

No. 72644-7-I

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

EAGLEVIEW TECHNOLOGIES, INC.,

Respondent,

v.

YURI PIKOVER, an individual; and 37 TECHNOLOGY
VENTURES, LLC, a Delaware limited liability corporation,

Appellants.

BRIEF OF APPELLANTS

Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
3rd Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Appellants
Yuri Pikover and
37 Technology Ventures, LLC

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A. INTRODUCTION

This appeal relates to the valuation of the shares of stock owned by appellants Yuri Pikover and 37 Technology Ventures, LLC ("37 TV") in EagleView Technologies, Inc. ("EagleView") under the dissenter rights statute in Washington's Business Corporations Act, RCW 23B.13. Pikover/37 TV invoked their statutory rights when EagleView merged with Pictometry International Corporation ("Pictometry") in 2013.

The trial court erred in failing to conduct an independent valuation proceeding confined to the fair value of EagleView's shares, as it was required to do by RCW 23B.13.300, and instead was swayed by irrelevant, inflammatory evidence regarding Pikover's ouster from EagleView's board, his conduct while on the board, and his alleged revenge motivation for asserting his statutory dissenter rights.

The trial court did not exercise independent judgment and instead merely chose between the parties' experts' opinions. The trial court ignored the Houlihan Lokey "fairness opinion," performed for Pictometry's shareholders only a month before the closure of the merger; that opinion constituted a disinterested expert valuation of the EagleView shares at the time of the merger. The court also largely ignored the 409A tax valuation of EagleView, another disinterested opinion on value,

performed by EagleView's own litigation expert. Those valuations should have been the cornerstone to any independent valuation by the trial court.

The trial court also erred in refusing to award attorney fees to Pikover/37 TV, under RCW 23B.13.310, particularly where they were successful in prompting an increase in EagleView's initial valuation of the dissenter shares by filing their action.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error¹

1. The trial court erred in admitting evidence of Pikover's ouster from the board of directors, his conduct while on the board, and his alleged revenge motivation for invoking his dissenter rights in the fair value portion of the trial.

2. The trial court erred in making finding of fact number 2.

3. The trial court erred in making finding of fact number 8.

¹ The findings of fact and conclusions of law here were prepared by EagleView's counsel. They read more like EagleView's brief than the court's objective findings and contain irrelevant findings, for example, attacking Pikover/37 TV.

The process of allowing counsel for a prevailing party to prepare findings has long been legitimately criticized because such findings, prepared by the non-objective advocate, may not fully and accurately reflect the thoughts of the impartial judge at the time of the initial discussion. *Industrial Bldg. Materials, Inc., v. Interchemical Corp.*, 437 F.2d 1336, 1339 (9th Cir. 1970); *Lumbermen's Underwriting Alliance v. Can-Car, Inc.*, 645 F.2d 17, 18 (9th Cir. 1980) (rejecting mechanical adoption of party's findings/conclusions by trial court). See generally *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656-57 n.4, 84 S. Ct. 1044, 12 L.Ed.2d 12 (1964).

Pikover/37 TV have assigned error to a wide swath of the trial court's findings that were likely affected by EagleView's prejudicial evidence on Pikover's conduct and motivations irrelevant to EagleView's fair value.

4. The trial court erred in making finding of fact number 22.
5. The trial court erred in making finding of fact number 23.
6. The trial court erred in making finding of fact number 24.
7. The trial court erred in making finding of fact number 29.
8. The trial court erred in making finding of fact number 30.
9. The trial court erred in making finding of fact number 31.
10. The trial court erred in making finding of fact number 45.
11. The trial court erred in making finding of fact number 48.
12. The trial court erred in making finding of fact number 49.
13. The trial court erred in making finding of fact number 50.
14. The trial court erred in making finding of fact number 51.
15. The trial court erred in making finding of fact number 52.
16. The trial court erred in making finding of fact number 53.
17. The trial court erred in making finding of fact number 54.
18. The trial court erred in making finding of fact number 55.
19. The trial court erred in making finding of fact number 58.
20. The trial court erred in making finding of fact number 59.
21. The trial court erred in making finding of fact number 60.
22. The trial court erred in making finding of fact number 61.
23. The trial court erred in making finding of fact number 62.
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61. The trial court erred in entering conclusions of law number B 7).
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66. The trial court erred in entering conclusions of law number B 12).
67. The trial court erred in entering conclusions of law number B 13).
68. The trial court erred in entering conclusions of law number B 14).
69. The trial court erred in entering conclusions of law number C.
70. The trial court erred in entering conclusions of law number E.

71. The trial court erred in entering its final judgment on October 6, 2013.

(2) Issues Pertaining to Assignments of Error

1. Did the trial court err in its valuation of the dissenters' stock in a RCW 23B.13.300 proceeding when it allowed the introduction of extraneous evidence in that proceeding relating to a dissenter's ouster from the corporation's board and his alleged motivation for invoking his statutory rights? (Assignments of Error Numbers 1-3, 33-50, 71).

2. Did the trial court err in its valuation of the dissenters' stock in a RCW 23B.13.300 proceeding when it failed to conduct an independent valuation of the company's shares, treating the proceedings as one in which it was to choose between the parties' competing experts, ultimately relying on the company's valuation expert to the exclusion of other pertinent valuations of the company, rather than conducting its own independent valuation? (Assignments of Error Numbers 4-32, 51-69, 71).

3. Did the trial court err in failing to award attorney fees to dissenters under RCW 23B.13.310 where the dissenters' invocation of their statutory rights forced the company to increase the value of the dissenters' shares? (Assignments of Error Numbers 70-71).

C. STATEMENT OF THE CASE

Pikover and 37 TV² are former EagleView shareholders who dissented from EagleView's decision to merge with Pictometry, a merger that was effective on January 7, 2013. EagleView had a five-member board of directors that included three independent directors with extensive

² 37 TV is an LLC used by Pikover for making investments; it had a substantial interest in EagleView. CP 62 (FF 4).

experience and expertise leading successful high-technology companies, Pikover, Edward Zander, and Robert Hawk. RP 994-1001, 1046-47; CP 62 (FF 7).³

Founded in 2007, EagleView was an innovator and leading provider of aerial roof measurements services, providing its customers detailed accurate roof measurements that allow insurance companies and contractors to estimate the costs of repair or replacement of rooftops throughout the country. CP 63-64 (FF 11-13). It used patented software⁴ to render accurate three-dimensional models from aerial photographs of roofs, and from these images can extrapolate accurate measurements and slopes. *Id.* It won awards for its business activities. RP 102-03, 334; CP 67-68 (FF 28).

EagleView's primary customers were roofing contractors and insurance companies who found EagleView a safer and faster alternative to measuring roofs by hand. CP 63 (FF 11). By 2012, EagleView's customer list included 19 of the 20 largest casualty insurance carriers. RP 333-34. While companies attempted to compete with EagleView over the

³ EagleView acknowledged the "stellar backgrounds" and the fundamental contributions of those outside directors to the corporation's success. Ex. 286.

⁴ Between December 2011 and June 2012, the United States Patent and Trademark Office issued four patents to EagleView related to its aerial roof measurement business. CP 66 (FF 22). It received 2 patents after the merger. RP 789. The patents constituted important leverage against potential or actual competitors. RP 1011-12.

years, none successfully challenged EagleView's dominance as the industry leader in aerial roof measurements; EagleView's roof measurement product was broadly accepted in the relevant market, as it had roughly 90% of the market. RP 1010.

EagleView's business grew rapidly. EagleView's revenues increased from \$1.4 million in 2008 to \$48.5 million in 2012. CP 67 (FF 25). This was a 3392% increase. RP 334, 392. Its EBITDA (earnings before interest, taxes, depreciation and amortization) grew from losses in 2008 and 2009 to \$11.4 million in 2012. CP 67 (FF 26). Just as its revenues and earnings climbed, so did EagleView's value and, consequently, the value of its stock.⁵ EagleView's own earnings forecasts were positive for the years after 2012. CP 67-68 (FF 28).

⁵ EagleView was the subject of numerous valuations performed pursuant to section 409A of the Internal Revenue Code. Such valuations are important as they are used for tax and financial reporting purposes. They are based on input from corporate management and involve a GAAP financial statement independently audited by outside auditors. CP 84 (FF 88). EagleView's 409A valuation was audited by Deloitte. CP 84 (FF 88).

EagleView was valued by Grant Thornton as of June 30, 2009 at \$13.3 million (undiscounted value of 60 cents/share of common stock); as of September 30, 2010 at \$44.7 million (\$2.09/share of common stock); as of June 30, 2011 at \$118.6 million (\$5.47/share of common stock); as of September 30, 2011 at \$179.8 million (\$8.21/share of common stock); and by Alvarez & Marsal Valuation Services LLC ("Alvarez & Marsal") as of December 31, 2011 (in a report dated June 12, 2012) at \$198.2 million (\$9.03/share of common stock). Exs. 212, 213, 260-62; RP 931-37; CP 67 (FF 27). Neil Beaton, EagleView's litigation valuation expert, also prepared the EagleView 409A valuations initially while at Grant Thornton and later at Alvarez & Marsal. RP 1482-83.

EagleView's rapid growth and rising profitability did not go unnoticed. In late 2011 and early 2012, EagleView received unsolicited inquiries concerning a potential purchase of the company, based on valuations as high as \$350 million. CP 65 (FF 18). Consequently, EagleView retained Allen & Company ("Allen"), an investment banking firm, to market the company to potential acquirers and investors. CP 64-65 (FF 19). Allen prepared a valuation of EagleView in January 2012 that placed the company's value near \$350 million. CP 2725. In April 2012, after EagleView's CEO, Chris Barrow, had travelled around the country to give substantive presentations to prospective acquirers and investors, CP 65 (FF 17), Allen reported expressions of interest from nine companies, including Pictometry, with which EagleView ultimately merged. CP 65 (FF 18). These expressions of interest valued EagleView between \$170 and \$350 million, with six of the nine interested parties showing a midpoint valuation of \$250 million or more. Ex. 219.

In May 2012, six of the nine interested parties submitted actual "bids." CP 65 (FF 18). These bids were based on the bidders' valuations of EagleView that ranged from \$150 to \$275 million, with the midpoint of all six at or above \$200 million. Ex. 221.

Despite the urging of EagleView's board to continue seeking bids from *all* interested parties, RP 1042-43, 1045-52, EagleView's

management eliminated all but Pictometry from the sales process and entered into an agreement with that company in which EagleView was valued at \$250 million. *Id.*; CP 65-66 (FF 21), 82 (FF 82). Knowing that the independent directors would object to narrowing the field to one potential transaction partner in this way, management and EagleView's largest shareholder, Curtis Pilot, undertook to remove the three independent directors, including Pikover, from the EagleView board, individuals he called "professional board sitters." RP 300, 495; CP 87 (FF 97).⁶

With the new board's approval,⁷ EagleView's management then negotiated exclusively with Pictometry, on terms that initially involved a payment by Pictometry of \$125 million to cash out any EagleView shareholders who did not desire to be shareholders in the combined company. CP 66 (FF 21), 82 (FF 82). The initial term sheet used a value of \$250 million for EagleView. Ex. 246; RP 561-62, 881-84. Ultimately, the merger deal was structured as a stock-for-stock "merger of equals"

⁶ The trial court's findings regarding the ouster of Pikover and the other two outside directors, are irrelevant to the valuation of EagleView. CP 87-88 (FF 97-99).

⁷ This move was a surprise to those outside directors, RP 493, 1085, and was undertaken initially without a shareholders' vote. RP 834. The removal of those outside directors was designed to facilitate the Pictometry merger. RP 854, 1086-87.

with Pictometry putting no cash into the deal. Ex. 314.⁸ The parties ultimately negotiated a deal without cash payments by Pictometry. CP 82-83 (FF 83). A final merger agreement was signed on December 18, 2012, and the merger transaction closed on January 7, 2013. CP 83 (FF 84).

EagleView received an independent valuation prepared by Houlihan Lokey for Pictometry prior to the merger. Exs. 305, 345. That valuation, undertaken in connection with its fairness opinion,⁹ was delivered by Houlihan Lokey to Pictometry four weeks before the merger; it valued EagleView at \$187-294 million, with a mid-point value of \$239 million. Ex. 345. This fairness opinion required months of work by Houlihan Lokey using the forecasts of EagleView's CFO John Polchin for

⁸ The record below is replete with references to a "merger of equals" and the merger was so described in press releases. *E.g.*, RP 286, 290, 489-90, 625-26, 884-85. This meant that EagleView and Pictometry were roughly of equal value -- 50/50. RP 634-35, 884-85. As Pictometry was valued at roughly \$200 million, Ex. 345; RP 507, this suggests that EagleView's value was similarly around \$200 million or \$9 share of common stock.

⁹ A "fairness opinion" is a valuation obtained by the directors of a corporation seeking to merge with another so that those directors are adequately informed as to the fairness of the price of shares in the merger partner. Ted. J. Fiftis, *Responsibility of Investment Bankers to Shareholders*, 70 Wash. L.Q. 497 (1992). As Professor Fiftis notes, "Clearly, the legal purpose of the fairness opinion is to protect the shareholders from an unfair transaction. It does not propose to protect directors, although it may help the directors discharge their duty to inform themselves." *Id.* at 511. That opinion carries some risk as it is used in the real world of corporate mergers with "real money" at stake. RP 1573-74. As Ellen Larson testified: "... when you are taking on that kind of risk as a valuation firm, you are not going to do anything to screw it up." RP 1574. Thus, the fairness opinion was of utility to Pictometry's shareholders, but it plainly was also of significance to EagleView, particularly where this was a "merger of equals."

EagleView's value as a stand-alone company. Ex. 348; RP 946.¹⁰ No fairness opinion or third party valuation of the corporation was obtained by EagleView, a risk factor it noted to its shareholders. CP 3024-25; RP 287-88, 648.

EagleView shareholders were notified of the proposed merger on January 3, 2013, and asked to consent to it. CP 90 (FF 116); RP 2961-3226. On January 5, shareholders were notified that sufficient support existed for the merger, and they were further advised of their statutory dissenter rights. CP 90 (FF 117); RP 3228-33. EagleView sent a further notice to non-approving shareholders on January 10. CP 90 (FF 119); RP 3235-43.

Dissatisfied with the final terms of the merger and how it came about, Pikover/37 TV asserted dissenters' rights under RCW 23B.13 in late January. CP 91 (FF 120); RP 3245-46, 3267. Pikover expected to receive \$12 or more per share for his EagleView stock based on a \$250 million valuation for the company. RP 1022, 1101.¹¹ To their surprise, EagleView responded on February 28, 2013 with proposed payments to

¹⁰ This opinion also valued Pictometry at a midpoint value of \$233 million, ex. 345, an important valuation of that company in a "merger of equals."

¹¹ This valuation was due to the rapid and continued growth of the company, its strong revenues and cash-flow position, and their knowledge of the third-party "bids" that EagleView had received prior to the removal of the independent directors in July 2012 (including the proposed transaction submitted by Pictometry, reflected in a signed term sheet). Ex. 246; RP 1014-15.

the dissenters based on a price of only \$2.75/share of common stock and \$3.65/share of preferred stock. CP 91 (FF 121-122); RP 3289-3312.¹² These numbers reflected a valuation for EagleView of approximately \$67 million. EagleView also set interest on the shares at 0.05%. CP 92 (FF 124).

Pikover/37 TV retained FTI Consulting, Inc. ("FTI") in March 2013 to prepare an expert valuation of EagleView in response to EagleView's proposed payments; based on the information available, FTI's Ellen Larson concluded in a preliminary that EagleView's value immediately before the merger was \$296.5 million and that its common stock was worth \$12.14/share. Ex. 41.¹³

¹² EagleView CFO John Polchin decided to use the \$2.75 and \$3.65 figures despite having a draft valuation from Alvarez & Marsal whose Neil Beaton had prepared EagleView's 409A valuations for the past several years. RP 1482-83. That draft valuation determined EagleView's common stock to be worth \$3.75 per share and its preferred stock to be worth \$4.68 per share. Ex. 211; RP 954-56.

The official 409A valuation performed by Neil Beaton of Alvarez & Marsal as of December 31, 2011, in a report issued June 12, 2012, was \$198.2 million or \$9.03 per share of EagleView common stock. CP 67 (FF 27). The 409A valuation as of December 31, 2012 (six days before the merger) put the value of EagleView common stock at \$3.89 per share. CP 84 (FF 89). While that value is less than its \$9.03 per share value of only one year earlier, Alvarez & Marsal's valuation was consistent with its "draft" valuation, and far exceeded what EagleView initially paid the dissenters.

EagleView attempts to explain away its failure to utilize these 409A valuations in its offer to Pikover/37 TV, CP 84 (FF 90), but such explanations are ultimately unavailing where EagleView sweetened its payment to the dissenters later to largely reflect the draft valuation.

¹³ Larson later issued a revised opinion in which she opined that the shares of common stock were worth \$12.31. Ex. 333.

Pikover/37 TV provided this preliminary report to EagleView, rejected EagleView's valuation, and requested that EagleView adopt FTI's values as the fair value for their shares by a letter from counsel dated March 29, 2013. Ex. 41; CP 93 (FF 125-26); RP 3314-74. EagleView, however, did not even respond, nor did it take any steps to try to resolve the dispute before filing this action. RP 705-06, 1105.

EagleView then commenced the present action on May 24, 2013 in the Snohomish County Superior Court. CP 93 (FF 127); RP 2952-59. The case was assigned to the Honorable Millie Judge.

Beaton, EagleView's litigation valuation expert,¹⁴ submitted a December 16, 2013 opinion in discovery that EagleView's value immediately before the merger was greater than the value that EagleView had used for the payments that it made to Pikover/37 TV in February 2013. Ex. 26; CP 93 (FF 128-129). He calculated EagleView's value at \$88.4 million with share values at \$3.94 per share of common stock and \$4.88 per share of preferred stock. *Id.*; RP 1384, 1442. EagleView tendered an additional payment to Pikover/37 TV reflecting the difference between its earlier payment and Beaton's valuation. CP 93-94 (FF 131).

In January 2014, almost exactly a year after EagleView and Pictometry merged, Verisk Analytics, Inc. ("Verisk") announced that it

¹⁴ Beaton was hardly "independent" where he had prepared 409A valuations for the corporation over the years. RP 1482-83.

had entered into an agreement to purchase the combined EagleView/Pictometry company for \$650 million, with shareholders of both EagleView and Pictometry to receive \$14.85 per share of common stock/Class A preferred stock. CP 90 (FF 114).

Beginning with its petition, CP 2957-58, and continuing with its trial brief, CP 2794-94, 2806-08, EagleView attempted to demonize Pikover. At trial, over objection,¹⁵ beginning with opening statements, RP 77, the court permitted EagleView to put on irrelevant evidence regarding Pikover's alleged self-interest or a revenge motivation for invocation of his dissenter rights against EagleView. *E.g.*, RP 275-76, 295-327, 564-68, 723-25, 783-89. Indeed, virtually the entirety of Pikover's cross-examination focused on these irrelevant issues with EagleView's counsel repeatedly referencing Pikover's ouster from EagleView's board. RP 1127-1319. EagleView's counsel even elicited testimony from Pikover on his net worth, a fact that is utterly irrelevant to the fair value of EagleView's shares of stock. RP 1287-88. Finally, in closing arguments, EagleView's counsel *repeatedly* referenced Pikover's ouster from the

¹⁵ Pikover/37 TV objected to the presentation of evidence on Pikover's net worth, his ouster from EagleView's board, his alleged provision of information to third parties, his alleged threats to EagleView's CEO, or his motivation for invoking his statutory dissenter rights *repeatedly* below. CP 2565-82, 2690-2707 (objections to admission of documents per joint statement of the evidence; CP 2547-48, 2750-51; RP 36-46 (motions in limine); RP 711, 1291 (revenge motivation); RP 312 (CEO's personal safety concerns); RP 723 (information to third parties); RP 1287 (net worth).

board, his alleged breach of fiduciary duties to the corporation, and his putative revenge motivation. RP 1780, 1785, 1791, 1807, 1816-24.

The trial court made findings on the dissenters' motivations for invoking their statutory rights, CP 61, 62, 86-90 (FF 2, 8, 95-112), but eventually concluded that such evidence did not justify a fee award against Pikover/37 TV. CP 106-07 (CL E).¹⁶

After a trial over the course of 12 court days, the trial court adopted Beaton's valuation, rejecting that of Pikover/37 TV's expert, Ellen Larson, CP 95-105 (CL B). The court essentially disregarded the fairness opinion valuation of EagleView by Houlihan Lokey, and the 409A valuations. The court chose Beaton's valuation in toto, awarding \$3.94 per share for EagleView common stock and \$4.88 per share for its preferred stock as of January 6, 2013. CP 105 (CL C). The court also

¹⁶ Pikover's exercise of his statutory dissenter rights was not the product of revenge or anger because that would have lowered EagleView's value, not increased it, and would have been counterproductive. RP 1098, 1104-05. Moreover, he specifically decided not to sue EagleView or its CEO, and persuaded Zander not to take legal action against EagleView. RP 1092-93.

Regarding stock options, all of the EagleView directors, in addition to Pikover, supported the policy that EagleView claimed at trial represented Pikover's self-interest. RP 1110. Hawk and Zander, though surprised and angered by their ouster from the board, later entered into settlement agreements with EagleView that allowed them to benefit from that stock option policy. RP 551-52, 906-07. Pikover did not agree to the settlement along the lines the other outside directors obtained, and that significantly impacted his options value. RP 906-07. Once he left the board, his options were no longer viable. RP 1110.

Any alleged disclosures to outsiders by Pikover were to non-competitors of EagleView and were usually pursuant to a non-disclosure agreement. RP 1111-16.

awarded interest on the shares at 5.75%, rather than the 0.05% proffered by EagleView. CP 105-06 (CL D). Despite allowing EagleView's introduction of irrelevant evidence regarding Pikover's ouster as a director or his motivation to assert his dissenter rights, the trial court denied an award of fees under RCW 23B.13.310 to either party. CP 106-07 (CL E). The trial court entered findings of fact and conclusions of law, CP 60-107, and subsequently a final judgment on October 6, 2014, CP 1-59, from which Pikover/37 TV timely appealed.¹⁷

D. SUMMARY OF ARGUMENT

The valuation of dissenter shares in a RCW 23B.13.300 proceeding requires a trial court to conduct an independent, objective analysis confined largely to the fair value of the dissenter shares at the time of the corporate decision that allows the dissenters to invoke their statutory rights. The trial court did not do so here.

The trial court allowed its valuation to be colored by EagleView's inflammatory, irrelevant accusations of misconduct, evidence on Pikover's ouster as a director, and allegations on his putative motivations for invoking their statutory rights. The trial court even heard evidence on Pikover's net worth.

¹⁷ EagleView has not filed a notice of cross-appeal on the interest question or with respect to the denial of an award of fees to it under RCW 23B.13.310(2)(b).

The trial court also ignored independent valuations of the dissenter shares and instead simply picked between expert valuations, relying ultimately upon the valuation from EagleView's far from disinterested expert whose valuation was based on flawed assumptions.

The trial court further erred in failing to award fees and legal expenses to Pikover/37 TV under RCW 23B.13.310 where EagleView violated RCW 23B.13.280 or engaged in arbitrary, vexatious, or bad faith conduct by failing to offer fair value for the dissenters' shares. The dissenters' filing of this action forced EagleView to increase its initial value for the shares and to pay interest at 5.75% for the shares, rather than 0.05% offered by EagleView.

E. ARGUMENT

(1) Overview of Washington Law on Corporate Dissenters Rights

Washington corporate law has long recognized that shareholders dissenting from certain fundamental corporate decisions have rights in connection with such decisions.¹⁸ But dissenter rights were not recognized at common law.¹⁹ Consistent with the national trend in

¹⁸ In *Moore v. Los Lugos Gold Mines*, 172 Wash. 570, 21 P.2d 253 (1933), for example, our Supreme Court held that certain minority shareholders could resist a corporate effort to transfer its assets to a new corporation.

¹⁹ The United States Supreme Court observed that the appraisal remedy was adopted in dissenters' rights statutes as part of a national trend in corporate law. *Voeller*

modern corporate law, our Legislature provided for specific rights to dissenters from certain key corporate decisions involving the valuation of their shares and their transfer to the corporation for such value.

(a) Pre-1989 Dissenter Rights Statute

In *Matteson v. Ziebarth*, 40 Wn.2d 286, 242 P.3d 1025 (1952), our Supreme Court addressed Rem. Supp. 1949, § 3803-41, the predecessor statute to RCW 23B.13.²⁰ The Court there determined that the statute was a minority shareholder's exclusive grounds for relief against the corporation and its management for acts amounting to unfairness or breach of fiduciary duty that did not constitute actual fraud; the acts had to be known to the shareholder prior to the shareholder meeting at which the particular corporate activity was approved. 40 Wn.2d at 296-97. The Court rejected the minority shareholder's equitable action because fraud was not present.

v. Neilston Warehouse Co., 311 U.S. 531, 535 n.6, 61 S. Ct. 376, 378, 85 L.Ed. 322 (1941). "Appraisal thus grants protection to the minority from forced participation in corporate actions approved by the majority." *HMO-W Inc. v. SSM Health Care Sys.*, 611 NW.2d 250, 254 (Wisc. 2000). "The consensus that has developed among courts and commentators is that the modern dissenters' rights statute exists to protect minority shareholders from oppressive conduct by the majority." *Pueblo Bancorporation v. Lindoe, Inc.*, 63 P.3d 353, 363 (Col. 2003). As will be noted *infra*, that is the purpose of RCW 23B.13.

²⁰ Under that statute, the minority shareholder had "the right to have his shares appraised and paid for." *Matteson*, 40 Wn.2d at 296.

Subsequently, in *In Re Petition of Northwest Greyhound Lines, Inc.*, 41 Wn.2d 672, 251 P.2d 607 (1952), the Court addressed the valuation of the shares of certain minority shareholders who opposed a corporate merger. The Court made clear that the appraisal or valuation of the dissenters' shares of stock rested with the court and not with expert witnesses.²¹ The trial court appointed an appraiser in accordance with the then-existing statute. The Supreme Court held that the trial court was not bound by that appraisal as the statutory appraiser's role was advisory only. *Id.* at 683. Where the Legislature did not define value, the Court established a very broad approach to "value" involving "a consideration of all the facts and circumstances pertinent to a particular case in an effort to arrive at a fair and reasonable compromise or arbitration which may in some degree be lacking in mathematical exactness or certitude." *Id.* at 680.

In *In re West Waterway Lumber Co.*, 59 Wn.2d 310, 367 P.2d 807 (1962), the Court refined its definition of "value" under the then-existing dissenters rights statute.²² The Court adopted the principle that value meant the value of the shares "if the proposed change in the corporation

²¹ This principle has carried over to RCW 23B.13. *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 142, 331 P.3d 40 (2014) ("... the court, rather than any expert witness, makes the ultimate valuation decision in a dissenter's right action.").

²² RCW 23.01.450.

had not occurred." *Id.* at 314. The Court reinforced that there was no "universal formula for determining the value of shares of a corporation." *Id.* at 320-21. The Court then reversed the trial court's valuation that relied too heavily on the current liquidation value of the corporation's shares and disregarded its future prospects. *Id.* at 322-23.

None of these cases suggest that an appraisal proceeding should address anything but the fair value of the dissenters' shares or that such a proceeding may become a platform for attacks on the dissenters who invoke their rights.

(b) RCW 23B.13

In 1989, the Legislature enacted extensive revisions to Washington's Business Corporations Act, effective in 1990. John Maurice, *The 1990 Washington Business Corporation Act*, 25 Gonz. L. Rev. 373, 374 (1990). The statute is based to a large extent on the 1984 Model Business Corporations Act. *Id.* at 374. The Legislature expanded and clarified dissenter rights, codifying many of the pre-1989 Supreme Court decisions in RCW 23B.13. *Id.* at 429-36.²³

²³ The section-by-section comments of the Corporation Act Revision Committee of the Washington State Bar Association were included in the Journal of the Senate in 1989 ("1989 *Senate Journal*") at 380. Those comments are persuasive authority in interpreting the Business Corporations Act generally and RCW 23B.13 specifically. *Humphrey Indus., Ltd. v. Clay Street Assocs., LLC*, 170 Wn.2d 495, 504 n.9, 242 P.3d 846 (2010).

Under RCW 23B.13, a merger is a corporate decision that invokes dissenter rights. RCW 23B.13.020(1)(a). The statute is the dissenter's exclusive remedy unless fraud is present. RCW 23B.13.020(2).²⁴ A corporation must notify all shareholders in the form required by RCW 23B.13.220 that it is going to take certain specified actions. It must also advise them of their rights as dissenters. RCW 23B.13.200. Dissenter rights must be exercised within 10 days of the key corporate action. RCW 23B.13.200(2).

RCW 23B.13.210 and .230 set forth the procedures for asserting dissenter rights. Once the procedural requirements set forth in those statutes are met, the dissenter is entitled to payment for the fair value of his/her shares plus interest. The corporation must then pay what it deems to be "fair value" for those shares, and that payment must occur within 30 days of the corporate action or the date on which the dissenter's demand for payment is received by the corporation. RCW 23B.13.250(1). Fair value is defined as the value of the shares immediately before the effective date of the corporate action. RCW 23B.13.010(3).²⁵

²⁴ This is consistent with pre-1989 law, *Matteson*, 40 Wn.2d at 297, and RCW 23B.13. *Matthews v. Wenatchee Heights Water Co.*, 92 Wn. App. 541, 555, 963 P.2d 958 (1998), *review denied*, 137 Wn.2d 1029 (1999). As will be discussed *infra*, this exclusivity imperative means that the court action contemplated by RCW 23B.13.310 must be focused solely on the fair valuation of the dissenters' shares.

²⁵ RCW 23B.13.010(3) states that "fair value" is "the value of the shares immediately before the effective date of the corporate action to which the dissenter

If aggrieved by the corporation's payment, the dissenter may demand payment based on the dissenter's own estimate of fair value. RCW 23B.13.280. If the corporation and dissenter disagree over valuation of the shares, the corporation must commence a court action. RCW 23B.13.300.²⁶ In certain circumstances, fees and legal expenses may be recovered. RCW 23B.13.310.

Washington courts have interpreted portions of RCW 23B.13, particularly with regard to valuation affected by the fact that the dissenters only had a minority interest in the corporation. In *Robblee v. Robblee*, 68 Wn. App. 69, 841 P.2d 1289 (1992), this Court applied RCW 23B.13 to the value of certain minority shareholders' stock in a closely held corporation, even though no specific action invoking the dissenter rights statute was present. *Id.* at 77-78. The court held that it was inappropriate to apply a "minority discount" to the fair value of the dissenter shares because it would be unfair to allow the corporation to, in effect, purchase the shares cheaply, at a penalty to the dissenter. *Id.* at 77-80. The court rejected the proposition that fair value under the statute meant fair market

objects, excluding any appreciation or depression in anticipation of the corporate action unless exclusion would be inequitable." The comments to this section evidence a legislative intent to adopt a broad formulation of "fair value." 1989 *Senate Journal* at 3086-87.

²⁶ As noted in the 1989 *Senate Journal* at 3093, this provision was designed to retain "the concept of judicial appraisal as the ultimate means of determining fair value."

value. *Id.* at 77. Similarly, in *Matthew G. Norton Co. v. Smyth*, 112 Wn. App. 865, 51 P.3d 159 (2002), this Court rejected the application of a “marketability discount” to the fair value of dissenter shares.²⁷ The effect of these decisions requiring a court to value the corporation as “a going concern” is to be fair to the dissenters. This is consistent with the majority of states interpreting the fair value provision of the Model Business Corporations Act.²⁸

In sum, RCW 23B.13 codified many of the procedural and substantive principles governing dissenter rights in pre-1989 Washington corporate law; it provides a comprehensive, and largely exclusive, procedure by which a dissenter may have the corporation purchase his/her interest in the corporation when the corporation takes certain key actions with which the dissenter disagrees. The fair valuation of the dissenter’s shares in the corporation is the core issue in any court action under RCW 23B.13.300 and a dissenter's reasons for exercising his or her rights are

²⁷ As this Court noted in *Robblee*: “It is important to note that a minority discount is different from a marketability discount. Marketability discounts are applied to all the stock of a corporation that is not widely traded, whereas minority fair market value discounts only apply to minority shareholders.” 68 Wn. App. at 78.

²⁸ Delaware is a leading state on corporate law issues. Its Supreme Court in *Cavalier Oil Corp. v. Harnett*, 564 A.2d 1137 (Del. 1989), rejected a so-called minority discount, reasoning that such a discount “is contrary to the requirement that the company be viewed as a ‘going concern;” and “imposes a penalty for lack of control, and unfairly enriches the majority shareholders who may reap a windfall from the appraisal process by cashing out a dissenting shareholder, a clearly undesirable result.” *Id.* at 1145.

not a relevant concern under the statute. The trial court's analysis of fair value here was flawed and prejudiced Pikover/37 TV.

(2) The Trial Court's Valuation Decision Cannot Stand

(a) The Trial Court's Valuation Decision Was Prejudiced by Irrelevant Evidence on Pikover/37 TV's Motives for Invoking Dissenter Rights

The trial court erred in permitting irrelevant evidence of Pikover's alleged misconduct while a board member, his ouster as a director, his net worth, or his motivation in invoking statutory dissenter rights to color its valuation decision.²⁹ Nothing in RCW 23B.13.310 or in its legislative history permits evidence that may be pertinent to the fee decision to be intermixed with the trial court's valuation decision. Rather, the entirety of RCW 23B.13 suggests a *contrary* intent. First, it is important to recall that RCW 23B.13 is meant to protect minority shareholders like Pikover/37 TV from oppressive corporate action. It is not meant to give the majority shareholders a vehicle to oppress the minority shareholders on valuation by allowing the trial court to consider extraneous matters irrelevant to value.

Moreover, RCW 23B.13 itself clearly limits the scope of any judicial hearing on valuation. RCW 23B.13.020(2) does not permit the

²⁹ The trial court's decisions on these evidentiary questions are reviewed for an abuse of discretion. *State v. Bashaw*, 169 Wn.2d 133, 140, 234 P.3d 195 (2010). An abuse of discretion involves a decision that is manifestly unreasonable or based on untenable grounds or reasons. *Id.*

valuation hearing to become a referendum on the corporation's decision that caused the dissenters to invoke their statutory rights because the dissenter "may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements [of the Business Corporations Act], the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation." The purpose of RCW 23B.13--to protect minority shareholders from majority oppression--would be perverted if the judicial action in RCW 23B.13.300 were allowed to become a vehicle for corporations to attack dissenters and their invocation of their rights.

Thus, the provisions of RCW 23B.13 constitute the exclusive remedy available to dissenters. *See Matteson, Matthews, supra*. Indeed, in *Sound Infiniti, Inc. v. Snyder*, 169 Wn.2d 199, 237 P.3d 241 (2010), our Supreme Court reaffirmed that RCW 23.13B was the exclusive remedy for a dissenting shareholder after a reverse stock split unless fraud was present, although it indicated that a broader definition of fraud than common law fraud was appropriate. *Id.* at 206-12. The Court concluded that a shareholder derivative action was unavailable to a dissenter. *Id.* at

212-14. A court could, however, consider wrongful acts *by the corporation* in valuing its shares of stock. *Id.* at 347-49.³⁰

The court proceeding on fair value must be focused on evidence relevant to valuation not extraneous matters like shakeups in corporate leadership or motivations of the dissenters for invoking their statutory rights. The law in other jurisdictions confirms that the scope of a valuation hearing is *narrowly circumscribed*, confined to the determination of the value of the dissenter's shares on the merger date. *E.g., Cede and Co. v. Technicolor, Inc.*, 542 A.2d 1182, 1187 (Del. 1988); *Alabama By-Products Corp. v. Neal*, 588 A.2d 255, 256-57 (Del. 1991).

Only in very narrow instances, dissenters' claims relating to the corporation's wrongdoing may be relevant to value, but such instances are also limited.³¹

Given the nature of statutory appraisal actions, courts have excluded consideration of evidence unrelated to valuation. *E.g.*,

³⁰ In *Quinn v. Anvil Corp.*, 620 F.3d 1005 (9th Cir. 2010) in applying Washington law, the Ninth Circuit reiterated that appraisal proceedings under RCW 23B.13 are narrowly confined to share value except that a dissenter may argue fraud or procedural flaws in the corporate action. *Id.* at 1010. The court rejected the dissenter's allegations of both. *Id.* at 1011-12.

³¹ The Delaware Supreme Court in *Cavalier Oil Corp.* indicated that matters involving corporate wrongdoing must relate "directly to the fair value of [the dissenter's] stock, not to validity of the merger itself." *Id.* at 1143. *See also, Alabama By-Products, supra* (corporation's unfair dealing may be relevant to impeach testimony of controlling shareholders who contributed information to expert upon which valuation opinion was based).

Weinberger v. UOP, Inc., 457 A.2d 701, 715 (Del. 1983) (court overrules cases that allowed inquiry into the "business purpose" of the merger -- whether the merger had a legitimate business rationale); *Gonsalves v. Straight Arrow Publishers, Inc.*, 701 A.2d 357, 362-63 (Del. 1997) (in absence of derivative action, trial court properly excluded consideration of allegedly excessive CEO compensation).

Ultimately, the evidence and argument EagleView repeatedly sought to interject into this case was irrelevant to value, or even the limited question of fair dealing usually associated with the *corporation's* conduct. *Weinberger*, 457 A.2d at 711 ("questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and stockholders were obtained."). *See also, Rabkin v. Philip A. Hunt Corp.*, 498 A.2d 1099 (Del. 1985). Rather, to employ the vernacular, EagleView's counsel sought to "slime" Pikover and 37 TV.

As noted *supra*, from the time of its petition, in its trial brief, at trial, and over Pikover/37 TV's objections, EagleView beat the drum that Pikover was a bad guy by discussing his ouster from EagleView's board or that he illegitimately invoked his dissenter rights under RCW 23B.13. This effort was designed to prejudice the trial court on the valuation decision and nothing more.

The trial court abused its discretion in admitting this irrelevant evidence and its valuation decision *was* affected by this extraneous evidence as it fell prey to EagleView's effort to interject irrelevant considerations into the case, entering findings on this issue in connection with its valuation decision. CP 61, 62, 86-90 (FF 2, 8, 95-112).³² Those findings were unnecessary for any valuation decision as evidence of dissenters' conduct or alleged motivation is *irrelevant* to the fair value decision and had no place in the trial on fair value under RCW 23B.13.300. Such evidence should have awaited a separate proceeding on fees under RCW 23B.13.310.³³ Here, the trial court found *no basis* to

³² These include findings that Pikover was ousted as an EagleView director, that he claimed to have threatened the CEO of another company with a baseball bat; that Pikover transmitted internal EagleView documents to other companies; that Pikover was not aware of the Aerologics litigation; that Pikover did not talk with most of EagleView's shareholders; and that Pikover voted in favor of a grant of options to the other outside directors.

Most puzzling was EagleView's repeated assertion that Pikover/37 TV cashed the checks provided to them after the appraisal process was commenced, CP 93 (FF 125); RP 2957. They had an absolute right to cash those checks even if they challenged EagleView's valuation. RCW 23B.13.250(1). As noted in the 1990 *Senate Journal* at 3091: "This obligation to make immediate payment is based on the view that since the person's rights as a shareholder are terminated with the completion of the transaction, the shareholder should have immediate use of the money to which the corporation agrees it has no further claim. A difference of opinion over the total amount to be paid should not delay payment of the amount that is undisputed." The Supreme Court in *Humphrey Industries*, addressing the analogous LLC dissenter rights statute, emphasized a dissenter must have "immediate use of the fair value of its interest in the company" under the statute. 170 Wn.2d at 504-05.

³³ Nothing in RCW 23B.13.310 demonstrates an intent to depart from the general rule in Washington that fee decisions are made *subsequent* to the entry of judgment. CR 54(d)(2) (claims for fees/expenses are to be made by motion "unless the substantive law governing the action provides for the recovery of such fees and damages

award EagleView fees against Pikover/37 TV, finding insufficient grounds to indicate their conduct was vexatious, arbitrary, or in bad faith:

Although EagleView presented evidence at trial that Yuri Pikover and other outside directors were very angry at being summarily removed from EagleView's board in July 2012, and that Yuri Pikover subsequently engaged in angry communications towards EagleView management, the Court concludes that EagleView has failed to prove by a preponderance of the evidence that Mr. Pikover dissented solely to get revenge for being fired and to prove he was wronged. Mr. Pikover presented a plausible argument for his dissent: that prior to his removal from the board, the general view was that EagleView was valued at approximately \$250 million.

CP 58 (CL E). This only confirms the irrelevance of the evidence to fair value.

A new trial is required here, given the trial court's consideration of inflammatory and irrelevant evidence on Pikover's conduct and his alleged motivation in assessing fair value. *Magana v. Hyundai Motors of America*, 123 Wn. App. 306, 315-16, 94 P.3d 987 (2004) (where a trier of fact considers evidence on an issue improperly before it, a new trial is required).

as an element of damages to be proved at trial." Any motion must be filed "no later than 10 days after the entry of judgment" unless a statute or court order specifies a different date).

Analogous statutes awarding fees for vexatious conduct specifically provide that a fee motion abides the outcome on the merits. *E.g.*, RCW 4.84.185 (motion to be filed 30 days after order of dismissal). This is consistent with our Supreme Court's admonition that awards of fees as sanctions should not turn into satellite litigation or become a "cottage industry" for lawyers. *Wash. Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 356, 858 P.2d 1054 (1993).

(b) RCW 23B.13 Requires an Independent Valuation of EagleView's Shares

Critical to this Court's analysis here is the nature of the trial court's role in analyzing fair value.³⁴ Washington courts have made clear the statutory purpose of RCW 23B.13 is "the protection of minority stockholders against oppressive action by the majority." *China Prods. N. America, Inc. v. Manewal*, 69 Wn. App. 767, 771 n.3, 850 P.2d 565 (1993).³⁵ To address the tension between the wishes of minority investors to continue as shareholders and the desire of the majority of the corporation's shareholders to re-arrange their investment, RCW 23.B.13, in effect, allows the dissenters to sell their shares at fair value to the majority. In doing so, the dissenters are prohibited from challenging the

³⁴ This Court should treat fair value as a question of law reviewed de novo. Such an approach is consistent with the statutory purpose of RCW 23B.13 to scrupulously protect the rights of minority shareholders from majority oppression.

³⁵ Most modern appraisal actions arise when the majority seeks to eliminate the minority, raising concerns about majority oppression, self-dealing and opportunism. Robert B. Thompson, *Exit, Liquidity, and Majority Rule: Appraisal's Role in Corporate Law*, 84 Geo. L.J. 1, 25-28 (1995). Minority shareholders "cashed out" by the majority are particularly vulnerable. Robert B. Heglar, *Symposium – Fundamental Corporate Charges: Causes, Effects, and Legal Responses – Note: Rejecting the Minority Discount*, 1989 Duke L.J. 258, 271 (1989). "A transition in which the majority shareholder is forcing the minority shareholder out of the enterprise at a price chosen by the majority is fundamentally different from the minority's voluntary decision to abandon the enterprise because of a business change proposed by the majority." F. Hodge O'Neal & Robert B. Thompson, *O'Neal and Thompson's Oppression of Minority Shareholders and LLC Members*, § 5:1 at 5-5 (2d ed. 2004).

corporate action on other grounds, unless severe procedural irregularities in the predicate corporation action or fraud are involved.³⁶

RCW 23B.13 provides incentives for non-judicial resolution of this valuation process, but, if such non-judicial resolution fails, the court process in RCW 23B.13.300 is a focused exercise of the courts' equitable powers, confined to valuation of the dissenters' shares.

Division III made clear that a trial court's obligation in an RCW 23B.13.300 judicial proceeding is to conduct an independent review of the evidence in arriving at "fair value" for the dissenter's shares. *SentinelC3, Inc. v. Hunt*, 176 Wn. App. 152, 160-61, 309 P.3d 582 (2013) ("We believe this statutory arrangement thus retains the obligation of the trial judge to undertake a de novo review of the evidence and not uncritically accept the appraiser's report."), *aff'd in part, rev'd in part on other grounds*, 181 Wn.2d 127, 331 P.3d 40 (2014). In reviewing Division III's decision, our Supreme Court concurred in the need for an independent trial court determination of fair value. The Court noted that a trial judge has "considerable discretion" under RCW 23B.13 in making an evaluation decision. 181 Wn.2d at 143.

The need for an objective, independent review by the trial court is further bolstered by the fact that in determining fair value within the

³⁶ RCW 23B.13.020(2).

meaning of RCW 23B.13.010(3) in an RCW 23B.13.300 judicial proceeding, no expert opinion is determinative. The determination of fair value under RCW 23B.13 does not permit a judge to simply accept one party's valuation and uncritically reject the other party's, but instead requires the judge to conduct an independent analysis of the company's value assisted by the opinions of the experts. Indeed, as was true under pre-1989 corporate law as discussed in *Northwest Greyhound Lines, supra*, the trial court could appoint an appraiser under RCW 23B.13.300(5), but was not required to do so. Ultimately, the valuation decision rests with *the court*, not with experts. *Id.* at 142 ("The Respondents are correct that the court, rather than any expert witness, makes the ultimate valuation decision in a dissenter's rights action.").

That RCW 23B.13 contemplates an independent valuation of dissenter shares by the trial court is consistent with relevant authority from other jurisdictions. For example, as early as *Weinberger*, a 1983 case, the Delaware Supreme Court broadened the scope of the valuation process to assess "all relevant factors involving the value of a company." 457 A.2d at 712-15. Subsequent decisions of that court have emphasized the necessity of an independent determination of value by the trial court. In *In re Shell Oil Co.*, 607 A.2d 1213 (Del. 1992), the court decried the use of competing "hired gun" valuation experts, stating: "The presentation of

widely divergent views reflecting partisan positions in appraisal proceedings adds to the burden of the Court of Chancery's task of fixing value." *Id.* at 1222. Similarly, in *Gonsalves*, the Delaware Supreme Court reversed a valuation decision where the trial court announced that it intended to adopt the opinion of one or the other party's experts in its entirety, without making adjustments.³⁷ The court in rejecting this approach noted: "The modern appraisal process presumes a sophisticated judge who exercises independence in determining the value of [a] corporation in a contested proceeding." 701 A.2d at 360. The court then emphasized that battles of hired experts are not useful to the valuation decision: "Even though today a [trial court] may be faced with widely divergent values presented by the parties' experts, the acceptance of one expert's value, in toto, creates the risk that the favored expert will be accorded a status greater than that of the now-eliminated master." *Id.* at 361.

The Nevada Supreme Court in *American Ethanol, Inc. v. Cordillera Fund L.P.*, 252 P.3d 663, 667 (Nev. 2011) offered the appropriate approach to the conduct of an appraisal proceeding by the trial court. There, neither the dissenter nor the corporation offered expert

³⁷ This type of process is often described as "baseball arbitration" limiting the decisionmaker to one party's position, or the other, *Moore v. Omnicare, Inc.*, 118 P.3d 141, 146 (Ida. 2005), thereby theoretically forcing both parties to a more reasonable middle ground position.

appraisal testimony. The dissenter, however offered evidence from Securities & Exchange Commission filings as to the corporation's value. The trial court accepted the dissenter's proposed value. The Supreme Court affirmed. In doing so, that court held that both the dissenter and the corporation "have the burden of proving their respective valuation conclusions by a preponderance of evidence" but the "[f]inal responsibility for determining fair value...lies with the trial court, which must make its own independent value determination." *Id.* at 667. The court was particularly swayed by the SEC value documentation. *Id.* See also, *Montgomery Cellular Holding Co. v. Dobler*, 880 A.2d 206, 221 (Del. 2005) (both dissenter and corporation have the burden, but even if one fails of its burden, "the Court is not free to accept the competing valuation by default, but must use its own independent judgment to determine fair value").

The trial court here did not conduct an independent valuation of EagleView's shares.

(c) The Trial Court Did Not Conduct an Independent Review of Fair Value

The trial court did not conduct an independent valuation of EagleView's shares,³⁸ instead relying *entirely* on the Beaton analysis, an

³⁸ The parties each submitted their own expert on fair value. The trial court determined that Beaton's valuation analysis was substantially supported by the evidence

analysis predicated on flawed assumptions by an analyst who was far from independent; it ignored other independent sources of fair value for the dissenter shares.

(i) The 409A Valuation and the Houlihan Lokey Fairness Opinion on EagleView's Value

In conducting its analysis of fair value, the trial court largely ignored Beaton's 409A valuation of EagleView and the Houlihan Lokey fairness opinion prepared for Pictometry's board *only a month* before the merger transaction closed.

The trial court acknowledged the Houlihan Lokey fairness opinion, and criticized it, CP 85-86 (FF 91-94), but it nowhere explains that the opinion set EagleView's value at \$198 million, RP 508-09, or roughly \$9 per share of common stock. That is *far more* than the value assigned to EagleView by Beaton and the trial court. Further, it *nowhere* addressed that independent assessment of fair value in its conclusions of law.

Valuations in fairness opinions are particularly helpful evidence because, unlike the opinions offered by opposing experts, the expert

and that Larson's was not, deciding to accept 100% of Beaton's opinion, without any questioning of its assumptions or adjustments of its values. CP 95-105 (CL B). The trial court's failure to address the criticisms of Beaton's analysis in its findings prepared by counsel for EagleView, CP 188, indicates forcefully that the court failed to conduct an independent analysis, as required by statute, and simply ceded the fair value decision to EagleView's expert.

providing the fairness opinion valuation is not a “hired gun” with respect to valuation litigation. Such opinions are prepared *for the corporation's merger* partner as part of the due diligence of the merger partner's board in its duty to its shareholders on the merger.³⁹

Similarly, 409A valuations are accurate reflections of corporate value for tax and accounting purposes; they are audited, as here, by independent third parties. In this case, the 409A valuation, performed by the very firm of EagleView's trial expert, put the firm's value at \$198.2 million, or \$9.03 per share, as of December 31, 2011, Ex. 262; CP 67 (FF 27), a value remarkably similar to the Houlihan Lokey fairness value.

Again, the trial court acknowledged the 409A valuations of EagleView generally, but then tried to explain them away, as it had done with the Houlihan Lokey fairness opinion. CP 84-85 (FF 90).

These truly independent valuations, not performed for purposes of this litigation, should have been the *starting point* for the trial court's independent assessment of EagleView's value.

(ii) The Trial Court Merely Picked One Expert's Valuation Opinion Over Another

³⁹ See *Gray v. Cytokine Pharmasciences, Inc.*, 2002 WL 853549 at *6-7 (Del. Chanc. 2002) (finding, in light of “enormously disparate” valuations provided by the parties’ experts, that it was “fortunate[e]” to “have the benefit of an independent valuation performed by Merrill Lynch in connection with the Merger.”).

Instead of making its own independent valuation of the dissenters' shares, the trial court instead simply evaluated the opinions of the parties' witnesses and chose to credit one over the other; its conclusions of law B-C, written by EagleView's counsel, represent nothing more than a rationale for adopting the Beaton valuation. CP 95-105. The court posed the question as one of accepting Beaton's opinion or Larson's, and then stated: "The Court concludes that Neil Beaton's expert valuation of EagleView was more reasonable than Larson's expert valuation." CP 95. But that is not the *independent* valuation envisioned by the statute.

Larson is a managing director of FTI, a world class appraisal firm, who brought over 30 years of valuation experience to the case. RP 1546. She has extensive experience valuing privately held companies, and has valued companies in the context of other dissenters' rights cases. RP 1547-50, 1552-53.

Larson calculated that EagleView's value immediately before the merger was \$273.2 million, with corresponding values of \$12.31/share of its common stock and \$13.26/share of its preferred stock. Ex. 333; RP 1557-58. Larson used three valuation methods that resulted in values in the range of \$250 to \$290 million. RP 1558-59.

EagleView's expert, Neil Beaton of Alvarez & Marsal, opined that, immediately before the merger, EagleView's value was just \$88.4 million,

its common stock was worth \$3.94/share and its preferred stock \$4.88/share. RP 1384, 1442-43. This value is less than half of what he calculated EagleView was worth just a year earlier, \$198.2 million, with an undiscounted common stock of \$9.03/share, as stated in its 409A valuation. Ex. 262; RP 1389-90. Beaton concluded values for EagleView in a range from \$37.4 to \$135.7 million, a swing of nearly \$100 million from low to high, with a concluding value of \$88.4 million. Ex. 26. Beaton's final \$88.4 million valuation rested largely on a hypothesized scenario, in which EagleView was valued at only \$37.4 million, to which he assigned a 40 percent likelihood. *Id.*

The trial court improperly credited Beaton's valuation in its findings and conclusions because Beaton was not "independent" in any sense. He and his colleagues performed valuation work for EagleView prior to the merger, and continued to perform such work after the merger. CP 84 (FF 89); RP 930, 1482-83. This calls into question his objectivity in providing a low valuation that fully supported EagleView's position.⁴⁰

Further, Beaton's valuation was flawed in several key respects. For example, Beaton over emphasized future risks to EagleView's business. CP 182-88.

⁴⁰ *Gray* at *7 ("The reliability of Davis' entire valuation is undermined for several reasons. First, more than a year before the merger, Gray retained Davis to serve as a financial consultant advisor to Access Pharmaceuticals.").

Beaton's use of the "subject company transaction methodology" under the facts of this case is improper. To use this methodology there must either be a completed recent transaction or, at least, evidence that steps have been taken to commence an actual, upcoming offering, but Beaton had no such transaction. CP 188, 2741-42. Beaton, however, relied on a hypothetical future transaction based entirely on management's estimate of what it could sell additional stock for, but where there appears to be no evidence of any effort to make such an offering.⁴¹ Without this methodology, EagleView's valuation increased from \$88 million to between \$115 and \$135 million, even if the trial court continued to give no weight to the Larson and Houlihan Lokey valuations and no other adjustments to Beaton's valuation methodologies were made. CP 2742-43.

Beaton's decision not to add a premium to the stock prices of his comparable companies was also error. For public companies, the stock prices of comparable companies reflect the value of the company to a minority owner. Because EagleView must be valued without any minority

⁴¹ *Prescott Group Small Cap, L.P. v. Coleman Co.*, 2004 WL 2059515 at *21 (Del. Chanc. 2004) ("Chicago Partners selected that lower (\$129.75 million) EBITDA figure essentially because it chose to credit management's unsworn representations, derived from off-the-record interviews, that Coleman's 1999 performance could not be replicated and that management's year 2000 projections were 'very aggressive.' ...Chicago Partners' \$129.5 million EBITDA input was flawed and unworthy of acceptance, because (1) this Court has previously found as fact that the management representations that Chicago Partners chose to credit were self-serving and incorrect....").

discount, performing a comparable analysis that was based on minority discount prices undervalued EagleView;⁴² Larson criticized Beaton's analysis for precisely this same reason -- Beaton's analysis did not provide for the offsetting control premium to his comparable company approach. CP 188.

Ultimately, the troubling fact here is that the trial court ignored independent indicia of EagleView's value:

- The last 409A valuation performed by Beaton's own firm before Pikover/37 TV's assertion of dissenter's rights valued EagleView at \$198.2 million, or \$9.03 per share of common stock. Ex. 262.
- During the first half of 2012, nine private equity firms and potential strategic partners interested in acquiring or investing in EagleView placed values on EagleView ranging from \$150 million to \$350 million, with a midpoint of these values substantially over \$200 million. Ex. 219; Ex. 221.⁴³
- Pictometry itself valued EagleView during mid-2012 at \$250 million, Ex. 246; Ex. 221, and was still valuing EagleView at \$200 million or more in December 2012. RP 507-09.
- Four weeks before the merger closed, Houlihan Lokey delivered a valuation associated with its fairness opinion to Pictometry in which it valued EagleView at \$187 million to \$294 million, with a

⁴² See *Prescott Group* at *23 ("Chicago Partners failed to eliminate the minority discount that is implicit in the value that results from its comparable company method, by adding an offsetting control premium....By not adding an offsetting control premium to the value of it derived from its comparable companies analysis, Chicago Partners even further undervalued Coleman for Section 262 appraisal purposes.")

⁴³ "When available, evidence as to the price an unaffiliated third party would be willing to pay for the corporation as a whole should be particularly probative in the appraisal context." *Matthew G. Norton*, 112 Wn. App. at 880 n.5 (internal quotation marks and citation omitted).

midpoint of \$239 million. Ex. 345. In addition, Houlihan Lokey valued Pictometry at a midpoint of \$233 million, *id.*, which is also relevant to determining EagleView's value in a merger of equals.

- Verisk's proposed acquisition of EagleView Technology Corporation was also important.⁴⁴ Because the transaction between EagleView and Pictometry was a merger of equals, the proposed \$650 million purchase price to be paid by Verisk was appropriately divided evenly. Given the modest growth of the combined entity in 2013, Ex. 97, it is unreasonable to believe that EagleView's value grew from \$88.4 million (Beaton's valuation) to \$325 million in the span of a year. It is more reasonable to believe the value increased from \$250 to \$325 million in that period.

The trial court's valuation simply made no sense in light of the fact that EagleView's value before and after the merger with Pictometry was in excess of \$200 million in the eyes of business people and analysts. Certainly there were risks to EagleView's business, a dominant one in the relevant market. But those risks were also reflected in the bids, in Beaton's 409A valuation, and in the Houlihan Lokey valuation. Beaton over emphasized them.

In sum, in addition to allowing the fair valuation issue to be tainted by improper evidence, irrelevant to valuation, the trial court did not conduct an independent assessment of EagleView's valuation. It merely accepted the valuation of the company's expert to the exclusion of

⁴⁴ The Federal Trade Commission did not approve the EagleView Technology Corporation/Verisk merger and they agreed to terminate the merger in December 2014.

independent evidence of value. This Court should reverse the trial court's decision and order a new trial on valuation of EagleView's shares.

(3) Pikover/37 TV Are Entitled to an Award of Fees/Expenses

The trial court erred in denying an award of attorney fees to Pikover/37 TV, CP 106-07 (CL E), regardless of how this Court resolves the valuation issue. RCW 23B.13.310(2). *See Appendix.*⁴⁵ RCW 23B.13.310(2) authorizes a fee award if the corporation fails to comply with provisions of the dissenter rights statute or if it acts arbitrarily, vexatiously or in bad faith. The purpose of this fee provision is to encourage non-judicial resolution of the valuation of the dissenters' shares.⁴⁶ Here, EagleView forced Pikover/37 TV to litigate fair value.

The trial court's conclusion of law E purported to deny fees and costs under RCW 23B.13.310(2) to either EagleView or Pikover/37 TV, CP 58-59, but then failed to offer *any rationale* as to why it was denying

⁴⁵ If, the Court agrees with Pikover/37 TV that the trial court undervalued their shares of EagleView, an award of fees under RCW 23B.13.310(2) is even more clearly mandated as EagleView failed to comply with RCW 23B.13.200-.280 in failing to provide fair value for the dissenters' shares.

⁴⁶ The comment to RCW 23B.13.310 states:

The purpose of these grants of discretion with respect to costs and counsel fees is to increase the incentives of both sides to proceed in good faith under this chapter to attempt to resolve their disagreement without the need of a formal judicial appraisal of the value of shares.

1989 *Senate Journal* at 3093.

an award of fees/expenses to Pikover/37 TV. That in and of itself is a sufficient basis for reversal. *Sentinel3C*, 181 Wn.2d at 145.

(a) EagleView Failed to Comply with RCW 23B.13

RCW 23B.13.310(2)(a) requires that fees/expenses must be awarded if the corporation fails to comply with the requirements of RCW 23B.13.200-280. EagleView failed to comply with the requirements of RCW 23B.13.280. *See Appendix*. EagleView did not provide "fair value" for the dissenters' shares, as the statute mandates.

EagleView determined the value of its shares on February 28, 2013 to be \$2.75/\$3.65 per share. CP 91 (FF 122); RP 3289-3312. Although Polchin had the draft valuation, RP 953, as did EagleView's board, RP 698-701, the board never considered the draft Alvarez & Marsal 409A valuation that set the shares' value at a *significantly* higher number. CP 84 (FF 89), 92 (FF 123). After Pikover/37 TV's RCW 23B.13.280 demand for a higher fair value for the shares in a March 29, 2013 letter that attached Larson's valuation opinion, ex. 41, not only did EagleView not pay what Pikover/37 TV believed was the appropriate fair value for the shares, *it simply ignored Pikover's letter*. RP 705-06, 1105.

Again, *after* the commencement of this action in May 2013, and once the parties exchanged their experts' reports, CP 93 (FF 128), *EagleView changed its valuation of the shares*. Beaton, EagleView's

expert, in his December 16, 2013 report opined that the EagleView January 2013 valuation was *flawed*. CP 93 (FF 129). EagleView then increased the valuation to \$3.94/\$4.88, nearly *a year* after its initial payment to Pikover/37 TV, Ex. 26; CP 93-94 (FF 131).⁴⁷ This December 16, 2013 report was uncannily similar to the "draft" 409A valuation of EagleView's shares that Alvarez & Marsal prepared for it, but its management simply ignored it in setting the February 2013 value of the shares. CP 84 (FF 89), CP 92 (FF 123).

Obviously, EagleView did not pay Pikover/37 TV the value of their shares within 30 days of the merger's effective date, RCW 23B.13.250(1), or within 60 days of the Pikover/37 TV March 29, 2013 demand for payment. RCW 23B.13.280(1). EagleView's failure to meet its statutory obligations should have resulted in a fee award to Pikover/37 TV, who were compelled to resort to court action to obtain the fair value of their shares.

In *Humphrey Industries*, the limited liability company delayed paying the dissenting company member the value of his shares of the LLC

⁴⁷ EagleView's management possessed the January 6, 2013 "draft" valuation at the time it initially valued the shares in January, 2013, Ex. 211; RP 698-701, 953, but Polchin decided not to pay the dissenters the value amounts for shares reflected in that valuation purportedly because the valuation was merely preliminary, or a "draft," subject to change. CP 92 (FF 123). But, in fact, EagleView was compelled to pay a higher value for the dissenters' shares after Beaton's expert report was revealed in discovery in the lawsuit in December, 2013. Ex. 26; RP 1701; CP 93 (FF 128). Only *then* did it change the value. CP 93-94 (FF 131).

for roughly six months, well in excess of the requirement in the LLC dissenter rights statute; that statute required payment within 30 days. In the court action, the dissenter succeeded in obtaining a higher valuation of his minority interest in the LLC. Not only did the trial court not award fees to the dissenter under the counterpart to RCW 23B.13.310, it awarded fees against him for his allegedly arbitrary, vexatious, or bad faith conduct. The trial court concluded that the LLC had substantially complied with the statute in making payment to the dissenter because it lacked funds to pay him, it could not obtain the necessary funds until the LLC's principal property sold, and it was willing to pay interest. 170 Wn.2d at 500-01.

Our Supreme Court reversed the trial court's attorney fee decisions. It rejected the trial court's finding that the LLC substantially complied with the payment statute. The Court noted that "substantial compliance" required performance that satisfied "the substance essential to the purpose of the statute." *Id.* at 504. The statute mandated that a dissenter have *immediate* use of the money associated with the value of its interest in the LLC; 6 months delay was not compliance, substantial or otherwise. *Id.* at 504-05. The Court also reversed the denial of a fee award to the dissenter because, though an award of fees under the LLC statute was a

discretionary decision, the trial court's fee decision was based on this error of law. *Id.* at 507.

EagleView's conduct here was no different than that of the LLC in *Humphrey Industries*. EagleView did not "substantially comply" with RCW 23B.13.200-.280 when it failed to properly value Pikover/37 TV's stock and pay them within the requisite time periods. Plainly, EagleView did not pay Pikover/37 TV the proper value for their shares, as required by RCW 23B.13.250, until December 16, 2013, obviously more than 30 days after the merger. EagleView also violated RCW 23B.13.280 in that it did not pay Pikover/37 TV within 60 days of Pikover's March 29, 2013 letter setting forth what Pikover/37 TV believed was the proper valuation of the shares. Ex. 41.

Such violations merited a fee award, but the trial court failed to even analyze the issue at all.⁴⁸ It abused its discretion.

(b) EagleView Acted Vexatiously, Arbitrarily, or in Bad Faith

EagleView's conduct was also arbitrary, vexatious, and in bad faith within the meaning of RCW 23B.13.310(2)(b), further justifying a

⁴⁸ In *SentinelC3*, our Supreme Court reversed a fee award made by the trial court against dissenters for alleged vexatious conduct within the meaning of RCW 23B.13.310(2)(b) where the trial court's fee decision was abbreviated, the court did not make findings of fact/conclusions of law, and it did not explain how it determined the amount of fees. 181 Wn.2d at 145. The trial court's failure to properly address fees as to Pikover/37 TV here similarly merits reversal.

fee award to Pikover/37 TV. Again, the trial court did not analyze the application of this issue to EagleView in its findings or conclusions.

First, when EagleView offered \$2.75/share of common stock and \$3.65/share of preferred stock, it possessed the Houlihan Lokey fairness valuation showing a much higher value for EagleView. EagleView also had a 409A valuation as of December 31, 2011 from Alvarez & Marsal, Beaton's own firm, setting the value of its common stock at \$9.03 per share. Moreover, it had a "draft" valuation from that same firm showing valuations of \$3.75 and \$4.68 per share of common and preferred stock, respectively, were the proper valuations of the common and preferred stock. Only *after* this case was filed and Beaton's expert report (ex. 26) was revealed in discovery did EagleView up its payment. The amount of that payment was reflected in the "draft" valuation. Second, EagleView applied a low interest rate of 0.05% based on considerations inconsistent with the governing statute, resulting in a *substantial* underpayment of interest, later corrected by the trial court, when it awarded interest at 5.75%. CP 105-06 (CL D).⁴⁹ Finally, despite the intent of RCW 23B.13 to resolve dissenter rights matters without formal judicial action, EagleView refused to even respond to Pikover/37 TV's March 29, 2013 letter, knowing the values it offered for the dissenter shares *by the*

⁴⁹ That proper interest rate has been conceded by EagleView as it has not sought cross-review on the interest rate issue. RAP 5.2(f).

calculation of its own experts were wrong. That was not good faith conduct.

Pikover/37 TV were entitled to their fees/expenses under RCW 23B.13.310(2)(a).

(4) Pikover/37 TV Are Entitled to Their Fees on Appeal

RAP 18.1 sets out the requirements for an award of fees on appeal. Pikover/37 TV meet them.

RCW 23B.13.310 authorizes an award of fees. It does not limit such an award to trial-related fees only. RCW 23B.13.310 supports an award of fees on appeal to Pikover/37 TV.

F. CONCLUSION

The trial court erred in its valuation of the dissenters' interest in EagleView. The trial court did not conduct the independent determination of EagleView's value commanded by RCW 23B.13.300. The trial court allowed its valuation opinion to be colored improperly by EagleView's evidence designed to impugn Pikover and to address his alleged motivations for invoking his statutory dissenters' rights, motivations that the trial court concluded did not even justify a fee award to EagleView under RCW 23B.13.310(2)(b). Moreover, it simply picked one expert opinion over another to the exclusion of more independent valuations such as the Houlihan Lokey pre-merger fairness evaluation. The trial court did

not conduct the independent valuation of the EagleView's shares of stock envisioned by RCW 23B.13.300.

The trial court erred in failing to award Pikover/37 TV their fees under RCW 23B.13.310(2) where it is undisputed that their invocation of their statutory rights forced EagleView to increase the value of their shares.

This Court should reverse the trial court's judgment and award a new trial or, alternatively, the Court should remand the case to the trial court for an award of fees to Pikover/37 TV.⁵⁰ Costs on appeal, including reasonable attorney fees, should be awarded to Pikover/37 TV.

⁵⁰ Washington law supports the remand of a case to a different trial judge in certain circumstances where the judge's impartiality or appearance of impartiality can reasonably be questioned. *E.g.*, *State v. M.L.*, 134 Wn.2d 657, 660-61, 952 P.2d 187 (1998) (remanding for resentencing before different judge when trial judge imposed excessive sentence without evidence that such sentence was warranted); *State v. Sledge*, 133 Wn.2d 828, 843, 947 P.2d 1199 (1997) (remanding before different judge where trial judge already expressed opinion that exceptional juvenile disposition was appropriate); *In re Custody of R.*, 88 Wn. App.746, 763, 947 P.2d 745 (1997) (remanding for proceedings before different judge where trial judge expressed personal disapproval of party ("I don't like what you did.")); *State v. Talley*, 83 Wn. App. 750, 763, 923 P.2d 721 (1996) (remand for resentencing before a different judge because the prior judge had already decided to give Talley an exceptional sentence without holding an evidentiary hearing). Such a remand may be wise in this case where the trial court's valuation decision was infected by EagleView's improper introduction of alleged misconduct or ill motivations of Pikover/37 TV in invoking their statutory dissenter rights.

DATED this 27th day of March, 2015.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973

Talmadge/Fitzpatrick/Tribe

2775 Harbor Avenue SW

3rd Floor, Suite C

Seattle, WA 98126

(206) 574-6661

Attorneys for Appellants

Yuri Pikover and

37 Technology Ventures, LLC

APPENDIX

RCW 23B.13.250:

- (1) Except as provided in RCW 23B.13.270, within thirty days of the later of the effective date of the proposed corporate action, or the date the payment demand is received, the corporation shall pay each dissenter who complied with RCW 23B.13.230 the amount the corporation estimates to be the fair value of the shareholder's shares, plus accrued interest.
- (2) The payment must be accompanied by:
 - (a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;
 - (b) An explanation of how the corporation estimated the fair value of the shares;
 - (c) An explanation of how the interest was calculated;
 - (d) A statement of the dissenter's right to demand payment under RCW 23B.13.280; and
 - (e) A copy of this chapter.

RCW 23B.13.280:

- (1) A dissenter may deliver a notice of the corporation informing the corporation of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 23B.13.250, or reject the corporation's offer under RCW 23B.13.270 and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:
 - (a) The dissenter believes that the amount paid under RCW 23B.13.250 or offered under RCW 23B.13.270 is less than the fair

value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under RCW 23B.13.250 within sixty days after the date set for demanding payment; or

(c) The corporation does not effect the proposed corporate action and does not return the deposited certificates or releases the transfer restrictions imposed or uncertificated shares within sixty days after the date set for demanding payment.

RCW 23B.13.310(2):

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in the amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of RCW 23B.13.200 through 23B.13.280; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by chapter 23B.13 RCW.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

EAGLE VIEW TECHNOLOGIES, INC.,

Petitioner,

vs.

YURI PIKOVER, an individual; and 37
TECHNOLOGY VENTURES, LLC, a
Delaware limited liability corporation,

Respondents.

No. 13-2-05103-4

**COURT'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION IN FAVOR OF PLAINTIFF**

THIS MATTER came before the Court on a bench trial conducted on May 27, 2014 through June 12, 2014, before the undersigned Judge. Having considered the testimony of the witnesses at trial, all exhibits and deposition testimony admitted into evidence at trial, the parties' post-trial briefs, and the files and records herein, the Court enters the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT, CONCLUSIONS OF LAW &
DECISION - 1
CASE NO. 13-2-05103-4

1 This matter is a dissenters' rights valuation proceeding under RCW 23B.13.300, whereby the
2 Court, following a bench trial must determine the fair value (as defined by the statute) of the stock
3 Respondents Yuri Pikover and 37 Technology Ventures, LLC held in Petitioner EagleView
4 Technologies, Inc., immediately prior to its double-reverse triangular merger on January 7, 2013 ("the
5 Merger Transaction") with non-party Pictometry International Corp. ("Pictometry"). The valuation date
6 for purposes of this proceeding is January 6, 2013.

7
8 Andrew R. Escobar and Tania Magoon of DLA Piper LLP (US) appeared for Petitioner,
9 EagleView Technologies, Inc. ("EagleView"). Joseph E. Bringman, Austin Rice-Stitt and Ulrike
10 Connelly of Perkins Coie, LLP, appeared for the Respondents, Yuri Pikover and 37 Technology
11 Ventures, LLC. The Court has heard testimony, examined evidence, considered the arguments advanced
12 by the parties and reviewed the briefs submitted by each party during the trial which occurred from May
13 27, 2014 through June 12, 2014. The Court now makes the following findings of fact, conclusions of
14 law and decision:

15 FINDINGS OF FACT

16 *The Parties*

17 1. EagleView Technologies, Inc. ("EagleView") was duly incorporated under the laws of
18 the State of Washington, with its principal place of business as of the valuation date at 2525 220th Street
19 SE, Suite 203, Bothell, Washington 98021. EagleView was founded in 2007 and specializes in aerial
20 roof measurement. Today, EagleView is a wholly owned subsidiary of Eagle View Technology
21 Corporation ("ETC"), a Delaware corporation.

22 2. Respondents Yuri Pikover and 37 Technology Ventures, LLC are former EagleView
23 shareholders that dissented from EagleView's merger with Pictometry. Mr. Pikover sat on EagleView's
24 board of directors from 2008 until he was removed, along with the other two outside directors, in July
25 2012. Ex. 286; Verbatim Report of Proceedings (hereinafter "VRP") at 298, 786, 898, and 1002-03.

26 3. Mr. Pikover is the managing director of 37 Technology Ventures, LLC. As of January

1 6, 2013, Mr. Pikover was the holder and owner of 106,485 shares of EagleView common stock. Ex. 39.
2 During his time on the board, Mr. Pikover did not have any discussions with most of EagleView's
3 shareholders, including EagleView's largest shareholder, Mr. Pilot. VRP at 1156-57.

4 4. Mr. Pikover is also the sole member of 37 Technology Ventures, LLC ("37TV"), a
5 Delaware limited liability company and the other respondent in this proceeding. VRP at 994. Mr.
6 Pikover often uses 37TV as a vehicle to invest in companies. VRP at 994. As of January 6, 2013, 37TV
7 was the holder and owner of (1) 425,000 shares of common stock; (2) 148,665 shares of Series A
8 preferred stock; and (3) 250,000 shares of Series A-1 preferred stock. Ex. 38.

9 5. Pictometry International Corporation ("Pictometry") has been the predominant supplier
10 of aerial images to EagleView since 2008. Pictometry merged with EagleView on January 7, 2013 and
11 is now, along with EagleView, a wholly owned subsidiary of ETC.

12 *EagleView - Management and Board Membership*

13 6. For most of its existence, EagleView's Chief Executive Officer was Chris Barrow and
14 its Chief Financial Officer was John Polchin. VRP at 99-100, 577.

15 7. Prior to the Merger Transaction, EagleView had a five-member board of directors. For
16 most of EagleView's existence (up until July 12, 2012), these directors were Mr. Barrow, Chris
17 Pershing (who invented and developed EagleView's roof measurement technology and was its Chief
18 Technology Officer), and three outside investors—Robert Hawk, Ed Zander, and Mr. Pikover.

19 8. These three outside investors, however, were removed from EagleView's board by
20 shareholder vote on July 16, 2012, and replaced with three new outside directors: Curtis Pilot, Roger
21 McOmber, and Tom Morrison. VRP at 206, 286, 748-49, 751.

22 *EagleView Products*

23 9. EagleView sells its customers "roof reports" that detail accurate roof measurements that
24 are used for estimating the cost to repair or replace rooftops across the country. VRP at 103-04.

25 10. EagleView believed that to succeed with selling its roof reports, it needed to provide
26 customers with the following:

- 1 a. Accuracy. EagleView endeavored to provide its customers accurate measurements and
2 certified that the measurements in its Premium Roof Reports were accurate. VRP at
3 104-05, 108.
- 4 b. Coverage. EagleView's customers wanted EagleView to be able to fulfill almost all of
5 their roof measurement requests. VRP at 108.
- 6 c. Convenience. EagleView endeavored to deliver its roof measurement reports in the
7 formats its customers requested, including *via* .pdf files, .xml files, or through an
8 estimating platform such as Xactware's estimating software. VRP at 108.
- 9 d. Scale. EagleView needed to ensure it could provide thousands of reports each day to
10 meet customers' needs, for example, soon after a storm. VRP at 108-09.

11 11. EagleView's primary product from the company's founding up through January 6,
12 2013, was its Premium Roof Report, which was sold to insurance carriers and roofing contractors. Ex.
13 107; VRP at 104-05. EagleView certified and guaranteed that the measurements in its Premium Roof
14 Report were accurate. VRP at 107. EagleView typically charged \$40-45 for a Premium Roof Report.
15 VRP at 111. To create its primary product, EagleView needs recent, high resolution aerial photographs
16 of the rooftops taken in the "leaf off" season, from top-down (orthogonal) and side-angled (oblique)
17 views, with the oblique views being critical to the production of the report. VRP at 120-22, 749, 772,
18 844-45.

19 12. Up through January 6, 2013, EagleView also sold a Standard Roof Report, which
20 provided roof measurements based upon orthogonal, or top-down, images. VRP at 105-06. The
21 Standard Roof Report lacked key features, such as the calculation of the roof's pitch. VRP at 105-06.
22 EagleView did not guarantee the accuracy of the measurements in the Standard Roof Report. VRP at
23 112. EagleView typically charged \$15-20 for its Standard Roof Report. VRP at 111. EagleView's
24 insurance carrier customers do not order, and will not accept, Standard Roof Reports. VRP at 107.

25 13. Up through January 6, 2013, EagleView also sold an Extended Coverage Report, which
26 provided measurements for some, but not all, parts of a roof. VRP at 106-07. Such reports were

1 generated when an image was taken during the leaf-on period and the foliage prevented EagleView
2 from obtaining a complete view of the roof structure. VRP at 106. EagleView did not guarantee the
3 accuracy of the measurements in the Extended Coverage Report. VRP. at 112.

4 14. In 2012, EagleView was developing an underwriting report product that was intended
5 to provide insurance carriers with information regarding property and structure square footage and roof
6 and property conditions to assist carriers' underwriting divisions. VRP at 113, 597-598.

7 a. As of January 6, 2013, EagleView's attempts to sell its underwriting reports were
8 wholly unsuccessful because the resolution of the images EagleView was using did not
9 provide carriers with the level of detail they needed to process underwriting policies
10 and the images were not as current as the carriers desired. VRP at 114-15, 598-99.

11 b. Throughout 2012, and as of January 6, 2013, EagleView had limited to no access to
12 current aerial imagery, a factor that hampered its success with the underwriting product.
13 Pictometry staff admitted that they were intentionally withholding current images from
14 EagleView during that time. VRP at 176; 599.

15 c. To calculate square footage accurately, EagleView needs oblique images. These
16 images assist EagleView in determining whether a structure is single- or multi-storied
17 or has a basement. VRP at 116-17.

18 15. In 2011, EagleView purchased a company called SuperBuild that had developed an
19 estimating software package. VRP at 131. As of January 6, 2013, the estimating software, called
20 Estimator, was unsuccessful, with little revenue coming in from the product. VRP at 132-34. No
21 revenues were derived for 2012 from the Estimator product from any insurance carriers. VRP at 580.
22 EagleView missed expectations regarding how it projected revenues for 2012 for the Estimator product.
23 VRP at 132-34.

24 ***Project Aerial***

25 16. In early 2012, EagleView decided to put itself up for sale and hired Allen & Company
26 to manage the solicitation process. VRP at 354:9-12. EagleView referred to this process as "Project

1 Aerial.” VRP at 354:16-20. Typically, once a company opens up such a process, it must go through
2 with a sale or it risks damaging its reputation (and value) within the business community.

3 17. After EagleView made it known that it was for sale, its Chief Executive Officer
4 (“CEO”) and Chief Financial Officer (“CFO”), Messrs. Barrow and Polchin, gave presentations about
5 EagleView’s business to a number of parties that expressed an interest in EagleView. VRP at 354:24-
6 355:6. During the presentations, Messrs. Barrow and Polchin informed the interested parties that
7 EagleView was dependent on one company—Pictometry—for the images it used to create roofing
8 reports. VRP at 357:6-9.

9 18. By April 2012, EagleView had received nine indications of interest from potential
10 acquirers or investors valuing EagleView at between \$170 and \$350 million. Ex. 219 at 2; VRP at
11 1032:13-15. Towards the end of May, Allen & Company reported bids from six companies ranging
12 between \$150 million (plus a \$100 million “earn-out”) and \$225 million (plus a \$75 million “earn-
13 out”). Ex. 221 at 3; VRP at 1039:2-5.

14 19. In April 2012, as EagleView was receiving the first round of bids in the Project Aerial
15 process, Pictometry sent a letter to EagleView stating that Pictometry wished to exercise its audit rights
16 under the Image Supply Contract to ensure, among other things, that EagleView was properly
17 computing and paying all royalties owed to Pictometry (the “Audit Letter”). See Ex. 343 ; VRP at
18 504:10-24. Ms. Salpini testified that they were suspicious that EagleView was not in compliance with
19 the contract. VRP at 503.

20 20. Mr. Pikover testified that the Board of Directors was never told about the Audit Letter.
21 VRP at 554:21-23, 1080:6-20. After discussions with Mr. Barrow and one of their board members,
22 Pictometry’s CEO Rick Hurwitz directed Ms. Salpini to put the audit process on hold. VRP at 504:25-
23 505:17.

24 21. On June 11, 2012, EagleView and Pictometry executed a term sheet whereby the two
25 companies agreed to merge based on a \$250 million valuation for EagleView. Ex. 246, *see also* Ex.
26

1 221 at 6. The terms of the proposed merger between EagleView and Pictometry initially called for
2 Pictometry to make \$125 million available to EagleView shareholders that wished to sell their shares in
3 conjunction with the merger. *See, e.g.,* Ex. 314. This cash component was very important to several of
4 the outside board members, such as Mr. Pikover. However, this term sheet never came to fruition and
5 a deal with those terms was never closed.

6 *EagleView – Patents*

7
8 22. As of June 26, 2012, EagleView obtained four utility patents covering its aerial roof
9 measurement technology. *See* Ex. 334, 335, 336, 337; VRP at 777–79. However, as of January 6,
10 2013, two of EagleView’s patents, both of which relate to measuring roof dimensions using aerial
11 imagery, were under re-examination. Ex. 334, 335; VRP at 401–02, 779–780. This resulted from
12 EagleView’s patent suit against Aerialogics, LLC, which was still pending as of January 6, 2013. Ex.
13 33 at 50; VRP at 844. Because these patents were in re-examination on January 6, 2013, EagleView
14 could not enforce them. VRP at 780–81. Mr. Pikover was unaware that, as of January 6, 2013, these
15 patents were under re-examination. VRP at 1168–69. Mr. Pikover was unaware that EagleView was in
16 litigation with Aerialogics, LLC, even though EagleView had filed suit against Aerialogics in April
17 2012, when he was still on EagleView’s Board. VRP at 1170.

18 *EagleView – Contract with Xactware*

19 23. As of January 6, 2013, the vast majority of EagleView’s insurance revenue—and over
20 30% of EagleView’s total revenue in 2012—was derived from its key contract with Xactware, whose
21 network and software is used by almost all of EagleView’s insurance-related customers. EagleView
22 used Xactware’s work flow product as a platform through which it sent its Roof Reports to its insurance
23 adjuster clients. Ex. 13, 14; VRP at 665. As of January 6, 2013, EagleView had contracts with most
24 of the nation’s major insurance companies to provide them with roof reports. VRP at 333, 665.
25 EagleView believed that its four-year contract with Xactware had auto-renewed, however, Xactware
26 had a different view. Having seen EagleView’s success, it was aggressively attempting to bring its own

1 competing (roof report) product to market and intended to terminate its contract with EagleView. VRP
2 at 333, 665.

3 24. If EagleView was locked out of Xactware's platform, they would still be able to deliver
4 roof reports through email to insurance adjusters, but it would not be as efficient as a delivery system
5 and it put 30 percent of the company's revenues at risk. Mr. Barrow testified that that the use of
6 Xactware created a seamless work flow environment for adjusters, greatly increasing the volume of roof
7 reports sold by EagleView, especially during mass casualty weather events when 200,000 roofs are
8 destroyed simultaneously.

9 *Eagle View's Growth*

10 25. EagleView was founded in 2008 and earned revenues of \$1.4 million that year.
11 EagleView's revenues grew to \$5.6 million in 2009 (297 percent year-over-year growth); to \$12.5
12 million in 2010 (121 percent growth); to \$35.4 million in 2011 (185 percent growth); and to \$48.5
13 million in 2012 (37 percent growth). Ex. 26 at Schedule ("Sched.") 2.

14 26. EagleView experienced similar growth in earnings: its earnings before interest, taxes,
15 depreciation, and amortization ("EBITDA") reflected losses in 2008 (\$2.4 million) and 2009 (\$2.1
16 million), followed by profits of \$513,000 in 2010, \$7.0 million in 2011, and \$11.4 million in 2012. Ex.
17 26 at Sched. 2.

18 27. EagleView's estimated value for tax and accounting purposes under Section 409A of
19 the Internal Revenue Code rose along with its revenues and profits. As of June 30, 2011, EagleView's
20 value for 409A purposes was \$118.6 million. Ex. 260 at Sched. 11 (Report issued Oct. 21, 2011). As of
21 September 30, 2011, EagleView's value for 409A purposes was \$179.8 million. Ex. 261 at Sched. 12
22 (Report issued June 12, 2012). As of December 31, 2011, EagleView's value for 409A purposes was
23 \$198.2 million. Ex. 262 at Sched. 12 (Report issued on June 12, 2012).

24 28. EagleView has won several awards and distinctions, including ranking #65 on *Deloitte*
25 *Technology Fast 500* list for 2013; being a finalist in *Seattle Business Magazine's 2012 Tech Impact*
26

1 Awards for outstanding innovation and achievement; and ranking #9 in 2012 in the *Top 100 Places to*
2 *Work in Washington State* list, and placing again on this list in 2013. (EagleView has been on such a list
3 since 2010). VRP at 102–103, 334–335.

4
5 a. EagleView prepared a three-year earnings forecast in early 2012 that projected, *inter*
6 *alia*, revenue for 2012, 2013, and 2014. Ex. 18; VRP at 580. This three-year forecast reflected three
7 different scenarios: (1) \$60 million in revenue for 2012, assuming a normalized weather year with little
8 to no new products; (2) \$72 million in revenue for 2012, assuming a favorable weather event and some
9 new product launches; and (3) \$84 million in revenue for 2012, assuming additional favorable weather
10 events and aggressive new product sales. Ex. 18; VRP at 586. Under the \$72 million plan, EagleView
11 projected \$72 million in revenue for 2012, \$126.5 million in revenue for 2013, and \$175.9 million in
12 revenue for 2014. Ex. 18; VRP at 589. Under the \$72 million plan, a key assumption EagleView made
13 was that it would achieve from its underwriting product around \$10.7 million in revenue for 2012, \$41.6
14 million in 2013, and \$77.2 million in 2014. Ex. 2, 18; VRP at 590–91. Under the \$72 million plan,
15 EagleView had projected that it would achieve around \$24.5 million in revenue for 2012, \$26.3 million
16 in 2013, and \$26.6 million in 2014 from the top three insurance carriers. Ex. 18 at Ex. 3; VRP at 601.

17 b. Under the \$72 million plan, EagleView had projected that it would achieve around
18 \$18.1 million in revenue for 2012, \$26.2 million in 2013, and \$32.0 million in 2014 from the remaining
19 carriers, with most of the business coming from the 4th through 10th largest insurance carriers in the
20 country. Ex. 18 at Ex. 3; VRP at 603–04, 607. With respect to those carriers, EagleView projected it
21 would achieve around \$12.6 million in revenue for 2012, \$15.9 million in 2013, and \$17.1 million in
22 2014. Ex. 18 at Ex. 4.4; VRP at 679.

23 29. Despite its fast start in earlier years, EagleView attained only \$48.5 million in total
24 revenues for 2012. Ex. 24; VRP at 653. Of this \$48.5 million, only \$60,000 was attributable to the
25 underwriting product. VRP at 730. EagleView's actual revenues from the underwriting product in 2013
26 were \$70,000. VRP at 660. In addition, EagleView failed to penetrate the markets for the 4th through

1 10th largest carriers. VRP at 654, 661-662, 679.

2 30. In November 2012, EagleView prepared only a one-year forecast for 2013 for
3 budgetary purposes and did not update its forecast for 2014 or provide a forecast for 2015. Ex. 20; VRP
4 at 657-58, 681-82. It did not do so because, at the time, EagleView was moving towards the Merger
5 Transaction, and it did not have the resources to prepare a revised three-year plan. VRP at 681-682.
6 Moreover, the assumptions that would go into such a three-year forecast would vary widely, depending
7 on whether the merger transaction with Pictometry International Corp. ("Pictometry") would close. VRP
8 at 681-682. So, it was felt that such a forecast would be overly speculative.

9 31. If the merger transaction had not closed, there was a real risk that Pictometry would
10 terminate the contract, leaving EagleView with no image library to draw upon to generate its products.
11 VRP at 681-682. On the other hand, if the merger closed, that risk of termination would be nullified.
12 VRP at 681-682.

13 32. Under the 2013 one-year operating budget, EagleView projected it would achieve \$73.8
14 million in revenue. Ex. 20; VRP at 658. Of that revenue, EagleView projected it would achieve around
15 \$2.0 million in revenue from its underwriting product. Ex. 20; VRP at 658. Under the 2013 one-year
16 operating budget, EagleView projected it would achieve around \$6.9 million in revenue from insurance
17 carriers #4-10.

18 *Pictometry contract with Eagle View*

19 33. Since 2008, EagleView and Pictometry have had a contractual relationship whereby
20 Pictometry provides EagleView with aerial imagery in exchange for a royalty. Ex. 32; VRP at 138-39,
21 335, 445, 751.

22
23 34. In 2010, EagleView and Pictometry entered into a new contract that lasted until 2015
24 (the "Image Supply Contract"). See Ex. 32. Under the Image Supply Contract, EagleView began
25 paying higher royalties to Pictometry than it had under the 2008 agreement. VRP at 335:13-122,
26

1 35. In late 2010 or early 2011, Pictometry indicated to EagleView its interest in acquiring
2 EagleView. *See* Ex. 324 (Barrow email to EagleView Board of Directors dated May 20, 2011 stating
3 “[a]s you recall, Pictometry had approached us earlier this year with the concept of a potential
4 acquisition”). On the same occasion, Pictometry’s CEO Richard Hurwitz stated his belief that
5 Pictometry could cancel the Image Supply Contract with EagleView. *See, e.g.*, VRP at 346:22-25. Mr.
6 Hurwitz also indicated that he wish to renegotiate the image supply contract on terms more favorable to
7 Pictometry. VRP at 353:13-23.

8 36. In May 2011, Pictometry acquired GeoEstimator, a company that created roofing
9 reports in competition with EagleView. *See* Ex. 324.

10 37. In late 2011, Pictometry again expressed an interest in acquiring EagleView (along with
11 several other parties), after EagleView essentially put itself up for sale. VRP at 353:24 - 354:8. That
12 process was known as “Project Aerial.”

13 38. As of January 6, 2013, Pictometry was EagleView’s dominant provider of aerial
14 imagery. VRP at 241. In 2012, Pictometry had the only image library, including a substantial library of
15 oblique imagery, that could meet EagleView’s needs. VRP at 757.

16 39. Pictometry provides multiple, high-quality orthogonal and oblique images¹ that can be
17 displayed in EagleView’s reports. EagleView needs both orthogonal and oblique imagery because,
18 taken together, these images provide data such as area and roof pitch that are critical to generating
19 accurate roof measurements. VRP at 120–22, 749, 772, 844–45. Pictometry pioneered and invented the
20 methodology to capture oblique imagery. VRP at 434, 439. Pictometry has an extensive patent portfolio,
21 including patents covering the oblique capture process. VRP at 439–440. Pictometry’s patent on
22 capturing oblique imagery expired in early 2012. VRP at 440, 758.

23 40. EagleView could display Pictometry’s oblique images in its reports, which was
24 significant because many of EagleView’s customers required EagleView to display the oblique imagery
25

26

¹ An orthogonal image is a top-down image of a structure. An oblique image shows the structure from an angle.

1 in the roof measurement reports. *See* Ex. 107; VRP at 129, 210, 530, 810–11, 816, 913–14, 916.

2 41. Pictometry has an image library dating back almost 15 years that covers around 80-90%
3 of the United States. Ex. 32; VRP at 138, 140. In addition, Pictometry flies about one-third of the
4 country each year, with the result that images are refreshed every 3 years or so. VRP at 138. County
5 governments pay Pictometry to capture these images. Ex. 32; VRP at 138, 140. Consequently,
6 Pictometry has compiled a vast image library where the images are already paid for. Ex. 32; VRP at
7 138, 140. Most of EagleView's high-volume customers are insurance companies that rely on
8 EagleView's technology to quickly and efficiently process roof repair and replacement claims across the
9 country. To meet that demand, EagleView must have ready access to a broad, pre-existing image library
10 to generate quickly its roof measurement reports for the requested properties. *See* VRP at 108–09.

11 42. EagleView needs clear, unobstructed views of structures to generate its accurate roof
12 measurements. Consequently, EagleView needs images that are taken during "leaf-off" season. VRP at
13 141–42, 756. Pursuant to its contracts with government entities, Pictometry captures images during leaf-
14 off, no-snow periods so that a complete view of the building is captured, with no obstructions by leaf
15 canopy or snow. VRP at 434. This is in contrast to some providers' images—like Google—that are
16 purposefully taken when leaves are on the trees for aesthetic reasons. Ex. 48; VRP at 217–18.

17 43. By the end of 2012, Pictometry had somewhere between approximately 65 and 70
18 planes, making it one of the largest aerial photographer-plane-secured companies in the image industry.
19 VRP at 436. The metadata in Pictometry's images were excellent; EagleView did not have problems
20 processing Pictometry's images. VRP at 222.

21 44. Pictometry cultivated relationships with governmental agencies to gain access to critical
22 airspace. Pictometry has a good relationship with Air Traffic Control, given its work for governmental
23 entities. VRP at 460–61. Indeed, Pictometry had access to the P-56 airspace, which is over the White
24 House and U.S. Capitol. VRP at 460–61. None of Pictometry's competitors had access to the P-56
25 airspace. VRP at 460–61.

26 **Pictometry's Threats and Plans To Terminate Its Contract Intensify During 2012.**

1 45. In late 2011 and early 2012, Pictometry's Chief Executive Officer, Rick Hurwitz, began
2 to increasingly threaten to terminate the agreement between EagleView and Pictometry. VRP at 157-
3 58. According to Ms. Salpini, Pictometry wanted to terminate its contract with EagleView because:
4 (1) Pictometry had its own roof report business, GeoEstimator; (2) Pictometry believed EagleView was
5 infringing on certain image-measurement patents it possessed; (3) Pictometry believed EagleView was
6 in breach of the parties' contract; (4) Pictometry believed EagleView's patents were invalid; and (5) the
7 amount of royalty revenue Pictometry received from EagleView in 2012 (\$1.8 million) was far less than
8 the amount GeoEstimator made (\$6 million), and Pictometry saw an opportunity to cut off EagleView to
9 capitalize on the greater revenue opportunity for its own roof report business. VRP at 448-51. All these
10 reasons still applied as of January 6, 2013. VRP at 452.

11 *GeoEstimator*

12 46. In 2011, Pictometry purchased Thornberry Consulting (d/b/a/ GeoEstimator)
13 ("GeoEstimator"), a roof report company that was one of EagleView's competitors. VRP at 443.
14 Pictometry observed that customers, like EagleView, were making significant money off of
15 Pictometry's images. *Id.* Through research, Pictometry discovered that the market for roof reports was
16 in the hundreds of millions; its acquisition of GeoEstimator would help Pictometry capture some of that
17 market. *Id.* at 444. Consequently, Pictometry desired to grow its GeoEstimator business. *Id.* at 459.

18 *Patent Infringement*

19 47. According to Ms. Salpini and Mr. Pershing, during 2011 and 2012, Pictometry believed
20 EagleView to be infringing on its patent for measuring on oblique images. VRP at 442-43, 803.

21 *Breach of Contract*

22 48. The parties' contract, which was renewed in March 2010, contains a provision that after
23 one year, either party could terminate the agreement on 30 days' notice without cause. Ex. 32, VRP at
24 455, 681. *See also* VRP at 173. The contract also contained provisions for termination for cause. *See*
25 Ex. 32. It also contained provisions allowing Pictometry to unilaterally change pricing on its product
26 and modify the scope of EagleView's use of its imagery products. *See* Ex. 32. Once the contract

1 terminates, EagleView is required to return all the images to Pictometry. *See* Ex. 32.

2 In 2012, Pictometry believed EagleView was breaching the agreement. Pictometry had reason
3 to believe that EagleView was not paying for all the images EagleView accessed through Pictometry's
4 Portal API image product. VRP at 446-47. The number of images EagleView was downloading did not
5 align with the number of reports EagleView indicated it was selling. VRP at 447. Under the contract,
6 EagleView was supposed to download the image from Pictometry, use it for the report, and purge the
7 image from its system. VRP at 447-48. Instead, Pictometry believed EagleView retained the image.
8 VRP at 447-48. Pictometry also believed that EagleView was breaching the agreement with respect to
9 use (or lack of use) of Pictometry's trademark on the images EagleView included on its roof reports.
10 VRP at 448.

11 49. Because it believed EagleView was breaching the agreement, Pictometry notified
12 EagleView that it intended to exercise its right under the agreement to audit EagleView. Ex. 343; VRP
13 at 245-46, 448-49, 503-05, 554-55. Pictometry elected to stay the audit process following discussions
14 between EagleView's CEO, Chris Barrow, Pictometry's CEO, Rick Hurwitz, and one member of
15 Pictometry's board of directors in light of the parties' ongoing merger negotiations. VRP at 505.

16 50. Through the due diligence process for the Merger Transaction during the fall of 2012,
17 Pictometry believed that its suspicions regarding EagleView's performance under the contract were
18 confirmed and led to a stronger desire for it to terminate the contract. VRP at 456-57, 503-04.

19 **Pictometry Sunsets Portal Product and Cuts Off EagleView's Access To New Imagery.**

20 51. Pictometry and EagleView's relationship became so troubled that EagleView noticed in
21 mid-2012, around the time that Yuri Pikover was removed, that Pictometry was no longer providing
22 EagleView with its latest imagery and was reserving such imagery for its own business so it could
23 compete against EagleView in the marketplace. Ex. 54, 55, 88; VRP at 182-86.

24 a. Unbeknownst to EagleView at the time, EagleView was not receiving Pictometry's
25 newer images because in 2012 Pictometry began sunseting its Portal API product
26 (through which EagleView accessed Pictometry's images). As a result, Pictometry was

1 no longer refreshing the product with newer imagery and was letting its existing
2 contracts expire with Portal customers like EagleView. VRP at 457.

3 b. Pictometry began sunsetting the Portal API product because it was designing a new
4 product, Gateway. VRP at 457. Pictometry did not plan to transition EagleView to the
5 Gateway product because it intended to terminate the parties' contract. VRP at 458.

6 c. Pictometry reserved use of the newer imagery for itself to generate roof reports to gain
7 a competitive edge in the market; recency of the imagery is one of the most important
8 factors. VRP at 187-88, 458.²

9 52. Some of EagleView's customers contractually required EagleView to produce roof
10 measurement reports with images that were taken within the last two years. VPR at 175, 776. But even
11 customers that did not have such a contractual requirement, if EagleView did not have recent imagery,
12 this would harm its goodwill with those customers. VRP at 560.

13 53. EagleView learned that Pictometry was telling EagleView's customers that it was not
14 providing EagleView with up-to-date imagery and positioned itself to compete with EagleView. *See Ex.*
15 86 (Pictometry offering \$12/report as compared to EagleView's \$40-50/report); 87 (EagleView
16 customer notifying EagleView that Pictometry contacted him and advertised that it has "better service,
17 lower prices and can provide images to him that are not available to EagleView users."); VRP at 560.

18 54. If the Merger Transaction did not go through, Pictometry planned to terminate its
19 agreement with EagleView. VRP at 456.

20 a. In the 2012 timeframe, Pictometry's executive management team discussed plans to
21 terminate its contract with EagleView if the Merger Transaction did not go through.
22 VRP at 521.

23 b. Pictometry's executive management team had authority to cancel the contract with
24 EagleView. VRP at 522.

25
26 ² Following the merger transaction on January 7, 2013, a Pictometry employee admitted to EagleView that
Pictometry had stopped providing EagleView with its latest imagery. VRP at 194; Ex. 92.

1 c. In 2012, Pictometry's board had planned to terminate the EagleView contract if the
2 Merger Transaction did not go through. VRP at 521.

3 d. In 2012, Pictometry's CEO informed EagleView's CEO that if EagleView and
4 Pictometry "didn't get some deal worked out" (i.e., merge), it would shut off
5 EagleView's image supply. VRP at 167.

6 55. In 2012, Pictometry salespersons were informing customers that Pictometry was going
7 to shut down EagleView's access to its images. Ex. 31; VRP at 166, 173-74, 198. Pictometry had
8 informed the insurance carrier Farmers that it was going to shut off EagleView's access to its images.
9 VRP at 198. As a result, Farmers informed EagleView that it was going to consider Pictometry as an
10 alternative roof report solution. VRP at 198.

11 **EagleView's Search For Alternatives To Pictometry Prove Fruitless.**

12 56. Given these events in 2011 and 2012, and understanding that relying upon Pictometry
13 as its sole source for aerial imagery was risky for its business, EagleView searched for alternate image
14 providers. VRP at 156-57. EagleView opened a new office in the Denver area, establishing a wholly-
15 owned subsidiary corporation, Atlas GSI, dedicated to the search. VRP at 205. The Atlas GSI division
16 explored the option of having EagleView obtain its own aerial images and develop its own library. VRP
17 at 773.

18 a. EagleView called the new division Atlas GSI to create an impression in the marketplace
19 that Atlas GSI was not affiliated with EagleView. VRP at 204-05, 644. EagleView was
20 concerned that Pictometry would react negatively and become more emboldened with
21 its threats if it discovered EagleView was assessing options to capture its own imagery.
22 VRP at 205, 644.

23 b. As part of due diligence in the latter half of 2012 with respect to EagleView and
24 Pictometry's Merger Transaction, Pictometry learned about Atlas GSI. VRP at 645.

25 57. In early 2012, EagleView was optimistic that it would secure an alternate oblique image
26 library that could substitute for Pictometry's, given that Pictometry's oblique image capture patent

1 expired in early 2012. VRP at 440, 758.

2 58. As of January 6, 2013, none of the alternative providers, either alone or in concert,
3 matched Pictometry's capabilities at that time. VRP at 143-44. As stated by Mr. Pershing, EagleView's
4 Chief Technology Officer:

5 ...[W]e looked around pretty hard for either libraries that might have been out there or
6 flyers who were capable not only in the ability to capture obliques but in their ability to
7 scale up their ability to capture to additional hardware and delivery systems and whatnot.
8 And so we were very hungry for finding alternatives for Pictometry. And the more we
investigated and the deeper we got into the year of kind of investigating these other
sources, it was becoming apparent that our hopes didn't match the reality of what was out
there in the marketplace.

9 VRP at 772-73.

10 59. None of the image providers listed in Ms. Larson's expert report (Ex. 333 at 40-41)
11 were suitable alternatives to Pictometry's image library. VRP at 767-72.

12 60. Microsoft Bing. Aware that Microsoft's Bing division had an agreement with
13 Pictometry where by Pictometry sold its images to Bing, EagleView contracted with Microsoft's Bing
14 division to access its image library. Ex. 27; VRP at 207-08. Sometime during the latter half of 2012,
15 Pictometry learned that Bing was providing EagleView with images from this image library. VRP at
16 463. Bing, however, was less than an ideal substitute for Pictometry's images.

17 a. First, Bing's image library was merely a de-resolved, cached copy of Pictometry's and
18 it was not receiving the most up-to-date imagery for certain locations; thus it lacked Pictometry's
19 coverage. VRP at 230-31, 463, 770, 914. Because Bing's images were de-resolved (and, thus, not as
20 clear or sharp as Pictometry's), it took EagleView's technicians more time to use Bing's images to
21 generate a report. VRP at 810.

22 b. Second, under the contract, while EagleView could use Bing's oblique imagery to
23 generate roof measurements, EagleView could not reproduce Bing's oblique images in the finished
24 aerial measurement reports. VRP at 210, 810-11, 913-14. This is important because, by definition,
25 EagleView's Premium Roof Reports included oblique imagery. VRP at 530. EagleView's customers
26 were not satisfied with reports that lacked the oblique imagery. VRP at 811, 816 (insurance carriers

1 "complained rather quickly" upon receiving EagleView's reports without the oblique imagery). This
2 impacts the overall quality and viability of EagleView's product. VRP at 811, 914, 916. In early 2012,
3 when EagleView tested the viability of Bing as an alternative to Pictometry, EagleView used Bing's
4 imagery to generate the roof measurements, but still incorporated Pictometry's imagery in the report to
5 send to customers. Ex. 220 at 51; VRP at 813-14.

6 c. Third, in September 2012 Pictometry received 180-days' notice from Bing that it was
7 going to terminate the contract. VRP at 464.³ The consequence of termination was that Bing had to
8 return or destroy any images Pictometry delivered to Bing after June 2009. Ex. 251; VRP at 465, 664,
9 905, 916.

10 61. **Google.** EagleView had a contract with Google wherein Google provided EagleView
11 with orthogonal imagery. VRP at 196-97, 211-12, 762, 766. Furthermore, Google was in the process of
12 capturing its own oblique imagery and was working with EagleView to create software APIs that would
13 allow EagleView to access any oblique images Google had. VRP at 212, 758-59. In July 2012, Google
14 materially failed to perform: it cancelled the contract and refunded the money EagleView had
15 previously paid under the parties' contract. Ex. 29, 30; VRP at 232, 234-35, 534, 614-15, 669, 765.
16 First, Google's image library was a mere fraction of Pictometry's library coverage. VRP at 212, 213.
17 Second, Google primarily collected its images during leaf-on seasons. VRP at 215-16. Third, and most
18 critically, Google could not provide EagleView's engineers with the appropriate interface to even use
19 the imagery. VRP at 232, 613-14, 765. Although EagleView revisited Google as a potential image
20 source shortly before the valuation date, Google had not yet developed the interface for EagleView to
21 access oblique imagery. VRP at 235-36, 765-66, 818-19.

22 62. **FUGRO.** FUGRO Earth Data, Inc. takes orthogonal and oblique imagery. VRP at 222.
23 In 2012, FUGRO had around 20 planes. VRP at 224. FUGRO, however, did not have an image library.
24 VRP at 222, 759. Although FUGRO had flown some counties, those images were not available for
25

26 ³ It was only *after* the valuation date, that Bing and Pictometry negotiated a deal whereby Bing would receive a perpetual license to images it received from Pictometry up to that date. VRP at 465-66.

1 resale to EagleView. VRP at 222. Furthermore, the cost to have FUGRO collect images to develop a
2 library were too steep; FUGRO informed EagleView that it would cost between \$700–800 per square
3 mile. VRP at 238–39, 759.

4 63. GeoSpan. EagleView researched GeoSpan, one of Pictometry's competitors, as a
5 possible source for aerial imagery. VRP at 219–20. GeoSpan, however, was not a viable option.
6 Although GeoSpan did have image sets for counties it had flown previously, it could not resell those
7 images to EagleView. VRP at 220–21. The quality of GeoSpan's images were also unsatisfactory; the
8 metadata and geocoding associated with the images were incorrect, rendering the images unusable. Ex.
9 52; VRP at 221, 761. Moreover, it took GeoSpan many months to send the images to EagleView. VRP
10 at 761. Even after GeoSpan reprocessed the images (which took a couple months), the images were
11 either marginally usable or unusable. VRP at 761.

12 64. Sanborn. Like FUGRO and GeoSpan, Sanborn is an aerial image flyer. VRP at 224,
13 768–69. Sanborn, however, did not have an existing image library. VRP at 224. Furthermore, although
14 Sanborn was capable of capturing its own orthogonal imagery, Sanborn used GeoSpan's systems for
15 obliques. VRP at 224–25.

16 65. DigitalGlobe. Although DigitalGlobe had a satellite image library, its images were
17 unusable for two main reasons. First, DigitalGlobe's images were restricted to 18 inches per pixel by
18 U.S. law. VRP at 225–26, 762. Such resolution is not usable for EagleView's purposes in most cases.
19 VRP at 762. Second, DigitalGlobe could only provide orthogonal images and no oblique images. VRP
20 at 225–26, 762. In any event, the quality and resolution of its orthographic library was inconsistent and a
21 great majority of the images were not as good as other providers'. VRP at 762. Consequently,
22 DigitalGlobe was not a very good contender as an alternate image supplier. VRP at 762.

23 66. GeoEye. GeoEye's capabilities and limitations were identical to DigitalGlobe's; in
24 2012, GeoEye and DigitalGlobe merged. VRP at 227, 240, 771.

25 67. GeoDigital. GeoDigital did not possess an image library. VRP at 227–28, 241.

26 68. Northrup Grumman. EagleView's discussions with Northrup were not successful

1 because it did not possess an image library. VRP at 227. As of January 6, 2013, Northrup had shut down
2 the division of the company that EagleView was dealing with and had laid off EagleView's main point
3 of contact at the company. VRP at 240-41.

4 69. Obtaining Images In-House. Eagle View also investigated the option of obtaining
5 images on its own by acquiring its own planes and camera equipment and capturing the images itself.
6 VRP at 773-74; *see also* VRP at 537-38, 617-18. There were several challenges to this approach. First,
7 although EagleView did locate flyers that had oblique camera systems, each flyer had a very small
8 number of systems, making them incapable of scaling. VRP at 773-74. Second, even if EagleView was
9 able to contract with flyers to capture the imagery, EagleView needed to build up the infrastructure to
10 process, store, host, and retrieve the images. VRP at 774. There would be costs associated with setting
11 up the infrastructure. VRP at 774. Third, EagleView discovered that the camera systems themselves
12 were very expensive, if it decided to purchase the systems and provide those to flyers. VRP at 774. For
13 example, EagleView discovered that one camera system that was being tested cost between \$1-1.5
14 million. VRP at 775. EagleView's management estimated as of the valuation date that a significant
15 initial capital expenditure—about \$30 million⁴—would have been required to develop a library that
16 would match Pictometry's. *See* Ex. 26 ¶ 21; VRP at 1076. EagleView had approached several private
17 equity firms to obtain funding for the project, but none accepted. *See, e.g.* VRP at 1229 (Mr. Pikover
18 noting that one of the goals of Project Aerial was to raise funds for projects like EagleView capturing its
19 own images). In any event, EagleView learned it would take a minimum of three years for it to develop
20 an image library that could approach the breadth of Pictometry's. *See* Ex. 26 ¶ 21; VRP at 1387, 1427-
21 28.; *see also* VRP at 1700. Such an estimate for the amount of funds required to build an image library
22 fell short of what is actually required to develop an image library akin to Pictometry's. VRP at 619-22.
23 In 2012, between the flights, the pilots, the processing, the flight planning, internal payroll costs
24 associated with the production of imagery as well as external costs to the flight vendors, Pictometry
25

26 ⁴ EagleView's management believed that Atlas GSI's estimation that a 3-year program to capture images would cost \$10.8 million was much too low of an estimate. Ex. 281; VRP at 617-19.

1 spent \$20 million on its image capture business. VRP at 441, 619–20 (noting that Pictometry spends
2 \$20–25 million each year on image capture costs, and Pictometry does not cover the entire country each
3 year). Furthermore, any imagery EagleView would be able to capture would have a shelf life. VRP at
4 775. EagleView would need to build infrastructure to repeatedly fly areas periodically, which proved to
5 be a logistical challenge. VRP at 775.

6 **As of the Valuation Date, Xactware Planned to Cut Off Over 30% of EagleView's Total Revenue.**

7 70. Xactware Solutions, Inc. is a company owned by Verisk Analytics, Inc. VRP at 145.
8 Xactware makes an estimating work flow system for insurance adjusters. VRP at 145. Xactware is the
9 dominant provider of insurance software for insurance claims in the marketplace, with 9 out of the top
10 10 insurance carriers using its software and a vast majority of the remaining carriers using it as well.
11 VRP at 145.

12 71. Since 2008, EagleView and Xactware have had a contractual relationship whereby
13 EagleView's customers seamlessly access EagleView's reports through Xactware's software, which
14 generates a claim estimate based on the measurements provided by EagleView. Ex. 13, 14; VRP at 147–
15 50, 665.

16 72. EagleView's relationship with Xactware directly contributed to EagleView's increased
17 sales volumes. VRP at 149. Xactware made it convenient for EagleView's customers to receive
18 EagleView's reports through its software platform, and its technology increased EagleView's coverage
19 because an adjuster could process more claims per day. VRP at 150.

20 73. By the end of 2012, the Xactware contract accounted for over 30% of EagleView's total
21 revenue. VRP at 665.

22 a. Most of EagleView's insurance carrier customers required EagleView to deliver reports
23 through Xactware's software platform. VRP at 561.

24 b. State Farm, an insurance carrier, conditioned its agreement to accept EagleView reports
25 only if EagleView sent its roof measurement reports through Xactware's software and
26 network. VRP at 148. As of January 6, 2013, EagleView was still under a contractual

1 obligation to provide State Farm its reports through Xactware's software and network.
2 VRP at 148. Mr. Pikover conceded that losing State Farm would be a significant blow
3 to EagleView. VRP at 1182.

4 74. In October 2012, Xactware attempted to terminate the parties' contract without cause.
5 Because it believed that the parties' contract had auto-renewed for another four years, EagleView filed a
6 declaratory judgment action in the United States District Court for the Western District of Washington
7 and moved for a preliminary injunction to block Xactware from terminating its agreement with
8 EagleView. Ex. 15; VRP at 268-72, 665. Many of EagleView's customers were concerned that
9 Xactware could potentially terminate the contract. VRP at 273.

10 75. In 2012, Xactware began competing with EagleView by aggressively promoting its
11 Aerial Sketch product. VRP at 155. EagleView lost top-ten (No. 4) Carrier, Travelers, to Xactware in
12 2012. Ex. 20; VRP at 155. Xactware was also threatening EagleView's State Farm account (No. 1
13 Carrier) and Nationwide account (No. 7 carrier). Ex. 18 at Ex. 4.4, Ex. 220; VRP at 249-50, 254
14 (Xactware proposing \$5/report vs. EagleView's \$40-50/report).

15 76. On December 19, 2012, EagleView obtained a preliminary injunction that prevented
16 Xactware from terminating its agreement with EagleView, but for only 60 days. Ex. 16; VRP at 271.

17 77. One day after the federal court issued its preliminary injunction order, Xactware
18 notified EagleView, on December 20, 2012, that it intended to terminate the parties' contract for cause
19 the day after the injunction's expiration in mid-February 2013. VRP at 274.

20 **In the Spring and Early Summer of 2012, EagleView Engaged In A Process, Termed "Project**
21 **Aerial," To Seek Out A Potential Strategic Business Partner Or Acquirer.**

22 78. During the spring of 2012, EagleView opened itself up to a third-party solicitation
23 process, termed "Project Aerial," after receiving several non-solicited, non-binding offers for
24 acquisition. VRP at 166, 276-77, 622-23, 782, 859.

25 79. EagleView provided the three-year, 2012-2014 model reflecting the three different
26 scenarios to Allen & Company in conjunction with Project Aerial. Ex. 18; VRP at 586. Allen &

1 Company put forth the \$72 million plan before bidders. *Id.*

2 80. Eventually, various bidders dropped out of the process⁵ and only Verisk Analytics
3 (“Verisk”) and Pictometry remained.⁶ *See* Ex. 11, 67; VRP at 283, 624. These two companies
4 incidentally were the two companies EagleView’s business needed to survive: Verisk’s subsidiary,
5 Xactware, provided the software solution most of the top insurance carriers used to process claims, and
6 Pictometry provided EagleView with its aerial imagery. VRP at 283. Bidders cited EagleView’s image
7 risk—*i.e.*, its dependence on Pictometry—as one of the reasons interest was lost. VRP at 283, 841.

8 81. After EagleView provided Verisk in July 2012 with a revised 2012 revenue projection
9 of \$56.2 million, Verisk lowered its bid to an amount communicated to be “tens of millions below” its
10 prior offer. It was now in the range of \$160–200 million, and on the lower end of that range. Ex. 319
11 (stating offer to be on lower end of range); Ex. 67 (stating offer to be “substantially below \$200 mm”);
12 VRP at 879–80.

13 82. In June 2012, the EagleView and Pictometry (through Spectrum) exchanged a non-
14 binding preliminary draft term sheet, which purported to have a purchase price of \$250 million, \$125
15 million of which would be paid in cash to certain shareholders and had EagleView’s remaining
16 shareholders owning 55% of the contemplated merged entity. Ex. 11, 246. The draft term sheet stated
17 that the exchange ratio would be determined by dividing \$250 million by the total number of
18 outstanding shares of EagleView common stock (on an as-converted basis) immediately prior to closing.
19 VRP at 246.

20 83. Because Pictometry’s initial approach, as reflected in the non-binding preliminary draft
21 term sheet (Ex. 246) fell apart because no party from Pictometry’s side produced cash, Pictometry
22 proposed financing a potential merger through debt. VRP at 624. Pictometry, however, did not provide
23 any details regarding how such a transaction would be structured and this proposal was also abandoned.

24

25 ⁵ Although Mr. Pikover testified that negotiations were merely put on hold with these other bidders, he conceded
26 that he personally did not have any direct communications with any of the bidders. VRP at 1230, 1270.

⁶ During 2012, Pictometry was in discussions with Xactware, one of Verisk’s subsidiaries, about a potential
relationship between those two parties. VRP at 524.

1 VRP at 624.

2 84. Eventually, the parties negotiated a stock-based, and 50/50 merger of equals and on
3 December 18, 2012, EagleView and Pictometry executed a merger agreement. Ex. 35; VRP at 555.

4 85. As of January 6, 2013, even though the merger agreement was signed, the merger
5 transaction was not guaranteed to close: As the parties' negotiations continued throughout fall 2012,
6 significant challenges arose, placing the completion of the merger in significant doubt. Ex. 34; VRP at
7 291-94, 629-30, 645. During the parties' due diligence in the latter half of 2012, Pictometry carefully
8 monitored EagleView's financial results from each month and had grave concerns that EagleView
9 would miss its initial \$72 million revenue projection, which it did. VRP at 467. As of December 31,
10 2012, it was EagleView's management's position that "the probability of the merger with Pictometry
11 was still very much in doubt, in fact more likely than not, that the merger would be successfully
12 completed (10% to 25% likelihood)." Ex. 34; VRP at 632-33. On January 6, 2013, Ms. Salpini,
13 Pictometry's VP of Finance was calling Pictometry's shareholders on that day in an attempt to get them
14 to execute applicable documentation so that they could vote on the merger. VRP at 468-69. As of
15 January 6, 2013, Ms. Salpini did not believe Pictometry had sufficient shares voted in favor of the
16 merger in order to get the transaction approved. VRP at 469. As of January 6, 2013, a Delaware tax
17 issue was threatening to derail the closing of the merger transaction. VRP at 292, 469. As of January 6,
18 2013, Pictometry's CEO, Rick Hurwitz, was refusing to sign his termination agreement and was not
19 voting his shares in favor of the merger transaction. Ex. 34; VRP at 469, 630. Mr. Hurwitz engaged in
20 conduct that was problematic and put the merger transaction in jeopardy. VRP at 893, 896. Even as of
21 January 7, 2013, EagleView's CEO, Chris Barrow, was concerned that the merger potentially would not
22 close. VRP at 293-94. Mr. Barrow and Mr. Polchin flew to Rochester on the morning of January 7,
23 2013, to determine whether the deal would in fact close and whether there would be a final decision.
24 VRP at 293-94, 646-47, 968-69. Even after landing in Rochester on January 7, 2013, not every
25 commitment that was supposed to have been met, was met. VRP at 293-94.

26 86. No specific dollar value was attributed to either company in constructing the merger.

1 VRP at 562–64, 626. The deal negotiation related to the relative value of the two companies. VRP at
2 562–64, 626. Ultimately, former EagleView shareholders and former Pictometry shareholders would
3 each own 50% of the shares of the combined company on a fully diluted basis. VRP at 626. The
4 Consent Solicitation and Information Disclosure provided to EagleView’s shareholders informed them
5 that EagleView did not obtain a third party fairness opinion with respect to the merger, nor did it obtain
6 a third party valuation for purposes of calculating the EagleView exchange ratio. Ex. 33 at 54; VRP at
7 288–89, 647–48. Furthermore, the share exchange ratio did not bear any particular relationship to any
8 financial metric, such as book value, liquidation values, or multiples of earnings cash flow or to any
9 valuation EagleView may have received for financial reporting purposes, nor did it represent
10 EagleView’s fair market value. Ex. 33 at 54; VRP at 288–89, 290, 647–48.

11 87. After the Merger Transaction closed, the purchase acquisition accounting for the deal
12 showed Pictometry to have been the acquirer of EagleView based on factors including each company’s
13 size relative to the other, revenues, board construct, and which company’s CEO would lead the
14 combined entity. VRP at 633–34.

15 **EagleView’s 409A Valuations**

16 88. A 409A valuation is a valuation of a business for tax and financial reporting purposes.
17 VRP at 684. It is required to produce GAAP financial statements, which are audited by an outside
18 auditor. VRP at 684, 1730–31. EagleView’s financials are audited by Deloitte. VRP at 684. A 409A
19 valuation is prepared with management’s input and is itself reviewed by an outside auditor. VRP at 685.

20 89. In June 2013, Alvarez & Marsal prepared a 409A report for the valuation of a minority
21 common stock interest in EagleView as of December 31, 2012 (*i.e.*, six days before Jan. 6, 2013). Ex.
22 21; VRP at 686. Alvarez determined that the fair value of EagleView’s common stock as of December
23 31, 2012 was \$3.89/share, and that the fair market value of its common stock as of December 31, 2012
24 was \$2.53/share.

25 90. The report referenced, but did not rely on, a three-year forecast for EagleView for
26 2013–2015. Ex. 21. The data for 2013 comprises the updated, one-year forecast EagleView as prepared

1 at the end of 2012. Cf. Ex. 20 (\$73.8 million in revenue for 2013) with Ex. 21 at 10. The data for 2014
2 and 2015, however, were carried over from the initial three-year forecast prepared in early 2012, with
3 the figures for 2013 and 2014 from the earlier forecast being pushed out one year to 2014 and 2015. Ex.
4 18, 21 at p. 10; VRP at 728. This assumed carry-over from 2013 and 2014 into 2014 and 2015 was not
5 provided by EagleView's management and was flawed given that EagleView had missed its earlier
6 2012 forecast by nearly 30%. VRP at 729. In any event, Alvarez & Marsal did not produce a discounted
7 cash flow analysis given the high growth over the forecast period, timing adjustment needed for the
8 financial forecast, lack of stabilization at the end of the forecast period, and the Company's history of
9 not achieving the forecast. Ex. 21 at p. 31.

10 **Houlihan Lokey, Which Was Retained by Pictometry's Board of Directors to Provide a Fairness**
11 **Opinion, Presented Pictometry's Board with an EagleView Three-Year Forecast (2013-2015)**
12 **That Was not Generated or Created by EagleView.**

12 91. As part of due diligence for the Merger Transaction, EagleView made its three-year,
13 2012-2014 forecast and its one-year, 2013 operating budget available to Pictometry. VRP at 948-49.

14 92. In September 2012, as part of due diligence, Pictometry pressed EagleView to provide
15 forecasts for 2015. Ex. 347; VRP at 1510-11. Mr. Polchin repeatedly responded that he was unable to
16 provide such guidance. Ex. 347; VRP at 1511-12, 1515.

17 93. Pictometry's Board of Directors retained Houlihan Lokey to provide it with a fairness
18 opinion. Ex. 305. Houlihan Lokey presented its draft fairness opinion to Pictometry's Board of
19 Directors on December 11, 2012. Ex. 306, 344, 345. Mr. Polchin spoke with Houlihan Lokey twice.
20 VRP at 950. After a discussion with EagleView's counsel, Mr. Polchin informed Pictometry on
21 October 2, 2012 that he could not provide Houlihan Lokey with any material information:

22 We really can't provide information for your use that we or our board believe may expose us to any
23 liability from your representations or those of your banker (e.g., HL), which will include the
24 underlying information your board uses to render various decisions. In fact, we don't want our
25 management's views incorporated into your representations to your financial advisor in any way. I
26 hope you can appreciate this. In addition, as you can imagine, we have been advised by counsel
against preparing and providing updated projections unless we're prepared to include them in the
shareholder disclosure documents, which we're not prepared to do.

1 Ex. 111; VRP at 950, 1533–35, 1543–44. Subsequently, Mr. Polchin simply informed Houlihan Lokey
2 how EagleView’s February 2012, three-year forecast model was constructed and explained certain
3 jargon. VRP at 950.

4 94. The three-year forecast reflected in Houlihan Lokey’s presentation was not produced,
5 generated, or created by EagleView. VRP at 945–46, 948–49 (Mr. Polchin stating, in reference to the
6 forecast in Houlihan Lokey’s presentation, “I can’t comment on where they came up with those
7 numbers.”), VRP at 951–52, 1524–25. Instead, it was based upon a financial model created by
8 Pictometry and one of Pictometry’s large investors, Spectrum Equity. See VRP at 1511–13, 1519–21.

9 On or around October 10, 2012, Mr. Polchin had informed Pictometry that while the latest
10 model Pictometry and Spectrum Equity had prepared—which was not EagleView’s work product—
11 generally had a directionally correct range at that point in time, Mr. Polchin was not aware of what
12 inputs or assumptions were built into those forecasts. Ex. 348; VRP at 1525. EagleView did not
13 generate or create any of the forecasts that are represented in Ex. 2 of Ex. 348, Ex. 348; VRP at 1530–
14 31. In response to Pictometry’s CEO’s request to provide assumptions regarding its underwriting
15 product, Mr. Polchin stated that EagleView’s management cannot provide Pictometry with that
16 information and that EagleView’s management did not want its views incorporated into Pictometry’s
17 representations to its financial advisor. Ex. 111; VRP at 1533–35. While the three-year forecast in
18 Houlihan Lokey’s presentation projected EagleView would attain \$8.4 million in underwriting revenue
19 in 2013, EagleView’s own one-year, 2013 budget, created in November 2012, forecast around \$2
20 million in revenue from the underwriting product. Ex. 20, 348; VRP at 1536–37. Houlihan Lokey’s
21 presentation contains a disclaimer that states, *inter alia*, that the presentation’s “materials do not
22 constitute a valuation opinion....” Ex. 345; see also VRP at 1732 (“A fairness opinion isn’t even a
23 valuation.”)

24 **Yuri Pikover And The Other Outside Directors Grant Themselves Large Portions Of Stock**
25 **Options That Were Intended To Be Reserved For EagleView’s Employees.**

26 95. In September 2011, EagleView’s management wished to augment substantially its

1 employee stock option pool to attract additional talent to help it fuel and sustain its growth. VRP at
2 709-10, 784.

3 96. Rather than reserve such additional options for incoming talent, Mr. Pikover voted to
4 award himself, along with Messrs. Hawk and Zander, almost 20% of the additional options. VRP at 784,
5 1146-49. In addition, the option pool would have reloaded non-outside-directors' shares at 25% (*i.e.*, if
6 an employee had previously been awarded 1000 options, the reload would provide an additional 250
7 options). VRP at 784. Here, the outside directors, including Mr. Pikover, were voting for a 100% reload.
8 VRP at 784-85. Mr. Pershing called Mr. Pikover to inquire why it would be justified to reload the
9 outside board members' options at that quantity. VRP at 785. This event set the stage for Mr. Pikover's
10 eventual dismissal from the board. VRP at 786-87, 839, 899-902.

11 **Yuri Pikover Is Removed From EagleView's Board of Directors.**

12 97. In July 2012, EagleView's shareholders summarily removed Yuri Pikover, Robert
13 Hawk, and Ed Zander from EagleView's Board through a shareholder vote. VRP at 295-97. One of the
14 shareholders voted to remove Yuri Pikover, Robert Hawk, and Ed Zander was Curtis Pilot, one of
15 EagleView's largest shareholders. VRP at 296-97, 788. The other was Chris Pershing. Messrs. Pershing
16 and Pilot were dissatisfied with Messrs. Pikover, Hawk, and Zander, because they felt that these
17 directors were increasingly acting in their financial self-interest to the detriment of EagleView and its
18 shareholders. VRP at 785-87, 839, 899-902. Mr. Pershing stated that he voted to remove these
19 directors from the board because it was his personal belief that their interest in their own financial stake
20 in EagleView was not in line with getting the best value to the rest of EagleView's shareholders,
21 including himself. VRP at 786. Both Mr. Pilot and Mr. Pershing cited the outside directors' earlier
22 grants of options to themselves as one reason for their decision to remove them. VRP at 786, 899-902.
23 Additionally, Mr. Pershing also noted that, during Project Aerial, he was concerned that the outside
24 directors, including Mr. Pikover, were willing to look for opportunities to liquidate their holdings
25 irrespective of whether such a deal made sense for the company strategically or whether that would
26 ultimately grant the best value to the shareholders. VRP at 788, 840. The outside directors would not

1 have given consideration to a transaction that did not involve cash. *See* Ex. 61; VRP at 840; *see also*
2 VRP at 1232–33.

3 98. No one from EagleView’s management encouraged or pressured Mr. Pershing to
4 remove Messrs. Pikover, Zander, and Hawk from the board. VRP at 788–89.

5 99. Following his removal in July 2012, Mr. Pikover did not have any information
6 regarding EagleView’s business. VRP at 1174, 1204, 1214, 1215, 1228.

7 **Yuri Pikover Is Pursuing A Personal Grudge Against Chris Barrow And EagleView.**

8 100. After being removed from EagleView’s board, Mr. Pikover’s communications to Mr.
9 Barrow and others reflect his anger and resentment towards EagleView, and specifically Chris Barrow.

10 101. Mr. Pikover made a motion to remove Mr. Barrow as a Director and Officer of
11 EagleView “given his dereliction of fiduciary responsibility to EagleView shareholders.” Ex. 65; *see*
12 *also* Ex. 66, 68; VRP at 298.

13 102. After his removal, Mr. Pikover sent various angry emails to Mr. Barrow. In one such
14 message he stated that he would “sue Mr. Barrow, the company, and make sure that everybody knew
15 what a scumbag Mr. Barrow was, and that he wouldn’t rest until he had his revenge essentially against
16 him and against the company.” Ex. 70; VRP at 300.

17 103. On July 17, 2012, the day after his removal, Mr. Pikover demanded a “check for 100%
18 of my company ownership based on \$250M valuation and the same offer to all EagleView
19 shareholders.” Ex. 74. In connection with Project Aerial, however, EagleView did not receive, at the
20 time of Mr. Pikover’s removal, any offers to provide all cash to EagleView shareholders at a \$250
21 million valuation. VRP at 312–13.

22 104. As a result of Mr. Pikover’s angry and threatening response to being removed from
23 EagleView’s board, and based on a prior story Mr. Pikover told Mr. Barrow about how he threatened
24 another CEO with a baseball bat, Mr. Barrow was concerned for his safety, as well as the safety of his
25 family and co-workers. VRP at 323–24. Mr. Barrow advised his family to take extra precaution and to
26 be on guard. VRP at 324. EagleView’s executive management team also discussed taking extra

1 precaution in light of Mr. Pikover's response. VRP at 324.

2 105. In January 2013, Mr. Barrow called Mr. Pikover to urge him not to dissent because the
3 Merger Transaction would eliminate one of the biggest risks to the company and that ultimately it would
4 be a very positive development for the company and its shareholders. VRP at 325-26. Instead, Mr.
5 Pikover:

6 ...was still very, very upset. He conveyed that for him it really wasn't about the money, it
7 was about I had wronged him, I had done the wrong thing. He had this delusion that there
8 was this group of dissenters and that perhaps they could even block the deal because there
9 was this list of dissenters. And I said, Yuri, you're the only dissenter on either side. Out of
350 or whatever shareholders, you're the only one. And he said I was a liar. He said that's not
true, you're lying to me, we shall see in the end. I'll be proven right.

10 *Id.*

11 106. On May 16, 2013, Mr. Pikover informed Mr. Zander that he was using the Pictometry
12 draft term sheet from June 2012, referencing the \$250 million valuation, in demanding additional fair
13 value payment from EagleView. He also told Mr. Zander that he "suspect[ed] [they]'ll be going through
14 courts." Ex. 94.

15 107. Mr. Pikover testified that he still stands by the comments he had made shortly after his
16 removal and that he is still angry. VRP at 1091, 1096, 1310.

17 108. EagleView's presentations to the board of directors contained proprietary information,
18 including product and customer information, company strategies, patent status, key engineering
19 initiatives, and corporate road map. VRP at 710-11, 716-17.

20 109. EagleView's board presentation's cover sheet contains a footer that states, "EagleView
21 Technologies, Inc. - Proprietary and Confidential. This presentation contains proprietary and
22 confidential information of EagleView Technologies. It is the property of EagleView Technologies and
23 it is strictly limited for internal use only by EagleView Technologies, Inc. Any disclosures, copying,
24 distribution or use of this presentation or any information contained therein is prohibited." Ex. 80; VRP
25 at 1303.

26 110. EagleView did not authorize Mr. Pikover to disseminate any materials provided to

1 EagleView's board of directors to third parties. VRP at 717.

2 111. Shortly before his removal from EagleView's board and thereafter, Yuri Pikover
3 distributed by email on a number of occasions EagleView's confidential and sensitive financial and
4 strategic information to the CEOs of half a dozen other companies in which Yuri Pikover is an investor.
5 Ex. 57, 58, 59, 80, 81, 82, 85, 90; VRP at 1300-06.

6 112. Mr. Pikover admitted that EagleView trusted that when it provided him with
7 confidential material he would not disclose such material. VRP at 1306.

8 113. As a result of the Merger Transaction on January 7, 2013, EagleView realized post-
9 merger synergies of approximately \$14 million plus \$3 million in additional 2013 post-merger revenue.
10 VRP at 741-42, 746.

11 114. On around January 14, 2014, the board of the EagleView-Pictometry merged entity
12 approved a transaction whereby Verisk Analytics, Inc. agreed to purchase the merged entity for \$650
13 million. Ex. 97; VRP at 735-36. Pursuant to this transaction, shareholders of the merged company's
14 common and Series A preferred stock will receive about \$14.85 per share. Ex. 97; VRP at 737-38.

15 115. The purchase multiple Verisk used as part of the transaction negotiation was 18.7x
16 adjusted EBITDA. VRP at 744.

17 **PROCEDURAL BACKGROUND**

18 116. On January 3, 2013, EagleView sent its shareholders a Consent Solicitation and
19 Information Statement that described in detail the proposed merger with Pictometry and informed the
20 shareholders of their right to dissent. Ex. 33; VRP at 274, 688.

21 117. On January 5, 2013, EagleView notified its shareholders that sufficient consents had
22 been executed by EagleView's shareholders. Ex. 108; VRP at 689-90.

23 118. On January 7, 2013, EagleView consummated a merger transaction with Pictometry.
24 VRP at 455, 468, 646.

25 119. On January 10, 2013, EagleView sent an additional Dissenters' Rights Notice and
26 included the form of Payment Demand to shareholders along with the additional material required by

1 RCW 23B.13.200. Ex. 109; VRP at 690.

2 120. On January 30, 2013, Mr. Pikover and 37TV notified EagleView that they were
3 asserting their dissenters' rights. Ex. 36, 37; VRP at 1312.

4 121. In accordance with RCW 23B.13.250, EagleView timely sent Respondents response
5 letters and checks in amounts reflecting the fair value of their EagleView shares plus accrued interest.
6 Ex. 38, 39; VRP at 691.

7 122. EagleView initially determined that the fair value of its common stock immediately
8 before the consummation of the merger was \$2.75/share and \$3.65/share for its preferred stock.
9 EagleView considered several factors in making this determination:

- 10 a. The common stock included certain redemption rights and other restrictions;
- 11 b. The value of a share of common stock, as determined by the Board of Directors after it
12 reviewed what it considered to be all relevant factors in determining what it believed to
13 be the current fair market value of EagleView's common stock based on the experience
14 of the its members, was \$2.75 as of December 14, 2012;
- 15 c. The price paid by EagleView for each share of common stock in its repurchase offer,
16 completed in or about November–December 2011, was \$1.35;
- 17 d. The estimated fair value of a share of common stock for 409A tax purposes as of
18 December 31, 2011, assuming a going concern premise of value, was \$8.17;
- 19 e. The conclusions of the Board of Directors included the following:
 - 20 i. Oblique imagery is a critical component of EagleView's products;
 - 21 ii. EagleView was substantially dependent on a single source, Pictometry, for its
22 image supply;
 - 23 iii. Despite its efforts to locate or develop alternate sources for images, EagleView
24 would remain substantially dependent on Pictometry;
 - 25 iv. Pictometry believed the license agreement pursuant to which EagleView
26 obtained images was terminable at will; and

1 v. If Pictometry terminated the license agreement (or if the agreement was not
2 extended on terms acceptable to EagleView), there was a risk that EagleView
3 would not be able to obtain comparable replacement images from other
4 suppliers or generate its own library of images in a timely manner and at an
5 acceptable cost, if at all, and that an interruption in EagleView's image supply
6 could materially harm its business, operating results and financial condition.

7 Petition (Dkt. 2) ¶ 13; Ex. 38, 39; VRP at 693-94, 700-01, 954-56.

8 123. EagleView's management did not consider draft schedules prepared by Alvarez &
9 Marsal in calculating EagleView's fair value because the values reflected in those schedules were draft,
10 preliminary, and subject-to-change. Ex. 211; VRP at 954-55.

11 124. EagleView sent Mr. Pikover a check in the amount of \$292,855.31 and 37TV a check in
12 the amount of \$2,624,070.40. Ex. 40; VRP at 691-92. EagleView calculated accrued interest based on
13 an interest rate of 0.05%, which represents the United States Daily Treasury Bill Rate in effect on
14 January 7, 2013.

15 a. EagleView selected that rate because it was consistent with its policy on investing its
16 own cash in United States-backed government securities. EagleView's investment
17 policy was presented to EagleView's Board of Directors during November 2011. Ex. 4;
18 VRP at 694-95, 963.

19 b. Mr. Pikover was a member of EagleView's Board of Directors when this presentation
20 was made. Ex. 4. The investment policy reflects guidelines directing EagleView to
21 invest its funds in approved instruments, including obligations of the United States
22 government and its agencies (e.g., United States treasury bills). Ex. 47.

23 c. EagleView's Board—including Mr. Pikover—unanimously approved the investment
24 policy at its next meeting. Ex. 5; VRP at 694-95.

25 d. EagleView made this decision because it had no outstanding bank loans, and therefore
26 was required under RCW 23B.13.010 to pay an interest rate "that is fair and equitable

1 under all the circumstances.” VRP at 695.

2 125. On March 29, 2013, Mr. Pikover and 37TV informed EagleView that they rejected
3 EagleView’s determination of fair value as inadequate (although both cashed the checks initially sent by
4 EagleView). Ex. 40, 41; VRP at 691–92.

5 126. In conjunction with their rejection of EagleView’s fair value determination,
6 Respondents provided a report issued by FTI Consulting, which concluded that the fair value of
7 EagleView’s shares as of January 4, 2013, was \$12.14. Ex. 41; VRP at 701, 1103–04, 1563. (Mr.
8 Pikover sent an email to Mr. Zander attaching the preliminary, non-binding June Term sheet provided
9 by Pictometry, referencing \$250 million valuation, as his support for his fair value demand. Ex. 94.)

10 127. On May 24, 2013, because the fair value issue was unsettled, EagleView timely filed
11 this action in accordance with RCW 23B.13.300. Petition (Dkt. 2). VRP at 706.

12 128. The parties engaged in discovery and exchanged expert reports on December 16, 2013.⁷
13 *See, e.g.*, VRP at 1701.

14 129. EagleView’s expert witness, Neil Beaton, determined that, as of January 6, 2013, the
15 fair value of Respondents’ former holdings was higher than that initially determined by EagleView’s
16 management: \$3.94/share for their common stock and \$4.88/share for their preferred. Ex. 26.

17 130. At Mr. Pikover’s deposition, which occurred on December 17, 2013, Mr. Pikover
18 produced a list which indicated that as of December 9, 2013, in addition to the approximately \$3 million
19 he received from EagleView in February 2013 as fair value payment for the shares he and 37TV held,
20 Mr. Pikover anticipated he would receive \$6.3 million for Respondents’ EagleView investments. Ex.
21 42; VRP at 1291–93.

22 131. After serving the December 16, 2013 report from its expert witness that indicated the
23 fair value of EagleView’s stock was slightly higher than that paid by EagleView to Respondents,
24 EagleView promptly delivered checks to Respondents that represented the difference between
25

26 ⁷ Mr. Beaton updated his expert report on January 21, 2014 to include additional materials considered and to correct a minor typo. The substance of his opinion had not changed.

1 EagleView's original fair value determination and that of Mr. Beaton, plus accrued interest. Ex. 43;
2 VRP at 706-07. It provided Mr. Pikover with a check in the amount of \$126,778.40, and it provided 37
3 Technology Ventures, LLC a check in the amount of \$996,589.40. Ex. 43; VRP at 707-08.

4 132. Respondents' expert witness, Ellen Larson, updated FTI Consulting's original March
5 29, 2013 report to increase her firm's fair value determination to \$12.31/share for common and
6 \$13.26/share for preferred stock. Ex. 333.

7 133. On January 10, 2014, Respondents moved for partial summary judgment regarding the
8 interest rate that they believe should have been applied to the fair value payment. Respondents' Motion
9 for Partial Summary Judgment, submitted Jan. 10, 2014.

10 134. The Court heard oral argument on Respondents' motion on February 4, 2014. At the
11 hearing's conclusion, the Court denied Respondents' motion for partial summary judgment. Order (Dkt.
12 43), dated Feb. 7, 2014.

13 CONCLUSIONS OF LAW

14 A. Fair Value Standard

15 1) Washington's Dissenters' Rights Statute defines "fair value" as "the value of the shares
16 immediately before the effective date of the corporate action to which the dissenter objects, excluding
17 any appreciation or depreciation in anticipation of the corporate action unless such exclusion would be
18 inequitable." RCW 23B.13.010(3). This concept of "fair value" is not equivalent to "fair market value."
19 *Matthew G. Norton Co. v. Smyth*, 112 Wn. App. 865, 873 (2002). Citing Delaware law, Washington's
20 legislature stated that courts can "accept proof of value by any techniques and methods which are
21 generally accepted in the financial community." Senate Journal 51st Legis. 3086-87 (1989) Section
22 13.01 Definitions for Chapter 13 reprinted in WASHINGTON BUSINESS CORPORATION ACT (RCW 23B):
23 SOURCEBOOK (2d ed. 2007) at 13.010-2. "Determining fair value requires consideration of all relevant
24 factors involving the value of a company, and may include elements of future value, excluding,
25 however, the speculative elements of value that may arise from accomplishment or expectation of the
26 transaction giving rise to the dissenters' rights." *Matthew G. Norton Co.*, 112 Wn. App. at 874. The key

1 to determining EagleView's fair value is determining its operative reality as of the valuation date.
2 *Allenson v. Midway Airlines Corp.*, 789 A.2d 572, 583 (Del. Ch. 2001). Where corporate plans on
3 contingent upon a merger's closing, any value attributable to those plans cannot be considered in the
4 valuation calculus. *Id.* Consequently, any appreciation or depreciation associated with the mere signing
5 of a merger agreement must be excluded from the fair value determination. *Id.* 583, 584-85.

6 **B. Expert Findings**

7 2) Petitioner presented expert witness testimony on valuation by Neil Beaton.
8 Respondents presented expert witness testimony on valuation by Ellen Larson.⁸ The Court concludes
9 that Neil Beaton's expert valuation of Eagle View was more reasonable than Ms. Larson's expert
10 valuation. Ms. Larson's valuation contained flawed assumptions, did not use similar guideline public
11 companies, and erroneously considered the impact of the merger with Pictometry, which case law
12 instructs us is impermissible.

13 1. **Valuation Methodology**

14 3) Market Approach – Guideline Public Company Method. This approach involves
15 (1) identifying publicly-traded companies having similar operational and financial characteristics to the
16 subject company (VRP at 1397-98); (2) deriving valuation multiples⁹ for each company (VRP at 1404);
17 (3) adjusting these multiples for comparability (VRP at 1406-07); and (4) applying the adjusted
18 multiples to the subject company's economic basis to estimate value. Both experts utilized this
19 approach. "The utility of the comparable company approach depends on the similarity between the
20 company the court is valuing and the companies used for comparison. At some point, the differences
21 become so large that the use of the comparable company method becomes meaningless for valuation
22 purposes." *In re Radiology Assocs. Litig.*, 611 A.2d 485, 490 (Del. Ch. 1991) (citations omitted). Here,
23 Mr. Beaton carefully selected public companies, identifying those that had a direct economic impact on
24

25 ⁸ Mr. Pikover admitted that he did not interact much with FTI Consulting, Inc. VRP at 1208.

26 ⁹ In general terms, an enterprise valuation multiple is a reflection, encapsulated in a single number, of an entity's enterprise value relative to a statistic that relates to that value, e.g., EBIDTA or revenue. That multiple can then be used for comparison purposes to other companies and can be used to derive another entity's enterprise value.

1 the industry in which EagleView operates. VRP at 1370. Specifically, he focused on companies
2 occupying the vertical space that EagleView operates in—i.e., the imagery, geospatial, and data
3 analytics industries—and focused his search on companies whose revenue, profitability drivers, and end
4 users were similar to EagleView's. VRP at 1385, 1398–99, 1400–03, 1462; cf. *Gray v. Cytokine*
5 *PharmaSciences, Inc.*, No. 17451 2002 BL 1384, at *12 (Del. Ch. Apr. 25, 2002) (finding analysis
6 reliable where comparable companies operated in the same business and industry as subject company).
7 After selecting appropriate companies, Mr. Beaton conducted further analyses to identify additional
8 similarities and differences. Ex. 26 ¶ 41. The Court concludes that the selected companies were
9 appropriate for use in this valuation method. Mr. Beaton focused on the cash-adjusted enterprise value-
10 to-revenue and value-to-EBITDA multiples for the next twelve months (“NTM”) and trailing twelve
11 months (“TTM”) as the most relevant indications of EagleView's value. Ex. 26 at Schedule 4; VRP at
12 1404–05. Using the comparable companies' data, Mr. Beaton derived the ranges of multiples. Because
13 EagleView's trailing twelve month gross margin, operating margin, and earnings before interest,
14 depreciation, and amortization (“EBITDA”) were on the low range compared to the guideline public
15 companies, Mr. Beaton selected multiples on the lower end of the range. *Id.* ¶ 42, Schedule 5; VRP at
16 1406–07:

- 17 i. NTM cash-adjusted enterprise value-to-revenue multiple of 2.8 x.
- 18 ii. NTM cash-adjusted enterprise value-to-EBITDA multiple of 6.0 x.
- 19 iii. TTM cash-adjusted enterprise value-to-revenue multiple of 3.0 x.
- 20 iv. TTM cash-adjusted enterprise value-to-EBITDA multiple of 6.5 x.

21 The Court concludes that the use of these lower end multiples were reasonable in light of Eagle View's
22 margins and EBITDA. Because EagleView failed to achieve its recent forecast, Mr. Beaton
23 appropriately gave less weight (25%) to the NTM financial statistics and more (75%) to the TTM
24 financial statistics to derive an indication of EagleVie
25 's fair value as of January 6, 2013 of \$135,730,000. Ex. 26 ¶¶ 43–44, Schedule 5. Mr. Beaton's analysis
26 is reliable and helpful to the Court due to his appropriate selection of comparable companies, valuation

1 multiples, and proper weighting of the forecast versus historical data. As noted in the AICPA's
2 Accounting & Valuation Guide: "Valuation of Privately Held Company Equity Securities as
3 Compensation," Beaton, N. and Kokenge, C. et al., (2013):

4 In performing valuations of early-stage enterprises under the market approach, not only is
5 it assumed that the industry, size of enterprise, marketability of products or services, and
6 management team are comparable but also that the enterprise's stage of development is
comparable.

7 Id. at Section 4.22. In contrast to Mr. Beaton's work, Ms. Larson did not appropriately limit her
8 selection of comparable public companies. Many of the companies she selected have nothing to do with
9 the markets EagleView occupied and do not have the same revenue and profitability drivers as
10 EagleView. Where the selected companies are drastically different from the subject company's—for
11 example operating in different markets—the comparisons are meaningless. *See, e.g., In re Radiology*
12 *Assocs. Litig.*, 611 A.2d at 490 (differing product mixes); *Gray v. Cytokine PharmaSciences, Inc.*, No.
13 17451 2002 BL 1384, at *9 (Del. Ch. Apr. 25, 2002) (finding comparable company method unreliable
14 where subject company was in drug delivery business, but comparable companies were not). Here,
15 some of the companies Ms. Larson selected sell into markets that were much larger than EagleView's,
16 which would result in larger multiples, and, hence, an inflated indication of value for EagleView. Ex.
17 333, Appendix F; VRP at 1460–62.

18
19 4) Market Approach – Guideline Transaction Method. An accepted valuation tool in
20 Delaware appraisal cases, the Guideline Transaction Method "involves identifying similar transactions,
21 quantifying those transactions through financial metrics, and then applying the metrics to the company
22 at issue to ascertain a value." *Highfields Capital, Ltd. v. AXA Financial, Inc.*, 939 A.2d 34 (Del. Ch.
23 2007); VRP at 1370–71, 1385–86, 1418–19. Mr. Beaton performed an analysis under this Method as
24 well. He identified sixteen appropriate transactions involving guideline target companies. Ex. 26 ¶ 45,
25 Sched. 6; VRP at 1419–20. These companies were identified based on their business description, size,
26 and proximity of the transaction date to the valuation date. Ex. 26 ¶ 45. Using these data, Mr. Beaton

1 correctly derived proper multiples from such transactions, and reliably applied those data to derive
2 EagleView's fair value indication. Based on the transaction data, Mr. Beaton appropriately selected a
3 latest twelve month enterprise "value-to-revenue" valuation multiple of 1.5x and a "latest twelve month
4 enterprise value-to-EBITDA" valuation multiple of 12.5x. Ex. 26, Schedules 6 & 7; VRP at 1425. He
5 properly accorded them equal weight to derive an indication of EagleView's fair value as of January 6,
6 2013 of \$115,778,000. Ex. 26, Schedules 6 & 7; VRP at 1426. As such, Mr. Beaton's analysis under this
7 method is reliable and helpful to the Court.

8 5) Market Approach – Subject Company Transaction Method. The subject company
9 transaction method (also known as the "back-solve" method) employs the use of a transaction involving
10 the subject company's own securities—such as a financing round—to derive a valuation. *See American*
11 *Institute of Certified Public Accountants, Valuation of Privately-Held Company Equity Securities Issued*
12 *as Compensation (2013); see generally* VRP at 1372–80. This method is commonly used in the
13 valuation industry, especially for early stage technology companies, and has been peer-reviewed. VRP
14 at 1376. For example, this method has been used over the last decade and is a method accepted and
15 approved by the Securities & Exchange Commission as well as Deloitte, PriceWaterhouseCoopers,
16 KPMG, and Ernst & Young. VRP at 1376. There is no requirement that the valuation be based on a
17 recent transaction. While recent transactions are commonly used in this methodology, they are not the
18 only transactions that can be considered. VRP at 1374–79. A future, anticipated round of financing can
19 be considered in this methodology. VRP at 1374–79. Here, the methodology worked on the assumption
20 that, if, as of the valuation date Pictometry terminated its contract with EagleView, EagleView would
21 not have any suitable alternative sources of aerial imagery and would be forced to develop its own
22 library. VRP at 1386–87, 1434–35. Working from this assumption, EagleView's management used data
23 available to it to calculate the funding needed to accomplish the development of its own image library
24 (as opposed to obtaining images from a third party). Eagle View determined that it would need to raise
25 about \$30 million in initial capital to fund a project to build an image library matching Pictometry's
26 existing library. EagleView determined that it would raise those funds by issuing a new class of

1 preferred stock at about \$2.75 per share. VRP at 1427–29. Using this methodology, Mr. Beaton derived
2 a fair value indication for EagleView as of January 6, 2013 in the amount of \$37,447,000. Ex. 26,
3 Sched. 10; VRP at 1430–31. Because Mr. Beaton employed a widely-accepted methodology and used
4 known and knowable facts adduced by EagleView’s management in this methodology, his analysis is
5 reliable and helpful to the Court.

6 6) After assessing the relative strengths of each methodologies, Mr. Beaton allocated 60%
7 weight to the methods that assessed EagleView’s fair value on a status quo, going-forward basis, *i.e.*,
8 the guideline public company method and the guideline transaction method. VRP at 1438. Given that
9 the guideline public company method incorporated an analysis of EagleView’s projected growth as
10 compared to guideline public companies, and given EagleView’s history of not achieving its forecast,
11 Mr. Beaton allocated a 20% weight to the guideline public company method. VRP at 1438–39. Thus,
12 the guideline transaction method was allocated 40% weight. VRP at 1438–39. Finally, Mr. Beaton
13 allocated a 40% weight to the subject company transaction method, which reflected a scenario where the
14 Merger Transaction did not go through and EagleView faced a heightened risk of losing Pictometry as
15 its image source. VRP at 1439. Mr. Beaton’s methodology of allocating weight to each of these methods
16 is appropriate under the literature. VRP at 1439–41; *see, e.g.*, Aswath Damodaran, *Living with Noise: Valuation in the Face of Uncertainty*, CFA Institute Conference Proceedings Quarterly, December
17 2013, at p. 13.

19 7) Under this method, Mr. Beaton concluded that EagleView’s enterprise fair value was
20 \$88,436,000, and the fair value of EagleView’s common stock as of January 6, 2013 was \$3.94/share
21 and \$4.88/share for preferred stock. VRP at 1442–43.

22 8) Income Approach – Discount Cash Flow Method. This analysis presumes that “the
23 value of a company is equal to the present value of its projected future cash flows.” *Neal v. Alabama*
24 *By-Prods. Corp.*, C.A. No. 8282 (Del. Ch. Aug 1, 1990), slip op. at 16, *aff’d*, 588 A.2d 255 (Del. 1991).
25 The DCF analysis comprises (1) cash flow projections, (2) terminal value, and (3) the discount rate.
26 Cash flow projections are typically derived from forecasts developed by the subject company and

1 cannot include elements from the corporate action that is subject of the dissenters' rights action. The
2 terminal value is the present value of all future cash flows beginning after a specific projection period.
3 *See* BALOTTI & FINKELSTEIN, DELAWARE LAW OF CORPORATIONS AND BUSINESS ORGANIZATIONS,
4 § 9.45 Valuation in a Delaware Appraisal Proceeding. Finally, a discount rate is applied to determine
5 the present value of the annual cash flows for the projection period and the terminal value. *Id.* Ms.
6 Larson's analysis under this approach is flawed for a number of reasons, and, consequently, her opinion
7 is unreliable and not helpful to the Court.

8 a. The Three-Year Financial Forecast Upon Which Ms. Larson Relied Was Inherently
9 Flawed Because It Was Outdated and Did Not Incorporate The Risks EagleView Was Facing As Of
10 January 6, 2013.¹⁰ The foundation of the income approach is a reliable multi-year forecast of future
11 cash flows. To provide reliable and informative results, these forecasts must be up-to-date and accurate.
12 "The quality of the projection as to the future benefits over some period...is central to the reliability of
13 the underlying methodology of the discount cash flow method." *In re Radiology Assocs.* "To obtain the
14 most accurate cash flow forecast, it is necessary to start the forecast with accurate, up-to-date financial
15 data." *Gilbert v. MPM Enters., Inc.*, 709 A.2d 663, 669 (Del. Ch. 1997), *aff'd* 731 A.2d 790 (Del. 1999)
16 (noting that dissenting shareholder's expert did not rely on accurate and up-to-date data). *See also* VRP
17 at 1361 (DCF output will be wrong if one uses an incorrect forecast); VRP at 1711 (agreeing that a DCF
18 analysis is only as good as its inputs).

19 b. Ms. Larson's analysis under the income approach is foundationally flawed. The three-
20 year forecast upon which she relied was outdated by several months, was taken from the December 31,
21 2012 409A valuation which was not prepared by management and did not incorporate the significant
22

23 ¹⁰ Any reliance Respondents place on the forecast reflected in Houlihan Lokey's fairness opinion presentation to
24 Pictometry's board of directors on around December 10, 2012, is inappropriate because the forecast was not
25 generated or created by EagleView's management. It is also outdated because it does not use EagleView's
26 subsequent revised 2013 operating budget, even though EagleView provided its revised 2013 forecast to
Pictometry. Ex. 345. "Valuations that have ignored or altered management's contemporaneous projections are
sometimes completely discounted." *S. Muoio & Co. v. Hallmark Entm't Investments Co.*, 2011 WL 841040 (Del.
Ch. Mar. 9, 2011) (citations omitted), *judgment entered* 2011 WL 841040 (Del. Ch. Mar. 9, 2011) and *aff'd*, 35
A.3d 419 (Del. 2011).

1 risks facing EagleView as of January 6, 2013, including (1) EagleView's inability to secure a suitable
2 alternative to Pictometry from which to source aerial imagery; (2) Pictometry's intent to terminate the
3 parties' agreement; and (3) Xactware's threats to terminate the parties' contract. VRP at 1447-48, 1456.

4 c. Mr. Beaton apparently did not use the DCF method because EagleView's three-year
5 2012-2014 forecast as of December 31, 2011 (Ex. 18) was unreliable and out of date. VRP at 1381,
6 1382-83. The Court concludes that the forecast was unreliable for several reasons: First, although the
7 data for 2013 reflected EagleView management's up-to-date assumptions as of the end of 2012, the data
8 for 2014 and 2015 were merely carried over from a model that was generated one year earlier by
9 Alvarez & Marsal. Second, the assumptions of that one-year old, three-year forecast were outdated and
10 no longer held true as of year-end 2012. EagleView was bullish in its projections relating to its
11 underwriting product and also its penetrations into insurance carriers #4-10, and by end of 2012;
12 however, those revenues failed to materialize. For example, although EagleView had forecasted it
13 would attain \$11 million in revenue for 2012 from its underwriting product, it actually achieved only
14 \$60,000 from the underwriting product in 2012. Similarly, EagleView's initial, bullish projections
15 regarding its penetration in the carriers #4-10 market in 2012 failed to materialize. VRP at 654, 661-62,
16 679. Consequently, projections whose assumptions were no longer valid are incorrect inputs, leading to
17 Ms. Larson's incorrect DCF method conclusions. *See also* VRP at 1448. The Court notes that Ms.
18 Larson conceded that her reliance on the three-year forecast reflected in the Alvarez & Marsal 409A
19 valuation as of December 31, 2012, was likely in error. VRP at 1566-67, 1568.

20 d. Mr. Beaton provided additional examples reflecting altered inputs into Ms. Larson's
21 DCF model:

22 (1) After adjusting the forecast to account for the poor performance of the
23 underwriting product and EagleView's failure to penetrate the market for carriers #4-10, but
24 still keeping Ms. Larson's terminal growth rate and discount rate, Mr. Beaton calculated that
25 simply correcting her DCF's flawed forecast lowered the indicated enterprise value to
26 \$157,811,000, which translates to an allocated per share fair value of \$7.07 and \$8.02 for

1 preferred. VRP at 1455–56.

2 (2) Using the adjusted forecast but correcting the terminal growth rate to 5.0% and
3 the discount rate to 32.3% (both of which Mr. Beaton attested were more appropriate values),
4 Mr. Beaton calculated that the indicated enterprise value would be \$97,776,000, which he
5 testified translated into an allocated per share fair value of EagleView’s common stock as of
6 January 6, 2013 of \$4.36 for common stock and \$5.30 for preferred stock. VRP at 1457–58.

7 (3) Ms. Larson Attributed An Insupportably High Terminal Growth Rate That
8 Results In An Overvaluation of EagleView. Mr. Beaton criticized Ms. Larson’s use of a
9 terminal growth rate of 7.5% stating that it meant that EagleView will grow faster than the
10 United States Gross Domestic Product in perpetuity. This rate of growth overvalues
11 EagleView’s terminal growth, and thus inflates Ms. Larson’s valuation conclusion. VRP at
12 1364–65, 1448–49. *See also* Aswath Damodaran, *Living with Noise: Valuation in the Face of*
13 *Uncertainty*, CFA Institute Conference Proceedings Quarterly, December 2013 (“The stable
14 growth assumed in a DCF valuation cannot exceed the growth rate of the economy or,
15 ultimately, it becomes the economy.”). Ms. Larson conceded that she should have used a two-
16 stage growth model in order to take into account a growth rate that is less than U.S. GDP in the
17 outer years. VRP at 1576–77, 1641.

18 (4) Ms. Larson Applied A Low Discount Rate That Is Not Supported By Literature
19 That Results In An Overvaluation Of EagleView. In simple terms, a discount rate is the measure
20 of risk related to specific cash flows that one is bringing to present value. VRP at 1361. The
21 more risk associated with achieving the projected cash flows, the higher the discount rate. *Id.*
22 1361–62. The AICPA publication, *Valuation of Privately-Held-Company Equity Securities*
23 *Issued as Compensation* provides that the appropriate discount rate for a company in
24 EagleView’s stage of development, which is termed the “expansion” stage, is 30–50%. Ms.
25 Larson, however, applied a discount rate of only 22–27% (eventually relying on 24.5%). Such a
26 discount rate in light of the relevant literature is improper. *See* VRP at 1346, 1362, 1448. Nor

1 does it appropriately consider the severe risks EagleView faced on the valuation date relating to
2 its image supply and Xactware contract.

3 9) Eagleview's merger with Pictometry was one of the factors Ms. Larson considered in
4 her analysis even though the statute forbids such consideration. Under Washington law, an entity's "fair
5 value" excludes "any appreciation or depreciation in anticipation of the corporate action." RCW
6 23B.13.010(3) (emphasis added); *see also* 8 Del. C. § 262(h) (Projections may not include elements of
7 value arising from the accomplishment or expectation of the merger.) (emphasis added); *Allenson v.*
8 *Midway Airlines Corp.*, 789 A.2d 572 (Del. Ch. 2001). One of the factors Ms. Larson considered in her
9 fair value analysis and overall risk assessment was that EagleView's merger with Pictometry was
10 "imminent" and would mitigate any risk to EagleView's sources for aerial imagery. VRP at 1566-68.
11 Such a consideration inappropriately inflates EagleView's fair value. Consequently, Ms. Larson's
12 opinion is unreliable and is thus not helpful to the determination of EagleView's fair value. By contrast,
13 Mr. Beaton did not consider the merger transaction in his analysis. VRP at 1368, 1369.

14 10) Ms. Larson Ignored Evidence That, As Of The Valuation Date, EagleView Did Not
15 Have A Suitable Alternative To Pictometry For Aerial Imagery. The record demonstrates that, as of the
16 valuation date, no other image source or sources could substitute for Pictometry's image library. In her
17 analysis, however, Ms. Larson believed that other suitable alternative image sources were available.
18 VRP at 1679-82. The evidence at trial demonstrated that this was incorrect. Ms. Larson indicated that
19 she would not change her opinion even though Mr. Pershing testified that none of the providers Ms.
20 Larson listed were suitable alternatives. VRP at 1700-01. Consequently, Ms. Larson's opinion is
21 unreliable and is not helpful to the determination of EagleView's fair value.

22 11) Ms. Larson Ignored Pictometry's Threat To Terminate Its Contract With EagleView.
23 The record demonstrates that, as of the valuation date, Pictometry had made threats to terminate its
24 contract with EagleView and that, had the merger transaction not been consummated, it would have
25 terminated the contract. Ms. Larson, however, did not factor this threat to EagleView's business in her
26 analysis. VRP at 1546.

1 12) Ms. Larson Was Unaware That, As Of The Valuation Date, One Of EagleView's Key
2 Business Partners, Xactware, Was Intending To Terminate The Parties' Contract, Thereby Causing
3 Irreparable Harm To EagleView. As part of her analysis, Ms. Larson did not take into consideration the
4 effects of EagleView's litigation with Xactware. Ms. Larson's failure to take into consideration the
5 ramifications of the Xactware litigation renders her opinion unreliable and thus not helpful to the court
6 in making its determination of EagleView's fair value.

7 13) Ms. Larson Used Out-Of-Date Bids From Project Aerial To Corroborate Her Findings.
8 In a dissenters' rights proceeding, fair value "is more properly described as the value of the company to
9 the stockholder as a going concern, rather than its value to a third party as an acquisition." *M.P.M.*
10 *Enters., Inc. v. Gilbert*, 731 A.2d 790, 795 (Del. 1999) (emphasis added). When a party presents
11 evidence of prior offers or bids to support its fair value conclusions, such evidence is only relevant if the
12 offers or bids represent the company's going concern value immediately before the corporate action's
13 effective date and not the company's value to a specific buyer. VRP at 796, 797. Without this additional
14 evidence, such offers or bids are irrelevant to a company's fair value and should be given no weight. *See*
15 *id.*; *see also* Respondents' Opp. To Petitioner's Motion in Limine #1, p. 2, ll. 17-23 ("Finally, and
16 perhaps most important, the Verisk acquisition received a weight of *zero percent* in the methodologies
17 that Ms. Larson actually employed in developing her opinion of the fair value of Respondents' shares of
18 EagleView stock.") (emphasis in original). The record shows that Respondents have failed to present
19 evidence that the bids EagleView received during the spring of 2012 or the term sheet it received from
20 Pictometry reflect EagleView's fair value as of the valuation date. Rather, the evidence shows that these
21 bids and term sheet (1) were outdated; (2) were unconsummated; and (3) did not incorporate the risks to
22 EagleView's business that materialized months later, including EagleView's failure to secure a suitable
23 alternative to Pictometry for aerial imagery, Pictometry's threats to terminate the contract, and
24 EagleView's litigation with Xactware. VRP at 1706-1710. In addition, Ms. Larson neglected the most-
25 recent bid Verisk had made to acquire EagleView in the \$160 million range, which was based on a mid-
26

1 year revenue of \$56.2.¹¹ VRP at 1722–24. Consequently, these bids are irrelevant to EagleView’s fair
2 value as of the valuation date because Ms. Larson only used these bids to corroborate her findings—not
3 to conclude her ultimate indication of value for EagleView. Ex. 333.

4 14) Ms. Larson Relies on the Transaction Announced by Verisk in January 2014 To
5 Corroborate Her Findings. It is inappropriate to look to events or transactions that post-date the merger
6 date. See VRP at 1471. Ms. Larson updated her expert report on May 5, 2014 to include her analysis
7 regarding the Verisk transaction. Ex. 333. Ms. Larson employed incorrect assumptions in connection
8 with her analysis. VRP at 1724–28. (If Ms. Larson’s assumptions are corrected, and the actual
9 assumptions that were used in negotiating the deal are employed, an indication of value at \$97,159,000
10 results. VRP at 1470–78.) In any event, Ms. Larson attributed zero weight to the Verisk transaction. See
11 Respondents’ Opp. To Petitioner’s Motion in Limine #1, p. 2, ll. 17–23 (“Finally, and perhaps most
12 important, the Verisk acquisition received a weight of *zero percent* in the methodologies that Ms.
13 Larson actually employed in developing her opinion of the fair value of Respondents’ shares of
14 EagleView stock.”) (emphasis in original).

15 **C. Valuation Conclusion**

16 After weighing all the evidence, the Court concludes that the fair value of EagleView’s
17 common stock as of January 6, 2013 should be \$3.94 per share and the fair value of EagleView’s
18 preferred stock as of January 6, 2013 should be \$4.88 per share, as determined by Mr. Beaton’s analysis.
19 The Court concludes that this determination appropriately balances EagleView’s potential future growth
20 against the significant risks it faced on the valuation date. The court concludes that substantial evidence
21 exists to support Mr. Beaton’s analysis and that it is fair and reasonable in light of all of the evidence
22 presented.

23 **D. EagleView Applied An Interest Rate That Was Fair And Equitable Under All**
24 **Circumstances.**

25
26 ¹¹ EagleView’s actual revenue for 2012 was even lower—\$48.5 million. Ex. 24.

1 Under Washington's Dissenters' Rights statute, EagleView paid Respondents the fair value of
2 their shares "plus accrued interest." RCW 23B.13.250(1). The statute's definition of "interest" mandated
3 the application of "the average rate currently paid by the corporation on its principal bank loans" or, "if
4 none, at a rate that is fair and equitable under all the circumstances." RCW 23B.13.010(4) (emphasis
5 added). As reflected in RCW 23B.13.010(4), interest shall be based on the rate paid by EagleView to
6 borrow funds, not on the rate EagleView might obtain on investments. *See Burns v. City of Seattle*, 161
7 Wn.2d 129, 149-50, 164 P.3d 475 (2007) (citing rule of statutory construction that "when general words
8 follow specific words, the general words are construed to embrace a similar subject matter").

9 The Court concludes that Eagle View had no outstanding loans on the date of valuation.
10 Accordingly, the Court must determine a fair and equitable amount of interest. Here, the Court
11 determines that the amount of interest that should be paid under RCW 23B.13.010(4), and which is fair
12 and equitable under all the circumstances, is 5.75 percent. This is the interest rate that applied to
13 EagleView's most recent bank loan.

14
15 **E. Neither Party is Entitled To Costs And Fees Under RCW 23B.13.310.** The
16 dissenters' rights statute states that the Court may assess costs and fees against a dissenting shareholder
17 if the Court finds that the dissenting shareholder(s) acted arbitrarily, vexatiously, or not in good faith.
18 RCW 23B.13.310. Although EagleView presented evidence at trial that Yuri Pikover and other outside
19 directors were very angry at being summarily removed from EagleView's board in July 2012, and that
20 Yuri Pikover subsequently engaged in angry communications towards EagleView management, the
21 Court concludes that Eagle View has failed to prove by a preponderance of the evidence that Mr.
22 Pikover dissented solely to get revenge for being fired and to prove he was wronged. Mr. Pikover
23 presented a plausible argument for his dissent: that prior to his removal from the board, the general
24 view was that Eagle View was valued at approximately \$250 million. In making its case here for the
25 significant change in its valuation, Eagle View proved that Mr. Pikover lacked information after his
26

1 removal as to the significant risk it faced with the reconsideration of its patents, the Xactware
2 litigation, and the potential for cancellation of the Pictometry contract. In the absence of such inside
3 information, it is understandable that a director could dissent from the new valuation presented to it by
4 Eagle View. Consequently, Eagle View is not entitled to costs and fees.

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6 Dated this 19TH day of September, 2014.

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8 Judge Millie M. Judge

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DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Postal Service for service a true and accurate copy of the Motion for Leave to file Over-length Brief of Appellants and the Brief of Appellants in Court of Appeals Cause No. 72644-7-I to the following:

Stellman Keehnel
Andrew R. Escobar
Katherine Heaton
DLA Piper LLP
701 Fifth Ave, Suite 7000
Seattle, WA 98104-7044

Yuri Pikover and 37 Technology Ventures,
LLC
3431 Sweetwater Mesa Road
Malibu, CA 90265

Original and one copy sent by legal messenger for filing with:
Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101-1176

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: March 27th, 2015, at Seattle, Washington.



Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick/Tribe