

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nos. 83598, 84971, and 85358

IN RE PARAMETRIC SOUND CORPORATION
SHAREHOLDERS' LITIGATION.

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Elizabeth A. Brown
Clerk of Supreme Court

PAMTP, LLC,

Appellant,

v.

KENNETH F. POTASHNER; VTB HOLDINGS, INC.;
STRIPE GROUP, LLC; SG VTB HOLDINGS, LLC;
JUERGEN STARK; and KENNETH FOX,

Respondents.

Consolidated Appeals from Final Judgment and Fees and Costs Awards
Eighth Judicial District Court Case No. A-13-686890-B

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	Trial Exhibit 1052	16	AA 2818- AA 2862

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 12th day of January, 2023.

MCDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on January 12, 2023, a true and correct copy of the foregoing was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

/s/ CaraMia Gerard
An Employee of McDonald Carano LLP

From: ken potashner <ken.potashner@gmail.com>
To: juergen.stark@turtlebeach.com <juergen.stark@turtlebeach.com>; Adam Kahn
<adam@iceroscap.com>
BCC: juergen.stark@turtlebeach.com
Sent: 1/3/2014 9:56:33 AM
Subject: Re: Update

Hi Adam,

The final step is administrative signoffs by VTBs banking entity PNC. PNC has a syndicate of several banks all requiring the signoff and this process has now commenced. The holiday has impacted the speed of this.

regards
Ken

On Fri, Jan 3, 2014 at 6:48 AM, Adam Kahn <adam@iceroscap.com> wrote:
Everything's satisfactory, sorry, had missed this email. When is the deal closing?

-----Original Message-----

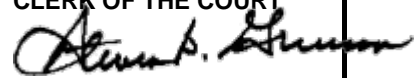
From: ken.potashner@gmail.com [mailto:ken.potashner@gmail.com]
Sent: Monday, December 16, 2013 3:53 PM
To: Adam Kahn
Subject: Re: Update

Was your call with Juergen satisfactory ?

Sent from my iPhone

> On Dec 13, 2013, at 5:46 AM, Adam Kahn <adam@iceroscap.com> wrote:
>
> Thanks. Wouldn't mind a 15 minute phone call today or early next week, please let me know your availability.
>
> Imagine this email may have been prompted by Josh Weisbord. Have only met him once and am not shy, I'd prefer if he did not mettle at all in our investment and will communicate that directly to him (whether or not prompted email).
>
> My general view of volatility in the stock is simply that it creates opportunity to buy the shares at discounted levels. We do not have to vote with ISS and their recommendations were obviously based on a misunderstanding of the situation. Josh was pressing me on whether I would vote for the deal (I also do not know if you want him doing this, although he's a free man), and I said that if there's no impairment to Turtle Beach's business post merger, i.e. the 2014 and beyond business expectations haven't changed, then the movement in the stock price is irrelevant. Alternatively, the deal was cut at 80/20 and the fairness opinion was based off of those projections. My view is if that there's impairment to Turtle Beach's business such that those projections are unlikely to be met, the deal should be recut for a greater share going to current PAMT holders as to de facto keep the consideration the same.
>
> I will elaborate further when we speak, but we are a passive, ~480k share shareholder here and have been buyers as we are excited about the long-term prospects of the combined entity, particularly at the current valuation.
>
> adam
>

>
> Adam Kahn
>
> IceRose Capital Management
> 183 Madison Ave. Suite 1416
> New York, NY 10016
> 212.776.1835 office
> 215.915.2695 mobile
>
>
>
> -----Original Message-----
> From: Ken [mailto:ken.potashner@gmail.com]
> Sent: Thursday, December 12, 2013 6:10 PM
> To: Adam Kahn
> Cc: Juergen Stark
> Subject: Update
>
> Hi Adam,
>
> If at any point you would like to get an update from Juergen and/or myself we would be fully available to you. The outlook is consistent with previous dialogues we have had with you but we can address any topic you prefer.
>
> Regards
> Ken
>
> Sent from my iPad



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN RE PARAMETRIC SOUND)
CORPORATION SHAREHOLDERS')
LITIGATION)

CASE NO. A-13-686890-B
DEPT NO. XI

This Document Relates to:)

ALL ACTIONS)

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TUESDAY, AUGUST 17, 2021

BENCH TRIAL - DAY 2 - VOLUME I

APPEARANCES:

FOR PAMPT LLC:

GEORGE F. OGILVIE, III, ESQ.
ADAM M. APTON, ESQ.

FOR KENNETH POTASHNER,
NORRIS, PUTTERMAN,
KAPLAN, & WOLFE:

J. STEPHEN PEEK, ESQ.
ROBERT J. CASSITY, ESQ.
JOHN P. STIGI, III, ESQ.
ALEJANDRO E. MORENO, ESQ.

FOR VTB HOLDINGS, STRIPES
GROUP, SG VTB HOLDINGS,
KENNETH FOX & JUERGEN STARK:

RICHARD C. GORDON, ESQ.
DAVID A. KOTLER, ESQ.
JOSHUA D. N. HESS, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

I N D E X

W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

J.T. ATKINS

Direct Examination by Mr. Apton 7

Cross-Examination by Mr. Kotler 48

E X H I B I T S

PLAINTIFF'S EXHIBITS ADMITTED:

1071 4

DEFENSE EXHIBITS ADMITTED:

DX-1045 121

DX-754 80

DX-845 94

DX-944 100

1 **LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 17, 2021, 8:53 A.M.**

2 * * * * *

3 THE COURT: Did Mr. Ogilvie get here?

4 Yes. Thank you. They were deciding whether they
5 were going to play music for you. But since you weren't late,
6 I didn't have them do it.

7 Mr. Kahn, if you would come back up, we're going to
8 swear you in.

9 While the evening was very short last night, I'm
10 sure, for all of you, did anyone decide to stipulate to any
11 exhibits? No.

12 MR. KOLTER: We didn't get that far, Your Honor.

13 THE COURT: All right. Sir, raise your right hand.
14 We have got to swear you in again.

15 **ADAM KAHN**

16 (having been recalled as a witness and previously sworn,
17 testified as follows:)

18 THE WITNESS: I do.

19 THE CLERK: Please state your name for the record.

20 THE WITNESS: Adam Khan.

21 THE COURT: And you can sit down. We went through
22 everything yesterday. Remember if you need a break at any
23 time, you let me know.

24 Mr. Peek.

25 MR. PEEK: Your Honor, I have two items, and then I

1 will be finished.

2 First of all, Your Honor, Exhibit 1071 is now the new
3 exhibit which includes all of the additional sheets.

4 THE COURT: Brokerage statements?

5 MR. PEEK: Yeah. Brokerage statements, other than
6 those already in evidence.

7 THE COURT: Any objection to 1071?

8 MR. APTON: No, Your Honor.

9 THE COURT: So 1071 is the complement to, if I recall
10 correctly, 470?

11 MR. APTON: 410, Your Honor.

12 MR. PEEK: 410, Your Honor, I believe.

13 THE COURT: Okay. It will be admitted.

14 (Defense Exhibit Number(s) 1071 admitted.)

15 MR. PEEK: And the second thing is, Your Honor, I
16 want to apologize to the witness for my interruptions
17 yesterday.

18 And with that, I am done.

19 THE COURT: That was nice of you. It only took
20 two minutes.

21 MR. APTON: Your Honor, I --

22 THE COURT: Wait. Does anybody else have any
23 questions? I know we only have two team members, so I'm making
24 sure everybody got to ask their questions.

25 MR. KOLTER: Nothing else, Your Honor.

1 THE COURT: All right. You're up.

2 MR. APTON: Your Honor, an issue came up with us
3 yesterday. Our expert, J.T. Atkins, needs to --

4 THE COURT: Wait. Let's finish this witness.

5 MR. APTON: Well, so, Your Honor, our expert J.T.
6 Atkins needs to get home tomorrow. And so the parties have
7 agreed to, if Your Honor is okay with it, deferring Mr. Kahn's
8 redirect in order to do J.T. Atkins today.

9 THE COURT: Everybody stipulate to that?

10 MR. KOLTER: We don't have a problem with that, Your
11 Honor.

12 MR. PEEK: Yes, Your Honor. That's fine.

13 THE COURT: Nobody objects. All right. Sir, step
14 down. We're going to suspend your examination.

15 THE WITNESS: What do I do with the binder, ma'am?

16 THE COURT: It goes back to your counsel, so you
17 handle that. Ramsey is going to wipe down.

18 Okay. So our next witness?

19 MR. APTON: Your Honor, we call J.T. Atkins.

20 THE COURT: Thank you.

21 **J.T. ATKINS**

22 [having been called as a witness and being first duly sworn,
23 testified as follows:]

24 THE WITNESS: I do.

25 THE CLERK: Please state and spell your first and

1 last name for the record.

2 THE WITNESS: J.T. Atkins, A-T-K-I-N-S.

3 THE COURT: Good morning, sir.

4 THE WITNESS: Good morning, Your Honor.

5 THE COURT: I think you were sitting here most of the
6 day yesterday. We're using masks here in Nevada, so I need you
7 to speak very loudly to be able to be heard. The lawyers
8 sometimes have trouble getting it through their masks, so if
9 you can't hear them or it doesn't make sense, or it's garbled,
10 let them know, they'll rephrase.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: If you need a break, let me know. You
13 need a sip of water or something, please feel free to do it,
14 then put your mask back on. But I've got to make you wear the
15 mask the whole time.

16 THE WITNESS: No problem, Your Honor.

17 THE COURT: Most of the exhibits will probably show
18 up on the screen there. If you need them to move up or down,
19 let them know. If they want to show you paper exhibits, please
20 feel free to look around as you're going through to give
21 yourself context.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: All right. You're up.

24 / / /

25 / / /

DIRECT EXAMINATION

BY MR. APTON:

Q Mr. Atkins, how are you doing this morning?

A I'm well. Thank you.

Q Okay. Can you please tell us your current employment?

A I am the managing partner of Cypress Associates, LLC, in New York City.

Q And what is Cypress?

A Cypress is a boutique investment banking firm for lines of business. We do MNA advisory, restructuring of bankruptcy, capital raising, and litigation consulting.

Q And how long have you been at Cypress?

A Twenty years.

Q Before I get to your prior employment history, let me just ask you, do you hold any degrees?

A I do. I graduated from the University of Virginia with highest honors. I graduated from Harvard Law School cum laude.

Q And so, if you can, please summarize your employment background.

A Sure. I started out of law school at Skadden, Arps. It was a law firm in New York City, in the merger and acquisition department. I was there for two and half years. And then I made a shift altogether out of law and into

1 investment banking.

2 I went to PaineWebber as an associate in 1985. I
3 later became the managing director in 1990.

4 And then when the economy cratered, I left to go to
5 Houlihan Lokey in 1991. I was at Houlihan Lokey for -- until
6 1995, when they finally recovered.

7 And then I joined Oppenheimer and Company, also in
8 New York. I was in Oppenheimer's corporate finance department,
9 doing merger or acquisition and restructuring of bankruptcy
10 work.

11 I left -- Oppenheimer was acquired by CIBC, which is
12 a large Canadian bank, in 1997. And I stayed there until 2001,
13 when I left to form Cypress and Associates.

14 Q And have you testified previously?

15 A I have.

16 Q Okay. And about how many times?

17 A Testified in court more than a dozen times, and I've
18 been deposed close to 100 times.

19 Q And can you describe the nature of those engagements?

20 A Most of the testimony has been in the Delaware
21 Chancery and also in other courts where oftentimes valuation is
22 the nature of the dispute. And I have done a lot of testimony
23 there.

24 I've also testified on investment banking customer
25 practice items as well.

1 Q What do you mean by valuation?

2 A Valuation is looking at the value of companies, and
3 oftentimes it's in Court, therefore it's disputed. And I have
4 done a lot of work as an investment banker, probably a thousand
5 different valuations in the context of my investment banking
6 work. And then in the context of my litigation consulting,
7 probably testified 40 to 50 times about valuation matters.

8 Q Has your testimony ever been excluded?

9 A No.

10 Q Do you predominantly testify for plaintiffs or
11 defendants?

12 A I testify equally for both.

13 Q And in your current practice at Cypress, how much of
14 your time is spent testifying versus doing non-litigation work?

15 A I would say over the last three or four years, it's
16 about 50/50. Last year it was very little testimony because
17 the court systems were primarily closed. This year it's been a
18 lot because the courts systems have been catching up.

19 THE COURT: Trying.

20 THE WITNESS: Yes, Your Honor.

21 BY MR. APTON:

22 Q Now, in the context of this case, you were retained
23 as an expert; correct?

24 A That is correct.

25 Q And how did that come to be?

1 A I was originally retained in the class action case by
2 Robbins Geller. After that settled, you contacted me and asked
3 if I could work with the opt-out plaintiffs. And I said yes.
4 And that's what I've done.

5 Q And what was the scope of your engagement for this
6 opt-out case?

7 A I was asked to -- which is similar, not quite as
8 broad -- but I was asked to determine the intrinsic value of
9 Parametric and Turtle Beach. And then looking at the split of
10 the shares that were given out in the merger to determine
11 whether there were damages, and if so, how much.

12 Q Then did you determine or come to an opinion on that?

13 A I did.

14 Q And what was that?

15 A The opinion is that the plaintiffs were damaged to
16 the tune of \$12.49 per share.

17 Q And do you know how much in damages that equates
18 for --

19 A Yes.

20 Q -- the LLC?

21 A The plaintiffs own approximately 801,700 and so
22 shares. That equates to just a little bit over 10 million.

23 Q Okay. And now, Mr. Atkins, for today's testimony, I
24 understand you prepared demonstrative exhibits; is that right?

25 A That is correct.

1 Q And how did you go about creating those?

2 A I and my team at Cypress pulled together information
3 primarily out of our expert reports and out of -- and looking
4 at Dr. Montgomery's expert reports.

5 And to make it easier to understand, without having
6 to go through the financial reports page by page, we created
7 approximately 16 demonstratives.

8 Q And what materials did you use to create those
9 reports again?

10 A It was based upon the underlying materials that were
11 available in the case, primarily financial information and
12 projections and other things that were in the record. We then
13 took those and essentially summarized them into the
14 demonstratives.

15 Q Okay. If I could bring up your demonstratives, and
16 if you could take a look and just let me know whether or not
17 these are the demonstratives you've prepared?

18 THE COURT: Counsel, have you provided the
19 demonstratives to the clerk?

20 MR. APTON: Yes. Yes, Your Honor. Have I? No, we
21 have not.

22 THE COURT: That's why we have support people around
23 us, so that we don't screw up.

24 Can you e-mail them to Val? Val, when you get them,
25 mark them as D1 for Demonstrative 1 as a package. Is that okay

1 with everybody?

2 MR. KOLTER: Yes, Your Honor.

3 THE COURT: Okay. Go.

4 MR. APTON: Thank you, Your Honor.

5 BY MR. APTON:

6 Q So, you know, Mr. Atkins, I don't think you can
7 control the monitor, but you can let us know to go forward and
8 backwards.

9 So would you want to take a scroll through and just
10 let us know that these are the demonstratives you've prepared?

11 A Sure. If you could just scroll through. There we
12 go. Yes. That is the complete group.

13 Q Okay. All right. So let's start with Slide 1. So,
14 Mr. Atkins, this provides the same \$12.49 number that you
15 mentioned earlier, your conclusion as to plaintiff's damages.

16 Can you tell us how you arrived at that conclusion?

17 A Sure. And I suspect we're going to come back to this
18 later, but you start off in the top box with the left numbers.
19 And we determined that the Parametric equity value, as of the
20 merger date, January 15th, 2014, was 203.6 million.

21 We determined that Turtle Beach equity value was
22 300.5 million. And that sums to a total value -- equity value
23 of 504.1 million. That implies that the contributions were
24 about 40/60. The actual exchange ratio was closer to 20/80 --
25 I'm rounding.

1 So what we did is, to determine damages, we took the
2 504.1 million; we took the -- we took what was given to the
3 Turtle Beach shareholders, which was 404.6 million, when, in
4 fact, it's our belief that they should have received 300.5
5 million in value. That's \$104.1 million in damages, divided by
6 the fully diluted 8.3 million shares, that works out to \$12.49
7 per share.

8 Q Okay. And so your estimates of the equity value of
9 each company, that's -- is that the same thing as intrinsic
10 value?

11 A Yes, sir, it is.

12 Q And what does that mean?

13 A Intrinsic value is the fundamental value that a
14 company is worth based upon, primarily, what's called a
15 discounted cash flow valuation analysis.

16 Q And did you perform discounted cash flows or DCFs
17 analysis?

18 A Yes, we did.

19 Q And what is a DCF?

20 A A DCF is a valuation of a stream of cash flows, with
21 a discrete period projection, followed by a terminal value.
22 And it's that's discounted back to the present period, or
23 whenever the date of valuation is, by using what's called a
24 weighted average cost of capital, which we abbreviate WACC,
25 W-A-C-C.

1 Q So what is a terminal value?

2 A Well, most companies projections don't go for every
3 single -- which happened to be the case here, of course. And
4 so at the end of a discrete period of projections, one must
5 estimate what the company is worth at the end of that period of
6 time.

7 Q And that's what a terminal value is?

8 A That's what the terminal value is. Yes.

9 Q I see. What are -- are there other inputs to a DCF?

10 A Yes. What a DCF is, you start, of course, with the
11 projections in the terminal value, but then you have to
12 calculate the weighted average cost of capital. And the inputs
13 into that are, first, you have to determine the cost of debt;
14 and the second you have to do is the cost of equity.

15 Q Okay. And if you could, what is a WACC?

16 A Well, a WACC is the weighted average cost of capital,
17 which is the same as the discount rate. The inputs, as I said,
18 are cost of debt, cost of equity.

19 I think we'll come to the different functions of
20 that, Mr. Apton, in a few moments.

21 Q Okay. Now, I believe there's another input referred
22 to as the capital asset pricing model?

23 A That's the cost of equity --

24 Q Okay.

25 A -- which I believe we'll come to that. But I could

1 talk about it right now, if you would like.

2 Q Yeah.

3 A Sure.

4 Q Why don't you give us --

5 A Sure.

6 Q -- the key inputs to the DCF.

7 A Sure. The cost of debt is pretty simple, Your Honor.
8 It is -- you take the average cost of the existing debt of the
9 company, so 7 percent, and then to put it through your model.
10 Because interest is deductible, you tax, which is what is
11 called tax affected, and we use a standard 37 percent tax
12 affecting rate. That gets you to the cost of debt.

13 The cost of equity is more complicated. And this
14 thing called the capital asset pricing model has been around a
15 long time, and it's academically accepted and used all over the
16 place in any investment banking, the courts, everywhere.

17 And what that is is you start with the -- which is
18 what's called the risk-free rate, which is the interest rate on
19 the 20-year treasury bond. You add to that the equity risk
20 premium, ERP, which is what is determined by an organization
21 called Ibbotson, which is now owned by Duff & Phelps. And that
22 is an annual number that it says, okay, right now for the --
23 for this particular period of time, which is the year before,
24 it's usually 6 percent -- between 6 and 7 percent. And that is
25 the market risk that you're taking.

1 Now, some companies have greater or lower risk than
2 the equity risk premium, and that's based on what's called a
3 beta. The beta is a measure of volatility for the particular
4 company. And you calculate that company's particular beta.

5 In Delaware, sometimes you use -- if the company is
6 public, the courts prefer you to use that company's beta.

7 Here, even though the company was probably also
8 looked at comparable company betas and discovered that the
9 comparable company betas were very similar to Parametric's own
10 beta and to Turtle Beach's own betas.

11 You then multiply the beta times the equity risk
12 premium. So let's say the equity risk premium is 6.11 percent,
13 which is what it happened to be here. If it's a beta of 1.2,
14 you'd multiply the 6.11 times 1.2, and then you would add that
15 number, which is, let's say, 7 percent, to the risk-free rate,
16 and we'll say the risk-free rate is 3 percent, so that gets you
17 to 10 percent.

18 Then, if the companies are small, which most
19 companies that we analyze are not the 20, 30, 50, 100 billion
20 dollar companies -- there's a thing called a size premium,
21 which, again, is an academically accepted thing to add.

22 And there's a size premium that exists because it was
23 observed by Ibbotson, and by others, that smaller companies
24 tend to require a greater rate of return to compensate the
25 owners of those securities for the smallness -- in particular,

1 for the less liquidity that smaller stocks tend to have.

2 So here we added size premiums to both Turtle Beach
3 and to Parametric, and that gives you the cost of equity.

4 And then what you do to get the WACC is you say,
5 okay, let's say in your subject company is 20 percent debt,
6 80 percent equity, you would weigh the cost of debt 20 percent,
7 then you weigh the cost of equity 80 percent.

8 Q Okay.

9 A And that gets you your WACC.

10 Q Thank you. And this DCF analysis is routinely used
11 to value companies; correct?

12 A It is the most commonly used valuation tool there is.
13 In litigation -- and in Delaware, in particular -- when you're
14 doing things like damages analysis or appraisal -- it used to
15 be used commonly in appraisal, not with the transaction prices.
16 But for doing damages analysis, it is almost exclusively used
17 by the Court of Chancery.

18 Q And how many times in your career have you done this
19 DCF analysis?

20 A Hundreds, maybe more.

21 Q And how many times have you done a DCF for purposes
22 is of expert representation?

23 A Forty or fifty times.

24 Q Any other tools or methods that could be used to
25 value business entities?

1 A Yeah. You can use what are called comparable
2 companies, which are multiples of different things: EBITDA,
3 price earnings. For some companies they've used revenue
4 multiples, which I find very -- personally very sketchy. You
5 can use what are called precedent transactions, which, again,
6 are multiples of different metrics, and those are commonly
7 used, again, in the fairness opinions and other things.

8 Q Can you use a Fairness Opinion to value a company?

9 A No. A Fairness Opinion is not a valuation of a
10 company. The academic literature is very clear that fairness
11 opinions do not count toward damages analysis.

12 Q The defendant's expert, Mr. Montgomery --
13 Dr. Montgomery, used a Fairness Opinion to value the companies.
14 Yes?

15 A Yes, he did.

16 Q And, again, DCF is most commonly accepted; correct?

17 A Yes. It is the gold standard, so to speak --

18 Q Okay.

19 A -- at least in -- especially in litigation.

20 Q Thank you.

21 So if we could bring up Slide 2.

22 And, Mr. Atkins, if you could walk us through this
23 slide, please.

24 A Okay. So I just previewed, in my last answer, what
25 I'm going to go through again here. So let's just start with

1 Parametric on the left.

2 Q And you could go through it in summary if you've
3 already explained it.

4 A Well, I've done a lot. But just a -- I want to get
5 to show how we got the numbers.

6 We talked about discount rates -- that is the WACC.
7 We determined that Parametric Sound's terminal exit multiple
8 was going to be 12 times, Turtle Beach's is 9 times. This is
9 based on comparable company analysis. Those numbers are also
10 very consistent with the -- with what Craig-Hallum did and what
11 some of the other people have done in value these companies.

12 The terminal adjusted EBITDA for Parametric Sound was
13 25. We multiply 12 times 25, that created a terminal value of
14 304 million; for Turtle Beach, it was 477 million.

15 We then took the present value, which is the WACC
16 times -- WACC discounting the discrete cash flows, which were
17 the cash flows for 2014, '15, '16, and '17. And that those
18 discounted at 15.5 percent came in at 25.2 million.

19 Then we took that 304 million that's the terminal
20 value, we discounted that back in 15.5 percent, that was
21 178 million.

22 We add those two numbers together, it's
23 203.7 million. Subtract off \$100,000 of debt and that's how
24 you get the equity value of 203.6 million, which is the equity
25 value of 24.43 million.

1 For Turtle Beach, same kind of -- same kind of
2 analysis. We took the discrete period cash flows, which were
3 17.6 million when you discount them back at 12 and a half
4 percent. We discounted the 477.6 million back at 12 and a half
5 percent -- when I say back, I mean back to January 15th,
6 2014 -- that's 377 million. That adds up to the total
7 enterprise value of 354.7 million.

8 Turtle Beach had some debt, so if you deduct the
9 debt -- which, again, this is all done academically accepted
10 and done in my industry as an investment banker -- you get to
11 the equity value of 300.5 million.

12 Q And equity value also intrinsic value?

13 A This is the intrinsic value --

14 Q Okay.

15 A -- of both of these companies.

16 Q Those terms are synonymous?

17 A Yes, sir.

18 Q Thank you.

19 A Well, the equity value was determined as the
20 intrinsic value of Parametric and of Turtle Beach.

21 Q Thank you. If we could talk about Slide 3 now,
22 please.

23 A Yes. This is -- do you have a question? Or do you
24 want me to do just tell you what Slide 3 is?

25 Q No. Please do as you did for Slide 3.

1 THE COURT: He likes you to give a narrative.

2 THE WITNESS: If it speeds it up, Your Honor, I am
3 all in favor.

4 The -- so, as I said before, we determined for --
5 Cypress determined, based on looking at comparable companies,
6 that the exit multiples would be 12 for Parametric and 9 for
7 Turtle Beach.

8 Our 12 is very consistent with the 10 to 14 used in
9 Craig-Hallum's Fairness Opinion are 9 for Turtle Beach, who is
10 above both the Craig-Hallum numbers and the Sorbus advisors --
11 Sorbus being an advisor to Turtle Beach.

12 And so, therefore, I'd like to say we are giving the
13 benefit of the doubt to Turtle Beach. Our value -- as you will
14 see, our valuation for Turtle Beach comes out higher than other
15 people's.

16 And then also Stripes came in at 9.1 which is very
17 similar to our number.

18 BY MR. APTON:

19 Q So you're saying that the Sorbus and Stripes Group
20 estimates were greater than what you --

21 A No. They were lower.

22 Q Lower than what you determined.

23 A Yes. That's what I mean by giving the benefit of the
24 doubt to the defendants.

25 Q I see. Okay. And if we could go to the next slide,

1 please. Slide 4.

2 A Yes.

3 Q If you could walk us through --

4 A Sure.

5 Q -- this slide.

6 A This is how we built -- so we saw, Your Honor, the
7 discount rates a couple of slides ago. This is how we build
8 into them, starting with Parametric.

9 Parametric had no debt, so the cost of debt was zero,
10 which meant that 100 percent of its capital structure is
11 equity.

12 I think you may recall we talked about 3.55 percent
13 is the risk-free rate. To that we add the 6.11 percent times
14 the .96 beta. And then we also add a 6.03 percent size premium,
15 which is a small company size premium. And that gets us to
16 15.5 percent.

17 As I said, because Parametric is 100 percent equity,
18 that means that it's WACC, its weighted average cost of capital
19 is 15.5 percent.

20 With respect to Turtle Beach, Turtle Beach's after
21 tax cost of debt is 4.5 percent. That's going to constitute
22 18 percent of the capital structure. We use the same risk-free
23 rate, we use the same equity rich premium.

24 Turtle Beach has had a higher -- Turtle Beach is a
25 private company, so it did not have its own beta. So we used

1 comparable companies to come up with the 1.41 beta. And we
2 multiplied that times the 6.11 percent. To that we add -- with
3 Turtle Beach being bigger than Parametric, it gets a lower size
4 premium of 2.07 percent.

5 So Turtle Beach's cost of equity is 14.2 percent --
6 when you add those up, those 3 numbers. And that's weighed
7 82 percent. So it's 18 percent times 4.5 percent; 82 percent
8 times 14.2. Percent and that gives us a weighted average cost
9 of capital for Turtle Beach of 12.5 percent.

10 Q Okay. So I'd like to talk about the valuations with
11 respect to each company now.

12 So for Parametric, how did you do the evaluation for
13 Parametric?

14 A Well, now that we have a WACC and now that we have a
15 terminal value, what we did was we used the projections. We
16 used the projections that were provided to Craig-Hallum in
17 August of 2013. And we also, because those projections did not
18 include licensing revenues and because that was the fundamental
19 component and very important component of Parametric's future
20 growth, we used licensing revenues that were actually developed
21 by Turtle Beach.

22 And then we did our -- and then we applied those
23 numbers. We took those revenues; we took those cash flows. We
24 discounted them back to the present at 15.5 percent.

25 Q And you mentioned that management generated

1 projections. Why is that an important point?

2 A Well, we used management projections. We do not like
3 making up our own projections. We just -- we -- it's
4 subject -- when you do that, it's subject to what I would
5 describe as litigation hindsight. And so we always try to find
6 the right management projections for the right people who
7 developed those projections, because those are contemporaneous
8 and those are things which are -- which cannot be as affected
9 by the fact that we're sitting in court here.

10 Q Okay. So then, let me ask you, what was your
11 understanding of Parametric's business model in the first
12 quarter of 2013?

13 A The first quarter of business gives what's called a
14 capital light model, meaning that they go on to manufacture,
15 which is why they were going to your licenses to bring their
16 product to marketing -- to market.

17 As we'll see in a few more slides, that was received
18 very favorably by the market and they had summarily successes.
19 They had a license with a company called Epsilon in 2012. They
20 announced some licensed agreements with two Chinese companies
21 in early March of 2013. And that was the model that was going
22 to drive -- at that time, it was going to drive this business
23 forward.

24 Q Okay. But you said earlier that you had to add
25 licensing revenues --

1 A Yes.

2 Q -- to the projections.

3 A Yes. That's because what happened starting in March
4 is Mr. -- Mr. Potashner was talking with Turtle Beach. He
5 began to tell them that he was going to slow roll he licensing,
6 because he clearly wanted to do the deal with Turtle Beach.

7 And it's my opinion that when you look at the outcome
8 of that, that turned out to be a very bad decision on his part.
9 And I'll let you guys decide whether or not that was self
10 interest or not -- we'll let the Court decide that.

11 But whatever -- he did change the business model
12 that, without the consent of the board -- and in the end they
13 did not even announce this until let much later in the year
14 that he had done this -- or the company had done this, excuse
15 me.

16 Q So I take it Slide 5 relates to that?

17 A Let's take a look. Yes.

18 Q Okay. And --

19 A So -- go ahead. I'm sorry.

20 Q No. I was going to say if you could explain how --
21 what Slide 5 is.

22 A This is just a very brief summary of what the company
23 did. This came out of the 10K, which was done later in the
24 year. But as you see, they had these early wins on licensing.
25 They had people who really believed in this product.

1 And they actually delayed the development of the two
2 Chinese ones -- the Shanghai Industrial and the Aviation
3 Industry Corporation's trade rep Optek [phonetic], and then
4 they delayed any furthering of this relationship with the
5 merger.

6 And they did this -- they announced it after they
7 signed the merger agreement. But they did this before they
8 signed the deal with Turtle Beach. And then you can see they
9 also terminated the license with Epsilon, the 2012 one.

10 And then the second comment talks about how if this
11 deal doesn't happen, they're going to have to go back to doing
12 licensing because that's how this business works.

13 Turtle Beach is a manufacturer, and Turtle Beach
14 wanted to develop these products. So licensing to other
15 companies simply takes that away from what Turtle Beach could
16 do for itself, assuming Turtle Beach got the deal done. As I
17 said these were done well before they entered into a deal with
18 Turtle Beach. They were done by Mr. Potashner on his own
19 motion.

20 Q So if Craig-Hallum's projections, the projections you
21 relied upon, did not include licensing revenue, but why did you
22 use them and not other projections?

23 A Well, because we didn't have any -- it's always a
24 struggle when you're trying to do -- when you're doing a
25 litigation a couple years later -- eight years later -- is what

1 had -- you know, if there are no projections in existence by
2 the company, who do you use?

3 And it turned out that the good news for us was that
4 Turtle Beach developed projections of licensing revenues
5 towards the end of March. And those revenues stayed -- those
6 licensing revenues stayed the same throughout the month of
7 March into the end of April, when Turtle Beach presented
8 numbers to its board.

9 Q So let me show you Slide 6. I believe this explains
10 how you determined licensing revenue.

11 A Yes, sir.

12 Q So if you could explain, please.

13 A Yes. Your Honor, if you could blow up sort of the
14 middle, the -- sort of the upper third. There we go. Thank
15 you.

16 So you can see that these -- that these are Turtle
17 Beach projections. And what Turtle Beach planned to do was
18 that if it didn't do a deal with -- if it didn't acquire -- and
19 these are dated April 29th, by the way.

20 Q April 29th of?

21 A 2013.

22 Q Thank you.

23 A So if it didn't actually end up acquiring Parametric,
24 its goal was to then license these products for gaming and
25 consumer electronics. And then they put these numbers, as you

1 can see, it says, "Gaming only, 10 million; 22 million;
2 45 million; 67 million."

3 And then, "Consumer electronics only, 30 million; 60
4 million; 100 million."

5 And so that's what -- that was the revenues that
6 Turtle Beach expected to achieve, and that Parametric would
7 receive a percentage licensing fee of those revenues.

8 Q So I understand, for example, a gaming only license
9 in 2014, they were estimating \$10 million of licensed products;
10 is that right?

11 A That's correct.

12 Q With sales up to 167 million?

13 A Of the two products together by 2017.

14 Q And where is that -- I see that number on the lower
15 right-hand corner of the page?

16 A Well, you know, I'm just adding the two lines
17 together --

18 Q Oh, okay.

19 A -- to 17 -- the 60, 75, and the 100. And what it
20 tells you is that Turtle Beach really, really, really believed
21 in Parametric's products.

22 Q And these license revenues were for its products
23 globally? Or no?

24 A I don't believe these were global. I don't think
25 that Turtle Beach had anticipated -- you've got a global -- in

1 its breakup fee, you've got a global license. But in here, I
2 don't think these were considered global fees.

3 So I view these as conservative because as we saw in
4 the prior slides, I mean, Parametric had already penetrated the
5 Chinese market with two companies there. So I think that the
6 expectation -- my expectations were -- and we used these
7 numbers. We didn't add anything to these numbers. But with
8 these numbers, I viewed the numbers as being conservative.

9 Q Okay. And let's bring up Slide 7, please. Now, how
10 does this tie into your analysis?

11 A Well, we had to pick a royalty rate. And so the
12 going royalty rate, if you look at the bottom two numbers that
13 they had entered into with Epsilon and with HyperSound Health,
14 were 15 percent.

15 But we used the number that was in the breakup fee,
16 in the merger agreement, of 6 percent, which is what Turtle
17 Beach would pay to -- for the sales. They would pay 6 percent
18 of the sales to Parametric.

19 So again, I think we were being conservative.

20 Q And so what was your concluded equity value or
21 intrinsic value to Parametric again?

22 A It was \$203.6 million.

23 Q Okay. And do you remember how much that was per
24 share?

25 A That was \$24.43 per share.

1 Q Did you do any sort of analysis to cross-check
2 that --

3 A Yeah.

4 Q -- \$24.43?

5 A Yes, we did. I mean, it's -- it can't be in a
6 vacuum. So what we did is we looked at the actual trading of
7 Parametric in the first quarter of 2013. And then it was very
8 consistent with this number.

9 Q Okay. Go to Slide 8, please. So, Mr. Atkins, sorry.
10 Could you go on about the cross-check that you provided?

11 A Sure.

12 THE COURT: Karen, could I ask you to blow up a
13 little bit, the left side of the slide.

14 MR. KOLTER: Your Honor, we have an objection to this
15 demonstrative.

16 THE COURT: Okay.

17 MR. KOLTER: Would you like me to state it?

18 THE COURT: Yeah.

19 MR. KOLTER: Sure. It purports to include
20 information regarding damages post-January 15th, 2014, which
21 has been excluded pursuant to your motion in limine rule.

22 THE COURT: Then I won't consider it. Okay. Thanks.

23 MR. APTON: But what motion in limine rule?

24 MR. KOLTER: The one that said the damages are
25 limited to his opinion. And as far as --

1 THE COURT: The 12.49 a share.

2 MR. APTON: Right. That is -- okay. So, Your Honor,
3 to the extent that --

4 THE COURT: Right. I'm just going to ignore the part
5 that's subject to the motion in limine --

6 MR. APTON: Thank you, Your Honor.

7 THE COURT: -- because I'm not a jury. So we don't
8 have to edit it.

9 Okay. Keep going.

10 THE WITNESS: All right. So if I could ask Karen --
11 thank you, Karen. This makes it a little easier for my old
12 eyes to read.

13 So the -- what was interesting is when -- and this --
14 the licensing, on the 3rd of --

15 THE COURT: Thank you.

16 THE WITNESS: So on 3rd of March, the company
17 announced -- Parametric announced that they had entered into
18 this strategic partnership with Shanghai and with the Optek.
19 And the stock, which had been at 11, began moving up very
20 quickly. And so it moved into the upper teens, which is almost
21 a 70 percent increase -- not 70 -- 60 percent increase.

22 Before the second announcement, which was that -- oh,
23 I'm sorry -- also the other important part of the first
24 announcement was that they would be shipping product by the end
25 of the year.

1 So the second announcement, which occurred on the
2 25th --

3 BY MR. APTON:

4 Q 25th of March, yes?

5 A 25th of March -- thank you -- was that they expected
6 to be cash flow positive for 2014, which makes sense, because
7 if you're doing this capital light model, you're not going to
8 have the kind of manufacturing cost -- because somebody else,
9 the person who is licensing from you, they take on the cost of
10 building out the product.

11 So that took the stock up from 17. And then finally
12 three days later, the company announced that it was -- it had
13 retained Houlihan Lokey to examine its strategic alternatives,
14 which is investment banking code for putting yourself up for
15 sale.

16 So the stock then went above \$20 and traded in and
17 around \$20. It actually hit a peak of \$24 -- \$21.14 on
18 May 13th.

19 So when I look at that, you have these -- you're
20 looking at strategic alternatives, which means you're for sale.
21 The 21.13 -- 21.14, excuse me, is only about 15 percent or so
22 below the intrinsic value.

23 So that says, hey, that intrinsic value makes sense
24 using -- with this business model. So the market really liked
25 it. And this market capitalization, at this point, is 150-,

1 \$160 million, on a fully diluted basis.

2 So that's what gave me some comfort, gave me a lot of
3 comfort, that the 24.43 that came out of the discounted cash
4 flow analysis was correct.

5 Q You say that because it was comparable to the trading
6 price at the time?

7 A Right. Yeah. I mean, this is -- that would be a
8 normal -- what I would describe as an arbitrary discount with
9 an announcement, and the market was expecting at that point, as
10 of May 13th, a proposal probably in the \$24 to \$25 range.

11 That's about the right kind of discount that I would
12 see, having been in the merger and acquisition business for
13 35 years.

14 Q Okay. So let's move to the other side, Turtle Beach.
15 How did you conduct your evaluation for Turtle Beach?

16 A Well, Turtle Beach was different.

17 Q Right.

18 A Turtle Beach was -- it did not change its business
19 model.

20 Q Sorry.

21 A Thank you. Turtle Beach did not change its business
22 model. But Turtle Beach, as we heard yesterday, it started
23 having some serious problems, largely as a result of Microsoft
24 not doing its -- providing for a place for it to sell its
25 headsets.

1 So Turtle Beach began revising, very quickly and very
2 substantially, downward its projected results, not only for
3 2013, but also for 2014.

4 MR. APTON: And, Karen, and if we could go to
5 Slide 9, please.

6 BY MR. APTON:

7 Q Could you explain --

8 A Sure.

9 Q What you just said, is that illustrated on Slide 9
10 here?

11 A It sure is.

12 Q And how so?

13 A The -- well, let's start with 2013. As of the
14 Fairness Opinion dates, they were -- Turtle Beach was
15 projecting an EBITDA 40.6 million for 2013 and -- or '14; 56.7
16 for '14. Within two weeks, the revision -- the downside -- it
17 had come down, so there is a downside projection of 33 million;
18 33.5 million. And then there's also 49.9 million, which is
19 also a reduction in '14.

20 And then by December, it had actually fallen almost
21 in half for 2013. EBITDA was 21.2 million, and for 2014 it was
22 down to 29.9 million.

23 So this was not -- Turtle Beach did not see this is
24 simply being a 2013 problem. This was a much longer term
25 problem. And they recognized it was going to take longer to

1 get their EBITDA backup.

2 So -- and then by then 2000 -- when they set
3 projections in 2014, on February 13th, it was down to \$12
4 million of EBITDA. So that's almost a 70 percent reduction for
5 2013. And it's down to \$19 million, which is a two-thirds
6 reduction from back in August. So we couldn't use the August
7 projections.

8 And so we said, okay. We have to -- we're going to
9 use the revised projections.

10 You know, I would note that they are at -- that these
11 numbers are after the merger closed. But these numbers were
12 also seen in an early January set of projections that was
13 developed internally at Turtle Beach. So these were -- we used
14 what's known or knowable. And our view is that these
15 projections were very knowable by the time they were delivered
16 to Wells Fargo and also sent to Stripes.

17 Q Okay. So these values came from Turtle Beach's
18 internal documents then. Yeah?

19 A Yes, sir.

20 Q And you're saying known or knowable -- the
21 projections you used were the ones sent to Wells Fargo in
22 February of '13?

23 A Yes, sir.

24 Q And then compared to what was considered in the
25 Fairness Opinion, they were down from 40.6 million, EBITDA

1 offered in 2013, all the way down to 12.4 million EBITDA?

2 A Yes, sir.

3 Q So what did you do then?

4 A Well, we then put them into our DCFs and then did the
5 comparison of values. Then we got 203.6 million for
6 Parametric, and we got 300.5 million for Turtle Beach.

7 Q If we can look at Slide 10. Did you track the equity
8 value of Turtle Beach over this period of time as well?

9 A Well, we looked at other valuations. This is the
10 Stripes one. There was -- Sorbus was also doing valuations,
11 and Sorbus' valuations were also below are 300.5 million.

12 And you could see the -- this is Stripes's own
13 internal numbers that it provides -- that it uses to advise its
14 limited partners what the valuation of its portfolio is. And
15 you can see that the price by December -- excuse me -- by
16 December 31st, 2013, Stripes was carrying this at
17 \$71.8 million, or at least valued at \$71.8 million -- and
18 carried it 177.1, because they knew they were getting equity
19 that was going to be in excess of that 71.8.

20 Q And I'm sorry, you value Turtle Beach as what?

21 A At 300.5 million.

22 Q Why is Stripes's valuation so much lower?

23 A Well, what they're doing is they're doing, as what I
24 would describe -- and this is what a lot of private equity guys
25 do -- they just -- they're using a simple multiple -- EBITDA

1 multiple of 9.1. And so that's what gets you to the
2 71.8 million.

3 This is one of the reasons that we are very careful
4 and why -- when we do intrinsic value, not book-carrying value
5 or not some kind of Fairness Opinion valuation -- that we're
6 looking at the long-term intrinsic value, which we got --
7 because we still use the same numbers that Stripes does.
8 Stripes is using 14.9. We actually used a slightly lower
9 number in our model for 20- -- actually our model didn't even
10 count '13.

11 For '14, we used Turtle Beach's '14 projection, which
12 was also low, but there projection showed a gradual return to
13 greater probability, which is why DCF is such a much better way
14 of determining intrinsic value. Because it's got a long-term
15 perspective line, not a short-term market perspective.

16 Q So you could have used this EBITDA valuation
17 methodology and generated a much smaller equity value for
18 Turtle Beach, but you went with DCF instead?

19 A Yes, we did. And by the way, that would have created
20 a much larger damages number. And we said, no, were not going
21 to do that. We're going to stick with our \$300.5 million
22 evaluation of Turtle Beach.

23 Q Okay. So if we could go back to Slide 1. Now that
24 we have an understanding of the Parametric's valuation and
25 Turtle Beach's is valuation, if you could walk us through the

1 math one more time --

2 A Sure.

3 Q -- so we understand how you got to your final
4 decision.

5 A Now, that Your Honor has been educated in all of
6 these crazy little numbers, we have -- again, we had the two
7 valuations, 203.6 and the 300.5 coming out of our discounted
8 cash flow analysis; summing to 504 million.

9 The -- of that, Turtle Beach should have received
10 59.6 percent, instead it received 80.3 percent which was going
11 to the lower box, \$404.6 million you've got in stock. And it
12 should have received 300.5 million. And that's how we got the
13 total damages of the 104.1 and dividing that by 8.3, gives
14 damages per share of \$12.49.

15 Q Okay. Now, earlier I know you testified that you
16 checked the market price of Parametric stock on the front end.

17 But did you do any analysis involving Parametric's --
18 or at this point, Turtle Beach's stock price on the back end,
19 to ensure the accuracy of your work?

20 A Yes.

21 Q And what was that?

22 A It was what I call a sanity check. We did a
23 regression analysis. And the regression analysis we did was we
24 regressed the Turtle Beach stock from 2012, through the merger
25 date, against the two measures of the Standard & Poor's 500.

1 So we found that there was a statistically
2 significant relationship, which then allows us to do what we
3 call a "but for" projection forward -- but for the merger here.

4 And so what you do is you then take -- assuming that,
5 but for the merger, Parametric would have performed the same
6 way it did before the merger, after the merger, with the
7 Standard & Poor's measures, it will project a stock price out.
8 And we projected it out 12 months.

9 Q Okay. And I believe Slide 11 shows the results of
10 your regression summary.

11 A Yes.

12 Q Can you confirm -- yes. So what were the results?

13 A Well, the predicted share price, based upon the S&P
14 and the variants of the indices was between \$20.74 and \$20.82,
15 which is very tight range, which is what -- you like to see
16 tight ranges when you're doing this.

17 The stock price, a year after the deal closed, was
18 \$2.97. And so that implies damages in the range of \$17.77 to
19 \$17.85, which we're not saying those are the damages. We're
20 saying this is just a sanity check, but that is above the
21 \$12.49. So it basically gave me comfort that the \$12.49 was an
22 accurate measure of damages.

23 Q Okay. Now, you referenced Dr. Montgomery earlier.
24 Who is Dr. Montgomery in this case?

25 A Dr. Montgomery is the defendant's expert.

1 Q Okay. And, Mr. Atkins, you provided a rebuttal
2 report in discovery in which you criticized Dr. Montgomery's
3 analysis; is that right?

4 A That is correct.

5 Q Okay.

6 MR. KOLTER: Objection, Your Honor. We have
7 disclosed to Plaintiff that we are not going to be relying on
8 Dr. Montgomery's report in this matter. So while they're
9 certainly free to question about something that we won't be
10 providing evidence on, in light of Mr. Atkins's time
11 commitments, I wanted to make Your Honor aware of that.

12 THE COURT: The objection is overruled. Thank you.
13 You can continue.

14 MR. APTON: Thank you. So, Karen, if you will pull
15 up Slide 12.

16 BY MR. APTON:

17 Q Dr. Montgomery did provide an opinion in this case.

18 A Yes, he did.

19 Q And in response to that opinion, you provided a
20 rebuttal report; correct?

21 A Yes.

22 Q And so if you could explain what Slide 12 has to say
23 about that?

24 A Sure. This is very high level, Your Honor, for
25 different things where we differed very, very dramatically from

1 Dr. Montgomery's analysis.

2 The question is, did you -- because one of the things
3 that we get asked in court is, Do you do your own independent
4 valuations?

5 And the answer is, Yes, we did. The answer is
6 Montgomery did not, because he simply relied on -- he adjusted
7 it slightly -- but he relied on the Craig-Hallum Fairness
8 Opinion, which is something that we don't even view as a good
9 measure of intrinsic value.

10 The second thing is that, Did we rely on data
11 valuation metrics?

12 No, we did not. And we could talk -- we'll talk
13 about the use of the licensing numbers and the use of the
14 numbers prior to not using the numbers in January for
15 Parametric. But we used the numbers that we felt were the
16 absolute best current numbers for the two companies.

17 Dr. Montgomery relied on the August numbers for both
18 companies. And we saw how Turtle Beach's numbers degraded
19 dramatically over the next four months.

20 Did they rely on known or knowable Turtle Beach
21 projections as of January 15th?

22 Yes, we did. And Dr. Montgomery was still relying on
23 the August Craig-Hallum numbers. Did we rely on the
24 projections adjusted for Parametric's actual business model,
25 For Parametric's management's failure to run the business

1 during the negotiation, in the pendency of the Turtle Beach
2 merger?

3 Yes, we did. We used the August numbers for
4 Parametric. And we added licensing revenues, because that was
5 Turtle Beach's business model before Mr. Potashner decided to
6 create favor with Turtle Beach.

7 And the answer is no, Mr. -- Dr. Montgomery decided
8 to use the January revised numbers for Parametric, which
9 were -- which reflected how poorly the business had been run
10 following Mr. Potashner's change in the business model.

11 Q So then if I could ask you to --

12 MR. APTON: Karen, if you could pull up to Slide 13,
13 please.

14 BY MR. APTON:

15 Q And then I think this further relates to your
16 criticism --

17 A Yeah.

18 Q -- of Dr. Montgomery. If you could explain.

19 A Dr. Montgomery used -- he did adjust slightly
20 downward Turtle Beach's numbers.

21 I don't know if anybody recalls this -- I do -- the
22 2013 initial projected number was going to be 40.6.

23 He said, Okay. Assuming the plaintiffs are right and
24 that there are certain things that the defendants did
25 incorrectly, he said, I would revise it to 36 million. That's

1 just wrong.

2 We think it should be -- it should have been brought
3 down to 12.4 million, which were the actual projections that
4 were available in January of 2014.

5 And you could also see that, what's very interesting,
6 as I said before, is that once you take this kind of a plunge,
7 this plunge in your performance, it doesn't just affect 2013.

8 If you look at the difference between the top line
9 and the bottom line, the top blue line and the bottom blue
10 line, you can see that this has a long-term negative effect on
11 your company. So it was going to be -- so Turtle Beach was
12 going to be -- was going to take a very long time to return to
13 the kind of profitability that it had forecast for in August of
14 2013.

15 Q And so if we could pull up now Slide 14, please. And
16 I think this continues in the same vein, if you could explain.

17 A Yes. Craig-Hallum used 10 different metrics in its
18 Fairness Opinion. And I'm not saying that these are right or
19 our numbers on the right side of the page are correct. I'm
20 just simply correcting Dr. Montgomery's numbers.

21 So Dr. Montgomery made some adjustments. We talked
22 about that. And as you can see in 1, 2, 3, 4 of the
23 different -- 4 of the 10, because these -- using what are
24 called LTM.

25 LTM, Your Honor, means latest 12 months.

1 THE COURT: Thank you.

2 THE WITNESS: So you probably know that. I'm sorry
3 to say it, if you did.

4 So four of the numbers were not even affected by --
5 because he was using LTM numbers from -- that were LTM prior to
6 the Fairness Opinion.

7 So the impact was a net -- if you go down to the
8 median equity line in the box, the top line, it's a 10 percent
9 decline in the overall numbers, with the LTM numbers
10 included -- the four LTM numbers included. And it's a
11 13 percent, almost 14 percent reduction in value.

12 But again, we don't believe that he used the correct
13 numbers.

14 So if you go to the right side of the page, and we
15 put in the numbers that we -- that are from the numbers given
16 to Wells Fargo in early 2014, the numbers that come down
17 dramatically.

18 So all we did -- all we did is we're just changing
19 his numbers. We're not changing multiples. We're not doing
20 anything else.

21 So if you -- just without the LTM numbers, it's gone
22 from 351 million down to 158 million. And that is a
23 \$160 million number lower than what he had said.

24 And then if you take out the LTM multiples, it goes
25 down by another \$60 million.

1 So what this -- this just tells me that, you know,
2 that Dr. Montgomery's forecast, that are a valuation -- which
3 we don't think is the correct way of doing it in the first
4 place -- but if you did believe it was, it's off by somewhere
5 between 160 and \$250 million.

6 BY MR. APTON:

7 Q Okay. And just to clarify, so when you say you
8 corrected Dr. Montgomery's numbers, what you mean by that?

9 A All I did was substitute in the numbers that were in
10 the January -- January/February forecast for Turtle Beach for
11 the numbers that he used which were based upon August and which
12 he adjusted slightly.

13 Q Okay.

14 A August of 2013.

15 Q So if we could bring up Slide 15, please.

16 And so if we take your corrections to Dr.
17 Montgomery's numbers, we get a new damages number; is that
18 correct?

19 A Yes.

20 Q And --

21 A This is a little complicated because this goes
22 through the shares that were issued. And then the key line is
23 G, which is the overpayment.

24 On the prior page, he had a 10.4 percent overpayment.
25 We corrected it in the second column -- 54 percent with the LTM

1 numbers, and 75 percent without the LTM numbers.

2 And what that does is he said that there was \$1.26
3 per share in damages. If you go to the second column, that's
4 \$11.34 using his valuation methodology, and then \$22.44 without
5 the -- without those LTM numbers.

6 Q So G represents -- sorry. Row G represents the
7 overpayment. And then the numbers you are just reciting were
8 from Row P, the dilution per share; correct?

9 A That is correct.

10 Q Okay. And so using his model, but with the corrected
11 numbers, it's \$22.44; correct?

12 A If you took out the LTM numbers. But if you used the
13 LTM numbers, it would be \$11.34.

14 Q And what, if anything, does that tell you about the
15 \$12.49 you calculated?

16 A Yeah. It says, again, when you do it right -- if you
17 do it right, you get damages very close to our number.

18 Q And let's see, if we go just to Slide 16 now. And if
19 you could tell us what this represents.

20 A Yeah. We heard in defendant's open -- I heard in
21 defendant's opening statement yesterday that Parametric was a
22 bad company. It never made money. It was going to be
23 horrible. Well, that's not what Turtle Beach believed.

24 We talked about April of 2013 with these very large
25 licensing numbers. This is now January/February 2014. And we

1 saw how Turtle Beach's numbers were going to take a long time
2 to come back to anywhere near where they were projected to be.

3 Here, even though the projections were for -- the
4 left side is the Wells Fargo numbers. Those are the early 2014
5 numbers. He asked for 2013 for 2014. For '14 in particular,
6 they were a lot lower than what we used.

7 But by 2015, even in January/February of 2014, Turtle
8 Beach was projecting that Parametric would recover to almost
9 where it was going to be under the original numbers that were
10 done in the middle of 2013, so 30.7 versus 33.5.

11 Now, that's the last year that they gave -- they had
12 projections, but those numbers are back to within 90 percent of
13 where they were versus -- where Turtle Beach's own numbers for
14 itself were in the 50 percent range of where they were prior to
15 the point.

16 So what this tells me, Your Honor, is that Turtle
17 Beach really believed at this particular point in time, which
18 is the daily measure of damages, that this company, Parametric,
19 was a good company.

20 Q And when you say recovered, what do you mean
21 recovered? Recovered from what?

22 A Well, recovered from the \$4 million in 2014 to
23 \$30.7 million in 2015, which is -- and the numbers we used
24 without licensing was 33.5.

25 So it was basically, in those numbers, 90 percent

1 back to where he would have been under the August 2013
2 projections for Parametric.

3 Q I see. Got it. Okay. So in conclusion, damages per
4 share?

5 A \$12.49.

6 Q Thank you, Mr. Atkins.

7 THE COURT: Sir, do you need a break before we go to
8 cross-examination?

9 THE WITNESS: I'm happy to go forward, Your Honor.

10 THE COURT: All right. Mr. Kotler?

11 MR. APTON: Give me one second.

12 THE COURT: If you will wipe it down for me. Thanks.

13 CROSS-EXAMINATION

14 BY MR. KOTLER:

15 Q Good morning, Mr. Atkins.

16 A Good morning.

17 Q Good to see you again. Good to see you, and I
18 appreciate the speediness of your direct examination. I will
19 try and goes quickly, but knowing our time together before, I
20 don't know that it will be as short.

21 A I've got seven hours if you've got seven hours.

22 THE COURT: I don't. So let's --

23 BY MR. KOTLER:

24 Q You prepared three expert reports in the class case;
25 correct? An initial report, a rebuttal report and a

1 supplemental report; right?

2 A That's correct.

3 Q And those were all prepared back in 2019?

4 A Yes, sir.

5 Q You did not provide any new expert reports for this
6 opt out case?

7 A That's correct.

8 Q And you did not in any way, shape, or form provide
9 any updated disclosure of your opinions or materials
10 considered; correct?

11 A That's correct.

12 Q Your assignment in this case pertains only to
13 plaintiff's claimed damages, the \$12.49 per share that we heard
14 about; correct?

15 A That is correct.

16 Q So you would agree with me you're not offering any
17 opinion regarding the intrinsic values of Parametric or Turtle
18 Beach on any date other than January 15th, 2014; correct?

19 A Yes, sir.

20 Q You're not offering any opinion as to the potential
21 value of the HyperSound technology in 2013; correct?

22 A Yeah, that's correct.

23 Q You're not offering any expert opinion as to why
24 95 percent of Parametric shareholders voted in favor of the
25 merger; correct?

1 A That's correct, sir.

2 Q You're not offering any expert opinion that any
3 Parametric shareholder voted for the merger because he or she
4 may have misunderstood any material fact about the merger;
5 correct?

6 A Yes, sir.

7 Q And you're not offering any expert opinion that was
8 an alternative transaction available to Parametric that would
9 have been more beneficial to the company or its shareholders
10 than the merger with Turtle Beach; correct?

11 A That is correct.

12 Q Let's focus on the \$12.49 per share. I think I
13 understand your testimony.

14 That represents the per-share difference between the
15 amount you believe that Turtle Beach's shareholders received in
16 the merger and the amount that you believe they paid to receive
17 that amount. Is that fair?

18 A That's close. Let me -- can I help you here?

19 Q Yes, please.

20 A What it is is the difference between what they
21 received, which was about 80 percent of Parametric stock,
22 versus what they should have received, which is 60 percent.
23 And that delta is 104.7 million divided by the 8.3 million
24 shares is how you get the 12.49.

25 Q So in other words, 104 million divided by the number

1 of shares, that's the profit, if you will, that Turtle Beach's
2 shareholders received according to your calculations?

3 A Profit is a pejorative word. You and I word played
4 last time a lot.

5 Q We did.

6 A So you'll have to forgive me for being precise.

7 It's not profit. It's just excess shares.

8 Q Okay. These are, as you describe them in your
9 demonstrative, these are dilution damages; correct?

10 A Again, dilution is just -- the split was just wrong.
11 It should have been 60/40, not 80/20.

12 Q You were in the courtroom for the opening statements
13 yesterday?

14 A I was.

15 Q You heard Mr. Apton describe your damages calculation
16 as dilution damages; did you not?

17 A If he said that, that's fine, but I want to be more
18 precise which is these are -- the split should have been 60/40,
19 and it was 20/80.

20 MR. KOTLER: And if you'd pull up PD 15, page 15 of
21 the demonstratives, please.

22 THE COURT: Is that the one you wanted?

23 MR. KOTLER: Yes.

24 THE COURT: Great.

25 MR. KOTLER: Yes. That is -- and particularly

1 line P.

2 BY MR. KOTLER:

3 Q When in your demonstrative you prepared saying
4 dilution per-share, you meant that; correct?

5 A This is -- all we're doing is correcting Dr. --
6 that's Dr. Montgomery's language. That's all I'm doing. And I
7 said --

8 Q Okay. So --

9 A -- we did -- this is not our damages analysis.

10 Q Okay.

11 A This is just showing why you can't rely on his.

12 Q Gotcha. Are you offering an expert opinion that any
13 premerger Parametric shareholder gained any amount of value in
14 the merger?

15 A Could you repeat that for me.

16 Q Sure. Are you offering an expert opinion that any
17 premerger Parametric shareholder gained any amount of value in
18 the merger?

19 A I don't understand the question, but I think the
20 answer is no, but I --

21 Q I think the answer is "no" also.

22 A Yeah. So I'm not a hundred percent clear on the
23 question.

24 Q Okay. You're not offering an opinion that Turtle
25 Beach was Parametric's controlling shareholder prior to the

1 merger; correct?

2 A No, I'm not offering that opinion, but I've said that
3 Mr. Potashner certainly did a dance that was orchestrated by
4 Turtle Beach.

5 Q You're not offering any opinion regarding that, are
6 you?

7 A It's not an opinion, no.

8 Q Okay. You're not offering any expert opinion that
9 Parametric had any controlling shareholder or group of
10 controlling shareholders as of the time of the merger; correct?

11 A That's a really good question.

12 Q Well, is --

13 A The answer -- the answer is I'm not offering an
14 opinion, but it is -- that particular fact, the fact that there
15 was an exercise -- the fact that Mr. Potashner was doing a
16 dance at the behest of Mr. Stark and others is a fact that was
17 the reason we used the earlier numbers for Parametric because
18 the company had changed completely.

19 But I am not offering an opinion about control or
20 otherwise.

21 Q Okay. And we'll get to the dance. You know we will.

22 You're not offering any opinion -- expert opinion,
23 excuse me, that any Parametric shareholder or director who has
24 diluted any differently than any other Parametric shareholder;
25 correct?

1 A That is correct.

2 Q Your \$12.49 per share does not represent a
3 calculation of the fair value of the shares representing the
4 overpayment by Turtle Beach to a controlling shareholder;
5 correct?

6 A There's a word in there that made me think that was a
7 legal question, but, no, I'm not offering an opinion.

8 Q And I know you mentioned in your direct testimony
9 that you were -- you're very familiar with Delaware law;
10 correct?

11 A Well, I'm not a lawyer, but I do spend plenty of time
12 talking to Delaware lawyers and New York lawyers and guys like
13 you to understand Delaware law, and I do -- I think I do know
14 how to do valuation in a Delaware framework.

15 Q And you have the law degree and those years at
16 Skadden. So you understand me?

17 A I'm 35 years in the recovery, Mr. Kotler.

18 Q Are you aware that this Court has ruled that the only
19 types of damages that plaintiff may pursue are those set forth
20 in a Delaware Supreme Court ruling titled *Gentile versus*
21 *Rossette*?

22 A I heard something like that, but since I'm not a
23 lawyer, I'm not going to venture a guess as to what that means.

24 Q And I take it you did not review that ruling prior to
25 doing your damages analysis back in 2019; correct?

1 A That is correct.

2 Q So you can't say with any degree of certainty as you
3 sit here today whether your \$12.49 per share calculation is or
4 is not among the types of damages permitted under *Gentile*;
5 correct?

6 A I have no idea.

7 Q This was a stock for stock transaction?

8 A Yes.

9 Q So and I think that I understand why -- that's why
10 you sought to determine the intrinsic value of both Parametric
11 and Turtle Beach as of the merger date; correct?

12 A Yes. Whenever we do anything involving two companies
13 merging stock for stock, we value both companies.

14 Q You would agree with me that the usefulness and
15 reliability of that \$12.49 calculation depends on the accuracy
16 of your valuations of both Parametric and Turtle Beach as of
17 the merger date?

18 A Yes, I think that's right.

19 Q So if hypothetically the excess equity received by
20 Turtle Beach's shareholders on the merger date was actually
21 lower than you've calculated, then plaintiff's damages would
22 also be lower than you calculated; right? That's just the
23 math?

24 A It's just math, and it sounds like --

25 Q Okay. So if we accept -- I'm going to give you a

1 little math on the fly here. If we accept your --

2 A The one thing I bring up to the stand of course. You
3 know this is my calculator.

4 Q I'll help you.

5 If we accept you or \$300 million intrinsic value for
6 Turtle Beach, then what is the intrinsic value for Parametric
7 at which plaintiff would have suffered no damages under your
8 approach?

9 A I'm sorry. Could you repeat the questions.

10 Q Sure. If we accept the 300 million for Turtle Beach,
11 what's the intrinsic value of Parametric at which plaintiff
12 would have suffered zero damages?

13 THE COURT: Using the 80/20?

14 MR. KOTLER: Yes, using the 80/20. Thank you, Your
15 Honor.

16 THE COURT: Okay. Just checking to see if he thought
17 I was listening.

18 THE WITNESS: That was real good, Your Honor.

19 The number would be approximately 75.6 million.

20 BY MR. KOTLER:

21 Q Thank you.

22 A Am I right?

23 Q Yes. I had approximately 75 million in my notes. So
24 we're good.

25 A I like being precise.

1 Q Before preparing your valuations of Parametric and
2 Turtle Beach, you made sure to review all of the materials you
3 believed you needed in order to reliably determine the
4 intrinsic values of both of those companies; correct?

5 A Yes. I and my colleagues. We -- we're an integrated
6 company. We don't use a third party to do our number
7 crunching.

8 Q Fair. And you, I'm including your colleagues, who I
9 understand from your deposition there was a Mr. Tolmie,
10 T-o-l-m-i-e?

11 A Yes.

12 Q He's still with Cypress?

13 A Yes.

14 Q So you made sure, for example, to review the
15 deposition testimony of the Turtle Beach CFO, Mr. Hansen, who
16 is responsible for preparing the Turtle Beach projections that
17 you relied upon; correct?

18 A What I did was -- we talked about this in the depo.
19 I think when it came to --

20 Mr. Hansen or Mr. Barnes? I'm sorry.

21 Q I'm asking about Hansen first.

22 A Okay. Hansen.

23 I always have my colleagues, when it comes to those
24 kinds of -- I asked him to go through them and pull the most
25 relevant stuff for my review, and I do not recall the last two

1 plus years later whether or not I -- what I saw from
2 Mr. Hansen.

3 Q So what you saw back then is what you were relying
4 upon as you are testifying today; is that fair?

5 A Yes, that would be fair.

6 Q You also made sure to review the deposition testimony
7 of the Parametric CFO, Mr. Barnes?

8 A Yeah. I think I'm now remembering. I think we had
9 this conversation a bit in my deposition. I am very cautious
10 when I'm looking at after-the-fact litigation-driven testimony
11 from parties in interest. So...

12 Q You did review the deposition testimony of the two
13 CFOs whose projections you're relying upon; fair?

14 A I think I reviewed summaries of it, yes.

15 Q Okay. And you also made sure to consider the
16 deposition testimony of the Craig-Hallum representative
17 regarding the fairness opinion; correct?

18 A I don't remember whether we -- again, the answer, if
19 it's in my materials considered, then somebody read it in my
20 shop. Somebody summarized it for me.

21 Q I'll represent to you that it's in there; and if
22 you'd like me to show it to you, I'm more than happy to.

23 A No. (Indiscernible) I can believe you Mr. -- you're
24 a New York lawyer. New York lawyers never fib.

25 Q By the way, I don't know if you were here yesterday.

1 There was some testimony regarding the reputation or concerns
2 about the reputation of Craig-Hallum as an investment banker
3 for 30 years and relying on projections that were provided to
4 Craig-Hallum, you did not form any expert opinions that
5 Craig-Hallum's work here was somehow not reliable; correct?

6 A You know, I disagreed with certain things that they
7 did as you and I discussed in my deposition. We can get to
8 those if you want to.

9 But the answer is is that they're a good firm, and
10 they do what they do. As investment bankers they don't -- they
11 didn't do the kind of analysis that I did for this case.

12 Q You also made sure to review a whole bunch of --
13 well, not a whole bunch -- a number of Parametric, Turtle
14 Beach, Stripes, Craig-Hallum and Houlihan Lokey documents that
15 were produced in discovery in this case, you or your team?

16 A Yes, sir.

17 Q And the full list of everything you considered is in
18 your reports; correct?

19 A Yes, sir.

20 Q And I think what you told me in your deposition is
21 that what happened is that the plaintiff's class counsel guided
22 the junior people on your team through those documents to
23 highlight ones that they believed you might find interesting.
24 Is that how the process worked?

25 A I don't remember saying that, but that's how the

1 process does work.

2 Q Okay. And I think you mentioned to Mr. Apton you did
3 just a DCF valuation of both Parametric and Turtle Beach for
4 your damages opinion; correct?

5 A Yeah. Other than doing some of the rebuttal stuff,
6 which was --

7 Q Right.

8 A -- goes to Dr. Montgomery's credibility.

9 Q And you mentioned the comparable company analysis and
10 the precedent transaction analysis, but you did not perform
11 those in reaching your damages opinion here; correct?

12 A That's correct.

13 Q Wouldn't you agree that valuations that generally
14 rely on at least two if not all three of these customary
15 valuation methodologies accepted by academic investment banking
16 and valuation professionals are more reliable?

17 A No, not necessarily. What I would say is that the --
18 in the context of an intrinsic value analysis and under
19 Delaware law, that this kind of cash flow approach is the
20 almost exclusive approach if not, you know -- it's certainly
21 weighted more heavily than the others. And only when you can
22 do a good one, I mean, Delaware has this concept that it's very
23 hard to find two companies that are really comparable to each
24 other.

25 So that's one of the reasons that the courts there

1 have pushed us, the valuation professionals, to focus in the
2 context of damages in the context of intrinsic value toward
3 using the DCF alone or if you can. We couldn't even do comps
4 here because, at least at the time of the deal, because
5 Parametric was just too small.

6 MR. KOTLER: May I approach the witness, Your
7 Honor --

8 THE COURT: You may.

9 MR. KOTLER: -- with regard to a potential
10 impeachment?

11 THE COURT: Sure.

12 MR. KOTLER: DX 960.

13 THE COURT: And, sir, you can take the time you need
14 to look through it before counsel --

15 THE WITNESS: Oh, I know what it is because we talked
16 about it before, Your Honor.

17 THE COURT: All right. Then I won't even -- okay.
18 BY MR. KOTLER:

19 Q DX 960 is an expert report that you prepared in a
20 case entitled *Kipperman*, K-i-p-p-e-r-m-a-n, verses *Onex*,
21 O-n-e-x, Corporation in the Northern District of Georgia back
22 in 2009; correct?

23 A That was that long ago? God.

24 Q And you were retained in that case to provide expert
25 testimony; correct?

1 A Yes, by Paul Weiss.

2 Q If you would turn to page 4, paragraph 5. In this
3 expert report, under the heading of "Plaintiff's Improper Use
4 of a Single Valuation Methodology," you wrote, and I'm just
5 going to read it to you, and ask you if I read it correctly:

6 "Valuations generally rely on at least
7 two, if not all three of the customary
8 valuation methodologies accepted by academic
9 investment banking and valuation
10 professionals: CompCo Analysis, Precedent
11 Transaction Analysis, and Discount Cash Flow,
12 DCF, Analysis.

13 Did I read that correctly?

14 A You did.

15 Q Those words were true when you wrote that in 2009?

16 A They were because it was a solvency analysis --

17 Q They were still --

18 A Excuse me. You've got to let me finish.

19 Q Sorry.

20 A Because it was a solvency analysis. It was not a
21 damages analysis in Delaware.

22 Q They were still true at the time of -- these words
23 were still true as of the time of your deposition in 2019 when
24 I asked you about them; correct?

25 A You bet.

1 Q And you still stand behind them today, don't you?

2 A Yeah, I do.

3 Q I'm going to keep that document with you. I have a
4 feeling we're going to need it again.

5 Wouldn't you agree that basing a company's valuation
6 on all three valuation methods is the best way to mirror how a
7 theoretical investor would analyze all of the information
8 available to it in making a decision to buy or not buy in an
9 acquisition transaction?

10 A Yes. Again, that's not a damages analysis, but, yes.

11 Q You would agree with those words?

12 A I think I wrote them.

13 Q I think you did. In fact, back in 2005 in a case
14 called *Litigation Trust of MDIP versus De La Rue Cash Systems*?

15 A Wow. You got to solvency analyses. That's good.

16 Q Okay. Those words when you wrote them were accurate,
17 and you stand by them; correct?

18 A I do for solvency. Absolutely.

19 Q Okay. In fact, haven't you previously criticized
20 another expert for only using a single valuation methodology
21 because it allows for improper manipulation of the values of
22 the company?

23 A Yeah. He did -- that was Dr. Logue, and he did a
24 comps only; and comps, as we know, are not a particularly good,
25 by itself, certainly not a good valuation approach.

1 Q All right. So you have criticized other experts for
2 relying on only one methodology -- one methodology because it
3 allows for improper manipulation of the values of the company.
4 Correct?

5 A Yeah. I'm not -- I mean, I don't know if it was -- I
6 don't think it was DCF because DCF you could tackle the inputs
7 very carefully. So it's tougher when you do it in the context
8 of comps, comparable companies requesting transactions. So,
9 yes, that's correct.

10 Q One of the reasons that you refused to do the --
11 well, let me back up.

12 You understand that Craig-Hallum used all three
13 valuation methodologies in the fairness opinion; correct?

14 A Yes, I do.

15 Q And one of the reasons that you didn't do that here
16 is because of your belief that things changed rather
17 dramatically on the Turtle Beach side. So that meant that the
18 comp analysis as of January 15th would not have resulted in
19 what you believe was an appropriate valuation of Turtle Beach.
20 Is that fair?

21 A Well, I think that's true, but I think it's also --
22 that's sort of -- we used -- to do intrinsic value, we used --
23 and that's what you do when you do an intrinsic value analysis
24 for purposes of calculating damages, and I will say this under
25 what I understand Delaware law to be. So the concept of using

1 comps here, and I think we criticized Dr. Montgomery for this,
2 is -- was exactly what you just read.

3 Q But the rather dramatic change in the business, that
4 only applies to Turtle Beach in your view; right? That doesn't
5 apply to Parametric; correct?

6 A Well, it does. It applies to both because that's the
7 reason that we used the numbers that predated the change in the
8 business because Mr. Potashner decided to, for whatever reason,
9 to do things to cuddle up to Turtle Beach. And so once that
10 happened, when you turn off the -- you have a business which
11 the market likes, which is being valued at \$20 a share -- about
12 \$20 a share, because they've announced that they had proof of
13 concept with the -- with these licensing agreements, so then
14 you turn that off. Then you cancel the one you got, and then
15 you send e-mails to Mr. Stark and Ms. Kenworthy saying, hey,
16 I'm doing my best to help you out. I'm trying to keep the
17 stock price down. Yeah, I'm not going to use anything that
18 followed as a consequence of that kind of change in business
19 because that was a bad thing.

20 Q Your DCF analysis is not based on actual performance
21 of either Parametric or Turtle Beach in 2014, '15, '16 or '17;
22 correct?

23 A Well, that would be hindsight, because it would be
24 after the January 15th, 2014, date. So, no, the answer is
25 no.

1 Q All right. We want to make sure we keep hindsight
2 out of the analysis; correct?

3 A As best we can.

4 Q So, for example, if we were to learn that
5 Parametric's intellectual property, this HyperSound technology,
6 was a total commercial failure in the years following the
7 merger, that would still play no part in your damages
8 calculation because you don't want this hindsight; correct?

9 A That is correct. I mean, I look at the nonhindsight
10 stuff where Turtle Beach thought this technology was the cat's
11 meow. And they not only think it back when they were doing the
12 licensing analysis back in April and -- excuse me March and
13 April of 2013, but they also felt the same way in those numbers
14 in 2014 when they put a \$30 million revenue number for 2015
15 under Parametric.

16 Q We'll get to that.

17 A Good. You say that a lot.

18 Q And I always follow up.

19 You would agree with me that the most reliable way to
20 determine the financial outlook of Turtle Beach and Parametric
21 as of January 15th, 2014, is by looking at the statements made
22 and the documents created around that time by the folks who
23 actually work there?

24 A With respect to Turtle Beach, yes, and I think that
25 they also give them where Parametric had gotten to at that

1 point. That those projections -- yeah, I think, as I said, the
2 2015 number for Parametric showed a \$30 million revenue number.

3 But the reason that I don't accept the numbers -- the
4 rest of the numbers or put those numbers into my DCF is because
5 the business had been dramatically and negatively affected by
6 Mr. Potashner's personal interest in getting a deal done with
7 Turtle Beach.

8 Q I understand what you did, and you have told us now
9 why you did it. So -- many times. So you can continue to
10 repeat it, but it will move things along if you just answer my
11 questions.

12 A I know. I'm sorry. I think that was part of the
13 answer to your question.

14 Q Okay. You would agree that there is the potential
15 for abuses with the DCF analysis through the selection of
16 projections; correct?

17 A I think that I have read that. I mean, I know that
18 there are certain commentators that say that.

19 On the other hand, the Delaware courts have long
20 believed that it's much easier, especially when you have two
21 experts to parse a DCF and what the inputs are and choose the
22 right inputs based upon the different experts in the case, and
23 that's why the State of Delaware at least has decided that the
24 DCF is a much better tool than comps and deals.

25 Q I understand that it's a better tool, but you would

1 agree with me that there is the potential for abuses with the
2 DCF analysis because that analysis can be manipulated through
3 the selection of projections, discount rates and terminal
4 value; correct?

5 A Yes, but not in litigation. I don't think so in
6 litigation because I think what happens, as I just said, is
7 when you have two experts and you have a Judge sitting there
8 examining the credibility of what they're saying and, you know,
9 the appraisal cases, the older appraisal cases, the Judge would
10 pick and select, and they would inevitably use the DCF as the
11 tool, but they would say, okay. I agree with Mr. Atkins, and I
12 agree with Dr. Montgomery, on this one. I agree with -- you
13 know, and that's how they would come to a conclusion, but it's
14 always done in the context, and when you have a competing
15 interest, i.e., two different experts, and you have somebody
16 who's smart judging those things, like a Judge, then it's still
17 a much better tool. And you can't manipulate it if you've got
18 somebody sitting looking over your shoulders saying, no,
19 Mr. Atkins or no, Dr. Montgomery.

20 Q Your standard practice when valuing a company as of a
21 particular date in the litigation context is to defer to
22 management and management's projections; correct?

23 A Yes.

24 Q In fact, you and your team at Cypress do your
25 damnedest to use the company's management projections; correct?

1 A That does sound like me.

2 Q Yeah, it is. Okay. So that would include, for
3 example, differing to the projections prepared by Turtle
4 Beach's CFO, Mr. Hansen, which is exactly what you did in
5 coming up with your intrinsic value for Turtle Beach; correct?

6 A Yes.

7 Q And that would also include deferring to projections
8 that Parametric CFO Mr. Barnes prepared; correct?

9 A Well, unless you're -- as of what date. I mean if
10 you're talking about the January February 2014 time frame,
11 then, no. Because by then the business had been damaged, and
12 we have to say, okay. This is not the Parametric that I was
13 looking at when it came to -- this was not the business model.
14 This was not the model. This was a damaged model that was
15 damaged by an individual's desire to achieve a result, i.e., a
16 merger with Turtle Beach. So what do I do then?

17 Then I have to differ backwards in time to see what
18 the nondamaged projections look like, and that's how we used
19 the August numbers for most of the business. And since there
20 were no projections that were given to cry down the volume
21 licensing, we went backwards and found the projections that
22 Turtle Beach had prepared with respect to licensing numbers.

23 Q So for Turtle Beach you followed your standard
24 practice, and you used projections, management projections
25 right around the date of the valuation without really monkeying

1 around with the numbers at all; correct?

2 A Yes, sir.

3 Q For Parametric you did not use projections from
4 around the merger date; correct?

5 A You keep saying don't repeat myself, and you asked me
6 the same question.

7 Q Well, I'm getting there. The good stuff is coming I
8 promise.

9 A Well, the answer is we went back to the, what I would
10 describe as the unaffected projections that were given to
11 Craig-Hallum, plus added in licensing revenue since that was
12 what was the driver of this business prior to Mr. Potashner
13 doing what he did.

14 Q So my question is really simple: You did not use
15 projections from February 2014 for Parametric; correct?

16 A That's because they were tainted. Yes.

17 Q A simple, yes, would just be fine.

18 A No. If I could give a simple, yes --

19 THE COURT: The explanation is okay.

20 MR. KOTLER: Okay.

21 THE WITNESS: Thank you, Your Honor.

22 BY MR. KOTLER:

23 Q Now, in your report you rely on a set of projections
24 for Parametric that your report describes as the -- refers to
25 as the, quote, January 15th, 2014, projections; right?

1 A This was the -- as of that date they were the ones we
2 used. Yes. Correct.

3 Q Let me show you your report.

4 A Oh, no. I just said correct.

5 Q You agree with me that your report defines the
6 projections that you used for January for Parametric you define
7 them in your report as the, quote, "January 15th, 2014,
8 Parametric projections." It's in paragraph 22.

9 A No. That's what I -- that's correct. That's what I
10 said before.

11 Q Now, Parametric itself, the company, the CFO, even
12 the CEO, did not actually prepare any projections on or around
13 January 15th, 2014, that look anything like your so-called
14 January 15th, 2014, projections; right?

15 A Yes. That's correct.

16 Q So you, not Parametric, created your so-called
17 January 15th, 2014, projections in 2019 entirely for purposes
18 of this case; correct?

19 A Nope.

20 Q Let's see. So you would agree with me that there was
21 no one at Parametric who had prepared any projections that look
22 like yours as of January 15, 2014; correct?

23 A Correct. Let me just jump ahead. We defined the
24 projections, defined as the January projections.

25 Q Right.

1 A The projections, as we both know, were done from the
2 Craig-Hallum report in August of -- August of 2013 to which we
3 added the Turtle Beach projections with respect to revenues
4 that were done as of end of April 2013. We just defined
5 them --

6 Q And the date was 2013.

7 A '13. Did I say -- yes, that's what I meant. Thank
8 you very much.

9 Q So all right. I would agree with you. Let's cut to
10 the chase. So when you define them as January 15th, 2014,
11 projections, you're combining two sets of data: what you
12 describe as Turtle Beach licensing projections from April
13 of 2013 and Parametric management projections that were used in
14 the August 2013 fairness opinion. Right?

15 A That's correct.

16 Q So neither of those things actually happened within
17 five months of January 15th, 2014; correct?

18 A Absolutely.

19 Q You would agree with me that an expert performing a
20 damages valuation analysis must not substitute his or her
21 judgment for the well-reasoned analysis of the parties at the
22 time of the transaction in question?

23 A When did I write that?

24 Q I'll tell you. 2008. Rebuttal report, *Kipperman*
25 *versus Onex*. You agree that you wrote that?

1 A Yes. (Indiscernible) yes. And I still believe that,
2 and I still believe that's what we did here.

3 Q Okay. You would also agree with me that an expert
4 who does substitute his or her judgment for the well-reasoned
5 analysis of the parties at the time of the transaction in
6 question violates one of the most basic and fundamental
7 principles of valuation analysis and a development of
8 projections?

9 A Yes. Which is why we did not do that here.

10 Q So just so we're clear, it's your expert opinion that
11 your so-called January 15th, 2014, projections, which you
12 created by lumping together two sets of data created many
13 months before January 15th, 2014, are more accurate and more
14 reliable than any projection actually prepared by Parametric
15 management at any time before, during or even since the merger?

16 A Absolutely.

17 Q Okay.

18 THE COURT: And that's because of Mr. Potashner's
19 conduct?

20 THE WITNESS: Correct, Your Honor.

21 THE COURT: Okay. Just making sure I close that
22 loop.

23 BY MR. KOTLER:

24 Q All right. With regard to Mr. Potashner's conduct,
25 you're making an assumption; correct?

1 A I read e-mails, yes, and I am --

2 Q But --

3 A Let me finish, please.

4 I've read a lot of e-mails. And I know that I've
5 only touched on -- apparently I've only scratched the surface
6 of those e-mails. You're going to hear a lot more of them
7 going forward.

8 The ones I've seen are him saying in as early as
9 March 2013, saying, oh, we're going to slow roll things. Don't
10 worry. The stock price won't go up because I'm not going to
11 tell the market something.

12 We have these deals that we're going to defer. We're
13 not going to do -- we're going to defer doing licensing. Yeah,
14 that's all March and April of 2013.

15 Q Now, you weren't copied on any of these e-mails;
16 correct? Just making sure.

17 MR. KOTLER: Excuse me, Your Honor.

18 THE COURT: Yes. I understand that.

19 THE WITNESS: No. Experts don't really -- it's a
20 tough business we're in because we have to do stuff after the
21 fact --

22 MR. KOTLER: Yeah.

23 THE WITNESS: -- and we have to sort of pretend we're
24 in the middle of the action back when the action is happening.

25 THE COURT: That's why it's called forensic

1 investigation.

2 THE WITNESS: Correct, Your Honor.

3 BY MR. KOTLER:

4 Q You are assuming that Mr. Potashner's representations
5 were all truthful, honest and well-founded; correct?

6 A I think that Mr. Potashner's saw it -- wrote what he
7 saw and wrote what he was in. He was very straight with trying
8 to suck up to -- that's a horrible word -- trying to curry
9 favor. There's the better words -- curry favor with the Turtle
10 Beach people because he wanted to do the deal with Turtle
11 Beach.

12 Q So you're assuming he was a straight shooter?

13 A I don't know if he's a straight shooter. I think
14 what he's doing when he's -- when he's simply saying I'm trying
15 to -- I'm the CEO of my company, the executive chairman of my
16 company, and I'm trying to keep the stock price down? I
17 don't -- I don't know that a straight shooter does that. I
18 mean, that sort of forgets the fact that there's a fiduciary
19 duty somewhere floating around.

20 Q You have no way of knowing one way or another if
21 Mr. Potashner was actually stalling licensing opportunities or
22 if he was just saying that as part of a negotiation tactic with
23 Mr. Stark, do you?

24 A Well, if there's a negotiation tactic, I don't know.
25 And if it was a negotiation tactic with Mr. Stark, it may be

1 one of the dumbest negotiating tactics if you're a fiduciary
2 for a company that's talking a merger that I've ever heard.

3 Q And you have no way of knowing one way or another if
4 there were actual licensing opportunities to be stalled in the
5 first place?

6 A Well, I talked to Qualcomm. He did what he -- they
7 terminated the loan with Epsilon. They stopped -- they had an
8 agreement principal with Shanghai, with Optic (phonetic), and
9 they just walked away from them. I mean, that's in the record,
10 and that's what he did.

11 Q Well, since you want to tell us about your review of
12 the record, I have no doubt that you studied what Mr. Barnes
13 had to say about the State of Parametric's licensing efforts;
14 right?

15 A When was this?

16 Q In his deposition.

17 A Yeah. After-the-fact litigation-driven stuff. So,
18 yeah, I'm going to discount that heavily. I didn't see
19 Mr. Barnes on any of those e-mails.

20 Q Hmm.

21 A Hmm.

22 Q So you have no idea -- strike that.

23 So when Mr. Barnes testified that none of the
24 licensing discussions was at the stage that would produce
25 near-term money to Parametric, toss that one away; right?

1 A Well, let's look at the numbers. The answer is I
2 didn't toss anything away. All right. What I say is I
3 discounted it. I didn't say I throw it away. I discount
4 heavily after-the-fact litigation-driven testimony by a party
5 in interest. So the way the projections worked in the original
6 stuff, there was not going to be licensing revenues until 2014
7 anyway. The 2013 numbers is the \$1 million that you and I went
8 back on -- back and forth on 600,000 versus a million. That
9 didn't have licensing revenue. So that statement, depending on
10 what the time frame is, may be correct.

11 Q So when Mr. Barnes testified under oath that none of
12 the licensing discussions even could be closed during the
13 period while the merger was being negotiated, that didn't make
14 its way into your report, did it?

15 A It didn't -- it was not relevant to the report. But
16 the numbers that were in existence -- when you look at the
17 numbers that are -- that we had that we put up on my slide 4, I
18 think 5, that had the Turtle Beach numbers, their licensing
19 revenues were also not -- the revenues for sales of products
20 that they planned to license from Parametric didn't kick in, I
21 don't believe, until 2014 anyway. And then most of it, and a
22 lot of it -- the bigger revenues didn't kick in until 2015.
23 But those projections still create value. And that's -- when
24 you take a DCF and you discount those future cash flows to
25 Parametric back in time and you get \$24.43 per share.

1 Q You're aware that Parametric had a Board of Directors
2 at the time of the consideration of the merger; right?

3 A Yes.

4 Q You did not review the testimony of Mr. Kaplan, one
5 of the members of the Board of Directors?

6 A I don't think so.

7 Q So you're not aware of what he had to say about
8 Parametric's licensing windfalls; right?

9 A If I didn't -- if it's not in the documents that we
10 considered. Again, if we did consider it, then, yes, back in
11 2019, you know, I was aware of it. But if it's not in our list
12 of documents considered, and it sounds like it's not, then we
13 did not look at it.

14 Q So you're not aware of Mr. Kaplan's testimony under
15 oath that these licensing arrangements were smoke and mirrors
16 that evaporated?

17 A When did -- that was his deposition; correct?

18 Q It was.

19 A Yeah. It was after the fact litigation-driven
20 testimony. I discounted it.

21 Q Is it only defendants who offer this after the fact
22 litigation-driven testimony? I just want to make sure.

23 A I don't know. I mean, I haven't seen any --
24 (indiscernible) plaintiff testimony. What was it -- I have not
25 reviewed our two plaintiffs' testimony.

1 Q Okay.

2 A I will tell you, Mr. Kotler, I've been in cases where
3 we have had that kind of stuff, and I said the same thing about
4 my client's testimony as I say about the other side's
5 testimony. I'm very cautious about testimony given during a
6 litigation.

7 Q All right. I'd like to show you DX 754.

8 MR. APTON: What are you looking to do with this,
9 David?

10 MR. KOTLER: Actually I'd like to have it admitted.

11 MR. APTON: Well, will you have our expert reports
12 admitted as well?

13 MR. KOTLER: 754 is the fairness opinion.

14 MR. APTON: Oh, 754. Excuse me. Sorry.

15 MR. KOTLER: Yeah, no, I'm not touching the expert
16 reports.

17 THE COURT: Any objection?

18 MR. APTON: I'm sorry, Your Honor. I'm just trying
19 to pull it up.

20 THE COURT: It's all right.

21 MR. APTON: Just to make sure.

22 Does anybody need the morning break, or are we all
23 doing okay?

24 THE WITNESS: Yeah, I'll take a morning break, Your
25 Honor.

1 THE COURT: You're okay?

2 THE WITNESS: I'll take the break. If you want a
3 break, I'll take the break.

4 THE COURT: Well, no, I'm waiting on everybody else.
5 I'll go to lunch, but, you know.

6 Okay. Nobody wants a break.

7 MR. APTON: And no objection to the exhibit.

8 THE COURT: Be admitted.

9 (Defense Exhibit Number(s) DX-754 admitted.)

10 BY MR. KOTLER:

11 Q You've reviewed this document; correct?

12 A Yes, sir.

13 Q So this is the presentation that Craig-Hallum
14 provided to the Parametric board on August 2nd, 2013;
15 correct?

16 A I'm only looking at the first page, but I'm going to
17 give you the benefit of the doubt and say, yes.

18 Q Okay. I'm going to direct you to page 22 of the
19 document, and it will magically show up for you.

20 These are the Parametric forecasts that you relied
21 upon for your -- in part for your DCF valuation of Parametric
22 as of the merger date; correct?

23 A I presume the Beam is Parametric?

24 Q It is.

25 A Usually code names use the same first letter. So

1 that's -- I forgot -- (indiscernible).

2 Let me just see. Yeah. This is definitely the --
3 yes, these are the numbers.

4 Q Okay. And do you see in that footnote it says,
5 "Forecasted data per Beam management estimates."

6 Right?

7 A Yes, sir.

8 Q And we have a million dollars forecast for 2013;
9 right?

10 A Yes, sir.

11 Q And then up to 23.1 million for 2014. And then it
12 increases all the way up to 51.8 million for 2017; correct?

13 A Yes, sir.

14 Q So these are effectively the floor projections in
15 your valuations to which you later added licensing revenues.
16 Is that fair?

17 A Yeah, I would normally take issue with you, the word
18 "floor," but I think given that (video interference) licensing,
19 yes, that's probably a good word to use. These are the base
20 projections on which the licensing was handled --

21 Q Okay.

22 A On to licensing --

23 Q You're aware from Mr. Barnes's testimony --

24 By the way, Mr. Barnes was never a defendant in this
25 case; isn't that correct?

1 A I don't know for sure, but that sounds right.

2 Q Okay. So you're aware from his testimony that he
3 described these projections as aggressive projections; right?

4 A Again it's, you know, after the fact litigation. I
5 don't know who his friends are and who his friends aren't, but
6 this, I don't, as I say, I don't pay attention.

7 These are the projections that were given. When you
8 give projections to an investment banking firm to use for
9 (video interference) purposes, you better be able to back them.

10 Q So what assumptions did Mr. Barnes --

11 A I don't see the word aggressive on this page.

12 Q No. It's in his deposition, which you're right.

13 And since you read his deposition, you know what
14 assumptions he was making when he made these aggressive
15 projections, don't you?

16 A Restate the question without the word aggression.

17 When he made these -- the answer is (indiscernible) I
18 don't remember.

19 Q Okay. Well, I'll tell you. His two assumptions were
20 that either Parametric would complete a merger or obtain
21 \$15 million early enough in 2013 -- \$15 million in financing to
22 successfully commercialize HyperSound sometime by the end of
23 2013.

24 A Yes, I do remember that.

25 Q Okay.

1 A And they had that wonderful Aspire term sheet of
2 \$20 million that would've allowed them to do it.

3 Q Understood. I'm just making sure we're in agreement
4 as to what Mr. Barnes was assuming when he made these
5 projections that you rely on, and I think we have agreement
6 there.

7 You would agree with me that the intrinsic value of
8 Parametric means the amount a willing buyer would be willing to
9 pay for it as a standalone company?

10 A We went through this before.

11 No. It's a DCF number. And I don't think I said
12 that in my deposition. This is not a -- this is not a fair
13 market value standard. Willing buyer, willing seller, not
14 under compulsion to buy or sell. This is an intrinsic value
15 statement, which is what is this company worth on a certain
16 date.

17 Yeah, in my deposition early, I think I said
18 something like that, but I corrected you later in my
19 deposition.

20 Q Okay. So you agree with me --

21 A The answer is, yeah. I said -- I went to fair market
22 value early in the depo, but then later in the depo I did say
23 that was wrong. This was -- it's not -- it's not a fair market
24 value standard.

25 Q So in calculating the intrinsic value of Parametric,

1 you were not assuming a merger with Turtle Beach; correct?

2 A Correct.

3 Q So by process of elimination, you were, as Mr. Barnes
4 had assumed, that there would have been a financing of at least
5 \$15 million followed by a successful product launch by the end
6 of 2013; correct? That's how you get to the -- to those
7 projections?

8 A Let me just -- let me explain. The answer is yes,
9 that is correct.

10 Q Okay.

11 A The explanation is that when you do projections, if
12 you have positive NPV, i.e., the company is going to have -- is
13 going to take money, it needs money to go in, and then money
14 will come out of it later, what professionals like me do,
15 professional bankers do is you assume the money will be
16 available.

17 Now, interestingly, here, you don't even have to
18 assume that. It was available because Aspire had produced a
19 term sheet, and a very aggressive term sheet in July of that
20 year for \$20 million. And that market, as opposed to a
21 (indiscernible), which is a discount to the market.

22 So not only do we assume that as professionals in the
23 theoretical world of doing valuation, here you actually had
24 that.

25 Q As part of your damages analysis, you're not offering

1 any expert testimony that I've seen as to whether the Aspire
2 deal was a good deal or a bad deal; correct?

3 A Well, I think in my deposition I told you it was --
4 the answer is I give opinions. And when I'm asked the
5 question, I can assess things. I'm an investment banker.

6 And I looked at that term sheet, and I said that's a
7 good term sheet because it's an at market term sheet. It's not
8 a -- it's a call. You may get to call the money. It's not
9 when Aspire wants to put the money. It's when Parametric wants
10 the money. That's the kind of term sheet that guys dream
11 about, CEOs dream about, CFOs dream about.

12 Q Okay. Well, maybe someone will send you the
13 testimony from those folks when they hear about that.

14 Let us look at -- now, you know, by the way, that
15 Parametric -- first of all, its fiscal year ends --

16 A September 30th.

17 Q September 30th. Right. You know where I'm going
18 with this.

19 And you know that they did not meet their \$1 million
20 financial projection that they had made as of the August
21 fairness opinion; correct?

22 A Yes. And I think that in part we discussed this in
23 my depo.

24 Well, first of all, they did a half million dollars,
25 which is better than zero. And secondly, by the end of March,

1 Mr. Potashner was already taking his eye off the ball, looking
2 forward to a deal with Turtle Beach. So it does not surprise
3 me that they did not hit the million dollars and they hit a
4 half million.

5 Q Just so we can agree on the math -- I'll actually
6 give you credit. It was \$562,000, which is about a 44 percent
7 miss off of the \$1 million. You would agree with me --

8 A A 40,000-dollar miss.

9 Q Yes. 40 percent.

10 A You and I did this in the depo. Let's not waste the
11 Court's time.

12 Q 40 percent miss.

13 A \$400,000.

14 Q Okay.

15 Now, you know that Mr. Barnes prepared projections
16 after these Craig-Hallum fairness projections that are as of
17 August 2nd, 2013; right?

18 A Yeah.

19 Q Multiple sets of projections?

20 A Yes.

21 Q None of which you rely upon in your evaluation;
22 correct?

23 A That's correct. Because by then, I'll say it for the
24 fourth time maybe, the company was already experiencing the
25 effects of Mr. Potashner's attempts to slow down the licensing

1 business, not hire people, not get independent financing,
2 turning down other financing opportunities because he was -- he
3 wanted to do the deal with Turtle Beach.

4 (Pause in the proceedings.)

5 THE WITNESS: Your Honor, may I stand up for one
6 second?

7 THE COURT: Yes. Absolutely.

8 THE WITNESS: Actually, Your Honor, would you mind if
9 we took a five-minute morning break?

10 THE COURT: That will be fine. We will take our
11 five-minute morning recess.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: At 10:44. So you have gone 49 minutes so
14 far.

15 (Proceedings recessed at 10:44 a.m., until 10:45 a.m.)

16 (Pause in the proceedings.)

17 THE COURT: All right. Let's go.

18 Sir, if you want to stand up because your back is
19 hurting, that's okay.

20 THE WITNESS: Oh, no, it's just my knee, actually,
21 that's stiff, Your Honor. Thank you.

22 THE COURT: It won't bother any of us if you stand
23 up.

24 THE WITNESS: Okay. Thank you. We tried for five
25 and got eleven.

1 BY MR. KOTLER:

2 Q Mr. Atkins, you told us before your views on
3 incentives to shade testimony and why you discount deposition
4 testimony, but I want to talk about incentives of the folks who
5 were involved in making projections at the time they were
6 making the projections; okay?

7 A Yes, sir.

8 Q Now, Mr. Barnes had no incentive to slow-roll the
9 Parametric projections and understate Parametric's future
10 financial performance; did he?

11 A As of when?

12 Q As of the time of the Craig-Hallum presentation, for
13 example.

14 A Yeah. I agree.

15 Q You agree with me, he didn't have any incentive to do
16 that; right?

17 A Right.

18 Q And do you know what Mr. Barnes's shareholdings in
19 the company were?

20 A No, I do not.

21 Q I will represent to you he was the second largest
22 shareholder. And if you accept that as true, you would assume
23 that somebody who was a very large shareholder of the company
24 would have every incentive in having the valuation be as high
25 as possible so that Parametric would receive as much value as

1 possible; correct?

2 A No. I would assume that someone who is a CFO of a
3 company would do his darndest or her darndest to get it right.

4 Q Right. And you have no reason to --

5 A Irrespective of shareholdings and irrespective of
6 anything else. I mean, if you have a job to do, you do it
7 right.

8 Q And you have no reason to doubt that Mr. Barnes got
9 it right; correct?

10 A I don't know if he got it right. I mean, we saw the
11 projections. Projections are projections. That was at that
12 point management's best estimate of what the company was going
13 to do as of that particular date.

14 Q And the later projections from Mr. Barnes that we're
15 about to get to that you reviewed and considered as part of
16 your report, you expect he'd try to get it right there as well?

17 A Well, yeah. I mean, the company at that stage, as we
18 talked about a little bit earlier, it had already started to
19 feel some of the negative effects of Mr. Potashner's actions in
20 seeking to ensure that the deal would get done with Turtle
21 Beach.

22 Q In your search for the truth, did you find any
23 projections that Mr. Barnes prepared that contained all of
24 these multi hundreds of millions -- tens of millions of dollars
25 of licensing revenue that you came up with?

1 A No, because the license -- that's the other thing.
2 There was no licensing revenue even as of the Craig-Hallum
3 numbers. And that tells me that Mr. Potashner -- I don't want
4 to use too bad of an adjective -- that is actions were already
5 being -- already affecting the company because as of March
6 licensing was a huge component.

7 It was announced -- this is a public company. Public
8 companies, there's consequences when you say things to the
9 markets. When you say to the market licensing is going to be
10 one of the big drivers of our business and then a couple months
11 later they're not even in the projections, you say so what's
12 going on here? You know, what is Mr. Potashner up to? I have
13 no idea, you know, what conversations he or Mr. Barnes may have
14 had. All I know is there were no licensing revenues. And
15 that's a very different business model than the one they were
16 talking about three months earlier.

17 Q I understand that. But you're a numbers guy, so
18 undoubtedly you went back and found projections that predated
19 this supposed slow-roll; right? How about projections from the
20 end of 2012? What do those say about licensing revenues? You
21 have no idea, do you?

22 A I don't -- we looked for licensing revenues. We
23 didn't find any licensing revenues. The company had started
24 doing licensing. The market cap went up tens of millions of
25 dollars when they announced the deal with Shanghai and with

1 Optek. So --

2 Q So even --

3 A So let me finish, please. Please.

4 Q I apologize. I thought you were done, sir.

5 A Thank you. Yeah, we're not going to do what happened
6 yesterday.

7 Q Definitely not.

8 A So the -- we did see that Mr. Potashner, starting in
9 late March and early April, began talking about -- began
10 sending emails to Ms. Kenworthy, to Mr. Stark, I don't know to
11 whom else, I didn't look who the cc's were, but saying we're
12 going to slow down the licensing business. We're not going to
13 do this one. I'm not going to -- I'm going to slow-roll this.
14 We're also going to slow-roll hiring of people, which may have
15 something to do with the difference between the \$400,000
16 difference between the million dollars that they did and the
17 560,000 thousand dollars they did. So, but all I know is that
18 by the time we looked at this, we said where are the licensing
19 revenues? They should be here. The company -- public company
20 said this is our future. We're going to be shipping product by
21 the end of the year. We're going to be cash flow positive,
22 which I presume meant that they expected the licensing to have
23 a positive impact in 2014. No, it's gone.

24 Q I understand that. So I think you have said your
25 assumption, based on the materials that were provided to you by

1 Mr. Baron's firm so that you could review them, gave you enough
2 information to keep telling us that this slow-roll started
3 March; is that fair?

4 A I think I saw an email dated March 28th.

5 Q Okay. We can agree on March. You don't recall
6 seeing anything provided to you prior to March?

7 A Not about the slow-roll.

8 Q Okay. So where were the projections that were
9 provided to you prior to March of 2013 in which all of these
10 massive licensing revenues were forecast by Parametric
11 management? Where are those projections?

12 A I don't need those because I have -- I have even
13 better. I have a buyer. I have a buyer's projections of what,
14 if the deal fell apart, they would do with respect to
15 getting -- creating revenues from licensing products starting
16 in 2014 and going forward. So I had -- which is -- to me
17 that's even better than have Mr. Barnes do it because now I
18 have somebody who has a marketplace to use these products,
19 which is Turtle Beach.

20 Q Let's just be clear. And we'll get to the supposed
21 buyer's projections, but let's just be clear. There is not a
22 single document, a single projection that you have seen or are
23 relying upon prior to March of 2013 that contains in any way,
24 shape or form these hundreds of thousands of dollars and
25 millions of dollars of licensing revenue that you are now

1 adding into your projections; correct?

2 A No. I just told you, I had the Turtle Beach
3 projections.

4 Q No, forget Turtle Beach. Parametric.

5 A Oh, Parametric. No.

6 Q Right. So before the merger discussions, before
7 anybody got in touch with anybody about a potential merger,
8 when Parametric was trying to figure out what they were going
9 to do with their business and they were sitting on this -- all
10 these licensing opportunities, you haven't seen one single
11 projection that contains even a dollar of licensing revenue;
12 correct?

13 A That is correct.

14 Q Thank you. I do want to talk about Mr. Barnes's
15 projections after the Craig-Hallum opinion.

16 MR. KOTLER: DX-845. I'd like to move for admission.

17 THE COURT: Any objection to DX-845?

18 MR. APTON: I'm just not sure if J.T. has seen this
19 before, so --

20 MR. KOTLER: I'll represent he has, but I can show
21 you.

22 THE COURT: Well, if that's the only issue, that's
23 not a basis to not admit it. Is there an objection to the
24 admission of it?

25 MR. APTON: Oh, I'm sorry. No, there's no objection,

1 Your Honor.

2 THE COURT: All right. It will be admitted.

3 MR. KOTLER: Thank you.

4 (Defense Exhibit Number(s) DX-845 admitted.)

5 THE COURT: And, sir, if you haven't seen it before,
6 please feel free to take the time you need to read it.

7 THE WITNESS: Could you make the -- it's blurry,
8 actually. I guess, could you make it bigger? It's still
9 blurry but I can read it, at least.

10 MR. KOTLER: Yeah.

11 THE COURT: And, sir, if you want to get up and look
12 at the really big TV over there, you're welcome to go do that
13 if that would help.

14 THE WITNESS: That would be embarrassing, Your Honor.

15 THE COURT: Well, you're not the first person who's
16 had to do it, so.

17 THE WITNESS: Thank you. And assuming this is not
18 too long, Mr. Kotler, could you have your people start at the
19 bottom and scroll up?

20 MR. KOTLER: Sure. Where I'm really going to be
21 focused is on the projections that are attached to it, but by
22 all means, please review the email.

23 THE WITNESS: Yeah. And this is the bottom right
24 here? I have seen this, so.

25 MR. KOTLER: Okay.

1 THE WITNESS: Let me just take a look here.

2 MR. KOTLER: If it would be easier, I have a paper
3 copy of just the email.

4 THE WITNESS: Yeah, it's okay. This is actually
5 bigger than your paper copy. These 64-year-old eyes. And if
6 you could go back up to the top now, please. Thank you. Okay.

7 BY MR. KOTLER:

8 Q So this is a document and a set of projections that
9 you considered as part of your expert opinions in this case;
10 correct?

11 A Yes. I think so. It is.

12 Q It's an October 16th email from Mr. Barnes to a
13 gentleman at Houlihan Lokey, who you understood was one of the
14 investment bankers involved in the transaction?

15 A It was -- I don't know if they were involved in the
16 transaction, but they were representing. I don't know if they
17 got a fee out of the final transaction. But they and
18 Craig-Hallum were the two advisors to the company.

19 Q Fair. And you see in the top email Mr. Barnes is
20 saying he updated the model to show last year and a new twelve
21 month. Do you see that right at the very top?

22 A I see that.

23 Q Okay. Now let's go over to the projections, which
24 David will bring up on the screen. And I'm going to direct
25 your attention to -- let's find the fiscal year 2014

1 projections.

2 A I think you want line 19.

3 Q Let me make sure I have that. There we go. Oh, it's
4 the very right column is the summation of it, the \$11,602,000.
5 It's coming. Got it? We're getting there.

6 A Technology is a good and bad thing.

7 Q Yeah. Okay, we're there now. So you see under
8 fiscal year 2014 final, in that line 19 you identified for
9 revenues, Parametric is forecasting now \$11.6 million in
10 revenues; correct?

11 A For -- yeah, that's not line 19, but that's --

12 Q Sorry. Line 13.

13 A Yes.

14 Q Okay. So --

15 A That's line 23, but okay.

16 Q I can't read, either.

17 A Welcome to my club.

18 Q On that document in front of you it says as of
19 two months after the fairness opinion that the Parametric CFO
20 had reduced Parametric's fiscal year 2014 forecast from the
21 23.1 million that you relied upon to 11.6 million; correct?

22 A That is correct.

23 Q And you also knew that in these projections the 2017
24 forecast had now dropped to 39.6 million, down from the
25 51.8 million that you relied upon?

1 A You might want to scroll over.

2 Q Yeah, we'll get there.

3 A Quickly. So 2017 is now 39 million.

4 Q Right. And you were relying on 51.8 million;
5 correct?

6 A Yes.

7 Q Okay. And, in fact, as of even fiscal year 2019,
8 Parametric still was not projecting the 51.8 million that you
9 used in your opinion for 2017; correct?

10 A Yeah. This is October. This is -- we're now
11 starting to see and it gets worse and worse as we go towards
12 the January-February period because we're seeing the impact of
13 the failure to focus on the basic business as well. And then
14 we also see a real hole with the lack of licensing, which was
15 already reflected in the August projections. So, yeah, this
16 is -- this company is starting to go down. And it's no
17 surprise in light of Mr. Potashner's approach to not focusing
18 on the business, not get the money he needs to build the
19 business to focus on doing a deal with Turtle Beach.

20 Q You knew about these projections when you prepared
21 your report but you decided not to rely upon them; correct?

22 A That is correct.

23 Q Had you relied upon them, of course your claim
24 damages number would have been lower than it is; correct?

25 A I'd have to run the numbers before I could give you

1 an answer to that.

2 Q All else being equal when the projections are lower
3 year after year after year after year for Parametric, you would
4 expect that that would spit out a lower intrinsic value and
5 therefore less damages; correct?

6 A Well, all things being equal, if I'm looking at the
7 net gain number, which I think is line 35, which is their
8 EBITDA, and if you could scroll down just a little teeny bit
9 more so I can see what the DNA is. There it is. Got it. Line
10 41.

11 Yeah. So this company really has -- this is not a
12 lot of depreciation. So the EBITDA is going to be in 2017,
13 10 million; twelve times, 120. Yeah, I would think that all
14 other things being equal, that's probably correct.

15 Q You talked a little bit on your direct about your
16 critiques of Dr. Montgomery. You prepared a rebuttal report
17 specifically to address Dr. Montgomery's initial analysis;
18 correct?

19 A Yes.

20 Q And you took him to task for relying on the fairness
21 opinion projections; correct?

22 A Well, I don't know what to task means. We just
23 don't -- we don't view fairness opinions as valuation tools in
24 the context of determining intrinsic value and damages.

25 Q I'll read you your words from your report. Tell me

1 if you still agree with that.

2 A Did I use the words "to task"?

3 Q Close. "Even though Dr. Montgomery specifically
4 claims to provide a valuation analysis as of January 15th,
5 2014, Dr. Montgomery incorrectly relies on outdated information
6 from early August 2014."

7 Do those sound like words that you wrote in your
8 rebuttal report?

9 A It sounds like my direct testimony.

10 Q Okay. Good.

11 A I don't think that's taking him to task, however.

12 Q You also critiqued Dr. Montgomery's reliance on the
13 fairness opinion projections as being unreliable; correct?

14 A Yes, because -- for Parametric.

15 Q Right.

16 A No, no, no. No, for -- I'm sorry, for Turtle Beach.
17 I misspoke.

18 Q You also fault Dr. Montgomery for looking at the
19 fairness opinion projections instead of contemporaneous
20 documents; correct?

21 A Could you repeat the question? I'm sorry.

22 Q You also fault Dr. Montgomery for looking at the
23 fairness opinion projections instead of contemporaneous
24 documents?

25 A Yes. I like the word fault better than to task.

1 Q You even described this in your rebuttal report as
2 mixing apples and oranges.

3 A Do I? That's correct, but I didn't know I was that
4 prescient.

5 Q So let's take a look now at the projections you rely
6 upon to value Turtle Beach.

7 MR. KOTLER: DX-944. I seek permission --

8 THE COURT: 944. Any objection?

9 MR. APTON: No, Your Honor.

10 THE COURT: It will be admitted. Thank you.

11 (Defense Exhibit Number(s) DX-944 admitted.)

12 THE WITNESS: And could you blow this up for me,
13 please. Thank you.

14 BY MR. KOTLER:

15 Q Does this appear to be the cover email -- and I will
16 show you the projections -- containing the Turtle Beach
17 projections that were given to Wells Fargo that you relied upon
18 for your valuation of Turtle Beach as of the merger date?

19 A It does.

20 Q Now, you are aware -- well, let's go to the
21 projections, please.

22 A Just -- before we do, I just want to read one
23 paragraph, the bottom paragraph of the email.

24 Q Go ahead. Go back to the cover email.

25 A Okay, thank you.

1 Q So this is the document that you found reliable when
2 it came to valuing Turtle Beach as of the merger date; correct?

3 A I think the word reliable -- we used it, okay. We
4 felt that this was management's -- Turtle Beach management's
5 best estimates of what they were going to do, based as of the
6 merger date, so yes. I mean, reliable -- I'm always cautious
7 about the word reliable in the context of projections.

8 Q Fair enough. Because projections are inherently
9 uncertain?

10 A Projections are inherently wrong.

11 Q Fair enough.

12 A That's the first thing you learn.

13 Q Well, in this inherently wrong set of projections,
14 you are aware that right in this very same document are
15 projections for Parametric as of the very same date?

16 A Yes, sir.

17 Q Now, you -- in your direct testimony you criticize
18 Dr. Montgomery for relying on numbers after Turtle Beach's
19 financial performance had degraded, I believe is the word you
20 used. Do you recall giving that testimony earlier?

21 A I don't recall the word degrade, but that sounds like
22 me.

23 Q In fact, Parametric's numbers had degraded by a whole
24 lot more as of the time of these February 2014 projections?

25 A Yes. And if you'd like me to say for the fifth time

1 why I think that, I will, but I can skip that.

2 Q You can just answer yes. I think we all know why.

3 A Okay.

4 Q Okay. But let me show you the numbers, just so we
5 have them in the record. So we're going to go to the
6 management revenue forecast for Parametric in 2014, which will
7 be in column AK, Row 6. Do you see that? Four million
8 dollars.

9 Q It says VTB Holdings. Sorry.

10 A But this -- you're representing this is Parametric?
11 Oh, there it is, PMT.

12 Q Yes.

13 A I get it. I get it. I get it.

14 Q Yeah.

15 A Sorry, sorry. Sorry, sir.

16 Q This is Parametric projections in the document.

17 A Yes.

18 Q Okay. So you knew, as of the time that you did your
19 valuation here, that on the very same day in the very same
20 document that contained the Turtle Beach projections that you
21 relied upon, there were Parametric projections that, instead of
22 \$23.1 million in revenue forecast for fiscal 2014, there were
23 \$4 million. You knew that; right?

24 A Yes, sir.

25 Q Okay. And that's an 83 percent drop, 23 million down

1 to 4 million?

2 A It depends what your denominator is, but, yeah, I
3 think you're right.

4 Q Okay. I have no idea what my denominator is.

5 A Twenty-three.

6 Q And had you used these projections for Parametric in
7 your damages analysis, all else being equal, the claimed
8 damages would have been lower than what you have testified to
9 today; correct?

10 A If we'd used these, yes.

11 Q You don't know by how much, do you? You haven't done
12 that calculation?

13 A Not off the top of my head. If you want to scroll
14 out to -- no, I would not be able to do it.

15 Q So when you told us earlier that you rely and defer
16 to management projections, at least when it comes to
17 Parametric, that's not completely true; correct?

18 A Well, we talked about a lie. You can repeat that
19 again, if you'd like. But the answer is, we decided that these
20 projections were reflective of a company who is not the
21 Parametric that was the one that we felt was the one that
22 should have been, which would have been licensing revenues,
23 which would have focused on its business, would not have
24 slow-rolled this and slow-rolled that. So we focused on what I
25 would describe as the unaffected Parametric.

1 Q So, in other words, you decided in 2019, from the
2 comfy confines of your office in New York as a litigation
3 expert that you knew more about how to project Parametric's
4 revenues starting in 2014 than its CFO knew in 2013 and 2014;
5 correct?

6 A Nope, that's not true.

7 Q You just ignored those of his projections that were
8 lower than the ones you decided to rely upon?

9 A We used his projections back in August.

10 Q Right.

11 A We added to that the licensing revenues that Turtle
12 Beach projected, and we used -- and we didn't substitute our
13 judgment in any respect whatsoever other than to say that the
14 numbers, after Mr. Potashner started doing his dance with the
15 Turtle Beach people, were tainted; and, therefore, could not be
16 used.

17 Q So you keep saying that Turtle Beach projected these
18 revenues. That's not correct.

19 A Licensing revenues.

20 Q Right. That's not correct. Turtle Beach didn't
21 project any licensing revenues, did they?

22 A Yes, they did.

23 Q You know there's a difference between Turtle Beach
24 and Stripes; right?

25 A Oh, Stripes. I -- well, Stripes owns half of it,

1 so -- you're right. Thank you very much for that distinction.

2 Q Okay. So you would agree that every time today you
3 said that Turtle Beach projected this, we should substitute in
4 Stripes; is that fair?

5 A Except for the fact that it was a combination of
6 Ms. Kenworthy and Mr. Stark doing those numbers. He gave her
7 inputs. She put them in. There's -- that was at the end of
8 March. The same numbers were in the -- in the detailed model
9 we sent to the board.

10 So the answer is it's -- I think it's both. I think
11 we're -- you know, we're counting -- trying to count angels on
12 the head of a pin, just finishing making that distinction. But
13 the answer is if you want to say Stripes, I'm happy to say
14 Stripes.

15 Q I'm just -- I'm trying to help you because I think
16 you had misspoken.

17 A Thank you.

18 Q You would agree that a damages expert should not
19 fabricate his or her own set of projections; correct?

20 A Yes.

21 Q Let's talk about your licensing revenue projections
22 that you added into the Parametric Fairness Opinion
23 Projections.

24 So I think I understand you were using a 6 percent
25 royalty rate.

1 A Yes, sir.

2 Q And you're applying that 6 percent of royalty rate to
3 \$10 million in 2014, and then the number goes up thereafter;
4 correct?

5 A Yes, sir.

6 Q Okay.

7 A I think that's right. I don't have nothing in front
8 of me, but that's my recollection.

9 Q Yeah. And I'm going to pull it up for you in a
10 second.

11 A You tend not to be the kind of guy that pulls stunts
12 like that, at least a lot of lawyers --

13 Q Thank you.

14 A -- that I've worked with over the years.

15 Q Now, I think you mentioned before, but the Fairness
16 Opinion Projections did not include any projected licensing
17 revenue for gaming or consumer electronics; correct?

18 A That is correct.

19 MR. KOTLER: DX-548.

20 THE COURT: Any objection to DX-548?

21 MR. APTON: So, Your Honor, I do because --

22 THE COURT: Okay.

23 MR. APTON: -- there's no foundation for it.

24 THE COURT: That's okay. All you have to do is tell
25 me you have an objection. It's okay. You don't have to tell

1 me what it is.

2 Counsel, can you lay some foundation?

3 MR. KOTLER: Sure. One second, Your Honor.

4 BY MR. KOTLER:

5 Q The materials that your report -- your expert reports
6 describe you as having reviewed are accurate; correct? That
7 list is accurate?

8 A I'm sorry. Run this by again. I wasn't...

9 Q Your initial report had a list of documents
10 considered; correct?

11 A Yes.

12 Q And that list would be accurate; correct?

13 A I think so, yes.

14 MR. KOTLER: One second, Your Honor.

15 BY MR. KOTLER:

16 Q Do you recall, sir, as you sit here, having reviewed
17 as part of your materials, a March 28th email and set of
18 projections, email correspondence between Ms. Kenworthy and
19 Mr. Stark and a set of, what you call projections, that were
20 attached to it?

21 A I do.

22 Q And that was a document, I believe, that you just
23 referenced in your testimony about Mr. -- as to why you were
24 including Turtle Beach as part of the projections that Stripes
25 was working on; correct?

1 A That's right, because Mr. Stark gave Ms. Kenworthy
2 some of the inputs.

3 Q So that's a document that you considered and relied
4 upon in forming your opinion as to the valuation of Parametric
5 here; correct?

6 A It's a document considered. We relied on the
7 April 29th numbers that were sent to the board as the -- as why
8 did we use those and -- which was a month later.

9 MR. KOTLER: Now I'll seek its admission.

10 THE COURT: There's no basis for admission. He can
11 rely on hearsay every day of the week. That doesn't make it
12 admissible at trial.

13 See, if you guys had stipulated to exhibits ahead of
14 time, we wouldn't be going through this process.

15 BY MR. KOTLER:

16 Q Do you recall approximately when in time, what month
17 in 2013, the email exchange between Ms. Kenworthy, Mr. Stark,
18 and Mr. Fox occurred that led to the licensing numbers that you
19 relied upon?

20 A I believe it was very -- it was late in March, the
21 28th maybe.

22 Q And you recall having discussed that during your
23 deposition?

24 A I do.

25 Q Do you recall in review of that document that

1 Mr. Stark had asked Ms. Kenworthy, Karen, if you have a few
2 minutes --

3 THE COURT: Counsel, you can't read from a document
4 that's not admitted. You can show it to the witness.

5 MR. KOTLER: Thank you. May I approach the witness,
6 Your Honor?

7 THE COURT: You can.

8 MR. KOTLER: I'm going to. May I approach?

9 THE COURT: Yes.

10 MR. KOTLER: Thank you.

11 THE COURT: Shall I put the black knight away because
12 I didn't take him out yesterday?

13 MR. PEEK: Yes, Your Honor, you may.

14 MR. KOTLER: Thank you.

15 THE COURT: Okay.

16 THE WITNESS: It would be helpful, Your Honor, if I
17 could see it on the screen.

18 THE COURT: I can't show it to you on the screen,
19 sir, because that's not admitted.

20 THE WITNESS: All right. Then I'll just --

21 THE COURT: Do you want a magnifying glass?

22 THE WITNESS: You got one?

23 THE COURT: I believe so. I have one that I read --
24 people frame building plans to 8-and-a-half-by-11 sometimes.

25 THE WITNESS: Thank you. This is heavy.

1 Thank you for this, Your Honor.

2 THE COURT: You can keep it, just in case they have
3 you look at something else.

4 THE WITNESS: Thank you. Okay, Mr. Kotler.

5 BY MR. KOTLER:

6 Q I will represent to you, sir, that this document is
7 listed as Number 154 on the list of your materials considered,
8 which was Exhibit D to your expert -- initial expert report.
9 Okay?

10 A Okay.

11 Q You've had a chance to review this exhibit, this
12 document?

13 A Yes.

14 Q Thank you. So having done so, you understand that it
15 is -- begins with an email from Ms. Kenworthy, at the top of
16 the second page, that is dated March 28th, 2013?

17 A Yes, but there's nothing --

18 Q Very top of the second page.

19 A I'm looking at the bottom of the first page and the
20 top of the second page, but -- yeah, I see that, but I don't
21 see any substance with it. It looks like there's an
22 attachment.

23 Q Right at the very top of the second page, it says,
24 "On March 28th, 2013."

25 A Oh, oh. I was looking at Mr. Fox's email. Sorry.

1 Q Okay. Are you with me?

2 A Yes, I am.

3 Q Okay. And then Ms. Kenworthy writes she's attaching
4 a Parametric news release --

5 THE COURT: Please don't read from the document since
6 it's not admitted, Counsel.

7 MR. KOTLER: Thank you, Your Honor.

8 BY MR. KOTLER:

9 Q How did you -- in the course of preparing your expert
10 opinions here, how did you consider this email?

11 A Well, I considered it -- well, we looked at it. It
12 was the first email transmitting the numbers. It was -- also
13 what I hadn't considered before is, is Ms. Kenworthy's initial
14 comment at the bottom, the -- you know, there's another thing
15 that -- it says "he" -- and I don't know who "he" is, but it
16 could be Mr. Potashner -- "net out and may be jumping the
17 price."

18 It's like, whoa, there's another email that's -- that
19 doesn't reflect well on Mr. Potashner. But that's not why
20 you're asking me this question, I'm sure.

21 Q Yeah, I'm not.

22 Did you consider -- did you consider that Parametric
23 was viewed to be a story stock as of that particular point in
24 time?

25 A Stocks like this are story -- we talked about this at

1 the depo. Story is a funny word, but, yes, it's definitely a
2 story stock.

3 Q And did you consider, in forming your opinions, that
4 the model that was being prepared was a simple model?

5 A Well, it was simple at the start, but then it was --
6 it was not as -- it was not that simple of a model. I mean,
7 the model had different tabs and different things, and they all
8 closed at different -- they all cross-referenced each other.

9 So she said it was a simple model that somebody gave
10 her or gave -- somebody at Stripes developed a fairly
11 sophisticated model.

12 Q Did you consider, in forming your opinions, as to
13 whether the numbers in the model would just be pulled out --
14 numbers pulled out of the air?

15 A At least they started that way. Mr. -- that's what I
16 meant earlier when I said Mr. Stark gave her some guidance. He
17 said just pulled out of the air, but they put some -- he gave
18 her some guidance. They put it in, and one month later the
19 numbers not only hadn't changed, they had gotten more detailed
20 and more complex, and they were used for different purposes.
21 So those pulled-out-of-the-air numbers were pretty damn good
22 numbers to be pulled out of the air. Mr. Stark is a smart guy.
23 Mr. Fox is a smart guy. Ms. Kenworthy appears to be a very
24 smart woman.

25 Q And did you also consider, in relying on these

1 numbers for purposes of forming your opinion, that the
2 assumptions it included were described as a straw man?

3 A Well, a straw man as a starter. And I said a month
4 later the numbers hadn't changed. In fact, it had gotten more
5 complex and more -- with a greater richness to the material, so
6 how they were being utilized.

7 Q If I could direct you, sir, to the projections for
8 the model, for the worksheet, so -- we can argue as to what
9 it's called. How about that?

10 A I don't have that in front of me.

11 MR. PEEK: We seek the admission of 548 at this time.

12 THE COURT: Any objection over 548? I've already
13 said no.

14 MR. APTON: Yeah, the objection stated -- well, and
15 my understanding --

16 THE COURT: I've already ruled.

17 MR. KOTLER: Okay.

18 MR. PEEK: As I understand, Your Honor, it's not
19 admitted.

20 THE COURT: That is correct.

21 MR. PEEK: Even though it's something he relied on?

22 THE COURT: That is correct. He's allowed to rely on
23 hearsay. That does not mean it gets admitted at trial.

24 BY MR. KOTLER:

25 Q It looks like at your demonstrative earlier -- let's

1 pull up TB-6, Slide 6 from your demonstrative.

2 You prepared this demonstrative?

3 A Yes, I did, with my colleagues.

4 Q The title, Turtle Beach Licensing Revenue
5 Projections, that's not completely accurate, is it?

6 A Yes, it is.

7 Q Turtle Beach made these projections?

8 A Oh, we're picking hairs between Stripes and Turtle
9 Beach?

10 Q No. I'm just asking you if it's accurate.

11 A All right. So let me give you an on-the-fly
12 modification. It should be Turtle Beach -- it should be
13 Stripes/Turtle Beach projections.

14 Q Thank you.

15 By the way, the -- these numbers, just so we're
16 clear, these were prepared by someone who never worked for
17 Parametric; correct?

18 A Yes, worked for the people who were going to be
19 consuming Parametric's product, yes.

20 Q These numbers were prepared sometime beginning around
21 March 28th, 2013; correct?

22 A No.

23 Q Beginning?

24 A No -- while they were beginning, but these numbers
25 were from April 29th, 2013.

1 Q And you don't know what went into the preparation of
2 these numbers; correct?

3 A Other than the fact that it looks like the kind of
4 modeling that my guys would do if we were doing a similar
5 thing. I don't know who at Stripes was the number cruncher,
6 no.

7 Q You don't know what due diligence had been done by
8 that point in time?

9 A No. But I do know that enough had been done that the
10 numbers didn't change across a month, and they were talking
11 to -- they had a view of the product and -- "they" being
12 Stripes/Turtle Beach -- had a view of the product, and that
13 view did not change over the course of a month, and that view
14 was shared with Turtle Beach's Board of Directors.

15 Q Your source for your demonstrative is listed as
16 4/29/13 document, VTBH-17531, Plaintiff's Exhibit 369; correct?

17 A Yes.

18 Q So that is the source upon which the information in
19 this demonstrative, that you testified to earlier, comes from;
20 correct?

21 A I -- I mean, I -- did I look up plan 369, no. But
22 did somebody in my shop do it, yes, and work with Mr. Apton,
23 yes.

24 MR. KOTLER: Look at PX-369.

25 THE COURT: Plaintiff's 369.

1 MR. APTON: Same objection, Your Honor.

2 THE COURT: Want to lay some foundation?

3 MR. KOTLER: Yes.

4 BY MR. KOTLER:

5 Q Just so we're clear, PX-369 is the source for the
6 demonstrative that you testified to today; correct?

7 A That's what it says, and I presume that's correct.

8 Q And it is one of the materials that you considered in
9 forming your expert opinions that you testified to here today;
10 correct?

11 A Yes.

12 MR. KOTLER: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 THE WITNESS: Thank you.

15 This is not the spreadsheet. This is -- this is not
16 what's on my screen.

17 BY MR. KOTLER:

18 Q No, that's not what's on your screen. We're going to
19 take off what's on your screen. What was on the screen was the
20 demonstrative.

21 A I think you gave me two copies. Do you want one
22 back?

23 Q Sure.

24 A Let me just see -- hold the last page up. Does it
25 say "risks"?

1 Q Yeah, it goes 1 through 22. Yes, I gave you two
2 copies. Sorry about that.

3 A No worries.

4 THE COURT: Any object -- you said you had an
5 objection to Plaintiff's 369, right, on foundation?

6 MR. APTON: Yes, Your Honor.

7 BY MR. KOTLER:

8 Q Did I hand you what appears to be the same
9 Plaintiff's 369 that is cited as the sole source for your
10 Demonstrative Number 6?

11 A There would be -- there was an attachment to this. I
12 think Plaintiff's 369 includes the -- the Excel spreadsheet
13 that became the source of what we were looking at just now.

14 Q Plaintiff's 369 was not produced to us with any
15 attachment.

16 MR. KOTLER: Is there an attachment?

17 MR. APTON: It's the one that you're holding, Dave.

18 MR. KOTLER: That's the demonstrative?

19 MR. APTON: No, the -- it cites -- there's a cite to
20 VTBH -- VTBH-17531.

21 MR. KOTLER: Which is described as Plaintiff's
22 Exhibit 369. Is that something else?

23 MR. APTON: Dave, I'm citing VTBH-17531 here on the
24 demonstrative.

25 THE WITNESS: Which, I think, was the attachment to

1 369, then, Mr. Kotler.

2 MR. KOTLER: Just give me one second.

3 BY MR. KOTLER:

4 Q On the copy of PX-369 that I handed to you, it does
5 not include the -- what's the last Bates number on your copy,
6 sir?

7 A It is VTBH-017580 -- 30. My eyes are a little off.

8 Q So the copy of the PX-369 that you have, it does not
9 include the 17531 that is listed as a source on your
10 demonstrative; is that correct?

11 A You tell me. I don't know.

12 Q Okay.

13 A I'm not looking at it.

14 Q Have you reviewed -- in the course of preparing this
15 demonstrative and forming your opinion, did you review this
16 PowerPoint presentation?

17 A Excuse me. Yes, sir.

18 Q Okay. And you're aware that within this PowerPoint
19 presentation, there actually is some financial forecasts for
20 predictions or projections regarding licensing revenues;
21 correct?

22 A Well, I wouldn't describe it as that. I would
23 describe it as -- because this is where it differs from the
24 attachment that was sent with this. But this is what they call
25 deal "break even" economics. And if you look down -- and I'm

1 on page -- it's -- the last two numbers of the page number are
2 26. Yes, 26. And if you look down at -- under -- sorry,
3 two-thirds of the way down the page, it says "net" -- gosh --
4 "net impact, net impact for TB."

5 THE COURT: So I don't want to hear the substance of
6 a document that's not admitted. You can certainly testify
7 generally about what you took from the document in reviewing
8 it, but it's not admitted at this point.

9 THE WITNESS: Okay.

10 THE COURT: I can't hear the substance.

11 THE WITNESS: All right, Your Honor.

12 So -- but basically this is a break-even analysis
13 of -- it's not a true projection. This is all we have to do to
14 be able to get a one -- negative one dollar of net present
15 value.

16 BY MR. KOTLER:

17 Q Generally speaking, without getting into the numbers,
18 for gaming and CE applications, the revenue forecast in this
19 particular document are much lower than those that you rely
20 upon in your expert report; correct?

21 MR. APTON: Your Honor, objection.

22 THE COURT: Sustained.

23 BY MR. KOTLER:

24 Q In forming your expert opinions, did you consider the
25 difference, if any, between the numbers in this PowerPoint and

1 the spreadsheet that you claim to have relied upon?

2 MR. APTON: Objection, Your Honor.

3 THE COURT: Overruled.

4 The answer [sic] is "did you consider."

5 THE WITNESS: And the answer is I considered it, but
6 we looked at this for what it is, which is a break-even
7 analysis, not a projection.

8 BY MR. KOTLER:

9 Q Have you calculated how much of Parametric's
10 \$200 million valuation comes from your inclusion of these
11 licensing numbers?

12 A I think Dr. Montgomery did that for us. And I didn't
13 check him but I think he -- I mean, he said 70-some-odd
14 million.

15 Q \$78 million. You don't have any reason to dispute
16 that?

17 A I wouldn't check it because we think there's no
18 reason to break it out because we think licensing revenue is a
19 correct component of the business before Mr. Potashner decided
20 to comfy up to Turtle Beach.

21 Q You mentioned on direct testimony that you said you
22 found no Parametric projections with licensing revenue. Do you
23 recall giving that testimony?

24 A Yes.

25 Q Did you look?

1 A Oh, yeah. We -- my guys are the most thorough humans
2 that you could possibly imagine when it comes to searching.
3 Right now there's a screaming match in another case going on
4 between John Tolmie and some other lawyers, who the judge is
5 familiar with, about finding stuff.

6 MR. KOTLER: DX-1045.

7 THE COURT: 1045?

8 MR. KOTLER: Yes, Your Honor.

9 THE COURT: Any objection to DX-1045?

10 MR. APTON: No, Your Honor.

11 THE COURT: Be admitted.

12 (Defense Exhibit Number(s) DX-1045 admitted.)

13 BY MR. KOTLER:

14 Q You'll see in the cover email that DX-1045 is an
15 email from Mr. Barnes to a fellow at Sorbus Advisors. The
16 subject is V2 with some license revenue. Do you see that?

17 A I do.

18 Q This was a document that you knew about when you were
19 forming your expert opinions; correct?

20 A Oh, so did I overstate that we didn't find anything?
21 I misspoke. We did see this document. This is a -- this is a
22 very minor product that Turtle Beach was not going to produce
23 and that it was going to go into the licensing revenue line of
24 a post-merger Parametric.

25 Q Well, let's just -- let's get these very minor

1 licensing numbers, just so we have them in the record. So
2 we're going to go to the projections, which you also reviewed
3 and elected not to include in your calculation; correct?

4 A I'm sorry. Which ones?

5 Q I'm going to get to the licensing revenue
6 projections.

7 A Line -- it was line 19 in the other thing.

8 Q Line 20 here. We're going to get to the
9 fourth quarter, 2014.

10 A All right.

11 Q All right. So you see \$189,000 of licensing revenue
12 as the only projection for all of 2014 as of the date of these
13 projections, which is three weeks after the Fairness Opinion;
14 correct?

15 A Yes. There's some more licensing revenues out to the
16 right on line 20.

17 Q Oh, we'll get to those.

18 A Yep.

19 Q So 189,000, how does that compare to what you
20 included in your forecast, in your opinion?

21 A In my opinion, this is a product that is not part of
22 gaming, not part of consumer electronics. This is a soundbar
23 which is things which goes under your computer. So somebody
24 had -- they had developed that product at Parametric, and this
25 was not something that -- and my conclusion was that this was

1 not something that Turtle Beach wanted to produce because it
2 didn't fit into the massive category of gaming and consumer
3 electronics.

4 Q So the fact that the licensing revenue projections
5 for 2014, 2015, 2016, and 2017 are significantly lower than
6 what you used, that had nothing to do with why they didn't make
7 their way into your damages analysis; right?

8 A This is a totally different product.

9 Q Got it.

10 A This, frankly, would be additive. I don't know when
11 they developed it. This would be additional revenues to -- to
12 Parametric that make our numbers conservative. Because we
13 talked about earlier, when Mr. Apton answered the question
14 about how I viewed the Turtle Beach numbers, and I said, "Well,
15 I view those as conservative because that's just Turtle Beach."
16 There would be other opportunities for Parametric to license
17 other products and license those products to other parts of the
18 world, namely China.

19 Q You would agree with me that a damages expert "should
20 not ignore contemporaneous, detailed, and highly-vetted
21 management projections related upon by persons with a
22 significant financial interest in the projections' reliability
23 in favor of his own very general after-the-fact projections for
24 litigation purposes"; right?

25 A Was that *Onex*?

1 Q Let's see which one of your cases that was. That
2 was -- nope. *Litigation Trust*.

3 A Oh.

4 Q I'm sorry. No. You're right. *Onex* 2008. Those
5 words were true when you wrote them in 2008; correct?

6 A And they still are. And as long as the projections
7 aren't tainted by a guy like Potashner, then I would say rely
8 on it as best you can.

9 Q In fact, what you wrote -- what you told us in your
10 deposition, that you won the case because of that testimony
11 that you gave. So those were words that --

12 A Did I say that, that I took credit for winning the
13 case?

14 Q You did.

15 A Really?

16 Q Yes.

17 A Then I just -- I'm patting myself on the back. We
18 won that case on summary judgment. My testimony was put in the
19 record. I don't know if that -- how important that was to the
20 judge's decision to find in our favor.

21 Q You certainly stand behind those words today;
22 correct?

23 A I do.

24 THE COURT: All right. We've come to the breaking
25 point for lunch. So I will see you guys at 1:00 o'clock.

1 Wow, my feet are killing me. That was another
2 50 minutes.

3 Have a nice lunch.

4 (Proceedings recessed at 11:46 a.m., until 12:53 p.m.)

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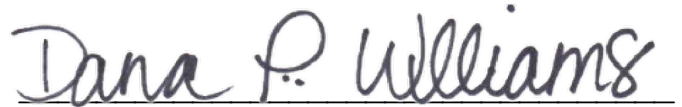
CERTIFICATION

I DO HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY TRANSCRIBED
THE AUDIO/VIDEO PROCEEDINGS IN THE ABOVE-ENTITLED CASE TO THE
BEST OF MY ABILITY.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL
SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

08/17/2021

DATE

<div>BY MR. APTON: [9] 7/2 9/21 12/5 21/18 32/3 34/6 40/16 42/14 45/6 BY MR. KOTLER: [26] 48/14 48/23 52/2 56/20 61/18 70/22 73/23 75/3 80/10 88/1 95/7 100/14 107/4 107/15 108/15 110/5 111/8 113/24 116/4 116/17 117/7 118/3 119/16 119/23 120/8 121/13 MR. APTON: [35] 4/8 4/11 4/21 5/2 5/5 5/19 11/20 12/4 30/23 31/2 31/6 34/4 40/14 42/12 48/11 79/8 79/11 79/14 79/18 79/21 80/7 93/18 93/25 100/9 106/21 106/23 113/14 116/1 117/6 117/17 117/19 117/23 119/21 120/2 121/10 MR. KOLTER: [9] 3/12 4/25 5/10 12/2 30/14 30/17 30/19 30/24 40/6 MR. KOTLER: [40] 51/20 51/23 51/25 56/14 61/6 61/9 61/12 70/20 74/17 74/22 79/10 79/13 79/15 93/16 93/20 94/3 94/10 94/20 94/25 95/2 100/7 106/19 107/3 107/14 108/9 109/5 109/8 109/10 109/14 111/7 113/17 115/24 116/3 116/12 117/16 117/18 117/21 118/2 121/6 121/8 MR. PEEK: [9] 3/25 4/5 4/12 4/15 5/12 109/13 113/11 113/18 113/21 THE CLERK: [2] 3/19 5/25 THE COURT: [100] 3/3 3/13 3/21 4/4 4/7 4/9 4/13 4/19 4/22 5/1 5/4 5/9 5/13 5/16 5/20 6/3 6/5 6/12 6/17 6/23 9/19 11/18 11/22 12/3 21/1 30/12 30/16 30/18 30/22 31/1 31/4 31/7 31/15 40/12 44/1 48/7 48/10 48/12 48/22 51/22 51/24 56/13 56/16 61/8 61/11 61/13 61/17 70/19 73/18 73/21 74/18 74/25 79/17 79/20 80/1 80/4 80/8 87/7 87/10 87/13 87/17 87/22 93/17 93/22 94/2 94/5 94/11 94/15 100/8 100/10 106/20 106/22 106/24 108/10 109/3 109/7</div>	<div>109/9 109/11 109/15 109/18 109/21 109/23 110/2 111/5 113/12 113/16 113/20 113/22 115/25 116/2 116/13 117/4 119/5 119/10 119/22 120/3 121/7 121/9 121/11 124/24 THE WITNESS: [46] 3/18 3/20 5/15 5/24 6/2 6/4 6/11 6/16 6/22 9/20 21/2 31/10 31/16 44/2 48/9 56/18 61/15 70/21 73/20 74/19 74/23 75/2 79/24 80/2 87/5 87/8 87/12 87/20 87/24 94/7 94/14 94/17 94/23 95/1 95/4 100/12 109/16 109/20 109/22 109/25 110/4 116/14 117/25 119/9 119/11 120/5 \$ \$1 [3] 77/7 85/19 86/7 \$1 million [3] 77/7 85/19 86/7 \$1.26 [1] 46/2 \$10 [2] 28/9 106/3 \$10 million [1] 106/3 \$100,000 [1] 19/23 \$104.1 [1] 13/5 \$11,602,000 [1] 96/4 \$11.34 [2] 46/4 46/13 \$11.6 [1] 96/9 \$12 [1] 35/3 \$12.49 [13] 10/16 12/14 13/6 38/14 39/21 39/21 46/15 48/5 49/13 50/12 54/2 55/3 55/15 \$15 [3] 82/21 82/21 84/5 \$15 million [3] 82/21 82/21 84/5 \$160 [2] 33/1 44/23 \$160 million [1] 44/23 \$17.77 [1] 39/18 \$17.85 [1] 39/19 \$189,000 [1] 122/11 \$19 [1] 35/5 \$2.97 [1] 39/18 \$20 [6] 32/16 32/17 65/11 65/12 83/2 84/20 \$20 million [2] 83/2 84/20 \$20.74 [1] 39/14 \$20.82 [1] 39/14 \$200 [1] 120/10 \$200 million [1] 120/10 \$203.6 [1] 29/22 \$21.14 [1] 32/17 \$22.44 [2] 46/4 46/11 \$23.1 [1] 102/22 \$23.1 million [1] 102/22 \$24 [2] 32/17 33/10 \$24.43 [3] 29/25 30/4 77/25 \$25 [1] 33/10 \$250 [1] 45/5</div>	<div>\$30 [2] 66/14 67/2 \$30 million [2] 66/14 67/2 \$30.7 [1] 47/23 \$30.7 million [1] 47/23 \$300 [1] 56/5 \$300 million [1] 56/5 \$300.5 [1] 37/21 \$4 [2] 47/22 102/23 \$4 million [1] 102/23 \$400,000 [2] 86/13 91/15 \$404.6 [1] 38/11 \$562,000 [1] 86/6 \$60 [1] 44/25 \$71.8 [2] 36/17 36/17 \$71.8 million [1] 36/17 \$78 [1] 120/15 \$78 million [1] 120/15 , '13 [3] 35/22 37/10 72/7 '14 [6] 34/15 34/16 34/19 37/11 37/11 47/5 '15 [2] 19/17 65/21 '16 [2] 19/17 65/21 '17 [2] 19/17 65/21 0 017580 [1] 118/7 08/17/2021 [1] 126/18 1 1.2 [2] 16/13 16/14 1.41 [1] 23/1 10 [8] 10/22 16/17 21/8 28/1 36/7 43/17 43/23 44/8 10 million [1] 98/13 10.4 [1] 45/24 100 [6] 8/18 16/19 22/10 22/17 28/4 28/19 104 million [1] 50/25 104.1 [1] 38/13 104.7 million [1] 50/23 1045 [5] 121/6 121/7 121/9 121/12 121/14 1071 [4] 4/2 4/7 4/9 4/14 10:44 [1] 87/13 10:44 a.m [1] 87/15 10:45 a.m [1] 87/15 10K [1] 25/23 11 [3] 31/19 39/9 109/24 11.6 [1] 96/21 11:46 a.m [1] 125/4 12 [10] 19/8 19/13 20/3 20/4 21/6 21/8 39/8 40/15 40/22 43/25 12.4 [2] 36/1 43/3 12.49 [2] 31/1 50/24 12.5 [1] 23/9 120 [1] 98/13 12:53 [1] 125/4 13 [3] 42/12 96/12 115/16 13 percent [1] 44/11 13th [3] 32/18 33/10</div>	<div>35/3 14 [3] 21/8 43/15 44/11 14.2 [2] 23/5 23/8 14.9 [1] 37/8 15 [6] 29/14 32/21 45/15 51/20 51/20 71/22 15.5 [5] 19/18 19/20 22/16 22/19 23/24 150 [1] 32/25 154 [1] 110/7 158 [1] 44/22 15th [18] 12/20 20/5 30/20 41/21 49/18 64/18 65/24 66/21 70/25 71/7 71/13 71/14 71/17 72/10 72/17 73/11 73/13 99/4 16 [2] 11/7 46/18 160 [1] 45/5 167 [1] 28/12 16th [1] 95/12 17 [4] 1/12 3/1 28/19 32/11 17.6 [1] 20/3 17531 [4] 115/16</div>
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