

Court File No. CV-17-587463-00CL  
Court File No. CV-18-593156-00CL

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

**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,  
CLARITY SPRING INC., NATHAN ANDERSON, BRUCE LANGSTAFF, ROB  
COPELAND, , JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD  
MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS, BRUCE  
LIVESEY, JOHN DOES #4-10**

**Defendants**

Court File No. CV-18-593156-00CL

**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 -**

**DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and JEFFREY  
MCFARLANE**

**Defendants**

**SECOND SUPPLEMENTAL MOTION RECORD OF THE DEFENDANTS,  
DOW JONES AND COMPANY, ROB COPELAND AND JACQUIE MCNISH  
(MOTION UNDER S. 137.1 OF THE *COURTS OF JUSTICE ACT*)**

May 11, 2021

**ST. LAWRENCE BARRISTERS LLP**  
33 Britain Street, 2nd Floor  
Toronto ON M5A 1R7

M. Philip Tunley (LSO# 26402J)  
phil@tunleylaw.ca  
Tel: 647.964.3495

Tel: 647.245.2121  
Fax: 647.245.8285

Lawyer for the Defendants,  
Dow Jones & Company, Rob Copeland, and  
Jacquie McNish

TO: **MOORE BARRISTERS**  
Professional Corporation  
1600-393 University Avenue  
Toronto ON M5G 1E6

David C. Moore (LSO# 16696U)  
Tel: 416.581.1818 ext. 222  
david@moorebarristers.ca

Kenneth Jones (LSO# 29918I)  
Tel: 416.581.1818 ext. 224  
kenjones@moorebarristers.ca

**GOWLINGS WLG LLP**  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, ON M5X 1G5

John Callaghan (LSO# 29106K)  
Tel: 416.862.7525  
Fax: 416.862.7661  
John.Callaghan@gowlingwlg.com

Benjamin Na (LSO# 40958O)  
Tel: 416.862.4455  
Fax: 416.862.7661  
Benjamin.Na@gowlingwlg.com

Matthew Karabus (LSO# 61892D)  
Tel: 416.862.7525  
Fax: 416.862.7661  
Matthew.Karabus@gowlingwlg.com

Tel: 416.581.1818  
Fax: 416.581.1279

Lawyers for the Plaintiffs

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**  
Barristers and Solicitors  
155 Wellington Street West  
37th Floor  
Toronto ON M5V 3J7

Kent E. Thomson (LSO# 24264J)  
Tel: 416.863.0871  
kthomson@dwpv.com

Matthew Milne-Smith (LSO# 44266P)  
Tel: 416.863.5595  
mmilne-smith@dwpv.com

Andrew Carlson (LSO# 58850N)  
Tel: 416.367.7437  
acarlson@dwpv.com

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendants,  
West Face Capital Inc. and Gregory Boland

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

Linda M. Plumpton (LSO# 38400A)  
Tel: 416.865.8193  
lplumpton@torys.com

Andrew Bernstein (LSO# 42191F)  
Tel: 416.865.7678  
abernstein@torys.com

Stacey Reisman (LSO# 72184U)  
Tel: 416.865.7537  
Fax: 416.865.7380  
sreisman@torys.com

Tel: 416.865.0040  
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**  
Barristers and Solicitors  
130 Adelaide Street West  
Suite 2400  
Toronto ON M5H 3P5

Rebecca Shoom (LSO# 68578G)  
Tel: 416.601.2382  
Fax: 416.601.4185  
rshoom@lernalers.ca

Lucas Lung (LSO# 52595C)  
Tel: 416.601.2673  
llung@lernalers.ca

Tel: 416.867.3076  
Fax: 416.867.9192

Lawyers for the Defendants,  
Clarity Spring Inc. and Nathan Anderson

AND TO: **MATHERS MCHENRY & CO.**  
161 Bay Street,  
Suite 2700  
Toronto ON M5J 2S1

Devin M. Jarcaig (LSO# 62223U)  
Tel: 416.572.2147  
devin@mathersmchenryandco.com

Fax: 647.660.8119

Lawyers for the Defendant,  
Bruce Langstaff

AND TO: **KEVIN BAUMANN**  
Box 109 Bluffton  
AB T0C0 M0

Tel: 403.505.7784

Defendant

AND TO: **JEFFREY MCFARLANE**  
558 Sunset Drive  
Durham 27713

jmcfarlane@triathloncc.com

Defendant

AND TO: **DARRYL LEVITT**  
Applewood Crescent  
Vaughan ON L4K 073

darryl@dlevittassociates.com  
Tel: 416.879.6965

Defendant

AND TO: **SOLMON ROTHBART GOODMAN LLP**  
Barristers and Solicitors  
375 University Avenue  
Suite 701  
Toronto ON M5G 2J5

Melvyn Solmon (LSO# 16156J)  
Tel: 416.947.1093 ext. 333  
msolmon@srglegal.com

Nancy J. Tourgis (LSO# 37349I)  
Tel: 416.947.1093 ext. 342  
ntourgis@srglegal.com

Tel: 416.947.1093  
Fax: 416.947.0079

Lawyers for the Defendant,  
Richard Molyneux

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

Ben J. Hahn (LSO# 64412J)  
ben@whittenlublin.com  
Tel: 647.640.2667  
Fax: 416.644.5198

Lawyers for the Defendant,  
Gerald Duhamel

AND TO: **MCCARTHY, TÉTRAULT LLP**  
Barristers and Solicitors  
TD Bank Tower  
66 Wellington Street West  
Suite 5300  
Toronto ON M5K 1E6

R. Paul Steep (LSO# 21869L)  
Tel: 416.601.7998  
psteep@mccarthy.ca

Daniel Goudge (LSO# 69632J)  
Tel: 416.601.7598  
Fax: 416.868.0673  
dgoudge@mccarthy.ca

Tel: 416.362.1812  
Fax: 416.868.0673

Lawyers for the Defendant,  
George Wesley Voorheis

AND TO: **DIMITRI LASCARIS LAW PROFESSIONAL CORPORATION**  
360, Rue St. Jacques, Suite G101  
Montreal Quebec H2Y 1P5

A. Dimitri Lascaris (LSO# 50074A)  
alexander.lascaris@gmail.com  
Tel: 514.941.5991  
Fax: 519.660.7845

Lawyer for the Defendant,  
Bruce Livesey

AND TO: **JOHN DOES #4-10**

Defendant

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

Robert Brush (LSO# 40373N)  
Tel: 416.217.0822  
rbush@cmlaw.ca

Clarke Tedesco (LSO# 55291C)  
Tel: 416.217.0884  
ctedesco@cmlaw.ca

Dana Carson (LSO# 65439D)  
Tel: 416.217.0110  
dcarson@cmlaw.ca

Tel: 416.217.0110  
Fax: 416.217.0220

Lawyers for the Defendant,  
Canaccord Genuity Corp.

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

John Adair (LSO# 52169D)  
Tel: 416.941.5858  
jadair@agblp.com

Gord McGuire (LSO# 58364S)  
Tel: 416.351.2781  
gmcguire@agblp.com

Michael Darcy (LSO# 66602R)  
Tel: 416.583.2392  
mdarcy@agblp.com

Tel: 416.499.9940  
Fax: 647.689.2059

Lawyers for the Defendants,  
B.C. Strategy Ltd. dba Black Cube and B.C. Strategy UK Ltd. dba Black Cube

AND TO: **ANDREW LEVY**  
46 Baldwin Farms N.  
Greenwich CT 0631

Defendant

AND TO: **EMMANUEL ROSEN**  
26 Shaar Ha'amakim Street  
Hod Harsron Merkus 45000

Defendant

# INDEX

## INDEX

<b>Tab</b>	<b>Description</b>	<b>Page No.</b>
6	Transcript of Riley, November 17, 2020, pages 445-567	672-799
7	Transcript of Riley, November 18, 2020, pages 761-883	800-928
8	Exhibits from Riley Cross	929-989
A	Exhibit 006 – Sutin Affidavit	929-952
B	Exhibit 009 – Anderson OSC submission form	953-964
C	Exhibit 021 – McNish email to Gagnier, July 31, 2017	965-966
D	Exhibit 024 – Baumann email to TPS, July 6, 2017	967-969
E	Exhibit 026 – Reuters Article March 23, 2018	970-986
F	Exhibit 027 – G&M editorial, Willis, October 30, 2019	987-989
9	Transcript of Mark Sunshine, November 10, 2020	990-1121
10	Amended Order of McEwen J April 7, 2020	1122-1367

# TAB 6

# Catalyst v West Face et al.

Jim Riley

on Tuesday, November 17, 2020



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

[neesonsreporting.com](http://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 Cross-Examination of JAMES RILEY, on  
35 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 17th day of November, 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  
13  
14           ANDREW CARLSON, Esq.,           for the Defendants  
15   (Plaintiffs by  
16   Counterclaim), West  
17   Face Capital Inc. and  
18   Gregory Boland  
19  
20           LUCAS E. LUNG, Esq.,           for the Defendants,  
21   ClaritySpring Inc. and  
22   Nathan Anderson  
23  
24           PHIL TUNLEY, Esq.,           for the Defendant, Rob  
25           & JENNIFER SAVILLE, Esq.,           Copeland, Dow Jones &

1 Company and Jacquie  
2 McNish

3  
4 DIMITRI LASCARIS, Esq., for the Defendant,  
5 Bruce Livesey

6  
7 MICHAEL DARCY, Esq., for the Defendants to  
8 the Counterclaim, BC  
9 Strategy Ltd. d/b/a  
10 Black Cube and BC  
11 Strategy UK Ltd. d/b/a  
12 Black Cube

13  
14 DARYLL LEVITT Self-Represented

15  
16 KEVIN BAUMANN Self-Represented

17  
18 JEFF McFARLANE Self-Represented

19  
20 Also Present: Greg Boland, CEO, West Face Capital  
21 Philip Panet, General Counsel, West  
22 Face Capital

23  
24 REPORTED BY: Deana Santedicola, RPR, CRR, CSR

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. McFARLANE.....447-566  
CROSS-EXAMINATION BY MR. LEVITT.....568-694

\*\*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: 582:14

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
505:3, 539:6, 546:16, 584:1, 587:14, 588:9, 589:21,  
590:13, 595:23, 639:2, 657:7, 685:13

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: 460:5, 467:16, 468:23, 469:8, 478:8, 509:11, 533:1, 545:25, 550:16, 551:7, 583:5, 584:13, 585:4, 585:25, 597:12, 598:14, 602:25, 603:12, 605:14, 607:4, 608:8, 616:16, 619:4, 619:19, 627:1, 628:10, 647:3, 659:24, 660:5, 669:14, 675:18, 679:9, 679:25, 681:25, 682:12, 683:10, 683:17, 684:12

INDEX OF EXHIBITS

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

NO. DESCRIPTION PAGE/LINE NO.

5 Electronic document brief of exhibits referred to by Mr. McFarlane in the cross-examination of Mr. Riley..... 567/3

6 Electronic brief of documents referred to in the course of Mr. Levitt's cross-examination... 648/6

Exhibits For Identification:

A Email from Lorne Morein, sent to Craig Boyer, cc'd to Duane Morrison, September 4, 2014, at 3:56 p.m., subject "FW: Fortress"..... 615/25

1 -- Upon commencing at 10:05 a.m.

2

3 JIM RILEY; UNDER PRIOR AFFIRMATION.

4 CROSS-EXAMINATION BY MR. McFARLANE:

5 1297 Q. Good morning, Mr. Riley, ready to  
6 begin?

7 A. I am. Good morning.

8 1298 Q. Good morning. Just for the  
9 record, could you state your name, please.

10 A. Jim Riley or James A. Riley.

11 1299 Q. James A. Riley, thank you. What  
12 role do you currently have with Catalyst Capital  
13 Group?

14 A. I am a Managing Director.

15 1300 Q. And what past roles have you had  
16 with Catalyst Capital Group?

17 A. I was formerly Managing Director  
18 and Chief Operating Officer.

19 1301 Q. Thank you. Do you currently have  
20 any role with Callidus Capital?

21 A. I do not. I am a shareholder with  
22 Callidus, but I am not -- I have no office.

23 1302 Q. And what past roles have you had  
24 with Callidus Capital?

25 A. I was a Director and Secretary.

1 1303 Q. What committees have you served on  
2 for Callidus or Catalyst?

3 A. None with Catalyst, and with  
4 Callidus I don't believe I was on any committees  
5 that I can recall.

6 1304 Q. So you were never a member of the  
7 Credit Committee?

8 A. Oh, sorry, the Credit Committee.  
9 I apologize, the Credit Committee.

10 1305 Q. Okay.

11 A. I was thinking of committees of  
12 the board.

13 1306 Q. Okay. When did Callidus start  
14 trading as a public company?

15 A. April of 2014.

16 1307 Q. Would that be 2013 by chance or  
17 2014?

18 A. 2014.

19 1308 Q. Okay. And at the time Callidus  
20 went public, did it own XTG?

21 A. No, it did not.

22 1309 Q. What was the current state of XTG  
23 at the time of the IPO?

24 A. I believe it was a borrower from  
25 Callidus.

1 1310 Q. Who were the other members of the  
2 Callidus Credit Committee?

3 A. David Reese and Newton Glassman.

4 1311 Q. Did Newton Glassman exert veto  
5 power over the Credit Committee?

6 A. Any one of the members of the  
7 committee had veto power because it required a  
8 unanimous decision.

9 1312 Q. Is it your position that the loan  
10 to XTG and the subsequent acquisition was at all  
11 times accounted for using Callidus's Significant  
12 Accounting Policies?

13 A. Yes.

14 1313 Q. I would like to turn to document  
15 001 in the documents shared, which I will share on  
16 the screen here, which was the IPO prospectus of  
17 Callidus. Just give me a moment, and I will start  
18 sharing.

19 Did you receive that file, Mr. Dearden  
20 or Mr. Moore?

21 MR. DEARDEN: Yeah, we have your  
22 documents.

23 BY MR. McFARLANE:

24 1314 Q. Okay, thank you. It is coming up  
25 shortly. So if we could turn to page 121, is it

1 large enough on the screen here? Is it sharing  
2 okay?

3 A. Yes, but what we see is page 6 of  
4 some document.

5 MR. DEARDEN: Perhaps, Mr. McFarlane,  
6 each time you refer to one of the documents, you  
7 just want to put on the record what the document is  
8 and if there is a date for it, say the date. So  
9 what is this document 1?

10 BY MR. McFARLANE:

11 1315 Q. Document 1 is the IPO prospectus  
12 of Callidus Capital. I'll just make sure the right  
13 document is sharing here. Can we confirm that is  
14 what is sharing on the screen?

15 A. It is --

16 1316 Q. It is section 3.

17 A. Sorry, Mr. McFarlane, could you go  
18 to the start of that document? I think it is  
19 probably notes to a financial statement, but I  
20 am --

21 1317 Q. Okay.

22 A. It is not -- you'll appreciate  
23 that the page you took me to is not the page from a  
24 prospectus. It looks like it is a page from a  
25 financial statement.

1 1318 Q. Understood. So can you see the  
2 prospectus on page 1 here?

3 A. I do.

4 1319 Q. Okay. So page 121 of this  
5 prospectus includes the Callidus financial  
6 statements for 2011 through 2013.

7 A. Got it, thank you.

8 1320 Q. Okay, so in particular, in section  
9 3(c), and I'll scroll down, specifically I just  
10 want to ask the question that at all times XTG was  
11 treated consistently with the impairment  
12 Significant Accounting Policy?

13 A. To the best of my recollection,  
14 yes.

15 1321 Q. Okay, and specifically the  
16 statement in the second bullet from the bottom:

17 "If the expected restructuring  
18 will not result in derecognition of  
19 the existing asset, then the  
20 estimated cash flows arising from  
21 the modified financial asset are  
22 included in the measurement of the  
23 existing asset based on their  
24 expected timing and amounts  
25 discounted at the original effective

1 interest rate of the existing  
2 financial asset."

3 A. Could you please -- sorry, just  
4 before you go, could you go up? There is a lead-in  
5 to that that I just want to look at.

6 1322 Q. Yes, we are still in the  
7 impairment section.

8 A. No, I understand, but I was just  
9 looking to see the paragraph before the one you  
10 just read to me.

11 1323 Q. Sure.

12 A. [Witness reviews document.]  
13 Okay, I see it.

14 1324 Q. Okay.

15 A. Thank you.

16 1325 Q. So back to the section I read,  
17 which was this second bullet here, it is your  
18 position that at all times XTG was treated  
19 consistently with this Significant Accounting  
20 Policy?

21 A. To the best of my knowledge, yes.

22 1326 Q. Okay, and if we could go to  
23 section 3(f) in the same document, still in  
24 "Significant Accounting Policies", and dealing with  
25 recognition, point (vi) the "Fair Value

1 Measurement":

2 "Fair value is the price that  
3 would be received to sell an asset  
4 or paid to transfer a liability in  
5 an orderly transaction between  
6 market participants at the  
7 measurement date in the principal  
8 or, in its absence, the most  
9 advantageous market to which the  
10 Company has access at that date.  
11 The fair value of a liability  
12 reflects its non-performance risk."

13 Again, Mr. Riley, was XTG treated  
14 consistently with this statement?

15 A. I do not know. I don't know  
16 whether that was the policy that was applied or  
17 not.

18 1327 Q. Okay.

19 A. If you go -- could you go up? I  
20 don't have an answer to that.

21 1328 Q. Okay.

22 A. Could you scroll up to the top of  
23 this, please?

24 1329 Q. Any further?

25 A. At the top.

1 1330 Q. That is the top.

2 MR. MOORE: No, it is not.

3 THE DEPONENT: Okay, so scroll down,  
4 please. Sorry, go back, go back to the top.

5 BY MR. McFARLANE:

6 1331 Q. To the top. Of which section?

7 A. In other words, Mr. McFarlane, I  
8 am trying to answer your questions, but some of  
9 this I wouldn't have particular expertise on or  
10 knowledge.

11 1332 Q. Let's start at the beginning of  
12 the Significant Accounting Policies here, so no  
13 questions on section (a), no questions on (b), (c)  
14 we already addressed, (d) no questions, (e) no  
15 questions, and here is the beginning of section  
16 (f).

17 A. Okay.

18 [Witness reviews document.]

19 Okay, I see that.

20 1333 Q. Okay, and scrolling down through  
21 (f), no questions on sub-point (iii); no questions  
22 on (iv) or (v). So we are in 3(f), sub (vi).

23 A. And as I say, I do not know  
24 whether that was the applicable policy that was  
25 applied in respect of XTG in its accounting on

1 the financial statements. I do know that those  
2 audit -- those financial statements were audited  
3 without qualification --

4 1334 Q. Okay.

5 A. -- by KPMG.

6 1335 Q. I am going to scroll down to  
7 section 3(n), section 3(n) - and I have got an echo  
8 now - 3(n) is "Assets Held For Sale":

9 "Assets held for sale are  
10 carried at the lower of the carrying  
11 amount at designation and fair value  
12 less costs to sell."

13 The question is was XTG treated  
14 consistently with this accounting practice?

15 A. I am going to answer it in a  
16 different way. The accounting policies that were  
17 applied in respect of XTG were reviewed by KPMG in  
18 connection with their audit, and it was an  
19 unqualified audit, with the report.

20 1336 Q. What time period are you referring  
21 to?

22 A. Well, they would have been audited  
23 in connection with this prospectus.

24 1337 Q. But you said XTG was a borrower.  
25 Why would they audit a borrower's statements at

1           this point?

2                           A.    They wouldn't audit those  
3           statements, but they would consider the loan at  
4           that time.

5   1338                   Q.    Okay.  If we could advance to page  
6           150 in this same IPO document, in the "Subsequent  
7           Events" section, Callidus is now carrying the loan  
8           net of a provision at 37.029 million.  Is that  
9           you --

10                          A.    Sorry, are you saying --  
11                          [Court reporter intervenes for  
12                          clarification.]

13                          MR. DEARDEN:  Sorry, Mr. McFarlane,  
14           could you just read the subsequent note 20(a) that  
15           you have highlighted there?  Could you just read it  
16           into the record so we have the dates, please?

17                          BY MR. MCFARLANE:

18   1339                   Q.    Sure.  20(a):  
19                          "During 2013, one of the  
20           Company's borrowers entered formal  
21           restructuring proceedings in Canada  
22           and the U.S.  It is anticipated that  
23           the Company, as a secured creditor  
24           will own the assets of the borrower  
25           when it emerges from protection

1 subsequent to year end. As at  
2 December 31, 2013, the carrying  
3 value of the loan, net of a  
4 provision was \$37.029 [million]."

5 Is that in U.S. or Canadian funds?

6 A. That is Canadian funds.

7 1340 Q. And at that time, was it your  
8 position that XTG was properly provided for in your  
9 loan loss provisions?

10 A. I do not recall whether footnote  
11 20(a) refers to XTG or not.

12 1341 Q. Okay, well, we can confirm that  
13 later. If it was XTG, was it properly provided for  
14 using this value?

15 A. Yes, that is what the financial  
16 statements say.

17 1342 Q. Okay. So at the time of the  
18 Callidus IPO, Callidus had three objective sets of  
19 financial data around the valuation of XTG. At  
20 this point in time -- and just I'll establish for  
21 the record here that the receivership was in  
22 October 2013; correct?

23 A. I do not remember that date, but  
24 do you have the receivership materials here?

25 1343 Q. Yes, I do.

1 MR. DEARDEN: And what do you mean, Mr.  
2 McFarlane, by receivership when --

3 MR. McFARLANE: The application for  
4 receivership was approved on October 29th, 2013.

5 MR. DEARDEN: And that is Justice  
6 Morawetz's order?

7 MR. McFARLANE: Yes, it is.

8 MR. DEARDEN: Okay.

9 BY MR. McFARLANE:

10 1344 Q. Okay, and later on we'll confirm  
11 the vesting date, et cetera, in a moment.

12 So as of the date of the IPO, Callidus  
13 would have had financial data for the lead-up  
14 period of XTG in receivership. You had two other  
15 objective data points, the offer from HIG to  
16 acquire the XTG loan for 17 million, which is on  
17 the record, and you had the liquidation analysis  
18 from the Receiver pre-receivership, a report that  
19 was sealed.

20 So in establishing this value of 37.029  
21 million for XTG, which of these data sets did you  
22 rely on?

23 A. I do not recall, although I would  
24 point out that XTG was one of the loans that was  
25 subject to the IPO guarantee.

1 1345 Q. Noted.

2 A. So from Callidus's point of view,  
3 it was always worth what the amount of the loan  
4 was.

5 1346 Q. We'll have questions about the  
6 guarantee in a minute here. Do you know what role,  
7 if any, discounted cash flow calculations played in  
8 determining the value of XTG at this point in time?

9 A. I do not recall.

10 1347 Q. What role, if any, did fair market  
11 valuation play in determining the value of XTG at  
12 this time?

13 A. I do not recall.

14 1348 Q. But it is your position that none  
15 of that mattered because it was covered by the  
16 Catalyst guarantee?

17 A. No, I am satisfied that the  
18 accounting was correct, and from Callidus' point of  
19 view, if the loan was covered by the guarantee, it  
20 was made whole.

21 1349 Q. So in effect, it did not matter  
22 what the real value was because of the Catalyst  
23 guarantee?

24 A. In functional terms, I agree with  
25 that statement.

1 1350 Q. Okay, thank you. Is there any  
2 documentation to support this valuation of 37.029  
3 million that you can supply to support this  
4 valuation?

5 R/F MR. DEARDEN: I am going to object to  
6 that question.

7 MR. MCFARLANE: On what grounds?

8 MR. DEARDEN: It is not relevant. You  
9 don't need that documentation.

10 MR. MCFARLANE: There is valuation  
11 support as of 12/31/2014. Why would it not be  
12 relevant to ask for valuation support at the time  
13 of the IPO?

14 MR. DEARDEN: I am not arguing with  
15 you, sir.

16 MR. MCFARLANE: Well, I am going to  
17 take that as a refusal then that you will not  
18 supply the valuation to support the 37.029 million.

19 MR. DEARDEN: I am objecting to your  
20 question, yes.

21 BY MR. MCFARLANE:

22 1351 Q. And I would also ask you to  
23 research the fact that I believe that is a U.S.  
24 dollar figure, not a Canadian figure, if you would  
25 undertake to confirm that?

1 MR. DEARDEN: Sorry, which figure are  
2 you referring to?

3 BY MR. McFARLANE:

4 1352 Q. 37.029.

5 A. And, Mr. McFarlane, if you could  
6 look at the top of the financial statement, it  
7 states it is expressed in thousands of Canadian  
8 dollars.

9 1353 Q. Okay, so that is your position?

10 A. That is --

11 1354 Q. Okay.

12 A. I can only go by what I see on the  
13 financial statements.

14 1355 Q. All right. Moving on, did  
15 Callidus have a defined policy of non-accrual of  
16 interest on non-performing loans, as most lenders  
17 do?

18 A. In terms -- it would depend on the  
19 loan, but under the arrangements that we had, cash  
20 was swept first to pay interest and second to pay  
21 principal.

22 1356 Q. So at a point in time, if there  
23 was no cash to sweep for interest, what happened?

24 A. I would say there would have to be  
25 an impairment to that loan and possibly an increase

1 in the guarantee, depending on whether the loan was  
2 guaranteed or not. XTG's was guaranteed.

3 1357 Q. In that scenario, would the clock  
4 continue to run on interest income?

5 A. Well, are we talking about a loan  
6 that is -- in the case of XTG, that eventually was  
7 carried as assets held for sale?

8 1358 Q. I am talking about any --

9 A. There would be no interest at that  
10 type.

11 1359 Q. Apologies. I am speaking about  
12 any non-performing loan that could not pay  
13 interest, was interest income still accrued?

14 A. Sorry, are we talking about XTG or  
15 are we talking about something else?

16 1360 Q. We are speaking about Callidus'  
17 financial policy.

18 A. If there was cash available, it  
19 swept to pay interest.

20 1361 Q. And if there was no cash  
21 available, did Callidus still accrue --

22 A. It would probably be written off  
23 at that point.

24 1362 Q. Was it accrued and then written  
25 off or did it stop accruing, as most financial

1 lenders do?

2 A. Well, I think actually under IFRS  
3 you still have to accrue it and then you have to  
4 write it off.

5 1363 Q. Okay.

6 A. I believe that is the way IFRS  
7 works. So your statement I guess I disagree with.

8 1364 Q. How does or did Callidus define a  
9 non-performing loan?

10 A. I don't recall a specific policy.  
11 I think each loan was reviewed at each quarter-end  
12 to determine what its carrying value should be.

13 1365 Q. So there was no global policy?

14 A. Not that I can recall.

15 1366 Q. At the point Callidus would  
16 acquire a business, often through a bankruptcy  
17 proceeding, did it stop charging interest at that  
18 point?

19 MR. DEARDEN: I am going to object to  
20 the "often" part of your question --

21 MR. McFARLANE: Fair enough.

22 MR. DEARDEN: But he can --

23 MR. McFARLANE: Let me rephrase.

24 MR. DEARDEN: No, it is okay, he'll  
25 answer it without agreeing that it was often

1 through bankruptcy.

2 THE DEPONENT: Once a company was  
3 acquired through whatever process was applicable,  
4 then it was consolidated and there are two parts to  
5 that.

6 One is from a financial point of view,  
7 if there was nothing in the financial statements  
8 for interest, we sometimes would charge interest  
9 just as a way of disciplining management, but it  
10 was not -- it had no effect on the financial  
11 position in the Callidus financial statements.

12 BY MR. MCFARLANE:

13 1367 Q. In that scenario, that specific  
14 scenario that you just described, would that amount  
15 imposed for management discipline purposes still be  
16 charged to the Catalyst guarantee?

17 A. No.

18 1368 Q. Okay, I am going to take you to  
19 document 002, the Bluberi appeal. Let me know when  
20 you can see it.

21 A. I am --

22 MR. DEARDEN: Let's just indicate, Mr.  
23 McFarlane, what the document is.

24 MR. MCFARLANE: This is in reference to  
25 the Bluberi CCAA case, and this is a Court of

1 Appeal decision.

2 MR. DEARDEN: Of Quebec.

3 MR. McFARLANE: From Quebec.

4 MR. MOORE: Well, let's have the date.

5 August 12th, I don't know if there is more than one

6 interim ruling or whatever, maybe not, but it is

7 dated August 12th, 2016?

8 BY MR. McFARLANE:

9 1369 Q. Correct. I'll take you to page 2,  
10 the highlighted section here:

11 "In so doing, the CCAA Judge  
12 issued the following order in  
13 paragraph [35] of the judgment in  
14 appeal:

15 'Wherefore the Court Declares and  
16 Orders that any and all forms of  
17 interest, costs, penalties, fees or  
18 other additional amounts shall cease  
19 to accrue and be accounted for as of  
20 and from the Risk Shifting Date, as  
21 such terms are defined in the APA."

22 Mr. Riley, in layman's terms, how do  
23 you interpret this section?

24 A. That no amounts of interest, et  
25 cetera, will be charged to Bluberi, the existing

1 Bluberi in CCAA, after the risk-shifting date as  
2 defined in I think that is the Asset Purchase  
3 Agreement.

4 1370 Q. Okay. Now, isn't a risk-shifting  
5 date consistent with Callidus's own practice of  
6 consolidation once it controls an entity?

7 A. I am not sure I understand the  
8 question.

9 1371 Q. When Callidus speaks to  
10 consolidation in its significant accounting  
11 practices, and I am going to take you back to the  
12 IPO prospectus -- let me just find the correct  
13 page.

14 So we are in section 3, point (i) of  
15 the prospectus in the 2013 financial statements,  
16 and point (i) "Consolidation" says:

17 "The Company consolidates any  
18 entities which it controls. Control  
19 is established when the Company has  
20 the power over the entity, exposure  
21 or rights to variable returns from  
22 its involvement, and the ability to  
23 exercise power to affect the amount  
24 of returns. The Company assesses  
25 individual loans for control at each

1 reporting date."

2 My question, and it is an involved  
3 question, is why would Callidus appeal this ruling  
4 from a CCAA judge that it could not continue  
5 charging interest and fees after effectively risk  
6 and control has shifted when its own policies says  
7 it will consolidate results and, by definition,  
8 consolidation means you are eliminating  
9 inter-company charges?

10 A. I do not recall the circumstances  
11 of that appeal.

12 1372 Q. Would you be willing to share why  
13 Callidus appealed something that appears to be  
14 consistent with its own stated Significant  
15 Accounting Policy?

16 R/F MR. DEARDEN: No.

17 MR. McFARLANE: So we have a refusal on  
18 that point?

19 MR. DEARDEN: You do.

20 BY MR. McFARLANE:

21 1373 Q. Mr. Riley, earlier you stated at  
22 the time of the IPO that Callidus did not own XTG,  
23 which was --

24 A. To the best of my recollection,  
25 that is correct.

1 1374 Q. Okay. Did Callidus control XTG at  
2 the time of the IPO?

3 A. No.

4 1375 Q. It did not control, okay. Can you  
5 confirm that Callidus took possession of XTG  
6 through a successful stalking horse bid during the  
7 receivership process?

8 A. Yes.

9 1376 Q. If we can go to document 3, which  
10 is the First Report of the Receiver. Just for  
11 context, there is the first page. We are going to  
12 page 7 in the First Report of the Receiver, section  
13 3.2(2), "Sale Process Results":

14 "On November 19, 2013, the  
15 Receiver advised Callidus that it  
16 was the 'successful bidder' and that  
17 the Receiver would promptly file  
18 motion materials to apply for the  
19 Vesting Order [...]"

20 And the vesting order subsequently came  
21 on November 22nd. Does this not constitute  
22 control?

23 R/F MR. DEARDEN: He is not going to  
24 provide you some -- he is not -- I'm objecting to  
25 that question.

1 BY MR. McFARLANE:

2 1377 Q. There is no grounds to object to  
3 that question, Mr. Dearden. Quite clearly, the  
4 company was vested to Callidus through the  
5 receivership process applied for on the 19th of  
6 November, 2013. The vesting order was signed  
7 November 22nd, 2013. Does that constitute control?

8 R/F MR. DEARDEN: He is not here to  
9 interpret orders or to apply what he thinks the  
10 definition of "control" is to a particular fact  
11 situation. The documents say what they say. I  
12 object to your question.

13 MR. McFARLANE: Mr. Riley is a  
14 sophisticated investor. He understands very  
15 clearly what these definitions mean. Does this  
16 constitute control?

17 MR. DEARDEN: I told you I object.

18 MR. McFARLANE: On what grounds?

19 MR. DEARDEN: I am not arguing with  
20 you, Mr. McFarlane.

21 MR. McFARLANE: On what grounds are you  
22 objecting to --

23 MR. DEARDEN: I'm on the record, sir,  
24 as to why he is not going to answer that question.

25 BY MR. McFARLANE:

1 1378 Q. Going back to document number 1,  
2 "Significant Accounting Policies", "Consolidation",  
3 and section 3(i), and my question, Mr. Riley, is as  
4 of November 22nd, 2013, did Callidus have exposure  
5 or rights to variable returns from its involvement  
6 in XTG?

7 A. Could you ask me that question  
8 again, please?

9 1379 Q. We have established as of November  
10 22nd, 2013, Callidus was successful in its stalking  
11 horse bid. Through court orders the company was  
12 vested. My question is as of November 22nd, 2013,  
13 did Callidus have exposure or rights to variable  
14 returns from its involvement in XTG?

15 MR. DEARDEN: Well, what do you mean by  
16 "exposure or rights to variable returns from its  
17 involvement in XTG"?

18 MR. McFARLANE: I am reading a Callidus  
19 Significant Accounting Policy. I am assuming that  
20 Mr. Riley as a director would know what his own  
21 Significant Accounting Policies mean.

22 MR. DEARDEN: Well, I asked you to tell  
23 Mr. Riley what you mean by "exposure or rights to  
24 variable returns".

25 BY MR. McFARLANE:

1 1380 Q. I will give you my interpretation,  
2 but this is a Callidus policy. My interpretation  
3 would mean they win or lose because of their  
4 exposure as of a certain point in time.

5 My question is, as of November 22nd,  
6 2013, did Callidus have exposure or rights to  
7 variable returns from its involvement in XTG?

8 A. I am just reading from my  
9 affidavit to make sure I have covered this and just  
10 so I am not saying something that is incorrect.

11 [Witness reviews document.]

12 Could you ask me the question again,  
13 please?

14 1381 Q. Mr. Riley, as of November 22nd,  
15 2013, by virtue of the vesting order which  
16 confirmed the successful stalking horse bid for the  
17 assets of XTG, did Callidus have exposure or rights  
18 to variable returns from its involvement in XTG?

19 MR. DEARDEN: Before -- Mr. McFarlane,  
20 the company XTG is still under receivership.

21 THE DEPONENT: Yes, that is my point.  
22 The receivership didn't end until XTG was  
23 transferred to Callidus, which occurred I believe  
24 in 2015 -- or 2014 -- 2015, I think, 2015.

25 BY MR. McFARLANE:

1 1382 Q. In January 2015 XTG emerged from  
2 receivership, but on November 22nd, 2013, 14-plus  
3 months earlier, Callidus's stalking horse bid was  
4 approved by the court and was vested.

5 A. And --

6 1383 Q. Did after that point in time  
7 Callidus have exposure or rights to variable  
8 returns?

9 A. I do not believe that is a correct  
10 statement. It was still under the control of the  
11 Receiver and under the court supervision until the  
12 actual transfer of XTG.

13 1384 Q. So your position is Callidus had  
14 no exposure or rights, meaning Callidus could not  
15 make money or lose money on XTG during  
16 receivership?

17 MR. DEARDEN: He didn't say that.

18 THE DEPONENT: I didn't say that. I  
19 did not say that.

20 BY MR. McFARLANE:

21 1385 Q. That would be the explicit  
22 definition of "exposure to variable returns". You  
23 made money or you lost money.

24 A. I am confused by your question.

25 1386 Q. I don't think you should be, Mr.

1 Riley. Did Callidus have the ability to exercise  
2 power that would affect the returns of XTG during  
3 receivership?

4 A. Could you go back to -- this is an  
5 accounting policy relating to consolidation.

6 1387 Q. Yes.

7 A. You consolidate when you control  
8 that entity.

9 1388 Q. Yes.

10 A. The entity was at all times that  
11 you are talking about in receivership, under Duff &  
12 Phelps as the Receiver and with the court  
13 supervision under Mr. Justice Morawetz. So I don't  
14 think that the --

15 1389 Q. Callidus's Significant Accounting  
16 Policy makes no reference to receivership. The  
17 stated accounting policy, as of a point in time you  
18 had exposure to variable returns, you would  
19 consolidate?

20 MR. DEARDEN: He has answered your  
21 question, sir.

22 BY MR. MCFARLANE:

23 1390 Q. Mr. Dearden, I respectfully  
24 disagree. He has not explicitly said that Callidus  
25 has had control of XTG legally since November 22nd,

1 2013, and according to Callidus's own Significant  
2 Accounting Policies should have consolidated?

3 A. No, I disagree with that statement  
4 and I think KPMG would disagree as well.

5 1391 Q. Okay, all right, let's move on.

6 When Callidus does consolidate its  
7 financial results, what exactly does that mean in  
8 practice with respect to inter-company charges like  
9 interest fees, expenses? How are they eliminated?

10 A. They are eliminated. They are  
11 taken out of the income statement.

12 1392 Q. Is there a situation in which they  
13 could be eliminated and still charged to the  
14 Catalyst guarantee?

15 A. Sorry, what charge to the Catalyst  
16 guarantee?

17 1393 Q. Professional fees, interest,  
18 capital, principal?

19 A. No. No. Principal yes, but not  
20 interest.

21 1394 Q. So interest could not be  
22 eliminated and charged to the Catalyst guarantee?

23 MR. DEARDEN: That is not what he said.

24 THE DEPONENT: Could you please ask the  
25 question?

1 BY MR. MCFARLANE:

2 1395 Q. My question was, when these  
3 inter-company charges are eliminated, are there  
4 situations where they could be eliminated from the  
5 financial statements of Callidus but still charged  
6 to the Catalyst guarantee?

7 A. I apologize, I do not understand  
8 the question. Are you telling me -- are you asking  
9 me does the guarantee cover interest? Is that what  
10 you are asking me?

11 1396 Q. I am asking --

12 A. I am not trying to be  
13 argumentative.

14 1397 Q. No, I understand.

15 A. I am not trying to be  
16 argumentative.

17 1398 Q. Apologies if it is at all not  
18 clear, but in accounting under consolidation, you  
19 would eliminate related-party transactions. So for  
20 example, if fees were charged between entities  
21 which look like revenue on one side, they are  
22 eliminated on the other. Fees could take any  
23 number of forms. They could be professional fees.  
24 They could be management fees. They could be  
25 facility fees. They could be interest.

1                   Are there any scenarios under which  
2                   inter-company fees within Callidus and assets held  
3                   for sale or assets controlled by Callidus could be  
4                   eliminated yet still charged to the Catalyst  
5                   guarantee?

6                   A.    The Catalyst guarantee relates to  
7                   the loan amount, so you would have to make  
8                   adjustments to get back to what the proper  
9                   principal amount that was covered under the  
10                  guarantee.

11   1399            Q.    Okay, and the guarantee always  
12                  covered principal?

13                  A.    Correct.

14   1400            Q.    And did the guarantee cover  
15                  professional fees?

16                  A.    No.

17   1401            Q.    Did it cover interest?

18                  A.    No.

19   1402            Q.    Okay, thank you.  Let's see, let's  
20                  go to document number 5, which is the initial  
21                  report of the Receiver in the XTG matter.

22                  At page 23 -- and I am going to scroll  
23                  back a page here.  This is the definition of "sale  
24                  process", and we are in the section that speaks to  
25                  the stalking horse bid and in this section it

1 insists that any competitive bid must contemplate a  
2 closing date of December 31st, 2013. Did that  
3 imply that Callidus would have its transaction  
4 concluded by this date?

5 A. I have no basis for answering that  
6 question.

7 1403 Q. Why did Callidus leave XTG in  
8 receivership until January 2015?

9 A. Two principal reasons. One was  
10 the risk of a tax inversion which would have had  
11 adverse tax consequences to Callidus. It took time  
12 to do the restructure that eliminated that risk.

13 And once that was done, if we had  
14 concluded the transaction I think it was November  
15 of 2014, we would have had to do two audits, one at  
16 that interim date and then one subsequent to  
17 December 31. So we deferred to I believe early  
18 January so we only had to do one audit.

19 1404 Q. Okay. And can I assume that given  
20 your presentation in the stalking horse bid that  
21 you were unaware that a tax inversion was a  
22 probability at this time?

23 A. I do not recall.

24 1405 Q. If you had done an audit at  
25 November 2014, and I understand the practical

1 reasons for not wanting to do two audits, would you  
2 have had to re-value XTG at that point in time?

3 MR. DEARDEN: Don't answer. It is a  
4 hypothetical.

5 MR. McFARLANE: No, it is a question  
6 about accounting policy. It is far from  
7 hypothetical.

8 R/F MR. DEARDEN: If you did an audit in  
9 November 2014, that is a hypothetical.

10 BY MR. McFARLANE:

11 1406 Q. Let me rephrase. With every  
12 annual audit, you would be required to value an  
13 asset of that consequence; correct?

14 A. Yes.

15 1407 Q. Was there any decision or debate  
16 or communication about deliberately leaving XTG in  
17 receivership until after the IPO?

18 A. I do not recall any such  
19 discussion.

20 1408 Q. And do you recall any conversation  
21 about when XTG should be brought out of  
22 receivership?

23 A. It would have been in the -- that  
24 discussion would have turned on when KPMG was  
25 satisfied that we had done a sufficient

1 re-organization or done sufficient things to avoid  
2 inversion.

3 1409 Q. Okay. So for the entirety of  
4 2014, XTG remains in receivership, and during that  
5 time was Callidus charging interest to XTG?

6 A. Interest would have been charged  
7 and was being paid under the cash sweep. Proceeds  
8 from the cash would be applied first to interest,  
9 and there was sufficient cash in that period to pay  
10 interest.

11 [Court Reporter intervenes for  
12 clarification.]

13 There was sufficient proceeds from the  
14 cash sweep to pay interest at all material times.

15 BY MR. McFARLANE:

16 1410 Q. And was that the result of  
17 additional advances from Callidus to XTG while in  
18 receivership?

19 A. Since interest was paid out of the  
20 cash sweep, the remaining balance of any cash swept  
21 was reducing principal, and further advances were  
22 made based on the availability principles.

23 1411 Q. I am going to go to document  
24 number 6, which is an exhibit filed as a part of  
25 the Dow Jones materials.

1 MR. DEARDEN: Could you just indicate,  
2 Jeff, what it is?

3 BY MR. McFARLANE:

4 1412 Q. This appears to be a loan  
5 statement for XTG from Callidus for the period of  
6 May 2014. We are on page 130, which shows a  
7 variety of transactions, and at the bottom would  
8 you agree that represents an interest charge for  
9 this particular facility?

10 A. Yes.

11 1413 Q. Okay, and fast-forwarding to  
12 Facility A in U.S. dollars, and we are now on page  
13 133, the third-last line from the bottom, is that a  
14 fee that Callidus is charging XTG for monitoring  
15 while in receivership?

16 A. Yes.

17 1414 Q. And that fee would translate to  
18 income in Callidus's public financial statements  
19 now that Callidus was a publicly traded company?

20 A. Are we in receivership at this  
21 stage?

22 1415 Q. Yes.

23 A. Sorry, it is just that we have  
24 gone through a lot of dates. Yes, then it would  
25 have been included.

1 1416 Q. We are in receivership but now  
2 public.

3 A. Yes.

4 1417 Q. The last line appears to indicate  
5 another interest charge, \$656,000 U.S. for May  
6 2014. Would that also have showed as interest  
7 income in Callidus's second quarter financial  
8 statements 2014?

9 A. Yes.

10 1418 Q. Okay.

11 A. To the best of my recollection.

12 1419 Q. And fast-forwarding here to  
13 Facility D, and apologies for bouncing around, page  
14 138, and this appears to represent that as of May  
15 21st, 2014, Callidus had spent \$600,000 USD on  
16 professional fees with respect to XTG; is that an  
17 accurate interpretation?

18 A. Ask the question -- could you ask  
19 the question, please?

20 1420 Q. This statement appears to indicate  
21 that through May 31st, 2014, Callidus set up a  
22 Facility D to accrue \$600,000 in fees related to  
23 XTG, professional fees?

24 A. I don't have a context for that.  
25 I see a balance amount, but I don't know -- Allen &

1 Overy is a law firm, so...

2 1421 Q. Okay. Scrolling back up to page  
3 137, we have Facility D in Canadian funds in the  
4 same time period, payments to Chaitons, one of your  
5 law firms; correct?

6 A. Yes.

7 1422 Q. And payments to Duff & Phelps as  
8 Receiver, almost \$100,000; correct?

9 A. Well, Chaitons I believe was  
10 acting for Duff & Phelps.

11 1423 Q. I seem to agree, from memory. So  
12 through this period, Callidus had spent 2.1 million  
13 on fees to professionals to that point in time on  
14 XTG?

15 A. Well, those were actually charges  
16 to XTG for which advances were made to pay XTG's  
17 expenses.

18 1424 Q. Okay. So would this 2.1 million  
19 be covered under the Catalyst guarantee?

20 A. Is it part of a facility?

21 1425 Q. This is your loan statement. You  
22 would probably know better than I would.

23 A. Well, I am looking and it says  
24 "Loan Facility D", so Facility D would have been --  
25 the principal of Facility D would have been subject

1 to the guarantee.

2 1426 Q. Okay.

3 A. So if advances were made to pay  
4 those, then they were covered under the principal  
5 of that loan.

6 1427 Q. And so previously you had stated  
7 professional fees were not covered by the  
8 guarantee?

9 A. I did not say that, I believe.  
10 What I said was what is covered is the principal of  
11 the loan. To the extent that the loan is advanced  
12 to XTG for the purpose of paying the Receiver's  
13 fees or the counsel to the Receiver, then those are  
14 advances on the loan, principal advances.

15 1428 Q. Okay. So if we could go back to  
16 page 133, which is -- let's see which facility is  
17 this one. Facility A, U.S. dollars, in this period  
18 you charged 657,000, roughly, U.S. dollars. There  
19 was an additional 131,000 Canadian dollars. At  
20 that point in time, the Canadian dollar was worth  
21 roughly -- or the U.S. dollar was worth 1.08  
22 Canadian dollars, which means in aggregate Callidus  
23 charged XTG \$778,000 in interest in that month;  
24 does that sound accurate?

25 A. Sorry, you -- I am not sure that

1 was a question because I'm not sure I am following  
2 your math. What amounts are you converting at what  
3 rate?

4 MR. DEARDEN: And what date.

5 BY MR. McFARLANE:

6 1429 Q. 131,000 Canadian at 1.08, so  
7 divide by --

8 A. Well, I don't see that number you  
9 are referring to, the 131.

10 1430 Q. Here it is.

11 A. And is this in U.S. dollars or  
12 Canadian dollars?

13 1431 Q. That is a Canadian dollar amount.

14 MR. DEARDEN: What page have you shown,  
15 Mr. McFarlane, is in the period of May --

16 [Court Reporter intervenes for  
17 clarification.]

18 MR. McFARLANE: We were referring to  
19 page 130, XTG Facility A, Canadian dollars, and  
20 there is \$131,666, which is at the exchange rate of  
21 the day worth approximately \$121,000 U.S.

22 MR. DEARDEN: And again, the date is  
23 May 31st, 2014.

24 BY MR. McFARLANE:

25 1432 Q. Correct.

1                   A.    And assuming your math is correct,  
2                   I'll agree with you.

3   1433            Q.    So if we add that 121,000  
4                   converted U.S. amount to the 656, we then have  
5                   approximately \$778,000 U.S. that was charged to XTG  
6                   in a single month in receivership; correct?

7                   A.    Yes, and paid for out of the cash  
8                   sweep.

9   1434            Q.    Okay.  Cash provided by Callidus?

10                  A.    Well, no.  The cash sweep, as you  
11                  recall, there was a lock box with every one of our  
12                  loans, so all of the receivables that come in go  
13                  into the lock box.  From there the cash from the  
14                  lock box is applied against the loan.  The first  
15                  use of that cash is to pay interest, and the  
16                  balance goes to pay down principal.

17   1435            Q.    Okay.  So if XTG were in  
18                  receivership for 13-plus months, would this level  
19                  of interest charge have been typical?

20                  A.    It would have been -- I assume  
21                  that that is the amount that was payable under the  
22                  loan agreement.

23   1436            Q.    Okay.  So if we were to  
24                  extrapolate that over 14 months, 13 months, sorry,  
25                  we would be at roughly 10 million U.S. in interest

1           that was charged to XTG during receivership, plus  
2           or minus maybe 10 percent?

3                     A.    I can't do the math that quickly.

4   1437            Q.    Okay.  And all of that interest  
5           would have been recognized after the IPO as income  
6           in Callidus's public financial statements?

7                     A.    I believe that is correct.

8   1438            Q.    Okay.  Do you recall the effective  
9           rate of interest you would charge to XTG or someone  
10          in its position?

11                    A.    I do not recall, but somewhere in  
12          the materials I am sure there is a loan agreement  
13          that supports those rates.

14   1439            Q.    Would it surprise you if it was in  
15          the 20 to 21 percent range?

16                    A.    Does that include fees?

17   1440            Q.    No.

18                    A.    That is just interest?

19   1441            Q.    Yes.

20                    A.    I don't recall what the interest  
21          rate was.

22   1442            Q.    Okay, so you don't recall the  
23          interest rate charged to XTG, but 20 to 21 percent  
24          wouldn't surprise you?

25                    MR. DEARDEN:  He didn't say that.

1 MR. MCFARLANE: I think he did.

2 MR. DEARDEN: He said, "I don't recall  
3 what the interest rate was."

4 BY MR. MCFARLANE:

5 1443 Q. Okay, I'll shift gears a little  
6 bit here. Multiple documents on the record refer  
7 to the Catalyst guarantee. Can you please explain  
8 how this works for investors in Callidus? And I'll  
9 take us back to the prospectus, if it is helpful.

10 A. Sorry, could you ask the question?  
11 Ask it as a question.

12 1444 Q. What is the benefit of the  
13 Catalyst guarantee for Callidus investors? Let me  
14 ask it that way.

15 A. The benefit was that if a loan was  
16 on the watch list or went onto the watch list  
17 within 12 -- or its next review period, it would  
18 be -- the principal amount would be guaranteed by  
19 Catalyst Funds to Callidus, which meant there was  
20 not a loss of -- there would not be a risk of loss  
21 of principal.

22 1445 Q. Okay. And in the prospectus, I  
23 believe you indicated that only applies to  
24 principal; correct?

25 A. Yes.

1 1446 Q. Okay. Did that policy change at  
2 some point?

3 A. To extending beyond principal?

4 1447 Q. Yes, or in any other way.

5 A. There was one change, and that was  
6 to clarify that cash swept from the lock boxes  
7 would be applied first to interest.

8 1448 Q. Okay, which I think the initial  
9 guarantee statement -- and I am just going to find  
10 it here in the prospectus real quick. Where is the  
11 Catalyst guarantee.

12 Okay, and --

13 A. Could you increase the size of  
14 that, please?

15 1449 Q. Yes.

16 MR. DEARDEN: And what is the date of  
17 this? Like what is the title and the date of this  
18 document, Mr. McFarlane?

19 MR. McFARLANE: This is the IPO  
20 prospectus April 15, 2014.

21 MR. DEARDEN: And we are on page?

22 BY MR. McFARLANE:

23 1450 Q. We are on page 11. It speaks  
24 to -- it starts to speak to the Catalyst guarantee.  
25 And there is another section in here, I misplaced

1 the actual reference, very quickly but I believe  
2 Mr. Riley's recollection is correct that it applies  
3 to principal because cash sweeps were used to pay  
4 interest.

5 So, okay, and the clarification you  
6 referred to one more time, what was that in terms  
7 of policy change?

8 A. There was a clarification. And it  
9 is in my affidavit. Do you have that document? I  
10 don't remember the date.

11 MR. DEARDEN: Do you have the exhibit  
12 number? Exhibit 86, I think.

13 THE DEPONENT: 86 to the libel?

14 MR. MCFARLANE: So 86 to the libel?  
15 Okay, I have got it here. I can share it.

16 MR. DEARDEN: It should be a document,  
17 Mr. McFarlane, that is dated February 16, 2015, a  
18 clarification memorandum.

19 BY MR. MCFARLANE:

20 1451 Q. Okay, I think this is the document  
21 here, Mr. Riley.

22 A. Yes. Well, that is the exhibit.  
23 It is there, thank you. Could you increase it,  
24 please?

25 1452 Q. Okay, is that large enough?

1 A. Yes, thank you.

2 1453 Q. And could you take us to the  
3 section where that clarification resides?

4 A. I am going to have to read the  
5 document.

6 1454 Q. Okay.

7 A. [Witness reviews document.]  
8 So in the fourth bullet point.

9 1455 Q. Okay.

10 A. And can you highlight that bullet  
11 point, please?

12 1456 Q. So this section?

13 A. Yes.

14 MR. DEARDEN: Read it into the record.

15 THE DEPONENT: And are you going to  
16 read this into the record, Mr. McFarlane?

17 BY MR. MCFARLANE:

18 1457 Q. So, Mr. Riley, what I asked for  
19 was an explanation.

20 A. Are you going to read this into  
21 the record or not?

22 1458 Q. I asked the question, Mr. Riley,  
23 if you would explain where the policy change to  
24 include -- or any policy change is the question.

25 MR. DEARDEN: It is a clarification.

1 THE DEPONENT: This whole document is a  
2 clarification of the principles that were being  
3 applied.

4 MR. McFARLANE: Okay.

5 MR. DEARDEN: And for the record,  
6 because no one is going to know what this bullet  
7 says, it reads:

8 "The cash sweep on a loan by  
9 loan basis arising from blocked  
10 accounts or by way of direction or  
11 other means will, as between  
12 Callidus and Catalyst, be internally  
13 allocated in the following priority:  
14 firstly, to accrued and unpaid  
15 interest and fees on any loan made  
16 by Callidus; secondly, to principal  
17 and other amounts owing under any  
18 such loan; and finally, without  
19 duplication, to payables and other  
20 cash requirements of the borrower.  
21 This will be calculated on a  
22 running, cumulative basis.

23 "The above clarifications apply  
24 to all loans subject to the  
25 above-mentioned guarantees" is the

1 next bullet.

2 BY MR. MCFARLANE:

3 1459 Q. Okay.

4 So if Catalyst guaranteed losses in  
5 Callidus, who ultimately bore the expense of that  
6 guarantee?

7 A. It would be Funds III and IV.

8 1460 Q. What was the primary purpose for  
9 including the guarantee in the prospectus?

10 A. Taking XTG as an example, the  
11 underwriters wanted to exclude it if Callidus was  
12 going to bear the...[inaudible]

13 [Court Reporter intervenes for  
14 clarification.]

15 Sorry, do you want me to start over?  
16 So could you ask the question again? Could someone  
17 read the question for me?

18 MR. DEARDEN: What was the primary  
19 purpose for including the guarantee in the  
20 prospectus?

21 THE DEPONENT: The underwriters would  
22 have excluded, for example, XTG from the  
23 transaction; i.e., we would have been required to  
24 take it out of corporate solution. With the  
25 guarantee in place, there was -- the risk of loss

1 stayed with the funds and it could then be subject  
2 to the IPO because the risk was retained by the  
3 funds.

4 BY MR. MCFARLANE:

5 1461 Q. Did this have anything to do with  
6 the common management between Callidus and  
7 Catalyst?

8 A. I don't think that was the  
9 purpose. The purpose was to benefit investors by  
10 having no risk of loss transferred on the IPO.

11 1462 Q. Did the Catalyst guarantee give  
12 rise to any conflicts of interest between Callidus  
13 and Catalyst?

14 A. No. Excuse me, let me rephrase.  
15 When I say no conflict of interest, in effect any  
16 disagreement between Callidus and Catalyst was  
17 resolved by having independent directors on one  
18 side and the balance of the board on the other  
19 side, namely, Newton and I.

20 1463 Q. Was there any discussion around  
21 XTG in that context?

22 A. No.

23 1464 Q. Was the guarantee uncapped?

24 A. It was uncapped.

25 1465 Q. And I am going to shift gears to

1 document 7, the 2014 financial statements for a few  
2 questions, and go to page 19. So the  
3 guarantee -- actually, let me go back to the  
4 balance sheet real quick.

5 And so the guarantee asset shows up for  
6 the first time in 2014; correct? I'll make it a  
7 little bigger. This is the line that relates to  
8 the Catalyst guarantee?

9 A. Yes, that is at -- when you say  
10 "shows up for the first time", was it in any  
11 balance sheet prior to that date? No, 2013, okay,  
12 thank you.

13 1466 Q. You have got your 2013 comp right  
14 there, so no, correct?

15 A. Yes, now I know. Okay, now I  
16 know, because the guarantee was not in place in  
17 2013.

18 1467 Q. Right, so if we go --

19 A. And so I see here the asset.  
20 Pardon me?

21 1468 Q. Apologies. I think we are clear  
22 on that point. It shows up for the first time in  
23 2014?

24 A. Yes.

25 1469 Q. And this is the Catalyst

1 guarantee?

2 A. Yes. Could you take me to Note  
3 10, please?

4 1470 Q. Sure. So here is the section Note  
5 10, sub (c), and that is the preamble.

6 If I could go to the next page, it has  
7 probably got the numbers you are looking for. And  
8 so this section here would be the relevant point,  
9 so 22.6 million was income related to the Catalyst  
10 guarantee; correct?

11 A. Well, I see that, but I would want  
12 to go back and see if there was a corresponding  
13 impairment amount.

14 1471 Q. Yeah, we can go to the -- I think  
15 the impairments show up here later.

16 Bear with me. Actually, maybe this  
17 statement does not show that. Let me see.

18 So here is the loan loss allowance. Is  
19 this what you are looking for?

20 A. Yes. Okay, thank you.

21 1472 Q. So my question was the guarantee  
22 shows up for the first time in here on the balance  
23 sheet for 22.606 million. Is that all related to  
24 XTG?

25 A. I don't know. I don't know

1           whether it was just XTG or whether there was other  
2           loans included in there.

3   1473           Q.   Okay.  And so if we take a look at  
4           the income statement for the same period, we have  
5           got income of 41.759 million.  Included in that is  
6           the 22.6 million for the Catalyst guarantee;  
7           correct?

8           A.   Yes.

9   1474           Q.   And so quick math, the net income  
10          for that period would have been half the amount if  
11          not for the Catalyst guarantee?  41.759 subtract  
12          22.606; to be precise, 19.153 million?

13          A.   But I think the recovery under the  
14          Catalyst guarantee would have been in respect of  
15          principal for the loans, the loans in question.  
16          And as we looked at Note 10, I believe the amount  
17          was in -- the amount of the impairment was included  
18          in that 22.606.  In other words, the loan was  
19          impaired and there was a guarantee.  As the loan  
20          was impaired, then there was an increase due under  
21          the guarantee.

22   1475           Q.   Okay.

23          A.   So that makes sense to me.

24          MR. DEARDEN:  Let's go back to Note 10,  
25          please.

1 MR. MCFARLANE: Yeah, we are there now.

2 MR. DEARDEN: Let's get it on the  
3 record.

4 BY MR. MCFARLANE:

5 1476 Q. Okay. So we are in Note 10,  
6 guarantee asset and related income of 22.606, and  
7 there were no other loans at that point subject to  
8 the guarantee that required a provision or --

9 A. I said to the best of my -- I  
10 don't recall I think is what I said, Mr. McFarlane.

11 1477 Q. Okay, thank you.

12 A. Okay, but if you could scroll down  
13 again to the impairment provision, which I think is  
14 Note 15 or 16.

15 1478 Q. Actually, it was earlier, but --

16 A. Sorry, 6, I apologize.

17 1479 Q. Is there anything in here that  
18 clarifies whether the 22.606 related to anything  
19 but XTG?

20 A. I do not know, sir, but I am  
21 looking at it and it is saying that the amount  
22 there seems to be in excess of the 26.606.

23 1480 Q. Okay. All right, we are going to  
24 go to document 5, which is the initial report of  
25 the Receiver, page 12.

1 MR. DEARDEN: What is the date of the  
2 initial report of the Receiver?

3 MR. McFARLANE: October 25th, 2013.

4 MR. DEARDEN: Thanks.

5 BY MR. McFARLANE:

6 1481 Q. Okay, we are clarifying here that  
7 XTG is indebted to Callidus in the amount of 36.97  
8 million?

9 MR. DEARDEN: Sorry, where are you, Mr.  
10 McFarlane?

11 MR. McFARLANE: 3.1(2), I am just  
12 establishing a point of clarity, here.

13 MR. DEARDEN: Is that page 10 as  
14 opposed to page 12?

15 MR. McFARLANE: We are on 13 now.

16 MR. DEARDEN: Well, I am looking at the  
17 bottom of the -- at the top of the screen it says  
18 page 9 of 22.

19 MR. McFARLANE: I'm looking at the PDF  
20 page number, which is 13.

21 MR. DEARDEN: Oh, okay, how about we  
22 actually refer to the document page number?

23 MR. McFARLANE: No problem.

24 MR. DEARDEN: I didn't know you were  
25 referring to --

1 BY MR. MCFARLANE:

2 1482 Q. Okay, so XTG goes into  
3 receivership with this level of debt. Callidus I  
4 believe credit bid 34 million for the debt;  
5 correct?

6 A. I believe that is correct.

7 1483 Q. Okay. Now, if we could go back to  
8 the --

9 A. I could double-check if we go back  
10 to my affidavit. I think we set forth that amount  
11 in my affidavit.

12 1484 Q. Yeah, I believe from memory you  
13 are correct, so I don't have an issue with that,  
14 because there was the 3 million carve-out left, so  
15 that makes sense.

16 So if we go back to the 2014 financial  
17 statements, document 7, on the final page in here  
18 it refers to "Subsequent Events" and I am going to  
19 read 22(b):

20 "In January 2015, one of the  
21 Company's borrowers emerged from  
22 formal restructuring proceedings in  
23 Canada and the U.S. as a going  
24 concern. As a result, the Company,  
25 as a secured creditor, will own the

1 business of the borrower subsequent  
2 to year-end and will be intended to  
3 be classified as an Asset Held for  
4 Sale. As at December 31, 2014, the  
5 carrying value of the loan, net of a  
6 provision, was \$60.184 [million]."

7 And again, Canadian dollars in the  
8 statement here. How did you arrive at that value?

9 A. I have no specific recollection of  
10 how that value was arrived at.

11 1485 Q. Was the --

12 A. That would seem to be -- the  
13 carrying value of the loan would be principal and  
14 interest, and at December 31, 2014, would be  
15 principal and interest and any other amounts that  
16 were included under the loan agreement net of  
17 whatever the provision was.

18 1486 Q. Okay, and so 60.184 was principal,  
19 interest, fees, et cetera, accrued to that point.  
20 If we go to document --

21 A. Yes, accrued but unpaid.

22 1487 Q. Accrued but unpaid, okay. If we  
23 go to document number 8, which is the PwC report  
24 which was your Exhibit 80 to the libel action, I  
25 believe.

1 A. Could you please go -- thank you.  
2 As at December 31, 2014, okay, thank you.

3 MR. DEARDEN: Paragraph 129 --

4 THE DEPONENT: Of the main action or  
5 the --

6 MR. DEARDEN: The libel.

7 BY MR. McFARLANE:

8 1488 Q. I am going to fast-forward here to  
9 page 14.

10 A. Paragraph 149?

11 MR. DEARDEN: Uhm-hmm.

12 THE COURT REPORTER: Did you say  
13 paragraph 141?

14 MR. McFARLANE: Page 14.

15 THE DEPONENT: No, paragraph 149.

16 MR. DEARDEN: Of his libel action  
17 affidavit, Mr. McFarlane, which is where your  
18 Exhibit 80 --

19 MR. McFARLANE: Okay. Would you like  
20 to take a look at that?

21 MR. DEARDEN: Actually, 148. It starts  
22 at 148 of the affidavit.

23 BY MR. McFARLANE:

24 1489 Q. So, Mr. Riley, was this 60.184  
25 million the PwC value, or was this the sum of all

1 of the advances and accrued but unpaid interest to  
2 XTG?

3 A. Net of a provision.

4 1490 Q. Okay, thank you. And back to the  
5 valuation report here, which again for clarity was  
6 effective as of December 31st, but according to  
7 page 2 was released on April 2nd, 2015.

8 A. Yes, I see that date.

9 1491 Q. Okay. Could you tell me what role  
10 Craig Boyer played in developing this report or  
11 this valuation?

12 A. I do not know. I don't know what  
13 his involvement was. He would have had some  
14 involvement, although it would principally be as  
15 the CFO.

16 1492 Q. The CFO of who?

17 A. I believe, but would have done it  
18 in conjunction.

19 1493 Q. The CFO of Callidus or XTG?

20 A. Callidus, Dan Nohdomi.

21 [Court Reporter intervenes for  
22 clarification.]

23 THE DEPONENT: It would have been under  
24 the supervision of Dan Nohdomi, the Vice President  
25 and CFO of Callidus.

1 MR. DEARDEN: How do you spell Nohdomi?

2 THE DEPONENT: Nohdomi is spelled

3 N-o-h-d-o-m-i.

4 BY MR. McFARLANE:

5 1494 Q. Okay, so I can take you to Exhibit  
6 9, or document 9 rather, which is the Statement of  
7 Defence and Counterclaim in the Craig Boyer action,  
8 and go to page 3. The allegations against  
9 Mr. Boyer as outlined by Callidus start here:

10 "As other underwriters began to  
11 review Boyer's work and reporting,  
12 several concerns with Boyer's  
13 performance were discovered,  
14 including that:

15 (a) Boyer had been failing to  
16 properly monitor loans in his  
17 portfolio, and in particular the  
18 loan advanced to Gray Aqua (as  
19 defined below);

20 (b) Boyer had encouraged certain  
21 portfolio companies, and in  
22 particular XTG (as defined below),  
23 to artificially inflate the results  
24 shown on their financial projections  
25 and financial statements;

1 (c) Boyer had directed one  
2 company in his portfolio  
3 (Horizontal, as defined below) to  
4 create a letter on fake Callidus  
5 letterhead purporting to make  
6 financial commitments on Callidus'  
7 behalf, and then to sign the letter  
8 for Boyer, even though Boyer did not  
9 have authorization from Callidus to  
10 make any such commitment or to  
11 provide such a letter."

12 How did Boyer's misconduct affect the  
13 PwC valuation?

14 A. To the extent that during -- I  
15 don't know whether during that relevant period  
16 Boyer was doing any of the activities referred to  
17 in paragraph (b) or not.

18 1495 Q. So you don't know if this  
19 allegation involves the time period around the PwC  
20 valuation?

21 A. I do not recollect.

22 1496 Q. Do you know specifically when it  
23 does refer to?

24 A. I would have to go back and check  
25 our records.

1 1497 Q. Are you willing to provide that  
2 undertaking?

3 U/A MR. DEARDEN: We'll take it under  
4 advisement.

5 BY MR. McFARLANE:

6 1498 Q. In Callidus's counterclaim against  
7 Mr. Boyer, you claim for 150 million dollars. How  
8 much of that might be attributable to the  
9 XTG-related misconduct?

10 A. I do not know.

11 1499 Q. But it is Callidus's position that  
12 Boyer misled the Credit Committee?

13 A. Yes.

14 1500 Q. Specifically around XTG?

15 A. Yes.

16 1501 Q. So let me just clarify the dates  
17 here. I am not sure I know the actual date of the  
18 Boyer -- do you recall, Mr. Riley, when the Boyer  
19 action or the counterclaim was filed?

20 A. If you scroll down, there should  
21 be a date at the end of the document. There should  
22 be a date somewhere.

23 1502 Q. February 2017. That is when it  
24 was filed. Do you remember when you parted ways  
25 with Mr. Boyer?

1 A. No. No, I do not. I do not  
2 recall that date.

3 1503 Q. And so you don't recall --

4 MR. MOORE: It is David Moore here. I  
5 don't want to go too far into this Boyer matter.  
6 It is a separate proceeding, as you know. But  
7 among other things, I can tell you that Mr. Boyer  
8 submitted a letter of resignation as of September  
9 6th, 2016, and in early 2017 he commenced legal  
10 proceedings.

11 But I don't want to turn this  
12 cross-examination into anything approaching an  
13 examination for discovery in the Boyer action. So  
14 I just want to -- but to your specific question, I  
15 can offer that information.

16 I see it is 11:30. I wonder if it is  
17 appropriate for a short break?

18 BY MR. McFARLANE:

19 1504 Q. How long would you like, Mr.  
20 Riley?

21 A. I think we have been taking 15  
22 minutes or so.

23 1505 Q. Okay, then we'll resume at 11:45?

24 A. Sure.

25 1506 Q. Thank you.

1 -- RECESSED AT 11:30 A.M.

2 -- RESUMED AT 11:48 A.M.

3 BY MR. McFARLANE:

4 1507 Q. I am going to try and wrap up  
5 quickly where we left off here with respect to some  
6 of Boyer's misrepresentations internally to  
7 Callidus.

8 In reviewing the dates, if Mr. Boyer  
9 left in 2016 and with respect to point 34 that  
10 Boyer was involved in the budgeting process, that  
11 must have been calendar 2015 or 2016 budget;  
12 correct?

13 A. Yes, I would say that is correct.

14 1508 Q. But you are not sure which year it  
15 is?

16 A. But I am not sure which year.

17 1509 Q. Okay. Given Boyer's fraudulent  
18 misrepresentations with respect to XTG's --

19 MR. DEARDEN: Sorry, Mr. McFarlane, I  
20 object to you saying "fraudulent". The  
21 counterclaim doesn't say "fraudulent." It deals  
22 with fiduciary duties.

23 BY MR. McFARLANE:

24 1510 Q. I will restate. With respect to  
25 Boyer's misrepresentations, is it possible that

1 those misrepresentations could have led Callidus to  
2 overvalue XTG?

3 A. It is possible, yes.

4 1511 Q. And can you confirm that since XTG  
5 emerged from receivership, its financial reporting  
6 was consolidated?

7 A. Could you please repeat the  
8 question?

9 1512 Q. Sure. There was an echo there.  
10 There still is.

11 Just to confirm -- Deana, can you  
12 figure out who that is?

13 [Court Reporter intervenes for  
14 clarification.]

15 I think we are agreed that since  
16 emerging from receivership, XTG's financial results  
17 were consolidated with Callidus and a part of the  
18 public record?

19 A. Yes.

20 1513 Q. Okay. It would be quite easy then  
21 for the founder of the business who spent 16 years  
22 building it to spot irregularities in financial  
23 reports then, wouldn't it?

24 MR. DEARDEN: Are you giving evidence,  
25 Mr. McFarlane?

1 MR. MCFARLANE: I think we are  
2 discussing a lot of that today.

3 MR. DEARDEN: Yeah, but you are not  
4 supposed to be giving evidence now. You are asking  
5 the questions.

6 BY MR. MCFARLANE:

7 1514 Q. I am asking, is it reasonable,  
8 given the Boyer misrepresentation, in the budgeting  
9 process for somebody with intimate knowledge of the  
10 business to be able to spot irregularities?

11 R/F MR. DEARDEN: I object.

12 BY MR. MCFARLANE:

13 1515 Q. I'll withdraw the question.

14 Let's go to document 10, and document  
15 10 is the first quarter 2015 Callidus financial  
16 statements. We are going to go to page 2, first of  
17 all.

18 This is the second time that the  
19 guarantee asset has showed up on financial  
20 statements. The first was the end of 2014. And at  
21 the end of the first quarter of 2015, the guarantee  
22 had increased to 23.434 million.

23 And if we go to Note 17 --

24 A. Sorry, could you -- sorry, okay,  
25 if you are going to do that, could you let me

1 read -- could you go back? I just want to look at  
2 those two numbers again and what the notes are.

3 1516 Q. Sure.

4 A. Thank you.

5 [Witness reviews document.]

6 1517 Q. So the two key figures here would  
7 be asset held for sale is now on the financial  
8 statements for the first time because there was a  
9 subsequent event at 2014 where at the end of 2014  
10 the declared value was 60.184 million and it is now  
11 62.603, and the Catalyst guarantee asset has  
12 increased from 22.606 million to 23.434 million.

13 A. Yes, got it.

14 1518 Q. And the relevant notes are 9 and  
15 17. Note 17 is clearly a reference to XTG. I  
16 don't think we dispute that one.

17 A. I agree.

18 1519 Q. And I think this is saying that an  
19 additional 1.424 million has been charged under the  
20 Catalyst guarantee with respect to XTG losses from  
21 operations; correct?

22 A. Yes, which would reduce the value  
23 of the asset.

24 1520 Q. Would it reduce the value of the  
25 asset, because the asset value went up according to

1 the balance sheet?

2 A. That would have gone up with  
3 additional advances.

4 1521 Q. Okay, so if we go back to --

5 A. We were just talking about the  
6 operations, sorry.

7 1522 Q. So if we go back to the asset held  
8 for sale, that increased from 60.184 million to  
9 62.603 would have been additional advances?

10 A. Yes.

11 1523 Q. Okay.

12 A. Yes.

13 1524 Q. All right, let's go to document  
14 11, which is the third quarter 2015 financial  
15 statements of Callidus Capital. If we could take a  
16 look at page 2, the guarantee asset has gone from  
17 22.606 to 24.795, Note 9, and the asset held for  
18 sale --

19 A. Sorry, nothing has changed on the  
20 screen.

21 1525 Q. Sorry.

22 A. I don't know what numbers you are  
23 reading.

24 1526 Q. I'll share it again. Sorry, let  
25 me go back to the beginning.

1                   So this is the Callidus Capital third  
2                   quarter 2015 financial results. The two figures  
3                   that I want to bring you to briefly are the assets  
4                   held for sale has now gone up to 66.902. Would it  
5                   be the same evidence as the first quarter, that any  
6                   increase would have been additional principal  
7                   advanced?

8                   A. Yes, I think that is correct.

9                   1527               Q. Okay, so that is roughly 4.3  
10                   million. And the 24.795 from 22.606, would that  
11                   also all relate to XTG or should we go to the note  
12                   and look?

13                   A. I think if we could go to the  
14                   note, please.

15                   1528               Q. Okay, so here, I think this is the  
16                   relevant portion.

17                   MR. DEARDEN: Do you want to just read  
18                   it into the record, Mr. McFarlane?

19                   BY MR. MCFARLANE:

20                   Q. "As at September 30, 2015, the  
21                   Company recorded a guarantee asset  
22                   of \$24.795 related to the Catalyst  
23                   guarantee. During the year-to-date  
24                   period, \$10.916 was received under  
25                   the Catalyst guarantee."

1                   And my question is does that all relate  
2                   to XTG?

3                   **A.**    I do not know.  I can't tell from  
4                   that.

5   1529            **Q.**    I think if we go to the assets  
6                   held for sale note, it should become clear.  So I  
7                   think at this point in time, XTG was the only asset  
8                   held for sale?

9                   **A.**    Yes.

10   1530           **Q.**    Okay.  All right, so safe to say  
11                   at this point Callidus has recognized income of  
12                   24.795 in income and has recovered that from  
13                   Catalyst under the guarantee?

14                   **A.**    But there also would have been an  
15                   impairment.

16   1531           **Q.**    Okay, and that impairment was  
17                   recoverable from Catalyst?

18                   **A.**    Well, it represents an impairment  
19                   in the loan, in effect.

20   1532           **Q.**    Whether it is an impairment or  
21                   operating losses, they were both recoverable under  
22                   the guarantee, if I am reading section 17  
23                   correctly?

24                   **A.**    Yes.

25   1533           **Q.**    Okay.  And so according to the PwC

1 report, the valuation was based on an assumption  
2 that XTG --

3 **A.** Which --

4 1534 **Q.** -- would generate 9.1 million in  
5 EBITDA -- would you like me to go back there?

6 **A.** Yes, please.

7 1535 **Q.** This was document 8, Exhibit 80,  
8 in the libel action. Let me know if it is big  
9 enough. Focussing on the second column from the  
10 right here, the projected budget for 2015 was  
11 positive EBITDA of 9.1 million?

12 **A.** Yes.

13 1536 **Q.** And just to confirm, going back to  
14 the other document which was the third quarter  
15 financial statements, the net loss from operations  
16 on the asset held for sale being XTG through nine  
17 months was negative 4.352 million?

18 **A.** Yes.

19 1537 **Q.** So we have a variance, and I don't  
20 know the precise math, but we were expecting  
21 positive EBITDA of 9.1 and we are still sitting at  
22 minus 4.352?

23 **A.** Could you go back to the PwC?  
24 Just as you are going back and forth between  
25 documents, and I am looking at the --

1 1538 Q. Sure.

2 A. So just, sorry, could you go back  
3 to that document for a second, please?

4 1539 Q. I am. Because it is on a  
5 different screen, I have got to stop and then start  
6 again.

7 MR. DEARDEN: What page is that of the  
8 actual PwC report?

9 MR. McFARLANE: Page 14.

10 MR. DEARDEN: Okay, thank you.

11 THE DEPONENT: And this document is as  
12 at what date? What is the calculation, as at  
13 December 31?

14 BY MR. McFARLANE:

15 1540 Q. Yes.

16 A. What is this document being  
17 prepared for?

18 1541 Q. As of December 31st, 2014 was the  
19 valuation date, and it was released on April 2nd,  
20 2015.

21 A. Okay. Now, take me back to that  
22 September document again.

23 1542 Q. The financial statements?

24 A. Yes, please.

25 1543 Q. My point being we were expecting,

1 according to the PwC report, to have positive  
2 EBITDA for 12 months of 9.1 million. Through nine  
3 months XTG's operating results are negative 4  
4 million plus?

5 **A.** Yes.

6 1544 **Q.** Yeah, would it be your practice to  
7 re-value an asset when there was a variance of that  
8 magnitude emerging?

9 **A.** This is a more complicated -- you  
10 are asking a more complicated question than I think  
11 you appreciate. To get to the amount that is on  
12 the balance sheet on a consolidated basis, you  
13 start with the gross loan receivable and then work  
14 down to amounts that are taken out of that gross  
15 loan receivable to get to --

16 1545 **Q.** I understand -- sorry to  
17 interrupt, Mr. Riley, but that wasn't my question,  
18 though.

19 **MR. DEARDEN:** Let him finish.

20 **MR. McFARLANE:** My question --

21 **MR. DEARDEN:** Finish your answer.

22 **BY MR. McFARLANE:**

23 1546 **Q.** Mr. Riley, go ahead.

24 **A.** Can I finish my answer? You have  
25 to work from the gross level receivable down to the

1 carrying value of those assets. The valuation is  
2 to test that carrying value.

3 Now, in the case of XTG, it is not a  
4 complication, but to the extent that there is a  
5 write-down of the XTG asset by the 4.3, there is a  
6 write-up in the guarantee.

7 1547 Q. Right.

8 A. And so --

9 1548 Q. So again, I think we have  
10 established there is really two components. There  
11 is the operating loss and then there is the  
12 additional advances being claimed under the  
13 guarantee.

14 I guess my question is under your  
15 Significant Accounting Policies and the practice of  
16 fair market valuation, is it only done once a year,  
17 in audit? Are the Significant Accounting Policies  
18 applied for each set of quarterly financial  
19 statements? How often do you test?

20 A. You have to apply them each  
21 quarter.

22 1549 Q. Okay.

23 A. You evaluate each loan each  
24 quarter.

25 1550 Q. Okay.

1                   **A.**   And we didn't necessarily do a  
2 valuation each quarter, a third party valuation  
3 like a PwC.

4   1551            **Q.**   So on that basis, if we go back to  
5 the balance sheet here, the asset actually  
6 increased by about 4 million. Does that reflect --

7                   **A.**   All I see is 66.902. What it is  
8 increased by, I do not know.

9   1552            **Q.**   Okay, if we could go back to the  
10 first quarter. Let me make sure I got the right  
11 one.

12                   **A.**   The first quarter or second  
13 quarter.

14   1553            **Q.**   The first quarter, just as a point  
15 of reference, because it is the first time it shows  
16 up on the balance sheet.

17                   **A.**   No, but you are showing me  
18 September statements, and you want me to compare it  
19 to March. Shouldn't it be June?

20   1554            **Q.**   I am looking at the --

21                   **A.**   Or do you just want to see --

22   1555            **Q.**   Because it has the three-month and  
23 it has the nine-month reference in the third  
24 quarter, so I am going back to the opening number.  
25 The first quarter, 62.603 is the asset held for

1 sale. Now --

2 **A.** Yeah.

3 1556 **Q.** Okay?

4 **A.** Okay, yeah, got it.

5 1557 **Q.** Now, in the third quarter, that  
6 number has increased to 66.902. What does that  
7 increase in value represent?

8 **A.** Those would be advances and  
9 effectively were funding losses at that time,  
10 negative cash flow.

11 1558 **Q.** Okay.

12 **A.** Because we were trying to rebuild  
13 the business.

14 1559 **Q.** But given you have operating  
15 losses and given you have a PwC statement that  
16 reflects a budget of 9.1 million of positive  
17 earnings, it does not appear that you took any  
18 measures to re-value this asset as of the date of  
19 these statements?

20 **A.** As at September 30th, it appears  
21 not.

22 1560 **Q.** Okay.

23 **A.** But again, going back, and I'll  
24 say it one more time, to the extent that we wrote  
25 down the assets held for sale, which I think there

1 were write-downs over the various time periods,  
2 time frame, there would be an increase in the  
3 corresponding guarantee asset.

4 1561 Q. What I am having difficulty with  
5 is the lack of application of the Significant  
6 Accounting Policies in this period.

7 A. I do not have a basis for that  
8 statement, but I will go back to the fact that  
9 these are audited financial statements prepared by  
10 management and then audited, so those policies  
11 would have been reviewed and they are tested by  
12 KPMG. Their opinion was unqualified.

13 And I am not an accountant by training,  
14 so I would defer to our CFO's preparation of the  
15 financial statements and the other people involved  
16 and the audit of KPMG.

17 1562 Q. My concern arises from this  
18 statement here:

19 "The significant accounting  
20 policies used in the preparation of  
21 these condensed interim consolidated  
22 financial statements are consistent  
23 with those described in note 3 to  
24 the Company's 2014 Audited Financial  
25 Statements."

1 I could take you back if you like, but  
2 my concern is the fair market and the other  
3 valuation instruments or policies were not applied?

4 **A.** I don't know your basis for that.  
5 I will have to disagree with that and defer again  
6 to the fact that they were audited.

7 1563 **Q.** Okay. Let's go to the fourth  
8 quarter Callidus financial statements for the year  
9 ending 2015 referred to in my email as document 12.  
10 We can see the assets acquired from loans is now  
11 represented a little bit differently. It used to  
12 be assets held for sale when it was exclusively  
13 XTG. I appreciate there is another asset in there  
14 now. And the guarantee asset has jumped up to  
15 34.755 million.

16 So if we go to note --

17 **A.** Can we go to Note 6 and 17?

18 1564 **Q.** Note 6?

19 **A.** Note 6 and 17.

20 1565 **Q.** Sure.

21 **A.** [Witness reviews document.]

22 1566 **Q.** Okay, ready for 17?

23 **A.** No, sorry, it is a long note, so I  
24 want to make sure.

25 1567 **Q.** Sure.

1                   **A.**    [Witness reviews document.]

2                   Okay, thank you.

3   1568            **Q.**    I might stop at Note 12 along the  
4                   way.  Actually, I'll stop here first.  This is Note  
5                   9 where the Catalyst guarantee is now up to 3.4 --  
6                   sorry, 34,755,000.

7                   **A.**    Okay.

8   1569            **Q.**    Interpreting the financial  
9                   statements, would you say that is all related to  
10                  XTG?

11                  **A.**    I do not know.

12   1570            **Q.**    So let's take a look at Note 12,  
13                  "Fair Value of Instruments".  I want to take you  
14                  back for a moment, and I am going to come back to  
15                  this Note 12, but if we go to the previous quarter,  
16                  in the same --

17                  **A.**    Mr. McFarlane, you are jumping  
18                  around a lot.

19   1571            **Q.**    Yes.

20                  **A.**    And I am not trying to be -- I am  
21                  trying to answer your questions, but you are  
22                  jumping around a lot, so you are going to have to  
23                  put context every time we go to one of these  
24                  documents.

25   1572            **Q.**    Sorry, you may not have heard me.

1 This is I am back one quarter, so September 30th,  
2 2015, the same notes section, Note 12, "Fair Value  
3 of Financial Instruments".

4 In this section Callidus lists asset  
5 held for sale being XTG for 66.902, fair value,  
6 carrying value.

7 **A.** Okay.

8 1573 **Q.** Okay, I am going to jump back to  
9 the end of the year fourth quarter. It is no  
10 longer listed as an asset held for sale with a  
11 valuation. Any idea why it is not included in this  
12 section anymore?

13 **A.** Sorry, you have -- sorry, which  
14 financial statement? We went from September to  
15 December?

16 1574 **Q.** Yes, and I said that.

17 **A.** Okay, December, but it is December  
18 of the same year; correct?

19 1575 **Q.** That's correct.

20 **A.** And what are you telling me you  
21 think the difference is here? What is missing from  
22 this?

23 1576 **Q.** There is no longer a fair -- we  
24 are in the "Fair Value of Financial Instruments"  
25 section, and there is no longer showing an asset

1 held for sale, but as of December 31st, 2015,  
2 Callidus still owned XTG; correct?

3 **A.** Mr. McFarlane, we are going to  
4 have to pause here. I am going to have to re-read  
5 these two sets of financial statements to properly  
6 answer that question.

7 1577 **Q.** I can show you in the "Subsequent  
8 Events" notes if it helps?

9 **A.** Sorry, I am going to have -- you  
10 have jumped around financial statements. I am  
11 going to have to look at them more closely, so let  
12 me take that time and do it now. What tab? What  
13 are the tabs in your --

14 1578 **Q.** 11 and 12 are the document numbers  
15 in the email you would have received this morning,  
16 or the printed ones if you have hard copies.

17 **A.** Do you want me to look at both?

18 1579 **Q.** Yes.

19 **A.** [Witness reviews document.]

20 Could you ask me the question again,  
21 please, and what financial statement are you in in  
22 this one?

23 1580 **Q.** We are in the 2015 financial  
24 statements full year, document 12 on Note 12. The  
25 question was in prior financial statements Callidus

1 had included assets held for sale in the fair value  
2 section here and attempted to outline fair value  
3 and carrying value?

4 **A.** So if you could please go to the  
5 "Subsequent Event" note?

6 [Witness reviews document.]

7 Should I read it --

8 1581 Q. I will read it onto the record

9 here:

10 "Subsequent Events.

11 Assets Held For Sale:

12 In March 2016, the Company  
13 required payment by the Catalyst  
14 Funds of a guarantee (as described  
15 in note 9(c)) with respect to one of  
16 the Company's loan assets in an  
17 amount equal to the [...]  
18 outstanding principal plus accrued  
19 and unpaid interest of \$101.3  
20 million. The Catalyst Funds  
21 acquired the loan in question for an  
22 amount equal to the guarantee and  
23 are now the owners of the business  
24 and are actively restructuring it.  
25 The Company primarily used the

1                   proceeds from the guarantees to  
2                   repay a portion of the balance  
3                   outstanding under the subordinated  
4                   bridge facility."

5                   MR. DEARDEN: I'll just add one thing,  
6                   Mr. McFarlane, you missed the word "total", "total  
7                   outstanding principal", just for the record.

8                   BY MR. McFARLANE:

9                   1582            Q.    Okay, thank you.

10                  A.    And I qualify my answer by saying  
11                  I am not an accountant, but I think that given that  
12                  the transaction, the subsequent event transaction  
13                  was in effect deemed to have occurred at December  
14                  31, a decision seems to have been made that rather  
15                  than characterize it as assets held for sale at  
16                  December 31, it was a loan that was being  
17                  transferred at the 101.

18                  1583            Q.    When you say "deemed to have  
19                  happened December 31st", either it did or it  
20                  didn't. What do you mean by "deemed"?

21                  A.    It was effective as of December  
22                  31.

23                  1584            Q.    So it was retroactively effective?

24                  A.    Yes.

25                  1585            Q.    Then I am confused if it still

1 shows on the balance sheet here.

2 **A.** I am not an accountant, sir, but I  
3 do believe that the discrepancy you are trying to  
4 point out, you'll notice it says "assets acquired  
5 from loans" as opposed to "assets held for sale",  
6 so I think that there was a recharacterization of  
7 the XTG loan as being a loan as at December 31  
8 because effectively it was transferred from that  
9 date.

10 1586 **Q.** Okay. Did XTG ever earn a profit  
11 under either Callidus -- I guess only under  
12 Callidus's ownership?

13 **A.** No.

14 1587 **Q.** If the asset was valued at the end  
15 of 2014 but not at 2015, your position is that it  
16 wasn't required because of the subsequent event?

17 **A.** Yes.

18 1588 **Q.** Would it not have been more proper  
19 to record the re-valuation and then an uptick in  
20 the Catalyst guarantee for transparency's sake?

21 **MR. DEARDEN:** What are you talking  
22 about, "an uptick in the Catalyst guarantee"?

23 **BY MR. McFARLANE:**

24 1589 **Q.** If you were to re-value the asset  
25 and the asset declined in value, Callidus would

1 still be made whole through the Catalyst guarantee;  
2 correct?

3 **A.** Yes.

4 1590 **Q.** My point is and my question is,  
5 would it not have been clearer reading for the  
6 reader of the financial statements and prospective  
7 investors in Callidus to know that it had written  
8 the asset down to fair value?

9 **A.** I don't know how to answer that  
10 question, sir.

11 1591 **Q.** Of the 101.3 million that the  
12 Catalyst funds paid for XTG, do you know how much  
13 of this was interest that Callidus charged XTG  
14 regardless of ownership time since receivership?

15 **A.** I think to the best of my  
16 recollection, it was approximately a million  
17 dollars, and as you'll recall, I have talked about  
18 the cash on numerous occasions and I do not have  
19 the numbers in my affidavit, but I think there was  
20 available cash in the period between December 31  
21 and March 31 of approximately 5 million dollars  
22 that could have been used to sweep that -- that  
23 could have been used to pay that interest.

24 So it was really just how do you  
25 account for that? Whoever the financial types on

1 each side of the transaction were agreed that that  
2 was the way to do it.

3 1592 Q. So my question is a two-part  
4 question.

5 So your affidavit does indicate that  
6 1.4 million of interest was accrued between the  
7 timing and the settlement or the agreement and the  
8 settlement --

9 A. Mr. McFarlane, can I ask a  
10 courtesy?

11 1593 Q. Sure.

12 A. I have not memorized my  
13 affidavits. To the extent you are referring to a  
14 document before you ask the question, I am now  
15 going to ask you to take me to that, please.

16 1594 Q. All I am saying -- I am affirming  
17 your answer that you are right, there was a  
18 period --

19 A. It is not about affirming my  
20 answer. It is just if you are going to refer to  
21 one of my affidavits, I would like you to take it  
22 to me.

23 1595 Q. Sure.

24 A. And what paragraph?

25 MR. DEARDEN: I think it will be 180.

1 Paragraph 180, Mr. McFarlane.

2 MR. MCFARLANE: Of the libel or the  
3 conspiracy affidavit?

4 MR. DEARDEN: The libel, the libel  
5 action, page 54.

6 THE DEPONENT: [Witness reviews  
7 document.]

8 Okay, thank you, yes, I have read it.

9 BY MR. MCFARLANE:

10 1596 Q. Okay. And that does deal with the  
11 interest in that period we discussed from let's  
12 call it the first quarter of 2016.

13 My question was from the time XTG went  
14 into receivership, and it went into receivership  
15 effectively with the 34 million for the credit bid  
16 and now it is at 101.3 million, how much of that  
17 differential is interest that Callidus charged,  
18 whether accrued, whether earned, whether swept, how  
19 much of that delta is attributable to interest  
20 income?

21 A. I don't know. That would be  
22 during the period in receivership only.  
23 Post-receivership there would have been no interest  
24 relating to income.

25 THE COURT REPORTER: I'm sorry, the

1 last thing you said, did you say "relating to  
2 income"?

3 THE DEPONENT: Yes, I believe that is  
4 correct. Would you read that back, Rick?

5 MR. DEARDEN: "That would be during the  
6 period in receivership only.

7 Post-receivership there would have been  
8 no interest relating to income."

9 THE DEPONENT: Yes.

10 BY MR. McFARLANE:

11 1597 Q. Well, we can agree that during the  
12 receivership period, Callidus recognized interest  
13 income, using that --

14 A. Yes.

15 1598 Q. -- one-month example, 788,000 in a  
16 single month?

17 A. Yes.

18 1599 Q. Thank you.

19 A. And that was paid out of the cash  
20 sweep.

21 1600 Q. Yes. So some figures I am having  
22 trouble getting my head around is the reduction in  
23 value between the time that Catalyst acquired XTG  
24 in 2015 and the subsequent write-down to 9.7  
25 million, which I'll share that document.

1 MR. DEARDEN: Which document number are  
2 you going to now?

3 MR. McFARLANE: 13.

4 MR. DEARDEN: Okay.

5 BY MR. McFARLANE:

6 1601 Q. This document here reflects the  
7 valuation of XTG once it resides in Funds III and  
8 IV. The total of Fund III and IV investment or  
9 valuation of its investment in XTG is under 9.4  
10 million at this point.

11 A. Sorry, what page, is it 28 of this  
12 document?

13 1602 Q. 28 and 29 of this document reflect  
14 the unrealized value of XTG.

15 A. Could you do me a favour? Could  
16 you blow that up, please?

17 1603 Q. Is that large enough?

18 A. So that is Fund III's portion  
19 only.

20 1604 Q. And then on the next page we have  
21 got Fund IV.

22 A. Yes, I see the number.

23 1605 Q. Okay. So how does a casual reader  
24 make sense of a drop in value from 101.3 million to  
25 9.7 million?

1 R/F MR. DEARDEN: He is not going to answer  
2 for the casual reader.

3 BY MR. McFARLANE:

4 1606 Q. Okay. If Callidus under its  
5 Significant Accounting Policies claims to have  
6 valued assets fairly, it was still carrying XTG at  
7 66 million in the previous statements we looked at.  
8 I can go back if we need to. And in a very short  
9 period of time, these fund values that are  
10 released, it is 66.9 million is written down to 9.7  
11 million.

12 A. I don't think you can compare the  
13 two. I don't think you can do that comparison,  
14 because Callidus had a guaranteed investment. This  
15 was unguaranteed. So the actual value, once it was  
16 re-evaluated and a view was taken that it was no  
17 longer -- that Catalyst Funds were no longer going  
18 to support the business at the level it was being  
19 supported at at Callidus, this was the value that  
20 was established.

21 1607 Q. So if we go back to the PwC  
22 report, document 8, I believe, I'll find the page  
23 number. And so towards the end of their  
24 conclusions here, the valuation that -- actually, I  
25 am going to go back. So we'll read this paragraph

1 first here, that we consider this to be a plus or  
2 minus 10 percent around the midpoint of the  
3 valuation.

4 **A.** Could you please read the whole of  
5 that bullet point?

6 1608

7 **Q.** Sure, "PwC Conclusion":

8 "In developing our conclusions,  
9 we have considered the fact that a  
10 valuation is not a precise science  
11 and the conclusions arrived at, in  
12 many cases will of necessity, be  
13 subjective and dependent on  
14 individual judgment. As such, in  
15 arriving at our comments with  
16 respect to reasonableness, we have  
17 considered whether Management's  
18 conclusions fall within a reasonable  
19 range, which we consider to be [plus  
20 or minus] 10% around a mid-point,  
21 given the nature of this  
22 engagement."

23 Earlier in this document --

24 **A.** Sorry, and could you read the next  
25 paragraph, please?

**Q.** "Based on the scope of our

1 work, major assumptions and the  
2 restrictions and qualifications set  
3 out in this Report, we have  
4 concluded that Callidus' valuation  
5 conclusion for XTG as at December  
6 31, 2014 is reasonable."

7 **A.** Yes, thank you.

8 1609 **Q.** And if we go back to -- this  
9 document outlines the various methodologies, but at  
10 the beginning it outlines that the 52 million --  
11 I'll read it:

12 "A \$9 million loan loss  
13 provision has since been taken  
14 resulting in a \$52 million net loan  
15 balance."

16 And paragraph --

17 **A.** And sorry, this is in U.S.  
18 dollars?

19 1610 **Q.** Yes, and I'll acknowledge that,  
20 it's up top.

21 **A.** Thank you.

22 1611 **Q.** My point being at this point in  
23 time, PwC has effectively said 52 million is within  
24 plus or minus 10 percent of fair value for XTG. 15  
25 months later it is written down to 9.4 --

1                   **A.**    Sorry, I apologize for a second, I  
2                   don't know whether they are concluding that 61 -- I  
3                   don't know whether they are concluding on the 61 or  
4                   on the 52.

5    1612                   **Q.**    52 is within their midpoint, if  
6                   you read through the whole report.

7                   **A.**    Okay.

8    1613                   **Q.**    My point is why was this estimate  
9                   so far off? The difference is 82 percent, not plus  
10                  or minus 10 percent.

11                  **A.**    I'm sorry, I don't understand what  
12                  you are saying.

13   1614                   **Q.**    PwC's report substantiates that  
14                  Callidus's valuation of 52 million U.S. is plus or  
15                  minus 10 percent of that.

16                  **A.**    Okay.

17   1615                   **Q.**    It is within the range of  
18                  reasonableness.

19                  **A.**    Okay.

20   1616                   **Q.**    We go from that point at December  
21                  31, 2014, the official report date released April  
22                  2nd, 2015, to this other document I have shared  
23                  with you that demonstrates the asset is now valued  
24                  on the Catalyst side at 9.4 million or less.

25                  **A.**    Yes.

1 1617 Q. Why such a dramatic swing of 82  
2 percent?

3 A. Okay, and I apologize, I obviously  
4 did not answer your question clearly enough, the  
5 prior question, because this is the same question.

6 When you are looking at XTG -- when you  
7 are looking at XTG in the hands of Callidus from a  
8 value -- from a what can we carry it under a  
9 balance at, some of in effect the assets held for  
10 sale, which I think is what PwC opined on, and the  
11 guarantee. Once they are moved to Catalyst, you  
12 don't have the benefit of the guarantee.

13 And it would appear, based on the  
14 assumptions, that obviously the valuation  
15 assumptions have changed in Catalyst from what they  
16 were in Callidus, and you would have to go back to  
17 all the assumptions that were in that report,  
18 because it is not a function of conclusions. It is  
19 a function of what was their assessment based on  
20 those assumptions, and obviously some of those  
21 assumptions or indicia were wrong.

22 1618 Q. Was any of that value decline  
23 attributed specifically to the Boyer  
24 misrepresentations?

25 A. I don't know.

1 1619 Q. Okay. All right, I would like to  
2 go to your libel affidavit, document 4.

3 A. What paragraph, please?

4 1620 Q. We are going to go to paragraph  
5 26.

6 A. Paragraph 2-6?

7 1621 Q. 2-6. Paragraph 26 says:

8 "Since 2006, Callidus has  
9 advanced 105 loans respecting total  
10 credit facilities of approximately  
11 CDA \$2.6 billion, of which 90 loans  
12 have been fully paid or realized.  
13 Of the 90 loans which have been  
14 fully repaid or realized, the vast  
15 majority of loans were fully repaid  
16 in the normal course. Only 13 loans  
17 resulted in a loss."

18 My question is what is the sum total of  
19 those 13 loans that were in a loss position?

20 A. I do not know.

21 1622 Q. And do you have any sense --

22 A. And also some of those loans would  
23 be subject to -- some of those loans could have  
24 been subject to the guarantee.

25 1623 Q. That is my next question. Do you

1 have any sense for how many of those loans were  
2 subject to the guarantee and the amount?

3 **A.** I do not.

4 1624 **Q.** Would you undertake to provide  
5 that?

6 U/A **MR. DEARDEN:** We'll take that under  
7 advisement, Mr. McFarlane. And that is how many of  
8 those 13 loans referred to in paragraph 26 of the  
9 affidavit were subject to a guarantee?

10 **BY MR. McFARLANE:**

11 1625 **Q.** It is a two-part question. And  
12 the quantum of those.

13 Let's go to 139. I am just confirming,  
14 and I probably should have recognized this earlier,  
15 but November 22nd, 2013, is in fact the vesting  
16 date?

17 **MR. DEARDEN:** It's the date of the  
18 vesting order.

19 **THE DEPONENT:** The date of the vesting  
20 order. It is not the date of the transfer of the  
21 asset.

22 **BY MR. McFARLANE:**

23 1626 **Q.** Section 140:  
24 "Following receipt of the  
25 Court's approval of the sale, the

1 Receiver and Callidus undertook a  
2 complex restructuring and  
3 right-sizing of XTG's business."

4 When it says "the Receiver and  
5 Callidus", does that not constitute control?

6 **A.** No.

7 1627 Q. Why doesn't that constitute  
8 control?

9 **A.** Because it doesn't.

10 1628 Q. So the Receiver was free to act on  
11 its own volition without influence or veto power  
12 from Callidus?

13 **A.** You want me to say that it  
14 constitutes control. I do not believe it did  
15 constitute control at that time, nor subsequently  
16 until there was an actual transfer in 2015.

17 1629 Q. Did you have additional risk of  
18 loss at that point?

19 **A.** Yes.

20 1630 Q. And did you have additional upside  
21 potential at that point?

22 **A.** Yes -- no, sorry, excuse me, only  
23 if we closed the transaction. For example, if we  
24 had concluded that we could not avoid the tax  
25 inversion, we might have -- we might not have

1 closed that transaction.

2 1631 Q. Okay.

3 A. Because of a risk of a tax  
4 inversion, so until that was resolved, I don't  
5 think you -- I would not say we were in control.

6 1632 Q. Were you the debtor in possession  
7 from a financing perspective?

8 A. No, you are mixing terms. There  
9 was no debtor in possession in a receivership. Did  
10 we continue to provide funds? Yes.

11 1633 Q. Okay, apologies for the  
12 misstatement.

13 A. That's okay.

14 1634 Q. Let's go to 176.

15 MR. DEARDEN: 176, Jim.

16 THE DEPONENT: Yes.

17 BY MR. MCFARLANE:

18 1635 Q. My question is when XTG was sold  
19 to Catalyst, there are typically two types of  
20 transfers. There is a share sale or an equity sale  
21 of the legal entities or there is an asset sale.  
22 How would you characterize the sale to Catalyst?

23 A. The loan and the related assets.

24 1636 Q. So they did not acquire the legal  
25 entities?

1                           **A.**    Yes, they did.

2    1637                   **Q.**    They did.  So again, I am not  
3                           clear then.  Was it an asset sale or the share of  
4                           the legal entities?

5                           **A.**    I believe it was in effect both  
6                           were transferred out as a result.  In effect, the  
7                           assets followed that loan.

8    1638                   **Q.**    I could understand how the assets  
9                           might give rise to value, but a sale transaction is  
10                          either an asset purchase where the assets are  
11                          stripped out and valued individually or it is a  
12                          sale of the shares to encompass the entire entity.  
13                          I am not clear which it was.

14                          **A.**    And I am not sure how to answer  
15                          your question, sir.  What are you trying to get at  
16                          here?  Because I'm not sure I am following what you  
17                          are trying to get at.

18    1639                   **Q.**    Those transactions have practices  
19                          that are implied with respect to how assets or how  
20                          businesses transfer, and it is not clear in reading  
21                          176 and some of the other supporting materials if  
22                          Callidus sold the business or if Callidus sold the  
23                          assets of the business.

24                          **A.**    This transaction occurred pursuant  
25                          to the guarantee arrangement, so in effect there

1 was a subrogation of Catalyst to the position of  
2 Callidus, a subrogation, so it was a transfer by  
3 way of subrogation.

4 1640 Q. Okay. In 176(c), amounts  
5 eliminated on consolidation, do you know what that  
6 5 million refers to?

7 A. Yes.

8 1641 Q. And what is that 5 million?

9 A. You would have to go back to how  
10 the -- how you get from the gross loan receivable,  
11 which is where you start, on an unconsolidated  
12 basis to a consolidated basis.

13 When you go from a gross loan  
14 receivable, you have above the line, as it were,  
15 when you are getting to what is the amount of that  
16 gross loan receivable, you take into account  
17 essentially the effect of the cash sweep. The cash  
18 sweep would go to pay interest, so you would reduce  
19 interest. The balance goes to pay principal.

20 Once you go from a gross loan  
21 receivable to a consolidated number, you have to  
22 back out the interest. The effect of that going  
23 from gross loan receivable to assets held for sale  
24 is that you have in effect understated the  
25 principal amount that is due on that loan because

1 if you take out an amount above the line and below  
2 the line, you have the cash sweep in effect going  
3 to pay principal only. So you have to adjust for  
4 that because of the consolidation.

5 1642 Q. So in that consolidation effort,  
6 is any amount in the 5 million interest-related?

7 A. No, it comes from interest, but it  
8 has to do with the fact that on the original  
9 cash -- when you have the cash sweep on the  
10 original loan, on the gross loan receivable, once  
11 you go to consolidation, you have understated the  
12 principal amount. So in order to get to the  
13 correct principal amount, you have to assume the  
14 sweep from what was the principal that was due.

15 1643 Q. Okay. All right, so just back to  
16 the transaction itself, was there an agreement of  
17 purchase and sale between Callidus and Catalyst for  
18 the XTG business?

19 A. No. No.

20 1644 Q. No APA.

21 A. It occurred by way of subrogation.

22 1645 Q. Are those documents in your  
23 affidavit?

24 A. The --

25 1646 Q. The subrogation?

1                   **A.**    The subrogation occurs as a matter  
2                   of law.

3    1647            **Q.**    Okay.

4                   **A.**    It's not a guarantee.  And I think  
5                   I said that in my affidavit.

6    1648            **Q.**    All right.

7                   MR. DEARDEN:  Paragraph 183.

8                   THE DEPONENT:  Paragraph 183, for the  
9                   record.

10                  BY MR. McFARLANE:

11    1649            **Q.**    Section 188, in the highlighted  
12                  sentence here:

13                                "Various claims were made  
14                                against McFarlane, including breach  
15                                of fiduciary duty, breach of  
16                                non-disclosure and non-solicitation  
17                                agreements [...]"

18                  Do you have and can you produce this  
19                  non-disclosure, non-solicitation agreement?

20                  **A.**    Those were the claims made against  
21                  you.

22    1650            **Q.**    Those agreements do not exist, yet  
23                  it is on the record.  On what basis did you make  
24                  this statement?

25                  R/F           MR. DEARDEN:  We are not litigating in

1           this anti-SLAPP motion, Mr. McFarlane, the lawsuit  
2           brought against you by the numbered company. As  
3           Mr. Riley said, that was a pleading.

4                           BY MR. MCFARLANE:

5   1651                   Q.    Bear with me one second.

6                           Okay, I think we have clarified a  
7           couple of things here.

8                           Section 214, which is --

9                           **A.**   And, sorry, we are in the libel  
10          affidavit?

11   1652                   Q.    The libel affidavit, 214, Exhibit  
12          112. Attached here as document 18, if we flip over  
13          to that one, an email from myself to Darryl Levitt.  
14          Can you tell me how you came into possession of  
15          this email?

16   U/A                   MR. MOORE: Well, we'll take that under  
17          advisement.

18                           THE DEPONENT: I --

19                           MR. MOORE: We'll take that under  
20          advisement. I believe, my belief is that - and it  
21          is David Moore talking - my belief is that this was  
22          a document that was ordered to be produced and was  
23          produced by Mr. Levitt pursuant to a  
24          cross-examination.

25                           THE DEPONENT: On his affidavit. I

1 think that is right. I think this is, subject to  
2 double-checking, but I believe this email came as a  
3 result of the cross-examination of Darryl Levitt on  
4 his affidavit and that this was produced pursuant  
5 to an order of Justice Chiappetta.

6 MR. MOORE: Yes, that is fine, but  
7 we'll verify that.

8 BY MR. McFARLANE:

9 1653 Q. I am going to state I believe this  
10 to be a breach of the deemed undertaking rule. Do  
11 you dispute that?

12 MR. MOORE: Absolutely.

13 THE DEPONENT: Yes.

14 MR. MOORE: Absolutely. You should  
15 have been in chambers when this issue arose and  
16 when an attempt was made to quote Justice  
17 Chiappetta's order in a completely false manner and  
18 Justice Hainey's reaction to that, but I won't go  
19 into that for this and clutter up this transcript  
20 any further, but absolutely that is disputed.

21 And Mr. Levitt, when confronted with  
22 that situation, promptly withdrew his motion based  
23 upon an alleged breach of the deemed undertaking  
24 rule.

25 BY MR. McFARLANE:

1 1654 Q. And on to section 215, the second  
2 line, there is a comment here:

3 "McFarlane was bitter and angry  
4 [...]"

5 On what basis do you say that?

6 A. It is my belief you were.

7 1655 Q. And what is your evidence for  
8 that?

9 A. You just read it. That is my  
10 evidence.

11 1656 Q. So that is your belief, and that  
12 is your evidence, okay.

13 A. And then down below you will see,  
14 if you can highlight it, "he was at war with us".  
15 That is taken from notes of Mr. Copeland.

16 1657 Q. And do you know the origin of  
17 those notes or that statement?

18 MR. DEARDEN: Well, he took them.

19 THE DEPONENT: He took them. He took  
20 the notes and put them in evidence.

21 BY MR. MCFARLANE:

22 1658 Q. Okay, so you are attributing  
23 something from a reporter's note pad to me with no  
24 context?

25 MR. DEARDEN: No, there is a lot of

1 context, which would include all the exhibits to  
2 this affidavit, some of which refer to you, sir.

3 BY MR. McFARLANE:

4 1659 Q. But the context for the "at war"  
5 comment came from your very own Craig Boyer and was  
6 not attributable to myself, while I may have  
7 repeated it, since you bring it up.

8 The third line in 215:

9 "[...] eventually dismissed by  
10 the company."

11 Multiple times there was reference to  
12 being bitter because --

13 A. And where? Can you just read  
14 that --

15 1660 Q. 215.

16 A. Thank you.

17 1661 Q. "[...] eventually dismissed by the  
18 company."

19 How long was McFarlane involved in the  
20 XTG post-receivership application approval?

21 A. I do not know that time frame.

22 1662 Q. A matter of minutes, for interest.  
23 And so these allegations that --

24 MR. DEARDEN: Mr. McFarlane, you can't  
25 give evidence, sir. You can't give evidence.

1 BY MR. McFARLANE:

2 1663 Q. Let's go to the conspiracy  
3 affidavit, document 14, section 63.

4 A. Sorry, paragraph 63?

5 1664 Q. Paragraph 63, sorry.

6 A. And it is in the libel or the  
7 conspiracy?

8 MR. DEARDEN: In the conspiracy.

9 THE DEPONENT: 63?

10 BY MR. McFARLANE:

11 1665 Q. 63 in the conspiracy affidavit.

12 My question for you on this one is are  
13 you aware that there was an offer to settle for  
14 \$250,000 before this ever went before a judge in a  
15 motion for summary judgment?

16 R/F MR. DEARDEN: I don't think he should  
17 be answering questions, Mr. McFarlane, about offers  
18 to settle.

19 BY MR. McFARLANE:

20 1666 Q. On what basis? It is a simple  
21 question.

22 Okay, let me rephrase.

23 Go to document 15. This is the  
24 supplemental motion record of the Defendant  
25 McFarlane, Exhibit 001. Have you seen this

1 document before, Mr. Riley?

2 A. Not that I recall, until it was in  
3 your documents.

4 1667 Q. Okay. So you are not aware this  
5 was provided to Callidus three months before the  
6 motion for summary judgment?

7 R/F MR. DEARDEN: I am objecting. What is  
8 the relevance? I still wonder how you can talk  
9 about an offer to settle, but at any rate, I'm  
10 objecting to any questions about what offers you  
11 made.

12 THE DEPONENT: And when was this  
13 so-called offer put in? When was it put in?

14 MR. DEARDEN: We are not answering  
15 questions about it.

16 THE DEPONENT: Okay, sorry.

17 MR. DEARDEN: The point of the  
18 paragraph, Mr. McFarlane, was that you were found  
19 liable on your --

20 MR. McFARLANE: If we are not going to  
21 talk about it, we are not going to talk about.

22 MR. DEARDEN: No, I am not talking  
23 about the offer. I am talking about the paragraph  
24 that says you were liable on your guarantee and it  
25 got reduced to \$250,000 by the Ontario Court of

1 Appeal.

2 MR. MCFARLANE: I'll refer to Exhibit  
3 108.

4 MR. DEARDEN: Of the conspiracy?

5 MR. MCFARLANE: Of the conspiracy.

6 MR. DEARDEN: 108.

7 BY MR. MCFARLANE:

8 1668 Q. Which is referred to in 171(n),  
9 document 16, Exhibit 108. And where did you  
10 acquire this email from?

11 A. Sorry, 171 -- sorry, what  
12 paragraph, please, again, Mr. McFarlane?

13 MR. DEARDEN: 171.

14 BY MR. MCFARLANE:

15 1669 Q. 171(n), an email from Levitt --

16 A. Sorry, please give me a chance to  
17 read it. Thank you.

18 [Witness reviews document.]

19 MR. DEARDEN: I think you are in the  
20 libel action exhibits and affidavit, Mr. McFarlane,  
21 in --

22 MR. MCFARLANE: Yes, sorry, it is the  
23 libel 108.

24 MR. MOORE: This is David Moore  
25 speaking. This is an email from Mr. Levitt, and I

1 believe the same answer applies as was stated  
2 previously.

3 MR. McFARLANE: And that answer was?

4 MR. MOORE: Produced as a result of the  
5 cross-examination and an undertaking and a consent  
6 order, in effect, of Justice Chiappetta during  
7 cross-examination.

8 THE DEPONENT: On an affidavit.

9 MR. McFARLANE: So again, it is your  
10 evidence this is not a breach of the deemed  
11 undertaking rule?

12 MR. MOORE: It is not a matter of  
13 evidence. It is a matter of crystal clear law.

14 And I'll repeat that Mr. Levitt brought  
15 a motion on that basis in which he misquoted, to  
16 put it generously, the order of Justice Chiappetta  
17 that made it clear what the context was, and when  
18 that misquote was brought to his attention, he  
19 promptly withdrew any such motion. And that is the  
20 way the matter was left.

21 So there is no basis of any breach of  
22 any implied undertaking rule connected with this  
23 document. It is not a matter of evidence. It is a  
24 matter of plain law.

25 BY MR. McFARLANE:

1 1670 Q. I'll take you to 353 where it  
2 speaks to -- let me read the whole --

3 A. 353 of which affidavit, please?

4 1671 Q. Of the conspiracy affidavit. And  
5 just for interest, I'll read in section or  
6 paragraph 353:

7 "Prior to the publication of  
8 the WSJ Fraud Articles, Callidus was  
9 able to originate 102 new loans. In  
10 the three and a half year period  
11 before the WSJ Fraud Articles were  
12 published, Callidus originated 29  
13 new loans. In 2014, Callidus  
14 originated 17 new loans. In 2015,  
15 Callidus originated 11 new loans.  
16 In 2016, there were no new loans as  
17 Callidus implemented a slowdown of  
18 new loan underwriting and focussed  
19 on addressing the impact of the  
20 first short attack. As Callidus  
21 restarted growth of its loan  
22 portfolio, Callidus originated one  
23 new loan in Q2 2017. Since the  
24 publication of the WSJ Fraud  
25 Articles, Callidus was only able to

1 originate three new loans, one new  
2 loan in the fall of 2017, and two  
3 loans in 2018."

4 I want to take you to document 15,  
5 which is back to the supplemental motion record of  
6 the Defendant. We are going to go to page 24, and  
7 in here -- actually, we are going to go to Exhibit  
8 002. Let me get the page number for you.

9 So starting on page 19, Exhibit 002,  
10 scrolling down to page 24.

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

13 1672 **Q.** September 12, 2019.

14 **A.** Thank you.

15 1673 **Q.** And this is an affidavit of David  
16 Sutin with respect to --

17 **A.** Sutin.

18 1674 **Q.** Sutin, got it -- an application  
19 under section 182 of the Business Corporations Act.  
20 "Background to Proposed Arrangement", and I am  
21 going to read from section 15:

22 "The Arrangement has resulted  
23 from negotiation of a transaction by  
24 the Special Committee, CCGI and  
25 Braslyn following a lengthy process

1 to solicit privatization proposals  
2 for Callidus commenced in September  
3 2016 (the 'Privatization Process').  
4 The length of time over which the  
5 Privatization Process and  
6 negotiation of the Arrangement were  
7 conducted, and the inability to  
8 develop interest of third parties in  
9 addition to Braslyn in a  
10 privatization or other transaction,  
11 were the result of a number of  
12 factors, including the following:

13 (a) Over the period in which the  
14 Privatization Process and  
15 discussions regarding the  
16 Arrangement have been conducted, the  
17 operating and financial performance  
18 of Callidus declined significantly,  
19 reflecting a number of factors  
20 including:

21 (i) on a quarter by quarter basis  
22 beginning with the quarter ended  
23 September 30, 2016, ongoing  
24 operating losses and negative cash  
25 flows from operations resulting from

1 non-performing loans made by  
2 Callidus and quarterly increases in  
3 loan loss provisions;

4 (ii) negative operating  
5 performance of, and the extent of  
6 the capital required by, a number of  
7 the non-core subsidiaries;

8 (iii) deterioration in the  
9 financial condition of Callidus,  
10 leading to an inability to obtain  
11 additional financing to invest in  
12 Callidus' existing business and to  
13 pursue new loan origination;

14 (iv) a number of senior personnel  
15 issues, including the medical leave  
16 of Mr. Glassman, Callidus' Executive  
17 Chairman and Chief Executive  
18 Officer, announced by Callidus on  
19 August 13, 2018; the resignation of  
20 Callidus' Interim Chief Executive  
21 Officer, Patrick Dalton, announced  
22 by Callidus on March 11, 2019  
23 following his appointment effective  
24 November 5, 2018; Callidus'  
25 inability to recruit a new [CEO]

1 with appropriate experience, and in  
2 April 2019, the departure of  
3 Callidus' Chief Credit Officer,  
4 James Rogers; and

5 (v) increasing inability to  
6 retain personnel despite retention  
7 programs."

8 Nowhere in here does it mention a  
9 conspiracy, short sellers or the Wall Street  
10 Journal articles, does it?

11 **A.** No, but could you -- first of all,  
12 I was not involved in the preparation of this for a  
13 number of reasons, not the least of which was this  
14 originated from the Special Committee, and during  
15 the relevant time frame I was in Australia, which  
16 has a significant time differential, because my  
17 granddaughter, my oldest granddaughter, as my  
18 second granddaughter wasn't born during this  
19 period, was undergoing treatment for leukemia. So  
20 I was in Australia spending a lot of time in  
21 isolation with her.

22 So I didn't see this document at the  
23 time, but I would like to go to -- and this would  
24 not have been -- Catalyst would not have been  
25 actively involved in this.

1                   If you go to the -- and sorry, when I  
2                   say that, sorry, the people involved in the  
3                   litigation around the conspiracy were not actively  
4                   involved in this, to the best of my knowledge.

5                   If you go to -- do you have the proxy  
6                   circular that was associated with the going private  
7                   transaction? Do you have that document?

8                   1675               Q.    I do not have it handy, at least.  
9                   I am not sure if I have it or not.

10                   A.    Is it in my materials? Is it in  
11                   my materials?

12                   MR. DEARDEN: What is it, Jim, that you  
13                   are looking for?

14                   THE DEPONENT: It is the proxy circular  
15                   relating to the going private transaction, because  
16                   I would like to review that document in the context  
17                   of what was actually put to the shareholders.

18                   BY MR. McFARLANE:

19                   1676               Q.    Well, let me ask you this. Mr.  
20                   Sutin would have knowledge as a director of  
21                   Callidus of the primary reasons for its performance  
22                   or non-performance; correct?

23                   A.    He wouldn't be -- I would not  
24                   agree that David was totally apprised of, among  
25                   other things, the effect of the litigation.

1 1677 Q. Okay.

2 A. That was primarily being carried  
3 by Catalyst at that point. Catalyst would have the  
4 relevant knowledge and a view on the effect, namely  
5 the allegations of fraud.

6 1678 Q. Would your COO of Callidus, David  
7 Reese, have intimate of the causal factors in  
8 Callidus's performance?

9 A. I can't speak for -- I can't speak  
10 for David, David Reese.

11 1679 Q. All right. Now let's --

12 A. Sorry, could I pause? Is it in my  
13 materials, the proxy circular?

14 MR. DEARDEN: I don't know offhand.

15 THE DEPONENT: Is one of them?

16 MR. DEARDEN: We are going to check to  
17 see if that proxy circular that Mr. Riley is --

18 MR. MCFARLANE: Well, why don't we  
19 leave that perhaps for after lunch, because I am  
20 going to try and wrap up here in five minutes if we  
21 can.

22 MR. DEARDEN: All right.

23 BY MR. MCFARLANE:

24 1680 Q. I want to take you to, still in  
25 the supplementary motion, Exhibit 3, page 43, and

1 this is a transcript of the proceedings of  
2 Callidus's annual shareholder meeting held on July  
3 2019. And I am just going to fast-forward here a  
4 little bit. I think it is page 70.

5 A. Page 70 of the -- what is the --

6 1681 Q. Document 15.

7 A. Sorry, page? What page?

8 MR. DEARDEN: 70.

9 THE DEPONENT: This only goes to 32.

10 MR. DEARDEN: It was -- Mr. McFarlane,  
11 we have that transcript with a page number 842 at  
12 the top.

13 BY MR. McFARLANE:

14 1682 Q. Yeah, could we go to page 868  
15 then, which is 70 in the PDF. So starting at row  
16 16:

17 "Mr. Reese: Our pipeline is  
18 much reduced, much reduced from  
19 where it was. And I think a lot of  
20 that ties to the transactions that  
21 we're looking at, the dollar size,  
22 where our own rate hurdles are in  
23 terms of where we think risk is.  
24 And also, clearly our name has  
25 been -- it's harder for our

1 originators to find deals given the  
2 recent performance of the company."

3 And later on -- sorry, I lost my --

4 **A.** Just before you go on, I want to  
5 note something in there because I was at this  
6 meeting.

7 1683 **Q.** Okay.

8 **A.** Where he says "And also, clearly  
9 our name has been --", he stopped himself. I do  
10 not know why he stopped himself, but I would say  
11 that he was starting to refer to the fact that the  
12 name had been trashed in the marketplace - my  
13 words, not his - and I think we were being  
14 sensitive at that time as to how much we wanted to  
15 say about the litigation.

16 1684 **Q.** And so the point being nowhere in  
17 here does he point to the litigation as a reason  
18 for the performance; is that accurate, if you were  
19 at the meeting?

20 **A.** I do not recall this. I am going  
21 by the transcript, but I think it is answered in  
22 the next -- if you keep going, the "Unidentified  
23 Speaker: Is that referable to the litigation  
24 specifically"? "No, not specifically", but that  
25 would mean it was a factor.

1 MR. DEARDEN: What page was that on?

2 THE DEPONENT: Page 27 -- sorry, 869 on  
3 whatever that number is.

4 MR. DEARDEN: Of the record.

5 THE DEPONENT: Of the record, 869 of  
6 the record, and it is the opening of Mr. Reese's  
7 statement.

8 BY MR. McFARLANE:

9 1685 Q. All right, I am going to jump  
10 ahead to document number -- sorry, it is the 2018  
11 MD&A report, and I am just looking for the document  
12 number. I am going to start sharing.

13 Apologies, it may not have made it into  
14 the package I sent you. I'll re-send that.

15 I will find it in your affidavits here.  
16 What I am looking for is the 2018 Callidus MD&A.

17 A. The 2018 MD&A. Do you have it  
18 from my -- sorry, can you give us, what tab is it  
19 in my affidavits?

20 1686 Q. That is what I am checking here.

21 Actually, you know what, it is embedded  
22 in my motion materials, apologies.

23 So document 15, starting on page 77 you  
24 will see is the 2018 Management Discussion &  
25 Analysis.

1 MR. MOORE: Sorry, where are you  
2 exactly? We are trying to follow where you are at.

3 MR. McFARLANE: Let me screen share  
4 again.

5 MR. MOORE: Tell us where you are at?  
6 We may have the document.

7 MR. DEARDEN: It's document 15.

8 MR. McFARLANE: It's document 15 and it  
9 starts on page 78.

10 MR. DEARDEN: Well, we have page  
11 numbers --

12 MR. MOORE: Document 15 is not this  
13 document, so just tell us what specific document  
14 you are referring to.

15 BY MR. McFARLANE:

16 1687 Q. It is the supplemental motion  
17 record of McFarlane, document 15. Starting on 77,  
18 we have the 2018 Callidus MD&A.

19 A. Before I do anything, I am going  
20 to turn some pages. Could you please tell me what  
21 page number, because I don't want to interfere with  
22 the recording of your questions and my answers.

23 1688 Q. Sure. Let's go -- it is document  
24 page 6 or PDF page 83.

25 MR. DEARDEN: That is page 6 of the

1 MD&A, Mr. McFarlane?

2 BY MR. MCFARLANE:

3 1689 Q. Yes.

4 A. There it is, yes, I have got it  
5 now.

6 1690 Q. Okay, thank you. So if I am  
7 reading this correctly, the net loss in Callidus  
8 for 2017 was 218.486 million; is that correct?

9 A. Yes.

10 1691 Q. And the 2018 loss was 183 million?

11 A. Yes.

12 1692 Q. For a combined total of 402  
13 million in a two-year period?

14 A. I'll take your addition.

15 1693 Q. Is short-selling illegal?

16 A. Yes, in certain circumstances.

17 1694 Q. So it is your position  
18 short-selling is illegal?

19 A. No, that is not my position. I  
20 think there is a difference between short-selling  
21 and short-selling during a short and distort  
22 campaign.

23 THE COURT REPORTER: I'm sorry, could  
24 you repeat, during a what?

25 THE DEPONENT: During a short and

1 distort campaign, so you can put it in quotes, so  
2 open quote "short and distort" campaign.

3 BY MR. McFARLANE:

4 1695 Q. Do you recall how much equity was  
5 left after writing off 402 million?

6 A. I do not.

7 1696 Q. Is it plausible that losses of 402  
8 million might attract a short seller?

9 A. During the period that I think we  
10 are interested in, this information was not in the  
11 marketplace. So we are looking at the period  
12 principally around August 9th, and there was no  
13 information, no corporate information in the  
14 marketplace other than what was in the Wall Street  
15 Journal article for the period I think about seven  
16 or eight days before that article and for two days  
17 afterwards. It was the dominant piece in that  
18 relevant time period.

19 1697 Q. Mr. Riley, I appreciate your time.  
20 That concludes my questions.

21 A. Thank you.

22 MR. McFARLANE: And, Deana, could I ask  
23 for what the next exhibit number is, so I can  
24 prepare a brief to submit all of these on the  
25 record?

1 THE COURT REPORTER: The next Exhibit  
2 is 5.

3 EXHIBIT NO. 5: Electronic document  
4 brief of exhibits referred to by Mr.  
5 McFarlane in the cross-examination of  
6 Mr. Riley.

7 MR. MCFARLANE: Exhibit 5, okay, I'll  
8 summarize that and submit that.

9 I think next -- who is up next after  
10 lunch?

11 MR. DEARDEN: I don't know, but I hope  
12 they identify themselves.

13 MR. LEVITT: It is me, Darryl Levitt,  
14 thank you.

15 MR. DEARDEN: Darryl Levitt, and then  
16 who is after you, Darryl?

17 MR. LEVITT: It will be Phil and  
18 Dimitri tomorrow.

19 MR. DEARDEN: And you are going to be  
20 the rest of the afternoon?

21 MR. LEVITT: Maybe, maybe not. I am  
22 not quite sure. I'll probably be at least two  
23 hours.

24 MR. DEARDEN: And then Dimitri and then  
25 Phil?

# TAB 7

# Catalyst v West Face et al.

Jim Riley

on Wednesday, November 18, 2020



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

[neesonsreporting.com](http://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 Continued Cross-Examination of  
35 JAMES 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 18th  
day of November, 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

13

14           MATTHEW MILNE-SMITH, Esq.,       for the Defendants

15   (Plaintiffs by

16   Counterclaim), West

17   Face Capital Inc. and

18   Gregory Boland

19

20           LUCAS E. LUNG, Esq.,           for the Defendants,

21   ClaritySpring Inc. and

22   Nathan Anderson

23

24           PHIL TUNLEY, Esq.,           for the Defendant, Rob

25           & JENNIFER SAVILLE, Esq.,       Copeland, Dow Jones &

1		Company and Jacquie
2		McNish
3		
4	DIMITRI LASCARIS, Esq.,	for the Defendant,
5	& A.J. FREEDMAN, Esq.,	Bruce Livesey
6		
7	MICHAEL DARCY, Esq.,	for the Defendants to
8		the Counterclaim, BC
9		Strategy Ltd. d/b/a
10		Black Cube and BC
11		Strategy UK Ltd. d/b/a
12		Black Cube
13		
14	DARYLL LEVITT	Self-Represented
15	KEVIN BAUMANN	Self-Represented
16		
17	Also Present:	Greg Boland, CEO, West Face Capital
18		Philip Panet, General Counsel, West
19		Face Capital
20		Saad Gaya, Student-at-Law, St.
21		Lawrence Barristers
22		Bruce Livesey
23		Joseph Weissman, In-House Counsel,
24		Dow Jones Defendants
25	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. LEVITT (CONT'D)..701-704  
CROSS-EXAMINATION BY MR. LASCARIS.....705-761  
CROSS-EXAMINATION BY MR. TUNLEY.....761-882

\*\*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: 702:13, 710:20,  
711:4, 726:6, 727:1, 728:7, 728:15, 730:21, 736:1,  
746:17, 747:19, 748:25, 760:5, 778:21, 809:15,  
815:14, 826:14, 858:14, 861:1, 871:2, 878:25

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
710:5, 728:25, 768:20, 770:24, 774:16, 776:20,  
807:25, 813:2, 813:14, 813:20, 815:25, 816:10,  
816:19, 818:1, 818:23, 827:14, 852:12, 856:11

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: 824:9, 839:21, 840:13, 875:14, 875:23, 876:14, 877:19, 882:3

INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
7	Electronic brief of documents referred to in the course of Mr. Tunley's cross-examination...	761/23

1           those are my questions for the time being.

2                         THE DEPONENT: Thank you.

3                         MR. LASCARIS: Thank you, have a good  
4           day, sir.

5                         CROSS-EXAMINATION BY MR. TUNLEY:

6           2167           Q. Good morning, Mr. Riley.

7                         A. Good morning.

8           2168           Q. I think you know I am the counsel  
9           for Dow Jones and the Wall Street Journal  
10           journalists who are involved in this action;  
11           correct?

12                        A. Yes.

13           2169           Q. And my colleague, Jennifer  
14           Saville, is going to be displaying the documents  
15           that I want to ask you about one at a time. And as  
16           in prior examinations, when my questions are  
17           complete, we are going to put the ones that I have  
18           referred you to in an exhibit which we'll mark as  
19           the next numbered exhibit. Is that acceptable to  
20           everyone?

21                        MR. DEARDEN: It is, and I believe that  
22           is Exhibit 7.

23                        EXHIBIT NO. 7: Electronic brief of  
24           documents referred to in the course of  
25           Mr. Tunley's cross-examination.

1 BY MR. TUNLEY:

2 2170 Q. Okay. In terms of your  
3 affidavits, I am going to be referring you to your  
4 libel affidavit from time to time and also your  
5 conspiracy affidavit less often. Do you have both  
6 of those in front of you?

7 A. Let me just make sure I have got  
8 both of them.

9 2171 Q. I will ask Ms. Saville to display  
10 the paragraphs I am going to ask you about  
11 specifically, but there has been a lot of  
12 discussion about context, and if you do need  
13 context, I think it is easier if you agree just to  
14 look at your hard copies and get the context that  
15 you need, sir. Is that acceptable to everyone?

16 A. That is what we have been doing,  
17 so that is acceptable to me. It is just the only  
18 thing I'll caution is that because, if you move  
19 around a lot, it will take me time to find what you  
20 are referring to.

21 2172 Q. I am patient and --

22 A. I am not saying that -- I am  
23 apologizing in advance if I am slow.

24 2173 Q. Not a worry, sir. I am starting a  
25 little earlier than I anticipated, so that is all

1 fine. We should have lots of time to finish and  
2 should actually, if things go well, should actually  
3 finish early.

4 So are you ready to begin?

5 A. Yes.

6 2174 Q. All right, I am going to start. I  
7 am going to say right up front that I am following  
8 a lot of people. You have been examined for more  
9 than three days, and if I ask you a question you  
10 have already answered, you can tell me that. I am  
11 going to try and avoid that, but we are just going  
12 to have to both do the best we can. I would ask  
13 you to bear with me in that regard if I am  
14 repeating what has already been covered.

15 And I say that because I want to start  
16 with the XTG investment, and I know that was  
17 covered by a couple of the other questioners,  
18 especially Mr. McFarlane yesterday, right?

19 A. Yes.

20 2175 Q. So let me try and avoid  
21 duplication. I would like you to look at -- you  
22 talk about the XTG transactions in your libel  
23 affidavit, and I want to start at paragraphs 110,  
24 111 and 112; if you could have those in front of  
25 you and if we could see those on the screen, that

1 might be helpful.

2 A. Yes, I see them.

3 2176 Q. I will direct you, you say that in  
4 2012 XTG was in default --

5 A. Mr. Tunley, you were frozen for a  
6 moment, so you'll have to repeat the question.

7 2177 Q. Okay, I am not sure what is  
8 causing that.

9 A. It may be an internet problem.

10 2178 Q. Are you hearing me now?

11 A. Yes.

12 2179 Q. All right, if that happens, I may  
13 be able to make some adjustments. I shouldn't have  
14 to, but if I do, I'll need a short break to sort  
15 that out.

16 You talk about the events in 2012  
17 regarding XTG and Callidus taking over the loan  
18 from its prior borrower, right?

19 A. Prior lender.

20 2180 Q. Sorry, prior lender, yes. And  
21 what you say is that there had been a 23.9 million  
22 U.S. loan from the prior lender?

23 A. Yes.

24 2181 Q. And you say that on October 11,  
25 2012, Callidus purchased that loan for 11.6 million

1 U.S. dollars; correct?

2 A. Correct.

3 2182 Q. And I just want to confirm, what  
4 Callidus bought for 11.6 million U.S. dollars was  
5 not the whole of the prior lender's loan, right?  
6 It was just 11.6 million U.S. dollars of that loan,  
7 right?

8 A. No, they bought the entire loan  
9 for 11.6, so at the time of the purchase, it was a  
10 23.9 million dollar loan.

11 2183 Q. Right. But as I understand your  
12 affidavit, the balance between 11.6 and 23.9 was  
13 forgiven at the time of the transaction; correct?

14 A. That is correct. That is correct.

15 2184 Q. So the borrower and any guarantors  
16 of that prior loan were discharged from the  
17 difference between 11.6 million U.S. and 23.9,  
18 being 12.3 million U.S., right?

19 A. That is correct.

20 2185 Q. And what Callidus ended up with as  
21 an enforceable loan based on that transaction was  
22 the 11.6 million U.S. dollar amount that it paid;  
23 correct?

24 A. Well, I think if you go to -- and  
25 I may be misunderstanding your question, but if you

1 go to paragraph 112 on the next page, you will see  
2 that the 11.6, there is an additional amount of  
3 money loaned and it was pursuant to that Amended  
4 and Restated Loan Agreement.

5 2186 Q. All right, but that is on -- I am  
6 going to get to that in a moment, but what I want  
7 to confirm with you so the record is clear is that  
8 that's new money advanced by Callidus? It is not  
9 any portion of the 12.3 million U.S. dollars that  
10 had been forgiven previously?

11 A. That is correct.

12 2187 Q. Okay. So just before we get to  
13 the additional advances by Callidus, can we  
14 confirm - and again, paragraph 112 is I think the  
15 reference point - that on top of the 11.6 million  
16 U.S. dollars that it paid to the prior lender,  
17 Callidus charged -- sorry, I am hearing an echo.

18 A. Sorry, could you repeat the  
19 question, sorry?

20 2188 Q. Yes, I can. I understand that on  
21 top of the U.S. 11.6 million that Callidus advanced  
22 or paid to the prior lender, Callidus charged a fee  
23 of 2.5 million U.S. dollars; is that correct?

24 A. Do I cite it anywhere in my -- I  
25 don't recall that fee, but do you have a source

1           that you are referring to for that?

2           2189                   Q.    Well, I am looking at --

3                            A.    Do you have a document or  
4 something that you can point me to?  But I don't  
5 recall that fee.

6           2190                   Q.    Well, I may have to come back to  
7 you with a document, but if I just look at what you  
8 have presented to us in paragraph 112, you say that  
9 Callidus increased XTG's available credit from 11.6  
10 million to 22 million; correct?

11                          A.    Yes, that is correct.

12           2191                   Q.    And that includes the 11.6 million  
13 you started with; that is the total as a result of  
14 the increase; correct?

15                          A.    Yes.

16           2192                   Q.    And what that advance did was to  
17 provide 7.9 million U.S. for working capital?  That  
18 is what you have recounted?

19                          A.    Yes.

20           2193                   Q.    And I am putting it to you that  
21 the difference between the 11.6 originally advanced  
22 plus the 7.9 million available for working capital,  
23 the difference, if you add those two together, the  
24 difference between that and the 22 million is 2.5  
25 million U.S. dollars, right?

1 A. Your math seems to be correct.

2 2194 Q. And I am suggesting to you that  
3 that difference --

4 A. I could agree with that, yes.

5 2195 Q. Okay, and I am suggesting to you  
6 that difference of 2.5 million, that is a fee that  
7 Callidus was paid or paid itself, I don't know how  
8 it works, but out of this transaction; correct?

9 A. I don't -- as I have said, I don't  
10 recall that fee. I agree with your math. I just  
11 don't recall whether that was for a fee or not.

12 2196 Q. Well, I am going to take away your  
13 request that I find you a document about the 2.5  
14 million dollar fee. Can I ask that you or your  
15 counsel take away a request for an explanation, if  
16 there is another explanation, for that 2.5 million  
17 difference that is reflected in paragraph 112 of  
18 your affidavit? May I have that undertaking from  
19 you or your counsel?

20 U/A MR. DEARDEN: We'll take that under  
21 advisement.

22 BY MR. TUNLEY:

23 2197 Q. Okay. If you go on in your  
24 affidavit to paragraphs 117 to 119, can you look at  
25 those and any context you require, sir.

1 A. [Witness reviews document.]

2 Thank you.

3 2198 Q. I don't need to deal with every  
4 detail here, but if you think the details are  
5 important to the questions I pose, feel free to  
6 point them out.

7 But you say that efforts to sell the  
8 business in 2013 failed. You say that only one  
9 arm's length offer was received in August 2013,  
10 which was an offer to buy Callidus debt for 17  
11 million U.S. dollars which Callidus rejected;  
12 correct?

13 A. Sorry, where -- may I just read  
14 that paragraph, sir?

15 2199 Q. That is paragraph 119.

16 A. [Witness reviews document.]

17 Yes.

18 2200 Q. And you say that by this time,  
19 what you call -- sorry, had you finished that  
20 answer, sir? I heard some kind of --

21 MR. DEARDEN: No, you just cut out.

22 THE DEPONENT: You cut out.

23 BY MR. TUNLEY:

24 2201 Q. Sorry. You say that the face  
25 value of the Callidus loan at this point was 37

1 million U.S. dollars?

2 A. Yes.

3 2202 Q. And what I would like to know at  
4 this point, whatever the point of time is  
5 referenced in paragraph 119 of your affidavit, how  
6 is that amount of 37 million U.S. dollars made up  
7 in terms of three or four things: I want to know  
8 in terms of principal loan advances by Callidus,  
9 including the 11.6 and the additional facility that  
10 we talked about, the 7.9 million for working  
11 capital; I want to know how much of that 37 million  
12 is unpaid interest due that is being accumulated;  
13 and I want to know how much is fees or other  
14 charges by Callidus or other amounts. Do you know  
15 the answer to that as we sit here, or do you need  
16 to take that away?

17 A. I do not. I think that Duff &  
18 Phelps may have information on that in their  
19 report, but I do not know that off the top.

20 2203 Q. So I appreciate that, and I am  
21 content if you or your counsel will give me an  
22 undertaking or an under advisement to provide that  
23 breakdown.

24 U/A MR. DEARDEN: We'll take it under  
25 advisement because this is reference to something

1 done by the Receiver.

2 BY MR. TUNLEY:

3 2204 Q. I am only interested in the result  
4 in terms of the Callidus loan and how it is made  
5 up, so I am not interested in -- the Receiver may  
6 be the source of the information, as Mr. Riley has  
7 just said, but I am only interested in the impact  
8 on Callidus's loan, which is very much relevant in  
9 these proceedings.

10 All right, so moving on, insolvency  
11 proceedings, as I understand it, including a  
12 receivership, ensue? They are ongoing at this  
13 point; correct?

14 A. Correct.

15 2205 Q. And I think you might have dealt  
16 with this with Mr. McFarlane yesterday, but at some  
17 point Callidus bought XTG out of the receivership  
18 proceedings?

19 A. Yes.

20 2206 Q. And I think there is kind of a  
21 staged process where there is a stalking horse  
22 offer that was made and accepted by the Receiver  
23 in -- if I understood your evidence with Mr.  
24 McFarlane yesterday, that was made and accepted in  
25 2013; is that correct?

1                   A.    May I refer to -- may I go back to  
2                   my affidavit? I think we have the dates there.

3    2207            Q.    Okay, sure.

4                   A.    [Witness reviews document.]

5                   So there was a vesting order issued on  
6                   November 22, 2013, by Mr. Justice Morawetz, as I  
7                   outline in my affidavit at paragraph 139.

8    2208            Q.    Okay, thank you. And the amount  
9                   paid was what, sir?

10                  A.    "The purchase price was the full  
11                  amount of the Callidus' [...]"  
12                  This is in paragraph 137:

13                         "The purchase price was the  
14                         full amount of Callidus' secured  
15                         debt at the time of closing  
16                         (approximately USD \$38 million) less  
17                         USD \$3 million, according to the  
18                         Fifth Report of the Receiver."

19    2209            Q.    Okay, and then there was a delay,  
20                   as I understand it?

21                  A.    Yes, there was.

22    2210            Q.    And the --

23                  A.    I'm sorry, did you -- you broke up  
24                   there, sorry. I had thought you finished your  
25                   question and you froze for a moment. So could you

1 ask the question again, please?

2 2211 Q. I just was confirming that there  
3 is then a delay and during which the receivership  
4 proceedings continued until late 2014 or early  
5 2015; is that correct?

6 A. That is correct.

7 2212 Q. And during that period, in 2014  
8 Callidus went public; correct?

9 A. Yes.

10 2213 Q. And it was at that point, while  
11 XTG was still in receivership but had been  
12 acquired, the vesting order had been made, it was  
13 during that time that Catalyst agreed to cover  
14 future losses on a number of loans, including XTG,  
15 right?

16 A. Correct.

17 2214 Q. And that's the Catalyst guarantee  
18 that we have been referring to?

19 A. That is correct.

20 2215 Q. So if I use that term, that is  
21 what I am referring to, all right?

22 A. Yes.

23 2216 Q. And if I look at your libel  
24 affidavit again, paragraph 147, you are indicating  
25 that by December 31, 2014, Callidus was reporting

1 the value of its loan in Canadian dollars now, and  
2 I will quote, "net of a loan loss provision" at  
3 something like Canadian 60.2 million dollars;  
4 correct?

5 A. Yes, that is correct.

6 2217 Q. And I am going to ask for the same  
7 undertaking, Mr. Riley, as to how that amount,  
8 Canadian 60.2 million dollars is made up in terms  
9 of, one, principal loan advances by Callidus; two,  
10 unpaid interest due; and three, fees or other  
11 charges or other amounts that have been charged by  
12 Callidus. Again, I don't expect you to know the  
13 answer to that. I am asking you or your counsel to  
14 undertake just to give me that breakdown of the  
15 60.2 million dollar Canadian number.

16 U/A MR. DEARDEN: We'll take it under  
17 advisement.

18 BY MR. TUNLEY:

19 2218 Q. If I could take you to your libel  
20 affidavit, paragraphs 174 to 176, thereabouts, you  
21 explain here that in or about December 31, 2015,  
22 Callidus made a call on the Catalyst guarantee,  
23 right?

24 A. Correct.

25 2219 Q. And that call required Catalyst to

1 pay a total of, as I read it, 101.3, roughly,  
2 million Canadian dollars to assume ownership of the  
3 XTG investment, right?

4 A. Correct.

5 2220 Q. And I take it the call on the  
6 guarantee, that was actually against Catalyst?  
7 Catalyst had to pay that amount of money; correct?

8 A. Yes.

9 2221 Q. And it then transferred that to  
10 one or more of the Catalyst Funds, transferred the  
11 asset that it acquired, the XTG investment, to one  
12 or more of the Catalyst Funds; correct?

13 A. It transferred to Funds III and  
14 IV.

15 2222 Q. And when was that transfer  
16 effective; do you recall? Was it December 31,  
17 2015, or very shortly thereafter?

18 A. It was effective as of December  
19 31, but completed I believe in March the following  
20 year.

21 2223 Q. That is fine.

22 MR. DEARDEN: Effective, Mr. Tunley,  
23 December 31, 2015, and --

24 THE DEPONENT: 2014, I think.

25 MR. DEARDEN: No, March 2016.

1 THE DEPONENT: Okay.

2 MR. DEARDEN: Let me -- okay, we are  
3 all confused, so let's get those dates right.

4 BY MR. TUNLEY:

5 2224 Q. I think your counsel has them  
6 right, Mr. Riley.

7 A. Yeah, I have got -- Mr. Dearden's  
8 statement is correct, it was 2015 and 2016. I  
9 apologize.

10 2225 Q. No, no, no worries. Look, it is  
11 not a memory test.

12 So again, all I want is the same  
13 undertaking or advisement as to how that amount of  
14 101.3 million dollars Canadian is made up in terms  
15 of, one, principal loan advances; two, unpaid  
16 interest due; and three, fees or other charges by  
17 Callidus or other amounts.

18 And I take it you'll take that under  
19 advisement, as you have the two previous requests?

20 U/A MR. DEARDEN: Yes, Mr. Tunley.

21 BY MR. TUNLEY:

22 2226 Q. Thank you. Now, if I go to your  
23 affidavit, paragraph 185, and again, there is lots  
24 of material in between which I don't need to ask  
25 you about, but if you need to review it, please do.

1                   A.    So this is the section that is  
2                   headed up "Catalyst's Accounting Treatment of XTG",  
3                   okay.  May I just read it again for a second?

4   2227            Q.    Yes, please.

5                   A.    [Witness reviews document.]  
6                   Okay, I am there.

7   2228            Q.    Now, here you are saying that  
8                   Catalyst is reporting this asset, the XTG  
9                   investment in the funds, in U.S. dollars again, and  
10                  after deductions it is almost 55 million U.S.  
11                  dollars; correct?

12                  A.    Yes, yes.

13   2229            Q.    And just two questions, really.  
14                  Why the switch back to U.S. dollars?  It is kind  
15                  of -- we are back and forth, starting U.S. and  
16                  going to Canadian and now we are back in U.S.  What  
17                  is the reason for that?  Do you understand why?

18                  A.    Yes, Callidus reports its  
19                  financial statements in Canadian dollars.  That is  
20                  the currency for the accounts.  So if you have a  
21                  U.S. dollar obligation, you convert it to Canadian  
22                  dollar equivalent on the date you are preparing  
23                  those financial statements.  So that is just that  
24                  currency date.

25                  We do the opposite, in effect, because

1 our investors make commitments to us in U.S.  
2 dollars, so we prepare our financial statements,  
3 that is, the Catalyst Funds, based on U.S. dollars.  
4 So if we have a Canadian dollar obligation or a  
5 Canadian dollar asset, we convert that to U.S.  
6 dollars, again, based on whatever the currency  
7 conversion is at the date of the preparation of  
8 those financial statements.

9 2230

Q. Okay, I understand that answer,  
10 and that is all I needed to know. Can I just ask  
11 you, as at the relevant date how much was that 55  
12 million U.S. in Canadian dollars? Do you know?

13 MR. DEARDEN: We do know somewhere.

14 THE DEPONENT: Do we?

15 MR. DEARDEN: Yes.

16 THE DEPONENT: Sorry, when you say the  
17 54, what is the 54 equivalent to?

18 MR. DEARDEN: In Canadian dollars.

19 THE DEPONENT: What does that convert  
20 to? I don't know.

21 U/T MR. DEARDEN: No, but we do know that.  
22 We'll get you that number.

23 BY MR. TUNLEY:

24 2231

Q. That is fine. It's 54.8, just for  
25 the record. I have been rounding it to 55, but we

1 are talking about --

2 A. Yes, we understand the number.

3 MR. DEARDEN: You are asking from  
4 paragraph 184 where we say the balance USD  
5 \$54,804,949.

6 MR. TUNLEY: Correct.

7 MR. DEARDEN: And what is that in  
8 Canadian dollars using the exchange rate at the  
9 time.

10 BY MR. TUNLEY:

11 2232 Q. At the relevant time, yes, thank  
12 you.

13 And the other question that I have in  
14 this area, and then I think I am done this area, is  
15 just simply as of December 2016, what was the value  
16 of the XTG investment that Catalyst was reporting  
17 to its fund investors? And I am talking about a  
18 total --

19 A. I think that number is in my  
20 paragraph 186.

21 2233 Q. All right.

22 A. That is the \$9,398,000.

23 MR. DEARDEN: U.S.

24 THE DEPONENT: U.S.

25 BY MR. TUNLEY:

1           2234                   Q.    Okay, thank you.  Now just to move  
2                                   on then to more broadly deal with the business of  
3                                   Catalyst and Callidus, I take it both are investors  
4                                   in financially distressed firms?  That is generally  
5                                   what both of them do?

6                                   A.    I disagree with that, and I say it  
7                                   with respect.  I think you have to start with how  
8                                   the respective businesses are done.

9                                   Let's start with the Catalyst Funds.  
10                                  We are investors for control, in effect.  We want  
11                                  to take control of an enterprise, either negative  
12                                  or positive control and thought of in terms of  
13                                  restructuring.  So negative control is about more  
14                                  than a third of that, of a particular interest;  
15                                  positive control is we own 66 and two-thirds of  
16                                  that interest.

17                                  Callidus -- Catalyst, rather, will try  
18                                  and acquire that control, negative or positive, and  
19                                  lead a restructuring of that asset that is either  
20                                  in insolvency proceedings or is put into insolvency  
21                                  proceedings.  That is what their business is.  So  
22                                  you start with a company that is in financial  
23                                  distress and try and make it into a profitable  
24                                  enterprise again.

25                                  Callidus, on the other hand, as a

1 lender is aiming to lend money to people that it  
2 believes will be able to repay that money.

3 2235 Q. All right.

4 A. So one is lending to get money  
5 back; the other may acquire loans in order to use  
6 those to restructure an enterprise. We don't just  
7 buy loans. We can also buy equity in certain  
8 cases.

9 2236 Q. Okay, that is helpful.

10 A. So what I am saying in the  
11 simplest terms is that they are not the same  
12 business.

13 2237 Q. Well, in the case of XTG, you'll  
14 agree that was a case where Callidus -- the initial  
15 investor was Callidus and it invested in a  
16 distressed debt situation; correct?

17 A. Yeah, it refinanced distressed  
18 debt, yes.

19 2238 Q. And you would agree that --

20 A. Through a proceeding.

21 2239 Q. Sorry, I missed your answer.

22 A. It would go through a proceeding  
23 at that time. So again, you have to go back to  
24 what Callidus typically -- Catalyst typically does.  
25 It will lead an insolvency restructuring through a

1 chapter process, Chapter 11 or CCAA.

2 2240 Q. So just staying with XTG, at the  
3 time of the insolvency proceeding, as I understand  
4 it, the investment was a debt investment held by  
5 Callidus, not Catalyst?

6 A. That's correct.

7 2241 Q. But are you saying that the  
8 restructuring that occurred during that insolvency  
9 proceeding was led by Catalyst?

10 A. No, I didn't say that.

11 2242 Q. Okay.

12 A. Callidus conducted that insolvency  
13 restructuring through the -- well, it is actually a  
14 realization proceeding. That is what a  
15 court-appointed receiver does.

16 2243 Q. You'll agree, though, and I think  
17 you say it at various points in your affidavit but  
18 I don't have the references for you, but raising  
19 funds for investment in distressed situations  
20 serves a market need; correct?

21 A. Yes. Are you talking about  
22 Callidus or Catalyst? Catalyst would -- I would  
23 say that is true of Catalyst. Without wanting to  
24 get on a soapbox, restructurings are an integral  
25 part of the capital markets.

1 MR. DEARDEN: Maybe start saying  
2 Catalyst Funds.

3 THE DEPONENT: Yes, Catalyst Funds.  
4 Because from time to time people will get confused,  
5 so I'll use "Callidus" for Callidus and "Catalyst  
6 Funds" for the funds that we manage.

7 BY MR. TUNLEY:

8 2244 Q. And sometimes, if the Callidus  
9 loans are not repaid, then either Callidus or  
10 Catalyst can acquire control of the borrower's  
11 business, as occurred in XTG's case?

12 A. I disagree with that.

13 2245 Q. Okay, how would you describe what  
14 happened in XTG?

15 A. Callidus went through an  
16 insolvency proceeding, a court-appointed  
17 receivership, tried to resurrect the business, was  
18 unsuccessful, and then pursuant to the guarantee  
19 that was given by the Catalyst Funds at the time of  
20 the IPO, it put that loan to the Catalyst Funds.

21 2246 Q. I see. The acquisition of  
22 control, though, took place while Callidus was  
23 managing the process through the insolvency when  
24 its stalking horse offer was accepted, correct, in  
25 that instance?

1 MR. DEARDEN: I don't understand the  
2 question.

3 THE DEPONENT: Yeah, I don't  
4 understand -- well, I don't understand the question  
5 either.

6 BY MR. TUNLEY:

7 2247 Q. Well, you described to me a moment  
8 ago that Callidus made an offer to purchase. Was  
9 it Callidus or Catalyst that made the offer to  
10 purchase XTG?

11 A. Callidus. Callidus. Callidus, in  
12 the insolvency proceedings before Mr. Justice  
13 Morawetz, Callidus made the stalking horse bid.

14 2248 Q. So it was Callidus whose offer to  
15 purchase the XTG business was accepted, the  
16 stalking horse offer that we spoke of a moment ago?

17 A. That is correct. That is correct.

18 2249 Q. And when the vesting order was  
19 made, it vests the business, control of the  
20 business in Callidus, not Catalyst; correct?

21 A. Not in the Catalyst Funds, in  
22 Callidus.

23 2250 Q. Correct, all right. Mr. Glassman  
24 holds an executive position in Callidus; correct?  
25 He is the CEO, among other things, of that firm?

1                   A.    He was at that time.  He is no  
2                   longer CEO of Callidus.

3   2251            Q.    And he also at that time held a  
4                   position in Catalyst as its Managing Partner;  
5                   correct?

6                   A.    Yes, yes.

7   2252            Q.    And that is a senior executive  
8                   position?

9                   A.    Yes, he is the Managing Partner.

10   2253           Q.    All right.  And you similarly had  
11                   a position in Callidus?  You held a senior  
12                   management position in Callidus at the time?

13                   A.    I was Secretary and a member of  
14                   the Credit Committee and a Director.

15   2254            Q.    Right.  And at that time as well,  
16                   you were the Managing Director of Catalyst; is that  
17                   right?

18                   A.    I was Managing Director and COO at  
19                   the time.

20   2255            Q.    Okay.  And were there other  
21                   executives who held positions both in Callidus and  
22                   Catalyst at the time?

23                   A.    No.  No.

24   2256            Q.    Just the two of you?

25                   A.    Yes.

1           2257                   Q.    All right.  I am going to ask you  
2                                   some very basic questions, sir, about these  
3                                   Catalyst Funds.  I think they are described in your  
4                                   conspiracy affidavit, or the most detail is in your  
5                                   conspiracy affidavit, paragraphs 13, roughly,  
6                                   through 16.

7                                   My understanding, sir, is these are  
8                                   investment funds basically created by Catalyst;  
9                                   correct?

10                                  A.    That is correct.

11           2258                   Q.    And my understanding, simple as it  
12                                   is, is they are structured as limited partnerships;  
13                                   is that correct?

14                                  A.    That is correct.

15           2259                   Q.    So there is a corporate general  
16                                   partner that operates the investment fund; correct?

17                                  A.    No, that is not quite the  
18                                   structure.  There is a general partner.  That is a  
19                                   wholly-owned subsidiary of Catalyst.  Catalyst  
20                                   manages the funds pursuant to a management  
21                                   agreement with the fund -- with each of the funds.

22           2260                   Q.    But there is a corporate general  
23                                   partner that enters into that management agreement  
24                                   with Catalyst?

25                                  A.    Say that again?

1 2261 Q. There is a corporate --

2 A. Say that again.

3 2262 Q. Sorry, I am not sure if it is my  
4 problem or -- Madam Reporter, is that a problem  
5 originating at my end?

6 A. I am not --

7 (DISCUSSION OFF THE RECORD.)

8 MR. DEARDEN: So, Mr. Tunley, we didn't  
9 hear the last question. We saw your mouth moving,  
10 but we didn't hear the question.

11 BY MR. TUNLEY:

12 2263 Q. I'll try it again, Mr. Dearden.  
13 Thank you.

14 I think you have told me, if I  
15 understood you, Mr. Riley, that there is a  
16 corporate general partner that is wholly owned by  
17 Catalyst; correct?

18 A. Yes, correct.

19 2264 Q. And that corporate general partner  
20 enters into a management agreement with Catalyst to  
21 manage the funds?

22 A. Well, I believe that the agreement  
23 says that it is entered into on behalf of the  
24 limited partnership, but the general partners is  
25 the signatory.

1 2265 Q. Right.

2 A. As the general partner, because it  
3 is the only one that can sign or enter into  
4 obligations.

5 2266 Q. And I am not a limited partnership  
6 expert. I am sure you are. But my understanding  
7 is investors buy limited partnership units in the  
8 fund; correct?

9 A. Yes.

10 2267 Q. And they have no role in  
11 management; correct?

12 A. If they do take a role in  
13 management, they lose their limited liability, so  
14 they do not participate.

15 2268 Q. But Catalyst itself is not the  
16 corporate general partner of any of the fund  
17 partnerships; it is a subsidiary --

18 A. No, it is the manager of the  
19 funds.

20 2269 Q. But Catalyst does own or control  
21 each of the corporate general partners?

22 A. That is correct.

23 2270 Q. So it holds all the shares of  
24 those entities directly or indirectly?

25 A. That is correct.

1           2271                   Q.    And some of the investors in the  
2                                   Catalyst Funds are identified in the record.  Am I  
3                                   right that Harvard University is one of the  
4                                   investors in one or more of the Catalyst Funds?

5                                   A.    That is correct.

6           2272                   Q.    And McGill University is another  
7                                   in one or more?

8                                   A.    That is correct.

9           2273                   Q.    I should say was at the time.  I  
10                                  don't -- my questions are referable to the  
11                                  2016/2017 period.

12                                  A.    That is what I understood you to  
13                                  be referring to.

14           2274                   Q.    Thank you.  And some of the  
15                                  investors are clients of other investment firms;  
16                                  correct?  They are brought to you by other  
17                                  investment managers?

18                                  A.    No -- well, we have -- in each of  
19                                  the funds you have, when you are going to market,  
20                                  you have something called a placement agent.  The  
21                                  placement agent is the one who identifies  
22                                  investors.

23                                  Now, in our case, a number of investors  
24                                  are in Fund II, III and IV, and also in V, so there  
25                                  is a -- they will invest -- earlier investors will

1 invest in subsequent funds.

2 2275 Q. And is more --

3 A. And not brought to us by investor  
4 dealers but by placement agents.

5 2276 Q. Is Morgan Stanley one of the  
6 placement agents for the funds?

7 A. No, it is not. No, it is not.

8 2277 Q. Is it the case that some of the  
9 client investors in the Catalyst Funds were brought  
10 into them by Morgan Stanley?

11 A. Not to my knowledge.

12 2278 Q. All right.

13 A. Sorry, Morgan Stanley is a co- --  
14 not a co-investor, but a fund-to-fund type of  
15 structure, so they have investors that they are  
16 charged with investing their money and so they in  
17 turn will invest with us or other funds.

18 2279 Q. I see, okay, that is helpful.

19 A. The Morgan Stanley -- the name of  
20 the Morgan Stanley entity involved is Morgan  
21 Stanley Asset Management. They are an asset  
22 manager.

23 2280 Q. Okay. And from time to time, I  
24 understand Catalyst has planned and initiated new  
25 funds; correct?

1 A. That is correct.

2 2281 Q. And was it the case as of August  
3 2017 that Catalyst was planning to launch a new  
4 fund as early as that fall?

5 A. I don't know if that -- I don't  
6 know if we were discussing a new fund because it  
7 would have been premature because Fund V was  
8 not -- for us to do a new fund, you have to have 66  
9 and two-thirds of the prior fund invested, or  
10 committed or invested in new investments. Fund V I  
11 don't think was at that level.

12 So under the terms of our agreement in  
13 Fund V, we could not have gone to market, to the  
14 best of my memory.

15 2282 Q. You could not have gone to market,  
16 and am I understanding you are saying you could not  
17 have gone to market with Fund VI?

18 A. That is correct.

19 2283 Q. All right. And can you tell me,  
20 and you won't know the date, but when did Fund V  
21 reach the threshold you have just talked about?

22 A. That would have been in December  
23 of 2019 or thereabouts -- or no, I better be  
24 careful. March, sorry, it is March. It is when  
25 the markets cratered and we started investing

1 again, COVID-related, so it is March of 2020.

2 MR. DEARDEN: 2020.

3 BY MR. TUNLEY:

4 2284 Q. So had there been any public  
5 announcement by Catalyst or any public discussion  
6 by Catalyst of the prospect of Fund VI being  
7 launched as of August 2017?

8 A. Not that I recall.

9 2285 Q. I am looking at your conspiracy  
10 affidavit around paragraph 19.

11 A. Paragraph 19?

12 2286 Q. The conspiracy affidavit.

13 A. Paragraph 19?

14 2287 Q. Yes.

15 A. Sorry, have I got the wrong  
16 affidavit?

17 MR. DEARDEN: Conspiracy.

18 THE DEPONENT: Oh, conspiracy, sorry.  
19 I apologize, I looked at the libel. What page is  
20 that?

21 MR. DEARDEN: Page 19.

22 BY MR. TUNLEY:

23 2288 Q. Paragraph 19. I am just focussing  
24 on what you report here. While Callidus was  
25 publicly traded, a portion of its shares continued

1 to be owned by Catalyst Funds II, III and IV; is  
2 that correct?

3 A. Yes.

4 2289 Q. And together you say the funds  
5 held a majority of the Callidus publicly traded  
6 voting shares?

7 A. There were only -- they only  
8 issued voting shares, yes.

9 2290 Q. I'm sorry, I missed that.

10 A. Sorry, maybe I -- the answer I was  
11 trying to give you was that the funds owned the  
12 majority, more than a majority of the outstanding  
13 common shares of Callidus.

14 2291 Q. Right. I think it is in your  
15 paragraph 21 you say that following the IPO, they  
16 owned or controlled more than 60 percent of  
17 Callidus shares; is that correct?

18 A. Yes.

19 2292 Q. And you are talking about the  
20 voting shares of Callidus, publicly traded  
21 voting --

22 A. Yes.

23 2293 Q. Okay.

24 A. Yes.

25 2294 Q. And that was control as at that

1 time?

2 A. Yes.

3 2295 Q. Now, I think you have been  
4 referring to an affidavit of Mr. Sutin who is I  
5 understand the Chair of an Independent Committee?

6 A. His name is Sutin, Rick Sutin.

7 2296 Q. Okay.

8 A. Or sorry, David Sutin. Rick is  
9 his brother, I apologize.

10 2297 Q. I am just going to take you to  
11 paragraph 12 of his affidavit, if we can display  
12 that to you. What he says in paragraph 12 is that  
13 it was 72.2 percent; do you see that reference?

14 A. Yes.

15 2298 Q. Approximately.

16 A. Approximately, yes.

17 2299 Q. And do you know if that had been  
18 fairly constant over the period that we are  
19 interested in, that is, from let's say early 2017  
20 through to the date of his affidavit?

21 A. I don't know that. I know that  
22 the increase in ownership was as a result of our --  
23 Callidus instituted a dividend program and, of  
24 course, wanting a dividend reinvestment plan, so  
25 you could either take your dividends in cash or in

1 stock. And so the increase in percentage was a  
2 result of we elected to take the dividend in stock,  
3 not in cash. That is -- and so that would have  
4 occurred somewhere from the 2014 period to the date  
5 of the Sutin affidavit.

6 2300

Q. I am just going to ask if there is  
7 any sort of single place I can go in the record,  
8 and maybe your counsel know or you know, that would  
9 show the changes in the percentage of ownership of  
10 Callidus by the Catalyst Funds in the period we are  
11 talking about from early 2017 through to the date  
12 of Mr. Sutin's affidavit? Do you know if there is  
13 one place that we can go?

14 A. There isn't. We would have to go  
15 back to the records of Callidus for that  
16 information.

17 2301

Q. So --

18 A. And I am not trying to quibble,  
19 but I am not sure what the relevance is.

20 2302

Q. Well, I don't want to put you to  
21 work that is maybe not worth the effort, but you  
22 are indicating that it started at slightly more  
23 than 60 percent and it increased to 72.2 percent;  
24 am I understanding that?

25 A. That is correct.

1 2303 Q. Okay. So I don't think that --

2 A. And did I say 60 or more than 60?

3 MR. DEARDEN: I think you said more.

4 THE DEPONENT: And the reason I say  
5 more than 60, I do not know the precise percentage.  
6 It is just it was more than 60.

7 MR. DEARDEN: Paragraph 21, the first  
8 sentence.

9 THE DEPONENT: 21.

10 BY MR. TUNLEY:

11 2304 Q. That is fine.

12 A. Yeah, more than 60 percent. At  
13 that time it might have been 66 and two-thirds. I  
14 don't know.

15 2305 Q. And your evidence, just so I  
16 understand it, is that that's because all  
17 shareholders had an option to take the dividend in  
18 cash or shares. The funds --

19 A. Correct.

20 2306 Q. -- controlled by Catalyst decided  
21 to take it in shares?

22 A. That is correct.

23 2307 Q. And from time to time, the  
24 Catalyst Funds were able to vote whatever  
25 percentage of the shares they held in Callidus;

1 correct?

2 A. Correct.

3 2308 Q. And directly or indirectly it  
4 would have been Catalyst itself that was able to  
5 control how those shares were voted by the funds;  
6 correct?

7 A. "Control" is a very slippery word.  
8 We exercised that function as the manager of the  
9 funds, so we exercised it on their behalf.

10 2309 Q. I am not using any technical  
11 meaning of the word "control", so take that out of  
12 my question. And just from time to time when a  
13 vote came up, if a vote came up, it would be  
14 Callidus's decision as to how those shares were  
15 voted?

16 A. Correct.

17 2310 Q. Just while we have Mr. Sutin's  
18 affidavit, I am going to ask you a few additional  
19 questions. I think they are additional questions  
20 about the going private transaction.

21 A. Yes.

22 2311 Q. There is reference to a going  
23 private plan or process. Sorry, I am getting that  
24 echo again.

25 I understand that court approval and/or

1 OSC approval of the going private process was  
2 necessary; is that correct?

3 A. That's correct.

4 2312 Q. And Mr. Sutin's affidavit is sworn  
5 in support of that court approval?

6 A. That is for the initial order,  
7 yes.

8 2313 Q. And that is -- if you could just  
9 scroll up to the title of proceedings. Who  
10 initiated the process, the application?

11 A. That would have been I believe the  
12 Independent Directors, the Special Committee of the  
13 Independent Directors of Callidus.

14 2314 Q. Okay. And the court approval or  
15 regulator approval was because the proposed  
16 transaction would involve a purchase or redemption  
17 of all of Catalyst's shares; correct?

18 MR. DEARDEN: I think he said court  
19 approval and not regulator approval, Mr. Tunley.

20 THE DEPONENT: There is a regulatory  
21 approval.

22 MR. TUNLEY: Okay.

23 THE DEPONENT: There is. The OSC gets  
24 involved.

25 MR. TUNLEY: Okay.

1 MR. MOORE: What was the question  
2 again, Mr. Tunley?

3 MR. TUNLEY: I am not -- I am just  
4 being careful. I think Mr. Riley is correct, there  
5 is more than approval, but it is not material to my  
6 questions. I am just trying to be careful in how I  
7 frame them so I don't get into an argument with  
8 you, sir.

9 MR. MOORE: Well, the reason I asked  
10 for clarification, I think you said at the end of  
11 your question that it involved the purchase of all  
12 of Catalyst's or Callidus's shares, and the witness  
13 is more familiar with the privatization process  
14 than I am, but I don't think that is the right  
15 characterization.

16 THE DEPONENT: The shares that were  
17 purchased essentially were the minority  
18 shareholdings.

19 BY MR. TUNLEY:

20 2315 Q. Okay.

21 A. Catalyst Funds remained a  
22 shareholder, shareholders in Callidus, if that is  
23 your question.

24 2316 Q. I see, okay, thank you. That  
25 helps. The decision to initiate this change was

1 made by Catalyst or by the Callidus Independent  
2 Directors?

3 A. Yes.

4 2317 Q. Could you just help me with that?  
5 Or both?

6 A. I'm sorry, I don't -- I apologize,  
7 and it may be -- let me be as simple as I can, and  
8 then maybe you can ask a more precise question.

9 2318 Q. It would be helpful if you are as  
10 simple as you can be.

11 A. And I don't mean that in a  
12 disrespectful way. It is just I don't want to  
13 misspeak in any way because it is -- and I don't  
14 want to be overly technical. That is what I am  
15 trying to say.

16 When you have a proposal from someone  
17 like Braslyn to initiate the going private  
18 transaction, because we are involved in remaining  
19 in Callidus, "we" being the Catalyst Funds, we have  
20 to have that considered by the Independent  
21 Directors of Callidus, those Independent Directors  
22 one of whom was David Sutin and he was the Chair of  
23 the Independent Directors; and they are the ones  
24 who actually ultimately negotiate what the  
25 arrangement will be, what the arrangement will be

1 with Braslyn --

2 2319 Q. So --

3 A. -- Braslyn funded the buyout of  
4 the remaining shares.

5 2320 Q. I understand and that is helpful.

6 I just want to understand, if I can, was this  
7 something that Catalyst wanted to happen or to see  
8 happen and which it initiated and therefore struck  
9 the Independent Committee to participate, or was it  
10 initiated by an Independent Committee of the  
11 directors representing the minority shareholders?  
12 Do you understand my question?

13 A. Braslyn in effect initiated the  
14 transaction, the technical term, and that was  
15 considered by the Independent Directors as to  
16 whether or not that was an offer that they were  
17 willing to take to the minority shareholders.

18 2321 Q. All right.

19 A. There is -- if you look at the --  
20 if you look at the proxy circular for that going  
21 private, you would see that there is a long --  
22 there will be, as there is in every one of these  
23 going privates or similar transactions, a lengthy  
24 outline of all of the steps that were taken by the  
25 Independent Committee.

1 2322 Q. And can you just, again, for me  
2 because this is not part of the case that I am  
3 particularly interested in or follow closely, but  
4 is that proxy circular in the record somewhere and  
5 could you identify where I find it by way of an  
6 undertaking, you or your counsel?

7 MR. DEARDEN: Yes, it is in the record,  
8 Mr. Tunley. It is at B00000473.

9 MR. TUNLEY: Thank you, and I'm sure  
10 I'm the only person that didn't know that.

11 MR. DEARDEN: We are going to put it up  
12 on the screen.

13 BY MR. TUNLEY:

14 2323 Q. You don't have to do that. I  
15 can -- it is a public document, and I can study it  
16 later, Mr. Dearden.

17 A. It is a public document.

18 MR. DEARDEN: Well, I would like to  
19 include it in the record.

20 BY MR. TUNLEY:

21 2324 Q. It is already in the record I  
22 think you told me, so you don't need to.

23 Can you go to Mr. Sutin's affidavit,  
24 paragraph 15 -- sorry, just before I go to 15, I  
25 don't want to be misunderstood. When I asked you

1 is it in the record, Mr. Dearden, is it a  
2 production that has not yet been identified and  
3 marked as an exhibit, or is it an exhibit in the  
4 record of these motions somewhere?

5 MR. DEARDEN: It is a production, and  
6 that is why I was suggesting that it be added as an  
7 exhibit.

8 MR. TUNLEY: All right, well, since I  
9 have referred to it, I don't think it is in the  
10 documents that we have prepared, but you have given  
11 me the document reference. And what I am going to  
12 do is I'll include that document in the brief that  
13 is marked as the exhibit on my examination. Is  
14 that acceptable to everybody, just to save time on  
15 the transcript?

16 MR. DEARDEN: Yes, and we'll send you a  
17 copy of that document.

18 BY MR. TUNLEY:

19 2325 Q. All right. Coming to paragraph  
20 15, it seems that this process had commenced in  
21 September 2016; is that correct?

22 A. Yes, I believe that is the correct  
23 date.

24 2326 Q. And was there any public  
25 announcement of when this began and how this began

1 in September 2016?

2 A. There would have been, yes, but I  
3 can't recall the date -- or I can't recall the  
4 exact document.

5 2327 Q. Mr. Sutin refers to a  
6 solicitation, do you see that, "a lengthy process  
7 to solicit privatization proposals"?

8 A. Yes.

9 2328 Q. And who is soliciting that? Is  
10 that Catalyst or Braslyn or the Independent  
11 Committee that is soliciting privatization  
12 proposals?

13 A. The initial solicitations were by  
14 Catalyst, and then the resulting Braslyn agreement  
15 was put to the Independent Directors for their  
16 consideration.

17 2329 Q. All right. And again, I am sure  
18 I'm the only person in the room that doesn't  
19 already know, but could you undertake to identify a  
20 copy of the solicitation that is being referred to,  
21 and if there is more than one, the solicitations,  
22 to the extent they are public documents?

23 A. They are not. They are not public  
24 documents.

25 2330 Q. Oh, they are not.

1 MR. DEARDEN: Do you really need them?

2 BY MR. TUNLEY:

3 2331 Q. Just explain to me how they work.

4 Maybe I don't if they are not public documents.

5 Just explain to me how these solicitations work,

6 Mr. Riley.

7 A. Again, in maybe overly simplistic  
8 terms, but I think we engaged Goldman Sachs to go  
9 out and solicit proposals initially, and then we  
10 also engaged, I can't remember the names, but our  
11 placement agent to also solicit. And there were  
12 people who came forward with proposals that were  
13 not acceptable to Callidus. Braslyn was one of  
14 them.

15 Sorry, and I should put context there.  
16 Because Catalyst was going to be a continuing  
17 shareholder, Catalyst was going to be a continuing  
18 shareholder in -- Catalyst Funds were going to be  
19 continuing shareholders in Callidus and were the  
20 majority, more than a majority, Callidus would  
21 necessarily have to agree to whoever the new  
22 participant was because we had to enter the  
23 shareholders arrangements and they had to be  
24 acceptable to us, what you would normally expect if  
25 you are going to be an investor with someone else.

1           2332                   Q.    I understand, and I understand  
2                                Mr. Sutin's affidavit, and I am looking  
3                                specifically at paragraphs 5 through 9, that is a  
4                                short summary of the key terms of this plan or  
5                                arrangement that you have just described; is that  
6                                right? Do you want to just take a moment and look  
7                                at that? I should say he is putting that under the  
8                                heading "Overview", right, "Overview of the  
9                                Arrangement"?

10                            A.    Sorry, you broke up a little bit.  
11                            Oh, you are just reading the title? Got it. Got  
12                            it.

13           2333                   Q.    Yeah.

14                            A.    Could you go to paragraph 6,  
15                            please?

16                                        [Witness reviews document.]

17                            Okay, and could you scroll down,  
18                            please?

19                                        Scroll down, please.

20                                        [Witness reviews document.]

21                                        Scroll down, please.

22                                        Thank you.

23           2334                   Q.    So this section of the affidavit  
24                                ends with paragraph 9; correct?

25                            A.    Yes.

1 2335 Q. And --

2 A. Yes.

3 2336 Q. And it refers to something called  
4 a, quote, "Draft Management Information Circular"  
5 that he has attached as Exhibit A. It is not part  
6 of what we have been provided. Do you know if that  
7 Draft Management Information Circular is part of  
8 the productions anywhere?

9 MR. DEARDEN: I don't know.

10 THE DEPONENT: I don't know. And the  
11 other thing I had said is during this time period,  
12 I was in Australia for personal reasons, which I  
13 went into --

14 BY MR. TUNLEY:

15 2337 Q. Yes, and I am not --

16 A. And so just I was not actively  
17 involved, so my memory is based on my review of the  
18 documents, not what I knew contemporaneously.

19 2338 Q. Not a problem, Mr. Riley. What I  
20 would just ask is if a copy of that Draft  
21 Management Information Circular that was attached  
22 as Exhibit A to Mr. Sutin's affidavit has not been  
23 produced in the productions, could it be produced  
24 by way of an undertaking or an advisement?

25 U/A MR. DEARDEN: And because I don't know

1 what it is, I'll give you an advisement.

2 MR. TUNLEY: That is fine.

3 MR. DEARDEN: If it isn't in the  
4 productions. That we will look for.

5 BY MR. TUNLEY:

6 2339 Q. That is fine. So Mr. Sutin was  
7 the Chair of this Independent Committee struck by  
8 Callidus's Board of Directors, and I am  
9 understanding that it kind of ran the privatization  
10 approval process through this court --

11 A. Yes, and also interacted with  
12 Braslyn to set up the terms.

13 2340 Q. Right. And the committee's  
14 mandate or its role, however you want to express  
15 it, was to report to shareholders and to the court  
16 on the proposed defined terms, right?

17 A. Well, the purpose of the Special  
18 Committee is to come to some sort of conclusion as  
19 to whether they think the offer should be put to  
20 the shareholders, and that in this case it was the  
21 Board of Directors, being all the members of the  
22 Special Committee of the Board of Directors  
23 unanimously recommend that we vote in favour of the  
24 arrangement. So that was what ultimately happened.

25 2341 Q. And ultimately approval was given

1 and this plan --

2 A. That is correct.

3 2342 Q. -- did close?

4 A. Yes.

5 2343 Q. Do you know when that occurred and  
6 at what share price it closed?

7 A. The price was 75 cents per share,  
8 and I don't know actually when it closed.

9 2344 Q. Perhaps your --

10 A. I just --

11 2345 Q. No, and you have told me you were  
12 absent for much of this, but if we could have an  
13 undertaking to determine the date, that would be  
14 great.

15 U/T A. Okay.

16 2346 Q. Can we just confirm Sutin had been  
17 a Director of Callidus for some time?

18 MR. DEARDEN: Sorry, you just broke up  
19 there, Mr. Tunley. Sutin had been...?

20 THE DEPONENT: Something for some time.

21 BY MR. TUNLEY:

22 2347 Q. He had been a Director of Callidus  
23 for some time?

24 A. Yes.

25 2348 Q. And he was a Director of Callidus

1 when the Wall Street Journal article was published?

2 A. Yes.

3 2349 Q. And there is no doubt he would  
4 have been aware of the article at that time when it  
5 was published?

6 A. Yes.

7 2350 Q. He likely read it as part of his  
8 own news review, but if not, he certainly would  
9 have been provided with a copy shortly afterwards?

10 A. We would have advised all of the  
11 Directors of that article.

12 2351 Q. Right.

13 A. They wouldn't have missed the  
14 story.

15 2352 Q. And when Catalyst and Callidus  
16 issued their Statement of Claim against Dow Jones  
17 and the Wall Street Journal reporters on November  
18 7, 2017, Mr. Sutin would have -- was still a  
19 Director and he would be provided with a copy of  
20 that?

21 A. He would have been briefed. All  
22 of the Directors would have been briefed, but I am  
23 not sure we would have provided them with a copy of  
24 the Statement of Claim.

25 2353 Q. And the Directors also certainly

1 had been made aware of the prior Wolfpack  
2 litigation involving West Face and Mr. Veritas, and  
3 I think it is referred to by others as the Veritas  
4 litigation; is that fair?

5 A. Yes, they would have been aware of  
6 that.

7 2354 Q. And they would have been provided  
8 with information or indeed copies of the claims in  
9 the conspiracy action when it was commenced  
10 alleging further short-selling attacks?

11 A. Yes.

12 2355 Q. Now I want to deal with contacts  
13 between the Wall Street Journal journalists and  
14 Callidus and Catalyst. Do you know when Catalyst  
15 and Callidus first became aware that the Wall  
16 Street Journal, that journalists with the Wall  
17 Street Journal were asking questions about the  
18 matters that ultimately became the subject of the  
19 article?

20 A. They would have been asking  
21 questions initially of Dan Gagnier. And I don't  
22 want to go just by memory, so I think it is  
23 probably -- I will say probably June or July, late  
24 June, early July, but I don't have the precise  
25 dates. I would have to go back to Mr. Gagnier.

1 MR. DEARDEN: What year?

2 THE DEPONENT: Oh, 2017.

3 BY MR. TUNLEY:

4 2356 Q. I am not just though -- my  
5 question wasn't just about actual contacts. It was  
6 about when Catalyst or Callidus first became aware  
7 of Wall Street Journal journalists asking questions  
8 about them.

9 A. I don't know how to answer -- I  
10 thought I had answered that question. The initial  
11 questions would have gone to -- how Dan Gagnier  
12 became aware of it? I assume it was through  
13 questions by the reporters. It could be some other  
14 source.

15 2357 Q. All right.

16 A. But you'll recall that Reuters was  
17 nosing around the same story, so I don't know what  
18 happened in that time frame.

19 2358 Q. The problem I am having is that  
20 Catalyst and Callidus have not produced documents  
21 from Mr. Gagnier's file, so I'll just put on the  
22 record that the Wall Street Journal Defendants have  
23 produced many documents of contacts with  
24 Mr. Gagnier that the Plaintiffs have not produced.  
25 Do you know why you haven't produced Mr. Gagnier's

1 file?

2 U/A MR. MOORE: Mr. Tunley, let me take  
3 that under advisement and we'll follow up and let  
4 you know. I thought that some Gagnier documents  
5 may have been produced and others may have been to  
6 and from counsel, but let us get back to you on  
7 that.

8 BY MR. TUNLEY:

9 2359 Q. Well, I want to know why documents  
10 of direct contacts between Mr. Gagnier and the Wall  
11 Street Journal Defendants have not been produced.  
12 Clearly no privilege attaches to them. So that is  
13 one question, Mr. Moore.

14 U/A MR. MOORE: Yes.

15 BY MR. TUNLEY:

16 2360 Q. I want to know whether and to what  
17 extent the Plaintiffs claim that a privilege  
18 attaches to Mr. Gagnier's file, and let me just put  
19 a couple of questions on the record in that regard.

20 U/A MR. MOORE: Yes.

21 BY MR. TUNLEY:

22 2361 Q. Am I coming through clear, Madam  
23 Reporter? You are looking -- or maybe you are not  
24 looking at me but -- no, that is fine.

25 First of all, Mr. Moore --

1 A. Sorry.

2 MR. MOORE: Well, I'll make a note of  
3 your questions, Mr. Tunley, so keep going.

4 BY MR. TUNLEY:

5 2362 Q. I want to know, Mr. Gagnier is not  
6 a lawyer, is he?

7 A. He is not.

8 2363 Q. Was he retained or directed by any  
9 lawyer on behalf of Callidus and Catalyst?

10 A. I interacted with him, and I am a  
11 lawyer.

12 2364 Q. You are not a lawyer on behalf of  
13 Catalyst and Callidus. You are an executive  
14 officer on behalf of --

15 A. No, but I do -- the Chief  
16 Operating Officer acts also as General Counsel. We  
17 just don't use that title. So I acted on behalf of  
18 Catalyst in legal matters, and also from time to  
19 time for Callidus.

20 MR. MOORE: And Mr. DiPucchio was  
21 involved at that time, as far as I recall.

22 THE DEPONENT: Yes, and --

23 MR. TUNLEY: Well, I am going to come  
24 to Mr. DiPucchio.

25 MR. MOORE: All right, so I should let

1           you finish your questions. Why don't you put all  
2           of your questions and we'll deal with them by way  
3           of advisement, rather than, you know, back and  
4           forth.

5                           BY MR. TUNLEY:

6   2365                   Q.    That is fine.

7                           And just to pick up, Mr. Riley, on what  
8           you have just said, has Callidus or Catalyst  
9           claimed privilege for any of your communications  
10          with Mr. Gagnier?

11                          A.    I didn't prepare the affidavit of  
12          documents, so I would have to defer to counsel as  
13          to what was in --

14   U/T                   MR. MOORE: We'll let you know.

15                          BY MR. TUNLEY:

16   2366                   Q.    I thought you swore it, sir.

17                          A.    No, Mr. DiPucchio did. I did not  
18          swear that affidavit.

19   2367                   Q.    All right. I'll just put my  
20          questions on the record, as Mr. Moore suggested.

21                          There was no litigation contemplated  
22          with the Wall Street Journal prior to the  
23          publication of the articles at issue on August 9,  
24          2017; is that correct or not correct?

25   U/A                   MR. MOORE: Well, just put your

1 questions and I'll take them all under advisement.

2 BY MR. TUNLEY:

3 2368 Q. I want to know who Mr. Gagnier  
4 reported to. You have said it was you partially,  
5 sir; is that right?

6 A. That is correct.

7 2369 Q. And to your knowledge, did he  
8 report directly to Mr. Glassman as well?

9 A. He --

10 U/A MR. MOORE: Well, just give us your  
11 questions and we'll take them under advisement. I  
12 don't want to deal with them piecemeal.

13 BY MR. TUNLEY:

14 2370 Q. Well, I am going to request  
15 production in the period from February to August of  
16 2017 I am interested in, number one, any contract  
17 or contracts under which Mr. Gagnier was engaged to  
18 work for Catalyst and Callidus. That is point one.

19 U/A MR. MOORE: I am making a note, Phil.

20 BY MR. TUNLEY:

21 2371 Q. Point two, I would like to get any  
22 letter or letters of instruction to him or any  
23 other mandate document that was given to him in  
24 writing regarding his contacts with the Wall Street  
25 Journal. That is number two.

1                   Number three, I would like production  
2 of all emails, texts, notes, and other records of  
3 correspondence between Mr. Gagnier and the Wall  
4 Street Journal.

5                   Number four, I would like all telephone  
6 records or calls between Mr. Gagnier and the Wall  
7 Street Journal.

8                   MR. MOORE: Sorry, that broke up a  
9 little bit. Say that again.

10                  MR. TUNLEY: All telephone records, Mr.  
11 Moore, of calls between Mr. Gagnier and the Wall  
12 Street Journal.

13                  MR. DEARDEN: Well, Phil, can we sort  
14 of hone that down? Are you talking Jacquie McNish?

15                  MR. TUNLEY: Well, there is also --

16                  MR. DEARDEN: I mean, he may have been  
17 speaking completely unrelated to this article for a  
18 completely different client to Wall Street Journal  
19 reporters.

20                  MR. TUNLEY: Well, we can't --

21                  MR. DEARDEN: The Wall Street Journal  
22 is a pretty big place.

23                  MR. TUNLEY: Well, we can't explore  
24 that until I have your productions. I don't know  
25 who he was talking to.

1 U/A MR. MOORE: Well, but, for example, one  
2 of your questions as to how -- we have taken it  
3 under advisement, so let's not debate it so that we  
4 can get through this. But you are asking for  
5 emails and the like between Mr. Gagnier and the  
6 Wall Street Journal. I presume the Wall Street  
7 Journal would have those, if there are any relevant  
8 ones.

9 But here I am doing what I said we  
10 shouldn't do. Put your questions and we'll take  
11 them under advisement and we'll get back to you.

12 BY MR. TUNLEY:

13 2372 Q. Thank you. I also want all  
14 records of communications, emails, texts, notes,  
15 phone calls, phone records between Mr. Gagnier and  
16 the Plaintiffs or anyone on their behalf regarding  
17 his contacts with the Wall Street Journal.

18 MR. MOORE: Again, just to be clear,  
19 all of these questions I take it are with respect  
20 to the time frame I think you've said February  
21 through August of 2017; is that right?

22 MR. TUNLEY: That's correct.

23 U/A MR. MOORE: All right.

24 BY MR. TUNLEY:

25 2373 Q. Mr. Riley, back to you. It is

1 fair to say, I take it, that most of the  
2 Plaintiff's contacts with the Wall Street Journal  
3 reporters were through Mr. Gagnier?

4 A. Yes.

5 2374 Q. There was some contacts by  
6 Mr. DiPucchio who you mentioned a moment ago or  
7 your counsel mentioned.

8 A. Rocco DiPucchio, sorry, was our  
9 counsel through this period when he was at Lax  
10 O'Sullivan.

11 2375 Q. Correct. And my understanding is  
12 the first letter from Mr. DiPucchio to the Wall  
13 Street Journal is a letter dated July 25, 2017,  
14 which is Exhibit A to Mr. Copeland's first  
15 affidavit. I am asking Ms. Saville to show that to  
16 you. Do you see that letter? You are aware of  
17 that letter? You have seen it before?

18 A. Yeah, can you just scroll down so  
19 I can -- yeah.

20 2376 Q. So I am not aware of any prior  
21 correspondence or communication from Mr. DiPucchio  
22 to the Wall Street Journal prior to this. Are you,  
23 sir?

24 A. In this matter? Not that I am  
25 aware of.

1           2377                   Q.    Okay, of course in this matter,  
2                                    yes.  There was one meeting, and I believe it is  
3                                    August the 8th, where you and other representatives  
4                                    of the Plaintiffs met directly with the Wall Street  
5                                    Journal journalists, Ms. McNish and Mr. Copeland,  
6                                    with one of their in-house counsel, Mr. Weissman,  
7                                    on the phone; you recall that?

8                                    A.    I do.

9           2378                   Q.    And apart from that, I am not  
10                                   aware of anyone other than Mr. DiPucchio or  
11                                   Mr. Gagnier having any direct contact with the Wall  
12                                   Street Journal journalists.  Are you aware of any  
13                                   other direct contact, other than through the --

14                                   A.    Other than through those  
15                                   individuals?

16           2379                   Q.    Correct.

17                                   A.    No, I am not aware.

18           2380                   Q.    Okay.  Now I want to show you an  
19                                   email from Ms. McNish to Mr. Gagnier.  I am pretty  
20                                   sure you will have seen it before.  It is in our  
21                                   productions, DOW000557.  Do you see this --

22                                   A.    Sorry, just so I -- what was the  
23                                   date of Mr. DiPucchio's letter?

24           2381                   Q.    July 25.

25                                   A.    Okay, thank you.  And so can you

1 go back now to the question. And what is the date  
2 of these? Okay, thank you.

3 2382 Q. This is an email of July 31. Have  
4 you seen this before?

5 A. Yes, I have.

6 2383 Q. And I take it Mr. Gagnier would  
7 have forwarded that email to you and to Mr.  
8 Glassman and perhaps others when it was received?

9 A. Yes.

10 2384 Q. And I am not aware of any response  
11 to this email until the August 8th meeting in terms  
12 of response to the questions that were posed. Are  
13 you aware of any substantive response to the  
14 questions posed between July 31 and the August 8  
15 meeting?

16 MR. DEARDEN: Are you excluding, Mr.  
17 Tunley, phone calls, some of which Ms. McNish  
18 recorded and are transcribed?

19 BY MR. TUNLEY:

20 2385 Q. No, I am not excluding anything.  
21 I mean, I have asked for Mr. Gagnier's file. I  
22 know what is in my client's productions. But I am  
23 asking Mr. Riley, as the representative of the  
24 Plaintiffs, are you aware of any substantive  
25 response to any of these questions --

1 MR. DEARDEN: Well, that is why I asked  
2 the question, Mr. Tunley.

3 MR. TUNLEY: Well, let me put it this  
4 way. Other than what appears in the Wall Street  
5 Journal's productions, let's do it that way.

6 MR. DEARDEN: So that would include the  
7 transcripts of phone calls between Mr. Gagnier and  
8 Ms. McNish.

9 BY MR. TUNLEY:

10 2386 Q. Exclude those. Are you aware of  
11 anything that is not in the Wall Street Journal's  
12 productions by way of response to these questions?

13 A. There would have been  
14 interactions, I believe, between Dan and the  
15 reporter, I think he interacted only with McNish.  
16 But the substance of those, I can't remember.

17 In other words, the meeting of August  
18 8th was as a result of a back and forth where we  
19 would go on -- would engage on I believe we said  
20 background to give colour to the reporters as to,  
21 among other things, XTG or primarily XTG I think  
22 was the arrangement of the parties.

23 2387 Q. All right, and we have -- I think  
24 we have two transcripts, verbatim transcripts of  
25 the audio recordings of that meeting of August 8th.

1 I am not aware of any real issue in terms of what  
2 was said by whom. Is there any issue based on  
3 those two transcripts about what occurred at the  
4 meeting on August the 8th?

5 A. No, and I --

6 MR. DEARDEN: Well, we haven't seen  
7 done a comparison.

8 THE DEPONENT: We haven't done a  
9 comparison is what I was going to say, so there may  
10 be some variations but this is the one that -- this  
11 is our transcript.

12 BY MR. TUNLEY:

13 2388 Q. The one that is --

14 A. I have not compared it to the Wall  
15 Street Journal's transcript.

16 2389 Q. That is fine. If there are any  
17 significant differences or issues that you want to  
18 raise on comparison of the two transcripts, will  
19 you let me know what those are on a timely basis?

20 MR. DEARDEN: And what would the  
21 relevance of that be?

22 MR. TUNLEY: So that I can ask  
23 questions about them.

24 MR. DEARDEN: Well, no, why don't you  
25 tell us where you found discrepancies if you did,

1 which seems to be implied in your questions, rather  
2 than having Mr. Riley do a comparison of the  
3 transcript you produced and one that we had  
4 independently produced by a court reporter.

5 MR. TUNLEY: Because it is my  
6 examination, Mr. Dearden, and I am asking Mr. Riley  
7 to do that comparison, and if there are any issues,  
8 to let me know. I don't think there are, but --

9 R/F MR. DEARDEN: Well, we object. We are  
10 not doing that homework.

11 MR. TUNLEY: That is called a refusal.  
12 That is fine. You are allowed to do that.

13 MR. DEARDEN: Thank you.

14 MR. TUNLEY: I think, looking at the  
15 time, maybe this is a convenient place to break. I  
16 am about to change topics.

17 MR. DEARDEN: That makes a lot of  
18 sense.

19 (DISCUSSION OFF THE RECORD.)

20 -- RECESSED AT 12:59 P.M.

21 -- RESUMED AT 2:00 P.M.

22 BY MR. TUNLEY:

23 2390 Q. Mr. Riley, I want to ask you about  
24 the whistleblower complaints, and specifically  
25 prior to any contacts from journalists with the

1 Wall Street Journal what Catalyst and Callidus knew  
2 about any whistleblower complaints. So just  
3 starting --

4 A. We may have known something --  
5 sorry.

6 2391 Q. Sorry, go ahead.

7 A. We may have known something from  
8 Reuters.

9 2392 Q. And are you aware of that from any  
10 document that Reuters was asking about that, or is  
11 that a personal --

12 A. I would -- sorry, I apologize.

13 2393 Q. We both know the rules. My  
14 question is simply were you aware of that from any  
15 document or from personal recollection of learning  
16 about those contacts from Reuters?

17 A. I would have to go back to any  
18 communications we had with Reuters to confirm that.

19 2394 Q. Have those been --

20 A. But it may be that the first thing  
21 we knew about the whistleblower complaints as such  
22 was when we met with the Wall Street Journal or  
23 when we interacted with the Wall Street Journal.

24 2395 Q. Well, I am interested if there was  
25 any interaction with Reuters reporters on the

1 subject of whistleblower complaints. Have you  
2 produced all the documents relating to your or I  
3 should say any representative of Catalyst and  
4 Callidus and their interactions with the Reuters  
5 journalists?

6 MR. DEARDEN: I believe we have  
7 produced quite a bit on Reuters.

8 MR. TUNLEY: Well, Mr. Dearden, when  
9 you say that, do you know that there is a document  
10 in terms of your interactions with Reuters  
11 journalists? Is there anything that you are aware  
12 of that answers my question? I am not aware of  
13 anything.

14 U/T MR. DEARDEN: Well, I'm going off of  
15 memory and we will check this, okay, but the  
16 conspiracy affidavit exhibits must have Reuters  
17 documents in them because it refers to Reuters.

18 BY MR. TUNLEY:

19 2396 Q. All right, well, I have reviewed  
20 that and I am not aware of anything that is  
21 responsive to my question, but if there is  
22 anything, you can point that out to me.

23 Was it Mr. Gagnier again who had most  
24 of the interactions with the Reuters journalists on  
25 behalf of the Plaintiffs?

1 A. Yes.

2 2397 Q. And do you know if his files with  
3 respect to his interactions with Reuters have been  
4 produced?

5 A. I do not know.

6 2398 Q. I would like the same inquiry, Mr.  
7 Dearden, as to whether those have been produced,  
8 and I think I have a long list of things I  
9 requested in terms of interactions with Mr. Gagnier  
10 and the Wall Street Journal and I have the same  
11 long list for interactions between Mr. Gagnier and  
12 the Reuters journalists. You'll take that under  
13 advisement, I would hope?

14 U/A MR. DEARDEN: Yes.

15 BY MR. TUNLEY:

16 2399 Q. Let me just take you to your  
17 conspiracy affidavit. Your counsel referred you to  
18 it. It is paragraph 172 and 173 is where I would  
19 like to take you. These paragraphs, and if we  
20 scroll down and see 173, you will see there is a  
21 lot of subparagraphs of exhibits dealing with  
22 Mr. Anderson; correct?

23 A. Hold on, I'm not there yet. 172?

24 MR. DEARDEN: 173.

25 THE DEPONENT: 173. Yes, I see that.

1 BY MR. TUNLEY:

2 2400 Q. And you refer here to Mr. Anderson  
3 preparing a, quote, "whistleblower proposal" and  
4 attending various meetings in Toronto and  
5 elsewhere; correct?

6 A. Yes.

7 2401 Q. And what is the proposal that you  
8 are referring to? Is that a document that has been  
9 produced by Mr. Anderson?

10 A. Do we have Exhibit 140, please?

11 2402 Q. I don't have it, unless Mr. --

12 A. Well, if you go to tab 140, there  
13 is a transmission of a document from Nathan  
14 Anderson to John somebody, John Wright I think it  
15 is, with a blind carbon copy to Darryl Levitt.

16 2403 Q. All right, so I am generally  
17 familiar with these documents. That is the  
18 whistleblower proposal that you are referring to in  
19 paragraph 172?

20 MR. DEARDEN: Yeah, he attaches it to  
21 that email, which we can show.

22 MR. TUNLEY: Sorry, Rick, you are very  
23 muddy, at least on my end. I didn't understand  
24 what you said.

25 MR. DEARDEN: I was just saying that

1 the email that Mr. Riley just referred to attaches  
2 the whistleblower proposal that you were speaking  
3 of.

4 MR. TUNLEY: All right.

5 MR. DEARDEN: There it is.

6 BY MR. TUNLEY:

7 2404 Q. All right, and I am familiar with  
8 that. Thank you.

9 Is it fair to say that you learned of  
10 that proposal only from the documents in the  
11 productions that were exchanged with Mr. Anderson  
12 and other parties in December of last year?

13 A. That is correct.

14 2405 Q. And in paragraph 172 you have  
15 assembled all of the exhibits that were produced to  
16 you at that time that relate to that document;  
17 correct? Or a lot of them, I should say?

18 A. I would say a lot of them.  
19 Whether it is all of them, I don't know, but a lot  
20 of them.

21 2406 Q. All right, fair enough. You'll  
22 agree that there is no mention in paragraphs 172 or  
23 173 or any of the documents that you have attached  
24 to those paragraphs of any involvement of the Dow  
25 Jones Defendants, Mr. Copeland, Ms. McNish or

1 anyone else from the Wall Street Journal; correct?

2 A. In this whistleblower syndicate?

3 2407 Q. No reference to them; correct?

4 A. That is correct.

5 2408 Q. And as of August 2017, the Wall  
6 Street Journal reported, you will be aware, four  
7 individuals had filed whistleblower complaints  
8 against Catalyst and/or Callidus; correct?

9 A. I believe that it said "at least"  
10 four whistleblowers.

11 2409 Q. Right. And those four individuals  
12 referred to have been identified subsequently as  
13 Messrs. Anderson, Baumann, Levitt and McFarlane;  
14 you understand that?

15 A. Yes.

16 2410 Q. So my question is prior to any  
17 contacts with the Wall Street Journal, did Callidus  
18 or Catalyst to your knowledge know that complaints  
19 were being prepared or had been filed with any  
20 agency, whether it is the OSC or other securities  
21 regulators or police?

22 A. Reuters had indicated to us that  
23 JSOT had a pending investigation. We contacted --  
24 it is complex, but we actually contacted IMETs,  
25 which is the part of the RCMP that is part of JSOT.

1 We met with senior members of the RCMP to ask them  
2 point blank whether or not we were the subject of  
3 any investigation, and the answer was no and they  
4 advised us that we could advise others as to that.

5 2411 Q. And did you ask them point blank  
6 whether or not anyone had filed a complaint against  
7 you?

8 A. We did not ask that question  
9 because we were more interested -- we were told  
10 they were investigating us, so we asked the  
11 investigation question.

12 2412 Q. All right. Now, in terms of OSC  
13 complaints, Ontario Securities Commission, you are  
14 aware that there is a form that the OSC has  
15 developed and provides for whistleblower  
16 complaints? In fact, I think you attach an example  
17 of that form to your affidavit, right?

18 A. Yes, I am aware of that form.

19 2413 Q. And you are generally aware,  
20 certainly people in your compliance department  
21 would be very aware of the whole whistleblower  
22 process and the forms involved; correct?

23 A. We would have -- no, I do not  
24 think that is correct internally.

25 2414 Q. You don't think anyone at Callidus

1 or Catalyst was aware of that program before these  
2 events?

3 A. Aware of the program, but I think  
4 you asked a more pointed question which was our  
5 compliance and what they know about whistleblower  
6 complaints. I think the answer to that is no. We  
7 turn to our outside counsel for advice on the  
8 whistleblower program.

9 2415 Q. Sorry, okay, that is fine. My  
10 question was about the program and the forms it  
11 uses, not specifically about the complaints, the  
12 four complaints that you are aware of.

13 A. Yes.

14 2416 Q. The same answer, I take it?

15 A. Yes.

16 2417 Q. You turn to external counsel for  
17 advice on that?

18 A. Yes.

19 2418 Q. All right. If I can show you what  
20 I understand to be Mr. Anderson's OSC complaint  
21 submission, it is Dow Jones DOW001023 being  
22 displayed. That is the same form that you have  
23 attached to your affidavit; correct? It seems to  
24 be.

25 A. Well, can you remember what tab I

1 attach it at?

2 2419 Q. Not from memory, Mr. Riley. Well,  
3 I think we can all compare the forms after the  
4 fact. This is --

5 A. That is fine. Yeah, I wasn't  
6 trying to delay. It is just that we can -- as long  
7 as -- sorry, I am happy to work with this one. You  
8 are advising me that this is the same document that  
9 was attached to it?

10 2420 Q. That is my information, but if you  
11 haven't sort of compared the production that I am  
12 showing you and the form that is attached to your  
13 affidavit, I don't want to take the time to do that  
14 now, okay.

15 A. Yes, okay, then let's go with  
16 this. And where do you want me to go from there?  
17 We just found it.

18 MR. DEARDEN: Exhibit 43 of the libel  
19 action.

20 THE DEPONENT: No, this is the form.  
21 This is the form. It is not the completed. Sorry,  
22 okay --

23 BY MR. TUNLEY:

24 2421 Q. Somebody is talking who I can't --

25 A. Are you asking me is this in the

1 proper form? Is that what you are asking me?

2 2422 Q. Yes, that is what I had asked you,  
3 but we have agreed that I can leave that question  
4 aside and we can do the comparison of the forms  
5 separately.

6 A. Okay, thank you.

7 2423 Q. I have identified what I am  
8 showing you on the screen as Dow Jones DOW000999;  
9 correct? Sorry, 1023; correct? That is the Dow  
10 Jones number that is indicated at the bottom of  
11 each page, and the first page is showing.

12 A. [Witness reviews document.]

13 2424 Q. Are you content that that's what  
14 we are looking at, is that Dow Jones production,  
15 Mr. Riley?

16 A. I cannot ascertain that, but we'll  
17 take it -- oh, I see it now. I see the number.  
18 Yes, I'll take that.

19 2425 Q. So what I want to do is take you  
20 to part 2 of the form on page 4 of this production,  
21 and we'll just scroll down to that. And my  
22 understanding is this is Mr. Anderson's complaint.  
23 You don't need to acknowledge that. Just take it  
24 from me. And on page --

25 A. Okay.

1 2426 Q. And on page 4 under the heading  
2 "Part 2 - What Happened?", there is a series of  
3 check boxes. As I understand it, whoever is filing  
4 the complaint will check off what it is about; do  
5 you see that?

6 A. I do.

7 2427 Q. And on this form one of the check  
8 boxes that has been checked is a check box with the  
9 word "Fraud" beside it; do you see that?

10 A. I do.

11 2428 Q. And I want to show you another Dow  
12 Jones production, DOW000999. This is an email from  
13 Mr. Baumann, and what he is doing is forwarding  
14 under the subject line "Formal Criminal Complaint  
15 Against Callidus Capital Corporation", he is  
16 forwarding a submission that he has made to the  
17 Toronto Police; do you see that?

18 A. I do.

19 2429 Q. And have you reviewed that  
20 production, that document before, Mr. Riley?

21 A. I believe I have seen it, yes.

22 2430 Q. And you'll agree with me it also  
23 references an allegation by Mr. Baumann of fraud on  
24 the part of Callidus and/or Catalyst; correct?

25 A. Yes, I see that as an allegation.

1           2431                   Q.    That is correct.  All right, and I  
2                                    would like to know what you know as to whether the  
3                                    Ontario Securities Commission or the Toronto Police  
4                                    or any other enforcement agency was making  
5                                    inquiries about one or other of these two  
6                                    complaints or similar complaints in this time  
7                                    frame.  Were you or others at Catalyst and Callidus  
8                                    aware of such inquiries being made?

9                                    A.    I think we have claimed privilege  
10                                   on that in earlier questions.

11           2432                   Q.    Sorry, I am not asking about your  
12                                   communications.  I am just asking the more general  
13                                   inquiry or question.  Were you aware of the OSC or  
14                                   any police or enforcement agency making inquiries  
15                                   of anyone about these complaints?

16                                   MR. DEARDEN:  What is your definition  
17                                   of "inquiries"?

18                                   BY MR. TUNLEY:

19           2433                   Q.    Asking questions.

20                                   A.    The only thing that we were aware  
21                                   of was what we had disclosed, that we were the  
22                                   subject of a continuous disclosure review by the  
23                                   OSC.

24           2434                   Q.    Well, I think you spoke with  
25                                   Mr. Lung about that when he was questioning you; is

1 that what you are referring to, the --

2 A. I do not recall that conversation  
3 or -- but we have I think stated that we were the  
4 subject of a continuous disclosure review, and I  
5 think that is in my affidavit, one of my  
6 affidavits.

7 2435 Q. That is fine. I am specifically  
8 asking about one or more of the complaints were  
9 similar complaints filed by Mr. Anderson, Mr.  
10 Baumann or anyone else.

11 A. With anybody?

12 2436 Q. With the Ontario Securities  
13 Commission, the Toronto Police Service, or any  
14 other securities regulator or enforcement agency.

15 A. I am not aware of any inquiries at  
16 that time.

17 2437 Q. Okay.

18 MR. DEARDEN: Do you have the full  
19 exchange that Baumann had with Gail Regan about his  
20 so-called criminal complaint that you see in the  
21 "re" line?

22 MR. TUNLEY: I am not -- I don't want  
23 to go there, Mr. Dearden, but if I have it, you  
24 have it. I only have what has been produced in our  
25 productions or in Mr. Baumann's productions in that

1 regard.

2 MR. DEARDEN: Well, no, you have it. I  
3 am just asking do you have it to put up on the  
4 screen.

5 MR. TUNLEY: I do not, and I don't want  
6 to go there.

7 MR. DEARDEN: I know you don't want to  
8 go there, but I'll put on the record that Detective  
9 Regan --

10 MR. TUNLEY: This is --

11 MR. DEARDEN: Sorry?

12 MR. TUNLEY: Mr. Dearden, I don't know  
13 why you are interrupting. This is my examination.  
14 You have had a chance with my witnesses. You'll  
15 have a chance with Mr. Baumann. You'll get your  
16 day in court, don't worry.

17 MR. DEARDEN: No, no, no, just a  
18 second. In fairness to this witness, when you are  
19 putting an email, and there was a lot of emails in  
20 the document that you took him to, took Mr. Riley  
21 to, about a formal criminal complaint, let's not  
22 mislead, Mr. Tunley, about whether it was indeed  
23 considered a formal criminal complaint. Very  
24 important.

25 MR. TUNLEY: Well, you can address

1           that, as I say, with Mr. Baumann. You know, I  
2           didn't ask your witness a question about that, in  
3           fairness, other than reading the "re" line of the  
4           email, and he has answered my question about it. I  
5           would like to move on, and I would like you to stop  
6           interrupting my cross-examination.

7                         MR. DEARDEN: I would like you to be  
8           fair to the witness.

9                         BY MR. TUNLEY:

10       2438                 Q. Well, he is not complaining that  
11           he feels that he has been unfairly dealt with. I  
12           don't think he has. So let's move on.

13                         Let me go back, Mr. Riley, to the  
14           terminology issue that your counsel refers to. My  
15           understanding is that there is a recognized  
16           difference between, quote, "inquiries" and an  
17           actual formal, quote, "investigation". I just want  
18           to ask the question. Are you familiar with the  
19           fact that there is a recognized distinction between  
20           those two things?

21       R/F                 MR. DEARDEN: I am objecting to you  
22           putting into evidence that that's your  
23           understanding, so please rephrase the question.

24                         BY MR. TUNLEY:

25       2439                 Q. Are you aware of a recognized

1 distinction between "inquiries" and an actual  
2 "investigation"?

3 A. I actually have never heard the  
4 term "inquiries" before, before this article. To  
5 me inquiries would mean an investigation or would  
6 be the same thing as an investigation.

7 2440 Q. All right. I would like an  
8 undertaking as to whether -- to make inquiries as  
9 to whether anyone in Catalyst or Callidus's  
10 compliance department, any executive responsible  
11 for compliance matters is familiar with a  
12 distinction between those two things?

13 R/F MR. DEARDEN: We are not giving that  
14 undertaking.

15 MR. TUNLEY: And why not? What is the  
16 basis of the objection, Mr. Dearden?

17 MR. DEARDEN: The witness just gave you  
18 the answer as to whether he recognized a difference  
19 between inquiries and an actual investigation.  
20 That is your answer. He said they are the same  
21 thing.

22 MR. TUNLEY: Well, all right. He  
23 didn't say that actually. His evidence was he  
24 hadn't heard of it until this case. If that is all  
25 you are going to say, you have got one witness and

1 no inquiries of anyone. That is an interesting  
2 position for you to take, Mr. Dearden. I am going  
3 to move on and I take it --

4 MR. DEARDEN: No, you are not. I am  
5 going to read what he said:

6 "I actually have never heard  
7 the term 'inquiries' before, before  
8 this article. To me inquiries would  
9 mean an investigation or would be  
10 the same thing as an investigation."

11 BY MR. TUNLEY:

12 2441 Q. Mr. Dearden, there is no need for  
13 you to re-read the record, no need at all. Let's  
14 move on.

15 Mr. Riley, it is fair to say that  
16 Callidus's lending practices were the subject of  
17 some of these complaints?

18 A. Some of which complaints?

19 2442 Q. Mr. Anderson, Mr. Baumann, Mr.  
20 Levitt and Mr. McFarlane.

21 A. And whose lending practices?

22 2443 Q. Callidus.

23 A. There were -- as has been  
24 produced, there were complaints made to the JSOT at  
25 the OSC and to the Toronto Police.

1       2444                   Q.    And just to repeat my questions,  
2                            fair to say those complaints were -- Callidus's  
3                            lending practices were the subject of some of those  
4                            complaints?

5                            MR. DEARDEN:  Now, let's be specific,  
6                            please.  You ask him whose complaint and who it is,  
7                            and then he'll indicate whether they were subject  
8                            to Callidus lending practices, if he knows.

9                            MR. TUNLEY:  Well, I am not going to  
10                           let you steer your witness through the answers to  
11                           my questions, Mr. Dearden.  Your interjections are  
12                           totally out of line and I am going to move on.  I  
13                           am going to take that as a refusal.

14                           MR. DEARDEN:  No, it isn't a refusal,  
15                           but you know, Mr. Tunley, that we don't have --  
16                           like right now we don't have Mr. McFarlane's  
17                           complaint.  He has claimed absolute privilege, and  
18                           that is an OSC whistleblower complaint.  We are  
19                           just not going to go writ large to -- it is just  
20                           not fair to Mr. Riley if you are asking --

21                           MR. TUNLEY:  Look, if you want to --

22                           MR. DEARDEN:  You know, the Baumann  
23                           complaint, for instance.

24                           MR. TUNLEY:  If you want to take my  
25                           question under advisement until you have had an

1 opportunity to examine someone, just say it, Mr.  
2 Dearden. Don't, as I say, try to steer your  
3 witness through the answers to my questions.

4 MR. DEARDEN: Okay, I resent that you  
5 keep on saying that I am trying to steer my  
6 witness. I am not trying to steer him to anything.  
7 I want you to be specific with what you are saying  
8 because there is so many complaints out there and  
9 you know as a fact that we don't have them all.

10 So let's just be specific. There is no  
11 steering.

12 BY MR. TUNLEY:

13 2445 Q. You have what I have, so I don't  
14 know why we are having this discussion. I am  
15 moving on.

16 Mr. Riley, back to you, I understand  
17 your position is some of the whistleblowers who  
18 filed complaints against Callidus and Catalyst are  
19 not credible, right?

20 A. Yes.

21 2446 Q. And you --

22 A. Well, the allegations aren't  
23 credible. I am not speaking -- the allegations  
24 they made are not credible.

25 2447 Q. And in some cases you say that

1 because they were borrowers of Callidus and later  
2 had their businesses seized and defaulted, and as a  
3 result, they had axes to grind? If I can  
4 summarize, that is why you are saying they are not  
5 credible?

6 A. No. No, I think, first of all, I  
7 don't like the word "seized". In every instance  
8 where we realized on security, and it is legitimate  
9 for a borrower to realize on security, we did it  
10 through a court process, or in the case of Esco --  
11 not Esco. Esco was in Chapter 11, and Fortress was  
12 in Chapter 11, I think Chapter 11. They were in a  
13 processing in the U.S., an insolvency proceeding.

14 So when you say "seized", we didn't  
15 seize anything. We realized it through a  
16 court-supervised process.

17 2448 Q. Okay, so take that out of my  
18 question. You say that because they were borrowers  
19 who had defaulted on their loans and because their  
20 business had been taken away from them in a court  
21 process, they had an ax to grind and they were not  
22 credible?

23 A. No, I think that they did -- they  
24 were not happy. You could use the word "ax to  
25 grind". I don't think I have used that. And they

1 had their day in court through the realization  
2 process, and I am talking about the actual  
3 realization of the collateral underlying the loans.

4 2449 Q. I understand. And you'll agree  
5 with me that is the case with Mr. Baumann, Levitt,  
6 maybe McFarlane, but it is not the case with  
7 Mr. Anderson; correct?

8 A. Mr. Anderson was not a borrower.

9 2450 Q. Right. You have also said some of  
10 the whistleblowers are not credible because they  
11 were in litigation with Catalyst or Callidus;  
12 correct?

13 A. Or either were in litigation or  
14 had been in litigation.

15 2451 Q. Had been in litigation, right, and  
16 again, that might be true of Mr. Baumann, Mr.  
17 Levitt and Mr. McFarlane, but it was not true of  
18 Mr. Anderson; correct?

19 A. That is correct.

20 2452 Q. And you have suggested that  
21 neither the OSC nor the Toronto Police or any other  
22 regulator had themselves accused Callidus or  
23 Catalyst or Mr. Glassman of any wrongdoing, and you  
24 say that shows that the complaints were not  
25 credible; that is the argument that you have made,

1 correct?

2 MR. DEARDEN: Okay, where in his  
3 affidavit did he make this what you call an  
4 argument?

5 MR. TUNLEY: Well, I think it is made  
6 in the response that was published by Catalyst and  
7 Callidus on the same day as the Wall Street Journal  
8 article that is appended to Mr. Riley's affidavit.  
9 It is most of your case, Mr. Dearden.

10 MR. DEARDEN: It is most of my what?  
11 It's most of my case, really?

12 MR. TUNLEY: Yes.

13 MR. DEARDEN: I am going to look for  
14 that -- you are talking about the Callidus  
15 statement regarding the Wall Street Journal  
16 allegations which was issued the evening of August  
17 9, 2017?

18 BY MR. TUNLEY:

19 2453 Q. Yes, I think you are looking at  
20 it.

21 A. It's 28, page 28. Let me just see  
22 and I will get you the number.

23 Actually, I may not need it. I think  
24 it is here. Yes, I have it in front of me.

25 2454 Q. And it is fair to --

1 MR. DEARDEN: Which paragraph, Jim?

2 THE DEPONENT: Well, it is in there in  
3 the affidavit, in 84, page -- Exhibit 40 is it?

4 MR. DEARDEN: Okay, he has the  
5 statement.

6 BY MR. TUNLEY:

7 2455 Q. All right, and so to my question,  
8 you'll agree that was an important point made by  
9 Catalyst and Callidus in their response to the Wall  
10 Street Journal article published that evening,  
11 August 9, 2017, right?

12 A. That is correct.

13 2456 Q. Okay. So I am going to turn to a  
14 new area, and it is one that was addressed with you  
15 a little bit with Mr. Lung, so I am going to try  
16 and not repeat.

17 But I want to ask you about the trends  
18 in business and stock price of Callidus pre-August  
19 9, 2017, before the publication of the Wall Street  
20 Journal articles. Are you with me?

21 A. The only thing I would like to say  
22 is that to the extent that I have said it before, I  
23 reserve the right to make sure that the answers are  
24 consistent.

25 2457 Q. That is fine.

1 A. Is that fair enough?

2 2458 Q. Everybody understands there is a  
3 right to check the transcript, and if there are  
4 errors, you are going to tell us about them. That  
5 is fine.

6 You referred, and I think I am -- I  
7 don't have the transcript, so you can correct me to  
8 that extent, but I think you have said that there  
9 were rumours and Twitter rumours in the market  
10 about some of the matters that were the subject of  
11 the Wall Street Journal article before it was  
12 published?

13 A. Yes.

14 2459 Q. And specifically, when you were  
15 referring to Twitter rumours, you'll agree with me  
16 there was nothing from Dow Jones, from the Wall  
17 Street Journal or from any of its reporters prior  
18 to the release of the article; correct?

19 A. I don't know that because there  
20 may have been some anonymous tweets, so I can't  
21 really answer that question.

22 2460 Q. You are not aware of -- and I'll  
23 phrase it slightly differently. You can't point me  
24 to anything in that Twitter rumour mill that you  
25 can, with any candour or confidence, say is a Wall

1 Street Journal representative; fair?

2 A. I cannot do that. I cannot point  
3 you to anything, with whatever the words you had,  
4 all those words, candour and honesty or whatever  
5 the words were.

6 2461 Q. Candour and confidence.

7 A. Candour and confidence, I cannot  
8 point to one.

9 2462 Q. And if there are any documents  
10 showing other Defendants in the conspiracy action  
11 creating or repeating such Twitter rumours about  
12 Callidus or Catalyst, am I fair to assume and say  
13 that they have been reproduced in your conspiracy  
14 affidavit?

15 A. Yes.

16 2463 Q. Yes?

17 A. Yes.

18 2464 Q. And what I want to know is how did  
19 you become aware of these rumours? When did you  
20 first become aware that these rumours were in the  
21 market?

22 A. I don't remember a date. I think  
23 that Dan Gagnier's office is always on the lookout  
24 for mentions of Callidus or Catalyst, and I think  
25 that is probably how we became aware of it.

1 2465 Q. Right.

2 A. I don't -- I have a Twitter  
3 account but don't know how to use it.

4 2466 Q. Did any shareholders or investors  
5 or prospective investors or borrowers or  
6 prospective borrowers of Catalyst or Callidus say  
7 to you at any time that, you know, we are concerned  
8 there are these rumours in the market and what do  
9 you say about them? Do you have any document where  
10 these were raised by any of those people?

11 A. Not to my knowledge.

12 2467 Q. You discussed with Mr. Lung that  
13 there had been no new loans generated for a period  
14 of time, and you made reference to this process  
15 involving Mr. Boyer; do you recall discussing that?

16 A. Yes.

17 2468 Q. And do you know, can you tell me  
18 when did Catalyst or Callidus first become aware,  
19 when was it first exposed to a concern that  
20 Mr. Boyer's conduct had not been proper?

21 A. After he had left, after he was in  
22 the process -- when he was in the process of  
23 leaving, we had a review undertaken of his files.

24 2469 Q. And just that was my next  
25 question. So when did Catalyst or Callidus's

1 review of Mr. Boyer's activities, when was that  
2 completed?

3 A. I don't recall. I don't recall  
4 when it was completed.

5 2470 Q. Is there a way to make inquiries  
6 and put a date on that? There must have been a  
7 time when you said, okay, we have the picture? Can  
8 you tell me -- what I would like is an undertaking  
9 for your best information as to when you had that  
10 conclusion about Mr. Boyer's activities.

11 A. Okay.

12 MR. DEARDEN: What is the conclusion  
13 again?

14 BY MR. TUNLEY:

15 2471 Q. That they were a concern and not  
16 proper?

17 A. No, no, what we have alleged is  
18 breach of fiduciary duty in the Boyer case. That  
19 is what we have alleged and whether he fulfilled  
20 his --

21 2472 Q. As far as I am concerned, Mr.  
22 Riley, that is an impropriety. I didn't use any  
23 other word. Let's use your word. That is fine.  
24 When did --

25 A. Let's use what we have pleaded in

1 the pleadings, please.

2 2473 Q. That is fine. When did you come  
3 to that conclusion?

4 MR. DEARDEN: So just so that I am  
5 clear, Mr. Tunley, we'll take under advisement that  
6 you want to know the date that Callidus came to the  
7 conclusion that Mr. Boyer was in breach of his  
8 fiduciary duty; is that fair?

9 MR. TUNLEY: That wasn't my question,  
10 but that is the question Mr. Riley wants to answer  
11 and I am content to have that answered.

12 U/A MR. DEARDEN: Okay, we'll take that  
13 under advisement and make those inquiries.

14 BY MR. TUNLEY:

15 2474 Q. And my next question, you know,  
16 between that time and the publication of the Wall  
17 Street Journal articles, how many new loans did  
18 Callidus or Catalyst generate?

19 A. What was the time frame again,  
20 please?

21 2475 Q. From that time frame when you were  
22 dealing with Mr. Boyer's activities and you had  
23 completed your review, because I think you told  
24 Mr. Lung that you stopped writing new business for  
25 a period while his activities were under review;

1 did I understand that?

2 A. Yes.

3 2476 Q. So I am saying once you came to  
4 that conclusion and that stopped, how many loans  
5 between that point in time and the Wall Street  
6 Journal article were generated, new loans?

7 A. I believe it is somewhere in my  
8 affidavit we set out the loans and when they were  
9 made, but I can't recall the page. Can you give me  
10 a moment to find that? It is in my affidavit.

11 2477 Q. Please do. In your conspiracy  
12 affidavit you might want to look at paragraph 353.  
13 That may be what you are thinking.

14 A. In the conspiracy affidavit?

15 [Witness reviews document.]

16 2478 Q. I am going to come to that  
17 paragraph in a moment, but I think that is what you  
18 may be thinking of.

19 A. Yes. We restarted and then we  
20 originated one loan in Q2 of 2017. We originated  
21 11 new loans in 2015, and none in 2016.

22 2479 Q. So there is one loan in the sort  
23 of eight months between, roughly, between your  
24 counterclaim in the Boyer matter and the Wall  
25 Street Journal article?

1                   A.    If your math is correct, I'll  
2                   adopt your math, rather than me taking the time to  
3                   double-check that.

4    2480            Q.    That is fine.

5                   MR. DEARDEN:    So if your math is  
6                   correct, Mr. Tunley, are we relieved of that last  
7                   advisement that we took?

8                   BY MR. TUNLEY:

9    2481            Q.    That is fine, Mr. Dearden.  If  
10                   there is anything you need to correct, even if it  
11                   is in my question, that may qualify the answer, you  
12                   just let me know what the correction is.  That is  
13                   fine.

14                   A.    I don't remember if we got into  
15                   this with Mr. Lung or not, but you will see that in  
16                   my affidavit:

17                                "In 2016, there were no new  
18                                loans as Callidus implemented a  
19                                slowdown of new loan underwriting  
20                                and focussed on addressing the  
21                                impact of the first short attack."

22                   So there were two events in there, what  
23                   you referred to as the Boyer event and the other is  
24                   the short attack, the first short -- what we call  
25                   the first short attack.

1           2482                   Q.    So again, my question focuses on  
2                                   when those sort of reasons for deliberate slowdown,  
3                                   from the period where those deliberate slowdowns  
4                                   ceased to the publication of the Wall Street  
5                                   Journal article, I have it in your evidence that  
6                                   there is one new loan generated and --

7                                   A.    Correct.

8           2483                   Q.    -- if that changes, you let me  
9                                   know, okay.

10                                  A.    Yes, I am sticking with what I  
11                                  have in my affidavit.

12           2484                   Q.    Great.  And it is fair to say that  
13                                  you haven't produced any documents respecting any  
14                                  new loans that were in the process of being  
15                                  generated at the time of the Wall Street Journal  
16                                  article but subsequently not completed?  I have no  
17                                  documentation about any such; correct?  Your  
18                                  affidavit doesn't refer to any such.

19                                  A.    No, my affidavit does not refer to  
20                                  that.

21           2485                   Q.    And Mr. Sunshine's report doesn't  
22                                  refer to any such?

23                                  A.    I would have to go back to  
24                                  Mr. Sunshine's report.  I have only read it once.

25           2486                   Q.    Well, if my statement to you is

1 not correct, you'll let me know, right?

2 A. I will.

3 2487 Q. And I'm suggesting --

4 A. And you'll note that --

5 2488 Q. Sorry?

6 A. Sorry, I just wanted to make sure  
7 we have got a note of that.

8 2489 Q. That is fine. I'm taking it as an  
9 advisement. My question is if I am wrong, you'll  
10 let me know, right?

11 U/A MR. DEARDEN: Yes, under advisement,  
12 yes.

13 BY MR. TUNLEY:

14 2490 Q. And, Mr. Riley, I am going to  
15 suggest to you that the reason there is no  
16 reference to those in your affidavit or in  
17 Mr. Sunshine's report is because there weren't any?

18 A. I don't know that.

19 2491 Q. Either that or the reasons that  
20 they were not completed had nothing to do with the  
21 Wall Street Journal article; that is what I am --

22 A. Well, if I can try and respond to  
23 that, to the extent that we still were still active  
24 in the marketplace, if someone does not enter into  
25 a loan with us, they may politely say that we have

1           gone to another lender, and will not tell you why  
2           they have not concluded the loan with you. So you  
3           don't always know for sure.

4   2492                    Q.   Well, that is all hypothetical. I  
5           am just saying there is nothing in your productions  
6           to show any loan of that nature that was not  
7           completed as a result of the Wall Street Journal  
8           article, is there?

9                            A.   Well, I think I have answered that  
10          question by saying you don't know why the loan  
11          isn't concluded.

12   2493                    Q.   Well, that may be why there isn't  
13          anything, but you are speculating.

14                          A.   Sorry, what I mean by that is  
15          typically advisors are the ones who you are  
16          interacting with. You also interact with the  
17          borrowers, but the initial connection is usually  
18          with a financial advisor.

19   2494                    Q.   Just going to your conspiracy  
20          affidavit, paragraph 353, which you wanted me to  
21          come to; are you there now?

22                          A.   Yes, it is up on the screen.

23   2495                    Q.   In fact, one new loan was  
24          originated almost immediately after the publication  
25          of the Wall Street Journal article in the fall of

1 2017, according to your affidavit?

2 A. This says Q2 2017.

3 2496 Q. I am looking at the last line of  
4 your paragraph 353.

5 A. Oh, I see, sorry. Yes. I  
6 would -- I don't remember which loan that was, but  
7 yes.

8 2497 Q. And then there is two more in  
9 2018?

10 A. Yes.

11 2498 Q. And can I get an undertaking, and  
12 I don't expect you to remember, but I would like to  
13 know what months in 2018?

14 U/T MR. DEARDEN: Okay.

15 BY MR. TUNLEY:

16 2499 Q. Thank you. Let's deal with  
17 short-selling, Mr. Riley. Were there any short  
18 sales of Callidus stock after the publication of  
19 the Wall Street Journal article?

20 A. I don't know. Nobody has advised  
21 us that they were short-selling.

22 2500 Q. And do you have any information  
23 from market sources about what volume of shares  
24 were shorted in that period? Is there any way that  
25 you can learn that from market sources?

1 MR. DEARDEN: We do have some  
2 productions, Mr. Tunley, on short sales from  
3 Mr. Voorheis.

4 BY MR. TUNLEY:

5 2501 Q. Mr. Voorheis and Mr. Anderson;  
6 correct?

7 A. Mr. Anderson, as I recall, in a  
8 document that he provided to Mr. Copeland advised  
9 that he had a syndicate, I think the term was  
10 "syndicate", or investors.

11 2502 Q. Well, I am not taking your  
12 evidence on what was provided to Mr. Copeland  
13 because I don't think you know that except from the  
14 productions, so let's just -- do you have any  
15 information -- apart from what is produced in the  
16 productions by Mr. Anderson, Mr. Voorheis or any  
17 other party to this litigation, I want to know all  
18 knowledge or information that Catalyst or Callidus  
19 had about short sales or the exercise, the holding  
20 or exercise of short positions in Callidus stock at  
21 the time of or following the publication of the  
22 Wall Street Journal article? Do you know what  
23 information Callidus or Catalyst may have in that  
24 regard?

25 A. That wouldn't be accessible to us,

1           except as produced by the parties.

2           2503           Q.    All right, and apart from the  
3           productions of Mr. Anderson and Mr. Voorheis, are  
4           there any other parties to this litigation for whom  
5           you have had production of short sale activity and  
6           volume?

7           A.    No, because not all of the  
8           parties have -- they haven't been produced, have  
9           they?

10           MR. DEARDEN:  I think -- well, can I --

11           THE DEPONENT:  Oh, Anson, yes, Anson  
12           has produced, or at least has produced some  
13           information.  Anson.

14           BY MR. TUNLEY:

15           2504           Q.    Okay, anybody else?

16           A.    Not that comes to mind.  Anson,  
17           Voorheis, Anderson, and I think that is probably  
18           the group.

19           2505           Q.    Okay.  Well, if there is anything  
20           else, I have a request on the record for all  
21           knowledge, information, and I am not interested in  
22           belief, so if it is just speculation, I am  
23           interested in knowledge or information, and you can  
24           let me know, if you would, following the  
25           examination.

1 U/T MR. DEARDEN: Yes.

2 BY MR. TUNLEY:

3 2506 Q. Can I just show you two articles  
4 that appeared that are not otherwise in the record  
5 about Catalyst or Callidus and its business or Mr.  
6 Glassman post-Wall Street Journal publication.

7 And the first, if my colleague can show  
8 you, there is a Reuters article March 23rd, 2018.  
9 The heading which is being displayed to you is "A  
10 private equities star's picks shine...until  
11 cash-out time".

12 A. I see that.

13 2507 Q. Were you aware of this article  
14 when it came out, Mr. Riley?

15 A. Yes, I was.

16 MR. MOORE: Has this been produced?

17 THE DEPONENT: I think he is doing it  
18 now. It has not been produced before.

19 MR. DEARDEN: Okay, do you want to read  
20 it?

21 THE DEPONENT: Sure.

22 MR. DEARDEN: Do I understand, Mr.  
23 Tunley, that this has not been produced?

24 MR. TUNLEY: I don't think it has.

25 MR. DEARDEN: Okay, we --

1 MR. TUNLEY: It is a public document.  
2 I am not going to ask any questions about it. I am  
3 just going to include it in the exhibit brief. If  
4 Mr. Riley can identify that and the next document  
5 for me, then we'll just include them in the exhibit  
6 brief.

7 MR. DEARDEN: Okay.

8 BY MR. TUNLEY:

9 2508 Q. The next one is a Globe and Mail  
10 opinion piece, October 30, 2019. You are reacting  
11 to that. What is the reaction, Mr. Riley?

12 A. Mr. Willis is not a fan. In fact,  
13 I don't think he is allowed to write about us  
14 anymore.

15 2509 Q. Okay, and why do you --

16 A. Sorry, he has been restricted from  
17 publishing anything about us.

18 2510 Q. Okay, so you say. He is not a  
19 Defendant in this lawsuit, though, is he?

20 A. No, he is not.

21 2511 Q. I'm sorry?

22 A. He is not.

23 2512 Q. He is not, okay. So this is an  
24 opinion piece that he wrote. He wasn't restricted  
25 from writing it as of October 30, 2019; is that

1 fair?

2 A. That's correct. That is correct.

3 2513 Q. So we'll just include that in, and  
4 that is a Globe and Mail --

5 A. Yeah, I don't think I was in -- I  
6 don't think I was in the country when this -- I  
7 know of this, and I am not sure when I saw it.

8 2514 Q. That is fine.

9 MR. DEARDEN: Well, Mr. Tunley, I am  
10 content to let you include this in your electronic  
11 Exhibit No. 7, but I completely object to this  
12 opinion from Mr. Willis being used for any purpose  
13 in this motion or the action. As was said, he is  
14 not a Defendant. So we'll proceed on that basis.

15 And I don't think you have actually  
16 read the headline for this opinion. You may want  
17 to do that.

18 MR. TUNLEY: I am happy to do that.  
19 The headline is "In Newton Glassman's tangled web  
20 of lawsuits, the truth is even stranger than  
21 fiction". Have I read that accurately, Mr.  
22 Dearden?

23 MR. DEARDEN: Yes.

24 MR. TUNLEY: Okay, let's move on.

25 MR. DEARDEN: And the Reuters one I

1 think was "A private equities star's picks  
2 shine...until cash-out time", I think that was the  
3 title or the headline.

4 THE DEPONENT: Can you go back to the  
5 previous article for a second? Can you just show  
6 me the picture again? I recognize that picture,  
7 okay.

8 MR. MILNE-SMITH: And just for  
9 everyone's knowledge, both of these articles are in  
10 West Face's productions, and if it matters to  
11 anybody, I am sure we can get you the production  
12 numbers.

13 BY MR. TUNLEY:

14 2515 Q. Thank you, Mr. Milne-Smith.

15 I just want to deal similarly with a  
16 couple of -- those two were post-Wall Street  
17 Journal publication, and there is a couple of  
18 articles I would like to refer you to pre-Wall  
19 Street Journal. And if they are in the productions  
20 already, that is fine.

21 Can we show, first of all, an article  
22 by a Mr. Rosen. Can we just go off the record for  
23 a second? Oh, here it comes, that is fine.

24 This is an article in Advisor.ca, which  
25 I understand is an industry publication, and the

1 title -- the author is a Mr. Rosen.

2 A. I see that. I think this has been  
3 produced by someone else.

4 2516 Q. I think you are right. Again, I  
5 have no questions for you about it, but if it is  
6 not already in the marked exhibits on this  
7 examination, I'll include it in our brief.

8 The next one I want to show you is an  
9 article by a David Cohen January 2014, in the  
10 Financier Worldwide Special Report. Are you  
11 familiar with this publication, the Financier  
12 Special Report?

13 A. I don't -- what is this? This is  
14 by David Cohen of Gowlings?

15 2517 Q. Oh, yes.

16 A. So I think -- I don't recall this  
17 article, but I am just saying, I just note that it  
18 is David Cohen.

19 2518 Q. All right.

20 A. And do you want me to look at  
21 this?

22 2519 Q. I don't need you to look at it,  
23 no. I am just identifying it is a publication  
24 pre-Wall Street Journal article that refers to your  
25 company. You are aware of that or you are familiar

1 with that?

2 A. Can you scroll down? Where does  
3 it refer to us? Oh, this is the Mobilicity case?

4 2520 Q. Is that a reference to Callidus  
5 and/or Catalyst?

6 A. Well, no, Catalyst was involved in  
7 Mobilicity in the CCAA. Can you scroll down? I  
8 just want to see where it mentions us.

9 2521 Q. The next paragraph there in the  
10 middle of the page:

11 "In broad terms, Catalyst  
12 alleged that [...]"

13 Do you see that?

14 A. Oh, yes, this is where they tried  
15 to bypass the proper distribution of Mobilicity to  
16 feed it up to the holding company.

17 2522 Q. All right, so I'll include that in  
18 the brief. I don't have any questions about it,  
19 but if you want to make a comment about it, I am  
20 not fussed.

21 A. It was a -- I have never read the  
22 article, to my knowledge.

23 2523 Q. All right.

24 A. And I'll assume it is a fair  
25 statement of what happened in the Mobilicity case,

1 but I reserve my right to criticize it later.

2 2524 Q. Counsel will do that for you, I'm  
3 pretty sure. Let's go to the last document I want  
4 to show you in this category and it is --

5 MR. DEARDEN: Mr. Tunley, you didn't  
6 the put the date or the headline of that article on  
7 the record.

8 BY MR. TUNLEY:

9 2525 Q. Let's go to the top and let's just  
10 catch that. So the date is January 2014 and the  
11 headline reads "The Canadian distressed market:  
12 low interest, low leverage leads to low distress."

13 A. Not quite the case today.

14 2526 Q. Let's go to the next document I  
15 want to show you. Oh, sorry, Ms. Saville, is that  
16 the last document? I may be misreading my notes.

17 MS. SAVILLE: It is on my count, unless  
18 you would like me to show something else.

19 BY MR. TUNLEY:

20 2527 Q. No, I think you are in charge  
21 here.

22 All right, let's move on, Mr. Riley. I  
23 want to deal with the allegations by Catalyst and  
24 Callidus against Mr. Copeland in the conspiracy  
25 action.

1                   Sir, you have no knowledge or  
2 information that Mr. Copeland ever held shares in  
3 Callidus either at the time of the article or at  
4 any time; correct?

5                   A.    That is correct.

6   2528            Q.    You have no knowledge that he held  
7 any short sale position in Callidus shares?

8                   A.    Not that I am aware of.

9   2529            Q.    And you have no knowledge or  
10 information that he held any interest in shares  
11 held by others or in short sales positions executed  
12 by others; correct?

13                  A.    That is correct.

14   2530            Q.    And you are familiar with his  
15 affidavits in which he denies categorically ever  
16 having had such interests; correct?

17                  A.    I -- there are a lot of  
18 affidavits.  If you are saying it correctly and  
19 fairly, then I'll adopt your statement.

20   2531            Q.    Okay, thank you.  It is fair to  
21 say none of the many other parties to the  
22 conspiracy action have produced any evidence that  
23 Mr. Copeland had any such interests; correct?

24                  A.    That is correct.

25   2532            Q.    And Catalyst and Callidus have not

1 produced any evidence that he had any such  
2 interests?

3 A. We do not have that evidence.

4 2533 Q. And you are aware that it would be  
5 a very serious ethical breach for a reporter to  
6 trade in shares of a public company that he or she  
7 writes about; you are aware of that, surely?

8 A. I think I would go further and say  
9 that that would also include tipping; i.e., he  
10 wouldn't have to trade if he was tipping people.

11 2534 Q. You have no information that  
12 Mr. Copeland tipped anybody about the story he was  
13 writing on, do you?

14 A. Well, I disagree with that  
15 statement.

16 2535 Q. All right, you tell me --

17 A. He alerted -- on two occasions he  
18 alerted this very group that we are talking about  
19 in the conspiracy, or some members of the group we  
20 are talking about in the conspiracy, of the pending  
21 publication of the article in the Wall Street  
22 Journal.

23 2536 Q. You are referring to one or more  
24 texts to Mr. Anderson; is that what you are  
25 referring to?

1                   A.    I also believe that there was one  
2                   where, I can't remember whether it is an email or  
3                   whether it is a text, when the story was originally  
4                   going to run in July.

5    2537                Q.    I said one or more texts.

6                   A.    I can't remember whether it was a  
7                   text or an email.  I can't -- I don't -- it was a  
8                   written communication.

9    2538                Q.    So if there is -- you are thinking  
10                   of things that were put to Mr. Copeland when he was  
11                   examined last week?

12                   A.    No, that are also in his -- in the  
13                   production.

14    2539                Q.    There is nothing other than the  
15                   documents that were put to Mr. Copeland when he was  
16                   examined last week?

17                   MR. DEARDEN:  I am not sure that I --  
18                   and I am just going from recollection here, Mr.  
19                   Tunley.  I am not sure I actually took Mr. Copeland  
20                   to the texts with Nathan Anderson where he  
21                   indicated the timing of publication.  I am not sure  
22                   I did that.

23                   But anyway, to answer your question, I  
24                   think you are right, it is the texts between him  
25                   and Anderson that dealt with date of publication.

1 THE DEPONENT: So --

2 U/T MR. DEARDEN: And we'll check to see if  
3 there is an email --

4 THE DEPONENT: We'll check. It is just  
5 I have seen written communications. Whether they  
6 are emails or texts, I do not recall.

7 BY MR. TUNLEY:

8 2540 Q. Well, that is fine. It is fair to  
9 say you have not made any complaint to the Ontario  
10 Securities Commission about tipping on the part of  
11 Mr. Copeland, have you?

12 A. I have not at this time.

13 2541 Q. And no one at Callidus or Catalyst  
14 has done that at this time or at any time?

15 A. No, at this time that has not been  
16 done.

17 2542 Q. And you know, because your counsel  
18 has produced it, that this kind of activity, should  
19 it occur on the part of a Wall Street Journal  
20 journalist, is forbidden by the Dow Jones Code of  
21 Conduct?

22 A. Yes.

23 2543 Q. And you produced --

24 A. Sorry, just one second, have we  
25 straightened out what the Code of Conduct is, which

1 one we are operating on? Have I seen it? Okay.

2 2544 Q. Well, you --

3 A. Sorry, I just want to make sure.

4 There was some confusion at the time about what was  
5 the code.

6 2545 Q. There is no confusion about  
7 Exhibit 4 to your libel affidavit, which is the  
8 Wall Street Journal Code of Conduct which is now on  
9 the screen in front of you, right? You produced  
10 it --

11 A. As I recall -- yes, I understand I  
12 produced it. I thought there was disagreement over  
13 which was the proper --

14 MR. DEARDEN: No, that was the internal  
15 policy --

16 THE DEPONENT: Oh, internal policy, I  
17 apologize. I have -- I apologize.

18 BY MR. TUNLEY:

19 2546 Q. If we could just go to page 3 of  
20 what I am showing you, which is the Dow Jones Code  
21 of Conduct which is in your affidavit. I am just  
22 going to read --

23 A. You want me to go to my --

24 2547 Q. Sorry, Mr. Riley, were you going  
25 to say something?

1                   A.    Well, are you going to show me  
2                   what you are reading?

3    2548            Q.    I am going to read the middle  
4                   paragraph on the page in front of you near where  
5                   the cursor is showing at the moment.  Actually now  
6                   I can't read it because it is highlighted.  Okay:

7                               "Similarly, the use of Dow  
8                               Jones property of this sort - i.e.,  
9                               forthcoming news, information or  
10                              advertising - as a basis for any  
11                              investment decision is strictly  
12                              prohibited.  No employee with  
13                              knowledge of any such forthcoming  
14                              material may, prior to publication,  
15                              buy or sell securities or in any way  
16                              encourage or assist any other person  
17                              in buying or selling securities,  
18                              directly or indirectly, based on  
19                              that information.  These strictures  
20                              should continue in force until the  
21                              third trading day after the content  
22                              or advertisement appears in a Dow  
23                              Jones publication or news service."

24                              Now, you are aware of that being a  
25                   strict prohibition in the Dow Jones Code of

1 Conduct, right?

2 A. Yes.

3 2549 Q. And you understand from that that  
4 it would be a firing offence on the part of  
5 Mr. Copeland to violate that strict prohibition?

6 A. I don't know that.

7 2550 Q. All right.

8 A. I don't know what the range of  
9 punishments would be.

10 2551 Q. You are aware from Mr. Copeland's  
11 affidavit that he denies having done any such  
12 thing?

13 A. And I have also seen some text  
14 messages.

15 2552 Q. Right, well, we can argue about  
16 the text messages, but my question is --

17 A. And my job is not to argue. I  
18 just want to make sure that you remember that I  
19 have seen some text messages.

20 2553 Q. I agree, but you are putting them  
21 on the record and they don't do any of the things  
22 that are referred to here or that are alleged  
23 against Mr. Copeland in your conspiracy Statement  
24 of Claim; fair?

25 A. And I disagree. I am not wanting

1 to be argumentative, but I disagree with that  
2 statement. I don't want to be taken as agreeing  
3 with that statement at all.

4 2554 Q. My question is, will you withdraw  
5 these allegations by Callidus and Catalyst against  
6 Mr. Copeland? Will you withdraw that now, sir? I  
7 am giving you that opportunity.

8 A. No. No, we will not.

9 2555 Q. And as the authorized  
10 representative for Catalyst and Callidus, will you  
11 apologize to Mr. Copeland for the unfounded  
12 allegations that they have made and that you are  
13 now --

14 R/F MR. DEARDEN: Objection.

15 MR. TUNLEY: I think I am --

16 MR. DEARDEN: When you say that on the  
17 record, you are arguing. Don't answer the  
18 question.

19 BY MR. TUNLEY:

20 2556 Q. Well, the answer is no, you won't.  
21 You don't have to not answer it. You won't  
22 apologize, will you? Will you, Mr. Riley?

23 R/F MR. DEARDEN: I told him not to answer  
24 your question.

25 MR. TUNLEY: You told him not to

1 apologize, Mr. Dearden?

2 MR. DEARDEN: No, I did not, Mr.  
3 Tunley. Please.

4 BY MR. TUNLEY:

5 2557 Q. All right, I just want to refer  
6 very briefly to the Elwood documents, and I  
7 understand that you have objected to questions in  
8 this regard. I want to put on the record that we  
9 rely on those documents. We have included them in  
10 Mr. Copeland's reply affidavit. We want to ask  
11 Mr. Riley questions about them, which I understand,  
12 Mr. Dearden, you are refusing to answer on grounds  
13 of privilege; correct?

14 R/F MR. DEARDEN: That's correct. But can  
15 you tell me, are you relying on the Elwood  
16 documents for just the conspiracy action or are you  
17 relying on them also for the Wall Street Journal  
18 libel action?

19 MR. TUNLEY: I don't need to answer  
20 questions at this moment. It doesn't matter for my  
21 purposes. I am here to cross-examine on both. So  
22 I don't see that that matters for my purposes --

23 MR. DEARDEN: Just put on the record  
24 why --

25 MR. TUNLEY: You are --

1 MR. DEARDEN: So it is fair to ask  
2 which action that you rely on those documents for.

3 MR. TUNLEY: I am not here to answer  
4 questions, you know. They are relevant, in my  
5 submission.

6 MR. DEARDEN: Okay, go ahead and put  
7 your questions on the record, but --

8 MR. TUNLEY: I will.

9 MR. DEARDEN: -- as Mr. Moore had done  
10 with previous witnesses, they are all subject to a  
11 privilege motion, and so no answers will be given.

12 So I'll just let you, Mr. Tunley, rhyme  
13 off your questions.

14 BY MR. TUNLEY:

15 2558 Q. I'll just do that. I want to  
16 confirm that you will refuse to advise me even what  
17 the basis of the claim for privilege is, as you  
18 have done with other questioners; correct?

19 R/F MR. DEARDEN: I guess I better say that  
20 because I don't recall exactly what Mr. Moore's --  
21 what the scope of his objection was before, so I  
22 don't want to be inconsistent. So let's proceed on  
23 that basis.

24 BY MR. TUNLEY:

25 2559 Q. Can I also on the record confirm

1           that you in fact produced these documents to  
2           counsel to West Face and to Mr. Boland in  
3           connection with their counterclaim in the  
4           conspiracy action? They were listed in your  
5           affidavit of documents and produced?

6                       MR. DEARDEN: I am not understanding  
7           that question.

8                       MR. TUNLEY: It is --

9                       MR. DEARDEN: So why don't you take  
10          that as a refusal.

11                      MR. TUNLEY: It is not a question, Mr.  
12          Dearden. I just want to confirm that those  
13          documents were in your affidavit of documents and  
14          were produced to West Face and Mr. Boland and their  
15          counsel in the counterclaim.

16                      MR. DEARDEN: Okay, Mr. Moore is not  
17          here, Mr. Tunley, and this is not my bailiwick, so  
18          I don't want to be criticized if I am wrong on  
19          this. I don't recall that being done, but --

20                      BY MR. TUNLEY:

21          2560           Q. I don't want to put you on the  
22          spot, Mr. Dearden. Let me leave it this way, that  
23          if my statement of fact is not correct, Mr. Moore  
24          can advise me after the examination?

25          U/T           MR. DEARDEN: Okay.

1 BY MR. TUNLEY:

2 2561 Q. Okay, and I will just reserve all  
3 rights to call poor Mr. Riley back and answer  
4 questions arising from those refusals.

5 And subject to those and the other  
6 refusals in the course of my examination, I am  
7 pleased to tell you, Mr. Riley, that those are all  
8 of my questions.

9 MR. DEARDEN: I thought you were going  
10 to put the questions on the record about the Elwood  
11 documents?

12 MR. TUNLEY: I can't when you won't let  
13 me -- I mean, you are just going to refuse them, so  
14 why would I do that? I'll just have Mr. Riley  
15 back.

16 MR. DEARDEN: Okay, so I have one  
17 question in re-examination, and by my notes, it  
18 came up around 71:17 of the timing that we have got  
19 in the margin of the realtime. I don't want it  
20 called up. I am just going to --

21 MR. TUNLEY: Mr. Dearden, can I ask  
22 whose examination was the question posed in so that  
23 they can -- was it my examination or one of the  
24 prior --

25 MR. DEARDEN: Yes.

1 MR. TUNLEY: Okay, fine.

2 RE-EXAMINATION BY MR. DEARDEN:

3 2562 Q. Oh, sorry, yes, yours.

4 So you had asked Mr. Tunley if Catalyst  
5 had agreed to cover future losses on a number of  
6 loans, including XTG, and the Catalyst guarantee  
7 was -- came into play somewhere in April of 2014.  
8 And my question to Mr. Riley is did the Catalyst  
9 guarantee cover money that was loaned by Callidus  
10 to XTG between October 2012 and April 2014 when the  
11 guarantee came into effect?

12 A. Yes, it did.

13 2563 Q. That is my --

14 MR. TUNLEY: I don't think that arose  
15 out of my questions, Mr. Dearden, but if it did,  
16 you have got an answer on the record.

17 MR. DEARDEN: It was exactly what you  
18 asked. It totally came out of the question you  
19 asked.

20 But anyway, that is all the  
21 re-examination that I have, and so Mr. Riley is  
22 released, right, subject to the --

23 MR. MILNE-SMITH: Sorry, Mr. Dearden, I  
24 had a few questions just arising out of one of the  
25 answers that Mr. Riley just gave in his

1 cross-examination by Mr. Tunley.

2 MR. DEARDEN: No, you are not entitled  
3 to ask questions. You have done it. You are  
4 finished.

5 MR. MILNE-SMITH: It arises out of an  
6 answer given in cross-examination by Mr. Tunley,  
7 and so --

8 MR. DEARDEN: You don't have a  
9 re-examination, Mr. Milne-Smith, so you are not  
10 asking him questions.

11 MR. MILNE-SMITH: All right, if you  
12 want to refuse it, that is fine.

13 MR. DEARDEN: No.

14 MR. MILNE-SMITH: If you want to refuse  
15 it, that is fine.

16 MR. DEARDEN: I have told you, you have  
17 no right to be asking questions like a  
18 re-examination question arising out of one of the  
19 other counsel. You have asked your questions.

20 MR. MILNE-SMITH: I think that the way  
21 we have divided it up, I am entitled to ask him  
22 about his answer that Mr. Willis is --

23 MR. DEARDEN: No, you are not.

24 MR. MILNE-SMITH: All right, if you are  
25 refusing it, you are refusing it. That's fine. I

1 want to ask him questions about Mr. Willis being  
2 muzzled.

3 R/F MR. DEARDEN: No, you are done.

4 MR. MILNE-SMITH: All right, I'll take  
5 that as a refusal --

6 MR. DEARDEN: No, we are done.

7

8

9

10 -- Adjourned at 3:17 p.m.

11

12

13

14

15

16

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 25th day of November, 2020.



---

NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

# TAB 8

# TAB A

This is Exhibit "M" referred to in the  
Supplementary Affidavit of Nathan Anderson,  
sworn before me this 20<sup>th</sup> day of August,  
2020.



---

Commissioner for Taking Affidavits

Court File No. CV-19-00627236-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER SECTION  
182 OF THE *BUSINESS CORPORATIONS ACT (ONTARIO)*,  
R.S.O. 1990, CHAP. B.16, AS AMENDED

AND IN THE MATTER OF RULE 14.05(2) OF THE *RULES  
OF CIVIL PROCEDURE*

AND IN THE MATTER OF A PROPOSED ARRANGEMENT  
BY CALLIDUS CAPITAL CORPORATION INVOLVING  
BRASLYN LTD.

AFFIDAVIT OF DAVID SUTIN  
(Sworn September 12, 2019)

I, David Sutin, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

1. I am an independent director of the applicant, Callidus Capital Corporation (“Callidus”) and the Chair of the special committee of independent directors (the “Special Committee”) established in December 2016 to oversee a privatization process directed at securing a transaction involving the sale of all or a portion of the outstanding common shares of Callidus or its business. As such, I have personal knowledge of the facts set out in this affidavit. Where I have stated that I rely on the information of others, I believe such information to be true. Where I rely upon information provided to me by counsel, that information is not privileged. I do not, and do not intend to, waive any privilege of any party by any statement herein.

2. I swear this affidavit in support of:

- (a) a motion for advice and directions in this application under section 182 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the “OBCA”),

seeking this Court's approval of the proposed arrangement (the "**Arrangement**") described in Callidus's draft management information circular (the "**Circular**"), attached as **Exhibit "A"** to this affidavit; and

(b) the application for final approval of the Arrangement.

3. I beneficially own or control 33,476 common shares in the capital of Callidus and 47,547 DSUs to acquire common shares in the capital of Callidus.

4. For the purposes of this affidavit, all capitalized terms not otherwise defined have the meanings given to them in the Circular and the Plan of Arrangement attached as Schedule "B" to the Circular.

#### I. OVERVIEW OF THE ARRANGEMENT

5. On August 15, 2019, Callidus entered into an arrangement agreement (the "**Arrangement Agreement**", a copy of which is attached hereto as **Exhibit "B"**), with Braslyn Ltd. ("**Braslyn**") whereby they agreed that Braslyn would acquire all of the common shares in the capital of Callidus ("**Shares**") not already held by Catalyst Fund Limited Partnership II, Catalyst Fund II Parallel Limited Partnership, Catalyst Fund Limited Partnership III, Catalyst Fund Limited Partnership IV, Catalyst Fund IV Parallel Limited Partnership (together, the "**Catalyst Funds**"), Figcorp Ltd., James Riley or Braslyn itself (the "**Subject Shares**" held by the "**Minority Shareholders**"), by way of a plan of arrangement (the "**Plan of Arrangement**"). The Plan of Arrangement takes Callidus private, provides liquidity for the Minority Shareholders at a premium to the then current market price for the Shares and provides an opportunity for the continuing Shareholders to restructure Callidus' debt to the Catalyst Funds.

6. The Plan of Arrangement provides (i) for holders of the Subject Shares to receive a cash payment of \$0.75 per Subject Share; (ii) for holders of options to acquire common shares in the capital of Callidus (“Options”) to receive a cash payment equal to the amount (if any) by which \$0.75 exceeds the exercise price payable for each Subject Share issuable under such Option; and (iii) for holders of Callidus Deferred Share Units (“DSUs”) to receive a cash payment equal to \$0.75 per DSU less applicable withholdings.

7. The Plan of Arrangement provides that, for the Arrangement to proceed, the Arrangement Resolution (as defined below) must be approved, with or without variation, at the Meeting (as defined below) by: (i) an affirmative vote of at least two-thirds (66 $\frac{2}{3}$ %) of the votes by the holders of Shares (the “Shareholders”) present in person or represented by proxy at the Meeting; and (ii) a majority of the votes cast by Shareholders present in person or represented by proxy at the Meeting, excluding Shareholders whose votes are required to be excluded for the purposes of “minority approval” under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (“MI 61-101”). The Catalyst Funds, Figcorp Ltd., Mr. Riley, and the directors of Callidus that own Shares have agreed with Braslyn to vote their Shares in favour of the Arrangement Resolution, subject to certain conditions.

8. The completion of the Arrangement is subject to other conditions, including the approval of this Court.

9. Subject to the advice and directions of this Court, and subject to the terms set out below, Callidus intends to deliver the Circular (including the Notice of Meeting), substantially in the form of Exhibit “A” to this affidavit, to Shareholders, to holders of Options and holders of DSUs, and to Callidus’ directors and auditors for the purpose of convening a special meeting of the

Shareholders on October 23, 2019 to consider and, if deemed advisable, approve the Arrangement (the “Meeting”).

## II. PARTIES

10. Callidus is an Ontario corporation that specializes in innovative and creative financing solutions for companies that are unable to obtain adequate financing from conventional lending institutions. The Shares are listed and traded on the Toronto Stock Exchange (the “TSX”) under the symbol “CBL”. As at the close of business on August 14, 2019, there were 57,121,422 Shares issued and outstanding. As of that same date, there were also issued and outstanding 90,500,000 preferred shares in the capital of Callidus, 5,712,142 Options exercisable to acquire Shares and 137,951 DSUs.

11. I am aware from public information and from representations in the Arrangement Agreement that Braslyn is a privately held international business company existing under the laws of the Commonwealth of the Bahamas; that it is based in Lyford Cay, New Providence, Bahamas; and that it holds or controls approximately 14.5% of the outstanding Shares.

12. I am aware from public information and from representations in the Arrangement Agreement that the Catalyst Funds are investment funds managed by The Catalyst Capital Group Inc. (“CCGI”), a Canadian private equity investment firm based in Toronto, and that the Catalyst Funds hold or control approximately 72.2% of the outstanding Shares.

## III. BACKGROUND TO PROPOSED ARRANGEMENT

13. The background to the Arrangement is described in detail in the Circular starting at page 23. I have reviewed and adopt that description in its entirety. What follows is an overview of the context of the Arrangement.

14. The proposed privatization of Callidus by way of the Arrangement follows an extensive formal process undertaken by Callidus, under the direction and oversight of the Special Committee, to identify viable strategic alternatives that Callidus might pursue to address the financial, operating and market challenges it has been subject to.

15. The Arrangement has resulted from negotiation of a transaction by the Special Committee, CCGI and Braslyn following a lengthy process to solicit privatization proposals for Callidus commenced in September 2016 (the "**Privatization Process**"). The length of time over which the Privatization Process and negotiation of the Arrangement were conducted, and the inability to develop interest of third parties in addition to Braslyn in a privatization or other transaction, were the result of a number of factors, including the following:

- (a) Over the period in which the Privatization Process and discussions regarding the Arrangement have been conducted, the operating and financial performance of Callidus declined significantly, reflecting a number of factors including:
  - (i) on a quarter by quarter basis beginning with the quarter ended September 30, 2016, ongoing operating losses and negative cash flows from operations resulting from non-performing loans made by Callidus and quarterly increases in its loan loss provisions;
  - (ii) negative operating performance of, and the extent of the capital required by, a number of the non-core subsidiaries;

- (iii) deterioration in the financial condition of Callidus, leading to an inability to obtain additional financing to invest in Callidus' existing business and to pursue new loan origination;
  - (iv) a number of senior personnel issues, including: the medical leave of Mr. Glassman, Callidus' Executive Chairman and Chief Executive Officer, announced by Callidus on August 13, 2018; the resignation of Callidus' Interim Chief Executive Officer, Patrick Dalton, announced by Callidus on March 11, 2019 following his appointment effective November 5, 2018; Callidus' inability to recruit a new Chief Executive Officer with appropriate experience; and in April 2019, the departure of Callidus' Chief Credit Officer, James Rogers; and
  - (v) increasing inability to retain personnel despite retention programs.
- (b) As a result of the decline in Callidus' operating and financial performance, which necessitated the elimination of the dividend paid on the Shares, the market price of the Shares declined significantly over this period. This decline in operating and financial performance was a significant factor in the inability of Callidus to negotiate a privatization proposal with any third party other than Braslyn, which was in a unique position as an existing Shareholder with a significant investment in the Shares.
- (c) The Special Committee was, throughout the Privatization Process and negotiation of the Arrangement, required to take into account the internal forecasts of management of Callidus and the value such forecasts implied for the Shares.

Given the participation of CCGI representatives in, and influence over, management of Callidus, and the substantial likelihood that a transaction resulting from the Privatization Process as well as the Arrangement would result in the Catalyst Funds retaining some or all of their Shares, the Special Committee was obliged to consider the influence of CCGI on the internal forecasts, and whether a transaction could be negotiated at a price level below that implied by the internal forecasts. As the internal forecasts in place prior to the preparation of Callidus' 2018 financial statements did not anticipate the extent of the decline in the Corporation's operating and financial performance referred to above, they implied a value for the Shares that was typically higher than price levels at which third parties were prepared to negotiate a transaction.

- (d) As a result of (i) the likely retention by the Catalyst Funds of all or part of the Shares held by them pursuant to a transaction, (ii) the extent of indebtedness of Callidus to the Catalyst Funds, and (iii) the commercial relationships between Callidus and CCGI, including the loan participation and guarantee arrangements and participation of CCGI in Callidus management, a third party having an interest in acquiring an equity interest in Callidus would need to negotiate a shareholders agreement with CCGI setting forth the basis on which they would jointly control Callidus and address its indebtedness to the Catalyst Funds. Addressing this "control" issue and this indebtedness represented a barrier to certain third parties that expressed initial interest in exploring a transaction.

#### IV. APPROVAL BY CALLIDUS BOARD OF DIRECTORS

16. The members of the Callidus Board of Directors (the “Board”) (excluding Messrs. Glassman and Riley) and the Special Committee unanimously determined that the Arrangement is in the best interests of Callidus and fair to the Minority Shareholders. Accordingly, the Board is recommending that the Minority Shareholders vote all of their Shares in favour of the special resolution to approve the Plan of Arrangement to be considered at the Meeting (the “Arrangement Resolution”).

17. In arriving at its recommendation, the Special Committee and the Board (excluding Messrs. Glassman and Riley) considered a number of factors, including the following, which are further described in the Circular:<sup>1</sup>

- (a) *Premium to Market Price.* The consideration to be received by Minority Shareholders pursuant to the Arrangement represents an 82.9% premium to the closing price of the Shares on the TSX on August 15, 2019 and a 62.3% premium to the 20-day volume weighted average price of the Shares on the TSX as at such date.
- (b) *Financial Performance of Callidus.* The Special Committee considered the decline in the financial performance of Callidus as a result of its significant operating losses and negative cash flows from operations in the preceding two years, and the significant risk of ongoing deterioration in its financial performance. As a result of its declining financial performance, Callidus has

---

<sup>1</sup> All capitalized terms in this paragraph not otherwise defined in this Affidavit have the meanings given to them in the Circular.

required ongoing funding by way of loans (the “Catalyst Loans”) and support from the Catalyst Funds, which Callidus is currently unable to repay. As at August 20, 2019, the aggregate indebtedness of Callidus under the Catalyst Loans was approximately \$262 million. CCGI has advised the Special Committee that, in the absence of the Arrangement being completed, it will not grant further extensions of the repayment of the Catalyst Loans or renew the Catalyst Loans beyond their required repayment date of September 30, 2020. Further, the Special Committee does not believe that Callidus would be able to independently raise the capital required to fund repayment of the Catalyst Loans. The Special Committee therefore believes that there is a significant risk that the Catalyst Loans will become due and payable on September 30, 2020, Callidus will be unable to fund their repayment, and CCGI will exercise its rights and remedies under the Catalyst Loans. The Special Committee further believes that the exercise of such rights and remedies would lead to the insolvency and/or liquidation of Callidus. In such circumstances, the Special Committee considers it unlikely that the Shareholders (including Braslyn) would receive any value for their Shares.

(c) *The Failure of the Privatization Process to Surface Other Acquisition Proposals.*

The Special Committee considered the nature and extent of the lengthy process undertaken to privatize Callidus or otherwise restructure the equity and debt interests in Callidus, and the failure of that process to surface an interested party willing to commit to a transaction other than Braslyn. In particular, having regard to (i) the public disclosure of Callidus’ efforts, together with its financial advisors, to undertake a privatization process over a lengthy period of time beginning on

September 30, 2016, (ii) the press releases of Braslyn and the Special Committee dated December 6, 2018 relating to a non-binding proposal by Braslyn to acquire the Shares held by Minority Shareholders, (iii) the absence of any other party having made an alternate acquisition or other proposal or having, to the knowledge of Callidus, a significant interest in the outstanding Shares, (iv) CCGI's indication to the Special Committee that it would be unwilling to sell the Shares held by the Catalyst Funds at a price near the current market price, and (v) the need for any party that was interested in making an acquisition proposal to achieve agreement with CCGI regarding the terms by which Callidus would be governed and how their respective interests in Callidus would be managed following completion of a transaction, the Special Committee concluded that there is very limited likelihood that any other party would propose an alternative transaction to the Arrangement.

- (d) *Fairness Opinion.* The Special Committee considered the Fairness Opinion and concurred with its analysis and conclusions including:
- (i) that the consideration to be provided to Braslyn under the Shareholders Agreement by the Catalyst Funds is not an asset of Callidus and does not represent value available to Minority Shareholders; and
  - (ii) the benefits and consideration provided to Braslyn in relation to the consideration provided or committed to be provided by it, both under the Arrangement and on an ongoing basis (including pursuant to the Shareholders Agreement), were not unreasonable having regard to the risk

undertaken by it in participating in the Arrangement and on an ongoing basis and relative to the expected financial returns required by a reasonable investor purchasing comparable risk assets.

Notwithstanding that the Valuation gives effect to an adjustment to take into account the provisions of the Shareholders Agreement, the Special Committee concurred with and has relied on the Fairness Opinion, including its conclusions that, as of the date thereof, and subject to the assumptions, limitations and qualifications contained therein

- (i) the Consideration available to Minority Shareholders under the Arrangement is greater than the value that could be achieved by the Minority Shareholders under any other feasible alternative currently available to Callidus;
- (ii) the benefits and other consideration to be received by Braslyn under the Shareholders Agreement do not compromise the fairness, from a financial point of view, of the Consideration to be received by the Minority Shareholders pursuant to the Transaction, having regard to the consideration being given, and risks assumed, by Braslyn; and
- (iii) the Consideration to be received by Minority Shareholders pursuant to the Arrangement is fair from a financial point of view to the Minority Shareholders.

(e) *The Position of Braslyn.* The Special Committee considered the unique circumstances of Braslyn and its possible motivation to undertake the Arrangement, principally being its position as a significant shareholder of Callidus, and the Special Committee's understanding of Braslyn's business experience relevant to the business of Callidus and Braslyn's banking and other relationships that it would be able to extend to Callidus upon completion of the Arrangement. The Special Committee also considered the risk that a further decline in the operating results and financial performance of Callidus might cause Braslyn to propose amendments to the terms of the Arrangement that would be adverse to the interests of Callidus and/or the Minority Shareholders, or even to withdraw its participation in the Arrangement altogether. The Special Committee also took into account its inability to negotiate improved terms of the Arrangement, including the Consideration, from Braslyn for the benefit of the Corporation and Minority Shareholders, notwithstanding its repeated efforts.

In particular, the Special Committee considered the provision of the Voting Support Agreement between Braslyn and the other Continuing Shareholders that restricted such Continuing Shareholders from engaging in discussions or negotiations with any person regarding an Acquisition Proposal after 5:00 p.m. (Eastern time) on August 29, 2019. As a result of this restriction, it was unlikely that a third party would have sufficient time to complete a due diligence review and negotiate agreements with Callidus and such Continuing Shareholders on a timeline that would enable Callidus to meet its obligation under the Arrangement Agreement to provide Braslyn with a matching right exercisable in the Matching

Period and allow the third party to enter into agreements with Callidus and the applicable parties to the Voting Support Agreements, in each case prior to August 29, 2019. As a result, third parties may have been discouraged from making a Superior Proposal until after the result of the shareholder vote at the Meeting is available, or at all.

- (f) *The Position of CCGI.* CCGI has advised the Special Committee that the terms of the Arrangement, including the terms of the Shareholders Agreement, are anticipated by CCGI to be more favourable in aggregate to the Catalyst Funds as lenders under the Catalyst Loans than the expected aggregate net benefits to the Catalyst Funds of exercising their rights and remedies pursuant to the Catalyst Loans or than any alternative transaction. CCGI has further advised the Special Committee, in response to repeated requests by the Special Committee, that it is not prepared to contribute additional funds to Callidus, arrange for the Catalyst Funds, James Riley and FigCorp to make an offer for the Shares held by the Minority Shareholders, convert the Catalyst Loans to Shares, accept conveyance of assets in repayment of the Catalyst Loans, or otherwise improve the terms of the Arrangement, including the Consideration, for Minority Shareholders. CCGI has advised the Special Committee that the Catalyst Funds are providing consideration to Braslyn under the Shareholders Agreement in order to induce Braslyn to undertake the Arrangement so that the Minority Shareholders will have the opportunity of receiving a cash offer for their Shares. The Special Committee recognized that the consideration to be provided by the Catalyst Funds to Braslyn under the Shareholders Agreement at closing of the Arrangement has resulted in

an opportunity for Minority Shareholders to receive value for their Shares that would otherwise not be expected to be available.

- (g) *Certainty of Value and Liquidity.* The Consideration to be paid pursuant to the Arrangement is all cash, which allows Minority Shareholders to immediately realize value for all of their investment, and provides certainty of value and immediate liquidity.
- (h) *Shareholder and Court Approval Required.* The Board and Special Committee considered the following rights and approvals which protect Minority Shareholders:
- (i) the transaction requires approval of a majority of the votes cast at the Meeting by the Minority Shareholders, and the Minority Shareholders are therefore able to determine whether the transaction is acceptable and is to proceed;
  - (ii) the transaction must be court-approved, and the court will consider, among other things, the fairness of the Arrangement to Minority Shareholders; and
  - (iii) Minority Shareholders have been provided with the right to exercise dissent rights in respect of the Arrangement.
- (i) *Likelihood of Completion.* The Special Committee considered the likelihood that the Arrangement would be completed in light of the customary nature of the

conditions to closing under the Arrangement Agreement, and the fact that the Arrangement is not subject to a financing condition.

18. The Special Committee and the Board (excluding Messrs. Glassman and Riley) also considered and evaluated a number of countervailing factors, including:

- (a) *Non-Solicitation.* The Arrangement Agreement and the Voting and Support Agreements limit Callidus' ability to solicit, initiate or encourage Acquisition Proposals. Additionally, if the Arrangement Agreement is terminated in certain circumstances, including termination by Braslyn following a Change in Recommendation or termination by Braslyn or Callidus in certain circumstances where an Acquisition Proposal is consummated or Callidus enters into an acquisition agreement, then Braslyn will be entitled to the Termination Fee. The Termination Fee may further discourage parties potentially interested in an Acquisition Proposal from pursuing that opportunity.
- (b) *Risks of Delay or Non-Completion.* The completion of the Arrangement is subject to a number of conditions, including the receipt of Court approval, in addition to the Required Shareholder Approval. If the Arrangement is not consummated or is delayed, it could have an adverse effect on Callidus' business, share price, retention of personnel and relationships with prospective borrowers and other third parties.
- (c) *Interests of Directors and Senior Officers.* The Special Committee and the Board considered the interests of certain Senior Officers and members of the Board with respect to the Arrangement in addition to their interests as Shareholders.

- (d) *Transaction Expenses.* Substantial costs will be incurred by Callidus in connection with the Arrangement, including legal and financial advisory fees, certain of which must be paid regardless of whether the Arrangement is consummated.
- (e) *Taxable Arrangement.* The Arrangement will be a taxable arrangement for Resident Holders (as defined in the Circular) for Canadian federal and provincial income tax purposes.

## V. THE ARRANGEMENT

19. Commencing at the Effective Time each of the following events shall occur and shall be deemed to occur sequentially as set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five-minute intervals starting at the Effective Time:

- (a) notwithstanding the terms of the Incentive Plan, each DSU outstanding immediately prior to the Effective Time (whether vested or unvested), shall, without any further action by or on behalf of a holder of DSUs, be deemed to be assigned and transferred by such holder to Callidus in exchange for a cash payment from Callidus equal to the Consideration, less applicable withholdings, and each such DSU shall immediately be cancelled and (i) the holders of such DSUs shall cease to be the holders thereof, and to have any rights as holders of such DSUs other than the right to receive the consideration to which they are entitled under the Plan of Arrangement; (ii) each such holder's name shall be removed from the register of the DSUs maintained by or on behalf of the

Company; and (iii) all agreements in the Incentive Plan relating to the DSUs shall be terminated and shall be of no further force and effect;

- (b) notwithstanding the terms of the Incentive Plan, each Option outstanding immediately prior to the Effective Time (whether vested or unvested), shall be deemed to be unconditionally vested and exercisable, and such Option shall, without any further action by or on behalf of a holder of Options, be deemed to be assigned and transferred by such holder to Callidus. If the Consideration exceeds the exercise price of such Option, the amount of such excess, less applicable withholdings, shall be paid by Callidus to the holder of the Option in exchange therefor. If the exercise price of such Option exceeds the Consideration, neither Callidus nor Braslyn shall be obligated to pay the holder of such Option any amount in respect of such Option. Upon such assignment and transfer, each such Option shall immediately be cancelled and (i) the holders of such Options shall cease to be the holders thereof, and to have any rights as holders of such Options other than the right to receive the consideration to which they are entitled under the Plan of Arrangement, if any; (ii) each such holder's name shall be removed from the register of Options maintained by or on behalf of Callidus; and (iii) the Incentive Plan and all agreements relating to the Options shall be terminated and shall be of no further force and effect;
- (c) each of the Shares held by Dissenting Holders in respect of which Dissent Rights have been validly exercised and in respect of which notice of exercise has not been withdrawn shall be deemed to have been transferred without any further act

or formality to Braslyn in consideration for a debt claim against Braslyn for the amount determined under the Plan of Arrangement, and:

- (i) such Dissenting Holders shall cease to be the holders of such Shares and to have any rights as holders of such Shares other than the right to be paid fair value by Braslyn for such Shares as set out in the Plan of Arrangement;
  - (ii) each such Dissenting Holder's name shall be removed as the holder of such Shares from the register of Shares maintained by or on behalf of Callidus; and
  - (iii) Braslyn shall be deemed to be the transferee of such Shares free and clear of all Liens, and shall be entered in the register of Shares maintained by or on behalf of Callidus; and
- (d) each Share outstanding immediately prior to the Effective Time, other than (i) Shares held by a Dissenting Holder who has validly exercised such holder's Dissent Right, and (ii) Shares held by a Remaining Shareholder or Braslyn, shall, without any further action by or on behalf of a holder of Shares, be deemed to be assigned and transferred by the holder thereof to Braslyn in exchange for the Consideration, and;
- (i) the holders of such Shares shall cease to be the holders of such Shares and to have any rights as holders of such Shares other than the right to be paid the Consideration by Braslyn in accordance with this Plan of Arrangement;

- (ii) such holders' names shall be removed from the register of the Shares maintained by or on behalf of Callidus; and
- (iii) Braslyn shall be deemed to be the transferee of such Shares (free and clear of all Liens) and shall be entered in the register of the Shares maintained by or on behalf of the Company.

20. The Plan of Arrangement further includes mutual releases by Callidus, its current and former directors and officers, and its current and former Shareholders in respect of the Arrangement and the business and affairs of Callidus and its subsidiaries, subject to certain exceptions. The mutual releases were necessary to retain the individuals engaged in advancing the Arrangement, and required as a commercial term of the transaction by the Continuing Shareholders.

## **VI. THE MEETING**

### **A. Meeting Mechanics**

21. Callidus intends to convene the Meeting at the offices of Fasken Martineau DuMoulin LLP, 333 Bay Street, Suite 2400, Toronto, Ontario, M5H 2T6, on October 23, 2019 at 10:00 a.m. (Toronto time), subject to the direction of this Court. At the Meeting, the Shareholders will be asked to consider and, if deemed advisable, pass, with or without variation, the Arrangement Resolution, which is Schedule "A" to the Circular, a copy of which is attached as Exhibit "A" to this affidavit.

22. In accordance with the terms of the Arrangement Agreement and the articles and by-laws of Callidus, the Arrangement Resolution shall be passed, with or without variation, by an affirmative vote of: (i) at least two-thirds (66 $\frac{2}{3}$ %) of the votes by the Shareholders present in

person or represented by proxy at the Meeting; and (ii) a majority of the votes cast by Shareholders present in person or represented by proxy at the Meeting, excluding Shareholders whose votes are required to be excluded for the purposes of “minority approval” under MI 61-101. Each Shareholder is entitled to one vote at the Meeting for each Share held.

23. Callidus’s by-laws provide that the quorum for the transaction of business at the Meeting is holders of 25% of the issued shares entitled to vote at a meeting of Shareholders, whether present in person or represented by proxy.

24. As of the date of this affidavit, pursuant to the terms of voting support agreements and subject to certain exceptions, the Catalyst Funds, James Riley and Figcorp Ltd. (controlled by Mr. Glassman) and each of the members of the Special Committee who owns Shares (together, the “**Supporting Parties**”) agreed to vote their Shares at the Meeting in favour of the transaction.

#### **B. Notice of Meeting**

25. It is intended that, subject to the approval of this Court, notice of the Meeting will be given to Shareholders by means of delivering the Notice of Meeting at the address of each Shareholder as shown on the books and records of Callidus as at the close of business on September 23, 2019. A copy of the draft Notice of Meeting to be sent appears at the beginning of the Circular, which is attached as Exhibit “A” to this affidavit.

26. Only Shareholders of record as of 5:00 p.m. (Eastern time) on September 23, 2019 will be entitled to notice of and to vote at the Meeting.

27. In accordance with the provisions of the OBCA, Callidus also intends to send to the Shareholders a copy of the Circular. The Circular discloses the terms of the Arrangement and

sets out in detail the steps that are proposed to be taken in carrying out the Arrangement. The Circular will include various schedules, including the text of the Arrangement Resolution (at Appendix "A") and a copy of the Plan of Arrangement (at Appendix "B").

28. Callidus also intends to send to each registered Shareholder a form of proxy with respect to the voting rights to be exercised at the Meeting. Shareholders that do not expect to attend the Meeting in person will be able to vote by means of proxy. The draft form of proxy which Callidus intends to use is attached as **Exhibit "C"** to this affidavit (the "**Form of Proxy**"). If a Shareholder intends to exercise his, her or its voting rights by means of proxy, the Form of Proxy must be forwarded so as to be received by Computershare Investor Services Inc., 8<sup>th</sup> floor, 100 University Avenue, Toronto, Ontario, M5J 2Y1, or by facsimile or internet as specified in the Form of Proxy not less than 48 hours (excluding Saturdays, Sundays and holidays) before the time fixed for the Meeting or any adjournment(s) or postponement(s) thereof. Non-registered Shareholders will receive a form of proxy or voting instructions to be completed and submitted in accordance with instructions provided by their intermediary.

29. It is anticipated that the Notice of Meeting, the Circular and related materials (the "**Meeting Materials**") will be mailed or otherwise sent to the Shareholders no later than October 2, 2019, in accordance with applicable Canadian securities laws. As a result of delivering the foregoing materials prior to the Meeting, I believe that Shareholders will receive proper and sufficient notice of the Meeting. It is also anticipated that the Circular (including the Notice of Application and the Interim Order) will be mailed or otherwise sent to holders of Options and DSUs no later than October 2, 2019, such that they will have proper and sufficient notice of the final hearing at which approval of the Arrangement will be sought.

## VII. DISSENT RIGHTS

30. Subject to this Court's approval, Callidus plans to give each registered Shareholder who delivers a written objection to the Arrangement Resolution by a specified deadline before the Meeting, and who otherwise complies with section 185 of the OBCA, the Interim Order and the Plan of Arrangement, the right to dissent in accordance with the OBCA, the Interim Order and the Plan of Arrangement, and to be paid by Braslyn fair value for its Shares determined as of the close of business on the day before the Arrangement Resolution's adoption.

31. For certainty, any registered Shareholder who wishes to dissent must send a written objection to Callidus to be received not less than two business days prior to the Meeting or any postponement(s) or adjournment(s) thereof.

32. The proposed deadline departs from the provisions of the OBCA, which would otherwise permit a dissent notice to be provided at or prior to the Meeting. The variation will advance the orderly and efficient conduct of the Meeting by permitting Callidus to assess the number of holders exercising their dissent rights prior to the Meeting while providing Shareholders with sufficient and reasonable notice to exercise those rights of dissent.

33. The text of section 185 of the OBCA, which sets out a Shareholder's rights of dissent and appraisal, is included in the draft Circular as Appendix "G".

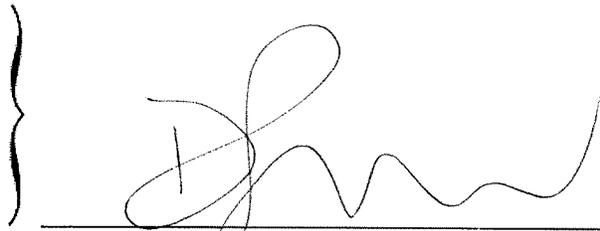
**VIII. FINAL ORDER**

34. It is expected that, if the Arrangement receives the required approval of the Shareholders, the Arrangement will be submitted for final approval of this Court on or about October 25, 2019, subject to the satisfaction or waiver of the conditions precedent contained in the Arrangement Agreement.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario on September 12, 2019



Commissioner for Taking Affidavits  
(or as may be)



DAVID SUTIN

**Laura Lynn Robinson, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires April 27, 2021.**

Laura Lynn Robinson

# TAB B

# OSC Whistleblower Program

## Whistleblower Submission Form

\* Indicates mandatory field.

\* 1) Tell us about yourself

- I am an individual whistleblower (or a group of up to five individual whistleblowers)
- I am a lawyer representing a whistleblower (or a group of whistleblowers) who wishes to be anonymous



Your client, the whistleblower, must have provided you with a completed and signed Whistleblower Submission Form including a Whistleblower Certification, the original of which you must retain in your records. Before you begin the online submission process, please ensure you have any supporting documents and/or materials on hand to upload as part of this online submission.

### PART 1 - Who is involved in the misconduct?

\* 2) How many **individual(s)** are involved in the misconduct?

#### Who are the individual(s) involved in the misconduct?

##### Individual #1

* First name	* Last name	Job position / title
<input type="text" value="Newton"/>	<input type="text" value="Glassman"/>	<input type="text" value="CEO"/>
Street address	City	Province/State
<input type="text" value="181 Bay Street"/>	<input type="text" value="Toronto"/>	<input type="text"/>
Country	Phone number	Email
<input type="text"/>	<input type="text" value="416-945-3240"/>	<input type="text"/>

##### Individual #2

* First name	* Last name	Job position / title
<input type="text" value="Jim"/>	<input type="text" value="Riley"/>	<input type="text" value="Secretary"/>
Street address	City	Province/State
<input type="text" value="181 Bay Street"/>	<input type="text" value="Toronto"/>	<input type="text"/>
Country	Phone number	Email
<input type="text"/>	<input type="text" value="416-945-3240"/>	<input type="text"/>

##### Individual #3

* First name	* Last name	Job position / title
<input type="text" value="Gabriel"/>	<input type="text" value="de Alba"/>	<input type="text" value="Managing Director"/>
Street address	City	Province/State
<input type="text"/>	<input type="text"/>	<input type="text"/>

181 Bay Street	Toronto	954
Country	Phone number	Email
Canada	416-945-3000	

\* 3) How many **entities** (e.g. corporations, organizations, etc.) are involved in the misconduct?

**Who are the entities involved in the misconduct?**

**Entity #1**

\* Name

Street address	City	Province/State
181 Bay Street	Toronto	Ontario
Country	Phone number	Website
Canada	416-945-3240	

**Entity #2**

\* Name

Street address	City	Province/State
181 Bay Street	Toronto	Ontario
Country	Phone number	Website
Canada	416-945-3000	

\* 5) Was or is "Newton Glassman" an employee, officer or director (a member of the board of directors) at any of the entities (Callidus Capital Corporation, Catalyst Capital Group) at the time of the misconduct?

Yes  No  I don't know

\* Which of the following entities was "Newton Glassman" an employee, officer or director of at the time of the misconduct:

- Callidus Capital Corporation
- Catalyst Capital Group

\* 6) Was or is "Jim Riley" an employee, officer or director (a member of the board of directors) at any of the entities (Callidus Capital Corporation, Catalyst Capital Group) at the time of the misconduct?

Yes  No  I don't know

\* Which of the following entities was "Jim Riley" an employee, officer or director of at the time of the misconduct:

- Callidus Capital Corporation
- Catalyst Capital Group

\* 7) Was or is "Gabriel de Alba" an employee, officer or director (a member of the board of directors) at any of the entities (Callidus Capital Corporation, Catalyst Capital Group) at the time of the misconduct?

of the misconduct?

Yes  No  I don't know

955

\* Which of the following entities was "Gabriel de Alba" an employee, officer or director of at the time of the misconduct:

Callidus Capital Corporation

Catalyst Capital Group



## Whistleblower Submission Form

### PART 2 - What happened?

\* Indicates mandatory field.

\* 1) What **type of securities-related misconduct** do you believe has occurred, is presently occurring, or will occur? Check all that apply.

- Illegal insider trading and/or tipping
- Corporate disclosure and/or financial statements
- Other
- Fraud
- Illegal distribution and/or unregistered trading
- I don't know (will clear other answers to this question)

\* When did or when will the misconduct "Fraud" occur? Select all that apply.

- The misconduct occurred in the past
- The misconduct is currently ongoing
- The misconduct is about to occur sometime in the future
- I don't know (will clear other answers to this question)

At what date did the "ongoing" misconduct "Fraud" start?

- I don't know (will clear dates provided)

\* When did or when will the misconduct "Corporate disclosure and/or financial statements" occur? Select all that apply.

- The misconduct occurred in the past
- The misconduct is currently ongoing
- The misconduct is about to occur sometime in the future
- I don't know (will clear other answers to this question)

At what date did the "ongoing" misconduct "Corporate disclosure and/or financial statements" start?

- I don't know (will clear dates provided)

\* 2) Describe the **facts** that lead you to believe that the above misconduct has occurred, is presently occurring, or is about to occur. Please be as specific as possible. (min. 50 and max. 2000 characters)

We have provided a detailed factual explanation of the fraud in Attachment A. This document details the fraudulent conduct by Catalyst, Callidus, Glassman and other directors. We are only uploading Attachment A and an Exhibit Description List to this online filing. We will be sending the OSC a USB drive with all accompanying exhibits (there are roughly 70 exhibits).

\* 3) **How** did you learn about the above misconduct? (max. 500 characters)

See Attachment A.

\* 4) **When** did you learn about the above misconduct?

2017

January

957

5) What do you believe is the magnitude of the misconduct? (For example, how much money is involved? How many people are being harmed?) (max. 500 characters)

See Attachment A.

## Whistleblower Submission Form

### PART 3 - Supporting documents

\* Indicates mandatory field.

\* 1) Do you currently have documents or materials in your possession or control, that you wish to provide to the OSC, to support the misconduct?

Yes  No

Electronic supporting documents or materials up to 1 GB in total (up to 20 files) may be attached to this online report. If your files exceed this limit, any files past this limit must be sent directly to the OSC's Office of the Whistleblower, either by mail or courier.

If you plan to send files to our office by mail or courier, please complete this report submission first and take note of the submission ID number that you will receive at time of online submission.

In your mailing to us, please send the information to the OSC's Office of the Whistleblower at the address noted below, and include the following:

1. your name(s);
2. submission ID;
3. electronic files saved on a physical storage medium, such as a USB thumb drive;
4. a description of the document(s) or material(s) provided;
5. a description of how the document(s) or material(s) were obtained; and
6. whether your identity is likely to be revealed in any of these items.

Mailing address:

Office of the Whistleblower - Confidential  
Ontario Securities Commission  
22nd Floor  
20 Queen Street West  
Toronto, ON M5H 3S8

For future reference, this mailing address is also listed on the website of the [Office of the Whistleblower](#).

\* Do you have files to upload?

Yes  No



Please do not reference or attach any documents that may reflect legal advice, that are communications with a lawyer for the purpose of obtaining legal advice or related working papers or that may otherwise be subject to solicitor-client privilege.

Once you have uploaded any files and closed the file upload window, you will not be able to view or delete any of the uploaded files.

For each file you upload, please provide the following details:

**Document #1**

\* Document description (please be specific)

This document is a submission that details the ongoing fraud at Catalyst and Callidus.

\* How was it obtained

This document was drafted by the Whistleblowers and their attorneys.

\* Is it likely to reveal your identity? If yes, please explain

Yes, this document lists one of the Whistleblowers' names.

\* Document file name

Attachment A

**Document #2**

\* Document description (please be specific)

This document lists the exhibits that will be sent to the OSC's office, which accompany Attachment A and provided the factual background for Attachment A.

\* How was it obtained

This document

\* Is it likely to reveal your identity? If yes, please explain

No

\* Document file name

Exhibit Description List

\* Do you have files stored on physical storage media and/or physical documents to mail or courier to the Office of the Whistleblower?

Yes  No

Please complete this report submission first, and take note of the submission ID number that you will receive at time of online submission.

In your mailing to us, please send the information to the OSC's Office of the Whistleblower at the address noted below, and include the following:

- 1. your name(s);
- 2. submission ID;
- 3. any physical documents or materials, or electronic files saved on a physical storage medium, such as a USB thumb drive;
- 4. a description of the document(s) or material(s) provided;
- 5. a description of how the document(s) or material(s) were obtained; and
- 6. whether your identity is likely to be revealed in any of these items.

Mailing address:

Office of the Whistleblower - Confidential  
 Ontario Securities Commission  
 22nd Floor  
 20 Queen Street West  
 Toronto, ON M5H 3S8

For future reference, this mailing address is also listed on the website of the [Office of the Whistleblower](#).

\* 2) Are there additional documents or materials available to support the misconduct which are not in your possession or control?

in your possession or control?

Yes  No  I don't know

960



## Whistleblower Submission Form

### PART 4 - About the whistleblower(s)

\* Indicates mandatory field.

1) Have you or the whistleblower(s) had any prior communication with the OSC regarding this matter?

Yes  No  I don't know

\* Please specify who you dealt with at the OSC and when. (max. 500 characters)

2) Have you or the whistleblower(s) had any communication with another securities regulator, self-regulatory organization (such as the Investment Industry Regulatory Organization of Canada (IIROC) or the Mutual Fund Dealers Association (MFDA)), government official, or a law enforcement agency regarding this matter?

Yes  No  I don't know

Specify the organization(s) and the person at each organization (if known) that you dealt with, the date of your initial communication, and the action taken by that party (if any, if known).

#### Organization #1

\* Organization

Person

\* Date (year is mandatory)

Securities and Exchange Commiss

Danielle Sallah and Osman

2017

Month

Day

Action taken (if any, if known) (max. 500 characters)

3) Are you or the whistleblower(s) involved in legal proceedings regarding this matter?

Yes  No  I don't know



## Whistleblower Submission Form

### PART 4 - About the whistleblower(s)

\* Indicates mandatory field.

4) Did the whistleblower obtain this information while conducting an inquiry or investigation into possible violations of law?

Yes  No  I don't know

5) Was the whistleblower involved in the misconduct?

Yes  No  Prefer not to answer

6) Is there anything else you would like to tell us?

Yes  No

\* Please detail below (max. 1000 characters):

See Attachment A.



## Whistleblower Submission Form

### Lawyer's contact information

\* Indicates mandatory field.

\* Lawyer's Name

Bryan Wood

Street address

1 Liberty Square

\* Province/State

Massachusetts

Daytime phone

(617) 542-8300

\* Name of Law Firm

Berman DeValerio

City

Boston

\* Country

United States

Email

bwood@bermandevalerio.com

## Whistleblower Submission Form

### PART 5 - Counsel certification

[Click here to read the OSC Policy 15-601 - Whistleblower Program.](#)

1. I confirm that I have read OSC Policy 15-601 - Whistleblower Program and explained it to my client, the whistleblower in this matter.
2. I confirm that I have verified the whistleblower's identity by viewing valid government issued identification of the whistleblower.
3. I confirm that the whistleblower has provided me with a complete and signed Whistleblower Submission Form including a Whistleblower certification, the originals of which I will retain in my records.
4. I have confirmed with the whistleblower that, to the best of their knowledge and belief, the information submitted is true and complete.

As the lawyer representing the whistleblower, please agree to the above counsel certification.

\*  I, Bryan Wood, certify that I have read and agree to the above certification on 2017-05-22.

Warning: It is an offence under the Ontario Securities Act to knowingly provide false or misleading information to the OSC.

Please review the information above and click on "Submit" to complete your online submission.

Once you submit this online form, you may print the completed form and you will receive a submission ID to retain in your records.

WBF1495489105335-601

Submission ID

2017-05-22 17:38:25.398

Date

# TAB C

**From:** McNish, Jacquie [<mailto:jacquie.mcnish@wsj.com>]  
**Sent:** Monday, July 31, 2017 9:02 AM  
**To:** Dan Gagnier <[dg@gagnierfc.com](mailto:dg@gagnierfc.com)>  
**Subject:** Story Fact Checks

Dan,

Please see the following questions:

We understand through our reporting at least three individuals have separately filed whistleblower complaints to authorities including the Ontario Securities Commission and a unit of the Toronto Police financial crimes unit. We understand that these authorities have questioned people in connection with the whistleblower complaints. Are Mr. Glassman, Catalyst and/or Callidus aware of these complaints, and do they have any comment on them? Has any of them been contacted by any of these authorities?

We understand the whistleblower complaints allege that Catalyst and Callidus improperly inflate the value of their investments and have deceived companies that borrow from the firm. Are these claims accurate? What is the companies' response to these claims?

We understand that one of the whistleblower complaints alleges that Catalyst and Callidus engage in a "corporate tag team process" in which Callidus sells to Catalyst distressed investments at what the complaint describes as inflated prices. The complaint alleges that the companies do so to prevent Callidus from having to acknowledge publicly the full degree of potential losses. Is this a practice the companies engage in? What is the companies' response to these allegations?

We understand that in March 2017 litigation with Callidus, former employee Craig Boyer cited "multiple complaints and regulatory investigations" surrounding the firm. Is this claim accurate? Do Catalyst and/or Callidus have comment on his statement?

We understand that at least two of the whistleblower complaints allege that Callidus and Catalyst inflated the value of their investments in Xchange Technology Group. Is this claim accurate? Do Catalyst and/or Callidus have comment on this allegation?

We understand that the two whistleblower complaints that relate to Xchange Technology Group allege that Catalyst and Callidus delayed and underreported subsequent losses in the company. Is this claim accurate? Do Catalyst and/or Callidus have comment on this allegation?

The Court of Appeal for Ontario ruling July 28 says that Callidus in its 3rd quarter report of 2015 valued its Xchange Technologies assets at US\$66.9 million. The ruling also states that Callidus acquired title in November 2015 to control Xchange Technologies, then under receivership, for about \$34 million. Do you agree with this assessment? What was the basis for significantly increasing the value of Xchange in the 2015 quarterly report?

We understand that Mr. Glassman's companies have sued or counter sued government agencies, borrowers and former employees. Is this accurate?

As part of its quarterly earnings, Callidus in May disclosed that its accounting practices were under a continuous disclosure review from the OSC. Mr. Glassman told analysts that the review was "nothing extraordinary." He added, "If there was a significant issue with the Commission, I'm fairly certain the Commission would force us to disclose it." Do Mr. Glassman and/or Callidus have further comment on the OSC review?

What is the origin and meaning of the name Callidus Capital?

Is there any other information you think we should know relevant to the questions asked?

Additionally, please see the following biographical and corporate facts as we understand them. We respectfully request

that you alert us to any errors or provide additional information as you wish.

Newton "Newt" Glassman is 53 years old.

Mr. Glassman is a trained lawyer.

Prior to Catalyst, Mr. Glassman worked at Cerberus Capital.

Mr. Glassman has described his companies as the "Goldman Sachs of Canada."

Mr. Glassman is protective of his privacy. He forbids friends and journalists from taking his photograph.

Catalyst was founded in 2002.

Catalyst has approximately C\$6 billion assets under management.

Catalyst funds have reported double-digit returns in certain years. Name years?

Catalyst has raised five funds.

Catalyst representatives have discussed raising a sixth fund as soon as this fall.

Catalyst investors include the endowments of Harvard University and McGill University and clients of Morgan Stanley.

Catalyst invests in loans to distressed companies, and sometimes takes over such companies.

We respectfully request a response by the close of business today, Monday July 31.

Best,

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

# TAB D

**Sent:** Sat, 15 Jul 2017 19:17:47 -0400  
**Subject:** Fwd: FORMAL CRIMINAL COMPLAINT AGAINST CALLIDUS CAPITAL CORPORATION - TORONTO JURISDICTION  
**From:** Darryl Levitt <darryllevitt71@gmail.com>  
**To:** Rob Copeland <rob.copeland@wsj.com>  
[Copy of Accounts payable Comparison 31 March to Receivers report.xlsx ATT00001.htm](#)

----- Original message -----

**From:** Kevin Baumann <kevin.baumann@whiteswanltd.com>  
**Date:** 2017-07-06 4:33 AM (GMT-05:00)  
**To:** darryllevitt71@gmail.com  
**Subject:** Fwd: FORMAL CRIMINAL COMPLAINT AGAINST CALLIDUS CAPITAL CORPORATION - TORONTO JURISDICTION

FYI  
 CONFIDENTIAL

Begin forwarded message:

**From:** Kevin Baumann <kevin.baumann@whiteswanltd.com>  
**Date:** July 6, 2017 at 2:30:21 AM MDT  
**To:** "john.tilak@tr.com" <john.tilak@tr.com>  
**Subject:** Fwd: FORMAL CRIMINAL COMPLAINT AGAINST CALLIDUS CAPITAL CORPORATION - TORONTO JURISDICTION

As promised

Thank You

Begin forwarded message:

**From:** Kevin Baumann <kevin.baumann@whiteswanltd.com>  
**Date:** July 6, 2017 at 2:21:00 AM MDT  
**To:** "gail.regan@torontopolice.on.ca" <gail.regan@torontopolice.on.ca>  
**Cc:** "diane.kelly@torontopolice.on.ca" <diane.kelly@torontopolice.on.ca>  
**Subject:** FORMAL CRIMINAL COMPLAINT AGAINST CALLIDUS CAPITAL CORPORATION - TORONTO JURISDICTION

Dear Gail and Diane

Further to our various discussions, i hereby submit the following request for an investigation of Callidus Capital Corporation . A company I was the president of, Alken Basin Drilling Ltd was a Callidus borrower, during the relationship with Callidus I experienced fraud similar to that experienced by other Callidus borrowers as per the Callidus playbook which you have been provided.

As you are aware Callidus loans capital to firms which require funds for a number of reasons .Not all CBL borrowers are non profitable , infact many are successful and have or had substancial assets which generate profits or have the ability to do so . Callidus refers to their monitoring of borrowers as proprietary procedures . It this within the Callidus so called procedures that fraud is committed . My firm experienced the withholding of rightful funds by Callidus with no explanation as to why. It is obvious that Callidus does so in order to obtain a yield enhancement upon oppressing and obtaining a companies assets via a receivership process which they often control via their placements referred to as CROs , Chief Recovery officers .

The CRO Callidus insisted I install was one Scott Sinclair , now known as Matthew Scott Sinclair which individual has a lifetime ban with the OSC for conduct many consider as fraud . Sinclair on behalf of Callidus took my company which was not in default on the call of the loan due to economy reasons and continued to operate Alken for close to a year . it was during this time that Sinclair and Callidus jacked Alken's debt by approx \$10,000,000 and incurred approx \$1,000,000 of additional supplier payables with no intention of ever paying. It was during this time that Callidus and Sinclair operated Alken by a power of attorney and share hypothecation. All decent and reasonable duty under these documents was ignored and abused and Alken and I were defrauded due to the conduct and lack of regard by Callidus and Sinclair . The issue of incurring payables that Callidus had or have no intention of ever paying has to be considered as fraudulently obtaining credit . A forensic accounting firm (forensic restitution) has assisted me in obtaining information and I have confirmed that within Callidus takeovers and credit bids of many firms including Alken that were controlled by Callidus CROs in excess of \$15,000,000 of supplier credit was obtained and harmed by placing these payables into Callidus controlled receiverships , 0.0 Dollars have been paid out to incurred supplier creditors within the Callidus receiverships. Although during the operating pre receivership of Alken and other firms Callidus takes in and controls all revenue into a blocked account . in short a firm can make a lot of profit by defrauding others and paying few payables / obligations .

The second complaint of fraud is the Callidus procedure refered to yield enhancement , and named by myself and others as premeditated yield enhancement. The Yield Enhancement is the end game for Callidus and has to be considered as fraud . This transpires when Callidus oppresses their borrowers and guarantors at all costs in order for Callidus to take over . When the process is complete Callidus takes an accounting bump up / yield enhancement / premeditated yield Enhancement which they justify by a true appraisal of the business or assets . The Enhancement is often substancial and in Alken's case was \$32,000,000 over and above the loan amount as confirmed by Forensic Restitution via available information . In short there is far for money to be obtained fraudulently via the PYE then lending capital at 18-20%

I urge your department to investigate this matter considering the Callidus head office is in your jurisdiction, if there is other jurisdictions you feel I should contact please provide contact information . I believe the complaints you have received from myself and others are genuine and legitamit . A business plan based on defrauding others by oppression and accounting games in order to gain from their failure is not how honest Canadian business's operate.

There is additional information I will send you via dropbox which will consist of sworn affidavits of Kevin Baumann and Dave Oswald relating to alleged fraud by Callidus in the Callidus/ Sinclair controlled receivership of Alken whereby Callidus and Sinclair withheld pertinent information from a court appointed receiver , to the detriment of Alken shareholders, guarantors , debenture holders and suppliers.

Thank You and if you require information please contact me at the below number or by email

**Kevin Baumann**  
403-505-7784

# **T A B L E**



## A private equity star's picks shine ... until cash-out time

**HIGH-STAKES BETTOR:** After the success of his first Catalyst private equity fund, Canadian financier Newton Glassman (left) was able to attract billions of dollars to his current stable of funds. Handout via REUTERS/Chris Helgren

Newton Glassman's early success helped turn his Catalyst private equity firm into one of Canada's largest. Some of the biggest bets in his current crop of funds, however, don't live up to their valuations, a Reuters examination finds.

By [LAWRENCE DELEVINGNE](#) and [JOHN TILAK](#) | Filed March 23, 2018, 1:30 p.m. GMT



NEW YORK/TORONTO – Canadian financier Newton Glassman has long told his private equity firm’s clients that his big bet on casinos would yield a financial jackpot.

Others haven’t been so sure.

At the end of 2011, a year after Glassman’s Catalyst Capital Group Inc took control of Gateway Casinos & Entertainment Ltd, Catalyst told investors in a report seen by Reuters that it already had more than doubled their money and that its majority stake was worth US\$475 million — for an implied equity value of the gaming company as a whole of US\$699 million.

But Catalyst was forced to abandon a planned initial public offering of Gateway in 2012 after investors balked at the firm’s valuation, according to two people familiar with the effort.

In the ensuing years, Catalyst’s implied valuation of Gateway continued to climb, to more than US\$1 billion as of Sept. 30, 2017, according to investor communications, all while Glassman repeatedly told clients to expect a sale that never happened.

Now, under increasing pressure to liquidate a past-due private equity fund, Glassman is again attempting a Gateway IPO at a valuation of as high as US\$1.95 billion, according to a Feb. 28 Bloomberg report.

Under Catalyst’s direction, British Columbia-based Gateway has expanded its operations and just restructured its debt. Even so, Catalyst’s assessment of the impact of those moves on the company are more optimistic than those of ratings agencies Moody’s and Standard & Poor’s, both of which still rate Gateway debt as “junk.”

Michael Lewitt, chief investment officer at hedge fund firm Third Friday Management in Boca Raton, Florida, reviewed Catalyst’s valuation of Gateway and called it “extremely aggressive.”



investors.

Catalyst follows a “loan-to-own” strategy, acquiring the discounted debt of troubled companies, mostly in Canada and the United States, taking over the business in the case of a default or by other means, and then selling at a profit after improving operations.

Early success using that strategy with Catalyst’s first fund established Glassman’s reputation as a savvy investor. It also has helped Catalyst attract enough investors to make it Canada’s third-largest private equity firm, with about C\$6 billion (US\$4.6 billion) in assets under management, according to data tracker Preqin.

Since Catalyst launched its second fund in 2006, however, the firm’s record of double-digit annual returns has been based largely on its own assessments of improvements to its stable of distressed companies. When put to the test, at least four of Catalyst’s major assets have been unable to find buyers at the firm’s valuations, based on a Reuters review of Catalyst’s portfolio, multiple communications from Catalyst to its clients and regulatory filings, as well as interviews with people familiar with Catalyst’s operations, academics and financial analysts.

Those major assets, plus expected payouts from pending litigation, made up US\$3.3 billion – or more than two-thirds – of the overall US\$4.7 billion of unrealized value across all Catalyst funds at the end of 2016, according to an April 5, 2017, report for clients. The assets include Gateway and Callidus Capital Corp, Catalyst’s publicly listed subsidiary that specializes in high-interest loans to distressed companies and that is itself a major holding of Catalyst funds.

Failure to cash out can put additional pressure on Catalyst as funds approach the end of their lifespan, typically eight or 10 years, by which time all money – principal and profits – is expected to be returned to investors. Catalyst Fund Limited Partnership II, for example, was supposed to mature in April 2014 after starting to invest in 2006. But Catalyst has extended the deadline at least three times.

The contrast between the picture Catalyst paints of its fund assets in communications with clients and how those assets perform when a sale is attempted shows that investors may not be able to count on the returns they expect. For now, though, any harm to Catalyst’s big investors is potential, rather than actual. Glassman could still repeat his early success with his current funds by managing to sell a handful of major assets at big gains.

Glassman did not respond to repeated requests for comment.



had trouble selling them. Reuters' reporting, he said, is "based upon false and unreliable allegations."

In keeping with the industry norm, Moore said, Catalyst's proposed valuations were reviewed by outside accountants PricewaterhouseCoopers LLP. They were then separately reviewed by KPMG LLP, Catalyst's independent auditor, which had issued unqualified audit opinions on Catalyst every year, Moore noted.

KPMG and PricewaterhouseCoopers declined to comment.

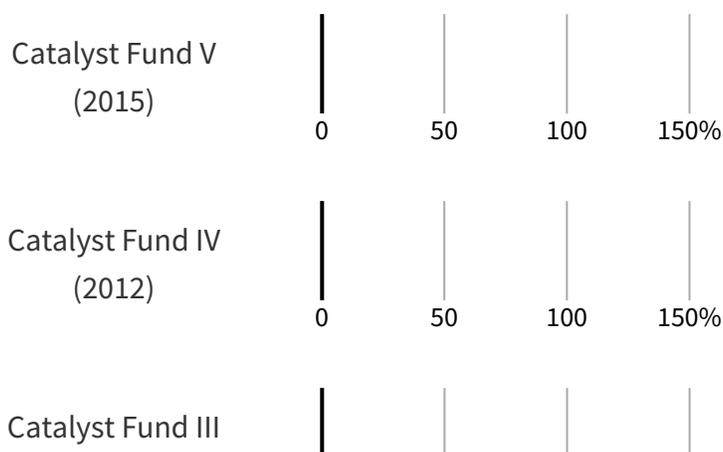
## Catalyst and its peers

Canadian private equity firm Catalyst Capital Group calls itself "one of the best in the world" at producing big gains for investors. On paper, Catalyst funds have usually matched or beaten others that invest in distressed companies and PE funds overall in terms of expected gains, as measured by **internal rates of return (IRR)**. But the amount of cash Catalyst has actually returned to investors from asset sales has often lagged behind others, as measured by the ratio of **distributed capital to paid-in capital (DPI)**, implying that Catalyst has struggled to cash out of some major investments at the valuations it places on them.

Catalyst      Overall PE benchmark      Distressed PE benchmark

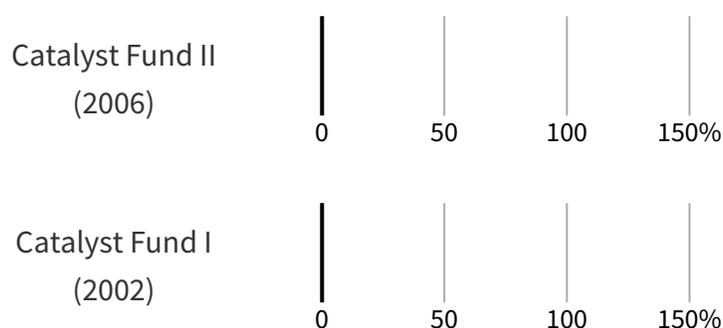
**FUND +  
YEAR STARTED**

**IRR**





## INVESTIGATES

**FUND +****DPI**

Moore stressed that Catalyst management’s pay is derived from proceeds from asset sales and that “valuations do not in any way affect Catalyst’s compensation.” He also pointed out that Catalyst had sold 23 assets in its history, 13 of them “in accord with applicable valuations.”

He did not provide specifics on those sales. However, of the 17 completed sales showcased on Catalyst’s website, most were “substantially realized” in 2010 or earlier, often for US\$50 million or less, according to a Reuters review of information Catalyst sent to clients. Nine of the sales were for the firm’s small first fund, which was largely wound down several years ago.

Catalyst investors – generally locked in for the duration of a fund’s lifespan – include endowments for the University of Michigan, McGill University and the University of Toronto, public-employee pension funds in Montana and New Jersey, and major philanthropies such as the Rockefeller Foundation. They did not respond to requests for comment or declined to comment on the record, citing confidentiality agreements.

Some said on condition of anonymity that they feared getting on the wrong side of Glassman, who has launched dozens of lawsuits in his career, most with Catalyst or Callidus as plaintiff. While in college, he successfully sued his father to force child support payments, according to Ontario court records.

Gateway and some other major Catalyst fund holdings examined for this article are among the assets alleged to have been overvalued in two whistleblower complaints submitted in the past 18 months to the Ontario Securities Commission (OSC), according to documents seen by Reuters and people familiar with the submissions.



## **"I wouldn't invest a penny with any manager that employs these types of valuations."**

Michael Lewitt, chief investment officer, Third Friday Management

### CARS AND PHARMACEUTICALS

Private equity holdings can be difficult to value because they often lack ready markets to test their worth. Even when reviewed by third parties, a fund manager's valuations are nonetheless open to interpretation.

Private equity experts said that, in general, a pattern of delayed sales can indicate valuations that are too high. Lewitt, the hedge fund manager, said of Gateway and other assets examined in this article: "I wouldn't invest a penny with any manager that employs these types of valuations."

Advantage Rent A Car is a case in point.

Catalyst started investing in the Orlando, Florida, company with a US\$22.2 million bet in 2013, and its total investment stood at US\$310.5 million as of Sept. 30, 2017, according to client reports.

As Catalyst's exposure to Advantage through Funds III and IV has risen, so has its valuation of the company – even as larger rental car businesses have come under pressure from increased competition and the rise of ride-sharing outfits like Uber.

Catalyst has long promised dramatic improvements at Advantage that would lead to a successful sale. In a 2014 letter to investors, it projected that within two or three years, earnings would top US\$100 million. But for 2015, Advantage had a loss of US\$31 million, according to an April 2017 presentation to Catalyst clients. A more recent investor letter put projected 2018 earnings at about US\$20 million.

Advantage has less than 1 percent of the U.S. market and was expected to generate revenue of US\$327.7 million in 2017, according to market research firm IBISWorld. That puts Catalyst's valuation of US\$542.9 million as of Sept. 30, contained in a recent letter to investors, at a whopping 1.7 times revenue. Hertz Global Holdings Inc and Avis Budget Group Inc, the two biggest publicly traded car-rental operators in the United States, trade at less than half their 2017 revenue of US\$8.8 billion each.



Another major Catalyst asset is Therapure Biopharma Inc. Glassman's firm started investing in the Mississauga, Ontario, biotechnology company in 2006, and the commitment totaled US\$82 million by the end of 2011. That year, Catalyst valued Therapure at US\$202 million.

In early 2016, it tried to take Therapure public at a valuation of C\$867 million, according to a Reuters analysis of the offering documents. The same documents show that Therapure had operating losses in 2012, 2013 and 2014.



ANEMIC RESPONSE: Catalyst's effort to take Therapure Biopharma public in 2016 failed at the valuation Catalyst placed on the Mississauga, Ontario, biotechnology company. REUTERS/John Tilak

The effort failed in part because Catalyst's valuation was too high for most investors and in part because of difficult market conditions, according to two people with direct knowledge of the IPO process.

In September 2017, Catalyst announced it had agreed to sell Therapure's contract manufacturing business for US\$290 million, which would result in a proportional payout for Fund II investors.



clients in April 2017. Therapure's remaining business – plasma-based drug development and protein therapeutics products – probably isn't worth more than US\$100 million, according to two sources with direct knowledge of the company. The unsold business is not generating profits, one of the sources said.

Therapure did not respond to requests for comment.

Since Gateway Casinos' IPO flopped in 2012, Catalyst has continually raised the valuation of its controlling stake – to levels that yield an imputed value for the gaming company as a whole of as much as US\$1.95 billion, according to the Feb. 28 Bloomberg article. That article, attributed to anonymous sources, appeared as Reuters was seeking comment from Catalyst on the firm's valuations of Gateway and other assets. Reuters could not independently verify that an IPO was imminent or determine the calculus underlying the US\$1.95 billion valuation.

Gateway operates about two dozen casinos, concentrated in western Canada and, more recently, Ontario, the country's most populous province. It plans to invest more than C\$300 million by 2020 to improve existing properties and build new ones, according to a February 2018 Gateway investor presentation.

In mid-March, Gateway completed a sale-leaseback of some properties, yielding net proceeds to Catalyst of C\$483 million. Catalyst said the transaction and a parallel debt refinancing would reduce Gateway's debt from C\$953 million to C\$702 million – or 4.5 times earnings, according to a recent investor presentation. That's in line with the typical debt-to-earnings ratio of between 4 and 5 for middle-market companies, based on Thomson Reuters LPC institutional loan data.

However, it's more optimistic than Moody's assessment. The ratings agency estimated in early March that under the new financial plan, Gateway's debt-to-earnings ratio wouldn't drop below 5 for 12 to 18 months. And Standard & Poor's said the number would climb to as high as 7.5 through 2018. Both ratings agencies still judge Gateway bonds to be non-investment grade "junk."

By comparison, rival Great Canadian Gaming Corp had a debt-to-earnings ratio of 2 as of Dec. 31, according to a financial filing.



ON THE HOUSE: Starlight Casino in New Westminster, British Columbia, is a core property for Gateway Casinos & Entertainment Ltd, a major Catalyst holding. REUTERS/Ben Nelms

Moody's also projects lower profits than Catalyst for Gateway. It did not elaborate on the full assumptions behind its numbers. A spokeswoman said the ratings agency's calculations "reflect our conservative view of the earnings potential of the company's assets."

Standard & Poor's and Gateway did not respond to requests for comment.

Moore, the Catalyst lawyer, said in a letter to Reuters that the firm's work to improve Gateway had been "highly successful."

## EARLY SUCCESS

Now in his mid-50s, Glassman established Catalyst in 2002, after sharpening his skills at Cerberus Capital Management LP, the New York-based distressed-investment powerhouse.

Catalyst's first fund started investing in 2003. Within several years, it had scored big wins through private sales of its positions in companies like Cable Satisfaction International Inc; AT&T Canada Inc, later known as Allstream; and Royal Group Technologies Ltd.



annual return of 32 percent over its lifespan, according to client reports. That's far better than a benchmark return of about 17 percent for funds of the same 2003 vintage tracked by investment consultants Cambridge Associates.

Catalyst's early triumph helped drive billions of dollars to the firm over four additional funds raised between 2006 and 2015. Glassman has yet to successfully wind up any of those newer funds and return all money to investors, though the most recent one, Fund V, has returned hundreds of millions of dollars since 2015.

---

**In an August 2016 ruling, Judge Frank Newbould described Newton Glassman as “aggressive,” “argumentative” and more of a “salesman than an objective witness.”**

---

It is not unusual for private equity firms to hold investments until near the end of a fund's lifespan. However, data from Cambridge and Preqin show that three of Catalyst's four active funds lag behind similarly aged funds in paying proceeds from asset sales to investors.

With Fund II already past due, Funds III and IV are to mature in December 2019 and June 2022, respectively. Most of the value of these funds – about US\$1.42 billion for Fund III and US\$1.36 billion for Fund IV – is unrealized, according to an April 2017 client report. That's more than 60 percent of the total value of each.

Some of that unrealized value would come from payouts from litigation whose outcome remains uncertain.

Catalyst filed two lawsuits against longtime rival and frequent adversary West Face Capital Inc and others after it lost a bidding process to buy Canadian wireless carrier Wind Mobile from VimpelCom Ltd in 2014. Catalyst claimed that it had an exclusive agreement with VimpelCom to buy Wind Mobile and that West Face and others engaged in improper conduct to win the deal and ultimately sell at a big profit.

Judge Frank Newbould, originally hearing both cases in Ontario Superior Court, dismissed one of them, concluding that West Face and others, contrary to Catalyst's allegations, had not used confidential information from a former Catalyst employee to make its winning bid. In his



EVIDENCE SUBMITTED BY GLASSMAN. HE DESCRIBED THE FINANCIAL AS AGGRESSIVE, ARGUMENTATIVE and more of a “salesman than an objective witness.”

Catalyst appealed Newbould’s dismissal. That appeal was dismissed Feb. 21.

The second Wind-related lawsuit, seeking C\$1.3 billion in damages, was on hold, pending the outcome of Catalyst’s appeal of Newbould’s dismissal of the other case. In a report to clients, Catalyst told investors that its remaining Wind-related claim was worth US\$446.9 million at the end of 2016 and that the firm has “a reasonable likelihood of success at trial.”

Newbould, who has retired from the bench and now works as an arbitrator, was targeted by an undercover agent last autumn in a sting orchestrated by Israeli investigative firm Black Cube on behalf of Catalyst, according to West Face court submissions in separate litigation. The sting, West Face alleges, was designed to discredit Newbould and his dismissal of one of the Wind-related lawsuits.

---

## **Catalyst funds can end up saddled with Callidus investments gone bad, such as Xchange Technology Group, an information-technology company that went bankrupt.**

---

Newbould declined to comment.

Black Cube gained attention last year for its work on behalf of Harvey Weinstein to undermine women and journalists in their efforts to go public with allegations of sexual harassment and assault against the Hollywood mogul.

A spokesman for Black Cube declined to comment on questions related to Catalyst and Callidus. He said Black Cube always operates ethically and legally.

In an April 2017 presentation to investors, Catalyst told clients of Fund III that without the expected litigation payouts, net annual returns as of end-2016 would fall to 8.9 percent from 11.7 percent.

Ludovic Phalippou, a private equity expert at the University of Oxford in England, said Catalyst’s expected return on the Wind litigation was “extraordinarily” high, given that one of the cases was dismissed and that money that would have been used to buy the Wind assets were presumably deployed elsewhere.



One company Catalyst succeeded in selling on the stock market is Callidus, a distressed-lending business Glassman invested in, took over, and made a core holding.

REUTERS INVESTIGATES



More Reuters investigations and long-form narratives



Got a confidential news tip? Reuters Investigates offers several ways to securely contact our reporters

Glassman's team took Callidus public in April 2014, raising C\$252 million while still keeping big positions in the company for its four current funds.

Catalyst funds provide guarantees for some of Callidus's risky loans to distressed businesses. But those guarantees mean that investors in Catalyst funds can end up saddled with Callidus investments gone bad, such as Xchange Technology Group, an information-technology company that went bankrupt.

The relationship between Catalyst and Callidus doesn't end there.

In May 2017, Callidus said in its first-quarter earnings report that a recent acquisition, struggling Canadian slot-machine maker Bluberi Gaming Technologies Inc, was worth about C\$110 million. In footnotes, it said that figure was based largely on an agreement for Bluberi to supply 7,000 slot machines to a "commonly controlled enterprise."

Callidus did not identify that enterprise. But it appears to be Gateway Casinos, which fits the description in a recent Callidus earnings report of a "large diversified gaming company in Canada that is controlled in common with ... Catalyst." Catalyst did not respond to requests for comment.

Such an order is large for Bluberi, a small company that recently emerged from bankruptcy. Bluberi has about 1,000 machines in use today, according to a third-quarter 2017 ranking by industry consultants Eilers & Krejcik Gaming LLC. The top three companies have nearly 40,000 each. Gateway operates 9,500 slot machines, according to its website.



related-party order and some pretty speculative assumptions.”

The risks, Casey said, include whether Bluberi’s casino clients can get the required regulatory approvals for expansion, and whether Bluberi is able to produce all the machines required.

Callidus acknowledged both of those risks in earnings reports last year.

Bluberi did not respond to requests for comment.

Callidus’s Bluberi valuation, now at C\$113 million, is based on a potential sale using an accounting method the company calls “yield enhancement,” which is not recognized under International Financial Reporting Standards (IFRS).

In a May shareholder report, Callidus said it would give greater prominence to calculations based on IFRS in its public disclosures in response to an Ontario Securities Commission review of its financial reporting. The OSC declined to comment.

Catalyst has said it would like to find a buyer to take Callidus private again, suggesting in a press release last year a price of C\$18 to C\$22 a share. The stock now trades around C\$7, down more than 60 percent over the past 12 months.

Callidus said in October 2016 that it had hired Goldman, Sachs & Co to handle a sale process that would be completed by June 2017.

Goldman declined to comment.

No buyer has yet emerged.

---

#### Relative Values

By Lawrence Delevingne and John Tilak

Graphics: Travis Hartman

Photo editing: Steve McKinley

Design: Troy Dunkley

Edited by Carmel Crimmins and John Blanton

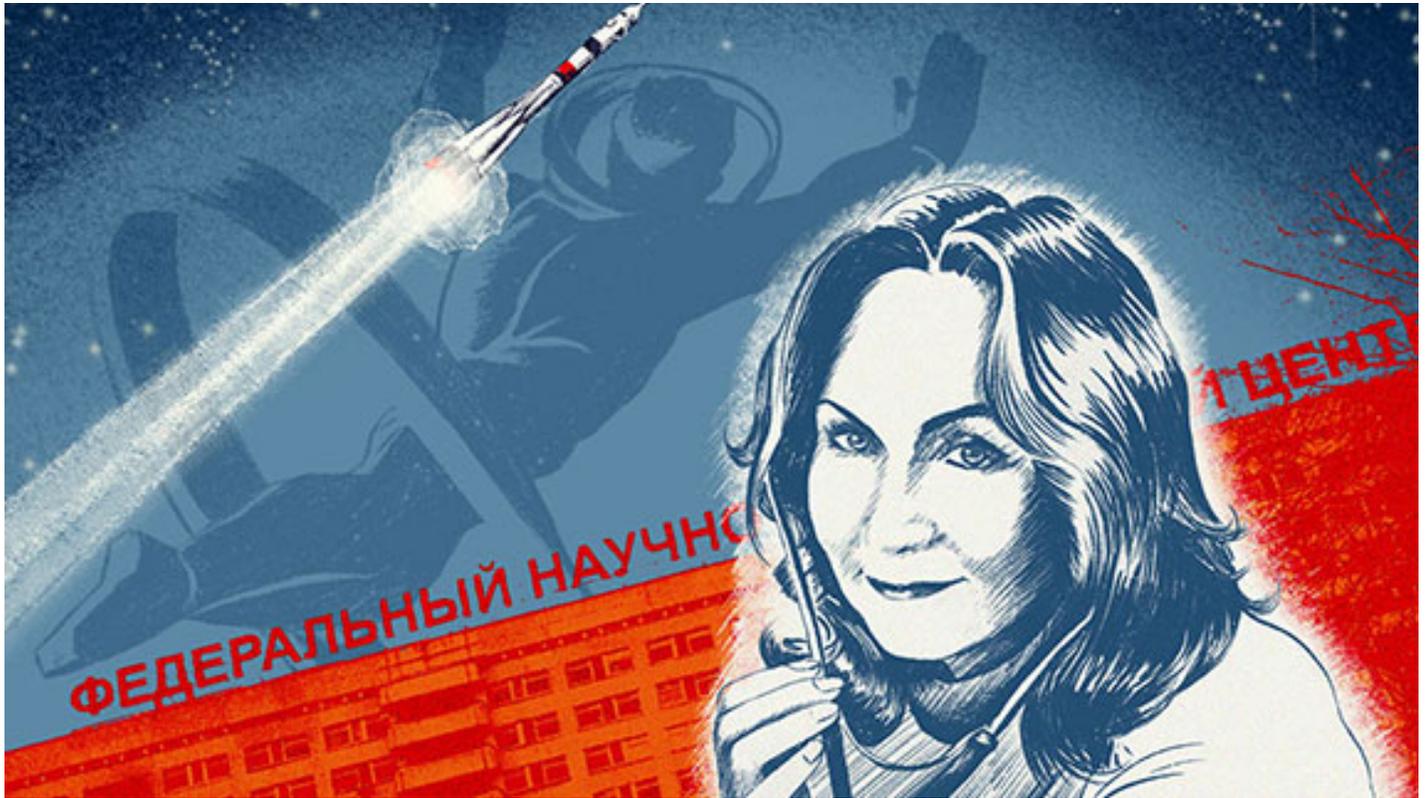


Follow Reuters Investigates  



## **Shots in the Dark**

An American city's struggle to police its police | A Reuters narrative in three chapters



## The Secrets of Star City

When the pandemic came within a sheet of glass to astronauts heading to space, fear and blame came next. One doctor found herself in a desperate situation.



## The Freedom Experiment

**Dying Inside** | Part 3: COVID prompted jails to free thousands. Now comes a press to free low-level inmates held because they are too poor to get out.





## Public Jails, Private Care

**Dying Inside** | Part 2: A Reuters investigation finds high death rates at U.S. jails with private healthcare providers. A Georgia jail's experience reveals the toll.



[THOMSONREUTERS.COM](#) [PRIVACY POLICY](#) [TERMS OF USE](#) [COPYRIGHT](#)

[TRUST PRINCIPLES](#)

# TAB F

## OPINION

## In Newton Glassman's tangled web of lawsuits, the truth is even stranger than fiction


**ANDREW WILLIS** >

PUBLISHED OCTOBER 30, 2019

UPDATED OCTOBER 31, 2019

FOR SUBSCRIBERS

PUBLISHED OCTOBER 30, 2019

This article was published more than 1 year ago. Some information in it may no longer be current.

3 COMMENTS   ← SHARE   - A A+ TEXT SIZE   BOOKMARK



Newton Glassman's love of litigation has had an unexpected outcome. The co-founder of Catalyst Capital Group Inc. has been quick to launch lawsuits throughout his 17 years at the helm of the \$4-billion private equity firm. Multiple court battles have created a legal window into both his corporate and personal life. It's not pretty. Netflix thrillers have fewer twists and turns than the financier's court filings.

The latest instalments in Mr. Glassman's saga are scheduled to play out Thursday. One drama will take place in at a Toronto law firm, where Mr. Glassman will attempt to end a disastrous trip through public markets by Callidus Capital Corp., a lender to troubled companies that has itself become a troubled company. Mr. Glassman was Callidus's CEO and took the company public in 2014 at \$14 a share. He subsequently put Callidus up for sale, claiming the company was worth more than the market would nav and brandishing an investment bank's valuation

### TOP STORIES

Flu season in Canada 'exceptionally low' so far, public health says

NOVEMBER 17 **UPDATED**



way. For all the brave talk, Callidus proved consistently bad at lending, losing a total of \$506-

million since 2017. On Thursday, Callidus minority shareholders will be asked to approve the sale of the business for just 75 cents a share. The buyer is billionaire Joe Lewis, who owns a resort in the Bahamas called Albany, where Mr. Glassman has a vacation home.

At the same time, another team of Mr. Glassman's lawyers are busy dealing with proceedings related to the apparent breakdown of his marriage to his wife, Laura MacDonald. The personal matter – and the possibility that it could alter Mr. Glassman's own financial fortunes in the future – has tongues wagging on Bay Street, and plays into the Street's obsession with what is going on inside Catalyst.

Like all private equity firms, Catalyst needs to eventually sell the companies it owns to make serious money for their partners. Over the past three years, Mr. Glassman has outlined plans for lucrative exits from businesses such as Gateway Casinos and Entertainment Ltd., Therapure Biopharma Inc. and Advantage Rent A Car, among others. Actual sales, however, have been harder to come by. Gateway, one of the bigger entities in the Catalyst stable, filed paperwork to go public nearly a year ago. There is still no IPO.

Mr. Glassman's prolific use of lawsuits gives his critics a platform to air their own views of what's happening. Catalyst went to court two years ago alleging a number of bankers, fund managers and journalists were engaged in a conspiracy against the asset manager. All these players have denied Catalyst's claim. One alleged conspirator is Nathan Anderson, a New York-based hedge fund researcher.

#### DID YOU KNOW?



You have access to  
**The Globe's personal  
finance tools**

TRY IT NOW

#### TOP STORIES

Flu season in Canada 'exceptionally low' so far, public health says

NOVEMBER 17 **UPDATED**



public interest when he sent Canadian and U.S. market regulators a whistle-blower report after

he "formed a view that Catalyst and Callidus were engaging in a scheme to artificially inflate the value of their assets." In a court filing, Mr. Anderson said his team's reports on Catalyst for the Ontario Securities Commission and the U.S. Securities and Exchange Commission were driven by a "specific interest, as professional whistleblowers, in bringing to light fraudulent practices by members of the investment industry."

Past conduct is also playing into Mr. Glassman's continuing legal fights. Lawyers for the financier's many opponents can use any judicial appearance as an opportunity to remind the courts of Catalyst's involvement in a sting operation against a retired Ontario judge conducted by Black Cube, an Israeli spy outfit founded by former Mossad agents. In Mr. Glassman's legal world, truth can be stranger than fiction.

Not everything in Mr. Glassman's world is going wrong. By all accounts, he is making a recovery from back problems that led Mr. Glassman to step down as Callidus's CEO last year. Securities filings signal that Catalyst stands to turn a small profit on its stake in Hudson's Bay Co., if a buyout offer for the retailer goes forward.

However, the most compelling drama in financial circles comes from reams of documents generated by seemingly endless litigation, showing Mr. Glassman being battered by legal storms that are mostly of his own making.

# TAB 9

# Catalyst v West Face et al.

Mark Sunshine  
on Tuesday, November 10, 2020



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

[neesonsreporting.com](http://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 -

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

-----  
23 --- This is the Cross-Examination of MARK  
24 SUNSHINE, on his affidavit sworn May 29, 2020,  
25 taken via Zoom Videoconferencing with all  
participants attending remotely, on the 10th day of  
November, 2020.  
-----

1 A P P E A R A N C E S:

2 DAVID C. MOORE, Esq., for the Plaintiffs,  
3 & BENJAMIN NA, Esq., (Defendants to the  
4 Counterclaim), The  
5 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

13  
14 MATTHEW MILNE-SMITH, Esq., for the Defendants  
15 (Plaintiffs by  
16 Counterclaim), West  
17 Face Capital Inc. and  
18 Gregory Boland

19  
20 LUCAS E. LUNG, Esq., for the Defendants,  
21 & REBECCA SHOOM, Esq., ClaritySpring Inc. and  
22 Nathan Anderson

23  
24 PHIL TUNLEY, Esq., for the Defendant, Rob  
25 & JENNIFER SAVILLE, Esq., Copeland, Dow Jones &

1		Company and Jacquie
2		McNish
3		
4	A.J. FREEDMAN, Esq.,	for the Defendant,
5		Bruce Livesey
6		
7	DARYLL LEVITT	Self-Represented
8		
9	KEVIN BAUMANN	Self-Represented
10		
11		
12	Also Present:	Philip Panet, General Counsel, West
13		Face Capital
14		
15		
16	REPORTED BY:	Deana Santedicola, RPR, CRR, CSR
17		
18		
19		
20		
21		
22		
23		
24		
25		

I N D E X

WITNESS: MARK SUNSHINE	PAGES
CROSS-EXAMINATION BY MR. TUNLEY.....	6 - 88
CROSS-EXAMINATION BY MR. MILNE-SMITH....	89 - 99
CROSS-EXAMINATION BY MR. FREEDMAN.....	99 - 102
CROSS-EXAMINATION BY MR. BAUMANN.....	102 - 112
RE-EXAMINATION BY MR. MOORE.....	112 - 114

\*\*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: 12:15, 43:21, 90:22

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following pages: 27:5

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: 31:24, 32:7, 35:3, 46:6

INDEX OF EXHIBITS

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

NO. DESCRIPTION PAGE/LINE NO.

[No Exhibits Marked]

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

2

3 MARK SUNSHINE; AFFIRMED.

4 CROSS-EXAMINATION BY MR. TUNLEY:

5 1 Q. Mr. Moore, do we have a fully  
6 sworn copy of Mr. Sunshine's affidavit or will you  
7 be filing one? I think there is some deficiency in  
8 the formalities there, but I am going to treat it  
9 as a fully sworn affidavit for purposes of my  
10 cross.

11 MR. MOORE: Yes. No, that is fine. I  
12 thought that we had circulated a sworn version, but  
13 if there is a problem with that, my understanding  
14 is it was sworn, and if the copy that people have  
15 does not reflect that, we'll rectify that. You can  
16 treat it as having been actually affirmed on May  
17 29th.

18 MR. TUNLEY: That is fine. Yeah, there  
19 is a signature missing, but I think it is -- I am  
20 going to treat it as if we are all good to go.

21 MR. MOORE: Yes, I see it.

22 BY MR. TUNLEY:

23 2 Q. I am just going to make sure  
24 that -- I am not displaying properly perhaps.

25 All right, and just before, again, we

1 start the formalities, but there is a few typos  
2 that I would like to just clear up what the text  
3 is.

4 If you could look, Mr. Sunshine, at  
5 paragraph 4.1 of the report that is attached to  
6 your affidavit in the third line.

7 A. Mr. Tunley?

8 3 Q. Yes.

9 A. I have a clean copy of it. Is it  
10 all right if I use that?

11 4 Q. I am -- as long as it is the same  
12 as what is in front of me, Mr. Sunshine, I am happy  
13 with that.

14 A. I hope that it is. I have no  
15 reason to think it isn't.

16 5 Q. Let's see if the typos match up.

17 A. Okay.

18 6 Q. In the third line you say:

19 "[...] after being publicly  
20 accused of a company accused of  
21 fraud [...]"

22 Do you see that in the third line of  
23 paragraph 4.1? I take it that is "publicly accused  
24 of being a company accused of fraud"; is that  
25 right?

1                   A.    Yes, I am certain that that is  
2                   correct. I appreciate that --

3           7            Q.    Just let's do a couple of others  
4                   so that there is no trip-ups down the road.

5                    At paragraph 6.1, the last sentence, so  
6                   I am on page 6, the last sentence is:

7                           "The incentives for borrowers  
8                           to find another lender, even at  
9                           higher cost, is overwhelming."

10                    Is that the "incentive" singular "is  
11                    overwhelming" or is that the "incentives" for  
12                    borrowers "are overwhelming"?

13                    A.    It should say "are overwhelming",  
14                    plural.

15           8            Q.    Okay, perfect. And then just  
16                   quickly down to 6.9.3, just a couple of pages  
17                   forward, just again the last sentence, "From by  
18                   experience, the fortunes of borrowers [...]", et  
19                   cetera, and that is, "From my experience [...]"; am  
20                   I right to read it that way?

21                    A.    Yes. Yes, sir.

22           9            Q.    Thanks. So I just want to start  
23                   by asking you about the documents that you reviewed  
24                   prior to swearing. Obviously, you read the online  
25                   and print versions of the Wall Street Journal

1 article that is in issue that is referred to you in  
2 Mr. Moore's instructing letter and in your  
3 paragraph 1.3 of your report, right?

4 A. Yes, sir.

5 10 Q. And at paragraph 2.9 you list  
6 other documents that you reviewed in addition to  
7 the article, and you list the pleadings in three  
8 actions, right?

9 A. Yes, sir.

10 11 Q. And --

11 A. I believe so, yes, sir.

12 12 Q. And there is a reference to the  
13 affidavits filed on these SLAPP motions, including  
14 certain exhibits. I take it that includes  
15 Mr. Riley's affidavits; do you recall reviewing  
16 those?

17 A. Yes, sir.

18 13 Q. But it would not have included the  
19 reply affidavits that were served after May 29.  
20 Have you been provided with those and have you had  
21 a chance to review them since you --

22 A. Yes.

23 14 Q. -- swore your affidavit?

24 A. Yes.

25 15 Q. Okay.

1           A.    I can't -- I have reviewed certain  
2           reply affidavits after May 29.  I can't certify  
3           that I have been provided all simply because I  
4           don't have access to that -- I don't have access to  
5           non-public information.

6           16           Q.    I'll ask -- when it matters to me,  
7           sir, I'll ask you.  All right, and then you also  
8           say that you have reviewed Callidus filings on  
9           CEDAR and you have reviewed media reports and other  
10          publicly available information about Callidus; that  
11          is all correct?

12                    A.    Yes, sir.

13          17           Q.    Did you do a thorough search for  
14          that or just whatever you had to hand; do you know?  
15          Do you recall?

16                    A.    I am not sure what you mean, sir.  
17          Can you clarify?

18          18           Q.    Did you do a full search of  
19          Callidus filings on CEDAR, the media reports and  
20          other publicly available information?

21                    A.    I --

22                    MR. MOORE:  Well, I mean, let's deal  
23          with that one at a time.  There is kind of three  
24          things built into that question.

25                    BY MR. TUNLEY:

1 19 Q. All right, let's deal with them  
2 one at a time.

3 CEDAR?

4 A. Well, I believe that I looked -- I  
5 believe that the CEDAR system, I assume it is a  
6 complete system of all the public filings, so I  
7 went to CEDAR and looked for Callidus. So I can't  
8 tell you I read every single page of every single  
9 filing, but I tried to read what was relevant or  
10 what I thought was relevant.

11 20 Q. Okay, and then media reports, did  
12 you do a search for media reports on Callidus --

13 A. Yeah.

14 21 Q. -- or how did you approach that?

15 A. I typed "Callidus" into Google and  
16 different versions of Callidus into Google. I  
17 can't certify that it was a complete search because  
18 I have no way to know if Google gave me complete  
19 results or if I did the right things.

20 22 Q. And I take it if there was  
21 anything particularly significant, you would have  
22 produced it or attached it to your affidavit or  
23 included a reference to it?

24 A. Right, yes.

25 23 Q. All right. Documents that are

1 referred to in the footnotes of your report, you  
2 also say. Many of the footnotes to your report  
3 have no documents referred to. If I can maybe just  
4 confirm, footnotes 1 and 2, 4 through 11 and 13  
5 through 16 do not cite documents, right? Do you  
6 want to take that from me or do you want to check?

7 A. I am --

8 MR. MOORE: I don't know that we need  
9 to check on the record, Phil. If we take issue  
10 with that, and I think you said 1 and 2 and then 4  
11 through 11 and 13 through 16?

12 MR. TUNLEY: Yes, and you are right,  
13 you can correct me off the record any time you  
14 want.

15 U/T MR. MOORE: Yes.

16 BY MR. TUNLEY:

17 24 Q. I think I'm right about that.

18 All right, I just want to deal with  
19 three footnotes that do have documents referred to  
20 in them, and I'll start with footnote 3, paragraph  
21 5.4. You attach an article or you refer to an  
22 article, a link to an article about shadow banking  
23 and the shadow banking crisis in 2008 and '09; do  
24 you remember that?

25 A. Yes, sir.

1           25                   Q.    All right, and just to be clear,  
2                                   we are not dealing with that crisis in this case,  
3                                   right?  That is not directly an issue here;  
4                                   correct?

5                                   A.    That is correct.  However, I don't  
6                                   think I was referring to it in that paragraph for  
7                                   that purpose as much as to talk about what happens  
8                                   when confidence is lost in a non-bank financial  
9                                   institution -- or non-depository, I should say,  
10                                  excuse me, non-insured depository.

11          26                   Q.    Right, so in paragraph 5.3, the  
12                                  context for your reference in footnote 3 is the  
13                                  deposit insurance, right, and that is what you are  
14                                  talking about here?

15                                  A.    I think that -- and I apologize if  
16                                  this is somehow not clear.  I think I was just  
17                                  trying to give background atmospheric on, you  
18                                  know, non-insured -- non-depository insured  
19                                  financial institutions and that there is a long  
20                                  history of what happens if they lose, if people  
21                                  lose confidence, the public loses confidence in  
22                                  them.  I didn't mean to really do anything more  
23                                  than that.

24          27                   Q.    Right.  I mean, we can agree, can  
25                                  we, just for the record, that we are not dealing in

1           this case with deposit-taking institutions like  
2           banks or shadow banks?

3                   A.    Yeah, no -- well, I think a shadow  
4           bank, yes.  Technically I think -- well, I  
5           shouldn't say "technically" because there is no  
6           defined term, but I think Callidus would be  
7           generally referred to as a shadow bank --

8           28           Q.    In this situation --

9                   A.    -- on the -- sorry --

10          29           Q.    Sorry, we are going to try and not  
11          talk over each other.  Otherwise, the reporter will  
12          be upset at one or both of us, right.  I was at  
13          fault that time, but just I'll try to wait for you  
14          to finish your answer and you try to wait until I  
15          have finished my question.

16                   The situations involving deposit-taking  
17          institutions, we can agree those situations involve  
18          loss of confidence by customers, investors,  
19          depositors and lenders to banks rather than  
20          borrowers; that's right?  Am I right about that?

21                   A.    Can you -- I am not sure that I  
22          would agree with that.  Can you repeat the  
23          question?

24          30           Q.    Of course.  Situations involving  
25          deposit-taking institutions involve loss of

1 confidence by customers, investors, and  
2 particularly depositors and lenders to the bank  
3 rather than borrowers from the bank, generally  
4 speaking; is that right?

5 A. I don't think that is correct, no.

6 31 Q. All right. We can agree in this  
7 case we are only dealing and the only issue is the  
8 question of confidence of borrowers in Callidus,  
9 right?

10 A. I am not sure if that is correct,  
11 actually.

12 32 Q. Well, you tell me what else we are  
13 concerned about in this case. I am not aware of  
14 anything else.

15 A. Prospective borrowers,  
16 professionals that advise prospective borrowers,  
17 and you know, as I mentioned in the report,  
18 prospective borrowers also turn out sometimes,  
19 often, in secured transactions to have a credit  
20 possession, meaning they don't mean to but they end  
21 up at times being a lender, if you will, to an  
22 institution like Callidus.

23 So I think it all revolves around  
24 borrowers and prospective borrowers and their  
25 advisors, but in all the different roles. So I

1           wouldn't want to quite cabin it in as tightly as  
2           you are.

3           33                   Q.    No, fair enough.  I didn't mean to  
4           exclude -- you obviously do refer at length to  
5           advisors to borrowers, for example, but the focus  
6           is borrowers; fair?

7                           A.    Borrowers and prospective  
8           borrowers and their -- you know, and all the  
9           atmospherics around them in the general sense.

10          34                   Q.    Okay, let's go to footnote 12.  In  
11          footnote 12 you cite articles or refer us to  
12          articles about security interests in proceeds of  
13          cash collateral, right?

14                           A.    Yes, sir.

15          35                   Q.    And can we agree we are not  
16          dealing with any issues, as far as I am aware,  
17          about security interests in such proceeds here?

18                           A.    I don't know that I would, again,  
19          agree with that completely.

20          36                   Q.    And tell me in what respect you  
21          believe we are dealing with issues about security  
22          interests in proceeds of cash collateral?

23                           A.    Well, it goes to the question of  
24          what happens when borrowers and prospective  
25          borrowers and their advisors, if you will, lose

1 confidence in a lender and the lender has the type  
2 of security arrangements that Callidus has, or had,  
3 I should say, with its borrowers. So that is the  
4 context that I am referring to it or referring to  
5 that.

6 37 Q. I didn't see that you had  
7 reviewed -- in your report, I didn't see that you  
8 had reviewed the kinds of security interests that  
9 Callidus had with its borrowers. Is that something  
10 that you did review prior to making your report?

11 A. Well, I reviewed the public  
12 information, as we know, from CEDARs and Callidus  
13 described the type of arrangements that it had  
14 entered into. And then I reviewed the - I was  
15 going to say deposition, I apologize - affidavits.  
16 In the U.S. it would be depositions. If I make  
17 that error, I apologize. The affidavits and I also  
18 have knowledge of Callidus in the, you know, U.S.  
19 and Canadian market.

20 So from all of that, I think I was able  
21 to conclude that they had the standard sort of  
22 security agreements -- or security arrangements,  
23 excuse me, that one would expect from an  
24 asset...[inaudible.]

25 [Court reporter intervenes for

1 clarification.]

2 The security agreements from an  
3 asset-based lender.

4 38 Q. All right, at footnote 17 you cite  
5 various articles about harms to borrowers that can  
6 result from the failure of a lender bank; do you  
7 see that?

8 A. Yes, sir.

9 39 Q. And again, can we agree that we  
10 are not dealing here with a failure of a bank,  
11 right? Callidus has not failed in that sense?

12 A. Callidus, to the best of my  
13 knowledge, did not fail in the sense that it -- I  
14 don't know the appropriate term under Canadian law.  
15 In the U.S. it would be sought protection. I am  
16 sure I am using the wrong term.

17 40 Q. No, that term will work.

18 A. Okay.

19 41 Q. We understand what you are  
20 referring to.

21 A. Okay, it didn't fail in the sense  
22 that it sought protection, but it stopped being a  
23 going concern. And failures of institutions can  
24 take all different forms. They don't necessarily  
25 result in an immediate, you know, immediate

1 burn-down and, if you will, death of the  
2 institution. Sometimes it can be, if you will, a  
3 slow death.

4 And this again is referring to what  
5 would, you know, a reasonable borrower or a  
6 potential borrower or advisors think when looking  
7 at Callidus.

8 So I think it is relevant. I think it  
9 is a relevant reference.

10 42 Q. In what you reviewed prior to  
11 making your affidavit, did you identify a point in  
12 time when Callidus failed or ceased to be a going  
13 concern?

14 A. I don't think I -- I think that  
15 pretty much from the time that the Wall Street  
16 Journal articles -- article or articles, you know,  
17 because it was multiple articles depending on which  
18 version and online. So if it is okay with you,  
19 I'll just refer to it as the Wall Street Journal  
20 "article" and meaning, you know, all the different  
21 versions of it. I think from the time that that  
22 was published, Callidus had very little chance of  
23 remaining a going concern and somewhere soon  
24 thereafter, you know, it began the process of, you  
25 know, failing, but I think that the inflection

1 point or the specific point that we are looking at  
2 is the time of that article.

3 Mr. Tunley, is it all right if I have a  
4 copy of the article that I printed out on my desk,  
5 or should I --

6 43 Q. Again, as long as it is the same  
7 as the copy that we are looking at in the record, I  
8 have no problem.

9 A. I believe it is. I just say that  
10 because I keep on wanting to point to it and just  
11 because it is, you know, with the hand gesture and  
12 it won't make any sense if -- so I don't know about  
13 the Canadian rules as much as the U.S. rules, so  
14 thank you for that.

15 44 Q. All right.

16 A. Those are the only two things on  
17 my desk.

18 45 Q. Bear in mind, there is no jury and  
19 that all we are producing here is a transcript, and  
20 your pointing to it to me won't have any impact.

21 MR. MOORE: And, Mr. Tunley, just to  
22 clarify, I take it from your question that when you  
23 refer to the "going concern", you are not  
24 necessarily referring to that in the strict  
25 technical sense from an accounting standpoint or a

1 GAAP standpoint or that kind of thing? That is a  
2 general terms you are using as opposed to a term of  
3 art; is that fair?

4 MR. TUNLEY: It wasn't my term, Mr.  
5 Moore.

6 THE DEPONENT: Yes, absolutely.

7 MR. TUNLEY: It was Mr. Sunshine's  
8 term, not mine, so --

9 MR. MOORE: I don't think he used that  
10 term, but in any event, whoever used it, you are  
11 not -- to the extent you are using it, you are not  
12 using it in that way; fair?

13 MR. TUNLEY: I am using it in whatever  
14 sense the witness was using it, and I don't  
15 appreciate you interrupting and prompting the  
16 witness when I am in the middle of my cross-exam.  
17 Thank you.

18 MR. MOORE: Well, I disagree with that  
19 characterization, but continue.

20 BY MR. TUNLEY:

21 46 Q. We can agree, just going back to  
22 the sources you quoted in footnote 17, what they  
23 deal with, as I read them at least, is widespread  
24 systemic failures of a banking system and their  
25 effects on borrowers. I didn't see them dealing

1 with the failure, the kind of failure that we are  
2 dealing with here; is that fair?

3 A. I think that your reading is both  
4 accurate and slightly inaccurate in the sense that  
5 if you are the borrower of a single institution  
6 that fails or is unable to continue in business and  
7 meet its financial obligations, that sort of thing,  
8 the effects on you are often the same, you as the  
9 borrower, you know, the entity. They are often the  
10 same as if there was -- as if other institutions  
11 were failing around you, you know, were failing in  
12 the general economy in the sense that, you know, it  
13 is a little like if you are in -- sorry, my  
14 computer or my printer decided to start making  
15 noise.

16 If you are in a battle, you know, it  
17 seems like the world is coming to an end, you know,  
18 in the battle in the war that you are in, even  
19 though the world is not coming to an end; it may  
20 just be coming to an end for you. And it is that  
21 sort of analogy that I would -- sorry about that  
22 background noise. It is that sort of analogy that  
23 I would use.

24 [Court Reporter intervenes for  
25 clarification.]

1 THE DEPONENT: Yes, I'm sorry, my  
2 printer just decided to start to make a lot of  
3 noise all of a sudden.

4 THE COURT REPORTER: If that is going  
5 to continue --

6 THE DEPONENT: I turned it off. I  
7 apologize.

8 MR. TUNLEY: Did you get the answer,  
9 Madam Reporter?

10 THE COURT REPORTER: I think I did.  
11 Would you like me to read it?

12 MR. TUNLEY: Maybe the witness should  
13 hear it, just what you've got.

14 THE COURT REPORTER: I'll read the last  
15 portion of it?

16 MR. TUNLEY: That's fine.

17 THE COURT REPORTER:

18 "If you are in a battle, you  
19 know, it seems like the world is  
20 coming to an end, you know, in the  
21 battle in the war that you are in,  
22 even though the world is not coming  
23 to an end; it may just be coming to  
24 an end for you. And it is that sort  
25 of analogy that I would -- sorry

1 about that background noise. It is  
2 that sort of analogy that I would  
3 use."

4 BY MR. TUNLEY:

5 47 Q. Do you need to add anything to  
6 that answer? No.

7 A. No, I am fine.

8 48 Q. That was a thumbs-up.

9 All right, I am moving on. So my point  
10 simply, Mr. Sunshine, kind of yes or no, is there  
11 is a big difference, isn't there, between  
12 widespread systemic failures of a banking system  
13 and the failure of a particular institution that  
14 loses confidence within an otherwise sound  
15 financial lending system? Those are two very  
16 different scenarios, right?

17 A. So, Counsellor, notwithstanding  
18 your instruction as to how I am supposed to answer  
19 the question, I don't think that that's actually  
20 accurate.

21 I think if you are a borrower of an  
22 institution that is unable to meet its obligations  
23 or -- well, that is unable to meet its obligations,  
24 that the effects on you as the borrower, meaning  
25 the entity as the borrower, are dramatic and bad

1 and well-documented. They may be worse if a lot of  
2 other lenders are failing at the same time or  
3 unable to meet their obligations, but the analogy  
4 still holds. If your institution fails and takes  
5 you down with it, it doesn't matter if the rest of  
6 the system is failing.

7 49 Q. Well, we can agree at least that  
8 there are some effects of a widespread systemic  
9 failure that don't occur in the latter situation,  
10 right?

11 A. Yes, I think we can agree on that.

12 50 Q. Such as the great difficulty that  
13 the borrower might have in finding a replacement  
14 lender?

15 A. Yes, but in a situation where  
16 there is not widespread failure and your lender is  
17 unable to meet its obligations for a whole bunch of  
18 reasons that we can talk about if you would like in  
19 detail, you may still have dramatic -- be  
20 dramatically impaired in finding another lender.

21 So I don't want to take that, your  
22 statement, too far. There is obviously some truth  
23 it to, but I don't believe that that really -- I  
24 wouldn't want to take that too far in saying how  
25 much that applies to this case.

1           51                   Q.    All right, well, we can agree to  
2                                disagree about that.  Let's turn to a new topic.  I  
3                                just want to review sort of the analysis or  
4                                document review that you undertook prior to  
5                                swearing your affidavit.  And I take it, at least  
6                                from reading your report, you did not conduct any  
7                                review of the history of Callidus's lending  
8                                business prior to the Wall Street Journal article  
9                                except to the extent it was disclosed in the  
10                              documents that you looked at on CEDAR?

11                             A.    I am not sure that that's  
12                             completely accurate, no.

13           52                   Q.    All right, what else did you  
14                                review in terms of the history of Callidus's  
15                                lending business prior to the Wall Street Journal  
16                                article?

17                             A.    Well, first, there was information  
18                             in the deposition -- in the affidavits that  
19                             provided some historical information, and second, I  
20                             was given broad access to the documents and  
21                             information.  Appendix C is documents I relied  
22                             upon.  Appendix C is not all documents reviewed.  
23                             There were many, many more documents reviewed.

24           53                   Q.    Well, at some point, Mr. Moore, I  
25                                may ask you to provide me all the documents that

1 Mr. Sunshine was given broad access to. I don't  
2 see that anywhere in the report. Are you prepared  
3 to provide me with a list of all documents that Mr.  
4 Sunshine was provided access to?

5 U/A MR. MOORE: I'll take that under  
6 advisement. I know that the last paragraph of  
7 Appendix C refers to his -- or is distinct from  
8 matters that he relied upon. He says that his  
9 research included a review of various things, so  
10 let me take that under advisement, the reason being  
11 I want to consider how granular that request is,  
12 and perhaps you and I can talk about that offline.

13 MR. TUNLEY: Just in fairness to you,  
14 to be clear for the record, I am not asking you to  
15 list everything that is available on CEDAR or all  
16 the publicly available information. I am asking  
17 documents that you made available to Mr. Sunshine  
18 for purposes of preparation of his report. That is  
19 what I am asking for.

20 MR. MOORE: I hear you. So I'll take  
21 that under advisement for the time being and I'll  
22 let you know.

23 BY MR. TUNLEY:

24 54 Q. Now, from reading your report, Mr.  
25 Sunshine, it does not appear that you conducted any

1 review -- certainly you don't refer to any of your  
2 review of the history of litigation between  
3 Callidus and its borrowers or any court findings in  
4 that regard; is that fair?

5 A. Yes, that is -- I didn't, yes,  
6 that's correct.

7 55 Q. And at least from looking at your  
8 report, you do not provide any analysis of whether  
9 or how much of Callidus's business includes term  
10 versus revolving lending, secured versus unsecured,  
11 other kinds of differences of loan instruments,  
12 right; you didn't review that?

13 A. I am not sure that that's  
14 accurate.

15 56 Q. Just what did you do in terms of a  
16 review of Callidus's lending business historically  
17 as to whether it related to term versus revolving  
18 lending or secured or unsecured transactions?

19 A. Well, I apologize for not having a  
20 complete and total recall of everything in CEDARs.  
21 Do you call it "see-dars" rather than "seed-ers"?  
22 I thought it was "seed-ers". But I think that  
23 there was disclosure about their business  
24 activities and other things that I was able to find  
25 in the public domain about sort of what their

1           general business activity was --

2           57                   Q.    Right, but --

3                           A.    -- which included some of that  
4           general information.

5           58                   Q.    It didn't give you any kind of  
6           breakdown percentage-wise how much of Callidus's  
7           business was term versus revolving and how much was  
8           secured versus unsecured?  You didn't do that kind  
9           of quantitative analysis, did you?

10                        A.    As I am sitting here right now, I  
11           don't remember if that information contained those  
12           breakdowns.

13           59                   Q.    All right, well, certainly can we  
14           agree to the extent that there is an issue about  
15           that in paragraph 6.3 of your report, there is  
16           reference to these things, you have not provided  
17           the court with any assessment of how that applies  
18           to Callidus, have you?

19                        MR. MOORE:  What paragraph did you  
20           refer to, sorry, 6.3?

21                        BY MR. TUNLEY:

22           60                   Q.    6.3, yes.

23                        A.    I think we can agree that I didn't  
24           quantify it and I didn't quantify the breakdowns.

25           61                   Q.    Okay.  And you didn't conduct any

1 analysis of Callidus's pre-existing reputation as a  
2 lender prior to the Wall Street Journal articles,  
3 again, except that you did your broad media review,  
4 Google searches, that kind of thing?

5 A. Yeah, I think that is generally  
6 accurate. I was aware of Callidus myself because  
7 of being a market participant, so I had some  
8 independent view of that.

9 62 Q. But you don't refer to any  
10 particular prior publications or prior media  
11 coverage that to you is illustrative of a prior  
12 reputation of Callidus in that marketplace?

13 A. No.

14 63 Q. All right. We can agree that the  
15 issue that you were asked to assess in paragraph  
16 1.3, you state it as being the impact of the Wall  
17 Street Journal article on the ability of a lender  
18 like Callidus to close new loans. That is the  
19 issue that you were asked to address; correct?

20 A. Yeah, as stated in my report, I  
21 was asked to provide a preliminary opinion on the  
22 impact of the articles, the Wall Street Journal  
23 articles upon a lender's ability like Callidus to  
24 close new loans.

25 64 Q. And the focus that you have

1 clearly is Callidus as a lender, right?

2 A. Yes, sir.

3 65 Q. And in the body of your report, I  
4 see no mention of Catalyst or any impacts on its  
5 business. If you want to take a moment to review,  
6 or you can take it from me that there is no  
7 reference to Catalyst?

8 A. I think that is accurate.

9 66 Q. And your mandate, and here I have  
10 moved to paragraph 1.4, you say your mandate is to,  
11 quote, "make some assessment of the harm done or  
12 likely to be done" by the Wall Street Journal  
13 article, right?

14 A. I'm sorry, I was silencing  
15 something on my computer when you asked that  
16 question. I apologize, can you repeat it?

17 67 Q. I can always repeat a question,  
18 yes.

19 A. Thank you.

20 68 Q. In paragraph 1.4 you talk about  
21 your mandate and you say your mandate is to, quote,  
22 "make some assessment of the harm done or likely to  
23 be done" by the Wall Street Journal --

24 R/F MR. MOORE: And I object to that  
25 question. The paragraph speaks for itself. You

1 can't kind of start halfway through the sentence  
2 and say that that's the paragraph, and it speaks  
3 for itself.

4 BY MR. TUNLEY:

5 69 Q. Is that a fair statement of your  
6 mandate, Mr. Sunshine?

7 R/F MR. MOORE: Well, I have objected to  
8 the question in the form in which it has been put.  
9 Paragraph 1.4 articulates what it says. Let's move  
10 to the next question.

11 BY MR. TUNLEY:

12 70 Q. Will you agree with me, Mr.  
13 Sunshine, that any assessment of harm done would  
14 depend on Callidus's prior business and  
15 specifically on its prior ability to generate new  
16 loans with new borrowers?

17 A. No.

18 71 Q. You don't agree that it is a point  
19 in time that the article has come out and there is  
20 a pre-existing history of Callidus's business and  
21 its ability to generate new loans that is relevant?  
22 You don't agree with that?

23 A. I think in the context of that  
24 article - and "that article" meaning the Wall  
25 Street Journal article as defined, articles. I

1 think that that article was so prejudicial and was  
2 so prejudicial in the - and I emphasize the word  
3 "the" with a capital "T", a capital "H" and a  
4 capital "E" - publication of record for the world  
5 in the business community that the previous  
6 reputation, positive or negative, would have been  
7 overwhelmed by that article.

8 And to the extent that there was any  
9 effect, you know, from previous reputation, it is a  
10 little like it would have been completely  
11 overwhelmed, you know, overwhelmed by that article.  
12 It is a little like, you know, a 20-foot tsunami.  
13 You know, it might have been choppy waters before  
14 the tsunami hit, but if there was a 20-foot  
15 tsunami, it didn't make a difference if there was  
16 choppy waters beforehand.

17 72 Q. Right, I understand what you are  
18 saying, but I want to pick up on two things.

19 First of all, you can agree that if  
20 there were choppy waters beforehand and Callidus's  
21 prior business or its ability to generate new loans  
22 was already impaired prior to August of 2017, the  
23 Wall Street Journal article is not responsible for  
24 that; surely you can agree with that?

25 A. Of course.

1           73                   Q.    So before you can assess the  
2                                    impact of the article, you have to make some  
3                                    assessment of what the status quo ante was, don't  
4                                    you?  You can't effect the impact unless you look  
5                                    at what came before?

6                                   A.    No, I don't necessarily think in  
7                                    the context of this article, because it was so  
8                                    overwhelming, that that would be the case.  And  
9                                    there are a lot of -- when I say "a lot", there are  
10                                   many, several, many lenders that have difficult  
11                                   reputations and are able to originate loans and be  
12                                   a going concern despite that reputation.  However,  
13                                   this article would overwhelm, again, overwhelm that  
14                                   ability to attract borrowers on a competitive  
15                                   basis.

16                                   But there are many lenders that have  
17                                   difficult reputations that are still able to  
18                                   attract borrowers, so I am not sure that is really  
19                                   as relevant as you think.

20           74                   Q.    So let me make or put my second  
21                                   concern about what you are saying to you, and you  
22                                   can answer it any way you want, of course.  But  
23                                   were you aware that Callidus in previous quarters  
24                                   had had steadily declining revenues, steadily  
25                                   failing to meet its own revenue targets and

1 reporting a growing inability to generate new loans  
2 with borrowers?

3 R/F MR. MOORE: Well, I object to that  
4 question. I don't accept the underlying predicate  
5 or assumption that is built into that question.

6 MR. TUNLEY: Well, with respect, Mr.  
7 Moore, you are not a finder of fact here, and I  
8 would appreciate it if you would stop interrupting  
9 my cross-examination. It is --

10 MR. MOORE: I am not --

11 MR. TUNLEY: It is not --

12 MR. MOORE: Just a minute. I am not  
13 interrupting your cross-examination. I am  
14 objecting to the form of the question. If you put  
15 to the witness "if it were true that" and put it in  
16 hypothetical terms, then I would have less of a  
17 problem with your question.

18 But the way you have phrased your  
19 question makes it appear the premise being that in  
20 fact that was the case.

21 So that is my objection. I am not  
22 interrupting. And I would ask you to rephrase your  
23 question.

24 BY MR. TUNLEY:

25 75 Q. Let me take it in two stages, the

1 second of which will be Mr. Moore's suggestion, Mr.  
2 Sunshine.

3 And first is you made no investigation  
4 of the prior trends of Callidus's business and its  
5 ability to generate new loans, its reporting of its  
6 difficulties in that record; is that fair?

7 A. No, I wouldn't say that that's  
8 fair, no.

9 76 Q. So whatever the public record  
10 shows about that, you in giving your opinion  
11 were -- are you saying you would have been aware of  
12 that, that you took it into account?

13 A. Of course.

14 77 Q. And that is fine.

15 So hypothetically, if that public  
16 record does show a history of decline in earnings,  
17 a failure to meet Callidus's own earnings targets  
18 and a declining ability to close new business with  
19 borrowers, are you saying that that's not relevant  
20 to your assessment of the harm done or likely to be  
21 done by the articles that subsequently were  
22 published?

23 A. Not necessarily, but you are  
24 cabining in and trying to -- what I sense is, and I  
25 apologize if I am mischaracterizing where you are

1 going, I think you are trying to cabin in something  
2 which may be coincident as contrasted with a  
3 factor, meaning, you know, to look at the -- if in  
4 fact Callidus was having trouble originating new  
5 loans prior to the article, you would have to look  
6 at a lot of factors as to -- you would have to look  
7 at all the different reasons that that might be the  
8 case. There could be general economic reasons for  
9 that. There could be particular market reasons for  
10 that. There could be, you know, interest rate  
11 reasons for that. There could be competitive  
12 reasons for that. There could be business plan  
13 reasons for that. It is not necessarily -- you  
14 know, you are trying to draw a causational link to  
15 something that may very well be coincident.

16 I didn't see, as I reviewed their  
17 behaviour beforehand -- not their behaviour, their  
18 history beforehand, I didn't see anything that  
19 stood out to me for this type of a lender in that  
20 period of time that I found to be exceptionally  
21 surprising.

22 78 Q. Well --

23 A. So I --

24 79 Q. Sorry, go ahead, finish your  
25 answer.

1                   A.    Yeah, so I don't necessarily -- I  
2                   didn't view it as -- I viewed what you are  
3                   referring to as kind of a besides-the-point kind of  
4                   relevance.

5           80                   Q.    Well, in fairness, sir, you were  
6                   not asked to assess all of the very long list of  
7                   possible causes of Callidus's decline that you have  
8                   just listed out. You didn't assess any of them, in  
9                   fact, did you?

10                   A.    No, that is not true.

11           81                   Q.    You were not asked to consider  
12                   whether any such causes had begun to have an effect  
13                   on Callidus's business prior to the Wall Street  
14                   Journal articles? You are --

15                   A.    Sorry, can you repeat the  
16                   question?

17           82                   Q.    You were not asked to consider by  
18                   Mr. Moore whether any of those causes that you have  
19                   listed out, potential causes, let's say, of decline  
20                   in Callidus business had begun or were operative  
21                   prior to the Wall Street Journal articles?

22                   A.    Perhaps it might be helpful if I  
23                   tell you what I did do.

24           83                   Q.    Why don't you just answer my  
25                   question. It is a very straightforward question.

1           You didn't --

2                   A.    Well, I am actually not sure of  
3           the answer to that.  I am not sure of the answer to  
4           that.

5   84                   Q.    Well, that is an answer.  That is  
6           a fine answer.  Let's --

7                   MR. MOORE:  He is entitled to answer  
8           the question in his own way, so please let him do  
9           so.

10                   THE DEPONENT:  I -- you know, because I  
11           would like to have as an expert my opinions and  
12           testimony have credibility and relevance, after  
13           examining what is in the report, I looked for  
14           reasons that my opinion would be wrong or could be  
15           undermined by somebody else.  So I kind of ran my  
16           own what if I was -- what if I disagreed with the  
17           opinion; what supporting evidence would I find for  
18           that?

19                   And you will find, you know, as we  
20           talk, there were a lot of things that I looked at  
21           and then considered, perhaps coincident or not, not  
22           as relevant as that Wall Street Journal or the Wall  
23           Street Journal articles.  I think this fits into  
24           that category.

25                   So I am trying to be helpful to you in

1 saying this. You know, was it a major factor? No,  
2 because it was dismissed as not -- I didn't think  
3 it was particularly relevant to the question of the  
4 impact of that article on a company like Callidus.

5 BY MR. TUNLEY:

6 85 Q. Well, just my questions are  
7 terribly simple, and you have given your answer now  
8 and that is fine. But my question on the record  
9 is, and we can all read Mr. Moore's instructing  
10 letter, but you were not asked to consider any  
11 other causes of Callidus's decline other than the  
12 Wall Street Journal article, right? You weren't?

13 A. I was asked to make sure that I  
14 didn't miss something in my opinion and that I did  
15 a deliberate and diligent and professional job, and  
16 in that regard I looked at a lot of different  
17 things. And I think that is part and parcel of  
18 being an expert. Mr. Moore did expect me to do a  
19 good job and to look at things broadly, and I did.

20 86 Q. Right, but the second part of my  
21 question, just to get back to it, was whatever  
22 consideration you gave to those other historical or  
23 ongoing causes of Callidus's difficulty, there is  
24 no reference to those causes in your report and no  
25 analysis of whether and how they continued to apply

1 after the Wall Street Journal article was  
2 published, right?

3 A. Well, I don't agree with that. I  
4 think that if we turn back to paragraph 1.3, the  
5 very end of that paragraph that you had previously  
6 cited or read, "upon a lender's ability, like  
7 Callidus". "Like Callidus" means a lender's  
8 ability like Callidus. That means I looked at -- I  
9 looked at issues and Callidus's business plan, you  
10 know, in the most general sense. I looked at what  
11 would, you know, an asset-based lender that is in  
12 the higher rate part of the marketplace, with  
13 everything that that means, what was the effect of  
14 that article on a lender like Callidus.

15 And that is a more encompassing  
16 statement than what you are trying to cabin it  
17 into.

18 87 Q. I am going to move on. Let's go  
19 back to paragraph 4.1, which you have helped me  
20 with the typo is to read, you say that the Wall  
21 Street Journal articles are important because  
22 Callidus was, quote, "publicly accused of being a  
23 company accused of fraud", right?

24 A. Yes, and by the way, you helped me  
25 with the typo, and I thank you for that.

1           88                   Q.    No worries.  You would agree that  
2                                   it is true as a fact and it was true as a fact in  
3                                   August of 2017 that Callidus is in fact a company  
4                                   and was in fact a company accused of fraud by four  
5                                   whistleblowers; you are aware of that?

6                                   A.    You pixilated and you broke up.  I  
7                                   didn't hear the -- I'm sorry, I didn't hear the  
8                                   audio.

9           89                   Q.    It is true as a fact that Callidus  
10                                  was a company in August of 2017 accused of fraud by  
11                                  four whistleblowers?  You know that to be the case?

12                                  A.    I know that the Wall Street  
13                                  Journal reported at least four individuals have  
14                                  filed whistleblower complaints.

15           90                   Q.    Right, and you know that that is  
16                                  the case.  There is no doubt about it, is there,  
17                                  Mr. Sunshine?  You knew that was the case at the  
18                                  time?

19                                  A.    Well, you just phrased the  
20                                  question that there were four.

21           91                   Q.    Yes.

22                                  A.    And this article says "at least  
23                                  four".  So I couldn't figure out how to get access  
24                                  to all whistleblower complaints, so this article  
25                                  suggests it could be four or more, and what I know

1 is what is in the article.

2 92 Q. It is fair that my question to you  
3 is conservative. I am saying there are four. You  
4 don't disagree with that?

5 A. I have no basis to disagree with  
6 it, sir.

7 93 Q. And you understand that three of  
8 those four were borrowers of Callidus who were  
9 accusing it of fraud?

10 A. If you represent that. I didn't  
11 remember the breakdown of internal and external and  
12 who the -- I don't -- I didn't remember offhand  
13 until you just said that.

14 94 Q. Okay. You recognize that is the  
15 case, though, that three of the four are in fact  
16 borrowers and were in fact borrowers of Callidus in  
17 August of 2017?

18 A. I have no reason to dispute what  
19 you are saying or to accept it. I trust that you  
20 wouldn't misrepresent on the record, so...

21 U/T MR. MOORE: Well, we'll let you know if  
22 we have any issue about that proposition.

23 BY MR. TUNLEY:

24 95 Q. All right, well, let's just move  
25 on.

1                   The fraud allegations that you are  
2                   concerned about that you relate to the Wall Street  
3                   Journal article that are made by those  
4                   whistleblowers relate to accounting misstatements,  
5                   securities law violations and deceptive lending  
6                   practices. Those are all words that you use in  
7                   your report, right?

8                   A. Do you want to point me to exactly  
9                   where you are in the report?

10           96           Q. I think I did. We are in  
11           paragraph 4.1.

12                   A. Okay, I'm sorry, I flipped around.  
13                   "Fraud, accounting misstatements, financial crimes,  
14                   securities law violations and deceptive lending  
15                   practices".

16           97           Q. Right, and you say your focus is  
17           not just the form and substance of those  
18           allegations, but also, quote, "the public nature",  
19           right, as reported in the Wall Street Journal?

20                   A. Yes.

21           98           Q. And did you note that Callidus was  
22           reported on the OSC's, the Ontario Security  
23           Commission's re-filings and corrections of errors  
24           list for accounting and reporting of something  
25           called yield enhancements, and that is in Mr.

1 Riley's affidavit at paragraph 341. Did you note  
2 that?

3 A. Did I note that or did I know  
4 that?

5 99 Q. Did you note that and did you take  
6 it into account in offering the court your opinion?

7 A. I am not sure what you mean by  
8 "note that." I did know that, and yes, I did take  
9 it into account.

10 100 Q. And you will agree that that is a  
11 kind of accounting misstatement, at least that is  
12 the way the Ontario Securities --

13 MR. MOORE: I disagree with that, the  
14 predicate of that question. That is not what  
15 happened.

16 MR. TUNLEY: Well, I am putting it to  
17 this witness, Mr. Moore, and again, I would  
18 appreciate you not intervening but --

19 MR. MOORE: Well, I am not interfering.  
20 I have the same problem as I did before. When you  
21 put a question that appears to be premised upon an  
22 assertion of fact as opposed to a hypothetical  
23 where I disagree with the underlying premise that  
24 is built into your question.

25 BY MR. TUNLEY:

1 101 Q. Let me address that this way.

2 Mr. Sunshine, you would agree that it  
3 would appear the OSC, the Ontario Securities  
4 Commission, viewed that as a securities law  
5 violation; fair?

6 R/F MR. MOORE: No, that is not a fair  
7 question. I object to that question. It is not a  
8 fair question.

9 BY MR. TUNLEY:

10 102 Q. So you are saying your witness  
11 can't comment on what the OSC appears to have been  
12 dealing with in --

13 MR. MOORE: Well, you are asking the  
14 witness to impute to the OSC some belief that there  
15 was a securities law violation, and I am saying I  
16 don't think that that's what the errors and  
17 omissions list, as you referred to, connotes.

18 MR. TUNLEY: All right, well, we can  
19 argue about that. Let's --

20 MR. MOORE: Well, I mean, all of this,  
21 Mr. Tunley, can be grist for the mill in terms of  
22 the underlying circumstances, and I fully expect  
23 you will argue all of those things. I am just  
24 saying I don't think that is a fair question to put  
25 to the witness in the way you have done it.

1 MR. TUNLEY: I am going to take it as a  
2 refusal, Mr. Moore. There is already refusals  
3 about the OSC's involvement in these matters, and  
4 we can add that to it, thank you.

5 MR. MOORE: Okay.

6 BY MR. TUNLEY:

7 103 Q. Let's move on.

8 Just to come back to the article, the  
9 Wall Street Journal article, you specifically were  
10 referred to the versions that were published at or  
11 about 3:30 in the afternoon on August 9, 2017, and  
12 those are the ones referred to you by Mr. Moore in  
13 his instructing letter; do you recall that? Do you  
14 take that from me?

15 A. Mr. Moore told me, instructed me  
16 to look at August 9th, 3:29, 3:32, and then  
17 published on August 10th in the print edition.

18 104 Q. Right. Were you asked to look at  
19 the updating of the online publication that  
20 occurred at 9:53 p.m. on August the 9th, which is  
21 the article as it currently appears on the Wall  
22 Street Journal website?

23 A. I was not asked to look at it --

24 MR. MOORE: Well, just a minute. This  
25 is not a memory contest. Look at paragraph 1.3 of

1 your report.

2 THE DEPONENT: Thank you. Yes, I did  
3 look at the updated. I was just about to say I  
4 looked at all the updateds, but I didn't remember,  
5 thank you, that I had put that in the report.

6 BY MR. TUNLEY:

7 105 Q. And did you look at Mr. Riley's  
8 libel affidavit Exhibit 35 which is a copy of that  
9 article? That is where we find it.

10 A. Well, I looked at Mr. Riley's  
11 affidavit. I don't recall if I saw that exhibit  
12 with the affidavit.

13 MR. MOORE: Well, Mr. Tunley, let's be  
14 clear, the Riley affidavit that you are referring  
15 to is dated May 29th, 2020. That was not provided  
16 to the witness before his report was prepared.

17 Now, it may well be that the exhibit  
18 you are referring to with the police car and photo  
19 and all the rest of it was indeed one of the  
20 matters that the witness has reviewed. So that is  
21 fair.

22 But I don't want you to be operating  
23 under any misunderstanding. That affidavit was not  
24 provided to Mr. Sunshine before he completed his  
25 report.

1 THE DEPONENT: Mr. Tunley, perhaps I  
2 can help you slightly.

3 BY MR. TUNLEY:

4 106 Q. I thought Mr. Sunshine told me  
5 that he did review that affidavit before filing his  
6 report, but you can correct your witness if you  
7 want, that is fine.

8 A. Right, but I think you had asked  
9 me about if I reviewed the affidavit, and I don't  
10 think you asked if it was before the report, and I  
11 certainly looked at it before testifying.

12 But perhaps I can help you slightly.  
13 In fairness, the copy of the article that I held  
14 up, updated August 9th, 9:53 p.m., so I am holding  
15 in my hand literally that copy of the article.

16 107 Q. All right, and did you note that  
17 it has been updated to refer to a statement that  
18 Callidus made, issued publicly following the  
19 earlier publication?

20 A. Would you like to point me  
21 specifically to the statement that you are  
22 referring to?

23 108 Q. I think it is on the screen in  
24 front of me. It is that-

25 A. "'Callidus believes that it is

1 the action of those individuals that  
2 warrants investigation "[...]"

3 109 Q. I am going to start you a bit  
4 early. The previous paragraph says:

5 "In a statement following  
6 digital publication, company  
7 officials said they know of no  
8 legitimate basis for any  
9 whistleblower complaint. The  
10 companies said they believe the  
11 whistleblowers are filing  
12 'deliberately misleading' reports  
13 with the OSC."

14 And then there follows the quotation  
15 you were about to take me to, right?

16 A. Yes.

17 110 Q. Now, your report makes no  
18 reference to that update to the article, right?

19 A. Well, of course not. With all due  
20 respect, that is kind of a nonsensical question. I  
21 have yet to find a company, with very few  
22 exceptions I should say, where short of themselves  
23 turning them in, themselves in, where the company  
24 didn't immediately deny the allegations.

25 But the reality is prospective

1 borrowers and borrowers aren't going to take that,  
2 those -- those two paragraphs into account at all.  
3 They are par for the course, so to speak. They are  
4 going to look at the picture of the police cruiser  
5 and say, Oh, that is really bad.

6 And the Wall Street Journal posting a  
7 picture of a police cruiser, again, the publication  
8 of record for the business community, you know,  
9 overwhelms and what is in that article overwhelms  
10 everything.

11 If they didn't do that -- you know,  
12 everybody makes that statement. That is -- guilty  
13 parties make that statement; innocent parties make  
14 that statement. Everybody makes that statement.

15 111 Q. So it is fair to say you are  
16 saying borrowers are going to make their own  
17 assessment of what is said by both Callidus and the  
18 Wall Street Journal?

19 A. No, that is not what I said.

20 112 Q. That is what I heard.

21 A. You misheard.

22 113 Q. All right, well, we have the  
23 record of what you said. Let's go to paragraph 4.2  
24 of your report. You say here, quote, "given a  
25 choice", and essentially what you are saying is

1 given that choice, borrowers would be very  
2 reluctant to do business with a lender who was the  
3 subject of allegations such as those appearing in  
4 the Wall Street Journal; is that a fair summary of  
5 what you are saying?

6 A. Yes, and following, the next  
7 sentence which says:

8 "This is especially true when  
9 the accusations are published by the  
10 Wall Street Journal including having  
11 a color photograph that featured a  
12 Toronto police car above a caption  
13 stating 'A unit of the Toronto  
14 Police Service has begun its own  
15 inquiries...'"

16 114 Q. Right, and you are aware that it  
17 is a true statement as a matter of fact that the  
18 Toronto Police Service had begun its own inquiries,  
19 right?

20 A. I don't know that to be true or  
21 not. I don't have any independent confirmation  
22 confirming that or denying that.

23 115 Q. You made no investigation as to  
24 whether any of the allegations in the Wall Street  
25 Journal article were true or not true; is that

1 fair?

2 A. So my understanding of -- no, that  
3 is not fair. My understanding of how law  
4 enforcement works, which I think is kind of the  
5 same in Canada, is --

6 116 Q. Sorry, just before you go on, do  
7 you know that to be the case or are you just  
8 speculating at this point, Mr. Sunshine? I want to  
9 be clear on the record.

10 A. Mr. Tunley, if after I finish  
11 speaking -- you had requested that I not interrupt  
12 you. I am going to make the same request of you,  
13 and if you have a question to pose to me, I would  
14 appreciate -- I mean, it is your deposition, but I  
15 think we'll do a lot better if you don't interrupt  
16 mid-sentence.

17 It is my understanding that nobody has  
18 been, you know, relating to these allegations, has  
19 been criminally charged, that - and I am going to  
20 use probably the wrong jargon - but nobody has been  
21 indicted, nobody has got pending allegations  
22 against them, pending criminal charges, that  
23 whatever investigation took place kind of went  
24 nowhere.

25 In the United States if I called the

1 Justice Department or a local police agency and  
2 asked, Did you clear somebody, and they say, No, we  
3 don't -- that is not what we do. It is my  
4 understanding from the time I have spent in Canada  
5 and, you know, doing business in Canada that it is  
6 much the same in Canada.

7 So your question about have I  
8 undertaken an investigation about what the police  
9 did or what law enforcement did, I am not totally  
10 certain that that's a fruitful investigation that  
11 anybody could undertake, nor do I think that I can  
12 prove the negative other than nobody was charged.

13 Now, do you have -- do you want to --  
14 did you want to ask me something before?

15 117 Q. My earlier interjection was about  
16 your familiarity with Canadian law enforcement. Do  
17 you have direct experience with Canadian law  
18 enforcement and the Toronto Police Service  
19 specifically?

20 A. I have not -- I do not have  
21 personal, although I have been in Toronto and I  
22 have spoken to law enforcement officers  
23 periodically and I have done lending in Canada and  
24 we have done background checks and I have been  
25 represented by Canadian counsel, I personally have

1 not had the opportunity, perhaps because I have  
2 never been arrested in Canada or even suspected of  
3 anything, to directly engage with Toronto law  
4 enforcement.

5 118 Q. So that is fine. Let's just go  
6 back to my question about paragraph 4.2 and  
7 focussing on the words "given a choice", borrowers  
8 would be reluctant; can we just focus on that for a  
9 moment.

10 A. Yes, sir.

11 119 Q. You understood from your review  
12 that Callidus is a last resort lender. I don't  
13 know that that's the right term, but you know what  
14 I am referring to, right?

15 A. I know what you are referring to,  
16 and I don't necessarily -- I don't agree with that  
17 characterization.

18 120 Q. You didn't consider that Callidus  
19 was potentially in the category of a last resort  
20 lender?

21 A. I don't think Callidus was in the  
22 category of a last resort lender the way I would  
23 use those terms. I believe that they are a high  
24 rate asset-based lender which means they are taking  
25 on riskier borrowers, but last resort, you know,

1           there were many competitors that they had. Last  
2           resort lenders are kind of, from a credit  
3           perspective or a risk perspective, several steps  
4           below where they are.

5           121           Q.    You can agree, though, can you,  
6           that many of Callidus's borrowers or potential  
7           borrowers do not have many other choices in terms  
8           of a lender?

9           A.    No, I don't -- I wouldn't agree  
10          with that. I think Callidus's business plan and  
11          lending operation looked a lot like Cerberus's,  
12          which is where the CEO, the founder and CEO, and I  
13          am having a --

14          122           Q.    Mr. Glassman.

15          A.    Yes, thank you, where he came from  
16          and was trained. I think it looks a lot like  
17          Cerberus's business, and Cerberus, just like  
18          Callidus, just like some businesses and divisions  
19          that I have run at some of my businesses, it is  
20          still a competitive market. There are many  
21          alternatives.

22          123           Q.    But you don't consider then that  
23          many of Callidus's borrowers as of 2017, August and  
24          subsequently, are high risk borrowers?

25          A.    I didn't say that they weren't

1 high risk. I in fact said that they were a high  
2 risk lender, a high risk/high rate lender,  
3 asset-based lender. I certainly agree with that.

4 But last, you know, a last resort  
5 lender or step -- I don't think so. And there is a  
6 lot of competitors, a lot, unfortunately, a lot  
7 of -- well, unfortunately when I was in business, a  
8 lot of competitors.

9 124 Q. And is it fair to say, I mean, I  
10 don't want to quibble with you, but we are talking  
11 about a spectrum, right? Callidus is on a  
12 spectrum, and you are saying, well, they are not at  
13 the bottom and you are reserving last resort to the  
14 bottom; is that -- am I understanding correctly, or  
15 do you want to just clarify that?

16 A. I think that is -- I think there  
17 are two -- I think that that's accurate but -- or a  
18 good characterization, I should say.

19 But the other part is where they are,  
20 there was a lot of competition, both national, and  
21 when I say "national, meaning North American,  
22 foreign from Europe and Asia, as well as regional.  
23 And they were hardly unique in what they did and  
24 there was a lot of competition then.

25 125 Q. Well, and just to be clear then,

1           you would agree that some of Callidus's borrowers  
2           may well be more concerned about the actual terms  
3           of the loan that they are taking on rather than who  
4           exactly the borrower is?

5                     A.    The lender, you mean, who the  
6           lender is?

7    126                Q.    Who exactly the lender is, sorry,  
8           yes.

9                     A.    Would I agree -- and I am going to  
10          repeat your question as I understand it.  Would I  
11          agree that they are more concerned about the terms  
12          of the loan rather than who the lender is?

13                    No, I actually wouldn't agree with  
14          that.

15    127                Q.    You think it is -- okay, all  
16          right, well --

17                    A.    I think it fits on a spectrum.  
18          The terms are obviously not irrelevant, but you  
19          know, in my businesses that I ran, we were always  
20          able to achieve yields because of who we were and  
21          how we operated and how we marketed.  We were  
22          always able to achieve yields 4, 5 or 6 points  
23          higher than our competitors without taking a credit  
24          loss.

25                    So no, I think that if the world was

1 completely efficient markets and everybody had  
2 perfect information and it was, you know, we were  
3 sitting in a theoretical, you know, economics or  
4 finance class, sure, you know, that would make more  
5 sense. But the world is inefficient and, you know,  
6 big and there are a lot of factors that go into why  
7 a lender -- why a borrower does business with a  
8 lender.

9 128 Q. Right. Just in terms of your  
10 position on the spectrum and how you are  
11 positioning Callidus on the spectrum then, we can  
12 agree that there are other lenders who have much  
13 worse lending practices than Callidus?

14 A. I can't say. I can't -- I didn't  
15 do a survey of everybody else's lending practices  
16 to even begin to comment on that. I think that  
17 would be broad speculation.

18 129 Q. But you would agree that from your  
19 experience, there are at least lenders that have a  
20 worse reputation among borrowers than Callidus had  
21 in 2017 or its successor has today, right?

22 A. So I apologize, there was  
23 something that just flashed on my screen saying  
24 that my internet connection was unstable. I heard  
25 you perfectly, but I just thought I would mention

1           that in case I disappear along the way here.

2       130           Q.    We can hear you perfectly, if it  
3           is any comfort, and we'll let you know if we can't.

4           A.    Okay, can you repeat the question,  
5           I'm sorry? That just totally distracted me. I  
6           apologize.

7       131           Q.    Yes. I am following from the last  
8           question which you have answered, and I have asked  
9           you would agree that there are other borrowers,  
10          maybe in the category of last resort -- sorry,  
11          other lenders in the category of last resort,  
12          lenders who have a worse reputation among borrowers  
13          than Callidus had in 2017 or indeed than its  
14          successor has today?

15                A.    Okay, two things to that.

16                The first is I wouldn't necessarily  
17                agree with that. I wouldn't imply that last resort  
18                lenders or lenders of last resort necessarily have  
19                bad reputations. It is just a market position that  
20                they choose to be in. And I don't know anything  
21                about the successor to Callidus today.

22       132           Q.    All right, let's move on.

23                Looking at paragraph 6.8 of your  
24                report, please, you talk here about the possibility  
25                of a lender's cash being seized by law enforcement,

1 and I take it you are talking here about criminal  
2 fraud, lenders who have stolen funds that are going  
3 to be seized as proceeds of that kind of a crime,  
4 right?

5 A. I'm sorry, when you say "criminal  
6 fraud", what do you mean by that?

7 133 Q. I mean fraud that can be  
8 prosecuted criminally and that will be the subject  
9 of proceeds of crime legislation enabling police,  
10 for example, to seize the lender's assets?

11 A. Well, so I am just looking at the  
12 article for one second. So the article refers to  
13 "A unit of Toronto Police Services that specializes  
14 in financial crimes has begun its own  
15 inquiries...", I am reading from the article, and I  
16 am having a hard time distinguishing that in a  
17 potential borrower's mind from -- including the  
18 allegations of -- the other allegations in this  
19 article, I am having a hard time distinguishing  
20 that from fraud as -- which was what was in your  
21 question.

22 134 Q. Well, just --

23 A. And I am not sure that -- I  
24 apologize, but I am not sure that -- I am not sure  
25 that somebody reading this would make that

1 distinction or parse the language as to whether or  
2 not the financial crimes that we are talking about  
3 potentially occurring in the article included or  
4 didn't include fraud. I think that would be a  
5 subset of financial crimes.

6 135 Q. And the --

7 A. And I think that would cause most  
8 normal people to stay away from a lender such as  
9 this if they have any alternatives at all, and  
10 there is always an alternative, including not  
11 borrowing or raising equity.

12 So you know, I mean, as an industry --  
13 you know, as an industry professional, I certainly  
14 would advise clients not to go near anybody who  
15 was, you know, accused or potentially accused of  
16 financial crimes, which include fraud.

17 I'm sorry if that was a little  
18 long-winded, and I hope I was responsive to your  
19 question.

20 136 Q. Well, it is not the  
21 long-windedness that I am concerned about. It is  
22 wide of the mark in terms of my question.

23 So let me try two things.

24 First of all, you understand it is not  
25 your job as an expert and you weren't asked to

1 interpret the Wall Street Journal article and tell  
2 us what meanings it would or would not bear? That  
3 is not what you were asked to do and it is not the  
4 expertise you have, right?

5 A. Well, I think that what I was  
6 asked to do was say or provide an opinion as to  
7 how -- what effect the Wall Street Journal article  
8 would have on a lender like Callidus in being able  
9 to attract new -- you know, attract borrowers. And  
10 I am not really sure how, without reading the  
11 article and interpreting it, strictly speaking I  
12 can do that. I think by reading anything, reading  
13 comprehension by definition involves  
14 interpretation. So I think as a truism what you  
15 just said is not correct.

16 137 Q. Well, it may be that you have been  
17 asked to do something that you shouldn't be asked  
18 to do, but I am just -- you are not disagreeing  
19 with me. It is not your job as an expert to  
20 interpret what meanings arise from the Wall Street  
21 Journal article; you understand that, right?

22 MR. MOORE: He has answered the  
23 question.

24 MR. TUNLEY: Is that a refusal?

25 MR. MOORE: No, he has answered the

1 question.

2 BY MR. TUNLEY:

3 138 Q. All right.

4 A. Well, I think that I was asked to  
5 opine on the impact of the article upon a lender's  
6 ability like Callidus to close new loans, and I am  
7 not sure, and maybe it is just semantics, but I am  
8 not sure how one does that, how one reads an  
9 article and has reading comprehension, you know,  
10 the definition of reading comprehension, without  
11 coming to an opinion on the article which is an  
12 interpretation.

13 I mean, you might agree with my reading  
14 of the article or disagree with it or its effect,  
15 but I think as a definitional matter, I have to  
16 read the article and comprehend it and then assess  
17 its impact on a lender's ability like Callidus to  
18 close new loans.

19 139 Q. All right, we have gone over your  
20 mandate. I understand what you are saying. I  
21 don't agree with you, but anyway, let me move on.

22 You are not prepared to concede then  
23 that there is a difference between sort of frank  
24 criminal fraud, theft, and breaches of security law  
25 in terms of fairness of reporting, accounting and

1 so on? You don't see a difference between those  
2 two things?

3 A. I don't know the answer to that,  
4 but what I do know is -- what I do know is the  
5 allegations contained in the Wall Street Journal  
6 article are of the type that are consistent with  
7 some of the -- are potentially consistent with some  
8 of the worst things that financial services  
9 companies may do, and this would be if in fact  
10 those things had happened at Callidus, this would  
11 appear to be sort of the leading edge of what could  
12 be a downward spiral of criminal allegations.

13 But I would also say that reasonable  
14 people who are potential lenders don't parse  
15 through what kind of crime a lender may have  
16 committed. If a non-bank, non-depository,  
17 non-insured lender is accused of committing any  
18 sort of crime that is, you know, meaningful, people  
19 avoid them like the plague. They don't spend a lot  
20 of time trying to figure out is it really serious?  
21 Could it be serious? Might it be serious? Will my  
22 funds get seized? Well, if they have an  
23 alternative, they just go the other direction; they  
24 just use a different alternative.

25 And again, a different alternative

1 includes equity or not doing anything, and  
2 reasonable people don't get into bed with  
3 potential -- you know, this article suggests that  
4 they -- implies that they may be potential  
5 soon-to-be felons. You know, reasonable people  
6 don't get into bed with people that may be going to  
7 jail for felonies. They just don't do that.

8 140 Q. We can agree to disagree about  
9 everything in that answer, Mr. Sunshine. I don't  
10 think you have any expertise to say the things you  
11 are saying apparently any more than I do, so let's  
12 move on.

13 Paragraph 5.1 of your report, you say  
14 in paragraph 5.1:

15 "Prospective borrowers avoid  
16 financial institutions that they  
17 believe engage in criminal  
18 activity", which we have dealt with,  
19 "and predatory lending."

20 I want to focus on that term "predatory  
21 lending". Are you with me?

22 A. Yes, sir.

23 141 Q. And by that term "predatory  
24 lending", would you include institutions that are  
25 in the business of lending to own the businesses of

1           their borrowers?

2                   A.    I'm sorry, would I include what?

3    142            Q.    Institutions that are in the  
4           business of lending to own the businesses of their  
5           borrowers? Do you know what that -- what I am  
6           talking about, lending to own?

7                   A.    Yes. Yes, I do.

8    143            Q.    Is that included in your use of  
9           the term "predatory lending"; yes or no?

10                   A.    Well, I don't think that is a -- I  
11           don't -- not necessarily. And I am aware that,  
12           because I read the deposition or the affidavits and  
13           other documents, I am aware that most borrowers who  
14           have their -- not most. Many borrowers who have  
15           their -- whose businesses fail in asset-based loans  
16           and have their assets seized by the lender  
17           subsequently accuse the lender of being in the  
18           loan-to-own business.

19                   And there is a common misperception in  
20           the general world about how lenders make money, and  
21           lenders don't make money by seizing people's  
22           businesses, you know, and being in the loan-to-own  
23           business, with the possible exception of certain  
24           types of bankruptcy type borrowers, you know, where  
25           they are in bankruptcy -- you know, they are

1 actually lending to companies in bankruptcy or, you  
2 know, certain unique situations.

3 It is just that that's just kind of a  
4 ridiculous, ridiculous allegation that was made,  
5 and what is here is they are being accused of  
6 effectively the implication is that they are a  
7 predatory lender, and that is different than, if  
8 someone defaults on their loan, seizing the  
9 collateral.

10 144 Q. Sorry, you just didn't answer my  
11 question. My question --

12 MR. MOORE: Well, I disagree with that.  
13 I think he did, but keep going.

14 BY MR. TUNLEY:

15 145 Q. Well, my question, and it really  
16 was a yes or no, your term "predatory lending",  
17 does that or does that not include having a  
18 reputation for lending to own? Just can you not  
19 answer that question?

20 A. And I answered it by saying not  
21 necessarily, and then I qualified it.

22 So the way I understand things,  
23 Counsellor, is I took an oath, and the way I  
24 understand it is only one of us is here under oath,  
25 and if I -- and only one of us is subject to

1 penalty of perjury.

2 So if I have an answer that I think  
3 would be materially misleading by not providing  
4 additional information, therefore, as I understand  
5 it, violating my oath, I am going to provide that  
6 additional information. And I appreciate your  
7 instructions to tell me how to answer, which is yes  
8 or no, but the way I understand things is you get  
9 to ask the questions and I get to answer them and  
10 you don't instruct me as to how to answer.

11 146 Q. I understand, and I don't think  
12 you have answered my question, and that is what I  
13 think is the bottom line here. And I am not going  
14 to argue with you about it, Mr. Sunshine. I am  
15 going to move on.

16 You would agree that one of the issues  
17 for borrowers about a lending to own lender is that  
18 it kind of puts the lender in an adverse position  
19 to management and the owners of the borrower  
20 because the lender's objective is to take their  
21 business away; you will agree with that, surely?

22 A. No, I wouldn't agree with that,  
23 and no, I actually wouldn't agree with that. Even  
24 in a business theoretically, which I don't believe  
25 applies here, even in a business where a lender was

1 quote/unquote there to take the business away,  
2 which I wouldn't agree with that, no. I wouldn't  
3 even come close to agreeing with that.

4 147 Q. All right, well, as you say, you  
5 are under oath. Would you not agree that having a  
6 reputation as a lender in the business of lending  
7 to own would discourage some borrowers from dealing  
8 with a lender such as Callidus?

9 A. Not necessarily, no.

10 148 Q. Okay, you mentioned Mr. Newton  
11 Glassman who you identified as a sort of principal  
12 of Callidus, right?

13 A. Yes.

14 149 Q. And you would agree that a high  
15 profile individual and executive like Mr. Glassman  
16 sets the tone, as it were, for a business that he  
17 leads such as Callidus?

18 A. Yes.

19 150 Q. And it is part of what borrowers  
20 look at to assess whether they want to deal with  
21 that lender or not, right, is who is in charge?  
22 Pretty obvious, right?

23 A. Maybe.

24 151 Q. You would certainly look at that,  
25 sir, as a prudent advisor to a lender, to look at

1           who is in charge?

2                           A.    Maybe.

3   152                    Q.    And you are aware that Mr.  
4           Glassman is rather famously quoted as referring to  
5           Callidus's business as a, quote, "blood sport"?  
6           Were you aware of that reference?

7                           A.    No, I wasn't.

8   153                    Q.    I suggest to you -- you are  
9           familiar with the term "blood sport", I take it?

10                          A.    I don't know the context that -- I  
11           know the word "blood sport", but without seeing the  
12           context of his comment, or alleged comment, I  
13           couldn't even begin to give you a comment on his  
14           comment, alleged comment I should say.

15   154                    Q.    Okay. You are familiar with the  
16           term "blood sport" and you know that it includes  
17           things like bullfighting, fox hunting, things of  
18           that nature, right?

19                          A.    No, actually I did not know that  
20           until you just said that.

21   155                    Q.    Well, you'll agree with me that  
22           any interpretation you want to put on the term  
23           "blood sport", it conveys a rather aggressive  
24           posture from a lender towards the borrowers; would  
25           you not agree with that?

1           A.    Again, without seeing the context  
2           of what allegedly Mr. Glassman said, I can't even  
3           begin to comment, and as a hypothetical that is way  
4           too broad for me even to begin to comment on.

5   156           Q.    You wouldn't be prepared to agree  
6           that it suggests Mr. Glassman is prepared to draw  
7           blood in his dealings with borrowers?  You don't  
8           see that in his comment?

9           A.    Are you suggesting that Mr.  
10          Glassman was like knee-capping people, shooting  
11          people, physically abusing them, hiring people to  
12          physically assault borrowers?

13   157          Q.    I am asking you a question about  
14          his comment.

15          A.    Well, again, since I have never  
16          seen the comment, heard that comment, don't know  
17          the context of it, you just asked about drawing  
18          blood, and I had never heard anything about Mr.  
19          Glassman physically assaulting or hiring people to  
20          physically assault borrowers, which is the  
21          implication of what you just asked.

22   158          Q.    Well, you don't need to read  
23          implications into my questions.  I am just putting  
24          the question.  You are perfectly able to interpret  
25          the Wall Street Journal article, but you won't

1 answer my questions about Mr. Glassman's reference  
2 to his business as a, quote, "blood sport"?

3 MR. MOORE: No, that is not what he  
4 said at all. He said he would need to see the  
5 context of what you are referring to. Don't  
6 misstate the record.

7 BY MR. TUNLEY:

8 159 Q. Well, can we show the context? Do  
9 we have that article? I think it is in the record.

10 Do you recognize this article, sir,  
11 from your media search?

12 A. I read a lot of articles. I don't  
13 remember this one specifically.

14 160 Q. And just if I can ask Jennifer, my  
15 colleague, to just highlight where the reference to  
16 "blood sport" is for you, if you want to see the  
17 context.

18 A. Can I ask two things? First, can  
19 you put the article into the chat so I can read the  
20 whole thing? And can we take about a two- or  
21 three-minute break?

22 161 Q. You can certainly take a break.  
23 We are about at that time. I am sure Mr. Moore  
24 will agree that you can review it over the weekend  
25 and I will come back to my -- you can review it

1 over the break, and I will come back to my  
2 question.

3 MR. MOORE: That is fine. Do you want  
4 to take ten minutes?

5 Phil, do you have a sense of  
6 approximately, and I won't hold you to it, but how  
7 much longer you think you are going to be?

8 MR. TUNLEY: Well, my estimate of my  
9 time has been wrong so far, but I am pretty close  
10 to being finished.

11 THE DEPONENT: Okay. Is it possible to  
12 put the article in the chat, so I can scroll it  
13 myself?

14 MR. TUNLEY: I have no idea how to  
15 answer your question, Mr. Sunshine, but the article  
16 is in the record and we can give your counsel the  
17 reference to it in the record and I'm sure you'll  
18 be able to find it.

19 THE DEPONENT: Okay.

20 MR. TUNLEY: Here it is. It is Exhibit  
21 40 to Mr. Boland.

22 (DISCUSSION OFF THE RECORD.)

23 -- RECESSED AT 12:03 P.M.

24 -- RESUMED AT 12:15 P.M.

25 BY MR. TUNLEY:

1 162 Q. Mr. Sunshine, you have had an  
2 opportunity now to read the article or review the  
3 article in which Mr. Glassman uses the term "blood  
4 sport" to describe the business he is in. Does  
5 that help you in terms of answering or not  
6 answering the questions I have put to you?

7 A. I think he says in the article:  
8 "If you want to be in a blood  
9 sport - and distressed [lending] is  
10 a blood sport - you've got to be  
11 able to take a punch" is what he  
12 said.

13 163 Q. Right.

14 A. And I think that just for  
15 clarification, I think in the context of the  
16 article "and distressed" was referring to  
17 distressed lending.

18 164 Q. You will agree with me that  
19 comments and the reputation that goes with comments  
20 by a principal, a high profile principal like Mr.  
21 Glassman set the reputation for the business that  
22 he leads? We have agreed on that?

23 A. Potentially, but I think that we  
24 need to look at the full context of this article  
25 and the full context of where he is. It also says:

1                    "'I will never be the CEO of a  
2                    public company ever again in my  
3                    life.' [...] 'It is not a fun  
4                    experience for me. I actually don't  
5                    think it's the best use of my  
6                    skills, and I don't have the right  
7                    personality for it.'"

8                    So he is talking about a lot of  
9                    different things in this article.

10                   Also, you know, his -- he came from  
11                   Cerberus, and you know, his comments, reputation  
12                   and business dealings are pretty consistent with,  
13                   you know, with Cerberus, which was a highly  
14                   successful company. I wouldn't be surprised to see  
15                   the same quote from anybody from Cerberus or  
16                   Fortress or Garrison at that time period or any of  
17                   the other sort of lenders that were in his  
18                   neighbourhood from a business perspective.

19                   "Neighbourhood", I don't mean literally  
20                   neighbourhood, but neighbourhood of marketplace.

21                   165                   Q. All right, I'm ready to move on to  
22                   paragraph 6.1 of your report, sir. You have that I  
23                   think in front of you. And I want to focus, and  
24                   there is a lot in here that I don't need you to  
25                   talk to, but I want to -- you cite continued

1 viability of a lender as a perceived risk for  
2 borrowers who deal with them, right? That is one  
3 of the things you refer to here?

4 A. The sentence I believe is:

5 "When a lender is perceived to  
6 have engaged in potential criminal  
7 activity, the lender is considered a  
8 bad credit risk because its  
9 continued viability is perceived to  
10 be at risk."

11 166 Q. Right, and I want to focus, as I  
12 say, on the continued viability as a perceived  
13 risk. Are you with me?

14 A. Yes, sir.

15 167 Q. And you say that the incentive for  
16 borrowers to avoid a lender with a perceived risk  
17 of continued viability is, quote, "overwhelming";  
18 that is how you characterize it?

19 A. Or as you have corrected the  
20 grammar, "are overwhelming", but yes.

21 168 Q. Forgive me. It is in my nature.  
22 In any event --

23 A. It was a good correction. I  
24 appreciate that, and I am saying that sincerely.

25 169 Q. We can agree, or I suggest to you,

1            anyway, that Callidus was not in 2017 perceived as  
2            a continued viability risk?

3                            A.    I would not agree with that.

4    170                    Q.    You would not agree with that?

5                            A.    That is correct.

6    171                    Q.    Prior to the Wall Street Journal  
7            articles, would you say it was already perceived to  
8            be a continued viability risk in 2017?

9                            A.    No.

10    172                    Q.    The Wall Street Journal article  
11            does not suggest anything about Callidus being a  
12            continued viability risk, does it?

13                            A.    So there is a -- I don't know if  
14            it is correlated or causational, but in my  
15            experience, financial services companies that are  
16            accused of criminal behaviour and then in fact  
17            potentially charged with criminal charge are  
18            always or always have -- always are perceived to be  
19            poor credit risks, you know, from a viability  
20            perspective.

21                                   So this article which sets forth that  
22            they were -- you know, that there is an  
23            investigation and the police car there, you know,  
24            in the picture, that kind of sets the tone for this  
25            company may not be around too much longer. I mean,

1 the only thing worse they could have done was to  
2 have staged a perp walk in the picture.

3 173 Q. Okay, so you say. We can move on.

4 At paragraph 6.7 of your report you use  
5 the term "weak lenders", and I just want to know  
6 was Callidus, prior to the Wall Street Journal  
7 article, was it perceived as a weak lender?

8 A. I don't think so, but certainly  
9 with the publication of the Wall Street Journal  
10 article, it immediately became a weak lender.

11 174 Q. And when you use that term "weak  
12 lender", what is included in that? Is that the  
13 same as not creditworthy or a viability risk? Is  
14 that the same thing?

15 A. Yeah, they are all meant to be  
16 part and parcel, yes.

17 175 Q. And I suggest to you that there is  
18 no suggestion in the Wall Street Journal article  
19 that Callidus was not creditworthy? You don't  
20 agree with that?

21 A. As soon as there is a suggestion  
22 that there is investigation into financial crimes,  
23 they -- you know, it is a little like an assassin's  
24 job. You know, someone is totally healthy until  
25 they get shot in the head. After that they are not

1 so healthy. They may live for awhile, but they are  
2 not so healthy after taking a bullet, and this was  
3 the rough equivalent of that sort of a bullet.

4 176 Q. We can agree, can we, that the  
5 allegations that were reported in the Wall Street  
6 Journal articles were actually being made, and we  
7 went over this earlier, by borrowers, by Callidus's  
8 own borrowers in the marketplace? You are aware of  
9 that?

10 A. I am not really sure how to  
11 respond to that. I am not really sure how to  
12 respond to that. You know, my report and my  
13 opinion really revolves around this article and  
14 what -- and the effect on a lender of this sort of  
15 an article. And so I am not really sure about how  
16 to respond to questions about allegations that may  
17 or may not have occurred, atmospheric in the  
18 marketplace that may or may not have been around,  
19 and you know, I think it is outside the scope. It  
20 would be speculation on my part without looking  
21 more, and I think it is outside the scope of my  
22 report.

23 177 Q. I think you have misunderstood my  
24 question. The allegations that we are talking  
25 about that are reported in the Wall Street Journal

1 article were allegations that were being made by  
2 Callidus's borrowers. That is what is being  
3 reported, right? And they were being made to  
4 Canadian security regulators and law enforcement,  
5 as a factual matter? You are aware of the facts of  
6 this case, I take it, Mr. Sunshine?

7 A. So earlier you said three out of  
8 four, and I took it on faith that three out of four  
9 of the whistleblower complaints were from  
10 borrowers, and I pointed out that the article said  
11 at least four individuals have filed whistleblower  
12 complaints.

13 I am not sure that the article  
14 identified that - in fact, I am pretty sure it  
15 didn't - that three out of four of the  
16 whistleblowers were borrowers.

17 So no, I am not aware of that, and I  
18 think that you perhaps in your question may have  
19 overstated the facts a little bit, or not, because,  
20 you know, what I really know is what is in the  
21 article.

22 178 Q. Yes, and I may know the facts a  
23 little better than you do, in fairness, Mr.  
24 Sunshine.

25 A. I am certain that you do know the

1 facts. I have not -- I have a very limited role in  
2 this case, so I am sure that you do know the facts  
3 more than I do.

4 But your question was, was I aware that  
5 it had been reported or that it was known that  
6 three out of -- you know, that the whistleblower  
7 complaints or these accusations were by borrowers,  
8 and the article says four individuals. It doesn't  
9 identify them as borrowers.

10 179 Q. All right. We can leave it there.  
11 That is fine.

12 Can I suggest to you that as an advisor  
13 to borrowers, it is important to you to know when  
14 such allegations are being made by borrowers  
15 against a lender that your clients are thinking of  
16 dealing with; you'll agree with that, surely?

17 A. I'm sorry, can you repeat the  
18 question?

19 180 Q. As an advisor to borrowers, it is  
20 important to you, sir, to know when allegations of  
21 this nature are being made by borrowers against a  
22 lender that your clients are thinking of dealing  
23 with, considering dealing with?

24 A. Not necessarily.

25 181 Q. You don't want to know whether

1           there are allegations of fraud being made to  
2           regulators on the part of a lender that your  
3           clients might be about to deal with?

4                   A.    That is -- well, the answer is  
5           absolutely to the second question, but that is not  
6           the question you asked in the first question.  Once  
7           there is an allegation of fraud and it is reported  
8           in the Wall Street Journal with a police cruiser,  
9           you know, and the colour picture of a police  
10          cruiser, it is game over, and that is a  
11          different -- that is really the second question  
12          that you asked.  The first question was very  
13          different.

14   182                   Q.   Well, actually, both questions  
15          were about the underlying facts.  It is important  
16          to you as an advisor, whether they are reported in  
17          the Wall Street Journal or not, it is important to  
18          you as an advisor to know that they are being made,  
19          isn't it?

20                   A.    So two things about that.  
21                   The first is the fact that it is in the  
22          Wall Street Journal is extraordinarily significant.

23   183                   Q.   Not my question, sir.  Not my  
24          question.

25                   A.    With all due respect, sir, I get

1 to answer the questions.

2 184 Q. You are not doing so, but go  
3 ahead.

4 MR. MOORE: I disagree. Let him answer  
5 the questions. Don't interrupt him. You can take  
6 the position or argue later that he didn't answer  
7 the questions. Don't interrupt his answers.

8 BY MR. TUNLEY:

9 185 Q. It is not an answer, but go ahead.

10 A. Counsellor, can you read back the  
11 exact words of your question?

12 186 Q. The reporter can do that for you.

13 THE COURT REPORTER: So the last  
14 question was:

15 "Question: Well, actually,  
16 both questions were about the  
17 underlying facts. It is important  
18 to you as an advisor, whether they  
19 are reported in the Wall Street  
20 Journal or not, it is important to  
21 you as an advisor to know that they  
22 are being made, isn't it?"

23 THE DEPONENT: Thank you. I appreciate  
24 that.

25 Okay, so in your question, Counsellor,

1           you predicated that on "as reported in the Wall  
2           Street Journal or not", and the first part of your  
3           question I am commenting on or answering, which is  
4           it is extraordinarily important that it was  
5           reported in the Wall Street Journal and that is not  
6           an assumption that one can just assume away, to put  
7           context on the question -- on the answer.

8                         And second, yeah, it is important to  
9           know that they were made because as soon as those  
10          sort of allegations are made and reported, and  
11          reported in the Wall Street Journal, the  
12          publication, if you will, informally of record for  
13          the entire business community, that is -- both of  
14          those are important to know, that the allegations  
15          were made and where they were reported.

16                        The Wall Street Journal holds special  
17          credibility in the business world, and we cannot  
18          ignore that.

19                        BY MR. TUNLEY:

20          187                        Q.     Coming to paragraph 6.9.9, you say  
21          in sort of summary that as a result of the  
22          allegations, not a single borrower would deal with  
23          Callidus; that's your wording, right?

24                        MR. MOORE:  No, that is not what he  
25          said.  Read the paragraph.  If you are going to

1 take him to a paragraph, don't characterize the  
2 paragraph. Read it.

3 THE DEPONENT: Would you like me to  
4 read it, Counsellor?

5 BY MR. TUNLEY:

6 188 Q. No, I'll take your counsel's  
7 suggestion. You say -- I am going to wait until  
8 your counsel has stopped answering his phone.

9 MR. MOORE: No, I am turning it off,  
10 sorry.

11 BY MR. TUNLEY:

12 189 Q. All right, in the second sentence  
13 you say:

14 "In my entire career, I cannot  
15 think of a single borrower, that was  
16 represented by counsel, that would  
17 have voluntarily entered into a  
18 business relationship with a  
19 financial institution that was  
20 [...] engaged in the matters  
21 alleged in the Wall Street Journal  
22 article, right?

23 That is what you said?

24 A. No, that is not what I said,  
25 Counsellor. If we are going to read the sentence,

1 can we read it accurately, please?

2 190 Q. Go ahead.

3 A. "In my entire career, I cannot  
4 think of a single borrower, that was  
5 represented by counsel, that would  
6 have voluntarily entered into a  
7 business relationship with a  
8 financial institution that was  
9 accused of engaging in fraud,  
10 accounting misstatements, financial  
11 crimes, security law violations and  
12 deceptive lending practices."

13 That is what I said.

14 191 Q. All right. Are you aware, sir,  
15 that since those allegations were made public by  
16 the Wall Street Journal, in fact, many borrowers  
17 have continued to deal with Callidus and its  
18 successor and many still do?

19 A. So let's cabin that off into two  
20 parts.

21 Successor I know nothing about, and so  
22 I can't even begin to comment on that. And  
23 successor could also mean a different entity, in  
24 which case that wouldn't surprise me in the  
25 slightest after the entity went private. Different

1 management, you know -- I don't know anything about  
2 what happened after -- I don't know anything about  
3 what happened.

4 And I do know that they entered into  
5 three loan agreements post-article. I don't know  
6 if they were represented by counsel, had a previous  
7 relationship with the company, previous  
8 relationship with Mr. Glassman.

9 I think that sentence could have been a  
10 little more artfully drafted, as I look at it  
11 again. First, I would probably have put in there  
12 "I cannot think of a single legitimate borrower",  
13 and then I would have cabined it off a little bit  
14 to exclude potential previous relationships. But  
15 the meaning and import is still the same.

16 192 Q. All right, well, so you say. And  
17 that, for the record, subject to the refusals that  
18 have been recorded on the transcript, those are my  
19 questions for you today, Mr. Sunshine. There are  
20 other counsel lined up who will ask you some  
21 questions, so don't go away.

22 A. I wouldn't dream of it. Thank  
23 you. Thank you, Counsellor.

24 MR. MOORE: So who is next?

25 MR. MILNE-SMITH: I have a couple of

1 questions, if no one else does.

2 MR. MOORE: Okay, I am not objecting.  
3 I am just mindful of the clock, that is all. I  
4 understood that Mr. Lascaris or his associate may  
5 have a few questions, but Matthew, go ahead.

6 MR. MILNE-SMITH: I am happy to let  
7 anyone else jump in. I don't expect to be any more  
8 than five minutes.

9 MR. MOORE: No, no, go ahead.

10 CROSS-EXAMINATION MR. MILNE-SMITH:

11 193 Q. So, Mr. Sunshine, my name is  
12 Matthew Milne-Smith. I am counsel to West Face and  
13 Greg Boland in these proceedings.

14 I am going to try to share my screen  
15 here, and hopefully this works. Forgive me, I'm  
16 not as good at this as some others.

17 Okay, do you see that?

18 A. No, sir. I see a shadow of  
19 yourself.

20 194 Q. You don't see an affidavit of  
21 David Sutin?

22 A. No, sir.

23 195 Q. Are you a co-host? You need to be  
24 a co-host to be able to share your screen.

25 (DISCUSSION OFF THE RECORD.)

1 BY MR. MILNE-SMITH:

2 196 Q. So, Mr. Sunshine, as you can see  
3 from what is shown on the screen here, this is an  
4 affidavit of a gentleman by the name of David  
5 Sutin, S-u-t-i-n, sworn on September 12, 2019.

6 And just for the sake of the record, I  
7 can advise that it is Exhibit "M" as in "Matthew"  
8 to the supplementary affidavit of Mr. Anderson in  
9 this proceeding, which was sworn on August 20th of  
10 2020.

11 Have you ever seen this affidavit  
12 before, Mr. Sunshine?

13 A. Maybe. I would need to go through  
14 my list of affidavits, you know, and compare it to  
15 what I had, what I did review to know the answer to  
16 that. I am not certain as I -- I don't have that  
17 great a recall on every affidavit, so I apologize,  
18 I am not sure.

19 197 Q. Okay, well, you can provide that  
20 answer by way of undertaking, is that all right,  
21 Mr. Moore?

22 U/T MR. MOORE: Yes, that is fine.

23 BY MR. MILNE-SMITH:

24 198 Q. So why don't we just walk through  
25 a couple of paragraphs of this affidavit and see if

1 it jogs your memory.

2 So paragraph 1 which is on the screen  
3 there, it says that Mr. Sutin is an:

4 "[...] independent director of  
5 the applicant, Callidus Capital  
6 Corporation, and the Chair of the  
7 special committee of independent  
8 directors established in December  
9 2016 to oversee a privatization  
10 process directed at securing a  
11 transaction involving the sale of  
12 all or a portion of the outstanding  
13 common shares of Callidus or its  
14 business."

15 Do you see that?

16 A. Yes, sir.

17 199 Q. And if we could go to paragraph --  
18 well, we can see the start of paragraph 2 on this  
19 page, and he says that he is swearing this  
20 affidavit in support of:

21 "a motion for advice and  
22 directions in this application [...]  
23 to seek this Court's approval of the  
24 proposed arrangement [...]"

25 And then under subparagraph (b), an

1 application for final approval of the arrangement.

2 So I am going to put it to you that  
3 this affidavit was sworn in support of the Plan of  
4 Arrangement by which Callidus was privatized; do  
5 you accept that?

6 A. It seems to be what or -- yes.

7 200 Q. Okay, and you are aware of  
8 Callidus's privatization process which occurred in  
9 the late or latter part of 2019, the transaction  
10 itself at least?

11 A. Yes, generally. I didn't see it  
12 in detail, but generally, of course.

13 201 Q. And does this jog your memory yet  
14 as to whether you would have reviewed Mr. Sutin's  
15 affidavit?

16 A. No, it does not.

17 202 Q. Do you accept that Mr. Sutin,  
18 given his qualifications and given that he has been  
19 put forward as an affiant for the company, would be  
20 in a position to understand Callidus's financial  
21 condition?

22 A. Presumably.

23 203 Q. And do you also accept that given  
24 those qualifications, he would also presumably be  
25 in a position to understand the causes for that

1 financial condition?

2 A. Yes.

3 204 Q. If we could go to paragraph 15,  
4 please. So you will see here Mr. Sutin explains  
5 the reasons for the length of time the  
6 privatization took; as he said in the first  
7 paragraph, it started in 2016. So he is explaining  
8 why it took so long and why there is the lack of an  
9 alternative offer. So he says:

10 "The Arrangement has resulted  
11 from negotiation of a transaction by  
12 the Special Committee, CCGI", that  
13 is Catalyst, "and Braslyn following  
14 a lengthy process to solicit  
15 privatization proposals for Callidus  
16 commenced in September 2016. The  
17 length of time over which the  
18 Privatization Process and  
19 negotiation of the Arrangement were  
20 conducted, and the inability to  
21 develop interest of third parties in  
22 addition to Braslyn in a  
23 privatization or other transaction,  
24 were the result of a number of  
25 factors, including the following:"

1                   And then I just want to walk you  
2                   through his subparagraphs here.

3                   So subparagraph (a) refers to the  
4                   operating and financial performance of Callidus  
5                   declining significantly; do you see that?

6                   A.     Yes.    Counsellor, if I might  
7                   interrupt for one second?

8     205            Q.     Yes.

9                   A.     I have reviewed this.

10    206            Q.     You have not?

11                   A.     No, I have.

12    207            Q.     Oh, you have?

13                   A.     Yes.    Yes, when we got to  
14                   paragraph 15, I had reviewed this.  I didn't  
15                   recognize it based upon the cover sheet, but I have  
16                   reviewed this.

17    208            Q.     Okay, you have reviewed this, but  
18                   you did not refer to it in your report?

19                   A.     That is correct.

20    209            Q.     Okay, so just going back to where  
21                   we were, you see that subparagraph 15(a) refers to  
22                   a significant decline in the operating and  
23                   financial performance of Callidus; do you see that?

24                   A.     Yes, sir.

25    210            Q.     And then he gives a number of

1 factors why that operating and financial  
2 performance declined, and number "i" is:

3 "[...] ongoing operating losses  
4 and negative cash flows from  
5 operations resulting from  
6 non-performing loans [...]"

7 Do you see that?

8 A. Yes, sir.

9 211 Q. And Roman numeral "ii":

10 "negative operating performance  
11 of, and the extent of the capital  
12 required by, a number of the  
13 non-core subsidiaries."

14 Do you see that?

15 A. Yes, sir.

16 212 Q. And number "iii":

17 "deterioration in the financial  
18 condition of Callidus, leading to an  
19 inability to obtain additional  
20 financing to invest in Callidus's  
21 existing business and to pursue new  
22 loan origination."

23 You saw that?

24 A. Yes, sir.

25 213 Q. And he refers to a number of

1 senior personnel issues, including medical leave of  
2 Mr. Glassman, the resignation of the interim CEO,  
3 Patrick Dalton, and the inability to recruit a new  
4 CEO and the departure of the Chief Credit Officer,  
5 James Rogers; do you see all that?

6 A. Yes, sir.

7 214 Q. And you will see fifth:

8 "increasing inability to retain  
9 personnel despite retention  
10 programs"?

11 A. Yes, sir.

12 215 Q. And then subparagraph (b) is a  
13 decline. It says:

14 "As a result of the decline in  
15 Callidus' operating and financial  
16 performance, which necessitated the  
17 elimination of the dividend paid on  
18 the Shares, the market price of the  
19 Shares declined significantly over  
20 this period."

21 And it says:

22 "This decline in operating and  
23 financial performance was a  
24 significant factor in the inability  
25 of Callidus to negotiate a

1 privatization proposal with any  
2 third party other than Braslyn,  
3 which was in a unique position as an  
4 existing Shareholder with a  
5 significant investment in the  
6 Shares."

7 Do you see that?

8 A. Yes, sir.

9 216 Q. And subparagraph (c) talks about  
10 internal forecasts of the management of Callidus,  
11 and then talks about the participation of Catalyst  
12 representatives in the management of Callidus and  
13 their awareness of those internal forecasts. And  
14 going down to the bottom of that paragraph, right  
15 there in the last sentence:

16 "As the internal forecasts in  
17 place prior to the preparation of  
18 Callidus' 2018 financial statements  
19 did not anticipate the extent of the  
20 decline in the Corporation's  
21 operating and financial performance  
22 referred to above, they implied a  
23 value for the Shares that was  
24 typically higher than price levels  
25 at which third parties were prepared

1 to negotiate a transaction."

2 So you see that difference between the  
3 Catalyst and the third party view of the prospects  
4 of the company?

5 A. Yes, sir.

6 217 Q. And then subparagraph (d), if I  
7 can summarize and hopefully you'll agree with me,  
8 is referring to the Catalyst control position in  
9 the company and the unique circumstances that  
10 presents in terms of finding a third party buyer?

11 A. Yes, sir.

12 218 Q. So having reviewed -- and you can  
13 see that is the end of the paragraph. There are no  
14 more factors listed there.

15 Having reviewed that by way of  
16 refresher and also having reviewed this affidavit  
17 in preparation of your report, as you just told me,  
18 you would agree with me that there is no reference  
19 in Mr. Sutin's affidavit to the Wall Street Journal  
20 article?

21 A. Yes, sir.

22 219 Q. And you didn't see fit in your  
23 report to refer to the affidavit of the Chair of  
24 the Special Committee of Callidus as to why they  
25 were in the condition they were in at the end of

1 2019; is that fair?

2 A. I'm sorry, can you repeat the  
3 question?

4 220 Q. Having reviewed this affidavit  
5 both in preparing your report and the excerpts that  
6 we have taken you through here today, is it fair to  
7 say that you did not see fit in drafting your  
8 report to refer to Mr. Sutin's affidavit as to why  
9 Callidus was in the position it was in at the end  
10 of 2019?

11 A. That would be accurate.

12 MR. MILNE-SMITH: Thank you, those are  
13 all my questions.

14 MR. LUNG: So, David, I don't have any  
15 further questions beyond that, so unless somebody  
16 else has some questions, I believe A.J.

17 Freedman --

18 CROSS-EXAMINATION BY MR. FREEDMAN:

19 221 Q. Yes, I'll be very, very brief.

20 Hi, Mr. Sunshine, I am counsel for  
21 Bruce Livesey, a Defendant in this action. I would  
22 just like to refer you to the Plaintiff's Fresh as  
23 Amended Statement of Claim. I will attempt to  
24 share it. Sorry, just give me one second.

25 Can you see my screen now? It is not

1 popping up for me.

2 A. Yes.

3 222 Q. Yes. Okay, so, Mr. Sunshine, the  
4 highlighted portion of paragraph 177 refers to  
5 Mr. Livesey's two articles that he published with  
6 the Southern Investigative Reporting Foundation; do  
7 you see that?

8 A. Yes, can you stop moving the --

9 223 Q. Yes, sorry about that.

10 A. And let me read the sentence,  
11 please.

12 224 Q. Yes.

13 A. [Witness reviews document.]  
14 Yes.

15 225 Q. So my question is, were you asked  
16 to examine Mr. Livesey's articles referenced in  
17 paragraph 177 of the Statement of Claim in  
18 informing your report, to inform your report in any  
19 way?

20 A. I'm sorry, you broke up.

21 226 Q. My question is very simply whether  
22 you were asked to examine Mr. Livesey's articles  
23 referenced in paragraph 177 of the Statement of  
24 Claim?

25 A. Was I asked to? No. My

1 recollection is I was able to find some of that,  
2 some of Mr. Livesey's articles.

3 227 Q. Okay, so you have reviewed them?

4 A. I don't remember if I was able --  
5 I don't remember exactly which of Mr. Livesey's  
6 articles I was able to get, but I did review some  
7 things that Mr. Livesey has written.

8 228 Q. Okay, so is it correct to say at  
9 this time you are not in a position to offer an  
10 opinion on Mr. Livesey's articles?

11 MR. MOORE: Well, I just want to  
12 clarify the question. It is kind of open-ended.  
13 What kind of opinion are you talking about?

14 BY MR. FREEDMAN:

15 229 Q. An opinion in proportion to the  
16 opinion on the Wall Street Journal articles as to  
17 the effects, any effects that the articles may have  
18 had to Callidus, Mr. Livesey's articles, sorry.

19 A. So I am going to -- I apologize, I  
20 am not supposed to ask you questions, but I am  
21 going to paraphrase your question, if that is okay.

22 230 Q. That is all right, uhm-hmm.

23 A. If I understand correctly, you are  
24 asking me if I reviewed Mr. Livesey's articles and  
25 am prepared to express an opinion as to how

1 Mr. Livesey's articles would have affected  
2 Callidus, broadly speaking?

3 231 Q. Yes, if you are in a position to  
4 offer that opinion, yeah.

5 A. No, that is outside the scope of  
6 my report and my opinions.

7 MR. FREEDMAN: Okay, thank you very  
8 much. That is all for me.

9 MR. MOORE: Does anyone else have any  
10 questions? I assume from the silence that no one  
11 else has any questions they want to ask.

12 MR. BAUMANN: This is Baumann. Sorry,  
13 Mr. Moore, I wasn't booked in, but would I be  
14 allowed five minutes?

15 MR. MOORE: Go ahead.

16 CROSS-EXAMINATION BY MR. BAUMANN:

17 232 Q. Mr. Sunshine, my name is Kevin  
18 Baumann. I'm a self-represented Defendant. And my  
19 apologies to everyone. I am away in Texas and so I  
20 am just on the cell phone. Can you hear me okay?

21 A. Yes, sir.

22 233 Q. Okay, great. Mr. Sunshine, when  
23 you were doing your report for the Plaintiffs, did  
24 you do any sort of internet research, Google to  
25 find any information relating to Callidus or

1 Catalyst?

2 A. I'm sorry, to who?

3 234 Q. Did you do any Google research to  
4 find information relating to the Plaintiffs?

5 A. Yes.

6 235 Q. Okay. Did you come across any  
7 websites that were active in acting as libraries  
8 relating to Callidus, one of them created by myself  
9 Callidus Capital litigation?

10 A. Yes, sir.

11 236 Q. You came across that?

12 A. Yes, sir.

13 237 Q. Okay, Mark, have you reviewed all  
14 of that, Mr. Sunshine, all of the vast claims and  
15 counterclaims that were within that website?

16 A. Well, I am not sure what you mean  
17 by "reviewed". I read it. I read your website.

18 238 Q. Okay. So basically it is a  
19 library of the majority of the Plaintiff's claims  
20 with borrowers lumped in a nice convenient little  
21 spot. Now I --

22 MR. MOORE: Well, I don't want by my  
23 silence to acquiesce in that characterization of  
24 your website, Mr. Baumann, but carry on.

25 BY MR. BAUMANN:

1 239 Q. Okay. Did you take any of that  
2 information or challenges relating to the Plaintiff  
3 into account when you prepared the report?

4 A. I am not sure what you mean by  
5 "into account". Can you be more specific?

6 240 Q. Okay, sir, you built a report.  
7 There was no mention relating to two websites that  
8 are acting as libraries to all of the lawsuits, and  
9 one is Callidus Capital litigation and one is  
10 Catalyst litigation. So there is two of them out  
11 there. They have been out there for some time.  
12 Actually, I think mine is the second hit you'll  
13 find on Google when you Google "Callidus".

14 So you had no opinion relating to them,  
15 so did you consider them at all relating to some of  
16 the issues that Callidus and Catalyst have in  
17 Canada relating to borrowers and borrower  
18 complaints, or was that just not taken into account  
19 or not even considered?

20 A. Yeah, I took that into account.

21 241 Q. Okay, so what is your opinion?  
22 Does it mean nothing then? Is that all untrue?

23 MR. MOORE: Well, those are two  
24 different questions.

25 THE DEPONENT: The -- well, the level

1 of vitriol was somewhat surprising.

2 BY MR. BAUMANN:

3 242 Q. Court documents can be. So why  
4 would they be surprising, Mr. Sunshine?

5 A. I'm sorry, Mr. Baumann, I wasn't  
6 finished. I want to choose my words carefully.

7 The whole nature of it is the lender's  
8 fault my business collapsed and in some cases of  
9 some of the borrowers misdirected funds or diverted  
10 funds is typical of, in my experience, of borrowers  
11 that aren't taking responsibility for their  
12 businesses collapsing and then doing something bad  
13 like diverting funds.

14 You know, in a U.S. context, I guess  
15 you would get sued for slander and defamation for  
16 that if the lender chose to pursue that, which is  
17 kind of what we are, in a broad sense, in the  
18 Canadian sense what we are here for, but I didn't  
19 find -- I didn't find the borrower accusations  
20 of -- the borrower accusations to be out of the  
21 ordinary for failed borrowers, you know, and  
22 executives of failed borrowers who have personal  
23 guarantees being enforced against them. It is kind  
24 of par for the course if you are an asset-based  
25 lender.

1       243                   Q.    And, Mr. Sunshine, did you --  
2                   since you say you reviewed them, did you find the  
3                   tie amongst all of the borrowers within the  
4                   counterclaims and whatnot that there is one  
5                   particular tie amongst all of them of Callidus  
6                   withholding availability? Did you see that?

7                   A.    I did, but again, that is typical  
8                   of revolving loans that go into default and the  
9                   lender having discretion to withhold, withhold  
10                  availability. That is, again, par for the course  
11                  for asset-based lending.

12       244                   Q.    What is your --

13                  A.    So I didn't find that unusual  
14                  either.

15       245                   Q.    What is your opinion, Mr.  
16                  Sunshine, with a lender acting unreasonable  
17                  relating to sole discretion? You know, once that  
18                  loan is signed, they could have given zero dollars  
19                  or 100 million dollars. What is your position  
20                  relating to this file and this report that you  
21                  built, because it is the complete tie behind this.  
22                  It was the business --

23                  MR. MOORE: I am going to register my  
24                  objection to that question --

25                  MR. BAUMANN: Go ahead.

1 MR. MOORE: -- to tie it to the scope  
2 of the report, and it is certainly not relevant to  
3 what the witness is here to be cross-examined  
4 about.

5 But, Mr. Sunshine, if you feel you are  
6 able to answer that question subject to that  
7 objection, that is fine. But I am not going to go  
8 too far down this road.

9 THE DEPONENT: That is a question that  
10 is a case-by-case answer, and without delving into,  
11 which I did not do, the individual facts and  
12 circumstances, credit file, you know, what was  
13 represented prior to closing, what happened  
14 post-closing, I can't -- it would be rank  
15 speculation for me to give any sort of an answer to  
16 that.

17 BY MR. BAUMANN:

18 246 Q. Okay, great. Mr. Sunshine, I  
19 don't want to waste any more of your time. I have  
20 one more question. There is one key factor. Did  
21 you review the situation relating to Callidus's  
22 former executive Mr. Craig Boyer, or -- yes, Craig  
23 Boyer. Are you aware of Callidus's issues with  
24 Mr. Boyer?

25 A. You totally broke up. I didn't

1 get any part of that question, I'm sorry.

2 247 Q. Are you aware of the lawsuit  
3 between Callidus, Catalyst and Mr. Boyer?

4 A. I'm sorry, Callidus, Catalyst and  
5 Mr. Boyer?

6 248 Q. Yes.

7 A. Is that what you were asking?

8 249 Q. Yes. Are you aware of that  
9 lawsuit?

10 A. If you could just refresh my  
11 recollection for one second, Mr. Boyer was who?

12 250 Q. Okay, Mr. Boyer is accused by  
13 Callidus and Catalyst of misrepresentation.

14 MR. MOORE: Mr. Baumann, just to be  
15 clear, and I don't want to interrupt you, but to  
16 try to help with the record here, Catalyst is not a  
17 party to that lawsuit.

18 BY MR. BAUMANN:

19 251 Q. Okay, I'll accept that. I wasn't  
20 aware of that. Sorry, Mr. Moore.

21 A. And what was Mr. Boyer's -- just  
22 what was Mr. Boyer's position, if I might? I'm  
23 just having a mental block for one second.

24 252 Q. Yeah, Mr. Boyer misrepresented  
25 some loans and Callidus sued him, so I guess my

1 question would have been if both parties were  
2 involved as Plaintiffs, why did that not -- why did  
3 you not take that into account relating to  
4 reputation as far as anyone ever wanting to borrow  
5 from a company who is suing one of their own  
6 executives for fraud --

7 A. Okay, that is what I wondered.  
8 Thank you. I was just trying to just --

9 253 Q. And unfortunately, Mr. Moore, I  
10 don't buy it. One party may not have been named,  
11 but they are all the same anyways, so --

12 MR. MOORE: No, they are not all the  
13 same, so let's not get into a debate about that,  
14 Mr. Baumann --

15 MR. BAUMANN: They are driven by the  
16 same guy. Don't give me that.

17 THE DEPONENT: Mr baumann, I --

18 MR. BAUMANN: Actually, you know what,  
19 Callidus don't even exist anymore. I have got a  
20 valid counterclaim and there is no assets, so  
21 what --

22 MR. MOORE: No, no, no, that is not  
23 true. Mr. Baumann, let's not you and I get into a  
24 debate back and forth, okay. But when you are  
25 putting questions about a particular lawsuit, I am

1 just suggesting that it should be accurate and it  
2 should refer to who the parties are, and the party  
3 to that lawsuit is Callidus.

4 THE DEPONENT: And all I was --

5 BY MR. BAUMANN:

6 254 Q. Okay, and --

7 A. Mr. Baumann, let me answer your  
8 question. All I was asking was, and I apologize,  
9 in my mind, was was Boyer the executive.

10 So now that I remember who Boyer was,  
11 your question is, if can paraphrase, and tell me if  
12 I got it right or not, did I take that into  
13 account?

14 255 Q. Yes.

15 A. Yes.

16 256 Q. So that it would not matter to  
17 potential borrowers knowing that the Plaintiff,  
18 Callidus, Catalyst, whichever one sued Mr. Boyer,  
19 was suing one of their own internal people for  
20 fraud, or the light version, misrepresentation, or  
21 do they do that in the U.S.?

22 A. I don't think there is a  
23 distinction between U.S. and Canada. It is not a  
24 great fact, but it also to many people suggests  
25 that, unlike other companies, they are not sweeping

1 stuff under the rug when they have bad employees or  
2 dishonest employees. And you know, there are a lot  
3 of companies that sweep stuff under the rug.

4 So it could be taken any number of  
5 ways. It is not wholly relevant, however, to --  
6 you know, it didn't undermine my -- that fact  
7 doesn't undermine my opinion that the article, the  
8 Wall Street Journal articles were the equivalent of  
9 a death knell to the company, you know, in terms of  
10 borrowers and potential borrowers wanting to do  
11 business with them.

12 257 Q. Just to finish off before we go,  
13 and I'm sorry I said we would go previously, but  
14 last question, Mr. Sunshine.

15 Did you do any research to find out how  
16 many lawsuits Mr. Glassman and his companies were  
17 involved in to put a tie to reputation as far as  
18 potential borrowers and new borrowers? Do you have  
19 any idea how many lawsuits Mr. Glassman and his  
20 companies are involved in?

21 A. I can't give you an exact count,  
22 but I knew before I accepted this engagement that  
23 Mr. Glassman was fairly litigious. But having said  
24 that, you know, that is not a unique characteristic  
25 for high yield, high risk lenders. It is a

1 characteristic that is more common than not.

2 MR. BAUMANN: Okay, that's it. Thank  
3 you very much, Mr. Sunshine. You have a great day.

4 THE DEPONENT: Thank you very much.

5 RE-EXAMINATION BY MR. MOORE:

6 258 Q. Anyone else? Well, I take the  
7 silence as a no. I just have a couple of very  
8 brief questions in re-examination.

9 Mr. Sunshine, you were asked questions  
10 about the article and about whistleblower  
11 complaints. I am not going to go over those  
12 questions with you.

13 In your experience in the United  
14 States, are the existence of whistleblower  
15 complaints normally confidential or are they  
16 normally widely published?

17 A. Confidential.

18 259 Q. And you were asked questions about  
19 the Sutin affidavit and several references in that  
20 affidavit to the declining financial performance  
21 and operating performance of Callidus. Do you  
22 recall those questions and that part of the  
23 affidavit?

24 A. Yes, sir.

25 260 Q. And in your opinion, you were

1 referring to the potential impact on borrowers like  
2 Callidus as to their ability to originate new loans  
3 following the Wall Street Journal article?

4 MR. TUNLEY: Just before the witness  
5 answers, I would like to put on the record that  
6 none of these questions are either in form or  
7 substance proper by way of re-examination.

8 BY MR. MOORE:

9 261 Q. Well, we can agree to disagree and  
10 argue about that later.

11 So in your experience, for a lender  
12 like Callidus, what is the effect -- assume that  
13 that lender was not able to originate new loans in  
14 any meaningful way going forward. In your  
15 experience, what impact would that have on the  
16 financial and operating results of such a lender?  
17 Would that be a positive thing or a negative thing?

18 MR. TUNLEY: I am just going to restate  
19 that is a leading question. It is not arising out  
20 of any cross-examination that I have heard, and it  
21 is not proper re-exam.

22 BY MR. MOORE:

23 262 Q. Go ahead, please answer my  
24 question.

25 A. It would obviously be a negative

1            thing. The thing that I found most interesting  
2            about that affidavit, but I wasn't asked the  
3            question, was that all of the --

4            263                    Q.    You know what, Mr. Sunshine,  
5            rather than have a debate with counsel about this,  
6            we can leave that as a matter of argument for some  
7            later time. So you don't have to answer that  
8            question.

9                            A.    Okay.

10           264                   Q.    All right, thank you.

11                            I think that completes Mr. Sunshine's  
12           cross-examination. It is just after 1 o'clock, so  
13           we got it in within the time or less than the time  
14           allocated.

15                            Thank you, Counsel, and thank you, Mr.  
16           Sunshine.

17  
18           -- Adjourned at 1:07 p.m.  
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 15th day of November, 2020.



---

NEESONS, A VERITEXT COMPANY

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

**WORD INDEX**

**< 0 >**

**09** 12:23

**< 1 >**  
**1** 6:5 12:4, 10  
91:2 114:12  
**1.3** 9:3 30:16  
41:4 47:25  
**1.4** 31:10, 20  
32:9  
**1:07** 114:18  
**10** 9:5  
**10:00** 6:1  
**100** 45:10  
106:19  
**101** 46:1  
**102** 4:5 46:10  
**103** 47:7  
**104** 47:18  
**105** 48:7  
**106** 49:4  
**107** 49:16  
**108** 49:23  
**109** 50:3  
**10th** 1:24 47:17  
**11** 9:10 12:4, 11  
**110** 50:17  
**111** 51:15  
**112** 4:6 51:20  
**113** 51:22  
**114** 4:7 52:16  
**115** 52:23  
**116** 53:6  
**117** 54:15  
**118** 55:5  
**119** 55:11  
**12** 9:12 16:10,  
11 90:5  
**12:03** 74:23  
**12:15** 4:15  
74:24  
**120** 55:18  
**121** 56:5  
**122** 56:14  
**123** 56:22  
**124** 57:9  
**125** 57:25  
**126** 58:7  
**127** 58:15  
**128** 59:9  
**129** 59:18  
**13** 9:18 12:4, 11

**130** 60:2  
**131** 60:7  
**132** 60:22  
**133** 61:7  
**134** 61:22  
**135** 62:6  
**136** 62:20  
**137** 63:16  
**138** 64:3  
**139** 64:19  
**14** 9:23  
**140** 66:8  
**141** 66:23  
**142** 67:3  
**143** 67:8  
**144** 68:10  
**145** 68:15  
**146** 69:11  
**147** 70:4  
**148** 70:10  
**149** 70:14  
**15** 9:25 93:3  
94:14  
**15(a)** 94:21  
**150** 70:19  
**151** 70:24  
**152** 71:3  
**153** 71:8  
**154** 71:15  
**155** 71:21  
**156** 72:5  
**157** 72:13  
**158** 72:22  
**159** 73:8  
**15th** 115:18  
**16** 10:6 12:5, 11  
**160** 73:14  
**161** 73:22  
**162** 75:1  
**163** 75:13  
**164** 75:18  
**165** 76:21  
**166** 77:11  
**167** 77:15  
**168** 77:21  
**169** 77:25  
**17** 10:13 18:4  
21:22  
**170** 78:4  
**171** 78:6  
**172** 78:10  
**173** 79:3  
**174** 79:11  
**175** 79:17  
**176** 80:4

**177** 80:23  
100:4, 17, 23  
**178** 81:22  
**179** 82:10  
**18** 10:18  
**180** 82:19  
**181** 82:25  
**182** 83:14  
**183** 83:23  
**184** 84:2  
**185** 84:9  
**186** 84:12  
**187** 85:20  
**188** 86:6  
**189** 86:12  
**19** 11:1  
**190** 87:2  
**191** 87:14  
**192** 88:16  
**193** 89:11  
**194** 89:20  
**195** 89:23  
**196** 90:2  
**197** 90:19  
**198** 90:24  
**199** 91:17

**< 2 >**  
**2** 6:23 12:4, 10  
91:18  
**2.9** 9:5  
**20** 11:11  
**200** 92:7  
**2008** 12:23  
**201** 92:13  
**2016** 91:9 93:7,  
16  
**2017** 33:22  
42:3, 10 43:17  
47:11 56:23  
59:21 60:13  
78:1, 8  
**2018** 97:18  
**2019** 90:5 92:9  
99:1, 10  
**202** 92:17  
**2020** 1:23, 25  
48:15 90:10  
115:18  
**203** 92:23  
**204** 93:3  
**205** 94:8  
**206** 94:10  
**207** 94:12

**208** 94:17  
**209** 94:20  
**20-foot** 33:12, 14  
**20th** 90:9  
**21** 11:14  
**210** 94:25  
**211** 95:9  
**212** 95:16  
**213** 95:25  
**214** 96:7  
**215** 96:12  
**216** 97:9  
**217** 98:6  
**218** 98:12  
**219** 98:22  
**22** 11:20  
**220** 99:4  
**221** 99:19  
**222** 100:3  
**223** 100:9  
**224** 100:12  
**225** 100:15  
**226** 100:21  
**227** 101:3  
**228** 101:8  
**229** 101:15  
**23** 11:25  
**230** 101:22  
**231** 102:3  
**232** 102:17  
**233** 102:22  
**234** 103:3  
**235** 103:6  
**236** 103:11  
**237** 103:13  
**238** 103:18  
**239** 104:1  
**24** 12:17  
**240** 104:6  
**241** 104:21  
**242** 105:3  
**243** 106:1  
**244** 106:12  
**245** 106:15  
**246** 107:18  
**247** 108:2  
**248** 108:6  
**249** 108:8  
**25** 13:1  
**250** 108:12  
**251** 108:19  
**252** 108:24  
**253** 109:9  
**254** 110:6

**255** 110:14  
**256** 110:16  
**257** 111:12  
**258** 112:6  
**259** 112:18  
**26** 13:11  
**260** 112:25  
**261** 113:9  
**262** 113:23  
**263** 114:4  
**264** 114:10  
**27** 13:24  
**27:5** 4:20  
**28** 14:8  
**29** 1:23 9:19  
10:2 14:10  
**29th** 6:17 48:15

**< 3 >**  
**3** 7:8 12:20  
13:12  
**3:29** 47:16  
**3:30** 47:11  
**3:32** 47:16  
**30** 14:24  
**31** 15:6  
**31:24** 4:24  
**32** 15:12  
**32:7** 4:24  
**33** 16:3  
**34** 16:10  
**341** 45:1  
**35** 16:15 48:8  
**35:3** 4:24  
**36** 16:20  
**37** 17:6  
**38** 18:4  
**39** 18:9

**< 4 >**  
**4** 7:11 12:4, 10  
58:22  
**4.1** 7:5, 23  
41:19 44:11  
**4.2** 51:23 55:6  
**40** 18:17 74:21  
**41** 18:19  
**4-10** 1:13  
**42** 19:10  
**43** 20:6  
**43:21** 4:15  
**44** 20:15  
**45** 20:18  
**46** 21:21

**46:6** 4:25  
**47** 24:5  
**48** 24:8  
**49** 25:7

< 5 >

**5** 7:16 58:22  
**5.1** 66:13, 14  
**5.3** 13:11  
**5.4** 12:21  
**50** 25:12  
**51** 26:1  
**52** 26:13  
**53** 26:24  
**54** 27:24  
**55** 28:7  
**56** 28:15  
**57** 29:2  
**58** 29:5  
**59** 29:13

< 6 >

**6** 7:18 8:6  
58:22  
**6.1** 8:5 76:22  
**6.3** 29:15, 20, 22  
**6.7** 79:4  
**6.8** 60:23  
**6.9.3** 8:16  
**6.9.9** 85:20  
**60** 29:22  
**61** 29:25  
**62** 30:9  
**63** 30:14  
**64** 30:25  
**65** 31:3  
**66** 31:9  
**67** 31:17  
**68** 31:20  
**69** 32:5

< 7 >

**7** 8:3  
**70** 32:12  
**71** 32:18  
**72** 33:17  
**73** 34:1  
**74** 34:20  
**75** 35:25  
**76** 36:9  
**77** 36:14  
**78** 37:22  
**79** 37:24

< 8 >

**8** 8:15  
**80** 38:5  
**81** 38:11  
**82** 38:17  
**83** 38:24  
**84** 39:5  
**85** 40:6  
**86** 40:20  
**87** 41:18  
**88** 4:3 42:1  
**89** 42:9

< 9 >

**9** 8:22 47:11  
**9:53** 47:20  
49:14  
**90** 42:15  
**90:22** 4:16  
**91** 42:21  
**92** 43:2  
**93** 43:7  
**94** 43:14  
**95** 43:24  
**96** 44:10  
**97** 44:16  
**98** 44:21  
**99** 4:4 45:5  
**9th** 47:16, 20  
49:14

< A >

**A.J** 3:4 99:16  
**a.m** 6:1  
**ability** 30:17, 23  
32:15, 21 33:21  
34:14 36:5, 18  
41:6, 8 64:6, 17  
113:2  
**absolutely** 21:6  
83:5  
**abusing** 72:11  
**accept** 35:4  
43:19 92:5, 17,  
23 108:19  
**accepted** 111:22  
**access** 10:4  
26:20 27:1, 4  
42:23  
**account** 36:12  
45:6, 9 51:2  
104:3, 5, 18, 20  
109:3 110:13  
**accounting**  
20:25 44:4, 13,

24 45:11 64:25  
87:10  
**accurate** 22:4  
24:20 26:12  
28:14 30:6  
31:8 57:17  
99:11 110:1  
**accurately** 87:1  
**accusations**  
52:9 82:7  
105:19, 20  
**accuse** 67:17  
**accused** 7:20,  
23, 24 41:22, 23  
42:4, 10 62:15  
65:17 68:5  
78:16 87:9  
108:12  
**accusing** 43:9  
**ACF** 1:10  
**achieve** 58:20,  
22  
**acquiesce**  
103:23  
**acting** 103:7  
104:8 106:16  
**action** 50:1  
99:21  
**actions** 9:8  
**active** 103:7  
**activities** 28:24  
**activity** 29:1  
66:18 77:7  
**actual** 58:2  
**ADAM** 1:11  
**add** 24:5 47:4  
**addition** 9:6  
93:22  
**additional** 69:4,  
6 95:19  
**address** 30:19  
46:1  
**Adjourned**  
114:18  
**ADMIRALTY** 1:9  
**adverse** 69:18  
**advice** 91:21  
**advise** 15:16  
62:14 90:7  
**advisement**  
4:18 27:6, 10, 21  
**advisements**  
4:9, 17

**advisor** 70:25  
82:12, 19 83:16,  
18 84:18, 21  
**ADVISORS** 1:8,  
9 15:25 16:5,  
25 19:6  
**affiant** 92:19  
**affidavit** 1:23  
6:6, 9 7:6 9:23  
11:22 19:11  
26:5 45:1 48:8,  
11, 12, 14, 23  
49:5, 9 89:20  
90:4, 8, 11, 17,  
25 91:20 92:3,  
15 98:16, 19, 23  
99:4, 8 112:19,  
20, 23 114:2  
**affidavits** 9:13,  
15, 19 10:2  
17:15, 17 26:18  
67:12 90:14  
**AFFIRMED** 6:3,  
16  
**after** 7:19 9:19  
10:2 39:12  
41:1 53:10  
79:25 80:2  
87:25 88:2  
114:12  
**afternoon** 47:11  
**agency** 54:1  
**aggressive**  
71:23  
**agree** 13:24  
14:17, 22 15:6  
16:15, 19 18:9  
21:21 25:7, 11  
26:1 29:14, 23  
30:14 32:12, 18,  
22 33:19, 24  
41:3 42:1  
45:10 46:2  
55:16 56:5, 9  
57:3 58:1, 9, 11,  
13 59:12, 18  
60:9, 17 64:13,  
21 66:8 69:16,  
21, 22, 23 70:2,  
5, 14 71:21, 25  
72:5 73:24  
75:18 77:25  
78:3, 4 79:20  
80:4 82:16

98:7, 18 113:9  
**agreed** 75:22  
**agreeing** 70:3  
**agreements**  
17:22 18:2 88:5  
**ahead** 37:24  
84:3, 9 87:2  
89:5, 9 102:15  
106:25 113:23  
**AIMF** 1:10  
**ALBA** 1:18 2:10  
**allegation** 68:4  
83:7  
**allegations** 44:1,  
18 50:24 52:3,  
24 53:18, 21  
61:18 65:5, 12  
80:5, 16, 24  
81:1 82:14, 20  
83:1 85:10, 14,  
22 87:15  
**alleged** 71:12,  
14 86:21  
**allegedly** 72:2  
**allocated** 114:14  
**allowed** 102:14  
**alternative**  
62:10 65:23, 24,  
25 93:9  
**alternatives**  
56:21 62:9  
**Amended** 99:23  
**American** 57:21  
**analogy** 22:21,  
22 23:25 24:2  
25:3  
**analysis** 26:3  
28:8 29:9 30:1  
40:25  
**ANDERSON**  
1:11 2:22 90:8  
**ANSON** 1:8, 9,  
10  
**answered** 60:8  
63:22, 25 68:20  
69:12  
**answering** 75:5,  
6 85:3 86:8  
**answers** 84:7  
113:5  
**ante** 34:3  
**anticipate** 97:19  
**anybody** 54:11  
62:14 76:15  
**anymore** 109:19

<p><b>anyway</b> 64:21 78:1 <b>anyways</b> 109:11 <b>apologies</b> 102:19 <b>apologize</b> 13:15 17:15, 17 23:7 28:19 31:16 36:25 59:22 60:6 61:24 90:17 101:19 110:8 <b>apparently</b> 66:11 <b>appear</b> 4:15, 19, 24 27:25 35:19 46:3 65:11 <b>appearing</b> 52:3 <b>appears</b> 45:21 46:11 47:21 <b>Appendix</b> 26:21, 22 27:7 <b>applicant</b> 91:5 <b>application</b> 91:22 92:1 <b>applies</b> 25:25 29:17 69:25 <b>apply</b> 40:25 <b>appreciate</b> 8:2 21:15 35:8 45:18 53:14 69:6 77:24 84:23 <b>approach</b> 11:14 <b>appropriate</b> 18:14 <b>approval</b> 91:23 92:1 <b>approximately</b> 74:6 <b>argue</b> 46:19, 23 69:14 84:6 113:10 <b>argument</b> 114:6 <b>arising</b> 113:19 <b>arrangement</b> 91:24 92:1, 4 93:10, 19 <b>arrangements</b> 17:2, 13, 22 <b>arrested</b> 55:2 <b>art</b> 21:3 <b>artfully</b> 88:10 <b>article</b> 9:1, 7 12:21, 22 19:16,</p>	<p>20 20:2, 4 26:8, 16 30:17 31:13 32:19, 24, 25 33:1, 7, 11, 23 34:2, 7, 13 37:5 40:4, 12 41:1, 14 42:22, 24 43:1 44:3 47:8, 9, 21 48:9 49:13, 15 50:18 51:9 52:25 61:12, 15, 19 62:3 63:1, 7, 11, 21 64:5, 9, 11, 14, 16 65:6 66:3 72:25 73:9, 10, 19 74:12, 15 75:2, 3, 7, 16, 24 76:9 78:10, 21 79:7, 10, 18 80:13, 15 81:1, 10, 13, 21 82:8 86:22 98:20 111:7 112:10 113:3 <b>articles</b> 16:11, 12 18:5 19:16, 17 30:2, 22, 23 32:25 36:21 38:14, 21 39:23 41:21 73:12 78:7 80:6 100:5, 16, 22 101:2, 6, 10, 16, 17, 18, 24 102:1 111:8 <b>articulates</b> 32:9 <b>Asia</b> 57:22 <b>asked</b> 30:15, 19, 21 31:15 38:6, 11, 17 40:10, 13 47:18, 23 49:8, 10 54:2 60:8 62:25 63:3, 6, 17 64:4 72:17, 21 83:6, 12 100:15, 22, 25 112:9, 18 114:2 <b>asking</b> 8:23 27:14, 16, 19 46:13 72:13 101:24 108:7 110:8 <b>assassin's</b> 79:23</p>	<p><b>assault</b> 72:12, 20 <b>assaulting</b> 72:19 <b>assertion</b> 45:22 <b>assess</b> 30:15 34:1 38:6, 8 64:16 70:20 <b>assessment</b> 29:17 31:11, 22 32:13 34:3 36:20 51:17  <b>asset...[inaudible]</b> 17:24 <b>asset-based</b> 18:3 41:11 55:24 57:3 67:15 105:24 106:11 <b>assets</b> 61:10 67:16 109:20 <b>assistance</b> 4:11 <b>associate</b> 89:4 <b>assume</b> 11:5 85:6 102:10 113:12 <b>assumption</b> 35:5 85:6 <b>atmospherics</b> 13:17 16:9 80:17 <b>attach</b> 12:21 <b>attached</b> 7:5 11:22 <b>attempt</b> 99:23 <b>attending</b> 1:24 <b>attract</b> 34:14, 18 63:9 <b>audio</b> 42:8 <b>August</b> 33:22 42:3, 10 43:17 47:11, 16, 17, 20 49:14 56:23 90:9 <b>availability</b> 106:6, 10 <b>available</b> 10:10, 20 27:15, 16, 17 <b>avoid</b> 65:19 66:15 77:16 <b>aware</b> 15:13 16:16 30:6 34:23 36:11 42:5 52:16 67:11, 13 71:3,</p>	<p>6 80:8 81:5, 17 82:4 87:14 92:7 107:23 108:2, 8, 20 <b>awareness</b> 97:13 <b>awhile</b> 80:1  &lt; B &gt; <b>B.C</b> 1:19, 20 <b>back</b> 21:21 40:21 41:4, 19 47:8 55:6 73:25 74:1 84:10 94:20 109:24 <b>background</b> 13:17 22:22 24:1 54:24 <b>bad</b> 24:25 51:5 60:19 77:8 105:12 111:1 <b>bank</b> 14:4, 7 15:2, 3 18:6, 10 <b>banking</b> 12:22, 23 21:24 24:12 <b>bankruptcy</b> 67:24, 25 68:1 <b>banks</b> 14:2, 19 <b>based</b> 94:15 <b>basically</b> 103:18 <b>basis</b> 34:15 43:5 50:8 <b>battle</b> 22:16, 18 23:18, 21 <b>BAUMANN</b> 1:12 3:9 102:12, 16, 18 103:24, 25 105:2, 5 106:25 107:17 108:14, 18 109:14, 15, 17, 18, 23 110:5, 7 112:2 <b>BAUMANN.....10</b> 2 4:6 <b>Bear</b> 20:18 63:2 <b>bed</b> 66:2, 6 <b>began</b> 19:24 <b>begun</b> 38:12, 20 52:14, 18 61:14 <b>behaviour</b> 37:17 78:16 <b>belief</b> 46:14 <b>believe</b> 9:11 11:4, 5 16:21</p>	<p>20:9 25:23 50:10 55:23 66:17 69:24 77:4 99:16 <b>believes</b> 49:25 <b>BENJAMIN</b> 2:3 <b>besides-the-</b> <b>point</b> 38:3 <b>best</b> 18:12 76:5 <b>better</b> 53:15 81:23 <b>big</b> 24:11 59:6 <b>bit</b> 50:3 81:19 88:13 <b>BLACK</b> 1:19, 20 <b>block</b> 108:23 <b>blood</b> 71:5, 9, 11, 16, 23 72:7, 18 73:2, 16 75:3, 8, 10 <b>body</b> 31:3 <b>BOLAND</b> 1:8, 13 2:18 74:21 89:13 <b>booked</b> 102:13 <b>borrow</b> 109:4 <b>borrower</b> 19:5, 6 22:5, 9 24:21, 24, 25 25:13 58:4 59:7 69:19 85:22 86:15 87:4 88:12 104:17 105:19, 20 <b>borrowers</b> 8:7, 12, 18 14:20 15:3, 8, 15, 16, 18, 24 16:5, 6, 7, 8, 24, 25 17:3, 9 18:5 21:25 28:3 32:16 34:14, 18 35:2 36:19 43:8, 16 51:1, 16 52:1 55:7, 25 56:6, 7, 23, 24 58:1 59:20 60:9, 12 63:9 66:15 67:1, 5, 13, 14, 24 69:17 70:7, 19 71:24 72:7, 12, 20 77:2, 16 80:7, 8 81:2, 10, 16 82:7, 9, 13, 14, 19, 21 87:16</p>
--	--	--	---	---

103:20 104:17 105:9, 10, 21, 22 106:3 110:17 111:10, 18 113:1 <b>borrower's</b> 61:17 <b>borrowing</b> 62:11 <b>bottom</b> 57:13, 14 69:13 97:14 <b>Boyer</b> 107:22, 23, 24 108:3, 5, 11, 12, 24 110:9, 10, 18 <b>Boyer's</b> 108:21, 22 <b>Braslyn</b> 93:13, 22 97:2 <b>breaches</b> 64:24 <b>break</b> 73:21, 22 74:1 <b>breakdown</b> 29:6 43:11 <b>breakdowns</b> 29:12, 24 <b>brief</b> 99:19 112:8 <b>broad</b> 26:20 27:1 30:3 59:17 72:4 105:17 <b>broadly</b> 40:19 102:2 <b>broke</b> 42:6 100:20 107:25 <b>BRUCE</b> 1:11, 13 3:5 99:21 <b>built</b> 10:24 35:5 45:24 104:6 106:21 <b>bullet</b> 80:2, 3 <b>bullfighting</b> 71:17 <b>bunch</b> 25:17 <b>burn-down</b> 19:1 <b>business</b> 22:6 26:8, 15 28:9, 16, 23 29:1, 7 31:5 32:14, 20 33:5, 21 36:4, 18 37:12 38:13, 20 41:9 51:8 52:2 54:5 56:10, 17 57:7 59:7 66:25 67:4, 18, 23	69:21, 24, 25 70:1, 6, 16 71:5 73:2 75:4, 21 76:12, 18 85:13, 17 86:18 87:7 91:14 95:21 105:8 106:22 111:11 <b>businesses</b> 56:18, 19 58:19 66:25 67:4, 15, 22 105:12 <b>buy</b> 109:10 <b>buyer</b> 98:10  < C > <b>c.o.b</b> 1:8 <b>cabin</b> 16:1 37:1 41:16 87:19 <b>cabined</b> 88:13 <b>cabining</b> 36:24 <b>call</b> 28:21 <b>called</b> 44:25 53:25 <b>CALLIDUS</b> 1:5, 18 2:6 10:8, 10, 19 11:7, 12, 15, 16 14:6 15:8, 22 17:2, 9, 12, 18 18:11, 12 19:7, 12, 22 28:3 29:18 30:6, 12, 18, 23 31:1 34:23 37:4 38:20 40:4 41:7, 8, 14, 22 42:3, 9 43:8, 16 44:21 49:18, 25 51:17 55:12, 18, 21 56:18 57:11 59:11, 13, 20 60:13, 21 63:8 64:6, 17 65:10 70:8, 12, 17 78:1, 11 79:6, 19 85:23 87:17 91:5, 13 92:4 93:15 94:4, 23 95:18 96:15, 25 97:10, 12, 18 98:24 99:9 101:18 102:2, 25 103:8, 9 104:9, 13, 16	106:5 108:3, 4, 13, 25 109:19 110:3, 18 112:21 113:2, 12 <b>Callidus's</b> 26:7, 14 28:9, 16 29:6 30:1 32:14, 20 33:20 36:4, 17 38:7, 13 40:11, 23 41:9 56:6, 10, 23 58:1 71:5 80:7 81:2 92:8, 20 95:20 107:21, 23 <b>CANADA</b> 1:8 53:5 54:4, 5, 6, 23 55:2 104:17 110:23 <b>Canadian</b> 17:19 18:14 20:13 54:16, 17, 25 81:4 105:18 <b>CAPITAL</b> 1:5, 8, 9, 13, 18 2:5, 7, 17 3:13 33:3, 4 91:5 95:11 103:9 104:9 <b>caption</b> 52:12 <b>car</b> 48:18 52:12 78:23 <b>career</b> 86:14 87:3 <b>carefully</b> 105:6 <b>carry</b> 103:24 <b>case</b> 13:2 14:1 15:7, 13 25:25 34:8 35:20 37:8 42:11, 16, 17 43:15 53:7 60:1 81:6 82:2 87:24 <b>case-by-case</b> 107:10 <b>cases</b> 105:8 <b>cash</b> 16:13, 22 60:25 95:4 <b>CATALYST</b> 1:5, 10, 18 2:5 31:4, 7 93:13 97:11 98:3, 8 103:1 104:10, 16 108:3, 4, 13, 16 110:18	<b>category</b> 39:24 55:19, 22 60:10, 11 <b>causational</b> 37:14 78:14 <b>CCGI</b> 93:12 <b>ceased</b> 19:12 <b>CEDAR</b> 10:9, 19 11:3, 5, 7 26:10 27:15 <b>CEDARs</b> 17:12 28:20 <b>cell</b> 102:20 <b>CEO</b> 56:12 76:1 96:2, 4 <b>Cerberus</b> 56:17 76:11, 13, 15 <b>Cerberus's</b> 56:11, 17 <b>certain</b> 8:1 9:14 10:1 54:10 67:23 68:2 81:25 90:16 <b>certainly</b> 28:1 29:13 49:11 57:3 62:13 70:24 73:22 79:8 107:2 <b>CERTIFICATE</b> 115:1 <b>Certified</b> 115:4 <b>certify</b> 10:2 11:17 115:4 <b>cetera</b> 8:19 <b>Chair</b> 91:6 98:23 <b>challenges</b> 104:2 <b>chance</b> 9:21 19:22 <b>characteristic</b> 111:24 112:1 <b>characterization</b> 21:19 55:17 57:18 103:23 <b>characterize</b> 77:18 86:1 <b>charge</b> 70:21 71:1 78:17 <b>charged</b> 53:19 54:12 78:17 <b>charges</b> 53:22 <b>chat</b> 73:19	74:12 <b>check</b> 12:6, 9 <b>checks</b> 54:24 <b>Chief</b> 96:4 <b>choice</b> 51:25 52:1 55:7 <b>choices</b> 56:7 <b>choose</b> 60:20 105:6 <b>choppy</b> 33:13, 16, 20 <b>chose</b> 105:16 <b>circulated</b> 6:12 <b>circumstances</b> 46:22 98:9 107:12 <b>cite</b> 12:5 16:11 18:4 76:25 <b>cited</b> 41:6 <b>Claim</b> 99:23 100:17, 24 <b>claims</b> 103:14, 19 <b>clarification</b> 18:1 22:25 75:15 <b>clarify</b> 10:17 20:22 57:15 101:12  <b>CLARITYSPRING</b> 1:11 2:21 <b>class</b> 59:4 <b>clean</b> 7:9 <b>clear</b> 7:2 13:1, 16 27:14 48:14 53:9 54:2 57:25 108:15 <b>clearly</b> 31:1 <b>clients</b> 62:14 82:15, 22 83:3 <b>clock</b> 89:3 <b>close</b> 30:18, 24 36:18 64:6, 18 70:3 74:9 <b>closing</b> 107:13 <b>co-host</b> 89:23, 24 <b>coincident</b> 37:2, 15 39:21 <b>collapsed</b> 105:8 <b>collapsing</b> 105:12 <b>collateral</b> 16:13,
---	--	---	---	---

<p>22 68:9 <b>colleague</b> 73:15 <b>color</b> 52:11 <b>colour</b> 83:9 <b>come</b> 32:19 47:8 70:3 73:25 74:1 103:6 <b>comfort</b> 60:3 <b>coming</b> 22:17, 19, 20 23:20, 22, 23 64:11 85:20 <b>commenced</b> 93:16 <b>commencing</b> 6:1 <b>comment</b> 46:11 59:16 71:12, 13, 14 72:3, 4, 8, 14, 16 87:22 <b>commenting</b> 85:3 <b>comments</b> 75:19 76:11 <b>COMMERCIAL</b> 1:3 <b>Commission</b> 46:4 <b>Commission's</b> 44:23 <b>committed</b> 65:16 <b>committee</b> 91:7 93:12 98:24 <b>committing</b> 65:17 <b>common</b> 67:19 91:13 112:1 <b>community</b> 33:5 51:8 85:13 <b>companies</b> 50:10 65:9 68:1 78:15 110:25 111:3, 16, 20 <b>Company</b> 3:1 7:20, 24 40:4 41:23 42:3, 4, 10 50:6, 21, 23 76:2, 14 78:25 88:7 92:19 98:4, 9 109:5 111:9 115:23 <b>compare</b> 90:14</p>	<p><b>competition</b> 57:20, 24 <b>competitive</b> 34:14 37:11 56:20 <b>competitors</b> 56:1 57:6, 8 58:23 <b>complaint</b> 50:9 <b>complaints</b> 42:14, 24 81:9, 12 82:7 104:18 112:11, 15 <b>complete</b> 11:6, 17, 18 28:20 106:21 <b>completed</b> 48:24 <b>completely</b> 16:19 26:12 33:10 59:1 <b>completes</b> 114:11 <b>comprehend</b> 64:16 <b>comprehension</b> 63:13 64:9, 10 <b>computer</b> 22:14 31:15 <b>concede</b> 64:22 <b>concern</b> 18:23 19:13, 23 20:23 34:12, 21 <b>concerned</b> 15:13 44:2 58:2, 11 62:21 <b>conclude</b> 17:21 <b>condition</b> 92:21 93:1 95:18 98:25 <b>conduct</b> 26:6 29:25 <b>conducted</b> 27:25 93:20 <b>confidence</b> 13:8, 21 14:18 15:1, 8 17:1 24:14 <b>confidential</b> 112:15, 17 <b>confirm</b> 12:4 <b>confirmation</b> 52:21 <b>confirming</b> 52:22 <b>connection</b></p>	<p>59:24 <b>connotes</b> 46:17 <b>conservative</b> 43:3 <b>consider</b> 27:11 38:11, 17 40:10 55:18 56:22 104:15 <b>consideration</b> 40:22 <b>considered</b> 39:21 77:7 104:19 <b>considering</b> 82:23 <b>consistent</b> 65:6, 7 76:12 <b>contained</b> 29:11 65:5 <b>contest</b> 47:25 <b>context</b> 13:12 17:4 32:23 34:7 71:10, 12 72:1, 17 73:5, 8, 17 75:15, 24, 25 85:7 105:14 <b>continue</b> 21:19 22:6 23:5 <b>continued</b> 40:25 76:25 77:9, 12, 17 78:2, 8, 12 87:17 <b>contrasted</b> 37:2 <b>control</b> 98:8 <b>convenient</b> 103:20 <b>conveys</b> 71:23 <b>COPELAND</b> 1:11 2:25 <b>copy</b> 6:6, 14 7:9 20:4, 7 48:8 49:13, 15 <b>CORPORATION</b> 1:5, 18 2:7 91:6 <b>Corporation's</b> 97:20 <b>correct</b> 8:2 10:11 12:13 13:4, 5 15:5, 10 28:6 30:19 49:6 63:15 78:5 94:19 101:8 115:14 <b>corrected</b> 77:19 <b>correction</b> 77:23</p>	<p><b>corrections</b> 44:23 <b>correctly</b> 57:14 101:23 <b>correlated</b> 78:14 <b>cost</b> 8:9 <b>Counsel</b> 3:12 4:11 54:25 74:16 86:8, 16 87:5 88:6, 20 89:12 99:20 114:5, 15 <b>Counsellor</b> 24:17 68:23 84:10, 25 86:4, 25 88:23 94:6 <b>counsel's</b> 86:6 <b>count</b> 111:21 <b>Counterclaim</b> 1:16, 21 2:4, 9, 16 109:20 <b>counterclaims</b> 103:15 106:4 <b>couple</b> 8:3, 16 88:25 90:25 112:7 <b>course</b> 14:24 33:25 34:22 36:13 50:19 51:3 92:12 105:24 106:10 <b>Court</b> 1:1, 2 17:25 22:24 23:4, 10, 14, 17 28:3 29:17 45:6 84:13 105:3 <b>Court's</b> 91:23 <b>cover</b> 94:15 <b>coverage</b> 30:11 <b>Craig</b> 107:22 <b>created</b> 103:8 <b>credibility</b> 39:12 85:17 <b>credit</b> 15:19 56:2 58:23 77:8 78:19 96:4 107:12 <b>creditworthy</b> 79:13, 19 <b>crime</b> 61:3, 9 65:15, 18 <b>crimes</b> 44:13 61:14 62:2, 5, 16 79:22 87:11</p>	<p><b>criminal</b> 53:22 61:1, 5 64:24 65:12 66:17 77:6 78:16, 17 <b>criminally</b> 53:19 61:8 <b>crisis</b> 12:23 13:2 <b>cross</b> 6:10 <b>cross-exam</b> 21:16 <b>Cross-</b> <b>Examination</b> 1:23 4:3, 4, 5, 6 6:4 35:9, 13 89:10 99:18 102:16 113:20 114:12 <b>cross-examined</b> 107:3 <b>CRR</b> 3:16 115:3, 24 <b>cruiser</b> 51:4, 7 83:8, 10 <b>CSR</b> 3:16 115:4, 24 <b>CUBE</b> 1:19, 20 <b>currently</b> 47:21 <b>customers</b> 14:18 15:1 <b>CV-17-587463-</b> <b>00CL</b> 1:1  &lt; D &gt; <b>d/b/a</b> 1:19, 20 <b>Dalton</b> 96:3 <b>DARRYL</b> 1:12 <b>DARYLL</b> 3:7 <b>dated</b> 48:15 115:18 <b>DAVID</b> 2:2 89:21 90:4 99:14 <b>day</b> 1:24 112:3 115:18 <b>DE</b> 1:18 2:10 <b>deal</b> 10:22 11:1 12:18 21:23 70:20 77:2 83:3 85:22 87:17 <b>dealing</b> 13:2, 25 15:7 16:16, 21 18:10 21:25 22:2 46:12</p>
---	---	---	---	--

<p>70:7 82:16, 22, 23 <b>dealings</b> 72:7 76:12 <b>dealt</b> 66:18 <b>Deana</b> 3:16 115:3, 24 <b>death</b> 19:1, 3 111:9 <b>debate</b> 109:13, 24 114:5 <b>December</b> 91:8 <b>deceptive</b> 44:5, 14 87:12 <b>decided</b> 22:14 23:2 <b>decline</b> 36:16 38:7, 19 40:11 94:22 96:13, 14, 22 97:20 <b>declined</b> 95:2 96:19 <b>declining</b> 34:24 36:18 94:5 112:20 <b>defamation</b> 105:15 <b>default</b> 106:8 <b>defaults</b> 68:8 <b>Defendant</b> 2:24 3:4 99:21 102:18 <b>Defendants</b> 1:13, 21 2:3, 8, 14, 20 <b>deficiency</b> 6:7 <b>defined</b> 14:6 32:25 <b>definition</b> 63:13 64:10 <b>definitional</b> 64:15 <b>deliberate</b> 40:15 <b>deliberately</b> 50:12 <b>delving</b> 107:10 <b>deny</b> 50:24 <b>denying</b> 52:22 <b>Department</b> 54:1 <b>departure</b> 96:4 <b>depend</b> 32:14 <b>depending</b> 19:17 <b>DEPONENT</b> 21:6 23:1, 6</p>	<p>39:10 48:2 49:1 74:11, 19 84:23 86:3 104:25 107:9 109:17 110:4 112:4 <b>deposit</b> 13:13 <b>deposition</b> 17:15 26:18 53:14 67:12 <b>depositions</b> 17:16 <b>depositors</b> 14:19 15:2 <b>depository</b> 13:10 <b>deposit-taking</b> 14:1, 16, 25 <b>describe</b> 75:4 <b>described</b> 17:13 <b>DESCRIPTION</b> 5:3 <b>desk</b> 20:4, 17 <b>despite</b> 34:12 96:9 <b>detail</b> 25:19 92:12 <b>deterioration</b> 95:17 <b>develop</b> 93:21 <b>difference</b> 24:11 33:15 64:23 65:1 98:2 <b>differences</b> 28:11 <b>different</b> 11:16 15:25 18:24 19:20 24:16 37:7 40:16 65:24, 25 68:7 76:9 83:11, 13 87:23, 25 104:24 <b>difficult</b> 34:10, 17 <b>difficulties</b> 36:6 <b>difficulty</b> 25:12 40:23 <b>digital</b> 50:6 <b>diligent</b> 40:15 <b>direct</b> 54:17 <b>directed</b> 91:10 <b>direction</b> 65:23 <b>directions</b> 91:22 <b>directly</b> 13:3</p>	<p>55:3 <b>director</b> 91:4 <b>directors</b> 91:8 <b>disagree</b> 21:18 26:2 43:4, 5 45:13, 23 64:14 66:8 68:12 84:4 113:9 <b>disagreed</b> 39:16 <b>disagreeing</b> 63:18 <b>disappear</b> 60:1 <b>disclosed</b> 26:9 <b>disclosure</b> 28:23 <b>discourage</b> 70:7 <b>discretion</b> 106:9, 17 <b>DISCUSSION</b> 74:22 89:25 <b>dishonest</b> 111:2 <b>dismissed</b> 40:2 <b>displaying</b> 6:24 <b>dispute</b> 43:18 <b>distinct</b> 27:7 <b>distinction</b> 62:1 110:23 <b>distinguishing</b> 61:16, 19 <b>distracted</b> 60:5 <b>distressed</b> 75:9, 16, 17 <b>diverted</b> 105:9 <b>diverting</b> 105:13 <b>dividend</b> 96:17 <b>divisions</b> 56:18 <b>document</b> 26:4 100:13 <b>documents</b> 8:23 9:6 11:25 12:3, 5, 19 26:10, 20, 21, 22, 23, 25 27:3, 17 67:13 105:3 <b>doing</b> 54:5 66:1 84:2 102:23 105:12 <b>dollars</b> 106:18, 19 <b>domain</b> 28:25 <b>doubt</b> 42:16 <b>Dow</b> 2:25 <b>downward</b> 65:12 <b>drafted</b> 88:10 <b>drafting</b> 99:7</p>	<p><b>dramatic</b> 24:25 25:19 <b>dramatically</b> 25:20 <b>draw</b> 37:14 72:6 <b>drawing</b> 72:17 <b>dream</b> 88:22 <b>driven</b> 109:15 <b>due</b> 50:19 83:25 <b>DUHAMEL</b> 1:12  &lt; E &gt; <b>earlier</b> 49:19 54:15 80:7 81:7 <b>early</b> 50:4 <b>earnings</b> 36:16, 17 <b>economic</b> 37:8 <b>economics</b> 59:3 <b>economy</b> 22:12 <b>edge</b> 65:11 <b>edition</b> 47:17 <b>effect</b> 33:9 34:4 38:12 41:13 63:7 64:14 80:14 113:12 <b>effectively</b> 68:6 <b>effects</b> 21:25 22:8 24:24 25:8 101:17 <b>efficient</b> 59:1 <b>elimination</b> 96:17 <b>else's</b> 59:15 <b>EMMANUEL</b> 1:19 <b>emphasize</b> 33:2 <b>employees</b> 111:1, 2 <b>enabling</b> 61:9 <b>encompassing</b> 41:15 <b>enforced</b> 105:23 <b>enforcement</b> 53:4 54:9, 16, 18, 22 55:4 60:25 81:4 <b>engage</b> 55:3 66:17 <b>engaged</b> 77:6 86:20</p>	<p><b>engagement</b> 111:22 <b>engaging</b> 87:9 <b>enhancements</b> 44:25 <b>entered</b> 17:14 86:17 87:6 88:4 <b>entire</b> 85:13 86:14 87:3 <b>entitled</b> 39:7 <b>entity</b> 22:9 24:25 87:23, 25 <b>equity</b> 62:11 66:1 <b>equivalent</b> 80:3 111:8 <b>error</b> 17:17 <b>errors</b> 44:23 46:16 <b>especially</b> 52:8 <b>Esq</b> 2:2, 3, 14, 20, 21, 24, 25 3:4 <b>essentially</b> 51:25 <b>established</b> 91:8 <b>estimate</b> 74:8 <b>Europe</b> 57:22 <b>event</b> 21:10 77:22 <b>everybody</b> 51:12, 14 59:1, 15 <b>evidence</b> 39:17 <b>exact</b> 84:11 111:21 <b>exactly</b> 44:8 58:4, 7 101:5 <b>examination</b> 115:11 <b>examine</b> 100:16, 22 <b>examining</b> 39:13 <b>example</b> 16:5 61:10 <b>exception</b> 67:23 <b>exceptionally</b> 37:20 <b>exceptions</b> 50:22 <b>excerpts</b> 99:5 <b>exclude</b> 16:4 88:14 <b>excuse</b> 13:10 17:23</p>
--	---	--	--	---

**executive** 70:15  
107:22 110:9  
**executives**  
105:22 109:6  
**Exhibit** 48:8, 11,  
17 74:20 90:7  
**EXHIBITS** 5:1, 4  
9:14  
**exist** 109:19  
**existence**  
112:14  
**existing** 95:21  
97:4  
**expect** 17:23  
40:18 46:22  
89:7  
**experience** 8:18,  
19 54:17 59:19  
76:4 78:15  
105:10 112:13  
113:11, 15  
**expert** 39:11  
40:18 62:25  
63:19  
**expertise** 63:4  
66:10  
**explaining** 93:7  
**explains** 93:4  
**express** 101:25  
**extent** 21:11  
26:9 29:14  
33:8 95:11  
97:19  
**external** 43:11  
**extraordinarily**  
83:22 85:4  
  
< F >  
**FACE** 1:8, 13  
2:17 3:13 89:12  
**fact** 35:7, 20  
37:4 38:9 42:2,  
3, 4, 9 43:15, 16  
45:22 52:17  
57:1 65:9  
78:16 81:14  
83:21 87:16  
110:24 111:6  
**factor** 37:3  
40:1 96:24  
107:20  
**factors** 37:6  
59:6 93:25  
95:1 98:14

**facts** 81:5, 19,  
22 82:1, 2  
83:15 84:17  
107:11  
**factual** 81:5  
**fail** 18:13, 21  
67:15  
**failed** 18:11  
19:12 105:21, 22  
**failing** 19:25  
22:11 25:2, 6  
34:25  
**fails** 22:6 25:4  
**failure** 18:6, 10  
22:1 24:13  
25:9, 16 36:17  
**failures** 18:23  
21:24 24:12  
**fair** 16:3, 6  
21:3, 12 22:2  
28:4 32:5 36:6,  
8 43:2 46:5, 6,  
8, 24 48:21  
51:15 52:4  
53:1, 3 57:9  
99:1, 6  
**fairly** 111:23  
**fairness** 27:13  
38:5 49:13  
64:25 81:23  
**faith** 81:8  
**familiar** 71:9, 15  
**familiarity** 54:16  
**famously** 71:4  
**fault** 14:13  
105:8  
**featured** 52:11  
**feel** 107:5  
**felonies** 66:7  
**felons** 66:5  
**fifth** 96:7  
**figure** 42:23  
65:20  
**File** 1:1 106:20  
107:12  
**filed** 9:13  
42:14 81:11  
**filing** 6:7 11:9  
49:5 50:11  
**filings** 10:8, 19  
11:6  
**final** 92:1  
**finance** 59:4  
**financial** 13:8,  
19 22:7 24:15

44:13 61:14  
62:2, 5, 16 65:8  
66:16 78:15  
79:22 86:19  
87:8, 10 92:20  
93:1 94:4, 23  
95:1, 17 96:15,  
23 97:18, 21  
112:20 113:16  
**financing** 95:20  
**find** 8:8 28:24  
39:17, 19 48:9  
50:21 74:18  
101:1 102:25  
103:4 104:13  
105:19 106:2,  
13 111:15  
**finder** 35:7  
**finding** 25:13,  
20 98:10  
**findings** 28:3  
**fine** 6:11, 18  
23:16 24:7  
36:14 39:6  
40:8 49:7 55:5  
74:3 82:11  
90:22 107:7  
**finish** 14:14  
37:24 53:10  
111:12  
**finished** 14:15  
74:10 105:6  
**fit** 98:22 99:7  
**fits** 39:23 58:17  
**flashed** 59:23  
**flipped** 44:12  
**flows** 95:4  
**focus** 16:5  
30:25 44:16  
55:8 66:20  
76:23 77:11  
**focussing** 55:7  
**following** 4:9,  
15, 19, 24 49:18  
50:5 52:6 60:7  
93:13, 25 113:3  
**follows** 50:14  
**footnote** 12:20  
13:12 16:10, 11  
18:4 21:22  
**footnotes** 12:1,  
2, 4, 19  
**forecasts** 97:10,  
13, 16

**foregoing** 115:5,  
13  
**foreign** 57:22  
**Forgive** 77:21  
89:15  
**form** 32:8  
35:14 44:17  
113:6  
**formalities** 6:8  
7:1  
**former** 107:22  
**forms** 18:24  
**forth** 78:21  
109:24 115:7  
**Fortress** 76:16  
**fortunes** 8:18  
**forward** 8:17  
92:19 113:14  
**found** 37:20  
114:1  
**Foundation**  
100:6  
**founder** 56:12  
**fox** 71:17  
**frank** 64:23  
**fraud** 7:21, 24  
41:23 42:4, 10  
43:9 44:1, 13  
61:2, 6, 7, 20  
62:4, 16 64:24  
83:1, 7 87:9  
109:6 110:20  
**FREEDMAN** 3:4  
99:17, 18  
101:14 102:7  
**FREEDMAN.....9**  
**9** 4:5  
**Fresh** 99:22  
**FRIGATE** 1:9  
**front** 7:12  
49:24 76:23  
**fruitful** 54:10  
**full** 10:18  
75:24, 25  
**fully** 6:5, 9  
46:22  
**fun** 76:3  
**FUND** 1:10  
**funds** 61:2  
65:22 105:9, 10,  
13  
  
< G >  
**GAAP** 21:1

**GABRIEL** 1:18  
**game** 83:10  
**Gariel** 2:10  
**Garrison** 76:16  
**General** 3:12  
16:9 21:2  
22:12 29:1, 4  
37:8 41:10  
67:20  
**generally** 14:7  
15:3 30:5  
92:11, 12  
**generate** 32:15,  
21 33:21 35:1  
36:5  
**gentleman** 90:4  
**GEORGE** 1:12  
**GERALD** 1:12  
**gesture** 20:11  
**give** 13:17  
29:5 71:13  
74:16 99:24  
107:15 109:16  
111:21  
**given** 26:20  
27:1 40:7  
51:24 52:1  
55:7 92:18, 23  
106:18  
**gives** 94:25  
**giving** 36:10  
**GLASSMAN**  
1:18 2:12  
56:14 70:11, 15  
71:4 72:2, 6, 10,  
19 75:3, 21  
88:8 96:2  
111:16, 19, 23  
**Glassman's** 73:1  
**good** 6:20  
40:19 57:18  
77:23 89:16  
**Google** 11:15,  
16, 18 30:4  
102:24 103:3  
104:13  
**GP** 1:10  
**grammar** 77:20  
**granular** 27:11  
**great** 25:12  
90:17 102:22  
107:18 110:24  
112:3  
**Greg** 89:13

**GREGORY** 1:8,  
13 2:18  
**grist** 46:21  
**GROUP** 1:5, 8,  
18, 20 2:5  
**growing** 35:1  
**guarantees**  
105:23  
**guess** 105:14  
108:25  
**guide** 4:10  
**guilty** 51:12  
**guy** 109:16

< H >  
**halfway** 32:1  
**hand** 10:14  
20:11 49:15  
**happened** 45:15  
65:10 88:2, 3  
107:13  
**happens** 13:7,  
20 16:24  
**happy** 7:12  
89:6  
**hard** 61:16, 19  
**harm** 31:11, 22  
32:13 36:20  
**harms** 18:5  
**head** 79:25  
**healthy** 79:24  
80:1, 2  
**hear** 23:13  
27:20 42:7  
60:2 102:20  
**heard** 51:20  
59:24 72:16, 18  
113:20  
**held** 49:13  
**help** 49:2, 12  
75:5 108:16  
**helped** 41:19, 24  
**helpful** 38:22  
39:25  
**Hi** 99:20  
**high** 55:23  
56:24 57:1, 2  
70:14 75:20  
111:25  
**higher** 8:9  
41:12 58:23  
97:24  
**highlight** 73:15  
**highlighted**

100:4  
**highly** 76:13  
**hiring** 72:11, 19  
**historical** 26:19  
40:22  
**historically**  
28:16  
**history** 13:20  
26:7, 14 28:2  
32:20 36:16  
37:18  
**hit** 33:14  
104:12  
**hold** 74:6  
**holding** 49:14  
**holds** 25:4  
85:16  
**hope** 7:14  
62:18  
**hopefully** 89:15  
98:7  
**hunting** 71:17  
**hypothetical**  
35:16 45:22  
72:3  
**hypothetically**  
36:15

< I >  
**idea** 74:14  
111:19  
**identified** 70:11  
81:14  
**identify** 19:11  
82:9  
**ignore** 85:18  
**ii** 95:9  
**iii** 95:16  
**illustrative** 30:11  
**immediate** 18:25  
**immediately**  
50:24 79:10  
**impact** 20:20  
30:16, 22 34:2,  
4 40:4 64:5, 17  
113:1, 15  
**impacts** 31:4  
**impaired** 25:20  
33:22  
**implication** 68:6  
72:21  
**implications**  
72:23  
**implied** 97:22

**implies** 66:4  
**imply** 60:17  
**import** 88:15  
**important** 41:21  
82:13, 20 83:15,  
17 84:17, 20  
85:4, 8, 14  
**impute** 46:14  
**inability** 35:1  
93:20 95:19  
96:3, 8, 24  
**inaccurate** 22:4  
**incentive** 8:10  
77:15  
**incentives** 8:7,  
11  
**include** 62:4, 16  
66:24 67:2  
68:17  
**included** 9:18  
11:23 27:9  
29:3 62:3 67:8  
79:12  
**includes** 9:14  
28:9 66:1 71:16  
**including** 9:13  
52:10 61:17  
62:10 93:25  
96:1  
**increasing** 96:8  
**independent**  
30:8 52:21  
91:4, 7  
**INDEX** 4:13, 17,  
22 5:1  
**indicted** 53:21  
**individual** 70:15  
107:11  
**individuals**  
42:13 50:1  
81:11 82:8  
**industry** 62:12,  
13  
**inefficient** 59:5  
**inflection** 19:25  
**inform** 100:18  
**informally** 85:12  
**information**  
10:5, 10, 20  
17:12 26:17, 19,  
21 27:16 29:4,  
11 59:2 69:4, 6  
102:25 103:4  
104:2

**informing**  
100:18  
**innocent** 51:13  
**inquiries** 52:15,  
18 61:15  
**institution** 13:9  
15:22 19:2  
22:5 24:13, 22  
25:4 86:19 87:8  
**institutions**  
13:19 14:1, 17,  
25 18:23 22:10  
66:16, 24 67:3  
**instruct** 69:10  
**instructed** 47:15  
**instructing** 9:2  
40:9 47:13  
**instruction**  
24:18  
**instructions**  
69:7  
**instruments**  
28:11  
**insurance** 13:13  
**insured** 13:18  
**interest** 37:10  
93:21  
**interesting**  
114:1  
**interests** 16:12,  
17, 22 17:8  
**interfering** 45:19  
**interim** 96:2  
**interjection**  
54:15  
**internal** 43:11  
97:10, 13, 16  
110:19  
**internet** 59:24  
102:24  
**interpret** 63:1,  
20 72:24  
**interpretation**  
63:14 64:12  
71:22  
**interpreting**  
63:11  
**interrupt** 53:11,  
15 84:5, 7 94:7  
108:15  
**interrupting**  
21:15 35:8, 13,  
22  
**intervenes**  
17:25 22:24

**intervening**  
45:18  
**invest** 95:20  
**investigation**  
36:3 50:2  
52:23 53:23  
54:8, 10 78:23  
79:22  
**Investigative**  
100:6  
**investment** 97:5  
**INVESTMENTS**  
1:9, 10  
**investors** 14:18  
15:1  
**involve** 14:17,  
25  
**involved** 109:2  
111:17, 20  
**involvement**  
47:3  
**involves** 63:13  
**involving** 14:16,  
24 91:11  
**INVOP** 1:20  
**irrelevant** 58:18  
**issue** 9:1 12:9  
13:3 15:7  
29:14 30:15, 19  
43:22  
**issued** 49:18  
**issues** 16:16,  
21 41:9 69:16  
96:1 104:16  
107:23

< J >  
**Jacque** 3:1  
**jail** 66:7  
**JAMES** 1:19  
2:10 96:5  
**JAMIESON** 1:19  
**jargon** 53:20  
**JEFFREY** 1:12  
**JENNIFER** 2:25  
73:14  
**job** 40:15, 19  
62:25 63:19  
79:24  
**jog** 92:13  
**jogs** 91:1  
**JOHN** 1:13  
**Jones** 2:25  
**Journal** 8:25  
19:16, 19 26:8,

15 30:2, 17, 22  
31:12, 23 32:25  
33:23 38:14, 21  
39:22, 23 40:12  
41:1, 21 42:13  
44:3, 19 47:9,  
22 51:6, 18  
52:4, 10, 25  
63:1, 7, 21 65:5  
72:25 78:6, 10  
79:6, 9, 18 80:6,  
25 83:8, 17, 22  
84:20 85:2, 5,  
11, 16 86:21  
87:16 98:19  
101:16 111:8  
113:3  
**jump** 89:7  
**jury** 20:18  
**JUSTICE** 1:2  
54:1

< K >

**KASSAM** 1:10  
**KEVIN** 1:12 3:9  
102:17  
**key** 107:20  
**kind** 10:23  
21:1 22:1  
24:10 29:5, 8  
30:4 32:1 38:3  
39:15 45:11  
50:20 53:4, 23  
56:2 61:3  
65:15 68:3  
69:18 78:24  
101:12, 13  
105:17, 23  
**kinds** 17:8  
28:11  
**knee-capping**  
72:10  
**knell** 111:9  
**knew** 42:17  
111:22  
**knowing** 110:17  
**knowledge**  
17:18 18:13  
**known** 82:5

< L >

**lack** 93:8  
**LANGSTAFF**  
1:11

**language** 62:1  
**Lascaris** 89:4  
**late** 92:9  
**law** 18:14 44:5,  
14 46:4, 15  
53:3 54:9, 16,  
17, 22 55:3  
60:25 64:24  
81:4 87:11  
**lawsuit** 108:2, 9,  
17 109:25 110:3  
**lawsuits** 104:8  
111:16, 19  
**leading** 65:11  
95:18 113:19  
**leads** 70:17  
75:22  
**leave** 82:10  
96:1 114:6  
**legislation** 61:9  
**legitimate** 50:8  
88:12  
**lender** 8:8  
15:21 17:1  
18:3, 6 25:14,  
16, 20 30:2, 17  
31:1 37:19  
41:11, 14 52:2  
55:12, 20, 22, 24  
56:8 57:2, 3, 5  
58:5, 6, 7, 12  
59:7, 8 62:8  
63:8 65:15, 17  
67:16, 17 68:7  
69:17, 18, 25  
70:6, 8, 21, 25  
71:24 77:1, 5, 7,  
16 79:7, 10, 12  
80:14 82:15, 22  
83:2 105:16, 25  
106:9, 16  
113:11, 13, 16  
**lenders** 14:19  
15:2 25:2  
34:10, 16 56:2  
59:12, 19 60:11,  
12, 18 61:2  
65:14 67:20, 21  
76:17 79:5  
111:25  
**lender's** 30:23  
41:6, 7 60:25  
61:10 64:5, 17  
69:20 105:7

**lending** 24:15  
26:7, 15 28:10,  
16, 18 44:5, 14  
54:23 56:11  
59:13, 15 66:19,  
21, 24, 25 67:4,  
6, 9 68:1, 16, 18  
69:17 70:6  
75:9, 17 87:12  
106:11  
**length** 16:4  
93:5, 17  
**lengthy** 93:14  
**letter** 9:2 40:10  
47:13  
**level** 104:25  
**levels** 97:24  
**LEVITT** 1:12  
3:7  
**libel** 48:8  
**libraries** 103:7  
104:8  
**library** 103:19  
**life** 76:3  
**light** 110:20  
**limited** 82:1  
**lined** 88:20  
**link** 12:22  
37:14  
**listed** 38:8, 19  
98:14  
**literally** 49:15  
76:19  
**litigation** 28:2  
103:9 104:9, 10  
**litigious** 111:23  
**live** 80:1  
**LIVESEY** 1:13  
3:5 99:21 101:7  
**Livesey's** 100:5,  
16, 22 101:2, 5,  
10, 18, 24 102:1  
**LLC** 1:9  
**loan** 28:11  
58:3, 12 68:8  
88:5 95:22  
106:18  
**loans** 30:18, 24  
32:16, 21 33:21  
34:11 35:1  
36:5 37:5 64:6,  
18 67:15 95:6  
106:8 108:25  
113:2, 13

**loan-to-own**  
67:18, 22  
**local** 54:1  
**long** 7:11  
13:19 20:6  
38:6 93:8  
**longer** 74:7  
78:25  
**long-winded**  
62:18  
**long-windedness**  
62:21  
**looked** 11:4, 7  
26:10 39:13, 20  
40:16 41:8, 9,  
10 48:4, 10  
49:11 56:11  
**looking** 19:6  
20:1, 7 28:7  
60:23 61:11  
80:20  
**looks** 56:16  
**lose** 13:20, 21  
16:25  
**loses** 13:21  
24:14  
**loss** 14:18, 25  
58:24  
**losses** 95:3  
**lost** 13:8  
**lot** 23:2 25:1  
34:9 37:6  
39:20 40:16  
53:15 56:11, 16  
57:6, 8, 20, 24  
59:6 65:19  
73:12 76:8, 24  
111:2  
**LP** 1:9, 10  
**LUCAS** 2:20  
**lumped** 103:20  
**LUNG** 2:20  
99:14  
  
< M >  
**M5V** 1:8  
**Madam** 23:9  
**made** 27:17  
36:3 44:3  
49:18 52:23  
68:4 80:6 81:1,  
3 82:14, 21  
83:1, 18 84:22

85:9, 10, 15  
87:15 115:10  
**major** 40:1  
**majority** 103:19  
**making** 17:10  
19:11 22:14  
**management**  
69:19 88:1  
97:10, 12  
**mandate** 31:9,  
10, 21 32:6  
64:20  
**MARK** 1:23 4:2  
6:3 62:22  
103:13  
**Marked** 5:4  
**market** 17:19  
30:7 37:9  
56:20 60:19  
96:18  
**marketed** 58:21  
**marketplace**  
30:12 41:12  
76:20 80:8, 18  
**markets** 59:1  
**MASTER** 1:10  
**match** 7:16  
**materially** 69:3  
**matter** 25:5  
52:17 64:15  
81:5 110:16  
114:6  
**matters** 10:6  
27:8 47:3  
48:20 86:20  
**MATTHEW** 2:14  
89:5, 12 90:7  
**MCFARLANE**  
1:12  
**McNish** 3:2  
**meaning** 15:20  
19:20 24:24  
32:24 37:3  
57:21 88:15  
**meaningful**  
65:18 113:14  
**meanings** 63:2,  
20  
**means** 41:7, 8,  
13 55:24  
**meant** 4:10  
79:15  
**media** 10:9, 19  
11:11, 12 30:3,

<p>10 73:11 <b>medical</b> 96:1 <b>meet</b> 22:7 24:22, 23 25:3, 17 34:25 36:17 <b>memory</b> 47:25 91:1 92:13 <b>mental</b> 108:23 <b>mention</b> 31:4 59:25 104:7 <b>mentioned</b> 15:17 70:10 <b>middle</b> 21:16 <b>mid-sentence</b> 53:16 <b>mill</b> 46:21 <b>million</b> 106:19 <b>MILNE-SMITH</b> 2:14 88:25 89:6, 10, 12 90:1, 23 99:12 <b>MILNE-</b> <b>SMITH....89</b> 4:4 <b>mind</b> 20:18 61:17 110:9 <b>mindful</b> 89:3 <b>mine</b> 21:8 104:12 <b>minute</b> 35:12 47:24 <b>minutes</b> 74:4 89:8 102:14 <b>mischaracterizin</b> <b>g</b> 36:25 <b>misdirected</b> 105:9 <b>misheard</b> 51:21 <b>misleading</b> 50:12 69:3 <b>misperception</b> 67:19 <b>misrepresent</b> 43:20 <b>misrepresentatio</b> <b>n</b> 108:13 110:20 <b>misrepresented</b> 108:24 <b>missing</b> 6:19 <b>misstate</b> 73:6 <b>misstatement</b> 45:11 <b>misstatements</b> 44:4, 13 87:10</p>	<p><b>misunderstandin</b> <b>g</b> 48:23 <b>misunderstood</b> 80:23 <b>MOEZ</b> 1:10 <b>MOLYNEUX</b> 1:12 <b>moment</b> 31:5 55:9 <b>money</b> 67:20, 21 <b>MOORE</b> 2:2 6:5, 11, 21 10:22 12:8, 15 20:21 21:5, 9, 18 26:24 27:5, 20 29:19 31:24 32:7 35:3, 7, 10, 12 38:18 39:7 40:18 43:21 45:13, 17, 19 46:6, 13, 20 47:2, 5, 12, 15, 24 48:13 63:22, 25 68:12 73:3, 23 74:3 84:4 85:24 86:9 88:24 89:2, 9 90:21, 22 101:11 102:9, 13, 15 103:22 104:23 106:23 107:1 108:14, 20 109:9, 12, 22 112:5 113:8, 22 <b>MOORE.....11</b> <b>2</b> 4:7 <b>Moore's</b> 9:2 36:1 40:9 <b>motion</b> 91:21 <b>motions</b> 9:13 <b>move</b> 32:9 41:18 43:24 47:7 60:22 64:21 66:12 69:15 76:21 79:3 <b>moved</b> 31:10 <b>moving</b> 24:9 100:8 <b>multiple</b> 19:17  &lt; N &gt; <b>named</b> 109:10 <b>NATHAN</b> 1:11 2:22</p>	<p><b>national</b> 57:20, 21 <b>nature</b> 44:18 71:18 77:21 82:21 105:7 <b>near</b> 62:14 <b>necessarily</b> 18:24 20:24 34:6 36:23 37:13 38:1 55:16 60:16, 18 67:11 68:21 70:9 82:24 <b>necessitated</b> 96:16 <b>NEESONS</b> 115:23 <b>negative</b> 33:6 54:12 95:4, 10 113:17, 25 <b>negotiate</b> 96:25 98:1 <b>negotiation</b> 93:11, 19 <b>neighbourhood</b> 76:18, 19, 20 <b>new</b> 26:2 30:18, 24 32:15, 16, 21 33:21 35:1 36:5, 18 37:4 63:9 64:6, 18 95:21 96:3 111:18 113:2, 13 <b>NEWTON</b> 1:18 2:11 70:10 <b>nice</b> 103:20 <b>noise</b> 22:15, 22 23:3 24:1 <b>non-bank</b> 13:8 65:16 <b>non-core</b> 95:13 <b>non-depository</b> 13:9, 18 65:16 <b>non-insured</b> 13:10, 18 65:17 <b>non-performing</b> 95:6 <b>non-public</b> 10:5 <b>nonsensical</b> 50:20 <b>normal</b> 62:8 <b>normally</b> 112:15, 16 <b>North</b> 57:21</p>	<p><b>note</b> 44:21 45:1, 3, 5, 8 49:16 <b>noted</b> 4:14, 19, 23 <b>notes</b> 115:14 <b>notwithstanding</b> 24:17 <b>November</b> 1:25 115:18 <b>number</b> 93:24 94:25 95:2, 12, 16, 25 111:4 <b>numeral</b> 95:9  &lt; O &gt; <b>object</b> 31:24 35:3 46:7 <b>objected</b> 32:7 <b>objecting</b> 35:14 89:2 <b>objection</b> 35:21 106:24 107:7 <b>objections</b> 115:10 <b>objective</b> 69:20 <b>obligations</b> 22:7 24:22, 23 25:3, 17 <b>obtain</b> 95:19 <b>obvious</b> 70:22 <b>occur</b> 25:9 <b>occurred</b> 47:20 80:17 92:8 <b>occurring</b> 62:3 <b>o'clock</b> 114:12 <b>offer</b> 93:9 101:9 102:4 <b>offering</b> 45:6 <b>offhand</b> 43:12 <b>Officer</b> 96:4 <b>officers</b> 54:22 <b>officials</b> 50:7 <b>offline</b> 27:12 <b>omissions</b> 46:17 <b>ones</b> 47:12 <b>ongoing</b> 40:23 95:3 <b>online</b> 8:24 19:18 47:19 <b>ONTARIO</b> 1:2 44:22 45:12 46:3 <b>open-ended</b></p>	<p>101:12 <b>operated</b> 58:21 <b>operating</b> 48:22 94:4, 22 95:1, 3, 10 96:15, 22 97:21 112:21 113:16 <b>operation</b> 56:11 <b>operations</b> 95:5 <b>operative</b> 38:20 <b>opine</b> 64:5 <b>opinion</b> 30:21 36:10 39:14, 17 40:14 45:6 63:6 64:11 80:13 101:10, 13, 15, 16, 25 102:4 104:14, 21 106:15 111:7 112:25 <b>opinions</b> 39:11 102:6 <b>opportunity</b> 55:1 75:2 <b>opposed</b> 21:2 45:22 <b>ordinary</b> 105:21 <b>originate</b> 34:11 113:2, 13 <b>originating</b> 37:4 <b>origination</b> 95:22 <b>OSC</b> 46:3, 11, 14 50:13 <b>OSC's</b> 44:22 47:3 <b>outside</b> 80:19, 21 102:5 <b>outstanding</b> 91:12 <b>oversee</b> 91:9 <b>overstated</b> 81:19 <b>overwhelm</b> 34:13 <b>overwhelmed</b> 33:7, 11 <b>overwhelming</b> 8:9, 11, 12, 13 34:8 77:17, 20 <b>overwhelms</b> 51:9 <b>owners</b> 69:19  &lt; P &gt;</p>
--	---	---	--	---

<p><b>p.m</b> 47:20 49:14 74:23, 24 114:18 <b>PAGE/LINE</b> 5:3 <b>PAGES</b> 4:2, 15, 19, 24 8:16 <b>paid</b> 96:17 <b>Panet</b> 3:12 <b>par</b> 51:3 105:24 106:10 <b>paragraph</b> 7:5, 23 8:5 9:3, 5 12:20 13:6, 11 27:6 29:15, 19 30:15 31:10, 20, 25 32:2, 9 41:4, 5, 19 44:11 45:1 47:25 50:4 51:23 55:6 60:23 66:13, 14 76:22 79:4 85:20, 25 86:1, 2 91:2, 17, 18 93:3, 7 94:14 97:14 98:13 100:4, 17, 23 <b>paragraphs</b> 51:2 90:25 <b>paraphrase</b> 101:21 110:11 <b>parcel</b> 40:17 79:16 <b>parse</b> 62:1 65:14 <b>part</b> 40:17, 20 41:12 57:19 70:19 79:16 80:20 83:2 85:2 92:9 108:1 112:22 <b>participant</b> 30:7 <b>participants</b> 1:24 <b>participation</b> 97:11 <b>particular</b> 24:13 30:10 37:9 106:5 109:25 <b>particularly</b> 11:21 15:2 40:3 <b>parties</b> 51:13 93:21 97:25 109:1 110:2 <b>parts</b> 87:20</p>	<p><b>party</b> 97:2 98:3, 10 108:17 109:10 110:2 <b>Patrick</b> 96:3 <b>penalty</b> 69:1 <b>pending</b> 53:21, 22 <b>people</b> 6:14 13:20 62:8 65:14, 18 66:2, 5, 6 72:10, 11, 19 110:19, 24 <b>people's</b> 67:21 <b>perceived</b> 77:1, 5, 9, 12, 16 78:1, 7, 18 79:7 <b>percentage-wise</b> 29:6 <b>perfect</b> 8:15 59:2 <b>perfectly</b> 59:25 60:2 72:24 <b>performance</b> 94:4, 23 95:2, 10 96:16, 23 97:21 112:20, 21 <b>period</b> 37:20 76:16 96:20 <b>periodically</b> 54:23 <b>perjury</b> 69:1 <b>perp</b> 79:2 <b>personal</b> 54:21 105:22 <b>personality</b> 76:7 <b>personally</b> 54:25 <b>personnel</b> 96:1, 9 <b>perspective</b> 56:3 76:18 78:20 <b>PHIL</b> 2:24 12:9 74:5 <b>Philip</b> 3:12 <b>phone</b> 86:8 102:20 <b>photo</b> 48:18 <b>photograph</b> 52:11 <b>phrased</b> 35:18 42:19 <b>physically</b> 72:11, 12, 19, 20 <b>pick</b> 33:18</p>	<p><b>picture</b> 51:4, 7 78:24 79:2 83:9 <b>pixilated</b> 42:6 <b>place</b> 53:23 97:17 115:6 <b>plague</b> 65:19 <b>Plaintiff</b> 1:6 104:2 110:17 <b>Plaintiffs</b> 1:16 2:2, 15 102:23 103:4 109:2 <b>Plaintiff's</b> 99:22 103:19 <b>plan</b> 37:12 41:9 56:10 92:3 <b>pleadings</b> 9:7 <b>plural</b> 8:14 <b>point</b> 19:11 20:1, 10 24:9 26:24 32:18 44:8 49:20 53:8 <b>pointed</b> 81:10 <b>pointing</b> 20:20 <b>points</b> 58:22 <b>police</b> 48:18 51:4, 7 52:12, 14, 18 54:1, 8, 18 61:9, 13 78:23 83:8, 9 <b>poor</b> 78:19 <b>popping</b> 100:1 <b>portion</b> 23:15 91:12 100:4 <b>pose</b> 53:13 <b>position</b> 59:10 60:19 69:18 84:6 92:20, 25 97:3 98:8 99:9 101:9 102:3 106:19 108:22 <b>positioning</b> 59:11 <b>positive</b> 33:6 113:17 <b>possession</b> 15:20 <b>possibility</b> 60:24 <b>possible</b> 38:7 67:23 74:11 <b>post-article</b> 88:5 <b>post-closing</b> 107:14 <b>posting</b> 51:6 <b>posture</b> 71:24</p>	<p><b>potential</b> 19:6 38:19 56:6 61:17 65:14 66:3, 4 77:6 88:14 110:17 111:10, 18 113:1 <b>potentially</b> 55:19 62:3, 15 65:7 75:23 78:17 <b>practices</b> 44:6, 15 59:13, 15 87:12 <b>predatory</b> 66:19, 20, 23 67:9 68:7, 16 <b>predicate</b> 35:4 45:14 <b>predicated</b> 85:1 <b>pre-existing</b> 30:1 32:20 <b>prejudicial</b> 33:1, 2 <b>preliminary</b> 30:21 <b>premise</b> 35:19 45:23 <b>premised</b> 45:21 <b>preparation</b> 27:18 97:17 98:17 <b>prepared</b> 27:2 48:16 64:22 72:5, 6 97:25 101:25 104:3 <b>preparing</b> 99:5 <b>Present</b> 3:12 <b>presents</b> 98:10 <b>Presumably</b> 92:22, 24 <b>pretty</b> 19:15 70:22 74:9 76:12 81:14 <b>previous</b> 33:5, 9 34:23 50:4 88:6, 7, 14 <b>previously</b> 41:5 111:13 <b>price</b> 96:18 97:24 <b>principal</b> 70:11 75:20 <b>print</b> 8:25 47:17 <b>printed</b> 20:4</p>	<p><b>printer</b> 22:14 23:2 <b>prior</b> 8:24 17:10 19:10 26:4, 8, 15 30:2, 10, 11 32:14, 15 33:21, 22 36:4 37:5 38:13, 21 78:6 79:6 97:17 107:13 <b>private</b> 87:25 <b>privatization</b> 91:9 92:8 93:6, 15, 18, 23 97:1 <b>privatized</b> 92:4 <b>problem</b> 6:13 20:8 35:17 45:20 <b>proceeding</b> 90:9 <b>proceedings</b> 89:13 115:5 <b>proceeds</b> 16:12, 17, 22 61:3, 9 <b>process</b> 19:24 91:10 92:8 93:14, 18 <b>produced</b> 11:22 <b>producing</b> 20:19 <b>professional</b> 40:15 62:13 <b>professionals</b> 15:16 <b>profile</b> 70:15 75:20 <b>programs</b> 96:10 <b>prompting</b> 21:15 <b>proper</b> 113:7, 21 <b>properly</b> 6:24 <b>proportion</b> 101:15 <b>proposal</b> 97:1 <b>proposals</b> 93:15 <b>proposed</b> 91:24 <b>proposition</b> 43:22 <b>prosecuted</b> 61:8 <b>Prospective</b> 15:15, 16, 18, 24 16:7, 24 50:25 66:15 <b>prospects</b> 98:3 <b>protection</b> 18:15, 22 <b>prove</b> 54:12</p>
---	--	---	--	---

<p><b>provide</b> 26:25 27:3 28:8 30:21 63:6 69:5 90:19 <b>provided</b> 9:20 10:3 26:19 27:4 29:16 48:15, 24 <b>providing</b> 69:3 <b>prudent</b> 70:25 <b>PSY</b> 1:20 <b>public</b> 11:6 13:21 17:11 28:25 36:9, 15 44:18 76:2 87:15 <b>publication</b> 33:4 47:19 49:19 50:6 51:7 79:9 85:12 <b>publications</b> 30:10 <b>publicly</b> 7:19, 23 10:10, 20 27:16 41:22 49:18 <b>published</b> 19:22 36:22 41:2 47:10, 17 52:9 100:5 112:16 <b>punch</b> 75:11 <b>PURI</b> 1:11 <b>purpose</b> 4:11 13:7 <b>purposes</b> 6:9 27:18 <b>pursue</b> 95:21 105:16 <b>put</b> 32:8 34:20 35:14, 15 45:21 46:24 48:5 71:22 73:19 74:12 75:6 85:6 88:11 92:2, 19 111:17 113:5 115:7 <b>puts</b> 69:18 <b>putting</b> 45:16 72:23 109:25</p> <p>&lt; Q &gt; <b>qualifications</b> 92:18, 24 <b>qualified</b> 68:21 <b>quantify</b> 29:24</p>	<p><b>quantitative</b> 29:9 <b>quarters</b> 34:23 <b>question</b> 10:24 14:15, 23 15:8 16:23 20:22 24:19 31:16, 17, 25 32:8, 10 35:4, 5, 14, 17, 19, 23 38:16, 25 39:8 40:3, 8, 21 42:20 43:2 45:14, 21, 24 46:7, 8, 24 50:20 53:13 54:7 55:6 58:10 60:4, 8 61:21 62:19, 22 63:23 64:1 68:11, 15, 19 69:12 72:13, 24 74:2, 15 80:24 81:18 82:4, 18 83:5, 6, 11, 12, 23, 24 84:11, 14, 15, 25 85:3, 7 99:3 100:15, 21 101:12, 21 106:24 107:6, 9, 20 108:1 109:1 110:8, 11 111:14 113:19, 24 114:3, 8 <b>questions</b> 40:6 69:9 72:23 73:1 75:6 80:16 83:14 84:1, 5, 7, 16 88:19, 21 89:1, 5 99:13, 15, 16 101:20 102:10, 11 104:24 109:25 112:8, 9, 12, 18, 22 113:6 <b>questions/reques</b> <b>ts</b> 4:14, 18, 23 <b>quibble</b> 57:10 <b>quickly</b> 8:16 <b>quite</b> 16:1 <b>quo</b> 34:3 <b>quotation</b> 50:14 <b>quote</b> 31:11, 21 41:22 44:18 51:24 71:5</p>	<p>73:2 76:15 77:17 <b>quote/unquote</b> 70:1 <b>quoted</b> 21:22 71:4</p> <p>&lt; R &gt; <b>R/F</b> 4:23 31:24 32:7 35:3 46:6 <b>raising</b> 62:11 <b>ran</b> 39:15 58:19 <b>rank</b> 107:14 <b>rate</b> 37:10 41:12 55:24 57:2 <b>read</b> 8:20, 24 11:8, 9 21:23 23:11, 14 40:9 41:6, 20 64:16 67:12 72:22 73:12, 19 75:2 84:10 85:25 86:2, 4, 25 87:1 100:10 103:17 <b>reading</b> 22:3 26:6 27:24 61:15, 25 63:10, 12 64:9, 10, 13 <b>reads</b> 64:8 <b>ready</b> 76:21 <b>reality</b> 50:25 <b>really</b> 13:22 25:23 34:18 51:5 63:10 65:20 68:15 80:10, 11, 13, 15 81:20 83:11 <b>reason</b> 7:15 27:10 43:18 <b>reasonable</b> 19:5 65:13 66:2, 5 <b>reasons</b> 25:18 37:7, 8, 9, 11, 12, 13 39:14 93:5 <b>REBECCA</b> 2:21 <b>recall</b> 9:15 10:15 28:20 47:13 48:11 90:17 112:22 <b>RECESSED</b> 74:23 <b>recognize</b> 43:14 73:10 94:15</p>	<p><b>recollection</b> 101:1 108:11 <b>record</b> 12:9, 13 13:25 20:7 27:14 33:4 36:6, 9, 16 40:8 43:20 51:8, 23 53:9 73:6, 9 74:16, 17, 22 85:12 88:17 89:25 90:6 108:16 113:5 <b>recorded</b> 88:18 115:11 <b>recruit</b> 96:3 <b>rectify</b> 6:15 <b>re-exam</b> 113:21 <b>RE-</b> <b>EXAMINATION</b> 4:7 112:5, 8 113:7 <b>refer</b> 12:21 16:4, 11 19:19 20:23 28:1 29:20 30:9 49:17 77:3 94:18 98:23 99:8, 22 110:2 <b>reference</b> 9:12 11:23 13:12 19:9 29:16 31:7 40:24 50:18 71:6 73:1, 15 74:17 98:18 <b>referenced</b> 100:16, 23 <b>references</b> 112:19 <b>referred</b> 9:1 12:1, 3, 19 14:7 46:17 47:10, 12 97:22 <b>referring</b> 13:6 17:4 18:20 19:4 20:24 38:3 48:14, 18 49:22 55:14, 15 71:4 73:5 75:16 98:8 113:1 <b>refers</b> 27:7 61:12 94:3, 21 95:25 100:4</p>	<p><b>re-filings</b> 44:23 <b>reflect</b> 6:15 <b>refresh</b> 108:10 <b>refresher</b> 98:16 <b>refusal</b> 47:2 63:24 <b>refusals</b> 4:10, 22 47:2 88:17 <b>refused</b> 4:23 <b>regard</b> 28:4 40:16 <b>regional</b> 57:22 <b>register</b> 106:23 <b>regulators</b> 81:4 83:2 <b>relate</b> 44:2, 4 <b>related</b> 28:17 <b>relating</b> 53:18 102:25 103:4, 8 104:2, 7, 14, 15, 17 106:17, 20 107:21 109:3 <b>relationship</b> 86:18 87:7 88:7, 8 <b>relationships</b> 88:14 <b>relevance</b> 38:4 39:12 <b>relevant</b> 11:9, 10 19:8, 9 32:21 34:19 36:19 39:22 40:3 107:2 111:5 <b>relied</b> 26:21 27:8 <b>reluctant</b> 52:2 55:8 <b>remaining</b> 19:23 <b>remember</b> 12:24 29:11 43:11, 12 48:4 73:13 101:4, 5 110:10 <b>remotely</b> 1:24 <b>repeat</b> 14:22 31:16, 17 38:15 58:10 60:4 82:17 99:2 <b>rephrase</b> 35:22 <b>replacement</b> 25:13 <b>reply</b> 9:19 10:2</p>
---	--	--	--	--

<p><b>report</b> 7:5 9:3 12:1, 2 15:17 17:7, 10 26:6 27:2, 18, 24 28:8 29:15 30:20 31:3 39:13 40:24 44:7, 9 48:1, 5, 16, 25 49:6, 10 50:17 51:24 60:24 66:13 76:22 79:4 80:12, 22 94:18 98:17, 23 99:5, 8 100:18 102:6, 23 104:3, 6 106:20 107:2 <b>REPORTED</b> 3:16 42:13 44:19, 22 80:5, 25 81:3 82:5 83:7, 16 84:19 85:1, 5, 10, 11, 15 <b>reporter</b> 14:11 17:25 22:24 23:4, 9, 10, 14, 17 84:12, 13 115:4 <b>REPORTER'S</b> 115:1 <b>reporting</b> 35:1 36:5 44:24 64:25 100:6 <b>reports</b> 10:9, 19 11:11, 12 50:12 <b>represent</b> 43:10 <b>representatives</b> 97:12 <b>represented</b> 54:25 86:16 87:5 88:6 107:13 <b>reputation</b> 30:1, 12 33:6, 9 34:12 59:20 60:12 68:18 70:6 75:19, 21 76:11 109:4 111:17 <b>reputations</b> 34:11, 17 60:19 <b>request</b> 27:11 53:12 <b>requested</b> 53:11 <b>required</b> 95:12</p>	<p><b>research</b> 27:9 102:24 103:3 111:15 <b>reserving</b> 57:13 <b>resignation</b> 96:2 <b>resort</b> 55:12, 19, 22, 25 56:2 57:4, 13 60:10, 11, 17, 18 <b>respect</b> 16:20 35:6 50:20 83:25 <b>respond</b> 80:11, 12, 16 <b>responsibility</b> 105:11 <b>responsible</b> 33:23 <b>responsive</b> 62:18 <b>rest</b> 25:5 48:19 <b>restate</b> 113:18 <b>result</b> 18:6, 25 85:21 93:24 96:14 <b>resulted</b> 93:10 <b>resulting</b> 95:5 <b>results</b> 11:19 113:16 <b>RESUMED</b> 74:24 <b>retain</b> 96:8 <b>retention</b> 96:9 <b>revenue</b> 34:25 <b>revenues</b> 34:24 <b>review</b> 9:21 17:10 26:3, 4, 7, 14 27:9 28:1, 2, 12, 16 30:3 31:5 49:5 55:11 73:24, 25 75:2 90:15 101:6 107:21 <b>reviewed</b> 8:23 9:6 10:1, 8, 9 17:7, 8, 11, 14 19:10 26:22, 23 37:16 48:20 49:9 92:14 94:9, 14, 16, 17 98:12, 15, 16 99:4 101:3, 24 103:13, 17 106:2 <b>reviewing</b> 9:15 <b>reviews</b> 100:13</p>	<p><b>revolves</b> 15:23 80:13 <b>revolving</b> 28:10, 17 29:7 106:8 <b>RICHARD</b> 1:12 <b>ridiculous</b> 68:4 <b>RILEY</b> 1:19 2:11 48:14 <b>Riley's</b> 9:15 45:1 48:7, 10 <b>risk</b> 56:3, 24 57:1, 2 77:1, 8, 10, 13, 16 78:2, 8, 12 79:13 111:25 <b>risk/high</b> 57:2 <b>riskier</b> 55:25 <b>risks</b> 78:19 <b>road</b> 8:4 107:8 <b>ROB</b> 1:11 2:24 <b>Rogers</b> 96:5 <b>role</b> 82:1 <b>roles</b> 15:25 <b>Roman</b> 95:9 <b>ROSEN</b> 1:19 <b>rough</b> 80:3 <b>RPR</b> 3:16 115:3, 24 <b>rug</b> 111:1, 3 <b>rules</b> 20:13 <b>run</b> 56:19  &lt; S &gt; <b>sake</b> 90:6 <b>sale</b> 91:11 <b>Santedicola</b> 3:16 115:3, 24 <b>SAVILLE</b> 2:25 <b>scenarios</b> 24:16 <b>scope</b> 80:19, 21 102:5 107:1 <b>screen</b> 49:23 59:23 89:14, 24 90:3 91:2 99:25 <b>scroll</b> 74:12 <b>search</b> 10:13, 18 11:12, 17 73:11 <b>searches</b> 30:4 <b>secured</b> 15:19 28:10, 18 29:8 <b>securing</b> 91:10 <b>securities</b> 44:5, 14 45:12 46:3, 4, 15</p>	<p><b>security</b> 16:12, 17, 21 17:2, 8, 22 18:2 44:22 64:24 81:4 87:11 <b>see-dars</b> 28:21 <b>seed-ers</b> 28:21, 22 <b>seek</b> 91:23 <b>seize</b> 61:10 <b>seized</b> 60:25 61:3 65:22 67:16 <b>seizing</b> 67:21 68:8 <b>Self-</b> <b>Represented</b> 3:7, 9 102:18 <b>semantics</b> 64:7 <b>senior</b> 96:1 <b>sense</b> 16:9 18:11, 13, 21 20:12, 25 21:14 22:4, 12 36:24 41:10 59:5 74:5 105:17, 18 <b>sentence</b> 8:5, 6, 17 32:1 52:7 77:4 86:12, 25 88:9 97:15 100:10 <b>September</b> 90:5 93:16 <b>serious</b> 65:20, 21 <b>served</b> 9:19 <b>Service</b> 52:14, 18 54:18 <b>Services</b> 61:13 65:8 78:15 <b>set</b> 75:21 115:6 <b>sets</b> 70:16 78:21, 24 <b>shadow</b> 12:22, 23 14:2, 3, 7 89:18 <b>share</b> 89:14, 24 99:24 <b>Shareholder</b> 97:4 <b>shares</b> 91:13 96:18, 19 97:6, 23 <b>sheet</b> 94:15</p>	<p><b>SHOOM</b> 2:21 <b>shooting</b> 72:10 <b>short</b> 50:22 <b>Shorthand</b> 115:4, 14 <b>shot</b> 79:25 <b>show</b> 36:16 73:8 <b>shown</b> 90:3 <b>shows</b> 36:10 <b>signature</b> 6:19 <b>signed</b> 106:18 <b>significant</b> 11:21 83:22 94:22 96:24 97:5 <b>significantly</b> 94:5 96:19 <b>silence</b> 102:10 103:23 112:7 <b>silencing</b> 31:14 <b>simple</b> 40:7 <b>simply</b> 10:3 24:10 100:21 <b>sincerely</b> 77:24 <b>single</b> 11:8 22:5 85:22 86:15 87:4 88:12 <b>singular</b> 8:10 <b>sir</b> 8:21 9:4, 9, 11, 17 10:7, 12, 16 12:25 16:14 18:8 31:2 38:5 43:6 55:10 66:22 70:25 73:10 76:22 77:14 82:20 83:23, 25 87:14 89:18, 22 91:16 94:24 95:8, 15, 24 96:6, 11 97:8 98:5, 11, 21 102:21 103:10, 12 104:6 112:24 <b>sitting</b> 29:10 59:3 <b>situation</b> 14:8 25:9, 15 107:21 <b>situations</b> 14:16, 17, 24 68:2 <b>skills</b> 76:6 <b>slander</b> 105:15</p>
--	--	--	--	--

**SLAPP** 9:13  
**slightest** 87:25  
**slightly** 22:4  
49:2, 12  
**slow** 19:3  
**sole** 106:17  
**solicit** 93:14  
**somebody**  
39:15 54:2  
61:25 99:15  
**somewhat** 105:1  
**soon** 19:23  
79:21 85:9  
**soon-to-be** 66:5  
**sorry** 14:9, 10  
22:13, 21 23:1,  
25 29:20 31:14  
37:24 38:15  
42:7 44:12  
53:6 58:7 60:5,  
10 61:5 62:17  
67:2 68:10  
82:17 86:10  
99:2, 24 100:9,  
20 101:18  
102:12 103:2  
105:5 108:1, 4,  
20 111:13  
**sort** 17:21 22:7,  
21, 22 23:24  
24:2 26:3  
28:25 64:23  
65:11, 18 70:11  
76:17 80:3, 14  
85:10, 21  
102:24 107:15  
**sought** 18:15, 22  
**sound** 24:14  
**sources** 21:22  
**Southern** 100:6  
**speak** 51:3  
**speaking** 15:4  
53:11 63:11  
102:2  
**speaks** 31:25  
32:2  
**SPEARS** 1:11  
**special** 85:16  
91:7 93:12  
98:24  
**specializes**  
61:13  
**specific** 20:1  
104:5

**specifically**  
32:15 47:9  
49:21 54:19  
73:13  
**spectrum** 57:11,  
12 58:17 59:10,  
11  
**speculating** 53:8  
**speculation**  
59:17 80:20  
107:15  
**spend** 65:19  
**spent** 54:4  
**spiral** 65:12  
**spoken** 54:22  
**sport** 71:5, 9, 11,  
16, 23 73:2, 16  
75:4, 9, 10  
**spot** 103:21  
**staged** 79:2  
**stages** 35:25  
**standard** 17:21  
**standpoint**  
20:25 21:1  
**start** 7:1 8:22  
12:20 22:14  
23:2 32:1 50:3  
91:18  
**started** 93:7  
**state** 30:16  
**stated** 30:20  
**statement** 25:22  
32:5 41:16  
49:17, 21 50:5  
51:12, 13, 14  
52:17 99:23  
100:17, 23  
**statements**  
97:18  
**States** 53:25  
112:14  
**stating** 52:13  
**status** 34:3  
**stay** 62:8  
**steadily** 34:24  
**stenographically**  
115:11  
**step** 57:5  
**steps** 56:3  
**stolen** 61:2  
**stood** 37:19  
**stop** 35:8 100:8  
**stopped** 18:22  
86:8

**straightforward**  
38:25  
**STRATEGY**  
1:19, 20  
**Street** 8:25  
19:15, 19 26:8,  
15 30:2, 17, 22  
31:12, 23 32:25  
33:23 38:13, 21  
39:22, 23 40:12  
41:1, 21 42:12  
44:2, 19 47:9,  
22 51:6, 18  
52:4, 10, 24  
63:1, 7, 20 65:5  
72:25 78:6, 10  
79:6, 9, 18 80:5,  
25 83:8, 17, 22  
84:19 85:2, 5,  
11, 16 86:21  
87:16 98:19  
101:16 111:8  
113:3  
**strict** 20:24  
**strictly** 63:11  
**stuff** 111:1, 3  
**subject** 52:3  
61:8 68:25  
88:17 107:6  
**subparagraph**  
91:25 94:3, 21  
96:12 97:9 98:6  
**subparagraphs**  
94:2  
**subsequently**  
36:21 56:24  
67:17  
**subset** 62:5  
**subsidiaries**  
95:13  
**substance**  
44:17 113:7  
**successful**  
76:14  
**successor**  
59:21 60:14, 21  
87:18, 21, 23  
**sudden** 23:3  
**sued** 105:15  
108:25 110:18  
**suggest** 71:8  
77:25 78:11  
79:17 82:12  
**suggesting**  
72:9 110:1

**suggestion**  
36:1 79:18, 21  
86:7  
**suggests** 42:25  
66:3 72:6  
110:24  
**suing** 109:5  
110:19  
**summarize** 98:7  
**summary** 52:4  
85:21  
**SUNNY** 1:11  
**SUNSHINE** 1:23  
4:2 6:3 7:4, 12  
24:10 27:1, 4,  
17, 25 32:6, 13  
36:2 42:17  
46:2 48:24  
49:4 53:8 66:9  
69:14 74:15  
75:1 81:6, 24  
88:19 89:11  
90:2, 12 99:20  
100:3 102:17,  
22 103:14  
105:4 106:1, 16  
107:5, 18  
111:14 112:3, 9  
114:4, 16  
**Sunshine's** 6:6  
21:7 114:11  
**SUPERIOR** 1:2  
**supplementary**  
90:8  
**support** 91:20  
92:3  
**supporting**  
39:17  
**supposed** 24:18  
101:20  
**surely** 33:24  
69:21 82:16  
**surprise** 87:24  
**surprised** 76:14  
**surprising**  
37:21 105:1, 4  
**survey** 59:15  
**suspected** 55:2  
**Sutin** 89:21  
90:5 91:3  
92:17 93:4  
112:19  
**S-u-t-i-n** 90:5  
**Sutin's** 92:14  
98:19 99:8

**swearing** 8:24  
26:5 91:19  
**sweep** 111:3  
**sweeping**  
110:25  
**swore** 9:23  
**sworn** 1:23 6:6,  
9, 12, 14 90:5, 9  
92:3  
**system** 11:5, 6  
21:24 24:12, 15  
25:6  
**systemic** 21:24  
24:12 25:8  
  
< T >  
**takes** 25:4  
**talk** 13:7 14:11  
25:18 27:12  
31:20 39:20  
60:24 76:25  
**talking** 13:14  
57:10 61:1  
62:2 67:6 76:8  
80:24 101:13  
**talks** 97:9, 11  
**targets** 34:25  
36:17  
**technical** 20:25  
**Technically**  
14:4, 5  
**term** 14:6  
18:14, 16, 17  
21:2, 4, 8, 10  
28:9, 17 29:7  
55:13 66:20, 23  
67:9 68:16  
71:9, 16, 22  
75:3 79:5, 11  
**terms** 21:2  
26:14 28:15  
35:16 46:21  
55:23 56:7  
58:2, 11, 18  
59:9 62:22  
64:25 75:5  
98:10 111:9  
**terribly** 40:7  
**testifying** 49:11  
**testimony** 39:12  
115:9  
**Texas** 102:19  
**text** 7:2  
**Thanks** 8:22

**theft** 64:24  
**theoretical** 59:3  
**theoretically**  
69:24  
**thing** 21:1 22:7  
30:4 73:20  
79:1, 14 113:17  
114:1  
**things** 10:24  
11:19 20:16  
27:9 28:24  
29:16 33:18  
39:20 40:17, 19  
46:23 60:15  
62:23 65:2, 8,  
10 66:10 68:22  
69:8 71:17  
73:18 76:9  
77:3 83:20  
101:7  
**thinking** 82:15,  
22  
**third** 7:6, 18, 22  
93:21 97:2, 25  
98:3, 10  
**thorough** 10:13  
**thought** 6:12  
11:10 28:22  
49:4 59:25  
**three-minute**  
73:21  
**thumbs-up** 24:8  
**tie** 106:3, 5, 21  
107:1 111:17  
**tightly** 16:1  
**time** 10:23  
11:2 12:13  
14:13 19:12, 15,  
21 20:2 25:2  
27:21 32:19  
37:20 42:18  
54:4 61:16, 19  
65:20 73:23  
74:9 76:16  
93:5, 17 101:9  
104:11 107:19  
114:7, 13 115:6,  
7, 10  
**times** 15:21  
**today** 59:21  
60:14, 21 88:19  
99:6  
**told** 47:15 49:4  
98:17

**tone** 70:16  
78:24  
**topic** 26:2  
**Toronto** 52:12,  
13, 18 54:18, 21  
55:3 61:13  
**total** 28:20  
**totally** 54:9  
60:5 79:24  
107:25  
**trained** 56:16  
**transaction**  
91:11 92:9  
93:11, 23 98:1  
**transactions**  
15:19 28:18  
**transcribed**  
115:12  
**transcript** 20:19  
88:18 115:14  
**treat** 6:8, 16, 20  
**trends** 36:4  
**trip-ups** 8:4  
**trouble** 37:4  
**true** 35:15  
38:10 42:2, 9  
52:8, 17, 20, 25  
109:23 115:13  
**truism** 63:14  
**trust** 43:19  
**truth** 25:22  
**trying** 13:17  
36:24 37:1, 14  
39:25 41:16  
65:20 109:8  
**tsunami** 33:12,  
14, 15  
**TUNLEY** 2:24  
6:4, 18, 22 7:7  
10:25 12:12, 16  
20:3, 21 21:4, 7,  
13, 20 23:8, 12,  
16 24:4 27:13,  
23 29:21 32:4,  
11 35:6, 11, 24  
40:5 43:23  
45:16, 25 46:9,  
18, 21 47:1, 6  
48:6, 13 49:1, 3  
53:10 63:24  
64:2 68:14  
73:7 74:8, 14,  
20, 25 84:8  
85:19 86:5, 11  
113:4, 18

**TUNLEY.....6**  
4:3  
**turn** 15:18 26:2  
41:4  
**turned** 23:6  
**turning** 50:23  
86:9  
**type** 17:1, 13  
37:19 65:6  
67:24  
**typed** 11:15  
**types** 67:24  
**typical** 105:10  
106:7  
**typically** 97:24  
**typo** 41:20, 25  
**typos** 7:1, 16  
  
**< U >**  
**U.S** 17:16, 18  
18:15 20:13  
105:14 110:21,  
23  
**U/A** 4:19 27:5  
**U/T** 4:14 12:15  
43:21 90:22  
**uhm-hmm**  
101:22  
**UK** 1:20  
**unable** 22:6  
24:22, 23 25:3,  
17  
**underlying** 35:4  
45:23 46:22  
83:15 84:17  
**undermine**  
111:6, 7  
**undermined**  
39:15  
**understand**  
18:19 33:17  
43:7 58:10  
62:24 63:21  
64:20 68:22, 24  
69:4, 8, 11  
92:20, 25 101:23  
**understanding**  
6:13 53:2, 3, 17  
54:4 57:14  
**understood**  
55:11 89:4  
**undertake** 54:11  
**undertaken**  
4:14 54:8

**undertaking**  
90:20  
**undertakings**  
4:9, 13  
**undertook** 26:4  
**unfortunately**  
57:6, 7 109:9  
**unique** 57:23  
68:2 97:3 98:9  
111:24  
**unit** 52:13  
61:13  
**United** 53:25  
112:13  
**unreasonable**  
106:16  
**unsecured**  
28:10, 18 29:8  
**unstable** 59:24  
**untrue** 104:22  
**unusual** 106:13  
**update** 50:18  
**updated** 48:3  
49:14, 17  
**updateds** 48:4  
**updating** 47:19  
**upset** 14:12  
**uses** 75:3  
  
**< V >**  
**valid** 109:20  
**value** 97:23  
**various** 18:5  
27:9  
**vast** 103:14  
**VENTURES** 1:9  
**VERITEXT**  
115:23  
**version** 6:12  
19:18 110:20  
**versions** 8:25  
11:16 19:21  
47:10  
**versus** 28:10,  
17 29:7, 8  
**viability** 77:1, 9,  
12, 17 78:2, 8,  
12, 19 79:13  
**Videoconferenci**  
**ng** 1:24  
**view** 30:8 38:2  
98:3  
**viewed** 38:2  
46:4  
**violating** 69:5

**violation** 46:5,  
15  
**violations** 44:5,  
14 87:11  
**VIRGINIA** 1:19  
**vitriol** 105:1  
**voluntarily**  
86:17 87:6  
**VOORHEIS** 1:13  
  
**< W >**  
**wait** 14:13, 14  
86:7  
**walk** 79:2  
90:24 94:1  
**Wall** 8:25  
19:15, 19 26:8,  
15 30:2, 16, 22  
31:12, 23 32:24  
33:23 38:13, 21  
39:22 40:12  
41:1, 20 42:12  
44:2, 19 47:9,  
21 51:6, 18  
52:4, 10, 24  
63:1, 7, 20 65:5  
72:25 78:6, 10  
79:6, 9, 18 80:5,  
25 83:8, 17, 22  
84:19 85:1, 5,  
11, 16 86:21  
87:16 98:19  
101:16 111:8  
113:3  
**wanting** 20:10  
109:4 111:10  
**war** 22:18  
23:21  
**warrants** 50:2  
**waste** 107:19  
**waters** 33:13,  
16, 20  
**ways** 111:5  
**weak** 79:5, 7, 10,  
11  
**website** 47:22  
103:15, 17, 24  
**websites** 103:7  
104:7  
**weekend** 73:24  
**well-**  
**documented**  
25:1  
**WESLEY** 1:12

**WEST** 1:8, 13  
2:16 3:12 89:12  
**whatnot** 106:4  
**whichever**  
110:18  
**whistleblower**  
42:14, 24 50:9  
81:9, 11 82:6  
112:10, 14  
**whistleblowers**  
42:5, 11 44:4  
50:11 81:16  
**wholly** 111:5  
**wide** 62:22  
**widely** 112:16  
**widespread**  
21:23 24:12  
25:8, 16  
**withhold** 106:9  
**withholding**  
106:6  
**WITNESS** 4:2  
21:14, 16 23:12  
35:15 45:17  
46:10, 14, 25  
48:16, 20 49:6  
100:13 107:3  
113:4 115:7, 9  
**wondered** 109:7  
**won't** 20:12, 20  
72:25 74:6  
**word** 33:2  
71:11  
**wording** 85:23  
**words** 44:6  
55:7 84:11  
105:6  
**work** 18:17  
**works** 53:4  
89:15  
**world** 22:17, 19  
23:19, 22 33:4  
58:25 59:5  
67:20 85:17  
**worries** 42:1  
**worse** 25:1  
59:13, 20 60:12  
79:1  
**worst** 65:8  
**written** 101:7  
**wrong** 18:16  
39:14 53:20  
74:9

< Y >

**Yeah** 6:18  
11:13 14:3  
30:5, 20 38:1  
79:15 85:8  
102:4 104:20  
108:24  
**yield** 44:25  
111:25  
**yields** 58:20, 22  
  
< Z >  
**zero** 106:18  
**Zoom** 1:24

# TAB 10

Court File No. CV-17-587463-00CL  
Court File No. CV-18-593156-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY, THE 7th  
 )  
MR. JUSTICE MCEWEN ) DAY OF APRIL, 2021

B E T W E E N:

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

**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 MAST 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

Court File No. CV-18-593156-00CL

**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 -

DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and JEFFREY  
MCFARLANE

Defendants

**AMENDED ORDER**

**THIS MOTION**, made by the Plaintiffs in both the above-styled actions, for an order that the Defendants, Rob Copeland, Jacque McNish, and Dow Jones and Company (the “Dow Jones Defendants”) produce without redaction the documents included in Volume VII of the Plaintiffs’ Supplementary Motion Record (the “Confidential Source Documents in Issue”), was heard by the Court in public hearings on December 15 and 16, 2020. The hearing of the motion was then continued *in camera* pursuant to my Order and Endorsement dated December 23, 2020.

**UPON READING** the Motion Record, Supplementary Motion Record and Responding Record, the Facta, Books of Authorities, Compendia and other materials filed in public by the Plaintiffs and the Dow Jones Defendants, and hearing public submissions of counsel for the Plaintiffs and the Dow Jones Defendants on December 15 and 16, and upon the Court reading a Confidential Motion Record containing unredacted copies of the Confidential Source Documents in Issue filed under seal by counsel for the Dow Jones Defendants, and hearing written and oral submissions *in camera* from counsel for the Dow Jones Defendants and from the *amicus curiae* appointed in accordance with my Order and Endorsement dated December 23, 2020.

**AND UPON BEING ADVISED** by counsel for the Dow Jones Defendants, pursuant to paragraph 59(c) of my Endorsement on this motion dated March 15, 2021. that they will not exercise any right of appeal from this Order.

1. THIS COURT ORDERS that the Dow Jones Defendants shall make disclosure of the Confidential Source Documents in Issue with the redactions for the names and genuine identifiers of the sources of the information contained therein that are set out in the copies attached hereto as Appendix “A” to this Order (the “Amended Disclosure”).
2. THIS COURT ORDERS that those pages of the Confidential Source Documents in Issue that the Dow Jones Defendants have identified as not relevant to these actions need not be, and have not been, reproduced in the Amended Disclosure at Appendix “A”.
3. THIS COURT ORDERS that the time period under the *Rules* for any appeal by the Plaintiffs from this Order shall run from the date their counsel receives this Order and the Amended Disclosure.
4. THIS COURT ORDERS that the portions of the record on this motion that were filed in confidence during the confidential hearings before me, consisting of:
  - a. the Confidential Motion Record containing unredacted copies of the Confidential Source Documents in Issue filed by counsel for the Dow Jones Defendants;
  - b. the List of Sources and Motion Record References filed by counsel for the Dow Jones Defendants;
  - c. the List of Confidential Sources Referenced in the Decision filed by counsel for the Dow Jones Defendants; and
  - d. the Outline of Amicus Submissions filed by the Amicus;

shall be filed together by the Dow Jones Defendants in hard copy in a sealed envelope, and sealed pursuant to this Order, and the said documents shall not form part of the public record on this motion, subject to further order of this Court, and all other copies of the said documents filed with the court in any form shall be destroyed.

5. THIS COURT ORDERS that the costs of this motion, including the costs of the *amicus curiae*, are reserved to me, as the motion judge designated to hear the motions brought by certain of the parties to these actions under s. 137.1 of the *Courts of Justice Act*, to be dealt with by me following the disposition of those motions, or at such earlier time as may be set in accordance with paragraph 60 of my Endorsement on this motion dated March 15, 2021.



---

# Appendix A

# TAB 1

**From:** Jacquie McNish <jacquie.mcnish@wsj.com>  
**Sent:** Fri, 4 Aug 2017 14:23:27 -0400  
**Subject:** Re: WB  
**To:** [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca>

Left vm.

On Aug 4, 2017, at 1:13 PM, [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca> wrote:

Haven't seen your piece yet. Did I miss it?? In any event, the WB program has now generated more than 70 tips. Hope that helps. [REDACTED] Confidential source privilege [REDACTED]

[REDACTED] Confidential source privilege [REDACTED]

Ontario Securities Commission  
 Ste 2200 - 20 Queen St. West  
 Toronto, ON M5H 3S8

[REDACTED] Confidential source privilege [REDACTED]

[REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca

On Jul 31, 2017, at 1:16 PM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

ok, thanks

[REDACTED] Confidential [REDACTED]

Jacquie McNish  
 The Wall Street Journal  
 o: 416-306-2031  
 c: 647-224-7554

On Mon, Jul 31, 2017 at 1:16 PM, [REDACTED] Confidential source privilege [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca> wrote:

Hi Jacquie. Pls go with "over 30". I have ccd [REDACTED] Confidential [REDACTED] who is back in the office this week.

[REDACTED] Confidential source privilege [REDACTED]

Ontario Securities Commission  
 Ste 2200 - 20 Queen St. West  
 Toronto, ON M5H 3S8

[REDACTED] Confidential source privilege [REDACTED]

Confidential source [REDACTED]@osc.gov.on.ca

On Jul 28, 2017, at 4:48 PM, Confidential source privilege [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca wrote:

Hi Jacquie. The Office of the Whistleblower launched July 14, 2016.

The program offers compensation of up to \$5 million to whistleblowers who come forward with tips that lead to enforcement action.

The range for awards is 5%-15% of the total monetary sanctions ORDERED and/or voluntary payments MADE.

The award percentage is determined based on a number of factors, including the amount of total money collected by the OSC.

In terms of number of tips, I will get back to you. Our last public announcement was in March 2016 when that number was over 30.

**Confidential source privilege**

Ontario Securities Commission  
Ste 2200 - 20 Queen St. West  
Toronto, ON M5H 3S8

**Confidential  
source privilege**

Confidential source privilege [REDACTED]@osc.gov.on.ca

#### OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

Le présent message s'adresse exclusivement à son destinataire et peut contenir des renseignements privilégiés et confidentiels. Si vous n'êtes pas le destinataire de ce document ou si vous l'avez reçu par erreur, vous êtes par la présente avisé qu'il est strictement interdit de le divulguer ou de l'utiliser sans autorisation. Veuillez en avvertir l'expéditeur immédiatement et détruire le message original sans le copier ou en révéler le contenu.

Ontario Securities Commission

#### OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not

the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

Le présent message s'adresse exclusivement à son destinataire et peut contenir des renseignements privilégiés et confidentiels. Si vous n'êtes pas le destinataire de ce document ou si vous l'avez reçu par erreur, vous êtes par la présente avisé qu'il est strictement interdit de le divulguer ou de l'utiliser sans autorisation. Veuillez en avvertir l'expéditeur immédiatement et détruire le message original sans le copier ou en révéler le contenu.

Ontario Securities Commission

# TAB 2

**From:** Jacquie McNish <jacquie.mcnish@wsj.com>  
**Sent:** Fri, 4 Aug 2017 13:17:45 -0400  
**Subject:** Re: WB  
**To:** [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca>

Thanks. Ok to give you a call in 15 mins?

On Aug 4, 2017, at 1:13 PM, [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca> wrote:

Haven't seen your piece yet. Did I miss it?? In any event, the WB program has now generated more than 70 tips. Hope that helps. [REDACTED] Conf

[REDACTED] Confidential source privilege

Ontario Securities Commission  
 Ste 2200 - 20 Queen St. West  
 Toronto, ON M5H 3S8

[REDACTED] Confidential source  
 privilege

[REDACTED] Confidential source  
 privilege [REDACTED]@osc.gov.on.ca

On Jul 31, 2017, at 1:16 PM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

ok, thanks [REDACTED] Confidential  
 al source

Jacquie McNish  
 The Wall Street Journal  
 o: 416-306-2031  
 c: 647-224-7554

On Mon, Jul 31, 2017 at 1:16 PM, [REDACTED] Confidential source privilege [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca> wrote:

Hi Jacquie. Pls go with "over 30". I have ccd [REDACTED] Confide who is back in the office this week.

[REDACTED] Confidential source privilege

Ontario Securities Commission  
 Ste 2200 - 20 Queen St. West  
 Toronto, ON M5H 3S8

[REDACTED] Confidential source  
 privilege

Confidential source  
privilege

@osc.gov.on.ca

On Jul 28, 2017, at 4:48 PM, Confidential source privilege

Confidential source privilege @osc.gov.on.ca wrote:

Hi Jacquie. The Office of the Whistleblower launched July 14, 2016.

The program offers compensation of up to \$5 million to whistleblowers who come forward with tips that lead to enforcement action.

The range for awards is 5%-15% of the total monetary sanctions ORDERED and/or voluntary payments MADE.

The award percentage is determined based on a number of factors, including the amount of total money collected by the OSC.

In terms of number of tips, I will get back to you. Our last public announcement was in March 2016 when that number was over 30.

**Confidential source privilege**

Ontario Securities Commission  
Ste 2200 - 20 Queen St. West  
Toronto, ON M5H 3S8

**Confidential source  
privilege**

Confidential source  
privilege

@osc.gov.on.ca

#### OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

Le présent message s'adresse exclusivement à son destinataire et peut contenir des renseignements privilégiés et confidentiels. Si vous n'êtes pas le destinataire de ce document ou si vous l'avez reçu par erreur, vous êtes par la présente avisé qu'il est strictement interdit de le divulguer ou de l'utiliser sans autorisation. Veuillez en avvertir l'expéditeur immédiatement et détruire le message original sans le copier ou en révéler le contenu.

Ontario Securities Commission

#### OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not

the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

Le présent message s'adresse exclusivement à son destinataire et peut contenir des renseignements privilégiés et confidentiels. Si vous n'êtes pas le destinataire de ce document ou si vous l'avez reçu par erreur, vous êtes par la présente avisé qu'il est strictement interdit de le divulguer ou de l'utiliser sans autorisation. Veuillez en avvertir l'expéditeur immédiatement et détruire le message original sans le copier ou en révéler le contenu. .

Ontario Securities Commission

# TAB 3

Confidential source privilege

@osc.gov.on.ca>

To: "McNish, Jacquie" <jacquie.mcnish@wsj.com>

Subject: Re: WB

Sent: Fri, 4 Aug 2017 17:13:40 +0000

Haven't seen your piece yet. Did I miss it?? In any event, the WB program has now generated more than 70 tips. Hope that helps. 

Confidential source privilege

Ontario Securities Commission

Ste 2200 - 20 Queen St. West

Toronto, ON M5H 3S8

Confidential  
source privilege

Confidential  
source  
privilege

@osc.gov.on.ca

On Jul 31, 2017, at 1:16 PM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

ok, thanks

Confide  
ntial

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Mon, Jul 31, 2017 at 1:16 PM,

Confidential source privilege

Confidential source privilege

@osc.gov.on.ca> wrote:

Hi Jacquie. Pls go with "over 30". I have cc'd  who is back in the office this week.

Confidential source privilege

Ontario Securities Commission

Ste 2200 - 20 Queen St. West

Toronto, ON M5H 3S8

Confidential  
source privilege

Confidential  
source  
privilege

@osc.gov.on.ca

On Jul 28, 2017, at 4:48 PM,

Confidential source privilege

Confidential source privilege

@osc.gov.on.ca> wrote:

Hi Jacquie. The Office of the Whistleblower launched July 14, 2016.

The program offers compensation of up to \$5 million to whistleblowers who come forward with tips that lead to enforcement action.

The range for awards is 5%-15% of the total monetary sanctions ORDERED and/or voluntary payments MADE.

The award percentage is determined based on a number of factors, including the amount of total money collected by the OSC.

In terms of number of tips, I will get back to you. Our last public announcement was in March 2016 when that number was over 30.

### Confidential source privilege

Ontario Securities Commission  
Ste 2200 - 20 Queen St. West  
Toronto, ON M5H 3S8

Confidential source  
privilege

Confidential source  
privilege

[osc.gov.on.ca](mailto:osc.gov.on.ca)

#### OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

Le présent message s'adresse exclusivement à son destinataire et peut contenir des renseignements privilégiés et confidentiels. Si vous n'êtes pas le destinataire de ce document ou si vous l'avez reçu par erreur, vous êtes par la présente avisé qu'il est strictement interdit de le divulguer ou de l'utiliser sans autorisation. Veuillez en avvertir l'expéditeur immédiatement et détruire le message original sans le copier ou en révéler le contenu.

Ontario Securities Commission

#### OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

Le présent message s'adresse exclusivement à son destinataire et peut contenir des renseignements privilégiés et confidentiels. Si vous n'êtes pas le destinataire de ce document ou si vous l'avez reçu par erreur, vous êtes par la présente avisé qu'il est strictement interdit de le divulguer ou de l'utiliser sans autorisation. Veuillez en avvertir l'expéditeur immédiatement et détruire le message original sans le copier ou en révéler le contenu.

Ontario Securities Commission

# TAB 4

Sent: Fri, 21 Jul 2017 14:24:53 -0400  
Subject: Re: esco decision  
From: "McNish, Jacquie" <jacquie.mcnish@wsj.com>

**Confidential source privilege**

great.

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Fri, Jul 21, 2017 at 2:24 PM, **Confidential source privilege** wrote:

Waiting to hear from clients

Sent from my iPhone

On Jul 21, 2017, at 2:22 PM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

Thanks **Confi**

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Fri, Jul 21, 2017 at 1:52 PM, **Confidential source privilege** wrote:

[https://www.google.ca/url?sa=t&ret=j&q=&esrc=s&source=web&cd=10&cad=rja&uac=t-8&ved=0ahUKF3vilhpvI95rVAhXKdD4KHcuJCE1QFghSMak&url=https%3A%2F%2Fwebsites.godaddy.com%2Fblob%2Fcb9a0d9d-50b9-491f-a7db-542db99ca273%2Fdownloads%2F1bgrohol0\\_899641.pdf%3F9b63dee1&usq\\_AfQjCN118L4SE-B4j2IGv517g36YOKqzCMQ](https://www.google.ca/url?sa=t&ret=j&q=&esrc=s&source=web&cd=10&cad=rja&uac=t-8&ved=0ahUKF3vilhpvI95rVAhXKdD4KHcuJCE1QFghSMak&url=https%3A%2F%2Fwebsites.godaddy.com%2Fblob%2Fcb9a0d9d-50b9-491f-a7db-542db99ca273%2Fdownloads%2F1bgrohol0_899641.pdf%3F9b63dee1&usq_AfQjCN118L4SE-B4j2IGv517g36YOKqzCMQ)

Regards,

**Confidential  
source  
privilege**

Confidential  
source  
privilege

# TAB 5

**From:** Confidential source privilege  
**To:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**Subject:** Re: esco decision  
**Sent:** Fri, 21 Jul 2017 18:24:31 +0000

Waiting to hear from clients

Sent from my iPhone

On Jul 21, 2017, at 2:22 PM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

Thanks Confidential

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Fri, Jul 21, 2017 at 1:52 PM, Confidential source privilege wrote:

<https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKIiwilhpvT95rVAhXKdD4KI1cuJCI:IQFghSMak&url=https%3A%2F%2Fwebsites.godaddy.com%2Fblob%2Feb9a0d9d-50b9-491f-a7db-542db99ca273%2Fdownloads%2F1bgroh01899641.pdf%3F9b63dee1&usq-AFQjCNH8L4SE-B4j2IGv5I7g36YOKqzCMQ>

Regards,

**Confidential  
source  
privilege**

**Confidential  
source privilege**

# TAB 6

**Sent:** Fri, 21 Jul 2017 14:15:47 -0400  
**Subject:** Re: esco decision  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** [REDACTED] **Confidential source privilege**

Thanks [REDACTED] **Confide**

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Fri, Jul 21, 2017 at 1:52 PM, [REDACTED] **Confidential source privilege** wrote:

[https://www.google.ca/url?sa=t&ret=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKewillhpvT95rVAhXKdD4KIHcuJCEIQFghSMAk&url=https%3A%2F%2Fwebsites.godaddy.com%2Fblob%2Feb9a0d9d-50b9-491f-a7db-542db99ca273%2Fdownloads%2F1bgroho10\\_899641.pdf%3F9b63dee1&usg=AFQjCNH8L4SE-B4j2IGv517g36YOKqzCMQ](https://www.google.ca/url?sa=t&ret=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKewillhpvT95rVAhXKdD4KIHcuJCEIQFghSMAk&url=https%3A%2F%2Fwebsites.godaddy.com%2Fblob%2Feb9a0d9d-50b9-491f-a7db-542db99ca273%2Fdownloads%2F1bgroho10_899641.pdf%3F9b63dee1&usg=AFQjCNH8L4SE-B4j2IGv517g36YOKqzCMQ)

Regards,

**Confidential  
source  
privilege**

# Confidential source privilege

# TAB 7

**From:** Confidential source privilege  
**To:** "Jacquie.mcnish@wsj.com" <Jacquie.mcnish@wsj.com>  
**Subject:** esco decision  
**Sent:** Fri, 21 Jul 2017 17:52:16 +0000

[https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKewilhpvT95rVAhXKdD4KHcuJCEIQFghSMAk&url=https%3A%2F%2Fwebsites.godaddy.com%2Fblob%2Feb9a0d9d-50b9-491f-a7db-542db99ca273%2Fdownloads%2F1bgrohol0\\_899641.pdf%3F9b63dee1&usg=AFQjCNH8L4SE-B4j2IGv5I7g36YOKqzCMQ](https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKewilhpvT95rVAhXKdD4KHcuJCEIQFghSMAk&url=https%3A%2F%2Fwebsites.godaddy.com%2Fblob%2Feb9a0d9d-50b9-491f-a7db-542db99ca273%2Fdownloads%2F1bgrohol0_899641.pdf%3F9b63dee1&usg=AFQjCNH8L4SE-B4j2IGv5I7g36YOKqzCMQ)

Regards,

**Confidential  
source privilege**

# TAB 8

**Sent:** Thu, 20 Jul 2017 15:15:24 -0400  
**Subject:** Re: FW: Wall Street Journal called  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** **Confidential source privilege**

Thank you for helping. What we need to know:

- how many times **Confidenti** have been approached by regulators?
- when was last approach?
- what was the specific nature of the questions?
- specific enforcement agencies that approached?
- If possible the names of the regulatory agents/ Police [so we can confirm they exist]
- any notion of how long investigation may last?

let me know when the statement of claim we discussed is available and I will pick up.

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Thu, Jul 20, 2017 at 2:33 PM, **Confidential source privilege** wrote.

You can call me at **Confidential source privilege**

**From:** **Confidential source**  
**Sent:** Thursday, July 20, 2017 12:16 PM  
**To:** **Confidential source privilege**  
**Subject:** Wall Street Journal called

**Re: Catalyst and Callidus**

**Jacquie McNish**

Looking to verify a piece of information. It doesn't have to be on the record just on background.

Jacquie.mcnish@wsj.com

Regards,

**Confidential source**

Confidential  
source  
privilege

# TAB 9

**From:** Jacquie McNish <jacquie.mcnish@wsj.com>  
**Sent:** Thu, 20 Jul 2017 14:55:28 -0400  
**Subject:** Re: Wall Street Journal called  
**To:** Confidential source privilege

Thanks. Is 10 minutes okay?

On Jul 20, 2017, at 2:33 PM, Confidential source privilege wrote:

You can call me at Confidential

**From:** Confidential  
**Sent:** Thursday, July 20, 2017 12:16 PM  
**To:** Confidential source privilege  
**Subject:** Wall Street Journal called

**Re: Catalyst and Callidus**

**Jacquie McNish**

Looking to verify a piece of information. It doesn't have to be on the record just on background.

[jacquie.mcnish@wsj.com](mailto:jacquie.mcnish@wsj.com)

**Confidential  
source  
privilege**

# TAB 10

**From:** Confidential source privilege  
**To:** "Jacquie.mcnish@wsj.com" <Jacquie.mcnish@wsj.com>  
**Subject:** FW: Wall Street Journal called  
**Sent:** Thu, 20 Jul 2017 18:33:09 +0000

You can call me at Confidential source privilege

**From:** Confidential  
**Sent:** Thursday, July 20, 2017 12:16 PM  
**To:** Confidential source privilege  
**Subject:** Wall Street Journal called

**Re: Catalyst and Callidus**

**Jacquie McNish**

Looking to verify a piece of information. It doesn't have to be on the record just on background.

[Jacquie.mcnish@wsj.com](mailto:Jacquie.mcnish@wsj.com)

Regards,

**Confidential  
source privilege**

# TAB 11

**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**Sent:** Tue, 18 Jul 2017 11:06:27 -0400  
**Subject:** Re: Here are some of the names we discussed  
**To:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>

Back at my desk now!

On Tue, Jul 18, 2017 at 10:32 AM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

let me know when you can take a call  
J

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Mon, Jul 17, 2017 at 11:29 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Gail Regan, organized crime enforcement/financial crimes unit/corporate crime section. Toronto police service.  
Diane Kelly, Toronto police

R. Cameron B. Watson (goes by Cam). OSC, enforcement branch, joint serious offences team

Michael Hutchinson, manager, joint securities intelligence unit, OSC.

I'm working on the RCMP end

---  
Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

---  
Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 12

**Sent:** Tue, 18 Jul 2017 10:32:57 -0400  
**Subject:** Re: Here are some of the names we discussed  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>

let me know when you can take a call  
J

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Mon, Jul 17, 2017 at 11:29 AM, Copeland, Rob <[rob.copeland@wsj.com](mailto:rob.copeland@wsj.com)> wrote:

Gail Regan, organized crime enforcement/financial crimes unit/corporate crime section. Toronto police service.

Diane Kelly, Toronto police

R. Cameron B. Watson (goes by Cam). OSC, enforcement branch, joint serious offences team

Michael Hutchinson, manager, joint securities intelligence unit, OSC.

I'm working on the RCMP end

--

Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 13

**Sent:** Tue, 18 Jul 2017 11:16:24 -0400  
**Subject:** Re: Here are some of the names we discussed  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>  
[Callidus may 3,2017.pdf](#)

I'll call in 5 minutes. See attached what I have highlighted in yellow

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Tue, Jul 18, 2017 at 11:06 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Back at my desk now!

On Tue, Jul 18, 2017 at 10:32 AM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

let me know when you can take a call  
J

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Mon, Jul 17, 2017 at 11:29 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Gail Regan, organized crime enforcement/financial crimes unit/corporate crime section. Toronto police service.  
Diane Kelly, Toronto police

R. Cameron B. Watson (goes by Cam). OSC, enforcement branch, joint serious offences team

Michael Hutchinson, manager, joint securities intelligence unit, OSC.

I'm working on the RCMP end

Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 14

**From:** Jacquie McNish <jacquie.mcnish@wsj.com>  
**Sent:** Mon, 17 Jul 2017 14:37:32 -0400  
**Subject:** Re: Here are some of the names we discussed  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>

Got this. Thanks.

On Jul 17, 2017, at 11:29 AM, Copeland, Rob <[rob.copeland@wsj.com](mailto:rob.copeland@wsj.com)> wrote:

Gail Regan, organized crime enforcement/financial crimes unit/corporate crime section.  
Toronto police service.  
Diane Kelly, Toronto police

R. Cameron B. Watson (goes by Cam). OSC, enforcement branch, joint serious offences team

Michael Hutchinson, manager, joint securities intelligence unit, OSC.

I'm working on the RCMP end

--

Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 15

**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**Sent:** Mon, 17 Jul 2017 11:29:32 -0400  
**Subject:** Here are some of the names we discussed  
**To:** Jacquie McNish <Jacquie.McNish@wsj.com>

Gail Regan, organized crime enforcement/financial crimes unit/corporate crime section. Toronto police service.

Diane Kelly, Toronto police

R. Cameron B. Watson (goes by Cam). OSC, enforcement branch, joint serious offences team

Michael Hutchinson, manager, joint securities intelligence unit, OSC.

I'm working on the RCMP end

--

**Rob Copeland**  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 16

**Sent:** Fri, 28 Jul 2017 16:50:53 -0400  
**Subject:** Re: WB  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca>

Thanks. When can we talk on other question?

Jacquie McNish  
 The Wall Street Journal  
 o: 416-306-2031  
 c: 647-224-7554

On Fri, Jul 28, 2017 at 4:48 PM, [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca> wrote:

Hi Jacquie. The Office of the Whistleblower launched July 14, 2016.

The program offers compensation of up to \$5 million to whistleblowers who come forward with tips that lead to enforcement action.

The range for awards is 5%-15% of the total monetary sanctions ORDERED and/or voluntary payments MADE.

The award percentage is determined based on a number of factors, including the amount of total money collected by the OSC.

In terms of number of tips, I will get back to you. Our last public announcement was in March 2016 when that number was over 30.

[REDACTED] Confidential source privilege

Ontario Securities Commission  
 Ste 2200 - 20 Queen St. West  
 Toronto, ON M5H 3S8

[REDACTED] Confidential source  
 privilege

[REDACTED] Confidential source  
 privilege [REDACTED]@osc.gov.on.ca

#### OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

Le présent message s'adresse exclusivement à son destinataire et peut contenir des renseignements privilégiés et confidentiels. Si vous n'êtes pas le destinataire de ce document ou si vous l'avez reçu par erreur, vous êtes par la présente avisé qu'il est strictement interdit de le divulguer ou de l'utiliser sans autorisation. Veuillez en avvertir l'expéditeur immédiatement et détruire le message original sans le copier ou en révéler le contenu.

Ontario Securities Commission

# TAB 17

**From:** Confidential source privilege [REDACTED]@osc.gov.on.ca>  
**To:** Jacquie McNish <jacquie.mcnish@wsj.com>  
**Subject:** WB  
**Sent:** Fri, 28 Jul 2017 20:48:48 +0000

Hi Jacquie. The Office of the Whistleblower launched July 14, 2016.

The program offers compensation of up to \$5 million to whistleblowers who come forward with tips that lead to enforcement action.

The range for awards is 5%-15% of the total monetary sanctions ORDERED and/or voluntary payments MADE.

The award percentage is determined based on a number of factors, including the amount of total money collected by the OSC.

In terms of number of tips, I will get back to you. Our last public announcement was in March 2016 when that number was over 30.

**Confidential source privilege**

Ontario Securities Commission  
 Ste 2200 - 20 Queen St. West  
 Toronto, ON M5H 3S8

Confidential source  
 privilege

Confidential source  
 privilege [REDACTED]@osc.gov.on.ca

#### OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

Le présent message s'adresse exclusivement à son destinataire et peut contenir des renseignements privilégiés et confidentiels. Si vous n'êtes pas le destinataire de ce document ou si vous l'avez reçu par erreur, vous êtes par la présente avisé qu'il est strictement interdit de le divulguer ou de l'utiliser sans autorisation. Veuillez en avvertir l'expéditeur immédiatement et détruire le message original sans le copier ou en révéler le contenu.

Ontario Securities Commission

# TAB 18

**Sent:** Fri, 28 Jul 2017 11:57:14 -0400  
**Subject:** Re: questions  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>

Yes, this passage is of great interest:

Counsel for McFarlane submits that Callidus is the author of its own misfortune. He argues that in essence Callidus could have structured its loan to own strategy in a manner that reflected a purchase price of \$30 million which would have left room to recover \$7 million, which necessarily includes \$3 million more than the amount of the facility and forbearance fees. That would have left McFarlane liable for the full \$3 million on the guarantee. He argues that, being a public company, Callidus refrained from doing so so that it would not have to show a loss to its investors. Moreover, the facility and forbearance fees would appear as profit. **Indeed, counsel argues that Callidus made a windfall on the acquisition of the Company as evident from the \$66.902 million value set forth in the Company's September 30, 2015 financial statements. [43] While it is the case that Callidus might have structured the transaction by negotiating or stipulating a purchase price less than \$34.25 million, the fact is that it neglected to do so. There is no need to draw any conclusion on its motivation. Nor is such a determination necessary for the purposes of identifying McFarlane's obligations under the guarantee**

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Fri, Jul 28, 2017 at 11:53 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Seems from the judgment he is still responsible for \$250K

On Fri, Jul 28, 2017 at 11:44 AM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

i'll call **Confiden** this aft

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Fri, Jul 28, 2017 at 11:44 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Will have to figure out what that means--if he gets a new trial or what

On Fri, Jul 28, 2017 at 11:43 AM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

wow.

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Fri, Jul 28, 2017 at 11:42 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

DOW000640-0001; DOW000640-0001; DOW000640-0001;  
DOW000983-0001; DOW000984-0001

# TAB 19

**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**Sent:** Fri, 11 Aug 2017 10:59:23 -0400  
**Subject:** Fwd: FW: CBL-TSX | Q2/17 First look: loss deepens with higher provisions  
**To:** Jacquie McNish <Jacquie.McNish@wsj.com>

----- Forwarded message -----

**From:** [REDACTED] Confidential source privilege  
**Date:** Fri, Aug 11, 2017 at 10:53 AM  
**Subject:** FW: CBL-TSX | Q2/17 First look: loss deepens with higher provisions  
**To:** "rob.copeland@wsj.com" <rob.copeland@wsj.com>

Hi Rob,

[REDACTED] Confidential, happy to chat after their cc call

**Confidential source privilege**

## **Callidus Capital Corporation**

Specialist Lenders | Flash Update

### Q2/17 First look: loss deepens with higher provisions

**CBL-TSX** | Price (10-Aug) C\$11.83 | Market Cap C\$597.3M

**HOLD**

**PRICE TARGET C\$13.50**

CBL reported Q2/17 EPS of -\$0.51, which was mainly impacted by lower interest income (from lower gross yield), higher provisions and G&A.

### Key highlights

- There was no material update regarding CBL's privatization process. Management cited the complexity and diversity of the proposed structure have resulted in delays beyond its original timeline. Consistent with the Jun/17 update, management indicated the potential pursuit of a private debt fund as an alternative. The company is committed to completing a transaction on terms in-line with previously published valuation range of \$18-22/sh. We will await further commentary on CBL's conference call.
- CBL reported EPS of -\$0.51/sh. Net provisions came in at \$28.2M (PCL rate of 15%) with the majority (~80%) related to the present value impact associated with the disposition of collateral that is expected to be fully realized over time. Interest revenue of \$21.1M was down 35% QoQ on lower gross yield of 11.2% (vs. 20.2% last quarter). The latter was mainly due to lower interest rates charged on certain loans and lower additional fees.
- GLRs of \$1.0B (+1% QoQ) were mostly unchanged from the prior quarter, with one loan of \$30M. We have yet to see a resumption in loan growth.
- As of Jun/17, management estimates total liquidity would support ~\$300M of new loans. Post quarter (Jul/17), CBL's revolving credit facility was terminated due to a zero balance at the end of the revolving period and beginning of the amortization period. CBL is actively looking for a potential warehouse facility as a replacement. Over the next three months, both the company's subordinated bridge facility and senior debt facility will mature. CBL believes these facilities will either be extended or replaced.

### Conference call details

- Management will host a conference call on Friday at 11:00AM ET. The dial-in numbers are [1-888-231-8191](tel:1-888-231-8191), or [647-427-7450](tel:647-427-7450) (passcode: 40047945).

### Valuation

- Our target price is based on a 25%/75% mixed valuation approach: (1) on a potential transaction assuming a price of \$18.00/sh.; and (2) 1.3x P/B target multiple based on our 2018 BVPS estimate.

.....



.....

Confidential  
source  
privilege

Confidential  
source  
privilege

# Confidential source privilege

--

Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 20

**From:** Jacquie McNish <jacquie.mcnish@wsj.com>  
**Sent:** Mon, 17 Jul 2017 14:37:32 -0400  
**Subject:** Re: Here are some of the names we discussed  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>

Got this. Thanks.

On Jul 17, 2017, at 11:29 AM, Copeland, Rob <[rob.copeland@wsj.com](mailto:rob.copeland@wsj.com)> wrote:

Gail Regan, organized crime enforcement/financial crimes unit/corporate crime section.  
Toronto police service.  
Diane Kelly, Toronto police

R. Cameron B. Watson (goes by Cam). OSC, enforcement branch, joint serious offences team

Michael Hutchinson, manager, joint securities intelligence unit, OSC.

I'm working on the RCMP end

--

Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 21

**Sent:** Mon, 17 Jul 2017 11:29:32 -0400  
**Subject:** Here are some of the names we discussed  
**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**To:** Jacquie McNish <Jacquie.McNish@wsj.com>

Gail Regan, organized crime enforcement/financial crimes unit/corporate crime section. Toronto police service.

Diane Kelly, Toronto police

R. Cameron B. Watson (goes by Cam). OSC, enforcement branch, joint serious offences team

Michael Hutchinson, manager, joint securities intelligence unit, OSC.

I'm working on the RCMP end

--

**Rob Copeland**  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 22

**From:** Confidential source privilege  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>  
**Subject:** Re: Following up - AIP  
**Sent:** Mon, 31 Jul 2017 22:16:28 +0000

Ok, I do think it would be inaccurate to say Confidential source privilege  
 Confidential or at the very least Confidential source privilege My concern is this appearing as  
 though this is investment on behalf of clients from Confidential source privilege

The majority of stories in WSJ clarify that the reference is to Confide when talking about one of our  
 investment teams, so I am a bit surprised to hear that this is reference labels us generally as Confid  
 ential

**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**Date:** Monday, July 31, 2017 at 5:50:21 PM  
**To:** Confidential source privilege  
**Subject:** Re: Following up - AIP

Not quite sure the exact phrasing but usually we say something like invested for clients by Confiden  
 Confide or some such.  
 Rob

On Mon, Jul 31, 2017 at 5:44 PM, Confidential source privilege wrote:

Thanks for clarifying. Nothing to correct, but I did want to confirm the reference will list Confident  
 Confidential source privilege Let me know.

**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**Date:** Monday, July 31, 2017 at 5:24:19 PM  
**To:** Confidential source privilege  
**Subject:** Re: Following up - AIP

Hi, it's the PE firm. Canadian. Apologies for the confusion.  
 Rob

On Mon, Jul 31, 2017 at 5:05 PM, Confidential source privilege wrote:

Rob - just following up on this. On background, I checked with our AIP hedge fund team and they  
 do not have investments with a Catalyst Capital. I am checking with the Private Markets team now  
 to see if it's something they own although I don't think they would typically have a hedge fund  
 holding

That said, a quick google search shows that there is a Catalyst Capital multi-strategy investment firm as well as a Catalyst Capital private equity firm. Which one are you reporting on? Just want to be sure that I'm fact checking the right one here.

Let me know.

Thanks,  
Confiden

**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**Date:** Monday, July 31, 2017 at 3:03:03 PM  
**To:** [REDACTED] Confidential source privilege  
**Subject:** Re: Following up - AIP

Sorry don't seem to have your number can you shoot it to me?

On Mon, Jul 31, 2017 at 1:47 PM, [REDACTED] Confidential source privilege wrote:

Hi Rob -

I got a message that you called about [REDACTED] Confidential source privilege I tried you back but got your voicemail; thought it may be easier to connect over email. Let me know how we can help.

Thanks,  
Confide

**Confidential source privilege**

--  
Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

DOW000790-0001; DOW000790-0001

Confidential source privilege

--  
Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

Confidential source privilege

---  
Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

Confidential source privilege

DOW000790-0001; DOW000790-0001

# Confidential source privilege

# TAB 23

**From:** Confidential source privilege  
**To:** "rob.copeland@wsj.com" <rob.copeland@wsj.com>  
**Subject:** FW: CBL-TSX | Q2/17 First look: loss deepens with higher provisions  
**Sent:** Fri, 11 Aug 2017 14:53:33 +0000

Hi Rob,

Confidential source privilege happy to chat after their cc call

**Confidential source privilege**

## Callidus Capital Corporation

Specialist Lenders | Flash Update

### Q2/17 First look: loss deepens with higher provisions

**CBL-TSX** | Price (10-Aug) C\$11.83 | Market Cap C\$597.3M

**HOLD**

**PRICE TARGET C\$13.50**

CBL reported Q2/17 EPS of  $-\$0.51$ , which was mainly impacted by lower interest income (from lower gross yield), higher provisions and G&A.

#### Key highlights

- There was no material update regarding CBL's privatization process. Management cited the complexity and diversity of the proposed structure have resulted in delays beyond its original timeline. Consistent with the Jun/17 update, management indicated the potential pursuit of a private debt fund as an alternative. The company is committed to completing a transaction on terms in-line with previously published valuation range of  $\$18-22$ /sh. We will await further commentary on CBL's conference call.
- CBL reported EPS of  $-\$0.51$ /sh. Net provisions came in at  $\$28.2$ M (PCL rate of 15%) with the majority (~80%) related to the present value impact associated with the disposition of collateral that is expected to be fully realized over time. Interest revenue of  $\$21.1$ M was down 35% QoQ on lower gross yield of 11.2% (vs. 20.2% last quarter).

DOW000817-0001; DOW000817-0001

The latter was mainly due to lower interest rates charged on certain loans and lower additional fees.

- GLRs of \$1.0B (+1% QoQ) were mostly unchanged from the prior quarter, with one loan of \$30M. We have yet to see a resumption in loan growth.
- As of Jun/17, management estimates total liquidity would support ~\$300M of new loans. Post quarter (Jul/17), CBL's revolving credit facility was terminated due to a zero balance at the end of the revolving period and beginning of the amortization period. CBL is actively looking for a potential warehouse facility as a replacement. Over the next three months, both the company's subordinated bridge facility and senior debt facility will mature. CBL believes these facilities will either be extended or replaced.

#### Conference call details

- Management will host a conference call on Friday at 11:00AM ET. The dial-in numbers are 1-888-231-8191, or 647-427-7450 (passcode: 40047945).

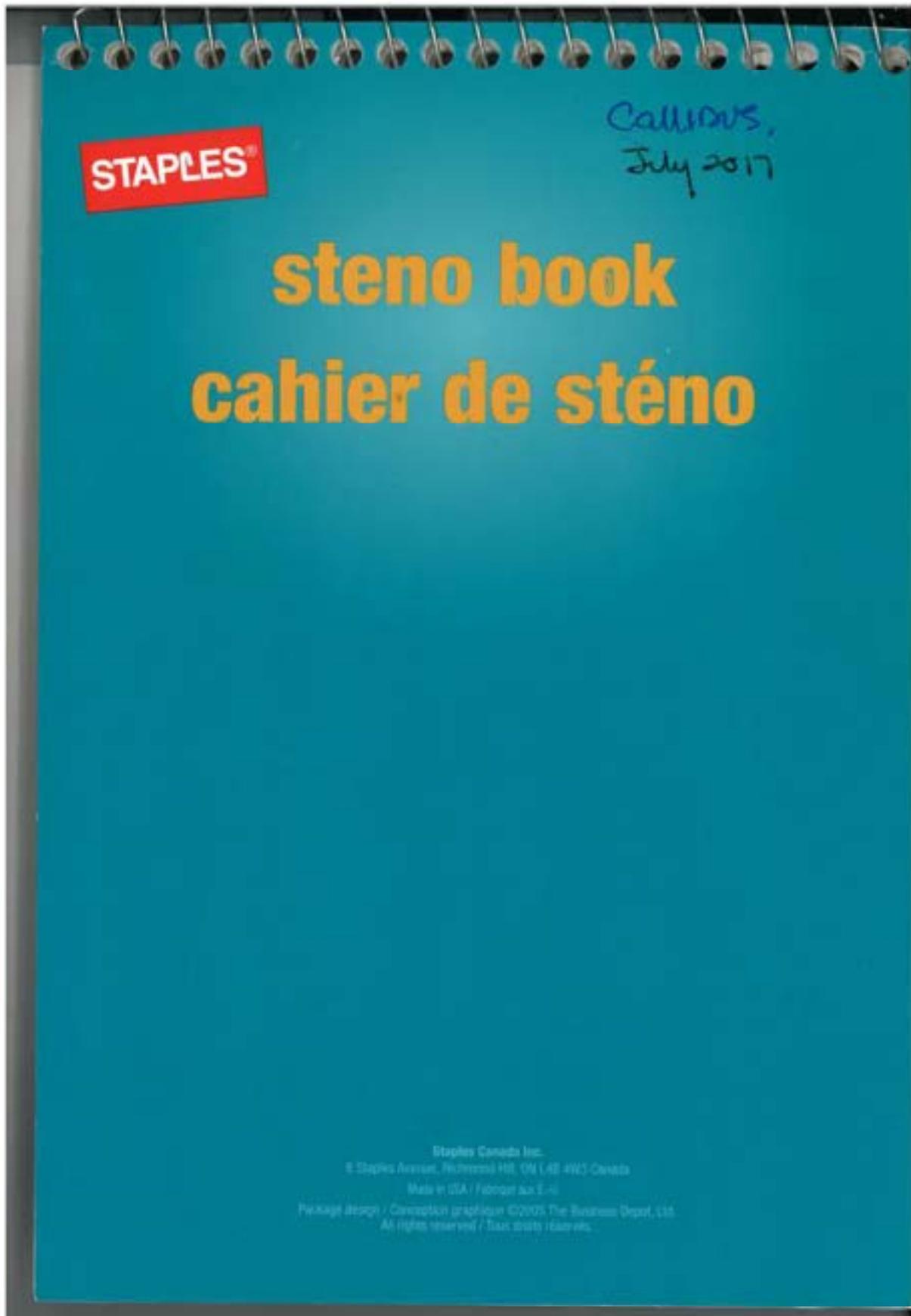
#### Valuation

- Our target price is based on a 25%/75% mixed valuation approach: (1) on a potential transaction assuming a price of \$18.00/sh.; and (2) 1.3x P/B target multiple based on our 2018 BVPS estimate.

Confidential  
source  
privilege

**Confidential  
source  
privilege**

# TAB 24



Staples Canada Inc.  
5 Staples Avenue, Richmond Hill, ON L4B 4W3 Canada  
Made in USA / Fabriqué aux É.-U.  
Package design / Conception graphique ©2005 The Business Depot, Ltd.  
All rights reserved / Tous droits réservés.

Airone Kelly. Toronto Police,

GAIL Regan: organized crime  
financial crimes. unit  
corporate crime sect.

Camera watch. enforcement  
section  
joint sensor  
offences. team  
Murchal Hutchinson  
joint security  
intelligence team.

wt to July 30.

**Confidential source privilege**

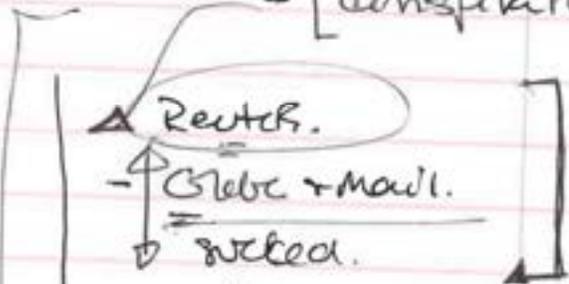
\* meaghan Gray 416 808 2095

Confidential source privilege

Aug. 2017-

- Gutierrez. fairly aggressive  
probed. in  
media

- order reveal  
sources.  
- [conspirator]



- game theory
  - our interview
    - gets somebody
- we wait go to  
point until we interview

Derek | get

Solicitor client privilege

▷ extreme

- never could have made loan
- poor underbank
- Sam. Fleisher

( success under  
drizzle business

Newton gave same sum  
any in exchange

- be equity holder
- told Sam

went to you to

\$1 billion, book

+ nice public

[ Sam said it's a  
+ big a business

↳ =

Confidential source  
privilege

August 17, 2017

\$30 milly ↔

| ↔

[ court - supervised, insolvency, process  
[ secured lender ]

See:

a

secured lender seek  
[ court order, initiated, by lender ]

[ capitalized  
prefers ]

rolled in

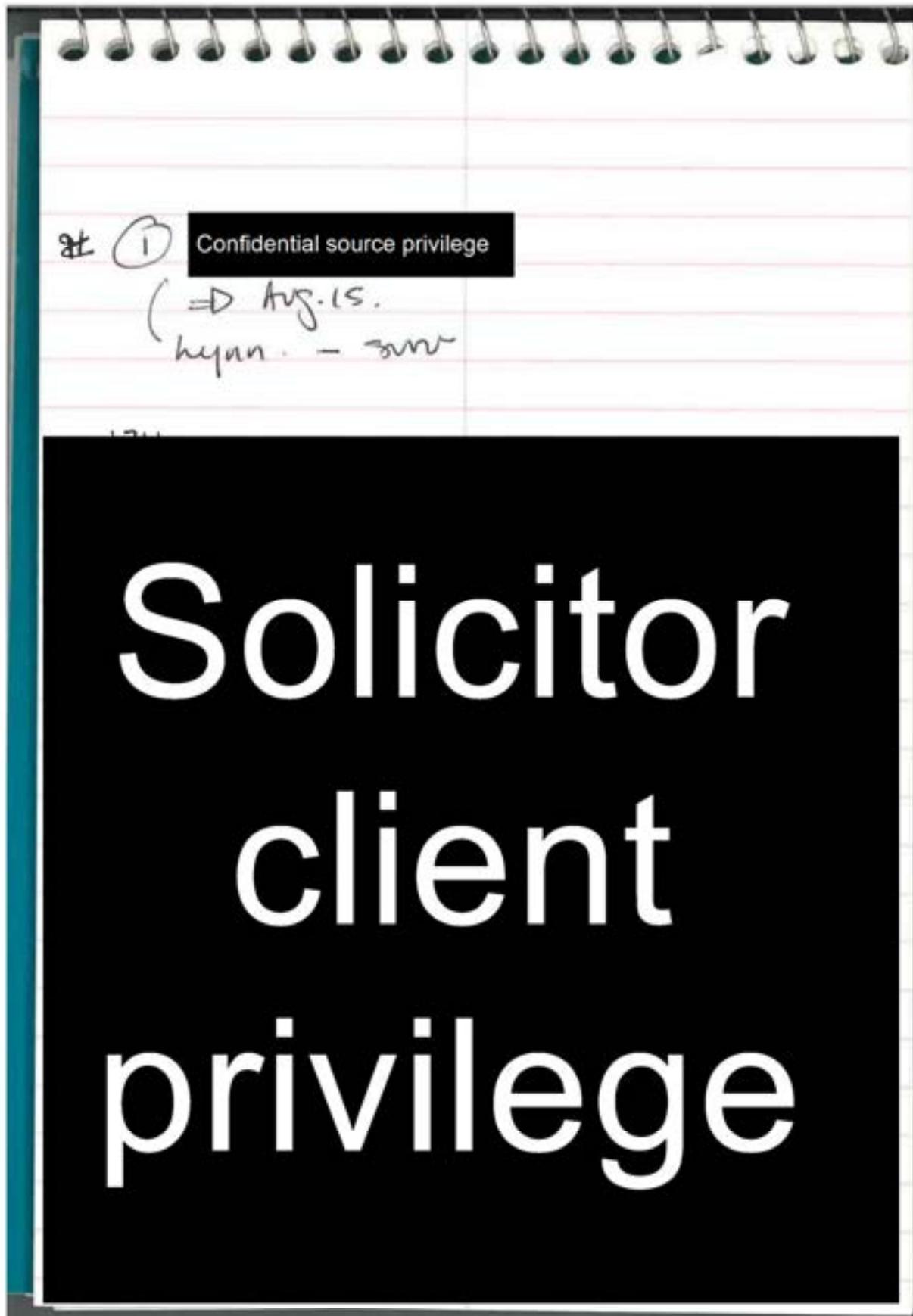
PO  
guarantee  
by catalyst  
to callides

banks  
used have  
to write down

PO  
- all assets  
- foreign subs

[ stuff.  
- restructuring  
- merger ]

- non-accrual  
given appropriate



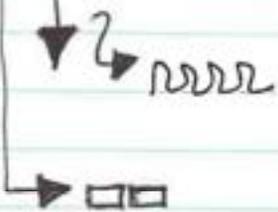
# TAB 25

Aug. 2017

Confidential source privilege

FUND III investor.

Confidential source privilege



↳ its unscrupulous  
X i fter

its  
real weakness  
is my

audited

Fund III  
accept is

IKR is 5% a year  
- new up to his  
IKR.

such a couple  
v what between  
Cebutsh + collides

III - expire next year

so for  
couple

Fund II - 12-13  
con extend  
still has

were pay  
for - lawsuit

pull  
some I mention  
all my big  
for results

- he keeps + quite separate  
- he sees everything & turns  
at most attorney claim.

"if he lends you my yr go  
to be in a lawsuit"

Xch  
 11+1  
 Confidential source privilege

• Gateway.  
 • way

Callidus. he

law.



\$150 mil.



7:30  
 Hyatt

Ed Regis went  
 Roger. Canada  
 Portman  
 Reuters

at

credit

trade @ 70 - 80%

Fund III

2x book for business

Callidus

we thought we were going to callidus.

Fund II put her on and she's in the market

For sure by all he is in is by the way > she's

vought. Callidus.

\$13 sold  
 \$12

they just keep up she's back

= were just up

Friskay. vahah

he's gonna it @ 20.

Buckbee  
 Boland. rci

Chairman & CEO.

- awcitors.  
 - value  
 ↓  
 empty & run into someone.

= waddy wants to get  
 ↓  
 all p

[ Calpers  
124.

Annual.  
 no questions or advice & annual.  
 ↓  
 - unit

LP. =  
 ↓  
 he certainly.  
 = pissed.  
 - few friends + in there  
 - sur. view

Have Capital  
 ↓  
 more from go organization  
 2 years ago  
 fixed

[ Centwest. disclosure. ]  
 ↓  
 Δ minor

it indeed depends  
 any.

\$180

- beyond,  
 - one are bend  
 - sur  
 - no disclosure  
 - O&C.

LP.

80% super majority vote to approve.

# TAB 26

Confidential  
source

Spts.

⇒ ~~CONFIDENTIAL~~

- try to keep clean @



! priv. opt

- sell portfolio into private debt fund

- ⇒ investor. month. that s\_h will happen

- osc. re false + unsubs. rumors

- all tr info. receivable back to

Confidential source  
privilege

Blue Rodeo.:

- Aug 10 WSS. story.

- 60 people @ his cottage Saturday.

- Blue Rodeo plays

- Guest said he was absent @ his  
- run party

- Rich. . Keith O'Leary.?

- [Rich + Jewell.] top. end.

- Tannenbaum.

↔ Frankly try to arrange meet g IRA  
you don't need.

⇒ Joseph Lewis → met her ~ \$100 mil.

- lost \$ 1 bill. on Best Steam.

- Joe Lewis re

=

⇒ stuck. that language put. in. after 1st quarter  
when they disclosed 1st quarter

- limited partnerships have

- catalyst cause event

→ catalyst cause event  
LP's ability to select w/ investment example

GP. (or). accelerated entire

Catalyst Fund 4. 80k purchase

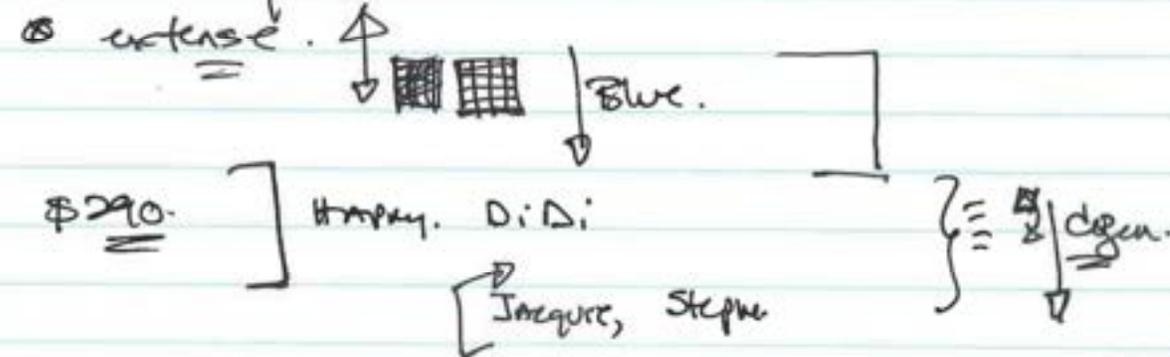
each Fund is an legal. entity  
+ less on GP General Partners  
Nov. Fund 2.

Therapies sold last week - Chinese company.  
Hemostatic (old name)

- sold all v cash
- kept. I.P.

Fund 2  
↓ sold \$290. unit.  
units -> 2.5 unit shares v Callidus

asked everyone over a barrel.



# **TAB 27**

P

**Confidential  
source privilege**

Fund III

**Confidential  
source privilege**

≡ Aug 1. 2017.  
Fund III

nona Pershell.

- Callidus Notes
- Gateway Casinos. tried to IPO.
- Therapure Tech. tried to IPO @ \$10/lim.  
↳ \$20 mill. revenue.

-biggest. hit.

June 2006. sold Cabovisao - Televisao por Cabo  
Catalyst Fund 1 to Cogeco Cable Inc.  
\$900 million. credit facility CIBC.

# TAB 28

P. Panet Aug 8. 2017.

Elkin Bahn  
Bauman.

issues around gawron  
summary paragraphs - Albertz  
include

⇒ = finds. | investus delegate a  
etv discretion to  
Catalyst.

- one fund - Fund 2. next next term  
deadline. NOV. 2017. -
- Callidus AIF? background on shareholder

May 25. info circular. Callidus.  
~~para~~ p. 3-4. talk  
Nov. 2017

Few limited. IRA Gusten  
Bill.

- throwing - weight around.

= capt. w). Then

- 2 weeks

Moyses on appeal. 20/07 + September  
review

- Deficiency. WF + vertab. -

- Refresh - moving breach case. - Catalyst new  
case alleging - Vimpticum fir cum vms. + u.s. advisor. UBS

- Federal -

when you have case + goes to federal  
fruits seen

- wanted to hold up. non-competes on Brandon. May  
+ access to docs.

when Vimpacem negotiating w/ Callidos

- had confidential agreement w/ Callidos

• Vimpacem granted exclusivity to  
Callidos. for July 23, 2014 - Aug. 18, 2014

- allege Vimpacem breached  
grant or agreed agreement  
by talks to consortium +  
included. W.F.

☐ - heard in Connecticut

- "Hainey" Judge. Newbold. represent  
L head of Commercial 1st.

☐ - when sued Vimpacem:

- . UBS.

. W.F.

2016. Vimpacem. litigate  
Catalyst claim tier

\$1.6. Orin J. Vimpacem

Rocco. - motion: advise u process stop lawsuit  
that Catalyst. is where  
suit it lost

Hainey. reserved judgment. -

mayse | <sup>Natbold.</sup> Appeal. v mayse decision  
Sept. 26 - 27<sup>th</sup> - Rocco for Catalyst  
 - Panel.

= Orestis . acta for complex  
Mike Breuk - private equity Tenneco  
 LG. capital  
Jim Dupus - Global LML.

[McCaffrey.] = Junior Sirvaz.

= Lerner. W<sup>R</sup> Soroya.

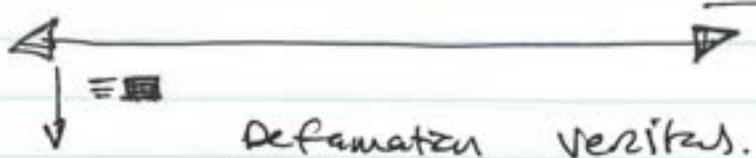
- UBS. Stikemans

Craig Bayer

\$180

Confidential source privilege

= argue abuse v process.  
- so over - top.



Defamation veritas. | callidus.  
 veritas filed.

pleadings. statement - statement v defame

Share into = sharing into -

trial. :

- pleadings just closed.

= reviewed v - case

- N  
Confidential  
source privilege

Look at moyses

close subpoena. = [good to find]  
west FACE. / moyses  
west FACE.

Clerkman.

[west FACE clean agents  
GEM

transcr

[Final trial transcript  
[Riley.] =

Callidos. quiet  
Nov. - sale

private debt opt

June. Da. announced no sale.

- express w/ optious. sale to private debt fund.

☐ = speculgea trade mag.  
Free.  
 puff piece.

P.E. Hub.

△ = buyout. mag  
 June 28. [sam better.]

week

Phil:

Bulletin Board.

● Callidos

●

= source.

[Stockwise.]

☐ = no respecture

# TAB 29

Confidential  
source privilege 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege

**JACQUIE MCNISH:** Hi, **Confid** It's Jacquie McNish at the Wall Street Journal, how are you?

Confidential source privilege I'm fine, how are you?

**JACQUIE MCNISH:** Have I got you at a time that's convenient?

Confidential source  
privilege Absolutely. How can I be -- how can I be helpful?

**JACQUIE MCNISH:** Well, you probably know that I've been working on Catalyst and Callidus, and I'm working with --

Confidential source privilege Yeah.

**JACQUIE MCNISH:** -- a colleague of mine in New York. And we have accumulated a lot of information, but the one thing that we're trying to be is scrupulous about as possible is talking to people with direct knowledge of what we believe to investigations by the OSC --

[00:00:32]

-- the Toronto Corporate Crimes Division, and possibly the RCMP as well. And I've talked to people of mutual acquaintance, which I assume is how you got my number.

Confidential source privilege Yeah.

**JACQUIE MCNISH:** And I just -- if it's okay, I'd just like to ask you to help explain to me on terms of the basis that we're talking, do you want to talk on background, not for attribution at this point?

Confidential source privilege Yes, absolutely.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Absolutely.

**JACQUIE MCNISH:** All right.

Confidential source privilege I have to do that as a part of my agreement with my employer.

[00:01:01]

Confidenti 7-20-2017  
 Dow Jones & Company  
 August 12, 2019  
 Transcript by TransPerfect

**JACQUIE MCNISH:** Okay. And I understand you were [redacted] Confidential source privilege  
 [redacted] Confidential source  
 privilege

[redacted] Confidential source privilege Well, I wasn't -- I'm in our institutional equity business.

**JACQUIE MCNISH:** Okay.

[redacted] Confidential source privilege Not in our investment banking business.

**JACQUIE MCNISH:** Okay.

[redacted] Confidential source privilege But I was here when that happened.

**JACQUIE MCNISH:** Okay. So you didn't have any role per say in the -- [redacted] Confidential source privilege -- so  
 in terms of institutional equity, is it more research or is it sales?

[redacted] Confidential source privilege No, I'm in sales and trading.

[00:01:32]

**JACQUIE MCNISH:** Okay, all right. Okay. All right. So I guess just tell me sort of what led you to  
 the point where you decided to contact the regulators?

[redacted] Confidential source privilege Okay, and that is their normal course of [PH00:01:55] sure bid.

**JACQUIE MCNISH:** Sorry, I lost part of the sentence. Are you just --

[redacted] Confidential source privilege Sorry.

**JACQUIE MCNISH:** -- you disappeared and then came back saying the end of the sentence.

[00:02:02]

[redacted] Confidential source privilege Okay. Yeah, sorry. So I've only spoken to the regulators about one thing.

**JACQUIE MCNISH:** Okay.

[redacted] Confidential source privilege Okay? And that is their normal course [PH00:02:08] of sure bid.

**JACQUIE MCNISH:** Okay.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege Okay. They put an automatic share purchase plan, okay, and the reason that you do -- the reason that you do an automatic share purchase plan is so that you're always buying stock regardless of whether you're in black out, right?

[00:02:30]

JACQUIE MCNISH: Right.

Confidential source privilege Because let's say that, you know, like you're the CEO and you want to buy back stock, but, oops, we're within a month of quarter end, we've got to stop buying back stock. And then you can report -- and then you can buy back stock until you report, and that's probably a month after quarter end. So there's really only a month out of three that you can actually be in the market buying back stock if you want to buy back stock.

JACQUIE MCNISH: Okay.

Confidential source privilege Right? Now there is rules about putting in an automatic share purchase plan, and one of those rules is that you have to walk in with clean hands.

[00:03:07]

JACQUIE MCNISH: Okay.

Confidential source privilege Okay. You can't be in possession of material non-public information when you initiate the plan.

JACQUIE MCNISH: Okay.

Confidential source privilege Does that make sense to you?

JACQUIE MCNISH: Yeah, can't possess material non-public information.

Confidential source privilege Yeah. [INDISCERNIBLE00:03:27] --

JACQUIE MCNISH: And so we're talking about automatic buyback of stock as part of a normal course issuer bid program.

[00:03:31]

Confidential source privilege Yeah.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** And you can do that so -- and so you can do this automatically so long as you don't have material, non-public information?

Confidential source privilege Yes. But when they establish their normal course issuer bid, okay, and enter it into this automatic share purchase plan with GMP who's the broker that's doing the buyback for them --

**JACQUIE MCNISH:** Right.

Confidential source privilege -- they were in the middle of this process where they were trying to sell the company.

[00:04:01]

**JACQUIE MCNISH:** So what period of time are we talking about?

Confidential source privilege This is like -- this is four months ago.

**JACQUIE MCNISH:** Ago. Okay. And this -- when we say sell the company, we're talking about Callidus back to Catalyst?

Confidential source privilege That -- no. Well, what -- at the time they were still trying to get people to believe that this was a -- that they were going to sell it to an independent third party.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Right? Now -

**JACQUIE MCNISH:** And had they retained bankers at that point?

Confidential source privilege Oh, yes.

[00:04:31]

**JACQUIE MCNISH:** And that was --

Confidential source privilege Yeah, they had hired -- Goldman Sachs had --

**JACQUIE MCNISH:** That's right.

Confidential source privilege -- been hired. That was public.

**JACQUIE MCNISH:** Right.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege They had, you know, given people updates about how the process was going, and so on and so on. Those updates were all lies in my opinion.

JACQUIE MCNISH: Okay.

Confidential source privilege But -- stay with me just one second, Jacquie, please.

JACQUIE MCNISH: Sure.

[00:05:00]

Confidential source privilege Jacquie, sorry about that.

JACQUIE MCNISH: No worries.

Confidential source privilege So, anyway, the fact is that they entered into this automatic share purchase plan at a time when it was completely inappropriate for them to do that.

JACQUIE MCNISH: Do you know when that was initiated?

Confidential source privilege I could find out for you.

JACQUIE MCNISH: Okay.

Confidential source privilege Bear with me just one --

JACQUIE MCNISH: Sure.

Confidential source privilege I mean I'm not in front of my -- I'm not in front of my computer right now. But --

JACQUIE MCNISH: Just approximately would be helpful.

[00:05:31]

Confidential source privilege Oh, it would be early this year like February/March of this year.

JACQUIE MCNISH: Okay. All right.

Confidential source privilege So that is my one communication with the regulator about Callidus.

Confidenti 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** So what was the material information that they weren't disclosing?

Confidential source privilege Well, the fact that they're in -- I mean they're in -- I mean if we're in the middle of a process to sell the public [PH] float, or sell the whole company to a third party --

[00:06:05]

**JACQUIE MCNISH:** Right.

Confidential source privilege -- okay, you are by definition in possession of material non-public information because you know the identity of prospective purchasers, if any.

**JACQUIE MCNISH:** Right.

Confidential source privilege You know what kind of price has been discussed, et cetera, et cetera, et cetera.

**JACQUIE MCNISH:** I thought they had disclosed it. Were they not -- did they just not disclose it till later?

Confidential source privilege They didn't disclose it until later.

**JACQUIE MCNISH:** Okay.

[00:06:31]

Confidential source privilege Right. And anyway, that's -- so that -- issuer bids of this nature are the responsibility of the Toronto Stock exchange --

**JACQUIE MCNISH:** Right.

Confidential source privilege -- okay, and IIROC. And I sent a letter to them saying, listen, you know, like I've been Confidential source privilege in the market for Confidential source privilege

[00:07:00]

**JACQUIE MCNISH:** Right.

Confidential source privilege Okay. And like in my view this is behavior that's [INDISCERNIBLE] you know, like number one, it's illegal, and number two, it's contrary to the public interest, and it should be investigated.

Confidential source privilege 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Okay. And when did you send that letter?

Confidential source privilege Contemporaneously with the announcement. It would [PH] only be a day or two after.

**JACQUIE MCNISH:** Okay.

Confidential source privilege So February or March of this year.

**JACQUIE MCNISH:** Okay. All right. And did anyone get back to you?

Confidential source privilege Yeah, they got back to me, and they said, well, thank you for your letter.

[00:07:31]

You know, if we choose -- you know, if we choose to act on this, we're not going to be able to tell you.

**JACQUIE MCNISH:** Okay, which is typical.

Confidential source privilege Yeah.

**JACQUIE MCNISH:** And has anyone gotten back and asked any questions?

Confidential source privilege No.

**JACQUIE MCNISH:** Okay. We're assembling a lot of stuff. If I promise not to use your name but just say according to a document read by the Wall Street Journal was a complaint launched here that said this. Would you be comfortable --

Confidential source privilege Yeah.

**JACQUIE MCNISH:** -- on that basis?

Confidential source privilege Yep.

**JACQUIE MCNISH:** Okay. Because we are aware of three other whistleblower reports, one of them quite voluminous.

[00:08:03]

And the others we're still sort of tracking down.

Confident 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege Okay. So I'm aware of -- I am aware of several, okay. Now there's one guy, you know, I know you can't -- I know you can't tell me who -- I know you can't tell me who you have talked to.

**JACQUIE MCNISH:** Right.

Confidential source privilege But I can tell you who I've talked to.

[00:08:32]

**JACQUIE MCNISH:** Okay.

Confidential source privilege Okay. So I'm presuming that your colleague in New York has spoken to [PH] Nathan Anderson, okay. Nathan is very, very up to speed on this.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Okay. There's a former borrower named [PH] Kevin Bowman in Alberta. I know he's been all over the regulator.

[00:09:01]

Now the problem is that for the rest of who want to see this scam put to bed, Kevin is crazier than a soup sandwich, okay? And he doesn't know when to speak and when to shut up.

**JACQUIE MCNISH:** Right.

Confidential source privilege Okay. Now I mean but I'll tell you something, I mean there's been some dark days watching this thing, and you think is this guy going to get away with this forever?

[00:09:31]

I mean this is just terrible.

**JACQUIE MCNISH:** Right.

Confidential source privilege Okay. Now what keeps me going is not Kevin Bowman. Okay, Kevin Bowman's going to be fine. Kevin Bowman is what we call a serial entrepreneur.

**JACQUIE MCNISH:** Right.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege And he got out [INDISCERNIBLE] on this one business, and it was sort of a Hall Mary pass to see if he could resuscitate it with money from Callidus, and he couldn't, okay. But what they did was they get this guy [PH] Scott Sinclair to go into the business as a chief restructuring officer ---

[00:10:06]

JACQUIE MCNISH: Right.

Confidential source privilege -- okay, working for them. And by the way, chief restructuring officer, that's like all the powers of a receiver.

JACQUIE MCNISH: Yes.

Confidential source privilege But with no [PH] court supervision.

JACQUIE MCNISH: Right. And they can charge their bills to the company.

Confidential source privilege Right. Sure. But here's the thing --

JACQUIE MCNISH: You know what, I have to take --

Confidential source privilege He went around ---

JACQUIE MCNISH: Confidential source privilege I have to take this other call. It's an urgent one. I'll call you right back.

Confidential source privilege Yeah, sure.

JACQUIE MCNISH: Thanks. Jacquie McNish.

[00:10:30]

Not relevant

Confidential [REDACTED] 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Not  
relevant

Confidential source  
privilege

JACQUIE MCNISH: Hey, [REDACTED] Confidential source privilege I'm so sorry about that. It was someone I've been trying to reach for several days. Please give me a call back. I'm at 416-306-2031.

14

DOW000861-0001; DOW000861-0001

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[00:18:30]

And thank you for your patience. Bye-bye.

[NO DIALOGUE]

[00:23:30]

JACQUIE MCNISH: Jacquie McNish?

Confidential source privilege

Hello. Hey, it's

Confidential

JACQUIE MCNISH: Oh, so sorry about that. It was someone I've been trying to reach for a while. I hate doing that to people.

Confidential source privilege

Don't apologize. Don't apologize. Listen, I, you know, I worked on a trading desk for 20 years. I got to go, bye is a perfectly acceptable way to end a conversation.

[00:24:01]

JACQUIE MCNISH: We train our spouses.

Confidential source privilege

Exactly.

JACQUIE MCNISH: And our children.

Confidential source privilege

Yeah. So I was able during our little intermezzo there, I was able to confirm the share purchase plan was entered into on April 4th.

JACQUIE MCNISH: Okay.

Confidential source privilege

Okay? The company reported earning -- the company reporter their first quarter earnings on May the 5th.

[00:24:32]

JACQUIE MCNISH: Okay.

Confidential source privilege

So, anyways, like the first quarter was in the can when they entered into the automatic share purchase plan.

JACQUIE MCNISH: Right.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege Okay. And when they announced their earnings, the stock sold off by 12%.

JACQUIE MCNISH: Okay.

Confidential source privilege Now that tells you that whether or not they're smart enough to realize that it was material --

JACQUIE MCNISH: Right.

Confidential source privilege -- the Street thought it was material, and that counts for something.

[00:25:03]

JACQUIE MCNISH: So, sorry, what was it that triggered the stock fall in the --

Confidential source privilege They reported their first quarter earnings.

JACQUIE MCNISH: Right. And was there something material --

Confidential source privilege So their first quarter.

JACQUIE MCNISH: Yeah.

Confidential source privilege So I'll just -- I don't want to talk down to you.

JACQUIE MCNISH: Right.

Confidential source privilege But I'll just walk you through it, okay? On March 31st, their first quarter ended.

JACQUIE MCNISH: Right.

Confidential source privilege Okay? And on April 4th, they go to [PH] Griffith's and say here's our automatic share purchase plan, please go ahead.

[00:25:30]

JACQUIE MCNISH: Right.

Confidential source privilege Right?

Confidential  
7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

JACQUIE MCNISH: Okay.

Confidential source privilege Well, there's no way that you're not in possession of material non-public information --

JACQUIE MCNISH: Okay.

Confidential source privilege -- when, you know, when your quarter ended four days ago.

JACQUIE MCNISH: Right.

Confidential source privilege You know your quarterly earnings and nobody else does.

JACQUIE MCNISH: Right.

Confidential source privilege Right?

JACQUIE MCNISH: Okay.

Confidential source privilege So it doesn't -- I mean you can ignore everything that I said about -- and they're trying to sell the company.

JACQUIE MCNISH: Right.

Confidential source privilege Right? They were right in the middle of their reporting season.

[00:26:03]

JACQUIE MCNISH: Right. They were in the quiet period.

Confidential source privilege That's right.

JACQUIE MCNISH: Right.

Confidential source privilege Okay. And nobody would be able to -- no company who had a normal course issuer bid in place would be able to buy stock at that time, right?

JACQUIE MCNISH: And the motivation for doing the share buyback would be just to protect --

Confidential source privilege Just to prop up the share price.

JACQUIE MCNISH: -- their share price? Yeah. Right.

Confidential 7-20-2017  
Law Offices & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege That's what ---

**JACQUIE MCNISH:** In advance of bad news.

Confidential source  
privilege Well, yes.

[00:26:30]

**JACQUIE MCNISH:** Okay. And what was the bad news?

Confidential source privilege And then why do they want to --

**JACQUIE MCNISH:** Sorry, what was the --

Confidential source privilege [PH] Well, the bad news is that they missed their earnings badly.

**JACQUIE MCNISH:** Okay. That's what I needed.

Confidential source privilege They took a number of -- they took a number of -- they took a number of charges against certain assets in their portfolio.

**JACQUIE MCNISH:** Okay.

Confidential source privilege And they announced that they were revising their disclosure protocols as a result of input from a continuous disclosure review by the OSC.

**JACQUIE MCNISH:** Okay. All right. That's interesting.

[00:27:00]

That's interesting because of all the things that you could say about them. It's interesting that this would be the thing that motivated you to say something to them. Okay.

Confidential source privilege Well, you know, this is -- I mean put it this way. I have tried and tried and tried to get everything else about Callidus into a memo that somebody could actually read.

**JACQUIE MCNISH:** Right.

Confidential source privilege And so far I can't.

**JACQUIE MCNISH:** Because?

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege Right? Because I've got --- like I've got it down to 50 pages.

[00:27:32]

JACQUIE MCNISH: Oh, you're writing a book.

Confidential source privilege Well, you know, yeah.

JACQUIE MCNISH: Okay. All right, well, it's not usual. It's not -- it's interesting that someone who, you know, is with an organization that Confidential source privilege is in this position. It must have really been something that has quite alarmed you.

Confidential source privilege Well, there's a lot of things about it that alarm me.

[00:28:02]

JACQUIE MCNISH: Right.

Confidential source privilege But I mean at the -- you know, in the first instance, I mean I'll just give you a little bit of background. Okay, I've known Newton Confidential source privilege

JACQUIE MCNISH: Okay.

Confidential source privilege Okay. And I --- and now ---

JACQUIE MCNISH: So did you know him when he was a lawyer?

Confidential source privilege He was never a lawyer. That's a lie.

JACQUIE MCNISH: Okay. I know he was at McCarthy's, he articulated there.

Confidential source privilege He articulated there but he never passed the bar exam.

JACQUIE MCNISH: Okay.

Confidential source privilege Okay. And I don't know anybody well enough at McCarthy's who's been there for long enough.

[00:28:34]

But my understanding is that the partners committee at McCarthy's said this guy might pass the bar somewhere but it ain't going to be at McCarthy Tetrault.

**JACQUIE MCNISH:** Okay, so he didn't complete his articles then.

Confidential source privilege That's correct.

**JACQUIE MCNISH:** Okay.

Confidential source privilege He did go to law school, he never passed the bar exam.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Okay. The other lie that he tells, if you go through the transcripts in the [PH] Moysic matter, somebody says --

[00:29:06]

He was asked whether he ever worked at Sprott Securities.

**JACQUIE MCNISH:** Yes.

Confidential source privilege He said, no, I didn't work there. I helped them with a regulatory problem. Well, he did work there and he caused a regulatory problem.

**JACQUIE MCNISH:** Which was?

Confidential source privilege They were working on a transaction for a company called Slater Steel.

**JACQUIE MCNISH:** Oh, yes, I remember them.

[00:29:30]

Confidential source privilege And in the middle of the evening one night he called one -- he was in the investment banking division and he called one of their traders and said start buying this stock tomorrow morning. It was like aren't we restricted on this stock?

**JACQUIE MCNISH:** Right.

Confidential source privilege Yeah, don't worry about that.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Right.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** And it was ---

Confidential source privilege And the trader went in the next morning and said to Eric Sprott I just got told to do this, I don't think I should. Should I?

**JACQUIE MCNISH:** Okay.

Confidential source privilege And Eric Sprott said, ah, yeah, no you shouldn't.

**JACQUIE MCNISH:** Okay. And did he have material information that would have resulted in the stock being -- price going up?

[00:30:05]

Confidential source privilege They were engaged by Slater Steel again.

**JACQUIE MCNISH:** Right.

Confidential source privilege Again, it wasn't that he had material information and he was trying to profit from material non-public information. He was trying to manipulate the stock.

**JACQUIE MCNISH:** Okay. To give it more value, okay.

Confidential source privilege Exactly.

**JACQUIE MCNISH:** Okay.

Confidential source privilege You know, because, you know, you have these transactions, Jacquie, where like what you pay is based on how your stock trades in a certain number of days and stuff like that.

[00:30:32]

**JACQUIE MCNISH:** How well do you know Callidus itself?

Confidential source privilege Extremely well.

**JACQUIE MCNISH:** What happened to David ---

Confidential source privilege I know -- I think I know --

**JACQUIE MCNISH:** What happened to David Reese?

Confident 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege Well, that's a great question. David Reese is as far as the public is concerned still an employee.

JACQUIE MCNISH: Right.

Confidential source privilege Okay. He -- if you look at the most recent quarterly results --

JACQUIE MCNISH: Right.

[00:31:01]

Confidential source privilege -- which I guess are the ones that we talked about that were released on May 4th or so. Oh, no, no, excuse me, it's the proxy. It's the proxy --

JACQUIE MCNISH: Okay.

Confidential source privilege -- from the annual meeting

JACQUIE MCNISH: Okay.

Confidential source privilege And they say that they entered into a new employment arrangement with David Reese.

JACQUIE MCNISH: Okay.

Confidential source privilege Okay. And that David Reese was, in addition to all his other composition was paid like an extra \$1 million bonus in, you know, in the later part of the second quarter of this year and is entitled to a further bonus --

[00:31:37]

JACQUIE MCNISH: Right

Confidential source privilege -- of like a \$1 million bucks --

JACQUIE MCNISH: Okay.

Confidential source privilege -- later this year, okay, which seems to me like -- which seems to me like hush money.

Confidential 7-20-2017  
 al source  
 Dow Jones & Company  
 August 12, 2019  
 Transcript by TransPerfect

**JACQUIE MCNISH:** Right. And do you know where he is? I like I'm told he hasn't gone in the office for a while.

Confidential source privilege You know, that is my understanding as well.

**JACQUIE MCNISH:** Okay.

Confidential source privilege I haven't had -- I mean like Confidential source privilege

[00:32:01]

I have not had the opportunity to conduct surveillance on Callidus' offices or anything like that.

**JACQUIE MCNISH:** Okay.

Confidential source privilege But your understanding is quite consistent with mine.

**JACQUIE MCNISH:** Okay. It is -- you know, put it this way, we have an analyst Confidential source  
 Confid ential okay? And this doesn't help you that much. I mean you can't print that somebody said that somebody said.

**JACQUIE MCNISH:** Right.

Confidential source privilege But David solicited Confidential source help in finding him another position in the area of alternative finance.

[00:32:40]

**JACQUIE MCNISH:** Right. Okay.

Confidential source privilege Now you're a named executive officer.

**JACQUIE MCNISH:** Right.

Confidential source privilege Okay, unless things are pretty bad for you, you don't tell a Confidential source  
 privilege that you're looking for a job.

**JACQUIE MCNISH:** Right.

Confidential source privilege I mean I'm pretty fucking stupid, Jacquie, but even I know that.

**JACQUIE MCNISH:** And I'm told that there's other folks that have left as well, not as --

Confidential source 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[00:33:01]

Confidential source privilege Yeah.

**JACQUIE MCNISH:** --- senior as David. And do you happen to know what their names are?

Confidential source privilege Yeah. There's one guy, Steven Parker, who was an employee based in Seattle, Washington. He just left to join an alt lending outfit in Greenwich, Connecticut called Great Rock Capital.

**JACQUIE MCNISH:** Okay.

Confidential source privilege At the Catalyst level, I got an e-mail forwarded to me that Newton's personal assistant was looking for a job.

[00:33:34]

**JACQUIE MCNISH:** Okay.

Confidential source privilege Okay. And --

**JACQUIE MCNISH:** And what's her name?

Confidential source privilege Magda Rzesztuzek.

**JACQUIE MCNISH:** How do you spell that?

Confidential source privilege Okay. I believe, okay, it's R-Z-E-S-Z-T-U-Z-E-K.

**JACQUIE MCNISH:** Okay.

[00:34:01]

All right. So she's left?

Confidential source privilege Okay. If you go to LinkedIn and --- no, well, she's trying to leave.

**JACQUIE MCNISH:** Okay.

Confidential source privilege And Jim Riley who is the corporate secretary of --

Confidenti 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** I know Jim, yeah.

Confidential source privilege Yeah. Like what Jim really needs to do is get out of there, surrender his law license and retire.

**JACQUIE MCNISH:** Right.

[00:34:31]

And is there any sign that he's leaving?

Confidential source privilege Yes. He's been aggressively recruiting for his replacement.

**JACQUIE MCNISH:** Okay. All right. What about [PH] Gabriel?

Confidential source privilege That's an interesting one. Gabriel has hired -- Gabriel hired Navigator --

**JACQUIE MCNISH:** Yeah.

Confidential source privilege And like that's, as you know, that's the PR firm that you hire when you've been found in bed with a dead girl or a live boy.

[00:35:07]

**JACQUIE MCNISH:** Right.

Confidential source privilege Right? And he hired them, and they called a friend of mine at another media outlet and said, hey, you know, Gabriel did the private equity deal of the year, or the --

**JACQUIE MCNISH:** Yeah, I got one of those calls, too.

Confidential source privilege -- restructuring. You got that call too, right?

**JACQUIE MCNISH:** Yeah.

Confidential source privilege And then my friend said, well, wait a minute.

[00:35:32]

Like I thought that Catalyst was [INDISCERNIBLE] client.

**JACQUIE MCNISH:** Right.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege And they said, oh, no, we're representing [PH] Mr. Delada in his personal capacity.

JACQUIE MCNISH: Right.

Confidential source privilege Right?

JACQUIE MCNISH: Okay.

Confidential source privilege And then it came out well, the -- and they were careful to say if the allegations that are made in the [PH] Boyer claim are true, right?

[00:36:01]

Have you read that?

JACQUIE MCNISH: Yep.

Confidential source privilege Okay. So if those allegations are true, then there are serious problems at Catalyst that obviously Mr. Delada wants to distance himself from.

JACQUIE MCNISH: All right.

Confidential source privilege Right?

JACQUIE MCNISH: Okay.

Confidential source privilege I don't think he can. I think it's too late for him to distance himself.

JACQUIE MCNISH: Right.

Confidential source privilege But, you know, he can try.

JACQUIE MCNISH: Right.

Confidential source privilege I mean I don't -- what's not clear to me is if he's trying to leave.

[00:36:33]

Or if he's trying to position himself to take over in the event that -- in the event that Newton is dispatched.

Confidential  
source 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Right. Okay. All right. All right. Have you talked to anyone else that has directly talked to the regulators?

Confidential source privilege Yes.

**JACQUIE MCNISH:** Who? And do you think that I might be able to contact them?

[00:37:02]

Confidential source privilege Yes.

**JACQUIE MCNISH:** Okay. And who would they be?

Confidential source privilege Okay, so there's a guy named [PH] Darrell Levit.

**JACQUIE MCNISH:** Yeah.

Confidential source privilege Okay. And I know that he's been in touch with the regulator.

**JACQUIE MCNISH:** Okay.

Confidential source privilege I know ---

**JACQUIE MCNISH:** He's a former --- he's a guarantor, one of the guarantors?

Confidential source  
privilege Well, he is a -- he was a principal of one of the borrowers.

**JACQUIE MCNISH:** Okay.

[00:37:30]

Confidential source privilege Okay. And then -- what was the other guy's name? [PH] Jeff McFarland.

**JACQUIE MCNISH:** Yeah.

Confidential source privilege Okay. I don't know whether the guys at Blueberry Gaming have talked to the regulators or not. But I mean --- like I know for a fact that --- I know for a fact that Darrel has, and not only the regulators, but also the police.

**JACQUIE MCNISH:** The Toronto police or the OPP?

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[00:38:01]

Confidential source  
privilege

Well, the Toronto police financial crimes unit.

JACQUIE MCNISH: Yeah. Okay.

Confidential source privilege

And they, you know, I think they just kind of hand everything over to the OSC.

JACQUIE MCNISH: Okay.

Confidential source privilege

Now the other person that you should speak to, and I'm happy to arrange this for you.

JACQUIE MCNISH: Okay.

Confidential source privilege

Is there's a guy named -- there's a guy named Randall Yasny.

JACQUIE MCNISH: How do you spell that?

Confidential source privilege

Okay. Y-A-S-N-Y.

[00:38:31]

JACQUIE MCNISH: Okay.

Confidential source privilege

Okay. And I've known Randall forever. I mean he used to -- I mean he's been around for a long time, and, you know, he and I have sort of -- like he and I sort of compared notes on this thing one day, and said, like this is a complete scam.

JACQUIE MCNISH: Right.

Confidential source privilege

Right. Like this is an ongoing fraud that's being perpetrated on a lot of, you know, a lot of very high profile people.

[00:39:03]

JACQUIE MCNISH: Right.

Confidential source privilege

Right? And they -- anyway, Randall may have also spoken to the regulators and/or law enforcement, but I don't know if he has.

Confidential 7-20-2017  
 Dow Jones & Company  
 August 12, 2019  
 Transcript by TransPerfect

[00:39:30]

**JACQUIE MCNISH:** Is he an investor or ---

Confidential source privilege Yes

**JACQUIE MCNISH:** Okay.

Confidential source privilege Yeah.

**JACQUIE MCNISH:** And is he an investor in one of the funds?

Confidential source privilege No.

**JACQUIE MCNISH:** Okay.

Confidential source privilege No. He's just a partner in a small money manager in Toronto.

**JACQUIE MCNISH:** Okay. And had they originally in Callidus, and they were concerned, or --

Confidential source privilege No. I think they were getting the hard sell -- I think they were getting the hard sell on it either from National or GMP.

**JACQUIE MCNISH:** Right.

Confidential source privilege And they said, oh, okay, well, like this is the way that all of us --- this is the way that all of us got around to being critical of it.

[00:40:06]

It's like, well, wait a minute, right? This guy says he lends out money at 20% and he never has any losses.

**JACQUIE MCNISH:** Right.

Confidential source privilege Okay. Well, let's like, you know, it wasn't so much let's buy the stock. It was like let's figure out what he's doing and if it's replicable let's do it, too.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Right? And then all of a sudden you start doing Google searches and you find like, you know, you Google like Callidus loan, Callidus CCAA, Callidus receiver ship.

Confidential source 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[00:40:39]

Like just, you know, stuff like that.

**JACQUIE MCNISH:** Yeah.

Confidential source privilege And all of a sudden you see, well, wait a minute, like he's got like five different active restructuring files out of 36 loans.

**JACQUIE MCNISH:** Right.

Confidential source privilege Okay. And like I don't know if you've ever watched one of these things from a front row seat before, but they take forever and they're a huge time suck.

[00:41:05]

**JACQUIE MCNISH:** Yeah.

Confidential source privilege Right? Like hours and hours and hours a week just of mind numbing stuff.

**JACQUIE MCNISH:** Okay. Hi.

Confidential source privilege Sorry, I don't know how I lost you.

[00:41:30]

**JACQUIE MCNISH:** Okay. It's all right.

Confidential source privilege So then we start looking and it's like well, wait a minute, some of these businesses are deeply, deeply, deeply impaired.

**JACQUIE MCNISH:** Yeah.

Confidential source privilege Right? So it's very improbable that he doesn't have any losses.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Right? And then we go ---

[00:42:00]

**JACQUIE MCNISH:** I blame Newton.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source  
privilege

He's got a tap on my phone.

**JACQUIE MCNISH:** Got his finger on a button somewhere.

Confidential source privilege

Yeah. Well, nobody knows more about the wireless business than him.

**JACQUIE MCNISH:** Yeah.

Confidential source  
privilege

So, anyway, I mean that's how we all got on to it.

**JACQUIE MCNISH:** Okay.

Confidential source privilege

Right?

**JACQUIE MCNISH:** So someone suggested to me, this is the typical journalist question that you might have a photo of him.

Confidential source privilege

I do.

**JACQUIE MCNISH:** All right. So do you want to me at King and Bay at some point and do an exchange?

[00:42:31]

I'm joking.

Confidential source privilege

You know what? No, that's fine. I'm not the only person who has it.

**JACQUIE MCNISH:** Okay.

Confidential source privilege

I have -- so here's what I have. I have a photo that was taken with a cell phone, okay. All I can represent to you is that the photo was taken legally.

**JACQUIE MCNISH:** Okay.

Confidential source privilege

I.E. it was not taken in a court room.

**JACQUIE MCNISH:** Right, right.

Confidential source privilege

Okay. I am not the owner of the image.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[00:43:00]

**JACQUIE MCNISH:** Okay.

Confidential source privilege I am however, in possession of an assignable license to you [PH] at least.

**JACQUIE MCNISH:** Okay, I have no idea what you're talking about. Someone else took the photo and said it's okay, you can have this?

Confidential source privilege Yes.

**JACQUIE MCNISH:** Okay, all right. Well, I guess I have two things, if it's possible. I don't know what part of the world are you in today?

Confidential source privilege

**JACQUIE MCNISH:** Okay. So I'm at York and King.

[00:43:30]

Confidential source privilege Okay.

**JACQUIE MCNISH:** I'm happy to come over there if it's --- if I can get a copy of the photo, and take a look, or get a copy of the complaint you've filed with my word that I don't mention who said it without your explicit permission.

Confidential source privilege Well, I'll give it to you with my name and address. I'll give it to you happily with my name and address redacted.

**JACQUIE MCNISH:** That's fine. So long as I can just see it in some way in its original form and ---

Confidential source privilege Yeah.

**JACQUIE MCNISH:** -- I can see with my eyes that it was from you.

[00:44:02]

Confidential source privilege Yeah.

**JACQUIE MCNISH:** That's all I ask. I just have to be really careful.

Confidential source privilege 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege Yeah, no, I understand. I like I'll show you the --- I'll show you the e-mail and I'll give you a paper copy of the PDF.

**JACQUIE MCNISH:** Okay. What's easiest for you? I'm not the most loved person because of my reporting, so ---

Confidential source privilege

Confidential source privilege Yeah, I know. We --

**JACQUIE MCNISH:** The mark is on my back.

Confidential source privilege Well, yeah.

[00:44:30]

The -- you know, for the record, I don't think that -- I think that the -- I think that [PH] Neil Glenn is the one who's really reviled. But anyway, you can --

**JACQUIE MCNISH:** Who's Neil Glenn? I don't even know who that is.

Confidential source privilege Oh, sorry, Neil McGee.

**JACQUIE MCNISH:** Oh, Neil, yes.

Confidential source privilege Yes.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Yeah.

**JACQUIE MCNISH:** Okay, all right. Good, I'll blame everything on him. That's good to know.

Confidential source privilege Yeah, exactly.

**JACQUIE MCNISH:** Okay.

Confidential source privilege But, you know, I'll tell you, it's -- I actually went -- as an aside, I went to the Isle of Mann on a due diligence trip.

[00:45:10]

**JACQUIE MCNISH:** Yes.

Confidential 7-20-2017  
 Dow Jones & Company  
 August 12, 2019  
 Transcript by TransPerfect

Confidential source privilege

Okay? And I saw all of the people who actually run that business.

**JACQUIE MCNISH:** Yeah.

Confidential source privilege

Okay. And, Jacquie, I've been doing this for Confidential source years, okay, I've seen my share of scams.

**JACQUIE MCNISH:** Yes.

[00:45:30]

Confidential source privilege

Okay, the one that we're talking about included. Okay, that PokerStars operation is unlike anything I've ever seen.

**JACQUIE MCNISH:** In terms of?

Confidential source privilege

Okay. In terms of the quality of the people that they have there. Like the guy who runs --

**JACQUIE MCNISH:** But no one was challenging the quality of the people at PokerStars.

Confidential source privilege

Oh, I know.

**JACQUIE MCNISH:** It was the improbability of [INDISCERNIBLE] on the trading. I mean the trading is --

Confidential source privilege

Oh. And, look --

**JACQUIE MCNISH:** -- of the charts.

Confidential source privilege

-- at the end of the day, look, I mean like the facts are what they are.

[00:46:05]

Right? And, you know, these guys are, you know, I mean at the end of the day, it still astounds me that this guy could just -- like this guy could have his hands on asset like this --

**JACQUIE MCNISH:** Yeah.

Confidential source privilege

-- and behave so stupidly.

**JACQUIE MCNISH:** Yeah, yeah.

Confidential source 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege Like it's just ridiculous. But anyway.

**JACQUIE MCNISH:** It's been an interesting story. All right, so you tell me what's a good time ---

Confidential source privilege That's beside the point.

[00:46:30]

**JACQUIE MCNISH:** -- and I'll come over there if you want to meet in the lobby or if you want to meet in the lobby. We're at 145 King West.

Confidential source privilege 145 King West. Yeah, I can walk over there.

**JACQUIE MCNISH:** Okay. So you tell me when you would like and I'll be downstairs and happy to sit down with you.

Confidential source privilege Yeah.

**JACQUIE MCNISH:** Okay.

Confidential source privilege Do you have -- I only have an electronic copy of this photo.

**JACQUIE MCNISH:** Okay. So you can --- do you want to e-mail?

Confidential source privilege Do you have an iPhone?

**JACQUIE MCNISH:** Yeah, do you want to e-mail it to me?

Confidential source privilege Well, if you've got an iPhone, we can airdrop it.

[00:47:01]

**JACQUIE MCNISH:** Okay. Do you want to teach me something new? Okay.

Confidential source privilege Yeah. And -- or I can text it to you or something like that.

**JACQUIE MCNISH:** Yeah, I think e-mail would be better.

Confidential source privilege Oh, okay.

**JACQUIE MCNISH:** If that's okay?

Confidential source privilege 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege Yeah, it's fine. I just don't want -- like when you get sued by -- when you get sued by Newton --

**JACQUIE MCNISH:** Right.

Confidential source privilege -- I just don't want -- when your e-mails get discovered, I just don't want my name on it.

**JACQUIE MCNISH:** I can give you my personal e-mail address. It's --

Confidential source privilege Okay, fine.

**JACQUIE MCNISH:** -- Jacquie, J-A-C-Q-U-I-E.

[00:47:30]

Confidential source privilege Yeah.

**JACQUIE MCNISH:** Not relevant

Confidential source privilege Okay, yeah, no problem.

**JACQUIE MCNISH:** Okay? That's a good thought though. You're obviously well trained.

Confidential source privilege Yeah.

**JACQUIE MCNISH:** All right, well, what time do you want to meet downstairs because you probably want a copy and --

Confidential source privilege Could you do --

**JACQUIE MCNISH:** -- [INDISCERNIBLE] stuff?

Confidential source privilege Yeah, I'll -- what time is it now? It's 2:11.

**JACQUIE MCNISH:** Yeah.

Confidential source privilege I'll walk over there in -- I'll probably be there in Confidential source privilege

**JACQUIE MCNISH:** Okay. Terrific.

Confidential source 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Confidential source privilege All righty?

JACQUIE MCNISH: Thank you very much Confidential source privilege

Confidential source privilege Thank you so much.

JACQUIE MCNISH: Okay, bye-bye.

[00:48:01]

Confidential source privilege Bye.

[NO DIALOGUE]

[02:29:00]

VOICE RECORDING: Sorry, Rob Copeland, is not available. Record your --

[02:29:30]

[02:30:00]

[02:30:30]

JACQUIE MCNISH: Jacquie McNish.

ROB COPELAND: Hey.

JACQUIE MCNISH: Hey. You really are out there, aren't you? What the fuck? I'm like this grand puppeteer. What is she going to do next? I'll do it before her.

ROB COPELAND: No, I -- we're probably getting it from the same -- well, so also your friend [PH] Greg is sending stuff to you --

JACQUIE MCNISH: Stuff to me.

ROB COPELAND: -- through me.

JACQUIE MCNISH: Yeah. Sending stuff to me through you?

[02:31:01]

ROB COPELAND: Sorry. Yes, to you --

Confidenti 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Oh, okay.

**ROB COPELAND:** --- through me.

**JACQUIE MCNISH:** All right. Because I have --- I know Confidential source privilege and he's the one that I contacted yesterday and he told me I should read ESCO Marine. Okay.

**ROB COPELAND:** Well, there you have it. It looks like a black --

**JACQUIE MCNISH:** And how did you get the photo of him?

**ROB COPELAND:** Someone got it for me from the guy that you were going to call --

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** -- from Confidential source privilege

**JACQUIE MCNISH:** And I just met him.

**ROB COPELAND:** Oh, there you go.

**JACQUIE MCNISH:** Yeah. Yeah, you're freaking me out.

[02:31:33]

**ROB COPELAND:** Yeah, okay, that's good. But apparently he doesn't want --- well, first of all that's a pretty bad photo, I'm not going to lie.

**JACQUIE MCNISH:** Yeah, but it's --- he certainly changed since I last saw him. He's put on a lot of weight and a beard.

**ROB COPELAND:** Yeah, he doesn't look --

**JACQUIE MCNISH:** It gives you the profile. You know, I'll push him to see if we can get an original because he said it's not the original. He got it from someone else, and he has permission to use it. So maybe we can get the original.

[02:32:01]

**ROB COPELAND:** That'd be better.

**JACQUIE MCNISH:** And one of my colleagues here plays baseball with [Confidential source] used to work as Newton's --- one of Newton's two secretaries.

**ROB COPELAND:** Oh, great.

**JACQUIE MCNISH:** Yeah. So he's asked her if there is a photo, and I've asked if I could just confirm stuff I'm hearing from people about his conduct.

**ROB COPELAND:** Sure. That'd be great.

**JACQUIE MCNISH:** Yeah. And she left about a year ago.

**ROB COPELAND:** That's great, that's fresh.

**JACQUIE MCNISH:** Yes, it is. Anyway.

[02:32:30]

So I did meet with [Confidential] and he gave me the letter that he submitted to the Toronto Stock Exchange compliance department complaining about their conduct relating to their share buybacks, and I'm sure it's the same in the U.S., you can't buy back your shares when you're in possession of material non-private information. And so what's the time line here? In April they launched a buyback program through Genuity, and they purchased about 3 million shares.

[02:33:07]

And within weeks of starting to do the buyback --- sorry, the buyback commenced in January and completed in April, and a month later they announced a very negative quarter and the stock sank. So it was an attempt he alleges to prop up the stock. And he says --- he called it an illegal insider trade.

[02:33:32]

This is not the first overstep of regulations by Callidus. They disclosed that they had changed their disclosure protocols the most recent quarter as a result of the OSC review. I believe that the improper use of the automatic share buyback program is another part of a pattern of malfeasance on the part of the issuer. And he said he received a communication from them confirming that they had received it, but nothing else.

**ROB COPELAND:** Well ---

**JACQUIE MCNISH:** It's something.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB COPELAND:** --- the Toronto Stock Exchange doesn't feel so important that we can confirm that, right?

[02:34:03]

Like I feel like they're ---

**JACQUIE MCNISH:** Yeah, this automatically goes to IIROC which is the -- regulates the exchange. But I'll certainly ask. I mean I don't that they will confirm. I have no reason to believe that this guy didn't do it. But we -- yeah, we have to ask. So you're going to get someone on the record saying they're a whistleblower?

**ROB COPELAND:** I think I'm going to get two.

[02:34:31]

**JACQUIE MCNISH:** Wow, that's amazing.

**ROB COPELAND:** So I think -- well, so I put the real hard sell on them.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** I'm the pushy New Yorker, so that's ---

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** --- that what I do in this team.

**JACQUIE MCNISH:** Yes.

**ROB COPELAND:** And I told --

**JACQUIE MCNISH:** Canadians are incapable of being pushy.

**ROB COPELAND:** That's [INDISCERNIBLE] yeah, you're -- whatever you're doing is extremely effective so please don't change on my behalf.

**JACQUIE MCNISH:** No.

**ROB COPELAND:** So I think Darrell -- I told Darrell that I was not willing to put my name out there for people who were not willing to put their own.

[02:35:03]

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** And he said that he will almost definitely be willing to say that he's talking to JSOT, but he is not willing to say that he's talking to the Toronto police. And I said, fine.

**JACQUIE MCNISH:** They lose their privilege if they do that though, so --

**ROB COPELAND:** There's a word for it, he told me. It's something privilege.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** I might have it in my notes somewhere. He said according to his lawyer, well, he can't do it for the police but he can do it for JSOT.

[02:35:32]

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** And I'm not going to give him contrary legal advice --

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** -- because it's in our favor. But yeah, it's something privilege. He also said if you got sued, of course, I would be willing to go on record.

**JACQUIE MCNISH:** Okay. Little late for us.

**ROB COPELAND:** And I said, well, let's just assume -- yeah, I was like why don't we try to not get sued by --

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** -- you doing it in advance. And then this guy Jeff McFarland is willing to say on the record that he filed an OSC claim.

[02:36:03]

**JACQUIE MCNISH:** And what does that mean?

**ROB COPELAND:** That he filed an OSC whistleblower.

Confidential 7-20-2017  
Source  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Okay. An OSC -- yeah, he filed a whistleblower complaint to the OSC under their whistleblower program?

**ROB COPELAND:** Correct.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** And he says -- so he says he was the first one to do that.

**JACQUIE MCNISH:** Okay. And that was in November?

**ROB COPELAND:** That was in November.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** Since then I went through the list with him.

[02:36:30]

It's your friend Confidential, it's Jeff, it's my original guy, it's Darrell, and then it is Kevin Bowman.

**JACQUIE MCNISH:** Who I'm told is a complete nutter.

**ROB COPELAND:** Well, takes one to know one. I don't know.

**JACQUIE MCNISH:** No, it's often they are, right --

**ROB COPELAND:** Yeah.

**JACQUIE MCNISH:** -- because who in their right mind would do something like this?

**ROB COPELAND:** So McFarland said he started a new company and Newt sued not just him, he sued his wife.

[02:37:03]

**JACQUIE MCNISH:** Who's -- who, Jeff?

**ROB COPELAND:** He sued his warehouse employee --

**JACQUIE MCNISH:** Jeff?

**ROB COPELAND:** Yeah. Jeff, yeah.

Confidenti 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** I heard that a wife had been sued as well. Okay.

**ROB COPELAND:** He said the warehouse employees were sued.

**JACQUIE MCNISH:** Oh, my God. That's amazing.

**ROB COPELAND:** The warehouse employees' families.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** So it's impossible to get anyone to work for me --

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** -- because you're basically saying --

**JACQUIE MCNISH:** That's unbelievable.

**ROB COPELAND:** And he said -- yeah, I mean the actual -- the sob story of a lot of these borrowers is not that interesting to me.

[02:37:33]

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** It's like okay --

**JACQUIE MCNISH:** It's the extent to which he will go that's interesting.

**ROB COPELAND:** Yeah, and then Jeff has this wonderful advantage which is because he knows the company that was seized from him --

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** -- he knows how useless it is.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** How worthless it is.

**JACQUIE MCNISH:** Which one was his?

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB COPELAND:** His was the X I think.

**JACQUIE MCNISH:** XTG?

**ROB COPELAND:** [INDISCERNIBLE].

**JACQUIE MCNISH:** I think Bowman was Xchange which is the computer leasing.

**ROB COPELAND:** Bowman was Xchange.

[02:38:00]

Oh, God, I should know this off the top of my head by now, but I'm [INDISCERNIBLE] --

**JACQUIE MCNISH:** I know. I feel like I'm learning about this company on the fly.

**ROB COPELAND:** It's very on the fly.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** TriathlonCC -- what is this? Yeah, Triathlon Computer.

[02:38:31]

Oh, that's his new company.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** His new company is Triathlon Computer.

**JACQUIE MCNISH:** Yeah. I'm pretty sure he was XTG.

**ROB COPELAND:** He was XTG, okay. He --

**JACQUIE MCNISH:** No, no, no. Xchange, sorry.

**ROB COPELAND:** Xchange.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** So he as part of his OSC complaint, which he'll send us in which I think we might be able to quote from --

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** -- he watches it all go through Callidus because Callidus has the IPO --

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** -- like right as they've taken the company so he -- they give a lot to -- a lot of information about it.

[02:39:02]

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** So he tracks it and he sees how even though he knows that there's nothing left, that they're holding it for \$66 million and they sell it to Catalyst for \$101 million. And he's like, you know, the company has never made money under them.

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** This is like -- and he said -- and they haven't sold it to anyone. So this is just their own -- it's not as if they found someone to buy it for \$101 million.\

**JACQUIE MCNISH:** Right.

[02:39:32]

**ROB COPELAND:** Then it would be good for you. It's just themselves. So he goes through all of this --

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** -- in his complaint apparently.

**JACQUIE MCNISH:** Yeah, Xchange is X-C-H-A-N-G-E Technology Group, and they're based in Morrisville, North Carolina. Maybe that's not -- oh, Kevin Bowman is Alken, A-L-K-E-N. It's an oil services company in Pekisko, P-E-K-I-S-K-O, Ranch, Limited.

[02:40:07]

And I was told **Confidential Source** that he was in serious financial condition. Got a distress loan and couldn't save his business. But he's just so offended at how Callidus accounted for the business that he's starting to go on the attack. The one that's interesting is [PH] Gray Aqua, that's the fish.

**Confidential** 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[02:40:31]

ESCO Marine is not the fish. But I just love the, you know, valuing, you know, baby fish at \$100 million or whatever it was.

**ROB COPELAND:** Yeah.

**JACQUIE MCNISH:** It just really illustrates the story. Like it's just a no brainer.

**ROB COPELAND:** So I think we need to do one other thing.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** And I think it can wait for Monday.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** I think you've got to reach out to Newt himself.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** Because standards is going to say have we made any effort to reach him.

**JACQUIE MCNISH:** Right.

[02:41:00]

**ROB COPELAND:** And if he doesn't --- we actually let him not respond for days ---

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** -- I think what they're going to say.

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** So let's just get that out of the way. He must know -- I mean I'm sure he knows.

**JACQUIE MCNISH:** [PH] No. Well, we've reached out to his PR person and his ---

**ROB COPELAND:** Yeah, there you go.

**JACQUIE MCNISH:** -- chief corporate counsel. So we've done those --

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB COPELAND:** Yeah. That's ---

**JACQUIE MCNISH:** --- had two conversations. And it really feels like the rats are fleeing the ship. I'm told that [Confidential] --- excuse me, Jim Riley, who I know --- I once knew very well, but I've just sort of steered clear of him because he's become such a loose cannon, and he's got really in trouble in the court case that I was telling you about earlier today.

[02:41:38]

This was on the West Face lawsuit over Wind Mobile, and they waltzed in to an in-chamber meeting. You had this top judge in Ontario set aside four days which is unusual here. And the lawyer walks in and says, well, we've all agreed to an adjournment, why are we here? And the judge said -- and the [INDISCERNIBLE] -- [PH] I was speaking to [Confidential source privilege], and he said I never agreed to that.

[02:42:01]

And the judge said I never agreed to that. You've got 10 minutes. Get your robes on. And he said I don't have my robes, you know? And so they come back at two, and still doesn't have his robes and Jim Riley says we had an agreement. You know, I refuse. They violated the agreement. We should be challenging them. And the judge barbequed him. Said he basically lied.

**ROB COPELAND:** Sure.

**JACQUIE MCNISH:** You know, like just --- like the stupidity.

**ROB COPELAND:** [INDISCERNIBLE]

**JACQUIE MCNISH:** There are a couple of websites that have a lot of this litigation.

[02:42:31]

And apparently in one cross-examination [Confidential source privilege], he talked about 20 lawsuits going on at the time, so -- which doesn't sound like a lot but for Canada it is.

**ROB COPELAND:** No, that sounds like a lot.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** Don't worry.

Confidenti 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** So I'm going to go --- I'm going to go try and piece through those things. I'm going to try and get out of here by --- what time is it? By probably 5:15 so I'm happy to call him on Monday. What do you think practically we have left to do?

[02:43:02]

We got to reach out to Newton.

**ROB COPELAND:** I think -- and we got to say to Newton we are willing to sit down and do an interview.

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** Because we have to let him say that he's thinking about -- like I'm just thinking that --

**JACQUIE MCNISH:** Right

**ROB COPELAND:** -- they're going to be like --

**JACQUIE MCNISH:** Right

**ROB COPELAND:** Did you just give him a list of facts, or did you say you're willing to hear him out? So --

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** And I think that's --- he's reckless enough that, who knows, he might say yes.

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** So [INDISCERNIBLE] do that. I'm going to start writing more on the story.

[02:43:32]

**JACQUIE MCNISH:** Okay. And I will go through the -- try and be efficient about getting documents, showing, you know, active litigator. And I have got access now to the affidavit by this guy Moysie who the judge, [PH] Judge Nubald again, said this guy tried to, you know, Newton, tried to destroy his life, and found in his favor.

[02:44:02]

And the affidavit describes the work environment, how hostile it was. And chairs being thrown, and, you know, get those details.

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB COPELAND:** What does Catalyst say in response to that? Do they [INDISCERNIBLE]?

**JACQUIE MCNISH:** I will ask them those questions.

**ROB COPELAND:** Okay, fair enough.

**JACQUIE MCNISH:** What they said in the Boyer case who cited an example where one executive physically attacked another, they never denied that.

[02:44:38]

What they said is that we work in sort of a high pressure environment and tempers flare. So they didn't dispute that claim by him. It was in his initial claim. [PH] Included this, you know, said -- outlined physical violence between two executives. And Callidus didn't deny it, but we'll specifically ask.

[02:45:02]

**ROB COPELAND:** Yeah, we'll give them all that. I think that practically speaking, there's so much to get into a first story that it's like --

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** -- it's all -- we'll have -- yeah, we'll have enough.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** Can we confirm by the way? I just love this detail that Newton won't let his friends take photographs of him?

**JACQUIE MCNISH:** What he said to me was, when I first interviewed him, I will never let you take a photograph of me because if my photo is in the paper I will be deluged by women who want my money.

[02:45:39]

I mean he said that to me.

**ROB COPELAND:** Why not, men, Newt. Come on, you're such a looker, I'm sure men too. Take all comers.

**JACQUIE MCNISH:** Okay. You know [PH] once told a reporter, you know? And we can -- I don't think we'd have to say, you know, he refuses to let people take photographs. He's just so -- I don't know if media shy is the right word.

**Confidenti** 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[02:46:04]

But I think we could say media shy. From time to time he does speak, but he's so, you know, sensitive about his image or whatever that, you know, does not allow media to take a picture he told one reporter, blah, blah, blah.

**ROB COPELAND:** Okay, we can probably do that.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** Yeah, I'm down for that.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** I'm looking for like one -- I also like -- someone told me that he tells people he's a billionaire.

**JACQUIE MCNISH:** He tells people that he's the Goldman Sachs of Canada.

[02:46:30]

And they're the most successful hedge fund. I don't know about billionaire. I'll ask people.

**ROB COPELAND:** Do we have -- I'm going to start being like beyond annoying.

**JACQUIE MCNISH:** Okay. No, that's not annoying at all.

**ROB COPELAND:** Who has he told that he is the Goldman Sachs of Canada?

**JACQUIE MCNISH:** That was a class that I teach.

**ROB COPELAND:** Right, right, right.

**JACQUIE MCNISH:** Yes. And there were lots of people there when he said that. And I can double check with my co-teacher who is the former chairman of the Ontario Securities Commission.

[02:47:04]

**ROB COPELAND:** Yeah, let's get -- so that when someone annoying asks us --

**JACQUIE MCNISH:** Yeah.

Confidenti 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB COPELAND:** --- how we know that, that we [INDISCERNIBLE]. I love that.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** That --- it was described --- himself or Catalyst as the Goldman Sachs of Canada?

**JACQUIE MCNISH:** Catalyst.

**ROB COPELAND:** Okay.

**JACQUIE MCNISH:** Just once described.

**ROB COPELAND:** I'd love to get that in a headline.

**JACQUIE MCNISH:** Yeah.

[02:47:30]

**ROB COPELAND:** Goldman Sachs --

**JACQUIE MCNISH:** And I'll check with my co-professor to make sure he agrees with my memory. I mean it was seared into my mind at the time. And what my -- what Ed said when he left the room, which I don't think we can use, was that basically everything he said don't believe.

**ROB COPELAND:** The lead that I would love to write at some point is Newton Glassman frequently tells associates he is a billionaire.

[02:48:05]

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** Period. He is not. Period.

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** And do we know that?

**ROB COPELAND:** I mean he's not a billionaire. If his personal investments in Catalyst and his personal ownership of Callidus stock aren't.

**JACQUIE MCNISH:** Right.

**ROB COPELAND:** Do you know I'm not a billionaire?

Confidential 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Well, I just don't know what other assets he's had as a result of reaping the harvest of his profitable endeavors.

[02:48:33]

**ROB COPELAND:** True. I guess. Well, we can always ask if he's a billionaire.

**JACQUIE MCNISH:** So the other thing that I was told, and I will be able to confirm because Confidential  
Confidential source privilege He started out a McCarthy Tetrault, which is a big corporate law firm here, and he never finished his articles, and he never actually was accredited lawyer even though he calls himself a lawyer.

**ROB COPELAND:** Oh.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** No?

**JACQUIE MCNISH:** Yep.

**ROB COPELAND:** Why is that not the lead? Newton Glassman calls himself both a billionaire and a lawyer.

[02:49:03]

**JACQUIE MCNISH:** Well, let's see --

**ROB COPELAND:** He is neither.

**JACQUIE MCNISH:** I have to check on the lawyer thing.

**ROB COPELAND:** Newton Glassman, lawyer. Does he put it on his --

**JACQUIE MCNISH:** I have a lot of lawyers.

**ROB COPELAND:** A lawyer by training.

**JACQUIE MCNISH:** Yes.

**ROB COPELAND:** Well --

[02:49:30]

Confidential  
Source 7-20-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

All right, so we'll think about it.

**JACQUIE MCNISH:** Is he 62?

**ROB COPELAND:** This is ---

**JACQUIE MCNISH:** He's 62? What? I had no idea he was that old. I thought he was younger than me.

**ROB COPELAND:** And let me ask -- I'll ask the research team to pull a background check. Who knows.

**JACQUIE MCNISH:** Okay. And I will talk to [Confidential source privilege]

**ROB COPELAND:** Okay.

**JACQUIE MCNISH:** -- who is [Confidential source privilege] and he's a very trusted source. I said, look, we're hearing this. Is it true? And he goes, God, I hope so.

[02:50:00]

He said he is so reviled in this town. Okay, now wait.

**ROB COPELAND:** Yeah, that's what we need to [INDISCERNIBLE] at in a really colorful way, in a really brief way.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** And the first story is how do we communicate really succinctly just how hated he is?

**JACQUIE MCNISH:** Well, I think he just inspires fear because of the way he goes after -- the tactics he will use. And the Moysie example, like this kid was 25, and, you know, they just, you know, as the judge said, he was trying to destroy this young man's life.

[02:50:32]

**ROB COPELAND:** Yikes.

**JACQUIE MCNISH:** Okay. Let me just see. Newton Glassman. Okay, we called it -- the Globe called it the second largest private equity firm in Canada.

Confidential 7-20-2017

Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[02:51:03]

**ROB COPELAND:** Yeah, and I got -- I pulled rankings from [PH] Preqin he's one of the most frequent fundraisers. Wait, what's the biggest private equity firm in Canada?

**JACQUIE MCNISH:** Oh, my God, [PH] this is going to barf. This was written by a guy who's now -- it was written by a guy at the Globe who's now in PR and they referred to him as a soft spoken man who has a touch of a cherub in him. Oh, my God.

**ROB COPELAND:** Oh, my God.

**JACQUIE MCNISH:** Oh, my God.

**ROB COPELAND:** Only if he killed a cherub --

[02:51:31]

**JACQUIE MCNISH:** Oh, my God.

**ROB COPELAND:** -- and ate him.

**JACQUIE MCNISH:** For breakfast.

**ROB COPELAND:** Yeah. Like --

**JACQUIE MCNISH:** Oh, my God. I remember reading this thinking, you know, the Globe just [PH] peaked on it. This is so bad. Okay.

**ROB COPELAND:** [INDISCERNIBLE] have my promise I will never call him that.

**JACQUIE MCNISH:** He said after law school at University of Toronto he didn't want to be a lawyer, and he went on to business school at Wharton. So he said in interviews that he was a lawyer. Education, law degree from the University of Toronto. Undergraduate degree from Toronto Career.

[02:52:03]

So it says he has a law degree but he didn't complete his articles. So it's --

**ROB COPELAND:** He might technically have the degree though.

**JACQUIE MCNISH:** He says he was at Cerberus. Does Feinberg know him?

Confidential 7-20-2017  
Source  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB COPELAND:** They do share some ---

**JACQUIE MCNISH:** Deals?

**ROB COPELAND:** --- similarity -- no, in temperament.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** I can call over there. They're not usually tremendously --

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** -- helpful.

[02:52:30]

**JACQUIE MCNISH:** Confidential was very chatty. He said that he worked briefly at Sprott which is sort of a --

**ROB COPELAND:** Oh, yeah, I know Sprott.

**JACQUIE MCNISH:** --- an adventurous brokerage firm here, and he was an investment banking and he was working on company called Slater Steel which had its own issues. And they were in a transaction and they needed a better stock price. So as an investment banker he phoned the desk and said you're going to buy Slater Steel stock tomorrow, and the guy said, well, you know, we're on the touch list because we're advising them. He said, I don't care, buy it.

[02:53:02]

And then he was fired right after that because -- yeah. I just think he --

**ROB COPELAND:** You know, you've given me a good reminder.

**JACQUIE MCNISH:** -- has no compass.

**ROB COPELAND:** I know someone who Confidential source privilege He's actually based in this building in New York with me.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** Their asset management is based here. I'll call him.

Confidential 7-20-2017  
source  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** That's a good idea.

**JACQUIE MCNISH:** Okay. We need -- yeah, I think that if we can just get the judgments, you know, quoting the judgement saying, you know, what he says isn't true. And that he says -- he said himself under cross examination, you know, at one time he said he had 20 different lawsuits going.

[02:53:31]

But this, you know, suing the wife, suing the warehouse, suing the employees, that's just says it all. You just need a couple of those examples.

**ROB COPELAND:** Yeah, agreed.

**JACQUIE MCNISH:** Okay.

**ROB COPELAND:** Okay, will do it.

**JACQUIE MCNISH:** All right. So I'm going to reach out to **Conf** I think I should mention your name at this point, that I'm working with you on it and that we're prepared to sit down and do an interview.

**ROB COPELAND:** Yep.

**JACQUIE MCNISH:** Okay?

**ROB COPELAND:** Sounds good to me.

**JACQUIE MCNISH:** Okay. I'll do that on Monday.

**ROB COPELAND:** But feel free -- just between us, you know, [INDISCERNIBLE] if he calls me, I will literally not pick up the phone.

[02:54:01]

**JACQUIE MCNISH:** **Confiden**  
**tial**  
**source**

**ROB COPELAND:** Yeah. So --

**JACQUIE MCNISH:** And does he know that?

Confidential 7-20-2017  
source  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB COPELAND:** [INDISCERNIBLE].

**JACQUIE MCNISH:** I won't say it to him. Yeah.

**ROB COPELAND:** I don't think he'll -- this is my attitude, people are entitled to a lawyer in court. You're not entitled to a lying PR person.

**JACQUIE MCNISH:** Right. No, I --

**ROB COPELAND:** [PH] Sorry, this is the law.

**JACQUIE MCNISH:** What I say to people you lie to me, I'll go public with the lie.

**ROB COPELAND:** Yeah, exactly.

**JACQUIE MCNISH:** You know? So --

**ROB COPELAND:** There you go.

**JACQUIE MCNISH:** Yeah.

**ROB COPELAND:** Okay, sounds good. If I don't talk to you, you have a wonderful weekend.

**JACQUIE MCNISH:** You too, thanks, Rob.

**ROB COPELAND:** Talk to you soon.

**JACQUIE MCNISH:** Bye.

[NO DIALOGUE]

[03:10:31]

# TAB 30

Confidential 7-19-2017

Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**MALE 1:** You know what? I don't want to misstate it. I don't recall off the top of my head. I can try and find out.

**JACQUIE MCNISH:** Okay, and so, these would be individuals that lost their businesses under the terms of the loans and the behaviors of Callidus.

**MALE 1:** Yes, I mean, this is all set out in a statement of defense **Confidential source privilege**

**JACQUIE MCNISH:** Which one?

**MALE 1:** That would be the OPES, O-P-E-S.

**JACQUIE MCNISH:** OPES.

[00:00:30]

**MALE 1:** This was a coal mine in Kentucky. The guarantors were here in Toronto.

**JACQUIE MCNISH:** Okay. And it would -- who would be the plaintiff?

**MALE 1:** The plaintiff is Callidus.

**JACQUIE MCNISH:** Callidus? Okay. Oh, they launched in order to take possession of --

**MALE 1:** No, they took possession of it down in Kentucky. They launched a \$25,000,000 action here on the guarantees.

**JACQUIE MCNISH:** Okay.

**MALE 1:** So that sets out in some significant detail.

**JACQUIE MCNISH:** Which court would that be --

**MALE 1:** Superior Court.

[00:01:00]

**JACQUIE MCNISH:** Would it possible to get a copy from your office? It's just a nightmare trying to get stuff from the courts.

**MALE 1:** Yep, sure.

**JACQUIE MCNISH:** I could go pick it up if they let me know when it's available because I'm downtown.

**MALE 1:** I'll see if I can get it emailed to you.

**Conf** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** All right. So what kinds of questions have they been asking? Is it into the conduct of taking ---

**MALE 1:** It's the manner in which the loans were induced. The subsequent conduct in terms of we promised we're going to give you X numbers of dollars. They don't. They dripped the funds.

[00:01:30]

We have a fair number of documents in evidence that they knew these businesses were failing, and yet they didn't do it. There's actually a fabulous decision by a judge in Texas.

**JACQUIE MCNISH:** Oh, this is on the XTG?

**MALE 1:** No, not XTG. XTG is [PH] McFarland. This one is [PH] Esko Marine.

**JACQUIE MCNISH:** Esko Marine, that's right. Now is that the fish farm, or is that ---

[00:02:00]

**MALE 1:** No, that was -- they restore or take a part old battle ships, and they had government contracts, and the court just land basted them for their conduct.

**JACQUIE MCNISH:** And was it a lower court, or was it a --

**MALE 1:** Well, I think it was a court of first sentence because they brought an action for summary judgment.

**JACQUIE MCNISH:** What was the ---

[00:02:30]

**MALE 1:** I can try and get you the Esko [INDISCERNIBLE].

**JACQUIE MCNISH:** Thank you very much for that, because we understand the thrust of what they're most interested in how Callidus values its assets. They have these yield enhancements, and you've read the whistleblower report and so have I. Have **Confidential** been approached on that basis by their regulators? Are they looking --

**MALE 1:** I don't know.

**JACQUIE MCNISH:** Okay.

**MALE 1:** I can tell you that, for example, in the OPES and LEVITT file, they valued the assets at close to \$150,000,000.

[00:03:08]

**Confid** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

And I think it got sold for nothing, or next to nothing, and they're not even denying it.

**JACQUIE MCNISH:** And is that a conversation that the regulators would've had with them?

**MALE 1:** They've got a copy of my statement of defense, and I know the notion of valuations is part of the whistleblower.

**JACQUIE MCNISH:** Okay, but I just wondered if **Confidential** had been questioned on that. We just have to be very careful here.

[00:03:32]

**MALE 1:** As I said, I'll find out exactly what he did. I know that he personally files one of the complaints [PH] even though there's no name.

**JACQUIE MCNISH:** Okay, so did --- so you think **Confidential source** approached by the OSC?

**MALE 1:** I don't know which came first, whether they went to them or it was the other way around. I suspect, if I had to guess, I think that the OSC did not come to them. I don't think Callidus was on their radar.

[00:04:04]

**JACQUIE MCNISH:** Okay, because what we're trying to figure out is we think that initial complaints were filed probably in November, and the whistleblower report --

**MALE 1:** The whistleblower report was just recently.

**JACQUIE MCNISH:** In May, we were told.

**MALE 1:** Yeah.

**JACQUIE MCNISH:** And I wonder if since then there has been any questions --

**MALE 1:** I'll ask [PH] Darryl.

**JACQUIE MCNISH:** Okay. All right, well this gives me a start. So **Confidential** went and complained in November about --

[00:04:31]

**MALE 1:** And I know they've had a conversation with the police.

**JACQUIE MCNISH:** Okay. And do you know was it the Toronto or Serious --

**MALE 1:** Toronto.

**Confid** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Okay. And do you know when approximately that was?

**MALE 1:** I think they've had more than one conversation.

**JACQUIE MCNISH:** Okay. If we could narrow that down as to how many times and when, that would be very helpful just so that we can --

**MALE 1:** Why don't you do me a favor, I'm just standing out here on the dock, just send me a quick email. You've got my email address.

**JACQUIE MCNISH:** Do you really want to get an email from me, though, on this?

**MALE 1:** Yeah. Well, just send me an email saying these are the things we need answered and I'll take care of it right away.

**JACQUIE MCNISH:** I won't put any corporate names.

[00:05:02]

**MALE 1:** No, no.

**JACQUIE MCNISH:** All right, thank you very much.

**MALE 1:** Okay? Just so I remember exactly what it is.

**JACQUIE MCNISH:** Okay, bye.

**MALE 1:** Bye.

[00:05:30]

[NO DIALOGUE]

[00:19:30]

**ROB:** Hey.

**JACQUIE MCNISH:** Hey, so I've got good news and bad news. Which one do you want first?

**ROB:** Surprise me, whatever you'd like.

**JACQUIE MCNISH:** Well, I'll give you the bad news first because it's sort of the chronological progression. So, my source says Reuters was asking the exact same questions. They were talking about JSOT and Toronto Police and the OSC, and he said they don't have primary sources, they're just hearing

Confid 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

it from the guarantors or the people that are part of these many lawsuits against Callidus for wrongful possession of their businesses.

[00:20:10]

And he said you've got nothing -- there's nothing there. I'm not aware of it. No one's approached me, and I think I would know. I'm [Confidential source]. They're doing a good job, and they're making money. And he wasn't hostile. He did concede that the lawsuit against Boyer made no sense, and to be suing him for \$150,000,000 was ludicrous. And I said doesn't that give you pause for concern about are they desperate, or what's going on here? And I was very careful. I always am careful, even when I go to a trusted source and you're in a small board room with a conference call because you just never know who else is listening.

**ROB:** Totally.

**JACQUIE MCNISH:** Yeah. So, I was just very careful with him and I just let him talk, and I said, "Well, we're pretty comfortable with our sourcing on this. We're not getting this from the guarantors, and it's not part of a market manipulation like you're alleging."

[00:21:08]

And I said, "I've heard that a million times in my career. I would encourage you to pay attention to this."

**ROB:** Sure.

**JACQUIE MCNISH:** And he said, "Well, I haven't heard anything." I have no reason not to believe him, but he may well -- he encouraged me to talk to [PH] Dan Gonyea. I also know [PH] Jim Riley, who's the number two person there, but I'm not ready to go there yet.

[00:21:32]

So the good news is I talked to [Confidential]. I was referred to this morning, who I thought represented the investors. He doesn't. He represents [Confidential source privilege] of their businesses, and he said that his clients have been approached by the Toronto Criminal Police, the Serious Crimes Divisions. And he's going to go back to them and ask them specifically when they were approached and what they were asking.

[00:22:02]

And I said what we need to know were they asking about how they valued assets. And he said, "Yes, I believe that was part of it," and he talked about this company called OPES, O-P-E-S, which is a coal mine, and he says that -- it's called the OPES-LEVITT file. He says Callidus valued the business at \$150,000,000 and it was sold for nothing, and it had absolutely no value. And he thinks that that's the sort of thing they were talking about, but I need to hear back from him on that.

[00:22:33]

Confid 7-19-2017  
 Dow Jones & Company  
 August 12, 2019  
 Transcript by TransPerfect

**ROB:** Was this [Confidential source] just heard from the police, they didn't hear from the OSC or the ---

**JACQUIE MCNISH:** That's his understanding. He has the whistleblower's report as well. He's familiar with it, and he also been told that the --- he understands from his clients at the OSC, JSOT and the Toronto Police are involved but he couldn't say specifically how they know. So he also said that Reuters was talking to him, but they got cold feet and they're not publishing the story.

[00:23:03]

**ROB:** Yeah, that jives with that I've heard.

**JACQUIE MCNISH:** Okay, so they clearly have the emails as well. I never said emails to anyone, but all I said was ---

**ROB:** [PH] That could be.

**JACQUIE MCNISH:** I don't know. I just assumed that -- I don't know. How else would they know about JSOT and the OSC?

**ROB:** Whistleblower could've told them.

**JACQUIE MCNISH:** Okay, okay. So you feel really good about those emails?

[00:23:30]

**ROB:** Yeah. I mean, I don't know if Reuters has been worried, or if Reuters feels the same way that I do, but they're clearly true emails. There's just no way. I think that's pretty good news.

**JACQUIE MCNISH:** I think it is, too.

**ROB:** I don't mind the bad news.

**JACQUIE MCNISH:** I just wanted to give it to you as it was, and I didn't go out of there thinking, "Well shit," I just went out disappointed that I couldn't come back with clear information.

[00:24:00]

So I don't know if he's lying to me, or he's in complete denial. I think he's in a place where he just knows what he needs to know to [Confidential source] properly. Like, he really is a highly regarded [Confidential source privilege]

**ROB:** Sure, and it's also possible that he doesn't know.

**JACQUIE MCNISH:** Yeah, it is possible, and it's possible that they don't know yet.

**ROB:** I mean, they must have heavy suspicions at this point given the number of ---

[00:24:31]

**JACQUIE MCNISH:** You know, they put it all down to West Face. And there's an organization up here called VERITAS Research, which has been -- he's suing them for liable. Their people I've known for a long time. They're really thorough, deep, independent financial analysts who do the hard stuff, and this is life threatening for them, that lawsuit. And yes, we both know that Greg Boland and West Face has got a crusade against Glassman, but so be it.

[00:25:07]

I heard a lot about the money that Glassman has donated to charity over the years, but that's fine. I just said we've got to have the full picture. Tell me what else --

**ROB:** That's just a sleazy -- I can say that because I'm sitting in New York. That's a really sleazy defense.

**JACQUIE MCNISH:** Yeah I know. It seemed like that's the best -- I said just tell me about him. Why does he make people so mad? And when we were going down the elevator in his office tower, there's a very important decision -- well, it won't be important to you.

[00:25:35]

But there was a decision that came out in a West Face-Capital fight over telecommunication assets, and West Face prevailed at every level. And the Superior Court judge basically said they just didn't trust anything that Glassman said, and this was involving a lawsuit over an employee that Boland had hired from Catalyst and basically they tried to ruin this kid's life.

[00:26:04]

And he cleaned his hard drive because he had porn on it and he was about to be married and he was really worried. It was just a mess.

**ROB:** Oh my goodness. What a world there.

**JACQUIE MCNISH:** The judge gave damages of something like \$300,000 to him saying Glassman basically set out to ruin this guy's life. And West Face paid for his legal bills, but they didn't indemnify him, and the judge basically said it's the right thing.

[00:26:33]

Now, Newton is appealing, but it -- when that happened two years ago that was circulated a lot. People talked about that a lot because Ontario judges just don't talk like that, or use language like that in their decisions.

**ROB:** You really taught me --- just from this short week, you've taught me so much about Ontario.

7

**Conf** 7-19-2017  
 Dow Jones & Company  
 August 12, 2019  
 Transcript by TransPerfect

**JACQUIE MCNISH:** Just the beginning of your indoctrination.

**ROB:** I don't know. I'm so naive, I was sitting here, like, well, Canada seems like a place that does things by the book, and we definitely have our political troubles down here right now and --

[00:27:03]

**JACQUIE MCNISH:** Well we do, do things by the book --

**ROB:** But now you're, like, in Canada you can get away with murder in the first degree if you --

**JACQUIE MCNISH:** No, murder they get you. [PH] Security's firm, they're not -- the difference, I mean, I'm a dual citizen. I've worked in both countries. The difference between Canada and the U.S. when it comes to situations like this, if you want to be a securities litigator, where's the number one place you're going to go work? The Department of Justice, or the SEC, and nobody ever went of the OSC.

[00:27:31]

I mean, it was just the drags from the law school classes because you would not get a job on Bay Street. You would not get one. And it was just this -- it was a club, and nobody crossed the club. I have seen that unfold. I know people that couldn't get jobs after they were high profile successful enforcement directors at the OSC. Those days are changing, but still there's a little bit of that don't do there, but Newton has no -- there's not a lot of good will towards him in this place.

[00:28:03]

**ROB:** Let's assume that Reuters already made all these calls, but if you just called the front door of these various organizations, is there any shot they would just say yeah, we're not going to fight you on that?

**JACQUIE MCNISH:** I don't think so. In the old -- a couple of years ago they would've, because I know people. I know someone who works for the RSMP that used to work for the -- and he hasn't gotten back to me and he does fraud stuff for them and he would know about this, but he may be on holiday.

[00:28:32]

I should call him again because I called him last week, and he used to be **Confidential source privilege**  
**Confid** So he's great, but there was a witch hunt as to who -- some of my sources were and they all --

**ROB:** You're too good. This is what happens. That's a compliment.

**JACQUIE MCNISH:** No I don't take it that way. I think it's a sad state of affairs because they make fun of the OSC here, and then when they OSC actually does something they think they're over zealous. So, it's just a lose-lose situation --

Confid 7-19-2017  
 Dow Jones & Company  
 August 12, 2019  
 Transcript by TransPerfect

[00:29:02]

**ROB:** Right.

**JACQUIE MCNISH:** --- for the regulator. They can't do anything right. And that's why I was so hardened when I heard you say all these people were involved. But doesn't it feel to you like its early days? If they got that report in May -- so anyway, I'll report to you as soon as I hear back from **Confidential** as to the when and he's going to try and specific names of who approached them, and I'll cross reference them with some of the names you gave me.

[00:29:31]

**ROB:** And the other thing would be if -- let's assume that **Confidential source privilege** **Confidential**, that he may tell Newt or Dan Gonyea, or whatever.

**JACQUIE MCNISH:** Oh no, he will.

**ROB:** So I think if either of them calls you, I don't think we can quite say to them that we won't talk to them about it. So I would just, if I were you, I would not do an interview or anything, but you can just tell them that we, of course, before we publish or anything we give people a chance to comment.

[00:30:03]

**JACQUIE MCNISH:** I'll just tell them I'm still doing my research. At this point, I'm not too sure where this is going. We have certain information and I would give you every opportunity, but I don't want to waste anyone's time right now because we're still investigating.

**ROB:** Perfect, perfect, yeah. I just don't want them to complain over here and to somehow send somebody saying that we refused to talk to them or something.

**JACQUIE MCNISH:** Right, and, I mean, I have a natural excuse for not returning Dan Gonyea's call last week, and **Confidential** said, "You've got to call Dan." So, I don't know quite what to do about that. I think he'll call me.

[00:30:33]

**ROB:** I was going to say, you can call him --- you can wait for him to call you.

**JACQUIE MCNISH:** Yeah, I think that's right.

**ROB:** He has no --- I mean, he's third-party PR person. He has no --- we don't have to talk to him about anything.

**JACQUIE MCNISH:** Yeah. I'll just say, "Look, it's early days." And I told **Confidential** the truth, I said, "I just found out about this last week." And I told him that was I working with a colleague in the States, but I didn't say who it was ---

**Confid** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB:** Sure.

**JACQUIE MCNISH:** -- and I also made it that we were very comfortable with our information. I hope I'm right.

[00:31:03]

**ROB:** I am very comfortable with it. I don't have --- it doesn't usually come this clean, honestly.

**JACQUIE MCNISH:** Okay, all right.

**Solicitor client privilege**

**ROB:** Sure, sure.

**JACQUIE MCNISH:** I hope you appreciate --- [PH] Ben, I don't mean that in anyway to be critical of you, just --

[00:31:33]

**ROB:** No, no.

**JACQUIE MCNISH:** Okay, good. We're on the same page then.

**ROB:** Okay.

**JACQUIE MCNISH:** Thanks.

**ROB:** Cool, talk soon.

[00:32:00]

[NO DIALOGUE]

[00:45:00]

**JACQUIE MCNISH:** Jacquie McNish.

**ROB:** Hey, it's [PH] Rob.

**JACQUIE MCNISH:** Hi.

**Conf** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB:** Okay, I have an answer to one of our unanswered questions.

**JACQUIE MCNISH:** Okay?

**ROB:** Why did they sue Boyer for a \$150,000,000?

**JACQUIE MCNISH:** To make it look like he committed the fraud?

[00:45:31]

**ROB:** Well, yes. Also, apparently Boyer, prior to the lawsuit, filed his own whistleblower complaint.

**JACQUIE MCNISH:** Oh my God, okay.

**ROB:** I don't have that on double sourcing, so I don't know if his lawyer could just cough in the right order.

**JACQUIE MCNISH:** Okay. Do you know when?

**ROB:** Prior to May.

**JACQUIE MCNISH:** Okay, so that --

[00:46:02]

**ROB:** And prior to this other whistleblower thing.

**JACQUIE MCNISH:** So there would be two whistleblowers then?

**ROB:** Correct, and one internal and one external.

**JACQUIE MCNISH:** Okay, so --

**ROB:** And that's why he then put the stuff about the investigations in his counter because it was, like, he didn't put it in the first one. He didn't put it in just the statement of claim.

**JACQUIE MCNISH:** So tell me -- I mean, I'm immediately drawn, in my salacious, fevered mind to assaults and aggressiveness. We can use that can't we?

[00:46:37]

**ROB:** Oh yeah.

**JACQUIE MCNISH:** Okay.

**ROB:** Anything that's factual is just -- it's not defaming -- you can't defame someone with the truth.

**Conf** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Okay, so, are you satisfied if I go back to my source and say -- how sure are we about this?

[00:47:00]

**ROB:** I mean, I'd like someone who touches him to confirm it to on [PH] background.

**JACQUIE MCNISH:** No, I know, but you feel you've got a really good source on this?

**ROB:** Yeah, I mean, he said that's what his understanding is.

**JACQUIE MCNISH:** Okay. And you think that person has the right knowledge?

**ROB:** Yeah.

**JACQUIE MCNISH:** Okay.

**ROB:** I mean, look, if the lawyer for Boyer says, "Jacquie, it's not true. I wouldn't do it."

**JACQUIE MCNISH:** Okay. If you don't mind, I'm going to wait until tomorrow. I don't want to -

**ROB:** That's totally fine.

**JACQUIE MCNISH:** -- be harassing this guy, and there may be other things that come up.

[00:47:32]

**ROB:** Sure.

**JACQUIE MCNISH:** So I would probably do something like, look, we have just learned this. It's important to our research. We trust our source on this. I'm going to tell you what I know and if you disagree say something.

**ROB:** Perfect.

**JACQUIE MCNISH:** Okay?

**ROB:** Perfect, that's flawless.

**JACQUIE MCNISH:** All right, that way he doesn't have to say anything.

**ROB:** Correct.

**JACQUIE MCNISH:** Okay.

**Confid** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**ROB:** And he, honestly, would want to say something, even if it's not true because it doesn't help Boyer to have that out there.

[00:48:01]

**JACQUIE MCNISH:** No. What we don't know was it a written complaint, or did he contact them? And we don't know what he contacted them about.

**ROB:** No, but we could ---

**JACQUIE MCNISH:** I'm not saying that ---

**ROB:** There's a formal whistleblower program.

**JACQUIE MCNISH:** Yes there is. It's relatively new.

**ROB:** So, we probably wouldn't even say his --- I'm willing to say that we don't even need to say that he filed a whistleblower. We just say that --

**JACQUIE MCNISH:** We just say he approached the regulators.

**ROB:** Do we even --- I mean, if we just said ---

**JACQUIE MCNISH:** Oh, there were two. Okay.

[00:48:32]

**ROB:** There were two, and one was from a former employee.

**JACQUIE MCNISH:** Okay.

**ROB:** I'm willing to be reasonable among friends.

**JACQUIE MCNISH:** Okay. I really trust this guy. I can't say enough about his integrity. I think he's doing exactly the right thing for **Confidenti**. He's not a talkative person, but he has helped me very much on other sensitive issues where his sense of justice was offended. And he's really offended about the way Newton has behaved here.

[00:49:03]

**ROB:** Well, what's happening is if they're trying to raise the fund in September, then I think all these guys who were maybe satisfied to just let the legal system do its work.

**JACQUIE MCNISH:** Yeah. He -- I'm sorry, you reminded me of something else that this guy said to me, **Confidential**. He said that they're not raising the fund right now. They're still in the investment stage with fund to five, and I don't think this is going to happen until 2018.

**Confid** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

[00:49:34]

**ROB:** It doesn't matter. We can still say, "Has discussed raising as fund as soon as..."

**JACQUIE MCNISH:** Okay. And so, this is one of the questions when can ask when we go in the front door, "Are you still doing that?"

**ROB:** Yeah, I mean, they couldn't possibly say on the record that they haven't discussed raising [PH] to fund six.

**JACQUIE MCNISH:** Okay, all right. Okay, good to know what the nuance is. All right, that's very interesting.

**ROB:** I'll leave the Ontario expertise to you. Leave the semantics of the alternative investment industry to me.

[00:50:03]

**JACQUIE MCNISH:** I will, okay.

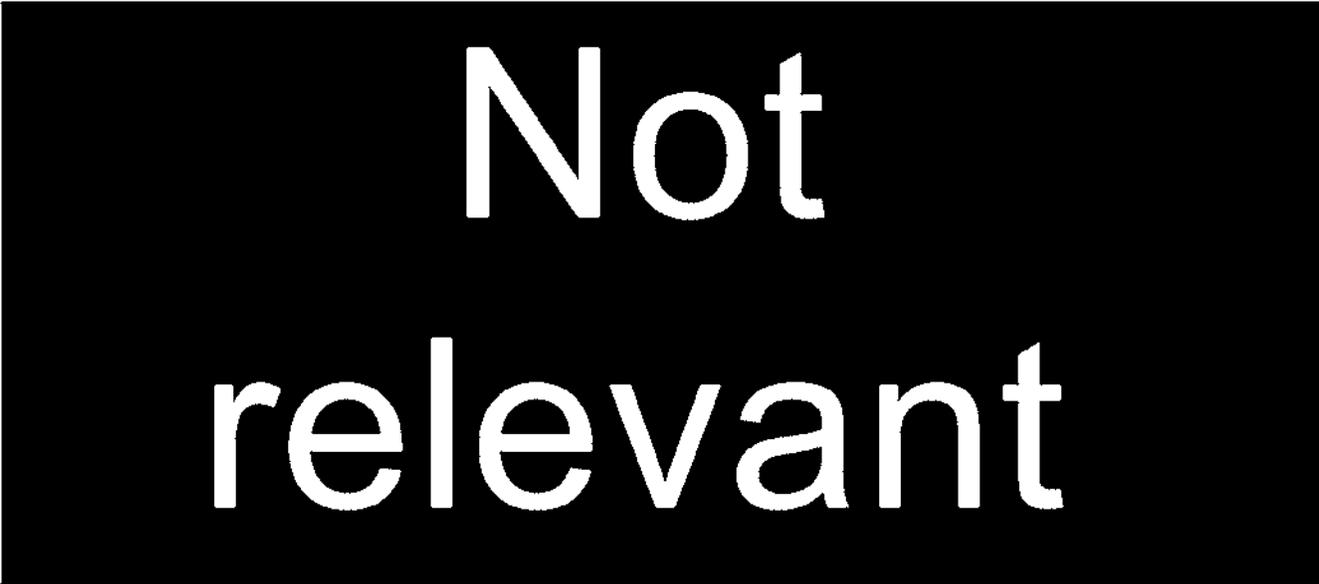
**ROB:** All right, great. Talk to you soon.

**JACQUIE MCNISH:** Take care. Bye.

[00:50:06]

[NO DIALOGUE]

[00:51:00]



Not  
relevant

14

Confid 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

Not  
relevant

[01:42:32]

MALE 3: Got you. So I just got a call from Confidential source  
privilege

JACQUIE MCNISH: Yes.

MALE 3: So I wanted to just kind of see -- I can walk you through some stuff absolutely on  
background -- off the record, just to help out here, and go through some of the stuff that maybe Conf  
wouldn't be as direct on.

[01:43:00]

**Conf** 7-19-2017  
Dow Jones & Company  
August 12, 2019  
Transcript by TransPerfect

**JACQUIE MCNISH:** Okay. I, by the way, just got involved in this --

[01:43:05]

# TAB 31

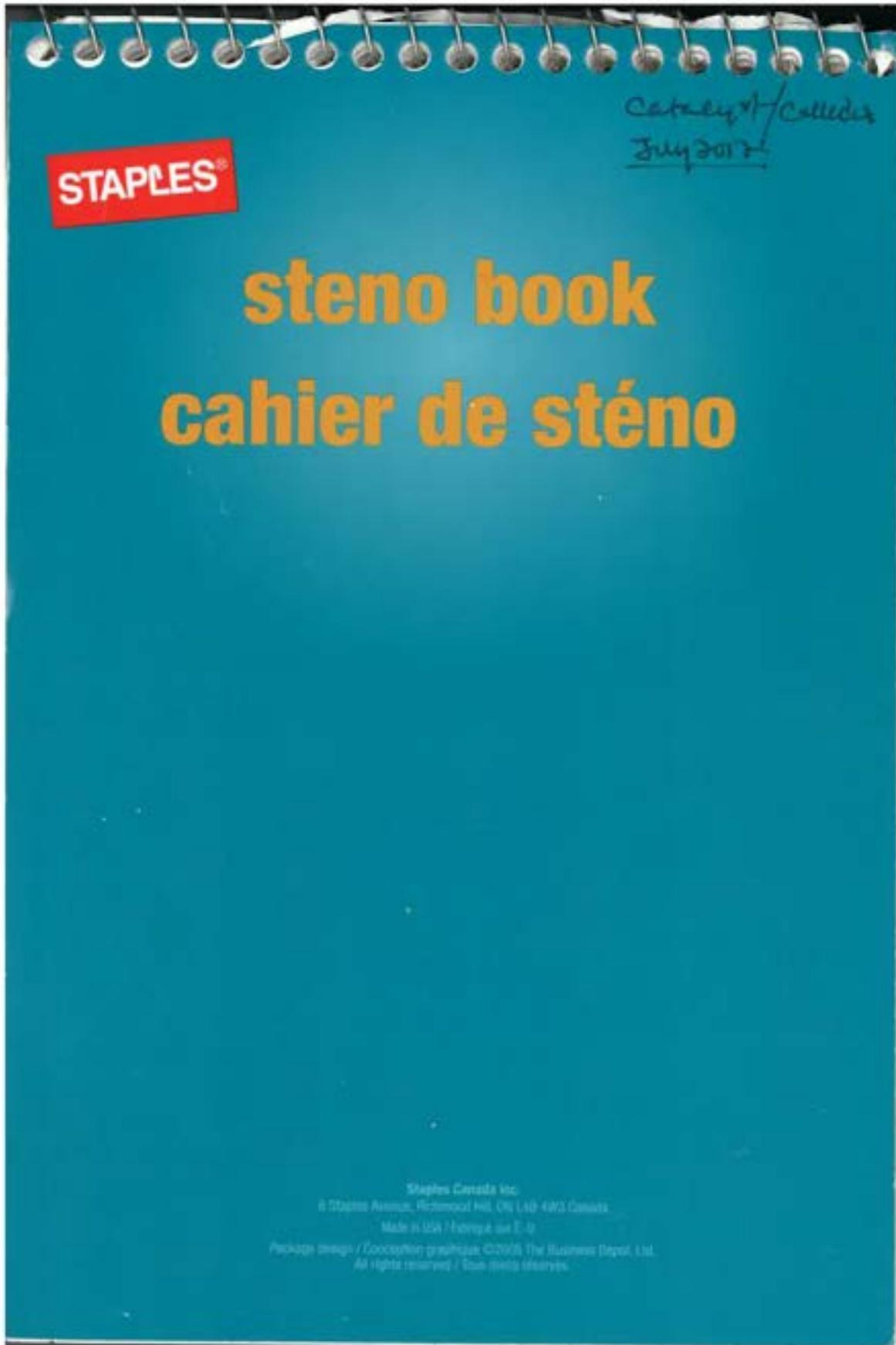
Confidential  
source  
privilege

Confidential  
source  
privilege

Confidential  
source  
privilege

Confidential  
source  
privilege

# TAB 32



DOW000845-0001; DOW000845-0001; DOW001019-0001;  
DOW001020-0001; DOW001032-0001

Confidential  
source privilege

July 20.

NAV. c plants for

NAV. whistleblower. yield values

- NAV - OSC disclosure review

March - litigation Craig Buyer

OSX

ISOT.

Toronto Police knows comes.

- focus includes probe into valuation  
v asset.

4 guarantees Callider

discovered details

primary review w. callid

4 guarantee.

open to regulate activity  
w/ aua

manipulate sure price

year-end

#s.

-

...ment

## Confidential source privilege

colluder. infiltrator

litigat. west Face  
venter.

- label seq.

v. to derive a h

# Confidential source privilege

Catalyst \* Colluder

- Adet.

guarantee certain colluder  
can.

-  $\mu$  colluder not public  
Catalyst guaranteed terms

Confidential source privilege

Confidential source privilege | July. 21

- variety. v different

↳ he has been  
sweat in U.S  
over their  
lead practices

U.S. #1  
longhaul  
UK.  
last year.

- 2 trucker  
network. leads

- false pretenses  
- abuse power if they  
lead me

2018  
monthly  
JAN.  
MAY.  
Spent  
qu.  
1-4.  
1d.  
2019.

- complete overhaul  
v Callidus's assets  
↓ drives asset

values v catalyze

largest single  
invest

- overstate value

spectrum set  
aside for  
new entrants.

Catalyst  
returns

Confidential source privilege

Confidential source  
privilege

- Grossman.  
+ Azell.  
also need  
is industry  
Canada. +  
Catalyst  
is not priv't  
will at quite  
y + report

Simple can  
try to  
sell.

— submitted by  
Professional colleagues  
so respect  
to about simple  
to obtain legal  
advice.

Confidential  
source  
privilege

Dankofsky

- i believe
- undertook for - lender
- patron.

Craig Buyer

Brunswick  
fraudulent.

hemestransun  
Frank. @

@ 10 loans on ~~STG~~ <sup>STG. capital lease</sup> learn book <sup>metPortland</sup> co. were in  
 @ ~~STG~~ - can. track <sup>300.</sup> <sup>future</sup> <sup>security</sup>  
 LPO.

- kept card <sup>ny</sup>
- drove value up to \$1000
- 1000 unit

dut discl. write it off. to \$800?  
 - Craig Buyer forged  
all these financial

# Confidential source privilege

- Buyer

just left  
- week 2go.

- oto [ DAVID Reese -  
president U Callidus  
not in office  
for week

use. e pen  
historicaly.

photo.

# Confidential source privilege

Confidential source privilege

This comes  
with

Confidential source  
privilege

GATE began.

reinfo  
enforcement  
corp. crime

institutional.

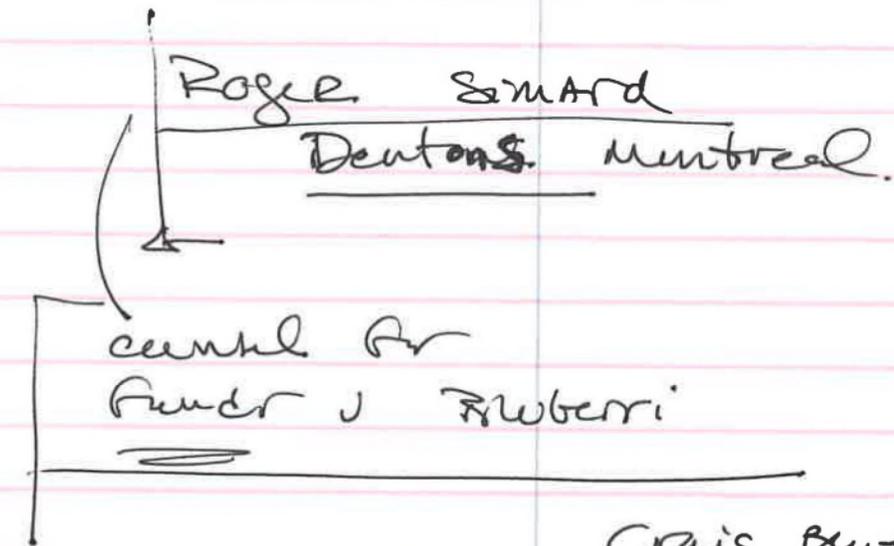
direct  
McFarland

- XTG  
Text

EXCLA  
materials

Donnell

Portuss



GAUL Regu  
 to June 15  
 sup  
 food  
 initiative.

- Craig Buyer  
 4  
 ① U.S.  
 2. Exchange  
 → Gerald or  
 Jeff in France  
 3 Darrell.

Blueberry:  
 if Blueberry  
 get like to  
 be member  
 in this initiative  
 say & will  
 → to

**Confidential  
 source  
 privilege**

Confidential source privilege

on background

Patrol

Confidential source privilege

sales. + ...

Newtm - we were with sit dur + intmns to best point year

live only spot normal curse issues auto share purchase plan. you always buy stock regardless of black out

- rules about automatic share purchase plan
- can't possess material / non-public info
- when they est. normal curse
- GMP. bought de buy stock they were notified & proceed to sell. the company

Confidential  
source privilege

= intermezzo

certific - share

April. 4.

Callidos.

Co. rpt Q1 MAY 5.

→ MARCH 31.

- when announced earnings stock  
fell 12%

April. Griffith

here is.

material. um

you know year 9.

earnings  
=

they were right in midyear

✓ update section

prop. up. share

missed earnings badly

took # of charges. announced they  
1 more

i have frica + frica  
+ frica  
to get evyone el.

memo. -  
[ 80 pages. ]

L with

= there's a lot +  
alarm me.

## Confidential source privilege

- never passed to anyone
- partners committee
- didn't a part.
- never passed to anyone

- transcripts may be

Glassman. spirit security  
- did work there + caused  
res. priv

# Confidential source privilege

Doughty earlier  
 (sued agent  
 - seller  
 property  
 enc. bar

[ Toronto wife  
 mansion east  
 way

Google

Have address.

Artwold Cr

[ ARTWOLD GATE ]

Big mansion

Toronto wife

= mansion, houses

don't

NASSAU.

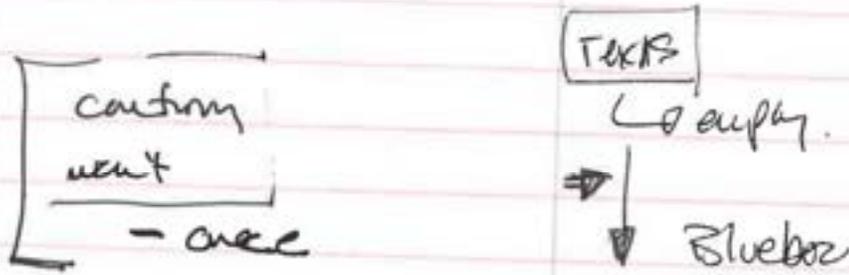
→ }  
 ↓  
 Daryl not writing.  
 put  
 - Mexico.  
 - Iowa  
 - NJ.  
 - Harvard.  
 - U of T

Jeff McFarland - NOV.  
 L filed. OSC claim  
 w

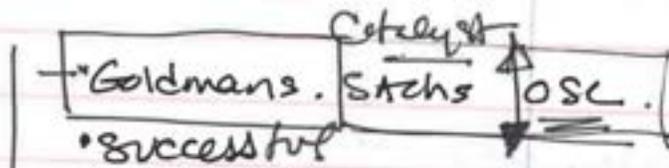
**Confidential source privilege**

- Nate.
- Barry.
- Jeff McFarland ← [wife, warehouse, families] XTG Exchange
- Kevin Baumann
- reach. att to note

because he knows



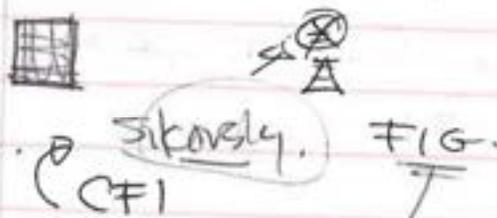
[media.] →



⊙

⇒ Don't believe

@Newton Green



Veritas report

Confidential source privilege

Controller. com.

2 jets \$20  
 Falcon 900EX  
 Challenger 604/52  
 Phil. Lewis



- artificially inflated asset value
- substantial loan losses.
- wrongly made financial commitments to ven.

reque. (contract approved)  
\$150 unsecured

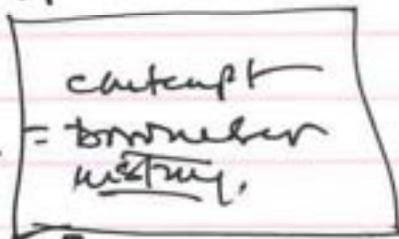
Brandon Hayse

↗ = Aug 4

Phil. Panet  
general counsel.

② 647 724 8917

③ 416 669 9523



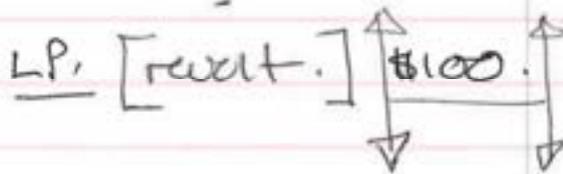
↔ each copy

[Michael W. Herbert]

Fund. - 1st Gluskin

**Confidential source privilege**

- sheep. like.



under oath.

Gluskin \$12. Billy  
under.

cross-exam.



Statement  
of assets + liabilities

---

= co. they believe  
honesty

Baby =

Brownie A

↓ bankruptcy

frankly  
D/S

VIP

6th

New York

= shipyard.

U.S.S. USS Saratoga

[court + affidavits]

[Saratoga sat  
=

⇒ lawsuit

↳ believe Newton

Bulhames → B: | Nassau.  
when - shit  
hits - fan

her. kid needs  
to be ok

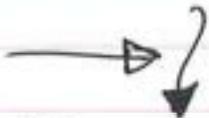
# Confidential source privilege

write paragraph

⊙ in force

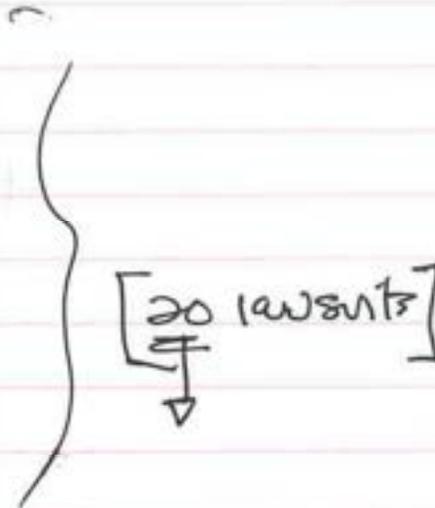
⊙:

⊙ ⇒ very quirky  
Gleason



[pugnacious]

⊙ physically..



[20 lawsuits]

Antar update

[names & police]

→ ≡ were from  
stay on invest

↓ = | 1-100. | 110 } ≡  
↓ -

# Confidential source privilege

↓ = [I got trouble]

[It plugged] ≡ □

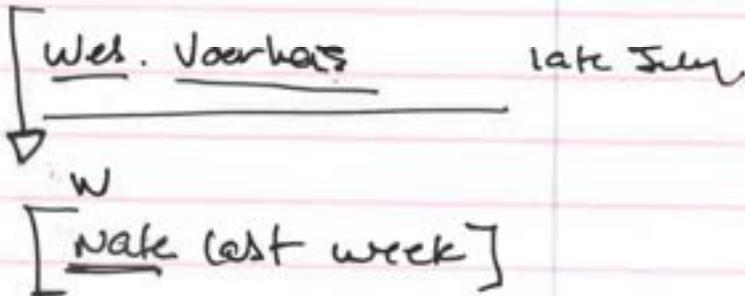
• if there

↕ Confidential source privilege

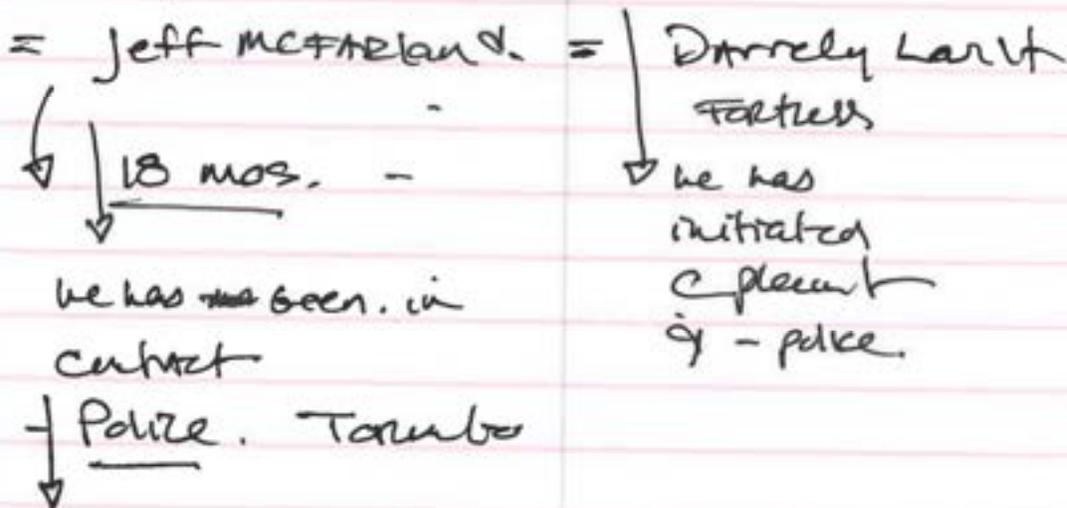
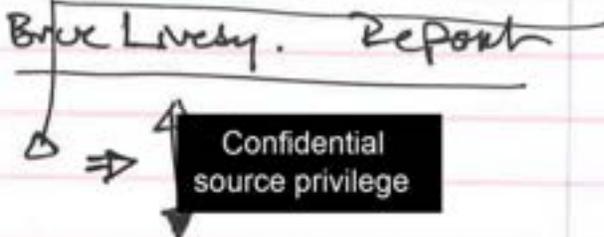
Simard.

= Newton 2004  
said of by source  
sources. i'll

How many ~~un~~ ~~the~~ ~~business~~



- aware v



# TAB 33



DOW000846-0001; DOW000846-0001; DOW001020-0001;  
DOW001021-0001

# Not relevant

separated

front to make  
these individuals

submit

↓ [there is no JST]

☐

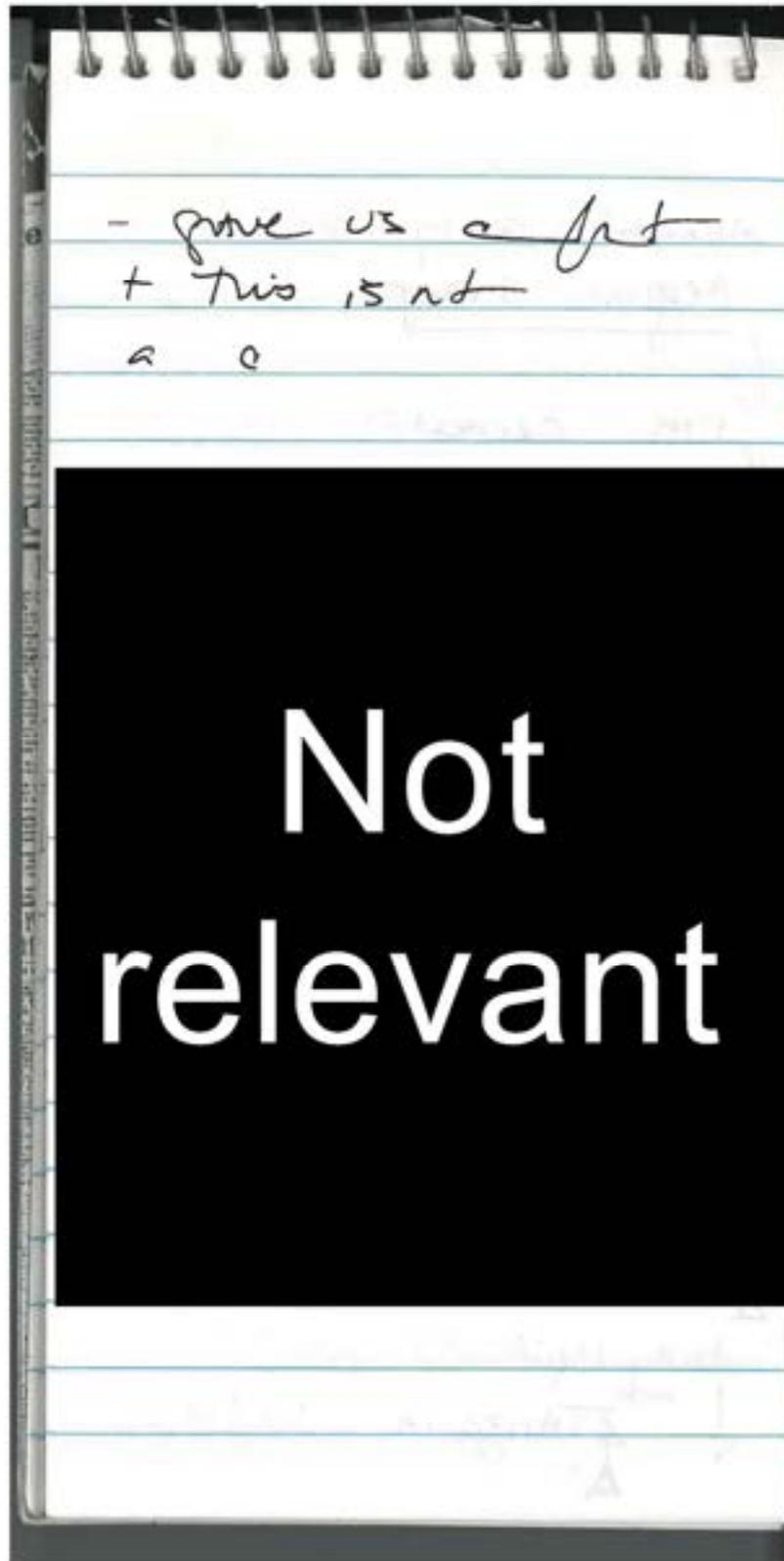
☐ when we get  
control

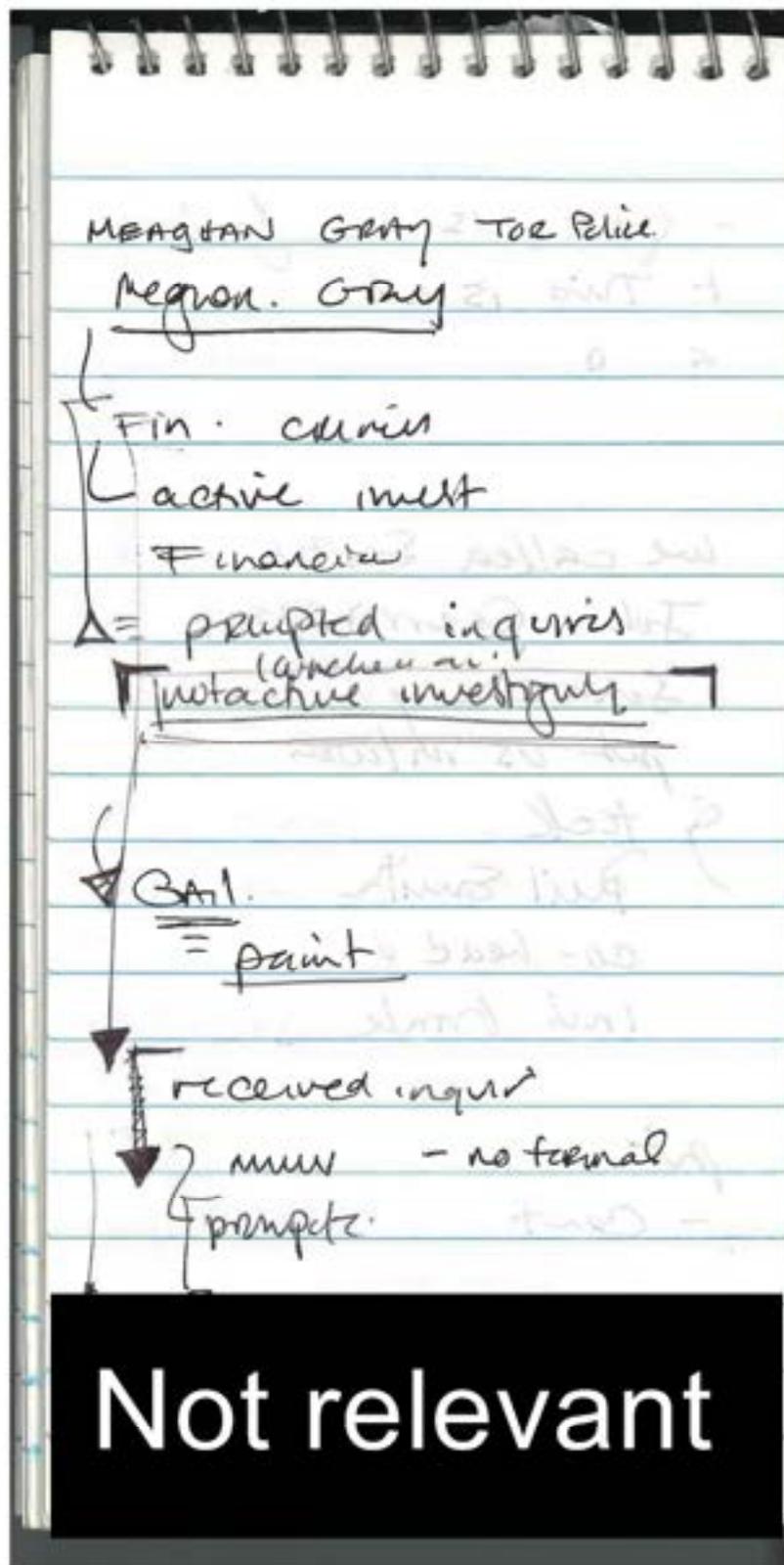
careful

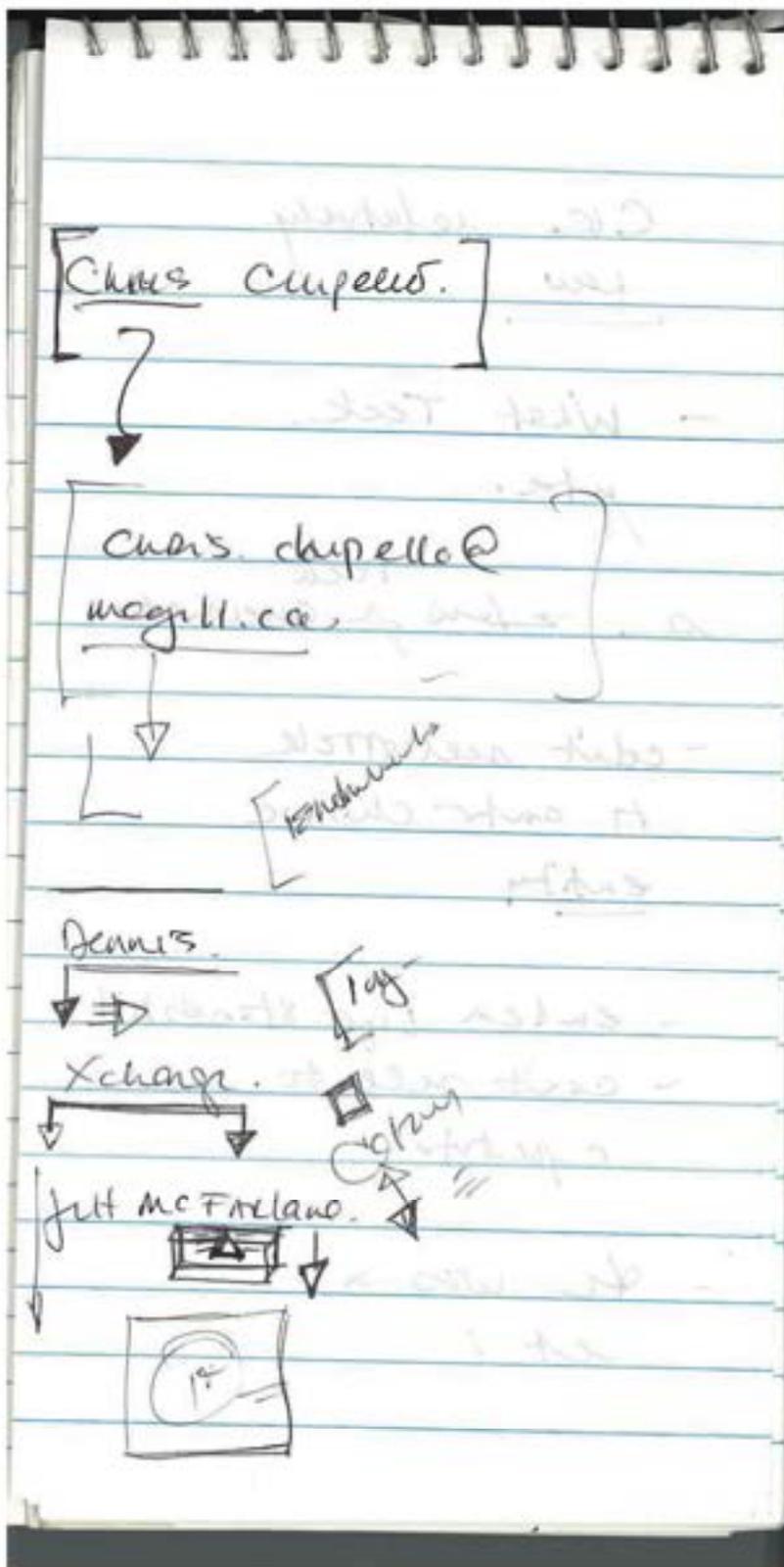
- we / subrogated

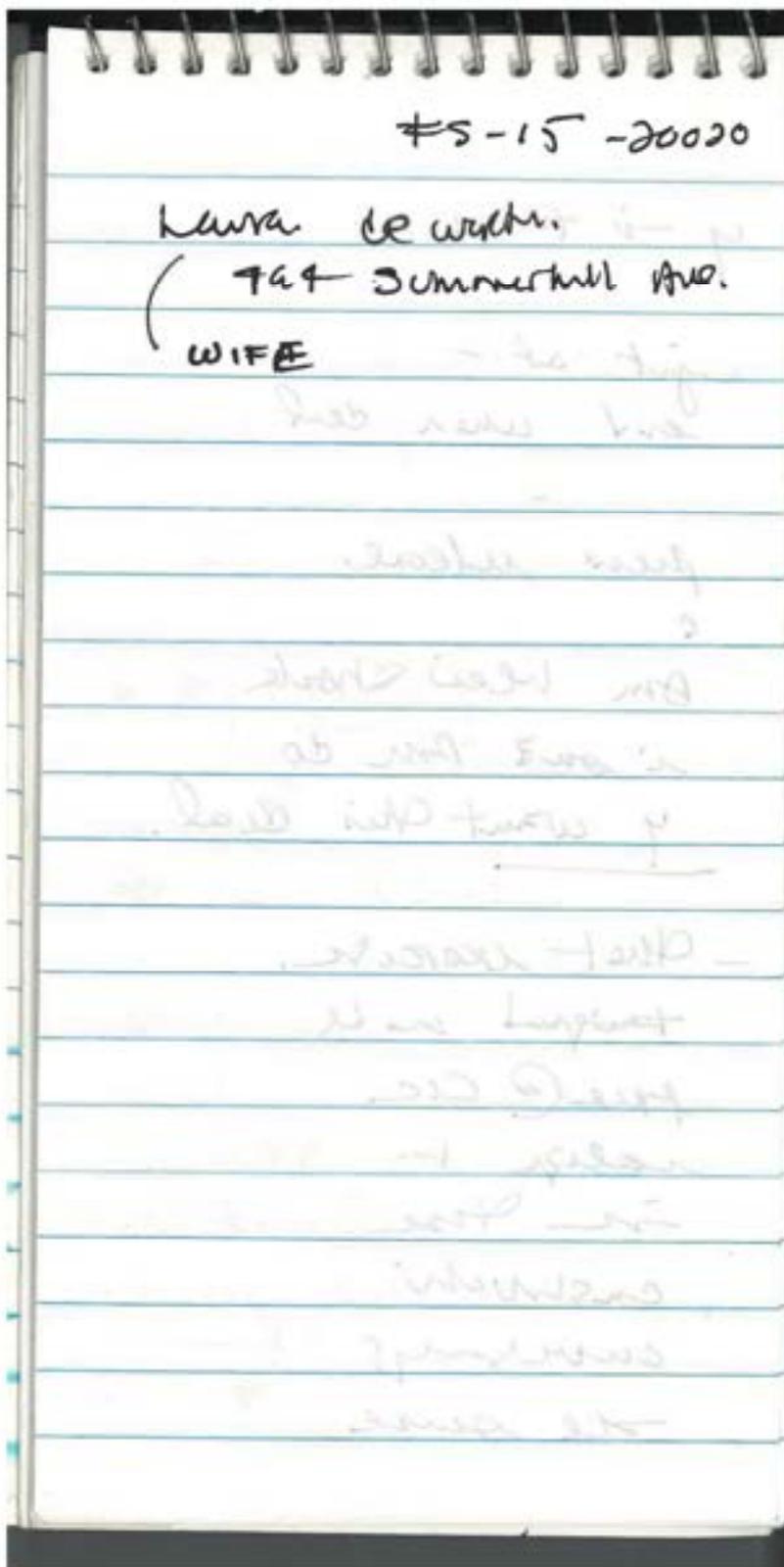
control

take on / transfer









Riley.

ye ago Jan.

wf. try

to put out

approval v wind

sale.

constructive trust  
argument.

other issue

induce breach

issue

Confidential source privilege  
commenced

simple to

breach. excluding

w/ catalyst

& says we don't  
 trust you.

- one + deal  
 & counted.  
 & novels

& perhaps. I think  
 it did find  
 ppl. @ sub acc  
 to think

& else  
 can i see.

- 45% of people  
 know

A Doughty @  
annual meet

Attendant

2015 nutrition

in mayse

can

available for

or

A

Tony Griffin

replied.

March 2015 Attendant

mayse

Levit

Levy @ Fabian.

• 2comp.

Darral Levitt

up. lawyer.

next time

Bundes Kilmer.

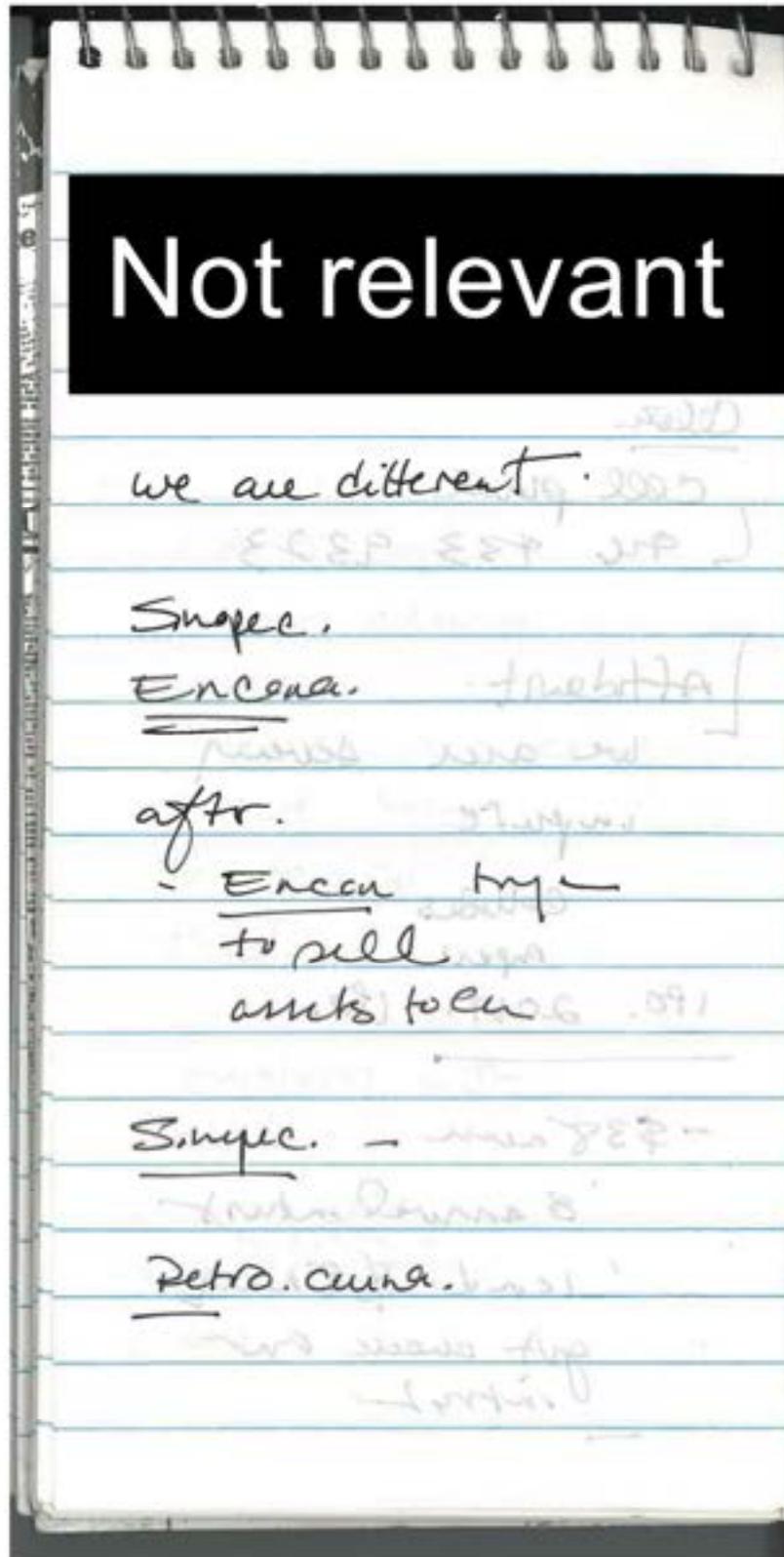
(  
Athletico. Village  
in Pan Am games.

Sam Fleischer

Funda Callidus.  
Newton. Output

\$ 1 - 2 million loan  
tradige cost  
basic loan  
1000 + 1000  
v snow loan.

[ bought price  
loan. - dr  
banks.



NB all - loans

**Not relevant**

[Affidant.

we are severely  
impaired

collides  
April

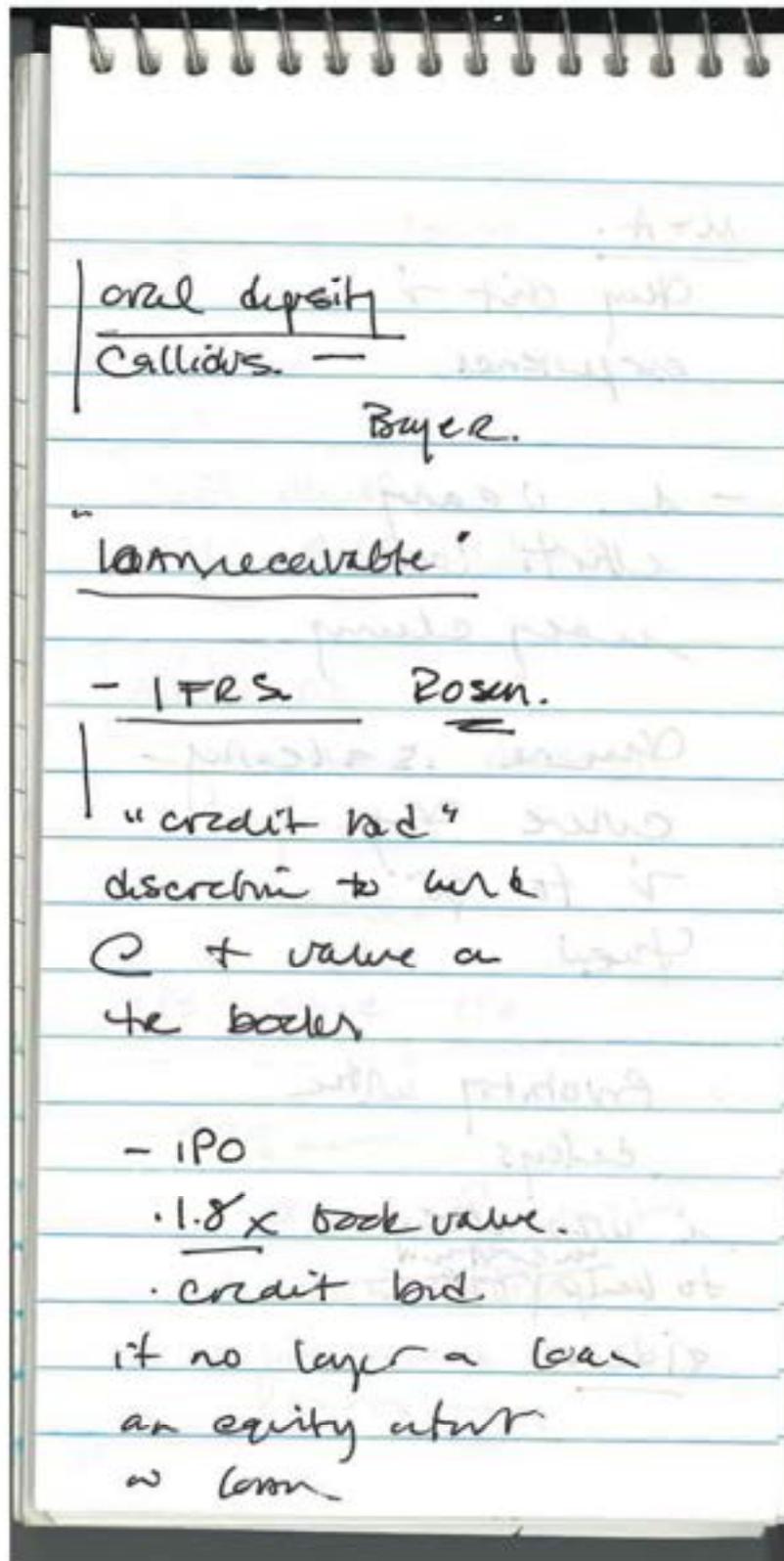
190. 2017. 190.

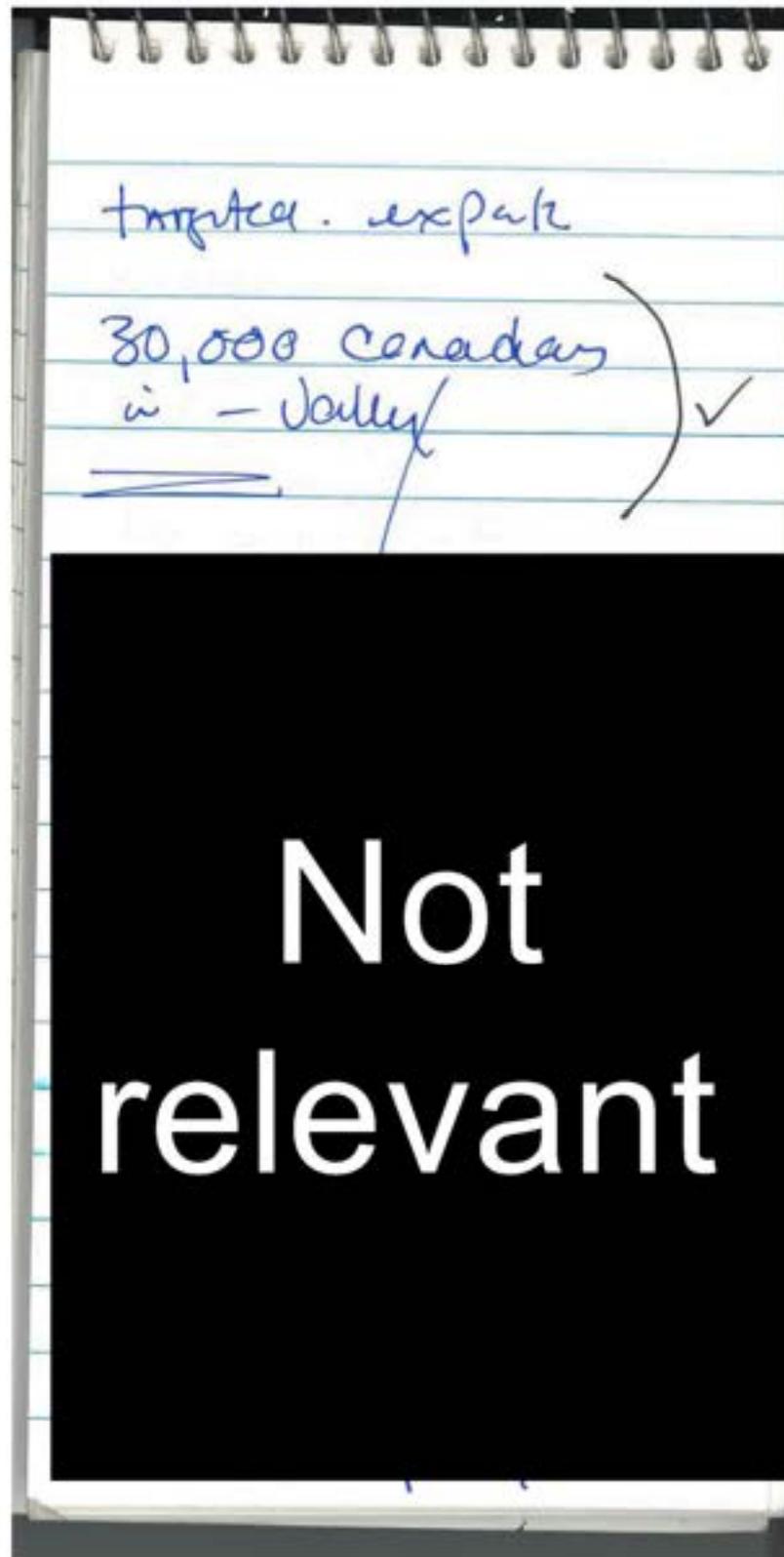
-\$38,000

8 annual interest

1 cent \$8,000

got check on  
interest





# TAB 34

I was the first one through the gate...with the OSC I don't think they have any obligation to communicate with the whistleblower but I would say if you were to read the content of my whistleblower complaint and stack it up of what the OSC continuous disclosure review demanded of callidus

They manufactured earnings and called them yield enhancements..they were forced to reverse earnings

I filed osc claim November 16 and was the first one....

He hasn't been talking to JSOT but Darryl is....i produced the charts for him...most of the Canadian borrowers contributed to the US file

Interest level from law enforcement is v high...

Its clearly an issue

919-279-0443 fwds to mobile...don't worry

---

Jacqui: Kevi baumann is alken and I was told by Confidential that he was in serious financial condition

---

Jeff: Xchange started its relationship with the \$12M buyout of the pnc note in 2012..then 22m credit facility later...went above and beyond that by early 2013

----

Nate: Boies schiller did not fund anything it was something that had been discussed .. all the borrowers were thinking about whether they wanted to do a class action but boies schiller didn't wind up doing it...I believe from there they wanted to see if they filed something together...but everyones cases is so diff theres no opportunity

-----

Our counsel says they have been...I don't think that our matter is going to be settled in a week....or if you do sit down in a week the questions are going to be limited bc if you look at all their earnings transcripts they really asy that's just not public information, yes we're not prepared to tell you

Blueberrie

As aprt of our settlement negotiations they've asked us to secretly gie us the names of the ppl involved in leading the charge againt them...ive explained to our counsel id rather go bankrupt...that's their precondition to a settlement...they asked if we were involved in leading the charge against them by the OSC....this was v recently over the last couple days...it was based on todays ... our cases that deals with fraud and inducement will be dealt with in court...I think they want to be able to establish a competent complaint....bc the best defense is an offense I think a week is them trying to buy time

# TAB 35

Source	Notes
Jeff McFarlane (xChange Tech CEO)	Glassman sued everyone even after he had already taken Jeff's company (
Gerald (Bluberi CEO)	Has emails showing that Callidus intended to take his business and that he
SS	A PE due-diligence firm had learned through a reference call with an ex-em
Brandon Moyse	Former employee that Glassman had sued, accusing him of taking confide
Max Glassman	In college Newton Glassman sued his own Dad for back child support: http
Justice Neubold statements on Glassm	"This lawsuit was driven by Mr. Glassman. He was not able to accept that h
Justice Neubold statements on Glassm	"Dealing first with the evidence of the witness for the Plaintiff, I must say t
Laying on the horn	During a tumultuous time during the relationship between Callidus and a p
\$1b	Glassman has claimed to be a billionaire (need to confirm source)- JM
"Buttercup"	Glassman's nickname is "buttercup" : <a href="http://business.financialpost.com/fi">http://business.financialpost.com/fi</a>
Florida Chopper	According to BL, Glassman's wife is divorced from another lawyer in town.
Joe Lewis, Albany Bahamas	According to BL, Glassman owns a condo in Joe Lewis's exclusive Bahamas
Waterski Boat for Cancer Kids	According to BL, Glassman donated a waterski boat to a camp for kids with
Helicopter	Glassman has a helicopter of his own that he parks outside his house. Pictu
Hit his COO in the back of the head	He open hand swatted David Reese in the back of head with 30 Institution
Craig Boyer	Former SVP of originations sued Callidus for physical abuse among other t

Xchange Technology) including suing Jeff's wife and all the employees at Jeff's new company, down to the warehouse "wouldn't be working there for long" despite telling Gerald to his face that they were looking forward to building employee that Glassman once threw a stapler at his head

ntial information with him. In the transcripts from the trial: "Do you recall joking....referring to Mr. Glassman as a <https://caselaw.canada.globe24h.com/0/0/ontario/superior-court-of-justice/1983/05/09/glassman-v-glassman-and-gl> e lost his chance to acquire Wind by being outsmarted by someone else...He was certainly playing hardball attack hat I had considerable difficulty accepting as reliable much of the evidence of Mr. Newton Glassman. He was aggressive portfolio company (believe it was Bluberi) Craig Boyer, SVP at Callidus parked outside the office of the company an

nancial-post-magazine/the-fixer

The lawyer wanted to have his kids over Christmas down at his parents place in Fort Myers Florida. Newton soug resort "Albany". <https://albanybahamas.com>. Glassman is very open about this when asked. cancer on Lake Muskoka (camp Oochigeas?). Glassman was at his cottage on the lake and called the camp to ask i re is available online. He owns 3 aircraft total (believed to be 2 helicopters and 1 plane) al investors in the room. This was right after their IPO when they were trying to market Callidus to the institutiona hings. Callidus countersued saying that Boyer committed fraud and forgery

use line-workers  
the business together with him

fatter, shorter Kim Jong Il"? <http://catalystlitigation.com/wp-content/uploads/Case1-2014-BrandonMoyle-and-Wassman-1983-1141-on-sc.shtml>

ing the reputation and honesty of West Face. However, in spite of the best efforts of Catalyst's very able and skilled  
essive, argumentative, refused to make concessions that should have been made and contradicted his own statement  
d blared his car horn and flashed his high beams at the companies offices for 2 hours

ht a court order seeking to force the ex husband to drive the kids to Ft Lauderdale because he wanted to chopper o

f they could take the boat out with the kids in the afternoon to drive by his cottage and have the kids wave at him

I crowd. David Reese apparently asked a question he didn't like.

estFaceCapital/trial-evidence/Trial-Transcripts/Day%206%20transcript%20-%2013%20June%202016.pdf

d lawyers, he utterly failed." [http://catalystlitigation.com/wp-content/uploads/2016/09/Cost-Endorsement-of-Juents made contemporaneously in emails.](http://catalystlitigation.com/wp-content/uploads/2016/09/Cost-Endorsement-of-Juents-made-contemporaneously-in-emails.)" <http://catalystlitigation.com/wp-content/uploads/2016/09/Reasons-fo>

ver to the Bahamas and he couldn't fly to Ft Myers without refueling the helicopter

in front of the girlfriend so he could tell her about the donation. They told him that's not really what they do so G

DOW000886-0001; DOW000886-0001; DOW001029-0001;  
DOW001030-0001; DOW001035-0001

stice-Newbould-7-October-2016.pdf  
r-decision-of-Justice-Newbould.pdf

lassman stopped making payments on the boat. Another donor had to step in to make payments on the boat to a

DOW000886-0001; DOW000886-0001; DOW001029-0001;  
DOW001030-0001; DOW001035-0001

void it being repossessed.

DOW000886-0001; DOW000886-0001; DOW001029-0001;  
DOW001030-0001; DOW001035-0001

# TAB 36

**Sent:** Mon, 31 Jul 2017 16:12:10 -0400  
**Subject:** Re: Try this  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>

haven't heard back from **Confid** yet. How are things otherwise?

Jacquie McNish  
 The Wall Street Journal  
 o: 416-306-2031  
 c: 647-224-7554

On Mon, Jul 31, 2017 at 4:11 PM, Copeland, Rob <rob.copeland@wsj.com> wrote:

We are good on **Confiden** and **Confidential**

On Mon, Jul 31, 2017 at 3:30 PM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

it is a good process

Jacquie McNish  
 The Wall Street Journal  
 o: 416-306-2031  
 c: 647-224-7554

On Mon, Jul 31, 2017 at 3:28 PM, Copeland, Rob <rob.copeland@wsj.com> wrote:

we will get through this!

On Mon, Jul 31, 2017 at 3:26 PM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

sure, thanks for doing this.

Jacquie McNish  
 The Wall Street Journal  
 o: 416-306-2031  
 c: 647-224-7554

On Mon, Jul 31, 2017 at 3:24 PM, Copeland, Rob <rob.copeland@wsj.com> wrote:

lets keep it in our pocket for now. someone may ask

On Mon, Jul 31, 2017 at 3:19 PM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

Nice job. I have two tweaks in blue. Do you still want following

Callidus stock has fallen about 26% from its peak in January. The slide followed a disappointing first quarter during which it reported a steep revenue decline, a net income loss and loan losses which more than doubled from the previous year to C\$19.4 million. [previous year loan losses were \$7.8 million]

# TAB 37

**Sent:** Fri, 28 Jul 2017 14:51:40 -0400  
**Subject:** urgent request  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** [REDACTED] Confidential source privilege [REDACTED]@osc.gov.on.ca>

**Confide**

I gather from your voicemail that you are away. So is **Confi**. We have a story in final stages that I need to talk to you or someone else about. Where can I go from here?  
Jacquie

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

# TAB 38

**From:** Jacquie McNish <jacquie.mcnish@wsj.com>  
**Sent:** Fri, 11 Aug 2017 11:57:54 -0400  
**Subject:** Re: CBL  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>

I'm guessing they were positive questions

On Aug 11, 2017, at 11:27 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

ONLY TWO ANALYSTS ASKED QUESTIONS.  
 What is going on up there!

On Fri, Aug 11, 2017 at 11:26 AM, Jacquie McNish <jacquie.mcnish@wsj.com> wrote:

Confidential  
 source

says they blamed WSJ entirely for stock collapse

On Aug 11, 2017, at 10:34 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Also there's this, in the MD&A:

"Salaries and wages corporate lending business for the current year-to-date period increased \$2.1 million from the same period last year as a result of an additional amount paid to key management personnel and a number of net new hires in anticipation of and to accommodate growth in the loan portfolio"

Except...the loan portfolio isn't growing, it's shrinking. And they've paid themselves 25% more (\$2.1M) year over year to manage it

On Fri, Aug 11, 2017 at 10:19 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Also there's something odd in "goodwill". They marked up goodwill 5x since the start of this year.

I'm not so smart to know exactly what that means but I'm asking

On Fri, Aug 11, 2017 at 8:58 AM, Jacquie McNish <jacquie.mcnish@wsj.com> wrote:

Yikes. Good take. I saw the credit line but didn't understand significance

**Confidential source privilege**

On Aug 11, 2017, at 8:05 AM, Rob Copeland <rob.copeland@wsj.com> wrote:

Here is a sources take:

It's way worse than that. They issued 1 loan last quarter. ONE. And they have exactly

# TAB 39

**From:** Wes Voorheis <wvoorheis@voorco.com>  
**To:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**Sent:** Thu, 10 Aug 2017 17:03:38 -0400  
**Subject:** RE: Re:

Any time. 416-903-9256

**From:** McNish, Jacquie [mailto:jacquie.mcnish@wsj.com]  
**Sent:** August 10, 2017 1:27 PM  
**To:** Wes Voorheis  
**Subject:** Re:

are you reachable?

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Wed, Aug 9, 2017 at 6:14 PM, Wes Voorheis <wvoorheis@voorco.com> wrote:  
Nice. Let the games begin.  
Good on you.

Sent from my iPhone

# TAB 40

**Sent:** Thu, 10 Aug 2017 11:41:47 -0400  
**Subject:** Re: XTG  
**From:** "McNish, Jacquie" <jacquie.mcnish@wsj.com>  
**To:** "Copeland, Rob" <rob.copeland@wsj.com>

agreed

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Thu, Aug 10, 2017 at 11:41 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Definitely don't need anything on record if that helps!  
Just want to know what they are saying to clients, if anything in writing has been sent out etc

On Thu, Aug 10, 2017 at 11:38 AM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

**Confidential source privilege**

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031  
c: 647-224-7554

On Thu, Aug 10, 2017 at 11:37 AM, Copeland, Rob <rob.copeland@wsj.com> wrote:

Ugh  
We really need a current LP source in Catalyst. There must be a ton happening behind the scenes today. Lemme see who I know

On Thu, Aug 10, 2017 at 10:56 AM, McNish, Jacquie <jacquie.mcnish@wsj.com> wrote:

someone sent me an excerpt from Callidos Q2 2015 earnings call. They are talking about XTG

**Paul Holden:** Great. Okay. One final question for you, is there any update on the asset held for sale in terms of that realization process?

**David Reese:** Yeah, thanks, Paul. it's a great question. That company continues to trend very, very well. **It's showing an increased improvement and it's EBITDA getting great traction in the marketplace. We've made some management changes at that company and they are doing what we believe are all the right things and increasing the value of that entity in the marketplace. And once we get to a number that we think is appropriate.**

**We would look at realizing on that company and then selling it out into the marketplace.**

--less than year later, Catalyst assumes the loan

Jacquie McNish  
The Wall Street Journal  
o: 416-306-2031

# TAB 41

**Sent:** Fri, 11 Aug 2017 10:42:16 -0400  
**Subject:** WSJ, Callidus  
**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**To:** [REDACTED] Confidential source privilege

**Confidential** if you come out (or if you have already) with any reports on Callidus' recent earnings/today's call, I would be very interested in reading.

Thank you very much,  
Rob

---

Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 42

**Sent:** Fri, 11 Aug 2017 10:22:49 -0400  
**Subject:** Callidus, WSJ  
**From:** "Copeland, Rob" <rob.copeland@wsj.com>  
**To:** Confidential source privilege

**Confidential** if you come out (or if you have already) with any reports on Callidus' recent earnings/today's call, I would be very interested in reading it.

Thank you very much,

Rob

--

Rob Copeland  
REPORTER

Office: +1 212-416-2752

1211 Avenue of the Americas, New York, NY 10036

# TAB 43

director  
cancer  
patient

shipped. mark patients  
Newton. ward like  
to ski kids in  
my back + wave to.

2 sumo kids love skiing  
age ↔ director v operator  
= Camp Oudigens

- collateral monitor  
} left: former a Kristine Armada  
c 416 899 8532.

mobile. phone. it = Sabina.  
= Richard Chay [left]  
647 787 8822

Newton. was max by  
sci boat for c.  
\$120. = boat arrive  
leased boat.  
Mark Will  
originator  
- salesman.

prefered.  
Bert Crossen. portfolio guy  
= c. 416 270 7911

- Michael Goffin J.P. in port c: 416 818 7254  
c. 416 219. 2272.

- Jim Hall. - Gray Aqua.  
416 627 0403. port

Mark Witt  
- noon.  
huge dealer.  
Craig Bayer.  
416 884 9533

Confidential source privilege

- Dwayne Mummism. ↔ scared to date  
519 841 7015  
york nice guy.

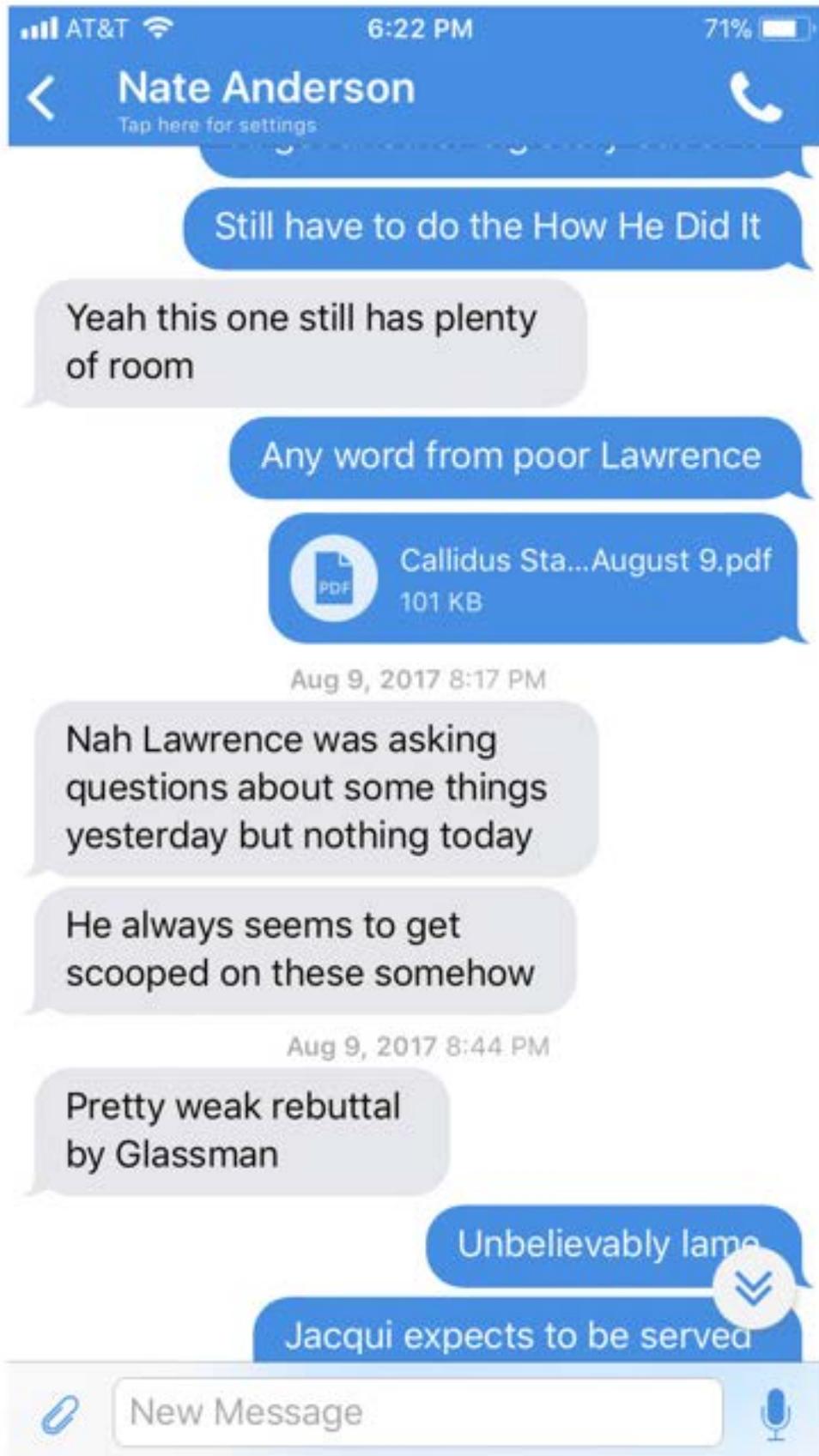
Tread mine. it  
coffee - callidus advances - gear.  
↳ hundreds.

Keep outside  
[annual presentation]  
- Fund III

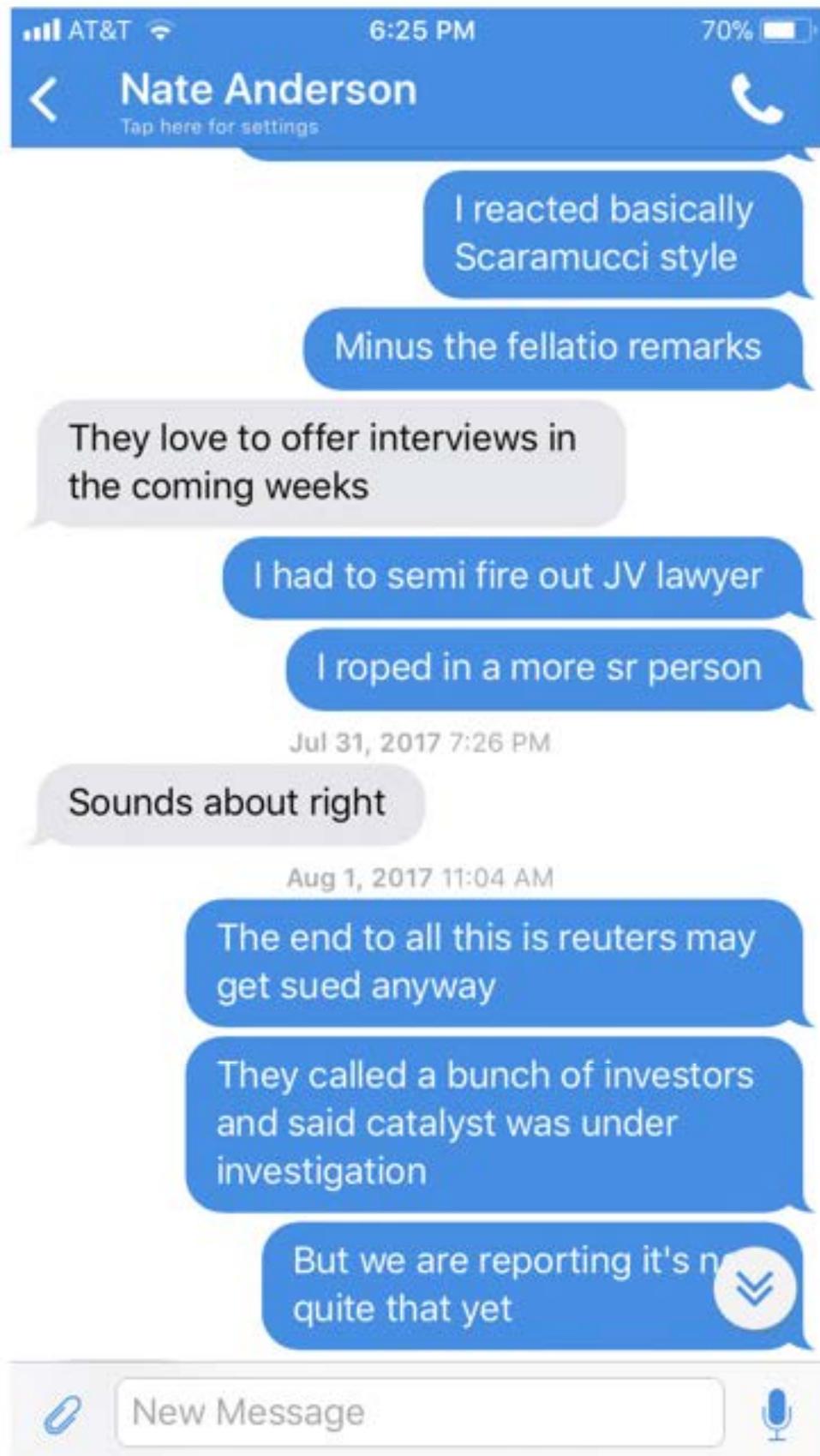
= averaging = game  
Callidus II III IV  
held.  
all in there

if ye Fund II - can unclal for 2 one yr. period  
after to have vote VLPs.  
- voting

# TAB 44



# TAB 45



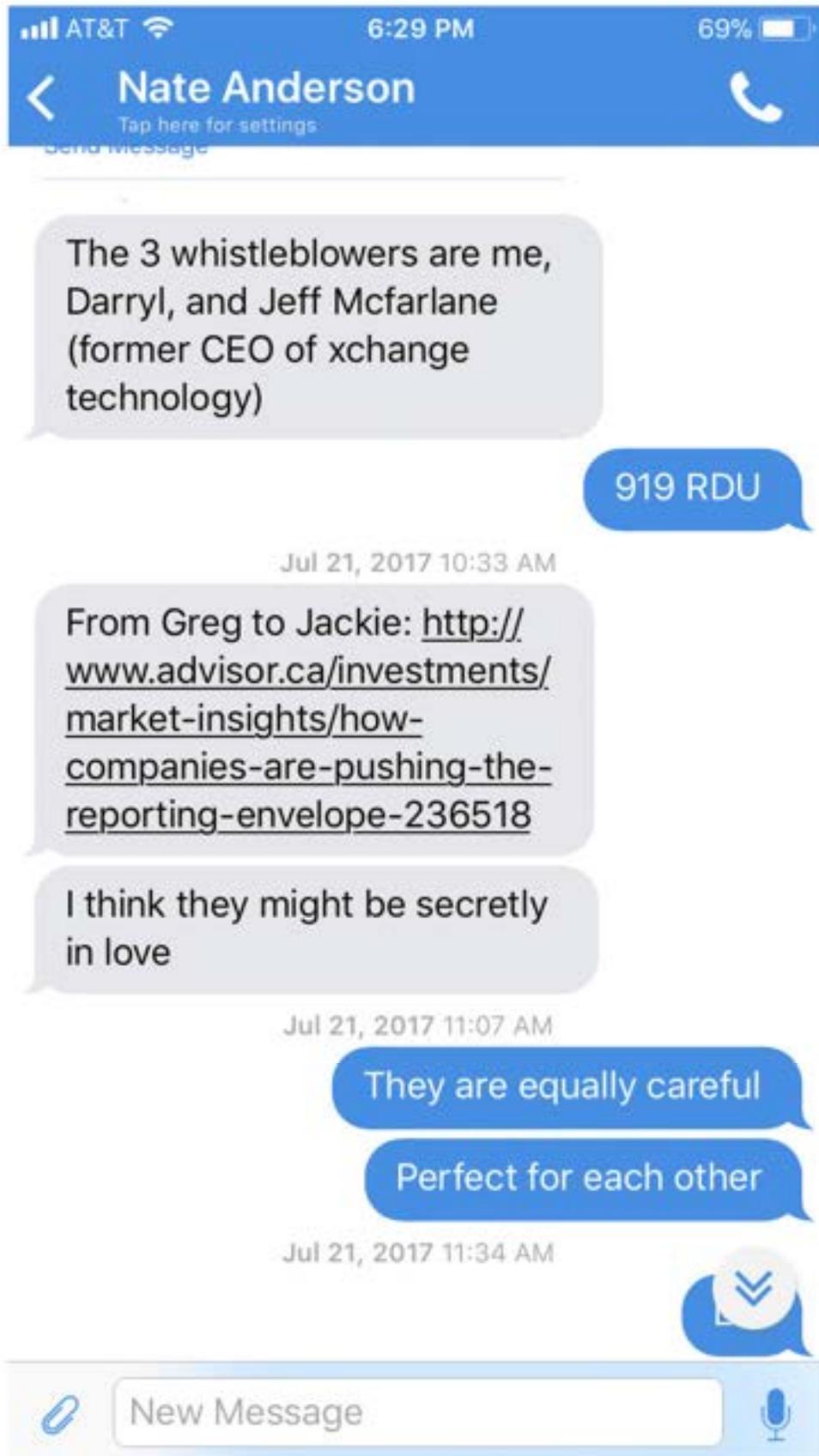
# TAB 46



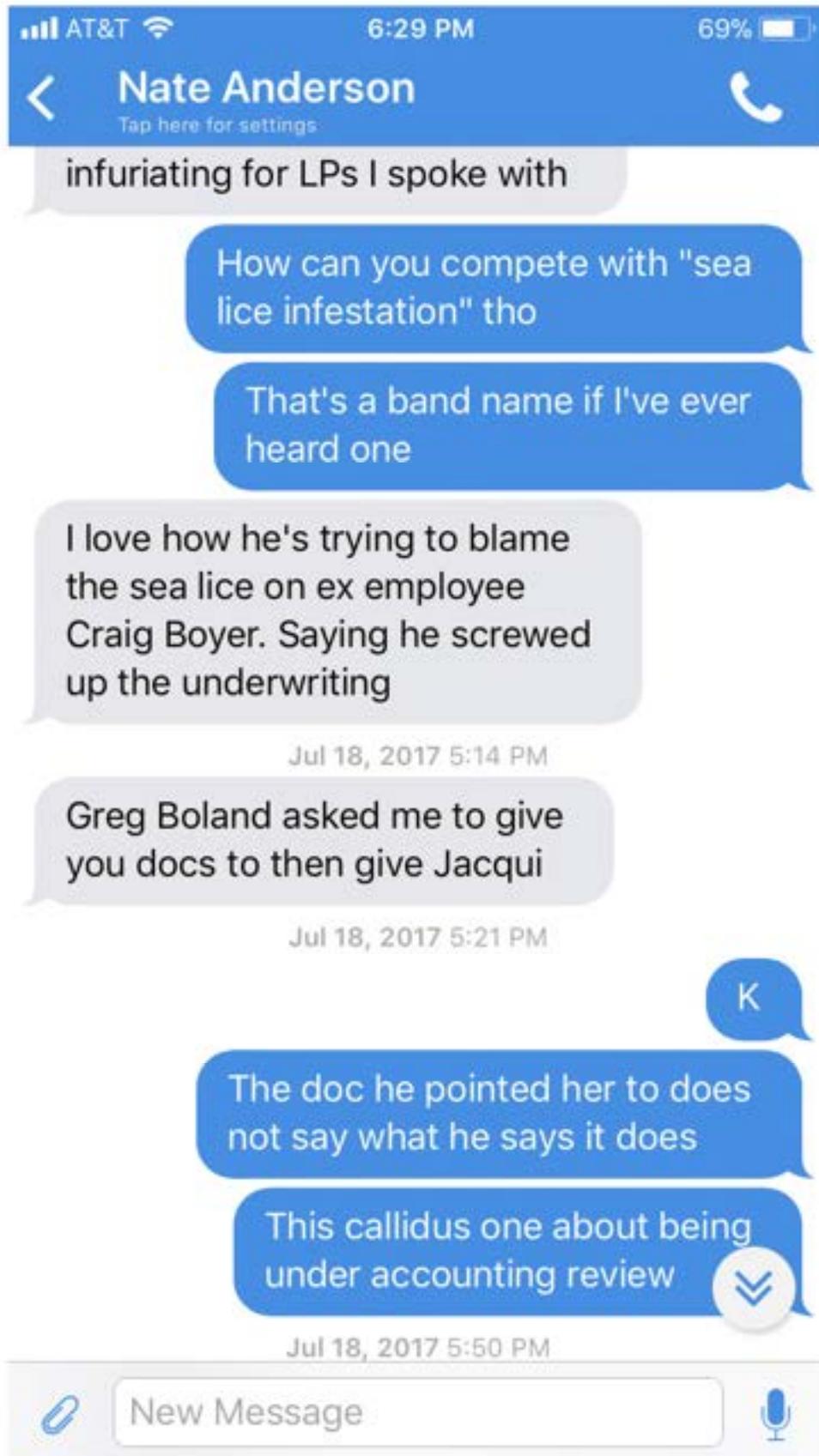
# TAB 47



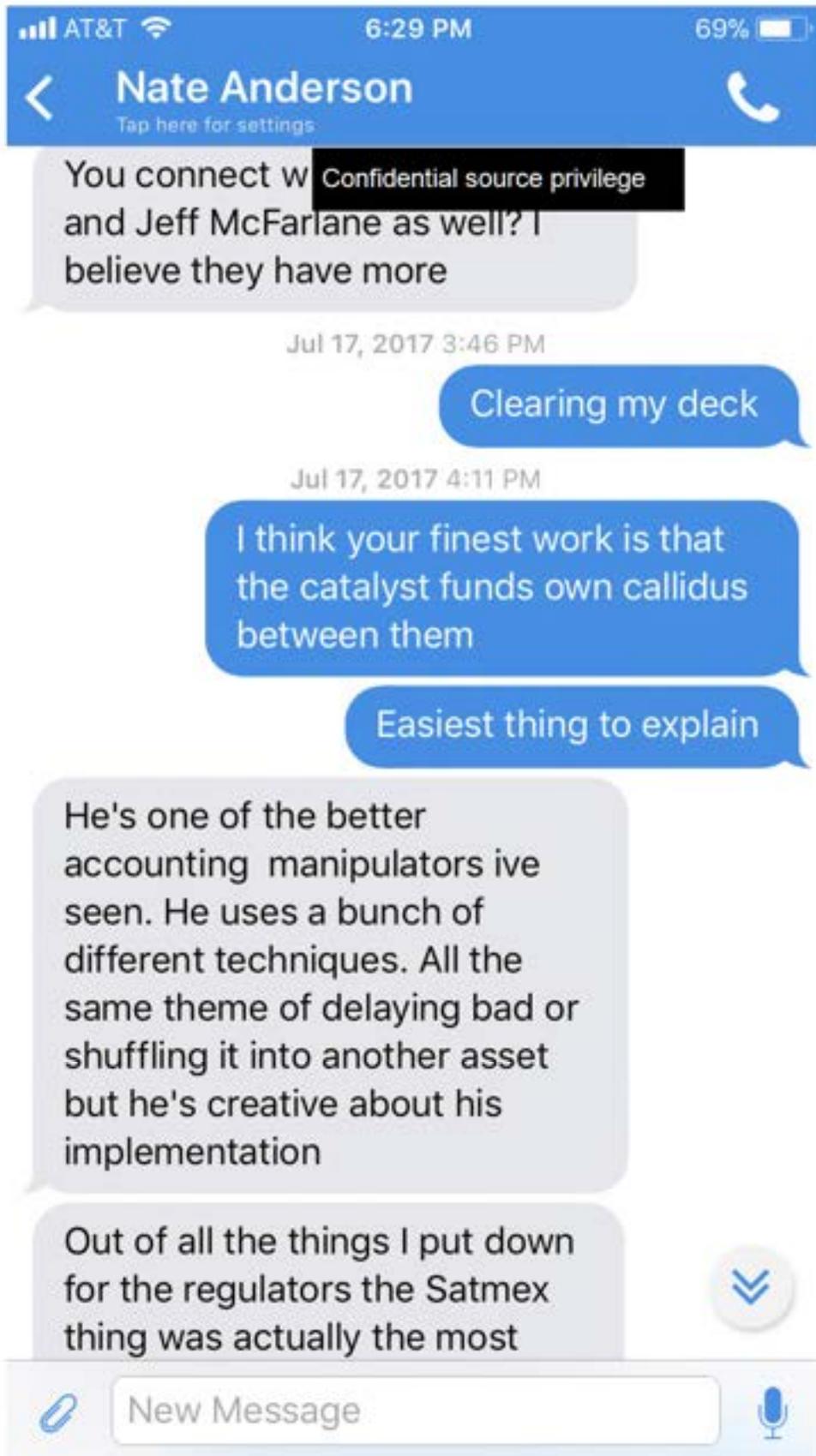
# TAB 48



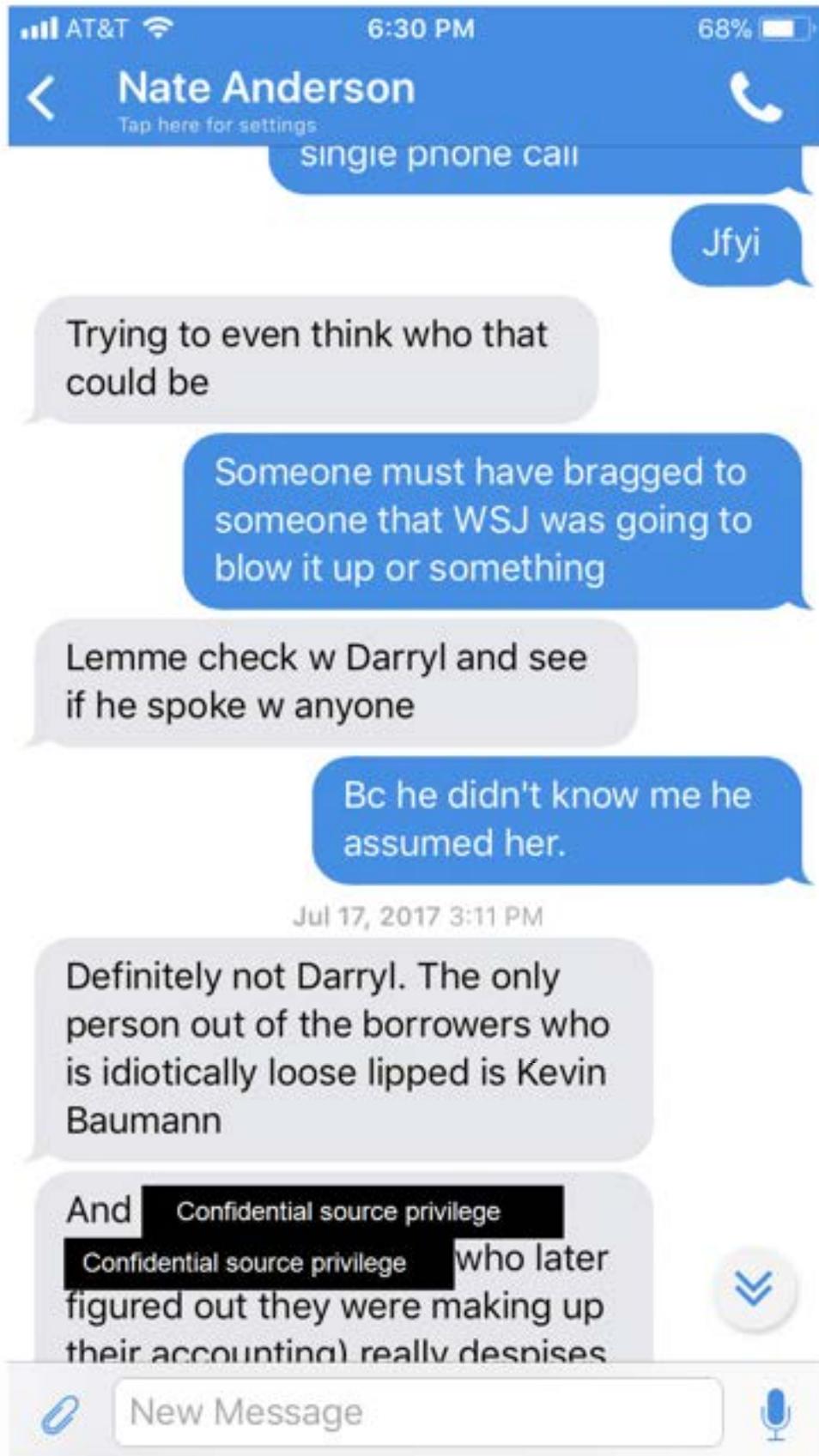
# TAB 49



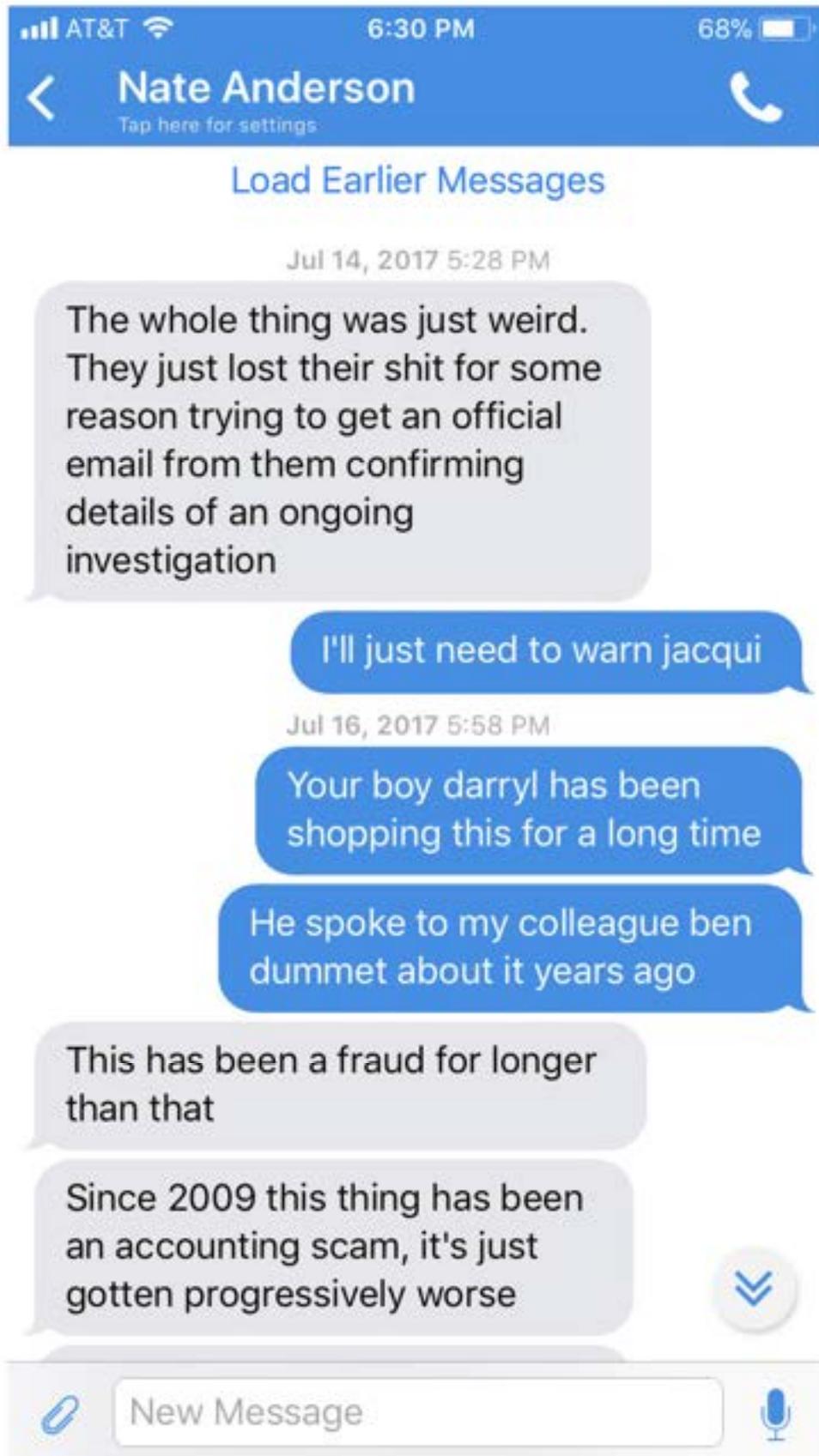
# TAB 50



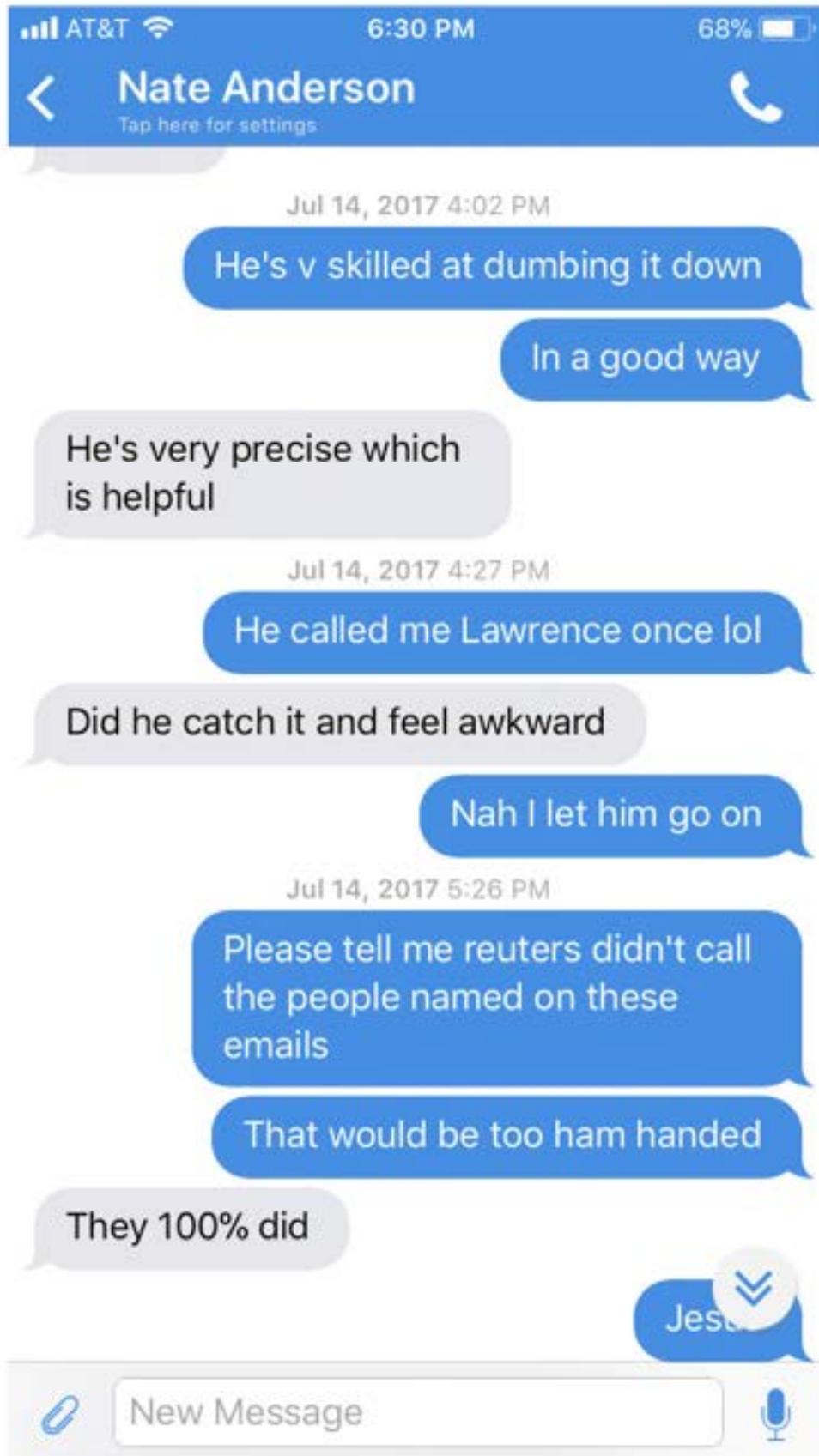
# TAB 51



# TAB 52



# TAB 53



THE CATALYST CAPITAL GROUP INC., et al.  
Plaintiffs

-and-

DOW JONES AND COMPANY ., et al.  
Defendants

Court File No. CV-17-587463-00CL  
Court File No. CV-18-593156-00CL

---

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
PROCEEDING COMMENCED AT TORONTO

---

**ORDER**

---

**ST. LAWRENCE BARRISTERS LLP**  
33 Britain Street, 2nd Floor  
Toronto ON, M5A 1R7

M. Philip Tunley (LSO# 26402J)  
phil.tunley@stlbarristers.ca

Tel: 647.245.2121  
Fax: 647.245.8285

Lawyers for the Defendants/Respondents Dow Jones  
and Company, Rob Copeland and Jacquie McNish

THE CATALYST CAPITAL GROUP INC. et al.  
Plaintiffs

-and- WEST FACE CAPITAL INC. et al.  
Defendants

DOW JONES & COMPANY et al.  
Defendants

Court File No. CV-17-587463-00CL  
Court File No. CV-18-593156-00CL

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

---

**SECOND SUPPLEMENTAL MOTION RECORD OF  
THE DEFENDANTS, DOW JONES AND COMPANY,  
ROB COPELAND AND JACQUIE MCNISH  
(MOTION UNDER S. 137.1 OF THE COURTS OF  
JUSTICE ACT)**

---

**ST. LAWRENCE BARRISTERS LLP**  
33 Britain Street, 2nd Floor  
Toronto ON M5A 1R7

M. Philip Tunley (LSO# 26402J)  
phil@tunleylaw.ca  
Tel: 647.964.3495

Tel: 647.245.2121  
Fax: 647.245.8285

Lawyer for the Defendants,  
Dow Jones & Company, Rob Copeland, and Jacquie McNish