

1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
2 COUNTY DEPARTMENT, CHANCERY DIVISION

3 SHELDON LANGER, RONALD M. YERMACK, )  
4 LANCE R. GOLDBERG, ROBERT PROSI, )  
5 GERALD PETROW, CRAIG RHEINGRUBER, )  
6 STANTON MILLER, RAY LARSEN, )  
7 DANIEL RYAN, CAROL JORISSEN, )  
8 individually on behalf of )  
9 themselves and all others )  
10 similarly situated, )  
11 Plaintiffs, )  
12 vs. )  
13 CME GROUP, INC., )  
14 a Delaware Corporation; )  
15 THE BOARD OF TRADE OF )  
16 THE CITY OF CHICAGO, INC., )  
17 a Delaware Corporation, )  
18 Defendants. )

No. 2014 CH 829

13 REPORT OF PROCEEDINGS at the hearing of  
14 the above-entitled cause before the  
15 Honorable Celia G. Gamrath, Judge of said Court,  
16 on January 30, 2024, at the hour of 9:29 a.m.

23 Reported by: Hannah Flynn CSR, RPR

24 License No.: 084-004894



1 APPEARANCES:

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1 APPEARANCES: (Continued)

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11  
12 ALSO PRESENT:

13 Sheldon Langer

14 Lance R. Goldberg



1 (whereupon, the following  
2 proceedings were held in open  
3 court via Zoom.)

4 THE COURT: I am calling Langer.

5 MR. AGRAWAL: Good morning, your Honor.

6 Suyash Agrawal, Massey & Gail, on behalf of the  
7 plaintiffs.

8 MR. MORRISSEY: Good morning, your Honor.

9 Steve Morrissey for the plaintiffs.

10 THE COURT: Good morning.

11 MR. CARULLO: Nick Carullo as well for the  
12 plaintiffs.

13 THE COURT: All right. Very good. Ms. Lape?

14 MS. LAPE: Good morning, your Honor.

15 Marcie Lape on behalf of defendants.

16 MR. HOGAN: Judge, this is Al Hogan on  
17 behalf of defendants.

18 THE COURT: Very good. Is there anyone else  
19 that needs to identify themselves? I believe we  
20 have Ms. Flynn, our court reporter, present.

21 Very good. You all asked for this  
22 status date for a briefing schedule. So why  
23 don't you give me an update in terms of what you  
24 have been doing since the last time you were



1 here and what it is you hope to accomplish this  
2 morning.

3 MR. HOGAN: I'll be happy to address that,  
4 Judge. We did ask for this conference to  
5 discuss the timeline, format, and length of the  
6 upcoming motion practice. The last time we were  
7 here, your Honor, was in the middle of December  
8 and we discussed the timing of dispositive  
9 motions and we discussed them at a conceptual  
10 level. We didn't discuss the format and the  
11 length of those motions.

12 And so today, Judge, I would like to  
13 first update you on timing, and make a request.  
14 I didn't think that request would be  
15 controversial, but I may be surprised, we'll  
16 see. And I definitely want to talk about the  
17 format and length of our briefs.

18 So Judge, we are making very good  
19 progress with respect to our anticipated  
20 dispositive motions. With dispositive motions,  
21 in a case like this, there's a period of  
22 development to be sure. Your Honor knows that  
23 this case is complex. There are two exchanges,  
24 there are two charters, there are Globex claims



1 with multiple variants, there are fee claims  
2 with multiple variants, both addressing issues  
3 of course of performance over 15 years, there's  
4 good faith and fair dealing claims. And Judge,  
5 if you think I'm winding up to a lot of pages, I  
6 am in some respect.

7           But I think it's important to say,  
8 Judge, we have taken 61 depositions, we, the  
9 defendants, have produced 1.986 million pages of  
10 documents. I was very disappointed that that  
11 number was not 2 million, but almost 2 million  
12 pages of documents. The parties have, between  
13 them, offered ten experts, five a side. So  
14 we're now contemplating our motion for summary  
15 judgment.

16           The motion for summary judgment is  
17 obviously a type where we have to grapple with  
18 the facts. Prior motions have been in the  
19 abstract in terms of allegations. But now we  
20 have got this substantial discovery record. And  
21 that's what we're grappling with. And so Judge,  
22 since we talked to you in mid-January, we have  
23 been working on this and developing it. And the  
24 motions are coming together quite nicely at this



1 point.

2 Our goal, of course, is to provide  
3 helpful, well-organized, I would say perfect, I  
4 know my team is listening, perfect motions.  
5 That's our goal. And I hope given our prior  
6 motion practice, I can at least say without  
7 sounding arrogant that we do not submit flabby  
8 briefs, and we don't intend to do so in this  
9 case. But the briefing that we're contemplating  
10 is substantial.

11 So with that, let me tell you again  
12 sort of what we have in mind and give you a  
13 sense for the pages. And particularly on the  
14 summary judgment motion, I would like to talk  
15 with you a little bit about my ideas on format.

16 So first, we do anticipate filing -- we  
17 intend to file a motion to decertify the class.  
18 And like I have done throughout this case, I  
19 will not sit and argue it in advance to you.  
20 You won't listen and Mr. Morrissey will just  
21 have to come up and argue it in the abstract to  
22 the contrary. We're going to file a motion to  
23 decertify this class. That motion, I believe we  
24 can accomplish in 15 pages.



1           Now, before I smile, I want to say that  
2 with the motion to decertify, we are going to  
3 file a companion motion to strike one of  
4 plaintiffs' experts and it is the plaintiffs'  
5 damages expert, you might recall Dr. Arnold in  
6 this case. Class certification, there was a lot  
7 of discussion and debate about how damages would  
8 be proved.

9           There's a lot of -- a lot of issues  
10 that we believe have come out of the expert  
11 report in discovery. And we don't think the  
12 damages model for what they're now attempting to  
13 pursue, which is only on the Globex claims from  
14 the damages perspective, the plaintiffs are no  
15 longer pursuing class-wide damages on the fees,  
16 but even on the Globex claims, we think the  
17 damages model that Dr. Arnold is now proposing  
18 is substantially different than what was  
19 discussed at class certification and should be  
20 struck.

21           So those two motions go together. And  
22 the motion to strike, Judge, we would ask for 25  
23 pages on that motion. So the decert motion of  
24 15 pages, and a motion to strike, that very much





1 do work together, of 25 pages.

2           with respect to the summary judgment  
3 motion, Judge, again, I outline the nature of  
4 this case, we have a summary judgment motion  
5 that we believe can and should dispose of the  
6 entirety of this action. Even though the  
7 plaintiffs are no longer pursuing class-wide  
8 damages, they have not decided at this point to  
9 forego their fee claims. So we're a  
10 little -- we're a little unsure about how that's  
11 going to shake out.

12           But on summary judgment we're going to  
13 have to grapple with all of the claims, the  
14 Globex claims, the fee claims, the good faith  
15 and fair dealing claims over the two exchanges.

16           I went back and looked, Judge. The  
17 last substantial motion we did prior to class  
18 certification was a motion to dismiss. On that  
19 motion, we put in a 54-page motion, the  
20 defendants put in a roughly 50-page response, we  
21 put in a 40-page reply. Summary judgment is  
22 different. It now involves the substantial  
23 factual record. But I believe that on the  
24 summary judgment motion, we can accomplish what



1 we need to accomplish with an argument brief,  
2 the argument section of 50 pages.

3 That leaves the statement of facts.  
4 And that's where I think some guidance from the  
5 court in terms of your preferred format would be  
6 helpful. I have not seen in state courts the  
7 kind of statements of facts that exist in  
8 federal practice where you almost have a  
9 chart-like recitation of facts with facts and  
10 evidence. Judges in Cook County have all sorts  
11 of different procedures. Some judges don't  
12 include the statement of facts in the page  
13 count. And frankly, Judge, that's what I am  
14 asking for in this case.

15 What I think the right format is, is to  
16 have a statement of facts that presents facts in  
17 a narrative fashion, non-argumentative, but in a  
18 narrative fashion with paragraphs, that we  
19 weren't contemplating numbering them so it reads  
20 as a story, non-argumentative, Mr. Morrissey may  
21 disagree when he reads it, but that's the idea,  
22 with citations to the support to all of those  
23 facts. And Judge, the citations, obviously  
24 they're in footnotes is the way we're



1 envisioning it.

2           And so the reason why I hesitate on the  
3 page limit on the statement of facts is there's  
4 so much going on that it takes a lot of pages.  
5 And to be fair, Judge, we believe that this is a  
6 case and these motions are one where the Court  
7 understanding the factual context is crucially  
8 important. I would love to have this case, and  
9 any case, tee up to where I can walk in and say  
10 I've got five facts and that results in judgment  
11 in my favor. This is not nearly such a case.

12           Instead, I believe I need to convey to  
13 the Court the nature of the two demutualization  
14 transactions and that a history of performance  
15 with respect to both Globex and the fee claims,  
16 that takes some doing. And so --

17           THE COURT: Now, before we get into this,  
18 you know, mammoth undertaking. Summary judgment  
19 standard, you know, law school 101, right, no  
20 genuine issue of material fact.

21           MR. HOGAN: That's right.

22           THE COURT: Mr. Hogan, there may be some  
23 one-off claims that have undisputed facts. But  
24 I can't imagine that Mr. Morrissey is going to



1 come in and say you're right, there's no genuine  
2 issue of material fact. This is a question of  
3 law. You, of course, as defendant believes  
4 differently. But you know how high that burden  
5 is, you know what that standard is. And all I  
6 have to find is you say yes, they say no,  
7 denied. I'm not prejudging your case. I'm  
8 telling you what the standard for summary  
9 judgment is. And so I would not expect given  
10 the caliber of lawyer in this case, which is  
11 superior, to come to me with a frivolous motion.

12 But I just, you know, really am taken  
13 aback to say from 61 depositions that you took and 2  
14 million pages tendered, it's hard to believe  
15 that there cannot be a genuine dispute as to a  
16 material fact. So when you say we're going to  
17 handle all three of these claims by way of  
18 summary judgment, is that true, is that even  
19 realistic?

20 MR. HOGAN: Judge, I really believe it is.  
21 I don't have any doubt that Mr. Morrissey will  
22 come in and point to other facts. And I  
23 understand that my job is going to be to educate  
24 the Court about the nature of the transactions,



1 about the rights that the plaintiffs claim they  
2 have, and about why, based on undisputable  
3 facts, those rights don't exist or they  
4 otherwise haven't been breached. I do  
5 understand that. And I believe we are going to  
6 be successful. I think -- Judge, again, I'm not  
7 going to argue.

8 THE COURT: No, I'm not looking for  
9 argument. I'm just saying, you know, from a  
10 global perspective here.

11 MR. HOGAN: Yes.

12 THE COURT: Just keeping in mind that  
13 standard, is there a way to sort of take this  
14 step-by-step before I get a 200-page brief in  
15 front of me, and again, exhausting many, many  
16 weeks, and, you know, thousands of dollars,  
17 right, and investment of significant time?  
18 That's just -- that's just sort of rhetorical.  
19 Let's back it up a bit.

20 MR. HOGAN: Yeah.

21 THE COURT: Because I'm giving, of course,  
22 Mr. Morrissey a chance to respond to this.

23 This motion for summary judgment, it  
24 seems to me that the first step would be for you



1 to file your motion to decertify the class and  
2 companion motion to strike the damages expert.  
3 Is there a way that we could hear that first, is  
4 that going to affect the summary judgment  
5 motion?

6 MR. HOGAN: well, what I would say, Judge,  
7 is the way that we're envisioning the motion for  
8 decertification is that it is an alternative  
9 form of relief. I don't -- your Honor can  
10 obviously take it up in any order you wish. And  
11 I want to talk about scheduling here in a  
12 second.

13 I think from -- my prediction is from  
14 Mr. Morrissey's standpoint, but mine as well,  
15 Judge, I will tell you my client is very  
16 desirous in getting this case done. I think  
17 it's better if we get both motions on file and  
18 briefed up, and then, you know, your Honor  
19 envisioned us coming back and talking to you  
20 shortly after that. I think it would benefit  
21 the parties to get those motions on file and  
22 briefed up in their entirety.

23 Mr. Morrissey and I, I think we  
24 discussed with the Court last time, we're going



1 to -- after that period, after both sides are  
2 able to stare at each other's papers, we're  
3 going to go off and do what your Honor has  
4 suggested that we do. So I think it's going to  
5 be helpful to get everything in paper and on  
6 file.

7           And I would suggest we come back in -- and  
8 Mr. Morrissey's opposition briefing may  
9 streamline things. I will tell you I honestly  
10 don't know how they're going to react to some of  
11 the fee issues given their lack of evidence on  
12 class-wide damages, or I think their lack of  
13 evidence on any damages. That may -- when I  
14 first saw that they weren't pursuing class-wide  
15 damages, I said that's great, this case is cut  
16 in half. It's not yet. But it may look more  
17 like that.

18           So I think we get the motion briefed  
19 up, we can come in and talk to you about how we  
20 see it and make suggestions about how your Honor  
21 might proceed to review it and even hear it up.  
22 And it may make sense then to deal with things  
23 sequentially. But I think getting them on file  
24 is the way to go and keep the train moving.



1 THE COURT: And that's fine. And again,  
2 when I recited that standard for summary  
3 judgment, I'm by no means prejudging the motion  
4 to come. I'm just making the point to say the  
5 facts are going to be really critical for  
6 summary judgment, but that's going to be Step 1.  
7 And I'm sure I'm going to get some beautiful  
8 written brief in terms of argument of those  
9 facts. But the first step is, is there a  
10 genuine dispute as to the material facts?

11 So if you want to provide me with 100  
12 pages of facts and then 50 pages of argument,  
13 I'm thinking, you know, a lot of times you could  
14 just look at these stacks, look at what  
15 Mr. Morrissey is going to cite as facts.

16 You had mentioned something about  
17 footnotes. I prefer it to be like you would an  
18 appellate brief. You say the deposition of X  
19 said A, B, C, citation, here is where it is in  
20 the record. So that to me is just easier than  
21 going back down to a footnote.

22 MR. HOGAN: Okay. We'll do it that way.

23 THE COURT: All right. I know that that's  
24 going to eat up your pages and you're going to





1 say well, now we can't use small font and it's  
2 more pages. But just in terms of readability,  
3 it's better.

4 MR. HOGAN: We'll absolutely do it that way.  
5 It does again -- I am definitely requesting that  
6 we don't have any limits on the fact statement.  
7 I totally understand the more facts I put in,  
8 the more risk I take. We do expect, and I know  
9 we have to work this out technically, and it  
10 won't be when we file the summary judgment  
11 motion, but when we finally submit it, we would  
12 also serve a linked copy of that brief.

13 So if we've got citations to fact or to  
14 case law, you can go and look at it. Again, I  
15 might challenge my team to say how do we make it  
16 as easy for the judge and her clerks as  
17 possible. So we will follow that citation  
18 convention.

19 MR. AGRAWAL: Your Honor, can we respond?

20 THE COURT: Yes.

21 MR. MORRISSEY: Yes.

22 THE COURT: Don't worry, I was going to give  
23 you a chance. I just wanted to hear all of it  
24 first.



1 MR. AGRAWAL: Sure.

2 THE COURT: You can have the same amount of  
3 floor time.

4 MR. AGRAWAL: So I'll let Mr. -- you know,  
5 as a routine practitioner in Cook County, I  
6 would like to -- I know there's a timing issue,  
7 and Mr. Morrissey will address that.

8 We understand Mr. Hogan's presentation  
9 that this is a complex case. But there are a  
10 lot of complex cases that the chancery courts  
11 handle. This is ultimately a two count, three  
12 affirmative defense case that involves two  
13 contracts. And I think your Honor hit the nail  
14 right on the head which is that the standard  
15 that the defendants have to establish to obtain  
16 summary judgment is that they have to establish  
17 that there's no material issue of fact.

18 Now, Mr. Hogan alluded to, you know,  
19 the last substantive briefing that they filed,  
20 which was 54 pages in April of 2017, which was  
21 their motion to dismiss or strike which came  
22 with it, as you will recall, a mountain of  
23 paper. And then before that, we had a July 2015  
24 combined motion to dismiss and for summary



1 judgment, which itself was 30 pages. And before  
2 that, we had, not before this Court, we had  
3 substantial briefing in the federal court when  
4 they moved -- removed this case to federal court  
5 and we successfully obtained a remand.

6 I'm in a case of equal, if not  
7 substantially greater complexity before  
8 Judge Mullen. That case had an equal number of  
9 depositions, that case has 20 counts, 20  
10 plaintiffs, a dozen affirmative defenses. And  
11 Judge Mullen very, very begrudgingly gave me  
12 35 pages for a summary judgment motion, facts,  
13 and argument.

14 And so these things are like sand  
15 buckets. The bigger the bucket, the more they  
16 fill. And so what we heard before this hearing  
17 from defendants was they wanted to file an  
18 80-page brief. And 80 pages for an opening  
19 brief and 80 pages for a response brief, that's  
20 160. I imagine they will ask at least for half  
21 as many pages for their reply. You're now at  
22 200 pages of briefing, notwithstanding the  
23 likely thousands and thousands of pages that  
24 they will submit in support of the motion for



1 summary judgment.

2 So we would respectfully request, your  
3 Honor, that you put some limits on this.

4 I mean, you know, you begrudgingly gave us 25  
5 pages to move for class certification. I  
6 handled that argument myself, I remember. I  
7 know it was many years ago now.

8 But you know, we thought it would be a  
9 foregone conclusion that for a case like this,  
10 25 pages would be a reasonable amount of pages  
11 for class certification. Which for plaintiffs,  
12 as your Honor knows, is a very substantial event  
13 in a case like this. They are now moving to  
14 decertify the class.

15 So respectfully, now they're asking for  
16 50 pages of argument and an unlimited number of  
17 pages for facts. That is just not -- I mean,  
18 that's just not reasonable. I mean, federal  
19 courts wouldn't -- you know, federal courts here  
20 in the Northern District of Illinois have a  
21 default 15-page rule.

22 And we understand that their client,  
23 after ten years -- this case is now ten years  
24 and two weeks old. We understand that their



1 client wants to put it all out there and argue  
2 their entire case.

3 But the reality of it is, is that the  
4 Court should set some parameters, some  
5 reasonable parameters. And we would  
6 respectfully request that really anything more  
7 than 30 pages for summary judgment, facts and  
8 argument is really, really unreasonable given  
9 how long this case has gone on.

10 The -- I mean, again, they have to  
11 identify the specific facts on which there's no  
12 material issue. And if they can't do it in 30  
13 pages, Judge, then all they're doing is  
14 prolonging this case for months and months and  
15 months. As your Honor fairly recognized,  
16 pouring through 200 pages of briefing will  
17 invariably mean that this case is not  
18 adjudicated and ready for trial until closer to  
19 the end of the year.

20 Let me just briefly touch on the other  
21 point that Mr. Hogan made, which is this  
22 supposed combined motion to dismiss with -- I'm  
23 sorry, motion to strike our expert combined with  
24 their motion to decertify the class.



1           You know, this case has a jury demand.  
2   And what they're looking to do is now looking to  
3   seek to strike our merit damages expert. And  
4   coincidentally, I had this exact same issue in a  
5   similar case in one of the courts here. And the  
6   chancery court judge said I can't do that, it's  
7   premature for me to make evidentiary rulings on  
8   substantive evidence that might or might not  
9   come at trial at this stage because I'm not  
10   going to be the trial judge. The case is going  
11   to get transferred.

12           And I wasn't here at the last hearing,  
13   but the case is ultimately for trial going to  
14   get transferred to the law division. That judge  
15   should be the one who addresses an evidentiary  
16   motion to strike an expert in a case like this.  
17   And the Court said I would be interfering with  
18   the way our system has been structured.

19           So respectfully, Judge, while we have  
20   had a very cooperative relationship with defense  
21   counsel, our clients have been waiting a very,  
22   very long time. And we just -- you know, we  
23   just don't think that 50 pages of argument plus  
24   unlimited facts is anywhere close to reasonable,



1 particularly when we were held at 25 on class  
2 cert.

3 MR. HOGAN: Your Honor, may I --

4 MR. MORRISSEY: Your Honor, if I may just  
5 expand briefly.

6 THE COURT: Mr. Morrissey, yes.

7 MR. HOGAN: Certainly.

8 MR. MORRISSEY: Thank you, your Honor. Just  
9 to the timing, and Mr. Agrawal covered a lot of  
10 the substance adeptly, so I won't repeat  
11 anything he said.

12 We were here in December when CME's  
13 summary judgment deadline was in December. And  
14 we asked the Court then to send the case to the  
15 law division because we believe we're ready for  
16 trial. We agreed to a two-month extension of  
17 the summary judgment deadline, which is on  
18 wednesday. Nothing has happened in the case  
19 over the past two months.

20 The basis for that extension was that  
21 CME supposedly was going to depose our rebuttal  
22 experts on their reports, and supposedly was  
23 going to consider reply reports. They did  
24 neither of those things. So for the past two



1 months they have had all the time in the world  
2 to write and streamline whatever motion they  
3 intend to file by the summary judgment motion on  
4 Wednesday.

5 We heard nothing at all from CME until  
6 Wednesday afternoon at the end of the day, just  
7 over two business days before their briefs are  
8 due. Where out of the blue, I hear from  
9 opposing counsel that they're going to want a  
10 more than two-week further extension, 80 pages  
11 of opening briefs on an issue that has already  
12 been addressed by the Court and by Judge Mikva  
13 in detailed rulings.

14 The issue of whether there's a fact  
15 issue on whether Aurora is a trading floor, we  
16 all know that issue. We know the six words in  
17 the contract are ambiguous. We know that  
18 there's a ton of evidence that both sides are  
19 going to put forward. And that there's going to  
20 be a fact issue, and that it's ultimately going  
21 to be resolved by a jury as to whether or not  
22 Aurora is a trading floor.

23 We had a class cert motion where we put  
24 forth that evidence in detailed briefing as





1 well. We have an expert report who has a  
2 damages model based on what's the value of that  
3 exclusivity right at Aurora during the damage  
4 period. It's a breach of contract case where  
5 you're valuing your out-of-pocket -- the benefit  
6 of the bargain for what you had during the  
7 period. It's a straightforward damages model.

8 There's no basis for striking this  
9 expert, there's no basis for decertifying the  
10 class. This is just further delay, further  
11 burden on the plaintiffs, who have been in this  
12 case for more than ten years, want to get to  
13 trial as soon as possible.

14 And to come at this late stage to ask  
15 for this kind of briefing and this kind of  
16 further extension is just not respectful of the  
17 court's deadlines, of the burdens on the parties  
18 and the court that result from bringing the  
19 request. And we have worked really well  
20 together on scheduling matters, we have  
21 worked -- we have been accommodating on  
22 extending schedules and agreeing to page limits.  
23 But this just, you know, goes beyond the bounds  
24 of what is reasonable.



1 THE COURT: So I can appreciate that. That  
2 said, I'm not going to prohibit defendant from  
3 filing the dispositive motion or the motion to  
4 decertify the class. This comes as no surprise,  
5 we have been talking about this. And so I  
6 understand your point saying let's get moving on  
7 it. But I'm certainly not going to say yes,  
8 Mr. Morrissey, I'm sending you -- you're getting  
9 your trial next month, and Mr. Hogan, you don't  
10 get the right to file this.

11 MR. MORRISSEY: Understood, your Honor. And  
12 if the request had been a week or two ago, and  
13 we need a few more pages and a few more days, we  
14 wouldn't even be here. But that's not what we  
15 got.

16 THE COURT: Okay. So Mr. Hogan, you have  
17 heard those objections. Plaintiff recognizes  
18 I'm going to allow you to file these things,  
19 they just want you to file them sooner than  
20 later and in fewer pages.

21 So with that said, and to summarize as  
22 I mentioned, let's get this teed up. And then I  
23 will let you know am I sending this out, am I  
24 going to hold some of these motions, what makes



1 most sense so that you guys could move forward,  
2 right, versus giving this to a judge.

3 I mean, Mr. Morrissey, if I transferred  
4 it to law tomorrow, you're not getting a trial  
5 date. All you're getting is a new judge who  
6 knows nothing about this case who is going to  
7 get these briefs dumped in his or her lap and  
8 then start from ground zero.

9 I think if I look at these briefs and  
10 say, you know, I can probably streamline this,  
11 happy to do that and hold it and not put that  
12 burden on somebody else. That said, I may be in  
13 a position where I'm no longer in a position to  
14 decide these motions. And so I am very worried  
15 about the potentiality of granting Mr. Hogan and  
16 his team unlimited pages. Because what will  
17 that do to my successor, who is going to say,  
18 you know, Judge Gamrath, you are out of your  
19 mind to allow this to happen. So I have to  
20 balance that as well.

21 I'm not afraid to dig into 100 pages of  
22 briefs. But I recognize what Mr. Agrawal has  
23 said. I recognize the customs here in Cook  
24 County, and quite frankly, all over the country



1 with courts in terms of that.

2           So Mr. Hogan, all of that said, help me  
3 strike a reasonable balance here. I am not  
4 going to approve an unlimited number of pages.  
5 And I do want to know the timing of when you  
6 will get the motion for decertification on file,  
7 that secondary motion with respect to striking  
8 the damages expert, and this motion for summary  
9 judgment. What is your timing on each of those  
10 motions? You have already told me about the  
11 15-page, 25-page, that's fine, I'm going to  
12 allow it for the motion to strike and the motion  
13 to decertify. The elephant in the room is the  
14 motion for summary judgment.

15           So one by one, when will you get that  
16 15-page motion to decertify on file?

17           MR. HOGAN: Your Honor, I asked  
18 Mr. Morrissey for an extension to February 16th  
19 for all of those motions. And that's what I'm  
20 asking for.

21           THE COURT: So you're asking that all three  
22 motions get filed at the same time?

23           MR. HOGAN: That's correct.

24           THE COURT: All right. That puts a lot on



1 the hands of plaintiffs. And if I grant until  
2 February -- we're already at the end of January.  
3 I see no prejudice in that, I will grant that  
4 timing as to all three motions.

5 MR. HOGAN: Thank you, Judge.

6 THE COURT: 15 pages, 25 pages. And then  
7 this summary judgment motion.

8 MR. HOGAN: Judge, one of the -- one of the  
9 realities of this case is that the plaintiffs'  
10 claims stand in sharp contrast to an awful lot  
11 of what has happened at the Exchange at the time  
12 of demutualization and over the years. It's  
13 critically important that I be able to tell that  
14 story.

15 You asked if your Honor isn't able to  
16 resolve these motions, and we have expressed  
17 before, we certainly hope that you are able to  
18 resolve these motions. But my job will be to  
19 develop and deliver a brief that will be helpful  
20 to your Honor or helpful to a following judge.  
21 The statement of facts, the story of facts that  
22 I want to tell will be based on facts that are  
23 clearly established.

24 And so given the complexity of the



1 case, I really -- and we have -- you know, we  
2 haven't not been working. The reason why I'm  
3 talking with this about you now is we have line  
4 of sight on the way these briefs are coming out.  
5 And the 50 pages for the argument is necessary  
6 and completely reasonable given the issues that  
7 we're going to have to grapple with and dispose.

8 THE COURT: So given the fact that you have  
9 given yourself a timeline in February, I suspect  
10 that you have already put pen and paper in  
11 part --

12 MR. HOGAN: Yes.

13 THE COURT: -- on this. And argument and  
14 facts, do you think 75 pages is feasible or  
15 doable, or are you thinking like 150? I mean,  
16 where are we at?

17 MR. HOGAN: Judge, I'm thinking like 100.  
18 I'm thinking like 100.

19 MR. AGRAWAL: Judge, we object. We object.

20 MR. HOGAN: We understand --

21 MR. AGRAWAL: That's ridiculous. I'm sorry.  
22 I'm sorry.

23 THE COURT: So Mr. Agrawal, I understand  
24 you're objecting, saying that's ridiculous.



1           we have three claims, but three  
2 separate buckets here. I have asked for  
3 citations. I love the idea of a link. Are you  
4 thinking a hyperlink --

5           MR. HOGAN: Yes.

6           THE COURT: -- where the Court can just jump  
7 to that?

8           MR. HOGAN: Yes, yes.

9           THE COURT: That will take up some space.

10          MR. HOGAN: Yes.

11          THE COURT: That will take up some space.

12                 And one of the reasons why I'm even  
13 entertaining this is given the quality of  
14 lawyers on both sides of this case. You have  
15 never given me something that I found  
16 superfluous, redundant, difficult to read. We  
17 know as lawyers and judges that oftentimes  
18 people can't simplify it down within a page  
19 limit. That's why we give them, because  
20 otherwise we get those rambling stories that you  
21 can't make heads or tails of. That's not my  
22 experience in this case. And I don't want to  
23 miss anything either. You know --

24          MR. HOGAN: I appreciate it, Judge. That's



1 our goal. That is absolutely our goal.

2 THE COURT: From plaintiffs' perspective, in  
3 some ways, quite frankly, it gives you a  
4 preview. Right?

5 MR. MORRISSEY: well, it not only gives us a  
6 preview, it sort of begs the question, if you  
7 need 100 pages to say why it's not a fact issue,  
8 how can there possibly not be a fact issue?  
9 Like we're more than two weeks out from when the  
10 motion is now due, and this is when you normally  
11 would get a summary judgment motion and put  
12 in -- put together your response within the 25  
13 or 30 or 35 pages or whatever you have in highly  
14 complex cases around the country.

15 I've never heard of a 100-page brief in  
16 a long time. It's awfully long. I mean, we'll  
17 obviously tell our story in our brief, too. And  
18 there are a lot of facts there that we can cite  
19 to tell our story. At the end of the day,  
20 there's going to be a mountain of paper with  
21 both sides telling the fact story that's  
22 ultimately going to go to a jury.

23 I'm not sure how we're saving any time  
24 here or doing anything other than imposing a





1 burden on the Court. But if the Court wants to  
2 dig through it, I guess, then that's -- and it  
3 will help you, then that's --

4 MR. AGRAWAL: And I imagine they'll have a  
5 whole day of argument, too. I mean, the papers  
6 are not going to be the only opportunity for the  
7 parties to present, you know, the facts so you  
8 don't miss anything.

9 MR. HOGAN: I hope there's an argument,  
10 Judge. I look forward to that. My observation,  
11 Judge, is if Mr. Morrissey wants to write in his  
12 opening statement the size of the defendant's  
13 brief demonstrates that they should lose, he can  
14 write that. But it's very odd to be previewing  
15 that argument today, and then turn around and  
16 begging your Honor to not allow us to walk into  
17 the trap that he's saying we're walking into.

18 We need to tell the story of this case.  
19 Because as I've said from day one, their Globex  
20 claims are made up. And their fee claims,  
21 although I comprehend them, have no factual  
22 basis. And now we have got a class that doesn't  
23 have any fee damages. So we need to tell the  
24 story.



1           And we are -- one thing Mr. Morrissey  
2   said, and he said it in passing, but I want to  
3   be entirely clear. We are thoroughly respectful  
4   of this Court's time, and frankly, are counting  
5   on this Court's careful attention. And we will  
6   do -- my team will do everything we can to  
7   deliver the kind of brief that you have come to  
8   expect from us and put forth the facts that we  
9   think are necessary to tell our story in this  
10 case.

11           MR. MORRISSEY: And your Honor, if I may  
12 briefly.

13           THE COURT: Yes.

14           MR. MORRISSEY: The argument that the Globex  
15 claim -- what they call the Globex claim, which  
16 has always been the trading floor claim, Aurora  
17 trading floor. The words, the Globex claim is  
18 made up, are the same exact words that Mr. Hogan  
19 has used on each of the prior motions where we  
20 have addressed this issue in detail.

21           Is there a fact issue as to whether  
22 Aurora is a trading floor? We had a mountain of  
23 paper on that issue in 2017. We had a mountain  
24 of paper on that issue in 2019. We'll have



1 another mountain of paper on that issue. Now we  
2 have experts and additional depositions,  
3 documents from CME, documents where they refer  
4 to it as a trading floor.

5 Everyone on our side of this case has  
6 thought it was a trading floor since it opened  
7 in 2012, and that it is a new and different  
8 thing. This is not about Globex. This is about  
9 the trading floor at Aurora, that's what the  
10 case has always been about. We'll tell that  
11 story again.

12 THE COURT: Okay. The Court is going to --

13 MR. HOGAN: I would like to respond --

14 THE COURT: I think I have heard enough.

15 85 pages, that includes facts, arguments.

16 Mr. Morrissey, you have 85 pages, you have  
17 40 pages for a reply. I think that that should  
18 be ample. If it is just -- I don't even want to  
19 open the door to say if it's absolutely  
20 impossible, you could come in with a motion. I  
21 am confident that you could tell your story in  
22 85 pages.

23 I would expect, you know, that's not  
24 going to include your table of contents of sorts



1 and so forth. You could start on Page 1 with  
2 your statement of facts. In terms of -- you  
3 know, I just -- I think that you could do it  
4 within that. I don't want to miss anything.

5           The reality is quite frankly,  
6 Mr. Morrissey, I'm giving them 85 pages, they  
7 have asked for 100, another 15 pages isn't going  
8 to move the needle. It is an exorbitant amount  
9 of pages, we know this, we know this. Try to do  
10 it in 85 pages. Mr. Morrissey, do yours in 85,  
11 40 for your reply. If you need to hear this  
12 again, you know where to find me. I don't think  
13 that you will.

14           But again, I would encourage you, if  
15 it's running over and it turns into 90, I'm not  
16 being wishy-washy with this ruling, I just don't  
17 want to hear it again, I don't want to get a  
18 motion on it. Does it really make a material  
19 difference? Probably not. But they're going to  
20 do their best to stay within that 85, as argued.

21           When could you get your briefs then on  
22 file? You have got three big briefs coming due  
23 in February. Mr. Agrawal, what's your timing?

24           MR. AGRAWAL: Why don't we take a look at it



1 and we'll submit an agreed order. I mean  
2 honestly, we'll see what they have to say in  
3 85 pages. And again, if we can't reach an  
4 agreement on a briefing schedule, we'll come  
5 back. I can't imagine we won't be able to reach  
6 an agreement on a briefing schedule. But I  
7 can't in the abstract without having seen this  
8 tome, you know, give you -- I don't want to give  
9 you an artificial date. You know, we're  
10 obviously going to put forth a proper and  
11 substantive response to what they have to say.

12 So again, I think once we have seen the  
13 brief on the 16th, what if you set a status for  
14 a week later. We will submit an agreed order  
15 and strike that if we aren't able to reach  
16 agreement on the rest of the schedule.

17 MR. MORRISSEY: Yeah. The prior order  
18 called for conferring within seven days after  
19 their briefs were filed and submitting a  
20 schedule. I think that will work again. We  
21 were hoping to respond within about a month. I  
22 don't know that it will be much longer than  
23 that. That's our goal. And we have already  
24 gotten started on our briefs, of course. So I



1 think we'll try to do it --

2 THE COURT: I'm not going to be expecting a  
3 cross motion, correct?

4 MR. MORRISSEY: No. And that's -- I mean,  
5 we -- they have a bunch of affirmative defenses.  
6 We considered moving for summary judgment on a  
7 bunch of affirmative defenses that we think are  
8 sort of pointless. But we also decided that  
9 moving for summary judgment on them would be  
10 fairly pointless when we can deal with them  
11 later. So we decided not to burden the Court  
12 with that.

13 THE COURT: Okay. Ms. Lape, I said 85, your  
14 facial expression was -- although, not to call  
15 you out on that. Not to call you out on that.  
16 But I suspect that you are well onto your way of  
17 doing this briefing. Tell me now, is 85 pages  
18 doable? I know you are going to utilize your  
19 best efforts possible.

20 MS. LAPE: I think it is going to be very  
21 difficult to get this in 85 pages when we're  
22 putting the citations up into the main document.  
23 You know, we'll absolutely do our best.

24 Al was not joking when he said earlier



1 that there are -- yes, there are only two claims  
2 technically in the complaint. But there's the  
3 breach of contract on the Globex/trading floor  
4 which has two different theories for each  
5 exchange; there's the fees that have four  
6 theories for CME and three theories for CBOT;  
7 there's the good faith and fair dealing that has  
8 two theories for CME and two theories for CBOT;  
9 plus the different damages, declaratory relief  
10 and injunctive relief that they still apparently  
11 have on an individual basis. So it's a lot.

12 MR. HOGAN: I am worried about the -- Judge,  
13 and I will say, the one thing that Ms. Lape  
14 mentioned that I am worried about, we haven't  
15 scoped out what putting the citations up will do  
16 to those pages. And so I feel like I have got a  
17 little bit of a --

18 MR. AGRAWAL: Your Honor, I may be able to  
19 offer a solution. We have, as you know in our  
20 prior briefing, used a sequentially numbered  
21 appendix, just like in appellate court, and our  
22 citations have always, in our lengthy briefings,  
23 been to pin cite to those lengthy appendices,  
24 which truncates the citation considerably. And



1 particularly when the Court is going to get  
2 hyperlink smart briefs, a citation to, you know,  
3 DX, appendix, you know, 1,374 takes you right to  
4 the page and line of the deposition testimony  
5 that they want to cite.

6 That will take -- that's how we  
7 would -- that's how we plan on doing our  
8 briefing. And unless the Court, you know -- the  
9 Court has never objected to it. And that  
10 certainly should take lots of those words and  
11 unnecessary citation space out of their briefs.

12 THE COURT: So I appreciate the suggestion.  
13 Again, the goal here is to make it readable for  
14 the user, which is me. And I don't expect to  
15 get anything that's superfluous. I just don't.  
16 I am giving you 85 pages.

17 Ms. Lape, if you cannot meet that page  
18 limitation and you turn to Mr. Agrawal and say  
19 I'm at 92, I'm expecting there to be some  
20 cooperation. I'm just leaving that out there.  
21 You're going to do your best to 85. If you run  
22 a little over, it is not unduly prejudicial, 15  
23 pages, 10 extra pages isn't going to move the  
24 needle, we are way off the charts.





1           So I am telling that to plaintiffs,  
2 please be reasonable. In turn, defendants, be  
3 reasonable with the time frame that plaintiffs  
4 want. They will get the same briefing ability.  
5 And quite frankly, if you came in and you said  
6 we need five extra pages on plaintiffs' side,  
7 I'm going to give it to you.

8           This is not a ruling that says oh, she  
9 can't make up her mind. It's really to say  
10 let's not talk about this anymore. Do your  
11 best. I can't believe I am granting 85 pages.  
12 But once you're there, let's just rip the  
13 Band-Aid.

14           Get me the briefs, make sure they're  
15 readable, user-friendly to all, that means the  
16 Court and to plaintiffs. Send them to me when  
17 you send them to plaintiffs. Come up with a  
18 schedule. And then after everything is fully  
19 briefed, give me a couple of weeks. Give me  
20 those briefs as they're being filed so that I'm  
21 not getting them all at once. And then check  
22 with my law clerks in terms of a status date  
23 after that.

24           Based on when we're talking about, I



1 would not expect you to come back before the mid  
2 to end of April. Does that seem right?

3 MR. HOGAN: That does seem right, Judge.

4 MR. MORRISSEY: I agree.

5 THE COURT: All right. Thank you for your  
6 cooperation. I don't think that there's  
7 anything else that we need to do today.

8 MR. HOGAN: I don't think so, Judge. Thanks  
9 to Mr. Connelly for organizing this so quickly,  
10 and obviously, thank you for this morning.

11 THE COURT: That's fine. And just one other  
12 thing that I would ask you to think about before  
13 you come back for that status, what makes sense  
14 in terms of hearing these motions? Mr. Hogan is  
15 filing them all together. If once you see what  
16 the full briefing looks like and you say, Judge,  
17 no, it may make sense to hear this motion for  
18 summary judgment first because then the  
19 decertification obviously is going to become  
20 moot, or hear this because we think that this  
21 will streamline things.

22 I would ask you to cooperate in that  
23 fashion so that we could figure it out. I'm not  
24 sure I'm going to have the bandwidth to hear all



1 three motions all at once, unless you say  
2 they're so intertwined that that's the best way  
3 to deal with things.

4 MR. HOGAN: We will give that a lot of  
5 thought, Judge.

6 THE COURT: Thank you, all.

7 MR. AGRAWAL: Thank you.

8 MR. MORRISSEY: Thank you, your Honor.

9 MR. HOGAN: Thank you.

10 MS. LAPE: Thank you.

11 THE COURT: Send me the order by 1 o'clock  
12 if you can.

13 MR. AGRAWAL: Will do.

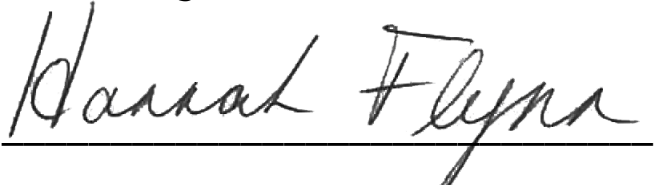
14 (which were all proceedings had  
15 in the above-entitled cause at  
16 this time.)

17 (Proceedings concluded at 10:15 a.m.)



1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )  
4

5 I, HANNAH FLYNN, being first duly sworn, on  
6 oath says that she is a court reporter doing  
7 business in the City of Chicago; and that she  
8 reported in shorthand the proceedings of said  
9 hearing, and that the foregoing is a true and  
10 correct transcript of her shorthand notes so  
11 taken as aforesaid, and contains the proceedings  
12 given at said hearing.

13   
14

15 HANNAH FLYNN, CSR, RPR  
16 LIC. NO. 084-004894  
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<p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1</b> 16:6 36:1 43:11</p> <p><b>1,374</b> 40:3</p> <p><b>1.986</b> 6:9</p> <p><b>10</b> 40:23</p> <p><b>100</b> 16:11 27:21 30:17, 18 32:7 36:7</p> <p><b>100-page</b> 32:15</p> <p><b>101</b> 11:19</p> <p><b>10:15</b> 43:17</p> <p><b>15</b> 6:3 7:24 8:24 29:6 36:7 40:22</p> <p><b>15-page</b> 20:21 28:11,16</p> <p><b>150</b> 30:15</p> <p><b>160</b> 19:20</p> <p><b>16th</b> 28:18 37:13</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>2</b> 6:11 12:13</p> <p><b>20</b> 19:9</p> <p><b>200</b> 19:22 21:16</p> <p><b>200-page</b> 13:14</p> <p><b>2012</b> 35:7</p> <p><b>2015</b> 18:23</p> <p><b>2017</b> 18:20 34:23</p> <p><b>2019</b> 34:24</p> <p><b>25</b> 8:22 9:1 20:4,10 23:1 29:6 32:12</p> <p><b>25-page</b> 28:11</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>30</b> 19:1 21:7,12 32:13</p> <p><b>35</b> 19:12 32:13</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>40</b> 35:17 36:11</p> 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