

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

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Chancery Courtroom 12A  
Leonard L. Williams Justice Center  
500 North King Street  
Wilmington, Delaware  
Wednesday, July 20, 2022  
9:15 a.m.

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor

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TRIAL TRANSCRIPT - VOLUME III  
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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. I  
2 appreciate everyone being here and being ready to go,  
3 including your witness being up on the stand. It's  
4 very helpful.  
5 Mr. Varallo, please feel free to  
6 resume.  
7 ATTORNEY VARALLO: Thank you, Your  
8 Honor. Good morning.  
9 CHRISTINE JOHNSON, having first been  
10 duly affirmed, was re-called to the stand and  
11 testified further as follows:  
12 CROSS EXAMINATION CONT'D  
13 BY ATTORNEY VARALLO:  
14 Q. Ms. Johnston, welcome back. I won't  
15 be terribly long, hopefully.  
16 Let me start with getting a  
17 housekeeping issue out of the way. Did you have an  
18 opportunity to speak with anyone regarding this case  
19 last evening, after the end of trial?  
20 A. No.  
21 Q. Text with anyone?  
22 A. No.  
23 Q. Smoke signal with anyone? Communicate  
24 in any way?

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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 MARTIN S. LESSNER, ESQ.  
21 JAMES M. YOCH, JR., ESQ.  
22 KEVIN P. RICKERT, ESQ.  
23 Young Conaway Stargatt & Taylor, LLP  
24 -and-  
MICHAEL A. OLSEN, ESQ.  
BRIAN J. MASSENGILL, ESQ.  
LINDA X. SHI, ESQ.  
of the Illinois Bar  
Mayer Brown LLP  
for Defendant TC Energy Corporation

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1 A. No.  
2 Q. Excellent.  
3 So when we left off last night, we  
4 were in JTX 913, which should be on the screen in  
5 front of you. I believe you had identified these as  
6 your notes, and we were walking through them.  
7 Do you recall that testimony broadly?  
8 A. Yes.  
9 Q. All right. So fair for me to  
10 understand that during this March 9 meeting, one of  
11 the things the board did was generally discuss the  
12 impact of a media leak on the parties' share prices?  
13 A. Yes.  
14 Q. And to the best of your recollection,  
15 it was anticipated in this discussion that the leak  
16 would drive Columbia's share price up. Correct?  
17 A. Correct.  
18 Q. And the board was also told that the  
19 exclusivity agreement had expired the day before and  
20 that there was some risk, albeit a low risk, of an  
21 interloper. Right?  
22 A. Correct.  
23 Q. But, directionally, the sense of the  
24 board was not to walk away from the deal and to

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## C. Johnston - Cross

## C. Johnston - Cross

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- 1 discuss a \$26 deal involving an equity component.  
 2 True?  
 3 **A. Yes.**  
 4 Q. All right. Switching topics. After  
 5 the March 9 meeting, *The Wall Street Journal* published  
 6 an article about your ongoing discussions. Right?  
 7 **A. Yes.**  
 8 Q. And soon after that leak, Columbia  
 9 sent around a script of what it would say in response  
 10 to inbound unsolicited indications of interest.  
 11 Correct?  
 12 **A. Correct.**  
 13 Q. And the script was shared with your  
 14 bankers at Wells Fargo. Right?  
 15 **A. Yes.**  
 16 Q. And after your bankers got the script,  
 17 a call was set up between the bankers and Columbia's  
 18 bankers. Correct?  
 19 **A. I believe that's the case, yes.**  
 20 Q. Sorry?  
 21 **A. Yes.**  
 22 Q. And you assume, although you weren't  
 23 on the call, that, in fact, it happened. Correct?  
 24 **A. Yes. Yes.**

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## C. Johnston - Cross

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- 1 **A. Yes.**  
 2 Q. And you're aware, aren't you, that  
 3 this Court found in the appraisal decision, and made  
 4 binding in this case, that the proxy was misleading  
 5 in, among other reasons, that it failed to disclose  
 6 that Mr. Smith had invited a bid and told Mr. Poirier  
 7 that TransCanada did not face competition.  
 8 You're aware of that. Correct?  
 9 **A. Yes.**  
 10 Q. And you just don't know why  
 11 Mr. Poirier didn't add that information when he  
 12 reviewed and commented on the background of the merger  
 13 section. Right?  
 14 **A. I don't know why. No.**  
 15 Q. So earlier in this case, we heard some  
 16 testimony about a meeting in New Albany, New York,  
 17 between Mr. Fornell, Mr. Skaggs, and Mr. Smith, on  
 18 February 9, 2016. And I'll direct your attention, if  
 19 I can, to the joint stipulation. I believe, if you  
 20 open to paragraph 317, you'll see that meeting  
 21 mentioned.  
 22 First question is, were you aware  
 23 before today about this meeting in New Albany, New  
 24 York, between your clients, Mr. Skaggs, and Mr. Smith,

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## C. Johnston - Cross

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- 1 Q. You don't recall any feedback from  
 2 that call. Correct?  
 3 **A. I don't recall. I don't think I was**  
 4 **on the subsequent call.**  
 5 Q. So you wouldn't have a first-hand  
 6 basis to know if the bankers reached – I don't  
 7 know – a gentlemen's agreement on what the script  
 8 meant in order to keep an actual agreement out of the  
 9 hands of plaintiffs' lawyers, for example. Right?  
 10 **A. I wasn't part of that conversation,**  
 11 **no. I don't know what was said.**  
 12 Q. Now, after the deal was struck, drafts  
 13 of the proxy were created. True?  
 14 **A. Yes.**  
 15 Q. And they were shared with TransCanada,  
 16 and TransCanada was given an opportunity to comment on  
 17 them. True?  
 18 **A. True.**  
 19 Q. And you made sure that Mr. Poirier  
 20 received drafts so that he had an opportunity to  
 21 review. Correct?  
 22 **A. Yes.**  
 23 Q. And Mr. Poirier read the draft proxy  
 24 and gave comments on it. Right?

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## C. Johnston - Cross

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- 1 and the banker for the other side, Mr. Fornell?  
 2 **A. I don't recall.**  
 3 Q. Do you have any reason – do you have  
 4 any reason whatsoever, that you know of as you sit  
 5 here today, as to why that meeting wasn't relayed to  
 6 stockholders in the background of the merger section  
 7 of the proxy or in any section of the proxy?  
 8 **A. I don't know.**  
 9 Q. So, again, switching gears and moving  
 10 forward in time, shortly after the deal was signed,  
 11 TransCanada developed what it called an interloper  
 12 action plan. Right?  
 13 **A. Yes.**  
 14 Q. You were involved in the exercise, and  
 15 you gave legal advice. Correct?  
 16 **A. Yes.**  
 17 Q. And then, in the April 2016 board  
 18 meeting – I think we've seen this in the trial so  
 19 far – the board was shown an interloper strategy  
 20 document. Correct?  
 21 **A. Yes.**  
 22 Q. And as corporate secretary, you  
 23 oversaw the assembly and distribution of the materials  
 24 to the board in connection with that and every other

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## C. Johnston - Cross

<p style="text-align: right;">C. Johnston - Cross Page 625</p> <p>1 meeting while you've been corporate secretary. Right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And the interloper strategy that was</p> <p>4 provided to the board, let's take a look at it.</p> <p>5 ATTORNEY VARALLO: Joe, would you</p> <p>6 bring up JTX 1244. And I want to go to page .243.</p> <p>7 Q. So we've seen this before. You may</p> <p>8 have even seen it on direct, I'm not sure. But you'll</p> <p>9 see that this interloper strategy contains a</p> <p>10 recommendation. It's the fourth bullet point –</p> <p>11 fourth major bullet point down on the page. It says,</p> <p>12 "Recommendation: TransCanada can afford to increase</p> <p>13 its offer."</p> <p>14 Now, you've seen that before today.</p> <p>15 Right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And, in fact, this particular document</p> <p>18 also contains a top-up case showing 27 to \$28 a share.</p> <p>19 Right?</p> <p>20 <b>A. I don't see that here, but I don't</b></p> <p>21 <b>disagree.</b></p> <p>22 Q. That's fine. Let's look at page 253,</p> <p>23 if we could. You'll see "Top-Up Combination Cases"</p> <p>24 here, under "Key Assumptions," and there is an</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">C. Johnston - Cross Page 627</p> <p>1 intended to issue a press release within the next few</p> <p>2 days indicating its acquisition discussions would be</p> <p>3 terminated. Correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And you understand, don't you, that</p> <p>6 Mr. Poirier intended that that threat placed some</p> <p>7 pressure on Columbia?</p> <p>8 <b>A. I don't know what his intentions were.</b></p> <p>9 <b>It would have been a regulatory requirement.</b></p> <p>10 Q. Well, let's look at Mr. Poirier's</p> <p>11 testimony about this from the appraisal case.</p> <p>12 ATTORNEY VARALLO: Joe, would you pull</p> <p>13 up JTX 1493, at page .026. And if you would be so</p> <p>14 kind as to –</p> <p>15 Excuse me, Your Honor. All right. So</p> <p>16 I have to adjust this.</p> <p>17 Q. Take a look with me, if you would, at</p> <p>18 the very bottom of page 426 on this transcript,</p> <p>19 beginning at lines 21, and I'll read it for the</p> <p>20 record.</p> <p>21 "Question: Your intention in</p> <p>22 communicating that to Columbia was to create a sense</p> <p>23 of urgency for Columbia's consideration of the 25.50</p> <p>24 per share offer. Correct?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">C. Johnston - Cross Page 626</p> <p>1 assumption about the assets sold to get to \$27 a share</p> <p>2 and the assets sold to get to \$28 a share. Correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. And this plan was actually presented</p> <p>5 to the board. Right?</p> <p>6 <b>A. Yes. It was with the board materials.</b></p> <p>7 Q. Yes?</p> <p>8 <b>A. Yes, it was in the board materials.</b></p> <p>9 Q. Next doc. It's true, isn't it, that</p> <p>10 on March 14, Mr. Poirier conveyed what TransCanada</p> <p>11 called a best and final offer to buy Columbia for</p> <p>12 \$25.50 a share?</p> <p>13 <b>A. Yes, I understand that to be the case.</b></p> <p>14 Q. And that was sometime after</p> <p>15 TransCanada, through Mr. Poirier or others, conveyed</p> <p>16 its best and final offer to buy Columbia at 25.25 a</p> <p>17 share. Right?</p> <p>18 <b>A. I'm sorry, I have to review the</b></p> <p>19 <b>minutes, but I -- if that's what's in the minutes --</b></p> <p>20 <b>if something happened, I would need to refresh, but it</b></p> <p>21 <b>sounds right.</b></p> <p>22 Q. Now, as part of conveying the best and</p> <p>23 final offer at 25.50, Mr. Poirier also told Columbia</p> <p>24 that if they didn't accept the offer, TransCanada</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">C. Johnston - Cross Page 628</p> <p>1 "Answer: It was intended to -- yes."</p> <p>2 Now, as you sit here today, you have</p> <p>3 no reason to dispute Mr. Poirier's testimony at trial</p> <p>4 as to what he intended when he communicated that</p> <p>5 \$25.50 offer. Correct?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. It's true, isn't it, though, that this</p> <p>8 really wasn't a best and final offer in the sense</p> <p>9 that, if Columbia would have said no to it, that</p> <p>10 wouldn't have been the end of the discussion with</p> <p>11 Columbia.</p> <p>12 <b>A. That's really not for me to say.</b></p> <p>13 <b>That's not my purview of responsibility.</b></p> <p>14 Q. Well, let's look at what Mr. Poirier</p> <p>15 testified in this very court at the appraisal trial,</p> <p>16 again. And this is from JTX 1493.024. He's asked the</p> <p>17 question:</p> <p>18 "[I]f they had said no to 25.50 all</p> <p>19 cash, we would have reconsidered being prepared" –</p> <p>20 He testified: "[I]f they had said no</p> <p>21 to 25.50 all cash, we would have reconsidered being</p> <p>22 prepared to take the risk of issuing stock as</p> <p>23 consideration along with the cash component of the</p> <p>24 transaction."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 And he's asked: "At 26?"

2 And he says: "[Y]es."

3 If you take a look, you can read it to

4 yourself. It begins at page 420, line 17, and it runs

5 through 421, line 7.

6 **A. I think maybe the key word there is**

7 **"reconsidered." We have a whole team of people on**

8 **valuation, and the execution team, they would look to**

9 **see whether it was even feasible, I guess.**

10 Q. You'll see here that the Court

11 actually asks Mr. Poirier what he means.

12 And the witness says: "It means that

13 if they had said no to 25.50 all cash, we would have

14 reconsidered being prepared to take the risk of

15 issuing stock as consideration along with the cash

16 component of the transaction. Although --"

17 And the Court asked him: "At 26?"

18 And he says: "At 26, yes."

19 So given that they were -- at least

20 Mr. Poirier was prepared to reconsider issuing the

21 joint stock cash offer at 26, they weren't --

22 TransCanada wasn't finished at this point. Correct?

23 **A. We would have taken it under**

24 **consideration. That's what I'm reading. And there**

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1 **would be a team of people trying to figure out if**

2 **there is any possibility to go higher.**

3 Q. So let me see if I understand the

4 logic that I thought I heard you testify about on

5 direct concerning the need for a further release that

6 you ascribe to -- I call it a threat, you call it

7 complying with law or regulation or whatever.

8 The idea, just put very simply, was,

9 having told the market that you were in discussions,

10 when you were no longer in discussions, you had a need

11 to update that under law, regulation, or something.

12 Right?

13 **A. Yes.**

14 Q. Is that the idea?

15 All right. So fair for me to

16 understand that the trigger there, the trigger to

17 issuing that additional press release, is that you're

18 really done. No more reconsideration, no more

19 anything. You're done. You're going to the market.

20 You're telling the market you're done. Right?

21 **A. The outcome of reconsideration is that**

22 **we might not have been able to go any higher, and then**

23 **we would have issued a press release.**

24 Q. Yes. But if you had reconsidered and

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1 decided to go forward with the 26, you wouldn't have

2 issued the press release. Correct?

3 **A. Yeah, but that could happen pretty**

4 **quickly and --**

5 Q. Understood?

6 **A. -- we had those models ready to go.**

7 Q. And the trigger, just so I've got

8 it --

9 **A. Yeah.**

10 Q. -- your logic is you need to issue

11 that press release when the hammer comes down and

12 you're done. Right?

13 **A. Yes. At a certain point in time, you**

14 **know that there's no deal to be had.**

15 Q. And until you know there's no deal to

16 be had, talking about a press release is a blatant

17 violation of the standstill, isn't it?

18 **A. No.**

19 Q. Really? Well, geez, I thought we had

20 looked at the Mayer Brown memo from December 15,

21 paragraph 3. Remember we read that, about the --

22 Mayer Brown's advice in response to the board member's

23 question as to whether you could use disclosure of an

24 offer to assert leverage.

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1 Do you remember that?

2 **A. Yes. But remember that the press**

3 **release did not name Columbia. It just talked about**

4 **us being in negotiations with a third party, and we**

5 **were closing the loop on that. And we wouldn't --**

6 Q. I'm sorry.

7 **A. I'm sorry. So I don't think that**

8 **would necessarily be a breach of the standstill.**

9 Q. I think we had established earlier

10 that when the original leak came out on March 10 in

11 the *Wall Street Journal*, Columbia's stock shot up.

12 Right?

13 **A. It increased, yes.**

14 Q. Okay. I'll take "increased." That's

15 fine.

16 And it stayed increased while you were

17 having these discussions from March 10 through

18 March 17. There was variation, but it stayed above

19 where it had been. Correct?

20 **A. I didn't monitor the stock. I don't**

21 **know.**

22 Q. Fair to say you would expect merger

23 arbitrage orders to be buying into the stock in

24 anticipation of a deal closing?

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## C. Johnston - Cross

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1           **A. I understand that's often the case,**  
 2 **yes.**  
 3           Q. All right. So when Mr. Poirier says  
 4 take it or I'm going to disclose that negotiations are  
 5 over, on something that's not a best and final, truly  
 6 a best and final, subject to reconsideration,  
 7 according to his testimony in this very court under  
 8 oath, that's just inconsistent with the NDA, isn't it?  
 9           **A. Not in my mind.**  
 10          Q. And at the great fear of violating the  
 11 first principle of cross-examination, I'll ask you to  
 12 explain to me why you don't think that's a violation.  
 13          **A. So I would be looking at the words of**  
 14 **the standstill, and I think -- are you looking at**  
 15 **sections (d), where we can't make a release or force a**  
 16 **disclosure?**  
 17          Q. Let's do that together. Okay?  
 18          ATTORNEY VARALLO: Joe, would you  
 19 please bring up plaintiffs' cross Demonstrative 7.  
 20 And let's put it on the screen.  
 21          Q. And I'm going to show you Section 1(b)  
 22 of the NDA, which I have culled out as a separate  
 23 cross exhibit simply so that we're not having to flip  
 24 back and forth. And I'll represent to you this is

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1 taken directly -- a photograph of the exhibit itself.  
 2           Is this the language you're referring  
 3 to?  
 4          **A. So I'm just trying to track where this**  
 5 **is. This isn't in the standstill, this is in the**  
 6 **other part?**  
 7          Q. This is Section 1 -- yeah, that's  
 8 correct. This is not the standstill. That's Section  
 9 3. This is Section 1(b). Is that what you were  
 10 referring to?  
 11          **A. I would have been looking at the full**  
 12 **agreement in its totality, but --**  
 13          Q. Happy to do that.  
 14          ATTORNEY VARALLO: Can we bring up the  
 15 full agreement in its totality? Is that 3 -- hold on.  
 16 I'll get it for you. Here it is. 305.  
 17          **A. So I think, again, as I said**  
 18 **previously, we would confer with our outside counsel,**  
 19 **confirm that there is a release required under our**  
 20 **regulatory requirements, and if we heard that was the**  
 21 **case, we would, again, notify Columbia, and we would**  
 22 **issue a news release without naming them. Just saying**  
 23 **that --**  
 24          Q. Right. And you would do that under

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1 Section 1(b), because 1(b) provided that you could  
 2 make disclosure if there was a regulatory necessity.  
 3 Correct?  
 4          **A. Yes. But --**  
 5          Q. However, 1(b) also requires you to get  
 6 a written opinion of counsel that there was a  
 7 regulatory necessity.  
 8          **A. Yep.**  
 9          Q. And to share the draft of the release  
 10 with the other side at least 24 hours in advance.  
 11 Isn't that correct?  
 12          **A. Agree. We do that to the best of our**  
 13 **ability.**  
 14          Q. And you, in fact, didn't do either of  
 15 those things in connection with Mr. Poirier's threat  
 16 to disclose that the deal was over if they didn't take  
 17 the 25.50.  
 18          **A. Right. But we didn't have to, because**  
 19 **it hadn't reached that point yet.**  
 20          Q. You didn't have to because it hadn't  
 21 reached that point. Haven't you just proven my point?  
 22          **A. I don't think so. I think I've proven**  
 23 **my point.**  
 24          ATTORNEY VARALLO: All right. We'll

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1 leave that to the Court.  
 2           Your Honor may be pleased to know I  
 3 have no further questions at this time.  
 4           **REDIRECT EXAMINATION**  
 5 BY ATTORNEY OLSEN:  
 6          Q. Ms. Johnston, I don't have much. I  
 7 want to start where Counselor almost left off.  
 8          ATTORNEY OLSEN: Can you pull up Joint  
 9 Exhibit 517, please, Kentaro.  
 10          Q. And this is the Mayer Brown memo that  
 11 plaintiffs' counsel asked you a bunch of questions  
 12 about regarding the advice of disclosing an offer of  
 13 leverage. Do you remember those discussions?  
 14          **A. Yes.**  
 15          Q. And do you remember this memo?  
 16          **A. Yes.**  
 17          Q. When you were talking to Mayer Brown  
 18 about this question and their analysis, was there any  
 19 issue related to a leak or compliance with  
 20 establishing rules being considered in connection with  
 21 this advice?  
 22          **A. No.**  
 23          Q. So is that exception in the NDA  
 24 relevant to these considerations at all?

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## C. Johnston - Redirect

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**C. Johnston - Redirect**

1 **A. No.**

2 Q. I want to ask you some questions about

3 the standstill provision.

4 ATTORNEY OLSEN: Can you pull up

5 JTX 305, please, Kentaro.

6 And in particular, Kentaro, can you go

7 to – near the top of page 5, where we see the

8 standstill. And blow up that (c).

9 Q. And as we are all well aware by now,

10 without written authorization from the Columbia board,

11 the standstill lists what is prohibited. It says you

12 cannot "acquire or offer to acquire, or seek, propose

13 or agree to acquire ..., " and it goes on.

14 I take it you were very familiar –

15 **A. Yeah, I think Kentaro needs to bring**

16 **up the different section. This is the wrong section.**

17 Q. (b).

18 **A. Yeah. I'm with you.**

19 Q. You were very familiar with the

20 language of the standstill at the time, I take it?

21 **A. Yes.**

22 Q. Now in cross-examination, Counsel used

23 a dictionary to give you several alternative

24 definitions of the word "seek" and asked you about a

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**C. Johnston - Redirect**

1 **A. Yes.**

2 Q. And during the many conversations you

3 had with Bob Smith about the standstill, did he also

4 agree with that understanding of the standstill?

5 **A. Yes.**

6 Q. And, in fact, as Mr. Smith testified

7 yesterday, isn't it also true that Bob Smith told you

8 he was receiving the same advice from Sullivan &

9 Cromwell?

10 **A. Yes.**

11 Q. And I'm not going to ask you again

12 about your understanding of what TransCanada's

13 obligations under the NDA and the standstill were.

14 You went through that on direct examination. But is

15 it fair to say that in the many discussions you had

16 with Francois Poirier and the other members of the

17 TransCanada deal team about the NDA and the standstill

18 provisions, that you explained to them the very same

19 understanding of those provisions that you explained

20 to me during your direct examination yesterday?

21 **A. Yes, I did.**

22 Q. And are you aware of anyone at

23 Columbia or from Columbia's legal or financial

24 advisors or anyone from TransCanada's legal or

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**C. Johnston - Redirect**

1 number of activities during the deal that met with

2 what he called or you called the colloquial definition

3 of "seek."

4 Do you remember those questions?

5 **A. Yes.**

6 Q. And he picked a number of events, like

7 TransCanada reengaging with Columbia, making an

8 indicative offer, discussions of valuation ranges – I

9 don't remember the others – and asked you whether

10 those did or didn't meet that colloquial definition of

11 "seek."

12 Do you remember those questions?

13 **A. Yes.**

14 Q. My question is, based on your

15 understanding of the standstill provision and the

16 language in the standstill provision, during the

17 entirety of the discussions that TransCanada had with

18 Columbia, did you believe that any of the actions that

19 TransCanada took violated the standstill provision?

20 **A. I don't believe that any of the**

21 **actions we took violated the standstill.**

22 Q. And did your external counsel, Mayer

23 Brown, share that same view and give you that advice

24 with respect to the standstill agreement?

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**C. Johnston - Redirect**

1 financial advisors who told you at any point in time

2 that that understanding of the NDA and standstills was

3 incorrect or inaccurate?

4 **A. No. I never heard it was incorrect.**

5 Q. And would you have expected, given

6 your role in connection with this deal, that

7 Mr. Poirier or other members of the TransCanada deal

8 team would have come to you for clarification if they

9 had been told by anyone that that understanding was

10 inaccurate or incorrect?

11 **A. Yes.**

12 Q. The last topic I have is one of the

13 last topics that counsel addressed. Do you remember

14 the questions he asked you about whether Mr. Poirier

15 or others would or would not have reconsidered that

16 \$26 mixed stock consideration offer?

17 **A. Right.**

18 ATTORNEY OLSEN: Can you pull up,

19 Kentaro, Joint Exhibit 1092, please.

20 Q. And I'm showing you what's been marked

21 as Joint Exhibit 1092, which are the minutes of the

22 March 14, 2016, meeting of the board of directors.

23 And if you look at the second paragraph under "Project

24 Constellation" – it begins on the bottom of page 1

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## C. Johnston - Redirect

<p>C. Johnston - Redirect</p> <p>Page 641</p>	<p>C. Johnston - Redirect</p> <p>Page 643</p>
<p>1 and then goes on to page 2 – it says, "The meeting</p> <p>2 discussed the impact of the media story on</p> <p>3 TransCanada's most recent offer, ability to pay and</p> <p>4 execution risk. In light of these developments,</p> <p>5 management indicated that it would communicate to</p> <p>6 Capricorn that its latest offer could no longer be</p> <p>7 supported as the conditions of that offer were no</p> <p>8 longer met. Management reviewed the challenges of a</p> <p>9 proposed share-for-share exchange with the board</p> <p>10 members, including valuation and execution risk."</p> <p>11 What was that discussion of the board</p> <p>12 that's reflected in that paragraph of the minutes as</p> <p>13 you recall?</p> <p>14 <b>A. Yeah, I think there is a paragraph</b></p> <p>15 <b>before that actually goes through the three conditions</b></p> <p>16 <b>that were -- sorry, my mic is -- that goes through the</b></p> <p>17 <b>three conditions that were for the mixed cash and</b></p> <p>18 <b>stock deal. And those were maintaining a certain</b></p> <p>19 <b>share price, at or above \$49; no adverse credit rating</b></p> <p>20 <b>agency implications; certain other factors, including</b></p> <p>21 <b>underwriters' willingness to continue to offer the</b></p> <p>22 <b>bought deal on the subscription receipts, which was</b></p> <p>23 <b>the way that we were financing the cash portion of the</b></p> <p>24 <b>transaction.</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 untenable?</p> <p>2 THE WITNESS: Yes. I'm happy to</p> <p>3 explain.</p> <p>4 So if you got -- so we were doing for,</p> <p>5 say, the \$26 per share price, and per share, let's</p> <p>6 just assume that's about U.S. \$13 billion, so when we</p> <p>7 were doing an all-cash deal, the way that we were</p> <p>8 going to finance the cash part was to do what was</p> <p>9 going to be the largest public offering, I think, in</p> <p>10 Canadian history of a \$3 billion what's known as a</p> <p>11 subscription receipts offering that would be announced</p> <p>12 the same day that we announced the deal and would</p> <p>13 close on closing so that we would have cash to pay.</p> <p>14 So with the mixed stock and cash, now</p> <p>15 the underwriters would be competing with another -- if</p> <p>16 you think about 10 percent of that \$13 billion, now</p> <p>17 there's another \$1.3 billion of shares being issued to</p> <p>18 the Columbia shareholders. And that's the natural</p> <p>19 competitive tension in the markets. So it would be --</p> <p>20 so the underwriters who were taking the risk on the</p> <p>21 3 billion bought underwritten offering, they now know</p> <p>22 that we're also simultaneously issuing shares to</p> <p>23 shareholders. And that's not -- that would be very</p> <p>24 challenging for them to try and execute on that</p> <p>CHANCERY COURT REPORTERS</p>
<p>C. Johnston - Redirect</p> <p>Page 642</p>	<p>C. Johnston - Redirect</p> <p>Page 644</p>
<p>1 Q. And did you know at the time whether</p> <p>2 or not the underwriters had expressed the view to</p> <p>3 management that it was not supportive of the \$26 mixed</p> <p>4 consideration offer with stock issuance and</p> <p>5 subscription receipts offerings simultaneously?</p> <p>6 <b>A. Yes, I do recall.</b></p> <p>7 Q. How did you know that?</p> <p>8 <b>A. Part of my role is also to lead the</b></p> <p>9 <b>legal team that does all the capital markets work for</b></p> <p>10 <b>the CFO group. And so, simultaneously, with me doing</b></p> <p>11 <b>the M&amp;A and corporate secretary, I was keeping track</b></p> <p>12 <b>of the finance lawyers and the work that they were</b></p> <p>13 <b>doing on the subscription receipts offering. So I was</b></p> <p>14 <b>hearing about this issue that the -- that would be</b></p> <p>15 <b>untenable, effectively untenable, to do the mixed</b></p> <p>16 <b>stock with the cash on the offering as consideration.</b></p> <p>17 Q. And your description that it would be</p> <p>18 untenable to proceed with that, that came from the</p> <p>19 underwriters?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And if you look at the third paragraph</p> <p>22 from the bottom in these minutes --</p> <p>23 THE COURT: I've heard this before,</p> <p>24 but can you give me your understanding of why it was</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 portion of the deal while we were simultaneously --</p> <p>2 THE COURT: That's the part that I'm</p> <p>3 trying to get a handle on. People have said that</p> <p>4 there is this inconsistency. Francois Poirier</p> <p>5 described it much like you did. But you described it</p> <p>6 like it's natural competitive tension in the market.</p> <p>7 What is your sense of why these things are</p> <p>8 incongruent?</p> <p>9 THE WITNESS: Because the underwriters</p> <p>10 were taking a fully underwritten deal that they take</p> <p>11 the risk on. You essentially buy those shares to</p> <p>12 market them. And simultaneously, TransCanada is also</p> <p>13 issuing shares as consideration. So the market is</p> <p>14 being flooded with TransCanada shares while they're</p> <p>15 taking the risk on the \$3 billion offering.</p> <p>16 Hopefully that helps explain.</p> <p>17 THE COURT: Yeah. I mean, key people</p> <p>18 keep stating that conclusion, and you've stated the</p> <p>19 conclusion. I'm trying to get behind the conclusion,</p> <p>20 but if that's where we are, that's where we are.</p> <p>21 Thanks.</p> <p>22 BY ATTORNEY OLSEN:</p> <p>23 Q. In any event, with respect to the</p> <p>24 validity or whether it's real concern or not, that was</p> <p>CHANCERY COURT REPORTERS</p>



## C. Johnston - Redirect

## C. Johnston - Redirect

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1 what the underwriters communicated to the management,  
 2 that they were not prepared to move forward with that?  
 3 **A. Yes, that's my recollection.**  
 4 Q. And if you look at the third paragraph  
 5 from the bottom, it indicates Messrs. Gardner and  
 6 Clarke entered the meeting or joined the meeting.  
 7 Were Messrs. Gardner and Clarke two  
 8 representatives for those underwriting banks?  
 9 **A. Yes.**  
 10 Q. And it says, "Messrs. Clarke and  
 11 Gardner responded to a series of questions from the  
 12 Board members regarding the commitment of the banks to  
 13 the underwritten financing. The bankers shared their  
 14 views noting that the trading of TransCanada's shares  
 15 since *The Wall Street Journal* story was indicative of  
 16 investor support for the rumoured transaction. The  
 17 bankers also commented on the likelihood of successful  
 18 execution and the expected discount rate on the  
 19 subscription receipts offering. It was conveyed that  
 20 the two lead banks stood by the commitment to execute  
 21 on the underwritten offering in light of their comfort  
 22 with the contemplated acquisition."  
 23 My question is, if the underwriters  
 24 had told management they didn't support \$26

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## C. Johnston - Recross

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1 **A. Correct.**  
 2 Q. So you have no basis to give an expert  
 3 opinion on what might happen in the market if shares  
 4 are issued in part of consideration and also sold in  
 5 the bond offering. Right?  
 6 You don't understand market dynamics  
 7 or you don't claim to understand market dynamics  
 8 sufficient to give an expert opinion on that issue.  
 9 Correct?  
 10 **A. Other than being a securities lawyer**  
 11 **for 28 years.**  
 12 Q. Right. But you don't go into the  
 13 market and sell securities. You help people do that,  
 14 but that's not your job. Right?  
 15 **A. That's not my specific job.**  
 16 **Absolutely not.**  
 17 Q. Now, just to be clear, Counsel took  
 18 you through these minutes of the 14th March 2016. And  
 19 he zeroed in on the paragraph on page 2, three  
 20 paragraphs up from the bottom, about Messrs. Clarke  
 21 and Gardner. I think you said just a moment ago they  
 22 were representatives of the underwriters. And when  
 23 they come in the room, the only deal on the table is  
 24 \$26 cash and stock. Right?

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## C. Johnston - Recross

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1 simultaneous share for share with subscription  
 2 receipts, what is going on in this discussion where  
 3 they're standing by the commitment with respect to the  
 4 subscription receipts?  
 5 **A. Of course, execution risk for coming**  
 6 **up with the consideration to pay for Columbia was top**  
 7 **of mind, and the board wanted that commitment that the**  
 8 **banks could, in fact, get that deal done for that**  
 9 **portion of the consideration.**  
 10 Q. So were they telling the board that,  
 11 despite the first issue, that they still stood behind  
 12 the subscription receipts at the cash offer position?  
 13 **A. Yes.**  
 14 ATTORNEY OLSEN: I have no further  
 15 questions at this time, Your Honor.  
 16 ATTORNEY VARALLO: If I may, Your  
 17 Honor.  
 18 **RECROSS-EXAMINATION**  
 19 BY ATTORNEY VARALLO:  
 20 Q. So keep that same document out in  
 21 front of you.  
 22 A couple of questions, if I can.  
 23 You're a lawyer. Right? You've never  
 24 been an investment banker?

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## C. Johnston - Recross

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1 **A. I don't know that that's the case. I**  
 2 **mean, that was the last one communicated to Columbia,**  
 3 **if that's what you mean.**  
 4 Q. Correct. That's the last one  
 5 communicated to Columbia –  
 6 **A. I just wanted to understand.**  
 7 Q. – never withdrawn by the board by any  
 8 formal action. Correct?  
 9 **A. No, not at that point.**  
 10 Q. At that point they come into the room.  
 11 \$26 is the last deal communicated. And they say –  
 12 and your minutes, your signed minutes, signed by both  
 13 you and the chairman of the board, say, "It was  
 14 conveyed that the two lead banks stood by their  
 15 commitment to execute on the underwritten offering in  
 16 light of their comfort with the contemplated  
 17 acquisition."  
 18 Have I read that correctly?  
 19 **A. Yes.**  
 20 Q. Those were your minutes. Right?  
 21 **A. Yes.**  
 22 Q. Twice reviewed. Right?  
 23 **A. Sure. Yes.**  
 24 Q. Come up with soon in time after the

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## C. Johnston - Recross

C. Johnston - Recross

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1 transaction -- after the meeting itself. Yes?

2 **A. Yes.**

3 Q. Signed by you after being approved by

4 the board?

5 **A. Yes.**

6 Q. Signed by the chairman of the board.

7 Correct?

8 **A. Yes.**

9 ATTORNEY VARALLO: No further

10 questions.

11 ATTORNEY OLSEN: Nothing from me, Your

12 Honor.

13 THE COURT: Thank you for being here.

14 You need to stand up when you speak,

15 Counsel.

16 ATTORNEY OLSEN: Oh, sorry. I

17 apologize. Nothing from me, Your Honor.

18 THE COURT: Thank you for being here.

19 I appreciate your time.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 ATTORNEY MESSINGILL: Good morning,

23 Your Honor. We're taking a witness out of order due

24 to scheduling, and we'll be calling in defendants'

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1 Q. During that period, did you have any

2 responsibilities over the M&A practice for Sullivan?

3 **A. I did. I was the managing partner of**

4 **our global M&A practice for about a dozen years at the**

5 **end of my career.**

6 Q. And what type of practice did you have

7 at Sullivan?

8 **A. It was focused on mergers and**

9 **acquisitions. I would say probably with an emphasis**

10 **on public company mergers and acquisitions involving**

11 **U.S. companies, primarily.**

12 Q. Approximately how many public company

13 M&A transactions did you work on during your career?

14 **A. It would have been many dozens. The**

15 **dollar value exceeded a trillion dollars in value of**

16 **M&A deals where I represented a principal.**

17 Q. Did you have a focus on buy side, sell

18 side?

19 **A. No. They were divided probably**

20 **roughly equally. You have more successfully completed**

21 **sell-side transactions because they tend to happen.**

22 **So I may have worked on a little more buy side than**

23 **sell side, but in terms of completed transactions, it**

24 **was probably roughly equal.**

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1 case Mr. Joe Frumkin.

2 Your Honor, may I approach?

3 THE COURT: Please.

4 JOSEPH FRUMKIN, having first been duly

5 affirmed, was examined and testified as follows:

6 **DIRECT EXAMINATION**

7 BY ATTORNEY MESSINGILL:

8 Q. Good morning, Mr. Frumkin. I'm Brian

9 Messengill with Mayer Brown on behalf of Defendant

10 TransCanada. And as you may recall, I took your

11 deposition in this matter.

12 Can you please tell us about your work

13 history?

14 **A. Sure. I graduated from college in**

15 **1980. I worked in the -- for a United States Senator**

16 **for, well, for six years, including two after college.**

17 **Then went to law school. Graduated from the**

18 **University of Pennsylvania. Joined Sullivan &**

19 **Cromwell. Was there for about three, four years.**

20 **Then went to become an investment banker for nine**

21 **months. Realized I needed to be a lawyer and returned**

22 **to Sullivan & Cromwell and became a partner and**

23 **practiced there until December of 2019, when I**

24 **retired.**

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1 Q. In your career, did you advise boards

2 of directors of Delaware corporations?

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

4 Q. How frequently was that part of your

5 practice?

6 **A. It was pretty continuous over the**

7 **course of my practice.**

8 Q. Let's turn to Columbia and your

9 representation, Sullivan & Cromwell's representation

10 of Columbia.

11 Were you engaged to represent

12 Columbia? And how did that come about?

13 **A. I was engaged to represent Columbia**

14 **during the summer of 2015. They reached out prior to**

15 **the time of the spinoff. And I can't remember whether**

16 **it was Bob Smith or Bob Skaggs that reached out to me**

17 **initially.**

18 **And we were retained and began -- did**

19 **a little bit of work prior to the spinoff and then**

20 **began working with them regularly following the**

21 **spinoff.**

22 Q. After the spinoff, was it anticipated

23 that Columbia would be an attractive M&A target?

24 **A. I think it was recognized as a**

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1 possibility that they might be an M&A target. I don't  
 2 think there was any certainty. But as is true in lots  
 3 of spinoffs, the separation of a bigger company into  
 4 two more focused pieces tends to focus both the public  
 5 markets and the private markets on both sides  
 6 following the spinoff. And it's not infrequent for  
 7 that to lead to transactions.

8 Q. And was the possibility of Columbia  
 9 being approached by inbounds part of the reason  
 10 Sullivan --

11 A. Yes.

12 Q. -- and its team was put in place?

13 A. It was part of the reason that we were  
 14 retained.

15 Q. And who else at Sullivan were the key  
 16 members of the team advising Columbia Pipeline Group?

17 A. The other key members of the team were  
 18 George Sampas, who was another partner at Sullivan &  
 19 Cromwell, and Alison Heyden, who was a mid-level  
 20 associate who was a member of the M&A group who was a  
 21 very strong lawyer.

22 Q. Let's talk about your interactions  
 23 with Columbia Pipeline and its board and officers for  
 24 a moment.

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1 observed.

2 Q. Who was your primary contact at  
 3 Columbia?

4 A. The general counsel, Bob Smith.

5 Q. And what was your view of Mr. Smith's  
 6 capabilities as a general counsel of a public company?

7 A. I thought he was doing a good job. He  
 8 was, you know, funneling not only advice from  
 9 Sullivan & Cromwell but all their other outside  
 10 counsel around a range of issues to the management  
 11 team and synthesizing it. And he seemed to be on top  
 12 of -- on top of all of the strands and was a good and  
 13 effective conduit for us to communicate with the  
 14 company.

15 Q. Did you have a chance to observe his  
 16 interactions with the Columbia board?

17 A. I did.

18 Q. And did you have a perception of how  
 19 his communication practices with the board were?

20 A. Yeah. I think he -- at least in what  
 21 I observed is that he was always prepared. And we  
 22 used to discuss on transaction-related things what  
 23 points he would cover with the board if he was  
 24 covering them instead of me. And he was always very

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1 When did you first meet Bob Skaggs?

2 A. I met Bob, I believe, in 2008, around  
 3 the financial crisis. He was then with NiSource. And  
 4 they were anticipating the possibility of having some  
 5 financial stress around their -- around NiSource's  
 6 financing needs and their utility's financing needs as  
 7 a result of the financial crisis. And I attended some  
 8 meetings with them to discuss possible actions they  
 9 might take to facilitate financing transactions.

10 Q. And then eventually -- when you were  
 11 now engaged by Columbia post-spin, what was your view  
 12 of Mr. Skaggs' capabilities as chairman and CEO in  
 13 connection with the potential transactions that  
 14 Columbia considered in 2015 and 2016?

15 A. I didn't really have an opportunity to  
 16 gauge or really the expertise to gauge him as a  
 17 business executive in terms of running it. But in  
 18 terms of managing the board and the process, I thought  
 19 he was very strong. I thought he was unusually open  
 20 to receiving and structuring the process in a way that  
 21 enabled management to receive input from the board and  
 22 to work with the board in a collaborative way on the  
 23 M&A process to a far, far greater extent than almost  
 24 any management team -- almost any management team I've

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1 careful and, I thought, competent in the way he  
 2 discussed substantive matters with the board.

3 Q. Now, discussing the board, what was  
 4 your view of the capabilities of the Columbia Pipeline  
 5 board and your interactions with them relating to a  
 6 potential merger transaction?

7 A. I interacted with them a great deal  
 8 because there were a lot of, in number and time, a lot  
 9 of meetings. And there were also a lot of executive  
 10 sessions where I got to spend time with the board  
 11 without management present and got to observe the  
 12 board's internal deliberations about the process and  
 13 hear their thinking about what they thought was in the  
 14 best interests of the company and why.

15 Q. Let me introduce an exhibit,  
 16 Mr. Frumkin. I'm going to show you what's been marked  
 17 as JTX 627, which is an email dated January 26, 2016,  
 18 from you to Bob Smith. And attached to that email is  
 19 a Sullivan & Cromwell deck titled "Project  
 20 Constellation, M&A Process -- Legal Analysis."

21 Do you see that, Mr. Frumkin? It  
 22 should be on the screen in front of you.

23 A. I do.

24 Q. Turning, as you have in front of you,

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1 to the first page on the deck, it has your name on it?

2 **A. Yes.**

3 Q. Are you familiar with this document?

4 **A. I saw this document in my deposition.**

5 Q. Do you recall it from the time that

6 you put it together in connection with –

7 **A. I don't, really, but it's typical of**

8 **the kind of document that we prepared frequently.**

9 Q. Would you have presented this document

10 to the board of directors of Columbia Pipeline Group?

11 **A. Yes.**

12 Q. Let's turn to the next page, please.

13 The first slide – the first line

14 says, "Advice Regarding Duties of Directors."

15 What advice did you give Columbia

16 Pipeline Group, at a high level, regarding their

17 duties in a potential M&A transaction?

18 **A. I would have talked about the enhanced**

19 **scrutiny and the standard of review applicable under**

20 **the Revlon suite of duties of directors in connection**

21 **with sales of control and how that differed from the**

22 **normal standard of review and the suite of obligations**

23 **of directors in a business judgment environment and**

24 **business judgment decision.**

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1 Q. Did Sullivan & Cromwell also prepare a

2 memo for the Columbia board regarding the fiduciary

3 duties of directors under Delaware law in connection

4 with –

5 **A. We did.**

6 Q. Why don't we go to – let me show you

7 JTX 1903, which is an email from Bob Smith to you

8 dated January 26, 2016.

9 And in that email, he says – from Bob

10 to you, says, "Joe" – and the subject line, "Board

11 Memo on Fiduciary Duties."

12 "Joe - can you send me the Board memo

13 that we'll hand out? I can't locate it."

14 Do you see that? Was he reaching back

15 out to you for that memo that you provided?

16 **A. I assume so. I don't have a**

17 **recollection.**

18 Q. Let's go to JTX 1904, and look at the

19 top. And this is, again, from Bob Smith to you and

20 others at Sullivan & Cromwell.

21 And he goes, "Disregard my previous

22 email. I found it – just hadn't looked for emails

23 from Florence."

24 **A. Mm-hmm.**

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1 Q. And then let's go to the attachment to

2 this. And is this the memo that was prepared by

3 Sullivan & Cromwell to inform the Columbia Pipeline

4 Group – the board of Columbia of its fiduciary

5 duties?

6 **A. It looks like it, yes.**

7 Q. I'll represent to you that yesterday,

8 Mr. Smith testified that this memo was handed out to

9 the board at the January 28th to 29th meeting, a

10 couple days after this email.

11 Do you have any reason to doubt that

12 this memo was provided to the board at that meeting?

13 **A. I don't have any reason to either**

14 **doubt or not doubt that it was provided.**

15 Q. Let's go to page 7 of the memo.

16 And you'll see in the paragraph at the

17 top, there is a section that states, "A third form of

18 deal protection device is a standstill ...."

19 And does this reflect the advice

20 Sullivan & Cromwell was providing the board in

21 connection with the standstill provision?

22 **A. Yes.**

23 Q. Did you advise the Columbia board of

24 directors regarding the standstill provisions in

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1 connection with potential merger transaction?

2 **A. Yes.**

3 Q. And we'll turn back to that topic more

4 later. Let's go back to JTX 627, which is the

5 presentation we were just looking at. And let's go to

6 the next section of it.

7 It says, "Appropriate Board Oversight/

8 Decision Making." And then it has four subbullets.

9 What would you be informing the

10 Columbia board relating to these topics?

11 **A. This would have been something that I,**

12 **in my normal practice, would have spent as much time**

13 **as I could on with the board, because this is the**

14 **point about the importance of the board's meaningful**

15 **involvement in structuring the sales process and**

16 **making decisions about the sales process and in**

17 **overseeing management's conduct in a sales process.**

18 **And I would have spent time on it**

19 **because, in my experience, it's a point that boards**

20 **don't always get immediately because it differs from**

21 **the normal business judgment rule where they are**

22 **accustomed to relying more on management to discharge**

23 **the day-to-day activities of the company and make**

24 **decisions that can seem more day-to-day.**

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1                   **And so I would have spent time talking**  
 2 **about, in a Revlon context, in an M&A context, because**  
 3 **of the potential for conflicts and the actuality of**  
 4 **conflicts on the part of management in those**  
 5 **transactions, that boards need to keep their hand on**  
 6 **the wheel and provide significant direction and input**  
 7 **to management.**

8           Q.       The last bullet, "Executive  
 9 sessions" -- and you touched on this a moment ago --  
 10 what's the significance of executive sessions in  
 11 connection with advising the board on M&A?

12           **A.       Execution sessions are something that**  
 13 **came in as a result of Sarbanes-Oxley. And it was an**  
 14 **innovation that I don't think I appreciated the power**  
 15 **of at the time Sarbanes-Oxley was adopted, but they**  
 16 **really are a good tool for directors to be able to**  
 17 **talk amongst themselves and speak freely, without**  
 18 **management present, about not only M&A transactions,**  
 19 **but other significant business issues or about**  
 20 **management itself, which is often a topic in these.**

21                   **In this case, in an M&A transaction,**  
 22 **it gave the board a chance to talk about how it was**  
 23 **going. Were they satisfied with the information they**  
 24 **were getting? Which is something I always ask at**

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1 **executive sessions, because I tried to organize a**  
 2 **process in a way that got the directors the**  
 3 **information they thought they needed or that I thought**  
 4 **might be useful for them to have, as part of the board**  
 5 **meetings.**

6           Q.       And did -- the executive sessions,  
 7 they both included sessions with Sullivan & Cromwell  
 8 and the board of directors. To your recollection, did  
 9 the Columbia board also then meet separately without  
 10 any advisors?

11           **A.       They did. And it also would have been**  
 12 **normal in an executive session for it to occur in**  
 13 **probably three parts. First, with Bob Skaggs present**  
 14 **as a director and as the CEO so that he could share**  
 15 **with the board anything he wanted to share with the**  
 16 **board without the rest of management present, and the**  
 17 **board could share with him anything they wanted to**  
 18 **share with him without the rest of management present.**  
 19 **Then a segment with Sullivan & Cromwell present but**  
 20 **not with -- without Mr. Skaggs. And then, often,**  
 21 **there would also be a session without Sullivan &**  
 22 **Cromwell so the directors could speak amongst**  
 23 **themselves without us there either.**

24           Q.       Let me introduce JTX 1091, which is

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1 the "Columbia Pipeline Group [] Board of Directors,  
 2 Meeting Minutes -- Executive Sessions.  
 3                   ATTORNEY OLSEN: 191.  
 4                   ATTORNEY MESSINGILL: I'm sorry, 191.  
 5 A little transposition.  
 6                   THE WITNESS: Okay.  
 7 BY ATTORNEY MESSINGILL:  
 8           Q.       Do you recall that Sullivan & Cromwell  
 9 prepared -- took the minutes of the meetings it  
 10 attended and prepared them?

11           **A.       I do remember that, yes.**  
 12           Q.       And did you review them --  
 13           **A.       Yes.**  
 14           Q.       -- prior to them being finalized?  
 15           **A.       I did.**  
 16           Q.       I want to just go to a couple of the  
 17 meeting sessions.  
 18                   Could we please turn to page 006, on  
 19 February 5th, which starts at the bottom of 5 and on  
 20 to 6. And I'm focused on the section on 6.  
 21                   And does this show the breakdown that  
 22 you were talking about of the separate meetings that  
 23 indicates that Sullivan & Cromwell, in fact, attended  
 24 the executive session on that date?

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1           **A.       Yes.**  
 2           Q.       Okay. And let's just go to the next  
 3 one. On February 12, 2016, top of the page 7 -- the  
 4 next page. I'm sorry.  
 5                   And, again, does it indicate that the  
 6 representatives of Goldman Sachs and management left,  
 7 and then there was a session with the board and  
 8 Sullivan & Cromwell on February 12, 2016?

9           **A.       Yes.**  
 10           Q.       And then the board met separately.  
 11           **A.       Yes.**  
 12           Q.       We'll come back to the February 12th  
 13 session a little bit later.  
 14                   Let's go back to, now, JTX 627,  
 15 please, which is the slide deck we started with. And  
 16 I want to go to page 5 of the deck, which is the next  
 17 page.  
 18           **A.       Okay.**  
 19           Q.       And it says -- the first bullet is on  
 20 "Board Consideration of Alternatives."  
 21                   What would you have informed the board  
 22 regarding its consideration of alternatives?

23           **A.       That in order to come to a point of**  
 24 **view about the advisability of approving a sale of the**

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1 **company transaction or any significant strategic**  
 2 **transaction, the board should do that, having**  
 3 **developed an understanding of the value of the company**  
 4 **on a stand-alone basis as a baseline, the value of the**  
 5 **transaction they're considering -- that would be**  
 6 **whether it was TransCanada or something else -- and**  
 7 **the value that might be created through other possible**  
 8 **transactions with other counterparties or through**  
 9 **self-help-type transactions, like stock buybacks or**  
 10 **internal restructuring, sales of assets, purchases of**  
 11 **assets, et cetera.**

12 Q. So in connection with this, did  
 13 Columbia Pipeline's board receive periodic updates on  
 14 the intrinsic value of the company?

15 A. **They did.**

16 Q. Let's go down to the next bullet,  
 17 "Assess Conflicts of Interest."

18 What would you advise the board in  
 19 connection with potential conflicts of interest?

20 A. **That as part of the decision-making**  
 21 **process and the board's deliberative process, that it**  
 22 **was important for them to have an understanding of**  
 23 **what conflicts of interest existed among management,**  
 24 **themselves, and the advisors, so that they could**

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1 Q. And the first line is, "The Board in  
 2 executive session asked for this information on  
 3 management conflicts in any transaction with  
 4 Taurus ...."

5 I assume you don't have a specific  
 6 recollection, but as we saw a few moments ago, there  
 7 was a board meeting on February 12, 2016, in which you  
 8 attended an executive session with the board of  
 9 directors.

10 Let's now, if we could, go to JTX 748,  
 11 please.

12 Is this the analysis performed by  
 13 Sullivan to provide the information -- actually, you  
 14 know what? Can we back up to the prior exhibit for a  
 15 moment.

16 And you sort of set forth, and it  
 17 says, "Something that shows" -- the analysis -- "what  
 18 they get in the event of a deal and what they would  
 19 get without a deal, assuming normal retirement or  
 20 continued employment, depending retirement  
 21 eligibility."

22 Why those three scenarios?

23 You know what? Let me do it this way.

24 So there was three scenarios requested in the email

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1 **filter what they were hearing through -- with**  
 2 **knowledge of what those conflicts were. And that they**  
 3 **needed to identify amongst themselves whether they had**  
 4 **conflicts. They needed to understand what the**  
 5 **management conflicts were, because there obviously**  
 6 **were management conflicts. And they needed to**  
 7 **understand advisor conflicts.**

8 Q. As to director conflicts, were there  
 9 director conflicts on the Columbia board?

10 A. **Other than Bob Skaggs, I don't believe**  
 11 **that there were any director conflicts of any**  
 12 **significance.**

13 Q. And then you also mentioned management  
 14 conflicts. Can we go ahead and look at -- I want to  
 15 show you JTX 728, which is an email from you to, I  
 16 believe, some other folks at Sullivan & Cromwell.

17 You see George Sampas, a member of  
 18 your team. Who are the other folks on this email?

19 A. **The other folks are all part of the**  
 20 **executive compensation team.**

21 Q. And what are you requesting of them?

22 A. **An analysis that shows the financial**  
 23 **impacts to the members of senior management of doing a**  
 24 **deal versus not doing a deal.**

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1 when you sent it to your benefits group?

2 A. **I guess I don't remember why those**  
 3 **three -- it seems like the logical ones to ask for,**  
 4 **but I don't remember a particular reason for that.**

5 Q. Okay. Let's go to the next exhibit,  
 6 which is JTX 748. Is this the analysis prepared by  
 7 the Sullivan & Cromwell benefits group?

8 A. **It appears to be, yes.**

9 Q. And it's -- the document is titled  
 10 "Constellation: Management Payments to NEOs and GC."  
 11 And it says -- at a high level, can you describe the  
 12 information set forth on this document that was  
 13 provided to the Columbia board?

14 A. **Sure. What it shows is that all of**  
 15 **the executives would receive significantly greater**  
 16 **compensation in 2016 if there was a change-in-control**  
 17 **transaction than if there was not.**

18 Q. And then the second one -- that's the  
 19 first one. The change in control is set forth in the  
 20 calculations in the first section. And the second is  
 21 "No Change in Control [ ] Executive Continues to Work."

22 And is that essentially if there's no  
 23 change, the status quo, the executives stay on?

24 A. **Right. Yes.**

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1 Q. And then the third scenario is if --

2 what's set forth in the third scenario?

3 A. Where there is no change in control,

4 and there is either a retirement or a voluntary

5 resignation on June 1, 2016.

6 Q. So is it fair to say that on or about

7 February 18, 2016, the Columbia board of directors had

8 an understanding of the different financial incentives

9 management may have in the event of either a

10 transaction, for example, a sale to TransCanada

11 proceeding to completion, or if management stayed on

12 and there was no change?

13 A. They had that quantified. I believe

14 that they had, directionally, that understanding from

15 earlier in the process, but this quantified it for

16 them, yes.

17 Q. Now, at this point, TransCanada had

18 been granted exclusivity, because we're now into

19 February. But discussions around specific price

20 negotiations weren't really scheduled to take place

21 until early March. So this is in between exclusivity

22 and when the price negotiations were to take place.

23 In your view, was the board receiving

24 that information about potential management conflicts

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1 in a timely manner such that it could assess the

2 potential conflicts as the deal negotiations

3 continued?

4 A. They were. And as I said, I also,

5 although I can't remember the conversation, I'm

6 certain that in an earlier discussion of conflicts, I

7 would have mentioned the management financial conflict

8 that's inherent in any sales transaction, and they

9 would have been aware, at least directionally, that

10 management had a financial incentive for a transaction

11 to occur.

12 Q. All right. Let's turn to now and

13 discuss the nondisclosure agreements, both of

14 TransCanada and other potential counterparties, that

15 were executed by Columbia in 2015.

16 So let's reset. So after spinoff, did

17 Columbia receive inbound indications of interest?

18 A. They did.

19 Q. And do you recall that Columbia

20 entered into nondisclosure agreements with Dominion,

21 TransCanada, Berkshire Hathaway, and NextEra?

22 A. I do.

23 Q. Who prepared those NDAs that Columbia

24 entered into with the other parties?

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1 A. Sullivan & Cromwell.

2 Q. Why did Columbia enter into NDAs with

3 those parties?

4 A. They're customary in M&A transactions

5 when a potential seller of either itself or of assets

6 is providing nonpublic information to another party,

7 to a counterparty, to enable it to assess the price at

8 which it might be willing to transact.

9 Q. And the confidentiality agreement has

10 some provisions that restrict certain activities to be

11 taking place by the counterparty, for example,

12 confidentiality, standstill. When did those

13 restrictions, if you will, come into force in

14 connection with the execution of the NDA?

15 A. The agreement says that they come into

16 force at the time of signing. I dealt with an issue

17 in one deal where my client signed a confidentiality

18 agreement and never actually received any confidential

19 information. And we later struggled with the question

20 of whether the confidentiality agreement was in effect

21 or not to bind my client, because you obviously have a

22 failure of consideration argument. But it ended up

23 not mattering. But ...

24 Q. And the NDAs had standstill

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1 provisions?

2 A. They did.

3 Q. Why did Sullivan include a standstill

4 provision in the NDAs it provided -- it prepared for

5 Columbia?

6 A. It's customary, and you don't want

7 somebody to, as part of a negotiated process, to be

8 able to circumvent that process by making an

9 unsolicited offer. I think experience has shown that

10 it's desirable that if a company is going to be sold,

11 that it be done in an orderly way, to maximize the

12 value for shareholders.

13 Q. And did the standstill provisions

14 prepared by Sullivan include a "Don't Ask, Don't

15 Waive" provision?

16 A. They did.

17 Q. Why did Sullivan include a "Don't Ask,

18 Don't Waive" provision in the standstill?

19 A. I think it was fairly common to

20 include those provisions at that time, and today, for

21 that matter. They crept into practice, I don't know,

22 my recollection is 1990 sometime, when there were a

23 couple of situations where parties sought to evade

24 their standstill obligations in a bad-faith way by

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1 submitting written proposals to -- or written requests  
2 for a waiver to a company at a time when they had  
3 signed up a deal with somebody else, as a way of  
4 forcing the company to make disclosure of the written  
5 proposal and, in effect, circumvent the standstill  
6 provision. So that was the genesis of them.

7 I had also in -- just not long before  
8 Columbia, had a lot of success, really good success,  
9 using a "Don't Ask, Don't Waive" in an auction when  
10 we -- it was probably the hottest auction I ever ran  
11 on the sell side, between the two final bidders, and  
12 got meaningful incremental consideration after telling  
13 the two final bidders that we were not going to waive  
14 the "Don't Ask, Don't Waive" for the bidder that lost.  
15 We did waive it in that case for all the other bidders  
16 who hadn't gotten that far. And I think we got  
17 improved deal terms and consideration as a result of  
18 using it that way.

19 That's a rare case. A lot of what we  
20 do, as lawyers, is try and, you know, get tiny  
21 potential for incremental improvements. And at the  
22 beginning of a process, you never know whether "Don't  
23 Ask, Don't Waive" is going to be worth anything, but  
24 maybe it will be. So having the option is

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1 Q. Is it also similar to the NDAs that  
2 you've received from sort of opposing counsel in  
3 connection with M&A transactions in which you've  
4 advised?

5 A. Yes.

6 Q. Mr. Frumkin, in connection with your  
7 advice provided to Columbia, can you please explain  
8 what action by bidder were prohibited by this  
9 provision?

10 A. I spent more time thinking about this  
11 in the last few months than I had previously. I think  
12 that what I advised Columbia at the time was that this  
13 provision was informed by its purpose to prevent  
14 actions that could hurt Columbia or its process, and  
15 that it was intended to require a board request for a  
16 proposal in a way that would hurt Columbia or the  
17 process and not to require a board of directors to  
18 request in writing preliminary proposals, indications  
19 of interest, or requests to resume discussions.

20 Q. In connection with your advice to  
21 Columbia, can you please explain what actions,  
22 generally, were not prohibited by this provision?

23 A. Submitting indications of interest in  
24 response to requests from the company, or reaching out

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1 definitely something useful to have.

2 Q. Now let's go ahead and look at the  
3 standstill provision. And I'm going to introduce  
4 what's been marked as JTX 307, which is the  
5 nondisclosure agreement dated November 9, 2015,  
6 between Columbia and TransCanada. And I would like to  
7 refer you to the bottom of page 4 out of 5, which is  
8 the standstill provision.

9 And let's go ahead and sort of focus  
10 on the lead-in in clause (a). All right. So it  
11 says -- and I just highlighted it. It says, "unless  
12 the other Party's board of directors otherwise so  
13 specifically requests in writing in advance, the  
14 Standstill Party shall not" -- and we'll skip down to  
15 (a) -- "acquire or offer to acquire, or seek, propose  
16 or agree to acquire, by means of a purchase, tender or  
17 exchange offer, business combination or in any other  
18 manner, beneficial ownership" -- I'll skip down to  
19 public party.

20 Now, is this form of a standstill, in  
21 terms of the prescribed conduct, similar to what  
22 you've used in other nondisclosure agreements in your  
23 practice?

24 A. Yes.

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1 to the company to see if the company was interested in  
2 resuming discussions, I don't think any -- either of  
3 those actions were prohibited.

4 Q. And did both of those actions occur in  
5 connection with TransCanada's interactions with  
6 Columbia?

7 A. They did.

8 Q. Did you advise Columbia that those  
9 actions were prohibited by the standstill?

10 A. I did not.

11 Q. Now, the provision contains some  
12 fairly broad terms, such as "seek, propose or agree to  
13 acquire." What did you understand that portion of the  
14 provision to prohibit in connection with your advice  
15 provided to Columbia?

16 A. Well, I guess the making of a proposal  
17 susceptible of acceptance to do any of those things.  
18 I had never -- I mean, I had never -- I had thought  
19 about this provision in the context of its purpose,  
20 which, as I said, is really to prevent things that are  
21 harmful to the company or to the process. In the  
22 context of practice, where I think this was uniformly  
23 not viewed as limiting the ability of counterparties  
24 to submit indications of interest or to make requests

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1 to resume negotiations, understanding that it's the  
2 right of the company to decline to resume  
3 negotiations, and this limits --

4 THE COURT: I'm sorry. I thought you  
5 were done. Go ahead and finish up.

6 **A. And it limits the ability of the**  
7 **person to make a tender or any sort of a hostile**  
8 **offer.**

9 THE COURT: What do you mean by  
10 "proposal capable of acceptance"?

11 THE WITNESS: I think something firm  
12 enough that it might -- it would be problematic for  
13 the company in some way and potentially raise a  
14 disclosure issue.

15 THE COURT: Raise a disclosure issue.

16 THE WITNESS: Yes.

17 THE COURT: What people have pushed  
18 and what you seem to be saying, and I want to know  
19 this, is it has to be essentially like a formal offer  
20 in the sense of an offer that, if accepted, would give  
21 rise to a binding obligation. Is that how you are  
22 understanding it?

23 THE WITNESS: I don't think it's quite  
24 that far because the disclosure obligation can come a

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1 THE WITNESS: I guess it's really --

2 THE COURT: In my experience --

3 THE WITNESS: I guess it's really when

4 you're getting very close to that final offer that

5 leads to a merger agreement that's signed. Where

6 you've got terms negotiated, you've got -- and maybe

7 they're negotiated but for the last couple of items,

8 you know, break fee or things that are customarily the

9 last items. But I think it's late -- I think it's

10 very late in the process.

11 THE COURT: That is much softer than

12 "offer capable of acceptance."

13 THE WITNESS: It is. I accept that.

14 I think that's -- offer capable of acceptance --

15 THE COURT: Let me push you on a

16 couple other things as well.

17 So let's assume that instead of

18 dealing with somebody that you want to hear from --

19 THE WITNESS: Mm-hmm.

20 THE COURT: -- you're dealing with

21 somebody you don't want to hear from. So, for

22 whatever reason, there is one bidder that you think of

23 as hostile, think of them as a T. Boone Pickens-type

24 fellow, that type of thing. It seems to me, like,

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1 little bit before that.

2 THE COURT: Sure.

3 THE WITNESS: Not a lot before, I  
4 don't think, but it can come a little bit before.  
5 Right?

6 In M&A, you've got to -- basically,  
7 Levinson -- you don't make disclosure until you're  
8 pretty certain of getting a deal. But when you have  
9 that confluence of things come together, at that  
10 point, I do think that the target company wants to  
11 keep control of the timing of that confluence so that  
12 it comes together when it's ready to make disclosure,  
13 announce the deal, et cetera. So you want the ending  
14 to come together in a way that permits disclosure.  
15 And that's the way I always thought of it.

16 THE COURT: I'm trying to drill down  
17 on this concept of an offer that's susceptible to  
18 acceptance, because it seems to me that in the M&A  
19 world, you all are always making proposals until you  
20 get the binding merger agreement that you actually  
21 sign.

22 THE WITNESS: Right.

23 THE COURT: So what is it that is an  
24 offer that is capable of acceptance in M&A land?

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1 your interpretation of the standstill and the

2 standstill that I'm hearing from the other witnesses

3 is that a T. Boone Pickens private bear hug letter

4 that includes a range would not breach a standstill.

5 THE WITNESS: I guess the question --

6 there is the harm element, but --

7 THE COURT: Look, I'm trying to read

8 the language.

9 THE WITNESS: Yeah.

10 THE COURT: I'm trying to figure out

11 and I'm trying to test your assertion that a proposal

12 that contains a range at which someone is potentially

13 willing to transact does not breach a standstill.

14 And so the way I'm testing this is by

15 saying, let's imagine that instead of it being someone

16 that you like and you're willing to accept a bid from,

17 let's imagine that it's somebody that you actually

18 want to be able to reserve your rights against. Do

19 you really think that that would fly under the

20 standstill and that you all wouldn't take the position

21 that somebody lobbying in a letter like that had

22 breached the standstill?

23 THE WITNESS: Well, I guess what would

24 we do about the breach? Right? We're not going to --

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<p style="text-align: right;"><b>J. Frumkin - Direct</b> Page 681</p> <p>1 THE COURT: Well, that's a separate</p> <p>2 question, isn't it? So there is a two-step analysis.</p> <p>3 Right?</p> <p>4 THE WITNESS: Yeah.</p> <p>5 THE COURT: There is the question of</p> <p>6 whether there is a breach, and then there's the</p> <p>7 question of whether we are going to enforce the breach</p> <p>8 or whether we are going to go ahead and let you all</p> <p>9 talk to us or whether we're going to do anything about</p> <p>10 it. Right?</p> <p>11 Do you agree that those are separate</p> <p>12 issues?</p> <p>13 THE WITNESS: I do.</p> <p>14 THE COURT: Okay. So let's focus on</p> <p>15 the first one. Let's focus on whether it is a breach</p> <p>16 to send an indication of interest with a range of</p> <p>17 prices in it, nonpublic -- again, and let's just make</p> <p>18 it clean. Let's assume it's somebody that we don't</p> <p>19 like. They got in the process earlier. They signed</p> <p>20 this. We shut down the process. And now we want to</p> <p>21 stay independent, and these fellows bear hug us.</p> <p>22 THE WITNESS: I guess informed by</p> <p>23 looking at it through the lens of purpose, which is, I</p> <p>24 think, one of the ways I was interpreting this, it</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>J. Frumkin - Direct</b> Page 683</p> <p>1 THE WITNESS: Okay.</p> <p>2 THE COURT: And, again, I'm not</p> <p>3 pushing you about the first step of the process.</p> <p>4 THE WITNESS: But I would be</p> <p>5 prepared --</p> <p>6 THE COURT: Excuse me. I'm not</p> <p>7 pushing you about the first step of the process before</p> <p>8 return and destroy. I'm pushing you in the second</p> <p>9 phase of the process after Columbia has said, we're</p> <p>10 shutting things down. Right?</p> <p>11 I'm with you that in the -- when you</p> <p>12 originally enter into these things, there is an</p> <p>13 understanding that, by entering into them, you are</p> <p>14 inviting this type of participation, inquiry,</p> <p>15 discussion, dah, dah, dah, dah.</p> <p>16 THE WITNESS: Okay.</p> <p>17 THE COURT: But my point is, once</p> <p>18 you've shut it down, return and destroy, now let's</p> <p>19 think about the reapproach, the reengagement, the</p> <p>20 proposal.</p> <p>21 So bear hug letter, somebody you don't</p> <p>22 like, just because it includes a range, you would say</p> <p>23 or wouldn't say that that's a breach of the</p> <p>24 standstill?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>J. Frumkin - Direct</b> Page 682</p> <p>1 probably would be more likely to be found to be a</p> <p>2 breach than an action by a TransCanada, for example.</p> <p>3 THE COURT: Why don't -- again, let's</p> <p>4 distinguish between breach and something you're not</p> <p>5 going to push.</p> <p>6 Why isn't, with TransCanada, it's</p> <p>7 still a technical breach, but because it is something</p> <p>8 that you think is going to lead to something</p> <p>9 consensual and not be damaging to the process, you all</p> <p>10 aren't going to assert that it's a breach. You're</p> <p>11 going to let the discussions happen.</p> <p>12 THE WITNESS: I'm not even -- I accept</p> <p>13 that you could and you have seen this as a breach.</p> <p>14 And having now looked at the words, I can see how</p> <p>15 somebody gets there. But in the context, I do think</p> <p>16 that whether the agreement is informed in part by --</p> <p>17 the meaning of the agreement is informed in part by</p> <p>18 its purpose and the circumstances. And I think that</p> <p>19 in the circumstance where you are sort of engaged with</p> <p>20 somebody, or when the question that's asked isn't, you</p> <p>21 know, a bear hug letter but a "Do you want to</p> <p>22 reengage?" question --</p> <p>23 THE COURT: Let's take these in</p> <p>24 consequence.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>J. Frumkin - Direct</b> Page 684</p> <p>1 THE WITNESS: I would say that</p> <p>2 that's -- if that's submitted knowing that it would</p> <p>3 be -- yes, I would say that's probably a breach of the</p> <p>4 standstill.</p> <p>5 THE COURT: The fact that it has a</p> <p>6 range in it doesn't mean that it's not a breach of the</p> <p>7 standstill.</p> <p>8 THE WITNESS: I agree.</p> <p>9 THE COURT: Okay. But part of what I</p> <p>10 keep hearing from people is, oh, the fact that it had</p> <p>11 a range in it means it wasn't a breach of the</p> <p>12 standstill. And that just doesn't make any sense to</p> <p>13 me because, you know, it seems to me, like, if</p> <p>14 somebody is bear hugging you and they have a range in</p> <p>15 it, well, query why they are putting a range in a bear</p> <p>16 hug letter. But if somebody floats a range that you</p> <p>17 don't want to hear from, you can tell them it breaches</p> <p>18 the standstill.</p> <p>19 THE WITNESS: I think these things do</p> <p>20 get interpreted contextually and under the</p> <p>21 circumstances. And I think that some approaches are</p> <p>22 welcome and, therefore, not a breach; and other</p> <p>23 approaches might be unwelcome and, therefore, a</p> <p>24 breach.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## J. Frumkin - Direct

<p style="text-align: right;"><b>J. Frumkin - Direct</b> Page 685</p> <p>1 THE COURT: Again, that's where I want</p> <p>2 to push you. Is it that they're welcome and they're</p> <p>3 not a breach? Or is it that they're welcome and,</p> <p>4 therefore, we are not going to assert that this is a</p> <p>5 breach?</p> <p>6 And I get it that in the parlance of</p> <p>7 ordinary discussions, you may communicate those things</p> <p>8 in the same way. Right? You may say, we agree that</p> <p>9 this isn't a breach. Right? Which is effectively</p> <p>10 saying the same thing as assuming that it were a</p> <p>11 breach, we're going to waive; we're not going to</p> <p>12 assert that this is a breach.</p> <p>13 But do you think it's a breach? Or do</p> <p>14 you think when we're interpreting these things</p> <p>15 contextually, people just aren't asserting that it's a</p> <p>16 breach?</p> <p>17 THE WITNESS: I'm not sure.</p> <p>18 THE COURT: Well, I mean, I think part</p> <p>19 of the reason you're not sure is because none of us</p> <p>20 want to give up the right and the ability to say</p> <p>21 against a hostile, this is a breach. And so you don't</p> <p>22 want to espouse an interpretation that would undercut</p> <p>23 your ability to do that against a true hostile,</p> <p>24 against somebody who truly was sort of trying to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>J. Frumkin - Direct</b> Page 687</p> <p>1 acquire"?</p> <p>2 THE COURT: Yeah, "seek to acquire."</p> <p>3 THE WITNESS: And the question is,</p> <p>4 would you like to resume discussions about a possible</p> <p>5 transaction? I don't think so. I think even on the</p> <p>6 words, I don't think I get there on that one.</p> <p>7 THE COURT: You don't think that by</p> <p>8 asking you that, I am seeking to acquire? I am trying</p> <p>9 to reengage with you to discuss a potential</p> <p>10 transaction. You don't think that's "seek to</p> <p>11 acquire"?</p> <p>12 THE WITNESS: Where would that end,</p> <p>13 then? I mean, that would be -- that would take you</p> <p>14 to -- almost anything could be a "seek to acquire."</p> <p>15 THE COURT: If I reengage with you,</p> <p>16 yeah. Look, you don't have to enforce it. Again,</p> <p>17 like, no one is arguing -- or at least I'm not pushing</p> <p>18 you on the idea that the target corporation in that</p> <p>19 setting has to say, you tripped the standstill. Stop.</p> <p>20 Go away.</p> <p>21 I perfectly acknowledge that you all</p> <p>22 can say, you know what? Your request to reengage,</p> <p>23 we're perfectly fine to talk to you. And we'll</p> <p>24 actually put it in writing that we're not going to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>J. Frumkin - Direct</b> Page 686</p> <p>1 interfere with your process.</p> <p>2 Fair?</p> <p>3 THE WITNESS: Fair. Which is why I</p> <p>4 fall back on context.</p> <p>5 THE COURT: All right. And so, again,</p> <p>6 I get that -- you know, I started with the range,</p> <p>7 because that one, to me, in my mind, is just -- I</p> <p>8 don't get how you make the argument that it's not a</p> <p>9 breach. I get how you respond and say, we're not</p> <p>10 going to push that it's a breach.</p> <p>11 But let's back up and think about the</p> <p>12 request to engage, the "seek to engage." Like, I'm</p> <p>13 not pushing you that somebody can say, this isn't a</p> <p>14 problem for us; we're happy to talk to you. But,</p> <p>15 again, like, why isn't it, from a technical</p> <p>16 standpoint, that's something that trips?</p> <p>17 THE WITNESS: Well, I think -- I mean,</p> <p>18 if that tripped it, would it even be valid under</p> <p>19 Delaware law? Because you're then disabling yourself</p> <p>20 from receiving information.</p> <p>21 THE COURT: I'm not asking you that.</p> <p>22 I'm asking you whether the contractual provision</p> <p>23 trips.</p> <p>24 THE WITNESS: I don't -- "seek to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>J. Frumkin - Direct</b> Page 688</p> <p>1 assert that this was a breach of the standstill.</p> <p>2 Totally fine.</p> <p>3 What I am not getting is why that's</p> <p>4 not seeking to acquire. And, again, like, I pivot</p> <p>5 this to the situation where you're facing somebody</p> <p>6 that you actually don't want to talk to. And, you</p> <p>7 know, I don't know. I can't tell you the exact</p> <p>8 situation, but I feel like I've seen letters where</p> <p>9 people have sent angry letters based on just sort of</p> <p>10 "seek to acquire" type stuff.</p> <p>11 THE WITNESS: But here, even in the</p> <p>12 T. Boone Pickens situation, if what T. Boone Pickens</p> <p>13 did was pick up the phone or have a banker pick up the</p> <p>14 phone and ask, would you like to resume discussions? I</p> <p>15 don't think I would have -- I would view -- even with</p> <p>16 T. Boone Pickens, I don't think I would view that as a</p> <p>17 breach of this.</p> <p>18 THE COURT: Why not?</p> <p>19 THE WITNESS: I struggled with the</p> <p>20 first one because I think that requires context to</p> <p>21 come to the conclusion that it's not a breach. But I</p> <p>22 think I get there, just -- I just don't think -- I</p> <p>23 don't interpret that as "seek to acquire." I know you</p> <p>24 get to decide what it means, but I would not interpret</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## J. Frumkin - Direct

<p style="text-align: center;"><b>J. Frumkin - Direct</b> <span style="float: right;">Page 689</span></p> <p>1 those words as --</p> <p>2 THE COURT: I'm trying to get to the</p> <p>3 "why." So what is the reasoning that you go through</p> <p>4 to be able to say that somebody reaching out and</p> <p>5 saying, hey, we'd like to reengage so that we can</p> <p>6 potentially talk about an acquisition, that that</p> <p>7 conversation doesn't fall within the broad ambit of</p> <p>8 "seek to acquire."</p> <p>9 THE WITNESS: It's consistent with the</p> <p>10 fundamental -- it's consistent with the fundamental</p> <p>11 purpose of the standstill, which is to leave the</p> <p>12 control of the situation in the hands of the company.</p> <p>13 And it does that. You can say, no, and then that's</p> <p>14 the end of the discussion. We don't want to continue</p> <p>15 with the M&amp;A process.</p> <p>16 I struggle with the first T. Boone</p> <p>17 Pickens hypo, but not so much with the second one. I</p> <p>18 don't think I would tell the client that that was a</p> <p>19 breach of the standstill, even if it was T. Boone</p> <p>20 Pickens or the equivalent.</p> <p>21 THE COURT: Again, I feel like I've</p> <p>22 seen litigator letters that actually take that</p> <p>23 position, but I won't push you on it.</p> <p>24 Thank you.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;"><b>J. Frumkin - Direct</b> <span style="float: right;">Page 691</span></p> <p>1 <b>the first one, but I did not advise Columbia that</b></p> <p>2 <b>either violated the standstill provision.</b></p> <p>3 THE COURT: When you say "first</p> <p>4 one" --</p> <p>5 THE WITNESS: The one from the</p> <p>6 December CEO conversation.</p> <p>7 THE COURT: Thank you.</p> <p>8 BY ATTORNEY MESSINGILL:</p> <p>9 Q. Let's focus on the actions of some of</p> <p>10 the other standstill parties, Parties B, C, D in the</p> <p>11 proxy, which are Dominion, Berkshire Hathaway, and</p> <p>12 NextEra, respectfully. Let's go to the -- I think we</p> <p>13 can stay at .045. The third paragraph says, "On</p> <p>14 November 24, 2015, TransCanada and Party D each made</p> <p>15 verbal indications of interest ...."</p> <p>16 And I'll represent to you -- and we</p> <p>17 can go there, if you'd like -- that on page 36 in the</p> <p>18 same time period, it discloses Party B, Dominion's,</p> <p>19 proposed joint acquisition with Party C that was</p> <p>20 presented to Columbia.</p> <p>21 So in November '15, November 2015,</p> <p>22 each of Dominion, Berkshire Hathaway, and TransCanada</p> <p>23 had provided proposals for acquiring Columbia.</p> <p>24 Are you with me?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: center;"><b>J. Frumkin - Direct</b> <span style="float: right;">Page 690</span></p> <p>1 ATTORNEY MESSINGILL: Let's go to JTX</p> <p>2 1291, which is the proxy. And I'd like, Kentaro, if</p> <p>3 you can please go to .053, which sets forth --</p> <p>4 actually, I'm sorry. Let's go to .046.</p> <p>5 BY ATTORNEY MESSINGILL:</p> <p>6 Q. And in the second paragraph, it reads</p> <p>7 in there, "In a follow-up call with Mr. Skaggs a few</p> <p>8 days [later] after their conversation on November 25,</p> <p>9 2015, Mr. Girling indicated that perhaps TransCanada</p> <p>10 would be willing to increase its price ...."</p> <p>11 Now, just to orient you in time, this</p> <p>12 would be after the return and destroy letter had been</p> <p>13 sent to TransCanada.</p> <p>14 And let's go down two paragraphs. And</p> <p>15 the second sentence reads, "On January 7, 2016,</p> <p>16 Messrs. Poirier and [ ] Smith met and Mr. Poirier</p> <p>17 indicated that TransCanada was still interested in</p> <p>18 acquiring CPG and wanted to conduct due</p> <p>19 diligence ...."</p> <p>20 In connection with these disclosed</p> <p>21 communications between the two parties, did you advise</p> <p>22 Columbia that those actions violated the standstill</p> <p>23 provision?</p> <p>24 <b>A. I did not. I'm not sure I knew about</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;"><b>J. Frumkin - Direct</b> <span style="float: right;">Page 692</span></p> <p>1 <b>A. I am.</b></p> <p>2 Q. Is that consistent with your</p> <p>3 recollection of events?</p> <p>4 <b>A. It is. I don't -- I don't actually</b></p> <p>5 <b>have a recollection of what Dominion and NextEra ended</b></p> <p>6 <b>up proposing. But, yes, it's in the proxy.</b></p> <p>7 Q. Thank you. I'll represent that it is</p> <p>8 in the proxy.</p> <p>9 <b>A. Yeah.</b></p> <p>10 Q. And at that time those proposals were</p> <p>11 provided, all three companies had nondisclosure</p> <p>12 agreements with Columbia that contained the standstill</p> <p>13 provisions?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Prior to Columbia receiving those</p> <p>16 indications of interest, did the Columbia board</p> <p>17 provide written invitations for those indications of</p> <p>18 interest?</p> <p>19 <b>A. Not to my knowledge.</b></p> <p>20 Q. Did you advise Columbia that written</p> <p>21 invitations were required for those indications of</p> <p>22 interest?</p> <p>23 <b>A. I did not.</b></p> <p>24 Q. Why not?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



## J. Frumkin - Direct

<p style="text-align: right;">J. Frumkin - Direct Page 693</p> <p>1           <b>A.       I did not believe they were required.</b></p> <p>2           Q.       And did you advise Columbia at the</p> <p>3 time that those indications of interest violated the</p> <p>4 standstill provision?</p> <p>5           <b>A.       I did not.</b></p> <p>6           Q.       Now, Vice Chancellor Laster was asking</p> <p>7 you about the return and destroy letter that was sent</p> <p>8 on or about, I believe, November 25th, and then</p> <p>9 TransCanada sought to reengage. Now, in advance of</p> <p>10 that reengagement, in connection with sending the</p> <p>11 return and destroy letters, did you advise Columbia</p> <p>12 that sending the return and destroy letters would</p> <p>13 somehow alter what overtures would be not violative of</p> <p>14 the standstill provision upon sending the return and</p> <p>15 destroy letter?</p> <p>16           <b>A.       I did not give Columbia any advice</b></p> <p>17 <b>that the return and destroy letter would change any</b></p> <p>18 <b>obligations or rights under the confidentiality</b></p> <p>19 <b>agreements.</b></p> <p>20           Q.       Did you have a view whether the return</p> <p>21 and destroy letter did change any rights or</p> <p>22 obligations under the standstill provisions?</p> <p>23           <b>A.       I don't think it ever occurred to me</b></p> <p>24 <b>that it would, no.</b></p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Frumkin - Direct Page 695</p> <p>1 or an equity offering, isn't set in stone. But, you</p> <p>2 know, it's 30 days, 60 days, something, some period of</p> <p>3 time that permits it to get the equity offering done</p> <p>4 and have the disclosure not mention the possibility of</p> <p>5 the sales transaction.</p> <p>6                     And so they all would have known that</p> <p>7 there would be a point in time in the not-distant</p> <p>8 future when that consideration would no longer be</p> <p>9 present.</p> <p>10                    THE COURT: If we're just talking</p> <p>11 about during process, post process, is that a</p> <p>12 contextual factor that affects your analysis at all?</p> <p>13                    THE WITNESS: I guess I'd have to say</p> <p>14 it could affect my analysis a little bit but not</p> <p>15 dramatically. And it wouldn't affect my analysis if I</p> <p>16 were representing a bidder either, although it's a</p> <p>17 different thought process for a bidder than for the</p> <p>18 company.</p> <p>19                    No, I don't think it would have</p> <p>20 occurred to me that that would have -- I really don't</p> <p>21 think it would have occurred to me that that would</p> <p>22 have affected the way bidders would think about it.</p> <p>23                    THE COURT: The difference between</p> <p>24 participating in a process versus making a pure,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">J. Frumkin - Direct Page 694</p> <p>1                    THE COURT: Explain that to me,</p> <p>2 because you're the context guy. Before the return and</p> <p>3 destroy letter, you're running a process where you</p> <p>4 actually solicited and engaged with people. So there</p> <p>5 is an understanding there that they're actually</p> <p>6 engaging with you. You're giving them a timeline for</p> <p>7 bids. In fact, Skaggs gives an outreach that solicits</p> <p>8 bids with a time period that results in these</p> <p>9 indications of interest. That, to me, seems to be</p> <p>10 contextually significant as to whether a bidder would</p> <p>11 view themselves as violating a standstill. Contrast</p> <p>12 that with after you've shut down the process and said,</p> <p>13 return and destroy.</p> <p>14                    And so the question is whether a</p> <p>15 bidder can unilaterally reinstate. You don't see any</p> <p>16 distinction?</p> <p>17                    THE WITNESS: I don't. And the</p> <p>18 reason -- there are a couple of reasons. One is --</p> <p>19 and probably also contextual -- is that all of the</p> <p>20 bidders were aware that the process was shut down so</p> <p>21 that Columbia could do an equity offering. The period</p> <p>22 of time in which, you know, they would need to put</p> <p>23 pencils down on an equity offering or -- I'm sorry, on</p> <p>24 an M&amp;A transaction, in order to do an M&amp;A offering --</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Frumkin - Direct Page 696</p> <p>1 unsolicited, outside of the process, you're telling me</p> <p>2 that you don't think that affects how a bidder thinks</p> <p>3 about something?</p> <p>4                    THE WITNESS: Not if the unsolicited</p> <p>5 is an inquiry as to whether there is a desire to</p> <p>6 resume a negotiated discussion about a transaction.</p> <p>7 No.</p> <p>8                    THE COURT: Okay.</p> <p>9 BY ATTORNEY MESSINGILL:</p> <p>10                   Q.       Let's go ahead and turn to JTX 621.</p> <p>11                    Now, JTX 621 is an email exchange,</p> <p>12 starting at the bottom between, Ms. Johnston and</p> <p>13 Mr. Bob Smith, the general counsel of Columbia.</p> <p>14                    And you recall Ms. Johnston was</p> <p>15 in-house counsel for TransCanada? That's your</p> <p>16 understanding?</p> <p>17                    And so Bob Smith and Ms. Johnston, in</p> <p>18 advance of the meeting to take place between the CEOs</p> <p>19 in which eventually a range was agreed to before</p> <p>20 proceeding to exclusivity, had this exchange in</p> <p>21 advance of that. And then Mr. Smith -- Ms. Johnston</p> <p>22 responds to that email from Mr. Smith and says,</p> <p>23 "Thanks Bob. I am comfortable with the conversation</p> <p>24 planned to take place this afternoon." And it goes,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



## J. Frumkin - Direct

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**J. Frumkin - Direct**

1 "As indicated ...." But if it proceeds further, it  
 2 may – the language of the standstill may "appear to  
 3 require more explicit Board direction ...."  
 4 And then Mr. Smith forwards this to  
 5 you for your reaction to Ms. Johnston's email, and  
 6 that's set forth at the top.  
 7 And I'll say – I'll just read it. It  
 8 says, "I think a formal proposal they are right, but  
 9 what we're doing now is fine. Just emphasize what we  
 10 approve them doing is making a private, non-public  
 11 indication for discussion of a negotiated transaction  
 12 and discussion of whether aboard [sic] wants to  
 13 initiate negotiations."  
 14 And you recall, as I just said, what  
 15 we were doing now was going to be the meeting between  
 16 the CEOs in which it was anticipated that a range  
 17 would be discussed?  
 18 **A. Yes.**  
 19 Q. So what distinction are you drawing  
 20 here – actually, why don't I save that question  
 21 for – unless the Court would like me to continue on.  
 22 THE COURT: We'll go ahead and recess.  
 23 Resume at 11:00.  
 24 (Recess taken at 10:45 a.m.)

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**J. Frumkin - Direct**

1 TransCanada to agree to do the deal – to negotiate  
 2 without exclusivity.  
 3 Q. But TransCanada, is it fair to say,  
 4 insisted on exclusivity, and exclusivity was executed  
 5 between the parties?  
 6 **A. Yes.**  
 7 Q. Let's move on.  
 8 Now, I'm going to move forward in  
 9 time. We're now around March 10. Lots happening in  
 10 the March 9 through 10, 11, 12 time period.  
 11 You recall that on March 9,  
 12 TransCanada provided – exclusivity had lapsed on  
 13 March 8. March 9, TransCanada had provided a proposal  
 14 that included a 90 percent cash component and  
 15 10 percent stock component. Exclusivity has lapsed.  
 16 March 10, The Wall Street Journal leak  
 17 happens, and then, shortly thereafter, there's an  
 18 outreach from Spectra to Columbia.  
 19 So what advice did Sullivan provide to  
 20 Columbia to address this sort of confluence of these  
 21 circumstances coming together in that time period?  
 22 **A. Can you ask a more specific question?**  
 23 Q. Sure. Why don't we go to Exhibit 971.  
 24 And you'll see at the top, it says, "Working with

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**J. Frumkin - Direct**

1 (Resumed at 11:00 a.m.)  
 2 THE COURT: Welcome back, everyone.  
 3 Please be seated.  
 4 Let's resume.  
 5 BY ATTORNEY MASSENGILL:  
 6 Q. Mr. Frumkin, just one last question on  
 7 standstills. Did you ever advise Columbia that  
 8 Columbia needed to disclose in the proxy that  
 9 TransCanada's actions had breached the standstill  
 10 provision of the nondisclosure agreements?  
 11 **A. I did not.**  
 12 Let's change topics, and exclusivity.  
 13 And you recall that when TransCanada provided the  
 14 range, it also requested exclusivity.  
 15 What advice did you give the Columbia  
 16 board in connection with whether it should agree to  
 17 TransCanada's request for exclusivity?  
 18 **A. I encouraged them to allow us in**  
 19 **management to try and resist the request for**  
 20 **exclusivity. I don't -- I'm not a fan of exclusivity**  
 21 **in deals, in part because it creates a thread for**  
 22 **plaintiffs' lawyers to pull on after the deal, to**  
 23 **suggest that, somehow, opportunities were foreclosed.**  
 24 And so we requested and tried to get

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**J. Frumkin - Direct**

1 Goldman Sachs and Sullivan [ Cromwell, we have  
 2 developed a balanced approach ...." And the  
 3 recommended approach included coming up with a script  
 4 and then taking some other actions in connection with  
 5 that.  
 6 So what was the thought process behind  
 7 preparing the script and providing it to Spectra and  
 8 other potential –  
 9 **A. The thought process behind the script**  
 10 **was to basically get a communication to Spectra and**  
 11 **others that would indicate to them that, if they**  
 12 **wanted to make a proposal, they needed to do so in a**  
 13 **quick and substantive way.**  
 14 Q. And would a recipient of that script,  
 15 in your view, have understood that that's the message  
 16 that was being delivered?  
 17 **A. I believe so, yes.**  
 18 Q. In that script, it provides the term  
 19 "serious written proposals."  
 20 Do you see that?  
 21 **A. I do.**  
 22 Q. And did Sullivan & Cromwell work with  
 23 Bob Smith and the executives at Columbia to develop an  
 24 inbound response protocol in the event that there was

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## J. Frumkin - Direct

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1 an inbound?

2 **A. We did.**

3 Q. Now, let's go to JTX 1075. And

4 there's an email, subject line -- it's from Alison

5 Hayden to Bob Smith, you, and George Sampas. And it's

6 called "Inbound response protocol." And then attached

7 to that is the actual protocol, which starts on the

8 next page.

9 Did Sullivan provide Columbia

10 management with a protocol, advice regarding a

11 protocol, essentially, what steps should be taken in

12 the event that there is an inbound?

13 **A. Yes.**

14 Q. All right. And I would like to direct

15 your attention to the bottom half of the page, which

16 starts with a Scenario, scenario A. It says, "A third

17 party makes a written proposal or indication of

18 interest with respect to a transaction with Capricorn

19 to a representative of Capricorn ...."

20 Do you see that?

21 **A. I do.**

22 Q. Okay. Under the protocol, would

23 Sullivan & Cromwell and the other executives at -- and

24 the executives at Columbia have been advised in the

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J. Frumkin - Direct

1 context, to your understanding, vis-a-vis Columbia?

2 **A. I think it's -- it's intended to**

3 **convey something less than bona fide, so that, you**

4 **know, the board would make the judgment about bona**

5 **fide or not bona fide with advice. But I think,**

6 **really, any proposal that was other than derisory**

7 **would be brought to the board's attention to make a**

8 **decision about.**

9 Q. And so are you familiar with the

10 testimony through deposition of Mr. Smith that he gave

11 in the appraisal action deposition that "serious

12 written proposal," which is the phrase from the script

13 that we saw a moment ago, meant "a bona fide proposal

14 that says I will pay you X for your company, hard and

15 fast, no outs, no anything; you're going to pay

16 whatever you're going to pay per share, and we're

17 going to sign that agreement and we're done."

18 Do you agree with that statement of

19 Mr. Smith as to what is meant by "a serious proposal"

20 as set forth in the inbound response protocol?

21 **A. I do not.**

22 Q. Why not?

23 **A. It's wrong in virtually every respect.**

24 **I mean, that's not remotely what "a serious proposal"**

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J. Frumkin - Direct

1 event of an inbound?

2 **A. Yes.**

3 Q. Okay. I'm now turning down to item 4,

4 "Core Team." It's got two steps to assess the inbound

5 and the proposal. First is confirm whether it was not

6 solicited. In other words, whether it -- you know, in

7 fact, there was an outbound outreach that prompted it.

8 And the second one, "Is the proposal

9 bona fide?"

10 Now, what did you understand -- what

11 did the term "bona fide" mean in this connection?

12 **A. I think "bona fide" tracks the**

13 **language of the exclusivity agreement, the fiduciary**

14 **out in the exclusivity agreement. And what I think it**

15 **means is a proposal from a serious, credible person**

16 **that is serious enough to warrant the board's**

17 **attention.**

18 Q. Let's go to the next page of the

19 protocol, item 6, which is on the bottom half of the

20 second -- next page.

21 And it goes, "If proposal is serious,

22 Board to be convened to consider proposal and next

23 steps."

24 What does "serious" mean in this

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J. Frumkin - Cross

1 **means, or a bona fide proposal means.**

2 ATTORNEY MASSENGILL: Thank you,

3 Mr. Frumkin.

4 (Defense counsel briefly conferred.)

5 BY ATTORNEY MASSENGILL:

6 Q. Mr. Frumkin, under the protocol, would

7 Steve Smith have been in a position to unilaterally

8 block inbound being presented to the board of

9 directors?

10 **A. No.**

11 ATTORNEY MASSENGILL: All right. Mr.

12 Frumkin, I have no further questions. Thank you for

13 your time.

14 ATTORNEY VARALLO: Your Honor, while

15 we're switching, can we hand out the cross binder?

16 THE COURT: Please.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY VARALLO:

19 Q. Mr. Frumkin, when we worked together

20 many years ago, I never thought I'd have the

21 opportunity to have a conversation with you in this

22 context. I have to say, it's good to see you again.

23 Wish it could have been under other circumstances, but

24 welcome back to Delaware, sir.

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## J. Frumkin - Cross

J. Frumkin - Cross

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1 **A. Always good to be here.**  
 2 Q. I guess I want to begin with some  
 3 questions about the minutes. Your counsel had showed  
 4 you a series of executive session minutes that were  
 5 all lumped into one document.  
 6 Do you recall seeing that document?  
 7 **A. I do.**  
 8 Q. And is it fair for me to understand  
 9 that lawyers at your firm attended these various board  
 10 meetings, took minutes of the executive session, and  
 11 then, at some late point in the process, put them all  
 12 together in one document and tendered them to the  
 13 client?  
 14 **A. I don't recall what the process was**  
 15 **for preparing those minutes.**  
 16 ATTORNEY VARALLO: May I see their  
 17 binder? Thank you.  
 18 Q. Let's take a look, if we can, at the  
 19 binder that Mr. Massengill shared with you.  
 20 The very first exhibit in that binder  
 21 is JTX 191.  
 22 **A. Okay.**  
 23 Q. And I think there was some short  
 24 discussion of this.

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J. Frumkin - Cross

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1 **these were collected at the end and put into a single**  
 2 **document for some function of convenience. I don't**  
 3 **know the answer to that.**  
 4 Q. Have you seen these executive session  
 5 minutes as stand-alone documents?  
 6 **A. I don't recall.**  
 7 Q. Let's talk about the NDA for a couple  
 8 minutes. I think we established Sullivan & Cromwell  
 9 prepared it; right?  
 10 **A. Yes.**  
 11 Q. And it was prepared from a form that  
 12 you used or your colleagues used; is that correct?  
 13 **A. Yeah. We have a -- several, probably,**  
 14 **different forms. We aren't a very form-bound**  
 15 **institution. But, yes, it was undoubtedly prepared**  
 16 **from one or more forms that are used.**  
 17 Q. And I think you told me it was a  
 18 standard-ish form. That is to say, you would have  
 19 taken a form and marked it up for this particular  
 20 deal; right?  
 21 **A. Correct.**  
 22 Q. You discussed with the Court, in  
 23 response to questions from His Honor, your view of the  
 24 December outreach after the return-or-destroy letter

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J. Frumkin - Cross

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1 This is a document that your  
 2 colleagues prepared; correct?  
 3 **A. The executive committee minutes would**  
 4 **have been prepared by somebody at Sullivan & Cromwell,**  
 5 **and they would have been reviewed by me. I'm just not**  
 6 **sure, temporally, whether they were prepared**  
 7 **periodically through the process or at what point they**  
 8 **were prepared.**  
 9 Q. So this document appears to have  
 10 executive committee minutes from each and every  
 11 meeting during the process; right?  
 12 **A. I haven't gone through to confirm**  
 13 **that, but, yes, it has a lot of meetings during the**  
 14 **process.**  
 15 Q. You're aware of then-Vice Chancellor  
 16 Strine's *Netsmart* decision of some years ago, I take  
 17 it?  
 18 **A. I am.**  
 19 Q. You're aware that he decried the  
 20 practice of doing batch minutes?  
 21 **A. Yes.**  
 22 Q. Why did you do batch minutes here?  
 23 **A. I'm not sure that we did; or I don't**  
 24 **know whether we prepared batch minutes or whether**

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J. Frumkin - Cross

Page 708

1 comes out, and then the reengagement.  
 2 **A. Uh-huh.**  
 3 Q. And I think you said, in response to a  
 4 question from His Honor, that, well, others could have  
 5 done this, and others didn't reach out.  
 6 And by "others," I think you were  
 7 talking about the other individual companies that were  
 8 bound by the standstill; is that right?  
 9 **A. I don't recall saying that, but if you**  
 10 **say I did, I believe you.**  
 11 Q. Well, I may have misheard you. My  
 12 question is simply this: Is any part of the logic for  
 13 why you believe it was okay to reengage with  
 14 TransCanada under the standstill the fact that the  
 15 other three parties that were bound by the standstill  
 16 also had the same opportunity to reengage like  
 17 TransCanada reengaged?  
 18 **A. Yes. I agree that same logic would**  
 19 **apply, and they could have.**  
 20 Q. They could have, right.  
 21 So fair for me to understand that,  
 22 while you were at Sullivan & Cromwell and headed the  
 23 global M&A practice there, your M&A team prepared  
 24 memoranda that you sent out to clients from time to

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## J. Frumkin - Cross

J. Frumkin - Cross

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- 1 time?
- 2 **A. Yes.**
- 3 Q. I'd like you to open, in the book that
- 4 I have given you, to JX 6, if you would.
- 5 **A. The Ancestry memo?**
- 6 Q. Yes. The Ancestry memo. Yes, sir.
- 7 **A. Okay.**
- 8 Q. Now, just to be clear, this is a memo
- 9 that your group -- not you, but your group wrote, and
- 10 it went out over your name in addition to the names of
- 11 others in your department; correct?
- 12 **A. It -- the memo refers -- I don't think**
- 13 **it went out over my name, but it does refer people to**
- 14 **contact -- contact me and others with questions.**
- 15 Q. Your name appears on it; correct?
- 16 **A. Yes. Correct.**
- 17 Q. All right. Let's take a look, if we
- 18 can, at page 004, which is page 4 of the memo. And I
- 19 want to direct your attention to some advice you
- 20 gave -- your group gave to all of your clients in this
- 21 memo.
- 22 The very first sentence reads, and
- 23 this is talking about Ancestry.com, "The Chancellor
- 24 noted, some bidders are more likely to take the

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J. Frumkin - Cross

Page 711

- 1 Q. You've heard it said time and again,
- 2 haven't you, that Delaware views itself as a
- 3 contractarian state?
- 4 **A. I have.**
- 5 Q. And you understand that to mean that
- 6 the judges of this Court and of the Supreme Court do
- 7 their very best to give meaning to the language of a
- 8 contract as written?
- 9 **A. Yes.**
- 10 Q. And you understand, as well, that
- 11 there's no such thing as words in a contract that
- 12 don't have meaning; that we apply doctrines, for
- 13 example, to make sure that no words within a contract
- 14 are viewed as mere surplus in interpreting contracts?
- 15 **A. I think you're exceeding my current**
- 16 **knowledge of Delaware contract interpretation.**
- 17 Q. Let me ask you this. Let me ask it
- 18 this way: Fair for me to understand that, when you
- 19 wrote contracts as a lawyer, you were careful what you
- 20 put in those contracts because you understood that a
- 21 judge in Delaware might very well have to interpret
- 22 them, and if so, the judge would interpret the
- 23 language as written?
- 24 **A. Yes.**

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J. Frumkin - Cross

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- 1 prohibition against indirect approaches to a target
- 2 board more seriously than others and, if a target
- 3 chooses not to enforce the prohibition, "the
- 4 argument[] about how it creates value are silly,"
- 5 quoting the Chancellor.
- 6 So am I correct in understanding, sir,
- 7 that part of the problem at looking at whether others
- 8 acted as a *ratio decidendi* for your advice is that,
- 9 when others look at the standstill, they're going to
- 10 look at the plain language and make decisions about
- 11 the plain language and what they're bound to or not
- 12 bound to?
- 13 **A. I don't think that that's actually --**
- 14 **correctly reflects what market practice is in this**
- 15 **area, no.**
- 16 Q. You know, it's very interesting. You
- 17 talked a lot about context in your colloquy with the
- 18 Court. Are you familiar with something called the
- 19 objective theory of contracts?
- 20 **A. No.**
- 21 Q. Okay. You understand, don't you,
- 22 from -- how long did you practice as a lawyer?
- 23 **A. From 1985 to 2019, with nine months**
- 24 **off.**

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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- 1 Q. So I want to talk for a couple of
- 2 minutes about some language in here, in the
- 3 standstill. And I was going to talk to you about
- 4 "proposing," but I think His Honor has the point. I'm
- 5 not going to waste time on that, given the colloquy.
- 6 But I want to talk for a few minutes
- 7 about "seeking to acquire."
- 8 Fair for me to understand -- I mean,
- 9 it's not a matter of me understanding. The language
- 10 itself is -- one of the prohibitions in that
- 11 standstill is "seeking to acquire," correct?
- 12 **A. Correct.**
- 13 Q. Who do you understand "seeking to
- 14 acquire" to mean?
- 15 **A. Attempting to acquire.**
- 16 Q. And you understand, don't you, that
- 17 one of the jobs His Honor faces in any contract
- 18 interpretation case is to try to give meaning to each
- 19 of the terms in your contract; right?
- 20 **A. In -- in the context of all of the**
- 21 **terms in the contract, correct.**
- 22 Q. That's perfectly fair, Mr. Frumkin.
- 23 So, as you understand it, the phrase
- 24 "seeking to acquire" here should be interpreted as

CHANCERY COURT REPORTERS

## J. Frumkin - Cross

J. Frumkin - Cross

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1 attempting to acquire?

2 **A. Yeah.**

3 Q. That is helpful, and it saves us some

4 time, sir.

5 I think you said that, with respect to

6 the December 2015 outreach, or outreaches, you weren't

7 aware of those at the time. Is that true?

8 **A. I don't think so. I don't have a**

9 **recollection of that.**

10 Q. So you wouldn't have given advice, if

11 you don't recall being aware of that?

12 **A. If I did, I wouldn't recall, but yeah.**

13 Q. That's fair.

14 And am I correct that you didn't know

15 about the January 7 meeting between the principals?

16 Did you know about the January 7 meeting, yes or no, I

17 guess is the first question.

18 **A. After the fact, I learned of the**

19 **meeting. But I don't believe I knew of it before the**

20 **fact.**

21 Q. And so fair for me to understand, no

22 one would have asked you, and you wouldn't have given

23 advice of whether that meeting should go forward;

24 correct?

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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1 Q. I absolutely agree that it was part of

2 it, and I don't want to retread that ground.

3 My question was, very simply, there's

4 no exception in the standstill you can point to that

5 says it's okay to reengage once there's been a

6 "pencils down" letter; correct?

7 **A. Correct. There's no such provision.**

8 Q. And on the subject of the January 7

9 meeting, fair for me to understand you knew nothing

10 about Mr. Smith giving his prepared talking points to

11 Mr. Poirier?

12 **A. If I was told that at the time, I**

13 **don't recall it.**

14 Q. Likewise, you didn't know at the time

15 that Smith told Poirier that Columbia had eliminated

16 the competition; correct?

17 **A. Correct.**

18 Q. So I want to talk about the January 25

19 communication between Girling and Skaggs for a moment

20 or two.

21 Correct that you held the view that it

22 was acceptable for TransCanada to make indications of

23 interest to Columbia?

24 **A. Yes.**

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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1 **A. Correct.**

2 Q. But in hindsight, your view was the

3 January 7 meeting wasn't a violation of the

4 standstill; is that right?

5 **A. Correct.**

6 Q. And that's because you can imply

7 consent from Columbia because it was a mutually agreed

8 meeting and, more broadly, because you believed that

9 parties to a don't ask, don't waive standstill can ask

10 if the counterparty wants to continue discussions,

11 without violating the standstill; correct?

12 **A. Correct.**

13 Q. But that's not in the language of the

14 standstill; right? That's your interpretation of the

15 language; fair to say?

16 **A. Well, I don't believe that, in**

17 **January, they were asking to waive any provision of**

18 **the agreement. I believe, in January, they were**

19 **asking whether Columbia wished to resume negotiations.**

20 **Columbia responded in the affirmative.**

21 **And I don't believe that violates the**

22 **terms of the standstill agreement, as that was part of**

23 **the colloquy with the judge, the different -- T. Boone**

24 **Pickens.**

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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1 Q. And you didn't believe that when

2 Girling gave a range of 25 to \$28 a share to Skaggs on

3 January 25, 2016, that that would have violated the

4 standstill; right?

5 **A. Correct.**

6 Q. And part of your thinking about why

7 giving a range of prices doesn't trigger the

8 standstill is that it wouldn't require disclosure from

9 Columbia; correct?

10 **A. Or otherwise harm Columbia's interest,**

11 **correct.**

12 Q. Right. But there's nothing in the

13 language of the standstill that says this is only

14 violated if it harms the interest of Columbia;

15 correct?

16 **A. Correct.**

17 Q. Another part of your reasoning on this

18 particular point is your view that no provision in the

19 standstill limited a party's ability to make a

20 nondisclosable, friendly overture to Columbia about

21 their willingness to enter into a possible negotiated

22 transaction; right?

23 **A. Correct.**

24 Q. Fair to say that you don't recall

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## J. Frumkin - Cross

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1 whether you provided that advice to your client?

2 **A. I don't recall providing that advice**

3 **to the client, correct.**

4 Q. Also fair to understand there's

5 nothing in the standstill carving out approaches that

6 don't require disclosure?

7 **A. Correct.**

8 Q. It's also true, isn't it, that there's

9 nothing in the standstill that deals with friendly, as

10 opposed to unfriendly, overtures; right?

11 **A. No. Not explicitly, no.**

12 Q. And just so we've got it, again, this

13 was your firm's document. You could have tailored it

14 in any way, when you took the standard-ish form

15 document and marked it up, to address any of these

16 points; right?

17 **A. Yes.**

18 Q. But, sir, when TransCanada reached out

19 to Columbia to request that Columbia confirm that the

20 principals discussing a range of prices on January 25

21 wouldn't violate the standstill, your client,

22 Mr. Smith, told you that he intended to acknowledge,

23 "that an offer" is not in contravention of the

24 standstill.

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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1 Q. Did you think about it before you

2 wrote, "Agree"?

3 **A. Yeah. I'm sure I did.**

4 Q. All right. You're going to have to

5 help me here. "[A]n offer is not in contravention of

6 the standstill ...." Jeez, Mr. Frumkin. I thought an

7 offer is at the very heart of the standstill. What

8 are you talking about?

9 **A. Because it's an offer in this context,**

10 **which is what his email ended up saying --**

11 Q. It doesn't say an offer in this

12 context, sir.

13 THE COURT: Let him finish.

14 ATTORNEY VARALLO: I apologize, Your

15 Honor. And Mr. Frumkin.

16 **A. It doesn't need to, because there's**

17 **obviously a context to the email, a context to the**

18 **situation, and that's incorporated into the -- into**

19 **the response.**

20 Q. Aren't we also squarely into the

21 don't ask, don't waive area here?

22 **A. Again, if you interpret the don't ask,**

23 **don't waive that way, it would be very difficult for**

24 **anybody to, you know, ever reach out to a company and**

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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1 Do you recall that?

2 **A. In this context, correct.**

3 Q. In that context, that's right.

4 And let's open, in fairness to you, to

5 Exhibit 620, Joint Exhibit 620, and take a look at

6 that.

7 So focusing on the second email from

8 the top, you'll see on the screen -- and we'll blow it

9 up so it's easier to read.

10 **A. Thank you.**

11 Q. Is that helpful to you?

12 **A. That's very helpful.**

13 Q. Good.

14 So Bob Smith writes to you. He says,

15 "Will call Chris back shortly acknowledging that an

16 offer is not in contravention with the standstill

17 agreement."

18 "An offer is not in contravention."

19 Now, when you respond to that, you say

20 one word: "Agree." Right?

21 **A. Yes.**

22 Q. Were you busy that day?

23 **A. I believe this was sent two minutes**

24 **after I received it, but, yes.**

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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1 **make a proposal, which is not the purpose of the**

2 **standstill. It's intended to limit a very narrow**

3 **scope of proposals that are damaging to the company or**

4 **its process.**

5 Q. Only intended to limit damaging

6 proposals?

7 **A. Yeah. If there's a proposal that does**

8 **no harm ...**

9 Q. I thought you said earlier that you

10 used it -- I think, in response to one of

11 Mr. Massengill's early questions, you told the Court

12 about how you used the don't ask, don't waive

13 provisions very helpfully in connection with

14 conducting an auction; right?

15 **A. Yes.**

16 Q. It was just recently, as a matter of

17 fact. I think you said you got additional

18 consideration out of it; right?

19 **A. Yeah, because there -- we did. It**

20 **wasn't recently. It was prior to the Columbia deal.**

21 Q. So that wasn't a circumstance where

22 there was harm threatened. That was a circumstance

23 where you were using this provision to generate a

24 better deal; right?

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## J. Frumkin - Cross

J. Frumkin - Cross

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1 **A. And there was a constant stream of**  
2 **proposals and counterproposals and new proposals being**  
3 **made by the bidders.**

4 Q. So I'm interested in this idea that  
5 you think that the purpose is only to avoid harm.

6 There are other purposes to a  
7 standstill; right?

8 **A. Such as?**

9 Q. Well, I would have thought that a  
10 standstill would be useful in running an auction, for  
11 example.

12 **A. Only because it prevents harmful**  
13 **circumventions of the auction process, but, yes, it is**  
14 **useful in an auction.**

15 Q. And I would have thought a standstill  
16 would be helpful to a board in the board's discharge  
17 of its duty to get the best transaction reasonably  
18 available, if used correctly with proper advice.

19 Would you agree with that?

20 **A. Yes.**

21 Q. So it could have both positive  
22 purposes in addition to having a purpose of helping  
23 avoid harm; correct? Would you agree with me?

24 **A. It's two sides of the same coin, I**

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J. Frumkin - Cross

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1 sought your advice on, but that's what he says, to be  
2 fair to you.

3 And do you recall that Ms. Johnston  
4 responded to this email that you had agreed to that  
5 Mr. Smith then sent?

6 ATTORNEY VARALLO: And let's scroll  
7 up.

8 Q. Did Mr. Smith share with you  
9 Ms. Johnston's response?

10 **A. Yes.**

11 Q. And I think you responded, when he  
12 sent it to you, that she may be right at least in the  
13 formal context; right?

14 **A. Something along those lines.**

15 Q. So let me see if I get this right.

16 Ms. Johnston reaches out because the principals are  
17 going to exchange a range -- she thinks the principals  
18 are going to exchange a range.

19 Your client comes to you and says,  
20 well, I'm about to tell her that an offer won't  
21 violate the standstill. You say, "Agree."

22 He sends, fundamentally, that email.

23 And Johnston comes back and says, whoa, wait a minute.

24 It looks like the language of the standstill will

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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1 **think.**

2 Q. Just looking at different ends of the  
3 same telescope, Mr. Frumkin; is that right?

4 **A. Maybe.**

5 Q. And just focusing on your agreement  
6 here, nothing in the standstill carves out an offer  
7 proposing to purchase securities; right?

8 **A. I don't think that what they presented**  
9 **in January was, in fact, an offer.**

10 Q. I understand your point in that  
11 regard. I'm focusing for a second on Mr. Robert  
12 Smith's proposed response that you agreed to.

13 Focusing on that for a moment, you  
14 aren't relying on something in the standstill that I  
15 haven't read or don't know about; right?

16 **A. No.**

17 Q. So Mr. Smith then sends an email to  
18 TransCanada after getting your advice "Agree." And in  
19 that email -- and let's look at that. That looks like  
20 JTX 621. We'll bring that up.

21 And here's where he says "in context."

22 You wanted to talk about context. Here's where he  
23 says the "receipt of an offer to purchase our  
24 securities in this context ...." That's not what he

CHANCERY COURT REPORTERS

J. Frumkin - Cross

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1 require more.

2 Do I have it right so far?

3 **A. Yes.**

4 Q. So let's go to your analysis. So  
5 let's scroll up here to the very top.

6 And you respond, "I think a formal  
7 proposal they are right, but what we're doing now is  
8 fine."

9 So when you write "a formal proposal  
10 they are right," are you suggesting that it was okay  
11 to make an informal offer to purchase the securities  
12 of your client, and that that would be consistent with  
13 the standstill?

14 **A. I think that it was acceptable for**  
15 **them to provide the indication of interest, which is**  
16 **what they provided. And that was consistent with the**  
17 **standstill. That was my belief at the time and,**  
18 **actually, is still my belief today.**

19 Q. And I'm focusing on the language, "I  
20 think a formal proposal they are right ...."

21 Does that suggest that, for an  
22 informal proposal, she's wrong?

23 **A. That -- that there is a -- that for a**  
24 **formal proposal, they would need to do it -- yes. For**

CHANCERY COURT REPORTERS

## J. Frumkin - Cross

J. Frumkin - Cross

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- 1 **an informal proposal, or for what they just did, I**  
 2 **thought she was wrong.**  
 3 Q. Okay. So your view was that an  
 4 informal proposal to purchase securities, an informal  
 5 offer to purchase securities could, in fact, be made  
 6 consistent with the standstill language?  
 7 **A. Yes.**  
 8 Q. Where do you come up with that, sir?  
 9 **A. Again, that's reading into the**  
 10 **context, the practice, the history of the provision.**  
 11 Q. But it's directly contrary to the  
 12 language of the actual provision; correct?  
 13 **A. I'm not sure it is directly contrary**  
 14 **to the language. That will be decided. But it is --**  
 15 **was definitely my view at the time.**  
 16 Q. All right, sir. The language of the  
 17 provision says you can't do this; right? I mean --  
 18 **A. Uh-huh.**  
 19 Q. -- it's phrased as a negative, yes?  
 20 **A. Yes.**  
 21 Q. And there's nothing in it that says,  
 22 except that if it's informal, you can do it; right?  
 23 **A. Correct.**  
 24 Q. All right. By the way, at the point

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J. Frumkin - Cross

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- 1 You were chairman of this group;  
 2 right?  
 3 **A. Managing partner, but, yes.**  
 4 Q. Managing partner, grand poobah, czar,  
 5 whatever. You were the head of the group. You were  
 6 the person who made the ultimate decisions for which  
 7 this group was responsible; correct?  
 8 **A. Well, as somebody with law firm**  
 9 **experience, you know how limited the authority of any**  
 10 **partner is in a law firm.**  
 11 Q. I have to admit I do, and certainly  
 12 His Honor --  
 13 **A. And especially having run the -- you**  
 14 **know very well.**  
 15 Q. His Honor will know that as well.  
 16 It's been described as herding cats. And I suspect  
 17 that when you ran your department, you were herding  
 18 some cats as well, fair to say?  
 19 **A. Indeed.**  
 20 Q. But it was your name at the apex of  
 21 the organization, at least this part of the  
 22 organization; right?  
 23 **A. Yes.**  
 24 Q. It was your reputation as head of the

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- 1 you gave that advice, you knew, didn't you, that the  
 2 Court of Chancery had rejected the argument that there  
 3 was any difference between a prohibition on a private  
 4 request versus a public request to approach a target  
 5 board and concluded that there's no such thing as a  
 6 public/private distinction?  
 7 You knew that; right?  
 8 **A. I'm not sure what you're referring to.**  
 9 Q. Well, let's look at JX 6, your  
 10 *Complete Genomics* memo.  
 11 **A. Hold it.**  
 12 Q. JX 6.  
 13 **A. Isn't that *Ancestry*?**  
 14 Q. I'm sorry. Let's take a look at  
 15 page 4 of this if we can. 004.  
 16 My friend is highlighting here.  
 17 You will see, on page 4 of this memo,  
 18 a description -- by the way, your name is on this  
 19 memo; right? No doubt about that; correct?  
 20 **A. It depends on what you mean by "on**  
 21 **this memo." My name is included in the memo as a**  
 22 **person to contact with questions. It's not on it in**  
 23 **the sense that I wrote it or was an author of it.**  
 24 Q. Well, let's pause there for a moment.

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J. Frumkin - Cross

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- 1 group that you prized; correct?  
 2 **A. Yes.**  
 3 Q. And I believe you told me during  
 4 deposition that you had a chance, from time to time,  
 5 to review some of these memos; correct?  
 6 **A. I did.**  
 7 Q. And you don't know whether you  
 8 reviewed this particular memo. You were a busy man.  
 9 You were doing a lot of things. But certainly, to the  
 10 extent that things were going out from your department  
 11 to your clients, you had an interest in making sure  
 12 that the advice was fundamentally correct; is that  
 13 fair to say?  
 14 **A. Yes.**  
 15 Q. And, sir, just so I understand it,  
 16 your mailing list was pretty large for these memos;  
 17 correct?  
 18 **A. Yeah. It was in the many hundreds or**  
 19 **low thousands, yeah.**  
 20 Q. And am I correct in understanding that  
 21 the individuals or the organizations on that mailing  
 22 list were either your current clients -- and I mean --  
 23 I don't mean your personal current clients --  
 24 **A. The firm's.**

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## J. Frumkin - Cross

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1 Q. -- but the clients of the firm that  
2 had an interest in Delaware law and M&A activity;  
3 correct?  
4 **A. Correct.**  
5 Q. And, in fact, these memos were  
6 published online; isn't that also true?  
7 **A. Yes.**  
8 Q. So they could be viewed not only by  
9 the clients you directly sent them to, but also by  
10 anybody interested in what Sullivan & Cromwell, and  
11 Joe Frumkin in particular, were thinking about on any  
12 particular issue; fair to say?  
13 **A. Yes.**  
14 Q. So this memo that you sent to your  
15 clients with your name on it says, "During oral  
16 argument" -- and this is describing the particular  
17 case.  
18 "During oral argument, the Court also  
19 gave short shrift to the notion that there is any  
20 difference between a prohibition on a private request  
21 versus a public request for [] an opportunity to  
22 approach ...." And it quotes the Vice Chancellor as  
23 "[t]here is no such thing as [a] public/private'  
24 distinction ...." That's advice that your group gave

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J. Frumkin - Cross

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1 Q. And just to be clear, when you were  
2 marking up your form, you could have included  
3 distinctions like public/private; right?  
4 **A. Right.**  
5 Q. Now, this particular standstill  
6 required written board approval or authority to waive  
7 it; right?  
8 **A. Yes.**  
9 Q. And is it correct that you don't know  
10 why that term was included in the contract?  
11 **A. No. I mean, that's not an unusual  
12 provision. You would always have that in a -- in a  
13 transaction that involved a going-private transaction,  
14 because you obviously want the board to retain control  
15 over the confidentiality and standstill in a situation  
16 where management might be on the other side of the  
17 deal.**  
18 And it's not at all unusual to have in  
19 even non -- in transactions where you're not expected  
20 to have a going-private, especially where the board is  
21 as engaged and active as it was in this transaction.  
22 Q. All right, sir. Do you remember  
23 giving a deposition in the matter?  
24 **A. In this matter?**

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J. Frumkin - Cross

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1 to all your clients at the time you were in charge of  
2 this group; right?  
3 **A. Well, in the context of this decision,  
4 the Vice Chancellor was 100 percent correct. This all  
5 related to conduct after the time the deal was signed  
6 up and when there was a proxy pending. And in that  
7 context, a private approach would effectively result  
8 in public disclosure.**  
9 There's a big difference with all of  
10 these things, whether it's a confidentiality agreement  
11 or a don't ask, don't waive or a standstill --  
12 actually, not true for a confidentiality agreement,  
13 but between a deal that's been signed up and prior to  
14 the time a deal is signed up.  
15 Q. All right.  
16 **A. But I believe -- I believe the Vice  
17 Chancellor was -- the public/private distinction, this  
18 is a completely correct statement in the context of  
19 the deal that's been signed up.**  
20 Q. I will take that as a completely  
21 correct statement in the context of your earlier  
22 answer that there's no such distinction in your  
23 agreement. Fair to say?  
24 **A. Yes. Not that I recall.**

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J. Frumkin - Cross

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1 Q. In this matter.  
2 **A. Yes.**  
3 Q. And you took an oath to tell the  
4 truth; correct?  
5 **A. Yes.**  
6 Q. And you did your very best to tell the  
7 truth; is that right?  
8 **A. Yes. Absolutely.**  
9 Q. And you didn't answer a question  
10 unless you understood it; fair to say?  
11 **A. I tried, yes.**  
12 Q. And you had an opportunity to review  
13 and make corrections, and you didn't do so; right?  
14 **A. Actually, I didn't have an opportunity  
15 to review and make corrections.**  
16 Q. Oh.  
17 **A. But -- I read it and --**  
18 Q. You should take that up with counsel.  
19 **A. -- there were little mistakes. There  
20 weren't big mistakes.**  
21 ATTORNEY VARALLO: Counsel, I'm going  
22 to play from page 125, lines 3 through 17.  
23 (A video clip was played as follows:)  
24 Question: Why is the standstill

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## J. Frumkin - Cross

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- 1 provision designed in those circumstances to require  
2 written board authorization?  
3 Answer: I don't actually know. I  
4 don't think it needs to. I think it could have been,  
5 you know, just a request from the company. And so I  
6 don't know why it was drafted that way.  
7 It didn't need to be, right? You  
8 could – it could have been drafted, and, in fact,  
9 it's awkward to require, make the board go and do this  
10 sort of extra step, which we did do in this case.  
11 But – and it wasn't a problem because the board was  
12 meeting so frequently.  
13 But I don't know the answer to that  
14 question, and it's a good question.  
15 (End of video clip.)  
16 BY ATTORNEY VARALLO:  
17 Q. Did Mr. Massengill ask you that  
18 question and did you give that answer at your  
19 deposition, sir?  
20 A. I did.  
21 Q. I want to switch topics. I want to  
22 talk about don't ask, don't waive for a couple of  
23 moments.  
24 A. And just for the record, since you

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- 1 they have significance in the period after a merger  
2 agreement is signed.  
3 Q. Got it. You don't believe  
4 practitioners view the don't ask, don't waive  
5 provision as limiting friendly, informal approaches  
6 expressing their willingness to resume discussions;  
7 right?  
8 A. Correct.  
9 Q. And I think we had seen earlier, your  
10 firm had published – well, let me ask it this way:  
11 We had seen one memo your firm published. In fact, it  
12 published several memos which touch on don't ask,  
13 don't waive provisions; right?  
14 A. Yes.  
15 Q. Take a quick look, if you would, at  
16 JX 3, 6, and 7. And just tell me if those are all  
17 memos your firm put out.  
18 A. Ancestry, Genomics, yes. What's the  
19 third?  
20 Q. JX 3, JX 6, and JX 7.  
21 A. Sorry. I'm having trouble finding  
22 them in this binder.  
23 Q. I apologize.  
24 A. Oh, and NetSpend. Yes. Those are all

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J. Frumkin - Cross

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- 1 raised a matter of inconsistency, I don't think my  
2 answer today was inconsistent with that answer.  
3 Q. It's up to the Court to decide.  
4 A. Fair enough.  
5 Q. Let's continue.  
6 You believe, don't you, that don't  
7 ask, don't waive provisions have assumed some sort of  
8 fetishistic significance in this Court because, in  
9 your view, they're just not a big deal in the real  
10 world?  
11 A. Yes.  
12 Q. And you think that don't ask, don't  
13 waive provisions have some significance, but that that  
14 significance is largely that the Delaware Court of  
15 Chancery ascribes to them, or focuses on them in its  
16 decisions; right?  
17 A. Yes.  
18 Q. And you think that the important thing  
19 about a don't ask, don't waive is that the Court has  
20 exhibited interest in it; but as a practical process  
21 matter, you don't think such provisions really make  
22 much of a difference; correct?  
23 A. That's correct as it applies to the  
24 period before signing a merger agreement. I do think

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J. Frumkin - Cross

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- 1 in the form of our memos.  
2 Q. Okay. Thank you.  
3 So let's go back to JTX 3, the  
4 Complete Genomics letter. And I want to focus on the  
5 takeaway section. Turning to the takeaway section in  
6 the client memo, one of them is that "don't ask,  
7 don't waive' provisions [may] impermissibly [restrict]  
8 the flow of information to a Board that[s] charged  
9 with evaluating competing offers and making []  
10 recommendations to [its] stockholders ...."  
11 Correct?  
12 A. Yes.  
13 Q. But you disagree with that statement  
14 in your firm's memo because you don't believe don't  
15 ask, don't waive provisions prevent the flow of  
16 information to the board to any significant extent;  
17 right?  
18 A. Prior to signing a merger agreement,  
19 that's correct.  
20 Q. So let's look at JTX 6.005, if we can.  
21 This is another of your don't ask,  
22 don't waive client memos. And it includes, as its  
23 very first client takeaway, that "sell-side  
24 practitioners will need to counsel boards during the

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## J. Frumkin - Cross

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1 auction process as to the import of 'don't ask, don't	
2 waive' provisions." Correct?	
3 <b>A. Correct.</b>	
4 Q. And you repeated the same advice in	
5 your <i>NetSpend</i> memo at JTX 7.	
6 And I'll ask my colleague to pull up	
7 .007. It's under "Implications."	
8 Do you see that?	
9 <b>A. Yes, I see it.</b>	
10 Q. All right. But your personal view --	
11 notwithstanding these memos having gone out to clients	
12 to give them that advice, your personal view is that	
13 this is not important to do because it can't be	
14 important to explain to a board something that doesn't	
15 have practical significance.	
16 That's your personal view; right?	
17 <b>A. With respect to the period prior to --</b>	
18 Q. Signing.	
19 <b>A. -- signing, correct.</b>	
20 Q. All right. And while you were in	
21 practice, these memos went out from your department	
22 when you were head of the department; right?	
23 <b>A. Yeah. Yes.</b>	
24 Q. I didn't see any Frumkin dissents to	
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1 any of these. Were there any Frumkin dissents	
2 published?	
3 <b>A. No. Although, again, the sentences</b>	
4 <b>that you've pointed me to are sentences that I</b>	
5 <b>generally can agree with.</b>	
6 <b>So looking at the one that's up on the</b>	
7 <b>screen now, you do have to counsel boards regarding</b>	
8 <b>the import of the provisions at the point at which</b>	
9 <b>they have some import, which is why the Columbia board</b>	
10 <b>discussed them considerably around the time of the</b>	
11 <b>TransCanada transaction and discussed waiving them and</b>	
12 <b>how we were going to waive them and the like.</b>	
13 Q. Really? So the Columbia board	
14 considerably discussed don't ask, don't waive	
15 provisions?	
16 <b>A. They considerably discussed waiving</b>	
17 <b>the standstill provisions for the other bidders, yes.</b>	
18 Q. How about the don't ask, don't waive	
19 provisions? Did they considerably discuss those?	
20 <b>A. I don't recall specifically.</b>	
21 Q. Do you know who Sig Cornelius is?	
22 <b>A. Yes, yeah.</b>	
23 Q. Who was he at the time of this deal?	
24 <b>A. He was the lead independent director</b>	
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1 <b>from Columbia.</b>	
2 Q. I want to play you a clip from his	
3 deposition testimony.	
4 ATTORNEY VARALLO: And, Counsel, it's	
5 page 45, line 5, through page 46, line 5.	
6 Q. And I'll have a question or two about	
7 this.	
8 (A video clip was played as follows:)	
9 Question: Do you have any specific	
10 recollection, sitting here today, of Sullivan &	
11 Cromwell or Mr. Bob Smith telling you that, because of	
12 the potency of a don't ask, don't waive provision in	
13 Columbia's standstill, Columbia would need to	
14 establish a clear record that it consciously and	
15 carefully employed the provision to maximize	
16 Columbia's sales price?	
17 Do you have a specific recollection of	
18 that?	
19 Attorney Kirby: Objection.	
20 Answer: I've never heard the term	
21 "don't ask, don't waive" before this -- this call	
22 here.	
23 Question: Okay. Now, I want you to	
24 look at the second bullet point and listen to my	
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1 question.	
2 Do you have any specific recollection,	
3 sitting here today, sir, of Sullivan & Cromwell or Bob	
4 Smith explaining to you that the don't ask, don't	
5 waive standstill provision in the Columbia NDA is a	
6 material fact to stockholders that should be publicly	
7 disclosed?	
8 Answer: Again, I've never heard the	
9 term "don't ask, don't waive provision" until -- until	
10 this call.	
11 Unidentified Speaker: Sorry, until	
12 what? Until this -- you said -- the end of your	
13 answer was "until this" what?	
14 Answer: Until this call, this	
15 deposition.	
16 Unidentified Speaker: Okay. Got it.	
17 Answer: I call it a call.	
18 (End of video clip.)	
19 BY ATTORNEY VARALLO:	
20 Q. Sir, any reason to dispute	
21 Mr. Cornelius's testimony that, as of the date of his	
22 deposition in this case, he had never heard of a don't	
23 ask, don't waive provision?	
24 <b>A. I am pretty sure he had heard of it.</b>	
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## J. Frumkin - Cross

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1 **So I would dispute his -- his testimony. I'm sure he**  
 2 **didn't recall it at the time of his deposition, but**  
 3 **I'm equally sure that he heard it.**

4 Q. And why are you sure that he heard it,  
 5 sir?

6 **A. Because we did actually spend time**  
 7 **discussing the waiver of the standstill and the don't**  
 8 **ask, don't waive provisions with the board. And he**  
 9 **was a very active participant in those discussions.**

10 Q. And he just totally forgot it?

11 **A. Yeah.**

12 Q. All right. Is it true, sir, that you  
 13 advised your client that the law required the don't  
 14 ask, don't waive standstill to be carefully  
 15 implemented and disclosed prior to the shareholder  
 16 vote?

17 **A. I don't have any knowledge of that,**  
 18 **no.**

19 Q. We saw earlier, on Mr. Massengill's  
 20 examination, a fiduciary memo that he said was  
 21 presented to the board.

22 Do you recall seeing that?

23 **A. Yes.**

24 Q. I searched for any, any, any trace of

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J. Frumkin - Cross

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1 So I want to ask a question about  
 2 process. You know, sir, boards are -- boards of large  
 3 industrial companies, they have pretty full agendas  
 4 when they have meetings; right?

5 **A. Uh-huh.**

6 Q. Is there any reason you can think of  
 7 why you would have presented precisely the same memo  
 8 to a January meeting and then again verbatim identical  
 9 memo to a March meeting?

10 **A. Sure. I mean, it's intended as a**  
 11 **refresher and for their convenience to have it. I can**  
 12 **imagine it, yeah.**

13 Q. You can imagine it. How often have  
 14 you done that with boards of this size and scope?

15 **A. I don't know.**

16 Q. Can you remember ever doing it,  
 17 Mr. Frumkin? I mean, this is a busy board. You  
 18 really going to give them a detailed memo like this  
 19 twice and read them through it twice?

20 **A. I don't think there would be anything**  
 21 **untoward about providing them with a memo at an early**  
 22 **point in the process and then at the end of the**  
 23 **process, as a reminder, as they go into the meeting at**  
 24 **which they're going to make the final decision,**

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1 that memo going to the board as part of a board  
 2 package for the January minutes, and I didn't find it.  
 3 But what I did find was it going to the board under a  
 4 different date, otherwise verbatim identical, in  
 5 connection with a March 16 meeting.

6 And I don't think it's in your book,  
 7 but I'll ask my friend to please pull up JTX 1107, and  
 8 let's spend a moment with that, if we can.

9 So you'll see JTX 1107 is a board  
 10 meeting agenda for a March 16, 2016, Columbia board  
 11 meeting. And you'll see the second numbered item on  
 12 the agenda is "Board Fiduciary Duties." Right?

13 **A. Yes.**

14 Q. And the assignment is for Mr. Robert  
 15 Smith, the general counsel, and for S&C to make the  
 16 presentation; right?

17 **A. Yes.**

18 Q. So if you then flip over to the very  
 19 next page, I guess it's 1107.003, you'll find your  
 20 memo.

21 And I'll represent to you that we  
 22 looked very carefully, and this is verbatim identical  
 23 to the memo that Mr. Massengill showed you, with the  
 24 exception that the date is now put on it as March 15.

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J. Frumkin - Cross

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1 **what -- what lens they should be thinking about. No,**  
 2 **that doesn't strike me as inappropriate or odd.**

3 Q. I'm neither suggesting it's  
 4 inappropriate nor untoward. I'm suggesting that --  
 5 I'm asking the question. Do you remember ever doing  
 6 that, giving the board the identical memo twice? And  
 7 I'm talking about a substantial board, like this  
 8 board.

9 **A. I can't remember, but that's as much a**  
 10 **function of my memory as anything else. It would not**  
 11 **surprise me if it -- if it happened other times.**

12 Q. You know, the Amish say, "We get too  
 13 old too soon and too smart too late." But I find  
 14 that, from time to time, I share that inability to  
 15 remember things I perhaps should.

16 Let me ask you a more direct question.  
 17 Do you recall standing up in front of the TransCanada  
 18 board twice and presenting this same memo twice? I  
 19 said TransCanada. I meant Columbia. I apologize.

20 ATTORNEY VARALLO: Thank you, Counsel.

21 **A. I don't think I would have presented**  
 22 **this memo in that way in any event. It isn't the kind**  
 23 **of thing I would have walked them through. I would**  
 24 **have delivered the fiduciary duty advice and**

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## J. Frumkin - Cross

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1 highlighted the things that were important at that  
2 moment in time for them to focus on, process or -- you  
3 saw the outline of the topics covered at the January  
4 meeting. And that would have actually been what I  
5 would have used to talk from, as opposed to this memo.  
6 This was intended as a takeaway for those who were  
7 inclined, and I don't know how many of them would have  
8 been inclined. But it's intended to be written in a  
9 reasonably -- as user friendly a way as I was able to  
10 write it.

11 Q. So just so I'm clear, no recollection  
12 of giving it to them twice?

13 A. No.

14 Q. Okay. Let's scroll to page 012 of  
15 this particular memo, the last page of the memo, in  
16 the footnotes.

17 And they told me that I should read  
18 the footnotes. And I usually don't, but I actually  
19 did read your footnotes here.

20 And I want to focus on footnote 63,  
21 where your team -- and by the way, just for clarity,  
22 this memo goes out over your name; right?

23 A. We debated the over my name point  
24 already.

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J. Frumkin - Cross

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1 Q. And I want to focus on this for a  
2 second. It indicates that in *Ancestry.com*, the Court  
3 of Chancery ruled that "don't ask, don't waive  
4 standstills" -- and I'm skipping -- "must be carefully  
5 implemented and disclosed prior to the stockholder's  
6 vote."

7 You understood that, that was part of  
8 *Ancestry*, that was part of your memo; correct?

9 A. Yes. And, again, in *Ancestry*, that  
10 was a case dealing with don't ask, don't waives that  
11 were in effect after the merger agreement was signed.

12 Q. In fact, the don't ask, don't waives  
13 weren't disclosed here; correct?

14 A. That's my understanding.

15 Q. By the way, we had some testimony in  
16 this case about a February meeting in New Albany, New  
17 York, between banker Fornell, Eric Fornell, and your  
18 clients, Skaggs and Smith.

19 Did you know anything about that  
20 meeting?

21 A. I don't recall that I did, no.

22 Q. That might be one of the reasons it's  
23 not in the background of the merger; right?

24 A. That might be one of the reasons, yes.

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J. Frumkin - Cross

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1 Q. Okay. Let me be more clear.

2 Whether or not you wrote this memo,  
3 whether or not you reviewed this memo, whether or not  
4 you thought about this memo --

5 A. I think I taught this memo in my  
6 class, if that helps, but --

7 Q. Fabulous. Yours is the first name on  
8 the memo; correct?

9 ATTORNEY VARALLO: Page 003, read  
10 quickly, please, Joe.

11 A. Yes. Okay. Oh, I'm sorry. This  
12 isn't the memo I thought it was. I didn't teach this  
13 in my class.

14 Q. I'm sorry?

15 A. I didn't teach this in my class. I  
16 thought we were on the *Ancestry* memo.

17 Q. We'll get to that in a moment.

18 A. Okay.

19 Q. This particular memo has your name  
20 first because you were *primo inter pares*; right?

21 A. Yes.

22 ATTORNEY VARALLO: All right. Let's  
23 go to footnote 63, please, Joe, on the last page of  
24 the memo, which is 012.

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J. Frumkin - Cross

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1 Q. I want to talk about exclusivity  
2 agreement for a moment or two.

3 I'm correct, aren't I, that you  
4 personally thought that TransCanada's request for  
5 exclusivity was a really bad idea and you tried to  
6 talk them out of it; is that fair?

7 A. Yes. That's correct.

8 Q. And you thought it was a bad idea. I  
9 think you said this today, in your direct  
10 testimony: because it creates very little value and  
11 "gives plaintiffs' lawyers a thread to pull on ...."  
12 That's what you said today?

13 A. Yes. Or something like that.

14 Q. And I think it's your view, and tell  
15 me if I'm wrong, that part of what you do as a deal  
16 lawyer is try to keep those threads that plaintiffs'  
17 lawyers might pull on down to a minimum?

18 A. Yes.

19 Q. Because you prefer not to sit in the  
20 Court of Chancery and give testimony about deals and  
21 be examined by big, old plaintiffs' lawyers like  
22 myself; is that right, Mr. Frumkin?

23 A. Or the Vice Chancellor.

24 Q. Or the Vice Chancellor indeed.

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## J. Frumkin - Cross

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- 1 Indeed, you think that TransCanada's  
2 demand to have written exclusivity is part of the  
3 reason we're here today; true?  
4 **A. Yeah. I think it was -- it added a**  
5 **thread.**  
6 **Q.** And you thought, in the context of  
7 this deal, it was best to create as few of those  
8 threads as possible; right?  
9 **A. In the context of any deal.**  
10 **Q.** Fair to say.  
11 And you proposed -- what you proposed  
12 was that the parties agree informally to exclusivity  
13 to try to avoid those threads; right?  
14 **A. Right.**  
15 **Q.** You were proposing a form of  
16 gentlemen's agreement; right?  
17 **A. Yes.**  
18 **Q.** Sir, I'm struggling with this a little  
19 bit, because I know you to be a person of great  
20 integrity. How would this have worked, Mr. Frumkin,  
21 if you were trying to keep this away from plaintiffs'  
22 lawyers -- that is to say, not create another  
23 thread --  
24 **A. Right.**

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J. Frumkin - Cross

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- 1 **A. Well, it would have achieved my**  
2 **objective of not having -- I mean, there is a**  
3 **substantive thread to this, right? Exclusivity does**  
4 **have a substantive component in some cases.**  
5 And it's the reason it's been a  
6 concern of the court -- there's a legitimate reason  
7 why it's been a source of concern to the courts; that,  
8 you know, when you get it, it has to be managed very  
9 carefully. And I think it was in this case.  
10 **Q.** I want to finish with the topic of  
11 what I've called the threat associated with the \$25.50  
12 offer. And I think you might have called it something  
13 else in deposition. And I want to, just for a moment,  
14 probe your understanding on this one.  
15 Just so we're setting context, when  
16 the 25.50 offer was made, Mr. Poirier communicated it  
17 with a message that if it wasn't accepted in short  
18 order, there would be a disclosure that discussions  
19 had -- had ended; correct?  
20 **A. Uh-huh. Yes.**  
21 **Q.** All right. And you'd agree with me  
22 that one of the reasons for a standstill, at least in  
23 your view, is to avoid public disclosure about a  
24 process which might harm a target? I think we heard

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- 1 **Q.** How would you do that, given your  
2 disclosure obligations under Rule 14(a) in creating  
3 the background of the memo section? This is a  
4 puzzlement to me, and I'm sure you're going to  
5 surprise me, but go ahead.  
6 **A. I'm happy to --**  
7 **Q.** Please.  
8 **A. I'm sure it won't be a surprise.**  
9 The reason is, is it's really kind of  
10 a nonagreement agreement, right? All it is is an  
11 agreement that we'll be exclusive until we decide  
12 we're not going to be exclusive, which is -- is not  
13 much of an agreement. It was intended to try and be a  
14 fig leaf to get TransCanada over their exclusivity  
15 point.  
16 **Q.** So what you were proposing, this  
17 gentlemen's agreement, you wouldn't contemplate  
18 putting in the proxy at all?  
19 **A. I don't know -- I don't think it would**  
20 **need to be, no. I haven't thought about that issue,**  
21 **but I don't think it would need to be.**  
22 **Q.** All right. And that would have  
23 achieved your objective of keeping it out of the hands  
24 of those pesky plaintiffs' lawyers; right?

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J. Frumkin - Cross

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- 1 you say that earlier today; right?  
2 **A. Yes.**  
3 **Q.** Well, is the reason you believe -- is  
4 it fair for me to understand that you believe that  
5 disclosure was necessary because there had been an  
6 earlier press release that said there were ongoing  
7 discussions, and then that, once discussions are over,  
8 it's necessary to update the market with that  
9 information?  
10 **A. I think what I said was that was a**  
11 **distinct possibility. Canadian rules are a little bit**  
12 **different than American rules, but having made the**  
13 **disclosure -- and, again, when they made the**  
14 **disclosure, they didn't disclose, as I recall, the**  
15 **identity of Columbia. They just said they were in**  
16 **negotiations with somebody.**  
17 No, I guess they did disclose  
18 Columbia, because that's how we were getting -- that's  
19 how Spectra knew to make -- or didn't they?  
20 **Q.** No. I don't think they named  
21 Columbia. I think The Wall Street Journal article --  
22 **A. Oh, The Wall Street Journal article**  
23 **named Columbia.**  
24 And -- but I think, under those rules,

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## J. Frumkin - Cross

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- 1 having made that statement to the markets in Canada,  
 2 and they were required by the stock exchange, I  
 3 believe, to make it -- in U.S. parlance, that would  
 4 require an updating disclosure once that was no longer  
 5 true.  
 6 Q. But the trigger there is, having made  
 7 the disclosure when the deal was done, it was not  
 8 going forward anymore, they would have to say to the  
 9 market, hey, it's not going forward anymore. That's  
 10 your understanding?  
 11 A. Yes. Correct.  
 12 Q. All right. I want to probe just for a  
 13 second your statement just a moment ago about Canadian  
 14 law. You don't claim expertise on the law in Canada,  
 15 do you?  
 16 A. No, no. I'm clear about that.  
 17 Q. You're not admitted in Canada?  
 18 A. No. No, no, no.  
 19 Q. And none of its provinces?  
 20 A. No.  
 21 Q. You've never clerked there to be  
 22 admitted; correct?  
 23 A. Correct.  
 24 Q. You never taught Canadian law, is that

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J. Frumkin - Cross

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- 1 out to know anything about Canadian law, right?  
 2 A. No. Nor is the Canadian law the  
 3 central point about that not being a threat. It would  
 4 not have harmed Columbia in any way to have them make  
 5 that disclosure at that point. In fact, it would have  
 6 put a punctuation mark on the market uncertainty that  
 7 was created by The Wall Street Journal story and their  
 8 prior announcement.  
 9 Q. Oh, really? Ah.  
 10 A. And it would have been --  
 11 Q. Well, let's examine that for a second.  
 12 You recall, don't you, that when The  
 13 Wall Street Journal leaked, Columbia's stock went up?  
 14 A. Yeah.  
 15 Q. You'd expect that to happen because  
 16 merger-arbitrage activity would typically take place  
 17 in a free and open market, right?  
 18 A. Uh-huh.  
 19 Q. And I think you had said you served as  
 20 an investment banker for about nine months, in the  
 21 middle of --  
 22 A. Very briefly, yes.  
 23 Q. But you certainly -- it wouldn't be  
 24 unusual to expect the stock to go up. In fact, the

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- 1 right?  
 2 A. That's correct.  
 3 Q. You never studied at Canadian law  
 4 schools; right?  
 5 A. Nope. No.  
 6 Q. You've never written about Canadian  
 7 law?  
 8 A. No. I might have mentioned the *Bentos*  
 9 decision at some point, which was a Canadian decision  
 10 that was kind of interesting, even in a U.S. context,  
 11 but no.  
 12 Q. Great. You've never served as a  
 13 Canadian judge?  
 14 A. No.  
 15 Q. Never served as a Canadian regulator?  
 16 A. No.  
 17 Q. Never drank Canadian beer? Oh, sorry,  
 18 I was only kidding about that one.  
 19 So you've got a nonexpert view on  
 20 Canadian law.  
 21 You're advised separately by Canadian  
 22 counsel on this deal; right?  
 23 A. Yes.  
 24 Q. Great. So you're not holding yourself

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- 1 stock did go up; yes?  
 2 A. Yes.  
 3 Q. And so would it also be your  
 4 expectation that, if that press release was issued,  
 5 the stock would go down, because the arbs would  
 6 sell -- the arbs who had got into it to play the  
 7 expected merger price would dump it because there was  
 8 no longer a deal going forward?  
 9 A. Yes. But that just means that the  
 10 market would be accurately informed about the  
 11 prospects, or lack thereof, for a deal. And so it  
 12 would be trading at whatever intrinsic level it ought  
 13 to be trading at, which is the way the market is  
 14 supposed to work.  
 15 Q. So I think you told me this all  
 16 triggers as a result of the deal being done; right?  
 17 This idea of an updating disclosure would trigger when  
 18 the deal is done?  
 19 A. Or not done.  
 20 Q. Sorry?  
 21 A. The updating disclosure by  
 22 TransCanada?  
 23 Q. Yes.  
 24 A. When the deal discussions were

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## J. Frumkin - Cross

<p style="text-align: center;"><b>J. Frumkin - Cross</b></p> <p style="text-align: right;">Page 757</p> <p>1 <b>terminated.</b></p> <p>2 Q. That's fine.</p> <p>3 So are you aware that Mr. Poirier</p> <p>4 testified in the appraisal litigation?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Well, he did. And he testified under</p> <p>7 oath. And, in fact, he sat in the same seat you're</p> <p>8 sitting in. Might have been this courtroom, might</p> <p>9 have been another one.</p> <p>10 But he gave some testimony about</p> <p>11 exactly where things stood when he made this – what I</p> <p>12 call threat to make this updating disclosure.</p> <p>13 And I'd like to have brought up now</p> <p>14 JTX 1493.024.</p> <p>15 And let's see if we can't take a look</p> <p>16 at this and share with you what Mr. Poirier said about</p> <p>17 the status of things.</p> <p>18 So let me direct your attention, if I</p> <p>19 can, to page 420, in the upper right-hand corner.</p> <p>20 Counsel is examining Mr. Poirier at</p> <p>21 the appraisal and asks: "Again, you're answering a</p> <p>22 question I haven't asked. I'm not asking you why.</p> <p>23 I'm asking did it happen, yes or no, you</p> <p>24 communicated –</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">Page 759</p> <p>1 consideration along with the cash component of the</p> <p>2 transaction."</p> <p>3 The Court asks: "At 26?"</p> <p>4 He says: "At 26, yes."</p> <p>5 Were you aware of that testimony by</p> <p>6 Mr. Poirier before it was shared with you?</p> <p>7 <b>A. I was not.</b></p> <p>8 ATTORNEY VARALLO: Your Honor, I have</p> <p>9 no further questions of this witness.</p> <p>10 THE COURT: Thank you.</p> <p>11 ATTORNEY VARALLO: And thank you, sir,</p> <p>12 for your kindness in answering my questions.</p> <p>13 THE WITNESS: Thank you.</p> <p>14 ATTORNEY VARALLO: Nice to see you</p> <p>15 again.</p> <p>16 ATTORNEY MASSENGILL: Your Honor, we</p> <p>17 have no questions.</p> <p>18 THE COURT: Mr. Frumkin, thank you for</p> <p>19 being here. I appreciate your time.</p> <p>20 THE WITNESS: Vice Chancellor, thank</p> <p>21 you.</p> <p>22 ATTORNEY MASSENGILL: Thank you,</p> <p>23 Mr. Frumkin, for your time.</p> <p>24 (Witness excused.)</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: center;"><b>J. Frumkin - Cross</b></p> <p style="text-align: right;">Page 758</p> <p>1 "Answer: We did not formally say no."</p> <p>2 Down a little bit: "On March 14[],</p> <p>3 you said TransCanada no longer interested in an</p> <p>4 acquisition at \$26. Correct?</p> <p>5 "Answer: We did not formally say no</p> <p>6 at 26 with a stock consideration."</p> <p>7 Dropping down a little bit, the</p> <p>8 question at line 13 is:</p> <p>9 "You informally said it?</p> <p>10 "Answer: We said that we were seeing</p> <p>11 a great deal of challenges with it, and we wanted to</p> <p>12 propose an alternative approach.</p> <p>13 "Question: So [it's] your position</p> <p>14 that TransCanada was still interested in acquiring</p> <p>15 Columbia for \$26 per share on March 14th of 2016?</p> <p>16 "Answer: We had put pencils down on</p> <p>17 that alternative, but we hadn't put it to bed, yes."</p> <p>18 And then the Court asked a question.</p> <p>19 The Court says: "What is that distinction? What does</p> <p>20 [it] mean?"</p> <p>21 And the witness says, quote – and now</p> <p>22 we're at page 421: "It means [] if they had said no</p> <p>23 to 25.50 all cash, we would have reconsidered being</p> <p>24 prepared to take the risk of issuing stock as</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">Page 760</p> <p>1 ATTORNEY VARALLO: Your Honor, while</p> <p>2 we're switching, as a housekeeping matter, I would</p> <p>3 like to hand up and have lodged a number of</p> <p>4 demonstrative exhibits we've used. Yesterday,</p> <p>5 plaintiffs' cross-examination Demonstrative No. 6 that</p> <p>6 Mr. Orrico used. And I've used today Demonstrative</p> <p>7 Exhibits No. 7 and 7A. If I could hand those up and</p> <p>8 have them included in the record.</p> <p>9 ATTORNEY OLSEN: Your Honor, I make</p> <p>10 the same objection I did yesterday, which is these are</p> <p>11 cribbed from existing exhibits. So I wouldn't have</p> <p>12 any objection if counsel is trying to introduce these</p> <p>13 as exhibits in evidence, I have no problem in using</p> <p>14 them shorthand with the witnesses.</p> <p>15 ATTORNEY VARALLO: I'm not trying to</p> <p>16 introduce them as independent evidence, Your Honor,</p> <p>17 merely as demonstrative exhibits so the record is</p> <p>18 complete and the reader of the transcript knows what</p> <p>19 it is we were talking about.</p> <p>20 ATTORNEY OLSEN: I have no objection</p> <p>21 to that, Your Honor.</p> <p>22 ATTORNEY VARALLO: Thank you.</p> <p>23 THE COURT: We'll proceed on that</p> <p>24 basis.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



<p style="text-align: right;">Page 761</p> <p>1 ATTORNEY ORMSBEE: Good afternoon,  2 Your Honor. Nice to meet you. My name is Lauren  3 Ormsbee. I'm with Bernstein Litowitz, here on behalf  4 of plaintiffs.  5 With the Court's permission,  6 plaintiffs call their next witness, Peter Ewing, who  7 will be appearing by video deposition testimony.  8 In 2015 and 2016, Mr. Ewing served as  9 the director of corporate development for TransCanada  10 and reported directly to Francois Poirier. You can  11 find that in the pretrial order at paragraph 61.  12 Before we start, we handed out some  13 binders, with the Court's permission, with the  14 deposition transcript and a couple of the exhibits  15 referenced in Mr. Ewing's testimony. Some of  16 Mr. Ewing's video deposition clips are  17 self-explanatory, so I will skip the transitions on  18 those.  19 In the following clips, Mr. Ewing was  20 asked about TransCanada's July 12, 2019, Columbia  21 acquisition look-back presentation, which is JTX 1522  22 in the binders, and particularly, page 3 of that  23 exhibit.  24 Joe, please play clips PE1 and PE2,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">Direct - By Video Page 763</p> <p>1 was an individual by the name of Stuart Kempal.  2 Question: What was his role at  3 Columbia Pipeline – I'm sorry. Strike that.  4 What was Mr. Kempal's role at  5 TransCanada on July 2019 time period?  6 Answer: He was a director here in the  7 corporate development group, but I think he was  8 charged with this task because he was not involved in  9 the Columbia process.  10 Question: And why do you think  11 someone who was not involved in the deal was charged  12 with this task?  13 Answer: Because they would have a  14 more objective per – perspective on it.  15 Question: I want to go to the second  16 sub-bullet point. It says, "The acquisition analysis  17 and subsequent negotiations were significantly  18 enhanced by previous strong relationships between  19 TransCanada and Columbia management."  20 Do you see that?  21 Answer: I see that.  22 Question: Okay. What were the  23 previous strong relationships between TransCanada and  24 Columbia management referenced in this bullet point?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">Direct - By Video Page 762</p> <p>1 which are pages 60, line 4, to 61, line 18, and  2 page 63, line 23, to 64, line 18.  3 PETER EWING was examined and testified  4 via video deposition as follows:  5 (A video clip was played as follows:)  6 Question: And you participated in  7 creating this document; right, sir?  8 Attorney Massengill: Objection to the  9 form.  10 Answer: I did not create this  11 document.  12 Question: You participated in  13 providing information for it, though; correct?  14 Answer: I was interviewed for this  15 document.  16 Question: Have you seen this document  17 before?  18 Answer: Yes.  19 Question: Okay. When?  20 Answer: We discussed this with  21 counsel yesterday.  22 Question: And who interviewed you to  23 make this document?  24 Answer: The creator of this document</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">Direct - By Video Page 764</p> <p>1 Attorney Massengill: Objection to  2 form.  3 Answer: I believe it's referring  4 to – and this is only my belief – the relationship  5 that existed between Steve Smith and Francois Poirier.  6 (End of video clip.)  7 ATTORNEY ORMSBEE: In the following  8 clip, Mr. Ewing was asked about whether Columbia  9 management communicated to TransCanada a preference  10 for a cash deal in 2015 and 2016.  11 Joe, please play PE3, which is  12 page 280, line 22, to 281, line 12.  13 (A video clip was played as follows:)  14 Question: Start from the spin-out, so  15 July 1, 2015, to June 2016, which is when the  16 shareholder vote occurred.  17 Did anyone discuss with you or relay  18 to you an understanding that Mr. Skaggs and/or  19 Mr. Smith had a desire to achieve a near-term cash  20 sale of Columbia Pipeline?  21 Answer: I don't know. I think we've  22 already discussed this, but I think our assumption was  23 they had a preference for a cash deal that was  24 disclosed to us in – I don't know – October,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## Direct - By Video

<p><b>Direct - By Video</b></p> <p>Page 765</p>	<p><b>Direct - By Video</b></p> <p>Page 767</p>
<p>1 something like that.</p> <p>2 (End of video clip.)</p> <p>3 ATTORNEY ORMSBEE: In the following</p> <p>4 clips, Mr. Ewing was asked about JTX 395, a</p> <p>5 November 25, 2015, email he sent with the subject line</p> <p>6 "Pencils down for now on Constellation."</p> <p>7 Joe, please play clips PE4 and 5,</p> <p>8 which are page 111, line 12 to 18, and 114, line 6, to</p> <p>9 115, line 4.</p> <p>10 (A video clip was played as follows:)</p> <p>11 Question: You were aware, at least of</p> <p>12 the 20 -- November 25 to the, you know, early</p> <p>13 December 2015 time period that discussions had</p> <p>14 concluded between TransCanada and Columbia; right?</p> <p>15 Answer: Yes.</p> <p>16 Question: In this email to</p> <p>17 Mr. Goulet, you write, "Corey -- left you a voice mail</p> <p>18 but the target has indicated they will pursue other</p> <p>19 options for the time being. That being said there is</p> <p>20 some possibility that discussions could pick up again</p> <p>21 in the new year."</p> <p>22 Do you see that?</p> <p>23 Answer: I see that.</p> <p>24 Question: And you wrote that on</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 "Francois wants to continue modeling</p> <p>2 the various cases but obviously put [stock] diligence</p> <p>3 on hold."</p> <p>4 Do you see that?</p> <p>5 Answer: Yeah.</p> <p>6 Question: You have no reason to</p> <p>7 dispute that's what Mr. Smith told Mr. Poirier on</p> <p>8 November 25, 2015?</p> <p>9 Answer: That's what Eric Fornell says</p> <p>10 that Mr. Smith told Mr. Poirier.</p> <p>11 Question: And in your -- well, let me</p> <p>12 ask you this: Do you think Mr. Fornell is a truthful</p> <p>13 person or full of it?</p> <p>14 Answer: No. He's a truthful person,</p> <p>15 so ... but I can't, by any means, confirm that.</p> <p>16 Question: But you can confirm that</p> <p>17 after the -- after November 25, 2015, you and your</p> <p>18 team continued modeling a potential deal with</p> <p>19 Columbia; right?</p> <p>20 Answer: Based on public data, yes.</p> <p>21 (End of video clip.)</p> <p>22 ATTORNEY ORMSBEE: The following clip,</p> <p>23 Mr. Ewing was asked about JTX 435, a December 2, 2015,</p> <p>24 email from Andrew Isherwood of TransCanada to Francois</p> <p>CHANCERY COURT REPORTERS</p>
<p><b>Direct - By Video</b></p> <p>Page 766</p>	<p><b>Direct - By Video</b></p> <p>Page 768</p>
<p>1 November 25, 2015; right?</p> <p>2 Answer: Apparently so.</p> <p>3 Question: Okay. So what gave you the</p> <p>4 impression that there was some possibility that deal</p> <p>5 discussions could pick up between Columbia and</p> <p>6 TransCanada in the new year?</p> <p>7 Answer: I suspect we had discussions</p> <p>8 within our team that that possibility might exist. I</p> <p>9 certainly wasn't -- it was a possibility, right, not a</p> <p>10 certainty.</p> <p>11 (End of video clip.)</p> <p>12 ATTORNEY ORMSBEE: In the following</p> <p>13 clip, Mr. Ewing was asked about JTX 392, a November</p> <p>14 25, 2015, email from Eric Cornell of Wells Fargo with</p> <p>15 the subject line "Weird twist."</p> <p>16 Joe, please play clip PE6, which is</p> <p>17 118, line 6, to 119, line 15.</p> <p>18 (A video clip was played as follows:)</p> <p>19 Question: All right. So I want to go</p> <p>20 in the middle of the email, okay? And it says,</p> <p>21 Mr. Fornell writes to his team, "Francois spoke with</p> <p>22 the CFO who said that they will 'probably' want to</p> <p>23 pick [up] the discussions" -- "pick the discussions up</p> <p>24 again 'in a few months.'</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Poirier and copying Mr. Ewing and Tony Spagnolo, with</p> <p>2 the subject line "Updated Slides" and an attachment</p> <p>3 titled "Strategic Issues Session, Capricorn Update,</p> <p>4 December 3, 2015." And Mr. Ewing is asked</p> <p>5 specifically about page 4 of JTX 435.</p> <p>6 Joe, please play PE7, 126, line 15, to</p> <p>7 127, line 16.</p> <p>8 (A video clip was played as follows:)</p> <p>9 Question: You learned, at least as of</p> <p>10 November 25, that there wasn't going to be a deal at</p> <p>11 that time; correct?</p> <p>12 Answer: It appeared that they were</p> <p>13 going to go ahead with the equity offer.</p> <p>14 Question: Right. Which is the next</p> <p>15 bullet point which describes the equity offering on</p> <p>16 December 1st; correct?</p> <p>17 Answer: Yup. Yes, that's true.</p> <p>18 Question: And then there's a bullet</p> <p>19 point that says, "Next Steps?"</p> <p>20 Do you see that?</p> <p>21 Answer: Yeah.</p> <p>22 Question: Okay. And it's fair to say</p> <p>23 that the next steps were to consider whether</p> <p>24 TransCanada should reach out to Columbia to reengage</p> <p>CHANCERY COURT REPORTERS</p>

## Direct - By Video

<p><b>Direct - By Video</b></p> <p>Page 769</p>	<p><b>Direct - By Video</b></p> <p>Page 771</p>
<p>1 or express continued interest in a deal; right?</p> <p>2 Attorney Massengill: Objection to</p> <p>3 form.</p> <p>4 Answer: I would expect one of the</p> <p>5 options would be that we would seek to engage sometime</p> <p>6 in the future.</p> <p>7 (End of video clip.)</p> <p>8 ATTORNEY ORMSBEE: In the next clip,</p> <p>9 Mr. Ewing was asked about JTX 467, a December 7, 2015,</p> <p>10 email chain between Eric Fornell, Francois Poirier,</p> <p>11 and Mr. Ewing, with the subject line "Capricorn."</p> <p>12 Joe, please play PE8, 133, line 10, to</p> <p>13 134, line 21.</p> <p>14 (A video clip was played as follows:)</p> <p>15 Question: Now, you received this</p> <p>16 email. Why were both Mr. Poirier and Wells Fargo</p> <p>17 mentioning a discussion with counsel in connection to</p> <p>18 any reengagement with Columbia at this time in</p> <p>19 December 2015?</p> <p>20 Answer: I wasn't really a party to</p> <p>21 the discussion, so I don't know.</p> <p>22 Question: Well, there was a</p> <p>23 standstill in the NDA between Columbia and</p> <p>24 TransCanada; correct?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 and Jane Brindle of TransCanada, with the subject line</p> <p>2 "Constellation Standstill."</p> <p>3 Joe, please play clips PE9 and 10,</p> <p>4 which is 139, line 5, to 142, line 14, and 143, line 2</p> <p>5 to 6.</p> <p>6 (A video clip was played as follows:)</p> <p>7 Question: I want to stick with the</p> <p>8 email. Ms. Johnston writes to Mr. Poirier, "The</p> <p>9 summary of the standstill is as follows[.]"</p> <p>10 Do you see that?</p> <p>11 Answer: I see that.</p> <p>12 Question: So Ms. Johnston,</p> <p>13 TransCanada's general counsel, is providing an</p> <p>14 interpretation and a summary of the standstill for</p> <p>15 Mr. Poirier; correct?</p> <p>16 Attorney Massengill: Objection to</p> <p>17 form.</p> <p>18 Answer: That's what the email is</p> <p>19 doing.</p> <p>20 Question: Okay. So I want to go</p> <p>21 through it. It says, "For 12 months from November 9,</p> <p>22 2015, TransCanada and its directors, officers and</p> <p>23 representatives cannot, unless" -- underlined --</p> <p>24 "Capricorn's board specifically requests in writing in</p> <p>CHANCERY COURT REPORTERS</p>
<p><b>Direct - By Video</b></p> <p>Page 770</p>	<p><b>Direct - By Video</b></p> <p>Page 772</p>
<p>1 Answer: That is correct.</p> <p>2 Question: Okay. And I think we</p> <p>3 talked about this at the very beginning, but it's fair</p> <p>4 to say that TransCanada management had discussions</p> <p>5 with in-house counsel about the standstill in early</p> <p>6 December 2015; correct?</p> <p>7 Answer: Correct.</p> <p>8 Question: And I think you said this,</p> <p>9 but correct me if I'm wrong. But you don't remember</p> <p>10 the specifics of what TransCanada's in-house counsel</p> <p>11 was saying about the standstill in the December 2015</p> <p>12 time period?</p> <p>13 Answer: I don't remember the</p> <p>14 specifics, that is correct.</p> <p>15 Question: But you did remember that</p> <p>16 the advice about the standstill was coming from</p> <p>17 Christine Johnston; correct?</p> <p>18 Answer: Yes. We relied on Christine</p> <p>19 Johnston to direct us somehow to operate under the</p> <p>20 standstill.</p> <p>21 (End of video clip.)</p> <p>22 ATTORNEY ORMSBEE: In the next clip,</p> <p>23 Mr. Ewing was asked about JTX 436, a December 2, 2015,</p> <p>24 email chain between Christine Johnston, Peter Ewing,</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 advance:"</p> <p>2 Do you see that?</p> <p>3 Answer: I see that.</p> <p>4 Question: Okay. And then there's</p> <p>5 three items. First is "Acquire, offer or agree to</p> <p>6 acquire ownership of equity securities or material</p> <p>7 assets."</p> <p>8 Do you see that?</p> <p>9 Answer: I see that.</p> <p>10 Question: Okay. And then it says,</p> <p>11 "Seek to influence, advise, change or control its</p> <p>12 management or the board (including by solicitation of</p> <p>13 proxies), or request amendment to the standstill</p> <p>14 provisions."</p> <p>15 Do you see that?</p> <p>16 Answer: Yes.</p> <p>17 Question: Third is, "Make any public</p> <p>18 disclosure or take actions that require Capricorn to</p> <p>19 make public disclosure with respect to matters that</p> <p>20 are the subject of this agreement."</p> <p>21 Do you see that?</p> <p>22 Answer: Yes.</p> <p>23 Question: So it's fair to say that,</p> <p>24 based off this summary from Ms. Johnston, that</p> <p>CHANCERY COURT REPORTERS</p>

## Direct - By Video

<p><b>Direct - By Video</b></p> <p>Page 773</p>	<p><b>P. Ewing - Direct by Video</b></p> <p>Page 775</p>
<p>1 TransCanada could not take any of those three actions</p> <p>2 unless Columbia's board specifically requests it in</p> <p>3 writing in advance; correct?</p> <p>4 Answer: I'm not a lawyer, so I'm not</p> <p>5 going to really try to opine on that.</p> <p>6 Question: Okay. You have no basis to</p> <p>7 disagree with what Ms. Johnston is summarizing as the</p> <p>8 obligations of the standstill in this email; correct?</p> <p>9 Answer: This is what she provided me</p> <p>10 with.</p> <p>11 Question: And you're not -- and you</p> <p>12 have no basis to disagree with this summary; correct?</p> <p>13 Answer: I have no basis to disagree</p> <p>14 with this summary. But I'm not going to interpret it.</p> <p>15 Question: Right. Because you're</p> <p>16 relying on Ms. Johnston's interpretation; correct?</p> <p>17 Answer: Absolutely.</p> <p>18 Question: Okay. Are you aware of any</p> <p>19 other written interpretations by Ms. Johnston of the</p> <p>20 standstill other than this document that is</p> <p>21 Exhibit 12?</p> <p>22 Answer: I'm not aware of any others.</p> <p>23 Question: Does the word "formal"</p> <p>24 appear in Ms. Johnston's summary of the standstill?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 (Resumed at 1:34 p.m.)</p> <p>2 THE COURT: Welcome back, everyone.</p> <p>3 Please be seated. I apologize for keeping you</p> <p>4 waiting. Please resume.</p> <p>5 ATTORNEY ORMSBEE: Thank you, Your</p> <p>6 Honor.</p> <p>7 In the next series of clips, Mr. Ewing</p> <p>8 is asked about TransCanada's interloper analysis,</p> <p>9 particularly JTX 1251, which is an April 27, 2016,</p> <p>10 email from Andrew Isherwood to Debbie Brown, copying</p> <p>11 Mr. Poirier and Mr. Ewing, and its attachment, which</p> <p>12 is an interloper strategy presentation.</p> <p>13 Joe, please play PE 23, 25, 26, and</p> <p>14 27, which are clips from his June deposition taken</p> <p>15 from pages 267 through 274.</p> <p>16 (A video clip was played as follows:)</p> <p>17 Question: And in the email,</p> <p>18 Mr. Isherwood states, "Debbie, Please see the attached</p> <p>19 Interloper slides for the Board presentation</p> <p>20 tomorrow."</p> <p>21 Right?</p> <p>22 Answer: Right.</p> <p>23 Question: Does this refresh your</p> <p>24 recollection that TransCanada's corporate development</p> <p>CHANCERY COURT REPORTERS</p>
<p>Page 774</p>	<p><b>P. Ewing - Direct by Video</b></p> <p>Page 776</p>
<p>1 Answer: There is no word "formal" in</p> <p>2 that document.</p> <p>3 (End of video clip.)</p> <p>4 ATTORNEY ORMSBEE: Your Honor, I just</p> <p>5 have a few more clips to play, but it's 12:30. Would</p> <p>6 you prefer a break?</p> <p>7 THE COURT: Are they going to take</p> <p>8 more than two minutes?</p> <p>9 ATTORNEY ORMSBEE: They are.</p> <p>10 THE COURT: All right. Then we'll</p> <p>11 need to resume when we come back. And I actually have</p> <p>12 another hearing during lunch, so I can't give you guys</p> <p>13 more time now to cover it.</p> <p>14 So we'll recess now and resume at</p> <p>15 1:30. Thank you, everyone.</p> <p>16 (Lunch recess taken at 12:28 p.m.)</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>	<p>1 team presented an interloper strategy slide</p> <p>2 presentation to the TransCanada board in the late</p> <p>3 April 2016 time period?</p> <p>4 Answer: It does.</p> <p>5 Question: And then there is another</p> <p>6 bullet point that says, "Requirements for TransCanada</p> <p>7 to match a Superior Proposal."</p> <p>8 Do you see that?</p> <p>9 Answer: Yes.</p> <p>10 Question: And that term "superior</p> <p>11 proposal," that's from the merger agreement, right?</p> <p>12 Answer: I believe that's the case,</p> <p>13 yes.</p> <p>14 Question: Add the bullet points say,</p> <p>15 "Additional asset monetization[] to source incremental</p> <p>16 funds and maintain credit rating."</p> <p>17 Do you see that?</p> <p>18 Answer: Yes.</p> <p>19 Question: Okay. So is that</p> <p>20 discussing that TransCanada could do additional asset</p> <p>21 sales to finance a higher or matching superior</p> <p>22 proposal bid?</p> <p>23 Attorney Massengill: Objection to</p> <p>24 form.</p> <p>CHANCERY COURT REPORTERS</p>

## P. Ewing - Direct by Video

## P. Ewing - Direct by Video

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1 Answer: That says that if we were to  
2 want to match a bid, we would probably have to sell  
3 more assets.  
4 Question: Then the fourth bullet  
5 point says, "Recommendation: TransCanada can afford  
6 to increase its offer."  
7 Do you see that?  
8 Answer: Yep.  
9 Question: Okay. And you presented  
10 this to the board, right?  
11 Answer: Yup.  
12 Question: So this was truthful,  
13 right, as of late April 2016?  
14 Answer: It appears to be, yes.  
15 Question: It's fair to say, though,  
16 that you presented and it was managed – or  
17 management's recommendation that TransCanada can  
18 afford to increase its offer from 25.50 in late  
19 April 2016?  
20 Answer: That's what it says.  
21 Question: So you and your team,  
22 corporate development team, had created case scenarios  
23 at \$27 per share and \$28 a share of what additional  
24 asset sales could be used to finance a higher bid,

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## S. Cornelius - Direct by Video

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1 ATTORNEY OLSEN: Your Honor, we don't  
2 have anything from this witness.  
3 THE COURT: Okay. Thank you.  
4 ATTORNEY JAMES: Appreciate it, Your  
5 Honor. Plaintiffs would like to call our next  
6 witness, Sigmund Cornelius. He will be testifying by  
7 video deposition.  
8 With Your Honor's permission, we would  
9 like to hand out binders of Joint Exhibits and  
10 deposition testimony so you can follow along.  
11 SIGMUND CORNELIUS, was examined and  
12 testified via video as follows:  
13 So in the following clips,  
14 Mr. Cornelius was asked about the nondisclosure  
15 agreement.  
16 Please play Cornelius 1 and 2, and  
17 those are pages numbers 17 through 18 and 18 through  
18 19.  
19 (A video clip was played as follows:)  
20 Question: Now, so I want to go back  
21 now to the 2015-2016 time period. And it's fair to  
22 say that in connection to the sale of Columbia,  
23 Columbia entered into a nondisclosure agreement with  
24 TransCanada and a couple of other potential acquirers

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## P. Ewing - Direct by Video

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1 correct?  
2 Answer: We had done those scenarios.  
3 Question: In fact, you had done some  
4 valuation if it fails, right? Below, it says,  
5 "Alberta Cogens - [Canadian dollars of] [450-425  
6 [sic] M." Do you see that?  
7 Answer: Yes.  
8 Question: And those were your best  
9 estimates at the time for those, I guess, three  
10 assets, Coolidge, Gas Storage, and Alberta Cogens?  
11 Answer: That looks correct, yeah.  
12 Question: And those assets, were they  
13 under TransCanada's control in March of 2016?  
14 Answer: Yes, we owned those assets.  
15 Question: So it's fair to say that  
16 they could have been sold then, too, right, to support  
17 a bid in March of 2016? Right?  
18 Answer: Could be sold anytime, or  
19 not. Our preference would be to not sell them.  
20 (End of video clip.)  
21 ATTORNEY ORMSBEE: Thank you, Your  
22 Honor.  
23 THE COURT: Are there any  
24 counter-clips or is that --

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## S. Cornelius - Direct by Video

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1 that contained a standstill provision. Do you  
2 remember that?  
3 Answer: Yes, I do.  
4 Question: Is it true, sir – and I'm  
5 talking about in the 2015 and 2016 time periods,  
6 before any litigation or anything like that. As the  
7 sales process is going on, it is true that you never  
8 read or saw the NDA, correct?  
9 Answer: I did not read the entire  
10 NDA, that's fair.  
11 Question: And, again, it's fair to  
12 say you're not an attorney, right, Mr. Cornelius?  
13 Answer: I'm definitely not an  
14 attorney.  
15 Question: Good for you. It is fair  
16 to say that you weren't a lawyer in the 2015 to 2016  
17 time period, right?  
18 Answer: That's correct.  
19 Question: And it's fair to say that  
20 you were not part of the negotiation or drafting of  
21 the NDAs Columbia signed with potential transaction  
22 partners in the 2015 to 2016 time period, right?  
23 Answer: That's correct.  
24 Question: And you would agree that

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## S. Cornelius - Direct by Video

<p style="text-align: center;"><b>S. Cornelius - Direct by Video</b></p> <p style="text-align: right;">Page 781</p> <p>1 the rest of the board wasn't involved in that either,</p> <p>2 right?</p> <p>3 Answer: That's correct.</p> <p>4 (End of video clip.)</p> <p>5 ATTORNEY JAMES: In the next clip,</p> <p>6 Mr. Cornelius was asked about his appraisal trial</p> <p>7 testimony, located at Joint Exhibit 1496.005 [sic].</p> <p>8 Joe, can you please play Cornelius</p> <p>9 clip 4, which is at pages 20 to 21 of the deposition</p> <p>10 testimony.</p> <p>11 (A video clip was played as follows:)</p> <p>12 Question: And one of my colleagues,</p> <p>13 he asked you some questions on cross-examination, and</p> <p>14 I just want to parse something out. So you go to the</p> <p>15 bottom, there is a question at line 20. It states:</p> <p>16 "Question: Okay, I can tell you that</p> <p>17 I've never heard what the legal advice was, so we are</p> <p>18 equally in the dark. My question for you, sir, is</p> <p>19 whether or not you know the legal conclusion, don't</p> <p>20 you agree if there was a breach of the standstill by</p> <p>21 one party while others remained bound, that would</p> <p>22 result in a nonlevel playing field?</p> <p>23 "Answer: As I said earlier, if the</p> <p>24 parties were treated differently and there was one</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;"><b>S. Cornelius - Direct by Video</b></p> <p style="text-align: right;">Page 783</p> <p>1 connection to any of those discussions, including the</p> <p>2 succession planning discussion, did Mr. Skaggs</p> <p>3 specifically inform you that he had told his personal</p> <p>4 financial advisor that he was targeting a March 2016</p> <p>5 retirement date?</p> <p>6 Answer: I don't recall that he</p> <p>7 specifically told me of a conversation that he had</p> <p>8 with his personal financial advisors, no.</p> <p>9 Question: Let me ask you a little</p> <p>10 different question, Mr. Cornelius. Did Mr. Skaggs</p> <p>11 ever inform you that he would only consider or support</p> <p>12 a sale of the company if the transaction was an</p> <p>13 all-cash buyout?</p> <p>14 Answer: No.</p> <p>15 (End of video clip.)</p> <p>16 ATTORNEY JAMES: In the next clip,</p> <p>17 Mr. Cornelius was asked about the factual findings in</p> <p>18 the appraisal decision, which is located at Joint</p> <p>19 Exhibit 1527.</p> <p>20 Joe, that's clip -- Cornelius clip 7,</p> <p>21 located at pages 94 to 95 of his deposition testimony.</p> <p>22 (A video clip was played as follows:)</p> <p>23 Question: Now, did Mr. Smith ever</p> <p>24 tell you or the board that he was targeting his</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: center;"><b>S. Cornelius - Direct by Video</b></p> <p style="text-align: right;">Page 782</p> <p>1 party that was allowed to violate the agreement, yes,</p> <p>2 that would be a nonlevel playing field. The parties</p> <p>3 were not treated differently. If a party would have</p> <p>4 contacted us and expressed an interest, if all the</p> <p>5 parties would have contacted us, expressed an interest</p> <p>6 in picking up the negotiations, we would have</p> <p>7 engaged."</p> <p>8 Do you see that, sir?</p> <p>9 Answer: I do.</p> <p>10 Question: And that was your testimony</p> <p>11 at trial, correct?</p> <p>12 Answer: Correct.</p> <p>13 Question: Okay. And it's fair to say</p> <p>14 that you were being honest and truthful in that</p> <p>15 response during trial, right?</p> <p>16 Answer: Correct.</p> <p>17 (End of video clip.)</p> <p>18 ATTORNEY JAMES: The following clips</p> <p>19 need no introduction. These are clips 6.1 and 6.2,</p> <p>20 which are located at pages 93 and 94 of Mr. Cornelius'</p> <p>21 deposition.</p> <p>22 (A video clip was played as follows:)</p> <p>23 Question: My question is, getting</p> <p>24 back to the topic, it's a little different. In</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;"><b>S. Cornelius - Direct by Video</b></p> <p style="text-align: right;">Page 784</p> <p>1 retirement for 2016?</p> <p>2 Answer: No.</p> <p>3 Question: Did he ever tell you or the</p> <p>4 board that he viewed him turning 55 as a target or a</p> <p>5 magical age to retire?</p> <p>6 Answer: No.</p> <p>7 (End of video clip.)</p> <p>8 ATTORNEY JAMES: In the next series of</p> <p>9 clips, Mr. Cornelius was asked about a December 3,</p> <p>10 2014, internal Goldman Sachs email, located at Joint</p> <p>11 Exhibit 56. These are clips 8 and 9 from pages 96 and</p> <p>12 98 of Mr. Cornelius' deposition.</p> <p>13 (A video clip was played as follows:)</p> <p>14 Question: Did Mr. Skaggs or Mr. Smith</p> <p>15 ever tell you in the 2014, '15, or '16 time period</p> <p>16 that the reason that they wanted to go with Columbia</p> <p>17 post-spin is because they didn't want to work forever</p> <p>18 and they saw the spinoff as an opportunity to sell</p> <p>19 Columbia in the near term?</p> <p>20 Answer: No.</p> <p>21 Question: He states that "[m]et with</p> <p>22 the CFO for an hour. Key points below:</p> <p>23 "- CEO and CFO going to Midstream</p> <p>24 company (CPG). CFO indicated that was in part because</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## S. Cornelius - Direct by Video

<p style="text-align: right;"><b>S. Cornelius - Direct by Video</b> Page 785</p> <p>1 they 'don't want to work forever.' They love the 2 business, and I think they see oppy for a sale in 3 [the] near term." 4 Do you see that? 5 Answer: I do. 6 Question: And I think you already 7 answered this. Is it fair to say that Mr. Smith never 8 told the board that part of the reason that he wanted 9 to go with Columbia after the spin is because he 10 didn't want to work forever and he saw it as an 11 opportunity for a sale in the near term, right? 12 Answer: That's what that email says. 13 I never had any conversation with Mr. Smith directly. 14 (End of video clip.) 15 ATTORNEY JAMES: The following clips 16 need no introduction. 17 Joe, let's please play clips 10 and 18 11, and those are at pages 5 – I'm sorry, pages 6 and 19 18 of Mr. Cornelius' deposition. 20 (A video clip was played as follows:) 21 Question: I think this is not a 22 controversial question, but you would agree that as a 23 director of a public company, you would expect your 24 management team and the company's legal and financial</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>S. Cornelius - Direct by Video</b> Page 787</p> <p>1 clips pertain to a Sullivan &amp; Cromwell client letter 2 regarding the case <i>In re Complete Genomics</i>, located at 3 Joint Exhibit 3. 4 Joe, let's please play Cornelius clip 5 13, which is from page 34 of Mr. Cornelius' 6 deposition. 7 (A video clip was played as follows:) 8 Question: It is fair to say that you 9 have never seen this document before, right? 10 Answer: Correct. 11 (End of video clip.) 12 ATTORNEY JAMES: In the next clip, 13 Mr. Cornelius was asked about the text in the first 14 full paragraph of page 3 of that alert. 15 Joe, let's please play clips 14 and 16 15, which are from pages 39 to 40 and 41 of his 17 deposition. 18 (A video clip was played as follows:) 19 Question: And it's fair to say that 20 Sullivan &amp; Cromwell and Mr. Bob Smith, they never 21 provided you with this memo in the sales process, 22 right? 23 Answer: That's correct. 24 Question: Do you have – sitting here</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>S. Cornelius - Direct by Video</b> Page 786</p> <p>1 advisors to keep the board informed about important 2 matters concerning the affairs of the company; 3 correct? 4 Answer: Correct. 5 Question: And that would include 6 important information in connection to a sales 7 process, right, sir? 8 Answer: Correct. 9 Question: And it's fair to say that 10 in connection with the sales process, you operated 11 with the expectation and assumption that Columbia's 12 legal advisors and financial advisors would bring to 13 your attention anything important about the NDA, 14 including the standstill provision, right? 15 Attorney Kirby: Objection to the 16 form. 17 Answer: That's correct. 18 Question: I just want to make sure I 19 heard that right. You said that's correct, right, 20 sir? 21 Answer: I answered that, yes. 22 Question: Okay. 23 (End of video clip.) 24 ATTORNEY JAMES: The next series of</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>S. Cornelius - Direct by Video</b> Page 788</p> <p>1 today, do you have any specific recollection of 2 Sullivan &amp; Cromwell or Bob Smith telling you during 3 the sales process that don't ask, don't waive 4 standstill provisions can preclude the flow of 5 incoming information to a target board and can limit a 6 board's fiduciary obligation to properly evaluate a 7 completing offer, disclose material information, and 8 make a meaningful merger recommendations to 9 stockholders? 10 Attorney Vallette: Objection to the 11 form. 12 Answer: I have no recollection of it. 13 Question: Let me ask you a different 14 question, Mr. Cornelius. Sitting here today, do you 15 have any recollection prior – strike that. 16 Do you have any recollection in the 17 2015 or 2016 time period of Sullivan &amp; Cromwell or 18 Mr. Smith telling you and the board that the 19 standstill provision in the NDA was a don't ask, don't 20 waive standstill? 21 Answer: I do not. 22 (End of video clip.) 23 ATTORNEY JAMES: The next clip 24 pertains to a Sullivan &amp; Cromwell client alert</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## S. Cornelius - Direct by Video

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<p>1 regarding the case <i>In re Ancestry.com</i>, located at</p> <p>2 Joint Exhibit 6.</p> <p>3 Joe, please play Cornelius clip 16,</p> <p>4 which is from page 42 of his deposition.</p> <p>5 (A video clip was played as follows:)</p> <p>6 Question: I think I know the answer</p> <p>7 to this, but fair to say that this memo wasn't shared</p> <p>8 with the board from Sullivan &amp; Cromwell or Mr. Bob</p> <p>9 Smith in connection with the sales process, right?</p> <p>10 Answer: I have not seen it before.</p> <p>11 (End of video clip.)</p> <p>12 ATTORNEY JAMES: Mr. Cornelius was</p> <p>13 asked about the text in the first two bullets on page</p> <p>14 1.</p> <p>15 Joe, that will be clip 17, please.</p> <p>16 That's from page 44.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: And, again, I just want the</p> <p>19 record to be clear. You don't have any recollection</p> <p>20 of this memo being shared with you or your fellow</p> <p>21 board members prior to the vote on the merger, right?</p> <p>22 Answer: That's correct.</p> <p>23 (End of video clip.)</p> <p>24 ATTORNEY JAMES: In the next clip,</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 (End of video clip.)</p> <p>2 ATTORNEY JAMES: The next clip</p> <p>3 pertains to a Sullivan &amp; Cromwell client letter</p> <p>4 regarding the <i>Koehler v. NetSpend Holdings</i> case,</p> <p>5 located at Joint Exhibit 7.</p> <p>6 Joe, can you please play clip 20 that</p> <p>7 is from pages 48 to 49 of Mr. Cornelius' deposition.</p> <p>8 (A video clip was played as follows:)</p> <p>9 Question: And I think I know the</p> <p>10 answer, but is it fair to say that you don't have a</p> <p>11 recollection of this memo being provided to the board</p> <p>12 in connection with the sale process by Sullivan &amp;</p> <p>13 Cromwell or Mr. Bob Smith; correct?</p> <p>14 Answer: That's correct.</p> <p>15 (End of video clip.)</p> <p>16 ATTORNEY JAMES: In the next clip,</p> <p>17 Mr. Cornelius was asked about the board executive</p> <p>18 session minutes from January 28 to 29, 2016, located</p> <p>19 at Joint Exhibit 191, pages 4 to 5 of that exhibit.</p> <p>20 Joe, if you could please play</p> <p>21 Cornelius clip 24, which is from page 55 of his</p> <p>22 deposition.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: My question is a little</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 Mr. Cornelius was asked about the text in the first</p> <p>2 bullet of page 5 of that memo. That's clip 19 from</p> <p>3 pages 46 to 47 of that memo – of the deposition</p> <p>4 transcript. Excuse me.</p> <p>5 (A video clip was played as follows:)</p> <p>6 Question: Then I'm going to the first</p> <p>7 bullet point. It says, "In light of <i>Genomics</i> and</p> <p>8 <i>Ancestry</i>, 'Don't ask, Don't Waive' provisions are</p> <p>9 likely to engender greater scrutiny by the Court of</p> <p>10 Chancery of the facts and circumstances surrounding</p> <p>11 their use in any particular case. Because in practice</p> <p>12 the provisions usually are negotiated well in advance</p> <p>13 of any transaction without the oversight of the target</p> <p>14 board and before any decision necessarily has been</p> <p>15 made as to the type of auction, if any, the target is</p> <p>16 likely to engage in, sell-side practitioners will need</p> <p>17 to counsel boards during the auction process as to the</p> <p>18 import of 'Don't ask, Don't Waive' provisions."</p> <p>19 Do you see that?</p> <p>20 Answer: I do.</p> <p>21 Question: And it's fair to say that</p> <p>22 before today, you never even heard the term "don't</p> <p>23 ask, don't waive," correct?</p> <p>24 Answer: Not that I recall.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 more specific, sir. Does the word "NDA" or</p> <p>2 "standstill" appear in the January 28th/29th, 2016,</p> <p>3 entry here that was drafted by Sullivan &amp; Cromwell?</p> <p>4 Answer: It does not, that I can see.</p> <p>5 Question: Okay.</p> <p>6 Answer: In that time frame.</p> <p>7 Question: Right. And I think we've</p> <p>8 established this before the break. You have no</p> <p>9 recollection of Sullivan &amp; Cromwell or Bob Smith</p> <p>10 explaining to you that there is a don't ask, don't</p> <p>11 waive standstill in these NDAs, right?</p> <p>12 Answer: Correct.</p> <p>13 Question: Okay. You – other than</p> <p>14 the language that is in this January 28/29, 2016,</p> <p>15 entry about assessing whether to solicit additional</p> <p>16 interest, do you have any recollection sitting here</p> <p>17 today that the standstill provision of the NDA was</p> <p>18 specifically discussed at the January 28th/29th, 2016,</p> <p>19 board meeting?</p> <p>20 Answer: I don't recall a specific</p> <p>21 discussion about the standstill.</p> <p>22 (End of video clip.)</p> <p>23 ATTORNEY JAMES: In the next clip,</p> <p>24 Mr. Cornelius was asked about the March 4th executive</p> <p>CHANCERY COURT REPORTERS</p>

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1 session minutes. It's also in Joint Exhibit 191, at  
 2 pages 8 to 9.  
 3 Joe, if you would please play  
 4 Cornelius clip 5. It's at page 57 of his deposition.  
 5 (A video clip was played as follows:)  
 6 Question: So it's fair to say that on  
 7 March 4, 2016, the advice you received from counsel  
 8 was, hey, there is a standstill provision in the  
 9 confidentiality agreement that prohibits TransCanada  
 10 from making a proposal without written invitation from  
 11 the board, right?  
 12 Answer: Correct.  
 13 (End of video clip.)  
 14 ATTORNEY JAMES: The next clips  
 15 pertain to Eric Fomell and Wells Fargo.  
 16 Joe, these are going to be clips 26,  
 17 27, and 28. And these come from pages 100 to 101, 119  
 18 to 120, and 127 of Mr. Cornelius' deposition.  
 19 (A video clip was played as follows:)  
 20 Question: Let me ask you this. Did  
 21 Mr. Steve Smith, did he ever inform the board or  
 22 discuss with the board that he was friends with  
 23 Mr. Poirier and that they had known each other at the  
 24 time for about 15, 20 years?

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1 Question: Did Mr. Smith ever disclose  
 2 to you that Mr. Fomell, Mr. Poirier, and him were all  
 3 friends?  
 4 Answer: Not that I recall.  
 5 Question: Would you agree that the  
 6 financial advisors and book runners for the equity  
 7 offering were likely provided confidential information  
 8 pursuant to confidentiality agreements to participate  
 9 in the equity offering and to advise Columbia about  
 10 it?  
 11 Attorney Vallette: Objection to the  
 12 form.  
 13 Answer: I would think that in that  
 14 position, they would have access to that.  
 15 Question: Again, you don't recall any  
 16 discussions from Mr. Smith or Mr. Skaggs or Wells  
 17 Fargo telling the board that one of the joint lead  
 18 book runners on the equity offering, Wells Fargo, was  
 19 the very same bank running the sale process for  
 20 TransCanada, including the lead banker, right?  
 21 Answer: I don't recall any of those  
 22 conversations.  
 23 Question: Again, there was no  
 24 discussion or effort to wall off Mr. Fomell and his

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1 Answer: I can't recall if it was ever  
 2 mentioned or not. It might have been in passing, but  
 3 certainly wasn't dwelled on.  
 4 Question: Did Mr. Smith discuss that  
 5 he had a relationship with Mr. Poirier -- well, strike  
 6 that.  
 7 Did Mr. Smith discuss that Mr. Poirier  
 8 was his relationship contact at JPMorgan while  
 9 Mr. Smith was an executive at American Electric, or  
 10 AEP?  
 11 Answer: Like I said, I don't recall  
 12 any specifics being discussed. Steve Smith may have,  
 13 in passing, said that he knew this gentleman, but that  
 14 is my recollection.  
 15 Question: Do you know who Eric  
 16 Fomell is?  
 17 Answer: No.  
 18 Question: I will represent to you  
 19 that Mr. Fomell was the lead banker for TransCanada  
 20 in connection to the acquisition of Columbia. Did  
 21 Mr. Smith ever disclose to you or the board that he  
 22 had a long-term relationship with Mr. Fomell since  
 23 the early 2000s?  
 24 Answer: Not that I recall.

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1 team from the equity offering while in deal  
 2 discussions with TransCanada, right?  
 3 Answer: Not that I'm aware of.  
 4 (End of video clip.)  
 5 ATTORNEY JAMES: In the next clip,  
 6 Mr. Cornelius was asked about a November 25, 2015,  
 7 internal Wells Fargo email from Mr. Fomell, located  
 8 at Joint Exhibit 402.  
 9 Joe, could you please play Cornelius  
 10 clip 33. This is at pages 116 to 117 of the  
 11 deposition.  
 12 (A video clip was played as follows:)  
 13 Question: Fair to say that when  
 14 Mr. Skaggs, you know, told TransCanada, hey, we're  
 15 terminating the deal discussions at the price,  
 16 Mr. Girling, you know, proposed, hey, can we try to  
 17 close the gap, and Mr. Skaggs went to you, and your  
 18 answer was, we are not taking the risk, let's get the  
 19 equity offering done, right?  
 20 Answer: I remember that conversation.  
 21 Question: Okay. Then the next  
 22 paragraph says, "Francois spoke with the CFO who said  
 23 they will 'probably' want to pick [] [up] discussions  
 24 [] again 'in a few months.' Francois wants to

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1 continue modeling the various cases but obviously put  
2 the diligence on hold. He also [thinks] that we think  
3 about whether there is some type of Capricorn security  
4 Taurus could invest in that would give Capricorn the  
5 equity they would need, protect Taurus on the downside  
6 and reduce the amount of equity that Taurus would need  
7 to pay [] premium for to do a deal in early '16. Can  
8 we have a call at 3 pm [Eastern]?"

9 Do you see that?

10 Answer: Yes.

11 Question: We just looked at the  
12 November 15, 2015, executive board minutes, but it's  
13 fair to say that Mr. Smith did not have board  
14 authorization to tell TransCanada on November 25,  
15 2015, that deal discussions would probably pick up  
16 again in a few months. Right?

17 Answer: I see that.

18 (End of video clip.)

19 ATTORNEY JAMES: The next clips need  
20 no introduction.

21 Joe, can you please play Cornelius  
22 clips 34 and 35, which are located at pages 118 and 98  
23 to 99 of his deposition.

24 Question: Now, let me ask you a

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1 Answer: I would agree.

2 Question: And so you would agree that  
3 the board never authorized Mr. Skaggs or Mr. Smith to  
4 tell TransCanada, hey, we need to get a deal done  
5 before the end of 2016, right?

6 Answer: That would surprise me.

7 (End of video clip.)

8 ATTORNEY JAMES: In the next clips,  
9 Mr. Cornelius was asked about a November 30, 2015,  
10 email from Mr. Fornell to Mr. Poirier located at Joint  
11 Exhibit 418.

12 Joe, if you could please play clips 36  
13 and 37. Those are at pages 130 and 131 to 132 of the  
14 deposition.

15 (A video clip was played as follows:)

16 Question: Sitting here today, do you  
17 have any recollection of the board authorizing  
18 Columbia's management team, its lawyers, or Wells  
19 Fargo, authorizing Wells Fargo to contact Mr. Smith in  
20 late November or early December of 2015 to obtain  
21 information about the equity offering or to discuss  
22 the potential deal with TransCanada?

23 Answer: No specific authorization  
24 provided.

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1 different question. Did you, in the -- now we're  
2 talking the December time period. Okay?  
3 December 2015. Do you remember any specific or  
4 written authorization from the board authorizing  
5 Mr. Skaggs or Mr. Smith to tell TransCanada that  
6 management was supportive of selling Columbia at that  
7 time, but the board was holding up the sale?

8 Answer: No, I'm not aware of that  
9 conversation.

10 Question: Now, going back -- and we  
11 are almost done with this document. I want to go back  
12 to the 2016 time period, so around the time of the  
13 sale. Okay?

14 You would agree, sir, that at the  
15 board level, there was no rush or need to sell  
16 Columbia because you guys had just completed a  
17 \$1 billion equity raise, right?

18 Attorney Kirby: Object to the form.

19 Answer: We had just completed a  
20 successful equity that satisfied our capital  
21 requirements in the near term.

22 Question: So you would agree there  
23 wasn't a gun to your head to sell the company in  
24 mid-2016, right?

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1 Question: You don't have any  
2 recollection of Mr. Smith telling you, hey, I had a  
3 convo with Mr. Fornell, TransCanada's banker, on  
4 December 2nd telling him how our equity offering was  
5 going and about discussing a potential deal, right?

6 Attorney Vallette: Objection to the  
7 form.

8 Answer: As I said, I'm answering your  
9 question that the last -- I mean, the next time that  
10 TransCanada came up with Mr. Skaggs and me was around  
11 the January 7th meeting.

12 Question: Okay.

13 (End of video clip.)

14 ATTORNEY JAMES: And the next clip is  
15 Mr. Cornelius was asked about a December 8, 2015,  
16 email chain between Mr. Fornell and Mr. Poirier, Joint  
17 Exhibit 474.

18 Joe, could you play clips 38 and 39.  
19 Those are at pages 134 to 135 and 135 to 136 of the  
20 transcript.

21 (A video clip was played as follows:)

22 Question: Did Mr. Skaggs or Mr. Smith  
23 ever inform you that they had a meeting with  
24 Mr. Fornell at an energy conference on December 8th

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<p>1 where they discussed a potential deal with</p> <p>2 TransCanada?</p> <p>3 Attorney Vallette: Objection to form.</p> <p>4 Answer: I'm not aware of that.</p> <p>5 Question: It's fair to say that in</p> <p>6 this time frame of December 8, 2015, the board had not</p> <p>7 provided written authorization to TransCanada or</p> <p>8 Columbia management to invite deal discussions, right?</p> <p>9 Attorney Kirby: Object to form.</p> <p>10 Answer: The board had not -- the</p> <p>11 board had not authorized conversations, specific</p> <p>12 conversations around deal conversations.</p> <p>13 (End of video clip.)</p> <p>14 ATTORNEY JAMES: And the next clip,</p> <p>15 Mr. Cornelius was asked about the January 7 meeting</p> <p>16 between Mr. Poirier and Steve Smith.</p> <p>17 Joe, could you please play clip 41.</p> <p>18 That's at pages 140 to 142 of the deposition.</p> <p>19 (A video clip was played as follows:)</p> <p>20 Question: Now, I want to talk about</p> <p>21 the January 7th meeting between Mr. Smith and</p> <p>22 Mr. Poirier. When did you first learn about that</p> <p>23 meeting, sir?</p> <p>24 Answer: My recollection is that Bob</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 January 7th actual meeting, right?</p> <p>2 Answer: That's correct.</p> <p>3 Question: Okay.</p> <p>4 (End of video clip.)</p> <p>5 ATTORNEY JAMES: The next clip,</p> <p>6 Mr. Cornelius was asked about a series of emails from</p> <p>7 Mr. Fornell dated February 4, 2016, scheduling an</p> <p>8 in-person meeting between Mr. Fornell, Mr. Skaggs, and</p> <p>9 Mr. Smith on February 9. Those emails are located at</p> <p>10 Joint Exhibit 691 to 692.</p> <p>11 Joe, if you could please play clip 43,</p> <p>12 which is at page 146.</p> <p>13 Question: You have no recollection of</p> <p>14 them sharing that they had the meeting, though, right?</p> <p>15 Answer: That's correct.</p> <p>16 (End of video clip.)</p> <p>17 ATTORNEY JAMES: In the next series of</p> <p>18 clips, Mr. Cornelius was asked about the January 25,</p> <p>19 2016, outreach from Mr. Girling of TransCanada.</p> <p>20 For that context, Joe, could you</p> <p>21 please play clips 44 and 45. And these are from pages</p> <p>22 65 and 70 of the deposition transcript.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: Prior to January 28 --</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 Skaggs had informed me that those two individuals were</p> <p>2 getting together prior to the meeting.</p> <p>3 Question: Okay. So you had an idea</p> <p>4 it was happening in late December, early January, from</p> <p>5 Mr. Skaggs?</p> <p>6 Answer: Yeah. I don't know -- I</p> <p>7 don't know exactly when, but --</p> <p>8 Question: I think we can agree on</p> <p>9 this, but fair to say that prior to that meeting, the</p> <p>10 board didn't authorize Mr. Smith to tell Mr. Poirier</p> <p>11 that, hey, there is no competition for a bid or we had</p> <p>12 to eliminate the competition. Right?</p> <p>13 Attorney Kirby: Objection to form.</p> <p>14 Attorney Vallette: Objection to form.</p> <p>15 Answer: The board never had -- the</p> <p>16 board did not have a conversation with Steve Smith on</p> <p>17 the subject matter of the meetings.</p> <p>18 Question: So let me clean up this</p> <p>19 time frame, and then we will take our break. So I'm</p> <p>20 reorienting you now. So we've just done December. We</p> <p>21 talked about the January 7th meeting for a bit. And I</p> <p>22 just want to be clear. There was no discussion at the</p> <p>23 board level or authorization at the board level on</p> <p>24 what Mr. Smith could say at that meeting prior to the</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 strike that.</p> <p>2 Prior to January 25, 2016, the board</p> <p>3 had not provided written authorization to TransCanada</p> <p>4 to give an offer, right?</p> <p>5 Answer: Written authorization, that's</p> <p>6 correct.</p> <p>7 Question: Fair to say that at the</p> <p>8 time on January 25, 2016, the board had not provided</p> <p>9 written authorization to Bob Smith or TransCanada or</p> <p>10 Sullivan &amp; Cromwell waiving the obligations of the</p> <p>11 standstill agreement, right?</p> <p>12 Answer: That's correct.</p> <p>13 (End of video clip.)</p> <p>14 ATTORNEY JAMES: In the next clips,</p> <p>15 Mr. Cornelius was asked about a January 28, 2016,</p> <p>16 email from Christine Johnston to several Mayer Brown</p> <p>17 attorneys. That's at Joint Exhibit 647.</p> <p>18 Joe, if you could please play clips</p> <p>19 46.1 and .2. Those are from pages 88 to 89 of the</p> <p>20 transcript.</p> <p>21 (A video clip was played as follows:)</p> <p>22 Question: I have a couple questions</p> <p>23 for you. One, did the board -- let me ask you this.</p> <p>24 Did -- was it the board's position that it didn't want</p> <p>CHANCERY COURT REPORTERS</p>

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<p>1 an executed agreement with concern that the</p> <p>2 plaintiffs' counsel would get their hands on it for</p> <p>3 exclusivity?</p> <p>4 Answer: I don't ever recall that</p> <p>5 being discussed.</p> <p>6 Question: Right. Did you authorize</p> <p>7 Mr. Skaggs or Smith or your legal advisors to tell</p> <p>8 TransCanada, hey, let's do a gentleman's agreement on</p> <p>9 exclusivity because it could be used against us in</p> <p>10 litigation?</p> <p>11 Answer: Not discussed to my</p> <p>12 knowledge.</p> <p>13 Question: Did Sullivan &amp; Cromwell,</p> <p>14 Mr. Skaggs, Mr. Smith, Mr. Bob Smith, ever discuss</p> <p>15 with the board that they really wanted to enter into a</p> <p>16 gentleman's agreement for exclusivity because if they</p> <p>17 didn't waive the standstills when entering</p> <p>18 exclusivity, it could be problematic from a fiduciary</p> <p>19 standpoint? Any discussion about that?</p> <p>20 Answer: I have no knowledge of that.</p> <p>21 Or I should say I have no recollection of that.</p> <p>22 (End of video clip.)</p> <p>23 ATTORNEY JAMES: The next clip needs</p> <p>24 no introduction.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 needed to understand all the specifics around how the</p> <p>2 26 with the stock was going to work. So there was</p> <p>3 never a complete, yeah, we accept what you propose.</p> <p>4 (End of video clip.)</p> <p>5 ATTORNEY JAMES: In the next clip,</p> <p>6 Mr. Cornelius was asked about the Wells Fargo fairness</p> <p>7 opinion committee memo from March 12, 2016. Present</p> <p>8 Joint Exhibit 1063.</p> <p>9 Joe, if you could please play clip 49.</p> <p>10 That's from page 165 of the transcript.</p> <p>11 (A video clip was played as follows:)</p> <p>12 Question: My question to you is, did</p> <p>13 you authorize your management team to tell TransCanada</p> <p>14 on March 10, 2016, that the board accepted the offer</p> <p>15 of \$26 per share and 10 percent stock?</p> <p>16 Answer: Not that I recall.</p> <p>17 (End of video clip.)</p> <p>18 ATTORNEY JAMES: In the next clip,</p> <p>19 Mr. Cornelius was asked about the March 10 <i>Wall Street</i></p> <p>20 <i>Journal</i> leak.</p> <p>21 Joe, if you could please play clip 51</p> <p>22 from pages 167 to 168 of the transcript.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: Understood. I'm going to</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 Joe, could you please play clip 47.</p> <p>2 That's from page 59 of the transcript.</p> <p>3 (A video clip was played as follows:)</p> <p>4 Question: We'll talk about that.</p> <p>5 Okay? But my question is very specific. Now, just</p> <p>6 listen to me for a second. Okay? Prior to March 4,</p> <p>7 2016, did the board provide written authorization to</p> <p>8 TransCanada to make a bid or an offer?</p> <p>9 Answer: Not that I'm aware of.</p> <p>10 (End of video clip.)</p> <p>11 ATTORNEY JAMES: In the next clip,</p> <p>12 Mr. Cornelius was asked about a March 10, 2016, email</p> <p>13 from Hugh Babowal of Wells Fargo. Present Joint</p> <p>14 Exhibit 956.</p> <p>15 Joe, if you could please play clip 48.</p> <p>16 That's from page 163 of the transcript.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: Again, my question is, did</p> <p>19 the board authorize management on March 10, 2016, to</p> <p>20 tell TransCanada, we have accepted 26 with the</p> <p>21 10 percent stock and we are only negotiating down the</p> <p>22 break fee?</p> <p>23 Attorney Vallette: Objection to form.</p> <p>24 Answer: My recollection was that we</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 be very clear right now. Okay? On March 10, 2016,</p> <p>2 did the board authorize management to tell TransCanada</p> <p>3 that, one, the board was freaking out; and that, two,</p> <p>4 it wanted to get a deal done with TransCanada with</p> <p>5 whatever it takes?</p> <p>6 Attorney Vallette: Objection to form.</p> <p>7 Answer: Those words were – those</p> <p>8 words were not used, and that authorization was not</p> <p>9 provided.</p> <p>10 Question: Yeah. Mr. Cornelius,</p> <p>11 I've – I've sat through your first deposition, I saw</p> <p>12 you testify at trial, and I've sat with you today.</p> <p>13 And it surprises me. Were you freaking out after the</p> <p>14 board leak – after the deal was leaked on March 10th?</p> <p>15 Answer: No.</p> <p>16 Attorney Vallette: Objection to form.</p> <p>17 Answer: The board was not freaking</p> <p>18 out. I personally was not freaking out.</p> <p>19 (End of video clip.)</p> <p>20 ATTORNEY JAMES: In the next clip,</p> <p>21 Mr. Cornelius was asked about Spectra.</p> <p>22 Joe, if you could please play clip 53.</p> <p>23 That's from page 176 of the deposition.</p> <p>24 (A video clip was played as follows:)</p> <p>CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;"><b>S. Cornelius - Direct by Video</b> Page 809</p> <p>1 Question: I have a couple questions</p> <p>2 about this. My first is, Spectra never signed an NDA</p> <p>3 with Columbia, right, in 2015 or 2016, correct?</p> <p>4 Answer: That's my understanding.</p> <p>5 Question: So it's fair to say that</p> <p>6 Spectra never received confidential information about</p> <p>7 Columbia in 2015, 2016, pursuant to an NDA, right?</p> <p>8 Answer: Correct.</p> <p>9 Question: Okay. And it's fair to say</p> <p>10 that TransCanada in 2015 and 2016 did not make an</p> <p>11 offer or proposal or an indicative offer without first</p> <p>12 signing an NDA and receiving diligence; correct?</p> <p>13 Answer: Correct.</p> <p>14 Question: All right.</p> <p>15 (End of video clip.)</p> <p>16 ATTORNEY JAMES: In the next clip,</p> <p>17 Mr. Cornelius was asked about a text Glen Kettering</p> <p>18 sent Mr. Skaggs on February 7, 2016. And that's at</p> <p>19 Joint Exhibit 701.</p> <p>20 Joe, let's play clip 54. That's from</p> <p>21 page 178 of the transcript.</p> <p>22 (A video clip was played as follows:)</p> <p>23 Question: Let me ask you this: Did</p> <p>24 anyone at Columbia management tell you on or before</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>S. Cornelius - Direct by Video</b> Page 811</p> <p>1 sitting here today, do you have any recollection of</p> <p>2 your legal counsel or any of your advisors or your</p> <p>3 management team coming back to you and explaining,</p> <p>4 hey, we committed to TransCanada that in our script,</p> <p>5 the term "serious written proposal" only means a fully</p> <p>6 financed bid subject to confirmatory due diligence?</p> <p>7 Attorney Vallette: Objection to form.</p> <p>8 Answer: I don't recall a conversation</p> <p>9 like that.</p> <p>10 Question: Okay.</p> <p>11 (End of video clip.)</p> <p>12 ATTORNEY JAMES: In the next clip</p> <p>13 Mr. Cornelius was asked about a text from Steve Smith</p> <p>14 to Glen Kettering, Bob Smith, and Mr. Skaggs on</p> <p>15 March 12, 2016. That's located at Joint Exhibit 1682,</p> <p>16 page 10 of that exhibit.</p> <p>17 Joe, if you could, please play clip</p> <p>18 57. That's from pages 195 to '96 of the deposition.</p> <p>19 (A video clip was played as follows:)</p> <p>20 Question: Then Mr. Smith responds</p> <p>21 right below at 18:49. He says, "I think we are done.</p> <p>22 Francois wanted to know the rationale - I explained it</p> <p>23 and pointed out how important the fiduciary</p> <p>24 protections were for our board. Told him we wanted to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>S. Cornelius - Direct by Video</b> Page 810</p> <p>1 March 11, 2016, that Spectra had indicated, at least</p> <p>2 in February, that they were interested in potentially</p> <p>3 discussing a deal and were sharpening their pencils?</p> <p>4 Answer: I was not aware of that</p> <p>5 approach.</p> <p>6 (End of video clip.)</p> <p>7 ATTORNEY JAMES: The parties have</p> <p>8 stipulated in the pretrial order that Columbia</p> <p>9 prepared a script to advise Spectra and any other</p> <p>10 inbound acquirers that Columbia would only respond to</p> <p>11 serious written proposals.</p> <p>12 The parties have further stipulated in</p> <p>13 it the pretrial order that Wells Fargo advised</p> <p>14 TransCanada that it would be okay with a script if</p> <p>15 there was a moral commitment that a serious written</p> <p>16 proposal is a financed bid subject only to</p> <p>17 confirmatory due diligence and not just a per-share</p> <p>18 price on a cocktail napkin. Those are from paragraphs</p> <p>19 389 and 404 of the PTO.</p> <p>20 With that context, Joe, could you</p> <p>21 please play clip 55. That's from pages 192 to 193 of</p> <p>22 the transcript.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: So my question is, for you</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>S. Cornelius - Direct by Video</b> Page 812</p> <p>1 get this deal done with them and this would achieve</p> <p>2 that goal. They were circling the wagons one last</p> <p>3 time and Francois said he would have Chris reach out</p> <p>4 to Bob to get it signed up once their meeting was</p> <p>5 concluded."</p> <p>6 Do you see that?</p> <p>7 Answer: Mm-hmm.</p> <p>8 Question: Did the board authorize</p> <p>9 Mr. Smith in connection to the inbound script to</p> <p>10 inform Mr. Poirier that, "We want to get the deal done</p> <p>11 with TransCanada"?</p> <p>12 Attorney Vallette: Objection to form.</p> <p>13 Answer: I have no recollection on my</p> <p>14 part that there was any instructions like that given.</p> <p>15 (End of video clip.)</p> <p>16 ATTORNEY JAMES: In the next clip,</p> <p>17 Mr. Cornelius was asked about the March 14, 2016,</p> <p>18 Columbia executive session meeting minutes located at</p> <p>19 Joint Exhibit 191, pages 16 to 17 of that document.</p> <p>20 Joe, if you could please play clip 58.</p> <p>21 That's from pages 197 to -99 of the deposition.</p> <p>22 (A video clip was played as follows:)</p> <p>23 Question: So if you go to the bottom</p> <p>24 of March 14, starts at the bottom of page 875. The</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

## S. Cornelius - Direct by Video

<b>S. Cornelius - Direct by Video</b> Page 813	<b>S. Cornelius - Direct by Video</b> Page 815
<p>1 very last sentence, it starts, "Mr. Skaggs noted that</p> <p>2 TransCanada's Chief Executive Officer" -- and</p> <p>3 continues on to the next page -- "later reaffirmed</p> <p>4 TransCanada's revised proposal to him in a</p> <p>5 conversation. Mr. Skaggs reported that [] TransCanada</p> <p>6 representative had cited concerns over execution risk</p> <p>7 on TransCanada's proposed subscription receipts</p> <p>8 offering and [that] the deterioration of TransCanada's</p> <p>9 stock price following the leak of the potential</p> <p>10 transaction as the motivation for the revised</p> <p>11 proposal. Mr. Skaggs further reported to the Board</p> <p>12 that, according to TransCanada's management,</p> <p>13 TransCanada would be prepared to move expeditiously</p> <p>14 and, subject to Board approval, announce the</p> <p>15 transaction on March 16 or March 17, 2016, and that if</p> <p>16 the Board were not to accept the offer, TransCanada</p> <p>17 planned to issue a press release within the next few</p> <p>18 days indicating its acquisition discussions had been</p> <p>19 terminated."</p> <p>20 Do you see that?</p> <p>21 Answer: I do.</p> <p>22 Question: And is that consistent with</p> <p>23 your recollection of what was indicated to the board</p> <p>24 about TransCanada's revised offer, its reasons for</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 (A video clip was played as follows:)</p> <p>2 Question: Okay. Look at Exhibit 31.</p> <p>3 It's on a Wells Fargo document 78026 between</p> <p>4 Mr. Fornell and Mr. Poirier. It says, "Market."</p> <p>5 Do you have it?</p> <p>6 Answer: I do.</p> <p>7 Question: Mr. Fornell writes to</p> <p>8 Mr. Poirier on March 16, "Your stock is hanging in</p> <p>9 nicely."</p> <p>10 And Mr. Poirier writes, "Agreed!"</p> <p>11 Do you see that?</p> <p>12 Answer: I do.</p> <p>13 Question: Is it safe to say that</p> <p>14 you've never seen this document before today. Right,</p> <p>15 sir?</p> <p>16 Answer: Correct.</p> <p>17 Question: And I just want to be</p> <p>18 clear. You don't recall any discussion or analysis</p> <p>19 from your management team or your advisors about how</p> <p>20 TransCanada's stock price was performing after they</p> <p>21 came with the lower bid, right?</p> <p>22 Answer: Correct.</p> <p>23 Question: Okay.</p> <p>24 (End of video clip.)</p> <p>CHANCERY COURT REPORTERS</p>
<b>S. Cornelius - Direct by Video</b> Page 814	<b>S. Cornelius - Cross by Video</b> Page 816
<p>1 doing so, and its indication that it would go public</p> <p>2 about terminating the deal discussions if the deal</p> <p>3 wasn't to be had soon?</p> <p>4 Answer: It is.</p> <p>5 Question: Okay. Now, I want to break</p> <p>6 this down. Do you recall any analysis from your</p> <p>7 financial advisors or management about TransCanada's</p> <p>8 excuse that it was lowering its bid because of</p> <p>9 subscription receipts offering issues?</p> <p>10 Attorney Vallette: Objection to form.</p> <p>11 Answer: I do not recall that was</p> <p>12 discussed.</p> <p>13 Question: Do you recall discussing or</p> <p>14 receiving any analysis from your advisors or</p> <p>15 management team about how TransCanada's stock price</p> <p>16 was actually performing at the time?</p> <p>17 Answer: I don't recall.</p> <p>18 (End of video clip.)</p> <p>19 ATTORNEY JAMES: In the last clip,</p> <p>20 Mr. Cornelius was asked about a March 16, 2016, email</p> <p>21 exchange between Mr. Poirier and Mr. Fornell located</p> <p>22 on Joint Exhibit 1110.</p> <p>23 Joe, if you could please play clip 59.</p> <p>24 That's from pages 200 to 201 of the transcript.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 ATTORNEY JAMES: I have nothing</p> <p>2 further. We pass the witness.</p> <p>3 ATTORNEY SHI: Your Honor, may I</p> <p>4 approach, please?</p> <p>5 Good afternoon, Your Honor. Linda Shi</p> <p>6 on behalf of TransCanada. Your Honor has been handed</p> <p>7 a copy of the binder with an annotated copy of</p> <p>8 Mr. Cornelius' transcript. It shows plaintiff's</p> <p>9 designations, TransCanada's designations, and</p> <p>10 TransCanada's objections. The exhibits referencing</p> <p>11 the clips are in the binder as well.</p> <p>12 ATTORNEY SHI: The first few clips are</p> <p>13 about the standstill provision, located on pages 29 to</p> <p>14 30, page 32, pages 53 to 54; and Joint Exhibit 191,</p> <p>15 pages 96 to 98 and pages 84 to 85.</p> <p>16 (A video clip was played as follows:)</p> <p>17 Question: I'm asking you personally,</p> <p>18 though. Do you have any basis to dispute that if a</p> <p>19 party reached out to acquire Columbia or expressed</p> <p>20 interest in acquiring Columbia without first receiving</p> <p>21 written board authorization, that would be -- would</p> <p>22 not be a violation of the standstill?</p> <p>23 Answer: I will say that throughout</p> <p>24 the entire process, we were advised by legal counsel,</p> <p>CHANCERY COURT REPORTERS</p>

## S. Cornelius - Cross by Video

## S. Cornelius - Cross by Video

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1 and at no time did we -- were we informed that we were  
 2 in violation of the standstill.  
 3 Question: Okay. And we're going to  
 4 talk about that in a little bit. Okay? What you  
 5 learned and when you -- when you learned it.  
 6 Well, let me ask you this: Sitting  
 7 here today, do you have any specific recollection of  
 8 Sullivan & Cromwell, Frumkin, Sampas, Bob Smith,  
 9 anyone, telling you, hey -- in December or January,  
 10 2015, 2016 -- TransCanada wants to reengage. We  
 11 better give them written authorization. Do you  
 12 remember any of that?  
 13 Answer: I do not. The only thing  
 14 that I recall is that I was advised that we were still  
 15 under the NDA.  
 16 Question: Right.  
 17 Answer: The NDA was still in effect  
 18 just like it was with all the others.  
 19 Question: Right. But do you remember  
 20 any specific discussion about the standstill in the  
 21 NDA in December and January of 2015 and 2016?  
 22 Answer: I do not.  
 23 Question: Earlier we established that  
 24 you are not changing your testimony from trial that if

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## S. Cornelius - Cross by Video

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1 through the pages, there is no mention of advice or a  
 2 discussion of the standstill provision in the NDA  
 3 until the March 4th board meeting, which is on the  
 4 page ending in 59867 and goes to -868 in the document.  
 5 Do you have any basis to dispute that?  
 6 Answer: Yes, I take a slightly  
 7 different view. I think if you look at the minutes of  
 8 the January 28th/29th minutes, specific reference to  
 9 the fact that the board didn't specifically mention  
 10 the NDA, but did discuss -- "the Board then discussed  
 11 with management and the Company's advisors" -- which  
 12 would have been Sullivan & Cromwell -- "an indicative  
 13 offer ... and whether [or not] the Company should  
 14 solicit interest from, or re-engage with, other  
 15 potentially interested counterparties ...."  
 16 Question: Okay. That's fair. Let me  
 17 ask you this: The language of the document which was  
 18 drafted by Sullivan & Cromwell, is there any mention  
 19 of the NDA or the standstill in that January 28th/29  
 20 entry?  
 21 Answer: Again, only from the  
 22 standpoint that it was -- that the NDA -- it wasn't  
 23 specifically mentioned, but we were advised by our  
 24 advisors accordingly.

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## S. Cornelius - Cross by Video

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1 someone was allowed to breach the standstill and  
 2 others weren't, that would create an unlevel playing  
 3 field; correct?  
 4 Answer: That's correct. And also --  
 5 I would also reemphasize my statement that we were  
 6 advised by legal counsel through the entire process  
 7 that they did not see it as a breach.  
 8 Question: I will represent to you  
 9 that it was actually drafted by Sullivan & Cromwell.  
 10 Do you have any basis to dispute that?  
 11 Answer: No basis to dispute.  
 12 Question: Okay. Now, to -- we have  
 13 been talking a bit about the NDA and whatnot, and so  
 14 to orient us in time, I'm talking -- well, strike  
 15 that.  
 16 To orient us in time, I think you'll  
 17 agree with me, Columbia ended up entering into NDAs  
 18 with standstill provisions with TransCanada,  
 19 Berkshire, Dominion, and NextEra in the mid-October or  
 20 November of 2015 time frame. Does that sound right to  
 21 you?  
 22 Answer: Yes, it does.  
 23 Question: Okay. Now, you should feel  
 24 free to flip through the documents, but if you go

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## S. Cornelius - Cross by Video

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1 Question: Okay. Again, there was no  
 2 written board authorization at this time to tell  
 3 TransCanada, hey, if we receive an offer from you, it  
 4 won't violate the standstill, right?  
 5 Answer: The record would indicate  
 6 that that was discussed between our -- CPG's counsel  
 7 and our legal counsel and confirmed it was not an  
 8 issue.  
 9 Question: Right. My question is a  
 10 little different, though, sir. Did the board -- the  
 11 board, did the board provide written authorization for  
 12 your legal counsel to waive the standstill for  
 13 TransCanada at this time?  
 14 Answer: It did not because it was  
 15 viewed as unnecessary.  
 16 Question: Okay. Let me ask you this:  
 17 You agree with me that the standstill required written  
 18 board authorization to get an offer, right?  
 19 Attorney Kirby: Objection to the  
 20 form.  
 21 Question: So what the standstill does  
 22 is it puts the power to the board to decide whether to  
 23 get an offer or not, right?  
 24 Answer: When we got to that point,

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## S. Cornelius - Cross by Video

<b>S. Cornelius - Cross by Video</b> Page 821	<b>S. Cornelius - Cross by Video</b> Page 823
<p>1 yes.</p> <p>2 Question: My question is, though, it</p> <p>3 is not Frumkin's or Bob Smith's decision to waive the</p> <p>4 standstill or not. It had to go to the board, right?</p> <p>5 Answer: The board relied on legal</p> <p>6 advice through the entire process.</p> <p>7 Question: I'm not asking that.</p> <p>8 Answer: I know you're not asking</p> <p>9 that. But if the board felt it was needed based on</p> <p>10 the advice that we were getting from counsel, we would</p> <p>11 have insisted on it.</p> <p>12 Question: Okay. I understand that.</p> <p>13 But the plain language of the standstill puts the</p> <p>14 power to the board to waive it or not, right?</p> <p>15 Answer: I would – you're asking a</p> <p>16 hypothetical. I don't have the NDA in front of me or</p> <p>17 the standstill agreement in front of me. The board</p> <p>18 has the obligation to waive the standstill, my</p> <p>19 understanding.</p> <p>20 Question: Okay. We'll agree on this:</p> <p>21 There was no written authorization from the board in</p> <p>22 January of 2016 to waive the standstill for</p> <p>23 TransCanada; correct?</p> <p>24 Answer: Correct, because it was felt</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 the board authorized management and Sullivan &amp;</p> <p>2 Cromwell to enter into this exclusivity agreement, and</p> <p>3 I would have assumed that they would have known</p> <p>4 whether or not it was in violation or not.</p> <p>5 (End of video clip.)</p> <p>6 ATTORNEY SHI: The next clip is about</p> <p>7 Mr. Skaggs' succession planning. It's located on</p> <p>8 pages 91 to 93 of the transcript.</p> <p>9 (A video clip was played as follows:)</p> <p>10 Question: I want to just break this</p> <p>11 down a little bit. In the 2015-2016 time period, did</p> <p>12 Mr. Skaggs ever specifically inform you that his</p> <p>13 target retirement date for his financial planning</p> <p>14 purposes was March 2016?</p> <p>15 Answer: No. I think, you know, the</p> <p>16 board first became aware of – the NiSource board</p> <p>17 first became aware of Bob's horizon, and I don't</p> <p>18 recall the specific date that he was thinking about,</p> <p>19 but it came up in context of splitting the company and</p> <p>20 splitting NiSource into its – spinning out Columbia</p> <p>21 Pipeline and NiSource. And the board had a</p> <p>22 conversation, when we were thinking about the search</p> <p>23 process to pick Bob's successor, what exactly we were</p> <p>24 looking for.</p> <p>CHANCERY COURT REPORTERS</p>
<b>S. Cornelius - Cross by Video</b> Page 822	<b>S. Cornelius - Cross by Video</b> Page 824
<p>1 it was not needed at that time in the process.</p> <p>2 Question: Okay. But, again, you have</p> <p>3 no specific recollection, sitting here today, if the</p> <p>4 standstill or don't ask, don't waive standstill and</p> <p>5 what that meant was even discussed with the board in</p> <p>6 that January 2016 time period, right?</p> <p>7 Answer: I think the minutes reflect</p> <p>8 that there was a discussion around whether or not –</p> <p>9 how it would impact other parties.</p> <p>10 Question: The minutes don't reflect</p> <p>11 the word "standstill," correct?</p> <p>12 Answer: Correct.</p> <p>13 Question: They don't reflect the</p> <p>14 words "don't ask, don't waive," correct?</p> <p>15 Answer: Correct.</p> <p>16 Question: Sitting here today, do you</p> <p>17 remember any specific advice provided by counsel about</p> <p>18 whether the standstill should be released for other</p> <p>19 potential bidders before entering exclusivity with</p> <p>20 TransCanada in January of 2016?</p> <p>21 Answer: No, because there was</p> <p>22 discussion around whether or not other unsolicited</p> <p>23 offers could be received during the period of</p> <p>24 exclusivity, and, again, the exclusivity agreement was</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 And that we needed to make – and it</p> <p>2 might lead us – it might lead us down a different</p> <p>3 path if the board concluded that we should seriously</p> <p>4 look at splitting, doing a tax-free spin of Columbia</p> <p>5 Pipeline. And, therefore, the skill set – the skill</p> <p>6 set that we would be looking for to run NiSource as a</p> <p>7 stand-alone company without Columbia Pipeline might be</p> <p>8 different than if the company stayed together. So ...</p> <p>9 And then once the decision was made to</p> <p>10 go ahead and spin out Columbia Pipeline, there was</p> <p>11 conversation that Bob would go with the Columbia</p> <p>12 Pipeline and stay on with the company until it was, I</p> <p>13 think Bob used the term "stood up," basically</p> <p>14 referencing the fact that we had got through a</p> <p>15 successful spin, the company was doing well, and</p> <p>16 basically a stable situation.</p> <p>17 I think the first time after the spin,</p> <p>18 then, the first time probably the target – I mean, we</p> <p>19 started having conversations was about – it was kind</p> <p>20 of after – in December, Bob and I had dinner in</p> <p>21 December, and we had completed our equity offering.</p> <p>22 We – I should say – let me back up.</p> <p>23 Yeah. We went through that period of</p> <p>24 time where there was strategic interest expressed by</p> <p>CHANCERY COURT REPORTERS</p>

## S. Cornelius - Cross by Video

<p style="text-align: center;"><b>S. Cornelius - Cross by Video</b> Page 825</p> <p>1 other companies. We decided to go and successfully</p> <p>2 complete the equity offering, so it seemed appropriate</p> <p>3 that the company was well positioned to be thinking</p> <p>4 about Bob's retirement.</p> <p>5 Question: Thank you. I don't need to</p> <p>6 rehash all that. But I will just say that that's</p> <p>7 consistent with the -- I think he had a couple</p> <p>8 one-on-one meetings with you and some of the other</p> <p>9 directors about different succession planning options,</p> <p>10 correct, around that time in December, January 2015,</p> <p>11 2016?</p> <p>12 Answer: Yeah, Bob -- based on a</p> <p>13 request of mine, Bob provided his thoughts on it, and</p> <p>14 then I had some conversations with fellow board</p> <p>15 members about that.</p> <p>16 (End of video clip.)</p> <p>17 ATTORNEY SHI: The next few clips</p> <p>18 pertain to Wells Fargo. They are about Wells Fargo's</p> <p>19 role in the equity offering, located on page 120 and</p> <p>20 pages 127 to 128; December 2015 energy conference, at</p> <p>21 page 136; and a February 9, 2016, meeting, located on</p> <p>22 pages 145 and 146.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: Right. And I think you're</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;"><b>S. Cornelius - Cross by Video</b> Page 827</p> <p>1 Question: It's fair to say that in</p> <p>2 this time frame of December 8, 2015, the board had not</p> <p>3 provided written authorization to TransCanada or</p> <p>4 Columbia management to invite deal discussions, right?</p> <p>5 Answer: The board had not -- the</p> <p>6 board had not authorized conversations, specific</p> <p>7 conversations, around deal conversations.</p> <p>8 Question: Right. And I think,</p> <p>9 correct me if I'm wrong, I think today is the first</p> <p>10 day you learned that Steve Smith had met with</p> <p>11 Mr. Fornell to discuss a potential deal in</p> <p>12 December 2015 at the energy conference, right?</p> <p>13 Answer: Again, you're speculating on</p> <p>14 what was discussed. They met at the energy</p> <p>15 conference. It is speculation as to what they talked</p> <p>16 about.</p> <p>17 Question: Okay. Is it fair to say --</p> <p>18 let me ask you this: Did Mr. Skaggs and Mr. Smith</p> <p>19 ever tell the board in February or March of 2016 that</p> <p>20 they had reached out to TransCanada's financial</p> <p>21 advisor and had a meeting with them on February 9,</p> <p>22 2016?</p> <p>23 Answer: No. I'm not sure they needed</p> <p>24 to.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: center;"><b>S. Cornelius - Cross by Video</b> Page 826</p> <p>1 going to agree with my next statement. But you would</p> <p>2 agree that it would be improper for any of the</p> <p>3 advisors or book runners who were subject to a</p> <p>4 confidentiality agreement with Columbia for the equity</p> <p>5 offering to take information it was learning about</p> <p>6 Columbia in connection with the equity offering and</p> <p>7 then take it to another client to help that client</p> <p>8 facilitate a strategy to buy Columbia, correct?</p> <p>9 Answer: I can't speak to the internal</p> <p>10 discussion on the book runners on what their -- on</p> <p>11 what the agreement says or doesn't say. So they would</p> <p>12 be in a position to decide whether or not that was</p> <p>13 ethical.</p> <p>14 Question: I think you would agree it</p> <p>15 would be improper for Mr. Fornell to use his</p> <p>16 relationship with Columbia management and Wells</p> <p>17 Fargo's position as a joint book runner to take</p> <p>18 confidential information about the equity offering to</p> <p>19 give to TransCanada without board authorization,</p> <p>20 right?</p> <p>21 Answer: I would agree that improper</p> <p>22 behavior can exist, but we were not, based on what you</p> <p>23 laid out, not in a position to comment on whether or</p> <p>24 not it was inappropriate.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;"><b>S. Cornelius - Cross by Video</b> Page 828</p> <p>1 Question: Well, do you think it was</p> <p>2 appropriate for two members of management to be having</p> <p>3 a meeting with TransCanada's financial advisor without</p> <p>4 the presence of Goldman Sachs, Lazard, or Sullivan &amp;</p> <p>5 Cromwell?</p> <p>6 Answer: I won't comment on the</p> <p>7 appropriateness of it without understanding the full</p> <p>8 context.</p> <p>9 (End of video clip.)</p> <p>10 ATTORNEY SHI: The next clip is about</p> <p>11 an internal Wells Fargo email dated February 24th and</p> <p>12 25th of 2016, located on pages 149 to 150. And Joint</p> <p>13 Exhibit 782.</p> <p>14 (A video clip was played as follows:)</p> <p>15 Question: So I'm actually going to go</p> <p>16 through Mr. Babowal's email, but below that, you will</p> <p>17 see it -- or above it, you will see that Mr. Fornell</p> <p>18 writes to Steve Melton and says, "below is a good</p> <p>19 summary." Okay?</p> <p>20 And then if you see, Mr. Babowal</p> <p>21 relays to the Wells Fargo deal team working with</p> <p>22 TransCanada, "FP gave me the download on today's</p> <p>23 events." And if you go to the third bullet point, it</p> <p>24 says, "FP raised the spectre of a lower price in a</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;"><b>S. Cornelius - Cross by Video</b> Page 829</p> <p>1 roundabout way multiple times with Steve Smith and was</p> <p>2 met with 'crickets.' FP interprets this as Skaggs and</p> <p>3 Smith will take a lower price to the board and dare</p> <p>4 them to turn it down. Clearly a risk, but he senses</p> <p>5 management wants to get this done."</p> <p>6 Do you see that?</p> <p>7 Answer: I do.</p> <p>8 THE COURT: Okay. I just want to</p> <p>9 break it up. Did the board ever authorize Skaggs and</p> <p>10 Smith in the February 26th time period to signal to</p> <p>11 TransCanada that you guys wanted to get a deal done?</p> <p>12 Answer: The answer to that is no. I</p> <p>13 think the record would show that we rejected their</p> <p>14 offer. Based on management's –</p> <p>15 (Overlapping speakers.)</p> <p>16 Question: I didn't mean to cut you</p> <p>17 off. You can continue your answer. I apologize.</p> <p>18 Answer: I said, based on management's</p> <p>19 recommendations, we rejected TransCanada's offer of</p> <p>20 25.25.</p> <p>21 Question: Fair to say that you never</p> <p>22 authorized Skaggs and Smith signaling to TransCanada</p> <p>23 that they would take – management would take a lower</p> <p>24 price and take it to the board to dare them to turn it</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>S. Cornelius - Cross by Video</b> Page 831</p> <p>1 recognized that TransCanada's offer was a non-binding</p> <p>2 indication of interest."</p> <p>3 Mr. Cornelius was asked about that</p> <p>4 indicative offer in the following clips, located on</p> <p>5 pages 159 to 161.</p> <p>6 (A video clip was played as follows:)</p> <p>7 Question: Now, Mr. Cornelius, I want</p> <p>8 to ask you a question, so really pay attention to this</p> <p>9 one. Okay? The proxy says that the board authorized</p> <p>10 Columbia's management and advisors to continue</p> <p>11 pursuing discussions with TransCanada on the basis of</p> <p>12 the most recent indicative offer, right? Do you see</p> <p>13 that?</p> <p>14 Answer: Yes.</p> <p>15 Question: Okay. And that offer was</p> <p>16 the 26 with the 10 percent stock, right?</p> <p>17 Answer: Right.</p> <p>18 Question: Okay. My question is this:</p> <p>19 Did the board at this time approve that was the term</p> <p>20 of the deal? Like, did you guys approve, hey, we are</p> <p>21 done at 26 with a 10 percent stock, or did you approve</p> <p>22 management relaying, hey, that's an acceptable offer</p> <p>23 but there's still room to negotiate?</p> <p>24 Answer: There were details around</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>S. Cornelius - Cross by Video</b> Page 830</p> <p>1 down, right?</p> <p>2 Answer: I believe you're reading into</p> <p>3 the – into that email that doesn't say that either.</p> <p>4 So that's somebody's interpretation.</p> <p>5 (End of video clip.)</p> <p>6 ATTORNEY SHI: The parties have</p> <p>7 stipulated to the following facts: Paragraph 562 of</p> <p>8 the PTO states, "Later on March 9, 2016, after the</p> <p>9 Board meeting, Poirier provided Stephen Smith with</p> <p>10 TransCanada's indicative offer for Columbia.</p> <p>11 TransCanada's offer was to acquire Columbia for \$26</p> <p>12 per share of Columbia common stock, with 10% of the</p> <p>13 consideration comprised of TransCanada common stock</p> <p>14 and 90% of the consideration comprised of cash, with a</p> <p>15 termination fee of 4%. Poirier stated that the</p> <p>16 proposal was non-binding, subject to changes in market</p> <p>17 conditions and TransCanada received feedback from the</p> <p>18 credit rating agencies and TransCanada's underwriters.</p> <p>19 Poirier said that TransCanada intended to present the</p> <p>20 revised plan to the credit rating agencies to confirm</p> <p>21 that the outcome of the rating assessment services</p> <p>22 remained unchanged."</p> <p>23 Paragraph 563 of the PTO states,</p> <p>24 "During the March 10, 2016 Board meeting, the Board</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>S. Cornelius - Cross by Video</b> Page 832</p> <p>1 that indicative offer that needed to be flushed out.</p> <p>2 Question: My question is this: Did</p> <p>3 you – let me ask you this: Did you, as a board, tell</p> <p>4 management, Oauthorize management to tell TransCanada,</p> <p>5 we have a deal at 26 with 10 percent stock, and we</p> <p>6 just need to negotiate the break-up fee, and we are</p> <p>7 done? Was that the message, or was it left more open</p> <p>8 that you can negotiate the price too?</p> <p>9 Answer: We did – we did not</p> <p>10 authorize that we had a deal at that numbers.</p> <p>11 Question: And is part of the reason</p> <p>12 why you didn't authorize that is to allow you to have</p> <p>13 flexibility to negotiate, right, including a higher</p> <p>14 price?</p> <p>15 Answer: There was – we didn't</p> <p>16 understand all the terms of the stock offering and how</p> <p>17 that may impact the decisions.</p> <p>18 (End of video clip.)</p> <p>19 ATTORNEY SHI: The next clip –</p> <p>20 ATTORNEY JAMES: Your Honor, if I may.</p> <p>21 I apologize for interrupting. I believe it was</p> <p>22 represented previously that paragraph 563 was a</p> <p>23 stipulated fact in the pretrial order. That is, in</p> <p>24 fact, one of TransCanada's proposed findings of fact.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p>1 So to the extent that was represented as a</p> <p>2 stipulation, we disagree with that.</p> <p>3 ATTORNEY SHI: Apologies, Your Honor,</p> <p>4 I did not mean that.</p> <p>5 THE COURT: Thank you for clarifying</p> <p>6 that. Let's move on.</p> <p>7 ATTORNEY SHI: The next clip is about</p> <p>8 an internal Wells Fargo email dated March 10, 2016,</p> <p>9 located on pages 168 to 170, and Joint Exhibit 952.</p> <p>10 (A video clip was played as follows:)</p> <p>11 Question: I'm going to the middle of</p> <p>12 the page. There is an email from Eric Fornell. Do</p> <p>13 you see that?</p> <p>14 Answer: I do.</p> <p>15 Question: And as you'll see in the</p> <p>16 email below it, his colleague, it looks like he's</p> <p>17 talking about TransCanada's press statement about the</p> <p>18 leak, right?</p> <p>19 Answer: Right.</p> <p>20 Question: And he writes above, "That</p> <p>21 was an accurate statement. They think they now have</p> <p>22 an opportunity to hear what their investors think</p> <p>23 about this. The Capricorn board is freaking out and</p> <p>24 told the management team to get [it] ... done with</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 (A video clip was played as follows:)</p> <p>2 Question: Now, did Mr. Skaggs or</p> <p>3 Goldman Sachs disclose to the board or discuss with</p> <p>4 the board on March 11th or anytime after that Spectra</p> <p>5 was asking to sign an NDA and to obtain diligence to</p> <p>6 get an offer on the table?</p> <p>7 Answer: No, I think they indicated</p> <p>8 that – they actually indicated that they would be –</p> <p>9 an offer would be forthcoming. And of course, that</p> <p>10 never materialized.</p> <p>11 Question: You would expect management</p> <p>12 to let you know if, hey, Spectra had indicated in</p> <p>13 February that they may be interested, that would have</p> <p>14 been something that should have been relayed to the</p> <p>15 board, right?</p> <p>16 Answer: Speculation on whether or not</p> <p>17 this was an inquiry or just a conversation. There had</p> <p>18 been previously established communication directly</p> <p>19 between Bob and his counterpart with Spectra Energy,</p> <p>20 so it's hard to believe that this was a serious</p> <p>21 inquiry.</p> <p>22 Question: But we can agree that you</p> <p>23 didn't know about this February 2016 inquiry, pass,</p> <p>24 whatever you want to call it, from Spectra. Right?</p> <p>CHANCERY COURT REPORTERS</p>
<b>S. Cornelius - Cross by Video</b> Page 834	<b>S. Cornelius - Cross by Video</b> Page 836
<p>1 'whatever it takes'.. Oddly, the Capricorn team has</p> <p>2 relayed this info to Taurus."</p> <p>3 Do you see that?</p> <p>4 Answer: I do.</p> <p>5 Question: And above, his colleague</p> <p>6 writes, "Turmoil provides opportunity. Taurus would</p> <p>7 appear to be well positioned."</p> <p>8 And Mr. Fornell says, "Yes," right?</p> <p>9 Answer: Right. I see that.</p> <p>10 Question: All right. I just want to</p> <p>11 be clear, because you're seeing the exact words from</p> <p>12 Wells Fargo, TransCanada's banker.</p> <p>13 My question is, did you and the board</p> <p>14 authorize your management team to tell TransCanada</p> <p>15 that the board was freaking out, and that you told the</p> <p>16 management team to get a deal done with whatever it</p> <p>17 takes, on March 10, 2016?</p> <p>18 Answer: I can't speak to how that was</p> <p>19 categorized on an internal memo. All I can say is</p> <p>20 that that was not where we were.</p> <p>21 (End of video clip.)</p> <p>22 ATTORNEY SHI: The next few clips are</p> <p>23 about Spectra, located on pages 176 to 177 and 179 to</p> <p>24 181.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Answer: Yeah. Again, I'm not sure</p> <p>2 that I would characterize it as an inquiry.</p> <p>3 Question: Let me ask you this: Did</p> <p>4 anyone tell you in February 2016 that Spectra had told</p> <p>5 Columbia management that they were sharpening their</p> <p>6 pencils and that they believed that Columbia</p> <p>7 management had stiff-armed them in the past?</p> <p>8 Answer: They did not. If I would</p> <p>9 have been advised they were sharpening their pencils,</p> <p>10 I would have expected them to follow through on their</p> <p>11 position – on their positioning that an offer was</p> <p>12 forthcoming, which never materialized.</p> <p>13 Question: It's true, though, again –</p> <p>14 we established this – that they didn't have access to</p> <p>15 a data room or confidential information at the time,</p> <p>16 in February 2016. Correct?</p> <p>17 Answer: Apparently, they didn't need</p> <p>18 it if they were sharpening their pencils.</p> <p>19 Question: Let me ask you this: You</p> <p>20 personally never had any direct contact with Spectra</p> <p>21 management about a potential deal or discussions,</p> <p>22 correct? Of Columbia?</p> <p>23 Answer: No. As I reported in the</p> <p>24 trial, that was another one of the strange facts,</p> <p>CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;"><b>S. Cornelius - Cross by Video</b> Page 837</p> <p>1 because I knew both their business development manager</p> <p>2 and their CEO, and certainly, if they felt that they</p> <p>3 were being frustrated in the process for whatever</p> <p>4 reason, they know how to contact me just as easily if</p> <p>5 not more easily than Bob Skaggs. And I heard nothing.</p> <p>6 Question: Okay.</p> <p>7 (End of video clip.)</p> <p>8 ATTORNEY SHI: The next clip is about</p> <p>9 exclusivity, located on pages 186 to 187.</p> <p>10 (A video clip was played as follows:)</p> <p>11 Question: Is it fair to say,</p> <p>12 though -- we have established this already -- as of</p> <p>13 March 12, 2016, TransCanada and Columbia were not in</p> <p>14 exclusivity, correct?</p> <p>15 Answer: Correct.</p> <p>16 Question: Okay. So there was no</p> <p>17 obligation to have TransCanada to sign off on the</p> <p>18 script, right?</p> <p>19 Answer: Repeat that question.</p> <p>20 Question: Well, there was no</p> <p>21 exclusivity, right? So there was no contractual</p> <p>22 obligation for TransCanada to let them know, one,</p> <p>23 Spectra had shown up; and two, on a script on how to</p> <p>24 deal with inbounds; correct?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>S. Cornelius - Cross by Video</b> Page 839</p> <p>1 Do you see that?</p> <p>2 Answer: I do.</p> <p>3 Question: And does this indicate here</p> <p>4 that you are deferring to counsel and relying on their</p> <p>5 advice regarding the wording of the inbound response</p> <p>6 script?</p> <p>7 Answer: It does. And I think I made</p> <p>8 that point earlier in the depositions that we relied</p> <p>9 on counsel to -- throughout the process, and also</p> <p>10 Frumkin indicates that whatever inbounds we got would</p> <p>11 know what that is. They would be referring to it as a</p> <p>12 serious inquiry.</p> <p>13 Question: Thank you.</p> <p>14 Just a couple more questions.</p> <p>15 Do you recall plaintiffs' counsel</p> <p>16 asking you questions about TransCanada's statement to</p> <p>17 Columbia that it would issue a public statement about</p> <p>18 merger talks being terminated if Columbia didn't</p> <p>19 accept the 25.50 offer?</p> <p>20 Answer: I do.</p> <p>21 Question: Was the board's decision to</p> <p>22 accept the 25.50 offer and approve the transaction</p> <p>23 with TransCanada affected in any way by TransCanada's</p> <p>24 statement that it would publicize termination of</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;"><b>S. Cornelius - Cross by Video</b> Page 838</p> <p>1 Answer: We were cognizant of the fact</p> <p>2 that we were going to enter into an exclusivity</p> <p>3 agreement with them and only consulted with</p> <p>4 TransCanada to establish the parameters under -- to</p> <p>5 make sure that we would not violate the exclusivity</p> <p>6 agreement that we were about to enter into and to get</p> <p>7 their understanding to that principle.</p> <p>8 Question: Okay. We'll agree just</p> <p>9 factually that the two parties were not in exclusivity</p> <p>10 on March 12, 2016; correct?</p> <p>11 Answer: We were, but we were in</p> <p>12 discussions.</p> <p>13 (End of video clip.)</p> <p>14 ATTORNEY SHI: The final clip is about</p> <p>15 Columbia's script for inbounds located on pages 207 to</p> <p>16 209 and Joint Exhibit 1021.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: And then you'll see there</p> <p>19 that in addition to what we just looked at, there are</p> <p>20 actually two more emails, one that you sent back to</p> <p>21 Mr. Skaggs on March 12th, and you stated, "I'm sure</p> <p>22 you did. Any inbound caller will know the code anyway</p> <p>23 so I'm ok with it and happy to go with our advisor's</p> <p>24 counsel."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;"><b>S. Cornelius - Cross by Video</b> Page 840</p> <p>1 negotiations?</p> <p>2 Answer: I don't recall that being a</p> <p>3 significant factor in the discussions.</p> <p>4 (End of video clip.)</p> <p>5 ATTORNEY SHI: Thank you, Your Honor.</p> <p>6 ATTORNEY SANBORN-LOWING: Good</p> <p>7 afternoon, Your Honor. Meg Sanborn-Lowing from</p> <p>8 Bernstein Litowitz on behalf of plaintiffs.</p> <p>9 Your Honor, with the Court's</p> <p>10 permission, we would call our next witness, Glen</p> <p>11 Kettering, president of Columbia Pipeline Group. And</p> <p>12 before the merger, he served as executive vice</p> <p>13 president and group chief executive officer of</p> <p>14 NiSource's Columbia Pipeline Group business unit.</p> <p>15 Mr. Kettering will testify by video deposition. And</p> <p>16 with the Court's permission, my colleague will hand</p> <p>17 out binders.</p> <p>18 As you'll see, the first page</p> <p>19 identifies the clip numbers with the deposition</p> <p>20 designation cites and exhibit references in the</p> <p>21 testimony, as well as stipulated facts from the PTO</p> <p>22 that may be referenced for context. The remainder of</p> <p>23 the binder is Mr. Kettering's deposition transcript</p> <p>24 and the actual exhibits referenced in the testimony.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



## G. Kettering - Direct by Video

<p><b>G. Kettering - Direct by Video</b> Page 841</p>	<p><b>G. Kettering - Direct by Video</b> Page 843</p>
<p>1 GLEN KETTERING, was examined and</p> <p>2 testified via video as follows:</p> <p>3 And to provide the Court with context</p> <p>4 of Mr. Kettering's testimony, we identify the</p> <p>5 following facts to which the parties have stipulated.</p> <p>6 Mr. Kettering has known Mr. Skaggs for</p> <p>7 approximately 40 years. They first met in law school</p> <p>8 at West Virginia University. Kettering considers</p> <p>9 Skaggs a friend. That's in PTO paragraph 94.</p> <p>10 At the time of the merger,</p> <p>11 Mr. Kettering had known Steve Smith for at least 20</p> <p>12 years, and Kettering considered his personal</p> <p>13 relationship with Smith as friendly. That's paragraph</p> <p>14 95.</p> <p>15 Kettering invited Skaggs and Smith to</p> <p>16 his son and daughter's weddings. That's paragraph 96.</p> <p>17 In the first clip, Mr. Kettering is</p> <p>18 asked about Joint Exhibits 471, which is an email</p> <p>19 exchange between Mr. Kettering and Charles Moran of</p> <p>20 Columbia from December 7, 2015.</p> <p>21 Joe, if you could please play clip 1.</p> <p>22 And this is found on pages 86 and 87 of the deposition</p> <p>23 transcript.</p> <p>24 (A video clip was played as follows:)</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 clip, Mr. Kettering is asked about Joint Exhibit 1684,</p> <p>2 which contains text messages from February 7 and 9,</p> <p>3 2016, between Mr. and Kettering and Mr. Skaggs.</p> <p>4 Joe, if you could play clips 8 and 9.</p> <p>5 This testimony is found on pages 185 and 186 of the</p> <p>6 deposition transcript.</p> <p>7 (A video clip was played as follows:)</p> <p>8 Question: So on February 7, 2016, the</p> <p>9 first text is actually from you. It states, "Stan</p> <p>10 just mentioned that Shields told him that an</p> <p>11 apparently high level SE person flew in and took him</p> <p>12 to dinner recently, said they lost out on Questar (and</p> <p>13 Wms) and asked a lot of questions about CPG. Said we</p> <p>14 had stiff armed them in [the] past and [] they are</p> <p>15 sharpening their pencils. Also says he heard the same</p> <p>16 thing from someone else at SE . . . . Consider the</p> <p>17 source."</p> <p>18 Do you see that?</p> <p>19 Answer: Yes.</p> <p>20 Question: Okay. Is Stan, Stan</p> <p>21 Chapman?</p> <p>22 Answer: I think so.</p> <p>23 Question: And who is Shields?</p> <p>24 Answer: Joe Shields was the president</p> <p>CHANCERY COURT REPORTERS</p>
<p><b>G. Kettering - Direct by Video</b> Page 842</p>	<p><b>G. Kettering - Direct by Video</b> Page 844</p>
<p>1 Question: If you look below,</p> <p>2 Mr. Moran writes to you, "In case you are not on the</p> <p>3 mailing list — this is actually a pretty good</p> <p>4 conference. Shawn P and I usually go ...."</p> <p>5 And then he attaches, like, an</p> <p>6 advertisement for a 2016 management conference dated</p> <p>7 April 6th through 8th, 2016.</p> <p>8 Do you see that?</p> <p>9 Answer: I do.</p> <p>10 Question: Above, you write, "Post</p> <p>11 retirement. [Thanks]." Right?</p> <p>12 Answer: Yes. I see that.</p> <p>13 Question: And you would agree, just</p> <p>14 chronologically, that April 2016 is after first</p> <p>15 quarter 2016, right?</p> <p>16 Answer: Chronologically, yes.</p> <p>17 Question: All right. You wrote,</p> <p>18 "Post retirement. [Thanks]." Right?</p> <p>19 <b>A. Yes. That's what it says.</b></p> <p>20 Question: And we can agree that after</p> <p>21 the merger, you did retire, right, sir?</p> <p>22 Answer: I did.</p> <p>23 (End of video clip.)</p> <p>24 ATTORNEY SANBORN-LOWING: In the next</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 of Millennium Pipeline.</p> <p>2 Question: Okay. That was one of the</p> <p>3 projects — wait. Correct me if I'm wrong. Were you</p> <p>4 guys in a partnership with Millennium, or was it one</p> <p>5 of your projects? I forgot.</p> <p>6 Answer: It was an operating pipeline</p> <p>7 that we had an equity interest in.</p> <p>8 Question: Do you have any</p> <p>9 recollection of the board being told in February or</p> <p>10 March 2016 in your presence that Spectra believed they</p> <p>11 had been stiff-armed by management or that they were</p> <p>12 sharpening their pencils in February 2016?</p> <p>13 Attorney Vallette: Object to form.</p> <p>14 Answer: I don't recall.</p> <p>15 (End of video clip.)</p> <p>16 ATTORNEY SANBORN-LOWING: Your Honor,</p> <p>17 the next clip is going to take us past 3:00, so I</p> <p>18 defer to you in terms of timing as it relates to the</p> <p>19 break.</p> <p>20 THE COURT: Why don't we go ahead and</p> <p>21 break here, then. We'll come back at 3:15.</p> <p>22 Thank you so much. We'll stand in</p> <p>23 recess until then.</p> <p>24 (Recess taken at 2:57 p.m.)</p> <p>CHANCERY COURT REPORTERS</p>

## G. Kettering - Direct by Video

<b>G. Kettering - Direct by Video</b> Page 845	<b>G. Kettering - Direct by Video</b> Page 847
<p>1 (Resumed at 3:15 p.m.)</p> <p>2 THE COURT: Welcome back, everyone.</p> <p>3 Please be seated.</p> <p>4 Let's resume.</p> <p>5 ATTORNEY SANDBORN LOWING: In the</p> <p>6 following clip, Mr. Kettering is asked about Joint</p> <p>7 Exhibit 966, which is a March 10, 2016, email from</p> <p>8 Mr. Skaggs to the board, copying Steve Smith, Glen</p> <p>9 Kettering, Matt Gibson, and Tim Ingrassia of Goldman</p> <p>10 and Joe Frumkin of Sullivan &amp; Cromwell, as well as</p> <p>11 Joint Exhibit 986, which contains a March 11, 2016,</p> <p>12 email from Greg Ebel of Spectra to Bob Skaggs about</p> <p>13 Spectra's interest, which was forwarded to</p> <p>14 Mr. Kettering, Steve Smith, and Bob Smith.</p> <p>15 Joe, if you could please play clip 11.</p> <p>16 This is found on pages 171 to 176 of the deposition</p> <p>17 transcript.</p> <p>18 (A video clip was played as follows:)</p> <p>19 Question: I want to actually look</p> <p>20 at – Mr. Ebel emailed Mr. Skaggs on March 11, 2016.</p> <p>21 In the middle, it says, "Given the news of recent days</p> <p>22 regarding CPGX, I wanted to be sure that you knew that</p> <p>23 we believed we could offer your shareholders a premium</p> <p>24 to CPGX's recent trading value and, by offering SE" –</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Do you see that?</p> <p>2 Answer: I see that.</p> <p>3 Question: My question to you is very</p> <p>4 simple. Do you have any recollection, sitting here</p> <p>5 today, of Mr. Skaggs, Mr. Smith, yourself, Goldman</p> <p>6 Sachs, or Lazard having a call or a meeting with</p> <p>7 Spectra to go over their assumptions so they could be</p> <p>8 in a position to present a proposal?</p> <p>9 Answer: I'm not aware of a meeting.</p> <p>10 Question: Or call?</p> <p>11 Answer: I'm not aware of it.</p> <p>12 Question: Now, we just looked at the</p> <p>13 board minutes. But sitting here today, do you have</p> <p>14 any recollection of anyone telling the board in your</p> <p>15 presence on March 11 or thereafter time period, before</p> <p>16 the deal was signed, that Spectra informed Mr. Skaggs</p> <p>17 that it would only need a short time to confirm its</p> <p>18 assumptions with management, and then it would be in a</p> <p>19 position to make a proposal?</p> <p>20 Answer: I don't recall a</p> <p>21 conversation –</p> <p>22 Question: Okay.</p> <p>23 Answer: – in my presence.</p> <p>24 Question: Right. Now, I'm staying on</p> <p>CHANCERY COURT REPORTERS</p>
<b>G. Kettering - Direct by Video</b> Page 846	<b>G. Kettering - Direct by Video</b> Page 848
<p>1 which is Spectra – "shares in exchange, the resulting</p> <p>2 dividend could be approximately double what your</p> <p>3 shareholders currently receive."</p> <p>4 Do you see that?</p> <p>5 Answer: I see it.</p> <p>6 Question: And then, two paragraphs</p> <p>7 below, it says, "Given the possibility of the</p> <p>8 combination between our two companies we believe we</p> <p>9 would only need a short time to confirm our</p> <p>10 assumptions with you and be in a position to present a</p> <p>11 proposal for you to consider."</p> <p>12 Do you see that?</p> <p>13 Answer: I see that.</p> <p>14 Question: So the first question is,</p> <p>15 sitting here today, do you have any recollection of</p> <p>16 Columbia management or Columbia's financial advisors</p> <p>17 confirming Spectra's assumptions with Spectra?</p> <p>18 Answer: What assumptions are you</p> <p>19 talking about?</p> <p>20 Question: Well, I'm just reading from</p> <p>21 the email, sir. Mr. Ebel writes to Mr. Skaggs, "[W]e</p> <p>22 would only need a short time to confirm our</p> <p>23 assumptions with you and be in a position to present a</p> <p>24 proposal for you to consider."</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 this exhibit because I want to go back to something I</p> <p>2 read from the email earlier. But it's fair to –</p> <p>3 well, strike that. Bad question.</p> <p>4 But Mr. Ebel is telling Mr. Skaggs</p> <p>5 here that they're contemplating offering Spectra</p> <p>6 shares in exchange to buy the company; right?</p> <p>7 Answer: That's what he says.</p> <p>8 Question: Okay. And sitting here</p> <p>9 today – let me ask you this: You would agree that</p> <p>10 Mr. Skaggs and Mr. Smith didn't like the prospect of a</p> <p>11 stock deal because cash was a key requirement for</p> <p>12 management to sell the company; right?</p> <p>13 Attorney Vallette: Object to the</p> <p>14 form.</p> <p>15 Answer: Not at all. Not at all.</p> <p>16 Question: Well, is it your testimony</p> <p>17 today that a primary deal requirement was not a</p> <p>18 predominantly cash transaction?</p> <p>19 Attorney Vallette: Object to form.</p> <p>20 Answer: I can't say that that was a</p> <p>21 predominant requirement whatsoever. I think,</p> <p>22 generally speaking, Spectra in particular, in my mind,</p> <p>23 was notorious for speaking in generalities and never</p> <p>24 really following up on any of the conversations that</p> <p>CHANCERY COURT REPORTERS</p>

## G. Kettering - Direct by Video

## G. Kettering - Direct by Video

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1 may have occurred over years regarding any interest in  
 2 doing things with CPG.  
 3 Question: Let's go to Exhibit 26.  
 4 In the middle of the page is an email  
 5 from Mr. Skaggs on March 10, 2016, and it has "Taurus"  
 6 Indicative Provisional Proposition." And it says,  
 7 "Stated Rationale[.]"  
 8 Do you see that?  
 9 Answer: Yes.  
 10 Question: Okay. And it says,  
 11 "Taurus" is attempting to address Capricorn's primary  
 12 deal requirements: [] \$26.00/share of value;  
 13 (b) predominantly a cash transaction; and [] certainty  
 14 of close."  
 15 Do you see that?  
 16 Answer: I see that.  
 17 Question: So at least Mr. Skaggs is  
 18 portraying here that Columbia's primary deal  
 19 requirement includes a -- predominantly a cash  
 20 transaction; right?  
 21 Attorney Vallette: Object to form.  
 22 Answer: I see what it says, yes.  
 23 Question: And you got this email  
 24 here. I think you're on it above. You didn't

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## G. Kettering - Direct by Video

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1 Question: And above, Bob Smith  
 2 responds, "Will - Just spoke with Bob and Steve.  
 3 Confirmed on both points below. Please note that we  
 4 want you to handle interactions with them rather than  
 5 opening up discussions between management."  
 6 Do you see that?  
 7 "Answer: I see that.  
 8 Question: Before I move on, there's a  
 9 couple things I just want to confirm.  
 10 Fair to say that the confidentiality  
 11 agreement was never signed with Spectra; right?  
 12 Answer: Not that I'm aware of.  
 13 Question: Okay. And Bob Smith  
 14 relayed to Goldman on March 11, 2016, that they wanted  
 15 Goldman to handle the interactions with Spectra rather  
 16 than having an open dialogue with management; right?  
 17 Answer: I see what that says, yes.  
 18 Question: I'll say it this way. And  
 19 I know the record says what it says in the proxy  
 20 statement. There was open dialogue between Mr. Smith  
 21 and Mr. Girling -- strike that -- between Mr. Smith  
 22 and Mr. Poirier and Mr. Skaggs and Mr. Girling in  
 23 connection to deal negotiations with TransCanada;  
 24 right?

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## G. Kettering - Direct by Video

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1 respond, no, that's not a -- predominantly cash  
 2 transaction is not a deal point; right?  
 3 Attorney Kirby: Object to form.  
 4 Answer: I don't believe I responded.  
 5 (End of video clip.)  
 6 ATTORNEY SANDBORN LOWING: In the next  
 7 clips, Mr. Kettering is asked about Joint  
 8 Exhibit 1004, which is a March 11, 2016, email chain  
 9 among Mr. Skaggs, Steve Smith, Mr. Kettering, Bob  
 10 Smith, and the Goldman bankers.  
 11 Joe, if you could please play clips 12  
 12 and 20, these are found on pages 176 to 180 of the  
 13 deposition testimony.  
 14 (A video clip was played as follows:)  
 15 Question: Going from the bottom to  
 16 the top, sir. The bottom, there is an email from  
 17 March 11, 2016, at 1:24 p.m. from a Will Bousquette of  
 18 Goldman Sachs.  
 19 It says, "Called this afternoon.  
 20 Before I call back I want to make sure 1. No confi  
 21 ever signed with them and therefore 2. We are in  
 22 listen mode with them."  
 23 Do you see that?  
 24 Answer: I see it.

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## G. Kettering - Direct by Video

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1 Attorney Vallette: Object to form.  
 2 Answer: Yes. They had discussions.  
 3 Question: And you were involved in  
 4 the due diligence process for the Columbia side;  
 5 right?  
 6 Answer: Yes.  
 7 Question: Okay. And I'm happy to  
 8 show you the proxy, but you had meetings with  
 9 TransCanada management to discuss due diligence;  
 10 correct?  
 11 Answer: Yes.  
 12 Question: Okay. Now, I want to go to  
 13 the last -- above, one more in the email. Do you see  
 14 that? Writes at 2:56 p.m. "I spoke with Pat Reddy.  
 15 He reiterated that they had been interested and could  
 16 not make numbers work last time around. That now with  
 17 valuations down, bonus depreciation, capex news  
 18 [et cetera] they potentially can.  
 19 "I said that company policy is not to  
 20 comment on rumors but obviously we are close to CPG  
 21 and if they have something to say I would make sure  
 22 you heard it.  
 23 "I think you will get an email from  
 24 Greg (this afternoon maybe).

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## G. Kettering - Direct by Video

<b>G. Kettering - Direct by Video</b> Page 853	<b>G. Kettering - Direct by Video</b> Page 855
<p>1 "Their call was fishing to see if they</p> <p>2 are too late."</p> <p>3 Now, sitting here today -- and we</p> <p>4 looked at the board minutes -- do you have any</p> <p>5 recollection of anyone telling the board on or around</p> <p>6 March 11, 2016, or after that Spectra thought they</p> <p>7 could make the valuation work because valuations were</p> <p>8 down, Columbia's bonus depreciation was disclosed, as</p> <p>9 well as the CapEx news?</p> <p>10 Answer: I don't recall it.</p> <p>11 (End of video clip.)</p> <p>12 ATTORNEY SANDBORN LOWING: In the next</p> <p>13 clip, Mr. Kettering is asked about Joint Exhibit 1060,</p> <p>14 which is a March 12, 2016, email chain between the</p> <p>15 Goldman bankers, Mr. Skaggs, Bob Smith, and Glen</p> <p>16 Kettering.</p> <p>17 Joe, if you could please play clip 13,</p> <p>18 which is found on pages 180 to 182 of the deposition</p> <p>19 transcript.</p> <p>20 (A video clip was played as follows:)</p> <p>21 Question: Again, I'm going from the</p> <p>22 bottom to the top. There's an email from Will</p> <p>23 Bousquette on March 12, 2016, at 9:49 a.m. He writes,</p> <p>24 "Just spoke with spectra cfo.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 quickly?</p> <p>2 Answer: I don't recall a</p> <p>3 conversation.</p> <p>4 (End of video clip.)</p> <p>5 ATTORNEY SANDBORN LOWING: In the</p> <p>6 following clip, Mr. Kettering is asked about Joint</p> <p>7 Exhibit 1061, which is a March 12, 2016, email with</p> <p>8 the subject line "Spectra" from Will Bousquette of</p> <p>9 Goldman to Skaggs, Bob Smith, copying Matt Gibson and</p> <p>10 Tim Ingrassia of Goldman, Steve Smith, and Glen</p> <p>11 Kettering.</p> <p>12 Joe, if you could please play clip 14,</p> <p>13 which is found on pages 182 to 184 of Mr. Kettering's</p> <p>14 deposition transcript.</p> <p>15 (A video clip was played as follows:)</p> <p>16 Question: So Mr. Bousquette is doing</p> <p>17 his job. He's relaying information. So he writes,</p> <p>18 "Guy Buckley from Spectra just called. Guy was</p> <p>19 formerly the head of MA and is now Chief Development</p> <p>20 Officer. When they get serious about MA he tends to</p> <p>21 drive.</p> <p>22 "So Guy making the call tonight can be</p> <p>23 interpreted as a sign they are doing real work over</p> <p>24 there.</p> <p>CHANCERY COURT REPORTERS</p>
<b>G. Kettering - Direct by Video</b> Page 854	<b>G. Kettering - Direct by Video</b> Page 856
<p>1 "Short conversation.</p> <p>2 "Let me know if you want me to call</p> <p>3 you for a quick post or email."</p> <p>4 And then above, Mr. Skaggs responds,</p> <p>5 "Thanks, Will . . . There's no need for a call.</p> <p>6 "We'll simply standby."</p> <p>7 Then, above that, Mr. Bousquette</p> <p>8 provides "Key commentary from pat," which I believe is</p> <p>9 Pat Reddy of Spectra.</p> <p>10 "1. Tough to be specific [on] the</p> <p>11 outside.</p> <p>12 "2. Had been worried about leaks.</p> <p>13 "3. But hear you and can be more</p> <p>14 specific subject to diligence.</p> <p>15 "[ ] Can move quickly.[ ]</p> <p>16 "[ ] Talking to Greg e this morning."</p> <p>17 Do you see that, sir?</p> <p>18 Answer: I do.</p> <p>19 Question: Do you recall any</p> <p>20 discussion at the board level in your presence around</p> <p>21 March 12, 2016, or after, that Spectra had indicated</p> <p>22 to Goldman Sachs that it was tough for it to be</p> <p>23 specific from the outside and could be more specific</p> <p>24 subject to due diligence and would be willing to move</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 "He noted that as we know this</p> <p>2 situation is not new to them (i.e., not something that</p> <p>3 popped up with the leak -- they have been watching</p> <p>4 this since before our equity [ ].</p> <p>5 "He wanted us to know we should expect</p> <p>6 a formal letter.</p> <p>7 "But they do not want to send</p> <p>8 something 'willy-nilly' They want it to be scrubbed."</p> <p>9 Feel free to read the rest. That's</p> <p>10 what I'm concerned with.</p> <p>11 Now, my question is, sitting here</p> <p>12 today, do you have any recollection of the board being</p> <p>13 told in your presence that Goldman interpreted</p> <p>14 Spectra's chief development officer contacting them as</p> <p>15 a sign that Spectra was real or doing real work?</p> <p>16 Attorney Vallette: Object to form.</p> <p>17 Answer: I don't recall a conversation</p> <p>18 speaking to this specific message.</p> <p>19 Question: Sitting here today, do you</p> <p>20 recall at the board level in your presence any</p> <p>21 discussion that Spectra wanted to submit a formal</p> <p>22 proposal, but they didn't want to be willy-nilly about</p> <p>23 it and wanted it to be scrubbed?</p> <p>24 Attorney Vallette: Object to form.</p> <p>CHANCERY COURT REPORTERS</p>

## G. Kettering - Direct by Video

<b>G. Kettering - Direct by Video</b> Page 857	<b>G. Kettering - Direct by Video</b> Page 859
<p>1 Answer: I don't recall a conversation</p> <p>2 into those specifics.</p> <p>3 (End of video clip.)</p> <p>4 ATTORNEY SANDBORN LOWING: In the next</p> <p>5 clip, Mr. Kettering is asked about Joint Exhibit 1064,</p> <p>6 which is a March 13, 2016, email chain with the</p> <p>7 subject line "Adam Ward call."</p> <p>8 Joe, if you could please play clip 15,</p> <p>9 which is found on pages 190 to 191 of the deposition</p> <p>10 transcript.</p> <p>11 (A video clip was played as follows:)</p> <p>12 Question: My first question is,</p> <p>13 sitting here today, do you have any recollection of</p> <p>14 the board being told in your presence about this</p> <p>15 message from Adam Ward, one of your stockholders?</p> <p>16 Answer: I don't recall it.</p> <p>17 Question: Now, above, you write, at</p> <p>18 the very top, "At some point, we may want to let</p> <p>19 Francois know a large holder is suggesting a process."</p> <p>20 Do you see that?</p> <p>21 Answer: Yes.</p> <p>22 Question: Okay. Do you know if --</p> <p>23 let me ask you this: Did you ever tell Francois this?</p> <p>24 Answer: No.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 phone call from Francois Poirier on March 14, 2016;</p> <p>2 right?</p> <p>3 Answer: Yes. I was on the call with</p> <p>4 Francois, and I think another -- I think the president</p> <p>5 of TransCanada was on the call as well. I'm not sure</p> <p>6 who fielded what. But I recall the conversation with</p> <p>7 the two of them.</p> <p>8 Question: Okay. That's fair. I</p> <p>9 wasn't trying to put words -- was it Mr. Johansson</p> <p>10 from TransCanada?</p> <p>11 Answer: No. Alex --</p> <p>12 Question: Oh, Pourbaix?</p> <p>13 Answer: I forget his last name.</p> <p>14 Question: Pourbaix?</p> <p>15 Answer: Yes.</p> <p>16 Question: And were you the only</p> <p>17 representative of Columbia on that call, sir?</p> <p>18 Answer: Yes.</p> <p>19 Question: What do you recall being</p> <p>20 discussed on that phone call?</p> <p>21 Answer: Well, it may have been -- I</p> <p>22 don't recall specifically what else was being</p> <p>23 discussed, but my -- it may have been a tag onto a</p> <p>24 previously arranged just update call with Alex. I'm</p> <p>CHANCERY COURT REPORTERS</p>
<b>G. Kettering - Direct by Video</b> Page 858	<b>G. Kettering - Direct by Video</b> Page 860
<p>1 Question: Okay. Do you know if</p> <p>2 Mr. Smith or Mr. Skaggs informed TransCanada that, you</p> <p>3 know, one of Columbia's largest stockholders was</p> <p>4 suggesting a sales process at the time?</p> <p>5 Attorney Vallette: Objection to form.</p> <p>6 Answer: I don't.</p> <p>7 (End of video clip.)</p> <p>8 ATTORNEY SANDBORN LOWING: In the next</p> <p>9 clips, Mr. Kettering is asked about March 14 and 15,</p> <p>10 2016, text messages between Mr. Kettering, Steve</p> <p>11 Smith, and Bob Smith, which are found at Joint</p> <p>12 Exhibit 1685.</p> <p>13 Joe, if you could please play clips 16</p> <p>14 and 17. And these are found on pages 199 to 207 in</p> <p>15 the deposition transcript.</p> <p>16 (A video clip was played as follows:)</p> <p>17 Question: Now, at some point, I'll</p> <p>18 represent to you it was on March 14, TransCanada said</p> <p>19 it could no longer do \$26 per share, 10 percent stock,</p> <p>20 and offered 25.50.</p> <p>21 Do you remember that?</p> <p>22 Answer: Yes.</p> <p>23 Question: And correct me if I'm</p> <p>24 wrong, but I think you're the one who fielded that</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 not certain. I'm also not certain if that was when we</p> <p>2 discussed the breakup fee. It may have also been at</p> <p>3 the same time.</p> <p>4 But I was on the -- I was on the call</p> <p>5 and received the message from Francois.</p> <p>6 Question: And what do you recall that</p> <p>7 message being from Mr. Poirier?</p> <p>8 Answer: I don't recall all the</p> <p>9 specifics, but the message was that the -- the hybrid</p> <p>10 structure was problematic and that they were reverting</p> <p>11 to an all-cash proposed price of \$25.50, and that if</p> <p>12 that were not acceptable from the Columbia side, that</p> <p>13 they would be announcing in some public forum that the</p> <p>14 conversations had terminated. That's the major gist</p> <p>15 that I recall.</p> <p>16 Question: Anything else you recall?</p> <p>17 Answer: I'm sure there was more, but</p> <p>18 that's all I recall in terms of the -- the basics.</p> <p>19 Question: Okay.</p> <p>20 Answer: And it was clearly being</p> <p>21 represented as this is the board of TransCanada had</p> <p>22 reached this decision.</p> <p>23 Question: All right. So I'm starting</p> <p>24 in the first text in the chain. And I'll represent to</p> <p>CHANCERY COURT REPORTERS</p>



## G. Kettering - Direct by Video

## G. Kettering - Direct by Video

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1 you it's from March 14, 2016, at 11:37 a.m. And it's  
 2 from Mr. Smith to you and Mr. Skaggs. And it states,  
 3 "Francois wants to give me or Glen a thorough update  
 4 call on where they stand with things at 2 to 2:30  
 5 [eastern]. I'm on the Golf course at that time, Glen  
 6 can you do it?"  
 7 And you respond: "Sure thing. 2:00  
 8 pm preferred as we have RMC at 3:00 but either works.  
 9 Any messages you guys want me to deliver?"  
 10 Do you see that?  
 11 Answer: I do.  
 12 Question: All right. And does this  
 13 refresh your recollection that Mr. Poirier was  
 14 requesting a call on March 14, and that you ended up  
 15 taking it or calling him; right?  
 16 Answer: Yeah. Now that I see this,  
 17 yes.  
 18 Question: That's the purpose of me  
 19 showing you this, is to refresh your recollection.  
 20 My first question is, Mr. Smith says  
 21 he's on the golf course. Was he on vacation or  
 22 something at the time? Do you remember?  
 23 Answer: I don't remember.  
 24 Question: Okay. Anyway, so in

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## G. Kettering - Direct by Video

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1 can no longer do 26 with the mixed consideration and  
 2 offer 25.50 with the representation that they'll go  
 3 public in some forum if it's not accepted; right?  
 4 Answer: Yes.  
 5 Question: So I want to go to the text  
 6 from you at 3:15 – I'm sorry. On March 15, 2016 –  
 7 it's military time – 14:29.  
 8 Answer: Okay.  
 9 Question: And there, you write,  
 10 "Check [TransCanada]'s share price."  
 11 Mr. Skaggs writes, "Yeah. So, what  
 12 does that say to us \$.25 [per] share?"  
 13 You respond, "That's what the math  
 14 would suggest. Only \$1 off what Francois quoted as  
 15 the pre leak level. If it closes like this tomorrow  
 16 may want to pursue."  
 17 Then there's a response from  
 18 Mr. Skaggs: "Let's see where they close today and  
 19 then huddle."  
 20 You respond, "Yep."  
 21 And then Mr. Skaggs says, "What was  
 22 the pre-leak TRP price?"  
 23 You write, "The price Francois quoted  
 24 to me yesterday was [49.40]."

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## G. Kettering - Direct by Video

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1 response to "Any messages you guys want me to  
 2 deliver?" Skaggs writes, "Gotta keep pushing. We  
 3 wouldn't be surprised to see more inbounds."  
 4 Then Mr. Smith writes, "Not sure, I  
 5 asked him what he wanted and he said they wanted to  
 6 provide an update of where they were with things. You  
 7 might point out that the leak has attracted a lot of  
 8 attention. We need to get this signed up."  
 9 Do you see that?  
 10 Answer: I do.  
 11 Question: Okay. So it's fair to say  
 12 that Mr. Skaggs and Mr. Smith relayed to you to tell  
 13 Mr. Poirier, "Gotta keep pushing," and "We need to get  
 14 this signed up" in these text messages; right?  
 15 Answer: Yes. I see that.  
 16 Question: Okay. So I want to go to  
 17 the next page of the text chain. All right?  
 18 Answer: Okay.  
 19 Question: On the next page, you'll  
 20 see now these texts are from March 15, 2016. Right?  
 21 Answer: Yes.  
 22 Question: Okay. And so, again, just  
 23 so the record is clear, Mr. Kettering, you have the  
 24 call with Mr. Poirier. He explained to you that they

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## G. Kettering - Direct by Video

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1 Then Mr. Skaggs writes, "Marty  
 2 believes the deal is [] straight-forward yes."  
 3 Then you write – Mr. Smith writes,  
 4 "Are you going to pop Russ in the nose and demand  
 5 [25.75]?"  
 6 Do you see that?  
 7 Answer: Uh-huh.  
 8 Question: Okay. So let me ask you  
 9 this: Is it fair to say that you were at least  
 10 looking at the stock price of TransCanada at the time,  
 11 figuring out, hey, maybe we can go back and try to  
 12 negotiate up based on how it was trading? Right?  
 13 Answer: No.  
 14 Question: No? Well, what's going on  
 15 in this text?  
 16 Answer: It's just banter.  
 17 Question: Okay. Well, let me ask you  
 18 this, Mr. Kettering: Sitting here today, do you have  
 19 any recollection of discussing with the board, you,  
 20 management, or advisors in your presence, about how  
 21 TransCanada's stock was trading on March 14th, 15th,  
 22 or 16th, and whether you could use it to go back and  
 23 negotiate?  
 24 Answer: I don't recall having a

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## G. Kettering - Direct by Video

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1 conversation along those lines.

2 Question: Sitting here today, you

3 have no recollection that TransCanada's stock price

4 closed almost a dollar higher than it did on March 15

5 compared to March 14?

6 Attorney Vallette: Object to form.

7 Answer: No. I don't have any -- I

8 don't have any recollection on what their stock price

9 was doing on those days.

10 Question: How much -- 25 cents per

11 share is about \$100 million in value for the company?

12 Answer: If you multiply that times

13 the number of shares, that's what the math would

14 suggest.

15 (End of video clip.)

16 ATTORNEY SANDBORN LOWING: In the last

17 clips, Mr. Kettering is asked about Joint

18 Exhibit 1686, which are text messages between

19 Kettering and Bob Skaggs from March 15 and 16, 2016.

20 Joe, if you could please play clips

21 18, 21, and 19. And these are found on pages 207 to

22 211, 212 to 213, and 222 of Mr. Kettering's deposition

23 transcript.

24 (A video clip was played as follows:)

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1 Question: More texts from your phone

2 that weren't produced in the appraisal action. These

3 are from March 15, 2016. I'm at the top. There's a

4 text from you.

5 Answer: Is this a new exhibit?

6 Question: Yes. Exhibit 34.

7 Answer: Okay.

8 Question: At the very top, there's

9 another text from you to Mr. Skaggs. It says you and

10 Mr. Skaggs, 101. March 15, 2016, you write, "Got a

11 minute?"

12 It says, "Do you mind if I send

13 Francois a friendly note -- "Your shares certainly

14 performed well today--made up half the pre-leak

15 deficit."

16 And there's another text from you, "Hi

17 Francois, Given the frequent stock price checks, I

18 kind of expected a call. I would suggest that you,

19 Alex and I chat at your earliest convenience."

20 Skaggs then writes, "Thanks. We'll

21 see."

22 He writes, "What did you decide re

23 speaking with Russ? I'm going to call him after 6:30

24 BS call."

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1 Do you see that?

2 Answer: I do.

3 Question: Sitting here today, do you

4 know -- let me ask you this, Mr. Kettering. Did

5 Mr. Skaggs, Mr. Smith, or you ever go back to

6 TransCanada and try to use their stock performance

7 between March 14 and March 16 to negotiate up from

8 25.50?

9 Answer: I don't recall having done so

10 on the basis of a change in price from one day to the

11 next.

12 Question: Okay.

13 Do you have any recollection of

14 pushing back at all from them coming down from \$26 a

15 share to 25.50 per share?

16 Attorney Vallette: Objection to form.

17 Answer: When you say "pushing back,"

18 what do you mean?

19 Question: Did you try to negotiate?

20 Answer: Well, we had spent months

21 negotiating, and had been presented with 25.50 as the

22 highest price the TransCanada board was prepared to

23 accept. And we decided as a board and the management

24 that, given all of the factors that we needed to take

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1 into consideration, that the 25.50 was an acceptable

2 price and one that was in the best interest of our

3 shareholders. And we regarded that as the highest

4 price that TransCanada was prepared to pay.

5 Question: Okay. But sitting here

6 today, you have no recollection, in connection to

7 those discussions with the board after TransCanada

8 lowered its bid, of any analysis of TransCanada's

9 stock price on March 14, March 15, or March 16, 2016,

10 right?

11 Answer: Just as we wouldn't have

12 expected TransCanada to adjust the price if their

13 share price has increased or decreased, we didn't have

14 discussions about making overtures based on day-to-day

15 share prices.

16 Question: Do you recall any

17 discussion at the board level, in your presence, that

18 because TransCanada lowered its bid from 26 to 25.50,

19 Columbia was no longer in exclusivity and could shop

20 the deal?

21 Answer: I don't recall having

22 discussions around exclusivity.

23 Question: Do you remember having any

24 discussions at the board level on March 14, March 15,

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## G. Kettering - Direct by Video

## G. Kettering - Direct by Video

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1 March 16, 2016, concerning that TransCanada's threat  
 2 to go public could be a violation of the NDA  
 3 standstill provision?  
 4 Attorney Vallette: Object to form.  
 5 Answer: I don't recall any specific  
 6 conversation along those lines.  
 7 Question: So when Mr. Poirier came  
 8 back -- let me ask you this. I think earlier you  
 9 testified that you had very little interaction with  
 10 Mr. Poirier about discussing price, right, in this  
 11 deal, personally?  
 12 Answer: As far as I can recall, it  
 13 was -- it was the phone call that we just spoke about.  
 14 Question: Right. So Mr. Poirier  
 15 requests a -- it looks like a nondescript call with  
 16 you, and then drops the price and gives a bunch of  
 17 reasoning, and you and everyone just took him for his  
 18 word?  
 19 Attorney Vallette: Object to --  
 20 Attorney Kirby: Object to form.  
 21 Answer: I don't know what you mean by  
 22 "a nondescript call." On a call, he told me their  
 23 board had reached a decision. He communicated it.  
 24 I communicated back to Bob Skaggs, who

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## G. Kettering - Cross by Video

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1 been handed a binder with an annotated copy of  
 2 Mr. Kettering's transcript that reflects plaintiffs'  
 3 designations, TransCanada's designation, as well as  
 4 the one exhibit that accompanies TransCanada's  
 5 designations.  
 6 In the first two clips, Mr. Kettering  
 7 discusses the Columbia board after the leak. These  
 8 are on pages 161 to 163 of the transcript.  
 9 (A video clip was played as follows:)  
 10 Question: Good to know.  
 11 My questions remain the same, though.  
 12 Do you remember the board telling management to get a  
 13 deal done with whatever it takes with TransCanada, on  
 14 March 10, 2016?  
 15 Answer: No. I don't think that ever  
 16 happened.  
 17 Question: I think we'll agree on  
 18 this: You, Mr. Kettering, didn't tell TransCanada on  
 19 March 10, 2016, that the Columbia board was freaking  
 20 out and wanted to get a deal done, whatever it takes,  
 21 right?  
 22 Answer: Yes. I don't believe anybody  
 23 did.  
 24 (End of video clip.)

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## G. Kettering - Direct by Video

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1 shared it, I'm sure, with the board.  
 2 Question: Right. And sitting here  
 3 today, you have no recollection of anyone at the board  
 4 level, including your advisors and management,  
 5 verifying Mr. Poirier's reasons for dropping the bid  
 6 on March 14, 2016; right?  
 7 Attorney Vallette: Objection to form.  
 8 Attorney Kirby: Object to form.  
 9 Answer: I can't recall any  
 10 conversations along those lines.  
 11 Question: Again, I just want to make  
 12 sure it's clear. You have no recollection of the  
 13 board discussing, in your presence, or analyzing how  
 14 TransCanada's stock price actually performed on  
 15 March 14, March 15, or March 16, before accepting the  
 16 25.50 offer, correct?  
 17 Attorney Vallette: Object to form.  
 18 Answer: I don't recall a conversation  
 19 with the board.  
 20 (End of video clip.)  
 21 ATTORNEY SANDBORN LOWING: Nothing  
 22 further, Your Honor. Plaintiffs pass the witness.  
 23 Thank you.  
 24 ATTORNEY SHI: Your Honor, you have

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## G. Kettering - Cross by Video

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1 ATTORNEY SHI: In the next two clips,  
 2 Mr. Kettering discusses his edits to the background  
 3 section of the proxy statement. These are on pages  
 4 215 to 219 of the transcript.  
 5 (A video clip was played as follows:)  
 6 Question: This is an April 2 email.  
 7 The top email is an April 2 email that you sent to Bob  
 8 Skaggs, Steve Smith, Bob Smith, and someone, J.  
 9 Nickerson at NiSource.  
 10 And you say, "Here are my comments on  
 11 the Background and Reasons For drafts. I couldn't  
 12 figure out how to scan two sided copies, this includes  
 13 the odd numbered pages and I'll shortly send the even  
 14 numbered pages."  
 15 Do you see that?  
 16 Answer: Yes.  
 17 Question: Okay. And then, below, we  
 18 see your attachment. In this email, you're referring  
 19 to comments that you made on the proxy statement;  
 20 specifically, as you note here, the background of the  
 21 merger and the reasons of the merger section.  
 22 Correct?  
 23 Answer: Yes.  
 24 Question: Okay.

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## G. Kettering - Cross by Video

## G. Kettering - Cross by Video

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1 So if we scroll down, you'll see the  
 2 attachment, and if you scroll through it, you'll see  
 3 that these are the odd-numbered pages. So this is the  
 4 scan that you were attaching to this document, or to  
 5 this email.  
 6 This document shows at least some of  
 7 your edits made to the proxy on or around April 2,  
 8 2016?  
 9 Answer: Yes.  
 10 Question: And do you recognize the  
 11 handwriting in the margins and top and bottom as  
 12 yours?  
 13 Answer: Yes.  
 14 Question: So it is – this is  
 15 obviously the proxy, the background of the merger. So  
 16 speaking chronologically – and it's on the page  
 17 that's discussing the events of March 14.  
 18 Answer: Okay. March 14. I'm getting  
 19 there.  
 20 Okay. I found it.  
 21 Question: Okay.  
 22 Answer: Sorry about that.  
 23 Question: No. No worries.  
 24 In the middle of the page, there's the

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## R. Skaggs - Direct

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1 of the call you had with Mr. Poirier and Mr. Pourbaix  
 2 on March 14?  
 3 Answer: Yes. I'm sure it represents  
 4 my recollection at the time.  
 5 Question: And, sir, when you were  
 6 making these edits, your goal was to create a  
 7 comprehensive and accurate description of that  
 8 meeting, correct?  
 9 Answer: Correct.  
 10 (End of video clip.)  
 11 ATTORNEY SHI: Thank you, Your Honor.  
 12 ATTORNEY van KWAEGEN: Good  
 13 afternoon, Your Honor. Plaintiffs call Bob Skaggs to  
 14 the stand. And we'll have a couple of binders, so  
 15 with Your Honor's permission, we'll approach and set  
 16 up.  
 17 THE WITNESS: Good afternoon.  
 18 THE COURT CLERK: Good afternoon.  
 19 ROBERT SKAGGS, having first beenduly  
 20 affirmed, was examined and testified as follows:  
 21 DIRECT EXAMINATION  
 22 BY ATTORNEY van KWAEGEN:  
 23 Q. Hello, Mr. Skaggs.  
 24 A. Good afternoon.

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## G. Kettering - Cross by Video

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1 paragraph that talks about – that references your  
 2 call. It starts with, "On the afternoon of March 14,  
 3 2016 ...."  
 4 Do you see that?  
 5 Answer: Uh-huh. Yes.  
 6 Question: Okay. So in the second  
 7 line – actually, I'm sorry. In the fourth line,  
 8 you'll see that you have made a line through some of  
 9 the words, and then you have inserted your proposed  
 10 edit that's written in the left-side margin.  
 11 Do you see that?  
 12 Answer: Yes. Yup.  
 13 Question: And correct me if I'm  
 14 wrong, but I think I've read this correctly. Your  
 15 edit reads, "Plus the deterioration of [TransCanada's]  
 16 stock price following the leak, indicated that  
 17 TransCanada's board concluded it could not maintain  
 18 the [26 cash/stock price offer. And that their final  
 19 proposal was to."  
 20 Is that right?  
 21 Answer: Yes.  
 22 Question: Okay. And in addition to  
 23 the other portion that's already typewritten in the  
 24 paragraph, is that consistent with your recollection

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## R. Skaggs - Direct

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1 Q. Nice to see you again. Jeroen van  
 2 Kwavegen from Bernstein Litowitz on behalf of  
 3 plaintiffs.  
 4 A. Yes. Good to see you again.  
 5 Q. So just to orient you, Mr. Skaggs, you  
 6 were handed two binders and one Velo-bound document.  
 7 I will not be using the Velo-bound document until the  
 8 end, so you can put that to the side. Binder No. 1  
 9 contains certain exhibits that I may show you. Binder  
 10 No. 2 contains prior testimony and the pretrial order.  
 11 A. Okay.  
 12 Q. And so I will direct you to the  
 13 various things, if I need to.  
 14 A. Sure. Sure.  
 15 Q. But Binder 1 will probably be used  
 16 more.  
 17 A. Okay. Sure.  
 18 Q. Mr. Skaggs, the Court is aware that  
 19 you're the former CEO of Columbia, so I'm not going to  
 20 talk a lot about your background, okay?  
 21 A. Okay.  
 22 Q. It's fair to say that your executive  
 23 compensation agreement with NiSource, and then later  
 24 with Columbia Pipeline, contained a change-in-control

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## R. Skaggs - Direct

R. Skaggs - Direct

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1 provision?

2 **A. I had a change-in-control agreement,**

3 **but I did not have a contract with either NiSource**

4 **or -- an employment contract with either company.**

5 Q. You understood, though, that you were

6 entitled to change-in-control payments?

7 **A. Absolutely, yes, sir. There was a**

8 **change-in-control provision somewhere in my documents.**

9 Q. And let me just show you a document

10 that Sullivan & Cromwell prepared. It's JTX 748.

11 We'll put it up on the screen as well.

12 **A. Thank you.**

13 Q. And that's so that you don't have to

14 remember specific numbers.

15 And at the top, there is a reference

16 there that says, "Change in Control [ ] Involuntary

17 Termination [as of] June 1, 2016." And there's a

18 reference there to a total payment to you of about

19 \$30.8 million.

20 Do you see that?

21 **A. Yes, sir.**

22 Q. And it's fair to say that that

23 provision would be triggered if there was a change in

24 control, and then you would be involuntarily

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R. Skaggs - Direct

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1 **A. A significant payment, yes, sir.**

2 Q. And it's fair to say that Columbia's

3 offices were in Houston; Columbus, Ohio; and New

4 Albany, Ohio?

5 **A. And Charleston, West Virginia.**

6 Q. You never moved to Houston after the

7 acquisition by TransCanada?

8 **A. No.**

9 Q. In fact, you moved to South Carolina.

10 **A. I moved to South Carolina, I believe,**

11 **in 2015, the latter part.**

12 Q. Right. Your best recollection is you

13 moved to South Carolina late 2015 or early 2016;

14 right?

15 **A. That general time frame, yes, sir.**

16 Q. And after the transaction closed, your

17 employment was terminated, you paid off the mortgage

18 on your house in South Carolina.

19 **A. I don't recall. But I certainly**

20 **wouldn't dispute it either. I just don't remember**

21 **that.**

22 Q. Well, that's why we have documents.

23 **A. Yeah.**

24 Q. I'll show you the first.

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R. Skaggs - Direct

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1 terminated?

2 **A. That would be my understanding, yes,**

3 **sir.**

4 Q. And that's what happened here with the

5 sale of Columbia Pipeline; right? There was a change

6 in control, and you were involuntarily terminated?

7 **A. Yes.**

8 Q. And if the merger or the sale of

9 Columbia Pipeline to TransCanada did not happen in

10 2016, you would not have received the change-in-

11 control payment in 2016?

12 **A. Not the change-of-control payment, but**

13 **I would have received annual compensation, a bonus,**

14 **and a stock grant that would have been embedded in --**

15 **in that sort of number.**

16 Q. Right. And if I look at this number

17 here, for example, the \$23.6 million that we see, you

18 would not have received in 2016?

19 **A. I would -- I believe my understanding**

20 **is I would have received a portion of that, because it**

21 **was an annual grant. But all grants were accelerated.**

22 **So I don't mean to parse words, but I think that's the**

23 **way it worked.**

24 Q. You got a significant payment?

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R. Skaggs - Direct

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1 This is from your appraisal

2 deposition, so it's in Binder No. 2. And I'll show

3 you the lines. It's lines 114 -- page 114, lines 11

4 through 18. You'll also see it on your screen,

5 Mr. Skaggs.

6 **A. I'm sorry. What --**

7 Q. And this is the appraisal deposition

8 in 2018.

9 **A. So there's deposition --**

10 Q. Day 1.

11 **A. Day 1. 2000 --**

12 Q. '18. A couple of years ago. We've

13 already met before.

14 **A. Yes, sir. I'm just -- sorry. I had**

15 **this issue last time.**

16 So I'm on tab "deposition transcript

17 day 1."

18 Q. Correct. If you go to page --

19 **A. Oh, I'm sorry. It's the appraisal**

20 **deposition; correct?**

21 Q. Right.

22 **A. Sorry about this. Okay.**

23 Q. No. It's okay. I'll show it to you

24 on the screen also.

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## R. Skaggs - Direct

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**R. Skaggs - Direct**

1 **A. Okay. Appreciate that.**  
 2 (A video clip was played as follows:)  
 3 Question: As far as you know, did you  
 4 pay off your mortgage after July 1, 2016?  
 5 Answer: I'd have to again look at  
 6 specific dates. My recollection or my guess would  
 7 be -- my guess would be, yes, I did.  
 8 Question: And this is on your house  
 9 in South Carolina?  
 10 Answer: Yes.  
 11 (End of video clip.)  
 12 BY ATTORNEY van KWAEGEN:  
 13 Q. I asked you those questions and you  
 14 answered those questions at your deposition; right?  
 15 **A. Oh, yes, sir.**  
 16 Q. And you spoke -- you understood that  
 17 you were under oath when you were answering those  
 18 questions?  
 19 **A. Yes.**  
 20 Q. And you spoke the truth?  
 21 **A. Oh, yes.**  
 22 Q. While at NiSource and Columbia, you  
 23 worked with Rick Rivera at AYCO?  
 24 **A. Both at NiSource and Columbia, yes.**

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**R. Skaggs - Direct**

1 **He was my financial planner.**  
 2 Q. And unfortunately, he's passed away;  
 3 right?  
 4 **A. Yes. Unfortunately, he has,**  
 5 **tragically.**  
 6 Q. I want to show you a document. It's  
 7 JTX 37. We'll show it to you on the screen as well.  
 8 It's an August 25, 2014, memo. And here, if you look  
 9 at the first page --  
 10 **A. One second. Yes, sir.**  
 11 Q. We'll blow it up, as well, so it's  
 12 easy to read. He's recounting a meeting that he had  
 13 with you on the morning of August 18, 2014, where he's  
 14 talking about the meeting objectives, key data points,  
 15 accomplishments, and followup. And says he here, in  
 16 this memo to you, underlined, "We analyzed the outlook  
 17 for a retirement on March 31, 2016."  
 18 **A. Yes, sir. That's what this document**  
 19 **says.**  
 20 Q. And this would have been a key input  
 21 that came from you?  
 22 **A. More likely, it -- in all likelihood,**  
 23 **it did begin with me. But I'm sure that Mr. -- that**  
 24 **Rick, Mr. Rivera, was prompting me on what should our**

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**R. Skaggs - Direct**

1 **assumption be around potential retirement.**  
 2 Q. Okay. And this is when you were still  
 3 at NiSource; right?  
 4 **A. That's correct.**  
 5 Q. If we go to the next page, there's a  
 6 reference there towards the bottom of the page,  
 7 "Compass/Long Term Cash Flow." And there, under (a),  
 8 he says, "As you know, the single greatest risk to  
 9 retirement is the single company stock position in  
 10 NiSource."  
 11 **A. Again, that's what this document says,**  
 12 **yes, sir.**  
 13 Q. And Mr. Rivera was telling you that  
 14 your portfolio should really be more diversified;  
 15 right?  
 16 **A. That was an ongoing theme from**  
 17 **Mr. Rivera. He had a point of view that**  
 18 **diversification in the portfolio was a good thing.**  
 19 **And I had a different point of view.**  
 20 Q. And it was your view that selling off  
 21 stock in a company where you were the CEO would not be  
 22 a good look, and basically would not be inspiring  
 23 confidence with investors; right?  
 24 **A. Well, not only investors, but**

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**R. Skaggs - Direct**

1 **employees and customers. I wanted to demonstrate that**  
 2 **I was all in and completely aligned with their**  
 3 **interests.**  
 4 Q. And that position didn't change  
 5 between this memo in 2014 and your involuntary  
 6 termination following the sale of Columbia?  
 7 **A. Oh, it did. It did dramatically.**  
 8 **Because when we spun the company off from NiSource in**  
 9 **mid-2015, that provided me an opportunity to divest a**  
 10 **significant chunk of -- or diversify a significant**  
 11 **chunk of my portfolio. So once I left that company,**  
 12 **this self-imposed policy to hold, hold, hold gave me,**  
 13 **if I wanted, the latitude to diversify.**  
 14 And that's what I began doing with my  
 15 NiSource holdings, beginning mid-2015.  
 16 Q. But it's fair to say you continued to  
 17 maintain the same policy, like I don't want to sell  
 18 the company stock when I'm the CEO, while you were the  
 19 CEO of Columbia?  
 20 **A. Oh, absolutely.**  
 21 Q. And so you continued to hold your  
 22 Columbia stock?  
 23 **A. Oh, absolutely correct.**  
 24 Q. I want to show you another memo from

CHANCERY COURT REPORTERS

## R. Skaggs - Direct

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**R. Skaggs - Direct**

1 Mr. Rivera that's at JTX 164.

2 **A. 164.**

3 Q. And towards the bottom -- it's

4 basically a running commentary. But towards the

5 bottom, the first page, there's a reference to a

6 June 1, 2015, meeting.

7 Do you have it here?

8 **A. Yes. I see it.**

9 Q. And here, Mr. Rivera notes that "He

10 noted that CPG could be purchased as early as Q3/[Q]4

11 of 2015. I think they are already working on getting

12 themselves sold before they even split. This was the

13 intention all along. He sees himself only staying on

14 through July of 2016."

15 And then it talks about the change of

16 controls not allowing for gross-up.

17 You have no reason to believe that

18 Mr. Rivera would make up that you told him that you

19 thought CPG could be purchased as early as Q3/Q4 2015

20 or that he understood from communicating with you that

21 you were already working on getting Columbia sold

22 before the split?

23 **A. June 1, we were literally just the**

24 **first day of being a stand-alone company. So we**

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**R. Skaggs - Direct**

1 **A. Truthful in the sense of the**

2 **statements that I gave him, but I'm not going to share**

3 **what I consider to be sensitive company information**

4 **with him.**

5 Q. All right. So this is right around

6 the time of the official split, Columbia Pipeline from

7 NiSource; right? June 1?

8 **A. No. July 1 is when we actually spun.**

9 **And June 1, we felt certain we were going to complete**

10 **the transaction. But as we all know, it's never**

11 **complete until it's complete. So we weren't taking**

12 **anything for granted. That was the time track that --**

13 **June 1, it wasn't a done deal.**

14 Q. It was approximately one month before

15 the formal spinout?

16 **A. Oh, that's true.**

17 Q. Okay.

18 **A. Before it was finally effectuated.**

19 Q. And it's fair to say that you had been

20 working on that spinout for quite some time before it

21 was actually finalized on July 1?

22 **A. Oh, absolutely. True.**

23 Q. And as part of the work on that, the

24 spinout of Columbia Pipeline from NiSource, you had

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**R. Skaggs - Direct**

1 **weren't pursuing anything on July 1.**

2 And the spin of Columbia was just a

3 notable event in the entire market. Mini spins, folks

4 look to sell the company or be purchased. We knew

5 there was likely to be a high demand for someone to

6 acquire Columbia. It was common knowledge. The

7 market was aware of it.

8 And Mr. Rivera was aware that that was

9 a possible scenario sooner rather than later.

10 Q. And that's because you had discussed

11 that with him?

12 **A. I don't recall having that discussion.**

13 Q. In any event, he had no reason to make

14 this information up; right?

15 **A. No. I would assume none.**

16 Q. All right. He's trying to advise you

17 on your retirement benefits; right?

18 **A. He's trying to develop scenarios for**

19 **upcoming potential events, be it being fired,**

20 **retiring, and disposition of the company.**

21 Q. And it's fair to say that when you

22 provided information to Mr. Rivera, you were truthful

23 and accurate because it would help him in providing

24 good advice to you?

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**R. Skaggs - Direct**

1 many meetings, many discussions, board meetings,

2 et cetera; right?

3 **A. Oh, that's correct.**

4 Q. And before the spinout, you were

5 actually the CEO of NiSource; right?

6 **A. Yes.**

7 Q. And you went along with Columbia

8 Pipeline; correct?

9 **A. I did.**

10 Q. And Columbia Pipeline was a smaller

11 part of NiSource than the remainder that was left

12 behind?

13 **A. Measured how?**

14 Q. Fair to say that approximately 25

15 percent of the assets of NiSource constituted Columbia

16 Pipeline and about 75 percent utilities?

17 **A. I think that's a wrong statement. I**

18 **think it was -- again, it depends on how you measure.**

19 **If you're measuring it net book of the assets, it's**

20 **probably a 55/45 split. The utilities, NiSource, 55;**

21 **the pipeline, 45. If you're looking at valuations,**

22 **it's probably CPG was here and NiSource was here.**

23 And at that point, the prospects for

24 CPG were that it would grow much faster than the

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## R. Skaggs - Direct

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- 1 traditional utility.
- 2 Q. And in terms of assets, though, just
- 3 assets, not about multiples or trade-in or valuation,
- 4 just assets, it's a true statement, if I understand
- 5 you correctly, that the assets were about 55 percent
- 6 NiSource and 45 percent Columbia?
- 7 A. True. But the CPG assets were
- 8 projected to almost double in size over the next five
- 9 years because of growth projects.
- 10 Q. Okay. Now, I want to take you back
- 11 to, you know, November/December of 2014, so before
- 12 the --
- 13 A. Help me here. November and
- 14 December of 2014?
- 15 Q. Correct. Before the spin.
- 16 A. Before the spin.
- 17 Q. Right. Do you recall having
- 18 discussions with the NiSource board about who would
- 19 succeed -- who would be the CEO of NiSource and who
- 20 would be the CEO of Columbia Pipeline?
- 21 A. We had extensive discussions about not
- 22 only those positions but, for the most part, all of
- 23 the executive positions.
- 24 Q. Okay.

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R. Skaggs - Direct

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- 1 that that he was not the best candidate to be CEO.
- 2 Q. And you delivered that message to
- 3 Mr. Smith?
- 4 A. I -- I'm sure I conveyed something to
- 5 that effect to Mr. Smith. But I can't recall that
- 6 conversation, nor how I handled it or whether the
- 7 chairman of the NiSource board delivered that message.
- 8 Q. You don't recall delivering the
- 9 message to Mr. Smith and him being disappointed that
- 10 he'd not been selected?
- 11 A. No. I recall that he was
- 12 disappointed. The delivery of the message, I just
- 13 can't recall how that was handled.
- 14 Q. And it's fair to say that, when you
- 15 say, I recall him -- you know, he was being -- he was
- 16 disappointed that he was not selected, it's fair to
- 17 say that you had to be sensitive and respectful of
- 18 Steve's feelings; right?
- 19 A. Oh, absolutely, yes.
- 20 Q. And it's fair to say that, among all
- 21 the candidates who were potentially considered to
- 22 become the CEO of NiSource, he was the one who was
- 23 most sensitive?
- 24 A. No. That's not true. There was the

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R. Skaggs - Direct

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- 1 A. Extensive discussions.
- 2 Q. And is it fair to say that those
- 3 discussions happened in the November to December 2014
- 4 time frame?
- 5 A. Plus or minus that that was the
- 6 period.
- 7 Q. And it's fair to say that Steve Smith
- 8 applied or tried or put his candidacy forward to
- 9 become the CEO of NiSource post-spin?
- 10 A. He was part of the consideration. I
- 11 can't recall whether it was throw the hat in or we,
- 12 the board, would like to consider Steve and others for
- 13 that position.
- 14 And my recollection is we asked
- 15 Russell Reynolds to come in and do assessments and
- 16 that sort of thing about a handful of people, internal
- 17 people.
- 18 Q. And it's fair to say that, in the end,
- 19 the board decided not to select Steve Smith?
- 20 A. Oh, that's correct.
- 21 Q. And it's also fair to say that you
- 22 supported that decision by the board not to select
- 23 Steve Smith to become the CEO of NiSource post-spin?
- 24 A. I suggested and registered my belief

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- 1 president of NIPSCO, who was in the running and wanted
- 2 to be considered. And to my surprise, he registered
- 3 by far the most disappointment and frustration that he
- 4 was not selected, much more than Steve.
- 5 Q. Let me show you from your deposition
- 6 in the appraisal.
- 7 A. Uh-huh.
- 8 Q. It's the same transcript we just
- 9 looked at, page 226, line 8, through 227, line 4.
- 10 A. Appraisal deposition, day 1?
- 11 Q. Yes.
- 12 A. And page?
- 13 Q. 226, line 8, through 227, line 4.
- 14 (A video clip was played as follows:)
- 15 Question: Were you the one -- were
- 16 you the one who shared the news with Mr. Smith that he
- 17 was not going to be the CEO of NiSource?
- 18 Answer: I did.
- 19 Question: How did he take that?
- 20 Answer: He was disappointed. He was
- 21 disappointed, but highly, highly professional. So he
- 22 understood the decision. He would have loved to have
- 23 had the opportunity. He would have loved to have been
- 24 recognized, but -- so he was disappointed.

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1 And I think all the individuals that

2 didn't make it were disappointed because they had, I

3 think, appropriate egos, but they had egos. They

4 wanted that sort of recognition. So all the

5 individuals were disappointed.

6 Again, Steve is probably one of the

7 most sensitive of those groups of candidates. And --

8 and you just had to be very, very sensitive and

9 respectful of his feelings. But while he handled it

10 very well, put on his helmet and strapped on his gear

11 and was ready to continue to work, and he did that.

12 (End of video clip.)

13 BY ATTORNEY van KWAEGEN:

14 Q. So I asked you that question and you

15 gave that answer at your deposition; right?

16 **A. I sure did.**

17 Q. All right. Let me show you a

18 document. It's Joint Exhibit 56.

19 **A. And that's in binder 2?**

20 Q. That's binder 1. And you can also

21 look at the screen. It's an email. At the bottom,

22 it's a December 3, 2014, email from Matt Gibson at

23 Goldman to Will Bousquette and Tim Ingrassia at

24 Goldman, dated December 3, 2014.

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**R. Skaggs - Direct**

1 **A. Okay. Just one second, please.**

2 Q. And there, Mr. Gibson says, "Met

3 [with] CFO for an hour."

4 "Subject: [NiSource].

5 "Met [with] CFO for an hour."

6 "CEO and CFO going to Midstream

7 company (CPG). CFO indicated that was in part because

8 they 'don't want to work forever.' They love the

9 business and I think they see an [opportunity] for a

10 sale in near term."

11 **A. I see that.**

12 Q. This email suggests that this happened

13 after the decision was made that Steve Smith would not

14 become the CEO of NiSource. Do you see where it says,

15 "CEO and CFO going to Midstream [] CPG"?

16 **A. Yes.**

17 Q. And sitting here today, you have no

18 basis to dispute that Steve Smith relayed that message

19 to Matt Gibson on or around December 3, 2014?

20 **A. Well, yes, I would dispute it. I --**

21 **it would be hard for me to imagine Steve saying that,**

22 **particularly to a banker.**

23 Q. Were you part of this meeting? Were

24 you there?

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**R. Skaggs - Direct**

1 **A. No.**

2 Q. Okay. And then there's a

3 discussion --

4 **A. Not the -- not the --**

5 Q. -- in the rest of the email --

6 **A. Not the --**

7 Q. Mr. Skaggs, sorry.

8 There's a discussion in the rest of

9 the email talking about starting to take preparations

10 for positioning Columbia Pipeline for a sale, should

11 there become inbounds in the future; right?

12 **A. No. I'm not sure I see that.**

13 Q. Well, for example, there's a

14 discussion about how Morgan Stanley and JPMorgan, they

15 think that "CPG will trade too rich to sell ...."

16 Do you see that?

17 **A. Yes.**

18 Q. And there's a discussion there how

19 Steve Smith asked Mr. Gibson to send him both of your

20 bios.

21 And when he's talking about bios, he's

22 talking about bios of Goldman Sachs financial advisors

23 in connection with a potential transaction; right?

24 **A. That's what this appears to say.**

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**R. Skaggs - Direct**

1 Q. And you did use Columbia Pipeline --

2 sorry. You did use Goldman Sachs in connection with

3 the sale of Columbia Pipeline to NiSource?

4 **A. Yes -- no. Columbia Pipeline to**

5 **TransCanada.**

6 Q. To TransCanada. I apologize. Thank

7 you. Okay.

8 Now, I want to continue with the

9 preparation for the spin. And I want to go back to

10 the change-in-control payments, or the

11 change-in-control provisions. And I'll show you

12 another document. It's Joint Exhibit 1781.

13 And at the first page, you see there's

14 a May 12, 2015, informational session of the human

15 resources and compensation committee of the board of

16 directors.

17 Again, prior to the spin and the

18 run-up to the spin; correct?

19 **A. Correct.**

20 Q. And I'd like to go to page 31 at the

21 bottom, so it's 1781.031.

22 And here, there's a discussion about

23 the change-in-control payments, about the "Transition

24 Approach, Future State Alignments with Common

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1 Practices."

2 And there's a Columbia Pipeline

3 management recommendation. And in the box underneath,

4 you can see that the recommendation is to change the

5 change-in-control payments to Glen Kettering and Steve

6 Smith from 2x to 3x. Right?

7 **A. Among other changes that were similar.**

8 Q. And that would be for a period of

9 three years; and after that, both Glen and Steve Smith

10 would go back to 2x?

11 **A. That's correct.**

12 Q. And you recommended that this approach

13 be adopted?

14 **A. I did.**

15 Q. And it was adopted?

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

17 Q. And it was adopted?

18 **A. Yes.**

19 Q. So for a period of three years,

20 Mr. Kettering and Mr. Steve Smith would have higher

21 payouts if the company was sold than if those three

22 years lapsed without the transaction?

23 **A. Yes. With -- in the context of the**

24 **rationale and the reasoning discussed on -- on the**

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1 slide.

2 Q. Right. I want to change topics and

3 talk about the transaction. So I'm moving forward in

4 time. We're now in November of 2015. Okay?

5 **A. November of '15. Okay.**

6 Q. So the spinout happens on July 1,

7 2015.

8 **A. Yes.**

9 Q. You remember there were a number of

10 inbounds from Dominion and others, and we're now in

11 November of 2015.

12 **A. Yes.**

13 Q. Okay. And you recall that in November

14 of 2015, Columbia Pipeline decided to move forward

15 with an equity offering and to ask inbounds, who had

16 received confidential information, to return or

17 destroy that information.

18 **A. I think in a very abbreviated fashion,**

19 **that your statement is correct. But that period**

20 **through November, there were a lot of activities going**

21 **back and forth leading up to that decision finally to**

22 **issue equity.**

23 **So just for clarity and the record's**

24 **sake --**

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1 Q. Sure. I'm just orienting you in time,

2 right?

3 **A. Yeah.**

4 Q. For a while, you had parallel tracks.

5 You were talking to the inbounds; right? TransCanada,

6 NextEra, Dominion.

7 **A. Berkshire Hathaway.**

8 Q. MidAmerican, I was going to say, but,

9 you know, yeah, Berkshire Hathaway. You were

10 discussing a potential transaction with them.

11 And --

12 **A. Preparing --**

13 Q. -- preparing for an equity offering.

14 And a decision was made: We are moving forward with

15 the equity offering; correct?

16 **A. That's correct.**

17 Q. And at that point in time, it was your

18 understanding that anyone who had received

19 confidential information would either return or

20 destroy it?

21 **A. Yes, sir. That was my understanding,**

22 **that the legal team would send letters asking,**

23 **demanding, or requesting, whatever the right term is,**

24 **to retain -- or destroy or return.**

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1 Q. And you understood that that was

2 because those potential bidders had received that

3 information pursuant to a confidentiality agreement,

4 NDA?

5 **A. Correct.**

6 Q. You also understood that that NDA

7 contained a standstill provision?

8 **A. I did.**

9 Q. And you understood that to be the case

10 for TransCanada, Dominion, NextEra, and Berkshire?

11 **A. My understanding was, is that**

12 **Sullivan & Cromwell, the legal team, drafted those**

13 **agreements; and for the most part, they were identical**

14 **for each of the parties that we shared information**

15 **with.**

16 Q. An equity offering happens December 1.

17 **A. Yes.**

18 Q. And it's your best recollection that,

19 after the equity offering happens, TransCanada reaches

20 out to reengage with you?

21 **A. At some point in late December they**

22 **reach out. I'm not sure what the subject of the**

23 **reach-out was. I could speculate.**

24 Q. Don't just speculate. I'll show you

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## R. Skaggs - Direct

R. Skaggs - Direct Page 901	R. Skaggs - Direct Page 903
<p>1 documents.</p> <p>2 <b>A. Yeah.</b></p> <p>3 Q. But just to give you a sense of time,</p> <p>4 if you look at JTX 1777 in the back of your binder –</p> <p>5 I'll put it up on the screen as well – those are text</p> <p>6 messages. I'm just showing you those to give you some</p> <p>7 sense of time. And these are text messages between</p> <p>8 Francois Poirier and Steve Smith. And if you look on</p> <p>9 December 1 at 8:00 in the morning, there's a text</p> <p>10 message from Francois Poirier, "Hi Steve, can you</p> <p>11 [please] give me a call? Thanks, Francois."</p> <p>12 <b>A. I see that.</b></p> <p>13 Q. And if you then look, there's a</p> <p>14 discussion there how there would also be a call on</p> <p>15 December 2 between you and Russ Girling?</p> <p>16 <b>A. I'm sorry. What was that again? I</b></p> <p>17 <b>was reading this.</b></p> <p>18 Q. Sure. If you look down, just read</p> <p>19 those text messages. There's a reference there to a</p> <p>20 call that you would have with Mr. Girling on</p> <p>21 December 2.</p> <p>22 <b>A. I'm not seeing that.</b></p> <p>23 <b>"Ok. If possible, before our board</b></p> <p>24 <b>meeting starts at ...."</b></p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Mr. Poirier on January 7, 2016.</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. And during this meeting, Mr. Poirier</p> <p>4 told Steve Smith that TransCanada was interested in</p> <p>5 acquiring Columbia.</p> <p>6 <b>A. And/or resuming discussions about</b></p> <p>7 <b>acquiring Columbia.</b></p> <p>8 Q. Okay. Mr. Poirier also told Steve</p> <p>9 that TransCanada wanted to do due diligence on</p> <p>10 Columbia Pipeline for 30 to 45 days in order to</p> <p>11 formulate a firm proposal.</p> <p>12 <b>A. I don't recall that being 30 to 45</b></p> <p>13 <b>days. I generally recall that Mr. Poirier wanted to</b></p> <p>14 <b>do additional due diligence in an effort to prepare</b></p> <p>15 <b>his CEO and board to consider extending a proposition</b></p> <p>16 <b>to the Columbia board in late January. That's my</b></p> <p>17 <b>recollection of the -- of at least the outcome of the</b></p> <p>18 <b>discussion.</b></p> <p>19 Q. Do you recall that during that</p> <p>20 discussion there was also a notion that TransCanada's</p> <p>21 view of the fundamental value of Columbia Pipeline had</p> <p>22 not really changed from before the equity offering and</p> <p>23 after the equity offering?</p> <p>24 <b>A. Yes. Which surprised me.</b></p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 Q. If you look at 3:52 p.m.: "Any</p> <p>2 progress [regarding] Russ and Bob? (no lie, I have</p> <p>3 [doctor]'s appointment [])."</p> <p>4 Response from Steve Smith: "Needs to</p> <p>5 be tomorrow sometime."</p> <p>6 Francois Poirier: "Ok. If possible,</p> <p>7 before our board meeting starts at 9:30am ...."</p> <p>8 <b>A. That's what this says. And bear with</b></p> <p>9 <b>me. I'm having difficulty piecing it together,</b></p> <p>10 <b>though.</b></p> <p>11 Q. It's okay. Do you have any</p> <p>12 recollection of a call with Russ Girling on</p> <p>13 December 2?</p> <p>14 <b>A. Not specifically on the 2nd.</b></p> <p>15 Q. Okay. It is your recollection,</p> <p>16 though, that in mid-December, Mr. Poirier – I was</p> <p>17 just doing this to orient you in time.</p> <p>18 <b>A. Yeah.</b></p> <p>19 Q. In mid-December, Mr. Poirier called</p> <p>20 Steve Smith to request a meeting.</p> <p>21 <b>A. Without identifying a specific date,</b></p> <p>22 <b>it was mid to latter part of December, he made that</b></p> <p>23 <b>phone call, correct.</b></p> <p>24 Q. And Mr. Smith had a meeting with</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. And then, on January 25, 2016,</p> <p>2 Mr. Girling contacted you and indicated that</p> <p>3 TransCanada would be interested in pursuing an</p> <p>4 all-cash acquisition of Columbia at a price per share</p> <p>5 in the range of 25 to \$28 per share?</p> <p>6 <b>A. I do recall that, correct.</b></p> <p>7 Q. You did not ask Mr. Girling to submit</p> <p>8 that proposal?</p> <p>9 <b>A. I'm sorry?</b></p> <p>10 Q. You never asked Mr. Girling to submit</p> <p>11 that proposal that came on January 25?</p> <p>12 <b>A. I don't understand that question.</b></p> <p>13 Q. Did you call Mr. Girling and say, hey,</p> <p>14 I would like you to make a proposal –</p> <p>15 <b>A. Oh.</b></p> <p>16 Q. – in that range?</p> <p>17 <b>A. No. He called me.</b></p> <p>18 Q. Did you ever ask Mr. Girling for a</p> <p>19 proposal in the January 2016 time frame?</p> <p>20 <b>A. Not -- we did not ask for a proposal</b></p> <p>21 <b>until they submitted, I believe, a bid at 25.25. And</b></p> <p>22 <b>I recall there was a -- a lawyer request, I believe to</b></p> <p>23 <b>a lawyer, we invite you to submit a formal, binding,</b></p> <p>24 <b>if you will, proposal.</b></p> <p>CHANCERY COURT REPORTERS</p>

## R. Skaggs - Direct

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R. Skaggs - Direct

1 At this point, the discussions were

2 around notional, provisional indications of interest.

3 Q. Well, Mr. Girling indicated to you on

4 January 25 that TransCanada would be interested in

5 pursuing an all-cash acquisition of Columbia at a

6 price per share in the range of 25 to \$28 per share;

7 right?

8 A. An indication of interest. That's

9 correct.

10 Q. And you did not ask Mr. Girling to

11 submit that proposal to you?

12 A. That's correct.

13 Q. And you were not aware of anyone at

14 Columbia who asked TransCanada to submit a proposal on

15 January 25, 2016?

16 A. That's correct. And I was never

17 advised that I needed to do something like you're

18 suggesting, by the legal team or --

19 Q. And is it fair to say that, to the

20 best of your recollection, Mr. Girling made that

21 proposal by phone?

22 A. That's my recollection.

23 Q. Mr. Girling also told you during that

24 call that TransCanada would not undertake additional

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R. Skaggs - Direct

1 transaction documents, you assumed that they were

2 asking that because they did not, meaning TransCanada,

3 did not want to engage in a bidding war?

4 A. I assume that's what they were

5 thinking. I was not surprised they asked for

6 exclusivity, and I'm sure that their reason, their

7 "why," was they were all invested and they didn't want

8 to be a stalking horse, and they wanted to have the

9 exclusive look.

10 Q. Right. They wanted to have a

11 one-on-one conversation on negotiations, as opposed to

12 inviting other potential bidders to the party, so to

13 speak.

14 A. I think that's -- that's a fair

15 statement. That's TransCanada's sort of point.

16 Q. And that's what you understood when

17 Mr. Girling was asking for exclusivity on January 25,

18 2016; correct?

19 A. He asked for exclusivity.

20 Q. Now, to your knowledge, as you engaged

21 in these discussions in January, no one from Columbia

22 informed TransCanada that their standstill obligations

23 had been waived or were waived?

24 A. I believe that's correct. I don't

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R. Skaggs - Direct

1 time and expenses for due diligence and negotiating a

2 transaction or transaction documents without a period

3 of exclusivity.

4 A. That's correct.

5 Q. And TransCanada got exclusivity,

6 right, until March 2?

7 A. Well, I took all of this information

8 back to the board, including the request for

9 exclusivity. And the board reviewed it with the help

10 of our legal advisors, financial advisors, and input

11 of management, and the decision was that we would go

12 along with exclusivity on the basis of the price range

13 if, if, diligence was reasonably limited; that it did

14 not extend *ad infinitum*. And I can't recall whether

15 we said 30 days or 40 days, but the board insisted

16 that it be a very short period of time for the

17 diligence.

18 Q. And when TransCanada asked for

19 exclusivity, you assumed that TransCanada was

20 concerned about engaging in a bidding war?

21 A. Could you repeat that question? I'm

22 not sure I fully understand it.

23 Q. Sure. When TransCanada asked you for

24 exclusivity to do due diligence and negotiate the

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R. Skaggs - Direct

1 recall Sullivan & Cromwell, our legal team, raising

2 any issues, legal issues, with reengaging TransCanada

3 in any manner at this point. Just --

4 Q. As you engaged in these discussions in

5 January with TransCanada, no one from Columbia

6 contacted Dominion, NextEra, or Berkshire Hathaway to

7 inform them --

8 A. Could you --

9 Q. -- that their standstill obligations

10 were waived?

11 A. I'm sorry. Could you say that again.

12 Q. Sure. As you were engaging in these

13 discussions with TransCanada in January of 2016, no

14 one from Columbia contacted Dominion, NextEra, or

15 Berkshire Hathaway to tell them that their standstill

16 obligations were waived?

17 A. My -- my recollection or knowledge

18 would be no.

19 Q. And you also did not reach out to any

20 potential bidder at that time who had not submitted or

21 signed an NDA, like Spectra or other potential

22 bidders. You did not go out and say, hey, let's look

23 for a potential bidder for this company.

24 A. No. We were not soliciting bids or

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## R. Skaggs - Direct

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1 looks at the company at this point. It was on the --  
2 within 30 days, 40 days of a significant issuance of  
3 equity at a very low price, and, frankly, my view of  
4 the world was no one would be interested in the  
5 company. And I was skeptical of whether TransCanada  
6 could even develop an indicative offer that was worth  
7 looking at.

8 Q. Well, you knew that TransCanada,  
9 especially following exclusivity, was devoting  
10 significant resources to do due diligence; right?

11 A. No. That's after January. That is  
12 correct. They were certainly --

13 Q. And so you changed, that in January no  
14 one would be interested, but then maybe in February  
15 people would be interested?

16 A. No. My view -- and I heard this  
17 directly from Berkshire Hathaway, for example:  
18 There's no way we're going to do an equity deal. You  
19 just diluted the company by 20 percent. You sold at  
20 17.50. There's just no way.

21 We knew that a deal for Dominion was  
22 diluted in the fourth quarter of 2015. We knew it  
23 would be ultra-diluted now in January of 2016.

24 So our point of view was, TransCanada

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1 And you've seen this before,  
2 Mr. Skaggs, I think in multiple depositions, actually.  
3 These are the slides that Mr. Smith gave to  
4 Mr. Poirier during the January 7 meeting; right?

5 A. I don't know. I can accept that  
6 that's what this title page looks like, but I just  
7 don't recall.

8 Q. Sure. You do recall that you had  
9 reviewed those slides before Mr. Smith gave them to  
10 Mr. Poirier; right?

11 A. I can't recall reviewing slides prior  
12 to the meeting with Mr. Poirier. I do recall  
13 reviewing a script.

14 Q. Okay.

15 A. Again, that's not to say I didn't. I  
16 just can't recall that. But I can recall reviewing  
17 the script.

18 Q. You were the CEO of Columbia Pipeline,  
19 right, at that time?

20 A. Yes.

21 Q. And normally, when, you know, your CFO  
22 goes to talk to a potential bidder, you would be  
23 involved in that kind of process; right? You're not  
24 going to leave your CFO, go by himself. Just, like,

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1 had an interest, and we were attempting to run that to  
2 ground.

3 Q. Well, in that answer that you just  
4 gave, I think -- I don't think I heard anything about  
5 bonus depreciation. Did you mention that just now?

6 A. I'm sorry?

7 Q. Didn't Congress pass a law, the PATH  
8 Act, giving Columbia Pipeline a billion dollars in  
9 benefits under the bonus depreciation scheme?

10 A. Not that -- not that I'm aware of,  
11 that it impacted our financial plan. We did not  
12 receive a windfall of a billion dollars.

13 Q. Really? And it's not the case that,  
14 between the time of the "pencils down" letter in early  
15 January, you got FERC approval for a settlement with  
16 your shippers under Modernization II?

17 A. We did receive that. But those  
18 weren't cash windfalls that mitigated our need for  
19 equity. We wouldn't have raised a billion dollars if  
20 we were looking at a billion-dollar windfall or if we  
21 were looking at any sort of huge cash infusion. We  
22 weren't just issuing equity because we wanted to.

23 Q. Let's take a look at JTX 549. And we  
24 can put it on the screen.

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1 okay, I'm not involved, do what you want.

2 A. Well, it depends on which stage of the  
3 discussions we're at. And at this point, very initial  
4 discussions for me that we're not sure what the agenda  
5 is. My depth of involvement could be this big  
6 (indicates) -- you know, very, very deep, or it could  
7 be not quite that deep.

8 Q. All right. Well, let's look at the  
9 key changes prior to discussion --

10 A. But I would confer with Mr. Smith  
11 prior to a meeting. But, again, the depth of that  
12 deliberation --

13 Q. Sure.

14 A. -- would vary based on circumstances.

15 Q. Let's look at the next page of the  
16 slide presentation that was given to Mr. Poirier on  
17 January 7. "Key Changes Since Prior Discussion."

18 Do you see that?

19 A. Yes.

20 Q. And the prior discussion was before  
21 the "pencils down" letter at the end of November;  
22 right?

23 A. I'm sorry?

24 Q. The prior discussion was before the

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<p>R. Skaggs - Direct</p> <p>Page 913</p>	<p>R. Skaggs - Direct</p> <p>Page 915</p>
<p>1 "pencils down" letter in November; right?</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. Right. So key changes since then.</p> <p>4 1.4 billion equity issuance at CPG in December of</p> <p>5 2015. We've been talking about that; right?</p> <p>6 <b>A. Yes. That was public information.</b></p> <p>7 <b>Sure. Everybody in the world knew that.</b></p> <p>8 Q. And there's discussion about how the</p> <p>9 dilution is partially offset by lower expected</p> <p>10 issuances through the MLP.</p> <p>11 <b>A. That's correct.</b></p> <p>12 Q. And then there's a discussion about</p> <p>13 Modernization II settlement reached with customers as</p> <p>14 one of the key changes.</p> <p>15 Do you see that?</p> <p>16 <b>A. That's a key change. But that -- that</b></p> <p>17 <b>settlement, the impacts of that settlement were fully</b></p> <p>18 <b>baked in all the financial plans we had during this</b></p> <p>19 <b>period. We assumed the plan reflected, our numbers</b></p> <p>20 <b>reflected, that that settlement was going to be</b></p> <p>21 <b>consummated.</b></p> <p>22 The news was that we'd reached it with</p> <p>23 customers, and it had not yet been approved by the</p> <p>24 federal regulatory group -- commission.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 I got the sense that you had a doom-and-gloom picture,</p> <p>2 and there were also some positive notes, right, during</p> <p>3 this time period?</p> <p>4 <b>A. There were certainly positive notes.</b></p> <p>5 <b>But the over --</b></p> <p>6 Q. Right. Let's move on.</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. So I want to talk about the January</p> <p>9 28-29 board meeting for a second. I'll go back to</p> <p>10 that later.</p> <p>11 <b>A. Okay.</b></p> <p>12 Q. This is right after you had the</p> <p>13 discussion with Mr. Girling where he indicated the 25</p> <p>14 to \$28 range; right?</p> <p>15 <b>A. Bear with me again.</b></p> <p>16 Q. Just orienting you in time.</p> <p>17 <b>A. Yeah. My -- my thought was, as often,</b></p> <p>18 <b>I want to be respectful of Your Honor's comments. So</b></p> <p>19 <b>could you reorient me -- reorient me again.</b></p> <p>20 Q. The big end of January 2016 board</p> <p>21 meeting.</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. All right. This was an important</p> <p>24 meeting.</p> <p>CHANCERY COURT REPORTERS</p>
<p>R. Skaggs - Direct</p> <p>Page 914</p>	<p>R. Skaggs - Direct</p> <p>Page 916</p>
<p>1 Q. Mr. Skaggs, there's also discussion</p> <p>2 there of bonus depreciation; right?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. "Bonus Depreciation Benefits of</p> <p>5 [about] [\$1.0BN in Cash." That's what was</p> <p>6 represented by Columbia Pipeline, or at least by</p> <p>7 Mr. Smith, to Mr. Poirier on January 7; right?</p> <p>8 <b>A. Yes. And, again, this was --</b></p> <p>9 Q. Okay.</p> <p>10 <b>A. -- this was public information,</b></p> <p>11 <b>because the Bonus Depreciation Act had been heavily</b></p> <p>12 <b>debated. It had been in place for, gosh --</b></p> <p>13 THE COURT: I'm going to interrupt</p> <p>14 you. There's no question pending. And try to focus</p> <p>15 in on his questions.</p> <p>16 THE WITNESS: Okay.</p> <p>17 THE COURT: The gratuitous</p> <p>18 information -- these folks are on a clock, both sides,</p> <p>19 so we need to try to be focused.</p> <p>20 THE WITNESS: Yes, Your Honor.</p> <p>21 ATTORNEY van KWAEGEN: Thank you,</p> <p>22 Your Honor.</p> <p>23 BY ATTORNEY van KWAEGEN:</p> <p>24 Q. I was only responding to this because</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 <b>A. Oh, very important meeting.</b></p> <p>2 Q. You had been working towards that</p> <p>3 meeting and preparing for that meeting for months.</p> <p>4 <b>A. It was our annual strategic planning</b></p> <p>5 <b>meeting.</b></p> <p>6 Q. Okay.</p> <p>7 <b>A. So it was -- and our first one as a</b></p> <p>8 <b>stand-alone company. So it was an important meeting.</b></p> <p>9 Q. And you do not recall any discussion</p> <p>10 about TransCanada's standstill obligations during this</p> <p>11 meeting?</p> <p>12 <b>A. I don't recall any discussion about</b></p> <p>13 <b>that. No flags --</b></p> <p>14 Q. You do not recall --</p> <p>15 <b>A. No flags raised.</b></p> <p>16 Q. You do not recall any discussion</p> <p>17 during this meeting about other potential bidders'</p> <p>18 standstill obligations either?</p> <p>19 <b>A. No. I do not recall, no.</b></p> <p>20 Q. And you don't recall any discussion</p> <p>21 during this January 28-29 board meeting about</p> <p>22 releasing the standstill provisions of other potential</p> <p>23 bidders to align with your fiduciary duties?</p> <p>24 <b>A. No discussion of the standstill</b></p> <p>CHANCERY COURT REPORTERS</p>

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<p style="text-align: center;"><b>R. Skaggs - Direct</b></p> <p style="text-align: right;">Page 917</p>	<p style="text-align: center;"><b>R. Skaggs - Direct</b></p> <p style="text-align: right;">Page 919</p>
<p>1 <b>agreements.</b></p> <p>2 Q. All right. Bringing you back to the</p> <p>3 equity offering. Raised about \$1.4 billion; correct?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Underwriters exercised to shoe?</p> <p>6 <b>A. That's correct.</b></p> <p>7 Q. I'm going to show you a document,</p> <p>8 Joint Exhibit 458.</p> <p>9 And here, in the middle, on December</p> <p>10 2, you say, "Wow ... What an 'interesting' -- and for</p> <p>11 many of us, a 'stunning' -- day for CPGX and CPPL. To</p> <p>12 say the least, the market's initial reaction to our</p> <p>13 equity offering has been overwhelmingly positive. I</p> <p>14 would only caution that this is only one day's</p> <p>15 trading ...."</p> <p>16 Do you see that?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. And then, right above, Sig Cornelius</p> <p>19 writes, "Good to get this behind us. Congratulations</p> <p>20 to you and the entire team. I don't think anyone</p> <p>21 would have predicted this reaction in the face of the</p> <p>22 overall market but a pleasant surprise. Certainly a</p> <p>23 testament to the quality of the company, our growth</p> <p>24 prospects and the management team."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1 \$1.4 billion. No need to access the equity markets</p> <p>2 until well into 2017.</p> <p>3 December, mid-December, Mr. Poirier</p> <p>4 calls Steve Smith to request a meeting. Just saw</p> <p>5 that. And it's fair to say that, around that same</p> <p>6 time, in the middle of December, you started preparing</p> <p>7 for the big board meeting at the end of January?</p> <p>8 <b>A. That's -- that's correct.</b></p> <p>9 Q. Okay. I want to show you a document,</p> <p>10 Joint Exhibit 496. And at the bottom, there's an</p> <p>11 email from Matt Gibson reporting back on a call he had</p> <p>12 with you the day before, so on December 18. "Team,</p> <p>13 Had a brief call with Bob and team yesterday. Key</p> <p>14 takeaways below[.]" And they're on the next page.</p> <p>15 At the top, you see there's a</p> <p>16 discussion how you're going to have board meetings on</p> <p>17 January 28 where Goldman Sachs will participate.</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. And then it says, "Bob is currently</p> <p>20 doing a series of 1-on-1 meetings with Directors:</p> <p>21 message is 'even though we raised equity, our plan</p> <p>22 still has a significant amount of execution risk (both</p> <p>23 financial and operational). Need to continue to</p> <p>24 consider strategic alternatives.'"</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: center;"><b>R. Skaggs - Direct</b></p> <p style="text-align: right;">Page 918</p>	<p style="text-align: center;"><b>R. Skaggs - Direct</b></p> <p style="text-align: right;">Page 920</p>
<p>1 You agreed with that; right?</p> <p>2 <b>A. I did.</b></p> <p>3 Q. And I want to show you another</p> <p>4 document, just to show you and talk about the impact</p> <p>5 of this \$1.4 billion capital raise, and that's Joint</p> <p>6 Exhibit 753. And you've seen this before many times</p> <p>7 too. These are your comments to analysts on February</p> <p>8 18, 2016, two months later.</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. If you go to the second page, in your</p> <p>11 prepared remarks at the bottom, you talk about the</p> <p>12 impact, and you say that, "despite stiff headwinds, we</p> <p>13 completed a large and successful CPGX equity offering</p> <p>14 during the fourth quarter, which positions us so that</p> <p>15 we'll not need to access the equity markets until well</p> <p>16 into 2017."</p> <p>17 And that's true when you said that;</p> <p>18 right?</p> <p>19 <b>A. That was our perspective and view.</b></p> <p>20 Q. And at that time, you also had just</p> <p>21 recently announced quarterly increases to both CPG's</p> <p>22 dividend and the MLP's distribution?</p> <p>23 <b>A. That's correct.</b></p> <p>24 Q. Okay. Now, keep that in mind. Raised</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1 And that was your message to the</p> <p>2 outside directors in your one-on-one meetings;</p> <p>3 correct?</p> <p>4 <b>A. Yes, sir.</b></p> <p>5 Q. And there were no board meetings where</p> <p>6 everybody was together between December 1, 2015, and</p> <p>7 January 28-29, 2016; correct?</p> <p>8 <b>A. There were no formal board meetings.</b></p> <p>9 Q. There were your one-on-one</p> <p>10 meetings with the directors?</p> <p>11 <b>A. Correct. Correct.</b></p> <p>12 Q. Did you know your formal general</p> <p>13 counsel, Mr. Bob Smith, testified yesterday how he</p> <p>14 admired your ability to manage the board?</p> <p>15 <b>A. I'm sorry?</b></p> <p>16 Q. I'll let it go.</p> <p>17 Fair to say that one of the topics</p> <p>18 that you wanted to discuss with the board on January</p> <p>19 28 was that it was your view that the company was</p> <p>20 still looking at challenging times ahead?</p> <p>21 <b>A. Certainly. That was.</b></p> <p>22 Q. And you wanted to keep the door open</p> <p>23 and continue to think through, and have the board keep</p> <p>24 the door open and think through, strategic options if</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>



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1 there was a bid?

2 **A. More broadly, strategic options in**  
 3 **general on how best to raise/access equity. Because**  
 4 **we still had 4, perhaps \$5 billion of equity staring**  
 5 **at us, equity needs staring at us.**

6 Q. And one of the strategic options that  
 7 you wanted to keep the door open for was a potential  
 8 bid.

9 **A. Potential bid, private equity, other**  
 10 **infusions of equity that might be less dilutive to the**  
 11 **shareholders. That's -- that's correct.**

12 Q. And it's fair to say that -- that your  
 13 message -- and, actually, the message of certain of  
 14 your fellow board members, was that, although, you  
 15 know, you just raised \$1.4 billion, the plan was  
 16 risky, and you needed to consider thoughtfully  
 17 strategic alternatives and, you know, keep the door  
 18 open, see what happens?

19 **A. Keep open minds and ensure that we**  
 20 **understood optionality. Correct.**

21 Q. Now, when you were having these  
 22 discussions, these one-on-one discussions where you  
 23 said, look, you know, we've raised a lot of money, but  
 24 the plan is still risky, keep an open mind, you knew

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1 **A. We -- that's a correct statement.**  
 2 **That's accurate.**

3 Q. All right. And then Mr. Gibson here  
 4 continues. He says, well, we'll make two  
 5 presentations on January 28. The first will be in  
 6 executive session, the second will be with the CPGX  
 7 and CPPL boards.

8 And you had it all planned out. You  
 9 started planning out what to say to the board right  
 10 around this December 19 email; correct?

11 **A. We were planning all of our**  
 12 **presentations for the 28th beginning now.**

13 Q. All right. So let's look at JX-- or  
 14 JTX 492. And here, there's an email from you to Matt  
 15 Gibson, "January Planning Meeting -- Rough Draft  
 16 Approach."

17 And that's the day before; right? The  
 18 day that you spoke with Mr. Gibson, according to his  
 19 email. Actually, the day before even that.  
 20 December 17.

21 Do you see that?

22 **A. Yes.**

23 Q. Let's go to the next page.

24 **A. My handwriting. Eh.**

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1 that TransCanada remained quite interested in having a  
 2 dialogue.

3 **A. Mr. Poirier was interested in reaching**  
 4 **out to Mr. Smith for a meeting. It was hard for me to**  
 5 **understand exactly what that meeting might be about.**

6 Q. Well, let's look at this  
 7 contemporaneous document that we're just looking at.  
 8 Same email, the download that Mr. Gibson here gives to  
 9 his colleagues. "TC remains quite interested. There  
 10 is a meeting on January 7th at TC's request with Steve  
 11 Smith. They have indicated that they could be [at]  
 12 \$28.00/share. We closed yesterday at \$19.31/share."

13 Certainly suggests that Mr. Gibson  
 14 understood, based on his conversation with you, that  
 15 TransCanada remained quite interested.

16 **A. I'm not sure that that's clear, that**  
 17 **it was based on a conversation with me. This is a**  
 18 **banker that's talking to a lot of people internally**  
 19 **and externally.**

20 Q. Now, that \$28 that we see here, that  
 21 was the threshold before the equity offering for  
 22 continuing discussions with potential bidders, as  
 23 opposed to pursuing the equity offering, right, in  
 24 November?

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1 Q. And one of the things that you were  
 2 planning to discuss, and that you also discussed  
 3 during your one-on-one meetings, was succession  
 4 planning; right?

5 **A. Yes, at the behest of Mr. Cornelius.**

6 Q. So during your one-on-one meetings,  
 7 you have a discussion about, look, the plan is risky,  
 8 still challenging times ahead; and you're also talking  
 9 about you potentially stepping down as CEO.

10 **A. No. We were talking about succession**  
 11 **planning. It was the first cut of a succession plan**  
 12 **for the new stand-alone company.**

13 Q. Keep that thought. We'll get back to  
 14 it.

15 **A. Okay.**

16 THE COURT: Let's stop there for the  
 17 day. We're at 4:47.

18 Let me just ask. I am feeling a  
 19 little bit nervous, based on the witness list, that  
 20 we're at 60 percent of our time and there seem to be a  
 21 lot of folks still to get through.

22 So where do we stand relative to your  
 23 forecasts for where we would be?

24 ATTORNEY van KWAWEGEN: I think we're

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1 still on budget, Your Honor.  
 2 THE COURT: Okay.  
 3 ATTORNEY van KWAWEGEN: I think that  
 4 we have used more, and I don't know exactly if the  
 5 defendants are going to use all of their time, but I  
 6 think we're still on track.  
 7 THE COURT: You think you're still  
 8 proceeding apace, based on what you expected?  
 9 ATTORNEY van KWAWEGEN: Yes, Your  
 10 Honor.  
 11 THE COURT: Same?  
 12 ATTORNEY OLSEN: Your Honor, we're  
 13 tracking the time and we are aware of it. And every  
 14 day, we're confirming it. I image sometime tomorrow  
 15 we'll say this is how much we have for Friday, and  
 16 we'll use what we use.  
 17 THE COURT: All right. I just wanted  
 18 to make sure that everybody understood where we were,  
 19 and I appreciate that you're on top of it.  
 20 We'll stand in recess until tomorrow  
 21 morning.  
 22 (Court in recess at 4:48 p.m.)  
 23  
 24

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**ATTORNEY van**  
**KWAWEGEN: [5]**  
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<b>38 [1]</b> 800/18	<b>6.2 [1]</b> 782/19	<b>abbreviated [1]</b> 898/18	<b>acquisitions [2]</b> 651/9 651/10	<b>advised [12]</b> 675/4 675/12 701/24 741/13 754/21 810/13 816/24 817/14 818/6 819/23 836/9 905/17
<b>389 [1]</b> 810/19	<b>60 [2]</b> 695/2 762/1	<b>ability [8]</b> 635/13 641/3 676/23 677/6 685/20 685/23 716/19 920/14	<b>Act [2]</b> 910/8 914/11	<b>advising [2]</b> 653/16 661/11
<b>39 [2]</b> 787/16 800/18	<b>60 percent [1]</b> 924/20	<b>able [6]</b> 630/22 661/16 672/8 680/18 689/4 745/9	<b>acted [1]</b> 710/8	<b>advisor [4]</b> 666/7 783/4 827/21 828/3
<b>392 [1]</b> 766/13	<b>61 [2]</b> 761/11 762/1	<b>aboard [1]</b> 697/12	<b>action [7]</b> 617/3 624/12 648/8 675/8 682/2 703/11 866/2	<b>advisor's [1]</b> 838/23
<b>395 [1]</b> 765/4	<b>620 [2]</b> 718/5 718/5	<b>above [13]</b> 632/18 641/19 828/17 833/20 834/5 842/10 849/24 851/1 852/13 854/4 854/7 857/17 917/18	<b>actions [14]</b> 638/18 638/21 654/8 675/14 675/21 676/3 676/4 676/9 690/22 691/9 698/9 700/4 772/18 773/1	<b>advisors [24]</b> 639/24 640/1 662/10 665/24 783/8 786/1 786/12 786/12 795/6 805/7 811/2 814/7 814/14 815/19 819/11 819/24 826/3 831/10 846/16 864/20 870/4 895/22 906/10 906/10
<b>3:00 [2]</b> 844/17 861/8	<b>621 [3]</b> 696/10 696/11 722/20	<b>absolutely [9]</b> 647/16 715/1 732/8 773/17 877/7 884/20 884/23 887/22 891/19	<b>actual [5]</b> 622/8 701/7 725/12 803/1 840/24	<b>AEP [1]</b> 794/10
<b>3:15 [3]</b> 844/21 845/1 863/6	<b>627 [3]</b> 656/17 660/4 664/14	<b>accelerated [1]</b> 878/21	<b>actuality [1]</b> 661/3	<b>affairs [1]</b> 786/2
<b>3:52 [1]</b> 902/1	<b>63 [3]</b> 745/20 746/23 762/2	<b>accept [10]</b> 626/24 679/13 680/16 682/12 807/3 813/16 839/19 839/22 867/23 911/5	<b>ad [1]</b> 906/14	<b>affect [2]</b> 695/14 695/15
<b>3x [1]</b> 897/6	<b>64 [1]</b> 762/2	<b>acceptable [5]</b> 715/22 724/14 831/22 860/12 868/1	<b>Adam [2]</b> 857/7 857/15	<b>affected [2]</b> 695/22 839/23
<b>4</b>	<b>647 [1]</b> 804/17	<b>accepted [5]</b> 677/20 751/17 806/20 807/14 863/3	<b>add [2]</b> 623/11 776/14	<b>affects [2]</b> 695/12 696/2
<b>40 [4]</b> 787/16 841/7 906/15 909/2	<b>65 [1]</b> 803/22	<b>accepting [1]</b> 870/15	<b>added [1]</b> 749/4	<b>affirmative [1]</b> 714/20
<b>402 [1]</b> 796/8	<b>691 [1]</b> 803/10	<b>access [5]</b> 795/14 836/14 918/15 919/1 921/3	<b>addition [4]</b> 709/10 721/22 838/19 874/22	<b>affirmed [3]</b> 619/10 650/5 875/20
<b>404 [1]</b> 810/19	<b>692 [1]</b> 803/10	<b>accompanies [1]</b> 871/4	<b>additional [8]</b> 630/17 720/17 776/15 776/20 777/23 792/15 903/14 905/24	<b>afford [3]</b> 625/12 777/5 777/18
<b>41 [2]</b> 787/16 801/17	<b>6:30 [1]</b> 866/23	<b>accomplishments [1]</b> 882/15	<b>address [3]</b> 699/20 717/15 849/11	<b>afternoon [11]</b> 696/24 761/1 816/5 840/7 850/19 852/24 874/2 875/13 875/17 875/18 875/24
<b>418 [1]</b> 799/11	<b>6th [1]</b> 842/7	<b>according [3]</b> 633/7 813/12 923/18	<b>addressed [1]</b> 640/13	<b>against [6]</b> 680/18 685/21 685/23 685/24 710/1 805/9
<b>42 [1]</b> 789/4	<b>7</b>	<b>accordingly [1]</b> 819/24	<b>adjust [2]</b> 627/16 868/12	<b>age [1]</b> 784/5
<b>420 [2]</b> 629/4 757/19	<b>70 [1]</b> 803/22	<b>accurate [4]</b> 833/21 875/7 886/23 923/2	<b>admirable [1]</b> 920/14	<b>agencies [2]</b> 830/18 830/20
<b>421 [2]</b> 629/5 758/22	<b>701 [1]</b> 809/19	<b>accurately [1]</b> 756/10	<b>admit [1]</b> 727/11	<b>agency [1]</b> 641/20
<b>425 [1]</b> 778/5	<b>728 [1]</b> 666/15	<b>accustomed [1]</b> 660/22	<b>admitted [2]</b> 753/17 753/22	<b>agenda [3]</b> 742/10 742/12 912/4
<b>426 [1]</b> 627/18	<b>748 [3]</b> 667/10 668/6 877/10	<b>achieve [2]</b> 764/19 812/1	<b>advised [1]</b> 920/14	<b>agendas [1]</b> 743/3
<b>43 [1]</b> 803/11	<b>75 [1]</b> 888/16	<b>achieved [2]</b> 750/23 751/1	<b>advice [42]</b> 624/15 631/22 636/12 636/21 638/23 639/8 655/8 657/14 657/15 659/19 675/7 675/20 676/14 693/16 698/15 699/19 701/10 703/5 709/19 710/8 713/10 713/23 717/1 717/2 721/18 722/18 723/1 726/1	<b>ago [8]</b> 647/21 661/9 667/6 703/13 704/20 706/16 753/13 880/12
<b>435 [2]</b> 767/23 768/5	<b>753 [1]</b> 918/6	<b>acknowledge [2]</b> 687/21 717/22	<b>advers [1]</b> 641/19	<b>agreed [6]</b> 696/19 714/7 722/12 723/4 815/10 918/1
<b>436 [1]</b> 770/23	<b>78026 [1]</b> 815/3	<b>acknowledging [1]</b> 718/15	<b>advertisement [1]</b> 842/6	<b>agreements [9]</b> 670/13 670/20 674/22 692/12 693/19 698/10 795/8 900/13 917/1
<b>44 [2]</b> 789/16 803/21	<b>782 [1]</b> 828/13	<b>acquire [27]</b> 637/12 637/12 637/13 674/15 674/15 674/16 676/13 687/1 687/2 687/8 687/11 687/14 688/4 688/10 688/23 689/8 712/7 712/11 712/14 712/15 712/24 713/1 772/5 772/6 816/19 830/11 886/6	<b>add [2]</b> 623/11 776/14	
<b>45 [7]</b> 739/5 803/21 888/20 888/21 889/6 903/10 903/12	<b>7A [1]</b> 760/7	<b>ad [1]</b> 906/14	<b>added [1]</b> 749/4	
<b>450-425 [1]</b> 778/5	<b>7th [5]</b> 800/11 801/21 802/21 803/1 922/10	<b>accepted [5]</b> 677/20 751/17 806/20 807/14 863/3	<b>addition [4]</b> 709/10 721/22 838/19 874/22	
<b>458 [1]</b> 917/8	<b>8</b>	<b>accepting [1]</b> 870/15	<b>additional [8]</b> 630/17 720/17 776/15 776/20 777/23 792/15 903/14 905/24	
<b>46 [2]</b> 739/5 790/3	<b>84 [1]</b> 816/15	<b>access [5]</b> 795/14 836/14 918/15 919/1 921/3	<b>address [3]</b> 699/20 717/15 849/11	
<b>46.1 [1]</b> 804/19	<b>85 [1]</b> 816/15	<b>accompanies [1]</b> 871/4	<b>addressed [1]</b> 640/13	
<b>467 [1]</b> 769/9	<b>86 [1]</b> 841/22	<b>accomplishments [1]</b> 882/15	<b>adjust [2]</b> 627/16 868/12	
<b>47 [2]</b> 790/3 806/1	<b>868 [1]</b> 819/4	<b>according [3]</b> 633/7 813/12 923/18	<b>admirable [1]</b> 920/14	
<b>471 [1]</b> 841/18	<b>87 [1]</b> 841/22	<b>accordingly [1]</b> 819/24	<b>admit [1]</b> 727/11	
<b>474 [1]</b> 800/17	<b>875 [1]</b> 812/24	<b>accurate [4]</b> 833/21 875/7 886/23 923/2	<b>admitted [2]</b> 753/17 753/22	
<b>48 [2]</b> 791/7 806/15	<b>88 [1]</b> 804/19	<b>accurately [1]</b> 756/10	<b>advised [1]</b> 920/14	
<b>49 [2]</b> 791/7 807/9	<b>89 [1]</b> 804/19	<b>accustomed [1]</b> 660/22	<b>advice [42]</b> 624/15 631/22 636/12 636/21 638/23 639/8 655/8 657/14 657/15 659/19 675/7 675/20 676/14 693/16 698/15 699/19 701/10 703/5 709/19 710/8 713/10 713/23 717/1 717/2 721/18 722/18 723/1 726/1	
<b>49.40 [1]</b> 863/24	<b>8:00 [1]</b> 901/9	<b>achieve [2]</b> 764/19 812/1	<b>advers [1]</b> 641/19	
<b>492 [1]</b> 923/14	<b>8th [2]</b> 800/24 842/7	<b>achieved [2]</b> 750/23 751/1	<b>advertisement [1]</b> 842/6	
<b>496 [1]</b> 919/10	<b>9</b>	<b>acknowledge [2]</b> 687/21 717/22	<b>advised [1]</b> 920/14	
<b>4:47 [1]</b> 924/17	<b>90 [1]</b> 830/14	<b>acknowledging [1]</b> 718/15	<b>advice [42]</b> 624/15 631/22 636/12 636/21 638/23 639/8 655/8 657/14 657/15 659/19 675/7 675/20 676/14 693/16 698/15 699/19 701/10 703/5 709/19 710/8 713/10 713/23 717/1 717/2 721/18 722/18 723/1 726/1	
<b>4:48 [1]</b> 925/22	<b>90 percent [1]</b> 699/14	<b>acquire [27]</b> 637/12 637/12 637/13 674/15 674/15 674/16 676/13 687/1 687/2 687/8 687/11 687/14 688/4 688/10 688/23 689/8 712/7 712/11 712/14 712/15 712/24 713/1 772/5 772/6 816/19 830/11 886/6	<b>admitted [2]</b> 753/17 753/22	
<b>4th [2]</b> 792/24 819/3	<b>91 [1]</b> 823/8	<b>accomplishments [1]</b> 882/15	<b>advised [1]</b> 920/14	
<b>5</b>	<b>913 [1]</b> 620/4	<b>according [3]</b> 633/7 813/12 923/18	<b>advice [42]</b> 624/15 631/22 636/12 636/21 638/23 639/8 655/8 657/14 657/15 659/19 675/7 675/20 676/14 693/16 698/15 699/19 701/10 703/5 709/19 710/8 713/10 713/23 717/1 717/2 721/18 722/18 723/1 726/1	
<b>500 [2]</b> 617/10 617/22	<b>93 [2]</b> 782/20 823/8	<b>accordingly [1]</b> 819/24	<b>advers [1]</b> 641/19	
<b>51 [1]</b> 807/21	<b>94 [3]</b> 782/20 783/21 841/9	<b>accurate [4]</b> 833/21 875/7 886/23 923/2	<b>advertisement [1]</b> 842/6	
<b>517 [1]</b> 636/9	<b>95 [2]</b> 783/21 841/14	<b>achieve [2]</b> 764/19 812/1	<b>advised [1]</b> 920/14	
<b>53 [2]</b> 808/22 816/14	<b>952 [1]</b> 833/9	<b>achieved [2]</b> 750/23 751/1	<b>advice [42]</b> 624/15 631/22 636/12 636/21 638/23 639/8 655/8 657/14 657/15 659/19 675/7 675/20 676/14 693/16 698/15 699/19 701/10 703/5 709/19 710/8 713/10 713/23 717/1 717/2 721/18 722/18 723/1 726/1	
<b>54 [2]</b> 809/20 816/14	<b>956 [1]</b> 806/14	<b>acknowledge [2]</b> 687/21 717/22	<b>advers [1]</b> 641/19	
<b>549 [1]</b> 910/23	<b>96 [3]</b> 784/11 816/15 841/16	<b>acknowledging [1]</b> 718/15	<b>advertisement [1]</b> 842/6	
<b>55 [5]</b> 784/4 791/21 810/21 888/20 889/5	<b>966 [1]</b> 845/7	<b>acquire [27]</b> 637/12 637/12 637/13 674/15 674/15 674/16 676/13 687/1 687/2 687/8 687/11 687/14 688/4 688/10 688/23 689/8 712/7 712/11 712/14 712/15 712/24 713/1 772/5 772/6 816/19 830/11 886/6	<b>advised [1]</b> 920/14	
<b>55/45 [1]</b> 888/20	<b>971 [1]</b> 699/23	<b>accomplishments [1]</b> 882/15	<b>advice [42]</b> 624/15 631/22 636/12 636/21 638/23 639/8 655/8 657/14 657/15 659/19 675/7 675/20 676/14 693/16 698/15 699/19 701/10 703/5 709/19 710/8 713/10 713/23 717/1 717/2 721/18 722/18 723/1 726/1	
<b>56 [2]</b> 784/11 893/18	<b>98 [3]</b> 784/12 797/22 816/15	<b>according [3]</b> 633/7 813/12 923/18	<b>advers [1]</b> 641/19	
<b>562 [1]</b> 830/7	<b>986 [1]</b> 845/11	<b>accordingly [1]</b> 819/24	<b>advertisement [1]</b> 842/6	
<b>563 [2]</b> 830/23 832/22	<b>99 [2]</b> 797/23 812/21	<b>accurate [4]</b> 833/21 875/7 886/23 923/2	<b>advised [1]</b> 920/14	
<b>57 [2]</b> 793/4 811/18	<b>9:15 [1]</b> 617/11	<b>achieve [2]</b> 764/19 812/1	<b>advice [42]</b> 624/15 631/22 636/12 636/21 638/23 639/8 655/8 657/14 657/15 659/19 675/7 675/20 676/14 693/16 698/15 699/19 701/10 703/5 709/19 710/8 713/10 713/23 717/1 717/2 721/18 722/18 723/1 726/1	
<b>58 [1]</b> 812/20	<b>9:30am [1]</b> 902/7	<b>achieved [2]</b> 750/23 751/1	<b>advers [1]</b> 641/19	
<b>59 [2]</b> 806/2 814/23		<b>acknowledge [2]</b> 687/21 717/22	<b>advertisement [1]</b> 842/6	
<b>59867 [1]</b> 819/4		<b>acknowledging [1]</b> 718/15	<b>advised [1]</b> 920/14	
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<b>A</b>	<b>alone [6]</b> 665/4 707/5 824/7 885/24 916/8 924/12	643/17 653/18 671/6 716/17 736/21 749/22 757/9 774/12 776/5 826/7 836/24 859/4 866/9 866/16 884/24 896/12 918/3	<b>anymore [2]</b> 753/8 753/9	887/14 888/14
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626/11 626/16 644/11 651/17 651/22 826/8 848/6</p> <p><b>buybacks [1]</b> 665/9</p> <p><b>buying [1]</b> 632/23</p> <p><b>buyout [1]</b> 783/13</p> <hr/> <p><b>C</b></p> <p><b>calculations [1]</b> 668/20</p> <p><b>call [56]</b> 621/17 621/23 622/2 622/4 630/6 630/6 690/7 718/15 739/21 740/10 740/14 740/17 740/17 757/12 761/6 779/5 797/8 835/24 840/10 847/6 847/10 850/20 853/1 854/2 854/5 855/22 857/7 859/1 859/3 859/5 859/17 859/20 859/24 860/4 861/4 861/14 862/24 866/18 866/23 866/24 869/13 869/15 869/22 869/22 874/2 875/1 875/13 901/11 901/14 901/20 902/12 902/23 904/13 905/24 919/11 919/13</p> <p><b>called [13]</b> 619/10 624/11 626/11 638/2 638/2 701/6 710/18 751/11 751/12 850/19 855/18 902/19 904/17</p> <p><b>caller [1]</b> 838/22</p> <p><b>calling [2]</b> 649/24 861/15</p> <p><b>calls [1]</b> 919/4</p> <p><b>can't [22]</b> 633/15 652/15 658/13 670/5 688/7 725/17 737/13 744/9 757/15 767/15 774/12 794/1 826/9 834/18 848/20 870/9 890/11 891/5 891/13 906/14 911/11 911/16</p> <p><b>Canada [3]</b> 753/1 753/14 753/17</p> <p><b>Canadian [15]</b> 643/10 752/11 753/13 753/24 754/3 754/6 754/9 754/13 754/15 754/17 754/20 754/21 755/1 755/2 778/5</p> <p><b>candidacy [1]</b> 890/8</p> <p><b>candidate [1]</b> 891/1</p> <p><b>candidates [2]</b> 891/21 893/7</p> <p><b>capabilities [3]</b> 654/12 655/6 656/4</p> <p><b>capable [4]</b> 677/10 678/24 679/12 679/14</p> <p><b>capex [2]</b> 852/17 853/9</p>
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<p><b>Glen</b> [11] 809/17 811/14 840/10 841/1 845/8 853/15 855/10 861/3 861/5 897/5 897/9</p> <p><b>global</b> [2] 651/4 708/23</p> <p><b>gloom</b> [1] 915/1</p> <p><b>goal</b> [2] 812/2 875/6</p> <p><b>goes</b> [10] 637/13 641/1 641/15 641/16 658/21 696/24 702/21 745/22 819/4 911/22</p> <p><b>going-private</b> [2] 731/13 731/20</p> <p><b>Goldman</b> [21] 664/6 700/1 784/10 828/4 835/3 845/9 847/5 850/10 850/18 851/14 851/15 853/15 854/22 855/9 855/10 856/13 893/23 893/24 895/22 896/2 919/17</p> <p><b>golf</b> [2] 861/5 861/21</p> <p><b>gone</b> [2] 706/12 737/11</p> <p><b>good</b> [27] 619/8 649/22 650/8 655/7 655/12 661/16 673/8 704/22 705/1 718/13 733/14 761/1 780/15 816/5 828/18 840/6 842/3 871/10 875/12 875/17 875/18 875/24 876/4 883/18 883/22 886/24 917/19</p> <p><b>gosh</b> [1] 914/12</p> <p><b>got</b> [28] 621/16 631/7</p>	<p>643/4 656/10 656/11 662/2 673/12 673/16 678/6 679/6 679/6 681/19 702/4 717/12 720/17 735/3 740/16 754/19 756/6 820/24 824/14 839/10 849/23 866/10 878/24 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<b>inherent [1]</b> 670/8	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13	<b>isn't [19]</b> 626/9 628/7 631/17 633/8 634/5 635/11 639/7 681/2 682/6 682/20 685/9 686/13 686/15 695/1 717/8 726/13 729/6 744/22 746/12	<b>January 7th [2]</b> 690/15 801/15	<b>JTX 1493 [1]</b> 627/13
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>internally [1]</b> 922/18	<b>issued [5]</b> 630/23 631/2 643/17 647/4 756/4	<b>January 7th [4]</b> 800/11 801/21 802/21 803/1	<b>JTX 1493.024 [2]</b> 628/16 757/14
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<b>infusions [1]</b> 921/10	<b>internal [9]</b> 656/12 665/10 784/10 796/7 826/9 828/11 833/8 834/19 890/16	<b>issuing [8]</b> 628/22 629/15 629/20 630/17 643/22 644/13 758/24 910/22	<b>job [4]</b> 647/14 647/15 655/7 855/17	
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>internally [1]</b> 922/18	<b>issues [7]</b> 655/10 661/19 681/12 768/3 814/9 908/2 908/2	<b>jobs [1]</b> 712/17	
<b>inherent [1]</b> 670/8	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4	<b>issued [5]</b> 630/23 631/2 643/17 647/4 756/4	<b>Joe [57]</b> 625/5 627/12 633/18 650/1 658/10 658/12 729/11 746/10 746/23 761/24 764/11 765/7 766/16 768/6 769/12 771/3 775/13 781/8 783/20 785/17 787/4 787/15 789/3 789/15 791/6 791/20 793/3 793/16 796/9 797/21 799/12 800/18 801/17 803/11 803/20 804/18 806/1 806/15 807/9 807/21 808/22	
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpreting [3]</b> 681/24 685/14 711/14	<b>is -- the [1]</b> 709/12		
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<b>infrequent [1]</b> 653/6	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13	<b>items [3]</b> 679/7 679/9 772/5		
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<b>infusions [1]</b> 921/10	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>inherent [1]</b> 670/8	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpretations [1]</b> 773/19			
<b>informing [1]</b> 660/9	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
<b>infrequent [1]</b> 653/6	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>infusion [1]</b> 910/21	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>infusions [1]</b> 921/10	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>inherent [1]</b> 670/8	<b>interpretations [1]</b> 773/19			
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
<b>informing [1]</b> 660/9	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>infrequent [1]</b> 653/6	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>infusion [1]</b> 910/21	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>infusions [1]</b> 921/10	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>interpretations [1]</b> 773/19			
<b>inherent [1]</b> 670/8	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>informing [1]</b> 660/9	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>infrequent [1]</b> 653/6	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>infusion [1]</b> 910/21	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>infusions [1]</b> 921/10	<b>interpretations [1]</b> 773/19			
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
<b>inherent [1]</b> 670/8	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>informing [1]</b> 660/9	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>infrequent [1]</b> 653/6	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>infusion [1]</b> 910/21	<b>interpretations [1]</b> 773/19			
<b>infusions [1]</b> 921/10	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>inherent [1]</b> 670/8	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>informing [1]</b> 660/9	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>infrequent [1]</b> 653/6	<b>interpretations [1]</b> 773/19			
<b>infusion [1]</b> 910/21	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
<b>infusions [1]</b> 921/10	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>inherent [1]</b> 670/8	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>informing [1]</b> 660/9	<b>interpretations [1]</b> 773/19			
<b>infrequent [1]</b> 653/6	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
<b>infusion [1]</b> 910/21	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>infusions [1]</b> 921/10	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>inherent [1]</b> 670/8	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpretations [1]</b> 773/19			
<b>informing [1]</b> 660/9	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
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<b>infusion [1]</b> 910/21	<b>interpret [6]</b> 688/23 688/24 711/21 711/22 719/22 773/14			
<b>infusions [1]</b> 921/10	<b>interpretation [8]</b> 680/1 685/22 711/16 712/18 714/14 771/14 773/16 830/4			
<b>Ingrassia [3]</b> 845/9 855/10 893/23	<b>interpreting [3]</b> 681/24 685/14 711/14			
<b>inherent [1]</b> 670/8	<b>interpretations [1]</b> 773/19			
<b>informed [12]</b> 664/21 675/13 681/22 682/16 682/17 756/10 786/1 802/1 817/1 847/16 858/2 907/22	<b>interpreted [4]</b> 684/20 712/24 855/23 856/13			
<b>informing [</b>				

<p><b>J</b></p> <p><b>JTX 1522 [1]</b> 761/21</p> <p><b>JTX 164 [1]</b> 885/1</p> <p><b>JTX 1777 [1]</b> 901/4</p> <p><b>JTX 1903 [1]</b> 658/7</p> <p><b>JTX 1904 [1]</b> 658/18</p> <p><b>JTX 191 [1]</b> 705/21</p> <p><b>JTX 305 [1]</b> 637/5</p> <p><b>JTX 307 [1]</b> 674/4</p> <p><b>JTX 37 [1]</b> 882/7</p> <p><b>JTX 392 [1]</b> 766/13</p> <p><b>JTX 395 [1]</b> 765/4</p> <p><b>JTX 435 [2]</b> 767/23</p> <p>768/5</p> <p><b>JTX 436 [1]</b> 770/23</p> <p><b>JTX 467 [1]</b> 769/9</p> <p><b>JTX 492 [1]</b> 923/14</p> <p><b>JTX 549 [1]</b> 910/23</p> <p><b>JTX 627 [3]</b> 656/17</p> <p>660/4 664/14</p> <p><b>JTX 728 [1]</b> 666/15</p> <p><b>JTX 748 [3]</b> 667/10</p> <p>668/6 877/10</p> <p><b>JTX 913 [1]</b> 620/4</p> <p><b>judge [4]</b> 711/21</p> <p>711/22 714/23 754/13</p> <p><b>judges [1]</b> 711/6</p> <p><b>judgment [4]</b> 657/23</p> <p>657/24 660/21 703/4</p> <p><b>July [10]</b> 617/11</p> <p>761/20 763/5 764/15</p> <p>881/4 885/14 886/1</p> <p>887/8 887/21 898/6</p> <p><b>June [9]</b> 669/5 764/15</p> <p>775/14 877/17 885/6</p> <p>885/23 887/7 887/9</p> <p>887/13</p> <p><b>June 1 [2]</b> 669/5 885/6</p> <p><b>Justice [2]</b> 617/9</p> <p>617/22</p> <p><b>JX [8]</b> 709/4 726/9</p> <p>726/12 735/16 735/20</p> <p>735/20 735/20 923/13</p> <p><b>JX 3 [2]</b> 735/16 735/20</p> <p><b>JX 6 [4]</b> 709/4 726/9</p> <p>726/12 735/20</p> <p><b>JX 7 [1]</b> 735/20</p>	<p>843/3 845/6 845/9</p> <p>845/14 850/7 850/9</p> <p>853/13 853/16 855/6</p> <p>855/11 857/5 858/9</p> <p>858/10 862/23 864/18</p> <p>865/17 865/19 867/4</p> <p>871/6 871/18 872/2</p> <p>897/5 897/20</p> <p><b>Kettering's [5]</b> 840/23</p> <p>841/4 855/13 865/22</p> <p>871/2</p> <p><b>KEVIN [1]</b> 618/12</p> <p><b>key [16]</b> 625/24 629/6</p> <p>644/17 653/15 653/17</p> <p>784/22 848/11 854/8</p> <p>882/14 882/20 912/9</p> <p>912/17 913/3 913/14</p> <p>913/16 919/13</p> <p><b>kidding [1]</b> 754/18</p> <p><b>kind [8]</b> 627/14 657/8</p> <p>744/22 750/9 754/10</p> <p>824/19 866/18 911/23</p> <p><b>kindness [1]</b> 759/12</p> <p><b>King [2]</b> 617/10 617/22</p> <p><b>Kirby [9]</b> 739/19</p> <p>786/15 798/18 801/9</p> <p>802/13 820/19 850/3</p> <p>869/20 870/8</p> <p><b>knew [15]</b> 690/24</p> <p>713/19 715/9 726/1</p> <p>726/7 752/19 794/13</p> <p>837/1 845/22 886/4</p> <p>909/8 909/21 909/22</p> <p>913/7 921/24</p> <p><b>knowing [1]</b> 684/2</p> <p><b>knowledge [9]</b> 666/2</p> <p>692/19 711/16 741/17</p> <p>805/12 805/20 886/6</p> <p>907/20 908/17</p> <p><b>known [6]</b> 643/10</p> <p>695/6 793/23 823/3</p> <p>841/6 841/11</p> <p><b>knows [1]</b> 760/18</p> <p><b>Koehler [1]</b> 791/4</p> <p><b>KWAWEGEN [2]</b> 618/5</p> <p>876/2</p>	<p>648/4 648/11 661/8</p> <p>675/11 679/7 679/9</p> <p>698/6 745/15 746/23</p> <p>800/9 812/2 813/1</p> <p>814/19 852/13 852/16</p> <p>859/13 865/16 880/15</p> <p><b>LASTER [2]</b> 617/13</p> <p>693/6</p> <p><b>late [13]</b> 679/9 679/10</p> <p>705/11 744/13 776/2</p> <p>777/13 777/18 799/20</p> <p>802/4 853/2 879/13</p> <p>900/21 903/16</p> <p><b>later [10]</b> 660/4 664/13</p> <p>671/19 690/8 813/3</p> <p>830/8 876/23 886/9</p> <p>915/10 918/8</p> <p><b>latest [1]</b> 641/6</p> <p><b>latitude [1]</b> 884/13</p> <p><b>latter [2]</b> 879/11 902/22</p> <p><b>Lauren [1]</b> 761/2</p> <p><b>law [19]</b> 630/7 630/11</p> <p>650/17 658/3 686/19</p> <p>727/8 727/10 729/2</p> <p>741/13 753/14 753/14</p> <p>753/24 754/3 754/7</p> <p>754/20 755/1 755/2</p> <p>841/7 910/7</p> <p><b>lawyer [11]</b> 646/23</p> <p>647/10 650/21 653/21</p> <p>710/22 711/19 748/16</p> <p>773/4 780/16 904/22</p> <p>904/23</p> <p><b>lawyers [11]</b> 622/9</p> <p>642/12 673/20 698/22</p> <p>705/9 748/11 748/17</p> <p>748/21 749/22 750/24</p> <p>799/18</p> <p><b>Lazard [2]</b> 828/4 847/6</p> <p><b>lead [12]</b> 642/8 645/20</p> <p>648/14 653/7 674/10</p> <p>682/8 738/24 794/19</p> <p>795/17 795/20 824/2</p> <p>824/2</p> <p><b>lead-in [1]</b> 674/10</p> <p><b>leading [1]</b> 898/21</p> <p><b>leads [1]</b> 679/5</p> <p><b>leaf [1]</b> 750/14</p> <p><b>leak [17]</b> 620/12</p> <p>620/15 621/8 632/10</p> <p>636/19 699/16 807/20</p> <p>808/14 813/9 833/18</p> <p>856/3 862/7 863/15</p> <p>863/22 866/14 871/7</p> <p>874/16</p> <p><b>leaked [2]</b> 755/13</p> <p>808/14</p> <p><b>leaks [1]</b> 854/12</p> <p><b>learn [1]</b> 801/22</p> <p><b>learned [5]</b> 713/18</p> <p>768/9 817/5 817/5</p> <p>827/10</p> <p><b>learning [1]</b> 826/5</p> <p><b>least [18]</b> 629/19</p> <p>635/10 655/20 670/9</p> <p>687/17 723/12 727/21</p> <p>751/22 765/11 768/9</p> <p>810/1 841/11 849/17</p> <p>864/9 873/6 903/17</p>	<p>914/6 917/12</p> <p><b>leave [3]</b> 636/1 689/11</p> <p>911/24</p> <p><b>left-side [1]</b> 874/10</p> <p><b>legal [22]</b> 624/15</p> <p>639/23 639/24 642/9</p> <p>656/20 781/17 781/19</p> <p>785/24 786/12 805/7</p> <p>811/2 816/24 818/6</p> <p>820/7 820/12 821/5</p> <p>899/22 900/12 905/18</p> <p>906/10 908/1 908/2</p> <p><b>legitimate [1]</b> 751/6</p> <p><b>lens [2]</b> 681/23 744/1</p> <p><b>Leonard [2]</b> 617/9</p> <p>617/22</p> <p><b>less [2]</b> 703/3 921/10</p> <p><b>LESSNER [1]</b> 618/11</p> <p><b>let [48]</b> 619/16 630/3</p> <p>656/15 658/6 662/24</p> <p>667/23 679/15 681/8</p> <p>682/11 711/17 711/17</p> <p>719/13 723/15 735/10</p> <p>744/16 746/1 757/18</p> <p>767/11 783/9 788/13</p> <p>793/20 797/24 802/18</p> <p>804/23 809/23 817/6</p> <p>819/16 820/16 824/22</p> <p>827/18 832/3 835/12</p> <p>836/3 836/19 837/22</p> <p>848/9 854/2 857/18</p> <p>857/23 864/8 864/17</p> <p>867/4 869/8 877/9</p> <p>892/5 893/17 920/16</p> <p>924/18</p> <p><b>let's [84]</b> 625/4 625/22</p> <p>627/10 628/14 633/17</p> <p>633/20 643/5 652/8</p> <p>653/22 657/12 658/18</p> <p>659/1 659/15 660/4</p> <p>660/5 664/2 664/14</p> <p>665/16 667/10 668/5</p> <p>670/12 670/16 674/2</p> <p>674/9 679/17 680/15</p> <p>680/17 681/14 681/15</p> <p>681/17 681/18 682/3</p> <p>682/23 683/18 686/11</p> <p>690/1 690/4 690/14</p> <p>691/9 691/12 696/10</p> <p>698/4 698/12 699/7</p> <p>701/3 702/18 705/18</p> <p>707/7 709/17 718/4</p> <p>722/19 723/6 724/4</p> <p>724/5 726/9 726/14</p> <p>726/24 734/5 736/3</p> <p>736/20 742/8 745/14</p> <p>746/22 755/11 757/15</p> <p>785/17 787/4 787/15</p> <p>796/18 805/8 809/20</p> <p>833/6 845/4 849/3</p> <p>863/18 908/22 910/23</p> <p>912/8 912/15 915/6</p> <p>922/6 923/13 923/23</p> <p>924/16</p> <p><b>letter [20]</b> 680/3 680/21</p> <p>682/21 683/21 684/16</p> <p>690/12 693/7 693/15</p> <p>693/17 693/21 694/3</p> <p>707/24 715/6 736/4</p>	<p>787/1 791/3 856/6</p> <p>910/14 912/21 913/1</p> <p><b>letters [6]</b> 688/8 688/9</p> <p>689/22 693/11 693/12</p> <p>899/22</p> <p><b>level [14]</b> 653/19</p> <p>657/16 668/11 756/12</p> <p>798/15 802/23 802/23</p> <p>843/11 854/20 856/20</p> <p>863/15 868/17 868/24</p> <p>870/4</p> <p><b>leverage [2]</b> 631/24</p> <p>636/13</p> <p><b>Levinson [1]</b> 678/7</p> <p><b>lie [1]</b> 902/2</p> <p><b>light [4]</b> 641/4 645/21</p> <p>648/16 790/7</p> <p><b>likelihood [2]</b> 645/17</p> <p>882/22</p> <p><b>likely [7]</b> 682/1 709/24</p> <p>790/9 790/16 795/7</p> <p>882/22 886/5</p> <p><b>Likewise [1]</b> 715/14</p> <p><b>limit [3]</b> 720/2 720/5</p> <p>788/5</p> <p><b>limited [3]</b> 716/19</p> <p>727/9 906/13</p> <p><b>limiting [2]</b> 676/23</p> <p>735/5</p> <p><b>limits [2]</b> 677/3 677/6</p> <p><b>LINDA [2]</b> 618/15 816/5</p> <p><b>line [42]</b> 629/4 629/5</p> <p>657/13 658/10 667/1</p> <p>701/4 739/5 739/5</p> <p>758/8 762/1 762/1</p> <p>762/2 762/2 764/12</p> <p>764/12 765/5 765/8</p> <p>765/8 765/9 766/15</p> <p>766/17 766/17 768/2</p> <p>768/6 768/7 769/11</p> <p>769/12 769/13 771/1</p> <p>771/4 771/4 771/4</p> <p>781/15 855/8 857/7</p> <p>874/7 874/7 874/8</p> <p>892/9 892/9 892/13</p> <p>892/13</p> <p><b>lines [9]</b> 627/19 723/14</p> <p>732/22 865/1 869/6</p> <p>870/10 880/3 880/3</p> <p>880/3</p> <p><b>list [4]</b> 728/16 728/22</p> <p>842/3 924/19</p> <p><b>listen [3]</b> 739/24 806/6</p> <p>850/22</p> <p><b>lists [1]</b> 637/11</p> <p><b>literally [1]</b> 885/23</p> <p><b>litigation [4]</b> 617/3</p> <p>757/4 780/6 805/10</p> <p><b>litigator [1]</b> 689/22</p> <p><b>Litowitz [5]</b> 618/4</p> <p>618/8 761/3 840/8</p> <p>876/2</p> <p><b>little [21]</b> 651/22</p> <p>652/19 663/5 664/13</p> <p>678/1 678/4 695/14</p> <p>732/19 748/10 749/18</p> <p>752/11 758/2 758/7</p> <p>782/24 783/9 791/24</p> <p>817/4 820/10 823/11</p>
<p><b>K</b></p> <p><b>keep [19]</b> 622/8 644/18</p> <p>646/20 661/5 678/11</p> <p>684/10 748/16 749/21</p> <p>786/1 862/2 862/13</p> <p>918/24 920/22 920/23</p> <p>921/7 921/17 921/19</p> <p>921/24 924/13</p> <p><b>keeping [3]</b> 642/11</p> <p>750/23 775/3</p> <p><b>Kempal [1]</b> 763/1</p> <p><b>Kempal's [1]</b> 763/4</p> <p><b>Kentaro [6]</b> 636/9</p> <p>637/5 637/6 637/15</p> <p>640/19 690/2</p> <p><b>Kettering [36]</b> 809/17</p> <p>811/14 840/11 840/15</p> <p>841/1 841/6 841/8</p> <p>841/11 841/12 841/15</p> <p>841/17 841/19 843/1</p>	<p><b>L</b></p> <p><b>Labaton [1]</b> 618/3</p> <p><b>lack [1]</b> 756/11</p> <p><b>laid [1]</b> 826/23</p> <p><b>land [1]</b> 678/24</p> <p><b>language [24]</b> 634/2</p> <p>637/20 638/16 680/8</p> <p>697/2 702/13 710/10</p> <p>710/11 711/7 711/23</p> <p>712/2 712/9 714/13</p> <p>714/15 716/13 723/24</p> <p>724/19 725/6 725/12</p> <p>725/14 725/16 792/14</p> <p>819/17 821/13</p> <p><b>lapsed [3]</b> 699/12</p> <p>699/15 897/22</p> <p><b>large [4]</b> 728/16 743/2</p> <p>857/19 918/13</p> <p><b>largely [1]</b> 734/14</p> <p><b>largest [2]</b> 643/9 858/3</p> <p><b>last [23]</b> 619/19 620/3</p> <p>640/12 640/13 648/2</p>	<p>648/4 648/11 661/8</p> <p>675/11 679/7 679/9</p> <p>698/6 745/15 746/23</p> <p>800/9 812/2 813/1</p> <p>814/19 852/13 852/16</p> <p>859/13 865/16 880/15</p> <p><b>LASTER [2]</b> 617/13</p> <p>693/6</p> <p><b>late [13]</b> 679/9 679/10</p> <p>705/11 744/13 776/2</p> <p>777/13 777/18 799/20</p> <p>802/4 853/2 879/13</p> <p>900/21 903/16</p> <p><b>later [10]</b> 660/4 664/13</p> <p>671/19 690/8 813/3</p> <p>830/8 876/23 886/9</p> <p>915/10 918/8</p> <p><b>latest [1]</b> 641/6</p> <p><b>latitude [1]</b> 884/13</p> <p><b>latter [2]</b> 879/11 902/22</p> <p><b>Lauren [1]</b> 761/2</p> <p><b>law [19]</b> 630/7 630/11</p> <p>650/17 658/3 686/19</p> <p>727/8 727/10 729/2</p> <p>741/13 753/14 753/14</p> <p>753/24 754/3 754/7</p> <p>754/20 755/1 755/2</p> <p>841/7 910/7</p> <p><b>lawyer [11]</b> 646/23</p> <p>647/10 650/21 653/21</p> <p>710/22 711/19 748/16</p> <p>773/4 780/16 904/22</p> <p>904/23</p> <p><b>lawyers [11]</b> 622/9</p> <p>642/12 673/20 698/22</p> <p>705/9 748/11 748/17</p> <p>748/21 749/22 750/24</p> <p>799/18</p> <p><b>Lazard [2]</b> 828/4 847/6</p> <p><b>lead [12]</b> 642/8 645/20</p> <p>648/14 653/7 674/10</p> <p>682/8 738/24 794/19</p> <p>795/17 795/20 824/2</p> <p>824/2</p> <p><b>lead-in [1]</b> 674/10</p> <p><b>leading [1]</b> 898/21</p> <p><b>leads [1]</b> 679/5</p> <p><b>leaf [1]</b> 750/14</p> <p><b>leak [17]</b> 620/12</p> <p>620/15 621/8 632/10</p> <p>636/19 699/16 807/20</p> <p>808/14 813/9 833/18</p> <p>856/3 862/7 863/15</p> <p>863/22 866/14 871/7</p> <p>874/16</p> <p><b>leaked [2]</b> 755/13</p> <p>808/14</p> <p><b>leaks [1]</b> 854/12</p> <p><b>learn [1]</b> 801/22</p> <p><b>learned [5]</b> 713/18</p> <p>768/9 817/5 817/5</p> <p>827/10</p> <p><b>learning [1]</b> 826/5</p> <p><b>least [18]</b> 629/19</p> <p>635/10 655/20 670/9</p> <p>687/17 723/12 727/21</p> <p>751/22 765/11 768/9</p> <p>810/1 841/11 849/17</p> <p>864/9 873/6 903/17</p>	<p>914/6 917/12</p> <p><b>leave [3]</b> 636/1 689/11</p> <p>911/24</p> <p><b>left-side [1]</b> 874/10</p> <p><b>legal [22]</b> 624/15</p> <p>639/23 639/24 642/9</p> <p>656/20 781/17 781/19</p> <p>785/24 786/12 805/7</p> <p>811/2 816/24 818/6</p> <p>820/7 820/12 821/5</p> <p>899/22 900/12 905/18</p> <p>906/10 908/1 908/2</p> <p><b>legitimate [1]</b> 751/6</p> <p><b>lens [2]</b> 681/23 744/1</p> <p><b>Leonard [2]</b> 617/9</p> <p>617/22</p> <p><b>less [2]</b> 703/3 921/10</p> <p><b>LESSNER [1]</b> 618/11</p> <p><b>let [48]</b> 619/16 630/3</p> <p>656/15 658/6 662/24</p> <p>667/23 679/15 681/8</p> <p>682/11 711/17 711/17</p> <p>719/13 723/15 735/10</p> <p>744/16 746/1 757/18</p> <p>767/11 783/9 788/13</p> <p>793/20 797/24 802/18</p> <p>804/23 809/23 817/6</p> <p>819/16 820/16 824/22</p> <p>827/18 832/3 835/12</p> <p>836/3 836/19 837/22</p> <p>848/9 854/2 857/18</p> <p>857/23 864/8 864/17</p> <p>867/4 869/8 877/9</p> <p>892/5 893/17 920/16</p> <p>924/18</p> <p><b>let's [84]</b> 625/4 625/22</p> <p>627/10 628/14 633/17</p> <p>633/20 643/5 652/8</p> <p>653/22 657/12 658/18</p> <p>659/1 659/15 660/4</p> <p>660/5 664/2 664/14</p> <p>665/16 667/10 668/5</p> <p>670/12 670/16 674/2</p> <p>674/9 679/17 680/15</p> <p>680/17 681/14 681/15</p> <p>681/17 681/18 682/3</p> <p>682/23 683/18 686/11</p> <p>690/1 690/4 690/14</p> <p>691/9 691/12 696/10</p> <p>698/4 698/12 699/7</p> <p>701/3 702/18 705/18</p> <p>707/7 709/17 718/4</p> <p>722/19 723/6 724/4</p> <p>724/5 726/9 726/14</p> <p>726/24 734/5 736/3</p> <p>736/20 742/8 745/14</p> <p>746/22 755/11 757/15</p> <p>785/17 787/4 787/15</p> <p>796/18 805/8 809/20</p> <p>833/6 845/4 849/3</p> <p>863/18 908/22 910/23</p> <p>912/8 912/15 915/6</p> <p>922/6 923/13 923/23</p> <p>924/16</p> <p><b>letter [20]</b> 680/3 680/21</p> <p>682/21 683/21 684/16</p> <p>690/12 693/7 693/15</p> <p>693/17 693/21 694/3</p> <p>707/24 715/6 736/4</p>	<p>787/1 791/3 856/6</p> <p>910/14 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766/15</p> <p>766/17 766/17 768/2</p> <p>768/6 768/7 769/11</p> <p>769/12 769/13 771/1</p> <p>771/4 771/4 771/4</p> <p>781/15 855/8 857/7</p> <p>874/7 874/7 874/8</p> <p>892/9 892/9 892/13</p> <p>892/13</p> <p><b>lines [9]</b> 627/19 723/14</p> <p>732/22 865/1 869/6</p> <p>87</p>



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816/13 823/7 825/19	635/2 660/23 673/4	632/17 632/18 640/22	<b>March 31</b> [1] 882/17
825/21 828/12 831/4	676/24 677/7 678/7	647/18 669/21 699/9	<b>March 4</b> [2] 793/7
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838/15	686/8 700/12 703/4	699/13 699/16 742/5	<b>March 4th</b> [2] 792/24
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<b>logical</b> [1] 668/3	733/9 734/21 742/15	793/7 806/6 806/12	699/13 830/8
<b>long</b> [5] 619/15 673/7	743/24 752/19 753/3	806/19 807/7 807/14	<b>March meeting</b> [1]
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<b>long-term</b> [1] 794/22	762/23 772/17 772/19	810/1 811/15 812/17	<b>MARGARET</b> [1] 618/7
<b>longer</b> [10] 630/10	786/18 788/8 806/8	812/24 813/15 813/15	<b>margin</b> [1] 874/10
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<b>look-back</b> [1] 761/21	885/18 886/13 893/2	835/4 837/13 838/10	<b>marked</b> [5] 640/20
<b>looked</b> [9] 631/20	904/14 923/4 925/18	838/21 844/10 845/7	656/16 674/4 707/19
658/22 682/14 742/22	<b>makes</b> [1] 701/17	845/11 845/20 847/15	717/15
797/11 838/19 847/12	<b>making</b> [15] 638/7	849/5 850/8 850/17	<b>market</b> [22] 630/9
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<b>looking</b> [17] 633/13	672/8 676/16 678/19	853/23 854/21 855/7	644/12 644/13 647/3
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681/23 710/7 722/2	736/9 793/10 855/22	859/1 861/1 861/14	710/14 752/8 753/9
738/6 823/24 824/6	868/14 875/6	862/20 863/6 864/21	755/6 755/17 756/10
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869/15 909/1 911/6	641/5 641/8 642/3	870/15 870/15 871/14	753/1 918/15 919/1
922/6	645/1 645/24 654/21	871/19 873/17 873/18	<b>marking</b> [1] 731/2
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678/3 706/13 710/17	665/23 666/5 666/6	807/14 807/19 808/1	733/17 742/23 762/8
728/9 843/13 862/7	666/13 666/23 667/3	830/24 833/8 834/17	764/1 769/2 771/16
876/20 898/20 921/23	668/10 669/9 669/11	<b>March 10th</b> [1] 808/14	776/23
922/18 924/21	669/24 670/7 670/10	<b>March 11</b> [8] 810/1	<b>Massengill's</b> [2]
<b>lots</b> [2] 653/2 699/9	698/19 701/10 731/16	845/11 845/20 847/15	720/11 741/19
<b>love</b> [2] 785/1 894/8	763/19 763/24 764/9	850/8 850/17 851/14	<b>match</b> [2] 776/7 777/2
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<b>lower</b> [5] 815/21	814/7 814/15 815/19	855/7	836/12
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<b>lunch</b> [2] 774/12	851/16 852/9 864/20	873/18 874/2 875/2	731/23 731/24 732/1
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			<b>maybe</b> [7] 629/6
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			<b>meaningful</b> [3] 660/14
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			<b>measure</b> [1] 888/18
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922/10 923/15	878/8	<b>minds [1]</b> 921/19	893/7 900/13	796/16 803/19 851/21
<b>meetings [21]</b> 654/8	<b>merger-arbitrage [1]</b>	<b>mine [1]</b> 825/13	<b>motivation [1]</b> 813/10	851/22 901/20 904/2
656/9 662/5 663/9	755/16	<b>Mini [1]</b> 886/3	<b>move [10]</b> 645/2 699/7	904/7 904/10 904/13
663/22 705/10 706/13	<b>mergers [2]</b> 651/8	<b>minimum [1]</b> 748/17	699/8 813/13 833/6	904/18 905/3 905/10
743/4 802/17 825/8	651/10	<b>minus [1]</b> 890/5	851/8 854/15 854/24	905/20 905/23 907/17
852/8 888/1 888/1	<b>message [18]</b> 700/15	<b>minute [2]</b> 723/23	898/14 915/6	915/13
919/16 919/20 920/2	751/17 832/7 856/18	866/11	<b>moved [4]</b> 879/6 879/9	<b>Mr. Goulet [1]</b> 765/17
920/5 920/8 920/10	857/15 860/5 860/7	<b>minutes [37]</b> 626/19	879/10 879/13	<b>Mr. Isherwood [1]</b>
924/3 924/6	860/9 891/2 891/7	626/19 640/21 641/12	<b>moving [3]</b> 624/9 898/3	775/18
<b>meetings with [1]</b>	891/9 891/12 894/18	642/22 647/18 648/12	899/14	<b>Mr. Joe [1]</b> 650/1
920/10	901/10 919/21 920/1	648/12 648/20 663/2	<b>Mr [9]</b> 704/11 704/19	<b>Mr. Johannson [1]</b>
<b>Meg [1]</b> 840/7	921/13 921/13	663/9 705/3 705/4	712/22 719/6 719/15	859/9
<b>Melton [1]</b> 828/18	<b>messages [9]</b> 843/2	705/10 705/15 706/3	722/3 748/22 851/20	<b>Mr. Kempal's [1]</b> 763/4
<b>member [2]</b> 653/20	858/10 861/9 862/1	706/10 706/20 706/22	882/23	<b>Mr. Kettering [23]</b>
666/17	862/14 865/18 901/6	706/24 707/5 707/8	<b>Mr. [372]</b>	840/15 841/6 841/11
<b>member's [1]</b> 631/22	901/7 901/19	712/2 712/6 718/23	<b>Mr. and [1]</b> 843/3	841/17 841/19 843/1
<b>members [11]</b> 639/16	<b>Messrs. [5]</b> 645/5	742/2 774/8 791/18	<b>Mr. Babowal [1]</b>	845/6 845/14 850/7
640/7 641/10 645/12	645/7 645/10 647/20	793/1 797/12 812/18	828/20	850/9 853/13 855/6
653/16 653/17 666/23	690/16	819/7 819/8 822/7	<b>Mr. Babowal's [1]</b>	857/5 858/9 858/10
789/21 825/15 828/2	<b>Messrs. Clarke [2]</b>	822/10 847/13 853/4	828/16	862/23 864/18 865/17
921/14	645/10 647/20	<b>misheard [1]</b> 708/11	<b>Mr. Bob [7]</b> 696/13	867/4 871/6 871/18
<b>memo [66]</b> 631/20	<b>Messrs. Gardner [2]</b>	<b>misleading [1]</b> 623/4	739/11 787/20 789/8	872/2 897/20
636/10 636/15 658/2	645/5 645/7	<b>mistakes [2]</b> 732/19	791/13 805/14 920/13	<b>Mr. Kettering's [5]</b>
658/11 658/12 658/15	<b>Messrs. Poirier [1]</b>	732/20	<b>Mr. Bousquette [2]</b>	840/23 841/4 855/13
659/2 659/8 659/12	690/16	<b>mitigated [1]</b> 910/18	854/7 855/16	865/22 871/2
659/15 709/5 709/6	<b>met [12]</b> 638/1 641/8	<b>mixed [6]</b> 640/16	<b>Mr. Cornelius [31]</b>	<b>Mr. Massengill [3]</b>
709/8 709/12 709/18	654/2 664/10 690/16	641/17 642/3 642/15	779/14 780/12 781/6	705/19 733/17 742/23
709/21 726/10 726/17	827/10 827/14 829/2	643/14 863/1	783/10 783/17 784/9	<b>Mr. Massengill's [2]</b>
726/19 726/21 726/21	841/7 880/13 894/2	<b>MLP [1]</b> 913/10	787/13 788/14 789/12	720/11 741/19
728/8 729/14 735/11	894/5	<b>MLP's [1]</b> 918/22	790/1 791/17 792/24	<b>Mr. Moran [1]</b> 842/2
736/6 736/14 737/5	<b>mic [1]</b> 641/16	<b>Mm [3]</b> 658/24 679/19	796/6 799/9 800/15	<b>Mr. Orrico [1]</b> 760/6
741/20 742/1 742/20	<b>MICHAEL [1]</b> 618/14	812/7	801/15 803/6 803/18	<b>Mr. Poirier [63]</b> 622/19
742/23 743/7 743/9	<b>mid [9]</b> 653/19 798/24	<b>Mm-hmm [3]</b> 658/24	804/15 806/12 807/6	622/23 623/6 623/11
743/18 743/21 744/6	818/19 884/9 884/15	679/19 812/7	807/19 808/10 808/21	626/10 626/15 626/23
744/18 744/22 745/5	902/16 902/19 902/22	<b>mode [1]</b> 850/22	809/17 811/13 812/17	627/6 628/14 629/11
745/15 745/15 745/22	919/3	<b>modeling [3]</b> 767/1	814/20 831/3 831/7	629/20 633/3 640/7
746/2 746/3 746/4	<b>mid-2015 [2]</b> 884/9	767/18 797/1	924/5	640/14 690/16 715/11
746/5 746/8 746/12	884/15	<b>models [1]</b> 631/6	<b>Mr. Cornelius' [7]</b>	751/16 757/3 757/16
746/16 746/19 746/24	<b>mid-2016 [1]</b> 798/24	<b>Modernization [2]</b>	782/20 784/12 785/19	757/20 759/6 767/7
747/8 750/3 787/21	<b>mid-December [3]</b>	910/16 913/13	787/5 791/7 793/18	767/10 769/16 771/8
789/7 789/20 790/2	902/16 902/19 919/3	<b>moment [14]</b> 647/21	816/8	771/15 775/11 793/23
790/3 791/11 807/7	<b>mid-level [1]</b> 653/19	653/24 661/9 667/15	<b>Mr. Cornelius's [1]</b>	794/5 794/7 795/2
834/19 882/8 882/16	<b>mid-October [1]</b>	703/13 715/19 722/13	740/21	799/10 800/16 801/16
884/5 884/24	818/19	726/24 742/8 745/2	<b>Mr. Ebel [3]</b> 845/20	801/22 802/10 812/10
<b>memoranda [1]</b> 708/24	<b>MidAmerican [1]</b> 899/8	746/17 748/2 751/13	846/21 848/4	814/21 815/4 815/8
<b>memory [1]</b> 744/10	<b>middle [8]</b> 755/21	753/13	<b>Mr. Ewing [13]</b> 761/8	815/10 851/22 860/7
<b>memos [9]</b> 728/5	766/20 833/11 845/21	<b>moments [2]</b> 667/6	761/19 764/8 765/4	861/13 862/13 862/24
728/16 729/5 735/12	849/4 873/24 917/9	733/23	766/13 767/23 768/1	869/7 869/10 869/14
735/17 736/1 736/22	919/6	<b>monetization [1]</b>	768/4 769/9 769/11	875/1 902/16 902/19
737/11 737/21	<b>Midstream [3]</b> 784/23	776/15	770/23 775/7 775/11	903/1 903/3 903/8
<b>mention [5]</b> 695/4	894/6 894/15	<b>money [1]</b> 921/23	<b>Mr. Ewing's [2]</b> 761/15	903/13 911/4 911/10
819/1 819/9 819/18	<b>might [27]</b> 630/22	<b>monitor [1]</b> 632/20	761/16	911/12 912/16 914/7
910/5	647/3 653/1 654/9	<b>month [1]</b> 887/14	<b>Mr. Fornell [22]</b> 623/17	919/3 922/3
<b>mentioned [7]</b> 623/21	662/4 665/7 671/8	<b>months [9]</b> 650/21	624/1 766/21 767/12	<b>Mr. Poirier's [4]</b> 627/10
666/13 670/7 754/8	677/12 684/23 711/21	675/11 710/23 755/20	794/19 794/22 795/2	628/3 635/15 870/5
	731/16 747/22 747/24	771/21 797/16 867/20	795/24 796/7 799/10	<b>Mr. Pourbaix [1]</b> 875/1

<p><b>M</b></p> <p><b>Mr. Rivera [8]</b> 882/24 883/13 883/17 885/1 885/9 885/18 886/8 886/22</p> <p><b>Mr. Robert [2]</b> 722/11 742/14</p> <p><b>Mr. Skaggs [60]</b> 623/17 623/24 662/20 690/7 764/18 783/2 783/10 784/14 795/16 796/14 796/17 798/5 799/3 800/10 800/22 802/5 803/8 805/7 805/14 809/18 811/14 813/1 813/5 813/11 823/12 827/18 835/2 838/21 841/6 843/3 845/8 845/20 846/21 847/5 847/16 848/4 848/10 849/5 849/17 850/9 851/22 853/15 854/4 858/2 861/2 862/12 863/11 863/18 863/21 864/1 866/9 866/10 867/5 875/23 876/5 876/18 880/5 895/7 911/2 914/1</p> <p><b>Mr. Skaggs' [2]</b> 654/12 823/7</p> <p><b>Mr. Smith [63]</b> 623/6 623/17 623/24 639/6 659/8 696/21 696/22 697/4 703/10 703/19 715/10 717/22 722/17 723/5 723/8 764/19 767/7 767/10 783/23 784/14 785/7 785/13 788/18 794/4 794/7 794/9 794/21 795/1 795/16 797/13 798/5 799/3 799/19 800/2 800/22 801/21 802/10 802/24 803/9 805/14 811/20 812/9 827/18 847/5 848/10 851/21 858/2 861/2 861/20 862/4 862/12 864/3 867/5 891/3 891/5 891/9 892/16 902/24 911/3 911/9 912/10 914/7 922/4</p> <p><b>Mr. Smith's [1]</b> 655/5</p> <p><b>Mr. Steve [2]</b> 793/21 897/20</p> <p><b>Mr. Varallo [1]</b> 619/5</p> <p><b>Ms. [17]</b> 619/14 636/6 696/12 696/14 696/17 696/21 697/5 723/3 723/9 723/16 771/8 771/12 772/24 773/7 773/16 773/19 773/24</p> <p><b>Ms. Johnston [13]</b> 619/14 636/6 696/12 696/14 696/17 696/21 723/3 723/16 771/8 771/12 772/24 773/7 773/19</p>	<p><b>Ms. Johnston's [4]</b> 697/5 723/9 773/16 773/24</p> <p><b>much [13]</b> 636/6 644/5 660/12 679/11 689/17 734/22 744/9 750/13 844/22 865/10 888/24 892/4 925/15</p> <p><b>multiple [2]</b> 829/1 911/2</p> <p><b>multiples [1]</b> 889/3</p> <p><b>multiply [1]</b> 865/12</p> <p><b>must [1]</b> 747/4</p> <p><b>mutually [1]</b> 714/7</p> <p><b>my [106]</b> 628/13 633/9 635/21 635/23 638/14 641/16 642/8 645/3 645/23 647/15 651/5 652/7 657/4 658/21 660/12 660/19 671/17 671/21 672/22 679/2 683/17 686/7 692/19 695/14 695/15 708/11 709/13 711/15 715/3 724/17 724/18 725/15 726/16 726/21 734/1 737/6 739/24 742/7 744/10 745/23 746/5 746/13 746/15 747/14 751/1 759/12 761/2 764/4 781/12 781/18 782/23 791/24 794/14 801/24 805/11 806/5 806/18 806/24 807/12 809/2 809/4 810/24 812/13 818/5 820/9 821/2 821/18 826/1 831/18 832/2 834/13 840/16 847/3 847/23 848/22 856/11 857/12 859/23 861/20 871/11 872/10 875/4 877/8 878/2 878/19 881/6 881/6 881/7 882/1 884/11 884/14 890/14 890/24 892/2 899/21 900/11 903/16 905/22 908/17 908/17 909/3 909/16 912/5 915/17 915/17 923/24</p> <p><b>myself [1]</b> 748/22</p> <p><b>N</b></p> <p><b>name [16]</b> 632/3 657/1 709/10 709/13 709/15 726/18 726/21 727/20 729/15 745/22 745/23 746/7 746/19 761/2 763/1 859/13</p> <p><b>named [2]</b> 752/20 752/23</p> <p><b>names [1]</b> 709/10</p> <p><b>naming [1]</b> 634/22</p> <p><b>napkin [1]</b> 810/18</p> <p><b>narrow [1]</b> 720/2</p> <p><b>natural [2]</b> 643/18 644/6</p> <p><b>NDA [33]</b> 633/8 633/22 636/23 639/13 639/17</p>	<p>640/2 671/14 707/7 740/5 769/23 780/8 780/10 786/13 788/19 792/1 792/17 809/2 809/7 809/12 817/15 817/17 817/21 818/13 819/2 819/10 819/19 819/22 821/16 835/5 869/2 900/4 900/6 908/21</p> <p><b>NDA's [8]</b> 670/23 671/2 671/24 672/4 675/1 780/21 792/11 818/17</p> <p><b>near [7]</b> 637/7 764/19 784/19 785/3 785/11 798/21 894/10</p> <p><b>near-term [1]</b> 764/19</p> <p><b>necessarily [2]</b> 632/8 790/14</p> <p><b>necessary [2]</b> 752/5 752/8</p> <p><b>necessity [2]</b> 635/2 635/7</p> <p><b>NED [1]</b> 618/2</p> <p><b>need [38]</b> 626/20 630/5 630/10 631/10 649/14 661/5 694/22 719/16 724/24 733/7 736/24 739/13 750/20 750/21 774/11 782/19 785/16 790/16 797/5 797/6 797/19 798/15 799/4 825/5 832/6 836/17 846/9 846/22 847/17 854/5 862/8 862/13 876/13 910/18 914/19 918/15 919/1 919/23</p> <p><b>needed [16]</b> 650/21 662/3 666/3 666/4 666/6 698/8 700/12 807/1 821/9 822/1 824/1 827/23 832/1 867/24 905/17 921/16</p> <p><b>needs [7]</b> 637/15 654/6 654/6 733/4 805/23 902/4 921/5</p> <p><b>negative [1]</b> 725/19</p> <p><b>negotiate [10]</b> 699/1 831/23 832/6 832/8 832/13 864/12 864/23 867/7 867/19 906/24</p> <p><b>negotiated [7]</b> 672/7 679/6 679/7 696/6 697/11 716/21 790/12</p> <p><b>negotiating [3]</b> 806/21 867/21 906/1</p> <p><b>negotiation [1]</b> 780/20</p> <p><b>negotiations [15]</b> 632/4 633/4 669/20 669/22 670/2 677/1 677/3 697/13 714/19 752/16 763/17 782/6 840/1 851/23 907/11</p> <p><b>neither [1]</b> 744/3</p> <p><b>NEOs [1]</b> 668/10</p> <p><b>nervous [1]</b> 924/19</p> <p><b>net [1]</b> 888/19</p> <p><b>Netsmart [1]</b> 706/16</p> <p><b>NetSpend [3]</b> 735/24</p>	<p>737/5 791/4</p> <p><b>never [41]</b> 640/4 646/23 648/7 671/18 673/22 676/18 676/18 704/20 739/20 740/8 740/22 753/21 753/24 754/3 754/6 754/12 754/15 754/17 780/7 781/17 785/7 785/13 787/9 787/20 790/22 799/3 802/15 807/3 809/2 809/6 815/14 829/21 835/10 836/12 836/20 848/23 851/11 879/6 887/10 904/10 905/16</p> <p><b>new [14]</b> 618/7 623/16 623/16 623/23 623/23 721/2 747/16 747/16 765/21 766/6 856/2 866/5 879/3 924/12</p> <p><b>news [6]</b> 634/22 845/21 852/17 853/9 892/16 913/22</p> <p><b>NextEra [8]</b> 670/21 691/12 692/5 818/19 899/6 900/10 908/6 908/14</p> <p><b>Nice [3]</b> 759/14 761/2 876/1</p> <p><b>nicely [1]</b> 815/9</p> <p><b>Nickerson [1]</b> 872/9</p> <p><b>night [1]</b> 620/3</p> <p><b>nilly [1]</b> 856/22</p> <p><b>nilly' [1]</b> 856/8</p> <p><b>nine [3]</b> 650/20 710/23 755/20</p> <p><b>NIPSCO [1]</b> 892/1</p> <p><b>NiSource [32]</b> 654/3 823/16 823/20 823/21 824/6 872/9 876/23 877/3 881/22 881/24 883/3 883/10 884/8 884/15 887/7 887/24 888/5 888/11 888/15 888/20 888/22 889/6 889/18 889/19 890/9 890/23 891/7 891/22 892/17 894/4 894/14 896/3</p> <p><b>NiSource's [2]</b> 654/5 840/14</p> <p><b>No. [5]</b> 760/5 760/7 876/8 876/10 880/2</p> <p><b>No. 1 [1]</b> 876/8</p> <p><b>No. 2 [2]</b> 876/10 880/2</p> <p><b>No. 6 [1]</b> 760/5</p> <p><b>No. 7 [1]</b> 760/7</p> <p><b>non [4]</b> 697/10 731/19 830/16 831/1</p> <p><b>non-binding [2]</b> 830/16 831/1</p> <p><b>non-public [1]</b> 697/10</p> <p><b>nonagreement [1]</b> 750/10</p> <p><b>nondescript [2]</b> 869/15 869/22</p> <p><b>nondisclosable [1]</b> 716/20</p>	<p><b>nondisclosure [8]</b> 670/13 670/20 674/5 674/22 692/11 698/10 779/14 779/23</p> <p><b>none [3]</b> 685/19 753/19 886/15</p> <p><b>nonexpert [1]</b> 754/19</p> <p><b>nonlevel [2]</b> 781/22 782/2</p> <p><b>nonpublic [2]</b> 671/6 681/17</p> <p><b>Nope [1]</b> 754/5</p> <p><b>nor [3]</b> 744/4 755/2 891/6</p> <p><b>normal [5]</b> 657/22 660/12 660/21 662/12 667/19</p> <p><b>normally [1]</b> 911/21</p> <p><b>North [2]</b> 617/10 617/22</p> <p><b>nose [1]</b> 864/4</p> <p><b>not-distant [1]</b> 695/7</p> <p><b>notable [1]</b> 886/3</p> <p><b>note [3]</b> 851/3 866/13 872/20</p> <p><b>noted [4]</b> 709/24 813/1 856/1 885/10</p> <p><b>notes [4]</b> 620/6 885/9 915/2 915/4</p> <p><b>nothing [11]</b> 649/11 649/17 715/9 716/12 717/5 717/9 722/6 725/21 816/1 837/5 870/21</p> <p><b>notify [1]</b> 634/21</p> <p><b>noting [1]</b> 645/14</p> <p><b>notion [2]</b> 729/19 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<b>P</b>	650/18	<b>Peter [3]</b> 761/6 762/3 770/24	923/15 924/2 924/4 924/11	<b>pleased [1]</b> 636/2
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830/6 838/9 841/5	763/14 777/23 807/15	<b>phrased [1]</b> 725/19	793/3 796/9 797/21	683/17 695/7 705/11
900/14	810/17 830/12 858/19	<b>pick [9]</b> 688/13 688/13	799/12 800/18 801/17	706/7 712/4 715/4
<b>parties' [1]</b> 620/12	863/12 865/10 867/15	765/20 766/5 766/23	803/11 803/21 804/18	716/18 722/10 725/24
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717/22 720/11 728/3	669/10 670/8 670/10	903/4 903/9 904/3	<b>truly [2]</b> 633/5 685/24	702/10 705/8 708/21
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744/13 744/13 778/16	<b>transactions [13]</b>	813/7 813/8 813/12	685/24 687/8 689/2	696/16 703/1 710/6
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<b>tool [1]</b> 661/16	624/11 625/12 626/10	869/1 870/14 871/3	744/18 744/18 745/12	747/7 807/24 877/5
<b>top [23]</b> 625/18 625/23	626/15 626/24 629/22	871/4 874/15 874/17	<b>twist [1]</b> 766/15	881/16 885/20 892/22
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718/8 724/5 850/16	669/10 669/17 670/14	790/4 800/20 803/22	688/10 790/15 797/3	<b>undertake [1]</b> 905/24
853/22 857/18 866/3	670/21 674/6 682/2	804/20 806/2 806/16	<b>typewritten [1]</b> 874/23	<b>underwriters [10]</b>
866/8 872/7 873/11	682/6 690/9 690/13	807/10 807/22 809/21	<b>typical [1]</b> 657/7	642/2 642/19 643/15
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<b>totally [2]</b> 688/2 741/10	771/1 771/22 773/1	<b>treated [2]</b> 781/24	892/7	<b>unfortunately [2]</b>
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<b>tough [2]</b> 854/10	793/9 794/19 795/20	624/18 628/3 628/15	<b>ultra-diluted [1]</b>	<b>Unidentified [2]</b>
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<b>trace [1]</b> 741/24	803/19 804/3 804/9	732/11 748/5 890/8	<b>under [32]</b> 625/24	704/7
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<b>tracks [2]</b> 702/12 899/4	812/11 813/5 813/13	<b>triggered [1]</b> 877/23	680/19 684/20 686/18	841/8
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<b>trading [7]</b> 645/14	821/23 822/20 826/19	<b>tripped [2]</b> 686/18	737/7 742/3 750/2	773/2
756/12 756/13 845/24	827/3 828/22 829/11	687/19	752/24 757/6 770/19	<b>unequal [1]</b> 818/2
864/12 864/21 917/15	829/22 830/13 830/17	<b>trips [2]</b> 686/16 686/23	778/13 817/15 838/4	<b>unnecessary [1]</b>
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791/1 791/8 791/15 791/23 792/22 793/5 793/13 793/19 796/4 796/12 797/18 799/7 799/15 800/13 800/21 801/13 801/19 803/4 803/16 803/23 804/13 804/21 805/22 806/3 806/10 806/17 807/4 807/11 807/17 807/23 808/19 808/24 809/15 809/22 810/6 810/23 811/11 811/19 812/15 812/22 814/18 815/1 815/24 816/16 823/5 823/9 825/16 825/23 828/9 828/14 830/5 831/6 832/18 833/10 834/21 835/1 837/7 837/10 838/13 838/17 840/4 840/15 841/2 841/24 842/23 843/7 844/15 845/18 850/5 850/14 853/11 853/20 855/4 855/15 857/3 857/11 858/7 858/16 865/15 865/24 870/20 871/9 871/24 872/5 875/10 881/2 881/11 892/14 893/12</p> <p><b>view [36]</b> 638/23 642/2</p>	<p>654/11 655/5 656/4 664/24 669/23 688/15 688/16 693/20 694/11 700/15 707/23 714/2 715/21 716/18 725/3 725/15 734/9 735/4 737/10 737/12 737/16 748/14 751/23 754/19 819/7 883/17 883/19 883/20 903/21 909/3 909/16 909/24 918/19 920/19</p> <p><b>viewed [5]</b> 676/23 711/14 729/8 784/4 820/15</p> <p><b>views [2]</b> 645/14 711/2</p> <p><b>violate [5]</b> 717/21 723/21 782/1 820/4 838/5</p> <p><b>violated [7]</b> 638/19 638/21 690/22 691/2 693/3 716/3 716/14</p> <p><b>violates [1]</b> 714/21</p> <p><b>violating [3]</b> 633/10 694/11 714/11</p> <p><b>violation [7]</b> 631/17 633/12 714/3 816/22 817/2 823/4 869/2</p> <p><b>violative [1]</b> 693/13</p> <p><b>Virginia [2]</b> 841/8 879/5</p> <p><b>virtually [1]</b> 703/23</p> <p><b>vis [2]</b> 703/1 703/1</p> <p><b>voice [1]</b> 765/17</p> <p><b>VOLUME [1]</b> 617/16</p> <p><b>voluntary [1]</b> 669/4</p> <p><b>vote [4]</b> 741/16 747/6 764/16 789/21</p>	<p><b>walked [1]</b> 744/23</p> <p><b>walking [1]</b> 620/6</p> <p><b>wall [10]</b> 621/5 632/11 645/15 699/16 752/21 752/22 755/7 755/13 795/24 807/19</p> <p><b>wanted [36]</b> 646/7 648/6 662/15 662/17 690/18 700/12 722/22 758/11 784/16 785/8 805/15 808/4 811/22 811/24 829/11 845/22 851/14 856/5 856/21 856/23 862/5 862/5 871/20 884/1 884/13 892/1 893/4 903/9 903/13 907/8 907/10 910/22 920/18 920/22 921/7 925/17</p> <p><b>wants [8]</b> 678/10 697/12 714/10 767/1 796/24 817/10 829/5 861/3</p> <p><b>war [2]</b> 906/20 907/3</p> <p><b>Ward [2]</b> 857/7 857/15</p> <p><b>warrant [1]</b> 702/16</p> <p><b>was -- the [1]</b> 730/17</p> <p><b>waste [1]</b> 712/5</p> <p><b>watching [1]</b> 856/3</p> <p><b>way [40]</b> 619/17 619/24 641/23 643/7 654/20 654/22 656/1 662/2 667/23 672/11 672/24 673/3 673/18 675/16 677/13 678/14 678/15 680/14 685/8 695/22 700/13 711/18 717/14 719/23 725/24 726/18 733/6 735/10 744/22 745/9 745/21 747/15 755/4 756/13 829/1 839/23 851/18 878/23 909/18 909/20</p> <p><b>ways [1]</b> 681/24</p> <p><b>we'd [2]</b> 689/5 913/22</p> <p><b>we'll [34]</b> 635/24 649/24 658/13 660/3 664/12 674/14 687/23 697/22 718/8 722/20 746/17 750/11 760/23 774/10 774/14 806/4 821/20 838/8 844/21 844/22 854/6 866/20 871/17 875/14 875/15 877/11 882/7 882/11 918/15 923/4 924/13 925/15 925/16 925/20</p> <p><b>we've [10]</b> 624/18 625/7 717/12 760/4 764/21 792/7 802/20 880/12 913/5 921/23</p> <p><b>weddings [1]</b> 841/16</p> <p><b>Wednesday [1]</b> 617/11</p> <p><b>WEINBERGER [1]</b> 618/2</p> <p><b>Weird [1]</b> 766/15</p> <p><b>welcome [9]</b> 618/18 619/14 684/22 685/2 685/3 698/2 704/24</p>	<p>775/2 845/2</p> <p><b>Wells [20]</b> 621/14 766/14 769/16 793/15 795/16 795/18 796/7 799/18 799/19 806/13 807/6 810/13 815/3 825/18 825/18 826/16 828/11 828/21 833/8 834/12</p> <p><b>went [10]</b> 639/14 650/17 650/20 709/10 709/13 737/21 755/13 796/17 824/23 888/7</p> <p><b>weren't [13]</b> 621/22 629/21 669/20 713/6 732/20 747/13 780/16 818/2 866/2 886/1 887/11 910/18 910/22</p> <p><b>West [2]</b> 841/8 879/5</p> <p><b>what's [9]</b> 626/19 640/20 643/10 656/16 661/10 669/2 674/4 735/18 864/14</p> <p><b>whatever [13]</b> 630/7 679/22 703/16 727/5 756/12 808/5 834/16 835/24 837/3 839/10 871/13 871/20 899/23</p> <p><b>whatnot [1]</b> 818/13</p> <p><b>whatsoever [2]</b> 624/4 848/21</p> <p><b>wheel [1]</b> 661/6</p> <p><b>when [82]</b> 620/3 623/11 628/4 630/10 631/11 632/10 633/3 636/17 643/6 647/22 649/14 650/23 654/1 654/10 668/1 669/22 671/5 671/12 672/22 673/2 673/9 678/8 678/12 679/3 682/20 683/11 685/14 691/3 695/8 698/13 704/19 710/9 711/18 716/1 717/14 717/18 718/19 723/11 724/9 727/17 730/6 731/1 737/22 743/4 751/8 751/15 752/13 753/7 755/12 756/17 756/24 757/11 762/19 764/15 774/11 796/13 801/22 802/7 805/17 817/5 817/5 820/24 823/22 855/20 860/1 867/17 869/7 875/5 881/17 883/2 884/8 884/18 886/21 887/8 891/14 895/21 906/18 906/23 907/16 911/21 918/17 921/21</p> <p><b>whether [57]</b> 629/9 631/23 638/9 640/14 642/1 644/24 652/15 665/6 666/3 671/20 673/22 681/6 681/7 681/8 681/9 681/15 682/16 686/22 693/20 694/10 694/14 696/5 697/12 698/16 702/5</p>
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<p><b>W</b></p> <p><b>whether... [32]</b> 702/6 706/6 706/24 706/24 710/7 713/23 714/19 717/1 728/7 730/10 746/2 746/3 746/3 764/8 768/23 781/19 792/15 797/3 819/13 820/22 822/8 822/18 822/22 823/4 826/12 826/23 835/16 864/22 890/11 891/6 906/14 909/5</p> <p><b>while [15]</b> 625/1 632/16 644/1 644/14 704/14 708/22 737/20 760/1 781/21 794/8 796/1 881/22 884/18 893/9 899/4</p> <p><b>whoa [1]</b> 723/23</p> <p><b>whole [1]</b> 629/7</p> <p><b>Williams [2]</b> 617/9 617/22</p> <p><b>willing [5]</b> 671/8 680/13 680/16 690/10 854/24</p> <p><b>willingness [3]</b> 641/21 716/21 735/6</p> <p><b>willy [1]</b> 856/22</p> <p><b>willy-nilly [1]</b> 856/22</p> <p><b>Wilmington [2]</b> 617/10 617/23</p> <p><b>windfall [2]</b> 910/12 910/20</p> <p><b>windfalls [1]</b> 910/18</p> <p><b>Wish [1]</b> 704/23</p> <p><b>wished [1]</b> 714/19</p> <p><b>withdrawn [1]</b> 648/7</p> <p><b>within [6]</b> 627/1 689/7 711/13 766/8 813/17 909/2</p> <p><b>without [24]</b> 634/22 637/10 656/11 661/17 662/9 662/16 662/18 662/20 662/21 662/23 667/19 699/2 714/11 790/13 793/10 809/11 816/20 824/7 826/19 828/3 828/7 897/22 902/21 906/2</p> <p><b>witness [14]</b> 619/3 629/12 649/21 649/23 758/21 759/9 759/24 761/6 779/2 779/6 816/2 840/10 870/22 924/19</p> <p><b>witnesses [3]</b> 680/2 760/14 926/4</p> <p><b>Wms [1]</b> 843/13</p> <p><b>won't [6]</b> 619/14 689/23 723/20 750/8 820/4 828/6</p> <p><b>word [8]</b> 629/6 637/24 718/20 773/23 774/1 792/1 822/11 869/18</p> <p><b>wording [1]</b> 839/5</p> <p><b>words [14]</b> 633/13 682/14 687/6 689/1</p>	<p>702/6 711/11 711/13 808/7 808/8 822/14 834/11 859/9 874/9 878/22</p> <p><b>work [20]</b> 642/9 642/12 650/12 651/13 652/19 654/22 668/21 700/22 756/14 784/17 785/1 785/10 807/2 852/16 853/7 855/23 856/15 887/23 893/11 894/8</p> <p><b>worked [6]</b> 650/15 651/22 704/19 749/20 878/23 881/23</p> <p><b>working [7]</b> 652/20 699/24 828/21 885/11 885/21 887/20 916/2</p> <p><b>works [1]</b> 861/8</p> <p><b>world [4]</b> 678/19 734/10 909/4 913/7</p> <p><b>worried [1]</b> 854/12</p> <p><b>worries [1]</b> 873/23</p> <p><b>worth [2]</b> 673/23 909/6</p> <p><b>wouldn't [19]</b> 622/5 628/10 631/1 632/5 680/20 683/23 695/15 713/10 713/12 713/22 716/8 717/21 750/17 755/23 760/11 862/3 868/11 879/20 910/19</p> <p><b>Wow [1]</b> 917/10</p> <p><b>write [9]</b> 724/9 745/10 765/17 842/10 857/17 863/9 863/23 864/3 866/10</p> <p><b>writes [21]</b> 718/14 766/21 771/8 815/7 815/10 828/18 833/20 834/6 842/2 846/21 852/14 853/23 855/17 862/2 862/4 863/11 864/1 864/3 866/20 866/22 917/19</p> <p><b>writing [5]</b> 674/13 675/18 687/24 771/24 773/3</p> <p><b>written [36]</b> 635/6 637/10 673/1 673/1 673/4 692/17 692/20 700/19 701/17 703/12 711/8 711/23 731/6 733/2 745/8 749/2 754/6 773/19 793/10 798/4 801/7 804/3 804/5 804/9 806/7 810/11 810/15 811/5 816/21 817/11 820/2 820/11 820/17 821/21 827/3 874/10</p> <p><b>wrong [11]</b> 637/16 703/23 724/22 725/2 748/15 770/9 827/9 844/3 858/24 874/14 888/17</p> <p><b>wrote [7]</b> 709/9 711/19 719/2 726/23 746/2 765/24 842/17</p>	<p><b>Y</b></p> <p><b>years [15]</b> 647/11 650/16 650/19 651/4 704/20 706/16 793/24 841/7 841/12 849/1 880/12 889/9 897/9 897/19 897/22</p> <p><b>Yep [3]</b> 635/8 777/8 863/20</p> <p><b>yesterday [10]</b> 639/7 639/20 659/7 760/4 760/10 762/21 863/24 919/13 920/13 922/12</p> <p><b>yet [2]</b> 635/19 913/23</p> <p><b>YOCH [1]</b> 618/12</p> <p><b>York [4]</b> 618/7 623/16 623/24 747/17</p> <p><b>you'd [3]</b> 691/17 751/21 755/15</p> <p><b>you'll [19]</b> 623/20 625/8 625/23 629/10 659/16 699/24 718/8 742/9 742/11 742/19 818/16 833/15 838/18 840/18 862/19 873/1 873/2 874/8 880/4</p> <p><b>Young [1]</b> 618/13</p> <p><b>Your Honor [1]</b> 816/5</p> <p><b>yours [2]</b> 746/7 873/12</p> <p><b>yourself [4]</b> 629/4 686/19 754/24 847/5</p> <p><b>Yup [3]</b> 768/17 777/11 874/12</p> <p><b>Z</b></p> <p><b>zeroed [1]</b> 647/19</p>		
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