IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVID JOHNSON, individually and on behalf of all others similarly situated,	:	
Plaintiff,	:	
v	:	Civil Action No. 11721-VCL
BRIAN J. DRISCOLL, ROBERT J. ZOLLARS, EDWARD A. BLECHSCHMIDT, ALISON DAVIS, CELESTE A. CLARK, NIGEL A. REES, RICHARD DEAN HOLLIS, ROBERT M. LEA, WILLIAM L. TOS JR., MATTHEW C. WILSON, SNYDER'S-LANCE, INC., SHARK ACQUISITION SUB I, INC., and SHARK ACQUISITION SUB II, LLC,	:	
Defendants.	:	

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Chancery Court Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Wednesday, February 3, 2016
10:02 a.m.

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BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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RULINGS OF THE COURT FROM TELEPHONIC ORAL ARGUMENT ON PLAINTIFF'S MOTION FOR EXPEDITED PROCEEDINGS

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APPEARANCES:

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THE COURT: All right. Thank you, everyone. I'm going to give you my ruling now.

I am going to deny the motion for expedition.

The complaint that was originally filed made both enhanced scrutiny claims against the transaction and its terms as well as disclosure claims. The enhanced scrutiny claims are no longer being pressed, meaning that, at least for purposes of today, I can assume that there wasn't any process dysfunction that would require an injunction to correct a mispricing effect.

So then the question becomes disclosure. The disclosure issues are presented effectively as legal arguments. What we've had for the last 50 minutes was argument about why the law does or doesn't require disclosure of items and effectively why, from the plaintiff's standpoint, these items are material omissions, and the counterarguments by defendants as to why, no, as a matter of law, they aren't material omissions. That legal issue can be raised after full briefing and ruled on in a post-closing motion to dismiss.

At this point the plaintiffs have made their pitch. The ball is now in the court of the defendants and their counsel. And by "their counsel," I'm not only referring to the litigators on the line, who doubtless are very experienced and knowledgeable, but also their securities counsel, who deal with questions of materiality all the time and who actually have expertise in calling materiality under the TSC standard, whether for purposes of Delaware law or federal securities law, all the time.

Having considered the plaintiff's arguments, if the defendants think they face any risk or if, on balance, they think that prudence outweighs the risk, well, they can easily supplement pre close. If, on balance, they believe that these things really aren't material and they have the courage of their convictions, so be it. That's their choice.

We will deal with these things post close in the context of a motion to dismiss where I can give you an actual ruling, as the Chancellor contemplated in his Trulia decision, as to whether this is material or not. If I hold that it's not material and grant the motion to dismiss, then the plaintiffs can seek a determination from the actual

authority on this question, the Delaware Supreme Court, instead of having, you know, musings and transcript rulings and probabilistic determinations. We'll find out. I'd like to know. I think it would be good to know.

If, on the other hand, I determine on the motion to dismiss that these, in fact, were material omissions, well, then, in terms of representing the class that they purport to represent, the plaintiffs will actually be in an optimal position, because then they can proceed and, on behalf of that class, potentially get money.

Now, what that requires, of course, is for the plaintiffs to believe that there's actually a wrong here in terms of not simply an informational deficit but actually an underpriced transaction so that the people they ostensibly represent are being harmed in the sense that they're not getting the amount of money that they should actually get. I'm not really sure that's true, at least based on what I've heard today, because the plaintiffs aren't pressing any process claims. So at least as far as a fiduciary approach to market pricing, they don't seem to believe that there's anything wrong with this deal,

from a market pricing standpoint, at least for purposes of expedition.

So dealing with this post closing also has the additional advantage of actually imposing a gut check on the plaintiffs as to whether they actually think that this deal is underpriced and that the people they are representing have suffered harm, or whether this is just some type of, I don't know, setup to a disclosure-only settlement. I know it would be hard to believe that that would be where this would be heading, but it's happened before.

In terms of the possibility of discovery, uncovering things that might lead to a disclosure claim not currently pled or some other issue, you don't get discovery just because you show up and you want discovery. You actually have to plead a claim that warrants expedition and, hence, leads to discovery.

By not granting expedition, I'm not foreclosing the plaintiffs from potentially finding information. There's at least two ways people can find information. One, of course, is Section 220. This, as we know, is partially a stock deal. What that means is members of the class the plaintiffs

purport to represent will continue as stockholders post transaction. What that means is under Saito versus McKesson, they can obtain books and records related to pre-transaction information. It's, thus, possible, notwithstanding the absence of expedited discovery, for someone to obtain information and bring a claim.

You shouldn't hear this as me suggesting that there's a credible basis for suspicion on the facts presented. All you should hear me saying is that to the extent the argument is that plaintiffs need to have expedited pre-close discovery just for the benefit of some arguably beneficial tire-kicking function, which I would submit historically the plaintiffs' bar was not actually performing, that is not necessary because, at least in this case, there's the possibility to use Section 220.

There's also a more important avenue, which is the loop that the Delaware Supreme Court in Weinberger said should be the primary remedy for mergers, and that's appraisal. Now, I'm not saying that appraisal is "adequate" in this circumstance. I don't have to say that. But I do know that if you get in there on an appraisal -- and, again, that forces

the plaintiffs to have the courage of their convictions because they actually have to believe that there's some price issue and some real harm to the people they ostensibly represent, not just an amorphous informational deficit. If you get in on an appraisal and you conduct discovery and you find out that there was a set of different projections or that there were problems, et cetera, well, what do we know? We know that when plenary actions, post-closing plenary actions, generate actual real recovery for stockholders, they often -- not always, but often -- have been brought because people uncovered things in appraisal. So that's another route that people have.

But in terms of today, I'm not going to rule as a matter of law on these things at the motion to expedite phase, when this is something that I can actually rule on post close and either give you-all a full remedy in the sense of some eventual possible monetary damages award, or I can dismiss the case. And if I'm wrong, that's fine. I'm happy to learn that I'm wrong, and we'll go forward under the new regime. I think that's the way to go.

This approach also dovetails with Trulia, because if there's one thing we know -- or at

least I know -- it's that part of what sets up the harvesting of cases is the pressure created by the motion to expedite ruling. It's that ruling that leads to expedited discovery. It's that ruling that makes cost effective people trying to settle cases pre close or hopefully post Trulia, people doing more "not-settling" -- I should say less settling or putting out mootness disclosures.

But on that latter point, nobody on the Court -- at least I don't think. I shouldn't speak for anybody else. At least nobody who's a Vice Chancellor sitting in my office right now, which is a total of one, wants to create a system where we substitute ritualized litigation leading to disclosure-only settlements and replace that with ritualized litigation leading to mootness fee buy-offs.

The need is to address these things in a manner that makes sense. And when we're talking about these types of disclosure issues, such as are raised here, which have been the bread and butter of the disclosure settlement industry, I think the answer is, "You know what, let's find out if these things are really material or not."

So you-all have presented these as essentially issues of law based on omissions. I'll deal with them if and when on a motion to dismiss. And I'm confident that if it turns out, either based on a ruling from me or after appeal, that if these things are material, and if there's a basis for some type of monetary damages award, that award will provide meaningful relief, far more meaningful relief than a little more information now.

So for all those reasons, the motion to expedite is denied.

I don't plan to take up the motion to dismiss until after the deal has closed. If there are, you know, some breaking developments, I'm not saying people can't come back. Obviously, if something real happens and something actually needs to be litigated pre close, I'm happy to hear you-all again. But based on what you've given me today, this is not something that warrants expedition.

Thank you all for your time. I appreciate you getting on the phone. Have a good one.

COUNSEL: Thank you, Your Honor.

(The proceedings concluded at 11:08 a.m.)

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CERTIFICATE

I, NEITH D. ECKER, Chief Realtime Court Reporter for the Court of Chancery for the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 10 contain a true and correct transcription of the rulings 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, except as revised by the Vice Chancellor.

IN WITNESS WHEREOF I hereunto set my hand at Wilmington, this 3rd day of February 2016.

/s/ Neith D. Ecker

Chief Realtime Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public