

In the Matter Of:  
The Catalyst Capital Group Inc. v.  
Brandon Moyse, et al.

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VOL 6  
June 13, 2016

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141 Adelaide Street West | 11<sup>th</sup> Floor  
Toronto, Ontario M5H 3L5  
1.888.525.6666 | 416.413.7755

Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

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--- This is Day 6/Volume 6 of the transcript of  
proceedings in the above matter held at the  
Superior Court of Ontario, Courtroom 8-1, 330  
University Avenue, Toronto, Ontario, on the 13th  
day of June, 2016, commencing at 9:00 a.m.

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B E F O R E:      The Honourable Justice F. Newbould

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1           REPORTED BY:   Deana Santedicola, RPR, CRR, CSR

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3  
4       A P P E A R A N C E S:

5  
6       Rocco DiPucchio, Esq.,  
7       & Andrew Winton, Esq.,           for the Plaintiff.  
8       & Brad Vermeersch, Esq.

9  
10      Robert A. Centa, Esq.,           for the Defendant,  
11      & Kris Borg-Olivier, Esq.,   Brandon Moyse.  
12      & Denise Cooney, Esq.

13  
14      Kent Thomson, Esq.,  
15      & Matthew Milne-Smith, Esq.,  
16      & Andrew Carlson, Esq.,       for the Defendant,  
17                                       West Face Capital Inc.

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I N D E X

WITNESS

PAGE

BRANDON MOYSE

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1 -- Upon commencing at 9:00 a.m.

2

3 THE COURT: Good morning.

4 MR. THOMSON: Good morning, Your  
5 Honour.

6 Two quick things. I am told that the  
7 read-in brief of West Face has now been filed on  
8 your iPad -- oh, I just fibbed. Apparently it has  
9 not been filed on your iPad, but I'm told it will  
10 be on the break, so I hope that is helpful.

11 And then one question from the parties  
12 and from our faithful court reporter. Do you want  
13 a court reporter here for the closings?

14 THE COURT: No. Unless you do, I  
15 don't.

16 MR. THOMSON: No, that is fine. So  
17 we'll attend to that on the break.

18 And subject to that, we close our case.

19 THE COURT: Thank you.

20 Mr. Centa.

21 MR. CENTA: Good morning, Your Honour.  
22 The next witness we would like to call is Brandon  
23 Moyse.

24 BRANDON MOYSE: AFFIRMED.

25 MR. CENTA: Justice Newbould, on your

1 iPad you should have a folder of documents for the  
2 examination of Mr. Moyse.

3 THE COURT: I have it.

4 MR. CENTA: It contains his trial  
5 affidavit as well as the earlier affidavits that  
6 have been filed in this proceeding.

7 THE COURT: Okay.

8 EXAMINATION IN-CHIEF BY MR. CENTA:

9 Q. Mr. Moyse, except as your evidence  
10 has been corrected from prior affidavits, do you  
11 adopt that evidence today?

12 A. I do.

13 Q. How old are you today?

14 A. 28.

15 Q. Where do you work?

16 A. I work for Stornoway Portfolio  
17 Management.

18 Q. When did you start there?

19 A. In mid-December of 2015.

20 Q. Prior to that, when did you start  
21 working at Catalyst?

22 A. I started around November 1st of  
23 2012.

24 Q. When did you stop working at  
25 Catalyst?

1                   A.     My last day in the office was May  
2     26th of 2014.

3                   Q.     When did your employment  
4     officially cease?

5                   A.     I believe it was June 22nd of  
6     2014.

7                   Q.     After leaving Catalyst, where did  
8     you work next?

9                   A.     I worked for West Face Capital.

10                  Q.     What was your first day on the  
11     job?

12                  A.     June 23rd, 2014.

13                  Q.     And if your first day on the job  
14     was June 23rd, 2014, when was your last day working  
15     in the office at West Face?

16                  THE COURT:   Well, the transcript says,  
17     and it may be a mistake but I didn't hear it, but  
18     it says you worked at Catalyst Capital starting  
19     June 23rd. I don't think that is right.

20                  BY MR. CENTA:

21                  Q.     No, your first day on the job at  
22     West Face?

23                  A.     West Face, June 23rd, 2014.

24                  Q.     And when was your last day working  
25     at West Face in the office?

1                   A.     My last day in the office was July  
2     15th of 2014.

3                   Q.     Mr. Moyse, did you ever provide in  
4     writing or verbally any confidential Catalyst  
5     information regarding Wind, Mobilicity, Catalyst  
6     regulatory strategy or its telecommunications  
7     industry strategy to any of the following people:

8                   Greg Boland?

9                   A.     No.

10                  Q.     Anthony Griffin?

11                  A.     No.

12                  Q.     Thomas Dea?

13                  A.     No.

14                  Q.     Peter Fraser?

15                  A.     No.

16                  Q.     Yu-jia Zhu?

17                  A.     No.

18                  Q.     Alex Singh?

19                  A.     No.

20                  Q.     Supriya Kapoor?

21                  A.     No.

22                  Q.     Anyone else at West Face that I  
23     have not named?

24                  A.     No.

25                  Q.     Lawrence Guffey?



1 A. No.

2 Q. Hamish Burt?

3 A. No.

4 Q. Anyone else affiliated with LG  
5 Capital Investors LLC or its special purposes  
6 investment vehicles that I have not named?

7 A. No.

8 Q. Michael Leitner?

9 A. No.

10 Q. Anyone else affiliated with  
11 Tennenbaum Capital Partners LLC that I have not  
12 named?

13 A. No.

14 Q. Did you ever provide in writing or  
15 verbally any confidential Catalyst information  
16 regarding Wind, Mobilicity, Catalyst's regulatory  
17 strategy or its telecommunications industry  
18 strategy to any of the following people: Tony  
19 Lacavera, Simon Lockie, or anyone at any of the  
20 Globalive entities?

21 A. Well, as part of the diligence  
22 process, it is possible that Catalyst exchanged  
23 information with those parties. I don't recall  
24 doing that, and subsequent to my leaving Catalyst  
25 Capital, no.

1 Q. Did you ever intentionally delete  
2 or destroy any evidence relevant to the matters at  
3 issue in this case with the intention of  
4 frustrating Catalyst's ability to pursue its case?

5 A. I did not.

6 Q. Did you ever use a software  
7 program called Secure Delete to delete any  
8 documents, files or data from your computer?

9 A. No.

10 Q. Did you ever alter, modify or  
11 tamper with the Secure Delete log that is resident  
12 on your computer?

13 A. No.

14 Q. Mr. Moyse, I would like to ask you  
15 some questions about -- in general about your job  
16 search.

17 A. Sure.

18 Q. You testified that you started  
19 work at Catalyst Capital on or about November 1st,  
20 2012?

21 A. That's right.

22 Q. What were your goals when you  
23 started working at Catalyst?

24 A. At the time, prior to my starting  
25 there, I was working in investment banking. I

1     wanted to transition from working on the call it  
2     sell side as an agent to being more of a principal.

3                 As a part of doing that, I wanted to  
4     improve my fundamental financial analysis skill-set  
5     and also get exposure to the deal-making process  
6     and the thought behind why firms do the deals they  
7     do.

8                 Q.     Having started at Catalyst on or  
9     around November 1st, 2012, when did you start  
10    looking for a new job?

11                A.     It would have been in late 2013,  
12    probably around December of 2013 is when I started  
13    to seriously think about it.

14                Q.     Why did you start looking for a  
15    new job a little over a year after you started at  
16    Catalyst?

17                A.     There's a couple of reasons.

18                One, I found that I wasn't getting at  
19    that point the learning opportunities that I had  
20    set out to achieve in the first place.

21                I found the -- secondly, I found the  
22    work environment to be somewhat oppressive.

23                Those would be the two main reasons.

24                Q.     I would like to ask you some  
25    questions about the first reason that you gave.

1 Can you describe the type of work you  
2 were doing at Catalyst between the fall of 2013 and  
3 the end of April of 2014?

4 A. Sure. My work over that period of  
5 time was focussed almost exclusively on helping  
6 with the management of two Catalyst portfolio  
7 companies, which are companies that Catalyst owned.  
8 The first was Natural Markets Food Group, and we  
9 can call that NMFG, and then the second was  
10 Advantage Rent a Car.

11 Q. And is that what you expected you  
12 would be doing at Catalyst?

13 A. I certainly expected that that  
14 would be part of the job. I was surprised by how  
15 much of my time it began to consume over such a  
16 long period of time, and I was also disappointed by  
17 the fact that even though I was involved with the  
18 management of these companies on a day-to-day  
19 basis, I had no real power or responsibility when I  
20 was on the ground with them.

21 So just as a quick example, Advantage  
22 Rent a Car had a \$127 invoice that I needed to send  
23 to Gabriel de Alba for approval. I had no power to  
24 simply say, okay, you can pay this for \$127.

25 Q. The second issue you identified is

1     what you described I believe in your testimony as  
2     an oppressive culture?

3                     A.     Yes.

4                     Q.     Please describe the working  
5     environment and why it was not satisfying?

6                     A.     There is a lot of incidents I can  
7     draw on, but just to sum it up, it was not what I  
8     would call a place that had very much common  
9     decency or respect for the individuals working  
10    there.

11                    Q.     If you would turn to tab 60 in the  
12    folder, Justice Newbould, this is document  
13    BM0004968. Mr. Moyse, do you recognize this  
14    document?

15                    A.     I do.

16                    Q.     What is it?

17                    A.     It is an email exchange between  
18    myself and my girlfriend at the time. She is my  
19    fiancee now. Just to be clear, it is not somebody  
20    else; it is my fiancée now.

21                    Q.     I'll bring that to her attention.

22                    There is an email from Ms. Richter to  
23    you in the middle of the page sent at 15:52 that  
24    says, she writes:

25                    "I think the culture of the

1 place is probably very important.

2 As Mr. Reese said, Catalyst is an  
3 oppressive environment. You'll feel  
4 lots better no matter where else you  
5 go probably."

6 And you reply:

7 "None of the other places seem  
8 oppressive. But anything is  
9 probably an improvement culturally,  
10 so I don't care a whole lot."

11 Did that accurately reflect your  
12 feelings at the time?

13 A. Yes.

14 Q. How surprised were you about the  
15 work culture that you found at Catalyst?

16 A. I knew beforehand that it had a  
17 reputation for being an intense and difficult place  
18 to work. I was surprised again by just how -- I  
19 guess how much on a daily basis it lacked the  
20 respect and common decency that I mentioned before.

21 Q. In his evidence, Mr. de Alba  
22 described the Catalyst culture as cohesive and  
23 transparent, with the goal to empower junior  
24 employees. Do you agree with that characterization  
25 of the Catalyst culture?

1 A. No, not at all.

2 Q. Mr. de Alba in his evidence said,  
3 quote:

4 "We also offer basically our  
5 younger members of the team, we  
6 pursue for them to have a career  
7 path to evolve not only promotions  
8 from associate or VP, but most  
9 likely to be able to build a career  
10 and become partners at Catalyst."

11 How accurately, Mr. Moyse, does that  
12 describe your sense of the career prospects of  
13 junior employees?

14 A. Not at all.

15 Q. When you commenced your -- when  
16 you started looking for a new job in late 2013, as  
17 you testified, to whom did you send applications?

18 A. I was in touch with a number of  
19 parties, a couple of headhunters. I sent  
20 applications directly to West Face, to a firm  
21 called Hanson Group, to Mackenzie Financial, and  
22 then I reached out to some connections I had, I  
23 remember in particular at the Canada Pension Plan,  
24 CPP.

25 Q. Leaving aside meetings with West

1 Face that we'll come back to, how many meetings or  
2 interviews did you have?

3 A. It was -- I met with people at  
4 West Face three different times.

5 Q. Leaving aside West Face, how many  
6 meetings or interviews did you have with other  
7 prospective companies?

8 A. It would be the three or four I  
9 mentioned, plus probably another two or three  
10 through headhunters.

11 Q. Other than West Face, how many job  
12 offers did you receive as part of this job search?

13 A. I voluntarily withdrew from the  
14 final round at Mackenzie, but the West Face job  
15 offer was the only one I received.

16 Q. By early May 2014, how frustrated  
17 were you with your job at Catalyst?

18 A. Very.

19 Q. If you could turn up tab 70, this  
20 is document BM0004976. Mr. Moyse, do you recognize  
21 this document?

22 A. I do.

23 Q. What is it?

24 A. It is another email exchange  
25 between myself and my now fiancée.



1 Q. On May 10th you write an email  
2 that reads:

3 "Got a bunch of work to do.  
4 Went in early so I hope to finish  
5 early afternoon. When are you home?  
6 How are you getting home? I think  
7 I'm going to quit this week. Maybe  
8 today or tomorrow."

9 At the time you wrote that message, did  
10 that fairly reflect your view?

11 A. I was giving it very serious  
12 thought, yes.

13 Q. At the time you wrote that  
14 message, did you have another job offer in hand?

15 A. I did not.

16 Q. Ms. Richter replies:

17 "Are you? I will support and  
18 be happy for you no matter what you  
19 do. Because I love you. Don't quit  
20 on Newton's birthday."

21 Do you recall why she would have said  
22 that?

23 A. I think she shares a birthday with  
24 Newton, and that was coming up that week.

25 Q. And you replied saying:

1                   "I'm just bored of what I'm  
2                   doing, and they're going to give me  
3                   shit for going on vacation because  
4                   there's too much work this week.  
5                   And there's still the West Face and  
6                   Mackenzie jobs. And other jobs I  
7                   can at least apply to. I have  
8                   enough money that I can live the way  
9                   I live now and not work for at least  
10                  a year or two."

11                  Does that fairly reflect your views on  
12                  May the 10th, 2014?

13                  A. I was hoping I could get back to  
14                  work sooner than that, but yes.

15                  Q. Mr. Moyse, I would now like to ask  
16                  you some questions about the job search that you  
17                  engaged in with West Face. When did you first meet  
18                  with West Face looking for employment?

19                  A. I first met with them in the  
20                  summer of 2012, I believe, while I was still  
21                  employed at Credit Suisse.

22                  Q. If we could call up tab 63,  
23                  please. And, Your Honour, this is the -- it is a  
24                  large bundle of material, but it also includes the  
25                  email that attaches the writing samples that we'll

1 hear about. This is tab 63, Your Honour.

2 But for now I want to focus on the  
3 first four pages of this tab. If you could turn to  
4 page 4, and scroll down just a little bit. There  
5 we go. This is an email, Mr. Moyse, from you to  
6 Mr. Dea on September 25th, 2012?

7 A. It is.

8 Q. And do you recall that email?

9 A. I do.

10 Q. And what was its purpose?

11 A. Well, I had met with Mr. Dea prior  
12 to that date. That was set up -- that meeting was  
13 facilitated by my boss at Credit Suisse, so I just  
14 wanted to let Mr. Dea know what had happened with  
15 me. I didn't want to completely close the loop. I  
16 felt that was rude to not follow up.

17 Q. Mr. Dea responds to that message  
18 in a message above, and Mr. Dea writes to you on  
19 September 25th:

20 "Hey Brandon, congratulations.

21 I agree that it will be an excellent  
22 place to learn. To be clear, I am  
23 very careful about granting either  
24 praise or red flags. So for the  
25 record, I do not have any firsthand

1                   experience with Catalyst. My  
2                   caution is based on second hand  
3                   information from professional  
4                   advisors and others who have worked  
5                   with them. The comments related to  
6                   how they were treated and what they  
7                   were like to work with."

8                   And it goes on from there to talk about  
9                   the Catalyst business.

10                  Mr. Moyse, if we turn back and go up  
11                  the email chain to the next page, 3, there is an  
12                  email from you to Mr. Dea dated December 11, 2013?

13                  A.     Yes.

14                  Q.     Do you recall that email?

15                  A.     I do.

16                  Q.     Why did you send it?

17                  A.     At that point, I had started to  
18                  think about finding new employment and I wanted to  
19                  get back in touch with people with whom I had met  
20                  before.

21                  Q.     And in this email you forward a  
22                  news article about Catalyst Capital winning the  
23                  bidding for Advantage Rent a Car?

24                  A.     That's right.

25                  Q.     Is that one of the portfolio

1 companies you referred to earlier?

2 A. Correct.

3 Q. Do you recall whether or not Mr.  
4 Dea responded to the December 11, 2013 email you  
5 sent?

6 A. I believe he did not.

7 Q. When did you reach out again?

8 A. In March of 2014.

9 Q. And is that the email we see at  
10 the top of page 3?

11 A. It is.

12 Q. And why did you reach out at this  
13 time?

14 A. By this time, I had fully decided  
15 to and had gotten my job search into call it full  
16 gear and simply wanted to be even more direct about  
17 what I was looking for.

18 Q. Why did you not mention your  
19 concerns about the Catalyst work culture in this  
20 email to Mr. Dea?

21 A. I didn't think it was necessary.  
22 The email reflects why I was interested in West  
23 Face in particular.

24 Q. There is a back-and-forth over the  
25 next page or so trying to set up a meeting. Did

1     you eventually meet with Mr. Dea?

2                     A.     I did.

3                     Q.     On what date?

4                     A.     It was March 26th of 2014.

5                     Q.     At approximately what time?

6                     A.     It was 1:30 or 1:45.

7                     Q.     Where?

8                     A.     At Aroma Coffee in the financial  
9     district.

10                    Q.     How long did the meeting last?

11                    A.     Maybe 45 minutes, maybe an hour.

12     Not more than an hour for sure.

13                    Q.     What did you and Mr. Dea talk  
14     about?

15                    A.     We spoke about why I was  
16     interested in -- why I wanted to leave Catalyst,  
17     what I was interested in doing with my career, why  
18     West Face in particular interested me, what sort of  
19     skills, what kind of my skills, my skill-set was  
20     that I could bring to West Face, and he told me a  
21     little bit about what they might need from an  
22     analyst.

23                    Q.     Did you talk about Wind?

24                    A.     No.

25                    Q.     Did you talk about the

1 telecommunications industry?

2 A. No.

3 Q. Did you talk about any specific  
4 deals or projects that you were working on at  
5 Catalyst at that time?

6 A. No.

7 Q. On page 1 of tab 63 there is an  
8 email from you to Mr. Dea on March 27th at 1:47  
9 a.m.; do you see that message?

10 A. I do.

11 Q. Do you recall sending this  
12 message?

13 A. I do.

14 Q. Your message begins:

15 "As discussed, please see  
16 attached for my CV and deal sheet,  
17 and a few investment write-ups I've  
18 done at Catalyst."

19 Stopping there, can you explain the  
20 discussion that you were referring to when you used  
21 the words "as discussed"?

22 A. Sure. At the end of our meeting,  
23 we left it that I should send him my resumé, a deal  
24 sheet that just says some of the work I did on  
25 completed deals, and then he said he wanted to see

1 writing samples that were with no confidential  
2 information.

3 Q. He asked you for writing samples  
4 with no confidential information. Did he ask you  
5 for those writing samples to reflect any particular  
6 type of writing?

7 A. No.

8 Q. What did you send to him?

9 A. I sent him these four memos that I  
10 had, that I had helped work on while I was at  
11 Catalyst.

12 Q. Did any of the memos relate to  
13 Wind?

14 A. No.

15 Q. Did any of the memos relate to  
16 Mobilicity?

17 A. No.

18 Q. Did any of the memos relate to the  
19 telecommunications industry?

20 A. No.

21 Q. How would you describe these memos  
22 today?

23 A. I would describe them as  
24 confidential, definitely proprietary to Catalyst,  
25 and my sending them was a serious, serious error in



1 judgment. I was tired; it was late at night; it  
2 was a busy day. I wanted to be responsive to his  
3 request. I should have taken more time to think  
4 about what I could do.

5 Q. How did you come to select those  
6 four writing samples?

7 A. I specifically chose these  
8 because, in my mind at the time, they were -- they  
9 represented other analyses based on completely  
10 public information, or dead, stale, inactive,  
11 inactionable ideas. It doesn't change the fact  
12 they were confidential and I shouldn't have sent  
13 them.

14 Q. When did you realize that you had  
15 made a mistake by sending these four confidential  
16 writing samples?

17 A. Shortly thereafter.

18 Q. What did you do?

19 A. I deleted this email from my email  
20 account.

21 Q. How would you describe that  
22 decision?

23 A. It was another -- it was  
24 compounding poor decisions.

25 Q. Did you tell anyone at Catalyst at

1     that time either that you had sent the memos or  
2     that you had deleted the email message?

3             A.     No, I didn't.

4             Q.     Did anyone at West Face raise with  
5     you the issue relating to you sending these memos?

6             A.     Yes, at least two different people  
7     on two different occasions did.

8             Q.     Let's take them one at a time.  
9     What was the first occasion?

10            A.     I can't remember which came first.  
11     They were within a couple of days of each other at  
12     most.

13            Q.     Who spoke to you about it?

14            A.     It was Alex Singh, the general  
15     counsel at the time, and Tom Dea.

16            Q.     Let's start with Mr. Singh. When  
17     did he speak to you?

18            A.     Sometime while I was on vacation,  
19     probably around between I would say May 20th and  
20     May 23rd.

21            Q.     What did he say?

22            A.     One, he gave me an outline of the  
23     employment agreement, but he impressed upon me that  
24     West Face takes matters of confidentiality very  
25     seriously, that I should uphold my confidentiality

1 obligations to Catalyst with the same high  
2 standard, and that they were seriously -- they were  
3 very, very concerned by the memos I had sent over.

4 Q. How would you describe the tone of  
5 that conversation?

6 A. Serious.

7 Q. You also testified that you spoke  
8 with Mr. Dea about this issue?

9 A. It was one of the things that came  
10 up when I spoke to him, yes.

11 Q. When did that conversation take  
12 place, approximately?

13 A. Around the same time. I think it  
14 was around when they had sent me the first draft of  
15 my employment agreement, so maybe about May 22nd.

16 Q. Do you recall what he said to you?

17 A. He said the same thing, that they  
18 were very concerned by that and that they take  
19 matters of confidentiality very seriously.

20 Q. How would you describe the tone of  
21 your conversation with Mr. Dea on that issue?

22 A. It was also very serious.

23 Q. Moving back in time, after you met  
24 with Mr. Dea on March the 26th, did you meet with  
25 anyone else at West Face as part of the recruitment

1 effort?

2 A. I did.

3 Q. With whom did you meet and when?

4 A. So there were two more meetings.  
5 One was with Peter Fraser, Tony Griffin and Yu-jia  
6 Zhu. Those were in the same day, three successive  
7 individual meetings. And then a couple of weeks  
8 later I met with Greg Boland.

9 Q. I want to ask you about the  
10 meetings not involving Mr. Boland first. Do you  
11 recall what day those meetings took place?

12 A. Not exactly, but it would have  
13 been -- it was mid-April, early to mid-April.

14 Q. How were the meetings organized?

15 A. It was just one-on-one meetings  
16 with each of the partners and Yu-jia.

17 Q. How long did those meetings last?

18 A. Each one was 15 to 30 minutes.

19 Q. What did you discuss?

20 A. The same topics of conversation as  
21 my first meeting with Tom Dea, so why I wanted to  
22 leave Catalyst, what I was interested in doing,  
23 what the environment at West Face was like, what --  
24 generally what type of work they do and what they  
25 might be looking for from an analyst.

1                   In the case of my meeting with Mr. Zhu,  
2                   he also gave me a hypothetical investment problem  
3                   that he wanted me to think out loud about.

4                   Q.     During those meetings with any of  
5                   those individuals, at any time did you discuss Wind  
6                   Mobile?

7                   A.     No.

8                   Q.     Did you discuss Mobilicity?

9                   A.     No.

10                  Q.     Did you discuss anything about  
11                  Catalyst's regulatory concessions that they were  
12                  seeking from the government?

13                  A.     No.

14                  Q.     You also gave evidence that you  
15                  met with Mr. Boland?

16                  A.     I did.

17                  Q.     Turn up tab 68. Do you recognize  
18                  this message?

19                  A.     Yes.

20                  Q.     What is it?

21                  A.     I'm writing a thank-you note to  
22                  Mr. Boland after meeting him and he just replies  
23                  briefly.

24                  Q.     When did you meet with Mr. Boland?

25                  A.     I believe in the morning on that

1 day, so the morning of the 28th.

2 Q. How long did that meeting last?

3 A. Less than ten minutes.

4 Q. What did you discuss?

5 A. He just wanted to know why I was  
6 leaving and what I was interested in doing.

7 Q. Did you discuss Wind Mobile?

8 A. No.

9 Q. Did you discuss Mobilicity?

10 A. No.

11 Q. Did you discuss anything about  
12 Catalyst's regulatory posture with respect to the  
13 Federal Government?

14 A. No.

15 Q. In your job search, if you turn to  
16 tab 69, there is a series of back-and-forth emails  
17 with Mr. Dea following -- I guess the chain starts  
18 at the bottom with Mr. Dea setting up the meeting  
19 with Mr. Boland.

20 Just briefly, after meeting with Mr.  
21 Boland, can you describe the contact that you had  
22 with West Face and what happened next in the job  
23 search?

24 A. There was some back and forth with  
25 Tom Dea about matters such as compensation and

1 references, and then another two -- another call it  
2 one or two weeks later I spoke on the phone with  
3 Mr. Dea and he informed me that they would like to  
4 make me an offer.

5 Q. If you could turn up tab 72, there  
6 is an email in the middle of the page from Mr. Dea  
7 to you on Friday, May 16th, 2014 at 14:54?

8 A. That's right.

9 Q. Do you recall receiving that  
10 email?

11 A. I do.

12 Q. And did you call Mr. Dea?

13 A. I did.

14 Q. What did you discuss on that call?

15 A. He just informed me again that  
16 they would like to make me an offer. I expressed  
17 my sincere thanks. And I was just starting my  
18 vacation at that point, so that was about the  
19 extent of the call.

20 Q. What day did your vacation start?

21 A. It started on Friday, May 16th; my  
22 flight was at 1:30 in the morning on the 16th.

23 Q. So where were you when you had  
24 this call?

25 A. I was in the Taipei airport on a

1 layover.

2 Q. On the call on May 16th with Mr.  
3 Dea, did you discuss Wind?

4 A. No.

5 Q. Did you discuss anything about  
6 Catalyst?

7 A. No.

8 Q. When you received the verbal offer  
9 from Mr. Dea, did you tell anyone that you had  
10 received this -- did you tell anyone at Catalyst  
11 that you had received this offer?

12 A. I did. So I -- sorry, when,  
13 before or after I spoke with -- after I spoke with  
14 Mr. Dea, yeah --

15 Q. Let me ask that question again.  
16 After you spoke with Mr. Dea, did you tell anyone  
17 at Catalyst that you had received the offer?

18 A. Yes, I spoke to Zach Michaud, who  
19 was a Vice President at Catalyst.

20 Q. If you could turn to tab 87,  
21 please. Do you recognize this message?

22 A. I do.

23 Q. It says:

24 "Hi, Zach, As discussed, let me  
25 know if you can put me in touch with



1                   your friend. Appreciate all your  
2                   help and understanding."

3                   What did you say to Mr. Michaud in the  
4                   discussion that this email references?

5                   A. Well, I called him from the  
6                   airport where I was on a layover. I let him know  
7                   that I had received a job offer from West Face and  
8                   was leaning towards accepting it.

9                   But I was also aware that he had had a  
10                  friend who had in the past worked at West Face, and  
11                  I was wondering if he could put me in touch with  
12                  his friend so I could do some diligence on whether  
13                  or not I would want to accept the job.

14                 Q. When you told him you had received  
15                 an offer from West Face and, as you said, were  
16                 leaning towards accepting it, did he say anything  
17                 to you about West Face being a competitor to  
18                 Catalyst on the Wind transaction?

19                 A. No.

20                 Q. Did he say that he had to tell  
21                 anyone else your news, did he have to tell anyone  
22                 else at Catalyst the news you had told him?

23                 A. No.

24                 Q. Did he remove you from any email  
25                 distribution chains relating to the Wind

1 transaction?

2 A. I don't think he did, given I  
3 continued to receive emails.

4 Q. If you could turn up tab 49, page  
5 2. This is an email from Zach Michaud to you on  
6 May 19th, 2014, and that is roughly three days  
7 after you told him you had received a job offer  
8 from West Face?

9 A. That's right.

10 Q. He writes to you and  
11 Mr. Creighton:

12 "Please take a look and provide  
13 me your comments by early afternoon.

14 Lorne can you please insert these  
15 into the memo where appropriate."

16 What was attached to this message?

17 A. It was an early draft of an  
18 operating model for Wind that Morgan Stanley, who  
19 was Catalyst's financial advisor at the time, had  
20 started to put together.

21 Q. And turning back to page 1 of that  
22 document, there is an email from you to  
23 Mr. Creighton and Mr. Michaud in response dated May  
24 19th?

25 A. Yes.

1 Q. Did that email contain your  
2 response to Mr. Michaud's question?

3 A. It does. It did.

4 Q. If you could turn to tab --

5 THE COURT: Sorry, which email?

6 MR. CENTA: The email I was referring  
7 to, Your Honour, is at the very top of tab 49. It  
8 is an email from Mr. Moyse dated May 19th, 8:39  
9 p.m.

10 THE COURT: All right, well, where is  
11 the question?

12 MR. CENTA: The question is over on  
13 page 2 of that tab.

14 THE COURT: Could I see it?

15 MR. CENTA: Can you call that up,  
16 please, page 2. And there is an email from  
17 Mr. Michaud on May 19th at 8:55 a.m. to Mr. Moyse  
18 and Mr. Creighton.

19 THE COURT: All right, thank you.

20 BY MR. CENTA:

21 Q. In addition to Mr. Michaud, did  
22 you tell anyone else working at Catalyst that you  
23 had received Mr. Dea's verbal offer of a job at  
24 West Face?

25 A. I told Lorne Creighton who was an

1 analyst at Catalyst as well. I actually, before  
2 leaving on my vacation, I indicated to him that I  
3 may be receiving a job offer while I was on  
4 vacation and would not be returning, or may not be  
5 returning.

6 Q. If you turn to tab 50, two-thirds  
7 of the way down the page below the redacted  
8 passage, there is an email dated May 16th, 2014 at  
9 6:20 p.m. where you write:

10 "Got an offer from West Face.  
11 Will likely send G an email over the  
12 weekend."

13 A. That's right.

14 Q. Do you see that?

15 A. Yes, I do.

16 Q. Is that how you communicated with  
17 Mr. Creighton?

18 A. It is.

19 Q. After you told him that you had  
20 received a verbal job offer from West Face that you  
21 were leaning towards accepting, did Mr. Creighton  
22 say anything to you about West Face being a  
23 competitor to Catalyst on the Wind transaction?

24 A. No.

25 Q. Did Mr. Creighton tell you that

1 Mr. Creighton felt that he had to tell anyone else  
2 at Catalyst the news you had shared?

3 A. He did not.

4 Q. When did you tell Mr. de Alba that  
5 you were resigning?

6 A. I sent him an email on I think the  
7 24th -- yeah, the 24th of May 2014.

8 Q. If you could turn to 52. At the  
9 time you sent this email to Mr. de Alba, did you  
10 have a signed employment agreement with West Face?

11 A. No.

12 Q. Did you tell him that you were  
13 going to West Face in this email?

14 A. I did not.

15 Q. Why not?

16 A. Well, one, I have always been  
17 under the assumption that it is best practices to  
18 keep resignation letters as short as possible.

19 Two, I wanted to be able to have that  
20 discussion with him in person.

21 And three, because I didn't have a  
22 signed offer at the time, I didn't want to say I  
23 was going to work somewhere that I may not, in the  
24 end, end up working.

25 Q. On May 24th, 2014, when you sent

1     this resignation email, did you know that West Face  
2     was a competitor to Catalyst on the Wind deal?

3             A.     No.

4             Q.     Did you eventually sign an  
5     employment contract with West Face?

6             A.     I did.

7             Q.     If you could turn, please, to tab  
8     76. Do you recognize this document?

9             A.     I do.

10            Q.     What is it?

11            A.     It is -- I'm not sure if this is a  
12     draft or the final, but it is my employment  
13     agreement with West Face.

14            Q.     If we flip quickly to the last  
15     page of this document, I can show you the  
16     signature.

17            A.     Yes, that is the final one.

18            Q.     Now, can we turn to page 3 of the  
19     document, please. Article 1.05(d), as in "dog",  
20     reads:

21                    "As a material inducement to  
22                    the corporation to employ the  
23                    employee, the employee represents  
24                    and warrants to the corporation  
25                    that:

1                   The employee will not use any  
2                   property in the course of the  
3                   employee's employment which is  
4                   confidential or proprietary  
5                   information of any other person,  
6                   company, group or organization."

7                   You saw that?

8                   A.     Yes.

9                   Q.     Did you comply with that term?

10                  A.     I did.

11                  Q.     When did you speak to Mr. de Alba  
12                  about the resignation email you had sent to him?

13                  A.     It was the morning of May 26th.

14                  Q.     Did you speak to anyone else at  
15                  Catalyst about your resignation that day?

16                  A.     I spoke also with Mr. Riley and I  
17                  was spoken to by Mr. Glassman.

18                  Q.     What did Mr. Glassman say to you?

19                  A.     He told me that if I left for West  
20                  Face, they would seek to enforce my employment  
21                  agreement with Catalyst.

22                  Q.     When you spoke to Mr. Riley, do  
23                  you recall approximately when that discussion took  
24                  place?

25                  A.     Yes -- well, I spoke with him a

1 couple of times, once with Mr. de Alba and Mr.  
2 Riley in the mid-morning, and then again just with  
3 Mr. Riley at 12:30, because the Monday meeting was  
4 happening concurrently.

5 Q. And what happened during the  
6 second meeting with Mr. Riley?

7 A. He had asked -- he informed me who  
8 Catalyst's counsel would be. He asked for contact  
9 information for my counsel. He reiterated that I  
10 should go home and potentially work on what he  
11 called less sensitive projects for the balance of  
12 my notice period. And that was essentially it.

13 Q. After you left that meeting with  
14 Mr. Riley, did you receive any further Catalyst  
15 confidential information about Wind?

16 A. I don't think so. It stopped very  
17 quickly, the emails.

18 Q. After that meeting with Mr. Riley,  
19 did anyone provide you with any confidential  
20 information about Catalyst's regulatory strategy or  
21 its attempts to acquire Wind after May 26th?

22 A. No.

23 Q. Before your employment ultimately  
24 ended at Catalyst, did you return items to  
25 Catalyst?



1                   A.     I returned a BlackBerry that had  
2     been issued to me by Catalyst, yes.

3                   Q.     What did you do before you  
4     returned it?

5                   A.     I wiped the BlackBerry, which  
6     means just deleting basically everything on it.

7                   Q.     And why did you do that?

8                   A.     I had used the BlackBerry for  
9     personal texts and photos and didn't just want to  
10    hand that over to Catalyst. That was also a  
11    mistake.

12                  Q.     How many email accounts were set  
13    up on that BlackBerry?

14                  A.     Just one, the Catalyst email  
15    account.

16                  Q.     In hindsight, how would you  
17    describe your decision to wipe the BlackBerry?

18                  A.     Like I said, it was a poor  
19    decision and I should have -- there was another way  
20    to handle things, I'm sure.

21                  Q.     Please turn up tab 78. This is  
22    document WFC0000050. Do you recognize it?

23                  A.     I do.

24                  Q.     What is it?

25                  A.     It is a memo from Supriya Kapoor,

1 who was the Compliance Officer at West Face,  
2 informing me and many, many people at West Face and  
3 everybody on the investment team that they have set  
4 up a confidentiality wall regarding Wind Mobile.

5 Q. Did you comply with the terms of  
6 this wall?

7 A. I did.

8 Q. Did anyone at West Face ever  
9 discuss the Wind file or the potential Wind  
10 transaction with you?

11 A. No, not at all.

12 Q. How did you learn that West Face  
13 had successfully acquired Wind?

14 A. I read about it on Twitter after  
15 it was reported in the news on, I think, September  
16 15th was the date.

17 Q. If you could turn up tab 55, this  
18 is an email from you to someone named Ben Matlin?

19 A. It is an email chain between us,  
20 yes.

21 Q. Who is Ben Matlin?

22 A. He is a friend of mine from  
23 Montreal.

24 Q. In your email at the top of the  
25 page, which was sent at 3:18 on September 16th,

1     2014, you write:

2                     "Haha - think they [...]"

3                     And "they", in that email "they" refers  
4     to West Face?

5                     A.    Yes, that's correct.

6                     Q.    "[...] think they're just  
7                     backing them financially (my guess  
8                     is they are lenders to the new  
9                     company and maybe have some equity  
10                    or warrants). Sounds like Lacavera  
11                    will probably be the largest equity  
12                    holder and majority owner."

13                    On September 16, 2014, did that  
14     accurately set out your understanding of the  
15     transaction?

16                    A.    Based on the few details that had  
17     been reported in the news, yes.

18                    Q.    How accurate was your  
19     understanding based on what had been reported in  
20     the press?

21                    A.    My understanding now is that it  
22     was not accurate at all.

23                    Q.    What day did you start at West  
24     Face?

25                    A.    June 23rd, 2014.

1 Q. If you could turn up tab 90,  
2 please. This is an email from Tony Griffin to Tony  
3 Griffin, Brandon Moyse and Pat McGuire with the  
4 subject line "Arcan" sent on June 23rd at 10:41  
5 p.m.; do you see that?

6 A. I do.

7 Q. Do you recall receiving this  
8 message?

9 A. I do.

10 Q. When did you first hear about  
11 Arcan that day?

12 A. So it was in the -- I think the  
13 early evening, definitely after market close.  
14 Arcan had announced that it was -- Arcan had  
15 announced that it was entering into a Plan of  
16 Arrangement to be bought by a company called  
17 Aspenleaf Financial.

18 Tony Griffin, who was sitting a couple  
19 of seats over from me in the big open kind of  
20 trading floor style environment at West Face, just  
21 kind of said out loud, "Arcan is doing a deal."  
22 Given the time, there were fewer people around than  
23 usual, and I started to read about what was  
24 happening.

25 Q. When Mr. Griffin said that out

1 loud after the market had closed, did he ask you to  
2 do any work on Arcan at that time?

3 A. No.

4 Q. What did you do?

5 A. Like I said, I started to read  
6 about the transaction. I started to model it out  
7 for myself with a bit of the analysis around the  
8 transaction, just in case I was called upon to do  
9 anything, given that there were fewer people at  
10 West Face than usual at the time Tony said that.

11 Q. And when was that that you started  
12 to work on Arcan?

13 A. Sometime after the deal was  
14 announced, so Monday evening.

15 Q. Do you recall whether you started  
16 work before or after you received the email from  
17 Mr. Griffin at 10:41 p.m.?

18 A. Well, I definitely started reading  
19 about the transaction to get smart on it before. I  
20 don't recall if I started my Excel file before or  
21 after. But it was around the same time.

22 Q. Did you recall at the time, that  
23 is June 23rd, after the market closed and through  
24 10:41 p.m. when you received that message, did you  
25 recall at that time that you had sent a memo on

1 Arcan to West Face as part of your employment --  
2 application for employment on March 27th?

3 A. Yeah, I remembered.

4 Q. Did you use any of the information  
5 that you learned during your time at Catalyst for  
6 the work you did on June 23rd?

7 A. No, not at all.

8 Q. Why not?

9 A. This was really a discrete  
10 situation where Arcan -- the analysis I did at  
11 Catalyst had no bearing on this Plan of  
12 Arrangement. So just to clarify a little bit,  
13 under the Plan of Arrangement, Aspenleaf was coming  
14 in with a bag of money and saying that the  
15 debenture holders in Arcan would get 82 and a half  
16 cents on the dollar for their bonds and the equity  
17 holders would get I think it says 43 cents.

18 But essentially, that shouldn't happen.  
19 The debenture holders should get paid in full  
20 before the equity gets anything. So you could  
21 simply just look at this deal in a vacuum and say  
22 it is not about the size of the pie; it is about  
23 how it should be cut.

24 Q. What happened the next day,  
25 Tuesday, June 24th?

1                   A.     At some point that day Alex Singh,  
2     the general counsel, called me into his office. He  
3     asked me what I was working on. I told him I was  
4     working on Arcan, and he told me to stop working on  
5     Arcan.

6                   Q.     Do you know why Mr. Singh called  
7     you into his office?

8                   A.     No, I don't.

9                   Q.     Did you do any more work on Arcan  
10    after you spoke to Mr. Singh?

11                  A.     No, I don't think so.

12                  Q.     Did you provide the work that you  
13    had already done on Arcan to Mr. Griffin?

14                  A.     No.

15                  Q.     I would like to ask you some  
16    questions now about what we have heard described as  
17    the Monday morning meetings at Catalyst.

18                  A.     Okay.

19                  Q.     In your time at Catalyst, how  
20    often or how frequently did the Monday morning  
21    meetings take place?

22                  A.     Sure. At first, so for the first  
23    while that I was there, they did occur almost every  
24    Monday, unless the partners were travelling, but it  
25    was call it 80 percent of the time. But that

1 started to become much less frequent in late 2013  
2 and 2014.

3 Q. Could you please describe a  
4 typical Monday morning meeting at Catalyst?

5 A. Yes. So it happened -- it  
6 involved the Catalyst investment professionals, so  
7 that would be Mr. Glassman, Mr. Riley, Mr. de Alba,  
8 whoever the vice presidents, associates, analysts  
9 were, the CFO of Catalyst, Chester Dawes, was  
10 there, and also the President of Callidus, David  
11 Reese, was attending the meeting.

12 And the first part of the meeting,  
13 which would last anywhere between call it 30  
14 minutes to an hour, would be a question and answer  
15 period between the partners and the vice presidents  
16 around macro-economic events, notable news items,  
17 political news, stuff of that nature.

18 If the meeting continued beyond that,  
19 we would discuss operating companies, so companies  
20 that were owned by Catalyst, and to a lesser extent  
21 we would discuss new deals and pipeline deals.

22 Q. In your time at Catalyst that ran  
23 from -- or during your time at Catalyst, how often  
24 did you speak at a Monday morning meeting, to the  
25 best of your recollection?



1           A.     Very few times. I can remember  
2 maybe three times off the top of my head, but it  
3 was very infrequently.

4           Q.     When you spoke very infrequently,  
5 about what did you speak?

6           A.     In one instance, I was called  
7 upon, I remember, to give an update on the status  
8 of NMFG, one of the portfolio companies.

9                 In another instance, I gave a summary  
10 of a potential investment situation relating to a  
11 real estate company in Europe.

12           Those are two I remember clearly. I'm  
13 sure there were maybe a couple more, but those are  
14 the two I remember.

15           Q.     Can you recall a specific instance  
16 when the Catalyst strategy for the Wind deal was  
17 discussed at a Monday morning meeting?

18           A.     Specifically, no.

19           Q.     Were the discussions at Monday  
20 morning meetings self-contained or did they rest on  
21 other information that was in discussion among the  
22 people at Catalyst?

23           A.     Well, the news items were  
24 certainly self-contained, but a lot of the  
25 discussion around operating companies and potential

1 or new deals seemed to be pieces of bigger  
2 conversations, so they seemed to be picking up on  
3 conversations that they had had either with  
4 external advisors or between themselves. But the  
5 general sense was that the analysts always didn't  
6 necessarily have the correct context for everything  
7 that was being discussed.

8 Q. How did that affect your ability  
9 to understand what was being discussed at the  
10 Monday morning meetings?

11 A. I mean, it was frustrating. I  
12 could certainly understand some of it, but most of  
13 it not well.

14 Q. Did you attend the Monday morning  
15 meeting on May 26th, 2014, which was the day you  
16 spoke to Mr. de Alba and Mr. Riley about your  
17 resignation?

18 A. No, I was speaking with Mr. Riley  
19 at the time separately.

20 Q. I would like to ask you some  
21 questions about your involvement in a  
22 telecommunications file at Catalyst before May 6th,  
23 2014. From your perspective, when did you become a  
24 member of the Catalyst telecommunications team?

25 A. It would have been in late

1 February or early March, after Andrew Yeh, who was  
2 the associate on the telecom file, gave his notice  
3 of resignation.

4 Q. And why were you added to the  
5 team?

6 A. They just needed somebody to  
7 replace him, but there really wasn't much work  
8 going on at the time in that file.

9 Q. From your perspective, prior to  
10 late February 2014, how much involvement did you  
11 have on Catalyst's telecommunications files?

12 A. Aside from helping grab a data  
13 point for Andrew on a couple of occasions, none.

14 Q. Prior to March 7th, 2014, and that  
15 is the -- just to help you with that date, that is  
16 the date I'm going to take you to where you  
17 prepared something called a combined pro forma.  
18 But prior to March 7th, 2014, from your  
19 perspective, did you do any analysis on any aspect  
20 of the telecommunications industry for Catalyst?

21 A. No.

22 Q. If you could turn up exhibit --  
23 sorry, tab 18, please, and if we could go to page 2  
24 of tab 18. Do you recognize this document?

25 A. I do.

1 Q. What is it?

2 A. It is a table summarizing some  
3 data for Mobilicity and Wind and what a combined  
4 entity might look like if you add them together.

5 Q. Who gave you this assignment?

6 A. I believe it was Zach Michaud.

7 Q. Do you recall what the assignment  
8 was?

9 A. Not specifically, but this table  
10 would reflect the assignment, so he told me that he  
11 wanted to see this table and I had produced it.

12 Q. To the best of your recollection,  
13 did he tell you the specific data inputs he wanted  
14 to assess the combined entity, or was that left to  
15 you to select the inputs that would produce this  
16 picture?

17 A. I am pretty sure he told me.

18 Q. To the best of your recollection,  
19 when would Mr. Michaud have assigned this to you?

20 A. Not long before I sent him this  
21 email, so probably earlier in the day on Friday the  
22 7th.

23 Q. In carrying out the assignment  
24 given to you by Mr. Michaud earlier that day, how  
25 much judgment or discretion were you exercising in

1 creating this table?

2 A. Aside from formatting, none.

3 Q. How complex is the analysis you  
4 are carrying out in this table relative to the  
5 other analysis work you were doing at Catalyst?

6 A. It was I would say  
7 uncharacteristically simple.

8 Q. Why do you say that?

9 A. Because in my experience at  
10 Catalyst, when we looked at analysis, we -- there  
11 just seemed to be no thought beyond adding "A" and  
12 "B" together here, there is no nuance to it.

13 Q. At the time Mr. Michaud gave this  
14 assignment to you, how much background in the  
15 telecommunications industry did you have?

16 A. None.

17 Q. From your perspective, how much  
18 background was required for you to complete this  
19 assignment successfully?

20 A. None.

21 Q. If you could turn up tab 27,  
22 please. This is the email that attaches a  
23 PowerPoint presentation and the PowerPoint  
24 presentation itself is found at tab 28.

25 Mr. Moyse, please describe your level

1 of knowledge of Catalyst and its regulatory  
2 strategy in relation to a potential acquisition of  
3 Wind, your level of knowledge as of March 26, 2014?

4 A. I was definitely aware that  
5 Catalyst had the desire to combine Mobilicity and  
6 Wind. Beyond that, I can't think of what else I  
7 may have known at that time.

8 Q. Who assigned you to work on the  
9 PowerPoint?

10 A. Some combination of Jim Riley,  
11 Gabriel de Alba and Zach Michaud.

12 Q. On what day did you receive this  
13 assignment?

14 A. The day -- sorry, it is the day I  
15 sent the email, so March 26th.

16 Q. And when was it to be completed?

17 A. They needed it for a meeting the  
18 next morning, so it was to be completed that day.

19 Q. You testified earlier that you met  
20 with Mr. Dea for coffee or soup for 45 minutes to  
21 an hour on March 26th starting at about 1:30 or  
22 1:45 p.m.; do you recall that?

23 A. Yes, that's right.

24 Q. Do you recall whether you received  
25 the assignment to create the PowerPoint

1 presentation before or after your meeting with Mr.  
2 Dea?

3 A. Given the pace of work, given the  
4 pace of work on the presentation and the urgency of  
5 it, I think it is very unlikely that I started  
6 working on this before the meeting with Tom Dea,  
7 because there is just no way I could have left for  
8 45 minutes to an hour while this was going on.

9 Q. In his evidence, Mr. Glassman  
10 testified as follows regarding the length of time  
11 it took to do the lead-up work on the PowerPoint  
12 presentation.

13 And, Your Honour, there is no need to  
14 turn up the transcript, but for your notes, this is  
15 found at page 320 of the transcript, starting at  
16 line 23:

17 "Question: What is your  
18 recollection as to the length of  
19 time it took to do the lead-up work  
20 that you have just described?"

21 And he is describing the lead-up work  
22 on the PowerPoint presentation.

23 "Answer: Well, that is a  
24 difficult question. All of the  
25 lead-up work would have been months,

1                   if not years, in the making. The  
2                   lead-up work, once we knew there was  
3                   going to be a meeting but probably  
4                   didn't know the date, probably would  
5                   have required weeks of work, and  
6                   then there would have been a push at  
7                   the very end to get the final  
8                   version once we knew the date and  
9                   the time and hopefully the  
10                  attendees. And I don't remember if  
11                  we knew all the attendees ahead of  
12                  time."

13                  Mr. Moyse, do you agree with Mr.  
14                  Glassman that the lead-up work probably would have  
15                  required weeks of work?

16                  A. I don't know. I'm not doubting  
17                  that there was lead-up work, but I wasn't involved  
18                  in any of that.

19                  Q. Please describe the workflow  
20                  process to generate the PowerPoint presentation?

21                  A. Sure. I remember Mr. de Alba,  
22                  Riley and Michaud working together in an office  
23                  creating slide mock-ups of exactly what the slides  
24                  should say and what it should contain, and then  
25                  usually Mr. Michaud would hand them over to me so I



1       could create those in PowerPoint.

2                   Q.     From your perspective, did you  
3       create or generate any of the content contained in  
4       the PowerPoint presentation?

5                   A.     I think there is a table or two  
6       that I created.

7                   Q.     Please turn to page 3 of the  
8       PowerPoint presentation, please.   And Mr. Moyse,  
9       from your perspective, did you generate any of the  
10      content on this slide?

11                  A.     Yes.   So the table in the middle,  
12      the left with the headline "Canadian Wireless  
13      Incumbents", I created that table, as well as  
14      the -- I think it is part of the same table, but  
15      the one below that says "Wind Canada and Mobilicity  
16      Estimates."

17                  Q.     Please turn to page 6.   Do you see  
18      any work on this page that from your perspective  
19      you generated?

20                  A.     Yeah, it looks like the same table  
21      we discussed before, the one I had made on March  
22      7th.   Maybe I think maybe a row or two has been  
23      eliminated, I don't know.

24                  Q.     Is there any other work or data or  
25      text in this PowerPoint presentation other than

1     what we have just looked at on slide 3 and slide 6  
2     that from your perspective you generated the  
3     content?

4                     A.     I don't believe so.

5                     Q.     Who generated the rest of the  
6     content?

7                     A.     The people writing the slides, so  
8     de Alba, Riley, Michaud, and I'm sure Mr. Glassman  
9     had some input at some point.

10                    Q.     How would you describe your role  
11     in the creation of the PowerPoint presentation?

12                    A.     I would say it was clerical.

13                    Q.     And is that statement excluding  
14     the two tables that you generated?

15                    A.     Yes. I mean, I had generated one  
16     of the tables beforehand. I don't know when I  
17     created the other one.

18                    Q.     Would you agree with the statement  
19     that some people have made that you led the  
20     creation of the PowerPoint presentation?

21                    A.     Other than creating a new  
22     PowerPoint file, no.

23                    Q.     What happened to the notes that  
24     the Catalyst partners and Mr. Michaud had provided  
25     to you that had the mock-ups that you described?

1 A. They were destroyed.

2 Q. Do you recall being briefed by Mr.  
3 Glassman or Mr. Riley following the meeting with  
4 the Federal Government representatives on what  
5 happened at those meetings?

6 A. Not specifically, no.

7 Q. Do you recall Mr. Glassman ever  
8 sharing with you his thoughts on the body language  
9 of the government representatives at the March 26th  
10 meeting?

11 A. No.

12 Q. Did he share with you what he  
13 thought that body language meant?

14 A. No, not that I remember.

15 Q. When did you first learn that  
16 Catalyst would be actively pursuing a transaction  
17 in Wind?

18 A. I think it was around May 6th or  
19 7th that we got an email.

20 Q. When did you leave on vacation?

21 A. On May 16th.

22 Q. So your last day in the office was  
23 May 15th?

24 A. That's correct.

25 Q. Did you work full-time on Wind

1     between May 6th and May the 15th?

2                   A.     No, I believe until the initial  
3     diligence meeting with the company on May 9th, I  
4     was travelling.

5                   Q.     Where?

6                   A.     It was in New Jersey for Advantage  
7     Rent a Car.

8                   Q.     Please describe your involvement  
9     in the Wind deal team from the time you returned  
10    from New Jersey on May 9th to the end of business  
11    on May 15th?

12                  A.     Sure. As an analyst that was  
13    focussed on the due diligence, the business due  
14    diligence specifically, and so I helped create  
15    checklists; I took notes at the meeting that we  
16    attended on May 9th; and I used basically the  
17    diligence work that we were doing at the analyst  
18    level, the business due diligence, to contribute to  
19    the investment memo that we were creating.

20                  Q.     On May 12th -- please turn up tab  
21    35. Do you recognize this email?

22                  A.     I do.

23                  Q.     What is it?

24                  A.     Well, that is an email from  
25    Gabriel to Newton, Zach Michaud and Jim Riley with

1 an updated version of the Industry Canada  
2 presentation that I had sent to Gabriel.

3 Q. How similar was the process of  
4 creating this PowerPoint to the prior PowerPoint  
5 presentation?

6 A. The process was essentially  
7 identical. We started with the hard copy of the  
8 previous presentation, but it was the same; changes  
9 were made and given to me to input or new slides  
10 were created and given to me to create.

11 Q. Do you know who had the hard copy  
12 of the original, of PowerPoint presentation number  
13 one?

14 A. I don't remember.

15 Q. Was it you?

16 A. No.

17 Q. Do you recall being briefed by Mr.  
18 Glassman or Mr. Riley on the outcome of the May  
19 12th meeting with the government?

20 A. Definitely not.

21 Q. Do you recall Mr. Glassman ever  
22 sharing with you his thoughts on the body language  
23 of the government representatives at the May 12th  
24 meeting?

25 A. No.

1 Q. I would like to ask you some  
2 questions about the preservation of documents  
3 related to this litigation. Do you recall that on  
4 June 30th, 2014, that your counsel gave an  
5 undertaking to preserve the status quo with respect  
6 to certain relevant documents?

7 A. I do.

8 Q. And do you recall that on July  
9 16th Justice Firestone issued his consent order?

10 A. I remember that.

11 Q. That order, which I don't think we  
12 need to turn up, Your Honour, but it is found at  
13 tab 81, required you to turn over your computer for  
14 forensic imaging?

15 A. Yes.

16 Q. When did you do that?

17 A. I turned it over on July 21st.

18 Q. What concerns, if any, did you  
19 have about turning over your computer?

20 A. I was concerned about what would  
21 happen to my personal information, specifically my  
22 internet browsing history.

23 Q. Why?

24 A. I had what I considered to be  
25 potentially embarrassing results in there.

1 Q. What did you decide to do, given  
2 the potentially embarrassing results in your  
3 browser history?

4 A. I decided to delete my browser  
5 history and also look into whether or not simply  
6 deleting it through the browser program would  
7 achieve the permanent deletion.

8 Q. And how did you look into that?

9 A. I did some internet searches.

10 Q. And what was your understanding  
11 based on those searches regarding how to accomplish  
12 your goal?

13 A. My understanding was that simply  
14 deleting it through the browser program would not  
15 make the history irrecoverable and that I should  
16 run a registry cleaner after doing that.

17 Q. If you could turn up tab 88,  
18 please. We are at tab 88, and I believe, Mr.  
19 Moyse, you had testified that you had decided to  
20 clean the registry?

21 A. That is correct.

22 Q. Do you recognize this document?

23 A. I do.

24 Q. What is it?

25 A. It is a receipt for my payment for

1 the registry cleaner.

2 Q. Where was this receipt delivered  
3 to?

4 A. My hotmail account.

5 Q. Where was the receipt when you  
6 turned over your computer and your email passwords  
7 to the Independent Supervising Solicitor?

8 A. Still in my hotmail account.

9 Q. What part of your hotmail account?

10 A. My inbox.

11 Q. If you turn to tab 89, do you  
12 recognize this document?

13 A. I do.

14 Q. What is it?

15 A. It is a receipt for the Advanced  
16 System Optimizer program.

17 Q. And how was this receipt delivered  
18 to you?

19 A. By email.

20 Q. And where was this email located  
21 when you turned over your computer for the forensic  
22 images to be taken?

23 A. In my inbox.

24 THE COURT: Was it in your hotmail  
25 account?



1 THE WITNESS: Yes.

2 BY MR. CENTA:

3 Q. Having purchased these pieces of  
4 software, please describe what you did on July  
5 20th, 2014?

6 A. Only July 20th I deleted my  
7 internet browsing history, I ran the registry  
8 cleaner, and I also opened Advanced System  
9 Optimizer and noodled around in it.

10 Q. On July 20th, 2014, did you use  
11 Secure Delete to delete any files or folders from  
12 your computer?

13 A. I did not.

14 Q. Did you delete or alter the Secure  
15 Delete log that is on your computer?

16 A. No.

17 Q. Did you intend to delete any  
18 Catalyst documents or Catalyst confidential  
19 information when you deleted your browser history?

20 A. No.

21 Q. Did you intend to destroy any  
22 evidence relevant to this litigation?

23 A. No.

24 Q. Did you intend to destroy any  
25 evidence in order to affect the outcome of this

1 litigation?

2 A. No.

3 Q. Also pursuant to the terms of the  
4 Firestone order, you were required to produce an  
5 affidavit of documents that were in your  
6 possession?

7 A. That's correct.

8 Q. Did you do that?

9 A. I did, a few, but I did.

10 Q. And did you locate a number of  
11 Catalyst documents on your computer?

12 A. Yes.

13 Q. How did you become aware of the  
14 existence of those documents --

15 THE COURT: You'd better just look up  
16 once in awhile.

17 MR. CENTA: I'm so sorry, Your Honour.  
18 I thought I was doing better today.

19 THE COURT: You had been, but you are  
20 starting to revert.

21 MR. CENTA: Old habits die hard.

22 THE COURT: Okay, Go ahead.

23 BY MR. CENTA:

24 Q. I think I also, because of your  
25 intervention, just lost a bet with Ms. Cooney,

1 which is unfortunate.

2 How did you become aware that there  
3 were Catalyst documents on your computer?

4 A. When I performed a closer  
5 inspection of all the files and folders on my  
6 computer, I found that the -- when I had worked on  
7 Catalyst files from home, I would email them from  
8 my Catalyst account to my hotmail account. I would  
9 then download them and work on a local copy, save  
10 that in the new folder, a Catalyst folder, and then  
11 send it back or -- yeah, send it back.

12 I remembered to delete all of those new  
13 folders that I had created where I saved the copies  
14 but forgot that the original copy of everything was  
15 saved in my downloads folder.

16 Q. Mr. Moyse, how has this proceeding  
17 affected you?

18 A. Very negatively.

19 Q. In what ways?

20 A. Well, one, I haven't been able to  
21 work for what was at the time my first choice  
22 employer. I have had to sit off -- I had to sit  
23 out work for almost a year and a half, which  
24 represents about a quarter of my career. And I  
25 mean, Catalyst was seeking for over a year to have

1 me put in jail, which was obviously very stressful.

2 Q. How has the media attention  
3 associated with this story affected you?

4 A. It has not been helpful, and  
5 actually, in my job search last year, following my  
6 departure from West Face, several firms were put  
7 off by the fact that I was involved in this.

8 Q. Who is paying your legal bills in  
9 this proceeding?

10 A. West Face is.

11 Q. Did West Face indemnify you  
12 against any damage award that may be made in this  
13 proceeding?

14 A. They did not.

15 MR. CENTA: Those are my questions,  
16 Your Honour.

17 THE COURT: Is there any questioning of  
18 this witness by you, Mr. Thomson?

19 MR. THOMSON: There is not, Your  
20 Honour, thank you.

21 THE COURT: Mr. DiPucchio?

22 MR. DiPUCCHIO: Thank you, Your Honour.

23 CROSS-EXAMINATION BY MR. DiPUCCHIO:

24 Q. Mr. Moyse, your counsel didn't ask  
25 you any questions about your educational

1 background, but I take it you'll agree with me that  
2 you have a degree from a prestigious Ivy League  
3 university?

4 A. Sure. I try not to say that, but  
5 that is --

6 Q. Well, let me flatter you at least  
7 for my first question. You do, don't you?

8 A. Yes.

9 Q. And you have a math degree; is  
10 that right?

11 A. That's right.

12 Q. I believe I have seen somewhere in  
13 this voluminous record that you scored near perfect  
14 on your SATs when you took your SATs?

15 A. That's right. You haven't seen my  
16 GPA.

17 Q. You scored near perfect on your  
18 SATs?

19 A. Yes.

20 Q. I'm going to suggest to you, you  
21 are a pretty intelligent guy?

22 A. With certain things, yes.

23 Q. You do high-level analysis for a  
24 living, financial analysis?

25 A. I do.

1 Q. You work well with computers as  
2 well, don't you?

3 A. What do you mean "work well with  
4 computers"?

5 Q. You use computers in your  
6 day-to-day work?

7 A. Yeah, limited functions, but yes.

8 Q. You understand how to operate  
9 PowerPoint, as an example?

10 A. Yes.

11 Q. And you understand what a registry  
12 is?

13 A. Not really.

14 Q. Really? You don't understand what  
15 a registry is? I thought we just heard evidence  
16 about how you cleaned your registry.

17 A. I understood from my searches that  
18 I would have to clean my registry. All I did was  
19 download a registry cleaner to do that. I don't  
20 really know what the registry is.

21 Q. We'll come back to that one.

22 You have taken an oath, by my count,  
23 approximately nine times already in this  
24 proceeding; is that right?

25 A. I'll trust you.

1                   Q.    All right.  And each time you took  
2   that oath, you acknowledged the importance of being  
3   completely honest and forthright to the Court,  
4   right?

5                   A.    I did.

6                   Q.    And certainly you weren't  
7   attempting to mislead the Court when you were  
8   swearing your oath, were you?

9                   A.    No.

10                  Q.    And is it fair to say that  
11   notwithstanding that you have taken an oath  
12   approximately nine times in this proceeding, that  
13   we have had numerous instances now where you have  
14   had to come back, after having been confronted with  
15   indisputable evidence, and admit that you were  
16   incorrect in testimony that you gave to this Court?

17                  A.    I have corrected earlier  
18   statements, yes.

19                  Q.    Earlier lies?

20                  A.    I didn't know they were not true  
21   at the time I swore them.

22                  Q.    I see.  Well, let me take you --  
23   what I want to do with you, if you don't mind, I  
24   would like to go to your very first affidavit that  
25   you swore in this proceeding, and let's take a look

1 at the story you were telling at that point to the  
2 Court. And this is at tab 2 of my  
3 cross-examination brief, Your Honour.

4 You recall this affidavit, Mr. Moyse?  
5 It is on the screen. You swore this affidavit on  
6 July 7th, 2014; correct?

7 A. Correct.

8 Q. And again, you were being  
9 completely honest and forthright to the Court when  
10 you swore this affidavit?

11 A. At the time, I believed that  
12 everything I was saying was true.

13 Q. All right. So let's look at some  
14 of the things you said in this affidavit at the  
15 time when you were doing your utmost to tell the  
16 truth.

17 And on page 2, paragraph 5, here is one  
18 of the things you said to the Court at a time when  
19 you knew that what Catalyst was seeking was an  
20 order that, "A", you would return to it  
21 confidential information in your possession, and  
22 "B", that you would be restricted from taking  
23 employment at West Face, right?

24 A. Yes.

25 Q. Okay, so let's see what you say to



1 the Court at that time in paragraph 5 when you are  
2 describing your duties as an analyst at Catalyst,  
3 and I am looking at the last two sentences where  
4 you say:

5 "I would normally review  
6 publicly available information, such  
7 as financial statements and provide  
8 analysis regarding the company's  
9 potential value to Catalyst. From  
10 time to time, I would also meet with  
11 management groups of various  
12 companies as part of my due  
13 diligence activities."

14 Right?

15 A. Yes.

16 Q. And you made a conscious decision  
17 in that paragraph to portray your duties as only  
18 requiring you to review publicly available  
19 information?

20 A. I say "normally", and that was the  
21 case, that normally I did review only publicly  
22 available information.

23 Q. And you didn't mention to the  
24 Court, when you were trying to be honest, that on  
25 many occasions you would review non-public

1 information as well?

2 A. That's right.

3 Q. You neglected to mention that?

4 A. I think there is some discussion  
5 later on about the types of non-public information  
6 I was exposed to.

7 Q. I don't care about discussions  
8 later on. I'm saying when you are swearing an  
9 affidavit to the Court where you know the issue is  
10 confidential information, what you try to do right  
11 up front is portray to the Court that you review  
12 publicly available information?

13 A. That is what it says.

14 Q. And in fact, this was such a  
15 glaring lie, I'm going to suggest to you, that you  
16 felt it necessary to correct your statement in your  
17 trial affidavit? Do you remember doing that?

18 A. I did correct the statement, yes.

19 Q. Yeah, you corrected that  
20 statement, didn't you?

21 A. I believe so.

22 Q. Because it was a lie?

23 THE COURT: Well, where are you looking  
24 at now?

25 MR. DiPUCCHIO: Okay, I'm going to take

1     you, Your Honour, to his trial affidavit.

2                     THE COURT:   And may I remind you there  
3     is no jury here.

4                     MR. DiPUCCHIO:   No, I understand, Your  
5     Honour.

6                     THE COURT:   Well, I'm not sure.

7                     MR. DiPUCCHIO:   It is  
8     cross-examination, Your Honour.

9                     THE COURT:   I understand that.

10                    BY MR. DiPUCCHIO:

11                    Q.    So if you go to your affidavit,  
12     trial affidavit, rather, it is at tab 1, Your  
13     Honour, of my cross-examination brief if you want  
14     to find the most convenient reference to it.

15                    And if you go to paragraph 15 of what  
16     you swore at trial now, so now this is the same  
17     paragraph that we saw in your affidavit of June the  
18     7th -- or July the 7th, rather, of 2014, but on  
19     this one you say:

20                                "I would normally review  
21                                publicly available information such  
22                                as financial statements and analyze  
23                                the company's potential value to  
24                                Catalyst."

25                    And then you say, and this is the new

1 part just down on the next page:

2 "From time to time, I would  
3 also review information provided to  
4 Catalyst pursuant to non-disclosure  
5 agreements [...]"

6 Do you see that?

7 A. I do.

8 Q. That is a new addition to your  
9 affidavit evidence now?

10 A. It is.

11 Q. And that was just as true back in  
12 July 2014 as it is today?

13 A. Yes.

14 Q. So now if we can go back to where  
15 I was, Your Honour, which is his July 7th, 2014  
16 affidavit, let's go through some of the other  
17 statements you made to the Court in that affidavit.

18 Let's go down now to paragraph 10. So  
19 the first thing you do here in paragraph 10, Mr.  
20 Moyse, is you reveal to the public at large that  
21 Catalyst was actively involved in the pursuit of  
22 Wind Mobile?

23 A. Correct.

24 Q. And you did that even though you  
25 understood both in the written communications

1 between counsel that pre-dated this affidavit and  
2 in fact in Mr. Riley's affidavit that great pains  
3 were being taken at that time to not publicly  
4 disclose the identity of the telecommunications  
5 company, right?

6 A. Yes.

7 Q. But in your judgment, in paragraph  
8 10 it was appropriate for you to reveal to the  
9 public at large that Catalyst was pursuing,  
10 actively pursuing Wind Mobile at that time?

11 A. I remember it being some topic of  
12 discussion with my counsel about whether -- about  
13 how we should put this information in.

14 Q. All right, I don't want to get  
15 into discussions with your counsel. The fact of  
16 the matter is you publicly stated it in your  
17 affidavit?

18 A. Yes.

19 Q. And not only did you publicly  
20 state it, but you then went on to make a point of  
21 saying in paragraph 10 that contrary to Mr. Riley's  
22 assertion that the opportunity was highly  
23 confidential, it is well-known in the industry that  
24 Catalyst is interested in purchasing Wind Mobile?

25 A. I say that.

1 Q. So therefore, there was absolutely  
2 no, I guess, feeling on your part that you should  
3 retain that information confidentially?

4 A. Well, again, it was --

5 THE COURT: Well, what he has done is  
6 he has put two newspaper articles in.

7 BY MR. DiPUCCHIO:

8 Q. Well, no, Your Honour, but there  
9 is a distinction, in my respectful submission, in  
10 the newspaper articles which indicated an interest  
11 in pursuing Wind Mobile and in your affidavit in  
12 which you categorically state that Catalyst was in  
13 the process of pursuing Wind Mobile; correct?

14 A. I state that, yes.

15 Q. Okay. And then you say in  
16 paragraph 11:

17 "In response to the allegations  
18 at paragraph 30 of Mr. Riley's  
19 affidavit, while I had been working  
20 on the Wind Mobile file prior to  
21 giving my notice of resignation, I  
22 was privy to very little, if any,  
23 confidential information about the  
24 transaction [...]"  
25 Right?

1 A. That's right.

2 Q. And that is false?

3 A. Having seen all of the productions  
4 now, yes, I was privy to much more confidential  
5 information.

6 Q. Well, are you trying to tell us  
7 that mere weeks after you left Catalyst -- this is,  
8 what, approximately two weeks after you left  
9 Catalyst?

10 A. Well, a month and a half after I  
11 stopped working there, but sure.

12 Q. Okay, but approximately two weeks  
13 after you ceased working at Catalyst, right?

14 A. Yes.

15 Q. Two weeks after you cease working  
16 at Catalyst, you have no recollection that you  
17 reviewed a huge amount of confidential information  
18 in relation to Wind?

19 A. I remember going through the data  
20 room and contributing to the diligence lists, but I  
21 don't -- I didn't really remember anything else.

22 Q. You didn't remember receiving an  
23 offer?

24 A. Sorry?

25 Q. A draft offer?

1 A. No.

2 Q. You didn't remember that?

3 A. No.

4 Q. You didn't remember looking at an  
5 operating model for Wind?

6 A. I do remember that, and that was  
7 part of the analysis, I would say.

8 Q. You didn't remember doing your  
9 analysis that we looked at in March, the one in  
10 relation to the combination of Wind and Mobilicity?  
11 You didn't remember doing that?

12 A. Not at all.

13 Q. You didn't remember working on the  
14 regulatory presentations?

15 A. I had mentioned the regulatory  
16 presentations here in the next -- well, in one of  
17 the next paragraphs.

18 Q. Where is that? Can you show me  
19 that?

20 A. Can I have a second to --

21 Q. Sure.

22 A. Keep scrolling down, please.

23 (Witness reviews document.)

24 Keep going. Keep going.

25 (Witness reviews document.)



1 Q. Take your time to read it, Mr.  
2 Moyse, and tell me where you refer to the  
3 regulatory presentation.

4 A. I could be wrong. I thought I  
5 did, but if it is not in there, it is --

6 Q. So you didn't refer to the  
7 regulatory presentations in this one?

8 A. I don't think I have had a chance  
9 to go through it fully.

10 Q. You haven't had a chance to review  
11 this affidavit fully?

12 A. I just want to double-check.

13 Q. Well, go ahead, read it.

14 A. Keep scrolling, please, or sorry,  
15 whoever is in charge of doing this.

16 (Witness reviews document.)

17 MS. COONEY: I would refer you to  
18 paragraph 12.

19 BY MR. DiPUCCHIO:

20 Q. 12? Okay. Is this the paragraph  
21 you are referring to?

22 A. That is correct, and I did correct  
23 that the presentation did not solely relate to  
24 Mobilicity, and my recollection was wrong.

25 Q. All right, so let's back up one

1 second. You didn't reveal to the Court that you  
2 had done any regulatory presentations in relation  
3 to Wind, did you?

4 A. I did not. I didn't remember  
5 that.

6 Q. Right. What you were telling the  
7 Court back in July of 2014 is that you had done a  
8 regulatory presentation in relation to Mobilicity,  
9 right?

10 A. That is what I had remembered.

11 Q. Right. So you were telling the  
12 Court back in July of 2014, don't worry about Wind;  
13 there is no concern about Wind; I did some  
14 regulatory work in relation to Mobilicity, not  
15 Wind?

16 A. That is what I remembered, yes.

17 Q. All right, and that was false?

18 A. Having seen them now, that was  
19 incorrect.

20 Q. And I suggest to you, Mr. Moyse,  
21 the reason you were suggesting that the  
22 presentation was in relation to Mobilicity and you  
23 felt safe saying that to the Court is because you  
24 didn't think anybody would be able to challenge you  
25 on that because you thought everything had been

1 destroyed in relation to that presentation?

2 A. No, I disagree. I knew that I  
3 destroyed the soft copies, but I assumed the  
4 partners still had hard copies.

5 Q. And even when you describe the  
6 Mobilicity, what you say was the Mobilicity  
7 regulatory presentation, all you say in relation to  
8 that is that you were simply updating three or four  
9 charts in the presentation using publicly available  
10 information?

11 MR. CENTA: Could you read the whole  
12 sentence to him, please?

13 BY MR. DiPUCCHIO:

14 Q. It says:  
15 "[...] on two occasions  
16 updating 3-4 charts in the  
17 presentation using publicly  
18 available information."

19 A. Well, I say that I typed their  
20 handwritten notes and did that.

21 Q. Yes, but I'm saying that is what  
22 you were saying. You were trying to convince the  
23 Court that all you were doing in relation to this  
24 presentation was transposing publicly --

25 THE COURT: That is not what the

1 sentence says.

2 MR. DiPUCCHIO: He is saying he updated  
3 three to four charts in the --

4 THE COURT: But he said more than that  
5 in the sentence. If you are going to be fair to  
6 him, read the whole sentence.

7 BY MR. DiPUCCHIO:

8 Q. Yes, he says:

9 "I fulfilled a purely clerical  
10 or administrative role typing Mr.  
11 Riley, Mr. de Alba, and  
12 Mr. Michaud's handwritten notes into  
13 a PowerPoint presentation [...]"  
14 I get that, Your Honour.

15 What I am suggesting is you were trying  
16 to make it appear to the Court that that  
17 presentation was really only based on publicly  
18 available information?

19 A. No, I don't -- that is not the  
20 impression I was trying to convey. The charts were  
21 that I remembered; the handwritten notes, I don't  
22 think that is what I am trying to say.

23 Q. And in relation -- going back to  
24 paragraph 11, which is where we were originally,  
25 you say that in relation to Wind that your role was

1 minor. Do you see this now in the first part of  
2 that paragraph, that you played a minor role  
3 essentially limited to contributing to a memo?

4 A. I see that.

5 Q. And that wasn't true?

6 A. My -- I believe that everything I  
7 did, so the diligence was for the purpose of  
8 contributing to the memo.

9 Q. So you classified the work that  
10 you performed in relation to Wind as being a minor  
11 role essentially limited to contributing to one  
12 memo?

13 A. Correct. All -- I agree that  
14 there was a diligence process and I helped with  
15 many diligence checklists and created many charts,  
16 but that was all for the purpose of creating this  
17 memo.

18 Q. And you did nothing else?

19 A. Specifically on Wind, not that I  
20 remember.

21 Q. And then let's look at what else  
22 you said in your first affidavit. If you go to  
23 paragraph 36, in that paragraph you say:

24 "It is noteworthy that neither  
25 Mr. Riley nor Mr. Musters [...]"

1                   And Mr. Musters was the forensic expert  
2                   that had been retained by Catalyst, right?

3                   A.     Right.

4                   Q.     You say:

5                             "It is noteworthy that neither  
6                   Mr. Riley nor Mr. Musters provide  
7                   any actual evidence that I  
8                   transferred any information,  
9                   confidential or otherwise, from  
10                  Catalyst's servers to my DropBox or  
11                  Box accounts or other personal  
12                  devices. Instead, Mr. Riley and  
13                  Mr. Musters rely solely on  
14                  unsupported speculation and  
15                  innuendo."

16                  Right?

17                  A.     That is what it says.

18                  Q.     And the reason you were saying  
19                  that was you were trying to point out to the Court  
20                  that, look, there has been no evidence presented  
21                  against me that I actually copied anything to my  
22                  DropBox account that was confidential to Catalyst,  
23                  right?

24                  A.     That is what it says.

25                  Q.     And as it turns out, that

1 statement was also wrong? In other words -- well,  
2 your statement may not have been wrong in the sense  
3 that you were making a statement as to what  
4 evidence Catalyst had, but you were, in my  
5 suggestion to you, Mr. Moyse, you were misleading  
6 the Court because in fact there was information  
7 that you had transferred via DropBox to your  
8 personal computer?

9 A. I did transfer information to  
10 DropBox, yes.

11 Q. Right. So rather than telling the  
12 Court that, what you did was you suggested to the  
13 Court that Mr. Riley and Mr. Musters were relying  
14 purely on unsupported speculation and innuendo?

15 A. Well, I do say that I transferred  
16 at the very least the Stelco files to my DropBox.

17 Q. Well, there was a heck of a lot  
18 more than just the Stelco files that were on your  
19 personal computer, right?

20 A. Right, and I deleted -- I believe  
21 that I deleted all of those prior to leaving  
22 Catalyst.

23 Q. Right.

24 A. And my understanding was that this  
25 was being call it positioned in a way to make the

1 activity seem nefarious, when in fact I was using  
2 it for work purposes.

3 Q. Well, no, you go further than that  
4 in paragraph 36. You are accusing Mr. Riley and  
5 Mr. Masters of relying on unsupported speculation  
6 and innuendo in a circumstance where we later find  
7 out that there is 850-some-odd documents belonging  
8 to Catalyst that are on your personal computer?

9 A. And at the time, I had no idea  
10 they were there.

11 Q. So prior to making that statement  
12 in paragraph 36, you made no efforts to try to  
13 figure out what in fact you may have had on your  
14 computer before accusing Mr. Riley and Mr. Masters  
15 of unsupported speculation and innuendo?

16 A. Well, I said before that my  
17 practice was to save the work I was doing on my  
18 local computer in a new folder, and I know that I  
19 had deleted all those folders prior to leaving  
20 Catalyst, so I just didn't think about the copies  
21 that were retained in the downloads folder.

22 Q. You didn't think of them at all  
23 prior to making that accusation?

24 A. No.

25 Q. And you do it again at paragraph



1 38 in this affidavit. Rather than making a  
2 statement to the Court that I do not have any  
3 Catalyst confidential information on my computer,  
4 what you say instead in this paragraph again is Mr.  
5 Riley has provided no evidence that I have used my  
6 personal DropBox account to store Catalyst files,  
7 right? Again, it is a no-evidence statement by  
8 you?

9 A. That is what it says.

10 Q. And again, you made that statement  
11 before even checking your computer in order to make  
12 sure that you were confident that you hadn't taken  
13 Catalyst confidential information with you?

14 A. Again, I checked where I knew that  
15 I had kept the files. I couldn't check where I  
16 didn't know I had kept the files.

17 THE COURT: Is this a convenient time  
18 for the morning break?

19 MR. DiPUCCHIO: It would be, Your  
20 Honour.

21 -- RECESSED AT 11:00 A.M.

22 -- RESUMED AT 11:25 A.M.

23 THE COURT: Mr. DiPucchio.

24 BY MR. DiPUCCHIO:

25 Q. Thank you, Your Honour.

1                   We were looking at Mr. Moyse's initial  
2 affidavit, Your Honour, at tab 2 of my  
3 cross-examination brief.

4                   Mr. Moyse, can I take you to paragraph  
5 48 of that affidavit, just to look at some of the  
6 other statements you made to the Court back in July  
7 of 2014. Here you talk about having reviewed the  
8 Stelco documents prior to your departure from  
9 Catalyst, right?

10                  A. Yes.

11                  Q. And you say to the Court that you  
12 were doing so simply out of personal curiosity and  
13 to learn more about the transaction, right?

14                  A. Right.

15                  Q. And I think what you said, either  
16 in this affidavit or in some other affidavit, is  
17 that you would frequently as a learning experience  
18 access unrelated files to what you were doing at  
19 Catalyst in order to sort of learn a little bit  
20 about how deals were structured and what kind of  
21 opportunities were being pursued, et cetera, et  
22 cetera?

23                  A. Typically, I would look at past  
24 deals, not other in-progress deals, but yes.

25                  Q. For that purpose, though?

1 A. Yes.

2 Q. To learn more about how deals were  
3 being structured and about what kinds of  
4 opportunities had been pursued, how they were being  
5 analyzed, that kind of thing?

6 A. Yeah, how they had been analyzed,  
7 but yes.

8 Q. And in relation to Stelco  
9 specifically, what you say at the bottom is:

10 "While I do admit transferring  
11 one Stelco file to DropBox to read  
12 at home, I deleted the file after  
13 reading it and did not provide the  
14 information to West Face or any  
15 other parties."

16 And as it turns out, that statement as  
17 well is incorrect, right, because we know now that  
18 it was more than one Stelco file that was on your  
19 computer?

20 A. That is what I had remembered, but  
21 if there were more, then there were more.

22 Q. So do you acknowledge now that  
23 that statement was also incorrect?

24 A. Yes.

25 Q. And then if we go to paragraph 56,

1 and this is in the context of your discussion of  
2 telecom files, you say this in paragraph 56 in July  
3 of 2014:

4 "As mentioned above, as a  
5 low-level employee, I was not privy  
6 to any internal discussions about  
7 the strategy behind Catalyst's  
8 potential acquisition of Wind Mobile  
9 or how Catalyst planned to structure  
10 a potential deal."

11 And just stopping there, do you  
12 acknowledge today that that statement is incorrect?

13 A. I don't remember specific  
14 discussions around either of those, but I probably  
15 was a part of some.

16 Q. Well, probably or you were, now  
17 that you have been confronted with all of the  
18 evidence in this case?

19 A. I certainly was part of some  
20 discussions, yes.

21 Q. Okay. And not only were you part  
22 of at least some discussions which you now  
23 acknowledge, I put it to you that you were aware of  
24 the strategy behind Catalyst's potential  
25 acquisition of Wind and you were aware of details

1 as to how it planned to structure the deal; do you  
2 acknowledge that today?

3 A. In terms of the strategy, again, I  
4 know that they had wanted to combine it with  
5 Mobilicity. I didn't remember at the time any of  
6 the details of the PowerPoints, given how frantic  
7 the pace of work was. And in terms of structuring,  
8 I'm still not sure I really knew anything about  
9 that.

10 Q. Well, we'll come to an email that  
11 you send in late May --

12 A. Sure.

13 Q. -- about your understanding as to  
14 how the deal was going to be structured. Do you  
15 remember the email I'm referring to?

16 A. Yes, I do.

17 Q. We'll come to it later. Right?

18 A. Yeah, I remember it.

19 Q. Your counsel took you to it this  
20 morning where you talk about the 300 million  
21 dollars and how it was going to be structured,  
22 right?

23 A. Sure. I mean, that is one aspect,  
24 but sure.

25 Q. No, but my only point to you, Mr.

1 Moyse, is that when you were testifying in July of  
2 2014 that you were not privy to any internal  
3 discussions about the strategy or how Catalyst  
4 planned to structure a potential deal, we can all  
5 agree now, with the benefit of the evidence that  
6 has been produced in this case, that that was  
7 wrong?

8 A. Yeah, partially wrong, yes.

9 Q. And then if you go to paragraph 62  
10 and on, this is where you were discussing in your  
11 original affidavit the investment research memos,  
12 the investment memos that you sent along to West  
13 Face as part of the interview process; do you  
14 remember that --

15 A. I do.

16 Q. -- in this original affidavit?  
17 And at that time, i.e., July of 2014 when you swore  
18 this affidavit, you believed that there was no  
19 record of what you had sent to West Face, right?

20 A. I didn't believe I had a record.  
21 I had no idea what West Face had.

22 Q. Right, but you believed that there  
23 was no record of what had been sent to West Face?

24 A. I assumed that they had retained  
25 all of their emails.

1 Q. And what you say in relation to  
2 this is you say:

3 "I do admit that early in my  
4 interview process with West Face,  
5 via one email, I provided West Face  
6 with four company research pieces I  
7 created at Catalyst between November  
8 2012 and January 2014."

9 You go on to describe why.

10 And then if you look at paragraph 64,  
11 which is the paragraph I wanted to draw your  
12 attention to, you said this to the Court back in  
13 July of 2014:

14 "Three of these research pieces  
15 did not contain any confidential  
16 information or information  
17 proprietary to Catalyst; it was also  
18 my understanding that Catalyst was  
19 not actively pursuing an investment  
20 in any of these companies."

21 Now, did I understand your evidence  
22 this morning to finally acknowledge that in fact  
23 the memos you did send to West Face were  
24 confidential and were proprietary to Catalyst?

25 A. Yes.

1 Q. So that statement that you made in  
2 paragraph 64 of your original affidavit to the  
3 Court was wrong?

4 A. It was incorrect.

5 Q. Is there a distinction between  
6 incorrect and wrong?

7 A. No, but --

8 Q. Okay.

9 A. -- again, I have had the benefit  
10 of time and having now reviewed all the documents  
11 in full.

12 Q. Yes, that is exactly the point I  
13 am trying to make here, Mr. Moyse, is that when you  
14 swore your affidavit in July of 2014, your  
15 attitude, I suggest to you, was unless you can  
16 point me to a document that is going to contradict  
17 what I have to say, I can pretty much say whatever  
18 I want, whether it is true or not?

19 A. I don't agree. I knew that West  
20 Face would be producing these.

21 Q. It doesn't matter, I mean, whether  
22 you knew or didn't know that West Face was going to  
23 be producing them. The fact of the matter is you  
24 took the position to the Court back in July of 2014  
25 that those research pieces weren't confidential or,



1 for that matter, proprietary to Catalyst?

2 A. And that was incorrect.

3 Q. And when did you come to the  
4 realization that that was incorrect?

5 A. Well, I think I acknowledged when  
6 you cross-examined me on this that it was  
7 definitely proprietary and, I mean, an analysis,  
8 and that was certainly confidential, so just  
9 because they were -- just even if they were based  
10 on publicly available information, they were  
11 confidential and I shouldn't have sent them.

12 Q. Well, as a matter of fact, Mr.  
13 Moyse, when I initially cross-examined you on that  
14 affidavit of July 2014, the position you took in  
15 that cross-examination was that you didn't even  
16 understand what made those pieces confidential; do  
17 you remember that exchange?

18 A. I do remember that, and I think in  
19 some cases it is a bit -- it can be complicated,  
20 but there is no doubt that at least parts of the  
21 memos and the memos themselves were confidential.

22 Q. Well, we had an extensive  
23 discussion, and I'm not going to take you to it  
24 because it covers pages of transcript and His  
25 Honour will have that transcript available to him,

1 but part of it was actually reproduced by Justice  
2 Lederer in his injunction decision; do you remember  
3 that?

4 A. I do.

5 Q. Where he explicitly pointed out  
6 that even after you were confronted with these  
7 memos, you still would not acknowledge that there  
8 was anything confidential, and you went a step  
9 further and took the position before the Court that  
10 you didn't understand what confidentiality was?

11 A. That wasn't my position. My  
12 position was I couldn't pick out particular lines.  
13 It doesn't change the fact that I do think the  
14 memos as a whole were confidential.

15 Q. Oh, no, you think that now, right?

16 A. They were definitely proprietary,  
17 and I knew from the start I never should have sent  
18 them.

19 Q. Well, I know, but you say now that  
20 you knew from the start that you never should have  
21 sent them. My question to you is why would you  
22 take the position in July of 2014 and when I  
23 initially cross-examined you that they weren't  
24 confidential and that you had no idea what made  
25 them confidential?

1 A. It was a mistake.

2 Q. So then if I could take you very  
3 briefly to the second affidavit in the sequence of  
4 events that you filed, and this is your affidavit  
5 of July 16th, 2014. It is at tab 3 of my  
6 cross-examination brief, Your Honour.

7 And this affidavit, Mr. Moyse, was made  
8 in response to certain affidavits that had been  
9 filed by Catalyst and, in particular, an affidavit  
10 by Mr. Musters that analyzed the cell phone that  
11 you had turned in to Catalyst, a BlackBerry, prior  
12 to leaving the firm, right?

13 A. I remember that.

14 Q. And we saw in your first affidavit  
15 that you did not come clean to the Court about the  
16 fact that you had wiped your BlackBerry prior to  
17 giving it back to Catalyst, right?

18 A. I didn't think there was any  
19 relevant information on it.

20 Q. Right. And then in this  
21 affidavit, in response to the affidavit from Mr.  
22 Musters that brought that to the attention of the  
23 Court, you then try to explain why you wiped that  
24 BlackBerry, right?

25 A. Correct.

1 Q. And as far as we can tell, you  
2 wiped that BlackBerry at some point between June  
3 the 17th and June the 19th, as I recall; is that  
4 fair?

5 A. That is fair.

6 Q. Okay. And by June 17th, I'm going  
7 to suggest to you that you knew that there was a  
8 possibility that Catalyst would be litigating with  
9 you in relation to your having accepted a position  
10 at West Face; is that fair?

11 A. It may have been a possibility.

12 THE COURT: You are not being asked to  
13 guess here. Just say what you remember or what you  
14 don't remember.

15 THE WITNESS: It was a possibility.

16 BY MR. DiPUCCHIO:

17 Q. You were aware -- so I guess let  
18 me just reframe your answer so we are all  
19 understanding what you are trying to say. You were  
20 aware by June 17th that there was at least a  
21 possibility that Catalyst would be bringing an  
22 action against you?

23 A. Yes.

24 Q. Because by that point in time  
25 there had been a lot of correspondence, and we have

1     seen some of it in the record, between counsel in  
2     relation to your departure?

3             A.     Well, I think we were hopeful to  
4     avoid it, but it was still possible.

5             Q.     Right. And so what you say in  
6     this affidavit, and I am looking specifically at  
7     paragraph 4 now, you say:

8                     "I 'wiped' the data from my  
9                     BlackBerry prior to returning it to  
10                    Catalyst, not to 'destroy evidence',  
11                    but to remove my personal  
12                    information from the device."

13             And you go on to say some other things,  
14     but what I want to do is I want to go right to the  
15     last sentence:

16                    "In any event, I did not use my  
17                    BlackBerry device or my Catalyst  
18                    email account to communicate with  
19                    West Face so this information was  
20                    not deleted when I wiped the device  
21                    prior to returning it to Catalyst."

22             Now, let's just pause there for a  
23     second. That, sir, we know now is not true?

24             A.     Are you referring to the fact that  
25     I took a couple of phone calls on it?

1 Q. Exactly right. You in fact did  
2 and had used your personal BlackBerry for the  
3 purpose of communicating with West Face?

4 A. Yes, I had two phones. I didn't  
5 remember at the time which one I had used.

6 Q. But, sir, if you don't remember  
7 things at the time, is it just simply your attitude  
8 that you should be fast and loose with what you are  
9 telling the Court in a sworn affidavit?

10 A. No. I didn't think I had used it  
11 for that.

12 Q. Sorry?

13 A. I didn't think I had used it for  
14 that purpose.

15 Q. But if you were not sure about it,  
16 I suggest to you that you ought not to have made  
17 this statement in an affidavit sworn to the Court?

18 A. It was wrong. It was a wrong  
19 statement, but I thought it was true.

20 Q. So we can all agree now that you  
21 did, in the process of wiping your BlackBerry,  
22 destroy evidence of your communications with West  
23 Face?

24 A. I don't agree. That evidence is  
25 call logs. That is not destroyed on the

1 BlackBerry.

2 Q. What call logs, sir? The call  
3 logs are exactly what you destroyed?

4 A. But evidence of those calls has  
5 been produced.

6 Q. No, no, sir, listen, follow me.  
7 Your BlackBerry would have a history of calls that  
8 were made between you and West Face?

9 A. Sure, but Catalyst gets the bills.  
10 They could have gotten the list of calls I had made  
11 and received.

12 Q. Sir, do you know whether the bills  
13 that Catalyst would have received would have  
14 contained that level of detail?

15 A. I don't.

16 Q. So can you and I, just taking a  
17 step back, agree that evidence that existed on your  
18 BlackBerry in relation to the call log, at minimum,  
19 would have contained evidence of your  
20 communications with West Face in this critical  
21 period?

22 A. The information on the BlackBerry,  
23 yes, would have been deleted.

24 Q. And in addition to whatever call  
25 logs may have existed on the BlackBerry, your

1 BlackBerry also would have contained a record of  
2 text messages as an example?

3 A. Correct.

4 Q. And any evidence of any text  
5 messages that you sent using your BlackBerry was  
6 also deleted?

7 A. I don't know.

8 Q. You don't know that?

9 A. Well, again, I don't know if the  
10 text messages can be recovered in some other way.

11 Q. Sir, your evidence was, and I can  
12 take you to it in paragraph 3 of this affidavit,  
13 that the reason you wiped your BlackBerry was  
14 precisely because you wanted to remove evidence of  
15 text messages?

16 A. That was the best I could do, was  
17 delete it from the device. That doesn't mean I  
18 didn't think there was a possibility it could be  
19 recovered elsewhere.

20 Q. And how did you think that was all  
21 going to work? How did you think your text  
22 messages were going to magically be recovered?

23 A. I'm not a technical expert. I  
24 don't know.

25 Q. It is safe to say, is it not, sir,



1     that by the time July of 2014 rolls around, you  
2     understand and understood full well, both through  
3     the affidavits that had been filed and the  
4     cross-examinations that had occurred by that point  
5     in time, that there was a significant issue around  
6     your having, "A", deleted the March 27th email to  
7     West Face and, "B", having wiped your BlackBerry;  
8     can we agree with that?

9             A.     Yes.

10            Q.     So you knew by that time, as early  
11     as July of 2014, that Catalyst was going to be  
12     making certain submissions to the Court about the  
13     fact that you had been deleting evidence?

14            A.     Yes, it seemed like it.

15            Q.     And you also acknowledged to me in  
16     your cross-examination that took place in July of  
17     2014 that you had been deleting information from  
18     your personal computer throughout the March, April  
19     and May 2014 timeframe, right?

20            A.     Correct.

21            Q.     Do you recall that?

22            A.     Yes.

23            Q.     And I suggested to you that the  
24     only way we were going to be able to determine what  
25     it was that you had deleted from your computer in

1 March, April and May of 2014 was through a forensic  
2 examination, right?

3 A. Yes.

4 Q. And you well understood that?

5 A. Yes.

6 Q. Now, you'll agree with me with  
7 respect to your role at Catalyst and your work at  
8 Catalyst, Mr. Moyse, that there were approximately,  
9 by my count, seven people working at Catalyst at  
10 the time you were there, seven investment  
11 professionals?

12 A. Seven or eight. Lorne joined  
13 about halfway while I was there, and then Mark left  
14 a little later, so between seven and eight, I  
15 think.

16 Q. And by March of 2014, you were one  
17 of only six investment professionals working at  
18 Catalyst; I believe there were three partners, one  
19 vice president and two analysts at that time?

20 A. Yeah, Andrew left sometime in late  
21 March, but after he left, there were only six.

22 Q. Right. So as of I'm going to  
23 suggest to you the date is March 26th, but let's  
24 just say March of 2014, okay? As of March 2014,  
25 you are one of six investment professionals at the

1 firm?

2 A. That's right.

3 Q. And I am going to suggest to you  
4 that that's quite a small team?

5 A. Sure.

6 Q. That was a smaller team than the  
7 team that you were going to be joining at West  
8 Face?

9 A. Yes.

10 Q. Now, at the time that you meet  
11 with Mr. Dea, and I believe it was March 26th,  
12 2014, I think your evidence this morning was that  
13 Mr. Dea asks you in that meeting to send him  
14 samples of your writing?

15 A. Correct.

16 Q. Correct?

17 A. Yes.

18 Q. And I think you said that he said  
19 to you that you should make sure not to send any  
20 confidential information?

21 A. He made that clear.

22 Q. And notwithstanding his having  
23 said that to you, you went ahead and produced to  
24 him what you now acknowledge were confidential  
25 research pieces?

1 A. Yes.

2 Q. And is it the case, sir, that the  
3 reason you sent those pieces to Mr. Dea at that  
4 time was because, as you said in your  
5 cross-examination in July, that you didn't believe  
6 they were confidential and therefore you were at  
7 liberty to send them to him?

8 A. No, the first -- I specifically  
9 chose stale, dead, old, inactionable analysis. I  
10 did also, secondarily, at the time I believed that  
11 they didn't contain confidential information. I  
12 drew the line in the wrong place.

13 Q. Right. So what I was suggesting  
14 to you, sir, is did you feel that you were okay to  
15 send Mr. Dea that kind of work because you were  
16 drawing a line in the sand about confidentiality  
17 that somehow allowed you to conclude that those  
18 research pieces were not confidential?

19 A. At that time, it was a lapse in  
20 judgment that I almost immediately regretted.

21 Q. Okay, but we'll get to that in a  
22 second. I'm trying to come to another point. I am  
23 suggesting to you or I'm putting to you that it  
24 wasn't a lapse in judgment. You understood at the  
25 time that you were drawing a line in the sand about

1 confidentiality that allowed you to send that kind  
2 of memoranda to Mr. Dea?

3 A. No, I never should have sent it to  
4 him.

5 Q. And you knew that right at the  
6 time?

7 A. It was a lapse in judgment. I  
8 immediately regretted it.

9 Q. Okay. And you regretted it to the  
10 point that you decided that the appropriate way to  
11 address the matter was to delete any evidence that  
12 you had sent those memos to Mr. Dea?

13 A. That is what I did.

14 Q. You certainly didn't tell anybody  
15 at Catalyst that you had had this lapse in judgment  
16 and that you had sent the firm's confidential  
17 information to another firm?

18 A. I did not.

19 Q. Is it your recollection sitting  
20 here today, Mr. Moyse, that you sent that email  
21 from your hotmail account while you were at home?

22 A. That is correct.

23 Q. So you were not at work when you  
24 sent that email to Mr. Dea', you were at home?

25 A. That's correct.

1                   Q.    And I am going to suggest to you  
2   that you had copies of the investment memo on your  
3   personal computer at home?

4                   A.    I must have had them, if I sent  
5   them from home.

6                   Q.    Well, in fact, when you swore an  
7   affidavit of documents subsequent to our appearance  
8   before Justice Firestone, you included in your  
9   affidavit of documents the investment memos that  
10  were sent?

11                  A.    Yes, I know those were included,  
12  yes.

13                  Q.    Right. So in fact, you had those  
14  investment memos, together with about another 840  
15  documents, on your personal computer at the time?

16                  A.    Correct.

17                  Q.    And just so we have it for the  
18  record in case it becomes relevant in our closing  
19  submissions, if you would turn to tab 12 of the  
20  cross-examination brief, this is a letter of July  
21  22, 2014 from your former lawyer, and then attached  
22  to that, Mr. Moyse, if you go to the attachment, is  
23  the affidavit of documents that you produced to us  
24  subsequent to our appearance before Justice  
25  Firestone, right?

1 A. Right.

2 Q. Where you were essentially  
3 compelled to produce this affidavit of documents,  
4 right?

5 A. Right.

6 Q. And we can see, just to bring this  
7 point home, at page 12 of this document, you will  
8 see right there, and keep going down, in the middle  
9 of the page 424 "Homburg Investment Memo.pdf";  
10 right?

11 A. That's correct.

12 Q. That is one of the investment  
13 memos that was sent on to West Face?

14 A. That's right.

15 Q. And the others are there as well.  
16 I'm not going to take your time going through it,  
17 Mr. Moyse, but they are on pages 13 and 19 of this  
18 document and we can review those later.

19 But while we are on this particular  
20 document, if you go to page 17, there is a  
21 reference in numbers 653 and 654 to a "Project  
22 Turbine - Preliminary Diligence Request List", and  
23 there's two of them, two preliminary diligence  
24 request lists in relation to a Project Turbine,  
25 right?

1                   A.     Yes, one is an Excel and one is a  
2     PDF.   They are the same, I think.

3                   Q.     And Project Turbine, just so we  
4     have that for the record, was an internal code name  
5     at Catalyst for the Wind opportunity, right?

6                   A.     That's right.

7                   Q.     And if you go to page 20 of this  
8     document, and I am looking now at the reference to  
9     number 760, we see a document that resided on your  
10    personal computer entitled "Turbine V2", and it  
11    looks to be an Excel spreadsheet; is that correct?

12                  A.     That's right, I believe that is  
13    the model I reviewed on vacation.

14                  Q.     Okay.   So that was the operating  
15    model for Wind that you were working on?

16                  A.     I think that is what -- not  
17    looking at it, I think that is what it was.

18                  Q.     Okay, and that also was on your  
19    personal computer?

20                  A.     Yes.

21                  Q.     And just to take you through some  
22    of the other documents, other kinds of documents  
23    that are in this affidavit of documents, for  
24    example, if you go to page 9, and I apologize for  
25    flipping around here a little bit, page 9, entry



1 268 to 272, you see a number of references there to  
2 various versions of a "Catalyst FTC Presentation";  
3 do you see that?

4 A. Yeah, I remember what that is  
5 clearly.

6 THE COURT: Wait, just wait for the  
7 question. All he asked you was do you see that.

8 THE WITNESS: Sorry.

9 THE COURT: Either the answer is yes or  
10 no.

11 THE WITNESS: Yes, I did see that.

12 BY MR. DiPUCCHIO:

13 Q. And I am going to suggest to you  
14 that what that is, Mr. Moyse, is those were drafts  
15 of a presentation to the Federal Trade Commission  
16 that you prepared on behalf of a portfolio company  
17 that you were managing called Advantage?

18 A. That's correct.

19 Q. And we see that you had various  
20 iterations of that presentation on your personal  
21 computer?

22 A. That's correct.

23 Q. And that was a regulatory  
24 presentation that was being made by you or prepared  
25 by you?

1 A. Yes.

2 Q. In regards to Advantage?

3 A. Yes.

4 Q. And am I correct that in that  
5 particular case where you made that regulatory  
6 presentation to the -- or when you prepared that  
7 regulatory presentation to the FTC, that you  
8 actually presented that to the FTC?

9 A. I did?

10 Q. Yes, did you?

11 A. No, I was not there.

12 Q. Okay. Were you responsible  
13 primarily for putting together that presentation?

14 A. I remember having a big hand in  
15 it. I was certainly taking instruction from  
16 Gabriel, but I definitely did have input.

17 Q. So that particular regulatory  
18 presentation you do recall having played a role in?

19 A. Yes.

20 Q. An active role?

21 A. More active than the other, yes.

22 Q. Well, that is my point. You  
23 played an active role in that particular  
24 presentation?

25 A. Yes.

1 Q. To the point where when you were  
2 meeting with Mr. Dea and sending him your deal  
3 sheet, you actually mentioned to Mr. Dea that you  
4 had taken the lead in making a regulatory  
5 presentation to the FTC on behalf of Advantage?

6 A. If that is what it says, then yes.

7 Q. And you also had, for example, on  
8 page 6 of this document on your personal computer,  
9 tabs 163 -- sorry, 161 to 163, as an example, you  
10 had business plan models for Advantage on your  
11 personal computer?

12 A. Yes.

13 Q. Those were business plan models  
14 that you were primarily responsible for drafting in  
15 relation to Advantage, right?

16 A. Yes, I had a big part in those.

17 Q. Right. And do you agree with me  
18 that all of the documents we just reviewed, Mr.  
19 Moyse, were confidential?

20 A. Yes.

21 Q. Now, in relation to the Homburg  
22 memo specifically, Mr. Moyse, this being the memo  
23 that you sent to Mr. Dea and that we just looked at  
24 was on your personal computer at the time, right?

25 A. Yes.

1                   Q.     In relation to the Homburg memo  
2 specifically, do you acknowledge today that the  
3 Homburg memo included information that Catalyst had  
4 received pursuant to a non-disclosure agreement  
5 entered into with Homburg?

6                   A.     It did.

7                   Q.     And yet you elected to send that  
8 document to Mr. Dea, notwithstanding that there was  
9 an NDA in place in relation to the information  
10 contained in that document?

11                  A.     Well, I don't know the terms of  
12 the NDA, but certainly the information provided in  
13 it was under an NDA.

14                  Q.     And do you agree with me, sir,  
15 that your providing that information to a third  
16 party was in contravention of the understanding  
17 under the NDA?

18                  A.     That is why I said I haven't seen  
19 it, so I don't know when it expired or what the  
20 different provisions were.

21                  Q.     So you had no concern one way or  
22 the other in sending that memo to Mr. Dea that you  
23 may have been putting your employer, Catalyst, in a  
24 position of having breached the NDA with Homburg?

25                  A.     It wasn't that I had no concern,

1 but I just -- I did not think of that.

2 Q. Do you have a concern now at  
3 least? Can we acknowledge that that ought to have  
4 been something in your contemplation at the time?

5 A. Yes.

6 Q. I want to talk a little bit about  
7 Arcan, which is, as you know, another one of the  
8 memos that you sent to Mr. Dea in March, right?

9 A. Yes.

10 Q. And if you go to, and this is in  
11 the cross-examination brief, tab 11-B, this is a  
12 copy of the internal investment memorandum that you  
13 prepared for Catalyst in or around January of 2014,  
14 it appears?

15 A. That is what it looks like.

16 Q. Well, is that what it is?

17 A. I believe it is, yes.

18 Q. And am I correct that your  
19 analysis of Arcan would have obviously pre-dated  
20 January 2014? You would have been doing work on  
21 Arcan for some period of time before producing this  
22 investment memo?

23 A. Yeah, I remember doing it over  
24 mostly the Christmas break, so it would have been  
25 December, but not really any time before that.

1                   Q.     But am I correct that Catalyst had  
2     been following Arcan for some period of time before  
3     that, to your knowledge?

4                   A.     Not to my knowledge.

5                   Q.     And in this memorandum that you  
6     send along to Mr. Dea, I'm sure that you and I can  
7     agree now that it presents your investment thesis  
8     for Arcan?

9                   THE COURT:   When you say "your", do you  
10    mean --

11                  MR. DiPUCCHIO:   Authored by Mr. Moyse.

12                  THE COURT:   Well, when you say it's  
13    "your" thesis, do you mean it is Mr. Moyse's  
14    thesis?   What's your question?   Or was it  
15    Catalyst's thesis?

16                  MR. DiPUCCHIO:   Well, ultimately, I  
17    guess it becomes Catalyst's.

18                  THE COURT:   I just want to make sure  
19    that we all understand the question.

20                  BY MR. DiPUCCHIO:

21                  Q.     No, I understand, Your Honour.

22                         What I am suggesting is you developed  
23    the investment thesis?

24                  A.     In this instance, yes.

25                  Q.     Which then became Catalyst's

1 investment thesis, right?

2 A. As the memo was the property of  
3 Catalyst, yes, but I never discussed it with the  
4 partners there.

5 Q. And one of the conclusions you  
6 reached in the investment memo, and I'm referring  
7 specifically, Your Honour, to page 3, you will see  
8 it there in bold right in the middle of that page:

9 "Arcan currently trades at a  
10 significant discount to its peer  
11 average on all key valuation  
12 metrics."

13 Right?

14 A. Yes.

15 Q. And I take it fundamentally your  
16 investment thesis which you submitted to the  
17 partners at Catalyst was that Arcan was an  
18 opportunity that merited some consideration?

19 A. I'm sorry, I never said I  
20 submitted it to the partners.

21 Q. Well, that you prepared and then  
22 did what with it?

23 A. I discussed it with Zach Michaud,  
24 and I never followed up on some small comments that  
25 he had had.

1 Q. Okay, but you were presenting it  
2 to the Vice President at the time, Mr. Michaud,  
3 right?

4 A. We discussed it together, yes.

5 Q. And this analysis you understood  
6 would be taken to presumably the Chief Investment  
7 Officer at Catalyst?

8 A. No, I don't agree.

9 Q. Okay. What did you think was  
10 going to be done with this?

11 A. He had some comments that he  
12 wanted -- he wanted me to make some small changes,  
13 small changes. I never got around to making them.  
14 And it just kind of died.

15 Q. No, but what did you think at the  
16 time that you were preparing this was going to be  
17 done with it?

18 A. I was hoping maybe that is what  
19 might be done with it, but my experience had told  
20 me that that was highly unlikely.

21 Q. So is it your evidence, and I want  
22 to understand this, Mr. Moyse, is it your evidence  
23 that this was an investment opportunity that you  
24 were presenting or hoped to present?

25 A. Yes.



1 Q. To the Catalyst partners?

2 A. Yes.

3 Q. So this was research that you were  
4 doing in relation to an opportunity that you hoped  
5 to present to the Catalyst partners or to the team,  
6 I guess, in order to convince the team that it  
7 should pursue this opportunity?

8 A. Hoped, yes.

9 Q. So this is an example of a  
10 situation in which an analyst like you was  
11 attempting to bring an opportunity forward for  
12 consideration to the partners?

13 A. I mean, it never got there, so --

14 Q. That is not what I asked you.

15 A. I have always said that I took  
16 this project on independently and that would have  
17 been my hope, but it was an independent project.

18 Q. Right. So my question quite  
19 simply was that this is one example of your  
20 undertaking research on your own in order to  
21 present a potential investment opportunity to the  
22 rest of the team, including the partners?

23 A. And I just let it die because I  
24 was discouraged.

25 Q. No, no, just listen to my question

1 and then give an answer. Was it or was it not an  
2 opportunity that you researched on your own in  
3 order that you could present it to the team and the  
4 partners as a potential investment opportunity?

5 A. Yes.

6 Q. Now, let's leave aside the fact  
7 that in July of 2014 you took the position that  
8 none of that was confidential. Let's leave that  
9 aside. You recall that when I cross-examined you  
10 in July of 2014, I specifically asked you what you  
11 were working on in your first three weeks at West  
12 Face; do you remember that?

13 A. I do.

14 Q. And do you remember your answer to  
15 me was "Not much"?

16 A. That's right.

17 Q. What you didn't tell me, Mr.  
18 Moyse, I suggest to you, was that on your very  
19 first day on your job at West Face, you were  
20 analyzing Arcan?

21 A. That is what I did and, yeah, in a  
22 few hours on my first day, yes.

23 Q. Yes, and my question is to you  
24 what you did not tell me in your cross-examination  
25 was that you were working on Arcan while you were

1 at West Face?

2 THE COURT: Well, the problem with this  
3 line of questioning is I don't know what the  
4 transcript said. We don't have it in front of us,  
5 so the witness doesn't have it. And as you know,  
6 ordinarily, transcripts get used from a previous  
7 examination if the witness gives evidence different  
8 from what he said beforehand. So --

9 MR. DiPUCCHIO: Yes, Your Honour, the  
10 difficulty in this case is, of course, we are not  
11 dealing with a discovery transcript, and I would  
12 totally agree with Your Honour that discovery  
13 transcripts --

14 THE COURT: What is the difference? If  
15 it is the transcript of a cross-examination, it is  
16 no different.

17 MR. DiPUCCHIO: Well, it is evidence in  
18 this proceeding, though, Your Honour. We have  
19 agreed as part of the trial protocol that all  
20 previous --

21 THE COURT: That may be, but all I'm  
22 saying is that you are now saying to the witness he  
23 gave some different evidence before or gave  
24 evidence about something or other, and it is not  
25 very helpful to me because I don't know what he

1 said before.

2 MR. DiPUCCHIO: Okay, well, all right,  
3 let me just short-circuit that a little, Your  
4 Honour, and break it down.

5 I had asked him that his evidence prior  
6 in July of 2014 when he was cross-examined was in  
7 response to the question, "What did you do during  
8 your first three weeks of work?" was "Not much."  
9 That is not -- I'm not challenging him on that. He  
10 acknowledges that was his evidence.

11 And now what I am asking him is a  
12 slightly different question, Your Honour, which is  
13 to say you didn't mention in your evidence in July  
14 of 2014 that you had done work at Arcan. So there  
15 is nothing to impeach him on there. It is simply a  
16 statement of what he didn't tell me in July of  
17 2014.

18 So we can go to the transcript. I can  
19 show you the answer he gives where he says "Not  
20 much", but it is not for the purpose of impeaching  
21 him, because he acknowledges that that's what his  
22 evidence was.

23 THE COURT: Well, you can go ahead.

24 BY MR. DiPUCCHIO:

25 Q. All right. So what you didn't

1 tell me, Mr. Moyse, in July of 2014 was that in  
2 fact you had done work on Arcan in your first day  
3 at West Face?

4 A. That is right.

5 Q. And we only became aware of that  
6 fact, Mr. Moyse, when we find out from West Face in  
7 the course of the motion to appoint an ISS that  
8 there was some work product performed by you in  
9 relation to Arcan, right?

10 A. Correct.

11 Q. And you say, Mr. Moyse, in your  
12 evidence here this morning that you worked on the  
13 Arcan file at West Face without having been  
14 instructed by anybody to do that?

15 A. Correct.

16 Q. You simply became interested in it  
17 when Mr. Griffin yelled out on the trading floor  
18 that there was something happening in relation to  
19 Arcan?

20 A. He said it out loud. I wouldn't  
21 say yelling, but yes, he made it clear to everybody  
22 there.

23 Q. Right, and you said, well, since  
24 there was generally fewer people at West Face there  
25 than would ordinarily be the case, you started to,

1 of your own initiative, look into the Arcan  
2 opportunity?

3 A. Correct.

4 Q. And of course, at that point in  
5 time you had only been working there for  
6 approximately a few hours, right?

7 A. That is right.

8 Q. And then if I understood your  
9 evidence correctly this morning, you are doing some  
10 kind of analysis in relation to Arcan and then Mr.  
11 Singh reaches out to you the following morning?

12 A. I believe it was the following  
13 day. I can't remember the exact time, but yes.

14 Q. All right, the following day Mr.  
15 Singh reaches out to you and asks you what you are  
16 working on, right?

17 A. Yes.

18 Q. And you tell him you are working  
19 on Arcan?

20 A. Yes.

21 Q. And Mr. Singh tells you stop  
22 working on Arcan?

23 A. Yes.

24 Q. Did he tell you why you needed to  
25 stop working on Arcan?

1           A.     Well, he had asked is that one of  
2     the four memos, and I said yes. So he didn't say  
3     exactly why but -- no, he didn't say why.

4           Q.     Did Mr. Singh express to you that  
5     you ought not to have been working on Arcan?

6           A.     He just made it clear that I  
7     should not be working on Arcan, and to me that I  
8     should have taken that as I should not have been  
9     working on it in the first place, but he did not  
10    specifically express that.

11          Q.     And this conversation with Mr.  
12    Singh that occurs the day following the email from  
13    Mr. Griffin and your having heard Mr. Griffin say  
14    something about Arcan on the trading floor, that  
15    conversation with Mr. Singh occurs after you say  
16    you had a very serious conversation with him about  
17    confidentiality?

18          A.     Correct.

19          Q.     And yet that conversation that you  
20    had with Mr. Singh that you characterized as a  
21    serious one in relation to confidentiality did not  
22    in your mind raise any red flags at all with  
23    respect to your working on an opportunity that you  
24    had previously analyzed for Catalyst?

25          A.     Because I was not referring to any

1 of the work I had done at Catalyst and because this  
2 situation had nothing to do with it other than the  
3 same company, no, it didn't.

4 Q. Yes, so you were using your own  
5 judgment at that stage as to the boundaries that  
6 were being placed upon you in relation to the  
7 activities you were performing at West Face insofar  
8 as they touched upon activities that you had worked  
9 on at Catalyst? You used your own judgment?

10 A. I wasn't referring to anything  
11 confidential, yes, I used my own judgment.

12 Q. Now, just in terms of your role  
13 generally at Catalyst, Mr. Moyse, you'll agree with  
14 me that you did perform during the course of your  
15 tenure at Catalyst some very high-level,  
16 sophisticated work?

17 A. Yes.

18 Q. For example, you built waterfall  
19 models in relation to various investments?

20 A. Correct.

21 Q. You led due diligence activities  
22 in relation to various investments?

23 A. I think we agreed before leading  
24 was an overstatement, but I certainly contributed a  
25 lot to some, yes.



1 Q. Well, I'm just reading, quite  
2 frankly, from your CV --

3 A. No, I know.

4 Q. -- that you sent along to Mr. Dea  
5 where you described yourself as having led due  
6 diligence activities. Was that an exaggeration in  
7 your CV?

8 A. It was a bit of an exaggeration,  
9 yes.

10 Q. I see. You certainly were  
11 involved in negotiations as it related to several  
12 transactions?

13 A. Yes.

14 Q. In relation to some of the  
15 investments that had been made at Catalyst, you  
16 were the day-to-day team leader?

17 A. For periods of time, yes.

18 Q. So for example, with respect to  
19 Advantage, which we have discussed already, you  
20 were and described yourself openly as being the  
21 day-to-day team leader in relation to Advantage?

22 A. Yeah, I was the face of Catalyst  
23 on the ground with the company.

24 Q. Yes, and in fact, in relation to  
25 Advantage specifically, Mr. Moyse, you were the one

1     that conducted the initial analysis of the  
2     investment opportunity, right?

3             A.     In conjunction with Mark Horrox  
4     and Lorne Creighton, yes.

5             Q.     Now, I had understood -- when did  
6     Mr. Creighton join Catalyst?

7             A.     It was in late July or early  
8     August of 2013.

9             Q.     Okay. And you did a number of  
10    tasks, performed a number of tasks in relation to  
11    Advantage specifically, one of which was that your  
12    analysis was used in order to make a decision to  
13    close 30 concessions?

14            A.     That was part of the company's  
15    business plan, but our analysis helped refine it,  
16    sure.

17            Q.     Right. Your analysis, as a result  
18    of your analysis, the decision was made by  
19    management to close 30 concessions?

20            A.     No, they had already decided to  
21    close a lot of concessions, and then the analysis  
22    helped refine exactly which ones. But ultimately,  
23    they made the decision independent of what some of  
24    the numbers said.

25            Q.     Right, using your analysis?

1 A. In part, yes.

2 Q. As we have already looked at, you  
3 created a presentation for the FTC, right?

4 A. Yes.

5 Q. You were responsible for preparing  
6 the company's go-forward plan?

7 A. Maybe to some extent, yes.

8 Q. You actually participated in  
9 interviewing candidates for senior management  
10 positions at Advantage?

11 A. I interviewed some CFO candidates,  
12 yes.

13 Q. I'm going to suggest to you that  
14 at least insofar as it relates to Advantage,  
15 Catalyst was giving you a lot of responsibility at  
16 that time?

17 A. Again, I had a lot of things -- I  
18 had a lot of responsibility in terms of tasks. I  
19 had no responsibility in terms of any ability to  
20 make a decision.

21 Q. Well, are you suggesting that you  
22 had no input at all into the making of decisions?

23 A. I'll tell you for one, our input  
24 was to not make the investment at all, and that was  
25 ignored.

1 Q. All right. Whose input was?

2 A. The investment team, Mark Horrox,  
3 Lorne Creighton and myself.

4 Q. Right, and then what happened with  
5 that investment analysis?

6 A. We were told to tweak the numbers  
7 in a way that made it look like a positive  
8 investment, and then Catalyst went ahead and made  
9 the investment.

10 Q. Okay. And do you disagree with me  
11 that you were given a lot of responsibility in  
12 relation to Advantage, for example?

13 A. Again, I agree I had a lot of  
14 tasks. I don't ever -- I didn't ever feel as if I  
15 had true responsibility.

16 Q. So you make a distinction between  
17 tasks that you were being asked to perform and  
18 responsibility?

19 A. I think there is a difference,  
20 yes.

21 Q. And in fact, you considered  
22 yourself to have been worthy of promotion to the  
23 role of an associate at Catalyst in 2014?

24 A. Well, I mean, I was told that they  
25 would be promoting me, yes.

1 Q. Right, so they were impressed  
2 enough at Catalyst with your carrying out your  
3 duties over the last year that you were there that  
4 they had told you that they were going to be  
5 promoting you to the role of associate?

6 A. Correct.

7 Q. And in fact, in your description  
8 to potential employers that you were sending your  
9 resumé out to in the early part of 2014, you  
10 described yourself as an associate at Catalyst?

11 A. It seemed that the promotion was  
12 all but finalized, yes.

13 Q. Right, but whether it was or  
14 wasn't, you described yourself to your potential  
15 employers in the early part of 2014 as an associate  
16 at Catalyst?

17 A. Correct.

18 Q. And you described yourself as an  
19 associate to West Face when you sent your CV along  
20 to Mr. Dea?

21 A. Correct.

22 Q. And if you want to look at that,  
23 Mr. Moyse, it is at tab 11-E of the  
24 cross-examination brief.

25 A. And again, at that time I was

1     being introduced as an associate to external  
2     parties and --

3                   Q.     Just a second.  I don't recall my  
4     having asked you a question.  But if you look at  
5     the resumé, do you see that you describe yourself  
6     to Mr. Dea as a "Distressed Debt Associate" and  
7     "Distressed Debt Analyst"?

8                   A.     I do.

9                   Q.     And you describe yourself as a  
10    "Distressed Debt Associate" as of February 2014?

11                  A.     Correct.

12                  Q.     And yet it is your evidence today  
13    that despite the fact that you had been told you  
14    were going to be promoted to the position of  
15    associate and that you were describing yourself as  
16    an associate to prospective employers, that you had  
17    very little knowledge of Catalyst's potential  
18    investments and its strategies for those  
19    investments?

20                  A.     Correct.

21                  Q.     That is your evidence?

22                  A.     Well, and the distinction between  
23    analyst and associate is -- it is the same job,  
24    just a different title.

25                  Q.     But titles were very important to

1     you, Mr. Moyse, weren't they?

2                   A.     I just wanted to be on fair ground  
3     with everybody else.

4                   Q.     No, no, but titles were quite  
5     important to you, because your evidence in this  
6     proceeding was that you actually had a discussion  
7     with Mr. Dea at the time that you were offered a  
8     job at West Face because you were concerned that  
9     West Face was going to be referring to you as an  
10    analyst and not as an associate?

11                  A.     Well, it was my understanding that  
12    there was somebody else at West Face with  
13    approximately as much experience as me who had the  
14    title of associate, so I just wanted to be put on  
15    the same footing. I don't really care what my  
16    title is. I just don't want to be treated like a  
17    very, very junior person.

18                  Q.     Right. And again, your evidence  
19    to this Court is that after a year and a half at  
20    Catalyst, where you are about to be promoted to the  
21    position of an associate at Catalyst, that you had  
22    very little information or knowledge of Catalyst's  
23    potential investments and its strategies for those  
24    investments; that is your evidence?

25                  A.     Yeah, I never felt I was getting

1     that insight.

2                   Q.     Not what you felt. That you never  
3     had that knowledge?

4                   A.     I had some of that knowledge, yes.

5                   Q.     If would bear with me, Your  
6     Honour, we have just covered off some areas, and so  
7     I'm just going through my notes here.

8                   Now, I want to talk to you a little bit  
9     about your evidence in relation to RegClean Pro and  
10    the scrubber, the Advanced System Optimizer program  
11    that we have been talking about in this proceeding,  
12    okay?

13                  A.     Okay.

14                  Q.     And first of all, let's just  
15    establish some facts. And I think we have already  
16    covered this in your evidence, but you and I agree  
17    that you acknowledged deleting files from your  
18    computer in the March to May 2014 timeframe, right?

19                  A.     Correct.

20                  Q.     And when you were cross-examined  
21    back in 2015 and you acknowledged that you had  
22    deleted files in March, April and May of 2014, you  
23    didn't tell me that you had also deleted your web  
24    browsing history?

25                  A.     When was this? When did I say



1     that?

2                   Q.     When I cross-examined you prior to  
3     the ISS issuing its report.

4                   A.     Correct, I didn't say that.

5                   THE COURT:   Well, just wait a second.  
6     You see, this raises the same issue. I don't know  
7     whether you asked him that or not. Maybe you  
8     didn't ask him.

9                   BY MR. DiPUCCHIO:

10                  Q.     That is fair, Your Honour. Let's  
11     just move forward. I was just trying to establish  
12     something, but it is not terribly important for the  
13     purposes of this line of questioning.

14                  You acknowledge now, Mr. Moyse, that at  
15     minimum what you did was you deleted your web  
16     browsing history?

17                  A.     Yes.

18                  Q.     Okay. And you did that after  
19     Mr. Justice Firestone had made his preservation  
20     order?

21                  A.     Correct.

22                  Q.     And you did it prior to your  
23     turning over your personal computer to your counsel  
24     for the purposes of having that computer imaged?

25                  A.     Yes.

1 Q. And what you did, if I understand  
2 correctly, what you did is you read Mr. Justice  
3 Firestone's order and you made the decision on your  
4 own that your web browsing history wasn't relevant  
5 to this proceeding?

6 A. Correct.

7 Q. And I believe your evidence has  
8 been in this proceeding that you had -- that you  
9 were in a state of confusion in respect of exactly  
10 what this request for an ISS was all about?

11 A. I don't think exactly confusion.  
12 I think it was more that I had no understanding of  
13 what the process would be.

14 Q. Okay, you had no understanding as  
15 to what an ISS process entailed?

16 A. No.

17 Q. And I believe it has been your  
18 evidence that you didn't ask your counsel how the  
19 process would play out?

20 A. No, I --

21 THE COURT: Well, I don't know, but you  
22 are now getting into what may be privileged.

23 MR. DiPUCCHIO: I don't think I am,  
24 Your Honour. We have asked these questions before  
25 and they have been answered, and I am not going to

1 go much further than that, Your Honour.

2 THE COURT: All right.

3 BY MR. DiPUCCHIO:

4 Q. But you didn't ask your counsel to  
5 give you some direction as to how this ISS process  
6 would play out?

7 A. No, I don't think that was my  
8 evidence. I think my evidence is that I asked them  
9 to explain how the process might work, and I found  
10 their answer to be dissatisfying in terms of detail  
11 and improving my understanding.

12 Q. Okay, so you asked your counsel  
13 how that process would work, and you weren't  
14 satisfied with their answer to you?

15 A. Correct.

16 Q. And you know, for example, that in  
17 April of this year, i.e. --

18 THE COURT: Just before you do that,  
19 was your counsel at the time you were talking  
20 about, was your counsel the Grosman firm?

21 THE WITNESS: It was.

22 THE COURT: Thank you.

23 BY MR. DiPUCCHIO:

24 Q. And just to close that particular  
25 line, Your Honour, because you might be thinking

1     it, I'll ask this question.

2                     You were asked at the time to produce  
3     evidence of the advice that was given by your  
4     counsel, and you refused to produce evidence of  
5     that advice, right?

6                     A.    I don't know what ended up  
7     happening. I thought we ended up saying that there  
8     is no evidence of that advice.

9                     Q.    Okay, we'll let the record --

10                    A.    But I don't know what was produced  
11     for that.

12                    Q.    All right, we'll let the record  
13     speak for itself when we look at the refusals that  
14     were given in this case.

15                    But coming back very briefly to April  
16     of this year, Mr. Moyse, do you recall in April of  
17     this year that you made further production in this  
18     case?

19                    A.    I do.

20                    Q.    You produced several dozen emails  
21     from your hotmail account in April of this year,  
22     right?

23                    A.    Correct.

24                    Q.    And these were emails, if I  
25     understood your explanation correctly as to why

1 they hadn't been produced until very recently,  
2 these were emails that you said you didn't believe  
3 were relevant to the litigation?

4 A. Well, I was given -- when we did  
5 all the initial searches, I was given, again,  
6 parameters by counsel and these emails at the time  
7 did not fit those parameters.

8 Q. Right, so because they didn't fit  
9 the parameters, you didn't produce them?

10 A. Correct.

11 Q. Now, one of the emails that you  
12 didn't produce -- and I am just going to give His  
13 Honour an example of one of the emails that was  
14 produced in April.

15 If we go to tab 25 of my brief, this  
16 was one of the emails from your hotmail account  
17 that was recently produced, and it is an email  
18 chain between you and Mr. Creighton on May 23rd and  
19 May 24th of 2014. And we'll come to the  
20 significance of the dates in just a moment.

21 But in this email chain, Mr. Moyse, one  
22 of the things you do, and I am looking at the first  
23 page now, Your Honour, right down to the bottom,  
24 one of the things you do on Friday, May 23rd, 2014,  
25 while you are on vacation in Asia, I believe, is

1     you specifically ask Mr. Creighton whether Catalyst  
2     had made a bid for Wind; do you see that?

3             A.     I do.

4             Q.     And then Mr. Creighton responds to  
5     you and he says:

6                     "Yes, I think so. That was  
7             Dan's email to George, asking George  
8             to send UBS the share purchase  
9             agreement."

10            Right?

11            A.     That is what he says.

12            Q.     And that was the share purchase  
13     agreement that had been sent to you in draft as  
14     well, right?

15            A.     Correct, but I wasn't aware of it.

16            Q.     Well, clearly you were aware of  
17     it, because Mr. Creighton was discussing it with  
18     you?

19            A.     That is why I asked. After he  
20     said it, then yes, I did become aware of it.

21            Q.     Right, but you reached out to  
22     Mr. Creighton on May 23rd, 2014, while you were on  
23     vacation, you reached out to Mr. Creighton and  
24     asked him the question, "Did we make a Wind bid?"

25            A.     I did.

1 Q. And if I'm not mistaken, Mr.  
2 Moyse, that is I believe either the same day or the  
3 day after you have a conversation while you are on  
4 vacation with Mr. Dea?

5 A. That is about the timeframe, yes.

6 Q. And we'll come to that transcript  
7 of calls so that we can nail it down, but you  
8 recall the two -- you recall Mr. Dea calling you  
9 and then you recall sending an email to  
10 Mr. Creighton, your colleague at Catalyst, to ask  
11 him while you were on vacation whether Catalyst had  
12 actually proceeded to make a Wind bid?

13 A. Yes.

14 Q. And this was one of the emails,  
15 Mr. Moyse, that if we are relying on your judgment  
16 to tell us what is relevant and what is not  
17 relevant in this case, you chose not to disclose  
18 until April of this year?

19 A. I can't say specifically why a  
20 certain email didn't get produced. That was  
21 generally the reason for the productions.

22 Q. Right, and the only reason we got  
23 this email was because we asked you to go  
24 double-check your hotmail account and to produce to  
25 us everything in your hotmail account that related

1 to this proceeding?

2 A. Well, you specifically said  
3 anything including Lorne Creighton or Catalyst  
4 employees.

5 Q. Okay. And getting back to the  
6 issue of the scrubber, I'm going to suggest to you,  
7 sir, that July 16th, 2014 was a very significant  
8 day in your life; do you agree with me?

9 A. It was an important day.

10 Q. Right, it was an important day  
11 because you were about to go to Court in a  
12 situation where an injunction was being sought  
13 against you that sought to have you, amongst other  
14 things, cease working for your new employer at West  
15 Face?

16 A. For a period of time, yes.

17 Q. And there had been serious  
18 allegations levelled against you at that point of  
19 misuse of confidential information by Catalyst,  
20 right?

21 A. Yes.

22 Q. Catalyst, as you knew, was seeking  
23 to have a forensic image made of your hardware  
24 devices through that motion?

25 A. Correct.



1 Q. Now, I'm going to suggest to you,  
2 Mr. Moyse, that you had never been through anything  
3 like that before?

4 A. No.

5 Q. And at the time, on July 16th,  
6 2014, you knew that you were being criticized for  
7 having wiped your BlackBerry without telling anyone  
8 beforehand?

9 A. Yes.

10 Q. You knew by that point in time  
11 that you were being criticized for having sent  
12 confidential memos to West Face and then having  
13 deleted your email in an effort to cover your  
14 tracks?

15 A. Right.

16 Q. So what happens on July 16th and  
17 the morning of July 16th, let's run it down.

18 The motion before Justice Firestone was  
19 scheduled to begin at 10:00 a.m., right?

20 A. Correct.

21 Q. And you, as I recall, were at the  
22 courthouse the morning of the motion?

23 A. I was.

24 Q. You arrived obviously at some  
25 point earlier than 10:00 a.m.?

1 A. Yes.

2 Q. What time did you leave your house  
3 that morning; do you remember?

4 A. I don't remember.

5 Q. Now, just before you left your  
6 house, I put it to you, in the face of this  
7 significant event that is happening in your life,  
8 you purchase Advanced System Optimizer?

9 A. I did.

10 Q. We see from the receipt that  
11 Mr. Centa took you to earlier in your evidence that  
12 you purchased it that morning?

13 A. Yes, I agree.

14 Q. And we also know from the ISS's  
15 report that you installed that software on your  
16 computer at 8:53 a.m. on July 16th?

17 A. Okay.

18 Q. Well, do you remember doing that,  
19 sir?

20 A. I did it. I must have done it. I  
21 don't specifically remember the installation  
22 process, but I'm not disputing that I did that.

23 Q. I'm going to suggest to you the  
24 morning of this very significant event in your  
25 life, just before you leave your house to attend

1 Court, you are installing on your computer Advanced  
2 System Optimizer; that is what you are doing?

3 THE COURT: Well, he has already  
4 acknowledged that.

5 BY MR. DiPUCCHIO:

6 Q. Okay, fair enough.

7 And you knew at the time that you  
8 installed Advanced System Optimizer on your  
9 computer that morning that it included a military  
10 grade scrubber?

11 A. I don't think I knew that at the  
12 time.

13 Q. You didn't know that at the time?

14 A. I don't think so.

15 Q. That was just a coincidence as it  
16 turns out that that software suite included that  
17 functionality?

18 A. It had many functions.

19 Q. You also purchased and installed  
20 that morning, just before you left for Court, I  
21 suggest to you, RegClean Pro?

22 A. I don't think that is right. I  
23 think I installed it a few days earlier.

24 Q. Well, you purchased it a few days  
25 earlier, Mr. Moyse. My suggestion to you is you

1 installed it at 8:50 a.m. that morning?

2 A. Okay, then I did.

3 Q. You don't recall doing that, as  
4 you are sitting here today?

5 A. Specifically, no.

6 THE COURT: Well, again, this isn't  
7 helpful if you don't recall these things.

8 The question was put to you that you  
9 installed it at 8:50 a.m. that morning, and so you  
10 said, "Okay, then I did." You are taking his word  
11 for it. He may be right, I don't know, but if you  
12 don't remember, don't say something if you don't  
13 recall because it is not helpful.

14 THE WITNESS: Thanks.

15 BY MR. DiPUCCHIO:

16 Q. So in light of His Honour's  
17 admonition, is your evidence that you don't recall?

18 A. I don't recall that.

19 Q. And as I understood your evidence  
20 in-chief, and correct me if I am wrong, you  
21 purchased RegClean Pro because you thought that  
22 RegClean Pro would assist you in deleting your web  
23 history so that it couldn't be forensically  
24 recovered; is that fair?

25 A. Yes.

1                   Q.     So in other words, just to break  
2     that down a little bit, in other words, you  
3     understood that there were ways that you could  
4     delete your web history that would involve, for  
5     example, simply going into your web browser and  
6     saying "delete history"?

7                   A.     Yes, I knew that was an option.

8                   Q.     But you knew more than that, Mr.  
9     Moyse. You knew that doing that wouldn't protect  
10    that information from being discovered in a  
11    forensic examination of your computer?

12                  A.     I don't know if I knew that or if  
13    I checked online to see if that was the case.

14                  Q.     Okay, so let's again back up and  
15    see if we can unpack this a little bit. You say  
16    that you are not aware whether you knew that just  
17    out of your general knowledge or whether you might  
18    have done some internet research in order to  
19    determine whether in fact that was the case; is  
20    that fair?

21                  A.     That is fair.

22                  Q.     It could have been one or the  
23    other?

24                  A.     I may have thought that -- I may  
25    have thought that and then did some searching to

1     verify it. I don't remember.

2                   Q.     So one of the possibilities, just  
3     so I understand, one of the possibilities is that  
4     you actually knew that deleting your browser  
5     history simply by using the built-in functionality  
6     in the web browser wouldn't be sufficient to  
7     protect that information from being discovered  
8     again in a forensic examination? That is one of  
9     the possibilities?

10                  A.     No, I don't think there is any way  
11     I could have known that, because I'm not a  
12     technical expert. So that would have been a belief  
13     of mine.

14                  Q.     All right, so if you didn't know  
15     that, then I guess we are left with possibility  
16     number two, which is that you actually researched  
17     it?

18                  A.     Yes.

19                  Q.     Okay. And do you actually recall,  
20     Mr. Moyse, going onto Google or going onto some  
21     other search engine and performing research as to  
22     how to delete things in the face of a potential  
23     forensic examination?

24                  A.     I think what -- well, sorry, I  
25     didn't search for that, but I did -- I do remember

1     searching for how to permanently erase your  
2     internet browsing history.

3                 Q.     Okay.  So that would have been  
4     something then, that was something then that you  
5     have an active recollection searching for using one  
6     of your search engines on your computer?

7                 A.     Yes, because I remember doing it a  
8     couple of times.

9                 Q.     Now, will you agree with me, Mr.  
10    Moyse, can you and I agree that when you deleted  
11    your browser history, scrolling forward, when you  
12    permanently deleted your browser history, that  
13    evidence of those kinds of searches that you would  
14    have performed was permanently lost to us?

15                A.     I don't know what was recovered or  
16    recoverable.

17                Q.     No, no, sir, we have just been  
18    through a five-minute chat where we talked about  
19    the fact that what you were trying to do was  
20    permanently delete that evidence so that it  
21    couldn't be recovered via forensic examination?

22                A.     If that was successful, then yes,  
23    it would not be able to be recovered.

24                Q.     Well, I'm going to suggest to you  
25    that you were successful because it hasn't been

1 recovered?

2 A. Okay.

3 Q. Right?

4 A. I guess it wasn't. I guess not.

5 Q. So getting back to my original  
6 question, would you agree with me that when you  
7 deleted your internet browser history on the  
8 evening of June -- July 20th, 2014, rather, that  
9 you permanently deleted evidence of your internet  
10 browsing activity as it related to --

11 THE COURT: Well, just a minute.

12 MR. CENTA: I don't see how this  
13 witness can answer the question that has been asked  
14 about whether he permanently deleted anything.  
15 That is in the purview of the experts. There has  
16 been evidence about that.

17 THE COURT: I understand. The witness  
18 has already said, Mr. DiPucchio, that he doesn't  
19 know.

20 MR. DiPUCCHIO: Okay.

21 THE COURT: You are --

22 BY MR. DiPUCCHIO:

23 Q. All right. All right, fair  
24 enough. We'll move on from that.

25 Now, do you agree with me, Mr. Moyse,



1     that from time to time, and I believe we have seen  
2     evidence of this, you would have used your browser  
3     to access DropBox?

4             A.     Among other methods, yes.

5             Q.     Okay. So one of the methods that  
6     you would have used and did use in order to access  
7     documents, Catalyst documents, via DropBox was your  
8     web-based DropBox?

9             A.     Sometimes, yes.

10            Q.     Okay. Now, in relation to  
11    Advanced System Optimizer, as I understood your  
12    evidence, Mr. Moyse, is that on the evening of July  
13    20th, 2014, which was the day before counsel had  
14    agreed you would be turning over your computer to  
15    your counsel for the purposes of the forensic  
16    imaging, right?

17            A.     Yes.

18            Q.     That on the evening of July 20th,  
19    2014, you elected to delete your internet browser  
20    history, right?

21            A.     Yes.

22            Q.     And you did so?

23            A.     Yes.

24            Q.     And then you ran RegClean Pro,  
25    which was the piece of software that you had

1 purchased a few days prior?

2 A. Correct.

3 Q. Correct?

4 A. Yes.

5 Q. And I believe your evidence is,  
6 again correct me if I'm wrong, that you ran  
7 RegClean Pro for the purpose of doing what?  
8 Modifying the registry so that there would be no  
9 trace that you had deleted your internet browser  
10 history?

11 A. Well, I didn't really know what  
12 RegClean Pro did. I just believed that that would  
13 clean up the traces.

14 Q. How did you form that belief, sir?

15 A. Through internet searches.

16 Q. All right. So through your  
17 internet searches, you would have come to the  
18 understanding that RegClean Pro would assist in  
19 your stated goal of permanently deleting your  
20 browser history?

21 A. Correct.

22 Q. So you had some idea what it did?

23 A. Yes, I knew that that could be a  
24 function.

25 Q. And then after you do that, I

1 believe your evidence is, and I think I may have  
2 taken it down verbatim, that you noodled around  
3 with the Advanced System Optimizer program?

4 A. That's right.

5 Q. And your evidence is that that  
6 would have included simply clicking buttons to try  
7 to figure out what kind of functionality it had?

8 A. Yeah. Yes.

9 Q. And if I understand correctly,  
10 what you are saying to this Court is that  
11 notwithstanding that we all now know that Advanced  
12 System Optimizer includes a function called Secure  
13 Delete, that your noodling around with Advanced  
14 System Optimizer on that very evening was purely  
15 coincidental?

16 A. Yes.

17 THE COURT: I'm going to break a bit  
18 early for lunch --

19 MR. DiPUCCHIO: That is fine.

20 THE COURT: -- so whenever it is  
21 convenient for you.

22 MR. DiPUCCHIO: That is as good a place  
23 as any, Your Honour.

24 THE COURT: Okay.

25 All right, 2:15.

1 -- RECESSED AT 12:45 P.M.

2 -- RESUMED AT 2:15 P.M.

3 BY MR. DiPUCCHIO:

4 Q. Mr. Moyse, I just wanted to cover  
5 off one little area of examination that we were  
6 speaking of before the break, and that is the ISS  
7 report. And I wanted just to take the Court to the  
8 ISS report for one brief moment. It is at tab 26,  
9 Your Honour, of the cross-examination folder, and I  
10 am looking specifically on page 41 at paragraph 45.

11 So you see here, Mr. Moyse, that the  
12 ISS is giving some information in relation to the  
13 software that you had purchased, the RegClean Pro  
14 and Advanced System Optimizer pieces of software,  
15 and if you scroll down, the ISS says here in its  
16 report --

17 THE COURT: Just a second. I'm trying  
18 to find paragraph 45.

19 MR. DiPUCCHIO: Paragraph 45 is on page  
20 40, Your Honour. Do you see it, Your Honour? It  
21 is paragraph 45 on page 40 of the ISS report.

22 THE COURT: Yes.

23 BY MR. DiPUCCHIO:

24 Q. And then going over to page 41,  
25 Your Honour, is really where I was reading from,

1 and I am doing this more for Your Honour's benefit  
2 because there was some questions about this. But  
3 do you see the ISS indicates in its report:

4 "Based on the creation date of  
5 the associated folders, RegClean and  
6 Advanced System Optimizer 3 were  
7 installed on July 16, 2014 at 8:50  
8 and 8:53 a.m. respectively."

9 And sitting here today, Mr. Moyse, I  
10 take it you have no evidence to contradict what the  
11 ISS has said in relation to when those pieces of  
12 software were installed?

13 A. I do not.

14 Q. And then in that same paragraph,  
15 right at the bottom, Mr. Moyse, the ISS says:

16 "On July 20, 2014, at 8:09 p.m.  
17 a folder entitled 'Secure Delete'  
18 was created, which suggests that a  
19 user of Moyse's computer took steps  
20 to make the use of that function  
21 available at that point in time."

22 Now, I take it, Mr. Moyse, that sitting  
23 here today, you have absolutely no explanation for  
24 the ISS finding a Secure Delete folder on your  
25 computer?

1                   A.     Well, I mean, I understand that --  
2     what the technical experts have found. I have no  
3     explanation other than that I clicked on it.

4                   Q.     Well, you have no explanation?

5                   A.     No.

6                   Q.     Right. And so just to recap your  
7     evidence, Mr. Moyse, because I want to put it to  
8     you in fairness, what you are suggesting to the  
9     Court is that it was simply a coincidence that you  
10    purchased Advanced System Optimizer approximately  
11    one hour before the hearing on July 16th, is  
12    that -- or installed it, purchased and installed it  
13    approximately one hour before the hearing on July  
14    16th, that is a coincidence?

15                  A.     Yes.

16                  Q.     And it is also a coincidence that  
17    a Secure Delete folder was created at 8:09 p.m. on  
18    your computer on July 20th, 2014? That is also a  
19    second coincidence; is that fair?

20                  A.     I know I never used it, so I can't  
21    explain that, so yes, it is a coincidence.

22                  Q.     And I am going to put it to you,  
23    Mr. Moyse, that in fact the reason there is a  
24    Secure Delete folder on your computer at 8:09 p.m.  
25    is because you ran the Secure Delete program at

1     that time?

2                     A.     I did not.

3                     Q.     And I put it to you, Mr. Moyse,  
4     that when you realized that the Secure Delete  
5     program had a record of how many files you had  
6     deleted using that program, that you then took  
7     steps to alter the registry of your computer in  
8     order to reset that counter?

9                     A.     I was neither aware of that log,  
10    nor did I delete that log.

11                    Q.     And I suggest to you, Mr. Moyse,  
12    that that behaviour is exactly consistent with what  
13    you did when you wiped your BlackBerry in June of  
14    2014 before returning it?

15                    A.     No.

16                    Q.     And similarly, Mr. Moyse, I  
17    suggest to you that the fact that you purchased the  
18    Advanced System Optimizer program one hour prior  
19    to -- or installed it, I should say, one hour prior  
20    to attending Court on July 16th is not  
21    coincidental. The reason you did that was because  
22    you wanted to be prepared and have the tools  
23    available to you to be prepared to delete  
24    information should Justice Firestone have made an  
25    order against you? I suggest that is what you were

1 doing that morning?

2 A. No, I don't agree.

3 Q. Now, Mr. Moyse, I want to take you  
4 to some of your evidence in relation to your  
5 involvement on the telecom team at Wind, and we  
6 looked at your affidavits that were filed with the  
7 Court early in July of 2014 where you indicated you  
8 had limited involvement in Wind, right?

9 A. Correct.

10 Q. And we can all look at your  
11 affidavits and we can see how much description you  
12 put in there, but in your most recent trial  
13 affidavit, am I correct that you now have from  
14 pages 7 to 38 of that affidavit attempted to run  
15 through everything that you did as part of your  
16 involvement on the telecommunications team and on  
17 the Wind opportunity?

18 A. That's correct.

19 Q. You have done that in 30 pages of  
20 affidavit material now?

21 A. Well, I have had the benefit of  
22 seeing productions and a lot of them pertained to  
23 individual charts that I created, but yes.

24 Q. Yeah, that is my point, Mr. Moyse.  
25 At a time when you didn't have access to the



1 productions and when nobody had access to the  
2 productions, your explanation of your involvement  
3 in Wind encompassed a couple of paragraphs in the  
4 affidavit, and we looked at that, right?

5 A. That is what I remembered.

6 Q. Right. And, sir, I'm going to  
7 suggest to you that despite your evidence now that  
8 you were only assigned to Wind I think you said  
9 back in July on May 9th, 2014, and that is  
10 incorrect, right?

11 A. I don't agree with that.

12 Q. Is it May 6th that you say you  
13 are --

14 A. Well, sometime between May 6th and  
15 May 9th, yes.

16 Q. Okay. Despite that evidence, I'm  
17 going to suggest to you that in fact, based on the  
18 record we have now available to us, you were  
19 involved with Wind far before May 9th or May 6th of  
20 2014; do you agree with me?

21 A. No, I don't.

22 Q. You knew, sir, I suggest to you,  
23 that Catalyst was interested in acquiring Wind as  
24 early as February 2014?

25 A. I knew as part of the fourth

1 carrier strategy, yes, that was part of it.

2 Q. You knew that they had an interest  
3 in acquiring Wind at least as early as February  
4 2014, right?

5 A. Yeah, I think there were news  
6 stories from mid-2013, but yeah.

7 Q. Well, you didn't know it from news  
8 stories, Mr. Moyse. Let's be fair. Are you  
9 actually suggesting to the Court that despite the  
10 fact that you are one of seven or eight investment  
11 professionals at Catalyst, that you became aware of  
12 an interest in acquiring Wind through news stories?

13 A. I don't remember how it came  
14 about.

15 Q. Well, I'm going to put it to you,  
16 Mr. Moyse, that the far more logical explanation  
17 for your awareness is because you worked at the  
18 place and you had discussions?

19 A. I don't know.

20 Q. And you have just said, Mr. Moyse,  
21 that as of February of 2014 you had knowledge of  
22 Catalyst's plan to build a fourth wireless carrier  
23 through a combination of Mobilicity and Wind; fair?

24 A. I think so, yes.

25 Q. And that was a topic, I'm going to

1 suggest to you, that was discussed at the Monday  
2 meetings?

3 A. It may have come up, yes. I don't  
4 remember.

5 Q. Just come up?

6 A. I don't remember specific  
7 discussions about combining Wind and Mobilicity.

8 Q. So you can't say one way or the  
9 other, because you have no precise recollection,  
10 whether the evidence that has been given in this  
11 Court by others at Catalyst that that was a  
12 frequent topic of conversation at Monday meetings,  
13 you have no way of telling us one way or the other  
14 whether that evidence is correct or incorrect?

15 A. The fact I can't remember  
16 specifics tells me it wasn't a frequent occurrence.

17 Q. Well, Mr. Moyse, I'm not sure we  
18 can rely on your recollection for a whole heck of a  
19 lot, can we?

20 THE COURT: Well, that is really for me  
21 to decide.

22 BY MR. DiPUCCHIO:

23 Q. All right, that is fine. The fact  
24 of the matter is, Mr. Moyse, you didn't recall any  
25 involvement in Wind or certainly not the extent of

1 your involvement in Wind until you were confronted  
2 with documents?

3 A. It was such a compressed period of  
4 time working so frantically, that I couldn't  
5 remember the individual things I had done for it,  
6 no.

7 Q. Sir, these Monday meetings -- and  
8 I'm going to call them Monday meetings, not Monday  
9 morning meetings -- these Monday meetings would  
10 involve all of the investment professionals at  
11 Catalyst; is that correct?

12 A. Usually, yes.

13 Q. Okay. And in addition, they would  
14 involve, as you have testified, a gentleman by the  
15 name of David Reese at Callidus, which was a  
16 portfolio company of Catalyst; is that fair?

17 A. Correct.

18 Q. And you have said, I think quite  
19 fairly in your evidence, that one of the things  
20 that would be discussed in the Monday meetings was  
21 the deal pipeline?

22 A. Sometimes, but yes, it did come  
23 up.

24 Q. Well, it was one of the topics  
25 that was generally on the agenda, right?

1                   A.     Whether or not we got to it was  
2 another story, but yes, it would have been a topic  
3 of discussion had we made it to it in that meeting.

4                   Q.     And I took from some of the  
5 evidence that we have seen in this proceeding that  
6 one of your concerns was that the deal pipeline at  
7 Catalyst in 2014 was slow?

8                   A.     It seemed to be to me, yes.

9                   Q.     Okay, I hate to quibble, but what  
10 do you mean "it seemed to be"?

11                  A.     Well, I can't compare it to what  
12 the pipeline was before my arrival or what a normal  
13 pipeline is, but it certainly seemed slow to me.

14                  Q.     And when you say or when you have  
15 given evidence now that it seemed slow to you, what  
16 does that mean, that there were relatively few  
17 deals in the pipeline?

18                  A.     There were very few deals that we  
19 were working actively on in the pipeline, yes.

20                  Q.     Okay. And I'm going to suggest to  
21 you, Mr. Moyse, that when these Monday meetings  
22 were occurring and when there were discussions of  
23 the deal pipeline in early 2014, Wind would have  
24 very clearly been one of the matters that was being  
25 discussed?

1                   A.    I don't remember Wind being  
2   discussed in early 2014.

3                   Q.    Do you mean to say that you have  
4   no recollection, or do you mean to say that  
5   positively you can say it wasn't discussed?

6                   A.    I have no recollection.

7                   Q.    How many other deals were in the  
8   pipeline at that time?

9                   A.    I mean, it depends what you mean  
10   by "pipeline".

11                  Q.    Well, those were your words.  You  
12   said the deal pipeline was slow.

13                  A.    People wrote down a lot of things  
14   but nobody ever worked on most of them, so I would  
15   say in early 2014 nothing was in the pipeline.

16                  Q.    Nothing at all?

17                  A.    No.

18                  Q.    So that if Wind was being actively  
19   pursued by Catalyst at that time, that would have  
20   been the only deal in the pipeline, according to  
21   you?

22                  A.    In early 2014, prior to May, I was  
23   not aware that Catalyst was pursuing Wind.

24                  Q.    Not that you were aware.  That if  
25   Catalyst was in fact pursuing Wind at that time,

1     that would have been the only deal in the pipeline  
2     according to you?

3             A.     From what I remember, yes.

4             Q.     And, sir, I think we can agree  
5     that you joined or were made a part of formally the  
6     telecom deal team in March of 2014; correct?

7             A.     Yes.

8             Q.     Now, what did you understand the  
9     telecom deal team to be doing as the telecom deal  
10    team?

11            A.     At that time, there was nothing  
12    going on because the telecom deal team had really  
13    been focussed on Mobilicity, and I believe at that  
14    point in time there was a lull in the CCAA  
15    proceedings.

16            Q.     So Mr. Yeh, and we have heard  
17    about Mr. Yeh, he was a vice president or an  
18    analyst at Catalyst?

19            A.     He was an associate.

20            Q.     An associate. I got it wrong both  
21    times. Mr. Yeh, the associate, leaves Catalyst at  
22    some point in March of 2014, right?

23            A.     That's correct.

24            Q.     And then you are immediately  
25    appointed as his replacement?

1 A. That's right.

2 Q. Yet you are saying to the Court,  
3 notwithstanding that you are immediately appointed  
4 as his replacement at that time, that there was  
5 actually nothing going on?

6 A. Correct.

7 Q. And you actually by that point had  
8 gone so far as to send some articles to people that  
9 were part of the telecommunications deal team,  
10 right?

11 A. I did.

12 Q. And we have seen some of those  
13 articles. One of the articles you sent, Mr. Moyse,  
14 was on March 6th of 2014, and I am going to ask you  
15 to turn it up. It is at tab 19 of the  
16 cross-examination brief.

17 And do you see on your screen, Mr.  
18 Moyse, there is a copy of an article that you  
19 forwarded on on March 6th, 2014 to Mr. de Alba,  
20 Mr. Michaud and Mr. Yeh?

21 A. I see that.

22 Q. And the article that you were  
23 forwarding was in relation to the fact that  
24 VimpelCom had written down its Canadian investment  
25 in Wind Mobile, right?



1 A. That's right.

2 Q. And the reason, I suggest to you,  
3 that you were forwarding this article to the other  
4 members of the telecommunications deal team in  
5 March is because you knew that they would be  
6 interested in receiving news relative to Wind  
7 Mobile?

8 A. I knew they were interested in  
9 news about the Canadian telecom industry generally,  
10 and this certainly fit the profile.

11 Q. Well, I'm suggesting to you that  
12 the reason you specifically knew that they were  
13 interested in receiving news tidbits about Wind is  
14 because you understood by that point in time that  
15 Catalyst had an active interest in acquiring Wind?

16 A. I probably knew that by that time,  
17 yes.

18 Q. Oh, okay, so by March, by March  
19 you knew that?

20 A. Well, I said I did know that  
21 beforehand.

22 Q. All right. And you recall also  
23 sending an article about Wind to the members of the  
24 deal team in January of 2014, right?

25 A. That's right.

1 Q. And we have all seen that article.  
2 And I'm going to suggest to you again that the  
3 reason that you were sending that article at that  
4 time was even as early as January, notwithstanding  
5 that you weren't formally on the telecommunications  
6 deal team, you knew that Catalyst had an interest  
7 in Wind?

8 A. Sure.

9 Q. All right. So now we can  
10 establish that you knew that they had that interest  
11 even in January of 2014?

12 A. Well, I knew as part of the fourth  
13 carrier strategy, yes.

14 Q. Well, how early did you know about  
15 the fourth carrier strategy?

16 A. I know that the earliest news  
17 articles go back to mid to early 2013, so at least  
18 as early as that.

19 Q. Right, but certainly your  
20 understanding would not have come only from news  
21 articles that you had subsequently read?

22 A. I'm not arguing it only came from  
23 that. I just don't know where I first heard that  
24 strategy articulated.

25 Q. Okay. Is it fair to assume that

1     you would have had knowledge of the fourth carrier  
2     strategy and therefore Catalyst's interest in Wind  
3     probably as early as 2013?

4                     A.     Yes.

5                     Q.     And it is fair to assume that that  
6     would have been actively discussed?

7                     A.     Again, in the -- I can't remember  
8     specifics about that combination being discussed.  
9     I remember many other specifics, but not that being  
10    discussed.

11                    Q.     And you also received from  
12    Mr. Michaud a copy of a Wind management  
13    presentation in February of 2014, and I am going to  
14    ask you to turn it up. It is at tab 17 of my  
15    cross-examination binder. It is actually tab 17  
16    and 18. Tab 17 is the email. Do you see that, Mr.  
17    Moyse?

18                    A.     I see that.

19                    Q.     And then if you turn to tab 18,  
20    you will see the document itself, the "Wind  
21    Operational Review, Strategy Update and Revised  
22    Business Plan", right?

23                    A.     That's right.

24                    Q.     And you understood that this was  
25    an internal Wind document?

1 A. I think I did, yeah.

2 Q. And you understood that that  
3 internal Wind document had been provided to  
4 Catalyst by the management of Wind?

5 A. I don't know how it got to  
6 Catalyst.

7 Q. All right. And, sir, did you have  
8 any understanding whatsoever as to why Mr. Michaud  
9 was sending you the Wind operational review in  
10 February of 2014?

11 A. I can't remember for sure.

12 Q. And then, Mr. Moyse, on March 7th,  
13 2014, as you have testified in-chief, you were  
14 working on a combined pro forma analysis of  
15 Mobilicity and Wind, and that is at tab 35 of my  
16 cross-examination brief.

17 We see here the email chain between you  
18 and Mr. Michaud in relation to the report, and then  
19 we see right at the very second page, we see set  
20 out there your analysis with respect to the  
21 combined pro forma analysis of Mobilicity and Wind,  
22 right?

23 A. Right.

24 Q. And I think you gave evidence in  
25 your examination in-chief that really what you were

1 doing was simply adding and subtracting or  
2 dividing?

3 A. I think it is addition and  
4 division, yeah.

5 Q. Yes, addition and division, you  
6 were almost functioning as a human calculator in  
7 this particular exercise?

8 A. I also had to go get the values  
9 from the reports as well.

10 Q. Right. And some of what you  
11 extracted for the purposes of this particular pro  
12 forma, I suggest to you, came from information that  
13 was not in the public domain?

14 A. I think that is true, yes. I  
15 think this is sourced, so we can see.

16 Q. Sorry, I didn't catch that last  
17 part.

18 A. The footnotes I think indicate  
19 where the sources come from.

20 Q. Fair enough. For Mobilicity, as I  
21 understand your evidence, and again correct me if  
22 I'm wrong, for Mobilicity your evidence is that the  
23 data would have come primarily from filings that  
24 were made in the CCAA process; is that fair?

25 A. That's correct, I think it came

1 all from that.

2 Q. Okay, but from the Wind  
3 perspective, I suggest to you that much of what you  
4 put into this presentation came from non-public  
5 sources?

6 A. I don't remember. It seems --  
7 reading the footnote it seems like it could have  
8 come from that management presentation, but I don't  
9 remember.

10 Q. But the management presentation,  
11 assuming you are correct, Mr. Moyse, you and I will  
12 agree was a non-public document?

13 A. Yes.

14 Q. Now --

15 A. Well, sorry, I don't know how it  
16 got to Catalyst.

17 Q. Well, let's put it this way.  
18 Those aren't the kinds of documents that are  
19 disseminated publicly; you understand that?

20 A. I agree with that.

21 Q. And do I take your evidence to be,  
22 Mr. Moyse, that notwithstanding that you were  
23 accessing non-public information about Wind for the  
24 purpose of putting together this presentation -- or  
25 sorry, this combined pro forma, rather, that you

1 still had no knowledge whatsoever that Catalyst was  
2 in active discussions to potentially acquire Wind?

3 A. Not at all, not at this point.

4 Q. You never asked that question?

5 A. No.

6 Q. A curious fellow like you, who is  
7 going around reading investment memos and all the  
8 rest that don't relate to any work you are doing  
9 for the purpose of educating yourself, you never  
10 bothered to ask that question in relation to an  
11 actual piece of work that you were doing?

12 A. Voicing one's curiosity was not  
13 encouraged.

14 Q. I see. And did you at least  
15 understand, Mr. Moyse, that what you were doing  
16 here was setting out an analysis that would have  
17 allowed Catalyst to assess relative value of a  
18 Wind/Mobilicity combination?

19 A. It might be a starting point, but  
20 you would have to do a lot more work.

21 Q. Well, I didn't ask you whether it  
22 was a starting point or an end point. What I did  
23 ask you was did you at least understand that in  
24 preparing --

25 THE COURT: Well, look --

1 MR. DiPUCCHIO: You get the point, Your  
2 Honour?

3 THE COURT: Well, you may not like the  
4 way he was answering it, but he was answering your  
5 question.

6 MR. DiPUCCHIO: Well, I think my  
7 question was -- and if he did answer it, Your  
8 Honour, I will move on. I thought my question was  
9 did you understand that what it was doing was  
10 providing a value or a relative value --

11 THE COURT: You said it set out an  
12 analysis, and he said it might be a starting point  
13 and you have to do a lot more work.

14 BY MR. DiPUCCHIO:

15 Q. Right, okay.

16 And, sir, do you know whether in fact  
17 there was ever any more work done on this analysis?

18 A. I think it is the same analysis  
19 that is in the PowerPoints, and I don't remember  
20 ever doing any other work on this analysis that I  
21 know.

22 Q. So, so far as you are aware, this  
23 was the analysis that ended up being used by  
24 Catalyst?

25 A. So far as I am aware.



1                   Q.    And you then send that analysis, I  
2    take it you'll agree with me, and it is in the  
3    record at tab 20 of my brief, you then send that  
4    analysis to Mr. de Alba --

5                   A.    Yes.

6                   Q.    -- on March 8th?  Do you see that?

7                   A.    Yes.

8                   Q.    And is it your evidence that you  
9    never had any other conversation or touch point  
10   with Mr. de Alba in relation to this particular  
11   piece of work?

12                  A.    That's correct.

13                  Q.    Now, I noted in your recent  
14   affidavit, Mr. Moyse, I think you basically use the  
15   words "I do not recall" several dozen times in  
16   relation to why you were doing certain things at  
17   certain points in time.  And we are all going to be  
18   able to read your affidavit, so I don't intend to  
19   take you to every example, but do I take it that,  
20   sitting here today, you do not have a very good  
21   recollection of the type of work you were doing or  
22   why you were doing it?

23                  A.    I don't think that is fair.  In  
24   many cases where I was involved more deeply with  
25   something, I think I have a very good memory.  In

1 other cases where I was asked to do specific tasks  
2 in short periods of time, no, I don't have a good  
3 memory of that.

4 Q. Well, we'll come to some of those  
5 examples in a second.

6 Let's talk about March 26th  
7 specifically, and March 26th, Mr. Moyse, was a busy  
8 day for you because in addition to preparing the  
9 slide presentation for Industry Canada, you were  
10 also meeting with Mr. Dea?

11 A. Correct.

12 Q. And do you recall that morning  
13 being asked by Mr. Michaud to join a call with him  
14 and the telecom industry consultant that Catalyst  
15 had retained or was retaining?

16 A. I don't remember specifically, but  
17 I have seen that I was invited to a call.

18 Q. All right. So again, consistent  
19 with His Honour's previous admonition, just answer  
20 the question whether you have any recollection of  
21 that today?

22 A. No.

23 Q. And so you can't assist us with  
24 why you were participating in the call with the  
25 telecom industry consultant at that time?

1 A. I can only assume.

2 Q. Yeah, we don't want you to do  
3 that.

4 And do you have any recollection -- and  
5 I'll take you to tab 22 of my cross-examination  
6 brief, just so you have it in front of you, in  
7 fairness. Do you have any recollection of having  
8 received a copy of this particular PowerPoint  
9 presentation from the consultant to review for the  
10 purposes of the call?

11 A. No.

12 Q. And I believe that your evidence  
13 was that on March 26th, 2014, the workplace was  
14 somewhat frantic because of the fact that there was  
15 a lot of work being done to prepare the PowerPoint  
16 presentation for Industry Canada?

17 A. Yes.

18 Q. Is that fair?

19 A. Yes.

20 Q. And am I right, Mr. Moyse, that  
21 what we have now in the record as being the  
22 PowerPoint presentation wasn't the only draft of  
23 that presentation that was circulated throughout  
24 the course of that day?

25 A. That's correct, we had multiple

1 drafts.

2 Q. Do you recall how many drafts of  
3 that presentation would have been circulated before  
4 settling on the final copy?

5 A. Not specifically. It would have  
6 been more than just a couple, though.

7 Q. And each of those drafts were  
8 shared with you? In other words, you received each  
9 of the drafts and you reviewed each of the drafts?

10 A. I don't remember if I reviewed  
11 them, but I certainly would have received them as  
12 being the person typing them into PowerPoint.

13 Q. All right, I'll come to that in a  
14 second. And your evidence in-chief, I believe, was  
15 that you recall all of the notes and all of the  
16 drafts having been destroyed as a result of an  
17 instruction received by Mr. Riley; is that fair?

18 A. Yes.

19 Q. And so back in 2014, when you were  
20 giving evidence in your affidavits in relation to  
21 these telecom -- in relation to these regulatory  
22 presentations, that is what you understood, that in  
23 fact everything had been destroyed, all the drafts,  
24 all the notes?

25 A. Correct.

1 Q. And you described it, and I think  
2 we have reviewed this and so I'm not going to go  
3 over it comprehensively, but you described it in  
4 your original affidavit as having been a  
5 presentation in relation to Mobilicity?

6 A. That is -- the March one, that is  
7 what I remembered, yeah.

8 Q. And you and I can agree that  
9 that's wrong; in other words, it is about Wind?

10 A. I think it is a bit about both,  
11 but it is not just about Mobilicity, I agree.

12 Q. Okay. And just coming back to the  
13 evidence you gave to Mr. Centa, what you are asking  
14 this Court to accept is that your role in relation  
15 to the presentation, other than preparing a few, as  
16 I understand it, tables, two tables I think you  
17 described for inclusion in the presentation, was  
18 simply to act as a scribe for the purpose of  
19 inputting other people's original thought?

20 A. That's right.

21 Q. So you were nothing more, and I  
22 think in fact you describe it this way in your  
23 affidavit, you were nothing more than an  
24 administrative assistant for the purpose of putting  
25 together this PowerPoint presentation?

1 A. In this case, yes.

2 Q. And just on that point, does  
3 Catalyst have administrative assistants, by the  
4 way?

5 A. It does.

6 Q. You, as I understand it, now do  
7 not deny that the presentation itself constituted  
8 highly confidential and sensitive information?

9 A. I agree.

10 Q. So that now in your trial  
11 affidavit you have acknowledged, at least in  
12 relation to knowing about the information, that you  
13 knew highly sensitive and confidential information  
14 as it related to what appears in the slides?

15 A. I don't know if I -- I was  
16 certainly made aware of it as a result of typing it  
17 in, but I don't know how much of the information I  
18 retained or knew.

19 Q. Well, is it your evidence that  
20 despite having worked on various drafts of the  
21 presentation and then finally preparing the final  
22 version of it, you didn't retain any of it?

23 A. Some of it, but I --

24 Q. What parts did you retain?

25 A. I don't remember.

1 Q. Is it your evidence to this Court,  
2 Mr. Moyse, that you did not understand any of the  
3 presentation?

4 A. I'm not saying I didn't understand  
5 any of it. I'm saying I didn't really retain any  
6 of it.

7 Q. Well, you just said you don't  
8 recall what you retained and what you didn't  
9 retain, in fairness, right?

10 A. Understanding and retaining is  
11 different.

12 Q. Okay. Well, what do you mean?

13 A. Well, I can understand what it  
14 means as I'm typing it in, but because I'm just  
15 fulfilling this administrative task, I don't  
16 necessarily remember what I typed in a day or a  
17 week or two months later.

18 Q. Right, but I'm trying to be a  
19 little more precise, Mr. Moyse. Let's get away  
20 from I don't necessarily this or I don't  
21 necessarily that. What I am asking you is, sitting  
22 here today, did you retain any of that work?

23 A. I don't know.

24 THE COURT: When you talk about  
25 retaining, are you talking about --

1 BY MR. DiPUCCHIO:

2 Q. In his head, Your Honour, in his  
3 head.

4 You don't know?

5 A. No. I can't separate out what I  
6 may or may not know from what was in only the  
7 presentation or multiple sources.

8 Q. And again, I'm going to ask you,  
9 and I apologize if you have answered this already,  
10 but is it your evidence that you didn't understand  
11 any of what you were being asked to input?

12 A. No, I don't think that is fair.

13 Q. So what did you understand?

14 A. Do you want like on a line-by-line  
15 basis?

16 Q. Well, do you want to go through it  
17 line by line and see what you understood?

18 A. I understood parts of it, and  
19 there are parts I wouldn't have understood.

20 Q. Okay, so what parts, sitting here  
21 today, can you assist us with what parts you  
22 understood?

23 A. I understood --

24 Q. Do you want to bring it up?

25 MR. CENTA: Yes.



1 BY MR. DiPUCCHIO:

2 Q. Okay, well, let's bring it up. I  
3 think we are looking at tab 23 of my brief. This  
4 is the email, and I am hoping the attachment is  
5 here. Maybe it is in the next one. It's 23-A,  
6 Your Honour. This is the presentation, right?

7 A. Yes.

8 Q. Okay, so let's go through the  
9 overview. Maybe we'll do it this way. Did you  
10 understand anything on this page?

11 A. I mean, I certainly understand  
12 all -- I mean, I certainly understand all the  
13 sentences. I didn't at the time and even now today  
14 don't understand what was necessarily a Catalyst  
15 position to the government versus its own internal  
16 views. And I don't know what any of this  
17 litigation was about.

18 Q. Well, hold on a second. What are  
19 you talking about, bullet point number two?

20 A. Yeah.

21 Q. You didn't know what the reference  
22 to potential litigation in the Mobilicity context  
23 was?

24 A. Yeah, I knew Mobilicity was in a  
25 CCAA process and that entails a lot of litigation,

1 but not specifically, no.

2 Q. And you couldn't understand the  
3 sentence there, I take it, is what you are telling  
4 us, that Mobilicity and its creditors, other than  
5 Catalyst's support for Court using its statutory  
6 power to approve a transfer of spectrum without  
7 regard to government policy; you couldn't  
8 understand that?

9 A. That I understand.

10 Q. Okay, so you understood that part?

11 A. But I don't really know what the  
12 impact of any of that is. I don't know the  
13 consequences.

14 Q. Well, what about the third point?

15 A. I mean, that is --

16 Q. "Catalyst has been and will  
17 continue to be fully supportive of  
18 the government's policy."

19 A. I understand all of that, but  
20 again, I can't tell the difference between  
21 Catalyst's positioning and what Catalyst was  
22 actually prepared to do internally.

23 Q. I haven't actually asked you about  
24 any positioning or negotiation. I'm just asking  
25 you to tell us what you understood versus what you

1       didn't understand.

2                   A.     Yes, I would have understood that.

3                   Q.     Okay, go to the next slide.  You  
4       hopefully would have understood some of this,  
5       because this is what you contributed to the memo,  
6       right?

7                   A.     I can understand the charts, what  
8       they are getting at, yes.

9                   Q.     All right.  And go over to the  
10      next slide, "Current Government Policy and Goals",  
11      did you understand the two points on that page?

12                  A.     I understand the main points.  I  
13      don't necessarily understand some of those  
14      sub-bullets, so I don't know what "Arbitration  
15      process to enforce policy mandates" means.

16                  I don't really know what "Introduce  
17      innovation back into an oligopolistic market"  
18      means.

19                  I mean, I understand what "Initiation  
20      of discussion" means, but I don't really know what  
21      the details of those discussions would have been.

22                  Q.     Let's go to the next slide,  
23      "Current Environment/Landscape"; did you understand  
24      any of what was contained in this slide?

25                  A.     I think it is more of the same,

1 where I understand that the incumbents have a lot  
2 of the market. I don't necessarily understand what  
3 the operational tactics and legal loopholes are,  
4 what the arbitration process means.

5 Q. Did you understand the last point,  
6 Mr. Moyse, that there had been "limited traction in  
7 establishing a strong fourth carrier in every major  
8 market"?

9 A. I understand what that means. I  
10 don't know if that was true or not. I hadn't  
11 really done the analysis of all the different  
12 telecom markets in Canada.

13 Q. Well, you knew points one and two  
14 in that heading, right?

15 A. I'm not sure what "Court solution  
16 likely to be inconsistent with the government's  
17 policy" necessarily means.

18 Q. You had no knowledge of what that  
19 meant, even though you were on the Mobilicity deal  
20 team?

21 A. I just don't know what the  
22 solution would have been and how that would be  
23 inconsistent. I could certainly imagine some  
24 solutions that might be and some that might not be.

25 Q. The next page, how about

1 "Economics of Creating the 4th Wireless Network",  
2 did you understand at least what was set out in  
3 this slide?

4 A. I can understand the math, but  
5 I -- actually, I remember this very clearly where  
6 they revised these numbers several times, it seemed  
7 somewhat arbitrarily.

8 Q. So you recall some back and forth  
9 on these numbers?

10 A. I do.

11 Q. The next page, the "Strategic  
12 Options: Option 1":

13 "Combination of Wind  
14 Canada/Mobilicity to create a 4th  
15 national carrier focussed on the  
16 retail market."

17 And I take it for sure you understood  
18 what was set out here?

19 A. That top bullet, yes, seems pretty  
20 clear.

21 Q. Anything else you didn't  
22 understand on this slide?

23 A. Well, I mean, again, I understand  
24 "Negotiations with VimpelCom are well advanced",  
25 but I didn't -- that was the first I ever heard of

1 it, so yes, I understand the phrase, but that  
2 wasn't my understanding of the situation.

3 Q. The next page, "Strategic Options:  
4 Option 2", did you understand that the "Combination  
5 of Wind Canada/Mobilicity to create a 4th national  
6 carrier focussed on the wholesale market" was an  
7 option?

8 A. I mean, from this, yes, I  
9 understood it was an option. I don't necessarily  
10 understand what the economics and how that changes  
11 the strategy, but yes, I understand it was an  
12 option.

13 Q. And you understood the  
14 requirements? No issue in understanding that?

15 A. In concept, yes.

16 Q. The next slide, "Strategic  
17 Options: Option 3":

18 "CCAA Mobilicity Court process  
19 sale to Telus without (or with)  
20 government support."

21 Did you understand that?

22 A. Not really.

23 Q. You didn't really understand that?

24 A. A lot of the bullet points even  
25 now, having read a lot more production than I have

1 ever seen on this, are very vague to me.

2 Q. So you didn't understand that what  
3 was being set out here as option number 3 was  
4 potential litigation?

5 A. Well, I mean, as part of CCAA,  
6 people tend to fight over things, so I knew that  
7 was the case.

8 Q. But did you not know that what was  
9 being discussed here was the fact that if the  
10 government didn't support the sale to an incumbent,  
11 that there would very likely be litigation that  
12 would result from that? Surely you understood that  
13 from this slide?

14 A. Well, yeah, the second bullet  
15 seems to say that.

16 Q. Then you understood it?

17 A. I don't know what I understood at  
18 the time.

19 Q. The next page, and then you have a  
20 variety of appendices, and I am not going to go to  
21 those.

22 Now, Mr. Moyse, do you recall Mr.  
23 Glassman discussing with the investment  
24 professionals at Catalyst the regulatory  
25 environment for telecom?

1                   A.     Not specific discussions, but it  
2     did come up.

3                   Q.     Okay. And again, those kinds of  
4     answers I'm not sure are very helpful. When you  
5     say I don't recall specific discussions but it did  
6     come up, are you saying that you recall that those  
7     topics were discussed but you can't give us  
8     specifics of those discussions today?

9                   A.     That's correct.

10                  Q.     And do you recall that Mr.  
11     Glassman had discussions with the investment  
12     professionals at Catalyst about a certain case that  
13     he was involved in in the U.S. called NextWave?

14                  A.     No, not at all.

15                  Q.     You don't recall Mr. Glassman  
16     suggesting that you read NextWave?

17                  A.     No, not at all.

18                  Q.     Now, when you met Mr. Dea for  
19     coffee at Aroma that day, I think you said in your  
20     evidence in-chief that your assumption is that  
21     because you recall the preparation of this  
22     presentation being a frantic exercise, that most  
23     likely you would not have been preparing it at the  
24     time that you went to meet Mr. Dea for coffee; is  
25     that a fair characterization of your evidence?



1 A. I think so.

2 Q. But you can't recall, sitting here  
3 today, one way or the other?

4 A. I know it would have been  
5 uncharacteristic, but no, I can't recall.

6 Q. And so when you met with Mr. Dea,  
7 I'm going to suggest to you, Mr. Moyse, that in  
8 fact you did discuss with Mr. Dea certain work that  
9 you were doing while at Catalyst?

10 A. I did not, not specifically.

11 Q. You didn't mention any companies  
12 whatsoever to him?

13 A. No. That I was working on? No.

14 Q. Do you remember mentioning  
15 Advantage to him?

16 A. No.

17 Q. Do you remember mentioning  
18 Callidus to him?

19 A. I remember that came up.

20 Q. That one you remember?

21 A. Yes.

22 Q. And is the reason you remember  
23 Callidus because we now have an email from Mr. Dea  
24 which reflects that you were discussing something  
25 about Callidus in the course of that interview? Is

1       that why you remember it?

2                   A.     Well, I remembered it before, and  
3       I remember what I replied to him.

4                   Q.     So Callidus was discussed, but you  
5       can't remember any other company specifically being  
6       discussed?

7                   A.     No.

8                   Q.     And I am going to suggest to you,  
9       Mr. Moyse, that as you were involved in having  
10      discussions with the regulatory advisor or the  
11      telecom advisor to Catalyst the morning of June  
12      26th -- or sorry, I said June 26th, but March 26th,  
13      and as you were tasked with this exercise of  
14      preparing this PowerPoint, that you did mention to  
15      Mr. Dea in this interview that you were working on  
16      Wind?

17                  A.     I did not.

18                  Q.     And the reason you mentioned it to  
19      him, I suggest to you, Mr. Moyse, is because you  
20      didn't see anything confidential about your  
21      involvement in Wind?

22                  A.     I didn't mention it to him.

23                  Q.     But did you see anything  
24      confidential about your involvement in Wind?

25                  A.     At that time, I didn't even think

1 I was involved in Wind.

2 Q. Even as you were preparing this  
3 PowerPoint presentation, you still didn't feel that  
4 you were involved in Wind?

5 A. I was certainly involved in  
6 Catalyst's telecom team, but we had done no work on  
7 Wind to that point, so I didn't think of it that  
8 way.

9 Q. And, sir, when you say that you  
10 recall a response to Mr. Dea in relation to  
11 Callidus; do you remember that?

12 A. I do.

13 Q. We know in the record, and I don't  
14 have it at my fingertips but we have seen it  
15 before, we know that Mr. Dea sends you an email  
16 shortly after your interview asking you a question  
17 about Callidus, right?

18 A. That's right.

19 Q. And you say you recall responding  
20 to Mr. Dea, right?

21 A. Yes.

22 Q. And you would have responded to  
23 him by email?

24 A. Yes.

25 Q. And we haven't seen any record

1 either in your productions or in the West Face  
2 productions of any email response; is that fair?  
3 You haven't seen one, have you?

4 A. I haven't seen one, no.

5 Q. And is that because, Mr. Moyse,  
6 you deleted your response to Mr. Dea?

7 A. Yes.

8 Q. You recall deleting your response  
9 to Mr. Dea?

10 A. No, not specifically. I can't  
11 explain why it is not there, but --

12 THE COURT: Well, look, I want you to  
13 be careful about how you are answering. You say  
14 you can't explain why it is not there, but 30  
15 seconds ago you said you deleted your response.

16 THE WITNESS: That is the only  
17 explanation I can --

18 THE COURT: Well, you have got to  
19 listen carefully and answer carefully.

20 BY MR. DiPUCCHIO:

21 Q. Sitting here today, I gather, Mr.  
22 Moyse, you can't tell us why that email doesn't  
23 appear in either your productions or the West Face  
24 productions?

25 A. I can't.

1 Q. Now, there is the next  
2 presentation that you assisted in preparing, and  
3 that is the one in May of 2014. This is at tab 27.  
4 I'm not going to take you through this one, Mr.  
5 Moyse. I think, in fairness, we can all agree that  
6 in substance it sort of echos what was said in the  
7 first presentation, largely, right?

8 A. Sure.

9 Q. Okay. And you understood that it  
10 was being prepared for the purposes of a meeting  
11 with Industry Canada the following day?

12 A. Correct.

13 Q. And, sir, what did you understand  
14 was actually being discussed with Industry Canada?  
15 Did you have any understanding, or were you just in  
16 the dark?

17 A. Aside from what is in the  
18 presentation, I didn't know what was being  
19 discussed with Industry Canada.

20 Q. But did you have any understanding  
21 as to why Catalyst had met with Industry Canada in  
22 March and was meeting again with Industry Canada in  
23 May?

24 A. I have a -- I can make a good  
25 guess.

1 Q. Don't guess.

2 A. No, I'm saying I can't -- nobody  
3 articulated it to me.

4 Q. And you didn't ask anybody? You  
5 just were content to stay in the dark?

6 A. Well, I made my own assumption  
7 that I was comfortable with.

8 Q. And that is why you didn't ask  
9 anybody?

10 A. Right.

11 Q. And was the assumption that you  
12 made at the time that Catalyst was meeting with  
13 Industry Canada in March and then again in May of  
14 2014 in an attempt to have Industry Canada  
15 understand its regulatory strategy in the event of  
16 a combination of Wind and Mobilicity?

17 A. That would be part of -- I  
18 wouldn't necessarily go that far.

19 Q. Well, how far should I go, Mr.  
20 Moyse?

21 A. Just that it is important to keep  
22 a dialogue with the regulator if you have an  
23 interest in a highly regulated industry.

24 Q. And what is the importance of  
25 maintaining a dialogue, for what reason?

1 A. To help accomplish your goals.

2 Q. And what were the goals that  
3 Catalyst was seeking to accomplish, to your  
4 understanding?

5 A. The one I knew was building a  
6 fourth wireless carrier.

7 Q. Right, and what was it needing to  
8 discuss with Industry Canada with respect to  
9 building a fourth wireless carrier?

10 A. Whatever is in these  
11 presentations.

12 Q. So you understood everything that  
13 was in the presentations then?

14 A. No, but I understood that was the  
15 point of the document.

16 Q. And again, Mr. Moyse, your  
17 evidence to this Court is that in relation to the  
18 second PowerPoint presentation, your role was  
19 purely clerical or administrative in nature?

20 A. It was the same process as the  
21 first one, essentially.

22 Q. Right, and therefore purely  
23 clerical and administrative in nature?

24 A. Correct.

25 Q. Now, you are copied on an email

1 chain that I would like to take you to at tab 28 of  
2 my cross-examination brief. This is an email chain  
3 that takes place over the course of two days, May  
4 6th and May 7th, 2014.

5 So if you go to the bottom of the  
6 chain, Mr. Moyse, because you are copied on all of  
7 this -- well, this part here, no, just go up.

8 So right here is a copy of an email  
9 from Mr. Glassman on May 6th, 2014 in response to  
10 some information from UBS, and Mr. Glassman says:

11 "Technically not \$300 million  
12 in cash (although it could be) --  
13 \$300 million in total value and we  
14 get to choose between replacing  
15 current vendor financing or  
16 re-negotiating with them etc...

17 Also, I think due diligence can  
18 be confined primarily to spectrum  
19 ownership and opinions thereon etc.  
20 since we are buying way below  
21 spectrum value. Need a condition of  
22 government approval..."

23 So stopping right there for a moment,  
24 Mr. Moyse, I take you understood the discussion  
25 here in relation to value and the economics of the



1 deal?

2 A. Well, I don't really know, I  
3 didn't know what the vendor financing was at Wind.  
4 I understand 300 million of value, though.

5 Q. And the vendor financing, though  
6 you may not know -- may not have known it on May  
7 6th, you certainly would have figured that out  
8 relatively quickly when you had access to the data  
9 room shortly thereafter, right?

10 A. Yes.

11 Q. Okay. So you had all of the tools  
12 available to you on or about May 6th or shortly  
13 thereafter to understand the economics of the deal?

14 A. Yes.

15 Q. And then in relation to the  
16 paragraph below where Mr. Glassman is expressing  
17 the opinion that:

18 "[...] due diligence can be  
19 confined primarily to spectrum  
20 ownership and opinions thereon since  
21 we are buying way below spectrum  
22 value."

23 You understood that to be a reference  
24 to the fact that the due diligence process was  
25 actually going to be substantially more confined in

1     this case?

2                   A.     That is what he was saying here,  
3     but in the end that is not -- that wasn't what  
4     happened.

5                   Q.     Okay, but do you understand that  
6     is what Mr. Glassman was saying? You had no  
7     problems understanding that?

8                   A.     Yeah, I understand what he is  
9     saying.

10                  Q.     Okay. And when he says "because  
11     we are buying way below spectrum value", what he is  
12     relying upon, I suggest to you, in order to make  
13     that statement was the assignment of value that you  
14     had made in your pro forma?

15                  A.     I can't say what he was relying on  
16     when he said that.

17                  Q.     Well, were you aware of any other  
18     assessment of spectrum value that was performed  
19     prior to this email chain?

20                  A.     Am I aware? No.

21                  Q.     And the "need a condition of  
22     governmental approval", did you have any problems  
23     understanding that?

24                  A.     "Government approval" can mean a  
25     lot of things, so I didn't really know what that

1     meant.

2                   Q.     All right.   And now if you go up  
3     in the chain, you will see an email from Mr. de  
4     Alba, and again you are copied on it, and it says:

5                   "The vendor financing is in the  
6                   default notice period."

7                   Did you know that, Mr. Moyse?

8                   A.     Not prior to this email.

9                   Q.     "We can negotiate to keep it but  
10     I suspect one of the reasons why the  
11     vendors did not roll over (for a  
12     large equipment buyer such as Wind)  
13     or are playing hardball is because  
14     without clarity on who, how and when  
15     the spectrum can be sold their  
16     collateral package is very weak."

17                   Do you see that?

18                   A.     I see that.

19                   Q.     And did you understand that? Did  
20     you have any problems understanding that, that  
21     there was an issue with respect to the  
22     transferability of the spectrum, and therefore,  
23     there could be an issue with respect to how weak or  
24     strong their collateral was?

25                   A.     I understand that is Gabriel's

1 view, yes.

2 Q. And you understood it at the time?  
3 You had no issue understanding it at the time, I  
4 suggest to you?

5 A. I would have understood that,  
6 yeah.

7 Q. And then he goes on to say:

8 "This can be positioned to our  
9 advantage with the government to get  
10 the required clarity on the ability  
11 to sell spectrum and/or monetize the  
12 investment."

13 And then he goes on to actually quote  
14 verbatim what the argument to the government would  
15 be, right?

16 A. He does.

17 Q. And you had no issue, I suggest to  
18 you, Mr. Moyse, understanding any of this because  
19 this was entirely consistent with the regulatory  
20 presentation that you had helped prepare?

21 A. A month and a half later, almost a  
22 month and a half later, I don't know if I would  
23 have connected this -- I did not connect this to  
24 the regulatory presentation.

25 Q. But apart from whether it was

1 connected to the regulatory presentation or not, I  
2 take it you had no trouble understanding that the  
3 argument to the government was going to be we want  
4 the ability to sell the spectrum in order to  
5 monetize the investment?

6 A. Gabriel is saying that that's what  
7 they can present to the government.

8 Q. And subsequent to that, as we have  
9 just seen, a few short days later, you are  
10 assisting again in preparing the presentation to  
11 Industry Canada, right?

12 A. Right.

13 Q. Where this precise kind of  
14 language appears again?

15 A. Right.

16 Q. So you would have then connected,  
17 I'm assuming, for the purposes of preparing that  
18 presentation you would have known full well why  
19 that presentation was being prepared, because Mr.  
20 de Alba signals it to you right in this email?

21 A. I don't know what I connected at  
22 the time.

23 Q. And then if you scroll up, Mr.  
24 Glassman then says:

25 "Government has told us today

1                   via Bruce D that they will not give  
2                   us in writing the right to sell  
3                   spectrum in 5 years. My response is  
4                   that such takes option 1 off the  
5                   table and we would only be willing  
6                   to build a wholesale/leasing  
7                   business specifically with  
8                   incumbents as the customers. They  
9                   know this. We are going to Ottawa  
10                  early next week. They also asked  
11                  for our help to understand who  
12                  really is controlling VimpelCom's  
13                  decision-making and to get our input  
14                  prior to next week's Mobilicity  
15                  mediation."

16                 There again, Mr. Moyse, I'm going to  
17                 suggest to you that that is all pretty plain  
18                 English and you would have understood exactly what  
19                 Mr. Glassman was saying to you?

20                 A. I understand the sentence. I  
21                 don't necessarily understand the consequences, the  
22                 economic strategy associated with the wholesale  
23                 leasing business.

24                 Q. But you understood the reference  
25                 to option 1 being the reference to the retail

1 carrier?

2 A. I understand that for sure now.  
3 At that time, I don't know if I would have made  
4 that connection.

5 Q. And I just want to take you for  
6 one brief moment to your April 2015 affidavit, just  
7 to see what you said in April 2015, and this is at  
8 tab 4 of the brief, Your Honour.

9 It is on the screen, Mr. Moyse, and I  
10 am looking specifically at paragraph 18 of that  
11 particular affidavit, and you say this to the  
12 Court:

13 "The junior employees,  
14 including me, spent those early days  
15 learning about Wind, primarily by  
16 reviewing information made available  
17 by the company through a data room.  
18 The only regulatory risk related to  
19 Wind of which I was aware, was  
20 whether or not the Federal  
21 Government would allow a new  
22 wireless entrant to sell its  
23 spectrum and/or be purchased by an  
24 incumbent. I learned about this  
25 regulatory issue through the

1                   extensive media coverage it received  
2                   in both the general and business  
3                   news. I did not do any analysis on  
4                   that subject or any other regulatory  
5                   issues facing Wind, and if anyone at  
6                   Catalyst did such an analysis before  
7                   I left, I was not informed of and  
8                   was not aware of it."

9                   Now, I take it, Mr. Moyse, given what  
10                  we have just looked at, that you and I can agree  
11                  that this concept that you only were aware of the  
12                  regulatory risk via your having read it in the  
13                  media wasn't true?

14                 A. Well, once I became aware of it  
15                  through the media, I'm not sure what significance  
16                  further mentions of it have, once I know it.

17                 Q. Oh, I'll tell you the significance  
18                  of it, Mr. Moyse. The significance of it, quite  
19                  frankly, was you were putting forward a position to  
20                  the Court in April of 2015 that any discussion in  
21                  relation to regulatory risk was only brought to  
22                  your attention through the media. That is the  
23                  impression you were trying to convey?

24                 A. I said that is where I learned  
25                  about it. I don't say that --



1 MR. CENTA: Objection. I don't think  
2 it is helpful to re-characterize a paragraph in an  
3 affidavit and put it back to a witness and ask him  
4 to agree that that's what he was attempting to  
5 convey to the Court. The paragraph says what it  
6 says.

7 BY MR. DiPUCCHIO:

8 Q. All right, can you and I at least  
9 agree to this, Mr. Moyse, that not only did you  
10 learn about it through the media, but in fact, you  
11 did have discussions within Catalyst about these  
12 regulatory issues?

13 A. There were discussions about  
14 regulatory issues at Catalyst, yes.

15 Q. And when you say in your affidavit  
16 that:

17 "I did not do any analysis on  
18 that subject [...], and if anyone at  
19 Catalyst did such an analysis before  
20 I left, I was not informed of and  
21 was not aware of it."

22 I take it that you would agree with me  
23 that the presentations that you were involved in  
24 certainly contradict your statement there?

25 A. I don't agree with that, because

1 the presentations were Catalyst's positioning to  
2 the Federal Government, not necessarily Catalyst's  
3 analysis of the issues internally.

4 Q. Okay. So you make the distinction  
5 between an analysis and what it was saying to the  
6 Federal Government?

7 A. I just didn't know what was a  
8 position and what wasn't.

9 Q. And just by the by, Mr. Moyse,  
10 when you look at this same affidavit, in paragraph  
11 24 specifically, in the sentence starting "Moreover  
12 [...]", in that paragraph:

13 "Moreover, as described above,  
14 any information that I had access to  
15 prior to my departure from Catalyst  
16 was extremely preliminary. If  
17 anyone at Catalyst had begun to  
18 develop negotiation plans by the  
19 time of my departure, which would  
20 surprise me given the preliminary  
21 stage of our work, I was not  
22 included in any discussions, nor did  
23 I ever see any documents concerning  
24 such plans, including drafts."

25 And we know now, Mr. Moyse, would you

1 agree with me, that in fact you were the recipient  
2 of a draft?

3 A. A draft what?

4 Q. A draft offer.

5 A. I was included on that email. I  
6 did not read the draft offer.

7 Q. Right, but what you are saying  
8 here to the Court, are you saying here to the Court  
9 that although you received it, you didn't see it  
10 because you never opened it?

11 A. That's correct.

12 Q. I see.

13 A. I was on vacation and I didn't  
14 open it.

15 Q. I see. Now, as we have just  
16 discussed, Mr. Moyse, you went on vacation on May  
17 16th, 2014, right?

18 A. Yes.

19 Q. And it was in the middle of the  
20 Wind deal; correct?

21 A. It was after the deal -- we had  
22 gotten started on the deal, yes.

23 Q. And did you tell Mr. de Alba that  
24 the purpose of your trip was you were taking a  
25 vacation with your girlfriend in order to propose

1 to her?

2 A. Absolutely not.

3 Q. You didn't say that?

4 A. In fact, I actively discouraged  
5 that speculation, and I only bought a ring over a  
6 year later.

7 Q. Okay. Was there speculation about  
8 that?

9 A. They like -- people liked to make  
10 jokes about it, and I told them to stop and that is  
11 not what I was doing.

12 Q. And if we go to tab 29 of the  
13 cross-examination brief, this is one of the emails  
14 I think you and I can agree that was sent to you  
15 while you were on your trip; correct?

16 A. Scroll down. But I recognize it,  
17 yes.

18 Q. And am I right, Mr. Moyse, that  
19 what is happening in this email chain is that you  
20 are being sent a working model for Project Turbine?

21 A. Correct, so -- well, keep  
22 scrolling down. I can't remember who sent it.

23 Right, that is what I thought, so  
24 Morgan Stanley, who was working on the model, sent  
25 it to us.

1 Q. Okay. And you then, I take it,  
2 were asked to give your comments?

3 A. Yeah, Zach Michaud forwarded it to  
4 myself and Lorne Creighton asking us to pass  
5 comments on it.

6 Q. And so Mr. Creighton, we see in  
7 the email chain that comes after Mr. Michaud's  
8 email, gives a couple of high-level comments,  
9 right?

10 A. He does.

11 Q. And then you chime in and you say:

12 "In the 'LBO' tab [...]"

13 And I assume that is a reference to the  
14 leveraged buyout tab?

15 A. Correct.

16 Q. "[...] aren't we buying this  
17 debt-free? I thought \$300 million  
18 buys out all the vendor financing  
19 and the shareholder loans go away as  
20 well. But the current case is  
21 keeping them in place and  
22 subtracting those from EV to  
23 calculate equity returns. Unless  
24 I'm misunderstanding, they should  
25 run a 2nd base case which better

1 reflects how the transaction would  
2 actually be structured (maybe a 1a  
3 and 1b depending on if we roll  
4 vendor financing or not)."

5 And I suggest to you, Mr. Moyse, that  
6 by May 19th, 2014, you certainly had a fairly  
7 in-depth knowledge of the economics of the  
8 transaction?

9 A. Well, I knew the price was 300  
10 million, and my assumption was that that buys  
11 everything in the company, and that is all I knew.

12 Q. Well, it wasn't an assumption.  
13 That is what you had been told by Mr. Glassman?

14 A. No, that is what I believed based  
15 on our discussion in the management meeting with  
16 Wind.

17 Q. Okay. So that is a discussion you  
18 recall having during the management meeting that  
19 you had with the individuals at Wind?

20 A. It came up, yeah.

21 Q. And that was a meeting that you  
22 participated in on May 9th, I believe?

23 A. That's correct.

24 Q. And in any event, regardless of  
25 where you obtained this knowledge, you agree that

1     you had a fairly good understanding of the  
2     economics of the deal at this point in time?

3             A.     I'm not trying to characterize my  
4     understanding.   I'm saying I understood the price  
5     was 300 million and that that buys out the vendor  
6     financing and shareholder loans.

7             Q.     Now, despite the fact that you say  
8     that you were on vacation and you were only really  
9     responding to emails on an as-requested basis, I'm  
10    going to suggest to you, Mr. Moyse, that in fact  
11    you were reviewing your emails to keep yourself  
12    apprised as to what was going on in relation to  
13    Wind?

14            A.     No.

15            Q.     And I suggest to you that in fact  
16    you were looking at things like the offer that came  
17    through to you?

18            A.     No.

19            Q.     And in fact, you were so curious,  
20    Mr. Moyse, about the status of the deal, as we have  
21    looked at earlier today, that notwithstanding you  
22    being on vacation, you asked Mr. Creighton what the  
23    status of the deal was?

24            A.     I was curious enough to ask him,  
25    but I didn't really want to look through all the

1 emails and documents.

2 Q. All right. That is just curiosity  
3 on your part?

4 A. Yeah, pretty idle curiosity.

5 Q. And, Mr. Moyse, I'm going to  
6 suggest to you, I'm going to suggest to you that  
7 the reason you were asking Mr. Creighton on May  
8 23rd to tell you about the status of the deal was  
9 not idle curiosity, but it was because you were  
10 going to pass that information along to Mr. Dea?

11 A. Absolutely not.

12 Q. And, Your Honour, just for your  
13 reference, the emails we are talking about with  
14 Mr. Creighton are the one I took you to earlier,  
15 and then there is one at tab 31 of the brief. And  
16 I think our agreement is we have to refer to these  
17 emails in order for them to form part of the  
18 record.

19 So, Mr. Moyse, is this one of the  
20 emails you sent to Mr. Creighton on May 20th, 2014,  
21 asking him what is the story with Wind?

22 A. Sorry, I think it is in the middle  
23 of the --

24 Q. It is right on the first page, in  
25 the middle of the first page; do you see that?



1 A. Yes, I sent him that.

2 Q. And then Mr. Creighton responds to  
3 you and says as far as he knows, the plan is to  
4 submit the offer on Friday, right?

5 A. That's right.

6 Q. Give me one second, as I find a  
7 document.

8 I'll come back to it in a second, as I  
9 find it.

10 Am I right, Mr. Moyse, that you gave  
11 some evidence earlier today about the fact that you  
12 started looking for a job, another job in December  
13 2013, right?

14 A. Yes.

15 Q. And that you had essentially  
16 determined to leave Catalyst even in the absence of  
17 receiving any offer, right?

18 A. Yes.

19 Q. You were very unhappy there,  
20 right?

21 A. That's right.

22 Q. And I think you described it as  
23 being very frustrated this morning?

24 A. Yes.

25 Q. And am I right that at this time

1     you developed a certain animus towards Catalyst?

2                     A.     I don't agree.

3                     Q.     You didn't develop a certain  
4     animus towards the partners at Catalyst?

5                     A.     I disliked working there, but I  
6     didn't develop any animus towards them.

7                     Q.     Did you joke with your friends in  
8     a derogatory way about Catalyst?

9                     A.     Yes.

10                    Q.     Did you joke with people at West  
11     Face in a derogatory way about Catalyst?

12                    A.     Yes.

13                    Q.     Do you recall joking with the  
14     people at West Face or the people at West Face in  
15     June of 2014 referred to Mr. Glassman as a fatter,  
16     shorter Kim Jong Il to you?

17                    A.     Yes, I recall that.

18                    Q.     And do you recall passing along  
19     that joke to your friends?

20                    A.     I do.

21                    Q.     And I suggest to you the reason  
22     you were joking about people at Catalyst in a  
23     derogatory way is precisely because you had  
24     developed a certain animus towards them?

25                    A.     I don't agree.

1 Q. And even in your very first  
2 affidavit, Mr. Moyse, part of what you decided to  
3 file in the public record were statements that you  
4 were making in an attempt to embarrass Catalyst?

5 A. I was making --

6 THE COURT: I'm having problems with  
7 this kind of -- you go ahead, Mr. Centa. I suspect  
8 I know why you are on your feet.

9 MR. CENTA: Partly because the  
10 affidavit was responsive to an allegation that a  
11 restrictive covenant was to be imposed and there is  
12 a legal part of the test that deals with the good  
13 faith departure of an employee, and the reasons  
14 that an employee is choosing to leave are squarely  
15 relevant to their ability to enforce the  
16 restrictive covenant. And I don't think it is open  
17 to Mr. DiPucchio to inquire into the mala fides of  
18 a pleading filed in a proceeding.

19 THE COURT: What I was going to say,  
20 Mr. DiPucchio, is we are all aware that witnesses  
21 usually don't make decisions as to what tactically  
22 is going to be in an affidavit, and I have seen  
23 affidavits today that clearly contain argument that  
24 had no business being in an affidavit and --

25 MR. DiPUCCHIO: Well, that is fair,

1 Your Honour.

2 THE COURT: And the problem with  
3 putting to the witness why something is in an  
4 affidavit probably gets into privilege because the  
5 lawyers call that shot, usually.

6 MR. DiPUCCHIO: Well, I take your point  
7 on that, except for the fact that I was going to  
8 ask a question, and maybe we don't need to go to  
9 it, Your Honour, but there is actually an email  
10 exchange with one of his friends where says he is  
11 going to respond in a way that's going to embarrass  
12 Catalyst --

13 THE COURT: Well, that's different --

14 MR. DiPUCCHIO: But, in any event, I'm  
15 not going to spend time on this, Your Honour. We  
16 can move on.

17 BY MR. DiPUCCHIO:

18 Q. Let me ask you about a call log  
19 that was produced to us --

20 THE COURT: You are now being called  
21 "Mr. Milne-Smith" in the transcript.

22 MR. DiPUCCHIO: I'm sure  
23 Mr. Milne-Smith won't appreciate that, Your Honour,  
24 so we'd better get that corrected. I'll speak for  
25 him. Mr. Thomson hasn't risen yet.

1 MR. THOMSON: He would treat it as a  
2 compliment, I assure you.

3 BY MR. DiPUCCHIO:

4 Q. I want to take you, Mr. Moyse, to  
5 a record of some phone calls --

6 THE COURT: Is this a convenient time  
7 for the afternoon break?

8 MR. DiPUCCHIO: It is, Your Honour,  
9 yes.

10 -- RECESSED AT 3:37 P.M.

11 -- RESUMED AT 3:53 P.M.

12 BY MR. DiPUCCHIO:

13 Q. Mr. Moyse, before we took the  
14 break, I was just about to refer you to a telephone  
15 call log that we received a few weeks back from my  
16 friends representing West Face. This is at tab 13  
17 of the cross-examination brief, Your Honour.

18 Mr. Moyse, we have talked a little bit  
19 about the call that occurred on May 23rd with Mr.  
20 Dea, which was the same day that you were emailing  
21 Mr. Creighton about the status of the Wind deal,  
22 right?

23 A. Correct.

24 Q. And I took from your evidence that  
25 you are not able to give us any explanation

1       whatsoever for the calls that are recorded on June  
2       19th, July 8th and July 15th of 2014?

3                   A.     No.

4                   Q.     Now --

5                   THE COURT:   Does your question involve  
6       both calls on June 19th or just one of them?

7                   MR. DiPUCCHIO:   Sorry, Your Honour, you  
8       are quite right, there is the one call from Supriya  
9       Kapoor which I took it Mr. Moyse had described in  
10      his evidence in-chief, Your Honour, in the  
11      affidavit that has been filed.   So really my  
12      question was only in relation to the second call,  
13      and then the two calls in July.

14                  THE COURT:   Thank you.

15                  BY MR. DiPUCCHIO:

16                  Q.     Mr. Moyse, I want to take you to  
17      the email chain that your counsel took you to  
18      earlier today.   It is found at tab 32 of my brief.  
19      Do you recall this chain, Mr. Moyse, between you  
20      and your friend Mr. Matlin?

21                  A.     That's right.

22                  Q.     And one of the things you said  
23      this morning in response to your counsel's question  
24      was that you actually know now that the information  
25      you were giving to Mr. Matlin was incorrect in

1 relation to the West Face deal?

2 A. Correct.

3 Q. And the information, just so we  
4 understand, that you give to Mr. Matlin on  
5 September 16th, 2014, is that you thought that West  
6 Face was just backing Wind financially:

7 "(My guess is they are lenders  
8 to the new company and maybe have  
9 some equity or warrants)."

10 Now, Mr. Moyse, you haven't produced  
11 any article contemporaneous with this September  
12 email that reflects that having been reported as  
13 the transaction?

14 A. I thought I had produced articles.  
15 If I didn't, then I didn't.

16 Q. Okay. And I'm going to suggest to  
17 you, Mr. Moyse, that this wasn't just a bad guess,  
18 as counsel are portraying it now. In fact, what  
19 you are telling Mr. Matlin is consistent with what  
20 West Face was proposing back in April and May of  
21 2014?

22 A. I neither knew that at this time,  
23 at the time I sent this email, and I don't even  
24 know the terms of their proposals now.

25 Q. And I'm going to suggest to you,

1 Mr. Moyse, that in fact you did know that back in  
2 April of 2014 and May of 2014 that West Face was  
3 proposing to simply lend to the company and take  
4 equity or warrants later on, and that is why, that  
5 is why you make an educated guess as to the  
6 structure of the transaction in September?

7 A. No.

8 Q. And I'm going to put to you, Mr.  
9 Moyse, that in fact you did have discussions in the  
10 April, May, June timeframe with people at West Face  
11 with respect to the Wind transaction?

12 A. Not at all.

13 Q. And I am going to suggest to you,  
14 Mr. Moyse, that you passed along the information  
15 you had in relation to that transaction which you  
16 learned at Catalyst, including the regulatory  
17 structure or the regulatory risks that Catalyst was  
18 outlining in the presentation to Industry Canada?

19 A. I didn't do that.

20 Q. And I am going to suggest to you  
21 further, Mr. Moyse, that you had in your possession  
22 information on your personal computer that  
23 reflected that information, that regulatory  
24 strategy, and that the reason you installed Secure  
25 Delete and opened the program was for the purpose



1 of deleting evidence of that information?

2 A. No.

3 MR. DiPUCCHIO: Thank you, Your Honour,  
4 those are my questions for this witness.

5 THE COURT: Any re-examination?

6 RE-EXAMINATION BY MR. CENTA:

7 Q. Very brief, Your Honour.

8 If I could turn up in Mr. DiPucchio's  
9 book of cross-examination tab 28. If we could  
10 scroll down to the bottom of that. Thank you,  
11 right there.

12 Do you recall, Mr. Moyse, that  
13 Mr. DiPucchio asked you some questions about the  
14 email from Mr. Glassman sent at 4:04 p.m. on May  
15 6th?

16 A. I do.

17 Q. And in the second -- in the  
18 paragraph that begins "Also [...]", the text of the  
19 email reads:

20 "Also, I think due diligence  
21 can be confined primarily to  
22 spectrum ownership and opinions  
23 thereon [...]"

24 Do you recall Mr. DiPucchio asking you  
25 some questions about that?

1 A. Yes.

2 Q. Was the due diligence that you  
3 performed between May 9th and May 16th confined  
4 primarily to spectrum ownership and opinions  
5 thereon?

6 A. It was not, and I didn't do any  
7 diligence on that.

8 Q. The email continues and it says,  
9 Mr. Glassman continues, quote:

10 "[...] since we are buying way  
11 below spectrum value."

12 And Mr. DiPucchio said to you, Mr.  
13 Moyse:

14 "Okay. And when he says 'because  
15 we are buying way below spectrum  
16 value', what he is relying upon, I  
17 suggest to you, in order to make that  
18 statement was the assignment of value  
19 that you had made in your pro forma?"  
20 Do you remember that question?

21 A. I do.

22 Q. When you constructed the combined  
23 pro forma that is found in my book of documents at  
24 tab 18, in compiling that chart, did you conduct an  
25 assessment of spectrum value owned by Wind?

1                   A.     No, I simply reported the data  
2     that was provided.

3                   MR. CENTA:   Thank you, no more  
4     questions.

5                   THE COURT:   Thank you.  
6                   Thank you, Mr. Moyse.

7                   THE WITNESS:   Thanks.

8                   -- WITNESS EXCUSED

9                   MR. CENTA:   Justice Newbould, we have  
10    provided an electronic copy of our read-in brief  
11    that I believe has been added to your iPad, and if  
12    it won't, it will be shortly.

13                  And with that, the Defendant Brandon  
14    Moyse closes his case.

15                  THE COURT:   Thank you.   Is there any  
16    reply evidence?

17                  MR. DiPUCCHIO:   No, there is not, Your  
18    Honour.

19                  THE COURT:   So this completes the  
20    evidence?

21                  MR. DiPUCCHIO:   Yes, it does.

22                  THE COURT:   All right, so we are on tap  
23    then tomorrow morning for 9 o'clock?

24                  And what will I be provided with?

25                  MR. DiPUCCHIO:   I don't think anybody

1 sitting here quite knows, Your Honour. There's  
2 elves at work back at each respective office. I  
3 suspect you are going to be provided with hundreds  
4 of pages of argument, written argument.

5 THE COURT: All right.

6 MR. DiPUCCHIO: But I for one can't  
7 tell you exactly what is being prepared back on the  
8 home front.

9 THE COURT: Early on I had asked from  
10 somebody for a USB key with all the affidavits in  
11 Word and the factums in Word, the pleadings in  
12 Word, and the final arguments in Word. I'll be  
13 given that some time tomorrow?

14 MR. THOMSON: You will, yes. We intend  
15 to provide you with the written argument, as well  
16 as a closing compendium and an electronic brief of  
17 authorities and -- will it be hyper-linked by  
18 tomorrow? We expect that the factum will be  
19 hyper-linked for you by the end of the day  
20 tomorrow.

21 THE COURT: Great.

22 All right, well then, we'll come back  
23 tomorrow morning at 9 o'clock.

24

25 -- Adjourned at 4:03 p.m.

REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,  
CSR, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth;

That the testimony of the witnesses  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter reviewed and certified for  
accuracy.

Dated this 10th day of October, 2016.



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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