



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

K-BAR HOLDINGS LLC, on behalf of :  
itself and all other similarly :  
situated stockholders of TILE SHOP :  
HOLDINGS, INC., and derivatively on :  
behalf of Nominal Defendant TILE :  
SHOP HOLDINGS, INC., a Delaware :  
corporation, :  
Plaintiff, :  
v. : Civil Action  
ROBERT A. RUCKER, PETER J. JACULLO :  
III, PETER H. KAMIN, CABELL :  
LOLMAUGH, TODD KRASNOW, and PHILIP :  
B. LIVINGSTON, :  
Defendants, :  
and :  
TILE SHOP HOLDINGS, INC., a :  
Delaware corporation, :  
Nominal Defendant. :

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Court of Chancery Courthouse  
Courtroom No. 2  
34 The Circle  
Georgetown, Delaware  
Friday, November 8, 2019  
3:30 p.m.

- - -

BEFORE: HON. SAM GLASSCOCK III, Vice Chancellor.

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ORAL ARGUMENT AND RULING OF THE COURT ON PLAINTIFF'S  
MOTION FOR A TEMPORARY RESTRAINING ORDER AND  
PLAINTIFF'S MOTION FOR EXPEDITED PROCEEDINGS

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CHANCERY COURT REPORTERS  
Leonard L. Williams Justice Center  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801  
(302) 255-0532

## 1 APPEARANCES:

2 GREGORY V. VARALLO, ESQ.  
3 Bernstein Litowitz Berger & Grossmann LLP  
4 -and-  
5 CHRISTOPHER J. ORRICO, ESQ.  
6 JACQUELINE Y. MA, ESQ.  
7 of the New York Bar  
8 Bernstein Litowitz Berger & Grossmann LLP  
9 -and-  
10 JONATHAN KASS, ESQ.  
11 Offit Kurman, P.A.  
12 for Plaintiff

13  
14 BROCK E. CZESCHIN, ESQ.  
15 Richards, Layton & Finger, P.A.  
16 -and-  
17 THOMAS M. RITZERT, ESQ.  
18 of the Ohio Bar  
19 Thompson Hine LLP  
20 for Defendants and Nominal Defendant

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1                   THE COURT: Good afternoon, Counsel.  
2 Thank you for making yourselves available. I  
3 appreciate it. We put you in the punishment courtroom  
4 not through any fault of your own, just random  
5 punishment being handed out for all of us.

6                   Mr. Varallo, I see you're standing.

7                   MR. Czeschin: Mr. Varallo is gracious  
8 enough to let me do introductions first.

9                   THE COURT: All right.

10                  MR. Czeschin: Brock Czeschin from  
11 Richards Layton & Finger on behalf of the defendants.  
12 My co-counsel Thomas Ritzert from Thompson Hine in  
13 Cleveland.

14                  THE COURT: Welcome both.

15                  MR. Czeschin: Mr. Ritzert will be  
16 doing the speaking today.

17                  THE COURT: I'll be happy to hear from  
18 Mr. Ritzert.

19                  MR. VARALLO: Good afternoon, Your  
20 Honor. May it please the Court, Gregory Varallo from  
21 Bernstein Litowitz Berger & Grossmann, Wilmington  
22 office.

23                  THE COURT: That sounds very strange.  
24 But welcome.

1                   MR. VARALLO: It's my great pleasure  
2 to appear before you today. With Your Honor's  
3 permission, my colleague C.J. Orrico will be making  
4 the presentation. He's been admitted pro hac. I also  
5 would take a moment to introduce to the Court my  
6 colleague Jacqueline Ma from the New York office and  
7 our co-counsel Jonathan Kass from Offit Kurman.

8                   THE COURT: Welcome.

9                   For those who have come from a  
10 distance, we do have a real courtroom here. It's  
11 actually a very beautiful courtroom. It's being set  
12 up right now for a three-day trial which starts first  
13 thing Tuesday morning that predicated the scheduling of  
14 the TRO, and that's why we're down here. I don't want  
15 you to think this is the best we've got. It's just  
16 the best that's available.

17                   Please go ahead, Mr. Orrico.

18                   MR. ORRICO: May it please the Court,  
19 good afternoon, Your Honor. C.J. Orrico from the  
20 Bernstein Litowitz law firm.

21                   THE COURT: You just taught me this  
22 the other day on the phone and I already lost it.  
23 That's really sad. I'll try to remember it now,  
24 Mr. Orrico.

1                   MR. ORRICO: Our firm has tough names.  
2 You may know my colleague Jeroen van Kwawegen. I  
3 still cannot pronounce his last name.

4                   In any event, I'm here on behalf of  
5 plaintiff K-Bar Holdings, a stockholder of the Tile  
6 Shop. I would just like to note for the Court that  
7 Kevin Barnes has joined us today. He's the principal  
8 of K-Bar Holdings, and he came here from New York.

9                   THE COURT: Now, does your client just  
10 not know how to spell K-Bar, or is this not the marine  
11 combat knife company?

12                  MR. BARNES: Your Honor, I'm  
13 originally from Wyoming and there's the K Bar Z Ranch,  
14 which is a big landholding in the area. So it's in  
15 honor of that. But I respect the marines also. Their  
16 role is very important.

17                  MR. ORRICO: Your Honor, before I jump  
18 into my presentation, if I may approach the bench. I  
19 have a few documents. I'll also give my colleagues  
20 here copies as well.

21                  The first is a copy of the court order  
22 from the Minnesota court about Mr. Rucker's divorce.  
23 The second is a Form 4 that was filed with the SEC  
24 yesterday with some more stock purchases. And the

1 third is the 8-K that was filed with the SEC by Tile  
2 Shop. And you'll see there's an Exhibit 99.4 in the  
3 back of that, which was with the 8-K.

4                   So, again, I thank the Court for  
5 hearing us under such exigent circumstances. I  
6 believe the Court has read our complaint and our  
7 moving papers, and I thank the Court for the  
8 opportunity to hear us on Wednesday and allow me to  
9 speak to the facts. So unless the Court has any  
10 specific questions about the background, I plan to  
11 keep my presentation short and just dive right into  
12 the issues.

13                  THE COURT: I'm not only familiar with  
14 your presentation, but I have had a chance to read the  
15 opposition papers as well. But I'm happy to have you  
16 tell me whatever it is you think is important.

17                  MR. ORRICO: Sure, Your Honor. And  
18 I'll be very brief with background.

19                  On October 21st, 2019, three members  
20 of the Tile Shop board, defendants Robert Rucker,  
21 Peter Jacullo, Peter Kamin, owned approximately 30  
22 percent of the company. The next day, on October  
23 22nd, the Tile Shop's board of directors announced  
24 that the company would go dark, delist from the Nasdaq

1 and deregister from the SEC.

2                   Immediately after the announcement,  
3 the market price of the company's stock dropped about  
4 60 percent and the board members began to purchase,  
5 and continue to purchase, the company's stock at a  
6 frenzied pace at depressed prices.

7                   Since October 22nd to today, Your  
8 Honor, defendants Kamin and Jacullo have bought over  
9 13 percent of the company and now defendants Rucker,  
10 Kamin, and Jacullo own about 42 percent of the  
11 company.

12                  One member of the board, Christopher  
13 Cook, immediately resigned from the board after the  
14 board approved the going dark. And the rest have done  
15 nothing since the approval to protect the company from  
16 the three insiders taking control.

17                  THE COURT: Did he vote in favor, or  
18 is that not in the record?

19                  MR. ORRICO: Your Honor, we learned  
20 this morning from defendants' papers that there was at  
21 least a representation that defendant Cook voted in  
22 favor of the going dark.

23                  But, in any event, since the going  
24 dark and the defendants buying up the shares, there's

1 been no attempts to reach a standstill, from our  
2 understanding. There's been no poison pill put in  
3 place. Rather, they've been rushing to complete the  
4 going-dark scheme.

5 Now, on November 1st, they filed a  
6 notice with the Nasdaq to delist. They expect that to  
7 finalize today. And I just want to make some  
8 clarification for the Court, because I also had a  
9 chance to read their papers this morning and there  
10 seems to be a little bit of talking past each. So the  
11 delisting is being done now. So for purposes of the  
12 TRO, we're not asking to stop that because that's not  
13 part of the status quo right now. Obviously, we plan  
14 to challenge that at trial on a full record.

15 However, the plan to send the Form 15,  
16 which deregisters the company from the SEC, is not  
17 supposed to be sent until November 12th. Now,  
18 according to that Exhibit 99 to the back of the 10-Q  
19 that I gave to the Court earlier, once the Form 15 is  
20 filed, the company has no obligations to file its  
21 periodic reports. And once deregistered, all of the  
22 requirements associated with being an Exchange Act  
23 registered company is terminated. And I will get into  
24 that in a little bit. But by delisting and by

1 deregistering, defendants are attempting to gain  
2 control of the company, extract personal benefits  
3 without public scrutiny. It's going to be secret once  
4 they go dark.

5                   The delisting and the deregistering  
6 will significantly reduce the amount of information  
7 about the company for public stockholders and will  
8 continue to negatively impact the market value for the  
9 company's stock, as many institutional investors  
10 cannot hold delisted, deregistered stock. Defendants  
11 actually recognize this fact as part of their 10-Q at  
12 page 27. And if this wasn't troubling enough, since  
13 we spoke with the Court on Wednesday, we learned that  
14 defendant Kamin purchased another 99,000 shares of  
15 Tile Shop.

16                   Now, I want to pause on that a minute.  
17 I provided the Court with the Form 4. With full  
18 knowledge of our complaint, the motions, and while the  
19 Court was in the process of addressing this matter,  
20 defendants went forward with their scheme to take  
21 control of the company, notwithstanding the Court or  
22 the parties. And because insider SEC Form 4s are  
23 usually due to the SEC by the end of the second  
24 business day after the purchases, we will not learn of

1 any additional purchases from yesterday or today by --  
2 until later tonight or on Monday. So without judicial  
3 intervention, the board will gain control of the  
4 company at an unfair price without paying a control  
5 premium and destroying value for public stockholders.  
6 And it will all be done in secret if the  
7 deregistration is allowed to go forward.

8                   THE COURT: Is the deregistration  
9 reversible and, if so, what has to be done to reverse  
10 it?

11                  MR. ORRICO: Sure, Your Honor. From  
12 our understanding, the way the process works is the  
13 following: The Form 15 is filed, they say, on  
14 November 12th. Once that happens, they no longer --  
15 everything is suspended. They don't have to file  
16 anything. It becomes finalized 90 days from there.  
17 So that would be early February, let's say. In that  
18 time period, my understanding is you can amend it or  
19 stop it on your own.

20                  So plaintiff seeks a TRO to keep the  
21 status quo --

22                  THE COURT: I'm still educating  
23 myself. So your understanding is that if the Form 15  
24 is filed on November 12th, there's a 90-day period in

1 which it could be withdrawn; correct?

2 MR. ORRICO: Yes, Your Honor.

3 THE COURT: And what if it is not  
4 filed on November 12th? Is there some obligation that  
5 that puts on the company as opposed to it being filed  
6 on December 12th?

7 MR. ORRICO: Yes.

8 THE COURT: The reporting requirements  
9 would persist for a month, or would they persist for  
10 another year, or would it have to be -- is it linked  
11 in some way to the Nasdaq delisting? How does this  
12 fit together?

13 MR. ORRICO: Sure. So my  
14 understanding is that the deregistration from the SEC  
15 is separate and apart from the delisting from the  
16 Nasdaq. So by delisting from the Nasdaq, it's no  
17 longer traded on the Nasdaq. Now it's an OTC-traded  
18 stock.

19 Right now it's registered, the company  
20 is registered. So it has to abide by the SEC  
21 reporting obligations, which include periodic reports,  
22 which include insider trade -- it has to disclose,  
23 like, the Form 4 I handed Your Honor. There's the 5  
24 percent stockholder clause, there's the disclosures

1 about related-party transactions that all have to be  
2 disclosed. The minute that the deregistration is  
3 filed, everything is suspended. And then it becomes  
4 finalized, meaning it's done -- the trigger is -- they  
5 would have to reregister after the 90 days.

6 THE COURT: Right.

7 MR. ORRICO: So, theoretically, if we  
8 were to delay the Form 15 being filed on, say,  
9 December 12th, like a month -- the  
10 deregistration would be -- their obligations would be  
11 suspended on the 12th, and then it would be 90 days  
12 from there for everything to be officially terminated.

13 THE COURT: But they would retain the  
14 ability to send the Form 15 on December 12th, in your  
15 view; correct?

16 MR. ORRICO: Yes, Your Honor.

17 THE COURT: It's not like if they  
18 don't send it on November 12th, they lose the  
19 opportunity for some period of time?

20 MR. ORRICO: No, Your Honor. They can  
21 send that Form 15 whenever they want. November 12th  
22 is not some drop-dead date that they can never  
23 deregister ever again, from my understanding.

24 THE COURT: Got it.

1                   MR. ORRICO: So plaintiffs seek a TRO  
2 to keep the status quo now and the expedited  
3 proceedings. It is well-settled in Delaware that the  
4 purpose of the TRO is to maintain the status quo.

5                   THE COURT: I don't need much help  
6 with the TRO.

7                   MR. ORRICO: Sorry, Your Honor. I'll  
8 move on.

9                   So, here -- just what we're seeking --  
10 we're seeking a TRO to stop the purchases, to separate  
11 the shares that have been purchased since October 22nd  
12 to effectuate any control, and just to stop the  
13 deregistration, to hold that off for some period of  
14 time.

15                  THE COURT: Let's take those one at a  
16 time. What entities are you seeking to have purchases  
17 stopped for?

18                  MR. ORRICO: Sure, Your Honor.

19                  THE COURT: And individuals.

20                  MR. ORRICO: It would be the members  
21 of the board, any of their affiliates. So, for  
22 example, Mr. Kamin has -- I think it's 3K Limited  
23 Partnership which he's making purchase through. It  
24 would be their business entities, family members,

1 associates, like that.

2 THE COURT: So that's the first thing  
3 you're seeking. The second thing is to sterilize the  
4 ability of the board members who have bought shares to  
5 vote the shares? I'm not quite sure what you're  
6 asking.

7 MR. ORRICO: Sure, Your Honor. Let's  
8 take a step back here for just a second. So since the  
9 time of the announcement of the going dark to today,  
10 they have purchased about 13 percent of stock. All  
11 we're asking is that be segregated or in escrow where  
12 they can't vote it, or something like that.

13 It's the same thing that Vice  
14 Chancellor Jacobs did in the *Ivanhoe* matter. In that  
15 case, there was a creeping takeover and he ordered --  
16 the Court ordered a TRO for purchases and then  
17 expanded it to kind of carve out what was purchased  
18 from the time of the wrongdoing.

19 THE COURT: Why would I need to carve  
20 this out? What is the harm that would be involved in  
21 allowing that 13 percent of stock to be voted and on  
22 what?

23 MR. ORRICO: Well, Your Honor,  
24 respectfully -- so now they would have 42 percent of

1 control. Again, it's not, technical, over the 50  
2 percent threshold, but they could still use that to do  
3 some type of transaction, I would imagine. And also  
4 just because --

5 THE COURT: You're talking about a  
6 transaction that the stockholders would have to vote  
7 on for this to make any difference; right?

8 So there are transactions the board  
9 can do. They can do them whether I sterilize this 13  
10 percent or not. So we're only talking about  
11 transactions where the stockholders have a right to  
12 vote on the transaction. If that were going to happen  
13 and you had a belief that it was detrimental, wouldn't  
14 that be the time to ask for a TRO with respect to that  
15 13 percent? Now you are just kind of saying, "Well,  
16 if they ever do having something in mind, like selling  
17 assets or buying assets that would trigger a  
18 stockholder vote, you should have this stock put in  
19 escrow so they can't vote it." I'm just struggling a  
20 little bit to see why that's part of the TRO.

21 MR. ORRICO: Your Honor, after  
22 listening to you, I think we can agree that just for  
23 purposes of the TRO it should just be to stop  
24 additional shares, and then after a trial on a full

1 record, we can discuss if those shares should be put  
2 into a trust or something to figure them out. I think  
3 that's the best way to proceed.

4 THE COURT: Fair enough.

5 And then the third thing is to enjoin  
6 filing the Form 15?

7 MR. ORRICO: Yes, Your Honor.

8 THE COURT: I got it.

9 MR. ORRICO: So, Your Honor, I know  
10 you had a chance to read their papers. It appears  
11 they are not challenging the colorability of our  
12 claims, so --

13 THE COURT: I can't read anything into  
14 that because I told them on the phone that you had met  
15 colorability. So I don't read anything into that  
16 other than it's not really an issue here today.

17 MR. ORRICO: So unless the Court has  
18 any questions, I plan to just jump into what I believe  
19 are the two debates, which is irreparable harm and the  
20 balance of equities.

21 THE COURT: Yes.

22 MR. ORRICO: So in assessing both the  
23 TRO motion and the motion for expedited proceedings is  
24 an assessment of whether plaintiff has demonstrated

1 sufficient possibility of threatened irreparable  
2 injury. The Court will find there is threat of  
3 irreparable harm if injury is imminent and genuine,  
4 and full relief will not be available if the motion is  
5 denied.

6                   Here, absent the TRO and expedited  
7 proceedings, there is an imminent threat that  
8 plaintiff and the proposed class will suffer  
9 irreparable harm from the go-dark scheme. Defendants  
10 argue that they have not gained control yet and there  
11 is no imminent irreparable harm. But actions speak  
12 louder than words, Your Honor. As we discussed, since  
13 the announcement of the go dark, defendants have  
14 bought over 13 percent of the company. They continue  
15 to buy shares even after we filed our papers. And  
16 without preserving the status quo, control will be  
17 lost and it will go to defendants Kamin, Jacullo, and  
18 Rucker.

19                   As Vice Chancellor Jacobs stated in  
20 the *Macmillan Shareholders Litigation*, "[t]here would  
21 be no practical way to 'put Humpty Dumpty back  
22 together again'" or unscramble the proverbial egg "if  
23 the [go-dark scheme] goes forward but is ultimately  
24 found to be unlawful." That's 552 A.2d at 1246.

1                   THE COURT: Why wouldn't an order and  
2 the divestment of the stock post-trial on the merits  
3 reach the same result?

4                   MR. ORRICO: I'm sorry, Your Honor?

5                   THE COURT: Why couldn't I remedy this  
6 post-trial by ordering a divestiture of the stock?  
7 Why do I need to stop them from purchasing it?

8                   MR. ORRICO: Your Honor, let's say --  
9 if they are not stopped now, they will continue to  
10 buy -- they will reach that 51 percent threshold and  
11 then that situation of where there is a transaction,  
12 it could be pushed through in between that time  
13 period.

14                  THE COURT: Okay. I understand.

15                  MR. ORRICO: Also, Your Honor, they  
16 would also have the right to vote at an annual meeting  
17 to change --

18                  THE COURT: They would. And that  
19 really was my -- as you were discussing the matter,  
20 what I was thinking about is, what is the least  
21 disruptive way to enter negative injunctive relief?  
22 And I don't know that it's to stop them from buying  
23 stock. It may be simply to sterilize their ability to  
24 vote the stock or do something else. But I'm thinking

1 out loud as you are talking.

2 So that's the acquisition of stock,  
3 one. But the other one is the Form 15. What is the  
4 irreparable harm faced if I do not enjoin that?

5 MR. ORRICO: Your Honor, I just have  
6 one thing to add on the stock purchases.

7 THE COURT: Sure. I didn't mean to  
8 cut you off.

9 MR. ORRICO: Very quick. There's a  
10 second part to the irreparable harm there. And  
11 defendants concede that the lost opportunity to be  
12 paid a control premium can constitute irreparable  
13 injury but argue that we have not identified how we  
14 will lose the control premium here. Again, they are  
15 buying up control. So as they buy --

16 THE COURT: But wouldn't divestiture  
17 of the stock give you the same remedy post-trial? If  
18 I were to say they have to divest themselves of the  
19 stock that they bought -- let's say they are breaching  
20 their fiduciary duties in buying this stock and I  
21 found, after a trial, when they were at 55 percent  
22 that they had to disgorge the 13 percent plus whatever  
23 they bought since. Wouldn't that give you full relief  
24 and, if not, why not?

1                   MR. ORRICO: I need to think about it,  
2 Your Honor.

3                   THE COURT: We're both doing a lot of  
4 thinking.

5                   MR. ORRICO: I understand. So we go  
6 to trial. It's taking back the control essentially  
7 and there's damages paid.

8                   THE COURT: There are various ways to  
9 do that. It would be to allow them to hold the stock  
10 and not vote it, force them to disgorge it. There are  
11 other ways to achieve that.

12                  MR. ORRICO: I guess my answer to  
13 that, Your Honor, is that there are market  
14 consequences to them gaining control now. So if they  
15 do gain control over, say, the next two weeks, the  
16 market -- even though there may be a pending trial to  
17 take back the stock, control has been effectuated, and  
18 the market will most likely react negative to that  
19 because it's going to be insiders.

20                  THE COURT: Fair enough.

21                  MR. VARALLO: May I have just one  
22 minute?

23                  THE COURT: Sure, Mr. Varallo.

24                  MR. ORRICO: As my colleague

1 Mr. Varallo aptly points out, how will we trace the  
2 divestiture and to who? because trades are being done  
3 on the open market for the stock now.

4 THE COURT: I get that. And that's a  
5 good point.

6 MR. ORRICO: Now, on the Form 15 --

7 THE COURT: You can't keep Mr. Varallo  
8 quiet. He just has to jump up now and then.

9 MR. VARALLO: Your Honor knows me too  
10 well.

11 MR. ORRICO: I'm glad he's on my team,  
12 Your Honor.

13 THE COURT: So now the Form 15.

14 MR. ORRICO: Yes, Your Honor. There's  
15 no discussion in defendants' papers about irreparable  
16 harm to be suffered if defendants are allowed to file  
17 the Form 15 next week. But the deregistration poses  
18 imminent irreparable harm. The deregistration will  
19 give the board control of the information while  
20 eliminating transparency to public stockholders.

21 That's very important here with this  
22 board, with a history of engaging in self-interested  
23 behavior. Indeed, the deregistration will be used as  
24 a mechanism for the board to avoid public scrutiny,

1 extract private benefits of control, protect  
2 themselves from liability, and hide poor management  
3 performance. As the company admits in the 8-K, when  
4 the deregistration occurs, the company will no longer  
5 have to file if its officers, directors, or 10 percent  
6 stockholders are transacting in the stock and they  
7 won't be subject to the recovering profits provision  
8 of the Exchange Act, meaning defendants will be able  
9 to buy more shares in secret. Persons acquiring more  
10 than 5 percent of the company will no longer be  
11 required to report their beneficial ownership under  
12 the Exchange Act. That means that their friends may  
13 be able to buy, who are lower in their benefit. The  
14 public won't know about it.

15                   Also, details about related-party  
16 transactions pursuant to Item 404. As we lay out in  
17 our complaint -- I think it's paragraphs 36 through 40  
18 and 51 -- there's a history here of defendants  
19 engaging in related-party transactions at the company.  
20 They'll be able to engage in more without even  
21 disclosing them.

22                   They won't have to disclose material  
23 weaknesses in their internal control. So just this  
24 past Monday when they filed their 10-Q, they reported

1 that the Enterprise Resource Planning System, which is  
2 overseen by defendant Rucker's son, is a material  
3 weakness in control. Again, this is another way where  
4 they'll be able to hide self-interested strategies.

5                   The deregistration, the finalization  
6 of it, the actual filing of the Form 15, will also  
7 continue to destroy the market value of the stock,  
8 which brings me into my next point of irreparable harm  
9 for the deregistration.

10                  So defendants, in their papers, say,  
11 "Hey, listen, the TRO and expedition should be denied  
12 because money damages are available here." And I'll  
13 agree, money damages are available here. But there's  
14 uncertainties, like collectability.

15                  Let's take a step back here. From the  
16 day of the announcement till today, about \$120 million  
17 of market cap has been lost. There's also the chance  
18 to lose a control premium if control is effectuated.  
19 So based off these rough numbers, there easily could  
20 be a \$9 million damages figure. How are we going to  
21 collect that? Again, it's uncertain.

22                  And like Vice Chancellor Noble stated  
23 in the *County of York v. Merrill Lynch*, "[t]he mere  
24 theoretical possibility that damages could be awarded

1 does not preclude the Court ... from expediting the  
2 proceedings." Where, as here, there is uncertainty  
3 about collectability.

4                   So unless Your Honor has any more  
5 questions on irreparable harm, I plan to move to the  
6 balance of equities.

7                   THE COURT: Well, the quote you've  
8 just given me refers to expedition, not injunctive  
9 relief. So collectability usually is not -- are there  
10 any problems here besides collectability in computing  
11 damages?

12                  MR. ORRICO: Well, Your Honor, again,  
13 as time goes on -- let's break it up. So now we're  
14 talking about the Form 15. So, again, I went through  
15 a list of -- and there's more than that -- but a list  
16 of things that they will no longer have to do.

17                  THE COURT: I get that.

18                  MR. ORRICO: To me -- for example, my  
19 client bought into this company. And part of his  
20 investment was, okay, this company has to comply with  
21 SEC rules. And that's being lost. Again, I'm sure we  
22 could figure out a way, but it's uncertain of how we  
23 will address that.

24                  THE COURT: That's really the problem,

1 isn't it? There would be a proof problem as well as  
2 how do you calculate the value of lost informational  
3 rights. I get it. I don't have any other questions.

4 MR. ORRICO: Your Honor, I'll turn to  
5 the balance of equities now for the TRO.

6 So the balance of hardships is  
7 essentially a weighing of the benefit to make sure it  
8 outweighs any drawbacks of the public or defendants.  
9 Here, Your Honor, I submit that the balance of  
10 equities is clear in favor of granting a TRO. Without  
11 the TRO, defendants will continue the going-dark  
12 scheme. They'll keep buying. There will be a loss of  
13 value because of the deregistration, a loss of  
14 transparency, all the things we just talked about.

15 Now, defendants argue that they'll be  
16 harmed because they will not be able to realize the  
17 purported expense reduction resulting from the  
18 deregistration.

19 THE COURT: That's a monetary  
20 detriment that will be addressed in the bond, I would  
21 think, if I grant a TRO.

22 MR. ORRICO: Well, Your Honor, I  
23 would, I guess, address two things with your question.  
24 First with the bond --

1                   THE COURT: It wasn't really a  
2 question, but you can address it.

3                   MR. ORRICO: Sorry, Your Honor. We  
4 believe it would be a nominal amount of a bond,  
5 unsecured.

6                   I would also just like to comment on  
7 this purported harm from the TRO. So they argue that  
8 they will not be able to realize any of the expense  
9 reduction from the deregistration. Now, this is all  
10 based off of an affidavit from Mr. Jacullo which is  
11 saying that the company is losing money, has negative  
12 earnings, and the 1.6 million of purported savings  
13 will prevent a financial disaster essentially.

14                  First, I'll note to the Court that  
15 Mr. Jacullo is a named defendant and he's part of the  
16 group buying shares here, including the shares after  
17 the announcement. I'll also note that, as referenced  
18 in the Minnesota court order I presented to the Court,  
19 one of the defendants has previously been found to  
20 misrepresent financial information of the company and  
21 they are interested to save themselves money.

22                  In any event, this argument about the  
23 net income is a red herring. It focuses on one  
24 quarter of net income. The largest proponent of that

1 slide of the net income in the recent quarter was an  
2 inventory shrink, write-off depreciation, both of  
3 which are noncash accounting charges.

4 THE COURT: That's not really the  
5 point. I know it's in the papers. The point to me  
6 is, what is the savings that will be foregone to the  
7 company over the period of time it will take to get  
8 this matter to trial?

9 MR. ORRICO: And, Your Honor, it's  
10 actually much less, if not nothing. And I'll explain.

11 THE COURT: Explain that.

12 MR. ORRICO: So the \$1.6 million of  
13 savings -- of that, about 600,000 of it is for its  
14 auditor. So there's two things about that.

15 One, in the 8-K that I provided to the  
16 Court, it states that the reporting covenants under  
17 the company's debt agreements require the company to  
18 deliver audited and unaudited quarterly financial  
19 statements to its banks. That means that that auditor  
20 expense is not going away, even if the company  
21 deregisters, because they have to provide audited  
22 statements to its bank. So right off the bat, the  
23 \$1.6 million in savings is cut in about half.

24 The other important part -- remember,

1 when we discussed the process of the deregistration,  
2 once they -- if they were to file the Form 15 next  
3 week, they are no longer under any obligation to file  
4 a 10-K. But they represented in their 8-K that they  
5 are doing it anyway. And they plan to do that on -- I  
6 think end of February 2020. That means that they are  
7 choosing to incur that expense for the filing of the  
8 10-K. So, again, any of the savings, annual savings,  
9 isn't going to click in until much later next year is  
10 my point.

11 THE COURT: And how long will it be  
12 before you are ready to take this matter to either a  
13 preliminary injunctive relief hearing or trial on the  
14 merits? I think you suggested you thought it should  
15 go directly to trial; correct?

16 MR. ORRICO: Yes, Your Honor. First,  
17 we would only need, I think, two to three months at  
18 the most. Again, I think we would only need -- and I  
19 don't want to be held to this -- but we would only  
20 need, like, four or five depositions, two or three  
21 days of time from you at trial or a preliminary  
22 injunction hearing. We think it would be more  
23 efficient to just have it ready for trial. We're  
24 ready to do so. Again, we will work with the Court

1 and defendants to do so efficiently.

2 THE COURT: All right.

3 MR. ORRICO: So, Your Honor, unless  
4 you have any other questions on the balance of the  
5 hardships, this concludes my affirmative presentation,  
6 unless you have any other questions.

7 THE COURT: No. That was very  
8 helpful. Thank you, Mr. Orrico.

9 Mr. Ritzert, are you going to argue?

10 MR. RITZERT: Yes, I am.

11 THE COURT: I'd be happy to hear you.

12 MR. RITZERT: Thank you, Your Honor.  
13 Thomas Ritzert for the defendants.

14 THE COURT: Pleasure to see you.

15 MR. RITZERT: First, to acknowledge  
16 one of your comments earlier about the colorability of  
17 the claims that have been filed to date, we agree with  
18 Your Honor. We took from your comment on the phone  
19 call a couple of days ago --

20 THE COURT: You are not waiving  
21 anything. I understand. When we get to trial, you  
22 are going to show me why this is all business  
23 judgment.

24 MR. RITZERT: Correct. Yes, Your

1 Honor. Thank you.

2                   But that being said, and without  
3 getting too much into the facts or rebutting, I just  
4 wanted to note for the record that there is a  
5 fundamental disagreement, of course, from the  
6 defendants' perspective, as to the theme of the case  
7 that has been articulated by the plaintiff. The  
8 plaintiff's papers set forth a conspiracy theory that  
9 essentially three of the directors, Messrs. Rucker,  
10 Jacullo, and Kamin, have engaged in a street sweep to  
11 obtain control of the company. And they've pointed to  
12 a few incidents that can be taken out of context.

13                  For example, the resignation of  
14 Mr. Cook a day after the vote. In fact, Mr. Cook  
15 voted in favor of the delisting. We don't see  
16 anything to be read into that fact. And Mr. Rucker,  
17 for example, has not been buying any shares. He's not  
18 part of a group of three people buying these shares to  
19 take over.

20                  So some of the circumstantial evidence  
21 comments that have been raised in the papers, we  
22 believe after a deposition and some discovery has  
23 taken place the defendants will be able to come  
24 forward with an appropriate explanation for those

1 events.

2 THE COURT: And just so I'm clear, do  
3 you represent all of the defendants here?

4 MR. RITZERT: Correct, Your Honor.

5 For purposes of today, we represent the director  
6 defendants and the nominal defendant company, Your  
7 Honor.

8 In addition, I see the Form 4 that my  
9 colleague brought -- opposing counsel brought forward.  
10 Again, this is a circumstantial event. This case has  
11 been moving rapidly this week. November 6th was the  
12 first day that these papers were noticed. So these  
13 recent stock purchases that are referenced -- there's  
14 a two-day reporting lag period, as Your Honor probably  
15 knows.

16 So, again, we fundamentally disagree  
17 that there's something to be read into this or that  
18 there's any intention to get out ahead of the Court's  
19 ruling on the end of this to buy more shares. We  
20 fundamentally disagree with that.

21 With all that being said, I understand  
22 from opposing counsel's presentation that the scope of  
23 the TRO that's being sought today has been refined a  
24 bit, in part.

1                   THE COURT: Yes. It doesn't involve  
2 the Nasdaq delisting.

3                   MR. RITZERT: Correct. The Nasdaq  
4 delisting and the Form 25 issue, Your Honor, I  
5 understand essentially plaintiff stipulates that they  
6 are not taking any action to undo the Form 25 filing,  
7 the Nasdaq delisting. That process was started on  
8 November 1st. Today is the last day of trading.  
9 That's going forward.

10                  There is this issue, however, of the  
11 Form 15 filing, which is due to be filed on Tuesday,  
12 which will, in essence, relieve the company, on a  
13 going-forward basis after a certain waiting period, of  
14 certain SEC reporting obligations and other compliance  
15 obligations that the company has determined are  
16 creating an ongoing annual significant expense and an  
17 ongoing significant use of company time and resources  
18 and of its management.

19                  As we stated in the papers last night  
20 and is supported by the affidavit of director  
21 defendant Jacullo, the company is currently operating  
22 at a loss of \$217,000. The board of directors decided  
23 that in order to stem some of the losses and save on  
24 these ongoing expenses -- as a part of a larger cost

1 reduction plan, one step that the company would take  
2 would be to delist and deregister, which will save the  
3 company from these ongoing expenses.

4                   This is not -- so Your Honor knows,  
5 this is not the only step that has taken place. The  
6 company has also recently downsized its management  
7 stream. They've let go a couple of executive vice  
8 presidents for sales. They've reduced by half the  
9 number of regional management. So in connection with  
10 this delisting, they are also reducing the management  
11 base that's at the company. So in addition to just  
12 the cost savings, the fact that the company believes  
13 it can save on the daily attention to matters that are  
14 involved with the SEC filings is a legitimate  
15 consideration, from the company's perspective, and it  
16 allows the company to do things much more efficiently.

17                  THE COURT: You can rest assured that  
18 I understand there can be business reasons for both  
19 delisting and deregistration. I don't know if they  
20 are present here or not, but it's not without the  
21 realm of possibility that this savings is within  
22 business judgment.

23                  MR. RITZERT: And I understand the  
24 concerns that Your Honor raised and were raised by my

1 colleague during the presentation about the timing of  
2 the Form 15 and whether that actually does cause harm  
3 to the company over the duration of what this trial  
4 would be. From our perspective, when you look at the  
5 overall theme of what was raised in the papers, the  
6 clear theme of the papers getting us to today was this  
7 street-sweep concept. The Form 15 was not referenced  
8 in the papers. There were no concerns about  
9 shareholder rights, shareholder access to information  
10 raised in the papers. This is a late-developing theme  
11 that's been raised on this Form 15 item. So we really  
12 think that the main direction that this case has taken  
13 until today has been the street-sweep concept.

14                   But as to the Form 15 issue, to the  
15 extent that there are shareholder information concerns  
16 that were raised, counsel correctly noted the company  
17 has already opted in to reporting the 10-K for this  
18 next reporting period. So there will be ongoing  
19 shareholder information available during the course of  
20 these proceedings.

21                   THE COURT: And when will the 10-K be  
22 filed?

23                   MR. RITZERT: I believe it will be  
24 filed within the first four to six weeks of 2020.

1                   THE COURT: So you agree, it's  
2 February?

3                   MR. RITZERT: I agree. Don't quote me  
4 on the precise date, but that sounds right.

5                   THE COURT: I won't hold you to that.  
6 I just wanted a time frame.

7                   MR. RITZERT: Of course, we're in  
8 litigation. The tools for discovery are at  
9 plaintiff's disposal. So we don't believe that any  
10 fundamental informational defect is going to transpire  
11 here with the company being permitted to proceed as  
12 they had planned with the Form 15.

13                  Now, what happens if we don't file the  
14 Form 15 on Tuesday as we had planned and the company  
15 is restrained from doing so for the duration of the  
16 trial? Well, if the Form 15 is not filed for the next  
17 two to three months as this trial evolves, we're going  
18 to be gearing into new reporting periods. By the time  
19 we would file the Form 15 next year, the company will  
20 have been a registered company in a new quarter. So  
21 apart from the delay of the waiting period that  
22 follows the time of the Form 15, there's just going to  
23 be additional reporting obligations that will carry  
24 the expenses and the time commitment for management

1 well into next year if the Form 15 is not filed now.

2 THE COURT: When is the end of the  
3 quarter? Is the company on a calendar basis?

4 MR. RITZERT: I apologize, Your Honor.  
5 I don't know that. I don't have that information.

6 THE COURT: All right.

7 MR. RITZERT: But it's our  
8 understanding that if the Form 15 is not filed on  
9 Tuesday, that moving into next year will cause us to  
10 continue the SEC reporting requirements well into next  
11 year, which will eliminate these cost savings.

12 THE COURT: I understand that.

13 MR. RITZERT: I also understand from  
14 the presentation that there's no longer a current  
15 request for a constructive trust or any sort of  
16 sterilization of the shares that have been held.

17 THE COURT: As part of the TRO.

18 MR. RITZERT: Correct. For today,  
19 correct. I understand.

20 In terms of entering a restraining  
21 order on additional shareholder -- additional director  
22 purchases, Your Honor, we're not aware of any present  
23 plan for the directors to take over a controlling  
24 interest in the shares. The shares have been publicly

1 traded on Nasdaq through today. They will be  
2 available on the OTC markets starting next week. None  
3 of the directors are alleged to have undertaken any  
4 illegal activity by virtue of acquiring shares that  
5 are publicly available.

6 So we believe that there's no risk of  
7 irreparable harm that the shareholders would incur by  
8 allowing directors to continue to buy shares. If some  
9 evidence of an actual transaction or overall plan of  
10 these directors does materialize through discovery, we  
11 could always revisit the issue. And as Your Honor  
12 noted during the original presentation, we think that  
13 these are things that can be addressed post-trial  
14 through a variety of remedies, whether there's  
15 disgorgement, some sort of constructive trust, or  
16 through monetary damages.

17 So from the defense perspective, Your  
18 Honor, the case that has been laid forward in these  
19 papers is essentially a concern over the drop in the  
20 share values. This is a damages case. This is not a  
21 case where there is clear evidence of any present  
22 concrete scheme by the directors to take a controlling  
23 interest, and we don't believe that the relief that's  
24 been requested is warranted.

1                   THE COURT: Thank you, Counsel. I  
2 appreciate the presentation. That was helpful.

3                   I didn't cut you off, did I?

4                   MR. RITZERT: No. That's fine. Thank  
5 you, Your Honor.

6                   THE COURT: I didn't mean to. If  
7 there's something else you want to tell me, go ahead.

8                   MR. RITZERT: That's it. Thank you.

9                   THE COURT: I was looking down and I  
10 didn't notice if you were done.

11                  MR. ORRICO: Two quick points, Your  
12 Honor.

13                  One, just in response to the "there  
14 will be no irreparable harm if directors are allowed  
15 to continue to buy." We disagree. If they continue  
16 to buy, control will be transferred. And for the  
17 reasons in our papers and my affirmative presentation,  
18 we believe that's irreparable harm.

19                  As far as the timing goes -- the  
20 company is on a normal fiscal year. The year ended  
21 12/31. I'm going off last year. I know every year is  
22 different. But their Q would not be due until May  
23 9th, 2020. So if you -- remember the 90-day rule of  
24 finalizing. So if you work backwards, if there is a

1 final decision on this matter on February 8th, let's  
2 say, they would be able to deregister -- say we lose,  
3 they would be able to file their Form 15 the next day  
4 and would not have to report the 10-Q in the 90 days,  
5 I believe.

6 That's it, Your Honor, unless you have  
7 any further questions.

8 THE COURT: No. Thank you. That was  
9 very helpful.

10 Counsel, first of all, your clients  
11 ought to be very pleased with the way you have been  
12 able to organize and present this information on such  
13 a very expedited time frame. It's impressive to me.  
14 I thank you. And thank you for coming all the way  
15 down here to do it on a Friday afternoon,  
16 accommodating us in these rather tight little  
17 quarters. The quality of the work you've been able to  
18 produce is very fine, and I appreciate it deeply.

19 There are really two motions before  
20 me. The one is a motion to expedite. I've already  
21 said on the phone that I believe there is a colorable  
22 claim here. That's one of the lowest standards in our  
23 law. It simply means a nonfrivolous claim. And I  
24 think, at the very least, the timing of the events is

1 such that it would raise -- well, my equitable antenna  
2 is set aquiver. When I look at the time frame, which  
3 doesn't prove anything, it just tells me, as I have  
4 already expressed, that there is a colorable claim  
5 here that mischief is afoot. So if that's the case, I  
6 think we need to address this quickly.

7 You are well aware of the standard for  
8 expedition in this court. It's simply a colorable  
9 claim and a demonstration of a threat of irreparable  
10 harm sufficient to justify the expense of going  
11 forward on an expedited basis. The fact that we're  
12 all sitting here not too many hours after the matter  
13 was filed indicates that it does, in my view, so  
14 justify going forward on an expedited basis. So that  
15 motion is granted.

16 Really, what we're here to talk about  
17 is a temporary restraining order. The standard is  
18 somewhat similar. There's a requirement of a  
19 colorable claim, which, for the reasons I've already  
20 discussed, has been met here; there must be a  
21 demonstration of imminent irreparable harm absent the  
22 TRO; and then the Court is required to balance the  
23 equities and make sure that the medicine is not worse  
24 than the disease it is meant to treat. I wish I could

1 avoid speaking in metaphors, but I don't seem to be  
2 able to. I should simply say that a balancing of the  
3 equities is then required.

4                   So what do we have here? Well, as  
5 this matter has been clarified, helpfully, there are  
6 really two things going on that the plaintiff asked me  
7 to enjoin. One is the continued buying of stock in  
8 what the plaintiff describes as a "street sweep" that  
9 would transfer control to the defendants. That does,  
10 it seems to me, pose a threat of irreparable harm. It  
11 is quite true -- and I pushed Mr. Orrico on this --  
12 that there are remedies, both in damages and in  
13 equity, such as disgorgement or sterilization or some  
14 other means, of remedying improper purchases of stock  
15 if the board has not adequately protected the  
16 corporation and the shareholders from an improper  
17 transfer of wealth to some of the directors who are  
18 buying stock. But having said that, it would be, I  
19 think, difficult if trading goes on to determine how  
20 that disgorgement would take place, to whom the  
21 damages run, and calculation of damages would all be  
22 very difficult questions. So it does pose a risk of  
23 irreparable harm.

24                   The same is true of the

1 deregistration. It would leave the stockholders in  
2 this time, where, as I found, there's a colorable  
3 claim that breaches of duty are occurring, to suffer a  
4 dearth of information that they would otherwise have  
5 access to. And I can imagine that causing harm that  
6 would be hard to remedy with damages *ex post facto* in  
7 a number of ways. So there is clearly some quantum of  
8 irreparable harm threatened.

9                         Set against that are two things. One  
10 is the limitation on the ability of the directors to  
11 continue to buy stock. Individuals have a right to  
12 buy stock. The directors -- and I assume their  
13 affiliates and family members should be part of this,  
14 but I'll address that in a minute -- the directors  
15 themselves have fiduciary duties. I don't think it is  
16 a large imposition on them to refrain from buying  
17 stock for a short period of time.

18                         That leaves the Form 15. It's clear  
19 that there will be harm -- not irreparable harm, but  
20 potential harm to the company -- if the Form 15 is  
21 delayed. But given the voluntary submission of a duty  
22 or an intent to file disclosures in February, at any  
23 rate, and given the fact that the large amount of  
24 monetary harm that is said will be incurred in a year

1 if there is not a deregistration -- it is loaded  
2 toward the end of the year for the same reason -- it's  
3 clear to me that that is not the kind of harm that can  
4 prevent equity acting to protect the company and its  
5 stockholders here.

6 So what is the remedy I need to put in  
7 place? I can only issue negative relief at this  
8 point. And I think negative relief is all that would  
9 be necessary.

10 At any rate, I am going to direct the  
11 named defendants and the entity mentioned in the  
12 complaint as being Mr. Kamin's entity from purchasing  
13 stock going forward. And I'll talk about the period  
14 in a minute. I'm not going to make it as broad as you  
15 have suggested, Mr. Orrico, because I'm not sure that  
16 it's proper to do so. You can seek to modify this  
17 going forward if you think it needs to be done. And  
18 I'm also going to direct the company not to file the  
19 Form 15 to trigger deregistration.

20 But let me talk about the period. The  
21 suggestion has been made by the plaintiff that we go  
22 directly to a trial that would be out perhaps three  
23 months. I think, in light of this, I am going to give  
24 the defendants the option of proceeding to a

1 preliminary injunctive relief hearing on a much more  
2 accelerated schedule, something like 30 days. So if  
3 you find that the injunctive relief that I've imposed  
4 is sufficiently onerous to justify doing that, you  
5 should notify me, and I will schedule a preliminary  
6 injunctive relief hearing, at which I'll have a  
7 somewhat more developed record and I can look to see  
8 what's really occurring, because this is so  
9 preliminary that I am concerned that letting this sit  
10 for 90 or 100 days might do mischief that I am not  
11 cognizant of.

12 I also think a bond needs to be  
13 posted. There will inevitably be some potential harm  
14 done to the corporation from withholding the ability  
15 to deregister. The question is how much. There is a  
16 number in the answering brief of \$1.6 million per  
17 year. However, given, as I've said, the voluntary  
18 assumption of reporting requirements, notwithstanding  
19 the deregulation, I think the amount, at least in the  
20 near term, is going to be far less than that. I  
21 don't, at this point, know what it is. I am going to  
22 impose a bond requirement of \$50,000, which is the  
23 damages bond. But either party may seek to have that  
24 increased or reduced if it is an inaccurate amount.

1 I've really had very little presented. But there may  
2 be some reporting requirements that would have been,  
3 notwithstanding the voluntary assumption of some  
4 reporting in February, avoided if I had not entered  
5 the temporary restraining order that I have just  
6 entered, and there needs to be a bond sufficient to  
7 compensate the company for that should I find that  
8 this temporary restraining order was improvidently  
9 granted.

10 I think that hits all the points that  
11 I needed to make.

12 Mr. Orrico, that was an extremely  
13 rough-and-ready, and not very elegant, decision, but  
14 was it comprehensive, or do you have any questions?

15 MR. ORRICO: Your Honor, yes, it was  
16 comprehensible. And thank you for your time.

17 I have one quick thing about the  
18 entities of the directors. We would also request the  
19 Court to add Mr. Jacullo's entity that he's bought  
20 stock through. Like Mr. Kamin, we would just ask that  
21 be added to --

22 THE COURT: Was that in the papers? I  
23 must have just missed it.

24 MR. ORRICO: I believe so. But if it

1 wasn't, I'm happy to get the names submitted to the  
2 Court in a letter or something, whatever you need,  
3 Your Honor.

4 THE COURT: Well, I am going to ask  
5 you to do a form of order. Add that entity. And when  
6 you submit it, submit it with a letter or point to  
7 where in the record it is. If it's the same situation  
8 as Mr. Kamin, then it should be included as well,  
9 subject, as I said, to the ability of the defendants  
10 to seek relief and narrowing of that or subject to  
11 your request to expand it.

12 MR. ORRICO: Of course, Your Honor.  
13 Thank you very much.

14 THE COURT: Thank you.

15 The same question to you, Counsel? I  
16 know that was an inelegant bench ruling, but was it a  
17 comprehensible ruling, from your point of view?

18 MR. RITZERT: It was comprehensible,  
19 Your Honor. Thank you.

20 In terms of the two follow-up points  
21 concerning a PI hearing and the further information  
22 about the amount of the bond, I can say that my  
23 clients do believe a PI hearing would be beneficial  
24 here, given the constraints. So I don't know if Your

1 Honor has a preference to schedule that today or  
2 receive some follow-up correspondence --

3 THE COURT: If I schedule it today,  
4 what you will get is my assistant calling you on  
5 Tuesday saying that brilliant Judge, nonetheless,  
6 misscheduled. So the best thing to do is for me to  
7 have Kim Roach contact the parties and schedule a  
8 hearing. And I'm thinking out about 30 days, if that  
9 makes sense.

10 MR. RITZERT: That sounds right, Your  
11 Honor. Thank you.

12 THE COURT: Thank you.

13 When can you get me a form of order,  
14 Counsel?

15 MR. ORRICO: Your Honor, I will work  
16 for Monday or Tuesday, whatever you need, Your Honor.

17 THE COURT: Well, I'm not going to be  
18 here on Monday.

19 MR. ORRICO: Sorry. I can get it to  
20 you tonight.

21 THE COURT: No, no, no. My bench  
22 ruling is an order. So the order is in place. It  
23 should be memorialized. Why don't you get it to me by  
24 Wednesday if that suits you.

1                   MR. ORRICO: Yes, Your Honor. Thank  
2 you.

3                   THE COURT: Anything else we can do  
4 here this evening, other than to thank you for the  
5 fine presentations and wish you a good trip home?

6                   From your point of view, Counsel?

7                   MR. ORRICO: We're good, Your Honor.  
8 Thank you very much.

9                   THE COURT: And yours?

10                  MR. RITZERT: No, Your Honor. Thank  
11 you.

12                  THE COURT: Once again, I was  
13 impressed with your ability to gin this up in a matter  
14 of hours. I don't want you to think that the fact  
15 that I gave a bench decision means that I don't think  
16 these are important issues. I do. I just realize  
17 that time is short. We've got a holiday weekend  
18 coming up. I won't have court personnel. And it  
19 seemed that, even though it certainly warranted  
20 attention sufficiently to write on the matter, the  
21 best way to proceed was to simply give you a bench  
22 decision.

23                  Have a good trip back.

24                  (Court adjourned at 4:32 p.m.)

1                   CERTIFICATE

2  
3                   I, DENNEL NIEZGODA, Official Court  
4                   Reporter for the Court of Chancery of the State of  
5                   Delaware, Registered Merit Reporter, Certified  
6                   Realtime Reporter, do hereby certify that the  
7                   foregoing pages numbered 3 through 48 contain a true  
8                   and correct transcription of the proceedings as  
9                   stenographically reported by me at the hearing in the  
10                  above cause before the Vice Chancellor of the State of  
11                  Delaware, on the date therein indicated, except for  
12                  the rulings at pages 39 through 48, which were revised  
13                  by the Vice Chancellor.

14                  IN WITNESS WHEREOF I have hereunto set  
15                  my hand at Wilmington, this 15th day of November,  
16                  2019.

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18                  /s/ Dennel Niezgoda

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19                  Dennel Niezgoda  
20                  Official Court Reporter  
21                  Registered Merit Reporter  
22                  Certified Realtime Reporter

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