IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PAUL DENT, On Behalf of himself and All Others Similarly Situated,	:	
Plaintiff,	:	
vs.	:	Civil Action No. 7950-VCP
RAMTRON INTERNATIONAL CORPORATION, ERIC A. BALZER, THEODORE J. COBURN, JAMES E. DORAN, WILLIAM L. GEORGE, WILLIAM G. HOWARD, JR., ERIC KUO, CYPRESS SEMICONDUCTOR CORPORATION and RAIN ACQUISITION CORP.,	:	
Defendants.	:	

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Chancery Courtroom No. 12A
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Monday, November 19, 2012
9:08 a.m.

- - -

BEFORE: HON. DONALD F. PARSONS, JR., Vice Chancellor.

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PRELIMINARY INJUNCTION HEARING
AND THE COURT'S RULING

CHANCERY COURT REPORTERS
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THE COURT: Good morning.

MR. ARONSTAM: Good morning, Your Honor. Bradley Aronstam on behalf of defendants Cypress and Rain. With me are my co-counsel from Wilson Sonsini, David Berger and Steve Guggenheim. Also with me, my colleague from my firm, Mike Sirkin.

THE COURT: All right.

MR. CZESCHIN: Brock Czeschin, Richards Layton & Finger, on behalf of Ramtron and the individual defendants. With me in the courtroom is Jill Remming from my office; and my co-counsel, Tafari Lumumba from Gibson Dunn is on the phone.

THE COURT: All right. Welcome.

MR. McEVILLY: Good morning, Your Honor. Jim McEvilly from Faruqi & Faruqi on behalf of plaintiff, Paul Dent. With me today from my firm are Mr. Juan Monteverde whom Your Honor knows, and Craig Springer from my office also.

THE COURT: All right.

MR. McEVILLY: Your Honor, may it please the Court, we're here this morning on plaintiff's motion for a preliminary injunction. Plaintiff seeks to enjoin the shareholder meeting scheduled for tomorrow in a transaction entered into

in September between Ramtron and Cypress and Rain Acquisition, its wholly owned subsidiary.

Cutting right to it, Your Honor, the basis for plaintiff's motion for a preliminary injunction is that the proxy statement that's been issued by the defendants is materially false and misleading. And it's materially false and misleading because it omits information that the minority shareholders need in order to be fully informed in connection with making their decision as to how to vote at tomorrow's meeting and whether or not to exercise their appraisal rights. And the proxy omits any reference whatsoever -- any information whatsoever as to the company's projections.

Now, in this context, minority shareholders are no less entitled to be fully informed and to have a fully informed vote and to decide what they're going to do than any other shareholders in any other context.

Now, Cypress and the defendants repeatedly tout in their papers that they own approximately 78 percent of the company at this point. They can vote and put the long-form merger through. Therefore, the conclusion follows, at least to them,

that the projections somehow are unimportant because this is a foregone conclusion. Well, that's not true, Your Honor. That makes this deal essentially no different than any other transaction involving a controlling or majority shareholder.

This is a slightly unusual situation in that Cypress is now the majority and controlling shareholder and wasn't at the time the transaction was proposed. But just because Cypress is in a controlling position right now and can put the transaction through, that doesn't entitle the defendants to disclose whatever it is they please and to deprive minority shareholders of information that's material to their decision.

And I think the one thing that distinguishes this case from some of the others cited by defendants in their briefs is that here, we have a complete lack of disclosures. In some other cases, there are situations where some of the projections are disclosed maybe down to the EBITDA level or some other level, or even revenues and costs of goods sold. Here, we have nothing disclosed. Nothing whatsoever. And I think that that is an important fact.

We're not quibbling here over the

extent to which something should be disclosed. Here, we have a banker's opinion, most of which, at least the DCF, the comparable companies analysis, and also perhaps part of the selected transactions analysis, which, by the banker's own testimony, is premised on projections. And those are two or three legs of the valuation stool that shareholders are being asked to make a decision upon here. And to say that shareholders are not entitled to view any of the projections information that those analyses are premised on and set forth in the proxy just cannot be right, Your Honor, not when information about the projections is just a complete vacuum.

Moreover, the defendants also try to point to Plaintiff Dent and his testimony regarding the projections and how he intends to vote on the transaction as though that's somehow pertinent to the materiality decision here before the Court; and it's not, Your Honor.

First of all, Mr. Dent was clear in his testimony that he wanted to see projections. He wanted to see the company's next quarter results and the company's 2013 results. And he further testified that he thought it was important for the class to see

the projections that the valuation analyses are premised on.

Now, the test for whether or not something is material is not whether or not it's subjectively important to any particular shareholder. That would be an untenable standard. It's an objective standard: What is important, what is material to a reasonable shareholder, and does that affect the total mix of information that's out there?

In this situation, plaintiff would respectfully assert that not only is any information about the projections material to a reasonable shareholder, but it has to affect the total mix of information, because right now, there's nothing.

So as I indicated before, Your Honor, we're not talking about gradations of disclosures about projections of what should or should not be disclosed. We're talking about nothing versus give us information showing us what the projections are about. That's a pretty stark contrast. And I think, certainly when you're talking about the standard that should be applied, it tips everything in our favor.

Now, Cypress and the defendants also spent a lot of time and a lot of money and a lot of

resources attempting at this point in time, after the fact, to attack the reliability of the projections. And first of all, Your Honor, for Cypress at this point in time, after the fact -- and the reason I point out Cypress is because Cypress is running the show here, as we pointed out in our brief. Cypress is the controlling shareholder. It controls the board six to three.

Mr. Richards, the current CFO of Ramtron, was pretty clear that it's Cypress' company at this point as a de facto matter if not de jure. So it's really Cypress who is running the show here. Cypress' attorneys are the ones who are sitting up front. They're the ones that are attacking these projections after the fact. And that simply is not the proper way to go about looking at this.

To determine whether or not the projections are reasonable and reliable, we should be looking at the circumstances under which they were created by the people who created them. And back at the time the projections were being created -- it was done in July and August and September based on current information -- company management, the CFO specifically, testified that they did their best to

put together reliable projections, projections that could be utilized by the banker. The board asked about the projections and satisfied itself that the projections were a proper basis upon which to make their own decision and to supply to the banker.

And the banker testified that they looked at the projections, they vetted them, and that they utilized the projections in connection with their various valuation analyses. And importantly, if they had any reason to think that the projections weren't reliable for that purpose at the time they were created, they wouldn't have used them, which is not an uncommon occurrence.

There are times when companies do not do DCF analyses. And presumably, that's because they're having trouble creating projections, they don't want to create projections, whatever the case may be. But there was nobody holding a gun to the head of the board or the banker saying, "You must create a DCF analysis" or "You must create a comparable companies analysis and base it on projections from the company."

That was done here. And the reason it was done here was that everybody on the Ramtron side,

back when it was still Ramtron, had a Ramtron board, Ramtron management, Ramtron banker, believed that, apparently, if you believe their testimony, that they were putting together projections that could be reasonably relied upon.

Now, these projections were contemporaneous. They weren't stale. We're not talking about a case where somebody -- a plaintiff is coming forward now saying, "You should disclose the projections that were created two years ago, and tell us what they were so that we can evaluates this transaction now."

We're also not talking about projections that, for any reason plaintiff has to believe now, at least in the context of expedited discovery, and certainly no testimony establishes this, that were created under suspect circumstances or that were manipulated improperly somehow. There is no evidence of that.

So --

THE COURT: But what we do have is it was disclosed that Needham, the investment banker, relied on the projections, created a DCF, came out with a DCF from 3.57 to 5.01 or something like that,

so significantly higher than the $5 -- or the $3.10 that was the ultimate price. So, you know, the shareholders know that the projections support the -- the projections must be more optimistic, more bullish, than what Cypress is offering; and they know those projections are the major input to the DCF.

The DCF, they're telling you straight out, it justifies this higher price. And yet they had three other analyses. They concluded ultimately that it was a fair price. Why do the projections themselves have to be disclosed to the shareholders?

MR. McEVILLY: Because, Your Honor, otherwise the shareholders have no basis upon which to make any determination as to how accurate or how reliable or whether or not they should be putting -- and how much -- credence in what the banker and what the company are saying. If they have no information regarding the projections, the future prospects of the company whatsoever, you're just left with simple conclusions. That is not a fair summary of the banker's work.

THE COURT: So what's the best case that you have? Give me the two best cases that you have. Because you're almost arguing for a per se all

projections have to be -- if you've got management projections that are relied upon by an investment banker to make an analysis, and especially a DCF analysis, they have to be produced. That seems to be what you're saying.

MR. McEVILLY: In this particular context of a cash-out merger, Your Honor, where the company's shareholders are being taken out, and one of the primary bases for the board's recommendation is a banker's fairness opinion utilizing management's best estimates, projections, this is a situation where the projections should be disclosed. And I think --

THE COURT: Isn't that, dead on, the Skeen case?

MR. McEVILLY: That's not. The Skeen case took place in the context of a motion to dismiss. And the Skeen case also occurred long before a lot of the more recent jurisprudence where the Court has found clearly that projections in certain contexts similar to these should be disclosed.

THE COURT: That's what I asked you a minute ago. So the Skeen case is the Supreme Court. The later cases, I think, are the Court of Chancery, which I, of course, still respect as a member of it.

What are your two or three best cases that say, in your view, that I have to order these -- notwithstanding Skeen, which was a very similar set of facts, I really have to order these projections produced?

MR. McEVILLY: I think the two best cases for that purpose, Your Honor, are the Netsmart case in terms of disclosing projections in the context of a cash-out merger and the PLATO Learning case.

And especially when you look at PLATO Learning, it wasn't good enough to just disclose some of the projections in the context of a cash-out merger, as here. The Chancellor thought it appropriate that the company disclose the actual cash flows because the cash flows are what you base a discounted cash flow analysis on. And that way, shareholders are able to look at that information and to determine whether or not it makes sense to be cashed out in that situation, or are they going to seek appraisal, or are they going to do something else.

So I think those two recent cases really stand for the proposition that you have to disclose projections in the context of a cash-out

merger, as you have here. Otherwise, I don't understand how those cases make any sense or are good law in the current context, Your Honor.

And they both took place in the context of a PI before the transaction was closed, at a time when something could be done with it, done about it, and an appropriate remedy fashioned. And then the shareholder vote can take place once the projections are disclosed and shareholders have had an opportunity to digest that information.

There are a whole raft of cases that say that that is the appropriate way to proceed when material information hasn't been disclosed. And I really, you know --

THE COURT: Are you suggesting that the standard is higher on a motion to dismiss or something than the standard would be here?

MR. McEVILLY: I'm not saying that --

THE COURT: It seems like you're distinguishing Skeen on the basis that it was a motion to dismiss and now we're on a motion for preliminary injunction, and so it should be easier for plaintiff to meet their burden on a motion for a preliminary injunction. I'm usually thinking any conceivable

basis for a claim on a motion to dismiss, you've got to have a reasonable likelihood of success here.

MR. McEVILLY: I'm not saying that it should be easier, Your Honor. I'm saying that in the current procedural context where we're proceeding on the basis of a preliminary injunction, we're looking to have material information to disclose to shareholders before they vote so that they can make an informed decision. That informs the Court's analysis as to whether or not the projections should be disclosed.

I think that that is a proper and an equitable way to analyze this situation. What's the current procedural context? What is the Court in a position to do? And how does that impact things going forward? In fact, that's part of the reason that fashioning injunctive relief in this kind of context is so important, because once you're beyond this context and the deal closes, it becomes very hard if not impossible to undo what's already been done. It's the unscrambling the eggs metaphor.

THE COURT: Well, I mean, here, wouldn't we -- I mean, I guess if I denied a preliminary injunction and you chose to pursue, to

continue on with the case, and let's say that ultimately, you succeed, or maybe there's clarification on the law and you succeed that there's been improper disclosures here, then wouldn't you have a quasi-appraisal remedy that would be available to you at that point?

MR. McEVILLY: I don't know about that, Your Honor. And I don't know that --

THE COURT: Why not? Why don't you know?

MR. McEVILLY: Well, because the defendants' quasi-appraisal remedy argument rests on Berger versus Pubco.

THE COURT: Which is short-form.

MR. McEVILLY: And Berger versus Pubco involved a short-form merger. The disclosures came out, and at that point, the transaction closes immediately. There was no opportunity to do anything about the defective disclosure in Berger versus Pubco. I think that's a very important reason.

For that reason, because there was no opportunity for anybody to do anything about it beforehand, the quasi-appraisal remedy that comes out of Berger versus Pubco really is not -- really doesn't

fit here. And the fact that we are here now, we do have an opportunity and the time to do something about the problem in this case, is all the more reason to do it. Because the Court should be looking to do equity here and to require the company to disclose this information, to clean up the situation. To provide shareholders with the information that they need before they have to make a decision is the right thing to do.

There was no such opportunity in Berger versus Pubco. If there had been, and somebody had come in and pointed out that the statutory language in that case regarding appraisal rights was defective, one would think that the Court would jump at the opportunity to fix it instead of having to deal with a quasi-appraisal remedy in the post-close context in that case.

So, you know, to say that Berger versus Pubco should be applied to -- should be fitted into this situation where, here, we have disclosures that had taken place well before close, we know exactly what we're fighting over, we know how to remedy it -- it's not as though we're asking the company to go back and renegotiate the merger at this

point. There are projections that were prepared. The company has them. They're set forth right in the banker presentations. If the company has to -- if the company is enjoined --

THE COURT: They're set forth where?

MR. McEVILLY: They're set forth in the company's records and in some of the exhibits that we've sent to the Court, the raw projections. And then the projections are also contained clearly right in the fairness opinion presentation materials that are also an exhibit. So the information, Your Honor, is already there. It's very easy for the company to disclose.

If Your Honor granted an injunction today and required the company to disclose those projections, presumably, actually, if they were prepared, they could disclose them almost instantaneously. And all we'd really be talking about is how much time shareholders need to digest that information in order to decide how to vote going forward.

THE COURT: All right. And now how much time do you think that should be?

MR. McEVILLY: Well, I think based on

other cases, in similar situations, for instance, the CVS Caremark case, I think that seven to ten days is probably an appropriate period of time for shareholders to be able to digest that type of information. I don't know if that would be impacted by the fact that this is Thanksgiving week and Black Friday on Friday, but seven to ten days based on the cases that I've seen pertaining to this seems to be a reasonable amount of time to give shareholders time to digest the information.

THE COURT: All right.

MR. McEVILLY: My very last point, Your Honor, and that is that if what defendants are saying now, after the fact, about the projections is true, that they're unreliable, that the bankers shouldn't have used them to try to value the company, that the board shouldn't have relied upon them --

THE COURT: Are the bankers saying that? I mean, it's one thing that Cypress is saying that, and I can push that to the side. Are the bankers before me now saying that those projections were unreliable?

MR. McEVILLY: No, not at all, Your Honor.

THE COURT: Right. And --

MR. McEVILLY: And I'm not suggesting that they are or that the projections are unreliable.

THE COURT: All right. Okay. And then management is not before me today -- management unaffected by Cypress is not before me today saying that the projections are unreliable; is that right?

MR. McEVILLY: That's correct, Your Honor.

THE COURT: Right.

MR. McEVILLY: So my only point was that if Your Honor was inclined to credit Cypress' argument that the projections are unreliable, which we respectfully assert that Your Honor shouldn't, then the proxy as it stands now is false and misleading, because it suggests that those projections were reliable and were properly used.

THE COURT: Right.

MR. McEVILLY: And that can't be the case.

So in any event, Your Honor, plaintiffs respectfully request that Your Honor enter an injunction requiring the company to disclose the projections so that shareholders have an opportunity

to look at them and assess them for themselves and decide how to vote on this transaction going forward, and decide whether or not to exercise their appraisal rights. And all those things are grounded in decisions of this Court over the past ten years or so. And that's really all I have, Your Honor.

THE COURT: Okay. I appreciate it.

MR. BERGER: Good morning, Your Honor. May it please the Court.

THE COURT: Good morning.

MR. BERGER: David Berger from Wilson Sonsini Goodrich & Rosati, counsel for Cypress. First of all, I want to thank the Court for making time. I know the Court has a trial that's waiting next door, and I'll try and be brief in my comments.

I understand that the sole legal issue before us is the projections issue, and I'm going to go through that.

And I heard my friends on the other side talk about Netsmart, and I'll answer those questions. However, and as we stated in our papers, we believe there are several reasons why the Netsmart and the PLATO Learning cases are very distinguishable and, in fact, Skeen is the appropriate case, Supreme

Court direct precedent, on the issue as to why that should be followed.

But before I discuss those cases and before I discuss the projections issue, I think from an analytical point of view, there are three specific issues as to why the Court should not even reach the projections issue in this case and why plaintiff's motion should be denied before the Court even reaches the projections issue.

First, most importantly, is standing. The plaintiff that we have has admitted that the projections were not necessary for him to determine that the price was too low. And the plaintiff's reply brief tries to deal with this by citing incomplete testimony to support the argument that plaintiff, in fact, needed the projections to -- needs the additional information as additional disclosures. And he cites Pages 61 and 62 of his transcript to come to that conclusion.

In fact, what plaintiff misses and fails to disclose is the very next question from the same deposition transcript. It's at Page 62. It begins at Line 8. And my colleague, Mr. Guggenheim, asked plaintiffs the following question, received the

following answer.

"Question: But you, yourself, didn't need that information" -- the projections -- "because you already knew that the price of 3.10 per share was unfair; is that right?"

And the plaintiff answered: "Personally, yes, but when I say that, I'm not necessarily speaking for the class."

THE COURT: Right. Do you have any case that throws out a plaintiff on the basis that you're arguing?

MR. BERGER: I do.

THE COURT: What is the case?

MR. BERGER: A couple of them. First would be the In Re Appraisal of Aristotle, which is 2012 Westlaw 70654, Delaware Chancery, January 10, 2012. And in that case, the Court held, and I'll quote from it: "The petitioners here were not deprived personally of any right to dissent by any of the alleged disclosure inadequacies. They dissented based on what they already knew. To put it simply, the alleged disclosure inadequacies did not in any way impair the petitioner's ability to seek appraisal, yet that is the theory on which they ground their claim."

That's exactly what we got here. The plaintiff --

THE COURT: But does the Court go on and say, "Therefore, they were inadequate class representatives" or something like that?

MR. BERGER: So what it held is that the plaintiffs lacked standing to pursue their claim.

THE COURT: All right.

MR. BERGER: Another case also is Andra versus Blount, which is 772 A.2d 183, Delaware Chancery Court from 2000. And there again, the Court held that, "The theory of her complaint in this action is that the inadequate disclosures worked injury because they induced stockholders to tender rather than to seek appraisal." But the Court dismissed the claim saying the plaintiff "herself sought appraisal and did not suffer injury of this nature."

And again, in there, what the situation was, was plaintiff was seeking an injunction on the basis -- on the lack of disclosures; and the Court found that the plaintiff didn't have standing to raise the alleged lack of disclosures because the disclosures didn't impact the plaintiff's own decision.

And it goes back to the fundamental injury, the fundamental question of standing, as to whether or not this plaintiff has suffered any injury. This plaintiff has not, because this plaintiff has already made up his mind as to the adequacy or alleged inadequacy of the 3.10-per-share price. And so because of that, he does not have the ability to claim injury as a result of any alleged disclosure or nondisclosure.

The one case that sort of raises the issue that I think Your Honor raised about whether it applies in a class action context is the Marriott decision. And there, there is some dicta to the effect --

THE COURT: Since we may have multiple Marriott decisions, can you give me the cite?

MR. BERGER: I think I have it in my notes.

THE COURT: Sure. Take your time.

MR. BERGER: I'll get it for Your Honor in just a minute.

THE COURT: Sure.

MR. BERGER: It's In Re Marriott, 2000 Westlaw 128875, Delaware Chancery, January 24, 2000.

And on that, the plaintiff had previously moved to enjoin the transaction on the grounds of unfair price and inadequate disclosures. The Court had denied the motion, but on a motion to dismiss, the Court held because the plaintiff had previously moved for an injunction pending -- to stop the transaction, that there are valid jurisprudential reasons to permit a plaintiff to act as class representative notwithstanding the fact that he was admittedly aware of all or nearly all of the disclosures that he complains were omitted. To rule otherwise would discourage prompt litigation in advance of the conclusion of a transaction.

Now, that's obviously not what we have here for two reasons: One, the plaintiff didn't move promptly -- and I'm going to get into that in just a moment -- didn't move promptly in Colorado or with respect to this Court; and second, we're in the second half of a transaction. This plaintiff did not stop or seek to stop the first step of the tender offer. So we're in a different situation, I would submit.

THE COURT: They tried to stop the first half of the tender offer. The Court denied that.

MR. BERGER: That's correct, Your Honor. But again, that's different than seeking the disclosures at this time.

THE COURT: Right.

MR. BERGER: So I think Marriott is easily distinguishable. And I think the key point here is that this plaintiff has not been injured by the alleged lack of disclosures. He knows what he's going to do.

The second reason for denying the injunction here, again, putting aside the projection issue, is the plaintiff's delay in seeking an injunction. The Court is well aware of case law on the fact that delay in seeking an injunction is, in itself, a basis for denial of the injunction. Here, there's no doubt about the timetable of past events.

Plaintiff has known about the disclosures and, in particular, the lack of disclosure or projections at issue in this motion since around the middle of September. As this Court knows, plaintiff waited several weeks, until early October, to file a motion for expedited relief in Colorado. That motion, as this Court knows, was denied in Colorado on October 4th.

Now, I know that this Court was not persuaded by the Colorado Court's reasoning to deny expedition here, but I do think that the Court should recognize that plaintiff waited another two and a half weeks between the time of the denial in Colorado on October 4th to bring a motion to expedite here on October 22nd. I'm sorry. The denial in Colorado was October 5th. So between October 5th and October 22nd was the time lag between filing a motion for expedited relief here. And I think that two-and-a-half-week period is a basis for denial of the motion for injunctive reliever.

And while plaintiff argues that he did not get a fair hearing in Colorado, an argument that I find a little insulting to the Colorado Court, he offers no reason why he waited the nearly three weeks before seeking expedited relief in this Court.

And under well-established precedent, including the cases cited in our brief at 37 and 38, but most noteworthy, the Oliver Press decision as well as the Santa Fe decision, both of those cases would support denying the injunction here just based on the delay of plaintiff in seeking expedited relief in this situation.

Third, and I'll be very brief on this issue, but we believe the balance of hardships -- and then I'll move into the injunction -- the balance of hardships here also favors denial of the injunction.

Now, we need to be clear that an injunction here causes real hardship. There is hardship to Ramtron and its employees, customers, shareholders. Ramtron has obviously been dealing with tremendous uncertainty in the marketplace the last several months since Cypress' offer became public. This has resulted in substantial uncertainty in its employee and customer base. These are discussed --

THE COURT: At this point, it's owned 78 percent by Cypress, so what's so uncertain about that?

MR. BERGER: Cypress doesn't get the chance to actually take control of the business until the transaction is closed. So what Cypress is doing is it is financially backstopping the business.

THE COURT: Because the merger agreement has an "ordinary course" until they have 100 percent.

MR. BERGER: Correct.

And the hardships are in evidence

before Your Honor in Mr. Buss's declaration at Paragraph 13 as well as in the testimony of Ramtron's CFO, which is in the prior deposition transcript at 73. And it's clear that but for Cypress' support, there would be significant questions if Ramtron could exist today.

In contrast, the harm to plaintiff is, we believe, speculative at best. Your Honor raised the issue of the quasi-appraisal remedy. Again, we don't think the information at issue here is material or required to be disclosed, and I'll go through that in a moment. But if you assume arguendo that it is, that provides an adequate remedy, we believe, for plaintiff.

THE COURT: Right. So you think that that would be a possible remedy if, in your view, we had the unlikely event of the disclosure ultimately being held inadequate. If that happened, then you think they could get a quasi-appraisal remedy?

MR. BERGER: If you assumed, Your Honor -- to answer Your Honor's question, if you assumed that the information was material and it was required to be disclosed, we do believe they could proceed under Steiner under a quasi-appraisal remedy,

yes.

I'd like to put forward that there isn't a single piece of admissible evidence we have seen in the record to support a claim in which the projections will change the total mix of information in the market, and so we believe that there is no evidence that the disclosures will affect even plaintiff's own decision. And given this, there is simply no factual basis to find any harm to plaintiff from not disclosing the information, the projections at issue.

Now I'd like to turn to the projections, and again, I'll try and be brief, Your Honor. Plaintiff obviously has the burden to show whether or not the projections, the information, is material. That's clearly plaintiff's burden here. The key case on point, as Your Honor recognized, is the Skeen case.

And Skeen, which is still well-settled good law under the Delaware Supreme Court opinion, makes clear what the standard of review is. I'm quoting from Skeen now at 750 A.2d. 1170. "Omitted facts are not material simply because they might be helpful. To be actionable, there must be a

substantial likelihood that the undisclosed information would significantly alter the total mix of information already provided." That's clearly the standard which we're all operating under.

There is no evidence -- there are four reasons here why the projections are not material, and I'm going to discuss each in detail, but let me give you a quick summary.

First, there is no evidence that the projections were material to the board. The projections were used by Needham. No question about that. We don't dispute that. But this is not a case of professional malpractice. What Needham chose to use to come to its own conclusions about its own fairness opinion -- just because Needham chose to use something does not mean that it was relied upon by the board. And there is no evidence in this record to show that the projections were relied upon by the board, and that's the key issue.

This is a breach of fiduciary duty case. This is not a professional malpractice case. And plaintiff does not get to say a per se rule in Delaware exists that merely because something was provided to the financial advisor, that it

automatically becomes either material to the board or must be disclosed. That's --

THE COURT: But I do have a situation here where we've got projections that were prepared by management in the ordinary course of business. They were supplied to the investment advisor in the context of negotiations about a possible merger. They were relied on by the investment advisor, at least for the DCF analysis that it did to come up with its fairness opinion. And perhaps -- I think they even said they relied on them for at least one of their other analyses. And not a single thing is revealed about the projections themselves. So, you know, stacking that up against cases like Netsmart and PLATO is tough to do.

MR. BERGER: Let me take that on directly in two respects, factually and then legally.

Factually, the projections, and in particular, the five-year projections, were not done in the ordinary course of business. On this, the testimony is clear. And I'll read from Mr. Richards' transcript. He's the CFO from Ramtron. He was the CFO during all of this time.

And in his deposition which plaintiffs

took, at Page 16 of his transcript, beginning at Line 21, he says -- I'll actually begin at Line 9.

"What about management? What does management at Ramtron use the quarterly financial forecast for?

"Same thing, plus more detailed stuff like we're going to meet covenants," and he goes on. "Decisions have been made in the past to cut salaries, to lay people off.

"And when you refer to 'plan,' are you talking about a five-year annual operating plan?

"Answer: No.

"What plan are you talking about?

"Possibly a three-month operating plan. We don't normally look out, you know, or at least I don't, from a tactical standpoint, look out five years in our industry or our company or any company I have ever been at.

"Question: How far does Ramtron typically look out when preparing quarterly financial forecasts?

"There is not a hard-and-fast rule on that.

"What's the general practice?

"Through the quarterly, through the end of the year, possibly the next four quarters."

There is no testimony that they normally do five-year forecasts. And in fact, Ramtron does not normally do five-year forecasts. What was done for the financial advisor for the DCF analysis was something specifically done for Needham, and it was not done in the ordinary course of business, and there is no dispute about that.

Both on the Netsmart and on the PLATO Learning case, there are a couple of reasons why I think projections there were required to be disclosed that make those cases quite distinct from this case.

First, what you had in those cases is both of those cases involved management buyouts where the Court in both cases expressed some skepticism at the process that the management and the board had engaged in in reaching its ultimate conclusions.

That's obviously not the case here. This was a hostile bidder. Cypress came forward. Management spent many months trying to fight off or fend off Cypress' bid. And there is no concern that this is some type of sweetheart deal.

Underlying the policy, if you will,

that I think exists between -- for favoring the disclosure of forecasts is a notion that shareholders should get the opportunity to see, when they're trying to be cashed out, whether or not the management is somehow playing a little fast and loose with the numbers, or the board is playing fast and loose to favor one transaction over another. And to my mind, that's the policy that we're trying to encourage.

And certainly, Netsmart and PLATO Learning have sub rosa in them so as to make sure that shareholders get that opportunity when trying to decide whether they should accept a cash-out offer or not and lose control of the company. Those issues, with all due respect, aren't present at all here.

Here, first of all, this is a hostile offer. None of the management team or the board will remain with the company afterwards. They obviously sought to fend off this offer as long as possible.

Second, there can be no doubt that Ramtron scoured the market and engaged in an extensive process to try and avoid -- or try and find other alternative bidders.

Third, with respect to what the board relied upon, when the board decided to sell the

company, the proxy discloses that the board, in fact, relied upon a number of factors. Those factors are set forth in Pages 32 to 34 of the proxy. They include such things as the review of strategic alternatives, Ramtron's financial condition and prospects, the board's view that Cypress' offer presented full and fair value, and a number of other things.

The board did not say that it was relying upon the projections prepared by management, and particularly the five-year projections that were at issue in this motion, in making its decision.

So we would submit that the Netsmart and the PLATO Learning cases are quite factually distinct from this case in that you don't have any of the concerns, and you also don't have the risks that you have in those cases present at all here.

And again, the reason that what I think -- and I think Your Honor's question to my friends on the other side really hit the issues squarely. What this case raises is whether or not the Delaware Courts are going to adopt a per se rule requiring disclosure of projections if they're created for the financial advisor. That's what we ultimately

come down to here.

And frankly, under Skeen, there just isn't -- that isn't what Delaware law is. And Delaware law, I think, takes a much more nuanced approach and looks at each situation individually. And here, we just don't have the type of concerns or indicia that require that information to be disclosed.

Again, this is an issue between whether or not to seek appraisal or not. The merger has already been decided upon. And what that means here is that the information that plaintiff is seeking is just additive. It doesn't provide anything new. Because, as Your Honor noted, the most important fact about the DCF analysis is that it suggests a price higher than the merger price. That's what's critical. That's what shareholders need to know. How Needham got to that analysis is not material to the total mix of information. What Needham used in coming to its analysis just doesn't qualify as material under the case law.

I'm going to -- I understand Your Honor's view on whether or not the projections are reliable or not. I'm not going to spend any time on that.

THE COURT: Yeah. I'm not used to a situation where I get into a sort of an objective analysis of whether they are or are not reliable.

MR. BERGER: The only thing I would point out to Your Honor, and I promise I'll pass right on, is -- and this is, to me, the indicia of reliability. When I was looking at the projections, and they're in the record, I looked at the books that Needham provided to the board, because how else are we going to tell; right?

And the book that Needham provided to the board in July of 2012 is attached as Exhibit 9 to the prior deposition. That's how it came into the Court's evidence. And the September book, which is the fairness opinion book, is Exhibit 3 to the Richards deposition.

What's interesting about these documents is between July and September, the company's performance declined. Not surprisingly, it declined fairly substantially. And yet -- and the projections for the rest of 2012 show a decline. And yet the projections for the out years, the 2013 through 2016, although they show declining, a little bit declining revenues for those years, actually show spectacular

growth, more growth, in the September book for the fairness opinion than the July book. So although the results came down in that three-month period, the projections actually increase. I don't know how they got there. There is no record evidence in there. But I think it tells us a lot about whether or not the projections are reliable.

And again, if this were a situation where, you know, I was arguing that Ramtron should be forced to drop its pill because these projections were unreliable, I think there be would be an interesting debate on all this stuff. But for our purposes here, I think there is plenty to say that Ramtron's projections are highly questionable, and they certainly don't add anything to the information that's already out there.

The final point, and maybe it's just a return to a point I mentioned earlier, but the notion of the projections, they don't add to what is, I submit, already the key point here, which Your Honor noted. The DCF analysis gives the price. That's what shareholders need to know. Under Skeen, that's what shareholders need to know. Other information may be nice to have, but I don't think any of it is material.

Unless Your Honor has any questions, I'm through.

THE COURT: No. I appreciate it. Thank you.

MR. BERGER: Thank you, Your Honor.

THE COURT: Mr. Czeschin.

MR. CZESCHIN: I would like to note quickly, because there was a lot said, there was a very strong suggestion that Ramtron's management had no concerns with respect to the reliability of the projections. And I don't want to belabor points that have already been made, but I don't know that that's an accurate characterization of the CFO's testimony, who was the CFO at the time of the negotiations.

If you look to Pages 70 and 73 through 75 of the CFO's transcripts, he clearly explains that he felt the projections were aggressive, and he details why he were thought they were aggressive, and that by the end of the negotiation period, he was having concerns as to whether or not Ramtron would survive as a going concern at all.

He further notes later in the deposition, Pages 79 and 93, that projecting all the way out to 2016, which was what was done here for the

purposes of providing something to the bankers, in his industry, he felt that was, quote, just crazy and a worthless exercise.

So I just wanted to point that out to the Court since there were the comments about Ramtron's management.

Thank you, Your Honor.

MR. McEVILLY: Your Honor, just a few brief points.

One, as to the board relying on the company's projections, if Your Honor were to look at the definitive proxy statement at Page 32, and the board's reasons for recommending the merger, under Ramtron's financial condition and prospects -- that's how it's entitled -- one of the reasons that the board gives for recommending the merger is, the second bullet item down, "Ramtron's prospects for future growth, which involved potential benefits herein, as well as the risks associated with executing its business plan."

I don't know that there is any way to read that other than the projected financial performance of the company in the future. They don't use the word "projections," but there is no other way

to read that, especially when you consider that the board was involved in this strategic review process and had had a couple of different sets of projections prepared prior to entering into the merger agreement.

Now, as far as Mr. Richards' testimony is concerned and the reliability of the projections, in that part of Mr. Richards' testimony that the defendants were just reading into the record, Mr. Richards did say that he thought that some of the sales goals might be a little aggressive. But then he went on to say that he talked to the board about it and the board was comfortable with that. In other words, the board knew all about the projections, had fully vetted them, and was comfortable with the projections that were being provided to the banker.

I think when you connect that with what the board is saying in the proxy statement, the notion that the board wasn't fully involved and didn't rely upon the financial projections that they apparently instructed management to prepare -- because the board had to authorize that. The banker isn't the boss of the deal. The banker didn't come in and say, "Management, prepare five-year financial projections for us and be quick about it and make sure they're

reliable." The board had to give them that ultimatum.

And Mr. Richards' testimony was clear that the board had people who were technologists on it, who had had a lot of experience in the industry. They were comfortable with what was contained in the projections. And they even had separately had Mr. Coburn, who had experience in the investment banking industry, who was looking at some of the assumptions that the bankers used in arriving at their conclusions. So not only was the board looking at the financial forecast that the company itself prepared, they were looking at what the bankers were doing, the bankers' own work product, and deciding for themselves whether or not they thought it was reasonable.

So any suggestion that the board didn't know what was going on, this is a board that was blindly relying on what bankers were doing in arriving at a financial opinion about the fairness of the transaction, simply does not hold any water.

Now, as far as the plaintiff himself is concerned, I want to circle back to some of Mr. Berger's comments.

First of all, the plaintiff wants to see the projections because he has made it clear he's

not made up his mind as to whether or not he's going to exercise his appraisal rights yet. He wants to see the projections for that reason, and for the same reason other shareholders in the class presumably would want to see the projections too.

Now, whether or not that changes his vote is irrelevant, because I think the standard is clear. We cite the case in our brief, the Simonetti case, that just because information is material and alters the total mix, plaintiff doesn't have to make a showing that it actually changes the outcome of someone's vote in some fashion.

And I don't believe that any of the cases that the defendants cite go to a standing issue. Standing, Your Honor, means you're out of court. You couldn't have brought the claims in the first place. The case never existed. And that is not what we have here. This plaintiff is clearly adequate. In fact, in his testimony, he goes to pains to point out that the class is entitled -- the rest of his fellow minority shareholders should want to see these projections and evaluate them for themselves. He's looking out for the class.

In at least one of the cases

defendants cite, it wasn't even a class action. It was post-close. And the plaintiff in that case was not pursuing claims on behalf of a class. He was pursuing claims on behalf of himself. And when he raised these disclosure issues after the fact and it came out that he hadn't relied on that information himself, the Court dismissed his claim on that basis. That is a different context than what we have here, where we are before the shareholder vote, this is a class action, this is a plaintiff who by his own testimony is clearly doing everything he can to look out for the interests of the class and coming forward and saying, "Projections, that's material information."

If you don't get the projections in this context, Your Honor, you're just blindly relying on what the proxy says. It's conclusions. It's not a fair summary to just omit any reference to projections whatsoever. And what makes it especially important in this case --

THE COURT: Watch out. It does refer to projections. It omits the projections. So I'll go along with it omits the projections altogether, but it refers to the projections at least a few times.

MR. McEVILLY: Yes, Your Honor. It refers to the fact that projections were supplied. I think it has to. Otherwise, there would be no basis for the banker to say much of anything in at least two or three of its analyses. But it gives you no guidance whatsoever as to what those projections were, or, you know, what the magnitude of the projections were.

What it does do is it says in the DCF part, the bankers found that the valuation range exceeded the offer price. Well, if you're a shareholder looking at this deal, deciding how you want to vote, and trying to make a decision as to whether or not you want to exercise appraisal rights, don't you want to see those projections to see why the valuation range exceeds the consideration offered in the deal here?

If this was a situation where the company was actually going down the drain like Defendant Cypress likes to suggest, you would think that the DCF valuation range would be below what Cypress is offering; that the future prospects for the company would be dim or horrible. We don't have that here.

We have a situation where, when you look at the bare conclusions that are made in the definitive proxy, a reasonable shareholder would say, Why aren't they paying me more for my shares? And should I be seeking appraisal under these circumstances? And under that circumstance, that argues more for the projections being disclosed in this particular case, Your Honor.

THE COURT: All right. Thank you.

MR. BERGER: Do you have time?

THE COURT: Okay. Since you've come all the way here. I don't usually do that, but you're taking advantage of me. It's all right.

MR. BERGER: Well, in that case, Your Honor, I'll feel real guilty and go real fast, but I'll try not to speak too fast for the reporter who is eyeing me warily. Just two quick points.

First, with respect to the standing issue, which I think is critical, the standing has nothing to do with whether he's an adequate class representative or anything. It has to do with the very simple issue of whether this plaintiff or not has suffered injury. That's what then-Vice Chancellor, now Chancellor Strine talked about in the Aristotle

case we cited. And here, the plaintiff has not suffered any of injury.

And just to read from plaintiff's deposition about the question as to whether or not he's going to seek appraisal, we asked him that question. My colleague Mr. Guggenheim did at Page 69 of his deposition transcript.

"Is it fair to say that given that you believe that the $3.10-per-share price is unfair, that you intend to seek appraisal of your shares?

"Answer: I don't.

"Question: You don't intend to seek appraisal?

"Answer: I don't intend to seek appraisal, no, not at this point. I leave it to my legal counsel to decide if that makes any sense.

"Question: So the only way you're going to decide whether to seek appraisal or not is through discussions -- and I'm not going to ask you to reveal the substance of those, but the only way you're going to decide is through discussions with your legal counsel?

"Answer: That is correct."

So this plaintiff has not suffered any

injury whatsoever. He knows what he's going to do. He's going to decide --

THE COURT: He's going to talk to his counsel. Don't you think his counsel are going to look at all the information that's available to them and his counsel will tell him that he needs to have these projections to make a decision?

I've heard enough about the standing.

MR. BERGER: Okay.

THE COURT: What's your other point?

MR. BERGER: Your Honor, I'll sit down. And I appreciate Your Honor's time.

THE COURT: I appreciate it.

All right. I have a room full of people next door. My plan is to take a lunch break at 12:30. I'm going to try to make an oral ruling at 1:00, so I'd like people to arrange with my assistant for that.

All right. Thank you very much.

(Court resumed at 1:20 p.m.)

THE COURT: Be seated, please. All right. Thank you for your patience.

In this case, I address a stockholder's request that this Court issue the extraordinary remedy of a preliminary injunction against a stockholder vote on a merger between the company in which the stockholder owns stock and the company's would-be buyer. The stockholder alleges that the company and its directors have failed to provide sufficient disclosures to allow the company's stockholders to make an informed decision on whether to vote in favor of the merger or, instead, to seek appraisal. This is my ruling on plaintiff's motion for a preliminary injunction.

The plaintiff, Paul Dent, is an individual who brings this stockholder class action individually and on behalf of all other public stockholders of Ramtron International Corporation, which I'll refer to as "Ramtron" or the "company." Plaintiff is and at all times was an owner of Ramtron common stock.

Defendant Ramtron is a Delaware corporation headquartered in Colorado Springs,

Colorado. Ramtron designs, develops, and markets specialized semiconductor memory, microcontrollers, and integrated semiconductor solutions, used in many markets for a range of applications in metering, computing and information systems, automotive, communications, consumer and industrial, scientific, and medical markets.

Defendants Eric Balzer, Theodore Coburn, James Doran, Jack Saltich, William George, William Howard, and Eric Kuo, the individual defendants, are all members of Ramtron's board of directors. According to defendants' joint brief in opposition to plaintiff's motion, on October 10, 2012, all of the directors resigned from the board except Coburn, Howard, and George.

Defendant Cypress Semiconductor Corporation is a Delaware corporation headquartered in San Jose, California. Cypress is alleged to be a world leader in USB controllers, including the high-performance West Bridge solution that allegedly enhances conductivity and performance in multimedia handsets, PCs, and tablets. It also is a world leader in SRAM memories. Cypress serves numerous markets including consumer, mobile handsets, computation, data

communications, automotive, industrial, and military.

Defendant Rain Acquisition Corporation is a wholly owned subsidiary of Cypress formed to effectuate the proposed buyout.

I refer to Cypress, the individual defendants, and Rain collectively as "defendants."

This case arises from the following factual background, which, unless otherwise noted, is disclosed in Ramtron's definitive proxy statement filed on October 29, 2012. Again, I'll refer to that as the "proxy."

On March 8, 2011, Cypress made an unsolicited proposal to the board to acquire Ramtron for $3.01 per share in cash. This price represented a 37-percent premium over Ramtron's closing price that day. According to plaintiff, the board immediately rejected this proposal.

On March 11, 2011, the board convened a telephonic meeting during which it established a strategic transaction committee to assist the board in considering an acquisition by Cypress or another company. During this meeting, the board also authorized the retention of Shearman & Sterling LLP as Ramtron's special legal counsel and Needham & Company

as Ramtron's financial advisor.

The board rejected Cypress's offer in a March 22, 2011 letter. According to plaintiff's verified and amended class action complaint, which I'll refer to as the "complaint," and I am referring to the complaint in this Delaware action, Ramtron then sold nearly 20 percent of its stock at a net price of $1.79 per share.

On June 22, 2012, Cypress publicly announced a proposal to acquire all outstanding shares of the company for $2.48 per share.

On June 18, Ramtron filed a Recommendation Statement on Schedule 14D-9 recommending that its stockholders not tender their shares to Cypress. On the same day, Ramtron issued a press release rejecting Cypress's offer as inadequate and announced the board's decision to explore strategic alternatives. The proxy states that "in connection with this strategic alternative review process, Ramtron, with the assistance of its financial advisor, contacted 24 companies, entered into seven confidentiality agreements with interested parties (including Cypress) and provided due diligence materials to the interested parties."

On June 21, 2012, Cypress publicly announced a revised proposal to acquire all outstanding shares of the company for $2.68 per share. Ramtron again recommended that the stockholders reject Cypress's offer.

Cypress renewed that offer on July 20, August 6 and August 20, 2012.

In an August 3, 2012 letter to the board, Cypress stated that it was willing to maintain its offer of $2.68 despite Ramtron's ongoing weak performance. The letter also expressed Cypress's willingness to proceed without access to Ramtron's confidential information, but stated that, at Ramtron's request, Cypress had marked up a proposed confidentiality agreement.

In that regard, Cypress further stated that: "we will not have our hands tied just so that you can provide us with management projections, which we do not need and believe are inherently unreliable given both the nature of the industry and Ramtron's record of missing three of the last four years of its own earnings guidance. "And that quote appears in the proxy that has been circulated in connection with the meeting scheduled for tomorrow.

The August 3 letter also stated that Cypress "share[d] the growing frustration of many of [Ramtron's] other stockholders," regarding several unanswered questions, including "Why hasn't the board given Ramtron's stockholders the opportunity to assess the reasonableness of the company's projections for themselves?" and "Did the board and its advisors rely upon projections last year when [Cypress's] prior acquisition proposal was rejected and, if so, how do they compare to Ramtron's actual results?"

Despite its expressed frustrations, Cypress raised its offer to $2.88 per share on August 27, 2012. As with Cypress's prior offers, this offer was not conditioned on financing, due diligence, or access to Ramtron's confidential information or financial projections.

On August 28, Ramtron filed a second amendment to its July 5, 2012 Recommendation Statement again recommending that its stockholders not tender their shares.

On September 8, the board rejected the offer of $2.88 per share.

According to the proxy, the board and Cypress began to negotiate on or after September 8,

2012.

On September 13, the board instructed Needham to present Cypress's financial advisor, Greenhill & Co., LLC, with a counter-proposal of $3.50 per share. Cypress rejected this proposal, however, and the board made another counter-proposal at $3.25 per share. Although Cypress again rejected that counter-proposal, it upped its offer to $3.01 per share. After further negotiations, Cypress finally agreed to an offer price of $3.10 per share conditioned on a termination fee of $5 million.

On September 18, 2012, the Ramtron board convened a meeting with Needham and Shearman & Sterling. At this meeting, Needham -- and this is a lengthy quote -- "discussed with [Ramtron's] [board] their financial analyses of the proposed offer price of $3.10 per share of common stock and indicated to [Ramtron's] [board] that, based on the current draft of the merger agreement, [Needham] was in a position to deliver an opinion as to the fairness, from a financial point of view, of the $3.10 per share of common stock consideration to be paid to holders of shares (other than Cypress, Purchaser and their respective affiliates) pursuant to the merger

agreement."

That same day, Needham delivered its written fairness opinion to the board. In it, Needham opined that "the offer and merger and the merger pursuant to the merger agreement was fair, from a financial point of view, to [Ramtron stockholders]." The board voted unanimously to recommend that Ramtron stockholders accept the $3.10 per share offer and tender their shares.

The next day, September 19, Cypress and Ramtron publicly announced that they had entered into a merger agreement.

Under the merger agreement, Cypress would acquire Ramtron through a two-step process. First, Cypress would make a tender offer for all outstanding shares of Ramtron's common stock at $3.10 per share. Second, Cypress, through its wholly owned subsidiary Rain, would merge with Ramtron. The remaining stockholders of Ramtron would receive $3.10 per share in cash.

Cypress's initial tender offer expired on October 9. After acquiring only approximately 72 percent of Ramtron's outstanding stock, Cypress commenced a subsequent offering that expired on

October 17.

Cypress currently holds approximately 78 percent of Ramtron's outstanding shares. This is enough to make the merger a foregone conclusion but not enough to exercise the merger agreement's top-up option, which requires that Cypress have secured more than 86 percent of Ramtron's outstanding shares.

Unable to exercise the top-up option in the tender offer, Cypress has decided to pursue a long-form merger under 8 Del. C., Section 251. The stockholder vote on the merger is scheduled to take place tomorrow, November 20, 2012, at 8:00 a.m. Pacific time.

Turning to the procedural history of this dispute, plaintiff first challenged Ramtron's dealings with Cypress in a Colorado state court. Plaintiff filed its first complaint there on June 19, 2012. In that complaint, plaintiff claimed that the individual defendants breached their fiduciary duties by refusing to engage in negotiations with Cypress.

After Cypress and Ramtron's public announcement of the proposed buyout on September 19, and Ramtron's filing of its Recommendation Statement on September 25, plaintiff amended his complaint in

Colorado on September 28 to challenge the proposed buyout. Plaintiff also moved for a temporary restraining order on October 4.

On October 5, 2012, the Colorado court denied plaintiff's motion in a one-paragraph ruling which stated, among other things, that plaintiff "has waited over three months' time to make this request to the Court when plaintiff has had knowledge of the circumstances regarding the tender offer and merger agreement well in advance of today's date."

Plaintiff Dent filed this class action complaint in Delaware on October 15, 2012, ten days after losing the preliminary injunction application in Colorado. On October 22, plaintiff filed an amended complaint. Plaintiff moved to expedite these proceedings on October 23, and sought a preliminary injunction on November 5.

On the afternoon of November 5, I heard oral argument on, and granted, plaintiff's motion for expedited proceedings. Since then, the parties have engaged in discovery. Ramtron and Needham have produced documents to plaintiff including board minutes, bankers' books, projections, and financial analyses. Plaintiff has taken depositions

of Gery Richards, Ramtron's chief financial officer and of John Prior, Needham's president and chief executive officer. Defendants have taken plaintiff's deposition.

This morning, November 19, 2012, I heard oral argument on plaintiff's motion for a preliminary injunction, and on the basis of all of these materials, make the ruling that follows:

The complaint states two causes of action. The first claim is for breach of fiduciary duties against the individual defendants and the second claim is for aiding and abetting a breach of fiduciary duties against defendants Cypress and Rain. Defendant Ramtron is named as a necessary party.

The complaint contains several allegations, such as that the board utterly failed to negotiate with Cypress and to shop the company in an adequate sales process, and that the terms of the merger agreement contained preclusive deal protection devices.

Plaintiff's main claim, however, is that defendants breached the fiduciary duty of candor by failing to disclose Ramtron's management's financial projections that covered the second half of

2012 and the years 2013 through 2016.

Ramtron provided these financial projections to Needham and the projections formed the basis for Needham's discounted cash flow or DCF analysis which yielded an implied per share value of Ramtron's common stock equity in a range of $3.57 to $5.01. Defendants, however, have not shared these projections with stockholders.

Plaintiff asks this Court to enjoin the stockholder vote on the merger between Ramtron and Cypress until defendants have disclosed all material information concerning the proposed merger, including, specifically, management's financial projections.

Defendants counter that management's projections are neither accurate nor reliable. Defendants claim that they are not required to disclose these projections because the projections are not material and disclosure of the projections would create a greater risk of confusing Ramtron's stockholders than informing them on whether to accept the $3.10 offer price or to seek appraisal.

To support their contention that these projections are not material, defendants make several points. First, they emphasize that Cypress did not

have access to Ramtron's financial projections when it decided to enter the merger agreement. Indeed, as disclosed in the proxy, Cypress noted at least once in an August 3 letter that it found management's projections to be "inherently unreliable."

Second, defendants argue that approximately 75 percent of Ramtron's stockholders did not find the lack of projections in the proxy to be significant because they tendered their shares to Cypress without those projections.

Third, defendants note that they disclosed Needham's financial analyses, the summary of which fills six single-spaced pages in the proxy and conspicuously provides that the DCF analysis yielded an equity value between $3.57 and $5.01 per share as compared to the merger consideration of $3.10 per share.

Fourth, defendants assert that plaintiff does not need the projections to decide whether to tender his shares because he admits that he has already determined that the $3.10 offer price is too low.

Defendants also emphasize that approval of the merger is not in doubt because after

the two tender offers, Cypress owns 78 percent of Ramtron's outstanding stock. They further stress that no other bidder ever materialized, even though the board engaged in a lengthy exploration of strategic alternatives and contacted 24 companies.

Defendants further contend that, in any case, plaintiff lacks standing to bring this class action. Plaintiff, defendants assert, already has decided to vote against the proposed merger and to pursue an appraisal. Because the additional disclosures plaintiff seeks will have no impact on his decision, defendants apparently contend that plaintiff will suffer no injury from the alleged disclosure violation.

Turning to my analysis, this Court has broad discretion in granting or denying a preliminary injunction. The moving party must demonstrate each of the following three elements: First, a reasonable probability of success on the merits at a final hearing; second, an imminent threat of irreparable harm; and third, a balance of the equities that tips in favor of the issuance of the requested relief.

The moving party bears a considerable burden in establishing each of these necessary

elements. Plaintiffs may not merely show that a dispute exists and that the plaintiffs might be injured; rather, plaintiffs must establish clearly each element because injunctive relief will never be granted unless earned. However, there is no steadfast formula for the relative weight each deserves. Accordingly, a strong demonstration as to one element may serve to overcome a marginal demonstration of another.

Moreover, preliminary injunctive relief should not be granted if the injury may be adequately compensated for after a full trial on the merits, either by an award of damages or by some other form of equitable relief. The injury must be of such a nature that no fair and reasonable redress may be had in a court of law and that to refuse the injunction would be a denial of justice.

Preliminarily, I briefly address defendants' arguments that plaintiff lacks standing to bring this claim. Defendants argue based on the discovery taken that plaintiff lacks standing because he stated that he believes the $3.10 per share price is too low, even without access to management's projections, and that he already has decided not to

seek appraisal. Defendants refer the Court to the following language from Dent's deposition. And here, I'm quoting:

"Question: Is it fair to say that given that you believe that the $3.10 price is unfair that you intend to seek appraisal of your shares?

"Answer: I don't.

"Question: You don't intend to seek appraisal?

"Answer: I don't intend to seek appraisal, no, not at this point. I leave it to my legal counsel to decide if that makes sense.

"Question: So the only way you're going to decide whether to seek appraisal or not is through discussions ... with your legal counsel?

"Answer: That is correct.

"Question: And are you aware that there's a shareholder vote that's currently set for the merger for November 20?

"Answer: Yes.

"Question: Do you intend to vote for or against the merger?

"Answer: Against."

Dent's testimony regarding his intent

to seek appraisal is inconclusive in my view. Dent specifically states that he "leave[s] it to his legal counsel" to decide if not seeking appraisal makes sense.

At this preliminary stage, I am not persuaded that Dent will suffer no harm or that he is an inadequate class representative under the applicable case law. Accordingly, I do not base my ruling on a finding that Dent lacks standing.

Turning to the requirements for preliminary injunction, the first is a reasonable probability of success on the merits. Plaintiff's main contention is that the board reached its duty of complete candor by failing to include in the proxy Ramtron's management-prepared projections upon which the financial advisors relied. Accordingly, the first element that plaintiff must prove is that he has a reasonable probability of success in demonstrating that the failure to disclose these projections constitutes a breach of the board's duty of disclosure.

The duty of disclosure is a specific application of a corporate directors' fiduciary duties of care and loyalty. This duty requires directors to

disclose fully and fairly all material information within the board's control when it seeks shareholder action. In duty of disclosure cases, the issue is whether shareholders have been provided with appropriate information upon which an informed choice on a matter of fundamental corporate importance may be made.

Because the considerations to which the business judgment rule originally responded are not present in the shareholder voting context, this Court does not defer to directors' judgment about what information is material, or at least ordinarily it does not, but determines materiality for itself from the record at the particular stage of a case when the issue arises.

An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Moreover, an omitted fact that otherwise might not be material may become material where the omission renders the partially disclosed information materially misleading.

Once defendants travel down the road of partial disclosure, they have an obligation to

provide stockholders with an accurate, full, and fair characterization of whatever they disclose. As defendants point out, Delaware law does not require the disclosure of inherently unreliable or speculative information which would tend to confuse stockholders or inundate them with an overload of information.

The omitted disclosure at issue in this case is Ramtron management's financial projections. "There is no per se duty to disclose financial projections furnished to and relied upon by an investment banker. To be a subject of mandated disclosure, the projections must be material in the context of the specific case." That statement of the law comes from McMillan v. Intercargo Corp. from the Delaware Court of Chancery in May of 1999.

In this case, the evidence demonstrates that the projections are not material. Here, as in the Delaware Supreme Court case Skeen v. Jo-Ann Stores, Inc., there are no facts suggesting that the undisclosed information is inconsistent with, or otherwise significantly differs from, the disclosed information.

For example, the proxy discloses that in addition to a DCF analysis, the financial advisor,

Needham, performed a selected company analysis, a selected transaction analysis, and a stock price premium analysis. These three analyses indicate that a merger at $3.10 is within a reasonable range, if not on the high side of a reasonable range of merger prices. The DCF, by contrast, values the company at between $3.57 and $5.01 per share. The proxy expressly states that the DCF analysis was "based on Ramtron's management's forecasts."

A reasonable inference from these disclosed data points is that management's projections are relatively optimistic, but were considered by the individual defendants, that is, the board, and Needham.

Furthermore, the board continuously rejected Cypress's offers and attempted to obtain a price of $3.50 per share, which is roughly at the low end of the price range supported by the Ramtron DCF that was performed by Needham. The proxy further discloses that the only bidder, Cypress, rejected that offer as well as a later Ramtron proposal of $3.25 per share.

The two cases cited and primarily relied upon by plaintiff for a contrary conclusion and

to demonstrate that management projections are material are Maric Capital Master Fund, Ltd. v. PLATO Learning, Inc. and In Re Netsmart-Technologies Inc. Shareholders Litigation.

These cases in my view, however, do not compel a different result in the circumstances of this case. I have looked at each of those cases carefully and believe that there are factual distinctions between those cases and the situation before me, and that when this case and the proxy disclosures are viewed in context of all the circumstances, that there has not been a showing here that the management projections are material and that it is necessary that they be disclosed in some form of supplemental proxy in this case.

Accordingly, plaintiff has not shown that the class is reasonably likely to succeed in proving the merits of its disclosure claim. The stockholders have received sufficient information from which they can deduce that management's forecasts support a price higher than $3.10 per share. The record nevertheless demonstrates that, notwithstanding management's relatively bullish forecasts, the other metrics that were studied by the investment advisor

make the $3.10 per share price supportable.

For example, Needham performed three other financial analyses that place $3.10 in a reasonable range; no other company expressed interest in buying Ramtron at any price; and others in the industry, including Cypress, Ramtron management, and one of the few analysts covering Ramtron, recently have expressed -- recently, when I say that, I mean back in the time period that's relevant to the proxy statement -- have expressed skepticism about the accuracy of forecasts in this industry, the industry that's before me, generally, semiconductors, and by Ramtron's management in particular.

Defendants further contend that Ramtron management's projections are immaterial because they are unreliable. To support this contention, they note that Cypress considered the projections to be "inherently unreliable" and did not care to use them to support its continued offers to buy Ramtron.

In addition, defendant's expert, Professor John Coates from Harvard, explains in his expert report that between October 2011 and June 2012, Ramtron repeatedly failed to achieve its public

guidance and also its internal projections.

On July 24, 2012, Ramtron publicly announced that because of "limited near-term visibility," the company no longer would provide annual guidance but would give guidance only for the next reported quarter. And by the end of the second quarter of 2012, there was not a single firm providing guidance for or forecasting the company's future results.

There is evidence, however, that management's projections were not necessarily unreliable. In preparing its fairness opinion, Needham accepted the projections and used them in its analyses of the company. Additionally, during negotiations with Cypress, management attempted to obtain a price of $3.50 per share, presumably based in part on management's projections. The board's negotiations with Cypress indicate, again, consistent with management's projections and the DCF performed by Needham, that the board believed a higher price than $3.10 was justified.

In this case, however, the materiality of management's projections does not turn on whether those projections were reliable or unreliable.

Rather, the question is whether there is a -- and this is taken from the Supreme Court's decision in Skeen v. Jo-Ann Stores, Inc. -- the question is whether there is "a substantial likelihood that the undisclosed information would significantly alter the total mix of information already provided."

I find that plaintiff has not demonstrated a reasonable likelihood of success in proving that that is the case here. Stated another way, it is unlikely that a reasonable stockholder would find the projections to be important as opposed to merely helpful in deciding how to vote on the merger or whether to seek appraisal.

Turning very briefly to irreparable harm, under Delaware law, the threat of an uninformed stockholder vote constitutes irreparable harm. It is appropriate for the Court to address material disclosure problems through the issuance of a preliminary injunction that persists until the problems are corrected. An example of that is the ODS Technologies v. Marshall case.

According to plaintiff, the stockholder vote scheduled to take place tomorrow will be uninformed because stockholders do not have all

material information necessary to make an informed decision. This harm can be remedied, plaintiff argues, by a preliminary injunction that briefly defers the stockholder vote until an appropriate supplemental disclosure can be made.

Defendants counter that plaintiff cannot demonstrate irreparable harm for three reasons: First, plaintiff has failed to establish a disclosure violation; second, plaintiff's alleged harm is speculative; and third, any harm may be addressed through the quasi-appraisal remedy.

As discussed above, I find that plaintiff has not demonstrated that he is likely to succeed in proving that defendants failed to disclose material information. The disclosure of management's financial projections may be helpful to plaintiff, but that alone is not sufficient.

Based on the entirety of the proxy, it appears that defendants have provided stockholders with the information they need to make an informed vote. Therefore, I conclude that plaintiff will not suffer irreparable harm if injunctive relief is denied in the sense that plaintiff supposedly would be required to make an uninformed stockholder vote.

Turning now to the balance of the equities, plaintiff has not demonstrated a likelihood of success on the merits of his disclosure claim, as I noted. Even if he had, however, the showing would be marginal at best. In these circumstances, plaintiff would not suffer irreparable harm even if this Court's evaluation of the disclosure claims is mistaken and he tenders his shares based on inadequate disclosures. That is because if plaintiff ultimately succeeds in demonstrating that the disclosures were materially deficient, plaintiff can pursue a quasi-appraisal remedy.

This Court has expressed a preference for addressing disclosure deficiencies in advance of a stockholder vote, and it is on that basis that I granted the motion to expedite in this instance and heard this preliminary injunction hearing today on very short notice to all involved.

For example, Chancellor Allen stated in Steiner v. Sizzler Restaurants, Inc., that "Where complete, corrected disclosure can be made before corporate action is taken, the cost and inherent risk of error that unavoidably accompanies ... 'quasi-appraisal' calculation is avoided. Thus

corrective disclosure ... is a favored remedy."

In Steiner, however, the Court noted that where, as in this case, plaintiff's disclosure claims were not strong, a preliminary injunction was not warranted based on the existence of an alternative, if in some respects less attractive, remedy.

In this case, where plaintiff's claims are weak or nonexistent on the merits, the availability of an alternative remedy means that the potential harm to plaintiff, if an injunction ends up being denied improvidently, would be relatively small, in my view.

Conversely, if this Court enjoined the stockholder vote, defendants as well as Ramtron and Cypress's respective customers, employees, and stockholders would face several potential harms. No other interested buyer for Ramtron has emerged. Cypress's offer represents a 71.3-percent premium over Ramtron's closing price on June 11, 2012. That was the last trading day before the first public announcement of Cypress's offer to acquire Ramtron. Although defendants do not argue that the deal is at risk if the stockholder vote is delayed, they do

contend that they will suffer harm from the uncertainty surrounding an announced but unconsummated merger.

At this time, Cypress has de jure but not de facto control over the company. Under the merger agreement, for example, Cypress is unable to cause Ramtron to make any changes outside of Ramtron's ordinary course of business. Furthermore, Ramtron's chief executive officer, Gery Richards, stated in his deposition that he was concerned that Cypress would walk away from the deal and that, if it had, then maybe Ramtron would not have been able to continue as a going concern.

Enjoining the stockholder vote, therefore, would delay Cypress's ability to exercise control over Ramtron's business and operations at a time when the company is performing below expectations and may face some level of distress.

Based on these facts, the balance of the equities weighs slightly in favor of this Court staying its hand and allowing the shareholders to be heard on the merits of this transaction, especially given the tempering power of the appraisal remedy, as was noted in the Louisiana Municipal Police Employees

Retirement System v. Crawford case from Chancery in 2007.

So for all of those reasons, I deny the plaintiff's motion for a preliminary injunction, and so order.

Thank you very much.

(Court adjourned at 2:00 p.m.)

CERTIFICATE

I, JEANNE CAHILL, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 79 contain 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 this 19th day of November, 2012.

/s/ Jeanne Cahill

Official Court Reporter
of the Chancery Court
State of Delaware

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Expiration: Permanent