IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SLINGSHOT TECHNOLOGIES, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 2019-0722-NAC
ACACIA RESEARCH CORP., ACACIA RESEARCH GROUP, LLC, MONARCH NETWORKING SOLUTIONS LLC, KATHARINE WOLANYK, and TRANSPACIFIC IP GROUP, LTD.,	:	
	:	
Defendants.	:	

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Chancery Court Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Wednesday, July 26, 2023
3:15 p.m.

- - -

BEFORE: HON. NATHAN A. COOK, Vice Chancellor

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TELEPHONIC BENCH RULING ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

CHANCERY COURT REPORTERS
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THE COURT: Good afternoon. This is Vice Chancellor Cook. Who do I have on the line?

ATTORNEY WEIDINGER: Good afternoon, Your Honor. This is Michael Weidinger, Delaware counsel for the Acacia defendants. With me on the line is Hajir Ardebili from lead counsel Skiermont Derby, as well as Jason Soncini, client representative of Acacia.

THE COURT: Thank you, Mr. Weidinger.

ATTORNEY HARRIS: Good afternoon, Your Honor. Jack Harris, Delaware counsel for plaintiff. And I believe also on the line is my co-counsel, Jason Spiro and Meredith Paley, both of whom have been admitted *pro hac vice*.

THE COURT: Thank you, Mr. Harris.

ATTORNEY BROWN: Good afternoon, Your Honor. This is Jamie Brown of Heyman Enerio Gattuso & Hirzel LLP, counsel for Transpacific. I have on the line with me today our client representative, Brad Close.

THE COURT: Thank you, Ms. Brown.

ATTORNEY HARRIS: Your Honor, Jack Harris once again. My apologies. I should add that plaintiff representative Keith Machen, I believe, is

also on the line.

THE COURT: Thank you. Good afternoon to you all. Thank you for joining this teleconference. If you'd like to place your phones on mute, I will provide my bench ruling now.

For the reasons I'll explain in a moment, I am going to grant Transpacific's motion and defer resolution of Acacia's motion pending supplemental briefing on the question of whether this Court has subject matter jurisdiction over Slingshot's remaining claims.

At the pleading stage, Vice Chancellor Laster issued four decisions that summarize the basic background to the parties' disputes. In the interest of efficiency, I incorporate his recitations of the facts and will limit mine to those relevant to the pending motions.

Almost five years ago, Slingshot sought to acquire a patent portfolio, known as the Orange Portfolio, from Transpacific. Transpacific gave Slingshot an exclusive option to acquire the Orange Portfolio for $3.3 million. Transpacific extended the deadline for exercising the exclusive option three times. Despite multiple opportunities to

acquire the Orange Portfolio, Slingshot failed to raise the funds to do it. The record suggests that even if available today, Slingshot still would lack the capital to acquire the Orange Portfolio.

After the deal fell through, Transpacific began sale discussions with one of Slingshot's competitors, Acacia. The sale discussions began after Katharine Wolanyk joined Acacia's board of directors. Wolanyk simultaneously served as the head of intellectual property at Burford LLC. Months earlier, Slingshot had unsuccessfully engaged Burford to obtain funding to acquire the Orange Portfolio. In doing so, Slingshot revealed to Burford purportedly confidential information. Slingshot revealed that information under two nondisclosure agreements or "NDAs." Wolanyk signed one of them.

In April 2019, Transpacific sold the Orange Portfolio to Acacia. Then Slingshot sued. Slingshot has theorized that Wolanyk divulged Slingshot's purported confidential information to facilitate Acacia's acquisition of the Orange Portfolio. Slingshot also has theorized that Transpacific knew Wolanyk had been sharing Slingshot's purported confidential information with Acacia.

Slingshot bases these theories on circumstantial evidence, including the timing of the acquisition *vis-a-vis* Wolanyk's appointment to Acacia's board, Acacia's outreach to Transpacific after Wolanyk joined the board, and press releases suggesting that Wolanyk would or did play an instrumental role in the expansion of Acacia's IP portfolio.

Based on these theories, Slingshot's second amended complaint alleged 11 claims. Acacia, Transpacific, and Wolanyk each filed a motion to dismiss the second amended complaint. Vice Chancellor Laster granted Transpacific and Acacia's motions in part and denied them in part and granted Wolanyk's motion. After the dust settled, six claims remained: Counts II, III, IV, VII, VIII, and IX.

Count II is a statutory misappropriation claim against Acacia under the Maryland Uniform Trade Secrets Act. Count III is an unfair competition claim against Acacia. Counts IV, VIII, and IX are tortious interference claims against Acacia. And Count VII is an implied covenant claim against Transpacific.

Slingshot seeks various, largely undifferentiated forms of relief that are pleaded

generically. According to the second amended complaint, Slingshot seeks (i) compensatory, consequential, incidental, rescissory, and exemplary damages; (ii) a constructive trust; (iii) rescission; and (iv) mandatory injunctions. I take these from subsections (a) through (h) of the Prayer for Relief.

The case has now proceeded through discovery. Acacia and Transpacific have separately moved for summary judgment. Slingshot opposes the motions. The nub of the parties' dispute is whether Slingshot has discovered evidence sufficient to support findings that (1) Wolanyk shared Slingshot's confidential information with Acacia, in violation of the NDAs; (2) Acacia used that information to acquire the Orange Portfolio; and (3) Transpacific knew that Acacia was using it. I heard oral argument on the motions and I am now ready to issue my ruling.

I'll start with the standard of review. At the pleading stage, Vice Chancellor Laster observed that none of the events surrounding Slingshot's claims against Acacia had occurred in Delaware. Slingshot and Acacia now agree that Maryland law applies to the merits of Acacia's motion. Even so, Delaware law governs application of the

summary judgment standard to both Defendants' motions. I draw that rule from our Supreme Court's 2001 *Chaplake* decision.

The Court will grant summary judgment where there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The movant bears the initial burden of demonstrating "clearly the absence of any genuine issue of fact." That's a quote from our Supreme Court's 1979 *Ocean Drilling* decision.

If that burden is met, then the non-movant must offer "some evidence" of a triable issue. That's a quote from our Supreme Court's 1966 *Phillips* decision.

"There is no issue for trial unless there is sufficient evidence ... to return a verdict" for the non-movant. That's a quote from our Supreme Court's 2011 *Health Solutions* decision.

"If the facts permit reasonable persons to draw but one inference, the question is ripe for summary judgment." That's a quote from our Supreme Court's 1995 *Brzoska* decision.

Conversely, summary judgment is inappropriate "if there is any reasonable hypothesis

by which the opposing party may recover, or if there is a dispute as to a material fact or the inferences to be drawn therefrom." That's a quote from our Supreme Court's 1970 *Vanaman* decision.

I'll begin with Transpacific's motion. By way of background, Slingshot has alleged that Transpacific breached an implied covenant in their option agreement by selling the Orange Portfolio to Acacia. The option agreement expressly prohibited Transpacific from selling the Orange Portfolio in a transaction directly involving a funding source, like Burford, that had access to Slingshot's alleged confidential information. The option agreement did not address a scenario where Transpacific sells the Orange Portfolio indirectly involving a funding source.

At the pleading stage, Vice Chancellor Laster found it reasonably conceivable that if the parties had considered the issue, they would have agreed that Transpacific could not sell the Orange Portfolio to a buyer who had indirectly obtained access to Slingshot's alleged confidential information from a funding source. Importantly, however, Vice Chancellor Laster emphasized that Transpacific would

not have agreed to such a term unless the term contained a "knowledge qualifier." That's a quote from paragraph 6(e) of the decision on Transpacific's motion. Given the knowledge qualifier, Vice Chancellor Laster concluded Count VII would not survive summary judgment unless Slingshot discovered evidence that Transpacific actually knew Acacia was using the information:

"It is ... reasonably conceivable that Slingshot could obtain a remedy against Transpacific if Slingshot can prove that Transpacific knew that Acacia was using knowledge gained from Burford in connection with its acquisition of the Orange Portfolio."

And going further, "At this preliminary stage, it is reasonable to infer that Transpacific knew Acacia had obtained information from Burford through Wolanyk .... [A]fter discovery, Slingshot will not be able to benefit from the plaintiff-friendly pleading standard and the inference to which it is currently entitled. Absent evidence that Transpacific knew that Acacia was using knowledge gained from Burford, Slingshot will not be able to establish a breach of the implied covenant."

Those are quotes from paragraphs 6(f) through (g) of the decision.

The question, then, is whether Slingshot has discovered material facts sufficient to support a finding that Transpacific knew Acacia was using information obtained from Wolanyk about Slingshot to acquire the Orange Portfolio. The answer is no. At best, discovery has revealed that Transpacific knew Wolanyk worked at Burford and was on Acacia's board during the negotiation and sale of the Orange Portfolio. But that does not mean "Transpacific knew that Acacia was using knowledge gained from Burford" to facilitate Acacia's acquisition of the Orange Portfolio. That's a quote from paragraph 6(h) of Vice Chancellor Laster's dismissal decision. And if the non-movant "fails to present any substantial evidence on an essential element of that party's case, summary judgment against [it] is mandated." That's a quote from Chancellor Allen's 1994 *Glosser* decision.

That is the case here. So Transpacific's motion is granted.

Slingshot does not meaningfully contest this result. Instead, Slingshot spends most

of its time resisting the knowledge qualifier governing Count VII. In other words, Slingshot asks me to depart from the law of the case. I decline that invitation.

"[O]nce a matter has been addressed in a procedurally appropriate way by a court, it is generally held to be the law of the case." That's a quote from our Supreme Court's 2021 *Food & Water Watch* decision.

Law of the case "operates as a form of intra-litigation *stare decisis*." That's a quote from our Supreme Court's 2017 *Frederick-Conaway* decision.

As a result, departures from law of the case are "rare." That's a quote from this Court's 2021 *Sciabacucchi v. Malone* decision. Even rarer when the law of the case has been established by a different judicial officer.

As then-Vice Chancellor Hartnett cautioned, "[a] judge should hesitate to undo his own work. Still more should he hesitate to undo the work of another judge." That's a quote from his 1993 *Siegman v. Columbia Pictures* decision.

Vice Chancellor Laster carefully examined the option agreement and applied black-letter

contract interpretation principles and the generous pleading standard to it. Based on the express prohibition on knowingly transacting with funding sources, Vice Chancellor Laster concluded that any implied covenant prohibiting indirect transactions would also require Transpacific's knowledge. This limitation is consistent with the narrow purpose of the covenant, which is a "limited and extraordinary legal remedy" that cannot be used to rewrite the parties' contract. That's a quote from our Supreme Court's 2021 *Glaxo Group* decision.

In short, nothing about Vice Chancellor Laster's ruling is "clearly wrong, produces an injustice[,] or should be revisited because of changed circumstances." That's a quote from our Supreme Court's 2000 *Gannett* decision, which articulated these situations as exceptions to the law of the case doctrine. So his ruling controls.

The only reasonable inference to draw from the record is that after Slingshot repeatedly failed to close on the Orange Portfolio, Transpacific became a motivated seller, seeking a buyer who could close on the Orange Portfolio quickly. Acacia fit that mold. It had just entered the IP market and had

the capital to complete the acquisition promptly. So a deal with Acacia made sense. Slingshot has not discovered any evidence suggesting Transpacific took acts to frustrate the purpose of the option agreement.

Given the absence of actual knowledge evidence, Count VII reduces to a tool designed to achieve the benefits of a transaction Slingshot could not consummate. But the covenant is not "an equitable remedy for rebalancing economic interests" or a means of palliating a sophisticated party's contractual regrets. That's a quote from our Supreme Court's 2019 *Oxbow* decision.

Instead, it is a "fact-intensive" remedy reserved for situations marked by "compelling fairness." These are quotes from our Supreme Court's 2005 *Dunlap* decision.

Slingshot was given a full and fair opportunity to discover the facts I would need to imply the covenant. It failed. Count VII is dismissed.

I'll turn now to Acacia's motion. The parties focus their arguments on whether Slingshot's evidence could be sufficient to support a finding that Acacia misappropriated Slingshot's allegedly

confidential information. This approach is understandable, but overlooks a threshold issue: jurisdiction. Having reviewed the record, I assume the parties have not questioned jurisdiction due to the presence of a so-called jurisdictional stipulation.

The stipulation was raised in Wolanyk's motion. She argued that this Court lacked jurisdiction due to an arbitration clause in the NDAs. Slingshot countered with the stipulation. According to Slingshot, Wolanyk waived arbitration by agreeing to this Court's jurisdiction. Vice Chancellor Laster rejected that argument, explaining that waiver is a question of procedural arbitrability reserved for the arbitrator. At the pleading stage, Vice Chancellor Laster was not asked to address the broader question of whether the jurisdictional stipulation would be enforceable against Acacia, and the issue has not been raised since.

The Court may question jurisdiction *sua sponte* at any time. That's a paraphrase of our Supreme Court's 2015 *Gunn v. McKenna* decision.

Indeed, courts may question subject matter jurisdiction "[w]henever it appears by

suggestion of the parties or otherwise[.]" That's a quote from Court of Chancery Rule 12(h)(3).

Consistent with that rule, a case may be dismissed for lack of subject matter jurisdiction even if the court raises it for the first time after trial or on appeal. For example, in its 1989 *Stroud v. Milliken* decision, the Supreme Court dismissed the case for lack of subject matter jurisdiction after raising the issue for the first time during oral argument.

Having reviewed the stipulation, I find it ineffective to the extent it purports to prevent this matter from being dismissed for lack of subject matter jurisdiction. Parties cannot by agreement "confer subject matter jurisdiction" on this Court that is "otherwise absent." That's a quote from Vice Chancellor Zurn's 2021 *Coinmint* decision. I therefore must determine whether jurisdiction is otherwise absent. To do so, I will require supplemental briefing. And here is why:

"The Court of Chancery is proudly a court of limited jurisdiction." That's a quote from the Court's 2019 *Perlman v. Vox Media* decision.

This Court acquires jurisdiction in

three ways: "(1) the invocation of an equitable right; (2) a request for an equitable remedy when there is no adequate remedy at law; or (3) a statutory delegation[.]" That's a quote from this Court's 2016 *Kraft v. WisdomTree* decision.

When one of these three bases for equitable jurisdiction exists, the Court may exercise "ancillary jurisdiction" over legal claims under the cleanup doctrine. That's a quote from Chancellor McCormick's 2021 *FirstString Research* decision.

The second amended complaint premises jurisdiction Title 10 Sections 341 and 342. Those provisions do not delegate jurisdiction where it otherwise would not exist. Instead, they codify the first two means of jurisdiction. Section 341 codifies this Court's jurisdiction to hear equitable claims. And Section 342 codifies this Court's jurisdiction to hear claims for which a legal remedy would be inadequate. Section 341 is no longer a source of original or cleanup jurisdiction here because the only two equitable claims — Counts X and XI — were dismissed at the pleading stage. So that leaves Section 342.

The mere availability of equitable

remedies does not mean the claimant lacks an adequate legal remedy. As then-Vice Chancellor Chandler explained:

"[A] judge in equity will ... not permit a suit to be brought in Chancery where a complete legal remedy otherwise exists but where the plaintiff has prayed for some type of traditional equitable relief as a kind of formulaic 'open sesame' to the Court of Chancery." That's a quote from his 1991 *Comdisco* decision.

The Supreme Court echoed this rule in its 2004 *Candlewood Timber* decision, which instructs this Court to look beyond equitable titles and "focus upon the allegations of the complaint in light of what the plaintiff really seeks to gain by bringing [its] claim."

Accordingly "[i]f a realistic evaluation [of the complaint] leads to the conclusion that an adequate legal remedy is available[,] this court ... will not accept jurisdiction over the matter." That's a quote from Chancellor Allen's 1987 *McMahon* decision.

If an adequate legal remedy exists — that is, a legal remedy that would provide Slingshot

with "full, fair and complete" relief — I must dismiss the case. That's a quote from our Supreme Court's 1995 *El Paso Natural Gas* decision.

Without the benefit of supplemental briefing, it appears right now that Slingshot may have an adequate legal remedy at law; namely, statutory damages. Slingshot seeks compensatory, consequential, incidental, and exemplary damages. All are available under the Maryland Uniform Trade Secrets Act. I cite Section 11-1203 of the statute for the observation and Footnote 16 in *First Union National Bank v. Steele Software*, a 2003 decision of the Court of Special Appeals of Maryland. Although Slingshot seeks to capture profits in a constructive trust, the statute also covers profits, which comprise a form of consequential damages.

My concerns are colored by the fact that Slingshot's proposed equitable remedies seem off the mark. The transaction closed four years ago, making the need for injunctive relief unclear. It is also not clear that rescission is an appropriate remedy at all. For one, it is not clear that Slingshot has standing to rescind someone else's contract here. For another, rescission is not

necessarily a remedy confined to this Court.

As Chancellor Allen explained in his 1989 *HEM Research* decision: "It is perhaps not commonly appreciated that rescission is a remedy awarded by law courts. A court of law may, upon adjudication of a contract dispute, determine, where the elements of the claim are proven, that a contract has been rescinded, and enter an order restoring plaintiff to his original condition by awarding money or other property of which he had been deprived."

The distinction between legal and equitable rescission could possibly be relevant to determining whether rescission could be awarded here.

Either way, a key consideration in a rescission analysis is the passage of time. It is not clear how the Court could "unscramble the eggs" that have hatched over the last four years, as Acacia as presumably been using the Orange Portfolio since April of 2019. That's a quote from then-Judge Slight's 2001 *Catamaran v. Spherion* decision, which quoted then-Chancellor Quillen's 1974 *Gimbel v. Signal* decision and rejected the prospect of equitable rescission where more than three years had passed since the transaction at issue closed.

To be sure, rescissory damages may be available where an award of rescission would be impractical. But impracticality alone is not enough. Rescission must be impractical and "warranted." That's a quote from this Court's 2018 *Ravenswood Investment* decision.

Here, it is not clear to me that rescission would be warranted. I note that the request for rescission is not particularly well-pleaded, which is a relevant consideration in the rescissory damages analysis. I take that principle from this Court's 2021 *Spay v. Stack Media* decision.

I also note there is considerable evidence in the record suggesting that Slingshot never had the capital to acquire the Orange Portfolio — then or now. So even if, somehow, rescission could put the Orange Portfolio back onto the open market, Slingshot could not even acquire it. Rescissory damages are not designed to replicate the benefits of a transaction that a party lacked the capital to close.

As Vice Chancellor Will observed, rescissory damages should not "reward a plaintiff who attempts to ... test the waters, see how the transaction plays out, and then sues for rescissory

damages if the deal turned out well" for someone else. That's a quote from her 2022 *Deane v. Maginn* decision.

In sum, I will defer resolution of Acacia's motion so that Acacia and Slingshot can brief the question of whether Slingshot has an adequate remedy at law.

Now, as I have said, this case has been aging. So in the interest of helping the parties think about next steps, I have preliminarily reviewed the merits and the discovery record. Without reaching any decision on Acacia's motion, I do have some initial impressions.

The key questions appear to be form of proof and credibility. The answers to those questions could go either way.

As to form of proof, it seems clear from the record that Slingshot has not discovered any direct evidence that Wolanyk shared allegedly confidential information with her colleagues during Acacia's discussions about the Orange Portfolio. On the one hand, Maryland law does not impose misappropriation liability for mere exposure to confidential information. I draw that rule from *LeJeune v. Coin Acceptors*, a 2004 decision of the

Court of Appeals of Maryland. On the other hand, a lack of direct evidence does not necessarily doom Slingshot's case. Claims may be proven by circumstantial evidence. That would seem particularly so in the misappropriation context, where evidence is presumably often circumstantial. Some of the circumstantial evidence adduced might fairly be deemed material enough to support a reasonable inference of misappropriation.

That said, if Slingshot's evidence is "merely colorable, or is not significantly probative, summary judgment may be granted" to Acacia. That's a quote from *Health Solutions*.

More specifically, Slingshot's evidence, circumstantial or otherwise, cannot be based on "guesses, innuendo or unreasonable inferences[.]" That's a quote from Chancellor Bouchard's 2018 *Cirillo Family Trust* decision, which was affirmed on appeal.

As to credibility, Slingshot seems to think it can get past summary judgment despite facially unsupportive evidence because it will impeach adverse witnesses at trial. For instance, Slingshot intends to cross-examine Wolanyk on whether she disclosed confidential information, even though during

her deposition she repeatedly testified that she did not. There are some cases suggesting that credibility is inherently a factual issue. I cite our Supreme Court's 2002 *Cerberus* decision as an example.

And on summary judgment, the Court "cannot try issues of fact ... but only is empowered to determine whether there are issues to be tried." That's a quote from our Supreme Court's 2012 *GMG Capital* decision. So credibility could possibly preclude summary judgment.

Still, other cases suggest a mere possibility of impeachment does not create a material factual dispute sufficient to defeat summary judgment. As then-Judge Slights explained: "The non-movant is not entitled to a trial on ... a hope that he can develop some evidence during the trial to support his claim. It follows, then, that an issue raised by the non-moving party as to a witness' credibility is insufficient to preclude ... summary judgment because if the most that can be hoped for is the discrediting of the defendants' denials at trial, no question of material fact is presented." That's a quote from his 2005 *Haglid v. Sanchez* decision.

This Court reasoned similarly in its

2023 *OptimisCorp v. Atkins* decision, which cautioned that when facing a summary judgment motion, the time to present a factual dispute is now, not at trial. In any event, resolution of this issue likely will depend on whether credibility is material to the case or not. That, again, is a question for another day.

Finally, I note that "[t]here is no absolute right to summary judgment." That's a quote from our Supreme Court's 2005 *AeroGlobal* decision.

I may deny summary judgment if I determine it would be "desirable to inquire [more] thoroughly into all the facts to clarify the application of the law." That's a quote from our Supreme Court's 1965 *Alexander Industries* decision, which was reaffirmed in the high court's 2023 *Wilmington Trust v. Sun Life* decision.

By the same token, I may grant summary judgment where, based on the evidence presented, a trial would amount to a "useless" expenditure of judicial and party resources. That's a quote from Chancellor McCormick's 2020 *Bay Capital* decision, which quoted Chancellor Chandler's 2002 decision *McKesson* decision and our Supreme Court's 1968 *Davis v. University of Delaware* decision.

To recap, then, I granted Transpacific's motion for summary judgment and deferred Acacia's summary judgment motion pending supplemental briefing. Slingshot and Acacia shall confer on a briefing schedule.

I'm not looking for reargument at this time, but I'm happy to answer any questions. I'll start with counsel for movant Transpacific.

ATTORNEY BROWN: No questions, Your Honor. Thank you.

THE COURT: Any questions from counsel for Acacia?

ATTORNEY WEIDINGER: Your Honor, this is Mike Weidinger for Acacia. I did have one follow-up question and it relates to the role of the cleanup doctrine is to play in the briefing, if any.

THE COURT: I think I will leave that to counsel to address in the first instance, to the extent you think it bears on the analysis. I'm not certain I entirely understand the question.

ATTORNEY WEIDINGER: Well, just as a follow-up to that, the cleanup doctrine, I think, is a matter of Your Honor's discretion. So I just was trying to find out if Your Honor had a view about that

in the analysis or whether we should just address this in the first instance.

THE COURT: I think I understand the question. To the extent that you think that as a discretionary matter at this point that's something I should consider, I would, of course, be happy to review the arguments. I think the question posed is, at this point, is there a basis for subject matter jurisdiction, or is this case really down to issues for which there are legal remedies and, at this point, it's something that would be best tried in the Superior Court as the case proceeds? I think there's, unquestionably, precedent that when equitable claims are no longer in the case, this Court has, in various instances, concluded that the Court does not have subject matter jurisdiction.

But I do take your point about whether, even despite that, there is an argument that there is some role for the cleanup doctrine to play given the status of the case.

However, the question that I raised in the course of giving this ruling is not one that I have raised lightly. And I hope folks understand that. It's something that I have given a lot of

consideration to. Certainly if that's an argument you want to present, I'll be glad to review the argument. But thinking about this case holistically and where we are now, the ruling that I've just given you is something that I don't come to lightly.

ATTORNEY WEIDINGER: Thank you, Your Honor. That's helpful.

THE COURT: Hearing nothing further, I appreciate everyone bearing with me while I gave that bench ruling.

With that, we're adjourned. Thank you very much.

(Proceedings concluded at 3:50 p.m.)

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CERTIFICATE

I, DENNEL NIEZGODA, Official Court Reporter for the Court of Chancery for the State of Delaware, Registered Merit Reporter, Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 28 contain a true and correct transcription of the rulings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except as revised by the Vice Chancellor.

IN WITNESS WHEREOF I hereunto set my hand at Wilmington this 31st day of July, 2023.

/s/ Dennel Niezgoda

Dennel Niezgoda
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter