

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.;
STRIPES 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.

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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

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W I T N E S S E S

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E X H I B I T S

PLAINTIFF'S EXHIBITS ADMITTED:

309	144
384	60
474	28
475	34

DEFENSE EXHIBITS ADMITTED:

1072	91
1073	106

1 **LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 17, 2021, 12:53 P.M.**

2 * * * * *

3 THE COURT: Sir, I'd like to remind you, you're still
4 under oath.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: You may continue your examination,
7 Mr. Kotler.

8 Did you stipulate to any exhibits while I was gone?

9 MR. KOTLER: No. Not -- none. We had a discussion.
10 I'll say that.

11 THE COURT: Did you get the message I've been trying
12 to deliver?

13 (Colloquy off the record.)

14 THE COURT: Okay. Let's keep going.

15 MR. KOTLER: Thank you.

16 **J.T. ATKINS**

17 (having been called as a witness and previously sworn, resumed
18 testifying as follows:)

19 CONTINUED CROSS-EXAMINATION

20 BY MR. KOTLER:

21 Q After lunch. Let's talk about WACC. Very, very
22 quick conversation.

23 You used a WACC of 15.5 percent for Parametric?

24 A Yes, sir.

25 Q You know that Craig-Hallum used a WACC of

1 20.8 percent when preparing the fairness opinion for
2 Parametric; correct?

3 A Yes, sir.

4 Q I know you disagree with Craig-Hallum's WACC;
5 correct?

6 A Yes. They got it wrong.

7 Q Okay. Fair enough. Well, you also would agree that,
8 all else being equal, the use of a lower WACC results in a
9 higher intrinsic value for Parametric; correct?

10 A And for Turtle Beach.

11 Q Understand. So for Parametric, you made a
12 calculation on a different WACC that resulted in a -- all else
13 being equal, a higher valuation for Parametric; correct?

14 A Yes, sir.

15 Q I want to circle back just to -- hopefully briefly,
16 to something I think you were hinting at about Mr. Potashner
17 slow-rolling licensing. I think I have that written down
18 correctly.

19 And so, in making that assumption as it informed your
20 decision to ignore later projections in favor of the Parametric
21 August projections, you were assuming that Mr. Potashner
22 believed that the Turtle Beach deal was not a better
23 alternative for Parametric than shanghaiing or slow-rolling all
24 those licensing discussions; correct?

25 A I think you said was not a better deal. I think you

1 meant to say that Mr. Potashner believed it was a better deal,
2 and to get that deal, he slow-rolled the -- the licensing and
3 terminated one, and finally terminated the others as well.

4 Q So, I see. So implicit in that assumption is, it
5 would have to be true that Mr. Potashner viewed the Turtle
6 Beach deal as a better alternative than what presently was
7 before Parametric; correct?

8 A That's what the -- that's my interpretation of a
9 series of different e-mails. Yes, sir.

10 Q Thank you. So just to see if we can put a fine point
11 on our discussion this morning about the Parametric valuation,
12 you started with the Craig-Hallum projections; correct?

13 A For Parametric, yes.

14 Q Yes. You made assumptions about Mr. Potashner
15 changing Parametric's business plan that we -- that we talked
16 about; correct?

17 A That's correct.

18 Q You added in the licensing revenue from a document
19 that Parametric neither prepared, nor received, nor reviewed;
20 correct?

21 A That Turtle Beach prepared and then adopted, yes.

22 Q Stripes prepared, and Turtle Beach adopted. Come on,
23 be accurate.

24 A Say what?

25 Q Stripes prepared it?

1 A Oh, I keep confusing the two. They're -- in my mind,
2 they're one in the same, and I apologize.

3 Q All right. Well, they're not one and the same. You
4 realize they are separate companies; right?

5 A Separate companies, 48 percent owned but one -- it
6 was at that time 48 percent owned by Stripes.

7 Q Right. You then --

8 THE COURT: I think everybody would agree they're
9 related.

10 MR. KOTLER: One is an investor in another at the
11 time.

12 THE WITNESS: How about the word affiliate, Your
13 Honor? Affiliated.

14 THE COURT: Any of those words will work.

15 MR. KOTLER: Yeah.

16 BY MR. KOTLER:

17 Q You then took your August 2013 Parametric projections
18 and your Stripes/Turtle Beach April 2013 licensing revenues and
19 called those your January 15th, 2014, projections in your
20 expert report; correct?

21 A I did.

22 Q You then proceeded not to include in your valuation
23 two later sets of Parametric management projections that showed
24 significantly lower projected revenues for 2014 through 2017;
25 correct?

1 A For the reasons I explained before and I won't repeat
2 again.

3 Q Correct. And then you changed the WACC that Craig-
4 Hallum used, which, again, increased your intrinsic value for
5 Parametric; correct?

6 A That's because Craig-Hallum did a very poor job on
7 the WACC. We can talk about it on my redirect.

8 Q You would agree -- I'm going to change topics with
9 you because I don't think anybody's going to be all that
10 interested in a WACC. You would agree, though, that --

11 A I love WACCs.

12 Q You would agree that, ultimately, a company's value
13 is established by the market, not highly attenuated,
14 after-the-fact analyses done years later; correct?

15 A Which is why we did that market analysis this morning
16 on my direct when we showed that the \$21.14 that Parametric got
17 to on -- I think it was May 13th was close to what our
18 24.43 intrinsic value is, yes.

19 Q But you agree with my words, which I just read to
20 you, which you know comes from one of your prior expert
21 reports, this one being the *Kipperman* Rebuttal Report; correct?

22 A Yes, sir.

23 Q And you also would agree that you have criticized the
24 opposing expert in *Kipperman*, calling his opinion unreliable
25 when that expert reached a valuation that was radically

1 different from the market's valuation; correct?

2 A I forget if that was why, but that sounds like it was
3 correct. And there was a lot of reasons why we disagreed, and
4 ultimately, the Court found for my client.

5 Q And you told us this morning, I think it was in the
6 demonstrative, that the \$203 million valuation for Parametric
7 breaks down to the equivalent of \$24.43 per share on a fully
8 diluted basis; is that correct?

9 A Yes, sir.

10 Q And you had some colloquy with Mr. Apton with respect
11 to the stock chart that you included that showed Parametric's
12 trading price in the period in the, say, the year prior to the
13 merger; correct?

14 A I don't think it was a full year. I think it was --
15 I think it was from the beginning of 2013, but I could be
16 wrong.

17 Q Fair enough. And you would agree with me that at --
18 on no day between the -- well, on no day shown in your stock
19 chart between the announcement of discussions regarding the
20 merger and the consummation -- the closing of the merger did
21 the Parametric stock price actually reach \$24.43; correct?

22 A Correct. I would not expect it to because it
23 generally will trade below its intrinsic value until there's an
24 event which creates -- which -- which monetizes that.

25 Q And the event here that you would consider is the --

1 how about the announcement that Parametric was engaged in
2 strategic discussions?

3 A That's helped push it up too -- too close to the --
4 within 15 percent of the 24.43, yes.

5 Q I'm happy to show you your demonstrative, but I will
6 represent to you that the stock price on March 27th was about
7 \$16.88 a share. Does that sound about right to you?

8 A I'm not sure, but all I know is that once they made
9 that announcement, the stock price traded up and got over \$21 a
10 share and within a very short period of time. This is not --
11 this is not necessarily an efficient market, semi-strong
12 definition of a stock. This is a -- this is a stock which had
13 liquidity but was not a \$20 billion company.

14 Q According to your demonstrative, the stock price on
15 March 28th, so the day after the announcement that Parametric
16 was engaged in a strategic alternative discussion, was \$20.05 a
17 share.

18 A Uh-huh.

19 Q Okay? That is, if my math is correct, nearly
20 20 cent -- 20 percent below your \$24 calculation; is that
21 correct?

22 A Which is close to the 15 percent when it peaked, so
23 yes.

24 Q Okay.

25 A That's about what I would expect a company to trade

1 at --

2 Q Okay.

3 A -- if -- if the market believed that there might be
4 an event in the mid-20s, upcoming.

5 Q And by the time of the merger, the stock price on the
6 closing date of the merger was \$14.30; correct?

7 A Yes. The market did not like the Turtle Beach deal.

8 Q I'm just asking a question. Is your demonstrative
9 accurate that on the closing date of the merger, the stock
10 price was \$14.30?

11 A Yes, sir.

12 Q And you are aware that 95 percent of the Parametric
13 shareholders voted in favor of the merger; correct?

14 A I am.

15 Q Okay. Talked -- Mr. Apton talked briefly about your
16 sanity check, this progression analysis. You do recall that
17 the first time you attempted to do this progression analysis in
18 your initial report, your team messed it up, right?

19 A Well, it's -- the statistic stuff kind of -- it
20 occurs -- the people with knowledge about statistics in my firm
21 are younger than you and me and anybody in this courtroom. And
22 they just -- they tripped over their feet, and we -- when we
23 showed it to them, they said, oops. They fixed it, and it's
24 still statistically significant. So, yes.

25 Q Well, actually, you didn't show them. Dr.

1 Montgomery issued a report --

2 A Right. That's right.

3 Q -- and in response, you issued a supplemental report
4 in which you attempted to correct some of those errors; isn't
5 that what happened?

6 A I didn't attempt. I did correct the errors.

7 Q Okay. Now, this sanity check is not an independent
8 measure of the damages in your case; correct?

9 A Yes. We -- we simply say it's -- it is exactly that,
10 it's a check.

11 Q And, in fact, it's not even an attempt to measure
12 damages as of January 15th, 2014, right? It looks at what
13 happened a year after the merger, possibly; correct?

14 A That is correct, sir.

15 Q Okay. So this \$12.49 a share that you claim as
16 damages, where did the money go?

17 A Pardon? Where'd the money go?

18 Q Yeah. Who -- who --

19 A The money -- the money was -- went into the ether
20 because Mr. Potashner decided he didn't -- he didn't like the
21 model that -- the business model that seemed to be working. So
22 when -- when stocks trade up to where they're supposed to trade
23 up, that's one thing, they trade down, the money is gone.
24 Whoever was on the other side of the trade -- one guy made
25 money, one guy lost money. It's -- it just went into the

1 ether, because what happened was the company should have been
2 worth 24.43. And by Mr. Potashner and whoever else was helping
3 him, changed this business model, they managed to put the
4 company in a fairly rapid downward trajectory, and as a
5 consequence, that money disappeared.

6 Q So the \$12.49 a share, I think you told us in this
7 case, is about \$10 million?

8 A Yes, sir.

9 Q So who has that \$10 million that -- that --

10 A Right now -- right now, Turtle Beach has it.

11 Q Turtle Beach has the \$10 million?

12 A Yeah, the bad actors have it.

13 Q Well, hold on.

14 A If there are bad -- if there are bad actors -- I'm
15 not saying there are because that's not my -- my job. But if
16 somebody causes somebody to lose money, they're the ones -- my
17 understanding of how the American legal system works, they're
18 responsible for it.

19 Q Are you offering an expert opinion on who has this
20 \$100 million?

21 A Absolutely not.

22 Q And you don't know if anyone has this \$100 million?

23 A It's -- that's -- that's the kind of question which
24 is -- you know, it's sort of like the questions I listened to
25 yesterday, some of which were -- want to make me go, what are

1 you talking about? When you ask that question, what you're
2 saying is, is this -- did this money get stolen? No. This
3 money -- bad decisions. These people were acting in their
4 interest, not in the interest of the company, caused this money
5 to lose value. That's what happened. That's what damages are.

6 Q So you believe that Turtle Beach has the \$100 million
7 that --

8 A Well, Mr. Potashner may have some of it. I mean,
9 I -- to the extent that they -- you know, I don't know who --
10 how this Court -- if it finds liability, I'm not sure how the
11 Court's going to allocate that liability. But certain people
12 caused this to occur --

13 Q You're not offering --

14 A -- in my opinion --

15 Q I'm sorry. I apologize --

16 A That's all right.

17 Q -- for interrupting, sir.

18 A In my opinion, based upon what I've been told by my
19 counsel. If my counsel's wrong about liability, then I'm wrong
20 about the damages.

21 Q We'll get to that. You're not offering any opinion
22 that Mr. Potashner received any of this \$100 million, are you?

23 A No, but I think if someone causes damages to someone
24 else, whether they received something or not, they sometimes
25 are on the hook.

1 Q That --

2 A Maybe here, it maybe not.

3 Q -- sounds a little bit like the old Skadden Arps guy
4 coming out there. So let's just try and limit this to your
5 actual expertise here, your admitted expertise, not your
6 perceived expertise.

7 So, you know, sitting here as the damages expert,
8 sir, are you offering any opinion as to what happened to the
9 \$100 million, who has it?

10 A No one has it. It's -- if someone -- just what I
11 said before. My opinion is that there was damages to the
12 whole -- the whole stockholder group of \$100 million, \$24 --
13 excuse me, \$12.49 a share is what -- is what I -- no, sorry.
14 The damages are \$12.49 a share.

15 Q But there's nowhere we could go look to find who has
16 the \$100 million --

17 A I -- you know --

18 Q -- that you say should be returned to the plaintiff;
19 correct?

20 A I've never had that question asked of me before.
21 It's a very interesting question because, to me, it's not a
22 question of where did the money go, it's a question of who's
23 responsible for hurting somebody.

24 Q You were in the courtroom for the opening statements;
25 correct?

1 A I think I was for all of them, yeah.

2 Q Okay. So you heard the discussion as -- you know
3 this is an equity expropriation -- or -- expropriation case;
4 correct?

5 A I heard that. I don't even know what that means.

6 Q Okay. And just to sum up here, you are not offering
7 any opinion on the intrinsic value of both Turtle Beach and
8 Parametric using management projections for both companies
9 created at or around the merger date? I know why you're not,
10 but you're not; correct?

11 A That's correct.

12 Q Okay.

13 A Well, Turtle Beach, yes. But not -- not Parametric.

14 Q Right. Both companies. And therefore, you are not
15 offering any opinion on the resulting damages based on
16 valuations of both companies using management projections for
17 both companies created at or around the merger date; correct?

18 A Yes, sir.

19 Q And you are not offering any opinion on the intrinsic
20 value of Parametric that, like the fairness opinion projections
21 you rely on, exclude any licensing revenue projections?

22 A That's correct.

23 Q And therefore, you are not offering any opinion on
24 the resulting damages based on a valuation of Parametric that
25 excludes licensing revenues like were not included in the

1 fairness opinion projections; correct?

2 A Yes.

3 Q And I believe we touched on it earlier. You are
4 aware that Dr. Montgomery in his rebuttal report made
5 calculations using your model but using projections for both
6 companies around -- at the time of the merger and excluding
7 licensing revenues; correct?

8 A Yes, I am.

9 Q I know you disagree with the assumptions, but you
10 have no basis to disagree with his calculations?

11 A I -- we haven't done those yet, and that's one of the
12 things we're going to do between now and Dr. Montgomery's
13 cross.

14 Q Well, you do know he included those calculations in
15 his rebuttal report back in May of 2019; correct?

16 A Right. And we did not do a surrebuttal report.

17 Q Well, you did put in a supplemental report when you
18 fixed the screw-up in your regression analysis on July 15th,
19 2019; correct?

20 A I can accept screw-up. It was a screw-up. You're
21 obviously correct.

22 Q I know.

23 A The answer is, is that, at that point, the -- we --
24 we just -- we didn't -- we were not -- the way that -- we were
25 not -- we were not aware that we could submit a surrebuttal if

1 we could. I don't know if we could or not.

2 Q Okay.

3 A So we didn't.

4 THE COURT: There's not a provision for it. Okay.

5 THE WITNESS: There we go.

6 THE COURT: Keep going.

7 THE WITNESS: There we go.

8 BY MR. KOTLER:

9 Q And you do -- you do recall at your deposition we had
10 some discussion about Dr. Montgomery's recalculation of your
11 model but just using the projections that we believe should be
12 used? You remember that we discussed that; correct?

13 MR. APTON: Your Honor, I'd like to object to this
14 line of questioning. We didn't know until just the other day
15 that defendants were going to be using that rebuttal report.

16 THE COURT: Overruled.

17 MR. APTON: It was not disclosed.

18 THE COURT: Overruled.

19 MR. APTON: Thank you, Your Honor.

20 THE WITNESS: Can you repeat your question?

21 MR. KOTLER: Sure.

22 BY MR. KOTLER:

23 Q You recall back at your deposition, which was in
24 August of 2019, we had some discussion about whether you had
25 checked Dr. Montgomery's math, and, in fact, you said at the

1 time, we're going to try and do it before the next day, which
2 was his deposition? You remember that discussion?

3 A Yeah. And then the case settled about two days after
4 that.

5 Q A couple weeks after. But yes, you do remember that
6 discussion?

7 A I do.

8 Q And throughout the -- in the time since we had that
9 discussion at your deposition in August of 2019, you did not
10 offer any report in this opt-out case in which you take any
11 issue with Dr. Montgomery's calculations -- recalculation of
12 your approach, just using the projections that we believe
13 should be used; correct?

14 A I was not aware that I could do that. As I said
15 there's no -- apparently, the Court agrees with me, there's no
16 surrebuttal here, but there will be questioning of Dr.
17 Montgomery, and we will be fully backing Mr. Apton and his team
18 with respect to questions about that.

19 Q You agreed with me earlier when we did our iPhone
20 math that if we keep Turtle Beach's valuation at 300 million,
21 there would be no damages under your analysis of Parametric's
22 value on the merger date was under 75.7 million; correct?

23 A Yes.

24 Q So if the Court were to find that a proper damages
25 calculation requires valuation of -- based on management

1 projections from around the merger date for both companies,
2 then you have no basis to disagree with Dr. Montgomery's
3 valuations of Parametric that are lower than \$75 million;
4 correct?

5 A I -- well, if, in fact, they are correct, which we
6 don't know yet, which we will try to elicit on -- I'm sure
7 Mr. Apton will try to go that direction during his --
8 Dr. Montgomery's cross-examination. We'll see where that
9 leads.

10 Q But as of now, you have no basis to disagree with
11 that?

12 A I haven't looked at it. It's been two -- I -- we
13 looked at it two years ago, and I don't know what the result
14 was, but to the extent that we had stuff, we gave it to Robbins
15 Geller for them to ask.

16 Q So last question. And if the Court were to find that
17 a proper damages valuation requires use of management
18 projections for both companies as of the time of the merger,
19 then, as you sit here right now, you have no basis to disagree
20 with Dr. Montgomery's opinion that plaintiff suffered negative
21 damages of more than a dollar a share; correct?

22 A I have no basis one way or the other.

23 MR. KOTLER: Thank you. Those are the questions I
24 had right now.

25 THE COURT: Are we going to do redirect?

1 MR. APTON: Yes, Your Honor.

2 THE COURT: All right. Could we wipe down the
3 lectern, please.

4 MR. KOTLER: Yes, Your Honor.

5 MR. APTON: Your Honor, in the meantime, can I hand
6 this to the witness?

7 THE COURT: Sure.

8 MR. APTON: Thank you.

9 THE COURT: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. APTON:

12 Q Mr. Atkins, you were shown two projections by
13 Mr. Kotler, DX-845 and DX-1045. One was dated August 13, the
14 other October 13, and, excuse me, they both featured little to
15 no licensing revenue at Parametric. Do you recall that?

16 A Yes.

17 Q And your explanation as to why you did not consider
18 those projections was what again?

19 A That Mr. Potashner by that point had changed the
20 model -- the business model, and had stopped doing anything,
21 and had actually reversed a lot of the licensing progress,
22 revenue progress that had been made earlier in the year.

23 Q And in determining that conclusion, I believe you
24 said you also looked at some e-mails; is that correct?

25 A I did.

1 Q Okay. Let me direct your attention, in the binder in
2 front of you, if you could go to Tab 143.

3 MR. PEEK: Is that an exhibit?

4 MR. APTON: Yes, Exhibit 143.

5 MR. PEEK: Oh, it's Exhibit 143.

6 THE COURT: It's a proposed exhibit.

7 MR. APTON: Oh, yeah, just proposed. And I'm not
8 even moving right now.

9 BY MR. APTON:

10 Q Mr. Atkins --

11 A Yes, sir.

12 Q -- is that one of the e-mails you reviewed?

13 A Yes.

14 Q Can you please go to Exhibit 154?

15 A Well, I guess I can't read out of an exhibit that's
16 not admitted.

17 THE COURT: Nope.

18 THE WITNESS: Love the rules of evidence. That's one
19 of the reasons I'm not an attorney anymore, Your Honor. Go
20 ahead.

21 BY MR. APTON:

22 Q Is this one of the e-mails you reviewed? This one's
23 from March 29th, 2013; yeah?

24 A Yes. Okay.

25 Q Is that one of the e-mails you reviewed?

1 A Yes, sir.

2 Q And what about the next one if you go to Exhibit 109,
3 dated April 4, 2013. I believe you earlier described this one
4 as slow-playing --

5 A Yeah, slow --

6 Q -- licensing revenue?

7 A Yeah. The -- I'm looking for that right now. If you
8 could direct -- yes, I will slow-play. Yep.

9 Q And Exhibit 110, this one is April 8th?

10 A Yes, it is.

11 Q Yeah. My point is that you reviewed a number of e-
12 mails that, in your opinion, sufficiently convinced you that
13 projections after March of '13 were no longer -- well, how
14 would you describe them?

15 MR. KOTLER: Objection.

16 THE COURT: Overruled. He rephrased his question.
17 He caught it.

18 How would you describe it, sir?

19 THE WITNESS: I'm sorry, I got -- anytime we have an
20 objection, it distracts me.

21 Can I have the question one more time, Mr. Apton?

22 BY MR. APTON:

23 Q Yeah, how would you describe the projections created
24 by Parametric once Potashner started doing what you were saying
25 he was doing?

1 A With respect to -- to the licensing, it's for sure
2 tainted. And then, in general, I think that the -- the -- that
3 the whole business slowed down a lot at Mr. Potashner's
4 direction.

5 Q Now, let me shift topics a little bit. Just a moment
6 ago, you asked to discuss Craig-Hallum's WACC on redirect. Is
7 there something you wanted to say about that?

8 A Yeah. I'm sorry about that. Suddenly, I got a big
9 jolt from the left side of the room.

10 Yes, Craig-Hallum made two errors in their Weighted
11 Average Cost of Capital. They -- first thing that they did
12 was, in calculating the beta for -- for Parametric, normally,
13 what's -- what's customary is -- is to use a two-year weekly
14 beta or a five-year monthly beta. Craig-Hallum used a five-
15 year monthly beta, but the problem was that Parametric had only
16 been public for two-and-a-half years. So you can't use a
17 five-year beta when you have a two -- when you have a company
18 only -- only in two-and-a-half years.

19 That means you have -- five-year -- five-year monthly
20 means you have 5 times 12, that's 60 data observations to
21 calculate the beta. Five-year -- two-and-a-half year monthly,
22 that means you only have 30 data observations. The two-year
23 weekly, you have 52 times 2, you have 104 observations from
24 which you could do the regression and calculate the beta. So
25 that's why -- so that's -- that was just -- that was just

1 wrong.

2 The second thing that they did is they used a -- they
3 used what's called 10b decile for size premium. So the -- 10b
4 is for small companies, and the 10b decile is full of companies
5 that are very thinly traded. And so what Craig- Hallum did is
6 they used the 10b decile, which had like an 8 percent size
7 premium, but what they didn't do is they didn't look at the
8 liquidity of Parametric. Parametric was in the 81st decile for
9 liquidity.

10 So that -- and when -- and there's a study done by
11 some gentlemen that looked at this, had over a million data
12 observations for the 10th decile. They concluded that
13 companies higher than the 50th decile will be below the
14 midpoint of the size premium, and we just used that. We used
15 the 6 percent, we didn't use something less than 6 percent.
16 But this study would argue that we could've used a size premium
17 as low as 4 percent, which would have pushed the damages up
18 substantially.

19 Q So the point is, is Craig-Hallum's WACC was flawed?

20 A Correct.

21 Q Thank you. And Mr. Kotler asked you about a case,
22 the *Kipperman* case?

23 A Yes.

24 Q And you said -- you made a point of pointing out that
25 it was a solvency analysis?

1 A Yes, as was *De La Rue*, the other one he quoted from.

2 Q Involving -- okay. Well, what's the difference --
3 why is that significant, this solvency?

4 A Well, a solvency analysis, you're looking at a lot
5 of -- you're not looking at damages. You're not looking --
6 you're not looking for a point of a number. You're looking to
7 see, can the company pay its debts as they come due? Is the
8 company -- what is the -- what is the due -- or, sorry. Are
9 debts -- or is -- is the value of the company greater than its
10 debts? That's the first test.

11 And to do that kind of analysis, you do a -- you do a
12 three-prong, DCF, comps, transactions analysis. Very different
13 kind of analysis than when you're looking for a point for
14 damages or a point for an appraisal. So and the same is true
15 in the *De La Rue* case.

16 Q Is that the one involving Dr. Logue?

17 A I think so. Yes, sir.

18 Q Where there was a comps-only methodology?

19 A Yes. Yes. That's correct.

20 Q Okay. And then, finally, a fairness opinion is, I
21 believe you said, not used to determine valuation; is that
22 right?

23 A No. A fairness opinion is a fairness opinion. It is
24 not used to determine damages, which require a point -- a
25 specific point.

1 MR. APTON: Okay. Thank you, Mr. Atkins. No further
2 questions, Your Honor.

3 THE COURT: Any further cross-examination?

4 MR. KOTLER: Nothing from me, Your Honor.

5 THE COURT: Could you wipe down, please, just in case
6 we're going to switch examiners.

7 Sir, travel safely.

8 THE WITNESS: Thank you very much, Your Honor.

9 THE COURT: Ramsey will wipe down the witness stand.
10 Who's our next witness? Are we resuming with Mr.
11 Kahn?

12 MR. APTON: Yes. We will, Your Honor.

13 THE COURT: Okay. So we're up to redirect.

14 THE MARSHAL: Are these yours, sir? Do you need
15 them?

16 THE WITNESS: They are mine, and I'll take them with
17 me and throw them away for you.

18 THE MARSHAL: Okay.

19 THE WITNESS: And this one, too.

20 THE MARSHAL: Okay.

21 THE WITNESS: Thank you.

22 THE COURT: So, Mr. Kahn, since you were sworn in
23 earlier today, you're still under oath. I'm not going to
24 reswear you.

25 THE MARSHAL: All right. So come on back up. Watch

1 your step.

2 Do we need any of these papers back or they stay up
3 here?

4 MR. APTON: I'm not sure what those papers are. Oh,
5 I think they may be --

6 THE COURT: Mr. Kotler, do you want your papers back?

7 MR. KOTLER: Oh. Thank you.

8 THE COURT: Ramsey will bring them to you.

9 Sir, remember, if you want a break, you let me know;
10 okay?

11 THE WITNESS: Thank you.

12 MR. APTON: So, Your Honor, if I may, yesterday we
13 had a -- an issue with Exhibit 310. It needed to be broken up
14 and split. We went ahead and did that and exchanged them to
15 defendants. And so I would hope that we could move to admit
16 474 and 475.

17 THE COURT: Is there any objection to 474 and 475?
18 What's 474? Is 474 just Mr. Kahn's documents?

19 MR. APTON: No. 474 is the opt-out letter, two
20 pages.

21 THE COURT: Okay.

22 MR. APTON: And then 475 is the complete version of
23 the Operating Agreement with Mr. Kahn's Assignment, signed.
24 Everything else is already in evidence except for the signed
25 Assignments.

1 THE COURT: Along with the other Assignments from the
2 other individuals.

3 MR. APTON: Those are -- are in evidence as well at
4 this point, in the DX-1025.

5 THE COURT: Of which?

6 MR. APTON: DX-1025.

7 MR. KOTLER: No objection.

8 THE COURT: I don't think so.

9 THE CLERK: 1025 was admitted yesterday.

10 THE COURT: Hold on a second. You're right. It is.
11 474, 475.

12 MR. KOTLER: We have no objection to 474, Your Honor.

13 THE COURT: 474 is two pages. It's admitted.

14 (Plaintiff's Exhibit Number(s) 474 admitted.)

15 MR. KOTLER: Our objections on 474 remain, in that it
16 doesn't rectify the issue we raised yesterday on the
17 Plaintiff 24 page and the signature. This doesn't clear that
18 up.

19 MR. APTON: The -- the document entirely is already
20 in as 1025, except for Mr. Kahn's assignment, who is here and
21 can authenticate that any which way you want.

22 THE COURT: Well, why don't you authenticate it and
23 then we'll be --

24 MR. KOTLER: Well, if it's already in 1025, why are
25 we doing this?

1 THE COURT: That page isn't in 1025, is what he's
2 saying. It's in a different format; remember?

3 MR. KOTLER: Right. Well --

4 THE COURT: Okay. Why don't we lay the foundation
5 for the Assignment, just so we're clear, in 475 to confirm what
6 it is.

7 MR. APTON: All right.

8 THE COURT: Because yesterday I looked at two
9 different versions and determined they were substantially
10 similar, including the unusual mark in the middle on the
11 bottom.

12 MR. APTON: Understood.

13 **ADAM KAHN**

14 (having been recalled as a witness and previously sworn,
15 testified as follows:)

16 REDIRECT EXAMINATION

17 BY MR. APTON:

18 Q Mr. Kahn, you assigned your claim to the PAMTP, LLC
19 entity; correct?

20 A Yes.

21 Q And do you recall what date you did that on,
22 approximately?

23 A April, the first week of April 2020.

24 Q Okay.

25 A I -- that -- that I signed? I'm sorry. Can you

1 repeat the question?

2 Q Yeah. That you signed, the Assignment. Did you sign
3 the Assignment?

4 A Yes.

5 Q And what was the purpose of that Assignment?

6 A To assign the claim to PAMTP, LLC.

7 Q Okay.

8 MR. APTON: I'd move to admit Exhibit 475, with Mr.
9 Kahn's Assignment.

10 THE COURT: Sir, have you looked at Exhibit 475
11 before taking the stand today?

12 THE WITNESS: I don't have the exhibit in front of me
13 so --

14 THE COURT: So you've got to show it to him.

15 MR. APTON: Okay.

16 THE WITNESS: I had the binder. If you want me to
17 grab it, it's back -- it's back there behind where I was
18 sitting.

19 THE COURT: Does it have 475 in the binder?

20 THE WITNESS: It has the Assignment with my
21 signature, at least.

22 THE COURT: That's not the same question I'm asking,
23 sir.

24 THE WITNESS: I'm sorry. I didn't know.

25 THE COURT: It's okay. Is 475 in the binder? You're

1 holding it. Somebody can answer the question. It should have
2 a tab somewhere. Dear Judge, 475 is not in the binder.

3 MR. APTON: Your Honor, may I hand this to him?

4 THE COURT: That's not Exhibit 475, Counsel.

5 MR. APTON: No. This is --

6 THE COURT: Do you know how I can tell? It's a
7 single page. That's how I know it's not Exhibit 475.

8 Has the witness looked at Exhibit 475? Can someone
9 tell me what the Bates Numbers for 475 are?

10 MR. APTON: The Bates Numbers for 475, Your Honor,
11 would be Plaintiff 3 through Plaintiff 28.

12 THE COURT: Those aren't the Bates Numbers as they
13 were originally produced, Counsel.

14 MR. PEEK: They're not.

15 THE COURT: Those are the Exhibit Numbers that were
16 placed on the documents to comply with the alphanumeric
17 requirements for the electronic exhibit protocol. Typically,
18 we have alphanumeric numbers that are included on the
19 document --

20 Don't look at me, George.

21 -- that are included on the document at the time of
22 the original production. What's that number?

23 MR. APTON: I'm sorry, Your Honor. I'm -- I'm
24 confused right now, apparently.

25 I have the version of what was here yesterday marked

1 as Plaintiff's 310, which is the same as Exhibit 475 presently.
2 And what I'd like to do is show this to the witness, which
3 includes his signed Assignment, so he could authenticate it,
4 and we could move to admit Exhibit 475.

5 THE COURT: I thought 475 was now different than 310
6 because you broke it up into parts.

7 MR. APTON: Right. But what I --

8 THE COURT: Yeah.

9 MR. APTON: -- have in my hand is Exhibit -- is what
10 appears to be Exhibit 475, Your Honor.

11 THE COURT: Okay. Anyone have anything else?

12 MR. PEEK: I think I understand that they don't have
13 475, so they grabbed the -- back to 310, and now say that's
14 475. That's -- and I don't know that that's the proper method.
15 The other thing is --

16 THE COURT: Well, I don't know that it's true is the
17 problem.

18 MR. PEEK: Yeah. And the other thing that -- that
19 still bothers me, of course, Your Honor, is the fact that when
20 this was originally produced, this --

21 THE COURT: I am past the production issue.

22 MR. APTON: Your Honor, I don't have a hard copy of
23 475 here. That's -- that's the issue.

24 THE COURT: Who has 475 on their computer?

25 MR. APTON: Karen does.

1 THE COURT: Okay. Karen. I am going to step out of
2 the room. Somebody is going to put 475 on the computer.

3 The witness is going to look at 475, which is a
4 proposed exhibit.

5 And then somebody's going to tell me he looked at,
6 and I'm going to come back.

7 MR. PEEK: Your Honor, we can print it.

8 UNIDENTIFIED SPEAKER: We have copies.

9 THE COURT: Well --

10 MR. PEEK: We can print it off the screen, Your
11 Honor.

12 THE COURT: Well, or you can give him a paper copy.
13 I don't care which. But he has to look at the document.
14 Because I don't have real Bates Numbers.

15 THE CLERK: Judge?

16 MR. APTON: Your Honor, may I proceed?

17 THE COURT: I don't know, Counsel.

18 MR. APTON: Okay.

19 (Pause in the proceedings.)

20 MR. PEEK: Go to Plaintiff's 24 if you can't see at
21 the bottom.

22 MR. APTON: Oh. Thank you, Steve.

23 MR. PEEK: Isn't that it?

24 MR. APTON: No. One up. Okay.

25 MR. PEEK: Yeah.

1 BY MR. APTON:

2 Q Mr. Kahn, what is the document you've got in front of
3 you?

4 A It is my Assignment of Claim to PAMTP, LLC.

5 Q When is it dated?

6 A 22nd of April, 2020.

7 Q And is that your signature?

8 A It definitely is.

9 MR. APTON: Your Honor, we move --

10 THE COURT: What is the number that is on --

11 MR. APTON: Oh.

12 THE COURT: -- the bottom of the page, sir?

13 THE WITNESS: 475-022.

14 THE COURT: Thank you. Can we take it off the
15 screen, please.

16 All right. Now that the witness has identified the
17 page of 475, does anybody have any additional objections?

18 MR. PEEK: No, Your Honor.

19 THE COURT: The document will be admitted.

20 (Plaintiff's Exhibit Number(s) 475 admitted.)

21 THE COURT: Okay.

22 MR. APTON: Thank you. I apologize for the
23 confusion. And on that note, I have no further questions, Your
24 Honor. Thank you.

25 THE COURT: Really? Okay. Anybody have any recross?

1 MR. PEEK: Your Honor, I do have just a --

2 THE COURT: Okay.

3 MR. PEEK: -- a couple of questions, if I may.

4 THE COURT: Counsel, wipe down the lectern, please.

5 MR. APTON: Wait. I'll wipe it down.

6 MR. PEEK: I'm waiting for him to wipe it down.

7 THE COURT: He's coming. He was trying to be
8 organized and neat and everything and then all of a sudden we
9 threw him off.

10 MR. APTON: It all came down again.

11 RE-CROSS-EXAMINATION

12 BY MR. PEEK:

13 Q Mr. Kahn, I know that Exhibit 475 is dated
14 April 22nd. Did you sign it on April 22nd, that day?

15 A Yes.

16 Q Okay. And yesterday we talked about the -- any
17 amendment to the LLC, and you've had the evening to sort of
18 look for it, like you did with this exhibit.

19 Have you been able to find that amendment to the LLC?

20 A First, I think I should apologize to you, if I spoke
21 over to you and was rude yesterday. This morning when you
22 apologized, I wasn't talking, so I didn't know if I was allowed
23 to talk.

24 But to answer your question, I thought that I was not
25 supposed to review documents pertaining to my testimony

1 overnight. Maybe that's an incorrect understanding. But that
2 was my understanding, so I did not review any documents
3 pertaining to the case, particularly my testimony, overnight
4 last night.

5 Q And on -- on 475, the Assignment that we see with the
6 stock -- your shares identified, it's 362,000; am I correct?

7 MR. PEEK: And if you'd bring that up to his
8 signature. If you don't have it, Brian, or do you have to
9 turn --

10 A/V TECH: She's going to send it to me right now.

11 A/V TECH: Well, I could even bring it up. It's up.

12 MR. PEEK: We've -- we've got it.

13 A/V TECH: Hold on. There you go.

14 MR. PEEK: Okay.

15 BY MR. PEEK:

16 Q And --

17 MR. PEEK: Let me see that.

18 THE COURT: Can you see it, sir?

19 THE WITNESS: I cannot read the document.

20 THE COURT: Do you want to step over to the big --
21 the big screen there and read it?

22 THE WITNESS: If it's legible on that.

23 BY MR. PEEK:

24 Q Actually, where I want to go to is, let's start with
25 Page 12 of this Exhibit, the Plaintiff 12.

1 MR. PEEK: Do you -- do you not have it, Brian?

2 TECH BRIAN: She's going to e-mail it actually. A/V

3 TECH: Well, he's --

4 MR. PEEK: Okay. Well, if somebody would -- all
5 right. Thank you.

6 MR. OGILVIE: Karen, just -- just pull it up. A/V

7 TECH: I am.

8 MR. PEEK: Just if --

9 A/V TECH: Okay.

10 MR. PEEK: If somebody could just help me, I'd
11 appreciate it.

12 A/V TECH: So you want 12, page 12 of the document;
13 correct?

14 MR. PEEK: It -- it says Plaintiff 12 at the bottom.

15 A/V TECH: Okay. Thank you.

16 MR. APTON: That's it. That's it.

17 MR. PEEK: Okay.

18 BY MR. PEEK:

19 Q So here we have your signature, as well?

20 A Yes.

21 Q Correct?

22 A That is my signature.

23 Q And there's no date there?

24 A It does not appear, so.

25 Q So was this also -- well, when -- when was this

1 executed?

2 A In April of 2020.

3 Q Would it have been at or about the same time as the
4 Assignment was executed on April 22nd?

5 A I don't remember specifically.

6 Q Okay. But at least both the assignment and the
7 identification of your shares that were assigned are only
8 362,196; correct?

9 A That's what's listed there. Correct.

10 Q And though you say such an amendment exists, we
11 haven't seen that. So you think there's now like a separate
12 assignment of the additional 127,000 shares?

13 A I don't know what you mean by a separate Assignment.
14 But the new Operating Agreement, which you can see in the
15 language of what the Operating Agreement does, as opposed to
16 assign percentages based on a pro rata share. And so there is
17 a new Agreement where the correct shares count is same.

18 Q You keep saying that, sir. And I -- I apologize.
19 But we haven't seen that yet. So I'm still waiting to see that
20 so-called new Agreement, at least all we have into evidence
21 right now is this Exhibit 475, which only referred to 362,000
22 shares; correct?

23 A I don't know the answer to that question of what you
24 have and don't have.

25 Q Okay. But at least what is being offered through

1 your testimony today is this Exhibit 475, which only recites
2 362,000 shares as being assigned; correct?

3 A If you pull back up the Exhibit 475, then I can --

4 Q That is -- this is part of 475. We'll go back to
5 that page. Do you want to go back to that page --

6 A Which would be --

7 Q -- where you signed it?

8 A -- the initial Assignment of Claim was with the
9 incorrect number. That is correct.

10 Q Well, I know you keep saying that. But at least, as
11 of -- I just want to focus on as of the date of the execution
12 of the Assignment and the formation of these parties who signed
13 it, at that time, your Assignment only referred to 362,000
14 shares; correct?

15 A I would need to --

16 MR. APTON: Objection, Your Honor. The Assignment
17 that Mr. Peek is referring to --

18 THE COURT: Overruled, Counsel.

19 THE WITNESS: I would need to read the Assignment
20 document which -- in order to answer that question.

21 BY MR. PEEK:

22 Q Well, the Assignment document was attached -- was the
23 Assignment document attached to this LLC as one document, as is
24 purported here to be represented?

25 A Okay. What I'm asking, I guess, then is can you

1 please pull up the Assignment document so I can see it, so I
2 can answer the question about my Assignment document?

3 Q Well, that's --

4 THE COURT: Well, that's on Plaintiff's 22. Here we
5 go.

6 MR. PEEK: That wasn't my question, but I'll -- but
7 will -- but I'll -- go ahead.

8 THE COURT: He wanted to look at it. We've got to
9 let him look at it.

10 THE COURT RECORDER: Do I need to flip it over to
11 Brian?

12 MR. PEEK: Not yet. I don't want this.

13 THE COURT RECORDER: Okay.

14 THE WITNESS: So, it -- nothing I see, at least on
15 the screen, and the Assignment document talks about any share
16 count, all it does is talk about me assigning my rights as of
17 January 15th, 2014, for all of my shares. And all of my shares
18 at that time were, in fact, I believe it was, 489,761.

19 So no, this Assignment of Claim does not reference
20 that incorrect shared number. All this Assignment of Claim
21 does is say that I am assigning my rights as a holder as of
22 January 15th, 2014.

23 BY MR. PEEK:

24 Q And the -- all of the other documents,
25 (indiscernible) with this General Assignment, refer to your --

1 under your signature, having 362,000 shares; correct?

2 A Well, I don't know what you mean by all of the other
3 documents.

4 Q Well --

5 A Your question I thought was about the Assignment of
6 Claim and my Assignment of Claim does not refer to that share
7 count.

8 Q When you signed, you signed on April -- excuse me --
9 on -- I don't know if Plaintiff's 14.

10 MR. PEEK: If I could have that, please. Can
11 somebody --

12 Brian, do you have it yet?

13 A/V TECH: Not yet.

14 MR. PEEK: Your Honor, we're trying to get this --

15 THE COURT: I understand. But we're trying to do
16 four things at the same time.

17 MR. PEEK: Does somebody have it yet?

18 MR. OGILVIE: Plaintiff's 14.

19 THE COURT: I hope you guys are having more luck with
20 the computers today than I am. I've got the blue circle of
21 death.

22 A/V TECH: Do you want Exhibit 14 --

23 MR. OGILVIE: Steve, what --

24 A/V TECH: -- or do you want --

25 MR. OGILVIE: -- page do you want?

1 MR. PEEK: The page that is Plaintiff's 14 at the
2 bottom.

3 A/V TECH: Okay.

4 MR. PEEK: That's the one that I want.

5 BY MR. PEEK:

6 Q When you signed this, you signed what's called a
7 Certification of Members; did you not, Mr. Kahn?

8 A This is, I believe, for the Operating Agreement of
9 PAMTP --

10 Q Correct.

11 A -- LLC.

12 Q When you signed it, you signed it as a Certification
13 as a member; correct, sir?

14 A I don't know the answer to that question.

15 Q Well, let's read the words above. What does it say?

16 A I'm signing it --

17 Q What does the --

18 A -- to adopt the Operating Agreement.

19 MR. PEEK: If you'll -- if you could scroll down,
20 please, Karen, so that I can see -- no, the -- scroll up. I
21 apologize. Scroll up. On his signature block, if you would,
22 please.

23 Wait a minute, I'm -- now I'm even more confused,
24 Your Honor. The one I have here is Exhibit 475. It has a
25 signature. This one doesn't have a signature.

1 THE COURT: Mr. Peek, it was apparently executed as
2 multiple originals, which means that the signatures for the
3 members appear on different pages.

4 MR. PEEK: Okay. So mine --

5 THE COURT: And some of them are blank.

6 MR. PEEK: -- I want -- what I want is 12,
7 Plaintiff's 12. If she could please give me Plaintiff's 12.
8 That's what I would want.

9 A/V TECH: I have it on the screen. Steve --

10 THE COURT RECORDER: Do you have it now?

11 A/V TECH: Steve, I have it now.

12 MR. PEEK: Yeah. Your Honor, could we switch back to
13 Brian?

14 THE COURT: That's between you and Jill.

15 THE COURT RECORDER: It's done.

16 MR. PEEK: Thank you.

17 BY MR. PEEK:

18 Q Do you see at the top what the words are?

19 A Yeah. "Certification of Members. The undersigned
20 hereby agrees, acknowledges, and certifies to adopt this
21 Operating Agreement."

22 Q And what does it say what your percentage is here,
23 sir?

24 A 54 percent.

25 Q And what does it say the number of shares are?

1 A 362,496.

2 Q And then I believe it also -- if you would look at
3 the Operating Agreement itself.

4 MR. PEEK: Which is on Plaintiff 6, Brian. It starts
5 at Article 1, if you have it.

6 BY MR. PEEK:

7 Q If you would look at the paragraph that reads
8 Article 1.7.

9 A "The Members. Members are the owners of the company.
10 The names of all members, the number of shares each member
11 owned in Parametric Sound Corporation as of January 15th, 2014,
12 and the approximately percentage of ownership in the Company
13 for each member stated on Exhibit A, attached hereto, and
14 incorporated herein by reference."

15 Q And then is Exhibit A, that Certificate --
16 Certification of Members that we just reviewed?

17 A Correct.

18 Q Then there's also another -- well, those are the
19 signatures. But Exhibit A --

20 MR. PEEK: If you would go, Brian, to Plaintiff's 18.
21 That's the Exhibit A. I think, if you could scroll up Brian,
22 you'll see the Exhibit A to it. I don't know if I'm saying up
23 or down.

24 A/V TECH: I've got it.

25 / / /

1 BY MR. PEEK:

2 Q That's the Exhibit A referred to in Article 1.7,
3 isn't it?

4 A For ownership of the operating company; correct.

5 Q And there again, we see your shares listed as
6 362,496, with a 54 percent -- percentage ownership; correct?

7 A Yes.

8 MR. PEEK: That's all I have, Your Honor.

9 Thank you, Mr. Kahn.

10 THE WITNESS: Yeah.

11 THE COURT: Anyone have anymore questions for the
12 witness?

13 MR. APTON: Yes, Your Honor. Just couple.

14 THE COURT: Could you wipe down, please, Mr. Peek.

15 MR. PEEK: I will, Your Honor. I was trying to get
16 rid of my stuff here.

17 THE COURT: Don't leave, sir.

18 THE WITNESS: I just wanted to not breathe on you
19 when I drink.

20 THE COURT: It's okay.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. APTON:

23 Q Mr. Kahn, in front of you is Exhibit A from the
24 operating agreement; correct?

25 A Yes.

1 Q And I think we all know that a mistake has been made,
2 but what is the number --

3 MR. PEEK: Objection, Your Honor. Leading.

4 THE COURT: Can you rephrase your question?

5 MR. PEEK: I don't think we all know a mistake was
6 made.

7 BY MR. APTON:

8 Q Mr. Kahn, how many shares did you own on January 15,
9 2014?

10 A I don't have the number in front of me, but I believe
11 it's 489,761.

12 Q And is that the number that should appear in
13 Exhibit A, Row 1?

14 A Yes, it should.

15 MR. PEEK: Objection, Your Honor. That's a leading
16 question and --

17 THE COURT: Overruled.

18 MR. PEEK: -- also if we're going to -- the Best
19 Evidence would be there's an actual amendment to that which
20 changes the percentages.

21 THE COURT: I understand your objection. It's
22 overruled. You may answer.

23 THE WITNESS: Did --

24 BY MR. APTON:

25 Q I'm sorry.

1 A The number should be 489,761.

2 Q Okay. And are there any other numbers on that table
3 that --

4 A Yes.

5 Q -- need to be changed --

6 A Yes.

7 Q -- or should have been changed?

8 A Yes, there is.

9 Q What are those?

10 A One that was also bid off. That was -- I don't have
11 the bid in front of me to see which one it was, but there's
12 another small adjustment that was made.

13 Q Was it Alan and Anne Goldberg?

14 A I believe so.

15 Q And do you know the difference that it should have
16 been?

17 A I had one -- I had the brokerage statements. If you
18 give me the binder, I can confirm the correct number of shares
19 that were in there. It was -- I believe it was...

20 Q Mr. Kahn, I'm going to show you a document. If you
21 could please tell me -- or what -- the Bates stamp of the
22 document -- well, does that refresh your recollection as to
23 what the Goldbergs' ownership was as of January 15, 2014?

24 MR. KOTLER: Objection, Your Honor.

25 THE COURT: Overruled.

1 MR. PEEK: What exhibit number was he referring to
2 again?

3 MR. APTON: 246, I believe.

4 MR. PEEK: Thank you.

5 THE COURT: This is only a yes-or-no question: Does
6 it refresh your recollection?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 BY MR. APTON:

10 Q Is your recollection done being refreshed, Mr. Kahn?

11 A I have not calculated yet the correct number of
12 shares.

13 Q And take your time, really.

14 A Appears to be 6,750 shares.

15 Q And in Ms. Goldberg's account -- or the IRA account?

16 MR. PEEK: I'm sorry. I didn't hear the answer.

17 Would you repeat it?

18 THE COURT: 6,750 shares.

19 THE WITNESS: And then in the IRA account...

20 It's in a different exhibit. It looks like there's
21 an additional 6,750 shares, so it would be 13,500 shares.

22 BY MR. APTON:

23 Q And so 13,500 shares should be what appears in
24 Exhibit A for the Goldbergs?

25 A Correct.

1 Q And so other than your 489,761 shares and the
2 Goldbergs' 13,500 shares, all the other share amounts are
3 correct; is that right?

4 A Yes. Yes.

5 Q Yes. Oh, Mr. Kahn, regardless of any error in the
6 Operating Agreement, what was your intent when you signed that
7 assignment to the LLC?

8 A To assign 100 percent of my ownership interest -- or
9 100 percent of my shares and rights to opt out to the LLC,
10 which I believe is what it says in the assignment of claim,
11 that I assigned all of my rights -- that I'm opting out fully
12 and assigning all my rights.

13 MR. APTON: Thank you, Mr. Kahn.

14 THE COURT: Anything else, Mr. Apton?

15 Anybody else want to ask the witness any more
16 questions?

17 MR. PEEK: Thank you, Your Honor.

18 FURTHER RECROSS-EXAMINATION

19 BY MR. PEEK:

20 Q Mr. Kahn, as I understand the -- from your earlier
21 testimony, that the 362,000 came from some filing that you had
22 access to which informed you for the 352,000 shares?

23 A That is correct.

24 Q And what was that filing?

25 A It was a 13G filing I made back when I crossed

1 5 percent ownership in Parametric Sound in late 2013.

2 Q When you say late 2013 --

3 A I don't remember the exact date. It could have been
4 October, November, December. I don't remember --

5 Q It could have been December?

6 A I don't remember the date of filing, sir.

7 Q And then after that date, you acquired additional
8 shares; is that correct?

9 A That's correct. And that's how obviously I got to
10 the 489,761 shares I owned at the time of the merger. The
11 mistake I had made was I had conflated, in my mind, a D and a G
12 filing, and I --

13 Q I'm sorry. A what?

14 A A 13D filing and a 13G filing, and I thought that I
15 had been restricted from buying additional shares after the
16 13G, based on my faulty memory, which was, in fact, not the
17 case. And so I was able to buy more shares, and did so, but I
18 had thought that that filing represented my share count, and
19 it, in fact, did not.

20 Q So the share count in the 13D --

21 A 13G.

22 Q -- 13G is correct as of that date?

23 A Correct.

24 Q All right. Okay. And then you bought additional
25 shares between that period of time and January 14th [sic],

1 2014; correct?

2 A Yes. And also I believe that the share count I gave
3 was for January -- close of business January 15th. I don't --
4 there was a small difference between January 15th at 9:30 and
5 January 15th at 4:00 p.m.

6 Q Okay. So what I'm trying to understand is the date
7 of the 13G so that I could -- if I wanted to do the math, as
8 you did, I could then do the math to show how you added.

9 So what is the date of that 13G, to your best
10 recollection, sir?

11 A I -- I don't recall it. It was fall/winter of 2013,
12 and it's a public document so it can be easily accessed.

13 Q But that was the basis where you started with the 362
14 and then went from that date and added the additional shares?

15 A No. I'm sorry. I don't know what you mean by "the
16 basis." The basis for getting the share count was using my
17 Morgan Stanley statement, taking the January 31st number and
18 then -- you also do it from January 1st. I did it both ways.
19 It comes out to the same.

20 But take the January 31st number, take the trading
21 between the 16th and the 31st to get a number of additional
22 shares that were added over that period, and then calculate the
23 number of shares owned on January 15th.

24 Q So getting back to these percentages that we see in
25 Exhibit A. If you would pull that up again, 475, Exhibit A.

1 If I depreciate -- now, all of these percentages
2 would change, correct, based on your new count?

3 A Correct. So there's a nominal change. In
4 Goldbergs', I believe my percentage is approximately
5 61 percent, and then the other percentages would be...

6 Q And in order to achieve that additional percentage,
7 you'd have to get the consent of all the other members, would
8 you not?

9 A Yes, but I think that it's important to understand
10 here that the -- a few things. The Operating Agreement says
11 pro rata ownership and, secondly, the -- in this case, when we
12 talk about damages, it's always on a per-share basis. So me
13 having a greater percentage, my percentage going from 54 to 61,
14 doesn't harm any of the other individuals in any way because
15 they're still getting their per-share value; right?

16 So if we owned one share, we wouldn't get -- we would
17 get 10 percent of the amount of damages as if we owned 10
18 shares. So even though my percentage increases, no one is
19 harmed -- no other members of the LLC are harmed by that, and,
20 in fact, they're aided because we split cost pro rata, so
21 they're getting the same outcome with a lower amount of
22 expense.

23 Q Well, thank you for bringing that up. So have you
24 only been paying 54 percent of the cost --

25 A No, I've -- I've --

1 Q -- or 61 percent of the cost?

2 A It's been adjusted, and I've paid 61 percent of the
3 cost.

4 Q And we know that from what document? I mean, do you
5 have bills that show that you've been paying that amount, some
6 document that shows that?

7 A I don't believe -- although, you can discuss with the
8 counsel or with the judge, I'm not sure. But I don't believe
9 that we have to share those documents the same as you don't
10 share the split between the defendants and how they're paying
11 for the counsel and any possible outcome.

12 Q That's not what I asked, is whether you have to share
13 it. I just asked you whether or not you have billing records
14 that show that when you're billed, you're only billed at
15 61 percent -- you're billed at 61 percent versus 54 percent.
16 That was really my only question.

17 A Okay.

18 MR. APTON: Your Honor, objection. Relevance.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, we do have those records, and we
21 have nicely color-coded Excel files, including the catch-up
22 payments that I made, to ensure that it was done equitably for
23 all members of the LLC.

24 BY MR. PEEK:

25 Q So when was this adjustment made to the four hundred

1 and -- 362 to 489?

2 A I believe I testified yesterday that sometime in the
3 May/June/July time frame. I don't -- as I told you, I don't
4 recall specifically when it happened. I do know that the --
5 there are recent payments we made where I had to pay
6 approximately all of them in order to catch-up to the
7 61 percent that I owed.

8 Q That's not what I asked. Let me see if I can just
9 ask my question again, sir.

10 When did you make the change from 362 to the 489?
11 Was that the June/July period, the time of 2021?

12 A There were -- the discussions happened and other
13 members of the LLC were made aware of it in March. And then I
14 don't know when the documentation was finalized and the final
15 signature was taken in. It could have been April/May/June. I
16 don't recall a specific date.

17 Q But you recall that you had these discussions to make
18 these changes in June or July of 2021 as opposed to March of
19 2021?

20 A No, that's not what I just said. I said that
21 everyone was made aware of the error in March and that we then
22 began working on making the changes to the agreement. And I
23 explained the basis for the error and apologized for doing so,
24 and we started the work to get the proper percentage and
25 assignments in the ITP LLC.

1 Q And you submitted a damage analysis in this matter as
2 well, as part of the disclosures?

3 MR. APTON: Objection. I don't want counsel to -- or
4 Mr. Kahn to answer anything that might be privileged. I'm not
5 sure where this --

6 THE COURT: A damages analysis is a document that's
7 required to be provided under Rule 16.1. I assume it was
8 provided; right?

9 MR. APTON: Well, I -- maybe I misheard the question.

10 THE COURT: Remember, you didn't file it, and they
11 filed a motion in limine. I said it was okay, but it was only
12 okay up to the number of the shares. And then you did some
13 math on a piece of paper and gave it to somebody; right?

14 MR. APTON: Absolutely right, Your Honor.

15 THE COURT: Okay.

16 MR. PEEK: That's what I'm trying to get to, Your
17 Honor. I --

18 THE COURT: I'm sorry. It's like my patience is not
19 as good as it used to be, Mr. Peek. Not you.

20 MR. PEEK: Yeah.

21 THE COURT: Although I have the sign from the first
22 time I had to write it with you.

23 BY MR. PEEK:

24 Q So I'm just asking you whether or not the damage
25 calculations that your counsel submitted have this change. Do

1 you know one way or the other?

2 A I don't know.

3 Q Were you aware that damage calculations had to be
4 provided to the Court?

5 A I -- I'm sorry that I don't know whether I was aware
6 there's -- this case has a lot of filings continuously. I
7 don't have memory of that specific filing or discussion.

8 MR. PEEK: Okay. Thank you.

9 THE COURT: Anything else, Mr. Peek?

10 Please wipe down.

11 MR. PEEK: Your Honor, I was going to put my stuff
12 down before we --

13 THE COURT: I'm writing down your time.

14 Anybody else have any more questions for Mr. Kahn?

15 Mr. Kahn, please get up and return to your chair
16 before they change their minds.

17 Who is the next witness?

18 Take your binder with you.

19 MR. PEEK: Could we take a quick comfort break before
20 we start?

21 THE COURT: We may take a biologic break at the
22 request of one of the counsel. It is 2:08. We're going to
23 shoot for ten minutes.

24 MR. PEEK: I don't need ten minutes, Your Honor.

25 THE COURT: I know, but if I do anything else, it

1 still doesn't work.

2 (Proceedings recessed at 2:09 p.m., until 2:10 p.m.)

3 (Pause in the proceedings.)

4 (Pause in the proceedings.)

5 THE COURT: Okay. Who's our next witness?

6 MR. APTON: Your Honor, can I have just two minutes?

7 It's Mr. Barry Weisbord, Your Honor.

8 THE COURT: Okay. Mr. Weisbord, come on up.

9 **BARRY WEISBORD**

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

12 THE CLERK: Please state and spell your first and
13 last name for the record.

14 THE WITNESS: Barry Weisbord. B-a-r-r-y W-e-i-s-b-as
15 in Boy-o-r-d- as in dog.

16 THE COURT: Sir, you can sit down. And you've been
17 listening to a lot of the proceeding today, so you know that
18 speaking through masks are something difficult. You need to
19 use your outside voice. If the lawyers can't hear or
20 understand you, they'll ask you to repeat. Please don't be
21 offended. If you need them to repeat, please let them know.
22 If you need a break, let me know. If you need water, let me
23 know.

24 THE WITNESS: Thank you.

25 THE COURT: Okay.

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DIRECT EXAMINATION

BY MR. APTON:

Q Good afternoon, Mr. Weisbord. Are you a plaintiff in this lawsuit?

A I am.

Q And what's this lawsuit about?

A I am as a member of an LLC.

Q What's the name of that LLC?

A PAMTP.

Q Okay. And what is this lawsuit about generally?

A This lawsuit is about that I and a number of my friends, acquaintances and family own stock in a company called Parametric. It was involved in a financial transaction in the end of '13, beginning of '14, and in that transaction we were -- owned part of a public company, and a private company did a reverse merger. The public company got 19 percent of the new NewCo (phonetic) company and we feel that we were unfairly treated.

Q And how did you first learn of Parametric? How did you first learn about Parametric?

A My son was working at Opco in an area where I think they were doing micro-cap investing, sort of five or 10 million into small companies. And he said that he came across a company -- I like technology, and he came across a company that he thought had some interesting technology that I would be

1 interested in seeing involving directional speakers --
2 directional sound through these specialized speakers and that
3 he had seen some demos of this.

4 I think they had put some money into this company.
5 And he brought the speakers down to my house. I thought the
6 demo was spectacular. I invited some of my friends to see the
7 demo. And some time, you know, some time soon after we all
8 invested some money in the company.

9 Q Okay. And how much was your initial investment?

10 A Five thousand shares.

11 Q And did you buy them in a brokerage account?

12 A Yes.

13 Q What was the brokerage account?

14 A At Oppenheimer.

15 MR. APTON: Okay. Your Honor, I'd like to show the
16 witness Exhibit 384.

17 THE COURT: Okay.

18 BY MR. APTON:

19 Q Mr. Weisbord, if you could take a look at what's in
20 that binder as 384 and let me know what it is, please.

21 A This is a copy of my brokerage statement from
22 12/31/13.

23 Q And what period does it cover?

24 A Excuse me. This is a copy of my statement from
25 January 31st of '14, starting from January 1st to January 31st.

1 Q And in the course of this litigation, did you obtain
2 that brokerage statement from your broker at Oppenheimer?

3 A Yes, I did.

4 Q And is that the copy of the brokerage statement that
5 you obtained?

6 A Yes, it is.

7 MR. APTON: Your Honor, I move to admit Exhibit 384.

8 THE COURT: Any objection?

9 MR. PEEK: No objection, Your Honor.

10 THE COURT: It will be admitted.

11 (Plaintiff's Exhibit Number(s) 384 admitted.)

12 BY MR. APTON:

13 Q Mr. Weisbord, you mentioned a merger earlier. How
14 did you find out about the merger?

15 A I guess we had bought the stock. We were interested
16 in what was going on with the company. Sometime soon after, I
17 was told that the company was --

18 MR. PEEK: Objection. Hearsay, Your Honor.

19 THE COURT: Sustained.

20 Sir, I don't want to know what other people told you,
21 just what you knew.

22 THE WITNESS: Okay.

23 BY MR. APTON:

24 Q Let me actually back up one question. Based on your
25 brokerage statement, how many shares did you own as of

1 January 15th, 2014?

2 A 5,000.

3 Q Thank you. So, Mr. Weisbord, generally how did you
4 find out about the merger?

5 A I found out -- I don't recall how I found out.

6 Q Okay. Did you do any research into VTB Holdings or
7 Turtle Beach when you did find out?

8 A The only thing I did was I went to look them up on
9 the Internet. I had read that they were involved in the
10 headset business. I'm not a gamer, so I wasn't familiar with
11 their product. And I went to look at and read a little bit
12 about their gaming headsets.

13 Q Now, have you spoken with any of the defendants in
14 this action?

15 A Yes.

16 Q And which defendants?

17 A Mr. Potashner.

18 Q When was that?

19 A I spoke to him a few times. I spoke to him a handful
20 of times over the years, actually.

21 Q Okay. And did you see him for the Breeder's Cup in
22 Pasadena at a certain point?

23 A I did.

24 Q When was that?

25 A In November, I think it was November 2nd of 2013. He

1 lives in the Del Mar area or San Diego area. He's a casual
2 race fan. I had known that because I had met him before or
3 talked to him before. And I think he either was my guest or I
4 got him tickets to the event. I was on the board of the event.
5 And he met me at my hotel prior to racing and we had, you know,
6 a business meeting.

7 Q And what was in sum and substance discussed at that
8 meeting?

9 A Basically there were two things discussed. The
10 directional sound technology, one of the reasons that I was so
11 interested was that in my world ,because of the nature of
12 simulcasting and facilities where they take bets on multiple
13 racetracks, it's always been a problem that if you play the
14 sound on all the TVs no one could hear anything. And so it's a
15 very big problem in my world.

16 And when I saw this technology, I thought that there
17 was a world-wide application in my field for being able to
18 choose which sound you wanted to hear of multiple TVs, and I
19 thought it could be a game changer. So I discussed what I saw,
20 how I felt about it, what I thought the opportunity could be.

21 And then he discussed the pending merger vote, the
22 merger opportunity, how important it was for this company to
23 get involved with a company that is better consumer directed
24 than they were and was very encouraging that I and my friends
25 would vote to support the merger.

1 Q And when you say it was important that this company
2 get involved with this other company, which company are you --

3 A Excuse me. So, Parametric was trying to develop a
4 consumer presence with their product and Turtle Beach was a
5 company that was strong in the consumer end.

6 Q Okay. And at that meeting on November 2nd, 2013, did
7 Mr. Potashner say anything to you about weak financials for
8 2013 at Turtle Beach?

9 A No, absolutely not. In fact, he said that the
10 company was very strong, very strong in management, very strong
11 financially, and why this would be a great fit for a company
12 needing more consumer expertise.

13 Q Did he share any information with you about a
14 fairness opinion completed by Craig-Hallum?

15 A No.

16 Q And this was on November 2nd, 2013?

17 A Correct.

18 Q Okay. So did you ultimately vote for the merger?

19 A Yes.

20 Q Okay. Now, did there come a point when you learned
21 that there was a class action -- I'm going to fast-forward
22 several years. Did there come a point in time when you
23 discovered a class action in relation to the merger?

24 A In 2019, I received a piece of mail from, I believe,
25 a law firm in Las Vegas, addressing the fact that they were

1 involved -- that I was eligible to be in a class, having owned
2 stock in Parametric in January of 2014, and that they were
3 involved in a class suit and I should contact them to -- I'm
4 not sure of the exact words in the mailer but, you know, to
5 help assert my rights.

6 Q Okay. And did there come a point in time when you
7 learned that class action was settling?

8 A Yeah. Sometime later on in the fall of that year, I
9 did learn that the class action was settling. I don't remember
10 exactly how I learned that.

11 Q Okay. And what did you do after you learned?

12 A Around the time in the fall of 2013, knowing that I
13 and a number of my friends were involved in the stock, they
14 also received mailers. And so I was -- a number of them called
15 me to say what did I know or what was I going to do about it.
16 And I decided that maybe a good idea would be to talk to
17 someone who was legally involved in that world, not the company
18 that had solicited me but someone that knows about that type of
19 work that would be looking out for my interest. And I was
20 recommended to call you and that's what I did.

21 Q Okay. And from there you ended up opting out of the
22 lawsuit, correct, the settlement?

23 A Yeah. We were -- a number of my friends asked me
24 what I was doing. I said I was going to try to learn more
25 about it. I hired you to call the firm that was involved in

1 the class suit in order -- I had some questions I wanted
2 answered and figured it would be better to have a lawyer ask
3 the questions than I ask the questions. I hired you to ask the
4 questions. You asked the questions.

5 They didn't want to deal with us at all even though
6 at this time it was a large number of shares that we
7 represented of what we believed to be the outstanding shares.
8 They were totally uninterested in discussing anything with us.
9 And we then asked, What are our options? And our options were
10 either to accept the class settlement, be part of the class, or
11 opt out. And after some discussion, as a group, we decided to
12 opt out.

13 MR. APTON: Okay. No further questions at this time,
14 Your Honor.

15 THE COURT: Cross-examination. Can you wipe down,
16 please.

17 MR. APTON: Oh, sorry.

18 THE COURT: Mr. Peek.

19 MR. PEEK: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. PEEK:

22 Q Mr. Weisbord, I understand that you're in the horse
23 racing business?

24 A Yes, sir.

25 Q And you invest in thoroughbred race horses as, I

1 guess, your business?

2 A That's -- if you wanted more context than that, my
3 main business is I invest in stallions, fathers of horses. I
4 also own like the Wall Street Journal for the industry
5 worldwide. I also have a technology company that deals --
6 creates graphics for tracks all over the world.

7 Q So whether it's stallions or this other investment,
8 they all come with risk, don't they?

9 A Yes, sir.

10 Q And the risk that a stallion may or may not produce a
11 foal that's going to be a good race horse or a company may not
12 perform; correct?

13 A Correct.

14 Q And stock prices go up and they go down; correct?

15 A Correct.

16 Q So when you were introduced to Parametric by your
17 son, that's Josh Weisbord?

18 A Yes.

19 Q That's the individual who's been here in the
20 courtroom the entire time?

21 A Yes, sir.

22 Q Okay. He was working at -- I think you said Osco.
23 That's the same thing as Oppenheimer?

24 A No. I'm sorry. It was the mask. He was working at
25 Opco, is that I said.

1 Q Opco. But that's Oppenheimer?

2 A Oppenheimer. Right.

3 Q Okay. And that was in 2012?

4 A I believe 2013.

5 Q Okay. So you first learned about Parametric in or
6 about the first quarter of 2013?

7 A Somewhere in there.

8 Q Okay. And you learned about it from your son?

9 A Correct.

10 Q And what did your -- and had you seen -- had you
11 heard or seen about the sound at your home before your son
12 introduced you to the --

13 A No. No, he said that they had -- they either were
14 going to or had -- they met a CEO and heard a story about a
15 technology. He said I'd like to show you the technology. He
16 brought these speakers to my home. We were able to demo the
17 sound. It actually worked right in my house. And I invited
18 some friends over to see it, too, and that's how I was
19 introduced to the technology.

20 Q That was in the first quarter of 2013?

21 A It was sometime early in '13, I believe.

22 Q Okay. And what else besides showing you the
23 technology did you learn about the company before you invested?

24 A Virtually nothing.

25 Q Did you have an understanding that the product that

1 you were -- that was demonstrated to you was in fact
2 commercialized at the time?

3 A I thought that the product was -- it had been
4 developed and they were now about -- I think at the time I did
5 this they had already signed a licensing deal or they were
6 operating with maybe McDonald's and Build-a-Bear and
7 Disneyland. There were three or four places that they were
8 demoing the technology or had started commercial operations.

9 Q So you knew that before you made your investment --

10 A Yes.

11 Q -- or is that something you learned after the fact?

12 A No. That's something that I knew at the time I made
13 the investment.

14 Q So you knew that there --

15 A So it was starting to -- it was starting to roll out.

16 Q So when you say it was starting to roll out, it was
17 rolled out at least from what you understood in two or three
18 places; correct?

19 A It wasn't just in a laboratory, it was actually
20 working with customers.

21 Q But there were only two or three customers that you
22 had learned where this product had been placed; correct?

23 A They're the only ones I remember.

24 Q Okay. Did you understand that there had been more
25 locations besides these two or three that you described in

1 which the product was placed?

2 A I don't recall.

3 Q Did you have an understanding or did you investigate
4 whether or not there had been any sales of the product?

5 A My sense was that if the technology was being used by
6 customers, that they were receiving revenue, whether it was a
7 sale, a lease. I didn't question what the financial
8 arrangements were. But in my mind it was being operated
9 commercially, for commercial gain.

10 Q Okay, that's your mind. So you came away with that
11 sense, as you said, based upon something your son told you or
12 something you independently investigated?

13 A I think I read about it, actually. I think there was
14 some release that they were operating in these locations.

15 Q Okay. But those --

16 A But I didn't do it by examining financial records.

17 Q But those are just the two or three locations about
18 which the press release was based; correct?

19 A Correct.

20 Q Did you have any other information other than this
21 press release that you say you saw that they had sales in other
22 locations?

23 A No. I don't recall any information.

24 Q Did you have any information, other than these three
25 locations where you say it was being demoed, that they had in

1 fact a commercialized product and a supply chain to sell it or
2 a distribution center to sell it?

3 A I don't recall knowledge beyond the handful of
4 locations that I remember.

5 Q So you didn't have any particular information that in
6 fact this product was being sold regularly in the marketplace
7 through some distribution method; correct?

8 A I don't recall any information.

9 Q So, did you or did your son describe to you what he
10 knew about the company, what his investigation had disclosed?

11 A I don't really recall his opinion. I really did this
12 based on my own assessment of the technology and thinking that
13 someone would have to be fairly untalented to not make this
14 work.

15 Q So I don't know at what price you bought, but could
16 you tell us at what price you bought the stock?

17 A Do I recall sitting today?

18 Q Yes.

19 A I just looked at the statement.

20 Q That was the ownership. I'm asking for what the
21 price was at which you purchased it.

22 A I believe that it's on the statement.

23 Q Okay. Well, then go ahead and look at the statement,
24 then.

25 THE COURT: And, sir, if it refreshes your memory,

1 let us know and then answer the question, please.

2 THE WITNESS: Okay. It looks like my average cost
3 was \$11.91.

4 Q Okay. So about a \$55,000 or \$60,000 investment;
5 correct?

6 A Right.

7 Q That's certainly a significant sum to me. Is that a
8 significant sum to you in your world of horse racing?

9 A I'd say moderate.

10 Q Okay. Well, as a moderate investment, what did you
11 do, if anything, to sort of follow the investment?

12 A Well, I have an app on my phone with the stocks and
13 you could look at the app and it collects the information for
14 you. It also collects when the companies have any
15 announcements. So that was really kind of what I would have
16 done at the time.

17 Q So, I mean, I have an iPhone and it has loaded a
18 stock market app. Is that what you're talking about?

19 A Yes.

20 Q Okay. And you included Parametric Sound on your list
21 of stocks that you own; correct?

22 A Correct.

23 Q Okay. And that would provide you from time to time
24 information that may have been in the public; correct?

25 A Correct.

1 Q Okay. So what, then, as you're following the stock
2 on your phone, what did you learn about the company? Let's say
3 the second quarter. Well, let's stay with the first quarter of
4 2013. What, if anything, did you learn about it?

5 A I don't recall.

6 Q Did you learn anything at all in that first quarter,
7 other than these three locations where the product was being
8 demoed, about any of their sales activity?

9 A No.

10 Q Did you learn anything in that first quarter of 2013
11 about any of its licensing activities?

12 A I know that there was some press releases, that they
13 were developing a licensing strategy and that they had sold
14 some licenses to some locations. That's all I knew. I guess I
15 should maybe also just say that I hate the stock market. I
16 don't like anything about the financial world. I'm not
17 interested in it. I don't like to read about it. I find it
18 just not something that I care about. So I don't spend, I
19 mean, hardly any time, other than the little app on my phone,
20 thinking about these kinds of things.

21 Q Okay. The horse racing business is more suited to
22 your, I guess, gambling style?

23 A I'm one of the biggest experts in the world on that
24 subject.

25 Q Okay.

1 A Not gambling. Investing.

2 Q So are you familiar with such information coming out
3 of a public company, such as a 10-Q?

4 A I know the terms. I've never read one in my life.

5 Q Okay. And what do you understand to be the term?

6 A I just know it's a term that public companies have to
7 file these reports.

8 Q So do you know what the information is that's
9 supposed to be in a 10-Q?

10 A No.

11 Q Have you also heard the term 8-K? Do you know what
12 an 8-K is?

13 A AK?

14 Q Eight. The number eight.

15 A 8-K. No, I don't know that term.

16 Q Okay. And what about a 10-K?

17 A I've heard that term.

18 Q And what do you understand to be a 10-K.

19 A No idea.

20 Q So I take it, then, that you were not informing
21 yourself from time to time about the company's profits and
22 losses, assets and liabilities; correct?

23 A Correct.

24 Q So you had no appreciation of whether they had or had
25 not commercialized the HyperSound technology that was

1 demonstrated in your home; correct?

2 A No understanding at all.

3 Q And you didn't know whether or not it was actually
4 ready for commercialization in that first quarter or second
5 quarter of 2013; correct?

6 A The only thing that I tried to connect the dots
7 myself in that I saw the technology. It's not theoretical, it
8 was real. It worked in my house. It worked in my body. It
9 had locations where they were using it. So I only surmised
10 that this was not a laboratory thing, this was a real thing.

11 Q I understand. Wouldn't you want to know, however, as
12 an investor, how they were proceeding to commercialize,
13 monetize and bring profits and losses to you as a shareholder?

14 A I kind of felt that anyone that was professional in
15 that world, if they had graduated kindergarten should be able
16 to make this thing work.

17 Q You understood this was a startup company?

18 A Didn't understand that.

19 Q Okay. You know what I mean by a startup company?

20 A A young company.

21 Q Did you know anything about any of the executives of
22 the company?

23 A No.

24 Q Do you know the name Elwood Norris, for example?

25 A I've come to learn that I think he was an inventor.

1 Q Did you come to learn that he was the inventor of the
2 HyperSound technology?

3 A Of the technology. Correct.

4 Q And what about Seth Putterman? Have you heard that
5 name before?

6 A I've heard the name, but I don't know him.

7 Q You don't know him to be a physics professor at the
8 University of California, Los Angeles?

9 A No.

10 Q What about the name Robert Kaplan? Do you know that
11 name?

12 A I believe we just let him out of the lawsuit.

13 Q I'm sorry, what?

14 A I think we just let him out of the lawsuit.

15 Q Okay. Other than the fact you let him out of the
16 lawsuit, did you do any due diligence on any of the members of
17 the board of directors?

18 A Absolutely none.

19 Q Did you do any due diligence on any of the executives
20 of the company when you purchased?

21 A Absolutely none.

22 Q Did you know the name Kenneth Potashner at the time
23 that you invested?

24 A No.

25 Q So you met Mr. Potashner much later?

1 A Sometime a little bit later, yeah.

2 Q And I think that I've learned from reading your
3 deposition that most of your interactions with Mr. Potashner
4 were at the race track or a dinner engagement, social in
5 nature; correct?

6 A Correct.

7 Q And you really only had one true business meeting
8 that you've described to Mr. Apton?

9 A I think that that's not strictly, I think, the case.
10 I think we might have even played golf. I know we went to the
11 Del Mar races. I know we went racing at the Breeder's Cup. I
12 know we had a dinner or two. At almost every occasion there
13 would be some mention of the business, but I would -- these
14 were not come into my office and have a business meeting.

15 Q So there would just be a mention, I work at
16 Parametric Sound, this is what we're doing, things -- that kind
17 of a casual conversation?

18 A Well, he was the chairman and the CEO, so I
19 expected -- when he would tell me something, I expected that he
20 would be knowledgeable and truthful.

21 Q I appreciate that. What I'm trying to understand is
22 what it was that he told you in this golf round, the Del Mar
23 racing or a dinner engagement about Parametric, if anything,
24 that you can recall.

25 A That they were developing the licensing program; that

1 he thought it had great potential; that the technology had
2 great potential. And then it morphed into merging with this
3 company would be a great idea. So that was sort of the
4 trajectory of the discussion in 2013.

5 Q So when did you first have a conversation with
6 Mr. Potashner about a merger?

7 A Not until that November.

8 Q That was the November 2013 --

9 A Excuse me. I think that I saw him at the races that
10 summer and I think --

11 Q You think. I want to know what you know, not just --

12 A Okay. Well, there was mention that there was
13 discussions, but he was way more specific in November.

14 Q Let me go back again, since you have your statement
15 of account up there in front of you. And I think we know this
16 already from Mr. Kahn, but at the time you -- you sold your
17 shares in Parametric/Turtle Beach; did you not?

18 A Correct.

19 Q And you sold them before April of 2020; correct?

20 A Correct.

21 Q And at the time you sold them, they just were sold to
22 somebody in the marketplace through your broker at Oppenheimer;
23 correct?

24 A Yeah. I didn't know who was on the other side of the
25 trade.

1 Q That's where I'm going.

2 A Yeah.

3 Q They were just -- you just called up your broker and
4 said, Sell my 5,000 shares in Parametric. Is that about the
5 extent of it?

6 A No. I didn't sell my shares in Parametric.

7 Q Excuse me. Well, Turtle Beach?

8 A Correct.

9 Q It became Parametric.

10 A No. Parametric became Turtle Beach.

11 Q In any event, those shares in Turtle Beach that you
12 sold, it was just calling up your broker and saying to your
13 broker, Sell these shares; correct?

14 A Correct.

15 Q And at the time that you sold them, it's true, is it
16 not, that you did not reserve any rights that you might have
17 had under those shares of stock; correct?

18 A Correct.

19 Q You had no written agreement with the purchaser of
20 your shares in which you retained any claims you might have in
21 this litigation; correct?

22 A Correct. I only thought we do that in the horse
23 business, not in the stock business.

24 Q I'm sorry, what?

25 A I said we do that in the horse business but not in

1 the stock business.

2 Q Okay. Now, is the only real, true recollection you
3 have of a discussion with Mr. Potashner about any of the
4 substance of a merger was in November of 2013?

5 A Correct.

6 Q Did you -- so other than this conversation, perhaps
7 at Del Mar or the golf course, wherever it occurred, where
8 Mr. Potashner mentioned that they were having discussions about
9 a merger, what, if anything, did you know about the merger at
10 or about the time that it was approved by the board?

11 A I don't know specifically what date it was approved
12 by the board.

13 Q I'm sorry, what?

14 A I don't know specifically what date it was approved
15 by the board.

16 Q I'll represent to you it was August 2nd.

17 A Okay.

18 Q So putting that date in mind, did you have any
19 knowledge of the approval of a merger by the board of directors
20 on or about August 2nd, 2013?

21 A No, I don't.

22 Q Now, your son I think left Oppenheimer and went to a
23 company called Finsen?

24 A I think it's Finjan.

25 Q Finjan. Maybe I got it wrong.

1 A Right.

2 Q Finjan. And it's another investment-type company;
3 investment banking type company?

4 A I don't -- I know they're in the financial world. I
5 don't know exactly what they do.

6 Q So you and your friends, as a result of this
7 demonstration at your home, all bought stock in Parametric;
8 right?

9 A Correct.

10 Q You don't know what due diligence, if any, these
11 other individuals did with respect to the purchase of the
12 stock; correct?

13 A Correct.

14 Q Were these friends to whom you introduced the
15 Parametric stock opportunity?

16 A A number of the people are people that I regularly
17 invest in thoroughbred activities with and we talk all the
18 time. And I would have said, hey, I saw this technology that I
19 think is really cool, come see it or let me tell you about it.
20 And then everybody got kind of excited about it, knowing --
21 easily understanding, as I did, that there could be a
22 tremendous application for our world. And I think that that's
23 what really kind of got us excited about it.

24 Q Did your son speak with you in or about the summer of
25 2013 about a letter that he sent to the board regarding the HHI

1 stock option in favor of Mr. Potashner, or something alone
2 those lines?

3 MR. APTON: Objection, Your Honor.

4 THE COURT: Overruled.

5 You can answer.

6 THE WITNESS: There was a discussion in the summer of
7 2013 that the company needed or could -- it could be a benefit
8 to the company to achieve some additional financing to help
9 roll out the health benefits, hearing benefits of the
10 HyperSound technology. And he must have had some discussion
11 with Mr. Potashner and spoke to myself and some of my friends
12 that maybe we should be interested in offering some financing
13 for this purpose. And I believe there was actually an offer
14 made that was rejected by the company.

15 BY MR. PEEK:

16 Q Okay. Are you aware that your son sent a letter to
17 the board of directors in July of 2013 supporting Mr. Potashner
18 and the health application of HyperSound?

19 A I don't recall the letter.

20 Q Are you aware that your son represented to the board
21 of directors that he represented over 20 percent of the
22 shareholders, which included yourself, Mr. Masterson, Mr.
23 Goldberg, Mr. Nusblatt, Mr. Greenberg, his brother Bradley,
24 you, Marcia Patricof, Jules Patricof, Jessie Silver, David
25 Brontauk, Joshua Scheer, Steven Seremeteis, John Grimley and

1 Peter Keblish.

2 A Am I cc'd on the letter?

3 Q No, you're not.

4 A Oh.

5 Q I'm just asking if you're familiar with the fact that
6 he wrote that letter, representing to the board of directors
7 that he represented this group?

8 A I'm not really aware of the letter.

9 Q Okay. The names that I read off, are these
10 individuals that are all friends of yours?

11 A Quite a few of them are.

12 Q And are they, to your understanding, friends of your
13 son, Josh Weisborg?

14 A Do you want to go through the list and I'll be able
15 to help you?

16 Q I will. Richard Santulli.

17 A He's my partner. He's also a friend of --

18 Q Robert Masterson, otherwise known as Bat Masterson.

19 A Mr. Masterson is my partner and a friend of Josh's.

20 Q And he goes by Bat Masterson?

21 A Absolutely.

22 Q Only guys like you and I remember that TV show.

23 A A hundred percent.

24 Q Allan Goldberg.

25 A My lifelong friend and partner. And he's Josh's

1 godfather.

2 Q Edward Nusblatt.

3 A Josh's stepdad. Also a dear friend of mine.

4 Q Married to your ex-wife?

5 A Exactly.

6 Q David Greenberg.

7 A A friend of Josh's.

8 Q Of course, Barry, his brother?

9 A Yes, his brother.

10 Q Excuse me. Bradley, his brother. I apologize.

11 A Right.

12 Q Marcia Patricof and Jules Patricof.

13 A That's his grandparents, his mom's parents. Also
14 dear friends of mine.

15 Q Jesse Silver.

16 A A good friend of his.

17 Q David Brontauk.

18 A A good friend of his.

19 Q Joshua Scheer.

20 A He was a co-worker at Oppenheimer; still there.

21 Q And Steven Seremeteis.

22 A He's a guy that runs my IRA at Opco.

23 Q Okay. And John Grimley.

24 A Investment guy, a friend of Josh's who lives near me.

25 Q And do you understand that John Grimley works at

1 Craig-Hallum?

2 A Did not know that.

3 Q Peter Keblish.

4 A Don't know that name.

5 Q Do you appreciate those names, other than those I
6 think one or two that you didn't recognize, that they're all
7 shareholders -- were all shareholders in Parametric?

8 A I mean, did I know that at the time?

9 Q Yes.

10 A I did not know that. I knew a bunch of them that are
11 my -- that are involved with me I knew had shares. I didn't
12 know all of his friends had shares.

13 Q Yeah. So your -- his stepdad, his grandparents?

14 A I knew they had shares.

15 Q Your dear friends?

16 A Yes.

17 Q Did you -- but you did discuss with Josh some
18 financing opportunities for the health application of the
19 HyperSound; correct?

20 A Yeah. I mean, like I said a few times here, the demo
21 of the technology was so significant to us that we thought this
22 was something to pay attention to. And when he brought to us
23 that the company might need some financing, whether it be debt
24 converted to equity or pure debt or whatever, particularly to
25 help develop this technology, it was something we were

1 interested in.

2 Q And so you looked at it?

3 A Correct.

4 Q You did some due diligence?

5 A Yeah. I mean, more about deal structure than the due
6 diligence of the financial aspects of the company per se.

7 Q Well, what did you learn as you were investigating
8 this potential financial opportunity with the health
9 application of HyperSound?

10 A I didn't really learn anything, other than that there
11 could be an opportunity here. It didn't go -- it just wasn't a
12 long process. There was an opportunity. There was a
13 discussion. There was a soft offer made.

14 Q A soft offer made by?

15 A Josh, representing some of our friends.

16 Q Okay.

17 A That we would have interest in investing this money.
18 And then it was -- the offer was quickly rejected by the
19 company. That's what I remember.

20 Q And did you have an appreciation as to why it was
21 rejected?

22 A No.

23 Q In or about this same time -- well, let me see if I
24 can get a time frame first. Was this in or about July?

25 A In the summer of 2013.

1 Q In or about this same time frame, did you come to
2 learn that the company, Parametric, had engaged in merger
3 negotiations with Turtle Beach?

4 A It would have been in close proximity.

5 Q And what did you learn, if anything, about Turtle
6 Beach with respect to this merger?

7 A It would be very hard for me to place, as there's
8 been so much learned about all this. To say what did I learn
9 in July of '13 versus seeing Ken at the races in August of '13,
10 post the board vote where he said I think we're going to be
11 doing a deal, to knowing the name of the company, to looking up
12 their product, to being asked to vote to support the merger in
13 November, literally bar those one sentences, I didn't spend
14 time to learn about anything.

15 Q So sometime, whether it's August or November, you did
16 become aware that there was a merger between Parametric and
17 Turtle Beach; correct?

18 A No. I don't think the merger would have taken place
19 until the vote.

20 Q You're correct. My apologies.

21 A Okay.

22 Q So sometime, whether it's August or November, you did
23 become aware that there was a merger between Parametric and
24 Turtle Beach; correct?

25 A No. I don't think the merger would have taken place

1 until the vote.

2 Q You're correct. My apologies, sir.

3 A Okay. But did I learn that that's what they were
4 trying to accomplish? Yeah.

5 Like I said, at -- in my November 2nd meeting,
6 Mr. Potashner explained to me why this was such a great deal
7 and I should vote for the merger. So there's no question in
8 November 2nd, I knew what was going on.

9 Q Let me have you -- I'm going to show you what has
10 been marked as DX834.

11 And before I show it to you, let me ask counsel
12 whether they will stipulate to it or not.

13 MR. PEEK: I've already showed it to you.

14 MR. APTON: Hold on one second. You said this was
15 834. Yeah?

16 THE COURT: 834?

17 MR. PEEK: Yes.

18 MR. APTON: Okay.

19 MR. PEEK: While I'm waiting on that, may I approach,
20 Your Honor?

21 THE COURT: You may.

22 BY MR. PEEK:

23 Q Let me show you what has been marked as Exhibit 834.

24 THE COURT: Any objection?

25 MR. APTON: There's a portion of -- well --

1 THE COURT: So it's a yes or no. Any objection?

2 MR. APTON: Yes.

3 THE COURT: Okay. Mr. Peek, continue.

4 BY MR. PEEK:

5 Q Okay. So you've been handed what has been marked as
6 834. Is that an e-mail to you?

7 A I'm cc -- it's not to me. I'm cc'd on it.

8 Q You're cc'd on the e-mail; correct?

9 A Correct.

10 Q You recognize that as something that you would have
11 received in or about the fall of 2013; correct?

12 A Correct.

13 Q And it's an e-mail from Josh to whom?

14 A To Rich Santulli, Robert Masterson, and Alan
15 Goldberg.

16 Q And then there is -- at the top of the e-mail, where
17 you weren't copied, it says, FYI, see below.

18 Do you see that? You weren't on that?

19 A See below -- this -- well, it looks like -- I'm
20 not -- I'm not sure I'm following exactly what I'm seeing. But
21 it looks like this is actually an e-mail from Josh to Juergen
22 Stark on October 10th. And he -- is this a -- a chain, because
23 Juergen Stark is on --

24 Q Yes. This is a -- this is what we would characterize
25 as a chain, Mr. Weisbord.

1 A Okay. So --

2 Q So you're the first part of the chain at the bottom,
3 in which your son is writing to you --

4 A Oh, so it's regards --

5 Q -- and the others.

6 A Got you. And then that e-mail was sent to Mr. Stark?

7 Q Correct.

8 A Okay.

9 MR. PEEK: Your Honor, rather than have to create a
10 new e-mail and bring him back, I would offer it again.
11 Otherwise I'm going to have to probably go back, redact the top
12 part of it, and make a new one, but --

13 THE COURT: That's what it sounds like.

14 MR. PEEK: I'll do it either way, if that's -- and
15 I'll bring him back to talk about it.

16 So I'm going to offer it again.

17 MR. APTON: Steve, I can redact it. He can redact
18 it.

19 MR. PEEK: I know. If she'll let us.

20 THE COURT: I will. But you have to have a new
21 exhibit number, but he does it all the time.

22 MR. PEEK: I'll give it -- I'll give an exhibit --
23 new exhibit number and show it to the witness. Just redact
24 that top part.

25 THE COURT: Is that acceptable with you, Mr. Apton?

1 Does that resolve your concern?

2 MR. APTON: Yes, it does. Thank you.

3 MR. PEEK: Thank you very much.

4 THE COURT: All right.

5 MR. APTON: Thank you. Thank you.

6 MR. PEEK: So we'll --

7 THE COURT: I'm glad we were able to work that out.

8 MR. PEEK: It's good when you can work together, Your
9 Honor.

10 THE COURT: It really is.

11 MR. PEEK: You're used to that, aren't you?

12 THE COURT: Mr. Ogilvie is losing his mind over
13 there.

14 MR. PEEK: He's been riding me a lot, Your Honor.

15 THE COURT: I can tell. I put the black knight away,
16 Mr. Peek.

17 MR. PEEK: I know you did, Your Honor. I appreciate
18 it.

19 In any event, so soon as we can bring that up here.

20 THE COURT: So we're going to give it a new number,
21 and we're going to e-mail it, Mr. Clark, to the clerk? We're
22 going to redact the top e-mail out.

23 MR. PEEK: So --

24 MR. APTON: I'll do it right now.

25 MR. PEEK: So do you want me to show you what

1 parts --

2 THE WITNESS: Do you want me to read this?

3 THE COURT: No.

4 MR. PEEK: Not yet. Not yet.

5 THE WITNESS: Okay.

6 MR. PEEK: You can read it to yourself.

7 THE WITNESS: Got it.

8 THE COURT: Don't read it to me.

9 MR. PEEK: Don't read it to her.

10 THE WITNESS: I will not do that.

11 MR. PEEK: There we go. It's awfully small, even on
12 my -- you know, the copy you have is obviously the one that I
13 have.

14 THE COURT: So what is its new number?

15 FEMALE SPEAKER: 1072, Your Honor.

16 MALE SPEAKER: 1072.

17 THE COURT: Any objection to 1072?

18 MR. APTON: Thank you. No, Your Honor.

19 MR. PEEK: Thank you, Mr. Apton.

20 THE COURT: Okay. I'm crossing out 834 and writing
21 1072 instead, with a check mark.

22 (Defense Exhibit Number(s) 1072 admitted.)

23 Thank you for your courtesy, Counsel.

24 BY MR. PEEK:

25 Q Again, this -- this e-mail is --

1 THE COURT: And for a great job.

2 BY MR. PEEK:

3 Q -- sent to you after the merger agreement is signed,
4 but before a stockholder vote; correct?

5 A Correct.

6 Q And Mr. -- your son is writing to you, Richard
7 Santulli, Robert Masterson, Alan Goldberg, and his brother and
8 you; correct?

9 A Yeah. We're -- again, we're cc'd. He's writing to
10 the other three people.

11 Q Oh, that's right. Sorry. You and your other son are
12 cc'd?

13 A Correct.

14 Q And you received this in or about October 9th;
15 correct?

16 A Correct.

17 Q And here -- what -- you -- your son is discussing
18 this to you -- with this group, the new litigation -- excuse
19 me -- this new merger; correct?

20 A You said litigation.

21 Q I did -- I misspoke. I'm sorry.

22 A Okay.

23 Q I talked to you about the fluctuations in the stock;
24 correct?

25 A Right. It looks like he's addressing the fact that

1 the stock must have dipped and that Turtle Beach has taken on
2 some hires that were going to make it a better company. And
3 it's going to be a matter of time until there's a better
4 understanding that this -- these are all positive developments.

5 Q Right. He's telling you that this merger proposed is
6 positive for Parametric; correct?

7 A Correct.

8 Q In fact, he talks about being excited about the
9 potential merger; correct?

10 A Correct.

11 Q And then he also says that we've continued to believe
12 that we have come to the time to see the light at the end of
13 the tunnel; correct? That's the second to last line in his
14 e-mail.

15 A You know, what happened, the hole blocked the
16 beginning of that out. So that's why I didn't understand where
17 you were going.

18 Q I know. And it has -- perhaps we can see it -- if
19 you look at it on the screen --

20 A It didn't -- this is too blurry for me. So I can read
21 it. I'm with you here.

22 Q Okay.

23 A [Indiscernible.]

24 Q If you would highlight -- I can highlight that last
25 line.

1 A No, I got it. I got it.

2 Q Okay.

3 A Yes. That's what it says, the next to the last
4 statement says; that's correct.

5 Q I have never been more excited about the company's
6 position and continue to believe we have now come close to
7 seeing the light -- the lights -- the highs of the stock.
8 Sorry.

9 A Right.

10 Q I thought it said the light at the end of the tunnel.
11 Because I couldn't read it either.

12 A Okay.

13 Q And that was your son really recommending that you,
14 as a shareholder group, vote to approve the merger; correct?

15 A That looks to be his opinion.

16 Q Right. And do you value his opinion --

17 A Absolutely not.

18 Q -- as a former Oppenheimer, I guess stockbroker or
19 investment banker type and a FIN JAM -- FIN JAM person?

20 A Absolutely not.

21 Q Why not?

22 A I don't value his opinion.

23 Q Why not?

24 A I just don't think -- I don't value anybody's
25 opinions in stocks.

1 Q As I recall in your deposition you were a little bit
2 more forthright as to why.

3 Do we need to read that? Or you do you --

4 A I had a few too many losers.

5 Q I'm sorry.

6 A I had a few too many losers.

7 Q Had a few too many losers from your son; correct?

8 A Correct.

9 Q So even though he writes to you and the other folks
10 about approving the merger, you disregarded that?

11 A If it was no basis -- my voting for the merger was
12 strictly based on Mr. Potashner telling me it was the right
13 thing to do.

14 Q Okay. Solely based on what Mr. Potashner said to you
15 at the horse race in Del Mar on November 2nd; correct?

16 A Not at Del Mar, Santa Anita.

17 Q Santa Anita. My apologizes. I heard Del Mar.

18 A No problem.

19 Q I know they're two separate. I don't know a lot
20 about racing, but I know there's a difference between Del Mar
21 and Santa Anita.

22 But solely based upon that one conversation you had
23 with Mr. Potashner, which was, what, a 10-minute conversation?

24 A No. It was a half hour, probably, I think. And in
25 my view, Mr. Potashner is a professional person being paid to

1 run a public company that has to be knowledgeable about what he
2 does, as opposed to my son reading something or thinking
3 something -- I wouldn't put it in the same bracket.

4 Q So let -- let's focus a little bit. I want to know
5 what it was specifically that Mr. Potashner told you at Santa
6 Anita, on November 2nd, 2013.

7 A You -- that's a question?

8 Q Yeah.

9 A Sorry. That -- we discussed the fact that Turtle
10 Beach was extremely strong in consumer interface, that this is
11 a skill that the HyperSound technology needed to help make it a
12 commercial product, that he thought it was a great fit, and
13 that he could see -- he believed in a very bright future for
14 the new combined company, and that the right thing to do would
15 be to vote for this merger to progress -- he knew that my
16 interest was in the technology, and the right thing to do to
17 progress the technology would be to vote for the merger.

18 MR. PEEK: May we have Mr. Weisbord's deposition --
19 original deposition, please.

20 THE COURT: Maybe. Just a moment.

21 MR. PEEK: Yeah, you're right. Maybe.

22 THE COURT: Let's see if we can find it.

23 MR. PEEK: I'm told by Katarina that they're all
24 alphabetized.

25 FEMALE SPEAKER: Yes, sir.

1 BY MR. PEEK:

2 Q Now, you were deposed on or about March 21st of this
3 year, were you not? Or excuse me, March 11th. My apologies.

4 A I believe so. I mean, I'm not sure of the date, but
5 it was in March.

6 Q And at that time you were placed under oath?

7 A Yes, sir.

8 Q And at that time you had prepared for your
9 deposition; correct?

10 A I don't -- I'm not sure what you mean by prepare.

11 Q Well, you knew you were going to testify. You wanted
12 to at least be prepared for the questions that were being
13 asked; right?

14 A I mean, I didn't go into it prepared really.

15 Q Okay.

16 A [Indiscernible] or I read the complaint.

17 Q Pardon?

18 A Or I read the complaint.

19 Q You read the complaint?

20 A I think at the time I read the complaint.

21 Q Before you testified on March 11th?

22 A Correct.

23 Q Okay.

24 THE COURT: And there's only one volume; correct,
25 Mr. Peek?

1 MR. PEEK: Yes, Your Honor. There's only one volume.

2 BY MR. PEEK:

3 Q And, of course, you were under oath at this time;
4 correct?

5 A Uh-huh.

6 Q The same oath that you were given here today?

7 A Correct.

8 THE COURT: Sir, we're going to hand you the original
9 of your deposition transcript. It's been removed from the
10 sealed envelope. You may look before or after the section in
11 the testimony Mr. Peek refers you to, to give yourself context.

12 BY MR. PEEK:

13 Q Yeah. So I'm going to have you look at page 23 and
14 24 and 26. So if you want to read all of those to yourself to
15 give you that context that the Court has described, you're
16 free -- feel free to do so.

17 A Okay.

18 Q And so I'm going to actually ask -- direct your
19 attention to the bottom of page 23.

20 Was this question asked of you and the answer
21 thereafter given:

22 "What do you recall about what was discussed during
23 that meeting?"

24 Answer, "It was -- there was a fairly brief
25 discussion about the upcoming transaction, and that

1 Mr. Potashner indicated that this was the right move for the
2 Parametric Sound Company and that he felt that this was a
3 forward step for the company."

4 And then it says, "Do you recall if he explained why
5 he believed that?"

6 Answer, "I don't recall."

7 Were those your answers -- questions and answered
8 asked of you?

9 A Correct.

10 Q At that time you didn't recall that conversation;
11 correct?

12 A Excuse me. I couldn't hear you.

13 Q I'm sorry. You -- at the time you had testified, you
14 didn't recall the conversation?

15 A No. I stated in here that -- what happened.

16 Q Well, all you say here is he indicated this was the
17 right move for the Parametric Sound Company. You didn't tell
18 us all the other things that he --

19 A That quite honestly was almost -- there was one other
20 sentence added, so --

21 Q Okay. The other sentence was what?

22 A That Turtle Beach was strong in consumer and that the
23 technology could use consumer help. I mean, it -- I don't
24 think it's different at all from what I said earlier.

25 Q Okay. And on 25 and 26, you say, "And this

1 technology enables you to direct" -- this is the answer -- "And
2 this technology enables you to direct the sound to a specific
3 head many feet away, and I thought that this would have been an
4 amazing use at these types of facilities all over the world.
5 And I remember discussing that with him."

6 Question, "Do you recall whether you discussed
7 anything else during this meeting with Mr. Potashner?"

8 Answer, "No, I don't recall."

9 Again, same questions, same answers about what you --
10 about those discussions?

11 A No. I think you're taking it out of context. I
12 don't recall anything else other than I already discussed the
13 merger -- just what I said earlier. I discussed the merger. I
14 discussed the technology. Same two things then; same two
15 things now.

16 Q The only thing that he said about the merger was that
17 it was a forward step for the company.

18 That's what you told us back in March; correct --

19 A I said it was --

20 Q -- on page 24.

21 A I said it was a brief discussion. My guess would be
22 is that if I was asked for more context, or potentially -- I
23 think -- I think it's basically the same exact thing with one
24 sentence added. So I was maybe thinking about it more now and
25 I recall the extra sentence.

1 Q And Mr. Potashner was telling you also about, I think
2 what you told us, is how great Turtle Beach was doing?

3 A No, no, he didn't say that. He said --

4 Q And did he tell you how wonderful their business was?

5 A No, I didn't say that.

6 Q And did he also tell you that they were going to be
7 experiencing significant growth?

8 A Didn't say -- I didn't say that.

9 Q No. I'm not asking you what you said. I'm asking
10 you whether he said that to you.

11 A Oh, no. I stated then, I state it again today, that
12 I said in here it was a brief discussion -- in my mind brief.
13 I say in the deposition, I said, Less than 30 minutes. Today I
14 said 30 minutes, so I -- in the same planet.

15 I said that he asked -- he said that he believed --
16 that the right thing would be to vote for the merger. He
17 believed in the merger. He told us why he believed in the
18 merger -- to develop the technology, that it was the best way
19 forward. And that I explained -- we talked about the
20 technology and how it would apply to my world -- all of which
21 is exactly what I explained today.

22 Q Okay. But I -- but I asked -- you were asked in the
23 deposition, "Do you recall if he explained why he believed
24 that?"

25 And your answer was, "I don't recall."

1 Now you're telling us that he did explain why he
2 believed it?

3 A Yeah. I added one sentence in that it would help --
4 the merger would help develop the technology I was interested
5 in.

6 Q All right. So then he -- he didn't tell you then how
7 wonderful Turtle Beach's business was; correct?

8 A Absolutely not.

9 Q And he didn't tell you that they were going to be
10 experiencing significant growth; correct?

11 A Absolutely not.

12 Q And he didn't tell you how great Turtle Beach was
13 doing; correct?

14 A Absolutely not.

15 Q Okay. I just wanted to be clear. Thank you. So
16 the -- back to the DX --

17 A I inferred -- the fact that he said, Vote for the
18 merger, I didn't -- in my mind, I would say that this was a
19 good company and a good fit, not -- that's what I inferred.

20 Q Okay.

21 A I didn't infer it was a bad company and a bad fit.

22 Q Before the merger, you were provided with a proxy
23 statement; correct?

24 A I don't recall.

25 Q Do you know what I mean by a proxy statement?

1 A I do know what a proxy statement is. I've never read
2 one.

3 Q Now, was -- were you provided with a -- the proxy
4 statement?

5 A I don't recall.

6 Q So if you'd been provided with a -- at least a link
7 to the proxy statement, or are you telling us you didn't look
8 at it?

9 A I can tell you with 100 percent certainty, I didn't
10 look at it.

11 Q Okay. Let's look at for a moment, before we go to
12 the proxy statement, Exhibit 914. And I'm going to hand it to
13 you first.

14 And again, this has on the top of it an e-mail to
15 which you were not -- actually a series of e-mails to which you
16 were not -- so I'm going to ask you to look at the bottom of
17 the e-mail chain on page -- the first page, DX914, on the
18 second and third page.

19 MR. APTON: What page, Steve?

20 THE COURT: It's 914.

21 MR. PEEK: It's 914. Sorry.

22 THE COURT: Any objection on 914?

23 MR. PEEK: And I will -- I will redact everything
24 above the line on the bottom of the first page that says, From
25 Josh Weisbord -- because Barry -- Barry Weisbord is not on it.

1 MR. APTON: Right. So -- so subject to that
2 redaction, then yeah.

3 BY MR. PEEK:

4 Q I -- I just want to maybe sure that you can identify
5 it. Is that an e-mail that you were sent and received from
6 your son?

7 A Okay. So what I see -- tell me -- I see Joshua
8 writing to Juergen --

9 Q Well, sir, let me just -- because I'm only --

10 MR. PEEK: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. PEEK:

13 Q So do you see at the bottom there where it says, From
14 Josh Weisbord?

15 A Right. And then I have to flip over to see --

16 Q I'm only asking you to look at that, sir.

17 A Got you. Okay. Got it, got it, got it, got it.

18 Q That's okay. Thank you.

19 A Okay. So I am written to on this bottom e-mail,
20 which the date is December 3rd, special meeting of stockholders
21 to consider the merger; full proxy out today; vote and do
22 the --

23 Am I supposed to read this out loud?

24 THE COURT: To yourself, please.

25 / / /

1 BY MR. PEEK:

2 Q Well, just --

3 A To myself. Okay. Got it.

4 Q No. Just refresh yourself that it's an e-mail that
5 you -- that was sent from your son to you, on or about
6 December 3rd.

7 A Correct.

8 Q Okay. That's all I care about for right now. We'll
9 actually review it now.

10 MR. PEEK: So if you could redact everything above
11 "From Josh Weisbord." Everything about this.

12 THE COURT: Okay. And then that will be next in
13 order, which should be 1073.

14 MR. PEEK: And that will be -- what was it? 1073?

15 THE COURT: That should be next in order at this
16 point.

17 MR. PEEK: Thank you. Yes. Okay.

18 BY MR. PEEK:

19 Q So let's go to the second page of Exhibit 914,
20 please, if you would.

21 THE COURT: Any objection to 1073, which is the
22 modified --

23 MR. PEEK: I'm sorry. I apologize.

24 THE COURT: -- version of 914?

25 MR. APTON: No, no objection.

1 THE COURT: 1073 will be admitted.

2 (Defense Exhibit Number(s) 1073 admitted.)

3 MR. PEEK: On yours. Thank you, Your Honor.

4 THE COURT: Thank you for your efforts and courtesy.

5 BY MR. PEEK:

6 Q So now, as we look on the e-mail to you, Josh sends
7 you, does he not, a link to the proxy statement?

8 A It looks that way, that a full proxy could be viewed
9 here; correct.

10 Q And first he says, Full proxy out today; vote will be
11 the 27th. Deal will hopefully close the 30th or 31st; correct?

12 A Correct.

13 Q And then he says, We will all be voting for it,
14 period; correct?

15 A Correct.

16 Q And more to come?

17 A Correct.

18 Q Then he says, Full proxy can be viewed here; correct?

19 A Correct.

20 Q And then there's also a press release that we see,
21 that he also forwarded to you, at the bottom; correct?

22 A Correct.

23 Q Okay. And what you're telling us, though, is that
24 despite the fact that you had access through this link, you did
25 not review -- don't have any recollection of reviewing the

1 proxy statement; correct?

2 A Correct.

3 Q Is it you have no recollection or that you, in fact,
4 did not review it?

5 A I have no recollection. But if I would look at my
6 own past performance that I say it would be highly unlikely.

7 Q Okay. And even though you had about a \$60,000
8 investment in this company, it wasn't important to you to
9 inform yourself about the future of the company; correct?

10 A I would have been interested in things like where
11 their licensing the technology. Stuff like that, I would read.
12 Proxy statements, I wouldn't read.

13 Q Well, how often did you see something about licenses
14 during the period of time from first quarter until December --

15 A I mean --

16 Q -- 2013 to --

17 A -- it could have been just a few times.

18 THE COURT: You've got to let him finish.

19 THE WITNESS: I'm sorry.

20 MR. PEEK: That's all right.

21 THE COURT: It's okay.

22 BY MR. PEEK:

23 Q I'm learning too.

24 A Okay.

25 Q It's only been 49 years, but it's working now. So

1 you didn't care whether this proxy might have included
2 information about licensing; correct?

3 A I don't remember -- recall reading the proxy in order
4 to gain information about the licensing. I don't recall that.

5 Q Do you recall, however, any press releases in that,
6 say, nine-month period of time from the first quarter to the
7 end of December, about licenses?

8 A I do -- I recall learning about licenses. Whether I
9 learned about the licenses from e-mail or press release or my
10 app, I don't recall how I got the information. But I know -- I
11 know for a fact that some of the information was gained through
12 press releases.

13 Q So I think you've told us that -- Well, what did you
14 understand, if anything -- because I said I know you talked to
15 him November 27th. And I think you didn't get a lot of
16 information from Mr. Potashner about Turtle Beach.

17 What did you do, if anything, to inform yourself
18 about the business of Turtle Beach that was now going to merge
19 with this company where you had a \$60,000 investment?

20 A When you say I didn't get a lot of information, it
21 wasn't lengthy information as far as quantity. But, in my
22 mind, I was getting the best quality you could get.

23 Q Well --

24 A The guy that runs the company said, This is the right
25 deal for us. Vote for this. So I did.

1 Q I got that. I got that.

2 A Okay.

3 Q And he didn't give any reasons why. He just said,
4 It's the right deal. Vote for it.

5 A No. No. He did give a reason why. He said because
6 you're interested in this technology, and this is the best way
7 to have the technology go forward.

8 Q Okay. We went back over your deposition. You didn't
9 tell us that in your deposition.

10 A That was a sentence of context that was --

11 Q Left out.

12 A It was recalled afterward.

13 Q What did you review to help yourself recall
14 afterwards?

15 A Probably in the last few months, I've spent way too
16 much time having to think about all of this, and some more
17 stuff came back to me.

18 Q Okay. So in time, if something more comes back to
19 your mind, please feel free to share it with us, Mr. Weisbord.

20 A I will. In fact, I think you said yesterday, it's my
21 obligation to do that.

22 Q We'll talk about that in a little bit --

23 A Okay.

24 Q -- because part of that had to do with the fact that
25 there has been no document produced to us, amending the LLC.

1 A I'm not aware of that.

2 Q Thank you. Anyway, getting back to the proxy. So
3 you did not review the proxy to inform yourself about the good
4 reasons or not good reasons to merge.

5 You relied only on a statement that it's a good
6 thing; you should vote for it?

7 A I think that -- I don't perceive myself as a
8 professional person in the finance world. And I know there's
9 way -- people way more qualified than me. And so I would -- I
10 would believe I would trust someone that I -- that I was led to
11 be trustworthy that runs a company, that I -- that they would
12 have a good opinion. But it's not --

13 I'm not going to analyze financial data from a proxy.
14 Unlike my associate Mr. Kahn that's an expert at these matters,
15 that is not my expertise. So I don't waste my time trying to
16 do things that I'm not good at.

17 Q Now, at the time of the merger, were you aware that
18 there had already been litigations filed by a certain class of
19 shareholders?

20 A Absolutely not.

21 Q That information was contained in the proxy that you
22 did not read, however; correct?

23 A I don't know that.

24 Q You don't know that. If you would have read it, you
25 would have found it, though; correct?

1 A I don't know that.

2 Q If it's there. Okay. And did your son tell you that
3 there was any litigation pending?

4 A Not that I recall.

5 Q Did any of your colleagues -- well, I'm sure they
6 could speak for themselves. But I'm just asking, are your
7 colleagues, who also addressed it very similar to you, in terms
8 of how they monitor their investments?

9 A No. They're -- a number of my close friends are very
10 interested in the stock market, very active in the stock
11 market, talk about the stock market. I just didn't listen.

12 Q Yeah. Did any of them, to your knowledge, have any
13 conversations with Ken Potashner, other than Mr. Kahn?

14 A I know Mr. Masterson has spoken with Mr. Potashner.

15 Q Before the merger or after the merger?

16 A I don't know. I don't recall, really.

17 Q Now, did you only meet Adam --

18 A I'm going to --

19 Q That's all right.

20 A -- say I believe he spoke before and after.

21 Q Okay. But you don't know for certain?

22 A I believe that he spoke before and after.

23 Q Okay. Now, you didn't know Adam Kahn before this
24 litigation?

25 A No, I did.

1 Q And how did you know him?

2 A He went to Penn with friends of my son that I coached
3 in Little League, that went to Penn, that I was close with.
4 And when he went into the finance world, we somehow interacted
5 along -- you know, a number of years ago. And when -- I
6 believe either pre -- probably premerger and then postmerger --
7 he would occasionally give me a call or send me some piece of
8 news, because he was very tied into the channels that produced
9 news when it concerned Parametric or Turtle Beach.

10 Q So did Mr. Kahn, during the -- let's say this
11 nine-month period in 2013, from March to December, send you
12 information?

13 A I don't recall specifically. I know that he has sent
14 me information.

15 Q Okay. But you don't recall receiving any of it in or
16 about -- in the year of 2013; correct?

17 A I don't recall --

18 Q Okay.

19 A -- what would have happened at that time.

20 Q So just to sort of close the loop on here. And if
21 somebody would tell me what the exhibit number is the
22 plaintiff's proxy statement, I would appreciate it.

23 FEMALE SPEAKER: 244.

24 MR. PEEK: 244.

25 / / /

1 BY MR. PEEK:

2 Q Would you pull up 244 for me, please. So let's go to
3 the first page of it, if you would, please, Barry, which I
4 think would be the proxy statement itself.

5 So this is actually the proxy statement that's been
6 identified by Mr. Kahn as having been filed with the
7 Securities Exchange Commission and sent to the shareholders.

8 A Right.

9 Q This is the document you say you've never seen?

10 A Correct. Till now.

11 Q Till now. So today is the first day you've ever seen
12 it?

13 A That I recall.

14 Q Okay. And you don't recall that you would have
15 received it as a shareholder in or about December of 2013;
16 correct?

17 A That I absolutely don't recall.

18 Q Okay. So you -- so do you understand what a proxy
19 statement is?

20 A I believe it's a document that contains literally all
21 the pertinent information that would help someone understand
22 the up and coming financial transaction.

23 Q Very good. And so it would have been something that
24 would have informed you about this upcoming financial
25 transaction; correct?

1 A If I was interested.

2 Q If you were interested in this transaction; correct?

3 A Correct.

4 Q Okay. So you wouldn't have learned from the proxy
5 statement all of the efforts that the board of directors
6 undertook to evaluate a merger with Turtle Beach; correct?

7 A If that's explained in the proxy statement, then I
8 would know more about it.

9 Q You wouldn't have known of all of the various
10 meetings of the board of directors that took place as they were
11 evaluating whether to merge or not merge; correct?

12 A I would not have known about that; correct.

13 Q You wouldn't have known about their retention of an
14 individual by the -- or a company by the name of Craig-Hallum
15 to do a Fairness Opinion; correct?

16 A Correct.

17 Q And you wouldn't have known that Craig-Hallum
18 provided a Fairness Opinion saying that the transaction with
19 Turtle Beach was fair to Parametric and in receipt of a little
20 over 19 percent of the surviving company shares with Turtle
21 Beach receiving a little over 20 percent. You wouldn't have
22 known that either?

23 A I wouldn't have known that that was their opinion.

24 Q And that the board of directors were relying on this
25 opinion of this outside consultant. You wouldn't have known

1 that either?

2 A Correct.

3 Q And you wouldn't have known, as well, that the
4 company retained another investment banking firm by the name of
5 Houlihan Lokey to assist them in the merger transaction, on
6 behalf of Parametric. You wouldn't have known that either?

7 A Correct.

8 Q And you wouldn't have known about all of the
9 financial due diligence that the company Parametric undertook
10 to determine whether or not it was the right thing for the
11 company to do?

12 A I missed out on knowing all the people to blame.

13 Q What's that?

14 A I missed out on knowing all the people to blame.

15 Q So because you don't know all the people to blame,
16 what did Elwood Norris do, if anything?

17 A I have no idea.

18 Q What did Seth Putterman do, if anything?

19 A I have no idea.

20 Q What did Bob Kaplan do, if anything?

21 A No idea.

22 Q What did Jim Honore do, if anything?

23 A No idea.

24 Q Did I miss somebody -- oh, and Andy Wolfe, what did
25 Andy Wolfe do, if anything?

1 A Not enough.

2 Q Okay. Just not enough. So what do you mean when you
3 say Andy Wolfe didn't do enough?

4 A Well, I heard him at the spoliation hearing
5 pontificate about a number of things. And I think he was smart
6 enough to know to do a better job. That's my opinion.

7 Q That's your opinion based upon what he testified to
8 at the evidentiary hearing when you were in attendance?

9 A Correct.

10 Q So how many shares of stock did Mr. Potashner hold as
11 of the date of the merger?

12 A No idea.

13 Q Have you become aware that Mr. Potashner owned
14 exactly no shares of Parametric stock as of the time of the
15 merger?

16 A I've heard that referred to.

17 Q Do you have any reason to believe that it's not
18 accurate?

19 A Absolutely not.

20 Q Did you also understand that all of the members of
21 the board of directors, including Mr. Potashner, suffered the
22 same loss that you did for whatever shares they did or did not
23 own?

24 A That whoever owned shares lost -- like no one -- are
25 you asking me if anyone had preferential treatment as far as

1 losing money?

2 Q Correct.

3 A No one that I know had preferential treatment.

4 Q That would include Norris, Kaplan, Honore, Putterman,
5 and Wolfe; correct?

6 A I've come to believe that Mr. Potashner was
7 compensated in other ways, but not by owning shares.

8 Q I understand you believe that. So what evidence have
9 you learned of how Mr. Potashner was compensated in these other
10 ways?

11 A Through documents that have been discussed in this
12 case.

13 Q Okay. So tell me what documents that you can tell
14 me -- what -- what words did you find in those documents that
15 told you that Mr. Potashner was compensated in other ways?

16 A I can't quote them.

17 Q Okay.

18 A It's not something I've committed to memory.

19 Q You know that Mr. Potashner was required to give up
20 his options in the HHI entity, the subsidiary; correct?

21 A I believe that that's true.

22 Q You do know that Mr. Potashner did receive
23 compensation pursuant to his employment contract; correct?

24 A I believe that's true.

25 Q You do understand that pursuant to his employment

1 contract that whatever stock options have been given to him
2 that they became vested on the change of control?

3 A I believe that that's true.

4 Q And do you also understand that those stock options,
5 similar to I guess what your stock was, became worthless?

6 A I don't know what in the period when he could sell
7 them, if he sold them. I don't know anything about that.

8 Q So you don't know that --

9 A I only -- I know that he received options. I don't
10 know how they monetized them.

11 Q So you don't know that, in fact, his ability to share
12 the shares into the market was locked up for a period of
13 six months?

14 A Well, like I said, I believed that he received
15 compensation. How it was monetized, I don't know.

16 Q So what is it that you understand that
17 Mr. Potashner -- what control do you believe that Mr. Potashner
18 had over these other five directors?

19 A I think that --

20 Q I want to know facts, not just the belief.

21 A I would say to you that it's not my job to prove the
22 case, and I think I would leave that up to my lawyers.

23 Q I understand. So really from your perspective, you
24 personally have no facts that you would present to this Court,
25 as a plaintiff representative, that Mr. Potashner controlled

1 the five other directors?

2 A I don't believe that -- like I said earlier in my
3 testimony, I like to think about things that I'm good at.

4 Things that I'm not guilty at, that -- I hired a
5 lawyer to do that. I think he's doing a great job. That's not
6 my job. And I would not want to waste the Court's time in an
7 area that I'm not an expert.

8 Q So do you understand that there are two different
9 types of claims in shareholder litigation -- one is called a
10 class action and the other one is called a derivative. Have
11 you ever heard that; right?

12 A I know the terms, but I'm not an expert.

13 Q Are you aware that what's -- what we call a
14 derivative claim is the damage that the entire corporation
15 suffered, such as what Mr. Atkins told us about, where all the
16 shareholders suffered this loss? That's derivative.

17 A I -- I know -- I know slightly about the difference
18 between direct and derivative.

19 Q Okay. So what value of your shares did any of the
20 directors expropriate to themselves? Ex means away from, and
21 appropriare means take away.

22 A Yeah. I sat through this Latin lesson yesterday.

23 Q You heard Mr. Kahn tell us?

24 A Right.

25 Q And I want to know what you know.

1 A I -- this is, again, an area of -- I'm going to say
2 that I don't -- it's not something that I would care to issue
3 an opinion on, because I'm not an expert.

4 Q Okay. I think I've seen something in your testimony,
5 or in your deposition, that you were concerned about nearly
6 \$3 million in compensation that Mr. Potashner received in
7 connection with the merger. What \$3 million --

8 A That number --

9 Q What --

10 A -- crossed my brain in some place. And I don't know
11 where I got it; I don't know what it's based on. But that was
12 a number that was in my brain.

13 Q So you don't have any real evidentiary basis --

14 A I'm not coming here to present evidence on
15 Mr. Potashner's compensation.

16 Q And so you don't have any facts to offer this Court
17 that Mr. Potashner, in fact, received nearly \$3 million in
18 compensation for this merger?

19 A Whatever facts we have to present will be presented
20 by my counsel.

21 Q Okay. And in the merger agreement, of course,
22 there's a section entitled Employment Agreements. But if you
23 had read it, you would have known; correct?

24 A If I read the merger agreement?

25 Q If you had read the proxy statement, you would have

1 known about Mr. Potashner's employment contract and what the
2 impact of it -- what the impact of the merger was on that
3 employment contract, if you had read it; correct?

4 A Correct. If it's in there.

5 Q And you would also know if you read the proxy
6 statement that there's a statement in there about the interests
7 of each of the individual directors in the merger and whether
8 there were conflicts. That's in the proxy agreement too, in
9 the proxy statement?

10 A I'm taking your word for it.

11 Q You would have known there were or were not; correct,
12 if you had read it?

13 A If it's in there, and I read it, then I would know
14 more than I know now.

15 Q Now, you also learned, at least in the course of this
16 litigation, that Mr. Potashner did give up his HHI options,
17 based upon the request of Turtle Beach; correct?

18 A Correct.

19 Q And you understand that he received no compensation
20 for giving up those HHI options; correct?

21 A I believe that's correct.

22 Q Now, I just want to make sure that I'm sure that --
23 that I'm clear that you've not seen any amendment to the PAMPT
24 Limited Liability Agreement; correct?

25 A Absolutely not true.

1 Q Oh, you have seen one?

2 A Absolutely.

3 Q Because when you testified in March, you said there
4 was none?

5 A It was signed on July -- in July of this year.

6 Q Okay. So I guess I shouldn't have -- I probably
7 should have asked that question.

8 A [Indiscernible.]

9 Q But why hasn't it been produced to us?

10 A I'm not familiar -- that to me was an internal
11 document with myself and my partners. I didn't realize we had
12 an obligation to share it with you.

13 Q Well, I mean, I see the Court writing down about it
14 now, so I'm a little bit concerned that we have not been
15 provided with this document, either as an exhibit or anything
16 at all along this line. So --

17 A I would take that up with --

18 Q Do you know why not?

19 A Take it up with my counsel. It's not -- I'm not --
20 I'm not an expert in these matters.

21 Q I haven't seen it identified as an exhibit. Have
22 you?

23 A I -- there's a lot of numbers being bandied about
24 here. I can honestly tell you --

25 Q Okay.

1 A -- I'm not following along. I can tell you
2 100 percent certainty that I have that document and that I've
3 circulated it for signature. I know what it says. I think
4 there's 801,761 shares on it. It has a list of all the people
5 and their percentages. It has all their signatures. I know
6 that because I did it.

7 Q Now, before July, were the costs and expenses
8 allocated in accordance with this amendment?

9 A Before you --

10 Q Before July?

11 A Before July.

12 Q Were they allocated in accordance with these new
13 formulas, new ownerships?

14 A So I imagine that I'm allowed to answer these
15 questions about our business?

16 THE COURT: Yes.

17 THE WITNESS: Okay. Great. So -- thank you, Your
18 Honor.

19 BY MR. PEEK:

20 Q That was a -- that was a --

21 THE COURT: I was waiting for somebody to talk.
22 Nobody was talking. So it's me. Okay. Yeah, go ahead.

23 THE WITNESS: I appreciate that. Thank you very
24 much.

25 MR. PEEK: I couldn't tell you that, so I just had to

1 wait for somebody --

2 THE WITNESS: No. So basically the way it worked was
3 that from the day we formed the group, we all put our -- we all
4 asked for our brokerage statements and we all circulated that
5 back to me and to Adam, and -- and to our counselor, both
6 Adams. And we knew -- and we made a chart of everybody's
7 percentage.

8 As the depositions progressed through the spring, we
9 realized that as people either got other updated copies of
10 brokerage, or through whatever process, further examination, we
11 realized that a few of the -- two of the people had the wrong
12 numbers. And that actually we've made two revisions, and we
13 have now a final revision with the 801,700 something shares
14 involved, with the proper percentages.

15 And what I did was I went back and calculated all of
16 our expenses -- it's ninth grade algebra. And I was able to
17 say, Here's what the people paid in; here's what they should
18 have paid in. Therefore they either, in Adam Kahn's case, owe
19 a couple extra dollars, and Alan Goldberg, and in the other
20 cases, I refunded a few dollars. And so too date, all of our
21 expenses are paid and our percentages are right and everything
22 is square.

23 BY MR. PEEK:

24 Q Mr. Weisbord, you just now referred to three
25 different amendments; correct?

1 A No. I said, I've revised the ownership table three
2 times.

3 Q Oh. So but you only did one amendment?

4 A I know of one amendment.

5 Q And each time you revised the ownership, did you
6 provide that to your counsel?

7 A I don't recall.

8 Q But your counsel has it now?

9 A I don't know that I gave it to him.

10 Q You don't --

11 A Honestly, I didn't understand that this was -- till I
12 sat here for the last two days to understand -- I thought this
13 was our business. We pay our bills. We know what is owned --
14 owed. I didn't understand the importance of this calculation.
15 I'm still not sure --

16 Q You don't understand the importance of 127,000
17 shares --

18 A No.

19 Q -- times \$12.49?

20 A 100 percent I understand what you're saying. Like,
21 in my mind, that was cleared up months ago, so I didn't think
22 that it was unclear to anyone. I didn't realize until I got
23 here today, that there was any question -- or yesterday -- that
24 there was any question about this. In my mind, this has been
25 something that has cleared up for months and has now been

1 papered properly.

2 If I didn't send it to my counsel, it's my fault.
3 But I have everybody's signature and I know the right
4 percentages. And I'm happy to share with it today. And I'm
5 sure he'd be happy to share it with the Court.

6 Q Well, sometimes things come a little bit too late.
7 But we'll deal with that down the road.

8 Were you given an opportunity to review your
9 deposition before -- afterwards? Were you given an opportunity
10 to review it, to make changes?

11 A After -- yes, I was.

12 Q And in that time, when was that -- when did you
13 review it?

14 A I remember it took a little while to get the
15 transcript, but it ultimately came. And ultimately, I did
16 review it.

17 Q When?

18 A Sometime after I took it.

19 Q I know that.

20 A I mean, it didn't come like days. It was more like
21 weeks later, maybe --

22 Q So sometime in June or July?

23 A Did -- yeah, whatever. I'm not positive. I do -- I
24 know I made a change.

25 Q Did you change that portion of your transcript where

1 you said there's been no amendment to the --

2 A No. Because the amendment was signed, I think,
3 July 20--something.

4 And I reviewed the deposition -- when was -- the
5 deposition was in what month?

6 Q March, sir.

7 A March. I think I reviewed it April -- maybe, at the
8 latest, May.

9 Q Okay.

10 A So it was before then.

11 Q And you didn't think to make another change after
12 that?

13 A Well, I -- in my mind, I thought the deposition was
14 the facts at the point of the deposition. I -- like, when you
15 said yesterday that I have an obligation to make corrections on
16 events that happened after the deposition, that was never
17 explained to me that that's how it works.

18 Q Well, this really wasn't an event that happened
19 after, because there actually had been some calculation done at
20 or about the time of your deposition --

21 A No.

22 Q -- of the extra --

23 A No.

24 Q -- extra 127,000 shares; correct?

25 A When you -- if you asked me was there an amendment.

1 And I said there wasn't, that was a true statement. There
2 didn't -- there wasn't an amendment until months later.

3 I didn't realize that if there was going to be an
4 amendment, and you asked me back in March if there was one, I
5 didn't realize that the question is there one, is there ever
6 going to be one. I didn't know that's how it worked.

7 Q All right. I understand, Mr. Weisbord. And I
8 appreciate you're not a lawyer. You don't have experience in
9 the courtroom like the rest of us do. So I appreciate
10 everything you've said.

11 And thank you very much. Appreciate it.

12 THE COURT: Would you please wipe down.

13 MR. PEEK: I will, Your Honor. Let me get my stuff
14 out of the way.

15 THE COURT: Does anyone need a break before we go to
16 the next cross-examiner?

17 MR. PEEK: Yes, Your Honor.

18 THE COURT: Okay. So, sir, get up, walk around, go
19 to the restroom, get some more water.

20 THE WITNESS: Okay. Thank you.

21 THE COURT: We're going to take about ten minutes.

22 (Proceedings recessed at 3:55 p.m., until 4:04 p.m.)

23 MR. APTON: Your Honor, are we going to 4:45 today?

24 THE COURT: That's when we break unless a witness
25 gets done at 4:30, and then I usually just stop, but I don't

1 think that's going to happen because it's 4:05.

2 Mr. Kotler, are you examining?

3 MR. KOTLER: Mr. Hess will be.

4 THE COURT: Mr. Hess. Whenever you're ready.

5 CROSS-EXAMINATION

6 BY MR. HESS:

7 Q Good afternoon, Mr. Weisbord.

8 A Good afternoon, Mr. Hess.

9 Q I just had a few questions for you. Mr. Weisbord,
10 earlier Mr. Peek asked you about your son Josh; correct?

11 A Correct.

12 Q And at some point your son was employed with one of
13 my clients, Turtle Beach; correct?

14 A Correct.

15 Q And during what period was your son employed with
16 Turtle Beach?

17 A I think 2014 to 2016, but I'm not 100 percent sure.

18 Q Sure. And his employment with Turtle Beach came up
19 because he was terminated by Turtle Beach around 2016; correct?

20 A That's a matter of ongoing litigation, so I'm not
21 sure.

22 Q Well, you went there. So it is -- it's a fact that
23 your son is currently involved in litigation against Turtle
24 Beach; correct?

25 A Correct.

1 Q Okay. And that case is currently scheduled to go to
2 trial in September; correct?

3 A I'm not aware.

4 Q Not aware. Mr. Weisbord, you've been involved in
5 that litigation against my client; have you not?

6 A Define "involved."

7 Q Have you been paying legal fees for it?

8 A I've lent him money.

9 Q Yes. And, in fact, you've been involved in
10 arbitration with the former counsel in that case on your son's
11 behalf; correct?

12 A I was.

13 Q And there's been, in fact, a judgment rendered
14 against you; correct?

15 A Correct.

16 Q And that's for failing to pay the legal fees in
17 connection with that; correct?

18 A I'm not a lawyer, but we had counsel that was not
19 scrupulous. They cheated us and didn't do work. They asked me
20 to sign a guarantee. I didn't know what I signed. We've
21 countersued them, and we were forced into the arbitration in
22 San Diego because that's what one of the documents said, and we
23 are -- we are suing them.

24 Q Correct. And there was -- there was an arbitration
25 about that; correct?

1 A There's been, and there's going to be more. We had
2 to postpone our countersuit until after his litigation ends, so
3 that's what we're waiting for.

4 Q And the arbitration award entered against you was in
5 the hundreds of thousands of dollars; correct?

6 A Correct.

7 Q Correct. And it's -- it is true that this litigation
8 that you and your son have been engaged in against Turtle Beach
9 has been ongoing since 2017; correct?

10 A I don't know when the litigation was started
11 specifically.

12 Q But it's been several years; correct?

13 A Yes. Correct.

14 Q Correct. Longer than this litigation's been going on
15 that you've been involved in?

16 A A hundred percent.

17 Q A hundred percent. And I believe you testified at
18 your deposition, Mr. Weisbord, that one of the reasons -- and I
19 didn't hear it today -- one of the reasons that you thought to
20 bring this claim and opt out, was the fact that the class
21 plaintiffs settled before they got your son's documents in his
22 employment litigation; is that right?

23 A In the fall of 2000 -- the answer -- repeat your
24 question. I'm sorry.

25 Q My question was that one of the -- in your

1 deposition, you testified that one of the reasons you thought
2 to opt out of this case was that you thought it was curious
3 that the class plaintiffs settled before they got your son's
4 documents from his employment litigation?

5 A Correct. The class -- I became aware of what was
6 going on because my son called to tell me that he was
7 subpoenaed in -- in that suit, and had to get counsel in
8 Nevada. And the -- the firm representing the class wanted
9 access to documents that they believed, I guess, would be
10 helpful in their pursuit of remedies from Turtle Beach and/or
11 Stripes. I'm not sure who was named in that suit. And they
12 had a hearing -- because discovery was closed, they had a
13 hearing in Nevada, and I guess my son had to be represented.

14 But either way, what -- what happened was that they
15 won the right to get the documents, and then I got notice of
16 the settlement right soon afterward. And I called and said,
17 did they look at your documents? And he said no. And I said,
18 that's really curious, so I -- that's one of the things I
19 discussed with my attorney.

20 Q So the answer to my question is yes?

21 A Yes.

22 Q Okay. Mr. Weisbord, have you ever spoken with
23 Juergen Stark?

24 A Yes.

25 Q And you spoke to Mr. Stark about your son's

1 litigation against the company; correct?

2 A I've spoken to him a few times. I don't really
3 recall much about either conversation.

4 Q Okay.

5 A Or I'm not sure even how many conversations there
6 were, but I know I've spoken to him a few times.

7 Q And have those conversations been about, among other
8 things, trying to resolve that litigation?

9 A My guess is that that was something that was
10 discussed.

11 Q Right. And do you, in fact, recall telling Mr. Stark
12 that if he did not satisfactorily settle the case with your son
13 that it would cost him millions of dollars?

14 A Doesn't sound like me.

15 Q That --

16 A I don't recall saying that.

17 Q That you thought, as a CEO, it was -- it was a
18 mistake, and you'd be sure that it would be a very expensive
19 process for him?

20 A That -- I'm not sure that I've ever said that.

21 MR. HESS: Okay. That's all my questions for you.
22 Thank you.

23 THE WITNESS: Okay.

24 THE COURT: Please wipe down. Any --

25 MR. HESS: Oh, you're right, Your Honor. Sorry.

1 THE COURT: Well, it was your first time up there.
2 You can't be expected to remember.

3 Any redirect?

4 Mr. Peek was so thorough, you only used
5 seven minutes.

6 MR. PEEK: That's -- I'm going to (indiscernible)
7 that compliment up, Your Honor. Thank you very much.

8 THE COURT: Uh-huh.

9 REDIRECT EXAMINATION

10 BY MR. APTON:

11 Q Mr. Weisbord, Mr. Hess mentioned the lawsuit with
12 your son and Turtle Beach. You have only 5,000 shares in the
13 LLC; correct?

14 A Correct.

15 Q So your -- is your interest in this lawsuit tied or
16 driven by what's going on with your son and Turtle Beach?

17 A No. My interest in the lawsuit is -- and it would
18 seem probably unusual that for 5,000 shares, I'd be sitting in
19 this courtroom now, except that my -- a bunch of my friends are
20 involved. They got involved because I love this technology. I
21 was sort of the focal point and I feel slightly responsible for
22 everything, so I've tried to take an active interest in this
23 process.

24 Q And --

25 A Different than -- not direct -- not related to the

1 fact of the 5,000 shares.

2 Q And it was Mr. Potashner who told you to vote for the
3 merger?

4 A Absolutely.

5 Q And he was the Executive Chairman of Parametric at
6 the time?

7 A Correct. And I thought would be the most
8 knowledgeable person.

9 Q And you -- well, you pointed out that you might not
10 have received a large quantity of information, but the quality
11 of the information you received from him was --

12 A I thought I was getting absolutely the highest
13 quality I could get.

14 Q That was on November 2nd, 2013; correct?

15 MR. HESS: Objection. Leading.

16 THE COURT: Can you rephrase your question, please.

17 BY MR. APTON:

18 Q What day was that on?

19 A November 2nd, 2013.

20 MR. APTON: Thank you, Barry. No further questions.

21 THE COURT: Anything else? Anybody have any
22 follow-ups?

23 MR. PEEK: I do, Your Honor.

24 THE COURT: Okay. Just a minute, Mr. Peek. We have
25 to wipe down after a two-minute redirect examination. Almost

1 as brief as your recross this morning, Mr. Peek.

2 RE-CROSS-EXAMINATION

3 BY MR. PEEK:

4 Q You seem to place a lot of weight on the fact that
5 this November 2nd meeting, that Mr. Potashner told you to vote
6 for the merger; correct?

7 A Placing a lot of weight?

8 Q You place a lot of emphasis on the fact that Mr.
9 Potashner told you to vote for the merger as --

10 A I voted for the merger because of that meeting.

11 Q Okay. Are you aware that the proxy and all the board
12 directors recommended that the shareholders vote for the
13 merger?

14 A No.

15 Q And if you'd read the proxy, you would know that;
16 correct?

17 A If that's what the proxy says.

18 Q So, Mr. Potashner telling you, vote for the merger,
19 is no different than what the board of directors recommended in
20 the proxy statement; correct?

21 A I can't speak, because I've not read the proxy
22 statement.

23 Q Because you didn't attempt to inform yourself, other
24 than what this one conversation with Mr. Potashner on
25 November 2nd, at Santa Anita race?

1 A I didn't think it was necessary.

2 Q Okay. So you've met with Mr. Potashner after the
3 merger; haven't you?

4 A Yes.

5 Q Have you talked to him about the litigation that your
6 son has with Turtle Beach?

7 A I believe so. Yes. In fact, I know so.

8 Q Yeah. And, in fact, you've said to him that it would
9 be in his best interest to help you in that litigation and he
10 could -- you would help him in this litigation; correct?

11 A No.

12 Q You don't recall saying to Mr. Potashner that you
13 wanted his help in the litigation your son had with Turtle
14 Beach?

15 A I said that I thought it would be a good idea to not
16 have this litigation, and if he could talk to the people on the
17 other side, I think it would be in everybody's interest not to
18 litigate.

19 Q When you say you talked to about the litigation,
20 you're talking about your son's litigation as well; correct?

21 A Well, that's -- I thought that's what the question
22 was about --

23 Q Yeah. That's what it was.

24 A -- my son's litigation.

25 Q I just want to make sure.

1 A Yeah. That's what I'm talking about, my son's
2 litigation. Correct.

3 MR. PEEK: Thank you.

4 THE COURT: Is that it, Mr. Peek? Was that all you
5 had?

6 MR. PEEK: I'm not a rookie, Your Honor. You're
7 right.

8 THE COURT: Okay. Anybody else have any more
9 questions for the three minutes Mr. Peek used?

10 MR. APTON: No, Your Honor.

11 THE COURT: I'm looking at Mr. Apton.

12 MR. PEEK: I think we have -- may have a witness
13 issue right now, Your Honor.

14 THE COURT: He asked me questions about what I did
15 when we ran out of time near the end of the day.

16 MR. PEEK: No, I wasn't talking about him. I was
17 just talking about getting the witness done.

18 MR. APTON: So, Your Honor, we have -- I have no more
19 questions.

20 THE COURT: Do you have any more questions for this
21 witness?

22 MR. APTON: No.

23 THE COURT: Thank you, sir. Get up from your chair
24 before they change their minds.

25 All right. Now --

1 MR. APTON: Your Honor, what we would like to do is
2 publish three transcripts and read a small portion from each.

3 THE COURT: Okay.

4 MR. APTON: So we'd like to start with --

5 THE COURT: So here's the issue. In my courtroom,
6 and it's probably different in every courtroom you've ever been
7 in, my rule is we read all of the designated portions of the
8 deposition at the same time, regardless of who designated them,
9 because I'm not reading depositions two or three times and
10 trying to keep notes on different parts.

11 So I am happy to have you read depositions in that
12 you have designated. But at the same time we will then read
13 the deposition designations made by the opposing parties, which
14 means you don't have as much control as you think.

15 MR. HESS: Well, Your Honor, the problem is that the
16 plaintiff has not designated any deposition testimony in this
17 case.

18 MR. APTON: Your Honor, we look to read -- or publish
19 a portion of the transcripts -- assignor transcripts that have
20 been designated by defendants for the purposes of
21 authenticating certain materials that were authenticated by the
22 assignors, for example, including Ms. Patricof.

23 THE COURT: You want to use your own client's deposes?
24 No.

25 MR. APTON: That was my --

1 THE COURT: They can testify by video.

2 Okay. What else?

3 MR. HESS: That was, I think, it, Your Honor.

4 THE COURT: Look at Mr. Ogilvie.

5 MR. HESS: (Indiscernible).

6 THE COURT: Don't you know the rules?

7 MR. OGILVIE: Your Honor?

8 THE COURT: Yes?

9 MR. OGILVIE: A party's deposition can be used for
10 any purpose. Ms. Patricof is 94 years old, does not have a
11 computer. And allowing -- it -- the purpose of the testimony
12 is simply to authenticate certain documents. There's really no
13 reason to disallow her.

14 THE COURT: Okay. So they --

15 MR. HESS: Your Honor, the defendants do have a
16 subpoena out to all of the assignors for this trial, and they
17 have not objected to any of them.

18 THE COURT: My problem is that you can use the
19 deposition if your witness is unavailable. Being 94 and not
20 having a computer, in an age of COVID, may convince me that
21 someone is unavailable and therefore you can use their
22 deposition. And while I understand the deposition of a party
23 can be used by the opposing party for any purpose, that doesn't
24 mean you can use it for any purpose.

25 But here you may have an unavailable witness, in

1 which case I'll let you use it.

2 MR. OGILVIE: Thank you. Thank you, Your Honor.

3 THE COURT: So is she really 94 years old, doesn't
4 have a computer and can't travel? Do you guys believe that or
5 not?

6 MR. PEEK: I don't know, Your Honor. We didn't --

7 THE COURT: Well, you took her depo. Was she 94 when
8 you took her depo?

9 MR. HESS: She is. I don't know her exact age, Your
10 Honor, but she is indeed elderly and she --

11 MR. PEEK: Was it by Zoom?

12 MR. HESS: It was -- it was not by Zoom. It was by
13 telephone.

14 MR. PEEK: Then it can be by telephone here, Your
15 Honor, as well.

16 THE COURT: It could.

17 MR. PEEK: She can do it by telephone?

18 MR. HESS: Yes. That's right, Your Honor.

19 THE COURT: But then I have -- I have a lot of
20 trouble taking trial testimony by telephone because of the
21 identification issue. But if there is a stipulation for her to
22 appear by telephone, I am happy to accomplish that testimony by
23 the stipulation.

24 MR. PEEK: Your Honor, the -- the trouble I think
25 that both Mr. Hess and I have is that these were

1 counter-designations of designations that we made for our case
2 that we may or may not use. And now --

3 THE COURT: Well, it's still -- they can rely on your
4 counter-designations, but they have to show --

5 MR. PEEK: Not in their own case in chief.

6 THE COURT: -- they have to show me she's
7 unavailable.

8 MR. HESS: Understood, Your Honor.

9 THE COURT: And it sounds like she may be, in our
10 current public health emergency, unavailable given her age.
11 Because I'm not going to force somebody who's 94 to travel
12 forever to have a depo, give trial testimony.

13 So do you want to call her by telephone? They --
14 they said she's not really unavailable. She doesn't have
15 access to a computer, and her depo was by telephone.

16 I feel like I'm negotiating.

17 MR. OGILVIE: I understand, Your Honor, and I
18 appreciate it. Let us consider --

19 THE COURT: I will step out for a few minutes --

20 MR. OGILVIE: Well --

21 THE COURT: -- while you discuss that. I'll be back
22 in ten minutes before we break for the day.

23 You might also want to talk about stipulating to
24 exhibits while I'm out of the room.

25 Are we done for the day on witnesses? I'm going to

1 go do math.

2 MR. HESS: Thank you, Your Honor. Thank you, again,
3 Ramsey, for all your hard work.

4 THE MARSHAL: You're welcome.

5 THE COURT: I appreciate your document handling.

6 (Pause in the proceedings.)

7 THE COURT: So are you ready to know where you are on
8 the time for today? Today the plaintiffs used 96. The
9 defendants used 232, for a total 328.

10 What did we decide about our elderly plaintiff?

11 THE COURT RECORDER: Do you care if this is on the
12 record because this is --

13 THE COURT: No.

14 THE COURT RECORDER: Okay.

15 THE COURT: What did we decide? I notice I'm still
16 missing some people. What did we decide as a group?

17 MR. HESS: The defendants want to stipulate --

18 MR. PEEK: Yes, Your Honor. We decided Mr. Josh --

19 MR. HESS: The defendants want to stipulate to --

20 MR. PEEK: Mr. Hess will speak for us.

21 MR. HESS: Yeah. The defendants will stipulate to
22 Plaintiff's Exhibit 309, which is the brokerage statements from
23 Mrs. Patricof.

24 THE COURT: Okay.

25 MR. HESS: And --

1 THE COURT: So, 309 will be admitted.

2 (Plaintiff's Exhibit Number(s) 309 admitted.)

3 THE COURT: Now that we've solved that problem, are
4 you still going to want to call her by telephone or video or
5 offer portions of her depo?

6 MR. APTON: Provided that no one else is calling her,
7 then, no, we have no intention of calling her either.

8 THE COURT: Okay. So you don't need to call her?

9 MR. APTON: Correct, Your Honor.

10 THE COURT: You said earlier you had several snippets
11 of depositions you wanted to use. Are there other depositions
12 that you want to use that aren't hers that I need to now
13 address the issue given the objection that's been made?

14 MR. APTON: There's Robert Masterson's and Richard
15 Santulli's.

16 THE COURT: Are either of those individuals elderly?

17 MR. APTON: Over 65?

18 THE COURT: That's not elderly.

19 MR. APTON: Over 75?

20 THE COURT: Okay. See Mr. Peek over there? I know,
21 you probably are not nearly as old as anybody else in the room.
22 But --

23 MR. PEEK: I've been practicing longer than you are
24 old, Adam.

25 THE COURT: He's been practicing law longer than

1 you've been alive.

2 MR. PEEK: Yeah.

3 MR. APTON: I -- thank you. I am glad everyone
4 thinks I look very young, and I appreciate that.

5 THE COURT: So you have two other individuals who
6 ostensibly have computers and can appear by video?

7 MR. APTON: Yes, Your Honor.

8 THE COURT: Okay. So we'll handle it that way. If
9 for some reason they truly are unavailable, then I would be
10 happy to consider allowing you to use their depositions, but
11 otherwise not so much.

12 Mr. Ogilvie, what else you got?

13 MR. OGILVIE: I'm stretching, Your Honor.

14 THE COURT: You look tired is why I'm asking.

15 Anything else, Mr. Hess, since you were designated as
16 the speaker for the defense side today?

17 MR. HESS: Nothing further from us.

18 THE COURT: All right. Well, then I guess I'll see
19 you guys at 9:00. There is nothing else that's on the morning
20 calendar. You're welcome to come at any time after Ramsey
21 opens the door at --

22 MR. PEEK: Ramsey, you're on. Wake up.

23 THE COURT: What time are you going to open the door,
24 Ramsey?

25 THE MARSHAL: What time do you need it open, Judge?

1 MR. PEEK: 8:50.

2 THE COURT: I don't need it open until 9:00 o'clock,
3 but...

4 THE MARSHAL: 8:45.

5 MR. PEEK: All right. Thank you.

6 THE COURT: Okay. But I will warn the other defense
7 counsel that historically, not just in this case, but in many
8 other cases, Mr. Peek has used up all the time for his
9 compatriots, and they feel bad because they don't have any time
10 then to talk.

11 Now, while the ten-minute rule is not related to
12 Mr. Peek but instead to Mr. Duschoff (phonetic), Mr. Peek does
13 have a tendency to use all the time if you don't reign him in.

14 MR. PEEK: Well --

15 THE COURT: So if you want to preserve some time for
16 yourself, make sure you stay on him.

17 MR. PEEK: Your Honor -- Your Honor, that -- that's a
18 little unfair.

19 THE COURT: No, it is true.

20 MR. OGILVIE: No, it's not. It's -- it's --

21 MR. HESS: We've been working with Mr. Peek now
22 about -- over eight years.

23 THE COURT: Eight years. Eight years. Yes, I know.
24 You've been working with him --

25 MR. HESS: So this is not coming as a surprise to us,

1 Your Honor.

2 THE COURT: Okay. Was the black night a surprise to
3 you though?

4 MR. HESS: That was a nice surprise, Your Honor.

5 THE COURT: Yeah. Okay. And the trumpet -- the
6 trumpet fanfare when he was not here --

7 MR. HESS: That was also a --

8 THE COURT: -- with the rest of him? Yeah. Okay.
9 So you missed that Mr. Peek has been in here probably as much
10 as Mr. Ogilvie over the years.

11 MR. PEEK: No, I think George has been in here more
12 because he had CityCenter.

13 THE COURT: Yeah.

14 MR. PEEK: They were here every day.

15 THE COURT: For years.

16 MR. PEEK: Yeah.

17 THE COURT: Mr. Cassity, I did not get your OST. I
18 keep looking in my box. It's not there.

19 MR. CASSITY: It is not there, Your Honor.

20 THE COURT: Okay.

21 MR. CASSITY: We're waiting on a couple signatures.

22 / / /

23 / / /

24 / / /

25 / / /

1 MR. PEEK: We're waiting for signatures, Your Honor.

2 THE COURT: Well, you told me it would be here
3 yesterday, and I've been looking.

4 All right. Goodnight, everyone.

5 (Proceedings recessed for the evening at 4:31 p.m.)

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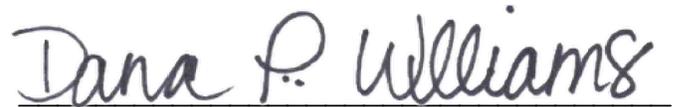
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A handwritten signature in cursive script that reads "Dana L. Williams". The signature is written in black ink and is positioned above a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

8/17/2021

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