

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE COLUMBIA PIPELINE : CONSOLIDATED  
GROUP, INC. MERGER LITIGATION : Civil Action  
: No. 2018-0484-JTL

- - -  
Chancery Courtroom 12A  
Leonard L. Williams Justice Center  
500 North King Street  
Wilmington, Delaware  
Monday, July 18, 2022  
9:15 a.m.

- - -  
BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor

- - -  
TRIAL TRANSCRIPT - VOLUME I

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CHANCERY COURT REPORTERS  
Leonard L. Williams Justice Center  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801  
(302) 255-0526

1 THE COURT: Welcome, everyone. Thank  
2 you for being here. So I know we have a big cast of  
3 folks. I am happy to have people introduce themselves  
4 when they come up to do a witness. That said, if  
5 there are any particular people, client  
6 representatives or things like that, that you want to  
7 take a point to introduce now, I'm also happy to have  
8 that done as well.

9 So why don't we start with  
10 Mr. Varallo, and then we can go, I take it, Mr. Yoch.

11 ATTORNEY VARALLO: Good morning, Your  
12 Honor. We don't have client representatives with us  
13 and would follow Your Honor's suggestion. With Your  
14 Honor's permission, my partner, Mr. Orrico, will take  
15 the first witness.

16 THE COURT: Great. Thank you so much.  
17 Mr. Yoch.

18 ATTORNEY YOCH: No introductions from  
19 us, Your Honor.

20 THE COURT: All right. Well, thank  
21 you for doing that.

22 ATTORNEY ORRICO: Your Honor, good  
23 morning. C.J. Orrico from Bernstein Litowitz on  
24 behalf of the plaintiffs.

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1 APPEARANCES:

2 NED C. WEINBERGER, ESQ.  
3 BRENDAN W. SULLIVAN, ESQ.  
4 Labaton Sucharow LLP  
5 -and-  
6 GREGORY V. VARALLO, ESQ.  
7 Bernstein Litowitz Berger & Grossmann LLP  
8 -and-  
9 JEROEN van KWAWEGEN, ESQ.  
10 CHRISTOPHER J. ORRICO, ESQ.  
11 THOMAS G. JAMES, ESQ.  
12 MARGARET SANBORN-LOWING, ESQ.  
13 of the New York Bar  
14 Bernstein Litowitz Berger & Grossmann LLP  
15 -and-  
16 STEPHEN E. JENKINS, ESQ.  
17 MARIE M. DEGNAN, ESQ.  
18 Ashby & Geddes, P.A.  
19 for Plaintiffs  
20  
21 MARTIN S. LESSNER, ESQ.  
22 JAMES M. YOCH, JR., ESQ.  
23 KEVIN P. RICKERT, ESQ.  
24 Young Conaway Stargatt & Taylor, LLP  
-and-  
MICHAEL A. OLSEN, ESQ.  
BRIAN J. MASSENGILL, ESQ.  
ROBERT S. HARRELL, ESQ.  
LINDA X. SHI, ESQ.  
SARA NORVAL, ESQ. of the Illinois Bar  
Mayer Brown LLP  
for Defendant TC Energy Corporation

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1 Your Honor, with the Court's  
2 permission, plaintiffs will call Eric Fornell, who is  
3 the lead banker for TransCanada's financial advisor  
4 for the merger at Wells Fargo. Mr. Fornell will  
5 testify by video deposition.

6 With the Court's permission, my  
7 colleague will hand the Court, the clerks, and my  
8 friends on the other side some binders.

9 To orient us, the first page  
10 identifies the clip numbers with the deposition  
11 designation cites and the JXs referenced in those  
12 deposition cites.

13 The second, it also has some PTO  
14 paragraphs directly from the stipulated facts that may  
15 be referenced in the introduction statements. And  
16 then the remainder of the binders, the full deposition  
17 and the JXs referenced.

18 Your Honor, some of Mr. Fornell's  
19 deposition clips are self-explanatory. So for those,  
20 I'll skip the transition.

21 Before we jump into the clips,  
22 plaintiffs identify the following stipulated facts  
23 from the PTO to provide some context about Mr. Fornell  
24 and the testimony that the Court will hear today.

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1 Mr. Fornell had a longstanding  
2 relationship with Mr. Poirier of TransCanada and  
3 Mr. Smith of Columbia. That's paragraph 117.

4 From 1999 to 2007, Mr. Poirier  
5 reported to Mr. Fornell at JPMorgan. That's at  
6 paragraph 46.

7 Mr. Poirier testified in deposition  
8 that Fornell was like a mentor to him. That's  
9 paragraph 47.

10 Mr. Fornell met Steve Smith when Smith  
11 worked at American Electric Power in the early 2000s.  
12 Poirier and Fornell were involved with relationship  
13 management with AEP when they worked at JPMorgan.  
14 That's paragraph 118.

15 THE COURT: Mr. Yoch.

16 ATTORNEY YOCH: Thank you, Your Honor.

17 I think this is the issue we raised  
18 during the pretrial conference. And I think  
19 Mr. Varallo said we were just going to hand up a  
20 binder, talk about what might be testified to. And  
21 here, I think we are getting beyond the factual  
22 minimal instructions that you gave us, and we're  
23 talking about now legal argument.

24 This is something we would hear at a

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1 Mr. Poirier would check in, meet with, or call Smith  
2 or AEP Management as part of the relationship building  
3 process "probably a couple dozen" times a year.  
4 That's paragraph 118.

5 Moving in our timeline of the matter,  
6 On September 16, 2015, Steve Smith had a Wells Fargo  
7 relationship meeting with Mr. Fornell, during which  
8 Fornell updated Smith on Francois Poirier and let  
9 Smith know he was working at TransCanada. That's  
10 paragraph 176.

11 On September 30, 2015, Mr. Fornell and  
12 Poirier discussed the concept of a TransCanada  
13 acquisition of Columbia in Toronto. That's paragraph  
14 177.

15 On October 8th, 2015, Smith had a  
16 meeting with Wells Fargo, including Mr. Fornell.  
17 Fornell and Smith discussed Poirier, and Smith  
18 suggested that Poirier reach out to him to catch up.  
19 Fornell called Poirier after the meeting with Smith  
20 and told Poirier that Smith would be receptive to a  
21 visit from Poirier. That's paragraphs 184 to -84.

22 On October 8th, 2015, Fornell sent  
23 Poirier an email with the subject line "Steve Smith,"  
24 stating, "He will be happy to hear from you." That's

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1 post-trial oral argument, not in introducing testimony  
2 for a witness. You wouldn't have this for a witness  
3 that would be in the courtroom. I don't know why it  
4 would be appropriate here. So we object that this is  
5 argumentative, and we should just move on to the part  
6 of the deposition that they wish to play.

7 THE COURT: Mr. Orrico, do you want to  
8 respond to that?

9 ATTORNEY ORRICO: My response is, Your  
10 Honor, I'm reading verbatim stipulated facts in the  
11 PTO. So they are not argument. They are for  
12 background about the witness. Rather than playing  
13 long clips, I'm giving the Court background about who  
14 this gentleman is you are about to hear from, Your  
15 Honor.

16 THE COURT: That's my take. As long  
17 as we're sticking to things that are in the stipulated  
18 facts, I think it's not problematic. And it's,  
19 frankly, their time. So if they want to do it, I am  
20 going to allow it. Thank you.

21 ATTORNEY YOCH: Thank you, Your Honor.

22 ATTORNEY ORRICO: Thank you, Your  
23 Honor.

24 To continue, Mr. Fornell or

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1 paragraph 185.

2 On October 9th, Poirier called Steve  
3 Smith to request a meeting. That's paragraph 186.

4 On October 26th, Smith and Poirier met  
5 for dinner, during which Poirier informed Smith that  
6 TransCanada was interested in the potential  
7 acquisition of Columbia. That's paragraph 204.

8 The first clip does not need further  
9 introduction. It's EF 3, pages 35 to 37.

10 ERIC FORNELL, was examined and  
11 testified via video as follows:

12 (A video clip was played as follows:)

13 Question: So I think this is  
14 noncontroversial, but you understand that in  
15 connection to a sale of a public company, the officers  
16 and directors of the sell-side public company have a  
17 duty to act reasonably and maximize value, right?

18 Answer: Yes.

19 Attorney Yoch: Objection to the form.

20 The Court: I'm sorry. Who said

21 objection?

22 Attorney Yoch: David Yoch.

23 Question: With that understanding,  
24 again, I think this is not controversial. In

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## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 9</p> <p>1 connection to advising a public company or the</p> <p>2 management team in connection to a sale, you would</p> <p>3 advise them on strategies on how to maximize value,</p> <p>4 correct?</p> <p>5 Attorney Mangan: Objection to the</p> <p>6 form.</p> <p>7 Answer: Yes.</p> <p>8 Question: And we talked now about</p> <p>9 your experience and your background, including you</p> <p>10 working with Mr. Poirier.</p> <p>11 Is it fair to say that when you and</p> <p>12 Mr. Poirier were together at JPMorgan and he moved</p> <p>13 down to New York, you worked closely together, right?</p> <p>14 Answer: Yes.</p> <p>15 Question: And you would agree that he</p> <p>16 is also an experienced investment banker, right?</p> <p>17 Answer: Yes.</p> <p>18 Question: And he also had experience</p> <p>19 at JPMorgan representing sell-side officers and</p> <p>20 directors in the sale of public companies, right?</p> <p>21 Answer: Yes.</p> <p>22 Question: So it's fair to say that</p> <p>23 going back now to TransCanada's purchase of Columbia</p> <p>24 in 2016, Mr. Poirier and you were aware that</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 11</p> <p>1 Mr. Smith, right?</p> <p>2 Answer: Yes.</p> <p>3 Question: Then it states,</p> <p>4 "Additionally, Wells Fargo has performed significant</p> <p>5 due diligence on CPGX and NiSource through the</p> <p>6 following recent roles," and if you flip the page,</p> <p>7 there is a list of loan syndications, debt capital</p> <p>8 market transactions, and equity capital markets</p> <p>9 transactions, right?</p> <p>10 Answer: Correct.</p> <p>11 Question: And that was true, right,</p> <p>12 that statement?</p> <p>13 Answer: Yes.</p> <p>14 Question: Okay. So it is fair to say</p> <p>15 that by this time, this is December 2015, Wells Fargo</p> <p>16 had significant due diligence on Columbia and NiSource</p> <p>17 through its various services and roles provided to the</p> <p>18 companies, right?</p> <p>19 Answer: Wells Fargo did, yes.</p> <p>20 (End of video clip.)</p> <p>21 ATTORNEY ORRICO: Your Honor, in the</p> <p>22 following clip, Mr. Fornell is asked about the</p> <p>23 standstill provision in the TransCanada and Columbia</p> <p>24 NDA. That's JTX 0441, which is a December 2, 2015,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 10</p> <p>1 Columbia's board of management had a duty to act</p> <p>2 reasonably and maximize value for Columbia's</p> <p>3 stockholders in connection with that sale, right?</p> <p>4 Attorney Yoch: Objection to the form.</p> <p>5 Answer: Yes.</p> <p>6 (End of video clip.)</p> <p>7 ATTORNEY ORRICO: Your Honor, Wells</p> <p>8 Fargo acted as a joint bookrunner for Columbia's</p> <p>9 December 2015 equity offering. Paragraph 270 of the</p> <p>10 PTO.</p> <p>11 In the following clip, Mr. Fornell was</p> <p>12 asked about JTX 0425 in the binder, which is a</p> <p>13 December 1st, 2015, internal Wells Fargo email with</p> <p>14 the subject line "Project Sandman 2015 ECC Memo</p> <p>15 Submission," and attached equity commitment committee</p> <p>16 memo regarding Project Sandman. "Project Sandman" was</p> <p>17 the Wells Fargo code name for Columbia's December 2015</p> <p>18 equity offering. That's clip EF 855, -56.</p> <p>19 (A video clip was played as follows:)</p> <p>20 Answer: You would agree that Wells</p> <p>21 Fargo, including you, had a strong relationship with</p> <p>22 Columbia's management team at this time, right?</p> <p>23 Answer: Yes.</p> <p>24 Question: And that included</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 12</p> <p>1 email chain between Mr. Poirier, Russ Girling, and</p> <p>2 Christine Johnston of TransCanada, with subject line</p> <p>3 "Constellation Standstill." It's EF 15, pages 99 to</p> <p>4 101 of the deposition.</p> <p>5 (A video clip was played as follows:)</p> <p>6 Question: You have no basis to</p> <p>7 dispute Ms. Johnston's summary of the standstill</p> <p>8 obligations in this email, correct?</p> <p>9 Answer: I have no reason to dispute.</p> <p>10 Question: Let me ask you this. There</p> <p>11 is a -- do you see in point one there? It says</p> <p>12 acquire, offer, or agree? Do you see that?</p> <p>13 Answer: Yes.</p> <p>14 Question: It doesn't say formal</p> <p>15 offer, right, or formal agreement, right?</p> <p>16 Answer: It does not.</p> <p>17 Question: Now, we just talked about</p> <p>18 Mr. Poirier. And I actually met him. I sat in the</p> <p>19 conference room with him at trial. So I will agree</p> <p>20 with you, he's very polite. And while he is polite,</p> <p>21 he won't sit -- he will let you know he disagrees with</p> <p>22 a statement, right? We just talked about that.</p> <p>23 Answer: Yes.</p> <p>24 Question: So if you look at above,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 13</p> <p>1 the next email, Mr. Poirier forwards Ms. Johnston's</p> <p>2 summary of the standstill obligations and provisions</p> <p>3 to Mr. Girling, right? He says, "Hi Russ."</p> <p>4 Answer: Yes.</p> <p>5 Question: And at that time,</p> <p>6 Mr. Girling was the boss, correct?</p> <p>7 Answer: Yes.</p> <p>8 Question: Okay. And you would</p> <p>9 expect -- let me ask you this. You were once</p> <p>10 Mr. Poirier's boss, right?</p> <p>11 Answer: Yes.</p> <p>12 Question: And you expected him to</p> <p>13 provide accurate information in connection to your</p> <p>14 jobs together at JPMorgan and Wells Fargo, right?</p> <p>15 Answer: Yes.</p> <p>16 Question: You would expect he took</p> <p>17 that same approach with Mr. Girling at TransCanada,</p> <p>18 right?</p> <p>19 Answer: Yes.</p> <p>20 Question: And so Mr. Poirier writes,</p> <p>21 "Hi Russ, See below. We basically must get</p> <p>22 Capricorn's acquiescence to pursue this transaction,</p> <p>23 or even to seek to influence them." And then he</p> <p>24 writes, "This is a standard provision in my</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 15</p> <p>1 It's fair to say that Columbia management told</p> <p>2 TransCanada starting -- beginning of the discussions</p> <p>3 of a deal that one of the three important criteria was</p> <p>4 an all-cash deal, right?</p> <p>5 Answer: Yes.</p> <p>6 Question: Do you remember who</p> <p>7 indicated to TransCanada that that was the key</p> <p>8 criteria in the deal discussions?</p> <p>9 Answer: I don't. But from this email</p> <p>10 chain, it appears to be Bob Skaggs.</p> <p>11 (End of video clip.)</p> <p>12 ATTORNEY ORRICO: Your Honor, in the</p> <p>13 following clips, Mr. Fornell was asked about JTX 0372,</p> <p>14 which is an email chain from November 22nd, 2015,</p> <p>15 between Christine Johnston, Mr. Babowal, and</p> <p>16 Mr. Fornell, with the subject line "Provided Under</p> <p>17 Client Confidentiality - Draft Cover slide for Russ</p> <p>18 briefing." These are clips 19 and 20, pages 111 to</p> <p>19 112; 112 to 113.</p> <p>20 (A video clip was played as follows:)</p> <p>21 Question: It looks like to me --</p> <p>22 correct me if I'm wrong -- that Mr. Poirier is putting</p> <p>23 together ideas for a briefing for Mr. Girling for the</p> <p>24 bid that is submitted in two days, right?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 14</p> <p>1 experience ...."</p> <p>2 Do you see that?</p> <p>3 Answer: Yes.</p> <p>4 Question: And Mr. Poirier doesn't</p> <p>5 write in this email -- feel free to read the rest of</p> <p>6 it. He doesn't write, Ms. Johnston's interpretation</p> <p>7 of the summary is wrong, right?</p> <p>8 Question: He did not write that.</p> <p>9 (End of video clip.)</p> <p>10 ATTORNEY ORRICO: Your Honor, in the</p> <p>11 following clip, Mr. Fornell was asked about JTX 0856,</p> <p>12 which is a March 5, 2016, email chain between</p> <p>13 Mr. Poirier, Hugh Babowal at Wells Fargo, and</p> <p>14 Mr. Fornell, with the subject line "Script for RG</p> <p>15 conversation with BS March 5th," EF 18, pages 105 to</p> <p>16 106.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: He says, "When we first</p> <p>19 discussed a transaction, you gave us three criteria to</p> <p>20 meet: an all cash transaction, closing certainty, and</p> <p>21 price."</p> <p>22 Do you see that?</p> <p>23 Answer: Yes.</p> <p>24 Question: My question is very simple.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 16</p> <p>1 Answer: Yes.</p> <p>2 Question: I want to go down to</p> <p>3 "Competitive Dynamics." Do you see that?</p> <p>4 Answer: Competitive dynamics, okay.</p> <p>5 Question: Do you see that?</p> <p>6 Answer: I do.</p> <p>7 Question: My first thing is it says,</p> <p>8 "Given Capricorn's strong desire to conclude a</p> <p>9 transaction prior to late 2016 (to avoid equity</p> <p>10 issuance) ...."</p> <p>11 Do you see that?</p> <p>12 Answer: I do.</p> <p>13 Question: It is fair to say that</p> <p>14 either Columbia told or Mr. Poirier got the impression</p> <p>15 that Columbia management wanted to get a deal done by</p> <p>16 the latest late 2016, right?</p> <p>17 Answer: Yes.</p> <p>18 Question: Do you think -- let me ask</p> <p>19 you. Independent of anything, do you remember -- let</p> <p>20 me ask you this. Do you remember any discussion of,</p> <p>21 hey, let's negotiate a 12-month standstill because</p> <p>22 Columbia's management wants to get this deal done by</p> <p>23 the latest end of 2016?</p> <p>24 Answer: I do not.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 17</p> <p>1 Question: Are you aware of any other</p> <p>2 potential bidder for Columbia being told, hey -- by</p> <p>3 Columbia management, hey, we need to get a deal to</p> <p>4 know by the end of 2016, the latest?</p> <p>5 Answer: I am not.</p> <p>6 (End of video clip.)</p> <p>7 ATTORNEY ORRICO: Your Honor, on</p> <p>8 November 25th, 2016, Columbia told TransCanada,</p> <p>9 Dominion, NextEra, and Berkshire that it was</p> <p>10 terminating discussions with respect to a potential</p> <p>11 transaction and asked each party to return or destroy</p> <p>12 confidential information pursuant to the terms of</p> <p>13 their respective nondisclosure agreements. That's</p> <p>14 paragraph 250 of the PTO.</p> <p>15 In the following clips, Mr. Fornell</p> <p>16 was asked about JTX 0402, which is a November 25th,</p> <p>17 2015, email chain among Wells Fargo's employees, with</p> <p>18 the subject line "Weird Twist." These are clips 21,</p> <p>19 22, 63, pages 116 to 118, page 119 to 120 and 121 to</p> <p>20 123.</p> <p>21 (A video clip was played as follows:)</p> <p>22 Question: I'm actually going to go to</p> <p>23 the third page, sir, with the Bates number ending in</p> <p>24 94. There is an email from you at the bottom. So you</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 19</p> <p>1 to your team on November 25th, 2015, correct?</p> <p>2 Answer: Yes.</p> <p>3 Question: And that was true at the</p> <p>4 time?</p> <p>5 Answer: Correct.</p> <p>6 Question: I want to go to the next</p> <p>7 paragraph that you wrote, sir. It says, "Francois</p> <p>8 spoke ...."</p> <p>9 Do you see that?</p> <p>10 Answer: I do, yes.</p> <p>11 Question: It says -- for the record,</p> <p>12 it says, "Francois spoke with the CFO who said they</p> <p>13 will probably 'want to pick [up] [the]</p> <p>14 [discussions] -- pick the discussions up again "in a</p> <p>15 few months.' Francois wants to continue modeling the</p> <p>16 various cases but obviously put the diligence on hold.</p> <p>17 He also asked that we think about whether there is</p> <p>18 some type of Capricorn security Taurus could invest in</p> <p>19 that would give Capricorn the equity they need,</p> <p>20 protect Taurus on the downside and reduce the amount</p> <p>21 of equity that Taurus would need to pay a premium for</p> <p>22 to do a deal in early '16. Can we have a call at 3 pm</p> <p>23 [Eastern]?"</p> <p>24 Do you see that?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 18</p> <p>1 originated that email?</p> <p>2 Answer: Okay.</p> <p>3 Question: Do you have it?</p> <p>4 Answer: I see it.</p> <p>5 Question: Let me ask you this. It's</p> <p>6 from you, November 25th. It was sent -- it looks like</p> <p>7 midday, Central Time, to a "G [] Project</p> <p>8 Constellation." Is that, like, the working group at</p> <p>9 Wells Fargo on this deal?</p> <p>10 Answer: Yes.</p> <p>11 Question: So you write, "Weird</p> <p>12 twist." And let's just go through it. The first</p> <p>13 thing that you write is, "Capricorn's CEO called Russ</p> <p>14 and said his board does not want to take the risk that</p> <p>15 Taurus won't get there in the end, so they are going</p> <p>16 to go to the equity market next week to raise</p> <p>17 []1 billion. Russ asked, what if we close the gap</p> <p>18 between []26 and []28 and we get it done before</p> <p>19 Christmas? Capricorn's CEO went back to his lead</p> <p>20 director to ask and came back with the answer that</p> <p>21 they still do not want to take the risk."</p> <p>22 Do you see that?</p> <p>23 Answer: I do.</p> <p>24 Question: And that's what you wrote</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 20</p> <p>1 Answer: Yes.</p> <p>2 Question: And you wrote that on</p> <p>3 November 25th, 2016, right?</p> <p>4 Answer: Yes.</p> <p>5 Question: You were being truthful in</p> <p>6 that information that you shared with your team,</p> <p>7 correct?</p> <p>8 Answer: Correct.</p> <p>9 Question: Do you remember who -- let</p> <p>10 me ask you this. Looking at this email, do you think</p> <p>11 Mr. Poirier provided you with this information?</p> <p>12 Answer: I don't know, but it's</p> <p>13 possible.</p> <p>14 Question: Well, it's fair to say that</p> <p>15 at least from this email, that you learned that</p> <p>16 Mr. Smith told Mr. Poirier on or around November 25th,</p> <p>17 2015, that Columbia would likely or probably want to</p> <p>18 pick up a discussion about a deal in a few months,</p> <p>19 right?</p> <p>20 Answer: Yes.</p> <p>21 Question: And if you look at the</p> <p>22 email, Mr. Poirier at this time still wanted to</p> <p>23 continue modeling the various cases for a deal, right?</p> <p>24 Answer: Yes.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

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<p>1 Question: So he wasn't operating</p> <p>2 like, hey, there is no deal, we are done, it's over,</p> <p>3 right?</p> <p>4 Answer: Correct.</p> <p>5 Question: I'm skipping a few emails.</p> <p>6 On the second page, 893, at the very top, there is</p> <p>7 another email from Mr. May to Mr. Robinson and</p> <p>8 Mr. Horodinka.</p> <p>9 Do you see that?</p> <p>10 Answer: Yes.</p> <p>11 Question: It says, "It gets even</p> <p>12 weirder. . . Torrie just informed me that CPGX has</p> <p>13 served TRP notice ordering TRP to discontinue the use</p> <p>14 of private information in its analysis. Relates to</p> <p>15 disclosure issues around the equity issuance."</p> <p>16 Do you see that?</p> <p>17 Answer: Yes.</p> <p>18 Question: It continues, "We now need</p> <p>19 [to] use public information for our Columbia</p> <p>20 forecasts."</p> <p>21 Do you see that?</p> <p>22 Answer: Yes.</p> <p>23 Question: I have a couple of</p> <p>24 questions. First is, even though the team could no</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 next clip, Mr. Fornell was asked about JTX 0411, which</p> <p>2 is a November 29th, 2015, email chain between</p> <p>3 Mr. Poirier and Mr. Fornell, with the subject line</p> <p>4 "Privileged and confidential: Constellation -</p> <p>5 thoughts." These are clips 23 and 24, pages 128 to</p> <p>6 129, 130 to 131.</p> <p>7 (A video clip was played as follows:)</p> <p>8 Question: So I want to go down a few</p> <p>9 more paragraphs in Mr. Poirier's key inputs. It says,</p> <p>10 "The second key input ..."</p> <p>11 Do you see that?</p> <p>12 Answer: Yes.</p> <p>13 Question: It says, "The second key</p> <p>14 input is the nature and quality of any board</p> <p>15 relationships we may have. From my perspective,</p> <p>16 management would be supportive of a sale. Based on</p> <p>17 the decision they made, I believe the board is not as</p> <p>18 wed to that path at this moment. To the extent we</p> <p>19 have a strong relationship with any board members, we</p> <p>20 should convey our sincere interest, and our ability to</p> <p>21 move quickly and get to a positive outcome. We</p> <p>22 should, however, also stress that this is a target</p> <p>23 rich environment, and we are aggressively pursuing a</p> <p>24 number of alternative scenarios, so this is not an</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 longer use confidential information, they were still</p> <p>2 working to model based off the publicly available</p> <p>3 information for this potential deal at this time?</p> <p>4 Answer: Yes.</p> <p>5 Question: My second question is, it's</p> <p>6 fair to say from this email with your team members --</p> <p>7 and I understand you're not on it, but at least your</p> <p>8 team members believe that TransCanada -- that Columbia</p> <p>9 informed TransCanada that the notice to discontinue to</p> <p>10 use the confidential information had to do with the</p> <p>11 equity issuance disclosure issues, right?</p> <p>12 Answer: Yes.</p> <p>13 Question: They didn't say, hey -- it</p> <p>14 is fair to say that at least your team was under the</p> <p>15 impression at that Columbia was not saying, hey,</p> <p>16 destroy the confidential information because we are no</p> <p>17 longer doing a deal; it had to do more with, hey, we</p> <p>18 have to do an equity issuance and we don't want to get</p> <p>19 in trouble with the disclosures on that, right?</p> <p>20 Attorney Mangan: Objection.</p> <p>21 Attorney Yoch: Objection.</p> <p>22 Answer: Yes.</p> <p>23 (End of video clip.)</p> <p>24 ATTORNEY ORRICO: Your Honor, in the</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 infinite option."</p> <p>2 Do you see that?</p> <p>3 Answer: Yes.</p> <p>4 Question: So it is fair to say, as of</p> <p>5 this time, late November, 2015, Mr. Poirier had the</p> <p>6 belief that the Columbia management team was</p> <p>7 supportive of the deal, but the board was not as wed</p> <p>8 to a deal at the time, correct?</p> <p>9 Answer: Yes.</p> <p>10 Question: It says, "The offering</p> <p>11 needs to occur either this upcoming week, or the</p> <p>12 following, before the window closes for the holidays.</p> <p>13 If they do not launch and offering, we should contact</p> <p>14 them immediately and try to reengage, as it will mean</p> <p>15 they have decided conditions are not favorable."</p> <p>16 Do you see that?</p> <p>17 Answer: I do.</p> <p>18 Question: So, again, fair to say</p> <p>19 Mr. Poirier was focused on when the equity offering</p> <p>20 was happening or if it was happening to get a sense on</p> <p>21 how to reengage, right?</p> <p>22 Answer: Yes.</p> <p>23 Question: I want to go to the next</p> <p>24 page. It says "Internal Work."</p> <p>CHANCERY COURT REPORTERS</p>

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<p>1 Answer: Okay.</p> <p>2 Question: I won't read the whole</p> <p>3 thing, but it says, "In the meantime, there is a lot</p> <p>4 of work that we could undertake." Then he talks about</p> <p>5 modeling on public information, right?</p> <p>6 Answer: Yes.</p> <p>7 Question: And then below he says, "We</p> <p>8 are also starting to undertake a much deeper dive and</p> <p>9 potential asset sales include preferred candidate,</p> <p>10 validation, and buyer universe in order to assess</p> <p>11 execution risks, Wells Fargo is also preparing</p> <p>12 Capricorn shareholder analysis for us so that we have</p> <p>13 a better understanding of the nature of the</p> <p>14 shareholder base, cost basis and motivation.</p> <p>15 Do you see that?</p> <p>16 Answer: Yes.</p> <p>17 Question: So it is fair to say that</p> <p>18 at the time, in late November of 2015, Mr. Poirier was</p> <p>19 still asking his team at Wells Fargo to do some work</p> <p>20 to prepare for a potential deal with Columbia, right?</p> <p>21 Answer: Yes.</p> <p>22 (End of video clip.)</p> <p>23 ATTORNEY ORRICO: The following clip,</p> <p>24 there's no instruction, Your Honor. It's clip 26,</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Answer: I don't recall.</p> <p>2 Question: Do you have any basis to</p> <p>3 dispute that Mr. Poirier asked you to reach out to</p> <p>4 Mr. Smith to get information about Columbia's equity</p> <p>5 offering in late November, early December 2015?</p> <p>6 Attorney Mangan: Objection to form.</p> <p>7 Answer: I don't.</p> <p>8 Question: Now, why were you asking</p> <p>9 Mr. Poirier on November 30th, 2015, if TransCanada's</p> <p>10 legal guys had talked to Columbia's legal guys to see</p> <p>11 if they were okay with you calling Steve Smith?</p> <p>12 Answer: I knew there was an NDA in</p> <p>13 place, and I didn't want to do anything untoward.</p> <p>14 Question: Did you ever get</p> <p>15 confirmation from TransCanada's legal guys to see if</p> <p>16 it was okay for you to call Mr. Smith?</p> <p>17 Answer: I don't remember.</p> <p>18 Question: Do you know if TransCanada</p> <p>19 ever received board authorization from Columbia saying</p> <p>20 it was okay for you to reach out to Mr. Smith to</p> <p>21 discuss an equity offering or potential deal with</p> <p>22 Columbia in late November or early December?</p> <p>23 Answer: I don't know.</p> <p>24 (End of video clip.)</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 page 133, line 19 to 24.</p> <p>2 (A video clip was played as follows:)</p> <p>3 Question: Do you remember any</p> <p>4 discussion with Columbia's management team or board</p> <p>5 about walling you off from Columbia in the equity</p> <p>6 offering because of your representation of TransCanada</p> <p>7 in connection to a sales process?</p> <p>8 Answer: No.</p> <p>9 (End of video clip.)</p> <p>10 ATTORNEY ORRICO: Your Honor, in the</p> <p>11 next clip, Mr. Fornell is asked about JTX 0418, which</p> <p>12 is a November 30th, 2015, email from Mr. Fornell to</p> <p>13 Mr. Poirier with the subject "Equity." It's clip 27,</p> <p>14 pages 135 to 136.</p> <p>15 (A video clip was played as follows:)</p> <p>16 Question: In this email you write,</p> <p>17 "Have your legal guys talked to Capricorn's legal guys</p> <p>18 to see if they are OK with my calling Steve."</p> <p>19 Do you see that?</p> <p>20 Answer: Yes.</p> <p>21 Question: All right. So did</p> <p>22 Mr. Poirier ask you around this time to reach out to</p> <p>23 Mr. Smith to get information about the equity</p> <p>24 offering?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 ATTORNEY ORRICO: Your Honor, the</p> <p>2 following clip has no introduction. It's clip 28,</p> <p>3 pages 137 to 138.</p> <p>4 (A video clip was played as follows:)</p> <p>5 Question: So it's fair to say that</p> <p>6 you called Mr. Smith on December 2nd, 2015, it looks</p> <p>7 like twice?</p> <p>8 Answer: Yes.</p> <p>9 Question: Do you remember making</p> <p>10 those phone calls?</p> <p>11 Answer: No.</p> <p>12 Question: Do you remember having a</p> <p>13 conversation with Mr. Smith on December 2nd?</p> <p>14 Answer: I do not.</p> <p>15 Question: You have no recollection</p> <p>16 one way or the other if you called Mr. Smith on</p> <p>17 December 2nd to get information about the equity</p> <p>18 offering and/or discuss a potential deal with</p> <p>19 TransCanada, correct?</p> <p>20 Answer: That is correct.</p> <p>21 Question: Let me ask you a different</p> <p>22 question. We will agree that you reached out or tried</p> <p>23 to reach out or called Mr. Smith on December 2nd,</p> <p>24 2015, right?</p> <p>CHANCERY COURT REPORTERS</p>

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<p>1 Answer: Yes.</p> <p>2 (End of video clip.)</p> <p>3 ATTORNEY ORRICO: The next clip,</p> <p>4 Mr. Fornell is asked about JTX 0423, which is an email</p> <p>5 chain between Mr. Poirier and Mr. Fornell from</p> <p>6 December 1st, 2015, with the subject line "CPGX</p> <p>7 trading performance." This is clip 29, pages 139</p> <p>8 to 140.</p> <p>9 (A video clip was played as follows:)</p> <p>10 Question: This is another email</p> <p>11 exchange between you and Mr. Poirier, the same time</p> <p>12 period, December 1st, 2015.</p> <p>13 Do you see that?</p> <p>14 Answer: Yes.</p> <p>15 Question: All right. And so at the</p> <p>16 bottom, Mr. Poirier writes to you, "CPGX trading</p> <p>17 performance.</p> <p>18 "Hi Eric, Does it make sense have a</p> <p>19 call tomorrow morning to see how the stock trades out</p> <p>20 of the gate? Say, 10am [Eastern Time]."</p> <p>21 Do you see that?</p> <p>22 Answer: Yes.</p> <p>23 Question: Above that you say, "Let me</p> <p>24 see what ECM suggests. We want to be able to tell you</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 It says that, "Agreed. Bob and Russ talking at 9am</p> <p>2 [eastern time]."</p> <p>3 Do you see that?</p> <p>4 Answer: Yes.</p> <p>5 Question: Fair to say that</p> <p>6 Mr. Girling and Mr. Skaggs had a call on December 2nd?</p> <p>7 Do you see that?</p> <p>8 Answer: Yes.</p> <p>9 (End of video clip.)</p> <p>10 ATTORNEY ORRICO: Your Honor, the next</p> <p>11 clip, Mr. Fornell is asked about JTX 0439, which is a</p> <p>12 December 2nd, 2015, email from Mr. Fornell to members</p> <p>13 of the Wells Fargo deal team with the subject line</p> <p>14 "Constellation." It's clip 64, pages 145 to 146 of</p> <p>15 the deposition.</p> <p>16 (A video clip was played as follows:)</p> <p>17 Question: To your recollection, there</p> <p>18 was no written board authorization from Columbia for</p> <p>19 Mr. Skaggs or Mr. Girling to have a call on</p> <p>20 December 2nd, 2015, to discuss a potential transaction</p> <p>21 between TransCanada and Columbia, correct?</p> <p>22 Answer: I do not know.</p> <p>23 Question: I want to show you another</p> <p>24 document. So before I do -- before I do -- so we've</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 something useful."</p> <p>2 Do you see that?</p> <p>3 Question: Yes.</p> <p>4 Answer: And is ECM Equity Capital</p> <p>5 Markets?</p> <p>6 Answer: Yes.</p> <p>7 Question: Is it fair to say that you</p> <p>8 were at least offering to Mr. Poirier to reach out to</p> <p>9 your capital markets team to get him something useful</p> <p>10 about Columbia's trading performance and equity</p> <p>11 offering at the time? Correct?</p> <p>12 Answer: Yes.</p> <p>13 Question: Is it fair to say that when</p> <p>14 you did so, you were working on Mr. Poirier's and</p> <p>15 TransCanada's behalf? Correct?</p> <p>16 Answer: Yes.</p> <p>17 Question: You don't remember one way</p> <p>18 or the other if Columbia had authorized you or Wells</p> <p>19 Fargo to provide that information to Mr. Poirier,</p> <p>20 correct?</p> <p>21 Answer: And we don't know what the</p> <p>22 information is.</p> <p>23 Question: Okay. Now, I want to go up</p> <p>24 above. There is a continuation of the email chain.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 established that, at least from your email here, which</p> <p>2 is Exhibit 22, that at the time Skaggs and Girling had</p> <p>3 a call on the morning of December 2nd, and it was a</p> <p>4 good call, right?</p> <p>5 Answer: Yes.</p> <p>6 Question: We don't know what was</p> <p>7 discussed, but it was a good call, right?</p> <p>8 Answer: Yes.</p> <p>9 Question: And we have phone records</p> <p>10 that on December 2nd you had a call -- two calls with</p> <p>11 Mr. Smith, right? We saw that a couple exhibits ago?</p> <p>12 Answer: Yes.</p> <p>13 (End of video clip.)</p> <p>14 ATTORNEY ORRICO: Your Honor, the next</p> <p>15 clip, Mr. Fornell is asked about JTX 0438, which is</p> <p>16 another email between Mr. Fornell and Mr. Poirier sent</p> <p>17 on December 2nd, 2015, with the subject line</p> <p>18 "Constellation EL" and which attaches a proposed</p> <p>19 engagement letter. This is clip 31, pages 150 to 151.</p> <p>20 (A video clip was played as follows:)</p> <p>21 Question: All I'm establishing is</p> <p>22 earlier we discussed that on December 2nd you had a</p> <p>23 call with Mr. Smith, correct?</p> <p>24 Answer: Yes.</p> <p>CHANCERY COURT REPORTERS</p>



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<p>1 Question: And Mr. Girling and --</p> <p>2 Mr. Girling and Mr. Skaggs had a call on December 2nd</p> <p>3 that you relayed to your team that was a good call,</p> <p>4 correct?</p> <p>5 Answer: Correct.</p> <p>6 Question: And it's fair to say that</p> <p>7 you wouldn't be sending a proposed engagement letter</p> <p>8 to a client if a deal was dead, right?</p> <p>9 Answer: That's correct.</p> <p>10 Question: And the conversation you</p> <p>11 had with Mr. Smith on December 2nd didn't lead you to</p> <p>12 believe that a deal was dead, right?</p> <p>13 Answer: So did we establish that I</p> <p>14 had a conversation with Mr. Smith?</p> <p>15 Question: I had your phone log where</p> <p>16 you called him twice, and I could show you another</p> <p>17 document where you said you called him. But --</p> <p>18 Answer: Okay.</p> <p>19 Question: -- assume that you did.</p> <p>20 Answer: All right. Those didn't look</p> <p>21 like they were very long calls. It looked like they</p> <p>22 could have also been going into voicemail.</p> <p>23 Question: Well, regardless, I'm happy</p> <p>24 to impeach the testimony because I can pull a</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 [versus] waiting till January?</p> <p>2 "Russ will ask. Please call my cell</p> <p>3 at your convenience."</p> <p>4 Do you see that?</p> <p>5 Answer: Yes.</p> <p>6 Question: So he's asking you for</p> <p>7 guidance on, hey, do you think we should reengage now</p> <p>8 with Columbia or wait until after the holiday, right?</p> <p>9 Answer: Yes.</p> <p>10 Question: Now, I want to go up in the</p> <p>11 email chain. You write back, "Hugh and I are on the</p> <p>12 same flight to Houston. We'll call when we land in</p> <p>13 about 30 minutes. Is it a question for counsel?"</p> <p>14 Do you see that?</p> <p>15 Answer: Yes.</p> <p>16 Question: And that was your response,</p> <p>17 right?</p> <p>18 Answer: Uh-huh.</p> <p>19 Question: You asked Mr. Poirier, hey,</p> <p>20 whether we reengage, isn't that a question for</p> <p>21 lawyers? Right?</p> <p>22 Answer: Yes.</p> <p>23 Question: And that's because there</p> <p>24 was a standstill obligation in the NDA, correct?</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 document.</p> <p>2 But Mr. Girling and Mr. Skaggs had a</p> <p>3 call on December 2nd, right?</p> <p>4 Answer: Yes.</p> <p>5 Question: Okay. And there was</p> <p>6 nothing about that call that led you to believe what</p> <p>7 you learned about at the time that the deal was dead,</p> <p>8 right?</p> <p>9 Answer: That's correct.</p> <p>10 (End of video clip.)</p> <p>11 ATTORNEY ORRICO: Your Honor, the next</p> <p>12 clip, Mr. Fornell is asked about JTX 0468, which is a</p> <p>13 December 7th, 2015, email chain with the subject line</p> <p>14 "Capricorn." It's clips 32 and 65, pages 152 to 153</p> <p>15 and 153 to 155.</p> <p>16 (A video clip was played as follows:)</p> <p>17 Question: I want to go to the second</p> <p>18 page, very bottom. The email chain originates from</p> <p>19 Mr. Poirier, where he sent an email to you and</p> <p>20 Mr. Babowal on December 7th at 9:15 a.m. Central</p> <p>21 Standard Time.</p> <p>22 He states, "Under pressure like the</p> <p>23 entire space.</p> <p>24 "What are merits of re-engaging now</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Attorney Mangan: Objection.</p> <p>2 Answer: Yes.</p> <p>3 Question: Okay. And it's fair we --</p> <p>4 and I know you weren't on those emails, but some of</p> <p>5 the first exhibits that I showed you were</p> <p>6 Ms. Johnston, who was the lawyer at TransCanada,</p> <p>7 providing Mr. Poirier her summary of the standstill</p> <p>8 obligations, correct? Do you remember that earlier</p> <p>9 today?</p> <p>10 Answer: I recall that exhibit.</p> <p>11 Question: And I guess it's fair to</p> <p>12 say that you have no recollection, sitting here today,</p> <p>13 if Columbia had provided TransCanada in early</p> <p>14 December 2015 written board authorization to commence</p> <p>15 deal discussions, correct?</p> <p>16 Answer: That is correct.</p> <p>17 Question: And you have no</p> <p>18 recollection, sitting here today, if Columbia had</p> <p>19 provided written board authorizations to TransCanada</p> <p>20 waiving the obligations of the standstill, correct?</p> <p>21 Answer: Correct.</p> <p>22 Question: All right. I want to stay</p> <p>23 on this email chain. Mr. Poirier responds to your</p> <p>24 questions, "Is it a question for counsel?" with,</p> <p>CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

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<p>1 "First, what are the tactical merits? If we think it</p> <p>2 makes sense, second step would be to talk to counsel."</p> <p>3 Do you see that?</p> <p>4 Answer: Yes.</p> <p>5 Question: Then above you write, "OK."</p> <p>6 Right?</p> <p>7 Answer: Yes.</p> <p>8 Question: Fair to say this appears to</p> <p>9 be a "take action and ask for forgiveness later"</p> <p>10 approach to reengaging?</p> <p>11 Attorney Mangan: Objection.</p> <p>12 Answer: I don't think so. I think</p> <p>13 it's a question of what would be the consequences of</p> <p>14 engaging, if we could. In other words, does it make</p> <p>15 sense? If it doesn't make any sense and there are no</p> <p>16 merits to it, there is no need to talk to counsel.</p> <p>17 Question: But you have no basis to</p> <p>18 dispute that Mr. Poirier had already received a</p> <p>19 summary of the standstill from his general counsel on</p> <p>20 December 1st? I showed you that earlier, correct?</p> <p>21 Answer: Yes</p> <p>22 (End of video clip.)</p> <p>23 ATTORNEY ORRICO: Your Honor, to</p> <p>24 orient the Court and the timeline before the next</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 that you put together. It says, "Situation[al]</p> <p>2 Summary."</p> <p>3 Do you see that?</p> <p>4 Answer: Yes.</p> <p>5 Question: Or "Situation Summary."</p> <p>6 Answer: Yes.</p> <p>7 Question: And the first thing that</p> <p>8 you say is, "Capricorn is the most attractive target</p> <p>9 of Taurus has engaged with in decades."</p> <p>10 Do you see that?</p> <p>11 Answer: Yes.</p> <p>12 Question: And that's true, right?</p> <p>13 Answer: That is true.</p> <p>14 Question: Go down to 1C. You write</p> <p>15 "Willing counterparty with no visible competitors."</p> <p>16 Do you see that?</p> <p>17 Answer: Yes.</p> <p>18 Question: So at the time, how did you</p> <p>19 know that Columbia was a willing counterparty with no</p> <p>20 visible competitors?</p> <p>21 Answer: I don't remember.</p> <p>22 Question: But you agree you wrote</p> <p>23 that, so it is likely true, right?</p> <p>24 Answer: Yes.</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 series of clips, I represent the parties have</p> <p>2 stipulated to the following facts.</p> <p>3 On December 8th, 2015, Fornell met</p> <p>4 with Columbia management at a Wells Fargo Energy</p> <p>5 Conference in New York, paragraph 276 of the PTO.</p> <p>6 Same day, "[Mr.] Fornell emailed Poirier with the</p> <p>7 subject line: 'Are you reachable?' and the message 'I</p> <p>8 had a nice talk with Steve Smith at the Energy</p> <p>9 Conference. [ ] [Mr.] Poirier responded, 'Yes now is</p> <p>10 good."</p> <p>11 That email is referenced at JTX 0474.</p> <p>12 It's also PTO paragraph 277.</p> <p>13 "In mid-December 2015, [Mr.] Smith</p> <p>14 received a call from Mr. Poirier. [And] during the</p> <p>15 call, Poirier requested a meeting on January 7th, 2016</p> <p>16 at TransCanada's request." Paragraph 276.</p> <p>17 The next clip, Mr. Fornell asked about</p> <p>18 JTX 0578, which is a January 19, 2016, email from</p> <p>19 Mr. Fornell to Poirier with the subject "Outline of</p> <p>20 bid options," with an attachment titled "Taurus Has At</p> <p>21 Least Four Options ...."</p> <p>22 It's clip 34, pages 165 to 166.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: I want to go to the outline</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Question: You got that information</p> <p>2 from somewhere, correct?</p> <p>3 Answer: Yes.</p> <p>4 (End of video clip.)</p> <p>5 ATTORNEY ORRICO: Your Honor, the next</p> <p>6 clip Mr. Fornell is asked about is JX 0616, which is a</p> <p>7 January 25th, 2016, email between Mr. Fornell and</p> <p>8 Mr. Poirier with the subject line "DRAFT Script -</p> <p>9 Please comment." It's clip 35, pages 168 to 169.</p> <p>10 (A video clip was played as follows:)</p> <p>11 Question: Mr. Poirier drafted a</p> <p>12 script, I think, for Mr. Girling's use with Mr. Skaggs</p> <p>13 and he's asking you, as his financial advisor to the</p> <p>14 deal, for comments, right?</p> <p>15 Answer: Yes.</p> <p>16 Question: I want to go to the</p> <p>17 comments. First one says, "Comment regarding 'we are</p> <p>18 respecting your requirements under the standstill, and</p> <p>19 so this does not constitute an offer on our part', and</p> <p>20 if and how we proceed will depend on your board's</p> <p>21 interest after your board meetings later this week."</p> <p>22 Do you see that?</p> <p>23 Answer: Yes.</p> <p>24 Question: And above that you write,</p> <p>CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 41</p> <p>1 "I like all of it except the last point," which you  2 can read, so I don't need to read it.  3 Do you see that?  4 Answer: Yes.  5 Question: Okay. So it's fair to say  6 that Mr. Poirier understood that an offer at this time  7 would be a violation of the standstill, correct?  8 Answer: That appears to be the case.  9 (End of video clip.)  10 ATTORNEY ORRICO: Your Honor, the  11 parties have stipulated to the fact that "On  12 January 25th, 2016, [Mr.] Girling contacted  13 [Mr.] Skaggs and indicated that TransCanada would be  14 interested in pursuing an all-cash acquisition of  15 Columbia at a price per share of Columbia[s] common  16 stock in the range of [ ]25 to \$28 [per share]."  17 Paragraph 301 of the PTO.  18 Parties have also stipulated to the  19 fact that "On February 9, 2016, [Mr.] Fornell met with  20 [Mr.] Smith and [Mr.] Skaggs in New Albany, Ohio."  21 Mr. Fornell is asked about that meeting in the  22 following clip, clip 37, pages 177, lines 9 to 25.  23 (A video clip was played as follows:)  24 Question: So is it fair to say that,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 43</p> <p>1 (A video clip was played as follows:)  2 Question: Let's look at the email.  3 In the email, Mr. Poirier writes to you and  4 Mr. Babowal, "Thought[s] -- Capricorn tactics.  5 "Guys, Steve keeps telling me that  6 despite their stock price, this is not a wasted effort  7 if due diligence." I think he means "in due  8 diligence."  9 Answer: Or "of due diligence."  10 Question: "[O]f due diligence. I  11 have been thinking hard about why he is saying that.  12 "Is it possible in your opinion, that  13 if we do not hit the bottom of the range, they will  14 run a competitive process, and that is the reason for  15 his comments?"  16 Do you see that?  17 Answer: Yes.  18 Question: And then you respond above,  19 "That is possible. He might also be signaling that  20 they would do a deal below their range."  21 Do you see that?  22 Answer: Yes.  23 Question: Do you remember, sitting  24 here today, why you thought Mr. Smith may have been</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 42</p> <p>1 to the best of your recollection, you did go to Ohio  2 and have a meeting with Skaggs and Smith on  3 February 9th, right?  4 Answer: Yes.  5 Question: And sitting here today, you  6 don't have any recollection of what was discussed or  7 what the purpose of that meeting was, correct?  8 Answer: Correct.  9 Question: It is true at that time  10 Columbia and TransCanada were in exclusivity and  11 active deal discussions, right?  12 Answer: Yes.  13 Question: Okay. And you were  14 representing the buy side in those discussions on  15 behalf of TransCanada, right?  16 Answer: Yes.  17 (End of video clip.)  18 ATTORNEY ORRICO: In the following  19 clips, Your Honor, Mr. Fornell is asked about JTX 0708  20 and JTX 0709. They are emails between Mr. Fornell and  21 Mr. Poirier and Hugh Babowal at Wells Fargo from  22 February 9th, 2016, with the subject line "Thought --  23 Capricorn tactics." Clips 39 and 40, pages 179 to  24 181, 181 to 182.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 44</p> <p>1 signaling that Columbia would be willing to do a deal  2 below the range of 25 to \$28 per share?  3 Answer: I do not.  4 Question: Is it fair to say that you  5 also have no recollection, sitting here today, whether  6 you discussed during the February 9th meeting with  7 Mr. Skaggs and Mr. Smith whether they would be willing  8 to do a deal below the range?  9 Answer: Yeah. I have no recollection  10 of that.  11 Question: You'll see on the bottom  12 half it is that same email that Mr. Poirier sent to  13 you and Mr. Babowal on February 9th.  14 Do you see that?  15 Answer: Yes.  16 Question: And then above, it is  17 Mr. Babowal's response. Do you see that?  18 Answer: I do.  19 Question: Okay. And he says,  20 "Possibly. Could also be that the management and the  21 board want an exit regardless of price and will reset  22 expectations to a lower level if the market doesn't  23 recover."  24 Do you see that?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 45</p> <p>1 Answer: I do.</p> <p>2 Question: And sitting here today, do</p> <p>3 you have any recollection as to why Wells Fargo or</p> <p>4 Mr. Babowal thought that Columbia management and the</p> <p>5 board may want an exit regardless of price and will</p> <p>6 reset expectations to a lower level if the market</p> <p>7 doesn't recover?</p> <p>8 Answer: I do not.</p> <p>9 Question: Do you have any</p> <p>10 recollection, sitting here today, whether you</p> <p>11 discussed with Mr. Skaggs and Mr. Smith during the</p> <p>12 February 9th meeting whether they would be willing to</p> <p>13 sell Columbia at a lower price and wanted an exit,</p> <p>14 regardless of price, in 2016?</p> <p>15 Answer: I do not.</p> <p>16 (End of video clip.)</p> <p>17 ATTORNEY ORRICO: Your Honor, in the</p> <p>18 following clip, Mr. Fornell was asked about JTX 0782,</p> <p>19 which starts with a February 24th, 2016, email from</p> <p>20 Hugh Babowal at Wells Fargo, with the subject line</p> <p>21 "Alive and Kicking." It's clip 42, pages 185 to 187</p> <p>22 of the deposition.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: So I'm focusing on the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 47</p> <p>1 Answer: I do not.</p> <p>2 Question: Now, over the course of</p> <p>3 today -- we started our day out talking about you had</p> <p>4 at least a client-management relationship with</p> <p>5 Mr. Smith that had gone back to the early 2000s,</p> <p>6 right?</p> <p>7 Answer: Yes.</p> <p>8 Question: And I showed you a few</p> <p>9 documents. But is it fair to say that leading up to</p> <p>10 the spinoff and after the spinoff, you had had some</p> <p>11 discussions and meetings with Mr. Smith to continue</p> <p>12 that client development role that you were in charge</p> <p>13 of at Wells Fargo or a part of, right?</p> <p>14 Answer: Yes.</p> <p>15 Question: And I just showed you some</p> <p>16 documents, and you had -- well, strike that.</p> <p>17 You had a meeting with Mr. Skaggs and</p> <p>18 Mr. Smith on February 9th, 2016, correct?</p> <p>19 Answer: Yes.</p> <p>20 Question: In all of these</p> <p>21 interactions, did Mr. Skaggs or Mr. Smith share with</p> <p>22 you their retirement plans or how much longer they</p> <p>23 intended to work at Columbia Pipeline?</p> <p>24 Answer: They did not.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 46</p> <p>1 third bullet point in Mr. Babowal's summary.</p> <p>2 Answer: Yes, sir</p> <p>3 Question: "[Francois] [Poirier]</p> <p>4 raised the spectre of a lower price in a roundabout</p> <p>5 way multiple times with Steve Smith and was met with</p> <p>6 'crickets.' "[Francois] [Poirier] interprets this as</p> <p>7 Skaggs and Smith will take a lower price to the board</p> <p>8 and dare them to turn it down. Clearly a risk, but he</p> <p>9 senses management wants to get this done."</p> <p>10 Do you see that?</p> <p>11 Answer: I do.</p> <p>12 Question: Okay. And let me ask you</p> <p>13 this. Sitting here today, do you remember that --</p> <p>14 well, strike that.</p> <p>15 Do you know what gave Mr. Poirier the</p> <p>16 sense that Mr. Skaggs and Smith wanted to get a deal</p> <p>17 done and would take a lower price to the board at this</p> <p>18 time?</p> <p>19 Answer: I do not.</p> <p>20 Question: Do you remember if</p> <p>21 Mr. Skaggs and Mr. Smith gave you any impression or</p> <p>22 told you during your February 9th meeting with them</p> <p>23 that they wanted to get a deal done and would do it at</p> <p>24 a lower price?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 48</p> <p>1 Question: Did Mr. Poirier ever share</p> <p>2 with you that Mr. Smith had told him, hey, I'm</p> <p>3 retiring in 2016?</p> <p>4 Answer: So I do not recall that.</p> <p>5 Question: I just want to be clear for</p> <p>6 the record. Are you saying that Mr. Skaggs and</p> <p>7 Mr. Smith never informed you about their retirement</p> <p>8 plans, or do you just not recall that discussion,</p> <p>9 sitting here today?</p> <p>10 Answer: I do not recall that</p> <p>11 discussion.</p> <p>12 (End of video clip.)</p> <p>13 ATTORNEY ORRICO: Your Honor,</p> <p>14 orienting the Court to the timeline, JTX 0944 is the</p> <p>15 minutes of the March 9th, 2016, TransCanada board</p> <p>16 meeting, which states that Mr. Fornell joined that</p> <p>17 meeting. In the following clip, Mr. Fornell was asked</p> <p>18 about the March 9th, 2016, TransCanada board meeting,</p> <p>19 and JTX 0913, which is a March 9th, 2016, email sent</p> <p>20 to and from Christine Johnston, with the subject line</p> <p>21 "March 9 special board meeting." It's clip 46,</p> <p>22 pages 199 to 203.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: I want to go to the third</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<b>E. Fornell - Video</b> Page 49	<b>E. Fornell - Video</b> Page 51
<p>1 page of this document, Bates No. 843. Let me know</p> <p>2 when you are there.</p> <p>3 Answer: 843. I am there.</p> <p>4 Question: So before I read the next</p> <p>5 part, which I'll ask you about, I want to establish</p> <p>6 that we looked at the board minutes, remember?</p> <p>7 Answer: Yes, we did.</p> <p>8 Question: And we agreed that the</p> <p>9 board minutes -- in the board minutes, Columbia --</p> <p>10 strike that.</p> <p>11 TransCanada's board authorized</p> <p>12 management to give the offer of 26 per share with</p> <p>13 10 percent stock, right?</p> <p>14 Answer: Yes.</p> <p>15 Question: Okay. Keep that in mind as</p> <p>16 we go to the next part. I want to go -- in the middle</p> <p>17 of the last page of these notes, it says</p> <p>18 "Directionally ...."</p> <p>19 Do you see that?</p> <p>20 Answer: Yes.</p> <p>21 Question: "[D]on't walk [from] this</p> <p>22 deal - try to get financing organized. Conversation</p> <p>23 with other side. Need [more] time to flesh out. FP -</p> <p>24 would need to ask them to add stock to consideration</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Answer: Yes.</p> <p>2 Question: And so did Mr. Poirier,</p> <p>3 correct?</p> <p>4 Answer: Yes.</p> <p>5 Question: Then it says, "Interloper</p> <p>6 risk is low. Could change in a few months."</p> <p>7 Do you see that?</p> <p>8 Answer: Yes.</p> <p>9 Question: Do you know why it was</p> <p>10 discussed at Columbia -- strike that.</p> <p>11 Do you know why it was discussed at</p> <p>12 the TransCanada board level that the interloper risk</p> <p>13 was low at the time, but it could change in a few</p> <p>14 months?</p> <p>15 Answer: I don't know.</p> <p>16 Question: Do you have any</p> <p>17 recollection as to why the interloper risk could</p> <p>18 potentially change from March 2016 to the summer of</p> <p>19 2016 for this deal?</p> <p>20 Answer: I don't know.</p> <p>21 Question: Do you recall that the</p> <p>22 general industry oil and gas company was improving at</p> <p>23 the time?</p> <p>24 Answer: I don't recall.</p> <p>CHANCERY COURT REPORTERS</p>
<b>E. Fornell - Video</b> Page 50	<b>E. Fornell - Video</b> Page 52
<p>1 next window opening. If not prepared to proceed with</p> <p>2 stock deal, then walk."</p> <p>3 Do you see that?</p> <p>4 Answer: Yes.</p> <p>5 Question: And is this consistent with</p> <p>6 your recollection of, at the time, TransCanada was,</p> <p>7 like, we are not going to walk away from the deal, but</p> <p>8 Francois needs to talk to Skaggs and Smith and</p> <p>9 Columbia to see if they are okay with adding stock as</p> <p>10 a consideration to get to 26?</p> <p>11 Answer: Yes.</p> <p>12 Question: The next line says, "EA</p> <p>13 expired yesterday."</p> <p>14 Do you see that?</p> <p>15 Answer: Yes.</p> <p>16 Question: And we just talked, the</p> <p>17 exclusivity agreement expired on March 8th, right?</p> <p>18 Answer: Yes.</p> <p>19 Question: So at the time on</p> <p>20 March 9th, there was no exclusivity anymore between</p> <p>21 TransCanada and Columbia, correct?</p> <p>22 Answer: Correct.</p> <p>23 Question: And the board knew it,</p> <p>24 right?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Question: Then there is the next</p> <p>2 line. It says, "Spoke to potential media leak."</p> <p>3 Do you see that?</p> <p>4 Answer: Yes.</p> <p>5 Question: It says, "Impact on each</p> <p>6 parties share price."</p> <p>7 Do you see that?</p> <p>8 Answer: Yes.</p> <p>9 Question: We haven't talked about</p> <p>10 this yet, but you remember that the deal did leak,</p> <p>11 right? The discussions leaked?</p> <p>12 Answer: Yes, I remember that.</p> <p>13 Question: Is it fair to say that that</p> <p>14 was discussed at this board meeting, right, that there</p> <p>15 was a potential leak coming?</p> <p>16 Answer: Yes.</p> <p>17 Question: Is it fair to say that the</p> <p>18 board and TransCanada management understood that that</p> <p>19 leak could impact not only Columbia's stock price, but</p> <p>20 also TransCanada's, right?</p> <p>21 Answer: Yes.</p> <p>22 Question. And you would expect if a</p> <p>23 transaction discussion were leaked, typically the</p> <p>24 target's stock increases and the buyer's stock will</p> <p>CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 53</p> <p>1 take a hit, correct?</p> <p>2 Answer: Correct.</p> <p>3 Attorney Yoch: Objection.</p> <p>4 Question: It is fair to say that the</p> <p>5 TransCanada management team recommended the</p> <p>6 TransCanada board approved on March 9th, 2016, to</p> <p>7 offer \$26 per share with a 10 percent stock component</p> <p>8 to acquire Columbia, with the knowledge that they were</p> <p>9 no longer in exclusivity, that interloper risk could</p> <p>10 change in a few months, and that a potential leak was</p> <p>11 coming that could impact stock price, correct?</p> <p>12 Answer: Yes.</p> <p>13 (End of video clip.)</p> <p>14 ATTORNEY ORRICO: In the next clip,</p> <p>15 Your Honor, Mr. Fornell was asked about JTX 0916,</p> <p>16 which is a March 9th, 2016, email from Fornell to</p> <p>17 Poirier and Hugh Babowal, with the subject line "Board</p> <p>18 call." Clip number 47. This is page 204 to 206.</p> <p>19 (A video clip was played as follows:)</p> <p>20 Question: So the bottom email is from</p> <p>21 Mr. Poirier to you and your colleague, Mr. Babowal.</p> <p>22 And it says "Board call." It says, "We will ask [you]</p> <p>23 for your views and then ask you to sign off and go</p> <p>24 in-camera..."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 55</p> <p>1 our Committee will rely most on."</p> <p>2 Do you see that?</p> <p>3 Answer: Yes.</p> <p>4 Question: And that was true, right,</p> <p>5 at the time?</p> <p>6 Answer: Yes.</p> <p>7 Question: Okay. Is it fair to say</p> <p>8 that you were telling Mr. Poirier, listen, I have to</p> <p>9 get fairness commitment approval, but it looks good</p> <p>10 based off of this information that I have now, right?</p> <p>11 Answer: Correct.</p> <p>12 Question: So we're going to move</p> <p>13 forward in our timeline. Okay. We just did</p> <p>14 March 9th. You go to the board meeting. The board</p> <p>15 signs off on TransCanada offering, hey, we have to do</p> <p>16 26 with 10 percent stock. And is it fair to say that</p> <p>17 Mr. Poirier relayed that offer to Mr. Smith after the</p> <p>18 meeting, right?</p> <p>19 Answer: I believe so, yes.</p> <p>20 Question: And I have a simple</p> <p>21 question. The stock component of that offer, assuming</p> <p>22 it went through, that would allow Columbia</p> <p>23 stockholders to share in any upside of the continuing</p> <p>24 company, right, because they would then be</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 54</p> <p>1 Do you see that?</p> <p>2 Answer: Yes.</p> <p>3 Question: And then you said, "OK."</p> <p>4 He writes above, "Would you be</p> <p>5 prepared to provide a FO at [26]?"</p> <p>6 Right?</p> <p>7 Answer: Yes.</p> <p>8 Question: Am I correct in assuming</p> <p>9 that "FO" means fairness opinion?</p> <p>10 Answer: Yes.</p> <p>11 Question: Let me ask you this. A</p> <p>12 client wouldn't be asking you to be prepared to</p> <p>13 provide a fairness opinion at a price if they weren't</p> <p>14 serious about offering it, right?</p> <p>15 Answer: That is correct.</p> <p>16 Question: Okay. And so you respond</p> <p>17 above, "Hugh and I just discussed. We caution that we</p> <p>18 have not received [the] final Fairness Committee</p> <p>19 approval, and we haven't updated the football field</p> <p>20 analysis since last Friday. But we notice [from] last</p> <p>21 Friday's presentation that the [26] price is within</p> <p>22 the DCF range, within the transaction comparable</p> <p>23 range, and within the range on the dividend discount</p> <p>24 analysis. Those are the three valuation metrics that</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 56</p> <p>1 stockholders of TransCanada?</p> <p>2 Answer: Yes.</p> <p>3 Question: Now, we talked a bit about</p> <p>4 this leak, and I want to circle back to it. Is it</p> <p>5 consistent with your recollection that on the morning</p> <p>6 of March 10th, 2016, the <b>Wall Street Journal</b> published</p> <p>7 an article recording that TransCanada was in deal</p> <p>8 discussions with Columbia?</p> <p>9 Answer: That is my recollection.</p> <p>10 (End of video clip.)</p> <p>11 ATTORNEY ORRICO: In the next clip,</p> <p>12 Your Honor, Mr. Fornell was asked about JTX 0956,</p> <p>13 which is an email chain between Hugh Babowal, Nick</p> <p>14 Horodinca, and Ben May of Wells Fargo from March 10th,</p> <p>15 2016, with the subject line "Constellation Draft Board</p> <p>16 Slides." It's clip 49, page 210 to 211.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: And in the middle of the</p> <p>19 page, at 8:28 a.m., Mr. Babowal tells Mr. Horodinca</p> <p>20 and Mr. May, "So they accepted \$26 [per] [share] with</p> <p>21 10 percent stock but are trying to negotiate down the</p> <p>22 break fee."</p> <p>23 Do you see that?</p> <p>24 Answer: "[N]egotiate down the break</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 57</p> <p>1 fee," okay.</p> <p>2 Question: And do you remember -- I</p> <p>3 think it is even in the proxy. But there was a</p> <p>4 negotiation about the breakup fee at this time, right?</p> <p>5 Answer: There always is.</p> <p>6 Question: Then it says, "Russ is now</p> <p>7 getting cold feet. Unbelievable. We should push</p> <p>8 forward and update the slides..."</p> <p>9 Do you see that?</p> <p>10 Answer: Yes.</p> <p>11 Question: Sitting here today, do you</p> <p>12 know who told TransCanada that Columbia -- well,</p> <p>13 strike that.</p> <p>14 Is it your understanding today that</p> <p>15 Columbia had accepted the 26, 10 percent, and the only</p> <p>16 thing left was the breakup fee at this time?</p> <p>17 Answer: This is news to me.</p> <p>18 Question: But you worked with -- I'm</p> <p>19 assuming you worked with Mr. Babowal at Wells Fargo in</p> <p>20 your career, right?</p> <p>21 Answer: His office was right next to</p> <p>22 mine.</p> <p>23 Question: And I would assume, because</p> <p>24 I work closely with people like you and Mr. Babowal,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 59</p> <p>1 according to the proxy statement, right?</p> <p>2 Answer: Yes.</p> <p>3 Question: So I want to talk about</p> <p>4 your email here. You write, "That was an accurate</p> <p>5 statement." I think you were referring to</p> <p>6 TransCanada's response to the leak from below.</p> <p>7 And then you write, "They think they</p> <p>8 now have an opportunity to hear what their investors</p> <p>9 think about this. The Capricorn board is freaking out</p> <p>10 and told the management team to get a deal done with</p> <p>11 "whatever it takes".. Oddly, the Capricorn team has</p> <p>12 relayed this info to Taurus."</p> <p>13 Do you see that?</p> <p>14 Answer: I do.</p> <p>15 Question: Who provided you with this</p> <p>16 information; do you remember?</p> <p>17 Answer: I do not remember.</p> <p>18 Question: So it could have been</p> <p>19 Mr. Poirier relaying to you what Mr. Smith told him,</p> <p>20 right?</p> <p>21 Answer: It could be.</p> <p>22 Question: It also could have been</p> <p>23 Mr. Girling saying what Mr. Skaggs told him, right?</p> <p>24 Answer: Could be.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 58</p> <p>1 that you trust what they're presenting as information</p> <p>2 in a work product, right?</p> <p>3 Answer: I have a lot of respect for</p> <p>4 Hugh Babowal.</p> <p>5 (End of video clip.)</p> <p>6 ATTORNEY ORRICO: In the next clip,</p> <p>7 Your Honor, Mr. Fornell was asked about JTX 0952,</p> <p>8 which is a March 10th, 2016, email from Mr. Fornell,</p> <p>9 with the subject line "State of play." It's clip 51,</p> <p>10 pages 212 to 217.</p> <p>11 (A video clip was played as follows:)</p> <p>12 Question: All I'm trying to establish</p> <p>13 is that by the time you sent this email --</p> <p>14 Answer: Yes.</p> <p>15 Question -- the <b>Wall Street Journal</b></p> <p>16 had come out with the leak, right?</p> <p>17 Answer: Yes.</p> <p>18 Question: And Mr. Poirier and</p> <p>19 Mr. Smith had a conversation about, hey, we're</p> <p>20 interested in doing a deal at 26, but we want</p> <p>21 exclusivity, right?</p> <p>22 Answer: Yes.</p> <p>23 Question: And Mr. Skaggs and</p> <p>24 Mr. Girling had a similar conversation, at least</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 60</p> <p>1 Question: Fair to say that someone</p> <p>2 from TransCanada told you what information they were</p> <p>3 getting from Columbia management on the morning of</p> <p>4 March 10th, 2016, right?</p> <p>5 Answer: Yes.</p> <p>6 Question: And you say that it was odd</p> <p>7 that Columbia told this information to TransCanada,</p> <p>8 right?</p> <p>9 Answer: Yes.</p> <p>10 Question: Okay. Why was it odd?</p> <p>11 Answer: It struck me as odd that a</p> <p>12 counterparty would tell you that their board is</p> <p>13 freaking out.</p> <p>14 Question: Right.</p> <p>15 Answer: But, on the other hand, as I</p> <p>16 think about this with the passage of time, clearly it</p> <p>17 was something, as we talked about earlier, you would</p> <p>18 expect the Capricorn share price to go up and the</p> <p>19 Taurus share price to go down. It could be a ploy to</p> <p>20 keep Taurus engaged.</p> <p>21 Question: But you wrote that the</p> <p>22 board was freaking out, right?</p> <p>23 Answer: Yes.</p> <p>24 Question: And they told the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 61</p> <p>1 management team to get a deal done with whatever it</p> <p>2 takes, right?</p> <p>3 Answer: Yes.</p> <p>4 Question: And there is a leak out</p> <p>5 now, right?</p> <p>6 Answer: Yes.</p> <p>7 Question: There's no exclusivity yet,</p> <p>8 right?</p> <p>9 Answer: Correct.</p> <p>10 Question: And it's fair to say that</p> <p>11 it could be interpreted, as well, that Columbia looks</p> <p>12 a little desperate here to get a deal done now, right?</p> <p>13 Attorney Yoch: Objection.</p> <p>14 Answer: That is clearly a possible</p> <p>15 interpretation.</p> <p>16 Question: And they are acting</p> <p>17 desperate -- one of the interpretations is that they</p> <p>18 are desperate even though there is an opportunity now</p> <p>19 for another bid to come in because it is publicly</p> <p>20 known that they are in deal discussions, right?</p> <p>21 Answer: Yes.</p> <p>22 Question: And your initial reaction</p> <p>23 as a senior banker is that this was odd that Columbia</p> <p>24 provided this information to TransCanada while you</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 63</p> <p>1 will do a deal with whatever it takes. There is no</p> <p>2 exclusivity, and it is public that Columbia may be for</p> <p>3 sale.</p> <p>4 Right?</p> <p>5 Answer: Yes.</p> <p>6 (End of video clip.)</p> <p>7 ATTORNEY ORRICO: In the next clip,</p> <p>8 Your Honor, Mr. Fornell was asked JTX 0975 and</p> <p>9 JTX 1063, which are a March 11th, 2016, Wells Fargo</p> <p>10 email, with the subject line "Constellation FO Memo,"</p> <p>11 and the attached Wells Fargo fairness opinion memo.</p> <p>12 These are clips 52, 53, 54, pages 218 to 219, 220 to</p> <p>13 222, and 222 to 223.</p> <p>14 (A video clip was played as follows:)</p> <p>15 Question: This looks to be like a</p> <p>16 draft fairness opinion memo sent to the fairness</p> <p>17 opinion committee at Wells Fargo, right?</p> <p>18 Answer: Yes.</p> <p>19 Question: Let me ask you this. If</p> <p>20 your team is preparing a fairness opinion memo, that</p> <p>21 means there is a seriousness about getting a deal done</p> <p>22 at this price because it is going to be brought for</p> <p>23 board approval, right?</p> <p>24 Answer: Yes.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 62</p> <p>1 were in active deal discussions, right?</p> <p>2 Answer: That was my initial reaction.</p> <p>3 Question: Then, above, Mr. Pitt</p> <p>4 writes, "Turmoil provides opportunity. Taurus would</p> <p>5 appear to be well positioned."</p> <p>6 Do you see that?</p> <p>7 Answer: I do.</p> <p>8 Question: You wrote, "Yes," right?</p> <p>9 Answer: Yes.</p> <p>10 Question: You agree with that</p> <p>11 statement, right?</p> <p>12 Answer: At that time, yes.</p> <p>13 Question: Let me put it this way.</p> <p>14 TransCanada appeared to be well positioned because, as</p> <p>15 we discussed, Columbia had just told them we will get</p> <p>16 a deal done with you with whatever at that takes,</p> <p>17 right?</p> <p>18 Answer: That's what was communicated.</p> <p>19 Question: So, again, I want to orient</p> <p>20 ourselves, Mr. Fornell. We have March 10th, there is</p> <p>21 an indication from Columbia, hey, we are interested in</p> <p>22 doing the deal that you offered at 26, 10 percent</p> <p>23 stock. There is a leak. Someone at Columbia tells</p> <p>24 someone at TransCanada the board is freaking out. We</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 64</p> <p>1 Question: Okay. And, again, as of</p> <p>2 March 11th, 2016, there was no exclusivity between</p> <p>3 Columbia and TransCanada, right?</p> <p>4 Answer: Correct.</p> <p>5 Question: I want to go to the second</p> <p>6 paragraph. I won't read it -- well, actually, I will</p> <p>7 read it. In the middle, it says, "Taurus board met in</p> <p>8 the days following and, on March 9, 2016, approved the</p> <p>9 submission of an verbal offer of \$26.00 per share,</p> <p>10 consisting of 90% cash and 10% stock. The Capricorn</p> <p>11 board accepted this preliminary offer on the morning</p> <p>12 [of] March 10th, 2016."</p> <p>13 Do you see that?</p> <p>14 Answer: I do.</p> <p>15 Question: So, again -- let me ask you</p> <p>16 this. Your team is not in the practice of giving</p> <p>17 inaccurate information to your fairness committee,</p> <p>18 right?</p> <p>19 Answer: That is correct.</p> <p>20 Question: So you would agree that --</p> <p>21 well, strike that.</p> <p>22 It's fair to say that, at least</p> <p>23 according to this document, it was Wells Fargo's</p> <p>24 understanding that Columbia had accepted the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 65</p> <p>1 preliminary offer of \$26 per share with a 10 percent</p> <p>2 stock component on the morning of March 10th, 2016,</p> <p>3 correct?</p> <p>4 Answer: That is my understanding from</p> <p>5 this memo, yes.</p> <p>6 Question: And the memo continues with</p> <p>7 what we've just been talking about. Later that</p> <p>8 morning, The Wall Street Journal reported from an</p> <p>9 un-named source that Taurus was in late stage</p> <p>10 discussion with Capricorn on a potential transaction.</p> <p>11 Despite the news leak, the two sides continue to</p> <p>12 negotiate the remaining items of the merger agreement,</p> <p>13 primarily the termination fee."</p> <p>14 Do you see that?</p> <p>15 Answer: Yes.</p> <p>16 Question: And that was true, right?</p> <p>17 Answer: Yes.</p> <p>18 Question: This memo is being</p> <p>19 circulated -- looking at Exhibit 42 -- as of</p> <p>20 March 11th, 2016, correct?</p> <p>21 Answer: Yes.</p> <p>22 Question: So at least as of</p> <p>23 March 11th, 2016, it was full steam ahead of we're</p> <p>24 going to get the deal done at 26, right?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 67</p> <p>1 show you the document in a second -- but Columbia is</p> <p>2 asking for TransCanada to sign off on a script on how</p> <p>3 to respond to this inbound, right?</p> <p>4 Answer: Yes.</p> <p>5 Question: And he above that writes,</p> <p>6 "This looks like fiduciary out during exclusivity.</p> <p>7 Would they have that anyways, and would they be</p> <p>8 obligated to say [] they cannot engage as they are in</p> <p>9 a period of exclusivity?"</p> <p>10 He's sending that to you and</p> <p>11 Mr. Babowal and Ms. Johnston, right, on March 12th?</p> <p>12 Answer: Yes.</p> <p>13 Question: Above -- well, let me ask</p> <p>14 you this. It's fair to say Mr. Poirier was asking for</p> <p>15 Wells Fargo's input on how to interpret the script and</p> <p>16 whether to sign off on it, right?</p> <p>17 Answer: Yes.</p> <p>18 Question: Mr. Babowal, who you, I</p> <p>19 think you said, sit next to, he responds, "My bet is</p> <p>20 Frumkin is telling them they can't re-up exclusivity</p> <p>21 now that the deal leaked and this is the compromise</p> <p>22 they came up with. The problem is 'serious' is in the</p> <p>23 eye of the beholder. Does that mean a financed</p> <p>24 bud" -- I think he meant "bid" --</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 66</p> <p>1 Answer: Yes.</p> <p>2 Question: And, again, there was no</p> <p>3 exclusivity as of March 11th, 2016, right?</p> <p>4 Answer: Correct.</p> <p>5 Question: And I'm just orienting you</p> <p>6 in time. So on "Monday, March 14th, 2016, Columbia</p> <p>7 and TransCanada executed an exclusivity agreement</p> <p>8 granting TransCanada exclusivity through 5:00 p.m.</p> <p>9 Central Time on March 18, 2016."</p> <p>10 Do you see that?</p> <p>11 Answer: I do.</p> <p>12 Question: So I just want to orient</p> <p>13 us. Mr. Poirier asked for exclusivity on March 10th,</p> <p>14 right?</p> <p>15 Answer: I think that's right.</p> <p>16 (End of video clip.)</p> <p>17 ATTORNEY ORRICO: The next clip, Your</p> <p>18 Honor, Mr. Fornell is asked about JTX 1029, which is a</p> <p>19 March 12th, 2016, email between Fornell, Poirier, Hugh</p> <p>20 Babowal, and Chris Johnston with the subject line</p> <p>21 "Exclusivity Extension - Inbound Response Language."</p> <p>22 These are clips 55 and 57, pages 225 and 227 to 230.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: Per this document -- I'll</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 68</p> <p>1 Answer: Yes.</p> <p>2 Question: -- "subject only to the</p> <p>3 confirmatory DD? Or can someone write a per share</p> <p>4 price on a cocktail napkin? If they are giving us a</p> <p>5 moral commitment that [] is the former I would be okay</p> <p>6 with this. I think we need to talk to them."</p> <p>7 Do you see that?</p> <p>8 Answer: Yes.</p> <p>9 Question: And you received that</p> <p>10 email, right?</p> <p>11 Answer: Yes.</p> <p>12 Question: Based on your experience</p> <p>13 working with Mr. Babowal, he attempts to give accurate</p> <p>14 advice when he's dealing with a client, right?</p> <p>15 Answer: He does.</p> <p>16 Question: So it's fair to say that</p> <p>17 Mr. Babowal and Wells Fargo, you, were okay with the</p> <p>18 script as long as Columbia gave a moral commitment</p> <p>19 that the term "serious written proposal" meant a</p> <p>20 finance bid subject only to confirmatory due</p> <p>21 diligence, right?</p> <p>22 Attorney Yoch: Objection to form.</p> <p>23 Answer: I think he was setting up two</p> <p>24 ends of a possibility here, which is, "Does that mean</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 69</p> <p>1 a financed [bid] subject only to confirmatory [due 2 diligence]? Or can someone write a per share price on 3 a cocktail napkin? If they are giving us a moral 4 commitment that it is the former ...."</p> <p>5 So the question, then, is, is it -- I 6 think what he was saying here is it has to be serious. 7 And clearly a financed bid subject only to 8 confirmatory due diligence, that would be serious. 9 But I am also expecting that if he had a conversation 10 with Hugh around that, there could be things that are 11 short of that that are still serious.</p> <p>12 Question: Okay. But it's fair to say 13 that in his email, right, he says if they are giving 14 us a moral commitment that it's the former, which is 15 in the email, it is a financed bid subject only to 16 confirmatory due diligence, he would be okay with it 17 and he thinks we need to talk to them, right?</p> <p>18 Answer: Right. And the need to talk 19 to them is, otherwise, you can just email back and 20 say, look, this is serious. You have to talk to them 21 and find out what else could possibly be serious and 22 have a conversation around that.</p> <p>23 Question: Right. And I could show 24 you some documents. But it is fair to say that from</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 71</p> <p>1 proposals from others."</p> <p>2 Do you see that?</p> <p>3 Answer: I see that, and that actually 4 is consistent with what I just said.</p> <p>5 Question: Right. I'm just showing 6 that you -- I'm agreeing with you. You guys wanted to 7 get comfort with how Columbia was interpreting 8 "serious written proposal," right?</p> <p>9 Answer: Uh-huh.</p> <p>10 Question: And is it fair to say that 11 you would not be comfortable with signing off on the 12 script if the words "serious written proposal" meant 13 anyone could lob in a cocktail napkin for \$30 per 14 share, right?</p> <p>15 Answer: Yes.</p> <p>16 Question: There needed to be some 17 sort of diligence behind that proposal that it could 18 actually happen, correct?</p> <p>19 Answer: Yes.</p> <p>20 Attorney Yoch: Objection.</p> <p>21 Question: Now, let me ask you this. 22 Well, I will represent to you -- how about this, 23 Mr. Fornell. I will represent to you that that script 24 that we just looked at was signed off by TransCanada.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 70</p> <p>1 Wells Fargo's team, right, you reached out to Goldman 2 Sachs to be like, hey, what does "serious" mean, 3 right?</p> <p>4 Answer: That sounds sensible. 5 (End of video clip.)</p> <p>6 ATTORNEY ORRICO: The next clip, 7 Mr. Fornell is asked about JTX 1027, which is a 8 March 12, 2016, email between Mr. Fornell and 9 Columbia's bankers from Goldman Sachs, and JTX 1732, 10 which contains text messages between Glen Kettering, 11 Bob Skaggs, Bob Smith, and Steve Smith from March 12, 12 2016. These are clips 58 and 59, pages 231 to 233 and 13 235 to 238.</p> <p>14 (A video clip was played as follows:) 15 Question: Wells Fargo document 16 123179. At the bottom, you will see an email from you 17 after Mr. Babowal's email on March 12th, 2016. The 18 subject line "Call?" to the folks at Goldman Sachs. 19 Right? 20 Answer: Yes. 21 Question: You say, "Would you be 22 available at 2:30 or 3 [] today for a call with Hugh 23 and me. We just want to understand what you are 24 intending around exclusivity and serious written</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 72</p> <p>1 Okay? Does that sound right?</p> <p>2 Answer: All right.</p> <p>3 Question: So it's fair to say that 4 through your conversations with Goldman Sachs -- and 5 I'll show you some other conversations between 6 Mr. Poirier and Mr. Smith -- TransCanada got comfort 7 about the interpretation of "serious written proposal" 8 to sign off on that script, correct?</p> <p>9 Answer: Okay.</p> <p>10 Question: Do you agree with that?</p> <p>11 Answer: Yes.</p> <p>12 Question: And we are going to go to 13 the text message that is 3/12/2016, time stamp 18:06. 14 Answer: Okay.</p> <p>15 Question: Bob Smith provides an 16 update. He said, "Just texted back-and-forth with 17 Matt. Was getting ready to update you. He spoke with 18 Wells. Said everything went fine. Said they seem to 19 be okay with the language. He said it felt like 20 Francois sent them to sniff out any issues, none were 21 found."</p> <p>22 Do you see that?</p> <p>23 Answer: Yes.</p> <p>24 Question: So, again, it sounds like</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 73</p> <p>1 you guys agreed to the script and it was -- and it's</p> <p>2 consistent with what your testimony was, the purpose</p> <p>3 of the call was to be like, hey, what does "serious</p> <p>4 written proposal" mean, right?</p> <p>5 Answer: Yes.</p> <p>6 Question: I want to go down a few</p> <p>7 more texts. There is a text from 3/12/2016 at 18:49.</p> <p>8 Do you see that?</p> <p>9 Answer: Yes.</p> <p>10 Question: This is from Steve Smith.</p> <p>11 He says, "I think we are done" -- hold on. The text</p> <p>12 above that, I'm sorry, is from Bob Smith, and he says,</p> <p>13 "Did you talk to Francois?"</p> <p>14 Do you see that?</p> <p>15 Answer: Yes.</p> <p>16 Question: And then Steve Smith</p> <p>17 responds, "I think we are done. Francois wanted to</p> <p>18 know the rationale - I explained it and pointed out</p> <p>19 how important the Fiduciary protections were for our</p> <p>20 Board. Told him we wanted to get this deal done with</p> <p>21 them and this would help us achieve that goal. They</p> <p>22 were circling the wagons one last time and Francois</p> <p>23 said he would not have Chris reach out to Bob to get</p> <p>24 it signed up once the meeting was concluded."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 75</p> <p>1 going to entertain competition at this point. He says</p> <p>2 we want to get a deal done with you, right?</p> <p>3 Answer: It makes sense. They put all</p> <p>4 that work in and they wanted TransCanada to finish it.</p> <p>5 (End of video clip.)</p> <p>6 ATTORNEY ORRICO: JTX 1110, which is a</p> <p>7 March 16th, 2016, email between Mr. Fornell and</p> <p>8 Mr. Poirier with the subject: "Market." It's</p> <p>9 clip 1661, pages 240 to 242 and 242 to 246.</p> <p>10 (A video clip was played as follows:)</p> <p>11 Question: Now, ultimately what</p> <p>12 happened is that TransCanada ended up lowering the</p> <p>13 offer, right, from \$26 per share with 10 percent stock</p> <p>14 to 25.50 all cash, right?</p> <p>15 Answer: Yes.</p> <p>16 Question: And that occurred on</p> <p>17 March 14th, 2016, correct?</p> <p>18 Answer: Yes.</p> <p>19 Question: And that occurred only</p> <p>20 after TransCanada obtained exclusivity from Columbia;</p> <p>21 right?</p> <p>22 Answer: Yes.</p> <p>23 Question: And only after TransCanada</p> <p>24 got comfort with what the script meant, right,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 74</p> <p>1 Do you see that?</p> <p>2 Answer: Yes.</p> <p>3 Question: So again, it's fair to say</p> <p>4 that after the postscript for the inbounds was</p> <p>5 presented to TransCanada, both Wells Fargo and</p> <p>6 Mr. Poirier all got comfort that the term "serious</p> <p>7 written proposal" was the commitment that you wanted</p> <p>8 and signed off on the script, right?</p> <p>9 Answer: Yes.</p> <p>10 Attorney Yoch: Objection to the form.</p> <p>11 Question: Now, we just read this text</p> <p>12 from Mr. Smith. And again, we established there was</p> <p>13 no exclusivity on the March 12th, 2016, right?</p> <p>14 Answer: Right.</p> <p>15 Question: And Mr. Smith is assuring</p> <p>16 Mr. Poirier that they are going to get a deal done</p> <p>17 with them, right?</p> <p>18 Answer: That they want to get a deal</p> <p>19 done.</p> <p>20 Question: That's fair. I didn't mean</p> <p>21 to put words in people's mouth. They want to get a</p> <p>22 deal done with TransCanada, right?</p> <p>23 Answer: Yes.</p> <p>24 Question: He's not saying we are</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 76</p> <p>1 "serious written proposal"?</p> <p>2 Answer: Yes.</p> <p>3 Question: And after Mr. Smith assured</p> <p>4 Mr. Poirier that they wanted to get a deal done with</p> <p>5 TransCanada; right?</p> <p>6 Answer: Yes</p> <p>7 Question: And TransCanada lowered the</p> <p>8 bid to just 25.50 in cash and got rid of the stock</p> <p>9 component with knowledge that Skaggs and Smith, one of</p> <p>10 their main criteria for a deal was all cash; right?</p> <p>11 Attorney Yoch: Objection to the form.</p> <p>12 Attorney Mangan: Objection.</p> <p>13 Answer: Yes.</p> <p>14 Question: We have heard a lot -- I</p> <p>15 have personally for, like, six years now -- that</p> <p>16 the -- one of the reasons that TransCanada lowered its</p> <p>17 bid is because of the deterioration of the stock price</p> <p>18 following the leak. Is that consistent with your</p> <p>19 recollection?</p> <p>20 Answer: Yes.</p> <p>21 Question: Now I just want to get a</p> <p>22 couple things straight. I showed you the board notes</p> <p>23 from Ms. Johnston. But TransCanada made that bid of</p> <p>24 \$26 per share with a 10 percent stock component with</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 77</p> <p>1 full knowledge that a leak could be coming and that</p> <p>2 their stock price could be negatively affected, right?</p> <p>3 Answer: Yes.</p> <p>4 Question: And, actually, let me say</p> <p>5 this, the deal wasn't finalized, announced, handshake,</p> <p>6 dotted I, signed or anything until March 17th, 2016,</p> <p>7 right?</p> <p>8 Answer: Yes, I think that's right.</p> <p>9 Question: In the middle of the page,</p> <p>10 there is an email from you to Mr. Fornell and</p> <p>11 Mr. Poirier on March 16th, 2016. It says: "Market".</p> <p>12 Your stock is hanging in nicely."</p> <p>13 Right?</p> <p>14 Answer: Yes.</p> <p>15 Question: That was true at the time,</p> <p>16 right?</p> <p>17 Answer: It was when I sent that, yes.</p> <p>18 Question: And Mr. Poirier wrote,</p> <p>19 "Agreed!"</p> <p>20 Right?</p> <p>21 Answer: Yes.</p> <p>22 Question: When TransCanada lowered</p> <p>23 its offer to 25.50, it also informed Columbia that it</p> <p>24 would issue a press release saying that the deal</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 79</p> <p>1 that message, or did Mr. Poirier deliver that message?</p> <p>2 Answer: It wasn't me.</p> <p>3 Question: Do you know if Mr. Poirier</p> <p>4 asked Columbia if he had written board authorization</p> <p>5 to go public about the deal?</p> <p>6 Answer: No.</p> <p>7 Question: Do you know if Columbia did</p> <p>8 anything to push back against Mr. Poirier about</p> <p>9 threatening to go public about the deal?</p> <p>10 Attorney Yoch. Objection to the form.</p> <p>11 Answer: I don't know. But it is my</p> <p>12 understanding that TransCanada would have been</p> <p>13 required by the rules of the Toronto Stock Exchange</p> <p>14 because of the previous announcement that they had</p> <p>15 made. Under those rules, they would have to announce</p> <p>16 that their conversations with the third party had been</p> <p>17 terminated.</p> <p>18 Question: Mr. Fornell, it's true,</p> <p>19 right, that every time Mr. Poirier got exclusivity</p> <p>20 from Columbia, he came in below the range, right?</p> <p>21 Answer: I have to go through that</p> <p>22 with you again.</p> <p>23 Question: I'm happy to do it.</p> <p>24 So when the parties first agreed to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 78</p> <p>1 discussions had been terminated if Columbia did not</p> <p>2 accept the lower offer, right? Do you remember that?</p> <p>3 Answer: Yes.</p> <p>4 Question: And it's true that if</p> <p>5 TransCanada issued that press release, Columbia's</p> <p>6 stock price would be negatively affected likely;</p> <p>7 right?</p> <p>8 Answer: Probably.</p> <p>9 Question: So it's fair to say that</p> <p>10 part of the motivation of presenting that information</p> <p>11 was to threaten Columbia to take the deal because</p> <p>12 TransCanada knew it was no longer in exclusivity by</p> <p>13 coming in below \$26 a share, right?</p> <p>14 Attorney Mangan: Objection.</p> <p>15 Attorney Yoch: Objection to form.</p> <p>16 Answer: So you're saying that</p> <p>17 TransCanada was doing that to threaten Columbia</p> <p>18 instead of complying with the laws of the -- rules of</p> <p>19 the Toronto Stock Exchange?</p> <p>20 Question: I didn't say anything about</p> <p>21 the Toronto Stock Exchange.</p> <p>22 Answer: Well, I offered that up as an</p> <p>23 explanation.</p> <p>24 Question: Okay. Were you delivering</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 80</p> <p>1 exclusivity, the range was 25 and 28 as of</p> <p>2 January 25th, 2016, correct?</p> <p>3 Answer: Yes.</p> <p>4 Question: And the first offer off of</p> <p>5 that exclusivity period was 24; correct?</p> <p>6 Answer: Yes.</p> <p>7 Question: That was below the range;</p> <p>8 right?</p> <p>9 Answer: Yes.</p> <p>10 Question: And when Columbia said no,</p> <p>11 TransCanada came right back; right?</p> <p>12 Answer: Yes.</p> <p>13 Question: And when Mr. Poirier got</p> <p>14 exclusivity again in this situation, he came in below</p> <p>15 \$26 per share; right?</p> <p>16 Answer: But he came back with the</p> <p>17 25.50 cash. It is below the range, but they wanted</p> <p>18 all cash.</p> <p>19 Question: Management did; right?</p> <p>20 Answer: I assume that they were</p> <p>21 acting on behalf of the board.</p> <p>22 (End of video clip.)</p> <p>23 ATTORNEY ORRICO: Your Honor,</p> <p>24 plaintiffs' last cliff from Mr. Fornell, he is asked</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

<p style="text-align: right;"><b>E. Fornell - Video</b> Page 81</p> <p>1 about JTX 1186, which is an April 5th, 2016, email</p> <p>2 from Fornell with subject: "Constellation -</p> <p>3 Interloper." It's clip 62, pages 247 to 248.</p> <p>4 (A video clip was played as follows:)</p> <p>5 Question: At the very bottom is an</p> <p>6 email from Mr. Poirier to you and other members of</p> <p>7 Wells Fargo and TransCanada management. He writes, "I</p> <p>8 have received credible information that ENB" -- that's</p> <p>9 Enbrick, right?</p> <p>10 Answer: Yes.</p> <p>11 Question: "... is taking a hard look</p> <p>12 at Columbia, but hasn't yet decided on approach.</p> <p>13 "We are planning to finalize our</p> <p>14 interloper strategy this week, for me to present to</p> <p>15 Russ next Monday. I believe that timeline is still</p> <p>16 fine."</p> <p>17 Do you see that?</p> <p>18 Answer: Yes.</p> <p>19 Question: And then he continues,</p> <p>20 "Those of you who you deal with banks, should</p> <p>21 obviously be sending the message of long term</p> <p>22 repercussions to the relationship if they support a</p> <p>23 competing bid in any way."</p> <p>24 Do you see that?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 83</p> <p>1 attendance at the Wells Fargo Energy Conference in</p> <p>2 December of 2015. It's page 158 of the transcript and</p> <p>3 JTX 466.</p> <p>4 The second clip is the state of the</p> <p>5 bid-ask on March 9th, 2016. Page 193 of the</p> <p>6 transcript. And it's Joint Exhibit 914.</p> <p>7 I think the Court has been handed a</p> <p>8 copy of the binder with an annotated copy of</p> <p>9 Mr. Fornell's transcript showing plaintiffs'</p> <p>10 designations, TransCanada's designations,</p> <p>11 TransCanada's objections as well, Your Honor, and the</p> <p>12 two exhibits that are referenced in our two clips.</p> <p>13 (A video clip was played as follows:)</p> <p>14 Question: Why would you tell</p> <p>15 TransCanada on December 7th, 2015, that it was timely</p> <p>16 for you to be meeting with Skaggs and Smith?</p> <p>17 Answer: Skaggs, Kettering and Smith</p> <p>18 and two IR guys, we had just done an equity deal for</p> <p>19 them. It would be interesting to see how they think</p> <p>20 things are going.</p> <p>21 Question: And one of the things that</p> <p>22 Mr. Poirier was interested in in his strategy in</p> <p>23 pursuing that acquisition of Columbia was how the</p> <p>24 equity offering went, correct?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>E. Fornell - Video</b> Page 82</p> <p>1 Answer: I do.</p> <p>2 Question: That's a threat, right?</p> <p>3 He's telling you that you should go threaten banks if</p> <p>4 they are going to try to finance a competing bid;</p> <p>5 right?</p> <p>6 Answer: Yes.</p> <p>7 (End of video clip.)</p> <p>8 ATTORNEY ORRICO: Thank you, Your</p> <p>9 Honor.</p> <p>10 THE COURT: Are there any</p> <p>11 counterclips?</p> <p>12 ATTORNEY OLSEN: Your Honor, we played</p> <p>13 them during -- sorry. I'm wrong. There are</p> <p>14 counterclips.</p> <p>15 THE COURT: All right. Just as a</p> <p>16 warning, I am going to break in four minutes.</p> <p>17 ATTORNEY NORVAL: I've got about three</p> <p>18 and a half minutes. Sarah Norval on behalf of</p> <p>19 TransCanada.</p> <p>20 We just have two clips from</p> <p>21 Mr. Fornell's testimony. What plaintiffs' played</p> <p>22 included counterdesignations for their clips, so we</p> <p>23 have two additional.</p> <p>24 The first clip is about Mr. Fornell's</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>E. Fornell - Video</b> Page 84</p> <p>1 Answer: Yes.</p> <p>2 Question: Let me ask you this, when</p> <p>3 you met with Skaggs, Smith, and Kettering, who were</p> <p>4 you representing?</p> <p>5 Answer: I was representing Wells</p> <p>6 Fargo in that conversation. They were at our energy</p> <p>7 conference. It is important for me to make them feel</p> <p>8 welcome. We had just been a passive book runner on a</p> <p>9 \$1 billion equity deal for them because we had an</p> <p>10 opportunity to thank them.</p> <p>11 Question: It was also timely because</p> <p>12 you could tell your client, TransCanada, who you just</p> <p>13 sent an engagement letter to, what Columbia's</p> <p>14 management was thinking about the equity in a</p> <p>15 potential deal, no?</p> <p>16 Answer: I think it is highly unlikely</p> <p>17 that Skaggs and Smith were going to talk to me about a</p> <p>18 merger transaction in front of two IR guys.</p> <p>19 Question: Did you have a one-on-one</p> <p>20 conversation with Mr. Smith during the energy</p> <p>21 conference?</p> <p>22 Answer: I do not recall.</p> <p>23 Question: Let's see what the document</p> <p>24 says. Exhibit 27 is a TransCanada document, 426065.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## E. Fornell - Video

E. Fornell - Video Page 85	E. Fornell - Video Page 87
<p>1 December 8th email. Do you see that?</p> <p>2 Answer: Got it.</p> <p>3 Question: So you met with the</p> <p>4 Columbia folks at the energy conference, right?</p> <p>5 Answer: Yes.</p> <p>6 Question: And on December 8th, the</p> <p>7 same day at the energy conference, you email</p> <p>8 Mr. Poirier, "Are you reachable," as the subject line,</p> <p>9 and you said, "I had a nice talk with Steve Smith at</p> <p>10 the energy conference."</p> <p>11 Do you see that?</p> <p>12 Answer: I do.</p> <p>13 Question: Do you recall any</p> <p>14 conversation with Mr. Smith or specifics at the energy</p> <p>15 conference?</p> <p>16 Answer: I do not.</p> <p>17 Question: You can't dispute one way</p> <p>18 or the other if Mr. Smith discussed with you any</p> <p>19 interest in continuing deal discussions or doing a</p> <p>20 deal with TransCanada at the energy conference;</p> <p>21 correct?</p> <p>22 Answer: That's correct.</p> <p>23 Question: It looks like Columbia</p> <p>24 management countered at 26.50, then TransCanada</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 (End of video clip.)</p> <p>2 ATTORNEY NORVAL: Thank you, Your</p> <p>3 Honor.</p> <p>4 THE COURT: Thank you.</p> <p>5 Well, it's 10:45. Let's take our</p> <p>6 morning break. We will resume at 11:00.</p> <p>7 (Recess taken at 10:46 a.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>CHANCERY COURT REPORTERS</p>
E. Fornell - Video Page 86	E. Fornell - Video Page 88
<p>1 management delivered a board-authorized price of</p> <p>2 25.25, and Columbia management delivered a</p> <p>3 board-authorized price of \$26 per share.</p> <p>4 Do you see that?</p> <p>5 Answer: Yes.</p> <p>6 Question: So my question is this: At</p> <p>7 least according to this document that was presented to</p> <p>8 the TransCanada board, Columbia management had</p> <p>9 delivered a board-authorized price of \$26 per share as</p> <p>10 of March 5th, 2016; correct?</p> <p>11 Answer: Yes.</p> <p>12 Question: And then it says,</p> <p>13 "Indications from Capricorn that the board is open to</p> <p>14 discussions with TransCanada to confirm its</p> <p>15 willingness to transact at 26 per share."</p> <p>16 Right?</p> <p>17 Answer: Yes.</p> <p>18 Question: And I will show you some</p> <p>19 more documents, but it's fair to say that one of the</p> <p>20 topics at the March 9th, 2016, TransCanada board</p> <p>21 meeting was whether to engage in the transaction at</p> <p>22 \$26 per share; right?</p> <p>23 Answer: Yes, there is a bid/ask of</p> <p>24 25.25 -- sorry -- 25.25 to 26.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 (Resumed at 11:00 a.m.)</p> <p>2 THE COURT: Welcome back, everyone.</p> <p>3 Please be seated.</p> <p>4 ATTORNEY OLSEN: Good morning, Your</p> <p>5 Honor. Mike Olsen for the defense. There are three</p> <p>6 TransCanada witnesses, Mr. Poirier today,</p> <p>7 Mr. Vanaselja and Ms. Johnston tomorrow, that are in</p> <p>8 plaintiffs' case. But we have agreed that we will do</p> <p>9 them all at once. So I will start with direct. They</p> <p>10 will do cross. I will do redirect. Right now we will</p> <p>11 call Francois Poirier to the stand.</p> <p>12 Your Honor, may I approach?</p> <p>13 THE COURT: Please.</p> <p>14 ATTORNEY OLSEN: Thank you.</p> <p>15 Since the last time I was here, I need</p> <p>16 reading glasses. It's very depressing.</p> <p>17 THE COURT: It's been a few years for</p> <p>18 all of us, I think.</p> <p>19 Can you just remain standing so we can</p> <p>20 administer the affirmation. Welcome back, by the way.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 FRANCOIS LIONEL POIRIER, having first</p> <p>23 been duly affirmed, was examined and testified as</p> <p>24 follows:</p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Direct

F. Poirier - Direct Page 89	F. Poirier - Direct Page 91
<p>1 THE COURT: Please proceed.</p> <p>2 BY ATTORNEY OLSEN:</p> <p>3 Q. Good morning, Mr. Poirier.</p> <p>4 <b>A. Good morning.</b></p> <p>5 Q. What is your current position with</p> <p>6 TransCanada?</p> <p>7 <b>A. I am president and chief executive</b></p> <p>8 <b>officer.</b></p> <p>9 Q. And how long have you been the CEO?</p> <p>10 <b>A. Since January 1st, 2021.</b></p> <p>11 Q. When did you join TransCanada?</p> <p>12 <b>A. I joined TransCanada in 2014.</b></p> <p>13 Q. Can you give me a brief overview of</p> <p>14 your work history prior to joining TransCanada.</p> <p>15 <b>A. I was an investment banker for</b></p> <p>16 <b>approximately 18 years with J.P. Morgan from 1991 to</b></p> <p>17 <b>2007, and then also as a banker for Wells Fargo from</b></p> <p>18 <b>2013 to 2014, before joining TransCanada, now called</b></p> <p>19 <b>TC Energy.</b></p> <p>20 Q. During your time -- and will you</p> <p>21 forgive me if I refer to it as TransCanada?</p> <p>22 <b>A. That's fine.</b></p> <p>23 Q. Thank you.</p> <p>24 During your time at J.P. Morgan, did</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 when was the next time you spoke to Mr. Smith?</p> <p>2 <b>A. I believe it was in October of 2015,</b></p> <p>3 <b>when we met in his capacity at Columbia.</b></p> <p>4 Q. When was the first time you met</p> <p>5 Mr. Fornell?</p> <p>6 <b>A. It was in the fall of 1999.</b></p> <p>7 <b>Mr. Fornell had just become the group head of power</b></p> <p>8 <b>and pipelines investment banking at J.P. Morgan. And</b></p> <p>9 <b>I was in the Toronto office at the time, and we had</b></p> <p>10 <b>discussions about transferring to New York and joining</b></p> <p>11 <b>his team.</b></p> <p>12 Q. Did you also work with Mr. Fornell</p> <p>13 again at Wells Fargo?</p> <p>14 <b>A. Yes, I did. In 2013, he was the vice</b></p> <p>15 <b>chairman at Wells Fargo, and still is today. And he</b></p> <p>16 <b>brought me on to be the founding CEO of Wells Fargo</b></p> <p>17 <b>Securities Canada, the post I held until I joined</b></p> <p>18 <b>TransCanada.</b></p> <p>19 Q. Did you have a social relationship</p> <p>20 with Mr. Fornell?</p> <p>21 <b>A. No. You know, business golf, those</b></p> <p>22 <b>types of things, but no.</b></p> <p>23 Q. When you joined TransCanada in 2014,</p> <p>24 what was your role?</p> <p>CHANCERY COURT REPORTERS</p>
F. Poirier - Direct Page 90	F. Poirier - Direct Page 92
<p>1 you meet Steve Smith?</p> <p>2 <b>A. I did.</b></p> <p>3 Q. And how did you meet Mr. Smith?</p> <p>4 <b>A. Mr. Smith was, I believe, treasurer at</b></p> <p>5 <b>American Electric Power, and we had dealings over a</b></p> <p>6 <b>two- or three-year period as part of arranging their</b></p> <p>7 <b>syndicated loan credit facilities.</b></p> <p>8 Q. Was Mr. Smith your primary client</p> <p>9 contact at American Electric Power?</p> <p>10 <b>A. No. The CFO and the VP of finance</b></p> <p>11 <b>were my primary points of contact.</b></p> <p>12 Q. How many other clients were you the</p> <p>13 relationship manager for around that time?</p> <p>14 <b>A. Approximately 20 clients.</b></p> <p>15 Q. And how often did you talk to</p> <p>16 Mr. Smith?</p> <p>17 <b>A. I would say over -- every two or three</b></p> <p>18 <b>months. When you get in a transaction, you will speak</b></p> <p>19 <b>more frequently. So over the time of our arrangement</b></p> <p>20 <b>of loan agreements, would have been every week or so.</b></p> <p>21 Q. Did you have a social relationship</p> <p>22 with Mr. Smith?</p> <p>23 <b>A. No.</b></p> <p>24 Q. After you left J.P. Morgan in 2007,</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. I was president of Energy East</b></p> <p>2 <b>pipeline, which was a proposed crude oil pipeline from</b></p> <p>3 <b>Western Canada to the East Coast of Canada. And I</b></p> <p>4 <b>held that role from the time I joined until September</b></p> <p>5 <b>of 2015.</b></p> <p>6 Q. And how did your job evolve over time</p> <p>7 until you became CEO at TransCanada?</p> <p>8 <b>A. I was head of strategy and corporate</b></p> <p>9 <b>development for TransCanada from -- and held that role</b></p> <p>10 <b>until I became chief operating officer in 2020. I was</b></p> <p>11 <b>given additional responsibility as part of my</b></p> <p>12 <b>development, including being the chief risk officer of</b></p> <p>13 <b>the company, overseeing our operations in Mexico, as</b></p> <p>14 <b>well as overseeing our power and unregulated storage</b></p> <p>15 <b>operations across our entire footprint.</b></p> <p>16 Q. I want to ask you briefly about your</p> <p>17 responsibilities when you were the senior vice</p> <p>18 president of strategy and corporate development.</p> <p>19 What did that job involve?</p> <p>20 <b>A. On the strategy side, I was</b></p> <p>21 <b>responsible for preparing the long-term strategic plan</b></p> <p>22 <b>that was reviewed with the board of directors every</b></p> <p>23 <b>fall and approved, as well as periodic topics of</b></p> <p>24 <b>strategy that the board discussed at its regular board</b></p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Direct

<p style="text-align: right;">Page 93</p> <p><b>F. Poirier - Direct</b></p> <p>1 <b>meetings. And then on the corporate development side,</b>  2 <b>I was responsible for overseeing all potential</b>  3 <b>acquisitions and divestitures.</b></p> <p>4 Q. I want to ask you about Joint Exhibit  5 144. Mr. Poirier, there are a couple of binders in  6 front of you that have the exhibits. You will also  7 see them appear on the screen, whichever is easier for  8 you.</p> <p>9 I'm showing you what's been marked as  10 Joint Exhibit 144, which is a slide deck that  11 discusses a potential TransCanada-Columbia merger. I  12 will represent to you that the metadata -- do you know  13 what metadata is, the electronic information that  14 accompanies the document? I will represent to you  15 that the metadata for this document has a date of  16 July 14, 2015.</p> <p>17 Did you create this document?  18 <b>A. No, I did not. That was created</b>  19 <b>before I was in the role.</b></p> <p>20 Q. When did you assume the role of VP of  21 corporate strategy?  22 <b>A. Approximately in September of 2015.</b></p> <p>23 Q. So does that mean that your  24 predecessor had initiated the concept of looking at</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">Page 95</p> <p><b>F. Poirier - Direct</b></p> <p>1 any conversations with anyone at Columbia?  2 <b>A. None that I am aware of.</b></p> <p>3 Q. When did you first reach out to  4 Columbia?  5 <b>A. I reached out to Columbia in early</b>  6 <b>October of 2015.</b></p> <p>7 Q. And who did you reach out to?  8 <b>A. Given that I had not spoken with Steve</b>  9 <b>Smith in many years, I asked Eric Fornell, who I was</b>  10 <b>aware had maintained contact with him, to reach out to</b>  11 <b>Steve on our behalf and see if he had interest in a</b>  12 <b>meeting. And dinner was arranged. Later in October,</b>  13 <b>I had dinner with Steve.</b></p> <p>14 Q. I want to ask you about, and I'm  15 showing you what's been marked as, Joint Exhibit 245,  16 which is an email from Andrew Isherwood to you dated  17 October 9, 2015, and attaching a revised slide deck  18 relating to a possible Columbia transaction.</p> <p>19 Around the time that you reached out  20 to Mr. Smith, did you ask your team to update  21 TransCanada's internal analysis?  22 <b>A. Yes. I wanted to make sure I was up</b>  23 <b>to date on our views on the combination, as well as</b>  24 <b>recent developments in the company before I had my</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">Page 94</p> <p><b>F. Poirier - Direct</b></p> <p>1 Columbia?  2 <b>A. That's correct.</b></p> <p>3 Q. I want to ask you about Slide 3. What  4 was the strategic rationale at that time for a  5 potential merger with Columbia?  6 <b>A. On the gas pipeline side, TransCanada</b>  7 <b>is predominantly oriented to the Western Canadian</b>  8 <b>basin. We saw the Appalachian basin as a major growth</b>  9 <b>basin for which we did not have a direct connection.</b>  10 <b>And acquiring incumbency through Columbia over the</b>  11 <b>Appalachian basin was of strategic value to us.</b></p> <p>12 Q. Did you have a view at the time as to  13 whether TransCanada had any operational advantages  14 over Columbia that might allow it to better execute  15 Columbia's expansion plans?  16 <b>A. They certainly had a very, very large</b>  17 <b>capital program in relation to the overall size of the</b>  18 <b>company. So the size and scale of TransCanada, our</b>  19 <b>ability to prosecute multiple projects simultaneously,</b>  20 <b>that's on the project execution side. And then on the</b>  21 <b>financing side, the scale of our balance sheet would</b>  22 <b>allow us to fund their program much more easily.</b></p> <p>23 Q. At this point, in July of 2015, had  24 you or, to your knowledge, anyone at TransCanada had</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">Page 96</p> <p><b>F. Poirier - Direct</b></p> <p>1 <b>dinner meeting with Steve.</b></p> <p>2 Q. And is Exhibit 245 that update?  3 <b>A. Yes.</b></p> <p>4 Q. What did you use or what did your team  5 use to build this deck?  6 <b>A. They used public information.</b></p> <p>7 Q. And you said that you met with  8 Mr. Smith later in October. Can you tell me what you  9 discussed at that meeting?  10 <b>A. We discussed the magnitude of their</b>  11 <b>growth program. And, first, we started with</b>  12 <b>discussing whether or not there was a potential for us</b>  13 <b>to partner with them on some of those projects. We</b>  14 <b>talked about some of the skills that we could bring,</b>  15 <b>financing and project execution. We talked about</b>  16 <b>potentially acquiring some of their projects. And</b>  17 <b>then ultimately the conversation gravitated to a</b>  18 <b>change-of-control transaction.</b></p> <p>19 Q. Did Mr. Smith in that meeting, at  20 least in your perspective, seem receptive to  21 discussions about a possible acquisition of Columbia  22 by TransCanada?  23 <b>A. He expressed some doubt as to our</b>  24 <b>ability to proceed with the transaction, given the</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



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1 fact that our market trading multiples and our stock  
2 were well below theirs; that they would have a  
3 preference for a cash transaction. He wasn't certain  
4 that we would be able to raise sufficient amount of  
5 cash to actually proceed with a transaction of that  
6 nature.

7 Q. Eventually did Mr. Smith reach back  
8 out to you to pick up those discussions?

9 A. Yes. We agreed, upon leaving,  
10 concluding our dinner, that he would take our interest  
11 back to his management, and he contacted me and  
12 indicated that they would be interested in having more  
13 conversation.

14 Q. I'm showing you what has been marked  
15 as Joint Exhibit 305, which is an email chain  
16 forwarding the executed NDA between Columbia and  
17 TransCanada.

18 Have you seen that NDA before?

19 A. Yes, I have.

20 Q. In your understanding, what was the  
21 purpose of the NDA?

22 A. The purpose of the NDA, by my  
23 understanding, was to, you know, avoid any unwelcomed  
24 or hostile action on -- on the part of TransCanada

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1 A. Yes. We received, I believe, a  
2 management presentation, yes, to help us with  
3 additional due diligence.

4 Q. I'm showing you what has been marked  
5 as Joint Exhibit 312, 3-1-2, which is an email chain  
6 forwarding a management presentation from Steve Smith  
7 to you.

8 Is this the management presentation  
9 that you referenced that you received in November of  
10 2015?

11 If you can go down a little bit.

12 A. Yes, it is.

13 Q. Were you the only person from  
14 TransCanada communicating with Columbia in the fall of  
15 2015?

16 A. No. Our respective internal -- our  
17 general counsels were in communication, as well as,  
18 ultimately, the respective CEOs of the company had  
19 conversation.

20 Q. And that's -- on the general counsel  
21 side, that's Ms. Johnston and Mr. Bob Smith at  
22 Columbia?

23 A. That's correct.

24 Q. And then it's Mr. Girling and

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1 towards -- towards Columbia.

2 Q. And did the NDA have a standstill  
3 provision?

4 A. Yes, it did.

5 Q. And based on your experience in M&A  
6 transactions, do you have a general understanding of  
7 how standstill provisions like this one function?

8 A. Yes.

9 Q. Can you tell me what that is?

10 A. Essentially, it's to ensure that all  
11 of the activities are coordinated and welcomed by the  
12 counterparty and that no actions that are taken on our  
13 part, ours being TransCanada, could create, for  
14 example, a disclosure obligation on the part of the  
15 counterparty or be deemed to be unwelcomed in any way.

16 Q. Over the course of your discussions  
17 with Columbia, did you also rely on counsel to  
18 interpret and explain the standstill to you?

19 A. Yes, very much so. At every step of  
20 the way, our -- since our goal was to abide by the  
21 terms of the standstill, I consulted with internal and  
22 external counsel.

23 Q. After Columbia and TransCanada signed  
24 the NDA, did TransCanada receive documents?

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1 Mr. Skaggs are the CEOs?

2 A. That's correct.

3 Q. Did TransCanada receive written  
4 authorization from Columbia's board for those  
5 discussions to take place in the fall of 2015?

6 A. No, as none were required.

7 Q. At the end of November, did  
8 TransCanada make an indicative offer to Columbia,  
9 subject to further due diligence?

10 A. Yes.

11 Q. What was that indicative offer?

12 A. The indicative offer was in the range  
13 of 25 to \$26 a share, I believe.

14 Q. How was that offer received by  
15 Columbia?

16 A. It occurred during a meeting between  
17 Mr. Girling and Mr. Skaggs, and Mr. Skaggs indicated  
18 that they would take it away. But ultimately, they  
19 disclosed that it was not a compelling enough offer to  
20 proceed versus other alternatives they were examining.

21 Q. Prior to making the indication of  
22 interest at 25 to \$26 per share, did TransCanada  
23 receive written authorization from Columbia's board?

24 A. No.

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## F. Poirier - Direct

<p style="text-align: right;">F. Poirier - Direct Page 101</p> <p>1 Q. In your understanding at that time,</p> <p>2 was that a problem under the standstill agreement?</p> <p>3 <b>A. My understanding was that that was not</b></p> <p>4 <b>a problem under the standstill.</b></p> <p>5 Q. At that point, could Columbia have</p> <p>6 accepted the range, in your view?</p> <p>7 <b>A. No, given that it was subject to a</b></p> <p>8 <b>fair amount of incremental due diligence.</b></p> <p>9 Q. I'm showing what's been marked as</p> <p>10 Joint Exhibit 392, which is an email from Eric Fornell</p> <p>11 to his team at Wells Fargo, dated November 25th, 2015.</p> <p>12 When did TransCanada engage Wells</p> <p>13 Fargo as its financial advisor in connection with</p> <p>14 evaluating Columbia?</p> <p>15 <b>A. In November of 2015.</b></p> <p>16 Q. Do you know whether Columbia was aware</p> <p>17 that TransCanada was using Wells Fargo as its</p> <p>18 financial advisor?</p> <p>19 <b>A. Yes, they were.</b></p> <p>20 Q. How do you know that?</p> <p>21 <b>A. Because I disclosed such to Steve</b></p> <p>22 <b>Smith.</b></p> <p>23 Q. So at least as far as you knew,</p> <p>24 Columbia knew at least by November 2015 that Wells</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">F. Poirier - Direct Page 103</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And tell me about the discussion, at</p> <p>3 least as far as you learned about it, where</p> <p>4 Mr. Girling asked if he could close the gap between 26</p> <p>5 and 28 and what happened then.</p> <p>6 <b>A. My recollection is that Mr. Skaggs</b></p> <p>7 <b>took that away, consulted either with the board or</b></p> <p>8 <b>with specific members on the board, and came back and</b></p> <p>9 <b>said that they viewed there was too much execution</b></p> <p>10 <b>risk in terms of being able to get to the finish line</b></p> <p>11 <b>in time, so they were proceeding with their equity</b></p> <p>12 <b>offering.</b></p> <p>13 Q. And as the email continues in 392,</p> <p>14 "Capricorn's CEO went back to his lead director to ask</p> <p>15 and came back with the answer that they still do not</p> <p>16 want to take the risk."</p> <p>17 Is that what you were just referring</p> <p>18 to?</p> <p>19 <b>A. Yes, sir.</b></p> <p>20 Q. The next sentence says, "Francois</p> <p>21 spoke with the CFO who said that they will 'probably'</p> <p>22 want to pick up the discussions again 'in a few</p> <p>23 months.'"</p> <p>24 What do you recall about the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">F. Poirier - Direct Page 102</p> <p>1 Fargo was TransCanada's financial advisor with respect</p> <p>2 to a potential transaction?</p> <p>3 <b>A. Yes, that's correct.</b></p> <p>4 Q. And I want to ask you a couple of</p> <p>5 questions about this email. And I realize you are not</p> <p>6 on this email. But Mr. Fornell says here,</p> <p>7 "Capricorn" -- and Capricorn, is that the code name</p> <p>8 for Columbia?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. "Capricorn's CEO called Russ and said</p> <p>11 his board does not want to take the risk that</p> <p>12 Taurus" -- Taurus, was that TransCanada?</p> <p>13 <b>A. I'm sorry. Yes.</b></p> <p>14 Q. Taurus was the nickname for</p> <p>15 TransCanada?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. -- "Taurus won't get there in the end,</p> <p>18 so they are going to go to the equity market next week</p> <p>19 to raise \$1 billion. Russ asked, what if we close the</p> <p>20 gap between [26 and [28 and we get it done before</p> <p>21 Christmas?"</p> <p>22 Is that consistent with your</p> <p>23 recollection of discussions that were taking place</p> <p>24 between the two companies at that time?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">F. Poirier - Direct Page 104</p> <p>1 conversation you had with Mr. Smith at that time?</p> <p>2 <b>A. My recollection is that, you know,</b></p> <p>3 <b>Steve wanted to keep all his options open. It was</b></p> <p>4 <b>always clear that they needed the stock price to</b></p> <p>5 <b>improve. Their perception or understanding or belief</b></p> <p>6 <b>was that there was an overhang in the stock, and their</b></p> <p>7 <b>hope was that issuing a billion dollars of equity to</b></p> <p>8 <b>fund their capital program would result in some relief</b></p> <p>9 <b>of that overhang and stock price appreciation.</b></p> <p>10 Q. At that time, did you have a sense of</p> <p>11 whether that reengagement would actually happen?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Did you have an interest in</p> <p>14 potentially reengaging after the equity offering at</p> <p>15 that time?</p> <p>16 <b>A. Yes, I did.</b></p> <p>17 Q. Why?</p> <p>18 <b>A. Because it's a compelling transaction</b></p> <p>19 <b>and would have been very strategic to TransCanada.</b></p> <p>20 Q. Did TransCanada continue to consider a</p> <p>21 possible transaction with Columbia?</p> <p>22 <b>A. Yes, we did.</b></p> <p>23 Q. What did you do in that regard?</p> <p>24 <b>A. Well, we had an obligation at this</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## F. Poirier - Direct

<p style="text-align: right;">F. Poirier - Direct Page 105</p> <p>1 point to either destroy or return all nonpublic</p> <p>2 information, so we continued our work on the basis of</p> <p>3 public information only, refining our analysis,</p> <p>4 reviewing all public documents to make sure that, to</p> <p>5 the extent they wanted to reengage, we were ready and</p> <p>6 up to date on what was available in the public domain.</p> <p>7 Q. And when you got that "return or</p> <p>8 destroy" request, did you, in fact, return or destroy</p> <p>9 all confidential information?</p> <p>10 A. Yes.</p> <p>11 Q. I'm showing you what's been marked as</p> <p>12 Joint Exhibit 424, which is an email exchange between</p> <p>13 Chris Johnston, you, and Russ Girling, dated</p> <p>14 December 1st, 2015.</p> <p>15 Can you tell me what's going on in</p> <p>16 this discussion?</p> <p>17 A. Ms. Johnston is reminding us of our</p> <p>18 obligations under the standstill.</p> <p>19 Q. Why were you discussing the standstill</p> <p>20 provision in early December 2015?</p> <p>21 A. Because I wanted to make sure that we</p> <p>22 continued to abide by our obligations, recognizing</p> <p>23 that all of our obligations survived the return of the</p> <p>24 information.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">F. Poirier - Direct Page 107</p> <p>1 were referring to as to whether or not to approach a</p> <p>2 board-to-board contact?</p> <p>3 A. That's correct.</p> <p>4 Q. In the first sentence, when you said,</p> <p>5 "We basically must get Capricorn's acquiescence to</p> <p>6 pursue this transaction ...," what did you mean by we</p> <p>7 must get their acquiescence to pursue this</p> <p>8 transaction?</p> <p>9 A. To the extent we wanted to extend an</p> <p>10 offer, a binding offer to acquire the company, we</p> <p>11 needed written consent from the board prior to</p> <p>12 doing so.</p> <p>13 Q. I'm showing you what's been marked as</p> <p>14 Joint Exhibit 414, which is an email chain between you</p> <p>15 and some senior TransCanada executives and Eric</p> <p>16 Fornell and Hugh Babowal from Wells Fargo on</p> <p>17 November 28th and 29th, 2015.</p> <p>18 And I want to start with your email</p> <p>19 discussion on November 29th, which begins on the</p> <p>20 bottom of page 1 of this exhibit and then goes on for</p> <p>21 several pages.</p> <p>22 Are you with me?</p> <p>23 A. If you could scroll down?</p> <p>24 Q. Sure. Sorry.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">F. Poirier - Direct Page 106</p> <p>1 Q. And you referenced having received the</p> <p>2 "return or destroy" request at this point. To your</p> <p>3 understanding, did the "return or destroy" letter</p> <p>4 change any of TransCanada's obligations under the NDA</p> <p>5 and the standstill provision?</p> <p>6 A. It did not change any of our</p> <p>7 obligations.</p> <p>8 Q. At that time, was TransCanada</p> <p>9 considering whether it would be appropriate for</p> <p>10 someone on the TransCanada board to reach out to a</p> <p>11 Columbia board member?</p> <p>12 A. We did have conversations about</p> <p>13 whether or not that was appropriate. Call it sort of</p> <p>14 a brainstorming session, just trying to maintain good</p> <p>15 relationships. But ultimately, we determined that</p> <p>16 under the standstill that was not appropriate, so it</p> <p>17 was not pursued.</p> <p>18 Q. And if you look at the first sentence</p> <p>19 in your email to Mr. Girling up top, you said, "We</p> <p>20 basically must get Capricorn's acquiescence to pursue</p> <p>21 this transaction, or even to seek to influence them.</p> <p>22 Under item 2, this extends to reaching out to board</p> <p>23 members without Bob's knowledge or consent ..."</p> <p>24 That second sentence, is that what you</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">F. Poirier - Direct Page 108</p> <p>1 A. Yes.</p> <p>2 Q. Are you with me now?</p> <p>3 A. Yes, I am.</p> <p>4 Q. You say, "I wanted soak time before</p> <p>5 sending out this note ...."</p> <p>6 What is this note about? Can you tell</p> <p>7 me what's going on here?</p> <p>8 A. I shared my views as to why I thought</p> <p>9 they made the decision they made, anticipating that</p> <p>10 how the market reacted to the unit issuance would have</p> <p>11 an important bearing on their interest in continuing</p> <p>12 with the transaction. And the importance of us</p> <p>13 maintaining our -- you know, continuing to stay</p> <p>14 current on the file based on public information.</p> <p>15 Q. I want to ask you, under your "Key</p> <p>16 inputs" section, you wrote, "The first, and most</p> <p>17 important input, is how the equity offering is</p> <p>18 received, and how the stock trades in the ensuing</p> <p>19 weeks."</p> <p>20 Why did you think that was so</p> <p>21 important?</p> <p>22 A. As I said before, you know, management</p> <p>23 of the company, their job is to maximize shareholder</p> <p>24 value, and any change-of-control transaction is going</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 to get compared against the status quo. So if the  
2 stock trades up significantly after reducing the  
3 overhang, it may rise to a point where it becomes  
4 untransactable for us in terms of a market premium,  
5 et cetera.

6 Q. And if you go back up to the top of  
7 this exhibit, with respect to Mr. Fornell's email on  
8 November 29th, Mr. Fornell, the first point he lists  
9 there is, "If John Lowe is extremely close to Sig  
10 Cornelius, a 'personal' call could be appropriate.  
11 How often do they talk? Once a month? Once every two  
12 years?"

13 Who are Sig Cornelius and John Lowe?  
14 A. John Lowe is a board member of  
15 TransCanada, and Sig Cornelius was the chair of the  
16 board of Columbia at the time.

17 Q. And did you discuss internally that  
18 idea as to whether you should make that board-to-board  
19 contact?

20 A. We had a discussion. And as one of  
21 the prior emails demonstrates, we decided that it was  
22 not allowed under the standstill, so we did not pursue  
23 that.

24 Q. After this discussion we see in this

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1 know, are essentially observers of the transaction.

2 Q. Did you have a discussion with  
3 Mr. Fornell about whether or not you were okay with  
4 him serving in his capacity as an advisor to you on a  
5 potential acquisition and Wells Fargo serving as a  
6 passive book runner with respect to the equity  
7 offering?

8 A. Yes. Mr. Fornell called me to inquire  
9 as to our comfort with them playing this role. And,  
10 first of all, Columbia is aware of their role with us  
11 on the M&A transaction. Secondly, it was a passive  
12 book-runner role. And, thirdly, as I indicated to  
13 Mr. Fornell, I presumed that their conflicts committee  
14 would be aware of and reviewing that role, and my  
15 acquiescence was subject to the conflict committee of  
16 Wells Fargo approving their role in the transaction.

17 Q. Did you ever ask Eric Fornell or  
18 anybody at Wells Fargo for nonpublicly available  
19 information about Columbia?

20 A. No.

21 Q. After the equity offering, did you  
22 discuss the merits of reengaging with Columbia with  
23 Mr. Fornell?

24 A. I did.

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1 exhibit, did you ask Eric Fornell to provide  
2 information about how Columbia's stock was trading  
3 after the equity offering?

4 A. Yes, I did.

5 Q. Tell me about that discussion.

6 A. Well, like any other investment bank,  
7 they have a capital markets desk who can look at  
8 public information around a market buying and selling  
9 in a stock and provide their view, as capital markets  
10 professionals, as to whether or not there was positive  
11 momentum or the stock was -- the stock offering was  
12 deemed to be successful.

13 Q. Was Wells Fargo involved in Columbia's  
14 equity offering?

15 A. Yes, they were.

16 Q. What was their involvement?

17 A. They were involved as a passive book  
18 runner, which means that they did not -- they were not  
19 involved in the marketing -- scheduling of marketing  
20 calls with potential buyers, the book-building  
21 process, et cetera.

22 Passive book runners and other  
23 underwriters are typically invited in at the very last  
24 minute. They take an underwriting liability and, you

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1 Q. Why?

2 A. Because I wanted his professional  
3 opinion on whether or not the equity issuance had been  
4 successful and achieved the company's objectives, and  
5 it would inform when, if, and how I would reapproach  
6 the company.

7 Q. I want to ask you about that  
8 reengagement. After the equity offering, did you, in  
9 fact, reach out to Columbia?

10 A. I did. I reached out to Steve Smith,  
11 I believe, in mid-December.

12 Q. Tell me about that discussion.

13 A. Well, I simply asked him if he would  
14 have an interest in having a check-in call early in  
15 the New Year. You typically need more than a couple  
16 of weeks for the stock to settle out after a  
17 transaction like that. And I was aware, based on my  
18 experience, that they would want to see some passage  
19 of time before they determined whether or not the  
20 equity offering was successful and had achieved their  
21 goals.

22 Q. I'm showing you what has been marked  
23 as Joint Exhibit 1707.

24 ATTORNEY OLSEN: Which, I apologize,

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1 Your Honor, the binder, this has lots of chats, so you  
 2 may have to look at the screen for this one.  
 3 Q. I want to ask you specifically about a  
 4 chat from you to Steve Smith on January 4th, 2016.  
 5 And it's chat 31585.  
 6 Are you with me?  
 7 **A. Yes.**  
 8 Q. You say, "My understanding is that our  
 9 respective counsels have talked, and that we are ok to  
 10 proceed with exchanging information. As we destroyed  
 11 all non public information, in addition to the data  
 12 room index, would it be possible to receive again the  
 13 information you previously sent, including the board  
 14 summaries?"  
 15 Do you see that?  
 16 **A. I do.**  
 17 Q. Did you have an understanding at the  
 18 time that TransCanada counsel had also discussed  
 19 reengagement with Columbia's counsel?  
 20 **A. Yes, I did have that understanding.**  
 21 Q. How did you know that?  
 22 **A. Because I requested our internal**  
 23 **counsel to have that conversation with her**  
 24 **counterparts.**

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1 **copy, but for the date on the front cover, it's an**  
 2 **exact copy of the presentation materials they had**  
 3 **given us in, I believe, November of 2015.**  
 4 Q. And this is shortly after you -- that  
 5 text we just saw; he sent you the same materials you  
 6 had received before?  
 7 **A. That's correct.**  
 8 Q. Shortly after receiving this, did you  
 9 meet with Mr. Smith?  
 10 **A. Yes, I did.**  
 11 Q. Was that on January 7th?  
 12 **A. That's correct.**  
 13 Q. Can you tell me what happened at that  
 14 meeting?  
 15 **A. The intent of the meeting was for**  
 16 **Mr. Smith to provide updates on the share count and,**  
 17 **you know, the equity offering. He presented his view**  
 18 **that the equity offering had been successful; that**  
 19 **despite the dilution incurred in terms of adding to**  
 20 **share count, that the enterprise value had not**  
 21 **changed; and made arguments to try and compel us to be**  
 22 **as aggressive as possible in terms of preparing an**  
 23 **offer, given that his view was that the status quo was**  
 24 **viable.**

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1 Q. Did you learn from Ms. Johnston what  
 2 the conclusion of that discussion was?  
 3 **A. Yes. The conclusion was that it was**  
 4 **acceptable and permitted for me to reach back out to**  
 5 **Steve Smith.**  
 6 Q. In your understanding, did you have a  
 7 view as to whether or not asking to reengage in  
 8 discussions with Columbia violated your standstill  
 9 provision or the NDA?  
 10 **A. In my mind, it did not.**  
 11 Q. Did Columbia, anyone at Columbia, ever  
 12 tell you or anyone at TransCanada, to your knowledge,  
 13 that asking for that reengagement or reengaging was a  
 14 violation of the standstill?  
 15 **A. No.**  
 16 Q. I want to ask you about Joint Exhibit  
 17 523, which is an email from Steve Smith dated  
 18 January 5th, 2016, attaching certain materials.  
 19 ATTORNEY OLSEN: Maybe if you could  
 20 turn to page 16, Kentaro.  
 21 Q. Can you tell me what these materials  
 22 are that you received from Mr. Smith on January 5,  
 23 2016?  
 24 **A. This is -- it's actually an exact**

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1 Q. And when you refer to the status quo,  
 2 what do you mean "the status quo"?  
 3 **A. Meaning Columbia maintaining itself as**  
 4 **a stand-alone entity.**  
 5 Q. I'm showing you what is marked as  
 6 Joint Exhibit 549, which is an email from you to  
 7 Andrew Isherwood dated January 8th, 2016, and  
 8 attaching two documents.  
 9 ATTORNEY OLSEN: Scroll down just a  
 10 little bit so he can see what the documents are,  
 11 Kentaro.  
 12 **A. Yes, I see that.**  
 13 Q. Do you know what these documents are  
 14 that you sent to Mr. Isherwood?  
 15 **A. The updated copy of the management**  
 16 **presentation that was provided and we just reviewed,**  
 17 **as well as a copy of Steve Smith's talking points for**  
 18 **our meeting.**  
 19 Q. I want to turn to page 2, the updated  
 20 management presentation.  
 21 What's contained in this, and what is  
 22 your understanding of why this was provided to you by  
 23 Mr. Smith?  
 24 **A. Could you scroll to the next page,**

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1 please? Thank you.

2 So this included the reflection of the

3 impacts of the equity issuance on the company's share

4 count and balance sheet. It included an update on

5 some of the progress they had made in developing some

6 of the projects on their -- in their project backlog,

7 a reflection of changes in bonus depreciation laws

8 that had been enacted into law, and his argument that

9 those had a potential -- pardon me, a positive impact

10 on value. Yeah. And that was essentially the nature

11 of the update.

12 Q. Did you view it as unusual, Mr. Smith

13 providing you an updated management presentation --

14 A. No.

15 Q. -- of what they had provided you

16 before?

17 A. No.

18 Q. Why not?

19 A. We need to understand recent

20 developments in order to incorporate them in our

21 analysis.

22 Q. I want to ask you about the talking

23 points that are in the last page of this exhibit.

24 A. Right.

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1 encourage us to be as aggressive as possible and to

2 present the company in as favorable a light as

3 possible.

4 Q. In the middle of the page, on the

5 fifth bullet down, there's a reference to price. And

6 the talking points says, "I suggest that you 'lean in'

7 on price as much as possible as every dollar matters a

8 lot to our Board."

9 Can you tell me what Mr. Smith said

10 about that in your meeting?

11 A. Again, on the same theme, wanting us

12 to be as aggressive as possible, because a sale of the

13 company has to compete with the value of the status

14 quo.

15 Q. Now, there's a discussion in these

16 talking points about price certainty. In your

17 experience in dealing with transactions you've dealt

18 with, and negotiations, have you ever seen a selling

19 board, in a discussion like this, that didn't at least

20 in part focus on price and certainty?

21 A. Most often, price and certainty are a

22 key consideration in a change-in-control transaction.

23 Q. Now, the Court's well aware of a

24 discussion that took place about certain other third

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1 Q. Were you surprised that Mr. Smith had

2 talking points?

3 A. Not at all. You know, it's quite

4 common to organize your thoughts around the key

5 messages you want to convey in a meeting, particularly

6 a meeting of importance.

7 Q. At TransCanada, with respect to when

8 you are engaged in transaction discussions, is it your

9 practice to often prepare talking points?

10 A. Most often, I do, yes.

11 Q. And why would you prepare talking

12 points for a meeting like this?

13 A. Just to make sure that you are clear

14 on, and ensure that you convey all of the key messages

15 that you intend to convey in the meeting, and that

16 they are conveyed in an appropriate manner.

17 Q. What did you think about these talking

18 points in particular when Mr. Smith shared them with

19 you?

20 A. My view was he was doing his job.

21 Looking for and maximizing value for the shareholders,

22 he's going to look for an alternative, in terms of an

23 M&A transaction, that clearly competes favorably with

24 the status quo. So his argument, or his job, is to

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1 parties in this meeting.

2 Can you tell me about that discussion.

3 A. Again, you know, how I interpreted

4 that discussion was him encouraging us to be as

5 aggressive as possible, to put and dedicate senior

6 resources to move forward with our analysis. He

7 discussed all of the obvious potential other buyers,

8 as well as offered some view as to why this may not be

9 a good time for them to want to pursue a transaction

10 like this.

11 As a market participant, they -- the

12 identity of those names was not new to me. It's the

13 same list I would have compiled. And there was really

14 nothing new in the information he gave me.

15 Q. Did Mr. Smith, when he was talking

16 about those potential third-party acquirers who could

17 be interested or not interested, did he share any

18 nonpublic information about any of those entities

19 during this meeting?

20 A. No.

21 Q. At the conclusion of this meeting with

22 Mr. Smith, did you take away the notion that

23 TransCanada would have no competition if it wanted to

24 pursue an acquisition of Columbia?

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<p>1           <b>A.</b>       <b>Not at all.</b></p> <p>2           Q.        Why not?</p> <p>3           <b>A.</b>        <b>Because it was an attractive</b></p> <p>4 <b>acquisition for any of the companies that we</b></p> <p>5 <b>discussed, and circumstances change, facts change, and</b></p> <p>6 <b>I know that if I -- I typically maintain a live file,</b></p> <p>7 <b>if you will, up to date on any number of companies out</b></p> <p>8 <b>there to decide to go after and engage if the</b></p> <p>9 <b>opportunity arose.</b></p> <p>10          Q.        I want you to turn to Joint Exhibit</p> <p>11 545. After your meeting with Mr. Smith, did you have</p> <p>12 a call to update your team on that meeting?</p> <p>13          <b>A.</b>        <b>Yes, I did.</b></p> <p>14          Q.        Who did you talk to?</p> <p>15          <b>A.</b>        <b>I spoke with Andrew Isherwood and</b></p> <p>16 <b>Nancy Johnson.</b></p> <p>17          Q.        I'm showing you what's been marked as</p> <p>18 Joint Exhibit 545, and I'll represent to you that</p> <p>19 these are Mr. Isherwood's notes from that call that</p> <p>20 you had with him.</p> <p>21                    Have you seen these notes before?</p> <p>22          <b>A.</b>        <b>Yes, I did. I saw them during my</b></p> <p>23 <b>depositions.</b></p> <p>24          Q.        Did you see these notes</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1 reference to "[Board] of [directors] &amp; [management]</p> <p>2 gap: not answered directly."</p> <p>3                    What did you discuss with Mr. Smith</p> <p>4 about that?</p> <p>5            <b>A.</b>        <b>So, first of all, these aren't minutes</b></p> <p>6 <b>of the meeting. This is a download to my team. So</b></p> <p>7 <b>it's a combination of facts that were shared with me,</b></p> <p>8 <b>but also my impressions.</b></p> <p>9                    And so this was -- reflected my</p> <p>10 <b>impression that there wasn't unanimity between board</b></p> <p>11 <b>and management, and even between board members or even</b></p> <p>12 <b>between management, that a change-of-control</b></p> <p>13 <b>transaction was the best course of action. And,</b></p> <p>14 <b>again, consistent with the theme that he was trying to</b></p> <p>15 <b>compel us to be as aggressive as possible.</b></p> <p>16          Q.        If you turn to the next page of these</p> <p>17 notes, there's a reference in the third bullet, "They</p> <p>18 have hired Sullivan &amp; Cromwell (external legal) and</p> <p>19 Goldman (Lazard might pop up)."</p> <p>20                    What is that a reference to in the</p> <p>21 discussion you had with Mr. Smith?</p> <p>22          <b>A.</b>        <b>He was informing me that they had</b></p> <p>23 <b>retained external legal and financial advisors to</b></p> <p>24 <b>advise them and assist them in the transaction.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
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<p>1 contemporaneously?</p> <p>2           <b>A.</b>        <b>No.</b></p> <p>3           Q.        I want to ask you about a few of the</p> <p>4 items in the notes. There's a reference, about the</p> <p>5 middle of the page on the first page, "Bob agrees for</p> <p>6 [a] call before the 27th (proposed 22nd)."</p> <p>7                    What does that refer to?</p> <p>8           <b>A.</b>        <b>My recollection is it refers -- I</b></p> <p>9 <b>believe they had a board meeting scheduled on the</b></p> <p>10 <b>27th, and there was a desire for Mr. Girling and</b></p> <p>11 <b>Mr. Skaggs to have a conversation before then, if it</b></p> <p>12 <b>deemed appropriate.</b></p> <p>13          Q.        And if you look two items down,</p> <p>14 there's a reference to "Bob meeting w/ [board] [of]</p> <p>15 [directors] one off in advance (we are a topic of</p> <p>16 discussion)."</p> <p>17                    Do you know what that refers to from</p> <p>18 your discussion with Mr. Smith?</p> <p>19          <b>A.</b>        <b>I believe I asked Steve whether or not</b></p> <p>20 <b>the board was aware of our conversations, and he</b></p> <p>21 <b>indicated that, in advance of the board meeting on the</b></p> <p>22 <b>27th, that he would be -- Mr. Skaggs would be meeting</b></p> <p>23 <b>with individual board members.</b></p> <p>24          Q.        If you go a few bullets up, there's a</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1           Q.        Did you have a sense from this</p> <p>2 January 7th meeting that Mr. Smith was acting alone in</p> <p>3 driving a transaction, or a possible transaction?</p> <p>4           <b>A.</b>        <b>Not at all. He made it clear that he</b></p> <p>5 <b>was there at the direction of Mr. Skaggs and the</b></p> <p>6 <b>senior leadership team.</b></p> <p>7          Q.        Did he specifically tell you at that</p> <p>8 meeting that the board either was engaged or would</p> <p>9 soon be engaged?</p> <p>10          <b>A.</b>        <b>As he indicated, you know, Mr. Skaggs</b></p> <p>11 <b>was in direct contact with board members in advance of</b></p> <p>12 <b>that upcoming meeting so that they were aware of our</b></p> <p>13 <b>conversations. So I would take that to mean that they</b></p> <p>14 <b>were aware of the conversations.</b></p> <p>15          Q.        What happened after the January 7th</p> <p>16 meeting?</p> <p>17          <b>A.</b>        <b>We requested exclusivity in order to</b></p> <p>18 <b>pursue our work.</b></p> <p>19          Q.        Did you conduct -- begin conducting</p> <p>20 standard due diligence?</p> <p>21          <b>A.</b>        <b>Yes.</b></p> <p>22          Q.        I'm showing you what's been marked as</p> <p>23 Joint Exhibit 618, which is an email exchange between</p> <p>24 you and Eric Fornell dated January 25th, 2016.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">F. Poirier - Direct Page 125</p> <p>1 Do you recognize this document?</p> <p>2 <b>A. I do.</b></p> <p>3 Q. What is it?</p> <p>4 <b>A. It is a draft of the script that I had</b></p> <p>5 <b>prepared for Mr. Girling's conversation with</b></p> <p>6 <b>Mr. Skaggs, which I typically did for Mr. Girling. He</b></p> <p>7 <b>didn't always abide by the script, but we did always</b></p> <p>8 <b>provide him -- or most of the time, provide him with</b></p> <p>9 <b>one. And I asked Mr. Fornell for his comments on the</b></p> <p>10 <b>script.</b></p> <p>11 Q. Why did you typically provide</p> <p>12 Mr. Girling with a script in advance of these types of</p> <p>13 discussions?</p> <p>14 <b>A. For the reasons we mentioned earlier,</b></p> <p>15 <b>just to be well organized and make sure we were on</b></p> <p>16 <b>point and that all of the key points were discussed.</b></p> <p>17 Q. Did you have a discussion with Steve</p> <p>18 Smith about valuation before this call between</p> <p>19 Mr. Girling and Mr. Skaggs took place?</p> <p>20 <b>A. Yes, I did.</b></p> <p>21 Q. Tell me why you talked to Mr. Smith</p> <p>22 before this call took place.</p> <p>23 <b>A. Generally, before our respective CEOs</b></p> <p>24 <b>had a conversation, Steve and I would have a</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">F. Poirier - Direct Page 127</p> <p>1 Q. And did TransCanada, in fact, in the</p> <p>2 conversation with Mr. Girling and Mr. Skaggs, convey</p> <p>3 that it proposed to continue discussions in that</p> <p>4 range?</p> <p>5 <b>A. Yes, in the conversation, Mr. Girling</b></p> <p>6 <b>did indicate to Mr. Skaggs that we would be prepared</b></p> <p>7 <b>to contemplate a transaction in that range in exchange</b></p> <p>8 <b>for exclusivity.</b></p> <p>9 Q. I'm showing you what has been marked</p> <p>10 as Joint Exhibit 530, 5-3-0, which is a Wells Fargo</p> <p>11 document dated January 2016. The subject of the</p> <p>12 emails is "[Adjusted] Share Price Analysis."</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Have you seen -- are you familiar with</p> <p>15 this document?</p> <p>16 <b>A. Yes, I am.</b></p> <p>17 Q. What is it?</p> <p>18 <b>A. It is a mathematical exercise to</b></p> <p>19 <b>attempt to translate a \$28 stock price before their</b></p> <p>20 <b>share issuance to a stock price after the share</b></p> <p>21 <b>issuance, giving effect to the increased share count</b></p> <p>22 <b>and the receipt of cash, net cash proceeds on the</b></p> <p>23 <b>balance sheet.</b></p> <p>24 Q. After their equity offering?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">F. Poirier - Direct Page 126</p> <p>1 <b>preliminary conversation to discuss what the content</b></p> <p>2 <b>would be so that there were no surprises on either</b></p> <p>3 <b>side going into the meeting.</b></p> <p>4 Q. I want to ask you about page 2 of your</p> <p>5 script, the second bullet down. It says, "Based on</p> <p>6 feedback from those discussions, we understand you</p> <p>7 would be open to bringing to your board our request</p> <p>8 for exclusivity, and to keep working, based on the</p> <p>9 following parameters: All cash transaction, a</p> <p>10 transaction range between \$25 and \$28 per share."</p> <p>11 Do you see that?</p> <p>12 <b>A. Yes, I do.</b></p> <p>13 Q. What does "Based on feedback from</p> <p>14 those discussions" refer to?</p> <p>15 <b>A. Conversations that Mr. Smith and I had</b></p> <p>16 <b>about what range of valuation would be required for</b></p> <p>17 <b>them to grant us exclusivity.</b></p> <p>18 Q. And what did Mr. Smith tell you in</p> <p>19 response to that inquiry?</p> <p>20 <b>A. Looking at the ranges that were</b></p> <p>21 <b>discussed in the past, and taking into account the</b></p> <p>22 <b>share issuance, he felt that a range of 25 to 28 would</b></p> <p>23 <b>be appropriate and that their preference would be for</b></p> <p>24 <b>an all-cash transaction.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">F. Poirier - Direct Page 128</p> <p>1 <b>A. That's correct.</b></p> <p>2 Q. If you look at the second page of the</p> <p>3 document, 530.003, what did the \$28 per share prior to</p> <p>4 the equity offering translate to post-equity offering?</p> <p>5 <b>A. It translated to a valuation of</b></p> <p>6 <b>\$25.73.</b></p> <p>7 Q. So does that mean on an</p> <p>8 apples-to-apples comparison that the 25 to \$28 range</p> <p>9 that TransCanada was discussing in January was</p> <p>10 significantly higher than the 25 to \$26 range that you</p> <p>11 proposed in the fall?</p> <p>12 <b>A. Yes, in effect, it -- the implied</b></p> <p>13 <b>valuation in aggregate was higher at 25 to 28, given</b></p> <p>14 <b>the increased share count.</b></p> <p>15 Q. Why were you prepared to increase your</p> <p>16 indicative offer between the fall and January?</p> <p>17 <b>A. We were continuing to do our work on</b></p> <p>18 <b>the projects, on the permitability of the projects, on</b></p> <p>19 <b>the reasonableness of the estimates, and we were</b></p> <p>20 <b>getting more comfortable with the valuation range that</b></p> <p>21 <b>the CEOs agreed to.</b></p> <p>22 Q. I'm going to show you what's been</p> <p>23 marked as Joint Exhibit 648, which is an email from</p> <p>24 Eric Fornell to you and Peter Ewing, dated January 28,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



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1 2016, attaching an ability-to-pay analysis.

2 **A. Yes.**

3 Q. Can you tell me what this discussion  
4 is about?

5 **A. An ability-to-pay analysis is a  
6 mathematical exercise to determine the point of  
7 neutrality where an acquisition would be neutral to  
8 earnings per share, cash flow per share, and credit  
9 metrics for a potential suitor. And it gives you a  
10 sense of how far a potential interloper could go and  
11 proceed with a transaction.**

12 **We were concerned with Enbridge and  
13 Dominion because of the size and scale of the  
14 companies and the potential strategic merits of the  
15 acquisition to them.**

16 Q. If you look at pages 4 and 5, as you  
17 just pointed out, you were specifically looking at  
18 Enbridge and Dominion. Why did TransCanada -- or at  
19 least why was TransCanada concerned that there could  
20 be a competing bidder with respect to Columbia?

21 **A. I think we looked at the trading  
22 multiples, and we looked at the strategic rationale of  
23 the transaction for each of them. They weren't  
24 identical to the rationale for us. But nonetheless,**

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1 **A. We would have had individuals dig into  
2 more detail on the commercial arrangements,  
3 particularly around the growth projects, since that  
4 was most of the value of what we were looking at; the  
5 reasonableness of the estimates; the cash flows of the  
6 existing assets, et cetera.**

7 Q. How many people were involved,  
8 roughly?

9 **A. A hundred, on our side.**

10 Q. If you can please look at -- well, I'm  
11 showing you what's been marked as Joint Exhibit 782,  
12 which is an email exchange between the Wells Fargo  
13 team, dated February 24th, 2016. I realize you are  
14 not on this email, but I want to ask you a few  
15 questions about what's said in here and whether you  
16 have any familiarity with it. It's from Hugh Babowal  
17 to an internal distribution list at Wells Fargo. It  
18 starts with "FP gave me the download on today's  
19 events."

20 Do you think that you are likely "FP"?

21 **A. Yes.**

22 Q. Third bullet here says, "FP raised the  
23 spectre of a lower price in a roundabout way multiple  
24 times with Steve Smith and was met with 'crickets.'"

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1 **we thought it might -- it could be compelling to them.  
2 And we wanted to understand how far they would, you  
3 know, be able to go from a financial point of view.**

4 Q. And why were you focused on Dominion  
5 and Enbridge in particular, as opposed to other  
6 potential acquirers?

7 **A. Because of their size and scale. And  
8 they are experienced companies in doing M&A for  
9 companies of this size and type.**

10 Q. At any point prior to closing, did you  
11 or anyone at TransCanada, to your knowledge, have a  
12 discussion with anyone at Columbia about what was or  
13 was not going on with any other potential bidders?

14 **A. No.**

15 Q. I want to turn back to the 25 to \$28  
16 range that was discussed between Mr. Girling and  
17 Mr. Skaggs.

18 What happened after Mr. Girling  
19 indicated that you would be prepared to negotiate in  
20 that range?

21 **A. We entered into an exclusivity  
22 agreement.**

23 Q. And can you tell me a little bit about  
24 the due diligence TransCanada conducted?

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1 Can you tell me about the discussion  
2 you had with Steve Smith and what your recollection  
3 was about that discussion?

4 **A. Yeah. From time to time when we had  
5 our check-in calls, I did mention to him that we were  
6 struggling to get anywhere above the bottom end of the  
7 range of 25 to 28, more or less to manage their  
8 expectations as to where in the range we might fall.  
9 And he did not react to those comments.**

10 Q. Why were you suggesting that it was  
11 difficult for TransCanada to find a way to the bottom  
12 of the range based on the diligence?

13 **A. Because that was, in fact, the case.  
14 We were struggling with getting beyond the bottom end  
15 of the range from a valuation standpoint, and I didn't  
16 want any surprises.**

17 Q. Do you have a recollection around this  
18 February 25th, 2016, time frame where Columbia's stock  
19 was trading?

20 **A. I believe it was trading in the mid to  
21 high teens, 16, \$17 a share, or a unit.**

22 Q. I want to show you what's been marked  
23 as Joint Exhibit 869, which are the minutes from the  
24 March 5th TransCanada board meeting.

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1 Did you attend this board meeting,

2 Mr. Poirier?

3 **A. Yes, I did.**

4 Q. In the last paragraph of the minutes,

5 it said -- it says that the board "agreed that

6 negotiations should commence at []\$24 a share with a

7 high range of approximately []\$25.25."

8 Is that consistent with your

9 recollection of what was discussed and decided at the

10 board?

11 **A. Yes.**

12 Q. Did you have a call on March 5th

13 following the meeting with somebody at Columbia after

14 that directive?

15 **A. Yes. As was typically the case,**

16 **before Mr. Girling and Mr. Skaggs spoke, Mr. Smith and**

17 **I would have a precall to discuss the content of the**

18 **conversation.**

19 Q. And tell me about your discussion with

20 Mr. Smith.

21 **A. I floated the idea of an offer coming**

22 **in at \$24 a share.**

23 Q. And how did Mr. Smith react?

24 **A. He reacted very negatively to that**

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1 what did TransCanada do in response?

2 **A. We decided -- well, Mr. Girling**

3 **decided. And Mr. Girling had his call with Mr. Skaggs**

4 **and offered \$25.25 a share.**

5 Q. Did TransCanada get written

6 authorization from Columbia's board before making that

7 \$25.25 offer.

8 **A. Yes, sir.**

9 Q. I want to show you what's been marked

10 as Joint Exhibit 829, which are materials that were

11 presented or materials that were prepared for the

12 March 5th board meeting.

13 Have you seen these materials before?

14 **A. Yes, I have.**

15 Q. I want to ask you a question, in

16 particular, on page 45 of 113 in the slide deck.

17 **A. I see that.**

18 Q. That's 829.045.

19 On this page, there's a slide entitled

20 "Transaction Considerations" that references

21 change-of-control agreements. And it says that there

22 are "22 executives under agreements with various

23 payout factors (one is retiring shortly)."

24 Do you know who that executive was

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1 **idea, said that maybe we had been wasting our time,**

2 **that -- this is his words -- working with us, might**

3 **have used colorful language, and challenged us to work**

4 **towards an offer within the range.**

5 Q. Did he say anything about his

6 expectation or Columbia's expectation within that

7 range?

8 **A. He did indicate that, you know, we**

9 **would need to get to the -- roughly the mid point of**

10 **the range to get their attention.**

11 Q. What did you think about Mr. Smith's

12 indication that you might need to get to the mid point

13 of the range?

14 **A. My purpose of floating the \$24 was to**

15 **do a little bit of negotiating discovery around where**

16 **they were in the range and to, you know, pull him**

17 **down, as best I could, to where we saw value, where we**

18 **could realistically get to. And from my perspective,**

19 **I did get value from that conversation in that he did**

20 **disclose that, you know, the mid point of the range**

21 **would be something that he thought they could get**

22 **comfortable with.**

23 Q. After Mr. Smith told you that \$24

24 wouldn't even warrant a conversation between the CEOs,

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1 that is referenced there in that slide?

2 **A. I did learn subsequently. Forgive me;**

3 **his name escapes me. But it was not an individual**

4 **that I knew or interacted with at Columbia.**

5 Q. Let me see if I can refresh your

6 recollection. If you could turn to Joint Exhibit 730.

7 I'm showing you what's been marked as Joint Exhibit

8 730, which is an email from Ursula Sanders, dated

9 February 14th, 2016, containing a list of executives

10 with change-of-control agreements.

11 At the bottom of the email, Brandon

12 Anderson asks you and Peter Ewing for a list of

13 executives with change-of-control agreements.

14 Do you see that?

15 **A. I do.**

16 Q. At the top, Ms. Sanders provides that

17 list.

18 Do you know who Ursula Sanders was, at

19 least at this time?

20 **A. Ursula Sanders was a compensation**

21 **consultant within the HR department at TransCanada.**

22 Q. And the second paragraph of her email

23 says, "Mr. Stephen Warnick has a CIC agreement, but

24 we've been told that he's retiring shortly ...."

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## F. Poirier - Direct

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<p>1 Does that refresh your recollection as</p> <p>2 to who that individual was in the previous slide?</p> <p>3 <b>A. Yes. Thank you.</b></p> <p>4 Q. And did you get confirmation, or did</p> <p>5 at least TransCanada get confirmation that that was</p> <p>6 Mr. Warnick that was referenced there?</p> <p>7 <b>A. That's correct.</b></p> <p>8 Q. I want to go back to the \$25.25 offer</p> <p>9 that TransCanada made to Columbia. How did Columbia</p> <p>10 respond to that offer?</p> <p>11 <b>A. Mr. Skaggs, to the best of my</b></p> <p>12 <b>recollection, expressed disappointment with the offer,</b></p> <p>13 <b>and -- but that he would take it back to his board for</b></p> <p>14 <b>consideration.</b></p> <p>15 Q. I want to show you what has been</p> <p>16 marked as Joint Exhibit 1902, which is an email</p> <p>17 exchange between you and Dean Ferguson, dated</p> <p>18 March 5th and 6th, 2016, forwarding a note from</p> <p>19 Mr. Girling.</p> <p>20 Do you recall this email exchange?</p> <p>21 <b>A. Yes, I do.</b></p> <p>22 Q. Mr. Girling says, "I am very</p> <p>23 disappointed to let you know that we were unable to</p> <p>24 come to terms with Capricorn this afternoon. We put</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Capricorn and said they would transact at \$26 but no</p> <p>2 lower."</p> <p>3 Who is Tim Ingrassia?</p> <p>4 <b>A. He is a senior member of Goldman</b></p> <p>5 <b>Sachs.</b></p> <p>6 Q. Why did you ask Mr. Fornell to contact</p> <p>7 Goldman?</p> <p>8 <b>A. As we were thinking about whether or</b></p> <p>9 <b>not there was really anything that we could possibly</b></p> <p>10 <b>do to continue to pursue a transaction, we had no</b></p> <p>11 <b>sense as to where Columbia was in terms of value. And</b></p> <p>12 <b>we weren't going to negotiate against ourselves. We</b></p> <p>13 <b>needed to know where they were looking to get to to</b></p> <p>14 <b>pursue a transaction. So sometimes the advisors are</b></p> <p>15 <b>an appropriate mechanism by which you can gain that</b></p> <p>16 <b>information.</b></p> <p>17 Q. I'm turning to what's been marked as</p> <p>18 Joint Exhibit 912, which is the deck that was prepared</p> <p>19 for the March 9th TransCanada board meeting.</p> <p>20 And in particular, I want to ask you</p> <p>21 about Slide 3 of that deck that presents a situation</p> <p>22 update. And it describes a back-and-forth bid ask</p> <p>23 between Columbia and TransCanada.</p> <p>24 At this point in time, does this</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 forward a fully chinned up offer that was inside of</p> <p>2 the range they provided. Their board rejected that</p> <p>3 offer."</p> <p>4 Did you have an idea from your</p> <p>5 discussions with Mr. Girling in around this time what</p> <p>6 he meant by "fully chinned up offer"?</p> <p>7 <b>A. Yes. Mr. Girling, in particular,</b></p> <p>8 <b>struggled with a valuation in the \$25.25 range. And</b></p> <p>9 <b>so my interpretation is that "fully chinned up" means</b></p> <p>10 <b>a very full and robust offer based on our view of the</b></p> <p>11 <b>value of the company.</b></p> <p>12 Q. I'd like to show you what's been</p> <p>13 marked as Joint Exhibit 900, which is an email</p> <p>14 exchange between Eric Fornell and others at Wells</p> <p>15 Fargo, dated March 5th to March 7th, 2016. And in</p> <p>16 particular, I want to ask you about the second email</p> <p>17 in the chain, which is from Eric Fornell on March 6th.</p> <p>18 That was the day after Columbia rejected the 25.25.</p> <p>19 Correct?</p> <p>20 <b>A. That's correct.</b></p> <p>21 Q. Mr. Fornell says, "With Francois's OK,</p> <p>22 I called Tim Ingrassia ... and told him that we need</p> <p>23 some guidance on where they will do a deal, or this</p> <p>24 thing is gone. He called back after talking to</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 accurately reflect a summary of the negotiations on</p> <p>2 price, as you understood it?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. So at this point, you understood that</p> <p>5 Columbia's board had authorized Columbia to do a deal</p> <p>6 at \$26 a share?</p> <p>7 <b>A. That's correct.</b></p> <p>8 Q. I want to ask you also about some</p> <p>9 notes that relate to this board meeting. If you turn</p> <p>10 to Joint Exhibit 913, 9-1-3, which is an email from</p> <p>11 Chris Johnston to herself. And the subject line is</p> <p>12 "March 9 special board meeting."</p> <p>13 Have you seen this document before?</p> <p>14 <b>A. I saw it as part of the document</b></p> <p>15 <b>review, yes.</b></p> <p>16 Q. Did you see it in your deposition?</p> <p>17 <b>A. Yes, sir.</b></p> <p>18 Q. Now, in the first paragraph,</p> <p>19 Ms. Johnston says, "Reviewed the price negotiations on</p> <p>20 Saturday."</p> <p>21 Do you have an understanding of what</p> <p>22 that refers to?</p> <p>23 <b>A. I believe Saturday was the day</b></p> <p>24 <b>Mr. Girling offered \$25.25 to Mr. Skaggs.</b></p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Direct

<p style="text-align: right;">F. Poirier - Direct Page 141</p> <p>1 Q. And she continues that "Capricorn came 2 back at []26 on Sunday which appeared firm." 3 Is that consistent with your 4 recollection? 5 <b>A. Yes.</b> 6 Q. Then it continues, "TransCanada . 7 Agonized over whether we can go over ur best offer of 8 []25.25 over the last few days." 9 Can you tell me about the 10 deliberations that were taking place at the board 11 about that agonization around whether we can go over 12 our \$25.25 best offer? 13 <b>A. From a valuation standpoint, I know</b> 14 <b>Mr. Girling, and certainly others, had concerns over</b> 15 <b>the intrinsic value of the company and whether, you</b> 16 <b>know, 25.25, or higher than that, rather, was</b> 17 <b>appropriate.</b> 18 <b>Also, from an affordability and from a</b> 19 <b>financing standpoint, we were already contemplating</b> 20 <b>the largest equity offering in Canadian history. We</b> 21 <b>were already contemplating a very robust M&amp;A program.</b> 22 <b>Any additional asset sales that may be required to</b> 23 <b>fund an incremental cash proceeds would, you know,</b> 24 <b>result in the loss of cash flow from the asset you're</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">F. Poirier - Direct Page 143</p> <p>1 <b>it's always been an important characteristic for us.</b> 2 Q. As of this point in time, March 9th, 3 had you already been to the rating agencies several 4 times to discuss this transaction? 5 <b>A. Yes. We had shown the rating agencies</b> 6 <b>at least two principal cases that I recall. The first</b> 7 <b>included incremental debt to fund the transaction.</b> 8 <b>They informed us that that would result in a downgrade</b> 9 <b>of the company, which is why we revised our funding</b> 10 <b>plan to include a very robust set of asset sales.</b> 11 Q. Now, paragraph 4 of this email says, 12 "Francois spoke to asset sales. Continue to be 13 bullish." 14 What does that refer to? 15 <b>A. Well, the board wanted to get</b> 16 <b>reassurance that we continued to view that the M&amp;A</b> 17 <b>market for those types of assets, that there was still</b> 18 <b>a strong demand for those. I indicated that there</b> 19 <b>was. Nonetheless, if we decided to sell an additional</b> 20 <b>asset, we would lose the cash flow that goes along</b> 21 <b>with it. So we concluded that the only way to --</b> 22 <b>whether or not we want to get to \$26, the only way to</b> 23 <b>get there would be to increase the equity component in</b> 24 <b>the transaction.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">F. Poirier - Direct Page 142</p> <p>1 <b>selling. So lots of concern on our side around the</b> 2 <b>ability to fund the transaction at that level.</b> 3 Q. In the second paragraph of 4 Ms. Johnston's email she says, "FP and DM ...." 5 FP is you. Who is DM? 6 <b>A. DM is Don Marchand, our chief</b> 7 <b>financial officer at the time.</b> 8 Q. "[T]o walk through the challenges and 9 what it means to execution of financing plan." 10 Is that what you were just referencing 11 with respect to the ability to transact here? 12 <b>A. Yes. And I neglected to mention the</b> 13 <b>other consideration, which is rating agencies. And we</b> 14 <b>would have to likely go back to the rating agencies at</b> 15 <b>the increased price to get confirmation that -- of the</b> 16 <b>impacts to our credit ratings.</b> 17 Q. Did you have a concern at this time 18 during the course of these negotiations about 19 potential impact to your rating with the rating 20 agencies? 21 <b>A. Credit ratings is a very important</b> 22 <b>part of what we view as our, you know, our value to</b> 23 <b>our shareholders. It not only speaks to credit</b> 24 <b>quality, but the ability to sustain a dividend. So</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">F. Poirier - Direct Page 144</p> <p>1 Q. One more question about this document 2 before we get there. Going down to page 3, the 3 paragraph that starts "Directionally." 4 It says, "FP- would need to ask them 5 to add stock to consideration mix. Window opening. 6 If not prepared to proceed with stock deal, then 7 walk." 8 Can you tell me about that discussion 9 at the board. 10 <b>A. Again, I think it was the -- when we</b> 11 <b>iterated on the different ways to fund the incremental</b> 12 <b>amount of cash in the transaction, asset sales were --</b> 13 <b>additional asset sales were not something the board</b> 14 <b>was prepared to go to. Incremental equity was the way</b> 15 <b>to bridge the gap and support the credit ratings. And</b> 16 <b>so we were tasked with going away and understanding</b> 17 <b>whether or not our underwriters on the subscription</b> 18 <b>receipts would be supportive of this.</b> 19 Q. The reference to "If not prepared to 20 proceed with stock deal, then walk," was there a 21 discussion at the board at this time that if the stock 22 deal was not feasible to TransCanada or Columbia, that 23 you would be prepared to walk from this deal? 24 <b>A. Yes.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## F. Poirier - Direct

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<p>1 Q. I'm showing you what has been marked</p> <p>2 as Joint Exhibit 944, which are the minutes of that</p> <p>3 March 9 TransCanada board meeting.</p> <p>4 Did you attend this board meeting,</p> <p>5 Mr. Poirier?</p> <p>6 <b>A. Yes, I did.</b></p> <p>7 Q. If you look at the last paragraph in</p> <p>8 the minutes, it says, "After further deliberation, the</p> <p>9 Board authorized management to make a counter offer to</p> <p>10 Capricorn at [\$26.00 per share but which would</p> <p>11 include TransCanada common shares as a portion</p> <p>12 (10 percent) of the consideration. It was noted that</p> <p>13 the offer would remain subject to formal Board</p> <p>14 approval to enter into the merger once all the terms</p> <p>15 had been negotiated."</p> <p>16 Can you tell me about the discussion</p> <p>17 that led to the conclusion to move in that direction?</p> <p>18 <b>A. Again, it was in consideration of the</b></p> <p>19 <b>ways we could bridge the gap from a funding</b></p> <p>20 <b>standpoint, that we did require having an equity</b></p> <p>21 <b>component as the mix of consideration moving from a</b></p> <p>22 <b>100 percent cash transaction to one that would include</b></p> <p>23 <b>a 10 percent component of stock.</b></p> <p>24 Q. In the second-to-last paragraph, at</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. I believe these were notes to prepare</b></p> <p>2 <b>Russ for a potential conversation with Mr. Skaggs the</b></p> <p>3 <b>next day.</b></p> <p>4 Q. Did you send this email to Mr. Girling</p> <p>5 after you spoke with Mr. Smith to convey the mixed</p> <p>6 consideration proposal?</p> <p>7 <b>A. Yes, that's correct.</b></p> <p>8 Q. I have a few questions about what you</p> <p>9 say here. In the third paragraph you say, "Firstly,</p> <p>10 they know that we need to go back to the rating</p> <p>11 agencies."</p> <p>12 What does that refer to?</p> <p>13 <b>A. Well, when you increase the purchase</b></p> <p>14 <b>price for a transaction, you know, it can have an</b></p> <p>15 <b>impact on the rating agencies' assumptions and</b></p> <p>16 <b>outcomes and findings of their ratings analysis. So</b></p> <p>17 <b>we're always very conservative around getting feedback</b></p> <p>18 <b>from the rating agencies when undertaking a</b></p> <p>19 <b>transaction of -- certainly of this magnitude.</b></p> <p>20 Q. Did you convey to Mr. Smith directly</p> <p>21 on that call that a positive reaction from the rating</p> <p>22 agencies was a condition of moving forward with this</p> <p>23 mixed consideration offer?</p> <p>24 <b>A. Yes, sir, I did.</b></p> <p>CHANCERY COURT REPORTERS</p>
F. Poirier - Direct Page 146	F. Poirier - Direct Page 148
<p>1 the end of that paragraph it says, "Management was</p> <p>2 asked to include representation from the lead</p> <p>3 financing banks at the next meeting."</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Why did the board want to hear from</p> <p>6 the lead financing banks?</p> <p>7 <b>A. The most critical element of our</b></p> <p>8 <b>funding plan was the issuance of the subscription</b></p> <p>9 <b>receipts. And subscription receipts essentially</b></p> <p>10 <b>perform and trade just like the underlying stock in</b></p> <p>11 <b>the company. And so there was always a concern from</b></p> <p>12 <b>underwriters that stock as consideration being issued</b></p> <p>13 <b>simultaneous with capital markets issuance would</b></p> <p>14 <b>create a less orderly market, and it's typically --</b></p> <p>15 <b>typically something that underwriters prefer not to</b></p> <p>16 <b>have happen.</b></p> <p>17 Q. Who conveyed the \$26 mixed</p> <p>18 consideration proposal to Columbia?</p> <p>19 <b>A. I did.</b></p> <p>20 Q. I'm showing you what has been marked</p> <p>21 as Joint Exhibit 953, which is an email from you to</p> <p>22 Russ Girling, dated March 10th, 2016.</p> <p>23 Can you tell me what's -- what this</p> <p>24 email is about?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. You also write, "Second, our stock</p> <p>2 price needs to remain at [49 [to] \$50 or higher per</p> <p>3 share Canadian, for the transaction to work."</p> <p>4 What does that refer to?</p> <p>5 <b>A. Well, the subscription receipts are</b></p> <p>6 <b>based on the stock price that we issue at the time.</b></p> <p>7 <b>And so the number of shares that we issue to fund the</b></p> <p>8 <b>acquisition of Columbia is impacted by the share</b></p> <p>9 <b>price. The higher the share price, the fewer number</b></p> <p>10 <b>of shares we issue. And so I was very clear with</b></p> <p>11 <b>Mr. Smith that in order for us to consider \$26 and the</b></p> <p>12 <b>mix of, you know, 90 percent cash and 10 percent stock</b></p> <p>13 <b>consideration, that our stock would need to remain in</b></p> <p>14 <b>that range.</b></p> <p>15 Q. One more question, going back to the</p> <p>16 rating agency point.</p> <p>17 Why was TransCanada's credit rating so</p> <p>18 important to the company, and maintaining the credit</p> <p>19 rating?</p> <p>20 <b>A. As I said, we -- we raise several</b></p> <p>21 <b>billion dollars a year in our capital program.</b></p> <p>22 <b>Particularly in the case of acquiring Columbia, we</b></p> <p>23 <b>would be taking on -- I don't recall the specific</b></p> <p>24 <b>number in aggregate, but 10 to \$15 billion in new</b></p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Direct

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1 projects. Cost of debt is really a critical factor to  
 2 generating the type of returns for your shareholders  
 3 that are required. So ratings are important.  
 4 Q. If you look down at the paragraph  
 5 after the paragraph that says third, you say, "Steve  
 6 [] tried to get me, two or three times, to agree that  
 7 the exchange ratio would be set at closing, rather  
 8 than at announcement. I firmly disagreed."  
 9 What was that discussion with, that  
 10 you recall, with Mr. Smith?  
 11 A. If the share count is established at  
 12 the time of announcement -- it's based on the share  
 13 price on the date of announcement -- it's quite often  
 14 the case that between announcing and closing, the  
 15 acquirer's stock is under pressure. And so Mr. Smith  
 16 was doing his job, attempting to shift the risk on  
 17 stock price performance to us, as the acquirer. And I  
 18 declined to consider.  
 19 Q. Did you and Mr. Smith ever resolve  
 20 that issue?  
 21 A. No.  
 22 Q. Up to this point in time, had  
 23 TransCanada only considered an all-cash acquisition?  
 24 A. Yes.

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1 giving them a portion of the value of the synergies,  
 2 we had to reduce our financing risk. We were already  
 3 at 25.25 all cash, taking on a fair bit of financing  
 4 risk around the stock issuance and around the asset  
 5 sales. And so we needed some relief in the form of a  
 6 portion of stock as part of the consideration mix in  
 7 order to get to 26.  
 8 Q. Ultimately, what happened with respect  
 9 to that mixed-consideration discussion?  
 10 A. We had conversations with our  
 11 underwriters, and they deemed that given the fact that  
 12 the subscription receipts would be the largest equity  
 13 offering in Canadian history, that they were not  
 14 prepared to undertake an overnight bought deal with us  
 15 should there be stock in the consideration mix.  
 16 Q. Was there also a material drop in  
 17 TransCanada's stock after the *Wall Street Journal*  
 18 article came out?  
 19 A. Yes. As the stock fell below that 49  
 20 to \$50 range, the number of shares that we would have  
 21 to issue, both in the stock as consideration, but also  
 22 in the underlying subscription receipt issuance, you  
 23 know, was unfavorable to TransCanada.  
 24 Q. As a result of those conditions not

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1 Q. Why?  
 2 A. A couple of reasons. Firstly, the  
 3 value of a dollar is known. It's a dollar. If we  
 4 were to introduce TransCanada stock as currency, it  
 5 would likely lengthen negotiations; there would be  
 6 some potential disagreements on what the value of our  
 7 currency was, number one. Secondly, we are a Canadian  
 8 company. Our shares also trade in the U.S., but we  
 9 pay a Canadian dollar dividend. Columbia is a  
 10 U.S.-based company. And we had a preference for  
 11 having control ourselves as to where the stock, and in  
 12 whose hands and whose investors the stock would  
 13 ultimately sit. And you have a lot more control by  
 14 doing that issuance yourself.  
 15 Q. Why do you think, at least what was  
 16 your view at the time as to why TransCanada was  
 17 willing to go to \$26 in a mixed consideration  
 18 proposal, but was not willing to go to \$26 in an  
 19 all-cash deal?  
 20 A. So, as I mentioned, we were struggling  
 21 on the valuation front beyond the 25.25. And in my  
 22 view, going to 26, essentially you are giving your  
 23 counterparty a share of the synergies that are  
 24 generated from the transaction. So in exchange for

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1 being met, did you communicate that TransCanada was no  
 2 longer prepared to proceed with that mixed  
 3 consideration offer to Columbia?  
 4 A. Yes. Our obligation and the condition  
 5 for extension of exclusivity was that we would notify  
 6 them as soon as we were no longer able to -- or  
 7 willing to meet those conditions or those parameters.  
 8 So we notified them shortly after the board meeting  
 9 where we reviewed this information with our board and  
 10 made the conclusion that we were no longer able to  
 11 pursue it.  
 12 Q. I want to ask you about exclusivity.  
 13 Do you recall that the exclusivity  
 14 agreement expired on March 8th at 11:59 p.m.?  
 15 A. Yes.  
 16 Q. Did TransCanada request an extension  
 17 of exclusivity before it expired?  
 18 A. No, we did not.  
 19 Q. Why not?  
 20 A. We should have. It was an oversight  
 21 on our part.  
 22 Q. On March 10th, did you ask Columbia to  
 23 renew exclusivity?  
 24 A. Yes, we did.

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1 Q. How much time did you ask for?

2 **A. We asked for two weeks, I believe, and**

3 **they granted us a one-week extension.**

4 Q. I want to show you what has been

5 marked as Joint Exhibit 1029, 1-0-2-9, which is an

6 email exchange between you and Hugh Babowal and

7 others, dated March 12th, 2016.

8 And I want to begin with the first

9 email on this chain, from Bob Smith to Chris Johnston

10 --

11 ATTORNEY OLSEN: It's on the next

12 page, Kentaro. JTX 1029.002.

13 Q. -- where he includes a scripted

14 response to inbounds.

15 Do you recall around this period of

16 time that Columbia received an inbound inquiry

17 following the leak?

18 **A. Yes, that's correct.**

19 Q. Did you know who that inbound inquiry

20 was from?

21 **A. No.**

22 Q. If you look at your email on

23 March 12th to Chris Johnston, you say, "This looks

24 like [a] fiduciary out during exclusivity."

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1 **A. We had -- I believe we had Wells Fargo**

2 **and Goldman Sachs have a preliminary conversation.**

3 **And certainly Chris Johnston had conversations with**

4 **Bob Smith, and then we had a group call, if you will.**

5 **And I don't recall the specifics of the group call,**

6 **but my view was always that the definition of a "bona**

7 **fide offer" is actually provided for in the NDA, and**

8 **we have to, obviously, allow the board and management**

9 **of Columbia to honor its fiduciary duties. So we**

10 **ended up being comfortable with the language as they**

11 **proposed.**

12 Q. Ultimately, did TransCanada confirm to

13 Columbia that you believe the script did not violate

14 the renewed exclusivity agreement that you were about

15 to enter?

16 **A. Yes.**

17 Q. And with respect to these discussions

18 and this inbound script, did you have an understanding

19 of whether this would just apply to whoever they had

20 received an inbound, or would it apply to future

21 inbounds as well?

22 **A. I presumed it would apply to all**

23 **inbounds.**

24 Q. As far as you know, did Columbia or

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1 What did you mean by that?

2 **A. What I meant was that the board of**

3 **Columbia needs to have a fiduciary out to honor its**

4 **obligations to its shareholders, and I wasn't**

5 **concerned with the way they were proposing to respond.**

6 Q. Do you see the email in the middle of

7 the page there, where he is asking about what the

8 meaning of "serious" is? And he says, "Does that mean

9 a financed [bid] subject only to confirmatory [due

10 diligence]? Or can someone write a per share price on

11 a cocktail napkin? If they are giving us a moral

12 commitment that it is the former I would be ok with

13 this."

14 Do you see that?

15 **A. I do.**

16 Q. Did you or, as far as you know, anyone

17 at TransCanada or its advisors ever ask Columbia for a

18 moral commitment that a serious offer had to mean a

19 fully financed bid only subject to confirmatory due

20 diligence?

21 **A. No.**

22 Q. After this email exchange and

23 receiving this email from Bob Smith, how did

24 TransCanada proceed?

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1 its advisors ever give TransCanada or its advisors

2 some kind of moral commitment that a serious offer had

3 to mean a fully financed bid subject to only

4 confirmatory due diligence?

5 **A. No, sir.**

6 Q. I want to turn to what has been marked

7 as Joint Exhibit 1092, 1-0-9-2, which are the minutes

8 from the March 14th TransCanada board meeting.

9 Did you attend this meeting,

10 Mr. Poirier?

11 **A. Yes.**

12 Q. If you look at the first paragraph of

13 the minutes, under "Project Constellation," the

14 minutes say that "management [] conveyed an offer

15 price to Capricorn's management, subject to

16 TransCanada Board approval, of [] \$26 per Capricorn

17 share which would include TransCanada equity as

18 10 percent of the total consideration. This offer was

19 relayed as conditioned on TransCanada's share price

20 remaining at or above []\$49 [Canadian] per share with

21 no adverse credit rating agency implications as well

22 as certain other factors ...."

23 Is that consistent with your

24 recollection of the discussion we have had already

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## F. Poirier - Direct

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<p>1 this morning?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. It continues, "The meeting discussed</p> <p>4 the impact of the media story on TransCanada's most</p> <p>5 recent offer, ability to pay and execution risk. In</p> <p>6 light of these developments, management indicated that</p> <p>7 it would communicate to Capricorn that its latest</p> <p>8 offer could no longer be supported as the conditions</p> <p>9 of that offer were no longer met."</p> <p>10 Who communicated that to Columbia?</p> <p>11 <b>A. I conveyed that to Glen Kettering in a</b></p> <p>12 <b>call that Alex Pourbaix, our chief operating officer,</b></p> <p>13 <b>joined me for.</b></p> <p>14 Q. And at the end of the minutes, the</p> <p>15 minutes conclude, "With the support and approval of</p> <p>16 the Board, the Chief Executive Officer indicated that</p> <p>17 he would engage in discussions with Capricorn's</p> <p>18 management regarding an all-cash offer at ... 25.50</p> <p>19 per common share."</p> <p>20 Can you tell me about the discussion</p> <p>21 at the board about going from 25.25 to 25.50?</p> <p>22 <b>A. It was, you know, a final effort to</b></p> <p>23 <b>try and put something as compelling as possible in</b></p> <p>24 <b>front of Columbia that we could live with, and</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. As you understood it, what was the</p> <p>3 purpose of this meeting?</p> <p>4 <b>A. Again, you know, anytime a management</b></p> <p>5 <b>is contemplating a sale of its company, it needs to</b></p> <p>6 <b>assess the execution risk associated with the buyer.</b></p> <p>7 <b>And I understand Mr. Skaggs and Mr. Smith and others</b></p> <p>8 <b>in the company wanted to understand how subscription</b></p> <p>9 <b>receipts work, how confident we were in the asset</b></p> <p>10 <b>sales, how the conversations with the rating agencies</b></p> <p>11 <b>were going. Because the finance plan for the</b></p> <p>12 <b>transaction, given the feedback we got from the rating</b></p> <p>13 <b>agencies, changed quite significantly midstream. So</b></p> <p>14 <b>they wanted to get a better understanding of what we</b></p> <p>15 <b>had in mind.</b></p> <p>16 Q. Did you think it was unusual to ask</p> <p>17 your lead banker to have a discussion with Columbia</p> <p>18 management on how those financing issues would play</p> <p>19 out?</p> <p>20 <b>A. No.</b></p> <p>21 Q. I want to turn to Joint Exhibit 1160,</p> <p>22 which is a document with the title in the header</p> <p>23 "Interloper action plan."</p> <p>24 Are you familiar with this document?</p> <p>CHANCERY COURT REPORTERS</p>
F. Poirier - Direct Page 158	F. Poirier - Direct Page 160
<p>1 <b>balancing all of the execution risk around the capital</b></p> <p>2 <b>markets issuance and the asset sales. And was, as I</b></p> <p>3 <b>mentioned, at Mr. Girling's limit, or perhaps even a</b></p> <p>4 <b>bit beyond there. But we did want to try and be</b></p> <p>5 <b>constructive.</b></p> <p>6 Q. Did you also convey the \$25.50 offer</p> <p>7 on that call you had with Mr. Pourbaix and</p> <p>8 Mr. Kettering?</p> <p>9 <b>A. Yes, I did.</b></p> <p>10 Q. Did Columbia counter the 25.50 offer?</p> <p>11 <b>A. No, they did not.</b></p> <p>12 Q. Did they accept it?</p> <p>13 <b>A. They accepted the offer.</b></p> <p>14 Q. I want to ask you about Joint Exhibit</p> <p>15 707, which is an email about a meeting Mr. Fornell had</p> <p>16 with Columbia management on February 9th, 2016. I'm</p> <p>17 showing you, in fact, an email from you to Russ</p> <p>18 Girling and others, with the subject line about this</p> <p>19 meeting.</p> <p>20 Do you recognize this document?</p> <p>21 <b>A. Yes, I do.</b></p> <p>22 Q. So I take it from your email that you</p> <p>23 had a discussion with Mr. Fornell about this meeting</p> <p>24 with Columbia management?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. Why did TransCanada develop this plan?</p> <p>3 <b>A. We wanted to make sure that we were</b></p> <p>4 <b>prepared to the extent an interloper presented itself.</b></p> <p>5 <b>I believe we only had four or five days to react to a</b></p> <p>6 <b>potential offer. So we had no idea if one would</b></p> <p>7 <b>transpire, who it would come from. So what one</b></p> <p>8 <b>typically tends to do is build the infrastructure, the</b></p> <p>9 <b>financial models and the math, if you will, on all the</b></p> <p>10 <b>potential candidates so that you are ready to react,</b></p> <p>11 <b>and you can use more of your four or five days to</b></p> <p>12 <b>actually think about what you want to do.</b></p> <p>13 Q. I want to show you what has been</p> <p>14 marked as Joint Exhibit 1244, which are minutes from</p> <p>15 the TransCanada board meeting on April 28 through 29,</p> <p>16 containing some board materials.</p> <p>17 Did you attend this meeting,</p> <p>18 Mr. Poirier?</p> <p>19 <b>A. Yes, I did.</b></p> <p>20 Q. I want to ask you specifically about</p> <p>21 page 242, which is JTX 1244.24 -- there you go. Thank</p> <p>22 you.</p> <p>23 There's a section in these materials</p> <p>24 called "Interloper Strategy."</p> <p>CHANCERY COURT REPORTERS</p>



## F. Poirier - Direct

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**F. Poirier - Direct**

1           **A.       Yes.**

2           Q.       What is this?

3           **A.       It's a discussion that we presented to**

4 **the board for information purposes only. It was a**

5 **draft of -- a work in progress of analysis that we had**

6 **done on -- at various scenarios of stock prices, how**

7 **we would fund an increased offer, and what the**

8 **corresponding impacts would be to earnings, cash flow,**

9 **and credit metrics.**

10          Q.       If you turn to page 253 of that slide

11 deck, it's 1244.253. There are some top-up

12 combinations referenced there at \$27 and \$28 a share.

13               What is that?

14          **A.       It's an identification of potential**

15 **incremental assets that could be sold in order to fund**

16 **a higher bid should an interloper offer present**

17 **itself.**

18          Q.       Is this presentation in any way a

19 recommendation to the board that TransCanada should or

20 would increase its price to 27 or \$28 per share, if

21 necessary, to match a topping bid?

22          **A.       No.**

23          Q.       Why not?

24          **A.       Because that topping bid had not**

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**F. Poirier - Direct**

1   **presented itself, firstly. And, secondly, this is**

2 **purely the mathematical analysis. It doesn't begin to**

3 **consider all the qualitative factors that would go**

4 **into whether or not we would want to top a bid at a**

5 **later point in time.**

6          Q.       Based on all of your discussions with

7 management and the board at TransCanada over the

8 course of these negotiations with Columbia, do you

9 have a view as to whether the company would have been

10 willing to go to 27 or \$28 on March 17 when the deal

11 closed?

12          **A.       No. I don't -- sorry. On**

13 **March 17th --**

14          Q.       I asked if you had a view. That was a

15 bad question.

16          **A.       Yes.**

17          Q.       I assume you had a view. Can you

18 share your view as to whether the company would have

19 done that?

20          **A.       On March 17th, no, we would not have**

21 **contemplated an offer at 27 or \$28 a share. We were**

22 **struggling at 25.25, let alone 25.50.**

23          Q.       I'm showing you what has been marked

24 as Joint Exhibit 1184, which is an email exchange on

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**F. Poirier - Direct**

1   April 5th, 2016, among you, Ms. Johnston, Mr. Girling,

2 and others.

3               Do you recall around this time that

4 you thought Enbridge might be looking at making a bid

5 to acquire Columbia?

6          **A.       Yes. We heard rumors from a bank to**

7 **that effect, a bank not associated with the**

8 **transaction.**

9          Q.       And in this email, Mr. Girling says,

10 "Don can you talk directly to our bank syndicate to

11 see if [Enbridge] is planning/looking at this and send

12 a direct message they are conflicted ...."

13          **A.       I see that note, yes.**

14          Q.       What is Mr. Girling suggesting there?

15          **A.       He was suggesting that we might apply**

16 **relationship pressure on banks that might be**

17 **contemplating supporting a competing bid.**

18          Q.       And then Ms. Johnston responds, "I

19 would be very careful not to make overt threats but

20 instead stress the importance of loyalty and

21 relationship.

22               "I will look into legal restrictions

23 but off the top of my head I don't think there are

24 any."

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**F. Poirier - Direct**

1               And Ms. Johnston follows up and

2 suggests that she couldn't find any legal restrictions

3 that would impose any such restrictions on a bank.

4               Did TransCanada have any discussions

5 with any banks telling them that they should not

6 finance a competing bid?

7          **A.       No.**

8          Q.       Why not?

9          **A.       Don Marchand, our CFO, interjected and**

10 **indicated that we would not proceed on that basis.**

11 **It's not the way we conduct ourselves.**

12          Q.       I want to ask you about the proxy

13 statement, or at least a few questions about the

14 proxy.

15               What was the process with respect to

16 TransCanada regarding drafting the proxy statement?

17          **A.       I believe Columbia took the pen for**

18 **the first draft. There was exchange of drafts between**

19 **both companies to verify its completeness and**

20 **accuracy. And I reviewed a near-final version of the**

21 **proxy circular.**

22          Q.       I want to ask you about Joint Exhibit

23 1196, which is an email exchange that began with an

24 email from Sullivan & Cromwell to Mayer Brown, dated

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## F. Poirier - Direct

<p style="text-align: right;"><b>F. Poirier - Direct</b> Page 165</p> <p>1 April 5th, 2016, attaching a draft background section</p> <p>2 of the proxy.</p> <p>3 Do you recall receiving a draft of the</p> <p>4 background of the merger section of the proxy around</p> <p>5 this time?</p> <p>6 <b>A. I do.</b></p> <p>7 Q. Did you review it for accuracy from</p> <p>8 your perspective?</p> <p>9 <b>A. I did.</b></p> <p>10 Q. If you could turn to page 1196.013,</p> <p>11 the background section. The third paragraph starts</p> <p>12 with a discussion of a voicemail from Party A in</p> <p>13 July 2015.</p> <p>14 Do you see that?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Then a couple paragraphs down, there's</p> <p>17 a discussion of a call from Party B?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And then later on, there's references</p> <p>20 to a Party C and a Party D.</p> <p>21 Before you read this draft of the</p> <p>22 background and merger section on around April 5th, did</p> <p>23 you have any idea that Columbia was in discussions or</p> <p>24 had discussions with four other parties about a</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Direct</b> Page 167</p> <p>1 of any discussions they were having with any other</p> <p>2 party who might be interested in pursuing an</p> <p>3 acquisition with Columbia?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Did you ever have any discussions with</p> <p>6 Bob Skaggs about his retirement plans, if he had them?</p> <p>7 <b>A. No. I never met Bob Skaggs until the</b></p> <p>8 <b>transaction had closed.</b></p> <p>9 Q. Did you ever have any discussions with</p> <p>10 Steve Smith about whether or not he had any retirement</p> <p>11 plans?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Did you have any discussions with</p> <p>14 anyone about Skaggs' or Smith's retirement plans?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Was there ever any discussion at</p> <p>17 TransCanada or with counsel about disclosing a breach</p> <p>18 of the standstill in the proxy statement?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Why not?</p> <p>21 <b>A. We didn't believe that there was any.</b></p> <p>22 ATTORNEY OLSEN: That's all I have,</p> <p>23 Your Honor, at this time.</p> <p>24 THE COURT: All right. Good timing.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>F. Poirier - Direct</b> Page 166</p> <p>1 potential transaction?</p> <p>2 <b>A. No, I did not.</b></p> <p>3 Q. At any time before the merger closed,</p> <p>4 did you learn who any of these parties were?</p> <p>5 <b>A. No.</b></p> <p>6 Q. I want to turn to Joint Exhibit 1183.</p> <p>7 I'm showing you what's been marked as Joint Exhibit</p> <p>8 1183, which is an email exchange between you, Chris</p> <p>9 Johnston, and Tara Shaw and others, dated April 5th,</p> <p>10 2016.</p> <p>11 As you can see in the top email, do</p> <p>12 you recall that there was some internal speculation at</p> <p>13 TransCanada as to who these parties may be?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. At any point before closing, as far as</p> <p>16 you know, did you or anyone at TransCanada learn from</p> <p>17 Columbia as to who these parties may be?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Did you or anyone at TransCanada, as</p> <p>20 far as you know, know whether Columbia had entered</p> <p>21 into NDAs or standstill provisions with any of these</p> <p>22 parties?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Did anyone at Columbia make you aware</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Direct</b> Page 168</p> <p>1 We are right at the lunch break. So why don't we</p> <p>2 break here, and we will resume at 1:30. We will stand</p> <p>3 in recess until then.</p> <p>4 (Lunch recess taken at 12:29 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

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<p>1 <u>AFTERNOON SESSION</u></p> <p>2 (Resumed at 1:32 p.m.)</p> <p>3 THE COURT: Welcome back, everyone.</p> <p>4 Please be seated. Thank you for being ready to go.</p> <p>5 ATTORNEY van KAWEGEN: Good</p> <p>6 afternoon, Your Honor. Jeroen van Kwawegen on behalf</p> <p>7 of plaintiffs, from Bernstein Litowitz.</p> <p>8 CROSS-EXAMINATION</p> <p>9 BY ATTORNEY van KAWEGEN:</p> <p>10 Q. Good afternoon, Mr. Poirier.</p> <p>11 Mr. Poirier, you have two binders in</p> <p>12 front of you, and the Court also has two binders. And</p> <p>13 hopefully everybody else has two binders. One binder</p> <p>14 will have exhibits that I'm showing you. It will also</p> <p>15 be on the screen. The other binder has a copy of the</p> <p>16 pretrial order. Part of that is some stipulated facts</p> <p>17 that we have agreed to. I may refer them. There's</p> <p>18 also a copy of your deposition transcript in this</p> <p>19 case, a copy of your testimony in the appraisal trial,</p> <p>20 and a copy of your deposition in the appraisal. If I</p> <p>21 refer to them, I will let you know where I am going,</p> <p>22 and I will also show some clips, if needed. Okay?</p> <p>23 A. Thank you.</p> <p>24 Q. I just wanted to get you oriented.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 AEP, where he was the trader?</p> <p>2 A. Yes.</p> <p>3 Q. You left JPMorgan around 2007 and then</p> <p>4 joined Wells Fargo Securities Canada 2013?</p> <p>5 A. Yes.</p> <p>6 Q. And this was after Mr. Fornell reached</p> <p>7 out to you?</p> <p>8 A. Yes.</p> <p>9 Q. You were again working as an</p> <p>10 investment banker?</p> <p>11 A. Yes.</p> <p>12 Q. And you again reported to Mr. Fornell,</p> <p>13 although now in a more remote, distant relationship?</p> <p>14 A. Correct.</p> <p>15 Q. And then you left Wells Fargo to join</p> <p>16 TransCanada in 2015; correct?</p> <p>17 A. 2014.</p> <p>18 Q. 2014. So if we add it all up, the</p> <p>19 time at JPMorgan and your time at Wells Fargo, you had</p> <p>20 over a decade of experience as an investment banker;</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And with this experience and</p> <p>24 background, you understood that the board of directors</p> <p>CHANCERY COURT REPORTERS</p>
F. Poirier - Cross Page 170	F. Poirier - Cross Page 172
<p>1 Mr. Poirier, it's fair to say, is it</p> <p>2 not, that before you started working at TransCanada,</p> <p>3 you had a career in investment banking?</p> <p>4 A. Yes.</p> <p>5 Q. And I think we covered some of that</p> <p>6 this morning, so I will be brief.</p> <p>7 But when Eric Fornell joined JPMorgan,</p> <p>8 he became the head of the power and pipelines group</p> <p>9 and he asked you to join him; right?</p> <p>10 A. Yes.</p> <p>11 Q. And you moved from Canada to New York</p> <p>12 to be working with him?</p> <p>13 A. Yes.</p> <p>14 Q. Fair to say Mr. Fornell was a mentor</p> <p>15 to you?</p> <p>16 A. Yes.</p> <p>17 Q. Taught you how to be an investment</p> <p>18 banker?</p> <p>19 A. Yes.</p> <p>20 Q. And I think this morning it was</p> <p>21 covered that during this time while you were at</p> <p>22 JPMorgan, you also met Mr. Stephen Smith?</p> <p>23 A. Yes.</p> <p>24 Q. You were the relationship manager for</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 of a target company had fiduciary duties?</p> <p>2 A. Yes.</p> <p>3 Q. You understood that the board would be</p> <p>4 required to work in the best interests of their</p> <p>5 shareholders in connection with the sale of the</p> <p>6 company?</p> <p>7 A. Yes.</p> <p>8 Q. You understood that the board would be</p> <p>9 required to maximize shareholder value?</p> <p>10 A. Yes.</p> <p>11 Q. And in that analysis, you understood</p> <p>12 that a contemplation of a transaction by the board</p> <p>13 should be in comparison with other alternatives,</p> <p>14 including the status quo and what delivers the best</p> <p>15 long-term value for the shareholders; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Let's talk about the transaction here.</p> <p>18 TransCanada began to assess the possibility of</p> <p>19 acquiring Columbia in July of 2015; right?</p> <p>20 A. That's correct.</p> <p>21 Q. And it's fair to say that the</p> <p>22 acquisition of Columbia by TransCanada was a strategic</p> <p>23 deal?</p> <p>24 A. Yes.</p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

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1	Q.	Not a private equity transaction?
2	A.	<b>Correct.</b>
3	Q.	Usually you would expect some cost
4		synergies in a strategic deal?
5	A.	<b>Yes.</b>
6	Q.	And in connection with this deal,
7		TransCanada was expecting synergies and cost synergies
8		as well?
9	A.	<b>Yes.</b>
10	Q.	And when you were thinking about those
11		cost synergies, that would include headcount
12		deductions; right?
13	A.	<b>Yes.</b>
14	Q.	And again, here, when TransCanada was
15		looking at Columbia Pipeline, it was also considering
16		a headcount deduction?
17	A.	<b>Yes.</b>
18	Q.	Now, is it fair to say that
19		TransCanada was told from the outset that social
20		issues may not be a significant consideration in
21		connection with this deal?
22	A.	<b>I don't recall.</b>
23	Q.	Let me show you a document.
24	A.	<b>Sure.</b>
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F. Poirier - Cross		Page 175
1	A.	<b>Yes.</b>
2	Q.	And when we were thinking about social
3		issues in connection with the strategic deal, that
4		generally refers to the composition of the <i>pro forma</i>
5		company, the combined company's board and senior
6		officers, in terms of the split post transaction;
7		right?
8	A.	<b>Certainly composition of management,</b>
9		<b>depending on whether it's a cash deal or a stock deal,</b>
10		<b>may or may not involve social issues at the board.</b>
11	Q.	But certainly with respect to
12		management?
13	A.	<b>Uh-huh.</b>
14	Q.	And just thinking through the
15		timeline, you became involved in this transaction
16		around September of 2015; right?
17	A.	<b>Yes.</b>
18	Q.	And you offered to meet with Steve
19		Smith because you had known him for years?
20	A.	<b>Yes.</b>
21	Q.	And you suggested internally at
22		TransCanada that the visit could be couched as a
23		catch-up to tell him about your new role at
24		TransCanada; right?
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1	Q.	It will be the first one. It's
2		JTX 109. And it's also in front of you on the screen.
3		There's an email there from Lazard, from Mark
4		Zimmerman to Alex Pourbaix, Karl Johansson, and Russ
5		Girling. And it's blown up on the screen if you want
6		to look at it there, because it's much bigger.
7	A.	<b>Okay.</b>
8	Q.	There you see there's a line that
9		says, "While there was Reverse Morris Trust issues
10		(tax free spin provisions [et cetera] ...) there is a
11		possibility that it may be put into play shortly
12		after. The current implied market cap is close to
13		\$9 [billion] with the senior management team from
14		NiSource slated to run the operation, suggesting that
15		social issues may not be a significant consideration."
16		Do you see that?
17	A.	<b>Yes.</b>
18	Q.	And at that time, Alex Pourbaix was
19		the chief operating officer of TransCanada?
20	A.	<b>Yes, that's correct.</b>
21	Q.	Was dealing with the CEO, and Karl
22		Johansson was president in U.S. pipelines; right?
23	A.	<b>Yes.</b>
24	Q.	Most senior management at TransCanada?
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1	A.	<b>Yes.</b>
2	Q.	And it's fair to say that you
3		discussed TransCanada's interest in exploring a
4		relationship with Columbia with Mr. Fornell, who then
5		offered to reach out to Mr. Smith to ask him if he
6		would be open to a conversation with you about a
7		potential transaction; right?
8	A.	<b>Yes.</b>
9	Q.	Met with Steve Smith for dinner
10		October 26th and told him that TransCanada was
11		interested in a potential acquisition of Columbia;
12		right?
13	A.	<b>Yes.</b>
14	Q.	Now, earlier today your counsel showed
15		a book that you received prior to that meeting. I'm
16		going to show you that in a second. But it's fair to
17		say that you had asked for that book to be updated so
18		you could prepare for that meeting; right?
19	A.	<b>Yes.</b>
20	Q.	Let's take a look at that book. It's
21		JTX 245. And if you go to the second page -- go
22		through the natives. It says, "TransCanada --
23		Columbia Pipeline Implications."
24		And if you flip through the book, it's
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1 basically a book that goes through the various  
 2 industry analyses, strategic fit, things of that  
 3 nature; correct?  
 4 **A. Yes.**  
 5 Q. Situational overview is in there.  
 6 Now, when you had dinner with  
 7 Mr. Smith on October 26th, did you hand him this book?  
 8 **A. No. I don't believe I actually saw**  
 9 **this book before -- perhaps I did -- before I met with**  
 10 **him. But, no, I didn't hand him the book. We didn't**  
 11 **have any paper.**  
 12 Q. Right. If you go to the first page of  
 13 this exhibit, it's actually emailed to you; right?  
 14 **A. Yes.**  
 15 Q. And it's October 9th before your  
 16 dinner?  
 17 **A. Yes. Okay. I see now. Thank you.**  
 18 Q. And so it's fair to say you didn't  
 19 hand that book to Mr. Smith during the dinner; right?  
 20 **A. That's correct.**  
 21 Q. And earlier today, we heard you  
 22 testify about scripts that were prepared for  
 23 Mr. Girling in anticipation of calls with Mr. Skaggs  
 24 to talk about a potential transaction; do you recall

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1 premiums will need to be considered)."  
 2 So in is this strategic deal, there  
 3 was never a consideration of keeping on Mr. Smith or  
 4 Mr. Skaggs following the transaction; right?  
 5 **A. No. In the change-in-control**  
 6 **transactions, typically the management of the acquirer**  
 7 **that -- remains as management of the combined entity.**  
 8 Q. Now, this memo is -- now, if you go to  
 9 page 19 of the presentation -- the bottom is 245.021,  
 10 but for the natives, it's 19 -- there you see an  
 11 assessment calculation of the change-in-control  
 12 payments that would need to be made to Mr. Skaggs and  
 13 Mr. Steve Smith and Glen Kettering and Shawn  
 14 Patterson.  
 15 **A. Yes.**  
 16 Q. So, for example, before your dinner  
 17 with Mr. Smith, you understood that Bob Skaggs would  
 18 probably get \$13 million in change-in-control premiums  
 19 and Steve Smith about \$8 1/2 million of control  
 20 premiums?  
 21 **A. Yes, I see that.**  
 22 Q. And you also knew this when you and  
 23 Alex Pourbaix met with Steve Smith and Glen Kettering  
 24 to discuss a potential transaction on November 13,

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1 that?  
 2 **A. Yes.**  
 3 Q. One of those scripts was about a call  
 4 that was happening on January 25th to talk about a  
 5 25 to \$28 per share range; do you recall that?  
 6 **A. Yes.**  
 7 Q. Did you ever send those scripts to  
 8 Mr. Smith?  
 9 **A. No.**  
 10 Q. Did you ever hand them over?  
 11 **A. No.**  
 12 Q. Let's look at this book. If you go to  
 13 page 8 of the presentation, at the bottom it's -- for  
 14 anybody who is looking at the paper, it's 245.008.  
 15 And it's actually page 6 of the presentation itself.  
 16 **A. Okay.**  
 17 Q. It says, "Considerations for  
 18 Purchase."  
 19 "Competition."  
 20 "Valuation."  
 21 At the bottom, there's a discussion  
 22 about the management team. It says, "Current  
 23 management team is made up same individuals who were  
 24 seen as 'ineffective' at NiSource (change of control

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1 2015; correct?  
 2 **A. Yes, we had that information.**  
 3 Q. It's fair to say that TransCanada's  
 4 board also knew that there would, quote/unquote, no  
 5 social issues with an acquisition by TransCanada;  
 6 correct?  
 7 **A. I don't know how you would define**  
 8 **that, "no social issues," and why the board would know**  
 9 **that.**  
 10 Q. Okay. I'll show you a document. If  
 11 we go to JTX 337 -- and I will define it the way we've  
 12 been talking about now. If you go to JTX 337 --  
 13 **A. Okay.**  
 14 Q. -- you see the first page, there's a  
 15 notice of a board meeting --  
 16 **A. Yes.**  
 17 Q. -- of TransCanada; right?  
 18 **A. Yes.**  
 19 Q. November 16th, 2015?  
 20 **A. Yes.**  
 21 Q. And if you go to the bottom, it's  
 22 337.004. You see a memo from Alex Pourbaix to the  
 23 TransCanada board of directors on November 19th, 2015?  
 24 **A. Yes, I see that.**

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## F. Poirier - Cross

F. Poirier - Cross Page 181	F. Poirier - Cross Page 183
<p>1 Q. And there's a discussion there about</p> <p>2 Project Constellation, which is the acquisition of</p> <p>3 Columbia Pipeline; correct?</p> <p>4 <b>A. Yes. I see that. Thank you.</b></p> <p>5 Q. And then if you go a couple of bullet</p> <p>6 points, "Strategic Fit," "Growth Platform,"</p> <p>7 "Transactable" -- if you look at the "Transactable"</p> <p>8 and go to the fourth bullet point, which on the next</p> <p>9 page, here Alex Pourbaix is informing the TransCanada</p> <p>10 board of directors, "At this point, management appears</p> <p>11 to prefer a sale of the company and have indicated to</p> <p>12 us there will be no social issues of an acquisition by</p> <p>13 our Company."</p> <p>14 Does this refresh your memory that --</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. -- the TransCanada board of directors</p> <p>17 was also aware that there would be no social issues --</p> <p>18 <b>A. Yes, it does. Thank you.</b></p> <p>19 Q. -- because we had been talking about</p> <p>20 it in connection with a potential acquisition by</p> <p>21 TransCanada?</p> <p>22 Yes?</p> <p>23 <b>A. Yes, it does.</b></p> <p>24 Q. No reason to doubt that; right?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 morning, I also heard you talk about, you know, a</p> <p>2 dollar is a dollar.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And Canadian currency is not</p> <p>5 necessarily the same as American currency. I think in</p> <p>6 one of your prior depositions, you spoke about El Paso</p> <p>7 del Norte; right?</p> <p>8 <b>A. I think I called them dollarettes.</b></p> <p>9 Q. But there was no doubt in your mind</p> <p>10 that from the outset of the discussions, Columbia</p> <p>11 management preferred an all-cash transaction over a</p> <p>12 transaction with stock?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And, in fact, when you first started</p> <p>15 discussions about the potential transactions, they</p> <p>16 gave you three criteria: all cash, closing certainty,</p> <p>17 and price; right?</p> <p>18 <b>A. That's certainly where we ended up</b></p> <p>19 <b>very quickly. As to whether or not that's exactly</b></p> <p>20 <b>where they started, that was very clear before we</b></p> <p>21 <b>started doing significant amounts of work.</b></p> <p>22 Q. And it's fair to say that you tried to</p> <p>23 structure the proposals to Columbia management around</p> <p>24 those issues?</p> <p>CHANCERY COURT REPORTERS</p>
F. Poirier - Cross Page 182	F. Poirier - Cross Page 184
<p>1 <b>A. No.</b></p> <p>2 Q. Alex Pourbaix, as chief operating</p> <p>3 officer, would be careful to provide accurate</p> <p>4 information to the TransCanada board; correct?</p> <p>5 <b>A. Yes, he would.</b></p> <p>6 Q. And it's fair to say that none of</p> <p>7 TransCanada synergies analyses and headcount</p> <p>8 deductions contemplated keeping Skaggs, Smith, or</p> <p>9 Kettering as operational executives after a</p> <p>10 transaction?</p> <p>11 <b>A. Just thinking back, I believe that's</b></p> <p>12 <b>correct, yes.</b></p> <p>13 Q. Now, besides the fact that you knew</p> <p>14 that there would be no social issues, you also knew</p> <p>15 that Columbia management preferred a cash transaction</p> <p>16 over a transaction that was all or mostly stock;</p> <p>17 correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And I think you believe -- I believe</p> <p>20 you testified that that's one of the things that</p> <p>21 Mr. Smith told you during that October dinner; is that</p> <p>22 correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Now, later in your testimony this</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. Now, in November of 2015, just</p> <p>3 orienting you in time, you understood that Columbia</p> <p>4 was considering prefunding it's 2016, 2017 capital</p> <p>5 expenditure program with a \$1 billion equity issuance;</p> <p>6 correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And you were concerned that such an</p> <p>9 offering irrevocably changed the dynamics for</p> <p>10 TransCanada; correct?</p> <p>11 <b>A. I was concerned that the valuation</b></p> <p>12 <b>might increase to the point where a transaction with</b></p> <p>13 <b>us was no longer viable.</b></p> <p>14 Q. And it's also fair to say that you</p> <p>15 were concerned that if Columbia addressed its</p> <p>16 financing, it would no longer be interested to be sold</p> <p>17 to TransCanada?</p> <p>18 <b>A. Not necessarily. It depends on how</b></p> <p>19 <b>the stock reacts to the equity issuance.</b></p> <p>20 Q. So let me just show you your appraisal</p> <p>21 deposition. And I'll show you a clip. And what we're</p> <p>22 looking at is in the second binder, if you want to</p> <p>23 read along. But it's JTX 1429, your appraisal</p> <p>24 deposition.</p> <p>CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 185</p> <p>1 And we're going to see the clip. And</p> <p>2 it's lines 79 -- page 79, lines 6 through 21. I'm</p> <p>3 going to see if this actually works.</p> <p>4 <b>A. Lines what? Sorry.</b></p> <p>5 Q. Sorry?</p> <p>6 <b>A. What lines, please?</b></p> <p>7 Q. Oh. Page 79 of your deposition,</p> <p>8 lines 6 through 21. It's JTX 1429.</p> <p>9 (A video clip was played as follows:)</p> <p>10 Question: Why were you concerned in</p> <p>11 November 2015 that an equity issuance by CPG could</p> <p>12 irrevocably change the dynamics of a potential</p> <p>13 transaction with TransCanada?</p> <p>14 Answer: Because they may not feel</p> <p>15 that being acquired by someone who had large, you</p> <p>16 know, internally generated cash flow and financing</p> <p>17 capability and a A-grade credit rating would not be</p> <p>18 necessarily an imperative anymore if they addressed</p> <p>19 this issue with the financing.</p> <p>20 Question: You were concerned that</p> <p>21 maybe they would not be interested to be sold to</p> <p>22 TransCanada anymore?</p> <p>23 Answer: Yes.</p> <p>24 (End of video clip.)</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 187</p> <p>1 they still do not want to take the risk."</p> <p>2 Correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And that was an oral conversation, was</p> <p>5 it not?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And it's fair to say that from</p> <p>8 TransCanada's perspective, that \$26 per share was an</p> <p>9 offer?</p> <p>10 <b>A. No, it was not an offer.</b></p> <p>11 Q. No?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Let's look at another document,</p> <p>14 JTX 517. And if you look at the first page, it's an</p> <p>15 email from Christine Johnston to you on January 5th?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And attaching is a memorandum dated</p> <p>18 December 15th, 2015, from Mayer Brown.</p> <p>19 Just go to the next page.</p> <p>20 <b>A. Okay.</b></p> <p>21 Q. And here Mayer Brown writes in the</p> <p>22 first sentence to Christine Johnston on Project</p> <p>23 Constellation issues, "Recently, Taurus made an oral</p> <p>24 offer to acquire all of Capricorn's outstanding common</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 186</p> <p>1 BY ATTORNEY van KAWAEGEN:</p> <p>2 Q. Did I ask those questions, and did you</p> <p>3 give those answers at your deposition?</p> <p>4 <b>A. Yes, sir.</b></p> <p>5 Q. Now, on November 25th, Columbia</p> <p>6 informed TransCanada it was terminating discussions</p> <p>7 with respect to a potential transaction and asked that</p> <p>8 TransCanada return and destroy all confidential</p> <p>9 information; right?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And your counsel showed you an email</p> <p>12 that I also want to show you. And that's JTX 402.</p> <p>13 And specifically on page 3 of this document, at the</p> <p>14 bottom right, there's an email from Eric Fornell.</p> <p>15 "Subject: [ ] Weird twist." And there's a reference</p> <p>16 there to the conversation that Mr. Girling had with</p> <p>17 Mr. Skaggs.</p> <p>18 <b>A. I see that.</b></p> <p>19 Q. "Russ asked" -- and I'm just repeating</p> <p>20 it so that everybody is on the same page.</p> <p>21 "Russ asked, what if we closed the gap</p> <p>22 between \$26 and \$28 and we get it done before</p> <p>23 Christmas? Capricorn's CEO went back to his lead</p> <p>24 director to ask and came back with the answer that</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 188</p> <p>1 stock at a price of \$26 per share."</p> <p>2 This is Mayer Brown providing legal</p> <p>3 advice to TransCanada in connection with Project</p> <p>4 Constellation; correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Now, if you go down the memo to</p> <p>7 page -- at the bottom, it's 007. There's a heading</p> <p>8 that says, "Possible leverage against Capricorn."</p> <p>9 Let's take a look at that.</p> <p>10 "We have considered whether Taurus</p> <p>11 could increase its bargaining leverage by threatening</p> <p>12 to disclose the existence of its \$26 per share offer.</p> <p>13 We do not believe that to be a viable strategy for</p> <p>14 several reasons: (1) the standstill agreement between</p> <p>15 the parties bars Taurus" -- TransCanada -- "from</p> <p>16 making such a disclosure without [Columbia and]</p> <p>17 Capricorn's consent."</p> <p>18 Do you see that?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. So your lawyers at Mayer Brown</p> <p>21 certainly seem to think that TransCanada had made a</p> <p>22 \$26 per share oral offer, right?</p> <p>23 <b>A. I don't agree with that. From my</b></p> <p>24 <b>perspective, an offer has to meet the standard in the</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 **NDA and standstill. And an indication of a range upon**  
 2 **which we will be prepared to continue our due**  
 3 **diligence is not an offer.**

4 Q. It's fair to say that you are not a  
 5 lawyer; correct?

6 **A. That's correct.**

7 Q. It is also fair to say that, based on  
 8 this advice here, you understood that you couldn't use  
 9 the threat of disclosure of negotiations for leverage  
 10 in the negotiations for a potential transaction;  
 11 right?

12 **A. Yes, sir.**

13 Q. You understood that?

14 **A. Yes.**

15 Q. You have no reason to doubt that you  
 16 received this memo around January 5th of 2016, if you  
 17 look at the first page?

18 **A. That's correct, sir.**

19 Q. Now, on November 25th -- you can put  
 20 this to the side -- November 25th, you spoke with  
 21 Steve Smith, and he told you that Columbia will  
 22 probably want to pick up communications again in a few  
 23 months, didn't he?

24 **A. Yes.**

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1 JTX 413. And I want to look, first, at the second  
 2 page of this exhibit. There's an email from you on  
 3 November 28th, 2015, to Russ Girling, Alex Pourbaix,  
 4 and Don Marchand; correct?

5 **A. Yes.**

6 Q. It was before the equity offering?

7 **A. I thought it was after. No?**

8 Q. I'll represent to you that the equity  
 9 offering was December 1st.

10 **A. Okay, I see. Yes. Okay. We had**  
 11 **heard that they had to make the decision to issue**  
 12 **equity.**

13 Q. Right. And thank you. Yes. This is  
 14 after you learned that they were going to do the  
 15 equity offering, but it's before the equity offering  
 16 itself; right?

17 **A. Yes.**

18 Q. Okay. And here, you basically give an  
 19 overview of your thoughts following that announcement  
 20 that Columbia Pipeline was going to pursue the equity  
 21 offering and not a transaction; correct?

22 **A. Yes.**

23 Q. Now, if you go to the second page, the  
 24 first key input that you talk about is how the equity

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1 Q. And in the meantime, you instructed  
 2 Wells Fargo to continue to model potential  
 3 transactions with Columbia; right?

4 **A. Yes.**

5 Q. And, in fact, between November of 2015  
 6 and March of 2016, you never instructed your team to  
 7 stop modeling a potential transaction with Columbia?

8 **A. That's correct.**

9 Q. I want to take you back to the moment  
 10 when you heard that Columbia was going to pursue the  
 11 equity offering. Okay?

12 And earlier we saw that you were  
 13 concerned that that would mean that Columbia Pipeline  
 14 management may no longer be interested in selling to  
 15 TransCanada; correct?

16 **A. Yes.**

17 Q. Now, it's fair to say, is it not, that  
 18 you realized pretty quickly that when you heard that  
 19 Columbia would be pursuing the equity offering, you  
 20 believed that management would still be supportive of  
 21 a sale?

22 **A. No. It would depend on how the stock**  
 23 **performed after the equity issuance.**

24 Q. Let's take a look. Let's look at

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1 offering is received. And then there's a second key  
 2 input.

3 And there you say, "The second key  
 4 input is the nature and quality of any board  
 5 relationships .... From my perspective, management  
 6 would be supportive of a sale. Based on the decision  
 7 they made, I believe the board is not as wed to that  
 8 path at the moment."

9 Those were your thoughts on  
 10 November 28th; right?

11 **A. Yes.**

12 Q. Now, if you go to the next page, I  
 13 want to talk a little bit about timing. At the top of  
 14 the page -- so the bottom is 004 -- you say, "The CFO  
 15 told me they thought we had two concerns regarding an  
 16 equity issuance. The first is how the share account  
 17 and cash might affect valuation, and the second is  
 18 their presumption that we would prefer they do not  
 19 proceed with a drop-down before we conclude the  
 20 transaction."

21 **A. Yes.**

22 Q. "On the latter point, he did say that  
 23 their planned window for the next drop-down would be  
 24 in the March to June timeframe. That suggests that

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1 reengaging in January, with an eye to concluding an  
 2 agreement by March, is our window. On that basis, I  
 3 would suggest that I check in with the CFO after the  
 4 equity offering, and that Russ check in with Bob just  
 5 before the holidays."  
 6 And that's what happened; right?  
 7 **A. Yes.**  
 8 Q. Did you check in with the CFO right  
 9 after -- around the offering, and Russ checked in with  
 10 Bob Skaggs before the holidays?  
 11 **A. I think I checked in with -- not right**  
 12 **after the equity offering with Mr. Smith. I think it**  
 13 **was more the middle of December, if memory serves.**  
 14 Q. We'll go back to that. You have no  
 15 doubt, though, that you checked in with Mr. Smith in  
 16 the middle of December?  
 17 **A. Yes.**  
 18 Q. Okay. Let's talk a little bit about  
 19 the equity offering. It's fair to say that Columbia's  
 20 equity offering in December 2015 was successful?  
 21 **A. How do you define "success"?**  
 22 Q. Well, underwriters exercised the SHU,  
 23 Columbia raised approximately \$1.4 million, and they  
 24 were addressing their capital needs through 2016, and

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1 little bit. As you can see, I go fairly  
 2 chronologically.  
 3 It's fair to say that you saw the  
 4 standstill provision around the time that TransCanada  
 5 entered into the NDA on November 9th, 2015?  
 6 **A. Yes.**  
 7 Q. You've seen those types of standstill  
 8 provisions before in connection with your role as an  
 9 investment banker at JPMorgan and Wells Fargo?  
 10 **A. With JPMorgan, yes.**  
 11 Q. And as a former investment banker, you  
 12 feel comfortable interpreting this?  
 13 **A. Yes.**  
 14 Q. And you briefed the TransCanada team  
 15 on the obligation?  
 16 **A. I did -- let me correct that. I**  
 17 **conveyed a meeting to have our general counsel brief**  
 18 **the team and participate in that meeting.**  
 19 Q. And who was your general counsel?  
 20 **A. Chris Johnston -- pardon me. Our**  
 21 **corporate secretary, Chris Johnston.**  
 22 Q. I just want to take a look at two  
 23 documents. The first one is JTX 311.  
 24 At the top, there's an email from you

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1 perhaps beyond; right?  
 2 **A. Yes, but they did not see any**  
 3 **appreciable increase in the stock price.**  
 4 Q. No doubt, though, in your mind, that  
 5 because of the equity raise, Columbia Pipeline was now  
 6 in a position to fund its capital program at least  
 7 through 2016 and potentially even beyond?  
 8 **A. At least until -- yeah, whatever the**  
 9 **use of proceeds were stated to fund, that's correct,**  
 10 **yes.**  
 11 Q. And that's what you just briefly  
 12 talked about? You did check in with Steve Smith after  
 13 the equity offering; correct?  
 14 **A. Yes.**  
 15 Q. And Russ Girling checked in with Bob  
 16 Skaggs after the equity offering, before the holidays  
 17 as well?  
 18 **A. Yes.**  
 19 Q. And neither Mr. Smith nor Mr. Skaggs  
 20 dissuaded TransCanada from reengaging on a potential  
 21 transaction, even though they now had enough money to  
 22 fund their project through 2016; right?  
 23 **A. That's correct.**  
 24 Q. I want to talk about the standstill a

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F. Poirier - Cross

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1 on November 10th, saying, "[For] [your] [information],  
 2 we have now signed an NDA with the target. I will  
 3 brief everyone on [their] obligations on this call."  
 4 **A. Yes.**  
 5 Q. Here, you are scheduling the call to  
 6 brief everyone on their obligations; correct? Is that  
 7 right?  
 8 **A. That's correct.**  
 9 Q. And if you go to JTX 314, you see  
 10 handwritten notes dated November 15th. Top right,  
 11 same participants from the email.  
 12 **A. Yes.**  
 13 Q. I want to focus on -- right underneath  
 14 the box, "NDA signed ...."  
 15 It says, "NDA signed with [Match]  
 16 [Stick]." "Match Stick" at that time was Columbia  
 17 Pipeline; right?  
 18 **A. That's correct.**  
 19 Q. It says, "NDA signed with [Match]  
 20 [Stick]. [B]jar is high on disclosure. [S]tandstill.  
 21 12 months can't make run at them."  
 22 **A. Yes.**  
 23 Q. You have no doubt that that was  
 24 discussed with the entire team on November 15th?

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## F. Poirier - Cross

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<p>1           <b>A.</b>       <b>That's correct.</b></p> <p>2           Q.        I want to show you another document</p> <p>3           that you talked about this morning. That's 424.</p> <p>4                     Here, you have at the bottom an email</p> <p>5           from Christine Johnston summarizing the standstill</p> <p>6           provision. You see that; right?</p> <p>7                     "The summary of the standstill is as</p> <p>8           follows ...."</p> <p>9                     And then on top, you forward that to</p> <p>10          Russ Girling, TransCanada CEO, on December 1st, 2015.</p> <p>11          And you say, "Hi Russ, See below. We basically must</p> <p>12          get Capricorn's acquiescence to pursue this</p> <p>13          transaction, or even to seek to influence them."</p> <p>14                    Do you see that?</p> <p>15          <b>A.</b>        <b>I do.</b></p> <p>16          Q.        And with respect -- that was your</p> <p>17          understanding, right, on December 1st, 2015?</p> <p>18          <b>A.</b>        <b>Yes.</b></p> <p>19          Q.        And when you looked at the email from</p> <p>20          Christine Johnston, it's fair to say that you did not</p> <p>21          write back to her and say, Christine, you got it all</p> <p>22          wrong. This NDA means something that you are not</p> <p>23          saying. Correct?</p> <p>24          <b>A.</b>        <b>That's correct.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1          not have been December 1st." Correct?</p> <p>2                    <b>A.</b>        <b>Uh-huh.</b></p> <p>3                    Q.        So I just wanted to show you another</p> <p>4                    document. And if you look at your binder, what you'll</p> <p>5                    see here is right before the exhibits, there are</p> <p>6                    Exhibits X-1, X-2, X-3, X-4, and X-5.</p> <p>7                    <b>A.</b>        <b>Yes.</b></p> <p>8                    Q.        And they are a summary or compilation</p> <p>9                    of certain text messages. And to make them more</p> <p>10                   legible, we produced them this way, with the actual</p> <p>11                   text messages right behind them.</p> <p>12                             And so I just want to look at X-1.</p> <p>13                   <b>A.</b>        <b>Okay.</b></p> <p>14                    Q.        If you look at the binder, you'll see</p> <p>15                    a blue slip sheet, and the actual text messages, as</p> <p>16                    produced, are behind it. And when we received those</p> <p>17                    text messages, they were out of order and very</p> <p>18                    difficult to follow.</p> <p>19                             In this case, it's JTX 273 that's</p> <p>20                    behind it. But to make it more legible and</p> <p>21                    followable, we compiled them in this spreadsheet.</p> <p>22                   <b>A.</b>        <b>Okay.</b></p> <p>23                    Q.        Made no changes.</p> <p>24                    So if you look at X-1, there are a</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
F. Poirier - Cross Page 198	F. Poirier - Cross Page 200
<p>1           Q.        So it's fair to say that you</p> <p>2           understood that under the terms of the standstill, for</p> <p>3           a period of 12 months, TransCanada could not pursue a</p> <p>4           potential transaction with Columbia Pipeline without</p> <p>5           receiving a written invitation from the Columbia</p> <p>6           Pipeline board?</p> <p>7           <b>A.</b>        <b>That's correct.</b></p> <p>8           Q.        And you were aware of TransCanada's</p> <p>9           obligations under the standstill between the time that</p> <p>10          TransCanada entered into the standstill in November</p> <p>11          2015 and the signing of the merger agreement on</p> <p>12          March 17th, 2016; correct?</p> <p>13          <b>A.</b>        <b>Yes.</b></p> <p>14          Q.        And it's also fair to say that, to</p> <p>15          your knowledge, there was no written invitation from</p> <p>16          the Columbia Pipeline board to pursue a transaction</p> <p>17          between December 1st, 2015, and March 2nd, 2016?</p> <p>18          <b>A.</b>        <b>Correct.</b></p> <p>19          Q.        Now, earlier we discussed that you</p> <p>20          checked in with Steve Smith after the equity offering;</p> <p>21          right?</p> <p>22          <b>A.</b>        <b>Yes.</b></p> <p>23          Q.        And I think you testified "I'm sure it</p> <p>24          was mid-December, but I don't remember," or "it may</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1          number of text message from you with Francois Poirier.</p> <p>2          Do you see that?</p> <p>3                    <b>A.</b>        <b>That's me, yes.</b></p> <p>4                    Q.        Sorry. I apologize. That's so silly.</p> <p>5                    Thank you very much.</p> <p>6                             From you and Steve Smith; right?</p> <p>7                    <b>A.</b>        <b>Yes.</b></p> <p>8                    Q.        And here, on the December 1st, 2015,</p> <p>9                    you reached out to Steve Smith, and you say, "Hi,</p> <p>10                   Steve, can you please give me a call? Thanks,</p> <p>11                   Francois."</p> <p>12                   <b>A.</b>        <b>Yes.</b></p> <p>13                    Q.        And then there's some back and forth.</p> <p>14                    And you agree to talk on the cell phone. Do you see</p> <p>15                    that?</p> <p>16                             "You around this afternoon?"</p> <p>17                             "Yes what time works for you?"</p> <p>18                             "Probably 4:30."</p> <p>19                             "Okay. Sure that works."</p> <p>20                             Do you have any reason to doubt that</p> <p>21                    you also spoke on December 1st with Steve Smith?</p> <p>22                   <b>A.</b>        <b>No, not based on this text record.</b></p> <p>23                    Q.        And it's fair to say that on</p> <p>24                    December 2, December 2nd, Russ Girling spoke with Bob</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

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<p>1 Skaggs?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Let's look at 423. I have the wrong</p> <p>4 number. Let's skip that.</p> <p>5 You have no reason to doubt that on</p> <p>6 December 2nd, Girling spoke with Skaggs; right?</p> <p>7 <b>A. Yes, correct.</b></p> <p>8 Q. Is that same day, Wells Fargo sent you</p> <p>9 an engagement letter; correct?</p> <p>10 <b>A. I don't recall.</b></p> <p>11 Q. Let's take a look at Exhibit 438. At</p> <p>12 the top, there's an email from Eric Fornell to you,</p> <p>13 sending you a proposed engagement letter. And it's in</p> <p>14 connection with the potential acquisition of Columbia</p> <p>15 Pipeline; right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Same day that Skaggs and Girling</p> <p>18 spoke, the day after you spoke with Steve Smith;</p> <p>19 right?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. And then on December 3rd, the next</p> <p>22 day, you asked Mr. Fornell to look into the question</p> <p>23 of whether the underwriters have exercised their SHU?</p> <p>24 <b>A. Yes.</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. He did.</b></p> <p>2 Q. And then in mid-December, you called</p> <p>3 Mr. Smith to request a meeting in early January;</p> <p>4 right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And that meeting was to potentially</p> <p>7 reengage on the acquisition of Columbia; right?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. You had that meeting with Steve on</p> <p>10 January 7th?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Now, during your direct testimony,</p> <p>13 your counsel showed you a document that I'm going to</p> <p>14 put on the screen. It's not in your binder, but it</p> <p>15 was a text exchange. And that was Joint Exhibit 1707,</p> <p>16 line 94. I want to show you that on the screen.</p> <p>17 There we go. Do you see this text</p> <p>18 message about the discussion between counsel?</p> <p>19 <b>A. I do.</b></p> <p>20 Q. Do you recall your testimony about</p> <p>21 this point?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Nothing in this text message is</p> <p>24 talking about standstill; right?</p> <p>CHANCERY COURT REPORTERS</p>
F. Poirier - Cross Page 202	F. Poirier - Cross Page 204
<p>1 Q. And that's because you wanted to know</p> <p>2 the share count. You wanted to understand how</p> <p>3 exercising the SHU, whether it was exercised or not,</p> <p>4 would affect the share count, and that would affect</p> <p>5 your analysis and modeling of a potential transaction.</p> <p>6 <b>A. It was less than -- yes, that's a</b></p> <p>7 <b>piece of data you would get from that. But exercising</b></p> <p>8 <b>the SHU is an indication of how well an issuance has</b></p> <p>9 <b>been received by the marketplace.</b></p> <p>10 Q. And so it's fair to say that you were</p> <p>11 asking Mr. Fornell to look into this because you were</p> <p>12 still modeling and analyzing a potential transaction?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Now, I think you talked about this a</p> <p>15 little bit before, but on December 8th Mr. Fornell</p> <p>16 spoke with Mr. Smith at the Wells Fargo Energy</p> <p>17 Conference; right?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Six days after he sent you the</p> <p>20 proposed engagement letter to act as your banker in</p> <p>21 connection with the transaction; right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And he reported back on their</p> <p>24 conversation between him and Steve Smith?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. Sorry, the screen is breaking in and</b></p> <p>2 <b>out.</b></p> <p>3 Q. Here, what it says is, "My</p> <p>4 understanding is that our respective counsels have</p> <p>5 talked, and that we are ok to proceed with exchanging</p> <p>6 information. As we destroyed all non public</p> <p>7 information, in addition to the data room index, would</p> <p>8 it be possible to receive again the information you</p> <p>9 previously sent, including the board summaries?"</p> <p>10 Do you see that?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. No reference there to a standstill;</p> <p>13 correct?</p> <p>14 <b>A. Well, there is an inference that the</b></p> <p>15 <b>counsels have talked. And I did direct Ms. Smith</b></p> <p>16 <b>[sic] to speak with her counterpart at Columbia.</b></p> <p>17 <b>So the implication is that by</b></p> <p>18 <b>referencing the conversation between our counsel, that</b></p> <p>19 <b>they concluded it was acceptable for us to have</b></p> <p>20 <b>another conversation.</b></p> <p>21 Q. Mr. Poirier, this specific document,</p> <p>22 there's no mention of a standstill; correct?</p> <p>23 <b>A. Not direct. You are correct on that,</b></p> <p>24 <b>sir.</b></p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

F. Poirier - Cross

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1 Q. Now, you had the meeting with Steve  
2 Smith on January 7th, and during that meeting, you  
3 told Steve Smith that TransCanada was interested in  
4 acquiring Columbia?  
5 **A. Yes.**  
6 Q. You also told Steve Smith that  
7 TransCanada wanted to do due diligence for 30 to  
8 45 days and wanted to formulate a proposal?  
9 **A. Yes.**  
10 Q. And that TransCanada's view as to the  
11 fundamental value of Columbia had not changed since  
12 the parties had first discussed the transaction.  
13 **A. I don't recall making that specific**  
14 **statement on the fact that the fundamental value had**  
15 **not changed.**  
16 Q. Okay. So if you look at witness  
17 binder No. 2, there's the pretrial order. And if you  
18 go to paragraph 290, those are stipulated facts  
19 between the parties.  
20 Do you see that?  
21 **A. Yes, I do.**  
22 Q. It says there -- it's one of the  
23 stipulated facts -- "Poirier informed Stephen Smith  
24 that TransCanada's view as to the fundamental value of

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F. Poirier - Cross

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1 approach was welcome if you engaged. Do you remember  
2 that?  
3 **A. Yes.**  
4 Q. And not unfriendly in any way.  
5 So when you had this impression that  
6 it wasn't unanimous on the board, Columbia Pipeline to  
7 sell, did you ask Steve Smith to get written  
8 confirmation from the board that TC Energy or  
9 TransCanada was asked to pursue a potential  
10 acquisition because you wanted to make sure it wasn't  
11 unfriendly or unwelcomed by any board member?  
12 **A. No.**  
13 Q. Let's look at the notes of Nancy  
14 Johnson. That's 599.011. And we'll go to the page  
15 that you have seen before. That's the page 011.  
16 "They've 'eliminated' the competition" notes that  
17 you've seen a number of times.  
18 She talks there about Enbridge,  
19 Dominion, Transfer, KMI; right?  
20 **A. Yes.**  
21 Q. And it's fair to say that during the  
22 January 7th meeting, Steve Smith told you that these  
23 companies might be distracted by other initiatives,  
24 and that this presented a good opportunity for

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F. Poirier - Cross

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1 Columbia had not changed since the parties had first  
2 discussed a potential transaction."  
3 No reason to dispute that; right?  
4 **A. No.**  
5 Q. Now, we looked at some notes following  
6 the debrief of that meeting you had with -- the  
7 debrief meeting with Nancy Johnson and Andrew  
8 Isherwood. I want to look at some of those same  
9 notes.  
10 So let's look at JTX 545. And you  
11 talked about "[Board] [of] [Management] gap: not  
12 answered directly. Not unanimous on Board to sell."  
13 **A. Yes.**  
14 Q. This morning you testified that it was  
15 your view there wasn't unanimity on the Columbia  
16 Pipeline board as to whether or not to engage in the  
17 transaction; correct?  
18 **A. Correct.**  
19 Q. Now, this morning you also testified  
20 that it was your understanding that when you were  
21 thinking about the standstill, it was really meant to  
22 deter unfriendly approaches. Do you remember that?  
23 **A. Yes.**  
24 Q. And you wanted to make sure that the

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1 TransCanada; right?  
2 **A. Yes.**  
3 Q. Now, I think this morning you  
4 testified that this was not new information, so the  
5 implication being, who cares?  
6 **A. Not new information, so wasn't**  
7 **relevant to whether or not we would prepare an**  
8 **aggressive proposal or not.**  
9 Q. So when you think about it, though, in  
10 this context -- you've been an investment banker.  
11 You've been in negotiations -- here, it is Columbia  
12 management, right, management of the target, telling  
13 you, in the context of a discussion about a potential  
14 transaction, that other potential bidders are  
15 distracted and may not be engaging; correct?  
16 **A. Yes.**  
17 Q. Let's think about this. Take a step  
18 back. By early January 2016, TransCanada knew that  
19 there were no social issues in connection with the  
20 strategic acquisition. You knew that the Columbia  
21 board was not unanimous on selling; you knew that  
22 Skaggs, Smith, Kettering would receive  
23 multi-million-dollar change-in-control payments in the  
24 event of a sale; and you knew that there could be a

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## F. Poirier - Cross

## F. Poirier - Cross

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- 1 gap between the board and management because the board  
2 may not be ready to sell. Right?
- 3 **A. Can you repeat that more slowly.**  
4 **There was a lot packaged in there. Let's take them**  
5 **one at a time.**
- 6 Q. Sure. My pleasure.  
7 So by early January 2016, TransCanada  
8 knew that there were no social issues in connection  
9 with the potential transaction; correct?
- 10 **A. That's correct, yes.**  
11 Q. TransCanada knew that Skaggs, Smith,  
12 and Kettering would receive multi-million-dollar  
13 change-in-control payments in the event of a sale of  
14 the company; correct?
- 15 **A. Yes.**  
16 Q. TransCanada knew that there could be a  
17 gap between the board and management with respect to  
18 whether or not to engage in a transaction; correct?
- 19 **A. Possibility, but not confirmation of**  
20 **that.**  
21 Q. And you knew that the board was not  
22 unanimous to sell; right?
- 23 **A. I suspected as such.**  
24 Q. Now, is it fair to say that you had a

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## F. Poirier - Cross

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- 1 **A. Correct.**  
2 Q. And TransCanada did get exclusivity  
3 until March 2nd; correct?
- 4 **A. Yes.**  
5 Q. Now, earlier today, you briefly talked  
6 about the February 9th meeting -- I want to do that  
7 too -- between Mr. Fornell, on the one hand, and Smith  
8 and Skaggs in New Albany, on the other. That was a  
9 meeting in connection with the potential acquisition  
10 of Columbia; right?
- 11 **A. Yes.**  
12 Q. And it's fair to say, as part of that  
13 meeting, you wanted Eric Fornell to convey to Bob and  
14 Steve, Bob Skaggs, Steve Smith, that TransCanada would  
15 be able to enter into a transaction if appropriate  
16 terms were reached?
- 17 **A. It was a bit of a broader objective,**  
18 **which was to help them understand what subscription**  
19 **receipts were, why the change in course from the**  
20 **rating agencies, and then what the execution plan was**  
21 **on asset sales.**  
22 Q. And in connection with that, you  
23 wanted to give Mr. Skaggs and Mr. Smith comfort that  
24 TransCanada would be able to actually execute on the

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## F. Poirier - Cross

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- 1 lot of calls with Steve Smith between, say,  
2 January 7th and January 31st?
- 3 **A. Yes.**  
4 Q. Fair to say you spoke to him as needed  
5 potentially on a daily basis?
- 6 **A. As needed, yes, for sure.**  
7 Q. And Steve Smith had access to you on a  
8 daily basis as needed; right?
- 9 **A. Yes.**  
10 Q. Now, earlier today we talked about the  
11 January 25th call between Girling and Skaggs. And  
12 it's fair to say that on January 25th, Russ Girling  
13 contacted Bob Skaggs and indicated that TransCanada  
14 would be interested in pursuing an all-cash  
15 acquisition of Columbia at a price per share in the  
16 range of 25 to \$28 per share?
- 17 **A. Yes.**  
18 Q. He made that comment orally just like  
19 the comment 26 to 28 in November; correct?
- 20 **A. Yes.**  
21 Q. And Mr. Girling also told Mr. Skaggs  
22 that TransCanada would not undertake additional time  
23 and expense for due diligence unless TransCanada would  
24 get exclusivity; right?

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## F. Poirier - Cross

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- 1 transaction if terms were reached; correct?
- 2 **A. Yes.**  
3 Q. Now, let's look at the document that  
4 your counsel showed you. It's 707.  
5 This is your report of the meeting on  
6 February 9th to Russ Girling, Alex Pourbaix,  
7 Don Marchand, and Karl Johannson; right?
- 8 **A. Yes.**  
9 Q. And these were all more senior to you  
10 at the time at TransCanada; right?
- 11 **A. Yes.**  
12 Q. You say, "Here's the download."  
13 February 9th.  
14 "Bob asked about rating agency  
15 process; how sub receipts work; execution risk on  
16 asset sales; on the latter, Eric pointed out we have  
17 lots of levers to pull in terms of other assets and  
18 their CFO, who was in the room, backed him up."  
19 Here, Eric Fornell, speaking on your  
20 behalf, was explaining that TransCanada had multiple  
21 ways to fund a potential acquisition of Columbia  
22 pipeline?
- 23 **A. Yes.**  
24 Q. You could do asset sales. You could

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## F. Poirier - Cross

<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 213</p> <p>1 do subscription receipts, equity, all kinds of</p> <p>2 leverage; correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Now, I want to look at another</p> <p>5 document you also saw. It's 708.</p> <p>6 Here, you were asking your bankers,</p> <p>7 Mr. Fornell and Mr. Babowal, "Steve keeps telling</p> <p>8 me -- "Guys, Steve keeps telling me that despite their</p> <p>9 stock price, this is not a wasted effort if due</p> <p>10 diligence. I have been thinking hard about why he was</p> <p>11 saying that.</p> <p>12 "Is it possible ... that if we do not</p> <p>13 hit the bottom [] of the range, they would run a</p> <p>14 competitive process, and that's the reason for his</p> <p>15 comments?"</p> <p>16 And above, Mr. Fornell responds:</p> <p>17 "That is possible. He might also be signaling that</p> <p>18 they would do a deal below their range."</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And it's fair to say that you then</p> <p>21 tested that? You raised the possibility of a price</p> <p>22 below the 25 to \$28 range that Mr. Girling had</p> <p>23 indicated multiple times with Mr. Smith in February</p> <p>24 2016?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 215</p> <p>1 the range of 25 to 28, but we were going to continue</p> <p>2 doing our work. And, look, I'm negotiating that to</p> <p>3 some extent here, right? It's just sort of testing</p> <p>4 their resolve.</p> <p>5 (End of video clip.)</p> <p>6 BY ATTORNEY van KWAEGEN:</p> <p>7 Q. I asked that question, and you gave</p> <p>8 that answer at your deposition; correct?</p> <p>9 <b>A. I recall that now. Thank you. Yes.</b></p> <p>10 Q. And when you were testing Columbia's</p> <p>11 resolve, Mr. Smith did not push back, did he?</p> <p>12 <b>A. No.</b></p> <p>13 Q. During that time period, he did not</p> <p>14 tell you that TransCanada needed to be at least in the</p> <p>15 range of 25 to \$28 per share?</p> <p>16 <b>A. He did not say much at all.</b></p> <p>17 Q. Okay. Is it fair to say that you then</p> <p>18 discussed this again with your team at Wells Fargo to</p> <p>19 try and understand what was happening?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Let's look at JTX 782. That was also</p> <p>22 a document you were shown this morning, but I want to</p> <p>23 focus on a slightly different paragraph.</p> <p>24 Here it says, "[Francois Poirier] FP</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 214</p> <p>1 <b>A. My recollection in February was that I</b></p> <p>2 <b>said we were having trouble getting above or beyond</b></p> <p>3 <b>the bottom end of the range.</b></p> <p>4 Q. And you said that because you wanted</p> <p>5 to test Columbia's resolve?</p> <p>6 <b>A. No. I was giving an accurate</b></p> <p>7 <b>assessment of where we felt we were on valuation.</b></p> <p>8 Q. Let's take a look at your testimony.</p> <p>9 This time it's your deposition testimony in this case.</p> <p>10 And we'll go to page 170.</p> <p>11 ATTORNEY van KWAEGEN: And, Your</p> <p>12 Honor, the JX is 1661, but I put the mini in the</p> <p>13 binder. If Your Honor wants, I'll separately mark</p> <p>14 that as a JTX. But I thought, let's just have the</p> <p>15 mini. It's easier to see context if people want.</p> <p>16 Q. But this is page 170, lines 7 through</p> <p>17 16.</p> <p>18 (A video clip was played as follows:)</p> <p>19 Question: Do you recall doing that,</p> <p>20 raising a lower price with Steve Smith in a roundabout</p> <p>21 way a number of times before February 24th to see what</p> <p>22 his reaction would be?</p> <p>23 Answer: I recall mentioning on</p> <p>24 several occasions that we were struggling to get into</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 216</p> <p>1 gave me the download on today's events."</p> <p>2 And you see the third bullet point,</p> <p>3 "[Francois Poirier] raised the spectre of a lower</p> <p>4 price in a roundabout way ...."</p> <p>5 We just talked about that.</p> <p>6 I want to look at the next sentence.</p> <p>7 "[Francois Poirier] interprets this as</p> <p>8 Skaggs and Smith will take a lower price to the board</p> <p>9 and dare them to turn it down. Clearly a risk, but he</p> <p>10 senses management wants to get this done."</p> <p>11 He wrote that. That was true; right?</p> <p>12 That was what you believed on February 24th?</p> <p>13 <b>A. Believed or mused that it was possible</b></p> <p>14 <b>and that we should test it, yes.</b></p> <p>15 Q. Right. You were trying to determine</p> <p>16 how hard you wanted to push down below the \$25 to \$28</p> <p>17 range?</p> <p>18 <b>A. Primarily as a means to pull them off</b></p> <p>19 <b>the top end of their range, yes.</b></p> <p>20 Q. And you knew at the time that Columbia</p> <p>21 stock price was still under a fair amount of pressure?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. You understood that management may</p> <p>24 believe that a transaction with TransCanada would be</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 in the best interests of the shareholders, even if it  
2 was below range of 25 to \$28 per share?

3 **A. I wouldn't agree with that. I don't**  
4 **know what they thought about that alternative.**

5 Q. If that were the case, it would depend  
6 on the board's resolve around stand-alone value and  
7 the financial advice that they got if they would then  
8 turn down a below-range offer; right?

9 **A. Or management may recommend not**  
10 **proceeding below the range.**

11 Q. In a situation where management may  
12 believe that a transaction with TransCanada would be  
13 in the interests of the shareholders below the  
14 range -- so management believes it's in the best  
15 interests of the shareholders to go below the range --  
16 it would then depend on the board's resolve around the  
17 stand-alone value of the company, the advice of the  
18 financial advisors, if the board would then turn down  
19 the below-range offer?

20 **A. Yes.**

21 Q. Now, sticking with this email here on  
22 February 24th, it says, "[Francois Poirier] [] and  
23 team are coming to [New York City] on Monday to sit  
24 down with lawyers and hammer things out."

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1 Q. Now, just thinking about the  
2 occurrences that we've been talking about now, right,  
3 your calls with Mr. Smith in December and January and  
4 February, Mr. Girling's calls in December and January,  
5 meeting that very month, January 7th and February 9th  
6 meeting, Girling's indication on January 25th of the  
7 25 to \$28 range, meeting on February 9th to inspire  
8 confidence that TransCanada can hold up its end of the  
9 bargain, your testing of Columbia's resolve with  
10 respect to the price and negotiation of material  
11 terms -- during all that time, you were not aware of  
12 any written invitation from the Columbia board to  
13 pursue a transaction; right?

14 **A. No.**

15 Q. You were not aware of that?

16 **A. I was not aware of any written**  
17 **invitation.**

18 Q. Now, sticking with the timeline, on  
19 March 5th you discussed with Mr. Smith a proposal to  
20 acquire Columbia Pipeline for \$24 per share; right?

21 **A. Yes.**

22 Q. Now, it's fair to say that you knew  
23 that same day that the stand-alone value, intrinsic  
24 value of Columbia Pipeline was significantly more?

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1 **A. Uh-huh.**

2 Q. That's what happened; right? You went  
3 to New York to negotiate the merger agreement?

4 **A. Yes.**

5 Q. Let's look at JTX 801. Here, this is  
6 an email that I showed you at your deposition on  
7 March 2nd, 2016, from Alex Pourbaix to you --  
8 actually, to Russ Girling, Don Marchand,  
9 Paul Johannson, and others, copying you and others at  
10 TransCanada; right?

11 **A. Yes.**

12 Q. And here, Alex Pourbaix on March 2nd  
13 reports back, "Hi everyone. Just a quick note to let  
14 everyone know that we have just reached agreement on  
15 all material terms with Capricorn subject to final  
16 discussions on value and a few other terms to be  
17 worked through and our final board approval."

18 You received that email on March 2nd?

19 **A. Yes.**

20 Q. You did not respond to this email and  
21 say: Alex Pourbaix, what are you talking about? You  
22 are absolutely not right. We have not reached  
23 agreement on material terms the way described in here?

24 **A. I did not reply to the email, no.**

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1 **A. Define "significantly."**

2 Q. Okay. Let's look at 862. It's not in  
3 your binder, but we'll show it to you on the screen.  
4 It's a document I also showed you at your deposition.

5 This is a March 5th email from  
6 Wells Fargo to you attaching a financial analysis of  
7 the stand-alone value of Columbia Pipeline; right?

8 **A. Yes.**

9 Q. Do you recall talking about this at  
10 your deposition?

11 **A. Yes.**

12 Q. And so if you look at the attachments,  
13 on page 003, there's a growth case; on page 004, it  
14 has a base case. And the midpoint of the DCF analysis  
15 of Columbia Pipeline by Wells Fargo working for you  
16 with respect to the growth case was \$27 a share and  
17 with respect to the base case was \$26.76 a share.  
18 Right?

19 **A. I see the math, yes.**

20 Q. And you don't recall writing back to  
21 Wells Fargo saying: I'm sorry, but I don't understand  
22 what you guys are doing. That's absolutely off. We  
23 did our own analysis, and you are wrong.

24 **A. Never gave them that kind of feedback,**

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<p>1 <b>no.</b></p> <p>2 Q. In fact, you retained Wells Fargo to</p> <p>3 provide these types of analyses to you so you could</p> <p>4 assess the deal; correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And when you are looking at these</p> <p>7 analyses, this growth case and this base case, it</p> <p>8 doesn't account for synergies, does it?</p> <p>9 <b>A. I don't recall whether it included</b></p> <p>10 <b>some or not. It should not have. Typically in</b></p> <p>11 <b>valuations you don't include synergies.</b></p> <p>12 Q. Now, when you presented the \$24 per</p> <p>13 share, that was rejected; right?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And after a board meeting, Columbia</p> <p>16 also rejected TransCanada's proposal at \$25.25 per</p> <p>17 share; right?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Fair to say that you then told</p> <p>20 Columbia management that TransCanada needed to know</p> <p>21 what the gap was to see if there was a way to close</p> <p>22 it?</p> <p>23 <b>A. No. We asked our financial advisor to</b></p> <p>24 <b>reach out to Columbia's financial advisor and have</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 board meeting to discuss a potential transaction on</p> <p>2 March 9th. And we've seen some of that?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. It's fair to say, though, that by the</p> <p>5 time of this March 9th board meeting, TransCanada,</p> <p>6 exclusivity had expired; right?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And you knew that there was a</p> <p>9 possibility of a leak of the discussions with</p> <p>10 Columbia?</p> <p>11 <b>A. Yeah. We had heard some noise out</b></p> <p>12 <b>there about a potential -- people were starting to ask</b></p> <p>13 <b>about whether or not there was anything going on, yes.</b></p> <p>14 Q. I'd like to take a quick look at the</p> <p>15 minutes. That's 944. These are the March 9th</p> <p>16 minutes.</p> <p>17 And at the next page, at the bottom</p> <p>18 right above the signatures, there's a discussion that</p> <p>19 "the board authorized management to make a counter</p> <p>20 offer to [Columbia Pipeline] at [\$26 per share but</p> <p>21 which would include TransCanada common shares as a</p> <p>22 portion (10 percent) of the consideration. It was</p> <p>23 noted that the offer would remain subject to formal</p> <p>24 board approval to enter into the merger once all the</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 <b>that discussion and see if they felt it was helpful to</b></p> <p>2 <b>get some feedback from Columbia, which Goldman Sachs</b></p> <p>3 <b>did and returned to us with the view -- the feedback.</b></p> <p>4 <b>They returned to us with it, yeah.</b></p> <p>5 Q. And it's fair to say that,</p> <p>6 essentially, what you were telling Wells Fargo is,</p> <p>7 hey, look, we don't want to negotiate against</p> <p>8 ourselves. Find out what the gap is and how we need</p> <p>9 to close it. Wells Fargo transmitted that to Goldman,</p> <p>10 and Goldman came back?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Let's look at 878. The top -- first</p> <p>13 email, email from you on March 6th to Alex Pourbaix,</p> <p>14 Russ Girling, and the others, same team management.</p> <p>15 "Just heard back from Eric."</p> <p>16 That would an Eric Fornell?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. "Capricorn CEO and CFO got on the</p> <p>19 phone with some board members and came back with a</p> <p>20 counter at \$26, best and final."</p> <p>21 Here, Eric was telling you that</p> <p>22 Columbia was drawing a line in the sand at 26; right?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And TransCanada then held a special</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 terms had been negotiated."</p> <p>2 So you don't dispute that the board</p> <p>3 authorized management to make a counteroffer at \$26</p> <p>4 per share with 10 percent of consideration of</p> <p>5 TransCanada stock subject to final board approval;</p> <p>6 right?</p> <p>7 <b>A. I don't dispute that we were</b></p> <p>8 <b>authorized to convey to Columbia management that we</b></p> <p>9 <b>were prepared to work towards that \$26 with the mix of</b></p> <p>10 <b>cash and 10 percent stock.</b></p> <p>11 Q. And it was an offer, right, just like</p> <p>12 it says here in the minutes?</p> <p>13 <b>A. No.</b></p> <p>14 Q. So in your mind, these minutes are</p> <p>15 wrong?</p> <p>16 <b>A. In my mind, what means an offer to a</b></p> <p>17 <b>board of directors versus what means an offer in a</b></p> <p>18 <b>standstill can be different.</b></p> <p>19 Q. I'm not talking about the standstill,</p> <p>20 right? I'm talking here about discussion that you had</p> <p>21 with the TransCanada board on March 9th.</p> <p>22 Here are the formal minutes, signed</p> <p>23 and all. And according to these formal minutes, the</p> <p>24 board authorized management to make a counteroffer at</p> <p>CHANCERY COURT REPORTERS</p>



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1 \$26 per share, including 10 percent equity; right?

2 **A. With conditionality. So it may or may**

3 **not happen. Right? We said stock price needs to be**

4 **at least 49. We have to have conversation with our**

5 **underwriters. We have to confirm with the rating**

6 **agencies. If I -- I'll leave it at that. Thank you.**

7 Q. Well, is it fair to say it's the

8 nature of an offer that it may or may not happen? It

9 may not be accepted; right?

10 **A. But to be an offer, quote/unquote,**

11 **that would cause disclosure requirements by Columbia,**

12 **that -- it would not meet that standard.**

13 Q. When you talk about disclosure

14 requirements, what are you talking about?

15 **A. Well, that it was, you know, an offer**

16 **that's firm and binding and doesn't have to -- pardon**

17 **me -- that a board of a company would have to disclose**

18 **that they have received and are contemplating.**

19 Q. Is it your understanding by March 9th,

20 that TransCanada still had not received a written

21 invitation from the board of Columbia Pipeline to make

22 an offer?

23 **A. If memory serves me, we had received**

24 **an invitation to make an offer, which was the 25.25**

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1 equity consideration, right?

2 **A. Correct.**

3 Q. To your knowledge, no one present at

4 the March 9th board meeting was opposed to a

5 transaction of \$26, including an equity component?

6 **A. I can't make that statement.**

7 Q. Let me show you your deposition. It

8 may help you refresh your memory. This is your

9 deposition in this case. It's page 203, line 13,

10 through page 204, line 5.

11 (A video clip was played as follows:)

12 Question: And so during this meeting,

13 the chair, Mr. Jackson, asked whether anyone was

14 opposed to \$26 and equity consideration. Do you

15 recall that discussion?

16 Answer: Yes.

17 Question: Okay. And when Mr. Jackson

18 asked that, did anyone say, "Look, I am opposed to a

19 transaction of \$26, including an equity component"?

20 Answer: No, but there was a clear

21 understanding that we needed to have our underwriters

22 and tax advisors opine on, you know, the viability.

23 Question: Right. But to the best of

24 your knowledge or recollection, no one was opposed to

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1 **offer, yes.**

2 Q. So to the best of your knowledge, by

3 March 9th there was an invitation from the Columbia

4 board to make an offer?

5 **A. Yes.**

6 Q. And so -- I'll leave it at that.

7 It's fair to say that it was your

8 understanding during this March 9th board meeting --

9 the minutes we've just looked at -- that Wells Fargo

10 was prepared to issue a fairness opinion at \$26 a

11 share?

12 **A. Yes.**

13 Q. Let's look at the notes of the

14 March 9th meeting. That's the email from Christine

15 Johnston to herself, Exhibit 913.

16 **A. I'm sorry. Exhibit what?**

17 Q. 913. I want to focus on the third

18 page. There's a reference that says, "BJ- anyone

19 opposed to \$26 and equity consideration."

20 That's Barry Jackson, the chair of the

21 board; correct?

22 **A. Correct.**

23 Q. And he asked if anyone at the meeting

24 was opposed to making an offer at \$26 a share with an

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1 a transaction of \$26, including an equity component,

2 at that March 9th board meeting?

3 Attorney Massengill: Objection to

4 form.

5 Answer: I think -- I think that's

6 correct, yes.

7 (End of video clip.)

8 BY ATTORNEY van KAWWEGEN:

9 Q. Did I ask those questions, and did you

10 give those answers at your deposition?

11 **A. Yes, sir.**

12 Q. Now, you were a little bit ahead of

13 me. You communicated your counteroffer to Steve Smith

14 still on March 9th; correct?

15 **A. Yes.**

16 Q. Before we get there, just thinking

17 about where we are, after Columbia Pipeline drew a

18 line in the sand of \$26 per share in cash on

19 March 6th, you went back to Steve Smith on March 9th

20 with TransCanada's counteroffer at \$26 per share with

21 a 10 percent equity component; correct?

22 **A. Yes.**

23 Q. The parties were not in exclusivity;

24 right?

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<p>1           <b>A.       Correct.</b></p> <p>2           Q.       Now let's look at 953, the document we</p> <p>3 saw this morning. So in the middle of the page, these</p> <p>4 are the March 9th -- this is the March 9th email where</p> <p>5 you are reporting back, and you are preparing Russ for</p> <p>6 his call with Bob Skaggs the following morning;</p> <p>7 correct?</p> <p>8           <b>A.       Yes.</b></p> <p>9           Q.       Now, just going through this, after</p> <p>10 you say to Russ that he's going to get a call from Bob</p> <p>11 Skaggs early in the morning, you say, "Steve and I</p> <p>12 spoke to confirm what was at risk that could derail a</p> <p>13 transaction between now and announcement."</p> <p>14           And then you have, first, rating</p> <p>15 agencies. We'll go there in a second. Second, stock</p> <p>16 price. Third, market reaction with respect to</p> <p>17 underwriters.</p> <p>18           No discussion here about price?</p> <p>19           <b>A.       Around what? Sorry.</b></p> <p>20           Q.       Price. No discussion here saying we</p> <p>21 don't have a meeting of the mind at 26; correct?</p> <p>22           <b>A.       Yes.</b></p> <p>23           Q.       Now, with respect to the first point,</p> <p>24 what could derail a transaction, the rating agencies,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1 additional asset sales ...."</p> <p>2           But it's true, is it not, that at this</p> <p>3 point in time, you were actually planning to use</p> <p>4 subscription receipts to raise equity?</p> <p>5           <b>A.       Yes.</b></p> <p>6           Q.       You were negotiating with Mr. Smith?</p> <p>7           <b>A.       How so? I don't understand.</b></p> <p>8           Q.       You say, look, we have some problems,</p> <p>9 maybe, with the rating agencies. We may -- we were</p> <p>10 going to sell additional \$800 million in assets.</p> <p>11           But, in fact, what you were going to</p> <p>12 do is raise that money with equity.</p> <p>13           <b>A.       I don't understand the logic. I can't</b></p> <p>14 <b>connect the dots. Sorry.</b></p> <p>15           Q.       If you go down -- second and third I'm</p> <p>16 skipping for now -- it says, "Steve then tried to get</p> <p>17 me, two or three times, to agree that the exchange</p> <p>18 ratio would be set at closing, rather than at</p> <p>19 announcement. I firmly disagreed." All caps, "WE</p> <p>20 MUST HOLD FIRM ON THIS POINT, for the reason below."</p> <p>21           And then you skip a paragraph and you</p> <p>22 lay out the reasons.</p> <p>23           <b>A.       Yes.</b></p> <p>24           Q.       What you say there is that if you hold</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: center;">F. Poirier - Cross Page 230</p> <p>1 is it fair to say that when you were talking to Steve</p> <p>2 Smith on March 9th, you were still negotiating with</p> <p>3 him as well; right?</p> <p>4           <b>A.       Negotiating with whom?</b></p> <p>5           Q.       With Steve Smith.</p> <p>6           <b>A.       I don't know. What do you mean by</b></p> <p>7 <b>"negotiating"? We are indicating that we are going to</b></p> <p>8 <b>work towards a funding plan that gets us to 26.</b></p> <p>9           Q.       Okay. But as part of those</p> <p>10 discussions, it's fair to say that you haven't</p> <p>11 concluded the transaction yet; right? You don't have</p> <p>12 the final transaction agreement signed; correct?</p> <p>13           <b>A.       Correct.</b></p> <p>14           Q.       So part of your discussions with</p> <p>15 Mr. Smith are still in negotiation; correct?</p> <p>16           <b>A.       Yes. In that sense, yes.</b></p> <p>17           Q.       Right. And so if you look here at the</p> <p>18 first thing, "they know that we need to go back to the</p> <p>19 rating agencies. I reiterated that the last case we</p> <p>20 showed was at \$24. I told him that even though we are</p> <p>21 asking them to take 10% of the consideration in stock,</p> <p>22 we are not raising any additional equity from in the</p> <p>23 case we showed [to] the [rating] agencies earlier.</p> <p>24 Therefore, the incremental \$800 million is coming from</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;">F. Poirier - Cross Page 232</p> <p>1 the exchange ratio firm at announcement, you are going</p> <p>2 to save roughly \$100 million.</p> <p>3           <b>A.       Where does it say that?</b></p> <p>4           Q.       Well, what you say there is, "What it</p> <p>5 means for us, though, is that we do not have to pay a</p> <p>6 10% discount, including underwriting fees, on their</p> <p>7 [\$1 billion of stock consideration. In addition to</p> <p>8 significantly reducing the size of the equity</p> <p>9 offering, we save U.S. dollar[s] 100 million in [the]</p> <p>10 discount, which equates to [.]25 per-share ...."</p> <p>11           <b>A.       Yes.</b></p> <p>12           Q.       Now, is it fair to say that</p> <p>13 Mr. Girling was not in the business of giving a</p> <p>14 potential \$100 million in savings, if he could do</p> <p>15 that?</p> <p>16           <b>A.       That's a fair comment.</b></p> <p>17           Q.       Now, after you communicated this</p> <p>18 counteroffer to Mr. Smith, you don't remember him</p> <p>19 telling you that Columbia was not prepared to consider</p> <p>20 a transaction at \$26 per share, including 10 percent</p> <p>21 equity?</p> <p>22           <b>A.       I'm sorry, could you repeat that.</b></p> <p>23           Q.       To the best of your knowledge,</p> <p>24 Mr. Smith never told you that Columbia Pipeline was</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 not interested in a transaction, \$26 per share,  
 2 including 10 percent equity?  
 3 **A. I'm sorry. I still don't understand.**  
 4 **There's a couple negatives in there. So could you**  
 5 **reframe it in the positive.**  
 6 Q. You tell Mr. Steve Smith, here is our  
 7 counteroffer, \$26 per share, including 10 percent  
 8 equity?  
 9 **A. Yes.**  
 10 Q. He never came back to you and said,  
 11 you know what, we're not going to do it. Columbia  
 12 Pipeline is not interested in that type of  
 13 transaction?  
 14 **A. Correct, he did not.**  
 15 Q. In fact, you are not aware of anyone  
 16 from Columbia Pipeline coming back and saying, you  
 17 know what? Not interested in a transaction at \$26 per  
 18 share, including 10 percent equity?  
 19 **A. Correct.**  
 20 Q. Now, Mr. Girling and Mr. Skaggs did  
 21 speak the next day, on March 10th; correct?  
 22 **A. I believe so, yes.**  
 23 Q. And it's true, is it not, that  
 24 following that call, Wells Fargo understood that

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1 Q. And this email suggests, at least,  
 2 that Wells Fargo believed that Columbia Pipeline  
 3 accepted TransCanada's counteroffer of \$26 per share  
 4 with 10 percent stock; correct?  
 5 **A. I wouldn't -- I can't guess what he**  
 6 **meant exactly by his email.**  
 7 Q. Let's look at another document.  
 8 JTX 1120. This is the final March 16th memo to the  
 9 Wells Fargo fairness opinion committee. And it's from  
 10 Mr. Fornell, investment banking, and Mr. Babowal of  
 11 Energy Power, and many, many other people at Wells  
 12 Fargo.  
 13 **A. Yes.**  
 14 Q. And if you look, there's discussion,  
 15 background of the transaction, in the second  
 16 paragraph. You see "The Taurus Board met in the days  
 17 following and, on March 9, 2016, approved the  
 18 submission of a verbal offer of \$26.00 per share,  
 19 consisting of 90% cash and 10% stock. The Capricorn  
 20 Board accepted this preliminary offer on the morning  
 21 of March 10, 2016."  
 22 Now, when you worked at JPMorgan and  
 23 Wells Fargo, you made every effort to give the  
 24 fairness opinion committee accurate informing; right?

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1 Columbia accepted your counterproposal of \$26 per  
 2 share, including 10 percent equity?  
 3 **A. They agreed that it was a case towards**  
 4 **which we should both continue working.**  
 5 Q. Let's take a look at JTX 956. This is  
 6 an email from Hugh Babowal to others at Wells Fargo on  
 7 March 10th at 8:28 a.m.  
 8 **A. Yes.**  
 9 Q. And here, Mr. Babowal -- Mr. Babowal  
 10 is a senior banker at Wells Fargo?  
 11 **A. He is.**  
 12 Q. He's the managing director of Wells  
 13 Fargo?  
 14 **A. Uh-huh.**  
 15 Q. And here, he's writing to his  
 16 colleagues. And he said, "So they accepted \$26 with  
 17 10% stock but are trying to negotiate down the break  
 18 fee. Russ is now getting cold feet. Unbelievable."  
 19 Do you see that?  
 20 **A. I do.**  
 21 Q. And when you were negotiating the  
 22 break fee, that was with Glen Kettering, not with  
 23 Steve Smith; correct?  
 24 **A. That's correct.**

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1 **A. Yes.**  
 2 Q. You understood that the bank would  
 3 rely on the information in this memo to decide whether  
 4 or not they would issue a fairness opinion in  
 5 connection with the potential transaction?  
 6 **A. Yes, sir.**  
 7 Q. Let's look at X-2. Again, this is a  
 8 compilation of the text messages that are right behind  
 9 it. And I want to look at -- these are text messages  
 10 between Steve Smith, Bob Skaggs, and Glen Kettering.  
 11 And also Bob Smith.  
 12 Start over. So these are text  
 13 messages between Bob Smith, Steve Smith, Glen  
 14 Kettering, Bob Skaggs.  
 15 Let's take a look at the first entry  
 16 at 6:26 p.m. from Bob Smith, general counsel. "[For  
 17 your information], I just had a good call with Chris  
 18 Johnston at Taurus. We discussed the stock exchange  
 19 events for the day. She confirmed that, like us,  
 20 calls quieted down as the day progressed. They are  
 21 beginning to get their outside counsel started again  
 22 and will be folding in language regarding equity prior  
 23 to sending over their comments. I suggested to her  
 24 that we not allow this to drag out and that we focus

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## F. Poirier - Cross

<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 237</p> <p>1 our respective teams on bringing it to conclusion</p> <p>2 within a couple of days. She agreed, however, I'm not</p> <p>3 confident that she will be able to control the Mayer</p> <p>4 Brown folks. Good to see them beginning to move</p> <p>5 already."</p> <p>6 No reason to doubt this, right,</p> <p>7 conversation happened?</p> <p>8 <b>A. No.</b></p> <p>9 Q. And when Mr. Smith, Bob Smith, is here</p> <p>10 commenting on this call with Christine Johnston,</p> <p>11 talking about "folding in language regarding equity</p> <p>12 prior to sending over their comments," that's</p> <p>13 consistent with the deal at \$26 per share, including</p> <p>14 10 percent equity; correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Fair to say that this does not suggest</p> <p>17 any disagreement from Columbia Pipeline on a</p> <p>18 transaction for \$26 per share, including 10 percent?</p> <p>19 <b>A. I can only speak to the direct facts</b></p> <p>20 <b>in the note. So I don't know that it does explicitly</b></p> <p>21 <b>say that.</b></p> <p>22 Q. Let's go to the next one, 1831.</p> <p>23 THE WITNESS: Can I interrupt. I'm</p> <p>24 sorry. Is it possible to have a short nature break?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 239</p> <p>1 (Resumed at 3:10 p.m.)</p> <p>2 THE COURT: Welcome back, everyone.</p> <p>3 Please be seated. Let's resume.</p> <p>4 ATTORNEY OLSEN: Thank you, Your</p> <p>5 Honor.</p> <p>6 ATTORNEY van KAWEGEN: Thank you,</p> <p>7 Your Honor. Going back to the same document, X-2, the</p> <p>8 text messages.</p> <p>9 BY ATTORNEY van KAWEGEN:</p> <p>10 Q. Mr. Poirier, I should have told you.</p> <p>11 So we got these text messages from Mr. Kettering after</p> <p>12 he changed counsel. We didn't have them during the</p> <p>13 appraisal last time we spoke.</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. So let's go back. We just talked</p> <p>16 about the text message from Bob Smith, about folding</p> <p>17 in the equity -- the language regarding equity into</p> <p>18 their comments on the merger agreement.</p> <p>19 Do you remember that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And so the next text message is from</p> <p>22 Mr. Steve Smith. He says, "Talked to Francois, said</p> <p>23 he would get a calendar to me tomorrow by 4 [Eastern</p> <p>24 Daylight Time], said they would accommodate any due</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 238</p> <p>1 THE COURT: Absolutely. We were going</p> <p>2 to break at 3:00, but why don't we go ahead and break</p> <p>3 now, and we come back at ten after instead of quarter</p> <p>4 after.</p> <p>5 We'll recess until then.</p> <p>6 (Recess taken at 2:55 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 240</p> <p>1 diligence we needed but felt we could do what the</p> <p>2 Underwriters were doing. He asked for another week of</p> <p>3 exclusivity."</p> <p>4 And it's fair to say, is it not, that</p> <p>5 you would expect Columbia to conduct due diligence on</p> <p>6 TransCanada if the deal included TransCanada equity?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Let's look at another document. It's</p> <p>9 JTX 958. Just sticking with the theme of doing due</p> <p>10 diligence in connection with equity.</p> <p>11 And here, there's an email from --</p> <p>12 it's also on your screen. Either is fine. There's an</p> <p>13 e-mail from Bob Skaggs to the Columbia Pipeline board</p> <p>14 on March 10th, 2016.</p> <p>15 "Project Constellation -- Day In</p> <p>16 Review." And what I would like to focus on is the</p> <p>17 very last point. The title is "Today's Follow-Up With</p> <p>18 Taurus." It's on the last page of this document.</p> <p>19 There you go.</p> <p>20 "In conversations" -- here Mr. Skaggs</p> <p>21 reports to his board.</p> <p>22 "In conversations that Steve had with</p> <p>23 Taurus' deal lead (Francois), I had with Taurus' CEO,</p> <p>24 and Bob Smith had with Taurus' legal counsel, we</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 241</p> <p>1 confirmed that Capricorn will continue to engage in</p> <p>2 the Project Constellation process -- with the clear</p> <p>3 understanding that, among other considerations, (a)</p> <p>4 the break fee was subject to negotiation; (b) ASAP, we</p> <p>5 must diligence Taurus' equity (financial plan); and</p> <p>6 (c) in short order we must agree on a critical path to</p> <p>7 bring this process to closure."</p> <p>8 No mention there of a discussion about</p> <p>9 rejecting the \$26 counteroffer. Correct?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. And then Mr. Skaggs continues, "By</p> <p>12 late afternoon, indications were that Taurus' outside</p> <p>13 legal counsel was re-engaging, and Francois committed</p> <p>14 to provide a critical path for diligence and</p> <p>15 completion of the Merger Agreement by [close of</p> <p>16 business] tomorrow (Friday)."</p> <p>17 And that would be consistent with Bob</p> <p>18 Smith's text message that we just looked at. Right?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Now, isn't it fair to say that senior</p> <p>21 executives at TransCanada also understood that</p> <p>22 Columbia accepted TransCanada's counteroffer at \$26</p> <p>23 per share, including equity?</p> <p>24 <b>A. Again, that both parties agreed to</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 243</p> <p>1 March 9th, 2016. "Did you hear.</p> <p>2 Francois spoke to the CFO and they are thinking about</p> <p>3 the 10% equity. They might just do it."</p> <p>4 Karl Johansson. "Yeah ... I just</p> <p>5 talked to Francois and he is confident they will do</p> <p>6 it. The[y] have called a board meeting for tomorrow</p> <p>7 morning. Wow. We went from killing it to a done deal</p> <p>8 that fast. We will not let you down. We will make it</p> <p>9 work and get the synergies."</p> <p>10 No reason to dispute that you had</p> <p>11 those conversations with Karl Johansson and Alex</p> <p>12 Pourbaix on March 9th, 2016?</p> <p>13 <b>A. No. But I don't know for sure what</b></p> <p>14 <b>Karl is referring to when he says he is confident they</b></p> <p>15 <b>will do it. Who is that?</b></p> <p>16 Q. Let's just continue.</p> <p>17 <b>A. Okay. Yeah. That would be helpful.</b></p> <p>18 Q. Because, remember, we had -- on</p> <p>19 March 9th, 2016, we had that board meeting, right,</p> <p>20 that we looked at where the board authorized</p> <p>21 management to make a counteroffer at \$26 per share --</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. -- including equity?</p> <p>24 <b>A. Yes.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 242</p> <p>1 <b>continue working towards it, subject to clearing all</b></p> <p>2 <b>of the conditions and meeting the standards, including</b></p> <p>3 <b>underwriting, et cetera.</b></p> <p>4 Q. Let's just take a look at more text</p> <p>5 messages. These are behind Tab X-3. And I need to</p> <p>6 give a little shout-out to Brendan Sullivan on my</p> <p>7 team, because if you look behind the blue sheet, this</p> <p>8 is how they were produced in the appraisal; out of</p> <p>9 order, difficult to follow. And so we put them</p> <p>10 together in chronological order in the spreadsheet</p> <p>11 here.</p> <p>12 And this is an email exchange between</p> <p>13 Alex Pourbaix and Karl Johansson. And at this time,</p> <p>14 Mr. Pourbaix is the chief operating officer and Karl</p> <p>15 Johansson is the president in U.S. pipelines. Right?</p> <p>16 <b>A. Of our gas business, which</b></p> <p>17 <b>incorporates the U.S., yes.</b></p> <p>18 Q. Other than Russ Girling, most senior</p> <p>19 senior executives of TransCanada at the time.</p> <p>20 Correct?</p> <p>21 <b>A. Along with the CFO, yes.</b></p> <p>22 Q. Let's go through them.</p> <p>23 March 9th, 2016, Alex Pourbaix. "Russ</p> <p>24 is going to kill us."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 244</p> <p>1 Q. And remember the notes of</p> <p>2 Ms. Johnston, warning about that board meeting? That</p> <p>3 was on March 9th. Right?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And on March 9th, following that board</p> <p>6 meeting, you communicated that counteroffer to Steve</p> <p>7 Smith. Right?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Alex Pourbaix continues, still on</p> <p>10 March 9th, "We have may have killed Russ. I'm not</p> <p>11 sure he will make it through this. I completely left</p> <p>12 him off the hook and he turned around and did that.</p> <p>13 Truly bizarre." Okay.</p> <p>14 March 10th. March 10th was the day of</p> <p>15 the leak. Right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Karl Johansson. "Are you in today?"</p> <p>18 How is Russ doing with the offer."</p> <p>19 Alex Pourbaix. "Just landing in</p> <p>20 Toronto. We had a deal as offered but now it is</p> <p>21 all" -- and I will bleep it out for the Court. You</p> <p>22 can see it on the screen -- "with the leak that we are</p> <p>23 in discussions. "What a" --</p> <p>24 <b>A. Yeah.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

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<p>1 Q. -- "cluster [problem]."</p> <p>2 It strongly suggests, does it not,</p> <p>3 that Alex Pourbaix and Karl Johansson thought you had</p> <p>4 a deal before the leak started interfering?</p> <p>5 <b>A. Subject to all of the work we had to</b></p> <p>6 <b>do around rating agency confirmation, stock price, and</b></p> <p>7 <b>underwriters, yes.</b></p> <p>8 Q. Now, jump down to 18:06, or 6:00 p.m.,</p> <p>9 or we transferred it to Eastern Daylight Time.</p> <p>10 Eastern Time.</p> <p>11 "Russ just got off the phone with the</p> <p>12 CEO. They really want to do the deal still which</p> <p>13 makes sense. This is more their problem than our</p> <p>14 problems."</p> <p>15 Now it's TransCanada's for the taking.</p> <p>16 Right?</p> <p>17 <b>A. I don't know what he means by that</b></p> <p>18 <b>statement. This is the first time I see this. So</b></p> <p>19 <b>can't comment on it.</b></p> <p>20 Q. Alex Pourbaix continues four minutes</p> <p>21 later, "He actually had come full circle to wanting to</p> <p>22 do it. We need to see where this shakes out. On the</p> <p>23 good side it may be an opp[ortunity] to go back to</p> <p>24 Capricorn with a lower price."</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. And here, he's reporting to his team,</p> <p>2 "The Capricorn board is freaking out and told the</p> <p>3 management team to get a deal done with 'whatever it</p> <p>4 takes'.. Oddly, the Capricorn team has relayed this</p> <p>5 info to Taurus."</p> <p>6 And Mr. Fornell is a senior banker.</p> <p>7 Correct?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Vice chairman at Wells Fargo?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Your mentor when you were at J.P.</p> <p>12 Morgan?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. He is talking to his team at Wells</p> <p>15 Fargo.</p> <p>16 <b>A. Is there a question?</b></p> <p>17 Q. Fair to say you don't know Mr. Fornell</p> <p>18 as someone who makes information up when he's talking</p> <p>19 to his colleagues at the bank?</p> <p>20 <b>A. No.</b></p> <p>21 Q. You don't recall having any</p> <p>22 conversations when you were working for him where you</p> <p>23 thought that Mr. Fornell was making things up?</p> <p>24 <b>A. No.</b></p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 <b>A. Mm-hmm.</b></p> <p>2 Q. Do you see that?</p> <p>3 <b>A. I do.</b></p> <p>4 Q. And Karl Johansson agrees. He says,</p> <p>5 "I agree. Maybe we will benefit through this."</p> <p>6 Now, it's true, and Mr. Pourbaix and</p> <p>7 Mr. Johansson were right, were they not, that the leak</p> <p>8 presented an opportunity for TransCanada to go back</p> <p>9 with a lower price to Columbia Pipeline?</p> <p>10 <b>A. I'm not sure that's the case,</b></p> <p>11 <b>actually, because of our stock price pressures.</b></p> <p>12 Q. Well, we know that you did go back to</p> <p>13 Columbia Pipeline with a lower price.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Before we get there, March 10th, just</p> <p>16 saw the text messages between Karl Johansson and Alex</p> <p>17 Pourbaix. I want to show you another document. 952.</p> <p>18 The middle of the page, email from</p> <p>19 Eric Fornell, also showed it at your deposition.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And this is from Eric Fornell, on</p> <p>22 March 10th, 2016, to Hugh Babowal and others at Wells</p> <p>23 Fargo. Correct?</p> <p>24 <b>A. Yes.</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. All right. Set the stage.</p> <p>2 Exclusivity expired March 8th. Leak comes out</p> <p>3 March 10th. We saw the text messages between Alex</p> <p>4 Pourbaix and Karl Johansson on March 10th.</p> <p>5 And is it fair to say that on</p> <p>6 March 10th, or maybe even before, you realize that you</p> <p>7 made a tactical error by not getting Columbia Pipeline</p> <p>8 to agree to extend exclusivity?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. All right. You were concerned that an</p> <p>11 interloper would now come up, show up, and make a bid?</p> <p>12 <b>A. At the time we let it lapse, we</b></p> <p>13 <b>thought we were done. It was over. So, you know,</b></p> <p>14 <b>only when we had a ray of hope of reengaging that we</b></p> <p>15 <b>realized we should have extended it.</b></p> <p>16 Q. And when you say "we had a ray of hope</p> <p>17 of engaging [sic]," actually, what you're talking</p> <p>18 about is when you had your conversations with Smith</p> <p>19 and Skaggs about the counteroffer at \$26, including</p> <p>20 equity, at that time you thought that you or Russ</p> <p>21 Girling should have raised extending exclusivity.</p> <p>22 Right?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And at that time, you were</p> <p>CHANCERY COURT REPORTERS</p>

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1 concerned -- following that, you were concerned that  
 2 because of the leak, an interloper would show up and  
 3 make a bid?  
 4 **A. No.**  
 5 Q. No?  
 6 **A. The concern with the leak was that our**  
 7 **stock price would be under pressure and we would not**  
 8 **be able to actually execute on the funding plan with**  
 9 **the per-share metrics that we were hoping to**  
 10 **accomplish from the merger.**  
 11 Q. How would that have been solved with  
 12 exclusivity?  
 13 **A. That's a good point. It would not**  
 14 **have been solved by exclusivity.**  
 15 Q. But exclusivity would have solved for  
 16 the problem with an interloper, right, somebody else  
 17 showing up and trying to make a bid, because if you  
 18 had exclusivity, Columbia Pipeline is contractually  
 19 obligated to say, unless you make a superior proposal,  
 20 nothing to see here. Right?  
 21 **A. They have a fiduciary out in the**  
 22 **exclusivity agreement.**  
 23 Q. But the reason you go into those  
 24 exclusivity agreements is to make it more difficult

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1 today with some of my partners including the head of  
 2 our Natural Resources group.  
 3 "Columbia has been on our radar given  
 4 their significant development pipeline and associated  
 5 funding pressures.  
 6 "I was able to pose the question of  
 7 our appetite ..., et cetera. And then he says, "The  
 8 response was very positive - up to \$3-4 [billion] at  
 9 the public company and or asset level."  
 10 **A. Mm-hmm.**  
 11 Q. That would have provided TransCanada  
 12 with another lever to fund a potential transaction.  
 13 Correct?  
 14 **A. Yes.**  
 15 Q. Scroll up. So he says, "Can you [or]  
 16 I have a [conversation] at 9am [Eastern] tomorrow?"  
 17 That's from you; right?  
 18 You respond to that email. You say,  
 19 you know, I'm getting an email from CPPIB. They are  
 20 interested in doing a 3 to \$4 billion participation.  
 21 You want to discuss that; right? Is that right?  
 22 **A. Yes, that's what the email says.**  
 23 Q. Right. And then if you scroll up, you  
 24 actually make arrangements to have that call.

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1 for competing bidders to come in. Correct?  
 2 **A. It's to give us the certainty to do**  
 3 **the work and spend the money and spend the time.**  
 4 Q. And it's fair to say that by that  
 5 time, March 10th, TransCanada had spent a lot of time,  
 6 at least a hundred people, months of due diligence,  
 7 trying to understand the company. Correct?  
 8 **A. And still potentially a great deal**  
 9 **more work if the underwriters had opined that the**  
 10 **stock consideration was viable.**  
 11 Q. Now, the leak wasn't all bad; you also  
 12 got some positive news from the leak. Correct?  
 13 **A. How so?**  
 14 Q. Well, isn't it true that one of the  
 15 large Canadian pension plans approached you about  
 16 participating in the deal?  
 17 **A. I didn't recall that.**  
 18 Q. Let me show you a document. 982.  
 19 Do you see at the bottom there's an  
 20 email from Christopher Hind at CPPIB, a large Canadian  
 21 pension plan. Right?  
 22 **A. Yes.**  
 23 Q. March 10th. "Francois, your rumoured  
 24 pursuit of Columbia was a hot topic of discussion

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1 **A. Okay.**  
 2 Q. You did have that call?  
 3 **A. I don't recall. I suppose I did. But**  
 4 **I don't recall.**  
 5 Q. Now, as you were arranging for a call  
 6 with CPPIB, did you recall your obligations under the  
 7 NDA not to disclose any information about a potential  
 8 transaction?  
 9 **A. Yes.**  
 10 Q. And here you are arranging a call with  
 11 CPPIB that is interested in making a 3 to \$4 billion  
 12 participation in that transaction. Right?  
 13 **A. To discuss mechanics, how it works,**  
 14 **et cetera. But you can have that conversation without**  
 15 **disclosing any nonpublic information.**  
 16 Q. Here in his email he says, "your  
 17 rumoured pursuit of Columbia ...." Was it public by  
 18 March 10th that you were actually in discussions with  
 19 Columbia for a potential transaction?  
 20 **A. Nope.**  
 21 Q. And yet, you were calling him, talking  
 22 about a 3 to \$4 billion participation. Right?  
 23 All right. Let's talk about that  
 24 script.

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<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 253</p> <p>1 On March 12th, Bob said, send over a</p> <p>2 proposed scripted response to any inbound expressions</p> <p>3 of interest.</p> <p>4 Do you recall that?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Let's look at 1029. If you go to the</p> <p>7 third page of this document, at the top there's an</p> <p>8 italics, the script.</p> <p>9 "We will not comment on market</p> <p>10 speculation or rumors. With respect to indications of</p> <p>11 interest in pursuing a transaction, we will not</p> <p>12 respond to anything other than serious written</p> <p>13 proposals."</p> <p>14 That's not the script that you used</p> <p>15 with CPPIB. Correct?</p> <p>16 <b>A. I don't recall what ...</b></p> <p>17 Q. Okay. Now, this is the proposed</p> <p>18 script; right? And you received that, if you look</p> <p>19 through the email chain, and you then forward that to</p> <p>20 Hugh Babowal at Wells Fargo. And that's on the first</p> <p>21 page of this document. He responds, he says, "My bet</p> <p>22 is Frumkin is telling them they can't re-up</p> <p>23 exclusivity now that the deal leaked and this is the</p> <p>24 compromise they came up with."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 255</p> <p>1 files. And I showed those also at your deposition,</p> <p>2 and I want to move over to March 12th. The first one</p> <p>3 I would like to look at is March 12th, at 4:00 p.m.</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. From Bob Smith to Glen Kettering, Bob</p> <p>6 Skaggs, and Steve Smith.</p> <p>7 And he says, "Just spoke with Matt</p> <p>8 Gibson."</p> <p>9 Matt Gibson was the Goldman banker.</p> <p>10 Right --</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. "Wells has asked for a call between</p> <p>13 them to discuss the scripted response language. He</p> <p>14 will circle back [with] us as soon as the call is</p> <p>15 completed. We have no indication as to the tone of</p> <p>16 the call at this point. Never a dull moment!"</p> <p>17 Bob Skaggs says, "Okay. I'll stand</p> <p>18 by."</p> <p>19 Steve Smith says, "Francois pinged me</p> <p>20 to chat - everything going okay?" Right?</p> <p>21 And then Bob Smith, at 6:06 p.m.</p> <p>22 reports back, "Just texted back-and-forth with Matt.</p> <p>23 Was getting ready to update you. He spoke with Wells.</p> <p>24 Said everything went fine. Said they seemed to be ok</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 254</p> <p>1 So you are talking about this proposed</p> <p>2 script before entering into a new exclusivity</p> <p>3 agreement with Columbia. Correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And Mr. Babowal continues, "The</p> <p>6 problem is 'serious' is in the eye of the beholder.</p> <p>7 Does that mean a financed [bid] subject only to</p> <p>8 confirmatory [due diligence]? Or can someone write a</p> <p>9 per share price on a cocktail napkin? If they are</p> <p>10 giving us a moral commitment that it is the former I</p> <p>11 would be ok with this. Think we need to talk to</p> <p>12 them."</p> <p>13 And at this time, you and your teams</p> <p>14 at TransCanada and Wells Fargo had just spent months</p> <p>15 of due diligence to make sure you were comfortable</p> <p>16 with a counteroffer of \$26 per share, including</p> <p>17 10 percent equity. Correct?</p> <p>18 <b>A. We'd done months of due diligence,</b></p> <p>19 <b>yes.</b></p> <p>20 Q. And you understand that Wells Fargo</p> <p>21 did speak with Goldman on March 12th?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And let's look at the text messages in</p> <p>24 X-2 again. Those, again, are from Mr. Kettering's</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 256</p> <p>1 with the language. He said it felt like Francois sent</p> <p>2 them to sniff out any issues, none were found."</p> <p>3 And then Mr. Smith, Bob Smith, asks</p> <p>4 you, "Did you talk to Francois?"</p> <p>5 And here is what Steve Smith reports</p> <p>6 back, at 6:49.</p> <p>7 "I think we are done. Francois wanted</p> <p>8 to know the rationale - I explained it and pointed out</p> <p>9 how important the fiduciary protections were for our</p> <p>10 Board. Told him we wanted to get this deal done with</p> <p>11 them and this would help us achieve that goal. They</p> <p>12 were circling the wagons one last time and Francois</p> <p>13 said he would have Chris reach out to Bob to get it</p> <p>14 signed up once their meeting was concluded."</p> <p>15 And after you had that conversation</p> <p>16 with Mr. Smith, the exclusivity -- the exclusivity</p> <p>17 agreement was signed up and the scripted response was</p> <p>18 final. Correct?</p> <p>19 <b>A. I believe a number of us got on a call</b></p> <p>20 <b>to review the language, including counsel.</b></p> <p>21 Q. And after this call, you felt</p> <p>22 comfortable saying that script, if you follow that</p> <p>23 script, will not violate the exclusivity agreement</p> <p>24 once we have entered into it?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



## F. Poirier - Cross

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<p>1           <b>A.       Yes.</b></p> <p>2           Q.       It's fair to say, looking at this, at</p> <p>3 these exchanges, that you don't have a specific</p> <p>4 recollection of your conversations, but that these</p> <p>5 exchanges seem accurate to you?</p> <p>6           <b>A.       Yes.</b></p> <p>7           Q.       And you don't have any basis to</p> <p>8 dispute that on March 12th, Steve Smith told you that</p> <p>9 they wanted to get the deal done with TransCanada,</p> <p>10 right, at the same time you were discussing the script</p> <p>11 that Columbia would be using for inbounds?</p> <p>12           <b>A.       That's what the text says.</b></p> <p>13           Q.       And you have no basis to dispute that?</p> <p>14           <b>A.       No.</b></p> <p>15           Q.       And this was before you renewed</p> <p>16 exclusivity?</p> <p>17           <b>A.       Yes.</b></p> <p>18           Q.       In fact, you thought, when Steve Smith</p> <p>19 was making those comments to you, that he was trying</p> <p>20 to be constructive by committing to a deal with</p> <p>21 TransCanada?</p> <p>22           <b>A.       Committing to a desire to do a deal</b></p> <p>23 <b>with TransCanada, yes. Still has to be the right</b></p> <p>24 <b>deal.</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Securities and TD Securities.</p> <p>2           <b>A.       Yes.</b></p> <p>3           Q.       Those were the underwriters, the lead</p> <p>4 banks?</p> <p>5           <b>A.       Yes.</b></p> <p>6           Q.       And if you go to the next page, at the</p> <p>7 bottom it says, "With the support and approval of the</p> <p>8 Board, the Chief Executive Officer indicated that he</p> <p>9 would engage in discussions with Capricorn's</p> <p>10 management regarding an all-cash offer at []\$25.50 per</p> <p>11 common share."</p> <p>12                   It doesn't say that the \$26 per share,</p> <p>13 including equity, was off the table. Correct?</p> <p>14           <b>A.       Not in that paragraph, no.</b></p> <p>15           Q.       So let's look above. The second full</p> <p>16 paragraph, it starts with "The Board," during this</p> <p>17 March 14th meeting. "The Board heard management's</p> <p>18 view ...," it says. These minutes, finalized, signed.</p> <p>19 "The Board heard management's view that the market</p> <p>20 reaction to the rumour demonstrated that the market</p> <p>21 appeared to view the acquisition positively on the</p> <p>22 basis that it was a good strategic fit. Management</p> <p>23 relayed that based on subsequent discussions with its</p> <p>24 lead underwriters, it appeared that a larger bought</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1           Q.       Now, earlier today you testified that</p> <p>2 the underwriters, TransCanada's underwriters, didn't</p> <p>3 want to support the \$26 deal including the 10 percent</p> <p>4 equity.</p> <p>5                   Do I remember that correctly?</p> <p>6           <b>A.       Ultimately, they came to that</b></p> <p>7 <b>conclusion, yes.</b></p> <p>8           Q.       And if I remember your testimony</p> <p>9 correctly, that is why you communicated to Columbia</p> <p>10 that, sorry, we need to change the structure of the</p> <p>11 deal; it's going to be \$25.50?</p> <p>12           <b>A.       Partly. Also, our stock price was</b></p> <p>13 <b>below that \$49 level, yes.</b></p> <p>14           Q.       Let's look at the board minutes of the</p> <p>15 March 14 TransCanada meeting. It's not in your</p> <p>16 binder, but it will be on the screen. It's a document</p> <p>17 your counsel just showed you. It's 1092.</p> <p>18                   So the first page -- it's a two-page</p> <p>19 document. The first page, this is the March 14, 2016,</p> <p>20 board meeting minutes?</p> <p>21           <b>A.       Yes.</b></p> <p>22           Q.       And if you look, there's a discussion</p> <p>23 in the attendees about who is there.</p> <p>24                   There are representatives from RBC</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 deal with a smaller over-allotment option would be</p> <p>2 supported by the markets."</p> <p>3                   No basis to dispute that's what</p> <p>4 management informed the TransCanada board on</p> <p>5 March 14th?</p> <p>6           <b>A.       That's correct.</b></p> <p>7           Q.       And then Mr. Gardner and Mr. Clarke</p> <p>8 from RBC and TD joined the meeting. Look at that a</p> <p>9 little bit below.</p> <p>10                   "[Mr.] Clarke and Gardner responded to</p> <p>11 a series of questions from the Board members regarding</p> <p>12 the commitment of the banks to the underwritten</p> <p>13 financing. The bankers shared their views noting that</p> <p>14 the trading of TransCanada's shares since the Wall</p> <p>15 Street Journal story was indicative of investor</p> <p>16 support for the rumoured transaction. The bankers</p> <p>17 also commented on the likelihood of successful</p> <p>18 execution and the expected discount rate on the</p> <p>19 subscription receipts offering. It was conveyed that</p> <p>20 the two lead banks stood by their commitment to</p> <p>21 execute on the underwritten offering in light of their</p> <p>22 comfort with the contemplated acquisition."</p> <p>23                   At this time, the only deal that the</p> <p>24 banks were contemplating was a \$26 deal, including</p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 261</p> <p>1 10 percent equity?</p> <p>2 <b>A. That's not my recollection.</b></p> <p>3 Q. There was a \$25.50 deal in cash.</p> <p>4 There was no reason for them to change. Right? There</p> <p>5 was not -- sorry. Withdrawn.</p> <p>6 You have no basis to dispute that as</p> <p>7 of March 14th, TransCanada's banks stood by their</p> <p>8 prior commitment to execute on the underwritten</p> <p>9 offering?</p> <p>10 <b>A. For the subscription receipts.</b></p> <p>11 Q. Okay. And if I look at who is there</p> <p>12 at the meeting on the first page, you were there;</p> <p>13 right? A lot of people from TransCanada are there.</p> <p>14 Eric Fornell is there, right, your advisor?</p> <p>15 <b>A. I think virtually, but, yes.</b></p> <p>16 Q. RBC Securities and TD Securities --</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. -- right?</p> <p>19 No other underwriters present at this</p> <p>20 meeting?</p> <p>21 <b>A. Unless they're listed there, there</b></p> <p>22 <b>were none, yes.</b></p> <p>23 Q. Sorry. What did you say? I couldn't</p> <p>24 hear you.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 263</p> <p>1 Q. Let's take a look at JTX 290. This is</p> <p>2 an email from Tim Ingrassia, the senior banker at</p> <p>3 Goldman Sachs, at the bottom, November 3rd, 2015, to</p> <p>4 his colleagues at Columbia Pipeline.</p> <p>5 And I want to focus on point No. 4.</p> <p>6 Here, he reports, "Any sale process that is public</p> <p>7 (whether leaked or announced) puts pressure on the</p> <p>8 board to 'take' best price at premium to market that</p> <p>9 is offered and absent competition may lead to any</p> <p>10 given bidder trying to push deal at a lower price."</p> <p>11 <b>A. Mm-hmm.</b></p> <p>12 Q. Is that consistent with your</p> <p>13 experience as an investment banker?</p> <p>14 <b>A. I have -- I did not have any</b></p> <p>15 <b>experience on this exact situation as an investment</b></p> <p>16 <b>banker.</b></p> <p>17 Q. Any basis to dispute what</p> <p>18 Mr. Ingrassia is saying here?</p> <p>19 <b>A. No basis to agree or disagree,</b></p> <p>20 <b>actually.</b></p> <p>21 Q. Does -- that's what's happening on</p> <p>22 March 14th; right? You are going back to Columbia</p> <p>23 Pipeline. The deal has been leaked; right? The board</p> <p>24 is under pressure. And you're going back with a</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 262</p> <p>1 <b>A. Unless they are listed there, there</b></p> <p>2 <b>are none.</b></p> <p>3 Q. Okay. Now, is it fair to say that you</p> <p>4 knew that when you were going back to Columbia</p> <p>5 Pipeline to talk about the \$25.50 all-cash offer, you</p> <p>6 knew that Steve Smith was on vacation?</p> <p>7 <b>A. No. At least I don't recall.</b></p> <p>8 Q. Okay. It's okay. Maybe I will</p> <p>9 refresh your memory.</p> <p>10 <b>A. Yes, I'm sure.</b></p> <p>11 Q. If you go to X-1, these are the text</p> <p>12 messages between you and Steve Smith. And if you go</p> <p>13 to March 12th, you reach out around 3:00 in the</p> <p>14 afternoon. And he tells you, "On my way to the hotel</p> <p>15 with family. I will call you when we get settled."</p> <p>16 Does this refresh your memory that</p> <p>17 Steve Smith was already on vacation?</p> <p>18 <b>A. Yes, it does. It does.</b></p> <p>19 Q. You also knew that Columbia had agreed</p> <p>20 to extend exclusivity by March 14th. Right?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And you knew that the deal was leaked</p> <p>23 and had become public?</p> <p>24 <b>A. Yes.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 264</p> <p>1 revised offer. Right?</p> <p>2 <b>A. The offer at 26 was not viable, in our</b></p> <p>3 <b>opinion, based on the feedback from our underwriters.</b></p> <p>4 <b>So we put our best foot forward and took one last</b></p> <p>5 <b>attempt at getting a transaction consummated at an</b></p> <p>6 <b>all-cash number, which was a big stretch for us.</b></p> <p>7 Q. You mean those were the underwriters</p> <p>8 from RBC and TD that stood by their commitment?</p> <p>9 <b>A. Yes, stood by their commitment on the</b></p> <p>10 <b>sub receipts.</b></p> <p>11 Q. All right. Let's go back to JTX 1092.</p> <p>12 And I don't want to waste too much time with this.</p> <p>13 But my question really is, where in here does it say</p> <p>14 that the underwriters no longer support a deal at \$26,</p> <p>15 including 10 percent equity, in these March 14th board</p> <p>16 minutes?</p> <p>17 <b>A. It doesn't.</b></p> <p>18 Q. Okay. All right. So thinking about</p> <p>19 where you are, the deal is leaked; there's pressure on</p> <p>20 the board to take a price. Isn't it fair to say that</p> <p>21 what you were doing here is you were setting it up so</p> <p>22 that Skaggs and Smith would take the lower price to</p> <p>23 the board and dare them to turn it down, just like you</p> <p>24 had talked about in February?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1	<b>A. No.</b>	
2	Q. You knew that Skaggs and Smith wanted	
3	to get the deal done. We saw the communications.	
4	They committed to you.	
5	<b>A. Get the right deal done.</b>	
6	Q. Well, at the time, you had been	
7	talking about a deal at \$26 per share, including	
8	10 percent equity. Right?	
9	<b>A. Yes. And there were conditions that</b>	
10	<b>were not met. And so we put our best foot forward and</b>	
11	<b>provided a revised offer at a higher price, all cash.</b>	
12	Q. So it is your position, sitting here,	
13	that \$25.50 in cash is a higher price than \$26,	
14	including 10 percent equity?	
15	<b>A. That's not relevant, because we</b>	
16	<b>couldn't execute on it.</b>	
17	Q. You mean based on the underwriters who	
18	didn't say anything, according to these minutes, on	
19	March 14th?	
20	<b>A. Not in the minutes. But we were very</b>	
21	<b>clear in the feedback we got from them.</b>	
22	Q. All right. Now, it's fair to say that	
23	you set up that meeting by texting with Francois --	
24	with Steve Smith and Glen Kettering. Right?	
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1	<b>A. Yes.</b>	
2	Q. You don't say, hey, we're going to	
3	give you a revised offer at \$25.50?	
4	<b>A. No, that's not what it says.</b>	
5	Q. It doesn't say anywhere here that the	
6	underwriters are no longer supporting a \$26 deal.	
7	Right?	
8	<b>A. Nope.</b>	
9	Q. In fact, it doesn't give any	
10	indication that you are about to revise the terms of	
11	the proposed transaction?	
12	<b>A. I think our job was to set up a</b>	
13	<b>meeting as quickly as possible, and it was a</b>	
14	<b>conversation that was best had verbally, where you can</b>	
15	<b>make -- provide a proper explanation and context, not</b>	
16	<b>a two-line text.</b>	
17	Q. Now, you had that call with	
18	Glen Kettering on March 14, and Alex Pourbaix was also	
19	on. Right?	
20	<b>A. Yes.</b>	
21	Q. And we just saw his text messages, his	
22	text message to Johannson on March 10th saying that	
23	the leak may be an opportunity to go back to Columbia	
24	Pipeline with a lower price.	
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1	<b>A. The meeting where we notified -- you</b>	
2	<b>are referring to the meeting where we notified them</b>	
3	<b>that we could no longer proceed on the \$26 with</b>	
4	<b>10 percent consideration?</b>	
5	Q. Yes. Actually, what I'm trying to	
6	talk about is the March 14th meeting where you	
7	presented the \$25.50.	
8	<b>A. I see. Yes. I don't recall, but I'm</b>	
9	<b>sure the record shows that those are the people that I</b>	
10	<b>reached out to.</b>	
11	Q. Mm-hmm. All right.	
12	Let's look at X-1. On March 14 at	
13	9:25: "Can you do a call around 12-12:30 [Mountain	
14	Time] today?"	
15	And Steve Smith, who is on vacation,	
16	responds, "Probably not until 4-4:30 []." "	
17	You ask, "Would Glen" -- Glen	
18	Kettering -- "be available at that time?"	
19	"Don't know. I can check. What do	
20	you need?"	
21	And then you say to Steve, "We want to	
22	give you a thorough update of where we are."	
23	<b>A. Mm-hmm.</b>	
24	Q. Correct?	
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1	Do you remember that?	
2	<b>A. Yes.</b>	
3	Q. Now, during this March 14th call, you	
4	told Kettering that TransCanada's underwriters thought	
5	that including stock as a consideration was going to	
6	make the transaction challenging.	
7	<b>A. Yes.</b>	
8	Q. Not impossible. Challenging?	
9	<b>A. Mm-hmm.</b>	
10	Q. And so you discussed an alternate	
11	course of action?	
12	<b>A. Mm-hmm.</b>	
13	Q. Which was an all-cash transaction at	
14	25.50 per share?	
15	<b>A. Yes.</b>	
16	Q. But you did not inform Glen Kettering	
17	that TransCanada was no longer interested in pursuing	
18	a transaction at \$26 per share?	
19	<b>A. My recollection is I started the call</b>	
20	<b>by saying that, once we have made our assessment and</b>	
21	<b>we believe that we can no longer deliver that price</b>	
22	<b>and consideration mix, that we have an obligation to</b>	
23	<b>inform you. So that's the purpose of this</b>	
24	<b>conversation.</b>	
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<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 269</p> <p>1 Q. So the following is not a video. I'm</p> <p>2 going to show you some testimony. The reason it's not</p> <p>3 a video is because you testified here. So we don't</p> <p>4 have video of your testimony. But we do have your</p> <p>5 trial testimony.</p> <p>6 <b>A. Okay.</b></p> <p>7 Q. And that's in the other binder, behind</p> <p>8 the tab "Appraisal Trial Testimony." What I would</p> <p>9 like you to do is go to page 419 of your testimony.</p> <p>10 And I just want to focus on the</p> <p>11 back-and-forth that you had there on pages 419 and</p> <p>12 420.</p> <p>13 <b>A. Mm-hmm.</b></p> <p>14 Q. So there you were asked --</p> <p>15 <b>A. Could you give me a moment, please?</b></p> <p>16 Q. Take a moment to review. I'm also</p> <p>17 going to read it to you.</p> <p>18 <b>A. No, I'll read it myself. Thank you.</b></p> <p>19 Q. Sure. Lines 9 -- page 419, lines 9,</p> <p>20 through page 420, line 17. Actually, through line 21,</p> <p>21 please.</p> <p>22 Have you had a chance to review it?</p> <p>23 <b>A. I have.</b></p> <p>24 Q. And when you were here last time, did</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 271</p> <p>1 okay. Let me ask it again.</p> <p>2 "Question: Again, are you answering a</p> <p>3 question I haven't asked. I'm not asking why. I'm</p> <p>4 asking did it happen, yes or no, you communicated --"</p> <p>5 You say, "We did not formally say no."</p> <p>6 You were asked those questions, and</p> <p>7 you gave those answers. Correct?</p> <p>8 <b>A. I did.</b></p> <p>9 Q. And then it continues:</p> <p>10 "Question: I'm sorry. We talked over</p> <p>11 each other.</p> <p>12 "On March 14th, you said TransCanada</p> <p>13 no longer interested in an acquisition at \$26.</p> <p>14 Correct?</p> <p>15 "Answer: We did not formally say no</p> <p>16 at 26 with a stock consideration.</p> <p>17 "Question: You say you did not</p> <p>18 formally say that?</p> <p>19 "Answer: That's correct.</p> <p>20 "Question: You informally said it?</p> <p>21 "Answer: We said that we were seeing</p> <p>22 a great deal of challenges with it, and we wanted to</p> <p>23 propose an alternative approach.</p> <p>24 "Question: So is it your position</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 270</p> <p>1 you swear to tell the truth? Did you tell the truth?</p> <p>2 <b>A. I did.</b></p> <p>3 Q. So here, you were asked:</p> <p>4 "Question: During a call on</p> <p>5 March 14th, you indicated that TransCanada was no</p> <p>6 longer interested in acquiring Columbia for \$26 per</p> <p>7 share. Correct?"</p> <p>8 And you say: "We indicated that our</p> <p>9 underwriters thought including stock as consideration</p> <p>10 was going to make the transaction challenging."</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. "And so we, you know, discussed an</p> <p>13 alternate course of action, which was an all-cash</p> <p>14 transaction at 25.50.</p> <p>15 "Question: My question wasn't why; it</p> <p>16 was just whether it happened.</p> <p>17 "You communicated on March 14th</p> <p>18 TransCanada was no longer interested in pursuing a</p> <p>19 transaction at \$26 per share. Correct?"</p> <p>20 And you answered: "We said that we</p> <p>21 found it challenging, and that's why we proposed an</p> <p>22 alternate price and consideration mix."</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. My former colleague Andy was, like,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>F. Poirier - Cross</b> Page 272</p> <p>1 that TransCanada was still interested in acquiring</p> <p>2 Columbia for \$26 per share on March 14th of 2016?</p> <p>3 "Answer: We had put pencils down on</p> <p>4 that alternative, but we hadn't put it to bed, yes."</p> <p>5 You were asked those questions, and</p> <p>6 you gave those answers. Right?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And you were being truthful?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And it's true, is it not, that if</p> <p>11 Columbia had come back to you and said, no, we're not</p> <p>12 doing \$25.50 per share, TransCanada would have</p> <p>13 reconsidered being prepared to take the risk of</p> <p>14 issuing stock as consideration along with the cash</p> <p>15 component of a transaction at \$26 per share?</p> <p>16 <b>A. I don't know, actually.</b></p> <p>17 Q. If you continue reading, 420, line 22,</p> <p>18 the Court asked: "What is that distinction? What</p> <p>19 does it mean?"</p> <p>20 You answered: "It means that if they</p> <p>21 had said no to 25.50 all cash, we would have</p> <p>22 reconsidered being prepared to take the risk of</p> <p>23 issuing stock as consideration along with the cash</p> <p>24 component of the transaction."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p>1 That's how you testified. Right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. That was true, wasn't it?</p> <p>4 <b>A. I answered honestly, yes.</b></p> <p>5 Q. "The Court: At 26?"</p> <p>6 You: "At 26, yes."</p> <p>7 Again, that was truthful and accurate</p> <p>8 and honest. Right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So it is true that if Columbia had</p> <p>11 said no to \$25.50 per share, TransCanada would have</p> <p>12 reconsidered being prepared to take the risk of</p> <p>13 issuing stock as consideration along with the cash</p> <p>14 component of the transaction at \$26 per share?</p> <p>15 <b>A. With still the same conditions, right,</b></p> <p>16 <b>rating agency support, proper stock price above 49 --</b></p> <p>17 <b>or 49 or above, et cetera, yes.</b></p> <p>18 Q. It's fair to say that Mr. Kettering</p> <p>19 was surprised when you announced during the call on</p> <p>20 March 14th that TransCanada found the transaction</p> <p>21 challenging at \$26 per share?</p> <p>22 <b>A. Yes, he was surprised. Or shall I say</b></p> <p>23 <b>he was surprised that we were calling as quickly as we</b></p> <p>24 <b>were, because he didn't -- he had not been aware that</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. So there's a leak about a potential</p> <p>2 transaction between TransCanada and Columbia.</p> <p>3 Correct? And it's your understanding, is it not, as</p> <p>4 an experienced banker and executive, that that leak</p> <p>5 impacts the stock price, both TransCanada and Columbia</p> <p>6 Pipeline?</p> <p>7 <b>A. Typically more the -- well, yeah, it</b></p> <p>8 <b>can affect both.</b></p> <p>9 Q. Right. And typically what you would</p> <p>10 expect is that the target stock price goes up, and</p> <p>11 maybe the --</p> <p>12 <b>A. Acquirers.</b></p> <p>13 Q. -- suitor, the acquirer, goes down.</p> <p>14 Right?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And here, following the leak,</p> <p>17 Columbia's stock price did go up. Right?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And what I hear you say now is that</p> <p>20 when you were telling Columbia that if they did not</p> <p>21 accept the offer of \$25.50 per share, TransCanada</p> <p>22 would issue a press release saying that discussions</p> <p>23 had been terminated, that was not to apply pressure?</p> <p>24 <b>A. No. We were the ones -- we were the</b></p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 <b>we had a board meeting to discuss it with the board.</b></p> <p>2 Q. In fact, he was not aware that you</p> <p>3 were going to talk about the terms of the transaction</p> <p>4 at all?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. And during this call, you did not tell</p> <p>7 Kettering that TransCanada was interested in</p> <p>8 considering the transaction at \$26 per share,</p> <p>9 including equity, if they said no to \$25.50?</p> <p>10 <b>A. No. I said that it was challenging to</b></p> <p>11 <b>do.</b></p> <p>12 Q. And, in fact, you told Mr. Kettering</p> <p>13 that if Columbia did not accept the offer of \$25.50</p> <p>14 per share, TransCanada planned to issue a press</p> <p>15 release within the next few days indicating that its</p> <p>16 acquisition discussions had been terminated?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And your intention in communicating</p> <p>19 this to Columbia was to create a sense of urgency for</p> <p>20 Columbia's consideration of the \$25.50 per share cash</p> <p>21 offer?</p> <p>22 <b>A. Yes, but not to apply pressure to</b></p> <p>23 <b>them. Simply a case that our economics with our stock</b></p> <p>24 <b>trending down were deteriorating by the day.</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>ones feeling pressure. Our stock was under pressure,</b></p> <p>2 <b>and the Toronto Stock Exchange -- we had to halt our</b></p> <p>3 <b>stock on the Toronto Stock Exchange. And we made a</b></p> <p>4 <b>commitment to, as quickly as possible, make a comment</b></p> <p>5 <b>as to whether or not there was a transaction.</b></p> <p>6 Q. Well, isn't it true that as of</p> <p>7 March 16th, right around the same time, TransCanada's</p> <p>8 stock price was not giving you any cause for concern?</p> <p>9 <b>A. How so?</b></p> <p>10 Q. I will show you a document. Just look</p> <p>11 at JTX 1110 -- it's also on your screen -- a March 16,</p> <p>12 2016, email from Eric Fornell to you.</p> <p>13 "Subject: Market.</p> <p>14 "Your stock is hanging in nicely."</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. You respond, "Agreed!"</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. So it's fair to say that as of that</p> <p>19 time, TransCanada's stock price was not giving you a</p> <p>20 great deal of concern?</p> <p>21 <b>A. At that given point in time, no. Was</b></p> <p>22 <b>it a risk that I wanted to take going forward? No.</b></p> <p>23 Q. I think earlier today we saw that you</p> <p>24 understood that you couldn't use the threat of</p> <p>CHANCERY COURT REPORTERS</p>

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<p>1 disclosure of deal negotiations as a way to apply</p> <p>2 pressure or leverage in connection with the</p> <p>3 transaction. Right?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. All right. I wanted to talk a little</p> <p>6 bit about the discussion about value. You had some</p> <p>7 discussions about intrinsic value and things like</p> <p>8 that.</p> <p>9 Before we do that, I wanted to show</p> <p>10 you one document that your counsel showed you, and</p> <p>11 then I will go through the others.</p> <p>12 ATTORNEY van KAWEGEN: So if you</p> <p>13 could put up, Joe, JTX 530.</p> <p>14 Q. And here, you were asked by your</p> <p>15 counsel a few questions about the transposition of the</p> <p>16 value of the stock price for Columbia Pipeline before</p> <p>17 the equity offering and after the equity offering.</p> <p>18 Do you remember that?</p> <p>19 <b>A. Sorry. I can't find the document in</b></p> <p>20 <b>the binder.</b></p> <p>21 Q. It's not in your binder.</p> <p>22 <b>A. Oh.</b></p> <p>23 Q. It was actually one of your counsel's</p> <p>24 documents.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. Nope.</b></p> <p>2 Q. And that happened between November of</p> <p>3 2015 and January 7th of 2016. Right?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And do you see anywhere in here the</p> <p>6 impact of the modernization 2 program that the FERC</p> <p>7 had approved the new settlement with Columbia Pipeline</p> <p>8 shippers that was providing significant financial</p> <p>9 benefits to Columbia Pipeline?</p> <p>10 <b>A. No, I don't see those in there either.</b></p> <p>11 Q. So when I'm looking at this \$25.73, it</p> <p>12 does not include the billion dollars of bonus</p> <p>13 depreciation, and it does not include the benefits of</p> <p>14 modernization 2 being approved?</p> <p>15 <b>A. Nor does it include our view of the</b></p> <p>16 <b>accuracy of the estimates they have on their other</b></p> <p>17 <b>projects, the amount of risk in taking on a large</b></p> <p>18 <b>portfolio, et cetera.</b></p> <p>19 <b>So it ignores a number of puts and</b></p> <p>20 <b>takes, some of which have positive impacts on value,</b></p> <p>21 <b>or theoretically could, and some that do not.</b></p> <p>22 Q. Let's look at some of that. There's a</p> <p>23 document 1398. It's talking about the impact of</p> <p>24 Columbia Pipeline on TransCanada.</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 <b>A. Okay.</b></p> <p>2 Q. So you see there's a Wells Fargo</p> <p>3 analysis?</p> <p>4 ATTORNEY van KAWEGEN: Next page,</p> <p>5 Joe.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And you were asked some questions</p> <p>8 about the adjustment of the share price for the equity</p> <p>9 offering. Right?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. The \$28 per share before the equity</p> <p>12 offering transposed to \$25.73 after the equity</p> <p>13 offering.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And your counsel asked whether this</p> <p>16 was apples to apples?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Do you remember that?</p> <p>19 <b>A. All other things being equal, yes,</b></p> <p>20 <b>purely from a math standpoint. That was the question.</b></p> <p>21 Q. And do you see anywhere in here the</p> <p>22 impact of the passage of the PATH Act, P-A-T-H, the</p> <p>23 bonus depreciation that provided Columbia Pipeline</p> <p>24 with a billion dollars in benefits?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 And I want to focus on the</p> <p>2 October 12th, 2017, email in the middle of the page</p> <p>3 from Stan Chapman. And Stan Chapman was at one point</p> <p>4 in the running to become CEO of TransCanada. Right?</p> <p>5 <b>A. Yes, he was.</b></p> <p>6 Q. And at this time, he's the executive</p> <p>7 vice president and president of U.S. natural gas</p> <p>8 pipelines at TC Energy.</p> <p>9 And here he says, "I've been digesting</p> <p>10 the slide deck for tomorrow's Plan review on the</p> <p>11 plane. Until now, I [did not] realize the true impact</p> <p>12 of the [Columbia Pipeline] acquisition on the company.</p> <p>13 I obviously knew the magnitude of [Columbia</p> <p>14 Pipeline's] EBITDA growth, but didn't realize how flat</p> <p>15 or moderate the growth was in the other [business</p> <p>16 units]. Our financial forecast would look very</p> <p>17 different [without Columbia Pipeline's] billion \$</p> <p>18 EBITDA contribution over the next 2 years."</p> <p>19 <b>A. Mm-hmm.</b></p> <p>20 Q. And it's true, is it not, that as of</p> <p>21 October 2017, Columbia was already making material</p> <p>22 contribution to TransCanada's forecasted EBITDA for</p> <p>23 the next two years?</p> <p>24 <b>A. Yes.</b></p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

F. Poirier - Cross Page 281	F. Poirier - Cross Page 283
<p>1 Q. And it's also true, is it not, that,</p> <p>2 to you, that was not really a surprise?</p> <p>3 <b>A. That's true.</b></p> <p>4 Q. And, actually, you knew in February of</p> <p>5 2016 that an all-cash transaction at \$27 per share</p> <p>6 would immediately be accretive on an</p> <p>7 earnings-per-share basis and a funds-from-operations</p> <p>8 basis for TransCanada?</p> <p>9 <b>A. We may have shown math that showed</b></p> <p>10 <b>that was the case. But when you make a decision,</b></p> <p>11 <b>you're triangulating between value, corporate impacts,</b></p> <p>12 <b>financing plan, et cetera.</b></p> <p>13 Q. Well, let's look at 729. Here,</p> <p>14 Mr. Ewing is forwarding the final version of a board</p> <p>15 presentation with respect to the potential acquisition</p> <p>16 Right?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And if you go through that</p> <p>19 presentation, there's a discussion of all the various</p> <p>20 angles. And here, if you go to the page at the bottom</p> <p>21 that says 008.</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. That's Figure 6. There's a discussion</p> <p>24 in these materials with the TransCanada board showing</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And this presentation was as of</p> <p>4 February 2016. Right?</p> <p>5 <b>A. That's correct.</b></p> <p>6 Q. Okay. Now, besides the contribution</p> <p>7 to TransCanada's bottom line, I also wanted to look at</p> <p>8 Columbia's stand-alone value and synergies a little</p> <p>9 bit.</p> <p>10 We saw earlier the Wells Fargo</p> <p>11 presentation. Right?</p> <p>12 <b>A. Mm-hmm.</b></p> <p>13 Q. With the midpoints and the base case,</p> <p>14 a little over \$26 per share on March 5th?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. So I wanted to show you 1103. And</p> <p>17 this is a big package for the meeting, special meeting</p> <p>18 of the TransCanada board of directors to consider the</p> <p>19 transaction. Correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And if you go to -- the bottom page is</p> <p>22 31, you see the beginning of the Wells Fargo</p> <p>23 presentation to the board of directors.</p> <p>24 <b>A. Yes.</b></p> <p>CHANCERY COURT REPORTERS</p>
F. Poirier - Cross Page 282	F. Poirier - Cross Page 284
<p>1 the accretion to TransCanada at \$27 per share, all</p> <p>2 cash. Correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And then underneath, TransCanada's</p> <p>5 board is informed, "The additional earnings and cash</p> <p>6 flow generated from Capricorn would provide</p> <p>7 TransCanada with the ability to grow dividends at</p> <p>8 higher rates while maintaining the same payout ratio.</p> <p>9 Based on the information received to date it would</p> <p>10 allow TransCanada to grow dividends at 12-14 percent</p> <p>11 per year through 2020."</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And when management is providing this</p> <p>14 type of information to the board, it's trying to be</p> <p>15 accurate?</p> <p>16 <b>A. Accurate based on our stock price at</b></p> <p>17 <b>the time, the diligence at that point in time, yes.</b></p> <p>18 Q. And you understand --</p> <p>19 <b>A. And it's an indication of a case; it's</b></p> <p>20 <b>not a recommendation that that's the appropriate</b></p> <p>21 <b>price.</b></p> <p>22 Q. And it's your understanding that the</p> <p>23 board will rely on information provided from</p> <p>24 TransCanada's management in forming its decisions.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. Dated March 17.</p> <p>2 <b>A. Mm-hmm.</b></p> <p>3 Q. And if you go to the bottom, that's</p> <p>4 page 52. So JTX 1103.52.</p> <p>5 <b>A. I see that.</b></p> <p>6 Q. Here, you have a DCF analysis, the</p> <p>7 stand-alone value of Columbia Pipeline as of --</p> <p>8 projected as of September 30, 2016. Right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And just looking at it, the midpoint</p> <p>11 of this DCF analysis is \$26.51 a share. Correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. That does not include synergies, does</p> <p>14 it?</p> <p>15 <b>A. I can't confirm that, but typically</b></p> <p>16 <b>they don't include synergies in their analysis.</b></p> <p>17 Q. Well, if you go to page 54, there is a</p> <p>18 separate DCF analysis of the synergies.</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. That would strongly suggest, when</p> <p>21 looking at the 26.51 per share, it does not include</p> <p>22 synergies.</p> <p>23 <b>A. Correct, that's logical.</b></p> <p>24 Q. Here, Wells Fargo is determining that</p> <p>CHANCERY COURT REPORTERS</p>

## F. Poirier - Cross

F. Poirier - Cross Page 285	F. Poirier - Cross Page 287
<p>1 there would be an additional \$1.93 a share in</p> <p>2 synergies. Correct?</p> <p>3 <b>A. Agreed.</b></p> <p>4 Q. So if you add those two up, you get</p> <p>5 well over \$28 a share. Right?</p> <p>6 <b>A. I would not add those two up in a</b></p> <p>7 <b>merger analysis. Never have.</b></p> <p>8 Q. Fair to say, though, that the Columbia</p> <p>9 acquisition was a strong success for TransCanada?</p> <p>10 <b>A. Yes, it was. We brought things to the</b></p> <p>11 <b>table that they couldn't do on their own, from a</b></p> <p>12 <b>financing standpoint and a project-execution</b></p> <p>13 <b>standpoint.</b></p> <p>14 Q. It's also true, though, that the</p> <p>15 acquisition analysis and the subsequent negotiations</p> <p>16 were enhanced, significantly enhanced, by previous</p> <p>17 strong relationships between TransCanada and Columbia</p> <p>18 management?</p> <p>19 <b>A. Yes, which you garnered from a</b></p> <p>20 <b>look-back we did a few months later.</b></p> <p>21 Q. Let's look at the look-back. It's</p> <p>22 1522. And this is not a few months later. This is</p> <p>23 July of 2019.</p> <p>24 <b>A. Oh, right.</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. No?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Your role in connection with --</p> <p>4 <b>A. No.</b></p> <p>5 Q. -- the acquisition of Columbia did not</p> <p>6 allow you to be considered as a candidate to become</p> <p>7 TransCanada's CEO?</p> <p>8 <b>A. No. Doing a good deal as a corporate</b></p> <p>9 <b>development executive makes me a subject-matter expert</b></p> <p>10 <b>in corporate development. Our general counsel winning</b></p> <p>11 <b>a case makes the general counsel a subject matter in</b></p> <p>12 <b>the law. What makes you a candidate for being</b></p> <p>13 <b>considered as CEO is your vision, your leadership,</b></p> <p>14 <b>your people leadership, your ability to inspire and</b></p> <p>15 <b>understand the business and all the fundamentals that</b></p> <p>16 <b>surround it.</b></p> <p>17 Q. That's your answer?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. So let's look at your deposition.</p> <p>20 It's page 285, lines 7 through 22. I'll also play it</p> <p>21 for you.</p> <p>22 <b>A. Okay. I will listen to it.</b></p> <p>23 (A video clip was played as follows:).</p> <p>24 Question: Okay. Is it your</p> <p>CHANCERY COURT REPORTERS</p>
F. Poirier - Cross Page 286	F. Poirier - Cross Page 288
<p>1 Q. And if you go to the third page,</p> <p>2 1522.003, "Columbia acquisition should be deemed a</p> <p>3 strong success"?</p> <p>4 <b>A. Mm-hmm.</b></p> <p>5 Q. The bullet points there, it's talking</p> <p>6 about how "[t]he acquisition analysis and subsequent</p> <p>7 negotiations were significantly enhanced by previous</p> <p>8 strong relationships between TransCanada and Columbia</p> <p>9 management." Correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And that refers to your relationship</p> <p>12 with Steve Smith?</p> <p>13 <b>A. Yes, it does.</b></p> <p>14 Q. If you go to the next page, one of the</p> <p>15 learnings and takeaways of the Columbia Pipeline</p> <p>16 acquisition was that TransCanada would develop a short</p> <p>17 list of targeted acquisitions and create relationships</p> <p>18 with those entities too.</p> <p>19 <b>A. Mm-hmm.</b></p> <p>20 Q. It's fair to say that your role in</p> <p>21 connection with the acquisition of Columbia allowed</p> <p>22 you to be considered as a candidate to become</p> <p>23 TransCanada's CEO?</p> <p>24 <b>A. Not at all.</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 understanding that your role in connection with the</p> <p>2 acquisition of Columbia Pipeline was one of the</p> <p>3 factors that the board considered when it decided to</p> <p>4 promote you to chief executive officer?</p> <p>5 Answer: You know, I wish I could say</p> <p>6 yes, but, sadly, no, it -- it allowed me to be</p> <p>7 considered as a candidate. But, you know, you can't</p> <p>8 become CEO of a hundred-billion-dollar operating</p> <p>9 company without having successfully operated a</p> <p>10 business unit, operated it safely, managed costs,</p> <p>11 et cetera. So it likely afforded me the opportunity</p> <p>12 to be considered, but then I had to perform in the</p> <p>13 role of president of the energy business unit, as well</p> <p>14 as the president of the Mexico business unit.</p> <p>15 (End of video clip.)</p> <p>16 BY ATTORNEY van KAWEGEN:</p> <p>17 Q. Did I ask that question and you gave</p> <p>18 that answer --</p> <p>19 <b>A. Yes, sir.</b></p> <p>20 Q. -- at your deposition? All right.</p> <p>21 Let's talk a few minutes about the</p> <p>22 proxy. You had an opportunity to review the proxy</p> <p>23 statement before it was finalized?</p> <p>24 <b>A. Yes.</b></p> <p>CHANCERY COURT REPORTERS</p>



## F. Poirier - Cross

F. Poirier - Cross			Page 289
1	Q.	Give comments on it?	
2	A.	Yes.	
3	Q.	That included the background of the	
4		merger section?	
5	A.	Yes.	
6	Q.	And you understood that the proxy	
7		would provide context for shareholders to inform them	
8		and to help inform their vote on the transaction?	
9	A.	Yes.	
10	Q.	You understood that it was important	
11		for the proxy to be accurate and truthful?	
12	A.	Yes.	
13	Q.	As part of this review, you were given	
14		the opportunity to comment on the proxy before it was	
15		finalized?	
16	A.	That's correct.	
17	Q.	In fact, you did comment, including on	
18		the background of the merger section?	
19	A.	I did.	
20	Q.	And after the preliminary proxy, you	
21		had another opportunity to review and comment on the	
22		proxy before the final proxy was issued?	
23	A.	I don't recall that, but ...	
24	Q.	1281.	
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F. Poirier - Cross			Page 290
1	A.	You can show me something.	
2	Q.	Sure. At the top, there's an email	
3		from Tara Shaw to you, Peter Ewing, Chris Johnston.	
4	A.	Yes.	
5	Q.	"Hi Francois and [Andrew]."	
6		It's dated May 13.	
7		"Please [] attached a few updates on	
8		Columbia's definitive proxy statement, including the	
9		background and forecast sections of the proxy	
10		statement with blacklines showing the non-rote	
11		changes ...."	
12	A.	Thank you.	
13	Q.	Does this help refresh your memory --	
14	A.	Yes.	
15	Q.	-- that you had an opportunity to	
16		comment on the final proxy before it went out?	
17	A.	It does, thank you.	
18	Q.	Do you know whether the proxy	
19		discloses the February 9th meeting between Eric	
20		Fornell and Bob Skaggs and Steve Smith, in connection	
21		with the potential transaction, where it was discussed	
22		that TransCanada had multiple levers to pull and you	
23		tried to inspire confidence that TransCanada could	
24		follow through on its commitments?	
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F. Poirier - Redirect			Page 291
1	A.	I don't recall.	
2	Q.	Do you recall one way or the other	
3		whether the proxy disclosed the nature of the	
4		standstill provision that TransCanada entered into as	
5		part of the NDA?	
6	A.	I don't recall.	
7	Q.	Do you recall any discussion of a	
8		don't ask, don't waive standstill in the proxy?	
9	A.	I don't recall.	
10	Q.	Do you recall whether the proxy	
11		disclosed that the parties were collectively working	
12		towards a deal at \$26 a share, including 10 percent	
13		equity, until TransCanada revised its offer to \$25.50	
14		cash?	
15	A.	I don't recall.	
16		ATTORNEY van KAWEGEN: At this time,	
17		Your Honor, I have no further questions.	
18		ATTORNEY OLSEN: I just have a few	
19		questions, Your Honor.	
20		REDIRECT EXAMINATION	
21		ATTORNEY OLSEN: Can you pull up	
22		JX 424, please, Kentaro.	
23		BY ATTORNEY OLSEN:	
24	Q.	Mr. Poirier, do you remember that	
CHANCERY COURT REPORTERS			

F. Poirier - Redirect			Page 292
1		counsel asked you some questions about this back and	
2		forth with Ms. Johnston and you, and then with you to	
3		Mr. Girling, and he asked you about your comment up	
4		top that you basically must get Capricorn's	
5		acquiescence to pursue this transaction? Do you see	
6		that?	
7	A.	Yes.	
8	Q.	Did you interpret that in the	
9		standstill or this discussion to mean that you did not	
10		think you could have discussions with Columbia's	
11		management or engage with them?	
12	A.	No.	
13	Q.	In fact, is that what you are	
14		referring to in the last sentence of this email, "I	
15		think this restricts our alternatives to you going	
16		through Bob, but as we discussed, that is the best	
17		course of action from a relationship standpoint ...,"	
18		as opposed to going board-to-board contact?	
19	A.	Yes, that's correct.	
20	Q.	Do you remember some questions from	
21		counsel about the \$26 to \$28 indicative range and	
22		whether that was an offer, and he showed you a memo	
23		from Mayer Brown?	
24	A.	Yes.	
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## F. Poirier - Redirect

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1 Q. Where Mayer Brown used a reference to  
2 a \$26 offer? Do you remember those questions?

3 **A. Yes.**

4 ATTORNEY OLSEN: Can you pull up  
5 520.001, please.

6 Q. Now, in this discussion, counsel  
7 didn't ask you about your response in that January 5th  
8 email to Ms. Johnston.

9 "Thanks, Chris. I don't know what the  
10 threshold is for a verbal conversation to constitute  
11 an 'offer,' but I am not sure that Russ's  
12 conversations with Capricorn's CEO would meet that  
13 test, or at least would be characterized as indicative  
14 and subject to substantial due diligence ..."

15 What did you mean by that?

16 **A. That I think the question was the**  
17 **conversations between the CEOs, did they constitute an**  
18 **offer as defined in the NDA and standstill. And my**  
19 **interpretation was that the conversations did not**  
20 **constitute an offer.**

21 Q. Okay.

22 ATTORNEY OLSEN: Can you pull up  
23 JTX 952, please, Kentaro.

24 Q. Now, counsel asked you about JTX 952

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1 and Mr. Fornell's email on March 10th, where he said,  
2 "The Capricorn board is freaking out and told the  
3 management team to get a deal done with 'whatever it  
4 takes' ...."

5 Did Mr. Smith, Steve Smith, or anyone  
6 at Columbia ever tell you or, to your knowledge,  
7 anyone at TransCanada that their board was freaking  
8 out and management needed to get a deal done, whatever  
9 it takes?

10 **A. No.**

11 Q. I just have one more question.

12 ATTORNEY OLSEN: Could you pull up  
13 JTX 1092, please.

14 Q. Remember, counsel showed you the  
15 minutes from the March 14th board meeting, and there  
16 was a discussion about the underwriters being present,  
17 and there's back and forth about what underwriters did  
18 or didn't do. Do you remember that discussion?

19 **A. Yes.**

20 Q. I want to refer you to the second  
21 paragraph under "Project Constellation" in the  
22 minutes.

23 **A. Yes.**

24 Q. "The meeting discussed the impact of

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1 the media story on TransCanada's most recent offer,  
2 ability to pay and execution risk. In light of these  
3 developments, management indicated that it would  
4 communicate to Capricorn that its latest offer could  
5 no longer be supported as the conditions of the offer  
6 were no longer met. Management reviewed the  
7 challenges of a proposed share-for-share exchange with  
8 the board members including valuation and execution  
9 risk."

10 Was there a discussion at this board  
11 meeting that the conditions that were put on that \$26  
12 mixed consideration offer were not met, given the  
13 change in circumstances?

14 **A. Yes.**

15 Q. Did TransCanada management, either at  
16 this board meeting or shortly before this board  
17 meeting, have a discussion with the underwriters as to  
18 whether or not they would support that \$26 mixed  
19 consideration offer?

20 **A. Yes.**

21 Q. And what did the underwriters tell  
22 you?

23 **A. They had significant concerns with --**  
24 **these are technical matters -- the flowback that comes**

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1 **from having two sources of equity issuance**  
2 **simultaneously in the market and that one would -- may**  
3 **impede the success of the other.**

4 Q. So --

5 THE COURT: Why doesn't that show up  
6 in the minutes anywhere?

7 THE WITNESS: I'm not sure.

8 THE COURT: It seems like the type of  
9 thing where if the underwriters were asked to endorse  
10 the deal and they had mixed feelings, they would say  
11 something like that. Yeah?

12 THE WITNESS: I would agree.

13 ATTORNEY OLSEN: I have no further  
14 questions, Your Honor. Thank you.

15 ATTORNEY van KAWEGEN: Your Honor,  
16 one housekeeping matter and one question.

17 THE COURT: Okay.

18 **REXCROSS-EXAMINATION**

19 BY ATTORNEY van KAWEGEN:

20 Q. Mr. Poirier, thank you for your time.  
21 At the time of the March 14th board meeting that we  
22 just looked at, the only offer communicated to  
23 Columbia Pipeline was \$26, including 10 percent  
24 equity. Correct?

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## F. Poirier - Further Redirect

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<p>1           <b>A.       Yes.</b></p> <p>2           ATTORNEY van KAWEGEN: Okay. And</p> <p>3 then one housekeeping matter, Your Honor.</p> <p>4           ATTORNEY OLSEN: I have one more</p> <p>5 question, Your Honor. Sorry.</p> <p>6           ATTORNEY van KAWEGEN: Before you do</p> <p>7 that, let me just do this.</p> <p>8           ATTORNEY OLSEN: Go ahead.</p> <p>9           ATTORNEY van KAWEGEN: Your Honor, at</p> <p>10 this time I would like to move into evidence X-1, X-2</p> <p>11 and X-3 under Rule 1006 as a summary or compilation of</p> <p>12 underlying evidence that's helpful to the Court.</p> <p>13           THE COURT: Any objection?</p> <p>14           ATTORNEY OLSEN: No objection, Your</p> <p>15 Honor.</p> <p>16           THE COURT: All right. I will accept</p> <p>17 them as submitted into evidence on that basis.</p> <p>18           ATTORNEY OLSEN: One more question, if</p> <p>19 I may, Your Honor.</p> <p>20           <b>FURTHER REDIRECT EXAMINATION</b></p> <p>21 BY ATTORNEY OLSEN:</p> <p>22           Q. At that very board meeting, wasn't</p> <p>23 there a discussion about whether to make an additional</p> <p>24 offer at \$25.50, all cash?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1           ATTORNEY HARRELL: May I approach?</p> <p>2           THE COURT: Please.</p> <p>3           <b>DIRECT EXAMINATION</b></p> <p>4 BY ATTORNEY HARRELL:</p> <p>5           Q. I think we need one for the witness,</p> <p>6 maybe. Do you have a binder?</p> <p>7           <b>A. I do not.</b></p> <p>8           Q. Would you please introduce yourself to</p> <p>9 everybody here.</p> <p>10          <b>A. Sure. My name is Robert Smith. I am</b></p> <p>11 <b>executive vice president and general counsel and chief</b></p> <p>12 <b>development officer for Pinnacle West Capital Corp. I</b></p> <p>13 <b>was general counsel and senior vice president at</b></p> <p>14 <b>Columbia Pipeline at the time of the merger.</b></p> <p>15          Q. You are a licensed lawyer. Is that</p> <p>16 right?</p> <p>17          <b>A. I am. I am licensed in the State of</b></p> <p>18 <b>Michigan and then an in-house counsel licensed in</b></p> <p>19 <b>Arizona.</b></p> <p>20          Q. How long have you practiced?</p> <p>21          <b>A. I'm doing math. 25 years or so. 1995</b></p> <p>22 <b>I was admitted. So 27 years.</b></p> <p>23          Q. So let's go back for a minute to your</p> <p>24 work at NiSource.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
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<p>1           <b>A. Yes, there was.</b></p> <p>2           ATTORNEY OLSEN: No further questions,</p> <p>3 Your Honor.</p> <p>4           ATTORNEY van KAWEGEN: Thank you,</p> <p>5 Your Honor.</p> <p>6           Thank you, Mr. Poirier.</p> <p>7           THE COURT: Thank you very much for</p> <p>8 being here. I appreciate it.</p> <p>9           THE WITNESS: Thank you, sir.</p> <p>10          THE COURT: Safe travels back.</p> <p>11          THE WITNESS: Thank you, sir.</p> <p>12          (Witness excused.)</p> <p>13          ATTORNEY HARRELL: Your Honor, good</p> <p>14 afternoon. I'm Bob Harrell. And the next witness</p> <p>15 we're going to do the same way. We're going to do the</p> <p>16 direct, and then we will pass them for the cross. And</p> <p>17 the next witness is Robert Smith.</p> <p>18          THE COURT: Welcome. Please remain</p> <p>19 standing while we administer an affirmation.</p> <p>20          ROBERT SMITH, having first been duly</p> <p>21 affirmed, was examined and testified as follows:</p> <p>22          ATTORNEY HARRELL: Your Honor, we've</p> <p>23 got binders.</p> <p>24          THE COURT: All right. Thank you.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1           What was your position there in the</p> <p>2 legal department?</p> <p>3           <b>A. I was vice president and deputy</b></p> <p>4 <b>general counsel of the corporate and commercial group.</b></p> <p>5           Q. And so with the spinoff, you moved</p> <p>6 from NiSource to Columbia. Is that right?</p> <p>7           <b>A. That's correct.</b></p> <p>8           Q. And what are you doing now, Mr. Smith?</p> <p>9           <b>A. I am chief development officer and</b></p> <p>10 <b>general counsel for Pinnacle West, which is a large</b></p> <p>11 <b>utility holding company in Arizona.</b></p> <p>12          Q. And that's why you're licensed in</p> <p>13 Arizona?</p> <p>14          <b>A. That's correct.</b></p> <p>15          Q. Tell us what your experience is with</p> <p>16 M&amp;A transactions, please, sir.</p> <p>17          <b>A. So I have been as a -- an associate.</b></p> <p>18 <b>All the way up through my career, I did M&amp;A-type</b></p> <p>19 <b>transactions and was active in securities law in a</b></p> <p>20 <b>transactional practice, among other activities that I</b></p> <p>21 <b>would perform, you know, in my legal career. So I</b></p> <p>22 <b>would say -- you know, I would describe myself as an</b></p> <p>23 <b>M&amp;A lawyer, among other things.</b></p> <p>24          Q. And over your lifetime of experience,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## R. Smith - Direct

<p style="text-align: right;">R. Smith - Direct Page 301</p> <p>1 have you had experience dealing with boards of 2 directors in connection with combinations and mergers? 3 <b>A. I have. I've been in front of boards</b> 4 <b>actively participating since 2000.</b> 5 Q. What were your responsibilities at 6 Columbia in connection with the TransCanada 7 acquisition? 8 <b>A. I led the legal work and was part of</b> 9 <b>the executive team that evaluated the transaction. I</b> 10 <b>would have been very active in strategy and in advice.</b> 11 <b>And, you know, one of my -- I saw as one of my primary</b> 12 <b>roles making sure that the board was very informed</b> 13 <b>and, you know, looking at the governance aspects to</b> 14 <b>make sure that there was an involved fiduciarily sound</b> 15 <b>process.</b> 16 Q. And were you also a conduit to outside 17 counsel? 18 <b>A. Absolutely.</b> 19 Q. And you did have outside counsel in 20 connection with this transaction, didn't you? 21 <b>A. Yes.</b> 22 Q. And who was that? 23 <b>A. We had -- I'm sorry. I'm blanking.</b> 24 <b>Sullivan &amp; Cromwell was our firm.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Smith - Direct Page 303</p> <p>1 <b>issues. And being an experienced in-house counsel,</b> 2 <b>while I have M&amp;A experience, these types of</b> 3 <b>transactions do not come along very often. And so I</b> 4 <b>would have looked to them very tightly and closely all</b> 5 <b>along in the process.</b> 6 Q. I guess we should mention who the lead 7 lawyer was from Sullivan. 8 <b>A. Joe Frumkin.</b> 9 Q. And he was assisted by another 10 partner, George Sampas? 11 <b>A. That's correct.</b> 12 Q. What was Sullivan's role in advising 13 the board on fiduciary duties? 14 <b>A. So they were very active in that role.</b> 15 <b>Early on we had -- I asked them to put together a</b> 16 <b>fiduciary memo that walked our board through the</b> 17 <b>process. We reviewed that with the board. And then</b> 18 <b>we were very careful to have independent board</b> 19 <b>meetings.</b> 20 <b>And so we would have the main board</b> 21 <b>session, and then we would regularly set it up so that</b> 22 <b>our board had independent sessions with outside</b> 23 <b>counsel or with the managing -- the investment banking</b> 24 <b>firms that were also advising us.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Smith - Direct Page 302</p> <p>1 <b>It's been seven years. Please excuse my memory.</b> 2 THE COURT: Not a problem to me. They 3 are going to be the ones who are irritated. 4 <b>A. So Sullivan &amp; Cromwell was our M&amp;A</b> 5 <b>counsel firm for large transactions like this.</b> 6 Q. Okay. And throughout this, we'll be 7 talking about your conversations and your 8 communications with Sullivan &amp; Cromwell. 9 Let's talk about the Columbia board 10 for a minute. 11 <b>A. Sure.</b> 12 Q. What was Sullivan's role in advising 13 Columbia on a potential transaction and the ultimate 14 acquisition? 15 <b>A. We -- so I kept them apart in our</b> 16 <b>engagement team. So we would have firms that did</b> 17 <b>different work for different areas of the law. And</b> 18 <b>Sullivan &amp; Cromwell was set apart for a big</b> 19 <b>transaction like this so that they could, without any</b> 20 <b>taint, be able to be strong counsel and fiduciary</b> 21 <b>counsel to the board.</b> 22 <b>And so we brought them as the sole and</b> 23 <b>primary counsel on the transaction and they would have</b> 24 <b>helped me work through transaction issues, fiduciary</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Smith - Direct Page 304</p> <p>1 Q. And did a -- 2 <b>A. And then by themselves, as well.</b> 3 Q. Excuse me. Did a Sullivan lawyer, 4 usually Joe Frumkin, attend the board meetings and the 5 executive sessions? 6 <b>A. Yes, he and/or George would attend</b> 7 <b>regularly.</b> 8 Q. And who took the minutes? 9 <b>A. Typically, I would ask Sullivan &amp;</b> 10 <b>Cromwell to actually take the minutes, and then we</b> 11 <b>would all review them as they were prepared. I think</b> 12 <b>Alison Heyden usually took the minutes. She was an</b> 13 <b>associate for them.</b> 14 Q. Okay. And I want to make a little 15 finer point on something you said a minute ago. 16 There were different levels of 17 meetings, the board, the executive sessions, executive 18 sessions with advisors, and then executive sessions 19 with just board members. Is that right? 20 <b>A. That's correct.</b> 21 Q. Explain that process and why you did 22 that. 23 <b>A. Happy to. So typically, a board</b> 24 <b>meeting will have a lot of extra attendees. So there</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## R. Smith - Direct

<p style="text-align: right;"><b>R. Smith - Direct</b> Page 305</p> <p>1 would be senior officers, normal officers that would</p> <p>2 attend. The meetings that we had around sensitive</p> <p>3 conversation, sensitive topics like a potential</p> <p>4 acquisition, would happen in executive session. And</p> <p>5 so it would be limited to, usually, Bob Skaggs,</p> <p>6 Steve Smith, Glen Kettering, and myself. Sometimes</p> <p>7 there might be another purposeful reason to bring</p> <p>8 someone else in. But then it would also include the</p> <p>9 board -- all of the independent board members.</p> <p>10 The -- Joe Frumkin and George Sampas</p> <p>11 would typically attend, along with Alison Heyden, and</p> <p>12 then our investment banks in those general meetings.</p> <p>13 And the investment banking firms were Goldman Sachs as</p> <p>14 well as Lazard. And we wanted to have good</p> <p>15 discussion, good information flow to the board so that</p> <p>16 they could make, you know, the best decision, in their</p> <p>17 view, for the shareholders.</p> <p>18 Now, that general discussion would</p> <p>19 happen, and then -- so my background is in governance</p> <p>20 and advising boards. And from a best practices</p> <p>21 standpoint, we would then excuse the interested</p> <p>22 director, Bob Skaggs, as well as the senior management</p> <p>23 team, and allow discussions to take place among the</p> <p>24 independent board members, as well as the advisors.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>R. Smith - Direct</b> Page 307</p> <p>1 Q. There's been discussion already in</p> <p>2 this trial about NDAs.</p> <p>3 Do you recall that in the fall of</p> <p>4 2015, Columbia entered into nondisclosure agreements</p> <p>5 with four companies relating to the merger?</p> <p>6 <b>A. I do.</b></p> <p>7 Q. Those were TransCanada, Berkshire</p> <p>8 Hathaway, Dominion, and NextEra?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. Why did Columbia enter into these</p> <p>11 NDAs?</p> <p>12 <b>A. Because the companies had reached out</b></p> <p>13 <b>to us and were expressing potential interest in</b></p> <p>14 <b>purchasing our stock. And they had fully reviewed the</b></p> <p>15 <b>public information that was there. And so the NDAs</b></p> <p>16 <b>had the purpose of, among other things, allowing them</b></p> <p>17 <b>to diligence us deeper so that they could look at</b></p> <p>18 <b>material contracts and other things in order to firm</b></p> <p>19 <b>up and decide whether or not, in fact, they were going</b></p> <p>20 <b>to make a proposal or a definitive offer.</b></p> <p>21 Q. Who drafted the NDAs?</p> <p>22 <b>A. Sullivan &amp; Cromwell.</b></p> <p>23 Q. And what was your role with respect to</p> <p>24 the NDAs?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>R. Smith - Direct</b> Page 306</p> <p>1 And we would have a multi-stage process where usually</p> <p>2 we would peel out one group at a time so they could</p> <p>3 have, then, the more direct conversation if they felt</p> <p>4 it was necessary.</p> <p>5 So we wanted them to be able to ask</p> <p>6 any question that they might not have felt comfortable</p> <p>7 with us and then make their decision based on the</p> <p>8 information they received.</p> <p>9 Q. How often were executive sessions</p> <p>10 held?</p> <p>11 <b>A. So in refreshing my memory, reading</b></p> <p>12 <b>the proxy and in my previous testimony, I believe it</b></p> <p>13 <b>was 17 times or 18 times since the early January</b></p> <p>14 <b>meeting. So it was much more than a normal set of</b></p> <p>15 <b>board meetings or executive sessions.</b></p> <p>16 Q. Would you comment briefly on just how</p> <p>17 well you felt like the board was kept informed during</p> <p>18 all of the TransCanada discussions?</p> <p>19 <b>A. Sure. I've been advising public</b></p> <p>20 <b>company boards for 22 years, and I've never seen a</b></p> <p>21 <b>process with so many meetings and conversations and</b></p> <p>22 <b>the board members being kept in the loop as much as we</b></p> <p>23 <b>were doing in this -- in this meeting, in this series</b></p> <p>24 <b>of meetings and transaction.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>R. Smith - Direct</b> Page 308</p> <p>1 <b>A. I received and reviewed the draft</b></p> <p>2 <b>NDAs, asked questions, and may or may not have had</b></p> <p>3 <b>comments on them.</b></p> <p>4 Q. But did you largely rely on Sullivan's</p> <p>5 advice regarding the drafting and the application of</p> <p>6 the NDAs?</p> <p>7 <b>A. Absolutely. They were up to speed on</b></p> <p>8 <b>the current market and how those provisions should</b></p> <p>9 <b>work and should be drafted.</b></p> <p>10 Q. Let's look at Joint Exhibit 307,</p> <p>11 please.</p> <p>12 Is this an NDA? It's hard to see, but</p> <p>13 you can turn in your book to it.</p> <p>14 <b>A. I did bring my glasses. It is.</b></p> <p>15 Q. And did it contain a standstill</p> <p>16 provision?</p> <p>17 <b>A. If it is the final draft in the one</b></p> <p>18 <b>signed, which I will rely upon the fact that it was,</b></p> <p>19 <b>then it does include a standstill provision.</b></p> <p>20 Q. So I'm going to help you out here.</p> <p>21 Let's turn to pages 4 and 5, please. Actually, let's</p> <p>22 look at the bottom of page 4.</p> <p>23 <b>A. It does, in fact, have a standstill.</b></p> <p>24 Q. Now, what was the purpose of the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## R. Smith - Direct

<p style="text-align: right;"><b>R. Smith - Direct</b> Page 309</p> <p>1 standstill?</p> <p>2 <b>A. The purpose of the standstill</b></p> <p>3 <b>agreement was to protect the company in case a party,</b></p> <p>4 <b>discussions were cut off from -- with a particular</b></p> <p>5 <b>party and to make sure that the party didn't try to go</b></p> <p>6 <b>around the company's will by having a hostile takeover</b></p> <p>7 <b>or something like that, by going to the public or</b></p> <p>8 <b>doing something that was against the will of the</b></p> <p>9 <b>company.</b></p> <p>10 Q. When did the standstill provision</p> <p>11 become operative with respect to the -- when the NDA</p> <p>12 became operative?</p> <p>13 <b>A. Sure. So the standstill went into</b></p> <p>14 <b>effect immediately upon signature. But it would</b></p> <p>15 <b>become operational and important at the time that</b></p> <p>16 <b>discussions were cut off.</b></p> <p>17 Q. We're going to talk about the equity</p> <p>18 offering for a minute.</p> <p>19 Do you recall that in November 2015,</p> <p>20 Columbia decided to pursue an equity offering?</p> <p>21 <b>A. I do recall.</b></p> <p>22 Q. In connection with that decision, what</p> <p>23 action did Columbia take with respect to</p> <p>24 return-or-destroy letters?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>R. Smith - Direct</b> Page 311</p> <p>1 <b>A. Sullivan &amp; Cromwell.</b></p> <p>2 Q. I want to refer you to the bottom of</p> <p>3 this page, which is page 3 of the exhibit, the first</p> <p>4 page of the letter. And my question is: Did the</p> <p>5 return-or-destroy letter alter any of the terms of the</p> <p>6 NDAs between Columbia and TransCanada or the other</p> <p>7 parties?</p> <p>8 <b>A. No.</b></p> <p>9 Q. And what's the basis of your testimony</p> <p>10 on that?</p> <p>11 <b>A. The return-or-destroy letter just</b></p> <p>12 <b>recognized that discussions were ceasing. And so all</b></p> <p>13 <b>of the nonpublic information, the confidential</b></p> <p>14 <b>information that was provided, would be returned, but</b></p> <p>15 <b>it did not affect -- and by its terms, did not affect</b></p> <p>16 <b>the balance of the terms in the letter, or in the</b></p> <p>17 <b>agreement.</b></p> <p>18 Q. And that's made clear in the last</p> <p>19 sentence on page 1 of the letter. Right?</p> <p>20 <b>A. That's correct.</b></p> <p>21 Q. I want to talk to you next about the</p> <p>22 January 7 meeting.</p> <p>23 Do you recall that after the equity</p> <p>24 offering, TransCanada reached out to Columbia to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>R. Smith - Direct</b> Page 310</p> <p>1 <b>A. I sent return-or-destroy letters to</b></p> <p>2 <b>each of the parties.</b></p> <p>3 Q. Let's look at Joint Exhibit 397,</p> <p>4 please. This is an email that you sent on</p> <p>5 November 25, 2015, to Christine Johnston.</p> <p>6 And Christine Johnston was your</p> <p>7 counterpart at TransCanada. Correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. And as you see here, you say, "Hi</p> <p>10 Chris. Please find the attached letter requesting the</p> <p>11 return or destruction of the materials ...."</p> <p>12 Correct?</p> <p>13 <b>A. That's correct.</b></p> <p>14 Q. And then if we go to the next page --</p> <p>15 actually, we need to go to page 3 of the exhibit,</p> <p>16 which is the first page of the letter. And you see</p> <p>17 that is the actual letter?</p> <p>18 <b>A. So just for clarification, you are</b></p> <p>19 <b>looking at 397.005, at the Bates stamp?</b></p> <p>20 Q. 397.003.</p> <p>21 <b>A. That is the letter. That is the</b></p> <p>22 <b>beginning of the body of the letter, correct.</b></p> <p>23 Q. Okay. So who prepared these letters</p> <p>24 that you sent out?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>R. Smith - Direct</b> Page 312</p> <p>1 reengage in discussions about a potential transaction?</p> <p>2 <b>A. I do.</b></p> <p>3 Q. And that that came about because</p> <p>4 Mr. Poirier reached out to Steve Smith and they set up</p> <p>5 a meeting for January 7th?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. Do you recall that?</p> <p>8 <b>A. That's correct.</b></p> <p>9 Q. Before that meeting, did you have any</p> <p>10 discussions with TransCanada about whether the NDA the</p> <p>11 parties signed in November was applicable?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Can you tell us how you did that?</p> <p>14 You talked to Chris Johnston. Right?</p> <p>15 <b>A. That's correct.</b></p> <p>16 Q. And what was the -- I guess what did</p> <p>17 you and Chris Johnston decide in your conversation?</p> <p>18 <b>A. Yeah. Thank you. The -- so Chris</b></p> <p>19 <b>reached out with a question, as I recall. And it's</b></p> <p>20 <b>been seven years. So the exact mechanics of how it</b></p> <p>21 <b>came up are a little bit fuzzy.</b></p> <p>22 <b>But my recollection is that Chris</b></p> <p>23 <b>reached out and wanted to know if they could reach out</b></p> <p>24 <b>to us and begin discussions again, begin talking about</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## R. Smith - Direct

<p style="text-align: right;">Page 313</p> <p><b>R. Smith - Direct</b></p> <p>1 whether or not they would want to move forward. And</p> <p>2 we both sought advice of counsel. And I talked to</p> <p>3 Sullivan &amp; Cromwell, and we determined that the</p> <p>4 language of the standstill did not preclude the loose</p> <p>5 discussions or even more formal discussions as long as</p> <p>6 it didn't go to a definitive agreement.</p> <p>7 Q. Okay. And then did you and Chris</p> <p>8 Johnston coordinate after both of you had gotten</p> <p>9 advice from your outside lawyers? Both you and Chris</p> <p>10 Johnston agreed?</p> <p>11 A. We did come to agreement that that</p> <p>12 conversation could happen; that's correct.</p> <p>13 Q. And so was that advice also provided</p> <p>14 to management and the board?</p> <p>15 A. Yes. My recollection is that Bob</p> <p>16 Skaggs made calls to the board members, but I don't</p> <p>17 have a specific recollection of how that occurred.</p> <p>18 But I do recall that we had informed the board.</p> <p>19 Q. Did you also have discussions with</p> <p>20 Goldman before the January 7 meeting?</p> <p>21 A. Yes.</p> <p>22 Q. And by the way, Goldman were the</p> <p>23 advisors on the deal. Right?</p> <p>24 A. They were. Goldman and Lazard.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">Page 315</p> <p style="text-align: center;">I N D E X</p> <p>1</p> <p>2 <u>WITNESSES:</u> <span style="float: right;"><u>Page</u></span></p> <p>3 ERIC FORNELL <span style="float: right;">8</span></p> <p>4 by Video Deposition</p> <p>5 FRANCOIS L. POIRIER <span style="float: right;">89</span></p> <p>6 Direct by Attorney Olsen <span style="float: right;">169</span></p> <p>7 Cross by Attorney van Kwawegen <span style="float: right;">291</span></p> <p>8 Redirect by Attorney Olsen <span style="float: right;">296</span></p> <p>9 Recross by Attorney van Kwawegen <span style="float: right;">297</span></p> <p>10 Further Redirect by Attorney Olsen</p> <p>11 ROBERT SMITH <span style="float: right;">299</span></p> <p>12 Direct by Attorney Harrell</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">Page 314</p> <p>1 Q. And Lazard.</p> <p>2 So was it common for you to have</p> <p>3 conversations with Goldman as this thing developed?</p> <p>4 A. Yes.</p> <p>5 Q. Was the Columbia board informed that</p> <p>6 TransCanada had expressed interest in reengaging?</p> <p>7 A. Yes.</p> <p>8 Q. Let's look at Exhibit 564, please.</p> <p>9 THE COURT: Actually, before we get</p> <p>10 there, I think it's time for us to stop for the day.</p> <p>11 So we will recess here, and we'll resume tomorrow at</p> <p>12 9:15.</p> <p>13 Thank you, everyone, for being here.</p> <p>14 (Proceedings concluded at 4:45 p.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	

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112/24 114/19 116/9	<b>\$25 [2]</b> 126/10 216/16	131/24	228/21 230/21 232/6
153/11 167/22 239/4	<b>\$25.25 [8]</b> 133/7 135/4	<b>'eliminated' [1]</b> 207/16	234/17 235/19 235/21
291/18 291/21 293/4	135/7 137/8 138/8	<b>'I [1]</b> 38/7	243/3
293/22 294/12 296/13	140/24 141/12 221/16	<b>'in [1]</b> 103/22	<b>10 percent [24]</b> 56/21
297/4 297/8 297/14	<b>\$25.50 [16]</b> 158/6	<b>'ineffective' [1]</b> 178/24	145/12 145/23 148/12
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