Case: Air Products and Chemicals, Inc. v. Airgas, Inc.
Interview of Kevin R. Shannon, Potter Anderson & Corroon, LLP
Interviewed by:
Paul A. Fioravanti, Jr., Prickett Jones & Elliott P.A.
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MR. FIORAVANTI: Kevin Shannon, thanks for joining us to talk about the Air Products – Airgas case from 2010.

MR. SHANNON: Happy to do it.

MR. FIORAVANTI: It was a pretty memorable time for you, I guess it was the lost – it was not just the lost summer, it was pretty much the lost year.

MR. SHANNON: Yeah, I had went for an expedited case for an extended period of time with two trials, a Supreme Court argument on a separate issue, so, it was a very busy time.

MR. FIORAVANTI: It's one of those times where the family members say remember that summer where dad was not around?

MR. SHANNON: Yes. I wish I could say it was the only summer, but it was certainly a busy, busy time.

MR. FIORAVANTI: To set the stage for the case. In late 2009, we were just coming out of the great recession. We had two gas products companies, Airgas and Air Products, both in the same general line of business, but both had different

niches. Air Products being one of the larger industrial gas suppliers as opposed to Airgas, which was more of a mom and pop type of business with a small bottled gas business supplies. But Air Products wanted to acquire Airgas because they had had some interest in the company years before. But in 2009, they decided to make a play for the company. It started out with John McGlade from Air Products approaching Peter McCausland from Airgas, offering initially a $60 all-stock offer; it was later changed to $62 stock with up to half in cash. The Airgas board rejected the offers, and ultimately Air Products decides to go public in February 2010. When was your involvement in the case? Were you involved before the lawsuit was filed in early February? Or were you advised that it's likely that there is going to be hostile litigation?

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MR. SHANNON: We, I think, were maybe contacted earlier just to make sure we didn't have conflicts, it was, you never where it's going to go. Once they went public, you can fully expect there would be litigation promptly, which is what occurred. So, I think our, substantively, once they went public, is when we would have been involved. There might have been some minimal involvement before then, but once they went public.

MR. FIORAVANTI: You had teamed up with the folks at Wachtell Lipton, the other side was Cravath, Swaine, & Moore, and Morris, Nichols, Arsht, & Tunnell – you obviously had worked with Wachtell before, and you have worked against Morris Nichols and worked against Cravath before as well. Did you expect that this was going to be long, drawn-out litigation? Did you have any anticipation of what you were going to expect? #00:02:51#

MR. SHANNON: I expected that certainly there wouldn't be an acceptance of a price around 60 or something near that. A lot of these things ultimately get resolved where the price goes up, and a deal is worked out. As you sort of pointed out at the beginning, we were coming out of the great recession at the time. I think there was a feeling that Airgas' stock was undervalued in the market. That things were turning around. it had some plans that they put a lot of work into that had suggested the value was much higher. So, I expected there would be a fight. Did I expect it would last a year with two trials, Supreme Court argument? No.

MR. FIORAVANTI: Airgas had a number of defensive mechanisms here. They had a staggered board. They had not opted out of Section 203, the anti-takeover statute. It had a poison pill, which was the subject of litigation, and then, it had a charter provision, which was a little bit like an anti-

takeover provision that required a supermajority vote in the certain circumstances where there was going to be a takeover. Air Products insisted that Airgas had taken a just say no attitude. Your view was that that wasn't the case. #00:04:16#

MR. SHANNON: No. And I think, ultimately, the record bore that out. We did not respond, or Airgas did not respond with a counter offer simply because it thought the offers at 60, 63, or 65 were simply too low and it made no sense to begin negotiations at that point. I think the communications consistently throughout the case, and certainly toward the end of the case, were clear that there was a price at which they would consider a sale, but Air Products wasn't there yet and it was later in the case, but one of Air Products' own nominees came out and made clear that Air Products was just too low to even start and suggested the price should be 78, which it was consistent with the board's view at that time.

MR. SHANNON: Early on, did you anticipate the significance or the potential significance of the case because this was one where you had a poison pill that had been deployed, plus, you have a classified board. And there had been a fair amount of commentary among the academics and practitioners about, really, the duration with which you could maintain the pill in that circumstance, particularly if there

had been one proxy contest where the potential acquirer prevailed the first time around, which happened here. #00:05:38#

MR. SHANNON: You don't – I didn't expect that it would necessarily be a case that would set law in that regard because if you think about the cases where it was addressed, whether – and I'm – a number of them mentioned in the opinion TW Services, Yucaipa, Versata, some of those coming during the litigation. They never really answered the question in full because quite often, it never got that far. Something happened and, in fact, the opinion notes that no one ever stayed long enough for two meetings or anything like that. So, the fact is that it's not that unusual to have a pill that's in place for a period of time, but for the court, ultimately, to have to make that final decision, quite often it gets resolved before that. So, it certainly teed up the issue, which was subject to a lot of commentary. Did I think the court would, at the end of the day, have to resolve that where the court had not in many other cases? No. But as it went along, it was pretty clear that both sides were pretty adamant on their positions. Airgas of the view that it was worth much more than Air Products was offering. Air Products, although suggesting it would go higher, I think made clear, it was not going to go into the range that Airgas was requiring.

MR. FIORAVANTI: Shortly after the complaint was filed, there was a stockholder action that was filed as well. It was a motion for expedited proceedings. The court did not set the case down for a preliminary injunction or highly expedited proceedings, but the court did say it was going to set the case down for trial in about six months. What was it about the discovery process that ensued that stands out in your mind – that period from approximately March to leading up to the first trial in October? #00:07:24#

MR. SHANNON: Fortunately, I blocked a lot of it out, but I did go back and look at the docket just to remind myself. And it reminded me that the docket itself was 123 pages. The discovery was fairly contentious and broad, although it wasn't as expedited as the plaintiffs originally requested, it was a fairly expedited proceeding with discovery of the directors on both sides as well as the advisors, and there were a number of different advisors. The one issue, which was a little unusual because the facts were playing out while the discovery was taking place, is that there were certain information that could not be shared with people involved in the deal aspect of it, other than litigation. So, we had a somewhat unusual order, which required that certain information, such as Airgas' plan, certain things that would provide Air Products a competitive advantage in either the

negotiations or just competing against them in business could not be shared with anyone but the litigators.

MR. FIORAVANTI: Was there also a twist on that, that it was Delaware lawyers? #00:08:40#

MR. SHANNON: There generally was. There was a concern, and it came up at one of the hearings, where originally it was framed in, as was known, litigators' eyes only and which is not common, but certainly there were other orders that we pointed to where the court had done that to address these sorts of concerns. At the hearing, one of the lawyers for Air Products raised the concern that well, he needs to talk with his deal people, so they should be able to have access to it. And that raised the concern that if the New York lawyers, who were talking to their deal people have it that as much as they would honor the order, they can't help but know things that might influence what they said. And so, at least for certain things, the view was that lawyers at both Cravath and Wachtell wouldn't have access to things. It made a bigger difference, I think, for Air Products because there was much more information of that kind for Airgas, given the nature of the litigation, than it did for Airgas as far as segregating their co-counsel.

MR. FIORAVANTI: Had you ever experienced that type of order before? #00:09:49#

MR. SHANNON: No. I mean certainly, we cited examples of it in order to get Chancellor Chandler to enter it. But I hadn't had an instance, and there were practical issues with it. I mean, for example, when I would take the depositions of Air Products' witnesses, if I was going to use any of that information, I would put it at the end, so I could share the entire deposition except for maybe the last couple pages, with everyone. And the same was true with regard to the trial. We, at points in the trial, the Chancellor allowed us to clear the courtroom except for people who were permitted to hear that. So, it had some practical constraints. I think everyone tried as much as possible not to let it interfere with efficiently proceeding, but it certainly was something I hadn't had before where we'd clear out the courtroom of counsel, not just third parties.

MR. FIORAVANTI: Would you also be clearing out directors or actual participants? #00:10:50#

MR. SHANNON: It would matter whose information you are going to use. I mean, it's not that unusual to have a hearing where stuff that is designated highly confidential, the court might seal it so third parties, the press, et cetera, can't get that. I mean, you try and limit it as much as possible, but typically a party representative was always allowed to be there for everything. But that party

representative generally had to be someone who was not involved at all with regard to the deal aspects.

MR. FIORAVANTI: That must have created some practical problems in discovery itself, right? #00:11:25#

MR. SHANNON: I think it did some, not a huge amount. Air Products' counsel may be better able to address from their side. Because Air Products did not necessarily have to produce as much as this type of information and it wasn't as relevant to the issue of whether the Airgas board was breaching its duty. It was certainly relevant, and we used it to some extent. There wasn't as much information of this type that we couldn't share among all ourselves where Airgas, there was a fair amount of highly-sensitive information that you would not want a competitor or someone who is in the process of trying to take you over to have.

MR. FIORAVANTI: So, it created more of a practical problem for the receiving party as opposed to the producing party? #00:12:12#

MR. SHANNON: Correct.

MR. FIORAVANTI: And since much of the information was from your side, it wasn't as much impractical—

MR. SHANNON: Correct. And you can see from the opinions that some of the information that we sought with regard to, for example, Air Products' strategies and their

valuations of Airgas, the court deemed really wasn't relevant and we didn't get some of that because, especially once Airgas deemed their offer to be best and final, the court said I am going to accept that. You don't really get to attest it and to test it, but I am going to, you know, they don't get to come back. This is their best and final.

MR. FIORAVANTI: Leading up to that, though, that really was an issue for you, it was apparent in some of the motion practice, or motions to compel, and your side pressed very hard to show that the various offers that had been put on the table by Air Products were not their final offer and that they were always willing to go higher. What was strategic on your trying to your putting that out? #00:13:06#

MR. SHANNON: To us, that was an extremely important issue because the question before the court wasn't one in the abstract or generally when should you pull the pill? The question was whether the Airgas board was breaching its duty by not pulling the pill in response to the offer that was currently in front of the board. People can debate how long you can keep a pill in place, but I think generally, it's viewed that one of the benefits, especially given the distinction between a tender offer and a merger, is that the pill can be used as leverage to get the best and final offer. So, if we could show, which I think largely, until we got to

$70, was undisputed, that what was on the table was not the best and final offer, then it would be very hard for the court to conclude that the board was breaching its duties by keeping it in place. In fact, the board was complying with its duties to get the best and final offer.

MR. SHANNON: I want to come back to that point and follow up in a second, but there is an interim step that we need to talk about, and that is the proxy contest that occurred. Because Air Products had put up three nominees just on the classified board as well as bylaw, a few bylaw proposals. Their nominees, all three, were elected. Mr. Clancy, Lumpkins, and Miller. The bylaw proposals were approved, including a critical one, which would have moved the annual meeting to January of every year. The annual meeting in 2010 was held in September. The bylaw provided for the meeting to be moved – the next meeting to be in January, essentially four months later. That was challenged by your side in a declaratory judgment action. The Chancellor held oral argument on the last day of trial; ruled that day, and there was an appeal to the Delaware Supreme Court, which reversed. In the interim, between the election and the Supreme Court opinion, you had a trial. And you had post-trial briefing before the Supreme Court had ruled on the appeal. That certainly must have complicated the case. #00:15:20#

MR. FIORAVANTI: It did. I am not sure that it changed the legal issue we were presenting to the court as far as what was presented at trial, which goes back to did the board breach its fiduciary duty with regard to 65.50? But from a practical perspective, if you looked and putting aside whether the Air Products nominees supported Airgas or Air Products at the time. If Air Products was to get another slate in in January, then at least their nominees would represent a majority of the board, which could, if they so desired, pull the pill. So, it had significant practical implications. And, in fact, the court, after the trial, and after the Supreme Court ruled and sent a letter to counsel raising a number of questions as to the implications of that and other aspects of evidence that was before the court.

MR. FIORAVANTI: The three Air Products nominees did not testify at trial in October, right? #00:16:24#

MR. SHANNON: Correct.

MR. FIORAVANTI: But after the trial, before the Supreme Court ruled on the bylaw, there was a letter that was sent from Airgas to Air Products saying that their latest offer was grossly inadequate and that the board unanimously believed that the price – I think the takeout price may have been $78 a share. That was shared with the Chancellor. And I think there was a motion to reopen the record. Describe for me

how that affected your litigation strategy at that point. #00:17:09#

MR. SHANNON: Well, as you pointed out, the new directors, the Air Products nominees, did not testify at the October trial. And if you think about it from a timing perspective, they only had gone on the board shortly before then. And in fact, as the opinion notes, one of those directors, Mr. Clancy, really didn't even have his orientation until after the trial. So, there was really not much they were going to add as, but after they had their orientation, after they got additional information, they supported the Airgas position, which, I think, was huge, because even though the majority of the Airgas board was independent by any measure, and Mr. McCausland being the only inside person, there's always questions as to that when you have Air Products' nominees who came on at Air Products, yes, and all supporting the view that it is inadequate, that certainly is something that should be given a lot of weight, and the court gave it a lot of weight. The letter you referenced is that – suggested the board unanimously suggested 78 would be sort of the starting point of negotiations. There was a letter after that on behalf of the three nominees suggesting that that may not have been entirely accurate. Although they had talked about 78, they had, I think the other directors, the Air Products

directors, suggested that you know, Air Products didn't have to put that on the table to start negotiations. Ultimately, what happened is that the Air Products directors wrote a letter saying that may not be accurate in trying to clarify the record. And also, reiterating their request for their own separate counsel and their own separate banker. In response, the Airgas board agreed to that. And ultimately, with their own banker and their own counsel, they came around to once again saying that they felt strongly that the Air Products offer was inadequate. In fact, Mr. Clancy, one of the Air Products nominees, was one of the probably primary champions of keeping the pill in place and reiterated that the board's position, as suggested to Mr. McGlade, that 78 would be the starting point was basically the board's unanimous position.

MR. FIORAVANTI: From a litigator's perspective, you have a very dynamic situation that is occurring after the record, presumably, had closed from trial and you had these three new directors who were certainly going to be key to the ultimate outcome of the case, indicating – or at least there was a representation that they thought $78 was the right price. They responded with a letter to get some leverage for their advisors. It almost seems like it was pretty much of a high-wire act, for lack of a better term, for a litigator to

have all of these facts changing after you have had a week of testimony. #00:20:23#

MR. SHANNON: It certainly was, and there was a question, as you pointed out, how do you get that in the record and what goes in the record? And ultimately, it became sort of a moot point because following the Supreme Court's decision and what the Chancellor pointed out was at the October trial the repeated concession by Air Products that this was not their best offer. The court invited them to say what is your best offer? And we had additional discovery and an additional hearing to address that offer, which would ultimately was $70. The Airgas board's response to that offer, at which time not only could the letters come in, but Mr. Clancy and other directors could testify.

MR. FIORAVANTI: I think it's fair to characterize the other side's position during this period as saying that the Airgas side was manufacturing a new record in order to avoid what had happened in trial in October. I think the response from your side was that's not true; if you had put your best and final offer on the table, we'd be in a different situation. Am I right? #00:21:33#

MR. SHANNON: I think we raised arguments that the issue presented in October was moot and not – and the challenge with regard to 70 was not ripe. I don't know that we

– I would say we were walking away from what happened at the October trial. I think evidence came in very well at that trial. But the point was, as I had mentioned earlier, the question isn't one that's abstract as far as when do you pull the pill. The issue that was presented at the October trial was whether the Airgas board breached its duty by maintaining the pill in place when the offer on the table was 65.50. The court noted, and the record was clear, two key facts. Air Products, both Hock and McGlade testified at the October trial that that was not Air Products' best price—

MR. FIORAVANTI: Hock being the Chief Financial Officer. #00:22:22#

MR. SHANNON: The Chief Financial Officer. And they further testified that if the court were to order the pill redeemed, that they would seek nonetheless to close at that price. So, in our view, that was the issue that was presented. And on that record, we thought that it would be extremely difficult for the court to find based on Delaware law that the Airgas board breached its duty to the extent they made an additional offer, a new offer at $70. The question then became whether the board breached its duty in response to that offer. That record was not before the court, and that's what the court ordered to the parties to go and take discovery and

supplement the record and we had an additional trial as to that $70 offer, which they represented was best and final.

MR. FIORAVANTI: To quote, essentially split the difference on the two sides of the argument. You were saying there was no need for any additional proceedings. What we did back in October is now moot. There is no need to have any trial. And what you need to wait until the record is fully developed, and factually, before there are any additional hearings. The other side said, no, you can decide based on what happened in October. And the court said I want additional testimony, additional discovery. And it was pretty extensive. #00:23:36#

MR. SHANNON: It was. I mean a number of depositions, both the directors as well as the advisors. Again, there were new advisors because, during that period of time, the Air Products directors got their own counsel – or their own advisor; Credit Suisse. So, there was a lot of discovery taken in a short period of time. A new trial at which that was all presented. So, in a way, maybe he did split the difference ultimately saying that I can rely on some stuff from the October trial, but I need to address the $70 offer and also making clear that this was Air Products' last shot. That if you're saying 70 is best and final, this is the last

application he would obtain – he would entertain with regard to it.

MR. FIORAVANTI: After the evidence came in in October, did you have a gut feeling as a litigator as to whether you felt the court would be leaning in one direction or another? #00:24:34#

MR. SHANNON: I certainly felt the court should rule in Airgas' favor, among other reasons for what I mentioned before, which is the record was clear that Air Products would pay more. And so, the only way you could potentially do that and cause them to pay more if it would otherwise close at the lower price if you pulled the pill, was to keep the pill in place until they make their best offer. And that, I think, had been recognized, if not as a very legitimate use of the pill, but one of the few avenues that a board may have in the context of a tender offer.

MR. FIORAVANTI: Fast forward to now to the supplemental hearing in January. There were some important dynamics there that you had touched on a little bit earlier. And one of them being the testimony of two of the three Air Products nominees to the Airgas board who had been elected, which based on our interview with the Chancellor, seemed to be the real turning point for him on the facts with respect to the outcome. #00:25:47#

MR. SHANNON: I would certainly say that that made a huge difference. I mean we felt that the record from October was very good as far as the Airgas board's grounds for believing the offer was inadequate. They had put a five-year plan in place that suggested strong growth going forward. They were starting to achieve those results. But having someone who Air Products put on the board who endorsed that view after, in his explanation, he really kicked the tires, tested management, he believed that the plan was extremely thorough. They were in the process of implementing SAP there, which could have a huge impact on a company like Airgas, which really grew by virtue of a lot of different acquisitions. So, having someone who was appointed as an Air Products nominee come in and endorse the view of the Airgas board that it was inadequate. And having all of the Air Products nominees endorse that view, but you know, Mr. Clancy probably the most vocal, and not only endorsing the view but exercising and stating that keeping the pill in place was very important. We also had the fact that one of Air Products' own directors said, when faced with a similar situation, he would have done the same thing. And that, all of that, I think, was part of the record in the subsequent hearing, which I think was a very compelling factual record. It is, by any measure, an uphill battle to try and keep a pill in place once the best and final

offer – a premium offer is on the table. This case, we were able to put that record together.

MR. FIORAVANTI: And you had an uphill battle in some sense because you had to prove what, I think, is referred to as substantive coercion, which is a concept that can, at times, be amorphous. But largely, what you were dealing with was an issue of can the board maintain the pill, even though the market and the stockholders have had ample time to hear the board's position on value, but that they just won't believe the board, and that the board has a better understanding of value than the market. #00:28:16#

MR. SHANNON: Correct. I mean ultimately, the threat had to be one that we argued was the substantive coercion, which you have articulated here, which is a difficult argument and the court repeatedly emphasized that Airgas' own directors stated that they had provided the stockholders with all the information they would need to evaluate, but the risk still exists. And here, the one additional dynamic is that, as a result of the litigation going on for a period of time, a significant portion of the stock was in the hands of arbs. And the view was that arbs, even if they were of the view that it was inadequate, for their own economic analysis, it didn't matter. Holding the stock for an extended period of time to realize the benefits was not the nature of how they invested.

So, you had a situation where even if stockholders, a significant percentage actually believed the board that it was undervalued, that given the nature of their positions, they would nonetheless sell. And the stock would – and the company would be sold for an inadequate price.

MR. FIORAVANTI: And I guess the flip side or the opposing side of that argument would be yes, but the stockholders who held, who sold to the arbs, believed that the 65.50 price or the $62 price was fair value. #00:29:40#

MR. SHANNON: Certainly, that argument was made, and it sort of highlights the problem even with the argument with regard to arbs if you start getting into the rationale or the economic analysis of each stockholder it becomes a very difficult analysis. And I think, ultimately, it really comes down to does the board, in this situation, have a reasonable and fully supported view that it's inadequate and shown that a threat exists in this situation. And here, although the court, I don't think was enamored with the concept of substantive coercion, it was certainly recognized in prior cases and felt that on this record, it had been established.

MR. FIORAVANTI: It also underscores the continuing debate over long-term investing versus short-termism, which is still a hot topic of debating today. Kevin, ultimately, the court ruled in favor of Airgas and maintaining the pill. And

certainly, you were pleased with the result, and your clients were obviously very pleased with the result, and ultimately, it paid out in the long run because it was several years later, the company was sold for $143 a share, I think it was, to Air Liquide. Were you surprised that Air Products did not take an appeal? Because it's clear to me from the Chancellor's opinion that he was anticipating that there would be an appeal and that he was inviting the court to respond to issues that he identified, that academics identified, and even a criticism or two from the Chancellor about the development of the law in this area. #00:31:19#

MR. SHANNON: I was surprised, and I agree with your view on his decision. I mean, he repeatedly said that as a trial judge, he is constrained by the current state of law. And that he failed to see, once best and final price had been achieved, as was here, what the purpose of maintaining the pill in place. But he pointed to a number of cases which suggested that it could still be in place and that it's not a New England town hall in which stockholders get to decide that, they elect the board who gets to decide. So, he was at one side ruling in our favor and the other questioning whether the law should not be reconsidered in that regard. So, I think all of us, I mean given the amount of resources that Air Products had devoted to it, and they clearly viewed for any

number of very good reasons, Air Products as a very attractive target. That they would continue on because I think there would be no question that the Supreme Court would accept it on a quick basis. It was a final ruling, so, you can appeal it. I think they just had determined not to proceed because not only did they not appeal, they made that decision very quickly. It was not sort of one they – over several days, so, I was of the view that they must have decided that if it doesn't go their way, they are going to walk away and without necessarily a significant analysis of the court's opinion as to their likelihood of success. Because my recollection is that very quickly after the decision came out, they announced that they were not proceeding.

MR. FIORAVANTI: Kevin, there were a number of moving parts in this litigation factually, many of them surrounding the annual meeting and the election of the Air Products nominees. Have you ever given any thought as to what the result might have been had, for example, the Air Products nominees, or Air Products said we are putting in people who are going to vote to redeem the pill because this is a fair price as opposed to what actually happened, which was nominees who Air Products proclaimed would be independent and that would exercise their fiduciary duty as to whether or not this was a fair price? #00:33:45#

MR. SHANNON: I don't know how it would have been different. I think, ultimately, the Airgas board's decision would, ultimately, have been sustained. It was a question or a tactic that a lot of people second-guessed over time because, as we talked before, the importance of the Air Products nominees supporting the Airgas board's position was, I think, critical in the case. Obviously, if they had put a number of people who were – had already committed to sell, that would not have happened. It was an interesting strategy, but not in hindsight, that surprising because if you look at the vote, I think the view was that they would have had a difficult time getting their directors elected if they were basically on the slate that we will pull the pill and facilitate the offer. And whether people truly believed that their nominees would be independent, certainly, they had more support for putting independent people on than people who had committed to pull the pill. So, although, someone might criticize after the fact making that decision and how it turned out with the nominees coming on the Airgas side, I think if they had, instead, picked people who were partisan to Air Products and committed to pulling the pill, there, I think, there is a very good question as to whether those people ever would have got elected in the first place.

MR. FIORAVANTI: Do you have a view as to what might have transpired had Air Products initially came up with a higher offer? Your side clearly made an issue of the fact that this was not their best and final, that there was much more that they were willing to offer. Have you ever thought about if they had gone to $70, say, in the spring in advance of the proxy contest, how that would have affected the dynamic? #00:35:42#

MR. SHANNON: I can't say how it would have impacted the ultimate litigation. Certainly, their appeal to the Airgas stockholders is more compelling if the number is higher. So, I think if they had gone out earlier with it, it would have further supported electing their slate. It certainly would have put more pressure on the Airgas board. But one true practical aspect of it is, as the Chancellor pointed out, by raising their price gradually over time when they thought it was necessary to stay in the game, whether to elect directors or move forward; they allowed Airgas a period of time to show improved earnings, which is what Airgas did, which further supported the argument that the price is inadequate. So, in that regard, doing it over time, I think, helped us. It certainly helped us establish the reasonableness of the board's conclusion that it was inadequate. Hopefully, convinced some stockholders that it was inadequate. Although,

as a financial strategy it makes ultimate sense to pay the least amount you can, to try and figure out that is. As a legal strategy, do I think they might have had a better chance if they came out right at the box at their highest? Sure. Do I think it would have changed the result? Not necessarily, but it would have made it a more difficult argument along the way for Airgas.

MR. FIORAVANTI: The other imponderable is what if the appeal on the bylaw had gone the other way? That is, if the Chancellor was upheld and there was a meeting in January. How do you think that would have affected the ultimate result? #00:37:31#

MR. SHANNON: The issue, and the reason why it was so hard-fought, was the view that that would give Air Products' nominees control of the board. And the theory is, if they had control of the board, that they could then pull the pill, which makes all the fights largely irrelevant. And the view was that if they pulled the pill, at whatever price was currently on the table, at that point in time, before they put best and final of 70, it was 65.50; that the deal would close at that. As a practical matter, by the time the Supreme Court ruled, the three initial nominees from Air Products had supported the Airgas position. So, as a result, even if they moved the meeting to January, if they were able to elect a

slate, whether they elected people who either again, or not only independent, or supported Air Products' position, they wouldn't then have a board with a majority of people supporting Air Products' position. So, normally, you would think that if you elect two slates and get control of the board, it's over. Here, it's just another instance where the fact that the Air Products nominees supported Airgas' position, made a huge amount of difference.

MR. FIORAVANTI: In many of these issues that we have just talked about, a lot of the facts cut in favor of Airgas, with the exception of say, the election of the three, although that righted itself from your perspective when they came out in support of maintaining the pill and saying that they thought that the value of the company was in the high seventies. #00:39:12#

MR. SHANNON: I think, ultimately, as it played out, that the board, for a host of reasons, the facts as existed, and the facts as developed along the way, provided a great amount of support for the board's conclusion. And you know, once again, some of those facts may not have existed if Air Products started out at the gate at a higher offer because it would have then presented to the court likely quicker. And so, no, I think as the facts developed, they largely developed in support of the Airgas position that the price was inadequate.

MR. FIORAVANTI: Kevin, thanks so much for your time. I appreciate it.

MR. SHANNON: Happy to do it. Thanks, Paul.

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