

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
Thursday, July 21, 2022
9:15 a.m.

- - -

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor

- - -

TRIAL TRANSCRIPT - VOLUME IV

- - -

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

1 THE COURT: Welcome back, everyone.

2 Thank you for being here, and thank you to the witness
3 to being ready to go.

4 ATTORNEY OLSEN: Your Honor, one very
5 brief housekeeping matter.

6 You had asked yesterday about time.
7 We conferred last night. We have 12 hours today and
8 tomorrow. Plaintiff has almost exactly four left, and
9 we have eight left. And we each understand that we
10 each have what we have, and we will be done on or
11 before 4:45 tomorrow.

12 THE COURT: Great. I was mainly just
13 worried about the number of folks still on the witness
14 list rather than what we've covered. But I'm glad you
15 all have conferred and are in agreement.

16 ATTORNEY van KWAEGEN: Your Honor, as
17 to housekeeping matters, the defendants asked to
18 switch the witness order to have Mr. Hunter today. So
19 after Mr. Skaggs, to accommodate Mr. Hunter's
20 schedule, he will be next, and then it will be
21 Mr. Smith.

22 So I just wanted to make sure that
23 everybody knew the order.

24 THE COURT: Works for me.

CHANCERY COURT REPORTERS

1 APPEARANCES:

2 NED C. WEINBERGER, ESQ.
3 BRENDAN W. SULLIVAN, ESQ.
Labaton Sucharow LLP
-and-
4 GREGORY V. VARALLO, ESQ.
Bernstein Litowitz Berger & Grossmann LLP
-and-
5 JEROEN van KWAEGEN, ESQ.
6 CHRISTOPHER J. ORRICO, ESQ.
7 THOMAS G. JAMES, ESQ.
MARGARET SANBORN-LOWING, ESQ.
of the New York Bar
8 Bernstein Litowitz Berger & Grossmann LLP
-and-
9 STEPHEN E. JENKINS, ESQ.
10 MARIE M. DEGNAN, ESQ.
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12 MARTIN S. LESSNER, ESQ.
JAMES M. YOCH, JR., ESQ.
13 KEVIN P. RICKERT, ESQ.
Young Conaway Stargatt & Taylor, LLP
-and-
14 ROBERT S. HARRELL, ESQ.
MICHAEL A. OLSEN, ESQ.
15 BRIAN J. MASSENGILL, ESQ.
LINDA X. SHI, ESQ.
16 of the Illinois Bar
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17 for Defendant TC Energy Corporation
18
19 WILLIAM M. LAFFERTY, ESQ.
RYAN D. STOTTMANN, ESQ.
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20 SARAH P. KABOLY, ESQ.
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-and-
21 WILLIAM SAVITT, ESQ.
NOAH B. YAVITZ, ESQ.
22 JESSICA L. ALLEN, ESQ.
JONATHAN M. ACEVEDO, ESQ.
23 of the New York Bar
Wachtell, Lipton, Rosen & Katz
24 for Robert C. Skaggs, Jr. and Stephen C. Smith
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CHANCERY COURT REPORTERS

1 ROBERT C. SKAGGS, JR., having
2 previouslyduly affirmed, was re-called andtestified
3 further as follows:

4 DIRECT EXAMINATION CONT'D
5 BY ATTORNEY van KWAEGEN:

6 Q. Good morning, Mr. Skaggs.

7 A. Good morning.

8 Q. As you heard yesterday, I'm on the
9 clock, so I'm going to be fairly rapid.

10 A. Okay.

11 Q. Yesterday we were discussing your
12 one-on-one meetings with directors in the run-up to
13 the January 28/29 board meeting.

14 Do you recall that?

15 A. Yes, sir.

16 Q. I showed you a document from
17 December 17, where you were planning out the meeting,
18 and you see it on your screen.

19 Do you see that?

20 A. Yes.

21 Q. That's your handwriting?

22 A. Yes, sir.

23 Q. If we go to the next page, there's a
24 discussion there about strategic positioning of

CHANCERY COURT REPORTERS

R. Skaggs - Direct

R. Skaggs - Direct Page 931	R. Skaggs - Direct Page 933
<p>1 Columbia Pipeline saying, "Conditions Are Historically 2 Challenging Given [these] conditions, Little room 3 for error. More downside (vs. upside) in [the] plan 4 (ALL upside baked-in). Bias scale [vs.] strong" 5 A. I'm sorry to interrupt. It was scale 6 and strong balance sheets. 7 Q. "Scale & strong [balance sheet]. 8 Therefore ... Grind on Plan. Mindful/Vet Inbounds, 9 Understand our Transaction [Point] of [Indifference]." 10 You were discussing this during your 11 one-on-one meetings with the board, with the 12 directors, in the run-up to the January 28/29 meeting; 13 correct? 14 A. In a general way. 15 Q. You were also discussing succession 16 planning during those one-on-one meetings? 17 A. That's correct. 18 Q. At this time, the company had been 19 spun out for six months? 20 A. That's -- approximately six months, 21 correct. 22 Q. And, yes or no, at the same time that 23 you're telling directors in one-on-one meetings of 24 historically challenging conditions and execution</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 dinner meeting, I wanted to ensure [] you had an 2 opportunity to digest my thinking on CEO Succession." 3 Do you see that? 4 A. That's correct. 5 Q. And attached, we'll walk through it, 6 is a discussion of the succession plan. 7 ATTORNEY van KAWEGEN: So if we can 8 go to page 7 of this document. 9 Q. "CEO Succession: <i>Proposed Plan</i>," and 10 there's an "Approach A.1." 11 Under "Approach A.1," "Glen Kettering 12 to Chairman & CEO, July 1, 2016." Right? 13 A. That's what this says, correct. 14 Q. And if we go to page 9 of this 15 document to "Approach A.2 -- One Modification to 16 Approach A.1, Glen Kettering to CEO, July 1, 2016." 17 Correct? 18 A. That's what this says, correct. 19 Q. And "Approach B," on page 10, 20 "External Succession ... External Candidate Named 21 President & CEO, July 1, 2016." Correct? 22 A. That's what this says, correct. 23 Q. And then, if we go to the next page, 24 at the top there's a reference to abbreviated profiles</p> <p>CHANCERY COURT REPORTERS</p>
R. Skaggs - Direct Page 932	R. Skaggs - Direct Page 934
<p>1 risks, you discuss a plan for your succession? 2 A. A succession plan for the team. 3 Q. Including you? 4 A. Including me. 5 Q. Let me show you JTX 94. This is a 6 draft -- you can see it on your screen, sir. Look at 7 your screen. 8 This is a draft presentation from 9 Goldman Sachs. If you can go to the next page. 10 That's your handwriting; right? 11 A. That's correct. 12 Q. You write here to Goldman Sachs, "Just 13 Remember ... Other Than Sig & to a degree, Marty ... 14 Our folks are not deeply knowledgeable ... Gotta cut 15 through stuff." Correct? 16 A. That's what this says, correct. 17 Q. And that's a reference to Columbia 18 directors Sig Cornelius and Marty Kittrell; correct? 19 A. That's correct. 20 Q. Let me show you another document, 484. 21 Here is an email from you to Sig Cornelius talking 22 about your one-on-one meeting with him; correct? 23 A. Well, one second. 24 Q. There it says, "Sig, prior to our</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 of the preliminary candidates that could be considered 2 outside the organization. 3 Do you see that? 4 A. That's essentially what this says. 5 Q. All right. I want to talk to you 6 about a January 14, email that you sent to Sig 7 Cornelius, and that is Joint Exhibit 573. It's on 8 your screen. 9 Here, you say: "Sig, thanks to you, 10 my meeting today with Marty unfolded according to 11 textbook -- very constructive and well aligned with 12 us. 13 "Marty is supportive of Approach A.2." 14 That is a reference to the succession 15 plan A.2 that we just looked at; correct? 16 A. Correct. 17 Q. And then underneath, he says -- you 18 say to Sig Cornelius, "A large chunk of our 19 conversation was about a potential [TransCanada] 20 offer. And again, Marty is aligned with you and me. 21 He had several good suggestions about grounding the 22 Board on current and historic EBITA multiples for 23 pipelines -- so that we have a complete framing of a 24 potential offer. [Marty noted several times prior to</p> <p>CHANCERY COURT REPORTERS</p>

R. Skaggs - Direct

<p style="text-align: right;">R. Skaggs - Direct Page 935</p> <p>1 the meltdown, pipelines were a 'valuation bubble'.]"</p> <p>2 You wrote that to Mr. Cornelius on</p> <p>3 January 14; right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Let me show you another document</p> <p>6 that's the next day. It's Joint Exhibit 575. We'll</p> <p>7 put it on your screen.</p> <p>8 Here, there's an email from Matt</p> <p>9 Gibson, January 15, to the team at Goldman. "Historic</p> <p>10 ebitda multiples for the 'pipeline group'. Bob (CEO)</p> <p>11 request."</p> <p>12 Underneath, "Bob's point is...and</p> <p>13 Marty's (Board member) point is...." yeah in the past</p> <p>14 5 years things exploded to the upside, but longer term</p> <p>15 what [is] the average run rate multiple...."</p> <p>16 You wrote that; correct?</p> <p>17 A. I did not, no.</p> <p>18 Q. You have no reason to dispute that</p> <p>19 Mr. Gibson wrote this to his team on January 15;</p> <p>20 right?</p> <p>21 A. Yeah, that's what this would reflect.</p> <p>22 Q. As Mr. Gibson is talking to his team,</p> <p>23 he also said underneath, "Bob has spent the past week</p> <p>24 flying around meetings with all his Directors</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 937</p> <p>1 you would have to believe in the future to beat an</p> <p>2 offer of \$26 or \$28 today."</p> <p>3 And this presentation or these</p> <p>4 indifference points were prepared at your request;</p> <p>5 correct?</p> <p>6 A. My request and Mr. Cornelius's</p> <p>7 request.</p> <p>8 Q. Is it fair to say that Mr. Cornelius</p> <p>9 had suggested it to you and then you suggested it to</p> <p>10 Goldman?</p> <p>11 A. That's a fair representation.</p> <p>12 Q. And you recall that Goldman Sachs did</p> <p>13 prepare that presentation; correct?</p> <p>14 A. That's my recollection, yes.</p> <p>15 Q. All right. Let me show you another</p> <p>16 document. It's Joint Exhibit 594.</p> <p>17 ATTORNEY van KAWWEGEN: Actually,</p> <p>18 going -- can we go back, sorry, 590. If we go to the</p> <p>19 next page.</p> <p>20 Q. Here is the Goldman slide deck, and on</p> <p>21 this page you see the "\$26 Offer Indifference</p> <p>22 Sensitivity." If you look at year-end, at a cost of</p> <p>23 equity of 8.5 percent, we're looking at 18 1/2</p> <p>24 multiple; right? You see the 18.5?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Direct Page 936</p> <p>1 1x1....he's priming them for a [TransCanada] bid.</p> <p>2 He's getting questions from the board 'would you take</p> <p>3 \$26 per share' -- he said every day it[s] [] harder</p> <p>4 to say no."</p> <p>5 It's true, is it not, that there was</p> <p>6 no board meeting where the entire board was together</p> <p>7 between December 1, 2015, and the big January 28/29</p> <p>8 board meeting that you were preparing for?</p> <p>9 A. That's correct.</p> <p>10 Q. Again, no basis to dispute that</p> <p>11 Mr. Gibson wrote this to his Goldman team as he was</p> <p>12 assisting you to prepare for that big board meeting?</p> <p>13 A. This says what it says, so I assume</p> <p>14 Mr. Gibson did write it.</p> <p>15 Q. I want to show you another document,</p> <p>16 Joint Exhibit 590, January 21, still before that board</p> <p>17 meeting.</p> <p>18 It says, the Goldman -- this is</p> <p>19 Mr. Christopher at Goldman to you, copying the Goldman</p> <p>20 team. "Board presentation - What Would You Have to</p> <p>21 Believe?"</p> <p>22 Then it says, to you, "Bob, the</p> <p>23 [Goldman Sachs] team has put together a few pages to</p> <p>24 highlight the offer price indifference points -- what</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 938</p> <p>1 A. I'm sorry. Bear with me. I have to</p> <p>2 get oriented on this slide.</p> <p>3 Q. That's all right. We'll blow it up</p> <p>4 for you.</p> <p>5 A. Well, I'd like to see it in context,</p> <p>6 too, if I could, please.</p> <p>7 Q. Mr. Skaggs, do you see the 18.5</p> <p>8 multiple?</p> <p>9 A. Yes, I certainly do.</p> <p>10 Q. Then the next page, there's the</p> <p>11 indifference point at 28. And there, you see the 19.6</p> <p>12 multiple by year-end 2016?</p> <p>13 A. That's what this says.</p> <p>14 Q. And you have no reason to doubt that</p> <p>15 you received these slides from Mr. Gibson here; right?</p> <p>16 A. I received slides. This slide, I</p> <p>17 can't speak to. I don't know the date or whether it</p> <p>18 was a draft. So I certainly saw slides like this.</p> <p>19 Q. All right. Well, let's look at the</p> <p>20 next page -- or the next document. That is Joint</p> <p>21 Exhibit 594.</p> <p>22 Here, towards the middle of the page,</p> <p>23 there's an email from you responding to the email we</p> <p>24 just saw. And you say to Steve Smith and Glen</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Direct

R. Skaggs - Direct Page 939	R. Skaggs - Direct Page 941
<p>1 Kettering, "What do you think????</p> <p>2 "First glance -- the slides make a</p> <p>3 statement."</p> <p>4 And above, Mr. Steve Smith -- not to</p> <p>5 be confused with Bob Smith -- responds, "Yep. We</p> <p>6 won't be trading at 18-20 x EBITDA any time soon."</p> <p>7 Did you write back and say, I</p> <p>8 disagree?</p> <p>9 A. I don't know what's -- I don't know.</p> <p>10 Q. Okay. Yes or no, at this time, you</p> <p>11 were grounding the board and you're priming them for</p> <p>12 an offer from TransCanada?</p> <p>13 A. No.</p> <p>14 Q. Goldman Sachs, we just saw the email,</p> <p>15 right, where Mr. Gibson was talking about that with</p> <p>16 his colleagues in advance of preparing these slides?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And it's fair to say that</p> <p>19 Goldman did present a version of this slide during the</p> <p>20 January 28/29 board meeting?</p> <p>21 A. That's my recollection. Yes.</p> <p>22 Q. And that's the same board meeting</p> <p>23 where you discussed TransCanada's indication of</p> <p>24 interest of 25 to \$28 a share?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 gap.</p> <p>2 A. I'm not sure that's the correct color.</p> <p>3 My recollection was that after we rejected 25.25, we</p> <p>4 agreed to put our pens down and stop. That's the</p> <p>5 discussion I had with the CEO.</p> <p>6 My other recollection was, I believe</p> <p>7 it was over a weekend or latter part of the week, the</p> <p>8 bankers began talking to one another. And clearly,</p> <p>9 the intent was, is there something that we could agree</p> <p>10 on. And it was during that discussion that 26</p> <p>11 surfaced.</p> <p>12 Q. Okay. Let's look at a document,</p> <p>13 JTX 885. Are here, there's an email from</p> <p>14 Mr. Ingrassia to you and Steve Smith.</p> <p>15 A. Sorry. The dates?</p> <p>16 Q. March 6, over the weekend, on a</p> <p>17 Sunday.</p> <p>18 A. Okay.</p> <p>19 Q. Mr. Ingrassia reports back on a call</p> <p>20 he had with Eric Fornell. Says, "Very short call with</p> <p>21 Eric." On the three, "Bottom line, they'll do 26.</p> <p>22 Not a penny less. Straight from Board.</p> <p>23 "My tone was pretty straightforward</p> <p>24 but no equivocation at all on the messaging: it[s]</p> <p>CHANCERY COURT REPORTERS</p>
R. Skaggs - Direct Page 940	R. Skaggs - Direct Page 942
<p>1 A. That's correct.</p> <p>2 Q. All right. Let's move forward a</p> <p>3 little bit, early March 2016 before the leak.</p> <p>4 Columbia rejected a TransCanada proposal at \$24 a</p> <p>5 share; correct?</p> <p>6 A. I hesitate only because Mr. Girling</p> <p>7 never mentioned to me 24.</p> <p>8 Q. Mr. Skaggs, you heard the number 24 in</p> <p>9 early March?</p> <p>10 A. I did.</p> <p>11 Q. And it was rejected?</p> <p>12 A. We strongly suggested that that number</p> <p>13 not come up in a conversation because it would be</p> <p>14 roundly rejected.</p> <p>15 Q. Okay. And then TransCanada came back,</p> <p>16 and they proposed \$25.25 per share?</p> <p>17 A. Mr. Girling did extend that</p> <p>18 conditional offer.</p> <p>19 Q. And after a board meeting, Columbia</p> <p>20 rejected that proposal?</p> <p>21 A. That's correct.</p> <p>22 Q. And then TransCanada came back and</p> <p>23 said: Look, we don't want to negotiate against</p> <p>24 ourselves; tell us what we need to do to close the</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 [[26 period.</p> <p>2 "I didn't explain, justify, defend, or</p> <p>3 review history. Just 'management took direction from</p> <p>4 Board, this is bottom line.'"</p> <p>5 You have no reason to dispute that</p> <p>6 Mr. Ingrassia delivered this message to Eric Fornell</p> <p>7 on March 6?</p> <p>8 A. I just don't know. I know what this</p> <p>9 says, but I don't know that because the board never</p> <p>10 talked about 26 on or about March 6.</p> <p>11 Q. Listen to my question, please, sir.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Sitting here today, you have no basis</p> <p>14 to dispute that Mr. Ingrassia delivered this message</p> <p>15 to Eric Fornell on March 6?</p> <p>16 A. Right. This is an email from</p> <p>17 Ingrassia to -- well, I guess the email is to our</p> <p>18 team. He's recounting a call he had with Eric. So</p> <p>19 that's all I can testify to.</p> <p>20 Q. Right. No basis to dispute that he</p> <p>21 delivered that message to Eric Fornell on March 6?</p> <p>22 A. That's certainly what he says here.</p> <p>23 Q. Let's look at another document, 893.</p> <p>24 And there, you say, "Sig" -- on March 6, still that</p> <p>CHANCERY COURT REPORTERS</p>

R. Skaggs - Direct

<p style="text-align: right;">R. Skaggs - Direct Page 943</p> <p>1 Sunday -- "I've pasted a note below from Tim Ingrassia</p> <p>2 [] that recounts his latest phone discussion with</p> <p>3 Wells Fargo (Eric Fornell)."</p> <p>4 And if we look at the message from</p> <p>5 Mr. Ingrassia, he says, "Eric just phoned back.</p> <p>6 "They are convening [an] 'all hands</p> <p>7 meeting'"</p> <p>8 Right? Talk about TransCanada.</p> <p>9 And then he says, "In essence, I said,</p> <p>10 ok, we've been clear, come back with yes or no when</p> <p>11 you can.</p> <p>12 "But implication of my answer is</p> <p>13 presumably if they say yes <u>tomorrow at 3pm</u>, that we'd</p> <p>14 scramble to sign by <u>Tuesday at 4pm</u>."</p> <p>15 At that time you didn't have board</p> <p>16 authorization yet to accept a \$26 per share offer;</p> <p>17 correct?</p> <p>18 A. Certainly not.</p> <p>19 Q. If we look above, the same email,</p> <p>20 Mr. Cornelius responds, maybe we should have "a call</p> <p>21 tonight ... to bring [everybody] up to speed [] give</p> <p>22 them a chance to comment. Also if the full board sees</p> <p>23 \$26 as a number they won't support the sooner you</p> <p>24 could feed that back to [Wells Fargo] the better."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 945</p> <p>1 However, I would like to reinstate this evening's</p> <p>2 Board Teleconference"</p> <p>3 The purpose is to talk about</p> <p>4 TransCanada's efforts "to resuscitate [the] []</p> <p>5 transaction" Correct?</p> <p>6 What you say there is --</p> <p>7 A. Excuse me. "[R]esuscitate a</p> <p>8 potential" Okay. I see it.</p> <p>9 Q. What you say there is, "In particular,</p> <p>10 we want to discuss our bias toward a line-in-the-sand</p> <p>11 at \$26 [per] share.</p> <p>12 A. That's what this note says.</p> <p>13 Q. That was partially your bias; correct?</p> <p>14 A. I just can't recall on March 6 whether</p> <p>15 that was a bias, a point of view, or what. I just</p> <p>16 can't recall.</p> <p>17 Q. Is it fair to say it was management's</p> <p>18 bias to draw a line in the sand at 26?</p> <p>19 A. I'm not sure we were of a mind to draw</p> <p>20 lines at that point.</p> <p>21 Q. Well, the email certainly says --</p> <p>22 A. I think it's fair -- I think it's</p> <p>23 fair --</p> <p>24 Q. Sir, the email certainly says, "[W]e</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Direct Page 944</p> <p>1 Right?</p> <p>2 A. That's what this note says.</p> <p>3 Q. At this time at least one board member</p> <p>4 was stuck at \$26.50 a share; correct?</p> <p>5 A. I have no recollection of that.</p> <p>6 Q. I'll show you a document, 889, Joint</p> <p>7 Exhibit 889, March 6, Bob Skaggs to Tim Ingrassia</p> <p>8 telling Goldman Sachs, "Sig and I spoke 30-minutes</p> <p>9 ago. He indicated that at least one of our [board]</p> <p>10 members is stuck at \$26.50. Although Sig believes our</p> <p>11 recommendation will carry the day, he acknowledged</p> <p>12 that work would have to [be] done."</p> <p>13 Did you feel any discomfort that</p> <p>14 Goldman Sachs had already said \$26, straight from</p> <p>15 board; and if they accept, the implication would be</p> <p>16 we'd scramble to sign as the board was not there yet?</p> <p>17 Did you feel any discomfort about</p> <p>18 that?</p> <p>19 A. Again, I'm not sure I follow the</p> <p>20 question.</p> <p>21 Q. Okay. Now, let's look at the next</p> <p>22 document, 887. Here, still on March 6, you convene --</p> <p>23 quickly convene a board meeting. You say, "I</p> <p>24 apologize for the last minute course correction.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 946</p> <p>1 want to discuss our bias toward a line-in-the-sand at</p> <p>2 \$26 [] share." Correct?</p> <p>3 A. That's what this note reflects.</p> <p>4 Q. And you are confident, are you not,</p> <p>5 that you wanted to come to a collective judgment on</p> <p>6 whether it made sense or not to have a deal at \$26 a</p> <p>7 share?</p> <p>8 A. Throughout, we were debating what was</p> <p>9 the proper price.</p> <p>10 Q. As of March 6, you wanted to come to a</p> <p>11 collective judgment as to whether it made sense or not</p> <p>12 to do a deal at \$26?</p> <p>13 A. To reengage with them, that's correct.</p> <p>14 Q. At \$26; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Let's look at JTX 890. And</p> <p>17 here, you send an email to yourself. And above, you</p> <p>18 say that these are notes that you plan to use at the</p> <p>19 meeting. Let's look at those notes.</p> <p>20 A. I'm sorry. What are the dates that</p> <p>21 we're talking about here?</p> <p>22 Q. Still March 6.</p> <p>23 A. This is after we put our pencils down?</p> <p>24 I just need to get reoriented on time.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Direct

<p style="text-align: right;">R. Skaggs - Direct Page 947</p> <p>1 Q. March 6, sir. Look at these notes.</p> <p>2 There, you say in your notes, "After</p> <p>3 taking stock, deliberating with [Goldman Sachs], []</p> <p>4 [confirming] with Sig, we authorized [Goldman Sachs]</p> <p>5 to tell Wells that we would take an offer of no less</p> <p>6 than \$26 [per] share to our Board for its</p> <p>7 consideration. We made it absolutely clear that (a)</p> <p>8 the CPG board had not signed-off on the number and (b)</p> <p>9 we would not even ask the CPG board to consider a</p> <p>10 number less than \$26 [per] share."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And if you look above --</p> <p>14 ATTORNEY van KAWEGEN: Just zoom out,</p> <p>15 Joe, on the left. Right.</p> <p>16 Q. There, you say in your email on</p> <p>17 March 6 that these are notes you plan to use during</p> <p>18 the meeting with the board in the evening.</p> <p>19 Do you see that?</p> <p>20 A. I do see that.</p> <p>21 Q. And when you wrote these notes,</p> <p>22 preparing for the board meeting, you knew that</p> <p>23 Goldman's message was not conditioned on board</p> <p>24 approval.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 949</p> <p>1 ATTORNEY van KAWEGEN: Can we put up</p> <p>2 PTO, paragraph 368.</p> <p>3 Q. Do you see that, sir?</p> <p>4 A. I do.</p> <p>5 Q. "At 11:59 p.m., Central Time, on</p> <p>6 March 8, 2016, the exclusivity period under the</p> <p>7 Exclusivity Agreement, as extended on March 2, 2016,</p> <p>8 expired."</p> <p>9 A. That's what this says. I'm sure it's</p> <p>10 correct.</p> <p>11 Q. So on March 9 when TransCanada came</p> <p>12 back with \$26 per share, 90 percent cash, 10 percent</p> <p>13 equity, countering at 26, exclusivity had expired?</p> <p>14 A. Yes.</p> <p>15 Q. You also knew that there was a</p> <p>16 possibility of a leak of the deal discussions with</p> <p>17 TransCanada?</p> <p>18 A. On or about that date, we became aware</p> <p>19 that that was a possibility.</p> <p>20 Q. Okay. I want to look at the board</p> <p>21 meetings.</p> <p>22 A. I'm sorry?</p> <p>23 Q. I want to look at the board minutes.</p> <p>24 We put them on your screen. That's Joint Exhibit 191,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Direct Page 948</p> <p>1 A. Again, I don't follow you. Every deal</p> <p>2 was conditioned on board approval.</p> <p>3 Q. Well, let's look at 889, JTX 889. At</p> <p>4 the bottom, you see that email that we just looked at</p> <p>5 where Mr. Ingrassia was reporting back to you.</p> <p>6 "Bottom line, they'll do 26. Not a penny less.</p> <p>7 Straight from Board."</p> <p>8 When you scroll up, there's a response</p> <p>9 from you. Bob Skaggs, Tim Ingrassia: "Tim,</p> <p>10 thanks"</p> <p>11 Right? Do you see that?</p> <p>12 A. That's what that says.</p> <p>13 Q. Now, is it fair to say that on</p> <p>14 March 9, TransCanada came back with a \$26 per share</p> <p>15 counteroffer, but now it was 90 percent cash,</p> <p>16 10 percent equity?</p> <p>17 A. That's a fair statement.</p> <p>18 Q. By then, exclusivity had expired?</p> <p>19 A. What was the date again?</p> <p>20 Q. March 9, the offer; March 8,</p> <p>21 exclusivity expired?</p> <p>22 A. I'll have to accept that. I just</p> <p>23 don't recall the exact time of day that the</p> <p>24 expiration -- but it certainly expired.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 950</p> <p>1 page 13.</p> <p>2 See it's a March 10th board meeting?</p> <p>3 ATTORNEY van KAWEGEN: And if you</p> <p>4 scroll down, Joe.</p> <p>5 Q. There's a discussion about</p> <p>6 TransCanada's indicative offer. "TransCanada's</p> <p>7 indicative offer was to acquire the Company at a value</p> <p>8 of \$26 per share, with 10% of the consideration being</p> <p>9 composed of TransCanada common stock and the remainder</p> <p>10 in cash, with a termination fee of 4.5% of the</p> <p>11 transaction value."</p> <p>12 Right?</p> <p>13 "Because TransCanada contemplated a</p> <p>14 fixed exchange ratio, its indicative offer was</p> <p>15 essentially \$23.40 in cash and a number of shares of</p> <p>16 TransCanada common stock valued at \$2.60 as of the</p> <p>17 signing date."</p> <p>18 That's what the minutes say, right?</p> <p>19 A. That's what the minutes say.</p> <p>20 Q. And then if we go to the next page, at</p> <p>21 the top, there's a discussion about the termination</p> <p>22 fee.</p> <p>23 "With respect to the termination fee,</p> <p>24 the Board determined that a termination fee of 4.5%</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">R. Skaggs - Direct Page 951</p> <p>1 would be unacceptable, but took comfort in the fact</p> <p>2 that Mr. Girling had indicated to Mr. Skaggs that</p> <p>3 TransCanada was willing to negotiate on that point."</p> <p>4 Ultimately, it was Mr. Kettering who</p> <p>5 was tasked with negotiating the termination fee;</p> <p>6 correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Board minutes continue: "[T]he board</p> <p>9 concluded that TransCanada's indicative offer was a</p> <p>10 basis for moving forward with discussions and</p> <p>11 authorized management to continue working toward a</p> <p>12 potential transaction, including revising the merger</p> <p>13 agreement to reflect the new structure and commencing</p> <p>14 more in-depth due diligence on TransCanada's</p> <p>15 business."</p> <p>16 Sir, that does not state that</p> <p>17 TransCanada was willing to negotiate on the point that</p> <p>18 the deal would be at \$26, including 10 percent equity;</p> <p>19 correct?</p> <p>20 A. That's not written in the minutes.</p> <p>21 Q. And, to your knowledge, the board did</p> <p>22 not instruct management to reject TransCanada's offer</p> <p>23 at \$26, including 10 percent equity?</p> <p>24 A. At this point it was an indicative</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 953</p> <p>1 A. But we can read the minutes. The</p> <p>2 minutes say what the minutes say.</p> <p>3 Q. And they say it was a basis for moving</p> <p>4 forward; correct?</p> <p>5 A. Correct.</p> <p>6 Q. You did not tell Mr. Girling that</p> <p>7 Columbia rejected TransCanada's proposal, did you?</p> <p>8 A. No.</p> <p>9 Q. Let's take a look at the text messages</p> <p>10 between you, Steve Smith and Glen Kettering and Bob</p> <p>11 Smith on March 10th, same day as this board meeting.</p> <p>12 It's Joint Exhibit 1778. March 10th, same day.</p> <p>13 ATTORNEY van KAWEGEN: Joe, if you</p> <p>14 can blow it up so we can also see who it's from.</p> <p>15 Thank you.</p> <p>16 Q. So here, Bob Smith on March 10th is</p> <p>17 reporting back about his call he just had "with</p> <p>18 Christine Johnston at Taurus," talked about "the stock</p> <p>19 exchange events for the day," "calls quieted down as</p> <p>20 the day progressed."</p> <p>21 Does this help orient you in time that</p> <p>22 the leak had come out?</p> <p>23 A. I just need to digest what this said</p> <p>24 and think about the timing here.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Direct Page 952</p> <p>1 offer.</p> <p>2 Q. We saw with the \$25.25 offer, that the</p> <p>3 board instructed you to reject it. Here, they did not</p> <p>4 do that; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Taking a step back, after Columbia</p> <p>7 drew a line in the sand at \$26 per share on March 6,</p> <p>8 TransCanada told Columbia on March 9 about their</p> <p>9 counteroffer at \$26 per share, with a 10 percent</p> <p>10 equity component, and the board did not instruct you</p> <p>11 to reject that counteroffer; correct?</p> <p>12 A. That's correct, because it was --</p> <p>13 Q. Okay.</p> <p>14 A. -- a provisional indicative offer.</p> <p>15 Q. In fact, the counteroffer of \$26,</p> <p>16 including 10 percent equity, was a basis for moving</p> <p>17 forward; correct?</p> <p>18 A. To continue to negotiate, that's</p> <p>19 correct.</p> <p>20 Q. It was a basis for moving forward, is</p> <p>21 what it says in the minutes; correct?</p> <p>22 A. A basis for negotiations, is what I</p> <p>23 would say.</p> <p>24 Q. Sure, but --</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 954</p> <p>1 Q. Well, it's March 10th. Okay.</p> <p>2 A. I see that, but --</p> <p>3 Q. Here, they say -- here, Mr. Smith,</p> <p>4 which is Bob Smith, reports back, "They[re] beginning</p> <p>5 to get their outside counsel started again and will be</p> <p>6 folding in language [regarding] equity prior to</p> <p>7 sending over their comments. I suggested to her that</p> <p>8 we not allow this to drag out and that we focus our</p> <p>9 respective teams on bringing it to conclusion within a</p> <p>10 couple of days. She agreed, however, I'm not</p> <p>11 confident that she will be able to control the Mayer</p> <p>12 Brown folks. Good to see them beginning to move</p> <p>13 already."</p> <p>14 That's a text message you received on</p> <p>15 March 10th; right?</p> <p>16 A. That's what this would suggest.</p> <p>17 Q. And you did not write back saying,</p> <p>18 whoa, whoa, what are you talking about? Let's not</p> <p>19 bring this to conclusion; right?</p> <p>20 A. I don't recall how I reacted to this.</p> <p>21 Q. Doesn't suggest that there's agreement</p> <p>22 at \$26 per share, including equity, correct?</p> <p>23 10 percent equity?</p> <p>24 A. I'm not sure what it suggested.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p>1 Q. All right. Well, let's look at your</p> <p>2 email.</p> <p>3 A. Sorry. My email or text?</p> <p>4 Q. The next document will be your email,</p> <p>5 Joint Exhibit 958. This, at the top, you'll see is a</p> <p>6 March 11th email from you to Sig Cornelius, but you're</p> <p>7 forwarding an email from you to the board.</p> <p>8 A. Okay. Again, bear with me. This is</p> <p>9 what I'm writing to Sig?</p> <p>10 Q. You have a March 10th that you</p> <p>11 forwarded on March 11. But on March 10th, you email</p> <p>12 the Columbia Pipeline board.</p> <p>13 A. Okay.</p> <p>14 Q. "Project Constellation -- Day In</p> <p>15 Review."</p> <p>16 A. I see that.</p> <p>17 Q. Let's go to the last page of this</p> <p>18 document. "Today's Follow-Up With Taurus.</p> <p>19 "In conversations that Steve had with</p> <p>20 Taurus' deal lea[d] (Francois), I had with Taurus' CEO</p> <p>21 and Bob Smith had with Taurus' legal counsel, we</p> <p>22 confirmed that Capricorn will continue to engage in</p> <p>23 the Project Constellation process -- with the clear</p> <p>24 understanding that, among other considerations, (a)</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 A. No clue.</p> <p>2 Q. Let me show you. Joint Exhibit 956.</p> <p>3 Email from Hugh Babowal to his team at Wells Fargo on</p> <p>4 March 10th. "So they accepted \$26 with 10% stock but</p> <p>5 are trying to negotiate down the break fee. Russ is</p> <p>6 now getting cold feet. Unbelievable."</p> <p>7 No basis to dispute that Mr. Babowal</p> <p>8 wrote that to his Wells Fargo team, do you?</p> <p>9 A. No.</p> <p>10 Q. No basis to dispute that Mr. Babowal</p> <p>11 is a senior Wells Fargo banker?</p> <p>12 A. I'm not sure he's a senior, but he's</p> <p>13 part of the Wells team at this point.</p> <p>14 Q. Let's go to another Wells Fargo</p> <p>15 document. I showed you an earlier version of this at</p> <p>16 your deposition, but it's Joint Exhibit 1120.</p> <p>17 You see this is a March 16th memo from</p> <p>18 Eric Fornell and Hugh Babowal and many, many other</p> <p>19 people at Wells Fargo to the fairness opinion</p> <p>20 committee at Wells Fargo.</p> <p>21 A. That's what this seems to reflect,</p> <p>22 yes.</p> <p>23 Q. If you scroll down, you'll see there's</p> <p>24 a discussion about the background of the transaction.</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 the break fee was subject to negotiation; (b) ASAP, we</p> <p>2 must diligence Taurus' equity (financial plan); and</p> <p>3 (c) in short order we must agree on a critical path to</p> <p>4 bring this process to closure."</p> <p>5 You wrote this on March 10th; correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And it continues, "By late afternoon,</p> <p>8 indications were that Taurus' outside legal counsel</p> <p>9 was re-engaging, and Francois committed to provide a</p> <p>10 critical path for diligence and completion of the</p> <p>11 Merger Agreement by [close of business] tomorrow</p> <p>12 (Friday)."</p> <p>13 You were truthful and accurate when</p> <p>14 you were informing the board about this?</p> <p>15 A. Yes, sir.</p> <p>16 Q. No discussion here that you expressed</p> <p>17 any disagreement with the counteroffer at \$26 per</p> <p>18 share, including 10 percent equity?</p> <p>19 A. It's certainly not reflected in these</p> <p>20 two paragraphs.</p> <p>21 Q. Okay. Did you know that Wells Fargo</p> <p>22 understood that Columbia accepted the counterproposal</p> <p>23 of \$26 per share, including 10 percent equity? Did</p> <p>24 you know that?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 And there, these many Wells Fargo bankers are telling</p> <p>2 the Wells Fargo fairness committee the following:</p> <p>3 "The Taurus board met in the days following and, on</p> <p>4 March 9, [], approved the submission of a verbal offer</p> <p>5 of \$26.00 per share, consisting of 90% cash and 10%</p> <p>6 stock. The Capricorn board accepted this preliminary</p> <p>7 offer on the morning of March 10, 2016."</p> <p>8 You have no basis to dispute that this</p> <p>9 in the final memo to Wells Fargo's fairness committee</p> <p>10 assessing this transaction?</p> <p>11 A. No, sir, no basis to dispute that</p> <p>12 that's reflected in this.</p> <p>13 Q. Were you aware that senior executives</p> <p>14 at TransCanada also understood that Columbia accepted</p> <p>15 their counteroffer at \$26, including 10 percent</p> <p>16 equity?</p> <p>17 A. I'd be shocked.</p> <p>18 Q. Let me show you a document. Joint</p> <p>19 Exhibit 1779.</p> <p>20 These are text messages between Alex</p> <p>21 Pourbaix and Karl Johannson. You knew that</p> <p>22 Mr. Pourbaix was the chief operating officer of</p> <p>23 TransCanada at the time; right?</p> <p>24 A. I'm sorry, who was?</p> <p>CHANCERY COURT REPORTERS</p>

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<p>1 Q. Alex Pourbaix.</p> <p>2 A. I knew he was a senior leader, not</p> <p>3 sure what the position was.</p> <p>4 Q. And you also understood that Karl</p> <p>5 Johansson was a senior executive?</p> <p>6 A. Yes.</p> <p>7 Q. Well, look. Look at 8:17.</p> <p>8 A. 8:17? I'm sorry.</p> <p>9 Q. P.m.; right?</p> <p>10 A. I'm sorry.</p> <p>11 Q. It says, "Yeah...I just talked" --</p> <p>12 it's the third entry.</p> <p>13 A. Okay, gotcha.</p> <p>14 Q. "Yeah...I just talked to Francois and</p> <p>15 he[s] confident they will do it." This is March on</p> <p>16 9th. "The[y] have called a Board meeting for tomorrow</p> <p>17 morning. Wow. We went from killing it to a done deal</p> <p>18 that fast. We will not let you down. We will make it</p> <p>19 work and get the synergies."</p> <p>20 Then, scrolling down, there's a text</p> <p>21 message from Mr. Pourbaix to Karl Johansson, the</p> <p>22 following morning at March 10th, 10:30 a.m.</p> <p>23 "Just landing in Toronto. We had a</p> <p>24 deal as offered but now it[s] all [blank]" --</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 problems."</p> <p>2 No reason to think that Mr. Pourbaix</p> <p>3 didn't write that; right?</p> <p>4 A. No reason to believe that he didn't.</p> <p>5 Q. All right. And at this time, you were</p> <p>6 the CEO of Columbia?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. March 10th, he's writing this,</p> <p>9 talking about a call to you and Russ.</p> <p>10 Let me show you another document.</p> <p>11 Joint Exhibit 952.</p> <p>12 Mr. Fornell, the banker at Wells</p> <p>13 Fargo, talking to his team. March 10th, he's writing,</p> <p>14 "The Capricorn board is freaking out and told the</p> <p>15 management team to get a deal done with 'whatever it</p> <p>16 takes' .. Oddly, the Capricorn team has relayed this</p> <p>17 info to Taurus."</p> <p>18 You have no reason, no basis to</p> <p>19 dispute that you spoke with Mr. Girling the morning of</p> <p>20 March 10th?</p> <p>21 A. That's correct.</p> <p>22 Q. You have no basis to dispute that</p> <p>23 Mr. Fornell is a senior banker?</p> <p>24 A. That's correct.</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 A. Yeah.</p> <p>2 Q. -- "with the leak that we are in</p> <p>3 discussions. What a cluster[blank]."</p> <p>4 Do you see that?</p> <p>5 A. I see that.</p> <p>6 Q. Here, Mr. Pourbaix, TransCanada's</p> <p>7 chief operating officer told his colleague that they</p> <p>8 "had a deal as offered."</p> <p>9 Do you see that?</p> <p>10 A. I do not see that yet.</p> <p>11 Q. "We had a deal as offered"</p> <p>12 ATTORNEY van KAWEGEN: Joe, can you</p> <p>13 highlight this for Mr. Skaggs. There you go.</p> <p>14 Q. "We had a deal as offered"</p> <p>15 Do you see that, Mr. Skaggs?</p> <p>16 A. Yes, I see that that's written in this</p> <p>17 text.</p> <p>18 Q. Then they're talking about the leak;</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. March 10th, from Alex Pourbaix to</p> <p>22 Mr. Johansson. "Russ just got off the phone with the</p> <p>23 CEO. They really want to do the deal still which</p> <p>24 makes sense. This is more their problem than our</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. Or that he's talking to his team?</p> <p>2 A. Apparently, that's correct.</p> <p>3 Q. Or that he would invent this?</p> <p>4 A. Well, he must have invented it because</p> <p>5 it's not ...</p> <p>6 Q. Right. But you have no reason to</p> <p>7 think that he would have a reason to invent it?</p> <p>8 A. He could have reasons to have done</p> <p>9 this.</p> <p>10 Q. Sure. All right.</p> <p>11 Go back to the text messages, 1779.</p> <p>12 And Mr. Pourbaix on March 10th says, "He" -- meaning</p> <p>13 referring to Russ -- "[had actually] come full circle</p> <p>14 to wanting to do it. We need to see where this shakes</p> <p>15 out. On the good side it may be an opp to go back to</p> <p>16 Capricorn with a lower price."</p> <p>17 Mr. Johansson responds, "I agree.</p> <p>18 Maybe we will benefit through this. It was nice to</p> <p>19 see Russ was on board. I was getting worried."</p> <p>20 And TransCanada did come back to</p> <p>21 Columbia with a lower price, did it not?</p> <p>22 A. Ultimately, they did.</p> <p>23 Q. March 14th?</p> <p>24 A. Can't recall the exact date, but</p> <p>CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">R. Skaggs - Direct Page 963</p> <p>1 that's certainly within the time frame.</p> <p>2 Q. I'll show you in a minute. But before</p> <p>3 we get there, at this time, March 10th, March 11 -- we</p> <p>4 just saw your email -- you were working towards</p> <p>5 completing in a timeline for completing the merger</p> <p>6 agreement; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And as you were working on this</p> <p>9 timeline towards completing the merger agreement,</p> <p>10 Spectra reached out to discuss a potential</p> <p>11 transaction.</p> <p>12 Do you recall that?</p> <p>13 A. They reached out; that's correct.</p> <p>14 Q. Let's take a look at Joint</p> <p>15 Exhibit 986. At the bottom, March 11, 2016, Mr. Ebel</p> <p>16 from Spectra is reaching out directly to you; correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And he's emailing you to express</p> <p>19 interest in discussing a potential transaction;</p> <p>20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. It is true, is it not, that Steve was</p> <p>23 about to go on vacation with his family at this time?</p> <p>24 A. I'm sorry, but who?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 965</p> <p>1 were working towards completing finalizing the merger</p> <p>2 agreement, Mr. Steve Smith was going on vacation with</p> <p>3 his family?</p> <p>4 A. Doesn't help refresh my recollection.</p> <p>5 I see what this says, and I don't doubt it. I just</p> <p>6 don't have a recollection of that.</p> <p>7 Q. You were in the middle of finalizing a</p> <p>8 \$14 billion transaction, Glen Kettering is tasked with</p> <p>9 negotiating the breakup fee, and Steve Smith is going</p> <p>10 on vacation; correct?</p> <p>11 A. Again, I have no recollection of that.</p> <p>12 I'm not disputing it. I just don't, sitting here</p> <p>13 today, remember that.</p> <p>14 Q. Meanwhile, Spectra continued to try to</p> <p>15 engage with you, is it not true?</p> <p>16 A. They indicated they would like to</p> <p>17 engage, but they did not follow up on an engagement.</p> <p>18 ATTORNEY van KAWEGEN: Joe, can you</p> <p>19 pull up PTO, paragraph 401, please.</p> <p>20 Q. This is March 12, the same day that</p> <p>21 Mr. Steve Smith was on his way to the hotel with his</p> <p>22 family.</p> <p>23 Stipulated fact: "On March 12, 2016,</p> <p>24 Spectra's Chief Development Officer contacted Goldman.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Direct Page 964</p> <p>1 Q. It's true, is it not, that at this</p> <p>2 time, Steve Smith was about to go on vacation with his</p> <p>3 family?</p> <p>4 A. I can't recall.</p> <p>5 Q. We'll get there.</p> <p>6 If you scroll up, there Mr. Kettering</p> <p>7 is telling Bob Smith -- sorry -- Bob Skaggs, you,</p> <p>8 Steve Smith, Bob Smith: "Steve, get on the plane</p> <p>9 fast."</p> <p>10 Does that help you refresh your memory</p> <p>11 that Mr. Smith, Steve Smith, was about to go on</p> <p>12 vacation with his family at the time?</p> <p>13 A. I just don't recall during this</p> <p>14 period. I'm not saying it's not true. I just can't</p> <p>15 recall.</p> <p>16 Q. That's okay.</p> <p>17 Let's take a look at a document, 1777.</p> <p>18 These are text messages between Mr. Smith and</p> <p>19 Mr. Poirier. And let's look at the entry for</p> <p>20 March 12. March 12, he's telling Francois, "On my way</p> <p>21 to hotel with family. I will call you when we get</p> <p>22 settled."</p> <p>23 Does this help refresh your memory</p> <p>24 that at this time, as Spectra was reaching out, as you</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Direct Page 966</p> <p>1 Goldman then stated to Skaggs, Smith, and Kettering</p> <p>2 that 'When [Spectra] gets serious about MA [the Chief</p> <p>3 Development Officer] tends to drive' and Spectra's</p> <p>4 contact 'can be interpreted as a sign that they are</p> <p>5 doing real work over there.'</p> <p>6 A. That's exactly what this says.</p> <p>7 Q. Sitting here today, you're not aware</p> <p>8 of any attempt to use the Spectra inbound to increase</p> <p>9 the price for TransCanada?</p> <p>10 A. TransCanada was aware that there was</p> <p>11 an inbound.</p> <p>12 Q. Listen to my question. You're not</p> <p>13 aware of any attempt to use the Spectra inbound to</p> <p>14 increase the price for TransCanada?</p> <p>15 A. Well, in what fashion? I'm not sure I</p> <p>16 follow the question. TransCanada was aware there was</p> <p>17 an inbound.</p> <p>18 ATTORNEY van KAWEGEN: Joe, can you</p> <p>19 just pull up the appraisal trial transcript, Joint</p> <p>20 Exhibit 1496, at 1023, line 23, through 1024, line 3.</p> <p>21 Q. "Question: My question is, your</p> <p>22 personal knowledge, sitting here today, are you aware</p> <p>23 of any attempt to use the Spectra inbound to increase</p> <p>24 the price with TransCanada?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Direct

R. Skaggs - Direct Page 967	R. Skaggs - Direct Page 969
<p>1 "Answer: [I'm] not aware." 2 You were asked that question and you 3 gave that answer during trial; correct? 4 A. That's what this would say. 5 Q. And you did not communicate to 6 TransCanada that, in light of the inbound, it should 7 commit to the \$26 transaction, including 10 percent 8 equity? 9 A. That's correct. 10 Q. Nor did you respond to Spectra with 11 anything other than the script that you ran by 12 TransCanada before using it? 13 A. Yes, that's correct. That was the 14 communiqué to Spectra. 15 Q. To be very clear, you did not respond 16 to Spectra with anything other than that script? 17 A. That's correct. 18 Q. Now, as you were working towards 19 finalizing a deal at 26, including 10 percent equity, 20 a large Columbia stockholder contacted you to talk 21 about the potential transaction. 22 Do you recall that? 23 A. No. 24 Q. Let me show you a document, Joint</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 large shareholder of Columbia Pipeline had asked you 2 to run a process? 3 A. I don't know. I don't recall. 4 Q. You don't recall telling the 5 TransCanada board -- the Columbia Pipeline board that 6 a large holder had suggested that they would not be 7 averse to owning TransCanada stock? 8 A. I don't recall. 9 Q. Or the stock of any other large 10 midstream management companies; correct? 11 A. I don't recall. 12 Q. All right. I'm going to talk about 13 March 14 when TransCanada reached out to talk about a 14 revised deal. I'm going to show you some text 15 messages. Got these after Mr. Kettering and you had 16 new counsel. 17 This is X5. You see it in front of 18 you. There's a March 14 text from Steve Smith to you, 19 Glen Kettering, March 14: "Francois wants to give me 20 or Glen a thorough update call on where they stand 21 with things at 2 to 2:30. I'm on the Golf course at 22 that time, Glen, can you do it?" 23 Mr. Smith is on vacation, right? 24 So Mr. Kettering responds, "Sure</p> <p>CHANCERY COURT REPORTERS</p>
R. Skaggs - Direct Page 968	R. Skaggs - Direct Page 970
<p>1 Exhibit 1064. And here, at the top, there's a 2 reference from Glen Kettering to you talking about how 3 a large holder is suggesting a process. March 13. If 4 we scroll down, there's an email on March 13 talking 5 about a communication with Adam Ward, with a request 6 to have a call with Bob. 7 At the bottom it says, "We feel 8 strongly that given the bid from TransCanada you 9 should start a strategic review and test the market. 10 We are on the same page that the company is worth more 11 than the current stock price but at a minimum we 12 should see if the long-term value of the firm can be 13 realized more rapidly. Further given the likely 14 rebound in the market we are not averse to owning 15 stock in [TransCanada], [Enbridge], [Spectra], 16 [NextEra], [et cetera]. We are large shareholders of 17 those firms as a group already." 18 After you received this message, you 19 did not reach out to Enbridge, Spectra, NextEra, or 20 any potential bidder to talk about a potential 21 transaction; correct? 22 A. That's correct. 23 Q. You did not inform the board after 24 this March 13 outreach from a large holder that a</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 thing. 2:00 p.m. preferred as we have RMC at 3:00 but 2 either works. Any messages you guys want me to 3 deliver?" 4 You respond, "Gotta keep pushing. We 5 wouldn't be surprised to see more inbounds." 6 That is you saying: Keep pushing 7 towards finalizing a deal at 26, including 10 percent 8 equity; right? 9 A. I don't know specifically. But I 10 would assume, given the timing, that that's what 11 that's intended to mean. 12 Q. So Steve Smith responds, "Not sure, I 13 asked him what he wanted" -- meaning Francois -- "and 14 he said [that] they wanted to provide an update of 15 where they were with things. You might point out that 16 the leak has attracted a lot of attention. We need to 17 get this signed up." 18 At this point in time there is no 19 revised offer from TransCanada at \$25.50 per share? 20 A. We were still working on their 21 provisional offer. 22 Q. Let's take a look at your email to the 23 board on March 14. That's Joint Exhibit 1087. 24 You say, "At the outset, I want to</p> <p>CHANCERY COURT REPORTERS</p>

R. Skaggs - Direct

R. Skaggs - Direct Page 971	R. Skaggs - Direct Page 973
<p>1 thank you for making time on very short notice to</p> <p>2 participate in this evening's Board Teleconference."</p> <p>3 You talk about the fast and furious</p> <p>4 developments in Project Constellation.</p> <p>5 And then you say, based on certain</p> <p>6 considerations, "[TransCanada] has 'revised its</p> <p>7 offer.'"</p> <p>8 Doesn't say "best and final" anywhere</p> <p>9 in your email to the board, does it?</p> <p>10 A. It does not in the email.</p> <p>11 Q. And, actually, when Mr. Girling came</p> <p>12 to you at \$25.25 in cash, he told you that it was best</p> <p>13 and final; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And then it wasn't; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Now, after having these conversations</p> <p>18 on March 14 when you received the revised offer, you</p> <p>19 don't recall anything to determine how TransCanada's</p> <p>20 stock price performed?</p> <p>21 A. Excuse me? I didn't hear your</p> <p>22 question.</p> <p>23 Q. Sure. You don't recall doing anything</p> <p>24 to determine how TransCanada's stock price performed</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. No? Let me show you something.</p> <p>2 Mr. Poirier testified in the appraisal trial. I want</p> <p>3 to show you his testimony.</p> <p>4 ATTORNEY van KAWEGEN: Joe, please</p> <p>5 put up JTX 1439 at 420, lines 17 through 421, line 7.</p> <p>6 A. I'm sorry. This is when?</p> <p>7 Q. This was the appraisal trial.</p> <p>8 A. Okay.</p> <p>9 Q. Same trial that you testified in</p> <p>10 before.</p> <p>11 "Question: So is it your position</p> <p>12 that TransCanada was still interested in acquiring</p> <p>13 Columbia for \$26 per share on March 14th of 2016?</p> <p>14 "Answer: We had put pencils down on</p> <p>15 that alternative, but we hadn't put it to bed, yes.</p> <p>16 "The Court: What is that distinction?</p> <p>17 What does that mean?</p> <p>18 "Answer: It means that if they had</p> <p>19 said to no to 25.50 all cash, we would have</p> <p>20 reconsidered being prepared to take the risk of</p> <p>21 issuing stock as consideration along with the cash</p> <p>22 component of the transaction. []"</p> <p>23 And you know that Mr. Poirier was an</p> <p>24 investment banker before he joined TransCanada?</p> <p>CHANCERY COURT REPORTERS</p>
R. Skaggs - Direct Page 972	R. Skaggs - Direct Page 974
<p>1 between March 14 and March 17 of 2016?</p> <p>2 A. Our advisors and our team were looking</p> <p>3 at their stock price on an hourly basis.</p> <p>4 Q. Isn't it fair to say that you don't</p> <p>5 recall asking your advisors to provide an analysis of</p> <p>6 TransCanada's stock price? You don't recall doing</p> <p>7 that?</p> <p>8 A. They were doing that -- that</p> <p>9 throughout this process because the stock, the</p> <p>10 performance of TransCanada stock was critical to their</p> <p>11 financing plan.</p> <p>12 Q. Do you recall asking them, saying:</p> <p>13 Goldman, please provide me with an analysis?</p> <p>14 A. Personally, I did not. But I'm sure</p> <p>15 our financial team --</p> <p>16 Q. Do you recall receiving a Goldman</p> <p>17 Sachs analysis between March 14 and March 17 analyzing</p> <p>18 the stock price performance of TransCanada?</p> <p>19 A. I don't recall.</p> <p>20 Q. Now, what's happening here is that</p> <p>21 TransCanada was using your commitment to the deal as</p> <p>22 an opportunity to come back with a lower price and</p> <p>23 test your resolve?</p> <p>24 A. No.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 A. I was aware of that.</p> <p>2 Q. I want to show you something else.</p> <p>3 Page 422, lines 1 through 4. Here he testifies:</p> <p>4 "Question: You didn't tell Columbia</p> <p>5 that you were interested in considering a transaction</p> <p>6 at 26 if they had said no to 25.50 all cash, did you?</p> <p>7 "Answer: That's correct."</p> <p>8 No basis to dispute this testimony, do</p> <p>9 you?</p> <p>10 A. No, sir. That's what this transcript</p> <p>11 says.</p> <p>12 Q. Right. Now, you did discuss</p> <p>13 TransCanada's stock price with Glen Kettering and</p> <p>14 Steve Smith on March 15.</p> <p>15 Do you recall doing that?</p> <p>16 A. No, sir.</p> <p>17 Q. Let's go back to X5. Again, these are</p> <p>18 text messages between you, Glen Kettering, Steve</p> <p>19 Smith.</p> <p>20 March 15, "Check [TransCanada]'s share</p> <p>21 price." Right?</p> <p>22 A. I'm sorry.</p> <p>23 Q. Glen Kettering.</p> <p>24 A. This is Glen Kettering.</p> <p>CHANCERY COURT REPORTERS</p>

R. Skaggs - Direct

R. Skaggs - Direct Page 975	R. Skaggs - Direct Page 977
<p>1 Q. To you.</p> <p>2 A. That's what this says. Consistent</p> <p>3 with we were watching their stock price constantly.</p> <p>4 Q. March 15. Bob Skaggs, "Yeah. So,</p> <p>5 what does that say to us \$.25/share."</p> <p>6 Response from Glen Kettering, "That's</p> <p>7 what the math would suggest. Only \$1 off what</p> <p>8 Francois quoted as the pre leak level. If it closes</p> <p>9 like this tomorrow, we may want to pursue."</p> <p>10 Does that help refresh your memory</p> <p>11 that you were talking about TransCanada stock price</p> <p>12 around March 15, 2016?</p> <p>13 A. Generally. I mean, again, we were</p> <p>14 looking at that stock price constantly. But I just</p> <p>15 can't recall the specifics in and around this date</p> <p>16 other than we're watching it.</p> <p>17 Q. Let's go down. On March 16, next day.</p> <p>18 Bob Skaggs, March 16, "Marty believes the deal is a</p> <p>19 straight-forward yes."</p> <p>20 That's Marty Kittrell; right?</p> <p>21 A. That would be, yes.</p> <p>22 Q. Steve Smith, "Are you going to pop</p> <p>23 Russ in the nose and demand \$25.75?"</p> <p>24 A. That's what this says.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 proxy. You understood that the purposes of the proxy</p> <p>2 was to inform shareholders about the process that you</p> <p>3 went through so they could make an informed decision</p> <p>4 as to whether to approve or not approve the</p> <p>5 transaction?</p> <p>6 A. That's correct.</p> <p>7 Q. You also understood that shareholders</p> <p>8 would rely on information in the proxy when they</p> <p>9 decided to vote to approve or disapprove the</p> <p>10 transaction?</p> <p>11 A. That's correct.</p> <p>12 Q. You personally approved the proxy</p> <p>13 before it was filed?</p> <p>14 A. That's correct.</p> <p>15 Q. You had a chance to review and comment</p> <p>16 on the proxy before it was finalized?</p> <p>17 A. That's correct.</p> <p>18 Q. As part of the overall process of</p> <p>19 preparing the proxy, you personally provided the</p> <p>20 information to be included in the proxy?</p> <p>21 A. That's correct.</p> <p>22 Q. And when you made your comments, you</p> <p>23 made them in your capacity as chairman and CEO of</p> <p>24 Columbia?</p> <p>CHANCERY COURT REPORTERS</p>
R. Skaggs - Direct Page 976	R. Skaggs - Direct Page 978
<p>1 Q. Glen responds, "I told Your best buddy</p> <p>2 they're master TFers."</p> <p>3 A. That's what --</p> <p>4 Q. Sitting here today, yes or no, you did</p> <p>5 not inform the board that, under TransCanada's own</p> <p>6 logic, the TransCanada stock price now supported a</p> <p>7 deal in cash at \$25.75?</p> <p>8 A. I don't believe so.</p> <p>9 Q. You did not go back to tell</p> <p>10 TransCanada that Columbia wanted to pursue a</p> <p>11 transaction at \$25.75 in cash, given TransCanada's</p> <p>12 stock price performance?</p> <p>13 A. The board never authorized a</p> <p>14 counteroffer.</p> <p>15 Q. In fact, you ordered NetJets to</p> <p>16 convene the board in person and get the deal signed;</p> <p>17 right?</p> <p>18 A. At the behest of our board. They</p> <p>19 wanted to sit down in person before they agreed to any</p> <p>20 sort of transaction.</p> <p>21 Q. Twenty-five cents on a float of</p> <p>22 400 million shares is \$100 million; right?</p> <p>23 A. That's what math would suggest.</p> <p>24 Q. Let's talk a little bit about the</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 A. That was my job at that point,</p> <p>2 correct.</p> <p>3 Q. And in front of you, there's a</p> <p>4 document in the spiral book. It's JTX 1291.</p> <p>5 A. I don't have a spiral -- I'm sorry, a</p> <p>6 stand-alone document?</p> <p>7 Q. A stand-alone document I gave you</p> <p>8 yesterday.</p> <p>9 A. No, don't have that.</p> <p>10 ATTORNEY van KAWWEGEN: Your Honor,</p> <p>11 may I approach?</p> <p>12 THE COURT: Please.</p> <p>13 A. Thank you.</p> <p>14 Q. Mr. Skaggs, just turn to the third</p> <p>15 page of this document. Bottom is 003.</p> <p>16 A. .003?</p> <p>17 Q. Correct.</p> <p>18 A. Correct.</p> <p>19 Q. That's your signature, is it not?</p> <p>20 A. That is.</p> <p>21 Q. Okay. You can put it to the side.</p> <p>22 Do you know whether the proxy</p> <p>23 discloses that the parties were working together</p> <p>24 towards a deal at \$26, including 10 percent equity?</p> <p>CHANCERY COURT REPORTERS</p>

R. Skaggs - Direct

R. Skaggs - Direct		Page 979
1	A. Excuse me?	
2	Q. Do you know one way or the other	
3	whether the proxy discloses that the parties were	
4	working together towards a deal at \$26, including	
5	10 percent equity, in March of 2016?	
6	A. I don't know. I'd have to look at the	
7	proxy to make that determination.	
8	Q. Do you know one way or the other	
9	whether the proxy discloses that based on	
10	TransCanada's stock price on March 15, March 16, you	
11	could have demanded \$25.75 a share?	
12	A. I don't know that.	
13	ATTORNEY van KAWEGEN: Your Honor,	
14	Exhibit X5 is a demonstrative that was a	
15	cross-demonstrative. We move it into evidence under	
16	Delaware Rule 1006 as a compilation or a summary that	
17	is helpful to the Court.	
18	ATTORNEY OLSEN: Your Honor, I'd just	
19	make the same objection as I did yesterday. I have no	
20	problem with adding them to the record, but I don't	
21	think we should be cribbing exhibits to introduce into	
22	evidence.	
23	THE COURT: I'm going to accept it on	
24	the same basis.	
CHANCERY COURT REPORTERS		

R. Skaggs - Cross		Page 981
1	I was president of the group of gas -- regulated gas	
2	utilities that were under the Columbia umbrella and	
3	brand.	
4	Q. Okay. And we all know that when	
5	Columbia was spun off, you became the CEO and the	
6	chair of Columbia; right?	
7	A. Of the Columbia Pipeline Group. The	
8	Columbia utilities remained with NiSource.	
9	Q. Let's talk a minute about what you've	
10	done since you left Columbia.	
11	A. Okay.	
12	Q. Have you continued to work?	
13	A. I've continued to work.	
14	Q. What have you done?	
15	A. I've done board work and a limited	
16	amount of advisory work. So I've served on several	
17	public company -- New York Stock Exchange company	
18	boards. And, again, I've done a little bit of	
19	advisory work.	
20	Q. Give us just a real quick statement of	
21	what boards you've served on.	
22	A. I've served on Cloud Peak Energy.	
23	I've served on Team, Inc. Most recently I've been a	
24	board member with DTE Energy, which is the largest	
CHANCERY COURT REPORTERS		

R. Skaggs - Cross		Page 980
1	ATTORNEY van KAWEGEN: Sure, Your	
2	Honor.	
3	And so that the record is clear, the	
4	way we prepared the demonstrative, we had put the	
5	excerpt in the front, but then there's a slip sheet	
6	and then the full document is behind it.	
7	THE COURT: Understood.	
8	ATTORNEY van KAWEGEN: Thank you very	
9	much, Your Honor.	
10	CROSS-EXAMINATION	
11	BY ATTORNEY HARRELL:	
12	Q. Mr. Skaggs, good morning.	
13	A. Good morning.	
14	Q. Let's start out by giving a little	
15	bit, very quickly, some of your background.	
16	You worked at NiSource; right?	
17	A. Yes, sir.	
18	Q. What was your position at NiSource?	
19	A. When NiSource purchased Columbia, I	
20	was the president of our regulated gas utilities at	
21	Columbia, the date of the purchase by NiSource.	
22	Q. Okay. Did you continue in some	
23	capacity with Columbia while it was owned by NiSource?	
24	A. I did. Initially, that was my role.	
CHANCERY COURT REPORTERS		

R. Skaggs - Cross		Page 982
1	regulated gas and electric utility in Michigan.	
2	And while working with DTE Energy,	
3	they made the decision to spin off their group of	
4	pipeline gathering assets, their gas infrastructure.	
5	And that board asked me to take the lead on that	
6	spinoff and ultimately to serve as the executive	
7	chairman of the new company, DT Midstream.	
8	So I sit on the DTE board, the DTM	
9	board, and serve as executive chair of that board.	
10	Q. In an average week, how many hours do	
11	you work?	
12	A. Oh, wow. It fluctuates, as you can	
13	appreciate, depending on board meetings, disclosure	
14	points, and activity.	
15	I'd say today the annual average would	
16	be about 30 hours a week. A large portion of that is	
17	related to DTM because of the executive chairman role.	
18	I would also just observe that prior to the spin of	
19	DTM and the first year of this spin, I could have been	
20	spending as much as 60 hours a week doing that work.	
21	Q. Do you consider yourself fully	
22	retired?	
23	A. No, sir.	
24	Q. I want to talk about what retirement	
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1 discussions you had prior to the spin-off. Did you

2 have plans to retire prior to the spin?

3 **A. No plans whatsoever to retire prior to**

4 **the spin.**

5 Q. After the spin-off, did you have plans

6 to retire?

7 **A. I had no plans to retire.**

8 Q. And tell me what your thinking was at

9 that time.

10 **A. Well, once I became 60 years old, that**

11 **was the age I was as we were contemplating the spin.**

12 **And as the spin was executed -- I think I turned 61,**

13 **in fact, when the spin occurred.**

14 **And my thinking was, I'm all in and**

15 **making sure that the spun company was successful, and**

16 **I anticipate I was going to work a number of years.**

17 **Having said that, I was 60. And I**

18 **knew and I think the board knew that my shelf life was**

19 **quickly dwindling, my track was quickly dwindling,**

20 **because typically CEOs don't serve deep into their**

21 **60s.**

22 **So at that point, I'm aware of it.**

23 **I'm considering that and understanding that that's**

24 **going to have to be a transition item that I'm going**

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1 **to have to take up with the board.**

2 **But that was the extent of my thinking**

3 **at that point. I'm focused on running the company.**

4 Q. At the time of the spin, was the

5 company experiencing and did you expect it to

6 experience more challenging issues?

7 **A. Well, when we spun the company, I**

8 **mean, we were very bullish on the business. We did**

9 **anticipate, because it was such a unique company with**

10 **such extraordinary growth prospects, that it would**

11 **draw attention; people might be interested in**

12 **acquiring it. So that was on one side of the ledger.**

13 **The other side was we were undertaking**

14 **the largest growth projects that we had in our**

15 **history, not by a little, but by multiples. And we**

16 **were trying to become a public company. So we knew**

17 **that we had a full plate. And, again, I was very**

18 **excited about it.**

19 **The world changed, though, as we got**

20 **into August because that began this, this, what I call**

21 **a meltdown of the industry. So the world changed**

22 **dramatically at that point because oil prices crashed,**

23 **gas prices were low, and the whole complex was just**

24 **totally disrupted.**

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1 **And the reason that was a key to us is**

2 **because all of the growth that I mentioned, we were**

3 **going to have to finance that with equity, either MLP**

4 **equity or common equity. And the cost of capital just**

5 **shot out of the roof. And so that was a new, if you**

6 **will, dynamic or variable that came to the fore.**

7 Q. So just to summarize, you were going

8 to need to finance with equity expenditures that were

9 coming up, and you knew that there were going to be

10 inbounds that you had to deal with.

11 **A. Simplified, yes. Those were the two**

12 **key dynamics that we knew were there.**

13 Q. Let's talk about the document that you

14 talked about earlier, which is the succession planning

15 document. Let's look at Joint Exhibit 571, please.

16 And at the top, we see it's an email

17 from you to Marty, and then below that there's an

18 email to Marty.

19 And by the way, who was Marty?

20 **A. Marty Kittrell was one of our board**

21 **members at Columbia Pipeline Group.**

22 Q. And what was his background?

23 **A. He was deeply financial transactional**

24 **person. I'd tend to say smartest financial person**

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1 **I've probably met. But he was deeply experienced in**

2 **the finance accounting disclosure world and**

3 **large-scale transactions.**

4 Q. So what initiated this email to Marty

5 and with a discussion, as we can see, item two, "CEO

6 Succession Plan"?

7 **A. Well, on an annual basis, I do**

8 **one-on-ones with my board to cover the waterfront.**

9 **I'm sending out an agenda, a talking framework for our**

10 **one-on-one meeting. As you can see, we cover a lot of**

11 **different issues. And as meetings go, we also inject**

12 **other issues. But that was just the framework.**

13 **And I included the succession plan**

14 **discussion in this meeting because Sig Cornelius felt**

15 **strongly that, given we had issued equity, we're going**

16 **to be a stand-alone company, we needed -- we as a**

17 **board needed to begin talking about succession.**

18 **So that was the genesis of this.**

19 **Mr. Cornelius felt it was important to begin that**

20 **effort.**

21 Q. And one more question about board

22 members. We've heard Sig Cornelius testify here in

23 this trial. What was his background?

24 **A. Mr. Cornelius was an energy**

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R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 987</p> <p>1 professional, so he spent and continues to spend his</p> <p>2 career in the energy arena. The bulk of his career</p> <p>3 was at Conoco Phillips where he had operational roles</p> <p>4 domestically, internationally, finance roles,</p> <p>5 including being the CFO of the corporation, working on</p> <p>6 partnerships that Conoco Phillips operated. And he</p> <p>7 also served on other energy infrastructure boards</p> <p>8 after he left Conoco Phillips.</p> <p>9 Now he is the COO of a large LNG</p> <p>10 export operation that we have in the U.S. -- not that</p> <p>11 we have, but this company has.</p> <p>12 Q. Fair to say that, as CEO and chair,</p> <p>13 that you relied on him a lot?</p> <p>14 A. Absolutely. We had a partnership, and</p> <p>15 I certainly deferred to his counsel and advice.</p> <p>16 ATTORNEY HARRELL: Let's go to the</p> <p>17 next page, please. Okay. And then let's go one more</p> <p>18 page. We'll come back to this one.</p> <p>19 A. Okay.</p> <p>20 Q. Let's go to plan A and plan B. I</p> <p>21 believe you were asked some questions about this</p> <p>22 earlier today.</p> <p>23 Very quickly, your email included</p> <p>24 several different approaches to succession; right?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 989</p> <p>1 plan, succession plan.</p> <p>2 ATTORNEY HARRELL: Let's go to the</p> <p>3 second page of this exhibit, please. I'm sorry.</p> <p>4 Let's go to page 2 of this exhibit.</p> <p>5 Q. Page 2 has a handwritten chart that</p> <p>6 you prepared. I assume you prepared this. Is this</p> <p>7 your chart?</p> <p>8 A. That's my writing. I apologize. It</p> <p>9 is.</p> <p>10 Q. And just real quickly, why did you</p> <p>11 prepare this --</p> <p>12 A. Well, this was --</p> <p>13 Q. -- this chart?</p> <p>14 A. -- really the point of the discussion,</p> <p>15 that in any sort of transition, be it myself,</p> <p>16 Mr. Kettering, the senior team, we had to be vigilant,</p> <p>17 in my view, of maintaining stability, continuity, and</p> <p>18 we also had to be keenly, keenly aware of what was</p> <p>19 going on at the business.</p> <p>20 And I mentioned we had this historic</p> <p>21 growth initiative underway that was going to span four</p> <p>22 or five years. And it was a huge, huge undertaking.</p> <p>23 So we needed to make sure that we understood the</p> <p>24 timing and the magnitude. Closely, closely tied to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 988</p> <p>1 A. That's -- I wanted to lay out options</p> <p>2 to begin these sorts of discussions and</p> <p>3 considerations.</p> <p>4 Q. And you did this at the request of</p> <p>5 Mr. Cornelius; right?</p> <p>6 A. I did. In fact, I suggested to</p> <p>7 Mr. Cornelius when he raised the issue that this</p> <p>8 wasn't ripe, given the volatile circumstances we were</p> <p>9 dealing with at Columbia Pipeline, and that this</p> <p>10 should be deferred. But he felt strongly that we</p> <p>11 needed to begin the process.</p> <p>12 Q. Okay. So very quickly, I think you've</p> <p>13 already testified, Approach A.1, "Glen Kettering to</p> <p>14 Chairman & CEO ... Sig remains Lead Director ... Steve</p> <p>15 Smith is elected to the [] Board"</p> <p>16 Let's go to A.2, which you were not</p> <p>17 asked about. Is A.2 another approach?</p> <p>18 A. This is another approach.</p> <p>19 Q. And tell us very briefly, what was the</p> <p>20 plan for A.2?</p> <p>21 A. That at some point Glen could</p> <p>22 transition -- Glen Kettering could transition to the</p> <p>23 CEO role; and I could either be executive chairman or</p> <p>24 nonexecutive chairman, in that sort of transition</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 990</p> <p>1 that was the equity raises to support those growth</p> <p>2 projects.</p> <p>3 And you can see that I indicated --</p> <p>4 Q. Let me just ask you another question,</p> <p>5 please.</p> <p>6 A. Uh-huh.</p> <p>7 Q. If you look at the bottom part of</p> <p>8 this, it says, "CEO Sequencing." Then your name</p> <p>9 handwritten below that, and there is a line to the</p> <p>10 right of your name.</p> <p>11 A. Yeah.</p> <p>12 Q. Part of it's filled in; part of it's</p> <p>13 got lines in it. And then at the end of it, there's a</p> <p>14 question mark.</p> <p>15 A. Correct.</p> <p>16 Q. Could you tell us what that meant?</p> <p>17 A. Well, again, the point of all of this</p> <p>18 was there were only certain times of any given year</p> <p>19 you can begin making a transition because of the</p> <p>20 projects and when you might sell equity. And that's</p> <p>21 what I was indicating here.</p> <p>22 And I was also indicating that my</p> <p>23 role -- CEO, chairman, executive chairman -- could</p> <p>24 continue across this entire four- to five-year period.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

R. Skaggs - Cross Page 991	R. Skaggs - Cross Page 993
<p>1 Q. As of this time frame, first quarter</p> <p>2 2016, what was your sense of how long you intended to</p> <p>3 remain as CEO?</p> <p>4 A. At that point, my belief was that I</p> <p>5 was going to be the CEO for the next two to three</p> <p>6 years, given the challenges that we were facing. That</p> <p>7 was my sense. I did not have a sense of where the</p> <p>8 board was.</p> <p>9 Q. Was the succession plan shared with</p> <p>10 the board?</p> <p>11 A. It was shared during the one-on-one</p> <p>12 meetings, but there was not any collective board</p> <p>13 meeting to discuss this. It was tabled because of the</p> <p>14 intervening events.</p> <p>15 Q. Okay. So did the board ever formally</p> <p>16 adopt any of these CEO succession plans?</p> <p>17 A. Literally, the one-on-one meetings, 15</p> <p>18 or 20 minutes was the discussion we had about this</p> <p>19 individually. This was just a pure introduction of</p> <p>20 the notion. And we never had a collective discussion</p> <p>21 about it.</p> <p>22 Q. Did you tell anyone at TransCanada</p> <p>23 about any plans to retire?</p> <p>24 A. Absolutely not.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. So you did meet with him from time to</p> <p>2 time; right?</p> <p>3 A. Correct.</p> <p>4 Q. How often?</p> <p>5 A. Three to four times a year.</p> <p>6 Q. Did you discuss specific retirement</p> <p>7 dates with him?</p> <p>8 A. I don't recall discussing the specific</p> <p>9 retirement dates.</p> <p>10 Q. Did you discuss, in general,</p> <p>11 retirement?</p> <p>12 A. Our discussions centered on the</p> <p>13 portfolio tax planning and estate planning. So in</p> <p>14 that broad sense, I guess the answer would be yes, but</p> <p>15 not specifically about retirement.</p> <p>16 Q. Okay. So I want to refer you to a</p> <p>17 line that counsel brought up in your direct a few</p> <p>18 minutes ago, where Rivera notes, "He sees himself only</p> <p>19 staying on through July of 2016."</p> <p>20 You've seen this memo before in</p> <p>21 litigation; right?</p> <p>22 A. I have, yes, sir.</p> <p>23 Q. And you've seen this line; right?</p> <p>24 A. I have.</p> <p>CHANCERY COURT REPORTERS</p>
R. Skaggs - Cross Page 992	R. Skaggs - Cross Page 994
<p>1 Q. Did you tell that to any of Columbia's</p> <p>2 advisors?</p> <p>3 A. Absolutely not.</p> <p>4 Q. Did you tell that to TransCanada's</p> <p>5 advisors?</p> <p>6 A. Absolutely not. Again, I had not had</p> <p>7 a discussion with my board.</p> <p>8 Q. Let's go to Exhibit 114, please. You</p> <p>9 were asked questions about this exhibit by counsel.</p> <p>10 This is a memorandum to the file dated</p> <p>11 June 4, 2015.</p> <p>12 A. That's correct.</p> <p>13 Q. From Rick Rivera to you; right?</p> <p>14 A. Well, I never received this document.</p> <p>15 I think this -- I have no recollection of ever seeing</p> <p>16 this document. I believe this was, from what it says,</p> <p>17 a memorandum to file.</p> <p>18 Q. Okay. We see that it's from Rick</p> <p>19 Rivera?</p> <p>20 A. That's correct.</p> <p>21 Q. And who was he?</p> <p>22 A. He was an AYCO financial planner that</p> <p>23 advised me and other members of the executive team at</p> <p>24 both NiSource and Columbia.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. Did you tell him that?</p> <p>2 A. I have no recollection of ever telling</p> <p>3 him that, particularly the matter of a month before</p> <p>4 spinning off the company, it would be hard to see</p> <p>5 where I would have that view. Just doesn't make</p> <p>6 sense.</p> <p>7 Q. Why would he say something like that?</p> <p>8 A. He might say that because he was</p> <p>9 running scenarios on my financial situation. And at</p> <p>10 this point, June, we were quickly approaching the</p> <p>11 first time that we would have an opportunity to</p> <p>12 potentially diversify my portfolio. So that's one</p> <p>13 thing that he may have been considering.</p> <p>14 The second thing was that he was well</p> <p>15 aware that we were spinning off a company, and this</p> <p>16 company might be an acquisition target post-spin.</p> <p>17 Q. Did any retirement discussions or</p> <p>18 considerations or thoughts have any impact on your</p> <p>19 assessment of the subsequent merger proposals that</p> <p>20 Columbia received?</p> <p>21 A. Absolutely, positively no.</p> <p>22 Q. Let's talk a little bit now about just</p> <p>23 the company and preparedness.</p> <p>24 ATTORNEY HARRELL: Let's go to Joint</p> <p>CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 995</p> <p>1 Exhibit 183, please.</p> <p>2 Q. This is a document entitled "Corporate</p> <p>3 Preparedness Update," and it's got your name and Steve</p> <p>4 Smith's on it, dated August 4, 2015; right?</p> <p>5 A. That's correct.</p> <p>6 ATTORNEY HARRELL: Let's go to page 5,</p> <p>7 please.</p> <p>8 Q. And this is entitled at the top</p> <p>9 "Intrinsic Value Plan, Key Work Streams." And then</p> <p>10 there's four bullet points. Tell us, first, just</p> <p>11 generally, what's going on here in August at the time</p> <p>12 that this was prepared?</p> <p>13 A. Well, as I mentioned, we were</p> <p>14 preparing the board that we could receive indications</p> <p>15 of interest in the company from outside parties. And,</p> <p>16 in fact, in July, we had received an indication of</p> <p>17 interest.</p> <p>18 And so with that in mind, and, again,</p> <p>19 the macro view that we were going to have to deal</p> <p>20 potentially with inbounds, we had charged two banks,</p> <p>21 Lazard and Goldman, to conduct an intrinsic value</p> <p>22 study, a study looking at the fundamental values of</p> <p>23 the company based on our financial plans, based on a</p> <p>24 grounds-up look at opportunities, risks, and the like,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 997</p> <p>1 please. It is entitled "Key Path Forward Milestones."</p> <p>2 And we see here in the first column, "Board Meetings,"</p> <p>3 and does that just indicate when board meetings would</p> <p>4 be scheduled?</p> <p>5 A. That was the official board calendar</p> <p>6 of formal meetings. Again, all things being equal.</p> <p>7 But those are on the calendar.</p> <p>8 Q. And then below it, "Intrinsic Value</p> <p>9 Updates." Now, we just saw that this August memo had</p> <p>10 such an update; right?</p> <p>11 A. Correct.</p> <p>12 Q. And did you have other updates</p> <p>13 scheduled for the future?</p> <p>14 A. That's correct. The bottom line</p> <p>15 refers to our internal financial planning efforts. So</p> <p>16 we update that, not quarterly, but three times a year.</p> <p>17 So the "7&5" is just simply referring to a financial</p> <p>18 plan update. We would do that, prepare it. We then</p> <p>19 give it to the financial advisors and they would</p> <p>20 update their intrinsic plan or intrinsic value</p> <p>21 analysis. So 7&5, and then you'll see the star and so</p> <p>22 on and so on.</p> <p>23 Q. And the stars show that there was</p> <p>24 going to be an update in October and then another one</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 996</p> <p>1 and develop points of view on what the true value --</p> <p>2 not what the stock price is saying, but what the true</p> <p>3 value of the company would be.</p> <p>4 Because, we wanted the board to</p> <p>5 thoroughly understand what the value was in comparison</p> <p>6 to alternatives, be it strategic alternatives,</p> <p>7 financing alternatives, including the issuance of</p> <p>8 equity.</p> <p>9 So it was the touchstone, if you will,</p> <p>10 keystone for all of our considerations. And that's</p> <p>11 what this work streams is intended to address and</p> <p>12 provide the board.</p> <p>13 Q. If we look at this page, it's entitled</p> <p>14 under "Intrinsic Value Plan, Key Work Streams," first</p> <p>15 two bullet points are "Lazard Assessment" and "Goldman</p> <p>16 Sachs Assessment."</p> <p>17 Are those the two assessments that you</p> <p>18 just mentioned that you had asked to be prepared at</p> <p>19 this time?</p> <p>20 A. That's correct. We wanted the board</p> <p>21 to have the benefit of different points of view so</p> <p>22 that they could reach an understanding that they felt</p> <p>23 comfortable with.</p> <p>24 Q. Let's turn to page 16 of the exhibit,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 998</p> <p>1 in March?</p> <p>2 A. That's correct. Again, following our</p> <p>3 budget process and also anticipating when we might be</p> <p>4 in the market to issue equity. That's the reference</p> <p>5 to "MLP Equity Raises."</p> <p>6 Q. Okay. I'd like to talk about the</p> <p>7 inbound overtures that you got starting in July.</p> <p>8 And so when was the spin finished?</p> <p>9 A. We, when effective, became a public</p> <p>10 company on July 1st of 2015.</p> <p>11 Q. And did you receive an actual</p> <p>12 reach-out in July?</p> <p>13 A. I did.</p> <p>14 Q. Who was it from?</p> <p>15 A. The CEO of Dominion Energy reached out</p> <p>16 to me by phone and indicated that his company had an</p> <p>17 interest in discussing with us the potential for an</p> <p>18 acquisition.</p> <p>19 Q. Okay. So did you also receive a</p> <p>20 reach-out from Spectra?</p> <p>21 A. I received a call from their CEO in a</p> <p>22 very brief -- and I referred to it, I believe it's in</p> <p>23 the record, as a casual pass.</p> <p>24 Q. Let's talk about that briefly first,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 999</p> <p>1 and then we'll get into Dominion. And why do you call</p> <p>2 the contact from Spectra a casual pass?</p> <p>3 A. It was a strange call. He calls me,</p> <p>4 congratulates me on the spin, talk about industry</p> <p>5 developments and activities and that sort of thing.</p> <p>6 And then he says, "At some point we should probably</p> <p>7 sit down and talk about whether there aren't any</p> <p>8 mutual opportunities."</p> <p>9 It was literally a two-minute call.</p> <p>10 And it just didn't have any substance. It was just</p> <p>11 literally what I've said.</p> <p>12 Q. Okay. And then you mentioned</p> <p>13 Dominion. Were you contacted by Dominion?</p> <p>14 A. Yes.</p> <p>15 Q. Before -- you've answered my question.</p> <p>16 But before we get into Dominion, at</p> <p>17 this point had you actually shopped the company and</p> <p>18 let the market know that you were on sale?</p> <p>19 A. Absolutely, no, no form or fashion.</p> <p>20 Q. And did you ever do that?</p> <p>21 A. We never shopped the company, as one</p> <p>22 might say.</p> <p>23 Q. Okay. Let's talk about Dominion.</p> <p>24 You said that you got an early</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1001</p> <p>1 inbound calls?</p> <p>2 A. It was.</p> <p>3 Q. And was this the type of communication</p> <p>4 that you would have fairly often with Sig Cornelius?</p> <p>5 A. Quite often. I would reach out to Sig</p> <p>6 on any developments and -- either by this or by phone.</p> <p>7 And, typically, I would send a note before I called,</p> <p>8 so I wouldn't be blindsiding him.</p> <p>9 Q. Did you meet later in July of 2015</p> <p>10 with Mr. Farrell of Dominion?</p> <p>11 A. I did.</p> <p>12 Q. And was that a call or --</p> <p>13 A. No, it was --</p> <p>14 Q. -- over the phone or an actual</p> <p>15 meeting?</p> <p>16 A. It was a sitdown meeting. In fact, he</p> <p>17 flew to Chicago to sit down with me.</p> <p>18 Q. And at that time, did he give you a</p> <p>19 pretty detailed presentation?</p> <p>20 A. A very detailed presentation on -- I</p> <p>21 call it a pitch book, a detailed presentation on his</p> <p>22 company. And with that, he provided commentary on how</p> <p>23 Columbia Pipeline might fit in with that portfolio of</p> <p>24 his.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1000</p> <p>1 reach-out from Dominion. Was that with Tom Farrell,</p> <p>2 the CEO?</p> <p>3 A. He was the CEO, yes.</p> <p>4 Q. And tell us what that discussion</p> <p>5 entailed.</p> <p>6 A. Well, the initial contact, I think it</p> <p>7 occurred mid-month. He calls me up -- which is</p> <p>8 unusual -- and he cuts straight to the matter. He</p> <p>9 says, "Congratulations. We would love to sit down</p> <p>10 with you and talk about potential acquisition. Our</p> <p>11 assets are complementary, the industrial logic is</p> <p>12 there. And we have a strong balance sheet that could</p> <p>13 offer both of our shareholders considerable value."</p> <p>14 That was the substance of the call.</p> <p>15 Q. And was that different from the call</p> <p>16 you got from Spectra?</p> <p>17 A. Couldn't have been more different. It</p> <p>18 was night and day. It was substantive versus, at</p> <p>19 best, a touch.</p> <p>20 ATTORNEY HARRELL: Let's look at Joint</p> <p>21 Exhibit 143, please.</p> <p>22 Q. This is an email dated July 14 from</p> <p>23 you to Sig Cornelius. And if you look down at the</p> <p>24 email that you sent, was this an update about these</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1002</p> <p>1 Q. And did that presentation exist in the</p> <p>2 form of a handout?</p> <p>3 A. It did. It was what I would call a</p> <p>4 PowerPoint deck.</p> <p>5 ATTORNEY HARRELL: Let's look at Joint</p> <p>6 Exhibit 154, please.</p> <p>7 Q. And this is an email from Bob Smith to</p> <p>8 your advisors dated July 23, 2015.</p> <p>9 ATTORNEY HARRELL: Let's go to the</p> <p>10 second page, please.</p> <p>11 Q. And is this the discussion materials</p> <p>12 that you got from Mr. Farrell of Dominion on or around</p> <p>13 July 20, 2015?</p> <p>14 A. That's correct.</p> <p>15 ATTORNEY HARRELL: Let's go to</p> <p>16 page 20, please, of this exhibit.</p> <p>17 Q. This is entitled "Indicative offer."</p> <p>18 At this meeting, did Mr. Farrell actually give a</p> <p>19 verbal indication of interest?</p> <p>20 A. He did. And it's reflected on this</p> <p>21 slide. It's the 32.50 to 35.50. And what you can</p> <p>22 see, he's making the pitch about how rich the offer</p> <p>23 is.</p> <p>24 Q. Okay. And what was your reaction?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">R. Skaggs - Cross Page 1003</p> <p>1 A. Well, during this meeting, I was in</p> <p>2 listen mode. My -- as I was digesting this, I thought</p> <p>3 this was a serious legitimate indication. I had not</p> <p>4 yet concluded whether it was a basis to engage, but it</p> <p>5 certainly was a significant overture.</p> <p>6 Q. Let's look at Exhibit 182, please.</p> <p>7 THE COURT: Before we do that, we've</p> <p>8 reached the time for our morning break, so we'll</p> <p>9 recess until 11:00. We'll return then.</p> <p>10 (Recess taken at 10:45 a.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1005</p> <p>1 Is that what we talked about earlier?</p> <p>2 A. That's a reference to the document,</p> <p>3 yes.</p> <p>4 Q. And then you see three bullets at the</p> <p>5 bottom. Were these enclosures that you sent to the</p> <p>6 board at the same time?</p> <p>7 A. Yes. Yes.</p> <p>8 Q. And just very quickly, please, tell us</p> <p>9 what those three bullets were.</p> <p>10 A. How we're performing -- again, one</p> <p>11 month removed from the spin, how we're performing in</p> <p>12 the market, our work to develop the fundamental</p> <p>13 analysis, and how we would respond to inbounds and our</p> <p>14 path forward.</p> <p>15 Q. Let's look at the minutes of that</p> <p>16 August 7th meeting, please, which is Joint Exhibit</p> <p>17 191, page 1.</p> <p>18 And at the top, you see the minutes of</p> <p>19 August 7 meeting?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And at that meeting, did you talk</p> <p>22 about the discussions that you had had with Spectra</p> <p>23 and Dominion?</p> <p>24 A. Full discussion of those topics, those</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1004</p> <p>1 (Resumed at 11:00 a.m.)</p> <p>2 THE COURT: Thank you, everyone.</p> <p>3 Please be seated.</p> <p>4 Let's resume.</p> <p>5 BY ATTORNEY HARRELL:</p> <p>6 Q. Mr. Skaggs, let's look at Joint</p> <p>7 Exhibit 0182, please.</p> <p>8 What is this?</p> <p>9 A. This is a board communiqué. It's a</p> <p>10 memo that I compiled for the board, looks like,</p> <p>11 setting the stage for our upcoming strategic planning</p> <p>12 meeting deliberations in --</p> <p>13 Q. So August --</p> <p>14 A. No. I'm sorry. August 4th.</p> <p>15 It's setting up a discussion, a board</p> <p>16 meeting and our upcoming executive session. That's</p> <p>17 what it is.</p> <p>18 Q. So is this typical of the board</p> <p>19 updates that you would send out?</p> <p>20 A. Very -- very representative.</p> <p>21 Q. And if you look at the first</p> <p>22 paragraph, it says, "I've enclosed in the Executive</p> <p>23 Session File Folder package a discussion package on</p> <p>24 Corporate Preparedness."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1006</p> <p>1 proposals.</p> <p>2 Q. Did you execute an NDA with Dominion</p> <p>3 after that meeting?</p> <p>4 A. The board authorized us to go forward</p> <p>5 with Dominion and to execute an NDA and to begin</p> <p>6 sharing confidential info.</p> <p>7 Q. After that, Columbia ultimately</p> <p>8 entered into NDAs with several potential</p> <p>9 counterparties, including TransCanada. Right?</p> <p>10 A. Several months after this, that's</p> <p>11 correct.</p> <p>12 Q. And you're aware that those NDAs</p> <p>13 contained standstill provisions?</p> <p>14 A. Yes.</p> <p>15 Q. Who did you, as the CEO, rely on to</p> <p>16 make decisions regarding the interpretation and</p> <p>17 application of the standstills?</p> <p>18 A. Sullivan & Cromwell and our legal</p> <p>19 internal team were the administers, interpreters,</p> <p>20 calling balls and strikes around the NDA, including</p> <p>21 standstill.</p> <p>22 Q. And the internal team was headed by</p> <p>23 Bob Smith. Right?</p> <p>24 A. He was our general counsel.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p>1 Q. Soon after entering into the NDA, did</p> <p>2 Dominion begin due diligence?</p> <p>3 A. They did. Yes.</p> <p>4 Q. How did the discussions with Dominion</p> <p>5 evolve from there?</p> <p>6 A. Again, we began exchange of</p> <p>7 information in early to mid-August. They met with</p> <p>8 selected members of our management team. So the</p> <p>9 information flows were straightforward.</p> <p>10 Q. So let's look at another exhibit,</p> <p>11 Joint Exhibit 219, please. Is this another email</p> <p>12 exchange between you and Mr. Cornelius?</p> <p>13 Do you see at the top?</p> <p>14 A. Yes.</p> <p>15 Q. And it's dated August 31. Right?</p> <p>16 A. End of the month.</p> <p>17 Q. And I want to refer you to an email at</p> <p>18 the very bottom. And what were you informing</p> <p>19 Mr. Cornelius about with respect to your discussions</p> <p>20 with Dominion?</p> <p>21 A. Although I hadn't yet spoken with</p> <p>22 Dominion's CEO, I fully anticipated that we were going</p> <p>23 to end our discussions with them because this was in</p> <p>24 the midst of this market meltdown that I've referred</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Columbia at that time send what we know now to be a</p> <p>2 return and destroy letter to Dominion?</p> <p>3 A. Yes, sir.</p> <p>4 Q. So at that point, discussions with</p> <p>5 Dominion were closed?</p> <p>6 A. Completely terminated. That's</p> <p>7 correct.</p> <p>8 Q. All right. So let's jump ahead from</p> <p>9 September to late October. Looking at Exhibit 253,</p> <p>10 please. Is this a note that you sent to the board</p> <p>11 dated October 16, 2015? You see the date at the</p> <p>12 bottom.</p> <p>13 A. Correct.</p> <p>14 Q. Let's turn to page 6 of this exhibit,</p> <p>15 please. And at the bottom of the page, we see, "We</p> <p>16 have delineated two near-term, parallel tracks of work</p> <p>17 to 'bracket' our equity challenge"</p> <p>18 Tell us what those two tracks were,</p> <p>19 please.</p> <p>20 A. Track one was that we would be a</p> <p>21 full-blown stand-alone company, but we would issue --</p> <p>22 Q. I'm sorry. Can you speak up just a</p> <p>23 little bit or move the mic a little closer.</p> <p>24 A. Sorry about that.</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 to several times. And given the market was in</p> <p>2 complete disruption, dislocation, my anticipation was</p> <p>3 he was going to say: We just can't go forward. There</p> <p>4 is not a way we can do anything in this environment.</p> <p>5 And so I was alerting him to the call,</p> <p>6 and I was also sharing with him what I predicted --</p> <p>7 how -- predict how the call might go.</p> <p>8 Q. Okay. Let's go to Exhibit 191,</p> <p>9 please. And look at the -- on page 1, the</p> <p>10 September 1, 2015, minutes.</p> <p>11 And you said, I think, that you were</p> <p>12 predicting that things were not going to go very far.</p> <p>13 Indeed, is that what happened?</p> <p>14 A. That's exactly what happened. And</p> <p>15 that's reflected in this September 1st -- these</p> <p>16 September 1st minutes.</p> <p>17 Q. We see Dogwood here. Would that be</p> <p>18 Dominion?</p> <p>19 A. That's a reference to Dominion, yes.</p> <p>20 Q. And so at that time, you terminated</p> <p>21 discussions?</p> <p>22 A. That's correct, because the market</p> <p>23 conditions were just so disruptive.</p> <p>24 Q. Did you at that time -- or did</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. That's better. Thank you.</p> <p>2 A. So given that the market disruption, I</p> <p>3 had developed a recommendation to go down two tracks.</p> <p>4 The first track was independent company but issue a</p> <p>5 billion plus or so of equity prior to the end of the</p> <p>6 year. And that was track one. And we had to do that,</p> <p>7 was my view.</p> <p>8 The second one was to explore whether</p> <p>9 there might be strategic alternatives that would</p> <p>10 mitigate or eliminate the need to issue equity.</p> <p>11 Q. Okay. So let's look at another</p> <p>12 exhibit, 264, please, which is dated October 19. And</p> <p>13 let's go to page -- well, first of all, if we can</p> <p>14 identify it, it is an email to some of the Goldman</p> <p>15 Sachs people internally. Right?</p> <p>16 A. Yes, sir. This is a -- appears to be</p> <p>17 an internal Goldman Sachs document or communication.</p> <p>18 Q. Okay. And let's go to page 5, please.</p> <p>19 And down near the bottom, do you see a</p> <p>20 reference to Dominion? The second-to-the-last bullet,</p> <p>21 at the very bottom.</p> <p>22 A. Yes, I see it. "Consider how to</p> <p>23 include Dominion in this process"</p> <p>24 Q. So we're now in mid-October. Six</p> <p>CHANCERY COURT REPORTERS</p>

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1 weeks ago, you had cut off, basically, your
 2 discussions with Dominion. What's going on now that
 3 we see "Consider how to include Dominion in this
 4 process"?

5 **A. The market dislocation had gotten even**
 6 **worse. And the equity markets in particular had**
 7 **gotten even worse. The MLP market had seized up. Our**
 8 **stock had dropped 30 percent.**

9 **So at this point, looking at track**
 10 **two, thinking about who we might engage, Dominion was**
 11 **still at the top of our list because they had an**
 12 **A-rated balance sheet. They had -- besides Berkshire**
 13 **Hathaway, they had the strongest balance sheet in the**
 14 **industry. And because of our equity needs, we needed**
 15 **someone with a balance sheet if we're going to look at**
 16 **that sort of alternative.**

17 Q. So did you reach out to Dominion
 18 again?

19 **A. We did reach out to Dominion.**

20 Q. And tell us how that happened.

21 **A. I believe I initiated with a phone**
 22 **call to Mr. Farrell.**

23 Q. Okay. And what did you tell him this
 24 time?

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1 **A. Told him -- Mr. Farrell and I talked**
 2 **about the historically bad conditions in the**
 3 **marketplace.**

4 **And I was candid with him. I said,**
 5 **there's no secret that we would be considering equity**
 6 **sooner rather than later; but if his company had an**
 7 **interest in taking another look at us, thinking**
 8 **through propositions, we would certainly welcome that.**

9 Q. Okay. Now, you had sent him already a
 10 return or destroy letter. You had ended discussions
 11 with him, and now you were starting them up again. Is
 12 that fair?

13 **A. Well, we were exploring at this point.**
 14 **We had not started up discussions. I think there is a**
 15 **distinction.**

16 Q. Okay. And just explain that briefly.
 17 What's the distinction?

18 **A. We were trying to get a sense of**
 19 **whether they might have any interest whatsoever in**
 20 **talking seriously about a transaction. And, again,**
 21 **given the market conditions, just didn't know where**
 22 **they stood.**

23 Q. Did the board at this time send a
 24 written request to Dominion permitting them to

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1 recommence discussions about potential acquisition?

2 **A. No. There was no advice or suggestion**
 3 **whatsoever that we needed to take that step. And if**
 4 **we had been advised, we certainly would have done**
 5 **that.**

6 Q. Let's go to Joint Exhibit 272, please.
 7 And this, at the top, is an email from Mr. Cornelius
 8 to you dated October 26. Right?

9 **A. That's correct.**

10 Q. And then below that, if you look -- if
 11 you look at the first item, in your update, which is
 12 right below that, what were you telling Mr. Cornelius?

13 **A. I was recounting a conversation I just**
 14 **mentioned, that I reached out to the Dominion CEO. He**
 15 **heard my messages. He needed to confer with his**
 16 **board, and he would come back to me.**

17 **And then I go on and, again, provide**
 18 **Mr. Cornelius my point of view on what a response from**
 19 **Dominion might look like.**

20 Q. Okay. And it says here, "I'm
 21 expecting a response that would be in the 20-25%
 22 premium zip code (\$24-\$25)." Right?

23 **A. That's correct. And I said that**
 24 **because of where our price was. It had dropped**

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1 **precipitously.**

2 Q. All right. Now, at this time, had
 3 Columbia heard from other potential acquirers out in
 4 the market?

5 **A. Again, I'd have to get reoriented on**
 6 **the timeline. But my best recollection was that**
 7 **TransCanada had reached out to us prior to this**
 8 **discussion with Mr. Farrell.**

9 Q. And had that reach-out come through
 10 Steve Smith?

11 **A. My recollection is Mr. Poirier touched**
 12 **base with Steve Smith.**

13 Q. And so you had this discussion with
 14 Dominion, you had reach-out from TransCanada. Did you
 15 discuss with the board whether Columbia should
 16 prioritize the discussions with Dominion versus
 17 whether they should do it with TransCanada?

18 **A. There was an extensive discussion on**
 19 **how we would proceed. And the board felt that we**
 20 **should do several things: One, first find out where**
 21 **Dominion was because, again, they had the most**
 22 **attractive balance sheet and the best capability to**
 23 **pay. And that while TransCanada had reached out -- my**
 24 **term, which is not meant to be derogatory -- but to**

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<p>1 slow play or put TransCanada on hold in order to find</p> <p>2 out where Dominion would be.</p> <p>3 Q. So the board decided let's push on</p> <p>4 Dominion first?</p> <p>5 A. Let's -- they were the, from our</p> <p>6 analysis, the best prepared potential acquirer next to</p> <p>7 Berkshire Hathaway, and we just needed to find out</p> <p>8 where they were.</p> <p>9 Q. And what was the board consensus that</p> <p>10 a counterparty proposal would need to be?</p> <p>11 A. Again, we were looking at two tracks.</p> <p>12 And we knew that equity was a likely track.</p> <p>13 The bar was at about \$28 per share</p> <p>14 from a credible counterparty. That was the bar that</p> <p>15 the board had decided on.</p> <p>16 Q. Did you have a view of whether cash</p> <p>17 consideration was preferable to stock consideration?</p> <p>18 A. I did have a view. And I say that,</p> <p>19 all things being considered, because you have to look</p> <p>20 at every transaction and every currency and every</p> <p>21 proposition, so case by case.</p> <p>22 But at this point, given that these</p> <p>23 markets were so dislocated and stressed, and I thought</p> <p>24 they would continue to be stressed because all these</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. Did he -- did you want to say</p> <p>2 something else?</p> <p>3 A. Well, he went on.</p> <p>4 Q. Okay. And what else did he say?</p> <p>5 A. He said, well, I knew you would be</p> <p>6 disappointed with that. I knew that wouldn't provide</p> <p>7 any traction. I've been noodling two different ideas.</p> <p>8 One was we might be able to invest in projects; so, in</p> <p>9 other words, give cash or equity or whatever in</p> <p>10 discrete projects. That was one notion.</p> <p>11 And then he said, I've got another</p> <p>12 notion that I've been noodling around, and that is</p> <p>13 somehow partnering up with NextEra -- another big,</p> <p>14 big, big electric utility -- that we could cobble</p> <p>15 together some sort of three-way merger of equals, no</p> <p>16 cash.</p> <p>17 And that's the proposition he laid out</p> <p>18 to me -- propositions he laid out to me when he</p> <p>19 couldn't come up with a stock price number.</p> <p>20 Q. Okay. So this email with Mr. Hort is</p> <p>21 November the 2nd. It says "your meeting with</p> <p>22 [Dominion]'s CEO tomorrow," which would be November</p> <p>23 the 3rd.</p> <p>24 ATTORNEY HARRELL: Let's go to the</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 companies needed enormous amounts of equity, my</p> <p>2 feeling was cash -- again, all things being considered</p> <p>3 and not knowing whose currency we might be dealing</p> <p>4 with -- was preferable. Because so much risk was</p> <p>5 circling around these entities.</p> <p>6 Q. Let's look at Joint Exhibit 283,</p> <p>7 please. Is this a November 2, 2015, email from</p> <p>8 Lazard? Do you see that at the top, Gregory Hort?</p> <p>9 A. Yes.</p> <p>10 Q. And it says, "Bob, Please find below</p> <p>11 our suggested script and Q&A responses for your</p> <p>12 meeting with Dogwood's CEO tomorrow."</p> <p>13 Do you recall that you received a</p> <p>14 script for your meeting with Mr. Farrell?</p> <p>15 A. Yes. And I typically had talking</p> <p>16 points for every CEO discussion.</p> <p>17 Q. And so what was discussed at that</p> <p>18 meeting with Mr. Farrell?</p> <p>19 A. Again, Mr. Farrell, very</p> <p>20 straightforward CEO, he says, given these market</p> <p>21 conditions, given where your price is, there is just</p> <p>22 no way we can do a straight-up transaction with you in</p> <p>23 a price range that you might find attractive. Too</p> <p>24 risky. Way, way diluted. We just cannot do that.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 next exhibit, which is JTX 327, please.</p> <p>2 Q. And this is an email on the first page</p> <p>3 from Mr. Steve Smith to the investment advisors dated</p> <p>4 November 13, which is about ten days later. Right?</p> <p>5 A. That's right. That's correct.</p> <p>6 Q. And then underneath it, you see an</p> <p>7 email from Mark McGettrick at Dominion. Right?</p> <p>8 A. That's correct. He was the CFO at</p> <p>9 Dominion.</p> <p>10 Q. And "CONFIDENTIAL, Steve, This is a</p> <p>11 high level JV concept we are evaluating." Right?</p> <p>12 A. That's what this says.</p> <p>13 Q. Okay. So let's go to the next page,</p> <p>14 please. Actually, we might need to go two more pages.</p> <p>15 Okay. The next page is entitled "Discussion</p> <p>16 Materials, November 12, 2015."</p> <p>17 ATTORNEY HARRELL: And let's go one</p> <p>18 more page to page 4.</p> <p>19 Q. Page 4 is entitled "Project Charm,</p> <p>20 Potential illustrative structure."</p> <p>21 Now, is this what you were referring</p> <p>22 to a moment ago when you said that Mr. Farrell came up</p> <p>23 with an idea for doing a combination?</p> <p>24 A. Yes.</p> <p>CHANCERY COURT REPORTERS</p>

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1	Q.	Okay. Could you tell us what you
2		learned from this regarding what they wanted to do?
3	A.	Well, when Mr. Farrell initially
4		outlined this, I was highly, highly skeptical. And I
5		had this sense, just based on my experience, that his
6		thoughts had not been fleshed out and fully thought
7		out.
8		And when I saw this document,
9		potential illustrative, and the complexity that was
10		inherent in this, my impression was that this just was
11		not feasible or reasonable and certainly could not be
12		acted upon any time soon. It just wasn't fully baked.
13	Q.	And at that point, did Columbia then
14		turn to discussions with others?
15	A.	We did.
16	Q.	So I already mentioned the inquiry you
17		received from TransCanada. Right?
18	A.	Yes, sir.
19	Q.	Did you have discussions with
20		Berkshire also?
21	A.	Yes. We made a soft outreach to
22		Berkshire; again, balance sheet, financial strength,
23		something that could be feasible. So we reached out
24		to them.
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1		reach out and congratulating us on a good strong
2		financial quarter, talking a little bit about industry
3		conditions, expressing interest in having discussions
4		at some point about general industry conditions. And
5		I did telephone him back, call him back.
6	Q.	And did that discussion net any fruit?
7	A.	It did not. But I communicated with
8		him in just a very similar vein that I did with
9		Mr. Farrell. That conditions were rocky. No secret
10		that all of us needed equity. And said if you had
11		anything to say, you needed to say it with definition,
12		and you needed to say it with dispatch.
13	Q.	Did you make it clear that the door
14		was open for further discussions if he wanted to have
15		them?
16	A.	I was explicit. Again, it was if you
17		have something explicitly to say, please say it,
18		because we're on the verge of potentially doing
19		something in the equity markets. And so I said, give
20		us something specific, give us something timely.
21	Q.	Fair to say the ball was in his court
22		at that point?
23	A.	Absolutely in his court.
24	Q.	And during this period in November,
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1	Q.	Did Columbia enter into NDAs with
2		Berkshire and TransCanada?
3	A.	We did.
4	Q.	And did Columbia also enter into an
5		NDA with NextEra?
6	A.	We did, in connection with trying to
7		flesh out this notion.
8	Q.	And did Columbia provide confidential
9		information to these companies?
10	A.	We did. We provided them virtually
11		identical information packages. And we made selected
12		management members available for interviews and
13		discussions.
14	Q.	Did you reach out to Spectra after the
15		Dominion discussions fell apart in early November?
16	A.	We did not.
17	Q.	So do you recall that Spectra's CEO
18		had emailed you in early November?
19	A.	He did. He did. So I did have a
20		discussion with him.
21	Q.	Did you have a discussion with him on
22		the phone?
23	A.	I did. He reached out. I can't
24		recall whether it was an email or what, but it was a
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1		did you keep the board informed of these discussions
2		you were having?
3	A.	Oh, we were in continual discussions
4		or updates with the board throughout November.
5		ATTORNEY HARRELL: Let's look at Joint
6		Exhibit 331, please.
7		Is this -- actually, okay. Yeah. Let
8		me just make sure this is the right exhibit. Let's
9		look at page 3 of this. Yes.
10	Q.	So this is another one of your
11		communications with the board. Right?
12	A.	One of my many communications. Right.
13	Q.	Right. And if you look at -- we're on
14		page 3 of this exhibit. At the very top it says,
15		"Track 2: Inbound Strategic Overtures."
16		And in this, did you provide the board
17		with an update of what was going on with the overtures
18		you were having?
19	A.	Yes. It was an attempt to quickly
20		explain what was going on with all parties, potential
21		parties.
22	Q.	Let's look at the third one, which is
23		Spectra. And here, did you inform the board of what
24		you just told us about, Spectra?
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<p>1 A. Yes. This is consistent with the</p> <p>2 discussion we had about my conversation and what I</p> <p>3 urged their CEO to consider.</p> <p>4 Q. Let's go to Joint Exhibit 363, please.</p> <p>5 Now, this is an email from you to Mr. Cornelius dated</p> <p>6 November 20. Right?</p> <p>7 A. Correct.</p> <p>8 Q. And is this an example of another</p> <p>9 status update that you had to Mr. Cornelius about</p> <p>10 indicative offers from TransCanada and Berkshire</p> <p>11 Hathaway?</p> <p>12 A. This was a typical update that I was</p> <p>13 providing him on the process and the like.</p> <p>14 Q. Okay. We see Berkshire Hathaway is</p> <p>15 BH. Right?</p> <p>16 A. Yes. That was just my shorthand.</p> <p>17 Q. And did Columbia receive indicative</p> <p>18 offers from TransCanada and Berkshire?</p> <p>19 A. We did.</p> <p>20 Q. Let's look at Joint Exhibit 191,</p> <p>21 please, and go to page 3. And I refer you to the</p> <p>22 board meeting of November 25, 2015.</p> <p>23 At that board meeting, did you bring</p> <p>24 the board up to date with the indicative offers from</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1 the board at that time?</p> <p>2 A. That we should fast-forward and begin</p> <p>3 doing what we needed to do to issue equity over the</p> <p>4 next week or so.</p> <p>5 Q. Okay. So the next-to-last sentence,</p> <p>6 "After discussions, the Board agreed with management's</p> <p>7 recommendation and authorized management to terminate</p> <p>8 discussions regarding a potential purchase</p> <p>9 transaction."</p> <p>10 Is that what happened at that time?</p> <p>11 A. That's exactly what happened.</p> <p>12 Q. And so at this point, what was it that</p> <p>13 tipped the scale for you and for the board that you</p> <p>14 needed to start focusing on the equity raise?</p> <p>15 A. That we just didn't have a basis to</p> <p>16 defer the equity. These proposals were well below the</p> <p>17 bar of \$28. They all would require an enormous amount</p> <p>18 of work and enormous amount of risk to get across the</p> <p>19 finish line. And we just couldn't take that risk,</p> <p>20 given the pressure on our stock price on the market.</p> <p>21 So to me it was a clear-cut decision.</p> <p>22 We needed to move equity to try to stabilize the price</p> <p>23 of the company and take some pressure off of us. And</p> <p>24 all other courses of action just seemed too risky.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
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<p>1 Berkshire and TransCanada?</p> <p>2 A. Yes, sir, I certainly did.</p> <p>3 Q. And if we could just look at the</p> <p>4 second sentence there, what was that discussion about?</p> <p>5 A. The second sentence. Well, the second</p> <p>6 sentence says that I received an indication of</p> <p>7 interest from TransCanada, all cash, price \$25 to \$26</p> <p>8 per share. And that's, in fact, what the CEO</p> <p>9 presented to me.</p> <p>10 Q. Okay. And then if we go -- we skip a</p> <p>11 sentence and go to the next highlighted one, and that</p> <p>12 mentions Dominion and NextEra.</p> <p>13 A. That's correct.</p> <p>14 Q. And Spectra and Berkshire Hathaway.</p> <p>15 So tell us what that was about.</p> <p>16 A. That Dominion, NextEra, they just --</p> <p>17 Dominion, NextEra, Spectra just never did do anything</p> <p>18 else. They did not engage. They did not comment.</p> <p>19 They did actually nothing. And they went dark. No</p> <p>20 comment.</p> <p>21 And that Berkshire Hathaway had come</p> <p>22 in with 23.50 all-cash offer. So we had 23.50, and we</p> <p>23 had 25 to 26 from the two parties that were engaged.</p> <p>24 Q. Okay. What was your recommendation to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1 Q. And --</p> <p>2 A. And the other thing I would say --</p> <p>3 Q. Go ahead.</p> <p>4 A. -- the reason there was some urgency</p> <p>5 on this was if we did not finance or issue equity by</p> <p>6 the first two weeks of December, then we would</p> <p>7 effectively have been closed out of the equity markets</p> <p>8 until the end of the first quarter of 2016 or early</p> <p>9 second quarter of 2016 because we have to get our</p> <p>10 year-end financials out in the market. So we had just</p> <p>11 a very narrow window.</p> <p>12 Q. And so did you communicate to</p> <p>13 TransCanada and Berkshire that you were terminating</p> <p>14 discussions at that time?</p> <p>15 A. Yes, we did.</p> <p>16 Q. What was Berkshire's response?</p> <p>17 A. Well, when Berkshire presented the</p> <p>18 proposal, they told me they didn't expect us to accept</p> <p>19 this. But that was their point of view on value, and</p> <p>20 they felt like that -- I think they used the term that</p> <p>21 relying on equity just was not going to be a feasible</p> <p>22 path for many companies.</p> <p>23 And they added, if you decide to go</p> <p>24 forward with equity, we will not be able to ever</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 transact with you because of the dilution and the
 2 price that they were anticipating the equity being
 3 issued at. So they were clear, unequivocal, as they
 4 tend to be.

5 Q. I guess when you have that much money,
 6 right?

7 A. Exactly.

8 Q. And what about TransCanada? What was
 9 the reaction you got from them?

10 A. I think they expected that reaction,
 11 but I also thought they were disappointed. I can't
 12 recall whether it was the day that I spoke to them and
 13 told them that we were going forward with equity or
 14 shortly thereafter, their CEO indicated, well, we
 15 still have interest. We still might be able to do
 16 something.

17 So in a soft way, he was trying to
 18 convince me to rethink and potentially defer. But,
 19 again, my recollection was when he offered 25 to 26,
 20 he didn't even have his board authorization in line
 21 for that, much less a higher price.

22 Q. And "he" means Russ Girling. Right?

23 A. Yes, sir. And he was the CEO of
 24 TransCanada.

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1 Q. So what did you do at this point?

2 A. We -- fast-forward on the process of
 3 issuing equity.

4 Q. At that time, what did you think the
 5 impact of the equity offering would be on these deal
 6 discussions?

7 A. Absolutely positively kill all deal
 8 discussions. I just couldn't reasonably conceive of
 9 someone wanting to purchase the company after we had
 10 diluted it by 20 percent at a price of 17.50. I
 11 just -- particularly in the environment we were in.
 12 The dislocation continued. But to me, it was a poison
 13 pill, basically.

14 Q. I want to talk about the reengagement
 15 with TransCanada. So after the December 2015 equity
 16 offering, we've heard testimony from you already from
 17 counsel's questions that in early December, there were
 18 discussions between TransCanada and Columbia, right,
 19 or there was a reach-out?

20 A. My recollection was that there were
 21 still rumblings, primarily from bankers, that
 22 TransCanada might still be interested. And maybe even
 23 Mr. Girling suggested at some point they might still
 24 be interested. But it was so general at that point,

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1 and I attached zero likelihood to that. I just didn't
 2 think it was legit or credible.

3 Later, though, in the month -- and
 4 again, I can't recall the date -- Mr. Poirier did
 5 reach out to Steve Smith requesting a meeting --

6 Q. Okay.

7 A. -- subject unidentified.

8 Q. And that's the January 7 meeting that
 9 we've heard about. Right?

10 A. Well, that was the request from
 11 Mr. Poirier, yes, to meet on January 7th.

12 Q. How did Columbia prepare for this
 13 meeting?

14 A. You know, we talked through scenarios
 15 of what might be broached during that discussion, be
 16 it an acquisition, joint venture, or whatever. We had
 17 no idea with any precision. So we kind of went
 18 through that scenario of thinking.

19 Ultimately, with the help of advisors,
 20 legal, financial, and others, a script was prepared,
 21 as we typically do, to take to the meeting.

22 Q. And so this is happening, and the
 23 script gets prepared in early January, is that right,
 24 before the meeting?

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1 A. That would be correct.

2 Q. And in the meantime, how is the board
 3 informed?

4 A. Well, it just was right on top of my
 5 one-on-one discussions that I do annually with the
 6 board members. So my recollection is I alerted Sig
 7 Cornelius, our lead director. I ultimately had a
 8 sit-down with Sig mid-month. And I followed that up
 9 with --

10 Q. Excuse me. Mid what month?

11 A. Mid-December. I was working on my
 12 one-on-ones through the middle of December through the
 13 first two weeks of January. That was the cycle and
 14 the circuit.

15 And so, again, I think I had three
 16 one-on-one meetings prior to the January 7th. My
 17 recollection was shortly thereafter, I had three
 18 additional meetings, six total.

19 Q. Okay.

20 A. And during each of the meetings, this
 21 TransCanada outreach was noted and we discussed it.

22 Q. And so did you have a prediction of
 23 what was going to happen at that meeting?

24 A. I just didn't think this meeting was

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1 **going to be productive. And I think I've stated**
 2 **before, the market conditions and the equity issuance,**
 3 **I just didn't see how somebody could go forward. That**
 4 **was my point of view.**
 5 Q. So you didn't have a board meeting
 6 during this period of time in late December, early
 7 January?
 8 A. **We did not. We did not.**
 9 Q. Why not?
 10 A. **Well, the strategic planning meeting**
 11 **was slated for the end of the month. And we weren't**
 12 **in transaction mode. We had just issued the equity.**
 13 **Now was the time to work one-on-one and do our other**
 14 **preparatory work for that meeting.**
 15 Q. Okay. And did you really expect much
 16 to come out of that meeting?
 17 A. **With TransCanada?**
 18 Q. Yeah.
 19 A. **No. I expected it to be a nonevent.**
 20 Q. Did Columbia's lawyers also know that
 21 this January 7 meeting was going to happen?
 22 A. **Everybody that had been working on**
 23 **strategic alternatives, or the teams working on that,**
 24 **Goldman, Lazard, Sullivan & Cromwell, internal legal**

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1 **team, this core team was pulled together, everyone**
 2 **knew of the meeting. It was not a secret, clandestine**
 3 **meeting. It was just common knowledge within all**
 4 **those groups.**
 5 Q. Did anyone advise you that
 6 reengagement in any way, having a meeting with
 7 TransCanada, would violate the standstill agreement?
 8 A. **Absolutely not. No one raised a flag**
 9 **or concern. If they did, we would have reacted to it**
 10 **and dealt with it. But, no, there was no mention that**
 11 **that would be problematic.**
 12 Q. Would you have expected your legal
 13 advisors to let you know if they believed there was
 14 going to be a problem with that meeting?
 15 A. **Oh, sure. I mean, this was a shop**
 16 **where we wanted that sort of feedback. And our**
 17 **attorneys and financial advisors, for that matter,**
 18 **weren't shy about speaking up when they saw an issue**
 19 **or a problem.**
 20 Q. I want to ask you a few more questions
 21 about these one-on-one meetings that you just said
 22 that you were having with the directors around this
 23 time.
 24 Tell us, just generally, what were the

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1 topics that you discussed with the directors at these
 2 meetings.
 3 A. **Well, for these specific meetings, we**
 4 **were going to -- I was going to continue to have**
 5 **discussion around strategic considerations for the**
 6 **obvious reason that we still had enormous equity**
 7 **needs, and the equity markets weren't favorable. So**
 8 **we needed to continue to have that ongoing discussion.**
 9 **It was just the reality of where we were.**
 10 **Mr. Cornelius felt strongly we ought**
 11 **to begin discussing succession planning. So that was**
 12 **an agenda item. I had project updates. And I kept**
 13 **mentioning these huge projects, wanted to touch base**
 14 **on those. A couple of operating issues. And then a**
 15 **few other issues. And then just completely open.**
 16 **I wanted to hear from the board what**
 17 **they thought about conditions, my performance, the**
 18 **team's performance.**
 19 Q. So this is leading up to your annual
 20 planning meeting at the end of January?
 21 A. **That's correct.**
 22 Q. And was this something you did once a
 23 year with the board?
 24 A. **Once a year, if not more. I think I**

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1 **met one-on-one twice this year, once early in -- once**
 2 **rather early in the spin process, and then as we**
 3 **approached this strategic planning meeting. But**
 4 **typically, I did that with all my board members every**
 5 **year, with every board.**
 6 Q. With respect to the end-of-January
 7 board planning meeting, was that something you did
 8 once a year, a big planning meeting?
 9 A. **Yes. That was the model we brought**
 10 **over from my NiSource. And, again, that meeting was**
 11 **to discuss business, strategic considerations, talent**
 12 **pool, and succession planning, were the typical**
 13 **things.**
 14 Q. When you were having these one-on-one
 15 meetings with directors, were you priming them for an
 16 acquisition offer from TransCanada?
 17 A. **Absolutely not.**
 18 Q. Let's look at another exhibit, please,
 19 Joint Exhibit 480.
 20 Is this an email that you sent to
 21 Mr. Cornelius on December the 13th?
 22 A. **Yes.**
 23 Q. And you refer in the first line to a
 24 12/15 discussion agenda that I believe counsel showed

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<p>1 you a document earlier about a meeting that you had</p> <p>2 with Mr. Cornelius.</p> <p>3 A. Or -- it may have been with</p> <p>4 Mr. Kittrell.</p> <p>5 Q. Thank you.</p> <p>6 A. It was the same sort of document. It</p> <p>7 was just a discussion outline, agenda, that I had</p> <p>8 suggested and wanted him to have in advance of the</p> <p>9 meeting.</p> <p>10 Q. And so was it your practice before</p> <p>11 each of these one-on-one meetings to prepare an agenda</p> <p>12 and pull some materials together?</p> <p>13 A. Sure. I wanted to make sure that they</p> <p>14 were well prepared for the discussion. It wasn't</p> <p>15 meant to be exclusive, but it was at least a starting</p> <p>16 point for deliberations.</p> <p>17 Q. So I think you've already hit on this,</p> <p>18 but you see item 1 is strategic considerations? Did</p> <p>19 that refer to -- why don't you just tell us. What did</p> <p>20 that refer to?</p> <p>21 A. Again, it went to that micro</p> <p>22 consideration I was talking about. We had issued</p> <p>23 equity, and it had stopped the bleeding -- that's my</p> <p>24 kind of vernacular -- and bought us some time. But</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 TransCanada.</p> <p>2 Q. I'm sorry. I interrupted you. Would</p> <p>3 you say that again, please.</p> <p>4 A. Yes. At this point, mid-December,</p> <p>5 early January, the only inbound -- if you will,</p> <p>6 inbound touch had been from TransCanada.</p> <p>7 Q. Let's look at Joint Exhibit 521,</p> <p>8 please.</p> <p>9 Is this an email exchange between you</p> <p>10 and the Goldman people on January 5, 2016?</p> <p>11 A. I'm sorry. Could you say that again?</p> <p>12 Q. Yes. If you look at the very top --</p> <p>13 A. Yes.</p> <p>14 Q. -- there is an email from you to --</p> <p>15 actually, this, at the top -- I misspoke.</p> <p>16 A. Yeah. That's what kind of confused</p> <p>17 me.</p> <p>18 Q. Yeah. It's the Stephen Smith with a</p> <p>19 cc to the Goldman people. Right?</p> <p>20 A. Correct.</p> <p>21 Q. And then if we look down below that,</p> <p>22 are these the talking points that Goldman drafted for</p> <p>23 the January 7 meeting?</p> <p>24 A. That's correct.</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 having said that, we still had 3, 4, \$5 billion of</p> <p>2 equity staring us in the face. We didn't have an MLP</p> <p>3 currency. We needed to understand how best to finance</p> <p>4 or deal with that in a shareholder-friendly way. I</p> <p>5 mean, that was the crux of our ongoing problem, and so</p> <p>6 that's why it was Item No. 1.</p> <p>7 Q. Okay. And then we see number 2, "CEO</p> <p>8 Succession Plan." We've talked about that. Right?</p> <p>9 A. Correct. And we go with, again, as I</p> <p>10 said, a waterfront of issues, a waterfront of</p> <p>11 considerations or issues.</p> <p>12 Q. So if Columbia were reengaging with</p> <p>13 TransCanada in January of 2016, did you reach back to</p> <p>14 Dominion, Spectra, or Berkshire at that time?</p> <p>15 A. We did not.</p> <p>16 Q. Why not?</p> <p>17 A. Because, in our view, we weren't</p> <p>18 soliciting proposals. And we believed that the</p> <p>19 likelihood of an acquisition during this period was,</p> <p>20 at best, remote.</p> <p>21 Q. Well, and had they reached out to you?</p> <p>22 A. Oh, no. No, sir.</p> <p>23 Q. Let's look at --</p> <p>24 A. The only outreach was from</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. And why did you ask to have these</p> <p>2 talking points drafted?</p> <p>3 A. Well, just as a matter of course, when</p> <p>4 we have interactions with senior leaders of other</p> <p>5 companies, transactional or otherwise, we tend to</p> <p>6 think through what might happen. We tend to prepare</p> <p>7 talking points in anticipation of how a discussion</p> <p>8 might unfold.</p> <p>9 Q. And so did you look at these before</p> <p>10 Steve Smith went to that meeting?</p> <p>11 A. I certainly did.</p> <p>12 Q. Were there any issues with Mr. Smith</p> <p>13 handing over these talking points, which I assume you</p> <p>14 learned about at some point?</p> <p>15 A. Yeah. I've now learned about -- I</p> <p>16 mean, I usually paraphrase and/or state my talking</p> <p>17 points. Mr. Smith is a fairly anal person. So once I</p> <p>18 heard that, I wasn't surprised that he had done that,</p> <p>19 because he is just overly cautious. And instead of</p> <p>20 trying to paraphrase, he would probably be more</p> <p>21 comfortable, I'm going to say this, well, here, you</p> <p>22 can read it.</p> <p>23 Q. We'll hear from him maybe later today</p> <p>24 on this.</p> <p>CHANCERY COURT REPORTERS</p>

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<p>1 So this wasn't the first time that</p> <p>2 Columbia had prepared talking points before an</p> <p>3 important meeting. Right?</p> <p>4 A. Again, that's a typical practice.</p> <p>5 Q. And in your view of things, was there</p> <p>6 anything secret in these talking points?</p> <p>7 A. No. This was just straightforward</p> <p>8 language, the way you would use in virtually any</p> <p>9 context, public, private, or otherwise. It was just</p> <p>10 straightforward.</p> <p>11 Q. After the January 7 meeting, did due</p> <p>12 diligence and negotiations with TransCanada proceed?</p> <p>13 A. Well, to be precise, we provided some</p> <p>14 updated due diligence, obviously, had gone through an</p> <p>15 extensive diligence process before, but we provided</p> <p>16 diligence, which our understanding was they were going</p> <p>17 to use with their CEO and, ultimately, with their</p> <p>18 board to make a decision on whether they were going to</p> <p>19 make a proposal that could lead into negotiations</p> <p>20 after that, if our board agreed.</p> <p>21 Q. And was that largely what you had</p> <p>22 already provided them and they destroyed earlier?</p> <p>23 A. It was almost identical. Just only a</p> <p>24 matter of weeks had passed.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 A. That's right. Again, work to prepare</p> <p>2 the board. And it included fiduciary duties, if we</p> <p>3 were presented with an offer.</p> <p>4 Q. Did you keep the board informed of</p> <p>5 material developments of the discussions with</p> <p>6 TransCanada?</p> <p>7 A. At all junctures of the process.</p> <p>8 Q. Let's look at Joint Exhibit 564,</p> <p>9 please. This is an email that you sent on January 11</p> <p>10 to three of the directors: Teresa Taylor, Les</p> <p>11 Silverman and Sig Cornelius. Right?</p> <p>12 A. That's correct.</p> <p>13 Q. And, generally, was this an update of</p> <p>14 what was happening?</p> <p>15 A. It was an update and an alert, and it</p> <p>16 was a follow-up to the one-on-one discussions I had</p> <p>17 with those three individuals. And I think you'll see</p> <p>18 that those are the folks that I had my one-on-ones</p> <p>19 with prior to the January 7th meeting. And then I</p> <p>20 think I add a P.S., I'm going to share the same info</p> <p>21 with the remaining three directors that I had</p> <p>22 one-on-ones scheduled with, that week, actually, it</p> <p>23 says.</p> <p>24 Q. Okay. In the second paragraph it</p> <p>CHANCERY COURT REPORTERS</p>
R. Skaggs - Cross Page 1040	R. Skaggs - Cross Page 1042
<p>1 Q. Let's look at Joint Exhibit 554,</p> <p>2 please. This is an email at the top from you to</p> <p>3 Robert Smith dated 1/9/2016. Right?</p> <p>4 A. That's correct.</p> <p>5 Q. And then below it is what I want to</p> <p>6 focus you on. There is an email from Mr. Bob Smith to</p> <p>7 you dated January 9, 2016.</p> <p>8 And what was that about?</p> <p>9 A. It appears that Bob had reached out to</p> <p>10 S&C to confer with them on the heels of the meeting</p> <p>11 that Steve Smith had with Mr. Poirier. And they were</p> <p>12 anticipating that diligence would be ongoing and also</p> <p>13 anticipating that we might receive an indicative</p> <p>14 indication of interest from TransCanada later in the</p> <p>15 month. So they were just preparing us for diligence,</p> <p>16 potential requests for exclusivity, and reminding the</p> <p>17 board of what its duties and responsibilities are at</p> <p>18 this stage of the process or could be at that stage of</p> <p>19 the process.</p> <p>20 Q. And you see that "(ii) board prep</p> <p>21 requirement to cover fiduciary duties at this</p> <p>22 stage ..."?</p> <p>23 This is on the eve of your late</p> <p>24 January planning session. Right?</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 says, "Since our recent discussions ..., " and so</p> <p>2 that's referring to the one-on-ones you had had with</p> <p>3 these three directors?</p> <p>4 A. Yes. That was my point.</p> <p>5 Q. So what happened with respect to your</p> <p>6 discussions with TransCanada in late January?</p> <p>7 A. Ultimately, on the eve of our</p> <p>8 strategic planning meeting, TransCanada's CEO calls me</p> <p>9 and outlines an indicative expression of interest in</p> <p>10 how we might proceed.</p> <p>11 Q. Okay. And what did you learn at that</p> <p>12 time from him?</p> <p>13 A. Well, number one, they still had an</p> <p>14 ongoing interest in Columbia. They felt like there</p> <p>15 was still fundamental value. I'm paraphrasing what</p> <p>16 the CEO said to me.</p> <p>17 And then he went on and said, we're</p> <p>18 interested in trying to work through an offer, 25 to</p> <p>19 \$28, all cash, expedited due diligence, and we would</p> <p>20 like exclusivity. Those were, give or take, the terms</p> <p>21 he laid out to me.</p> <p>22 And I was in the listening mode, and I</p> <p>23 obviously had asked a few questions. And I agreed</p> <p>24 that I would take that back to my board, and after the</p> <p>CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 1043</p> <p>1 board meeting, I would revert to him.</p> <p>2 Q. And so did you consider that a firm</p> <p>3 offer that you could accept?</p> <p>4 A. I mean, that was just -- as I said,</p> <p>5 that was just an indication of interest to determine</p> <p>6 whether we could even begin negotiations and begin a</p> <p>7 process of trying to iron something out.</p> <p>8 Q. Let's look at Exhibit 191 again, which</p> <p>9 is the minutes on pages 4 through 5, starts at the</p> <p>10 bottom of page 4.</p> <p>11 And it says, "January 28" --</p> <p>12 A. I'm sorry. We're not -- we're synched</p> <p>13 up now.</p> <p>14 Q. Yeah. It's a little bit confusing</p> <p>15 because it starts at the bottom of page 4,</p> <p>16 "January 28-29, [] Executive Session," and then it</p> <p>17 goes to the next page.</p> <p>18 A. Yes, sir.</p> <p>19 Q. You see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And this is a long paragraph. I just</p> <p>22 want to point you to two highlighted parts of it. One</p> <p>23 is about six lines down, beginning, "He recounted his</p> <p>24 January 25, 2016 conversation with Russ Girling"</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1045</p> <p>1 an extended period of give and take and negotiation</p> <p>2 and wheel-spinning. We needed to try to get to a</p> <p>3 conclusion up or down as soon as we possibly could,</p> <p>4 practically could, reasonably could.</p> <p>5 Q. Fair to say that exclusivity was</p> <p>6 thoroughly discussed at this meeting?</p> <p>7 A. To say the least.</p> <p>8 Q. Let's go to Joint Exhibit 492. This</p> <p>9 is a December 17 email that you sent to the advisors.</p> <p>10 And go to the next page, please.</p> <p>11 I believe counsel referred to these</p> <p>12 handwritten notes that you prepared in preparation for</p> <p>13 the late January planning meeting. Right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. By the way, is there anything in these</p> <p>16 notes or was it your intention in preparing them to</p> <p>17 prime the board for a TransCanada bid?</p> <p>18 A. Absolutely not. Again, this was</p> <p>19 dealing with our strategic position in the marketplace</p> <p>20 and the fact that we had 3 to \$4 billion of equity</p> <p>21 looming, how best to skin that cat.</p> <p>22 Q. Let's look at page 3, please, titled</p> <p>23 "CPG Strategic Positioning."</p> <p>24 Do you see that?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1044</p> <p>1 So tell us what was happening there</p> <p>2 with respect to this board meeting.</p> <p>3 A. I'm relaying the conversation that I</p> <p>4 had with Mr. Girling and his presentation of an</p> <p>5 indication of interest. And that's what I just</p> <p>6 mentioned, that he indicated 25 to \$20 [sic] all-cash.</p> <p>7 And I'm conveying that, I'm explaining that to the</p> <p>8 board, and they're obviously going to deliberate on</p> <p>9 that.</p> <p>10 Q. Look at the last sentence of this long</p> <p>11 paragraph, please. And there is a reference there to</p> <p>12 exclusivity. Tell us what you discussed with the</p> <p>13 board on that and what the board decided.</p> <p>14 A. Well, I think the minutes reflect the</p> <p>15 discussion that there are certainly pros and cons</p> <p>16 going with exclusivity, and the board understood that</p> <p>17 this was a serious request. It needed to be thought</p> <p>18 through. We needed to have the advice of our</p> <p>19 financial and legal advisors.</p> <p>20 And, ultimately, the board felt that</p> <p>21 the most balanced, appropriate way to proceed was to</p> <p>22 go on and grant exclusivity with the understanding and</p> <p>23 the terms that it was going to be relatively short.</p> <p>24 At this point, they were very interested in not having</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1046</p> <p>1 A. Yes, sir.</p> <p>2 Q. And I don't want to spend any time on</p> <p>3 this, but have you laid out here the considerations</p> <p>4 that we've been discussing in our examination about</p> <p>5 the issues that the company was facing financially?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Turn to page 4, please. And let's</p> <p>8 look at the third bullet at the bottom. "Here's our</p> <p>9 Deal, Analytic Framework."</p> <p>10 And what does that relate to?</p> <p>11 A. That simply refers to the fact that if</p> <p>12 we had an inbound proposition, here are the parameters</p> <p>13 that we're going to use to analyze that proposition,</p> <p>14 any proposition that comes through the door. Again,</p> <p>15 we're comparing our base plan, our base thinking, to</p> <p>16 alternatives.</p> <p>17 Q. Okay. And we see at the far-right,</p> <p>18 "Matrix versus \$28 per share."</p> <p>19 What does that mean? If you recall.</p> <p>20 A. It's hard for me to recall. You know,</p> <p>21 clearly, the board had looked at 28 as a benchmark, if</p> <p>22 you will. And I think this refers to, just looking at</p> <p>23 EBITDA multiples, market multiples, our stock price,</p> <p>24 and the like, against that baseline.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 1047</p> <p>1 Q. Let's go to page 5, please. And at</p> <p>2 the bottom, you see that says, "At What Price (Range)</p> <p>3 Would It Be Compelling To Transact."</p> <p>4 And so was that an issue that you</p> <p>5 wanted to talk to the board about at this planning</p> <p>6 session?</p> <p>7 A. I wouldn't say it was an issue. It</p> <p>8 was, again, we received inbounds. We were considering</p> <p>9 options. We needed to have what I would call a</p> <p>10 dynamic point of view on what prices might be worth</p> <p>11 engaging, be it a strategic, a PE, or anyone. So it</p> <p>12 was just -- that's what this is attempting to do, is</p> <p>13 to continue to develop points of view around value,</p> <p>14 prices, and the like.</p> <p>15 Q. Okay. So --</p> <p>16 A. And Goldman was going to present this</p> <p>17 sort of analysis.</p> <p>18 Q. Did these points end up getting, like,</p> <p>19 rolled into part of the agenda for this meeting?</p> <p>20 A. It certainly did. I believe not only</p> <p>21 Goldman, but I believe Goldman Sachs -- sorry --</p> <p>22 Goldman but also Lazard tried in their packages to</p> <p>23 address these sorts of considerations.</p> <p>24 Q. I haven't asked you this. This is</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1049</p> <p>1 A. Yes, after much discussion. It went</p> <p>2 through the same sort of analytical bases, and</p> <p>3 obviously, they heard from the lawyers and from the</p> <p>4 financial advisors. And again, it was going to be a</p> <p>5 relatively abbreviated period they were willing to do</p> <p>6 that.</p> <p>7 Q. I want to turn to February now. We're</p> <p>8 after that strategic planning meeting. And I want to</p> <p>9 read you a sentence out of the plaintiffs' pretrial</p> <p>10 brief. "On February 9, 2016, Skaggs and Smith had a</p> <p>11 secret one-on-one meeting with Fornell to discuss the</p> <p>12 merger. Through this meeting, TransCanada confirmed</p> <p>13 that Skaggs and Smith wanted to exit regardless of</p> <p>14 price and would dare the board to decline a lowball</p> <p>15 offer."</p> <p>16 Okay. Did you hear that?</p> <p>17 A. I heard that.</p> <p>18 Q. Okay. Now, this is the February 9,</p> <p>19 2016, meeting. And I believe you testified in your</p> <p>20 deposition that you didn't even recall the meeting.</p> <p>21 A. I did not -- I have no recollection of</p> <p>22 having that meeting.</p> <p>23 Q. But realizing that -- let me ask you</p> <p>24 this question: Did you ever tell Wells Fargo that you</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1048</p> <p>1 before that late January meeting. We saw in the</p> <p>2 minutes that you discussed exclusivity at that</p> <p>3 meeting.</p> <p>4 A. That's correct.</p> <p>5 Q. And so why did you believe it would be</p> <p>6 in the company's best interest to agree to</p> <p>7 exclusivity?</p> <p>8 A. My point of view was that it seemed</p> <p>9 that TransCanada had strong intent at this point to</p> <p>10 explore, try to reach a deal. This is the second time</p> <p>11 they had come back. And that they were willing to</p> <p>12 invest the resources in doing this. And so I thought</p> <p>13 that would be worth the exercise if we could do it on</p> <p>14 a truncated basis.</p> <p>15 And I was sensitive and understood</p> <p>16 that they might not want to do that with exclusivity.</p> <p>17 And so back and forth, on balance, it seemed the best</p> <p>18 way to proceed to follow what could be a legitimate</p> <p>19 option and not kill that off at this point by</p> <p>20 insisting on nonexclusivity talks. So it was that</p> <p>21 balancing.</p> <p>22 Q. And then after that discussion at that</p> <p>23 board meeting, did the board decide that exclusivity</p> <p>24 was the right path?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1050</p> <p>1 wanted an exit regardless of price?</p> <p>2 A. Absolutely, positively not. I mean,</p> <p>3 that's not -- I would never say that to anybody, much</p> <p>4 less a Wells Fargo person.</p> <p>5 Q. Did you ever tell Wells Fargo or</p> <p>6 anyone else that you would dare the board to decline a</p> <p>7 lowball offer?</p> <p>8 A. Again, I apologize. I mean, it's just</p> <p>9 completely nuts and incredible. I would never, ever</p> <p>10 say that. And I would never, ever put my board in</p> <p>11 that sort of position, nor could I put my board in</p> <p>12 that sort of position.</p> <p>13 Q. Did you tell anyone at TransCanada</p> <p>14 this?</p> <p>15 A. Again, absolutely, positively no.</p> <p>16 Q. And to your knowledge, did Steve Smith</p> <p>17 ever do that?</p> <p>18 A. No. I just can't imagine him ever</p> <p>19 doing that.</p> <p>20 Q. You've worked with Steve Smith for a</p> <p>21 long time or you worked with him a long time. Right?</p> <p>22 You know him probably better than anybody.</p> <p>23 A. Probably do.</p> <p>24 Q. Could you ever imagine Steve Smith</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 1051</p> <p>1 saying that?</p> <p>2 A. Never. Most conservative,</p> <p>3 down-the-middle person. And he just -- it's just not</p> <p>4 what he would do.</p> <p>5 Q. Let's go to Joint Exhibit 707, please.</p> <p>6 So, Mr. Skaggs, you were not copied on</p> <p>7 this document. Realizing that you don't have a</p> <p>8 recollection of that February 9 meeting, would you</p> <p>9 look at these bullet points, just very quickly, and</p> <p>10 tell us -- and realizing you didn't prepare this and</p> <p>11 you don't remember the meeting, but are these the</p> <p>12 types of things that would have been discussed around</p> <p>13 that time in early February regarding a potential deal</p> <p>14 with TransCanada?</p> <p>15 A. The question is?</p> <p>16 Q. Are these, these bullet points, are</p> <p>17 these the types of things that, logically, could have</p> <p>18 been discussed at that meeting?</p> <p>19 A. Those are the sorts of things that</p> <p>20 would be reasonable and logical if I had that sort of</p> <p>21 meeting. This would be what I would expect.</p> <p>22 Q. In this summary, does it say that you</p> <p>23 said or Steve Smith said that you wanted an exit</p> <p>24 regardless of price?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1053</p> <p>1 And Mr. Smith said to me, I think</p> <p>2 they're considering 24. That's what my -- Mr. Poirier</p> <p>3 has indicated. And I absolutely lost it. I was</p> <p>4 angry, disappointed, frustrated. I reacted strongly,</p> <p>5 let's say.</p> <p>6 And I think Mr. Smith understood I was</p> <p>7 extraordinarily unhappy. And he communicated back to</p> <p>8 TransCanada, my observation is, if you even broach</p> <p>9 that with Mr. Skaggs, the reaction is just going to be</p> <p>10 negative, counterproductive, and you shouldn't do</p> <p>11 that.</p> <p>12 Q. And did TransCanada come back with a</p> <p>13 bigger number?</p> <p>14 A. Well, the only number, then, that</p> <p>15 Mr. Girling presented with me -- he didn't talk about</p> <p>16 24 or any other number. He just went right to and</p> <p>17 said 25.25, all cash. And then just call it -- it was</p> <p>18 a tense conversation because I was still very unhappy</p> <p>19 about the positioning, this notion of 24.</p> <p>20 Q. And at this board meeting -- and we</p> <p>21 see this on the screen -- March 5, down near the</p> <p>22 bottom, was that discussed with the board, the \$25.25?</p> <p>23 A. We did discuss this with the board.</p> <p>24 Q. And what did the board decide to do?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1052</p> <p>1 A. It does not say that.</p> <p>2 Q. And does it say that you all would</p> <p>3 dare the board to decline a lowball offer?</p> <p>4 A. It certainly doesn't say that.</p> <p>5 Q. Let's look at Joint Exhibit 191,</p> <p>6 please. And go to the March 5 minutes, which is on</p> <p>7 page 10.</p> <p>8 You were asked a number of questions</p> <p>9 about the \$24 proposal and the \$25.25 offer?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And so -- and I don't want to rehash,</p> <p>12 but you said, I believe, the \$24 number never really</p> <p>13 went anywhere because they -- because TransCanada</p> <p>14 withdrew it and then came back.</p> <p>15 A. Well, I'm not sure I said it exactly</p> <p>16 like that.</p> <p>17 Q. Okay. Put it in your words.</p> <p>18 A. Yeah. In my words, and I think, in my</p> <p>19 words and my understanding, that I believe it was over</p> <p>20 the weekend -- or I can't recall the exact date. But</p> <p>21 they floated a trial balloon with Steve Smith at 24,</p> <p>22 and I think the purpose was trial balloon and also to</p> <p>23 provide me with a sense of where Mr. Girling might be</p> <p>24 when he ultimately engaged.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1054</p> <p>1 A. The board decided that that offer</p> <p>2 should be rejected, straight out.</p> <p>3 Q. And did you convey that rejection to</p> <p>4 Mr. Girling?</p> <p>5 A. I did.</p> <p>6 Q. How did he respond?</p> <p>7 A. He responded with disappointment.</p> <p>8 Again, very short, terse conversation. He said, well,</p> <p>9 I guess we're done.</p> <p>10 And I said, yes, we are done.</p> <p>11 Q. And at that point, did you ask Bob</p> <p>12 Smith to prepare a return or destroy letter for</p> <p>13 TransCanada?</p> <p>14 A. I can't recall whether I requested</p> <p>15 that, but my assumption was that the lawyers would</p> <p>16 proceed in that manner.</p> <p>17 Q. And at that point, did you think the</p> <p>18 merger discussions were dead?</p> <p>19 A. I certainly did.</p> <p>20 Q. Do you recall what happened next?</p> <p>21 A. Again, I apologize for my recollection</p> <p>22 here, but I can't -- I keep saying I think it was over</p> <p>23 the weekend. But over the next several days, bankers</p> <p>24 were talking to bankers. And, clearly, they were</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 1055</p> <p>1 attempting to find if there was any opportunity to</p> <p>2 revive discussions. And during those discussions,</p> <p>3 this notion of, well, would people reengage around 26,</p> <p>4 potentially, and see whether there was a basis to move</p> <p>5 forward and attempt to strike a deal at that sort of</p> <p>6 number.</p> <p>7 Q. Okay. And we saw a number of</p> <p>8 documents from counsel on your direct about these</p> <p>9 discussions happening with the bankers and with you</p> <p>10 and others during this period of time.</p> <p>11 A. That's correct.</p> <p>12 Q. Was there any effort on your part to</p> <p>13 keep the \$26 number somehow hidden from the board?</p> <p>14 A. No. Absolutely not. I spoke directly</p> <p>15 to Mr. Cornelius about the possibility of receiving</p> <p>16 that sort of number and asking his thoughts on that</p> <p>17 and how we might proceed if we received that. In</p> <p>18 other words, do we take that to the board? Do we --</p> <p>19 that sort of give and take with Mr. Cornelius.</p> <p>20 Q. Did you end up communicating that to</p> <p>21 TransCanada? And I'm saying "you" --</p> <p>22 A. Communicating?</p> <p>23 Q. So let me ask a better question.</p> <p>24 A. Yeah.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1057</p> <p>1 that it was provisional; that they had to get through</p> <p>2 credit rating agencies, equity considerations. He</p> <p>3 needed to make sure he had a financing plan to be able</p> <p>4 to execute on a \$26 price.</p> <p>5 Q. So did you consider that when it was</p> <p>6 presented to you as a firm offer that you could just</p> <p>7 accept at that time?</p> <p>8 A. No. It was absolutely provisional. I</p> <p>9 do recall putting in writing to the board, this is a</p> <p>10 highly provisional, risky sort of proposition.</p> <p>11 Q. Let's look at Joint Exhibit 960,</p> <p>12 please. This is an email that you sent to the board</p> <p>13 from March the 10th that laid out this indicative</p> <p>14 proposal from Mr. Girling.</p> <p>15 A. The best -- this is the document I was</p> <p>16 referring to or alluding to.</p> <p>17 Q. And if you look down below that</p> <p>18 horizontal line, it says "Taurus' Indicative/</p> <p>19 Provisional Proposition." Your words. Right?</p> <p>20 A. Absolutely my words.</p> <p>21 Q. And is that what you believed it was?</p> <p>22 A. That's exactly what it was. And I</p> <p>23 believe I also outlined what the risks and the</p> <p>24 provisions and the tentativeness was all about.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1056</p> <p>1 Q. Did the \$26 end up being communicated</p> <p>2 to TransCanada?</p> <p>3 A. Based on Mr. Cornelius' counsel and</p> <p>4 advice, he said one possible approach would be to</p> <p>5 indicate that 26 is a possible point for ongoing</p> <p>6 negotiations, but say it in the manner that there's</p> <p>7 been no board approval, there has been no board</p> <p>8 authorization. This is something management might</p> <p>9 recommend, but make it clear that if we proceed on</p> <p>10 this, no board authorization at this time.</p> <p>11 Q. And so was it actually conveyed in</p> <p>12 that sense?</p> <p>13 A. I can't recall in what manner, but</p> <p>14 somehow, there was a communication, yes. We would be</p> <p>15 willing to consider something at 26, with the</p> <p>16 understanding the board has not authorized 26 and has</p> <p>17 not authorized us to go forward yet.</p> <p>18 Q. How did TransCanada respond?</p> <p>19 A. Ultimately, TransCanada did respond.</p> <p>20 Mr. Girling, the CEO, responded to me with \$26,</p> <p>21 10 percent of that would be equity, and then he</p> <p>22 attached a host of provisions around this. So it was</p> <p>23 an indicative provisional proposal that they wanted to</p> <p>24 try to work with us on, but he made it crystal clear</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1058</p> <p>1 Q. So plaintiffs, in their pretrial</p> <p>2 brief, say the following on page 36: "Skaggs and</p> <p>3 Smith informed TransCanada on the morning of March 10</p> <p>4 that the Board had 'accepted \$26 per share with</p> <p>5 10 percent stock' and that the parties just needed to</p> <p>6 negotiate the break fee."</p> <p>7 Agree or disagree?</p> <p>8 A. Absolutely categorically disagree.</p> <p>9 Q. Okay.</p> <p>10 A. It's just not true.</p> <p>11 Q. Let's look at the board minutes.</p> <p>12 That's Exhibit 191, please, page 14. And we want the</p> <p>13 part at the top, please. March -- these are the</p> <p>14 March 10 minutes that start on the prior page. And</p> <p>15 counsel asked you questions and read two of the</p> <p>16 sentences in this top paragraph during your direct.</p> <p>17 I want to refer you to a sentence that</p> <p>18 was not read. And so let me find it. It begins on</p> <p>19 the fourth line. And it reads, "The Board recognized</p> <p>20 that TransCanada's offer was only a non-binding</p> <p>21 indication of interest, and there could be no</p> <p>22 certainty that would result in a firm offer by</p> <p>23 TransCanada approximately two weeks later."</p> <p>24 Do you recall that that was discussed</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">R. Skaggs - Cross Page 1059</p> <p>1 at that meeting?</p> <p>2 A. Well, that certainly was discussed at</p> <p>3 length at that meeting. And, again, it reflects the</p> <p>4 note that I sent to the board that this was highly</p> <p>5 conditional and, at this point, highly risky.</p> <p>6 Q. Let's go to Joint Exhibit 997, please.</p> <p>7 And this is an email from you to the board the next</p> <p>8 day, March 11.</p> <p>9 THE COURT: Before we move off that,</p> <p>10 what's your understanding of the reference to</p> <p>11 "approximately two weeks later"? I'm not tracking</p> <p>12 that.</p> <p>13 THE WITNESS: My understanding was</p> <p>14 that to try to firm up that -- sorry -- to firm up</p> <p>15 that proposal, that they were going to have to meet,</p> <p>16 obviously, with their board, with the credit rating</p> <p>17 agencies, and that they were going to have to assess</p> <p>18 the financial markets.</p> <p>19 And, fourth, my recollection was there</p> <p>20 was I'll call it a banking holiday in Canada where</p> <p>21 they were not going to have, for whatever reason, good</p> <p>22 insight into the equity markets in Canada. That's my</p> <p>23 general understanding.</p> <p>24 They still had quite a bit of work to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1061</p> <p>1 equity they were going to have to do to finance this</p> <p>2 deal. And the stock price was a very key indicator,</p> <p>3 because, obviously, when the stock price goes down,</p> <p>4 more and more dilution, and it's a risk to the ability</p> <p>5 to do this.</p> <p>6 And it's not only dilution but also</p> <p>7 how much equity they could reasonably raise in the</p> <p>8 Canadian market. So, again, financing this</p> <p>9 transaction was a huge risk. It wasn't just the</p> <p>10 equity, but it was the credit rating agencies, and it</p> <p>11 was selling assets. But at this point, we were really</p> <p>12 focusing on that price and what it might imply about</p> <p>13 their ability to sustain an offer to us.</p> <p>14 Q. During this critical period of time,</p> <p>15 were you monitoring TransCanada's stock price?</p> <p>16 A. Every day.</p> <p>17 Q. And were you keeping people abreast of</p> <p>18 it?</p> <p>19 A. Virtually every day.</p> <p>20 Q. Let's go to Exhibit 952, please. This</p> <p>21 is an internal Wells Fargo email, and it's been</p> <p>22 discussed a lot in this case. What you will see in</p> <p>23 the middle of the page, Eric Fornell -- and by the</p> <p>24 way, you didn't get a copy of this, but I'm going to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1060</p> <p>1 do on this provision -- this offer.</p> <p>2 BY ATTORNEY HARRELL:</p> <p>3 Q. Let's look at Joint Exhibit 997, which</p> <p>4 is an email that you sent to the board on March the</p> <p>5 11th.</p> <p>6 And so is this another one of those</p> <p>7 board update emails bringing them up to date on the</p> <p>8 transaction?</p> <p>9 A. The transaction, media leaks, and the</p> <p>10 markets at-large.</p> <p>11 Q. Okay. Let's look at page -- I can't</p> <p>12 find it. Let's go to the next page, please. Yes.</p> <p>13 And go down to the bottom of the page.</p> <p>14 And so I'm looking at the bottom of</p> <p>15 page 2 and the top part of page 3.</p> <p>16 A. Yes.</p> <p>17 Q. And do you see on the top part of page</p> <p>18 3, a reference to TRP, TransCanada's closing stock</p> <p>19 price?</p> <p>20 A. I do. Both Canadian and U.S.</p> <p>21 Q. Yeah. And so why is that in this</p> <p>22 update to the board at that time?</p> <p>23 A. Well, in order to execute on this</p> <p>24 provisional offer, they were increasing the amount of</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1062</p> <p>1 ask you about it.</p> <p>2 Eric Fornell says, "They think they</p> <p>3 now have an opportunity to hear what their investors</p> <p>4 think about this. The Capricorn board is freaking out</p> <p>5 and told the management team to get a deal done with</p> <p>6 'whatever it takes.'"</p> <p>7 Did the board tell management to get a</p> <p>8 deal done with whatever it takes?</p> <p>9 A. Absolutely not, and it would be hard</p> <p>10 for me to imagine my -- that board ever saying</p> <p>11 anything like that.</p> <p>12 Q. And did you hear from the board that</p> <p>13 they were freaking out?</p> <p>14 A. Absolutely, positively not. That</p> <p>15 board would -- is unflappable.</p> <p>16 Q. Did anyone at Columbia tell</p> <p>17 TransCanada that -- about these board discussions that</p> <p>18 were going on at this time, much less make a statement</p> <p>19 that the board was freaking out?</p> <p>20 A. I just can't imagine it. If somebody</p> <p>21 said something like that, it would not be true and</p> <p>22 certainly wouldn't be appropriate.</p> <p>23 Q. When counsel was asking you questions</p> <p>24 about this document, you, I think, were prepared to</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">R. Skaggs - Cross Page 1063</p> <p>1 say why Eric Fornell might have said something like</p> <p>2 this. Why don't you go ahead and complete your answer</p> <p>3 and tell us. You obviously have an opinion on that.</p> <p>4 A. Again, I don't know Mr. Fornell, but I</p> <p>5 do realize that he might have a very, very strong</p> <p>6 incentive to see the transaction completed and to see</p> <p>7 the process continue.</p> <p>8 Q. Let's go to Exhibit 986, please. And</p> <p>9 in the interest of time, I'm just going to move pretty</p> <p>10 fast through this.</p> <p>11 Did you get an email from Spectra</p> <p>12 shortly after the leak of the negotiations in <i>The Wall</i></p> <p>13 <i>Street Journal</i>?</p> <p>14 A. I did.</p> <p>15 Q. And do you see at the bottom, this is</p> <p>16 the email that you got from Spectra?</p> <p>17 A. That's correct.</p> <p>18 Q. And I would like to highlight -- just</p> <p>19 one moment. In the second paragraph, the second</p> <p>20 line -- I'm sorry, the third paragraph, the second</p> <p>21 line, middle, "offering SE shares in exchange"</p> <p>22 A. Correct. I see that.</p> <p>23 Q. So what did you take -- what did you</p> <p>24 take from this when you got this email from Spectra</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1065</p> <p>1 board about the inbound script.</p> <p>2 Do you recall that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Was this fully vetted with all of the</p> <p>5 advisors, that is, Sullivan & Cromwell, legal</p> <p>6 department, Goldman, everybody internally?</p> <p>7 A. Fully, fully developed, times three.</p> <p>8 Q. I'm going to ask you just one</p> <p>9 question. If we just scroll down, under "Recommended</p> <p>10 Approach," circa mid-day Saturday, was there a</p> <p>11 protocol that you guys came up with on how to convey</p> <p>12 this with Bob Smith and Steve Smith both taking a part</p> <p>13 in that?</p> <p>14 A. That's right. That's what the team</p> <p>15 recommended, how to proceed with this.</p> <p>16 Q. Let's go to Joint Exhibit 1028,</p> <p>17 please.</p> <p>18 And before I go to that, was there a</p> <p>19 discussion to make sure that the script did not</p> <p>20 violate any exclusivity agreement that might be</p> <p>21 entered into with TransCanada?</p> <p>22 A. Again, that was one of the key</p> <p>23 considerations as we were developing this.</p> <p>24 Q. Let's look at 1028, which, at the top,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1064</p> <p>1 saying, look, we might still be interested in a deal</p> <p>2 offering our shares in exchange?</p> <p>3 A. That if, if they developed a proposal,</p> <p>4 it would likely be an all-stock proposal. No cash,</p> <p>5 all stock.</p> <p>6 And that's what I would expect because</p> <p>7 they did not have a balance sheet or the ability to do</p> <p>8 anything with cash.</p> <p>9 Q. And how did that make you feel about</p> <p>10 whether it was wise to do a deal with them at that</p> <p>11 time, if there were a deal?</p> <p>12 A. Well, from the get-go, their balance</p> <p>13 sheet was weaker than our balance sheet. And that to</p> <p>14 do a deal with us, under virtually any scenario I</p> <p>15 could imagine, the transaction would be highly</p> <p>16 dilutive to Spectra.</p> <p>17 So, again, reasonable feasibility of</p> <p>18 doing anything, anything, was just minuscule when it</p> <p>19 came to Spectra.</p> <p>20 That was my analysis. Now, would we</p> <p>21 listen to something? Sure. But it just seemed to me</p> <p>22 such a long stretch.</p> <p>23 Q. Let's look at Exhibit 971, please.</p> <p>24 And this is an email dated March 11 from you to the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1066</p> <p>1 is an email from Mr. Poirier to a number of people,</p> <p>2 dated March 12. And if you go down to the very</p> <p>3 bottom, there is a reference to -- and we have to get</p> <p>4 part of that on the next page, at the top -- a Hugh</p> <p>5 Babowal email that uses the words "moral commitment."</p> <p>6 Do you see that?</p> <p>7 A. I see that line or that term.</p> <p>8 Q. And so let me just ask you -- and I</p> <p>9 don't have a lot of time to spend on this -- but at</p> <p>10 any time did you tell anybody anything about a moral</p> <p>11 commitment?</p> <p>12 A. Absolutely positively no.</p> <p>13 Q. Did those words ever come out of your</p> <p>14 mouth?</p> <p>15 A. They never came out of my mouth. And</p> <p>16 frankly, in this context, I'm not even sure what they</p> <p>17 mean.</p> <p>18 Q. Okay. And did you hear anybody else</p> <p>19 say that?</p> <p>20 A. No.</p> <p>21 Q. Did you ask Goldman and Lazard to do</p> <p>22 an analysis to evaluate how likely it was that Spectra</p> <p>23 would be a viable acquirer?</p> <p>24 A. We did ask them to do that, and they</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">R. Skaggs - Cross Page 1067</p> <p>1 had been providing that all along, all through the 2 process. 3 Q. Let's look at Joint Exhibit 1107, 4 please. And go to page 20. 5 By the way, I guess we ought to 6 identify it first. Let's stay on page 1 for one 7 moment, please. 8 This was the board meeting agenda for 9 March 16. Right? 10 A. That's correct. 11 Q. All right. And March 16 was the day 12 that the board had the vote on whether to accept the 13 \$25.50 offer. Right? 14 A. That's correct. 15 Q. Quickly, let's go to page 20, please. 16 Is this Goldman's analysis of 17 Spectra's ability to pay? 18 A. Yes, it is. 19 Q. And so at that meeting, was Spectra 20 discussed? 21 A. Spectra was discussed, yes, sir. 22 Q. It wasn't just a meeting to 23 rubber-stamp \$25.50? 24 A. It was not. We were talking about</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1069</p> <p>1 <u>AFTERNOON SESSION</u> 2 (Resumed at 1:30 p.m.) 3 THE COURT: Welcome back, everyone. 4 Please be seated. 5 You-all should take the growing number 6 of folks in front of me as an endorsement of your 7 litigation skills. We started with my two clerks, 8 then we gained an intern, and we've now gained another 9 intern. So everybody wants to see the top-flight 10 lawyers going at it. Take that as an endorsement. 11 Please resume. 12 ATTORNEY HARRELL: Hopefully we don't 13 disappoint. 14 THE COURT: No pressure. 15 ATTORNEY HARRELL: Exactly. 16 BY ATTORNEY HARRELL: 17 Q. Mr. Skaggs, welcome back. 18 When we took our lunch break, we had 19 talked about a document that had been prepared by 20 Goldman about Spectra's ability-to-pay analysis; 21 right? 22 A. I recall that, yes. 23 Q. And I want to refer you to one other 24 document that was very similar but was prepared by</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1068</p> <p>1 Spectra, and we were looking at fairness opinions. We 2 were soliciting input of all of our advisors during 3 that discussion. 4 Q. And so what does this show? Without 5 getting into the weeds here, what did it show you 6 about Saturn's or Spectra's ability to pay? 7 A. That to transact at 25.50 under any 8 imaginable, reasonable scenario would be massively 9 dilutive to them. And it also suggests, again, when 10 you look to the upper left, they're just on the verge 11 of being a downgraded credit. So it's just -- it 12 shows that it just wouldn't be tenable. 13 Q. And so did this analysis help inform 14 the board whether it should do further reach-outs to 15 Spectra? 16 A. Oh, absolutely. Absolutely. This is 17 confirmation that this was just not a reasonable path. 18 THE COURT: We need to break there for 19 lunch. We'll resume at 1:30. 20 (Lunch recess taken at 12:30 p.m.) 21 22 23 24</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1070</p> <p>1 Lazard. 2 ATTORNEY HARRELL: Let's pull up Joint 3 Exhibit 1114, please. 4 Q. So at the top it says, "From: 5 [Raymond] Nebel" And you can see "Lazard." 6 And below it, it says, "Per 7 Capricorn's request, we've prepared preliminary 8 acc/dil and credit analysis regarding a potential 9 Spectra/Capricorn transaction." 10 You see it's dated March 16, which is 11 the date of the ultimate board meeting that approved 12 the deal; right? 13 A. That's correct. 14 Q. Let's go to page 5, please. So, 15 again, I'm going to request that you not get into the 16 weeds on this, but just tell us what this informed you 17 and the board about Spectra's ability to pay and the 18 effect of a combination with Spectra. 19 A. That at any price between 25.50 to 20 \$28, a transaction would be highly, highly dilutive 21 for Spectra. And, also, that their debt levels were 22 on a credit rating precipice for a downgrade. 23 Q. And like the Goldman analysis we 24 looked at a minute ago, was that discussed with the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p>1 board at the March 16 meeting?</p> <p>2 A. Yes, sir.</p> <p>3 Q. One other document I want to look at</p> <p>4 regarding Spectra, and that's Exhibit 1057. This is a</p> <p>5 Goldman document. If we go to the next page, please.</p> <p>6 We see here from Goldman --</p> <p>7 They had reached out, by the way to</p> <p>8 Spectra, correct, and had given Spectra the script?</p> <p>9 A. That's correct. Yes.</p> <p>10 Q. Okay. And this is Goldman coming back</p> <p>11 with what they had learned from Spectra?</p> <p>12 A. Yes. That's the essence of the letter</p> <p>13 or the note.</p> <p>14 Q. Pardon me. So about two-thirds of the</p> <p>15 way down, we see, "He wanted us to know we should</p> <p>16 expect a formal letter."</p> <p>17 And then he goes on to make a couple</p> <p>18 of other statements.</p> <p>19 Do you remember being informed that</p> <p>20 there might be a formal letter coming?</p> <p>21 A. Yes. The answer is yes, to that.</p> <p>22 Q. Did that formal letter ever arrive?</p> <p>23 A. Nothing ever arrived. It was radio</p> <p>24 silent from Spectra.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 Q. And actually, the board, according to</p> <p>2 this, "concluded that pursuing discussions with</p> <p>3 Spectra would not be worth the risk of losing the</p> <p>4 potential transaction with TransCanada"</p> <p>5 Right?</p> <p>6 A. That's what this reflects, yes.</p> <p>7 Q. All right.</p> <p>8 A. I think, though, in the interest of</p> <p>9 completeness, it doesn't say that we would not</p> <p>10 evaluate a proposal if one was submitted to</p> <p>11 TransCanada -- or submitted by Spectra because the</p> <p>12 board was concerned deeply about their fiduciary</p> <p>13 duties.</p> <p>14 Q. Okay. This is talking about actually</p> <p>15 pursuing or chasing after Spectra?</p> <p>16 A. That's correct.</p> <p>17 Q. All right. And then, if we look at</p> <p>18 the next page, 17, which is the board minutes of</p> <p>19 March 14th. First full paragraph, it says, "Spectra</p> <p>20 was preparing to make a formal proposal to the Company</p> <p>21 in the next few days"</p> <p>22 That's what we just saw in the Goldman</p> <p>23 email; right?</p> <p>24 A. That's correct. It was reported to</p> <p>CHANCERY COURT REPORTERS</p>
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<p>1 Q. You didn't hear back from Spectra at</p> <p>2 all?</p> <p>3 A. That's correct.</p> <p>4 Q. So that's March 12; right?</p> <p>5 A. Yes, sir. That's the date on this</p> <p>6 note.</p> <p>7 Q. So very quickly, I want to look at a</p> <p>8 couple more board minutes.</p> <p>9 Let's look at the minutes of March 12,</p> <p>10 which is Exhibit 191. It starts on page 15, but we're</p> <p>11 going to look at what's on 16.</p> <p>12 And in the first full paragraph, you</p> <p>13 see at the first part of the paragraph, "The board</p> <p>14 then discussed with management and representatives</p> <p>15 from Goldman Sachs and Sullivan ... considerations</p> <p>16 applicable to potentially engaging with Spectra"</p> <p>17 And just read that to yourself about</p> <p>18 halfway through that paragraph.</p> <p>19 My question is: Does that refresh</p> <p>20 your recollection that the Spectra situation was</p> <p>21 discussed thoroughly with the board on March the 12th?</p> <p>22 A. Oh, for certain. It was a key topic</p> <p>23 of conversation as the board decided what it would</p> <p>24 like to do next.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 the board that, based on that information, that we</p> <p>2 could expect something.</p> <p>3 Q. And it says, "[T]he Company would</p> <p>4 potentially be entering into the merger agreement</p> <p>5 without having the opportunity to consider such formal</p> <p>6 proposal from Spectra."</p> <p>7 Right? Do you see that in the middle</p> <p>8 of the paragraph?</p> <p>9 A. Yes. Yes. Yes, sir. I see it.</p> <p>10 Q. And so was that a risk that was</p> <p>11 debated and discussed within the board?</p> <p>12 A. Fully vetted, that consideration was</p> <p>13 fully vetted by the board and our legal advisors and</p> <p>14 others.</p> <p>15 Q. Okay. And then I go to March the</p> <p>16 16th, which starts at the bottom of page 17, and go to</p> <p>17 the next page, which is near the middle of page 18,</p> <p>18 the middle paragraph.</p> <p>19 And there's a statement, "The Board</p> <p>20 concluded, after discussions with management and the</p> <p>21 Company's financial advisors, that Spectra's ability</p> <p>22 to present a strong, competitive offer in a timely</p> <p>23 manner was likely relatively weak. The Board also</p> <p>24 considered that there was no assurance that Spectra</p> <p>CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 1075</p> <p>1 would make a formal written proposal in a timely</p> <p>2 matter or at all"</p> <p>3 My question to you is: Did the board</p> <p>4 fully, over these few days, discuss in every way all</p> <p>5 of the issues, the good and the bad, with Spectra?</p> <p>6 A. Oh, absolutely, thoroughly ventilated</p> <p>7 all the considerations around that. And, of course,</p> <p>8 they were conferring with experts, market experts</p> <p>9 throughout this period. So yes.</p> <p>10 Q. And what was the board's decision with</p> <p>11 respect to Spectra?</p> <p>12 A. It reflected in the minutes that it</p> <p>13 was highly, highly unlikely, highly risky. Did not</p> <p>14 see a reasonable scenario where they would come in</p> <p>15 with an offer that could compete, if at all come in</p> <p>16 with an offer, which, of course, they did not.</p> <p>17 Q. Let's go back to TransCanada for a</p> <p>18 moment.</p> <p>19 A. Okay.</p> <p>20 Q. Did TransCanada -- let me ask you this</p> <p>21 first. So we talked about the \$26 mixed cash stock</p> <p>22 consideration; right?</p> <p>23 A. Yeah, the conditional proposition.</p> <p>24 Q. Was that ever made into a binding</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1077</p> <p>1 we could avoid it.</p> <p>2 Q. And so at some point in this process,</p> <p>3 did TransCanada make an offer of \$25.50 per share all</p> <p>4 cash?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And tell us, did TransCanada signal</p> <p>7 that they would be open to further negotiations on</p> <p>8 this \$25.50 offer?</p> <p>9 A. To the contrary. They indicated that</p> <p>10 they were out. This was it, they had no flexibility</p> <p>11 left.</p> <p>12 Q. Did Columbia's legal team ever advise</p> <p>13 you that a public announcement would breach the</p> <p>14 standstill?</p> <p>15 A. Not sure I understand the question.</p> <p>16 Q. Let me just move on.</p> <p>17 At that time, did you think the \$26</p> <p>18 indicative offer was still available?</p> <p>19 A. Oh, absolutely not. It had never been</p> <p>20 proposed, and we knew that it was falling apart</p> <p>21 because of their financing concerns.</p> <p>22 Q. Okay. So leading up to the March 16</p> <p>23 meeting, let's look briefly at Exhibit No. 1081,</p> <p>24 please. And that's a March 14 email.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1076</p> <p>1 offer?</p> <p>2 A. It was never formalized. It was never</p> <p>3 presented to me as a formal offer from their CEO.</p> <p>4 Q. So in counsel's direct to you, you</p> <p>5 were asked questions about whether the lawyers at that</p> <p>6 time were actually preparing an agreement.</p> <p>7 Do you recall those questions?</p> <p>8 A. I do recall those questions.</p> <p>9 Q. So how is it that you could have</p> <p>10 lawyers working on a merger agreement, but at the same</p> <p>11 time not even have an offer on the table and certainly</p> <p>12 not one you had accepted?</p> <p>13 A. Well, the lawyers, the teams continued</p> <p>14 to work on diligence, contract language, pricing, and</p> <p>15 break fee were the last elements of a potential</p> <p>16 transaction. That was intentional.</p> <p>17 So they were continuing those work</p> <p>18 streams, while, ultimately, TransCanada's CEO and</p> <p>19 myself would have an understanding on price/break fee,</p> <p>20 and we'd present it to the board and then the board</p> <p>21 would make a decision. Because we wanted to make an</p> <p>22 announcement sooner rather than later because the</p> <p>23 markets were so dislocated, and now there was a rumor.</p> <p>24 So we didn't want to lose time because of drafting, if</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1078</p> <p>1 ATTORNEY HARRELL: And if we go to the</p> <p>2 next page, please.</p> <p>3 Q. Was this an email that discussed what</p> <p>4 the value of the current offer of 25.50 versus the 26</p> <p>5 cash and the stock offer, what the difference was?</p> <p>6 A. It does, based on math. It doesn't</p> <p>7 reflect what a due diligence of TransCanada's currency</p> <p>8 would be. So, in other words, we had not completed</p> <p>9 and we may not have even begun a due diligence of</p> <p>10 their financial plan.</p> <p>11 Q. Okay. Based on math, what did this</p> <p>12 tell you that the value was?</p> <p>13 A. About 25.70 to, let's round up, 25.60.</p> <p>14 Q. And if you turn to Exhibit No. 810.</p> <p>15 ATTORNEY HARRELL: Go to the next</p> <p>16 page.</p> <p>17 Q. And did that -- was this something --</p> <p>18 was this a document that was used at the March 16</p> <p>19 meeting regarding intrinsic value?</p> <p>20 A. My recollection, yes, this document</p> <p>21 was part of the overall package.</p> <p>22 Q. What did that tell you about Goldman</p> <p>23 Sachs' and Lazard's calculations of intrinsic value?</p> <p>24 A. That at this point we slipped to,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Cross

<p style="text-align: right;">R. Skaggs - Cross Page 1079</p> <p>1 let's call it 20.85, 22.23, different points of view.</p> <p>2 And then it reflects what sort of premium we were</p> <p>3 looking at. So it reflects an offer of 25.50 as way</p> <p>4 above our intrinsic value.</p> <p>5 Q. At the March 16 meeting, the 25.50</p> <p>6 offer was accepted; right?</p> <p>7 A. After much discussion and debate, it</p> <p>8 was accepted.</p> <p>9 Q. Okay. And so just tell us very</p> <p>10 briefly -- because we're running out of time -- how</p> <p>11 would you describe that debate on whether to accept</p> <p>12 it?</p> <p>13 A. Well, management felt like it was a</p> <p>14 relatively close call. Obviously, these numbers say</p> <p>15 it wasn't a close call. But we had emotional ties to</p> <p>16 the company. Our experts felt like it was certainly a</p> <p>17 good price. The board wanted to discuss counter and</p> <p>18 the risks that might go to a counteroffer.</p> <p>19 So we had a good debate/vetting, if</p> <p>20 you will, of what our options were and the quality of</p> <p>21 this price.</p> <p>22 Q. And so, did you press the board to</p> <p>23 accept it? I mean, was there any coercion to try to</p> <p>24 get the board to try to accept it?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Cross Page 1081</p> <p>1 very frequent basis?</p> <p>2 A. A very frequent basis with the entire</p> <p>3 board, and also communicating via phone with</p> <p>4 Mr. Cornelius throughout this entire period.</p> <p>5 Q. So was that almost a full-time process</p> <p>6 for that two weeks?</p> <p>7 A. Full-time plus, yes.</p> <p>8 ATTORNEY HARRELL: We offer</p> <p>9 Demonstrative Exhibit 1 as a demonstrative exhibit.</p> <p>10 ATTORNEY van KAWEGEN: Your Honor,</p> <p>11 it's fine as a demonstrative, not a substantive</p> <p>12 exhibit.</p> <p>13 THE COURT: We'll accept it on that</p> <p>14 basis.</p> <p>15 BY ATTORNEY HARRELL:</p> <p>16 Q. Did you read the complaint that was</p> <p>17 filed against you, Mr. Smith and TC Energy?</p> <p>18 A. Yes, sir, I certainly did.</p> <p>19 Q. So just to sum it up in one sentence,</p> <p>20 you and Mr. Smith were accused of working together to</p> <p>21 breach your fiduciary duties in multiple ways.</p> <p>22 If I could summarize all of the</p> <p>23 charges against you, it would be the following: "You</p> <p>24 tilted the playing field towards TransCanada in</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Cross Page 1080</p> <p>1 A. Absolutely not. I don't believe I</p> <p>2 could ever coerce the board to do anything. But, no,</p> <p>3 this was -- throughout the entire process, it was a</p> <p>4 fulsome discussion and debate and vetting.</p> <p>5 Q. And I think from your earlier</p> <p>6 examination by counsel, Mr. Smith was not even in town</p> <p>7 at that time; right?</p> <p>8 A. That's the one, I just cannot recall.</p> <p>9 Q. Okay. So he wasn't at that board</p> <p>10 meeting trying to convince the board to take that</p> <p>11 offer, was he?</p> <p>12 A. Oh, certainly not, certainly not.</p> <p>13 Q. Last exhibit. Let's look at our</p> <p>14 Demonstrative Exhibit No. 1. And there is a lot on</p> <p>15 this exhibit.</p> <p>16 ATTORNEY HARRELL: It's in the binder,</p> <p>17 Your Honor.</p> <p>18 Q. It is a summary of your communications</p> <p>19 with the board between March 4 and March 17. And</p> <p>20 we've put the board meeting entries in black. What</p> <p>21 you see in blue are emails and board updates. I</p> <p>22 counted 43 contacts between March 4 and March 17.</p> <p>23 My question to you is: Were you</p> <p>24 communicating during that time with the board on a</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Redirect Page 1082</p> <p>1 pursuit of a cash deal that would maximize the value</p> <p>2 of your retirement benefits." True or false?</p> <p>3 A. False.</p> <p>4 Q. And, again, we don't have much time,</p> <p>5 but give me a really short answer of why that's false.</p> <p>6 A. Because I had no intention or plan to</p> <p>7 do that. I was going to work and labor to make this</p> <p>8 company successful and then ultimately to run a</p> <p>9 process that was best in class, credible, fair and</p> <p>10 honest.</p> <p>11 Q. And looking back, do you believe that</p> <p>12 the board made the right decision?</p> <p>13 A. Oh, absolutely. When I look back and</p> <p>14 when the market looks back, it was an outstanding</p> <p>15 outcome for the shareholders.</p> <p>16 ATTORNEY HARRELL: Pass the witness,</p> <p>17 Your Honor.</p> <p>18 ATTORNEY van KAWEGEN: Thank you,</p> <p>19 Your Honor.</p> <p>20 REDIRECT EXAMINATION</p> <p>21 BY ATTORNEY van KAWEGEN:</p> <p>22 Q. Mr. Skaggs, did I hear you testify</p> <p>23 today that before the equity offering, the bar for the</p> <p>24 board to reengage or to engage with the potential bid</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

R. Skaggs - Redirect

<p style="text-align: right;">R. Skaggs - Redirect Page 1083</p> <p>1 was \$28 per share?</p> <p>2 A. That's correct, when we were looking</p> <p>3 at the issuance of equity.</p> <p>4 Q. And did I also hear you say that the</p> <p>5 equity offering was somewhat like a poison pill? Did</p> <p>6 I hear you say that?</p> <p>7 A. Somewhat like that, in my estimation.</p> <p>8 Q. And you went to law school; right?</p> <p>9 A. I did.</p> <p>10 Q. Okay. And did I also hear you say</p> <p>11 that you couldn't see anyone -- after this equity</p> <p>12 offer, you couldn't see anyone be interested in making</p> <p>13 a proposal?</p> <p>14 A. That's exactly right.</p> <p>15 Q. Let me show you a document, and it's</p> <p>16 JTX 1195. And at the top there's an email from Steve</p> <p>17 Smith to you and others talking about the proxy and</p> <p>18 macro factors affecting value.</p> <p>19 Then at the end he says, "We also got</p> <p>20 bonus depreciation, if you recall which completely</p> <p>21 mitigated the equity raise on a per share DCF basis."</p> <p>22 That's the same Mr. Smith, Steve</p> <p>23 Smith, that you refer to as a cautious person?</p> <p>24 A. Correct.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Redirect Page 1085</p> <p>1 minutes ago I think you talked about this. Do you</p> <p>2 remember that?</p> <p>3 A. Yes.</p> <p>4 Q. You have no basis to believe that this</p> <p>5 document actually went to the board, do you?</p> <p>6 A. I just don't know.</p> <p>7 Q. Right. And if you look at the first</p> <p>8 page of this document, it's just an email from Matt</p> <p>9 Gibson to you dated March 14.</p> <p>10 A. That's true. But the information may</p> <p>11 have been conveyed to the board. In fact, I would</p> <p>12 have expected it to be conveyed to the board.</p> <p>13 Q. But sitting here today, you don't know</p> <p>14 one way or the other?</p> <p>15 A. Don't know one way or the other.</p> <p>16 Q. Let's go back to the second page.</p> <p>17 This analysis comparing the various stock price,</p> <p>18 various offers, right, the implied revised offer per</p> <p>19 Capricorn share, is as of March 14, 2016; right?</p> <p>20 A. Well --</p> <p>21 Q. Date of the document?</p> <p>22 A. Yes, but I'm not sure it's various</p> <p>23 prices unless I'm missing something here. I think</p> <p>24 it's one price but different assumptions --</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">R. Skaggs - Redirect Page 1084</p> <p>1 Q. Down the middle, conservative?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. You also talked about Spectra.</p> <p>4 Now, it's true, is it not, that when</p> <p>5 Spectra showed up, you were not in exclusivity with</p> <p>6 TransCanada?</p> <p>7 A. When Spectra showed up? I believe</p> <p>8 that's right. When the note was written to me, and</p> <p>9 our response was provided to them, I think that is</p> <p>10 correct.</p> <p>11 Q. And you were not required to renew</p> <p>12 exclusivity with TransCanada?</p> <p>13 A. Certainly not.</p> <p>14 Q. Okay. So just to be clear, when</p> <p>15 Spectra's CEO contacted you and the head of corporate</p> <p>16 development was reaching out to Goldman Sachs, not in</p> <p>17 exclusivity; right?</p> <p>18 A. Again, subject to check, that would be</p> <p>19 my recollection.</p> <p>20 Q. Now, your counsel -- moving on to the</p> <p>21 next topic, your counsel showed you a document that is</p> <p>22 JTX 1081. Maybe we can show you that.</p> <p>23 And on the second page, there's this</p> <p>24 analysis "Taurus Revised Offer Analysis." Five</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">R. Skaggs - Redirect Page 1086</p> <p>1 Q. All right.</p> <p>2 A. -- I think.</p> <p>3 Q. And that's as of March 14, 2016?</p> <p>4 A. Again, subject to check, I'll agree</p> <p>5 that if that's what it is, it's what it is.</p> <p>6 Q. Right. And if you see above, you see</p> <p>7 where it says, "Equity Consideration (per Capricorn</p> <p>8 Share) [of] \$2.60"?</p> <p>9 A. Yes.</p> <p>10 Q. If that equity consideration had been</p> <p>11 fixed as of the date of the signing, right, it could</p> <p>12 have gone up if TransCanada stock price increased</p> <p>13 between the date of the signing and the date of the</p> <p>14 close?</p> <p>15 A. Yes, and the converse is true.</p> <p>16 ATTORNEY van KAWEGEN: Thank you.</p> <p>17 No further questions, Your Honor.</p> <p>18 ATTORNEY HARRELL: Nothing further,</p> <p>19 Your Honor.</p> <p>20 THE COURT: Thank you, Mr. Skaggs. I</p> <p>21 appreciate you being here.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 (Witness excused.)</p> <p>24 ATTORNEY OLSEN: Your Honor, we're</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

J. Hunter - Direct

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1 going to call Joel Hunter to the stand. We're just
 2 going to get him.
 3 JOEL EDWARD HUNTER, having first been
 4 duly affirmed, was examined and testified as follows:
 5 DIRECT EXAMINATION
 6 BY ATTORNEY YOCH:
 7 Q. Hello, Mr. Hunter. For the record, my
 8 name is James Yoch on behalf of TransCanada.
 9 Can you please briefly describe for
 10 the Court your educational background?
 11 A. Yes. I have a bachelor of arts in
 12 economics from the University of Regina. I have a
 13 bachelor of commerce, majoring in accounting, from the
 14 University of Calgary. And I'm a charter financial
 15 analyst, commonly known as a CFA charterholder.
 16 Q. Could you please briefly describe your
 17 work history now.
 18 A. Started with TransCanada back in 1997.
 19 Started as an analyst in the accounting group. I went
 20 into the finance group around 2000. I became the
 21 director of finance in 2008. I became the vice
 22 president of finance in 2010. I became the vice
 23 president of finance and treasurer in 2015. Senior
 24 vice president, capital markets in 2019. Then I moved

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1 finance, responsibilities are long-term financing for
 2 the company, working with the credit agencies, and
 3 being responsible for our long-term planning and
 4 forecasting.
 5 Q. Now, before the July 1st, 2016,
 6 acquisition of Columbia by TransCanada, did you have a
 7 close relationship with anyone in management at
 8 Columbia?
 9 A. No.
 10 Q. As the then-vice president of finance
 11 and treasurer at TransCanada, did your role include
 12 modeling from a corporate planning perspective?
 13 A. Yes.
 14 Q. What specifically did that involve?
 15 A. So we would model any type of
 16 transaction that we do in the company. We looked for
 17 the corporate impacts. So we put the model and
 18 valuation model into our corporate model, determine
 19 the impact on our earnings per share, cash flow per
 20 share, or EBITDA, or cash flow, and the finance plans
 21 associated with it.
 22 Q. What was your role in connection with
 23 evaluating the acquisition of Columbia?
 24 A. So my role -- our group's role was to

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1 into my current role on August 1st of last year as
 2 executive vice president and chief financial officer.
 3 Q. And your predecessor and CFO was
 4 Don Marchand; right?
 5 A. Yes.
 6 Q. What are your responsibilities as CFO
 7 of TransCanada?
 8 A. My responsibilities range from
 9 accounting, tax, treasury, finance, risk management,
 10 investor relations.
 11 Q. What was your position at TransCanada
 12 during the 2015 to 2016 process that led to
 13 TransCanada's acquisition of Columbia?
 14 A. I was vice president of finance and
 15 treasurer.
 16 Q. Who did you report to at that time?
 17 A. Don Marchand, executive vice president
 18 and chief financial officer.
 19 Q. Staying in that time, what were your
 20 responsibilities as vice president finance and
 21 treasurer?
 22 A. So from a treasury standpoint,
 23 day-to-day cash management, make sure the money is in
 24 the right spot, where it needs to be. Being VP of

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1 evaluate the corporate impacts. So, again, we would
 2 take an evaluation model, put it into our corporate
 3 model to determine the impact it would have on our
 4 earnings cash flow and, again, work through a finance
 5 plan associated with that as well.
 6 Q. Did that include engaging with the
 7 rating agencies?
 8 A. It did.
 9 Q. And what specifically did that entail,
 10 engaging with the rating agencies?
 11 A. So what it entailed is it's called a
 12 rating advisory service where we provide them our
 13 model with the acquisition and associated finance
 14 plan. And what they do is they opine on that model to
 15 determine whether or not it has any impact on our
 16 credit ratings or our outlook.
 17 Q. Now, in late 2015 and early 2016,
 18 before TransCanada acquired Columbia, what was
 19 TransCanada's credit rating?
 20 A. So with Moody's Investors Services, it
 21 was A- with a stable outlook. With Standard & Poor's,
 22 it was A- with a stable outlook. And with DBRS, it
 23 was A (low) with a stable outlook.
 24 Q. Was it important for TransCanada to

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J. Hunter - Direct

<p style="text-align: right;">J. Hunter - Direct Page 1091</p> <p>1 maintain those ratings?</p> <p>2 A. Yes, it was.</p> <p>3 Q. Why?</p> <p>4 A. Credit ratings are really important to</p> <p>5 a company of our size, and especially the capital</p> <p>6 program that we have where we're really relying on the</p> <p>7 capital markets.</p> <p>8 Generally, the higher the rating, the</p> <p>9 lower the cost of capital. And by that, I mean you</p> <p>10 keep your debt costs as low as can, the higher the</p> <p>11 credit rating, along with keeping a premium valuation</p> <p>12 for your shares.</p> <p>13 Q. Did TransCanada approach any rating</p> <p>14 agencies in connection with a potential acquisition of</p> <p>15 Columbia?</p> <p>16 A. We did.</p> <p>17 Q. And what were those rating agencies?</p> <p>18 A. So it was Moody's, Standard & Poor's,</p> <p>19 DBRS, all three agencies that were covering us at the</p> <p>20 time.</p> <p>21 Q. When did approach those rating</p> <p>22 agencies in connection with a potential acquisition of</p> <p>23 Columbia?</p> <p>24 A. We approached them in early February</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Hunter - Direct Page 1093</p> <p>1 Q. You see this is a February 5th, 2016,</p> <p>2 email exchange from Linda Leslie to Don Marchand and</p> <p>3 others, and you're copied on this email. There's an</p> <p>4 attachment.</p> <p>5 ATTORNEY YOCH: Can we turn to</p> <p>6 JTX 694.003, the first page of that attachment.</p> <p>7 Q. What is this attachment?</p> <p>8 A. So this attachment is the ratings</p> <p>9 presentation that was provided to all three rating</p> <p>10 agencies as part of their rating advisory service.</p> <p>11 ATTORNEY YOCH: Okay. Could you</p> <p>12 please turn, Kentaro, to JTX 694.010. And if you're</p> <p>13 using the hard copy, it's the internally numbered</p> <p>14 Slide 8.</p> <p>15 Q. What is this slide showing?</p> <p>16 A. So this slide shows two scenarios that</p> <p>17 represent the agencies. On the left-hand side is an</p> <p>18 assumed acquisition price of \$25 per share. The first</p> <p>19 scenario contemplates us issuing debt, which is shown</p> <p>20 in the purple box, along with some equity. And then</p> <p>21 the gray box being asset sales, hence the title "Asset</p> <p>22 Sale" for scenario number one.</p> <p>23 The second scenario does not</p> <p>24 contemplate asset sales. It's purely debt and equity.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">J. Hunter - Direct Page 1092</p> <p>1 of 2016.</p> <p>2 Q. Why did you -- why did TransCanada</p> <p>3 approach the rating agencies?</p> <p>4 A. Our ratings are really important to</p> <p>5 us. As I mentioned earlier, we're at A- with a stable</p> <p>6 outlook with all three agencies, which we found really</p> <p>7 important for us, again, from a cost-of-capital</p> <p>8 standpoint. It was important for our management team,</p> <p>9 it was important for our board of directors that we</p> <p>10 maintain those credit ratings.</p> <p>11 So given the size of this transaction</p> <p>12 and the finance plan that's associated with it, we</p> <p>13 felt it was important for us to go to the rating</p> <p>14 agencies for them to provide what's called an</p> <p>15 indicative rating, that if the transaction were to go</p> <p>16 ahead, based on the information they received from us</p> <p>17 through our model, that the rating would apply at that</p> <p>18 point in time.</p> <p>19 Q. I'd like for you to take a look at the</p> <p>20 binder. The document will also come up on your</p> <p>21 screen. But if you'd like to take a look at the hard</p> <p>22 copy of the document, there's binder in front of you.</p> <p>23 Would you turn to JTX 694, please.</p> <p>24 A. Yes.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Hunter - Direct Page 1094</p> <p>1 So the key in both of these scenarios is that TC</p> <p>2 Energy is assuming to issue debt for the transaction.</p> <p>3 Q. And how did the rating agencies react</p> <p>4 to these scenarios that TransCanada presented to them?</p> <p>5 A. They came back to us and -- with</p> <p>6 Moody's, they said we'd be downgraded to BBB+ with a</p> <p>7 negative outlook. Standard & Poor's came back and</p> <p>8 said we'd be downgraded to BBB+ with a negative</p> <p>9 outlook. And DBRS came back and said we'd be</p> <p>10 downgraded to BBB+ with a stable outlook.</p> <p>11 Q. Could you take a look at JTX 778 now,</p> <p>12 Mr. Hunter. This is the minutes of the February 24,</p> <p>13 2016 --</p> <p>14 THE COURT: Can I just ask you</p> <p>15 something? Is that basically one level? I don't have</p> <p>16 the different rating agencies' stacks in my head. But</p> <p>17 basically, each one of them was telling you you'd be</p> <p>18 downgraded one level with negative outlook, or was it</p> <p>19 more than one level?</p> <p>20 THE WITNESS: It was one level.</p> <p>21 THE COURT: It was one level. Okay.</p> <p>22 BY ATTORNEY YOCH:</p> <p>23 Q. So I think on your screen is JTX 778.</p> <p>24 This is a copy of the February 24, 2016, minutes of</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">J. Hunter - Direct Page 1095</p> <p>1 the TransCanada board meeting. Did you attend this</p> <p>2 meeting?</p> <p>3 A. Yes.</p> <p>4 Q. I'd like you to take a look at the</p> <p>5 underlined heading "Project Constellation" towards the</p> <p>6 bottom of the page. And the first paragraph</p> <p>7 underneath that says, "The key issues included the</p> <p>8 funding plan, the adverse outcome of the credit rating</p> <p>9 advisory services discussions and potential</p> <p>10 alternative financing scenarios which could be</p> <p>11 explored in order to continue pursuit of the Capricorn</p> <p>12 acquisition."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Where it says, "[T]he adverse outcome</p> <p>16 of the credit rating advisory services</p> <p>17 discussions ...," what were those discussions? And</p> <p>18 how did they take place?</p> <p>19 A. They took place through a call that</p> <p>20 was on February 19, I believe, a Friday. We had</p> <p>21 received calls with -- we had calls with Moody's and</p> <p>22 Standard & Poor's. We were supposed to have a</p> <p>23 scheduled call that day with DBRS, but they needed the</p> <p>24 weekend. And they came back to us the following</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Hunter - Direct Page 1097</p> <p>1 what we heard back from the credit rating agencies.</p> <p>2 You can see here, as mentioned earlier, a one notch</p> <p>3 downgrade to BBB+ from all three agencies if we were</p> <p>4 to pursue the two scenarios that we presented to them.</p> <p>5 And it highlights here that Moody's and S&P, the</p> <p>6 negative outlook, and DBRS with a stable outlook.</p> <p>7 Further on, just an assessment or</p> <p>8 overview just what came from reports back from each of</p> <p>9 the agencies are summarized in these two slides here.</p> <p>10 Q. The fourth bullet down says, "Would</p> <p>11 lose ability to issue commercial paper in Canada."</p> <p>12 Why is that important?</p> <p>13 A. It's really important at the time for</p> <p>14 a company like us. We only had a commercial paper</p> <p>15 program in Canada; we did not have one in the United</p> <p>16 States. And the importance of having the DBRS rating</p> <p>17 is you need a rating from DBRS to access the</p> <p>18 commercial paper market in Canada.</p> <p>19 And the way it works is it's you get a</p> <p>20 different rating. And with our A- rating with a</p> <p>21 stable outlook, we had what was called an R-1(low)</p> <p>22 rating on commercial paper, which allowed us to access</p> <p>23 the commercial paper market basically at any point in</p> <p>24 time. This is important from a treasury standpoint</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">J. Hunter - Direct Page 1096</p> <p>1 Tuesday.</p> <p>2 Q. And you were on those calls and heard</p> <p>3 directly from the rating agencies?</p> <p>4 A. I was.</p> <p>5 Q. Okay. And that's the same sort of</p> <p>6 feedback that you had just been talking about --</p> <p>7 A. Yes.</p> <p>8 Q. -- that you had received?</p> <p>9 A. Yes.</p> <p>10 Q. Could you turn to JTX 768, please.</p> <p>11 This is a February 24, 2016 email from Andrew</p> <p>12 Isherwood, attaching a file titled "Project</p> <p>13 Constellation - Board Presentation Feb24final []." </p> <p>14 ATTORNEY YOCH: Can we flip to the</p> <p>15 attachments, the fifth page of the document,</p> <p>16 JTX 768.005?</p> <p>17 Q. Was this deck presented to the board</p> <p>18 at the February 24th meeting?</p> <p>19 A. Yes.</p> <p>20 ATTORNEY YOCH: Can you please turn</p> <p>21 now to JTX 776.022. That's Slide 18 internally.</p> <p>22 Q. Can you tell us what this slide is</p> <p>23 showing?</p> <p>24 A. Yeah. This slide is just overviewing</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Hunter - Direct Page 1098</p> <p>1 for liquidity of a company. It's short-term warrants,</p> <p>2 you can do from one day right up to 364 days.</p> <p>3 If we went down to BBB+ with a stable</p> <p>4 outlook, we would go to what's called R-2(high). And</p> <p>5 that would lock us out of the commercial paper market.</p> <p>6 So we would no longer have access to this cheap,</p> <p>7 accessible form of capital to fund our day-to-day cash</p> <p>8 needs, so we'd be more reliant on the bank market.</p> <p>9 Q. I want to flip back to Slide 15 of the</p> <p>10 deck, which is 768.019. It's titled "Implications of</p> <p>11 Downgrade."</p> <p>12 Can you walk us through the</p> <p>13 implications listed here.</p> <p>14 A. Yes. So we put on here the trends.</p> <p>15 So, first of all, with a downgrade, the cost of money</p> <p>16 would go up. And by that we mean the lower the</p> <p>17 rating, the higher the cost of debt.</p> <p>18 "Access to capital" would go down.</p> <p>19 The lower the rating, depending on the economic</p> <p>20 conditions of the market at that time, the lower the</p> <p>21 rating, you're not always going to have the same</p> <p>22 access to the capital markets that you would being a</p> <p>23 higher rated or an A- rated entity that we were.</p> <p>24 "Refinancing risk" and "term</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 constraints" goes up. Again, with a lower rating, you
 2 don't necessarily have the option to issue debt for
 3 longer terms, 20, 30, 40 years. And, as a result,
 4 you're going to, over time, kind of truncate your
 5 maturity profile, which increases the refinancing risk
 6 for the company because you're having more debt
 7 maturities come due on a very regular basis because
 8 you can't issue debt for longer periods of time.

9 "Reliance on the bank market," as I
 10 mentioned earlier, with losing the commercial paper
 11 market, we'd have to go to the bank market through our
 12 credit facilities, which is more expensive than the
 13 commercial paper market and it's not as efficient for
 14 your day-to-day cash needs.

15 The "Regulatory cost recovery risk,"
 16 we have the ability in Canada to pass through interest
 17 costs in our tolls as part of our regulated cost of
 18 service. With a lower rating, there's the risk that
 19 the company will not be able to transfer over all of
 20 its interests cost to its shippers. That would be a
 21 risk to the company.

22 "Reputation/counterparty of choice."
 23 Reputation, at the time we had around \$30 billion in
 24 debt outstanding. When you get downgraded, you have a

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1 would be negligible. So this we would just -- as a
 2 credit downgrade, we may have to post additional
 3 letters of credit, depending on the contracts. But
 4 here it's an equal sign.

5 So overall, the trend here is down,
 6 it's not good if we were to be downgraded to BBB+.
 7 And especially with the negative outlook, that's the
 8 part that would really concern me is that this wasn't
 9 going to stop at BBB+. This had the potential to go
 10 to mid-BBB, which puts you two notches above junk in
 11 the bond market, as it's referred to.

12 Q. And as a result of the feedback you
 13 received from the rating agencies, did your team put
 14 together a new financing plan for the transaction?

15 A. Yes.

16 Q. Did you send that new rate case to
 17 Moody's, S&P, and DBRS for their feedback?

18 A. Yes.

19 Q. Let's take a look then at JTX 799.
 20 It's a March 1st, 2016, email from Terry Hook, and
 21 then below that it's forwarding a February 26, 2016,
 22 email from Terry Hook to individuals at Moody's.

23 Who is Terry Hook?

24 A. Terry Hook was the manager of finance

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1 lot of unhappy bondholders. Some would be forced to
 2 sell your bonds because now you're out of the A
 3 bucket. It's referred to when you're going into a
 4 different bucket called the EEE bucket. So there
 5 certainly would be some impact on the price of their
 6 bonds.

7 The "counterparty of choice," when we
 8 look to build long linear infrastructure for 20, 30,
 9 40 years, one of the things that we hear back when
 10 we're signing these long-term contracts with entitles
 11 like Shell, for example, is that having a strong
 12 credit rating is really important because if they're
 13 going to be in business for 40 years, they want to
 14 make sure that their shipper, their pipeline company,
 15 is going to be in business. So it's very important
 16 for us.

17 "Currency mismatch," we like to issue
 18 most of our debt in the U.S. markets because we are
 19 functionally long in U.S. dollars, meaning we generate
 20 a lot of our revenue in the United States. As a
 21 result of a downgrade, we'd probably be more beholden
 22 to the Canadian markets and we'd have a bit of a
 23 currency mismatch there.

24 Then "Collateral requirements," this

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1 who reported to my director of finance at the time.
 2 One of his key responsibilities was working with the
 3 rating agencies.

4 Q. Now, the scenarios here, are they the
 5 new rate case or the new financing plan that we just
 6 discussed?

7 A. They are.

8 Q. And this was sent to Moody's in this
 9 email, but was this also sent to S&P and DBRS?

10 A. It was.

11 Q. So in the second bullet under finance
 12 plan, do you see that?

13 A. I do.

14 Q. It says, "Issue US\$3.0 billion
 15 subscription receipts"

16 What is the importance of that
 17 notation of the subscription receipts here?

18 A. A couple things. So, first of all,
 19 100 percent equity credit. So what we learned from
 20 the first two cases that we ran, that we could not
 21 incur any additional debt. So as a result, we went
 22 back. And as you can see on this finance plan, we did
 23 revise the purchase price. But what you'll notice
 24 here is that we're not incurring any incremental debt.

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1 We have asset sales along with subscription receipts.
 2 Subscription receipts are unique to
 3 the Canadian market. The best way to think of it is,
 4 like, contingent financing. We issue the subscription
 5 receipts; and so long as certain conditions precedents
 6 are met to close a transaction when the transaction
 7 closes, the subscription receipts convert into common
 8 shares of the company.

9 So in the event that a transaction
 10 doesn't close, the investors get their money back.
 11 The money is held in escrow until all the conditions
 12 are met to close the transaction.

13 Q. And the assumptions and changes that
 14 are noted here, if you look right above "Finance
 15 Plan," what was the reaction of the rating agencies to
 16 this new case?

17 A. So Moody's came back and said that we
 18 would maintain our A- rating with a stable outlook.
 19 DBRS came back and said we'd maintain our A (low)
 20 rating with a stable outlook. And S&P came back and
 21 said we'd maintain our A- rating with a negative
 22 outlook.

23 ATTORNEY YOCH: Can we now turn to
 24 JTX 1922, please.

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1 A. So what I meant by that is when I
 2 looked at Columbia and I looked at the price that we
 3 were offering at 25.25 that they rejected, I looked at
 4 their financial condition at that point in time.

5 And they had this very large capital
 6 program for a company their size. And they were
 7 heavily reliant on the master limited partnership
 8 market for their financing of this capital program.

9 And during this time, the master
 10 limited partnership market wasn't doing well. It was
 11 effectively melting down. And I know that they had to
 12 raise equity, they had to raise common equity in
 13 December of 2015.

14 So my view was, given the constraints
 15 for their access to equity capital through their
 16 master limited partnership, that I felt by making
 17 this -- I made this comment because I felt that their
 18 price was going to go down. They had no way of really
 19 efficiently funding their company, at least in the
 20 near term, from what I was seeing.

21 So I thought being patient and wait
 22 would be the best thing to do, in my opinion.

23 Q. Do you recall that after Columbia
 24 rejected TransCanada's \$25.25 offer, whether

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1 Q. So if you take a look at the -- it's
 2 an email chain. If you take a look at the bottom of
 3 the first page, there's a March 5th, 2016, email from
 4 Russ Girling and many other recipients.

5 And it says -- it begins, "I am very
 6 disappointed to let you know that we were unable to
 7 come to terms with Capricorn this afternoon."

8 Do you see that?

9 A. I do.

10 Q. Is he referring to Columbia's
 11 rejection of TransCanada's \$25.25 per share offer?

12 A. Yes.

13 Q. Now, moving up, so later in time,
 14 there's an email exchange between you and Gillian
 15 Garrett. Who's Gillian Garret?

16 A. Gillian Garrett was an analyst in my
 17 planning and forecasting group.

18 Q. And she writes to you on March 5th,
 19 "I'm checking my email like a lunatic today. Think
 20 the doors shut? I really hope not."

21 And then you respond in the early
 22 hours of March 6, "Shut for now. We should wait 3
 23 months then see. Interesting day to say the least."

24 What did you mean by that?

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1 TransCanada considered whether to make an offer at \$26
 2 per share?

3 A. Yes.

4 Q. And what was your view of TransCanada
 5 offering to acquire Columbia at that price?

6 A. I thought it was very rich. I
 7 struggled even at 25.25. Every 25 cents means a lot,
 8 especially from where I sit in finance, as I'm looking
 9 at our credit metrics, that if the price goes up, it
 10 means that we're probably going to have to raise more
 11 equity, which is -- ultimately can be dilutive to the
 12 shareholder.

13 So I was very concerned in just
 14 looking at the premium that would be applied relative
 15 to the market at the time that I was concerned --
 16 again, from where I sat -- that it was a rich premium
 17 at \$26.

18 Q. I'd like you to take a look now at
 19 JTX 882. Again, the bottom of the first page, it's
 20 going to continue onto the second page.

21 There's an email from Francois Poirier
 22 dated March 6th. It starts, "This is killing me..."

23 What is Mr. Poirier outlining in this
 24 email?

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<p style="text-align: right;">J. Hunter - Direct Page 1107</p> <p>1 A. So he's outlining a following case 2 here at \$26, ramping up our synergies, which were 3 already very high, to \$200 million. Upping the sub 4 receipts to \$4 billion plus what's called a greenshoe, 5 so an over-allotment option, which is, at that time, 6 very high for the Canadian market, so very aggressive. 7 And the question is: Do we need to go 8 back to -- for the rating advisory services, to all 9 the agencies if we put in another \$500 million in 10 equity. So he's asking us to think about running a 11 new plan here to consider a new option. 12 Q. Then it looks like Mr. Marchand 13 responds to that above on the first page, on March 6, 14 2016. You can take a look at that if you'd like. 15 Then you respond to Mr. Marchand, 16 "Great response - absolutely spot on. While I applaud 17 Francois' determination, this case is fatal." 18 What did you mean by writing, "[T]his 19 case is fatal"? 20 A. Looking at the purchase price of \$26, 21 the finance plan that's associated with it, you see 22 all the comments that Mr. Marchand makes. I concurred 23 with all of them from the premium that would be paid 24 at that price, to us being able to access that amount</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Hunter - Direct Page 1109</p> <p>1 Do you see that? 2 A. I do. 3 Q. So is it fair to say at this board 4 meeting, TransCanada's board was discussing a 5 potential \$26 per share offer? 6 A. Yes. 7 Q. If you take a look at the last full 8 paragraph, it reads: "After further deliberation, the 9 Board authorized management to make a counter offer to 10 Capricorn at US\$26.00 per share but which would 11 include TransCanada common shares as a portion 12 (10 percent) of the consideration." 13 What was the purpose of the mixed 14 consideration? 15 A. Again, with a higher price, that we 16 were constrained -- at the time we thought we would be 17 constrained with the amount of subscription receipts 18 that we would be able to issue in the market. We knew 19 that we couldn't incur any additional debt. 20 So this was put forward here to see if 21 they would be receptive to 10 percent of our shares in 22 consideration. However, it was nonbinding. There 23 were certain conditions that had to be met in order 24 for us to go ahead with this consideration.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">J. Hunter - Direct Page 1108</p> <p>1 of equity in the capital markets, the \$4 billion, and 2 in the synergies that we wanted to assume at 3 \$200 million, we felt that that was a very high amount 4 to achieve. 5 So I just concurred with all of his 6 comments, hence why I said, "[A]bsolutely spot on." I 7 couldn't have answered it any better. 8 Again, I applauded Francois' 9 determination here to get the deal done or at least 10 pursue it. But from where I sat, it was getting to be 11 a bit of a white-knuckle ride. 12 ATTORNEY YOCH: Can we turn to 13 JTX 944, please. 14 Q. This is a copy of the minutes from the 15 March 9, 2016, meeting of the TransCanada board of 16 directors. Were you present at this meeting? 17 A. Yes. 18 Q. Okay. I'd like to direct your 19 attention to the second page of the minutes. It's the 20 second paragraph on that page. 21 It reads: "Management reviewed a 22 slide at both the US\$25.25 per share as well as the 23 US\$26 per share which outlined the sources of funds at 24 those pricing levels."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Hunter - Direct Page 1110</p> <p>1 Q. Just above that, at the end of the 2 prior paragraph, it reads: "Management was asked to 3 include representation from the lead financing banks 4 at the next meeting." 5 Do you see that? 6 A. I do. 7 Q. Why did the board ask for 8 representation from the lead financing banks to attend 9 the next board meeting? 10 A. So the board wanted to hear the views 11 of the bank. Just given the size of the contemplated 12 transaction, they want to get their views on how they 13 think the market would receive the transaction if it 14 were to go ahead. They wanted to get their views on 15 the finance plan and, in particular, the subscription 16 receipts, that the size that we were contemplating, if 17 that was something that would be achievable in the 18 market. 19 Q. And at this point, had you worked 20 through this price with the underwriters? 21 A. We had, yes. 22 Q. Okay. Do you recall if 23 representatives from the lead financing banks attended 24 the next meeting?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p>1 A. Yes.</p> <p>2 Q. And what were those banks?</p> <p>3 A. RBC and TD Securities were the lead</p> <p>4 banks on the subscription receipts offering.</p> <p>5 MR. YOCH: Can we turn to JTX 1092,</p> <p>6 please.</p> <p>7 Q. This is a copy of the minutes of the</p> <p>8 March 14, 2016, meeting of the TransCanada board of</p> <p>9 directors. Were you present at this meeting?</p> <p>10 A. Yes.</p> <p>11 Q. The minutes also indicate that Trevor</p> <p>12 Gardner from RBC and Alec Clark from TD Securities</p> <p>13 attended this meeting.</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall that they were at the</p> <p>16 meeting?</p> <p>17 A. Yes.</p> <p>18 Q. Were they the representatives from the</p> <p>19 lead financing banks that were discussed and being</p> <p>20 invited to this meeting?</p> <p>21 A. They were.</p> <p>22 Q. Did you have any discussions with</p> <p>23 Mr. Clark or Mr. Gardner before the March 14 meeting?</p> <p>24 A. I did.</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 remaining at or above []\$49 [Canadian] per share with</p> <p>2 no adverse credit rating agency implications as well</p> <p>3 as certain other factors, including underwriters'</p> <p>4 willingness to offer a bought deal on the subscription</p> <p>5 receipts."</p> <p>6 Was this the reason for your</p> <p>7 discussion with the underwriters before the March 14</p> <p>8 meeting?</p> <p>9 A. Yes.</p> <p>10 Q. Staying on this page, the last</p> <p>11 paragraph, it continues on in the second page. It</p> <p>12 says, "The meeting discussed the impact of the media</p> <p>13 story on TransCanada's most recent offer, ability to</p> <p>14 pay and execution risk. In light of these</p> <p>15 developments, management indicated that it would</p> <p>16 communicate to Capricorn that its latest offer could</p> <p>17 no longer be supported as the conditions of [the]</p> <p>18 offer were no longer met. Management reviewed the</p> <p>19 challenges of a proposed share-for-share exchange with</p> <p>20 the Board members including valuation and execution</p> <p>21 risk."</p> <p>22 What is the proposed share-for-share</p> <p>23 exchange referred to in this second sentence I just</p> <p>24 read?</p> <p>CHANCERY COURT REPORTERS</p>
J. Hunter - Direct Page 1112	J. Hunter - Direct Page 1114
<p>1 Q. Did you talk to them together or</p> <p>2 separately?</p> <p>3 A. Both. Separately and together.</p> <p>4 Q. And what did you discuss?</p> <p>5 A. We discussed the finance plan, their</p> <p>6 role here -- again, two things. One, give us some</p> <p>7 input in how you think the market would react to the</p> <p>8 transaction but, more importantly, how they could</p> <p>9 execute on the subscription receipts offering that we</p> <p>10 were contemplating.</p> <p>11 Q. And did you discuss at what level they</p> <p>12 would support or whether or not they would support a</p> <p>13 share-for-share exchange?</p> <p>14 A. That was discussed, yes.</p> <p>15 Q. Let's look at the first page under the</p> <p>16 heading "<u>Project Constellation</u>," which is underlined</p> <p>17 and bolded.</p> <p>18 The second sentence of that paragraph</p> <p>19 reads: "Specifically, management had conveyed an</p> <p>20 offer price to Capricorn's management, subject to</p> <p>21 TransCanada Board approval of US\$26 per Capricorn</p> <p>22 share which would include TransCanada equity as</p> <p>23 10 percent of the total consideration. This offer was</p> <p>24 relayed as conditioned on TransCanada's share price</p> <p>CHANCERY COURT REPORTERS</p>	<p>1 A. So that's the 10 percent share</p> <p>2 exchange that was in the previous paragraph.</p> <p>3 Q. Okay. And can you describe the</p> <p>4 valuation and execution risk challenges referred to</p> <p>5 here?</p> <p>6 A. Yeah. With the subscription receipts</p> <p>7 that we were offering to the market, it was going to</p> <p>8 be on a bought deal basis. And what that means is</p> <p>9 that we are guaranteed our money, and all the risk is</p> <p>10 being transferred over to the underwriters.</p> <p>11 And in order for them to take on that</p> <p>12 risk, we're issuing the shares effectively to them to</p> <p>13 sell at a discount. In this transaction, it</p> <p>14 ultimately would sit at a 6 percent discount to the</p> <p>15 last trading price.</p> <p>16 Having -- so with the banks, they have</p> <p>17 the risk to sell the shares into the market. They</p> <p>18 want to get it in as quickly as possible. We</p> <p>19 ultimately did the issuance at 45.75 a share. So we</p> <p>20 were guaranteed that money. They're, then, trying to</p> <p>21 sell at 45.75 or higher. But they're subject to</p> <p>22 market risks.</p> <p>23 Adding on the share exchange would</p> <p>24 have added further risk to them because now you've got</p> <p>CHANCERY COURT REPORTERS</p>

J. Hunter - Direct

<p style="text-align: right;">J. Hunter - Direct Page 1115</p> <p>1 a linkage between our share price and Columbia's share 2 price that could influence, ultimately, our price and, 3 ultimately, increase the risk for them as they try to 4 sell the shares. 5 So that's where we come from here with 6 the execution and valuation. Ultimately, if a bank is 7 going to take on more risk, that means for us that we 8 would be paying a higher discount. And we're trying 9 to do it as cheaply as possible, issue as few shares 10 as possible for our transaction so that we don't 11 reduce the dilution that we otherwise had to our 12 shareholder. 13 Q. And this portion of the meeting, this 14 is where management is reporting to the board; isn't 15 that right? 16 A. Yes. 17 ATTORNEY OLSEN: Can we turn to the 18 second page of this document, please. 19 Q. And the second full paragraph, starts, 20 "The Board heard" 21 The second sentence reads: 22 "Management relayed that based on subsequent 23 discussions with its lead underwriters, it appeared 24 that a larger bought deal with a smaller</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Hunter - Direct Page 1117</p> <p>1 on all that risk. We're guaranteed at least a minimum 2 of the 4.2 billion. And if they ultimately exercise 3 their greenshoe option, which they ultimately did for 4 5 percent, then that took that number up to 5 4.4 billion, which was the largest sub receipts 6 offering in Canadian history and the largest common 7 equity offering. 8 THE COURT: And did they want more 9 than a 6 percent discount, or were they happy with the 10 6 percent discount? 11 THE WITNESS: They were happy with -- 12 they were comfortable with a 6 percent discount that 13 was offered to us that we ultimately signed. 14 BY ATTORNEY YOCH: 15 Q. A little lower, there's a portion of 16 the minutes where it indicates that Mr. Clark and 17 Mr. Gardner then joined the meeting. See that 18 notation in parentheses? 19 A. Yes. 20 Q. That paragraph says in the last 21 sentence, "It was conveyed that the two lead banks 22 stood by their commitment to execute on the 23 underwritten offering in light of their comfort with 24 the contemplated acquisition."</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">J. Hunter - Direct Page 1116</p> <p>1 over-allotment option would be supported by the 2 markets." 3 Is this referring -- is "subsequent 4 discussions" referring to the discussions with the 5 underwriters that you had after the March 9 meeting 6 and before the March 14 meeting? 7 A. Yes. 8 Q. And is what is described here, is that 9 consistent with the feedback you received from 10 Mr. Clark and Mr. Gardner before the meeting? 11 A. Yes. 12 THE COURT: Why don't you just tell me 13 what they said. 14 THE WITNESS: So what they said was 15 that they had increasing confidence in our ability to 16 raise the base offering. We were actually -- they had 17 confidence in us doing up to \$4.2 billion Canadian, 18 but they would reduce the over-allotment or greenshoe 19 option, typically on transactions that are anywhere 20 from zero to 15 percent. In this case, it would be 21 5 percent. 22 So what it meant for us is that they 23 had a high degree of confidence that they could 24 support an offering for \$4.2 billion. They're taking</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">J. Hunter - Direct Page 1118</p> <p>1 What contemplated acquisition were 2 Mr. Gardner and Mr. Clark discussing with the board? 3 A. It was -- the contemplated transaction 4 was in that range of 25.50 -- or 25.25 to 25.50 and 5 their ability to execute on the sub receipts offering. 6 They stood by it because those two banks were the ones 7 that were going to underwrite the whole deal, and then 8 they would get subsequently, then, syndicate it out to 9 banks. 10 So they were willing to take on the 11 entire risk, both banks, of the \$4.2 billion, subject 12 to syndication. So they were just conveying here that 13 their confidence, they stood behind what they told us; 14 that if we went ahead, that we could execute as we 15 opined. 16 THE COURT: This was at 25.50. This 17 was not the 26 with 10 percent equity? 18 THE WITNESS: That's correct. 19 THE COURT: So I know you explained to 20 me the flow-back issue, and I appreciate it. Did they 21 say that they would do the 26 with 10 percent equity, 22 or they would just want a bigger discount? Or did 23 they say: We're just not even going to do it? 24 THE WITNESS: They were saying that,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 due to the sub receipts at the -- with the 6 percent
 2 discount, that that would be enough to fund the entire
 3 transaction. We were just making sure that we had
 4 enough equity to fund the entire transaction.
 5 And so they came back and said: We
 6 have confidence to do this. We can do it higher than
 7 we thought we could do it, and we can do it at a
 8 discount of 6 percent. And then we wouldn't need to
 9 go ahead with the share exchange. It wasn't
 10 necessary.
 11 THE COURT: All right. So I may not
 12 be following. Since you were there, you're going to
 13 be able to hopefully clear this up for me. So my sort
 14 of simplistic understanding was you started out at a
 15 price of 26 bucks. And of that 26 bucks, 10 percent
 16 of that value, roughly \$2.50, was going to be
 17 TransCanada equity.
 18 That was going to be, like, a stock
 19 component issued directly to the Columbia stockholders
 20 as part of the exchange?
 21 THE WITNESS: Yes.
 22 THE COURT: So far -- okay. And what
 23 I understood you to be saying is that -- or what I was
 24 curious about is, what was the feedback that the lead

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J. Hunter - Cross

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1 were comfortable up to 25.50?
 2 THE WITNESS: Based on the number, the
 3 4.2 billion with the 5 percent allotment, that more
 4 fit into the 25.50 that we ultimately did.
 5 THE COURT: All right. Thanks.
 6 BY ATTORNEY YOCH:
 7 Q. And just to confirm, the commitment to
 8 execute on the underwritten offering with a
 9 contemplated acquisition was not with an equity
 10 component?
 11 A. Correct.
 12 ATTORNEY YOCH: No further questions
 13 at this time, Your Honor.
 14 THE COURT: Thank you.
 15 CROSS-EXAMINATION
 16 BY ATTORNEY SULLIVAN:
 17 Q. Good afternoon, Mr. Hunter. I'm
 18 Brendon Sullivan from Labaton Sucharow. I was at your
 19 deposition. It's good to see you in person.
 20 ATTORNEY SULLIVAN: My assistants --
 21 my colleagues are going to hand out some binders here
 22 that will hopefully be helpful. There's a little bit
 23 of overlap.
 24 Q. Mr. Hunter, you believe that

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1 banks gave you on that transaction and whether that
 2 was actionable? And the reason why I'm getting
 3 confused is I felt like what you told me is that they
 4 actually thought that you could do the transaction
 5 without the 10 percent component at all; but I thought
 6 without the 10 percent component you guys were at
 7 25.50 rather than at 26.
 8 THE WITNESS: Yeah. So what they said
 9 to us is that they had conviction that we could do
 10 more at the 25.25 to 25.50 that we outlined. That
 11 adding in the 10 percent component was going to add
 12 some additional risk for them, as I mentioned earlier.
 13 And that would result in a higher discount, as I
 14 mentioned earlier, for us. And the cleanest way to do
 15 this transaction would be to do it all with the
 16 subscription receipts.
 17 THE COURT: I see.
 18 And, again, I apologize if I'm being
 19 slow. Were they willing to fund -- did they think
 20 from their standpoint -- setting aside whether you
 21 guys wanted to do it. But from their standpoint, if
 22 you-all had gone to 26 all cash, did they think that
 23 they could fund with the subscription agreements to
 24 get you there? Or were they only saying that they

CHANCERY COURT REPORTERS

J. Hunter - Cross

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1 TransCanada had the ability to pay more than 25.50 per
 2 share for Columbia in 2016; correct?
 3 A. Yes.
 4 Q. Okay. And, Mr. Hunter, you and other
 5 members of the TransCanada management made a
 6 recommendation to the board in 2016 that TransCanada
 7 could afford to increase its offer from 25.50 per
 8 share; right?
 9 A. Yes.
 10 Q. Okay. I want to go back. That was
 11 April 2016. I want to go back to -- actually, let's
 12 just talk about it real quick. Can you turn to
 13 JTX 1264 in your binder.
 14 Okay. If you flip to the page labeled
 15 JTX .020, that's the recommendation that you were
 16 talking about where management recommended to
 17 Columbia's board that TransCanada -- or TransCanada's
 18 board that TransCanada could afford to increase its
 19 offer?
 20 A. Yeah. This is after the fact. This
 21 is April 28, so after the transaction had been
 22 announced and the subscription receipts had been
 23 issued into the marketplace.
 24 So this is really with the benefit,

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J. Hunter - Cross

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1 obviously, of hindsight here and the market reaction.
 2 So what we're doing here is just running some
 3 scenarios at 25.50 up to \$28. And what you see here
 4 is actually dilution from it, a nickel, on the EPS as
 5 an example.

6 But what it says is, yes, that we
 7 could afford to increase the offer but, again, with
 8 the benefit of hindsight and just how well the
 9 subscription receipts offering had gone and how well
 10 the transaction was received by the marketplace back
 11 in March.

12 Q. Okay. Let's turn to the page ending
 13 in .30. Okay. And what this slide shows is \$27 and
 14 \$28 per share cases which could be funded through
 15 additional asset sales; right?

16 A. Yes.

17 Q. And below that you see there are
 18 different valuations for these assets; right?

19 A. Yes.

20 Q. And they were your best estimates of
 21 value at the time; right?

22 A. Yes.

23 Q. And they were accurate valuations?

24 A. Based on the information we had at the

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J. Hunter - Cross

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1 share price, I'm sorry.

2 Q. And in the next slide, if we turn to
 3 it, which ends in .32, this slide assesses
 4 TransCanada's ability to pay based on various credit
 5 metrics; right?

6 A. It does.

7 Q. Okay. And the primary credit metric
 8 that the ratings agencies considered when rating
 9 TransCanada was its FFO-to-debt ratio?

10 A. At that point in time, yes.

11 Q. And TransCanada targeted a
 12 15.4 percent FFO-to-debt ratio through the credit
 13 agencies?

14 A. Yes.

15 Q. And that was to maintain its credit
 16 rating?

17 A. Yes.

18 Q. And the dotted line there in the
 19 quadrant up at the top, that represents TC's --
 20 sorry -- TransCanada's 15 percent target for its
 21 long-term FFO-to-debt ratio; right?

22 A. Correct.

23 Q. And what this chart shows, doesn't it,
 24 is that TransCanada would achieve that long-term FFO

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J. Hunter - Cross

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1 time, they're an estimate. Yes.

2 Q. And the third bullet point,
 3 TransCanada is valuing its Coolidge asset at 450 to
 4 \$520 million; right?

5 A. Yes.

6 Q. And that's using a 30-year DCF?

7 A. Yes.

8 Q. And TransCanada did, in fact, sell
 9 Coolidge for approximately \$500 million in 2018,
 10 right?

11 A. Yes.

12 Q. And that transaction was unrelated to
 13 the merger, right?

14 A. That's correct.

15 Q. Okay. Can you turn to the next page,
 16 which ends in .31. And the title of this slide is
 17 "TransCanada -- Ability to Pay." And it says
 18 TransCanada in this slide is -- sorry, let me start
 19 over there.

20 So the title of this slide is
 21 "TransCanada -- Ability to Pay." And in it,
 22 TransCanada is assessing its ability to pay based on
 23 various financial metrics; right?

24 A. Various financial prices, yes -- or

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J. Hunter - Cross

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1 to debt ratio, regardless of whether it paid 25.50,
 2 \$27, or \$28 per share under these cash cases; right?

3 A. I see it differently, that we are
 4 under that 15 percent threshold in 2015 and 2018. You
 5 can see in the green bar, 25.50, it's slightly higher.
 6 And when you look at FFO to debt, every decimal point
 7 matters, especially when you're below your stated
 8 target. So even though it doesn't look like much --

9 Q. I understand, Mr. Hunter. I'm sorry
 10 to cut you off. But in 2019, none of these -- let me
 11 start again.

12 You would agree that under any of
 13 these scenarios, whether it be 25.50 cash, \$27 cash,
 14 \$28 cash, the FFO-to-debt ratio does not exceed
 15 15 percent until 2019; right?

16 A. Yes.

17 Q. And the green bar there, the 25.50 in
 18 cash, is the actual case that TransCanada was using
 19 for its acquisition of Columbia; right?

20 A. Yes.

21 Q. Okay. I want to go back in time a
 22 little bit to March 9, 2016. And that's the date that
 23 TransCanada made its \$26 per share mixed consideration
 24 offer to Columbia; right?

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J. Hunter - Cross

J. Hunter - Cross Page 1127	J. Hunter - Cross Page 1129
<p>1 A. Yes.</p> <p>2 Q. Prior to TransCanada making its \$26</p> <p>3 per share mixed consideration offer to Columbia, you</p> <p>4 and other managers -- sorry. Let me start that again.</p> <p>5 Prior to TransCanada making that \$26</p> <p>6 per share mixed consideration offer, you and other</p> <p>7 members of management advised the board concerning a</p> <p>8 potential \$26 all-cash offer, right?</p> <p>9 A. Yes.</p> <p>10 Q. Can you turn to JTX 0915 in your</p> <p>11 binder.</p> <p>12 ATTORNEY SULLIVAN: And if you can</p> <p>13 scroll to the attachment. Sorry.</p> <p>14 Q. This is a copy of the presentation</p> <p>15 that was presented at the board; right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. We discussed this at your</p> <p>18 deposition?</p> <p>19 A. Yes, I believe we did, yes.</p> <p>20 Q. Okay. Can you flip to the page ending</p> <p>21 in .007. And what this page is showing is how</p> <p>22 TransCanada could fund a \$26 per share cash offer</p> <p>23 versus the 25.25 per share cash offer that TransCanada</p> <p>24 had previously made to Columbia; right?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1 Q. Can you turn to the last page of this</p> <p>2 slide, of this deck?</p> <p>3 ATTORNEY SULLIVAN: Should be .013.</p> <p>4 Sorry. There we go.</p> <p>5 Q. So, again, the presentation we're</p> <p>6 discussing was given on March 9, which is the same day</p> <p>7 that the board eventually approved TransCanada making</p> <p>8 a \$26 mixed consideration offer to Columbia; right?</p> <p>9 A. Yes.</p> <p>10 Q. And here, the presentation identifies</p> <p>11 a risk of "Over-allotment not exercised"; right?</p> <p>12 A. Yes.</p> <p>13 Q. And to mitigate that risk, it says,</p> <p>14 "Equity forms part of the consideration;" right?</p> <p>15 A. Yes.</p> <p>16 Q. And the purpose of the TransCanada</p> <p>17 equity forming part of the merger consideration was to</p> <p>18 mitigate a perceived risk that the over-allotment</p> <p>19 option on a bought deal wouldn't be exercised; right?</p> <p>20 A. That along with the, just overall</p> <p>21 funding shortfall, yeah, that we went through in the</p> <p>22 model there, particularly with the asset sales, the</p> <p>23 500 million. You're right. It's the funding</p> <p>24 shortfall.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
J. Hunter - Cross Page 1128	J. Hunter - Cross Page 1130
<p>1 A. Yes.</p> <p>2 Q. Okay. In either scenario, TransCanada</p> <p>3 would have raised \$3.1 billion through an equity</p> <p>4 offering with an over-allotment, right?</p> <p>5 A. Yes.</p> <p>6 Q. So here, TransCanada was considering</p> <p>7 bridging the gap between 25.25 cash and \$26 cash with</p> <p>8 the sale of additional assets; right?</p> <p>9 A. Yes, I believe that -- it says that,</p> <p>10 additional assets at \$26. "Other" was -- it's too</p> <p>11 small to be asset sales. It would have come from</p> <p>12 other proceeds. But, yes.</p> <p>13 Q. You would agree in the \$26 cash case,</p> <p>14 that they would be funding the difference in the</p> <p>15 purchase price with \$500 million in additional asset</p> <p>16 sales; right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And the additional asset that</p> <p>19 TransCanada considered selling in this case, this</p> <p>20 scenario, was the Coolidge asset; right?</p> <p>21 A. Yes.</p> <p>22 Q. And, again, that Coolidge asset was</p> <p>23 sold for approximately \$500 million in 2018; right?</p> <p>24 A. Yes.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p>1 Q. Okay. And management advised the</p> <p>2 board on March 9 that introducing TransCanada's stock</p> <p>3 would reduce the size of the bought deal and decrease</p> <p>4 execution risk; right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. With that said, there were</p> <p>7 members of management who believed there was not much</p> <p>8 incremental execution risk of going to \$26 per share</p> <p>9 in cash; right?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know who Mr. Johannson is?</p> <p>12 A. Yes.</p> <p>13 Q. He was amongst them?</p> <p>14 A. Pardon me?</p> <p>15 Q. He didn't believe that going to \$26</p> <p>16 all cash would appreciably increase execution risk;</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. And you did not believe that there was</p> <p>20 much incremental risk with going to \$26 in cash;</p> <p>21 right?</p> <p>22 A. From where I sat from getting the</p> <p>23 money, yes. Felt differently about the valuation.</p> <p>24 Q. Okay. Okay. Let's talk about the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

J. Hunter - Cross

J. Hunter - Cross

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1 March 14 board meeting for a minute.
 2 ATTORNEY SULLIVAN: That's JTX 1092,
 3 sorry.
 4 Q. I think you testified that the
 5 underwriters were at that meeting; right?
 6 A. Yes.
 7 Q. And I just want to clarify. If you go
 8 to the second page there. They were only there for a
 9 portion of the meeting; right?
 10 A. Yes.
 11 Q. And that portion of the meeting was
 12 not when management highlighted the challenges with a
 13 stock-for-stock exchange; right?
 14 A. No.
 15 Q. The discussions that you referred to
 16 with the underwriters between March 9 and March 14,
 17 can you point me to any written correspondence
 18 reflecting those discussions?
 19 A. No.
 20 Q. Okay. At the end of the March 14th
 21 board meeting, the board authorized Russ Girling to
 22 engage in discussions with Columbia management
 23 regarding an all-cash offer of 25.50 per share; right?
 24 A. Yes.

CHANCERY COURT REPORTERS

J. Hunter - Cross

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1 to them this, the offer, the nonbinding offer of the
 2 10 percent consideration.
 3 Q. My question is just whether any of the
 4 underwriters told you that it would be impossible for
 5 them to support the mixed consideration offer.
 6 A. I don't recall.
 7 ATTORNEY SULLIVAN: Okay. No further
 8 questions.
 9 ATTORNEY YOCH: No further questions,
 10 Your Honor.
 11 THE COURT: Thank you for being here.
 12 I appreciate your time.
 13 (Witness excused.)
 14 ATTORNEY van KAWEGEN: Your Honor,
 15 the next witness will be Mr. Steve Smith. We'll set
 16 up.
 17 With Your Honor's permission, we'll
 18 hand out the binders.
 19 STEPHEN PAUL SMITH, having first been
 20 duly affirmed, was examined and testified as follows:
 21 THE COURT: Welcome back.
 22 THE WITNESS: Thank you.
 23 ATTORNEY van KAWEGEN: So many
 24 binders flying around. We'll find it at some point.

CHANCERY COURT REPORTERS

J. Hunter - Cross

Page 1132

1 Q. And that was not a best and final
 2 offer; right?
 3 A. It says here in the 25.50 range.
 4 Q. It says --
 5 A. Oh, I'm sorry.
 6 Q. At the very end.
 7 A. Yeah. It says, "[R]egarding an
 8 all-cash offer at [25.50]"
 9 Q. So the words "best and final" do not
 10 appear there, right?
 11 A. They do not.
 12 Q. Are you aware of any underwriter ever
 13 telling anyone at TransCanada that it could not fund
 14 the transaction, the mixed \$26 -- sorry. Let me start
 15 over.
 16 Are you aware of any underwriter ever
 17 telling anyone at TransCanada that TransCanada could
 18 not fund a transaction with the \$26 mixed
 19 consideration offer?
 20 A. Their preference -- because at the
 21 March 9th meeting when we went to the board, we didn't
 22 have the advice of the underwriters at that point in
 23 time. We had subsequent discussions leading into this
 24 board meeting where we would have, you know, presented

CHANCERY COURT REPORTERS

S. Smith - Direct

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1 DIRECT EXAMINATION
 2 BY ATTORNEY van KAWEGEN:
 3 Q. Hello, Mr. Smith.
 4 A. Hello. How are you?
 5 Q. Nice to see you.
 6 You were handed some binders. One
 7 binder has prior testimony, and the smaller binder has
 8 some documents I may refer to, but they will also be
 9 on the screen. Okay?
 10 A. Okay.
 11 Q. And the Court knows who you are, so
 12 I'm not going to go through all of your background.
 13 You were the CFO of Columbia Pipeline, correct?
 14 A. Yes.
 15 Q. And you received \$10.8 million,
 16 including change-in-control payments, when you left
 17 Columbia Pipeline following the transaction?
 18 A. Yes.
 19 Q. It's fair to say, thinking about your
 20 retirement, that in a way, you've been thinking about
 21 your retirement all your life?
 22 A. Yes.
 23 Q. From the age of 30, you thought that
 24 55 was like a magical age to retire?

CHANCERY COURT REPORTERS

S. Smith - Direct

S. Smith - Direct Page 1135

1 **A. Yes.**

2 Q. And you turned 55 on March 1st, 2016?

3 **A. That's correct.**

4 Q. Okay. I want to talk about the

5 January 7 meeting. You've heard about that before;

6 correct?

7 **A. Yes, I have.**

8 Q. All right. Building up to that, in

9 the middle of December 2015, Francois Poirier called

10 you to congratulate you on the equity offering. And

11 during that call, he said to you that he still really

12 liked the company and wanted to continue talking.

13 **A. Yeah, thereabouts. I know he called**

14 **and it was December 2nd, 8, something. It was in that**

15 **time frame.**

16 Q. And do you recall during that

17 conversation that he told you that he still really

18 liked the company and wanted to continue talking?

19 **A. Yes.**

20 Q. You agreed to meet in January?

21 **A. Yes.**

22 Q. And to the best of your knowledge,

23 after you had this call with Francois in December, no

24 one from Columbia reached out to Dominion or Spectra

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1 or Berkshire to see if they also wanted to continue to

2 talk; correct?

3 **A. That's correct.**

4 Q. You didn't ask Goldman to reach out to

5 any of these potential bidders either?

6 **A. We did not.**

7 Q. I want to show you Joint Exhibit 549,

8 which will also be on the screen. And you've seen it

9 a number of times. If you look at the second page and

10 onward, Mr. Smith, these are the materials that you

11 took to the January 7 meeting with Francois Poirier.

12 Are they not?

13 **A. Yes.**

14 Q. At the final page, they're the talking

15 points. You took those to the meeting as well;

16 correct?

17 **A. Yes.**

18 Q. And you handed both the slides and the

19 talking points to Francois Poirier at that January 7

20 meeting; correct?

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

22 Q. Now, I want to show you some notes

23 that you've also seen before. But I'm going to show

24 you some notes from people who worked with Francois at

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1 the time and who would debrief. And they are at

2 JTX 599.

3 **A. I'm going to rely on the screen**

4 **because I don't know.**

5 Q. That's fine.

6 If you go to the bottom page, it's

7 009. At the top right, you see there's a reference to

8 January '16 -- January 7, 2016?

9 **A. Yes.**

10 Q. And in the middle of page, there's a

11 reference to, "Gap [between] board [and] management?

12 Not a unanimous view but consensus that at the right

13 price."

14 Do you see that?

15 **A. I do.**

16 Q. And when you had your discussion with

17 Francois on January 7, it was your view that there was

18 no consensus was -- within the board at what the right

19 price would be to sell the company.

20 **A. I don't -- I don't recall what the,**

21 **what -- I don't know what you're asking me exactly.**

22 Q. Isn't it fair to say that while you

23 were having that meeting with Francois Poirier, you

24 knew there was no unanimous view on the board what the

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1 right price would be to sell the company at?

2 **A. I hadn't thought about it.**

3 Q. Let me show you the first clip. It is

4 from your deposition in the appraisal. Page 201,

5 line 18, through page 202, line 18. And it's clip 13.

6 (A video clip was played as follows:)

7 Question: Was it your understanding

8 in early January of 2016 that Columbia's board was not

9 unanimous on whether or not to sell in the first

10 place?

11 Answer: Yeah, I mean, we had to be

12 sure it was the right deal. You know, we had gone

13 through all that stuff in August, September, October,

14 November, and the indications were woefully

15 inadequate. So, you know, it's, what's the right

16 price? You know, it has to make sense from a

17 shareholder value perspective and all of that. So

18 there was no consensus formed around what the right

19 price was at that time.

20 But, you know, it was kind of a range,

21 you know, of value. Was it 26 to 28? Was it 25 to

22 28? Was it 26 to 29? That sort of thing.

23 Question: Did you have an

24 understanding which board members were more interested

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<p style="text-align: right;">S. Smith - Direct Page 1139</p> <p>1 in selling the company than others?</p> <p>2 Answer: No.</p> <p>3 Question: You just knew and had an</p> <p>4 understanding that they were not unanimous?</p> <p>5 Answer: Yeah. I mean, that they --</p> <p>6 it was a discussion. It was, like, what's the</p> <p>7 appropriate price to enter into a transaction or not?</p> <p>8 So I don't know where each one of the board members</p> <p>9 were. I really didn't.</p> <p>10 (End of video clip.)</p> <p>11 BY ATTORNEY van KWAEGEN:</p> <p>12 Q. Did I ask you those questions and did</p> <p>13 you give those answers a number of years ago at your</p> <p>14 deposition?</p> <p>15 A. Indeed I did.</p> <p>16 Q. I want to go back to the notes from</p> <p>17 the debrief in Exhibit 599. And this -- please turn</p> <p>18 to 011 at the bottom. And there's a reference there</p> <p>19 that says, "[T]hey've 'eliminated' the competition.</p> <p>20 "[Enbridge] - complex structure.</p> <p>21 "Dominion - capital, HSR.</p> <p>22 "Transfer - over extended.</p> <p>23 "KMI - out of the market."</p> <p>24 And it's fair to say that when you had</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Direct Page 1141</p> <p>1 up to the plate.</p> <p>2 And, you know, there was a window</p> <p>3 there, which was reality, in my mind. I mean, it</p> <p>4 was -- it was, you know, a tough situation.</p> <p>5 Q. And so the tenor of the conversation</p> <p>6 was: Francois, TransCanada doesn't really have</p> <p>7 competition because the likely competition is</p> <p>8 struggling, so you should do something?</p> <p>9 A. I didn't say that. I didn't say they</p> <p>10 didn't have competition.</p> <p>11 Q. No. I'm talking about the tenor of</p> <p>12 the conversation, right? You're talking about</p> <p>13 potential, other potential bidders who could make a</p> <p>14 bid for Columbia Pipeline during the January 7</p> <p>15 meeting; right?</p> <p>16 A. Can you -- can you repeat the</p> <p>17 question? Are you saying -- am I saying what?</p> <p>18 Q. During the January 7 meeting --</p> <p>19 A. Yes.</p> <p>20 Q. -- there's a discussion about the</p> <p>21 potential bidders for Columbia Pipeline; correct?</p> <p>22 A. Well, there was a discussion about</p> <p>23 other market participants in the energy market. That</p> <p>24 would possibly be, you know, a bidder perhaps.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">S. Smith - Direct Page 1140</p> <p>1 your conversation with Francois Poirier on January 7,</p> <p>2 you were telling him that TransCanada had an</p> <p>3 opportunity here and that this was -- there was a</p> <p>4 window for TransCanada to act.</p> <p>5 A. It was clear what was going on in the</p> <p>6 market, right. I mean, you couldn't -- you couldn't</p> <p>7 deny reality. I mean, there were a lot of companies</p> <p>8 that were struggling. So that was the intent of the</p> <p>9 conversation.</p> <p>10 So, yeah, there was a window of</p> <p>11 opportunity, right, if you weren't in a difficult</p> <p>12 situation like everybody else.</p> <p>13 Q. So it's fair to say that you told</p> <p>14 Francois: Look at Enbridge, complex structure. Look</p> <p>15 at Dominion, capital, HSR issues. Look at Transfer,</p> <p>16 they're overextended. KMI is out of the market.</p> <p>17 You told Francois Poirier that, as</p> <p>18 part of overall discussion, to tell TransCanada:</p> <p>19 Look, this is an opportunity for you; you should make</p> <p>20 a bid.</p> <p>21 A. I didn't say you should make a bid. I</p> <p>22 said -- I believe Francois talked about Enbridge. I</p> <p>23 didn't. But it was, if they were serious, you know,</p> <p>24 it was something they should, you know, focus on, step</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Direct Page 1142</p> <p>1 Q. Right. And as part of that</p> <p>2 conversation, when you talk about those other market</p> <p>3 participants who could be potential bidders, right,</p> <p>4 you talked about with Francois how those other</p> <p>5 participants were struggling and potentially would not</p> <p>6 be able to make an offer in the near term.</p> <p>7 A. It would be more difficult for them,</p> <p>8 yes.</p> <p>9 Q. And that provided an opportunity for</p> <p>10 TransCanada, call it a window, to potentially preempt</p> <p>11 those other participants from making a bid and getting</p> <p>12 the asset for itself?</p> <p>13 A. Well, it would provide an opportunity</p> <p>14 for them to make a bid, yeah, I suppose, if they were</p> <p>15 so inclined.</p> <p>16 Q. Right. And is it fair to say that</p> <p>17 that was the context of the discussion when you were</p> <p>18 talking about Enbridge and Dominion and Transfer and</p> <p>19 KMI?</p> <p>20 A. Yeah. I mean, the context of the</p> <p>21 discussion to me was look, the energy market is in a</p> <p>22 difficult situation. A lot of these companies are in</p> <p>23 difficult situations. And, you know, that sometimes</p> <p>24 provides opportunity for people who aren't in a</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">S. Smith - Direct Page 1143</p> <p>1 difficult situation.</p> <p>2 Q. And in this case, the opportunity</p> <p>3 would be for TransCanada?</p> <p>4 A. Yes.</p> <p>5 Q. Let's look at the talking points. So</p> <p>6 it's the final page. We can blow it up a little.</p> <p>7 Again, these are the talking points that you gave to</p> <p>8 Mr. Poirier on January 7th; right?</p> <p>9 Mr. Smith?</p> <p>10 A. Yes. I was just reading. I'm sorry.</p> <p>11 Q. And one of the talking points you gave</p> <p>12 him was, "If Taurus is serious, Bob and Russ should</p> <p>13 discuss terms in advance of our Board Meetings in</p> <p>14 January."</p> <p>15 And Taurus was the deal term for</p> <p>16 TransCanada; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And to the best of your knowledge, Bob</p> <p>19 and Russ did discuss at least a 25 to \$28 range in</p> <p>20 advance of the board meetings at the end of January?</p> <p>21 A. Yes, that's my recollection.</p> <p>22 Q. And a little bit below --</p> <p>23 THE COURT: I'm sorry. I'm slow on</p> <p>24 the job. It's two minutes late. We need to take our</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Direct Page 1145</p> <p>1 (Resumed at 3:15 p.m.)</p> <p>2 THE COURT: Please be seated.</p> <p>3 Please resume.</p> <p>4 ATTORNEY van KAWEGEN: Your Honor,</p> <p>5 with your permission, Jeroen van Klawegen on behalf of</p> <p>6 plaintiffs.</p> <p>7 THE COURT: I'm sorry?</p> <p>8 ATTORNEY van KAWEGEN: I was saying</p> <p>9 my name.</p> <p>10 THE COURT: Exactly.</p> <p>11 BY ATTORNEY van KAWEGEN:</p> <p>12 Q. All right. Mr. Smith, we'll go back</p> <p>13 to the same document, the talking points we were</p> <p>14 looking at before.</p> <p>15 A. Okay.</p> <p>16 Q. And there is a reference here about</p> <p>17 leaning in on price and then, "This is particularly</p> <p>18 true if you hope to avoid putting Capricorn 'in</p> <p>19 play'"</p> <p>20 What did you mean by that?</p> <p>21 A. Well, then you -- you don't want an</p> <p>22 auction, basically. I mean, that could end up</p> <p>23 happening if you're not definitive enough on your</p> <p>24 level of interest or the amount of your bid. It could</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">S. Smith - Direct Page 1144</p> <p>1 afternoon break. We'll resume at 3:15.</p> <p>2 (Recess taken at 3:01 p.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Direct Page 1146</p> <p>1 cause, you know, an issue, eventually, if it leaked or</p> <p>2 something like that.</p> <p>3 Q. And so it's fair to say that here,</p> <p>4 you're advising TransCanada how they can avoid an</p> <p>5 auction in connection with a potential transaction.</p> <p>6 Correct?</p> <p>7 A. Yeah, I believe that's what it says.</p> <p>8 Q. And do you recall, just independent of</p> <p>9 this document, that TransCanada asked for due</p> <p>10 diligence before and after this January 7th meeting?</p> <p>11 A. Can you repeat that? I'm sorry.</p> <p>12 Q. Sure. Do you recall that TransCanada</p> <p>13 asked for due diligence, confidential information,</p> <p>14 from the company before and after this January 7th</p> <p>15 meeting?</p> <p>16 A. Yes.</p> <p>17 Q. And it's fair to say that TransCanada</p> <p>18 went through a significantly diligent effort to</p> <p>19 analyze the company?</p> <p>20 A. Yes.</p> <p>21 Q. And it's also fair to say that</p> <p>22 TransCanada never made any proposal for the equity</p> <p>23 offering, after the equity offering, any proposal</p> <p>24 ever, without first getting confidential due diligence</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

S. Smith - Direct

<p style="text-align: right;">S. Smith - Direct Page 1147</p> <p>1 from the company?</p> <p>2 A. Can you say that again? I'm sorry. I</p> <p>3 apologize.</p> <p>4 Q. No, no.</p> <p>5 A. You're asking me --</p> <p>6 Q. No. Is it fair to say that, to the</p> <p>7 best of our knowledge, TransCanada never made any</p> <p>8 offer, indicative or otherwise, any offer to acquire</p> <p>9 the company without first getting due diligence,</p> <p>10 confidential company information?</p> <p>11 A. Yes.</p> <p>12 Q. I want to show you another document.</p> <p>13 And it's 688, Joint Exhibit 688. And I want to focus</p> <p>14 on an email from Tim Ingrassia to you and Bob Skaggs</p> <p>15 on February 2nd.</p> <p>16 Tim Ingrassia was the senior banker at</p> <p>17 Goldman. Right?</p> <p>18 A. Yes.</p> <p>19 Q. And here, he's telling you and Bob</p> <p>20 Skaggs the following: "Our strongest card here is to</p> <p>21 maintain confidence in long term plan versus short</p> <p>22 term market. We've got a hockey stick that unlike</p> <p>23 most hockey sticks is slam dunk bankable. If the</p> <p>24 right deal isn't here now, it will be later. No</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Direct Page 1149</p> <p>1 your birthday was March 1, 2016.</p> <p>2 A. Yes.</p> <p>3 Q. And I want to show you a document.</p> <p>4 It's Joint Exhibit 1777. And these are text messages</p> <p>5 between you and Francois Poirier. And I want to focus</p> <p>6 on March 12th, so 11 days after your birthday.</p> <p>7 You say, "On my way to hotel with</p> <p>8 family. I will call you when we get settled."</p> <p>9 Do you recall where you went?</p> <p>10 A. Los Angeles.</p> <p>11 Q. Okay. And was this partially to</p> <p>12 celebrate your birthday?</p> <p>13 A. No.</p> <p>14 Q. And is it fair to say that you're here</p> <p>15 with your family, going to hotel, so it's a family</p> <p>16 vacation?</p> <p>17 A. It's a family visit. I have a sister</p> <p>18 that lives in Los Angeles and a daughter that went to</p> <p>19 Occidental College in Los Angeles.</p> <p>20 Q. Okay. And that same day, March 12th,</p> <p>21 Bob Smith sent over a proposed scripted response to</p> <p>22 any inbound's expressions of interest.</p> <p>23 Do you recall that?</p> <p>24 A. I recall the script, yes.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">S. Smith - Direct Page 1148</p> <p>1 threats, no anger, just literally hold onto the</p> <p>2 indifference to selling."</p> <p>3 And when Mr. Ingrassia is talking</p> <p>4 about a slam-dunk, bankable hockey stick, what he's</p> <p>5 referring to is that Columbia Pipeline already had</p> <p>6 contracts in place with shippers for its massive</p> <p>7 capital investments that it had planned for the next</p> <p>8 couple of years. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And above, Mr. Gibson responds, "I</p> <p>11 totally agree."</p> <p>12 A little bit later: "If they know we</p> <p>13 are confident and don't need to sell -- that's our</p> <p>14 point of strength."</p> <p>15 You understood this as of February 2,</p> <p>16 2016. Right?</p> <p>17 A. I recall these emails, yes.</p> <p>18 Q. And you relied on Mr. Ingrassia to</p> <p>19 provide this type of information?</p> <p>20 A. Yes.</p> <p>21 Q. That's why you hired him. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. All right. I want to move forward to</p> <p>24 March. And just a moment ago, we talked about how</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Direct Page 1150</p> <p>1 ATTORNEY van KAWWEGEN: And let's put</p> <p>2 it on the screen for a second. It's JTX 1029. And go</p> <p>3 to the last page.</p> <p>4 Q. And at the top, in the italics, that's</p> <p>5 the script that you were working on around March 12th.</p> <p>6 Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And at this time, you understood that</p> <p>9 you were not in exclusivity.</p> <p>10 A. Exclusivity ran out when -- we were</p> <p>11 not in exclusivity with TransCanada as of March 12th.</p> <p>12 Q. That's my question. You understood as</p> <p>13 of March 12th, you were not in exclusivity with</p> <p>14 TransCanada. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. And it's fair to say that TransCanada</p> <p>17 had an opportunity to review the script while there</p> <p>18 was no exclusivity agreement in effect?</p> <p>19 A. Yes.</p> <p>20 Q. Now, if you scroll up the same email</p> <p>21 chain, after it's sent over, Francois Poirier forwards</p> <p>22 the email to Hugh Babowal at Wells Fargo. And Hugh</p> <p>23 Babowal responds on March 12th, in the middle, "My bet</p> <p>24 is Frumkin is telling them they can't re-up</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: center;">S. Smith - Direct Page 1151</p> <p>1 exclusivity now that the deal leaked and this is the</p> <p>2 compromise they came up with. The problem is</p> <p>3 'serious' is in the eye of the beholder. Does that</p> <p>4 mean a financed [bid] subject only to confirmatory</p> <p>5 [due diligence]? Or can someone write a per share</p> <p>6 price on a cocktail napkin? If they're giving us a</p> <p>7 moral commitment that it is the former I would be ok</p> <p>8 with this. Think we need to talk to them."</p> <p>9 And it's your understanding that Wells</p> <p>10 Fargo did speak with Goldman on March 12th. Correct?</p> <p>11 A. I don't recall if they did or didn't.</p> <p>12 Q. I'll show you some text messages.</p> <p>13 A. Okay.</p> <p>14 Q. It's Joint Exhibit 1778. Let me make</p> <p>15 sure I've got you the right exhibit. Oh, I do.</p> <p>16 Scroll down to March 12 at 4:00 p.m.</p> <p>17 So this is March 12th. You saw the</p> <p>18 email. And there is an email from Bob Smith to you,</p> <p>19 Glen Kettering, and Bob Skaggs. He says, "Just spoke</p> <p>20 with Matt Gibson."</p> <p>21 Matt Gibson was at Goldman. Right?</p> <p>22 A. Yes.</p> <p>23 Q. And he says, "Wells has asked for a</p> <p>24 call between them to discuss the scripted response</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;">S. Smith - Direct Page 1153</p> <p>1 to Francois?" Still on March 12th.</p> <p>2 And your response is on the next page.</p> <p>3 You say, "I think we are done. Francois wanted to</p> <p>4 know the rationale - I explained it and pointed out</p> <p>5 how important the Fiduciary protections were for our</p> <p>6 Board. Told him we wanted to get this deal done with</p> <p>7 them and this would help us achieve that goal. They</p> <p>8 were circling the wagons one last time and Francois</p> <p>9 said he would have Chris reach out to Bob to get it</p> <p>10 signed up once their meeting was concluded."</p> <p>11 You have no reason to believe that you</p> <p>12 didn't send that text that I just read to you on</p> <p>13 March 12th around 7:00 p.m.?</p> <p>14 A. I do not.</p> <p>15 Q. And this was before you renewed the</p> <p>16 exclusivity agreement. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And as you were talking with Francois,</p> <p>19 what you were talking about was what is the meaning of</p> <p>20 "serious written proposal." Correct?</p> <p>21 A. When I was talking to Francois or</p> <p>22 texting with Francois?</p> <p>23 Q. Well, here, you're reporting back that</p> <p>24 you spoke with Francois.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: center;">S. Smith - Direct Page 1152</p> <p>1 language. He will circle back [with] us as soon as</p> <p>2 the call is completed. We have no indication as to</p> <p>3 the tone of the call at this point. Never a dull</p> <p>4 moment!"</p> <p>5 Bob Skaggs says, "Okay. I'll</p> <p>6 standby."</p> <p>7 And you then ask, at 6:05 p.m.:</p> <p>8 "Francois pinged me to chat - everything [] okay?"</p> <p>9 So this is while you were in</p> <p>10 Los Angeles. Right?</p> <p>11 A. Yes.</p> <p>12 Q. And then Bob Smith says, "Just texted</p> <p>13 back-and-forth with Matt. Was getting ready to update</p> <p>14 you. He spoke with Wells. Said everything went fine.</p> <p>15 Said they seemed to be ok with the language. He said</p> <p>16 it felt like Francois sent them to sniff out any</p> <p>17 issues, none were found."</p> <p>18 And this is the same day that you had</p> <p>19 proposed the script to respond to emails. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. Go down to 6:49 because -- actually,</p> <p>22 go back up. Sorry.</p> <p>23 There is a question on the previous</p> <p>24 page at the bottom. Bob Smith asks you, "Did you talk</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: center;">S. Smith - Direct Page 1154</p> <p>1 A. Right.</p> <p>2 Q. Right.</p> <p>3 A. There is nothing in here that says</p> <p>4 "serious written proposal."</p> <p>5 Q. I'm asking you: Did you talk with</p> <p>6 Francois about what "serious written proposal" meant?</p> <p>7 A. No.</p> <p>8 Q. No? You just told him, don't worry</p> <p>9 about it; we just want to get this deal done with you?</p> <p>10 A. I was communicating -- I mean, it was</p> <p>11 stating the obvious. The board wanted to extend</p> <p>12 exclusivity with TransCanada for another week. So,</p> <p>13 yeah, it was pretty clear in my mind and I think the</p> <p>14 board's mind that we wanted to at least pursue the</p> <p>15 transaction to either its logical conclusion, either</p> <p>16 was the deal going to be done or not.</p> <p>17 Q. I mean, when you wrote -- told him,</p> <p>18 Francois, "[W]e wanted to get this deal done with</p> <p>19 them ..., " you were being accurate and truthful?</p> <p>20 A. With respect to what the board wanted</p> <p>21 us to do --</p> <p>22 Q. Okay.</p> <p>23 A. -- yes, I believe we were.</p> <p>24 Q. And in your mind, that was to get the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">S. Smith - Direct Page 1155</p> <p>1 transaction for Columbia Pipeline done with 2 TransCanada.</p> <p>3 A. Either done or not done, but just to 4 move forward to its logical end. Either it's going to 5 get done or it's not going to get done. I would like 6 it to get done. Right? But if it doesn't, it 7 doesn't.</p> <p>8 Q. Okay. What did you mean when you 9 said, "Told him we wanted to get this deal done with 10 them" Because I'm getting confused.</p> <p>11 A. Well, so the board was supportive of 12 extending exclusivity, granting them exclusivity, 13 again, for another week or so. And so they wanted to 14 engage in exclusivity. And obviously, they wanted to 15 move forward with TransCanada one way or the other. 16 Either we're going to get the deal done or we're not.</p> <p>17 Q. And here, you say, "Told him we wanted 18 to get this deal done with them" Correct?</p> <p>19 A. Right.</p> <p>20 Q. Doesn't say "one way or the other." 21 Correct?</p> <p>22 A. It does not, no.</p> <p>23 Q. Now, I wanted to talk a little bit 24 about your understanding of what "serious written</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Direct Page 1157</p> <p>1 A. Yes. The script said what it said.</p> <p>2 Yeah.</p> <p>3 Q. Well, no. What I'm asking you is, the 4 interpretation that we just discussed that you had of 5 the script, right, that was your interpretation of the 6 script that was being used. Correct?</p> <p>7 A. I think if you asked me at that time, 8 it very well could have been a different answer. I 9 don't know. When you asked me -- I forget when the 10 deposition was, but that was my feeling at the time --</p> <p>11 Q. Okay.</p> <p>12 A. -- when you asked me that at my 13 deposition. I don't know what I was feeling at the 14 time the script was being written.</p> <p>15 Q. Now, Columbia prepared this script 16 after TransCanada had just done at least two months of 17 due diligence. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And in your view, Spectra could not 20 have gotten such a serious written proposal done in 21 two weeks.</p> <p>22 A. In my deposition, I recall saying 23 that, yeah, that it would be difficult for them. But 24 I think at the end of the day, if they were serious,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">S. Smith - Direct Page 1156</p> <p>1 proposal" meant.</p> <p>2 In your mind, when you're thinking 3 about a serious written proposal, that was a <i>bona fide</i> 4 proposal that says, I will pay you X for your company, 5 hard and fast, no outs, no anything, no way to wiggle 6 out of anything. This is going to happen. You're 7 going to pay whatever you're going to pay per share 8 and we're going to sign that agreement, and we're 9 done.</p> <p>10 That was your interpretation of 11 "serious written proposal." Correct?</p> <p>12 A. Yes. When you asked me in my 13 deposition, in the appraisal, that was what I --</p> <p>14 Q. And you --</p> <p>15 A. -- that's what I said, yes.</p> <p>16 Q. Right. And you were accurate and 17 truthful when I asked you what did you mean by 18 "serious written proposal" during your deposition. 19 Correct?</p> <p>20 A. At the time I responded with what I 21 believed it was, yeah.</p> <p>22 Q. And it was also your interpretation of 23 the script that was used to talk to potential 24 inbounds, including Spectra. Right?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Direct Page 1158</p> <p>1 they could provide something that would, you know, be 2 enough for the board and management to pause and 3 look at.</p> <p>4 Q. Well, let's look at your appraisal, 5 then, in your deposition. And let's pull it up. It's 6 page 243, line 16, through 244, line 11.</p> <p>7 (A video clip played as follows:)</p> <p>8 Question: Is it your belief that it 9 would take Spectra more than one week to put together 10 a written proposal that would merit a response from 11 Columbia Pipeline?</p> <p>12 Answer: Yeah. I believe so. Yeah.</p> <p>13 That would be my opinion, my personal opinion.</p> <p>14 Question: What --</p> <p>15 Answer: I don't think they could have 16 gotten a proposal done in a week or two weeks. I 17 really don't.</p> <p>18 Question: When you say "a proposal 19 done," you mean prepared?</p> <p>20 Answer: A <i>bona fide</i> proposal that 21 says, I will pay you X for your company. Hard and 22 fast, no outs. No anything. No way to wiggle out of 23 anything. This is going to happen. You're going to 24 pay whatever you're going to pay per share and we're</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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1 going to sign that agreement and we're done. I don't
 2 know of any company that could do that in that short a
 3 time frame.
 4 (End of video clip.)
 5 BY ATTORNEY van KAWEGEN:
 6 Q. I asked you those questions, and that
 7 was your answer at your deposition?
 8 **A. Yeah, it was. Yes, it was.**
 9 Q. I want to talk a little bit about the
 10 proxy.
 11 **A. Okay.**
 12 Q. You understood that the purpose of the
 13 proxy was to advise shareholders of the potential
 14 transaction. Right?
 15 **A. Yes.**
 16 Q. To give the background of how the deal
 17 came to be and what the information is that would be
 18 important for them as shareholders?
 19 **A. Yes.**
 20 Q. You understood that shareholders would
 21 rely on information in the proxy when they decided to
 22 vote to approve or disapprove the transaction?
 23 **A. Yes.**
 24 Q. You had a chance to review and comment

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1 **A. I was treasurer of American Electric**
 2 **Power, and he was the relationship manager for the**
 3 **commercial banking activities that supported AEP's**
 4 **treasury functions.**
 5 Q. And was he with JPMorgan at the time?
 6 **A. Yes.**
 7 Q. Did you strike up a relationship with
 8 Mr. Poirier?
 9 **A. We had a professional relationship.**
 10 **Yes.**
 11 Q. And so about how many times a year
 12 would you see him in connection with your professional
 13 relationship?
 14 **A. I would say a handful of times.**
 15 Q. So at some point, you left AEP.
 16 Right?
 17 **A. Yes.**
 18 Q. And did you keep in touch with him
 19 when you left?
 20 **A. No, I did not.**
 21 Q. When did you first meet Eric Fornell?
 22 **A. At some point in 2004 as well.**
 23 Q. And what was his position with -- he
 24 was with JPMorgan also?

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1 on the proxy before it was finalized?
 2 **A. Yes.**
 3 Q. Do you know one way or the other
 4 whether the proxy discloses your interpretation of the
 5 script that we just talked about?
 6 **A. Can you repeat the question? Do I**
 7 **know if the proxy --**
 8 Q. -- discloses your interpretation of
 9 the script that was going to be used for inbounds?
 10 **A. I don't know.**
 11 ATTORNEY van KAWEGEN: No further
 12 questions at this time, Your Honor.
 13 Thank you, Mr. Smith.
 14 **CROSS-EXAMINATION**
 15 BY ATTORNEY HARRELL:
 16 Q. Mr. Smith, good afternoon.
 17 **A. Good afternoon.**
 18 Q. Mr. Smith, I want to ask you a few
 19 questions at the outset about your relationship with
 20 Francois Poirier and Eric Fornell.
 21 When did you first meet Mr. Poirier?
 22 **A. It was in 2004.**
 23 Q. And what were the circumstances under
 24 which you met him?

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1 **A. Yes. He was a senior or vice chairman**
 2 **for JPMorgan. He was on the investment banking side,**
 3 **so he was a relationship banker.**
 4 Q. So you would run into him from time to
 5 time when you were with AEP?
 6 **A. Yeah. I would get invited to meetings**
 7 **with the CEO occasionally.**
 8 Q. Okay. You weren't --
 9 **A. He wasn't coming to see me, no.**
 10 Q. Okay. And so when you left AEP, did
 11 you keep in touch with Eric Fornell?
 12 **A. No, I did not.**
 13 Q. Let's talk about the December 2015
 14 equity offering on the part of Columbia.
 15 ATTORNEY HARRELL: Would you please
 16 pull up JTX 1910.
 17 Q. Do you recognize this document?
 18 **A. Yes.**
 19 Q. Tell us what it is, please.
 20 **A. This is a prospectus for a common**
 21 **stock offering for Columbia Pipeline Group.**
 22 Q. Okay. And this is the offering that
 23 ended up raising \$1.4 million?
 24 **A. 1.4 billion.**

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1 Q. Billion?

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

3 Q. It's hard to think in terms that big,

4 but 1.4 billion. Right?

5 **A. Yes.**

6 Q. Let's turn to the second page of the

7 document, please.

8 We see Goldman Sachs and Credit Suisse

9 at the top. Are their names there because they were

10 lead book running managers?

11 **A. Yes.**

12 Q. What are lead book runners responsible

13 for?

14 **A. We refer to them as book runners.**

15 **They were responsible for managing a**

16 **transaction from beginning to end. They control all**

17 **the documents. They control how it works, the**

18 **marketing of the deal. And they also control the**

19 **syndicate that is added on to help sell the deal. So**

20 **they get the majority of the economics of this**

21 **offering.**

22 Q. So in a word, they did the due

23 diligence?

24 **A. They did.**

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1 Q. Now, is Wells Fargo listed here as a

2 lead book runner?

3 **A. No.**

4 Q. Let's look at JTX 0432, please. This

5 is the first page of the exhibit. Okay. So let's go

6 to page 22, please.

7 See on this page, we see,

8 "Underwriting (Conflicts of Interest)." And there is a

9 list of underwriters.

10 What do you understand this list of

11 underwriters to be?

12 **A. So this is the list of underwriters**

13 **that are going to underwrite the transaction and**

14 **ensure that the funds get raised by selling the**

15 **shares.**

16 Q. Are these what is called passive

17 underwriters?

18 **A. Yes. Other than Goldman Sachs and**

19 **Credit Suisse, the other group are primarily passive**

20 **underwriters. They get paid for selling a portion of**

21 **the stock.**

22 Q. Do the passive underwriters have any

23 role in diligencing the transaction?

24 **A. My understanding is their only role is**

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1 **on the bring-down due diligence call. So the due**

2 **diligence is done by the book running managers prior**

3 **to launching the transaction. The transaction gets**

4 **launched, marketed. And then when it comes time to**

5 **close the transaction, there is a bring-down due**

6 **diligence call in which the entirety of the syndicate**

7 **is on that. And the bring-down due diligence call**

8 **just guarantees that nothing happened from the time of**

9 **going public with the prospectus and closing the**

10 **transaction.**

11 Q. Okay. So fair to say the passive

12 underwriters come in at a later time, after the due

13 diligence is done?

14 **A. Yes.**

15 Q. And we see Wells Fargo there.

16 Do you see that?

17 **A. I do.**

18 Q. And what does that tell you about

19 Wells Fargo's role in that equity offering?

20 **A. That they were a passive book runner**

21 **and they were going to be allocated 4.8 million**

22 **shares, and those were their shares to sell through**

23 **their system.**

24 Q. To your knowledge, was Mr. Fornell

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1 involved in the due diligence on behalf of Wells

2 Fargo?

3 **A. Not to my knowledge.**

4 Q. Were you aware in the fall of 2015

5 that Wells Fargo or Eric Fornell were TransCanada's

6 financial advisor with respect to a possible

7 transaction with Columbia?

8 **A. I wasn't initially, but I am now.**

9 Q. So how did you learn that? Was it

10 through this lawsuit, or did you learn back at that

11 time?

12 **A. It was through this lawsuit.**

13 **Apparently, he sent an email that asked questions**

14 **about some of the due diligence materials to me. So,**

15 **obviously, I had to know he was involved.**

16 Q. So at the time of this offering, we

17 know that Goldman Sachs was around. We know that

18 Sullivan & Cromwell was around. We know that there is

19 a robust management at Columbia. Did anybody raise

20 this as being a conflict of interest or a problem?

21 **A. No. I didn't see it as an interest.**

22 **It didn't dawn on my mind at the time. The thing**

23 **about it, in retrospect, I don't see why it would be**

24 **an issue. You know, the transaction, you know, was**

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1 **done. For all intents and purposes, it was pencils**
 2 **down on that. All the due diligence was just**
 3 **confirmatory, bring-down due diligence. There was**
 4 **nothing really going on there.**

5 **And, you know, most large financial**
 6 **institutions have commercial banking that does debt**
 7 **raises and equity raises and the investment banking,**
 8 **and they have pretty thorough policies around how**
 9 **information is shared and how people are treated in**
 10 **terms of being walled off or not. So I didn't have**
 11 **worries about that.**

12 Q. And, by the way, was Wells Fargo
 13 involved in some way with a revolver for lending to
 14 Columbia?

15 A. **Yes, Wells Fargo was. A lot of these**
 16 **J.P. Morgan Securities were. A lot of them were**
 17 **involved in our working capital facilities.**

18 Q. And did Eric Fornell have anything to
 19 do with that side of the house, that is, the lending
 20 side?

21 A. **No. He was more the relationship**
 22 **banker. And then we had more operational bankers that**
 23 **would come and you would see more often.**

24 Q. Once discussions began between

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1 conference, the energy conference?

2 A. **I recall -- yes.**

3 Q. And it mentions here that, not only
 4 would you be there, but if you look at the second
 5 email down, it says, "Skaggs, Kettering, Smith and two
 6 IR guys"

7 Do you see that?

8 A. **Yes, I do.**

9 Q. And what does "IR guys" mean?

10 A. **Investor relations.**

11 Q. Okay. So, now, going back to that
 12 investor conference, did you have any discussions
 13 there about the TransCanada possible transaction?

14 A. **No.**

15 Q. And what does the presence of two IR
 16 guys there signify to you?

17 A. **Well, it's an annual securities**
 18 **conference that's hosted by Wells Fargo, and a number**
 19 **of securities analysts come. And there is a day or**
 20 **two worth of meetings every 45 minutes for the balance**
 21 **of the day, and you meet with them and talk about the**
 22 **company.**

23 **And Wells Fargo is the sponsor of**
 24 **that. And so Wells Fargo's relationship person will**

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1 TransCanada and Columbia, did you ever use Eric
 2 Fornell as an intermediary between you and Francois
 3 Poirier?

4 A. **No.**

5 Q. Let's look at Exhibit 466, please.
 6 And this is an email dated December 7, 2015, from Eric
 7 Fornell to several people at the top. And if you read
 8 down, you will see that it relates to the December 7
 9 meeting, or -- yeah, the December 7 event that Wells
 10 Fargo was having.

11 It might help to go to the second
 12 page. Is there another page? Yeah. If you start
 13 there.

14 And in fairness, you were not copied
 15 on this, but let's start at the bottom, the second --
 16 the top of the second page.

17 "Russell- I noticed you are double
 18 booked for [one by one] with Enable and Columbia. I
 19 am not at the conference so was hoping you can carry
 20 the Columbia meeting. If not, we should cancel it
 21 today. Let me know what you are thinking."

22 And then if we read up, there's
 23 emails, if we just keep going up, about that meeting,
 24 that conference. So do you recall going to that

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1 **make a point to come and say hi to whoever their**
 2 **relationship company is. And so that's what this was.**
 3 **You come by and you say hello, you shake hands and ask**
 4 **how things are going, that sort of thing.**

5 Q. I want to move to the February 9
 6 meeting that you and Mr. Skaggs had with Mr. Fornell.
 7 I believe you testified at your
 8 deposition you had no recollection of a meeting.

9 A. **I did not.**

10 Q. There's been an allegation made in
 11 this lawsuit that, through this meeting, TransCanada
 12 confirmed that Skaggs and Smith wanted an exit,
 13 regardless of price, and would dare the board to
 14 decline a lowball offer. That's the allegation that's
 15 being made in this lawsuit.

16 Do you understand that?

17 A. **Yes.**

18 Q. Did you ever tell Wells Fargo that you
 19 or anybody else at Columbia wanted an exit regardless
 20 of price?

21 A. **Absolutely not.**

22 Q. Did you ever tell Wells Fargo or
 23 anybody else that you would dare the board to decline
 24 a lowball offer?

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1	A. Absolutely not.	
2	Q. And are you aware of anybody else at	
3	Columbia having discussed that or said that?	
4	A. No, I am not.	
5	Q. Let's talk about Columbia's business	
6	plan. I want to go back briefly to July 1, 2015, at	
7	the time of the spin.	
8	At that time, what was the primary	
9	driver of Columbia's business plan?	
10	A. \$7 billion worth of growth projects.	
11	Q. And growth projects was, to a	
12	layperson --	
13	A. Pipeline projects.	
14	So there's a lot of gas in your	
15	service territory, and you've got to figure out a way	
16	to get that gas to market. And so these were projects	
17	that basically took the Marcellus and Utica shale gas	
18	and moved it to markets across the system.	
19	Q. Was this building pipelines?	
20	A. Yes, it was.	
21	Q. Did Columbia have any recent	
22	experience in building projects of this scale?	
23	A. We had built a number of I would call	
24	them singles and doubles, so \$30 million, \$60 million,	
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1	that sort of thing, projects, recently.	
2	Q. You just said that it was going to	
3	cost a lot of money. How was Columbia going to pay	
4	for all of this?	
5	A. Columbia was going to use the MLP that	
6	was IPO'd in February of 2015. So that was the	
7	financing vehicle that was going to be used to raise	
8	the funds to pay for the growth projects.	
9	Q. Okay. And so did that happen?	
10	A. It did. The MLP IPO happened in	
11	February of 2015. And when we spun, it was a C Corp.	
12	company.	
13	Q. We're talking about after the spinoff,	
14	how was it going to finance all of these projects that	
15	you were looking at ahead of you?	
16	A. Through the MLP and with equity.	
17	Q. Okay. So why not just borrow the	
18	money?	
19	A. We had no debt --	
20	Q. Was Columbia able to do that?	
21	A. No. We had no debt capacity.	
22	Q. And as the time went by, after the	
23	spinoff, into the fall of 2015, what did the MLP	
24	market do and how did that affect how you could raise	
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1	money?	
2	A. The MLP market effectively shut down.	
3	So it was a difficult time in the MLP marketing.	
4	Nobody could raise any money through that market. So	
5	it was -- that was closed off from us.	
6	Q. And so what did that leave you as the	
7	only way that Columbia could raise the money to build	
8	these pipelines?	
9	A. The only other alternative was C Corp.	
10	equity. So Columbia Pipeline group was offering --	
11	would offer C Corp. equity. So ...	
12	Q. And is that what Columbia ended up	
13	doing in December, December 1 of 2015?	
14	A. Yes, it is.	
15	Q. By the way, did the MLP market turn	
16	around the next spring, like in 2016?	
17	A. No, it did not.	
18	Q. Or even in the summer of 2016?	
19	A. No, it did not. In fact, I think,	
20	still hasn't recovered, and a lot of the MLPs have	
21	gotten rolled up.	
22	Q. And just one other question on this.	
23	How did that, just this whole financing thing, affect	
24	the cash flow of Columbia and the budget and trying to	
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1	meet the budget and operational issues?	
2	A. Well, the \$7 billion of growth	
3	projects had to be funded, at least with 3 or	
4	\$4 billion of equity. So to the extent you had any	
5	operational problems that overran budgets or to the	
6	extent you had any capital expenditure problems, i.e.,	
7	delays in the pipeline or cost overruns or something	
8	like that that drove your capex budget up, any --	
9	every marginal dollar, whether it was O&M or capital,	
10	it would have to be funded by equity.	
11	You couldn't go borrow the money. You	
12	had to find the money in the equity markets. And so	
13	you would have created a situation where, you know,	
14	you were a serial equity issuer. You had to issue a	
15	lot of money there. It would create a lot of dilution	
16	and put a lot of pressure on the stock.	
17	Q. So if you had, for example, a big cost	
18	overrun when you were building your pipeline, you	
19	didn't have the cash to fund that?	
20	A. Exactly. You would have to go to the	
21	equity markets to fund that. You couldn't do a debt	
22	offering to fund that because you were right at the	
23	investment-grade threshold, credit-rating-wise.	
24	Q. I'm going to ask you just a couple	
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1 questions about initial overtures.

2 We've heard testimony about inbound

3 offers that Columbia received. Were you involved in

4 negotiating at all with these inbound offerors other

5 than TransCanada?

6 **A. No.**

7 Q. And then with respect to TransCanada,

8 what was your role?

9 **A. Well, I was the contact with Francois.**

10 **He called me. So that was that. But it was very**

11 **similar to all the other interactions with the**

12 **Dominion staff or the Berkshire staff or the NextEra**

13 **staff. It was largely administrative, providing**

14 **documents, access to the data room, that sort of**

15 **thing.**

16 Q. Okay. So you weren't involved in

17 negotiating the deals?

18 **A. No.**

19 Q. Let's talk briefly about your

20 reengagement with TransCanada in December 2015. And

21 we've heard a lot about the January 7 meeting.

22 **A. That's correct, yes.**

23 Q. And what we know is that you handed

24 the script over to Mr. Poirier at the meeting. Right?

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1 **A. I did.**

2 Q. Why did you do that?

3 **A. Well, I felt that, you know, he was --**

4 **wanted to be clear and definitive about what our point**

5 **of view was. And he was writing all the notes down.**

6 **And I just thought it would be more efficient if I**

7 **just handed it to him and he would see -- you know,**

8 **there would be no risk of misunderstanding or anything**

9 **like that. So I just felt that it would be more**

10 **efficient.**

11 Q. So you didn't come into the meeting

12 and hand it to him just right at the beginning, at the

13 start of the meeting?

14 **A. No, I did not. I read them and then**

15 **handed them to him.**

16 Q. Okay. So it was sometime during your

17 going through and reading the script, and that's when

18 you made the decision to hand it to him?

19 **A. Yeah. I had finished. I mean, there**

20 **are not very many of them. It doesn't very long to**

21 **read it. So you would read it. And he was writing it**

22 **down, so I just said, here.**

23 Q. Was there anything -- I mean, in your

24 mind, when you handed him that script, was there

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S. Smith - Cross
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1 anything secret or, you know, really strategic that

2 should not have been conveyed to him in that script?

3 **A. Not to my knowledge. I mean, it was**

4 **prepared for me by Goldman Sachs. It was thought --**

5 **the team thought, you know, you don't want to end up**

6 **wasting a lot of time. You want to be definitive.**

7 **And this is the best way to do that. So I went into**

8 **that meeting thinking that that's what I was supposed**

9 **to do.**

10 Q. By handing him the talking points,

11 were you also conveying a message about where these

12 talking points came from?

13 **A. Well, I think they -- it describes**

14 **itself in the talking points. And it was -- you know,**

15 **Goldman prepared them. So it was, you know, this is**

16 **what they needed to do, you know, if they were serious**

17 **about expressing interest in the company.**

18 Q. Well, so my question is more about

19 tell us whether or not you were trying to convey that

20 this is not just Steve Smith talking to you --

21 **A. No. This was --**

22 Q. -- but this is the company.

23 **A. Yeah. This is the position of the**

24 **company, you know? If you're serious about it, you**

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S. Smith - Cross
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1 **have to be serious. It's not an academic exercise.**

2 Q. Did you discuss anything about any

3 third party that was not public knowledge?

4 **A. I did not.**

5 Q. You were asked a few questions earlier

6 about these third parties and what was going on with

7 these third parties and, frankly, that some of them

8 were having a tough time.

9 Do you remember those questions?

10 **A. Yes.**

11 Q. Now, why did you say that? Why did

12 you discuss these third parties?

13 **A. Because that was the -- that was**

14 **reality. I mean, that was what was out there. I**

15 **mean, it was in the news. Everybody that was in the**

16 **industry knew about it. I mean, I felt that it was**

17 **appropriate to talk about it because it was our**

18 **industry, and there were issues, you know, that people**

19 **were dealing with that were pretty serious.**

20 Q. Did you discuss it to give TransCanada

21 some sort of competitive advantage over everybody

22 else?

23 **A. No. I mean, I -- no. I mean, it was**

24 **just, you know, making sure that -- you know, you had**

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S. Smith - Cross

S. Smith - Cross

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1 to maintain your credibility, you know? The market
2 was in a difficult time. It was in shambles. And
3 TransCanada was not. You know, they had a single A
4 balance sheet, and they were a strong company. So ...

5 Q. When you conveyed this, in your mind,
6 did you believe this was all public knowledge?

7 A. Absolutely.

8 Q. Did you say, "The competition has been
9 eliminated"?

10 A. No, I did not.

11 Q. Let's talk just a couple minutes about
12 *The Wall Street Journal* leak. Do you recall on
13 March 10, 2016, *The Wall Street Journal* leaked the
14 merger?

15 A. Yes.

16 Q. Let's look at JTX 0952. You are not
17 copied on this, but this is an internal Wells Fargo
18 email sent around noon on March 10, 2016, in which
19 Eric Fornell describes the Columbia board as freaking
20 out in reaction to *The Wall Street Journal* leak.

21 You didn't get a copy of this when it
22 went out. Right? This email?

23 A. I did not.

24 Q. Was the Columbia board freaking out?

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S. Smith - Cross

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1 Q. Was a decision made that you would
2 deliver that script to Mr. Poirier or tell him about
3 it?

4 A. Yes. The board was -- asked us to
5 talk to our counterparts. So I would talk to
6 Francois, and Bob Smith would talk to his counterpart
7 at TransCanada.

8 Q. And is that what you did?

9 A. I did, yes.

10 Q. Now, you were asked some questions
11 about "serious written proposal" and what that meant.

12 A. Yes.

13 Q. And we saw what you said in your
14 deposition.

15 A. Yes.

16 Q. Would you defer to Columbia's counsel
17 on what the phrase "serious written proposal" meant?

18 A. I would.

19 Q. Prior to the deposition, when you gave
20 that testimony that we saw today, had you discussed
21 with anybody what you -- what the phrase "serious
22 written proposal" meant?

23 A. No, I did not.

24 Q. And so when you were asked the

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S. Smith - Cross

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1 A. No.

2 Q. Did the board tell management,
3 including you, "go get a deal done with whatever it
4 takes"?

5 A. Absolutely not.

6 Q. Did you tell Francois Poirier that the
7 Columbia board was freaking out?

8 A. No, I did not.

9 Q. And did you tell him that the board
10 told management to get a deal done with whatever it
11 takes?

12 A. No, I did not.

13 Q. After *The Wall Street Journal* leak,
14 did any other potential bidder reach out to Columbia?

15 A. Yes.

16 Q. You recall that Spectra contacted
17 Columbia after the leak?

18 A. Yes.

19 Q. Did Columbia discuss a way to respond
20 to that inquiry?

21 A. Yes.

22 Q. And what was that?

23 A. That was a script, which we've talked
24 about earlier.

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S. Smith - Cross

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1 question in your deposition, were you drawing on any
2 knowledge you had based on what outside counsel or
3 inside counsel at Columbia had told you?

4 A. No.

5 Q. Who was the primary participant in the
6 price discussions with TransCanada?

7 A. Bob and Russ.

8 Q. So you had one discussion with
9 TransCanada about price in March of 2016.

10 Do you recall that?

11 A. Yes.

12 Q. Was that a call with Mr. Poirier when
13 he conveyed the initial offer of \$24, all cash?

14 A. Yes.

15 Q. How did you react?

16 A. Not well.

17 Q. What did you tell him?

18 A. I told him that it was below the range
19 and that it was unacceptable and it was not going to
20 work.

21 You know, my role was to then call Bob
22 and tell him what they were going to talk about, Bob
23 and Russ; there was going to be a \$24 offer. So ...

24 Q. And when you say, "It would not work,"

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S. Smith - Cross

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1 are you referring to how the board would take it?

2 **A. Yes.**

3 Q. And that resulted in, later in the

4 day, an offer at \$25.25. Is that right?

5 **A. That's my understanding, yes.**

6 Q. A couple of quick questions about

7 retirement. And let me just first ask you: Did you

8 have plans to retire in the 2014-2016 time frame?

9 **A. No, I did not.**

10 Q. Rick Rivera, who we've heard about in

11 this trial, was a financial planner for AYCO, who

12 provided services to NiSource executives. Right?

13 **A. Yes.**

14 Q. And that would include you.

15 **A. Yes.**

16 Q. Did he manage your retirement

17 investments?

18 **A. No, he did not.**

19 Q. At various points, did you provide him

20 with target retirement dates?

21 **A. I provided him with dates that would**

22 **be used to run planning scenarios for potential**

23 **retirement dates.**

24 Q. Let's look at Joint Exhibit 1926.

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1 This is a letter from Mr. Rivera to you dated

2 November 12, 2014. Correct?

3 **A. Yes.**

4 Q. Let's go down to Section 2, please.

5 And that's on the second page, I believe. And at the

6 top, it says, "I know you have quite a bit rolling

7 around in your mind professionally and personally.

8 There is also a limited amount ... that you can share.

9 Nevertheless, this deal, as I expected, will delay

10 your plans for retirement."

11 What deal is he referring to?

12 **A. The corporate separation of NiSource**

13 **and Columbia Pipeline.**

14 Q. And so what did you understand he

15 meant when he was referring to your plans for

16 retirement?

17 **A. I don't know. Those are his words. I**

18 **don't know what he meant by that.**

19 Q. Do you know what he is referring to

20 when he says -- sorry. I already asked you that.

21 And then part 1.a, let's go back to

22 1.a. It says, "You owe me the dates to consider for

23 another retirement analysis."

24 Do you see that?

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1 **A. Yes, I do.**

2 Q. So, as you indicated, this is an email

3 where Mr. Rivera is asking you to provide target

4 retirement dates. Right?

5 **A. Yes. It's a letter, actually.**

6 Q. Yes, a letter.

7 Let's go to Exhibit 77, please. Is

8 this another letter from Mr. Rivera?

9 **A. Yes, it is.**

10 Q. And this one is dated February of

11 2015. Correct?

12 **A. Yes.**

13 Q. Let's go to Section 2.c, please. And

14 he says, "You are in good shape to walk away as you

15 desire at 55. However, you put the new target as

16 early as June of 2016."

17 This is a few months after the letter

18 which Rick asked you to provide target retirement

19 dates. Right?

20 **A. Yes.**

21 Q. And, in fact, you did provide a date

22 for retirement planning purposes as he requested.

23 Right?

24 **A. Yes. June of 2016.**

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1 Q. And why did you do that?

2 **A. Because I, you know, I turned 55**

3 **March 1st of 2016. And so, typically, if people were**

4 **going to retire, they always retire on a quarter. So**

5 **it was just the earliest date at which one could**

6 **contemplate that.**

7 **But I had no plans to retire at that**

8 **point. It was just a planning scenario.**

9 Q. If you had planned to retire, who

10 would you have told in the company?

11 **A. I would have told Bob. I would have**

12 **told the board. I would have told HR.**

13 Q. And you didn't tell anyone, did you?

14 **A. No, I did not.**

15 Q. And why was that?

16 **A. Because I wasn't going to retire.**

17 **These are all planning scenarios. I thought it was**

18 **prudent to look at that, you know, over time.**

19 Q. A couple of quick questions about the

20 proxy.

21 Do you recall that Columbia filed a

22 proxy disclosure in connection with the stockholder

23 vote?

24 **A. Yes.**

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S. Smith - Redirect

<p style="text-align: right;">S. Smith - Redirect Page 1187</p> <p>1 Q. What was Sullivan & Cromwell's role in</p> <p>2 the drafting process?</p> <p>3 A. They drafted the proxy.</p> <p>4 Q. And what was your role?</p> <p>5 A. I provided some factual information in</p> <p>6 terms of dates and meetings and things like that.</p> <p>7 Q. And who made the decisions on what</p> <p>8 needed to be in it and what did not need to be in it?</p> <p>9 A. The lawyers.</p> <p>10 Q. And there's been a lot of testimony in</p> <p>11 this case about standstill provisions, NDAs, "Don't</p> <p>12 Ask, Don't Waive." In all of those decisions that got</p> <p>13 made, who did management rely on in making those</p> <p>14 decisions?</p> <p>15 A. The lawyers, both internal and</p> <p>16 external.</p> <p>17 ATTORNEY HARRELL: I'll pass the</p> <p>18 witness.</p> <p>19 REDIRECT EXAMINATION</p> <p>20 BY ATTORNEY van KWAEGEN:</p> <p>21 Q. Thank you. A few follow-up questions.</p> <p>22 Mr. Smith, did I just hear you testify</p> <p>23 that you had no plan to retire in the 2014-2016 time</p> <p>24 frame?</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Redirect Page 1189</p> <p>1 cash proceeds of our \$1.4 billion secondary equity</p> <p>2 offering in December. This enhanced liquidity</p> <p>3 position allows us to fund our deep investment</p> <p>4 inventory without having to access the capital markets</p> <p>5 until well into 2017. Our credit metrics are strong,</p> <p>6 and reflect our unwavering commitment to maintaining</p> <p>7 an investment grade credit rating."</p> <p>8 You were truthful when you were</p> <p>9 talking to the analysts and you said that. Correct?</p> <p>10 A. Yes. That means the credit statistics</p> <p>11 would work out to about the second quarter, and then</p> <p>12 they started getting stressed.</p> <p>13 Q. When you said this here, reflected in</p> <p>14 this transcript, you were truthful. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. And if we scroll down, it talks about</p> <p>17 the MLP, CPPL, at the bottom, last paragraph. "CPPL</p> <p>18 also continues to maintain a \$500 million five-year</p> <p>19 revolving credit facility, only []15 million of which</p> <p>20 had been drawn as of December 31, 2015," in line with</p> <p>21 your expectations.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And you were truthful when you said</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">S. Smith - Redirect Page 1188</p> <p>1 A. Yes.</p> <p>2 Q. Let's take a look at a document. It's</p> <p>3 Joint Exhibit 1138.</p> <p>4 And in the middle, there is an email</p> <p>5 where Rick Rivera is congratulating you. And right</p> <p>6 above, on March 17, when the merger agreement is</p> <p>7 signed, you say to Mr. Rivera -- scroll up, please --</p> <p>8 "Thanks Rick, do you think I can retire now?"</p> <p>9 You wrote that on March 17th. Right?</p> <p>10 A. I did.</p> <p>11 Q. I want to talk a little bit about the</p> <p>12 company where you were the CFO.</p> <p>13 You spoke on analyst calls in your</p> <p>14 capacity as CFO. Correct?</p> <p>15 A. Yes, I did.</p> <p>16 Q. Let's take a look at Joint Exhibit</p> <p>17 753, a transcript of an analyst call that we've seen</p> <p>18 before. And this is an analyst call on February 18,</p> <p>19 2016.</p> <p>20 And if we go to the third page, there</p> <p>21 are prepared remarks from you. And I want to focus on</p> <p>22 the prepared remarks that start at the bottom here:</p> <p>23 "CPG's total liquidity remains robust. Approximately</p> <p>24 \$2.9 billion as of December 31, 2015, which includes</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">S. Smith - Redirect Page 1190</p> <p>1 that to the market. Right?</p> <p>2 A. Yes.</p> <p>3 Q. And if we go to the next page, in the</p> <p>4 middle of the page, right before the final comment</p> <p>5 that you make, prepared remarks, "I'll close by</p> <p>6 highlighting on slide 8 that we expect to end the year</p> <p>7 with a strong \$1.6 billion of liquidity."</p> <p>8 You were truthful and accurate when</p> <p>9 you said that. Correct?</p> <p>10 A. Yes. And you're talking about 2015.</p> <p>11 Q. Okay. Another document I want to show</p> <p>12 you, and that's document 1195. This is more about the</p> <p>13 operational financial performance. It's an email from</p> <p>14 you on April 5th, talking to Matt Gibson at Goldman.</p> <p>15 And here, you're talking about the language of the</p> <p>16 proxy that Goldman Sachs is suggesting. Is that</p> <p>17 right?</p> <p>18 Do you see where it says, "The way the</p> <p>19 proxy is worded, it makes it sound like our plan</p> <p>20 deteriorated from the summer to the spring because of</p> <p>21 lower cash flows, among other things. That's just not</p> <p>22 true, it was the MACRO factors that hurt our value."</p> <p>23 You continue, "We also got bonus</p> <p>24 depreciation, if you recall which completely mitigated</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

S. Smith - Recross

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1 the equity raise on a per share DCF basis."
 2 You were truthful and accurate when
 3 you were explaining to Matt Gibson what you indicated
 4 in the proxy?
 5 **A. Yes.**
 6 Q. Okay. And it's fair to say that when
 7 you left Columbia Pipeline, you received a \$177,000
 8 payment based on Columbia's financial and operational
 9 performance metrics as of July 1, 2016.
 10 **A. Yes, I did.**
 11 Q. It's an additional \$177,000. Right?
 12 **A. Yes.**
 13 ATTORNEY van KAWEGEN: No further
 14 questions.
 15 ATTORNEY HARRELL: One question,
 16 Your Honor.
 17 **RECROSS-EXAMINATION**
 18 BY ATTORNEY HARRELL:
 19 Q. When you sent that email back to
 20 Rick Rivera and you said, can I retire now? what were
 21 you saying?
 22 **A. That was a joke. It was**
 23 **tongue-in-cheek, because he harassed me about that for**
 24 **years. And, you know, it was just an offhanded joke.**

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1 ATTORNEY HARRELL: Pass the witness,
 2 Your Honor.
 3 ATTORNEY van KAWEGEN: Nothing
 4 further, Your Honor.
 5 THE COURT: Mr. Smith, thank you for
 6 being here. I appreciate your time.
 7 THE WITNESS: Thank you.
 8 (Witness excused.)
 9 ATTORNEY WEINBERGER: Good afternoon,
 10 Your Honor. Ned Weinberger from Labaton Sucharow.
 11 Plaintiffs call Timothy Meinhart as
 12 their next witness.
 13 Your Honor, we're just handing up a
 14 couple documents.
 15 THE COURT: That's fine.
 16 TIMOTHY J. MEINHART, having first been
 17 duly affirmed, was examined and testified as follows:
 18 **DIRECT EXAMINATION**
 19 BY ATTORNEY WEINBERGER:
 20 Q. Good afternoon, Mr. Meinhart. Can you
 21 please introduce yourself to the Court.
 22 **A. Good afternoon. My name is Timothy J.**
 23 **Meinhart. I am a managing director with Willamette**
 24 **Management Associates in Chicago, Illinois.**

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Page 1193

1 Q. What is Willamette Management
 2 Associates?
 3 **A. Willamette is a business valuation,**
 4 **forensic analysis, and transaction opinions firm. So**
 5 **the members of the firm, such as myself, routinely**
 6 **provide valuation opinions and damages analyses.**
 7 **We're often testifying in defense of our work. And we**
 8 **also provide valuation opinions related to**
 9 **transactions as well as solvency opinions and fairness**
 10 **opinions in connection with those transactions.**
 11 Q. Do you have any degrees or
 12 accreditations?
 13 **A. I do.**
 14 Q. What are those?
 15 **A. I hold a BS in finance from Northern**
 16 **Illinois University and an MBA with a concentration in**
 17 **accounting from DePaul University.**
 18 Q. Have you testified as an expert on
 19 valuation or damages before?
 20 **A. I have.**
 21 Q. Approximately how many times?
 22 **A. Approximately 30 times in total. I**
 23 **would estimate that maybe 20 of those times was at**
 24 **deposition and maybe ten times at trial.**

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1 Q. And have you testified in the Delaware
 2 Court of Chancery before?
 3 **A. I have.**
 4 Q. Could you just briefly describe those
 5 cases to the best of your memory?
 6 **A. Sure. I refer to those cases really**
 7 **based on the company name, the first of which, the**
 8 **company was known as *Hazelett Strip Casting***
 9 ***Corporation*, which I testified at deposition and at**
 10 **trial before Your Honor.**
 11 **The second company that I can think of**
 12 **involved a company named the *Orchard Enterprises, Inc.***
 13 **I testified at deposition and at trial.**
 14 **There was another company or case that**
 15 **involved a company referred to as *Sauer-Danfoss, Inc.*,**
 16 **where I testified at deposition.**
 17 **And there was a fourth case involving**
 18 **a company referred to as *SourceHOV Holdings, Inc.*,**
 19 **where I testified at deposition and at trial.**
 20 ATTORNEY WEINBERGER: Your Honor,
 21 plaintiffs proffer Mr. Meinhart as an expert on
 22 business valuation damages.
 23 THE COURT: Any objections?
 24 ATTORNEY MASSENGILL: No, sir.

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T. Meinhart - Direct

<p style="text-align: right;">T. Meinhart - Direct Page 1195</p> <p>1 THE COURT: I'll except Mr. Meinhart</p> <p>2 as an expert on the subjects proffered.</p> <p>3 ATTORNEY WEINBERGER: Thank you, Your</p> <p>4 Honor.</p> <p>5 BY ATTORNEY WEINBERGER:</p> <p>6 Q. Mr. Meinhart, were you retained by</p> <p>7 plaintiffs in this action?</p> <p>8 A. I was, yes.</p> <p>9 Q. And what was your assignment?</p> <p>10 A. Really, in general, my assignment was</p> <p>11 to measure two categories of damages, what I refer to</p> <p>12 in my report, number one, as <i>Revlon</i> damages; and,</p> <p>13 number two, the second category would be rescissory</p> <p>14 damages.</p> <p>15 Q. And the report you reference, is that</p> <p>16 the document in front of you?</p> <p>17 You have two documents, actually, in</p> <p>18 front of you. One has a JX at the bottom.</p> <p>19 A. Yes. Yes. I see that.</p> <p>20 Q. And that contains your opinions?</p> <p>21 A. Yes, it does.</p> <p>22 Q. And did you prepare slides to</p> <p>23 accompany your testimony today?</p> <p>24 A. Yes, I did.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">T. Meinhart - Direct Page 1197</p> <p>1 Q. How would you calculate damages under</p> <p>2 Scenario 1?</p> <p>3 A. Sure. So Scenario 1, I should</p> <p>4 probably first say, and you saw this on Slide No. 1,</p> <p>5 Scenario 1 is what I refer to as the \$26 mixed</p> <p>6 consideration scenario, which was based on 90 percent</p> <p>7 cash, 10 percent stock.</p> <p>8 But going to Slide 2 that you just</p> <p>9 pulled up, it's probably easiest for me to walk</p> <p>10 through that quickly.</p> <p>11 If this scenario would have been</p> <p>12 announced on March 17, 2016, that first column is what</p> <p>13 it would have looked like, \$23.40 of cash and another</p> <p>14 \$2.60 of stock. That stock component would have been</p> <p>15 set on the date of closing, at least based on my</p> <p>16 review of the documents in the record. You can</p> <p>17 certainly see that TransCanada was adamant about</p> <p>18 setting that exchange ratio for the stock on that</p> <p>19 date. So on the March 17th date, you would have a</p> <p>20 stated value or a headline price, if you will, of \$26.</p> <p>21 What I did, since I'm measuring my</p> <p>22 damages as of the date of closing, which is July 1,</p> <p>23 2016, I brought the stock component forward using the</p> <p>24 actual transaction price of TransCanada at that</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">T. Meinhart - Direct Page 1196</p> <p>1 Q. And is that the slide -- are those the</p> <p>2 slides that are sitting in front you?</p> <p>3 A. Yes, they are.</p> <p>4 ATTORNEY WEINBERGER: And, Joe, would</p> <p>5 you put the slides up on the screen whenever you're</p> <p>6 ready.</p> <p>7 All right. Let's start with <i>Revlon</i></p> <p>8 damages. And, Joe, you can go ahead and turn to</p> <p>9 Slide 1.</p> <p>10 Q. Mr. Meinhart, can you describe</p> <p>11 generally how you went about estimating <i>Revlon</i> damages</p> <p>12 in this case?</p> <p>13 A. Sure. As you can see on this slide, I</p> <p>14 used five discrete scenarios. And these five</p> <p>15 scenarios are based on five potential transaction</p> <p>16 prices, which, based on my review of documents and</p> <p>17 testimony in the record, are five potential</p> <p>18 transaction prices at which the transaction could have</p> <p>19 taken place but for the alleged misconduct of the</p> <p>20 defendants.</p> <p>21 Q. Okay. Let's focus on a couple of the</p> <p>22 scenarios. Let's start with Scenario 1.</p> <p>23 ATTORNEY WEINBERGER: Joe, you can</p> <p>24 turn to Slide 2.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">T. Meinhart - Direct Page 1198</p> <p>1 July 1, 2016, date.</p> <p>2 So as I'm showing in the chart at the</p> <p>3 bottom of the page, there was a run-up in the</p> <p>4 TransCanada stock price from signing, March 17, to</p> <p>5 closing. And that's why you're seeing an increase in</p> <p>6 the stock component from \$2.60 -- and, by the way,</p> <p>7 these are all U.S. dollars -- to \$3.10. So</p> <p>8 ultimately, as of July 1, 2016, I am looking at a</p> <p>9 value for this particular scenario of \$26.50.</p> <p>10 Q. And I just want to clarify real quick.</p> <p>11 I may have misheard you. You said that the -- I</p> <p>12 believe you said that the exchange ratio, you had</p> <p>13 fixed as of closing. Did you mean announcement for</p> <p>14 determining what the fractional share would be,</p> <p>15 Mr. Meinhart?</p> <p>16 A. Yes. If I said that, I misspoke. So</p> <p>17 the ratio would have been set or is set in this</p> <p>18 analysis as of March 17, 2016, which is as of signing.</p> <p>19 That's correct.</p> <p>20 Q. Okay. And then you said, but you</p> <p>21 ultimately value that stub or that fractional share at</p> <p>22 close. Why did you use the closing date,</p> <p>23 Mr. Meinhart?</p> <p>24 A. Well, simply because I thought it was</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

T. Meinhart - Direct

T. Meinhart - Direct

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1 the best proxy, best representation of what the price
2 would have been as of that date.

3 Q. And why do you believe that it was the
4 best proxy for what it would have been valued at as of
5 that date?

6 A. Well, I considered a number of
7 different things. But essentially, the actual run-up
8 in the TC stock was one of them. And as I just
9 mentioned, I used the actual price there.

10 The second one was there was
11 actually -- in the course of my work on rescissory
12 damages, I had the opportunity to look at peer group
13 companies, other companies in the midstream space.
14 And when running betas for those companies, I'm
15 clearly looking at the stock performance of those
16 companies over different lookback periods.

17 And I also noted in my analysis, as I
18 was doing it, that there was an increase in the value
19 of those companies and the market cap of those
20 companies at that point in time as well. So that
21 allowed me to become very comfortable with the fact
22 that this wasn't a TransCanada-specific event, but we
23 were actually seeing somewhat of a recovery in the
24 sector from a stock price standpoint.

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1 be about a billion dollars of sources of cash, if you
2 will. It's not really source of cash but source of
3 funding, which means you would have a billion less
4 that you would have to raise through either asset
5 sales or the subscription receipts offering. So I
6 viewed both of those items and said, logically, that
7 would have to reduce the execution risk of the asset
8 sales and/or the subscription receipts offering.
9 So not only did I have a noticeable
10 run-up in the stock prices of these peer group
11 companies in the midstream space, but it seemed as
12 though there was a logical conclusion that some of the
13 execution risk could have been eliminated or
14 mitigated, I should -- not eliminated -- mitigated
15 under the mixed consideration scenario. That's what I
16 was thinking about at the time I decided to use the
17 actual TransCanada stock price.

18 Q. Okay. Why don't we just briefly
19 quickly flip back to Slide 1, if you could just sort
20 of summarize your bottom-line damages conclusion under
21 Scenario 1.

22 A. Yes, so under Scenario 1, and this is
23 the same for all these, but while it's referred to as
24 the \$26 scenario, as I just pointed out to you on

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1 Q. And did you do any comparison in
2 considering whether or not to use of the ultimate --
3 the actual closing price of TransCanada, any
4 comparison of the 25.50 cash versus the \$26 cash and
5 stock in terms of, I guess, comparing their structure?

6 A. Well, comparing the structure as well
7 was another thing that I was thinking about at the
8 time I was developing my analysis. As I mentioned,
9 clearly, I'm viewing the peer group companies as I'm
10 developing my rescissory damages, and I know what's
11 happening there.

12 In terms of the structure, the real
13 question in my mind is, would the stock, the TC -- I'm
14 sorry -- the TransCanada perform worse had the mixed
15 consideration offer been announced rather than the
16 25.50? And, frankly, looking at the structures of
17 those two transactions the way I understand them, I
18 came to the conclusion that I was not convinced that
19 it would. And simply because the mixed consideration
20 structure requires less cash.

21 And really, when you think about it in
22 simplest terms, if the CPG shareholders took
23 10 percent consideration, the deal value, equity value
24 was about \$10.2 billion, in round numbers. That would

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1 Slide No. 2, I actually put a price on that, if you
2 will, or a value on that of 26.50.
3 So the calculation here is taking
4 \$26.50, subtracting from that the 25.50 actual
5 transaction that was announced and that occurred, the
6 difference of which results in the lost transaction
7 price, lost transaction value. And then I multiply
8 that difference by number of shares in the class to
9 arrive at approximately \$401 million.

10 Q. Okay. Let's talk very briefly about
11 Scenarios 2 through 5. We do not have to go through
12 each of them, but just, generally, what are you doing
13 in Scenarios 2 through 5?

14 A. Well, in 2 through 5, it's really the
15 same thing I just described for Scenario 1. But,
16 frankly, it's easier because each of those are based
17 on a potential transaction price that is an all-cash
18 price, so I don't have to deal with the stock
19 component of it.

20 Quite frankly, it's just basic math.
21 I mean, I really don't know how else to explain it
22 other than to say that you could take any of these
23 price points, subtract from that the actual
24 transaction price, and multiply it by shares in the

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<p style="text-align: right;">T. Meinhart - Direct Page 1203</p> <p>1 class. And that's how I arrived at each of these</p> <p>2 aggregate damages figures in the right-hand column.</p> <p>3 Q. And let me ask you just about a couple</p> <p>4 of these. Scenario 4, \$27 per share, what was your</p> <p>5 basis for the \$27 per share?</p> <p>6 A. The \$27 per share relates back to the</p> <p>7 document that I have referred to, and I believe others</p> <p>8 have, as the interloper analysis that was done in late</p> <p>9 April, 2016.</p> <p>10 Q. And Scenario 5 the \$28 per share.</p> <p>11 A. That scenario is based on the same</p> <p>12 document, that's correct, the interloper analysis.</p> <p>13 Q. Okay. Mr. Meinhart, let's turn to</p> <p>14 your rescissory damages calculation.</p> <p>15 Can you describe for the Court sort of</p> <p>16 what you sought to do through your rescissory damages</p> <p>17 analysis?</p> <p>18 A. Yes. In simplest terms, I was</p> <p>19 quantifying the change in value of the Columbia equity</p> <p>20 from the time it was acquired, July 1, 2016, to what I</p> <p>21 would refer to as a current date, which, for purposes</p> <p>22 of my analysis, I'm using a valuation date of</p> <p>23 December 31, 2021.</p> <p>24 Q. Okay. And at a high level, how did</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">T. Meinhart - Direct Page 1205</p> <p>1 by TransCanada in 2021.</p> <p>2 Q. Okay. And what were the 7+5</p> <p>3 projections used for at TransCanada or Columbia?</p> <p>4 A. Well, my understanding, based on my</p> <p>5 reading of the record and deposition transcripts, I</p> <p>6 believe they were used for a number of different</p> <p>7 purposes, but in general, generally speaking, kind of</p> <p>8 long-term planning purposes. I understand they were</p> <p>9 shared with the credit agencies and used for a number</p> <p>10 of different purposes.</p> <p>11 Q. Okay. All right. So you did a DCF,</p> <p>12 as you've said. Why did you choose to do a DCF?</p> <p>13 A. Well, because I determined that was</p> <p>14 the most appropriate and I would say the valuation</p> <p>15 method that resulted in the most accurate indication</p> <p>16 of value for the business unit.</p> <p>17 Q. Okay. Let's go through sort of at a</p> <p>18 high level some of the steps in your DCF. Can you</p> <p>19 sort of walk through at a high level what you're doing</p> <p>20 in the DCF calculation?</p> <p>21 A. Sure. It's, quite frankly, your</p> <p>22 typical DCF that puts down to an enterprise value. So</p> <p>23 what I'm essentially doing is looking at or developing</p> <p>24 a multiyear projection of net cash flow over a</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">T. Meinhart - Direct Page 1204</p> <p>1 you go about valuing Columbia in this exercise?</p> <p>2 A. Well, at a very high level, I used a</p> <p>3 discounted cash flow analysis to value the Columbia</p> <p>4 equity.</p> <p>5 Q. All right. Let's go through, I guess,</p> <p>6 a couple or a few components of the DCF. You</p> <p>7 mentioned you chose a valuation date. What was the</p> <p>8 valuation date that you chose?</p> <p>9 A. That was the December 31, 2021, date</p> <p>10 that I mentioned, yes.</p> <p>11 Q. Why did you use December 2021?</p> <p>12 A. Well, because that was the most</p> <p>13 current date that I felt I had reasonably accurate</p> <p>14 financial information, and, really, two categories of</p> <p>15 financial information. Accurate financial statements</p> <p>16 of the Columbia business unit, number one, and then,</p> <p>17 number two, probably more importantly, what I believed</p> <p>18 to be a very accurate projection, financial</p> <p>19 projection, multi-year financial projection, of the</p> <p>20 Columbia business unit.</p> <p>21 Q. Okay. And what were those</p> <p>22 projections?</p> <p>23 A. The projections I used were commonly</p> <p>24 referred to as the 7+5 projections that were developed</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">T. Meinhart - Direct Page 1206</p> <p>1 discrete projection period, which in this case was ten</p> <p>2 years.</p> <p>3 At the end of that projection period,</p> <p>4 I'm developing a terminal value for that company. And</p> <p>5 then I'm discounting both of those back. The discrete</p> <p>6 net cash flows and the terminal value, I'm discounting</p> <p>7 both of those back to a present value using a weighted</p> <p>8 average cost of capital.</p> <p>9 Q. And just briefly, those steps, how do</p> <p>10 you calculate net cash flows in your DCF?</p> <p>11 A. Well, again, the calculation of net</p> <p>12 cash flow was based on the 7+5 projections that were</p> <p>13 developed by management. And really, the calculation</p> <p>14 of cash flow is the common way you would do it in most</p> <p>15 instances. When you're putting down to invest the</p> <p>16 capital, you essentially start with debt-free net</p> <p>17 income. You adjust that for noncash expenses, such as</p> <p>18 depreciation and amortization. You reduce it for</p> <p>19 capital expenditures. And then I also considered in</p> <p>20 that calculation any projected changes in operating</p> <p>21 working capital, the sum of which puts down to net</p> <p>22 cash flow.</p> <p>23 Q. And then you mentioned discount rate.</p> <p>24 How did you go about determining the discount rate</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">T. Meinhart - Direct Page 1207</p> <p>1 that you utilized?</p> <p>2 A. Well, the appropriate discount rate to</p> <p>3 use here and what I did use is the weighted average</p> <p>4 cost of capital, which is a weighting of my estimated</p> <p>5 cost of equity capital with my estimated cost of debt</p> <p>6 capital, which is kind of, in a nutshell, what the</p> <p>7 WACC consists of.</p> <p>8 Q. Can you talk very briefly about your</p> <p>9 calculation of the cost of equity capital?</p> <p>10 A. Sure. The cost of equity capital, in</p> <p>11 that case, I use the generally accepted capitalized</p> <p>12 pricing model to develop that, a fairly easy model to</p> <p>13 apply. Just a few components: risk-free rate, equity</p> <p>14 risk premium, the beta, which I am happy to talk more</p> <p>15 about if anyone cares to know. And I also use -- it's</p> <p>16 really a modified version of the capital asset pricing</p> <p>17 model, because I did include a size premium as well,</p> <p>18 based on the estimated size of the CPG equity.</p> <p>19 Q. And your cost of debt calculation,</p> <p>20 Mr. Meinhart?</p> <p>21 A. So for the cost of debt, I looked at a</p> <p>22 number of different data points. I looked at the</p> <p>23 yield on the long-term notes that Columbia had issued.</p> <p>24 I looked at the interest rate on the term debt, the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">T. Meinhart - Direct Page 1209</p> <p>1 Q. Okay. And then so let's talk about</p> <p>2 how you calculated switching from the net cash flows</p> <p>3 to the present value of the -- I'm sorry, present</p> <p>4 value of the terminal value. Can you talk about your</p> <p>5 calculation of terminal value?</p> <p>6 A. Yes. So the terminal value, in that</p> <p>7 case, I used the Gordon Growth Model, which is a</p> <p>8 generally accepted model for developing a terminal</p> <p>9 value. Really, the process was as simple as</p> <p>10 capitalizing normalized cash flow in that terminal</p> <p>11 period by a risk-adjusted capitalization rate, which</p> <p>12 consisted of my WACC less my long-term growth rate.</p> <p>13 Q. And did you make any other adjustments</p> <p>14 to your calculation of terminal value?</p> <p>15 A. Well, in that calculation, there are a</p> <p>16 couple of adjustments that I probably should mention,</p> <p>17 both of which were tax-related.</p> <p>18 As I just mentioned, I capitalized</p> <p>19 what I refer to as normalized cash flow. And what I</p> <p>20 meant by that is I excluded from the cash flow in the</p> <p>21 terminal period that I capitalized, I excluded from</p> <p>22 that measure of cash flow the off-shore tax benefits</p> <p>23 that are running through the cash flow stream because</p> <p>24 it's my understanding that those benefits will not</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">T. Meinhart - Direct Page 1208</p> <p>1 floating rate, interest rate, on the term debt that</p> <p>2 Columbia took out in 2021. And then I also looked at,</p> <p>3 basically as a proxy, the yields on long-term debt</p> <p>4 that was issued by other market participants in the</p> <p>5 energy space that had credit ratings in that single A</p> <p>6 to BBB area, to make them consistent with where</p> <p>7 Columbia fell within that range.</p> <p>8 Q. And Slide 3 that's in front of you,</p> <p>9 titled "Rescissory Damages, <i>WACC Components</i>," can you</p> <p>10 just briefly walk through what this is describing?</p> <p>11 A. Sure. So the selected cost of equity</p> <p>12 capital, 7.28 percent, that's what I was referring to</p> <p>13 with the capital asset pricing model. I developed a</p> <p>14 rate of 7.28 percent.</p> <p>15 Just skipping down to the cost of</p> <p>16 debt, I should mention that the market metrics I was</p> <p>17 using developed a pre-tax cost of debt for the</p> <p>18 company. I tax-effected that debt, given the fact</p> <p>19 that interest is tax deductible, to arrive at an</p> <p>20 after-tax cost of debt of 2.26 percent. And then I</p> <p>21 weighted those two cost components approximately</p> <p>22 76 percent attributed to equity, 24 percent attributed</p> <p>23 to debt, to arrive at my concluded weighted average</p> <p>24 cost of capital of 6.1 percent.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">T. Meinhart - Direct Page 1210</p> <p>1 continue in perpetuity. They have a finite life. So</p> <p>2 I stripped those out and valued those separately and</p> <p>3 discretely.</p> <p>4 And then, also, at the end of the</p> <p>5 terminal period, we were at a point where tax</p> <p>6 depreciation far exceeded capital expenditures. So,</p> <p>7 again, I made a normalization adjustment for</p> <p>8 depreciation and handled that separately and really</p> <p>9 discretely so that it, frankly, wouldn't cloud up my</p> <p>10 terminal value calculation.</p> <p>11 ATTORNEY WEINBERGER: Joe, could we</p> <p>12 turn to Slide 4, please.</p> <p>13 Q. Can you just describe what's on</p> <p>14 Slide 4, I guess, beginning with your calculation of</p> <p>15 enterprise value for Columbia?</p> <p>16 A. Sure. So what I'm showing on Slide 4</p> <p>17 is really a sanity check or a check of the</p> <p>18 reasonableness of my conclusion using the DCF. And</p> <p>19 what I'm doing is comparing it to the DCF valuation</p> <p>20 that TransCanada did of Columbia at year-end 2021,</p> <p>21 specifically for impairment, goodwill impairment</p> <p>22 testing purposes.</p> <p>23 So as you can see on this slide, my</p> <p>24 concluded enterprise value for Columbia, using the</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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<p style="text-align: right;">T. Meinhart - Direct Page 1211</p> <p>1 DCF, was, in round numbers, \$22.2 billion. The TC</p> <p>2 valuation, the TransCanada valuation of CPG around</p> <p>3 that same time was higher than where I was. They were</p> <p>4 at \$26.6 billion. What that really translates to is,</p> <p>5 obviously, I'm coming up with a value that implies a</p> <p>6 lower multiple to 2021 EBITDA than them. I'm at 12.2.</p> <p>7 They're at 14.6.</p> <p>8 I also wanted to provide a little</p> <p>9 clarity on the terminal value comparison here and how</p> <p>10 that was calculated. For purposes of the terminal</p> <p>11 value estimate I came up with, I used a long-term</p> <p>12 growth rate of 1.5 percent. In the analysis that</p> <p>13 TransCanada did of CPG around that same year-end, they</p> <p>14 used a higher growth rate of 2.26 percent for that.</p> <p>15 So those are a couple differences, as</p> <p>16 you can see. I'm lower than them in terms of value</p> <p>17 and certainly lower than them in terms of multiples</p> <p>18 and growth. Where we are the same is actually in the</p> <p>19 WACC. As I previously mentioned, I estimate a</p> <p>20 6.1 percent weighted average cost of capital, which is</p> <p>21 what TransCanada used in their analysis, around that</p> <p>22 time as well.</p> <p>23 Q. And, Mr. Meinhart, could you quickly</p> <p>24 turn to Slide 5. Can you walk us through Slide 5,</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">T. Meinhart - Direct Page 1213</p> <p>1 Q. Can you just briefly describe why you</p> <p>2 made that adjustment, post-closing dividends net of</p> <p>3 contributions, and then just explain what your</p> <p>4 bottom-line damages conclusion is?</p> <p>5 A. Sure. I think this is a necessary</p> <p>6 adjustment to be made because this is capital that</p> <p>7 TransCanada, as I said, contributed to the business.</p> <p>8 Without making this adjustment, I think it would give</p> <p>9 a distorted view of really what that growth was from</p> <p>10 2016 to year-end 2021.</p> <p>11 I could illustrate with a very simple</p> <p>12 example. But the fact of the matter is if I bought a</p> <p>13 company for \$100 and then, five years later, I valued</p> <p>14 it again, and right before that second valuation date,</p> <p>15 I pushed in \$400 of capital and now I have a \$500</p> <p>16 value as of my second date, I could subtract 100 from</p> <p>17 the 500, and it would suggest I had \$400 of growth</p> <p>18 when, in fact, the only reason I had \$400 of growth is</p> <p>19 because of that capital contribution. Without that</p> <p>20 capital contribution, there would have been no growth.</p> <p>21 So that's really just a real quick</p> <p>22 summary of the basis for that. But after that</p> <p>23 adjustment, I put down the \$3 billion of rescissory</p> <p>24 damages to the class.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>
<p style="text-align: right;">T. Meinhart - Direct Page 1212</p> <p>1 please.</p> <p>2 A. Sure. I start on Slide 5 with the</p> <p>3 equity value of Columbia, which is really just nothing</p> <p>4 more than taking my enterprise value from the previous</p> <p>5 page, reducing it for the debt that existed at that</p> <p>6 time, and also factoring in related-party receivables</p> <p>7 with TransCanada. So it's a very common calculation</p> <p>8 to move from enterprise value to equity value.</p> <p>9 So the \$17 billion number is my equity</p> <p>10 value conclusion as of 12/31. From that, I make two</p> <p>11 adjustments to arrive at damages. Let me start with</p> <p>12 deal value. I subtract the actual deal value as of</p> <p>13 July 1, 2016, which is the \$10.2 billion. So that</p> <p>14 lowers the value, obviously. That's really the</p> <p>15 difference between those two values.</p> <p>16 But the adjustment in the middle,</p> <p>17 which is what I refer to as post-closing dividends net</p> <p>18 of contributions, is a further adjustment I make,</p> <p>19 which is meant to take into account the equity that</p> <p>20 TransCanada has pushed into CPG over the</p> <p>21 five-and-a-half-year period that it has owned it.</p> <p>22 Q. And I think we just have two or three</p> <p>23 more minutes today.</p> <p>24 A. Yep.</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>	<p style="text-align: right;">Page 1214</p> <p>1 ATTORNEY WEINBERGER: Thank you,</p> <p>2 Mr. Meinhart.</p> <p>3 Your Honor, no further questions at</p> <p>4 this time.</p> <p>5 THE COURT: I think it makes sense to</p> <p>6 stop there for the day, and we'll begin tomorrow</p> <p>7 morning with cross.</p> <p>8 Thank you, everyone. We stand in</p> <p>9 recess.</p> <p>10 (Proceedings adjourned at 4:44 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">CHANCERY COURT REPORTERS</p>

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