IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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| STOURBRIDGE INVESTMENTS LLC, individually and on behalf of all others similarly situated, | : | |
| Plaintiff, | : | |
| vs. | : | Civil Action No. 7300-VCL |
| EDWARD H. BERSOFF, KEVIN S. FLANNERY, JOHN H. SCHULTE, EDWARD J. SMITH, ANITA K. JONES, JOEL R. JACKS, JAMES R. SWARTWOUT, ATS CORPORATION, SALIENT FEDERAL SOLUTIONS, INC. AND ATLAS MERGER SUBSIDIARY, INC., | : | |
| Defendants. | : | |

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Chancery Court Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Tuesday, March 13, 2012
12:35 p.m.

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

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TELECONFERENCE ON PLAINTIFF'S MOTION TO EXPEDITE AND THE COURT'S RULING

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APPEARANCES: (via telephone)

RALPH N. SIANNI, ESQ.
SIANNI & STRAITE LLP
-and-
ROBERT L. HARWOOD, ESQ.
JAMES G. FLYNN, ESQ.
of the New York Bar
Harwood Feffer LLP
-and_
JOSHUA M. LIFSHITZ, ESQ.
of the New York Bar
Law Office of Joshua M. Lifshitz
for Plaintiff

DAVID J. TEKLITS, ESQ.
KEVIN M. COEN, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
for Defendants Edward H. Bersoff, Kevin S. Flannery, John H. Schulte, Edward J. Smith, Anita K. Jones, Joel R. Jacks, James R. Swartwout and ATS Corporation

GREGORY V. VARALLO, ESQ.
SCOTT W. PERKINS, ESQ.
Richards, Layton & Finger, P.A.
for Defendant Salient Federal Solutions

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THE COURT: Good afternoon, everyone. I'm sorry to keep you waiting. This is Travis Laster speaking.

ALL COUNSEL: Good afternoon, Your Honor.

THE COURT: Whom all do we have?

MR. SIANNI: Your Honor, this is Ralph Sianni, Delaware counsel for the plaintiff, Stourbridge Investments. And with me, I have Robert Harwood and James Flynn from Harwood Feffer and Joshua Lifshitz from the Law Office of Joshua Lifshitz as well.

THE COURT: Okay. Welcome, and who for the defendants?

MR. TEKLITS: Good afternoon, Your Honor. It's David Teklits from Morris Nichols. We represent the ATS defendants, and with me in my office is Kevin Coen.

MR. VARALLO: Good afternoon, Your Honor. Greg Varallo for the buyer Salient Federal Solutions, and with me in my office is my colleague Scott Perkins.

THE COURT: What is the nature of the claims asserted in the U.S. District Court for the

Eastern District of Virginia?

MR. TEKLITS: Yes. This is David Teklits, Your Honor. The claims are parallel except they added a 14(e) claim, but other than that, the claims are similar breach of fiduciary duty claims challenging the process and disclosure.

THE COURT: Who is the plaintiff's counsel in that case?

MR. TEKLITS: If you hold on one second --

MR. FLYNN: It's Evan Smith from Brodsky & Smith, Your Honor. They are located in Pennsylvania, Bala Cynwyd, Pennsylvania.

THE COURT: I am familiar with the Brodsky firm.

All right. For the defendants, you guys are telling me -- you are not opposing. You guys are telling me you think there is a colorable claim here?

MR. TEKLITS: Well, Your Honor, the Virginia action certainly changed the way we viewed the Delaware action. You know, our primary consideration is we only want to be going forward in one forum. The Delaware action was first filed, and

we think if we are going to go forward we want to go forward in Delaware. We weren't confident we could successfully oppose expedition in both jurisdictions, so we agreed to not oppose in Delaware and have moved to stay in Virginia based upon the pendency of the Delaware case.

THE COURT: All right. I understand that. Mr. Sianni or Mr. Harwood or Mr. Flynn or Mr. Lifshitz, does one of you want to explain to me why this is a case that should be expedited?

MR. SIANNI: Mr. Flynn will be addressing the Court, Your Honor.

MR. FLYNN: Thank you, Your Honor. James Flynn from Harwood Feffer. This is a two-part transaction as a merger for $3.20 per share. That tender offer is supposed to close on Monday, March 26, followed by a back-end merger.

We believe that they're claims here because, one, the valuation set forth in the 14D-9 seems to exclude all the things that make this exclusive, things that make this company more attractive and make it seem a little unattractive. The discount rate is particularly high. It's 60 percent higher than the industry that would make

the price seem good. The range of comparables they seem to include a low range and outlie that even though they exclude a high range outlier. In addition, the investment advisor seems to be taking all the compensation at the back end, let's say, of the 1.1 million or so dollars, and the fees here, 700 or 750 if the deal goes through. The company was shopped, but at one point in the process negotiations with third parties stopped, but it seemed like they were considering prices that were higher than the final offer of 320. Now there were some earnings downgrade during the period, but it's not clear why the company left behind a bidder who might have bid more. And of course, there is some termination provisions here as well. So the claims are for breach of fiduciary duty and aiding and abetting. We think the claims have merits. We think it warrants looking further into. The defendants have agreed.

And we are scheduled to begin the first deposition tomorrow morning, I think, of the -- one of the directors followed by an investment banker. We are still trying to nail down the location and availability of the investment banker. Apparently, I have been informed that there's only one person who

knows about this, of the investment banker side, and that person is out of the hemisphere or out of the country on a vacation with family during spring break, but that's what I've been told. So we think that there is reason to go forward in this case and to consider some of these issues, and the defendants have agreed.

THE COURT: All right. Thank you very much. I am going to deny the motion to expedite.

Here's my rationale. The plaintiff has moved for an expedited hearing on an application for preliminary injunction challenging an arm's length, third-party merger agreement. The total equity value of the transaction is approximately $74 million.

The ATS board approved this transaction after an extensive market canvass. ATS embarked on the sale process in January of 2011. With the assistance of its financial advisor, the company contacted 99 potentially interested parties. It entered into confidentiality agreements with 34. Four parties submitted indications of interest, and two made offers.

On February 21, 2012 -- so this is

after a little bit more than a year of the market knowing based on a press release that ATS was exploring strategic alternatives -- ATS and Salient announced their merger agreement. The merger agreement does contemplate a two-step tender offer with a top-up option. Notwithstanding Olson v. ev3, the plaintiffs have challenged the top-up option. I should say also notwithstanding Cogent.

The $3.20 price represents a premium of approximately 10.3 percent over the stock price on January 7th, the day before ATS publicly announced that it was evaluating strategic transactions. It's true that on February 17th, 2012, the day before the merger announcement, ATS's stock closed slightly over the deal price. During the intervening 52 weeks, throughout which the market understood that ATS was exploring strategic alternatives, the stock traded between $2.80 and $4.75. If you use these prices, you get anywhere -- you get the deal price being anywhere from a premium of 14.3 percent to a discount of 32.6 percent. But I think you can certainly -- it is certainly hard to suggest that this is an off-market deal given the way the market reacted over a year during which everyone understood that the company was

exploring strategic alternatives.

I have discretion to depart from the time periods contemplated by the Court of Chancery Rules. The party seeking an expedited schedule has to show good cause why that's necessary. When evaluating the request, this Court conducts a truncated determination of the merits and an examination of the necessity for prompt adjudication, and whether those are sufficient to impose on both the parties and also on the public and the Court, the increased burden an expedited proceeding entails. It should be clear that this requires balancing.

When ruling on a motion to schedule an expedited hearing, the Court applies a more particularized version of this test. The plaintiff has to articulate a sufficiently colorable claim. In other words, not just any claim will do. It has to be a sufficiently colorable claim to warrant expedition, and there has to be a sufficient possibility of threatened irreparable injury as would justify the scheduling, not just any possibility of irreparable injury, a sufficient possibility of irreparable injury. And in making those comments, I am paraphrasing the good Chancellor Allen from the

Snapple Beverage case.

Now in the oft-quoted words of Chancellor Allen -- I say oft-quoted because we see them in pretty much every motion to expedite -- "this court traditionally has acted with a certain solicitude for plaintiffs in this procedural setting and thus has followed the practice of erring on the side of more [expedited injunction] hearings rather than fewer." Chancellor Allen said that in 1994, which was shortly after we had been through a somewhat apocryphal Golden Age in which the plaintiffs challenging public company M&A transactions were principally competing bidders seeking merits relief to help them overcome barriers to an alternative and higher-value transaction that was nevertheless opposed by target's fiduciaries. And Chancellor Allen wrote those words during the nineties, which were perhaps an equally apocryphal but still something of a Silver Age in which when stockholders sought to litigate without a covering bid, they actually wanted to get merits relief and tried to obtain an injunction.

How quaint those days seem. As we know from scholarly studies, the past decade has witnessed a dramatic transformation in the nature of

public company M&A litigation. In 2010, 84.2 percent of announced deals attracted lawsuits. In 2010 and 2011, according to Cornerstone Research, 91 percent attracted lawsuits. According to the data for 2011, in the same study, 96 percent of deals valued at $500 million or more attracted lawsuits. That's compared to 53 percent in 2007.

As these volumes have increased, merits-related outcomes have decreased. So of the 447 transactions involving public companies valued at a $100 million plus, between 2005 and 2010 for which data is available, 69.8 percent resulted in a settlement. The remaining 135 were dismissed by the Court. So all of those were either settled or dismissed. Of the cases that settled, 74.7 percent were supplemental disclosures only -- and I'm drawing these stats from Mr. Davidoff's article. That was a sharp increase over 1999 through 2000 when, according to a study by Professors Thompson and Thomas, the rate of disclosure-only settlements was only 10 percent.

As I have observed, viewed against the background of these statistics, the increase in disclosure-only settlements is troubling. Disclosure claims can be settled cheaply and easily, creating a

cycle of supplementation that confers minimal, if any, benefits on the class. I don't think for a moment that 90 percent -- or based on recent numbers, 95 percent of deals are the result of a breach of fiduciary duty. I think that there are market imbalances here and externalities that are being exploited.

What this means is that this Court needs to think carefully about balancing. It's not impossible to defeat a motion to expedite. You simply have to make sure that you build the right record during your transaction planning. If you have an arm's length deal that involved a thorough pre-signing process, a reasonable suite of defensive protections that would be, frankly, acceptable under our cases in a single bidder scenario and really in terms of the amount of the termination fee is below median, and there's nothing pled to suggest any reason to suggest a loyalty taint or some type of concern about side dealing or anything like that, I don't think the parties or the Court should have to bear the burden of a preliminary injunction proceeding.

In terms of disclosure, again, this is an arm's length deal where the company was extensively

shopped, and therefore, there is true market evidence of what the price is. Under those circumstances, the total mix of information is materially different then when you are dealing with a single bidder scenario or a private equity bid or a go-private. Even given all of that -- now look, if I were looking over this set of disclosure documents, this TO and 14D-9, I would have comments. Some of those comments I would care a lot about. But what the plaintiffs have pled is not a disclosure claim.

The fact that the banker used a high discount rate is accurately disclosed. That's not a disclosure claim.

The fact that they excluded an outlying comp is disclosed. It's not a disclosure claim.

The banker fees are disclosed. That's not a disclosure claim.

This point about not -- about what's the likelihood of government contracts being renewed, that's a question. That's not a disclosure claim.

If people want to come forward with disclosure claims in the context of well-shopped arm's length deals, they should actually articulate real

disclosure claims.

Given the nature of the complaint and its significant weaknesses, I have to believe that this case is really a harvesting case not a litigating case. I am not going to facilitate leverage to create a harvest settlement in a case like this where there's been absolutely no colorable reason for anyone to be concerned about this deal.

The fact that the defendants have agreed to expedition, I think, is entirely logical given the fact that the Brodsky firm opened a second front. That doesn't mean that it is a good investment of social resources or this Court's resources to expedite something under these circumstances. So for all those reasons, I am denying the motion.

And I should say that to the extent the plaintiffs want to go forward, they can do so. There will be a motion to dismiss in due course. If I am wrong and there actually is a material disclosure problem here, there's always quasi-appraisal as a remedy. And I should say that quasi-appraisal comes in two flavors. There's statutory replication, and there's damages calculation. When I talk about quasi-appraisal as a remedy in this type of

proceeding, I am not talking about class-wide statutory replication. I am saying that if there is a sufficient claim of a disclosure violation that's proven and the directors are shown to have done so and committed that disclosure claim in a non-exculpable manner or the party responsible for the disclosure violation is a non-exculpated party, then you would have a pled and proven breach of fiduciary duty for which a remedy could be awarded. The remedy under that circumstance could be quasi-appraisal.

The goal of the quasi-appraisal would be to construct what the value of the company would have been independent of the deal, and if there could be proven damages in excess of the deal price, then, in that case, the plaintiffs could recover on a quasi-appraisal theory. I think that all these principles are outlined in Arnold v. Society of Savings, particularly in then-Vice Chancellor Chandler's decision on remand. This is not a concept of statutory replication where because someone messed up in sending out the statute everyone automatically gets a Section 262-like determination of fair value regardless of a showing of underlying breach. This is a situation where you have to show a breach of the

duty of disclosure then, because breaches of the duty of disclosure can be a result of care or loyalty, you would have to show it was a non-exculpated breach or that a non-exculpated party was responsible for the breach, then you have to get to the damages calculation. And when I refer to this quasi-appraisal concept, I am using damages calculation language not statutory replication language.

Nevertheless, the point remains, to the extent I am wrong about the profound weakness of this complaint and the failure of the plaintiff to plead any material disclosure violation, there is the possibility of a back-end remedy in the form of a quasi-appraisal damages determination should that be necessary.

For all these reasons, the motion to expedite is denied. I appreciate everyone getting on the phone and listening to me. Have a good day.

(Teleconference concluded at 12:55 p.m.)

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CERTIFICATE

I, CHRISTINE L. QUINN, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 16 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand this 13th day of March, 2012.

/s/ Christine L. Quinn
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Official Court Reporter
of the Chancery Court
State of Delaware

Certificate Number: 123-PS
Expiration: Permanent