

1 APPEARANCES: (via telephone)

2 PETER B. ANDREWS, ESQ.
3 DAVID M. SBORZ, ESQ.
4 Andrews & Springer LLC

-and-

5 ALEXANDER ARNOLD GERSHON, ESQ.
6 MICHAEL A. TOOMEY, ESQ.
7 of the New York Bar
8 Barrack, Rodos & Bacine
9 for Plaintiff

10 KATHALEEN ST. J. MCCORMICK, ESQ.
11 JORDAN ETH, ESQ.
12 Young, Conaway, Stargatt & Taylor LLP

-and-

13 MARK R.S. FOSTER, ESQ.
14 of the California Bar
15 Morrison & Foerster, LLP
16 for Defendants David Filo, Susan M. James,
17 Max R. Levchin, Marissa A. Mayer,
18 Thomas J. Mcinerney, Charles R. Schwab,
19 H. Lee Scott, Jr., Jane E. Shaw,
20 Maynard G. Webb Jr., and Yahoo! Inc.

21 STEPHEN P. NORMAN, ESQ.
22 TYLER J. LEAVENGOOD, ESQ.
23 Potter, Anderson & Corroon LLP
24 for Defendant Henrique de Castro

RAYMOND J. DICAMILLO, ESQ.
NICHOLAS R. RODRIGUEZ, ESQ.
Richards, Layton & Finger, P.A.

-and-

18 JENNIFER L. CONN, ESQ.
19 of the New York Bar
20 Gibson, Dunn & Crutcher LLP
21 for Defendants Susan M. James, Max R.
22 Levchin, Marissa A. Mayer, Thomas J.
23 McInerney, and Maynard G. Webb, Jr.

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(Continued)

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1 APPEARANCES CONTINUED:

2 ANDREW DUPRE, ESQ.
3 McCarter & English, LLP

4 -and-

5 JACK B. JACOBS, ESQ.
6 Sidley Austin LLP

7 -and-

8 SARA B. BRODY, ESQ.
9 KEVIN R. RUBINO, ESQ.
10 of the California Bar
11 Sidley Austin LLP
12 for Interested Party Special Litigation
13 Committee of Board of Directors of Yahoo!
14 Inc.

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1 THE COURT: All right. I'm going to
2 start over. This is Travis Laster speaking.

3 Let me apologize in the first instance
4 for keeping you all waiting. Sounds like I wasn't at
5 least keeping some people waiting who were belated
6 like I was.

7 So what I'd like to know is who is
8 going to be presenting. I'd like a Delaware person to
9 tell me who is going to be presenting for the
10 plaintiff.

11 MR. ANDREWS: Your Honor, this is
12 Peter Andrews from Andrews & Springer. Arnold Gershon
13 will be presenting. I believe he just got
14 disconnected. That's what you were hearing when it
15 said he left the conference. So I apologize. If we
16 give him one second, through the roll call, I assume
17 he will pick back up.

18 ELECTRONIC OPERATOR: The caller
19 Arnold Gershon and Mike Toomey has joined the
20 conference.

21 THE COURT: Right on cue.

22 All right. So I have the same request
23 for a Delaware counsel from the defendant, tell me who
24 is going to be presenting for their side.

1 MS. McCORMICK: Good morning,
2 Your Honor. This is Katie McCormick from Young
3 Conaway. And on behalf of Yahoo! Mark Foster from
4 Morrison & Foerster will be presenting.

5 THE COURT: Okay. And I know that the
6 defendant directors filed something short. Who from
7 Delaware is on for them and who will be speaking for
8 them if there is a need to add anything?

9 MR. DICAMILLO: Good morning,
10 Your Honor. It's Ray DiCamillo. Also on the line
11 from my office is Nick Rodriguez and Jennifer Conn
12 from Gibson Dunn & Crutcher. We don't expect to have
13 anything to say, but if we do either Ms. Conn or I
14 will take the lead on that.

15 THE COURT: All right. Great. Thank
16 you.

17 All right. Mr. Gershon, why don't you
18 go ahead.

19 MR. GERSHON: Okay. Thanks, Your
20 Honor. Good morning.

21 This is a motion to expedite
22 proceedings in connection with a motion for
23 preliminary injunction. And the standards governing a
24 motion to expedite, whether the movant has a colorable

1 claim and faces the prospect of immediate irreparable
2 harm, we submit that we fit both requirements.

3 The claim is colorable in that this
4 Court sustained the complaint last year. And the
5 argument made by the respondents on this motion that
6 the claim is not colorable is the fact that a special
7 litigation committee has submitted a report concluding
8 that the misdisclosure was not material. Our view
9 is -- our position is that a special litigation
10 committee report does not overrule a Court's decision.

11 There is a procedure under Zapata
12 against Maldonado to determine the effect of
13 subsequent reports, but that proceeding has not yet
14 happened, and so the report is just more like argument
15 from another party.

16 On the subject of the imminent harm,
17 the harm will occur on June the 8th if the proxy
18 statement is not supplemented to include corrective
19 disclosures, which was something that the Court
20 commented on at the hearing on the motion to dismiss.

21 And the misdisclosure concerns
22 severance pay of one of the officers. And coming up
23 next month, the stockholders are asked to vote on the
24 severance pay of at least one officer who was on the

1 board at the time of this disclosure complained of.
2 And this is exactly the sort of thing where the
3 disclosure would be important. So the harm is
4 imminent.

5 It would be irreparable because once
6 the meeting goes by, the stockholders will never have
7 another chance to vote on the compensation of these
8 officers, as the CEO, Marissa Mayer, is resigning from
9 the company, resigning from the board, anyway, when
10 the transaction closes. And so this is the last
11 chance that the stockholders of Yahoo! will ever get
12 to vote on her compensation.

13 Therefore, we submit that the motion
14 to expedite should be granted.

15 THE COURT: All right. Thank you.

16 Mr. Foster.

17 MR. FOSTER: Thank you, Your Honor.

18 Good morning.

19 First I'd like to address plaintiff's
20 argument that there's a colorable claim. There is not
21 a colorable claim asserted on this proxy. Plaintiff's
22 own motion points out that when shareholder action is
23 requested, the proxy must provide all material
24 information bearing on that decision. The proposal

1 then presents it to shareholders to vote on.

2 There is one thing that is not in
3 dispute today. That is, there is nothing that is
4 alleged to be false or misleading in any manner about
5 the proxy that was issued in connection with the
6 upcoming vote. Plaintiff's counsel did not address
7 that argument. That's the lead argument that we
8 presented in our brief. The reply brief didn't touch
9 on that either.

10 There's not a colorable claim related
11 to this coming proxy and the vote that is in less than
12 two weeks. There is therefore, on that basis alone,
13 no reason to expedite proceedings and have a
14 preliminary injunction motion in connection with this
15 vote.

16 Second, as plaintiff's counsel pointed
17 out, the standard requires an immediate irreparable
18 harm. There is no threat of immediate harm. The only
19 harm here has already transpired.

20 The alleged harm that transpired
21 occurred three years ago. Since that time, plaintiff
22 filed their complaint in April 2015. Two say-on-pay
23 votes have happened since then. At no time did
24 plaintiff attempt to expedite the remedy that she now

1 seeks. Those two votes passed.

2 Plaintiff's response presented in
3 their reply brief filed last night said that she
4 needed to wait until after this Court ruled to find
5 that she stated a conceivable claim. That does not
6 make any sense. Plaintiffs routinely come to this
7 Court to expedite proceedings before a motion to
8 dismiss is adjudicated. But even accepting
9 plaintiff's argument, that decision was rendered last
10 July, right about the same time that this Verizon
11 transaction was announced.

12 A couple months later, on
13 September 6th, Yahoo! issued its preliminary proxy.
14 In that proxy, it announced that there would be a
15 say-on-pay vote tied to the Verizon transaction. She
16 has had over 250 days since that time to expedite
17 proceedings. There's absolutely no reason why that
18 needs to be done now, let alone on an emergent basis.
19 Her delay is reason enough to deny the motion.

20 In her papers, she referenced some
21 recent settlement communications that she -- her
22 counsel initiated with us as if it's an excuse for why
23 she didn't bring this motion earlier.

24 On May 5, she contacted us to propose

1 a settlement. And of course, we considered that, as
2 it is our ethical obligation to do. But that is not
3 an excuse for her late-game fire drill today.

4 What this all amounts to is an attempt
5 by plaintiff to get an early summary judgment motion
6 on a disclosure claim relating to a 2014 proxy
7 disclosure that has no bearing on the 2017 proxy
8 disclosure.

9 Discovery, substantial discovery, and
10 document production was complete in January. If she
11 thought the time for a remedy was this vote, she could
12 have moved for an early summary judgment motion in
13 January or February or March or April. Instead, she
14 waited until May, prejudicing the ability of Yahoo!
15 and the other defendants to present their defense on
16 the merits.

17 There is absolutely no basis and no
18 precedent for using this as an opportunity to get an
19 expedited remedy where there is absolutely no dispute
20 that the proxy is not challenged on the basis of
21 falsity.

22 For these reasons, we ask the Court to
23 deny the motion to expedite.

24 THE COURT: Okay. Mr. DiCamillo, do

1 you or Ms. Conn have anything you want to add?

2 MS. McCORMICK: We have nothing to
3 add, Your Honor. Thank you.

4 THE COURT: Mr. Gershon, back to you.

5 MR. GERSHON: Thank you, Your Honor.

6 As to whether we are challenging the
7 right proxy statement, this Court stated at the
8 hearing on the motion to dismiss that one way to
9 resolve the issue of the disclosure in this case was,
10 and I quote from the Court, "You might want to take
11 into account, when you are voting for somebody today,
12 that when you were voting for something two years ago,
13 when they went out to describe someone's compensation
14 to you, they [described it] in ... a misleading way."

15 This is exactly what the Court
16 suggested and the reason why we make this challenge to
17 the current special meeting proxy statement.

18 As to the argument that we should have
19 done it earlier, challenging the disclosure in 2015
20 and 2016, according to Mr. Foster, there, too, we had
21 no quibble with the proxy statements for 2015 and
22 2016. If he is saying that we could have challenged
23 it then, then there is no reason why we can't
24 challenge it now.

1 And furthermore, we relied on the
2 discovery that we got after we survived the motion to
3 dismiss, and we incorporate that discovery into the
4 motion that we've made. And we quote specifically
5 from various documents that we have.

6 And indeed, we note that the directors
7 were seeking a way to minimize the effect of the
8 extraordinary severance given to Mr. de Castro and
9 that they were questioned by a number of stockholders
10 about it.

11 And we cite an e-mail in our motion
12 for preliminary injunction where Mr. Webb wrote an
13 e-mail saying, "Hard to believe we got a hall pass on
14 this one," speaking of the comments of Institutional
15 Shareholder Services on their disclosure concerning
16 severance.

17 Finally, the delay. We were
18 criticized for causing undue delay and criticized this
19 morning for having divulged settlement discussions,
20 which, according to Mr. Foster, we initiated.

21 First of all, you don't get to keep
22 settlement discussions confidential when you have to
23 challenge a contention of undue delay, which we've had
24 to do. And second of all, it's unfortunate that

1 Mr. Foster was not on that phone call where settlement
2 was first discussed. It was not we who broached it.
3 It was Jonathan Dickey, and he's not here today to
4 hear what I have to say and speak to it.

5 Therefore, we submit that the motion
6 for expedition should be granted.

7 THE COURT: All right. Thank you,
8 everyone, for your presentations this morning, as well
9 as your written submissions. I know a lot of work
10 went into those, particularly on the defense side.
11 You all presented me with a sizeable volume of
12 material.

13 I am denying the motion to expedite.
14 A decision on a motion to expedite is ultimately a
15 discretionary ruling. The plaintiff has to show both
16 a colorable claim and a threat of irreparable harm.

17 I am really not sure that this claim
18 is colorable. What we're talking about is an advisory
19 say-on-pay vote in connection with a transaction. The
20 claim is based on the details of the de Castro
21 compensation from several years ago.

22 I understand that what the plaintiff
23 is saying in terms of how this could figure in.
24 Indeed, as Mr. Gershon points out, I previously made

1 this observation. If someone has made incorrect
2 disclosures to you in the past or has made a decision
3 that you think is questionable in the past, you very
4 well could want to know that when making a decision
5 today.

6 To the extent that is hard for anyone
7 on the defense side to understand, think about how you
8 evaluate judges. I am sure that when you --

9 ELECTRONIC OPERATOR: The caller,
10 Kevin Rubino at Sidley, has left the conference.

11 THE COURT: I'm sure that when you see
12 that your case has been assigned to me, you sometimes
13 think, oh, this guy made such-and-such a decision
14 several years ago, and I'm not really sure I want him
15 on my case. So this is not really a hard concept to
16 grasp, but I think that here, the connection is more
17 attenuated because of the passage of time and because
18 of the different issues.

19 Also, quite frankly, I was thinking
20 about this type of relief as some type of
21 post-adjudication remedy. It seems to me that because
22 we're talking about intent and knowledge and belief,
23 the likelihood that I would issue some type of ruling
24 on this indirect disclosure issue as part of a

1 preliminary injunction is remote. I could even add an
2 adverb to "remote."

3 Similar considerations infect the
4 analysis of irreparable harm. There's just not, I
5 don't believe, a sufficiently strong link between the
6 underlying analysis of misdisclosure and what is going
7 on right now, particularly in the context of what we
8 have right now.

9 My view is also colored by the fact
10 that anyone who is alive and remotely cognizant of
11 business news has to be aware of the volume of
12 discussion around Yahoo! and its process and various
13 things going on there. I don't know what the truth of
14 any of that is, and I'm not suggesting that I have any
15 strong feelings about it. But what I do think, in
16 light of that, is that the de Castro disclosure, in
17 the context of what is already a boiling soup of
18 issues surrounding Ms. Mayer and Yahoo! and things of
19 that nature, is likely to be a disclosure of
20 relatively minimal importance.

21 Again, is it something that could be
22 remediable? Yeah, I think it could be remediable. Is
23 it something where I understand the logic of the
24 linkage? Yes. I've already told you that. But in

1 terms of balancing things out, this is not a situation
2 that calls for any type of expedited proceeding to
3 potentially stop the type of votes that we are talking
4 about on the basis of the type of claims that we are
5 talking about.

6 So for all those reasons, I am denying
7 the application.

8 I am also going to take the motion for
9 preliminary injunction out of my queue because it's
10 just not going to happen in light of my ruling on the
11 motion to expedite.

12 So the next point in this case is to
13 deal with the special litigation committee's motion.
14 I guess it's the company's motion based on the special
15 committee report. People should figure out a schedule
16 for doing that and moving forward.

17 Thank you, everyone, for getting on
18 the phone. I hope you all have a good Memorial Day
19 weekend and get to spend some time with your families.
20 And from the plaintiff's side, if there's any virtue
21 to my decision, it's that you don't have to now go
22 rushing off to conduct expedited discovery and can
23 actually spend some time with your families, which,
24 frankly, in the grand scheme of life, is more

1 important.

2 Everyone have a good day.

3 VARIOUS COUNSEL: Thank you, Your
4 Honor.

5 (Conference adjourned at 10:26 a.m.)

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CERTIFICATE

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I, JEANNE CAHILL, RDR, CRR, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 17 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 at Wilmington, Delaware, this 30th day of May, 2017.

/s/ Jeanne Cahill

Jeanne Cahill, RDR, CRR
Official Chancery Court Reporter
Registered Diplomat Reporter
Certified Realtime Reporter