

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and
CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,
FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON
CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN
ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS,
BRUCE LIVESEY and JOHN DOES #4-10

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES
RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY
LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK
CUBE and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

**MOTION RECORD OF THE DEFENDANTS,
WEST FACE CAPITAL INC. AND GREGORY BOLAND
(RE: CATALYST'S REFUSALS
RETURNABLE DECEMBER 15, 2020)
VOLUME 3 OF 4**

November 17, 2020

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO# 24264J)

416.863.5566

kentthomson@dwpv.com

Matthew Milne-Smith (LSO# 44266P)

416.863.5595

mmilne-smith@dwpv.com

Andrew Carlson (LSO# 58850N)

416.367.7437

acarlson@dwpv.com

Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by
Counterclaim), West Face Capital Inc. and
Gregory Boland

TO: GOWLING WLG (CANADA) LLP

1 First Canadian Place
1600-100 King Street West
Toronto ON M5X 1G5

Richard G. Dearden

Email: richard.dearden@gowlingwlg.com
Tel: 613.786.0135

John Callaghan

Email: john.callaghan@gowlingwlg.com
Tel: 416.369.6693

Benjamin Na

Email: benjamin.na@gowlingwlg.com
Tel: 416.862.4455

Matthew Karabus

Email: matthew.karabus@gowlingwlg.com
Tel: 416.369.6181

Fax: 416.862.7661

Lawyers for the Plaintiffs (Defendants to the Counterclaim), The Catalyst Capital Group Inc. and Callidus Capital Corporation and the Defendants to the Counterclaim, Newton Glassman, Gabriel De Alba and James Riley

AND TO: MOORE BARRISTERS

Suite 1600
393 University Avenue
Toronto ON M5G 1E6

David C. Moore

Email: david@moorebarristers.ca
Tel: 416.581.1818 ext. 222

Ken Jones

Email: kenjones@moorebarristers.ca
Tel: 416.581.1818 ext. 224

Fax: 416.581.1279

Lawyers for the Plaintiffs (Defendants to the Counterclaim), The Catalyst Capital Group Inc. and Callidus Capital Corporation and the Defendants to the Counterclaim, Newton Glassman, Gabriel De Alba and James Riley

AND TO: TORYS LLP
79 Wellington Street West
Suite 3000
Box 270, TD South Tower
Toronto ON M5K 1N2

Linda M. Plumpton
Email: lplumpton@torys.com
Tel: 416.865.8193

Leora Jackson
Email: ljackson@torys.com
Tel: 416.865.7547

Stacey Reisman
Email: sreisman@torys.com
Tel: 416.865.7537

Fax: 416.865.7380

Lawyers for the Defendants, M5V Advisors Inc. c.o.b. Anson Group Canada, Admiralty Advisors LLC, Frigate Ventures LP, Anson Investments LP, Anson Capital LP, Anson Investments Master Fund LP, AIMF GP, Anson Catalyst Master Fund LP, ACF GP, Moez Kassam, Adam Spears and Sunny Puri

AND TO: LERNERS LLP
130 Adelaide Street West
Suite 2400
Toronto ON M5H 3P5

Lucas E. Lung
Email: llung@lernalers.ca
Tel: 416.601.2673

Rebecca Shoom
Email: rshoom@lernalers.ca
Tel: 416.601.2382

Fax: 416.867.9192

Lawyers for the Defendants, Clarityspring Inc. and Nathan Anderson

AND TO: MATHERS MCHENRY & CO.
161 Bay Street, Suite 2700
Toronto ON MSJ 2S1

Devin Jarcaig
Email : devin@mathersmchenryandco.com
Tel: 416.572.2147

Fax: 647.660.8119

Lawyers for the Defendant, Bruce Langstaff

AND TO: ST. LAWRENCE BARRISTERS LLP
144 King Street East
Toronto ON M5C 1G8

Phil Tunley
Email: Phil.Tunley@Stlbarristers.ca
Tel: 647.245.8282

Jennifer Saville
Email: jennifer.saville@stlbarristers.ca
Tel: 647.245.2222

Alexi Wood
Email: alexi.wood@stlbarristers.ca
Tel: 647.245.8283

Fax: 647.245.8285

Lawyers for the Defendant, Rob Copeland

AND TO: KEVIN BAUMANN
Email:pekiskokb@gmail.com
Tel: 403.505.7784

Defendant

AND TO: JEFFREY MCFARLANE
220 Dominion Drive
Suite B
Morrisville NC 27560
Email: jmcfarlane@triathloncc.com

Defendant

AND TO: DARRYL LEVITT
Suite 100
400 Applewood Cres.
Vaughan ON L4K 0C3

Email: darryl@dlevittassociates.com
Tel: 416.879.6965

Defendant

AND TO: SOLMON ROTHBART GOODMAN LLP
701-375 University Avenue
Toronto ON M5G 2J5

Melvyn L. Solmon
Email: msolmon@srglegal.com
Tel: 416.947.1093

Nancy Tourgis
Email: ntourgis@srglegal.com
Tel: 416.947.1093

Fax: 416.947.0079

Lawyers for the Defendant, Richard Molyneux

AND TO: WHITTEN & LUBLIN
Suite 1100
141 Adelaide Street West
Toronto ON M5H 3L5

Ben J. Hahn
Email: ben@whittenlublin.com
Tel: 647.494.9445

Fax: 416.644.5198

Lawyers for the Defendant, Gerald Duhamel

AND TO: INVOP LTD. D/B/A/ PSY GROUP
ID 58615667
7 Menahem Begin Str., (12 Floor)
Ramat Gan 5268102

Defendant to the Counterclaim

AND TO: MCCARTHY, TÉTRAULT LLP
TD Bank Tower
5300-66 Wellington Street West
Toronto ON M5K 1E6

R. Paul Steep
Email: pstEEP@mccarthy.ca
Tel: 416.601.7998

Erin Chesney
Email: echesney@mccarthy.ca
Tel: 416.601.8215

Fax: 416.868.0673

Lawyers for the Defendant, George Wesley Voorheis

AND TO: A. DIMITRI LASCARIS LAW PROFESSIONAL CORPORATION
G101-360 Rue Saint-Jacques
Montreal QC H2Y 1P5

A. Dimitri Lascaris
Email: alexander.lascaris@gmail.com
Tel: 514.941.5991

Fax: 519.660.7845

Lawyers for the Defendant, Bruce Livesey

AND TO: MACKENZIE BARRISTERS
120 Adelaide Street West
Suite 2100
Toronto ON M5H 1T1

Gavin MacKenzie
Email: gavin@mackenziebarristers.com
Tel: 416.304.9293

Brooke MacKenzie
Tel: 416.304.9294
Email: brooke@mackenziebarristers.com

Fax: 416.304.9296

Lawyers for the Defendant to the Counterclaim, Virginia Jamieson

AND TO: EMMANUEL ROSEN
ID No. 56548456
26 Shaar Ha'amakim Street
Hod Hasaron Merkus 4500

Defendant to the Counterclaim

AND TO: ADAIR GOLDBLATT BIEBER LLP
95 Wellington Street West
Suite 1830
Toronto ON M5J 2N7

John Adair
Email: jadair@agbllp.com
Tel: 416.941.5858

Michael Darcy
Email: mdarcy@agbllp.com
Tel: 416.583.2392

Fax: 647.689.2059

Lawyers for the Defendants to the Counterclaim, B.C. Strategy Ltd. d/b/a
Black Cube and B.C. Strategy UK Ltd. d/b/a Black Cube

AND TO: CRAWLEY MACKEWN BRUSH LLP
179 John Street
Suite 800
Toronto ON M5T 1X4

Robert Brush
Email: rbrush@cmlaw.ca
Tel: 416.217.0822

Clarke Tedesco
Email: ctedesco@cmlaw.ca
Tel: 416.217.0884

Lawyers for the Third Party, Canaccord Genuity Corp.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and
CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC,
FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON
CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN
ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS,
BRUCE LIVESEY and JOHN DOES #4-10

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES
RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY
LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK
CUBE and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

I N D E X

TAB	DOCUMENT	PAGE NO.
Volume 1		
1.	Notice of Motion	1
A.	Appendix A: Undertakings, Questions Taken Under Advisement, and Refusals Chart of James Riley	25
2.	Affidavit of Debra Bilous affirmed November 17, 2020	54
1.	Exhibit 1 ~ Fresh as Amended Statement of Claim of Catalyst and Callidus dated July 19, 2019	65
2.	Exhibit 2 ~ Fresh as Amended Statement of Defence and Counterclaim of West Face and Gregory Boland dated October 1, 2019	147
3.	Exhibit 3 ~ Amended Reply and Statement of Defence to Counterclaim of Catalyst, Callidus, Newton Glassman, Gabriel De Alba, and James Riley dated November 19, 2019	266
4.	Exhibit 4 ~ Statement of Defence to Counterclaim of Black Cube dated August 15, 2018	308
5.	Exhibit 5 ~ Statement of Defence to Counterclaim of Virginia Jamieson dated August 17, 2018	321

TAB	DOCUMENT	PAGE NO.
Volume 2		
6.	Exhibit 6 ~ Affidavit of Documents of Virginia Jamieson sworn March 6, 2019	329
7.	Exhibit 7 ~ Affidavit of Documents of Catalyst and Callidus (main action) sworn December 31, 2019	343
8.	Exhibit 8 ~ Affidavit of Documents of Catalyst and Callidus (counterclaim) sworn December 31, 2019	352
9.	Exhibit 9 ~ Affidavit of Documents of Newton Glassman sworn December 30, 2019	390
10.	Exhibit 10 ~ Affidavit of Documents of Gabriel De Alba sworn December 31, 2019	397
11.	Exhibit 11 ~ Affidavit of Documents of James Riley sworn December 31, 2019	404
12.	Exhibit 12 ~ Affidavit of Documents of Black Cube sworn December 31, 2019	411
13.	Exhibit 13 ~ Letter from Mr. Milne-Smith to counsel to the Catalyst Parties dated January 16, 2020	477
14.	Exhibit 14 ~ Email from counsel to the Catalyst Parties dated October 13, 2020	489
15.	Exhibit 15 ~ Emails exchanged between counsel to West Face and Boland and counsel to the Catalyst Parties dated October 13 to 16, 2020	505
16.	Exhibit 16 ~ Emails exchanged between counsel to West Face and Boland and counsel to the Catalyst Parties dated October 13 to 19, 2020	509
17.	Exhibit 17 ~ Endorsement of Justice McEwen dated August 26, 2020	514

TAB	DOCUMENT	PAGE NO.
Volume 3		
18.	Exhibit 18 ~ Excerpts of the revised final transcripts of the cross-examination of James Riley dated October 26, 2020	519
19.	Exhibit 19 ~ Excerpts of the revised final transcripts of the cross-examination of James Riley dated October 27, 2020	768
Volume 4		
20.	Exhibit 20 ~ Email from Mr. Carlson to counsel to the Catalyst Parties dated November 16, 2020, with attachment	788
21.	Exhibit 21 ~ Screenshots of the website of Gagnier Communications	819
22.	Exhibit 22 ~ Emails exchanged between Dan Gagnier and Andrew Willis dated September 13, and 14, 2016	822
23.	Exhibit 23 ~ Email from Dan Gagnier to Bruce Livesey dated September 20, 2016	825
24.	Exhibit 24 ~Email from Dan Gagnier to Theresa Tedesco dated October 20, 2016	827
25.	Exhibit 25 ~ Email from Jacquie McNish to Dan Gagnier dated July 31, 2017	837
26.	Exhibit 26 ~ Emails exchanged between Dan Gagnier and Newton Glassman dated September 27, 2017	839
27.	Exhibit 27 ~ Email from Emmanuel Rosen to Dan Gagnier dated September 27, 2017	842
28.	Exhibit 28 ~ Emails exchanged between Dan Gagnier and Newton Glassman dated October 3, 2017	844
29.	Exhibit 29 ~ Emails exchanged between Dan Gagnier, Newton Glassman, and James Riley dated October 5, 2017	846
30.	Exhibit 30 ~ Email from Emmanuel Rosen to Dan Gagnier dated October 10, 2017	848
31.	Exhibit 31 ~ Email sent from Jacquie McNish to Dan Gagnier dated November 15, 2017	856

TAB	DOCUMENT	PAGE NO.
32.	Exhibit 32 ~ Emails exchanged between Dan Gagnier, David Reese, James Riley, Lawrence Delevingne, and John Tilak dated December 1, 2017	858
33.	Exhibit 33 ~ Emails exchanged between Dan Gagnier and Caroline Simson dated December 4, 2017	864
34.	Exhibit 34 ~ Emails exchanged between Ori Amir, Dan Gagnier, James Riley, Newton Glassman and others dated December 6 and 7, 2017	869
35.	Exhibit 35 ~ Emails exchanged between Dan Gagnier and Bruce Livesey dated February 23, 2018	872
36.	Exhibit 36 ~ Emails exchanged between Dan Gagnier, Lawrence Delevingne and John Tilak (and bcc'ing James Riley) dated March 22, 2018	874
37.	Exhibit 37 ~ Screenshots from the website of Haystack Reputation	882
38.	Exhibit 38 ~ Screenshots from the website of Haystack Reputation	893
39.	Exhibit 39 ~ Screenshots from Due Diligence Consulting's website	907
40.	Exhibit 40 ~ Email from Marc Cohodes to Adam Spears and Derrick Snowdy dated January 20, 2016	920
41.	Exhibit 41 ~ Email from Marc Cohodes to Derrick Snowdy dated January 20, 2016	922
42.	Exhibit 42 ~ Email from Darryl Levitt to Marc Cohodes dated February 13, 2017	924
43.	Exhibit 43 ~ Email sent from Marc Cohodes to Bruce Langstaff, Adam Spears, Derrick Snowdy and another dated July 7, 2017	926
44.	Exhibit 44~ Email sent from Newton Glassman to "Jeff" dated April 16, 2018	936

TAB	DOCUMENT	PAGE NO.
45.	Exhibit 45 ~ Article from <i>Wall Street Journal</i> dated August 9, 2017	939
46.	Exhibit 46 ~ Email sent by Vincent Hanna to Newton Glassman dated August 11, 2017	944
47.	Exhibit 47 ~ Letter from Catalyst to its investors dated August 14, 2014	946
48.	Exhibit 48 ~ Excerpt from the Affidavit of James Riley sworn December 5, 2019	976
49.	Exhibit 49 ~ Excerpt from the Conspiracy Affidavit of James Riley sworn May 29, 2020	983
50.	Exhibit 50 ~ Excerpt from the Reply Affidavit of James Riley sworn August 20, 2020	991
51.	Exhibit 51 ~ IMDB's webpage about the movie "Heat"	998
52.	Exhibit 52 ~ "Why Runbox" page from runbox.com	1004
53.	Exhibit 53 ~ Letter from Mr. Milne-Smith to Danny Guy (c/o John Kingman Phillips) dated January 14, 2020	1011
54.	Exhibit 54 ~ Emails exchanged between Mr. Milne-Smith and Danny Guy dated January 15 and 16, 2020	1014
55.	Exhibit 55 ~ Excerpt of Callidus's Management's Discussion and Analysis for the year ended December 31, 2018	1018
56.	Exhibit 56 ~ Ontario Securities Commission Refilings and Errors List (re: Callidus)	1022

This is **Exhibit "18"** referred to in the Affidavit of DEBRA BILOUS, sworn before me, this 17th day of November, 2020.

A handwritten signature in black ink, appearing to read 'Maura O'Sullivan', written over a horizontal line.

Maura O'Sullivan
(LSO#77098R)
Notary / Commissioner

Catalyst v West Face et al.

James Riley
on Monday, October 26, 2020



77 King Street West, Suite 2020
Toronto, Ontario M5K 1A1

neesonsreporting.com | 416.413.7755

1 Court File No. CV-17-587463-00CL

2 ONTARIO
3 SUPERIOR COURT OF JUSTICE
4 COMMERCIAL LIST

5 B E T W E E N:

6 THE CATALYST CAPITAL GROUP INC. and CALLIDUS
7 CAPITAL CORPORATION
8 Plaintiff

9 - and -

10 WEST FACE CAPITAL INC., GREGORY BOLAND,
11 M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA,
12 ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP,
13 ANSON INVESTMENTS LP, ANSON CAPITAL LP,
14 ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
15 ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
16 ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC.,
17 NATHAN ANDERSON, BRUCE LANGSTAFF, ROB COPELAND,
18 KEVIN BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT,
19 RICHARD MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY
20 VOORHEIS, BRUCE LIVESEY and JOHN DOES #4-10
21 Defendants

22 A N D B E T W E E N:

23 WEST FACE CAPITAL INC. and GREGORY BOLAND
24 Plaintiffs by Counterclaim

25 - and -

26 THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
27 CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA,
28 JAMES RILEY, VIRGINIA JAMIESON, EMMANUEL
29 ROSEN, B.C. STRATEGY LTD. d/b/a BLACK CUBE,
30 B.C. STRATEGY UK LTD. d/b/a BLACK CUBE
31 and INVOP LTD. d/b/a PSY GROUP
32 Defendants to the Counterclaim

33 -----
34 --- This is the Cross-Examination of JAMES RILEY,
35 on his affidavits sworn December 5, 2019, May 29,
2020 and August 20, 2020 respectively, taken via
Zoom Videoconferencing with all participants
attending remotely, on the 26th day of October,
2020.

1		Investments LP, Anson
2		Capital LP, Anson
3		Investments Master
4		Fund LP, AIMF GP,
5		Anson Catalyst Master
6		Fund LP, ACF GP, Moez
7		Kassam, Adam Spears
8		and Sunny Puri
9		
10	LUCAS E. LUNG, Esq.,	for the Defendants,
11	& REBECCA SHOOM, Esq.,	ClaritySpring Inc. and
12		Nathan Anderson
13		
14	PHIL TUNLEY, Esq.,	for the Defendant, Rob
15	& JENNIFER SAVILLE, Esq.,	Copeland, Dow Jones &
16		Company and Jacquie
17		McNish
18		
19	DIMITRI LASCARIS, Esq.,	for the Defendant,
20		Bruce Livesey
21		
22		
23	CLARKE TEDESCO, Esq.,	for the Third Party,
24		Canaccord Genuity
25		Corp.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MICHAEL DARCY, Esq., for the Defendants to
the Counterclaim, BC
Strategy Ltd. d/b/a
Black Cube and BC
Strategy UK Ltd. d/b/a
Black Cube

DARYLL LEVITT Self-Represented

KEVIN BAUMANN Self-Represented

JEFF McFARLANE Self-Represented

Also Present: Greg Boland, CEO, West Face Capital
Philip Panet, General Counsel, West
Face Capital
Julia Fetila Fasie, Law Clerk,
Davies Ward

REPORTED BY: Deana Santedicola, RPR, CRR, CSR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS: JAMES RILEY PAGES
CROSS-EXAMINATION BY MR. MILNE-SMITH.....8 - 246

**The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose**

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T
and appear on the following pages: 49:22, 51:4,
52:6, 69:3, 71:9, 107:22, 122:21, 124:21, 126:4,
131:13, 132:17, 145:14, 150:11, 161:12, 189:16,
195:19, 197:24, 211:22, 218:25, 242:2

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
11:1, 50:11, 63:5, 63:21, 64:2, 64:10, 70:12, 81:5,
82:20, 84:18, 90:18, 98:23, 183:8, 202:6, 202:24,
222:20, 223:10, 223:18, 224:5, 225:23, 227:3,
228:5, 229:25, 231:5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(CONT'D)

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: 12:18, 14:14, 16:24, 17:11, 18:21, 19:25, 32:10, 39:16, 83:10, 98:6, 119:22, 165:24, 174:14, 180:9, 180:17, 185:4, 188:24, 189:3, 203:20, 218:15, 218:19, 220:21, 221:8, 221:20, 224:13, 227:18, 230:7, 232:5, 238:16, 243:1

INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
1	List of corrections to the affidavits of Mr. Riley.....	7/24
2	Electronic document brief for the cross-examination of Mr. Riley.....	8/1

1 -- Upon commencing at 10:00 a.m.

2

3 JAMES RILEY; AFFIRMED.

4 MR. DEARDEN: Before you commence, Mr.
5 Milne-Smith, would you like me to put on the record
6 the 9:30 a.m. email sent out today that indicates
7 that there is some corrections to Jim Riley's
8 affidavits. So everybody on the line, you should
9 have received that at 9:30.

10 But Mr. Milne-Smith and I agreed that I
11 would enter these corrections as Exhibit 1 to this
12 cross-examination, and we will send it, the email
13 and the attachments, to the court reporter.

14 MR. MILNE-SMITH: Okay, yes, that is
15 fine, Mr. Dearden, and likewise, as we have
16 exchanged emails about this morning, I am going to
17 enter as Exhibit 2 on this examination my
18 examination brief, which at the moment consists of
19 91 documents and 6 affidavits without exhibits, but
20 the final content of which will be determined by
21 what is actually referred to in this
22 cross-examination and then it will be circulated to
23 all of the attendees and the court reporter.

24 EXHIBIT NO. 1: List of corrections to
25 the affidavits of Mr. Riley.

1 EXHIBIT NO. 2: Electronic document
2 brief for the cross-examination of Mr.
3 Riley.

4 MR. DEARDEN: Yes, so the end product
5 of that electronic brief, which we think will
6 probably be less than what you have got there right
7 now, Mr. Milne-Smith, will be what is entered as
8 Exhibit number 2 at some point.

9 MR. MILNE-SMITH: That's correct.

10 CROSS-EXAMINATION BY MR. MILNE-SMITH:

11 1 Q. All right, Mr. Riley, you are the
12 Managing Director of Catalyst Capital Group and
13 semi-retired; do I understand that correctly?

14 A. That is correct.

15 2 Q. And when did you semi-retire from
16 your position as Chief Operating Officer of
17 Catalyst?

18 A. July of 2019.

19 3 Q. And just because the issue of
20 privilege is in play on these motions and in this
21 case, you in your affidavit describe Mr. Glassman
22 as a lawyer; is that correct?

23 A. I would have to go back to it, but
24 if you could read it to me, I am sure I said that.
25 He is a lawyer by training.

1 4 Q. Okay, so that is what I wanted to
2 clarify. My understanding is that while he
3 graduated law school, he did not complete his
4 articles and was not called to the bar; is that
5 correct?

6 A. I know he was not called to the
7 bar. Whether he completed his articles or not I do
8 not know.

9 5 Q. Okay. Do I understand correctly
10 that Mr. DiPucchio is now Catalyst's general
11 counsel?

12 A. He doesn't have that title. I
13 believe he is Managing Director and Chief Operating
14 Officer, but he functions as general counsel, as I
15 did.

16 6 Q. Okay, and could you remind me when
17 he was hired in that role?

18 A. Sometime in 2017.

19 7 Q. Okay, I would imagine late 2017,
20 because he filed in November of 2017 the Statement
21 of Claim in this matter; is that --

22 A. Yes, I apologize, you are right to
23 correct me. It was 2018.

24 8 Q. Okay.

25 A. I apologize.

1 9 Q. Okay, thank you. For my next
2 question, I want to talk about the time frame from
3 June 2014 when the first action by Catalyst against
4 West Face was commenced, and that was the Moyse
5 action, up until the present.

6 And for that time period, what I would
7 like to know, and this will probably have to be by
8 way of undertaking, I would like to know whether or
9 not Catalyst has disclosed all communications
10 between Catalyst on the one hand and any third
11 party on the other hand about West Face, Greg
12 Boland or any of the five pieces of litigation
13 involving West Face and Catalyst; and on the
14 Catalyst side, that should include, at a minimum,
15 yourself, Mr. Glassman, Mr. de Alba, Jean Lepine,
16 the Director of Corporate Communications, and Dan
17 Gagnier who I understand is an external public
18 relations consultant.

19 So I would like and the first part of
20 my question is whether all such communications have
21 been disclosed, and the second obvious part is, to
22 the extent they have not, I would like them to be
23 disclosed.

24 And, Mr. Dearden, that is probably for
25 you.

1 U/A MR. DEARDEN: We'll take that under
2 advisement.

3 BY MR. MILNE-SMITH:

4 10 Q. Okay. Regarding Mr. Gagnier, Mr.
5 Riley, could you please describe to me what Dan
6 Gagnier's role is, what services he performs for
7 Catalyst?

8 A. He performs investor relation type
9 services and press coordination.

10 11 Q. Is there a retainer agreement that
11 he operates under?

12 A. Yes, there is.

13 12 Q. And is there one sort of umbrella
14 retainer agreement, or is there one -- or are there
15 different ones for different specific projects?

16 A. I do not recall. I believe there
17 was just one document, but I am going by memory.

18 13 Q. Okay. And he obviously did not
19 perform a legal role?

20 A. I'm sorry?

21 14 Q. He did not perform a legal role?

22 A. No, he did not.

23 15 Q. I would like to be informed of the
24 basis on which privilege has been asserted over any
25 number of communications involving Dan Gagnier in

1 your Schedule B?

2 MR. MOORE: Well, perhaps - and it is
3 David Moore speaking - perhaps I can interject
4 there.

5 As I understand it, there are several
6 privilege motions either pending or not even yet
7 instituted, including with respect to Black Cube,
8 PSY, and I presume with respect to the SEC and OSC
9 documents.

10 And our position is that the time and
11 place to ask questions about privilege, the grounds
12 of privilege and facts relating to privilege is not
13 on the SLAPP examinations or cross-examinations,
14 but once those motions have been delivered so that
15 the issues can be ascertained and understood based
16 upon the proper record. That is the time to ask
17 those questions and not today.

18 R/F So we'll be objecting generally to
19 questions that get into issues of privilege given
20 the fact that those motions, again, they are -- we
21 know they are coming, but we don't have any motion
22 records for them.

23 MR. MILNE-SMITH: Okay, thank you for
24 explaining that position to me.

25 And just so you have it, and I don't

1 intend to debate this on the record today, my
2 understanding is that the upcoming motion before
3 Justice Boswell is limited to the issue of sort of
4 Black Cube and PSY-related privilege claims and
5 that other claims are not necessarily before
6 Justice Boswell. And therefore, if I intend to
7 pursue any claims in respect of those documents
8 that have not been produced, I need to do it now,
9 so that is why I am going to ask the questions and
10 then you can refuse them and we'll both deal with
11 it in the ordinary course.

12 MR. MOORE: Well, I hear you, but I
13 don't want to debate it either. My understanding
14 is that indeed West Face intends to raise the
15 issues of privilege on the December 15th and 16th
16 motion dates that have been set aside, including in
17 relation to the claims of privilege over the OSC
18 and SEC documents. That is my understanding.

19 Now, there haven't been any motion
20 records delivered for that either, but in terms of
21 where that fits in, as opposed to Justice Boswell,
22 that is my understanding of what the schedule
23 contemplates.

24 MR. MILNE-SMITH: Okay.

25 MR. MOORE: But you have articulated

1 your position. I have articulated our position.
2 We can agree to disagree, but that is where we are
3 at this point in time.

4 BY MR. MILNE-SMITH:

5 16 Q. Okay, that is fine.

6 Mr. Riley, one of the organizations or
7 people or communications you have claimed privilege
8 over is an organization called Haystack Needle.
9 Now, according to their website, they engage in
10 marketing, corporate communications, crisis
11 communications and investor relations.

12 I would like to know for what reason
13 Haystack Needle was retained by Catalyst?

14 R/F MR. MOORE: Well, just a minute. I
15 have the same general observation. I don't know,
16 in addition to the four issues that I have raised,
17 what additional privilege matters are in issue. I
18 think that should be articulated and dealt with in
19 the same way and not on the cross-examination on
20 the SLAPP motion.

21 MR. MILNE-SMITH: Okay, I'll take that
22 as a refusal. I just want to make sure I get it on
23 the record, and then we can deal with it in --

24 MR. MOORE: And if there are other
25 claims of privilege that you contemplate making,

1 our position is not going to be that you have got
2 to put all of the questions on the record and have
3 a formal refusal and, if you don't, then you are
4 foreclosed.

5 You have let us know what additional
6 claims of privilege you intend to raise, but it is
7 not going to be, oh, you didn't raise it today, so
8 therefore, you know, you can't raise them. So we
9 are not going to take that position on that.

10 BY MR. MILNE-SMITH:

11 17 Q. Okay, that is helpful, thank you.
12 Mr. Riley, from May 2014 to late 2019,
13 Callidus was a public company; correct?

14 A. No, it went public in April of
15 2014, and I do not recall the privatization date.

16 18 Q. Okay, but it was sometime in late
17 2019?

18 A. That sounds correct to me. But I
19 thought you said May 2019.

20 19 Q. Oh, okay, sorry. Late 2019.

21 A. I am fine with late 2019.

22 20 Q. Okay. And you would agree with me
23 that as a public company, Callidus can fairly
24 expect a certain amount of public scrutiny?

25 A. Yes.

1 21 Q. And the public can and will
2 discuss the company's public disclosure and its
3 implications for the company's future; correct?

4 A. Yes.

5 22 Q. And if the public who are
6 discussing the company in this nature are doing so
7 based on true facts, then there is nothing wrong
8 with that; you would have no objection to that?

9 A. If it is based on truth.

10 23 Q. And future projections for the
11 company would be a matter of opinion, you would
12 agree?

13 MR. DEARDEN: Sorry, I don't understand
14 that question.

15 THE DEPONENT: Yeah, I am having
16 trouble understanding that.

17 BY MR. MILNE-SMITH:

18 24 Q. To the extent people who are
19 observing the company's public disclosure and are
20 making future projections about the company's
21 prospects based on that public disclosure, that is
22 a matter of opinion for the public to make;
23 correct?

24 R/F MR. DEARDEN: I object. He can't speak
25 for the people that you refer to writ large and

1 what opinions or true facts they may be putting out
2 in the public domain about Callidus.

3 BY MR. MILNE-SMITH:

4 25 Q. Okay, let me restate, because that
5 is not what I was asking.

6 I am saying that as an officer of a
7 public company, you understand that the public may
8 come to opinions and may express those opinions
9 about the future prospects of a public company like
10 Callidus; correct?

11 R/F MR. DEARDEN: I object. This witness,
12 Mr. Milne-Smith, is not going to speak about what
13 the public's opinion is going to be.

14 MR. MILNE-SMITH: I am not asking about
15 what the opinion would be. It is about the fact
16 that as a public company, they can expect that the
17 public will have opinions about the company's
18 future.

19 MR. DEARDEN: Yeah, well, the context
20 of what those opinions may be about and who is
21 making them matters, and so that is just far too
22 general a question to have him answer.

23 BY MR. MILNE-SMITH:

24 26 Q. Okay. Mr. Riley, you might expect
25 the public to have opinions as to whether Callidus

1 would be able to continue to grow its loan book,
2 for example; correct?

3 A. Yes, I could expect them to have
4 that opinion --

5 27 Q. And you might --

6 A. -- and -- I'm sorry.

7 28 Q. No, sorry, finish your answer. I
8 didn't hear that last bit.

9 A. I would expect that they could
10 have an opinion.

11 29 Q. And to give another example, the
12 public might have opinions about whether Callidus
13 is likely to suffer losses on loans?

14 A. Yes.

15 30 Q. And there is nothing wrong with
16 people being more or less pessimistic about the
17 company's prospects than Catalyst, so long as they
18 are not intentionally or negligently misstating the
19 underlying facts; is that fair?

20 A. No.

21 R/F MR. DEARDEN: I object.

22 BY MR. MILNE-SMITH:

23 31 Q. And, Mr. Riley, you would agree
24 with me that Catalyst was not shy about promoting
25 the company's future prospects in the public;

1 correct?

2 THE COURT REPORTER: I'm sorry, did you
3 say Catalyst or Callidus?

4 BY MR. MILNE-SMITH:

5 32 Q. I'm not sure, but let me -- no,
6 let me state the question again and be clear.

7 Catalyst was not shy about promoting
8 the future prospects of Callidus the company?

9 MR. DEARDEN: What do you mean by "not
10 shy"?

11 BY MR. MILNE-SMITH:

12 33 Q. It means it frequently engaged in
13 public relations campaigns to promote the future
14 prospects of Callidus?

15 MR. DEARDEN: Can you ask the question
16 without the "campaigns" part in it?

17 MR. MILNE-SMITH: Mr. Riley --

18 MR. DEARDEN: Just with respect to
19 public relations.

20 BY MR. MILNE-SMITH:

21 34 Q. Mr. Riley, do you agree with me
22 that Catalyst frequently engaged in public
23 relations campaigns to promote the future prospects
24 of Callidus?

25 R/F MR. DEARDEN: So, Mr. Milne-Smith, I'm

1 sorry, I was wondering if you could ask that
2 question without the "campaigns" in it. They
3 engaged in public relations to promote the future
4 prospects, that is fair, but what may or may not be
5 a campaign, just like what the public might be or
6 the people might be, it is too general.

7 BY MR. MILNE-SMITH:

8 35 Q. Let's look at some specifics then.
9 Do you agree with me, Mr. Riley, that after the
10 Veritas report that came out in April of 2015, that
11 Catalyst and Callidus launched a comprehensive
12 investor relations public relations campaign?

13 A. I don't know if I can say it was
14 comprehensive. There were instances where we
15 pushed back on the Veritas report and related
16 communications at that time, but I believe those
17 were done through Callidus, not through Catalyst,
18 but I am going by memory.

19 36 Q. If we could pull up document
20 number 1, please, and put it on screen.

21 So, Mr. Riley, this is one of your
22 productions in this case. The title says "CBL",
23 and that is Callidus; correct?

24 A. That is Callidus, yes.

25 37 Q. Callidus, yes, and "IR/PR Plan",

1 and that is investor relations/public relations;
2 correct?

3 A. Yes.

4 38 Q. And if we go to page 3 of the
5 slide --

6 MR. MOORE: Mr. Milne-Smith, it is
7 David Moore speaking. Do you have the production
8 number handy so that when you are referring to a
9 document, for the record it can be identified and
10 that will make it easier for everyone involved
11 in the transcript?

12 BY MR. MILNE-SMITH:

13 39 Q. Well, you can see it in the top
14 left-hand corner of the Acrobat opening there, and
15 that information will all be included in the
16 electronic brief that I circulate as part of
17 Exhibit 2.

18 A. The only problem I am having with
19 this document is I can't see all of it. It has to
20 do with the way the side screens were over-laid.

21 40 Q. Okay, I am not sure if we can just
22 zoom in on the document and with the view with the
23 video side bars.

24 MR. DEARDEN: We are just going to try
25 to get it up on a laptop for Mr. Riley to be right

1 in front of him, Mr. Milne-Smith, because the big
2 screen is about 10 feet away from him.

3 THE DEPONENT: No, that is fine. I
4 have got it. Whoever just adjusted it, that is
5 fine, okay.

6 BY MR. MILNE-SMITH:

7 41 Q. Okay, so I don't think there is
8 anything terribly controversial here. This is a
9 description of the purposes of the two campaigns,
10 one investor relations, one public relations;
11 correct?

12 A. Well, I would have to see the
13 whole document, but could we see the whole
14 document? I don't -- I am not recalling this
15 document.

16 42 Q. Well, you saw the cover page, and
17 all I am asking you -- I am not asking you about
18 the entire document, but I am asking you on page 3
19 whether this provides an accurate description of
20 what you understood to be the investor relation and
21 public relations campaign?

22 A. I would take that to be a
23 traditional IR and PR campaign, the goals.

24 43 Q. And just for the record, I should
25 be clear, in the documents that I am going to be

1 showing I have added highlighting in green to
2 assist the witness in going to the pertinent
3 passages. Some of these documents have original
4 highlighting in yellow. That is not mine. That
5 was in the productions or the exhibits originally.
6 I used green to indicate where I have added the
7 highlighting.

8 A. Thank you.

9 44 Q. Okay, and if we could go to slide
10 6, please. This describes some of the target
11 audience, so this is "Target Audience - Research
12 Analysts (I)", and so is this accurately indicating
13 that a part of the target audience for this IR/PR
14 campaign was research analysts who covered
15 Callidus?

16 A. Yes.

17 45 Q. And if we could go to slide 9,
18 please.

19 MR. DEARDEN: Mr. Milne-Smith, when you
20 say "slide 9", do you mean page 9?

21 MR. MILNE-SMITH: Yes.

22 MR. DEARDEN: Thanks.

23 BY MR. MILNE-SMITH:

24 46 Q. So this indicates that a second
25 part of the target audience constituted

1 institutional investors, at least some of whom are
2 listed on this page; is that correct?

3 A. I'm sorry, I was -- I apologize, I
4 was reading. Could you ask me the question again,
5 please?

6 47 Q. Sure. So is it fair to understand
7 from this document or this slide that is in front
8 of you that a second part of the target audience
9 for this campaign constituted institutional
10 investors, at least some of whom are listed on this
11 page?

12 A. These appear to be institutional
13 investors.

14 48 Q. And these were the kind of people
15 that you were targeting with this campaign?

16 A. Yes.

17 49 Q. And then page 10, the next slide.
18 And a third part of the target audience was the
19 financial news media, including organizations such
20 as Bloomberg, Globe and Mail, Financial Post and
21 Reuters; correct?

22 A. Yes.

23 50 Q. Okay. If we could then go to
24 document number 2, please. This is an email from
25 Jean Lepine, who was the Director of Corporate

1 Communications at Catalyst, sent to Mr. Glassman,
2 Mr. Reese of Callidus and yourself, and the date is
3 April 28, 2015; do you see that?

4 A. Yes.

5 51 Q. And this describes a three-page
6 public relations strategy to support both Catalyst
7 and Callidus's business objectives; correct?

8 A. That is what it says.

9 52 Q. And you'll recall this; this was
10 something that Callidus and Catalyst were engaged
11 in at the time, correct?

12 A. Yes.

13 53 Q. And if we could go to document
14 number 3, that shows the attachment. If you could
15 go back to the first page of this document, just to
16 orient the witness, so this is the attachment
17 describing the three-page public relations plan;
18 correct? Is that correct; Mr. Riley?

19 A. Well, I am just reading it. So
20 could you ask me the question again, please?

21 54 Q. So all I want to ask you right now
22 is this is in fact the three-page PR strategy that
23 was attached to the email we just looked at?

24 A. I will have to take it as that is
25 correct because I don't have any other way of

1 verifying it.

2 55 Q. Okay, if we could go to page 2,
3 this indicates that part of the intended plan was
4 to "Leverage [the] West Face deposition when
5 submitted"; correct?

6 A. Yes.

7 56 Q. And I take it from this document
8 that Callidus and Catalyst see nothing wrong with
9 providing the media with what you consider to be
10 favourable documents from ongoing litigation?

11 A. I would take it from that, yes,
12 although whether we would be providing the
13 deposition or whether it would be responding to
14 what was on the deposition I do not know.

15 57 Q. Okay. And if you go to the third
16 page of this document, so you see at the bottom the
17 target audiences, covering analysts, bankers and
18 brokers, new and current investors and various
19 media organizations, and these would have been the
20 targets of the kinds of media outreach campaign you
21 were planning in this document?

22 A. Yes.

23 58 Q. Could we go to document 4, please.
24 So this was the other document that was attached to
25 the email we saw as document number 2. And if we

1 could go to slide 10 or page 10, so this describes
2 various targets for this media campaign. It
3 describes media, government relations, key players
4 and influencers such as think tanks, and even talks
5 about developing and disseminating a backgrounder
6 on the value of restructuring in terms of adding
7 value to Canada's economy and hopefully identifying
8 a third party author like an economics or law
9 professor to draft or write that backgrounder.
10 Does this fairly describe the communications
11 strategy that Callidus came up with at the time?

12 A. Sorry, you said Callidus?

13 59 Q. Yes.

14 A. I would say that the initiative
15 number 2, and I don't know what initiative number 2
16 is styled early on in the document, but the
17 "develop and disseminate a backgrounder" and "key
18 players", those three or four that you have
19 highlighted and left some -- I think that you have
20 to look at the "Using survey results", the three
21 points under there, "ideally a third party author",
22 and the next one down that you haven't highlighted:

23 "Backgrounder theme:

24 'Companies, like Catalyst Capital,
25 that invest in and retool distressed

1 companies are an important component
2 of an effective Canadian capital
3 markets structure and ultimately
4 create long lasting Canadian jobs'."

5 That is Catalyst's business to buy and
6 rebuild companies. So that doesn't have anything
7 to do with Callidus.

8 60 Q. Okay, so that is a Catalyst
9 initiative?

10 A. Yes, well, companies like Catalyst
11 Capital. So to a certain extent, you should have
12 highlighted the second point as well, I believe.

13 61 Q. Okay, that is fair, thank you. If
14 we could go to document number 5.

15 A. That is page 5, correct? Or is
16 this a new document?

17 62 Q. It's a new document.

18 A. Okay, thank you.

19 63 Q. So this is a June 16, 2015 email
20 from an individual named Daniel Tisch?

21 A. Yes.

22 64 Q. I understand he is the president
23 of another PR firm called Argyle. Did you also
24 retain them at this time?

25 A. They had been retained for awhile,

1 and we transitioned away from them over time.

2 65 Q. And did you pursue the public
3 relations campaign that Argyle was proposing at
4 this time?

5 A. Although I am copied on this
6 email, I don't recall the comms plan that he
7 attached.

8 66 Q. If we could go to document number
9 6, please. Does this refresh your recollection?

10 A. What is the date of this document,
11 please?

12 67 Q. June 16, 2015.

13 A. Thank you.

14 68 Q. And do you recall --

15 A. And could you scroll up, just so I
16 can read it, please?

17 [Witness reviews document.]

18 69 Q. Do you recall pursuing this?

19 MR. DEARDEN: Is that the whole
20 document?

21 THE DEPONENT: Is that the whole
22 document, Mr. Milne-Smith?

23 BY MR. MILNE-SMITH:

24 70 Q. It is a three-page document.

25 There is this page and then the next page. So I

1 don't think it is necessary to read the whole
2 thing. I would just like to know if you remember
3 this.

4 A. I actually do not recall this
5 document.

6 71 Q. Okay, could we go to document
7 number 7, please. So this is an email dated
8 September 12th, 2017, from Dan Gagnier to an
9 individual at Bloomberg News, and it says:

10 "Dan -- sorry on this but not
11 getting much traction here re West
12 Face...best if you go to another
13 publication on this one...sorry to
14 have wasted on your time."

15 Can I understand correctly from this
16 that Mr. Gagnier on behalf of Catalyst or Callidus
17 was speaking to Bloomberg News and trying to get
18 them interested in a story about West Face?

19 A. I would take that from this email.
20 What the story was I do not know.

21 72 Q. Safe to assume that if Mr. Gagnier
22 was acting on behalf of Catalyst, he would not have
23 been promoting a positive story about West Face; he
24 would have been promoting a negative story about
25 West Face, fair?

1 A. I am not sure I know how to answer
2 that. I think we were trying to get a correct mix
3 of information out in the marketplace since we were
4 the subject of adverse press during that time
5 period.

6 73 Q. And the kind of news you would be
7 trying to get out there about West Face would not
8 be flattering to West Face; correct?

9 A. Well, we would try to make it
10 truthful.

11 74 Q. That wasn't my question. My
12 question was whether it would be flattering or not?

13 A. I would expect the story to be
14 balanced.

15 75 Q. Again, Mr. Riley, was Catalyst
16 engaging Dan Gagnier to promote stories that would
17 be favourable to West Face or unfavourable?

18 A. I think I have answered as best I
19 can, which is I think we would want it to be a
20 balanced story because one of the problems we were
21 trying to face was the imbalance in the press in
22 respect of us.

23 76 Q. All right, I think we have got the
24 message from your refusal to answer the question,
25 Mr. Riley. I take it --

1 MR. DEARDEN: He has answered your
2 question, Mr. Milne-Smith.

3 BY MR. MILNE-SMITH:

4 77 Q. That is fine. Since these were
5 produced, I take it that these public relation
6 campaigns you accept are not privileged?

7 MR. MOORE: Well, what public relations
8 campaigns are you talking about?

9 MR. MILNE-SMITH: Well, the --

10 R/F MR. MOORE: Well, strike that. I am
11 not going to get into any privilege issues on this
12 cross-examination.

13 BY MR. MILNE-SMITH:

14 78 Q. Okay. And I take it, Mr. Riley,
15 that you would agree that there is nothing wrong
16 with providing the press with documents that have
17 been publicly filed in litigation by one party or
18 another?

19 A. Yes, once publicly filed.

20 79 Q. It is fine to give the press
21 things that have been publicly filed; correct?

22 A. Yes.

23 80 Q. And in fact, Catalyst would --
24 sorry, was someone objecting?

25 MR. DEARDEN: No, sir.

1 MR. MILNE-SMITH: Okay.

2 MR. DEARDEN: Should I?

3 BY MR. MILNE-SMITH:

4 81 Q. I am just trying to show good
5 hygiene on the examination here. I think there is
6 an echo with somebody, so I am not sure if somebody
7 needs to go on mute because an echo just started.

8 And that is better now, thank you.

9 In fact, Mr. Riley, is it fair to say
10 that at various points, and we have already seen
11 one of them, a reference to leveraging West Face
12 deposition documents, is it fair to say that at
13 various points in time, Catalyst or people like Dan
14 Gagnier have in fact provided filings in various
15 pieces of litigation with West Face to the press;
16 you are aware of that?

17 A. Yes.

18 82 Q. And there is nothing wrong with
19 that?

20 A. No.

21 83 Q. And there is nothing wrong with
22 talking to investors about your competitors like
23 West Face; is that correct?

24 A. That is correct.

25 84 Q. So, for example, if we go to

1 document 11, this is an email, the top email in the
2 chain is from you to someone named Matthias Jahnke
3 at Wells Fargo?

4 A. Yes.

5 85 Q. And Mr. Jahnke had written to you
6 attaching or providing a link to a Bloomberg
7 article about West Face and said:

8 "Hi Jim - Do you happen to know
9 these guys?"

10 And you replied:

11 "Do you have time to talk about
12 them today?"

13 Correct?

14 A. Yes.

15 86 Q. So you would agree with me that
16 there is nothing wrong with you or frankly anyone
17 at Catalyst talking to people in the financial or
18 investment community about publications regarding
19 your competitor West Face; correct?

20 A. Well, you should have the context
21 of it, of who Matthias is. Matthias was the person
22 who was the lead relationship person on our capital
23 call financing work, so I think he was talking
24 about the possibilities of doing capital call
25 financing.

1 87 Q. Let me ask the question more
2 generally. You would agree with me that there is
3 nothing wrong with you or anyone at Catalyst
4 talking to people in the financial or investment
5 community, whether Mr. Jahnke or otherwise, about
6 West Face and public articles discussing West Face?
7 There is nothing wrong with doing that?

8 A. That is correct.

9 88 Q. And so of course you would agree
10 that the converse is also true, that there is
11 nothing wrong with West Face talking about Catalyst
12 or Callidus when something happens to be in the
13 news with members of the financial community?

14 A. I agree with that.

15 89 Q. Could you go to document 12,
16 please. So the bottom email there -- well, the one
17 I want to look at is on the bottom of the page, a
18 man named Michael Aswad is forwarding to you
19 something that he received from a woman named
20 Kristen Belfi. So he writes to you, Mr. Glassman
21 and Mr. de Alba and passes on what he received from
22 Ms. Belfi. It says:

23 "Thanks for your gracious
24 hospitality and generous information
25 sharing today."

1 And my understanding is that what was
2 attached, and we could look at it if you want, was
3 a confidential investor presentation that West Face
4 had been disseminating to prospective investors in
5 November of 2017; do you recall this?

6 A. Do I recall this email or --

7 90 Q. Yes.

8 A. Or, sorry, what is it that you are
9 asking me to recall?

10 91 Q. Do you recall receiving this email
11 and do you recall seeing West Face's November 2017
12 confidential investor presentation?

13 A. Could you scroll up for a minute,
14 please, or whoever is handling this document? So
15 that was from Aswad to me? I am not sure I recall
16 that, but I was copied on the email, or I was an
17 addressee on the email.

18 92 Q. Could we go to document number 13,
19 please. Do you recall seeing this document?

20 A. I don't recall at this time, but I
21 have seen this document. That is for the 1.5
22 billion dollars?

23 93 Q. Yes.

24 A. Yes.

25 94 Q. You recall that you have seen this

1 document; correct?

2 A. I have seen it currently. Whether
3 I remember seeing it at the time, I don't recall.

4 95 Q. You certainly wouldn't contest,
5 given that these are your productions, that
6 Catalyst in fact received this document from
7 Mr. Aswad as indicated on November 29th, 2017?

8 A. I would agree with that.

9 96 Q. And you see that it is marked
10 "Strictly confidential - not for distribution"?

11 A. I do.

12 97 Q. But Catalyst in fact did not
13 destroy it, did not notify West Face, but rather
14 kept it in its possession; correct?

15 A. That is correct.

16 98 Q. And am I correct that Catalyst
17 treats its own communications with investors as
18 highly confidential?

19 A. Yes.

20 99 Q. And in fact, in 2018 am I correct
21 that Catalyst unsuccessfully tried to enjoin the
22 Globe and Mail from publishing one of its
23 communications to investors; correct?

24 A. Yes.

25 100 Q. Mr. Riley, Catalyst commenced two

1 proceedings in respect of the Wind Mobile
2 transaction; correct?

3 A. Yes.

4 101 Q. And the first we commonly refer to
5 as the Moyse action?

6 A. Correct.

7 102 Q. And this was dismissed after a
8 trial in front of Justice Newbould?

9 A. Correct.

10 103 Q. The second was what we have
11 referred to commonly as the VimpelCom action?

12 A. Yes.

13 104 Q. And this was dismissed on a motion
14 by Justice Hainey under the legal doctrines of
15 estoppel and abuse of process; correct?

16 A. I don't -- I would be going by
17 memory, but that sounds correct. I don't have the
18 decision in front of me.

19 105 Q. That is fine. All we need to
20 remember is that --

21 A. In other words, I am not
22 quibbling. I just don't remember.

23 106 Q. You'll remember it was dismissed?

24 A. Yes, I do remember that.

25 107 Q. Okay. And both of those

1 decisions, the decision by Justice Newbould and the
2 decision by Justice Hainey, were appealed to the
3 Court of Appeal; correct?

4 A. Yes.

5 108 Q. And the Court of Appeal dismissed
6 both of those appeals?

7 A. Yes.

8 109 Q. And applications for leave to
9 appeal to the Supreme Court in both cases were
10 dismissed; correct?

11 A. That is correct.

12 110 Q. And you will accept that Catalyst
13 cannot now bring any further proceedings claiming
14 relief arising out of West Face's acquisition of
15 Wind Mobile?

16 R/F MR. DEARDEN: I am going to object to
17 that, Mr. Milne-Smith. You are getting into
18 concepts of abuse of process, res judicata, issue
19 estoppel, et cetera, et cetera.

20 BY MR. MILNE-SMITH:

21 111 Q. Okay, let me ask a simpler
22 question. You accept, Mr. Riley, that the Moyse
23 action and the VimpelCom action are completed and
24 are no longer active?

25 MR. DEARDEN: Well, denial of leave to

1 the Supreme Court of Canada occurred, we agree to
2 that. I don't think there is anything else we can
3 add to that, Mr. Milne-Smith.

4 BY MR. MILNE-SMITH:

5 112 Q. Could we go to the affidavit, and,
6 Julia, who is assisting me with these documents,
7 that is affidavit B in our brief.

8 Mr. Riley, this is your affidavit that
9 you swore in the conspiracy action on May 29, and I
10 would like to go to page 145, paragraph 372.

11 A. Sorry, I had to find my affidavit.
12 What page?

13 113 Q. Page 145, paragraph 372.

14 A. Sorry, paragraph?

15 MR. DEARDEN: 372.

16 THE DEPONENT: It is not on that page.

17 BY MR. MILNE-SMITH:

18 114 Q. Do you have that, sir?

19 MR. DEARDEN: Mr. Milne-Smith, is this
20 the paragraph that starts, "The injunction was
21 granted by Justice Lederer [...]?"

22 BY MR. MILNE-SMITH:

23 115 Q. Yes, it is on the screen as well.

24 A. Oh, thank you, sorry.

25 MR. DEARDEN: Instead of looking at the

1 document.

2 THE DEPONENT: Yes, sorry.

3 BY MR. MILNE-SMITH:

4 116 Q. So just to situate you here, you
5 are discussing the injunction that was brought
6 before Justice Lederer in the Moyse action in 2014,
7 and you say:

8 "During the course of the
9 injunction proceedings, it was
10 discovered that despite the
11 assurances from West Face and Moyse,
12 Moyse had provided West Face with
13 Catalyst memos marked 'Confidential'
14 and 'For Internal Discussion
15 Purposes Only' [...]. We also
16 discovered that Moyse provided
17 Catalyst Confidential Memos to
18 Thomas Dea of West Face who then
19 circulated them to the other
20 partners and a Vice-President at
21 West Face."

22 Now, you didn't mention in your
23 affidavit that Mr. Moyse sent those documents in
24 response to a request for writing samples as a part
25 of the interview process; correct?

1 A. Yes.

2 117 Q. And you don't mention in your
3 affidavit that those memos had nothing to do with
4 Wind or Callidus; correct?

5 A. That is correct.

6 118 Q. And you will agree with me that
7 those four memos had nothing to do with Wind or
8 Callidus; correct?

9 A. That is correct.

10 119 Q. And of the four companies that
11 were the subject of the writing samples, West Face
12 only invested in one of them, a company called
13 Arcan; correct?

14 A. I think that is correct. I don't
15 think it is mentioned in there, but I remember a
16 company that it was invested in and I think its
17 name was Arcan, but I am going by memory.

18 120 Q. Correct, and --

19 A. Did they invest in that? Am I
20 correct in my memory?

21 121 Q. You are.

22 A. Okay.

23 122 Q. And of the four companies, the
24 only one that Catalyst invested in was a company
25 called Homburg; correct?

1 A. Yes, Homburg we did invest in.

2 123 Q. So in other words, there was no
3 overlap in the writing samples, of the four
4 companies discussed in the writing samples, there
5 was no overlap where both Catalyst and West Face
6 invested in one of those four companies; correct?

7 A. Sorry, repeat the question again,
8 please?

9 124 Q. The four companies that were
10 referred to in Mr. Moyse's or that were discussed
11 in Mr. Moyse's writing samples, none of those
12 companies were invested in by both West Face and
13 Catalyst?

14 A. I think that is as a result of we
15 invested in Homburg and they invested in Arcan.

16 125 Q. Yes.

17 A. I think so, I think that is
18 correct.

19 126 Q. And, sir, you filed five
20 affidavits in connection with the Moyse action?
21 You don't have to remember the exact number, but
22 you remember filing five affidavits?

23 A. Yes, I remember filing a number of
24 affidavits.

25 127 Q. And is it fair to say, and we can

1 take you to your trial transcripts if you want, but
2 is it fair to say that you did not attach to any of
3 the affidavits that you filed in that action even
4 one document in which Mr. Moyse conveyed to West
5 Face confidential information of Catalyst
6 concerning either Wind or VimpelCom?

7 A. I think you'll recall that part of
8 our concern was that he had -- I forget the term,
9 but he had purged information from his computer
10 using a military grade scrubber, and so it was
11 unclear what information might have been spoliated.

12 128 Q. That is not my question, sir. My
13 question is, you did not attach to any of the
14 affidavits that you swore and filed in the Moyse
15 action even one document in which Mr. Moyse
16 conveyed to West Face confidential information of
17 Catalyst concerning either Wind or VimpelCom? I
18 don't need an explanation of why you did or didn't
19 do it. I just need a confirmation you did not do
20 any such thing?

21 A. No.

22 129 Q. So you are agreeing with me?

23 A. Yes.

24 Excuse me for just for one second.

25 I've have spilled some water. Can I get a cloth?

1 130 Q. Could we go to affidavit A,
2 please, and, Mr. Riley, this is your affidavit that
3 was sworn on December 5, 2019. And I understand
4 that, you know, as part of Exhibit 1 that Mr.
5 Dearden referred to, that there is no longer a need
6 for a public or a redacted, but I didn't know you
7 were going to do that, and so I am just using the
8 public version here. I don't think it is going to
9 matter.

10 MR. DEARDEN: Again, just for the
11 record, Mr. Milne-Smith, why doesn't everybody just
12 stroke out the word "private" in what was a private
13 affidavit which is unredacted and that is what
14 we'll operate off of, so that everything is public
15 now. Does that make sense?

16 BY MR. MILNE-SMITH:

17 131 Q. That is fine. Everybody can do as
18 they wish, but the cross-examination brief I have
19 prepared used the public affidavit out of an
20 abundance of caution, so --

21 A. Which one? December 5th? I
22 apologize, I have grabbed the wrong book. Sorry,
23 just one second, please.

24 Okay, I have got it. I have got it. I
25 just grabbed the wrong one.

1 132 Q. And I am interested in page 42,
2 paragraph 68.

3 A. Sorry, paragraph 68? One of the
4 problems is your page numbers are not the same as
5 the page numbers in our materials.

6 133 Q. And I am going by the page number
7 in the top right-hand corner.

8 A. So I'll go by paragraph, yes.

9 134 Q. Yes, okay, paragraph 68.

10 A. 6-8?

11 135 Q. Yes. So immediately following
12 Justice Newbould's trial decision in the Moyse
13 action, Catalyst issued a press release accusing
14 Justice Newbould of, quote, "severe indications of
15 possible bias"; is that correct?

16 A. I don't think it is an accusation.
17 I think it is a concern that we had that there were
18 indications of possible bias which we took from the
19 judgment or reasons for judgment.

20 136 Q. "Severe indications of possible
21 bias"; correct?

22 A. Possible bias.

23 137 Q. Okay, well, the word "possible" or
24 "possibly" doesn't appear in your press release,
25 does it?

1 MR. DEARDEN: Which press release are
2 you speaking of, Mr. Milne-Smith?

3 THE DEPONENT: It does, "severe
4 indications of possible bias."

5 MR. DEARDEN: Gentlemen, just a second.
6 So in paragraph 68, we are not referring to a press
7 release. It is an email that Dan Gagnier sent to
8 the National Post or Financial Post reporter Emily
9 Jackson.

10 BY MR. MILNE-SMITH:

11 138 Q. Okay, that is fine. And this
12 statement was emailed to various members of the
13 press; correct?

14 A. Beyond the one that is Exhibit 30,
15 I don't know of others, but there may have been.
16 I'm just saying this is the one I know of.

17 139 Q. And the press release also in the
18 second highlighted passage says that:

19 "[...] after the Moyse
20 litigation commenced, additional
21 evidence came out that is supportive
22 of our case against Globalive, West
23 Face, VimpelCom and other parties."

24 Do you see that?

25 A. Yes, I do.

1 140 Q. And you then go on to describe
2 this so-called additional evidence at paragraphs 74
3 to 91 of this affidavit. Do you see there is a
4 section called "The Additional Evidence"?

5 A. Yes.

6 141 Q. And am I correct, sir, that all of
7 the evidence you referred to in this section of
8 your affidavit, paragraphs 74 to 91, was in fact
9 produced by West Face in the Moyse action?

10 A. I don't know whether it was in the
11 Moyse action. I believe these came out during the
12 course of the Mid-Bowline portion of the Moyse --
13 well, Mid-Bowline folds into Moyse, and I think
14 that is when these came out.

15 142 Q. That is when they first --

16 A. After the commencement of the
17 Mid-Bowline transaction.

18 143 Q. So you are referring to the Plan
19 of Arrangement proceedings --

20 A. The Plan of Arrangement. Sorry,
21 the Plan of Arrangement is a better way to say it
22 perhaps.

23 144 Q. Yes, that culminated in I think it
24 was February -- the hearing was in January of 2016
25 and the hearing and the final approval was in

1 February of 2016; correct?

2 A. Sorry, could you give me -- sorry,
3 part of it is I am having trouble following what
4 you are saying. I apologize.

5 145 Q. Just to get the timeline straight,
6 the Plan of Arrangement proceedings that we are
7 referring to were commenced in December 2015.
8 There was a hearing in January 2016 and a final
9 order was granted in February of 2016; correct?

10 A. I will take those dates as given.
11 I don't have them in front of me.

12 146 Q. The point is that Catalyst
13 received all the documents that you have called
14 "The Additional Evidence" well before the Moyse
15 trial in June of 2016; correct?

16 A. I don't think that is correct, but
17 I would have to go -- can we -- do we have a way of
18 verifying the dates of those deliveries? Those
19 were delivered by you, do you --

20 147 Q. Let's do that by way of
21 undertaking --

22 U/T MR. MOORE: We will undertake to give
23 you our best reconstruction of the dates of
24 delivery.

25 BY MR. MILNE-SMITH:

1 148 Q. Okay, all I want to know is if any
2 of the documents referred to in paragraph 74 to 91
3 were not produced by West Face prior to the Moyse
4 trial in June 2016? In other words, my
5 understanding and my contention is that all of the
6 documents referred to here as additional evidence
7 were produced prior to the Moyse trial in either or
8 both of the Plan of Arrangement proceedings and the
9 Moyse action, and if you have something to the
10 contrary, please let me know by way of undertaking.

11 U/A MR. MOORE: All right, it is just that
12 one of your questions was -- we'll take that under
13 advisement. I think I'm willing to give that
14 undertaking, but I hear you.

15 [Court Reporter intervenes for
16 clarification.]

17 BY MR. MILNE-SMITH:

18 149 Q. And just one more -- I suspect
19 I'll ask for this by way of undertaking so as not
20 to put the witness to a memory test, but my
21 understanding, again, with respect to the documents
22 referred to as "Additional Evidence" at paragraphs
23 74 to 91 of your affidavit that we have been
24 looking at, my understanding is that each of those
25 documents was in fact relied on by Catalyst both at

1 the trial of and the appeal from the Moyse action.
2 And if you have anything to the contrary, please
3 let me know. Mr. Dearden?

4 U/T MR. DEARDEN: We will.

5 BY MR. MILNE-SMITH:

6 150 Q. With respect to the allegation of
7 possible bias, Catalyst never had any evidence that
8 Justice Newbould had an interest in the outcome
9 against Catalyst, did you?

10 A. No.

11 151 Q. And Catalyst never made an
12 allegation of bias in any of its filings prior to
13 or during the trial of the Moyse action, did it?

14 A. The bias that we saw was on the
15 judgment, in the judgment in connection with Moyse.

16 152 Q. Right, so there was no allegation
17 of bias before the judgment; correct?

18 A. That is correct.

19 153 Q. And in fact, there was no
20 allegation of bias actually made in the appeal
21 proceedings; correct?

22 A. That I do not recall.

23 154 Q. Okay.

24 A. I just don't recall. I don't
25 recall the pleadings.

1 155 Q. That is fine. If you can point me
2 to any allegation of bias in the appeal materials
3 of Catalyst, I would like to be advised by way of
4 undertaking?

5 A. Okay. I assume that is okay?

6 U/T MR. DEARDEN: Yes.

7 THE DEPONENT: Yeah, that is okay.

8 BY MR. MILNE-SMITH:

9 156 Q. Could we go to document number 15,
10 please.

11 A. [Witness reviews document.]
12 I have read it.

13 157 Q. Okay, so this is West Face's press
14 release following the cost judgment that was
15 rendered by Justice Newbould on October 13, 2016;
16 have you seen this?

17 A. Yes.

18 158 Q. Okay, so I have numbered -- well,
19 the paragraph numbering for some reason isn't
20 showing up on the version that is on screen, but in
21 any event, let's just walk through this.

22 So the first paragraph here that is
23 highlighted states that:

24 "West Face Capital Inc.
25 announced today that Justice

1 Newbould [...] has awarded costs of
2 \$1.2 million to West Face, on a
3 substantial indemnity basis, and
4 \$340,000 to Brandon Moyse on a
5 partial indemnity basis, to be paid
6 by Catalyst [...]"

7 That is a factually correct statement?

8 A. That is correct.

9 159 Q. And the next paragraph says that:

10 "In August [...] Justice
11 Newbould dismissed in its entirety
12 the brought by Catalyst [...]
13 related to West Face's successful
14 acquisition of WIND Mobile Corp. in
15 2014. Justice Newbould's cost
16 endorsement noted that the lawsuit
17 was driven by Catalyst CEO Newton
18 Glassman, who 'was not able to
19 accept that he lost his chance to
20 acquire Wind by being outsmarted by
21 someone else.'"

22 That was a factually true statement of
23 what occurred?

24 MR. DEARDEN: Well, that is a statement
25 that is in the decision.

1 BY MR. MILNE-SMITH:

2 160 Q. Yes, in other words, the press
3 release is accurately recounting the decision? I
4 am not asking you to accept the decision, but it is
5 a factual accounting of what was in the decision;
6 correct?

7 A. To the best of my memory, yes.

8 161 Q. And then the last paragraph on the
9 page is another quote from Justice Newbould's
10 decision. "Justice Newbould also found that Mr.
11 Glassman 'was certainly playing hardball [...]',
12 et cetera. And this is also, to the best of your
13 knowledge, an accurate quote from the decision?

14 A. Yes.

15 162 Q. Okay, and going to the next page,
16 so the next one you can see now my numbering has
17 come through, and paragraph 4 is just describing a
18 website that Catalyst has -- sorry, a website that
19 West Face has put together, including the public
20 filings of both parties in their litigation between
21 each other. You'll accept that this is a factually
22 accurate statement of what West Face did?

23 A. Yes.

24 MR. DEARDEN: Well, you are talking
25 about the website or why they did it?

1 MR. MILNE-SMITH: The website.

2 MR. DEARDEN: There is a
3 Catalystlitigation.com website.

4 BY MR. MILNE-SMITH:

5 163 Q. And it has been accurately
6 described here?

7 MR. DEARDEN: Well, how is this witness
8 going to know that West Face was getting numerous
9 inquiries from current and prospective investors,
10 service providers and industry participants?

11 By MR. MILNE-SMITH:

12 164 Q. You have no information to the
13 contrary; correct, Mr. Riley?

14 A. No, I do not have information to
15 the contrary.

16 165 Q. Okay, and then the last statement
17 on this press release is that:

18 "West Face believes that the
19 Catalyst and Callidus claims [...] are without merit and is vigorously
20 defending each of these
21 proceedings."
22

23 A. Well, that is what it says.

24 166 Q. Yes.

25 A. And it is West Face's belief.

1 167 Q. Correct. And there is not one
2 word in this press release about Callidus; correct?

3 A. It believes that is Catalyst and
4 Callidus's claims. I think Callidus and Catalyst
5 shows up several times.

6 168 Q. There is a reference to Catalyst
7 and Callidus claims, but there is no discussion
8 about Callidus's public prospects, its business,
9 its forecasts, its profitability. There is no
10 discussion about any of the substance of Callidus's
11 business; correct?

12 A. This relates to litigation.

13 169 Q. Yes. There is no discussion of
14 Callidus's business; correct?

15 A. Could you go back to the earlier
16 parts, please?

17 [Witness reviews document.]

18 Yes, there is nothing about our
19 business.

20 170 Q. Okay.

21 A. Just a comment about one of our
22 principals.

23 171 Q. And that was a comment that was
24 made by Justice Newbould and was accurately
25 reported; correct?

1 A. Yes.

2 172 Q. And if we go then to document 16,
3 this is a press release that Catalyst issued in
4 response to the West Face press release; correct?

5 A. What is the date? August --
6 October, rather, 13?

7 173 Q. Yes, the same day.

8 A. Yes, it is in reply I think to
9 that, to the prior document.

10 174 Q. And you would agree with me that
11 the second paragraph, which I have highlighted
12 there, finds no support in Justice Newbould's
13 judgment?

14 A. Sorry, I am having trouble reading
15 it, sorry. Is there a way to increase the size? I
16 think the highlighting is kind of making it --
17 there, that is better, thank you.

18 [Witness reviews document.]

19 Yes, that was not in his judgment.

20 175 Q. And you will see that it refers to
21 allegedly questionable and potentially unlawful
22 actions around not just the acquisition of Wind but
23 also activities regarding Callidus Capital?

24 A. Yes.

25 176 Q. Even though West Face hadn't

1 talked about Callidus's business in its own press
2 release; correct?

3 MR. DEARDEN: Sorry, what was the
4 question again, Mr. Milne-Smith?

5 BY MR. MILNE-SMITH:

6 177 Q. You will see that the second
7 paragraph refers to allegedly questionable and
8 potentially unlawful actions around West Face's
9 acquisition of Wind and activity regarding Callidus
10 Capital, even though West Face's press release had
11 not talked about that in its own press release;
12 correct?

13 A. Yes.

14 178 Q. And in the fourth paragraph, you
15 will see I have highlighted a reference to
16 Catalyst's rights being trampled or counterparties
17 acting unethically. That was a reference to West
18 Face? You were saying that West Face had trampled
19 Catalyst's rights or acted unethically?

20 A. Well, I think that is a statement
21 of our principal.

22 179 Q. Yes, but --

23 A. That would apply to all parties,
24 not just --

25 180 Q. But these --

1 A. Sorry, it would apply to all
2 parties, a more general statement.

3 181 Q. Okay, I apologize for interrupting
4 there. I understand it may apply to all, but you
5 thought it particularly applied in this specific
6 instance to West Face's conduct; correct?

7 A. No, I think there were more
8 parties than just West Face.

9 182 Q. I am not denying that, but among
10 the parties that you believed trampled your rights
11 and acted unethically was West Face; correct?

12 A. Yes, correct.

13 183 Q. And then if you could just scroll
14 down to the bottom of that page, so starting at the
15 bottom of the page and then carrying over to the
16 next full page is I think fair to say a summary of
17 Catalyst's arguments in its planned appeal of the
18 Moyse decision; is that fair?

19 A. That would be some of them.

20 184 Q. Yes, not necessarily exhaustive,
21 but it is some of the arguments that Catalyst
22 intended to make?

23 A. Correct.

24 185 Q. Let's go to your conspiracy
25 affidavit, and that is tab B in my examination

1 brief. So that is your conspiracy affidavit, which
2 we looked at earlier, and I am looking at paragraph
3 55 which at least in our pagination is page 36,
4 using the page numbering at the bottom. Do you
5 have that, sir?

6 A. Yes.

7 186 Q. And in this paragraph you describe
8 and sort of categorize the parties that you
9 considered to be the conspirators that are named as
10 parties in this conspiracy action, and you provide
11 four categories.

12 The first category is guarantors with
13 an animus against Callidus; the second category
14 consists of several well-known short-sellers; the
15 third is I guess a category of one, a former
16 employee of an investment advisor to Catalyst and
17 Callidus; and the fourth category consists of
18 journalists with previous ties to some of the
19 short-sellers. Do you see all of that?

20 A. I do.

21 187 Q. And on your evidence, West Face
22 would fall into the short-seller category; am I
23 correct? And you can look at paragraph 79, if you
24 want.

25 A. Yes, I see it.

1 188 Q. And you would agree with me, Mr.
2 Riley, that Catalyst and Callidus in fact have no
3 evidence that West Face was a short-seller of
4 Callidus at any time after 2015; correct?

5 A. I believe that is correct,
6 although I think in this context we are talking
7 about them as part of a conspiracy. Whether or not
8 they sold short is not as relevant.

9 189 Q. West Face -- you are aware that
10 West Face sold short the shares of Callidus in the
11 2014 to 2015 time period; correct?

12 A. Yes.

13 190 Q. And Callidus then sued West Face
14 in relation to those short sales, that is the
15 Veritas claim; correct?

16 A. Yes.

17 191 Q. And those events are not the
18 subject matter of this action; correct?

19 A. I am -- I think you brought up
20 Veritas, so it may be tangentially involved.

21 192 Q. Let's put it differently.
22 Catalyst and Callidus are not seeking relief in
23 this action in respect of West Face's short-selling
24 in 2014 to 2015?

25 A. That is correct, although we are I

1 think claiming that West Face was part of a
2 conspiracy, whether they sold short or not.

3 193 Q. I understand that. I just want to
4 make sure we are clear what are the predicate facts
5 giving rise to it, and West Face's 2014/15 short
6 sales are predicate facts for the Veritas action,
7 not for the current action; correct?

8 A. Yes.

9 MR. DEARDEN: Well, wait a second.
10 Before you said "relief" and understand that the
11 predicate fact -- I mean, the actions of Mr. Boland
12 and West Face regarding the 2014 and 2015 shorts
13 are factually relevant in the conspiracy action. I
14 guess I am objecting, Mr. Milne-Smith, to the way
15 you have put it with predicate fact only relating
16 to the Veritas action and not the current action.

17 BY MR. MILNE-SMITH:

18 194 Q. Okay, well, I have the witness's
19 answers. Document number 17, please. This is an
20 internal chain of West Face emails from early
21 December 2014 about a report that they were
22 preparing on Callidus, and you will see from the
23 title of the document in the top left-hand corner
24 there is a production number of "WFV" and then a
25 string of numbers. I take it you would agree with

1 me that this document was produced by West Face in
2 the Veritas action and not in the "Wolf Pack"
3 action that we are dealing with here on this
4 cross-examination; correct?

5 U/A MR. MOORE: I don't think that is a
6 correct legal characterization of how the
7 productions have been made. I'll take that under
8 advisement and advise you further in that regard,
9 but I don't think that is quite right.

10 BY MR. MILNE-SMITH:

11 195 Q. Okay, well, I am going to put a
12 proposition to you, Mr. Moore, and by way of
13 undertaking or advisement you can tell me whether
14 you have any evidence to the contrary.

15 Our position is that this document,
16 number 17 on this examination that we are looking
17 at, was produced by West Face only in the Veritas
18 action and not in the Wolf Pack action. So that is
19 question number one. You'll take that under
20 advisement?

21 U/A MR. MOORE: Yes.

22 BY MR. MILNE-SMITH:

23 196 Q. And my second question is,
24 Catalyst or Callidus did not obtain this document
25 from any other independent source other than the

1 production in the Veritas action; correct?

2 U/A MR. MOORE: I'll take that under
3 advisement as well.

4 BY MR. MILNE-SMITH:

5 197 Q. Okay. And then if we can go to
6 document number 18, the same question. This was
7 produced only in the Veritas action, not the Wolf
8 Pack, and Catalyst or Callidus did not obtain it
9 from any other source; correct?

10 U/A MR. MOORE: That is the same answer as
11 before with respect to the prior line of questions
12 and --

13 MR. MILNE-SMITH: Okay, and -- sorry,
14 go ahead, Mr. Moore.

15 MR. MOORE: It is David Moore speaking.
16 The same answer as before with respect to the
17 questions you just asked a moment ago.

18 BY MR. MILNE-SMITH:

19 198 Q. Thank you. So, Mr. Riley, this is
20 an email dated December 12th, 2014, from Greg
21 Boland to Jacquie McNish?

22 A. Yes.

23 199 Q. And you will see that -- so what
24 is attached here -- well, we'll come to the
25 attachment, so let's wait for that.

1 You will see that Mr. Boland indicates
2 that there is a password for the attached document.
3 He says "Password is mcnish"; do you see that?

4 A. Yes, I do.

5 200 Q. And you will see that he asked her
6 not to distribute the deck; correct?

7 A. Yes.

8 201 Q. And are you aware that Mr. Boland
9 also watermarked the attachment with her name?

10 A. I believe that is correct. I do
11 recall that in this production.

12 202 Q. And the watermarking meant that if
13 another copy showed up somewhere else, it would be
14 traceable to Ms. McNish; correct?

15 A. Yes.

16 203 Q. And you have no evidence that Ms.
17 McNish did in fact distribute this document, this
18 attachment to anybody else; correct?

19 A. Not to my knowledge.

20 204 Q. And are you aware, Mr. Riley, that
21 Rob Copeland of the Wall Street Journal swore an
22 affidavit in these proceedings stating that Ms.
23 McNish did not write anything for the Wall Street
24 Journal based on this deck provided by Mr. Boland?

25 A. I don't recall that from his

1 affidavit. If you could -- is it easy for you to
2 bring it up?

3 205 Q. Yes, so that is affidavit C. So
4 this is the Rob Copeland August 17, 2020 reply
5 affidavit, and I would like to go to page 12,
6 paragraph 33. So it states that:

7 "Mr. Riley also refers to
8 correspondence between Mr. Boland
9 and Ms. McNish [...]"

10 That is the email that we were just
11 looking at, which dated to when Ms. McNish looked
12 at the Globe and Mail.

13 So Mr. Copeland has spoken to Ms.
14 McNish and has been advised by her that:

15 "She did not write any article
16 for the Globe & Mail based on those
17 communications in or after 2014."

18 And that:

19 "During the time that we", he
20 is now referring to himself and
21 McNish, "were working on the [Wall
22 Street Journal] publications, she
23 did not have access to any of her
24 emails from her time working at the
25 Globe and Mail."

1 I take it you have no evidence to the
2 contrary of what Mr. Copeland has sworn here?

3 A. No.

4 206 Q. Okay, could we go to document 19,
5 please. So this is an email from Greg Boland to
6 Ben Dummett at the Wall Street Journal on December
7 12th, 2014, and this was also attached to your
8 conspiracy affidavit. The first email here is just
9 an excerpt from an affidavit sworn by Craig Boyer
10 of Callidus; correct?

11 A. Yes, but I don't have the context.
12 Is this in connection with the receivership of XTG?

13 207 Q. I don't know. This was something
14 that Craig Boyer swore and Greg Boland sent to Ben
15 Dummett. All I am asking you to accept is that
16 this is an affidavit of Craig Boyer who was the
17 Vice President of Callidus Capital at the time?

18 A. But is this -- is this the whole
19 of the affidavit?

20 208 Q. No, it is an excerpt.

21 A. It is an excerpt, okay.

22 209 Q. This was in your affidavit as
23 Exhibit --

24 A. Yes.

25 210 Q. -- 52.

1 A. Okay, got it.

2 211 Q. And all this is is a two-page
3 excerpt from an affidavit sworn by Craig Boyer;
4 correct?

5 A. Yes.

6 212 Q. And the affidavit that Mr. Boyer
7 swore was, to your knowledge, a public document
8 filed in a public court file?

9 A. Yes.

10 213 Q. And as we discussed previously in
11 connection with Callidus providing things to the
12 media, there is nothing wrong with Mr. Boland
13 providing Mr. Dummett with a publicly filed court
14 document of Callidus; correct?

15 A. No, there is not.

16 214 Q. And the next page, if we just flip
17 past the blue page to the next attachment, this is
18 an email --

19 MR. DEARDEN: Mr. Milne-Smith, I want
20 to take under advisement whether that Boyer
21 affidavit was in fact filed in a court file, or can
22 you tell me that you know that as a fact, in which
23 case I'll accept what you say.

24 BY MR. MILNE-SMITH:

25 215 Q. Okay, if you have any evidence to

1 the contrary, please let me know by way of
2 undertaking.

3 U/T MR. DEARDEN: Okay.

4 BY MR. MILNE-SMITH:

5 216 Q. So we are now at page 4 of the
6 document. It is another email from Mr. Boland to
7 Mr. Dummett on December 9, 2014, and this
8 attaches -- there is a link to a Duff & Phelps
9 website, and there is also a reference to an
10 attachment, and Xchange Technology PDF. So you
11 would agree with me that what Mr. Boland has done
12 here is sent Mr. Dummett a password-protected
13 two-page PDF about Xchange Technology; is that
14 correct?

15 A. Is that a -- sorry, is that a
16 question? It appears to me that he sent a link to
17 Ben Dummett.

18 217 Q. Yes, and then there is also an
19 attachment, and this was all in your affidavit, but
20 just to refresh your recollection, could we bring
21 up document 20 as well. So this was the
22 attachment --

23 A. Okay, thank you. Thank you, that
24 is why I was getting confused.

25 218 Q. Okay, no, that is no problem.

1 So I take it, Mr. Riley, you have no
2 evidence that this two-page attachment was
3 distributed by Mr. Dummett to anybody else?

4 A. I do not know.

5 219 Q. And, Mr. Dearden, going back to
6 the earlier advisement you gave, or Mr. Moore
7 perhaps, I can't remember, my understanding is that
8 these two documents we have been looking at, 19 and
9 20, were produced by West Face only in the Veritas
10 action and that Catalyst or Callidus did not obtain
11 it from any other source; correct?

12 U/A MR. MOORE: We'll give you the same
13 answers; we'll give you the same undertaking or
14 advisement as before.

15 BY MR. MILNE-SMITH:

16 220 Q. And then if we go back to document
17 19, and scrolling through to the next email that is
18 part of this Exhibit, so this is another email on
19 December 12, 2014, from Mr. Boland to Mr. Dummett,
20 and it attaches excerpts from the receivership
21 application of Xchange. If you could just scroll
22 forward, you can see that. So you see that, Mr.
23 Riley?

24 A. Yes, I do.

25 221 Q. And you would agree with me that

1 there is nothing wrong with providing excerpts from
2 a public receivership application to Mr. Dummett?

3 A. That is correct.

4 222 Q. And, Mr. Dearden, if you have any
5 evidence to the contrary that this is anything
6 other than excerpts from the receivership
7 application of Xchange which were publicly filed,
8 will you please let me know?

9 U/T MR. DEARDEN: Will do.

10 BY MR. MILNE-SMITH:

11 223 Q. And then going back to page 6 of
12 this document, the covering email, so Mr. Boland
13 says:

14 "Best part is the part with the
15 red exclamation point. It means
16 that the loan is \$40mm and there is
17 only \$30mm assets of which \$10mm is
18 intangible."

19 So just take that in, Mr. Riley, and I
20 am going to take you to the point in the document
21 that shows that this is an accurate summary of the
22 receivership application.

23 If you go to page 14 of this document,
24 so you will see here a red exclamation mark and
25 yellow highlighting. As I indicated before, these

1 were on the original productions. This is not my
2 highlighting.

3 A. Uhm-hmm.

4 224 Q. So it says:

5 "The book value of its current
6 liabilities (approximately \$46
7 million) [...]"

8 So that is actually even higher than
9 the 40 million.

10 "[...] significantly exceeds
11 the book value of its assets
12 (approximately \$30 million,
13 including approximately \$10 million
14 of intangible and other assets
15 [...])"

16 So, Mr. Boland, with the exception of
17 the difference between 40 and 46 million, has
18 accurately stated what this receivership
19 application indicates; correct?

20 A. Yes.

21 225 Q. And there is nothing wrong with
22 making factual statements about Callidus's public
23 court filings; correct?

24 A. Correct.

25 226 Q. If we go to the next email, which

1 is at page 16 of this document, so this provides a
2 link to and then excerpts the MD&A of another XTG
3 lender that ranked behind Callidus; do you see
4 that?

5 A. Yes, I do.

6 227 Q. And Mr. Boland states that this
7 other lender wrote their investment down to zero,
8 and you are not aware of any evidence to the
9 contrary, and in fact, that is consistent with the
10 yellow highlighting which is what Mr. Boland had
11 done; correct?

12 A. Yes.

13 228 Q. And he --

14 A. And sorry, the yellow highlighting
15 in this document is Mr. Boland's?

16 229 Q. Correct.

17 A. Thank you.

18 230 Q. And again, there is nothing wrong
19 with that?

20 A. No.

21 231 Q. Page 18, this is an excerpt from
22 XTG's publicly filed financials, and Mr. Boland is
23 perfectly entitled to send Ben Dummett excerpts
24 from a public company's public filings; correct?

25 A. Sorry, whose public filings are

1 these?

2 232 Q. XTG, Xchange Technologies.

3 A. No, I know who XTG is, but I
4 wasn't aware of whether they were publicly filing
5 documents. That is my question. They weren't a
6 public company.

7 233 Q. Are you aware of whether or not
8 this document accurately reflects the financial
9 results of XTG Group since 2010?

10 A. I don't. I don't know the source
11 of this document, so I can't comment one way or the
12 other.

13 234 Q. Okay. You are not aware of
14 anything in this being inaccurate?

15 A. I cannot say one way or the other.

16 235 Q. Okay. Then if you go to page 19,
17 the next page --

18 A. Sorry, there is a name there
19 that -- who is Aland Wang?

20 236 Q. That is an analyst at West Face.

21 A. Okay, thank you.

22 237 Q. So just to see what this is
23 attaching, if you go forward in the document to the
24 next page, right there, so what Mr. Boland is
25 sending now is Callidus's earnings call

1 transcripts; do you see that?

2 A. Yes, I see that.

3 238 Q. Okay, and so if we go back to the
4 email, Mr. Boland has attached the earnings call
5 transcript and he has asked a question of
6 Mr. Dummett, whether it is misleading to describe
7 all loans as performing. And you would agree that
8 there is nothing wrong with sending a public
9 document like an earnings call transcript and
10 asking a question?

11 A. There is nothing wrong with that.

12 239 Q. All right.

13 A. Although it is missing -- there is
14 some context. I am not sure whether Mr. Dummett
15 was aware of how the cash sweep worked on our loans
16 and also the guarantee arrangements on XTG.

17 240 Q. So if you could go back to
18 Mr. Copeland's affidavit, which is document C, and
19 page 11, paragraph 32, you will see the highlighted
20 portion. This indicates that Mr. Dummett had no
21 involvement in the August 2017 Wall Street Journal
22 article that is at the heart of this proceeding.
23 He had no access to -- that Mr. Copeland had no
24 access to Mr. Dummett's files or communications
25 with him. Do you have any evidence to the

1 contrary?

2 A. I do not.

3 241 Q. And --

4 MR. DEARDEN: We haven't cross-examined
5 him yet. You know that, right.

6 BY MR. MILNE-SMITH:

7 242 Q. That is fine. We'll see what
8 happens in cross-examination. But at this moment,
9 Mr. Riley, you have no evidence to the contrary of
10 what Mr. Copeland has stated here; correct?

11 A. I do not.

12 243 Q. And in fact, you have no evidence
13 that these emails with Ms. McNish and Mr. Dummett
14 that we have just been looking at had anything to
15 do with any of the reporting that went into the
16 2017 Wall Street Journal article; correct?

17 A. Not at this time.

18 244 Q. You have no evidence that any of
19 these emails Mr. Boland sent to either Mr. Dummett
20 or Ms. McNish, you have got no evidence they were
21 passed on to any of the guarantors who were parties
22 to this proceeding?

23 A. I do not know.

24 245 Q. You have no evidence that they
25 were passed on to any whistleblower like

1 Mr. Anderson or Mr. Levitt; correct?

2 A. I do not know.

3 246 Q. And you have no evidence that they
4 were passed on to any short-seller; correct?

5 A. Sorry, could you please repeat the
6 question?

7 247 Q. You have no evidence that these
8 emails to Mr. Dummett or Ms. McNish were passed on
9 to any short-seller; correct?

10 A. I do not know.

11 248 Q. Okay, why don't we take the
12 morning break here.

13 A. I was going to ask the same thing,
14 probably for the same reason.

15 249 Q. It's 11:30 on the dot.

16 A. Thank you.

17 MR. MILNE-SMITH: So we'll reconvene at
18 11:45?

19 MR. DEARDEN: Yes.

20 -- RECESSED AT 11:31 A.M.

21 -- RESUMED AT 11:45 A.M.

22 BY MR. MILNE-SMITH:

23 250 Q. So, Mr. Riley, the next document
24 we have up here is number 21, and this is Exhibit
25 57 to your conspiracy affidavit. This is an email

1 from Aland Wang, who I told you before is an
2 analyst at West Face, sent to some individuals at
3 Veritas. And again, you would agree with me that
4 the attachment that Mr. Wang sent to Veritas was
5 password-protected?

6 A. Yes.

7 251 Q. And your version of this exhibit
8 didn't include the attachment, so I have included
9 that as document 22, if we could go to 22. You'll
10 see this is the same email, but then if you scroll
11 down, Julia, it shows the attachment -- sorry, to
12 the next page.

13 So you will see this is a two-page
14 attachment, and you can see the document has three
15 pages in total. There is an "Estimated Partial
16 Reconstruction of Callidus Loan Book From Public
17 Information Sources". And then the next page, page
18 3, is an excerpt from Callidus's IPO Prospectus and
19 what this purports to do is to link up the
20 anonymous companies in the IPO prospectus to the
21 identified companies from public sources in the
22 West Face research; do you see all of that?

23 A. Sorry, I am reading this document,
24 and then I see boxes around things. And how does
25 that tie to that document, the prior document?

1 252 Q. So what Mr. Wang is saying is that
2 the companies with red boxes around them can be
3 connected to or are the same as the borrowers
4 identified on the preceding page.

5 A. Could we go to that preceding
6 page?

7 253 Q. Yes.

8 A. Thank you.

9 254 Q. So that was just by way of
10 situating you, Mr. Riley, to be fair to you. Here
11 is my actual question. You'll recall that in the
12 course of injunction proceedings in the Moyse
13 action, and that was the motion that was heard by
14 Justice Glustein, you'll recall that Tony Griffin
15 of West Face swore an affidavit explaining that all
16 of the public sources -- explaining that West Face
17 relied on exclusively public sources of information
18 in its reconstruction of Callidus's loan book that
19 you see on this page. Do you recall seeing
20 Mr. Griffin's affidavit in that regard?

21 A. I do not recall, but for the sake
22 of this, I will accept what you say.

23 255 Q. Okay.

24 A. If that is what it says.

25 256 Q. Am I correct that Catalyst did not

1 in fact pursue any claims for breach of confidence
2 in respect of Callidus at the trial of the Moyse
3 action?

4 A. Again, sorry, I didn't quite
5 understand that question, Mr. Milne-Smith.

6 257 Q. So to back up a little bit, you'll
7 recall the motion before Justice Glustein that I
8 referred to, Catalyst had brought a notice of
9 motion that alleged that Mr. Moyse provided West
10 Face with confidential information about the
11 identity of Callidus's borrowers; do you recall
12 that?

13 A. I do not recall, but I will take
14 that as given for the sake of this.

15 258 Q. And all I want to confirm is that
16 when it came to trial of the Moyse action, Catalyst
17 did not pursue any such allegation that Mr. Moyse
18 had provided West Face with information about the
19 identity of Callidus borrowers?

20 A. That is correct.

21 259 Q. Okay. And so you have no evidence
22 to the contrary that West Face obtained all its
23 information about the identity of Callidus
24 borrowers from public sources?

25 A. I can't state that as a fact.

1 260 Q. Right, but my question is do you
2 have any evidence to the contrary, and sitting here
3 today, you can't point me to any evidence to the
4 contrary?

5 U/A MR. MOORE: Well, why don't we take
6 that under advisement.

7 MR. MILNE-SMITH: All right. And
8 Mr. --

9 MR. MOORE: We'll take that question
10 under advisement.

11 BY MR. MILNE-SMITH:

12 261 Q. And, Mr. Riley, you would agree
13 with me that as a general proposition, there is
14 nothing wrong with researching the loan book of a
15 public company from public sources?

16 A. If they are from public sources
17 with no other information coming from non-public
18 sources.

19 262 Q. Correct. And again, you have no
20 evidence of West Face obtaining any information
21 about Callidus's loan book from non-public sources;
22 correct?

23 A. No, although I am surprised to see
24 some of the names on here. I have always been
25 surprised by some of the names that are on here and

1 where the public source would have been.

2 263 Q. Well, I will direct you then, if
3 you want to satisfy your curiosity, to the
4 affidavit of Tony Griffin sworn in I believe March
5 2015 in the Glustein motion, but that is just to
6 assist you in that regard. We don't need to go
7 there now.

8 A. Sorry, whose affidavit was that
9 again?

10 264 Q. Tony Griffin.

11 A. Tony Griffin, thank you.

12 265 Q. Now, again, and I think Mr. Moore
13 has been taking these questions under advisement,
14 but I am going to ask the same question for this
15 document, either 21 or 22, and they are the same
16 thing just with or without the attachment. These
17 documents were produced in the Veritas action and
18 not in the Wolf Pack action, and Catalyst did not
19 obtain them from any other source; correct?

20 U/A MR. MOORE: Well, we will answer that,
21 those two questions in the same way as we have
22 undertaken or taken under advisement previously.

23 BY MR. MILNE-SMITH:

24 266 Q. That is fine. And am I correct,
25 sir, that Catalyst and Callidus are pursuing relief

1 in respect of this document and these
2 communications with Veritas in the Veritas action;
3 correct?

4 MR. DEARDEN: Say that again, please?

5 BY MR. MILNE-SMITH:

6 267 Q. Callidus and Catalyst are pursuing
7 relief in respect of this document and these
8 communications with Veritas in the Veritas action;
9 correct?

10 R/F MR. MOORE: Well, I don't know how one
11 can kind of raise a question that way and
12 characterize the relief being sought in the Veritas
13 case as specific to this particular document or
14 documents. So I don't think that is an appropriate
15 question to put it that way.

16 MR. MILNE-SMITH: Okay, well, I am
17 going to -- you know, I have been indulgent here in
18 the tag-teaming, but I am going to raise a concern
19 here because that is precisely the question that
20 Mr. Dearden said is how I should phrase my
21 questions when he objected to predicate facts and
22 he said it was proper to ask about relief.

23 So I'll just note for the record that I
24 have asked exactly the kind of question that Mr.
25 Dearden said was appropriate and it is being

1 refused.

2 So let's just --

3 MR. MOORE: Well, it is your linking it
4 to, you know, you have got an overall reference to
5 that claim and the relief and saying that this
6 specific document is part of what is being
7 specifically advanced in that case. I am not at
8 all sure about that. I think that the question is
9 not appropriately phrased.

10 BY MR. MILNE-SMITH:

11 268 Q. It is a simple question,
12 Mr. Moore. I am asking whether in the Veritas
13 action where Callidus and Catalyst are suing West
14 Face for its alleged conspiracy with Veritas to
15 publish information about Callidus, whether or not
16 this is part of what Catalyst and Callidus are
17 suing about?

18 U/A MR. MOORE: I am not going to add to
19 what I said. I'll take any further response under
20 advisement.

21 BY MR. MILNE-SMITH:

22 269 Q. If we could go to your conspiracy
23 affidavit, tab B, paragraph 81 on page 43.

24 MR. DEARDEN: It is the conspiracy
25 affidavit.

1 THE DEPONENT: Paragraph 81?

2 MR. DEARDEN: 81.

3 BY MR. MILNE-SMITH:

4 270 Q. So you say in your affidavit here,
5 Mr. Riley, that:

6 "It also appears that on or
7 around December 30, 2014, a version
8 of the West Face Report", and this
9 is a report they prepared regarding
10 Callidus, "was presented to [an
11 individual named] Jerome Hass [...]"

12 A. Yes.

13 271 Q. And the evidence you provide in
14 support of that assertion is Exhibit 28, which I
15 have included in my brief at tab 23. Would you
16 bring that up. So this document refers to a
17 "formidable 'Short' case", but it does not mention
18 West Face; you would agree with me?

19 A. That is correct.

20 272 Q. And in fact, notwithstanding this
21 formidable short case, it is fair to say that
22 Mr. Hass enthusiastically endorses Callidus's
23 prospects in this little post; correct?

24 A. Yes.

25 273 Q. And you have presented no evidence

1 from Mr. Hass that he in fact had West Face's short
2 report as opposed to a short report from somebody
3 else; correct?

4 A. I am only aware of one short
5 report at that time, which was West Face's.

6 274 Q. And I take it that even assuming
7 that it was a short report by West Face as opposed
8 to somebody else, you have no evidence as to how
9 Mr. Hass may have gotten his hands on it?

10 A. Well, taking -- and I have -- I
11 don't recall speaking to Mr. Hass about this, but I
12 would take the line "A firm presented a very
13 formidable 'Short' case" to mean somewhere there
14 was a presentation.

15 275 Q. You are making an assumption
16 there?

17 A. No, I am not. I am reading what
18 is there, which you have highlighted and --

19 276 Q. My point is --

20 A. "A firm presented a very
21 formidable 'Short' case recently [...]"

22 277 Q. Just to confirm something I think
23 you said earlier, you haven't spoken to Mr. Hass
24 about this; correct?

25 A. Not that I recall.

1 278 Q. So you don't know what
2 communications he may or may not have had with West
3 Face?

4 A. No, I do not.

5 279 Q. And you did not seek to obtain an
6 affidavit from him in this proceeding, did you?

7 A. No, we did not at this time.

8 280 Q. And if we go back to the
9 affidavit, the same paragraph, 81 -- no, you are in
10 the wrong affidavit. It is B. Yes, paragraph 81,
11 the same paragraph, you state that you were advised
12 by Mr. Glassman that Boland called an individual
13 named Yashwant Sankpal at Dundee Securities to have
14 him write negative facts on Catalyst. So you
15 haven't obtained an affidavit from Mr. Sankpal; is
16 that correct?

17 A. That is correct.

18 281 Q. And you did not speak to
19 Mr. Sankpal; correct?

20 A. No, I am relying on his
21 communications with Mr. Glassman.

22 282 Q. Right, and you spoke to Mr.
23 Glassman who spoke to Mr. Sankpal who spoke to
24 Mr. Boland; correct?

25 A. Yes.

1 283 Q. So you would agree with me this is
2 triple hearsay; correct?

3 A. Sorry, I am not sure I am allowed
4 to answer a legal question.

5 284 Q. That is fine, Mr. Riley.

6 A. Pardon me?

7 285 Q. Your first --

8 A. Pardon me? I didn't hear -- did
9 you ask another question?

10 286 Q. I said, that is fine, Mr. Riley.

11 A. Okay, thank you. I apologize.

12 Part of the problem is when you are bending forward
13 to speak into your mic, your face is obscured by
14 your name. You sort of disappear from the screen.
15 So I am having trouble -- that is -- thank you.
16 Thank you.

17 287 Q. Now, with respect to Mr. Voorheis,
18 you allege that West Face appeared to be in
19 communication with him based on a reference in a
20 memo prepared by Mr. Voorheis that referred to a
21 sophisticated investor that was short and active;
22 you'll recall that in your affidavit?

23 A. What paragraph, please?

24 288 Q. So it is the same affidavit we
25 were looking at, tab B, the conspiracy affidavit,

1 page 64, paragraph 138.

2 A. Paragraph 138?

3 289 Q. 138. And you will see I have
4 highlighted the relevant portion on the screen.

5 A. Yes, I see that.

6 290 Q. And then if we can look at the
7 document you rely on in respect of this, if we go
8 to document 24, which is Exhibit 61 to your
9 affidavit.

10 So let me just walk you through this,
11 Mr. Riley. This attachment contains various
12 versions of what you have attached as Mr. Voorheis'
13 report. The first one is a draft number 1 of
14 February 11, 2015, and you will see it is pros and
15 cons. Pro number 2 is:

16 "Comment from a senior
17 investment banker that CBL is a
18 'ponzi scheme'."

19 And then pro number 3 is:

20 "At least one sophisticated
21 investor is short and active."

22 So that is what you were referring to
23 in your affidavit that we just looked at; correct?

24 A. Yes. I said yes.

25 291 Q. Oh, okay, sorry, I didn't hear.

1 A. Sorry.

2 292 Q. And you would agree with me that
3 this document, this page, and in fact -- well,
4 let's do it one step at a time. This page doesn't
5 refer to West Face or Mr. Boland; correct?

6 A. No.

7 293 Q. And I am going to put it to you as
8 a proposition and if you would like by way of
9 undertaking you can advise me if you have any
10 evidence to the contrary, that in fact, this entire
11 document which is 45 pages doesn't have any
12 reference to West Face or Mr. Boland by name;
13 correct?

14 A. I'll have to do that I think by
15 way of undertaking, because I have not memorized
16 the 45 pages. So I am looking at counsel; is that
17 all right?

18 U/A MR. DEARDEN: Yeah, we'll take it under
19 advisement.

20 THE DEPONENT: We will take it under
21 advisement.

22 BY MR. MILNE-SMITH:

23 294 Q. And again, I'm not asking you to
24 do anything. I am just saying if you don't take my
25 word for it, then please go ahead and you can

1 advise me to the contrary if I have missed
2 something.

3 A. The only thing I do note is the
4 date of that document.

5 295 Q. Yes, so --

6 MR. DEARDEN: Which is February 11,
7 2015?

8 THE DEPONENT: Yes.

9 BY MR. MILNE-SMITH:

10 296 Q. So the reference to a senior
11 investment banker calling CBL a Ponzi scheme, to
12 your knowledge that is not a reference to West
13 Face; correct?

14 A. To my knowledge, no. I wouldn't
15 call West Face an investment banker.

16 297 Q. Okay.

17 A. That would be someone in a trading
18 house.

19 298 Q. Yes, exactly. It is point 3 is
20 what you took to be the reference to West Face;
21 correct?

22 A. That is correct.

23 299 Q. And you haven't obtained the
24 evidence of Mr. Voorheis in this regard?

25 A. At this time, no.

1 300 Q. And in fact, this memo doesn't
2 even state whether or not Mr. Voorheis even spoke
3 to whomever this, quote, "sophisticated investor"
4 is; correct?

5 A. I can't tell one way or the other
6 from this.

7 301 Q. Yes. So if you then go to page 6
8 of this document, which is an earlier draft, you
9 will see I have highlighted the draft, and this one
10 is now dated February 10th instead of February
11 11th; do you see that?

12 A. Yes, I do.

13 302 Q. And you see that the point 3 from
14 the later draft is missing? The reference to what
15 you assumed to be West Face is not in this draft;
16 correct?

17 A. But that is a prior draft.

18 303 Q. Yes.

19 A. So I would -- looking at the two
20 documents, something changed between February 10
21 and February 11.

22 304 Q. Yes. So all we can conclude from
23 this, without any of us having spoken to
24 Mr. Voorheis, is that the reference to a short and
25 active sophisticated investor was made on February

1 the 11th?

2 A. I think that is correct, yes,
3 that -- I don't know about other changes, but that
4 is certainly one change looking at the two pages.

5 305 Q. And you will recall, Mr. Riley,
6 that by this time, of course, in February 2015
7 Catalyst had already commenced the Moyse action;
8 correct?

9 A. I will -- I do not recall the
10 dates of that. If you say that is the date,
11 though, if you say that date, I'll take your word
12 as to the commencement of the Moyse action.

13 306 Q. And if we could turn up document
14 25, this is a notice of motion that Catalyst
15 brought in that proceeding, and this is an amended
16 notice of motion, but I'll ask you to take my word
17 for it that this notice of motion was brought on
18 January 13, 2015, and we can go to the end of the
19 document if you want to.

20 A. I will take your word for it.

21 307 Q. Okay. And if we could then go to
22 paragraphs (vv) to (xx), which is on page 14 of the
23 document, and you will see I have highlighted this,
24 there is no underlining in this which indicates
25 that it is part of the original notice of motion

1 from January 13th, 2015.

2 And would you agree with me that on
3 these highlighted portions that I have indicated
4 here, Catalyst is pleading that West Face prepared
5 a research report on Callidus and was shorting the
6 shares of Callidus; is that a fair summary?

7 A. Yes.

8 308 Q. And this notice of motion of
9 course was a public document?

10 A. Yes.

11 309 Q. And do you recall that on February
12 the 4th, Theresa Tedesco of the National Post wrote
13 an article about the motion?

14 A. I don't recall the story but it is
15 quite possible. Tedesco was following us I believe
16 at that time.

17 310 Q. Just for the record, if we could
18 pull up document 26 and zoom in a bit. So you can
19 see the date there, February 4th, Theresa Tedesco.
20 And just scroll down to the highlighted passage.
21 So this is a reference to the notice of motion we
22 were just looking at; correct?

23 A. Yes.

24 311 Q. And if you go to the second page
25 of this document, you will see a highlighted

1 passage there referring to statements made by
2 Jeffrey Mitchell who was the lawyer for West Face
3 at the time; do you see that?

4 A. I see that.

5 312 Q. And do you recall that your
6 counsel, Mr. DiPucchio, actually wrote a libel
7 notice to Mr. Mitchell or a letter threatening
8 defamation proceedings against Mr. Mitchell for
9 these statements?

10 A. I don't recall that. Do you have
11 a copy of the letter?

12 313 Q. Yes, document 27.

13 A. Just for my own memory, Mitchell
14 was on for Moyse at the time of the injunction
15 before Lederer?

16 314 Q. No, he was on for West Face at the
17 time of the injunction before Lederer. He
18 provided --

19 A. Okay, sorry, thank you. That is
20 just -- I was trying to remember. I do remember
21 the name. I don't remember the context, or I
22 didn't remember the context.

23 315 Q. That is fine. So here is the
24 February 9, 2015 letter from Mr. DiPucchio to
25 Mr. Mitchell. It refers to two articles where the

1 same statements appear, and one was a Globe and
2 Mail article on February the 2nd and the second was
3 a Financial Post, that is the Theresa Tedesco
4 article, on February the 5th; do you see those?

5 A. Yes.

6 316 Q. And so anybody reading these
7 articles would know that Catalyst had brought a
8 motion against West Face and that there would be a
9 motion record and a notice of motion in the public
10 court file; correct?

11 A. Yes.

12 317 Q. And Catalyst didn't file its
13 motion record under seal; it was a public document,
14 correct?

15 A. Yes.

16 318 Q. And so anyone reading the motion
17 record would see that West Face was alleged to have
18 a short case against Callidus; correct?

19 A. Sorry, you are -- I am not
20 disagreeing, but I would have to go back and see
21 what was in the notice of motion.

22 319 Q. Okay, could we go back to the
23 notice of motion.

24 A. I have not memorized that
25 document.

1 320 Q. Yes, it is document 25. So anyone
2 reading this document would see that Catalyst was
3 accusing West Face of having prepared a research
4 report about Callidus and that it was actively
5 shorting the stock; correct?

6 MR. MOORE: Well, which subparagraph
7 says that?

8 BY MR. MILNE-SMITH:

9 321 Q. So (vv) says that:
10 "[...] West Face was 'talking
11 down' the stock on the street and
12 had prepared a research report that
13 purported to reveal problems with
14 Callidus's loan book."

15 So anybody who read that knew that
16 there was an allegation that West Face had prepared
17 a research report on Callidus; correct?

18 MR. MOORE: Well, your question was
19 premised upon this excerpt stating that they were
20 shorting the stock.

21 MR. MILNE-SMITH: Yes --

22 MR. MOORE: I am just trying to read as
23 you go along.

24 BY MR. MILNE-SMITH:

25 322 Q. So you would agree with me, Mr.

1 Riley, that it might be a reasonable inference for
2 someone to draw that if West Face had prepared a
3 research report and was talking down the stock,
4 that West Face might also have shorted the shares;
5 correct?

6 R/F MR. DEARDEN: He is not going to
7 speculate.

8 BY MR. MILNE-SMITH:

9 323 Q. All right. Well, so even assume
10 that your assumption was correct that Mr. Voorheis
11 in his memo was talking about West Face, for all
12 you know Mr. Voorheis learned about West Face's
13 research into Callidus from your own notice of
14 motion; correct?

15 A. That would be speculation. I am
16 not trying to be the lawyer, but I don't have any
17 information as to that effect.

18 324 Q. And you have no evidence of any
19 communications between Mr. Voorheis and West Face
20 at this time period; correct?

21 A. I don't recall. Is there any --
22 do we have anything in my affidavit?

23 U/A MR. MOORE: Well, I'll take that under
24 advisement and let you know. You don't want this
25 to be a memory test, so we'll answer that and we'll

1 take that under advisement.

2 BY MR. MILNE-SMITH:

3 325 Q. That is fine. Let's go back to
4 your affidavit, just to situate you here. So this
5 is tab B, the conspiracy affidavit, and paragraph
6 139. So this is one of these paragraphs where you
7 provide a summary of a whole bunch of documents and
8 then attach the documents. So you say that:

9 "After Livesey contacted Levy
10 on behalf of West Face [...]"

11 And we are going to come back to this,
12 but let's see if we can do it the easy way right up
13 front the first time it appears. Mr. Riley, you
14 would agree with me that in fact Levy was never
15 told by Livesey that he was acting on behalf of
16 West Face; you accept that now, correct?

17 A. I do not. I am relying on what
18 Levy said at the time of his examination under
19 oath.

20 326 Q. Okay, well, we'll come back to
21 that and we'll do it the hard way then, so:

22 "After Livesey contacted Levy
23 on behalf of West Face, it appears
24 that West Face, Langstaff, Voorheis
25 and the guarantors began collecting

1 and exchanging information about
2 Catalyst and Callidus."

3 First of all, you would agree with me,
4 based on what you told me earlier about Catalyst
5 and Callidus's own practices, that provided they
6 are exchanging true information, there is
7 absolutely nothing wrong with individuals
8 collecting and exchanging information about
9 Catalyst and Callidus; fair?

10 A. Yes.

11 327 Q. So let's start looking at the
12 individual documents. Number 28 is Exhibit 64.

13 A. May I ask, are you going to do the
14 exhibits in this order that have different numbers?
15 Is that how you are going to proceed?

16 328 Q. I am not going to promise you
17 that. I have organized it in my own way, and it
18 may or may not follow what is in your affidavit.

19 A. Could I just take a moment.
20 Marco, could you try and keep track of these
21 exhibits? So you want my Exhibits 64 to 72, just
22 so that we can -- just to make sure we have got the
23 same exhibits, that's all.

24 329 Q. That is fine. We'll have it all
25 up on the screen in any event.

1 So this document 28 is Exhibit 64, and
2 this is a voicemail message -- or I should say it
3 is an email to Mr. Voorheis presumably from his
4 assistant indicating that Vincent Mercier, my
5 partner at the Davies firm, called about Callidus
6 and West Face; correct?

7 A. Yes.

8 330 Q. And I take it, Mr. Riley, to state
9 the obvious, you have no idea what they discussed
10 about Callidus; correct?

11 A. I do not.

12 331 Q. And of course, there is nothing
13 wrong with discussing a public company in and of
14 itself; correct?

15 A. No.

16 332 Q. And tab 29, this is Exhibit 65.
17 So if you scroll down to the bottom on this first
18 page here, you will see that Mr. Baumann, a
19 Defendant in this case, appears to send an
20 unsolicited email to Yu-jia Zhu, who was the Vice
21 President of West Face at the time on October 7,
22 2015, and he introduces himself saying:

23 "We met during presentations
24 regarding White Swan."

25 And that was Mr. Baumann's business.

1 And then he sends Mr. Zhu some
2 information about Callidus. There is nothing wrong
3 with sending information about Callidus; correct?

4 A. Well, there is some opinions that
5 he expresses in there that I would question.

6 333 Q. Okay. And all Mr. Zhu does is
7 say:

8 "Thank you for the email and
9 information."

10 And he says that he will pass it along
11 to Greg Boland. He offers no commentary whatsoever
12 on Callidus; is that correct?

13 A. That is correct.

14 334 Q. And so there is nothing wrong with
15 receiving that information from Mr. Baumann?

16 A. No.

17 335 Q. And if we go to page 3, just after
18 the blue sheet, so in this email Mr. Baumann
19 forwards to Mr. Zhu an email that he says was sent
20 to his executive assistant which relates to
21 Callidus borrowers?

22 A. Yes.

23 336 Q. You would agree with me there is
24 no indication in this email or anywhere else that
25 Mr. Zhu replied to or did anything with this email;

1 correct?

2 A. Not to me, no.

3 337 Q. For example, it doesn't say that
4 I'll pass it on, like it did on the one we just
5 looked at?

6 A. This would be material non-public
7 information.

8 338 Q. That is not my question, sir. My
9 question --

10 A. I understand your question, and
11 the answer is there is nothing to indicate that it
12 was passed on.

13 339 Q. Okay. So you have no way to know
14 what Mr. Zhu did with this. For all you know, he
15 might have just immediately deleted it?

16 A. I don't know Mr. -- I don't know.

17 340 Q. Document 30. This is Exhibit 66.
18 This is Mr. Griffin of West Face sending Bruce
19 Langstaff a public court filing about Fortress
20 Resources, and if you scroll over to the third
21 page, you will see that this is a U.S. Bankruptcy
22 Court in Kentucky filing?

23 A. Yes, I see it.

24 341 Q. And you would agree with me there
25 is nothing wrong with Mr. Griffin sending

1 Mr. Langstaff a public court filing?

2 A. No.

3 342 Q. Document 31. This is a 2015 email
4 from Roger Simard. I understand he was a lawyer
5 for Bluberi and later at some point he ceased being
6 Bluberi's lawyer after Callidus took it over and he
7 started being the lawyer for the principal of
8 Bluberi, Mr. Duhamel. Do you know who Mr. --

9 A. As I recall, Dentons, including
10 Mr. Simard, acted for both Duhamel and Bluberi
11 during the CCAA proceedings.

12 343 Q. Okay, thank you. And this email
13 appears to be Mr. Simard on behalf of Bluberi
14 soliciting a potential investment from West Face in
15 Bluberi in 2015; is that correct?

16 A. Yes.

17 344 Q. And there is nothing wrong with
18 that?

19 A. No.

20 345 Q. And document 32. This is Exhibit
21 71. This is an email where Mr. Langstaff
22 circulates an analyst report on Callidus from
23 Canaccord Genuity to a list of undisclosed
24 recipients that includes Tony Griffin at West Face.
25 There is nothing wrong with Mr. Langstaff doing

1 that or Mr. Griffin receiving it; correct?

2 A. Well, the only question I have --
3 the answer is yes, but who are the undisclosed
4 recipients and why is Tony Griffin blind
5 carbon-copied?

6 MR. MOORE: This question and several
7 others where you say "there is nothing wrong with
8 this", I take it your questions are that there is
9 nothing wrong with circulating this piece of paper
10 or this document in and of itself. Whether it is
11 part of something bigger or different that the
12 court may conclude, that is another matter
13 altogether, I get that. But I take it your
14 questions are focussed on the distribution of this
15 piece of paper or this information in and of
16 itself; am I understanding that correctly?

17 MR. MILNE-SMITH: I would appreciate
18 you not to try to coach the witness here,
19 Mr. Moore, but I think my questions speak for
20 itself and it is consistent with what you just
21 said.

22 MR. MOORE: Well, all right, thank you.
23 I really -- there is no need for that editorial
24 comment. It is not coaching anybody. It is making
25 sure we are on the same page about what questions

1 you are actually asking, and it sounds like we are.
2 So that is fine. Thank you.

3 BY MR. MILNE-SMITH:

4 346 Q. So, Mr. Riley, your answer to the
5 last question is consistent with your affidavit
6 where you have seemed to imply or indicate at
7 certain points that sending information to a group
8 of undisclosed recipients is somehow improper or
9 malicious; is that your evidence?

10 A. My evidence is that I don't know
11 who the undisclosed recipients are in this context,
12 although I think we may be able to deduce that
13 later. But why is it being done in this way?
14 There is something surreptitious about this.

15 347 Q. Are you familiar that using bcc's
16 is a means by which an individual can send
17 information to more than one person without
18 disclosing to all the recipients who each other
19 are?

20 A. Yes. Well, that is -- when you
21 use undisclosed recipients, that for sure is the
22 case.

23 348 Q. Right, so it actually prevents the
24 recipients from knowing each other and being able
25 to communicate with each other about the

1 correspondence?

2 A. No, I don't agree with that.

3 349 Q. You would agree with me that if
4 there were 50 people or 2 people who were bcc's on
5 this email, Mr. Griffin would have no idea who the
6 other recipients were or who they weren't; correct?

7 A. That is correct, but he may have
8 known before who the undisclosed recipients are and
9 who else was potentially bcc'd.

10 350 Q. Well, you are just completely
11 speculating there. You don't know what
12 communications Mr. Griffin or Mr. Langstaff had
13 with each other outside of this email; correct?

14 A. Well, I think there is some other
15 communications we have between West Face and Bruce
16 Langstaff or references to communications.

17 351 Q. Okay, what I would like to have
18 then by way of undertaking is if you can point me
19 to anything that shows that Mr. Griffin knew who
20 the other recipients of this email were, I would
21 like you to let me know?

22 U/T A. Okay.

23 352 Q. And you would agree with me that
24 if Mr. Langstaff wanted to coordinate the
25 dissemination of information among a group of

1 individuals beyond just himself and Mr. Griffin,
2 the easier way to do that would just be to cc
3 everybody and then they would all know who each
4 other were and could communicate openly; correct?

5 A. Yes, and that is why I don't know
6 why he chose to do it this way.

7 353 Q. But are you aware, Mr. Riley, that
8 the use of bcc's is a commonly used business
9 practice in order to respect the privacy and
10 confidentiality of the individuals to whom you are
11 sending something?

12 A. I don't know all of the uses of
13 bcc.

14 354 Q. Has Callidus or Catalyst ever sent
15 something to investors and bcc'd them all so that
16 they don't know each other's identity?

17 A. No, not that I know of. You mean
18 our investors in our funds?

19 355 Q. Yes.

20 A. They are aware of who the
21 investors are.

22 356 Q. So all of your investors know who
23 the other investors are?

24 A. I can't say for certain, but I
25 think they are very aware because we have annual

1 meetings where investors participate so their names
2 come up at that time.

3 357 Q. Do Catalyst or Callidus ever send
4 anything out with bcc's?

5 A. Oh, I'm sure we use bcc's, but I
6 can't think of a particular case.

7 358 Q. So the fact that you use them
8 then, you are familiar with the notion that it can
9 be a tool used to respect the privacy of the
10 recipients so that you are not telling everybody on
11 the list who everybody else is? You are familiar
12 with that as a common business communications
13 practice?

14 A. I will take that as a given.

15 359 Q. Okay. Let's go to document 33,
16 please. This is Exhibit 68 to your conspiracy
17 affidavit. So Mr. Boland sends Mr. Langstaff an
18 article from Canada NewsWire about Berkley Capital
19 Management buying some shares of Callidus; do you
20 see that?

21 A. Yes.

22 360 Q. And then Bruce Langstaff responds
23 with a question mark, and Mr. Boland says:

24 "You would think he learned his
25 lesson on bear Stearns."

1 And Mr. Langstaff says he is:

2 "Happy to have shorted him some
3 of his stock."

4 So you would agree with me that this is
5 evidence that Mr. Langstaff apparently shorted
6 Callidus at some point in late 2015; correct?

7 A. I actually don't understand what
8 Mr. Langstaff meant by that, and I have tried to
9 puzzle through it.

10 361 Q. But it is certainly not evidence
11 of West Face doing any short-selling at the time in
12 question; correct?

13 A. I can't say one way or the other.

14 362 Q. And --

15 A. I don't know the -- "Happy to have
16 shorted him some of his stock", I don't know what
17 that is in connection with. I don't understand
18 that communication.

19 363 Q. That is fine. All Mr. Boland has
20 done is provided a public press release or article
21 of some kind to Mr. Langstaff; correct?

22 A. Yes.

23 364 Q. And there is nothing wrong with
24 that, of course, as we have already established;
25 correct?

1 A. Correct.

2 365 Q. And document 34. This is an email
3 from Mr. Boland to Mr. McFarlane -- sorry, first
4 from Mr. McFarlane to Mr. Boland, and then there
5 are a couple of replies. All this indicates is
6 that they planned to speak by telephone; correct?

7 A. Yes.

8 366 Q. Of course, there is nothing
9 inherently wrong with Mr. McFarlane and Mr. Boland
10 speaking on the telephone; correct?

11 A. It depends on what they
12 communicate on the phone.

13 367 Q. And of course, you don't know what
14 they said on the phone; correct?

15 A. No, we do not.

16 368 Q. So you can't say that they did or
17 discussed anything improper; correct?

18 A. I don't know. We would have to
19 have communications with McFarlane and with Boland
20 to know that.

21 369 Q. Well, you'll get a chance to
22 cross-examine them. If we could go to page 3 of
23 this document, and --

24 MR. DEARDEN: What document number is
25 this, Matt?

1 BY MR. MILNE-SMITH:

2 370 Q. So this is page 3 of this
3 document, number 34, which is Mr. Riley's Exhibit
4 69.

5 A. Sorry, no, just I think this one
6 that you have got up on the screen now is 72.

7 371 Q. It may be in more than one place.
8 Wherever you find it is fine. It is tab 34 for the
9 purposes of my examination brief.

10 A. No, but this -- sorry, 69 is the
11 catch up and compare notes email that we just
12 looked at, and now you have got up on the screen
13 one that looks to me to be our Exhibit 72.

14 372 Q. It is all the same tab. It is
15 page 3 of the same tab there. One is behind the
16 other.

17 A. Okay.

18 373 Q. And there is a document number
19 WF565 in case anyone wants to track this down, but
20 let's just talk about the contents of it.

21 A. Okay.

22 374 Q. And feel free to satisfy yourself
23 as to this, but I will advise you that the rest of
24 this document or the rest of this tab is just
25 Callidus's consolidated financial statements for

1 the years ended December 31, 2015 and 2014, okay?

2 A. Yes.

3 375 Q. So this email consists, I mean it
4 is fair to say, of Mr. McFarlane providing his
5 observations based on Callidus's public disclosure;
6 correct?

7 A. Well, I think it is a footnote to
8 the financial statements for 2015.

9 376 Q. Right, my --

10 A. I believe that is what that is.

11 377 Q. Sorry, say that again?

12 A. That the in quotes portion is from
13 the subsequent event footnotes to the December 31,
14 2015 financial statements.

15 378 Q. Okay, thank you for clarifying
16 that. My only point is that, without getting into
17 the substance of what Mr. McFarlane says which you
18 can raise with Mr. McFarlane, there is nothing
19 wrong with Greg Boland simply receiving this email?

20 A. On its face, no, but I wonder why
21 he is sending that information to Greg Boland.

22 379 Q. You appreciate, sir, that when a
23 company like Catalyst or Callidus sues a whole
24 bunch of different people, that those various
25 Defendants may have a perfectly legitimate interest

1 in speaking with each other about their common
2 interests and their defences to the ongoing
3 litigation? You accept that?

4 A. I do not.

5 380 Q. So your position, and let me just
6 make sure I have got this clear for the record,
7 your position is that it is improper inherently for
8 Defendants in multiple actions brought by a common
9 Plaintiff, it is improper for those Defendants to
10 speak to each other about the ongoing litigation in
11 and of itself?

12 A. My answer to that is that you have
13 to look at the purpose of the communication. On
14 its face, I do not understand why Greg Boland would
15 be speaking to Jeff McFarlane about XTG. XTG is an
16 insolvency case relating to Catalyst and the other
17 actions related primarily to Catalyst.

18 381 Q. You are aware --

19 A. The Moyse action, and the
20 VimpelCom action, and Veritas did relate to
21 Callidus.

22 382 Q. You are aware, sir, that this is
23 in December -- this is March 31, 2016. By this
24 time, Catalyst and Callidus had sued Mr. Boland in
25 the Veritas action?

1 A. Yes, I agree.

2 383 Q. Right, and one of the issues in
3 the Veritas action is whether West Face had made
4 wrongful, defamatory statements about Callidus in
5 its research report which cast doubt on the
6 strength of Callidus's...[inaudible.]

7 MR. DEARDEN: Sorry, Matt, you cut out.

8 BY MR. MILNE-SMITH:

9 384 Q. One of the issues in the Veritas
10 action was whether West Face had made wrongful,
11 defamatory statements about Callidus in its
12 research report which cast doubt on the strength of
13 Callidus'S business?

14 A. And was one of the loans in
15 question XTG in the report by West Face?

16 385 Q. Yes.

17 A. Then I would say that what people
18 seemed to be ignoring is the function of the
19 guarantee, which is referenced in the footnote, the
20 subsequent event footnote, the 101.3.

21 386 Q. Okay, Mr. Riley, you are jumping
22 ahead to something I am not asking. I am not
23 asking about whether or not West Face's analysis of
24 Callidus or the XTG loan was correct. What I am
25 asking about is whether you are aware that part of

1 the subject matter of the Veritas action was XTG?

2 A. Sorry, please repeat the question.

3 387 Q. You are aware that part of the
4 subject matter of the Veritas action was XTG?

5 A. But I am -- if you tell me that is
6 what is in the pleadings, I will accept it.

7 388 Q. Okay, well, what is in the
8 pleadings is the West Face research report, and the
9 West Face research report includes an analysis of
10 XTG; do you accept that?

11 A. Again, I have no precise memory of
12 that. I will take you at your word.

13 389 Q. Okay, thank you. And that being
14 the case, it is perfectly reasonable for Mr. Boland
15 to be interested in information about XTG; correct?

16 A. I am not sure that Mr. McFarlane
17 would be a good source.

18 390 Q. Well, that is again not the
19 question. It is reasonable for Mr. Boland to be
20 interested in information about XTG; correct?

21 A. Yes.

22 391 Q. And Mr. McFarlane is providing him
23 with information and then his opinion about XTG;
24 correct?

25 A. Could you scroll up -- or scroll

1 down. I apologize, scroll down. I used the wrong
2 phrase.

3 Yes, it's there, thank you.

4 [Witness reviews document.]

5 392 Q. So Mr. McFarlane is providing
6 Mr. Boland with information, being the attached
7 public disclosure, and then opinion, being the
8 email he sends about XTG; correct?

9 A. There are a lot of opinions in
10 there by Mr. McFarlane.

11 393 Q. Yes.

12 A. And I am not sure that his
13 information that he is conveying to Mr. Boland is
14 accurate.

15 394 Q. But --

16 A. But it is what he says in his
17 email.

18 395 Q. Okay, that is fine. I understand
19 you may want to take issue with that.

20 A. That is all I am saying.

21 396 Q. But the point is that Mr. Boland,
22 as a Defendant in a lawsuit that raises questions
23 about West Face's analysis of XTG, it is reasonable
24 for him to be interested in information and
25 opinions about XTG; correct?

1 A. I'm sorry, I am trying to read --
2 I apologize, I shouldn't be reading while you are
3 asking the question. Could you please ask me the
4 question again.

5 397 Q. Mr. Boland, as a Defendant in a
6 lawsuit that raises questions or makes allegations
7 about West Face's analysis of XTG, it is reasonable
8 for Mr. Boland to be interested or want to gather
9 information and opinions about XTG; correct?

10 A. Yes.

11 398 Q. Document 35. This is Exhibit 70
12 to your conspiracy affidavit. It is an article
13 from March 2016 about an unrelated investment by
14 Catalyst, so unrelated to Callidus, and it appears
15 in a publication called Streetwise on March 8,
16 2016, and Mr. Langstaff forwards it without comment
17 to Mr. Boland; do you see that?

18 A. Yes.

19 399 Q. And Mr. Boland offers an opinion
20 saying:

21 "I have" -- and I suspect that
22 is a typo and it is supposed to say
23 "I have not seen" -- "that kind of
24 rebuke in a while."

25 And that is all he says. Do you see

1 that?

2 A. Yes, I see that.

3 400 Q. So you would agree with me, first
4 of all, that this has nothing to do with Callidus?
5 This was about the Shaw Corus transaction; correct?

6 A. Yes.

7 401 Q. And there is nothing wrong with
8 Mr. Langstaff sending or Mr. Boland receiving a
9 published news article; correct?

10 A. Yes.

11 402 Q. And you would agree with me --
12 now, I am not asking you to agree with me about the
13 contents of the article, because I know you won't,
14 but you would agree with me that, objectively
15 speaking, the article is critical of Catalyst;
16 correct?

17 A. That is correct.

18 403 Q. And therefore, it would be fair
19 comment for Mr. Boland to say he hasn't seen a
20 rebuke like that in awhile because, whether it was
21 true or not, it was a rebuke of Catalyst; correct?

22 R/F MR. DEARDEN: I object. He is not
23 going to give evidence about your fair market
24 defense.

25 BY MR. MILNE-SMITH:

1 404 Q. Okay, let me back away from the
2 magic language that has triggered Mr. Dearden to
3 object there. It is reasonable for Mr. Boland to
4 say he hasn't seen a rebuke like that in awhile
5 because, whether it was true or not, it was in fact
6 a rebuke of Catalyst; correct?

7 A. It is a rebuke.

8 405 Q. Document 36. This is Exhibit 73
9 to your conspiracy affidavit. And the first email
10 is just the same document that we just looked at,
11 so we'll skip over that and go to the fourth page,
12 which is a new document.

13 This is Mr. Langstaff sending an email
14 to undisclosed recipients, including Tony Griffin
15 again. You characterized this in your affidavit as
16 West Face -- sorry, as keeping West Face informed
17 of Mr. Langstaff's activities with guarantors and
18 other short-sellers. You would agree with me that
19 there is no reference here to --

20 A. What paragraph am I on, please, in
21 my affidavit?

22 406 Q. Paragraph 140 of your affidavit.

23 A. 140?

24 407 Q. Yes, on page 66. So if you go
25 over to the next page, at the end of that paragraph

1 on page 67, you will see there is a reference to
2 Exhibit 73, so that is what I was just taking you
3 to.

4 So let's go back to the beginning of
5 paragraph 140, and if we look at the last sentence
6 on the last line, it says:

7 "By copying Griffin or Panet of
8 West Face [...]"

9 And then over to the next page:

10 "[...] Langstaff kept West Face
11 informed of his activities with the
12 guarantors and the other
13 short-sellers."

14 So with that by way of context, let's
15 go back to document 36. You would agree with me
16 there is no reference here to either guarantors or
17 short-sellers?

18 A. No, but it has undisclosed
19 recipients.

20 408 Q. And again, we have no idea who
21 they are, and to your knowledge, neither does Tony
22 Griffin?

23 A. And perhaps I'll turn to my
24 counsel, because I recall that as a result of email
25 exchanges with Langstaff, it was revealed who two

1 of the undisclosed recipients are, which I
2 think...[inaudible.]

3 [Court Reporter intervenes for
4 clarification.]

5 I believe Exhibit 73, but I am not
6 saying -- I may not be answering the question in
7 the same way, so if you could take this as my
8 answer. I believe that in the exchange that is
9 part of our exhibit, my Exhibit 73 to my affidavit
10 that we are discussing, that we found two names of
11 the undisclosed recipients, namely, Anderson and
12 Anson's productions revealed they were part of the
13 undisclosed recipient group.

14 409 Q. Okay, well, that is not my
15 question. I don't really care who the undisclosed
16 recipients were. I want you to indicate to me, and
17 I am happy to take it by way of undertaking, what
18 evidence you have that Tony Griffin knew who some
19 of the other undisclosed recipients might have
20 been?

21 U/T A. Okay, we'll do that by way of
22 undertaking.

23 410 Q. Okay. I have no doubt that there
24 were other undisclosed recipients, and I will take
25 your word for it, it may have been Anderson and

1 Anson, but what I want to know is evidence of, as
2 you said in paragraph 140, keeping West Face
3 informed of Mr. Langstaff's activities with
4 guarantors and other short-sellers. You have no
5 evidence in this exhibit or otherwise that --
6 sorry, let's just deal with this exhibit. I am
7 going to rephrase my question.

8 This Exhibit 73 contains no evidence
9 that West Face was being made aware of anything
10 that Mr. Langstaff was doing with guarantors or
11 other short-sellers?

12 A. Blind carbon-copying someone on an
13 email informs them of something.

14 411 Q. Okay, let's take this one step at
15 a time, Mr. Riley. There is no reference here in
16 Mr. Langstaff's email to guarantors or
17 short-sellers; correct?

18 A. And I am not trying to be
19 argumentative. It is unclear to me why Tony
20 Griffin would be blind carbon-copied other than to
21 inform him of communications between Langstaff and
22 undisclosed recipients.

23 412 Q. Okay, you are jumping to the
24 conclusion, Mr. Riley, but I want to get the
25 factual foundation first. So let's just take it in

1 this these little bitty steps.

2 There is no reference in this exhibit
3 to guarantors or short-sellers; correct?

4 A. That is correct.

5 413 Q. And in this email we are looking
6 at dated July 18, 2016, all Mr. Langstaff does is
7 send a news article and say "Presented without
8 comment"; correct?

9 A. Correct.

10 414 Q. And there is nothing in this email
11 or anywhere in this exhibit that indicates
12 Mr. Griffin was aware of who any other undisclosed
13 recipients might be; correct?

14 A. From the email itself, no.

15 415 Q. Okay, so now let's ask the bigger
16 question. If you have any evidence anywhere
17 outside of this exhibit that Mr. Griffin was aware
18 of who the other undisclosed recipients of this
19 email were, please let me know by way of answer to
20 undertaking.

21 U/T A. We will.

22 416 Q. Okay. And then if we go to the
23 last couple of pages, so the last document in this
24 exhibit at page 7, so this is -- it appears to
25 start with an internal email chain at Canaccord

1 Genuity that is sending around a Globe and Mail
2 article about Callidus, and then Mr. Langstaff
3 forwards that without any communication whatsoever,
4 without any editorializing or comment to a list of
5 undisclosed recipients that includes Mr. Panet at
6 West Face; do you see that?

7 A. Sorry, I am just looking at who
8 this was to. So it went to Bruce, Jason, Kalyk --
9 or Valentina and Jason, okay, I see it.

10 417 Q. So all this is is Mr. Langstaff
11 forwarding a Canaccord Genuity email chain about a
12 Globe and Mail article to a list of undisclosed
13 recipients that includes Mr. Panet; correct?

14 A. Yes.

15 418 Q. And there is nothing wrong with
16 Mr. Panet receiving a copy of a Globe and Mail
17 article about Callidus; correct?

18 A. No.

19 419 Q. And there is nothing in here that
20 indicates Mr. Panet was aware of who the other
21 undisclosed recipients might have been; correct?

22 A. That is correct.

23 420 Q. And you are not aware of any
24 evidence, period, anywhere in the record that
25 Mr. Panet was aware of who the other undisclosed

1 recipients might have been?

2 A. Not that I can recall.

3 421 Q. And --

4 U/T MR. MOORE: We'll take that by way of
5 undertaking as well.

6 BY MR. MILNE-SMITH:

7 422 Q. That is fine. Document 37,
8 please.

9 MR. DEARDEN: And just for the record,
10 Mr. Milne-Smith, it was a bcc to Philip Panet.

11 MR. MILNE-SMITH: Yes.

12 MR. DEARDEN: That is Exhibit 73 that
13 you were referencing.

14 BY MR. MILNE-SMITH:

15 423 Q. So document 37 is Exhibit 74 to
16 your conspiracy affidavit. So this, the first
17 email is from Tony Griffin and it appears to be
18 sent to Mr. Langstaff because he is who replies,
19 and he appears to be commenting on the latest
20 Callidus earnings release; do you see that?

21 A. Yes.

22 424 Q. And he says that there is a 23
23 million write-off in Q4 and a complete write-off of
24 100 million on Xchange that they defer to March of
25 this year while calling 100 million under the

1 guarantee; do you see that?

2 A. Yes.

3 425 Q. And that is an accurate statement
4 of what happened; correct?

5 A. Well, I don't know if it was -- I
6 don't know that that is accurate.

7 426 Q. Okay, how is it inaccurate?

8 A. Well, again, I am looking at an
9 email that seems to be in short form:

10 "[...] a complete write off of
11 100 [million] on Xchange that they
12 deferred to march of this year while
13 calling 100 [million] under the
14 guarantee."

15 That 100 million -- Xchange was
16 transacted at 100 million. There was no loss to
17 Callidus on the Xchange, on the XTG.

18 427 Q. Right, and Mr. Griffin indicates
19 that. He says that Callidus called 100 million
20 under the guarantee, so he is accurately reflecting
21 that; correct?

22 A. Well, he --

23 MR. DEARDEN: The email says a complete
24 write-off of 100 million.

25 THE DEPONENT: That is my point, there

1 is no complete write-off of 100 million.

2 BY MR. MILNE-SMITH:

3 428 Q. Okay, so you disagree that the
4 value of the loan was written down, was written
5 off? You disagree with that?

6 A. Without going through all the
7 accounting, by memory Xchange in effect was a zero
8 loss to Callidus. The reason was it was guaranteed
9 by Callidus in connection with the IPO, so there
10 was no loss. In fact, if you wrote down -- in
11 fundamental terms, if you wrote down Xchange to
12 zero, you wrote the guarantee claim up to 100.

13 429 Q. And that is exactly what
14 Mr. Griffin indicates here, correct, calling 100
15 million under the guarantee?

16 A. No, we didn't write off 100
17 million on Xchange. As a result of the guarantee,
18 Xchange was always worth what its par value was, in
19 effect.

20 430 Q. So let me try and get at this
21 another way, Mr. Riley. Mr. Griffin's email does
22 not indicate that Callidus suffered any loss
23 because he accurately reflects the fact of the
24 guarantee; correct?

25 A. I don't believe that is correct.

1 431 Q. So you are interpreting this email
2 as saying that Callidus suffered a 100 million
3 dollar loss?

4 A. That is what he seemed to be
5 saying.

6 432 Q. And how do you interpret then him
7 saying that they called 100 million under the
8 guarantee?

9 A. But we didn't have a write-off of
10 Xchange. We called on the guarantee and transacted
11 the guarantee price.

12 433 Q. Okay, let's try this another way.
13 Would you agree that...[inaudible.]

14 MR. DEARDEN: Sorry, Matt, you are
15 cutting out.

16 BY MR. MILNE-SMITH:

17 434 Q. Would you agree with me that it
18 would be accurate to say that the guarantee
19 provided by Catalyst ensured that Callidus did not
20 suffer any loss in respect of XTG?

21 A. I would agree with that.

22 435 Q. Okay. And would you also agree
23 with me that Mr. Griffin's email accurately
24 reflects that basic fact?

25 A. I do not agree with that.

1 436 Q. Okay. Let's go back to the
2 affidavit, tab B, at paragraph 158. So you see
3 here it indicates and you state that:

4 "[...] Panet directly contacted
5 Levitt on December 3, 2016 re
6 'Callidus Catalyst Fraud Outline'.
7 Previously, Panet contacted Levitt
8 on November 22, 2016 re 'IMET:
9 Integrated Market Enforcement
10 Team'."

11 Do you see that?

12 A. Yes, I do.

13 437 Q. And you are aware that Mr. Levitt
14 has given evidence that in fact it was he that
15 contacted IMET; correct?

16 A. Sorry, you broke up. There is
17 something that causes your microphone to break up
18 partway through the question.

19 438 Q. You are aware that --

20 A. I don't know why that is.

21 439 Q. You are aware that Mr. Levitt has
22 given evidence that he contacted IMET; correct?

23 A. That is correct.

24 440 Q. And there is no evidence in the
25 record of Mr. Panet contacting IMET; correct?

1 A. That is correct.

2 441 Q. And I take it, since you didn't
3 attach something to this, that you are referring to
4 West Face's Schedule B disclosure; correct?

5 A. That is correct.

6 442 Q. And you would agree with me that
7 that West Face Schedule B in fact discloses that it
8 was Mr. Levitt contacting Mr. Panet about IMET, not
9 vice versa; correct?

10 A. I do not know.

11 443 Q. If you have any evidence to the
12 contrary, please let me know.

13 U/T A. We will.

14 444 Q. Okay, so that is the IMET point.

15 If we then look at the December 3rd
16 Callidus/Catalyst fraud outline point, just to skip
17 ahead because I think we are talking about the same
18 thing, it is at two different points in your
19 affidavit.

20 So go ahead to paragraph 171(d) as in
21 "delta". Do you see at the bottom of the page
22 there is a reference to Exhibit 9:

23 "On December 3, 2016, Panet

24 [...] wrote to Levitt about the XTG

25 loan [...] Panet also contacted

1 Levitt about the 'Callidus Catalyst
2 Fraud Outline'."

3 So the second sentence of paragraph
4 171(d) here is the same as the point we were just
5 looking at in 158; correct?

6 A. That is correct.

7 445 Q. And again, that is a reference to
8 a document disclosed in West Face's Schedule B;
9 correct?

10 A. That is correct.

11 446 Q. And again, that was an email from
12 Levitt to Panet; correct?

13 A. I don't recall. If that is what
14 you say it is.

15 447 Q. If you have any evidence to the
16 contrary, please let me know.

17 U/T A. Okay.

18 448 Q. But you would agree with me that
19 there is nothing wrongful with receiving an email
20 from someone else unsolicited; correct?

21 MR. DEARDEN: Well, where do you get
22 the unsolicited part from?

23 BY MR. MILNE-SMITH:

24 449 Q. I am not saying anything about
25 what happened. It is in the Schedule B. I am

1 asking you as a general matter, there is nothing
2 wrong with receiving an unsolicited email from
3 somebody; correct?

4 A. I don't know whether it was
5 solicited or not.

6 450 Q. Okay, you have no evidence on that
7 one way or another; correct?

8 A. No, we do not.

9 451 Q. Okay. Document 38. This is
10 Exhibit 91 to your affidavit, your conspiracy
11 affidavit, and this is going into the other part of
12 171(d) that we just looked at which is the - just
13 let me refresh my own recollection - which is Panet
14 and Levitt corresponding on the XTG loan. So I
15 just have to set that up a little bit, okay, so you
16 have the proper context.

17 A. Sorry, could I just read it for a
18 second and could you scroll down? I just want
19 to -- I know this email, but I just want to have
20 the context for it.

21 [Witness reviews document.]

22 Okay, sorry, you can go back up.
23 Sorry, if I'm using the wrong term "up" or "down",
24 let me know.

25 452 Q. That is fine.

1 A. Okay.

2 453 Q. So you would agree with me that
3 this is an affidavit where Darryl Levitt sends to a
4 bunch of individuals who appear to be guarantors a
5 document with the subject "Callidus Catalyst fraud
6 outline"; do you see that?

7 A. Yes, I do.

8 454 Q. And then you see Mr. Levy's email
9 to Mr. Levitt and he says:

10 "Also they are improperly
11 moving loans between funds. Greg
12 Boland of West Face told me they
13 moved the XChange Technologies loan
14 on to unsuspecting investors in
15 their latest fund."

16 So you would agree with me that this is
17 simply Mr. Levy's account of what happened in this
18 conversation with Mr. Boland; correct?

19 A. That is correct.

20 455 Q. And you don't in fact have any
21 actual sworn evidence of Mr. Levy in this regard;
22 correct?

23 A. I think that is correct, yes.

24 456 Q. And the fact of the matter about
25 what happened here is that, as we were looking at

1 before, Callidus moved the XTG loan on to Catalyst,
2 so it was a movement from Callidus to Catalyst
3 pursuant to the guarantee, not a movement between
4 Catalyst funds; correct?

5 A. That is correct. Well, it went to
6 Fund III and IV, in proportion.

7 457 Q. All right.

8 A. In proportion.

9 458 Q. Correct. And the words
10 "improperly moving loans between funds", that is
11 Mr. Levy's language, not Mr. Boland's; correct?

12 A. Yes.

13 459 Q. And of course, we don't know
14 exactly what Mr. Levy or Mr. Boland -- sorry, we
15 don't know exactly what Mr. Boland said to
16 Mr. Levy, and of course, you'll have the
17 opportunity to cross-examine him about that, but
18 sitting here right now, we don't know what Mr.
19 Boland actually said to Mr. Levy; correct?

20 A. That is correct.

21 460 Q. And is it fair to say that
22 Catalyst, not Callidus but Catalyst took a
23 significant loss on the XTG investment; correct?

24 A. That is correct.

25 461 Q. And I believe your -- we can look

1 at it if you want to, but I believe your 2016 Fund
2 III and IV annual meeting materials indicated total
3 capital invested of 55 million and a total value of
4 10 million at that time; correct?

5 A. The only thing -- and again, I'm
6 not sure what the capital invested at the time was.
7 I just -- that I don't know, but if you -- can you
8 bring that AGM document up on the screen?

9 462 Q. That is document 41. And if we go
10 to --

11 A. Thank you.

12 463 Q. -- page 28 to 29. So go to page
13 28, please. So it is broken out into Fund III and
14 IV, so you'll see I have highlighted Xchange
15 Technology for Fund III, total capital invested of
16 18 million and change and a total value of 3
17 million and change; do you see that?

18 A. I see that.

19 464 Q. And then over to the next page,
20 this is for Fund IV, total capital invested of 40
21 million, so we are up to a total of 58 million
22 being the total capital invested in unrealized
23 value -- or sorry, total value. I should have
24 highlighted the "Total Value" column. They are the
25 same, though, 6 million and change?

1 A. Yes.

2 465 Q. So the total capital invested
3 between the two funds was 58 million and the total
4 value was under 10 million; correct?

5 A. That seems correct, adding the
6 numbers quickly. These are all U.S. dollars.

7 466 Q. Correct. And ultimately, the
8 total value of Xchange Technologies was written
9 down to zero; correct?

10 A. No, it was never written down to
11 zero.

12 467 Q. Okay, but it was 10 million as of
13 this date at the end of 2017 -- sorry, at the end
14 of 2016; correct?

15 A. Yes. Well, going -- I can't add
16 the math, I can't do the math that fast, but if
17 that is what the math is, I agree with it. It is
18 the sum of the two numbers.

19 468 Q. Right. And let's then go to
20 document 42, and this will be the last document
21 before a lunch break. So you'll recall that we
22 talked about how we weren't sure exactly -- we
23 don't know exactly what Boland told to Mr. Levy and
24 that it was Mr. Levy's spin that they were -- that
25 Catalyst was improperly moving the loan between

1 funds.

2 So this is an exchange between
3 Mr. Panet and Mr. Levitt at the same time, on the
4 same day, December 3rd, 2016, and you will see that
5 at the bottom of the page Mr. Levitt writes to
6 Mr. Panet and says:

7 "Are you able to check with
8 your analyst if he understands that
9 the Xchange loan moved from one fund
10 to another?"

11 So it appears that Mr. Levitt is
12 following up on Mr. Levy's email making that
13 accusation; correct?

14 A. That seems correct.

15 469 Q. And what Mr. Panet responds is
16 that:

17 "There is a reference in the
18 2015 annual MD&A to the loan moving
19 from Callidus to Catalyst, but I'm
20 not aware of a move of the loan
21 between Catalyst funds. That would
22 be difficult to do."

23 So Mr. Panet here is denying any
24 wrongdoing by Catalyst; correct?

25 A. Yes, but that doesn't say what Mr.

1 Boland said to Mr. Levy.

2 470 Q. I am not asking that. I am asking
3 what this email is doing and Mr. Panet correctly
4 stating the record and denying wrongdoing by
5 Catalyst; correct?

6 A. Well, it says it would be
7 difficult to do, and he was not aware, so it was
8 unknown to him and it would be difficult to do, but
9 he did not say that it did not happen.

10 471 Q. Okay, that is fair. So let's take
11 this one step at a time. Mr. Panet is indicating
12 that, to his knowledge, he is not aware of any
13 wrongdoing in respect of Catalyst --

14 MR. DEARDEN: The document does not say
15 that, Mr. Milne-Smith. I don't see the word
16 "wrongdoing", but maybe I am not seeing the screen
17 properly.

18 BY MR. MILNE-SMITH:

19 472 Q. Well, I am trying to get to the
20 import of the document, and I think, Mr. Riley,
21 that this should be pretty clear to you here.

22 Would you agree with me that the import
23 of Mr. Levy's email reporting on his call with Mr.
24 Boland was that Catalyst had done something
25 improper by moving the Xchange loan from one

1 Catalyst fund to the other? That was what Mr. Levy
2 was implying; correct?

3 A. That is correct.

4 473 Q. And Mr. Panet is saying that
5 contrary to that, he is in fact aware of no
6 information that Catalyst did that thing that
7 Mr. Levy implied was wrongful; correct?

8 A. That is correct.

9 474 Q. Just to close out this point, if
10 you go back to the affidavit, tab B, the conspiracy
11 affidavit at -- so that was -- and just for the
12 record so we have it all, that was Exhibit 99 to
13 your affidavit that we were looking at, and you
14 will see that Exhibit 99 is attached at paragraph
15 171(d), so that is the one we were just looking at
16 from Mr. Panet to Mr. Levitt.

17 And you characterize this in paragraph
18 171 as being an example of a document
19 "demonstrating the conspirators' coordinated
20 efforts to file complaints against Catalyst and
21 Callidus." You would agree with me that Mr. Panet
22 was in fact not doing anything of the sort in
23 Exhibit 99?

24 A. I am not sure I agree with that.
25 I think it shows a degree of interaction that is

1 relevant.

2 475 Q. No, that is not my question, sir.
3 The question isn't whether there was interaction.
4 The question is whether that email demonstrated
5 Mr. Panet coordinating efforts to file complaints
6 against Catalyst and Callidus. You would agree
7 with me that, if anything, Mr. Panet was doing
8 exactly the opposite?

9 A. I would say I would have to go
10 back to your Schedule B and not understanding why
11 the communications relating to their interaction on
12 the filing with the OSC was privileged.

13 476 Q. No, sir, that has nothing to do --
14 this has nothing to do with Schedule B. This is
15 Exhibit 99 which you attached --

16 A. Yes.

17 477 Q. -- and that email you attached as
18 Exhibit 99. Sir, you are a lawyer and you are an
19 officer of the court. You have been an officer of
20 this company for a number of years. You are a very
21 smart individual, and you can answer this simple
22 question.

23 Mr. Panet in that email in which he
24 said he was aware of no evidence of the thing
25 Mr. Levy had characterized as wrongdoing, in so

1 doing Mr. Panet was not in fact demonstrating a
2 coordinated effort to file complaints against
3 Catalyst and Callidus. He was doing just the
4 opposite. You can admit that simple point;
5 correct?

6 A. In the context of that one email,
7 yes, you could infer that.

8 MR. MILNE-SMITH: Okay. Why don't we
9 take the lunch break there and we'll come back at 2
10 o'clock.

11 -- RECESSED AT 1:07 P.M.

12 -- RESUMED AT 2:00 P.M.

13 BY MR. MILNE-SMITH:

14 478 Q. Julia, if you could please pull up
15 document 43. That is the next one we'll be going
16 to.

17 MR. DEARDEN: What Exhibit is it, Matt?

18 BY MR. MILNE-SMITH:

19 479 Q. It is Exhibit 171.

20 A. What page number in the affidavit,
21 please?

22 480 Q. I don't know. I know what exhibit
23 it is, but I am not looking at the text of the
24 affidavit at this point.

25 MR. DEARDEN: It's Exhibit 171.

1 BY MR. MILNE-SMITH:

2 481 Q. Yes, 171.

3 A. Thank you.

4 482 Q. So, Mr. Riley, I have asked you to
5 pull up -- well, I have pulled up on the screen
6 document 43 of our examination brief. It is
7 Exhibit 171 to your conspiracy affidavit.

8 So you would agree with me that this is
9 an email from Philip Panet to Bruce Livesey sending
10 various documents and internet links about Mr.
11 Glassman's personal life?

12 A. It appears to be -- that appears
13 to be, based on the attachment, based on the
14 description of the attachment.

15 483 Q. Right, sorry, if you flip forward
16 to page 3, I'm sorry. Can you see the whole
17 highlighted text there, Mr. Riley?

18 A. Yes, I can.

19 484 Q. Okay, good. So you would agree
20 with me that this email contains no criticism of
21 Mr. Glassman?

22 A. Although it was not critical, I am
23 curious as to why he would be providing that
24 information to Bruce Livesey who at that stage I
25 think he was writing an article about us or an

1 article about West Face and Catalyst.

2 485 Q. And you would agree there is
3 nothing about Callidus in this email?

4 A. There is nothing about Callidus,
5 no. It is just Catalyst.

6 486 Q. And there is nothing unlawful or
7 improper about providing a reporter with public
8 information about a public figure; correct?

9 A. That is correct.

10 487 Q. And you see in the highlighted
11 reference where Mr. Panet refers to withholding,
12 quote, "difficult" but irrelevant information?

13 A. "Not really very relevant", I see
14 the reference, but I don't know what the material
15 was.

16 488 Q. So you haven't reviewed the
17 attachments that Mr. Panet provided?

18 A. To the best of my memory, no.

19 489 Q. Okay, so there is --

20 A. No, I must have because it is an
21 attachment, but whether I remember it or not, I do
22 not recall.

23 490 Q. Okay, well --

24 A. I think that is an attachment to
25 my affidavit.

1 491 Q. Yeah, I think it was redacted from
2 your affidavit, but let me pull it up just so --
3 and I think it is to be fair to you and to the
4 record, so we see exactly what we are talking
5 about.

6 There were a number of attachments, and
7 one was, for example, a Jewish community group
8 newsletter that announced Mr. Glassman's wedding.
9 There were a couple of other documents that were a
10 family law application and affidavit, so again,
11 public documents. I take it if you have any
12 disagreement on my characterization of that by way
13 of undertaking, you can let me know?

14 U/T A. Yes.

15 492 Q. So the last one I want to talk
16 about is document 44.

17 A. Just before we move on, did you
18 get -- sorry, just this is not -- if I could go off
19 the record for a minute.

20 (DISCUSSION OFF THE RECORD.)

21 BY MR. MILNE-SMITH:

22 493 Q. So document 44 is a document that
23 was attached by Mr. Panet to the email that we just
24 looked at. It was not attached to your affidavit
25 because for whatever reason you left out the

1 exhibits, but I am advising you that this was one
2 of our productions and it was attached to
3 Mr. Panet's email that we just looked at, okay?

4 A. Uhm-hmm.

5 494 Q. So if you look at this, I want you
6 just to take a general note of what this page looks
7 like. There is an email from Mr. Glassman to
8 Mr. Dewerth with a cc on September 8, 2014, and it
9 is from Mr. Glassman's Catalyst Capital email
10 address; do you see that?

11 A. Yes.

12 495 Q. And then go over to the next page,
13 please, Julia, and this email is from Mr. Dewerth
14 to Mr. Glassman and Ms. MacDonald on September 7,
15 2014. He apologizes for a "decidedly bad turn [of]
16 our correspondence"; do you see that?

17 A. Yes.

18 496 Q. And now, go back to, please,
19 document 43, and that is Mr. Panet's email and to
20 page 3 of that. So you will see how he says:

21 "These documents [...] should
22 make the connection between Laura
23 Macdonald and Newton Glassman from
24 Catalyst."

25 And he says:

1 "For the Exhibit C document
2 [...]", that is the one we were just
3 looking at, he said "I've left out
4 the more difficult exchanges and
5 limited it to showing an email that
6 has a Catalyst Capital email
7 signature - the other stuff is more
8 difficult, but not really very
9 relevant."

10 Now, again, I'm happy to do this in
11 either of two ways. First of all, I am just going
12 to propose to describe to you, and I think my first
13 proposal is the much more discreet way to proceed,
14 but we can do it any way you want.

15 The discreet way to proceed is I am
16 going to put it to you as a proposition that in the
17 unredacted version of that Exhibit C, the
18 unredacted version of document 44 that we just
19 looked at is a longer, I believe 15-page document
20 that includes some very defamatory and personal
21 allegations about Mr. Glassman by Mr. Dewerth and
22 then some very aggressive language by Mr. Glassman
23 back to Mr. Dewerth.

24 And my purpose here isn't to embarrass
25 anybody or put anything irrelevant in the public

1 record, but given the allegation that you have made
2 about Mr. Panet and his motives, I think I need to
3 make the record clear here.

4 So the simple proposition I want to put
5 to you is that what Mr. Panet said in his email in
6 document 43 is exactly correct, that he left out in
7 what he sent to the reporter materials that were
8 irrelevant but quote/unquote "difficult", which
9 means highly prejudicial or defamatory of Mr.
10 Glassman. Do you accept that proposition?

11 A. Could you go back to Mr. Panet's
12 email, please?

13 497 Q. Yes, that is number 43. And maybe
14 let me help you out. Bring up document 45 but just
15 go to pages 9 to 10. So go directly to page 9. So
16 you will see here there is that same email we just
17 looked at?

18 A. Yes.

19 498 Q. And go to page 10.

20 A. Yes, I see that.

21 499 Q. And you see that is the same page
22 as well.

23 A. Yes.

24 500 Q. The rest of this email is what
25 Mr. Panet had redacted. If you want me to show it

1 to you, I will. But I am putting it to you as a
2 proposition that it is highly defamatory and
3 prejudicial to Mr. Glassman and it was
4 intentionally left out by Mr. Panet. Do you accept
5 that proposition or do you want me to show it to
6 you?

7 A. I am not sure how to respond to
8 it. And I am not being argumentative or
9 obfuscating. I do not want to have it shown to me.
10 I don't think I need to see it, and I think that it
11 is someone's personal life relating -- and in
12 particular, the mention of Alexandra, who is
13 Laura's and Tim's daughter, and Newton's
14 stepdaughter, I think is not a good idea to have
15 something out there on the public record.

16 501 Q. Okay, so I am going to leave it
17 this way. I would like you to accept my
18 proposition for purposes of this examination right
19 now that Mr. Panet left out the highly personal and
20 defamatory exchanges. You of course will get a
21 copy of this complete unredacted email, or exhibit,
22 I should say, and if you want to tell me that, on
23 review of it, that my characterization is
24 incorrect, you can let me know and we can come back
25 and have a further examination about it. Is that

1 fair?

2 A. That is fair. And can someone
3 record that? I don't know, is that an undertaking
4 from your side? How do we record that?

5 502 Q. I think it is an undertaking on
6 your part to advise me whether you disagree with my
7 characterization of the unredacted document, and if
8 you disagree, I am just letting everyone know that
9 I will probably want to come back and examine on
10 it, okay.

11 U/T A. Understood.

12 MR. DEARDEN: Well, Mr. Milne-Smith,
13 you are planning on in what will be Exhibit 2
14 having an unredacted version of what Mr. Riley is
15 going to look at to see if he agrees with your
16 proposition, or are you going to send that to me
17 offline so that it is not in the public record if
18 Exhibit 2, which is highly likely to -- well,
19 definitely be included in the record and therefore
20 become public at some point.

21 MR. MILNE-SMITH: Yes, let me talk
22 with -- you and I will communicate after this, and
23 I am asking Julia who is handling these exhibits
24 not to distribute this Exhibit 2 until you and I
25 have had that conversation, Rick, okay?

1 MR. DEARDEN: Agreed, that is good,
2 thanks.

3 BY MR. MILNE-SMITH:

4 503 Q. Okay. Could you go to the
5 affidavit, the conspiracy affidavit, tab B, please,
6 and paragraph 149.

7 A. Which affidavit is this?

8 MR. DEARDEN: The conspiracy action.

9 THE DEPONENT: 140? 149?

10 MR. DEARDEN: Yes.

11 BY MR. MILNE-SMITH:

12 504 Q. Here you refer to the fact that
13 the guarantors approached me for a referral to U.S.
14 counsel and that I gave them a name of an
15 individual in the United States. I trust you
16 accept that providing a referral when asked for one
17 is not wrongful activity by West Face?

18 A. In and of itself, no.

19 505 Q. Document 47, please. This is
20 Exhibit 105 to your affidavit, and Mr. Boland
21 provides Bruce Langstaff with a link to a Dropbox
22 containing Callidus's filings on the Esco Marine
23 matter. I take it there is nothing wrong with
24 providing public court filings?

25 A. And the answer is no, but it

1 depends again on what the context of why he is
2 producing it to Bruce Langstaff.

3 506 Q. Again, I am just asking about
4 these individual actions and these individual
5 documents. There is nothing wrong with providing
6 someone with public court information, which we
7 have seen already Catalyst itself does, not just to
8 individuals but to the media even; correct?

9 A. Well, as to this, there is nothing
10 wrong with producing it.

11 507 Q. Okay.

12 A. Or sorry, providing it, I
13 apologize.

14 508 Q. Document 48, please. This is
15 Mr. Panet sending Mr. Levitt a filing in the
16 Catalyst litigation. Again, nothing wrong with
17 that by Mr. Panet?

18 MR. DEARDEN: Which exhibit number is
19 that?

20 BY MR. MILNE-SMITH:

21 509 Q. Exhibit 112. Thank you.

22 A. Sorry, can you just read who it is
23 going to?

24 510 Q. It is going from Mr. Panet to
25 Mr. Levitt. Mr. Levitt then forwards it on to a

1 whole bunch of people, but Mr. Panet only sent it
2 to one person.

3 A. Okay, that is what I wanted to --
4 that is what I was trying to follow, thank you.

5 511 Q. Nothing wrong with that; correct?

6 A. No.

7 512 Q. And then if you go to page 3, you
8 see the attachment. It is a statement -- it is a
9 court filing. And then there is one more document
10 behind this exhibit. It is at page 16. And
11 Mr. Panet sends Mr. Livesey a complaint that was
12 "filed earlier this week". Again, nothing wrong
13 with sending public court filings?

14 A. No.

15 513 Q. Okay.

16 A. Sorry, could you go back to what
17 was behind the blue sheet, the prior document you
18 showed me?

19 514 Q. At page 3, the Minnesota Court
20 filing?

21 A. Okay, thank you.

22 515 Q. Document 49, please. This is
23 Exhibit 116. And these are always the conspiracy
24 affidavit, unless I say otherwise. So the first
25 email is just correspondence among the guarantors.

1 There is no involvement of Mr. Boland on this first
2 page. To see any reference to Boland or Levitt,
3 you have to go to the third page of this document.
4 So Mr. Boland sends Mr. Levy the Statement of
5 Defence and Counterclaim by Callidus against Craig
6 Boyer with no commentary. There is obviously
7 nothing wrong with that?

8 A. Correct.

9 516 Q. And back to page 1, and you will
10 from the highlighted passage Mr. Levy tells the
11 group that "Boland called me today on it"?

12 A. Yes.

13 517 Q. You obviously don't know the
14 content of that conversation?

15 A. I do not.

16 518 Q. And of course, there is nothing
17 inherently wrongful about two individuals talking
18 about public court filings; correct?

19 A. That is correct, but it depends
20 what the actual tenor of the conversation was.

21 519 Q. Of which you know nothing?

22 A. No.

23 520 Q. Document 50. So in your
24 affidavit, and feel free to pull it up if you want
25 to, at paragraph 171(z) you describe this email

1 which is Exhibit 119 as Langstaff, Griffin and
2 Boland, quote, "exchanging emails"?

3 A. Sorry, I apologize, Mr.
4 Milne-Smith, what is the paragraph again?

5 MR. DEARDEN: 171(z).

6 BY MR. MILNE-SMITH:

7 521 Q. 171(z).

8 A. Yes, thank you.

9 522 Q. So in fact, what we have here in
10 this Exhibit 119 is not Langstaff, Griffin and
11 Boland exchanging emails plural. We have one email
12 from Langstaff to Griffin and Boland; correct?

13 A. So you want it to say "an email"?

14 523 Q. Well, I would put it to you that
15 an accurate way to put it is that Langstaff sent
16 Griffin and Boland an email; correct?

17 A. Yes.

18 524 Q. And all this email does is attach
19 the public results of Pacific Exploration &
20 production, which was a Callidus borrower; correct?

21 A. No, it was not a Callidus
22 borrower.

23 525 Q. Oh, sorry, it was a company with
24 which Catalyst had a transaction; correct?

25 A. It was a company which Catalyst

1 was involved in the restructuring of.

2 526 Q. Okay, yes, sorry for that.

3 A. That is okay.

4 527 Q. And Langstaff asks:

5 "You tell me how these numbers
6 go around..."

7 But there is no response from Griffin
8 or Boland; correct?

9 A. Not that I see in this email
10 chain.

11 528 Q. Okay, and there is nothing wrong
12 with Mr. Griffin and Boland receiving an email from
13 Mr. Langstaff and not responding to it, surely;
14 correct?

15 A. No, there is nothing wrong with
16 that.

17 529 Q. Okay, document 51.

18 MR. DEARDEN: So, Mr. Milne-Smith, can
19 I just put on the record that when you say "and not
20 responding to it" like it's a fact, the witness
21 just said that he -- well, I should be looking at
22 the realtime -- well, from what he can see from
23 this particular email, but are you saying as a fact
24 that there never was a reply?

25 MR. MILNE-SMITH: I am saying I am not

1 aware of any reply. I don't see it in Mr. Riley's
2 affidavit, and I am sure that if there is a reply,
3 that you will put it to Mr. Boland in
4 cross-examination.

5 MR. DEARDEN: No, I am just getting
6 clear what your knowledge is when you put things
7 like that to Mr. Riley as though they are a fact,
8 and so on this particular one, you are telling me
9 you have no knowledge that there ever was a reply
10 by either Mr. Boland or Mr. Griffin to this email?

11 MR. MILNE-SMITH: That's correct, I am
12 unaware of any reply.

13 MR. DEARDEN: Okay, thanks.

14 BY MR. MILNE-SMITH:

15 530 Q. I am not purporting to have done a
16 diligent search for it, but I can say I am not
17 aware of any reply, and that is why I am asking Mr.
18 Riley if he has any evidence to the contrary. But
19 I certainly would have suspected that --

20 A. Based on that email chain, no, but
21 for example, I don't know that there wasn't a
22 telephone conversation or meetings. I am just
23 going on the email chain.

24 531 Q. And you included in your affidavit
25 everything that you were aware of that appeared to

1 be relevant; correct?

2 A. Yes.

3 532 Q. So document 51, and this is
4 Exhibit 126.

5 A. Yes.

6 533 Q. So this is Mr. Panet sending to
7 Mr. Simard and...[inaudible.]

8 MR. DEARDEN: We are having trouble
9 hearing you, Matt.

10 MR. MOORE: This paragraph 171 starts
11 out that with referring to examples. This whole
12 line of questioning with these exhibits starts out
13 with a premise that these are examples of
14 documents, so whether it is an exhaustive list of
15 every document, it appears not to be.

16 BY MR. MILNE-SMITH:

17 534 Q. Document 51, Exhibit 126,
18 Mr. Panet is providing Callidus's 2015 year-end
19 earnings call transcript to Mr. Simard without
20 commentary; correct?

21 A. Yes.

22 535 Q. And there is nothing wrong with
23 that?

24 A. No.

25 536 Q. Document 52. Safe to say all this

1 indicates is that Mr. Levitt and Mr. Panet intended
2 to speak; correct?

3 A. Sorry, could you scroll down to
4 what Darryl Levitt wrote?

5 MR. DEARDEN: Do you have the exhibit
6 number, Matt?

7 BY MR. MILNE-SMITH:

8 537 Q. That is Exhibit 128.

9 A. Sorry, we don't know from that
10 what Darryl Levitt wrote?

11 538 Q. Correct.

12 A. And this was a production from
13 West Face?

14 MR. DEARDEN: Anderson.

15 THE DEPONENT: Anderson, sorry. So we
16 don't know what Levitt said in whatever he wrote,
17 so I can't reply as to what Panet is referring to.

18 BY MR. MILNE-SMITH:

19 539 Q. And you have no evidence that
20 Mr. Levitt and Mr. Panet spoke about anything
21 unlawful or improper?

22 A. I do not know what they spoke
23 about.

24 540 Q. Right, document 53, please.

25 MR. DEARDEN: Exhibit?

1 MR. MILNE-SMITH: 129.

2 MR. DEARDEN: Thank you.

3 BY MR. MILNE-SMITH:

4 541 Q. Similarly, this just says that
5 Boland and Levy intended to speak; correct?

6 A. Yes.

7 542 Q. And there is nothing wrong with
8 that, without knowing the content of the
9 conversation; correct?

10 A. Correct.

11 543 Q. In fact, we get a hint of what it
12 might have been about if you go to document 54,
13 which is Exhibit 131. It looks like one week
14 later, and the previous email was April 25th and we
15 are now May 3rd, and Mr. Levy says that they have
16 filed a "recent MSJ", which I take to be a motion
17 for summary judgment, under seal. So when Levy
18 referred to "lots going on", he may have been
19 referring to preparing his motion for summary
20 judgment; is that a fair inference?

21 A. I don't want to speculate, and I
22 don't understand why there is a redaction in this.

23 544 Q. Well, if you see from the top, it
24 is because it is a communication between the
25 client, being West Face's principal Mr. Boland, and

1 counsel is general counsel Philip Panet; do you see
2 that?

3 A. I see that now.

4 545 Q. For example, in your Schedule B
5 you have claimed privilege over any number of
6 communications between you and individuals at
7 Catalyst, just as Mr. Panet and Boland have here;
8 correct?

9 A. I don't know that, but if you --
10 if my counsel confirms that, I will agree with
11 that. Is that correct?

12 U/T MR. MOORE: We'll let you know if there
13 is any disagreement on that.

14 BY MR. MILNE-SMITH:

15 546 Q. Okay, document 55, Exhibit 133.
16 So if you go to page 2 of this to see the beginning
17 of the email thread, so Mr. Zucker, who I believe
18 at the time was counsel to one of the guarantors,
19 sent me an email asking for electronic copies of
20 filings in the VimpelCom case; do you see that?

21 A. I don't see the reference to
22 VimpelCom.

23 547 Q. In the --

24 A. Sorry, I just can't see it.

25 548 Q. So --

1 A. Oh, okay, yes, now I see it. It
2 is not in Mr. Zucker's email. It is in your reply.

3 549 Q. That is correct. I apologize.

4 A. It is just I kept looking for it
5 in Zucker's, but now I see it.

6 550 Q. Okay. And so again, all that I
7 did was send it to Mr. Zucker when he had asked for
8 the publicly filed court materials. You see that;
9 correct?

10 A. I see that, yes.

11 551 Q. And this had nothing to do with
12 Callidus; this was about the VimpelCom litigation?

13 A. Yes.

14 552 Q. And there is nothing wrong with
15 providing publicly filed documents to another
16 counsel; correct?

17 A. That is correct.

18 553 Q. And if you go back to the first
19 page, you will see that neither I, nor anyone at my
20 firm, nor anyone at West Face was copied on the
21 subsequent correspondence between Mr. Zucker,
22 Mr. Levitt and Mr. Anderson; correct?

23 A. So documents go from you to Zucker
24 to Levitt?

25 554 Q. They go from me to Zucker, and

1 then Zucker separately, without my --

2 A. Sorry, sorry, I was following the
3 chain. Zucker to Levitt and then Levitt to Nathan
4 Anderson.

5 555 Q. Yes, and neither I nor anyone at
6 West Face had anything to do with what Mr. Zucker
7 and any subsequent recipients did with that
8 document; correct?

9 A. Well, it would depend on what
10 people knew at the time.

11 556 Q. On the face of this email.

12 A. On the face of the email, yes.

13 557 Q. Document 56.

14 MR. DEARDEN: Exhibit?

15 MR. MILNE-SMITH: This is Exhibit 138.

16 MR. DEARDEN: Thank you.

17 BY MR. MILNE-SMITH:

18 558 Q. And this is an email of June 30,
19 2017, where Mr. Boland sends Mr. Langstaff an
20 article by Al and Mark Rosen; do you see that?

21 A. Yes.

22 559 Q. And you are familiar with
23 Mr. Rosen as -- certainly Al Rosen is a prominent
24 forensic accountant?

25 A. Sorry, Al Rosen? I am not sure I

1 know why I know him.

2 560 Q. Okay.

3 A. I just don't -- I may know of him,
4 but it --

5 561 Q. That is fine. You are not a
6 litigator, so that is why you may not know him.
7 Most litigators do.

8 A. Okay.

9 562 Q. So you would agree with me that,
10 you know, based on the URL at the top of this
11 document, this would be a document publicly
12 available on the internet?

13 A. Yes.

14 563 Q. And it appears to discuss
15 Callidus? You will see in the first highlighted
16 portion after the headline, it talks about
17 "Callidus Capital, a Toronto-based alternative
18 lender"?

19 A. Thank you. Sorry, thanks for
20 blowing it up.

21 564 Q. Do you see that?

22 A. I see that.

23 565 Q. So is it fair to say that this
24 article is suggesting that Callidus was pushing the
25 reporting envelope based on that headline? You see

1 how companies are pushing the reporting envelope,
2 and then it talks about Callidus rejigging some of
3 its non-GAAP disclosures. So is it a fair --

4 A. I think it is an overstatement.
5 Again, I don't know Mr. Rosen. I think it is an
6 overstatement to say that we were over -- what was
7 the phrase you used? You used a phrase.

8 566 Q. Pushing the reporting envelope.

9 A. I think we and a number of -- a
10 lot of other companies were questioning how to
11 respond to IFRS and non-IFRS measures.

12 567 Q. I apologize --

13 A. And this is an ongoing item before
14 the OSC and others.

15 568 Q. I apologize, Mr. Riley, my
16 question wasn't clear. I am of course not asking
17 you to agree with Mr. Rosen's conclusion. All I am
18 asking you to agree with is the characterization of
19 this article as saying, whether accurate or not,
20 the authors here are making the argument that
21 Callidus was pushing the reporting envelope. That
22 is a factual description of what the article
23 claims?

24 R/F MR. DEARDEN: No, that is -- you want
25 his opinion as to the meaning of that article, and

1 he is not going to give that opinion.

2 MR. MILNE-SMITH: Okay.

3 MR. DEARDEN: The article speaks for
4 itself.

5 BY MR. MILNE-SMITH:

6 569 Q. Okay. And you would agree with me
7 that there is nothing wrong with sharing this
8 article, of course?

9 A. No.

10 570 Q. Okay, document 57. So you will
11 see there is a cover email here about a meeting
12 between Mr. Boland and Mr. Duhamel, and then over
13 to page 4, the next sort of substance --

14 MR. DEARDEN: What exhibit is this, Mr.
15 Milne-Smith?

16 MR. MILNE-SMITH: This is Exhibit 137.

17 MR. DEARDEN: Thank you.

18 BY MR. MILNE-SMITH:

19 571 Q. And these are just more emails and
20 all they amount to is the fact that Mr. Boland and
21 Mr. Duhamel intended to meet; correct? There is no
22 reference to what they actually discussed; is that
23 fair?

24 A. That is correct.

25 572 Q. And again, you obviously know

1 nothing about what they did discuss?

2 A. Have they -- going back to the
3 exchange between Panet and Simard, could we go back
4 to that for a moment? I can't remember your
5 exhibit number. Do you know the one I mean?

6 573 Q. Well, I think that was in 2015,
7 because that was about signing up an NDA to look at
8 a possible investment in Bluberi back in 2015.

9 A. That is what I wanted to make sure
10 of. I couldn't remember the dates.

11 574 Q. Yeah, this is two years later. So
12 we don't know anything about what they might have
13 discussed; correct?

14 A. That is correct.

15 575 Q. Let's go to your affidavit now,
16 your conspiracy affidavit, tab B, and paragraph
17 172.

18 A. Yes, I am there.

19 576 Q. So you describe here a syndicate
20 of investors consisting of Anderson, the
21 guarantors, Langstaff, Boland, Anson and Voorheis
22 that were working together to file complaints with
23 the regulators; do you see that?

24 A. Yes.

25 577 Q. And in the next paragraph you set

1 out by way of various subparagraphs 14 documents
2 you say are evidence of such a syndicate; correct?

3 A. Yes.

4 578 Q. And without requiring you to swear
5 that it is exhaustive, just so that Mr. Moore
6 doesn't get exercised, I take it that in
7 responsibly preparing your affidavit, you certainly
8 would have included in these 14 documents what you
9 considered to be the most relevant documents;
10 correct?

11 A. Yes.

12 579 Q. And you would not have left out
13 any key documents?

14 A. That is correct.

15 580 Q. And these documents include things
16 like signed whistleblower agreements and wire
17 transfer instructions; correct?

18 A. Yes.

19 581 Q. This whistleblower syndicate
20 wasn't something informal done on a handshake or an
21 oral agreement, by all appearances from the
22 documents; correct?

23 A. Well, I would say it was not as
24 sophisticated, but it was documented.

25 582 Q. And am I also correct that Mr.

1 Boland and West Face are not referred to once in
2 any of these documents as a signatory or
3 participant in this whistleblower syndicate?

4 A. That is correct.

5 583 Q. They are not parties to any
6 whistleblower agreement?

7 A. That is correct, to my knowledge.

8 584 Q. And their name, neither West Face
9 nor Boland's names appear on any whistleblower
10 submission; correct?

11 A. I'm sorry, say that again?

12 585 Q. Neither West Face nor Mr. Boland's
13 name appear on any whistleblower submission;
14 correct?

15 A. I don't -- I do not know that.

16 586 Q. Okay, you are not aware --

17 A. I don't know that. I don't know
18 who all the whistleblowers are, and I don't know
19 what they submitted.

20 587 Q. Put it this way. You haven't seen
21 any whistleblower submission that is attributed to
22 Mr. Boland or West Face?

23 A. Without wanting to be
24 argumentative, I have only seen one whistleblower
25 complaint which was submitted by Anderson and which

1 was in effect re-submitted by Levitt.

2 588 Q. Right.

3 A. That is what I have seen.

4 589 Q. So again, I am not asking you to
5 speculate about what other hypothetical
6 whistleblower submissions could exist. If we talk
7 about the entire universe of whistleblower
8 submissions of which you are aware, which you just
9 told me consists of one document which was
10 submitted by Anderson and then by Levitt, Boland
11 and West Face do not appear on either of those?

12 A. That is correct.

13 590 Q. And so there is in fact no
14 evidence of Mr. Boland or West Face being part of
15 this whistleblower syndicate you described at
16 paragraph 172?

17 A. That is correct.

18 591 Q. Document 58.

19 MR. DEARDEN: The Exhibit?

20 BY MR. MILNE-SMITH:

21 592 Q. This is not an exhibit. This is a
22 letter that your counsel at the time,
23 Mr. DiPucchio, wrote to me on July 25th, 2017. Do
24 you recall this?

25 A. Sorry, are you asking Jim Riley?

1 593 Q. Yes.

2 A. And it is not -- did I put it in
3 my affidavit?

4 594 Q. No.

5 A. Where does this document come
6 from?

7 595 Q. It comes from correspondence from
8 Rocco DiPucchio to me.

9 A. To you, okay, so it is from your
10 files?

11 596 Q. Correct.

12 MR. DEARDEN: And you produced this?

13 BY MR. MILNE-SMITH:

14 597 Q. I don't know. We are happy to do
15 so if you would like. It is not a secret document.
16 It was sent by your counsel. I assume that
17 Catalyst has a copy of it.

18 So my question, Mr. Riley, is do you
19 recall this correspondence or the events that gave
20 rise to it in July of 2017, right before the Wall
21 Street Journal article came out, and your counsel
22 is accusing West Face of funding guarantors in
23 litigation against Callidus; do you recall this?

24 A. I recall the issue coming up, yes,
25 of us being told or being aware of potential

1 litigation funding. And I think this doesn't
2 accuse you. It just says we would like to be
3 assured that you are not implicated in this
4 activity, or your client, West Face.

5 598 Q. So I take it at the time that this
6 letter was written, to the best of your knowledge
7 on July 25, 2017, Catalyst did not -- Catalyst or
8 Callidus did not have any evidence that West Face
9 or Mr. Boland were engaged in proceedings against
10 Callidus related to certain guarantees or to
11 funding such proceedings; correct?

12 MR. DEARDEN: Can Mr. Riley see the
13 rest of that letter before he answers, Mr.
14 Milne-Smith, please.

15 BY MR. MILNE-SMITH:

16 599 Q. There is not much there. Go back
17 to page 1.

18 A. And the green, again, the green is
19 your highlighting; correct?

20 600 Q. Correct.

21 A. So what this letter reads to me is
22 we are concerned about litigation funding, we
23 question whether it is proper, and we want
24 assurances that West Face is nowhere connected with
25 this.

1 601 Q. Right, and I take it at the time
2 that this letter was sent, you had no evidence that
3 West Face actually was involved in funding
4 litigation by guarantors. That is why you were
5 asking, because you didn't know; correct?

6 A. We did not know who was funding.
7 We were trying to narrow it down and eliminate
8 sources.

9 602 Q. Okay. And this also indicates --
10 so if you look at the second paragraph, it says,
11 Mr. DiPucchio says that:

12 "[...] my client", being
13 Callidus and Catalyst presumably,
14 "met with the appropriate regulatory
15 authorities to discuss with them
16 concerns around potential stock
17 manipulation."

18 Did you participate in such meetings?

19 A. Yes.

20 603 Q. And you say -- or sorry,
21 Mr. DiPucchio says, if you keep reading in the next
22 highlighted section, it says:

23 "[...] my client would like to
24 be assured that West Face is not
25 implicated in this most recent

1 activity. Catalyst has no desire or
2 need to mention your client in
3 further discussions with the
4 regulatory authorities [...]"

5 As a participant in the relevant
6 discussions, had Catalyst already mentioned or
7 raised allegations with respect to West Face in
8 their discussions with the regulators?

9 A. I do not recall.

10 604 Q. Did Callidus accuse West Face of
11 involvement in stock manipulation to the Ontario
12 Securities Commission in the period leading up to
13 this July 25, 2017 letter?

14 R/F MR. MOORE: We are not going to get
15 into any OSC communications, but in any event, how
16 is this subject relevant? My understanding is that
17 there is no claim being advanced in the
18 counterclaim or otherwise in connection with this.

19 MR. MILNE-SMITH: I am just trying to
20 find out what the evidence is, Mr. Moore.

21 MR. MOORE: Well, I am just trying to
22 find out what the connection is between that
23 inquiry and what the relevant issue is in these
24 SLAPP motions. You have asked the question and you
25 have got the answer, and let's move on.

1 BY MR. MILNE-SMITH:

2 605 Q. Document 59. You will see this is
3 my response where I say that:

4 "West Face has no knowledge of,
5 and neither it nor its principals
6 have played any role in, any of the
7 ongoing proceedings described in
8 your letter."

9 And that is just to give you context.

10 So then go to number 60, which is
11 Mr. DiPucchio's further letter, and he says that:

12 "[...] certain individuals have
13 publicly acknowledged that
14 litigation against Callidus Capital
15 Corp. is being funded by third
16 parties."

17 Who publicly acknowledged that to you?

18 A. My best recollection is that there
19 was a tweet by Baumann to the effect that the
20 guarantors are now in front, or words to that
21 effect.

22 606 Q. Okay, and no reference to West
23 Face or Boland in that tweet?

24 A. No.

25 607 Q. Let's go to your --

1 A. And, sorry, is there a further
2 response by you to that letter?

3 608 Q. Yes, I am happy to put that on the
4 record.

5 A. Just so I can complete the
6 sequence. And we are going to get copies of these
7 letters, just to make sure that -- I am sure we
8 have them, but --

9 609 Q. Document 61. So that was my
10 response to Mr. DiPucchio saying that neither West
11 Face nor its principals were aware of any short
12 attack, that they were not short Catalyst and were
13 not involved in any recent activities surrounding
14 the short attack.

15 MR. DEARDEN: What is the date of that
16 letter? It is just cut off on the screen.

17 MR. MILNE-SMITH: August 2.

18 MR. DEARDEN: Thanks.

19 BY MR. MILNE-SMITH:

20 610 Q. So let's go to your affidavit, tab
21 B.

22 A. Sorry, I just want to finish
23 reading, please.

24 [Witness reviews document.]

25 Okay, thank you.

1 611 Q. And we are going to go to page 48,
2 paragraph 101. And to situate you in time, this is
3 after the Wall Street Journal article has been
4 published on August 9, 2017, and Mr. Glassman
5 receives the so-called Vincent Hanna email.

6 A. Yes.

7 612 Q. Mr. Riley, at the time that you
8 received this email, that Mr. Glassman received
9 this email, did anybody at Catalyst Google the name
10 "Vincent Hanna"?

11 A. I did, and Newton may also have.
12 Vincent Hanna, as I recall, is the police detective
13 in Heat played by Al Pacino.

14 613 Q. Correct, and so you knew that this
15 was a pseudonym that was being used; correct?

16 A. Well, I didn't knew it was a
17 pseudonym. I just was curious what came up when
18 you Googled "Vincent Hanna".

19 614 Q. Okay.

20 A. I liked the movie Heat, but I
21 didn't remember the names of the characters.

22 615 Q. The point is that you didn't
23 believe that this was actually an individual named
24 Vincent Hanna?

25 A. No, I think that is maybe going

1 too far. The name Vincent Hanna we Googled to see
2 if there was anything that came up. Vincent Hanna
3 may have been a real person, as it were.

4 616 Q. Okay, but you couldn't find any
5 public record of a real person named Vincent Hanna
6 who might have sent you --

7 A. That only -- yeah, the only
8 Vincent Hanna that I could find was the Vincent
9 Hanna from the movie Heat.

10 617 Q. Okay. Now, you have said in your
11 affidavit, and you can see it in the next paragraph
12 there, that you have since learned that Vincent
13 Hanna's identity is Danny Guy?

14 A. Yes.

15 618 Q. How did you come to learn that
16 Danny Guy was Vincent Hanna?

17 A. Through a series of
18 communications, some by text, some by email and
19 some by telephone, we met with a lawyer John
20 Phillips, or John Kingman Phillips as he is
21 sometimes known as, and through that I eventually
22 met with Danny Guy.

23 619 Q. And Danny Guy told you he was
24 Vincent Hanna?

25 A. Well, I don't think we bothered

1 discussing it, because by that point I was talking
2 directly with Danny Guy and the subject matter that
3 was discussed was consistent with the Vincent Hanna
4 email.

5 620 Q. But there is a step missing here
6 that I don't understand how you learn that Mr. Guy
7 was Mr. Hanna and had sent this email?

8 A. No, I think the way I phrased it
9 was correct, which is as a result of the
10 communication from Danny -- from Vincent Hanna, we
11 ended up meeting with Danny Guy through the
12 arrangements made by his lawyer, John Phillips.
13 And there were a series of intermediate meetings
14 that led to my meeting with Danny Guy during which
15 we discussed matters which would be the subject of
16 I think a common interest privilege.

17 621 Q. And how did you know to reach out
18 to either Mr. Guy or Mr. Phillips?

19 A. Because that was -- we were guided
20 to that by Vincent Hanna, as I recall.

21 622 Q. I see, you had further
22 communications with Vincent Hanna himself who then
23 advised --

24 A. Through emails.

25 623 Q. Okay. And you have asserted

1 privilege over all of the communications with
2 either Mr. Hanna or subsequently Mr. Guy and
3 Mr. Phillips; correct?

4 A. Yes, other than that original
5 email.

6 624 Q. And, Mr. Moore, can I take it you
7 are not going to let me ask questions about the
8 basis for that assertion of privilege?

9 R/F MR. MOORE: Yes, I think that's right.

10 BY MR. MILNE-SMITH:

11 625 Q. Okay. Let's take it that, just
12 for the purposes of the record, I would like a
13 complete disclosure and discussion of the
14 communications between Catalyst on the one hand and
15 either Hanna, Guy or Phillips on the other, and I
16 take it that question is refused?

17 R/F MR. MOORE: For the purposes of today's
18 cross-examination, yes. You can take it as a
19 refusal for the purposes of the SLAPP
20 cross-examination, yes.

21 BY MR. MILNE-SMITH:

22 626 Q. And, Mr. Riley, you state in your
23 affidavit that Concordia, of which Mr. Guy was a
24 director, or, I guess, sorry, an investor, and you
25 can see this on the page which is displayed on the

1 screen, paragraph 103, was the subject of a
2 short-selling campaign "by an alleged 'cabal of
3 short sellers' that included Mark Cohodes", and
4 then you attach a court discussion in that regard?

5 A. Yes.

6 627 Q. But you didn't mention in your
7 affidavit that the application in that regard was
8 dismissed?

9 A. That is correct.

10 628 Q. And that IIROC declined to pursue
11 Mr. Guy's allegations; correct?

12 A. Well, they declined to give a
13 Norwich order.

14 629 Q. No, it was the court that declined
15 to grant a Norwich order. The reason the court
16 declined to grant the Norwich order, at least in
17 part, was because IIROC had declined to pursue
18 Mr. Guy's allegations; correct?

19 A. I would have to go back and read
20 the decision.

21 630 Q. Okay, well, let's just put it on
22 the record and it will speak for itself. Document
23 62, so this is the decision you were referring to,
24 sir? Correct, Mr. Riley, this is what you were
25 referring to?

1 A. Yes, that is the one I am
2 referring to, yes.

3 631 Q. Okay. And so I am going to put it
4 to you that a fair reading of this decision is
5 that, number one, IIROC declined to pursue
6 Mr. Guy's allegations; number two, Justice Perell
7 concluded in those circumstances that the public
8 interest was against granting a Norwich order; and
9 number three, that in fact Justice Perell
10 characterized Mr. Guy's application as a fishing
11 expedition. If you have any reason to assert to
12 the contrary, based on a thorough review of this in
13 your own time, please advise by way of undertaking.

14 MR. DEARDEN: Well, I'll put on the
15 record, Mr. Milne-Smith, that this decision and the
16 reasons for decision will speak for themselves.

17 BY MR. MILNE-SMITH:

18 632 Q. That is fine. Mr. Riley, upon
19 receiving the Vincent Hanna email, the first one,
20 and that is Exhibit 38 of your affidavit and it is
21 document 63, so upon receiving this email, did
22 Catalyst have any internal communications about
23 Mr. Hanna and this alleged Wolf Pack? Did you have
24 any communications with anybody at Catalyst about
25 this?

1 A. Well, Newton and I would have
2 discussed it. If we discussed it with anybody
3 else, I do not know.

4 633 Q. I would like to have production of
5 any internal Catalyst emails, memoranda,
6 correspondence, investigations, or other documents
7 concerning this initial Vincent Hanna email.

8 U/A MR. MOORE: I am not prepared to give
9 that undertaking, but we'll take that under
10 advisement because some, if not all, of those
11 communications may have been with counsel. So
12 we'll take that under advisement.

13 BY MR. MILNE-SMITH:

14 634 Q. Okay. In the email, the sender,
15 whether it is Mr. Hanna or Mr. Guy, lists five
16 people or groups who were alleged to constitute
17 this, quote, "cabal"; do you see that?

18 A. Yes.

19 635 Q. And the only one you wound up
20 suing was Greg Boland and West Face, number one,
21 and then Sunny Puri and Moez Kassam, number two.
22 You didn't sue any of the other people; correct?

23 A. That is correct.

24 636 Q. Document 64 --

25 A. I'm sorry, and I am not being

1 technical here, but they may constitute part of the
2 John Does because we have not seen -- beyond this
3 email, I am not aware of any evidence so far that
4 would show involvement of Keiper, Kimmel, MMCAP or
5 Marc Cohodes, but we have, as you'll recall, John
6 Does 1 to 10, I think.

7 637 Q. Document 64.

8 A. Sorry, I did not hear that.

9 638 Q. Document 64. No, that is 65.

10 A. Sorry, and what paragraph number
11 were you at?

12 639 Q. This is an Exhibit to the
13 affidavit of Phil Elwood.

14 MS. FETILA FASIE: And I'm sorry, I
15 don't have 64.

16 BY MR. MILNE-SMITH:

17 640 Q. Well, let me do it this way,
18 because I expect to get refusals on this. I can
19 bring it up if we need to and we can get it on a
20 break.

21 Mr. Moore, this was one of the
22 attachments that Phil Elwood included in his
23 affidavit. It is his Exhibit B. It is a September
24 14 email from Abraham Ronan of PSY Group to Phil
25 Elwood and it attached an info-graphic that

1 purports to describe the Wolf Pack, and I would
2 like to ask Mr. Riley some questions about that.
3 Will those questions be permitted or refused?

4 R/F MR. MOORE: Well, they are probably
5 within the general purview of what I had said at
6 the outset about matters that are or potentially
7 the subject of a privilege motion. So as I recall,
8 all of the exhibits to his affidavit and additional
9 portions of it were redacted in light of that
10 outstanding issue. So yes, I will instruct the
11 witness not to answer questions with respect to
12 those documents at this time.

13 BY MR. MILNE-SMITH:

14 641 Q. Okay, back to your affidavit,
15 paragraph 105.

16 A. Yes.

17 642 Q. So you say at paragraph 105 that:

18 "This information that Callidus
19 and Glassman were the targets of a
20 'co-ordinated effort' to short
21 Callidus and spread false rumours
22 was corroborated during an
23 examination of Levy", and that is
24 Andrew Levy, "held on August 30,
25 2017."

1 And go to -- okay, we are on the next
2 page, yes, so subparagraph (d).

3 A. Yes.

4 643 Q. You see one of the facts that you
5 say corroborates your allegation from the Levy
6 transcript is that:

7 "Levy contacted [me] [...] for
8 a copy of the report that West Face
9 had prepared about Callidus when
10 West Face shorted Callidus in March
11 2015."

12 Do you see that?

13 A. Sorry, what paragraph again,
14 please?

15 MR. DEARDEN: It's (d).

16 THE DEPONENT: So (d) as in "dog"?

17 MR. DEARDEN: Yes.

18 THE DEPONENT: Yes, I see that.

19 BY MR. MILNE-SMITH:

20 644 Q. And then the next subparagraph (e)
21 is:

22 "After obtaining a copy of West
23 Face's report, Levy learned about
24 XTG [...]", et cetera.

25 Do you see that?

1 A. Yes.

2 645 Q. And, sir, are you implying by
3 this, by these two subparagraphs, that Mr. Levy
4 gave evidence that I gave him the West Face report
5 about Callidus; is that your allegation?

6 A. My best memory of that is that he
7 contacted you and you directed him to the public
8 file because you had a concern about possible
9 libel.

10 646 Q. Yes, and in fact, you would agree
11 with me that what Mr. Levy said that he asked me
12 for the report and I told him no and that he would
13 have to try and obtain it from the public court
14 file because I was not willing to give it to him?

15 A. I thought that is what I said, I'm
16 sorry, but that -- I agree with that.

17 647 Q. And you didn't put that in your
18 affidavit, the fact that I told him no?

19 A. I think -- did we not put the
20 email in to that effect?

21 648 Q. No, you did not. You simply
22 stated that he contacted me and then he got the
23 report, giving the clear implication that I gave it
24 to him; correct?

25 A. No, I don't actually say that.

1 What I say is:

2 "Levy contacted Matthew
3 Milne-Smith, counsel for West Face,
4 for a copy of the report that West
5 Face had prepared about Callidus
6 when West Face shorted Callidus in
7 March 2015. Levy believes that he
8 may have obtained Milne-Smith's name
9 from Livesey."

10 And then:

11 "After obtaining a copy of West
12 Face's report, Levy learned about
13 XTG [...]"

14 649 Q. So, Mr. Riley, as a reader of the
15 document...[inaudible.]

16 [Court Reporter intervenes for
17 clarification.]

18 BY MR. MILNE-SMITH:

19 650 Q. You would agree, Mr. Riley, that a
20 reasonable reader who is not, unlike you and I, a
21 reasonable reader who hasn't read the Levy
22 transcript would most likely conclude from this
23 that I gave Levy the report, wouldn't they?

24 R/F MR. DEARDEN: He is not answering that.

25 BY MR. MILNE-SMITH:

1 651 Q. And that in fact was the intention
2 of what you were trying to convey here; correct?

3 R/F MR. DEARDEN: He is not answering that
4 question, Mr. Milne-Smith, and are you sure that
5 that email that Mr. Riley is recollecting is not in
6 one of his affidavits, because I am thinking it is,
7 but I am not a hundred percent certain. So how
8 about we both look to see if the email where you
9 said you weren't producing the report is in the
10 record somewhere.

11 MR. MILNE-SMITH: I don't think there
12 is an email, Mr. Dearden. If there had been, I am
13 sure Mr. Riley would have attached it. I think it
14 was a phone call. That is certainly what the Levy
15 transcript says.

16 U/T MR. DEARDEN: No, well, I am just
17 telling you as counsel that I have in my brain
18 right now, and it may be an empty vessel, that I
19 saw that in writing. Now, whether it is an
20 exhibit, we both should look. And we are certainly
21 going to take that, but we are going to look to see
22 if it is there, because I am sure I read that
23 somewhere.

24 MR. LUNG: Maybe I can jump in just to
25 help. If you take a look at the other affidavit, I

1 think there might be a reference to correspondence
2 there.

3 MR. DEARDEN: Do you know the exhibit,
4 Lucas?

5 MR. LUNG: I can try to find it, but --

6 MR. DEARDEN: It is in the libel
7 affidavit, the libel action affidavit?

8 MR. LUNG: It is the conspiracy
9 affidavit. I think we are looking at the libel
10 one, aren't we?

11 MR. DEARDEN: Well, we are looking at
12 what we should be calling the conspiracy action
13 affidavit. It is not a conspiracy affidavit.

14 BY MR. MILNE-SMITH:

15 652 Q. Sorry, let's deal with this on a
16 break. I don't want to waste our time on the
17 transcript here hunting for documents.

18 Could you go to document 65, please,
19 which is the Levy transcript, Exhibit 39 to Mr.
20 Riley's conspiracy affidavit.

21 Now, again, just to situate you, Mr.
22 Riley, the context for this, as we had looked at
23 previously in your affidavit, is that you had
24 alleged that Andrew Levy corroborated the Vincent
25 Hanna email accusation of an effort to short

1 Callidus and spread false rumours; do you recall
2 that? That is paragraph 105 of your affidavit.

3 A. 105 or 150?

4 653 Q. 105.

5 A. 105, thank you.

6 654 Q. Do you see that?

7 A. Yes.

8 655 Q. Okay, so back to document 65, and
9 go to -- so this is a condensed transcript. It is
10 pages 81 to 82, which is on the 22nd page of the
11 PDF. So just zoom in there on the highlighted
12 portion. So Callidus's counsel asks Mr. Levy:

13 "Question: [...] other than
14 the information you've told me, you
15 don't have any other information
16 about any coordination amongst the
17 guarantors or third parties or
18 anything to attempt or to look to
19 short-sell the stock of Catalyst or
20 Callidus? It should be Callidus."

21 A. Yes.

22 656 Q. And the answer:

23 "Answer: No, we don't know a
24 lot about that, and, you know, it's
25 not our -- you know, not our --

1 concern. I've never sold stock
2 short myself, so I wouldn't do it;
3 it's a very risky thing to do."

4 Now, Mr. Levy in his -- and, sorry, the
5 question talks about other than information you
6 provided. And I am going to put it to you that
7 this transcript has nothing about Mr. Levy knowing
8 anything about short-selling and --

9 A. Well --

10 657 Q. You have got to wait for the end
11 of my question, Mr. Riley.

12 A. Yes, I apologize.

13 658 Q. I am going to put it to you that
14 the transcript has nothing about Mr. Levy knowing
15 anything about short-selling. And if you have any
16 evidence to the contrary, if there is some portion
17 of this transcript that I am reading incorrectly
18 and you say it really is all about short-selling,
19 then I would like you to so advise me, please?

20 A. I did not say it was all about
21 short-selling. It was about the degree of
22 coordination between the guarantors, among others,
23 and efforts to get misinformation into the hands of
24 the OSC and the Toronto Police Services.

25 So I think that when you read -- you

1 are reading 105 too finely, in my view, "the
2 targets of a 'co-ordinated effort' to short
3 Callidus and spread false rumours", this is part of
4 the continuum of efforts that were going on
5 throughout that period from roughly 2015 -- 2014 up
6 until the publication of the article, and maybe
7 subsequently.

8 659 Q. Okay, so let's just deal with this
9 in little bits at a time. You would agree with me
10 there is nothing in this transcript about
11 short-selling, period?

12 A. That it was a part of a
13 coordinated effort? It backs up the statement that
14 I am -- you are saying specifically does it mention
15 short-selling? No. Does it show a coordinated
16 effort plus information fed to the Toronto Police
17 Services and to the OSC that was false? That is
18 what it says.

19 660 Q. Okay, so I have got your answer
20 which is no on the short-selling. Now let's talk
21 about those other points.

22 A. Uhm-hmm.

23 661 Q. Page 35 of this transcript, which
24 is page 10 of the PDF. And actually, you have to
25 go up a little bit because I need to see something

1 before the highlighting. There, it's right there.
2 Okay, you see at line 5 on page 35 it says:

3 "Question: Now, in your
4 discussions with the guarantors, did
5 you get to the point in these
6 discussions about the fact that the
7 guarantors intended to file a
8 whistleblower complaint with the
9 Ontario Securities Commission?

10 Answer: No. The first I knew
11 about that was reading their Wall
12 Street Journal article, quite
13 frankly."

14 So you would agree with me that in fact
15 Mr. Levy denies knowing anything about a
16 whistleblower complaint to the Ontario Securities
17 Commission; correct?

18 A. I wasn't talking about the
19 whistleblower complaint. I was talking about the
20 complaints about our lending practices.

21 662 Q. Okay, and the next question --

22 A. Sorry, just could I read? Sorry,
23 this is a long transcript, so could I just take a
24 moment to read the highlighted portions?

25 663 Q. Yes.

1 A. [Witness reviews document.]

2 Mr. Levy was aware of the activity of
3 Levitt and filing the complaint about business --
4 about lending practices by Callidus.

5 664 Q. Where does it say that, Mr. Riley?
6 Because I don't see that here. I see him saying he
7 doesn't know anything about whistleblower
8 complaints by Levitt or Anderson or anyone else.

9 A. Well, I apologize, you are
10 focussing on the word "whistleblower complaint".
11 I'm talking about the complaints to the Ontario
12 Securities Commission about lending practices,
13 not -- other than whistleblower complaints.

14 665 Q. Okay, and will you advise me by
15 way of undertaking of where in this transcript
16 Mr. Levy refers to coordinating with Mr. Levitt or
17 discussing with Mr. Levitt filing of complaints to
18 the OSC about lending practices?

19 U/T A. I will.

20 666 Q. Okay. And let's talk specifically
21 about what Mr. Levy says about Mr. Boland. If you
22 go forward to page 13 of the PDF, page 47 of the
23 transcript, so Mr. Levy says:

24 "I did speak to Greg Boland of
25 WestFace Capital."

1 And he says:

2 "[Mr. Boland] contacted me; I
3 spoke to him two or three times; and
4 the conversation was, you know,
5 basically, 'What's happening in your
6 case?', and he told me what was
7 happening in his case, but nothing,
8 you know, that you could have gotten
9 just by, you know, getting it off
10 the records."

11 And then further down the highlighted
12 portion, it says:

13 "[Boland] basically just wanted
14 to know the status of the Esco
15 litigation and what was happening.
16 It was the same thing that Livesy
17 was asking, really."

18 So you would agree with me that based
19 on this transcript, Levy is saying that he and
20 Boland just exchanged publicly available
21 information about the status of their litigation?

22 A. That is what it would appear to
23 say, yes.

24 667 Q. Nothing about what other
25 guarantors were doing and nothing about any RICO

1 claim in terms of conversations between Boland and
2 Levy; correct?

3 A. I don't know whether they had a
4 discussion about RICO.

5 668 Q. You are not aware of any evidence
6 that Boland and Levy had a conversation about what
7 other guarantors were doing or about any potential
8 RICO claim by Levy or others; correct?

9 A. Say that again, please?

10 669 Q. You are not aware of any evidence
11 that Boland and Levy had a conversation about what
12 other guarantors were doing about any potential
13 RICO claim by Levy or others; correct?

14 A. No, not from this transcript.

15 670 Q. Or anywhere?

16 A. I would have to review the emails
17 that have been tendered in this case to make sure
18 that that is a correct statement.

19 671 Q. Okay, if you can point me to an
20 email or other document that shows Boland and Levy
21 coordinating or discussing the activities of other
22 guarantors or Levy regarding a RICO action, will
23 you please let me know?

24 U/T A. Yes.

25 672 Q. And then if we could go to page 65

1 to 66, which is at page 18 of the PDF, and you can
2 tell that this was after the Vincent Hanna email
3 because your counsel asks about all of the other
4 people listed in the Vincent Hanna email, Roland
5 Keiper and Moez Kassam and Shawn Kimmel and MMCAP
6 and Marc Cohodes, and Levy says he doesn't know
7 anything about any of them; correct?

8 A. That is correct.

9 673 Q. And in terms of media, if we go to
10 pages 79 to 80 of the transcript, which is page 21
11 of the PDF, so he says that he spoke to Ben Dummett
12 from the Wall Street Journal and told him about the
13 Esco case. He did not speak to Lawrence Delevingne
14 from Reuters. He did speak to John and I think the
15 correct spelling is --

16 A. I'm sorry, just before we go on,
17 just for a moment, he said it doesn't ring a bell.
18 He didn't say he didn't speak to him. He just said
19 that he couldn't remember is the way I read that.

20 674 Q. Fine, he doesn't recall speaking
21 to him. He says he did speak to John and I think
22 the correct spelling is Tilak, T-i-l-a-k, at
23 Reuters?

24 A. Yes. Yes, that is the correct
25 spelling.

1 675 Q. Yes. But he says I don't recall
2 speaking with him; he called me and left a message,
3 but don't think I ever got to speak to him, and
4 then he says:

5 "[...] this guy Livesey, as I
6 say, he was working for a Canadian
7 business journal or whatever; he
8 said he was writing a story, called
9 several times."

10 And then he says:

11 "I've given you all the media.
12 As I say, I don't like talking to
13 any media."

14 And so --

15 A. So, sorry, if you just go back,
16 earlier on he identifies Livesey as working for
17 Mosaic, if you go back earlier in the transcript.
18 And when I say "earlier", it would be back -- I am
19 not sure if you highlighted it, so you'll have to
20 go back to the beginning of the transcript, early
21 on.

22 676 Q. Well, hang on, we are going to get
23 to that and we are going to get to what
24 Mr. Livesey's evidence is. First let's just --

25 A. I want to go back to what Levy

1 said first, just so I have got it in my mind.

2 677 Q. No, I'm sorry, Mr. Riley, I'm
3 running this cross-examination, and we are going to
4 do it --

5 A. I apologize.

6 MR. MOORE: Well, hold on. Just a
7 minute. If he thinks he needs to refer to another
8 part of the transcript to properly complete his
9 answers to your questions, he is entitled to do
10 that. You are entitled to put your questions, no
11 doubt, but if he thinks he needs to look elsewhere
12 to have some context, he is entitled to do that.

13 BY MR. MILNE-SMITH:

14 678 Q. Mr. Moore, I am not going to go
15 hunting through a 150-page transcript for
16 something. I am asking for a simple answer to a
17 simple question, which is that, according to
18 Mr. Levy's evidence, he did not speak to Rob
19 Copeland or Jacquie McNish of the Wall Street
20 Journal; correct?

21 A. Where is that?

22 MR. DEARDEN: What page are you
23 referring to, Mr. Milne-Smith?

24 BY MR. MILNE-SMITH:

25 679 Q. Pages 79 to 80. He lists all the

1 media he spoke to. He says:

2 "I've given you all the media.

3 As I say, I don't like talking to
4 the media."

5 The fair conclusion from that is that
6 he did not speak to Copeland or McNish; correct?

7 A. I'll accept that.

8 680 Q. So let's just summarize regarding
9 the Levy transcript. There is not one word where
10 Levy suggests or I should say testifies that anyone
11 intended to or did spread false rumours about
12 Callidus, is there?

13 MR. MOORE: Okay, I am going to object
14 to that question because one minute you say you are
15 not going to go rooting through a 150-page
16 transcript, and now you are posing a question which
17 is so broad as to cover every page in that
18 transcript.

19 So if you want to leave that by way of
20 undertaking, that I suppose is something we would
21 consider, but to ask the question in the way that
22 you have and turn it into a broad ranging question
23 dealing with all 150 or whatever the number of
24 pages is, I don't think that is the way we are
25 going to do it.

1 BY MR. MILNE-SMITH:

2 681 Q. If you can point me in the
3 transcript to where Levy suggests anyone intended
4 to or did spread false rumours by way of
5 undertaking, please do so.

6 U/T MR. MOORE: All right.

7 BY MR. MILNE-SMITH:

8 682 Q. If you can point to anything in
9 the transcript that talks about short-selling,
10 please do so. Okay?

11 If you can point to anything about
12 participating in or even discussing a complaint to
13 the OSC or Toronto Police Services, please do so.

14 If you can point me to where Mr. Levy
15 talks about a potential RICO action, please do so.
16 Sorry, strike that last one. That is a separate
17 question.

18 So I want to find out where in the
19 transcript Levy talks about false rumours,
20 short-selling, speaking to the Wall Street Journal
21 after 2015 or a whistleblower or other kind of
22 complaint to the OSC, and can I have that
23 undertaking?

24 U/A MR. MOORE: I will take that under
25 advisement.

1 BY MR. MILNE-SMITH:

2 683 Q. Okay. What he does talk about is
3 discussing a potential RICO action or defending
4 guarantee claims; correct? Levy definitely does
5 talk about that in the transcript, right?

6 A. Sorry, he talks about RICO?

7 684 Q. A potential RICO action and about
8 defending Callidus's claims on the guarantees;
9 correct?

10 A. Yes, and that was in connection
11 with your email, and also related to that is your
12 email to him about potential counsel.

13 685 Q. So unless you can produce
14 something by way of undertaking, you would agree
15 with me that Mr. Levy's transcript in fact refutes
16 the allegation that he was coordinating with Mr.
17 Boland or West Face regarding whistleblower
18 activities, complaints to the OSC, short-selling or
19 spreading false rumours about Callidus; correct?

20 R/F MR. MOORE: Don't answer the question.
21 That is an argumentative question.

22 MR. MILNE-SMITH: Let's take the
23 afternoon break there.

24 -- RECESSED AT 3:18 P.M.

25 -- RESUMED AT 3:35 P.M.

1 BY MR. MILNE-SMITH:

2 686 Q. Mr. Riley, in your affidavit at I
3 think at least six or seven places you indicate
4 that Bruce Livesey told Andrew Levy that he,
5 meaning Livesey, had been hired by West Face; do
6 you recall that?

7 A. Yes.

8 687 Q. And that is based on the Andrew
9 Levy transcript dated August 30, 2017 that we were
10 looking at; correct?

11 A. Yes.

12 688 Q. And are you willing to concede
13 based on the evidence that has since been filed in
14 this case, including by Mr. Livesey and by Mr.
15 Boland, that in fact Mr. Levy was mistaken in that
16 recollection and that in fact Mr. Livesey told him
17 no such thing?

18 A. I acknowledge that that's been
19 advanced by the other side of this litigation, but
20 I still am troubled by the fact that Bruce Livesey
21 or Levy early on says that Bruce Livesey from
22 Mosaic contacted him, Mosaic being Livesey's
23 company, or at that time it was called Mosaic, and
24 the fact that I don't know why Levy would know that
25 fact.

1 And I think during this time period
2 Livesey was both representing Mosaic and
3 representing his attempt to do a freelance story on
4 us and West Face.

5 689 Q. Okay, well, I don't dispute any
6 connection between Livesey and Mosaic. My point is
7 that you have seen the transcript of -- presumably
8 you have seen the transcript of Livesey's call with
9 Levy where in fact Livesey says he was not hired by
10 West Face.

11 And so Levy's transcript two years
12 later where he says that Livesey told me he was
13 retained by West Face is just a mistake by
14 Mr. Levy; correct?

15 A. The mistake may be identifying --
16 failure to identify Voorheis because I think there
17 has been some subsequent evidence that Voorheis may
18 have retained Livesey.

19 690 Q. That is fine, but I don't have a
20 brief for Voorheis. I have a brief for --

21 A. I understand, but if we could
22 go -- I am just trying to understand the nature of
23 the mistake made by Mr. Levy, as you characterize
24 it.

25 But if you could go back to the -- I

1 don't want to take time away from this, but I also
2 think and I have realized that part of what we have
3 put in my affidavit probably is informed by, among
4 other things, the document which is at tab 16 of my
5 reply motion -- sorry, the reply motion record of
6 Catalyst that was filed August 20. That is a
7 memorandum from Levy to Marketos.

8 And the other is, and I don't have them
9 at my fingertips, a number of emails that were
10 exchanged between Levitt and some of the guarantors
11 with respect to materials that they were going to
12 file with the Toronto Police Services and I also
13 believe the Ontario Securities Commission, in
14 particular that part of the OSC that is labelled
15 JSOT or called JSOT.

16 691 Q. Okay, I am not asking about any of
17 that, but --

18 A. I know you are not, but I am
19 saying that I think in what we have put in here, we
20 are informed by other documents as well.

21 692 Q. Okay, so let's do this the hard
22 way. Document 66, so this is one of Catalyst's
23 productions in the litigation. So this is an email
24 from Derek DeCloet at the Globe and Mail to Dan
25 Gagnier, your communications consultant, on

1 September 12th, 2017, and so less than two weeks
2 after the Levy transcript?

3 A. Uhm-hmm.

4 693 Q. Mr. DeCloet tells Mr. Gagnier:

5 "Andrew Levy is mistaken or
6 confused. If someone called him on
7 behalf of West Face, it was not
8 Bruce Livesey; Bruce has never done
9 any work for West Face. The
10 transcript also quotes Levy as
11 saying he met Livesey in person.
12 They've never met.

13 Perhaps it's a case of mistaken
14 identity."

15 And Mr. Gagnier forwarded that email to
16 you. So you were aware of Mr. DeCloet's
17 information about Levy and the mistake he made less
18 than two weeks after the transcript happened;
19 correct?

20 A. Well, this is Livesey saying it is
21 a mistake. This isn't -- this is DeCloet passing
22 on information.

23 694 Q. Right, but you had this
24 information from Mr. DeCloet at the time; correct?

25 A. Yes.

1 695 Q. And you are aware that Mr. Boland
2 has given sworn evidence denying having hired or
3 retained Bruce Livesey in any capacity? You are
4 aware of that; correct?

5 A. Is that in a Boland affidavit?

6 696 Q. Yes.

7 A. Then I'll take that as given. I
8 have read his affidavit, but I don't recall that.

9 697 Q. Well, just for the record, it is
10 in his reply affidavit dated August 21, 2020, at
11 paragraph 62. You are also aware that Mr. Livesey
12 swore a supplemental affidavit in this case that
13 attached the tape-recording and transcript of his
14 actual call with Mr. Levy; correct?

15 A. I was not aware of that.

16 698 Q. All right, so let's go to
17 Mr. Livesey's supplemental affidavit dated
18 September 4 of 2020. It is tab E of my examination
19 brief. And we'll start at paragraph 11. So you
20 see the highlighted passages:

21 "Mr. Riley's false allegation
22 that I was engaged by West Face
23 appears to be based entirely on
24 testimony given by Mr. Levy in an
25 examination conducted on August 30,

1 2017, over two years after I first
2 spoke to Mr. Levy on April 17,
3 2015."

4 And then he refers to where you said
5 this in the affidavit. And so let's go to the next
6 page:

7 "In his examination, Mr. Levy
8 falsely claimed that I told him that
9 I had been hired by West Face."

10 In the next paragraph it says that he
11 actually had a transcript of the call in question.
12 So now at paragraph 14:

13 "As appears from page 11 of the
14 Levy Transcript, Mr. Levy asked me
15 at the outset of our conversation
16 whether I had been hired by 'West
17 Capital', to which I responded 'no,
18 no'."

19 And then he says how he wasn't willing
20 to say who had retained him because of Catalyst's
21 notorious litigious nature, and then in paragraph
22 16:

23 "At no time did I ever tell
24 Mr. Levy or anyone else that I or
25 Mosaic had been retained by West

1 Face and, in fact, neither I nor
2 Mosaic have ever been retained by
3 West Face for any purpose."

4 So that is the affidavit, and then
5 let's just go to the transcript itself, just to
6 complete the loop.

7 A. Just before you go on, can we just
8 go back? I just want to read something for a
9 second.

10 699 Q. Yes.

11 A. So you didn't underline 15 which
12 is:

13 "As appears from page 11 of the
14 Levy Transcript, Mr. Levy asked me
15 to identify the client on whose
16 behalf Mosaic was performing
17 research into Callidus, but I
18 declined to do so [...]"

19 Now, I take from that that Livesey is
20 saying he was engaged to do work, "he" being Mosaic
21 was engaged to do research into Catalyst.

22 700 Q. Yes, by someone, but it wasn't
23 with --

24 A. But I just wanted -- you didn't
25 highlight that, so I just wanted to make sure I had

1 read it.

2 701 Q. And do you accept that

3 Mr...[inaudible.]

4 [Court Reporter intervenes for
5 clarification.]

6 BY MR. MILNE-SMITH:

7 702 Q. Now, Mr. Riley, you were at pains
8 to point out that Mr. Livesey indicates he was
9 hired by someone but he declined to say who, and I
10 accept that, but my point to you is do you accept
11 Mr. Livesey's evidence that he was not retained by
12 West Face?

13 A. That is subject to our right to
14 cross-examine him. I'll accept that for now.

15 703 Q. Now, if we could go to the exhibit
16 to this affidavit, which is at page 21 of the PDF,
17 so do you accept that Mr. Livesey has provided a
18 fair and accurate transcript of the recording which
19 was included with his evidence? If you for any
20 reason say that this transcript is incorrect, by
21 way of undertaking I would like to know?

22 U/T A. Yes.

23 704 Q. And you see, just as he described
24 in his affidavit, Levy asks:

25 "Have you been hired by West

1 Capital?"

2 And Livesey says, "No, no".

3 A. And this is from the transcript
4 that he found on his old computer; correct? Sorry,
5 this is a transcription of what he had on his old
6 computer?

7 705 Q. Yes.

8 A. Is there anything more I should
9 look at in this?

10 706 Q. Nothing relevant to this question.

11 MR. DEARDEN: Have you done a
12 comparison, Mr. Milne-Smith, of the audio with this
13 transcript and you guys have come up with the
14 conclusion that it is a hundred percent accurate?

15 MR. MILNE-SMITH: No, I have not. I
16 have taken him at his word.

17 MR. DEARDEN: Sorry? Oh, you have
18 taken him at his word, okay.

19 BY MR. MILNE-SMITH:

20 707 Q. I would like to go now - I am
21 echoing again - to the first affidavit, so this is
22 the December 2019 affidavit, tab "A", of you, Mr.
23 Riley, and paragraph 103.

24 A. Sorry, what date, December 5th,
25 you mean?

1 708 Q. Yes.

2 A. December 5th, correct?

3 709 Q. Yes.

4 A. Yes.

5 MR. DEARDEN: Paragraph 103.

6 BY MR. MILNE-SMITH:

7 710 Q. So you see at paragraph 103 there
8 is a quote from your first investor letter of
9 August 14, 2017 where Catalyst writes to its
10 investors:

11 "As a brief update on the West
12 Face and Wind litigation, new facts
13 helpful to the case have been
14 discovered. These relate not only
15 to their stand-alone behaviour but
16 also to possible interference and
17 market manipulation involving West
18 Face and others in Callidus."

19 You are referring here to the Vincent
20 Hanna email; correct?

21 A. That would be the basis for that
22 statement, yes.

23 711 Q. And the Vincent Hanna email, as we
24 looked at before, says nothing about Wind; correct?

25 A. That is correct. There are two

1 concepts in here.

2 712 Q. So there are no new facts helpful
3 to the West Face and Wind litigation that have been
4 discovered?

5 A. That I think is referring to the
6 letters which we -- or sorry, the emails that we
7 referred to earlier and that are referred to in the
8 body of one of my affidavits.

9 713 Q. And that is the paragraph 74 to 91
10 new information?

11 A. I believe that is correct. I
12 believe those are the correct numbers.

13 714 Q. Okay, and we also already
14 established that those emails, that evidence was in
15 fact provided to Catalyst and Callidus in January
16 2016 in the course of the Plan of Arrangement;
17 correct?

18 MR. MOORE: No, just a minute. We gave
19 an undertaking to reconstruct the timing. I think
20 some of them were provided then; I think some of
21 them were provided later, but all in advance of the
22 trial.

23 BY MR. MILNE-SMITH:

24 715 Q. Thank you. So all in advance of
25 trial, so that means over a year before this first

1 investor letter went out on August 14th, 2017;
2 correct?

3 MR. MOORE: No, no, when I say before
4 trial, I mean, I think a couple of -- well, shortly
5 before trial. But I gave an undertaking, and I am
6 not sure that you accepted it, but to try to
7 reconstruct for you our best indication of what the
8 timing of the receipt of those documents was, which
9 we will do.

10 BY MR. MILNE-SMITH:

11 716 Q. And, Mr. Riley, you would accept
12 that evidence that was presented at the Moyse trial
13 in June 2016 would not constitute new facts as of
14 August 14, 2017?

15 A. I don't agree with that.

16 717 Q. Okay. And you didn't tell
17 investors that this new information consisted of an
18 anonymous email from an individual using the name
19 of a movie character? You didn't tell your
20 investors that?

21 A. No, we did not.

22 718 Q. And you didn't tell investors that
23 you had no evidence that West Face was even short
24 Callidus's shares?

25 A. Here we are talking about market

1 manipulation. It doesn't necessarily mean
2 short-selling.

3 719 Q. Okay. And you didn't tell your
4 investors that you were relying exclusively in this
5 regard in terms of new information relating to
6 Callidus on this one anonymous email from
7 quote/unquote "Vincent Hanna"? You didn't disclose
8 that to your investors, did you?

9 A. It was an email that we received
10 shortly after the printing of an article that we
11 considered to be -- that we considered then and
12 still consider to be defamatory. And an
13 unsolicited email, even if it is written by an
14 anonymous person or an anonymous source, still is
15 relevant.

16 720 Q. Let's go to document 67.

17 A. Sorry, in this?

18 MR. DEARDEN: It is the same --

19 THE DEPONENT: Okay, got it.

20 MR. DEARDEN: Is that an Exhibit?

21 BY MR. MILNE-SMITH:

22 721 Q. This is in -- it is Exhibit 1 to
23 Christie Blatchford's affidavit, which has been
24 included in our motion material records, in our
25 anti-SLAPP motion record. So page 2 of this

1 document --

2 MR. MOORE: Well, just before you go
3 further, I don't want to take up your time or get
4 into a debate with you, but to the extent you are
5 going into - which I anticipate you are - Black
6 Cube-related issues and frankly other related
7 issues, from our perspective at this point those
8 are still subject to privilege issues to be
9 determined, and so I take the same position as I
10 did at the outset of this examination.

11 MR. MILNE-SMITH: Well, there are a
12 number of documents that have been produced or that
13 are public documents that relate to Black Cube or
14 PSY Group, and I don't see how there could be any
15 valid claim of privilege over, for example, a
16 newspaper article or about documents that have been
17 produced by Catalyst.

18 MR. MOORE: I hear you, but I think any
19 questions that you ask touching upon those subjects
20 are inevitably or at least run the risk of getting
21 into the overlapping of privilege issues, and I
22 don't want to slice it and dice it and have part
23 now and part at some other time.

24 So I am -- I mean, we can disagree, but
25 that is our position.

1 BY MR. MILNE-SMITH:

2 722 Q. Okay, well, let's see how far we
3 can get. The highlighted portion of this article
4 indicates that:

5 "A source authorized to speak
6 for Catalyst acknowledges that a
7 subcontractor working for a security
8 company it hired carried out the
9 sting on the judge. But the source
10 said Catalyst did not order the
11 sting or know about it until after
12 it happened."

13 Mr. Riley, were you the source
14 authorized to speak for Catalyst?

15 R/F MR. MOORE: Don't answer that question.

16 BY MR. MILNE-SMITH:

17 723 Q. Who was the source authorized to
18 speak for Catalyst?

19 R/F MR. MOORE: The same position.

20 BY MR. MILNE-SMITH:

21 724 Q. Document 68. This is a redacted
22 form of Mr. Glassman's calendar that was produced I
23 think less than two weeks ago. What is the basis
24 for the redactions? Is it privilege or relevance?

25 U/T MR. MOORE: I'll undertake to let you

1 know. It's certainly privilege, and it may be
2 relevance. Well, I think it is privilege, but if
3 it is anything more than that, we'll let you know.

4 BY MR. MILNE-SMITH:

5 725 Q. Okay, if you go to page 29, there
6 is a portion that isn't redacted.

7 MR. MOORE: Yes.

8 BY MR. MILNE-SMITH:

9 726 Q. So this is August 29, and it
10 refers to "JR; meeting with [...]" and I think that
11 should be "[Brian] Greenspan and Yossi Tanuri"? I
12 take it "JR" is you, Mr. Riley?

13 A. Yes.

14 727 Q. And what was the subject of this
15 meeting between yourself, Mr. Glassman,
16 Mr. Greenspan and Mr. Tanuri?

17 MR. MOORE: That entry was unredacted
18 because our -- to assist with the timing. It is
19 our understanding that it was that or shortly after
20 that date is the date of the actual retainer of
21 Yossi Tanuri, so our view is that that specific
22 meeting date in and of itself should be unredacted.

23 BY MR. MILNE-SMITH:

24 728 Q. And Mr. Tanuri was a security
25 contractor that was retained by Catalyst following

1 certain security-related events that are referred
2 to in Ms. Blatchford's article that we looked at
3 previously?

4 MR. MOORE: Well, you received I think
5 the affidavit of Brian Greenspan. It wasn't
6 Mr. Yossi personally. It was his companies, as I
7 recall, and I believe that certain facts pertaining
8 to that were set out in the Greenspan affidavit
9 from October or November of 2018 when the Black
10 Cube privilege motion was first instituted on
11 behalf of West Face.

12 And so once we have the up-to-date or
13 new or whatever it is motion record pertaining to
14 that, we'll have a full record, including
15 presumably the Greenspan affidavit and whatever
16 else we conclude is necessary to provide a proper
17 basis for this.

18 BY MR. MILNE-SMITH:

19 729 Q. So does that mean you are not
20 going to let me ask questions about it now?

21 R/F MR. MOORE: That's right. Again, I am
22 not -- you don't have to put all your questions.
23 As I said before, we are not going to say, oh, you
24 didn't put this question or cover that area and,
25 you know, use up your time to protect yourself

1 against some technical argument. We are not going
2 to take that position.

3 BY MR. MILNE-SMITH:

4 730 Q. So are you going to let me ask
5 questions about the contents or purpose of any of
6 the meetings disclosed in the August, September and
7 October calendars that were recently disclosed?

8 R/F MR. MOORE: No. As I say, we
9 unredacted them to provide some timing, but in
10 terms of the substance or the discussions, et
11 cetera, those are a part of the privileged dispute
12 that we have with --

13 BY MR. MILNE-SMITH:

14 731 Q. Okay. Mr. Riley, did you meet
15 with Virginia Jamieson on or about September 21 in
16 order to deliver to her a USB key containing the
17 contents of the sting on Justice Newbould for
18 dissemination to the media, including Christie
19 Blatchford?

20 R/F MR. MOORE: Don't answer that. I take
21 the position that falls into the same area, down up
22 in the privilege issues with respect to both Black
23 Cube and PSY.

24 BY MR. MILNE-SMITH:

25 732 Q. If you could pull up

1 document...[inaudible.]

2 MR. DEARDEN: We didn't get that
3 number, Matthew.

4 MR. MILNE-SMITH: 78.

5 MR. DEARDEN: Is this an exhibit,
6 Matthew?

7 BY MR. MILNE-SMITH:

8 733 Q. No, this is not an exhibit. It is
9 a recent production of Catalyst. You can see in
10 the top left-hand corner the production number
11 Catalyst_E_144. This is an email from Mr. Glassman
12 to you, Mr. Riley, on Wednesday, November 20th,
13 2017, subject "Virginia Jamieson". It appears to
14 attach her contact card. You can see it is a
15 ".vcf" file. And it says:

16 "This is the person they want
17 you to contact."

18 Am I correct that the "they" being
19 referred to is PSY Group?

20 U/A MR. MOORE: We'll take that under
21 advisement and let you know. I think this is I
22 think September 20th, if I'm not mistaken?

23 MR. MILNE-SMITH: Right.

24 MR. MOORE: I thought you said
25 November, or maybe I misheard you.

1 THE DEPONENT: No, it's September,
2 September 20th.

3 MR. MOORE: But without prejudice to
4 any of the privilege issues, we'll take that last
5 question under advisement and let you know.

6 BY MR. MILNE-SMITH:

7 734 Q. I would like to know how Mr.
8 Glassman knew that this is the person, quote,
9 "they" wanted Mr. Riley to contact?

10 U/A MR. MOORE: We'll take that under
11 advisement.

12 BY MR. MILNE-SMITH:

13 735 Q. I would like to know what Mr.
14 Riley knew about this request to contact Ms.
15 Jamieson, whether it came out of left field and
16 what he knew about it in advance before he received
17 this email?

18 U/A MR. MOORE: The same position, we'll
19 take that under advisement.

20 BY MR. MILNE-SMITH:

21 736 Q. Mr. Riley, can you confirm that in
22 September of 2017 you were in possession of a cell
23 phone with the number 416-302-6040?

24 A. Yes, that is still my current cell
25 number.

1 737 Q. And then you accept that there are
2 phone records indicating that you called Virginia
3 Jamieson twice on the morning of September 21 at
4 8:46 and 9:33 a.m.?

5 U/A MR. MOORE: We'll take that under
6 advisement.

7 BY MR. MILNE-SMITH:

8 738 Q. Document 81. This is an email
9 from Sharon, a person named Sharon at PSY Group.
10 Do you understand that to be Sharon Kisluk,
11 K-i-s-l-u-k, as indicated by the signature at the
12 bottom?

13 R/F MR. MOORE: That is what the document
14 says, but as far as I am concerned, this falls
15 under the same category, so I am going to object to
16 questions on this cross-examination with respect to
17 this document.

18 MR. MILNE-SMITH: Okay, you understand
19 my surprise, Mr. Moore, that you are expressing
20 privilege over documents that you produced.

21 MR. MOORE: Well, it is not just a
22 question of privilege and how it may be linked to
23 the motion that we have yet to see, at least in the
24 current form, but also this doesn't relate to any
25 of the SLAPP motions that are at play. Certainly

1 the counterclaim SLAPP motion that we brought does
2 not relate to any PSY matters.

3 But rather than debate all of that, our
4 position is that we object to the questions in
5 respect of this document at this time.

6 BY MR. MILNE-SMITH:

7 739 Q. Who was Michael Buckstein? Mr.
8 Riley, do you know someone by the name of Michael
9 Buckstein?

10 A. The name rings a bell, but I don't
11 have the context for it. Do you have a context?

12 740 Q. Yes, it appears in Mr. Glassman's
13 calendar, which I am not allowed to take you to.

14 MR. MOORE: Well, I didn't say you
15 couldn't take him to them. I said it's for a
16 limited purpose. If there is a reference in it,
17 bring it up and we'll see if the document --

18 BY MR. MILNE-SMITH:

19 741 Q. Okay, document 72, and it is the
20 October 21 entry. You will see a reference to
21 "Yossi, Newton, Michael", and then it says "Michael
22 Buckstein".

23 U/A MR. MOORE: All right, don't answer the
24 question. We'll take that under advisement. I
25 want to understand what relation, if any, that may

1 have to any privilege issues before any answer is
2 given, so we'll take that under advisement for now.

3 THE DEPONENT: Does that also include
4 my recollection as to whether I remember Michael
5 Buckstein or not?

6 MR. MOORE: Yes.

7 THE DEPONENT: Okay.

8 MR. MILNE-SMITH: David, can he say who
9 Michael Buckstein is, if he remembers it?

10 MR. MOORE: Do you remember?

11 THE DEPONENT: Well, and I am not
12 saying this is a correct memory, but I think it was
13 a friend of Newton's that I met when he was out in
14 Jackson Hole and he -- I think the company has --
15 does armored protection gear. I think that is who
16 Michael Buckstein is, but I am going by memory. I
17 would have to look at my -- I would have to make
18 sure that my memory is correct.

19 BY MR. MILNE-SMITH:

20 742 Q. Okay, how about if we go to
21 October 10 of this calendar. You will see a
22 reference to Gad Benefraim. There is also I see
23 different entries referring to a Gaddi Ben Efraim;
24 sometimes it's spelled as three words rather than
25 two. Can you tell me who Gaddi Ben Efraim was and

1 what role he played that is relevant to this
2 litigation?

3 U/A MR. MOORE: Well, there is more than
4 one question bound up in that, and certainly part
5 of that question gets into privilege issues. We'll
6 take that under advisement. In terms of who he
7 was, my recollection is that that is already
8 alluded to in the affidavit that was delivered with
9 respect to Mr. Greenspan, but I'll double-check and
10 see and I'll take that under advisement.

11 BY MR. MILNE-SMITH:

12 743 Q. Okay. Mr. Moore, does your
13 refusal extend to any and all efforts by Ms.
14 Jamieson to solicit interest from Christie
15 Blatchford, USA today, Globe and Mail and any other
16 sources of articles relating to the sting on
17 Justice Newbould?

18 R/F MR. MOORE: Without adopting that
19 terminology, yes, it does.

20 BY MR. MILNE-SMITH:

21 744 Q. Am I correct, Mr. Riley, that
22 prior to the sting on Justice Newbould, or as you
23 prefer to call it, the interview of Justice
24 Newbould, I would like to know if any of
25 Mr. DiPucchio, Mr. Greenspan, Mr. Moore or anyone

1 at Catalyst were aware that that sting or interview
2 was to take place? My understanding, based on what
3 you said before, is that none of you were aware of
4 it; is that correct?

5 U/A MR. MOORE: I'll take that under
6 advisement. I am not trying to duck the question.
7 I just want to make sure that we are not getting
8 into areas that relate to the motion. So your
9 question extended to DiPucchio, myself and
10 Greenspan?

11 MR. MILNE-SMITH: And anyone at
12 Catalyst, or I guess any other counsel that I might
13 not be aware of who were acting for Catalyst.

14 MR. MOORE: Fair enough, I understand.

15 BY MR. MILNE-SMITH:

16 745 Q. And just so you have it, in I
17 believe it was November of 2017, Mr. Greenspan sent
18 a letter to the Court of Appeal explicitly
19 representing that neither Catalyst nor any of its
20 counsel knew anything about the sting on Justice
21 Newbould or any other sting by Black Cube, any
22 other investigative activities before they
23 happened. I would like you to confirm that that
24 was in fact true?

25 MR. MOORE: We can confirm that the

1 contents of that letter insofar as the authors of
2 the letter were concerned was absolutely true at
3 that time, yes.

4 MR. MILNE-SMITH: Okay, let's just
5 bring that one up, because it is --

6 MR. MOORE: I am not going to get into
7 the whole -- like I know there is a whole series of
8 questions that you would like me to get into
9 surrounding that, and that is where it overlaps
10 with some privilege issues and other things which
11 is, in my view, not appropriate for this
12 cross-examination.

13 BY MR. MILNE-SMITH:

14 746 Q. Okay, document 85. So just so you
15 have it, this is the letter in question and,
16 Mr. Moore, if -- I think you said that or you
17 confirmed that the contents of that letter insofar
18 as the authors of the letter was concerned was
19 absolutely true at that time. I would like a less
20 qualified affirmation that the contents of this
21 letter and specifically the highlighted passage
22 here at the end of the third paragraph are true as
23 of today's date and with respect to anybody,
24 whether the author of the letter or otherwise.

25 U/A MR. MOORE: I hear you, and we'll take

1 that under advisement.

2 BY MR. MILNE-SMITH:

3 747 Q. Mr. Riley, do you know who Avi
4 Janus is, J-a-n-u-s?

5 MR. MOORE: Well --

6 THE DEPONENT: J-a-n-u-s?

7 R/F MR. MOORE: In some respects, it is a
8 question that you know the answer to, I suspect, in
9 part because of the channels that were provided
10 during the mediation. And so it is not the most
11 momentous question. And I am not meaning to
12 criticize your question, but it gets into areas of
13 overlap with Black Cube and PSY and
14 privilege-related issues that, in our view, should
15 be dealt with not on the SLAPP cross-examinations
16 but once that motion has been delivered.

17 BY MR. MILNE-SMITH:

18 748 Q. Okay, just to test the boundaries,
19 document 86, please. This is an article that
20 appeared on an Israeli website called "Calcalist",
21 and as you see the highlighted portion, it refers
22 to a witness statement written by Black Cube
23 co-founder Avi Yanus, and I think the spelling is
24 alternately either Y-a-n-u-s or J-a-n-u-s.

25 I would like Catalyst to give its

1 consent to Black Cube, or whatever the official
2 name of Black Cube is, the B.C. Strategy companies,
3 to disclose a complete list of parties to whom this
4 witness statement by Avi Janus was given?

5 U/A MR. MOORE: We'll take that under
6 advisement.

7 BY MR. MILNE-SMITH:

8 749 Q. Go back to your first affidavit,
9 sir, and that is tab "A" of my brief. It is your
10 December 5th affidavit.

11 A. It is the one we are currently in,
12 right? That is the one we are currently in?

13 750 Q. Yes.

14 A. Yes.

15 751 Q. Paragraph 113, please. So this is
16 about the March 19, 2018 investor letter sent to
17 Callidus's investors -- sorry, Catalyst's
18 investors. Catalyst, of course, is a fiduciary to
19 its investors, and you have made that point at
20 various stages in your affidavits; correct?

21 A. That is correct.

22 752 Q. And Catalyst has a duty to give
23 its investors fair, complete and accurate
24 information to the best of your abilities; correct?

25 A. Yes.

1 753 Q. And it would be inconsistent with
2 your fiduciary duties in that regard to provide
3 your investors with inaccurate, incomplete or
4 misleading information; correct?

5 R/F MR. MOORE: Don't answer that question.

6 BY MR. MILNE-SMITH:

7 754 Q. Paragraph 113 says that:

8 "The March Investor Letter
9 informs our investors that a former
10 employee of West Face said that
11 inside information about the WIND
12 negotiations was improperly leaked
13 to the West Face Consortium and that
14 Catalyst's exclusivity rights and
15 other contractual rights were not
16 respected."

17 Do you see that?

18 MR. DEARDEN: Paragraph 113, he asked
19 if you see it.

20 THE DEPONENT: Yes, I do see it.
21 Sorry, I just was reading it as you said that. I
22 do see 113.

23 BY MR. MILNE-SMITH:

24 755 Q. And you didn't disclose to your
25 investors what the context in which the former

1 employee of West Face made the statements quoted
2 below was, and it was a meeting under false
3 pretenses carried out by Black Cube?

4 A. Not to my knowledge did we say
5 that.

6 756 Q. And you didn't disclose to your
7 investors that the target of the sting, Peter
8 Brimm, did not in fact work on Wind and told Black
9 Cube's operative that he had no involvement in the
10 Wind Mobile file; correct?

11 MR. MOORE: I don't think that is an
12 accurate summation of what Brimm said.

13 BY MR. MILNE-SMITH:

14 757 Q. Go to document 88, please, page 5.
15 So you see agent:

16 "Agent: Your experience there
17 while the purchase of Wind happen -
18 occurred."

19 And they go back and forth about it for
20 a little bit.

21 And Brimm says:

22 "Hmm, I didn't, I didn't work
23 on that file.

24 Agent: Mm-hmm you know.

25 Brimm: -- I know some details

1 about it, but I didn't actually work
2 on it, so. The gentleman who was
3 responsible for it now lives in BC.

4 Agent: BC?

5 Brimm: You know, British
6 Columbia."

7 So you didn't disclose to your
8 investors that Peter Brimm, the person you were
9 quoting in the investor letter, didn't actually
10 work on the Wind file?

11 A. But I am not sure that doesn't
12 mean he didn't know details about Wind.

13 758 Q. That is not my question. You
14 didn't disclose the fact that he didn't work on it;
15 correct?

16 A. If I could just for a moment go
17 back to, and I am not sure what affidavit, but the
18 reference to the new information I believe that was
19 referred to was not just the emails but was the
20 Brimm and Yu-jia Zhu tapes.

21 759 Q. No, the new information, that was
22 August 2017. That was before you --

23 A. Then I am mistaken. I am just --
24 I get very -- I apologize, there is a lot of dates
25 and a lot of things.

1 760 Q. Okay, so let's just stay on the
2 same page here. This is the March 19, 2018
3 investor letter. That is the one that refers to
4 Peter Brimm's transcript.

5 A. Got it.

6 761 Q. You didn't disclose in that letter
7 to your investors, to whom you had a duty of fair,
8 complete and accurate information, you didn't tell
9 them that Brimm didn't work on the file, did you?

10 A. No.

11 762 Q. And you didn't tell them that
12 Yu-jia Zhu, the individual who actually did work on
13 the file, said that Catalyst was wrong in its
14 position in the Moyse litigation? You didn't
15 disclose that, did you?

16 A. No, we did not.

17 763 Q. And if we could go to document 89,
18 this is the transcript of the sting on Yu-jia Zhu.

19 A. Sting or interview? The interview
20 with Yu-jia Zhu, as I pronounce it, Yu-jia Zhu, the
21 interview.

22 764 Q. The interview under false
23 pretenses by an agent of Black Cube, if we want to
24 be technical; correct?

25 A. I don't -- I am not sure I have to

1 agree with that.

2 MR. MOORE: Let's move on with it.

3 BY MR. MILNE-SMITH:

4 765 Q. Page 67.

5 A. Could someone please blow that up?

6 766 Q. So going down a little bit, okay,
7 and stop right there. So I am picking up at where
8 Yu-jia says:

9 "Exactly, yeah, yeah."

10 Do you see that?

11 A. Yes.

12 767 Q. He says:

13 "So, it was, it's not without
14 risk. We were willing to take that
15 risk, and therefore we were
16 rewarded, you know, with the asset
17 and, and eventually the, the
18 proceeds, you know, the game's --

19 It was the judge's words, the
20 judge said this to Catalyst. He
21 said, 'You lost, not because --'

22 Agent: 'Just deal with it.'

23 Yu-Jia: Yeah, 'Not because this
24 junior analyst gave some secret to
25 West Face, it's because you were

1 unwilling to take the risk.'

2 Agent: So, the rumours that he
3 came with, umm, the competitors',
4 umm, offer, those are, that's
5 bullshit?

6 Yu-jia: Yes. No tricks to it at
7 all, we bid less than --

8 Agent: Yeah, logically it
9 doesn't make any sense, of course.

10 Yu-jia: It's because, it's a
11 fundamental thing they forgot about
12 the priorities for VimpelCom."

13 So you didn't disclose to your
14 investors that Mr. Zhu said to the agent that
15 Catalyst's theory was quote/unquote "bullshit"?

16 MR. MOORE: Mr. Milne-Smith, the
17 transcripts of these meetings, interviews, whatever
18 you want to call them, I can't remember whether it
19 is Zhu or Brimm or both, elsewhere -- and I am not
20 suggesting that we pause and look it up because
21 we'll be scrolling through pages and pages and
22 pages to find it which is just going to eat up your
23 time and I am not trying to do that. But my
24 recollection is there are comments in the
25 transcripts elsewhere that make it clear that

1 Catalyst had it wrong in thinking that Moyses was
2 the person who had improperly leaked information
3 and that they were right in believing there had
4 been an improper leak. It just wasn't Moyses. It
5 was someone else.

6 So I'm paraphrasing now, but I think
7 you'll find words to that effect elsewhere on one
8 or more of these transcripts.

9 BY MR. MILNE-SMITH:

10 768 Q. That was Mr. Brimm's evidence, and
11 we have already talked about how he actually didn't
12 work on the file. So I am talking now about
13 Mr. Zhu's evidence and what was included or not
14 included in the, as Mr. Riley agreed, fair,
15 complete and accurate information to its investors.

16 R/F MR. MOORE: Well, I object to the
17 question then, because I think to put that question
18 fairly - and leaving aside asking Mr. Riley
19 implicitly to judge what the fiduciary duty meant
20 or didn't mean, which I object to - but I think if
21 you want to ask that question fairly, one would
22 have to allow Mr. Riley to read the whole nine
23 yards of both transcripts to put the whole thing in
24 context. And unless we are going to break and do
25 that, which I don't think would be a useful way to

1 do it from your standpoint, then I object to the
2 question based upon what is in my view a narrow
3 reference to this particular part of the
4 transcript.

5 MR. MILNE-SMITH: All right, we'll deal
6 with that refusal in due course.

7 MR. MOORE: All right.

8 BY MR. MILNE-SMITH:

9 769 Q. Mr. Riley, you never sought to
10 file those so-called interviews or the transcripts
11 of these so-called interviews with Mr. Zhu and
12 Mr. Brimm in any court proceeding, did you?

13 A. I don't know what counsel did or
14 didn't do.

15 770 Q. You are not aware of Catalyst or
16 Callidus attempting to do so?

17 A. I do not --

18 MR. MOORE: I can answer that question.

19 The only court proceeding that followed
20 from a timing standpoint was I think the attendance
21 before Justice Hainey in April or thereabouts of
22 2018, following the issuance of the Court of Appeal
23 decision in the Moyse case, and in which Justice
24 Hainey had given a very explicit, clear order that
25 the only submission that was going to be

1 entertained at that time and the sole purpose of
2 that attendance was to receive submissions about
3 the implications of the Court of Appeal decision.

4 So at that time, no, there wasn't an
5 attempt to get into these transcripts or adduce
6 further evidence or make further argument. The
7 process that was followed respected the direction
8 that Justice Hainey had given in clear and
9 unequivocal terms.

10 MR. MILNE-SMITH: And you did not --

11 MR. DEARDEN: Matt, can we just go off
12 the record for a second?

13 (DISCUSSION OFF THE RECORD.)

14 BY MR. MILNE-SMITH:

15 771 Q. So my simple question, Mr. Moore,
16 is that you never -- Catalyst or Callidus never
17 brought a motion to file fresh evidence before the
18 Court of Appeal in the Moyse action with respect to
19 the evidence of either Mr. Brimm or Mr. Zhu?

20 MR. MOORE: So that is right, we
21 didn't, because the evidence of Brimm and Zhu taken
22 in totality did not point at Moyse. They pointed
23 at someone else.

24 But let's not debate all of that. The
25 simple answer is no motion to adduce fresh evidence

1 was advanced in the Court of Appeal, that's
2 correct.

3 BY MR. MILNE-SMITH:

4 772 Q. Document 90, please, and over to
5 page 4, paragraph 18 at the bottom.

6 A. Sorry, paragraph 18 of the
7 December 5?

8 773 Q. No, it is paragraph 18 of the
9 document on the screen. This is your investor
10 letter of March 19, 2018. So this states that:

11 "Catalyst is also in possession
12 of numerous emails which support the
13 opinions quoted above and which
14 corroborate that there was improper
15 leakage of confidential information
16 in connection with the sale of WIND
17 to the West Face consortium, during
18 Catalyst's exclusivity period."

19 I think this goes back to the earlier
20 undertaking you gave, Mr. Moore. My understanding
21 is that all of these, quote, "numerous emails"
22 referred to are in fact the same emails that were
23 relied on by Catalyst at the trial of the Moyse
24 action in June 2016. If there is anything else
25 that is being referred to here, I would like to

1 know.

2 U/T MR. MOORE: I think I gave an
3 undertaking in respect of that reliance. Of course
4 it was for a particular purpose, which we don't
5 debate right now, but -- and I believe those are
6 the emails that are referred to in paragraphs 74 to
7 96, or whatever the paragraphs were that you have
8 alluded to previously. If there is anything else,
9 we'll let you know.

10 BY MR. MILNE-SMITH:

11 774 Q. And, Mr. Riley, you certainly
12 didn't disclose to your investors that all of these
13 numerous emails that you relied on had already been
14 considered and rejected by Justice Newbould?

15 MR. DEARDEN: Say that again, Matt,
16 please.

17 BY MR. MILNE-SMITH:

18 775 Q. You didn't disclose to your
19 investors in this March 19, 2018 investor letter
20 that these quote/unquote "numerous emails" referred
21 to in paragraph 18 had in fact already been argued
22 by Catalyst before Justice Newbould and Catalyst's
23 arguments in that respect and claims in that
24 respect had already been rejected by Justice
25 Newbould?

1 R/F MR. MOORE: Just a minute. I don't
2 think that is a fair question. Whether all of
3 those emails were before the Court in the Moyse
4 trial, they may well have been or they may not. I
5 am not sure. But what I am sure of, they were
6 advanced and relied upon in connection with the
7 claims against Mr. Moyse, period, and not in
8 respect of any other claims.

9 MR. MILNE-SMITH: Well, when you say
10 "in respect of Mr. Moyse", West Face was also a
11 Defendant at that trial.

12 MR. MOORE: No, that is right, but the
13 allegations in that trial were based on whether
14 Moyse has been the proper conveyor of confidential
15 information that was agreed to...[inaudible.]

16 [Court Reporter intervenes for
17 clarification.]

18 What I was saying is that the
19 allegations in the Moyse trial were tried on the
20 merits and it was whether or not Moyse had been the
21 purveyor or the person who disclosed confidential
22 information to West Face and that gave rise to a
23 breach of confidence and a misuse of information
24 conveyed by Mr. Moyse. I am paraphrasing, but that
25 was the sum and substance of what the Moyse trial

1 was about.

2 So I think that your question is a
3 little broader than that, and in that regard, I
4 don't think it really conforms to the record or is
5 a fair question. Certainly those emails had been
6 referred to at trial for that limited purpose.

7 MR. MILNE-SMITH: Document 91.

8 MS. FETILA FASIE: I'm sorry, Matt, I
9 don't have it.

10 BY MR. MILNE-SMITH:

11 776 Q. You don't have it? All right, let
12 me send it to you right now.

13 That should be about 30 seconds, and
14 you'll be pleased to know that will be our last
15 document for the day, given all the refusals.

16 Is that still not coming through,
17 Julia?

18 MS. FETILA FASIE: No, not yet.

19 MR. MILNE-SMITH: Okay, well, why don't
20 we -- I am almost done here, under reserve of my
21 rights with respect to all the questions refused.

22 Why don't we adjourn for the day, or I
23 suppose if Mr. Lung wants to, he could jump in now.
24 But otherwise, rather than wasting everyone's time
25 trying to get this one last document, let's just do

1 that overnight and I'll wrap up in the morning.

2 MR. MOORE: That is fine.

3 So subject to that, and you may think
4 about this overnight too, I know that happens to us
5 all sometimes, are you near the end of your -- I
6 take it you are near the end of your
7 cross-examination, Mr. Milne-Smith?

8 MR. MILNE-SMITH: Yeah, I had a couple
9 of hours on the Black Cube and PSY Group, but it
10 looks like I am not going to be able to go there.

11 MR. MOORE: All right, and so,
12 Mr. Lung, you are next in the batting order, as I
13 understand it?

14 MR. LUNG: That's right.

15 MR. MOORE: And do you anticipate
16 taking up the whole day tomorrow or not?

17 MR. LUNG: I hadn't planned on taking
18 up the whole day, so I had provisioned for about
19 three-quarters of a day. But we'll see how it
20 goes. It could go quicker. It depends on how
21 things go.

22 MR. MOORE: Yes.

23 MR. MILNE-SMITH: And I think
24 Mr. Baumann had indicated, and I am not sure he is
25 still on the line, but he had indicated that if

1 there was any time leftover, he would be happy to
2 jump in.

3 MR. DEARDEN: Well, is that happening
4 or not?

5 MR. BAUMANN: Absolutely, if there is.

6 MR. MOORE: And, Mr. Baumann, do you
7 know how long, whether you start tomorrow or some
8 other day, approximately - and I won't hold you to
9 this - approximately how long your
10 cross-examination would be?

11 MR. MILNE-SMITH: Sorry, why don't we
12 go off the record here.

13 MR. MOORE: Yes, that is fine.

14 (DISCUSSION OFF THE RECORD.)

15
16 -- Adjourned at 4:33 p.m.

17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 31st day of October, 2020.



NEESONS, A VERITEXT COMPANY

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

This is **Exhibit "19"** referred to in the Affidavit of DEBRA BILOUS, sworn before me, this 17th day of November, 2020.

A handwritten signature in black ink, appearing to be 'MO', written over a horizontal line.

Maura O'Sullivan
(LSO#77098R)
Notary / Commissioner

Catalyst v West Face et al.

James Riley
on Tuesday, October 27, 2020



77 King Street West, Suite 2020
Toronto, Ontario M5K 1A1

neesonsreporting.com | 416.413.7755

1 Court File No. CV-17-587463-00CL

2 ONTARIO
3 SUPERIOR COURT OF JUSTICE
4 COMMERCIAL LIST

5 B E T W E E N:

6 THE CATALYST CAPITAL GROUP INC. and CALLIDUS
7 CAPITAL CORPORATION

8 Plaintiff

9 - and -

10 WEST FACE CAPITAL INC., GREGORY BOLAND,
11 M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA,
12 ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP,
13 ANSON INVESTMENTS LP, ANSON CAPITAL LP,
14 ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
15 ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
16 ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC.,
17 NATHAN ANDERSON, BRUCE LANGSTAFF, ROB COPELAND,
18 KEVIN BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT,
19 RICHARD MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY
20 VOORHEIS, BRUCE LIVESEY and JOHN DOES #4-10
21 Defendants

22 A N D B E T W E E N:

23 WEST FACE CAPITAL INC. and GREGORY BOLAND
24 Plaintiffs by Counterclaim

25 - and -

26 THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
27 CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA,
28 JAMES RILEY, VIRGINIA JAMIESON, EMMANUEL
29 ROSEN, B.C. STRATEGY LTD. d/b/a BLACK CUBE,
30 B.C. STRATEGY UK LTD. d/b/a BLACK CUBE
31 and INVOP LTD. d/b/a PSY GROUP
32 Defendants to the Counterclaim

33 -----
34 --- This is Continued Cross-Examination of JAMES
35 RILEY, on his affidavits sworn December 5, 2019,
May 29, 2020 and August 20, 2020 respectively,
taken via Zoom Videoconferencing with all
participants attending remotely, on the 27th day of
October, 2020.

1 A P P E A R A N C E S :

2 RICHARD G. DEARDEN, Esq., for the Plaintiffs,
3 & DAVID C. MOORE, Esq., (Defendants to the
4 & BENJAMIN NA, Esq., Counterclaim), The
5 & MARCO ROMEO, Esq., Catalyst Capital Group
6 Inc. and Callidus
7 Capital Corporation
8 and the Defendants to
9 the Counterclaim,
10 Gariel De Alba, James
11 Riley and Newton
12 Glassman

14 MATTHEW MILNE-SMITH, Esq., for the Defendants
15 & ANDREW CARLSON, Esq., (Plaintiffs by
16 & MAURA O'SULLIVAN Counterclaim), West
17 Face Capital Inc. and
18 Gregory Boland

20 LEORA JACKSON, Esq., for the Defendants,
21 & STACEY REISMAN, Esq., M5V Advisors Inc.
22 c.o.b. Anson Group
23 Canada, Admiralty
24 Advisors LLC, Frigate
25 Ventures LP, Anson

1		Investments LP, Anson
2		Capital LP, Anson
3		Investments Master
4		Fund LP, AIMF GP,
5		Anson Catalyst Master
6		Fund LP, ACF GP, Moez
7		Kassam, Adam Spears
8		and Sunny Puri
9		
10	LUCAS E. LUNG, Esq.,	for the Defendants,
11	& REBECCA SHOOM, Esq.,	ClaritySpring Inc. and
12		Nathan Anderson
13		
14	PHIL TUNLEY, Esq.,	for the Defendant, Rob
15	& JENNIFER SAVILLE, Esq.,	Copeland, Dow Jones &
16		Company and Jacquie
17		McNish
18		
19	DIMITRI LASCARIS, Esq.,	for the Defendant,
20		Bruce Livesey
21		
22	MICHAEL DARCY, Esq.,	for the Defendants to
23		the Counterclaim, BC
24		Strategy Ltd. d/b/a
25		Black Cube and BC

1 Strategy UK Ltd. d/b/a
2 Black Cube

3

4 DARYLL LEVITT Self-Represented

5

6 KEVIN BAUMANN Self-Represented

7

8 JEFF McFARLANE Self-Represented

9

10 Also Present: Greg Boland, CEO, West Face Capital
11 Philip Panet, General Counsel, West
12 Face Capital
13 Tanya Barbiero, Law Clerk,
14 Davies Ward

15

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

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS: JAMES RILEY

PAGES

CROSS-EXAMINATION BY MR. MILNE-SMITH
(Cont'd).....254-265
CROSS-EXAMINATION BY MR. LUNG.....265-378
CROSS-EXAMINATION BY MR. BAUMANN.....378-439

**The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose**

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T
and appear on the following pages: 292:22, 326:16

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
260:5, 262:25, 263:8, 263:25, 321:11, 376:4,
376:15, 376:20, 377:1, 377:9, 388:15, 393:17,
396:21, 402:1, 409:10, 411:24, 413:5, 426:18, 436:6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(CONT'D)

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: 255:10, 256:15, 282:19, 284:22, 285:24, 286:10, 287:10, 287:14, 288:10, 289:24, 293:19, 294:7, 339:21, 375:17, 380:4, 383:10, 397:2, 436:15

INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
3	Supplemental Schedule B of the Plaintiffs.....	285/15
4	Electronic brief of documents referred to during the course of Mr. Baumann's cross-examination of Mr. Riley.....	399/2

1 -- Upon commencing at 10:00 a.m.

2

3 JIM RILEY; UNDER PRIOR AFFIRMATION.

4 CROSS-EXAMINATION BY MR. MILNE-SMITH

5 (CONT'D):

6 776 Q. Actually, the first question I had
7 is I just want to clarify something from yesterday
8 with Mr. Moore, to make sure that we understand
9 your position and the scope of it.

10 So, Mr. Moore, you'll recall that
11 yesterday I started asking some questions about the
12 basis for the claim of privilege over
13 communications involving Dan Gagnier, and as I
14 understood it, you indicated that you would be
15 refusing any questions regarding privilege of any
16 kind that were asserted on Schedule B, so not just
17 limited to Black Cube or PSY Group, but that you
18 were refusing questions regarding the assertion of
19 any privilege, including everything on Schedule B;
20 is that correct?

21 MR. MOORE: Yes.

22 BY MR. MILNE-SMITH:

23 777 Q. Okay, and this isn't meant to be
24 an exhaustive list but just by way of greater
25 certainty, that means that you will refuse any

1 questions that would be intended to test the
2 assertion of privilege over Tamara Global, Yossi
3 Tanuri, the SEC, and that is the U.S. Securities
4 and Exchange Commission, the Ontario Securities
5 Commission, Patrick Dalton, Vincent Hanna/Danny Guy
6 or his counsel, Dan Gagnier and Virginia Jamieson;
7 you are refusing any questions over any assertions
8 of privilege, including those individuals or
9 organizations I named; correct?

10 R/F MR. MOORE: Yes, that's right. I mean,
11 I think in several instances questions did not come
12 up yesterday, but as I said, you don't need to put
13 all the questions. So that is fine, I agree with
14 what you have just said.

15 MR. MILNE-SMITH: Okay, thank you.

16 Just so I understand it - and hopefully
17 that echo will go away - is it your position that
18 anything other than Black Cube or PSY Group should
19 be dealt with in the refusals motion before Justice
20 McEwen or the privilege motion before Justice
21 Boswell? I understand Boswell is handling Black
22 Cube and PSY Group.

23 MR. MOORE: Yes.

24 MR. MILNE-SMITH: But where do you say
25 all the other privilege assertions can be tested?

1 MR. MOORE: My understanding is that
2 the dates in December, the 15th and 16th, have been
3 set aside for the privilege issues, and then the
4 Black Cube and PSY-related privilege issues got
5 hived off to be dealt with by Justice Boswell.
6 That is my understanding.

7 BY MR. MILNE-SMITH:

8 778 Q. Fine, okay, and everything else
9 goes to McEwen.

10 And just to be clear, you are not just
11 refusing questions that would invade the privilege.
12 As we saw earlier when I started to ask about
13 Mr. Gagnier, you are refusing questions that would
14 explore the basis for the privilege?

15 R/F MR. MOORE: Yeah, I mean, I think that
16 is a subtle distinction, but sometimes it is
17 difficult to delineate. And so it seemed to me
18 that we could potentially get into some issues and
19 difficulties and it would clutter up the transcript
20 and not be particularly helpful or productive or
21 efficient in terms of what you wanted to get
22 through, so yes.

23 BY MR. MILNE-SMITH:

24 779 Q. Okay, thank you.

25 So let's then pull up, if we could,

1 Tanya, I am going to put one more affidavit on the
2 record here and, Mr. Riley, this is your affidavit
3 from August 20 of this year. It was a reply
4 affidavit to an affidavit of Mr. Boland sworn on
5 May 29th, and I am going to label that as document
6 G for the purposes of this examination.

7 And I would like to go to paragraph 27,
8 and you will see the highlighted portions there.
9 And maybe just scroll up a little bit so you can
10 see the highlighting on (d) as well there, and you
11 can get the whole thing on one page.

12 So is it fair to say, Mr. Riley, that
13 in this affidavit and in particular in this
14 passage, parts of which I have highlighted, you
15 criticize the fund performance of certain funds
16 managed by West Face?

17 A. That is correct.

18 780 Q. And in paragraph 27(a) in
19 particular you say that:

20 "West Face had an abysmal
21 investment track record as a hedge
22 fund"?

23 A. I do.

24 781 Q. And in paragraph (d) you give the
25 detail for that, I suppose, which is you say that:

1 "West Face was marketing off of
2 a negative return of minus 1.6% in
3 YTD March 31, 2017."

4 Is that correct?

5 A. Yes.

6 782 Q. And that is what you characterize
7 as an abysmal investment track record; correct?

8 A. No, I think it is the broader
9 track record in the last five years, but that was
10 in that one period where was minus 1.6.

11 783 Q. Okay, so that is part of it.
12 Let's turn up document 91. And we can see the
13 heading. This is an article from May 14, 2020, in
14 Bloomberg News by Paula Sambo titled "Glassman's
15 Catalyst Says Third Fund Plunged More Than 60%",
16 and it states that:

17 "Catalyst Capital Group Inc.
18 told investors that assets in one of
19 its oldest active funds declined in
20 value by more than 60% last year."

21 A. This was for 2019?

22 784 Q. This is for 2019, because it is
23 May 14, 2020, so it is disclosing the results from
24 2019. This is pre-pandemic.

25 A. Well, no, and I am not quibbling,

1 it is pre-pandemic, but the valuation of that
2 particular asset, Gateway and the other ones in the
3 funds, were affected by COVID because the auditors
4 took the view that it was an event that you had to
5 take into account in valuing the assets.

6 785 Q. Okay, well, let's just look at
7 what this article says:

8 "The Toronto-based firm, which
9 invests primarily in distressed debt
10 and private equity, marked down the
11 value of the portfolio in the
12 Catalyst Fund Limited Partnership
13 III to about \$320 million at the end
14 of last year," meaning the end of
15 2019, "from about \$820 million at
16 the start of the year, according to
17 a document sent to its limited
18 partners."

19 Is that a true reporting of Catalyst
20 reporting to its investors?

21 A. Yes. What I am saying, though, is
22 the reason for that writedown was directly related
23 to COVID because Gateway is a casino that could not
24 be open during COVID.

25 786 Q. So, Mr. Riley, I am going to have

1 to ask you to produce then the reporting that was
2 sent to your investors, because I don't understand
3 how events that started in March of 2020 affect the
4 valuation which says \$320 at the end of last year.

5 U/A MR. MOORE: Well, we'll take that under
6 advisement, but I think Mr. Riley said that the
7 auditors in effect took the position that the COVID
8 events, even though they were post year-end, had to
9 be taken into account in the valuation that was
10 circulated. But in any event, I have your question
11 and we'll take it under advisement.

12 BY MR. MILNE-SMITH:

13 787 Q. And, Mr. Riley, you see the next
14 highlighted paragraph says that the fund started
15 with about 1 billion in 2009. Just on that, so you
16 would agree that it started at 1 billion, and then
17 by the start of 2019, it was at 820 million;
18 correct?

19 A. I would want to defer to my CFO to
20 make sure these numbers are correct and the
21 accounting for them in each of those periods.

22 788 Q. Okay, so that would be -- if that
23 were true, that would be a decline of 18 percent;
24 correct?

25 A. I didn't hear, Matt.

1 789 Q. If true, that would be a decline
2 of 18 percent from 1 billion to 820 million?

3 A. I would want to go back and look
4 at those numbers to make sure that they are
5 accurate, that is all, because part of the impact
6 in Fund III in that time frame was the results of
7 Callidus. So it is not just one event in there.

8 790 Q. Oh, I'm sure that's right. And,
9 Mr. Riley, sometimes the fact is in financial
10 management is sometimes markets move against a fund
11 manager; correct?

12 A. Well, it depends on -- yes.

13 791 Q. And it is not necessarily a sign
14 of incompetence?

15 A. Well, it depends on how you define
16 "competence". In other words, if someone is a good
17 stock-picker, then their track record would
18 generally be more positive than negative. There
19 will be events where it is negative.

20 792 Q. Right, and so the simple fact that
21 Catalyst went from 1 billion at the inception down
22 to 820 million at the beginning of 2019 to 320
23 million at the end of 2019 is not necessarily a
24 sign of incompetence on the part of Catalyst; it
25 could just be you got unlucky, correct?

1 A. Well, I don't think COVID is a
2 matter of luck.

3 793 Q. Then let's talk about what
4 happened before COVID, down from a billion to 820.
5 It is not necessarily incompetence?

6 A. I would want to look at the
7 numbers to make sure. Again, I am deferring
8 because I want to review those numbers with my CFO
9 to make sure they are accurate.

10 794 Q. So take it as an assumption.
11 Assuming that it was down from a billion to 820.
12 That is not necessarily a sign of incompetence on
13 the part of the fund manager?

14 A. No.

15 795 Q. And more important for a fund
16 manager, rather than any particular short-term
17 results, is their reputation for integrity;
18 correct?

19 A. That is important.

20 796 Q. Okay. I would like to see
21 obviously the communications to investors in Fund
22 III, Fund IV and Fund V for year-end 2019, so it
23 was referred to in this article and whatever the
24 equivalents are for Fund IV and V?

25 U/A MR. MOORE: We'll take that under

1 advisement

2 BY MR. MILNE-SMITH:

3 A. And to the extent that those
4 investor communications rely on financial reporting
5 by auditors, accountants and or other external
6 firm, I would like to see their underlying
7 reporting?

8 U/A MR. MOORE: Well, I'll take that under
9 advisement, but I think that we are not likely to
10 agree to that, but I'll take that under advisement.

11 BY MR. MILNE-SMITH:

12 797 Q. Well, put it this way. I would
13 like to know what the basis is for the reporting to
14 investors, and then whatever that is, I would like
15 to see the underlying documentation that supports
16 the reporting to investors.

17 MR. MOORE: Well, let me understand
18 your question. Do you mean by that all of the
19 audit working papers and that kind of material in
20 the hands of the auditors? What are you talking
21 about?

22 MR. MILNE-SMITH: The end product of
23 whatever the auditors produced that was relied on
24 by Catalyst in its reporting to investors.

25 U/A MR. MOORE: All right, we'll take that

1 under advisement.

2 MR. DEARDEN: Why is that relevant, Mr.
3 Milne-Smith?

4 MR. MILNE-SMITH: Pardon me?

5 MR. DEARDEN: Why is it relevant to go
6 into the weeds to the point where you are actually
7 looking for documents from auditors? What is the
8 relevance?

9 MR. MILNE-SMITH: I am not looking to
10 get it from working papers. I am asking for one
11 level down from the reporting to the investors so I
12 can have some comfort in the basis for what is told
13 to investors. Mr. Riley has explained in his
14 testimony this morning that there are requirements
15 by auditors that writedowns be made after the fact
16 and so forth, so I just want to see so I can
17 properly understand the reporting to investors what
18 it was that Catalyst relied on in doing so.

19 MR. DEARDEN: I want to know the
20 relevance.

21 MR. MILNE-SMITH: The relevance was
22 established at the beginning of the
23 cross-examination when Mr. Riley has attacked the,
24 quote, "abysmal track record of West Face". I
25 think it is fair to look at the same kind of

1 information for Catalyst.

2 MR. DEARDEN: That is your basis for
3 relevance?

4 MR. MILNE-SMITH: Yes.

5 MR. DEARDEN: Okay, we'll take it under
6 advisement.

7 MR. MILNE-SMITH: And of course, the
8 anti-SLAPP suit talks about the relevance of harm
9 to the -- harm suffered by the investment manager,
10 and therefore, for the very same reasons that you
11 say that West Face's performance is relevant, I say
12 that the performance of Catalyst is relevant.

13 MR. MOORE: We have your question.

14 MR. MILNE-SMITH: All right, subject to
15 the questions taken under advisement and refused
16 and the undertakings and answers arising therefrom,
17 those are my questions for this witness, and I will
18 turn it over to Mr. Lung.

19 CROSS-EXAMINATION BY MR. LUNG:

20 798 Q. Good morning, Mr. Riley.

21 A. Good morning.

22 799 Q. Can you hear me okay?

23 A. I can. Can you hear me?

24 800 Q. I can hear you just fine.

25 Deana, if you need me to stop or if you

THE CATALYST CAPITAL GROUP INC.
et al.
Plaintiffs
WEST FACE CAPITAL INC. et al.

Plaintiffs by Counterclaim

-and-

-and-

WEST FACE CAPITAL INC. et al.

Defendants
THE CATALYST CAPITAL GROUP INC.
et al.
Defendants to the Counterclaim

-and-

Third Party

CANACCORD GENUITY CORP.

Third Party

Court File No. CV-17-587463-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE DEFENDANTS,
WEST FACE CAPITAL INC. AND
GREGORY BOLAND – Volume 3 of 4**

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO #24264J)

Email: kentthomson@dwpv.com
Tel: 416.863.5566

Matthew Milne-Smith (LSO #44266P)

Email: mmilne-smith@dwpv.com
Tel: 416.863.5595

Andrew Carlson (LSO #58850N)

Email: acarlson@dwpv.com
Tel: 416.367.7437

Fax: 416.863.0871

Lawyers for the Defendants (Plaintiffs by Counterclaim),
West Face Capital Inc. and Gregory Boland