IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JEFFREY L. DOPPELT and NEIL A. DOLGIN,	:	
	:	
Plaintiffs,	:	
	:	
v	:	C. A. No.
	:	10629-VCS
WINDSTREAM HOLDINGS, INC., et al.,	:	
	:	
Defendants.	:	

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Chancery Court Chambers
417 South State Street
Dover, Delaware
Monday, September 11, 2017
2:01 p.m.

- - -

BEFORE: HON. JOSEPH R. SLIGHTS III, Vice Chancellor.

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TELEPHONIC ORAL ARGUMENT ON PLAINTIFFS' MOTION TO COMPEL DEFENDANTS AND THIRD PARTIES TO PRODUCE DOCUMENTS and RULINGS OF THE COURT

CHANCERY COURT REPORTERS
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APPEARANCES: (Via teleconference)

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-and-
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THE COURT: Good afternoon. It's Joe Slights on the line.

Can I get appearances, please. First, starting with plaintiffs' counsel.

MS. KEENER: Yes. Good afternoon, Your Honor. This is Carmella Keener of Rosenthal Monhait & Goddess. I apologize. I don't have much of a voice. My co-counsel, Carol Shahmoon and Gregory Keller from CSS Legal Group, are on the phone. I will let them each say hello so that we can be sure Your Honor can hear them, but Ms. Shahmoon will make the argument on behalf of the plaintiffs today.

THE COURT: Great. Thank you. Good afternoon.

MS. SHAHMOON: Good afternoon, Your Honor. This is Carol Shahmoon.

MR. KELLER: Good afternoon, Your Honor. Greg Keller.

THE COURT: Great. Thank you.

And on behalf of the defendants, please.

MR. SAUNDERS: Good afternoon, Your Honor. Rob Saunders from Skadden Arps for the individual defendants.

THE COURT: All right. I have had a chance to read the motion to compel, so I have a petty good sense of what's going on. But, Ms. Shahmoon, why don't you take us away.

MS. SHAHMOON: Sure. May it please the Court, Carol Shahmoon on behalf of plaintiffs.

We bring this motion to compel the production of documents, which include draft talking points, Q&As, shareholder mailings that were created by proxy advisors and communications consultants for a business purpose to collect votes and to communicate with investors. And the communications were made among business people. And so, as we move in our motion, we say the logs do not meet defendants' burden to show that the documents are protected.

We rely on the Chase Bank case primarily, as it goes through the same type of theory that defendants have offered here, that draft documents that may at some point go to counsel or that might be subject to legal review are privileged.

And defendants cite to the Sarissa case, which is consistent with Chase Bank. And in that case, that case also involved proxy solicitor communications, as are involved here. And that case

held that the communications were not privileged. That case is from June, and we have been kind of going through this since June. So that's what I'm turning to next, is the procedure here.

Your Honor, we filed this motion June 5th, and we had submitted some examples. We wanted an order that would require them to turn over the examples, as well as produce anything else that would be like them that were on those logs, because so many drafts, including some business presentations, some financial presentations, had been withheld. And so the defendants agreed to produce those examples and to work on a case-by-case basis as to -- if we could identify everything else we were interested in. And so we did that. And that process resolved.

August 3rd we had hit an impasse on Camberview, and they were still working on the other logs. So we filed on Camberview. And on the 21st we got the Brunswick and Innisfree documents. So these are -- Camberview, Brunswick, and Innisfree are all proxy communication/business communication third-party consultants. The motion was amended and supplemented on the 21st.

Okay. So that's where we are.

We have divided up the documents into different categories. And I'm going to start with the Q&A/talking points/FAQ documents. Those are Exhibit O and Exhibit K to our motion. That's where we list the privilege log items that we are interested in. But I want to caution that there are -- we think there are at least four types of documents within this category.

There's the Camberview talking points and Q&A. So at some point, Camberview, which was the proxy advisor focused on institutions, created talking points and Q&A's for a January 15 -- sorry. January 2015 time period that involved meetings with the investor relations personnel, including Mr. Fletcher, who is their general counsel, met with institutional investors to communicate with them about the vote.

And we don't have any version, we do not have a final version of these documents, but we understand from our depositions that they were used. We understand the purpose of them was not a legal purpose. And defendants have confirmed with the affidavit of Mr. Fletcher that his role in connection with those talking points and FAQs was a business role, because his job was to talk to the investors about the deal. So that's the first category.

The second category of that Q&A is Brunswick. Brunswick created a Q&A as well that we have not seen. We've seen no version of it. And it was also used to talk to investors around the time the deal was announced in December of 2014. But, again, we have not seen it. And we understand it relates to the types of things that shareholders are interested in. That's why we're interested in it.

Then there's a Brunswick document called an FAQ, a website FAQ. And it's our understanding that that was posted on the website of the company and it was meant to address questions investors might be interested in.

And then the fourth category is what they call the reactive -- sorry. The last thing I mentioned, the website FAQ, we have an example at Exhibit M.

And then Brunswick created a reactive FAQ at Exhibit K. And that was something it was our understanding that it was questions that would be answered only if people asked. So it was only for reactive use only.

And so those are the types of things that are -- you know, a big chunk of our motion is

about these business documents. I don't think anyone could argue that they are legally -- primarily used for a legal purpose.

And then the next category, we call them shareholder mailings. And one of them was Tony Thomas, the CEO, Tony Thomas' letter to shareholders in which he, you know, talked about how great the transaction was in order to collect votes. Again, the same purpose, to collect votes.

And what is interesting about this letter -- and you can see this at Exhibit L -- is that the version that we have from December, which is the last version we have before the final one, is -- I shouldn't say that. But we have a version from December. And it indicates that the post-transaction dividend would be 70 cents per share. And the heart of this case is the lack of disclosure on that issue. And that language was taken out. And so in the final, there is no disclosure of the 70-cent dividend or the dividend cut, which wasn't 70 cents.

And so what we're trying to get at is that business decision to remove that language, but all of the drafts in-between, we're missing them. And we don't believe that that would have been legal

advice. That sounds like business advice, which is consistent with some of the other documents.

There is also, similarly, a brochure which was -- there were drafts that were withheld.

And then, finally, there are these e-mails from Brunswick, which is that communications firm, to Windstream's investor relations and Windstream's media consultant. And that's been withheld, purportedly as litigation advice. And, again, we don't see a lawyer on it. We don't understand how Brunswick could be giving litigation advice. Or if so, if it reflects legal advice, why that can't be redacted. So essentially, we basically don't believe defendants have met their burden.

We also make a Garner motion in there. To the extent there are privileged documents here, we think Garner would cover them because we -- neutrality of interest is not disputed. Defendants only focus on good cause. And I think that their argument about good cause is not strong enough. It's a multi-factor test, and I think we are strong on every factor. In particular, there's missing documents here. And I think that, for whatever reason, documents are missing, and so we have to look at -- grab whatever we

can find on these issues so we can make our case.

THE COURT: All right.

MS. SHAHMOON: That's it. Thanks, Your Honor.

THE COURT: Thank you.

Mr. Saunders.

MR. SAUNDERS: Thank you, Your Honor.

So let me sort of jump into it. And I will try to be brief. The things that we're talking about here are drafts and e-mails attaching drafts that are in pipelines, I guess is my word to describe them, that culminates ultimately in disclosure to stockholders. That's a process, we submit, and I think the cases recognize, that heavily involves legal advice.

The gist of the dispute -- and I think it's apparent from the papers, and I think it's even more apparent from hearing Ms. Shahmoon's presentation -- the gist of the dispute seems to be that the plaintiffs contend that the process of figuring out what must and should be disclosed to stockholders in connection with a legally required vote is a business matter rather than a legal matter. And we disagree with that.

The whole reason that you are communicating with stockholders, as a general matter, when these issues come up -- and certainly it's the case here -- you know, we're not talking about communications encouraging people to invest in the company or an analyst road show, we're talking about communications in connection with a legally required vote on a couple of matters that were submitted to stockholders for their approval. And then we're also talking -- there are also very complicated federal disclosure regimes and state law requirements that are applicable to figuring out what has to be disclosed to stockholders in a circumstance like that.

As a result, as we all know, lawyers are heavily involved in the process of getting to final disclosure documents that get filed with the SEC. And that's a good thing. Right? I think it's a good thing, and to be encouraged, to have lawyers heavily involved in that process. And at least since Jedwab, this Court has acknowledged that that process of figuring out what ought to be disclosed to stockholders in connection with a vote is privileged. Because if you have an ultimate publicly disclosed disclosure document and you were to be forced to

disclose drafts that were prepared by various people along the way, then that would inevitably disclose, because of the changes, you know, advice that lawyers had given in that pipeline process of getting to the final disclosure document.

And that principle has been applied, that Jedwab principle has been applied even if some of the e-mails in the pipeline are exclusively between nonlawyers or if nonlawyers do the first draft. That's the MPEG case, I think, perhaps, among others. But that's the one we cited in our papers from Vice Chancellor Parsons.

And Your Honor recognized that concept in the Sarissa-Innoviva transcripts that Ms. Shahmoon referred to earlier, that drafts of public disclosure documents are privileged under Jedwab.

I would say as well that the argument is even stronger here than in the usual case, and even in the usual case I think it's dispositive, because the documents here is because they want to get at the legal advice.

In the context of the Garner argument -- and I will get to that in a second. But in the context of that argument, in their reply

submission the plaintiffs say, "The documents sought are pinpointed on defendants' logs and bear on what information, such as the planned dividend cut, was known to be material to shareholders in connection with the vote." That's pages 8 to 9 of their reply.

So exactly what plaintiffs want to get at, the reason why they want to get these documents is because they think it will show what somebody thought was material or what somebody thought was not material, what somebody thought needed to be disclosed or not disclosed because it was material or immaterial. And that's obviously itself a legal issue.

So this is not a situation where we're talking about business or financial evaluation of proposed transactions or pros and cons of various transactional alternatives. It's not a situation like Chase Bank, where we're talking about business documents with business purposes that are, you know, sent to lawyers just to have them check a box that it was reviewed by legal. We are talking about this well-recognized pipeline concept where the end product is going to be a legally important document. And I think it's well recognized that the drafts that people

prepare along the way to that final document are privileged.

I would also note that I think Your Honor made a distinction in the Sarissa- Innoviva transcript that is helpful and that elucidates this a little bit more. Your Honor held that the -- exactly what I just said, I think, that the drafts of disclosure documents were privileged, but that to the extent, at least as reflected on a log, communications from a proxy advisor might simply have related to the status of the proxy contest, that was not a privileged communication. But the kinds of things that we're talking about here are all exclusively within this sort of pipeline, Jedwab pipeline concept.

Just to break that down slightly, there are two different sort of drafting pipelines, or at least they end in two different places, for the documents that are at issue here.

The first ending place is, as I suggested, a sort of final communication to the stockholders. So we have FAQs that were publicly disclosed. We have a stockholder cover letter that was filed with the SEC. We have a stockholder brochure that was filed with the SEC. And then there

are talking points that were used by nonlawyers at the call center run by the proxy solicitor, Innisfree, so that they would have scripted answers to give to stockholders who called in. And we have produced, and the plaintiffs have, all of those final versions of communications with stockholders.

What they don't have, because we withheld them as privileged, is the drafts of those documents, because, again, we think that under Jedwab and its progeny those are all privileged. Disclosure would inevitably disclose the legal advice that was given with respect to what ultimately was in the document.

The other pipeline ended at John Fletcher, who, as Ms. Shahmoon said, was at the time the general counsel. And this is the specific issue of the Camberview-generated talking points or Camberview-drafted talking points and FAQs. We did submit an affidavit from Mr. Fletcher in which he explained that he had asked Camberview to do first drafts of talking points and FAQs for him to consider in preparing for his own communications with some of Windstream's largest institutional stockholders.

And we would submit that the general

counsel's decisions about what should be in a document that he used to prepare himself to talk to stockholders, his notes about what points to make, to help him make sure that he made those points consistently across conversations with different institutions, and the documents that he asked people to prepare for him so that he could prepare those notes for himself, those are all privileged as well.

THE COURT: Can I stop you on that point.

Just in terms of understanding his role, I mean, I suppose general counsel could be preparing to talk to stockholders in a legal sense, but also could be preparing to talk to stockholders as an executive of the company to try to convince them that it's the right thing to do to vote in favor of a particular proposal.

From a privilege perspective, doesn't it matter what hat he's wearing in this case, Mr. Fletcher?

MR. SAUNDERS: Well, I suppose I could imagine a circumstance, certainly, just because somebody is a general counsel doesn't mean that everything that they utter is legal. But I think the

documents that we're talking about here were, you know, prepared for him to make sure that when he communicated with stockholders, he communicated the points that needed to be made and communicated them consistently. Right? Not as an advocacy matter, but, "Okay, when we're communicating and answering questions, we want to make sure that, you know, we say words to them that we have all agreed upon as being the appropriate words to say and that are consistent with our other disclosures and that we express those things to all people consistently."

I think the process of, again, figuring out -- just like the process of figuring out what ought to be in a proxy statement, the process of figuring out what notes do I have for myself, want to have for myself before going into a meeting with stockholders about what are the material points I'm going to make, and, you know, to help me make sure that I express them consistently to all stockholders, is inevitably involving sort of legal judgments about what are the material points to make.

Your Honor, with respect to Garner, and just sort of briefly on the Garner exception, we obviously don't think that the Garner exception

entitles the plaintiffs to any of these documents. Your Honor noted in the Salberg case that -- that's just earlier this year -- that the Garner exception is narrow, exacting, and intended to be very difficult to satisfy. And yet the plaintiffs have done almost nothing here to satisfy it. The motion itself offers no explanation at all, at least that I could tell, for why good cause is present here, and the reply offers really only a little more.

It just seems to be that the drafts of disclosure documents could prove that the defendants failed to disclose things that they knew should have been disclosed. And as I alluded to earlier, I think that goes to really the core of the privilege. This is not -- the plaintiffs are hoping that, by reviewing the drafts, they will have some evidence that somebody thought something was material and had to be disclosed in the back and forth along the way, and then they will be able to compare that with the final disclosure document and say, "Aha, see, here was something that somebody thought was material, and yet it didn't get disclosed."

And that process of making those judgments about what ought to ultimately disclose is

very much tied up in legal advice and, therefore, the privilege is applicable.

This is not a situation where we have a discoverable fact that is unavailable in some other way -- you know, when did a meeting happen or who was there -- that's embedded within an otherwise privileged document. And so the benefits of being able to get at that discoverable fact, they outweigh the privilege component. This is a circumstance where the very reason why the plaintiffs seem to want to get the documents is to invade the privilege.

In any event, the plaintiffs also haven't connected anything about these drafts to any of the people who are actually defendants and whose state of mind, therefore, matters. And that's obviously the directors. So, again, the theory seems to be that if we can see a draft of a disclosure document and identify what changed, then we'll have the ability to argue that the change shouldn't have been made, and something that somebody at some point in the process proposed be disclosed should have been disclosed, and because it was -- because that view was expressed in a draft along the way, then the plaintiffs will then be able to argue that, "Aha, the

failure to disclose it was intentional."

But plaintiffs haven't connected, as I say, any of these documents to any of the people who are actually the defendants in the case. So they haven't established that there would be that connection or the ability to make that argument that something in a draft showed something about the state of mind of any of the actual defendants.

And then there was -- Ms. Shahmoon made a sort of brief reference to documents no longer being available. There is obviously nothing nefarious about the fact that people sometimes delete e-mails when there isn't any litigation and they don't have an obligation to preserve them. But there's no reason to believe that if there were additional documents that once existed that were created contemporaneously and were deleted prior to the commencement of litigation, that they would be anything -- and that related to any of these issues, that they would be anything other than additional documents for the privilege log. They would be -- there's no reason to believe that any of those e-mails that don't exist anymore would be nonprivileged for all the same reasons we have talked about.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Ms. Shahmoon.

MS. SHAHMOON: Yes. Thank you, Your Honor.

So just to be clear, our purpose here is not to get at legal advice. In fact, we have suggested that defendants should identify the subject matter of the advice and redact it in some manner.

What we're stumped on is trying to locate that advice and trying to figure out how the subject matter of the advice would relate to these documents. So what I mean by that is the Camberview Q&A and talking points, we all can understand what they were used for. They were used at these investor meetings, as defendants have acknowledged.

And so where I'm stuck is figuring out how Fletcher is acting as a lawyer, because I don't believe he's giving advice to the institutional investors. And certainly if there's some advice along the way, which defendants have not identified, we suggest that they just redact it.

But their general principle that they can withhold all drafts because there's some way in

which we will be able to figure out the advice, first of all, that doesn't serve our purpose to figure out the advice. Our purpose is to figure out what -- what was happening with these documents that everybody directed towards shareholders. And not all of them were filed legal documents. These Q&As and talking points, which is the bulk of it, were never provided to us. We don't even know what's in them. So there is no way they were legally delivered to shareholders the way Mr. Saunders is suggesting.

Only the items under the stockholder mailing, the brochure and the cover letter were ever delivered to shareholders. Everything else was not delivered to shareholders, everything else that we're asking for. But they do reflect what -- you know, contemporaneous understanding in connection with this transaction of what would be important to shareholders, which is where -- which is at the heart of our case.

So when there's, you know, document destruction, we have got to do our best to get what we can on that issue. And we certainly have documents that seem to reflect that the defendants and their consultants understood that the dividend was

important.

Also, I want to point out that the Chase case that we cite to in our brief talks about draft customer service training materials and draft scripting. And I think those are analogous to the documents that we are seeking here. At some point those documents were circulated to attorneys, because they do have legal import. And I submit that most documents at a public company have some legal importance and have to get run by legal, just as these did. But the comments from nonlawyers and the communications among nonlawyers are not privileged.

So we just think that -- maybe what we're saying, too, is defendants should do a better job with their log at identifying where and when Mr. Fletcher gave advice, and redacting that, but limiting it to that. I don't think they've met their burden. You know, it's their burden, not ours.

So let me just think what else. I think that's it. Thank you, Your Honor.

THE COURT: All right.

Mr. Saunders, anything further?

MR. SAUNDERS: No, Your Honor. I think Your Honor has the points.

THE COURT: Okay. Thank you.

What I'm going to try to do is give you some guidance here as specifically as I can. Needless to say, I haven't seen these documents. I have seen the exemplars. I have a flavor, I suppose, for what they are.

But several log entries have been identified. I haven't seen the documents, nor do I really care to. I have expressed before my reluctance to have a process that would contemplate the Court engaging in in-camera review every time a privilege issue surfaces. And I don't really think that's necessary here. My hope is that the guidance I give you will be enough to help the parties work through the issues. If not, you can come back, and we will take it from there once I get a sense of where the breakdown is.

So I start, obviously, with the propositions that I think are fairly well known to all of us and have been cited here, that the attorney-client privilege protects legal advice only, not business advice, not personal advice. And when there is overlap, the privilege really kicks in to the extent of protecting the legal aspects of a document,

but that doesn't mean that the entire document would be protected by privilege. And in those instances where a business matter really predominates the document, the Court looks at that and is inclined not to protect that document, even if there may be some privilege sprinkled within it.

The mere fact that a lawyer is on the document doesn't mean that it's privileged. The mere fact that a lawyer isn't on the document doesn't mean that it isn't privileged. The analysis, unfortunately, for courts is a little more nuanced than that. So we have got to look more carefully at precisely what the communication is and what the purpose of the communication is.

Lastly, because it's been cited -- and I do think it is a principle that's now fairly well settled in our law, at least in this specific context of disclosure -- Jedwab, as I read it, recognizes that there are state and federal disclosure regimes that have very specific requirements where it can be assumed that legal counsel will be involved in formulating those disclosures for legal compliance. On the other hand, that doesn't mean that every communication with a stockholder is going to be

subject to Jedwab and its recognition of privilege for drafts of disclosures to stockholders. There are certain instances where a communication with a stockholder is not going to be formulated around settled legal requirements or expectations, either of a regulator or otherwise.

And so I think it's important for courts to be careful not to overextend Jedwab. But at the same time, I think it's also important to recognize, as Chancellor Allen did, that there are certain types of disclosures to stockholders where the Court can really assume that a lawyer had a hand in preparing them and that the lawyer did so in his role or her role as legal counselor.

So with that background, it appears to me that what we have here are communications with stockholders. On the other hand, we don't have proxy-like documents that are necessarily subject to a legal disclosure regime where one can just assume that any input that a lawyer might have had would have been in his role or her role as attorney/legal advisor.

On the other hand, there may well be legal advice that is incorporated in these various draft documents, turning first to the Camberview,

Brunswick, and Innisfree documents, the talking points, the FAQ and the Q&A documents. And yet when I went through and tried to correlate the documents that the plaintiff is seeking here with the documents as logged on the various privilege logs, it was really difficult for me to draw that distinction between what within the documents might contain legal advice and where you've got folks who are proxy advisors just trying to assist the company in making the most compelling pitch to stockholders to achieve a desired result.

In my view, that latter category of communications would not be privileged. And just because Mr. Fletcher or some other lawyer weighed in to help wordsmith would not reflect privileged communications, either.

On the other hand, if in-house counsel is weighing in and providing input to ensure that, for instance, these documents are consistent with the company's legal obligations of disclosure, if he is weighing in to help qualify what is and isn't material as a matter of disclosure law, or if he's weighing in to ensure that the documents are consistent in the messaging for purposes of ensuring that the

disclosures are not somehow misleading as a matter of law, then it would seem to me in those instances that input is legal advice that would be subject to the privilege.

Again, without seeing these documents, I can't make that nuanced call. But what I hear the plaintiffs say is, "Okay. If that's happening, redact that and produce to us the input that you are getting from your various proxy advisors in terms of how to pitch the message that you are trying to pitch to investors and stockholders."

Again, I don't believe that that communication would be privileged just because an attorney is copied on it. I don't believe it's privileged just because an attorney weighs in on that with his input. The only thing that would be privileged would be advice from the attorney or comments from the attorney that reflect that attorney's attempt or efforts to ensure that the company is complying with its legal obligations.

The logs aren't getting me there. I can't tell from what's been logged. One approach to that would be to say, "Okay. It's waived outright." But this is a little more nuanced, and so I don't

think that's a fair first reaction to that.

Instead, what I think should happen is that these documents, here talking about the talking points, the FAQs, I think there were some other Q&A-like documents that were identified here, and I guess there was the website FAQ, there was a reactive FAQ, Brunswick prepared a "talk to investors" document, and then I gather there was another FAQ prepared in and around January 2015, a talking points kind of document, that those should be reviewed, the input from the various advisors should be retained in the documents, and the only thing redacted should be legal advice.

The logs should then be amended to reflect those redactions, with some more specific description of the nature of the legal advice being rendered so that the plaintiffs can look at that and determine whether further motion practice is appropriate.

That same approach, even though the two categories have been separated, to me should be taken with respect to the stockholder mailings. And that would include the cover letter. Here again, I don't think that that is per se subject to a state or

federal disclosure regime, as with the documents that are perhaps attached to that letter. So drafts of that letter, to me, aren't per se embraced by the Jedwab holding.

On the other hand, as I mentioned before, if legal counsel's input is to ensure that state or federal disclosure laws are being followed, that some call is being made to ensure consistency for purposes of ensuring that the document is not somehow misleading as a matter of law, the same sort of guidance I gave before. If that legal input is reflected in these various drafts, then that input can be redacted. Otherwise, to me, again, if it's just a matter of the various advisors, nonlegal advisors weighing in to advise of better ways to say the same thing, more compelling ways to say it, that to me does not reflect legal advice, and that should be disclosed, even in these various drafts of communications that would go out to stockholders.

The same with the brochures. The reasoning, from my point of view, in the approach to discerning privilege or not should be the same with respect to those documents.

The one area where I don't think

there's much nuance, at least based on my understanding of the description, would be the February, I think it's 10th, 2015, e-mails post filing. To me, those are protected. The description, as I see it, is a document discussing strategy in light of the filing of the complaint. And reacting to litigation, to me, is not in any way captured by the nuance that I have just been talking about between business and legal advice or some other form of advice and legal advice. This is going to assist lawyers in rendering legal advice to a client that is now involved in litigation. So I don't see any basis for those documents to be produced absent some exception to the privilege.

So that takes me to Garner. I do think that our law -- and the federal law as well, for that matter -- views Garner as a narrow and exacting exception to the attorney-client privilege. The burden to demonstrate the Garner exception lies with the stockholder seeking to pierce the privilege. And in this instance, in my view, the plaintiffs have not identified why any particular document that they are seeking over the privilege objection that's been raised here would be helpful in overcoming the

knowledge shortfall that they've identified. The showing would just have to be much more specific than has been made in this instance.

Oliver v. Boston University I think is a case that addresses the good-cause showing in the context that I am thinking of it now and discusses the specificity that is really required to demonstrate good cause in order to meet the burden that is imposed under Garner. And I just don't think that that has been carried in this instance.

So where I think that leaves us is for defense counsel to go back to the drawing board to look at these documents, all that have been identified -- and I appreciate that there are a lot of them -- to look at them critically, drawing the distinction that I have tried to draw here. And my expectation is that there will be content within these documents that will be produced unredacted, given that I just don't think it's likely that the entirety of these documents would reflect the kind of legal advice that I have just been talking about.

To the extent that the documents do contain that content, meaning legal advice, with respect to information that's going to be transmitted

to stockholders, then that can be redacted. If that content is redacted, then the logs need to be revised to reflect what has been redacted in a more specific way than has been described thus far. And once those logs are in hand and the redactions are in hand and plaintiffs' counsel can determine if there is a basis to seek to challenge those redactions -- not on the basis of Garner. I have made my ruling in that regard. But on the basis that what has been redacted does not actually reflect legal advice that would be privileged -- we can take that up at that time. Hopefully that won't be necessary.

All right. And with that, I think I've covered the bases, but you can certainly tell me if there are any areas either that aren't clear or that I haven't yet addressed.

And, Ms. Shahmoon, I will start with you. Any questions?

MS. SHAHMOON: No. Thank you, Your Honor.

THE COURT: All right. Mr. Saunders?

MR. SAUNDERS: No questions, Your Honor. Thank you.

THE COURT: All right. Well, thank

you all. Your briefs were very helpful. I hope this gives you enough to get you on the right track. And if not, as I said, I will certainly be here to hear further from you.

Have a good week and a good balance of the day. Thank you.

ALL COUNSEL: Thank you, Your Honor.

(Teleconference concluded at 2:47 p.m.)

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CERTIFICATE

I, DEBRA A. DONNELLY, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 34 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, except for the rulings at pages 24 through 34, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 12th day of September, 2017.

/s/ Debra A. Donnelly

Debra A. Donnelly
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter
Delaware Notary Public