



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE JEFFERIES GROUP, INC. : Consolidated  
SHAREHOLDERS LITIGATION : Civil Action No. 8059-CS

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Chancery Courtroom No. 12A  
New Castle County Courthouse  
500 North King Street  
Wilmington, Delaware  
Monday, November 4, 2013  
10:07 a.m.

- - -

BEFORE: HON. LEO E. STRINE, JR., Chancellor.

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ORAL ARGUMENT ON DEFENDANTS' MOTION TO DISMISS and  
RULINGS OF THE COURT

- - -

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CHANCERY COURT REPORTERS  
New Castle County Courthouse  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801  
(302) 255-0524

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## 1 APPEARANCES:

2 STUART M. GRANT, ESQ.  
MICHAEL J. BARRY, ESQ.  
3 JUSTIN K. VICTOR, ESQ.  
REBECCA A. MUSARRA, ESQ.  
4 Grant & Eisenhofer, P.A.  
-and-  
5 AMY MILLER, ESQ.  
of the of the New York Bar  
6 Bernstein, Litowitz, Berger & Grossmann LLP  
-and-  
7 PETER B. ANDREWS, ESQ.  
CRAIG J. SPRINGER, ESQ.  
8 Faruqi & Faruqi, LLP  
-and-  
9 JONATHAN M. STEIN, ESQ.  
of the Florida Bar  
10 Saxena White, P.A.  
for Plaintiffs  
11  
12 COLLINS J. SEITZ, JR., ESQ.  
BRADLEY R. ARONSTAM, ESQ.  
Seitz, Ross, Aronstam & Moritz LLP  
13 -and-  
14 JOSEPH S. ALLERHAND, ESQ.  
ROBERT S. RUFF, III, ESQ.  
of the New York Bar  
15 Weil, Gotshal & Manges LLP  
for Defendants Leucadia National Corporation,  
16 Limestone Merger Sub, LLC, Joseph S. Steinberg,  
and Ian M. Cumming  
17  
18 GREGORY V. VARALLO, ESQ.  
RICHARD P. ROLLO, ESQ.  
Richards, Layton & Finger, P.A.  
19 -and-  
20 BRIAN A. HERMAN, ESQ.  
of the New York Bar  
Morgan, Lewis & Bockius LLP  
21 for Defendants Richard B. Handler, Brian P.  
Friedman, Jefferies Group Inc., JSP Holdings,  
22 Inc., and Jasper Merger Sub, Inc.  
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Faruqi & Faruqi, LLP

-and- JONATHAN M. STEIN,ESQ. of the Florida Bar Saxena White,  
P.A. for Plaintiffs

COLLINS J. SEITZ, JR., ESQ. BRADLEY R. ARONSTAM, ESQ. Seitz,

Ross, Aronstam & Moritz LLP

-and- JOSEPH S. ALLERHAND, ESQ. ROBERT S. RUFF, III, ESQ.  
of the New York Bar Weil, Gotshal & Manges LLP

for Defendants Leucadia National Corporation, Limestone Merger  
Sub, LLC, Joseph S. Steinberg, and Ian M. Cumming

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Lewis & Bockius LLP

for Defendants Richard B. Handler, Brian P. Friedman, Jefferies  
Group Inc., JSP Holdings, Inc., and Jasper Merger Sub, Inc.

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1 MR. GRANT: Good morning, Your Honor.

2 THE COURT: Good morning, everyone.

3 ALL COUNSEL: Good morning, Your  
4 Honor.

5 THE COURT: Good morning, Mr. Seitz.

6 MR. SEITZ: Good morning, Your Honor.  
7 With me today is Joseph Allerhand, who you know well,  
8 from the Weil Gotshal firm, and, with the Court's  
9 permission, he'll be making the argument today.

10 MR. ALLERHAND: May it please the  
11 Court. Good morning, Your Honor. Joseph Allerhand on  
12 behalf of Leucadia and Joe Steinberg.

13 Your Honor, it's been a pleasure to  
14 work on this motion to dismiss. And I'm only sorry my  
15 colleague, Mr. Savitt, is not with us here. He did  
16 yeoman's work and working with Stu.

17 I think this is one of the rare  
18 motions, Your Honor, we have an opportunity to resolve  
19 some important doctrinal issues, in that I think both  
20 sides have cleared away the legal underbrush and have  
21 presented the issues in a way that they really are  
22 encapsulated. We see the issues as two, and we see  
23 them as distinct, Your Honor.

24 The first issue is what is the

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MR. GRANT: Good morning, Your Honor.

THE COURT: Good morning, everyone.

ALL COUNSEL: Good morning, Your Honor.

THE COURT: Good morning, Mr. Seitz.

MR. SEITZ: Good morning, Your Honor.

With me today is Joseph Allerhand, who you know well, from the Weil Gotshal firm, and, with the Court's permission, he'll be making the argument today.

MR. ALLERHAND: May it please the Court. Good morning, Your Honor. Joseph Allerhand on behalf of Leucadia and Joe Steinberg.

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I think this is one of the rare motions, Your Honor, we have an opportunity to resolve some important doctrinal issues, in that I think both sides have cleared away the legal underbrush and have presented the issues in a way that they really are encapsulated. We see the issues as two, and we see them as distinct, Your Honor.

The first issue is what is the

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1 standard under Delaware law for alleging a Lynch-like  
2 controller where you're not identifying one  
3 shareholder but you're grouping together a series of  
4 shareholders, directors, officers, and saying  
5 together, they're a controller, full stop? We think  
6 that issue is squarely presented here. We think it's  
7 been addressed in your PNB decision. It's been  
8 addressed elsewhere but never in terms of a unifying  
9 standard that you can know going into the boardroom  
10 what is the standard going to be. And I think it has  
11 real impact in terms of how far Lynch can go. Because  
12 the one thing we all agree on, both sides, on this  
13 motion, if this is not entire fairness, if this is a  
14 business judgment rule case, we win, it's  
15 game-set-match. There's no dispute that the merger  
16 was rational. It's not a Revlon transaction. There  
17 was a premium, Your Honor --

18 THE COURT: You know, it is  
19 interesting, I suppose, you know, if this were some  
20 sort of landmark thing. I suppose -- I don't view it  
21 quite as the binary switch that you-all do.

22 Why is it necessary for them to be a  
23 control block for me to refuse to dismiss a complaint  
24 for the breach of fiduciary duty of loyalty when the

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what is the standard going to be. And I think it has real impact in terms of how far Lynch can go. Because the one thing we all agree on, both sides, on this motion, if this is not entire fairness, if this is a business judgment rule case, we win, it's game-set-match. There's no dispute that the merger was rational. It's not a Revlon transaction. There was a premium, Your Honor --

THE COURT: You know, it is interesting, I suppose, you know, if this were some sort of landmark thing. I suppose -- I don't view it quite as the binary switch that you-all do. Why is it necessary for them to be a control block for me to refuse to dismiss a complaint for the breach of fiduciary duty of loyalty when the

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1 four folks on the board -- half the board, who  
2 basically did most of the important work on the  
3 merger, including negotiating the exchanges, each,  
4 their well-pleaded allegations, had interests that  
5 were not aligned with the public stockholders of  
6 Jefferies?

7 MR. ALLERHAND: Fair question.

8 THE COURT: I mean, it doesn't  
9 matter -- and, in fact, I think what is, in fact, pled  
10 is that the Leucadia affiliates understood -- and  
11 remember, you're at a stage where you've chosen  
12 voluntarily to take the least procedurally favorable,  
13 you know, standard on. So you don't get to, you know,  
14 argue what the actual facts may be after a trial.  
15 You're stuck with them. (Continuing)-- is that the  
16 two Leucadia guys knew that the two Jefferies guys  
17 desperately wanted these managerial positions, and,  
18 when it came to cutting the exchange ratio, used their  
19 insecurity about that as bargaining leverage; that the  
20 supposedly cleansing transaction committee not only  
21 came out of the bottle slower than the ketchup in the  
22 early '70s' commercial for ketchup, but once they  
23 actually were formed, you know, instead of being kind  
24 of hacked off -- and it's not clear, to be fair to

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four folks on the board -- half the board, who basically did most of the important work on the merger, including negotiating the exchanges, each, their well-pleaded allegations, had interests that were not aligned with the public stockholders of Jefferies?

MR. ALLERHAND: Fair question.

THE COURT: I mean, it doesn't matter -- and, in fact, I think what is, in fact, pled

is that the Leucadia affiliates understood -- and remember, you're at a stage where you've chosen voluntarily to take the least procedurally favorable, you know, standard on. So you don't get to, you know, argue what the actual facts may be after a trial. You're stuck with them. (Continuing)-- is that the two Leucadia guys knew that the two Jefferies guys desperately wanted these managerial positions, and, when it came to cutting the exchange ratio, used their insecurity about that as bargaining leverage; that the supposedly cleansing transaction committee not only came out of the bottle slower than the ketchup in the early '70s' commercial for ketchup, but once they actually were formed, you know, instead of being kind of hacked off -- and it's not clear, to be fair to

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1 them, how much they were fully told about how much  
2 they were not fully told for how long -- instead of  
3 then exercising adult supervision over the four folks  
4 who had freely gone on a frolic and detour without  
5 full board authorization, including sharing  
6 confidential nonpublic information with Leucadia and  
7 with ratings agencies without the knowledge of the  
8 entire board, then say, "You guys cut the price."  
9 (Continuing) -- I don't know why -- I'll give you a  
10 chance to answer it -- why in this context does this  
11 turn on some sort of grand doctrinal about Lynch as  
12 opposed to, frankly, you don't get business judgment  
13 rule treatment if there's a well-pled allegation that  
14 there's a duty of care breach; that you're trying to  
15 argue that the disinterested board members are a  
16 curative to the interested board members. The  
17 interested board members were allowed to do all this  
18 stuff.

19                   The plaintiffs have pled that the two  
20 Leucadia guys, kind of savvy, and, when it came to  
21 cutting the deal, reintroduced uncertainty about what  
22 the two Jefferies executives cared most about, thereby  
23 blunting their avidity to get the highest price. The  
24 board cleansing people weren't even present at the

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them, how much they were fully told about how much they were not fully told for how long -- instead of then exercising adult supervision over the four folks who had freely gone on a frolic and detour without full board authorization, including sharing confidential nonpublic information with Leucadia and with ratings agencies without the knowledge of the entire board, then say, "You guys cut the price."

(Continuing) -- I don't know why -- I'll give you a



chance to answer it -- why in this context does this turn on some sort of grand doctrinal about Lynch as opposed to, frankly, you don't get business judgment rule treatment if there's a well-pled allegation that there's a duty of care breach; that you're trying to argue that the disinterested board members are a curative to the interested board members. The interested board members were allowed to do all this stuff.

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1 negotiations. The negotiations were cut in one day.  
2 The committee's advisors had to do a rush job because  
3 they weren't engaged. Even though this transaction  
4 started to be talked about in April, they were not  
5 engaged until autumn.

6                   So let me just say before we get into  
7 the grand stuff, just tell me on the particulars --  
8 and realizing that they just have to plead facts that  
9 support a reasonably conceivable set of circumstances  
10 in which some of the defendants breached their duty of  
11 loyalty.

12                   MR. ALLERHAND: Thank you. Candid as  
13 always, and I appreciate it. And let me --

14                   THE COURT: And that's what's on my  
15 mind. And this is a 12(b)(6).

16                   MR. ALLERHAND: Let's try to unpack it  
17 and how we see it and, frankly, how it was briefed by  
18 both sides, because we take the complaint as it is.

19                   The complaint's path to entire  
20 fairness is not the path which says that there was a  
21 majority of conflicted directors here, so you don't  
22 have to get into the controller Lynch. They have pled  
23 and they have briefed that the way they get to entire  
24 fairness is through the Lynch roadway. And they were

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negotiations. The negotiations were cut in one day. The committee's advisors had to do a rush job because they weren't engaged. Even though this transaction started to be talked about in April, they were not engaged until autumn.

So let me just say before we get into the grand stuff, just tell me on the particulars -- and realizing that they just have to plead facts that support a reasonably conceivable set of circumstances

in which some of the defendants breached their duty of loyalty.

MR. ALLERHAND: Thank you. Candid as always, and I appreciate it. And let me --

THE COURT: And that's what's on my mind. And this is a 12(b)(6).

MR. ALLERHAND: Let's try to unpack it and how we see it and, frankly, how it was briefed by both sides, because we take the complaint as it is. The complaint's path to entire fairness is not the path which says that there was a majority of conflicted directors here, so you don't have to get into the controller Lynch. They have pled and they have briefed that the way they get to entire fairness is through the Lynch roadway. And they were

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1 correct about that, because there is no dispute that a  
2 majority of this board, whether the denominator is  
3 six, which we believe it should be under Delaware law,  
4 given that the two Leucadia directors recused  
5 themselves --

6 THE COURT: Oh, come on. I mean,  
7 seriously, we're so -- I mean, I don't want to be  
8 impatient, but I'm going to be.

9 MR. ALLERHAND: It's okay.

10 THE COURT: The two Leucadia directors  
11 recused themselves from the Jefferies vote approving  
12 the merger.

13 MR. ALLERHAND: From the  
14 deliberations, Your Honor, not just the vote.

15 THE COURT: The deliberations. They  
16 did not recuse themselves from cutting up the  
17 managerial -- they were fiduciaries of Jefferies.

18 MR. ALLERHAND: But they chose sides,  
19 Your Honor. I mean, that happens in any -- the  
20 plaintiffs allege in their papers --

21 THE COURT: When did they tell the  
22 independent directors of Jefferies that they chose  
23 sides?

24 MR. ALLERHAND: They told the CEO and

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plaintiffs allege in their papers --

THE COURT: When did they tell the  
independent directors of Jefferies that they chose  
sides?

MR. ALLERHAND: They told the CEO and

CHANCERY COURT REPORTERS

1 the president of Jefferies.

2 THE COURT: I just asked -- what did I  
3 just ask you?

4 MR. ALLERHAND: They didn't  
5 participate --

6 THE COURT: I asked you when they told  
7 the independent directors of Jefferies that they had  
8 chosen sides.

9 MR. ALLERHAND: Those are the  
10 plaintiffs' words, by the way. And they did not  
11 attend any of the meetings --

12 THE COURT: Well, wait a minute. What  
13 is the plaintiffs' words?

14 MR. ALLERHAND: The "chosen sides"  
15 phrase. It's used in their opposition --

16 THE COURT: I thought you just said --

17 MR. ALLERHAND: I did use those words.

18 THE COURT: I mean, the point is -- I  
19 understand your point, which is they declared  
20 themselves Leucadia.

21 MR. ALLERHAND: Right.

22 THE COURT: But when did the  
23 declaration come?

24 MR. ALLERHAND: When they were absent

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THE COURT: Well, wait a minute. What is the plaintiffs' words?

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MR. ALLERHAND: I did use those words.

THE COURT: I mean, the point is -- I understand your point, which is they declared themselves Leucadia.

MR. ALLERHAND: Right.

THE COURT: But when did the declaration come?

MR. ALLERHAND: When they were absent

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1 from every single board meeting --

2 THE COURT: No, no. When did the  
3 declaration come? Because it is -- I believe the  
4 facts, as pled, indicate that Leucadia received  
5 confidential nonpublic information before the entire  
6 board was told about the prospects of a merger. These  
7 two gentlemen were fiduciaries of Jefferies. They  
8 were directors.

9 I also believe there was indication  
10 that the rating agencies were given things before the  
11 full board was told; correct?

12 MR. ALLERHAND: I think there are  
13 allegations to that effect.

14 THE COURT: Well, you're stuck with  
15 allegations. See, that's the point. That is what we  
16 assume to be true, when there are specific -- and  
17 these are not cursory allegations. There's specific  
18 factual allegations.

19 MR. ALLERHAND: So let's accept them  
20 all as true.

21 THE COURT: Right. So what you're  
22 telling me is that the people that they told -- were  
23 there board meetings at Jefferies during this period?

24 MR. ALLERHAND: What I'm saying, Your

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