

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nos. 83598, 84971, and 85358

IN RE PARAMETRIC SOUND CORPORATION
SHAREHOLDERS' LITIGATION.

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Elizabeth A. Brown
Clerk of Supreme Court

PAMTP, LLC,

Appellant,

v.

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

Respondents.

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

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	Trial Exhibit 1052	16	AA 2818- AA 2862

AFFIRMATION

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

Respectfully submitted this 12th day of January, 2023.

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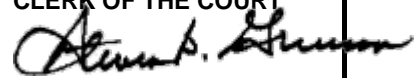
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CERTIFICATE OF SERVICE

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



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN RE PARAMETRIC SOUND)
CORPORATION SHAREHOLDERS')
LITIGATION)

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

This Document Relates to:)

ALL ACTIONS)

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 18, 2021

BENCH TRIAL - DAY 3 - VOLUME II

APPEARANCES:

FOR PAMPT LLC:

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

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

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

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

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

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

I N D E X

W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

KENNETH POTASHNER

Direct Examination by Mr. Apton 5

E X H I B I T S

PLAINTIFF'S EXHIBITS ADMITTED:

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 18, 2021, 12:59 P.M.**

2 * * * * *

3 THE COURT: Mr. Potashner, are you ready?

4 THE WITNESS: I am.

5 THE COURT: All right. I'd like you remind you
6 you're still under oath.

7 Counsel, did you come up with any more stipulations
8 to exhibits while I was gone?

9 MR. APTON: Your Honor, I was approached by defense
10 counsel at the lunch break and they had told me they would
11 stipulate to one exhibit.

12 THE COURT: Which one?

13 MR. APTON: 101.

14 THE COURT: Any objection to 101?

15 (No audible response.)

16 THE COURT: It's admitted.

17 (Plaintiff's Exhibit Number(s) 101 admitted.)

18 THE COURT: Now, I understand some additional
19 exhibits were sent to the clerk that were next in order because
20 they carved out those parts of the exhibits that there had been
21 an objection to. Have you shown those to defense counsel?

22 MR. APTON: The redacted versions?

23 THE COURT: The new ones.

24 MR. APTON: I do not believe so, Your Honor. I don't
25 know.

1 THE COURT: Well, we've got to show them to them so
2 they can tell me if they're okay now.

3 MR. PEEK: I'll check my email, Your Honor, to see.

4 THE COURT: Okay. So they're still pending
5 validation but we're getting close, because Dan made sure they
6 looked at them over the lunch hour. Apparently it didn't work,
7 but we tried.

8 MR. APTON: May I proceed, Your Honor?

9 THE COURT: You may.

10 **KENNETH POTASHNER**

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

13 CONTINUED DIRECT EXAMINATION

14 BY MR. APTON:

15 Q Mr. Potashner, I want to go back to something we
16 discussed earlier about McDonald's. Do you remember the
17 conversation you had or the email that you exchanged saying
18 that you were going to issue an 8-K instead of a press release?

19 A Yes.

20 Q So how many people had you issued a press release?
21 How many people would have received that press release,
22 approximately?

23 A We did some press releases out to our shareholders.
24 We used some service that just posted them on Yahoo News,
25 things like that, so I have no idea.

1 Q Which service was that? GlobeNewswire? Guering
2 (phonetic)?

3 A I don't recall.

4 Q And that just goes to an 8-K. How do people access
5 8-Ks?

6 A It's an SEC filing available to everybody.

7 Q So you'd agree that a press release would be more
8 widely disseminated than the issuance of an 8-K; correct?

9 MR. STIGI: Objection.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: Yeah, I don't know. I don't know how
12 many people follow one news source versus -- people following
13 the company would see SEC rulings or SEC filings of 8-Ks,
14 10-Ks, 10-Qs, so anyone following the company would be aware.
15 BY MR. APTON:

16 Q Provided they logged into the SEC's website and --

17 A No. I think simply if you look -- pull up stock
18 quotes you'll get notifications that there was a filing.

19 Q And the content of the 8-K was the initiation of a
20 pilot program at McDonald's; right?

21 A Correct.

22 Q And what was the significance of that pilot program?

23 A As I mentioned before, there was no financial
24 consequences to it. They were being -- McDonald's was going to
25 let us use one of their restaurants to try to demonstrate the

1 technology. And the hope was if that went well it could lead
2 to follow-on opportunities with that. But there was zero -- I
3 mean, literally this was negotiated not at the McDonald's
4 Corporation level, this was a franchisee who let us use his
5 store, is basically what it came down to.

6 Q Was it just one location?

7 A I believe that franchisee owned multiple locations,
8 but I believe the installation was one location.

9 Q And your technology, Parametric's technology was in
10 that McDonald's; right?

11 A Correct.

12 Q And it had the potential to expand to other
13 McDonald's. Yes?

14 A Correct.

15 Q So that would seem like a big deal, it's something
16 shareholders would want to know, yet you declined to issue a
17 press release; correct?

18 A The step from having it in one franchisee's
19 restaurant to they were approved -- McDonald's is deploying us
20 broadly, and we're getting revenue from that deployment is a
21 huge distance.

22 Q And you declined to issue a press release because you
23 thought it was bad form to do so, given your negotiations with
24 Mr. Stark; right?

25 A No. It would have also included that I could have

1 been setting myself up for expectations that I couldn't meet
2 with investors. So to put out a release that you're in
3 McDonald's, the anticipation is going to be that you're in 50
4 McDonald's next month. And I had awareness that there is a
5 long -- you know, several hurdles that would need to be crossed
6 to get that, so I might have even been setting myself up with a
7 press release.

8 Q When you set investor expectations, you agree that
9 it's important to meet those expectations. Yes?

10 A Yeah, the flavor of press releases that Parametric
11 did, I'd say 80 percent of them, if not higher, were we signed
12 an NDA with Sony or with whomever, so we were simply letting
13 companies know that, hey, we've got an initial dialogue going,
14 which is not a big deal. Many companies don't even announce
15 NDAs. So we weren't announcing term sheets. There was no
16 announced because there were none. We're not announcing
17 significant licensing deals. We're not -- so it was a very --
18 the announcement strategy was very limited. And putting
19 something out there broad-base McDonald's would have been
20 inconsistent.

21 Q So you shoot PRs for simply entering into an NDA, but
22 you declined to do so to announce that your product, core
23 product was in a McDonald's?

24 A Yeah. The likelihood of getting from one store to a
25 corporate relationship at a time that we had zero dialogue with

1 McDonald's corporate, it would have been a big stretch.

2 Q Mr. Potashner, I'd like to turn your attention to
3 276, please. Exhibit 276.

4 THE COURT: Two, seven, six.

5 MR. STIGI: 276.

6 BY MR. APTON:

7 Q And as you get in there, I'll remind you that before
8 we broke for lunch we were talking about HHI and the board
9 instructing you to cease communications about it. Do you
10 recall that?

11 A Yes, I recall the discussion. The board did not tell
12 me to cease all discussions around HHI. They told me to stop
13 talking about HHI options.

14 THE COURT: Any objection?

15 MR. STIGI: No, Your Honor.

16 MR. HESS: No objection.

17 UNIDENTIFIED SPEAKER: No, Your Honor.

18 THE COURT: It will be admitted.

19 (Plaintiff's Exhibit Number(s) 276 admitted.)

20 BY MR. APTON:

21 Q So, Mr. Potashner, Exhibit 276 is an email from John
22 Todd to you. This was the same day that you were told to cease
23 discussing the HHI options, and yet you are discussing HHI
24 options here; correct?

25 A Where does it say HHI options?

1 Q Well, if you go to the first email in the chain,
2 there's an email from you to Juergen, and I believe you're
3 discussing HHI.

4 You say, "I want to make sure I don't find myself in
5 conflicted discussions that might apply to HHI given my option
6 position (indiscernible)."

7 So that refers to your HHI options, yes?

8 A Yeah. This is me telling Juergen that to avoid me
9 being in conflict, we're going to have Seth Putterman step in
10 and lead discussions.

11 Q Because had you continued talking about HHI, it would
12 have been in direct contradiction to what the board told you.
13 Yes?

14 A Correct.

15 Q And doing that would have been a breach of fiduciary
16 duty; correct?

17 MR. STIGI: Objection. Calls for a legal conclusion.

18 THE COURT: Overruled.

19 THE WITNESS: No. I don't see how me talking
20 about -- I would have been not listening to the board, their
21 input, but I don't see how I would have been violating my
22 fiduciary responsibilities.

23 BY MR. APTON:

24 Q There's a distinction between the two? How is that?

25 A Well, I don't have the expertise to comment on

1 whether listening fully to the board, whether that's a
2 violation of fiduciary responsibilities. And as I mentioned
3 before, there are a myriad of issues that were HHI that have
4 nothing to do with options or my role, and there was continued
5 discussion.

6 Q But the whole reason you were told to cease
7 discussing HHI was because of a conflict of interest; right?

8 A It was the board was not in agreement with what I
9 thought was best, so yes.

10 Q What you thought was best in terms of your options in
11 HHI?

12 A What was best in terms of the best way to maximize
13 shareholder valuation.

14 Q The board, in the exhibit we looked at, Exhibit 5,
15 told you to cease discussing HHI because of a conflict of
16 interest related to your options in HHI; right? I'm just
17 having a hard time --

18 A Yeah. So, again, when we use the words conflict of
19 interest, my interests were always aligned with the
20 shareholders. The board had a different perspective, I
21 acknowledge that, and so that's where the gap was. So there
22 was instruction from the board to discontinue discussions on
23 HHI options with Juergen.

24 Q Your interests were aligned with Parametric
25 shareholders when you were slow playing licensing deals,

1 freezing licensing deals, issuing or declining to issue press
2 releases?

3 A And I told you I did none of that.

4 Q Telling Juergen Stark that you were not in a go-shop
5 mode?

6 A Yeah. As I've said consistently, I represented to
7 Juergen several things in the context of looking to pressure
8 him to move the deal forward, whereas in reality none of those
9 things occurred.

10 Q So you were lying to him?

11 A If you'd like to use the word lying. I was
12 negotiating with him, would be my word, but that's fine.

13 Q Did you negotiate with your own shareholders, using
14 your definition of negotiation?

15 A Did I negotiate with my own shareholders? I would
16 need a context.

17 Q If we could please now, in 276 --

18 A Okay.

19 Q -- so the email halfway down on the first page, you
20 say to John Todd that you're going to call Seth and raise the
21 stakes, dot, dot, dot.

22 A Okay.

23 Q That was in regards to him negotiating with Juergen
24 Stark in accordance with your interest. Yes?

25 A No.

1 Q Why do you say that?

2 A I think this was in the context of what we went
3 through earlier bringing lawyers in and slowing down the
4 process, things of that nature on the transaction.

5 Q Well, you told Mr. Todd that you convinced Seth and
6 Jim, Seth Putterman and Jim Barnes, to cease and desist on
7 this. And you're referring to intervening in your negotiation
8 with Mr. Stark; right?

9 A No. No, once the board said, Ken, no more HHI
10 negotiations with Juergen, it was clear. It wasn't, hey, I
11 would like you to consider it. It was a pretty specific order
12 and there was nothing I would do to try to -- it would have
13 been futile -- fruitless for me to try to turn them on that. I
14 knew they would not turn on that. Seth, with Andy's support,
15 were designated, go negotiate the HHI strategy with Juergen,
16 and it was absolutely clear that I would put no energy into
17 stopping that.

18 Q And are you --

19 A And let me add one other thing. There was continued
20 discussion between myself and Juergen on HHI issues because
21 there was, you know, a myriad of operational decisions and
22 updates and status that needed to occur that I didn't think
23 conflicted with the board directive. And it would not be
24 uncharacteristic for me to every now and then poke him and say,
25 are you sure, you know, you're making the right call on HHI

1 options, or my consulting things or things of that nature. So
2 it wouldn't surprise me if there's -- if you're able to -- if I
3 stepped out of bounds on that directive on occasion, but in
4 terms of embracing Seth's role as the negotiator, if I use that
5 term, with Juergen on HHI treatment, that was very clear.

6 Q Do you have any recollection of how many times you
7 might have poked Mr. Stark about the HHI options after being
8 told not to do so?

9 A I don't.

10 Q Let's continue.

11 A And it would never be with any intensity. I'll add
12 that, because it was at this point pretty clear that -- the
13 direction we were on here.

14 Q And if we could please go to 439.

15 THE COURT: 439?

16 MR. APTON: Yes.

17 THE COURT: Any objection, Mr. Peek?

18 MR. PEEK: No objection, Your Honor.

19 THE COURT: No? Or Mr. Stigi?

20 (No audible response.)

21 THE COURT: It will be admitted.

22 (Plaintiff's Exhibit Number(s) 439 admitted.)

23 BY MR. APTON:

24 Q Now, in this email -- you can take your time to
25 review it.

1 A Yeah, let me read it so I can hear your question.
2 Okay.

3 Q You're obviously angry at Norris, Mr. Norris, for
4 doing something. What is it that he did?

5 A Yeah. I believe he set up a back channel with
6 Juergen. So as you can imagine, when you're negotiating a deal
7 CEO to CEO, the last thing you want is an inconsistent message
8 going out from one of your board members to the CEO on the
9 other side. So mixed messages were beginning to be received.

10 Q He was advocating for one direction in terms of HHI
11 which was adverse to yours; right?

12 A I don't have a context that this is an HHI
13 discussion.

14 Q Well, from your recollection independently?

15 A It was bigger than HHI. Woody, who was 70 or -- I
16 forget his age at the time of this, this was a must-have deal
17 for him at any cost. So I think the whole concept of, hey,
18 whatever this deal ends up, I want to take it, and Potashner
19 stopped putting energy into maximizing this, let's go get this
20 deal done. So I actually think this is bigger, must bigger
21 than HHI.

22 Q And you accused him of trying to lose the deal on
23 purpose in order to prevent you from making too much money on
24 the transaction. Is that right?

25 A Yeah. So we had an animosity at this point that --

1 you know, when I met Woody and Jim Barnes, it was a two-person
2 company operating out of Woody's garage. And I actually met
3 Woody at a science show where he was a presenter and I was a
4 judge and I liked what he was doing and got to know them
5 better, and said I think I can turn your garage into a real
6 company. Woody -- and then as I mentioned before, this thing
7 goes from being worth a hundred thousand to a hundred million.
8 And Woody did the math on my stake in this company, my options
9 in this company, and decided in his mind that I'm the luckiest
10 guy in the planet, having walked into his invention and now I
11 have options that could be worth millions. And he resented
12 that. He felt that -- you know, he just resented the numbers
13 that were involved here, even though his shares were tens of
14 millions. So that was an animosity and that's what I think I
15 called out here, you know, because he made it clear previously
16 that, hey, I'm -- you know, he did all the work. He did the
17 invention. I'm just this guy that's leveraging it.

18 Q That why he previously accused you of cheating the
19 company in connection with your HHI options?

20 A Yeah. It would be consistent. He would take any
21 compensation-related piece and think I'm getting too much,
22 given that it was his invention.

23 Q And he agreed that the HHI options were valuable as
24 well. Yes?

25 A He --

1 Q You just said millions; right?

2 A I didn't say for the HHI. I said for the full
3 position of the company. Woody needed to be convinced, as did
4 the whole board, that the HHI strategy was the right one. They
5 did accept it. And one of the things that I want to make
6 really sure is clear, when I said spin off HHI, right, that
7 means every shareholder that has a share of Parametric gets a
8 piece of HHI. There was never discussions that, hey, I'm
9 spinning this off to me or the internal folks that are
10 participating in HHI. It's you have a share of Parametric,
11 you've got a share of HHI. So this was a spin off for the
12 shareholders, not to insiders.

13 Q I've never seen a document to that effect. Do you
14 know of any that would support that?

15 A I'm telling you that's what a spin off is. You spin
16 off a division, you spin it off to the shareholders. You don't
17 spin it off to yourself.

18 Q Let me turn your attention to Exhibit 1 --

19 A And that's the key. Now you've just explained a ton
20 of your questioning because there's obviously a
21 misunderstanding in your mind in terms of when I said -- when
22 everything says spin off HHI, it was a spinoff to the
23 shareholders. And as a matter of fact, the Weisbords who are
24 here fully understood that because they were lobbying for that
25 support -- lobbying their support for the spin off. And so it

1 was real clear to the plaintiffs that this was a spin off to
2 them, to the shareholders.

3 MR. APTON: I'd move to strike as non-responsive,
4 Your Honor.

5 THE COURT: Denied.

6 BY MR. APTON:

7 Q Were you having those negotiations with the Weisbords
8 while you were told not to discuss the HHI options?

9 A I had discussions with Josh Weisbord relative to why
10 I thought HHI could be a valuable entity that could be
11 positioned for spin off, and I think, but I'm not positive,
12 that I put him under NDA for that discussion.

13 Q Let me turn your attention to Exhibit 102, please.

14 THE COURT: Any objection to 102?

15 MR. HESS: No objection.

16 MR. STIGI: No, Your Honor.

17 THE COURT: It will be admitted.

18 (Plaintiff's Exhibit Number(s) 102 admitted.)

19 BY MR. APTON:

20 Q So this is July 1st, 2013. And correct me if I'm
21 wrong, but you're again discussing --

22 A I need to read it.

23 Q Sure.

24 A Okay.

25 Q You're discussing HHI options with Stark again;

1 correct?

2 A Discussing the process on how the -- discussing the
3 process of how we got to where we were with HHI.

4 Q So, yes; correct? Discussing HHI options. Yes?

5 A Yes.

6 Q Thank you. Can we go to 104, please. Tab 104.

7 THE COURT: Any objection to 104?

8 MR. STIGI: No, Your Honor.

9 MR. HESS: No objection.

10 THE COURT: It will be admitted.

11 (Plaintiff's Exhibit Number(s) 104 admitted.)

12 THE WITNESS: Sir, with the last one, I don't know if
13 I'm out of order here, but I'm answering Juergen's question.
14 This is not me reaching out to Juergen on HHI. He's asked me a
15 question and I gave him an answer on it, so. But, okay, for
16 what it's worth.

17 BY MR. APTON:

18 Q And he recognizes in the top email that -- he says,
19 "Shouldn't I be discussing this with Seth and Jim?" So he
20 knows that you're not supposed to be talking to him about HHI;
21 correct?

22 A He knows I'm not supposed to be negotiating HHI.
23 This is me giving him a historical account of when things were
24 formed, what decisions were made, et cetera. This is not a
25 negotiation, this is a here's what occurred between the last

1 nine months.

2 Q You were told to cease discussing -- discussions --
3 all discussions about HHI just days earlier, and every day
4 since then you have discussed HHI with Mr. Stark; correct?

5 A I answered the question.

6 Q No.

7 THE COURT: No, sir, you didn't.

8 THE WITNESS: Okay.

9 THE COURT: Could you please answer the question.

10 THE WITNESS: Yes. I was told by the board not to
11 negotiate HHI. I'm negotiating a deal, a merger with Juergen
12 and I was told I'm not to negotiate anything to do with HHI. I
13 received a question from Juergen on things relative to HHI. I
14 did not see the question as a negotiated -- a negotiation, so I
15 answered his question with a historical account of how HHI came
16 to be. But I don't see this in any way as a negotiation, and
17 therefore I don't think I violated the intent of the board.

18 BY MR. APTON:

19 Q Where is the question that Mr. Stark asked you?

20 A "Why would it have taken nine months to go from
21 negotiation to issue?" I think he's talking about the issuance
22 of the equity.

23 Q I'm sorry, where are you reading from?

24 A 102-001.

25 Q I'm on 104, Mr. Potashner.

1 A Oh. I thought we were still talking about 102. All
2 right. Let me look at 104.

3 Q If you can tell me why you're discussing HHI with Mr.
4 Stark on this day, July 3rd. Exhibit 104.

5 A Let me read it.

6 Q There is no question from Mr. Stark; correct?

7 A Well, not in this chain, but I'm not sure what
8 initiated this discussion.

9 Q So you're affirmatively reaching out to him on
10 July 3rd to give him some sort of discussion or history about
11 HHI --

12 A Yeah, I had --

13 Q -- in which you tell him -- Excuse me.

14 A I'm sorry. Go ahead.

15 Q In which you tell him you're going to need, quote,
16 "using Andy Wolfe as a catalyst." Right?

17 A This is me communicating to Juergen after the board
18 member -- one of the board members who is designated to talk
19 about HHI reached out to me. So I'm relaying information to
20 Juergen. I don't know why Andy didn't do it directly. But I'm
21 saying that one of my board members, Andy Wolfe, gave me
22 guidance based on internal Parametric board discussions. So
23 Andy handed me a proposal, effectively, that I was relaying to
24 Juergen and it was, hey, we've got doctors here at our HHI
25 stakeholders. They need to be compensated differently. So

1 that's what I'm looking at. That's what I say.

2 Q So if Mr. Wolfe is relaying to you something from
3 Juergen and you know you're not supposed to be talking to
4 Juergen about this, why do you then contact him directly
5 instead of going back through Andy Wolfe, as the board told you
6 to do?

7 A Because this is a -- this is allocating Parametric
8 shares to the stakeholders in lieu of their HHI shares. So
9 this is a discussion on not HHI shares, but we may need to
10 issue Parametric shares to these doctors if they're going to
11 lose their HHI shares. This is not me looking to change any of
12 the parameters of the HHI discussions or change anything. It's
13 just, hey, we may need to give the doctors Parametric shares.

14 Q Is it your testimony that this email in no way
15 relates to your HHI options, directly or indirectly?

16 A I don't see -- point me to where you see that.

17 Q The entire email discusses HHI and the options. You
18 are a holder of HHI options at this point; correct?

19 A I took zero compensation when I forfeited my options.

20 Q That was not the question I asked you, sir. I
21 understand that might be your ultimate point here, but that's
22 not the question I asked you.

23 A I can't tell in looking at this. I think this is
24 relative as to the doctors that we had on board.

25 Q In any event, Juergen responds to you, "Shouldn't I

1 be discussing this with Seth and Jim?"

2 So he knows that you and he were not supposed to be
3 discussing this; correct?

4 A Well, it's on the margins, but when he questioned it
5 then that discussion ceased. So there was no --

6 Q You're telling me discussions ceased after this?

7 A I'm saying I don't see a follow-up to this email, so
8 you'll have to point me. I don't know what happened next,
9 whether I ceased based on when he said, "Shouldn't I be
10 discussing with Seth and Jim?" Andy was in the dialogue as
11 well with -- on HHI.

12 Q Right. You were using him as a catalyst; correct?

13 A He was designated by the board to play a role in
14 this.

15 Q And in your words, you were using him as a catalyst;
16 right? It's right in front of you, sir.

17 A Where? Where?

18 THE COURT: It's been highlighted on the screen for
19 you, sir.

20 THE WITNESS: Oh. Thank you.

21 MR. APTON: Thank you.

22 THE WITNESS: Okay.

23 BY MR. APTON:

24 Q So, yes?

25 A So the -- yeah. Andy would be the right guy to

1 convey the message back to the board.

2 Q If I can turn your attention now to Exhibit 6, which
3 are board minutes. These are board minutes, Mr. Potashner. If
4 you go to Exhibit 6, dated July 5th, 2013. So, if I may,
5 earlier --

6 MR. PEEK: Let him read it, please.

7 THE WITNESS: I'm going to have to read this. It's
8 ten pages.

9 THE COURT: Sir, just let us know when you're done,
10 please.

11 (Pause in the proceedings.)

12 THE COURT: Let us know when you're done reading,
13 sir.

14 THE WITNESS: Yeah, I'm just about done. I'm on the
15 last page. I'm done.

16 THE COURT: Okay.

17 BY MR. APTON:

18 Q So, Mr. Potashner, earlier, you drew a distinction
19 between negotiating HHI options and discussing HHI in its
20 entirety, and you said you were only told not to do the former.
21 Is that accurate?

22 A No. I said -- no, it's not.

23 Q Why not?

24 A I said that I was told to not negotiate deal points
25 related to HHI. But as I mentioned before, there was ongoing

1 dialogue that needed to happen relative to the operational
2 issues of HHI. So there was continued dialogue between Juergen
3 and myself on everything from what is the FDA strategy, the
4 likely timing, cost-related issues of executing HHI, so there
5 would have been, you know, a myriad of dialogues that would
6 have continued. The ones that were to be stripped were deal
7 point negotiation relative to HHI.

8 Q So if you had any discussions about HHI going
9 forward, they were strictly related to operational issues and
10 not options; is that right?

11 A That was the -- that was the intent.

12 Q Okay.

13 A That was the board's intent.

14 Q What was your intent?

15 A To honor that, and as I said, I'm sure I've -- I
16 slipped out of bounds on occasion, but I --

17 Q Okay.

18 A Yeah, but --

19 Q And so, just so we're clear, as of July 5th, 2013, if
20 you go to page 5 --

21 A Yep.

22 Q -- of Exhibit 6 --

23 A Okay.

24 Q -- the bottom of the second to last paragraph says,
25 "In light of Mr. Potashner's conflict of

1 interest, the board reiterated its direction
2 to Mr. Potashner not to discuss HHI or the HHI
3 stock options either with merger partner
4 Turtle Beach, or its CEO Juergen Stark, or
5 with Mr. Todd, or the two doctors who hold HHI
6 stock options."

7 Right?

8 A Correct.

9 Q Okay. So can we agree that as of July 5th, 2013, the
10 board had told you not to discuss HHI or its stock options with
11 Juergen Stark?

12 A No, I don't agree with that.

13 Q What -- what don't you agree?

14 A I --

15 Q Did I read something incorrectly from the board
16 minutes?

17 A No, I think you're -- the board's saying this -- so
18 HHI stock options were -- I do agree with you. HHI, the
19 board's intent was don't participate in negotiating facets of
20 HHI, but they're -- they clearly did not say, don't let Juergen
21 know what the budget is for HHI for next year; right? That
22 there was nobody else in the company that would have been
23 positioned to answer those questions to Juergen.

24 Q Okay.

25 A So the board clearly was not looking to constrain

1 information flow on HHI. They simply did not want me to
2 negotiate deal parameters around HHI.

3 Q So only operational material going forward?

4 A Correct.

5 Q Okay. All right. Let's go to Exhibit 42, please.
6 Oh, I'm sorry. I meant Exhibit 99, please. Sorry.

7 THE COURT: 99?

8 MR. APTON: 99.

9 THE COURT: Any objection to 99?

10 MR. STIGI: No, Your Honor.

11 MR. HESS: No objection.

12 THE COURT: It'll be admitted.

13 (Plaintiff's Exhibit Number(s) 99 admitted.)

14 THE COURT: Thank you.

15 BY MR. APTON:

16 Q So, Mr. Potashner, 99.

17 A Yeah.

18 Q It appears to me --

19 A I need to read it.

20 Q Sorry.

21 A Okay.

22 Q Are you discussing HHI with Mr. Stark here?

23 A Am I discussing? No, I'm telling him that I'm not in
24 a position to negotiate with you, but here is something from
25 one of my board members that you should -- that I'm -- that I'm

1 relaying to you.

2 Q So you forwarded him something from Andrew Wolfe that
3 you thought would be useful, is your word, about HHI and the
4 company's position on it; correct?

5 A Correct.

6 Q Okay. So this is in accordance with or against the
7 board directive that you received just one day earlier?

8 A Andy Wolfe is part of the board. For him to give me
9 something to forward to Juergen, I think it's -- I think it's
10 fine.

11 Q Is it your testimony that you were supposed to do
12 that? Did Andy Wolfe direct you to forward this to Mr. Stark?

13 A So I don't recall the dynamics, but why -- if Andy
14 knew that I'm not in a position to talk to Juergen, and he's
15 giving a structure here for Juergen to execute, I'm not sure
16 what he would expect me to do with it. I mean --

17 Q Why did you tell Mr. Stark to treat it as
18 confidential?

19 A It is confidential.

20 Q It appears to me that this was an internal
21 conversation amongst your board members that you then forwarded
22 to Mr. Stark. Is that not the case?

23 A Again, I don't recall the dynamics of it, but I do
24 know if Andy gave me a recipe, he would have expected it to be
25 passed on. I did nothing but pass on something from my board.

1 Q So if Mr. Wolfe testifies in this case, he's going to
2 say that he told you to pass that along?

3 A I don't know what he'll say because, again, I don't
4 recall myself, the dynamics associated with this. But I do
5 know that I did not construct this -- these dynamics, and I do
6 know that I reinforced to Juergen that I'm not positioned to
7 negotiate this with you.

8 Q If you had passed along confidential information from
9 your board, would that have been a breach of fiduciary duty?

10 MR. STIGI: Objection. Calls for a legal conclusion.

11 THE WITNESS: Yeah, I don't --

12 THE COURT: Overruled.

13 THE WITNESS: I don't --

14 THE COURT: He can answer.

15 THE WITNESS: I don't know.

16 BY MR. APTON:

17 Q You don't know one way or the other?

18 A I don't know whether passing on information that I
19 assumed was to be passed on, whether that violates anything.

20 Q Okay.

21 A My assumption is this was designed to be passed on.

22 Q But you have no independent recollection of that?

23 A Correct.

24 Q If we could go to Exhibit 119, please.

25 MR. STIGI: No objection, Your Honor.

1 MR. HESS: No objection.

2 THE COURT: It'll be admitted.

3 (Plaintiff's Exhibit Number(s) 119 admitted.)

4 BY MR. APTON:

5 Q I assume you want to read the document,
6 Mr. Potashner?

7 A I'm -- yeah.

8 Q Okay.

9 A Let me read it, please. Okay.

10 Q So let's start with the first e-mail in the chain,
11 all the way at the bottom on page 2.

12 You were telling Mr. Putterman -- correct me if I'm
13 wrong, but he was one of the people, one of the directors that
14 the board had appointed to negotiate HHI instead of you because
15 of your conflict of interest; correct?

16 A Correct.

17 Q And you're telling him a story involving SonicBlue.
18 Presumably, there were some legal issues there; yes?

19 A Correct.

20 Q And you end your e-mail by saying, "We would not like
21 to ever have to go through that again."

22 What was the legal issue that you dealt with at
23 SonicBlue?

24 A Yeah, there was a tier of debt that was subordinated,
25 and there was a legal challenge in terms of whether or not that

1 debt could have been subordinated. And the board had different
2 perspectives on who did what, and -- and everyone got their own
3 lawyers. And at the end of the day, I was demonstrated to have
4 had the right position --

5 Q So --

6 A -- and was compensated.

7 Q It was you and then the other director disagreeing
8 with one another?

9 A Correct.

10 Q And fiduciary duties were involved?

11 A No. No. No, we didn't disagree with each other. We
12 each got different counsel.

13 Q But you sued each other; correct?

14 A I sued the company for indemnification and won.

15 Q And then going back to the e-mails above that, Mr.
16 Putterman says, "I plan to discuss Scenario 1 with Juergen. I
17 think you said to do it, but please say if otherwise."

18 Why is Mr. Putterman taking directions from you on --
19 I'm assuming HHI?

20 A All right. So where is Scenario 1?

21 Q I don't know, but you must have discussed scenarios
22 with Mr. Putterman and given him directives; yes?

23 A No. He could have sent me, here's three scenarios,
24 and I plan to discuss Scenario 1 with Juergen. I --

25 Q Well, the e-mail above this one, so the top of page

1 2, you're now telling him, "No changes to license should occur
2 until we know we have a deal and should not go into effect
3 until" --

4 A Yeah. That --

5 Q Go ahead.

6 A Understand. Right. So this addresses, hey, we're
7 walking away from the strategy that I think is the best one for
8 the company, which is to keep HHI as an entity, spin it off
9 downstream to shareholders, all the things I've, you know,
10 repeated today. What if this deal doesn't close with Turtle
11 Beach; right? Are we abandoning what I think is the right --
12 you know, so I'm willing -- you know -- you know, I've been
13 given the directive board, and I -- I accept it, that we will
14 abandon the -- what I think is the most valuable shareholder
15 strategy around HHI, for the interest of getting the Turtle
16 Beach merger done. But what if that deal falls apart? What if
17 it doesn't consummate? Do we still dismantle HHI, or do we
18 keep it intact?

19 Q Well, more important --

20 A Right? So -- so that's -- that's what this is.

21 Q Well, more importantly, it would have been very bad
22 for Parametric because you had already given them an exclusive
23 license on gaming for the technology; correct?

24 MR. STIGI: Objection.

25 THE COURT: Overruled.

1 THE WITNESS: You're -- you're asking me what this --
2 what this deal was. That's what this was. I don't know what
3 the relevance is to breakup fee. This is saying that, hey, are
4 we really going to dismantle HHI if Turtle Beach doesn't
5 happen; right? That's what this is.

6 BY MR. APTON:

7 Q Well, what this is, is you're -- Seth is asking
8 you --

9 A Right.

10 Q -- how to handle negotiations with Juergen, and he's
11 taking directives from you; correct? And read the first --

12 A No, I don't think --

13 Q -- page of the e-mails, too.

14 A -- he's taking directives. I think there likely
15 was -- I don't recall the sequencing, whether Juergen wanted
16 HHI dismantled prior to the merger occurring, you know, and I
17 think this might be what it is, that there's timing sequences
18 here, that I would have argued that you don't dismantle HHI
19 until you're, you know, signing on the dotted line, and the
20 money's flowing across, shares are flowing across. There was
21 the exposure here, which is, hey, we dismantle the entity, the
22 merger never occurs, and then what; right? So I think Seth
23 would have looked to me for guidance to -- how to -- you know,
24 how to deal with that possibility.

25 Q You're not talking about dismantling HHI here.

1 You're talking about the license between HHI and Parametric.

2 A It's the same.

3 Q You said --

4 A Yeah. There -- there is no HHI without the license;
5 right?

6 Q Okay. And --

7 A So HHI's premise is, hey, we've got this exclusive
8 license from the parent, from Parametric, to use the technology
9 for health applications.

10 Q And some of the director --

11 A And if that license doesn't exist, then there's no
12 HHI.

13 Q Or if the license is narrowed, too; correct?

14 A If the license is narrowed, the value of HHI is
15 diminished.

16 Q And so it was against your interests to narrow or
17 remove that license; right?

18 A It was against my -- against the valuation -- the
19 shareholder value proposition.

20 Q That's you?

21 A And -- and --

22 Q You and Mr. Todd?

23 A And me as a shareholder.

24 Q You and Mr. Todd; right?

25 A Me, Mr. Todd, Mr. Weisbord, all of the Parametric

1 shareholders.

2 Q HHI. I'm talking about HHI.

3 A So am I.

4 MR. STIGI: Objection.

5 THE WITNESS: So am I. Again, the playbook --

6 THE COURT: What's the objection?

7 MR. STIGI: Oh. Oh, the objection is badgering.

8 THE COURT: Oh, okay.

9 MR. STIGI: But mostly, I'd like to just hear an
10 answer from the witness --

11 THE COURT: Me, too.

12 MR. STIGI: -- and then we can have a question and an
13 answer.

14 THE COURT: So, yeah, can I have an answer? It's all
15 I need.

16 THE WITNESS: Yeah. So -- so my answer is that
17 limiting the license would have limited the value of a key
18 asset that I intended to spin off to all shareholders
19 downstream, including myself as a shareholder. And I was
20 looking to close the gap of, gee, what if the deal doesn't go
21 through, you know, will we have taken actions that would have
22 limited shareholder value for nothing?

23 MR. APTON: If we can go to Exhibit 131, please.

24 THE COURT: 131?

25 MR. APTON: 131.

1 BY MR. APTON:

2 Q This e-mail's dated July 9th, 2013.

3 THE COURT: Any objection?

4 MR. HESS: No objection.

5 MR. STIGI: No, Your Honor.

6 THE COURT: It'll be admitted.

7 (Plaintiff's Exhibit Number(s) 131 admitted.)

8 BY MR. APTON:

9 Q It's between you and Mr. Stark.

10 A Wait. Let me finish it, please.

11 Q Uh-huh.

12 A Okay.

13 Q Are you talking about operational issues with respect
14 to HHI in this e-mail?

15 A Yeah. I'm talking about demotivating the doctors
16 that I put in place because we're going to be taking their
17 options away.

18 Q So you're talking about HHI options; yes? With Mr.
19 Stark?

20 A I'm talking about the employees.

21 Q You're talking about --

22 A The doctors.

23 Q -- HHI options with Mr. Stark; correct?

24 A I'm talking about, you've got key assets here, which
25 are doctors that are making this HHI entity happen, and you're

1 going to demotivate them.

2 Q Are you, in this e-mail, discussing HHI with Mr.
3 Stark?

4 A Yes.

5 Q Thank you. And you and he, by this point in time,
6 both know you should not be doing that; correct?

7 MR. HESS: Objection.

8 THE WITNESS: This is 100 percent --

9 THE COURT: Overruled.

10 THE WITNESS: -- within the realm of what I should be
11 doing with Mr. Stark. So the last thing the board would want
12 me to do is have a key asset, that -- that Mr. Stark has
13 declared relevant to the deal, begin getting devalued in a
14 massive way because all the employees quit, because they
15 believe that their full compensation has just gone to zero.

16 So this was an essential discussion. The board would
17 have been 1000 percent in support of me making sure that the
18 assets stay in place, that the doctors stay in place. So
19 100 percent legitimate discussion.

20 BY MR. APTON:

21 Q Four days ago, you were told not to discuss HHI with
22 Mr. Stark at all. There was no exception for essential issues.
23 Is there an exception for essential issues going forward?

24 A This is an operational -- this is an operational
25 issue.

1 Q Okay.

2 A This is not an HHI option negotiation with -- with --
3 with Juergen.

4 Q Okay. Let's go to --

5 A I'm not negotiating deal points on HHI with Juergen
6 here. I'm saying, we've got to go stabilize workforce, period.

7 Q Because if you were to have discussed deal points,
8 then that would be a problem; correct?

9 A I was not -- yeah, I was told not to discuss deal
10 points.

11 Q Okay. Let's go to Exhibit 90, please.

12 MR. STIGI: Which one, now?

13 THE COURT: 90.

14 MR. HESS: 90.

15 THE COURT: Any objection to 90?

16 MR. HESS: No objection.

17 MR. STIGI: No, Your Honor.

18 THE COURT: It'll be admitted.

19 (Plaintiff's Exhibit Number(s) 90 admitted.)

20 BY MR. APTON:

21 Q This is an additional e-mail between you and
22 Mr. Stark dated July 11th?

23 A Let me read it, please.

24 Q Sure.

25 A Okay.

1 Q Discussing HHI with Mr. Stark, again, on July 11th;
2 correct?

3 A No, not -- well, I'm not discuss -- I'm not
4 negotiating anything in this e-mail.

5 Q You're not discussing the value of HHI?

6 A I'm --

7 Q And Mr. Stark is not telling you that your math
8 doesn't make sense?

9 A This is --

10 MR. STIGI: Objection. There were multiple questions
11 just asked. Which question are we answering?

12 THE COURT: Sustained. Can we please break them up?
13 BY MR. APTON:

14 Q Are you discussing the value of HHI with Mr. Stark?

15 A I'm not negotiating anything within this. I'm
16 discussing HHI's valuation.

17 Q So, yes, you were discussing HHI's valuation with
18 Mr. Stark; correct?

19 A Correct.

20 Q Thank you. And if we can go to 98.

21 A Which the board was fine with, just as a footnote;
22 right? The board gave me instruct not to negotiate HHI. This
23 is not a negotiation. This is a, here's how you should value
24 HHI.

25 Q The word the board used was "discuss"?

1 A The word --

2 MR. STIGI: Objection, there's no --

3 THE WITNESS: -- the board meant --

4 THE COURT: Overruled.

5 THE WITNESS: -- is "negotiate."

6 MR. STIGI: -- question.

7 THE COURT: There was a question mark on the end of
8 that sentence.

9 Keep going.

10 MR. STIGI: I didn't hear it.

11 BY MR. APTON:

12 Q There was no exception in the board's mandate for
13 negotiations. It was, you are not to discuss HHI because of
14 your conflict of interest; is that correct?

15 MR. STIGI: Thank you.

16 THE WITNESS: No.

17 MR. STIGI: That was a question.

18 THE COURT: Overruled.

19 BY MR. APTON:

20 Q Do we need to go back to Exhibit 5 or 6?

21 A No, I'm telling you what the intent of the mandate
22 was, which is the board did not want me to negotiate HHI
23 related issues. The board knew 100 percent, and even as you
24 saw Seth reaching out to me two exhibits ago for guidance on
25 HHI, you saw Andy sending me stuff on HHI, so it was

1 100 percent understood that I'm engaged fully with Juergen
2 relative to HHI operational execution.

3 Q You had a consulting deal in place with Seth
4 Putterman; yeah?

5 A Correct.

6 Q And you also had arranged with John Todd to somehow
7 pay Andy Wolfe for his help with all this; correct?

8 A No.

9 Q You --

10 A I didn't arrange with John to pay Andy Wolfe.

11 Q You nominated him to sit on --

12 A I asked him to have a discussion with Andy to
13 understand what his contributions are going to be and how he
14 would look to get compensated for those.

15 Q And you were actively nominating him to sit on the
16 board of the new company; correct?

17 A Andy Wolfe; correct.

18 Q Uh-huh. Okay. Let's move on to Exhibit 98, please.

19 THE COURT: Any objection to 98?

20 MR. HESS: No objection.

21 MR. PEEK: No, Your Honor.

22 THE COURT: It'll be admitted.

23 (Plaintiff's Exhibit Number(s) 98 admitted.)

24 THE COURT: How much longer you think you got
25 examining Mr. Potashner?

1 MR. APTON: Probably an hour or two, Your Honor.

2 THE COURT: Okay.

3 BY MR. APTON:

4 Q Mr. Potashner, this is an e-mail dated July 11th --

5 A Yeah.

6 Q -- 2013, between Ken, yourself, and Mr. Stark?

7 A Yeah. Let me read it, please. Go ahead.

8 Q Discussing HHI again with Mr. Stark; correct?

9 A Yes.

10 Q You tell him that the whole reason you did the deal
11 in the first place was to build a multibillion dollar HHI;
12 right?

13 A Not the -- when you say, the deals, which deals do
14 you -- are you reading?

15 Q You're talking about the merger; are you not?

16 A Let me reread this. No. I'm saying here that -- no.
17 In my mind, the deal -- entered into the deal in the first
18 place. No, because my -- my desire, as I said, was to not have
19 HHI be part of this deal, so I did not enter into this deal to,
20 you know, for HHI's purpose.

21 Q And then you proceeded to ask him for a gentlemen's
22 agreement if you couldn't convince him into keeping HHI;
23 correct?

24 A The --

25 Q Third paragraph.

1 A Yeah. No, I understand. We discussed that earlier,
2 that I wanted him to keep HHI as an entity and let me
3 participate in helping build that business.

4 Q Were you supposed to be having this conversation with
5 Mr. Stark?

6 A This is on the margins. So I -- clearly, I'm not
7 negotiating. I'm not saying, we're -- we're not going to do
8 the deal. I'm not asking for more. I'm just suggesting, hey,
9 let me help post-deal. But yeah, this would be on the margins.

10 Q What do you mean by, on the margins?

11 A Meaning, I'm not saying, Juergen, either make me a
12 consultant, or this deal's not going to happen. So not --
13 there's no ask. There's no consequences of him saying no to
14 this. It's, hey, Juergen, please consider letting me be a
15 consultant on HHI post-deal.

16 Q And you're asking him for a gentlemen's agreement on
17 that point; right?

18 A Correct.

19 Q And the purpose of a gentlemen's agreement is what?
20 To not have it be written down; correct?

21 MR. STIGI: Objection. Two questions there.

22 THE WITNESS: Of course it would be written down.

23 THE COURT: Can you divide up your questions, please.

24 BY MR. APTON:

25 Q What's your understanding of a gentlemen's agreement?

1 A It was, hey, I don't -- I don't know if this needs to
2 be a deal point for -- you know, because it's not. I'm not
3 authorized to negotiate deal points, and the board clearly
4 would not support this as a deal point. But I think I can help
5 make this thing worth a lot, which would benefit you, Juergen,
6 it would benefit your shareholders, it'll benefit the
7 Parametric shareholders, and it'll benefit me.

8 Q You weren't authorized to do it, but yet here you
9 were doing it; right?

10 A Correct.

11 Q Let's move on to --

12 A But I -- again, I'm being redundant. There were no
13 consequences of him saying, no. There was not a negotiation.
14 This was a plead, I guess, for lack of better words, but fine.

15 Q A plea that was directly in contravention of the
16 orders from your board; correct?

17 A Yeah. The board told me I'm out, I'm not in a
18 position to negotiate anything on HHI options, or HHI. I don't
19 know if I would consider this a negotiation. This is a, hey,
20 Juergen, consider making me a consultant. So, I don't know
21 what -- how you would define that, but -- but that's how I
22 define it.

23 Q If you could go to Exhibit 87, please.

24 THE COURT: Any objection to 87?

25 MR. STIGI: No, Your Honor.

1 MR. HESS: No objection.

2 THE COURT: It'll be admitted.

3 (Plaintiff's Exhibit Number(s) 87 admitted.)

4 BY MR. APTON:

5 Q Mr. Potashner, I only have one question about --

6 A Yeah. Let me -- let me read it, please. Okay. Go
7 ahead.

8 Q You're talking about HHI again; yes? July 13th, with
9 Mr. Stark?

10 A I'm acknowledging that, gee, that -- there's mutual
11 dissatisfaction. I'm not negotiating anything.

12 Q You were discussing HHI with Mr. Stark; correct?
13 Yes?

14 A Again, clearly, within the board's -- this would --
15 this would be acceptable to the board, for me to say, gee, I
16 don't like how HHI turned out. So that's not a negotiation.
17 The board's limitation on me was negotiation of HHI options,
18 HHI, and I'm doing none of that here, other than saying I
19 didn't like how that turned out.

20 Q You keep saying the board's limitation was on
21 negotiations, but that's not -- that's not true.

22 If you go to 6 -- Exhibit 6, page --

23 THE COURT: So we're not going to argue with him
24 about what you think and what he thinks.

25 MR. APTON: Okay.

1 THE COURT: We're going to hopefully ask a factual
2 question, so I will eventually get done with this witness.

3 MR. APTON: Thank you, Your Honor.

4 THE COURT: Thank you.

5 BY MR. APTON:

6 Q Okay. Exhibit 88, please, Mr. Potashner.

7 MR. HESS: 88?

8 MR. APTON: 88.

9 MR. HESS: Thank you.

10 MR. STIGI: No objection.

11 MR. HESS: No objection.

12 THE COURT: It'll be admitted.

13 (Plaintiff's Exhibit Number(s) 88 admitted.)

14 THE COURT: Thank you.

15 BY MR. APTON:

16 Q This is now the day after the previous e-mail, and my
17 question is, are you discussing HHI, again?

18 A Let me read it again. Okay.

19 Q Are you discussing HHI?

20 A I'm discussing, again, the fact that we've got a key
21 asset, the doctors, that are going to need some clarity, so I'm
22 discussing HHI operational aspects there. I'm declaring to
23 Juergen that, hey, I'm going to do nothing that's going to
24 block the deal, so draw up whatever documents we need to draw
25 up, and I -- I'll -- I will sign them.

1 So, that's what I'm discussing. So -- so it's
2 consistent with what I've said before. I'm not negotiating
3 anything relative to HHI, or HHI options, other than saying
4 I'll sign whatever you need me to sign.

5 Q So you're discussing HHI; yes?

6 A I'm discussing what I just shared with you I'm
7 discussing.

8 BY MR. APTON:

9 Q And Tab 89, please.

10 THE COURT: Any objection?

11 MR. HESS: No objection.

12 MR. PEEK: Well, if Josh has no objection, I guess we
13 don't either, Your Honor.

14 THE COURT: Okay.

15 MR. STIGI: What? No. No objection.

16 THE COURT: It will be admitted.

17 (Plaintiff's Exhibit Number(s) 89 admitted.)

18 THE COURT: I was pretty sure based on the
19 description you had no objection, but you know. But
20 descriptions have been known to be wrong.

21 THE WITNESS: Go ahead.

22 BY MR. APTON:

23 Q Discussing HHI again; correct?

24 A Relaying to Juergen, the board -- all the agreements
25 that were put in place from the board that moved every -- any

1 barriers -- any barriers relative to HHI.

2 Q And how come you're doing this and not Mr. Wolfe or
3 Mr. Putterman?

4 A Don't know. But these are all items that would have
5 been approved by the board.

6 MR. APTON: And Tab 132, please.

7 THE WITNESS: Yeah. I think what's going on again is
8 things that --

9 MR. APTON: I didn't ask a --

10 THE WITNESS: -- were not negotiation points were
11 fine, and the board didn't need to communicate that, I would
12 have communicated this.

13 Q Tab 132, please.

14 A Yep.

15 MR. PEEK: No objection, Your Honor.

16 THE COURT: Thank you.

17 MR. HESS: (Indiscernible) be first.

18 UNIDENTIFIED SPEAKER: Who's keeping track.

19 THE COURT: It'll be admitted.

20 (Plaintiff's Exhibit Number(s) 132 admitted.)

21 THE WITNESS: Okay.

22 BY MR. APTON:

23 Q Discussing HHI, Mr. Potashner?

24 A I'm communicating to Juergen that we think we can
25 narrow the license without it impacting the doctor, so I was

1 giving him an operational update that the HHI business is still
2 intact.

3 Q And what about Exhibit 94?

4 MR. HESS: No objection.

5 MR. STIGI: No objection.

6 THE COURT: It will be admitted.

7 (Plaintiff's Exhibit Number(s) 94 admitted.)

8 BY MR. APTON:

9 Q Are you discussing HHI, Mr. Potashner?

10 A I don't think I'm negotiating anything. I'm telling
11 him something that happened at another company.

12 Q That was analogous to what's going on with HHI at the
13 time; yes?

14 A Correct.

15 Q Okay.

16 MR. APTON: If we could go to Tab 293, please.

17 THE COURT: 293?

18 MR. APTON: 293. Yes, Your Honor.

19 THE COURT: Thank you.

20 MR. STIGI: No objection.

21 MR. HESS: No objection.

22 THE COURT: It will be admitted.

23 (Plaintiff's Exhibit Number(s) 293 admitted.)

24 THE WITNESS: Okay.

25 / / /

1 BY MR. APTON:

2 Q So Mr. Norris's e-mail to you at the bottom of 293-
3 1, he says, "It turns out you've been speaking to the TB folks,
4 Turtle Beach, without Andy. I expressly remember the board
5 having stated you were not -- in capital letters - authorized
6 to do that as it relates to the subject of HHI. We're major
7 conflicted on that matter. Please start acting like you're
8 working for PAMT not yourself."

9 So it seems to me that at least Mr. Norris disagrees
10 with the exceptions to the director from the board you received
11 earlier that month; correct?

12 A Yeah. What's really interesting to me though is it
13 also seems to legitimize my ability to have discussions with
14 them that Andy is involved with. And, you know, before we hit
15 some dialogue where he said, why did I pass this on from Andy
16 and such, so -- so this -- I think he says, "Don't speak to
17 Turtle Beach without having Andy in on the conversation."

18 So I think that -- you know, that could explain some
19 of the earlier dialogues. But --

20 Q We went through a number of -- of e-mails at this
21 point where Andy is not attached to them, yet you're discussing
22 HHI.

23 A Yeah. But I might on the (indiscernible) Andy, the
24 concepts or whatever. But go ahead. Sorry.

25 Q Did you?

1 A It would -- things like the one we showed where Andy
2 sent me one that -- yes, that would have been one that Andy was
3 in on the conversation.

4 Q And the others? You're telling me Andy --

5 A We'd have to go case by case. I -- I --

6 Q Is it --

7 A -- I don't recall.

8 Q Is it your --

9 A But go -- go --

10 THE COURT: You've got to only do one at a time,
11 please.

12 BY MR. APTON:

13 Q Are you done, Mr. Potashner?

14 A Yes.

15 Q Is it your testimony that Andy Wolfe authorized you
16 to have those conversations with Mr. Stark?

17 A I would need to know which conversation you're
18 talking about.

19 Q The last half a dozen exhibits we looked at.

20 A Yeah, there were several that Andy would have been
21 fluent with, like the last one you showed, with the six deal
22 points that were constraining the license and this and that.
23 So Andy would have been a part of that decision process.

24 Q So you were violating the board's directive from July
25 5th, with Andy's permission?

1 A No. I -- I -- if I'm reading what Woody said -- see,
2 this is in contradiction to what your earlier statement on
3 board constraints was; right? You pointed up a document that
4 said I'm not allowed to talk about HHI, and here's a board
5 member saying I'm not allowed to talk about HHI unless Andy's
6 in on it.

7 Q Well --

8 A Right. So -- so there's some latitude. But -- but
9 again, I think the board intent was don't negotiate HHI deal
10 points with, you know, I'm out -- out of that topic. That's
11 not you, Ken. You know, but -- but it was legitimately open
12 for HHI operational issues.

13 Q So the second from the bottom, on the top e-mail --

14 A Okay.

15 Q -- on Friday, July 19th, Woody says, "Ken, you lie.
16 You seem to have no idea what fiduciary duty even means."

17 A Yeah.

18 Q So --

19 A And I don't know what he's referring to.

20 MR. STIGI: Objection. Was that a -- was there a
21 question?

22 MR. APTON: He interrupted. I wasn't able to ask.

23 MR. STIGI: I -- well, the last --

24 THE COURT: Okay. Can we start --

25 MR. STIGI: -- word I heard was "So" --

1 THE COURT: Wait. So let's --

2 BY MR. APTON:

3 Q So --

4 THE COURT: -- finish the question. Start over.

5 MR. APTON: Excuse me.

6 BY MR. APTON:

7 Q In response -- in response to your justification, in
8 the lower e-mail, that Mr. Norris is calling you a liar; right?

9 A Correct. But I don't know relative to what. I don't
10 know what he's accusing me of lying on.

11 Q Is it safe to assume that it was in regards to the
12 reasons why you were discussing HHI?

13 A I have -- I have no idea what he's referring to,
14 unless there's -- I don't know. I can't get in his head and,
15 obviously, he was annoyed but I don't know what the topic was.

16 Q If we could go to Exhibit 113.

17 A Notice that I had a meeting Qualcomm, even though
18 you -- I've been accusing of slowing things down. But go
19 ahead.

20 Sorry. 113?

21 Q Yes.

22 MR. STIGI: No objection, Your Honor.

23 MR. HESS: No objection.

24 THE COURT: It'll be admitted.

25 (Plaintiff's Exhibit Number(s) 113 admitted.)

1 THE COURT: Let us know when you've finished looking
2 at it, sir.

3 THE WITNESS: Yes, I will, Your Honor. Okay.

4 BY MR. APTON:

5 Q So --

6 A Or actually, I'm sorry. I'm -- I couldn't see this
7 first page, so let me read this.

8 Okay.

9 Q So this e-mail chain suggests that it was Juergen,
10 actually, who was the one to make you give up your HHI options;
11 correct?

12 A Yeah. Juergen took the view -- well, not only HHI
13 options, but the -- the dismantlement of the entity was the --
14 was the request.

15 Q Well, with respect to the options for now, it was not
16 your board that -- that ultimately made you surrender your
17 options in HHI, it was Mr. Stark; correct?

18 A It was the board responding to Juergen's request.
19 Yeah, I think -- I think the board would not have cared if it
20 wasn't the tension point with Turtle Beach. Turtle Beach
21 wanted 100 percent ownership of the entity, so that was the
22 catalyst for the board saying, how do we deliver that.
23 Therefore, we need to unwind the options.

24 Q The board definitely cared. They accused you of
25 breaching your fiduciary duty because of your conflict of

1 interest, several times; right?

2 A They cared once Juergen declared he doesn't want
3 minority owners on HHI. They didn't care prior to that.
4 Otherwise, the board would not have established HHI and the
5 options in the first place.

6 Q And interestingly, it's Mr. Wolfe who recommended
7 breaking up the deal; yes? On page 2?

8 A I'm sorry. Where -- where do you see that?

9 Q It's in bold, actually. It's the paragraph starting,
10 "If anyone wants to discuss this," and then he concludes, "I
11 think this is the point where we say no."

12 A Yeah. So, I think what Andy is reacting to is the
13 exposure I mentioned before which is what if the deal doesn't
14 close; right? So -- so are we compromising the -- you know,
15 the higher -- high shareholder solution on the request of
16 someone who potentially doesn't close a deal with us. So I --
17 I think that was the -- the no, we should consider saying no,
18 would be to, hey, dismantle HHI prior to entering into a
19 definitive agreement.

20 Q My point is, is you wanted to keep your options, and
21 Mr. Wolfe was supporting that; correct?

22 A I -- yeah, of course, I would want to keep my options
23 if the deal didn't happen. And I had full board support to do
24 that. That's -- again, that's back to the establishment of the
25 options in the first place.

1 And the -- the trick here is -- was the request by
2 Turtle Beach to dismantle this pre-deal; right? And -- and
3 quite frankly, again, I'm -- I don't know the legal aspects of
4 it, but it would be odd to me if a board is asked to act on a
5 potential buyer's behest, to reduce its -- its potential.

6 Q And at this point --

7 A So Andy's saying no. Andy's saying we should say no
8 to them.

9 Q At this point, Mr. Kaplan was firmly of the opinion
10 that you had been negotiating against the interests of
11 Parametric, in breach of your fiduciary duties. And it's in
12 the e-mail right above Andy's.

13 A Okay.

14 Q He says, "Ken is totally conflicted. Ignored his
15 fiduciary responsibility to our shareholders and has been
16 negotiating constantly for his self-interest -- own
17 self-interest."

18 So you were; correct? Mr. Kaplan was correct, yes?

19 A No, of course not.

20 Q Why not?

21 A Mr. Kaplan believed that, perhaps, but -- but he's
22 not correct.

23 Q Well, you had been negotiating for HHI --

24 A So -- so again, to be real clear, HHI is a potential
25 future value; right? It's -- it's a low valuation asset that

1 could achieve a high value later. The only way it achieves
2 that high value for me, is if it achieves that high value for
3 all shareholders. Right? So -- so I don't see how me doing --
4 how me benefitting by having all shareholders benefit is a
5 self-interest. Right? If I said, hey, I want my HHI -- HHI
6 options, and nobody else gets them, that would be, in my mind,
7 negotiating for self-interest. But there was never anything
8 remotely to that possibility. This was, keep this asset.
9 Reserve the right to spin it off to shareholders, of which I am
10 one, and I will benefit, you know, side by side everybody else.

11 Q But you and who else had options in HHI?

12 A Yeah. The internal folks; right?

13 Q You and Mr. Todd; correct?

14 A And the doctors.

15 Q None of the other Parametric shareholders at large
16 had options in HHI --

17 A Yeah. They --

18 Q -- right?

19 A -- would only manifest if it was spun out.

20 Q Okay.

21 A Yeah. The division -- there's no liquidity in a
22 wholly owned division; right? So there's no way that we could
23 turn this into value unless it's -- unless it's spun out or
24 sold and then all shareholders would get the --

25 Q So --

1 A -- the cash through Parametric.

2 Q -- you and Mr. Todd surrender your options more or
3 less at --

4 A Yeah.

5 Q -- at this point. And --

6 A So we --

7 Q Sorry.

8 A I'm sorry. Go ahead.

9 Q Go ahead.

10 A Yeah. Let me add a point, a key one. So Bob Kaplan,
11 the most -- you know, well, Woody the most, Bob Kaplan the
12 second, you know, Woody had a board of folks that were -- were
13 the kind of board that would be consistent with a garage
14 startup. You know, these were his close associates. Woody
15 needed the deal to get done, as I mentioned, the end of career
16 piece. Bob was his greatest advocate, as was Jim Barnes, said
17 hey, let's get a deal. You know, we don't care if it's the
18 best deal, but let's get a deal. And I was fighting for, let's
19 get the best deal. And that fight for let's get the best deal
20 is where we all ran sideways.

21 So me not immediately caving in and, yeah, lets throw
22 HHI under the carpet, you know, give it away, was in the
23 construct of, hey, I can get more -- I can get value for this
24 thing, you know, either -- either pulling it out of the deal or
25 negotiating it differently.

1 So, you know, and yes, I personally would win if that
2 happens, but I win with all the shareholders if I get a better
3 price; right? So, I said, hey, I could get \$200 for this
4 thing. You guys want to accept \$100 for it. And their input
5 is, hey, we don't want to mess this \$100 up. Ken, stop
6 talking. Stop trying to get 200. Take the -- take the damn
7 100 now. And that was -- that was the tension point. That I
8 was pushing for that 200. I believe I could have got it with a
9 board that wanted to take 100.

10 Q And the issue with HHI wasn't resolved until you
11 eventually gave the say so; right?

12 A Well, I was told, I mean, I was -- I was confronted
13 with the, gee, do I really want to put significant risk into
14 closing this deal by holding the line; right? I mean, I could
15 have gone after shareholders and said, hey, this is a really --
16 I can get us a better deal. This board is, you know, accepting
17 a less than favorable deal. But I didn't do that.

18 I ultimately decided, well, I -- they -- I mean, the
19 board found its due process, which is there was every other
20 board member was in support of let's remove friction, bird in
21 the hand. The company had a lot of challenges; right? So --
22 so there was significant execution risk. So the deal -- so it
23 made sense to me that the board did what they did in accepting
24 a deal. I believe --

25 Q You accepted.

1 A -- they could have got a better deal.

2 Q You accepted the deal that --

3 A And ultimately, I accepted the deal as well. I --
4 and I take --

5 Q And it was your -- it was --

6 A -- I -- I accepted the deal as well.

7 Q It was your deal. You negotiated it directly with
8 Stripes group; did you not?

9 MR. STIGI: Objection. What deal are we talking
10 about at this point?

11 MR. APTON: HHI options.

12 MR. STIGI: Okay. I wasn't clear. Thank you.

13 THE WITNESS: Yeah. I -- I accepted taking zero for
14 my HHI position, which I took in lieu of Parametric equity that
15 I could have had, for the sole purpose of, hey, let's get this
16 deal done.

17 BY MR. APTON:

18 Q Well, but you didn't take zero. What you did was you
19 gave up your HHI options, so that the merger could go forward
20 and trigger a change in -- a change in control provision in
21 your stock options; correct?

22 A I -- yeah, contractually, I had acceleration. But in
23 parallel with that, I locked up my option position. I think I
24 actually did take zero when it was all said and done.

25 Q Those options --

1 A I think my options expired worthless. So, I took
2 zero.

3 Q You extended your options several times; correct?

4 A I took -- I ended up -- you can show me where I'm
5 wrong, but I think I cashed my options in for zero.

6 Q If we go to Exhibit 8, this is the board meeting, the
7 minutes where you discuss the compensation that you and Mr.
8 Todd were going to receive for your options. Page 3.

9 THE COURT: Let us know when you finished looking.

10 THE WITNESS: Just page 3 --

11 BY MR. APTON:

12 Q Yes.

13 A -- am I reading or am I reading more than page 3?

14 Q I'm directing your attention to page 3.

15 A Okay. I've read page 3.

16 Q So Mr. Todd was going to receive 100,000 bonus, and
17 an additional 150,000 bonus for his HHI options; correct?

18 A No. I don't think -- I think that's incorrect. I
19 think he had an employment contract in place that we were
20 honoring as the 150, I believe. And he did get bonus
21 considerations for forfeiting his HHI stock. And I think I
22 took zero.

23 Q Well, again, you had performance options; right?
24 Stock options with --

25 A Well, no, the question was HHI, I thought. My

1 premise is --

2 Q My -- my --

3 A -- I gave up the HHI for zero.

4 Q And my point is that you also had performance
5 options --

6 A For Parametric.

7 Q -- that would not have vested had the merger not
8 taken place; correct?

9 A Would not have vested. It would depend on whether we
10 hit the performance parameters. So -- so they well might have
11 vested.

12 Q Well, but they weren't; right? The targets for 2013
13 were not going to be met?

14 A I don't know that. One good licensing deal would
15 have -- could have -- could have done it.

16 Q Well, but --

17 A It's hard to speculate whether a bonus is going to
18 get hit downstream or not. I can't -- can't say for --

19 Q You also received a -- for at least the -- a promise
20 of a continued leadership role in HHI; correct?

21 A A continued leadership role in HHI. I'm not aware of
22 that.

23 Q Can you turn to Tab 86, please.

24 A In Turtle Beach, going forward?

25 Q Yes.

1 A I think I took nothing there but a board seat for
2 awhile.

3 MR. STIGI: What was the number again?

4 MR. PEEK: 86.

5 MR. APTON: 86.

6 MR. STIGI: 86. Thank you. All right. No
7 objection.

8 MR. HESS: No objection.

9 THE COURT: It will be admitted.

10 (Plaintiff's Exhibit Number(s) 86 admitted.)

11 THE WITNESS: Okay. What's the question?

12 BY MR. APTON:

13 Q You were promised, or you received the opportunity to
14 have a continued leadership position to the HHI?

15 A Yeah. You know, I read that in the press release,
16 but I have zero recall of being head of HHI. And so I don't
17 believe this happened.

18 Q Well, it was in the press release.

19 A And -- and I don't know if -- I see this -- if this
20 says, draft, I don't know if this was a final press release,
21 but this is a draft.

22 Q And you also received an indemnification agreement?

23 A Is this the final press release or was this draft as
24 initiated?

25 Q Mr. Potashner, you also received an indemnification

1 agreement; correct?

2 A Yes.

3 Q Tab 183.

4 A Yes. I know I have a indemnification agreement. But
5 let me look at 183 to --

6 I'm looking at an indemnification agreement. So are
7 you going to ask me about it?

8 Q Is that your indemnification agreement?

9 A Yes.

10 MR. APTON: I move to admit Exhibit 183, Your Honor.

11 THE COURT: Any objection to 183?

12 MR. STIGI: No objection.

13 MR. HESS: No objection.

14 MR. PEEK: No objection?

15 MR. HESS: No objection. Sorry.

16 THE COURT: It'll be admitted. Thank you.

17 (Plaintiff's Exhibit Number(s) 183 admitted.)

18 BY MR. APTON:

19 Q Now, Mr. Potashner, as the deal went forward, you
20 continued to work with Stark to get the deal done, against the
21 interests of Parametric shareholders; correct?

22 A Against the interest of Parametric shareholders?

23 MR. HESS: Objection.

24 BY MR. APTON:

25 Q Yes. Against --

1 A No, of course not.

2 THE COURT: Overruled.

3 BY MR. APTON:

4 Q If we could go --

5 A The -- the deal was truly in the interests of the
6 Parametric shareholders.

7 Q Even though you were aware that VTB's financial
8 situation had been deteriorating over the course of 2013?

9 A I'm not sure I understand your question.

10 Q Let's go to Exhibit 83.

11 THE COURT: 83?

12 MR. APTON: Yes, Your Honor. 83.

13 BY MR. APTON:

14 Q This is August 3rd, 2013, and it's an e-mail between
15 you and Mr. Stark; correct?

16 MR. HESS: No objection.

17 MR. STIGI: No objection.

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

19 (Plaintiff's Exhibit Number(s) 83 admitted.)

20 THE WITNESS: Go ahead.

21 BY MR. APTON:

22 Q So you tell him that the fairness opinion had just
23 happened.

24 A Right.

25 Q And that it was deemed, quote, "barely fair" and

1 you're going to need to do a good job selling the deal; yes?

2 A Correct.

3 Q So what in your opinion required you to do a good job
4 selling the deal, if the deal was so favorable for Parametric
5 shareholders?

6 A Yeah. So the mechanics on this were there were
7 delays in some of the revenue stream. And it became less of a,
8 here's today's great performance. It became more of a, here's
9 what's -- here's the great performance that's coming. And
10 there was some story telling, obviously, the first one's easier
11 to sell than the second one.

12 Q So as of the date of the fairness opinion, though,
13 had that revenue stream issue already come to bear?

14 A I don't know the exact timing, but there were -- but
15 I don't know the exact timing if -- what numbers came when.
16 But -- but I can say there wasn't -- in the early stages, there
17 wasn't long-term declines. It was shifting of revenue to
18 the -- a series of things, predominately Microsoft related.

19 Q And Parametric --

20 MR. HESS: And Your Honor, I'd just like to make an
21 objection to this line of questioning along the lines I think
22 Mr. Stigi made earlier, that these types of questions don't go
23 to an equity expropriation. They go to the valuation of a
24 company, or a derivative, and those claims have been settled.

25 THE COURT: Okay. I understand your objection.

1 MR. HESS: I understand, Your Honor.

2 THE COURT: At some point in time, we're going to
3 have a discussion --

4 MR. HESS: Thank you.

5 THE COURT: -- about Footnote 15. I'm glad all of
6 you looked at me with -- like you don't understand. Okay.

7 MR. PEEK: You mean, that 78 -- 278 to 11
8 Footnote 15?

9 THE COURT: I have no idea what you just said.
10 BY MR. APTON:

11 Q So, but Mr. Potashner, assuming you knew that VTB, or
12 Turtle Beach was in a state of decline, and you were pushing
13 the deal anyway, wouldn't that have been against the interests
14 of your Parametric shareholders?

15 A Yeah. I've never viewed Turtle Beach to be in a
16 state of decline. The predominant reason we're doing this deal
17 is, is I've got limited capital resources. I've got a research
18 team that's done some good inventions, have no idea how I'm
19 going to get this to market. Licensing's tough. And here's
20 the leader in a key application space, gaming, that could make
21 this a big deal. It looks like they've -- you know, they've
22 got presence, they've got resources. That these are the
23 strategic partners that could enable this technology to -- to
24 happen. This is the right strategic play for us.

25 You know, near term numbers, gee, that should help

1 influence exchange rates maybe, whether it's a 80/20, 81/19,
2 things like that. But strategically, Turtle Beach was the
3 ideal partner.

4 Q Okay. If could go to --

5 A So -- so that -- you know, so the shareholders that
6 were hoping to get a day one stock pop, stock price pop, you
7 know, you may not get that today, but you know, this is the
8 right long term play.

9 Q If you could go to Tab 82. This is an e-mail between
10 you and Mr. Todd.

11 A Okay.

12 Q Dated August 8, 2013. And you and he are discussing
13 how Turtle Beach's financials have just come down, just a week
14 after the fairness opinion.

15 THE COURT: Any objection?

16 MR. STIGI: No, Your Honor.

17 MR. HESS: No objection.

18 THE COURT: It'll be admitted.

19 (Plaintiff's Exhibit Number(s) 82 admitted.)

20 THE WITNESS: Okay. Question?

21 BY MR. APTON:

22 Q So you are aware that VTB Holdings was experiencing
23 financial problems at this point in time; yes?

24 A No. What we had here was -- and I actually do
25 remember this thing, I think, pretty vividly.

1 So Juergen, first time public company CEO, in his
2 capacity as being a public company CEO, wanted to put numbers
3 out publically that he could then beat. You don't want to put
4 out numbers and then miss the numbers. So he was forecasting
5 for public consumption, pretty conservative numbers. And we
6 had this issue, in that the -- the numbers we were using for
7 the fairness opinion were numbers that were most likely
8 numbers. So -- so Juergen had, hey, here's most likely what's
9 going to happen, but I want to give myself some guard band so
10 I'm going to go public with lower numbers. And that -- that
11 was the crux of the tension that we had.

12 Q The deal was cut, the 80/20 split was cut, based on
13 the numbers using the fairness opinion; correct?

14 A Correct.

15 Q And now here we are --

16 A Well -- well --

17 Q -- here we are a week --

18 A Yeah. One part on the numbers in the fairness
19 opinion, nine parts on the strategic ramifications put --
20 putting the two companies together.

21 Q And here we are, a week after the fairness opinion.

22 A Right.

23 Q And Turtle Beach's range, EBITDA range for 2013, had
24 declined by 8 to 10 million. This is in August of 2013,
25 August 8th. You and Mr. Todd know this; correct?

1 A Yes. But -- and as I said clearly, and that Mr.
2 Todd knew, that -- that we were pushing back on the, hey, you
3 can't be conservative with your numbers. You can't give
4 yourself a buffer, you know, given that we're making decisions
5 on your most likely numbers, not -- not your worst case
6 numbers.

7 Q You two are openly discussing that the fairness
8 opinion was wrong --

9 A No. I was --

10 Q -- right?

11 A -- openly discussing the inconsistency between using
12 numbers in the fairness opinion and not having the same numbers
13 go into the public market.

14 Q And if you could go Tab 360, please. Again --

15 THE COURT RECORDER: Your Honor, again, can we break
16 so she can --

17 THE COURT: We can break so she can do things. How
18 long do you need?

19 A/V TECH: It just stopped working. So I just have
20 to play with it.

21 THE COURT: Ten maybe?

22 A/V TECH: Yeah.

23 THE COURT: Ten will be great.

24 (Proceedings recessed at 2:42 p.m., until 2:50 p.m.)

25 THE COURT: I'm waiting for those two to tell me --

1 MR. STIGI: No objection.

2 THE COURT: No objection. 476 through 479 are
3 admitted. Okay. Those are the ones from this morning that you
4 had had Karen edit for us.

5 (Plaintiff's Exhibit Number(s) 476-479 admitted.)

6 THE COURT: Let's keep going.

7 BY MR. APTON:

8 Q Mr. Potashner, if you could turn to 162.

9 A 162?

10 Q Um-hmm. Yes.

11 THE COURT: 162 or 163?

12 MR. APTON: 162.

13 THE COURT: Thank you.

14 BY MR. APTON:

15 Q Does it start -- I'm sorry. Mr. Potashner, I would
16 like to ask you a question.

17 A Let me read it, first, please.

18 MR. PEEK: Before we ask questions on this, I don't
19 know -- do we have a -- I know you can't -- I don't know if
20 it's been admitted or not.

21 THE COURT: It has not been admitted yet.

22 MR. PEEK: Yeah. So --

23 THE COURT: He asked the witness to look at it and
24 wanted to ask him a question.

25 MR. PEEK: All right.

1 THE COURT: At some point --

2 MR. PEEK: It could be incomplete, so that's why I'm
3 asking.

4 THE COURT: If it's incomplete, we will, of course,
5 allow supplementation.

6 MR. STIGI: No objections from us, Your Honor.

7 MR. HESS: No objection, Your Honor.

8 THE COURT: Be admitted.

9 (Plaintiff's Exhibit Number(s) 162 admitted.)

10 BY MR. APTON:

11 Q Mr. Potashner, are you ready?

12 A Just one minute. Okay.

13 Q So two days prior to this, you were talking to Mr.
14 Todd. You just looked at that e-mail. And you were discussing
15 how the -- Juergen Stark had taken down the range for 2013;
16 correct?

17 A I didn't say he took down the range. I said he was
18 looking to publicly announce the conservative numbers.

19 Q That was lower than what was used in the Fairness
20 Opinion; correct?

21 A Correct. Yes.

22 Q Yes. Okay. And now, two days later, August 10th,
23 you're telling Stark that, notwithstanding what's going on at
24 Turtle Beach, you've skewed the scenario, so you don't need
25 50 percent of the vote, just 50 percent of those in attendance.

1 This should help. Yes?

2 A What's the question?

3 Q Is that what the e-mail says?

4 A That's what the e-mail says. But obviously bylaws of
5 the company would dictate how shareholders vote on things,
6 so --

7 Q But you took these actions, notwithstanding your
8 knowledge that VTB's financials were declining; correct?

9 A They -- we haven't established that their financials
10 were declining.

11 Q We --

12 A We -- it said there's a difference relative to what
13 Juergen would like to present versus what we believed the
14 numbers were.

15 Q So relative what we viewed in the Fairness Opinion,
16 and then what was discussed the week after that, the numbers
17 did, in fact, decline. Yes?

18 MR. HESS: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: I haven't seen anything here yet that
21 says the numbers declined. I know that Juergen wanted to show
22 a conservative case.

23 BY MR. APTON:

24 Q Do you want to look at the e-mails between you and
25 Mr. Todd that we just discussed to refresh your recollection?

1 A You -- you pointed me also to 360, which we didn't
2 discuss, which said that Juergen lifted the numbers back up.
3 You pointed me there, but you didn't ask me any question on it.

4 THE COURT: Was that 360?

5 THE WITNESS: Yeah. 360, where I say to Mr. Todd,
6 You used your thoughts of the Fairness Opinion to move Juergen
7 and his lawyers to announce numbers that were the positive
8 numbers.

9 BY MR. APTON:

10 Q Right. And then above that, you say --

11 A And then he said -- and then he --

12 Q You say he just --

13 THE COURT: Only one at that time. Let the witness
14 finish.

15 BY MR. APTON:

16 Q Sorry. Continue.

17 A No. I was going to acknowledge and then you were
18 going to come back; right? So the numbers -- so there was
19 one -- the numbers weren't moving millions of dollars each way
20 on the hourly basis. The debate was, What are you going to
21 present to the public?

22 Q Okay. So --

23 A So I looked at the number -- at this point, I looked
24 at the numbers as having stability at this point in time. It's
25 just whether you're showing most likely numbers, best case

1 numbers, or worst case numbers.

2 Q In any event, relative to the numbers used for the
3 Fairness Opinion, the numbers had gone down at this point in
4 time, just a week after this; correct?

5 A No.

6 THE COURT: Anyone object to 360?

7 MR. PEEK: No, Your Honor.

8 THE COURT: Be admitted.

9 (Plaintiff's Exhibit Number(s) 360 admitted.)

10 THE COURT: Thank you, Val, for reminding me.

11 MR. APTON: Your Honor, Exhibit 240 is the SEC
12 filing. I move to admit the SEC filing.

13 THE COURT: Any objection to the SEC filing?

14 MR. PEEK: Is that the proxies?

15 MR. APTON: No.

16 THE COURT: 240 says Parametric Sound Corporation
17 Schedule 13D, dated August 14, 2013 -- if the description is
18 accurate on the exhibit list.

19 MR. HESS: No objection, Your Honor.

20 MR. PEEK: 240, just a moment, Your Honor.

21 MR. STIGI: No objection.

22 THE COURT: Be admitted.

23 (Plaintiff's Exhibit Number(s) 240 admitted.)

24 BY MR. APTON:

25 Q Mr. Potashner, on page 5 of 240, does it refer to a

1 voting agreement and you and Lawrence and Norris representing
2 19.3 percent of Parametric stock?

3 A Let me -- let me read this.

4 THE COURT: You may.

5 THE WITNESS: Thank you. I've read the voting
6 agreement paragraph.

7 BY MR. APTON:

8 Q Was my description accurate?

9 A Please repeat.

10 Q 19.3 percent agreement between you, Lawrence, and
11 Norris, concerning Parametric stock?

12 A I don't see where the 19.3 percent is highlighted.

13 Q Section 5.

14 A Oh, the -- let me read Section 5.

15 THE COURT: It's at the very end of that paragraph.

16 THE WITNESS: All right. Okay.

17 BY MR. APTON:

18 Q So yes, my description was accurate?

19 A Please repeat the description.

20 Q Let's move on to Exhibit 272. This is an e-mail
21 between you and Mr. Todd, dated September 1, 2013. You would
22 agree that it discusses HHI; correct?

23 A Well, let me read it, please.

24 THE COURT: Any objection?

25 MR. PEEK: No, Your Honor.

1 MR. STIGI: No objection.

2 THE COURT: Be admitted. Thank you.

3 (Plaintiff's Exhibit Number(s) 272 admitted.)

4 THE WITNESS: Okay.

5 BY MR. APTON:

6 Q So you're telling Mr. Todd, in the top e-mail, that
7 you're meeting with Ron D. That refers to Ron Doornink. Yes?

8 A Yes.

9 Q And you're going to begin the, quote, HHI campaign.
10 What sort of campaign is that?

11 A I don't recall. But I think I was -- in the same way
12 I was lobbying Juergen early stage, I would have also expressed
13 to Ron Doornink why I thought HHI is a valuable asset.

14 Q So you're still advocating for HHI?

15 A I don't know the timing of this, relative to the
16 other sequencing. But here I'm sharing with Ron Doornink some
17 aspect of HHI.

18 Q And you say you're also going to grab, quote/unquote,
19 the board's selection, as well. Is that [indiscernible]?

20 A No. I didn't say I'm going to grab the board
21 selection. I said, I'm going to lead that process for defining
22 who is on the board.

23 Q And this was while you knew VTB Holdings was
24 continuing to face financial difficulties; right?

25 A I -- again, I've never stated that I was aware of

1 financial difficulties. I was aware of shifting of revenue
2 from quarter -- one quarter to the next at this point.

3 Q Well, the numbers had come down right after the
4 Fairness Opinion; right?

5 A Again, I don't have the reference, when you say the
6 numbers have come down, in terms of whether he's -- what he's
7 signaling or versus whether he's adding buffers and things of
8 that nature. The --

9 I'm sorry. Go ahead.

10 Q Yeah. If you could turn to Exhibit 354.

11 THE COURT: 354?

12 MR. APTON: 354.

13 THE COURT: After you had a chance to review it, tell
14 me if you have an objection.

15 MR. STIGI: No objection.

16 MR. HESS: No objection.

17 THE COURT: Be admitted. Thank you.

18 (Plaintiff's Exhibit Number(s) 354 admitted.)

19 THE WITNESS: Okay.

20 BY MR. APTON:

21 Q Okay. At this point in time, based on your e-mail,
22 it seems that you were now being required to raise \$5 million
23 in order to close the deal; correct?

24 A Correct.

25 Q And that was a requirement being imposed upon the

1 merger by VTB's lender, PNC Bank; right?

2 A Correct.

3 Q And did that indicate to you that financials were
4 good on the other side of the transaction?

5 A No. My understanding was that Stripes, who was the
6 financier of Turtle Beach, actually pulled some money out of
7 Turtle Beach. And I don't recall whether it was a debt
8 obligation or what the rationale was. But money was pulled out
9 of Turtle Beach, lessening their cash position. And we needed
10 that adequate cash to run the combined company. And that's
11 what drove the request to go bring 5 million of cash to the
12 table on the deal.

13 Q So as of September, Turtle Beach was short on cash?

14 A I can't characterize whether they were short on cash,
15 but they had an additional cash necessity to support
16 Parametric. And we weren't executing to our plan at that point
17 either, so we had -- I think we were bringing less cash to the
18 equation, in addition.

19 Q And he -- sorry. Go ahead.

20 A No. I was just --

21 Q Can you please turn to Exhibit 79?

22 THE COURT: 79?

23 MR. APTON: 79.

24 THE COURT: Any objection?

25 MR. STIGI: No, Your Honor.

1 MR. HESS: No, Your Honor.

2 THE COURT: Be admitted.

3 (Plaintiff's Exhibit Number(s) 79 admitted.)

4 BY MR. APTON:

5 Q Mr. Potashner, this is an e-mail between you and Mr.
6 Stark. It's dated October 14, 2013.

7 And I suppose you want to read it before we discuss
8 it?

9 A Yes, please. Let me read it. Okay.

10 Q So here's another e-mail, October 14, 2013, where
11 you're again concerned about a shareholder vote; correct?

12 A Correct.

13 Q Okay. And it's because of the additional financing
14 requirements being imposed by VTB's lender PNC. Yes?

15 A Yeah. Getting shareholder support for a deal that
16 now requires me to go raise additional financing is obviously
17 not as attractive as, you know, just a straight merger. So
18 they put a new constraint that required explanation and made
19 the deal somewhat less attractive.

20 Q But you didn't tell your shareholders about this;
21 correct?

22 A I didn't tell my shareholders, no. Yeah. Clearly --

23 MR. STIGI: Objection. Your Honor, what is the this?
24 I've found --

25 THE COURT: The cash position? Yeah. Okay. I think

1 it's the subject matter of the e-mail.

2 THE WITNESS: I'm not sure. Yeah. Please ask the
3 question that --

4 BY MR. APTON:

5 Q Did you disclose the financial issues and the
6 potential concern you had over the shareholder vote to
7 Parametric shareholders?

8 A Yes. We would have publicly announced that we were
9 raising capital.

10 Q If you --

11 A There would have been all kinds of public disclosures
12 around the capital raise.

13 Q And if we could go to Exhibit 78, please.

14 THE COURT: Any objection?

15 MR. HESS: No objection.

16 THE COURT: Be admitted.

17 (Plaintiff's Exhibit Number(s) 78 admitted.)

18 BY MR. APTON:

19 Q I'll direct your attention to the initial e-mail,
20 Mr. Potashner.

21 A Yeah. Yeah. Let me read that. Oh, just the very
22 first one that -- where you're joking.

23 Q No. On the second page, you e-mailed Mr. Stark.

24 A Okay.

25 Q So this is further confirmation that you knew VTB was

1 experiencing financial decline at this point; correct?

2 A I don't -- I can't tell whether this is backwards
3 looking or forward looking. But we were looking for numbers --
4 you know, multiple different requests to get numbers. So I
5 know there were challenges in getting reliable forecasts. So
6 this -- but again, looking at this, I mean, when you look at --
7 I think this is actually backward-looking numbers.

8 Q Right. But you're talking about 2013. And relative
9 to the Fairness Opinion that was done earlier in the year, the
10 numbers had gone way down by this point; correct?

11 A The Fairness Opinion was to justify the equity split,
12 the exchange rate that we put in place. The basis for the
13 exchange rate was forward-looking projections and strategic
14 ramifications. It wasn't historical backwards-looking
15 performance.

16 But with that said, I'm sure I was surprised that the
17 backwards-looking numbers were poor.

18 Q And despite that, you continued to support the deal;
19 correct?

20 A Correct.

21 Q And if we could go to Exhibit 122.

22 THE COURT: Any objection to 122?

23 MR. HESS: 122?

24 THE COURT: 122.

25 MR. HESS: And foundation objection, Your Honor.

1 THE COURT: Okay. So there's an objection.

2 BY MR. APTON:

3 Q Mr. Potashner, I asked you earlier whether or not you
4 nominated yourself to serve on the board of the new company;
5 correct?

6 A Yeah. Let me read this first, please, for the
7 context.

8 MR. HESS: There's a foundation objection to this
9 exhibit.

10 THE COURT: He can let the witness read the document.

11 MR. HESS: Well, he's putting it on the screen.

12 THE COURT: Oh, don't put it on the screen.

13 MR. PEEK: Sorry.

14 THE COURT: Sorry. It wasn't -- it wasn't blown up
15 enough for me to read yet.

16 MR. PEEK: Very good. Herding cats.

17 THE COURT: You know what, I've got my reading
18 glasses. I'm admitting it. I'm getting older.

19 THE WITNESS: Okay. Question. What's the question?

20 BY MR. APTON:

21 Q So you unilaterally decided to put yourself as the
22 new board member of the combined company; correct?

23 A No.

24 Q This e-mail doesn't refresh your recollection as to
25 that point?

1 A No. I would never have done that. And it wasn't
2 just me. It would have been myself and Andy. And I remember
3 substantial discussion with the board on why that's the right
4 choice.

5 Q Okay. But --

6 A And I also remember discussions with Juergen to
7 advocate why this is the right choice, but I --

8 Q Did the board try to revote on that issue?

9 A This is the first -- I'm not familiar with this
10 e-mail. So I'm surprised by this e-mail. And it's inaccurate.

11 Q If we could go to Exhibit 112.

12 THE COURT: Any objection to 112?

13 THE WITNESS: And the -- quite frankly, the board --
14 if they thought a fast one was pulled, they would have replaced
15 me immediately and put Jim Barnes or somebody else there. So
16 there's a -- yeah, that -- that didn't happen.

17 MR. STIGI: No objection.

18 MR. HESS: No objection.

19 THE COURT: 112 will be admitted.

20 (Plaintiff's Exhibit Number(s) 112 admitted.)

21 BY MR. APTON:

22 Q So the board could have removed you at any time;
23 right?

24 MR. STIGI: Objection.

25 THE COURT: Overruled.

1 THE WITNESS: I'm sorry.

2 BY MR. APTON:

3 Q The board could have removed you at any time. Is
4 that not what you just said?

5 A Yeah. Two things, the Parametric board could have
6 said, We don't want Ken to be on -- our representative going
7 forward.

8 Or two, I'm sure Juergen would have had an input in
9 terms of what his board would have looked like, going forward.

10 So either of those two would have taken me off the
11 board.

12 Q So I -- on Exhibit 112, this refers to you putting
13 yourself on the board of the new company again. The first
14 e-mail in the chain, you accused Seth of looking for loopholes
15 around how to remove you from the new company's board.

16 A Let me read this, please. Okay. Go ahead. What was
17 the question?

18 Q The question is Mr. Putterman was -- or you -- sorry.
19 You accused Mr. Putterman of trying to undo what you did, in
20 terms of putting yourself on the new company's board; correct?

21 A No. I was saying clearly that don't try to pull a
22 fast one over the shareholders, you know, say something, and
23 then undo it later. Right? So --

24 Q But the board had never approved you to be on the
25 company -- the board of the new company?

1 A Yeah. And I believe they did.

2 Q And then you told --

3 A Or at a minimum, I believe I thought they did.

4 Q And you told Mr. Putterman that he would take on
5 incredible personal liability, that it could be demonstrated
6 that you/he, are participating in a plan to deceive our
7 shareholders; correct?

8 A That's right.

9 Q So deceit of shareholders results essentially in
10 incredible personal liability. You would agree?

11 A Yes. I'm saying -- just to be very clear, I'm saying
12 that, hey, you can't go ahead and present -- let everyone go
13 forward thinking I'm going to be on the board, if you have an
14 alternate decision that says you're going to pull me off. So
15 it's -- you know, you can't deceive the shareholders.

16 Q And then at the top of the e-mail, so at the top of
17 the page, you then tell Mr. Putterman --

18 A Uh-huh.

19 Q -- that this BOD, board of directors, is the most
20 unprofessional, dysfunctional team I've ever worked with. The
21 sooner we all distance ourselves the better. There's
22 definitely a path. We'll all begin suing each other.

23 But you said that in response to his efforts to try
24 to remove you from the board of the new company; is that
25 correct?

1 A No. I don't think there's a root cause behind that
2 statement. That's -- it was my belief.

3 Q And if we could go to Exhibit 352. You sent a
4 similar e-mail to Mr. Norris at this time; correct?

5 THE COURT: Any objection to 352?

6 MR. STIGI: No, Your Honor.

7 THE COURT: Be admitted.

8 (Plaintiff's Exhibit Number(s) 352 admitted.)

9 BY MR. APTON:

10 Q My question is only if you -- this e-mail is similar
11 to your one to Mr. Putterman, in terms of threatening the
12 election.

13 A Yeah. I was reinforcing. You can't present that
14 here's your board slate if you knowingly know it's not your
15 board slate. So I was making it clear that that's a bad thing
16 to do, and there's -- you know, there's consequences.

17 Q Now, at this time, around October 25th, 2013, did you
18 receive a draft disclosure for the proxy statement relating to
19 VTB Holdings' financial statements, for results for 2013?

20 A I don't know.

21 Q Okay. Let me -- if you can turn to Exhibit 172. And
22 read it and see if you can refresh your recollection.

23 THE COURT: Read it to himself? Are you offering it
24 or just having him read it to himself?

25 MR. APTON: No. Just reading it to himself --

1 THE COURT: Okay.

2 MR. APTON: -- to refresh his recollection. And it's
3 the top e-mail.

4 THE WITNESS: Okay. What's the question?

5 BY MR. APTON:

6 Q Do you recall learning that the numbers in the proxy
7 statement were inaccurate?

8 A So this is an e-mail from Juergen to his CFO, I
9 believe.

10 Q And do you recall receiving a disclosure at this
11 time, which indicated to you that the numbers in the proxy
12 statement were inaccurate?

13 A No, I don't recall.

14 MR. HESS: Objection.

15 THE COURT: Overruled.

16 BY MR. APTON:

17 Q Can you please turn to 346?

18 THE COURT: 346?

19 MR. APTON: Yes.

20 THE COURT: Thank you. Any objection?

21 MR. HESS: No objection.

22 MR. STIGI: No, Your Honor.

23 THE COURT: Be admitted.

24 (Plaintiff's Exhibit Number(s) 346 admitted.)

25 / / /

1 BY MR. APTON:

2 Q And my question, Mr. Potashner --

3 A Let me read it, please. Okay.

4 Q In the first e-mail, the original message on the
5 chain, it's dated October 29, 2013. So look on page 2.

6 A Yep.

7 Q So it appears that Juergen is sending you the
8 disclosure we were just talking about, with previous -- I don't
9 --

10 And in response, you say, I still think we are light
11 in articulating 2014 enthusiasm; right?

12 A I -- I'm not following -- I'm seeing Juergen say --
13 saying that given his installed base and other considerations
14 that he's okay that even though the sector is slowing.

15 THE COURT: So on the screen, sir --

16 THE WITNESS: Oh.

17 THE COURT: -- there's a portion of the exhibit
18 that's shown that's in highlighting.

19 THE WITNESS: Okay.

20 THE COURT: If that will help you.

21 THE WITNESS: Yeah. So -- yeah. So this I believe
22 is Juergen was against giving guidance, and I was all for give
23 guidance -- you know, show that you're enthusiastic about the
24 future. So I think that's what this would have -- it would
25 have addressed.

1 BY MR. APTON:

2 Q So you had just received a draft disclosure section
3 that was very negative about 2013. And your response was we
4 should be more enthusiastic about 2014; correct?

5 MR. HESS: Objection.

6 THE WITNESS: Yeah. If -- as I read the chain, I
7 also saw -- what I saw was, hey, this was a shift.

8 MR. HESS: Your Honor, objection.

9 THE COURT: I know, but I need a basis.

10 MR. HESS: Well, it's -- he's referring to something
11 that's not on the document --

12 THE COURT: Okay.

13 MR. HESS: -- so there's no foundation for the
14 question.

15 THE COURT: Overruled. Have you finished your
16 answer, sir?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 BY MR. APTON:

20 Q Mr. Potashner, could you please go to 171.

21 THE COURT: Any objection?

22 MR. STIGI: No, Your Honor.

23 MR. HESS: No objection.

24 THE COURT: Be admitted. Thank you.

25 (Plaintiff's Exhibit Number(s) 171 admitted.)

1 BY MR. APTON:

2 Q This is dated October 31st, 2013. Again between you
3 and Mr. Stark. I'm going to ask you about the e-mail on the
4 bottom.

5 A Okay. Let me read it. Okay.

6 Q So here you tell Stark -- again, you acknowledge that
7 2013 financials have been brought down. You state that CH --
8 I assume that means Craig-Hallum; is that correct?

9 A Correct.

10 Q Craig-Hallum believes 2014 is off as well. And that
11 their Fairness Opinion is exposed; is that correct?
12 [Indiscernible]?

13 A Correct.

14 Q And so what does it mean to have the Fairness Opinion
15 exposed?

16 A Yeah. So the -- it was being represented again that
17 some of the 2013 revenue was going to move to 2014, which is,
18 you know, not good. But it's influenced the strategic
19 ramifications of the deal. They -- Craig-Hallum -- let's see
20 what it says -- Craig-Hallum may believe that '14 is off as
21 well; right? So that doesn't tell me that a plan was presented
22 for '14 that was off. It says Craig-Hallum has reason to
23 believe it could be off, which is a difference; right? So --

24 Q Craig-Hallum -- sorry, are you done?

25 MR. HESS: Objection, leading.

1 THE WITNESS: Yeah. So I'm reading this as
2 Craig-Hallum is suspicious whether Turtle Beach can hit the
3 numbers they're now showing for 2014; as opposed to, hey,
4 Turtle Beach just gave us numbers for 2014 that put the
5 Fairness Opinion at risk.

6 BY MR. APTON:

7 Q And Craig-Hallum had access to both company's
8 financials; correct?

9 A Correct.

10 Q And Craig-Hallum was the entity that was charged with
11 determining whether or not the deal was fair; correct?

12 A Correct.

13 Q And Craig-Hallum is suspicious, as you put it,
14 because it thinks that Turtle Beach can't even hit its '14
15 numbers, despite this revenue shift; correct?

16 A Correct. But the numbers were -- I mean, it's the
17 difference between the numbers that were provided, which the
18 Fairness Opinion supported that everything was fine, versus
19 doubts in Craig-Hallum's mind whether these numbers are good
20 numbers.

21 Q So if revenue was being shifted from '13 into '14 --

22 A Right.

23 Q -- it stands to reason that '14 would even be easier
24 to satisfy or hit, in terms of the target?

25 A Yeah. This doesn't --

1 MR. HESS: Objection. Lack of foundation.

2 THE COURT: Overruled.

3 THE WITNESS: Yeah. This doesn't indicate to me that
4 '14 is lower than '13. This just indicates that '14 might not
5 have been as high as they thought '14 might have been.

6 BY MR. APTON:

7 Q The point is, is based on this e-mail, you had spoken
8 with Houlihan Lokey, and you had learned that Craig-Hallum was
9 worried that its Fairness Opinion was exposed; correct?
10 Correct, Mr. Potashner?

11 MR. PEEK: Mischaracterizes the e-mail; Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: I'm rereading this. Yeah. So this
14 is -- so I'm saying, get on the phone with Craig-Hallum and
15 validate with your plan with them. Get them comfortable.

16 Or two, go ahead and create a more extensive model
17 that you can verify the assumptions. So -- so Juergen got some
18 work to do here to make sure that there's not an issue with
19 this Fairness Opinion -- substantiate your revenue claims.

20 BY MR. APTON:

21 Q And now, you met a few days later, my client, Mr.
22 Barry Weisbord, at the races; right? I think it was the
23 Breeder's Cup; is that right?

24 A Yes.

25 Q You had a conversation with him at that point in time

1 about the deal. Yes?

2 A I don't recall.

3 Q Do you recall anything about what was said at that
4 time?

5 A I do not.

6 Q Do you recall -- well, I guess you don't recall.
7 Okay. You don't recall telling him to vote for the merger?

8 A I would have been talk -- so I don't recall that, but
9 that would not be inconsistent. I thought this merger was the
10 right thing, so -- so yes.

11 Q Even though, just two days prior, you were talking
12 with Stark and recognizing that the Fairness Opinion might be
13 off?

14 A I didn't say the Fairness Opinion was off.

15 Q Exposed.

16 A I said that Juergen, you need to do some work to --
17 to get more confidence in the numbers that are the basis for
18 the Fairness Opinion, that Craig-Hallum has some concerns.

19 And let's not lose sight that the Fairness Opinion
20 was in support of the equity split; right? Not in support of,
21 gee, does this deal make strategic sense or not?

22 Q The proxy came out on December 3rd, 2013; correct?

23 A Yes.

24 Q And if we go to Exhibit 72, please.

25 THE COURT: Any objection?

1 MR. HESS: No objection.

2 MR. STIGI: No, Your Honor.

3 THE COURT: Be admitted.

4 (Plaintiff's Exhibit Number(s) 72 admitted.)

5 BY MR. APTON:

6 Q So a week after the proxy came out, you asked --

7 A Let me read this, please. Okay.

8 Q So in your e-mail to Mr. Stark on December 12th,
9 you're asking him for additional help selling the deal; right?

10 A Correct.

11 Q And you're saying that Parametric stock is down for
12 lack of guidance from Turtle Beach. And you suspected that
13 Parametric shareholders were getting 19 percent of something
14 not worth much; right?

15 A Correct.

16 Q Yet you continued to support the deal; correct?

17 A The -- people tend to worst case things, so if you're
18 not guiding them to what the company can do, that they may very
19 well assume a negative position; right?

20 So I was advocating Juergen, give some guidance out
21 there so people can build some models and realize this is a
22 good deal; right?

23 So I was not concerned about the value of the Turtle
24 Beach or the exchange rate. I was concerned about the
25 posturing of the deal and getting the right story out and why

1 this is a compelling strategic thing.

2 Q And if you could turn to 361.

3 THE COURT: Exhibit 361?

4 MR. APTON: Yes, please.

5 THE COURT: Any objection?

6 MR. HESS: 361 or 51?

7 THE COURT: 361.

8 MR. HESS: Thank you.

9 MR. STIGI: No objection.

10 MR. HESS: No, Your Honor.

11 THE COURT: Be admitted. Thank you.

12 (Plaintiff's Exhibit Number(s) 361 admitted.)

13 BY MR. APTON:

14 Q So contrary to or in addition to everything you just
15 said, you're still talking about HHI at this point and John
16 Todd; correct?

17 A Go ahead, sir. Obviously, John had no consequence
18 whatever on negotiations. This is well beyond -- all HHI
19 decisions were already made.

20 Q But my point is you were still planning for HHI --

21 A No.

22 Q -- even at this late stage in the merger
23 negotiations?

24 A No. This is a frustration e-mail saying, Hey, if
25 this things blows up, you're in charge of HHI. But that --

1 it's nothing more than that.

2 Q Were you --

3 A And this was, again, on the topic of Juergen is not
4 giving guidance. You know, he needs to give guidance to
5 stabilize investor confidence. You know, if this thing falls
6 apart, you know, et cetera, so --

7 Q Do you have any understanding as to why Juergen
8 wasn't giving guidance at this point for 2014?

9 A There were -- you would have to ask him. But lots of
10 moving parts. Microsoft was moving things around. The sector
11 was moving around. Fear of missing numbers; right?

12 So I think it was simply a series of unknowns
13 overlaid with a conservative guy. And he just was not
14 comfortable giving guidance. And as I said, people get nervous
15 if you don't give them guidance.

16 Q Was it because VTB's internal numbers were so low at
17 this point that the proxy statement was just going to be
18 incredibly inaccurate and off?

19 MR. HESS: Objection. He does not know Stark's
20 reason to give --

21 THE COURT: Speculation?

22 MR. HESS: Yes, that's it.

23 THE COURT: Sustained.

24 MR. HESS: I forget about the speaking objections,
25 Your Honor. I'm sorry.

1 THE COURT: I know. I'm just trying to get the basis
2 out there, so I can make my ruling.

3 BY MR. APTON:

4 Q Now, Mr. Potashner, let's turn to Exhibit 376,
5 please.

6 THE COURT: 376. That's already in.

7 MR. APTON: 376 is in.

8 THE COURT: It is.

9 BY MR. APTON:

10 Q Mr. Potashner, 376 is in evidence. And this is an
11 e-mail between you and another one of my clients, Mr. Kahn, in
12 which --

13 A Okay. Let me read it, please. Okay.

14 Q So, Mr. Kahn, on December 13th, he says to you, in
15 response to your request as to whether he's going to support
16 the vote or not, that he'll support it. Mr. Kahn will support
17 it. He's a 5 percent shareholder at this point; correct?

18 MR. HESS: Objection.

19 THE WITNESS: I received 480,000 shares --

20 THE COURT: Overruled.

21 THE WITNESS: -- but I don't know what percent that
22 was.

23 BY MR. APTON:

24 Q A large shareholder, yes?

25 A A large shareholder, sure.

1 Q And he says that he'll vote for the deal if there
2 hasn't been an apparent Turtle Beach business coast merger,
3 that two third -- the 2014 and beyond business expectations
4 haven't changed.

5 But at this point in time, you knew that those
6 expectations had changed; correct? We just discussed a few
7 e-mails earlier.

8 A Yeah. What I discussed was, again, movement of
9 revenue from one quarter to another quarter.

10 So, yeah, with the Fairness Opinion, that was still,
11 you know, supported by the Fairness Opinion. So I'm not sure,
12 you know, where you see, again, materiality in the -- in the
13 whole deal.

14 I'm also not sure where you see me pushing for the
15 vote from Adam Kahn. I see him referencing that John Weisbord
16 is pushing him.

17 Q It was not a -- sorry. Did you have a conversation
18 with Mr. Kahn in which you had wanted him to vote for the
19 merger?

20 A I don't recall whether I did or not. I obviously --
21 I would have wanted him to vote for the merger. So whether
22 there was a call or not, it's -- I obviously would have wanted
23 him to vote.

24 Q Well, you reached out to him on December 12, on page
25 2. And you made yourself and Juergen fully available?

1 A Right.

2 Q Right? And that was presumably to see if he was
3 voting for the merger or to convince him to vote for the
4 merger, something to do with the merger; correct?

5 A Yeah. He's a -- as you said, a significant
6 shareholder, and I wanted to offer him an opportunity for him
7 to talk to Juergen.

8 Q And he says he'll vote for it if 2014 hasn't changed;
9 or alternatively, if it has, then the deal should be
10 renegotiated or recut?

11 A Right.

12 Q And he says the Fairness Opinion was based off of the
13 projections for 2014. And you, by this point in time, knew
14 that Fairness Opinion was potentially exposed; correct?

15 A I knew that Craig-Hallum had suspicion of the
16 numbers, but the numbers were the numbers; right? I only can
17 make decisions on the numbers that were given to me. I can't
18 -- I did not say, well, Juergen has given me these numbers, I'm
19 going to divide them by two. You know, I put faith in the
20 numbers and made decisions based on the numbers I had available
21 to myself.

22 Q And you said nothing about that to Mr. Kahn; did you?

23 A The numbers still were reflected in the Fairness
24 Opinion. They were not impaired. Craig-Hallum was concerned
25 that there could be impairment. But there -- there wasn't any

1 demonstrated impairment at this time.

2 Q You didn't feel any duty to tell Mr. Kahn what you
3 knew?

4 A To tell him, gee, my -- Craig-Hallum may have
5 concerns about Juergen's numbers? No, I wouldn't have said
6 that. I would have been still operating on good faith that I'm
7 being given numbers that are good.

8 Q On January 3rd, 2014, you reach out to him again.
9 This is in response to his e-mail about the timing of the deal
10 closing. Do you see that at the top of the page?

11 A Yes.

12 Q And you say that the delay is due to administrative
13 sign-offs by VTB's banking group at [indiscernible]?

14 A Yes.

15 Q Were they actually having administrative issues? Or
16 was it something more serious than that?

17 A I was told at this time that there was logistical
18 issues, people traveling, that they literally were very minor
19 -- again, the timing with it -- availability type issues.

20 Q So but if that was not the case, then you're saying
21 you were lied to?

22 A If I was told something that wasn't truthful, then I
23 would say I was lied to.

24 Q And if we could go to Exhibit 69, please.

25 THE COURT: Any objection?

1 MR. STIGI: No, Your Honor.

2 MR. HESS: No objection.

3 THE COURT: Be admitted.

4 (Plaintiff's Exhibit Number(s) 69 admitted.)

5 BY MR. APTON:

6 Q January 10th, 2014, just before the merger closed,
7 you're still talking about HHI; correct?

8 A Okay. What's the question?

9 Q You're still talking about HHI five days before the
10 merger closed; correct?

11 A Yeah. I'm sharing with him again that I'm doing
12 everything the board has asked me to do, but I'm also giving
13 him my personal opinion as an individual shareholder of the
14 company.

15 Q And if we could go to Exhibit 168.

16 THE COURT: Any objection to 168?

17 MR. PEEK: 168?

18 THE COURT: 168.

19 MR. STIGI: No, Your Honor.

20 MR. HESS: No objection.

21 THE COURT: Be admitted.

22 (Plaintiff's Exhibit Number(s) 168 admitted.)

23 BY MR. APTON:

24 Q And the same question -- and the same question,
25 Mr. Potashner --

1 A Let me read through this.

2 MR. STIGI: Objection. What was the question?

3 MR. APTON: Well, I was about to ask if --

4 THE COURT: We weren't there yet.

5 MR. STIGI: Sorry. Thought I heard the questions.

6 THE COURT: It's okay. It's all right. There's

7 noise mind you in the hallway, so it's okay.

8 You ready?

9 THE WITNESS: Nope, not yet.

10 THE COURT: Okay.

11 THE WITNESS: Is there a specific e-mail here you
12 want me to read or all of it?

13 BY MR. APTON:

14 Q My point is only to demonstrate that still five days
15 before the merger, you're still talking about HHI with Mr.
16 Stark, so --

17 A I am venting. I am not negotiating. I'm venting.

18 Q Okay.

19 A A negotiation is long gone. The terms are long gone.
20 Everything is public. It's -- I'm venting.

21 Q I need to go back quickly to one topic that I skipped
22 over earlier, real quickly.

23 If you can go to Exhibit 50, please, Mr. Potashner?

24 A Okay.

25 THE COURT: That was my disappointed face. You can't

1 see it behind the mask.

2 Any objection to 50?

3 MR. APTON: I can expedite this.

4 BY MR. APTON:

5 Q Mr. Potashner, did you sabotage the Go-Shop provision
6 in the merger agreement?

7 A Of course not.

8 Q If you could look at Exhibit 50, please.

9 A Okay. It's many pages. I'm going to start reading.

10 Q We're moving back in time to August 3rd, 2013, so
11 just after the Craig-Hallum opinion occurred.

12 THE COURT: Any objection to 50?

13 MR. STIGI: Hold on one.

14 THE COURT: I know. That's why I'm asking again.
15 Sorry we didn't catch that earlier.

16 MR. APTON: Your Honor, this is an e-mail sent by
17 Juergen Stark in his production.

18 THE COURT: I -- there's other stuff in it.

19 MR. PEEK: We're trying to review the chain, Your
20 Honor. There's a lot of stuff.

21 THE COURT: I know you're reviewing the chain. So
22 we're going to break about 4:30, which is about in 40-ish
23 minutes.

24 THE WITNESS: Okay.

25 THE COURT: How much longer do you have? Another

1 hour?

2 MR. APTON: No. Five, ten minutes, depending on --

3 THE COURT: So you're getting close?

4 MR. APTON: Yeah. Yeah.

5 THE COURT: Okay.

6 THE WITNESS: I'm ready. Go ahead.

7 MR. PEEK: That's some motivation, Your Honor. There
8 are some breaks in the e-mail chain, but I think it'll
9 ultimately lay foundation, so no objection.

10 THE COURT: Be admitted. Thank you. All right.

11 (Plaintiff's Exhibit Number(s) 50 admitted.)

12 MR. PEEK: There are things he may not know about in
13 the e-mail, but --

14 THE COURT: There may well be, and he can say, I
15 don't know. That's a really good answer.

16 BY MR. APTON:

17 Q After the board voted to approve the merger, a press
18 release was going out to the public, allowing them -- well,
19 informing them that the deal had been agreed to; correct?

20 A Correct.

21 Q A press release, as opposed to an 8K, it was --

22 A I'm not aware of it.

23 Q Okay. And the press release, Juergen sends you his
24 edits in his e-mail. And he notes that he removed the Go-Shop
25 paragraph. Yes?

1 A Yes. He removed it. I didn't remove it.

2 Q Well --

3 A And I didn't support it being removed. And we did a
4 -- we did execute a Go-Shop, and I think we contacted 13
5 companies, if I recall -- somewhere in that number.

6 Q Well, but he --

7 A And Houlihan Lokey executed the Go-Shop.

8 Q Well, he wanted to remove the Go-Shop paragraph, and
9 you agreed. Yes?

10 A I never -- where do you see I agreed?

11 Q Well, the Go-Shop paragraph was omitted from the
12 press release. Yeah?

13 A No. I didn't agree to eliminate a Go-Shop.

14 Q Well, if we can go to 149, please.

15 A I'm sorry. Did you -- I missed where did you see
16 that I --

17 Q We're moving on, Mr. Potashner.

18 THE COURT: Sir, we're going to another question,
19 149.

20 MR. APTON: [Indiscernible.]

21 MR. PEEK: He didn't like your answer, so he moved
22 on.

23 THE WITNESS: I got it. I thought I missed
24 something.

25 THE COURT: Any objection to 149?

1 MR. HESS: I'm afraid so.

2 THE COURT: Okay. That's all you've got to say.

3 MR. APTON: Let's move on to 139.

4 MR. PEEK: May we have a moment, Your Honor?

5 THE COURT: We're skipping 149 and going to 139 now.

6 BY MR. APTON:

7 Q Mr. Potashner, could you look at 139, please?

8 THE COURT: Don't put it on the screen yet, please.

9 You're on 50, so you're okay. But I was worried there for a
10 minute.

11 MR. APTON: Your Honor --

12 THE COURT: Yes, sir.

13 MR. APTON: -- there have been a number of exhibits
14 that I have skipped over, not too many, but some.

15 THE COURT: Counsel, I'm not criticizing you.

16 MR. APTON: But I do want to reserve the right to use
17 them in redirect, as soon as we can get the redactions in place
18 --

19 THE COURT: Absolutely.

20 MR. APTON: -- to counsel's satisfaction.

21 THE COURT: Absolutely.

22 MR. APTON: Thank you, Your Honor.

23 THE COURT: So did we get an objection on 139? Or
24 did you look at the --

25 MR. HESS: 139, sorry, Your Honor.

1 MR. STIGI: No, Your Honor.

2 MR. PEEK: No, no objection on 139.

3 THE COURT: Be admitted. Thank you.

4 (Plaintiff's Exhibit Number(s) 139 admitted.)

5 BY MR. APTON:

6 Q Now, Mr. Potashner, just for --

7 A Give me one second. That's fine.

8 MR. PEEK: He needs to read it first.

9 THE WITNESS: Okay.

10 BY MR. APTON:

11 Q You were in a Go-Shop period, yet at the same time
12 you were telling Juergen Stark that he should be not shopping
13 company -- I'm sorry. Excuse me -- but he's defending the deal
14 against other companies that expressed interest. Yes?

15 A No. I was saying defending the deal for
16 shareholders, to give shareholders support.

17 Q Well, what if another bidder came in with a better
18 offer?

19 A I would take it.

20 Q Isn't that the purpose of the Go-Shop?

21 A Yes. I said I would take it.

22 Q So what happened to Motorola, then?

23 A All of the companies that we approached expressed no
24 interest in wanting to make a bid on the company.

25 Q Let me turn to Exhibit 55, please.

1 MR. HESS: Your Honor --

2 THE COURT: What?

3 MR. HESS: Objection to foundation.

4 THE COURT: Thank you.

5 BY MR. APTON:

6 Q Mr. Potashner, are you looking at Exhibit 55?

7 A I am.

8 Q Are you the recipient of this e-mail? The top one?

9 A The top one.

10 Q From Juergen Stark?

11 A Yes.

12 Q Dated August 12, 2013?

13 A Yes.

14 Q Okay. Do you have any reason to doubt the content of
15 this document is what it was when you received it?

16 A Let me read through the document, so I can comment on
17 it.

18 MR. PEEK: Your Honor, we have no objection to 55.

19 THE COURT: 55 will be --

20 MR. HESS: Your Honor, I'll go -- I'm sorry.

21 THE COURT: Mr. Hess, are you changing?

22 MR. HESS: I'll withdraw it.

23 THE COURT: Okay. You represent a different party.
24 You can maintain your objection, if you want to.

25 MR. HESS: No, no, no, I -- I've looked at it.

1 I'll --

2 THE COURT: Okay.

3 THE WITNESS: Okay. What's the --

4 THE COURT: It'll be admitted.

5 MR. HESS: All right.

6 THE COURT: It's okay.

7 (Plaintiff's Exhibit Number(s) 55 admitted.)

8 BY MR. APTON:

9 Q So Motorola inquired as to Parametric. And you
10 referred them to speak with Mr. Stark; is that correct?

11 A Yeah. I don't believe this was an acquisition
12 related. This was a relationship possibility. And I referred
13 them to Mr. Stark because Mr. Stark was an executive at
14 Motorola. So I would have wanted to see if he knew this
15 contact.

16 Q And had they have it been an inquiry in terms of the
17 acquisition for buying the company, would you still have
18 forwarded it to Mr. Stark?

19 A No.

20 Q What would you have done instead?

21 A Yeah. Clearly, I would not have -- have Mr. Stark
22 discussing with a potential competitor for the company
23 anything.

24 Q Because that would make no sense. It would be
25 completely antithetical to the purpose of the Go-Shop period;

1 right?

2 A Well, it would -- yeah, it could drive Turtle Beach
3 off the table as well.

4 Q And can we turn to Exhibit 57.

5 A So again, this has nothing to do with the Go-Shop
6 valuation.

7 MR. APTON: Exhibit 57.

8 THE COURT: Any objection to 57?

9 THE WITNESS: Okay.

10 MR. STIGI: No, Your Honor.

11 MR. HESS: No.

12 THE COURT: Be admitted.

13 (Plaintiff's Exhibit Number(s) 57 admitted.)

14 BY MR. APTON:

15 Q This is an e-mail to Mr. Stark confirming that he had
16 spoken to Motorola in response to your forward; correct?

17 MR. HESS: Objection.

18 THE COURT: Overruled.

19 MR. HESS: Lack of foundation of that conversation.

20 THE COURT: Overruled. That was my thinking part.

21 MR. HESS: Yes.

22 THE COURT: I was thinking about that one. Okay.

23 MR. HESS: Thank you, Your Honor.

24 BY MR. APTON:

25 Q Stark is confirming to you that he spoke with

1 Motorola; correct?

2 MR. HESS: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: He's confirmed that he spoke to
5 Motorola.

6 BY MR. APTON:

7 Q Yes?

8 A Yes.

9 Q Okay. Can we look at Exhibit 42, please.

10 THE COURT: Any objection to 42?

11 MR. HESS: No objection.

12 MR. STIGI: No objection.

13 THE COURT: Be admitted.

14 (Plaintiff's Exhibit Number(s) 42 admitted.)

15 BY MR. APTON:

16 Q Mr. Potashner, this is a communication between you
17 and someone at Amazon; correct?

18 A Correct.

19 Q On August the 13th?

20 A Correct.

21 Q And you tell them you wouldn't know that video gaming
22 would be out of the question if there was a deal; correct?

23 A Correct.

24 Q It's on the first page.

25 A Yeah. We were talking to Amazon about a totally

1 different application set.

2 Q But video gaming was off the table, because you had
3 already granted an exclusive license to Turtle Beach as part of
4 the breakup. Yes?

5 A They wanted to use the technology for warehouses to
6 direct warehouse workers around, so gaming was inconsequential
7 to them.

8 Q And you had already given gaming away as part of the
9 breakup; correct?

10 A Again, they had no interest in gaming.

11 MR. PEEK: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: They had no interest in gaming. They
14 had an interest in warehouse applications.

15 BY MR. APTON:

16 Q That's not my question, Mr. Potashner.

17 A Okay.

18 THE COURT: Mr. Potashner, he's just asking you if
19 you had already reached an agreement that a license would be
20 provided if there was a breakup.

21 THE WITNESS: Correct.

22 THE COURT: Okay.

23 BY MR. APTON:

24 Q So it's your testimony that you didn't do anything to
25 interfere with the Go-Shop period?

1 A I put --

2 MR. STIGI: Objection, asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: I put full energy into trying to get
5 a -- I mean, the other names that we approached on the Go-Shop
6 were more substantial entities than Turtle Beach. So I would
7 have welcomed Amazon or Sony acquiring us. So highly motivated
8 to have a successful Go-Shop.

9 BY MR. APTON:

10 Q Can you please turn to Exhibit 74.

11 MR. STIGI: No objection.

12 MR. PEEK: No objection.

13 THE COURT: Be admitted. Thank you.

14 (Plaintiff's Exhibit Number(s) 74 admitted.)

15 BY MR. APTON:

16 Q In this e-mail you say that you actually put
17 boundaries that were very difficult in, that would prevent the
18 Go-Shop from being successful. Did you not?

19 MR. PEEK: I'm sorry. Could I get that question
20 again?

21 THE COURT: Can you rephrase or restate your
22 question?

23 BY MR. APTON:

24 Q Mr. Potashner, does this e-mail say, Dolby and Amazon
25 had interest. I will take you through the discussions when we

1 are together. I put boundaries that were very difficult in. I
2 didn't want an exit, given the 150 million valuation?

3 A Yeah. This is consistent with me saying, let's get
4 everything done. I'm doing everything to get you over the
5 line. I put no bound -- no barriers for anybody.

6 As a footnote, you mentioned Newport earlier today.
7 I had a deal with Coherent, and I actually through the no shop
8 going with a -- or Go-Shop, ended up going with a different
9 buyer at a higher price.

10 Q Did you refer to this --

11 A So I've had experience in successfully using Go-Shops
12 to step up the valuation.

13 Q Did you initially refer to it as no shop?

14 A I said no -- like correct as a Go-Shop.

15 Q I understand. Mr. Potashner, earlier today you said
16 that one good licensing deal, just one good licensing deal
17 would have helped you -- or would have satisfied the
18 performance targets for your stock options.

19 Do you recall that?

20 A Yeah. I said that the economics of one solid
21 licensing deal could be enough to -- to enable that to happen.

22 Q And did that deal happen? Or no?

23 A No. We did not manifest -- we did not execute a
24 successful licensing.

25 Q And why not?

1 A The technology was seen as -- as not mature enough.
2 It was seen as lab, as opposed to working consistent
3 prototypes. So just a two -- you know, we were never told go
4 away for good. We were told come back once -- once the
5 technology evolves.

6 Q So the absence of a licensing deal had nothing to do
7 with your conduct and your actions in terms of trying to close
8 this [indiscernible]; is that fair?

9 A No, that's not fair. The absence of licensing; the
10 challenges that we had; the fact we were more of a research
11 place than a product place all said, hey, this is a high risk,
12 go forward plan that's going to require a lot of capital.

13 It was a motivational factor for let's go get this
14 deal with Turtle Beach done; right, at the risks -- all the
15 execution.

16 So yeah, we would have toughed it out without the
17 deal and figured out how to make things work. But this was a
18 very ideal scenario for us.

19 Q Okay.

20 MR. APTON: Your Honor, I'm done with direct
21 examination. Just reserve for redirect.

22 THE COURT: Okay. And I understand because of the
23 exhibit issues that we have, you're going to try and edit some
24 of the exhibits you previously have identified, where there may
25 have been objections or you perceive there to be issues and you

1 may use those in your redirect.

2 MR. APTON: Thank you, Your Honor.

3 THE COURT: I'm just making sure we all understand
4 that.

5 MR. APTON: Your Honor, I just want to say if there's
6 any additional exhibits that become important during cross,
7 I'll preserve the right to use those as well.

8 THE COURT: Well, sure. That's a different issue,
9 though.

10 MR. APTON: Thank you.

11 MR. PEEK: What about --

12 THE COURT: If you bring something up on cross, he
13 can find exhibits that maybe impact that if he needs to do
14 redirect.

15 MR. PEEK: Well, that's but that's not part of the
16 protocol, Your Honor. The protocol says --

17 THE COURT: Mr. Peek, that's always part of the
18 protocol.

19 MR. PEEK: The idea was that we've done this, he
20 discloses. We disclose. We've done that.

21 THE COURT: Right.

22 MR. PEEK: So he knows what those exhibits are. But
23 we all have --

24 THE COURT: Well, but now you're going to ask
25 questions.

1 MR. PEEK: Yeah.

2 THE COURT: Well, the witness hasn't actually been on
3 script most of the time. This is why I understand what you're
4 saying, but if there are issues that are unexpected that come
5 up, someone can always identify additional exhibits.

6 MR. PEEK: So I --

7 THE COURT: We used to call that true rebuttal.

8 MR. PEEK: No. And I agree -- I agree with that,
9 Your Honor.

10 THE COURT: Do you remember the old days when we had
11 true rebuttal?

12 MR. PEEK: And I'm happy to live by that rule, as
13 long as the same rule that applies to him when he brings up in
14 his examination --

15 THE COURT: George, did you do that when you were on
16 the murder team?

17 MR. PEEK: -- that I didn't anticipate, I get the
18 bring it up. I get to present it.

19 THE COURT: Did you know true rebuttal?

20 MALE SPEAKER: Yes.

21 THE COURT: Okay.

22 MR. PEEK: As long as that applies to me that I may
23 bring up an exhibit he hasn't identified in that list, and I
24 get to show it.

25 THE COURT: If it is truly unexpected, something new.

1 That's what true rebuttal was, Mr. Peek; remember?

2 MR. PEEK: I know, Your Honor.

3 THE COURT: Okay.

4 MR. PEEK: I do understand that.

5 THE COURT: Remember me using the words truly new in
6 the Wynn case, over and over and over again. And you guys
7 trying to decide what truly new meant every time? Okay.

8 MR. PEEK: That case and many others, Your Honor.

9 THE COURT: Before we go to the next step, how long
10 is your anticipated, Mr. Stigi?

11 MR. STIGI: I'm right here, looking for --

12 THE COURT: How long?

13 MR. STIGI: Looking for my binder among everything.

14 THE COURT: I know. But I'm trying to get a time
15 frame.

16 MR. STIGI: More than today, Your Honor.

17 THE COURT: Okay. That's what I thought. How long
18 are you? You're going to be after Mr. Stigi.

19 MR. HESS: Well, I was going to say, I don't know
20 exactly what Mr. Stigi is going to do. I'm hoping to be an
21 hour or --

22 THE COURT: Okay. You're a couple hours?

23 MR. STIGI: Yes, I think so.

24 THE COURT: Okay. So we're assuming then the morning
25 is going to be -- you can stand up, Mr. Potashner.

1 The morning is going to be spent with Mr. Potashner
2 on the direct and crosses that they're going to do.

3 You will then have some redirect of some period of
4 time, whatever that is. So it doesn't sound to me like he can
5 get all three of those witnesses done tomorrow.

6 MR. APTON: Probably not.

7 THE COURT: So the reason I'm asking the question is,
8 Mr. Peek asked nicely if you could help give him an idea as to
9 the order they were going to be in so you could try to tell him
10 which of those guys we were going to do.

11 MR. PEEK: I know the order, Your Honor. It's just
12 really the length of each, because he's already told me the
13 order. We accept that, although it's a little bit of a
14 challenge for one of them, but we'll make it work. I just need
15 to know whether I need all three of them tomorrow or whether I
16 need just Mr. Kaplan, who is after this witness? Or do I need
17 Mr. Kaplan, Mr. Putterman, and Mr. Norris all at once? And
18 that's really my challenge, Your Honor, so if I could just get
19 a little bit more guidance to be able to tell them --

20 THE COURT: If it --

21 MR. PEEK: -- since they're testifying remotely, that
22 would be appreciated.

23 THE COURT: If it was me, you would know I would say
24 there's no way you would get through all three, given what we
25 have been.

1 MR. PEEK: I don't think they'll even get to Mr.
2 Kaplan, but I -- because that's -- given the number of exhibits
3 that I've already seen identified --

4 THE COURT: Yeah.

5 MR. PEEK: -- and I will be taking Mr. Kaplan, Your
6 Honor, on direct, so --

7 THE COURT: That's okay.

8 MR. PEEK: -- that could also guide you a little bit.

9 MR. STIGI: So we can limit it to Mr. Kaplan,
10 tomorrow, Your Honor. If we run out of time, they get docked
11 for the amount of time we don't use up.

12 THE COURT: No.

13 MR. PEEK: Boy, this is really getting --

14 THE COURT: So let's do, we're going to plan for two.
15 We're not going to plan for three, though.

16 MR. PEEK: Yeah, two, two.

17 THE COURT: We're going to plan for two.

18 MR. PEEK: Two, great.

19 THE COURT: So the time, just so we're all clear on
20 the time -- hold on a second.

21 MR. PEEK: Oh, so we're not -- we're breaking for the
22 day?

23 THE COURT: He says he can't finish this afternoon.
24 So I'm going to give you math right now. I'm going math.
25 Because at the end of the day, I do math. 352 minutes were

1 used by the plaintiff today. That is the most minutes we have
2 gotten out of a day all week. Very efficient, guys.

3 MR. PEEK: I wasn't involved in that, Your Honor.
4 Did you hear that comment?

5 THE COURT: Hold on. I've got to do math again,
6 because I think I made a math error.

7 MR. PEEK: I think that's a little too much. For me,
8 anyway.

9 THE COURT: You didn't do any of this.

10 MR. PEEK: Oh, that's what I thought. All right. I
11 wanted to make sure.

12 THE COURT: I got 352 again. Where did I mess up?
13 That one's the same. That one's the same. That one's the
14 same. Oh, that's why. My math is wrong there. Jill is
15 correct. It's only 322.

16 MR. PEEK: Your Honor, for planning purposes --

17 THE COURT: Wait a minute. Let me do the math. I am
18 not a math major anymore. I became a judge. I don't do math
19 anymore. I still understand math, but I can't do it.

20 MR. PEEK: I was going to say, Your Honor, I've been
21 around you long enough to know that's not --

22 THE COURT: 322, 322, not 352. So we're about the
23 same we've been doing every day.

24 Okay what?

25 MR. PEEK: I just -- and I'm not quarrelling with Mr.

1 Ogilvie, and I don't wish to quarrel with him, but --

2 THE COURT: But you do, and you will.

3 MR. PEEK: Well, I am, because I -- you know, just to
4 say to me oh, well, have it both ways. I just try to get a
5 little bit of time. I'm not getting any clarity on how long
6 they will expect Mr. Kaplan to take. If he starts at 1
7 o'clock, how long will he take? So that I would then have Mr.
8 Putterman available at 3:00. That's all I'm asking, just a
9 little bit of courtesy.

10 THE COURT: So you think your part is about an hour,
11 and Mr. Peek's part is about an hour for him?

12 MR. OGILVIE: No, a little longer than that, Your
13 Honor.

14 THE COURT: Okay.

15 MR. PEEK: See my point?

16 THE COURT: How long do you think, an hour and a
17 half, two?

18 MR. OGILVIE: Let's say --

19 THE COURT: Best estimate, only an estimate.

20 MR. OGILVIE: Three hours.

21 THE COURT: Three hours for your part? Oh, for you
22 and Steve?

23 MR. OGILVIE: Yes.

24 THE COURT: Wow, okay.

25 MR. PEEK: So I will have Mr. Putterman available at

1 4 o'clock, then, Your Honor.

2 THE COURT: I would say 3:45.

3 MR. PEEK: All right, Your Honor. I'll have him
4 available at 3:45. That's all I wanted to know. Thank you.

5 THE COURT: Uh thank you.

6 MR. PEEK: I doubt it'll go at 3:45, but I --

7 THE COURT: Mr. Peek --

8 MR. PEEK: I'll have him there.

9 THE COURT: Well, no, you'll have him sitting
10 wherever he is, so you can call him and tell him it's time to
11 sign on.

12 9 o'clock tomorrow. What do I call this?
13 Involuntary dismissal. My computer has died three times today,
14 usually if I'm trying to sign orders. Anything else?

15 MR. PEEK: No, Your Honor.

16 MR. STIGI: No, Your Honor.

17 MR. APTON: No, Your Honor.

18 THE COURT: Thank you for your brief. I'll see you
19 guys tomorrow morning, 9 o'clock. Ramsey will open it when he
20 feels like it. As you all know, I don't have keys. I can't
21 get in. So I've got to go to the secret entrance.

22 (Proceedings recessed for the evening at 4:14 p.m.)

23 / / /

24 / / /

25 / / /

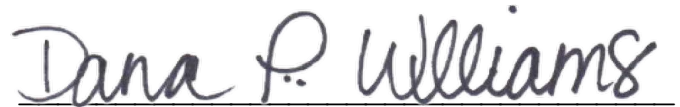
CERTIFICATION

I DO HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY TRANSCRIBED
THE AUDIO/VIDEO PROCEEDINGS IN THE ABOVE-ENTITLED CASE TO THE
BEST OF MY ABILITY.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL
SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

08/18/2021

DATE

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From: James Barnes <jbarnes@parametricsound.com>
Sent: Saturday, October 19, 2013 11:33 AM
To: ken potashner <ken.potashner@gmail.com>
Subject: Re: numbers

All their sections are weak and we are still missing a number - - we can discuss why telephonically — and I am not complaining but it is costing us more legal \$\$.

This is going back to them in the next hour or so with substantial comments so it is being communicated.

From: Ken Potashner <ken.potashner@gmail.com>
Date: Saturday, October 19, 2013 11:28 AM
To: James Barnes <jbarnes@parametricsound.com>
Subject: Re: numbers

have you communicated this to them?

On Fri, Oct 18, 2013 at 4:54 PM, James Barnes <jbarnes@parametricsound.com> wrote:

The MDA needs a rewrite. Very thin and not near enough outlook to future/ console transition etc. I am scheduling call to provide our input and get it right and more presentable.

I don't think it meets minimal SEC standards as first draft but for benefit of doubt maybe they are still working on it.

From: Ken Potashner <ken.potashner@gmail.com>
Date: Friday, October 18, 2013 4:36 PM
To: James Barnes <jbarnes@parametricsound.com>
Subject: Fwd: numbers

he called me to discuss. He never has appreciated my sense of humor.. anyway He had committed that Q3 numbers would be prevalent and they are invisible so he said he will fix that

----- Forwarded message -----

From: ken potashner <ken.potashner@gmail.com>
Date: Fri, Oct 18, 2013 at 3:37 PM
Subject: Re: numbers
To: Juergen Stark <juergen.stark@turtlebeach.com>

ok

On Fri, Oct 18, 2013 at 3:22 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

you are joking right?

On Fri, Oct 18, 2013 at 3:19 PM, ken potashner <ken.potashner@gmail.com> wrote:

Have been going over VTB financials in proxy with Jim . Shitty numbers. money losing negative equity etc. If Stripes was really intereted in doing an IPO next year they never should have replaced cash with debt layer.

Anyway glad to rescue your sorry ass and get you public...

--

Juergen Stark
CEO

**Turtle Beach,
Inc.**

juergen.stark@turtleb
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Drive, Suite 100
Valhalla, NY 10595
[+1 914-358-8807](tel:+19143588807)
www.turtlebeach.com

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AA 2240

From: John Todd <john1228@earthlink.net>
Sent: Thursday, August 8, 2013 9:30 AM
To: ken.potashner@gmail.com
Subject: RE: Last input before call later

I realize that you are in BOD meeting. The more I think about it I don't know how you can go out with any numbers that are lower than fairness opinion unless there has been a material change in business. Wanting to be conservative is not a material change in business. How logical is it that less than a week after fairness opinion the range moved by 8-10M. Then in 6 weeks when public all models are going to be run on fairness opinion. Shareholders are going to say if fairness opinion wrong then you need a re-price on deal. I think we are boxed in that 2013, 2014 first look must match fairness opinion. Otherwise you need to conclude fairness opinion was wrong. Which I don't think is correct or you want to go down that track. It would be different if several months had passed but your talking 1 week. Sorry but I think your locked on fairness opinion numbers as targets.

From: ken.potashner@gmail.com [mailto:ken.potashner@gmail.com]
Sent: Thursday, August 8, 2013 8:50 AM
To: john todd
Subject: Fwd: Last input before call later

Sent from my iPhone

Begin forwarded message:

From: Ken <ken.potashner@gmail.com>
Date: August 8, 2013, 8:22:26 AM PDT
To: Juergen Stark <juergen.stark@turtlebeach.com>
Subject: Re: Last input before call later

Heading into a bod meeting with another company at 8:30 (8 min)I will step out for your call

But we will need to be brief.

Sent from my iPad

On Aug 8, 2013, at 8:13 AM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

will call you in a few minutes...getting update from legal

On Thu, Aug 8, 2013 at 4:12 PM, Ken <ken.potashner@gmail.com> wrote:

The bullish comments on 2014 will carry the day. You already showered that bullishness in your slide in the deck that shows strong sector rebound graph

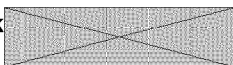
Also be aware that the fairness opinion will become public with proxy so you don't want to be pessimistic to the point you contradict the data you provided that was basis for that opinion

Call will go great...have a good day

Sent from my iPad

--

Juergen Stark



CEO

Turtle Beach, Inc.

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From: Juergen Stark <juergen.stark@turtlebeach.com>
Sent: Saturday, August 3, 2013 5:43 AM
To: ken potashner <ken.potashner@gmail.com>
Subject: Re: fairness opinion

ok

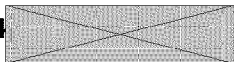
On Sat, Aug 3, 2013 at 2:41 PM, ken potashner <ken.potashner@gmail.com> wrote:

We did get it but you should know that just barely. With the renegotiation to 81-19 we were below one on the 3 metrics and when you aggregate the 3 metrics the deal is 'barely fair'

The issue with this is that the document goes public and can make the vote harder for shareholders. i will need to do a good job selling the strategic ramifications

--

Juergen Stark
CEO



Turtle Beach, Inc.

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From: Ken <ken.potashner@gmail.com>
Sent: Saturday, July 13, 2013 3:23 PM
To: john todd <john1228@earthlink.net>
Subject: Re: update

I am not comfortable having you discuss revenue sharing models with the Drs given that I would have no interest in supporting them if we don't execute the transaction. I also can't support you having discussions with them relative to their options given that it was a difficult negotiation with them until we know we are moving forward. If we come to the conclusion that you and I are aligned per the call we had with Andy then I would welcome the Dr discussions. We can either defer the meeting or keep it but avoid the options discussion. Pls advise.
Sent from my iPad

On Jul 13, 2013, at 8:35 AM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Im in Michigan with combo of picking up my son at camp, visiting parents at cottage in upper MI (w/terrible cell coverage and no wifi), college tour and flight back Monday evening. We are setting up a call with CH over the weekend or latest Monday morning to make sure they have everything they need. On HHI, let's see where we get with doctors on Wednesday and then we can reconvene on it.

On Jul 13, 2013 10:00 AM, "ken potashner" <ken.potashner@gmail.com> wrote:

Hi Juergen

This coming week is essential on two fronts. We need to have clarity and understanding to the finance steps while launching Craig Hallum Fairness Opinion and secondly I have to do some damage control necessary too assure success with shareholder vote. I would like to think that we have reached a level of mutual dissatisfaction on hhi such that we can put it behind us(or better yet in front of us). If there are further discussions to be had I am available by phone today and then in person on Sunday. as a footnote I have wrist surgery mon am so my poor typing skills may be further diminished.

I know you are meeting with Andy on Monday and I am hopeful you see him as viable as a BOD member .He is solid.

My lawyers felt they had a productive interchange with your team yesterday

We need to begin planning a communication rollout and also set some expectations on the Goshop. (i can tell you after the Jueregn /Ken process I need a break some I am hopeful the phone doesnt ring...

lastly may need Yoga advice during recovery from wrist injury

From: ken potashner <ken.potashner@gmail.com>
Sent: Sunday, July 14, 2013 8:16 PM
To: Juergen Stark <juergen.stark@turtlebeach.com>
Bcc: john todd <john1228@earthlink.net>
Subject: Re: Drs Metha/Mattson

Okay have a good trip . I am convinced we cant solve pre deal because of litigation scenarios plus shareholder vote issue. I am convinced we can solve post deal. John and I are willing to sign whatever needs to be signed relative to waive rights on narrowing license and are also willing to commit to a process where we discuss/negotiate in good faith post deal and if we cant get an agreement then we get an independent arbitrator.

Also we are at the target date for limiting legal spend on DA so lets figure that out as well.

On Sun, Jul 14, 2013 at 7:46 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Sorry for the delay, couple hour drive then dinner with bunch of family...just got back to parents house and packing to leave tomorrow morning.
We are not passed the HHI issue. Thursday's proposal to essentially deal with it post close doesn't really resolve anything. But I'm working to see what kind of release or agreement you and John could sign that would make us comfortable...or trying to think of other solutions. It's an extremely challenging situation with the varying interests. You, Andy, and I can talk Tuesday morning or late Monday when I'm back.

I don't see the issue with exploring possibilities with the Dr. Mehta and Sara. We can figure out if they are amenable without forcing anything. But we can also defer or see where we are on Tuesday.

On Sun, Jul 14, 2013 at 6:27 PM, ken potashner <ken.potashner@gmail.com> wrote:

I didnt want to disturb you on your trip in that it seems like a key family outing and school stuff can be stressful. But you please give this so thought and we can discuss at your convenience...I have my wrist surgery in the morning so will be off the grid for a bit. I did set up my personal and other business travel such that I will be in SD full time through our earnings call plus a week after in case road show required

If you feel we are still not aligned on HHI then we need to solve that prior to the Dr meeting(or alter focus of the Dr meeting). I am not comfortable having discussions on revenue sharing models with the Drs given that I would not implement them if we don't execute the transaction. I also can't support having discussions with them relative to their options given that it was a difficult negotiation with them until we know we are

moving forward. On the flip side once we do get aligned I will do my absolute best to support your line of reasoning with them . If we come to the conclusion that you and I are aligned per the call we had with Andy then I would welcome the Dr discussions as you intend. If we are not aligned we can either defer the meeting or keep it but avoid the options/rev share discussion. Pls advise.

Sent from my iPad

--

Juergen Stark
CEO

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From: ken potashner <ken.potashner@gmail.com>
Sent: Monday, July 15, 2013 5:53 AM
To: Juergen Stark <juergen.stark@turtlebeach.com>
Bcc: john todd <john1228@earthlink.net>
Subject: HHI

Concessions made on HHI

1. substantial narrowing of license
2. waive any litigation relative to license narrowing
3. Waive option vesting on Change of control
4. Willingness to negotiate in good faith and accept arbitration if necessary
5. Willingness to support your strategy on the Drs.

We have actually moved alot..hope you can be flexible and we get the deal done

From: Juergen Stark <juergen.stark@turtlebeach.com>
Sent: Thursday, July 11, 2013 6:52 PM
To: ken potashner <ken.potashner@gmail.com>
Subject: Re: update

sorry, that math absolutely does not compute. if HHI was able to get 20x sales value some far future point in time where this actually something real in HHI and HHI was a meaningful portion of PAMT in terms of value, revenues, etc., then PAMT would ALSO get something close to 20x sales. if HHI is a big winner and it's inside of PAMT, then PAMT is also a big winner.

On Thu, Jul 11, 2013 at 9:30 PM, ken potashner <ken.potashner@gmail.com> wrote:

we have established after reviewing all docs that the Drs have no input into the license width discussion so we wont discuss that with them on wed. Only your financial concept proposal relative to their options

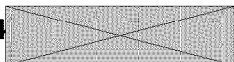
also as part of the rationale for why non fda (psap) was in HHi:

if you had a choice of booking a dollar of revenue in a business unit that was achieving a 15x ebit multiple or in a business unit that you believed would be valued at 20x sales where would you take that dollar of sales?

with that said I have conceded already to the narrowing but look forward to philisophical debate over a beer post DA

--

Juergen Stark
CEO



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AA 2251

Confidential

PAMTNV0104271

90 - 002

From: ken potashner <ken.potashner@gmail.com>
Sent: Friday, July 19, 2013 7:51 AM
To: Juergen Stark <juergen.stark@turtlebeach.com>
Bcc: john todd <john1228@earthlink.net>
Subject: precedence

I also did the same thing at Maxwell Technologies. Each division became an entity and exec group had shares in parent and subs. Stock went up 10x in 18months, we were voted best performing turnaround (i changed company from defense to commercial) and I was featured in Forbes and business week (plaques and articles now buried in garage somewhere).

I am past debating this with you and I have a proposal I am confident you can live with . Will get BOD support Sat and can run it by you after that.

Having everything fit in neat boxes and having the financial models allwork nicely is important for a VP of OPS . Thinking outside the box is important for a good CEO

From: Ken <ken.potashner@gmail.com>
Sent: Thursday, July 11, 2013 6:42 PM
To: Juergen Stark <juergen.stark@turtlebeach.com>
Subject: Re: legal effort PAMT

Also I have been frustrated for 2 weeks as my bod and team got torn apart over this topic. we didn't sneak HHI in place as this deal happened. It was an integral part of the company.

For what it is worth if it weren't for my fiduciary responsibility I wouldn't do the deal because I am losing the whole reason that I entered into the deal in the first place.. To build a multi billion dollar HHI and benefit from it

I said I would take nothing to you in the context that I would convince you it made sense to keep it so I am not really risking it. I all said in a gentlemen agreement to give me a consulting deal if I couldn't talk you into keeping it equal to what you think my stake was worth

I personally make out much better if the deal doesn't happen but I will do what it takes to make the deal happen. I need you to help.

Sent from my iPad

On Jul 11, 2013, at 6:20 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Pretty frustrated given where I thought we were headed based on Monday's call. What happened to your position of being willing to drop the options with no conversion or other comp? Based on that, I thought we had your situation resolved, needed to convince the Dr's, and then only John left to figure out.

On Thu, Jul 11, 2013 at 7:42 PM, ken potashner <ken.potashner@gmail.com> wrote:

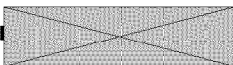
Hi Juergen ,

Thanks for your time on the call. I have our lawyers moving things forward but I don't have them in full court press mode given the deal exposure we discussed. I am hopeful you can support the proposal I put forth. let me know when you hit a level of confidence that we can get there and I will push the work around the clock button on our legal team.

also since we last talked I connected with John and he (as I am as well) are willing to waive any acceleration of HHI due to the transaction.

--

Juergen Stark
CEO



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From: ken potashner <ken.potashner@gmail.com>
Sent: Saturday, July 6, 2013 12:37 PM
To: Juergen Stark <juergen.stark@turtlebeach.com>
Subject: FYI

As I mentioned the bankers are running an analysis as well and I expect it to confirm this view.

As I mentioned I am not positioned to negotiate with you but thought this could be useful

pls treat this as confidential

On Jul 5, 2013, at 3:36 PM, "Andrew Wolfe" <awolfe@awolfe.org> wrote:

I'll wait to hear from the accountants, but I don't think it works that way.

PAMT shareholders get 20% of TB in exchange for their 80% of PAMT (knowing that 80% of PAMT includes 80% of 87% fully diluted of HHI)

We have determined that this is a fair market trade.

HHI shareholders get no TB stock for holding HHI shares. They retain the same number of HHI shares at the same value. (Which analytically is probably only the Black-Scholes value of the options at par)

If we do not think that the TB assets we are getting are a fair exchange for the PAMT ownership we are giving up, then that has nothing to do with whether anyone else owns part of HHI. We (as shareholders in aggregate) own 100% of PAMT which includes some number of HHI shares. That is what we are offering in the merger. Any other HHI shareholders are unaffected. Our HHI dilution is due to our merger with TB.

If we own 87% of HHI today then we retain 20% of that. If we own 100% of HHI today then we retain 20% of that.

I don't see any windfall for HHI shareholders unless options accelerate. That makes this mostly a political/complexity issue with TB not a financial one.

From: Kaplan Robert <bobkaplan007@gmail.com>
Sent: Tuesday, July 23, 2013 7:46 AM
To: ken potashner <ken.potashner@gmail.com>
Cc: Andrew Wolfe <awolfe@awolfe.org>; Elwood Norris
<enorris@parametricssound.com>; James Barnes
<jbarnes@parametricssound.com>; James Honore
<jameslhonore@gmail.com>; Seth Putterman
<puherman@ritva.physics.ucla.edu>; John Hentrich
<jhentrich@sheppardmullin.com>
Subject: Re: VTB PAMT acquisition

Yes Ken, I intentionally sent the email to you too. It was intended to all the BoD members , Jim Barnes and John Hentrich.

The deal blows up if we do not cancel the options. I am not the one insisting on keeping "my" options. I don't have any in HHI. Juergen's language is very clear. How many times does he have to tell us the same thing - No HHI options or no deal!

Regarding the disclosure of the HHI options to VTB, I refer you to Juergen's email where in he states that he only found out about the options through their due diligence.

I agree with the first part of Andy's proposed solution, not necessarily with the second part.

If it gets the deal done, I'm for it. My thoughts are not about blowing up the deal. You have completely mischaracterized what I said. The second part - if the deal does not get done - we are still stuck with the inappropriately issued options. I agree, the best thing for our shareholders is to get the deal done. Then why have you and John been pushing back so hard on the options when you know it is the blocking point of the deal.


Bob.

On Jul 22, 2013, at 10:35 PM, ken potashner <ken.potashner@gmail.com> wrote:

Bob,

I am not sure if you meant to copy me on this email or not but you did.

Andy's solution get the deal done. We give up the options, nobody sues ,shareholders win



Your proposal would blow up the deal , result in a massive amount of lawsuits and personal liability for the BOD , and is the worst thing for our shareholders.

You are making accusations about me that are false . Everything was fully disclosed on HHI. You appear to be wanting to be vindictive at the cost of our shareholders.

A proposal is on the table that everyone can live with so its not obvious to me why you would want to blow that up.

On Mon, Jul 22, 2013 at 8:53 PM, Kaplan Robert <bobkaplan007@gmail.com> wrote:

Gentlemen:

I do not agree with Andy's proposed solution of "soft pedaling" the HHI options problem. Let's admit we were talked into and made a big error a few months ago. That is all history now. Let's move forward and the first step is to undo our mistake about the options in HHI. This was even acknowledged by Seth in our telephonic BoD meeting last Saturday. This is an opportune time to correct our mistake. Juergen has categorically stated that the options foul up the deal. He is absolutely correct. Even if this merger does not go through, the options are still wrong and not in the best interest of our shareholders. Ken is totally conflicted, ignored his fiduciary responsibility to our shareholders and has been negotiating constantly for his own self interest. Also I note that in Juergen's email he says he only found out about the options to Ken and John through the VTB due diligence not by full disclosure of the total picture by Ken in negotiating the deal. In addition, we (the BoD) were told by Ken that VTB was not interested in HHI and that was an important input to our consideration about the options. The appropriate action would be to cancel the options and move on.

On Jul 21, 2013, at 7:57 PM, Andrew Wolfe <awolfe@awolfe.org> wrote:

I have had a subsequent discussion with Juergen and he has indicated that he is not satisfied with this solution. He wants the HHI options to be unconditionally cancelled prior to the DA signing – not at close. He has indicated that he is concerned that Ken and John might not support the closing otherwise.

I think this is an unreasonable request.

- 1) I have no doubt that if the DA is signed, Ken and John will support closing the deal. I have repeatedly assured Juergen as much.**
- 2) I don't like the idea that VTB is telling us how we need to be structured if the deal falls through.**
- 3) I don't think John will agree to release his shared even if the VTB deal falls through. He has agreed to release them because he wants the VTB deal to close.**

If anyone wants to discuss this, give me a call tomorrow. We can formally discuss it together on Tuesday and make a decision. I think that this is the point where we say no.

From: Andrew Wolfe [<mailto:awolfe@awolfe.org>]

Sent: Sunday, July 21, 2013 5:01 PM

To: Elwood Norris (enorris@parametricsound.com); James Barnes (jbarnes@parametricsound.com); James Honore (jameslhonore@gmail.com); Seth Putterman (puherman@ritva.physics.ucla.edu)

Cc: ken potashner (ken.potashner@gmail.com); Kaplan Robert (bobkaplan007@gmail.com); john hentrich (jhentrich@sheppardmullin.com)

Subject: FW: VTB PAMT acquisition

Juergen has decided that HHI must be 100% owned by PAMT at closing with no outstanding vested or unvested options. He is willing to delay the DA until we can resolve this. See his email below.

Ken and John have agreed that this issue cannot be allowed to hold up the VTB deal and are willing to support a plan to dissolve the options. They are disappointed that they will not be tied to HHI as an independent entity as shareholders since they see great potential, but they see the bigger picture. I think that the following should be our plan. Ken and John support it.

- 1) On Tuesday we can approve a revised license agreement for HHI that limits it to FDA medical devices. I have seen an acceptable draft and will request that it is distributed prior to the meeting. Ken will approve the adjustment on behalf of HHI. If somehow VTB does not close, we would always have the option of revisiting the scope of HHI again later.
- 2) We can determine as a board that given the changes in scope of HHI and the likely integration with VTB, we see no reasonable likelihood of HHI shares ever becoming liquid. The options are thus no longer a good incentive vehicle. We vote to put in place an option termination plan that says that on VTB closing, the HHI options are canceled. [REDACTED]
 - a. Ken will agree to this and to whatever waivers VTB requires.
 - b. John will agree to this and whatever waivers VTB requires. As alternative compensation, we will offer him a closing bonus of 9 month's salary.
 - c. We will explain this to the doctors and explain that we will restructure their compensation as cash (likely royalties and/or bonuses). Ideally, they will agree. I think we can convince Juergen to close during those negotiations as long as the equity has been legally cancelled.
- 3) We would approve 2013 bonuses for key personnel including Jim, Ken, and John.

I'd like to try to put this in place very quickly – so that (1) we can get the DA in place ASAP and (2) Ken, John, Jim, and Woody can get back to running the company.

From: Juergen Stark [<mailto:juergen.stark@turtlebeach.com>]

Sent: Sunday, July 21, 2013 4:29 PM

To: Ken Potashner; Jim Barnes; Andy Wolfe

Cc: Ron Doornink

Subject: VTB PAMT acquisition

Ken, Andy, Jim:

As we originally stated when we discovered the potential future ownership stake in the HHI subsidiary during our diligence, we are not going to move ahead with the acquisition of PAMT unless the HHI ownership issues are completely eliminated. This potential future ownership reduces the economic value of the deal to us and the differing interests of the parties involved have led to difficult deal dynamics over the past weeks. Given those dynamics, we are requiring this to be solved at or prior to signing the Definitive Agreement. For the sake of clarity, let us reiterate what "solved" means:

- We are OK having a wholly owned subsidiary with a license to FDA products

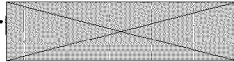
since this has some potential future benefits as we've discussed

- If HHI is left in place, the subsidiary has to be wholly owned with no current or future stock or option holders
- We are also OK if the current HHI subsidiary is eliminated

We realize this may take some time to resolve so we will put the legal work on hold until the company has resolved this issue. I will still support discussions with prospective lenders and investors as needed if you so desire.

Juergen

Juergen Stark
CEO



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From: Ken <ken.potashner@gmail.com>
To: Juergen Stark <juergen.stark@turtlebeach.com>
Sent: 7/17/2013 5:10:33 PM
Subject: HHI license narrowing

I have confirmed though jim barnes that Drs have no impact on license narrowing and I have confirmed with Lawyers that we include that in DA plus waivers on the narrowing

Sent from my iPad

From: Juergen Stark <juergen.stark@turtlebeach.com>
To: ken potashner <ken.potashner@gmail.com>
Sent: 10/31/2013 10:59:43 PM
Subject: Re: IMPORTANT

i'm more than happy to get on the phone with CH tomorrow and talk through whatever they need. there is no way anybody has time to whip up a new model plus we are doing it in the right, very detailed way which will take time to finish and require some real data on attach rates after console launches.

On Thu, Oct 31, 2013 at 7:46 PM, ken potashner <ken.potashner@gmail.com> wrote:
had long discussion with HL and all will be fine BUT there is a concern that given you brought down 2013 due to MSFT that CH may believe that 14 is off as well and thus fairness opinion is exposed. The easiest resolve is for us to get yyou on phone with CH to explain rev shift as opposed to downward revision for 14. Other approach is for you to generate a rev model for 14 for internal consumption only that gets shared with CH asap. Which way do you want to go?

--

Juergen Stark
CEO



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Message

From: ken potashner [ken.potashner@gmail.com]
Sent: 7/19/2013 4:13:05 PM
To: Elwood Norris [elwoodnorris@cox.net]
Subject: Re: TB

I stopped fighting with you. When you attack me U cant help but respond. I am glad we are not married.
Qcomm dial in
: 1-805-309-0111, CONF ID 702422#

Who

ken

On Fri, Jul 19, 2013 at 9:02 AM, Elwood Norris <elwoodnorris@cox.net> wrote:
Ken,

You lie. You seem to have no idea what fiduciary duty even means.

If you want me on the Qualcomm call forward me the call in number. I have a doctor appt at 1:30pm.

Woody

From: ken potashner <ken.potashner@gmail.com>
Date: Friday, July 19, 2013 8:37 AM
To: Elwood Norris <elwoodnorris@cox.net>
Cc: Andrew Wolfe <awolfe@awolfe.org>
Subject: Re: TB

I absolutely have not!!! If Juergen asks me a question I will respond but my response is that We can address that with Andy.

You need to stop leaking information to Juegen and outsiders as we discussed. Total violation of your fiduciary responsibilities.

We have a very important call with Qualcomm today that could be a major opportunity for PAMT . D you plan on participating or is that not important to you anymore?

I am working around the clock on the deal while you are spending hours schemeing

As I have said repeatedly if you dont get aligned with me for the good of PAMT you will kill the deal and personally lose \$40M

Stop the BS and the attacks...

On Fri, Jul 19, 2013 at 8:06 AM, Elwood Norris <elwoodnorris@cox.net> wrote:
Ken,

It turns out you have been speaking with TB folks without Andy in on the conversation(s). I expressly remember the board having stated that you are NOT authorized to do that as it relates to the subject of HHI. Phone calls, emails, texts, etc. You are major conflicted on that matter.

Please start acting like you are working for PAMT, not yourself!

Woody

From: Ken <ken.potashner@gmail.com>
Sent: Tuesday, October 29, 2013 10:22 PM
To: Juergen Stark <juergen.stark@turtlebeach.com>
Cc: Daniel Hoverman, CFA <dhoverman@hl.com>; Ken Potashner <kpotashner@parametricsound.com>; Jim Barnes <JBarnes@parametricsound.com>; John Hanson <john.hanson@turtlebeach.com>; Karen Kenworthy <karen@stripesgroup.com>
Subject: Re: Front section of MDA

You are correct that many do provide guidance but in our case I think we are trying to recover still from some degree of confusion

Given you are not able to throw big numbers out there it would need to be subjective. Consider a simple paragraph titled 2014 outlook which has no numbers but simply states: 'Due to x,y, and z the company anticipates substantial revenue and profit growth.....'

Sent from my iPad

On Oct 29, 2013, at 10:13 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

I get that. Not sure how it is any different from other industry leaders who also haven't provided 2014 guidance. Everybody is guessing on those as well and with the proxy investors have very complete information on us including how well we are positioned. I completely get that it would be helpful to throw a big number out but then we have to deal with the next year. I'm open to input on this and would also like to not repeat the post DA issue.

By the way, we are working on a robust model to forecast next year based on multiple sets of external variables and then our internal estimates but it won't be possible to populate some key items on that until we see how holiday goes for Xbox (old and new), PS (old and new), and headset purchases.

On Tue, Oct 29, 2013 at 9:42 PM, Ken <ken.potashner@gmail.com> wrote:

I understand IDG

The section of q3 and 2013 forecast addresses the impact of deferring rev from q4 13 to q1 14 which is fine but we are lacking the strength of how well you are positioned for 14. I am advocating (but we probably won't get there) for a paragraph called '2014 outlook'. The trick is we are still leaving every one to guess. I understand you would need to. Make some guesses but they would be educated guesses.

I am looking to not repeat what happened when we did the Concall where we gave rev and no ebit. The more of the guesswork you take out the better

Sent from my iPad

On Oct 29, 2013, at 8:50 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

To be clear, that is IDG forecast of console unit sales growth. That will not tie directly to our growth since we grow with installed base, replacement, others factors, etc. We did some research and Activision and Gamestop have not provided any 2014 guidance (not even Q1). EA has but shows 2% growth so that's pretty useless. Analysts expect ATVI to post 11% growth in 2014. I checked two other proxy's like this and there is no forward guidance of any kind. So give me a more specific idea of what you would like to see. Given that 40% of our revenues have yet to come, guessing at next year doesn't seem useful and we'd just end up setting a very low bar.

On Tue, Oct 29, 2013 at 5:46 PM, ken potashner <ken.potashner@gmail.com> wrote:

I like the reference to IDG 46% growth for 2014. If there were opportunities to further indicate that magnitude of growth within other parts of the MD&A that would be beneficial. I still think we are light in articulating 2014 enthusiasm

On Tue, Oct 29, 2013 at 4:17 PM, Juergen Stark <juergen.stark@turtlebeach.com> wrote:

Attached is a new version of the MDA section prior to the financials and management discussion. The purpose of this section is to properly set the context for the financials. This is an extremely important section so in the interest of getting input ASAP, I'm sending it to you now even though finance and legal here have not yet reviewed it.

Please track changes and provide any comments. Don't focus on specific wording, just major themes or pieces of content that are missing or problematic.

Feedback needed ASAP.

Thanks

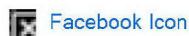
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CEO



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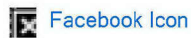
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