evidence, at least in any detail, to reach the conclusion that we're entitled to summary judgment on this claim.

So with respect to the meaning of the provision, the two possible ways of reading it are that the consideration received by all shareholders must be identical in form or in kind. There can be no distinction between the consideration at all. Or to read it that the consideration received by the shareholders must be equal in value. They must be getting substantively the consideration that has the same value.

We, in our brief, take the Court through a detailed analysis of the right way to read this provision. We provide exhaustive discussion of what the word "equal" means and show that, from a dictionary perspective, from a case law perspective, it does not mean identical.

We address how the phrase "payments or distributions" should be read and point out it does not say "equal payments." It does not say "equal

distributions." It says "equal payments or distributions." And we walk through the fact that those words have different meanings within the charter.

And just on the face of the words themselves, the logical way to read them is that there must be payments or distributions received by one set of shareholders that is equal to the payments or distributions received by the other set of shareholders.

Then, after going past the linguistic analysis, we turn to the evidence regarding the intent of the provision, which there is no disagreement about between the two parties, because both sides here rely on Doctor Volgenau's testimony as to the intent of the provision.

His testimony was that its purpose was to prevent any stockholder from receiving a premium compared to other stockholders; not to prevent alternative forms of consideration. We do not for a moment dispute that the purpose of the provision was to prevent a transaction that was understood to provide Doctor Volgenau with a better deal, something worth more than what the public shareholders were

receiving.

The other thing we point out in the brief, Your Honor, is that if you read the provision to say that the consideration must be identical in kind, you are forcing a result on the corporation that prevents it from engaging in a transaction to the benefit of the common shareholders or to the benefit of all shareholders where you can get a better deal from the acquirer by having something other than an all-cash transaction, where you have a transaction where a majority shareholder agrees to roll over a portion of their holdings rather than take cash.

At the end of the day, this is the perfect example of why you don't want to go there, because late in the process, as Mr. Gillespie alluded to, Doctor Volgenau was asked to roll over a higher percentage of his shares by the members of the special committee in order to get Veritas to put more money on the table, to raise the price for everybody, which is something that he agreed to do.

It was not his idea. It wasn't particularly his preference. But allowing that type of structure to occur plainly benefited everybody in this transaction, and to read the provision narrowly

to preclude that is going to hurt corporations who have provisions like this, not help them. And there is no other reason to do it.

The reason for it, the evil, if you will, or at least the concern that it sought to address, was to keep the majority shareholder from getting a premium compared to everybody else. And that is what Doctor Volgenau explained. That's what he always understood. That's what the members of the special committee understood, and that is really what even the plaintiffs argue in their brief.

They never concede that the provision should not be read to say that consideration just must be equal in value. But they don't argue against that. They have no response to the detailed argument we make about the proper way to read the provision. They just go right past it and say, "Well, the problem here is that there was a difference in value." So I don't think there's any basis to look at it the other way.

Even if you did, Your Honor -- and the Court itself foreshadowed this in its prior opinion, it just takes you back to the same place. Because if you read the provision to say, well, there's not supposed to be a difference in consideration, but you

then conclude that there's no basis to conclude there's a difference in value, you have a breach without any damages. There's no harm to the minority shareholders.

So to take an example, if the transaction had been that the public shareholders were receiving $31.25 in cash for their stock and Doctor Volgenau received, instead -- let's suppose it was a transaction with Boeing, Boeing stock in an amount equal to $31.25 per SRA share measured by the public trading price of Boeing, nobody could possibly argue that the minority shareholders did not get functionally the same deal that he did.

That's essentially what happened here because the SRA -- the new SRA stock was valued at the same 31.25.

THE COURT: But we know what the price of Boeing is at any given point in time because it's publicly traded. We don't know the same thing about the SRA entity on the other side of the transaction, do we?

MR. MILLIAN: We do not know it to the same degree of precision, that is certainly true. So you then have to look at what is the evidence that the

members of the special committee had before them on that issue. I agree with you, it becomes a more complicated analysis.

THE COURT: Is my purpose here to figure out whether what the special committee had before it was reasonable, it was prudent for them to rely upon it, or is it a matter that I have to resolve the debate between the experts.

And if I conclude that the plaintiff's expert is right and there's an extra $10 kicking around out there, that there is, in and of itself, a mistake. Or is this simply akin to 141(e) where the directors can rely upon experts giving them reasonable advice, and that's the beginning and end of my inquiry?

MR. MILLIAN: Your Honor, it's much closer to the latter. Let me turn to that because I think the answer is you look at what the directors had in front of them at that time, and were they reasonable in concluding that the consideration that Doctor Volgenau received was equal in value to the consideration that the public shareholders received.

On that score, for a moment, let me turn to the fact that -- the plaintiffs try to make a

big deal out of the point that they elicited testimony from, I think, three members of the special committee that they don't recall actually discussing the charter.

But that isn't really the question. The question was were they discussing considering whether Doctor Volgenau got the same deal that the other public shareholders received. That plainly was understood, and because they understood that, they didn't need to discuss whether or not the provision of the charter was being violated.

That really is the question; what did the members of the special committee, ultimately, the board, and I'll include Doctor Volgenau in this, understand about the value of what he received versus the value of what the public shareholders received.

If they understood that what he was getting was worth more than what the public shareholders received, that's a problem under the charter provision. Because even though the law of Delaware is that a controlling shareholder can negotiate for a control premium within certain bounds, we concede Doctor Volgenau gave that up. We, SRA, went public, and that provision was put in the

charter. At no point did he seek any premium or understand that he was receiving a premium or did anybody else understand that he was receiving a premium.

So this is the opposite situation than the Delphi case where that was the whole problem people had in front of them; was that the majority shareholder was seeking a premium.

Let me turn to where the plaintiffs come from in arguing that Doctor Volgenau, in fact, received consideration that had greater value than what the public shareholders received. Their argument is based entirely on the testimony of their expert, Doctor Hurley. He does a complex financial analysis that we are very critical of and we think doesn't begin to stand up at the end of the day.

But he does these calculations, and he comes up with these numbers. But that's all the plaintiffs have. There are no emails. There's no analysis. There is no testimony. There's no anything that's contemporaneous to the transaction stating that Doctor Volgenau was getting consideration of higher value than what the other shareholders received. We just have Mr. Hurley's after-the-fact analysis.

And his conclusion that Doctor Volgenau received more than what the other shareholders received is, itself, entirely derivative of his conclusion that SRA itself was worth more than $31.25 a share, and that the members of the special committee sold too cheap. He says they sold a lot too cheap.

So his case is that the members of the special committee gave away their own profit because they were stakeholders themselves in the common stock, and they received cash in the transaction, and their interests were all perfectly aligned with those of the shareholders. They took less money than they should have to their own detriment. And that Doctor Volgenau, who cashed out, effectively, two-thirds of his shares also took less than he should have for those two-thirds.

It's important to understand the argument that Doctor Volgenau got more than everybody else. Those calculations are derivative of the argument that the merger price itself was too low.

Let me read from page 79 of the plaintiff's omnibus response brief. "Hurley opines that the economic value of the Volgenau rollover

shares was at least $55.51 per share. That is so because the Volgenau rollover shares were pegged to the merger price of $31.25, but the actual fair value of SRA shares was greater than $31.25."

So, in essence, what he did was the equivalent of taking $31.25 in cash for his shares and buying new SRA shares at that price. And the argument is, well, they were worth a lot more than that. But if they weren't worth a whole lot more than that, if the fair value of those shares was $31.25, Doctor Volgenau got exactly the same thing that the other shareholders received.

It's important again to understand that the argument is that if his rollover shares were really worth $55 a share, or $45 a share, or $70 a share, whatever number they want to put on it, then, yes, Doctor Volgenau got a better deal than the rest of the shareholders on one-third of his stock. And he sold the other two-thirds for a lot less than they were actually worth if that's the plaintiff's case.

Let me go back again, though, to what was the contemporaneous evidence, which is what I think you have to look at to judge the conduct of the directors and determine whether they breached the duty

of loyalty by approving this transaction. There is nothing in the record indicating that anyone -- never mind the people who really mattered, the individual directors here -- genuinely believed that SRA's fair value was above what was obtained in this heavily negotiated process in which Providence emerged as the winner.

And you have to judge the directors on what they had in front of them at that time which takes us back to the question you asked; can they rely on the expert opinion that they received, the fairness opinion they received. My answer is yes, but that isn't the only thing they had in front of them.

It isn't about just they had that so they can have blinders, it doesn't matter what else was in front of them. They can rely on its expert's eyes. The point is the case is far stronger than that. There isn't anything else there that tells them that that's wrong.

Critically here, Your Honor, in this day and age where everything everybody thinks seems to be in an email, where is the email that says "we're selling too cheap"? Where is the email that says "Ernst is getting this great deal and everybody else

is getting hosed." Nobody thought that. There is no evidence that anyone knew that or believed it.

So, again, this case is the opposite of Delphi where everybody understood that was the problem.

Not only is there an absence of evidence that anybody thought that was the case, and I've touched on some of it, there is affirmative evidence, strong evidence, that people believed it was a fair price, and that the shareholders were getting a good deal and Doctor Volgenau was getting a good deal that was the same deal.

I've already mentioned the special committee members themselves were sellers, and they left over a million dollars on the table if you believe the plaintiffs. Where is the evidence that they believed that the stock was worth more than what they got for it? And where is the suggestion that they would have given away their own economic interests? As I mentioned, Doctor Volgenau sold two-thirds of his stock at the price for cash.

Well, you can concoct a mathematical gerrymandered set of numbers that says, well, he gave away those two-thirds so cheap, but the other third

was worth ten times as much so he really came out ahead. I mean, you can concoct something like that which is kind of what Hurley has done, but there's nothing that suggests that he thought that or anybody else thought that at the time.

It's, frankly, preposterous to suggest that he would have given away two-thirds of his shares for much less than he thought they were worth; and there is no suggestion that he, in fact, had that in his mind or anybody else did.

Third, as I mentioned, Veritas came to the special committee that then went to Doctor Volgenau and said, "We're almost tapped out. If you want us to raise the price further, you've got to get Doctor Volgenau to roll over more of his stock so we've got the cash to get this deal done to raise our price further. We want him to roll over another $50 million worth of stock."

If Veritas believed that they were getting some incredible deal here and this stock was worth way more than they were paying, why in the world are they suggesting that Doctor Volgenau should get a bigger piece of that pie instead of Veritas itself?

Ditto when the same deal was offered

to Providence and said, "Well, Doctor Volgenau is willing to do that for Providence, he'll do it for -- he's willing to do that for Veritas," and I actually think Mr. Gillespie misspoke earlier when he said it was done for Providence.

The record is that Veritas made that request, and Doctor Volgenau agreed to it. And then the same deal was offered to Providence; he will also increase the rollover from 100 million to 150 million for Providence.

The evidence from Providence is they didn't need him to do that. That's what the testimony is. They took him up on it because it reduced their cash needs to close the deal, but they didn't need that. And if they thought the company they were buying was worth way more than $31.25 or even any material amount more than $31.25, why in the world are they giving that to Doctor Volgenau? They would have just said "We don't need that, no problem."

So the conduct of the people who were on the ground at the time is entirely inconsistent with the notion that people believed the stock was worth something more than $31.25 or very, very close to that. There is nothing to suggest that people did

not believe that was a fair price. That's evidence both from the lack of evidence, the dog that doesn't bark here, in these days that you would find a barking email if that's what people thought.

And then the affirmative evidence that that was a fair value. And then added on top of that, where are the rest of the bidders if, in fact, this company is worth more than that? Why did Boeing walk away? Why didn't other people come in?

One of the points that the plaintiffs focus on is the supposed fact that some strategics were discouraged, and if you actually look at one of the quotes of what the strategics are thinking, it says that -- I don't remember the exact terms, but in essence, it was "SRA is asking for too much money."

That means the strategics think it isn't worth that. That is further evidence that you just can't say that the directors engaged in a breach of the duty of loyalty by agreeing to this price and thereby violating the charter because there is no evidence that they believed, or should have believed, or were on notice or were reckless in not believing, or consciously disregarded or whatever standard you want to apply. There's no evidence that they

disloyally let this transaction go forward in the face of the equal consideration provision in the charter.

So, Your Honor, the answer to the question "do you need to resolve the disputed expert testimony" I think is plainly no. You can look at, and should look at, what the evidence was in front of the directors at the time, and it takes you inevitably to the conclusion that they, in fact, believed -- I guess there's almost no dispute about that -- I don't know where there is any evidence to the contrary, they, in fact, believed this was a fair price. They, in fact, believed Ernst was getting the same deal that everyone else was getting.

If we held a trial about that, the evidence would show that's absolutely right, but you don't get there in this case because that's not the legal question.

I'm happy to answer any questions the Court has, but that's it on Count IV.

THE COURT: I have no questions at this time.

We've been going for about an hour and a half. I think we should take a ten-minute recess.

(At this time a short recess was taken)

THE COURT: Good morning, Mr. DiCamillo.

MR. DiCAMILLO: Good morning, Your Honor.

THE COURT: Do you have any idea how disorienting it is for me to see you on the other side of the courtroom?

MR. DiCAMILLO: It is disorienting for me as well, Your Honor. I want to assure the Court that I have not jumped ship, and I am fully aligned with the defendants to my right.

As the Court is aware, I represent Providence Equity defendants. I'd like to take a second to introduce my colleague sitting at counsel table, from Debevoise & Plimpton, Maeve O'Connor, Elliot Greenfield and Michael Leigh.

THE COURT: Good morning.

MR. DiCAMILLO: My colleague, Susan Hannigan is in the back of the courtroom, and with the Court's permission, Miss O'Connor will make the presentation on behalf of Providence.

THE COURT: That's fine. Good morning.

MS. O'CONNOR: Good morning. So I am

Maeve O'Connor from the law firm of Debevoise & Plimpton here for the Providence defendants, which is Providence Equity Partners LLC, Providence Equity Partners VI L.P., Providence Equity Partners VI-A L.P., Sterling Parent Inc., Sterling Merger Inc. and Sterling Holdco Inc. which I'll just refer to collectively as Providence.

This whole claim against Providence is a claim for aiding and abetting a breach of fiduciary duty by the SRA board and/or by Doctor Volgenau in connection with the negotiation of the merger.

As the Court knows, the standard for aiding and abetting is a stringent one. To establish liability for aiding and abetting a breach of fiduciary duty, plaintiff has to establish that, first, that SRA board members or Doctor Volgenau, committed an underlying breach of fiduciary duty, and second, that Providence knowingly participated in that breach.

And it's, of course, established that where a bidder negotiated with a target at arm's length, which, of course, we believe was the case here, there can be no aiding and abetting liability.

Now, Mr. Gillespie and Mr. Millian

just laid out at length the reasons why there was no underlying breach of fiduciary duty in connection with negotiating the merger, and they recounted the robust arm's length negotiations that resulted in a winning bid by Providence. So I won't belabor those points here unless the Court has questions. But the lack of any underlying breach of fiduciary duty, standing alone, defeats plaintiff's aiding and abetting claim against Providence.

Now, even if there had been an underlying breach, however, plaintiff's claim would still fail because there's no evidence in the record that Providence knowingly participated in any breach. And because the undisputed facts make clear that Providence negotiated with the special committee at arm's length --

THE COURT: What do I do with the suggestion that the acquirers hired some cronies to lobby Doctor Volgenau to enhance the acquirer's success in the process? Isn't that, assuming there is an underlying breach of fiduciary duty, almost an automatic aiding and abetting ticket?

MS. O'CONNOR: No, Your Honor, I don't think so. Aiding and abetting has to be knowingly

assisting a violation. What the record shows as to the individuals who Providence reached out to who assisted in introductions with Ernst Volgenau and the like is simply that they helped with introductions. They didn't impact the negotiations.

They didn't bring about an outcome. They didn't -- nobody caused Doctor Volgenau to breach a fiduciary duty owed or suggested that he would. I can talk more particularly about some of them now if you like, or I can talk about them when we come to them.

THE COURT: I don't want to disrupt the order of your argument.

MS. O'CONNOR: Well, I will address the allegations concerning former SRA individuals who Providence worked with. In opposing Providence's motion for summary judgment, plaintiff does not cite a single piece of evidence in the section of its opposition brief addressed to the aiding and abetting claim, which is somewhat remarkable given that it's plaintiff's job here to identify a material issue of disputed fact, and it does leave us somewhat wondering what he's relying on.

Plaintiff does rely a fair amount on

conjecture and innuendo, and we'll talk through some of that in a moment, which, of course, innuendo and conjecture that aren't backed by facts is insufficient to defeat summary judgment.

So before I address the merits of plaintiff's aiding and abetting claim, I think it's worth pausing for a moment on what exactly plaintiff's theory is. It seems to have two parts. First, plaintiff claims that Providence conspired with Doctor Volgenau to co-opt his loyalty. That's a quote from plaintiff's opposition brief.

Now, we obviously dispute that, but even if that were true, standing alone, based on the evidence we have here, that doesn't do the trick. Causing Providence to feel an allegiance to -- causing Doctor Volgenau to feel allegiance to Providence, which is quoting plaintiff's opposition, or causing Doctor Volgenau, perhaps at one point in time, to hope that Providence prevails, does not negate the special committee process, does not establish that the auction was rigged.

Doctor Volgenau is not the special committee, and his hopes and dreams are not a breach of fiduciary duty. So it's kind of a hole there in

the theory that plaintiff has to fill. Plaintiff claims, and this is a quote again, "The success of Providence's efforts to co-opt Doctor Volgenau's loyalty is reflected in the multiple breaches of the SRA Board members' duty of loyalty to ensure that the process culminated in the transaction desired by Doctor Volgenau."

So in other words, plaintiff argues that Providence's contact with Doctor Volgenau somehow corrupted the special committee process. And that's a leap. There are a couple of big problems with this theory as I'll discuss in a minute.

First, the contacts with Doctor Volgenau which I will walk through were innocuous. They didn't give rise to or encourage a breach of fiduciary duty, but rather were aimed at getting to know him, getting him to know them.

Even assuming, contrary to fact, that Providence's contacts with Doctor Volgenau were problematic, there's just not a single shred of evidence to suggest that Providence conspired with the special committee, that Providence viewed the special committee process as anything other than a robust auction, that Providence was aware of or involved in a

conspiracy between Doctor Volgenau and the special committee to deliver the deal to Providence. There's just no evidence at all to suggest that.

So let's take a look at some of the early contacts between Providence and Doctor Volgenau that plaintiff focuses on. By "early contacts," I mean contacts before the special committee process was formed. I think it's worth focusing on this in some detail to see exactly what it is that's at issue here.

First, on February 9th, Randy DiPentima, who was then acting as an advisor to Providence and had been an SRA employee, he and Doctor Volgenau had a social visit, and the record shows that at the end of that visit, Doctor DiPentima mentioned the possibility of a buyout; that Doctor Volgenau gave no substantive response that's reflected in the record; that Doctor Volgenau subsequently requested bios of key people at Providence apparently to get a sense of who they are and agreed to meet with them.

On March 2nd, 2010, Julie Richardson and Chris Ragona of Providence met for the first time with Doctor Volgenau, and Doctor Volgenau's contemporaneous notes of this meeting indicate a very general discussion of how an LBO typically works, such

as typical leverage and the like, and the notes also state, "An offer would likely require the formation of an independent committee of the board."

Mr. DiPentima testified that it was Providence that told Doctor Volgenau that a committee would be required. Later in March, March 25th, after some follow-up emails, Julie Richardson requested a second meeting with Doctor Volgenau. Doctor Volgenau responded by email that he is "not quite ready at this time."

On April 16th, Doctor Volgenau met with Julie Richardson and Chris Ragona of Providence again, and according to his notes, quoting, "They discussed Providence's ability to be competitive with bids from large companies which can reduce combined costs by administrative reduction. It appears they can be competitive so we ceased discussions pending an SRA board decision on a strategic plan."

In May 2010, Doctor Volgenau suggested, and the board agreed, to form the study team that Mr. Gillespie and Mr. Millian discussed, and over the course of the summer, Providence and Doctor Volgenau had a few additional discussions, and the evidence is clear that these also remained preliminary

in nature.

On June 16th, Doctor Volgenau's notes state "told them we are conducting a 1-2 month strategic study and cannot discuss details with them."

On June 22nd, Doctor Volgenau and Jonathan Nelson, who was the founder of Providence, exchanged personal background stories by email. Actually, I'm not sure if that's in an email or not. In late July 2010, then, as we discussed, SRA, with Doctor Volgenau's support, decided to pursue an acquisition of EIG, despite the fact that this would preclude a Providence transaction.

So for several months that went on, an attempt to get EIG. Providence ultimately -- SRA ultimately lost that to Veritas. In late October, after SRA failed to acquire EIG, Doctor Volgenau then invited Providence to make a presentation to the full SRA board, which Providence did on October 27th, and the very next day a special committee was formed.

So from that point on, there were no negotiations between Doctor Volgenau and Providence as to price or anything other than that apart from the ultimate discussion of the rollover.

So these contacts before the special

committee was formed, which plaintiff really makes a lot of, really were innocuous. It's possible that Doctor Volgenau may have felt comfortable with Providence as a result of those. It's possible that at one point in time he felt like, "Gee, if there's going to be a transaction, I think I'd like it to be with Providence."

It's possible he felt that at one time. But there's nothing there in terms of the contacts. They were very innocuous. They don't add up to a breach of anything, much less knowingly aiding and abetting a breach.

So once the special committee was formed, there's again not a shred of evidence to suggest that it was anything other than a robust auction in which Providence would have to compete with the other bidders.

Mr. Gillespie covered that already. I'm not going to retread that ground, but there's not a shred of evidence that Providence had scienter; that Providence conspired with the special committee; that Providence understood the process to be a sham or believed the fix was in or anything that would suggest that Providence knowingly conspired in any rigging of

the process by the special committee.

On the contrary, the record shows here, again, that the contacts between Doctor Volgenau and Providence after the formation of the special committee were innocuous, non-substantive and that ultimately, as Mr. Gillespie I believe said, Providence felt that it was being used by the special committee and was wasting its time.

A couple of examples. On December 23rd, 2010, Randy DiPentima, the advisor, again had lunch with Doctor Volgenau, and to be clear, we don't concede that Randy DiPentima was acting for Providence in his every social encounter with Doctor Volgenau at all. They had been friends for years, and they had lunch periodically. There's no evidence that Providence was instructing him to go have lunch.

In any event, Randy DiPentima testified about that meeting; that Doctor Volgenau told him -- this is a quote; that once the process started that what he favored or didn't favor was really irrelevant, that the committee would make their recommendations, and that it's likely that a qualified high bidder, whoever that was, would be selected.

According to Randy DiPentima, Doctor

Volgenau also made it clear to him at that meeting that "he saw it as his responsibility to protect the rights of minority shareholders."

On January 6th, 2011, Providence's initial indication of interest at $28 a share was rejected by the special committee. Providence also sought exclusivity and was denied at that time.

On February 10th, Randy DiPentima again spoke with Doctor Volgenau, and Randy DiPentima testified that Doctor Volgenau made it clear to him that whoever was the best bidder was going to win regardless of who that was even if it was a large company; that he wouldn't particularly be thrilled with that idea, but that was going to happen; that in this process, whoever the top bidder turned out to be they were going to get the company.

On February 23rd, as we've discussed, Providence again sought exclusivity, again was denied and withdrew from the process. And you saw Julie Richardson's testimony that Providence felt like "we were sort of being used in the process to get higher bids from others and that we were wasting our time trying to buy this company." I see that as completely incompatible with any sense that Providence was

conspiring in a rigged process here.

On March 18th, Providence ultimately agreed to come back into the process when the special committee came to them and asked that they do so. Providence did not come back in on its own, and Providence -- Julie Richardson testified that they had to think about that.

At this point, the auction was down to two bidders, and I won't go over the blow-by-blow of the closing days except to say that there was intense competition down to the wire between Providence and Veritas; that Providence very nearly lost the deal, and that the price was driven up significantly as a result of that competition.

So plaintiff points to nothing in the record that rebuts these facts. Instead, plaintiff relies on some conclusory statements that really do not have support in the record, and I'll give you some of those. He says that "Providence explicitly set out to co-opt the loyalty of Doctor Volgenau in its quest to acquire SRA for the lowest possible price, and at no time was truly an arm's length third party."

There's nothing cited for that proposition. Nothing.

Plaintiff argues that Providence was aware that a strategic buyer could potentially pay more for SRA and therefore devised a plan to address and appeal to Doctor Volgenau's non-economic concerns and goals.

Now, contrary to that characterization, the presentations that are cited for this all reflect Providence's expectation that Doctor Volgenau would negotiate a fair price. There is nothing in any of these documents anywhere to suggest that Providence at any time thought they were going to get a lower price because Doctor Volgenau liked them. All of Providence's internal materials refer to a fair price or a high price.

Plaintiff suggests that Providence brought in a former SRA employee named Ted Legacy as part of the effort to entice Doctor Volgenau toward the LBO concept. Well, it's true Randy DiPentima reached out to Ted Legacy who had been an old friend of his and had helped build SRA from the beginning. But this goes nowhere.

Ted Legacy didn't do anything. He had nothing to do with the deal. In the record, there's one conversation that he had with Doctor Volgenau in

which he said to Doctor Volgenau -- and there's nothing to suggest that Providence asked him to do this -- he said to Doctor Volgenau, "Gee, why is SRA pursuing EIG? I don't think that's a good deal. Why would you do that?"

And Doctor Volgenau just said "The study team wants to do it and that's what the board is doing." Even if Legacy wanted to try to do something, he was clearly ineffective.

Plaintiff also suggests that Doctor Volgenau sought and obtained comfort from Providence that if he did agree to a sale to Providence, a go-shop process could not disrupt it. That's also a mischaracterization. It's certainly true that Doctor Volgenau, at some point early in the process, I believe it was around the time of the formation of the study team in May 2010 or so, that Doctor Volgenau had asked a question of Providence, "Gee, you know, how did this go-shop work? What's going to happen? Am I going to -- you know, what's going to happen?"

Providence did some research and came back and said, "Okay, we researched recent go-shops and here's what happens. It looks like they rarely do result in a topping bid. It's not common, and in

fact, it's not common for a topping bid to arise, particularly when there's a controlling shareholder." So Providence reported that information back to Doctor Volgenau.

In fact, that's true. That's a factual matter. But that doesn't establish that a go-shop is not an effective market check. It doesn't establish certainly that Providence had anything to do with the effectiveness of the go-shop here or could control its outcome or promise that it could control its outcome or anything of that sort. It purely reflects an exchange of information on a topic that Doctor Volgenau had asked about.

So I believe I have covered the items that plaintiff alleges. If I have missed anything, I'm sure that we will hear about it and I'll address it in rebuttal. But, in any event, these statements are all fairly conclusory. They're not supported by the record, and they can't satisfy the stringent standard for an aiding and abetting claim, which, of course, turns on proof of the scienter of the alleged abettor.

Providence spent over a year working to try to establish -- to try to negotiate a deal and

it was clearly arm's length extensive competitive negotiation, and those facts preclude any finding of knowing participation or aiding and abetting.

Now, it's, frankly, not clear to us whether plaintiff also intends to assert a claim against Providence for aiding and abetting the alleged breach of fiduciary duty in connection with the charter. We think not. But it's not actually clear.

So, in any event, I'll just very briefly address that because there's no evidence to support such a claim. Mr. Millian addressed the substance of the charter claim, so I won't address that here.

But as to the Providence defendants, there's really -- plaintiff doesn't even really make an argument that they aided and betted any breach. The only evidence in the whole record regarding this is a Q and A to Julie Richardson of Providence in which she was asked about the charter provision, and she said that she wasn't aware of any provision in the charter and she hadn't discussed it with anyone.

There's certainly no evidence in the record to suggest that Providence thought that the charter was violated by a deal in which all merger

consideration was based on equal per share consideration of 31.25.

So, in our view, plaintiff comes nowhere near satisfying the burden and the stringent standard for aiding and abetting against Providence, and we have obviously made additional arguments in our summary judgment briefs, but unless the Court has questions, we'll rest on our papers as to those.

THE COURT: I have no other questions right now. Thank you very much.

Good morning.

MR. NAYLOR: Good morning, Your Honor. Obviously, Miss Tikellis and I are outnumbered today, but happily I think that we have the facts and the law on our side with respect to these motions.

Just one housekeeping point before I begin. There are some confidential names that I am going to address today. I think the other side has already addressed them. I discussed with Mr. Gillespie beforehand that they didn't have any problem with those being mentioned in open court, so I'm not going to avoid using some of the names that have been designated as confidential or highly confidential previously, and I'm sure if something

comes up that they feel otherwise about, they'll speak up.

So this case arises from a self-dealing, going-private transaction led by SRA's controlling stockholder, Ernst Volgenau to satisfy his own idiosyncratic vision for the company that he founded.

Volgenau identified a private equity firm that was prepared to guarantee his vision and initiated a sale of SRA to that firm and himself. A special committee was formed, but it was led and advised by actors that were incentivized financially to satisfy Volgenau's desires.

That special committee also allowed Volgenau's agenda to drive the sale process. All of that resulted in a merger that was not entirely fair. I think somewhat candidly this morning, counsel for defendants have jumbled the time line of events and mixed and matched the time line of events, but I would submit that the start-to-finish story here is really what's important to understand how these breaches unfolded and also to put them in context of the standards that apply to their motion and to the underlying merits.

So with respect to the standard on the motion, all defendants, of course, have sought summary judgment on all claims, and to obtain that relief, they have the burden to establish that there's no genuine issue of material fact.

Respectfully, a review of the briefs here shows that position is not tenable. The parties are telling basically entirely different stories, and I can tell Your Honor the story in our brief that's an 82-page brief with about 380 footnotes was meticulously cited to the facts drawn from depositions and documents.

Defendants spin a completely different story. Only one of those versions is correct, and I submit it's ours, but I believe that can be resolved at trial.

I'd say this case fits that cautionary tale that when the undisputed facts in a case have to be wheeled in in boxes that it's probably not a good candidate for summary judgment anyway. I know that I had to push those undisputed facts up the hill to the door of the courthouse today from federal street, so there's a lot of them.

So the bottom line, in our view, is

that this procedural mechanism is not the time for deciding which story is the right one, to weigh the evidence or to determine questions of fact. Rather, today's exercise is to determine whether the evidence in the record, read in the light most favorable to the plaintiff, shows disputes of material fact. We believe that question must be answered in the affirmative.

In this case, the controlling stockholder, Doctor Volgenau, initiated the LBO process and ultimately retained and, indeed, increased his equity position in post-merger SRA. He retained his chairman position with extensive government rights, and he received a large cash payment.

As such, we believe that this case needs to be decided under the entire fairness standard, the one articulated in Weinberger, in Kahn versus Lynch and most recently reaffirmed without reservation by the Americas Mining case.

Under the record facts, we believe that entire fairness applies ab initio to the conduct of Doctor Volgenau. And because entire fairness cases are fact driven by their nature, defendants point to no case in which entire fairness was the standard and

summary judgment was granted.

Defendants, on their summary judgment motion, attempt to invoke the business judgment rule, and their only path to do so is a very narrow one. It's the tight rope, if you will, created by the John Q. Hammons case. But Hammons doesn't demand the application of business judgment. Rather, it creates a very narrow pathway that could be walked that could invoke business judgment.

But what do you have to do? You have to show that the controller didn't stand on both sides of the transaction. And then you also have to show a robust set of procedural protections.

THE COURT: Why do you claim that Doctor Volgenau stood on both sides of the transaction? Because he ended up having an ownership interest in the surviving entity? Is that enough, or is there something more that's required?

MR. NAYLOR: There's something more, and let me touch on Hammons and the topic of standing on both sides of the transaction.

There is substantial evidence, in our view, that Volgenau intentionally placed himself on both sides of the transaction. This wasn't a case

where a board of directors sat down -- and I think this was Your Honor's Frank case -- a board of directors sat down and said "it's time to sell this company," and under a control and supervised process, the controlling shareholder has some potentially different interest in this.

This was a situation where Volgenau himself decided that the company was going to be sold in an LBO because that's the transaction that he realized could serve the interests that he had developed, which was "I want a pile of cash to pursue some interests. I want to retain my vision for SRA for at least a few more years, and I don't want to wind up as an Oscar Mayer wiener."

There are also some differences between this case and Hammons which I think are important. In Hammons, Mr. Hammons did much of his negotiation prior to the special committee's formation with a firm called Barcelo. That wasn't the deal that ultimately happened. The deal that happened in Hammons was with the bidder Eilian, and Eilian came in after the special committee had already been formed. So that wasn't the firm that he had the extensive background negotiations with as I understand that

case. Hammons was also found not to be involved in the negotiation of price for public stockholders.

Volgenau, on the other hand, discussed price points with Providence long before any special committee was formed. There's record evidence that the number 28 was discussed between Volgenau and Providence as a place that he believed could prompt discussions with the board.

THE COURT: Well, is it your view that the controlling stockholder can never talk to the acquirer?

MR. NAYLOR: It's not our view that the controlling stockholder can never talk to the acquirer, but you have to consider, I believe, Doctor Volgenau's circumstances.

Let me touch on the nature of his control. He owned 20 percent of the equity and 70 percent of the voting power, but he had no power to sell the controlling stock. If he sold the stock, all he would sell is a 20 percent block which would lose its super voting rights.

So the only path for Doctor Volgenau -- and he realized this, and he reflects on it in his book -- that the only way for him to

maintain his particular vision was through the LBO mechanism. So, in Doctor Volgenau's circumstances, his identification of a private equity firm that was prepared to meet those demands and allow him to maintain this name/value/culture credo that he had set forth for the company makes it different for his circumstances.

THE COURT: Am I supposed to just ignore what the special committee did?

MR. NAYLOR: No. In fact, the special committee created a process that was explicitly bifurcated. They sent a message to strategic buyers -- because, remember, strategic buyers are the ones that Volgenau wanted nothing to do with. He says it in his book, and I know earlier some testimony was cited that Doctor Volgenau had a revelation during his deposition that, "Oh, no, I would have sold to anybody, and I realized the error of my ways."

His book is dated three weeks after the merger agreement was signed, and he says in no uncertain terms "I wasn't selling. I had the decision on who SRA got sold to. I wasn't selling to a sausage factory. We weren't becoming an Oscar Mayer wiener. We were going to do an LBO."

So in that context, the special committee allowing him this bifurcated process whereby -- and this is in the words of Houlihan Lokey, the banker for the special committee, this is going to be a bifurcated process in which the special committee deals with the more traditional price issues, but Doctor Volgenau will be dealing with the issues that are important to him, including probing humanistic values and the name/values culture.

Now, if I'm a strategic buyer and that's the message to me, I may have a very pleasant conversation with Doctor Volgenau. I have no reason to believe that he and CGI and he and Boeing didn't have a perfectly cordial meeting.

But Doctor Volgenau also admits in his deposition that during those meetings he talked about the fact that name, value and culture had to be preserved. So if I'm looking to extract some synergy value as a strategic buyer, how can I do that with a controlling shareholder who's not going to allow it?

THE COURT: Well, Boeing had more than just lunch with Doctor Volgenau. They put a lot of resources into trying to figure out whether they could make sense out of this deal, and as far as I can tell,

they concluded that they couldn't make financial sense out of it.

How do you square that with your argument that they were deterred simply because they were a strategic buyer?

MR. NAYLOR: Well, I think that's how they don't make financial sense out of it. Recall that the company's CFO and CEO both said to Doctor Volgenau "We believe a strategic buyer can pay more here. They can probably pay $5 more a share, mid-thirties, high thirties."

Providence's internal information says strategic buyers pay more. So if you're Boeing, perhaps you do put a lot of research into it to see can we get over the hurdle even though we're not going to be able to extract these synergy values.

If I'm saying synergies are worth potentially five plus dollars per share and we can't extract them, maybe I would have offered 35, but now I'm left with a value case that only makes sense at 30.

THE COURT: There's an "IF" in that sense with no facts behind it. What we know is that Boeing made a real look at this entity and backed away

because of dollars. How do I square that with your theory that, well, they were really deterred because Doctor Volgenau had this ulterior purpose that was lurking behind everything.

MR. NAYLOR: Well, all I can say, Your Honor, is that the ulterior purpose is something that he knows is likely to drive the price down. Again, he reflects in his book all through the years strategic buyers had come to him and said, you know, if we put these two companies together we can really extract a lot of value.

But he wouldn't agree to brand integration. He wouldn't agree to chopping overhead. He had an idiosyncratic vision for this company. If those things are worth some amount per share to a strategic buyer, then they're not going to be able to provide full value. They're just not.

Also, getting back to the Hammons case and why I believe that Your Honor should view Doctor Volgenau as standing on both sides of this transaction, I looked back at the Weinberger case to see the sorts of things that are taken into account in the entire fairness question, because there aren't a lot of cases that really define when you're on both

sides, when is that triggering point that puts you on both sides.

So I went back to look at what Weinberger says about entire fairness. And it says timing, initiation, structure, disclosure to the board, all of those are factors that go into the analysis of whether something was entirely fair.

THE COURT: Do you disagree that it was very fair to suggested that maybe Doctor Volgenau should leave some money behind and put into the new entity?

MR. NAYLOR: I believe that's correct that Veritas asked him to put a larger rollover in.

THE COURT: So when the acquirer wants the controlling shareholder to stay in in order to reduce the amount of cash that it has to come up with, are you saying that automatically puts the controlling shareholder on both sides of the transaction?

MR. NAYLOR: No; that automatically doesn't. I'm not arguing that. What I'm arguing is that when the controlling shareholder comes to an internal realization that the only way to satisfy his desire for the company is to do an LBO, and then he goes to the board and says, "Here's Providence. These

are the only guys I've ever been interested in in all the years that I've been talking to potential bidders, and they want to propose a LBO to you," when you initiate that, when you time that, when you structure it, and when you bring it upon the board, that's you putting the company into play as a controlling shareholder.

THE COURT: The company is in play, but there's a special committee. It has an investment advisor. It has a law firm. And it gets lots of interest. And it gets down to a fairly competitive dispute between Veritas and Providence as to who's going to win.

Yet you're really asking me to disclaim all of that, ignore all of that just because you think that the special committee essentially did nothing other than try to humor Doctor Volgenau.

MR. NAYLOR: It's not necessarily nothing. Let's start at the beginning with the special committee. We have Mr. Klein who was -- the special committee was selected by Doctor Volgenau which is probably a problem in the first instance.

THE COURT: Did he select them or did they volunteer?

MR. NAYLOR: General Ellis volunteered. The rest were selected by Doctor Volgenau. That was Mr. Grafton's testimony. Mr. Klein is the same individual who earlier in the year said, "Doctor Volgenau, you're 77 years old. If you don't do something to decide the fate of this company now, your super vote is going to lapse at some point, and then your family will not have the ability to direct the company. So why don't you decide how to dispose of this company now."

So that suggests to me that Mr. Klein was predisposed towards helping Doctor Volgenau proceed in the fashion that he wanted.

THE COURT: Why? He's presumed to be acting in accordance with his fiduciary duties. I've got to get over that presumption somehow to get to where you want me to go.

MR. NAYLOR: Well, the --

THE COURT: The problem of Mr. Klein is different from the other members of the committee. You will probably talk about that separately.

MR. NAYLOR: Yes, I'm happy to talk about Mr. Klein first. We start with the statement that he wants Volgenau to make the decision on how

this company is going to look going forward. He wants him to make the decision. That's in the record. That's in Doctor Volgenau's book. He quotes Mr. Klein as having said that to him during the summer of 2010. Then Mr. Klein selects the --

THE COURT: Can't that comment also be read as saying, to use our equity phrase, "If you slumber on your rights it's going to happen despite what you wish rather than what you might wish." That's just a statement of fact, isn't it?

MR. NAYLOR: It's an encouragement. It's not a statement of fact. It's "you should do this, this is what you should do," and I'm certainly not afraid of Mr. Klein sitting in that seat and being tested as to his motivations and his meaning behind the various statements that he made. I think if he were there, this version of events makes a lot more sense than that version of events.

So Mr. Klein then is appointed the chairman of this special committee. Look at who he selects as his advisors. He takes Mr. Stamas from Kirland & Ellis who sits with him on the Shakespeare Theater Company board. He selects Houlihan Lokey who is lead banker, and Antenucci who sits with him on the

Shakespeare Theater board. He presents them with financial incentives to close a deal. They weren't incen -- they weren't getting paid a flat fee. They were being incentivized specifically to get a deal. At this point --

THE COURT: How many times in the deals you've seen does the investment banker get a higher fee if there's a deal that closes than if there's a deal that doesn't close?

MR. NAYLOR: Far too often, frankly.

THE COURT: Almost all the time. What you're doing at this point is fighting standard practice I think.

MR. NAYLOR: Well, the tele-communications case I think lays out the problems with what happens when you incentivize bankers and incentivize special committee members with contingent payments. It may be standard practice, but it doesn't make it good practice.

THE COURT: So I'm supposed to say because Houlihan had its compensation incentivized as to whether a deal closed or not, not a deal with any particular buyer, but just a deal close, that there's something inherently wrong in that. That might get

some attention.

MR. NAYLOR: Well, that's an interesting point whether a deal would close if you have a special committee who has just been told days before by Doctor Volgenau, "Of all of the people I've met with over all of the years, Providence is the only one that interests me, and they've committed to maintaining name, value and culture."

THE COURT: You're suggesting then that the special committee from the get-go was hopelessly conflicted.

MR. NAYLOR: Mr. Klein was certainly without question, and I can get into his memoranda and demands. And the other members of the special committee basically testified that he was a one-man show.

They got occasional updates, but the testimony cited in footnote 124 of our brief from each of the other members of the special committee was Klein was the special committee. So, to some extent, Klein's conflict is the one that really matters for the purpose of how the special committee operated.

THE COURT: Help me understand why Mr. Klein cared. Financially, he had stock in the

company. Selling at $10 a share less than what it was worth would have been to his detriment. Most of the consideration you talk about is essentially after the fact. We don't have much evidence out there as to his goals and aspirations as to additional compensation before then. How do I put that altogether to overcome the presumption that he was acting as he was supposed to act?

MR. NAYLOR: Well, in the memorandum that he sends to Doctor Volgenau, he cites the precedent of the Tutor-Perini transaction in which he was the special committee member, and there he says, "Well, we only disclosed that it was a $60,000 payment, but in reality, after the deal was signed and ready to close, the board turned around and gave me another 2.6 million so I'm very disappointed with what's happened here."

So I think it's fair to conclude that he had harbored this intent to go and seek a windfall at the end of the transaction. I don't think it just pops up at the end. It's something that obviously he's given a lot of thought about, is important to him. He's disappointed, and he notes in his memorandum to Doctor Volgenau isn't it also a happy

coincidence that you got the deal with a company that's committed to your name, values and culture.

THE COURT: Happy coincidence.

MR. NAYLOR: Happy coincidence is probably not the correct quote. It was also a good result that it came out. I can get the exact quote for Your Honor, but it's in the brief.

THE COURT: But here is what I keep coming back to. Maybe the problem I'm having here is that there are competing inferences, and I'm leaning to the inference that I find more appealing at this point in time.

But Doctor Volgenau, based on his history in the industry, says, "I like those folks, but let's see what happens," and the folks he likes end up winning. He says "That's a good thing. I'm glad it worked out this way." That, in and of itself, doesn't tell me anything that something bad happened. It just says that he stood back, watched the process and got a result that he was happy with.

MR. NAYLOR: Okay, and then we also have Mr. Klein's written admission that Veritas would have paid more or caused Providence to pay more but for this supposed 11th hour due diligence issue.

THE COURT: Do you agree that Veritas made the decision not to respond the last time?

MR. NAYLOR: Yes.

THE COURT: And you agree that the board of SRA was concerned about Veritas' ability to come up with cash?

MR. NAYLOR: That's the testimony, although --

THE COURT: Do you have any facts going the other way?

MR. NAYLOR: No, I don't have any other facts going the other way on that.

THE COURT: If the SRA special committee says "We're concerned about your ability to finance this, we're giving you another chance to make a proposal," and then Veritas doesn't make a proposal, where does that take me? It's a perfectly innocuous set of facts, isn't it?

MR. NAYLOR: Well, you've got them asking for a best and final bid right at that point, and Mr. Gillespie showed you the time line where there was supposedly this big long period of due diligence where they never raised this issue with Veritas until the final moment right after this article started

floating around that Veritas treats its partners poorly.

But the timing on it is very suspicious at that point that Veritas had had enough of the treatment, and Mr. McKeon says in his email to Doctor Volgenau they were sick of the underhanded way that the special committee was behaving, and it seemed to be encouraged by Providence and Houlihan.

Let me go back then to the beginning a little bit with Volgenau's introduction to Providence, because there was a whole lot omitted from that story, and it was made to seem fairly routine and innocuous.

But the routine for Doctor Volgenau was to have a meeting with the potential bidder and then send them on their way because he didn't want to do anything. Providence is a completely different story. He has his initial meeting with Mr. DiPentima and finds out about an LBO, and an LBO is a way for him to maintain his vision for the company while retaining some ownership while getting some cash. It's a perfect scenario for him.

So what happens from there? He embarks on a series of phone calls and meetings with Providence during which term such as price, Volgenau's

position in the post-merger entity, his rollover participation, management equity, financing and go-shops were all discussed. Those are material terms to an LBO. Those were all being discussed before the formation of the so-called study team.

These led to Volgenau directing SRA management to provide confidential and proprietary information to Providence. That's something that directors had no idea was going on. It's something that apparently he had never done before. And he did it all pursuant to a faulty confidentiality agreement that didn't even have a stand-still provision.

So he was dumping confidential information on Providence, and they could have turned around and made a tender offer. And he also directed his CFO to start generating LBO scenarios to provide to Providence. All of that was happening before this study team came into existence. That's not routine contact with a potential bidder.

THE COURT: But doesn't that say that Doctor Volgenau, at that point, had gone so far that a deal with Providence had no prayer of being approved legally at the end? In other words, you're saying that this deal was doomed before the special committee

was ever even formed.

MR. NAYLOR: I'm sorry, I don't think I understand Your Honor's question.

THE COURT: You're saying all this stuff that Doctor Volgenau did before the special committee was formed doomed what, in fact, happened down the road because he had talked about price, he had talked about a confidentiality agreement which you claim was defective, all those factors.

How do you unring that bell, if you will?

MR. NAYLOR: I think it's pretty difficult under these circumstances, because let's go forward from there. So now we're into about May of 2010. So Volgenau creates this study team. Of course, he puts himself in charge of the study team and doesn't tell the other directors that he's having these conversations with Providence.

So it's a parallel track that's going on there, and he continues to talk to Providence all throughout the time this study team is doing its work.

So the record shows that the board members had resolved to monitor for conflicts. Volgenau came in and said, "Look, we're going to

create this study team, but you got to know these are my criteria of what I want to have happen, and it may be that you'll need to form a special committee at some point."

At that point, he had talked to Providence so much that if they knew what was going on, they would have formed a special committee right there I would think. But, obviously, they didn't.

THE COURT: Is it your view the effort to acquire EIG was a sham.

MR. NAYLOR: No. In fact, it definitely wasn't a sham.

THE COURT: If he was determined to sell to Providence, EIG would have killed that deal.

MR. NAYLOR: Not in his view. Probably Providence's view and probably in the view of most people. I think it probably would have, but that's not what Volgenau believed. Volgenau, in fact, said that even though he supported the attempt to acquire the asset from Lockheed Martin, he continued to talk to Providence.

He and Sloane, who I haven't spoken about, but I will, he and Sloane continued to update Providence on their bidding activities for EIG, and

this is even though Providence is a potential competing bidder for EIG.

They're telling DiPentima and Legacy and others at Providence about what they're doing with this bidding process. And Doctor Volgenau tells Mr. Legacy, "If we don't get EIG, I want to get right back with Providence. If we do get EIG, I know it will be about a year before I can go back to them, but I don't foresee this being a reason that we wouldn't be able to do the deal."

So Providence has Legacy and others in there lobbying, Volgenau saying "don't do this deal, don't do this deal, it's going to hurt your chances with Providence." Volgenau doesn't believe them, and that's reflected in Mr. Legacy's email to Mr. DiPentima which was passed along to the other folks at Providence.

Just speaking about Doctor Sloane for a moment, he was the one other board member who was aware of Doctor Volgenau's dealings with Providence. He wasn't aware from the very beginning. I think it was in May 2010 that he was read into the process, and he was a facilitator of providing confidential company information to Providence, and he also didn't advise

the board, and from that point forward, he also had numerous meetings and conversations with folks from Providence and Mr. DiPentima. So it's not a routine thing that's going on here between Volgenau and Providence. This is an ongoing building of a trust relationship.

I'd also like to point out, since Your Honor raised the EIG matter, the board retained Citigroup in the summer of 2010 as part of this study team review. Specifically, the banker at Citigroup they brought in was a man named Ed Wehle. Mr. Wehle had a long history with SRA. He had helped with a second initial public offering several years back, had been one of their go-to bankers over the years.

So Citigroup did an analysis of what strategic options are available to SRA, and this is in the summer of 2010. Citigroup comes back with a presentation that says "Your best move is to acquire some strategic asset such as EIG," which was up for sale at the time.

The football field that provides that says the worst thing you could do is do an LBO. That would return the least value of anything. A merger of equals would be better. A strategic acquisition would

be better. LBO is the worst thing you can do.

But as soon as the EIG deal doesn't go through, what happens? Volgenau comes in to the board and says, "Here's Providence. They want to did an LBO. They're the only people that interest me."

So that's what I mean when I say that there's a factor of initiation, of timing, of disclosure that Volgenau has intentionally aligned himself with this LBO prospect with this particular LBO partner. And that's what distinguishes it from a Hammons case and what puts him on both sides of the merger.

Now, in terms of Doctor Volgenau's conduct post the formation --

THE COURT: In other words, the facts in this case are complicated enough, and making a hypothetical out of it is probably a bad idea, but I guess it's one of the perks of my job. If Veritas had gotten this for 31.25, you'd have no case.

MR. NAYLOR: That's probably right, but they didn't. They didn't. They disappeared under --

THE COURT: It's not really about value.

MR. NAYLOR: It's a quirky circumstance.

THE COURT: It's not about value, because whether Veritas or Providence paid 31.25 makes no difference to the shareholders.

MR. NAYLOR: Whoever pays, it doesn't make a difference to the shareholders. It may make a difference to Doctor Volgenau and his willingness to accept it. I guess we will never know whether Doctor Volgenau would have agreed to a deal at that price.

The other point is you don't always have to sell the company once you know what the price on the table is. If you get a price on the table, and it's not good enough, you can just say no.

The special committee was under no obligation to sell the company other than the fact that Volgenau wanted to do an LBO and the board wanted to satisfy his desire to get that sale done.

THE COURT: Do I do anything with the sequester? Let's back up on the path to sequester. The fate of government contracting firms was already -- they were already facing a rocky road back when this was going on, and nothing has changed that perspective since then.

Does the overall picture where SRA was and had kind of gotten a box that it couldn't get out of, coupled with the future of government contracting, doesn't that explain why the board might very well have been interested in cashing out while the cashing out was as good as it was going to be?

MR. NAYLOR: Well, that's certainly their postscript story, the litigation story; is that that was some motivation here.

THE COURT: From a historical perspective, it would show that there was a fairly prescient board I would think.

MR. NAYLOR: I don't know that I agree with that because one of the things that SRA was constantly touting itself about was that it was exposed to the high growth areas of federal government spending; that while reductions in federal spending might have some impact on the margins, that overall SRA was positioned in the right segments of the government, the ones that would continue to grow, and they only had about 1 percent of the market share of all of the federal government spending.

So if you still have a big pie, you can increase your slice of that pie just because the

total pie is a slightly smaller one. You can still get a bigger piece. So it's a little bit of a red herring when they say, oh, well, the sequestration was coming down the pipes and the government wasn't going to grow quite as fast as we believed.

I'm jumping ahead a little bit, but all those statements were known at the time, and yet Providence and Volgenau went out to the debt markets selling debt based on a set of projections which is what our expert used to value the company.

Their experts actually used a more aggressive set of projections, so our expert was the more conservative one in that respect because we did rely on these projections that were created in a conservative environment to sell debt and to not overcommit on the growth prospect.

But there's no evidence that the board was clamoring to sell the company. They were, admittedly, looking at some strategic alternatives, and the one that they pursued which was recommended by Citi was to buy EIG.

THE COURT: The board is not clamoring to sell. The sale process gets started. It looks at it. It gets what, from a distance, looks like

reasonable advice, follows it and sells the company. Isn't that the way it's supposed to work?

MR. NAYLOR: Well, I'd be happy to talk about the reasonable --

THE COURT: There are a lot of steps there that I suspect you have issues with.

MR. NAYLOR: Yeah.

I'll start with the reasonable advice because it's remarkable to compare Houlihan Lokey's February 2nd presentation to the special committee to its fairness committee presentation from March 31st.

It's like they're valuing two different companies. In the first one they have high multiples, they have an LBO analysis which suggests high prices. And then all of a sudden they just turn the volume down from about ten to five in their fairness opinion, because at that point they knew what the price was likely to be. So backing into a price doesn't suggest, to me, excellent advice.

Also, on the advice point, this is kind of an interesting thing that affects the special committee and the reasonableness of what they were doing here. Citi, which was the long-time banker for SRA, wasn't selected as the banker for the special

committee. Mr. Klein went with his fellow member of the Shakespeare board instead. But Citi was released to go work for Providence.

As far as we can tell from the documents, the first thing that Citi generated for Providence was a list of strategic targets that SRA could buy to improve value post-LBO SRA. So Citi's advice didn't change. They were just giving it to Providence instead of to the company. What changed was the fact that Doctor Volgenau came into the board and said "Here's the LBO. This is what we want to do."

So, moving forward with the special committee process, really, the biggest problem with the special committee process is this explicit bifurcation. There was a message sent to strategic buyers that Doctor Volgenau had particular concerns about the name, values and culture of this company that he founded, and that those would have to be addressed in a bifurcated way by anybody who wanted to bid on the company.

That's not a reasonable tack to take for a special committee looking to get the best price. That's a tack being taken by a special committee

that's trying to get a deal done, and a special committee chairman who is financially incentivized to get a deal done, that banker that's incentivized to get a deal done and a law firm that's incentivized to get a deal done.

It probably makes sense, before we go too much further, to circle back to Providence and the aiding and abetting claim because they're not an innocent third party operating at arm's length here.

They began this process by hiring Mr. DiPentima as a consultant, and their goal in hiring DiPentima as a consultant was to devise a strategy for approaching Doctor Volgenau. They knew that the only way to get SRA was to get in with Doctor Volgenau and to convince him that they were going to adhere to his idiosyncratic view of the world.

So that's articulated by Mr. DiPentima in an email where he says to the Providence team that what Volgenau believes SRA stands for is more important to him than anything they can possibly imagine, and that Volgenau is willing to be receptive to them because Providence is willing to satisfy Volgenau's conditions.

So that's how they start this process.

They internally create this strategy involving Mr. DiPentima. Along the way, this trust relationship builds up between the Providence folks and Doctor Volgenau directly. There are several instances that we can talk about where they were working in tandem to talk about how this LBO would work.

The first is this go-shop thing. Doctor Volgenau expresses a concern to Providence that, well, if I do a deal with you, what if we have one of these go-shop things and some higher bidder comes along. These are Exhibits 46 and 47 to my affidavit.

So Providence turns around, does a presentation for him and says, don't worry, there's no chance of this deal being disrupted because the only examples of a go-shop being successful don't have a controlling stockholder, so nobody is going to come in and disrupt this deal with the go-shop.

Of course, he didn't provide that information to the stockholders or to the special committee, but he had that information, and he knew that and had it in his back pocket.

He also asked Providence to go out and do a no-names market check for financing. He wanted

to know from Providence what kind of financing is out there, are we going to be able to pay for this LBO. And, you know, it's almost like a testing of the water by Providence along the way.

As you read their emails -- and fortunately Mr. DiPentima is an avid emailer. Unlike some of the other defendants in this case, he does send a lot of emails. It appears at one point Miss Richardson is concerned that Doctor Volgenau has a board and "should we be talking directly to him," and Mr. DiPentima assures her, "No. Feel free to talk directly to Doctor Volgenau." So those are the sorts of things that are developing with this trust relationship between Doctor Volgenau and Providence.

Meanwhile, that was the direct assault by Providence. They also had this sort of a shadow governance team I call it where, in addition to Mr. DiPentima, they recruited Mr. Legacy to aid them in the transaction.

Again, like Mr. DiPentima, Mr. Legacy is an SRA consultant. He's paid in that position. He's subject to a nondisclosure agreement, but here are Mr. DiPentima and Mr. Legacy working for Providence to aid in this LBO.

Providence also brings in a firm called Wolf Den Associates. Now, Wolf Den is a firm founded by a man named Barry Landew and Kevin Robbins. Kevin Robbins and Barry Landew are both former SRA employees. Mr. Robbins is Mr. DiPentima's son-in-law. Mr. Landew, on the other hand, was ousted from SRA for what appear to have been some personal conduct and human resource issues, but Volgenau had a personal affinity for Landew, and he writes about it in his book, and says even though the general counsel wanted to do the right thing for the company, I arranged a way so that through Wolf Den he could continue to spend most of his time for SRA.

So you have this Wolf Den Associates under a consulting agreement with a nondisclosure agreement. Their consulting agreement is worth a million dollars, but here they are doing due diligence for Providence, in their words, to restore SRA to its glory, and those are the ways that Providence was sinking itself into the SRA culture, and through the SRA culture, to Doctor Volgenau. Because we know Doctor Volgenau's primary concerns are name, values and culture.

So we believe that goes far beyond

what an innocent third party would have been doing here at arm's length. This was, rather, a sponsor that wanted to be in with the CEO so that they could come and pitch an LBO.

I just want to highlight again, we spoke about it a little bit earlier, this memorandum from Klein to Volgenau. It's one of the most amazing documents that I've ever gotten in discovery. It's Exhibit 84 in my affidavit. This is Mr. Klein saying to Doctor Volgenau that he's disappointed in the amount that he's been paid; that in his experience -- and he uses this phrase, in his experience as an M and A lawyer, and in his experience with service on special committees, the amount that's typically paid to a special committee chairman isn't determined until after the deal is signed, and once it's closer to closing.

Now, to put that in some context, between November 2010 and the formation of the special committee and March 2011, the special committee and the board, on a number of occasions, received advice about typical special committee compensation.

Now, at no time did Klein share these supposed experiences or expectation that after the

deal was signed there would be some revisiting of his compensation. In fact, he was already receiving 225,000 which is already well above the norm for a special committee service. But it's clear from his memorandum that he had an intent to seek a reward.

He even uses the term "reward" in his letter. He cites to his experience in the Tutor-Perini transaction. Again, this Tutor-Perini transaction is fascinating because the proxy there didn't disclose his $2.6 million compensation. It only said he got 60,000 plus some per diems for meetings but turned around, and in reality, he got this huge windfall.

THE COURT: Is this a concern that to come in at this time in the chain of events and ask for additional compensation, that's wrong? Or is this part of your argument that Mr. Klein was trying to steer everything to Providence?

MR. NAYLOR: It's that Mr. Klein wanted to steer it to a deal that he knew could get done, and Mr. Klein, of all of the potential bidders that were out there, the one that he knew that Volgenau would say yes to was Providence.

So the driving force here is that

Volgenau is getting them to a result that's going to get the yes so that he can then make his request, that he can then go seek the money for Kirland, that he can then get Houlihan its benefit in the transaction.

It's about getting a deal done. I don't really think that Mr. Klein probably cares one way or the other about Providence versus Veritas or whatever. But what I do think he cares about is getting a deal done that's going to serve these interests that he identifies himself in his memorandum to Doctor Volgenau.

THE COURT: What are the interests? You've got making money, and then you've got Doctor Volgenau's concerns, to some extent, about the future of the company after the deal is closed. I'm trying to figure out how this all fits together, because if it's merely a matter of "if I am able to close a deal and get a premium," and a 52 percent premium is certainly a real benefit to the shareholders, "why shouldn't I get a reward?" Is there something inherently wrong with that?

MR. NAYLOR: I can't even imagine the flood of litigation that would start if we started having contingently-paid special committee members.

Yeah, there's something wrong with that inherently. I don't think that we can have special committee chairmen running around with expectations that they will get paid if a deal closes regardless of whether it's a fair value or with a controlling stockholder or with anyone else. That's one that I am willing to stick my neck out and say that's a problem.

THE COURT: Okay, that's fine, but what does that do to this case? Because if we have a special committee chair who is, in our subjective view, improperly incentivized or expects to gain the benefits of improper incentivization, does that mean the transaction gets set aside? Does it mean -- what does it mean? Where do I go with it?

MR. NAYLOR: Well, it speaks to the fairness of the process. If you've got a process that's being steered towards getting a result as opposed to getting a fair result, then that's an issue of entire fairness, and whether or not the process followed here, and a controlling stockholder transaction, was truly designed to replicate arm's length bargaining, or whether Mr. Klein put himself in the controlling shareholder mind set and went ahead

and tried to get the deal done and maximize value for the interests of him and his friends.

THE COURT: So you're arguing we have -- and I don't mean to limit the facts you're arguing -- we have a controlling shareholder, and we have a chair of the special committee who harbors this desire to get additional compensation which we know because he, in fact, asked for it later, that, in and of itself triggers -- those two things by themselves trigger an entire fairness analysis? How much more do I need to get to entire fairness?

MR. NAYLOR: Well, I think we also have the fact that there is a controlling shareholder who initiated the process; that the controlling shareholder timed, initiated, controlled the disclosures to the board in terms of where he had gotten to in the process, and then sprung the board, the rest of the board, into this sale mode.

So, but for the controlling stockholder taking that initiative action, you're not going down this road to begin with. But once that road is the one traveled and you have an improperly incentivized special committee, you do not have the robust types of procedural protections that are

required to find this narrow tight rope to business judgment. I just don't think that that's possible on this factual record.

For their part, the other special committee members -- like I said, for the most part they were there along for the ride. But one thing we do identify that is particularly troublesome that they did is they went and endorsed these payments to Mr. Klein to some extent.

Some said more than others. I think General Ellis said "pay him even more than he's asking for." I think Mr. Barter was more conservative about it thinking that it was a bit too much of a windfall to give Mr. Klein that much. But they all endorsed some additional payment. This is despite the fact that they had received, on multiple occasions during this process, guidance about what typical special committee fees are.

No one ever said "we're going to be revisiting this and taking money out of essentially shareholders' pockets and putting it onto Mr. Klein's favorite charity."

I also point out that throughout this litigation, including today, the SRA defendant group

have taken a completely unnuanced position with respect to all of the charges against it. None of them are sticking their neck out and saying anything else. In fact, they let Mr. Klein sign their interrogatory verifications for them.

Apparently, they all think everything is just ducky and don't want to take any nuanced positions, but I submit that the Court should treat them the same if that's the way they want to be treated, and for all intents and purposes, it appears that that is the way they want to be treated.

Then the other aspect of the robust procedural protection is the question of disclosure which Your Honor raised this morning. There's no argument here that there wasn't an unwaiverable minority -- majority of the minority vote. That's probably the one thing they got right.

There was an unwaiverable majority of the minority vote. Fortunately, because we had the preliminary injunction proceedings, we were able to correct a good amount of misleading information in the proxy. Unfortunately, we didn't become aware of quite a lot of this until after the PI proceedings and discovery was completed.

I'll give you some examples of the things that we found out after discovery was completed. Mr. Klein's demand for the payment. There's a disclosure, I think it's on page 60 of the proxy, that says the special committee members are receiving this and nothing else.

Well, that proxy was issued on June 15th. There was no decision made on Mr. Klein's additional consideration by June 15th. That issue was in flux. How can this board possibly endorse a disclosure that this was the only payment being made to the special committee without dealing with that issue that, "Hey, by the way, the special committee chairman is now seeking another $1.3 million." I think that's pretty material.

The proxy doesn't disclose the contingent aspects of Kirland and Ellis' compensation. We didn't know about those until after the closing and after the additional documents were produced.

The proxy doesn't mention that Mr. Klein had a view that but for this diligence issue with Veritas that he believed that Veritas would have paid more than 31.25 or at least required Providence to pay more than 31.25. I believe that's also

material, and once we found out about that, then they certainly should have been more forthcoming about what this supposed issue was and why they concluded that it was a serious problem as they've testified to.

The proxy doesn't talk about -- it discusses that Citi worked for Providence, but they don't talk about the fact that Citi had drawn conclusions about the advisability of an LBO just months before this process started.

The proxy omits several of the meetings and the calls between Providence representatives -- representatives and Volgenau, and it completely omits references to Mr. DiPentima, Mr. Legacy and Wolf Den's roles. These are the three that are SRA consultants who are also working for Providence in connection with the transaction. None of that's in there.

THE COURT: Were they material?

MR. NAYLOR: That one specifically? Yeah, Mr. DiPentima for certain is material. He's a former CEO of SRA, had been CEO only a couple of years before. He was the one that originally pitched the LBO idea.

So the fact that Providence had

recruited SRA's former CEO, former COO and also this Wolf Den firm, I think that's pretty material to a stockholder saying, "Well, wait a second, you know, these guys really had an in."

And let's look at what Miss Richardson says after the closing during one of the presentations to potential debt buyers. She says, "Our partner in this is Ernst Volgenau, and we were lucky because we had such a head start over any other possible bidder because we had Mr. DiPentima in the fold, and he was able to get us in there and really working on this before anybody else had a chance to see it."

So that's how Providence viewed it. So if it was material to Providence, I'd say it's material to shareholders.

The proxy discusses the post-signing go-shop. It doesn't discuss the fact that Providence had provided Doctor Volgenau with information that that kind of go-shop process was going to be illusory; that with a controlling shareholder they had already done that analysis and found out it wasn't going to work.

The proxy also doesn't discuss the manner in which the board resolved this whole charter

issue which I'll turn to next. It doesn't discuss it because they didn't do anything to resolve that issue.

Turning to the -- unless Your Honor wants me to go through the valuation issues. I can do the blow by blow on the "he said/she said" about valuation. I don't know if you want that today.

THE COURT: You have no idea how much I enjoy listening to debates about valuation opinions.

MR. NAYLOR: Probably as much as we do during a multi-day deposition of experts.

I mentioned the manipulation of the Houlihan materials to back into the valuation, and I think that's the one that's most important to the special committee process. I'll leave it at this unless you have other specific questions about that the experts here have battles about the things that experts normally do, discount rates, terminal value, which multiples to use.

We would submit that Mr. Hurley's use of multiples more closely tracks what was being done contemporaneously by the parties involved, meaning SRA, Providence, Citi and Houlihan before they manipulated their data.

So Mr. Hurley's is a lot closer to

them than post-manipulation Houlihan and Professor Cornell. I would also mention that there is a big fact here about the date of valuation. Mr. Hurley is the only one who proffers a valuation on the date of the closing which we believe, as a matter of law, is the date that this company has to be valued for the purpose of an entire fairness analysis.

So while, to be certain, they have criticisms of Mr. Hurley's approach, they don't actually offer any affirmative testimony as to value on that date. But their experts did concede during deposition that valuing on the date of closing does make a material difference because of the fact that the cash on hand in the company increased a great deal, and also the relevant EBITDA statistics also increased a great deal between Houlihan's March valuation and the date of closing.

I'll leave the valuation information to that. I think the briefs fairly set forth what the differences of opinions are.

That brings me to the fourth claim which is the charter claim, and as a reminder, the certificate of incorporation explicitly requires Class A stockholders receive in any merger equal per share

payments or distributions as what's received by the Class B shareholders.

Volgenau is the Class B shareholder. So there's no question that that certificate provision applies here. Nobody is arguing that here today. There was no attempt -- and you see this sometimes. You saw it in the Delphi case that was raised earlier. There was no attempt to amend the charter in connection with the merger.

A lot of times you'll see that they'll want to pass an amendment so that those terms don't apply just to cover themselves. That wasn't done here.

So I would submit that there are really two questions with respect to the charter claim, which is was the provision adhered to in these circumstances. We submit the answer to that is no. And the second question is whether or not that constitutes a breach of fiduciary duty, and we submit that the answer to that question is yes.

THE COURT: Let's back up and work a little bit with the first question. You have said that the board didn't think about the charter provision. There's some evidence that suggests that

the board was concerned that everybody was treated equally. If the board's objective was to treat everybody equally, but they didn't look at the specific provision in the charter, does that matter?

MR. NAYLOR: I don't know that there's any evidence that suggests that the board had specifically attempted to treat everybody equally. I mean, I asked all the directors whether or not this was something that they took into account, was it discussed, did they do anything with it, and they said no.

THE COURT: Does the record show that there was never any calculation given to the board showing that when you factored in the note and Doctor Volgenau's interests on the other side that he was getting a per share price that was different from, or perhaps was getting a per share price that was equal to, what the common shareholders were getting.

MR. NAYLOR: I'm not aware of anything along those lines other than the simple conclusion that 31.25 was fair from a financial point of view to shareholders.

So I suppose you could extrapolate from that some scienter on the part of the board that

that automatically meant that this rollover and the governance provisions and everything else that Doctor Volgenau got were equal to that. But I don't think there's any record evidence that shows that that leap was made by any member of the board.

THE COURT: If 31.25 were the correct price, would there be a problem under the charter provision?

MR. NAYLOR: Probably not a problem that would have damages. We could parse the word "equal" as Mr. Millian attempted to do. I don't know that that's the overriding question here. We're not really saying that there couldn't be some way to be equal without being identical in form or in kind.

But the fact that you have a board that didn't even approach the issue -- Houlihan may have concluded that 31.25 was within the range of fairness, but they didn't conclude what the value of what Doctor Volgenau was getting was. They just pinned the number to it and said that's the number.

The board is forthcoming in the proxy about the fact that what Doctor Volgenau is getting is different than what everybody else is getting. They say it three or four times in the proxy that Doctor

Volgenau's interests in the merger are different; he's getting a package. Everybody else is getting cash. He's getting a package of cash, equity, security and a governance agreement that satisfies his various interests.

So maybe if 31.25 was determined to be the fair price of SRA, you wind up in a situation where there's no damages. But we don't have a record of evidence that supports that 31.25 is the fair price.

On that line, I really do have to say that the type of breach that's invoked by that charter provision has to fall under loyalty. It's not mere negligence. This is a charter mandated action which is specifically in place to protect the rights of minority shareholders in a merger. It couldn't be more specifically in tune to what was going on here with Doctor Volgenau.

So to just ignore that altogether, not do any kind of analysis on that and just accept, after the fact, for litigation purposes that it was satisfied, that doesn't make any sense. I think it calls for more than that.

That's the sort of thing that reflects

a failure to act in accordance with a known duty. It's the "I don't care about the risks" kind of attitude. Those are the sorts of things that are found under good faith and, hence, loyalty.

To the extent there's a breach on Count IV, I really do think it has to fall under loyalty. Just one more thing, and I'm skipping backwards just a little bit here to the discussion we had earlier about this bifurcation of the special committee process where Doctor Volgenau was permitted to have these private meetings with potential bidders, and he admittedly went down the road of saying, you know, "Name, values, culture is my credo and those are the sorts of things I need to have maintained in any deal," I was reminded of the old Freeport case. Freeport is probably the last word Your Honor wants to hear these days.

THE COURT: It's just another day in the life.

MR. NAYLOR: The old Freeport case came to mind because there Vice Chancellor Lamb had a summary judgment motion before him, and it was a merger of two related Freeport entities.

The special committee that was formed

by the target had in attendance, at certain of its meetings, the CEO of the target. Vice Chancellor Lamb said, well, the CEO of the target is certainly arguably beholden to the interests of Mr. Moffett who stands on both sides of this transaction.

So that created a significant doubt in his mind as to whether or not that special committee process was fair. I would submit that the explicit bifurcation of a special committee process as between a special committee of independent directors or supposedly independent directors, and a controlling shareholder goes many shades beyond what we were talking about in that old Freeport case and is a good basis for denying a summary judgment motion on this record.

THE COURT: Is continuing board membership material to these directors? It's a big difference between being a director and being the CEO of the entity.

MR. NAYLOR: Continuing board membership by whom?

THE COURT: Continued board membership of the special committee members.

MR. NAYLOR: In SRA?

THE COURT: Yes. I'm trying to figure out -- I understand why it's material to the CEO. I'm not sure it's material to the directors at least as a matter of presumption.

MR. NAYLOR: I don't have any reason to believe that continued service on the SRA board was a material thing to the members of the SRA special committee. My point was simply that in that Freeport case, that specter of influence by the controlling shareholder over the committee process was enough to raise doubts that the claims couldn't be dealt with on Rule 56.

I think that putting Doctor Volgenau alone in a room with bidders, as cordial as he may have been, and I have no reason to doubt that he was, does influence the process in an inappropriate way and raises a significant doubt as to whether or not this was an entirely fair process.

That's all I have unless Your Honor has additional questions for me.

THE COURT: I want to go back to the valuation question and how it ties into the fourth count. Do I have to resolve the question of whose expert is right as to the fair value of the stock at

the time of the transaction?

MR. NAYLOR: Not for summary judgment you don't. Probably at trial that question has to get resolved. At summary judgment, I don't think it has to be resolved because we've got a record of directors who didn't make any attempt to satisfy the charter provision, and made no specific finding that the charter provision was satisfied.

THE COURT: Well, then, the Hurley valuation also doesn't affect my judgment, does it?

MR. NAYLOR: The point is that the battle of the experts exists, but it doesn't need to be resolved on summary judgment I guess is my point. That's something that will need to be resolved at some point, but on the record before you, putting aside the experts, because the committee and the rest of the board didn't attempt to grapple with the issue, I believe that's enough to move forward on that claim.

And there's no basis that they actually made any kind of determination. I mean, even certain of Houlihan's methodologies include value ranges that exceed the deal price. If I'm a director, and I'm trying to adhere to this thing, I say, well, you said this company could be worth anywhere between

29 and 33. If it's worth 33, then are we giving him something extra if we're pricing his shares at 31.25. That's not just 141(e). You gave me an opinion that the deal price was fair. It's a separate question. It's a different question that needs to be resolved specifically by this board that they didn't.

THE COURT: Thank you. Let's take ten minutes.

(At this time a short recess was taken)

THE COURT: Good afternoon.

MR. GILLESPIE: Thank you, Your Honor Jim Gillespie again for the individual SRA defendants other than Doctor Volgenau.

Your Honor, a few responses. First off, it bears emphasis, and we note this in the papers, our colleagues have not challenged that the business judgment rule applies to this case.

The second point is that the Court had asked my colleague wasn't it essentially prescient of the directors to see two years out that the sequester was coming. Of course, at that time, there were threats of government shut down all throughout in the government and spending budgets that were being cut.

And I believe my colleague suggested

that there was not really evidence in the record to support that that was a concern motivating the directors to urge Doctor Volgenau to consider a sales process. But that's not accurate.

Mr. Gilburne, Mr. Grafton and Mr. Klein all testified that during this time period as it went into 2010 they were concerned about the company's performance, how it was losing recompetes. We cited some of Mr. Gilburne's testimony in one of the slides. It's all laid out in deposition testimony.

Mr. Grafton was very concerned about the future direction of government spending. The company was missing its numbers as this time period went on because of poor performance.

So the evidence in the record is quite clear that the outside directors were very much concerned about the company's ability to compete in the field as it once had. That was a reason to motivate them to think that now is the time for a sale.

As Mr. Gilburne said, we couldn't get out of our place in the value chain, and that made the need for a sale more pressing. This is in the 2010

time frame.

Our colleague Mr. Naylor speculated about what Boeing was thinking about the names, values and culture concerns when it was formulating a bid. Well, Mr. Naylor's speculation does not substitute for evidence, Your Honor.

Obviously, my colleague could have taken a deposition of Boeing just like he could have taken the deposition of CGI or Veritas. Plaintiffs chose not to take any of that evidence, and they're simply speculating about what was in the mind of Boeing.

What we know is in Boeing's affidavit, and the evidence we have is that they viewed SRA as an unattractive acquisition target because the price would be too high given risks in the government contracting sector.

Turning to Veritas, Your Honor, a few points. My colleague, eventually, in response to your question, just simply said, well, things are suspicious about Veritas. Again, undifferentiated suspicions don't substitute for evidence.

Not only does the process at the very end show that the special committee had a concern

about financing, asked Veritas to reformulate a bid, give it its highest and best offer and afforded them that opportunity and Veritas made the choice to withdraw, but Veritas, if the allegation, which it clearly is, is that the special committee was looking for an opportunity to blow Veritas out of the auction process, the Court must take into account what is recounted on page 25 of the proxy.

On March 18th, that's the day that the bid packages were due, financial bidder A, which is Veritas, indicated that it would be withdrawing from the process. In order to keep financial bidder A in the process, the special committee granted financial bidder A an extension of a bid submission deadline to March 20th, 2011.

On March 20th, 2011, a written proposal was received from financial bidder A to acquire 100 percent of the outstanding common stock of the company at a purchase price of $30 a share.

If it was the idea of the special committee, Doctor Volgenau or whomever, to drive Veritas out of the process on the 30th of March, why wouldn't they have simply walked away from Veritas on the 20th of March when Veritas had withdrawn from the

sales process. They would not have to take any steps indulging plaintiff's theory to supposedly drive them out. Veritas had left at that point, hadn't met a bid deadline.

But what really happened is the special committee wanted the competitive bidding process so that Providence would be forced to bid higher. They got them back in by relaxing the rules and allowing Veritas to submit a late bid.

Another point that my colleague suggests that I don't think is in tune or in accord with the record is that our colleague suggests that Doctor Volgenau had not kept other board members apprised of his discussions with Providence even during the study team process.

But as our papers show, the study team has minutes from July of 2010 specifically stating that the study team encouraged management of SRA to keep in discussions about potential sale discussions or potential transactions, keep those discussions alive with potential bidders in case the EIG bid fell through because the study team and the board as a whole didn't want to be flat footed if the EIG bid didn't go through.

That evidence flatly contradicts the notion that members of the study team or the special committee or the board as a whole did not understand that Doctor Volgenau had had discussions with folks such as Providence.

Turning to Mr. Klein's compensation and the proxy disclosure, my colleague erred. He suggested that Mr. Klein received $225,000 in compensation for his special committee service. As accurately described on page 60 of the proxy, Mr. Klein received $75,000 of compensation personally to be chairman of the special committee. He declined an additional $150,000 personal compensation when it was offered in the spring of 2011, and the special committee then voted, or the entire board then voted to donate to charities that delta of 150.

Then Mr. Klein, later, at the end in the memo that Mr. Naylor mentioned, in July, suggested that additional charitable donations be made on his behalf. Those charitable donations never occurred. He was not given what he wanted, which shows a few things.

One is that the proxy disclosure about the compensation that flowed to Mr. Klein and the

other members of the special committee was accurate. And two, if Mr. Klein had so dominated the special committee or dominated this process, he, of course, could have had additional charitable donations that he was asking for be made. But they weren't because they were not granted by the rest of the board.

At some point my colleague suggested that the debate over Mr. Klein's compensation was going to be money out of the shareholders' pocket. Well, that's not true either because the money -- shareholders were cashed out at 31.25. That was not going to change. If there was any additional compensation that flowed to Mr. Klein during these discussions, it would have been simply coming out of money ultimately that the acquirer, Providence, would have -- funds that Providence would have otherwise assumed when the transaction closed.

Unless the Court has any questions, that would conclude my remarks.

THE COURT: Thank you very much.

MR. MILLIAN: John Millian again, Your Honor, for Doctor Volgenau. Just a handful of points.

The theory I think you heard clearly articulated today, Your Honor, is that the plaintiff's

case is that Doctor Volgenau and Providence were in cahoots, it was a joint effort on their part to try to acquire SRA. That's the whole theory behind this both "sides of the transaction" argument. It's the whole theory behind the "Providence favored" argument.

It is explicit in the concession that was made to you that if Veritas had acquired SRA for $31.25 a share, the plaintiffs would not have any case. The whole thing is built on this concept that somehow you had a co-venture between Providence and Doctor Volgenau.

The evidence though, Your Honor, simply can't get you there. I talked a bit already about what happened before the special committee process, and you heard more about that from Miss O'Connor.

There were preliminary discussions, but then the process was turned over to the special committee, and without a doubt, you ended up with two competing bidders at the very end and enormous uncertainty as to whether or not Providence was going to win the competition or Veritas was going to win the competition.

Again, think about this. If Veritas

had won at 31.25, the plaintiffs wouldn't have a case. Well, they almost did win. Does the validity of this case turn on whether or not Veritas did or didn't put another 50 cents on the table, on whether they came back again and beat Providence's offer? That is nonsensical.

And think again about what happened at the end of this process. Veritas requested -- Mr. Gillespie pointed out already that the special committee tried to keep Veritas in the process. You heard a concession also that Mr. Klein didn't have a preference between Veritas or Providence. He didn't care which one of them won.

That's an express concession that was made just a few moments ago. When Veritas came forward and said "For us to put a higher price on the table, we need a greater rollover from Doctor Volgenau," and he was asked to provide that, he did. That's entirely inconsistent with the notion, the whole theory that he's trying to win this company in cahoots with Providence. It simply makes no sense.

When Providence came back and said, "Well, for us to put more money on the table, we want you to agree to take this non-recourse note where you

want to run a big risk," which was subsequently realized, "that you're not going to get 31.25 a share more than but 8 percent of your interest in the company," Doctor Volgenau agreed to that.

But then he and the special committee turned around and offered the same deal to Providence. Again, that's entirely inconsistent with the notion that Doctor Volgenau was trying to just drive this process to a purchase by Providence.

Then you have the reality, as the evidence plainly shows, that Doctor Volgenau was not the one making the decision at the end. Yes, he received a news article and he forwarded it on. But the evidence is absolutely uncontradicted that he was not in the room for the discussions, he was not privy to the discussions, he was not part of the decision as to which bid to accept.

And at the end of the day, the reason that Providence won was they offered the most, and Veritas decided it didn't want to continue the discussion.

So I think it's perfectly clear that Doctor Volgenau was not on both sides of this transaction. This does not match up in any way with

the case law where this Court or the Supreme Court has reached that conclusion. This was not his purchase of SRA. He agreed to a rollover of a portion of his interest, which happens not infrequently in these types of transactions, and helped facilitate the transaction.

On Mr. Klein, I've already suggested earlier I just don't think that the fact that he asked for money he didn't get after the fact that that just changes the picture. I mean, the story that you just were told was that the other special committee members were along for the ride, they enforced Mr. Klein's request for additional payments, it was taking money out of the shareholders' pockets and putting it into Klein's favorite charity.

Well, first of all, while there was some initial support for his request -- because certainly the General thought this was a great deal that had been obtained, he didn't ultimately get what he wanted, so the board didn't support this.

It wasn't taking money out of the shareholders' pocket. The deal had been set at that point. The only shareholder whose pocket this money was going to come out of, the only existing

shareholder whose pocket this money was going to come out of, was going to be Doctor Volgenau. Because if the money was paid out of the company, all the public shareholders would still get $31.25 a share, and the assets of the company would be less, and since he was rolling over some of his stock, it would make that stock worth less.

So this just does not go anywhere, Your Honor. On this note, you haven't heard from the defense on this, but the plaintiffs lobbed in some allegations about the Shakespeare theater in a letter that came in earlier. If you would like to hear from any of us on that, we would be happy to address it.

I can assure you that Gibson Dunn's contribution had nothing to do with SRA or Doctor Volgenau or this transaction. It had to do with the fact that one of our partners was asked by Abbe Lowell to co-chair the fund raising gala and persuaded the firm and 25 plus partners, including myself, to contribute money, and that fellow didn't even know what SRA was or who Doctor Volgenau was. With respect to the other contributions, I know that similar information can be provided.

At the end of the day, where you are,

Your Honor, I think, is that there is no evidence here certainly of any damages. Even the argument that, well, the range of values that Houlihan provided went from $28 to $33, well, suppose it was $33 the other shareholders received 31.25. Well, then, Doctor Volgenau is getting more.

I mean, in a theoretical sense, that's true, but as we discussed earlier, it's just not possible for a private company to value the company precisely. There would be no answer to the question to Houlihan, "Well, which is it? Is it 28 or is it 33?"There's no answer to that question.

All the board could do was know that 31.25 appeared to be a fair value, and to set Doctor Volgenau's rollover shares at exactly that same price, and that is discussed in the proxy statement that that is how the value of the rollover shares was set.

So there was a conscious consideration to the fact that his rollover shares were being set at the same price that the public shareholders were getting. First of all, not all the directors were even asked this question.

Mr. Klein was not asked the question whether he had considered the charter provision. But

none of the directors suggested they had not considered whether Doctor Volgenau was getting the same value as the other shareholders. And plainly, they didn't consider that. And the proxy statement specifically says that his rollover shares are being priced at the same amount as what the other shareholders are receiving.

If I am driving down the highway on the interstate and I know I'm going 55, and you then ask me later, well, did you consider whether or not at each speed limit sign you went by did you do an analysis of whether you were in compliance with the speed limit sign. Well, I didn't. I don't. Because I know when I'm going 55 that I'm going to be in compliance with the speed limit signs.

And, here, the directors knew that Doctor Volgenau was getting consideration with the same value as the other shareholders. So the notion that they needed to do a specific analysis of it doesn't really take you anywhere.

THE COURT: I'm just glad to hear that there is somebody who complies with the speed limit.

MR. MILLIAN: From time to time, Your Honor.

I guess the last point that I would make is I think the evidence is quite clear that Doctor Volgenau personally acted honorably through this process. He put it in the hands of the special committee. At the end of the day, when they came to him and asked him to make sacrifices to get the price up for everybody else, he agreed to do it.

Plaintiffs may consider it idiosyncratic that Doctor Volgenau places such high value on integrity and honesty, but the record simply has nothing in it to suggest that his own conduct was anything but consistent with those values throughout this process.

I think the same can be said for the other directors. There's no evidence he sought to get a premium for himself. He personally tried to look out for the minority shareholders. He and the members of the special committee cut square corners, followed the process they were supposed to follow.

In fact, they got two bidders to have a vigorous auction at the end of the day to obtain a price that was a very significant premium for the shareholders at a time when the company's prospects had some questions associated with it given what was

happening with the economy and the government services market in particular.

History has shown it was a great deal for the shareholders. There is nothing in this record that suggests the Court should reach any result other than that there is ample support for the conclusion that the business judgment rule should apply across the board, including with reference to the charter claim, and the directors satisfied their duties here.

They cut square corners. This is a case that cannot be pounded into that round hole. The facts just are not there. You don't need to decide, as both sides seem to agree, you don't need to decide the battle of the experts to get there. I think it's clear we're entitled to summary judgment.

THE COURT: Thank you.

MS. O'CONNOR: Good afternoon. Maeve O'Connor again for the Providence defendants with just a few words in response.

First, Mr. Naylor stated that Providence and Mr. Volgenau negotiated material terms such as price and rollover and financing and go-shops and management all before the study team came into place. That is certainly a conclusion from the facts,

but it's not the facts.

The reality is that there's no evidence that the early discussions between Providence and Doctor Volgenau, which I already summarized, were anything other than preliminary conversations aimed at providing background to Doctor Volgenau, for example, on how an LBO works which is not something he was familiar with.

Taking the pieces one at a time, Mr. Naylor suggested that there were discussions of management. Well, the evidence shows that Renny DiPentima suggested to Doctor Volgenau that, gee, perhaps there could be a board of the company that would include me and Ted Legacy and you.

There's no evidence that Providence told him to say that. In fact, that wasn't the case. Ted Legacy wasn't on the board, and DiPentima wasn't on the board. So that's just Randy talking.

Mr. Naylor suggested that price was discussed. Well, the evidence on that is that Stan Sloane took some notes during a presentation given to the study team of the board by Providence, and those notes included various calculations he made about EBITDA and this and that, and trying to sort some

things out. And he wrote the number 28. And when asked about it, he couldn't remember whether it was something Providence said to him or whether it was just calculations that he was trying to do.

But, in any event, even if Providence had said that, they said it to the study team of the board as an indicative price. That was certainly not the final price because the price was negotiated on and on from there and landed at 31.25.

Let's see. He suggested that there were discussions of leverage, and Providence contacted potential lenders. That was discussed only in very general terms in the early meeting as to what level of financing was available for similar acquisitions. Doctor Volgenau asked Providence to do a no names market check, and Providence did that, and came back and said, gee, five to six times EBITDA financing seems to be available. Very general. Totally preliminary. Not reflecting a negotiation of a material term at all.

I already addressed the go-shop point. I don't think I need to address that again. Providence made no promises and could not have made any promises as to the outcome of a go-shop period

that it did not control.

As for rollover being negotiated, there was no negotiation of a rollover. There was indication that that could be something if that's what Doctor Volgenau was interested in, but no negotiation beyond that.

Second, Mr. Naylor said that Providence's goal in hiring Mr. DiPentima was to devise a strategy to get to Doctor Volgenau. That is flatly not true, contradicted by ample evidence in the record. It's just not true.

The record is very clear that Providence had been interested in the government services base for a long time. Randy was expert in that area. He was not hired for that purpose. And in fact, the evidence shows that initial conversations with Randy were about multiple types of companies, and in fact, only subsequently did they start focusing more on SRA.

Finally, there's the suggestion again that there's something sort of nefarious about Providence's reliance on former SRA folks who are consultants such as Ted Legacy and this organization called Wolf Den.

The reality is that while Mr. Naylor wants to make it sound nefarious, there's no evidence at all, no facts suggesting anything improper here. There is no fact suggesting that any of those individuals were in conflict with or violating any agreement they had with SRA.

They helped Providence do due diligence and analyze data, but there is no evidence to suggest that they undercut the auction or in any way were involved in the process in a way that would render them remotely material to anything.

One other point on that is there's nothing wrong with Providence as a buyer, potential buyer, who is interested in acquiring a company to try to learn about the company and hire people who used to work there. They want to buy the company. They want to understand the company. They want to understand its business. It's a smart thing to do, and there's nothing nefarious about that.

Finally, Mr. Naylor suggests that by seeking input from the consultants such as Mr. Legacy or Wolf Den or Randy DiPentima that Providence was not operating at arm's length to the special committee. That's like apples and oranges, the sun and the moon.

There's no evidence that Providence was not operating at arm's length to the special committee, whether it was former SRA consultants helping it with diligence. It has nothing to do with the special committee process.

I have nothing further unless you have any questions.

THE COURT: I do not. Thank you.

Mr. Naylor, do you have anything to add.

MR. NAYLOR: Only briefly, Your Honor, and before I start, I would encourage Mr. Millian to make sure that he keeps his eye on the speed limit signs if he's heading down 113 to the bridge because they change regularly from 55 to 35.

Just a very few points. The record evidence does indicate that the CFO and CEO of SRA believed that a strategic buyer could pay much more, but that was dependent on them being able to extract synergies, and Volgenau states in his book that he wasn't open to those sorts of buyers.

So even assuming, and we don't concede this, but even assuming that the special committee got the best price they could have out of Veritas and

Providence, the process was crippled from the start because of that bifurcation.

Another point that was raised was that Mr. Klein didn't get this additional compensation. Well, that wasn't for a lack of trying by the other special committee members. They all endorsed giving Klein additional compensation. That was halted by Providence who thought that it would be a bad fact pattern. That's an exhibit in my transmittal affidavit.

I think Mr. Gillespie mentioned that if the business judgment rule does apply, which obviously we don't agree with, everything would go away. I don't think that that's true with respect to Count IV. I think that's a separate issue for consideration because it does have to do with the adherence to a specific charter provision as opposed to the judgment with respect to endorsing the merger consideration itself.

Someone mentioned that the board was knowledgeable about what was happening with Providence. That's not reflected in the record. We've cited testimony in footnotes 51, 74 and 83 of directors testifying that they were unaware of the

details of what Volgenau was talking about and had no idea that there was anything other than a general existence that a firm called Providence might be interested.

Even assuming that Mr. Klein's charitable interests didn't wind up receiving an additional payment, plaintiff submits that it's that expectation that's the taint on the process; not the ultimate reward. It's the fact that he felt that he could go back and search out a reward. So I don't think that it's really dispositive one way or the other whether he got it or not. I guess we'll never really know that.

With respect to Veritas, if Veritas had won at 31.25, the case would certainly be different. There may be an appraisal case. So it's not that there would be no claim if Veritas won. And there would still be the aspect of a controlling shareholder who pursued an LBO to the exclusion of strategic buyers because he had a particular vision for the company.

If he was able to get Veritas to agree to the same things as Providence, maybe those two things coalesce into a claim. It's not what happened

here. So it's really hypothetical.

Mr. Millian said something that I thought was interesting, that there's no way to answer the charter question definitively. And then earlier on he made the point about equality and whether equality had to be identical or identical in value.

Well, if there's no way to answer the question, it sort of cuts against the notion that you could have different forms of consideration and still determine they were equal if there's no way to answer that question. That struck me as a little bit strange.

In response to Miss O'Connor's comments, there is evidence in Providence's internal documents that they set about how to pitch Doctor Volgenau, what sorts of things to offer him, how to press his buttons. That's in their documents. They're in my affidavit and cited in the brief.

She also mentioned that there was a presentation to the study team. There wasn't a presentation by Providence to the study team. The Providence presentation was to Volgenau, Sloane, Nadeau, who is the CFO, and Mr. Schultz who is the general counsel. So I don't think that was accurate.

It's not the biggest point in the world, but I think it reflects the fact that the other members of the board weren't really on top of what was happening with Providence in a detailed way.

Finally, there was a mention -- there's no evidence in the record that Doctor Volgenau was seeking out a premium payment for himself. Well, that's a little bit different of a question, because there is evidence that he wanted SRA to be private again, and he wanted to retain a chairman role and retain an equity role.

So did he say, "And I want to get a premium out of that"? Maybe not, but he certainly had positioned himself in a way that he had specific interests in the transaction. So I did just want to address that as well.

Those are all the additional points that I wanted to touch on based on the reply from my colleagues.

THE COURT: Thank you.

MR. MILLIAN: May I make one very short point, Your Honor, in direct response?

THE COURT: Especially if you want to talk about speed limits.

MR. MILLIAN: I'll note the road in question is not a freeway, and I would have looked very carefully. Just with respect to -- it's not a huge point, but in case it's a consequence in the Court's mind, with respect to Doctor Volgenau's book, I commend to you what he says in there. The time period that is being referred to was early on in the process when he does say in his book he was not interested in selling to the sausage factories.

If you then look at his deposition then, you will see that his thinking evolved as the process moved forward, and he concluded he was willing to sell to at least some strategic buyers, and the ones who actually responded and expressed an interest in potentially purchasing SRA, he was quite open to.

So it is not the case in this record that strategic buyers were excluded. We've already discussed all the work Boeing put into this.

Thank you, Your Honor.

THE COURT: Thank you all very much. I will reserve decision.

I wish you safe travels. With that, recess court please.

(The Court adjourned at 1:35 p.m.)

CERTIFICATE

I, MAUREEN M. McCAFFERY, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 171 are a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Dover, this 27th day of April, 2013.

/s/Maureen M. McCaffery

Maureen M. McCaffery
Official Court Reporter
of the Chancery Court
State of Delaware