

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GOOD TECHNOLOGY CORPORATION : Civil Action  
STOCKHOLDER LITIGATION : No. 11580-VCL

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Chancery Court Chambers  
Leonard L. Williams Justice Center  
500 North King Street  
Wilmington, Delaware  
Friday, May 26, 2017  
3:00 p.m.

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

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TELEPHONIC ORAL ARGUMENT ON PROPOSED ORDER GRANTING  
SEVERANCE AND STAY OF CLAIMS ASSERTED AGAINST THE  
BOARD DEFENDANTS AND FUND DEFENDANTS AND PROPOSED  
ORDER GRANTING SEVERANCE AND STAY OF CLAIMS ASSERTED  
IN BRING-ALONG ACTION AND APPRAISAL ACTION and RULINGS  
OF THE COURT

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CHANCERY COURT REPORTERS  
Leonard L. Williams Justice Center  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801  
(302) 255-0522

## 1 APPEARANCES:

2 JOEL FRIEDLANDER, ESQ.  
3 JEFFREY M. GORRIS, ESQ.  
4 CHRISTOPHER P. QUINN, ESQ.  
5 Friedlander & Gorris, P.A.

6 -and-

7 RANDALL J. BARON, ESQ.  
8 of the California Bar  
9 Robbins Geller Rudman & Dowd LLP  
10 for Plaintiffs

11 PETER J. WALSH, JR., ESQ.  
12 Potter, Anderson & Corroon LLP

13 -and-

14 PATRICK E. GIBBS, ESQ.  
15 of the California Bar  
16 Cooley LLP

17 -and-

18 SARAH M. LIGHTDALE, ESQ.  
19 of the New York Bar  
20 Cooley LLP  
21 for Defendants Christy Wyatt, Ronald J. Fior,  
22 Bandel L. Carano, John H.N. Fisher, Barry  
23 Schuler, Thomas Unterman, and Christopher  
24 Varelas

EDWARD B. MICHELETTI, ESQ.  
SARAH R. MARTIN, ESQ.  
Skadden, Arps, Slate, Meagher & Flom LLP  
for Defendant J.P. Morgan Securities LLC

BLAKE ROHRBACHER, ESQ.  
Richards, Layton & Finger, P.A.

-and-

JOHN C. TANG, ESQ.  
of the California Bar  
Jones Day

-and-

MARJORIE P. DUFFY, ESQ.  
of the Ohio Bar  
Jones Day  
for Good Technology Corporation

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(Continued) ...

1 APPEARANCES: ... (Continued)

2 WILLIAM M. LAFFERTY, ESQ.

3 RYAN D. STOTTMANN, ESQ.

4 Morris, Nichols, Arsht & Tunnell LLP

5 for Oak Management Corporation, Oak Investment  
6 Partners X, LP, Oak X Affiliates Fund, LP

7 Draper Associates, L.P.,

8 Draper Associates, Inc., Draper Fisher

9 Jurvetson ePlanet Partners, Ltd., Draper

10 Fisher Jurvetson ePlanet Partners Fund, LLC,

11 Draper Fisher Jurvetson ePlanet Ventures GmbH &

12 Co. KG, Draper Fisher Jurvetson ePlanet

13 Ventures L.P., Draper Fisher Jurvetson

14 Management, LLC, Draper Fisher Jurvetson Fund

15 VI, L.P., Draper Fisher Jurvetson Partners VI,

16 LLC, DFJ Growth Fund 2006, Ltd., Draper Fisher

17 Jurvetson Growth Fund 2006, L.P., Draper Fisher

18 Jurvetson Partners Growth Fund 2006, LLC,

19 Draper Associates Riskmasters Fund III, LLC,

20 Saints Rustic Canyon LLC, Saints Rustic Canyon,

21 LP, Riverwood Capital Management, L.P.,

22 Riverwood Capital L.P., Riverwood Capital

23 Partners L.P., Riverwood Capital Partners

24 (Parallel-A) L.P., and Riverwood Capital

Partners (Parallel-B) L.P.

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1 THE COURT: Good afternoon, everyone.  
2 This is Travis Laster speaking.

3 What I propose to do, if  
4 Mr. Friedlander is on, is have him say whatever he  
5 wants to say. Then anyone who has anything to add in  
6 support of the two applications regarding the  
7 settlements can speak up. At that point, I will hear  
8 from Mr. Micheletti. And then we will go from there.

9 So, Mr. Friedlander, are you around?

10 MR. FRIEDLANDER: I am ready and able.  
11 Thank you, Your Honor.

12 So we did submit the first of, I  
13 guess, a few letters. On May 23rd, we submitted the  
14 term sheet for a partial settlement with the director  
15 defendants and the fund defendants. And in connection  
16 with that, we're seeking to sever those defendants out  
17 of the case and stay the proceedings as to them until  
18 a settlement is ultimately approved or a hearing on  
19 the settlement is heard, but allow the rest of the  
20 trial to go forward as to the remaining defendants.

21 But then the list of remaining  
22 defendants diminished, I guess just this morning, when  
23 we submitted a second term sheet in connection with  
24 the appraisal action and the bring-along action as to

1 Good. And we're seeking to sever and stay those  
2 actions. Now, I know that one is a little more  
3 complicated in terms of the procedures. The appraisal  
4 case, our clients collectively represent about  
5 50 percent of the appraisal class. The petitioners  
6 have actually filed. We represent -- it includes the  
7 largest member of the class. That's the trust  
8 affiliated with Mr. Bogosian. There is also the  
9 Harvest fund and the Saturn fund.

10                   And we would like to work with Good,  
11 or we are working with Good to -- so that folks who  
12 have sought appraisal can withdraw their petitions and  
13 get paid promptly the merger consideration plus  
14 interest. And then as to the non-petitioner members  
15 of the appraisal class, we have contemplated some  
16 procedures that we haven't quite spelled out, but we  
17 are contemplating notice to those petitioners. And in  
18 the event anybody wants to, you know, pick up the  
19 cudgel and litigate the appraisal case, which we  
20 wouldn't expect, I think that could actually be done  
21 pretty easily, because the only thing we would be  
22 severing out of the trial, as we would propose it,  
23 would be any purely appraisal valuation date issues as  
24 to the closing date. And everything else would be the

1 record would already be created by the trial. And if  
2 there's -- if anybody -- you know, in the, I think,  
3 unlikely possibility anybody wanted to litigate the  
4 appraisal action, the -- I think it would be  
5 relatively easy just to have like a mini trial as to  
6 closing date-valuation date issues, which would  
7 probably just be purely an expert issue. That could  
8 happen at some later time, although I find that  
9 actually hard to imagine.

10                   So we're seeking to sever those  
11 aspects of the case, and that just leaves the case  
12 against J.P. Morgan. I think this case has largely  
13 been about J.P. Morgan for a long time, although,  
14 obviously, you know, there are other factual issues  
15 and expert issues about the directors and their  
16 culpability.

17                   But as to the trial -- one is we think  
18 the trial could be shorter, probably at least two days  
19 shorter. And it could begin, say, two days later. So  
20 on June 7th instead of June 5th. But our basic  
21 position as to the trial date generally is that  
22 there's been no factual showing to move the trial.  
23 It's not an issue purely of some contract right to  
24 move the trial.

1                   And the directors would be made  
2 available to the extent anybody wants to create an  
3 additional record as to the directors beyond the  
4 depositions. J.P. Morgan has participated in every  
5 single deposition in this case. We've agreed to push  
6 out the pretrial brief deadline from yesterday until  
7 Tuesday, and the same for the pretrial order  
8 submission deadline from yesterday until Tuesday.

9                   That's all I really have for now, Your  
10 Honor, unless Your Honor has any particular questions.

11                   THE COURT: I don't. Before I turn to  
12 Mr. Micheletti, does anybody else who is representing  
13 one of the parties to the proposed settlements have  
14 anything that they would like to add?

15                   MR. WALSH: Your Honor, this is Pete  
16 Walsh.

17                   May I be heard very briefly?

18                   THE COURT: Absolutely.

19                   MR. WALSH: Thank you. Again, Pete  
20 Walsh on behalf of the board defendants.

21                   Just two points.

22                   First, on the JPM request for a  
23 continuance, as we pointed out in my letter, we take  
24 no position on that. If the Court deems a short

1 continuance appropriate to address any potential  
2 prejudice, we certainly have no problem with that. As  
3 the proposed severance order indicates, we are  
4 prepared to work with plaintiffs and J.P. Morgan to  
5 make our clients available for trial as needed,  
6 whenever the Court deems it should proceed. That's  
7 really point one.

8                   On the request in which we join  
9 plaintiffs to sever the claims against my clients, we  
10 don't think there's any reason the Court ought not  
11 promptly enter the proposed severance order,  
12 consistent with its usual practice. As I pointed out  
13 in my letter, neither my clients nor the fund  
14 defendants are parties to the J.P. Morgan engagement  
15 letter, and we think on that basis alone whatever  
16 rights JPM may have thereunder should not defeat or  
17 certainly not delay our client's ability to settle  
18 claims against them.

19                   And I think, as Your Honor knows, the  
20 board and fund settlement outlined in the term sheet,  
21 which you have now seen, is the product of a very,  
22 very hard-fought case and an expensive litigation. I  
23 think it benefits the entire class, and I think it  
24 brings resolution to the matter on behalf of many,



1 many defendants. All but one, to be precise.

2                   And so in our view, what really should  
3 be of paramount importance here is that there is a  
4 facially fair and reasonable settlement on the table  
5 which shouldn't be jeopardized by delay or any further  
6 uncertainty.

7                   My last point is really one of a  
8 practicality/timing issue. And I think I speak for  
9 everybody on the phone, and perhaps for the Court as  
10 well, in that, you know, the sooner we all know how  
11 this is going to proceed, the better. So for those  
12 reasons, we would respectfully request that, at least  
13 for the board and fund defendants, the Court enter the  
14 proposed severance order.

15                   That's all I have, Your Honor.

16                   THE COURT: All right. Thank you,  
17 Mr. Walsh.

18                   Anyone else before I turn to  
19 Mr. Micheletti?

20                   MR. LAFFERTY: Your Honor, this is  
21 Bill Lafferty on behalf of the fund defendants. I'm  
22 going to pass for the time being and just listen. But  
23 I do join in the request for the severance order, and  
24 we obviously support the settlement and ask that the

1 severance order be entered.

2 THE COURT: All right. Thank you.

3 MR. ROHRBACHER: Your Honor, this is  
4 Blake Rohrbacher of Richards Layton on behalf of Good.

5 Mr. Friedlander correctly points out  
6 where we are on the appraisal action. There is some  
7 complication because of the number of unrepresented  
8 folks who are out there. But we would like to work  
9 together with Mr. Friedlander and with Your Honor to  
10 find a process that will work. But we still would  
11 want the appraisal action, the bring-along action  
12 stayed and severed as of now.

13 And Mr. John Tang from Jones Day may  
14 have some points as to the continuance, and I will let  
15 him decide whether he wishes to raise them.

16 THE COURT: Mr. Tang.

17 MR. TANG: Yes. Thank you, Your  
18 Honor. John Tang from Jones Day on behalf of the  
19 company.

20 I was intending to chime in, perhaps  
21 after J.P. Morgan had the opportunity to advocate for  
22 their reasons for a continuance. But I do want to, if  
23 Your Honor will indulge me, express what I think is  
24 fairly described as the company's very unique

1 position, maybe even a unique predicament that has  
2 been just now brought about by the events of this past  
3 week involving the settlement that's proposed by the  
4 board and fund defendants.

5                   That impacts the company's own views  
6 about a continuance. And I will tell you that from  
7 the company's unique perspective, we do think a  
8 continuance makes some sense for reasons that have  
9 been triggered by the proposed settlement by the board  
10 and the funds. And this really arises from the fact  
11 that the company, while it is admittedly not a named  
12 defendant in the fiduciary action, nevertheless in  
13 some ways is the ultimate defendant in that action.  
14 Because the company alone has, at least from our  
15 perspective, has indemnification obligations that flow  
16 to the former directors of Good on the one hand and to  
17 J.P. Morgan on the other hand.

18                   And so the proposed settlement by the  
19 board has placed the company in a uniquely tight spot,  
20 I would put it, Your Honor, in seeking to navigate  
21 what I would describe as a tension between these two  
22 interlocking or concurrent sets of indemnity  
23 obligations.

24                   And I should say that the company

1 intends to stand by its obligations to indemnitees and  
2 certainly doesn't have any relish for the notion of  
3 any indemnitees seeking to influence the company's  
4 duties to honor its obligations with any other  
5 indemnitees or, for that matter, the company's rights  
6 vis-a-vis the merger escrow, which we bargained for in  
7 the deal.

8                   But to the point about a continuance,  
9 we do need some time to sort through these rapidly  
10 escalating issues in an orderly way and hopefully find  
11 a way to thread the needle, because we don't want to  
12 be sort of caught in the middle or caught in the  
13 cross-fire. So that's why I do think having an  
14 additional bit of time from the company's vantage  
15 point will help in the hopefully orderly resolution of  
16 these issues that have just arisen.

17                   And I should say that from the  
18 company's perspective, if some parties go to trial  
19 immediately, I do think that it will become  
20 practically impossible to try to resolve or address  
21 these indemnification issues in an orderly way. And  
22 I'm concerned that the trial itself could, in effect,  
23 foreclose other pathways to sorting out those issues  
24 that might, perhaps, otherwise be available with the

1 benefit of a little bit of breathing room.

2                   So I will close simply by observing,  
3 Your Honor, that I recall when we all were on the  
4 phone way back in September, I believe you had,  
5 yourself, suggested that really complex problems like  
6 this might benefit from having time in the schedule,  
7 perhaps after the close of expert discovery, so the  
8 parties could talk and perhaps find a way to negotiate  
9 a resolution. And that's sort of procedurally where  
10 we are right now. And certainly however people on  
11 this call feel about the events of the past few days,  
12 it's clear to me, at least, that discussions here have  
13 certainly resulted in some very material movement  
14 towards trying to resolve at least part of the case.

15                   So to the point, I do think, from the  
16 company's perspective, that a brief continuance would  
17 certainly be put to very good use and productive use.  
18 Thank you.

19                   THE COURT: So before I turn to  
20 Mr. Micheletti, I guess I'm not quick enough to  
21 understand what you're talking about.

22                   The company's position as a source of  
23 indemnification, either to the directors or to J.P.  
24 Morgan, I mean, it's analogous to an insurer. So you

1 have contract obligations that are triggered off  
2 either a duty to defend or an underlying liability.

3           Those are contractual. So I'm not  
4 following you. I don't understand, like, what you're  
5 going to do in this amount of time. I mean,  
6 essentially you're in the potentially uncomfortable  
7 situation of holding the bag. Yeah, that's right.  
8 But just like any insurance company is. So a  
9 continuance is good because it puts off the day at  
10 which you're going to know with greater certainty  
11 whether or not you are on the hook on your  
12 indemnification obligation, subject to any defenses  
13 you might have. I'm not seeing what moving parts  
14 there are from your side.

15           So maybe if you use smaller words.

16           MR. TANG: Sorry, Your Honor. Yeah.  
17 Let me clarify.

18           I think the intention from the  
19 company's perspective arises from the notion -- and I  
20 won't speak for Mr. Micheletti. Perhaps he will  
21 address this in his remarks. But the notion that it  
22 appears that under one term of the term sheet between  
23 the board and funds on the one hand and the plaintiff  
24 there is this notion that the company will have a role

1 to play in indemnifying presumably the directors for  
2 that loss and, in turn, seeking a payment from the  
3 escrow to cover that.

4                   And I believe the one suggestion on  
5 the J.P. Morgan side is that that activity in and of  
6 itself could violate or create a problem vis-a-vis  
7 J.P. Morgan's indemnification rights with the company.  
8 And the company is trying to find a way to, frankly,  
9 honor both sets of obligations without one side sort  
10 of feeling that one activity is sort of violating its  
11 own rights.

12                   That's sort of the fundamental tension  
13 that we are beginning to see. And it's pretty  
14 late-breaking, Your Honor, so we're just trying to  
15 find a way to try to sort through it, like I say, in  
16 an orderly way.

17                   THE COURT: All right.

18                   Mr. Micheletti, I think we are to you.

19                   MR. MICHELETTI: Thank you, Your  
20 Honor. May it please the Court, Ed Micheletti,  
21 Skadden Arps, on behalf of J.P. Morgan. Thank you for  
22 hearing us today on short notice.

23                   J.P. Morgan is seeking a continuance  
24 of trial and also a denial or a comparable stay of the

1 request to sever so that it has time to pursue its  
2 rights in connection with what it believes is,  
3 especially after the flurry of letters that came in  
4 today, an intentional attempt to defeat J.P. Morgan's  
5 contract rights in its engagement letter with Good,  
6 which has now been assumed and has been -- or is being  
7 honored by BlackBerry.

8                   The issue that J.P. Morgan has stems  
9 from Section 1(b) of the standard terms and conditions  
10 section of J.P. Morgan's engagement letter, which  
11 requires BlackBerry not to settle or compromise or  
12 participate or facilitate such a settlement like the  
13 partial settlement involving individual director  
14 defendants unless the settlement includes a release  
15 for J.P. Morgan or the parties obtain a written  
16 consent from J.P. Morgan.

17                   Now, the whole point of the provision,  
18 from J.P. Morgan's standpoint, was to contractually  
19 avoid the circumstance that the plaintiffs have  
20 created here with the partial settlement, which is  
21 leaving J.P. Morgan as the last defendant standing in  
22 the case. And the term sheet between the plaintiffs  
23 and the Good director defendants on its face evidences  
24 that J.P. Morgan's rights have been violated under its



1 engagement letter.

2                   Sections 6(a) and 6(c) of the partial  
3 settlement term sheet on its face suggest that  
4 BlackBerry -- at least superficially on its face  
5 suggest BlackBerry is participating and facilitating  
6 the settlement.

7                   Now, BlackBerry is either complicit in  
8 that, or what we've come to learn is that they may  
9 have found out about it after the fact. But in either  
10 event, even if they found out -- even if it's true --  
11 and perhaps it is true that they found out about it  
12 after the fact -- the terms of the settlement call for  
13 them to assent to those two provisions, 6(a) and 6(c),  
14 in order to effectuate the settlement. They either  
15 have to object to those provisions or they would have  
16 to assent to them in order to effectuate it.

17                   Now, 6(a) requires BlackBerry to  
18 participate and facilitate the partial settlement, in  
19 J.P. Morgan's view, by releasing escrowed funds.  
20 Section 6(c), in J.P. Morgan's view, is clearly  
21 designed to compromise J.P. Morgan's indemnification  
22 rights with BlackBerry, which acquired Good, by at  
23 least -- again, by the way the plaintiffs seem to be  
24 construing that provision -- prohibiting BlackBerry

1 through Good from indemnifying any amounts in  
2 settlement. Right? So it puts an overhang, a  
3 significant overhang on J.P. Morgan's indemnification  
4 rights.

5                   Now, even if BlackBerry hasn't decided  
6 what yet to do with the term sheet and those  
7 provisions, the threat to J.P. Morgan at this point is  
8 now real and imminent. And the day the case -- and  
9 here's the real point, Your Honor, in connection with  
10 this provision and this language, which J.P. Morgan  
11 was -- put into its engagement letter specifically to  
12 address a similar situation that had come up in the  
13 Rural/Metro case. The day the case starts with J.P.  
14 Morgan as the last defendant standing, J.P. Morgan's  
15 contract rights will be irreparably harmed in  
16 connection with this provision in this partial  
17 settlement.

18                   And the theory is the provision was  
19 designed to be a sort of "all for one, one for all"  
20 type of provision, where everybody would go to trial  
21 and defend themselves collectively, or if the  
22 individual director defendants were ever to settle,  
23 that settlement would involve J.P. Morgan's -- a  
24 release for J.P. Morgan or the contract -- the

1 engagement letter provides it would also contemplate  
2 potentially J.P. Morgan giving its advance written  
3 consent. The written consent in this case was never  
4 even requested before the partial settlement term  
5 sheet was identified to us roughly at the same time it  
6 was identified to the Court.

7                   So for those reasons, we think the  
8 request to sever claims at this point should either be  
9 denied or, again, stayed in connection with the  
10 continuance of the trial. And the reason, Your Honor,  
11 the thrust of this is because J.P. Morgan can then  
12 have a fair opportunity to address the issues  
13 concerning its contractual rights that were intended  
14 to prevent this exact situation from occurring.

15                   Now, another layer of complication on  
16 this is that whether there is a breach of the  
17 engagement letter must be determined under New York  
18 law and litigated in state or federal court in New  
19 York. That's Section 4 of the standard terms and  
20 conditions section of J.P. Morgan's engagement letter.  
21 Right?

22                   Now, I am just reporting that because  
23 that's the terms of the engagement letter that were  
24 signed way back when between Good and J.P. Morgan, and

1 that's the law and the venue they landed on. I can  
2 tell you that J.P. Morgan is now actively considering  
3 its options concerning New York counsel and also  
4 exploring the idea of seeking injunctive relief there  
5 on a very prompt basis.

6                   And, Your Honor, let me just also say  
7 that, from J.P. Morgan's standpoint, we believe this  
8 was intended to be tactical in nature, doing it in  
9 this fashion and at this time. Right? And whoever it  
10 was, right, it was designed -- and I think primarily  
11 driven by the plaintiffs here. They decided to drop  
12 this on us without any prior notice. Nobody asked us  
13 for written consent. Nobody asked J.P. Morgan for  
14 written consent. And they designed -- it was designed  
15 to be dropped on us at the greatest possible  
16 prejudicial moment, only days before trial. Right?

17                   Now, in that sense, Your Honor, we  
18 think a brief continuance makes sense for a couple of  
19 reasons. One, it would allow J.P. Morgan to go to New  
20 York and go where the contract requires it to go to  
21 vindicate its rights. And two -- and given that there  
22 is an irreparable harm aspect to this -- and, you  
23 know, again, I'm not going to pretend to be a New York  
24 law expert -- but the thought would be you go in and

1 you seek injunctive relief to try to remedy this as  
2 soon as possible.

3                   Two, given that J.P. Morgan had a  
4 reasonable expectation that its engagement letter  
5 rights would not be affected in this way -- and,  
6 again, this is something that, every step of the way  
7 in this case, any time the issue of settlement came  
8 up, not even so much a partial settlement, but  
9 settlement came up, our indemnification -- I  
10 referenced, because it was me who was doing the  
11 talking at the mediation, or in any other conversation  
12 I had with any of the parties, I always referenced the  
13 engagement letter. And I always referenced, any time  
14 somebody suggested a partial settlement, that the  
15 reality is we have an engagement letter that prevents  
16 it. Not once, not once did anybody ever say any of  
17 the things that they said in the flurry of letters  
18 today to me. The first time I saw that was in the  
19 letters today as an after-the-fact justification.

20                   So J.P. Morgan believes it had a  
21 reasonable expectation that its engagement letter  
22 rights would not be trampled on and that we'd be  
23 working collaboratively. And I think we were working  
24 very collaboratively with the other defense counsel in

1 the case dividing the work appropriately and preparing  
2 for trial on that basis.

3                   Now, Your Honor, simply saying that we  
4 were at every deposition and at the mediation, it  
5 doesn't really change the fact that, again, like I  
6 said, nobody ever raised these issues before. And  
7 nobody ever drew a line in the sand like they are now  
8 in terms of whether the agreement either -- it's an  
9 open issue whether it complies with public policy.  
10 And they are not clear, and they are probably  
11 intentionally vague, about whether that means Delaware  
12 or New York, given that New York law applies to the  
13 agreement. Nor did anybody ever say that it was an  
14 impact on their rights for indemnification or their  
15 rights to settle.

16                   I will note that the continuance is  
17 not opposed by any of the individual defendants, and I  
18 think it's supported by BlackBerry, as I heard today  
19 from Mr. Tang.

20                   Now, Your Honor, I just want to make a  
21 few brief points about the letters that  
22 Mr. Friedlander and Mr. Walsh submitted. And I will  
23 try to be very brief. Right on the first page, again,  
24 they make the point that we must have been aware about

1 what they intended to do because we participated in  
2 the mediation process. And again, any time that the  
3 idea of either a settlement contribution from J.P.  
4 Morgan comes up, not just in connection with  
5 mediation, but at any time, or if it had come up in  
6 the context of, "Well, maybe there will be partial  
7 settlements here," I always referenced the engagement  
8 letter and I always indicated that the participation  
9 and facilitation language would prevent BlackBerry  
10 from doing something like releasing monies from the  
11 escrow.

12                   And that is also true about the  
13 conversation that's reported on page 2 of  
14 Mr. Friedlander's letter that I had with Mr. Baron and  
15 Mr. Gorris. They leave out that I said, "It's not  
16 clear to me" -- in response to their point about "We  
17 might be pursuing a partial settlement," I said, "It's  
18 not clear to me how that would be possible, given J.P.  
19 Morgan's engagement letter." So they are not  
20 accurately reporting that conversation.

21                   But nevertheless, Your Honor, if I  
22 turn to page 3 of their letter, they make the argument  
23 that J.P. Morgan is seeking to coerce its former  
24 client, and presumably Good, and the former directors

1 and former stockholders of its former client as a  
2 means to create immunity for itself. Now, on that  
3 score, this agreement was negotiated vigorously at  
4 arm's length between J.P. Morgan and Good. Good's  
5 former CEO and one of the directors signed the  
6 contract. Nobody put a gun to anybody's head and  
7 forced them to sign this provision that requires them  
8 to give us either -- again, our written consent or to  
9 include us as part of the release in any partial  
10 settlement.

11           Mr. Friedlander also candidly admits  
12 that the contract right that I am identifying may  
13 be -- he says it's hardly a matter of settled law. I  
14 think it's potentially an open issue. I don't think  
15 anybody has had an opportunity to actually raise or  
16 address this issue subsequent to Rural/Metro. I think  
17 it's an open issue. And I think for that reason it  
18 should be considered, because I think it could  
19 actually help identify an area here involving this  
20 type of scenario, especially in a context like this,  
21 when you are having more and more an increasing amount  
22 of matters for damages -- deal litigation for damages  
23 going to trial and they involve both board members and  
24 financial advisors. I think these types of



1 provisions, like the one we have at issue, are  
2 appearing more and more in contracts, and I think it  
3 is an important issue to address. And I think that  
4 makes the case for some sort of continuance of the  
5 trial so that that can attempt to be addressed.

6           On the next page, they make this  
7 argument that, you know, how can we even decide this  
8 before we figure out whether or not J.P. Morgan is  
9 ultimately going to be indemnified based on how the  
10 Court rules in the case. Right? But the aspect of  
11 the provision that I am talking about, right, doesn't  
12 rely -- it doesn't impact how the plaintiffs want to  
13 litigate their case or it doesn't really impact on  
14 J.P. Morgan's liability.

15           It limits BlackBerry's ability to  
16 participate or facilitate in the settlement, and it  
17 also talks about what situation is J.P. Morgan  
18 required to go to trial and defend itself. Is it all  
19 or -- is it all for one with all of its -- with its  
20 former client and the board members of its former  
21 client or is it on its own? So that's that issue  
22 there.

23           And then the last point I will make  
24 about Mr. Friedlander's letter is that on page 5 they

1 say, "If [J.P. Morgan] thought it was obtaining an  
2 absolute veto right over partial settlements from  
3 stockholder claims arising out of its prior conduct,  
4 or arising out of subsequent fraudulent conduct, then  
5 it was engaging in a further fraud ...." I think that  
6 just completely misses the point.

7                   The point is nobody is saying that  
8 J.P. Morgan has some sort of absolute veto right.  
9 What we're saying is that Good signed an engagement  
10 letter with J.P. Morgan at arm's length, and that  
11 contract requires Good, and now BlackBerry, not to  
12 participate or facilitate in any partial settlement  
13 without J.P. Morgan's written consent or that doesn't  
14 include a release for J.P. Morgan. They are free to  
15 settle. Right? But they need to either include J.P.  
16 Morgan or obtain J.P. Morgan's written consent.

17                   And I don't understand the argument  
18 about how it could be against public policy generally,  
19 but I certainly don't understand how seeking J.P.  
20 Morgan's written consent in advance of signing  
21 something like this and dropping it on them without  
22 any advance notice is somehow against public policy.

23                   Let me just turn briefly to  
24 Mr. Walsh's letter. Just two quick points.

1                   They make a similar point on page 5 of  
2 their letter that the individual directors never  
3 relinquished a right to settle. And, again, I  
4 generally agree with that, except they did put a, I  
5 guess an overhang on their right to settle when they  
6 signed the engagement letter with us by agreeing  
7 voluntarily at arm's length that any settlement had to  
8 include a release with J.P. Morgan, right, and/or  
9 obtaining J.P. Morgan's prior written consent when  
10 BlackBerry participated and facilitated in the  
11 settlement. Again, from the face of the term sheet, I  
12 don't see how it could be construed any other way.  
13 And I think I'm hearing BlackBerry saying they have  
14 identified the same provisions we are identifying as  
15 to these pressure points.

16                   And then the final thing I would say,  
17 Your Honor, also on page 5 of Mr. Walsh's letter, is  
18 that they make this argument that BlackBerry's  
19 signature to release the escrow funds is too  
20 ministerial to be considered participation or  
21 facilitation. All I can say there, Your Honor, is  
22 that, again -- and I say this with great respect,  
23 given that I am a Delaware lawyer that's practiced in  
24 the Court of Chancery for 20 years. I am looking out

1 my window at Rodney Square -- that's a matter for  
2 under New York law. And under the terms of our  
3 engagement letter, whether or not participation or  
4 facilitation occurred would be decided by a New York  
5 Court under the engagement letter. And it's for that  
6 reason, Your Honor, that we are seeking a continuance  
7 in order to be able go and allow J.P. Morgan the  
8 opportunity to assess that claim and to pursue that  
9 claim.

10 Now, the only other thing I will say,  
11 Your Honor, is, in light of all this, you know, we --  
12 again, we have collaboratively worked with the other  
13 defense counsel based on representations that no  
14 settlement discussions were imminent, and things of  
15 that nature, over -- or even happening over the last  
16 few weeks. Now, of course, things change. I get  
17 that. But, again, not once did anyone ever say that  
18 your partial -- or your engagement letter would  
19 prevent -- would not prevent us from pursuing a  
20 partial settlement, even if BlackBerry participated  
21 and facilitated in it.

22 So, Your Honor, for that reason, we  
23 also need to address and recalibrate the effort for  
24 purposes of starting trial, at least in -- for some

1 period of time so that we -- you know, instead of just  
2 focusing on J.P. Morgan-specific issues and witnesses,  
3 we now have to assume the mantel for the whole trial  
4 under the partial settlement theory if it's severed  
5 and the defendants aren't going to trial or if there  
6 is no continuance. We would like to have the  
7 opportunity for a brief continuance also for that  
8 purpose as well.

9                   Your Honor, I will stop there and just  
10 see if the Court has any questions. But we would  
11 request a brief continuance on that basis.

12                   THE COURT: Thank you.

13                   Mr. Friedlander, I think we are back  
14 to you.

15                   MR. FRIEDLANDER: Okay. I will try to  
16 make a brief number of points.

17                   But first of all, about this advance  
18 notice, we informed J.P. Morgan of settlement as soon  
19 as we were able to negotiate enough money so that we  
20 were willing to settle. So there's not, like, a  
21 delay, or, you know, we didn't, I guess, ask for their  
22 permission and then say, "We will submit this to the  
23 Court three days later," or something like that. I  
24 guess that's true. But they didn't find out any later

1 than immediately after we were able to negotiate  
2 enough money to get this deal done. So in terms of  
3 any tactical thing, I don't even know what that means.

4           We had -- you know, everybody sat  
5 around in a mediation in San Francisco way back in  
6 early February. And sometimes it's harder to settle  
7 things early on. Sometimes you need some clarity on  
8 some legal issues to get people motivated enough to  
9 settle. And when that finally happened, which often  
10 is the case, is shortly in the weeks before trial. We  
11 got the deal done and we immediately told the Court.  
12 We didn't -- it's not like we were sitting on this  
13 settlement for one day, two days, three days or a  
14 week, or anything like that.

15           And we did tell them we were pursuing  
16 this. I don't know if there is, like, some code words  
17 or something that Mr. Micheletti says he was using.  
18 You know, the idea -- I mean, there's certainly  
19 nothing in writing he can point to to say there can be  
20 no -- our position is there can be no partial  
21 settlement because they unavoidably would involve  
22 facilitation or participation by -- I guess he's  
23 saying BlackBerry or Good by virtue of the escrow that  
24 was set up at the time the sale happened, you know,

1 back in 2015; that it's absolutely not entitled to  
2 happen. I know there's some "he said, she said" going  
3 around, but we stand by what's in our letter. And we  
4 made no secret of the fact that we were pursuing a  
5 partial settlement. So that's as for the timing.

6           You know, I don't see how more time  
7 would clarify anything, because I'm trying -- I'm  
8 really trying to envision this threatened preliminary  
9 injunction application in New York. I don't know who  
10 they would sue or what they would try to do or what  
11 kind of showing they would make. Because  
12 fundamentally, it comes back to a Delaware public  
13 policy about whether this standard terms and  
14 conditions, which now they say was negotiated with the  
15 clients -- I mean, with Good. I mean, certainly the  
16 fees were negotiated with Good. But as they said,  
17 they specifically drafted this provision, the one they  
18 are talking about, which is an absolute veto right  
19 over a partial settlement absent an unconditional  
20 release of J.P. Morgan. That's how we described it.  
21 And I have listened carefully to Mr. Micheletti's  
22 description of it. It's the same thing. An absolute  
23 veto right over a partial settlement unless J.P.  
24 Morgan gets a release.

1                   They're not going to make -- I haven't  
2 heard anything about a record that this was discussed  
3 with Christy Wyatt, that this was presented in any of  
4 the innumerable e-mails about the back and forth over  
5 fees, or mergers and acquisitions versus IPI or  
6 whatever, that there was any negotiation or discussion  
7 of this. I don't think they are going to be able to  
8 create any record that any director has any idea about  
9 the significance of it or that they identified that  
10 any director identified this conflict and was aware of  
11 it, and that it was vetted and, you know, that there  
12 was any kind of the active oversight, which is sort of  
13 a predicate of our case, about what it means to have  
14 fraud on the board or knowing participation by a  
15 financial advisor and a breach of the duty of care by  
16 directors.

17                   And what I take from J.P. Morgan's  
18 argument is no matter what we say to directors or what  
19 our conduct is, and even if all the directors, if they  
20 breached their duty of care and have no monetary  
21 liability, and if J.P. Morgan is liable for fraud on  
22 the board, nonetheless, they have this veto right over  
23 any resolution of a case that gets filed either by  
24 stockholders against -- involving a defendant other



1 than J.P. Morgan, that they have this absolute veto  
2 right. I'm trying to envision how a New York Court --  
3 you know, we're going to sit around and wait for an  
4 application to a New York Court so they can decide  
5 this matter, which strikes me, as a matter of Delaware  
6 public policy, or as to whether -- you know, as a  
7 matter of contract law, or as just another ground for  
8 a breach of fiduciary duty claim against the directors  
9 for their lack of oversight in signing this letter.

10           And I don't hear anything about any  
11 record about the -- that this provision was explained  
12 to Ms. Wyatt or to any member of the board or to any  
13 representative of Good and its significance was made  
14 clear, or that there was any disclosure of, "Oh, when  
15 we told you we could do an IPO in March, on  
16 March 17th, we really didn't mean it, but that's  
17 all -- don't worry about that because, just so you  
18 know, we have the veto right over a partial  
19 settlement. And if we defraud you in the future,  
20 still no partial settlement. We have an absolute veto  
21 right."

22           It's uniquely a matter of Delaware  
23 law. They have a -- you know, as far as the public  
24 policy. And they have a standard of care under this

1 contract. They have standards of care under Delaware  
2 law as advisors to fiduciaries.

3           So it's purely a matter for this Court  
4 for right now as to whether any showing has been made  
5 that this provision can hold up. And I don't see how  
6 more time is going to aid in the disposition of that  
7 or why -- how it can unavoidably not require a trial  
8 or have been sufficiently resolved by Your Honor's  
9 order denying summary judgment because of the fact  
10 issues that exist as to fraud on the board by J.P.  
11 Morgan.

12           You know, J.P. Morgan and BlackBerry  
13 have a relationship. And, you know, the fact that  
14 BlackBerry is now seeking a continuance, I think it  
15 just reflects the commercial pressures that J.P.  
16 Morgan has that they could bring to bear. You know,  
17 there is customer relationships. There's banking  
18 relationships. But this is a case, you know, that's  
19 about fraud on the board by J.P. Morgan that's being  
20 litigated. It's on this track pursuant to a schedule.  
21 And that's what the case has always been about.

22           I haven't heard J.P. Morgan say they  
23 want to prove that any director shares common  
24 liability and that they want to shift some of the

1 blame to any director. You know, if they are saying  
2 they need to get ready for trial because they want to  
3 prove something against Bandel Carano or Christy  
4 Wyatt, I haven't heard that application. But that's  
5 the only difference as to the trial that was  
6 envisioned as to J.P. Morgan and the trial we are  
7 envisioning now. So we're saying take those issues  
8 out of the case by settling them, and the case just  
9 gets shorter, smaller, focused on, as to J.P. Morgan,  
10 the same issues they have always had to face.

11 I don't think I have anything more to  
12 add to that.

13 THE COURT: All right. Thank you.

14 I appreciate everyone's presentations  
15 and comments. They are very helpful.

16 Here is what I am going to do. First  
17 of all, I am going to grant the request to sever the  
18 claims against the board defendants and the fund  
19 defendants and to stay those claims pending  
20 consideration of a full settlement. I think that  
21 makes a lot of sense given the settlement that was  
22 reached. It's analogous to what happened in  
23 Rural/Metro. So that's issue number one.

24 I'm likewise going to sever and stay

1 the appraisal proceeding and related bring-along  
2 action. That also makes sense. I understand that  
3 there's a contemplated opportunity there for  
4 stockholders to participate in that settlement and  
5 that if perhaps some stockholders opt not to  
6 participate, they at least theoretically could take  
7 over the appraisal action. That's all fine. And I  
8 think that a mechanism for working through that makes  
9 a lot of sense.

10 I am not continuing the trial. The  
11 baseline here is this is what can happen in  
12 litigation. This is something that happens among  
13 defendants all the time, even defendants who have  
14 litigated under a joint defense agreement.  
15 Historically, it hasn't happened among the gentile  
16 environs of the 11th floor or the 12th floor. That's  
17 because the defendants historically faced  
18 over-matched, under-resourced plaintiffs who really  
19 had no intention of ever going to trial. But that  
20 doesn't mean that this isn't something that happens  
21 all the time on other floors in terms of cases where  
22 people settle before trial. You essentially have to  
23 be aware of this risk and litigate with the  
24 expectation that the trial date is in place and you

1 need to be ready to go, recognizing that your  
2 co-defendants, while you might hope they would be  
3 there with you, they may not be there with you.

4 J.P. Morgan has raised the consent  
5 provision in its engagement letter. The consent  
6 provision runs versus Good and its successor  
7 BlackBerry. The plaintiffs are not parties to that  
8 agreement. The settling defendants are not parties to  
9 that agreement. So in terms of their ability to  
10 settle, I don't see where it comes into play.

11 In terms of BlackBerry as the  
12 successor to Good, I am happy to leave for a New York  
13 Court the question of whether agreeing to facilitate  
14 the release of an escrow rather than having the  
15 settling parties pay upfront and then be reimbursed  
16 amounts to sufficient participation to create a  
17 problem.

18 I will say, however, that I don't  
19 understand why that issue needs to be litigated now or  
20 why it would hold up the trial. It seems to me that  
21 the logical remedy for a breach of that provision is  
22 money damages. That type of remedy is not  
23 co-extensive with the indemnification provision. The  
24 indemnification provision has in it carve-outs for

1 things like gross negligence and willful misconduct  
2 such that there could be circumstances where J.P.  
3 Morgan would not be entitled to indemnification.

4           Assume, however, a situation where  
5 this partial settlement has now happened. Assume that  
6 J.P. Morgan goes to trial. Assume that, contrary to  
7 J.P. Morgan's expectations, it is held liable. If so,  
8 then J.P. Morgan can seek to shift that liability to  
9 Good because of its breach of contract. And there  
10 isn't a gross negligence or willful misconduct  
11 carve-out to the claim for breach of the consent  
12 provision. That's just a breach of a contract right.

13           So it seems to me that there is a  
14 fully adequate monetary remedy that can be put into  
15 place if the eventuality happens that J.P. Morgan is  
16 held liable. It is not at all clear to me that that  
17 eventuality will come to pass. Is it possible? Yeah,  
18 it's possible. I didn't see a reason to let J.P.  
19 Morgan move for summary judgment on it. There's fact  
20 issues. But it's also possible that J.P. Morgan could  
21 prevail and this whole consent-to-settlement thing  
22 will never need to be adjudicated.

23           It's only in the event that J.P.  
24 Morgan is adjudged liable that this problem comes to

1 pass, in which case, I think at that point, you've got  
2 a standard remedy for breach of contract, which is you  
3 get money. And this will be an easy one, because I  
4 would have determined an amount of money that J.P.  
5 Morgan would owe, and J.P. Morgan could turn around  
6 and seek that amount of money from BlackBerry. Maybe  
7 Mr. Micheletti would find other damages. Maybe he  
8 would say that he shouldn't have had to incur the fees  
9 to go to trial, or something like that. But there is  
10 an easy remedy available, and it is a remedy that, as  
11 I've already said, may never need to come into play.

12 I am hard pressed to view the consent  
13 right as such a broad, wide-ranging, and powerful  
14 provision that it forecloses the right of nonparties  
15 to the agreement to settle and that it also trumps the  
16 scheduling order and trial date that's been in place  
17 such that there now has to be a hard stop on  
18 everything so that J.P. Morgan can go litigate in  
19 another forum. As to that, you guys put the forum in  
20 there, but it's not like people don't regularly waive  
21 forum clauses. There are defense lawyers on this  
22 phone who have waived forum selection clauses.

23 The idea that you then have to go and  
24 litigate this in some other court, and we all have to

1 wait for that, when it's a situation where this  
2 breach, assuming it's a breach, may prove immaterial  
3 is not something that sways me in terms of causing a  
4 reset of the schedule.

5 I am happy if, after talking to  
6 Mr. Friedlander, people want to take him up on his  
7 proposal to shorten the trial and reduce the number of  
8 trial days. I like spending time with you guys, but  
9 I'm perfectly happy to spend less time with you. If  
10 you-all want to start a few days later, that's fine  
11 with me.

12 But otherwise, this is a trial that  
13 has been long scheduled. People have been hearing  
14 from virtually every member of the court that we are  
15 busier than we have ever been. The ironic effect of  
16 losing the assembly line, nonlitigation litigation has  
17 been that people are now engaging in real litigation.  
18 That real litigation requires more rather than less  
19 judicial attention, just like I suspect it requires  
20 more rather than less litigant attention. So I am  
21 less capable of accommodating scheduling changes now  
22 than I was in the days of Rural/Metro, when a  
23 substantial portion of this Court's docket was fake  
24 litigation that bore none of the hallmarks of real



1 litigation.

2                   This is real litigation. And as a  
3 result, it needs to be treated like real litigation,  
4 and we need to go forward and not pretend we are in a  
5 world where people don't settle. In cases where  
6 people litigate against joint tort-feasors, be it  
7 doctors and their hospitals, or who knows what type of  
8 other multi-defendant cases, people settle. And the  
9 people who are left have to go to trial. That's life  
10 in litigation.

11                   So what I will do is I will enter the  
12 two orders severing the claims for which settlements  
13 have been submitted. I am happy to consider something  
14 along the lines of what Mr. Friedlander has proposed  
15 in terms of starting a few days late. That's fine  
16 with me. But otherwise, not only do I not have the  
17 great deal of flexibility I otherwise might have had  
18 in days of yore, but I think that it is unwarranted in  
19 this case, both in terms of how litigation normally  
20 develops and also in terms of this contract provision  
21 that J.P. Morgan is invoking.

22                   I'm sure that result is disappointing  
23 to Mr. Micheletti, but the nature of my job is such  
24 that I am regularly in the business of disappointing

1 many people.

2 Mr. Friedlander, do you have any  
3 questions?

4 MR. FRIEDLANDER: No, I do not. Thank  
5 you, Your Honor.

6 THE COURT: All right.

7 Mr. Micheletti, do you have any  
8 questions?

9 MR. MICHELETTI: No, Your Honor.  
10 Thank you.

11 THE COURT: All right. Is there  
12 anyone else on the phone, any of the other counsel,  
13 who has any question that they would like to raise?

14 MR. WALSH: No, Your Honor.

15 MR. LAFFERTY: No, Your Honor.

16 THE COURT: All right. Well, thank  
17 you, everyone, for getting on the phone. Your letters  
18 were very helpful. I felt like, because of your  
19 letters, I had a good feel coming in for what the  
20 issues were. I appreciate your presentations today.  
21 They were also helpful.

22 I hope everyone enjoys the rest of the  
23 day. And I guess I will be seeing some of you very  
24 soon.

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So good-bye, everyone.

(Teleconference concluded at  
3:51 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 43 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 35 through 43, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 30th day of May, 2017.

/s/ Debra A. Donnelly

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