

Case: Omnicare

Interview of Edward P. Welch

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Interviewer: **Elissa Habbart**, Delaware Counsel Group

Wednesday, September 26, 2018, Wilmington, DE

#00:00:20#

1 MS. HABBART: Ed, thanks so much for your time
2 today. This Omnicare case is quite a story to tell. So, why
3 don't we begin with the simple question of when you entered
4 this story.

5 MR. WELCH: Yeah, it goes back now about 16 years, I
6 think. So, my recollection is not precise; however, I'm quite
7 certain we were in by the beginning of September, September 4,
8 I think it was.

9 MS. HABBART: But that was already after the merger
10 agreement had been entered into and the fighting had begun.

11 #00:00:56#

12 MR. WELCH: Yep, the merger agreement was actually
13 signed up, I think, on July 28, and we got in maybe late
14 August, or early...but it was certainly by early September.

15 MS. HABBART: So, you weren't involved at the point
16 where they were negotiating the terms? #00:01:10#

17 MR. WELCH: Elissa, we were not.

18 MS. HABBART: What was your impression of the
19 parties when you came into the story, Ed? #00:01:18#

1 MR. WELCH: Well, my impression of the directors,
2 Elissa, was very, very positive. My instinct was that these
3 folks were highly motivated. They very much wanted to do the
4 right thing, and they wanted to do it in the very difficult
5 circumstances with which they were confronted. As I know
6 you're well aware, NCS, a pharmaceutical company, this was a
7 2002 timeframe, and the company was characterized in various
8 places as being on the brink of bankruptcy. The company was
9 heavily shopped by UBS. They were exploring alternatives and
10 did so aggressively. And really, the shopping to 50, or
11 perhaps more, potential buyers was not overwhelming. They
12 didn't have overwhelming results.

13 MS. HABBART: And Omnicare's proposal during that
14 time was simply to buy them out of bankruptcy, and therefore
15 shareholders would get nothing, is that correct? #00:02:21#

16 MR. WELCH: Yeah, that's basically right. Omnicare,
17 Elissa, proposed what was characterized in various places,
18 various forums, as a fire sale. It was an asset sale in
19 bankruptcy that really did not pay creditors in full and
20 beyond that provided nothing to stockholders. So, back to your
21 first question, my instinct was that the Board was very
22 concerned about that and wanted to see that they explored and
23 went after the best transaction they could to try to get some

1 value for stockholders and, indeed, more value for creditors,
2 if they could get it. That's my recollection.

3 MS. HABBART: And they did...in that merger
4 agreement. They did get something better than they had ever
5 been offered before. #00:03:08#

6 MR. WELCH: You're right; they did. Along came
7 Genesis, and Genesis offered additional payments to creditors
8 and, if memory serves, about 24-million in value, in equity
9 value-

10 MS. HABBART: Right.

11 MR. WELCH: To stockholders. So, it was a quite
12 favorable result of the Board's efforts at that point.

13 MS. HABBART: Yeah, the creditors would all be paid,
14 and business could go on as usual. #00:03:36#

15 MR. WELCH: After the acquisition, I think that was
16 basically correct. That's what, I think, the Board was
17 thinking at that point.

18 MS. HABBART: And there was nothing else on the
19 table at that point. #00:03:47#

20 MR. WELCH: At that point, that's correct.

21 MS. HABBART: So where does the dispute come from?
22 #00:03:53#

23 MR. WELCH: Well the dispute comes from I think the
24 fact that... along came Genesis again, and ultimately, I think

1 that happened in July, and they came along after the deal was
2 signed up on July 28-

3 MS. HABBART: Right.

4 MR. WELCH: -- and asked ... and wanted to negotiate
5 more. Now, at that point-

6 MS. HABBART: Right. But again, it was due
7 diligence... contingent upon satisfactory due diligence, and
8 that merger--again, let's just clarify that again. #00:04:31#

9 MR. WELCH: Sure.

10 MS. HABBART: The Board already entered into that
11 merger agreement that ... the time it entered into that merger
12 agreement that was the only game in town, was Genesis.

13 #00:04:42#

14 MR. WELCH: Well, that's right. In terms of the only
15 game in town, in terms of the consideration to stockholders
16 and that sort of thing-

17 MS. HABBART: And creditors, right. #00:04:49#

18 MR. WELCH: Right. The deal was actually signed up
19 on July 28, as I recall. Genesis actually surfaced again, I
20 think, on July 26; again, we're going back 20 years or 16
21 years or-

22 MS. HABBART: No, of course, I understand.

23 #00:05:01#

1 MR. WELCH: -- but they surfaced on the 26th. They
2 wanted to talk and, at that point, Genesis had an exclusivity
3 agreement. Genesis said it would walk if the matter wasn't
4 resolved and it wasn't resolved promptly. So, they hadn't
5 actually signed up at that point. This was before the evening
6 of the 26th. And, of course, Genesis had a July 28 midnight-

7 MS. HABBART: Deadline. #00:05:32#

8 MR. WELCH: -- deadline ... drop dead date, exactly.

9 MS. HABBART: By the way, your recollection of 16
10 years ago is right on the money. It was July 26, and it's
11 described as after not communicating - this is Omnicare -
12 after not communicating directly with NCS for almost five
13 months - Omnicare sends NCS a "highly conditional indication
14 of interest." #00:05:54#

15 MR. WELCH: Right.

16 MS. HABBART: What does that mean? You know, when
17 you have a solid offer in front of you versus a highly
18 conditional potential offer? #00:06:06#

19 MR. WELCH: A legitimate question for you to ask,
20 Elissa. I agree. So that was the circumstances they were faced
21 with on July the 28th. Omnicare had only offered, as you
22 pointed out earlier, an asset sale and bankruptcy with no
23 payment to stockholders and limited payments to creditors. So,
24 what happened was on the twenty-eighth, the agreement between

1 NCS and Genesis was signed up. Now that included, by the way,
2 voting agreements, which we've talked about with the two key
3 stockholders, Outcalt and Shaw and-

4 MS. HABBART: Did you think they were a problem when
5 you first looked at the matter? #00:06:48#

6 MR. WELCH: Do you mean-

7 MS. HABBART: The background? The fact that there
8 were voting agreements? #00:06:52#

9 MR. WELCH: Well, I certainly understand that that
10 was the kind of thing that, if you were in Genesis' spot - and
11 they had some prior experience with Omnicare as well - and the
12 impression that I got was that the relationship between the
13 two parties was not necessarily great. It doesn't surprise me
14 at all that, at that point in time, that Genesis wanted
15 certainty-

16 MS. HABBART: Absolutely.

17 MR. WELCH: -- and asserted, essentially, that it
18 was going to walk if it didn't get that certainty. And, of
19 course, the risk - and I do think the case is ultimately very
20 much about risk - the risk was that Genesis would do exactly
21 what it said it was going to do, which was to walk away from
22 the transaction. But that isn't what happened at that point in
23 time. They signed up the deal, and it basically went forward
24 from there. Now, shortly after that, August 29, Omnicare made

1 a conditional proposal subject to due diligence. August 1,
2 Omnicare, I think, launched its tender offer. Now much later
3 than that in the year -- in October of 2002 -- Omnicare
4 committed at that point to what they, I believe, characterized
5 as an irrevocable offer.

6 MS. HABBART: Yes, but that was how long after?

7 #00:08:22#

8 MR. WELCH: That was I believe October 6, 2002 ... so,
9 we're months away from that.

10 MS. HABBART: Right. So, Genesis was nothing more --
11 if you would have not put the protections in place, Genesis
12 would have been nothing more than a stalking horse. #00:08:40#

13 MR. WELCH: I think that's right and, indeed, that
14 was the--

15 MS. HABBART: And who wants that?

16 MR. WELCH: -- they articulated that point very
17 clearly. They did not want to be a stalking horse for Omnicare
18 or for anybody else, and they wanted certainty in the deal,
19 and they offered some very, very substantial value in exchange
20 for that certainty. Obviously, as you pointed out earlier,
21 stockholders would have gotten nothing out of the original
22 Omnicare discussion proposal. Creditors would have come up
23 short, and that was largely addressed by the July 28 proposal
24 with Genesis being accepted.

1 MS. HABBART: So, the Court of Chancery's initial
2 opinion, their decision with respect to the matter was, you
3 know, obviously was consistent with your thinking. #00:09:32#

4 MR. WELCH: Well, that opinion came out the way we
5 had hoped.

6 MS. HABBART: Right.

7 MR. WELCH: The Vice Chancellor, as I recall, staked
8 out the position that the Genesis proposal was far superior to
9 Omnicare's at that point in time.

10 MS. HABBART: At that point...right. #00:09:50#

11 MR. WELCH: And, of course, they were looking, from
12 a legal standpoint, at the point of time where the Board was
13 acting, and the Board was considering its alternatives and the
14 Board was trying to do fundamentally the right thing. So,
15 obviously, the court said that it viewed the proposal as far
16 superior. But, at the same time, the court articulated what I
17 think the Board perceived earlier, which was the risk that the
18 Board and the stockholders and the creditors faced, that
19 Omnicare, if they hadn't proceeded in the way that they did,
20 might have rescinded its proposal.

21 MS. HABBART: Absolutely. #00:10:29#

22 MR. WELCH: Had the Board recommended against
23 Omnicare - and there really wasn't another option, there was
24 no other way out-

1 MS. HABBART: They'd be sued for that. #00:10:44#

2 MR. WELCH: Exactly, no that-

3 MS. HABBART: That would be a breach.

4 MR. WELCH: Yeah. So, in any event, the bottom line
5 from, I think, the Court of Chancery's standpoint was there
6 was no probability of success on the merits. *Revlon*, the court
7 said, wasn't applicable. It was ultimately going to be a
8 combined company that was owned by its stockholders, and it
9 was under the *Arnold vs. Society for Savings* analysis. It was
10 control over it resided in the fluid aggregation of public
11 stockholders. The Board complied with its fiduciary duty to
12 creditors, properly focused on creditors, properly complied
13 with its duty of care, something that was obviously missing
14 later-

15 MS. HABBART: And the merger agreement even had
16 provisions in it where, if there was a real option that arose,
17 that the Board could consider it. And the problem was nothing
18 arose that was certain until well after the fact. #00:11:50#

19 MR. WELCH: Well, I don't have any recollection that
20 there was anything that prohibited the Board from looking at
21 evaluating proposals as they came in ... however, at the same
22 time, the transaction - the ability to go to another
23 transaction, at that point, would have been problematic with
24 respect to the Genesis merger.

1 MS. HABBART: If my recollection is correct, the
2 Genesis Board could move forward and have a discussion with
3 another party **if** it first determined that there truly was a
4 better offer. And that to me is - tells me that the Board was
5 complying with its fiduciary duties when it entered into the
6 merger agreement because it contemplated or directed what
7 would have to be done under those circumstances. #00:12:41#

8 MR. WELCH: Elissa, what I can say again, based upon
9 this look back that we're trying to do here, is that that
10 Board was focused - and by the way, to a certain extent, this
11 is reflected in the, not only the Vice Chancellor's decision,
12 but I think to a large degree, the majority decision in the
13 Supreme Court as well as, certainly, the two dissenting
14 justices, Justice Veasey and Justice Steele, I think this was
15 a Board that was independent, was careful, was loyal, explored
16 its alternatives, was dealing with a very, very difficult
17 situation and did the very best it could under the
18 circumstances. And I think the Vice Chancellor in his opinion
19 in November where he denied preliminary injunctive relief - I
20 think his analysis reflects that.

21 MS. HABBART: And the Supreme Court noted too, it
22 adopted all the facts that were established in the Court of
23 Chancery. #00:13:36#

1 MR. WELCH: I think that's right. I think Justice
2 Veasey made a point of that--

3 MS. HABBART: Yes.

4 MR. WELCH: -- but there really were, Elissa, no big
5 factual disputes here.

6 MS. HABBART: Right.

7 MR. WELCH: The factual issues were almost non-
8 existent. The question was, I think, and, as I said, Justice
9 Steele, Justice Veasey, they were very strong on this, but the
10 real question was the risk that the Board was faced with at
11 that time it entered into the agreement and what was right for
12 stockholders in light of those risks, that the stockholders
13 might end up with nothing.

14 MS. HABBART: So, what was your reaction when you
15 saw the Supreme Court's opinion? Let's talk about the majority
16 -- the majority's opinion. #00:14:22#

17 MR. WELCH: I view the case as one that, as I've
18 said a few times here today, was fundamentally about risk.

19 MS. HABBART: Right. #00:14:37#

20 MR. WELCH: And I was asked by Justice Holland at
21 the argument about why the Board didn't simply say "no" when
22 it came to essentially locking up the deal. And, ultimately,
23 the answer to that was, had they done that, the very risk that
24 they talked about, they focused on, and they worried about --

1 that stockholders ended up with nothing and creditors ended up
2 with less than they ended up with under the Genesis deal -
3 could very easily come to pass. All right, now-

4 MS. HABBART: Do you think they were saying that
5 there's not - there's no circumstance in which a Board should
6 lock up to protect themselves? I mean it would seem to me this
7 would be the perfect circumstances. #00:15:21#

8 MR. WELCH: Elissa ... I understand your viewpoint
9 on that. I have high respect for that viewpoint. I think
10 you're analyzing it correctly. My reaction to the Supreme
11 Court's decision, the majority decision, was that I had
12 difficulty with reconciling it with the duty of care. Why?
13 Because, again, as you and I both well know, your duties as a
14 director -- care, loyalty, and good faith -- but there was
15 never really a question about loyalty. There wasn't a question
16 about good faith.

17 MS. HABBART: No. #00:15:53#

18 MR. WELCH: People were trying to do the best they
19 could. But it was a question about - I think - fundamentally
20 the duty of care and the direction out of the Supreme Court
21 was you must have - you must have a fiduciary out. You got to
22 do that. Now, I asked myself at the time - and I think Justice
23 Steele and Justice Veasey did the same thing, you know, how
24 that could necessarily work in this context where Genesis says

1 look, we're prepared to put money on the table, good hard
2 cash, and really favorable terms. And they said we're not
3 going to be a stalking horse. That's-

4 MS. HABBART: That's right.

5 MR. WELCH: -- that's it - that's clear from the
6 start. So, how one goes about preserving those rights for
7 stockholders as economic rights and, at the same time, saying
8 well, if Omnicare decides that it's going to do something,
9 even though it hasn't; it hadn't and, at that point, you know,
10 I mean at least when the deal was signed up, it hadn't done
11 that.

12 MS. HABBART: Sure. #00:17:01#

13 MR. WELCH: That was problematic for me. I have to
14 confess, as it was obviously for-

15 MS. HABBART: For the dissent.

16 MR. WELCH: For the dissent.

17 MS. HABBART: But you know what? Boards, do they
18 not, enter into contracts all the time where economics falls
19 apart, economies fall apart if you can't enforce the terms of
20 an agreement. There can always... . Circumstances can always
21 arise that, somehow, you would look at a contract and say
22 maybe it's not the greatest thing for the company right now,
23 but a deal is a deal. We made this deal at a time we thought
24 it was right. Did this necessity of a fiduciary out, I'm not

1 sure how you square that with contracts in general, that a
2 Board - that a company enters into that are approved by a
3 Board or officers. #00:17:54#

4 MR. WELCH: I think obviously, to the extent that
5 the Board was able to negotiate an agreement that had a
6 fiduciary out in it, that could work under those
7 circumstances. But, you're right. In the very difficult
8 circumstances that this Board was faced with, with the company
9 being basically bankrupt with the alternative being nothing
10 for stockholders, with the alternative being limited, less
11 lucrative recovery for creditors, I think, you know, to take
12 that chance and to say, when Genesis made very clear they were
13 going to walk, that they had an exclusivity agreement, and
14 they had a drop-dead date of July 28.

15 MS. HABBART: Ed?

16 MR. WELCH: Yeah.

17 MS. HABBART: You know when you talk about the
18 Supreme Court making a statement to the effect that you need a
19 fiduciary out-

20 MR. WELCH: Right.

21 MS. HABBART: -- if my recollection is correct, the
22 merger agreement did contain, what I would consider in any
23 event, a fiduciary out. If my recollection is correct, it
24 basically allowed the Board of NCS to speak to another bidder

1 if they came with a real – a real offer that was potentially
2 better. And that they could change their recommendation.

3 #00:19:18#

4 MR. WELCH: All right, well let's break it down this
5 way. I do believe that they could change their recommendation.
6 They had that ability. And, indeed, as you look down the road,
7 after Omnicare on October 6, put a firm offer on the table
8 that said it was not going to be revocable. They, indeed,
9 after that, they did that, and they did say we prefer that the
10 stockholders get three-fifty as compared with a dollar sixty-

11 MS. HABBART: Which is wonderful in October but that
12 wasn't there in July. #00:19:53#

13 MR. WELCH: That's right. But on the other hand, did
14 they have the ability to say that? They not only had it but
15 they, in fact, they exercised it. But, at the same time, you
16 will recall – and I know you do – that there were certain
17 provisions pursuant to which the stockholders, two Board
18 members, in fact, Shaw and Outcalt, had about 65-percent of
19 the vote.

20 MS. HABBART: Right. #00:20:15#

21 MR. WELCH: And they signed lock-up agreements to
22 vote in favor of the Genesis deal. Okay, so that being the
23 case, even though the Board was able to say that the price was
24 better, that ultimately Omnicare decided to put on the table,

1 but it wasn't available to stockholders. That's what the
2 preliminary injunction application before Vice Chancellor Lamb
3 was about, and that's ultimately -- which of course he denied
4 because he thought that they had done the right thing at the
5 time they signed up the deal on the twenty-eighth because it
6 was the best deal on the table. Indeed, Justice Walsh -- pardon
7 me, Justice Veasey and Justice Steele said the same thing --
8 that the Board did the right thing. But at the same time, the
9 deal itself wouldn't come unwrapped as a result of that. Vice
10 Chancellor Lamb said he agreed with that and supported the--

11 MS. HABBART: Yes.

12 MR. WELCH: -- or agreed to a denial of the
13 preliminary injunction. When it got to the Supreme Court, the
14 Supreme Court took a different view. And that's how the door
15 was effectively opened.

16 MS. HABBART: If you accept the premise that there
17 was a fiduciary duty out in the merger agreement ... did the
18 combination of the voting agreements and the irrevocable
19 proxies give you pause? Or did you think that they would not
20 just give you pause, but did you expect that the Supreme Court
21 would focus on that so much? #00:21:46#

22 MR. WELCH: Elissa, to me the whole case is all
23 about risk analysis. And I think the Board has to play the
24 hand it's dealt when it's dealt. That's exactly what they did.

1 And in doing what they did, they took what was a real
2 difficult, challenging economic circumstance and turned it
3 into something of very substantial value.

4 MS. HABBART: Agreed.

5 MR. WELCH: Twenty-four million dollars in terms of
6 equity value to the stockholders alone. All right, so...

7 MS. HABBART: Nothing or a dollar-sixty or so a
8 share... #00:22:24#

9 MR. WELCH: Did I think the Vice Chancellor was
10 correct? Yes. Did I think that? Yeah. I did. I did think that.
11 When we got to the Supreme Court, as I indicated, I did take
12 some pressure about, you know ... why you didn't just say no.
13 And, of course, the answer to that we have already discussed.
14 We've already talked about. Was I a little bit surprised?
15 Sure, of course, I was. At the same time, and you know this as
16 well as anybody, when you're arguing one of these things, you
17 kind of have to, you know, you recognize that anything can
18 happen and sometimes it does. And, of course in this
19 circumstance, it did. All right, so, the bottom line was the
20 Supreme Court did enjoin the deal, and as I think you know as
21 well as anybody, what that did was open it up to further
22 developments-

23 MS. HABBART: Of course.

1 MR. WELCH: -- and the three-fifty or three-sixty,
2 ultimately, became five-fifty. And the deal was done
3 essentially on that basis. Now, at the same time, I asked
4 myself -- first of all, I do believe the opinion is really all
5 about risk -- but I asked myself, okay, the risk was that
6 Genesis might walk. Seemingly, the analysis is, you still need
7 a fiduciary out. Too bad. Which means you might not have
8 gotten the Genesis deal. If you didn't get the Genesis deal,
9 you might not have gotten the Omnicare deal either because
10 based upon their track record, they were looking for an asset
11 sale -- a 363 asset sale in bankruptcy; so, that was a problem.
12 But nevertheless, you still had to have a fiduciary out.

13 MS. HABBART: And I would argue there was, but that
14 the court seemed to focus on these voting agreements and
15 proxies. But again, the voting agreements and proxies were
16 done by these shareholders acting in their capacity as
17 shareholders with no conflict because arguably, they would
18 walk away with nothing. They weren't going to approve or lock
19 themselves up for a bad deal. They wanted shareholders to get
20 something, and they wanted creditors paid. And that's
21 independent of the Board. #00:24:44#

22 MR. WELCH: Yes. Yes, I understand that. I don't
23 doubt that's the case. Of course, Mr. Shaw and Outcalt were
24 two of the four directors, right? So, they were involved in

1 this process too. Although the other two, Sells and Mr.
2 Osbourne were - comprised a special committee that obviously
3 performed that role in the process. But Mr. ... well, the two
4 directors who signed the voting agreements that had the 65-
5 percent-

6 MS. HABBART: Yes.

7 MR. WELCH: -- in the view of the court, the Court
8 of Chancery, essentially locked up the deal. The Chancery
9 would say for a good reason and under the correct and proper
10 circumstances, compliance with fiduciary duty; the Supreme
11 Court said no, and I accept that.

12 MS. HABBART: Of course, you accept that. And I
13 suppose my, my ... what troubles me about this is that it took
14 Genesis going to the mat on this and getting a deal and then a
15 couple months later Omnicare comes in. Those are untenable
16 circumstances. I think when you're managing some - a
17 negotiation where you think that I am working hard to get
18 these terms, right? A deal is a deal. But then, somebody else
19 can come along in the last minute and cause my deal to
20 unravel. #00:26:11#

21 MR. WELCH: I understand. One reading, I suppose, of
22 the Delaware Supreme Court's opinion is that's the way it is.
23 That's life. In other words, you know... but I think the

1 consequence of that, that we have to be mindful of, is that,
2 at the time the Board was dealing with these issues, right?

3 MS. HABBART: Yes.

4 MR. WELCH: -- Right? Had they not done what Genesis
5 demanded, in essence, in order to get the high value for
6 stockholders - the value of any sort from stockholders because
7 the stockholders weren't going to get anything, right? They
8 had to go along with this. Now, if they hadn't done it, if
9 they had said to themselves, we got to have a fiduciary out,
10 what would have happened? What could have happened? Nobody
11 knows. Nobody knows for sure. However, it's all about risk
12 analysis. I think that's what the duty of care is about, in my
13 judgment, right? So, the risk that they faced was Omnicare
14 goes back into bankruptcy. They take the company back into the
15 363 bankruptcy proceeding and, potentially, stockholders get
16 nothing. I think, as I look - as I read the opinion of the
17 Supreme Court -- I think that doesn't matter. I think they
18 have to always have to have a fiduciary out. That's how I read
19 the opinion. I could be wrong about that. I'd like to be wrong
20 about that because I don't like to see that I might have to
21 deal with it again at some point.

22 MS. HABBART: And I, of course, would argue that
23 there was a fiduciary out in that - in the merger agreement.

24 MR. WELCH: I understand.

1 MS. HABBART: That it was the other factors that
2 complicated things, perhaps. #00:27:47#

3 MR. WELCH: I mean, I say to myself, if stockholders
4 end up getting nothing had the Board not done this, you still
5 have to have a fiduciary out. I don't know how that works.

6 MS. HABBART: So, let's get a little into the
7 dissent. That was kind of interesting. I mean, how often do
8 you see a majority of three and the dissent is two from our
9 Supreme Court? #00:28:10#

10 MR. WELCH: You see it. I mean, it's happened before
11 but not very often. And indeed, I think Justice Veasey pointed
12 out that that's a rare circumstance and he said, hopefully,
13 this is a rare circumstance which is not going to be repeated
14 again. The whole thing is not. And I think that prediction, at
15 least to my limited knowledge, basically came true. That this
16 issue has not gone back - or through Chancery and back up to
17 the Supreme Court again. So, but insofar as Justice Steele was
18 concerned, his, I think, point right out of the box was the
19 Board acted selflessly. They were careful. They used a fair
20 process. There were benefits to the corporation, but really to
21 the stockholders. He thought the court should not interfere
22 with the business judgment of--

23 MS. HABBART: And this was how you felt? That's--
24 #00:29:07#

1 MR. WELCH: Well ... that was certainly the position
2 that we-

3 MS. HABBART: You were taking.

4 MR. WELCH: -- we took in the Court of Chancery and
5 in the Delaware Supreme Court. No doubt about that.

6 MS. HABBART: Did the fact that there was an order
7 of the Supreme Court in December, but the opinion didn't come
8 out until four months later, do you recall your reaction?
9 That's hard to remember 16 years ago, but what reaction you
10 had to that? There's an order, and you don't know their
11 analysis? #00:29:37#

12 MR. WELCH: Well, we didn't know their analysis. I
13 mean we had ... if I am recalling correctly, I think we did
14 have a - there was an articulation in the order that you had
15 to have a fiduciary out, and that that was a focal point of
16 what they were talking about. I have nothing to add in terms
17 of the delay in the Court's opinion other than, really, rank
18 speculation. But, ordinarily, the Supreme Court acts pretty
19 promptly in circumstances like that, particularly where you
20 have a potential deal that's in the works. I think perhaps,
21 perhaps, it might not have been an easy one to put together
22 that opinion. I don't know. But it was what it was.

23 MS. HABBART: It was what it was. Absolutely. I can
24 only imagine it. Again, I'm speculating that it would have - I

1 would have found it hard to accept the order and not have the
2 analysis behind it. But nevertheless, so what ended up
3 happening was Omnicare did come out and pay more money, right?
4 #00:30:54#

5 MR. WELCH: In that sense, you know, it ended well
6 with the stockholders getting considerable value. And that's a
7 good thing. And of course, not only did that happen but that
8 was consistent with the Board actually making its statement to
9 the stockholders—

10 MS. HABBART: Exactly.

11 MR. WELCH: -- that their preference would be that
12 they get three-fifty rather than a buck-sixty, and of course,
13 they ended up getting five-fifty rather than a buck-sixty. And
14 so, that's a good thing.

15 MS. HABBART: Again, after the fact. #00:31:23#

16 MR. WELCH: I think the problem that I have is, you
17 know, is how this plays out in the future. Now, the
18 interesting thing is, as you and I have commented already,
19 this was 16 years ago, and I think people have thought about
20 it, they have dealt with it, they have, I'm sure, worried
21 about it, and I know I have in other deal transaction
22 situations, but I do feel that there could be circumstances
23 which arise wherein, if literally applied, there could be harm

1 to stockholders if things don't break the way they did in
2 Omnicare, and hopefully, Elissa, that never happens.

3 MS. HABBART: Right. Well, Ed, although the ultimate
4 result was not necessarily your position, you did have two
5 Supreme Court Justices agree with your position, so...

6 #00:32:23#

7 MR. WELCH: We did, but ultimately, Elissa, I think
8 our position, my position was, we thought the Board was highly
9 motivated. We wanted to do the right thing in terms of
10 protecting them, but at the same time, it wasn't as if, once
11 there was an agreement to pay a higher price, that anybody had
12 a problem with that. We ultimately-

13 MS. HABBART: Of course. #00:32:42#

14 MR. WELCH: -- you know, when the Court said what it
15 said and did what it did, getting a higher value was something
16 the Board wanted too, and the Board strived for it. That's
17 why they called 50 people to try to get the best deal they
18 could. So, nobody was unhappy, that I know of anyway. We're
19 going back 16 years, so, I can't be sure, but I think - I
20 don't think anybody was unhappy with getting a good price.
21 There are other potential issues, but that's for another day.

22 MS. HABBART: Well thank you for letting me pick
23 your brain about something that's so far in the past. But it's
24 very much appreciated. #00:33:19#

