

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

EDGEN GROUP INC.,

Plaintiff,

v

JASON GENOUD,

Defendant.

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: Civil Action
: No. 9055-VCL
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Chancery Court Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Tuesday, November 5, 2013
10:30 a.m.

- - -

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

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TELEPHONIC HEARING ON PLAINTIFF'S MOTIONS FOR
EXPEDITED PROCEEDINGS AND FOR TEMPORARY RESTRAINING
ORDER and RULINGS OF THE COURT

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0523

1 APPEARANCES: (via teleconference)

2 P. CLARKSON COLLINS, JR., ESQ.
3 JOSEPH R. SLIGHTS, III, ESQ.
4 JASON C. JOWERS, ESQ.
5 BRETT M. McCARTNEY, ESQ.
6 Morris James LLP

-and-

7 STEVEN B. FEIRSON, ESQ.
8 JONI S. JACOBSEN, ESQ.
9 of the Illinois Bar
10 Dechert LLP
11 for Plaintiff

12 ALSO PRESENT:

13 RANDALL J. BARON, ESQ.
14 of the California Bar
15 Robbins Geller Rudman & Dowd LLP

16 ALEXANDER R. BILUS, ESQ.
17 of the Pennsylvania Bar
18 Dechert LLP

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1 THE COURT: Good morning. This is
2 Travis Laster speaking.

3 MR. SLIGHTS: Good morning, Your
4 Honor. It's Joe Slight from Morris James. If I
5 could begin with some introductions.

6 THE COURT: That would be wonderful.

7 MR. SLIGHTS: With me here at Morris
8 James we have the entire team assembled, actually.
9 Clark Collins is here, Jason Jowers, and Brett
10 McCartney. Also with us in our conference room is
11 Steven Feirson from the Dechert firm, and we have on
12 the line with us as well Joni Jacobsen, also from the
13 Dechert firm, who is calling in from Chicago. And
14 that completes the roster of attorneys on behalf of
15 the plaintiff.

16 I believe that we have two additional
17 attorneys on the line, Randall Baron and Sandy Bilus,
18 who are -- I'm sorry? Oh, Sandy is with -- I'm sorry.
19 Sandy is on our side of the ledger, but I believe
20 Randy Baron is counsel to the plaintiff in the
21 Louisiana action, and as we understand it is just
22 going to be listening in today but not participating.

23 MR. BARON: Good morning, Your Honor.

24 THE COURT: Mr. Baron, is that

1 correct?

2 MR. BARON: Yes, Your Honor. Just so
3 that I can make it clear on the record, I have a good
4 relationship with the Court. I was asked to be on the
5 call. I'm happy to do so, and I'm happy to provide
6 information that the Court wants.

7 I do not have authority to speak on
8 behalf of Mr. Genoud. I have not been retained by
9 him. It's his view that the Court does not have
10 personal jurisdiction over him, and he hasn't been
11 served in the case. So I'm a little bit stymied as to
12 what I think I can ethically do, but to the extent I
13 can be a friend of the Court and provide any
14 information, as always, I am happy to do so.

15 THE COURT: Thank you.

16 Well, the only person missing from the
17 Dechert team is my ex-clerk, Ms. Newell, who I am very
18 happy to say has joined Dechert. But I'm sure that
19 she's off profitably billing on other matters, or at
20 least I hope she is.

21 So, Mr. Slight, do you want to take
22 it away?

23 MR. SLIGHTS: Yes, Your Honor. I may,
24 with the Court's permission, lateral to Mr. Feirson to

1 the extent the Court has specific questions regarding
2 the Louisiana action. I am not entered in that
3 action, and Mr. Feirson is certainly much more
4 familiar with what's occurred there and, importantly,
5 not occurred there.

6 If I could start with just some
7 procedural issues first, and to address specifically
8 the service issue. I sent a letter to the Court
9 yesterday outlining our efforts thus far to achieve
10 service or process upon Mr. Genoud, and those efforts
11 have been extensive. And I won't reiterate what we've
12 already stated in the letter except to state that
13 those efforts are ongoing, and we are confident we can
14 achieve service. We did ask plaintiff's counsel to
15 assist us in that regard, either to agree to accept
16 service or to provide a residence address for
17 Mr. Genoud, and they have thus far refused to do that.

18 We do have what we believe to be an
19 employment address, which is all that we've been able
20 to secure. And if necessary, we will attempt to
21 achieve service on Mr. Genoud at that address, mindful
22 of our obligations under Delaware law and under the
23 Hague Convention.

24 We've also, I just want to let the

1 Court know, made extensive efforts to provide notice
2 of today's hearing to the plaintiff's counsel in the
3 Louisiana action. We supplied our papers to Louisiana
4 plaintiff's counsel Thursday night immediately after
5 they were filed, and then were in pretty regular
6 e-mail communication with them yesterday regarding the
7 status of scheduling this morning's hearing.

8 So we do believe, for all of those
9 reasons, that we have complied with our notice
10 obligations under Rule 65(b). And with that said, our
11 intent, as I mentioned, is to effect service upon
12 Mr. Genoud. And once we do that, we believe that this
13 Court will be able lawfully to exercise personal
14 jurisdiction over him.

15 And in this regard, the Delaware forum
16 selection clause in the Edgen charter is key, really,
17 to all aspects of our motion, but it's also key to our
18 argument with respect to personal jurisdiction. And
19 in our motion papers we cite to the Carlyle decision
20 from our Supreme Court, among others, for the
21 proposition that parties to a forum selection clause
22 consent freely and knowingly to the Court's exercise
23 of jurisdiction.

24 And we cite that case further for the

1 proposition that the clause itself is sufficient to
2 confer personal jurisdiction on a court, and go on to
3 cite case law for the proposition that in a case where
4 there is a valid, clear forum selection clause, that
5 the Court need not engage in a minimum contacts
6 analysis. And we think that's what we have here.

7 So this is not a situation where we
8 are relying upon Mr. Genoud's stock ownership of the
9 Delaware corporation alone as a means for the Court to
10 exercise personal jurisdiction. We believe the forum
11 selection clause in the charter really is the key to
12 the Court's exercise of personal jurisdiction and that
13 the case law in Delaware supports that.

14 Turning, then, to the substantive
15 elements of our motion, we've got two motions that we
16 filed: One, a motion to expedite the proceedings, and
17 the second, a motion for temporary restraining order.
18 The standards for both motions are actually quite
19 similar. We've got to show a colorable claim and we
20 have to show immediate irreparable harm. And we
21 believe that we have done that with regard to both
22 motions.

23 Just briefly to review some of the key
24 facts, Edgen's initial public stock offering occurred

1 on April 27th, 2012. On that same day it adopted its
2 charter, which contains the provision that really, as
3 I mentioned, is the key to our motion here, and that
4 is at Article X of the charter, which is Exhibit B to
5 the McCartney affidavit.

6 Importantly, the provision selects
7 Delaware as the exclusive forum for, among other
8 claims, breach of fiduciary duty claims against
9 directors and claims relating to the internal affairs
10 of the company. That charter provision was in place
11 at the time that Mr. Genoud acquired his shares.

12 The merger that is at issue in the
13 Louisiana action with the Sumitomo Corporation of
14 America was approved by the Edgen board on September
15 30th, 2013. It was announced October 1. There is, we
16 now understand, a target closing date this month. And
17 in particular, we're advised that once the
18 Hart-Scott-Rodino clearances are secured -- and that
19 is anticipated on or about November 18 -- that the
20 closing could occur immediately thereafter.

21 The Louisiana action was filed on
22 October 11, 2013. My understanding is an amended
23 petition was filed on October 22nd, 2013. That is at
24 Exhibit D of the McCartney affidavit. And that action

1 in Louisiana brings claims challenging the merger that
2 fall within the Edgen charter forum selection
3 provision.

4 Expressly asserted in Louisiana are
5 claims for breach of fiduciary duty and other claims
6 relating to the Internal Affairs of Edgen, and we
7 frankly don't see that there could be any credible
8 argument made that the Louisiana claims do not fall
9 within the claims enumerated in the forum selection
10 clause of the Edgen charter.

11 Interestingly, there was a Delaware
12 action filed on October 17th, and then voluntarily
13 dismissed about six days later, as best we can tell,
14 on October 23rd. And my sense is that that is how
15 Your Honor is the lucky recipient of this motion,
16 because that prior action was assigned to you and we
17 felt obliged to alert the Court of that related action
18 when we filed this action.

19 THE COURT: That was very candid of
20 you, Mr. Slight, although perhaps to your detriment.

21 MR. SLIGHTS: Yes, I know. Candor at
22 times can be detrimental.

23 So turning now to the substance of our
24 motion, and with the Court's permission I'd like to

1 start with irreparable harm. In addition to the case
2 law that we've cited from Delaware that holds, in
3 essence, that forcing us to litigate the forum
4 selection clause outside of Delaware is itself
5 irreparable harm, because Edgen would be denied the
6 benefit of its forum selection charter provision by
7 having to litigate that issue elsewhere -- and we've
8 cited the case law for that point -- we have, really,
9 two more practical concerns with having to litigate
10 the forum issue in Louisiana.

11 The first, we have filed a motion to
12 dismiss or stay in Louisiana, and yet, we have
13 concerns that a decision on that motion that will --
14 in our view at least -- necessarily involve a
15 determination regarding the effect and enforceability
16 of Edgen's charter forum selection provision could
17 have issue preclusion implications if we return to
18 this Court to argue that issue anew.

19 And I know that there have been
20 instances -- the Household case, for example, that
21 Chancellor Allen decided in several different
22 iterations -- where the Court of Chancery has visited
23 another court's decision not to stay or dismiss an
24 action. Yet in that case there was not a forum

1 selection clause that was at issue, and there were no
2 determinations made by the Texas Court with respect to
3 any forum selection clause enforceability or scope,
4 and so that case really doesn't provide us much
5 comfort here.

6 Our concern, as I say, is that the
7 Louisiana Court is going to have to weigh in on how
8 far-reaching our forum selection provision within our
9 charter is, and those findings may well be impediments
10 to our seeking relief in this Court down the road.

11 So that is one concern that we have
12 and, frankly, is an example of the kind of irreparable
13 harm that I think our courts have recognized in making
14 the pronouncement that litigating these issues outside
15 of Delaware in itself constitutes irreparable harm.

16 Our second concern is that plaintiffs
17 are seeking injunctive relief in Louisiana. And while
18 thus far nothing really of substance has happened in
19 Louisiana -- in fact, the Court really hasn't been
20 involved at all as of yet -- there is a conference
21 scheduled for tomorrow which we understand to be a
22 scheduling conference, but the agenda for that
23 conference has not been set. And, frankly, we're not
24 entirely certain what issues will be addressed there

1 tomorrow.

2 There is a motion for expedited
3 discovery that has been filed. As I understand it,
4 though, no motion for preliminary injunction has yet
5 to be filed although, as I say, the complaint does
6 note a request for injunctive relief in the prayer.

7 So our sense is that there will be
8 some -- or at least common sense suggests that there
9 would be some sequence in Louisiana that would have
10 our forum motion decided prior to the injunction
11 motion, but there is no guarantee as to sequence. And
12 if this transaction is enjoined in Louisiana -- we
13 don't think it should be, but if it is, it's too late
14 for us to really seek to invoke our exclusive forum
15 provision at that point. The Court's anti-suit
16 injunction really would not be of any real value or
17 benefit at that stage.

18 So those are our two concerns in
19 addition, as I say, to the per se irreparable harm
20 that our case law recognizes in terms of practical
21 irreparable harm that we're facing on a very near-term
22 basis. Those are our principal concerns.

23 As to the colorable claim component of
24 our burden here, we believe that we have provided an

1 analytical chain based on settled jurisprudence of
2 this Court and our Supreme Court that would allow us
3 to seek expedited specific performance or enforcement
4 of the Edgen Delaware forum charter provision.

5 The charter of a Delaware corporation
6 is a contract among the shareholders of the
7 corporation and between the corporation and its
8 shareholders. That is well settled in our law. And
9 this Court has recognized this dynamic and has
10 advised, "If boards of directors and stockholders
11 believe that a particular forum would provide an
12 efficient and value-promoting locus for dispute
13 resolution, then corporations are free to respond with
14 charter provisions selecting an exclusive forum for
15 intra-entity disputes." And that was Your Honor's
16 decision in the Revlon case, citing to section
17 102(b)(1) of our general corporation law. And this is
18 precisely what Edgen did in April of 2012 when it
19 adopted its Delaware forum selection charter
20 provision.

21 We also cited to what I think is now
22 well settled authority in Delaware from Bremen, our
23 United States Supreme Court decision, followed by our
24 Delaware Supreme Court in Ingres and Carlyle, and then

1 followed by the Court of Chancery in the ASDC
2 decision, among others, that stands for the
3 proposition that a forum selection provision is
4 presumptively valid, presumptively enforceable, and
5 that the provision should be enforced unless to do so
6 would be unreasonable, "unreasonable" having been
7 interpreted to mean that enforcement would deny a
8 plaintiff his day in court.

9 And that certainly cannot be the case
10 here if the Court enforces the Delaware forum
11 selection provision in the Edgen charter. The Court
12 of Chancery is available, and certainly learned in our
13 corporation law, more so than any other court in the
14 world. So this plaintiff has an available forum and
15 can certainly have his day in court here in Delaware,
16 where the charter of the company he owns stock in
17 tells him he needs to be.

18 As we've argued, the law in Delaware
19 is now settled that violation of those forum selection
20 laws is per se irreparable harm, a harm that cannot be
21 remedied with monetary damages or anything, really,
22 short of injunctive relief. And without this remedy
23 in this case, under the circumstances presented here,
24 the forum selection provision in the Edgen charter

1 would be rendered completely meaningless and utterly
2 superfluous. And, therefore, we're asking the Court
3 specifically to enforce that provision, and at least
4 at this point, for now, to temporarily restrain
5 Mr. Genoud from prosecuting his claims in Louisiana in
6 clear violation of that provision.

7 And unless the Court has any
8 questions, I think that summarizes our two
9 applications.

10 THE COURT: Great. Thank you,
11 Mr. Slights. I don't have any questions.

12 I do hope that the folks from Dechert
13 understood that I was joking about my clerk. My
14 current clerks, who are with me in my office, gave me
15 a dirty look when I said that, as if I was getting
16 their friend in trouble, so I wanted to make sure I
17 put that caution on the record.

18 MR. FEIRSON: As you might expect,
19 she's off to a fast start.

20 THE COURT: Well, good to hear.

21 Mr. Baron, I know that you are limited
22 in what you can say, but I want to give you the
23 opportunity to add whatever you feel you can add,
24 should you wish to do so.

1 MR. BARON: And I appreciate the
2 Court's indulgence, and I'm going to try to walk a
3 fine line here. I think that, as a friend of the
4 Court, the issue of personal jurisdiction is one that
5 should concern the Court. I think that the position
6 that they are taking that a charter provision swallows
7 the constitutionality -- the constitutional rule of
8 minimum contact -- because I think under that
9 argument, then by passing that statute then they get
10 personal jurisdiction, and it's not over justice
11 issues, it is over any issue in which a company
12 chooses to shoot to its shareholders. I think that up
13 to this point there are some decisions in Delaware
14 that are directly contrary to that concept.

15 As a friend of the Court, I'd be happy
16 to brief that issue, without it representing my
17 client, but so that the Court is aware of, I think,
18 the other authority, to the extent the Court is not
19 already aware of it.

20 I also think that, you know, the issue
21 of enforceability is one that is not the issue here.
22 I think the one we're talking about, we note the
23 Delaware courts have talked about the enforceability
24 of forum selection clauses, both in -- you know,

1 passed in bylaws, and presumably it wouldn't rule any
2 differently if they were passed in a charter. But
3 that's only half of the equation.

4 The next part of the equation is the
5 full faith and credit, and the question as to full
6 faith and credit that is given to one ruling in one
7 court in a second jurisdiction is one that we face all
8 the time. We face that in res judicata, we face that
9 in releases.

10 And I think that the appropriate
11 attack on whether that Court needs to give full faith
12 and credit to a charter provision or a ruling in
13 another court is truly up to that court, and that --
14 you know, and indeed, that is teed up to be heard in
15 Louisiana. The Louisiana Appellate Court, if that
16 court goes along, has that opportunity, and then there
17 are of course constitutionality arguments that allow
18 the federal courts to get involved.

19 So my view is this is a very premature
20 effort on their part in trying to short-circuit, I
21 think, a system that has its checks and balances
22 throughout. Again, I am happy to provide briefing as
23 a friend of the Court. I don't have authority to make
24 specific arguments on behalf of our client, however.

1 THE COURT: That's fine. Thank you,
2 Mr. Baron.

3 Mr. Slight, is there anything you
4 would like to add in light of Mr. Baron's comments?

5 MR. SLIGHTS: Only, Your Honor, that
6 this is a classic instance where we have a plaintiff
7 in Louisiana bought stock in a company, and no doubt
8 would seek to take advantage of the Delaware corporate
9 governance law and its rights to the extent that it
10 advances his agenda, but in this instance seeks to
11 avoid a limitation on those rights as properly
12 promulgated by the corporation and its charter.

13 And our case law says that you just
14 can't do that. You can't have it both ways. And that
15 there are, with regard to the jurisdiction issues,
16 consent to jurisdiction in these kinds of contractual
17 relationships.

18 With regard to the full faith and
19 credit, you know, we're stuck. If the Louisiana Court
20 issues a preliminary injunction, either glossing over
21 or improperly interpreting the forum selection
22 provision in our charter, no full faith and credit
23 argument is going to help us. We're going to be
24 likely stuck with those rulings, improper as they may

1 be. And going up the chain in Louisiana does not
2 really provide us with the kind of certainty that the
3 forum selection provision that Edgen adopted was meant
4 to provide, and properly so.

5 So we urge the Court to grant our
6 motions.

7 THE COURT: All right. Well, thank
8 you, everyone, for getting on the phone. This case
9 likely warrants a written opinion, but time
10 unfortunately doesn't allow it. We're having this
11 hearing today because the plaintiff, Edgen Group, has
12 sued and sought expedition and a temporary restraining
13 order in advance of a conference with the Court in
14 Louisiana tomorrow. Therefore, I'm going to give you
15 my ruling now.

16 This case really exemplifies the
17 interforum dynamics that have allowed plaintiff's
18 counsel to extract settlements in M&A litigation and
19 that have generated truly absurdly high rates of
20 litigation challenging transactions.

21 It also demonstrates why corporations
22 have seen fit to respond with forum selection
23 provisions in an effort to reduce the ability of
24 plaintiff's counsel to extract rents from what is

1 really a market externality.

2 There is no competition or beef or
3 argument between the Delaware courts and Louisiana
4 courts, or the Delaware courts and any other courts.
5 This is simply a question of what is an efficient way,
6 in a federal system, for matters to be resolved.

7 Currently the ability of plaintiffs'
8 counsel to sue in multiple forums is a factor that
9 imposes materially increased costs on deals and
10 effectively disadvantages stockholders as a whole.
11 The people that the stockholder plaintiff firms
12 purport to represent end up picking up the tab for
13 these types of litigations.

14 This case arises out of the sale of
15 the Edgen Group to Sumitomo Corporation of America in
16 a transaction where all stockholders will receive \$12
17 per share. Edgen stock had been trading for less than
18 \$8 per share the previous day, meaning that the \$12
19 per share merger consideration constitutes a 55
20 percent premium from the prior day's trading price.

21 The \$12 per-share consideration also
22 constitutes significant premiums to the
23 volume-weighted average closing prices for the 30-day
24 window before the deal (55 percent), the 180-day

1 before the deal (69 percent), and the one-year window
2 before the deal (38 percent).

3 Notably, Edgen has controlling
4 stockholders. They have majority stockholders. But
5 critically, of critical importance, those stockholders
6 are receiving the same per-share consideration in the
7 deal. There is no misalignment of interest alleged in
8 the Louisiana action that would colorably skew the
9 process.

10 The claim currently alleged is simply
11 that the controllers had large illiquid blocks that
12 they could only monetize via a sale. That is not an
13 argument that calls into question on a reasonably
14 conceivable basis the decision to sell now versus
15 later. The alleged illiquidity is something that
16 would incent a sale whenever a controller sells.
17 Therefore, there's no reason to credit a market timing
18 argument; namely, that the controller wants to sell
19 now, at a time when it's disadvantageous to other
20 stockholders, versus later, at a time when the
21 controller supposedly wouldn't be able to capture the
22 same advantages. To the contrary, the only reasonable
23 inference, when interests are aligned and there's no
24 pled reason for divergence, is that the controller is

1 selecting the optimal time to sell to maximize the
2 controller's wealth.

3 Consequently, under Delaware law, this
4 is an exceedingly weak challenge to a deal. Indeed,
5 the challenge is one that would likely not survive a
6 motion to dismiss, and it's hardly likely to be
7 expedited.

8 On the merits of the claim, one can
9 consult the Chancellor's decision in the Synthes
10 Stockholder Litigation, 50 A.3d 1022, a 2012 decision.
11 In terms of the denial of a motion to expedite, one
12 can consult a number of decisions, but the gist of it
13 is that because there's a controlling stockholder, if,
14 indeed, the plaintiff were successful in alleging a
15 divergent interest, then entire fairness would apply,
16 at which point money damages would be an adequate
17 remedy. Given that dynamic, it comes as no surprise
18 to me that the lone plaintiff who chose to file in
19 Delaware, once they had a time to more closely
20 evaluate their claims, chose to dismiss them.

21 It is also indisputable that this suit
22 is governed by Delaware law under the internal affairs
23 doctrine. Consequently, the logical and most
24 efficient place for this lawsuit to be brought is

1 Delaware, and that's for reasons described by the
2 Chancellor in the Topps case. He was then a Vice
3 Chancellor.

4 In saying this, I mean no disrespect
5 to the Louisiana courts, just as I don't mean any
6 disrespect to any other courts. This is simply a
7 question of what we do a lot, versus what other courts
8 do a lot. I do Delaware mergers and acquisitions
9 cases a lot. I therefore have a comparative advantage
10 in handling Delaware law M&A cases, because I am very
11 familiar with that body of law.

12 There are myriad types of cases where
13 other courts would have a dramatically large
14 comparative advantage over me. I would not hesitate
15 to admit that I know virtually nothing about Louisiana
16 law. I love New Orleans. I've been there many times.
17 I had at least two matters in practice where there was
18 parallel litigation in Louisiana. But otherwise,
19 essentially, other than knowing that it's a civil law
20 state, I really don't know much about Louisiana law.

21 There is no question that a Louisiana
22 judge would have a nigh infinite comparative advantage
23 over me in dealing with matters of Louisiana law. I
24 don't think my comparative advantage over the

1 Louisiana courts is nearly anywhere so great. It is
2 at most a marginal comparative advantage, given my
3 familiarity with Delaware law.

4 But the plaintiff here didn't decide
5 to sue in Delaware. The plaintiff is Mr. Genoud, who
6 is a resident of our neighbor to the north, hailing
7 from Edmonton in the Province of Alberta, Canada, and
8 he owns an undisclosed number of shares.

9 He did not choose to sue in Alberta,
10 Canada. He did not choose to sue in Delaware. He,
11 instead, filed his case as a putative class action.
12 In other words, he seeks to sue on behalf of all
13 stockholders everywhere. He filed that case in the
14 19th Judicial District Court of East Baton Rouge
15 Parish in Louisiana. That seems to be where the
16 company is headquartered.

17 Now, for many types of suits, suing
18 where the company is headquartered makes perfect sense
19 and could likely be quite preferable to suing in
20 Delaware, but for suits against a board of directors
21 where the suit is governed by Delaware law under the
22 internal affairs doctrine, the concept of comparative
23 advantage comes directly into play. Moreover, as the
24 plaintiff here has pointed out, only one director --

1 so only one of the actual human defendants in this
2 suit -- is a Louisiana resident, and that's the CEO.

3 The plaintiff is represented in his
4 case by Robbins Geller, a firm of which Mr. Baron is a
5 member, and he is on the line. Robbins Geller is a
6 law firm based in San Diego, California, that
7 predominantly represents plaintiffs. One of their
8 specialties is M&A litigation. They frequently sue in
9 the Delaware Court of Chancery. In fact, Mr. Baron
10 and his partner Mr. Wissenbroeker, who called my
11 chambers yesterday, are lawyers that I see quite
12 often. I would hazard a guess that I see them more
13 frequently than some members of the Delaware bar.

14 There is no clear jurisdictional
15 interest that a resident of Edmonton in Alberta,
16 Canada, and a law firm hailing from San Diego,
17 California, have in suing in a Louisiana forum. The
18 assertion of a Louisiana forum is particularly
19 problematic here because Edgen has a forum selection
20 provision in its certificate of incorporation. That
21 provision has been there since before its initial
22 public offering, and that provision provides that the
23 Delaware courts shall be the exclusive forum for this
24 type of litigation. The charter is a public document,

1 both in Delaware and in the public filings that have
2 been disclosed pursuant to the federal securities
3 laws.

4 For reasons that I will return to, the
5 suit in Louisiana is quite obviously violative of the
6 forum selection provision. The issue that Edgen faced
7 was what to do about it. Edgen has done two things
8 about it. The first is that Edgen has moved to
9 dismiss the Louisiana proceeding as violative of the
10 forum selection clause. Edgen has also taken the more
11 aggressive step -- and I don't use that in a critical
12 way, it's just a more aggressive step -- of filing
13 suit in this Court against Mr. Genoud seeking an
14 anti-suit injunction against his continuing litigation
15 in Louisiana.

16 Now, Mr. Genoud has not responded to
17 the complaint. Extraordinary efforts have been made
18 by Mr. Slights and his colleagues to track down
19 Mr. Genoud, including the hiring of two process
20 servers and the hiring of a private investigator. His
21 residential address cannot be found.

22 The Louisiana counsel who represent
23 Mr. Genoud for purposes of that action have declined
24 to accept service. And the Robbins Geller firm, a

1 firm that I generally have great respect for, has
2 engaged in unsatisfying and, dare I say, pathetic
3 representational contortions in which they have
4 maintained that although they represent Mr. Genoud for
5 purposes of challenging the merger and bringing the
6 lawsuit in Louisiana, they do not represent Mr. Genoud
7 for the clearly-related subject matter of this
8 proceeding.

9 Now, anyone remotely familiar with
10 this type of stockholder litigation understands that
11 Robbins Geller is not taking its direction from a
12 nominal client on these issues but rather is calling
13 the shots itself. And the idea that Robbins Geller
14 and Louisiana counsel have not been able to reach
15 their client, even though they sued in Louisiana and
16 sought expedited proceedings and have a status
17 conference tomorrow, is either, one, not credible, or
18 two, confirmatory that Robbins Geller is not taking
19 direction from its client about how to handle this
20 litigation.

21 Frankly, it's quite disappointing
22 behavior from a firm that otherwise has done a great
23 deal to build up reputational capital and credibility
24 with the Delaware courts. It would not have been, I

1 think, any impairment at all to enter an appearance
2 and reserve the ability to fight the jurisdictional
3 issue. It is much more credibility-straining to claim
4 that you can't contact your client, and that although
5 you have been engaged to handle a broad and expedited
6 attack on a merger and to sue in a jurisdiction
7 internationally removed from your client's residence,
8 you have nevertheless not been retained to handle a
9 related proceeding in another court that, although I
10 haven't done the math, is probably equidistant, if not
11 closer, to the plaintiff's residence.

12 There are two issues today: the motion
13 to expedite and the motion for TRO. I'm going to
14 focus on the latter. The issuance of a temporary
15 restraining order is appropriate when the movants have
16 demonstrated that there's a colorable claim against
17 the defendants and that irreparable injury would
18 result if the Court denies the short-term injunctive
19 relief. There's also a balancing of the equities, but
20 that factor is tilted in favor of the movant because
21 of the short-term nature of the remedy sought.

22 Here, the complaint is clearly
23 colorable. The forum selection provision in the
24 charter is valid as a matter of Delaware corporate

1 law. Under long-settled and repeated holdings of the
2 Delaware Supreme Court, the charter is a three-way
3 contract among the corporation, all of its
4 stockholders, and the State of Delaware, which creates
5 it and provides its key attributes. The Supreme Court
6 recited that in the Lawson v. Household Financial
7 case, a decision from 1930. And I'm going to quote.
8 "[I]t has been generally recognized in this country
9 that the charter of a corporation is a contract both
10 between the corporation and the state and the
11 corporation and its stockholders. It is not necessary
12 to cite authorities to support this proposition."

13 It was so settled in 1930. It was
14 equally settled in 1991. In the STAAR Surgical case,
15 the Delaware Supreme Court wrote, "[A] corporate
16 charter is both a contract between the State and the
17 corporation, and the corporation and its
18 shareholders."

19 Because of this fact, general rules of
20 contract interpretation apply to provisions found in
21 the charter. I'm now going to quote from Centaur
22 Partners, a decision of the Delaware Supreme Court
23 from 1990. "Corporate charters and by-laws are
24 contracts among the shareholders of a corporation and

1 the general rules of contract interpretation are held
2 to apply."

3 Under those general rules of contract
4 interpretation, forum selection clauses are
5 "presumptively valid" and entitled to "substantial
6 weight." Those are quotations from the Delaware
7 Supreme Court in the Carlyle case, that Court's most
8 recent decision on forum selection clauses. Moreover,
9 forum selection clauses that appear in the charter or
10 bylaws are similarly presumptively valid and handled
11 the same way as clauses in other contracts. That's
12 from Chancellor Strine's decision in *Boilermakers*
13 *Local 154 Retirement Fund vs. Chevron Corp*, 73 A.3d
14 934 from this year, 2013.

15 Nor should it come as any surprise
16 that Delaware handles forum selection clauses in that
17 manner. The premise that forum selection clauses are
18 presumptively valid and entitled to substantial weight
19 is something that the United States Supreme Court
20 announced in its 1971 decision in *Bremen vs. Zapata*.
21 More recently, in 1991, the Supreme Court applied the
22 same principles to a forum selection provision that
23 was preprinted on the back of a ticket in the *Carnival*
24 *Cruise Lines* case.

1 It is also clear that the plaintiff
2 here has facially breached the exclusive forum clause.
3 Article Ten -- that's Roman numeral X -- so Article X
4 of Edgen's certificate, titled "Exclusive Jurisdiction
5 for Certain Actions," provides -- and this is going to
6 be a lengthy quote that I start now: "The Court of
7 Chancery of the State of Delaware shall, to the
8 fullest extent permitted by applicable law, be the
9 sole and exclusive forum for (i) any derivative action
10 or proceeding brought on behalf of the Corporation,
11 (ii) any action asserting a claim of breach of a
12 fiduciary duty owed by any director, officer, or other
13 employee of the Corporation to the Corporation or the
14 Corporation's stockholders, (iii) any action asserting
15 a claim against the Corporation arising pursuant to
16 any provision of the DGCL or the Corporation's
17 Certificate of Incorporation or bylaws or (iv) any
18 action asserting a claim against the Corporation
19 governed by the internal affairs doctrine, in each
20 such case subject to said Court of Chancery having
21 personal jurisdiction over the indispensable parties
22 named as defendants therein. Any person or entity
23 purchasing or otherwise acquiring an interest in the
24 shares of capital stock of the Corporation shall be

1 deemed to have notice of and consented to the
2 provisions of this Article X." That's the end of that
3 lengthy quote.

4 The Louisiana action asserts claims
5 for breach of fiduciary duty. That is the subject
6 matter of (ii) of the exclusive jurisdiction
7 provision. The Louisiana action claims that the
8 directors and controlling stockholders of Edgen
9 breached their fiduciary duties by failing to obtain
10 the best transaction reasonably available, and by
11 breaching their fiduciary duty of disclosure. The
12 Louisiana action, therefore, falls squarely within the
13 clause. It is clear, therefore, for purposes of the
14 motion for a TRO and, indeed, for the motion to
15 expedite, that the plaintiff has stated a colorable
16 claim.

17 Next, in terms of irreparable harm,
18 the Delaware Supreme Court has held squarely on at
19 least two occasions that when considering forum
20 selection clauses that appear in negotiated
21 agreements, the violation of a forum selection clause
22 constitutes irreparable harm. The Delaware Supreme
23 Court so held in the Ingres case. More recently, the
24 Delaware Supreme Court so held in the Carlyle case.

1 To elaborate on the Carlyle holding,
2 which is even more on point than the on-point Ingres
3 holding, there, Carlyle sought an anti-suit injunction
4 to bar the defendant, referred to in the opinion as
5 NIG, from prosecuting litigation in Kuwait. NIG
6 failed to defend the Delaware action and the Court of
7 Chancery entered a default judgment that included the
8 requested anti-suit injunction.

9 On appeal, NIG argued in part that the
10 Court of Chancery lacked subject matter jurisdiction
11 because Carlyle could not prove irreparable harm or
12 the absence of an adequate remedy at law. According
13 to NIG, Carlyle had an adequate remedy at law because
14 it could simply invoke the exclusive forum provision
15 in the other forum.

16 This is what the Supreme Court said.
17 It is going to be a less lengthy quote than the last
18 one, but still somewhat prolonged. I'm going to begin
19 now. "Carlyle would suffer irreparable harm if it
20 were required to litigate in Kuwait in contravention
21 of the bargain it struck with NIG that is set forth in
22 the forum selection clause of the Subscription
23 Agreement. Carlyle has no adequate remedy other than
24 an anti-suit-suit injunction. Therefore, Carlyle was

1 entitled to equitable relief by having the forum
2 selection clause specifically enforced in the Court of
3 Chancery by the issuance of an anti-suit-suit
4 injunction." That is at pages 385 through 386 of the
5 Delaware Supreme Court's decision.

6 The Supreme Court reasoned, and I'm
7 quoting again, "requiring Carlyle to enforce the forum
8 selection clause in Kuwait, when Carlyle bargained for
9 a Subscription Agreement provision that precluded such
10 litigation, would deprive Carlyle of the benefit of
11 its bargain. Therefore, that is not an adequate
12 remedy at law." That's at page 385. Consequently in
13 this situation there is irreparable harm sufficient to
14 support the issuance of an injunction.

15 This leads me to the third element,
16 which is the balancing of the equities. And I will
17 tell you now that despite the fact that there is a
18 colorable claim and irreparable harm, the balancing of
19 the equities leads me to deny the request for the
20 temporary restraining order in this instance.

21 I do so for two reasons: First, I do
22 so because there are potential questions about
23 personal jurisdiction. Historically, as a general
24 rule, simply owning stock in a Delaware corporation is

1 not sufficient to confer personal jurisdiction on a
2 Delaware court.

3 Edgen has made a quite strong argument
4 that Genoud consented to jurisdiction in Delaware for
5 the limited purpose of those claims falling within the
6 exclusive forum provision. That provision states --
7 and I'm going to again quote it so you-all don't have
8 to flip back in the transcript -- "Any person or
9 entity purchasing or otherwise acquiring any interest
10 in the shares of capital stock of the Corporation
11 shall be deemed to have notice of and consented" to
12 it.

13 But note that the forum provision does
14 not specifically call out consent on the part of the
15 stockholders to personal jurisdiction. By contrast,
16 in the preceding sentence of the provision the
17 provision does specifically call out the need for the
18 Court of Chancery to have personal jurisdiction over
19 indispensable parties named as defendants. Contrast
20 the absence of an explicit consent to personal
21 jurisdiction in this case with the contract at issue
22 in Carlyle, in Vice Chancellor Parson's decision in
23 ASDC, and in the Capital Group vs. Armour case,
24 another Court of Chancery decision, where in each

1 case, the provisions in question actually addressed
2 explicitly the matter of personal jurisdiction.

3 Now, I am not making a ruling today
4 that I do not have personal jurisdiction under the
5 consent to jurisdiction theory. I am merely holding
6 that there is a litigable issue there that affects the
7 balancing of equities in terms of the need for a TRO
8 issued today.

9 The second factor that enters the
10 balancing is the question of ends versus means. The
11 end that Edgen seeks is indeed laudable and efficient;
12 namely, the localization of litigation to a
13 contractually selected forum, wherever that may be.
14 Here it happens to be Delaware, but there's absolutely
15 no reason why one of these provisions would have to
16 select Delaware. This corporation could have selected
17 Louisiana and concentrated its litigation there, but
18 for whatever reason, they selected Delaware.

19 The question, though, is one of means.
20 In Carlyle -- and this is from the Chancellor's
21 trial-level decision in Carlyle, not from the Delaware
22 Supreme Court case -- but in Carlyle, Chancellor
23 Strine recognized at least three ways to enforce a
24 forum selection clause and achieve the laudable end.

1 The first is to move to dismiss in the
2 foreign forum. Edgen has done that.

3 The second is to obtain a default
4 judgment in the contractually specified forum when the
5 breaching party declines to appear in the
6 contractually specified forum. The party obtaining
7 that default judgment can then seek res judicata in
8 the other forum on the grounds of the judgment that
9 was obtained. Now, given jurisdiction dodging so far
10 by Genoud and his counsel, Edgen is well on its way to
11 getting that.

12 The third option is the anti-suit
13 injunction. I would be remiss if I didn't say again
14 that I do think the anti-suit injunction is the most
15 aggressive of these three, and I don't say that in a
16 bad way. I simply mean relative to the other two, it
17 is more aggressive. It creates potential issues of
18 interforum comity if the other court feels slighted by
19 the issuance of an anti-suit injunction. That
20 certainly would not be my intent, but we have all
21 lived long enough to understand that human actions are
22 quite frequently misconceived, and that people may
23 take offense even where none is intended.

24 The contrary argument, of course, is

1 that failing to enforce a forum selection clause could
2 be equally insulting and have negative implications
3 for comity. The obvious reasons include that if I
4 don't enforce the forum selection clause, I have
5 forced my judicial colleague in Louisiana to be stuck
6 with work that he or she otherwise would not have to
7 do. A further consequence is that parties, if forum
8 selection clauses are not enforced, would thereby be
9 encouraged to file multiple different suits in
10 multiple jurisdictions, contrary to their forum
11 agreements. That itself is insulting to judges, who
12 generally like people to follow their contracts.
13 Integrity of contracts is the overarching value, as
14 Chancellor Strine explained, and he also explained
15 these other principles at page 8 of his decision in
16 Carlyle. Nevertheless, I have to recognize that
17 comity is a concern here.

18 When I review the Chevron decision --
19 that's Chancellor Strine's decision that upheld the
20 validity of a forum selection clause found in the
21 bylaws of a Delaware corporation -- it is seemingly
22 apparent on the face of the that decision that
23 Chancellor Strine contemplated, at least for purposes
24 of his ruling in that case, that the forum selection

1 provision would be considered in the first instance by
2 the other court, by the court where the breaching
3 party filed its litigation, not through an anti-suit
4 injunction in the contractually specified court.

5 One can't say that Chancellor Strine
6 was not aware of the anti-suit injunction route.
7 Indeed as I noted, he wrote the trial court decision
8 in Carlyle that identified the three means by which a
9 forum selection clause could be enforced.

10 Despite this, his Chevron decision
11 repeatedly contemplates enforcement by the foreign
12 forum. And by foreign I mean the non-contractually
13 selected forum. It's at page 938 of the decision. In
14 explaining why he chose to address the legal issue
15 presented in that case, he stated that doing so "aids
16 the administration of justice, because a foreign court
17 that respects the internal affairs doctrine, as it
18 must, when faced with a motion to enforce the bylaws,
19 will consider, as a first order issue, whether the
20 bylaws are valid under the chartering jurisdiction's
21 domestic law." He is thus contemplating this issue
22 would be considered by the foreign, i.e.,
23 non-contractually selected court.

24 Likewise, on page 941 of his decision

1 he discusses that, "as-applied challenges to the
2 reasonableness of a forum selection clause should be
3 made by a real plaintiff whose real case is affected
4 by the operation of the forum selection clause. If a
5 plaintiff faces a motion to dismiss because it filed
6 outside the forum identified in the forum selection
7 clause, the plaintiff can argue under Bremen that
8 enforcing the clause in the circumstances of the case
9 would be unreasonable." Edgen has clearly heeded the
10 part about a real plaintiff whose real case is
11 affected, and I'm not criticizing them for that. But
12 this language seems to indicate that the decision, at
13 least as contemplated by Chevron, would be made in the
14 first instance by the non-contractually selected
15 forum.

16 On page 954 of the Chevron decision he
17 states the following: "Because the corporation must
18 raise the forum selection clause as a jurisdictional
19 defense if it wishes to obtain dismissal of the case
20 filed in a different forum outside of the state
21 selected in the bylaws, the enforceability of the
22 forum selection bylaws will be analyzed under the
23 Bremen test in any case where an affected stockholder
24 resists compliance...." Same idea.

1 And then lastly, on page 958 he
2 states, "[I]f a plaintiff believes that a forum
3 selection clause cannot be equitably enforced in a
4 particular situation, the plaintiff may sue in her
5 preferred forum and respond to the defendant's motion
6 to dismiss for improper venue by arguing that, under
7 Bremen the forum selection clause should not be
8 respected because its application would be
9 unreasonable."

10 I would simply add to his references
11 to Bremen that Carnival Cruise is the case, and he
12 acknowledges in his decision, but Carnival Cruise is
13 the case that really deals with these types of clauses
14 that appear in contracts to which the party against
15 whom the clause is being enforced is not a direct
16 signatory to the contract. So it's clear from his
17 decision that the reference to Bremen includes
18 Carnival Cruise.

19 Nevertheless, there's no discussion of
20 the anti-suit injunction approach in Chevron. I don't
21 think that rules out the anti-suit injunction approach
22 at all. It may be that in the right case an anti-suit
23 injunction is appropriate, but I do think that Chevron
24 suggests that primacy should be given in the first

1 instance to the non-contractually selected forum to
2 address the Bremen/Carnival Cruise issue.

3 Lastly, I would be remiss if I didn't
4 recognize that forum selection provisions in charter
5 and bylaws represent an evolving issue. In
6 traditional bilateral contracts the initial course for
7 courts was to defer and allow the nonselected forum to
8 address the motion to dismiss. As Mr. Slights, I
9 think, correctly recognized, that was Delaware law for
10 a long time, and it remains Delaware law in the McWane
11 context that we try to let the other court decide it
12 first. Chancellor Allen, in *Household V. Eljer*,
13 elucidated those principles at length.

14 I view myself now bound by *Ingres* and
15 *Carlyle*, that in the case of a negotiated agreement
16 with signatories it's clear that the Delaware Supreme
17 Court wants an injunction issued to avoid the myriad
18 problems that are created when one isn't issued. But
19 it took us a long time to get there. It took us
20 approximately two and a half, if not three, decades to
21 get sufficiently comfortable with forum selection
22 clauses in negotiated agreements that the preference
23 went from allowing the other court to determine it
24 first to simply issuing the anti-suit injunction.

1 Now, it's not at all clear to me that
2 forum selection provisions are as yet sufficiently
3 understood and accepted such that the Delaware Supreme
4 Court would want the same approach taken for a forum
5 selection clause that appears in the charter and
6 bylaws. Maybe they would. Far be it from me to say
7 that they wouldn't. I don't know what they'd do, but
8 I do know that they haven't been given the opportunity
9 to deal with this yet because the plaintiff in the
10 Chevron case, perhaps recognizing that discretion is
11 the better part of valor, dismissed the appeal and
12 denied the Delaware Supreme Court an opportunity to
13 address this issue. Thus, we might have had learning
14 on this but for the strategic behavior of firms who
15 predominantly represent plaintiffs.

16 Needless to say, though, at present,
17 in light of Chevron and when I compare it to the
18 evolution of how these clauses have been treated in
19 bilateral agreements, it is not clear to me that it is
20 appropriate at this time to be making anti-suit
21 injunctions the initial tool of judicial first resort.

22 I will say that as this action
23 proceeds, if it proceeds beyond the default judgment
24 stage -- if, for example, if we have a preliminary

1 injunction or something like that -- what will be
2 quite informative to me is how courts have handled
3 other mass contracts involving non-direct signatories.

4 So, for example, we have Carnival
5 Cruise and the issuance of pre-printed tickets and
6 similar things with forum selection provisions. To
7 what degree are anti-suit injunctions granted in that
8 context? If they are, that counsels in favor of
9 anti-suit injunctions in the charter and bylaw
10 context, where the degree of consent and acceptance
11 and the ability to modify the provision is far greater
12 than in the pre-printed contract setting.

13 One could also think about bubblewrap
14 and click-through agreements for software. Are
15 anti-suit injunctions granted in those type of cases?
16 If they are, again, that counsels in favor of using
17 anti-suit injunctions as more of a tool of first
18 resort in the charter and bylaw context.

19 I am sure that everyone on the phone,
20 myself included, has received credit card agreement
21 modifications in the mail, where you're told that
22 here's notice of modification, and gosh darn it, if
23 you choose to use your credit card after you've
24 received this notice, you have consented to a

1 rewriting of your contract. Those contracts have
2 forum selection clause provisions in them. Sometimes
3 it's an arbitration provision. Are there anti-suit
4 injunctions granted in that context?

5 Perhaps there are other areas that
6 counsel can think of, but if the case law shows wide
7 judicial acceptance of the anti-suit injunction as a
8 tool of, if not first, at least faster resort in those
9 other types of mass contracts, I think that could
10 presage and be certainly persuasive authority as to
11 what the Delaware Supreme Court would want this Court
12 to do when dealing with charter and bylaw provisions.
13 Right now, though, I don't have that type of showing.

14 Finally -- and I know this is my
15 second finally. I apologize for that. We are talking
16 about a status conference tomorrow in Louisiana.
17 Given that we're talking about a status conference, I
18 think that the risk of truly irreparable harm to Edgen
19 is relatively slight. I get the idea that on a
20 theoretical level any engagement in Louisiana is
21 harmful, because you bargained for this protection or
22 you established this protection in your charter
23 provision and the stockholders accepted it. So I
24 understand the theory, but it's hard for me to credit

1 that participating in a scheduling conference is
2 sufficiently scary that I should err on the side of
3 granting the TRO, given these other considerations.

4 So for all these reasons, I am going
5 to deny the application for a temporary restraining
6 order. I believe that there is a colorable claim. I
7 believe that there is irreparable harm. But
8 nevertheless, in balancing the equities, I think the
9 equities counsel against the grant.

10 Likewise, I'm going to deny for the
11 time being the motion to expedite without prejudice to
12 Edgen's ability to come back if there are concrete
13 circumstances that would require me revisiting that
14 issue.

15 I will also tell Edgen that to the
16 extent that the time for a response to the complaint
17 runs and there is no response, you can immediately
18 seek entry of a default judgment, and thereby follow
19 course two that was anticipated by Chancellor Strine
20 in the Carlyle case.

21 I apologize for being long-winded. As
22 I said at the outset, this situation really warrants a
23 written opinion, but given the time frame involved and
24 the request by the parties, time really didn't allow

1 it. And so I have belabored the issue with you
2 orally.

3 Mr. Slights, what questions do you
4 have?

5 MR. SLIGHTS: Your Honor, I guess my
6 only question is to get some understanding -- and
7 perhaps the Court may not be comfortable in providing
8 us with this guidance, but at least opportunity to
9 come back before you to seek expedited treatment of
10 our complaint was mentioned, depending on
11 circumstances.

12 And as I mentioned in my presentation,
13 at the moment what we're being told is that there is a
14 potential for closing of this transaction this month.
15 We anticipate tomorrow in Louisiana the Court to
16 address a schedule to go forward with the complaint
17 that has been brought there. Presumably our motion to
18 dismiss will also be scheduled, we hope in advance of
19 any motion to preliminarily enjoin the transaction,
20 but we are dealing with a compressed time frame here
21 and genuine concerns that our merger partner may walk
22 away in the event that we're not able to bring this
23 deal to closing.

24 So I'm just wondering under what

1 circumstances might the Court entertain, at least, a
2 motion for expedition down the road, depending on what
3 occurs in Louisiana.

4 And again, I understand if you're not
5 wanting to read the crystal ball and give us that
6 guidance, but I just want to be clear that we don't
7 file a motion anew that does not square with Your
8 Honor's view of when that might be appropriate.

9 THE COURT: Well, I think it's a very
10 good question. The short answer is I don't know. I,
11 like all mortals, see through a glass darkly. I don't
12 have prescience. I don't know what's going to happen.

13 ATTORNEY ONE: Right.

14 THE COURT: What may well happen is
15 that the Louisiana Court may grant your motion. If
16 that happens all of this is moot, and, you know,
17 contracts have prevailed. If the Louisiana Court
18 doesn't grant your motion or grants a different type
19 of relief, that would all have to be taken into
20 account.

21 Part of comity means being respectful
22 of one's judicial colleagues in other fora. So I
23 can't foresee what's going to happen coming out of
24 tomorrow, and so I'm not in a position -- it's not

1 that I don't want to. I'd love to be able to tell you
2 exactly what's going to happen. And then I would also
3 make my living, you know, betting on things. But I
4 can't do it. I just can't do it.

5 So you're just going to have to make a
6 judgment as to whether or if you need to come back on
7 some type of preliminary injunction record.

8 I think that what I would like to have
9 from you is some type of report on what goes on in
10 Louisiana, just so I'm kept informed. I think that
11 experience has proven that in these multi-forum
12 situations, keeping both Courts completely informed is
13 the best policy.

14 Along those similar lines, I would ask
15 that you or your counsel that's representing Edgen in
16 Louisiana makes sure that the Louisiana Court is aware
17 that this Court has deferred on the issue of the forum
18 selection provision. I certainly have no objection to
19 you providing a copy of this transcript to the Court
20 so that the Court understands what my reasoning was
21 and why I didn't want to interfere with his or her
22 decision in the first instance.

23 But beyond that, we're going to have
24 to see what happens and where this thing goes, and I'm

1 not in a position today, because of human frailty, to
2 give you any further guidance.

3 MR. SLIGHTS: Understood, Your Honor.
4 Thank you.

5 THE COURT: Anything else from your
6 side?

7 MR. SLIGHTS: No, Your Honor.

8 THE COURT: All right. Well, thank
9 you, everyone, for getting on the phone. And I will
10 look forward to being kept up to date as to what
11 happens further afield.

12 MR. BARON: Your Honor, this is Randy
13 Baron. May I just add one thing to --

14 THE COURT: No. You're not here for
15 any purpose other than I think as a friend of the
16 Court. So if you want to file an application to
17 appear as amicus, you can.

18 MR. BARON: I understand. I just
19 wanted to clarify --

20 THE COURT: All right.

21 MR. BARON: Something that I thought
22 maybe was misunderstood by the Court, but I'm happy
23 to --

24 THE COURT: If you want to put that in

1 writing, you may.

2 MR. BARON: All right. Thank you very
3 much, Your Honor.

4 THE COURT: Thank you, everyone.

5 (Hearing concluded at 11:40 a.m.)

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CERTIFICATE

I, JULIANNE LaBADIA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify the foregoing pages numbered 3 through 51, contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Wilmington this 5th day of November, 2013.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public