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1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2 COUNTY DEPARTMENT - CHANCERY DIVISION
3 SHELDON LANGER, RONALD M.)
4 YERMACK, LANCE R.)
5 GOLDBERG, ROBERT PROSI,)
6 GERALD PETROW, CRAIG)
7 RHEINGRUBER, STANTON)
8 MILLER, RAY LARSEN,)
9 DANIEL RYAN, and CAROL)
10 JORISSEN, individually)
11 and on behalf of)
12 themselves and all others)
13 similarly situated,)
14 Plaintiffs,)
15)
16 vs.) No. 2014 CH 00829
17)
18 CME GROUP, INC., a)
19 Delaware Corporation; THE)
20 BOARD OF TRADE OF THE)
21 CITY OF CHICAGO, INC., a)
22 Delaware Corporation,)
23)
24 Defendants.)

16 TRANSCRIPT OF PROCEEDINGS had in the
17 above-entitled cause held via Zoom
18 videoteleconference on the 29th day of May, A.D.
19 2024, at 9:47 a.m.
20
21
22 BEFORE: HONORABLE CELIA G. GAMRATH.
23
24

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1 APPEARANCES:
2 SUSMAN & GODFREY LLP,
3 (401 Union Street, Suite 3000,
4 Seattle, Washington 98101,
5 206-516-3880), by:
6 MR. STEPHEN E. MORRISSEY,
7 smorrissey@susmangodfrey.com,
8 -and-
9 SUSMAN GODFREY LLP,
10 (One Manhattan West,
11 New York, New York 10001,
12 212-336-8330), by:
13 MR. NICK CARULLO,
14 ncarullo@susmangodfrey.com,
15 -and-
16 MASSEY & GAIL LLP,
17 (50 East Washington Street, Suite 400,
18 Chicago, Illinois 60602,
19 312-283-1590), by:
20 MR. SUYASH AGRAWAL,
21 sagrawal@masseygail.com,
22 appeared via videoteleconference on
23 behalf of the Plaintiffs;
24

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1 APPEARANCES (Continued):
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP,
3 (320 South Canal Street,
4 Chicago, Illinois 60606,
5 312-407-0700), by:
6 MR. ALBERT L. HOGAN III,
7 al.hogan@skadden.com, and
8 MS. MARCIE LAPE,
9 marcie.lape@skadden.com,
10 appeared via videoteleconference on
11 behalf of the Defendants.
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23 REPORTED BY: VICTORIA C. CHRISTIANSEN, RPR, CRR,
24 Illinois CSR No. 84-3192.

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1 THE COURT: If there is no one else, then the
2 Court is calling 2014 CH 829, Langer vs. CME Group.
3 Will the attorneys please identify
4 themselves.
5 MR. MORRISSEY: Good morning, your Honor.
6 Stephen Morrissey of Susman Godfrey for the
7 plaintiffs.
8 MR. AGRAWAL: Good morning, your Honor.
9 Suyash Agrawal of Massey & Gail for the plaintiffs.
10 MR. CARULLO: Nick Carullo also from Susman
11 Godfrey for the plaintiffs.
12 MR. HOGAN: Good morning, Judge. This is
13 Al Hogan of Skadden Arps for the defendants.
14 MS. LAPE: And Marcie Lape from Skadden Arps
15 for defendants.
16 THE COURT: Thank you. Do we have a court
17 reporter present? Very good. So aside from the
18 official court reporter, please, there shall be no
19 recordings, videos or photographs taken.
20 With respect to today, we have some
21 motions that are primed and ready to go, it
22 appears. They are voluminous, comprehensive.
23 Mr. Hogan, what would you like to speak
24 to? They're your motions.

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1 MR. HOGAN: Sure, your Honor. We're here
2 today for a status on -- on the suite of motions
3 that we filed.
4 The first thing I would like to say is
5 to express our appreciation to the Court for the
6 additional pages. I know we discussed that earlier
7 in the year. I hope that we didn't disappoint in
8 terms of how we used those pages, but we're
9 grateful to be able to put all of those motions in
10 front of the Court.
11 Your Honor, as we discussed where the
12 motions sit and how your Honor may take them up, we
13 obviously received -- in addition to the prior
14 discussion, we had we received your e-mail
15 approximately a month ago where you reiterated that
16 your time here on this court is up toward the end
17 of this year and you asked us to think about how --
18 how we might use that time.
19 Judge, from the defendants' perspective,
20 I will say that the most important consideration
21 for us in terms of discussing scheduling is to give
22 your Honor hopefully the time and the information
23 necessary so that you can resolve this suite of
24 motions prior to your departure. We -- and I've

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1 got some ideas about how you might approach that,
2 but from our perspective, as we said before, your
3 Honor's familiarity with this case, your --
4 frankly, your approach to the case so far is
5 what -- what we believe these motions deserve and
6 what my clients are hoping for.
7 These motions are obviously critical to
8 us. They are -- they are dispositive. I know that
9 there's been talk about what happens when the case
10 moves forward. I don't have that perspective. I
11 think this case should be resolved based on the
12 motions that we've -- that we've filed, and so from
13 our perspective, Judge, we -- we want to make sure
14 that when we leave here today that you have the --
15 the right amount of time, but with respect to if
16 you want to have a substantive hearing on these
17 motions, we -- we, the defendants, want to
18 accommodate you with whatever we need to give you
19 in terms of the time to resolve these motions.
20 Having said that, I will -- I will
21 report to your Honor that along with Mr. Morrissey,
22 we have discussed and have a mediation scheduled in
23 this case. We have resolved to mediate the case in
24 front of former Judge James Epstein, for -- for

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1 reasons that your Honor's probably familiar. He's
2 a fantastic judge, very familiar with the court,
3 and we're -- we're looking forward to having a
4 session with him. That mediation takes place on
5 Thursday, July the 11th.
6 And so I want your Honor to know that
7 because I thought about the hearing today, and it's
8 a difficult pitch to say, Judge, I think you
9 should -- you should go full steam ahead on getting
10 ready to resolve these motions when we have a
11 mediation coming up on July 11, but here's a couple
12 of considerations, from my perspective.
13 The first is that now is the time for us
14 to go to mediation. There's no doubt about that.
15 I would say that we -- we're going to approach this
16 mediation thoroughly, obviously in good faith and
17 hopefully, but I think we should all plan that
18 there is the likelihood, certainly the possibility
19 that your Honor will still be called upon to
20 resolve these motions.
21 The parties are tremendously far apart
22 conceptually, and if you had a chance to review
23 them, our motions in essence -- they're long, but
24 they do boil down to what I've said about this case

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1 all along.
2 The Globex claims we think are made up
3 and the fee claims are conceptually cognizable but
4 factually without basis, and there's a lot that
5 goes into that. That's our view strongly. It's
6 been our view all along. The plaintiffs have a
7 very different view.
8 And so we're going to go to this
9 mediation in front of Judge Epstein, who hopefully
10 will be able to see if there is a different
11 perspective that one side or both sides may take
12 over their positions, but we should -- we should
13 plan I think on your Honor resolving that.
14 The second thing I would say is that I
15 believe that the case and both parties will benefit
16 substantially from leaving here today knowing that
17 your Honor is going to take up and decide this
18 suite of motions. I think giving us all the
19 certainty that that's going to happen, it's going
20 to happen from your Honor and it's going to happen
21 in the -- the time period that you have remaining
22 with this case will properly focus the parties as
23 we head into the mediation session and maximize the
24 chances that people think hard about this case

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1 because it will be moving forward from our
2 perspective hopefully to a resolution in the short
3 term. Obviously from Mr. Morrissey's perspective,
4 he's going to tell you, "I want to do a trial,"
5 but knowing that your Honor's going to deal with it
6 puts us in the right frame of mind.
7 So with that, Judge, I would say
8 we're -- we -- in an ideal world, if you said,
9 "Hey, I want to have a hearing --" and I'm not sure
10 if you do, but if you want to have a substantive
11 hearing, I think we should look at that and get
12 that on the calendar and -- bearing in mind the
13 paramount consideration from my perspective is your
14 time and your being able to resolve it.
15 I would offer that if you're thinking
16 about staging these motions --
17 THE COURT: That's what I was going to ask.
18 MR. HOGAN: Yeah.
19 THE COURT: And I'm going to get some input
20 from Mr. Morrissey, as well, but if I was going to
21 stage them in sequential order, what is your view
22 on that?
23 MR. HOGAN: So I will tell you, Judge, I
24 believe that you should take up the motion for

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1 summary judgment first. The reason why I say that
2 is that it is the -- it is the comprehensive story
3 of the case, from our perspective. It puts forth
4 all of the facts and the law that we think results
5 in a judgment in our favor.
6 The -- the motion -- I'll take the --
7 the other side of the spectrum would be the motion
8 to decertify, and we spell this out in our papers,
9 we view that as a motion in the alternative.
10 Obviously if your Honor's inclined to grant summary
11 judgment, that ends the case and we don't have to
12 worry about decertification.
13 Sitting in between those is our motion
14 to exclude the plaintiffs' damages expert, and they
15 have other experts, but we just moved on one expert
16 now because we think it is informative on the
17 summary judgment motion and I would concede it's
18 probably required that you rule in our favor if
19 you're in the decertification motion.
20 So what I would say is that the motion
21 for summary judgment is the straight-away path.
22 Your Honor could rule in our favor without
23 issuing -- certainly without taking up the motion
24 to decertify and without issuing a ruling on the

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1 motion to exclude Dr. Arnold.
2 So that -- that seems like it -- it
3 seems like the straightforward path. It's frankly
4 the way that I would prefer your Honor does it just
5 in terms of grappling with the case writ large. We
6 think now is the time for this case to move.
7 THE COURT: If the Court was disinclined to
8 rule on the motion to exclude the damages expert,
9 if I think that belongs in front of the trial court
10 who's going to hear this case, what would that do
11 to the motion for decertification? Is the motion
12 for decertification contingent on me excluding the
13 damages expert?
14 MR. HOGAN: I believe it is, Judge. I think
15 the substantial change in the case is that the
16 plaintiffs have no damages with respect to their
17 fee claims, and we believe that with Dr. Arnold
18 excluded, they would have no damages with respect
19 to the Globex claims.
20 We think that Dr. Arnold's exclusion
21 also weighs heavily in terms of granting summary
22 judgment outright, but there are additional
23 considerations in the summary judgment motion that
24 we think you can get there without dealing with

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1 Dr. Arnold necessarily, but the -- the
2 decertification, I -- I don't -- I wouldn't ask you
3 to take that up and not take up Dr. Arnold.
4 THE COURT: Okay. Thank you.
5 Mr. Morrissey?
6 MR. MORRISSEY: Yes, your Honor. I agree with
7 a large portion of what Mr. Hogan said except for
8 the ramifications of the elephant in the room,
9 which is the merits.
10 We have conferred and agree that
11 mediation should be July 11. In terms of what your
12 Honor should do before your time's up here, we
13 agree that it would be best for you to wrap up as
14 much as you can.
15 As we've flagged in our papers, we
16 believe the motion to exclude and the motion to
17 decertify that hinges on it are properly directed
18 to the trial court judge and that the summary
19 judgment motion in any event should be taken up
20 first.
21 On the merits, Mr. Hogan said he's firm
22 in his views, and I take him at his word. We, too,
23 are firm in ours as we have been throughout that
24 there's a fact issue as to whether Aurora is a

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1 trading floor and that that leads to a need for a
2 trial.
3 If we can make progress on narrowing
4 that gap at a mediation, it would be terrific,
5 and -- but like Mr. Hogan, I would not place a
6 strong bet on that happening in one day of
7 mediation. We hope -- we will enter it with good
8 faith and hope to get there, and I think we've done
9 a good job of selecting a mediator who is the right
10 person for this case.
11 THE COURT: I wholeheartedly agree. I think
12 you chose an excellent mediator, somebody who has
13 experience in big cases, chancery, law, the
14 appellate court, is incredibly diligent.
15 This is really your opportunity to have
16 this case be heard, come to a close with terms that
17 can be a little bit more flexible than the ultimate
18 trier of fact can give either one of you.
19 So I really do encourage you to go
20 forward in good faith, which I know you will, but
21 just keep an open mind about what suggestions and
22 modality you can glean from that mediation session,
23 and if it requires more than one day, that's not
24 unheard of, and I'm sure Judge Epstein would afford

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1 you that time. It is time and money well spent.
2 MR. MORRISSEY: Yes, your Honor. We've
3 discussed with him the possibility of needing
4 additional days, as well.
5 The one point of hesitation that
6 Mr. Hogan and I think both -- we discussed this in
7 advance is we want -- we're sensitive to your time
8 and your docket and we want to make sure that we've
9 allowed you adequate time after oral argument to
10 resolve the motion, and if -- if it made more sense
11 for your schedule to have the argument before the
12 mediation, we would certainly be willing to do
13 that, but we could also do it shortly after the
14 mediation, within a couple weeks after that first
15 mediation date, if that works best for you and
16 allows you adequate time.
17 THE COURT: Yeah, so it is definitely not
18 going to be in July. At best you're going to get
19 an August date.
20 I am inclined to look at that summary
21 judgment motion and the other motions. I need to
22 see where my schedule goes, and, quite frankly,
23 just in all candor, my latest date that I'm here is
24 December. There is the potentiality that I leave

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1 sooner. I am going to be without law clerks for
2 many months, so I just -- there's a lot of moving
3 pieces.
4 This case is a priority to me. I've
5 lived with it for some time, Judge Mackoff before
6 that, and then you're going to be moving on forward
7 to someone else.
8 I do want to ask you, however: If I am
9 unable to resolve these motions, one or all of
10 them, do you want another chancery judge to hear
11 these motions or at that point should I just send
12 you to law?
13 MR. MORRISSEY: Our preference at that point
14 would be to go directly to law and hopefully to get
15 in the commercial department at that point.
16 THE COURT: Mr. Hogan, I tend to agree with
17 that because there's no guarantee that there's
18 going to be a seamless transition between me and my
19 successor, so you could just be in a holding
20 pattern for a long time without a judge.
21 Alternatively, I could ask the presiding
22 judge to reassign you to a sitting judge in
23 chancery, and maybe that would expedite things, but
24 I just -- you're going to switch judge anyways to

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1 law division, so maybe it's more prudent to do it
2 sooner rather than later.
3 MR. HOGAN: When you say "sooner rather than
4 later," Judge, what -- so that I understand --
5 THE COURT: Well, you know, again, when I
6 leave, there is no guarantee that somebody is
7 coming in to take over Calendar 6.
8 MR. HOGAN: Uh-huh.
9 THE COURT: You didn't have that experience
10 with me and Judge Mackoff. That was done
11 seamlessly in terms of a calculated transition.
12 This one may not be so seamless. Months
13 may go by before a new judge is assigned to fill
14 Calendar 6, and if you stay on Calendar 6, you will
15 be without a judge for many, many months
16 potentially.
17 So the alternative is for me to say to
18 the presiding judge, "I've dealt with this one
19 motion. There's other motions pending. They want
20 to have them in chancery. Can you reassign this to
21 Calendar 1, 2, 3 or 4," or something of that
22 nature, "so that they have a judge," or should I
23 kick it to law division and then let the law
24 division judge deal with, for example, the motion

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1 to exclude the damages expert and decertification.
2 That's what I think would expedite
3 things best. That's if I can't get to all of these
4 motions.
5 MR. HOGAN: So, your Honor, when -- as you sit
6 here today, does the Court have any indication of
7 when -- again, knowing we've got a mediation coming
8 up, when your Honor might want to have a hearing if
9 you want to have a hearing or when you might rule
10 on that summary judgment motion?
11 The reason why I ask, not to ans- -- not
12 to answer your question with a question, but I
13 will -- I will tell you my inclination is that I --
14 I'd prefer some time to think about that ultimate
15 reassignment.
16 I don't believe it will be necessary if
17 your Honor rules on the summary judgment motion.
18 I -- I'm fervent in my belief, I'm optimistic,
19 but --
20 THE COURT: No, I get that, you're hoping I
21 grant it, but if I deny it and we still have some
22 motions out there --
23 MR. HOGAN: Right, and what I suggest is maybe
24 that's something that I could consider and take up

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1 when that time comes, and maybe if you want me to
2 let you know sooner rather than later, I can.
3 THE COURT: And this is not -- this is not
4 forum shopping; this is really I'm getting input
5 from both sides of the coin to see how we could
6 serve this case best. I am well aware of the
7 length of this case --
8 MR. HOGAN: Sure.
9 THE COURT: -- and so I want to make sure that
10 my situation is not unduly detrimental to moving
11 this case forward.
12 So you guys have some time to think
13 about that. I want to get your views on what you
14 want to occur. It sounds to me like both parties
15 would like me to hear the summary judgment, and I'm
16 going to do that.
17 So let me look at my calendar. I will
18 have my clerks next week or so give you some dates
19 that are appropriate for argument on that motion,
20 and my timeline is such that -- like I said, it
21 will definitely be the first week in December. It
22 may be sooner. I have some things that I need to,
23 you know, juggle, as well, and I'm just being
24 candid with you, giving you as much information I

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1 can.
2 So if I do oral argument on the summary
3 judgment motion, it will definitely be after
4 mediation and it probably will not be until August
5 or so, so -- and keeping in mind I also want to
6 keep it, selfishly, because when I transfer this to
7 a colleague with 85-page briefs, I will not be a
8 fan favorite, so I'm balancing that.
9 But I did skim through the briefs.
10 They're excellent, as always. You both present
11 very, very well, and that's why I gave you a long
12 leash, because I knew it would not just be, you
13 know, bulk, that it would be substance, so thank
14 you for that.
15 We're going to do an order today that
16 says these three motions are pending, they're fully
17 briefed, the Court will get back to the parties
18 with an oral argument date, and to the extent that
19 you have more to report, just contact my clerks and
20 you can get a status date, but otherwise just wait
21 a few days to hear from them about what the oral
22 argument date will look like, okay?
23 MR. MORRISSEY: Very well, your Honor.
24 THE COURT: All right. If that's all, thank

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1 you all for the courtesy. Best of luck at
2 mediation. You know, why don't you plan to submit
3 a status report either in writing or you could
4 appear and tell me how mediation went after July.
5 Does that sound all right?
6 MR. HOGAN: After the 11th?
7 MR. MORRISSEY: Yes, yes.
8 THE COURT: And, you know, again, because you
9 cooperate so well, I'll let you guys decide how you
10 want to present that, either in writing or if you
11 want to come for a short status, just let my clerks
12 know.
13 MR. HOGAN: Very good, Judge.
14 THE COURT: Okay. Very good. Thank you, all.
15 MR. HOGAN: Thank you.
16 MR. MORRISSEY: Thank you, your Honor.
17 MR. CARULLO: Thank you, your Honor.
18 (WHICH WERE ALL THE PROCEEDINGS
19 HAD IN THE FOREGOING CAUSE ON
20 THIS DATE.)
21
22 (TIME NOTED: 10:09 A.M.)
23
24

1 REPORTER'S CERTIFICATE
2
3 I, VICTORIA C. CHRISTIANSEN, a Certified
4 Shorthand Reporter of the State of Illinois, do
5 hereby certify that I reported in shorthand the
6 proceedings had at the hearing aforesaid, and that
7 the foregoing is a true, complete and correct
8 transcript of the proceedings of said hearing as
9 appears from my stenographic notes so taken and
10 transcribed under my personal direction.
11 IN WITNESS WHEREOF, I do hereunto set my
12 hand at Chicago, Illinois, this 29th day of May,
13 2024.
14
15 
16 Certified Shorthand Reporter
17 C.S.R. Certificate No. 84-3192.
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