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Case No. 2018-0484-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ROBERT C. SKAGGS, JR., STEPHEN P. SMITH, and TRANSCANADA CORPORATION, Defendants.	C.A. No. 2018-0484-JTL

VERIFIED AMENDED STOCKHOLDER CLASS ACTION COMPLAINT

Plaintiff Public Employees' Retirement System of Mississippi ("Plaintiff"), on behalf of itself and all other similarly situated former stockholders of Columbia Pipeline Group, Inc. ("Columbia" or the "Company"), brings the following Verified Amended Stockholder Class Action Complaint (the "Complaint") against Columbia's former Chairman and Chief Executive Officer, Robert C. Skaggs ("Skaggs"), and Columbia's former Chief Financial Officer, Stephen P. Smith ("Smith"), for breaching their duties as fiduciaries of Columbia, and against TransCanada Corporation ("TransCanada" and together with Skaggs and Smith, "Defendants") for aiding-and-abetting Skaggs and Smith's breaches of fiduciary duty and for unjust enrichment. The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, and on information and belief, including the

investigation of counsel and counsel's review of publicly-available information, including the publicly-available evidence and trial record from *In re Appraisal of Columbia Pipeline Group, Inc.,* Cons. C.A. No. 12736-VCL (Del. Ch.) (the "Appraisal Litigation") and this Court's post-trial Memorandum Opinion in the Appraisal Litigation, 2019 WL 3778370 (Del. Ch. Aug. 12, 2019) (the "Opinion"), as to all other matters.

NATURE OF THE CASE

1. Skaggs and Smith were the Chairman/CEO and CFO, respectively, of Columbia Pipeline. This action arises because Skaggs and Smith exploited their positions and advanced their own self-interest. This Court issued a post-trial opinion in the Appraisal Litigation finding that the "fair value" of Columbia as of July 1, 2016 was the deal price of $25.50 per share. The Court did not assess whether Skaggs and Smith complied with their *Revlon* duties, including their duty to act like "auctioneers charged with getting the best price for the stockholders at a sale of the company."[1]

2. Before the merger of Columbia and TransCanada, Skaggs and Smith were looking to retire with "change-in-control" benefits. Understanding that Columbia would be an attractive merger candidate because its position in the

[1] *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986).

Marcellus and Utica shales represented a "once-in-two-generations opportunity," Skaggs and Smith spun out Columbia from NiSource Inc. ("NiSource") and stayed with Columbia to arrange a sale and retire. In selling Columbia, Skaggs and Smith were duty bound to act reasonably and seek out and obtain the maximum price available.

3. Columbia was never shopped and the Board never announced a strategic review process. This did not stop inbound expressions of interest. Immediately after the spinout in July 2015, Dominion Energy Inc. ("Dominion") and Spectra Energy Corp. ("Spectra") expressed interest in discussing a merger. Dominion's CEO, Tom Farrell, told Skaggs that Dominion was interested in buying Columbia for between $32.50 and $35.50 per share. Columbia's Board immediately rejected this range as insufficient to capture the value of Columbia's significant growth prospects and said it would only take seriously a price in the "upper-$30s."

4. Skaggs spurned all approaches by Spectra. Skaggs believed that any deal with Spectra would include a stock component, while he wanted to retire with a cash deal.

5. TransCanada and Berkshire Hathaway Energy ("Berkshire") also expressed interest. Dominion (teamed up with NextEra Energy Inc. ("NextEra")), TransCanada, and Berkshire entered into NDAs to get access to Columbia

diligence. The NDAs contained "don't ask don't waive" standstill provisions prohibiting Berkshire, Dominion, NextEra, and TransCanada, for a period of 12 to 18 months, from making: (i) any proposal to acquire Columbia without an invitation from the Board; or (ii) any request to the Board to amend or waive the standstill. As TransCanada executive Francois Poirier explained, "[w]e basically must get C[olumbia]'s acquiescence to pursue this transaction, or even to seek to influence them... this extends to reaching out to board members without Bob [Skaggs]'s knowledge or consent."[2]

6. Between July 2015 and November 2015, gas prices declined significantly, as did the Alerian Index, Columbia's stock price, and the unit price of Columbia's MLP. On November 25, 2015, the Board decided to terminate all discussions with potential bidders and focus on an equity offering to ensure that Columbia would have sufficient liquidity to fund its growth. Columbia instructed TransCanada, Dominion, NextEra and Berkshire to put their "pencils down" and destroy all diligence.

7. In December 2015, Columbia successfully raised $1.4 billion in an oversubscribed equity offering of common stock. Skaggs told investors that the offering was "large and successful" and "positions us so that we'll not need to

[2] Unless otherwise indicated, all quotes are from testimony or documents in the trial record in the Appraisal Litigation.

access the equity markets until well into 2017." Although good for Columbia and its stockholders, the Board's decision to terminate all deal discussions left Skaggs and Smith with retirement plans that would not include change-in-control benefits.

8. Skaggs and Smith secretly reengaged with TransCanada. Without Board approval, Skaggs and Smith provided TransCanada with updated diligence showing the continued strength of Columbia's finances and operations following the equity offering. Smith secretly met with TransCanada's Poirier, handing him a playbook for convincing Columbia's Board to accept a TransCanada proposal, and informing him that Columbia had "eliminated the competition."[3] Dominion, NextEra, and Berkshire were not informed of any discussions and not invited to resume diligence or make a proposal.

9. Skaggs' and Smith's favoritism towards TransCanada was unreasonable and not sanctioned by the Board, created a "nonlevel playing field," and prevented Columbia stockholders from getting the best price for their shares.

10. Skaggs began "priming" the Board for a proposal from TransCanada of $26 to $28 per share. After secretly reengaging with TransCanada, Skaggs doctored a Board presentation that dramatically overstated the risks that Columbia was facing in the next 12 months. Skaggs and Smith also facilitated months of TransCanada exclusivity and due diligence. On March 9, 2016, TransCanada

[3] Unless otherwise indicated, all emphasis is added.

offered to pay $26 per share for Columbia, right at the bottom of the range that Skaggs had prepared the Board to accept.

11. As deal rumors began to swirl, Spectra again expressed interest in a transaction. Spectra's CEO, Greg Ebel, contacted Skaggs. Spectra's Chief Financial Officer contacted Columbia's bankers at Goldman Sachs requesting due diligence and a meeting with Columbia management. And again, Skaggs spurned those inbound requests, and downplayed Spectra's interest to the Board.

12. Moreover, Skaggs reassured TransCanada that Columbia remained committed to a deal with TransCanada. With this reassurance, TransCanada signed off on Columbia's scripted response to Spectra requiring a "serious written proposal" before Columbia would engage and allow due diligence. Skaggs, Smith and TransCanada understood (but did not communicate to Spectra) that only a fully financed bid would qualify as a "serious written proposal." As Smith testified, Spectra or any other alternative bidder would need to make:

> [a] bona fide proposal that says I will pay you X for your company. Hard and fast. No outs. No anything. No way to wiggle out of anything. This is going to happen. You're going to pay whatever you're going to pay per share and we're going to sign that agreement and we're done.

13. Skaggs and Smith knew this was an impossible standard to meet. Indeed, TransCanada had not yet made a proposal meeting this standard despite weeks of exclusivity and due diligence.

14. Having locked up the deal with Skaggs' and Smith's assistance, TransCanada promptly lowered its offer to $25.50 per share. Poirier admitted at trial that TransCanada was prepared to pay $26 per share for Columbia. However, Skaggs and Smith had no interest in pushing back against TransCanada, especially while Spectra was looking to prepare a competing bid that could delay a deal. Skaggs and Smith quickly chartered each Board member a private jet to Houston and rushed the Board into approving the deal at $25.50 per share, locking in their change-in-control benefits.

15. In the Opinion, this Court found that Columbia issued a materially false and misleading Proxy to solicit stockholder support for the sale to TransCanada. Specifically, the Proxy did not disclose to stockholders that: (i) TransCanada breached the "don't ask don't waive" standstill while Dominion, NextEra and Berkshire were still bound by the standstill and Columbia opted to ignore TransCanada's breach; (ii) Smith informed TransCanada on January 7, 2016 that it faced no competition in acquiring Columbia; and (iii) Skaggs and Smith were planning to retire in 2016. Skaggs retired on July 1, 2016 with $17.9 million in additional change-in-control benefits. Smith received $7.5 million in additional change-in-control benefits.

16. Because of Skaggs' and Smith's breaches of fiduciary duties, Plaintiff and the Class did not receive the best price for their shares. Putting their own

interests ahead of the interests of Columbia's stockholders, Skaggs and Smith deprived Plaintiff and the Class of a value-maximizing transaction and oversaw the issuance of a Proxy that informed stockholders that the deal was the result of a fair and open process, and negotiated by fiduciaries acting in good faith, when the opposite was true. This action seeks to hold these faithless fiduciaries accountable for their misconduct.

PARTIES AND NON-PARTIES

17. Plaintiff held shares of Columbia common stock at all times relevant hereto.

18. Defendant Skaggs was President, Chief Executive Officer, and Chairman of the Board of Columbia at the time of the Merger. Skaggs served as President of NiSource from October 2004 to July 2015 and as Chief Executive Officer and Chairman of the Board of NiSource from July 2005 to July 2015. He left NiSource for Columbia in connection with the spinout and retired on July 1, 2016.

19. Defendant Smith was Executive Vice President and Chief Financial Officer of Columbia at the time of the Merger. Smith served as Executive Vice President of NiSource from June 2008 to July 2015 and Chief Financial Officer of NiSource from August 2008 to July 2015. He left NiSource for his positions at Columbia in connection with the spinout and retired on July 1, 2016.

20. Defendant TransCanada is a Canadian corporation headquartered in Calgary, Alberta, Canada. TransCanada acquired Columbia in the Merger.

21. Non-party Columbia was a Delaware Corporation headquartered in Houston, Texas. Columbia was established on September 26, 2014 as a subsidiary of NiSource. NiSource then spun off Columbia as a new independent, publicly-traded company on July 1, 2015 (the "Spin-off"), with NiSource stockholders receiving one share of Columbia common stock for each share of NiSource stock they held prior to the Spin-Off. Columbia's principal asset was an 84.3% interest in Columbia OpCo LP ("OpCo"), which owned Columbia's operating assets. Columbia's largest business divisions operated interstate pipelines. Smaller divisions operated gas-gathering and processing systems. Columbia also owned a 100% general partner interest and a 46.5% limited partner interest in Columbia Pipeline Partners, L.P. ("CPPL"), a master limited partnership ("MLP") whose common units traded on the New York Stock Exchange. CPPL owned the other 15.7% interest in OpCo. Columbia was acquired by TransCanada in the Merger and is now a wholly-owned subsidiary of TransCanada. After the Spin-Off and prior to the Merger, Columbia's common stock traded on the New York Stock Exchange ("NYSE") under the ticker symbol "CPGX."

FACTUAL BACKGROUND

A. Columbia's Stable Core Business, Competitive Advantage, and Growth Potential

22. Before the sale to TransCanada, Columbia's business was a "once-in-two-generations opportunity." Columbia was a growth-oriented company that owned and operated more than 15,000 miles of strategically located, primarily natural-gas, pipelines extending from New York to the Gulf of Mexico, as well as storage and related "midstream"[4] assets.

23. Columbia had a stable core business with predictable cash flows and a robust inventory of accretive growth and modernization investments supported with long-term "take or pay" contracts with producer-customers. Columbia's pipelines and growth projects were strategically positioned on the "sweet spots" in the lowest cost, fastest growing natural gas production basin in North America: the Marcellus and Utica shales in Appalachia.

24. TransCanada management explained to their Board that "[t]he majority of production growth in North America will occur in the Marcellus and Utica [shales]" and Columbia had "an incumbent position in the fastest growing

[4] In the oil-and-gas business, oil and gas producing companies are said to be "upstream," pipeline and storage companies are "midstream" and refiners are "downstream." Although it held some oil-and-gas leases, Columbia was overwhelmingly a midstream company.

gas production basin in North America with material growth opportunities secured."

25. In 2016, Columbia's net investment was expected to triple by 2020, with projects built at a "compelling" 5x-7x EBITDA and an expected rate of return exceeding 15%. Because these pipeline projects would be funded in part by relatively cheap debt, that 15% return on investment would result in a substantially higher return on equity.

26. The Company's strategic location in the "sweet spots" of the Marcellus and Utica shale basins gave Columbia a competitive advantage and positioned it to get its "fair share" of additional growth projects, contributing to Columbia's long-term growth.

B. Skaggs' and Smith's Retirement Plans

27. Columbia was spun out from NiSource Inc., a publicly traded utility company headquartered in Indiana, on July 1, 2015. Before the spinout, Skaggs and Smith were aging executives of NiSource who wanted to retire. In the years leading up to the spinout, Skaggs discussed his succession planning and desire to retire around 2016 with the NiSource and Columbia board of directors. Skaggs believed that CEOs have a shelf life of ten years and by July 1, 2016, Skaggs would be the CEO of NiSource/Columbia for ten years.

28. Skaggs also discussed his retirement with his personal financial advisor, Rick Rivera, giving him a target date of March 31, 2016. Rivera cautioned Skaggs that "the single greatest risk" to his retirement plan was his "single company stock position in NiSource." Skaggs therefore wanted to cash out of company stock upon retirement.

29. Smith was NiSource's CFO. He was passed over to become the CEO of NiSource following the spinout of Columbia. The Board "did not want him to be on the Columbia board following the spin" and thus he did not become a director of Columbia. Smith had long viewed fifty-five years old to be the "magical age" to retire in any event and discussed a retirement target date of mid-2016 with his financial advisor. Smith turned fifty-five on March 1, 2016.

30. Skaggs and Smith's employment packages at NiSource included golden parachute payments in the event of a change-in-control ("CIC") transaction. The severance packages included a "double-trigger" CIC provision that would be triggered if there was a sale for more than 50% of book value. However, the Columbia assets comprised less than 50% of NiSource's book value and selling Columbia before the spinout would not trigger Skaggs's and Smith's CIC benefits.

31. By spinning out Columbia, staying with the Company, and then selling it, Skaggs and Smith would be selling 100% of the book value of the Company and receive CIC benefits under their employment agreements. As part

of the spinout, Smith's CIC benefits were increased from 2x to 3x his base salary and target annual bonus.

32. Columbia was established as a subsidiary of NiSource on September 26, 2014. NiSource announced the spinout and its separation into two publicly traded companies (Columbia and NiSource) on September 28, 2014.

33. On December 1, 2014, NiSource approved the plan for Skaggs and Smith to stay with Columbia after the spinout. Skaggs would become CEO and chairman of the board and Smith the CFO of Columbia and CPPL. A few days later, Skaggs and Smith met with Goldman bankers to discuss strategic alternatives for Columbia and informed them that they decided to spinout Columbia because "they 'don't want to work forever'... [and] they see opp[ortunity] for sale in the near term."

C. Columbia Starts the Sales Process Before the Spinout Effective Date

34. The spinout was structured as a tax-free transaction, consistent with "Reverse Morris Trust" tax rules. To comply with these rules, the spinout cannot be part of a plan to sell the company that is spun out. If there is such a plan, however, the spinout is a taxable event for the parent company, in this case NiSource. The resulting tax liability can be enormous. Here, if the Columbia spinout was part of a plan to sell the Company to a third party, NiSource could be liable for $3 billion in taxes.

35. To protect against this enormous liability, NiSource insisted that Columbia's representatives (Skaggs and Smith) represent that there was no plan to sell Columbia following the spinout. Specifically, Skaggs and Smith represented that "there is no plan or intention to enter into transaction(s) that could be deemed to effect a 50% or more change in the ownership of Op Co, Spin Co, or Stay Co."

36. Skaggs and Smith started planning a sale of Columbia before the effective date of the spinout. In May 2015, Lazard gave a 144-page presentation to Columbia management discussing, among other things, the Company's strategic alternatives, the Company's intrinsic value based on various methodologies, and detailed information about likely bidders for the Company including Dominion, TransCanada, Berkshire, Spectra and NextEra.

37. On May 28, 2015, Lazard contacted TransCanada explaining that Columbia could be put in play shortly after the spinout. TransCanada informed Lazard that it had been monitoring the developments but expected the "Reverse Morris Trust" tax rules to be a hindrance to deal discussions because potential acquirers of Columbia faced a potential $3 billion tax impediment if management intended to sell the Company following the Spin-Off or any bidder discussed a potential deal with NiSource/Columbia in the two-years prior to July 1, 2015.
Lazard responded that Columbia's tax counsel was being aggressive on that assumption. Lazard and TransCanada continued their discussions about a potential

deal with Columbia in June 2015. During these discussions, Lazard advised TransCanada against "opening a dialogue" until the spinout was completed due to the "Reverse Morris Trust" concerns.

38. TransCanada may not have been the only company to have pre-spinout discussions about a potential merger with Columbia. Dominion was reportedly also in discussions with NiSource to purchase NiSource and/or Columbia before the spinout.

39. Skaggs was aware of the efforts to prepare Columbia for a potential sale of the Company following the effective date of the spinout. For example, during a June 1, 2015 meeting with his personal financial advisor, Rivera, Skaggs noted that Columbia "could be purchased as early as Q3/Q4 of 2015." Rivera commented in his notes from the conversation:

> I think they are already working on getting themselves sold before they even split. This was the intention all along. [Skaggs] sees himself only staying on through July of 2016.

D. Columbia's Performance Remains Strong During a Cyclical Downturn

40. The oil and gas industry is cyclical. TransCanada's Russ Girling informed investors, for example, that "[w]e have been through the market volatility of [oil] being well over $100 a barrel and then back to $40 per barrel. That will, and I've been at this business for 30 years, and I have seen that cycle a number of times and I'm sure I will see that cycle a number of times going forward."

41. Shortly after the July 1, 2015, spinout, oil and gas prices began to experience a severe, cyclical downturn that continued into early 2016. Between September 2015 and February 2016, oil declined 44.53% and gas 18.61%. Investor sentiment declined alongside prices as concerns grew about the ability of midstream energy companies, including pipelines and MLPs, to maintain dividends, finance their operations and growth projects, and to cope with producer bankruptcies.

42. Investors were concerned that producer-customers would not be able to meet their obligations under their fixed "take or pay" contracts. Investors had limited visibility into this counterparty risk. On December 1, 2015, Wells Fargo analysts issued a memo for investors entitled "The Other Shoe Falling," noting that:

> For MLPs, lower natural gas prices will likely affect drilling volumes over time, but in the near term we see increased counterparty risk that could take certain contracts to market rates if restructuring[s] occur. <u>Although this dynamic is difficult to analyze based on limited company disclosures, we believe the market is starting to price this risk into securities</u>.

43. On December 9, 2015, Skaggs reported to the Board that a "defensive (if not dark) tone" pervaded a Wells Fargo energy conference he attended, "[a]s you would expect, given the negative outlook for commodity prices and the financial markets' severe dislocation…." He reported "field[ing] a steady stream

of questions about the status of our producer-customers and their commitments to our growth projects."

44. The investor concerns were further exacerbated in December 2015 when industry bellwether Kinder Morgan Incorporated ("KMI") was forced to slash its dividend by 75%, was put on "negative watch," and drastically reduced its 2016 capital spending program. Rumors that Chesapeake Energy, the nation's leading independent exploration & production company by volume, might file for bankruptcy triggered investor panic in early February 2016.

45. But Columbia was not KMI, much less Chesapeake. Its performance kept improving throughout the market dislocation. Oil and gas prices were down, but well operators in the low-cost high production Marcellus and Utica shales where Columbia already had a strategic footprint needed new pipelines to be able to move their gas to markets. As Skaggs stated during a November 3, 2015 call with analysts, "if anything, we hear [customers] say more consistently, we need that capacity… we need it to move our gas…."

46. While Columbia's stock price declined with other midstream industry participants, the Company's operations continued to excel, and its growth projects continued to profitably come on line on time and within budget. During the February 16, 2016 analyst call, Columbia reported "robust year-over-year growth,"

that it had "exceeded 2015 adjusted EBITDA target," had a "strong liquidity position," and "no need to access capital markets until well into 2017."

47. This strong performance continued. On May 10, 2016, Smith informed the Board that all metrics were "strong" and that Columbia's projects continued to be on time, on budget, and progressing according to plan. As of July 1, 2016, the Company was still outperforming its forecast. Skaggs and Smith received substantial bonuses because Columbia was outperforming its operational targets as of July 1, 2016.

E. Columbia Binds Potential Bidders to "Don't Ask, Don't Waive" Standstill Provisions

48. Columbia never announced a strategic review. Columbia management never conducted an auction for the Company.

49. On July 6, 2015, Spectra's CEO, Greg Ebel, contacted Skaggs expressing interest in Columbia. According to Skaggs, Spectra was a "credible" strategic bidder. However, despite receiving this inbound inquiry, Skaggs did not meet Ebel, Columbia did not offer Spectra an NDA, and Columbia did not provide Spectra any due diligence. Skaggs believed that any interest from Spectra would include a stock component, which he did not personally want.

50. On July 20, 2015, Dominion's CEO, Tom Farrell, indicated that Dominion was interested in exploring the acquisition of Columbia for $32.50 to $35.50 per share. The Board summarily rejected this range as insufficiently

capturing the value of the "significant growth projects that [Columbia] would be embarking on over the next several years." Skaggs told Farrell that his Board would only take seriously a price in the "upper-$30s."

51. On August 4, 2015, Columbia's bankers at Goldman and Lazard presented their views on Columbia's intrinsic value to Skaggs and Smith. Using management projections and a standard discounted cash flow methodology, Goldman concluded that Columbia was worth between $29.44 and $37.61 per share with a midpoint of $33.52 per share. Using the same projections and methodology, Lazard concluded that Columbia was worth between $26 and $35.50 per share with a midpoint of $30.75 per share. At this time, the Henry Hub natural gas price was $2.83 mmBtu. By July 1, 2016, the Henry Hub natural gas price had recovered from its temporary cyclical downturn and was priced at $2.89 mmBtu.

52. Dominion signed an NDA dated August 12, 2015, and received limited due diligence. Dominion's NDA (and each NDA signed by potential bidders thereafter) contained a "don't ask, don't waive" standstill provision. Section 3 of each NDA provided that for a period of eighteen months after signing the agreement (or twelve months for TransCanada):

> [U]nless the other Party's board of directors otherwise so specifically request in writing in advance, the Standstill Party shall not… directly or indirectly, (A) acquire or offer to acquire, or <u>seek, propose, or agree to acquire</u>... beneficial ownership… of the other Party… (B) <u>seek or propose to influence, advise</u>, change or control <u>the management, board of directors</u>, governing instruments or policies or affairs of the

> other Party, including by means of… contacting any person relating to any of the matters set forth in this Agreement or… making a request to amend or waive this provision or any other provision of this Section 3.

53. After the market became dislocated in late August 2015, no one made a bid for Columbia without first conducting due diligence and receiving Columbia's confidential financial plan.

54. In early October, TransCanada's Vice President of Corporate Development, Francois Poirier, called Smith to express interest in a potential transaction.

55. During a board meeting on October 19 and 20, 2015, Skaggs proposed a "dual-track" strategy in which Columbia would prepare a near-term equity offering to fund Columbia's planned growth projects and, concurrently, permit exploratory discussions regarding a potential merger. The Board decided that Columbia would pursue the equity offering unless a bidder offered at least $28 per share.

56. On October 26, 2015, Skaggs invited Dominion to re-engage in deal discussions. He informed Farrell that Columbia could be moving forward with a large equity offering and that Dominion would have to move quickly. Dominion proposed a potential joint acquisition approach with NextEra that would include a stock component.

57. On October 27, 2015, Skaggs met with Rivera to discuss updating his retirement analyses with a target retirement date in July 2016, or sooner.

58. Columbia executed NDAs with TransCanada, Berkshire and NextEra imposing the same "don't ask, don't waive" standstill provision as included in Dominion's NDA. TransCanada's vice president of law explained the effect of the "don't ask, don't waive" provision as follows:

> Unless [the Columbia Board] specifically requests in writing in advance, TransCanada could not seek to acquire, offer, or agree to acquire ownership of equity securities or material assets or seek to influence, advise, change or control its management or the board (including by solicitation of proxies) or request amendment to the standstill provisions.

59. Poirier (a former investment banker) explained to TransCanada's CEO, Russ Girling, "[w]e basically must get C[olumbia]'s acquiescence to pursue this transaction, or even to seek to influence them... this extends to reaching out to board members without Bob [Skaggs]'s knowledge or consent." Poirier understood that the only way around the "don't ask, don't waive" standstill in the NDA would be to get a "written invitation from Columbia's board or to amend the agreement." In short, potential acquirers could not engage with Columbia concerning a takeover except through a Board-approved process.

F. Skaggs and Smith Subvert the Sale Process in Favor of TransCanada

1. Skaggs and Smith Treat Potential Bidders Differently in Fall 2015

60. Between October 26, 2015 and November 24, 2015, TransCanada, Berkshire, Dominion, and NextEra engaged in due diligence of Columbia. Skaggs and Smith provided more extensive and complete diligence information to TransCanada and Berkshire than to Dominion and NextEra. They did not provide any diligence to Spectra and kept this credible potential bidder in the dark about the strategic review process with TransCanada, Berkshire, Dominion, and NextEra.

61. On November 19, 2015, Skaggs and Smith invited TransCanada and Berkshire to make a bid by November 24, 2015. They explained that absent a bid, Columbia would move forward with the equity offering.

62. Skaggs and Smith did not inform NextEra, Dominion, or Spectra about the November 24, 2015 deadline for submitting bid. A potential bid from NextEra, Dominion, or Spectra would have included a stock component.

63. On November 24, 2015, TransCanada indicated interest in buying Columbia for $25–$26 per share and Berkshire made an indicative offer of $23.50 per share. Skaggs represented to the Board that "no additional word had been received from [the] Dominion and NextEra combined team or Spectra," creating the false appearance that these potential bidders were not interested in making a proposal for Columbia.

64. Skaggs and Smith withheld from the Board that they never informed Spectra, NextEra, or Dominion about the November 24, 2015 deadline for bids. The fact that Dominion, NextEra, and Spectra did not make an offer to buy Columbia by November 24, 2015 was partly the reason the Board later agreed to exclusivity with TransCanada and approved the Merger.

65. Skaggs also misled the Board about Spectra's purported lack of interest. On November 15, 2015, Skaggs told the Board that Spectra "hasn't followed-up with a request for a meeting or an initial substantive discussion" when, in fact, Spectra's CEO, Greg Ebel, had expressly requested a meeting with Skaggs to discuss a potential transaction less than two weeks earlier.

66. On November 25, 2015, the Board decided that Berkshire's and TransCanada's indications were inadequate, and that Columbia would instead pursue the equity offering. Columbia sent "pencils down" letters to TransCanada, Berkshire, Dominion and NextEra, terminating discussions and instructing them to destroy all confidential information pursuant to the NDAs.

67. Upon receipt of the "pencils down" letter, Dominion/NextEra wrote back, "This was news to us—we were working on it."

68. Dominion was eager to pursue a strategic acquisition. Immediately upon receiving Columbia's "pencils down" letter, Dominion contacted Questar to

discuss a possible transaction. This contact led to a $4.4 billion acquisition that reduced competition for a deal with Columbia after the equity offering.

69. After the market closed on December 1, 2015, Columbia announced a public offering of 51 million shares of common stock at $17.50 per share. The next day, the size of the offering was increased due to strong demand.

70. On December 7, 2015, Columbia completed the equity offering, selling 71.5 million shares of common stock at $17.50 per share, plus an additional 10.725 million shares of common stock if its underwriters exercised their option to purchase additional shares of common stock in full. All 71.5 million shares offered in the Equity Financing were sold for $17.50 per share. In addition, the underwriters fully exercised their option to purchase the 10.725 million shares.

71. The net proceeds from the equity offering, after deducting underwriting discounts and estimated offering expenses payable by Columbia, were approximately $1.4 billion.

72. Skaggs informed investors that the completion of the equity offering "eliminates the need for additional equity capital until 2017 and gives us the financial flexibility to be opportunistic in raising equity as we go forward and execute our business plan" and "allows the team to maintain its singular focus on the flawless execution of our business plan, including delivering our deep inventory of transformational investment opportunities on time and on budget. The

completion of that backlog is expected to result in a tripling of the net investment of the company by 2020 . . . .”

73. In December 2015, the Protecting Americans from Tax Hikes (“PATH”) Act became effective. This Act extended bonus depreciation to property acquired and placed in service before 2020. This legislation reduced taxes on Columbia and provided Columbia with the equivalent of <u>$1 billion</u> of cash between 2018 and 2023.

2. Skaggs and Smith Secretly Invite TransCanada To Recommence Deal Discussions

74. The Board’s decision to terminate deal discussions on November 25, 2015 jeopardized Skaggs and Smith’s ability to sell Columbia and retire with lucrative change-in-control benefits by their mid-2016 target retirement date.

75. On November 25, 2015 Smith informed TransCanada that Columbia “will ‘probably’ want to pick the discussions up again in a few months.” The Board did not authorize Smith to tell TransCanada about the continuing interest in a transaction after the equity offering. Nor did Smith inform any other potential bidder that Columbia would be up for sale again.

76. In mid-December 2015, TransCanada’s Poirier contacted Smith to convey TransCanada’s continued interest in acquiring Columbia. In its Opinion in the Appraisal Litigation, the Court concluded that this was a breach of TransCanada’s obligations under the standstill provision in the NDA. Columbia’s

Board had not invited TransCanada to continue discussing a potential acquisition as required by the "don't ask, don't-waive" standstill provision that bound TransCanada and other potential bidders that signed the NDA.

77. Skaggs began to "prime" individual Board members in mid-December and early January for a potential deal with TransCanada, telling them that "even though we raised equity, our plan still has a significant amount of execution risk (both financial and operational). Need to continue to consider strategic alternatives." During his meetings with the Board, Skaggs also discussed his CEO Succession Plan that contemplated him resigning as CEO by July 1, 2016, putting further pressure on the Board to consider a potential strategic transaction with TransCanada.

78. On December 19, 2016, Skaggs and Smith informed Goldman that "TC remains quite interested. There is a meeting on Jan 7th at TC's request with Steve Smith."

79. During meetings with individual Board members in December 2015 and January 2016, Skaggs did not tell the members of the Board that Poirier had reached out in the middle of December or that Smith was providing TransCanada with confidential due diligence (including updated projections). Skaggs also did not tell the Columbia Board members that Smith was meeting with Poirier on January 7, 2016 to tell Poirier that TransCanada faced no competition from other

potential bidders and to give Poirier bullet points outlining a strategy to convince Columbia's Board to accept a TransCanada offer.

80. While Skaggs and Smith were enticing TransCanada (a potential all-cash bidder), no one contacted Spectra, Dominion, NextEra or Berkshire.

3. Smith Informs TransCanada that it Has No Competition

81. On January 5, 2016, Smith sent Poirier 190 pages of confidential Columbia information, including agreements with producer-customers securing its growth projects. This information was highly confidential and not provided to any other potential bidder after the "pencils down" letter.

82. The Board did not authorize Smith to send this confidential information to Poirier on January 5, 2016. Indeed, as far as the Board was concerned, there were no discussions with potential bidders after the November 25, 2015 "pencils down" letter and the equity offering.

83. On January 7, 2016, Smith met with Poirier to discuss a potential merger. In its opinion in the appraisal, the Court concluded that this meeting was a breach of TransCanada's obligations under the standstill in the NDA.

84. During the meeting, Smith explained to Poirier that Columbia had "eliminated the competition" for the Company. That was true. Skaggs had spurned Spectra and the other potential bidders that had engaged in due diligence, had signed NDAs with "don't ask, don't wave" standstill provisions, and the other

potential bidders remained oblivious about Columbia's renewed discussions with TransCanada.

85. The Board did not authorize Smith to inform TransCanada that it faced no competition in making a proposal for Columbia. A Columbia director, Kittrell, testified, that such authorization would have been "counterintuitive" because "you want to make sure you have provided an opportunity for any of those [other] companies to come back" and that competition is "generally good."

86. Moreover, by telling TransCanada that Columbia had eliminated the competition, Smith kneecapped Columbia's bargaining position and, therefore, the ability to maximize shareholder value in a transaction. As Columbia's bankers at Goldman explained, "Competition, real or perceived, is the best way to drive bidders to their point of indifference."

87. On January 7, 2016, Smith handed Poirier "talking points" for his meeting with "Taurus" (the deal term for TransCanada). The talking points explained how TransCanada could convince Columbia's Board to agree to a transaction without putting the Company "in play" and avoid an auction process.

88. The Board never authorized Smith to advise TransCanada on a preferred bidding strategy for the Company or to express the Company's potential willingness to forgo an auction. By sharing this information with Poirier, Smith

limited the Board's ability to maximize shareholder value in a merger with TransCanada.

89. On January 7, 2016, Smith also provided Poirier with a "management presentation update" for "Capricorn" (the deal term for Columbia) dated January 7, 2016. The presentation identified a number of "key changes" since the prior discussion in November 2015, including the $1.4 billion equity issuance, the fact that Columbia reached a profitable settlement with customers that would allow Columbia to pass along the cost of modernizing older pipelines to its customers ("Modernization II), and the impact of the PATH Act, including the additional $1 billion cash, on Columbia's projected EBITDA in 2016, 2017, 2018, 2019 and 2020. No other potential bidder ever received this information.

90. The January 7, 2016 Columbia management update to TransCanada also showed that Columbia's changes to its capital expenditures were "expected to be minimal" and related to "refining timing of expected costs – not driven by project delays or customer issues." This information was critically important for potential bidders because each capital project's IRR depended on delivery "on time and on budget." No other potential bidder was informed that, as of January 2016, Columbia expected to make only minimal changes to its capital expenditures and that those changes were not driven by project delays or expected costs.

4. Skaggs Primes the Board for a TransCanada Bid

91. On January 25, 2016, after weeks of exclusive due diligence, TransCanada indicated that it was prepared, subject to further diligence, to acquire Columbia for $25 to $28 per share. In its Opinion in the Appraisal Litigation, the Court concluded that this was another breach of TransCanada's obligations under the standstill in the NDA. The Board had not waived the "don't ask, don't waive" standstill and had not invited TransCanada to make a proposal for Columbia. Columbia's lead independent director testified that this favoritism to TransCanada was unreasonable and that if, as here, "parties were treated differently and there was one party was allowed to violate the [standstill] agreement, yes, that would be a nonlevel playing field."

92. On January 28–29, 2016, Columbia held a Board meeting where Skaggs "prim[ed] them for a TC bid." Skaggs gave a presentation stating what the Board needed to believe to reject a $26 per share bid for the Company. According to Skaggs' presentation, Columbia's stock price would have to be $30.11 per share in the next twelve months for the Board to reject a bid of $26 per share. However, the underlying (non-disclosed) analysis made clear that the Board would only need to believe that Columbia's stock price would be $30.11 per share in the next 23 months – a material difference given the known cyclicality of the business and the

fact that during this time new projects would come into service and generate substantial revenues for the Company.

93. Meanwhile, Skaggs withheld from the Board part of the same analysis showing that Columbia's stock price would only need trade at $27.95 per share by year-end 2016 to reject a bid of $26 per share. Columbia's stock price was above $27 per share only five months earlier.

94. Furthermore, Columbia's financial plan discussed at this Board meeting assumed that Columbia's MLP subsidiary ("CPPL") would trade at $16.50 per unit in February, March, and April 2016, and at $17.20 per unit in May, June, and July of 2020. This was important. Columbia did not need to raise capital until "well into 2017" but CPPL would be an efficient way for Columbia to raise additional capital to fund its growth capex if it chose to do so if CPPL traded above these assumed prices.

5. Columbia Maintains a Nonlevel Playing Field in Favor of TransCanada

95. The Board did not rebuke TransCanada for breaching its obligations under the standstill agreement by approaching Skaggs and Smith to continue discussions about a potential transaction. Nor did the Board waive the same standstills precluding Dominion, NextEra and Berkshire from making a proposal, or instruct Skaggs and Smith the contact Spectra.

96. Instead, on February 1, 2016, Columbia entered into an exclusivity agreement with TransCanada. Exclusivity was granted through March 2, 2016 and later extended by another six days until March 8, 2016. Pursuant to the exclusivity agreement, Columbia could not accept or facilitate an acquisition proposal from anyone but TransCanada, except in response to a "bona fide written unsolicited Transaction Proposal" that did not result from a breach of the exclusivity agreement. Conducting due diligence on Columbia was a necessary and extensive undertaking. During exclusivity, <u>sixty-nine</u> TransCanada employees conducted due diligence on Columbia for a period of weeks.

97. On February 11, 2016—ten days after arranging TransCanada's exclusivity—Skaggs met with his personal financial advisor and reiterated his target retirement date of July 1, 2016.

98. On March 4, 2016, the Board authorized management to invite TransCanada to make a proposal to acquire Columbia. The Board further instructed Skaggs and Smith to waive the standstill provisions in other NDAs. However, Skaggs and Smith had no interest in jeopardizing a deal with TransCanada and ignored the Board's clear instruction.

99. On March 8, 2016, Columbia learned that the *Wall Street Journal* was preparing a story about TransCanada being in advanced discussions to acquire Columbia. TransCanada's exclusivity expired that night. Even though the

exclusivity period terminated on March 8, Columbia still did not waive the "don't ask, don't waive" standstills in the NDAs with Dominion, NextEra, and Berkshire. Nor did Columbia contact Spectra to gauge its potential interest.

100. On March 9, 2016, TransCanada offered to acquire Columbia for $26 per share, consisting of 90% cash and 10% TransCanada stock.

101. On March 10, 2016, the *Wall Street Journal* published an article reporting that TransCanada was in talks to acquire Columbia. Skaggs convened a Board meeting to discuss TransCanada's proposal, informed the Board that TransCanada's exclusivity expired, and observed that the news story could lead to inbound offers. Columbia still did not waive the "don't ask, don't waive" standstills in the NDAs with Dominion, NextEra, and Berkshire.

102. Moreover, Skaggs and Smith did not inform the Board that, by this time, CPPL was already trading well above the unit price that Columbia assumed for its financial plan.

6. Skaggs and Smith Rebuff Spectra

103. On March 11, 2016, Spectra's CEO informed Skaggs that Spectra was still interested in acquiring Columbia. He requested that Skaggs let him know "as soon as possible when we may speak or get our teams together to determine how best to realize the[] potential opportunities for our shareholders."

104. Skaggs, Smith, and the Board did not use Spectra's expression of interest as an opportunity to maximize the price that a bidder would pay for Columbia. To the contrary, Columbia immediately informed TransCanada that it would renew exclusivity through March 18, 2016.

105. Skaggs and the Board approved a script "to use with Spectra and other inbounds." The script stated: "We will not comment on market speculation or rumors. With respect to indications of interest in pursuing a transaction, we will not respond to anything other than serious written proposals."

106. Skaggs informed TransCanada that Columbia had received "an inbound from a credible, large, midstream player." In the same message, he made clear that instead of engaging with this other credible, large, midstream player, Columbia would like to renew exclusivity with TransCanada, while sharing the scripted message for potential competing bidders for TransCanada's approval. Skaggs wrote:

> [O]ur board has agreed to the renewal of the EA for one week subject to your agreement that this scripted response would not violate the terms of the EA (both in terms of the inbound received in the EA's gap period and going forward until signing, which unfortunately, given the leak, there is a potential that we will receive additional inquiries). Please confirm via response to this email that [TransCanada] is in agreement with this condition/interpretation and we will send over the new EA.

107. As Skaggs's email made clear, Columbia was not bound to an exclusivity agreement when Columbia asked for TransCanada's approval of the

scripted response to potential competing bidders, including Spectra. Nor did Columbia use the inbound from a credible, large, midstream player to maximize stockholder value. To the contrary, Skaggs' message made clear that TransCanada remained the favored bidder.

108. TransCanada's financial advisor, Wells Fargo, advised TransCanada that it should agree to the script, but only if there was a "moral commitment" that a "serious written proposal" meant "financed bid subject only to confirmatory [due diligence]" and not just a "per share price on a cocktail napkin."

109. Skaggs and Smith promptly complied by giving TransCanada the requested "moral commitment," thereby again confirming that there was no competition for TransCanada in acquiring Columbia. As Smith explained, a serious written proposal would be:

> [a] bona fide proposal that says I will pay you X for your company. Hard and fast. No outs. No anything. No way to wiggle out of anything. This is going to happen. You're going to pay whatever you're going to pay per share and we're going to sign that agreement and we're done.

110. After August 2015, no company had given any expression of interest—let alone a "serious written proposal" as interpreted by Smith—without receiving due diligence.

111. According to Smith, it was impossible to prepare a "serious written proposal" within one week. TransCanada had needed more than one month of due

diligence to firm make its offer at $26 per share which did not even meet Smith's definition of an offer that "[y]ou're going to pay whatever you're going to pay per share and we're going to sign that agreement and we're done."

112. On Friday, March 11, the Board again instructed management to waive the standstills with Berkshire, Dominion, and NextEra. However, Skaggs, Smith, and management dragged their feet and did not send the emails waiving the standstills until Saturday, March 12.

113. On March 12, Spectra's CFO and Chief Development Officer reached out to Columbia's bankers at Goldman to advise that Spectra was prepared to express "more specific" interest in acquiring Columbia if it had access to diligence. Spectra was serious. Goldman informed Skaggs and Smith that "When [Spectra] gets serious about M[&]A [the Chief Development Officer] tends to drive" and Spectra's contact "can be interpreted as a sign that they are doing real work over there."

114. Goldman read the TransCanada approved script to Spectra. Spectra said it could "move quickly" and "be more specific subject to diligence," but the script did not allow for that option. As one Goldman banker put it: "Does [Spectra] 'get it' that they aren't going to get diligence without a written proposal?"

115. Later on March 12, Spectra's head of M&A made a follow-up call. He said to expect a written offer in the "next few days" absent a "major bust." The

banker who took the call found Spectra's assurance credible, but Skaggs and Smith were not interested, and the script meant that Columbia could only entertain a "serious written proposal" which was "Hard and fast. No outs."

116. Skaggs conceded that management never engaged with Spectra. Skaggs, Smith, and the Board instructed Goldman to screen Spectra's calls so that Spectra could not speak directly to management. Skaggs testified:

> Q. During this stage when you were getting an inbound call from the CEO of Spectra, an inbound e-mail from the CEO of Spectra, an inbound e-mail from the CEO of Spectra, a call from the CFO of Spectra to Goldman Sachs, and a call from the chief development officer of Goldman Sachs, did you, Mr. Skaggs, or another member of management, do anything to respond to Spectra? And since I'm going to anticipate what you're going to say, other than tell Goldman to look at the script.
>
> A. That was it, sir.
>
> Q. So the answer's no.
>
> A. No.

117. Skaggs' and Smith's conduct ignored Goldman's advice that "[c]ompetition (real or perceived) is the best way to drive bidders to their point of indifference" and fatally undermined with any effort or intent to maximize value for Columbia stockholders.

7. TransCanada Lowers its Offer Knowing there is No Competition

118. On March 13, 2016, one of Columbia's largest stockholders contacted Skaggs and Smith stating:

> We feel strongly that given the bid from TransCanada you should start a strategic review and test the market. We are on the same page that the company is worth more than the current stock price but at a minimum we should see if the long-term value of the firm can be realized more rapidly. Further given the likely rebound in the market we are not averse to owning stock in TRP, ENB, SE, NEE, etc. We are large shareholders of those firms as a group already.

119. But Skaggs and Smith were not interested in a strategic review or market test. Nor were they interested in owning stock in any of the potential bidders, including Spectra. To the contrary, they wanted to retire with cash benefits by July 1, 2016. Thus, they never informed the Board about the stockholder's request for a market test, its belief that the market will likely rebound, and appetite to receive stock (including Spectra's) in an acquisition.

120. Nor did management inform the Board that Columbia was already outperforming its financial plan as of early March 2016, or that CPPL was trading above the minimum unit price supporting Columbia's financing projections. In other words, there was no rush to do a deal as Columbia could finance its capital projects. As Smith conceded:

> Q. Is it fair to say that even in early March, CPPL was already trading above the assumptions of the 2016 0+12 plan for July of 2016?
>
> A. Yes.

121. On Monday, March 14, 2016, TransCanada lowered its offer for Columbia from $26 per share to $25.50 per share. TransCanada knew that Columbia had renewed exclusivity after receiving an inbound expression of

interest from a credible, large, midstream player, asking for TransCanada's approval of a script to respond to that offer, and giving a "moral commitment" that a "serious written proposal" meant "financed bid subject only to confirmatory [due diligence]."

122. TransCanada's proposal below $26 per share terminated exclusivity. Columbia was again free to engage with Spectra or any other potential bidder to test the market and try to maximize value for Columbia stockholders. However, TransCanada gave Columbia three days to accept a final offer of $25.50 per share or it would publicly announce termination of negotiations. Such a public withdrawal would immediately cause Columbia's stock price to drop and stigmatize Columbia in the market, as professionals would assume that TransCanada had uncovered problems with the Company.

123. Columbia's Board, and especially Skaggs and Smith, had put Columbia in this difficult position by making clear to TransCanada that it was the preferred bidder who did not face competition, giving months of exclusive access and diligence while other potential bidders remained subject to "don't ask, don't waive" standstill provisions, and reentering exclusivity when a potential alternative bidder expressed interest. These actions were contrary to the Boards' and Skaggs' and Smith's duty to maximize stockholder value in a sale of the company.

124. The Board, Skaggs and Smith did not push back against TransCanada's revised lowball offer at $25.50 per share. At trial, TransCanada's Poirier testified that TransCanada would have reconsidered a deal at $26 per share if the Board, Skaggs and Smith had done so. As Poirier admitted,

> If [Columbia] had said no to $25.50 all cash, we would have reconsidered being prepared to take the risk of issuing stock as consideration along with the cash component of the transaction . . . at 26.

125. But Skaggs and Smith were unwilling to put at risk their guaranteed retirement payout in a deal at $25.50 per share by maximizing shareholder value and asking for $26 per share, even though TransCanada had offered to pay $26 per share only days earlier.

126. Instead, Skaggs and Smith chartered each Board member a private jet to get them to Houston on March 16 to rush approval of the lowered $25.50 offer. The Merger Agreement was executed on March 16, the Merger was announced on March 17, 2016, and the Merger closed on July 1, 2016—precisely in time for Skaggs's and Smith's planned retirement.

G. The Terms of the No-Shop, Matching Rights, and Termination Fee Prevented Competing Bids

127. Poirier confirmed that TransCanada and Columbia agreed to a no-shop provision, matching rights, and $309 million termination fee plus up to $40

million in cost reimbursement in the Merger Agreement to protect the deal and prevent competing bids.

128. The no-shop provision prohibited Columbia from soliciting competing bids *and* from providing any confidential due diligence information to a potential bidder unless that bidder made a "bona fide written acquisition proposal" that could be expected to result in a superior proposal and the Board believed that the failure to engage would be a breach of duty. As Smith explained, a serious written proposal would be:

> [a] bona fide proposal that says I will pay you X for your company. Hard and fast. No outs. No anything. No way to wiggle out of anything. This is going to happen. You're going to pay whatever you're going to pay per share and we're going to sign that agreement and we're done.

129. Considering the cyclical downturn in the energy market and the limited visibility in Columbia's financial plan and counterparty risk, the no-shop provision deterred any competing bid. After August 2015, no bidder—including TransCanada—made any indicative offer for Columbia without first receiving confidential due diligence.

130. The $309 million termination fee plus $40 million cost reimbursement was also effective. The most likely competing bidders could not take on additional leverage to finance a deal with Columbia and pay the termination fee without jeopardizing their investment-grade credit rating. Moreover, conducting adequate

due diligence on Columbia was an extensive undertaking. TransCanada had sixty-nine employees conduct diligence over a three-month period and estimated its total transaction costs as of April 2016 at $130.8 million. Incurring these costs to support a bid would be for nothing and not reimbursed by anyone if TransCanada simply matched the bid.

131. In sum, any purported "passive market check" did not cure Skaggs's and Smith's unreasonable actions and failure to obtain the best price for Columbia.

H. Columbia's False and Misleading Proxy

132. In its Opinion in the Appraisal Litigation, this Court found that the Proxy contained material misstatements and omissions.

133. *First*, the Court found that the Proxy was false and misleading because it did not disclose that TransCanada, Dominion, NextEra, and Berkshire were subject to "don't ask, don't waive" standstill provisions, that TransCanada breached its standstill, and that Columbia ignored TransCanada's breach. The Court found that these disclosure violations were material and that "a reasonable stockholder would have found it significant that TransCanada and [Dominion, NextEra, and Berkshire] were bound by standstills in fall 2015 and that TransCanada was permitted to breach its standstill to pursue the Merger."

134. *Second*, the Court found that the Proxy was false and misleading because it did not disclose that Skaggs and Smith were planning to retire in 2016. As the Court explained,

> [A] reasonable stockholder would want to know an important economic motivation of the negotiator singularly employed by a board to obtain the best price for stockholders, when that motivation could rationally lead that negotiator to favor a deal at a less than optimal price, given his overall economic interest, than only a doing a deal at the right price.

135. *Third*, the Court found that the Proxy was false and misleading because it omitted that Smith invited a TransCanada bid and informed TransCanada's Poirier in January 2016 that it did not face competition for Columbia. According to this Court, this information was also material for Columbia stockholders asked to vote on the Merger.

I. Skaggs and Smith Retire with Millions of Dollars in Change-in-Control Benefits by their Retirement Target Date

136. The Merger closed on July 1, 2016. A few days later, Skaggs and Smith retired. Skaggs received approximately $26.84 million—$17.9 million more than he would have received had he retired without a change-in-control transaction. Smith received $10.89 million—$7.5 million more than he would have received had he retired without a change-in-control transaction.

137. The contingent nature of these change-in-control benefits made Skaggs and Smith more averse to losing a deal. Indeed, Skaggs and Smith had

informed TransCanada that they would do "whatever it takes" to get a deal done. Thus, Skaggs' and Smith's incentives were not aligned with public stockholders in obtaining the best price for Columbia.

J. The Merger was Not a Value Maximizing Transaction

138. Because of its strategic location in the Marcellus and Utica, Columbia was a "once-in-two-generations opportunity." Acquiring Columbia provided TransCanada with the competitive advantage and impregnable position in the "sweet spot" in North America for owning natural gas pipelines. The Marcellus and Utica shales are closer to population centers on the East Coast and industrial Midwest than other natural gas formations and the gas is relatively cheap to produce. As TransCanada noted, Columbia's position is one of its "growth platforms that cannot be replicated."

139. TransCanada knew that it bought Columbia for a bargain. TransCanada management noted that the acquisition of Columbia was a "timely transaction at a low point in the cycle." TransCanada's stock price substantially increased after the market digested the Merger price during the weeks and months following the March 17 announcement of the deal.

140. The damages to the Class were substantial. As Columbia's management continually maintained between July 2015 and July 2016, its

prospects were improving, not declining, and the numbers its businesses have recorded since show that that optimism was fully justified.

141. That pattern has continued since the merger. Although some of Columbia's less-strategic assets have been sold (for very nice prices), TransCanada has kept the vast bulk of them, and they have become one of the jewels in the crown of the TransCanada empire as they produce large and increasing amounts of cash very much in line with Columbia's original projections.

142. Columbia's public stockholders deserve to participate in that windfall through rescissory damages. In its Opinion in the Appraisal Litigation, the Court found that the stockholder vote was procured with a false and misleading Proxy. Furthermore, Columbia's stockholders faced an unenviable choice when asked to vote. They knew that Columbia was performing well; they also knew the midstream sector was out-of-favor on Wall Street; and they knew that management and the Board of Directors wanted to sell at what would otherwise seem to be an inopportune time. Looking at those facts, any stockholder would have to be concerned—what was it about Columbia, its prospects or the market that would induce the Board to sell the Company only nine months into its life as a separate public company and at a price well-below its initial trading price? What was it that management knew about the Company that the stockholders did not know?

143. The trial established there was nothing wrong with Columbia, there were no hidden problems, and senior management firmly thought that it would do well once the panic was over. The trial also established that the real reason why management was eager to sell was because Skaggs and Smith targeted retiring in 2016. Furthermore, they planned to be able to make more than enough money for their retirements by spinning off the Company from NiSource, thereby allowing them to receive change-in-control benefits when Columbia was sold.

144. As this Court held, Skaggs' and Smith's desire to retire in 2016 was material to stockholders. Had the stockholders known the simple (if inconvenient) truth they would have realized that there was no compelling reason to vote for the deal since Skaggs and Smith would certainly try to find another one as Columbia's stock price increased. But in that case, Skaggs and Smith would not have been able to retire on their desired timeline. And so, they did not inform Columbia's stockholders.

145. Defendants also did not inform Columbia's stockholders that Columbia allowed TransCanada to violate its "don't ask, don't waive" standstill obligations without consequence while potential competitors remained bound by those same standstills and could not bid unless and until Columbia asked them to do so.

146. The stockholders should be put back into the position they would have been in if Defendants had disclosed the truth in 2016. As such, they should receive the value of the Columbia assets at the time of trial less the $25.50 they already received, plus the dividends they would have received over the intervening years, with interest at the legal rate on each dividend since the date that dividend should have been paid.

147. Rescissory damages is particularly appropriate because the evidence at trial showed that TransCanada's most senior management was aware that it had violated the "don't ask don't waive" standstill. Most critically, it also knew—because it received drafts of Columbia's proxy statement—that Columbia's stockholders were going to be kept in the dark about the existence of the "don't ask don't waive" standstill provisions *and* that Columbia allowed TransCanada to violate it. Yet, TransCanada did nothing to prevent issuance of a false and misleading Proxy and profited greatly.

148. Even if one only looked at 2016 values the damages are significant. For example, TransCanada was admittedly willing to reconsider its offer of $26 per share if Columbia had rejected its lowered offer of $25.50 per share right after Columbia renewed exclusivity, gave its "moral commitment" to TransCanada, and asked for TransCanada's approval of the message to Spectra.

CLASS ACTION ALLEGATIONS

149. Plaintiff brings this action on behalf of itself and on behalf of a class of former public stockholders of Columbia (the "Class"). Excluded from the Class are Defendants and any directors or officers of Columbia, as well as the members of their immediate families, and any entity in which any of them has a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded party.

150. This action is properly maintainable as a class action.

151. The members of the Class are so numerous that joinder of all members is impracticable.

152. There are common questions of fact and law including, among other things the following:

a. Whether Skaggs and Smith breached their fiduciary duties in connection to approving the Merger;

b. Whether Skaggs and Smith breached their fiduciary duty of candor in connection to issuing what this Court has already found to be a false and misleading Proxy Statement;

c. Whether TransCanada aided and abetted Skaggs and Smith's breaches of fiduciary duties; and

d. Whether Plaintiff and the other members of the Class are entitled to damages.

153. Plaintiff's claims are typical of the claims of the members of the Class, and Plaintiff do not have any interests adverse to the Class.

154. Plaintiffs are adequate representatives of the Class, have retained skilled counsel with extensive litigation in this nature who are thoroughly familiar with the facts of this case because of their prosecution of the appraisal case, and will fairly and adequately protect the interests of the Class.

155. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

156. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

COUNT I
Breach of Duty of Candor
(Against Skaggs and Smith)

157. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

158. As Columbia's Chairman and CEO, and Columbia's CFO with a personal interest in the Merger, Skaggs and Smith owed Columbia's stockholders an unremitting duty to disclose all material information relevant to the Merger. Skaggs' and Smith's duty of candor is one of the elementary principles of fair dealing, and they had a duty to ensure that Columbia would issue a Proxy that was not materially false or misleading. Skaggs and Smith did the exact opposite. To pursue their own self-interest in a Merger that would allow them to retire on their timeline with significant change-in-control benefits, Skaggs and Smith caused Columbia to issue a materially false and misleading Proxy inviting Columbia's stockholders to vote for the Merger.

159. On May 17, 2016, Columbia issued a Proxy with a letter to Columbia stockholders signed by Skaggs inviting Columbia's stockholders to vote in favor of the Merger because "[u]nder the General Corporation Law of the State of Delaware, the approval of CPG stockholders must be obtained before the transactions contemplated by the merger agreement can be completed." As the Court already found, this Proxy was materially false and misleading because it did not disclose that: (i) TransCanada, Dominion, NextEra, and Berkshire were subject to "don't ask don't waive" standstill provisions, TransCanada breached its standstill, and Columbia ignored TransCanada's breach; (ii) Skaggs and Smith were planning to retire in 2016; and (iii) Smith invited a TransCanada bid and

informed TransCanada's Poirier in January 2016 that it did not face competition for Columbia.

160. Plaintiff and the Class have suffered damages as a result of the wrongful acts and conduct of Skaggs and Smith in causing Columbia to issue a false and misleading Proxy as alleged herein, including but not limited to the lost opportunity of owning Columbia stock as a standalone company and the lost opportunity of a stockholder maximizing transaction.

COUNT II
Breach of Fiduciary Duty
(Against Skaggs and Smith in their Capacity as Executive Officers)

161. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

162. As Columbia's most senior executive officers, Skaggs and Smith owed Plaintiff and all other Columbia stockholders fiduciary duties of loyalty and care. In connection with the Company's sale, Skaggs and Smith were obligated to maximize stockholder value and refrain from benefitting themselves at the expense of Columbia's common stockholders.

163. Skaggs and Smith initiated and timed the Merger for their own self-interest at an inopportune time for Columbia's public stockholders. Skaggs and Smith sought to sell Columbia to retire with significant change-in-control benefits

by their mid-2016 retirement dates. As a result, Skaggs and Smith were incentivized to sell Columbia at a lower price that did not maximize stockholder value.

164. Without Board authorization, Skaggs and Smith invited TransCanada to breach its standstill obligations, provided confidential due diligence to TransCanada, and conducted deal discussions during which they informed TransCanada that it faced no competition. Their actions created an admittedly "nonlevel playing field."

165. Skaggs repeatedly and without Board authorization interfered with Spectra's ability to make a proposal for Columbia. Furthermore, Skaggs and Smith ignored the Board's instruction between March 4, 2016 and March 12, 2016 to waive the "don't ask don't waive" standstill provisions in the NDAs with Dominion, NextEra and Berkshire.

166. To protect their personal interests in retiring with change-in-control benefits, Skaggs and Smith did not use Spectra's interest in a potential transaction to obtain the best price for the Company. For the same reason, Skaggs and Smith did not push back against TransCanada's successful attempt to lower the price for Columbia from $26 per share to $25.50 per share after Columbia renewed exclusivity and Skaggs and Smith reconfirmed their commitment to a deal with TransCanada.

167. Skaggs and Smith also caused Columbia to issue a materially misleading Proxy Statement that did not disclose that: (i) TransCanada, Dominion, NextEra, and Berkshire were subject to "don't ask don't waive" standstill provisions, TransCanada breached its standstill, and Columbia ignored TransCanada's breach; (ii) Skaggs and Smith were planning to retire in 2016; and (iii) Smith invited a TransCanada bid and informed TransCanada's Poirier in January 2016 that it did not face competition for Columbia.

168. Plaintiff and the Class have suffered damages as a result of the acts and conduct of Skaggs and Smith alleged herein, including but not limited to the lost opportunity of owning Columbia stock as a standalone company and the lost opportunity of a stockholder maximizing transaction.

COUNT III
Breach Of Fiduciary Duty
(Against Skaggs in his Capacity as a Director)

169. Plaintiffs repeat and re-allege all previous allegations as if fully set forth herein.

170. As a Columbia director, Skaggs owed Plaintiff and other public stockholders of Columbia fiduciary duties of loyalty, care, and candor. In connection with the Company's sale, Skaggs was obligated to maximize stockholder value and refrain from benefitting himself at the expense of

Columbia's common stockholders. Skaggs also had an obligation to disclose all material information to Columbia stockholders.

171. In breach of his duties, Skaggs caused Columbia to enter into the Merger before the market recovered from its dislocation in late 2015 and early 2016. Skaggs impeded competitive bidding and pursued his own personal interest in a retirement on his timeline with change—in-control benefits at the expense of the interests of Columbia stockholders in transaction that would maximize shareholder value.

172. Plaintiffs and the Class have suffered damages as a result of the acts and conduct of Skaggs alleged herein, including but not limited to the lost opportunity of owning Columbia stock as a standalone company and the lost opportunity of a stockholder maximizing transaction.

COUNT IV
Aiding and Abetting Breaches of Duty
(Against TransCanada)

173. Plaintiffs repeat and re-allege all previous allegations as if fully set forth herein.

174. TransCanada aided and abetted Skaggs' and Smith's breaches of fiduciary duty as alleged herein. After receiving a tip from Smith, TransCanada approached Columbia's management to discuss a potential transaction and made an indicative offer at $25 to $28 per share knowing that it was bound by a "don't

ask don't waive" standstill provision and had not obtained a waiver. When Columbia received an inbound from Spectra, TransCanada used Skaggs' and Smith's desire for a transaction that would allow them to retire to extract a "moral commitment" that "serious written proposal" meant "financed bid subject only to confirmatory [due diligence]" and not just a "per share price on a cocktail napkin," rendering any such potential competing bid extremely unlikely. Then, when Skaggs and Smith gave this "moral commitment," TransCanada promptly lowered its offer from $26 per share to $25.50 per share to further enrich itself at the expense of Columbia's stockholders. Throughout this course of conduct, TransCanada knew that it could extract value from Columbia stockholders because Smith improperly told TransCanada on January 7, 2016 how it could avoid an auction that would maximize shareholder value and that TransCanada faced no competition for acquiring the Company.

175. TransCanada also aided and abetted breaches of fiduciary duty by Columbia's board of directors. Each of Columbia's directors breached their fiduciary duties by: (i) allowing TransCanada to violate the "don't ask don't waive" standstill provision while other potential bidders remained bound to those provisions, thereby creating a nonlevel playing field favoring a transaction with TransCanada; (ii) negotiating the merger agreement with TransCanada in a state of "willful blindness" and without canvassing the market before or after the

announcement of the transaction due to the “don’t ask don’t waive” standstill provisions precluding potential alternative bidders from approaching the Board, entering into exclusivity with TransCanada, and approving a Merger Agreement with a no-shop provision, matching rights, and a $309 million termination fee; and (iii) allowing Columbia to issue a Proxy that was false and misleading because it did not disclose that TransCanada, Dominion, NextEra, and Berkshire were subject to “don’t ask don’t waive” standstill provisions, that TransCanada breached its standstill, and that Columbia ignored TransCanada’s breach. These breaches of duty prevented a stockholder maximizing transaction for Columbia’s stockholders.

176. TransCanada aided and abetted these breaches of duty. TransCanada approached Columbia’s management to discuss a potential transaction and made an indicative offer at $25 to $28 per share knowing that it was bound by a “don’t ask don’t waive” standstill provision and had not obtained a waiver.

177. TransCanada knew it was preventing Columbia’s Board from canvassing the market by breaching its own standstill provision, insisting on exclusivity and inserting the no-shop provision, matching rights, and termination fee in the merger agreement.

178. TransCanada knew it was assisting Columbia’s directors and officers in breaching their duty of candor by issuing a false and misleading Proxy. TransCanada assisted Columbia in drafting the Proxy Statement and had an

opportunity to review the Proxy Statement prior to its dissemination to Columbia's public stockholders. Section 5.01 of the Merger Agreement also required TransCanada to furnish all information concerning itself that was required to be included in the Proxy. Yet, the Proxy did not disclose that TransCanada was subject to a "don't ask don't waive" standstill provision, that TransCanada breached its standstill, and that Columbia ignored TransCanada's breach. Nor did the Proxy disclose that Smith invited a TransCanada bid and informed TransCanada in January 2016 that it did not face competition for Columbia. This Court has already found that these omissions were material and rendered the Proxy false and misleading.

179. Plaintiff and the Class have suffered damages as a result of the acts and conduct of TransCanada alleged herein, including but not limited to the lost opportunity of owning Columbia stock as a standalone company and the lost opportunity of a stockholder maximizing transaction.

COUNT V
Unjust Enrichment
(Against TransCanada)

180. Plaintiffs repeat and re-allege all previous allegations as if fully set forth herein.

181. By taking advantage of Colombia's conflicted fiduciaries, TransCanada unjustly enriched itself to the detriment of Colombia's stockholders

without legal justification. The assets that TransCanada obtained for $25.50 per share were worth far more than that. As TransCanada explained to its own stockholders, Columbia's assets are located in the center of the most productive Marcellus and Utica shale acreage and constitute "*a growth platform that cannot be replicated*." The results that TransCanada has been able to achieve with those non-replicable assets demonstrate the truth of that assertion. TransCanada has sold off non-core Colombia assets for almost $1.5 billion, and in addition the cash flows it has received from the remaining assets have closely tracked Colombia's projections—projections that Respondent urged the Court to ignore in the Appraisal Litigation. The net result is that TransCanada has wrongfully received many billions of dollars of value that should be in the possession of Colombia's stockholders.

182. The only reason that TransCanada currently owns those assets is because it knowingly took advantage of the breaches of fiduciary duty outlined herein, and the appropriate remedy to prevent a continuation of the unjust enrichment TransCanada has enjoyed is the payment of full rescissory damages to Colombia's stockholders.

183. Plaintiffs lack an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment in its favor and in favor of the Class and against all Defendants as follows:

A. Declaring that this Action is properly maintainable as a class action, and certifying Plaintiff as Class representative and Plaintiff's counsel as Class counsel;

B. Declaring that Skaggs and Smith breached their fiduciary duties owed to Plaintiff and the Class;

C. Declaring that TransCanada aided and abetted those breaches of duties;

D. Awarding damages, including rescissory damages, pre-judgment interest, and post-judgment interest, to Plaintiff and the Class;

E. Ordering disgorgement of TransCanada's profits (plus pre-judgment and post-judgment interest) resulting from TransCanada's aiding and abetting breaches of duty as alleged herein;

F. Ordering disgorgement of Skaggs' and Smith's change-in-control benefits plus pre-judgment and post-judgment interest;

G. Awarding Plaintiff the costs and disbursements of this Action, including reasonable attorneys' and experts' fees; and

H. Granting such other and further relief as this Court may deem just and proper.

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DATED: February 24, 2020

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, Ned Weinberger, hereby certify that, on February 24, 2020, I caused a true and correct copy of Verified Amended Stockholder Class Action Complaint to be served on the following counsel of record by File and ServeXpress*:*

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