IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF MIAMI GENERAL EMPLOYEES' AND SANITATION EMPLOYEES' RETIREMENT TRUST, on behalf of itself and on behalf of all others similarly situated,	:	
Plaintiff,	:	
vs.	:	Civil Action No. 9980-VCN
C&J ENERGY SERVICES, INC., JOSHUA E. COMSTOCK, RANDALL C. MCMULLEN, DARREN M. FRIEDMAN, ADRIANNA MA, MICHAEL ROEMER, C. JAMES STEWART, III, H.H. "TRIPP" WOMMACK, III, NABORS INDUSTRIES LTD., and NABORS RED LION LIMITED,	:	
Defendants.	:	

- - -

Chancery Courtroom #2
38 The Green
Dover, Delaware
Monday, November 24, 2014
2:00 p.m.

- - -

BEFORE: HON. JOHN W. NOBLE, Vice Chancellor

- - -

PRELIMINARY INJUNCTION HEARING AND RULING OF THE COURT

- - -

CHANCERY COURT REPORTERS
410 Federal Street
Dover, Delaware 19901
(302) 739-3934

APPEARANCES:

JAMES SABELLA, ESQ.
MARY THOMAS, ESQ.
JONATHAN KASS, ESQ.
Grant & Eisenhofer, P.A.
-and-
MARK LEBOVITCH, ESQ.
JEROEN van KWAWEGEN, ESQ.
KRISTIN MEISTER, ESQ.
of the New York Bar
Bernstein, Litowitz,Berger & Grossman LLP
for Plaintiff

STEPHEN C. NORMAN, ESQ.
JACLYN C. LEVY, ESQ.
Potter Anderson & Corroon LLP
-and-
MICHAEL C. HOLMES, ESQ.
ELIZABETH C. BRANDON, ESQ.
CRAIG ZIEMINSKI, ESQ.
of the Texas Bar
Vinson & Elkins LLP
for Defendants C&J Energy Services, Inc., Joshua Comstock, Randall McMullen, Darren Friedman, Adrianna Ma, Michael Roemer, C. James Stewart, III and H.H. "Tripp" Wommack, III

WILLIAM LAFFERTY, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
ALAN STONE, ESQ.
HAILEY DeKRAKER, ESQ.
CHARLES CONROY, ESQ.
of the New York Bar
Milbank, Tweed, Hadley & McCloy
for Defendants Nabors Industries, Ltd. and Nabors Red Lion Limited

- - -

THE COURT: Good afternoon. We have a preliminary injunction. Do we need to go through social hour first? Also, do we need to deal with the motion to compel.

MR. NORMAN: Your Honor, I'd like to do some introductions. With me is Michael Holmes, Elizabeth Brandon, Craig Zieminski from Vinson & Elkins.

THE COURT: Welcome.

MR. NORMAN: With Your Honor's permission, Mr. Holmes is going to make the argument on behalf of the C&J defendants today. Thank you.

THE COURT: Mr. Lafferty is going to introduce Mr. Stone.

MR. LAFFERTY: It's my honor and privilege, Your Honor, my former partner, now partner in Milbank, Alan Stone, his colleagues Chuck Conroy and Hailey DeKraker, also from Milbank.

THE COURT: Good afternoon, and welcome.

MR. LAFFERTY: Mr. Stone will speak on behalf of the Nabors defendants, Your Honor.

MS. THOMAS: My turn now. Good morning, Your Honor. Mary Thomas from Grant &

Eisenhofer on behalf of the plaintiff. I have my colleagues --

THE COURT: You can say it's morning because that's how far I've gotten today.

MS. THOMAS: It feels like it. Good afternoon. I have my colleagues, Jim Sabella and Jonathan Kass and from the Bernstein Litowitz firm. I have Mark Lebovitch and Jeroen van Kwawegen, and Mr. Kwawegen will be making the argument today with your permission, Your Honor.

THE COURT: That's fine.

Mr. Holmes.

MR. HOLMES: I was just going to address the motion to compel. What I was going to suggest is I don't know that we have much past what's in the briefing, and we can just take it up with the argument of your motion.

MR. KWAWEGEN: I don't think we need to address it right now.

THE COURT: That is what I was hoping I would hear.

MR. HOLMES: Very well.

MR. KWAWEGEN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. KWAWEGEN: May it please the Court, Jeroen van Kwawegen on behalf of the plaintiff here.

Your Honor, the vast majority of deals, litigated or not, have this patina of normalcy. There are no real conflicts. There's no real serious problems, and the Court sometimes sees those and moves on.

THE COURT: Yet 90 some percent of them draw litigation.

MR. KWAWEGEN: That is correct, Your Honor, and there is a serious problem there. What I am urging on the Court is that this is not one of those cases. This case involves a broken process. It is a significantly different case from 97 percent of the cases that Your Honor will even see.

This is a case where the deliberative process has been tainted by fiduciaries who have conflicting interests and were pursuing their own incentives, and this is a case among the lines of Mills and Del Monte, Your Honor. Now --

THE COURT: You talk about conflict. They're on the selling board, and they're going to end

up on the new entity board. Merely going from director of one to director of the next can't be a conflict. Is it because they're directors in the new entity, or is it because of the five-year guarantee?

MR. KWAWEGEN: Your Honor --

THE COURT: Or is it because they were a majority? They're a majority now and they will be a majority when the deal goes through.

MR. KWAWEGEN: Your Honor, the latter. It is because right now they're on a non-staggered board. There are elections every year. They will go to a board where they will have guaranteed five-year board memberships.

Now, Your Honor, by and of itself, you will say, well, they are standing on both sides of the transaction. That's not what we're saying. What we're saying is this case is much more along the lines of Mills where a majority of the board had an acute interest in the future board membership and then took a step back, did not actively oversee the process, and that combined, the Court said, well, you cannot let this stand.

So we're not urging on the Court to make a ruling where just because you have a future

board membership, well, now we have a conflict. Not at all, Your Honor. But we think it is absolutely fair to say that if you have an interest in guaranteed five-year board memberships down the line, you cannot take a step back and let the conflicted fiduciary of this case, Mr. Comstock, go and run away and sell the company from underneath you.

Now, why was this such a broken process? Well, fundamentally, Your Honor, this board did not even understand it was selling the company. The board did not initiate a sales process. It did not retain a financial advisor to assist with the sale of the company. There's nothing to find out what a potential bidder may want to pay for C&J.

Instead, all the documents, contemporaneous documents, the minutes, the emails, they all talk about the NCPS acquisition process. In addition to that -- so the board is not paying attention to what's happening. We also have a financial advisor, Citi, who was beholden to the CEO. The CEO allows him to do both advisory work but also to do the financing of the entire transaction, generating $31 million in fees. And of that $31 million, $19 million is on the financing.

So Citi is not even retained by the board, let alone looking out for the board's interest. They're looking out for Mr. Comstock's interest.

What Mr. Comstock and management then do, they say we'll bring in a second financial advisor and see if they can give us a fairness opinion. The record is clear, Your Honor, and I'll show it to you, that Tudor, this second financial advisor, never even meets with the board until the day that they give the financial opinion.

The fairness opinion. That is not consistent with the situation where the board is actively overseeing a process involving the sale of the company. It is potentially consistent with the situation where they are looking to buy NCPS, but it's not consistent where the board is taking its job seriously in selling the company.

In some ways, this case is worse than Mills and Del Monte. There, the board knew it was selling the company. It was running a sales process. The deal presented to the board there would have actually resulted in a premium, and I'll get back to that later, Your Honor, but, here, it's a negative premium deal. And if the shareholders didn't like the

deal, they could dissent and seek an appraisal.

Here, no such luck, Your Honor. There is no appraisal rights. So, in many ways, this injunction hearing may be the last time that the shareholders get a fair day in court.

Now, there is some argument here or there about the appropriate standard of review, so I will briefly address that with Your Honor. The defendants admit that Nabors will have a majority stake, 53 percent, in the combined entity. The S-4 says that Nabors will select a majority of the board of this combined entity.

Before this deal, no dispute, C&J did not have a controlling stockholder, and stockholders could replace the board members every year. After this deal, stockholders will be in the minority, and in a Bermuda company with a single majority shareholder, and they cannot, cannot, replace a single director.

Defendants have not cited a single case where, if you have that type of situation, it's not a change of control and we're out of Revlon. This is clearly, at a minimum, a Revlon transaction.

Now, there's a lot of talk about what

the by-laws do to protect supposedly the C&J stockholders. I may get back to that in reply with Your Honor's permission if the defendants go into this with great detail.

But here's what you really need to know. None of those provisions, none of them, require Nabors to pay a control premium to C&J stockholders as part of this deal that Your Honor is looking at right now. None of them give the C&J stockholders control over the combined company. They protect the C&J directors. They do not protect the C&J stockholders.

As the Supreme Court observed in QVC, C&J stockholders will become "mere formalities." This is a Revlon deal, Your Honor, at a very, very minimum.

Now let's talk about the sales process for C&J.

THE COURT: Let's back up to that for just a second. If I were to conclude that this is just ordinary business judgment, would you lose?

MR. KWAWEGEN: No, Your Honor, I don't believe so, because this deal is so fundamentally broken that even under the business judgment rule, I think Your Honor would say, look, this is not possible. If that was the only thing, you might say,

okay, well, maybe, maybe not.

But there's another issue here. Stockholders are getting a negative premium deal. They're not being told that it's a negative premium. They don't have appraisal rights. So, at a minimum, we would then look at a disclosure injunction. I'll get back to this.

Your Honor, you know that our firms are not in the business of seeking disclosures or bringing disclosure-type cases, but if there's a fundamental disconnect between what the shareholders are being told about the value of the shares that they're selling and what they're actually getting, that is, in and of itself, whether it's a business judgment or not, that is a fundamental problem that needs to be fixed.

So the sales process. From the very beginning to the very end, this board treated this transaction as an acquisition of NCPS; not the sale of C&J. Your Honor, I prepared some handouts, and they have them too, and I can put them on the screen. With your permission, I could approach and hand them to you.

THE COURT: That's fine.

MR. KWAWEGEN: These are just excerpts from exhibits that are already in the record.

The very first document, Your Honor, on the left is just to show where it comes from. These are the April 3rd, 2014 board minutes, and it's not disputed that this is the first time that the board is actually discussing this deal that we're talking about here today.

Read what it says, Your Honor. The chairman, Mr. Comstock, "led a discussion of Project Navy, a proposed acquisition of the completion services division of a publicly traded oilfield services company (Navy)."

There's no discussion here about selling C&J, Your Honor. Then let's look at the minutes of the June 24th board meeting when they actually approved this deal, Your Honor.

"Following the conclusion of the executive sessions the Board requested that management rejoin the meeting. Following additional discussion, and upon motions duly made and seconded, the Board unanimously approved the Company's acquisition of Navy and each of the related items," blah, blah, blah.

This is a board that is looking at

buying a company, Your Honor. It's not a board that's looking at selling itself.

Mr. Comstock testified he did not consider selling C&J to another company during the past year. That's Mr. Comstock's deposition, Exhibit 5 at 19. Mr. Stewart, one of the board members testified saying "we were not interested as far as a board member in selling our business." That's Mr. Stewart's deposition at 24.

So the question rhetorically is how can the defendants show that the process for the sale of C&J was fair or reasonable when they did not treat this deal as a sale of C&J? The answer, Your Honor, is that they can't.

As Vice Chancellor Laster also explained in the Del Monte opinion, the board, in order to satisfy at least its Revlon obligations, needs to seek affirmatively the best possible deal, reasonably possible deal that reasonably maximizes the price for the shareholders. Here, the board did nothing of that kind. They didn't seek the best possible deal. They were buying NCPS.

In the Netsmart decision, then Vice Chancellor Strine still said that a breach of Revlon

duties from the board failed to engage -- "engage in any logical efforts to examine the universe of strategic buyers and to identify a select group for targeted sales overtures was a breach."

Here, the board did not run a sales process, did not canvas the market, did not look for an alternative bidder, did not retain independent financials advisors to advise the board on the sale of C&J, did not ask Citi or Tudor to find out how much a potential alternative bidder for C&J would be willing to pay for the company.

As Citi's fairness opinion says, "We were not requested to and we did not undertake a third-party solicitation process on C&J's behalf with respect to the acquisition of all or a part of C&J."

The board did not take a direct and active role in the sales process or actively oversee Mr. Comstock while he was negotiating the deal. Clearly, under Mills, QVC, Citron, the board had that obligation, Your Honor.

THE COURT: The scenario you describe has some resemblance to what was happening in Plains. Is Plains right? Is Plains distinguishable? Does Plains control the setting?

MR. KWAWEGEN: Plains is distinguishable, Your Honor, for a couple of reasons. One, the board in Plains actually knew that they were selling the company. What happened there was there was a bidder that came along, a desperate buyer that was offering a huge premium, and the board in that situation determined deliberately, thinking about it, determined that it was better to go with that bidder than to pursue a stand-alone future of the company. There was a deliberative process.

Another reason why this case is distinguished is that there was a huge premium, Your Honor. Here, it's a negative premium. So what you have in Plains is a board that reasonably tries to maximize shareholder value, and reasonably concluded that the best deal out there was this desperate buyer that was willing to pay a huge premium.

Here, the board is not considering selling C&J. Instead, Mr. Comstock is negotiating a deal for NCPS which the board doesn't realize actually involves a change of control, and they're losing the company. It's a very different situation, Your Honor.

Now, after we put this record together, we put in our briefs, suddenly Miss Ma sent

in an affidavit and said, "Well, we considered all options and everything was on the table." But there are a couple of problems with that, Your Honor.

First, it is important to know that Mr. Comstock co-opted Miss Ma in this process early on. When she was asking critical questions, even before the first board meeting, he told her, "Well, I might retain you as a paid consultant, and I will talk to the CEO of General Atlantic, your boss, about this, make you look good."

Miss Ma was ultimately not retained, but Mr. Comstock never withdrew that idea. And suddenly the emails drop.

The other problem with Miss Ma's testimony and affidavit is that it flies in the face of all the contemporaneous documents. None of the board minutes, none of the board minutes, talk about a potential sale of C&J. None of the contemporaneous emails talk about the sale of C&J.

Mr. Comstock was clear in his testimony "I did not consider selling C&J." Mr. Stewart was clear in his testimony, "We as a board were not considering selling C&J."

So, Your Honor, we respectfully submit

that this should be heavily discounted to the extent that the defendants will actually rely on it.

Now, in addition to co-opting Miss Ma, Mr. Comstock also co-opted Citi allowing it to provide 100 percent committed financing in addition to providing these advisory services.

Now, as a result of this broken process, we have no information about the value of C&J to potential alternative bidders right now. Well, the defendants say, well, hasn't the company been for sale since the announcement of this deal, isn't that like a de facto type after-the-fact market check? The answer is no, Your Honor.

There are two problems with this. First, under Delaware law, the stockholders were entitled to a fair sales process run by an actively engaged board. So to sort of back into, well, no harm, no foul, that's selling the C&J stockholders short. But just as important, this board has never announced to anybody that the company was for sale.

THE COURT: But we're talking about a fairly small number of operations that would have the interest and the wherewith all to buy C&J. And I can't believe they all don't know about this

transaction, and they all know how to jump a deal if that's what they want to do.

MR. KWAWEGEN: Your Honor, I think there are two very important comments there. First, I don't think we know that it's only a relatively small number of companies. Nobody looked. Two, what do these companies actually know?

THE COURT: There aren't that many operations that have 2.1 or $2.6 billion. That's a starting filter in the process.

MR. KWAWEGEN: Well, I acknowledge that the oil price is dropping, but there's still money to be made in the oil industry.

But here's what those other companies, those theoretical potential bidders, do know. What they know, and what has been advertised to the world, is that C&J is buying NCPS. It's not being advertised that C&J is being sold in the process and has ever been in play.

What those other potential bidders know is that a majority of the current board has been guaranteed five-year board seats, untouchable, in a Bermuda company. What they also know is that there are all these deal protections in place, including

unlimited matching rides for Nabors.

So if you put that altogether, it's very rational for a theoretical potential alternative bidder to say, well, how am I going to persuade a majority of this board that is already locked into five-year board memberships to now support a new deal when the company has never, and the board has never, even said that the company is up for sale, and even maintains to this day that the company is not for sale.

THE COURT: Money probably would be a very good solution for that conundrum.

MR. KWAWEGEN: We think that there are serious problems here as Your Honor probably gathers from my presentation so far, and there are certainly loyalty issues by a number of the people involved here.

But there are two -- I see where Your Honor is going. There are two very fundamental problems that we need to reckon with: Figuring out how much, after a process where the board has sold the company without realizing it, now we're looking at alternatives, and then hypothetically determining in the future what the stock would have been sold for to

a theoretical potential bidder is, at best, an imprecise exercise.

Secondly, just as importantly, there are alternative equitable remedies available to Your Honor to fix this process now. It's not necessary to go to money damages. We have a possibility of fixing this. Of course that's the requested relief that we have.

THE COURT: Well, we're probably ahead of ourselves, but what should be done?

MR. KWAWEGEN: Your Honor, we believe that there are multiple grounds for temporarily enjoining this deal. One is the broken process. One is the inadequate disclosure on the fundamental pricing issues, and I'll get back to those.

And if Your Honor would temporarily enjoin this deal, it would be, in some ways, analogous to a disclosure injunction similar to what Vice Chancellor Laster did in Del Monte. We think that the deal should be enjoined, say, for 30 days, at least before the December 31st cutoff so that Nabors cannot walk away, and that there would be an adequate and a real process run by the board members who are now, we know, and they know, not going over to the new board.

Because one of the things that the defendants said in their papers was, well, how could there be a conflict; these board members didn't even know who was going to join this new board. Well, we all know how that happens. On June 24th, when they approved this deal, everybody knows a majority is going over to this new board, right, but we don't know who. If you're creating waves or you're voting no, your chances of being on that board are very, very small.

Now, though, now we know who went over. We know that there are a number of directors who are not going over. And we believe that if a sales process, in compliance with their fiduciary duties under Revlon, would be initiated and with their own financial advisors and in good faith conducted, that would go a long way, Your Honor. That way we don't have to second guess later what could have happened, might have happened, should have happened.

Now, I'll talk briefly about the NCPS acquisition process because we don't only have a problem here with the sales process with C&J. There's also a fundamental issue with the way the acquisition process of NCPS was conducted.

Your Honor just saw the April 3rd board meeting. At that board meeting, as the minutes reflect, the board gave authority to Mr. Comstock to make a non-binding offer of $2.6 billion. That offer was made on April 4th. It's Exhibit 30, our exhibit 30. And it was based on 2014 EBITDA numbers, and it made clear all C&J board members will become members of the combined entity, consistent with an acquisition.

When Nabors said no, Mr. Comstock went back to the board with a proposal to increase the offer to $2.75 billion. And as you will see in the email exchange on Exhibit 34, the board said, and Mr. Friedman specifically said, okay, but let's not get on a slippery slope on price here. And Mr. Friedman, I believe everybody concedes, is also a financially savvy board member.

He said, "No, no slippery slope please. You can go to 2.75 but that's it." Mr. Comstock responded and he said, "Okay, I will make clear to Nabors that I will await a formal response and see what happens here."

Mr. Stewart testified that Comstack did not have carte blanche and that the board expected

Mr. Comstock to come back before further increasing the offer beyond 2.75. That's the Stewart deposition at 38 and 39.

"Question: So you're saying the board approved Mr. Comstock going back on a higher number before he went back with the higher numbers?

"Answer: No. We went, we approved his wanting to raise the offer price from 2.6 to 2.75 and that was his max target at that time. And he had come back to us and tell us how it goes. I think it says that. I know -- I, you know, keep us informed and we'll do it but it was not carte blanche."

On April 16th, Mr. Comstock sends his $2.7 billion letter, and as part of the governance requirements of that offer for NCPS, he included the idea of a dual class structure. Mr. Petrello, Nabors, quickly shot that down. He said "I'm not doing this dual class structure."

Now, after this exchange, and after having received a number of probing emails, Mr. Comstock lamented the board oversight to Mr. Trauber of Citi, and Mr. Trauber said, "Well, you have to get the board out of the day-to-day."

This is Plaintiff's Exhibit 35, and

it's also blown up on your screen and in the binder in front of you. Mr. Trauber says to Mr. Comstock on April 15, "It's going to happen. One issue is you need to get the board out of the day-to-day. I have done deals for 26 years, hundreds, and never seen a CEO have to provide their board so much data day-to-day and have to constantly answer emails from the board. As you attempted to do in the first board meeting, you should seek permission approval to negotiate the best deal you can for your shareholders and then present to them for approval or disapproval. That will save you some years on your life."

Again, Your Honor, Mr. Comstock never got blanket approval as he later claimed to just negotiate a deal. It was not in the cards.

Now, on April 22nd, Mr. Comstock learned that NCPS had a very bad first quarter in 2014, especially in the completion segment of the business. He wrote to Mr. Trauber, and this is Exhibit 36, "There's no way he," and he meant Mr. Petrillo, "turns it around from minus 6 million to 60 million in one quarter. So that means more in Q3 and Q4 which won't happen."

And a little later, he goes on, "I

can't believe they didn't disclose this to us. Made me look foolish. I could have prepped people for this."

There's no evidence whatsoever that Mr. Comstock then went to the board. After Mr. Trauber had suggested to get the board out of the day-to-day, there is a remarkable drop in emails.

Three days later, April 25, Mr. Comstock sends a letter increasing C&J's offer to 2.9 billion. He's just learned that they're not going to make the numbers in Q1 and that Q2 and Q3 are going to be bad too. And he increases it the 2.9 billion.

He also uses now a different basis for valuing the business because he knows that the 2014 EBITDA will no longer support this increase. There's no more dual class structure, and there's no evidence whatsoever, Your Honor, that the board gave approval to Mr. Comstock to make this increased offer.

In fact, Mr. Comstock testified that the board never formally -- "never formally approved any of these letters." That's his deposition on five.

Now, Mr. Comstock and Miss Ma later try to fix this by saying that Comstack had blanket approval to get to a deal, and then they will just do

due diligence after and see how it goes. But this assertion is not right, Your Honor. It's refuted by the April 3 board minutes saying you have approval for a $2.6 billion offer, the April 14 email exchange with the board where Mr. Friedman said not to get on a slippery slope on price, the April 15 email from Trauber saying to Mr. Comstock, "You should try to get blanket approval," and Mr. Stewart's testimony that 2.75 billion was Comstock's "max target" at the time, and that Mr. Comstock did not have carte blanche to make a higher offer.

Now, Mr. Comstock did not tell the board about this April 25 offer of $2.9 billion. If you look at the April 29, 2014 board minutes and the meeting packet, it's clear the board did not get a copy of the April 25 letter. It's not in the materials. The minutes do not mention the 2.9 billion offer. Not discussed. And the minutes do not mention the board giving approval to enter into a $2.9 billion agreement. Nothing of the kind, Your Honor.

Now, the evening of April 29th, they just had the board meeting. Mr. Comstock has a telephone conversation with Mr. Petrello. At this time, the board is unaware of the $2.9 billion offer.

And Mr. Petrello knows exactly what levers to push to get to an agreement. He tells Mr. Comstock that Nabors will push "aggressive employment agreements" for the C&J executive management. That's Exhibit 10. It's a text message.

In that same telephone conversation, Mr. Comstock and Mr. Petrello agree on a $2.925 billion agreement in principle. That's in the S-4.

Now, Mr. Comstock understands this business. He says, "I understand this is not going to be supported by the 2014 EBITDA. I see this is not performing well." So on May 2nd, he sends Mr. Petrillo an email. Now they're joint ventures on the road to a deal. And he says on May 2nd, "Please update your forecast for 2015 EBITDA because this will help 'the valuation case'." That's Exhibit 39.

After Mr. Comstock enters into this agreement without any board approval, he goes to Citi and he says, "Mr. Trauber, I'm hereby giving you approval to also provide the financing for this deal." Citi now will get $31 million in fees if this deal closes.

Although Tudor was then brought in on

May 23rd, 2014 to cleanse this supposed conflict, this conflict, the record is clear that Tudor never met, ever met with the board until June 23rd and June 24th, and the board minutes of both June 23rd and June 24th make clear that Tudor had no role whatsoever in the negotiations of this deal. The representatives of Tudor were very clear during this meeting, "We had no role in this. This is just Citi and Mr. Comstock."

Now, what happens after that, after Mr. Comstock has made his $2.925 billion agreement in principle with Mr. Petrillo?

One of the fundamental issues and points that I really want to make sure that I bring across is that NCPS is a division of Nabors. It has no publicly verifiable financial statements. It is a division. So it is critically important, if you want to value this business, that you have verifiable information about the actual performance of the company.

So C&J retained Deloitte, and Deloitte was retained to do two things. Deloitte was retained to give tax advice because there are tax implications in this deal, but Deloitte was also retained to do financial and accounting due diligence.

On June 10th, 2014, Deloitte sent an email identifying a list of key issues, and I have this also. This is the April 25th letter showing that they changed the methodology. This is the June 10th email from Deloitte.

And Deloitte says on June 10th, one of the key items, number three, is "April 2014 forecasts are low in the forecasts continuing the downward trend in profitability in full year '14 from full year '12 to full year '13. This is something to consider for deal value as the step change in the company's profitability may be more severe than management's forecast.

"Also, our comparison of year over year results for full year '14 appears to indicate that much of the decline is due to climate changes and not just weather as discussed in public statements for Q1. We noted the biggest year over year declines were in Texas which should not have been impacted by weather over the same period over the prior year."

And I asked Mr. Comstock about this, and he says, oh, yes, we knew that the significant drop was largely due to the loss of a major take-or-pay contract that NCPS had with Marathon.

That's at page 132 of his deposition.

I just want to show Your Honor how big of an impact that is. If you go to Tab 6 of your binder, I don't have it on the screen, we have an excerpt from a March 5th, 2014 presentation from Nabors management to C&J management, and page 20 of this presentation shows on the left-hand side the Marathon contract and then the other contracts, and those are the top ten customers in south Texas in 2013. It is a massive impact to lose this Marathon contract.

Now, Your Honor, the record is clear, no one informs the board about these findings, about the June 10th findings. Mr. Comstock testified in his deposition at page 130 and 131, and he says, "No, we did not tell the board."

Mr. Comstock further testified that around June 11th, after this became known, less than two weeks before the board approves the deal, his best estimate of 2015 EBITDA for NCPS is only 380 to 400 million. That's at 136 of his deposition. Again, no one informs the board.

A few days later, Nabors put out the May results and gives a June forecast, but by that

time, the record is clear, the emails are clear, Mr. Comstock's testimony is clear, that Mr. Comstock did not believe Nabors' forecasts any more. He said between June 12th and June 14 that the forecasts for NCPS were no longer credible and that Nabors was engaging in creative accounting, showing funny math.

Now, when confronted with this, Mr. Comstock and Miss Ma said, well, what was really going on here was it was an accounting issue, you see, because Nabors is a driller largely, and they have this NCPS completion and production services unit in there, and the accounting just didn't match up. It was an Oracle issue, software.

And if that was true, Your Honor, why then, two days later, tell Deloitte to stop working on the accounting due diligence as they do? June 16th, McMullen tells Deloitte "Stop your financial accounting due diligence." That's the Defendants Exhibit 47.

Two days later, June 18th, six days before the board approves the deal, Citi does a presentation to C&J management, and I believe I have it here, and that's Tab 7 of your binder, Your Honor.

Here's what they say. It's again an

excerpt of this presentation, and the first page is "Project Navy Discussion Materials" dated June 18, 2014, and the next page is "Diligence/Forecast Considerations," June 18th.

Citi says to C&J management, well, "Diligence identified several areas that imply significantly lower results for 2014 and 2015. Run rate performance is significantly lower than previously suggested. May run-rate plus Canada equates to approximately $369 MM of annual EBITDA," way below the earlier forecasts clearly.

Then they talk about the April results that were significantly lower than forecasted. Then they talk about the additional services that Navy's corporate division currently provides and that will need to be factored in. And taking all those factors into account, Citi says, 2015 EBITDA for NCPS best estimate is 408 million.

Mr. Tisman testified at that time that was the number that we were most comfortable with.

The next day, five days before they approved the deal, Mr. Comstock signals to Mr. Petrello, "I will increase the multiple to get a deal."

I put the email on your screen, Your Honor, and it's also Tab 8 of the binder. Here's what Mr. Comstock says on June 19th, to Mr. Petrello only. "Once I get the feedback from Randy," Mr. McMullen, "on where we are off on forecasts I will call you to discuss valuation. My current thinking is original valuation of the $2.295 was based on 6x 2015 ebitda or $490," clearly a reference, Your Honor, to the agreement in principle of the 2.25 billion.

Mr. Comstock continues, "To the extent forecasts come down, I'm willing to stretch to a 6.5x to get it done. 6.5 is a number I can substantiate as it is a blended multiple of the peer group plus 1 term. Hopefully, everyone gets comfortable with the current forecast and it's a mute point. Thanks for the meeting last night."

This is not an innocent email, Your Honor. This is a very, very important email. Mr. Comstock knows the forecasts are coming down. He knows that the best estimate of Citi and Mr. Comstock himself is only $408 million. If you apply a six times multiple to that, you clearly get to a $2.4 billion deal, not $2.925 billion deal. He knows that if there's a deal to be done, he needs to do

something, and this is his answer. He is willing to stretch the multiple to the extent the forecasts come down to 6.5, one turn over the peer group multiple. Again, very clear, Your Honor, that no one informs the board.

Mr. Comstock, in his deposition at 168, "Question: Did you inform the board in June 2014 that to the extent the NCPS EBITDA forecasts for 2015 would come down, you were willing to increase the multiple to six and a half to get the deal done?

"Answer: No."

Now, if you just take this six and a half multiple and you take the 2.925 agreement in principle that Mr. Comstock had entered into, 2.925 divided by 6.5, you get to $450 million target. That's exactly what the email above on your screen in Exhibit 56 says.

Nabors immediately understands that if they want to get a deal at 2.925, the EBITDA forecast for NCPS needs to come in at around 450. It doesn't take them long to figure that out. And Exhibit 59, Your Honor, will see the same is true on the side of C&J. Now both sides are looking at 450 as a magical number.

At that point in time, Nabors had said, well, our forecast is $515 million in EBITDA, and C&J said, well, our best estimate is 408. Both sides now know, okay, we need to get to this 450 number to get the deal done in the range that we had previously agreed.

They don't reengage Deloitte at all. They don't tell the board about these issues. No. They sit in a room, and they work it out, and lo and behold, they get to a $445 million forecast.

Your Honor, there has been some back and forth about where this $445 million is the upside case. It's clear in the contemporaneous documents saying this is an upside case. Mr. Comstock said he believed it was an upside case. He later submitted an affidavit saying that he believes he's now being misunderstood, but the truth is, Your Honor, defendants have submitted no evidence whatsoever that $445 million would ever be a best estimate; not in Mr. Comstock's affidavit retracting his earlier testimony.

Instead, what the defendants are saying is, well, this was a reasonable process leading to a reasonable price.

Then they cite Plains that we briefly

discussed, and OPENLANE and Smurfit. In each of those cases, Your Honor, the majority of the board was disinterested. Not so here. In each case, the board understood it was selling the company and actively oversaw the process.

We talked about Plains, but in OPENLANE, there was a finding that the board was "fully committed to the process" and performed a "targeted market check." In Smurfit, there was a special committee that oversaw the day-to-day of the negotiations. They had their own financial and legal advisors. And in each case, the shareholders would get a significant premium. Not so here.

So let me briefly talk about the premium here. As I mentioned earlier, Your Honor, NCPS is not a public company, so the stockholders here have to rely on the representations in the S-4 about the forecasted EBITDA and performance that formed the basis of the valuation. They cannot go out and independently check. And, here, the stockholders don't know, don't know that this is a negative premium deal. It's nowhere announced.

The June 24 presentations from Citi and Tudor, the fairness presentations that were given

to the board on June 24th, they used a $445 million EBITDA forecast. Based on that forecast, they said, okay, well, the implied price per share that stockholders will get in this deal is $30.76 is a share. They also mention that this is below the trading price then of $32.50 a share. Citi and Tudor also note that the implied price per share in this deal is below the implied price per share of C&J on a stand-alone basis.

When you look at the DCF analysis of Tudor, and you look at the DCF analysis of Citi, they provide a range, but the midpoint of those ranges are between $35 a share and 37 and change a share for Tudor and Citi. So what we have here is an implied price per share that is below the trading price and below the stand-alone price.

So even using a stretched six and a half multiple and what we believe to be an unrealistic $445 million EBITDA forecast, because it was backed into in order to get a deal done, you still have a negative premium deal.

Mr. Stewart testified, and this is consistent with the board that is actually trying to buy a company, not sell itself, Mr. Stewart testified

the board didn't even discuss the issue of a control premium.

At page 58, "Question: In this transaction, did any director ever raise the point that since Nabors was getting more than 50 percent of the stock the C&J shareholders should get a change in control premium?

"Answer: I am not aware of -- about the suggestion of change of form premium being discussed, no."

Now, after the record is created and the briefs are submitted, Miss Ma suddenly says, well, there was a discussion about a control premium. But when I asked about this discussion, she referenced potential synergies in the future. She said well, there was going to be revenue synergies, there's going to be cost synergies, there's going to be tax synergies. But she didn't say anything about a premium over the then current trading stock price based on the stand-alone value of C&J.

Now, these synergies are just potential future savings, potential future revenue increases for a "pro forma" company that relies on the projections of Mr. Comstock and his managers. There

is no evidence that any of them are real. And more fundamentally, the payment of a premium on the value of your share on the date of the transaction for selling your control, that premium is, of course, very different from getting a potential upside in the future that may or may not be realized depending on the market conditions and assumptions that are made.

That is not a control premium. I do not get more for my shares in return for giving up control. I just share in the future upside. So if C&J stockholders are supposedly getting a control premium because of these potential synergies, while they get a minority interest, and a minority interest in the company, and a minority interest in those future synergies, what is Nabors getting; a super control premium? Because they get the majority of those synergies, Your Honor, they will get 53 percent of those future synergies. This is not -- this doesn't make sense.

The other thing that the defendants ignore is that synergies don't magically appear. There are integration costs that you need to take into account. When those are taken into account, it's clear that even with the synergies, this is a negative

premium deal at closing. If you look at the defendants Exhibit 31, and I have it here, it's at Tab 9, this is a Citi's synergies presentation on June 23rd, Your Honor.

If you look, Your Honor, this is an excerpt on the right. It says at the top "Potential Synergies and Integration Costs Forecast," and at the right, it says "Net Synergies Profile." That box on the left starts negative, and it's difficult to see with the copy, but it's negative 62 million. There are no synergies, even under Citi's analysis, until 2015. There's no payment of a control premium at the close of this deal.

Now, the defendants try to cure this negative premium by bringing an expert and they say, well, I will retroactively find that this was a fair deal. That's ironic, Your Honor, because he's doing the appraisals analysis where our stockholders don't get them.

And there's more problems with that. Mr. Beaulne's report clearly states that what he did here is he took the 515 million forecast from Nabors and then tried to assess whether it was reasonable for management to back into the $445 million.

Now, Mr. Beaulne, unlike C&J management probably, but Mr. Beaulne knew and relied on KPMG reports that were prepared for Nabors management. And in those reports, Nabors management told KPMG at the end of April that their best estimate for 2015 EBITDA for NCPS was 387 million; not 515 million.

Now, maybe Nabors used that 515 million as negotiation strategy. I don't know. What I do know is that KPMG was told it's 387. Mr. Beaulne referenced those reports in his report. He knows about the 387. How does he take them into account to determine whether retroactively this is magically a fair deal? He doesn't, Your Honor.

When I asked him he said, well, no, no, this is a draft report. And I show him the final report still using the 387, and Mr. Beaulne had no answer. He did not take that into account.

Instead, he took the unsupported estimate of 515 million at face value and then concluded that backing into the 445 million was somehow fair.

Now, Mr. Beaulne's estimate, just like the other arguments from the defendants, that includes

the synergies, which we believe is not a control premium. The vast majority of those synergies, almost a billion dollars that Mr. Beaulne projects won't be realized until after 2018. And then Mr. Beaulne's own model shows that if you use C&J's actual beta, not a manufactured average, an actual beta, then C&J's value, according to Mr. Beaulne, all else being equal, increases by $400 million and exceeds the value of NCPS, again, all else being equal, by $300 million.

This is a negative premium deal, Your Honor. This is a negative premium deal. One of the books cited in Mr. Beaulne's report cited by -- written by someone else at Duff & Phelps says when it is an openly traded security, you use the actual beta; you don't use an industry average. Instead, Mr. Beaulne chose to use an industry average.

Your Honor, this is a negative premium deal where stockholders are not informed. It is a negative premium deal. They have no appraisal rights, and the deal is the result of a deeply broken process.

C&J stockholders were entitled to a process where the board would implement a reasonable process, provide active oversight over management as the board sought out the reasonable available maximum

price. They got the opposite.

The board did not know it was selling C&J, did not implement a reasonable sales process, never informed anyone that the company was for sale, did not include a go-shop, did not get a control premium.

Without an injunction, C&J stockholders will be locked into a minority stake in a Bermuda company, will lose their vote, cannot get rid of any directors and will have no ability -- no control over who will run this company.

THE COURT: Why should I get in the way of the shareholders making their own decision?

MR. KWAWEGEN: Your Honor, if the shareholders were told that this was a negative premium deal where the stand-alone value according to Citi and Tudor exceeded the implied value per share by at least $5 a share, if the shareholders were told that this was a process where the C&J board sold the company without even realizing it, if the C&J shareholders were told that Mr. Comstock was negotiating secretly with Mr. Petrello to get to a $2.925 billion deal and then stretched the multiple to get a deal done, maybe Your Honor, but those

disclosures were never made.

The C&J stockholders don't know this. And then the people who vote against this, if this goes to a vote, they don't have any remedies. They can't go and get an appraisal because there are no appraisal rights in this deal either. Your Honor, because Mr. Comstock's stake is locked up, that could be a majority.

THE COURT: I understand your argument that Mr. Comstock has committed to vote his shares, but given how bad you say the deal is, and he has special benefits, that also tells me that from Mr. Comstock's position, it's a very good-looking deal. He's going to vote for it whether his shares are locked up or not.

Isn't that a reasonable assumption? In other words, I'm not sure the deal locking up Mr. Comstock really adds much to the mix in terms of what the votes are going to be.

MR. KWAWEGEN: Your Honor, I think that's a fair comment. I don't know how Mr. Comstock is going to vote. I know that the shareholders are told that he is going to vote in favor of the deal, and they're not told about his private benefits, and

that, in and of itself, may misinform the shareholders here.

My real point here is that a majority of the stockholders may vote against this deal, will have no appraisal rights, and they'll be locked into a company that is located in Bermuda to get a negative premium on their stock, and they're going to be harmed, irreparably harmed.

Now, Your Honor, obviously this case is not about admissions in the proxy. I mean, there are fundamental issues here. It's a broken process. But, also, there are misrepresentations in the proxy itself. For example, it still lists Nabors' forecast of NCPS's 2015 EBITDA, and they say 516. KPMG -- they told KPMG it's 387, just to give you one example. It still talks about the 445 as if that's a real estimate.

Your Honor, the stockholders -- it's not a case where a banker had an additional piece of information that he could have included in his DCF. This is way beyond that. This is a significant problem.

THE COURT: Do we have disclosure claims properly before the Court? Because when I read

the conclusion in plaintiff's opening brief, it's talking about enjoining the shareholder vote and the enforcement of the deal protection provisions to allow C&J's board to appropriately explore reasonable alternative transactions. Doesn't sound like a disclosure claim to me.

MR. KWAWEGEN: Well, Your Honor, the truth is -- there are two answers to that. The first answer, it's clearly in our complaint. We say unless there is an equitable remedy here, the stockholders will never get adequate disclosures about this deal. I believe that's paragraph 182 of the complaint.

But then the other point is that when you take a step back and you look at this deal -- I gave you a few examples of the disclosures that I would have in mind. They would have to rewrite the proxy, Your Honor. I mean, this is a fundamentally different deal than what is being presented to shareholders.

This proxy doesn't even disclose that the C&J stockholders are selling control. It doesn't. So it's not just like a situation, like I said earlier, where a bank was provided with a DCF piece that they could have run or not run. This proxy has

no resemblance to what this deal is.

And our significant concern is that that is a result of lack of board oversight, majority of the board having interest and letting Mr. Comstock run wild.

Now, without an injunction, C&J will never get the benefit of an informed, deliberative board process which I believe they are entitled to under Delaware law. They will also never get the opportunity for a pre-vote topping bid because the company is still officially not for sale.

As I think I alluded to earlier, money damages are very difficult here, Your Honor. In a hypothetical world what they could have gotten, should have gotten, is very difficult, and we get, of course, the Del Monte.

One big thing, of course, is that there is no competing bidder right now, and I understand that that is one of the things that may be on the Court's mind and the defendants will point to.

THE COURT: I'm sure if it's not on my mind, it will be pointed out to me.

MR. KWAWEGEN: And I understand why Delaware courts would be hesitant, when there is a

competing bidder, to sort of interfere with that, or why Delaware courts would be hesitant to interfere with the premium on the table like, for example, in Plains. There's a massive premium. Am I going to enjoin this deal and risk the shareholders having that premium, miss out on that premium?

Those are perfectly legitimate and fair concerns. Here, there is no premium, Your Honor. It's a negative premium deal. It's not the same situation as in these cases.

As I said earlier, the stockholders don't even know it's a negative premium deal.

Balance of the equities. Your Honor, then Chancellor Strine laid out four factors in the Ace case. I won't go through them, but in this case, it meets each than every one of them. We have a broken process where the shareholders are not being fairly informed and will not get fair value and not have the benefit of a fair process.

The only issue that I think legitimately could be raised is, well, what about the expectancy of Nabors; don't they have an expectation in the deal protections; didn't they negotiate for them; shouldn't they get the benefits from them.

And the answer from our perspective is no, Your Honor, no. Those deal protections, the absence of the go-shop, the go-shop provision, matching rights, termination fee, are all the result of the fiduciary breaches of the board and Mr. Comstock that cannot be readily addressed after trial. And Nabors got those deal protection measures by aiding and abetting Mr. Comstock in improperly informing the board and breaching his duties.

This was a song and dance between Mr. Petrello and Mr. Comstock starting with the agreement in principle of $2.925 billion on April 29th that Mr. Comstock had no authority to enter into.

Mr. Petrello enticed Mr. Comstock to enter into this agreement in principle by promising aggressive employment agreements. Nabors then worked together with Mr. Comstock to back into the $445 million EBITDA forecast that it knew -- that it felt was false because it reported 387 to KPMG, and it took Mr. Comstock's cue when he said "I will stretch the multiple to get this done." Nabors should not get the benefit from the misconduct in which itself has participated.

Your Honor, unless you have any

questions, I will reserve the right to rebut.

THE COURT: I do not right now, thank you.

Mr. Holmes.

MR. HOLMES: Yes, sir.

THE COURT: We will probably go about 20 minutes and then take a break.

MR. HOLMES: Okay.

MR. NORMAN: Your Honor, we have a couple sets of binders. May I approach?

THE COURT: You may.

MR. HOLMES: Good afternoon, Your Honor. It's a pleasure to be back in Dover.

THE COURT: You have spent time here before.

MR. HOLMES: I have. This is the first time in this courtroom. I already like the fact that this is much wider.

THE COURT: That's as good a podium as you're going to see. Have you figured out how to play with it? You can raise it and lower it.

MR. HOLMES: We have a diametrically opposed view of the record here. We think this was a board that was fully involved in the process, more

involved in the process than I am used to seeing a board; that, in my view, had in many respects, what you'll see in cases impeccable knowledge of the market, of the players, of what the possibilities were. And this was a fully informed board that acted reasonably the entire time.

I'm going to get into the entire process and talk about -- give the Court a fuller picture, in my view, of what happened from the beginning to the end. But the plaintiff's injunction request can really be denied for a very simple reason, and one of the things that Your Honor hit on is what their request actually is.

In both -- in their motion, their conclusion is exactly as the Court read. The Court should enjoin the shareholder vote on the merger and the enforcement of the deal protection mechanisms or deal protection provisions to allow C&J's board to appropriately explore reasonable alternative transactions.

In our response brief, we point out, well, they don't bring any disclosure claims. They're not saying that the shareholders aren't fully informed. They aren't saying there's any reason why

this Court should interfere with stockholder democracy. And in their reply, they come back, and the conclusion is exactly the same. The Court should enjoin the shareholder vote on the merger and the enforcement of the deal protection provisions to allow C&J's board to appropriately explore reasonable alternative transactions.

Today, to come in and say emphatically I think that the proxy now, in their view, contains misrepresentations is very troubling. I think Delaware law is very clear; if it's not in your motion for a preliminary injunction, it's been waived.

Emerald Partners. It is settled Delaware law that a party waives an argument by not including it in its brief. It's not in the first prayer. It's not in the last prayer, and we raised it in between. So to raise it today, they have waived it.

Now, with respect to the very simple reason why it can't be enjoined, the other thing you don't see in their first brief is any challenge to the very deal protection mechanisms that they want the Court to enjoin. We point that out in our response.

And the reason you don't see a

challenge to the deal protection mechanisms is because they are, at worst, down the middle of the fairway from the deal protection mechanisms this Court and Your Honor has enforced time and time again in other deals, including in the Plains deal.

We have a no-shop with a fiduciary out. The one interesting thing about the fiduciary out here which actually makes it more favorable to C&J is the fact that it doesn't have to be a superior proposal for the entire company. It can be for part of the company.

You have match rights. You also have a termination fee that is round about three percent of equity value which has been enforced and found reasonable time and time again. And we again point this out in our response brief.

And in their reply, they devote about a third of a page to saying, without specifically going into any of them -- and I note today in their argument there was no argument as to why any one of those provisions in any way ran afoul of Delaware law, and, indeed, they don't.

But in their response brief, they say, well, it would dissuade a buyer, it's a conclusory

statement. And they cite the Pennaco case, and they cite to a provision of the Pennaco case page 693 that's actually the background of the parties' contentions being made in that case.

And the interesting thing about Pennaco is it's actually very similar to this Court's holding in Plains. In Pennaco, that was a single-bidder strategy as well just as in Plains, and the Court held, "It appears that the Pennaco board was careful to balance its single-buyer negotiating strategy by insuring that an effective post-agreement market check would occur. The merger agreement's provisions leave the purchaser exposed to competition from rival bidders with only the modest and reasonable advantages of a three percent termination fee and matching rights. The plaintiffs' attack on the termination fees level is make weight and at odds with precedent upholding the validity of fees at this level."

Pennaco supports denying the injunction without even letting it get out of the gates. The simple injunction of "we're going to enjoin deal protection mechanisms that comply with Delaware law," that's not a proper request. And

without more, even with respect to the rest of the plaintiff's arguments, I don't think it's an injunction that can be granted.

But I also think the rest of their arguments -- let me just also say that as we said earlier, it's not in their motion that the deal protection mechanisms -- when I read their motion, I got to the end, I got to the conclusion, I thought I must have missed the page where they challenge the deal protection mechanisms. It's not in the brief. They don't challenge them. They don't cite law. They don't analyze them. They don't say, well, this deal protection mechanism is invalid for this reason. They simply say "I want to enjoin them."

THE COURT: Well, the argument I think is the sale process was bad, and the way to cure a bad sales process is to do a go-shop, and if you're doing a go-shop, that would have to be inconsistent with some of the deal protection devices.

MR. HOLMES: Perhaps that's the gist. I don't read that in their papers that they want a go-shop period. They just want to enjoin deal protection mechanisms that have been found by this Court time and time again to be reasonable and to be

enforceable.

They are a part of the bargained-for consideration. These deal protection mechanisms were bargained, hotly bargained. The termination fee -- I think the bid/ask spread was somewhere between 30 and 160, and it got to 65. So these were part of the overall package of consideration that was negotiated between C&J and between Nabors.

But the Court raises the point of, well, you had this -- we heard it, there's a broken process, and there's a negative premium. Actually, before I get into the process, I want to point out a couple of things just to start out of the gate, things that I heard.

This notion that the C&J board viewed this as an acquisition and was never informed or never told or never thought about that this might be Revlon or something like that -- obviously, I know we have this argument about was it Revlon, is it not, but the C&J board was, in fact, advised that this potentially could be viewed as Revlon.

And I will quote from Mrs. Ma's deposition at page 24. "We were presented by legal counsel. They actually walked us through a

presentation of what this transaction was and what the Revlon rules were and took the whole board through it on a call," and that's page 24 -- that's page 24, lines 14 through 19.

Then, in the proxy -- and Your Honor doesn't need to turn to it in the binder for just looking at the proxy. In the background of the proxy section, there is also a reference that the board was advised of its legal obligations by legal counsel at a board meeting.

So this notion that, well, it's an acquisition or is it a sale, you know, that really gets into the difference between what the business transaction is and how we -- legally how it fits into our hierarchy.

Now, let me talk a little bit about that transaction because I don't know if there's been much discussion of it so that the Court understands the transaction. C&J is a completion services business which essentially means that it assists companies drilling a well, completing that well.

A lot of times it's hydraulic fracturing, horizontal drills, or it's horizontal drill sites. They come in, they help fracture the

well. They fracture the rock so that the oil can flow.

So C&J operates a fleet of trucks, and the way these companies work, or the way you think of them is how many horsepower do you have, how many horsepower of hydraulic fracturing do you have. And C&J has about 600,000-horsepower. It's all utilized. And they have back orders from their customers.

So C&J was in the position of "we need to expand," and you can do that by building, or you can do smaller acquisitions. I suppose. But if you build, it's going to take two or three years, and you might miss the window right now that is there. There is obviously a demand for completion services businesses.

So Nabors has 400,000-horsepower, 500,000-horsepower of hydraulic fracturing equipment that's under utilized. Nabors is a land driller, one of the leading -- maybe the leading land driller.

Completion services is a specialty business. In the words of Adrianna Ma who was deposed last Friday, this was an under utilized set of assets, and that was the real opportunity. The board knew -- and we'll look at the testimony, but the board knew

that Nabors' completion and production services business had been declining. They knew it was under utilized.

The question to Josh Comstack and the board was not what could Nabors do with these assets, because it was clear that they were being under utilized. It was what could C&J do with these assets. C&J is a company that Mr. Comstock started with one truck in 1997 and has built it to the company it is today he is a hands-on CEO. He knows his business. He is integral to this deal and integral to the C&J.

So the question is not what can Nabors do. That's why this talk about the EBITDA multiple and the EBITDA number for what the Nabors stand-alone forecast is in 2015, it's a point for negotiating, but in terms of the business logic of this deal, they weren't buying it because what Nabors could do with it. They were buying it because of what they thought they could do with it and how they thought they could use it.

So that's the business. So when you see acquisition, that's the business sense. It doesn't inform how they were advised from a legal sense that the legal rules might apply.

THE COURT: Help me understand. The collective of the C&J shareholders right now own 100 percent of the company. The deal goes through, they'll own 47 percent of the company. Sure sounds to me like they sold control, and that sounds like a sale, and it doesn't sound like the board unanimously approved the company's acquisition of Navy.

MR. HOLMES: So, again, I think the word "acquisition" there -- again, that's in the board minutes. I don't believe that was the resolution that was handed up. But in the board minutes, it does use the word "acquisition." Again, acquisition is maybe from a business standpoint. There's no doubt in the proxy statement, from Miss Ma's deposition testimony, there's no doubt that the board was advised of their responsibilities regarding a sale.

And if it was viewed as a sale of control, what it would look like now, when you say giving 53 percent sure sounds like a sale of control -- let me just say our argument today doesn't depend on whether it's business judgment or Revlon. We think the board met both standards. Okay.

But to focus on this for a minute, if it was just a sale of 53 percent without more, then,

sure, you might say that is a sale of control. But that's not it all. The question is what does that 53 percent represent. And as the Supreme Court recognized in QVC, if you had limitations on the sale of control, then that might take it out of a sale of control.

In this case -- and I'm not going to go into them chapter and verse because they're very long, and it would consume the afternoon, but there are a number of provisions that limit Nabors' right to control this business.

There are super majority voting for various items on the board. Four of the board members are current C&J board members. There's this notion, which I think is mainly lawyer argument, that these guaranteed five-year four board seats or four of them somehow created a conflict. First of all, none of the board members were subject to challenge. Second, there's no allegations at all that any of the board -- that the board seats are at all material to any of the board members. That is critical under Delaware law.

This Court in TriQuint rejected the notion that continuing board seats create a conflict without some particularized allegations that the board

seats were material. There are no such allegations in the complaint. There are no such allegations in the motion.

So the notion of does 53 percent represent control, it is a -- the question is what do they get for it, can they actually exercise control, and I don't think they can when you look at the menu of control-limiting provisions that were included in this deal. You certainly can't do so --

THE COURT: Some have durational limits on them though.

MR. HOLMES: That's fair. Some do have durational limits and something -- when you say about duration, can they be forever. No, I don't think they can be forever. I mean --

THE COURT: You get to be my age, five years sounds a lot longer than it does to you.

MR. HOLMES: One? Can it be one year? I don't think it can be one year. Two years? I'm not sure about that. Three, four, five, six, seven years? Five years, in the life of a company, life of a publicly-traded company, is an awfully long time on the horizon.

There's no -- particularly over that

time frame, if Nabors sells down, which, obviously, they have no legal obligation to do that, but if Nabors sells down, they may not be a controller in five years. The business may be sold in five years. If the business is sold within five years to somebody else, the right to a control premium is locked in.

So there are a number of things, in our view, that take this out of a sale of control and put it into a non-Revlon category. So the reason that it went over 50 percent was the inversion which is a tax benefit to the C&J shareholders.

THE COURT: I have negative reactions to deals made for tax purposes. That's just -- you find your judge as you find them. I have seen a lot of bad things be done in the name of trying to save taxes, and inversions aren't exactly the most politically popular thing in the world these days.

MR. HOLMES: There have been an article or two written about inversions, and it is obviously very widely known that this is an inversion. It is disclosed in the proxy.

The plaintiffs make some comments about that it's a -- some illegal inter-company loan. The fact of the matter is whatever anybody's personal

feels are, with all due respect, it's a legal transaction. It's a transaction that's permitted by our laws, and it's disclosed in the proxy.

THE COURT: Don't read anything into my comments, but it's an interesting issue, and the question is when I start balancing the public interest, which is sort of a subset of the balancing of the equities, is this something I should consider. My inclination is no, but I don't think you're going to argue with me on that.

MR. HOLMES: No, I'm not.

That's the acquisition. Let me move to the other thing that I had to jump out. They said there was no evidence that 445 million was management's best evidence. Well, attached to our response, and it is in your binder as Exhibit A, is the affidavit of -- B, excuse me, Randy McMullen. You have to go back. It's Tab 6 at the very back. There are a number of tabs, and then within the numbered tabs, there are letter tabs.

THE COURT: I figured it out.

MR. HOLMES: Second page -- third page, excuse me, paragraph seven -- let me tell you who Mr. McMullen is. He's the chief financial officer

of C&J. He's also a board member. He was not deposed by the plaintiffs. He was one that was in charge of going in, looking at Nabors' financials and their reports and coming back with a number that he thought was supportable for Nabors as a stand alone.

He says in paragraph seven, "As management informed the board, $445 million reflects management's expected or base case for EBITDA for the Nabors assets for 2015."

Now, Mr. Jeffers, their expert, who I'm not sure was mentioned in the argument, he has no opinion on whether it's 445 million or some other number. Plaintiff's case, in this respect and on many other respects, simply comes from sound bites from certain emails that get pulled out of context. It's like trying to do a dot-to-dot, but only given a tenth of the dots. It's just sound bites. You don't know the context.

Mr. Jeffers, his report where he says it's -- in his report he says 408 million, not 445 million. When we deposed him, he said he didn't have an opinion on that. What he says is, on this point, and this is page 45, lines 11 through 24, "Question: Now, you think that the projected EBITDA

for 2015 for the Nabors business should be 408 million?

Answer -- objection by Mr. Sabella. I want to be fair.

"Answer: What I'm saying, and I'm really repeating what the C&J staff said, and that is that these were the upside case. Comstack said that in his transcript in his deposition and McMullen said it in the emails. So I took them at their word this was not their best case. It was an upside case. I'm not here to tell you that 408 is the right number. I'm only here to tell you what they said."

So their expert is doing the same thing. He's looking at the email, and I think there's briefing on this, and I can talk about it, about the 445 million. Then Mr. Comstock's deposition where, if you look at the question Mr. Comstock was asked, and in the binder his exhibit is -- his affidavit is Exhibit 6-C.

Mr. Comstock says, look, I didn't mean to imply in my deposition that 445 million was the upside case. The question is -- first question at the top of page three, "Just to be clear, the 445 million is an upside case, just not as aggressive as they are

being. The downside case or run rate is much lower. Yes. Do you agree with that as of June 21st?

"Yes."

He said, "I didn't mean to say that it was an upside case." The fact is when you look at Mr. McMullen's affidavit, Mr. Comstock's affidavit and the two emails, the language about the upside case was language Mr. Comstock added to Mr. McMullen's email prior to forwarding to the Mr. Petrello.

It was done because Mr. Comstock is a shrewd negotiator. He wanted to tell Mr. Petrello "The upside case, the 445 million that's below in Randy's email, it's an upside case, it's not our base case." You can look at the affidavits of Randy McMullen and Josh Comstack, and you can also compare the emails which are exhibits in the main section, Tabs R and S in the binder. Tab R.

So the email that the plaintiffs put up was what's behind Tab S, and it has the language at the end, "Our number more fairly reflects what the business can do. Just to be clear, the 445 million is an upside case."

In Tab R of our binder is Mr. McMullen's email to Mr. Comstock, the one where it

ends in Mr. Comstock's inbox, and that language isn't on there. As Mr. McMullen testified in his affidavit, he didn't write the language. As Mr. Comstock testified in his affidavit, he added that language before he sent it on to Mr. Petrello.

But to be clear, that right there, those two emails, that's what they're talking about when it's "is the 445 the upside case or not." It's not expert analysis. It's not anything. It's simply pulling emails out of context and trying to base a conclusion off of it.

The fact is when you look at the email that the plaintiffs handed up which is behind Tab S of our binder, Mr. McMullen did a detailed review of Nabors' financials. Remember, this was what Nabors could do as a standalone. When you think about the business logic of this deal, it's not the driving business logic of the deal.

It's why Director Ma in her deposition said, you know, "That's one year based on what Nabors can do in their hands. That's not why we're doing this deal. It's what we can do with the assets in our hands."

So the last point before I talk about

the entire process is this notion of this is a negative premium. I don't know how many times I heard it was a negative premium. There's absolutely zero expert testimony on their side that this is a negative premium. It is legal argument, and that is it. That is not evidence.

When you look at -- remember, Mr. Jeffers, their expert who was who was designated to do a valuation of both Nabors and C&J, as we set forth in our motion in limine, he didn't do a valuation of either. And he set forth a schedule attached to his report, Schedule 1 which in his deposition he said was an illustration, and earlier we saw the testimony he wasn't sure 408 was right. He used 408 in the illustration to calculate a positive premium. Remember, that's a one-year number. Whether it's right or wrong, it's one year in 2015.

But when we pressed him on whether or not he had a opinion after these admissions that, "Well, it's just an illustration. I didn't do a valuation. I'm not sure 408 is right, and I'm not sure the EBITDA multiple in there -- I'm not here to testify about that."

So on page 119 of his deposition, I'm

reading lines three to line 15, "Question: So Schedule 1 to your report which is marked as Exhibit 5, I believe, is an illustration. You don't have a definitive opinion that there was a premium or a discount paid in that transaction.

"Answer: Definitive opinion by which you mean a number?

"Right. You haven't done a calculation.

"I have not done a calculation.

"So you do not have a definitive opinion on that.

"I don't."

He has an illustration under certain assumptions that may or may not be accurate, that he doesn't know whether are right or wrong, and that's the only basis they have in the record for whether there's a negative premium or a positive premium.

The fact is the board and Citi -- and the board believed there was premium, that C&J was receiving a premium, and Citi and Tudor presented to the board materials reflecting that C&J was receiving a premium in this transaction.

THE COURT: While you are in my notes,

why don't you talk about stretching the EBITDA multiple from six to 6.5.

MR. HOLMES: Okay.

That is -- first, that is kind of a general category. What the plaintiffs are doing there are conflating negotiation tactics with valuation. I think maybe as I'm addressing this, the easiest thing to do is we have a time line that's behind Tab 1 of the binder. It's helpful to understand what was going on around this email to understand the email.

Now, there's no doubt that this was nothing more than a negotiation tactic. This email was in June of 2014. Now, remember, this 2.925 not to exceed 2.925 in value, subject to due diligence, subject to board approval, that had been agreed back in May. So what's happening -- in a non-binding letter of intent.

What's happening in May and June is due diligence. And in the middle of June, Mr. Comstock, because of things he's seeing in the business, actually threatens to walk away from the transaction just like the CEO in Plains did in that case. He said pencils down. There's been a meeting -- and part of why pencils go down has to do

with these forecasts and trying to get comfortable with the business.

So there's a meeting that -- remember, we're still at 2.925. In the context of they're trying to get their hands around the business and what's going on, Mr. Comstock says at that same time, "We'll offer you 2.8. We're going to reduce 2.925 to 2.8." Remember, the deal price that was agreed to here was 2.86. It's a reduction from 2.925.

So the "stretch" email was said in the context of negotiating with Mr. Petrello to get from 2.925 to 2.86. So that's the context of the email.

Director Ma was asked about this question, did she know, and her testimony -- let me -- first of all, she says the board knew the multiple that was implied by the price.

So they keep asking her did you know that he said stretch, did you know he said stretch. And she says, "Look, they were so many discussions happening. I'm sure we asked what his implied multiple of 2015 that you're paying for this business. Of course the bankers will run it. But when you take the transaction as a whole, multiple off one year off of one business, it is -- in isolation it is not

something that the board -- I don't know that I would even consider that a material piece of information that he had to disclose much less to be a driver of the deal."

And the reason for that is, remember what the business logic of this deal is. 445 million, or what the projections of Nabors were, was what Nabors could do with it. We knew what Nabors could do with it. C&J was buying this because of what C&J could do with this.

But here's what's more important about this. Whether he said, "Hey, here is my negotiation tactic. I told him I'd be willing to do this if he did that," what's more important is the board knew exactly the multiple that was implied by the price and knew how that compared to the peer group.

Miss Ma testified -- what I just read from Miss Ma was page 54. On page 55, she says, "The board recognized the multiple we're paying for NCPS," which is the Nabors business, "going into this deal, and we recognized at that point in time what the peer groups were trading at."

There was nothing hidden from the board. The board knew full well what the multiple

implied by the purchase price was and knew how it compared to the pierce. I think there's repeated places in her testimony where she says that.

The one last thing before -- I see you glance at the clock -- is that the multiples are reflected in the -- if you turn in our binder to the Citi and Tudor Pickering presentations, Citi's is X, 1-X.

So on page five are the implied transaction multiples, and you can see kind of in the middle of the page Q2 '14 through Q1 '15 is the 7.3 times implied multiple, 2015 estimated 6.4 implied multiple.

And then if you turn over to page nine, it shows what the ranges of the multiples from the selected public company analysis is; in other words, from the peer group selected by Citi, and it reflects 6.3 times to 7.4 times and 5.3 times to 6.3 times. That's the ranges.

The board was advised of that. Mr. Comstock, in sending that email -- he's obviously a very consummate businessman when it comes to running a completions business. He's not an investment banker. So for him to say, "Well, I'll be willing to increase

it a turn based on this," that is a negotiation tactic and nothing more. There's no evidence to support that it's anything more than that. No evidence whatsoever.

THE COURT: With that, let's take ten minutes.

(At this time a short recess was taken)

MR. HOLMES: Let me now turn to a brief summary of the overview of the process, and I want to try to focus on and say a couple of things. First of all, something I think has gone -- it's in our brief, but I want to make sure the Court understands, is Mr. Comstock owns 10 percent of this company. He is roughly about 10 percent. He is one of the largest stockholders.

I think that's a very material fact when you're looking at is there a conflict of interest or is there not a conflict of interest. I this that same fact was before the -- I keep saying the Plains case. I really do think this case is very, very similar to Plains. It's very similar to what the Court found in the Plains case in terms of reasons why Mr. Flores -- Mr. Flores in that case was found not to have the conflict.

I think the same is true here, and I

think that reason -- because he's such a large shareholder, because he founded this company, drilled a lot of his decisions which we're going to go through.

So I think maybe the best way to do this is behind Tab 1 is this time line. I'm going to kind of walk through certain points of this time line kind of to -- I won't go through, I promise, every point. The Court can just rip it out of there if you'd like because I'm going to go through some documents also that are in the binder to go with it.

To tell the Court the way the time line works is you'll see behind certain of the entries there's a letter. Like if you look at April 4 in the top left, C&J proposal of 2.6 billion, there's a letter (C). That corresponds to Tab C behind two in the binder, so that's why I was suggesting maybe just pull it out. I'm not going to go through each of those cross referenced tabs.

Now, I think looking at this time line, on April 4, there's an offer from C&J that's a proposal, non-binding letter of intent for up to 2.6 billion subject to due diligence. That's the basic framework that's utilized for the offers. One of the

issues in this case is what authority did Mr. Comstock have in negotiating the non-binding letter of intent.

The plaintiff said in their argument that, well, he had authority to do the 2.75 billion letter of intent, and that's supported by document J. Well, that is the letter of intent, but there are emails in H which is the email the plaintiff referenced giving authority for the 2.75 billion.

But what plaintiff says is, well, Mr. Comstock unilaterally went up to 2.925 billion, and we just don't think that that's accurate. First of all, they rely on the testimony of Director Stewart.

Now, Mr. Stewart said -- if you look at Mr. Stewart's deposition and testimony, he said -- he says, "I don't recall, I don't recall. I don't have the benefit of documents. I don't recall."

The one thing you don't see Mr. Stewart say, despite being presented with these facts at his deposition, was "I didn't know he did that. I didn't know he had gone that far. He shouldn't have gone that far." He never once says that.

And when you look at the proxy which is behind Tab AA -- again, they don't challenge -- we

talked about not having disclosure claims, but they don't challenge this part of the proxy either where it says -- and this 2.925 offer or the 2.9 offer was made on April 25th.

On page 65 of the proxy, the paragraph says "Between April 23rd and April 25th 2014, members of the C&J board of directors discussed the appropriate response to Mr. Petrello's letter." That's a reference to the April 23rd letter that's here on the time line, the $2.75 billion proposal.

So one of the points they said is, well, Mr. Comstock didn't have authority to go up to 2.925 billion. Well, the proxy refutes it. And then if you look at Adrianna Ma's testimony, in a variety of places, her testimony is, look, at the initial board meeting on April 3rd, the board discussed a range of values, and if you look at the book, the range of values were between 2.6 and three.

And what the board said is, look, the authority to Josh was go out and negotiate a non-binding letter of intent that gave us the right to do due diligence that was subject to board approval that was under $3 billion.

She said, and I'll quote the

testimony, "He didn't have to come back to us, but he chose to come back to us, chose to keep us involved because that's the way he treats his board."

So in talking about did anybody see the letter, this $2.9 billion letter which was introduced, the 2.925 letter which was introduced as an exhibit to Miss Ma's deposition, and she says -- testimony at page 43, line seven through 12, "The methodology and the value in that letter is one that I knew well and I thought was very, very creative before he inked it. The fact that it doesn't show up on the minutes" -- and let me go back to that, "isn't a reflection of how deliberative he was with the board as he was going through the negotiation."

Now, the minutes were -- there was an April 29th board meeting at which there was an update given to the board. And the board minutes say, and they are also in the binder behind Tab M on page three, it says, "Next, Mr. Comstock provided an update on the status of negotiations surrounding Project Navy, including Navy's April 23, 2014 response to the Company's initial offer letter, Navy's first quarter financial results and Mr. Comstock's further valuation discussions with Navy's CEO."

Now, the plaintiffs say, well, there's no -- the letter that was sent is not attached, it's not specifically referenced, and what Director Ma says is, "Well, it may not be specifically referenced, but I knew that letter well. I knew the methodology. I thought it was very, very creative before he sent it over. And the fact that it's not specifically referenced doesn't mean we didn't discuss it during that board meeting."

So her testimony is, "I did actually see that letter." But here's the other thing. Whether she saw the letter or not, she said she didn't need to see the letter. The question was -- there's numerous questions in the deposition about what his upper limit of authority was.

On page 43, "Question: What was the upper limit of Mr. Comstock's ability," which I think should be "authority."

"He indicated to us that Tony's ask was 3.2 billion which was Mr. Petrello's ask on April 10th. We would like to go in at around 2.6 billion and ask for our support. Our indication to Josh was go in what you have to do to get a non-binding LOI so we can go and do the diligence but

the 3.2 is tough. 3.2 billion as an ask would be difficult for the board, and we indicated that to him."

Turning over to page 49, line 18, "Our marching orders to Josh was three billion probably too high for us. You're going to have to come back with very compelling synergies to prove that. 2.6 absolutely yes. In between," meaning in between 2.6 and three billion, "do what you have to do to close the deal. That was the marching order, and he did exactly that. Over the course of April to June, he continued to demonstrate to the board the synergy potential in the business and a 2015 outlook."

So going on, Mrs. Ma testifies in several places he had the authority to go up to 2.925. Remember, what he's doing in this period. It's a non-binding letter of intent, non-binding letter of intent subject to board approval, subject to due diligence.

And meaningfully, the deal price didn't say 2.925 because in Mr. Comstock's and his team's efforts, it went down to 2.86 which I think is meaningful in terms of -- plaintiffs want to paint this as some kind of -- it was a manipulated process

to get a deal done for a deal sake. Once you have the price at 2.925, and then you negotiate for the price to come down, that doesn't square -- and also in that process threaten to walk away, that doesn't square with getting a deal done for deal sake.

So let me read one other thing about Mr. Comstock's authority from Miss Ma. It was, "As of April 14th, was it the board's expectation that Mr. Comstock would get back to you if Nabors would reject a $2.75 billion offer?

"It was never my expectation for Josh to check with us every single step of the way in arriving at an agreed upon price below three billion. That's not viable to do diligence for the business and go after the synergies. Josh chose to keep us abreast every step of the way."

Now reading on page 36 starting on line ten, "Partly because he always keeps the board involved, partly the board can be used potentially as a tool for negotiation when you're trying to push the other side and be a good cop bad cop. I've seen him use that as a tactic."

That was her expectation. He didn't have to come back. He chose to come back. He chose

to keep the board in the loop.

Now, April 29th, there's this agreement, and it's an agreement on a valuation, right. Here's the valuation. It's 2.925. It's subject to due diligence. What happens after that -- there's a board meeting in early May. And what happens after that is Nabors gets some financial results in.

Mr. Comstock, Mr. McMullen see the financial results, and one of the things the plaintiffs say is, well, they didn't tell the board that there was -- it's in their brief -- "creative accounting." Again, this is another sound bite taken out of an email that when you put it in context and ask people what it meant, you get an understanding for what it meant.

Now, the situation was Nabors -- remember, it's a land driller. It has an Oracle customized system that's not exactly customized for a completion services business, or at least not customized in the way that C&J has its completion service business financial software customized.

So there's certain categories that you're trying to fill in for cost and revenue, and

they were seeing things that didn't seem to make sense. For example, one of the things Mr. Comstock testified to was utilization went up, meaning you had trucks going more places, but logistics expense, i.e. the cost of moving those trucks places, went down. That didn't make sense to him. He didn't think that was possible.

So he sees these results, and he says, look, this looks like creative accounting. There's another quote they use in the brief where he says "funny math." Well, those emails, for a CEO of a company to dig into the numbers like that, to roll up his sleeves, dig into the numbers and figure out what's going on, that is a lot more involved than the average bear. It doesn't mean that there was actually creative accounting. The fact was those logistics expenses were finding themselves in other buckets within their spread sheet. And the board knew about this. It was not something that was hidden from the board.

Let me turn back to Miss Ma's testimony on page 70. "Did Mr." -- question -- this is page 71, line five.

"Question: Did Mr. Comstock ever

inform you that Nabors was engaged in creative accounting to make the numbers work?

"Answer: Josh and I talked about the business in the C&J business over that time frame had also been eroding profitability. It was a difficult, difficult time for the entire completion services industry, and it culminated in severe weather in Q1. But even the likes of Halliburton were suffering. C&J was somewhat insulated."

So she goes and talks and talks about the metrics, and she says, to skip through what was happening, "So this division, the Nabors division," now on page 72 line 15, "that was doing completion and production work were orphaned. They were always force fitting what they do to a drilling operation which leads to discrepancies in how you would translate these accounts. That, in fact, was one of the biggest initiatives that Josh had put in place for integration planning. We ended up having to hire a CTO just to do the math."

But Mr. Comstock testified to the same thing, and Miss Ma says, "Yeah, I knew about this." Mr. Comstock talked about it with at least her and the rest of the board. So what's happening in May and

June is not, as the plaintiffs say, this effort to get a deal done for deal's sake. It's the opposite. It is legitimate roll-up-your-sleeves, get down to it due diligence by Mr. Comstock, the CEO, by Mr. McMullen, the CFO; the two people who have run C&J for years and made it what it is, and the two people who were going to integrate the Nabors assets and run those the same way they run their C&J assets.

Now, you turn over to -- behind Tab Q, in June, Nabors is producing more numbers, its financial run rate. C&J is trying to get its hand around the numbers. And when I said earlier that C&J was prepared to walk from the deal, it's here in Q from Randy McMullen, June 16th, 2014, to his deal team.

"Guys, please stop working on Navy. We have hit a serious impasse and for now the deal is on hold. Thanks."

One doesn't put a deal on hold if you're trying to get a deal done for deal's sake. What happens -- plaintiffs have no -- this is not contested, as far as I know. What happens after this is there's a meeting with Nabors, and then C&J's management team, led by Mr. McMullen, goes to Nabors

and sits down with their financial team and puts Nabors' results in C&J's accounting system so he can get a sense for what is actually going on with the Nabors business on a stand-alone basis.

Now, when you've already got an agreed-upon value of 2.925 billion, and if you want to get a deal done for deal's sake, this isn't what you do. At the same time, Nabors is producing a financial forecast that shows for 2015 it's going to be about $500 million in EBITDA.

Now, if you want to get a deal done just to get a deal done, as they say, and you can get an employment agreement, then you would say, hey, well, if you certify that this is what you can do -- it happens all the time -- you certify this is what you can do and this is your best estimate, then we'll do some due diligence.

But to go over to their offices, peel it apart, put it into your system and to see what you think they can do on a stand-alone basis, that doesn't happen often. That is a lot of due diligence. That is work being done by C&J's management to get comfortable with the assets they are buying, to get comfortable with the valuation that they are paying.

Why? Because, as they say in multiple emails, because they needed to make sure there was shareholder value in this transaction. I would submit Mr. Comstock, as a 10 percent shareholder, he is aligned with the stockholders in this deal. This notion that he's somehow going to do a deal that compromises his 10 percent interest -- we talked about at the end of this transaction Nabors is going to be 53 percent. He's 10 percent. He's one of the largest stockholders.

After this deal, he's going to be -- he's not exactly at 10 percent, but approximately. He's going to be around about 4.7 to 5 percent, somewhere in that neighborhood. And he's got a 53 percent share holding. It just strains logic to think that Mr. Comstock is going to put himself -- do a deal that's not good for himself as a 10 percent shareholder of this multi-billion dollar company that he's grown from one truck simply to get a deal done because it wasn't in the shareholders best interests, that's what's going on in June. They get to this $445 million number.

Now, behind Tabs R and S -- we talked about that earlier. I was talking pretty fast as

sometimes I do, and I don't know if the Court can see, but Tab R, that's the email from Randy McMullen that -- it's the one that ends in Mr. Comstock's in box. That's the email string.

And if you look down on June 21st, at the bottom of this email you see June 21st, 2014 at 3:24 p.m. "Below is the description of the various changes we made to the forecast and why. The revised 2015 EBITDA is $445mm for Navy. I'm available to discuss."

And then he goes through the base line assumptions, and if you turn over the page, you look at all the things Mr. McMullen did when he went in, all the assumptions he changed, all the inputs, how they got there -- plaintiff's expert, remember, he doesn't know whether 408 is the right number. He doesn't know whether 445 is the right number. He doesn't know if 508 is the right number.

There's nobody to contradict the work that Mr. McMullen did to get to 445 million. He sends it on to Josh. If you look at the top email, this is the email at the top of Exhibit R that ends up with the upside case language in it.

If you look at the top email here in

Exhibit R and you turn over to Exhibit S and you look about halfway down, you'll see "The overall theme is that 505 million of 2015 EBITDA," that email, that's the same email at the top of Exhibit S that Mr. Comstock is now forwarding to Mr. Petrello.

But now there appears a sentence on the end, two sentences on the end to be technically accurate. "Our number more fairly reflects what the business can do in an improving market. Just to be clear, the $445mm is an upside case."

Look at the affidavits of Mr. Comstock and Mr. McMullen. Mr. McMullen says, "I didn't write that language." Mr. Comstock added that language before he sent it to Mr. Petrello. Why? Because he was being a shrewd negotiator, not because he was trying to get a deal done just to get a deal done; not because he was trying to signal.

So based on the 445 million, Mr. Comstock goes back, and about the same time says "I'll do this deal for 2.8 billion," and the parties settle at a valuation not to exceed 2.86 billion which is comprised of stock, which represents about 53 percent and about 900 million in the assumption of debt.

If you look at the chart in the time

line, the bottom is a stock price chart, and as Director Ma said, it was a very good time for C&J to use its stock to do a transaction.

The stock price had been trading at a very high multiple. Now, the board did this deal, and it did not have to give to Nabors a down side collar. That was not part of the negotiations. It was not part of the merger. The stock price was done when the stock was at a very high multiple, and the board was aware of that. The board knew it was a good time to use stock to do a deal. The board acted reasonably and considered these angles of the negotiations and whether to use the stock.

Now, when you get to the final two board meetings June 23 and June 24, you have a presentation on June 23 by Citi of synergies. I won't spend a lot of time on that. That's Tab B. There was a lot of argument about, well, synergies this and synergies that. Again, that's legal argument. The business people who run this business, whose business judgment it is, who have built C&J, think that the synergies that are reflected in these presentations are achievable.

Now, on June 24th, there's the final

board meeting at which the board approves the deal. There's a couple of things that are remarkable about this board meeting. First of all, there are two executive sessions that are reflected in the board minutes, and it's reflected in the proxy statement.

There are two executive sessions by the non-management members of the board of directors. They met before the meeting to talk about the deal, and then after they had presentations from Citi and Tudor, they met again to talk about the deal.

In the context of a transaction somebody is trying to say that Mr. Comstock manipulated or dominated, I think to me that is something that stands out on that board meeting.

Now, there's no doubt also that Citi and Tudor provided detailed presentations, and one of the things that they talked about was whether or not there was a premium. This idea of did the board consider a control premium or not, the board absolutely considered whether there was a control premium.

This is Miss Ma's testimony on page 25, line 13. "Do you remember a June 24th board meeting where you discussed the potential acquisition

of NCPS?

"Yes, I do.

"Question: During this meeting, was there any discussion of the control premium that C&J stockholders would receive for their stock?

"Yes, there was. We discussed the value that needs to come to the C&J shareholders as part of this transaction, all along the way. And the way we thought about the value which one can call a control premium, one can call it accretion to earnings of the business, we broke it up into different categories. We looked at the premium here that's embedded in the value as coming to us in the form of operating synergies on cost that's very much identified."

And she goes on. I'm not -- it's a very long answer. She goes on to talk about the different buckets, and this is on page 26 and then again at the bottom of page 27 continuing through page 28. She talks about the different ways the board viewed that its shareholders, C&J shareholders, were receiving a control premium.

One of the arguments was, well, but they have to share that control premium with Nabors 53

to 47. Miss Ma answered that perfectly. She said, "The way we view" -- this is at the bottom of 27, line 21 through 25. "The way we view the premium, the buckets that I just identified to you, none of it is available to C&J on a stand-alone basis. So the difference is zero to 47 percent."

In other words, yeah, Nabors may get 53 percent of them, but C&J stockholders are going to enjoy value that they could not otherwise enjoy without doing this transaction.

Now, Citi and Tudor Pickering's analyses are Tabs X and Y. Behind Tab X is Citi's June 24th presentation to the board, and on page 14, it is the "Illustrative Implied Equity Value Creation."

Now, remember, as set forth in the motion, their expert has no criticism of the Citi or Tudor Pickering books other than his quibble with the 445 million. But that's just based on the documents. That's not because he can tell you which is right. That's just based on his reading the documents that were supplied to him by plaintiff's counsel.

So there's no evidence in the record that would contradict or controvert in any way what's

in Citi or Tudor's books.

If you walk through this analysis, "Implied Standalone Copper DCF Equity Value, Implied Standalone Navy C&P DCF Firm value." Combine those two.

And then you have a "Capex Adjustment and Improvement of Cost of Capital due to Acquisition." That's the integration costs that we heard were not taken into account that reduced the synergies.

Then you got the "NPV of Potential Synergies, Incremental Net Debt," and you get all the way over and you see "Implied Pro Forma Equity Value" before tax benefits, so they calculated it before the tax benefits of 11 percent and with the tax benefits 15 percent.

At the bottom of the page, you see it's immediately accretive to earnings per share from 4.11 -- this is on page 15 -- from 4.11 to 5.20, 5.30 -- that's in 2015. So that's almost over a dollar per share accretive to the earnings.

Based on that information, the board believed it was getting a control premium. It believed it was getting these assets, almost half a

million worth of horsepower of hydraulic fracturing as well as some other assets, some fluid hauling and some other things, getting it at a price that was at a discount to what those assets could produce in C&J management hands, and because C&J's management could do more with those assets immediately -- remember, as Mr. Comstock testified, 100 percent of their assets were utilized. They needed more. They could deliver a premium to their stockholders immediately.

Just I'll quickly mention -- I won't go through it, but in the Tudor analysis, Tudor has a similar analysis, and this is behind Tab Y on pages 16 and 17. It has an implied equity value per share status quo copper and pro forma copper, which is C&J stand-alone and the combined company, and you can just see the DCF range -- just looking at a DCF range which of course depends on terminal multiple and other things selected by Tudor, it's showing that it's -- that together it's worth more than stand-alone. And the same thing is shown kind of in a different way on page 17.

So the board of directors of C&J -- certainly, one, Miss Ma testified, yes, we were advised by counsel regarding the application,

potential application of Revlon and what it implied. The proxy confirms that. And we talked about a control premium and the value that we needed to deliver to C&J shareholders all along the way, and we thought we were getting, our view, based on all the -- she says not only on my own work but on the work that Citi and Tudor did.

I'm loathe to encourage the Court to read anything more than we have submitted. Her deposition is about 75 pages. It can't be squared with their version of the case. This notion that somehow she's co-opted which I heard for the first time today, I honestly found it hard to square.

In her deposition, she said, well, Mr. Comstock asked if your CEO, a CEO of a private equity company, might be willing to consult to help on this deal and that was in an email. And then he said did you ever do it and she says no. Why not? He never asked. So I don't know how a remotely fair inference from that testimony is that she was co-opted.

Again, the other thing I want to mention about Miss Ma is set forth in her affidavit which we submitted with our response. She's, in herself, a large shareholder of C&J. She owns about

5000 shares of common stock, and the value to General -- the shares owned by General Atlantic is almost 6 million shares, which is roughly about 10 percent. General Atlantic -- in fact, General Atlantic has bought more shares of C&J since this deal was done. And it supports this transaction which I'll get to when we get -- when I close out on balance of equities.

So the board approves it June 24th. One of the things that had always been out there was that C&J management would continue to run the combined company. Now, a process was put in place in order to manage that issue or any potential issue, and that process was there would be no negotiation of any management contracts for C&J officers until after the terms of the merger agreement were substantially agreed upon.

And in the June 24th board minutes, or perhaps it's the June 23rd board minutes -- it's the 24th board minutes. That's explained. Mr. Moore, he's the general counsel to the company, explained that Baker Botts, who was the management team, had their own counsel for the negotiation of the management contracts, and Mr. Comstock intentionally

delayed the delivery of negotiation of such draft agreements until final purchase price negotiations were completed with Navy.

So the board approves this transaction on June 24th. The employment agreements, draft employment agreements -- there's also a draft integration agreement -- were sent over to Nabors. Because the companies want to announce the transaction the next day, there's not enough time to get the deal -- to get those contracts negotiated.

Now, it turns out, as you can look in the time line, these management contracts actually aren't finally executed until late September, 2014. Okay. On the very far -- to the right, it's the last entry far right. Late September. It was actually just before the proxy, preliminary proxy was filed is when the management contracts were executed.

Because they could not get them finalized prior to the announcement -- remember, the board has already approved the transaction under the merger agreement. There is going to be a side letter, and there's negotiation back and forth about how much assurance Nabors is going to give.

And what the plaintiffs say in their

brief is, well, Mr. Comstock threatened to hold up the deal because he was dissatisfied with the level of assurance that Nabors was willing to provide. Nabors wanted to provide an email that said "We'll negotiate employment agreements that conform to the ones attached."

Mr. Comstock wanted an agreement. He wanted something in writing more than an email. And the plaintiffs say, well, he held up the deal for his own benefit. That's just not -- that doesn't even square with the facts. Remember, the deal has already been approved on June 24th. Nothing in the merger agreement changes after June 24th. The board has already approved it.

Second of all, he told the board. He told the board this is what's going on. That's in Tab Z of the binder. June 25th at 3:02 to the board.

"It appears I spoke too soon. Still a few open items so close will not occur just after the bell. If not resolved by morning, we will call you to discuss. At the moment we believe last minute gamesmanship/negotiating," which is I think all it ended up being. "In short he is saying," he being Mr. Petrello, "he's in agreement on management

contracts, as drafted after his multiple changes yesterday through today, however in the past 30 minutes he has had his counsel tell our counsel that he will only give an agreement via email."

He concludes by saying management is simply not willing to take that risk based on email. "This transaction is only valuable to C&J shareholders to the extent the current management team remains in place."

That is exactly what Miss Ma testified to, exactly what Mr. Stewart testified to. There is no doubt about that statement. And the board knows about it. He sends it to the entire board, and then he follows up and says, "We're done. We're releasing," and the board says, "Just read. Very impressive. Nice job."

The board knew everything that was going on. He wasn't going out there manipulating the process. He wasn't getting out in front of his board. As Miss Ma said, he didn't have to keep his board informed all along the way. He chose to keep his board informed all along the way.

You can't take her testimony, the time line and the documents that have been reflected on

this time line and in this binder and come to any other conclusion that this was an extremely well informed board.

Now, this idea of a market check. Something that I want to go back to, earlier the Court asked me about, well, maybe they're really asking for an injunction that you go shop the company. I think that would be a mandatory injunction, which would require summary judgment like, or maybe summary judgment standard level of proof in order to gain, and I don't think we're anywhere near that ballpark.

So on this idea of a market check, this Court has recognized in Plains and Pennaco as well that when you do have this single-bidder kind of strategy, the board -- it puts pressure on the board and its knowledge and its involvement of the market.

The Court remarked earlier that it's a small playing field, there's not that many people involved. Well, that's exactly what Director Ma said in her deposition. As we know, two of the biggest players, Halliburton and Baker Hughes, either one of those, a deal like this size for companies of either of those size, is not a problem. We now know what Halliburton had its eyes on and Baker Hughes had its

eyes on. It wasn't C&J. Halliburton wanted to acquire Baker Hughes.

So there is a lot of testimony in this case that the board, two of whom are private equity, know the market very, very well. And Mr. Comstock knows the market very, very well too. So the idea that there's some affirmative right to go do a pre-signing market check is just not the law in Delaware.

And particularly where, as here, as the Court found in Plains, the board has preserved the right to do a post-signing check through -- even though there's deal protection mechanisms, none of them are owners. In fact, they're slightly more favorable than the deal protection mechanisms in Plains because, although I can't tell from the opinion, I didn't go back and pull the merger agreement, here, of course, it's the superior proposal that can be for less than all of the company which kind of tracks more of what this transaction looks like than in Plains.

THE COURT: Plains I think approaches the limit where the board does nothing to solicit input from the market, from other potential acquirers.

The single-bidder strategy works, and I don't find the cases particularly satisfying, but that's where we are, and I accept that. You see the same thing in OPENLANE.

But it depends upon a very special board. If you go back to Plains, seven out of the eight directors, I think I have my arithmetic right, had absolutely no noise around them. Here, you've got a majority of the board that has noise. I'm not saying it's disqualifying, but it's noise about the fact that they're going to get to be directors, and not only that, they're going to be the majority directors in the new entity.

You had, in Plains, a tremendous, 40 percent plus or minus, premium to market before the deal was announced. Here, we've got debate about what the premium was, but your folks are struggling to get us to ten to 20 percent, certainly nothing approaching 40 percent.

Now we talk about this impeccable knowledge. I'm not quite sure what that means. It's kind of like rifle precision in 220 requests. But I'm not disputing that the board here is a good board, and if I were going for a model of a buying board, I'm not

sure how you could do it much better, but they're a selling board in my world. And what they didn't do was they didn't factor in the fact that there were other options out there.

They just said, "We're not going to go any further." And they may have had wonderful knowledge of their own enterprise, but did they really know the Nabors assets they were getting.

I understand it's the same kind of equipment that C&J uses, and they're going to basically try to run C&J's business the same way. But I don't know that I can reach the impeccable knowledge of the other side of the coin. In Plains, it was cash. For better or for worse, we're going to assume we know what cash is. I don't know that we can assume that folks knew what the Nabors' assets were worth.

MR. HOLMES: That's -- one of the reasons is we have a preliminary record. We have had three board members of seven board members that have been deposed, and I don't know how you would demonstrate with those other four at this point.

I have no doubt that when the record is fully developed, that's exactly what it's going to reflect. It's going to reflect -- and as I said

earlier, I'm loathe to give the Court extra reading, but Director Ma's testimony -- despite my briefs in this case which probably tested the limit, I am loathe to do that. But if you look at did they do anything, there's several questions embedded that I want to try to address all.

THE COURT: That was a litany of questions, and I apologize. They certainly were not focused.

MR. HOLMES: Page 18 of Miss Ma's deposition.

"Question: Did the board ever ask Citi or Tudor to look for bidders for C&J?"

And she goes and answers that, look, we talked to them on page 18, 20, 21, 22, 23 and 24. She goes into they had discussions about who might else possibly be interested, who might be potential interlopers if the deal were announced. And what the banks advised them, it was a very, very low percentage that anyone would be interested.

Remember, C&J stock is -- you can look at the stock price. It was trading at a fantastic multiple at the time; usually not the stuff where you see that happening. So there is some basis to hang it

on.

Second of all, as is frequently set forth -- it was one of the things in OPENLANE that I think the Court remarked upon on doing a limited, very quiet market check -- remember, it could have been Answers. I apologize. I confuse those.

But in other cases on the single-bidder strategy is she says, "Look, secondly, hanging a for sale sign to the company when we are contemplating this transaction is highly, highly disruptive to the focus to the execution of the company. We would not want to jeopardize C&J's value."

That's a consideration that board members repeatedly use, and reasonably so, in trying to decide how to fashion a process in a single-bidder world, and it's something that this Court has recognized in a variety of opinions about that being a reasonable concern of a board member, a reasonable concern of a board member.

In terms of -- there's debate about the premium. I definitely hear legal argument being made about the debate. I have seen no financial argument that withstands even the slightest scrutiny

from the plaintiffs that would contradict the TPH, the Citi or Mr. Beaulne, our expert, who did his own independent valuation and calculated a 26 percent multiple.

They had some critique about his beta. That testimony was essentially like, okay, well, if you take two times one and do two times two, is the output twice as great. And his answer was yes. He never said that was the right beta. He never agreed with that.

His independent valuation, the only independent valuation that's been done in this case, their expert could have done one and didn't, and Delaware case law is clear that there's an inference you can draw from that. So his is 26 percent.

So I don't think there's any credible evidence to challenge the premium that C&J stockholders are receiving in this deal.

But, look, something else Your Honor -- first of all, before I get to this point about stockholder democracy which you raised, and I'll get back to, the noise around the directors, the one thing factually is the directors who were going to serve on the board or not serve on the board wasn't

known by anybody until much later.

There's no evidence in the record -- they don't say, well, they knew in April or they knew in May it was these four so these four are going to do it. I think the record is it wasn't -- I'm not sure they were even told at closing. Director Ma said, "We didn't talk about it. We didn't talk about who those members were going to be."

So this noise about continuing, again -- I understand that the continuation -- you know, maybe that is some noise, though there is very, very little, other than just this continuation of people you don't even know who is -- they don't even know who it's going to be. All right.

As Your Honor held in TriQuint, in most circumstances, Delaware law routinely rejects the notion that a director's interest in maintaining his office, by itself, is a debilitating factor. You got to have some allegations about materiality. They don't have any of those. Again, we didn't know who it was going to be.

Now, let's go to stockholder democracy. Again, I've heard today these assertions that there are misrepresentations in the proxy

statement that I've never heard of before. One of the things that counsel said was, "Well, it was in our complaint."

I found that very curious because, as the Court will recall, the complaint was filed before the proxy statement was filed. What their complaint says at paragraph 82 is, suredly defendants won't give adequate disclosure to the stockholders. They have never amended that complaint. Never once amended that complaint to say now the proxy has come out and here's what we think is wrong with it. It's not in their motion. It's not in their prayer. It's not in their reply. It's waived.

They can't come up here -- it's telling to me they've come up here today and said, okay, now we have disclosure violations about the strength of their motion. So in terms of stockholder democracy, they're sitting here saying there's a full and fair summary of the financial opinion. The stock price is known to everybody. You can read the proxy and see what the deal is. You can see it said a million times -- maybe not a million. That's on over statement. I admit to that. I apologize.

It said numerous times that Nabors is

going to end up owning 53 percent, and it sets forth what we think the control limiting mechanisms are.

So without a pled -- actual pled disclosure claim not seeking an injunction based on a disclosure, and they say this is such a bad deal, such a bad deal. Well, they're somewhat hung by their own petard. If it's such a bad deal, the stockholders should get their say; do they want to double the size of the company under these terms or conditions or do they not.

We know General Atlantic has got no dog in this hunt. Miss Ma is not a continuing director. There's no noise around her continuing. General Atlantic is a shareholder, a stray stockholder. That's it. It's its only interest. It's bought more. It wants the transaction to close.

But if they're right, it's reminiscent of what Vice Chancellor Parsons recently said in the Crimson case which is "Plaintiffs fail to allege that a higher price reasonably was available or that there was another bidder ready and willing to buy Crimson. These failures are conspicuous because if, as plaintiffs allege, the board approved a sale of the company for somewhere between one-tenth and one-sixth

of its value, one might think some other buyer would emerge to capture the surplus."

That's not only true about another bidder emerging when you have deal protections that are down the middle of the fairway. It's true about stockholder democracy as well.

THE COURT: I am told that the world doesn't realize that for my purposes C&J could be viewed as a seller, and hence folks don't know to come to make a better offer.

MR. HOLMES: I find that hard to believe when you read the proxy statement. I think it's -- one of the things that this Court says in looking at deal protections and whether there's an alternate bidder, and Your Honor has used this language, it wouldn't dissuade a sophisticated, serious bidder from lobbing in a topping offer if that was the case.

I find it very hard to believe that the other companies in this space who would have the capability, take a Halliburton or Baker Hughes -- it strains credulity to think that they don't realize what this transaction is and what the price implied by it is.

If they want to lob in a topping bid and they say, hey, you know, we'd like to buy 53 percent of C&J, let's put in a price, there's a number of metrics one could pick in the proxy to say, well, you know, the 40-day view I think was $30.76, let's up that a little bit, or let's take some other metric and up that.

The fact is nobody did despite deal protections that, at worst, are down the middle of the fairway. Nobody did. So if it was as bad as they say, surely somebody would have.

Unless the Court has any other questions, I think that wraps up my comments. Mr. stone might have a few comments.

THE COURT: I was going to turn the podium over to Mr. Stone.

MR. HOLMES: Thank you very much.

MR. STONE: Your Honor, good afternoon.

THE COURT: Good afternoon.

MR. STONE: I will be quite brief.

Your Honor, the plaintiff didn't say anything about aiding and abetting at all in their opening brief. We noted that conspicuous absence of

any argument in our answering brief.

In their reply brief, they came back with a footnote, a mere footnote that said "we have more than enough evidence for knowing participation," but they didn't really cite any at all. They simply cited the "stretch" email that has been the subject of discussion today.

So I was quite surprised today to hear them come up with some new arguments, and as I understand it, their argument is that there was some kind of song and dance that Mr. Petrello enticed Mr. Comstock with employment agreements, that he backed him into the 445 EBITDA number, and that Mr. Petrello took his cue from the "stretch" email and this all apparently establishes knowing participation, so let me deal briefly with those points.

First, with respect to the employment agreements, the only evidence of record with respect to what Mr. Petrello knew is a single question that was asked at his deposition, and this is page 76 beginning at line 20.

"Do you recall talking to Mr. Comstock or anybody else on April 30th, 2014 about employment contracts for management?

"Answer: No. I mean, the only conversation we ever had, you know, get me the drafts of what you want for employment agreements and we'll support giving you new employment agreements. But we had no detailed discussions as far as I recall about any specifics about anything. We were always waiting for them to come across."

In fact, they did come across after the terms of the deal were agreed to, and I think the rest of the story is consistent with what Mr. Holmes described before, and I won't repeat all that. So there was no enticement with any employment agreements here on the part of Mr. Petrello.

With respect to the backing into the 445 EBITDA number, the record is very clear, Your Honor. What happened here was that, as happens in a negotiation, Nabors came up with a very high number, 515 million for 2015 EBITDA. And Mr. Comstock said, "That's crazy. This is witch craft. You're using the wrong accounting."

And Mr. Petrello said, "Here's the books. Come and look at them." And that's precisely what they did. So the 445 number is not a number that Mr. Petrello in any way endorsed. It was the product

of due diligence on the part of Mr. Comstock and his team. And there was no "backing into" that 445.

Finally, Your Honor, with respect to taking his cue from the "stretch" email, the one that says "I'm willing to stretch to 6.5," Your Honor, there is no evidence that Nabors knew that Mr. Comstock was stretching to 6.5. In fact, it was nothing more than posturing on his part.

Indeed, Mr. Petrello was never questioned regarding that email at all, nor was he ever questioned about his view of the correct multiple. Had he been asked, I'm sure that he would have come up with a very different opinion about what the correct multiple was. So there's just no evidence supporting the idea that somehow Nabors either knew that Mr. Comstock was trying to dupe his board into buying or selling, whichever way you view it, at an unfair price.

Your Honor, what the record actually shows is a somewhat formal, actually and vigorous arm's length negotiation. It's really no more than that.

Finally, Your Honor, there's a lot of discussion today about control and whether this is a

change in control. I can only say that from Nabors' standpoint, it doesn't feel like they're getting control of anything. It's a five-year standstill. They got five years of voting for the C&J nominees for a majority of the board. There are super majority provisions. And management is completely made up of C&J employees. That's a critical part of the deal.

This is a highly strategic deal that depends on taking this very top management team in the industry and putting them in charge of the NCPS assets. So from the Nabors' standpoint, this feels like a very good strategic transaction which Nabors and its board support.

And unless Your Honor has any questions, that's all I have.

THE COURT: I do not. Thank you.

MR. STONE: Thank you, Your Honor.

MR. KWAWEGEN: Your Honor, could I have five minutes to organize?

THE COURT: That's fine. Let's take five minutes, which I predict will take ten.

(At this time a short recess was taken)

MR. KWAWEGEN: Your Honor, thank you for your time.

Your Honor, Mr. Holmes started his presentation with a startling admission. He said that the board was advised that this was a sale of control of the company. This is a waiver privilege in open court, Your Honor, and this is the first time.

They have clawed back documents. They have asserted privilege over everything and now they tell Your Honor, well, this was known to the board that this was a sale of control. That's just not fair, Your Honor. They have asserted privilege. They clawed back documents. You can't do that.

But even if you would take it, there's nothing in the documents suggesting that this is true. There's no discussion in the minutes, not in the documents, not in the presentations, and it doesn't even help them. Because if this was something that the board was advised of, well, why didn't they supervise Mr. Comstock closer? Why did they let him run wild with this process and manipulate it?

This is pure Mills, Your Honor, pure Mills. They did not -- the testimony is clear -- did not get their own financial advisor to advise them on a potential sale; did nothing to actively supervise this.

Now, Mr. Holmes spent a lot of the time during his presentation explaining the mindset of the board. He said things like "we were looking to expand, the NCPS assets were under utilized," and the question before the board was, well, what could C&J do with those assets.

Well, those are perfectly fair questions if you're just buying assets. They're not perfectly fair questions when you are selling the company. Similarly, Miss Ma testified it was always discussed, on page 74, as a growth strategy for C&J. This is growing the business. That's what they were doing, trying to grow the business. They did not know they were selling the business.

Now, on the one hand now, Mr. Holmes says, well, this was known to be a sale of control, but on the other hand, he says, well, no, no, the control still rests with the stockholders. He wants to have it both ways.

And one of the exhibits that we put in with our reply brief, Your Honor, is an overview. It's just a chart with the various provisions from the by-laws and the merger agreement, and what the effect is of those provisions.

There's a prohibition, for example, for Nabors to solicit or encourage the sale of Red Lion. Well, that protects the rollover board. It does not require Nabors to pay a control premium. And it falls away after five years. It does nothing for the C&J stockholders.

There is another -- just an example, there's a prohibition on -- there's a super majority requirement on Nabors sale of more than 20 percent of its stock. Okay, well, that insures that the rollover board is protected from some new investor that comes in. But does it do anything for the C&J stockholders? No. Does it require to Nabors to pay a control premium? No. It falls away after five years? Yes.

The requirement that the Red Lion shareholders will receive the same amount on a per share basis in case of a sale of Red Lion, the combined entity, to a third party. Well, they point to this a lot in their papers.

First of all, that is a by-law provision that can be amended after five years. It doesn't exist any more. Does it protect the rollover board? No. Does it do anything for them? No. Does it do anything for the C&J stockholders? No.

Your Honor, this is not guaranteeing a control premium in this transaction to the C&J stockholders. These by-law provisions do everything to insure that control rests with the rollover board; not with the C&J stockholders.

Now, we also heard a lot of talk about Mr. Comstock being an expert and shrewd negotiator. Well, let's look at that. So he makes a $2.75 billion offer together with one of the governance requirements being dual class stock, and we know that that was approved by the board.

Now, this dual class stock is interesting, because you can imagine a world where, if you would have dual class stock where the C&J stockholders would actually get their own class of stock, where they would elect their own directors, perhaps even a majority that you could say, well, you know, that's interesting, they are protected.

But then when the bad first quarter results come out, terrible, and Nabors says no, what does Mr. Comstock do? He increases the bid to $2.9 billion, and he lets go of the dual class structure that was potentially protecting the C&J stockholders.

He was perfectly willing to trade away the interest of the stockholders for his own personal interest in what he thinks is a great opportunity to buy these assets.

THE COURT: And he's willing to risk his 10 percent ownership interest for that?

MR. KWAWEGEN: Well, Your Honor, if you look -- and this goes a little bit to the premium. If you look at the way this deal is structured, I think it is fair to say that the board and Mr. Comstock believed that there is upside potential long in the future for this combined entity and that they believe in Mr. Comstock's ability to achieve them. I believe that.

The problem though is they all are long-term investors. Mr. Comstock is not going away. He's insured that he is going to run this company for five years. He is insured that he is going to have an iron-clad employment agreement that if he is being fired, he gets enormous payments.

He also, of course, insures a $20 million deal bonus that our stockholders don't get. But if you then look at the premium that they say exists in this deal, they are all spread out long

after 2018. On day one, the first year of the merger, it's all negative. And for them, that's probably a great deal because they plan to be there. But they are not looking out for the C&J stockholder because they get an implied value that is below the trading price, that is below the implied equity value pursuant to the DCF analysis of Citi and Tudor.

Now, the defendants say, well, you know, "The plaintiffs didn't get Mr. Jeffers to opine on the value of the company. They have no expert evidence." Your Honor, just looking at the DCF analysis that Citi and Tudor did, just looking at the presentation to the board, it says implied value per share under this deal for C&J stockholders $30.76 a share. Trading price right now, $32.50 a share. That's a negative premium. I don't need an expert for that.

Then, on the stretching email, we had some discussion about the stretching email. There again, the defendants -- Mr. Holmes said, well, it's another shrewd negotiation tactic to signal to the other side that you will stretch the 6.5, the multiple, from six to 6.5 to get a deal done.

Well, Mr. Holmes ignores part of the

email. It actually says, "To the extent the forecast comes down, I will increase the multiple." And what are those forecasts? Those are the forecasts, the EBITDA forecasts, that are, at least during the negotiation, used to value the company.

Your Honor, if you have a situation where you know that your best estimate as of June 18, the Citi analysis, after due diligence, after taking into account all these extra costs, after taking into account the lower run rates in April and in May, you say, okay, our best estimate is 408, and you know what, our multiple is six. Uh-oh, six times 408 is not close enough to 2.9.

You then, on your own, send an email to the other side and say, well, to the extent our forecasts come down, we'll stretch it to 6.5 to get a deal done, you are signaling to the other side where you need to go.

The email that I showed Your Honor shows that. Immediately, Mr. Restrepo, the CFO of Nabors, says 450 is the target. And that is exactly what everybody knew because Exhibit 59 also shows that internally at C&J, C&J management was also working with that same 450 target.

Now, you may still say, well, okay, you know, these things happen. Okay. Well, here's an important thing. Miss Ma, in her testimony, very clear in her testimony, she said, "Okay, I don't agree with you, plaintiff's counsel. He had authority to do what he wanted to do. If he wanted to do the 2.925, he could."

Side question, is that appropriate under Mills? I don't think so. Not if you're selling the company. But, okay, leave that to the side. She says he had authority and he could just check in with us whenever he wanted to. 2.925. Okay.

But then she says this was supposed to be dependent on the results in due diligence. Very clear. This must be borne out in due diligence. So what happens in due diligence? I have showed Your Honor, June 10th, Deloitte says there is a significant problem. NCPS is not making its earnings. It's in a downward profitability trend since 2012 because of the Marathon contract.

Mr. Comstock says "I was aware of that." What is the response? They tell Deloitte to stop working.

Now, Mr. Holmes said, well, you know,

look at Tab R in my binder and he says, well, look, there Mr. McMullen said, well, pens down, we're willing to walk away from the deal.

He was saying that to his team? He's not saying it to his team. He's saying that to the due diligence team at Deloitte. He's not saying that to the internal team at C&J. They're taking Deloitte out of the picture.

So was Deloitte ever asked to finalize its due diligence findings? No. Was the board ever provided with the presentation from the Deloitte people who were doing this due diligence? No.

The only --

THE COURT: What do I do with this? What was being acquired was not the Nabors completion business on a truly ongoing basis. It was a shell of assets into which the C&J management could be inserted.

And they were so much better at running that enterprise than what the Nabors management was, that's where the value was going to come from, and therefore, unlike most deals where you buy a business, the Nabors numbers really matter. In this instance, the Nabors numbers -- I'm not saying

they're not relevant, but they're not nearly as important as what they usually are because this is all about what can C&J do with those assets.

MR. KWAWEGEN: So, Your Honor, I know that that's what the defendants are telling you, but NCPS, this division, is not an empty shell with just a bunch of assets. It isn't. There are people there. It's a running business. It's a running division of Nabors.

And so if you are trying to value that running division, you don't just look at the assets. You look at like what are the future revenue potentials, what are the clients, what is going on in this business.

If this is a publicly-traded company, you say, okay, I have analysts covering this, I have all this other information. Here, it's much, much more opaque. And so it's much more difficult to value this. So for the defendants to say, well, you know, EBITDA was irrelevant, that's just not true.

That's not how this deal was negotiated by Comstack with Petrello. It was all about EBITDA from the very first offer letter to the very end. It was all about EBITDA. It switched from

2014 to 2015 to support a higher valuation. But that's how they valued this case. They cannot walk away from that now to say it's not convenient. That's how they valued this case.

So the bottom line is I understand that that's what they want you to believe, that this is a great opportunity for C&J, and maybe that's true. If this was a pure acquisition process, we would not be standing here. But it isn't.

As part of this structuring this deal, they also sold the control of C&J, and from that perspective, I don't think you can compare the two. I don't think you can say, well, it may be a good opportunity for C&J and its rollover directors and its management in the future, while it's not necessarily a good opportunity at all for the C&J stockholders.

THE COURT: If Mr. Comstock negotiated the best deal that he could, wouldn't that necessarily include whatever the control premium was? Because otherwise what you're telling me is there's a fair value for the business and then there's something else that has to be paid.

I understand that intellectually, but as a sales process, how do you get there?

MR. KWAWEGEN: So I think the best answer I can give you is this way. It's a totally different mindset. Mr. Comstock made it very clear, "I never considered selling this company." Mr. Stewart said, "We would never consider selling this company." It's a different mindset.

If you are, as a board or another fiduciary, if you are engaged in acquiring the assets, you will try to get those done at the best possible price for the company if you're doing your job in good faith.

But if you are selling control of the company, a whole new set of considerations come into play that you never even considered when you are buying assets, including is this really the best deal possible for shareholders, is there another bidder out there, is there -- is the stand-alone value potentially better.

So if you look at the numbers that are presented, for example, by Citi and by Tudor to the board, they have a very significant stand-alone value here, 35, $37 a share at the midpoint. And there's no consideration from the board, well, is this company better off in the next two years buying these assets,

yes or no.

And there's certainly no consideration -- what I mean to say by this mindset, there's certainly no consideration to say, well, is there something better out there because it didn't even come into the equation. And if you don't have that mindset, how can you maximize shareholder value? You're not even trying.

I guess maybe I'll try to find an analogy. If I am buying -- I am doing this somewhat on the fly, I admit, but if I am buying a significant painting for my house, I think, okay, I'm willing to buy this painting for XYZ dollars and it will make my house nicer. The calculation would be, okay, how much is it accretive to my house.

Now, if I am selling my only house, I now need to look for another house. I don't have it any more. It's a different mindset. I will be much more critical. I will be much more careful in the way I approach this. Even if the acquisition is material, it's not as material as just selling the house. It's apples and oranges. I know this is sort of garbled. I'm trying to find the best analogy.

THE COURT: It's understandable. If

nothing else, that time on the clock will justify pretty much anything.

But what I'm struggling with is trying to figure out, the board was not thoroughly deposed. There's no requirement that you do so, but that was a litigation tactic. Miss Ma's deposition is perhaps the best guidance I have at this point. And if you read it, it certainly makes more than passing reference to that which sellers would do in a single-buyer scenario.

And you can say it came in late, and I understand that, but that's also, to some extent, the consequence of your choice of who to depose and who not to depose. So I've got a record basis where Miss Ma says -- and I have no real reason to doubt her -- that they really were thinking about control and premiums and things like that.

MR. KWAWEGEN: So, Your Honor, I guess there are a couple of points. Yes, I would urge the Court to say this is late. You can't have an entire record before you, get right before a deposition, and then suddenly have all these revelations that are nowhere in the record, that are nowhere in any documents.

If you have board minutes that start with "We are buying NCPS," and then end with "We are buying NCPS," then to suddenly back into a story saying, "Well, we considered all options."

For example, Miss Ma says, "Well, we asked Citi whether there would be potential buyers out there." And what does Citi say in its fairness opinion? "We were not asked to look into potential buyers for this company."

I think you have to discredit that. Miss Ma says, "Well, you know, we considered a control premium," when Mr. Stewart was emphatic no one at the board asked about a control premium.

So I think that to be fair to the entire record, I don't think that Miss Ma's deposition testimony holds up at all.

If you look at what Mr. Stewart testified, "We did not talk about a control premium." When you then look at what Miss Ma testified, "We considered the control premium." I asked, okay, what are the control premiums, what is the control premium here? She comes up with synergies, potential revenue synergies, potential cost synergies, potential tax synergies, potential this.

There is no discussion of an immediate control premium. As I urged the Court before, having a potential, not real, you don't know, but a potential upside in a future revenue, a minority interest in a potential revenue, it's not the same as saying "I'm getting more for my shares today than they are being traded at." It's not the same.

THE COURT: We talk about a control premium, but let's talk about a standard all-cash deal. $37. I don't recall very often seeing directors say, well, you know, the business is probably worth $35 and a control premium is worth $2 or whatever percentage you want to ascribe to it.

Those conversations tend not to happen. The focus is on what's the best deal we can get. Whether it includes a control premium, consciously or not consciously, or subconsciously, doesn't make a whole lot of difference, does it?

MR. KWAWEGEN: I think it does, Your Honor, because -- this is where I started my very, very beginning of this argument with this is not a normal deal.

In a normal deal, in a cash deal, if a board is presented with a potential sale of the

company and the financial advisors say, look, the implied value of this deal is $30.76 a share, and you know what, it's trading right now at $32.50 a share, if you are selling the company, you're going to say, well, hang on a minute, are my shareholders getting $30 a share and it's actually trading at 32?

And if those same financial advisors say, you know what, if you don't sell yourself, it's worth 35 to 37. Any board in good faith would say, whoa, whoa, whoa, my shareholders are getting $30 a share while the implied value of the company is 37? What's going on here?

I'm not saying that they should go down to the dollars and cents and say, well -- but that's not the normal case, you see. The normal case you would have is to say it's trading at 32, the implied value of this deal for shareholders is 50.

THE COURT: I agree this is an unusual deal. It's not one that comes by very often. But just because it's unusual doesn't make it bad.

You can go back to the wonderful guidance that there's no specific blueprint that directors have to follow. So shouldn't somebody in my position be willing to give the directors who are

confronted with an unusual deal even greater latitude to exercise their business judgment?

MR. KWAWEGEN: Your Honor --

THE COURT: Or to pursue getting the maximum consideration for the shareholders.

MR. KWAWEGEN: I think, Your Honor, the full quote is there's no blueprint for reasonable sales process or a reasonable transaction process.

There was no sales process. There is no blueprint. There is no sales process. They thought they were buying assets. So when Miss Ma, for example, said, "Look, we asked Citi what potential interlopers there would be," I asked did you get financial advice to help you with sale side of the deal. No. No, because the board, contemporaneous evidence shows that this board was never considering selling C&J.

Mr. Comstock, the CEO and chairman, says, "I have not considered selling C&J in the last 12 months." Mr. Stewart deposed before we put in your briefs and made clear what our theory was said, "Oh, no, no, we were not selling the company. We were not out there selling the company."

So if you are talking about a

reasonable blueprint, the minimum you have as a starting point is a board that is aware that they are selling themselves. And every single case -- that's why I started off the argument saying this case is worse than Mills and Del Monte, because there the board was aware but it was misled. Here, the board was not even aware and was misled.

Now, Your Honor, there was some discussion about whether or not we had adequately indicated that there were some disclosure issues in this case. First, I think I made this point earlier, but I cannot stress it enough.

Your Honor, we are not in the business of fixing disclosure issues, okay. We come to this Court, and we come to Your Honor because we believe there is a fundamental problem with this deal, and that's the basis for our injunction request.

But we did raise disclosure issues on page 51 of our opening brief. We say, for example, the proxy does not disclose that Comstack repeatedly changed the method for valuing NCPS to support a higher valuation as NCPS continued its downward trend and profitability while missing EBITDA forecasts.

There are four bullet points. I won't

read them all to Your Honor. You can see that. But it also talks about the "stretch" email that was never disclosed to the board. It talks also about Mr. Comstock's threat to walk away from the deal if he did not get his employment agreement.

On that point, Mr. Holmes said, "Oh, that was all disclosed to the board, there was no real threat to walk away." Your Honor, if you look at Exhibit 68 that we put in, this is what Mr. Comstock says on June 25th after the board has approved the deal. "We will not be prepared to close as it currently stands. Also, I am out tomorrow and Friday, so closing then is out of the question. Unless resolved in the next hour or so it will be next week unless my board intervenes and approves without management support."

We know that that was never going to happen, Your Honor. So, yes, Mr. Comstock is threatening to blow up the deal unless he gets his employment agreement in writing.

Now, in the briefs, the defendant said, oh, you know, but look at that side agreement, that doesn't say anything. But what they forgot to say is that one of the referenced exhibits, Exhibit A,

is Mr. Comstock's employment agreement, and it has a $19.1 million deal signing bonus, including 500,000 restricted stock units that Goldman had calculated, altogether being 19.1 million.

It does include the severance protections we talked about earlier. So, yes, Mr. Comstock is threatening to blow up this deal unless he gets what he wants.

Now, just one important side note for Miss Ma. Miss Ma in her testimony said, "Well, you know, there was a problem with the weather, that's why NCPS was not meeting its forecasts."

Well, we know that Deloitte had said no, it's not the weather. It's not the weather. It's Marathon. Mr. Comstock said it's not the weather, it's Marathon. But because Deloitte's results were never presented to the board by Deloitte, Miss Ma didn't even know this. It doesn't matter how.

Two final points, Your Honor. Three.

Mr. Holmes just said, well, General Atlantic wants this deal to close because they bought some more shares. That's nowhere in the record, Your Honor. They bought some shares, but Miss Ma testified that this was because it was a good deal price now,

because the stock price of both C&J and Nabors has gone down. There's no testimony anywhere that General Atlantic is wanting this deal to close.

Mr. Holmes also speculates that there was no other bidder but -- and this is a fundamental point in our brief. We have the right, shareholders have the right, to have a board make that determination, a board that is actually considering selling the company, not Mr. Holmes or me or another lawyer. This is a board decision. That's why we believe this is ripe for an injunction.

Last point, and that's just to respond to Mr. Stone's comment that there is no real aiding and abetting here. First, he said there was no discussion about specifics with respect to Mr. Comstock's employment agreement until later.

The truth is if you promise the CEO that you will be aggressive in your employment agreements that you're going to push, you don't need much more specifics than that. You know it's going to be good. And then if you then get an email saying, look, to the extent your forecasts, which it's not a publicly traded company, your internal forecasts come down, I will stretch the multiple, and then you both

work towards a $450 million target, that, Your Honor, is conscious, and that, Your Honor, is aiding and abetting Mr. Comstock getting a deal that he wants to push through.

The final point on that is I believe I heard Mr. Stone say that there was no evidence that Nabors knew there was a $450 million target. I showed Your Honor the document where Mr. Restrepo immediately responds to the email being forwarded, the "stretch" email being forwarded saying the $450 million target. I think that shows enough.

Your Honor, unless you have any further questions.

THE COURT: I do not. Thank you.

MR. KWAWEGEN: Thank you, Your Honor, for your time.

THE COURT: Mr. Holmes.

MR. HOLMES: I will keep it extremely brief.

THE COURT: I have made that threat before and totally failed to live up to it.

MR. HOLMES: We'll see. I'll dig a bigger hole.

Number one, the notion that the board

was getting $30.76 a share is completely eviscerated by the Tudor Pickering analysis which says, on page 16, this is the June 24 analysis, that the midpoint -- the range is 28.84 to 47.08 and the middle is 37.56 for the DCF analysis of the combined company. So that's higher than the DCF analysis of the stand-alone company.

Two, Miss Ma, this notion that she somehow influenced her testimony based on the fact that the briefs had been put in. The funny thing is counsel asked her that. The very last question he asked after her testimony, she said "I haven't read the briefs."

Three, he says there are disclosures in the complaint. It's in the context of is there irreparable injury. Never once is there do they have probable success on the merits based on disclosures.

So, four, the Deloitte report. Stewart testifies, page 72, he received the Deloitte Touche report.

Four, General Atlantic, there being no evidence in the record that General Atlantic supports this transaction. The first sentence, paragraph ten of Miss Ma's affidavit. "General Atlantic, which is a

significant stockholder in C&J likewise believes that the proposed transaction is in the best interests of C&J."

That's all, Your Honor.

THE COURT: Mr. Stone.

MR. STONE: Nothing for me, Your Honor.

THE COURT: It is late, and that ought to guide me to stand down, but I think this is a case where a prompt answer will allow those who are unhappy with it to seek an appeal. I will certify an appeal because I think the issues here are very close. They are very interesting issues.

I start with the disclosure claims. They simply were not fairly presented in the plaintiff's briefing to support the application for summary judgment. I am not about to expand the scope of what I think is a fairly complicated preliminary injunction hearing at the last minute with the briefs being as they are. The disclosure claims, at least as we sit here today, have been waived.

Plaintiff, a stockholder of C&J Energy Services, brings a class action on behalf of itself and C&J's other public stockholders seeking to enjoin

a stockholder vote on a merger agreement for a period of time to allow C&J's board to explore alternative transactions.

The challenged merger was announced on June 25th of this year and would involve C&J's merging with Nabors Red Lion Limited, a subsidiary of Nabors Industries Limited. The merger would see each share of C&J common stock converted into the right to receive one common share of Red Lion. Upon consummation, C&J's shareholders will have a 47 percent interest in Red Lion. Nabors' completion and production business in the United States and Canada will be transferred to the surviving entity which will be led by C&J's management.

Four of C&J's current board members will comprise a majority of the board of the new entity, and they will have guaranteed five-year terms. I do note that at the time the merger was agreed to, the identity of the four directors, at least the non-management directors, had not been determined.

Nabors emerged as a potential partner for a combination with C&J when Citigroup approached the company's CEOs, Mr. Comstock for C&J and Mr. Petrello for Nabors, with the idea of combining

C&J and Nabors completion and production services division. At that time, C&J was a successful growing company and had been looking to grow through strategic acquisitions.

Mr. Comstock and Mr. Petrello negotiated a transaction during early 2014. Apparently, the two agreed that Nabors would receive a majority stake in Red Lion in order to achieve significant tax savings resulting from the tax inversion, which is associated with the location or registration of the new entity in Bermuda.

It was clear throughout the negotiations that Mr. Comstock and his management team would manage Red Lion. Mr. Comstock believed that he could turn around Nabors completion and production services division which he considered to be poorly run.

C&J's management began to address valuation in March. At this point, Nabors represented that its completion and production services division would have an EBITDA of perhaps 463 million in 2014 and 489 million in 2015. The projections declined over time, and Mr. Comstock did grow increasingly concerned about the division's performance.

I note that C&J's position is that it was looking at what it could do with Nabors business, not what Nabors had been doing with its business.

C&J's board deferred to Mr. Comstock to negotiate the terms of the merger. On April 4, Mr. Comstock proposed a deal which implied a $2.6 billion value. By April 14, Mr. Comstock had increased C&J's offer to 2.75 billion. Although the offers were increasing, the completion and production services division had a poor first quarter financial performance.

Despite the dismal performance, Mr. Petrello made clear that he wanted C&J to pay 2.9 billion or so. He also made clear to C&J's management that they would receive very generous employment packages as a result of the merger, although those agreements were not negotiated until a couple of months after the merger agreement was signed.

Mr. Comstock further increased his offer in late April despite the continuing problems with achieving the forecasted EBITDA. To reach a mutually satisfactory purchase price, Mr. Comstock decided to change the approach used to value the division. He and Mr. Petrello agreed to a valuation

in principle of 2.9 billion on April 30.

With the declining performance in the completion and production services division, it became clear that the 2014 EBITDA would not support that valuation. The financial projections were revised to use 2015 EBITDA. By late May, C&J's management had turned to Citi, who was advising C&J on the sale side, to provide financing for the merger, and when I say "on the sale side," I probably should say "on the deal side" because it is not my intent to put a rabbit in the hat here. Because of the resulting conflict in interest, C&J retained a second financial advisor to provide a fairness opinion.

In June, Deloitte reported on its due diligence assessment on the completion and production services division. The results had continued to decline. Deloitte concluded that the low April 2014 results continued a downward trend in profitability which was a concern for the deal value.

Mr. Comstock apparently questioned the credibility of Nabors' accounting. Exactly the scope of that skepticism is not totally clear. Despite these concerns, Mr. Comstock did use some arguably optimistic values and did increase the multiple for

EBITDA to get to a number that would support the transaction.

C&J's board approved the merger of C&J and Red Lion on June 24. Nabors will receive 53 percent of Red Lion's outstanding shares but has agreed to governance provisions limiting its exercise of control for five years. In approving the transaction, the board did not consider alternative transactions. The board did not seek out other potential buyers. The board's review of the merger process was more akin to what one would expect from a board pursuing an acquisition rather than one selling a company, but that is not necessarily fatal to the arguments that C&J makes.

The plaintiff challenges the transaction based on what it claims to have been a defective sales process. In order to earn a preliminary injunction, the plaintiff must demonstrate a reasonable probability of success on the merits, the threat of imminent irreparable harm, and that a balancing of the equities favors injunctive relief.

The defendants invoked this Court's decision of last year in Plains as the template for the deal which they structured. There are many

similarities, and those similarities are related to why Plains, where the parties did agree that Revlon applied, approached the line for what may be considered an adequate sales process, in a single-buyer effort.

The similarities include that the seller's CEO was the lead negotiator and would have a significant position in the post-merger entity. In this instance, the role of Mr. Comstock, C&J's CEO, is even more impressive.

Like here, the board in Plains did not shop the company or have a pre-agreement market check or a go-shop provision. There was no special committee. There were suggestions that the board lacked important information. The deal protections however, were modest, and in the five months after the deal was announced, no intervening offers surfaced, and that is exactly what has happened here. In five months, no intervening offers have surfaced.

This case does differ in certain ways from Plains. First, Plains was sold at approximately a 40 percent premium to the premerger announcement price. Here, there may be a modest premium, perhaps around 20 percent, but there is some disagreement as

to the extent of the deal premium.

Second, and this is the major problem that I have encountered with this case, it is not so clear that the board approached this transaction as a sale. C&J's shareholders, who, of course, own 100 percent of C&J now, will end up only owning 47 percent of the new entity. Thus, they technically no longer will have collective control. Plains was always a sale situation, and the board understood it as such, and acted with that in mind.

The C&J board did not approach this transaction as part of a sales effort. Indeed, if we go back to documents from very early on in the process, there is talk about the board unanimously approved the company's acquisition of Navy which was the name for the Nabors completion and production business.

Here, the post-merger minority status may have been driven by tax considerations. As noted, the new entity will be registered in Bermuda. That the tax law may suggest one course of conduct does not justify overlooking or minimizing basic corporate governance responsibilities. Yet, as Miss Ma's affidavit sets forth, the board did consider control

premiums and a wide range of options that might well have involved a more detailed assessment of what one would expect from a board that is in the selling process as opposed to the buying process.

Third, as I have noted, C&J's board took no steps to sell or shop the company otherwise. In order to justify not shopping the company or engaging in other techniques available to sellers, it is generally viewed as imperative that the board have impeccable knowledge of the value of the company that it is selling.

I have no doubt about the board's knowledge as to the value of C&J, but it is uncertain what its knowledge was with respect to the Nabors assets. Of course, the value of the Nabors assets is not so important here because it's what would C&J's management do with those assets. That is where the value was going to come from. But, unfortunately, I cannot sit here and say that that is impeccable knowledge within the Plains notion.

There were questions, some raised by Deloitte, about Nabors' accounting methods and the track that the EBITDA was following. In a cash transaction such as Plains, the value of the acquiring

company, assuming it can pay the merger price, is not that critical. Here, however, the C&J shareholders are trading their C&J stock for shares in a new entity owning substantial former assets of Nabors, and there simply is not the confidence in the valuation of those assets to justify the discretion that must be accorded boards if it followed the general strategy of Plains.

Fourth, another concern that should be touched upon is the independence and disinterestedness of the board. In Plains, seven out of eight directors were, beyond any question, independent and disinterested. There was no question about what may have motivated them. Only the status of the CEO could have been called into question. Here, four members of the C&J board, a majority, are guaranteed seats on the new entity's board with guaranteed terms of five years. They will also be a majority of the new board.

I am not as concerned about the conflict aspect of this as perhaps some would argue simply because continuing on with a board is not, in and of itself, disqualifying. The five-year guarantee is a unique status and it raises concern. But it certainly does not call into question the independence of the board or the disinterestedness of the board,

especially since who was going to serve on the new board was not fully determined at the time the merger agreement was entered into. Nonetheless, it is a factor that goes into determining whether or not the Plains strategy worked.

I am satisfied that there is a plausible showing of a likelihood of success on the merits as to a breach of the duty of care, and that goes to the absence of an effort to sell. This company was looking at this pretty much as a buyer would, and there simply was not the engagement that one would expect from a board in the sales process.

The Court is not suggesting any specific steps that the board needed to take, but the fundamental underpinning -- and lacking here -- is a recognition of the sales process that this transaction involved.

It is a very close call, and as I indicated, I will certify this if anyone wants to take an appeal. That brings me then to the question of whether there was irreparable injury. Perhaps the record will evolve, but as of now, it certainly looks as if the board was not conflicted, and, therefore, it is likely that any due care claim for monetary damages

would be exculpated by the Section 102(b)(7) provision.

I do not see on this record any basis for loyalty claims, although as the record is developed, that conclusion, obviously tentative now, could readily change.

I pause because it has been five months since the deal was announced and no one has come forward. The number of entities that would be interested in acquiring C&J is small, and it is impossible to believe that they do not know about the transaction. Given the relatively modest deal protection measures, one does wonder why, if the deal is as bad as the Plaintiff contends, no one has put forth another offer. It is easy to be skeptical that another buyer will emerge.

The shareholders are adequately informed, and one can ask why they should not be allowed to decide. The answer, which is not a particularly satisfying one, is simply that they are entitled to having a sales process run when their company is being sold, and I don't believe that there was a sales process as that concept is commonly understood.

As for balancing of the equities, I have touched on much of what should be considered already, but this is a transaction where it is likely that the board did not exercise due care in its sales methodology mainly because it wasn't focused on a sales process. That is why I believe that the plaintiff has prevailed on its request for a preliminary injunction. The question is what is the scope.

I am prepared to enjoin the merger for a period of 30 days from today during which time the company, and it does have directors who can do this, shall solicit interest. This is a relatively modest modification of the deal protection provisions. If nothing develops either in terms of potential buyer or in terms of an additional factual basis for further injunctive relief, the injunction will expire after the 30-day period.

I look to Del Monte for some guidance, but I have extended the period there of 20 days to 30 days here, in part because I am concerned that 20 days may not be a sufficient period, and because the impending holiday season seems to make everything take longer than what it otherwise would.

I have no sense that this deal was otherwise going to go away. If I am wrong, that's always a risk, but that is just the nature of enjoining a transaction. This is, as I have indicated, not a permanent injunction. It is for a very brief respite.

Bond must be set for a preliminary injunction. Defendants have suggested that the deal value is the appropriate metric. If they are correct on that, I doubt that we're going to see very many deals enjoined. A more modest amount can be reasonably established by looking at the termination fee. It is not likely to come into play, but at least it is a reference. One percent of the termination fee makes sense. It follows, to an extent, the approach of Del Monte. Bond will be set at $650,000. The termination fee is 65 million.

As I have indicated, there are several interesting questions here. I am perfectly willing to certify an appeal.

As for a form of order, my impression is that it would be better if counsel were first to confer about the form of the implementing order. If I must prepare one, please let me know. I would ask

that I be told of the need for me to do so by no later than close of business tomorrow.

I thank counsel. The arguments were outstanding, and an incredible amount of work went in to getting this matter ready for argument. I will also share that I have gone back and forth throughout this day as to what I would do. But I am not sure that reflecting on it any longer would let me get to a more informed answer than what I have given you.

With that, it is late. I thank you all very much for your patience. As I said, let me know about the form of order.

With that, recess court please.

(The Court adjourned at 5:50 p.m.)

CERTIFICATE

I, MAUREEN M. McCAFFERY, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 156 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Dover, this 26th day of November, 2014.

/s/Maureen M. McCaffery

Maureen M. McCaffery
Official Court Reporter
of the Chancery Court
State of Delaware