

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

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

Defendants

**THIRD SUPPLEMENTARY MOTION RECORD OF BRUCE LIVESEY
(Anti-SLAPP Motion under s. 137.1 of the *Courts of Justice Act*)**

May 10, 2021

**A. Dimitri Lascaris Law
Professional Corporation**
G101-360 Rue Saint-Jacques
Montreal, QC H2Y 1P5

A. Dimitri Lascaris (LSO #50074A)
alexander.lascaris@gmail.com
Tel: (514) 941-5991
Fax: (519) 660-7845

A.J. Freedman (LSO# 73196R)
aj@kalloghlianmyers.com
Tel: (647)-968-9560
Fax: (647)-243-6620
c/o A. Dimitri Lascaris Law P.C.

Lawyers for the Defendant, Bruce Livesey

TO: SERVICE LIST

Table of Contents

TAB	DOCUMENT	PAGE NUMBERS
1.	Affidavit of A.J. Freedman, sworn May 10, 2021	1
Ex "A"	Chart Containing Bruce Livesey's Answers to Questions Taken Under Advisement at his Cross-Examination held on December 18, 2020 (Amended)	4
Ex "B"	Chart Containing Bruce Livesey's Answers to Undertakings given at his Cross-Examination held on December 18, 2020 (Amended)	12
Ex "C"	Transcript from the Cross-examination of Jim Riley held on November 18, 2020	22
Ex "D"	Transcript from the Cross-examination of Jim Riley held on April 22, 2021	237

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

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

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

Defendants

AFFIDAVIT OF A.J. FREEDMAN
(Affirmed on May 10, 2021)

I, A.J. Freedman, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer at Kalloghlian Myers LLP and co-counsel to the Defendant, Bruce Livesey, in the above-captioned action, as such, I have knowledge of the matters herein deposed. I swear this affidavit in support of Mr. Livesey's motion to dismiss the claims against him under s. 137.1 of the *Courts of Justice Act*, RSO 1990, c C.43.

2. Attached hereto as exhibits are the following documents:

Document	Exhibit
Chart Containing Bruce Livesey's Answers to Questions Taken Under Advisement at his Cross-Examination held on December 18, 2020 (Amended)	"A"
Chart Containing Bruce Livesey's Answers to Undertakings given at his Cross-Examination held on December 18, 2020 (Amended)	"B"
Transcript from the Cross-examination of Jim Riley held on November 18, 2020	"C"

Transcript from the Cross-examination of Jim Riley held on April 22, 2021	"D"
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SWORN remotely by A.J. Freedman in
the City of Toronto, in the Province of
Ontario, on May 10, 2021 in accordance
with O. Reg. 431/20, Administering
Oath or Declaration Remotely



Commissioner for Taking Affidavits



A.J Freedman

This is Exhibit "A" referred to in the affidavit of
A.J. Freedman, sworn before me this 10th
day of May, 2021

A handwritten signature in blue ink, appearing to be "JFC", is written above a horizontal line.

A Commissioner, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

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

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

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

A N D B E T W E E N:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION
Defendants to the Counterclaim

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

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 ANSWERS TO QUESTIONS TAKEN UNDER ADVISEMENT AND REFUSALS
given at the Cross-Examination of Bruce Livesey held on December 18, 2020

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
1.	14-16	36-38	UA	To confirm that Mr. Livesey is "not continuing to say that any documents relating to [his] dealings with Mr. Voorheis are privileged," given that Mr. Voorheis "doesn't assert privilege over any documents or categories of documents."	<u>Mr. Livesey no longer asserts litigation privilege over documents relating to his dealings with Mr. Voorheis.</u>
2.	17-18; 23-24; 92; 95-96	43; 70; 330; 345	UA	<p>To produce "any and all documents relating to [Mr. Livesey's] contact with Mr. Voorheis, [Mr. Livesey's] engagement, the work [Mr. Livesey] did for him, the follow-up," etc., "including electronic documentation, pertaining to that subject throughout the piece."</p> <p>The above inquiry should include "any and all correspondence, documents, communications of any sort whatsoever, including as defined in the Rules of Civil Procedure."</p> <p>The report that Mr. Livesey prepared for Mr. Voorheis "will be among the documents" to produce.</p> <p>The "question for listing and production of documents would extend to all of" Mr. Livesey's file created for this research and "any documents relevant to the research in the file," including any "list of names", "recordings", and "transcribed" material.</p>	<p>Mr. Livesey is producing herewith various documents he obtained and reviewed <u>or generated</u> in the course of his retainer by Voorheis & Co. LLP in the first half of 2015. (Those documents are contained in the file entitled "Advisements Q2 - Voorheis & Co. LLP Documents".)</p> <p>In addition to the above documents, Mr. Livesey is producing herewith copies of text messages he exchanged with Mr. Voorheis on September 29, 2015 and an email he received from Mr. Voorheis on Nov. 27, 2018.</p> <p>Having conducted a diligent search of his records, Mr. Livesey has identified no other documents in his possession or control which he obtained, received or generated in connection with his retainer by Voorheis & Co. LLP.</p>
3.	28-30	94-96	UA	To produce the tape recordings of Mr. Livesey's interviews with Mr. Boland and with Mr. Panet.	In the course of gathering information for the articles he co-authored and that were published by SIRF, Mr. Livesey recorded (in five parts), one off-the-record, confidential, in-person

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					<p>interview of Mr. Boland, one off-the-record, confidential, telephonic interview of Mr. Boland, and one off-the-record, confidential, telephonic interview of Mr. Panet. Mr. Boland and Mr. Panet have waived the journalist source privilege attaching to these interviews and recordings. Accordingly, following the cross-examination of Mr. Livesey, Mr. Livesey produced to the Plaintiffs all recordings and transcripts in his possession or control of his interviews of Messrs. Boland and Panet. The transcript and audio recording of Mr. Livesey's telephonic interview of Mr. Boland have been redacted to protect the identity of another confidential source who is not a current or former employee or agent of West Face Capital Inc. and who is not a party to this action.</p> <p>To the best of Mr. Livesey's recollection, Mr. Livesey's in-person interviews of Mr. Boland took place on Sept. 6 and 13, 2016, his telephonic interview of Mr. Boland took place in January 2018 and his telephonic interview of Mr. Panet took place in September 2016.</p>
4.	34-35	111-112	UA	To produce a listing of "all of the conversations, whether in-person or by telephone or in some other means" between Mr. Livesey and either of Mr. Boland and Mr. Panet "with respect to Callidus or Catalyst at any time"; and to advise "how many of those communications were recorded by some means."	<p>Mr. Livesey did not maintain a record of all conversations he had with Mr. Boland or with Mr. Panet with respect to Callidus or Catalyst and he is unable to provide a listing of all such conversations.</p> <p>In September and October 2016, Mr. Livesey exchanged various emails with Mr. Boland that related to the Plaintiffs. In September, October and November 2016, January 2017 and April 2018, Mr. Livesey exchanged various emails with Mr. Panet that related to the Plaintiffs.</p>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					<p>Copies of those emails are being produced herewith.</p> <p>As explained in answer to Question 3 above, Mr. Livesey has produced to the Plaintiffs all recordings of his conversations with Mr. Boland and Mr. Panet with respect to Callidus or Catalyst that are in his possession or control. To the best of Mr. Livesey's recollection, the recordings he has produced to the Plaintiffs are the only recordings Mr. Livesey made of his conversations with Mr. Boland or Mr. Panet with respect to Callidus or Catalyst.</p>
5.	37-38	119-122	UA	To identify documents that were provided by West Face to Mr. Livesey, "to the extent any of the Schedule A listed documents were ones that were provided by West Face;" and to advise whether there are "additional documents that were picked up, provided by West Face, that are not in Schedule A or otherwise produced" and, if there are, to provide "a list of what those are."	Enclosed herewith is a list of the documents provided by West Face to Mr. Livesey.
6.	39-40	130-133	UA	To advise whether there are "any emails or other forms of written communication from West Face indicating there are documents that they think [Mr. Livesey] should pick up," including documents received "not by way of physical pickup, but also by email or some other means" and, if so, to produce them.	Mr. Livesey has conducted a diligent search of his records and, subject to Mr. Livesey's answer to Question 4 above, he has found no emails or other forms of written communication from West Face indicating there are documents that they think Mr. Livesey should pick up.
7.	46	164	UA	To "produce [Mr. Livesey's] phone records, including [his] cell phone records, from January 1, 2015, going forward" in order to "reconstruct just how many of those phone calls took place" between Mr. Livesey and Mr. Levitt.	At all times material to this litigation, it has been Mr. Livesey's practice to conduct phone conversations relating to his journalistic and investigative work on his home landline. It is Mr. Livesey's understanding that the telephone service provider for his home landline does not itemize local calls on its customer invoices.

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					<p>Many of the calls that Mr. Livesey made in the course of conducting research for his articles on Callidus and Catalyst were local calls. In any event, Mr. Livesey is not in possession of his phone records for the period January 1, 2015 to December 31, 2018.</p>
8.	51-52; 59; 184-185	184; 206-208; 670	UA	<p>Regarding contact between Mr. Livesey and Mr. Levitt or any of the other debtors, including Mr. Baumann, Mr. Duhamel, Mr. Molyneux, Mr. McFarlane, and Mr. Levy, to advise "how many such contacts and conversations took place and which ones were recorded" and to "provide the recordings" for the period "going back to at least to 2015."</p>	<p>Mr. Livesey interviewed Messrs. Baumann, McFarlane, Levitt and Levy. Mr. Livesey never interviewed Mr. Molyneux or Mr. Duhamel.</p> <p>At item 1 of Schedule "A" of Mr. Livesey's Affidavit of Documents, Mr. Livesey produced a rough Transcript of an interview with Kevin Baumann on Sept. 20, 2016.</p> <p>Mr. Livesey produced a transcript of an interview of Mr. Levy as part of the reply affidavit he swore in support of his anti-SLAPP motion.</p> <p>Following his cross-examination in December 2020, Mr. Livesey produced to the Plaintiffs audio recordings and transcripts of his interviews of Messrs. McFarlane and Levitt.</p> <p>To the best of Mr. Livesey's recollection, he did not record any conversation with Messrs. Baumann, McFarlane, Levitt or Levy other than the conversations referenced above.</p> <p>Mr. Livesey did not maintain a record of the number of contacts or conversations he had with Messrs. Baumann, McFarlane, Levitt or Levy and is unable to provide the number of such contacts or conversations.</p>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
9.	101-102	360-361	UA	To advise when the conversation occurred in which Mr. Voorheis' counsel "took the position that Mr. Livesey asserted privilege over" the materials regarding the Mr. Voorheis' engagement of Mr. Livesey.	To the best recollection of counsel to Mr. Livesey, that conversation occurred on December 9, 2019.
10.	165	601	UA	To produce "whatever documents exist...including as defined under the Rules of Civil Procedure...relating to [Mr. Livesey becoming or being part of the Forensic Restitution team."	Refused on the basis of irrelevance.
11.	166	603-604	UA	To produce "whatever documents" including as defined under the Rules of Civil Procedure, relating to both Mr. Oswald and Stan Levitt "becoming a member of the staff and associates of i20."	Refused on the basis of irrelevance.
12.	197	718-719	UA	To "identify what documents [Mr. Livesey] obtained from West Face."	See answer to Question 5 above.
13.	199-200	725-726	UA	To advise whether "documents evidencing" communications between Mr. Livesey and Catherine Dowling of Dowling Research "are contained in the Exhibit A listing," and "if they are not contained," to produce them.	Document 15 in Schedule "A" to Mr. Livesey's Affidavit of Documents, sworn December 31, 2019, is an email of Nov 21, 2016 from Mr. Livesey to Ms. Dowling. Mr. Livesey has identified additional written communications with Ms. Dowling that relate to her fact-checking of his proposed article. Copies of all such written communications are being produced herewith.

This is Exhibit "B" referred to in the affidavit of
A.J. Freedman, sworn before me this 10th
day of May, 2021

A handwritten signature in blue ink, appearing to be 'JFC', is written above a horizontal line.

A Commissioner, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

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

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

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

A N D B E T W E E N:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION
Defendants to the Counterclaim

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

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 ANSWERS TO UNDERTAKINGS

given at the Cross-Examination of Bruce Livesey held on December 18, 2020

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
1.	11	28	UT	To produce the "marketing material that [Mr. Livesey] had prepared" in "late March or early April 2015" to "outline the services that Mosaic was able to offer" to Mr. Voorheis.	The requested material consists of a Mosaic marketing brochure, which is being produced herewith.
2.	36	115-116	UT	To advise whether Mr. Livesey spoke "to anyone else at West Face apart from Mr. Panet and Mr. Boland at any time about Callidus or Catalyst."	Mr. Livesey did not discuss Callidus or Catalyst with anyone at West Face other than Messrs. Boland and Panet.
3.	51; 59; 184-185	181-183; 206-208; 670	UT	To provide "a list of the calls that [Mr. Livesey] had and which were recorded and which weren't" with "Mr. Levitt or any of the other debtors," including "Mr. Baumann, Mr. Duhamel, Mr. Molyneux, Mr. McFarlane," and Mr. Levy, if "there is a list or lists of contacts like this."	<p>Mr. Livesey interviewed Messrs. Baumann, McFarlane, Levitt and Levy. Mr. Livesey never interviewed Mr. Molyneux or Mr. Duhamel.</p> <p>At item 1 of Schedule "A" of Mr. Livesey's Affidavit of Documents, Mr. Livesey produced a Transcript of an interview with Kevin Baumann on Sept. 20, 2016.</p> <p>Mr. Livesey first interviewed Mr. Levy on April 15, 2017. Mr. Livesey produced a transcript of that interview as part of the reply affidavit he swore in support of his anti-SLAPP motion. The audio recording of that interview is being produced herewith.</p> <p>Following his cross-examination in December 2020, Mr. Livesey produced to the Plaintiffs audio recordings and transcripts of his interviews of Messrs. McFarlane and Levitt. To the best of Mr. Livesey's recollection, Mr. Livesey interviewed Messrs. McFarlane and Levitt in January 2018.</p>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					<p>To the best of Mr. Livesey's recollection, he did not record any conversation with Messrs. Baumann, McFarlane, Levitt or Levy other than the conversations referenced above.</p> <p>Mr. Livesey did not maintain a list of his contacts with debtors of Callidus and is unable to provide such a list.</p>
4.	150-151	533	UT	To make "reasonable inquiries to refresh [Mr. Livesey's] memory about how [he] received a hard copy" of Mr. Anderson's whistleblower complaint.	After making reasonable inquiries, Mr. Livesey still cannot recall how he received a copy of Mr. Anderson's whistleblower complaint.
5.	152	538	UT	To make reasonable inquiries to "produce the documentation that will evidence the electronic copy" of Mr. Anderson's whistleblower complaint "having been sent to [Mr. Livesey]."	Mr. Livesey has made a diligent search of his records and was unable to identify any evidence, electronic or otherwise, as to the means by which Mr. Anderson's whistleblower complaint was obtained by Mr. Livesey.
6.	153-154	545-547	UT	To produce a copy of Mr. Livesey's private investigator's license.	A copy of Mr. Livesey's private investigator's license is produced herewith.
7.	165	600	UT	To review records and advise when Mr. Livesey "first became part of the Forensic Restitution team."	Mr. Livesey first became part of the Forensic Restitution team on or about March 13, 2020.
8.	165-166	602	UT	To advise "when it was that Mr. Dave Oswald became part of the staff and associates of [Mr. Livesey's] company."	Mr. Oswald became an associate of Mr. Livesey's investigative firm in September or October 2018.
9.	185-186; 191	671; 698	UT	To advise of Mr. Livesey's positions with respect to Mr. Moore's "letter articulating what the undertaking and advisement extends to" with regards to Mr. Moore's requests for "production of documents... with respect to several of the additional Defendants, and a small number of additional people, like a Bloomberg person."	<p>In the course of conducting research for the articles which Mr. Livesey authored or co-authored, Mr. Livesey interviewed the following individuals:</p> <p>Andrew Pink Dan Pedtrotty Don Steinbrugge</p>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					<p>Greg Boland Hap Stephen Ian Bourne Jeff Fenwick Josuha Friedlander Kevin Baumann Mark McQueen Rob MacLellan Simon Lack Daryll Levitt Philip de Panet Jeff McFarlane Andrew Levy Bruce Langstaff <u>Nathan Anderson</u></p> <p>As part of his Affidavit of Documents, Mr. Livesey produced rough transcripts of his interviews of Messrs. Pink, Pedrotty, Steinbrugge, Stephen, Bourne, Fenwick, Baumann, MacLellan and Lack. These transcripts appear as items 286-294 of Schedule "A" to Mr. Livesey's Affidavit of Documents. Mr. Livesey is producing herewith the audio recordings of those interviews. <u>Mr. Livesey interviewed Messrs. Pink, Pedrotty, Steinbrugge, Stephen, Bourne, Fenwick, Baumann, MacLellan and Lack in September 2016.</u></p> <p>Initially, Mr. Livesey withheld production of the recordings of his interviews with Messrs. Friedlander and McQueen on the basis of journalist source privilege. After further consideration, it has been determined that those interviews are not clothed with journalist source privilege. Accordingly, the transcripts and audio</p>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					<p>recordings of Mr. Livesey's interviews of Messrs. Friedlander and McQueen are being produced herewith. To the best of Mr. Livesey's recollection, the interviews of Messrs. Friedlander and McQueen took place in September or October of 2016.</p> <p>The transcripts and audio recordings of Mr. Livesey's interviews of Messrs. Boland, Panet, McFarlane and Levitt were produced by Mr. Livesey on January 12, 2021, after each of those interviewees had waived journalist source privilege.</p> <p>The only recording Mr. Livesey made of his interviews of Mr. Levy was a recording of his interview of Mr. Levy in April 2015. Mr. Livesey produced a transcript of that interview as part of his reply affidavit sworn in support of his anti-SLAPP motion. The audio recording of that interview is being produced herewith. To the best of Mr. Livesey's recollection, Mr. Livesey had two other conversations with Mr. Levy – one in 2016 and one afterwards. The purpose of those other conversations was to obtain updates on Mr. Levy's legal proceedings against Catalyst.</p> <p>Initially, Mr. Livesey withheld the <u>recordings</u> of his <u>interviews</u> of Mr. <u>Langstaff</u> and Mr. <u>Anderson</u> on the basis of journalist source privilege. However, following the cross-examination of Mr. Livesey on his affidavit sworn in support of his anti-SLAPP motion, Mr. <u>Langstaff</u> and Mr. <u>Anderson</u> waived the privilege. Accordingly, Mr. Livesey is producing herewith the audio <u>recordings</u> of his interview of</p>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					<p>Mr. Langstaff (in three parts) and <u>Mr. Anderson</u>, as well as transcripts of those audio recordings. The transcript and audio recording of <u>Mr. Livesey's interview of Mr. Anderson</u> have been redacted to protect the identity of an individual who is a confidential source to both <u>Mr. Anderson and Mr. Livesey</u>. To the best of Mr. Livesey's recollection, his interview of Mr. Langstaff occurred in January or February of 2018 and his interview of <u>Mr. Anderson</u> occurred in January 2018.</p> <p>With respect to the interviewees identified above, Mr. Livesey's best recollection is that he did not record any interviews other than the interviews identified above.</p> <p>In addition to the interviewees listed above, Mr. Livesey interviewed <u>five</u> other persons in the course of conducting research for the articles about the Plaintiffs which he authored or co-authored. Mr. Livesey's interviews of those <u>five</u> individuals were conducted on a confidential, off-the-record basis. On the basis of journalist source privilege, Mr. Livesey refuses to disclose the identities of those interviewees, <u>none of whom is a party to this proceeding</u>. Enclosed herewith is an <u>Amended</u> Addendum to Schedule "B" of Mr. Livesey's Affidavit of Documents which particularizes the audio recordings and transcripts which Mr. Livesey is withholding from production on the basis of journalist source privilege.</p> <p>Mr. Livesey has never spoken or communicated with Mr. Kassam, Mr. Copeland, Mr. Spears, Mr. Molyneux, Mr. Duhamel, Ms. McNish, Mr.</p>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					Delevingue, Mr. Tilak, Mr. Jaross or Mr. Dummett.
10.	212	777-779	UT	To advise whether Mr. Livesey "agree[s] or disagree[s] that [he] got the documentation and the links with respect to the lawsuit by Mr. Glassman and his sister from West Face."	Among other documents, Mr. Livesey received from West Face: (1) CanLII printout of <i>Glassman and Glassman v. Glassman</i> , 1982 CanLII 1264 (ON CJ); and (2) CanLII printout of <i>Glassman and Glassman v. Glassman</i> , 1983 CanLII 1141 (ON SC). However, Mr. Livesey cannot recall how he first learned of the lawsuit by Mr. Glassman and his sister.
11.	214	790-792	UT	To make best efforts to determine and advise how and when Mr. Livesey got "the court documents about Mr. Glassman's lawsuit against his father."	See answer to question 10 above. Mr. Livesey's best recollection is that he obtained the documents in or about the fall of 2016.
12.	215	793	UT	To make reasonable efforts to advise "from whom [Mr. Livesey] first heard anything about the subject of a lawsuit by Mr. Glassman and his sister against their father."	See answer to question 10 above. After having made diligent inquiries, Mr. Livesey is unable to recall or determine from whom he first heard anything about the lawsuit by Mr. Glassman and his sister against their father.
13.	216	797-798	UT	To make reasonable inquiries to "provide the specific URL of the website from with Mr. Livesey downloaded either of" the West Face report and Veritas report.	Mr. Livesey obtained the Veritas report from Mr. Voorheis. To the best of Mr. Livesey's recollection, he downloaded the West Face report from this URL: https://www.bnnbloomberg.ca/exclusive-greg-boland-vs-newton-glassman-1.633180/dozens-of-sears-canada-locations-launch-liquidation-sales~1172412 .
14.	220	812-814	UT	To make best efforts to advise where the document found at BLIV00000266 "came from" and reasonable efforts to advise "who did prepare it."	To the best of Mr. Livesey's recollection, that document came from Nathan Anderson. Having made diligent inquiries, Mr. Livesey is unable to recall or determine who prepared the document.
15.	221	815	UT	To advise whether, once Mr. Livesey received the document found at BLIV00000266, he "share[d] it with anyone else."	Mr. Livesey did not share that document with anyone.

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
16.	222-223	820-821	UT	<p>Row 4 of the document found at BLIV00000266 reads as follows after the reference "SS":</p> <p>"A PE due-diligence firm [...]"</p> <p>To advise "what is 'SS' referring to", if "on further reflection, [Mr. Livesey] is able to provide any clarification as to who that is."</p>	<p>Upon further reflection, Mr. Livesey is unable to recall or determine what "SS" refers to in the document in question.</p>

This is Exhibit "C" referred to in the affidavit of
A.J. Freedman, sworn before me this 10th
day of May, 2021

A handwritten signature in blue ink, appearing to be 'JFC', is written above a horizontal line.

A Commissioner, etc.

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 | 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

--- This is the Continued Cross-Examination of
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		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

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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

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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 -- Upon commencing at 10:01 a.m.

2

3 JIM RILEY; UNDER PRIOR AFFIRMATION.

4 CROSS-EXAMINATION BY MR. LEVITT

5 (CONTINUED):

6 2028 Q. Just a couple of errors that I
7 think might be innocent errors.

8 On paragraph 209 of your affidavit,
9 conspiracy affidavit, I just want to clarify this.
10 There are a few, but I don't have the time to deal
11 with it, but I'll deal with this one.

12 A. Sorry, I haven't got that
13 affidavit out.

14 MR. DEARDEN: Yeah, we made a
15 correction on this, Darryl, that it was instead of
16 "Anson", it is "McFarlane".

17 BY MR. LEVITT:

18 2029 Q. And I think it might be, Jaross,
19 Mr. Jaross. I don't think it is Mr. McFarlane.
20 209 is Jaross, according to the exhibit.

21 A. Which affidavit are we in?

22 MR. DEARDEN: It is the conspiracy,
23 paragraph 209.

24 BY MR. LEVITT:

25 2030 Q. Mr. Riley, have you read it? It

1 should be Jaross; can that be corrected? I don't
2 know how we address that, sir?

3 MR. DEARDEN: I need to get back to you
4 on that, Mr. Levitt, because it doesn't necessarily
5 mean that Exhibit 172 that does say is a copy of
6 Levitt's email to Levy and Jaross on November 28th,
7 and I am looking quickly through Exhibit 172 and I
8 am not seeing a particular email of Levitt,
9 McFarlane and Levy, but that just may be a
10 statement in the first sentence there that Levitt,
11 McFarlane and Levy discussed putting --

12 MR. LEVITT: Okay.

13 U/T MR. DEARDEN: So we'll have to get back
14 to you on that.

15 MR. LEVITT: No problem. Then
16 paragraph 441. In my affidavit, your statement
17 here is "Levitt alleges that Black Cube on
18 Catalyst". My allegation was "organizations like
19 Black Cube". I did not specifically say Black
20 Cube.

21 I am just going to take one document,
22 and I am finished. Let me just share the -- can I
23 move it, because I know I'm taking up other
24 people's times, if I may just bring you to Exhibit
25 16, which I would like entered on the record as an

1 exhibit. This is the only question that I have.

2 I did put multiple requests for
3 disclosure and production, I think there are
4 probably eight or nine, but for purposes of keeping
5 it simple, I have never received a response in
6 relation to any of the items here that I have
7 sought from.

8 So I just wanted -- it is not
9 necessarily a question, Mr. Riley, but I would like
10 to place it on the record.

11 MR. MOORE: Well, it is David Moore
12 here, Mr. Levitt. There have been numerous emails.
13 You and I have had several discussions, informal,
14 off the record. And in a nutshell, these SLAPP
15 motions are not an examination for discovery, nor
16 are the upcoming motions dealing with the
17 affidavits of documents, per se.

18 So you can -- I guess if you want to
19 mark this for identification, that is your
20 prerogative, but I don't accept what you have just
21 said and I don't think this document has anything
22 whatsoever to do with the cross-examination on the
23 SLAPPs.

24 MR. LEVITT: Okay, I think just to
25 respond to it, it is just really all I am seeking,

1 if you take issue with the questions or disclosure
2 that I have asked for, please just reply to me.
3 That is all I am seeking.

4 MR. DEARDEN: I have told you that.
5 Let's not debate what we have --

6 MR. LEVITT: I am not debating, Mr.
7 Moore. I am not debating. I am going to hand it
8 off now to I think Dimitri. I am going to hand it
9 off to Dimitri.

10 MR. MOORE: Well, what I object to, Mr.
11 Levitt, is you putting a document on the record
12 which fails to take into account additional
13 communications that we have had and relates to a
14 subject that has got nothing to do with the SLAPP
15 cross-examinations.

16 Let's leave it at that for now, and you
17 and I can disagree.

18 MR. LEVITT: Okay, well, I would ask
19 for it to be entered. Thank you.

20 Thank you, Mr. Riley. I appreciate it,
21 and, Mr. Dearden, I appreciate it as well. Mr.
22 Moore, thank you.

23 I will sign off now. If you can mute
24 me, Deana, and take me off.

25 (DISCUSSION OFF THE RECORD.)

1 CROSS-EXAMINATION BY MR. LASCARIS:

2 2031 Q. Good morning, Mr. Riley, how are
3 you doing?

4 A. Good morning.

5 2032 Q. I am counsel to the Defendant,
6 Bruce Livesey, and I will be asking you this
7 morning questions relating to your conspiracy
8 affidavit sworn on May 29, 2020. Do you have that
9 in front of you, sir?

10 A. Yes, I do.

11 2033 Q. Okay.

12 A. Sorry, May 29th, correct?

13 2034 Q. Correct.

14 A. And it is the main action?

15 2035 Q. Yes, the one described as the
16 conspiracy affidavit, yes.

17 A. Thank you.

18 2036 Q. Okay, and in this
19 cross-examination I am going to ask -- and by the
20 way, Deana, I can hear an echo, I'm not sure why.

21 I will be asking you a number of
22 questions about the Fresh as Amended Statement of
23 Claim dated July 18th, 2019, and when I do that, I
24 am just for purposes of simplicity going to refer
25 to that iteration of the Statement of Claim as "the

1 claim", okay? If I am not referring you to --

2 A. Did you say -- I apologize, did
3 you say July 18th?

4 2037 Q. Correct.

5 A. July 18th?

6 2038 Q. Yes. So we are going to be
7 putting that up on the screen. If you have a copy
8 of it handy, it will make life easier. Do you have
9 a copy of it there with you?

10 A. I do.

11 2039 Q. Okay. So before we begin, I just
12 want to ask you a few questions about your
13 preparation for this cross-examination. Have you
14 read the affidavit sworn by Mr. Livesey on November
15 7th, 2019, in support of his anti-SLAPP motion?

16 A. Sorry, November?

17 2040 Q. November 7th, 2019.

18 A. I did. I read it at the time, but
19 I have not re-read it.

20 2041 Q. When you say "at the time", when
21 was that approximately?

22 A. When I was provided with the SLAPP
23 motion affidavits.

24 2042 Q. So probably last year?

25 A. Yes.

1 2043 Q. Okay.

2 A. No -- yes. Sorry, I had to think
3 what year we are in.

4 2044 Q. Late 2019, approximately, that is
5 when you would have last read it?

6 A. Correct.

7 2045 Q. And do you have a copy of it there
8 with you, a hard copy?

9 A. I do.

10 2046 Q. And Mr. Livesey swore a reply
11 affidavit in support of his anti-SLAPP motion on
12 September 4th, 2020. Have you read that affidavit?

13 A. I read it last night.

14 2047 Q. Is that the first time you read
15 it?

16 A. To the best of my recollection, it
17 is.

18 2048 Q. And in this cross-examination I am
19 going to refer a couple of times to an affidavit of
20 Mr. Boland, the one he swore on November 8th, 2019.
21 Have you read that affidavit, sir?

22 A. Yes.

23 2049 Q. Okay.

24 A. But some time ago.

25 2050 Q. Okay. Now, you state at paragraph

1 4 of your conspiracy affidavit, and I don't think
2 you have to pull it up, but if you want to, go
3 ahead, please:

4 "I am Managing Director of The
5 Catalyst Capital Group Inc. and
6 semi-retired. Prior to my
7 semi-retirement, I was the Chief
8 Operating Officer of Catalyst."

9 And just one normally thinks of a
10 Managing Director as being a full-time position, so
11 could you just elaborate what you mean by
12 "semi-retirement" and how that accords with your --

13 A. I'm sorry, I'm committed to work
14 for up to 500 hours or be available for up to 500
15 hours per year.

16 2051 Q. Okay, and I would imagine, sir,
17 that you have devoted a considerable amount of time
18 to preparing your affidavit, preparing for these
19 cross-examinations, participating in them. Are you
20 being compensated for that work other than by means
21 of the salary you are being paid for those 500
22 hours or so?

23 A. I am not being compensated other
24 than my salary.

25 2052 Q. Okay, and do you have -- do you

1 own any shares or other securities of Catalyst?

2 A. Of Catalyst, I have invested in
3 all of the funds with the exception of Fund I. We
4 all invest in the funds alongside the other LPs.
5 And I have options in -- to acquire shares in
6 Catalyst.

7 2053 Q. And how about Callidus or whatever
8 the successor to Callidus is named? Do you have
9 any shares, equity interests or other securities of
10 that entity?

11 A. I am going by memory, I think I
12 own 12,000 shares of Callidus and 12,000 shares of
13 FrontWell.

14 2054 Q. Now, I would like to talk to you
15 about the Fresh as Amended Statement of Claim, the
16 one that I referred to earlier, which I am going to
17 now call "the claim", and if you could look at
18 paragraph 1(a) and it is stated there that the
19 Plaintiffs seek 450 million dollars in damages in
20 against the Defendants:

21 "[...] for defamation,
22 injurious falsehood, the tort of
23 causing loss by unlawful means
24 (intentional interference with
25 economic relations) and civil

1 conspiracy."

2 So am I correct in understanding that
3 the Plaintiffs are asserting all of those causes of
4 action against Mr. Livesey?

5 U/A MR. DEARDEN: We'll take that under
6 advisement, Mr. Lascaris.

7 BY MR. LASCARIS:

8 2055 Q. Okay, I certainly would like to be
9 informed of that, Mr. Dearden, and hard to imagine
10 on what basis you wouldn't want to tell me that
11 information, but I would appreciate being advised.

12 Now, in connection with the allegations
13 made against Mr. Livesey in the claim, the
14 Plaintiffs never served a libel notice on
15 Mr. Livesey; correct?

16 A. I do not know the answer to that
17 question.

18 2056 Q. Okay, would you let us know,
19 please?

20 U/T MR. DEARDEN: Yes.

21 BY MR. LASCARIS:

22 2057 Q. At paragraph 1(e) of the claim, it
23 is stated that the Plaintiffs seek a declaration
24 that the Defendants breached section 126.1 and
25 section 126.2 of the Ontario Securities Act. I

1 want to be clear, you are alleging in particular
2 that Mr. Livesey violated those sections of the
3 Ontario Securities Act; is that correct?

4 U/T MR. MOORE: We'll let you know. We'll
5 confirm one way or the other.

6 BY MR. LASCARIS:

7 2058 Q. Have either of the Plaintiffs
8 complained to the OSC about Mr. Livesey's alleged
9 violations of these sections?

10 A. No, we have not, to the OSC.

11 2059 Q. And to your knowledge, the OSC has
12 never commenced any proceedings against Mr. Livesey
13 for these alleged violations, has it?

14 A. To the best of my knowledge, no.

15 2060 Q. And have either of the Plaintiffs
16 complained to the OSC about any of the other
17 Defendants' alleged violations of those sections of
18 the OSA?

19 A. No.

20 2061 Q. I'm sorry?

21 A. No.

22 2062 Q. Thank you. And to your knowledge,
23 the OSC has never commenced any proceedings against
24 any of the other Defendants for these alleged
25 violations of the OSA; is that correct?

1 A. Not to my knowledge.

2 2063 Q. Okay, at paragraph 25 of the
3 claim, if we could go there, Mr. Livesey is named
4 as a "Wolfpack Conspirator"; he is one of the
5 persons who are included in that defined term,
6 right?

7 A. Yes.

8 2064 Q. Okay, so let's go to paragraph 57
9 of the claim. Now, it is stated there that:

10 "Catalyst and Callidus allege
11 that funding did occur to support
12 the Guarantors in the Guarantee
13 Actions through several undisclosed
14 'angels', including the Wolfpack
15 Conspirators. In many cases, the
16 funders sought to keep their
17 involvement secret through the use
18 of non-disclosure agreements."

19 Now, as we have seen, "Wolfpack
20 Conspirators" is defined to include Mr. Livesey.
21 So should we take it from paragraph 57 that the
22 Plaintiffs are alleging that Mr. Livesey provided
23 funding to the guarantors to support them in the
24 guarantee actions?

25 A. I think --

1 MR. MOORE: He is referring to the --

2 THE DEPONENT: I am looking at that
3 right there.

4 MR. MOORE: Oh, I'm sorry.

5 THE DEPONENT: I think that is the
6 implication, but I don't think he has to actually
7 provide the funding. When you have a conspiracy,
8 not all the conspirators have to do the act would
9 be my view.

10 BY MR. LASCARIS:

11 2065 Q. Sorry, are the Plaintiffs alleging
12 that Mr. Livesey in any way, shape or form, whether
13 directly or indirectly, provided funding to the
14 guarantors to support the guarantee actions?

15 A. I think my interpretation of that
16 is that he is part of a group. Some of them may
17 have provided funding to the guarantors.

18 2066 Q. But not necessarily Mr. Livesey?

19 A. Not necessarily.

20 2067 Q. That is how you read this
21 allegation in the claim, right?

22 A. Yes.

23 2068 Q. Okay, and it is in fact the case
24 that you don't have any evidence that Mr. Livesey
25 provided any funding to the guarantors to support

1 the guarantee litigation?

2 A. Not at this time.

3 2069 Q. And you are aware that - and if
4 you want, we can take you there - that Mr. Livesey
5 denies having done so at paragraphs 136 to 137 of
6 the first affidavit he swore in support of --

7 A. Can we pull that up?

8 2070 Q. Sure, why don't we do that.
9 Again, that is paragraphs 136 to 137 of the
10 original Bruce Livesey affidavit.

11 (DISCUSSION OFF THE RECORD.)

12 BY MR. LASCARIS:

13 2071 Q. So just to move things along, I
14 can't recall, Mr. Riley, did you say you have a
15 hard copy of Mr. Livesey's November 2019 affidavit?
16 I'm sorry, September -- yes, I have got it,
17 November 2019. Do you have a copy, a hard copy of
18 that in front of you?

19 A. I do.

20 2072 Q. Okay, could you go to paragraphs
21 136 to 137.

22 [Court Reporter intervenes to resolve
23 audio issue.]

24 BY MR. LASCARIS:

25 2073 Q. So, Mr. Riley, do you have those

1 paragraphs in front of you?

2 A. I do.

3 2074 Q. Okay, so you have said that at
4 this time the Plaintiffs have no evidence that
5 Mr. Livesey funded directly or indirectly the
6 guarantee actions, and you have seen Mr. Livesey's
7 sworn denial. Are the Plaintiffs prepared to
8 withdraw that allegation, sir?

9 MR. DEARDEN: No.

10 MR. LASCARIS: So you have got no
11 evidence. You have seen a sworn denial, and you
12 are not prepared to withdraw the allegation?

13 MR. DEARDEN: Well, I don't need to
14 argue with you, Mr. Lascaris. No discoveries have
15 been held yet, so anyway, I have indicated we are
16 not withdrawing at this time.

17 BY MR. LASCARIS:

18 2075 Q. You understand, sir, and you are a
19 member of the bar of some accomplishment and
20 tremendous experience by your own account, and you
21 understand that lawyers and litigants have an
22 obligation to make allegations only that are
23 supported by evidence. You understand that you
24 have that obligation, sir?

25 A. I don't know that, and so I'll

1 turn to my counsel for advice.

2 2076 Q. Well, I don't think this is the
3 time for you to be getting advice from your
4 counsel, sir. Your answer is you don't know the
5 answer to that question; is that right?

6 MR. DEARDEN: No, but in fairness,
7 Mr. Lascaris, it is a conspiracy action. The case
8 law is clear that knowledge is -- and I won't put a
9 percentage on it, but it is within the possession
10 of the conspirators. And as I have said, we have
11 not had an opportunity to examine Mr. Livesey, and
12 when we do that, it could very well be that we
13 withdraw that allegation. But I have said at this
14 time we are not going to do that because we haven't
15 examined him yet.

16 BY MR. LASCARIS:

17 2077 Q. Well, we don't need to argue this
18 now, Mr. Dearden, but that sounds to me like the
19 quintessential definition of a fishing expedition.

20 Let's move on. At paragraph 63 of the
21 claim -- A.J., could we go there, please.

22 A. Paragraph 63?

23 2078 Q. Yes. Now, you will see there that
24 it is alleged that West Face and/or Mr. Boland
25 retained Livesey to write a false and disparaging

1 article regarding Catalyst's principal, Newton
2 Glassman and --

3 MR. DEARDEN: Sorry, you are cutting
4 out, Dimitri. Sorry, I think we should go back to
5 the headsets, and I'm not sure the last shuffling
6 of papers against the microphone is you at all.

7 MR. LASCARIS: Okay, let's just go off
8 the record for one second.

9 (DISCUSSION OFF THE RECORD.)

10 BY MR. LASCARIS:

11 2079 Q. Okay, so again --

12 A. And now you are frozen. Your
13 video is frozen. There, okay, maybe you were just
14 frozen.

15 2080 Q. Hopefully that won't happen again.

16 So at paragraph 63 of the claim, I was
17 saying that it is alleged that West Face and/or
18 Mr. Boland retained Mr. Livesey to write a false
19 and disparaging article regarding Catalyst's
20 principal, Newton Glassman. And my question to
21 you, sir, is, is it correct that the only evidence
22 on which the Plaintiffs base this allegation are
23 statements of Andrew Levy, a director of Esco
24 Marine?

25 A. No, I think there also was

1 interaction between Catalyst and Mr. Livesey -- not
2 Catalyst, but our representative with Mr. Livesey
3 on that story.

4 2081 Q. Okay, so you are saying the
5 interaction itself is evidence that Mr. Livesey was
6 retained by West Face or Mr. Boland, or are you
7 saying that in the course of that interaction the
8 Plaintiffs learned of evidence that Mr. Livesey is
9 or has been retained or was retained by Mr. Boland
10 or West Face?

11 A. Yes, that together with the Levy
12 transcript and the --

13 2082 Q. Okay, so I am just trying to
14 understand --

15 A. -- examination under oath --

16 2083 Q. Okay, I am trying to understand
17 what you meant, so just seeking a clarification.
18 Are you saying -- why don't I just finish my
19 question and then I will let you answer, okay.

20 Are you saying that the mere fact that
21 Mr. Livesey interacted with a representative of the
22 Plaintiffs or one of the Plaintiffs in connection
23 with the matters underlying the Statement of Claim
24 or the substance of the Statement of Claim, the
25 things that are alleged in the Statement of Claim,

1 that that is evidence of Mr. Livesey having been
2 hired by West Face or Mr. Boland, or are you saying
3 that in the course of those interactions the
4 Plaintiffs learned of specific evidence supporting
5 the allegation that Mr. Livesey was hired by West
6 Face or Mr. Boland?

7 A. It was our belief that he had been
8 retained in some manner by West Face or Boland and
9 that also was confirmed in the examination of
10 Mr. Levy.

11 2084 Q. Okay, so what caused you to form
12 that belief prior to the examination of Mr. Levy?

13 A. The nature of the questions that
14 were being asked by Mr. Livesey that indicated
15 that --

16 2085 Q. Okay, is that --

17 A. Let me finish, please.

18 2086 Q. Sure.

19 A. That indicated to us that it was
20 going to be a false and disparaging article
21 regarding Newton Glassman and us, "us" being
22 Callidus and Catalyst, that it was not going to be
23 a fair article.

24 2087 Q. Okay, so is it fair to say that
25 the evidence on which the allegation is based that

1 Mr. Livesey was hired by West Face or Boland is
2 two-part; it is the nature of the questions he
3 asked, that Mr. Livesey asked, and it is the
4 statements of Mr. Levy?

5 A. Correct.

6 2088 Q. And there is no other evidence?

7 That is the evidence; is that correct?

8 A. At this time.

9 MR. MOORE: Well, let me just say when
10 the witness has said the nature of the questions,
11 there is evidence in the material about the
12 sequence of events about how Mr. Livesey contacted
13 Catalyst and/or Callidus to purportedly write a
14 fair and balanced story. There is evidence about
15 other things that were going on at that time
16 involving West Face or a contact at West Face.
17 There is evidence that, if accepted, would indicate
18 that Mr. Livesey was misleading the Plaintiffs
19 about his two intentions.

20 I am not going to put it all on the
21 record. It is referred to in the affidavit. But
22 my simple point is that to kind of frame it as
23 narrowly as that, it is the contents of Mr. Riley's
24 affidavit with respect to Mr. Livesey's approach
25 and the contemporaneous events that were occurring

1 at that time.

2 Now, it is an inference, as is often
3 the case in a conspiracy action of this type, but I
4 just don't want you to be misled as to our
5 position.

6 BY MR. LASCARIS:

7 2089 Q. Thank you, sir. So we can agree,
8 I would hope, that you don't have any written
9 retainer agreement, any document evidencing a
10 retainer of Mr. Livesey by West Face or Mr. Boland,
11 right?

12 A. We wouldn't have those in our
13 possession.

14 2090 Q. Well, we don't need to argue about
15 that, but you don't have it, right?

16 A. No.

17 2091 Q. Okay, and you don't have any
18 evidence of payments having been made by West Face
19 or Mr. Boland to Mr. Livesey, right?

20 A. Not at this time.

21 2092 Q. Okay. I would like to take you to
22 paragraph 101 of Mr. Livesey's November 2019
23 affidavit.

24 A. Sorry, the November affidavit?

25 2093 Q. Correct. And you will see there

1 that Mr. Livesey is describing what he understands
2 was a meeting in August 2017 that Catalyst
3 requested with Mr. DeCloet of the Globe and Mail
4 and, according to Mr. Livesey's understanding of
5 that meeting, Mr. DeCloet was shown a transcript of
6 a deposition given by Andrew Levy, one of the
7 principals of Esco Marine, and Mr. Levy -- as Mr.
8 Livesey goes on to say in 102, Mr. DeCloet was told
9 that Mr. Levy had claimed that Mr. Livesey might be
10 working on behalf of West Face; do you see that?
11 That is what Mr. Livesey testifies in that
12 affidavit, okay.

13 So my question to you is, was there in
14 fact a meeting in or about August 2017 with a
15 representative of Catalyst or Callidus and
16 Mr. DeCloet relating to Mr. Livesey's proposed
17 article?

18 A. Yes.

19 2094 Q. And at that meeting, was it
20 represented in any way to Mr. DeCloet by the
21 Catalyst representative that Mr. Levy had said that
22 Mr. Glassman -- I'm sorry, that Mr. Livesey had
23 been hired by West Face or Mr. Boland? Was that in
24 fact --

25 A. Mr. DeCloet.

1 2095 Q. I'm sorry, was Mr. DeCloet told by
2 the Catalyst representative that Mr. Livesey --
3 that Mr. Levy had said that Mr. Livesey had been
4 hired by West Face? Was that communicated to
5 Mr. DeCloet at that time by the representative of
6 Catalyst?

7 A. Mr. DeCloet was shown a copy of
8 the transcript.

9 2096 Q. And you are referring to the
10 transcript of the Levy testimony to the --

11 A. Yes.

12 2097 Q. -- effect that West Face might
13 have hired Mr. Livesey, right?

14 A. I would have to go back to the
15 transcript. I think it actually said that he
16 had -- that he was working for West Face.

17 2098 Q. Right.

18 A. I don't think he used the word
19 "might".

20 2099 Q. Okay, but whatever he was --

21 A. I think --

22 2100 Q. Whatever he said, whatever
23 Mr. Levy said in that deposition, the substance of
24 it was related to Mr. DeCloet at that meeting by
25 the Catalyst representative, right?

1 A. Yes.

2 MR. MOORE: No, what the witness said
3 was that he was shown the transcript.

4 THE DEPONENT: Yes.

5 MR. MOORE: Not just a paraphrase of
6 the transcript. There might have been discussion
7 about that, but that he was actually shown the
8 transcript is what he just said.

9 BY MR. LASCARIS:

10 2101 Q. Okay, but that is really what I am
11 trying to get at. So the actual testimony that
12 Mr. Levy gave was shown to Mr. DeCloet at that
13 time; is that right?

14 A. Yes, that is correct.

15 2102 Q. Okay. Now, I would like to go to
16 paragraph 74 of the claim. Sorry to jump around on
17 you, but we need to go back to the claim. It is
18 alleged that Mr. Boland contacted Mr. Voorheis, in
19 paragraph 74, to induce him to conspire to harm
20 Glassman, Catalyst and Callidus.

21 And my question to you, sir, is
22 according to the Plaintiffs, is that the
23 approximate point in time at which Mr. Voorheis
24 allegedly became involved in the alleged
25 conspiracy?

1 A. I cannot say that that is the
2 interpretation of that. In other words, we were
3 still gathering facts. There hadn't been
4 examinations or discovery, so it is premature to
5 say what time, but I think based on what we have
6 seen so far, this is what we believe.

7 2103 Q. Okay, let's go to paragraph 83 of
8 the claim. And there it is alleged that:

9 "[...] the Wolfpack

10 Conspirators and the Guarantor

11 Conspirators [...]:

12 (a) Established a data room where
13 false information were shared and
14 allegations were repeated; and

15 (b) [that the Wolfpack
16 Conspirators] Provided Anderson and
17 Clarity with access to a Dropbox
18 facility containing the false
19 information and allegations to
20 facilitate their continuing
21 participation in the Conspiracy."

22 So as we have discussed, the Plaintiffs
23 define the "Wolfpack Conspirators" to include Mr.
24 Livesey. May we take it therefore that the
25 Plaintiffs are alleging that Mr. Livesey took part

1 in the establishment of a data room where false
2 information was shared and that Mr. Livesey
3 provided Anderson and Clarity with access to a
4 Dropbox facility? Is that what the Plaintiffs are
5 alleging as against Mr. Livesey?

6 U/T MR. MOORE: We'll undertake to advise
7 you.

8 BY MR. LASCARIS:

9 2104 Q. All right. In paragraphs 138 and
10 139 of Mr. Livesey's affidavit of November 2019, he
11 denies having had anything to do with this data
12 room or having provided access to a Dropbox
13 facility to Anderson and Clarity. And if you would
14 like to go see that denial, sir, please feel free
15 to do that.

16 But my question to you is you don't
17 have any evidence, do you, that Mr. Livesey
18 actually participated in the establishment of that
19 data room or that he provided access to a Dropbox
20 facility?

21 MR. MOORE: Your question is what
22 direct evidence of actual involvement of that
23 particular event?

24 MR. LASCARIS: Well, let's start with
25 direct evidence. Do you have direct evidence?

1 U/T MR. MOORE: We'll let you know, but as
2 has been pointed out already, this is a conspiracy
3 claim, and it is our position, and I will say this
4 in general terms, that the conspirators were all
5 aware of and participated in various ways and means
6 in the action and furtherance of the conspiracy.

7 So I understand the law. That doesn't
8 mean that every single conspirator has to be
9 directly involved in each particular act. And I
10 don't want to argue the case here now, but if the
11 underlying premise of your question, and you don't
12 have to say it one way or the other, is that Mr.
13 Livesey has to be directly involved in every
14 specific act alleged in relation to the conspiracy,
15 we don't subscribe to that view of things. But I
16 will leave it at that.

17 BY MR. LASCARIS:

18 2105 Q. All right, so we can have this
19 interesting discussion when the motions are argued,
20 Mr. Dearden, but -- and please don't assume there
21 are any underlying premises to my question.

22 I just want to know at this point in
23 time, it is true, is it not, that the Plaintiffs
24 have no evidence, certainly no direct evidence of
25 Mr. Livesey's involvement in the establishment of

1 the data room or the Dropbox facility?

2 MR. MOORE: Well, those are two
3 different questions. To say no evidence and no
4 direct evidence are two different questions.

5 MR. LASCARIS: Well, and I can break it
6 down.

7 U/T MR. MOORE: We'll let you know if we
8 have any direct evidence.

9 BY MR. LASCARIS:

10 2106 Q. Okay, and if you do, please
11 identify it to me, because I can't find it. I
12 looked at the very lengthy affidavits that Mr.
13 Riley filed and I see absolutely no evidence to
14 support that claim which is denied --

15 U/T MR. MOORE: No, I understand, and I am
16 giving that undertaking. If we say that yes, we
17 have direct evidence, we would understand that it
18 would be incumbent on us to tell you what that is
19 in fulfilling that undertaking. We understand.

20 BY MR. LASCARIS:

21 2107 Q. Thank you. And if you can't point
22 us to any direct evidence, please let us know
23 whether you have indirect evidence and, if so, what
24 it is?

25 U/A MR. MOORE: We'll take that under

1 advisement.

2 BY MR. LASCARIS:

3 2108 Q. Now, at paragraph 130 of the
4 claim, it is alleged that:

5 "[...] the Wolfpack
6 Conspirators and the Guarantor
7 Conspirators had also filed, with
8 the direct assistance and
9 participation of Anderson, a false
10 complaint with the SEC and OSC
11 alleging that Catalyst, Callidus and
12 Glassman were guilty of serious
13 criminal misconduct."

14 Again, sir, because the Plaintiffs have
15 defined the term "Wolfpack Conspirators" to include
16 Mr. Livesey, may we take it, should we take it from
17 this paragraph, paragraph 130, that the Plaintiffs
18 are alleging that Mr. Livesey filed a false
19 complaint with the SEC or the OSC against Catalyst,
20 Callidus or Glassman? Is that the allegation
21 against Mr. Livesey?

22 A. Sorry, the phone -- Mr. Moore's
23 phone is ringing, so let's just wait until he
24 silences that.

25 2109 Q. Sorry, do you want me to repeat my

1 question, Mr. Riley?

2 A. Yes, please.

3 2110 Q. Okay. So because the Wolfpack
4 conspirators are defined to include Mr. Livesey,
5 should we take it from paragraph 130 that the
6 Plaintiffs are alleging that Mr. Livesey filed a
7 false complaint with the SEC and/or the OSC against
8 Catalyst, Callidus or Glassman?

9 MR. MOORE: Well, let me just clarify.
10 Is that in effect in substance the same question as
11 a moment ago in relation to direct evidence?

12 MR. LASCARIS: I'm sorry, I'm not sure
13 I understand your question, Mr. Dearden.

14 MR. MOORE: A moment ago, you asked are
15 we alleging that Mr. Livesey was involved in the
16 establishment of a data room and the ensuing
17 exchange and I gave an undertaking with respect to
18 direct evidence. And is this, in effect, the same
19 type of question?

20 MR. LASCARIS: Yes, it is, sir.

21 U/T MR. MOORE: All right, so I'll take the
22 same answers, the same position. We'll advise you
23 if we have any direct evidence.

24 We don't subscribe to the underlying
25 premise or potential premise of your question that

1 direct evidence of involvement every step of the
2 way by every conspirator is necessary, but we can,
3 as you say, we can debate that issue at another
4 time and another place.

5 BY MR. LASCARIS:

6 2111 Q. So as you sit here now, Mr. Riley,
7 are you aware of any evidence that Mr. Livesey
8 filed a complaint with the SEC or the OSC against
9 Catalyst, Callidus or Glassman?

10 A. The first time we have actually
11 seen any complaints was in connection with the
12 productions made in connection with the affidavits
13 filed by the various so-called Wolfpack and
14 guarantor conspirators. So I don't think we have
15 seen all of them, and I don't know that we know all
16 of the roles that people played in the filing of
17 those complaints.

18 2112 Q. You really haven't answered my
19 question, sir. I am asking you, as you sit here
20 now -- I don't want to know about other complaints
21 filed by other Defendants. I only want to know
22 about my client.

23 So as you sit here now, are you aware
24 of any evidence that Mr. Livesey filed a complaint
25 against Catalyst, Callidus or Glassman with the OSC

1 or the SEC?

2 A. No.

3 MR. MOORE: Well, again, if you are
4 asking about direct evidence --

5 MR. LASCARIS: Mr. Dearden, we don't
6 need any more -- he has answered my question.

7 MR. MOORE: No, I am --

8 MR. LASCARIS: We don't need any --

9 MR. MOORE: I am talking.

10 MR. DEARDEN: Dimitri, that is not me.
11 It is Mr. Moore.

12 MR. LASCARIS: Sorry.

13 MR. MOORE: The question is, as I
14 understand it, is there direct evidence, and I said
15 we would let you know. But we are not going to
16 have the witness answer and, you know, give a long
17 debate and discussion about the circumstantial
18 evidence and the inferences about who had what
19 knowledge, who gave what encouragement, who
20 participated, who was aware, et cetera.

21 So if your question is intended to be
22 that broad, I object to that.

23 MR. LASCARIS: You object to me asking
24 Mr. Riley if he is aware of any evidence underlying
25 an allegation made against my client; is that

1 correct?

2 MR. MOORE: Well, his affidavit has
3 numerous examples of emails back and forth in which
4 Mr. Livesey was copied, sent emails, participated,
5 was aware, et cetera. There are any number of
6 exhibits illustrating that at different steps along
7 the way.

8 MR. LASCARIS: Well, we have Mr.
9 Riley's answer, sir. And that is Mr. Moore
10 speaking; is that right?

11 MR. MOORE: Yes, that's right.

12 MR. LASCARIS: Thank you.

13 MR. MOORE: And you know that, you know
14 from reading his affidavit that there is all kinds
15 of email exchanges and communications amongst the
16 co-conspirators, or alleged co-conspirators,
17 including your client.

18 MR. LASCARIS: Well, what I know is
19 that I scoured his affidavit for evidence that my
20 client filed a complaint with the OSC or the SEC
21 and found none. That is what I know, sir, okay,
22 and that --

23 MR. MOORE: Well, that is why I wanted
24 to clarify the question. If you are asking about
25 direct evidence, in other words, did Mr. Livesey

1 walk over to the OSC on a specific date and
2 physically deposit a complaint with the OSC, that
3 is one question. And if there is direct evidence
4 of that nature, we'll undertake to advise you. I
5 am not aware of any direct evidence of that nature.

6 But asking if it is a broader kind of
7 expansive question about what is the whole body of
8 evidence and circumstantial evidence about the
9 communications, et cetera, his affidavit is replete
10 with examples of that.

11 BY MR. LASCARIS:

12 2113 Q. You are aware, Mr. Riley, and if
13 you want to go there, please do so, at paragraphs
14 140 to 141 of Mr. Livesey's November 2019
15 affidavit, he unequivocally denies having filed a
16 complaint against Catalyst, Callidus or Glassman
17 with the OSC or the SEC; you are aware of that
18 denial, sir?

19 A. Yes, I see that.

20 2114 Q. All right, and in light of that
21 denial and your inability to cite any evidence
22 supporting the allegation that he filed such a
23 complaint, are the Plaintiffs prepared to withdraw
24 that allegation?

25 MR. MOORE: We are not withdrawing that

1 allegation at this time.

2 BY MR. LASCARIS:

3 2115 Q. Paragraph 90 of the claim. It is
4 alleged that the Wolfpack conspirators agreed that
5 either directly or indirectly they would take short
6 positions in Callidus shares through the
7 co-conspirator Langstaff at Canaccord and that the
8 Wolfpack conspirators would close out their naked
9 or short positions at a substantial profit. This
10 plan was in fact executed.

11 And then if we go forward to paragraph
12 157 of the claim --

13 A. Of the claim?

14 2116 Q. Of the claim, you will see it is
15 alleged that:

16 "On or about August 9, 2017, in
17 furtherance of the Conspiracy, the
18 Wolfpack Conspirators and one or
19 more of the John Doe Defendants took
20 short positions in Callidus Shares,
21 either directly or indirectly."

22 Should we take it from these two
23 paragraphs that the Plaintiffs are alleging that
24 Mr. Livesey took short positions either directly or
25 indirectly in Callidus shares?

1 U/T MR. MOORE: We'll let you know.

2 BY MR. LASCARIS:

3 2117 Q. And, sir, you are aware, are you
4 not, and I can take you there if I need to, that
5 Mr. Livesey has denied under oath at paragraphs 130
6 to 131 and 147 of his November 2019 affidavit ever
7 having taken a short position, whether directly or
8 indirectly, in Callidus shares? Are you aware of
9 that denial, sir?

10 A. Could you take it to me, please.

11 2118 Q. Sure. So up on the screen we have
12 paragraphs 130 to 131.

13 A. [Witness reviews document.]

14 2119 Q. Have you read those, Mr. Riley?

15 A. I have.

16 2120 Q. Okay, 147. So, sir, are you aware
17 of any evidence and is it not in fact the case that
18 there is no evidence in your affidavits that Mr.
19 Livesey shorted Callidus shares directly or
20 indirectly?

21 MR. MOORE: We don't have any evidence
22 of them shorting the shares at this point in time.

23 BY MR. LASCARIS:

24 2121 Q. Okay, and in light of the fact
25 that you have --

1 A. I agree with that --

2 2122 Q. Sorry, go ahead.

3 A. I agree with that answer.

4 2123 Q. And in light of that agreement and
5 Mr. Livesey's sworn denial, are you prepared to
6 withdraw the allegation that Mr. Livesey shorted
7 Callidus shares either directly or indirectly?

8 MR. MOORE: We are not withdrawing that
9 at this time.

10 MR. LASCARIS: I'm sorry?

11 MR. MOORE: We are not withdrawing that
12 allegation at this time.

13 BY MR. LASCARIS:

14 2124 Q. Let's go to paragraph 138 of the
15 claim. Oh, and by the way, before I talk to you
16 about 138, did I understand correctly that you
17 acknowledged yesterday when Mr. Levitt was
18 cross-examining you that the Plaintiffs had no
19 evidence that Mr. Levitt had shorted the shares of
20 Callidus?

21 MR. DEARDEN: I don't recall that,
22 Mr. Lascaris, one way or the other. I just don't
23 recall it.

24 THE DEPONENT: Yes, and I don't recall.

25 BY MR. LASCARIS:

1 2125 Q. Okay, well, we'll figure it out
2 from the transcript.

3 So at paragraph 138 of the claim, it is
4 alleged that:

5 "The Wolfpack Conspirators and
6 the Guarantor Conspirators
7 approached Reuters in June 2017 and
8 advised, with the existence of the
9 Complaints, and encouraged Tilak and
10 a New York based Reuters reporter,
11 Lawrence Delevigne, to publish a
12 negative story about Callidus [...]"

13 And then in the next paragraph, 139, it
14 is alleged -- well, let's just stop there actually
15 before I get to 139.

16 So we can take it from, you know, the
17 fact that Mr. Livesey has been included in the term
18 "Wolfpack Conspirators" that Plaintiffs are
19 alleging that Mr. Livesey encouraged Tilak and
20 Delevigne to publish a negative story about
21 Callidus and Catalyst; is that the allegation
22 against Mr. Livesey?

23 MR. MOORE: Well, the Statement of
24 Claim reads as it reads.

25 MR. LASCARIS: And I am just trying to

1 confirm, you know, what is the Plaintiffs'
2 allegation against my client. I don't want to have
3 a debate about it. What is the Plaintiff alleging
4 against my client? I am just asking --

5 MR. MOORE: What is your question
6 again?

7 BY MR. LASCARIS:

8 2126 Q. Is the Plaintiff alleging that Mr.
9 Livesey himself encouraged Tilak and Delevingne to
10 publish a negative story about Callidus and
11 Catalyst?

12 MR. MOORE: What it says is, in the
13 first sentence of paragraph 139, that "Livesey
14 offered to be a source for the story provided" --

15 MR. LASCARIS: Well, I haven't gotten
16 there yet.

17 MR. MOORE: Sorry?

18 MR. LASCARIS: I haven't gotten there
19 yet.

20 MR. MOORE: Well, I don't know how you
21 can divorce these two paragraphs.

22 MR. LASCARIS: Okay, fine, let's --

23 MR. MOORE: You are asking for what the
24 allegation is, and I am looking at these two
25 paragraphs that pertain to what Reuters did or

1 didn't do and Tilak and Delevingne, and I don't
2 think you can look at them, you know, sentence by
3 sentence or paragraph by paragraph.

4 BY MR. LASCARIS:

5 2127 Q. Okay, fine, so is it fair to say
6 that the Plaintiffs are alleging that Mr. Livesey
7 encouraged those two Reuters reporters to write a
8 negative story about Callidus and offered to be a
9 source for the story and provided false information
10 to those individuals for the negative story? Is
11 that the allegation against Mr. Livesey?

12 MR. MOORE: When you say "those
13 individuals", let me just make sure I understand
14 the question. Are you asking whether we allege
15 that Livesey had direct contact with Tilak and
16 Delevingne or whether he had contact with the other
17 conspirators who had that direct contact?

18 BY MR. LASCARIS:

19 2128 Q. Well, the word that is used in
20 paragraph 138 is "encouraged", okay, so I am just
21 using the word that the Plaintiffs are using. Is
22 the allegation that Mr. Livesey encouraged Tilak
23 and Delevingne to publish a negative story about
24 Callidus and Catalyst?

25 A. That paragraph I believe is based

1 on the relative -- the story that was eventually
2 published by the Wall Street Journal originated in
3 the kinds of questions that Mr. Livesey was asking
4 of Callidus/Catalyst at the time. And if you
5 compare the story that was written and the type of
6 questions that were being asked by Tilak and
7 Delevingne, they seem to be a migration of the
8 story from Mr. Livesey to those people.

9 2129 Q. Well, let's just park the question
10 about evidence for a second. Is the allegation --
11 and we can unpack what the word "encourage" means
12 in a second, but I am asking you, first of all, are
13 the Plaintiffs alleging that Mr. Livesey
14 encouraged, whatever that may mean, these two
15 Reuters reporters to write a false and negative
16 story about Catalyst and Callidus? So this is a --

17 MR. MOORE: Directly or indirectly?

18 THE DEPONENT: I think you are
19 correctly reading 139.

20 BY MR. LASCARIS:

21 2130 Q. I'm sorry, which paragraph? I am
22 talking about 138, sir.

23 A. Sorry, you keep -- 138 and 139 are
24 one and the same.

25 2131 Q. Okay, so as regards Mr. Livesey,

1 when the Plaintiffs use the word "encouraged" in
2 paragraph 138, you are saying that all they mean is
3 what is alleged in 139, that Mr. Livesey --

4 A. Well, I think you have to read --

5 2132 Q. -- offered to be a source for the
6 story?

7 A. My answer is I think you have to
8 read 138 and 139 together. You can't read them
9 individually. You have to have the context. There
10 was a story that was written by the Wall Street
11 Journal that, from my point of view, migrated from
12 Livesey to Tilak and Delevingne and to the Wall
13 Street Journal.

14 MR. MOORE: So the allegations in June
15 2017, in paragraph 138, relate to various
16 communications, contacts, et cetera, with Reuters,
17 and we say that Livesey directly or indirectly was
18 involved in that process. He was aware that those
19 attempts were being made and he offered to be a
20 source for the proposed story, provided false
21 information, at paragraph 139, for the negative
22 story that he knew was going to be passed on to
23 Tilak and Delevingne, whether he did or did not
24 have direct contact himself. And you can -- that
25 is the allegation.

1 BY MR. LASCARIS:

2 2133 Q. All right, let's go to paragraphs
3 133 -- let's start with 133 of Mr. Livesey's
4 November 2019 affidavit.

5 A. Sorry, which affidavit?

6 MR. DEARDEN: November.

7 BY MR. LASCARIS:

8 2134 Q. November. And you will see that
9 Mr. Livesey flatly denies offering to be a source
10 for the Reuters story, flatly denies providing
11 false information for that story.

12 Let's go to paragraph 142, and then go
13 to 143, I'm sorry. He says:

14 "[...] I never approached
15 either Mr. Tilak or Mr. Delevigne
16 about such a story, nor did I ever
17 'encourage' or 'advise' them to
18 write such a story. I have never
19 communicated with either Mr. Tilak
20 or Mr. Delevigne for any purpose."

21 Sir, it is true, is it not, that your
22 affidavits contain no evidence whatsoever that Mr.
23 Livesey communicated with Mr. Tilak or
24 Mr. Delevigne; isn't that true?

25 MR. MOORE: Well, let me just make

1 clear what your question is. Are you asking about
2 direct communications?

3 MR. LASCARIS: Let's start with direct
4 communications.

5 MR. MOORE: Because our position is,
6 just so there is no misapprehension, our position
7 is that if Mr. Livesey advised others, contacted
8 others who he knew were in contact with Tilak and
9 Delevingne and assisted them, gave them
10 information, suggested questions, et cetera,
11 knowing that it was going to be passed on to
12 Reuters in furtherance of what was afoot in June
13 2017, that is -- I mean, he can say he never
14 communicated directly, as he does in the second
15 sentence of paragraph 143, but that doesn't end the
16 issue, as far as we are concerned.

17 MR. LASCARIS: Well, he doesn't
18 actually use the word "directly", but the fact
19 that --

20 MR. MOORE: Well, okay, well, we'll
21 cross-examine him when the time comes.

22 BY MR. LASCARIS:

23 2135 Q. I am sure you will.

24 So the fact remains, Mr. Riley, that
25 your affidavit contains no communications, no

1 emails, no texts, nothing of that nature from Mr.
2 Livesey to either Mr. Tilak or Mr. Delevingne,
3 right?

4 MR. MOORE: Are you asking about direct
5 communications or are you asking about --

6 MR. LASCARIS: I am asking about
7 written communications of any kind, electronic
8 communications. There is no such evidence in the
9 possession of the Plaintiffs; correct?

10 MR. MOORE: If your question is are
11 there any direct communications and email directly
12 from Livesey to Tilak or Delevingne, that kind of
13 thing, if that is your question, I think the answer
14 is there are no such emails in the affidavit.
15 We'll correct that if I'm overlooking something,
16 but that is not the full extent of the issue.

17 BY MR. LASCARIS:

18 2136 Q. Let's go to paragraph 181 of the
19 claim. Now, you will see here, and I just want to
20 make sure I understand what the Plaintiffs are
21 alleging here, at paragraph 181 they say:

22 "The Wolfpack Conspirators
23 acted in concert with the Guarantor
24 Conspirators and Copeland to publish
25 the Defamatory Words."

1 Which are statements contained in a
2 Wall Street Journal article, right?

3 A. Yes.

4 2137 Q. Now, insofar as Mr. Livesey is
5 concerned, and I think, as I recall, I asked you at
6 the outset if the Plaintiffs are asserting that
7 laundry list of causes of action against my client,
8 and I believe your counsel took under advisement
9 the question of whether all of those causes of
10 action were being asserted against my client.

11 So for the time being, we are kind of
12 in a state of uncertainty about whether you are
13 asserting the cause of action of defamation against
14 my client. Well, I'll just ask you now. Is it
15 your understanding the Plaintiffs are asserting
16 defamation against my client?

17 U/T MR. MOORE: We'll let you know. We are
18 certainly alleging that he is part of this
19 conspiracy, but we'll examine each specific cause
20 of action in that paragraph and let you know.

21 MR. LASCARIS: Okay, so, well, I have a
22 question -- hopefully so I don't have to come back
23 and ask this question, assuming that the answer is
24 yes --

25 MR. MOORE: But this paragraph 182

1 refers to a "common design"; that is speaking to
2 the conspiracy, and as does 181, "The Wolfpack
3 Conspirators acted in concert [...]", et cetera.

4 MR. LASCARIS: Why don't you listen to
5 my question first, Mr. Moore, and then --

6 MR. MOORE: Well, I thought you had put
7 your question, sorry.

8 MR. LASCARIS: No, no, I am not --

9 MR. MOORE: Okay.

10 BY MR. LASCARIS:

11 2138 Q. Okay, so I am just trying to
12 understand, if the Plaintiffs are asserting the
13 cause of action of defamation against Mr. Livesey,
14 is that cause of action based strictly on what was
15 said in the Wall Street Journal article, or is it
16 also based on what was said in the two articles
17 that my client co-authored and that were published
18 by SIRF after the Wall Street Journal article?

19 U/T MR. MOORE: My belief is I don't think
20 we are alleging any defamation specifically as a
21 result of the SIRF articles. If there is anything
22 different, I'll let you know.

23 BY MR. LASCARIS:

24 2139 Q. Thank you. At paragraph 145 of
25 the claim it is alleged that:

1 "[...] in late July or early
2 August, the Wolfpack Conspirators
3 and the Guarantor Conspirators
4 contacted a different reporter, the
5 Defendant Copeland of the [Wall
6 Street Journal], with the intention
7 of having Copeland write a story
8 that would insinuate that Callidus
9 and Catalyst were under
10 'investigation' by both the OSC and
11 the Toronto Police for fraud."

12 So again, should we take it from this
13 paragraph that the Plaintiffs are alleging that Mr.
14 Livesey contacted Mr. Copeland to persuade him to
15 write a story about Callidus or Catalyst?

16 MR. MOORE: Well, the allegation is not
17 necessarily that Livesey directly contacted them in
18 terms of picking up the phone and calling them or
19 delivering an email to them. We are alleging he is
20 part of a conspiracy.

21 MR. LASCARIS: I am well aware of that.

22 MR. MOORE: All right, well, that is
23 fine.

24 MR. LASCARIS: I am just asking if --

25 U/T MR. MOORE: If we rely upon any direct

1 evidence that Livesey picked up the phone and
2 physically contacted Mr. Copeland directly or
3 something of that nature, we'll let you know.

4 BY MR. LASCARIS:

5 2140 Q. Well, there is no such evidence in
6 your affidavit, Mr. Riley, is there?

7 A. Not that I recall.

8 2141 Q. And you are aware that Mr.
9 Livesey -- why don't we go there. This is the
10 November 2019 Livesey affidavit, paragraphs 144 and
11 145. At 145 he avers:

12 "[...] I never contacted
13 Copeland or the Wall Street Journal
14 with the intention of having him or
15 the Wall Street Journal write or
16 publish a story about the
17 Plaintiffs. I have never
18 communicated with Mr. Copeland for
19 any purpose."

20 So, sir, in light of this sworn
21 testimony and the absence of any evidence that my
22 client communicated with Mr. Copeland, are the
23 Plaintiffs prepared to withdraw the allegation that
24 my client contacted Mr. Copeland or communicated
25 with him for the purpose of inducing him to write a

1 false story about the Plaintiffs?

2 MR. MOORE: I don't read the allegation
3 in the same way that you do. I don't read the
4 constituent elements of the conspiracy the same way
5 that you do. So we are not prepared to withdraw
6 the conspiracy allegations in respect of this issue
7 against your client.

8 MR. LASCARIS: Okay, I hope I can get
9 some more testimony from the witness, because I'm
10 getting a hell of a lot of testimony from you, Mr.
11 Moore, so --

12 MR. MOORE: Well, actually, the
13 questions you are asking, as you know, I suppose
14 you know, at least in my experience are the kinds
15 of questions that normally are asked as kind of a
16 wrap-up of an examination for discovery when
17 counsel goes through the pleading and says is there
18 anything more about this or could you please
19 interpret this paragraph of your claim. Those are
20 normally the kinds of questions that counsel deal
21 with, at least in my experience, at the end of an
22 examination for discovery --

23 MR. LASCARIS: Well --

24 MR. MOORE: -- as opposed to having the
25 witness on discovery --

1 MR. LASCARIS: -- that is an
2 interesting --

3 MR. MOORE: Well, you may say it is
4 interesting, but that is my experience, as opposed
5 to having the witness on an examination for
6 discovery, you know, deal with legal issues or
7 interpretations of pleadings, et cetera, that has
8 been my experience, at least.

9 MR. LASCARIS: Well, it is entirely
10 appropriate that in the context of a motion to
11 dismiss under the anti-SLAPP legislation I seek to
12 understand clearly what the allegations against Mr.
13 Livesey are and what the evidence or lack thereof
14 is in relation to those allegations. That is
15 entirely appropriate in this context, whatever may
16 happen in examinations for discovery, Mr. Moore.

17 Now --

18 MR. MOORE: Well, you are referencing
19 that I am asking some of these questions and...
20 [inaudible].

21 [Court Reporter intervenes for
22 clarification.]

23 Sorry, what I was saying or attempting
24 to say was really in response to the comment that I
25 am answering some of these questions. So let's

1 leave it at that and move on with the next set of
2 questions.

3 BY MR. LASCARIS:

4 2142 Q. Okay, at paragraph 245 of your
5 affidavit - and you don't need to go there, sir,
6 I'll just tell you generically - you make reference
7 to two articles co-authored by Mr. Livesey and
8 published by SIRF. The first of those articles was
9 published on April 11th, 2018. When did that
10 article first come to the attention of the
11 Plaintiffs?

12 A. Sorry, let me get to 245.

13 2143 Q. Okay.

14 A. To the best of my recollection, it
15 would have been contemporaneous with their
16 publication.

17 2144 Q. Okay, so contemporaneously with
18 the publication of the April 11th, 2018 article
19 published by SIRF the Plaintiffs would have learned
20 of it?

21 A. Yes.

22 2145 Q. And I have the same question for
23 the article published on November 27th, 2018; the
24 same answer for that one as well?

25 A. Yes.

1 2146 Q. At paragraph 103 of your
2 conspiracy affidavit, and I apologize if somebody
3 has already asked you this question, but to my
4 knowledge, it hasn't been asked. In that
5 affidavit -- in that paragraph, you state:

6 "I have since learned that
7 Vincent Hanna's identity is Danny
8 Guy."

9 A. Excuse me, can you give me a
10 moment to get to it in my affidavit?

11 2147 Q. Sure. I'm sorry, it is 102, not
12 103. So you say there -- are you there, sir? It
13 is up on the screen.

14 A. No, but I would like to be able to
15 see the whole of the page.

16 2148 Q. Okay. Why don't I ask my
17 question, because I don't think you need to see the
18 context. So you say:

19 "I have since learned that
20 Danny Guy is a director of
21 Harrington Global Opportunities Fund
22 [...]"

23 I'm sorry:

24 "I have since learned that
25 Vincent Hanna's identity is Danny

1 Guy."

2 A. Danny Guy.

3 2149 Q. Danny Guy, okay.

4 A. And I'm only correcting the names
5 because in fairness --

6 2150 Q. Okay, so my question is how did
7 you come to learn that?

8 A. Through the course of interaction
9 with -- we have gone through this, that as a result
10 of -- and I don't want to be inconsistent because I
11 have answered this before in one of the prior
12 examinations, so I am -- essentially, as a result
13 of communications with Vincent Hanna, we were put
14 in touch with John Kingman Phillips, and as a
15 result of that, we had some subsequent meetings
16 that involved, among others, Danny Guy, both on a
17 conference call and subsequently in person.

18 2151 Q. Well, did Mr. Guy confirm to you
19 that he is Vincent Hanna?

20 A. It was our belief that he was
21 Vincent Hanna, yes.

22 2152 Q. Yeah, but that is not my question.
23 Did he actually confirm to you that he is Vincent
24 Hanna?

25 A. Let me answer it slightly

1 differently. It was irrelevant to me who Vincent
2 Hanna was in the sense of that person who sent that
3 email. As a result of the Vincent Hanna
4 interaction, we met with Danny Guy.

5 2153 Q. Okay, but I still don't have an
6 answer to my question. Did --

7 A. I do not recall whether he
8 specifically confirmed, but certainly the
9 impression that we took away from the various
10 meetings and communications with him, Vincent Hanna
11 and Danny Guy were one and the same.

12 2154 Q. Let's go to paragraph 82 of your
13 affidavit. You state that:

14 "Wes Voorheis is a securities
15 lawyer and principal of Voorheis and
16 Co. LLP. Voorheis manages an
17 investment fund, VMK Partners Fund
18 LP, through which he short-sells
19 stock."

20 And then at paragraph 97 you state
21 that:

22 "[...] [Mr.] Livesey was hired
23 by West Face and [Mr.] Voorheis at
24 least as early as April 2015 when
25 West Face and Voorheis were engaged

1 in a prior short selling campaign
2 against Callidus."

3 So first of all, if I understand your
4 evidence, and please confirm that this is correct,
5 you are saying that at the time Mr. Livesey was
6 hired, Mr. Voorheis or his fund were engaged in a
7 short-selling campaign against Callidus at that
8 time? Is that what the allegation is?

9 A. Yes.

10 2155 Q. And do you have evidence that
11 Mr. Voorheis was then engaged in a short-selling
12 campaign against Callidus?

13 MR. MOORE: I believe it is in his
14 trading records.

15 MR. LASCARIS: Okay, well, we'll look
16 into that.

17 MR. MOORE: I mean, I am going from
18 memory. I don't have it all memorized, but that is
19 my recollection.

20 BY MR. LASCARIS:

21 2156 Q. Okay. Well, really what I wanted
22 to ask you about, Mr. Riley, is this. And I know
23 that Mr. Milne-Smith had something to say about
24 this, but would you agree with me that it is fairly
25 common practice in Canada's capital markets for law

1 firms and investors to hire professional
2 investigators to examine the businesses of public
3 companies and assess whether their disclosures are
4 materially accurate?

5 A. Sorry, did you say private
6 investigator?

7 2157 Q. Professional investigator.

8 A. I actually don't know the answer
9 to that.

10 2158 Q. Well, you do know that lawyers in
11 Canada and institutional investors who work in the
12 capital markets do from time to time hire
13 professional investigators to investigate public
14 companies?

15 A. I do not know that.

16 2159 Q. Okay. Would you think there is
17 anything inherently -- do you think there is
18 anything inherently illegal or improper about a
19 lawyer investigating a possible lawsuit or an
20 institutional investor assessing a possible
21 investment hiring a professional investigator to
22 examine the affairs of a company?

23 A. I don't think there is anything
24 improper in that hiring of someone to do that. It
25 depends on what use is made of the information and

1 for what purpose.

2 2160 Q. Correct, so I said "inherently".
3 So in other words, there are circumstances in which
4 there is nothing illegal or improper about it?

5 A. Yes.

6 2161 Q. And it might just be pursuant to a
7 lawyer's or an institutional investor's desire to
8 conduct adequate due diligence, right? Is that
9 correct, sir?

10 MR. MOORE: Well, you are talking in
11 the abstract, right? You are asking in the
12 abstract? This is what Mr. Milne-Smith --

13 MR. LASCARIS: Well, my question is my
14 question.

15 MR. MOORE: Okay, fine.

16 BY MR. LASCARIS:

17 2162 Q. That might be simply an effort on
18 the part of the lawyer and the institutional
19 investor to conduct adequate due diligence, right?

20 A. I think I want to put it in the
21 context of this particular activity. I don't think
22 it was proper.

23 2163 Q. Well, we'll get into that in the
24 courtroom, but the mere fact of somebody being
25 hired, a professional investigator, to do due

1 diligence on a company is not in and of itself
2 illegal or improper; would you agree with that?

3 MR. MOORE: I think he has already
4 answered that question four days ago.

5 THE DEPONENT: I have answered it.

6 BY MR. LASCARIS:

7 2164 Q. Is your answer yes, sir?

8 A. Well, I'll say -- could you ask
9 the question again? Sorry, I am not trying to
10 be -- just it is -- we have gone around this
11 maypole a couple of times, so could you please ask
12 the question again?

13 2165 Q. The mere fact that a lawyer or an
14 institutional investor hires a professional
15 investigator to investigate the affairs and
16 disclosures of a public company is not in and of
17 itself improper or illegal?

18 A. I agree with that statement.

19 2166 Q. Okay. At paragraph 251 and
20 continuing at 254 of the conspiracy affidavit you
21 allege that some or all of the Defendants used
22 encrypted and self-destructing messaging
23 applications such as Confide. Are you asserting
24 that Mr. Livesey himself used encrypted and
25 self-destructing messaging applications such as

1 Confide with one or more of the other Defendants in
2 the course of this conspiracy?

3 MR. MOORE: We'll let you know.

4 MR. LASCARIS: Okay.

5 U/T MR. MOORE: We have a motion
6 outstanding with respect to Confide which we are
7 going to pursue to find out who had accounts with
8 Confide, but specifically we'll let you know what
9 our current information is about that with respect
10 to Mr. Livesey.

11 MR. LASCARIS: Okay, I may be done. I
12 would just like to take a quick break. I may have
13 one or two more questions. Let me see what time we
14 are at.

15 MR. MOORE: Do you want to take the
16 morning break now?

17 MR. LASCARIS: That is fine, let's do
18 that. Thank you.

19 MR. MOORE: We'll come back at --

20 MR. LASCARIS: 11:30.

21 MR. MOORE: That is fine. Thank you.

22 -- RECESSED AT 11:15 A.M.

23 -- RESUMED AT 11:30 A.M.

24 MR. LASCARIS: Mr. Riley, subject to
25 the questions taken under advisement and refusals,

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 have been 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:

 "Similarly, the use of Dow
7 Jones property of this sort - i.e.,
8 forthcoming news, information or
9 advertising - as a basis for any
10 investment decision is strictly
11 prohibited. No employee with
12 knowledge of any such forthcoming
13 material may, prior to publication,
14 buy or sell securities or in any way
15 encourage or assist any other person
16 in buying or selling securities,
17 directly or indirectly, based on
18 that information. These strictures
19 should continue in force until the
20 third trading day after the content
21 or advertisement appears in a Dow
22 Jones publication or news service."

23 Now, you are aware of that being a
24 strict prohibition in the Dow Jones Code of
25

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.

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10 -- Adjourned at 3:17 p.m.

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1 REPORTER'S CERTIFICATE

2
3 I, DEANA SANTEDICOLA, RPR, CRR,
4 CSR, Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth, at which time the witness was put under oath
8 by me;

9 That the testimony of the witness
10 and all objections made at the time of the
11 examination were recorded stenographically by me
12 and were thereafter transcribed;

13 That the foregoing is a true and
14 correct transcript of my shorthand notes so taken.

15
16
17
18 Dated this 25th day of November, 2020.

19
20
21 

22 _____
23 NEESON COURT REPORTING INC.

24 PER: DEANA SANTEDICOLA, RPR, CRR, CSR

WORD INDEX

< \$ >

\$3 772:17
\$38 772:16
\$54,804,949
779:5
\$9,398,000
779:22

< 1 >

1(a) 709:18
1(e) 710:22
10:01 701:1
101 721:22
101.3 775:1
776:14
102 722:8
753:11
1023 834:9
103 753:1, 12
11 764:24
782:1 844:11,
12 853:21
11.6 764:25
765:4, 6, 9, 12,
17, 22 766:2, 15,
21 767:9, 12, 21
770:9
11:15 760:22
11:30 760:20, 23
110 763:23
111 763:24
112 763:24
766:1, 14 767:8
768:17
117 768:24
119 768:24
769:15 770:5
11th 752:9, 18
12 794:11, 12
12,000 709:12
12.3 765:18
766:9
12:59 824:20
126.1 710:24
126.2 710:25
13 786:5
130 729:3, 17
730:5 736:5, 12
131 736:6, 12
133 743:3
136 714:5, 9, 21
137 714:5, 9, 21
772:12

138 726:9
737:14, 16
738:3 740:20
741:22, 23
742:2, 8, 15
139 726:10
738:13, 15
739:13 741:19,
23 742:3, 8, 21
772:7
140 734:14
828:10, 12
141 734:14
142 743:12
143 743:13
744:15
144 749:10
145 747:24
749:11
147 736:6, 16
773:24
15 802:24
803:20
157 735:12
16 702:25 786:6
17 769:10
172 702:5, 7
827:18, 23
828:19 829:14,
22
173 827:18, 20,
24, 25 829:23
174 774:20
176 774:20
181 745:18, 21
747:2
182 746:25
184 779:4
185 776:23
186 779:20
18th 696:24
705:23 706:3, 5
19 792:10, 11,
13, 21, 23

< 2 >
2 834:20 835:2
2.5 766:23
767:24 768:6,
13, 16
2:00 824:21
20 696:23
2012 764:4, 16,
25 880:10

2013 769:8, 9
771:25 772:6
2014 773:4, 7,
25 775:24
795:4 865:9
867:10 880:7, 10
2015 755:24
773:5 774:21
775:17, 23
776:8 853:21
2016 775:25
776:8 779:15
803:21 804:1
853:21 854:17
2016/2017
789:11
2017 722:2, 14
735:16 738:7
742:15 744:13
791:3 792:7
794:19 795:11
810:18 812:2
815:24 816:16
818:21 819:13
830:5 846:17
847:11, 19
853:20 858:1, 2
2018 752:9, 18,
23 858:9, 13
861:8
2019 696:23
705:23 706:15,
17 707:4, 20
714:15, 17
721:22 726:10
734:14 736:6
743:4 749:10
791:23 862:10,
25
2020 696:23, 25
705:8 707:12
792:1, 2 883:18
2028 701:6
2029 701:18
2030 701:25
2031 705:2
2032 705:5
2033 705:11
2034 705:13
2035 705:15
2036 705:18
2037 706:4
2038 706:6
2039 706:11

2040 706:17
2041 706:20
2042 706:24
2043 707:1
2044 707:4
2045 707:7
2046 707:10
2047 707:14
2048 707:18
2049 707:23
2050 707:25
2051 708:16
2052 708:25
2053 709:7
2054 709:14
2055 710:8
2056 710:18
2057 710:22
2058 711:7
2059 711:11
2060 711:15
2061 711:20
2062 711:22
2063 712:2
2064 712:8
2065 713:11
2066 713:18
2067 713:20
2068 713:23
2069 714:3
2070 714:8
2071 714:13
2072 714:20
2073 714:25
2074 715:3
2075 715:18
2076 716:2
2077 716:17
2078 716:23
2079 717:11
2080 717:15
2081 718:4
2082 718:13
2083 718:16
2084 719:11
2085 719:16
2086 719:18
2087 719:24
2088 720:6
2089 721:7
209 701:8, 20, 23
2090 721:14
2091 721:17
2092 721:21

2093 721:25
2094 722:19
2095 723:1
2096 723:9
2097 723:12
2098 723:17
2099 723:20
21 793:15
796:7, 9
2100 723:22
2101 724:10
2102 724:15
2103 725:7
2104 726:9
2105 727:18
2106 728:10
2107 728:21
2108 729:3
2109 729:25
2110 730:3
2111 731:6
2112 731:18
2113 734:12
2114 734:20
2115 735:3
2116 735:14
2117 736:3
2118 736:11
2119 736:14
2120 736:16
2121 736:24
2122 737:2
2123 737:4
2124 737:14
2125 738:1
2126 739:8
2127 740:5
2128 740:19
2129 741:9
2130 741:21
2131 741:25
2132 742:5
2133 743:2
2134 743:8
2135 744:23
2136 745:18
2137 746:4
2138 747:11
2139 747:24
2140 749:5
2141 749:8
2142 752:4
2143 752:13
2144 752:17

2145 752:22	22 767:10, 24 772:6	2252 785:7	2304 796:11	2358 812:19
2146 753:1	2200 769:18	2253 785:10	2305 796:15	2359 813:9
2147 753:11	2201 769:24	2254 785:15	2306 796:20	2360 813:16
2148 753:16	2202 770:3	2255 785:20	2307 796:23	2361 813:22
2149 754:3	2203 770:20	2256 785:24	2308 797:3	2362 814:5
2150 754:6	2204 771:3	2257 786:1	2309 797:10	2363 814:8
2151 754:18	2205 771:15	2258 786:11	2310 797:17	2364 814:12
2152 754:22	2206 771:20	2259 786:15	2311 797:22	2365 815:6
2153 755:5	2207 772:3	2260 786:22	2312 798:4	2366 815:16
2154 755:12	2208 772:8	2261 787:1	2313 798:8	2367 815:19
2155 756:10	2209 772:19	2262 787:3	2314 798:14	2368 816:3
2156 756:21	2210 772:22	2263 787:12	2315 799:20	2369 816:7
2157 757:7	2211 773:2	2264 787:19	2316 799:24	2370 816:14
2158 757:10	2212 773:7	2265 788:1	2317 800:4	2371 816:21
2159 757:16	2213 773:10	2266 788:5	2318 800:9	2372 818:13
2160 758:2	2214 773:17	2267 788:10	2319 801:2	2373 818:25
2161 758:6	2215 773:20	2268 788:15	2320 801:5	2374 819:5
2162 758:17	2216 773:23	2269 788:20	2321 801:18	2375 819:11
2163 758:23	2217 774:6	2270 788:23	2322 802:1	2376 819:20
2164 759:7	2218 774:19	2271 789:1	2323 802:14	2377 820:1
2165 759:13	2219 774:25	2272 789:6	2324 802:21	2378 820:9
2166 759:19	2220 775:5	2273 789:9	2325 803:19	2379 820:16
2167 761:6	2221 775:9	2274 789:14	2326 803:24	2380 820:18
2168 761:8	2222 775:15	2275 790:2	2327 804:5	2381 820:24
2169 761:13	2223 775:21	2276 790:5	2328 804:9	2382 821:3
2170 762:2	2224 776:5	2277 790:8	2329 804:17	2383 821:6
2171 762:9	2225 776:10	2278 790:12	2330 804:25	2384 821:10
2172 762:21	2226 776:22	2279 790:18	2331 805:3	2385 821:20
2173 762:24	2227 777:4	2280 790:23	2332 806:1	2386 822:10
2174 763:6	2228 777:7	2281 791:2	2333 806:13	2387 822:23
2175 763:20	2229 777:13	2282 791:15	2334 806:23	2388 823:13
2176 764:3	2230 778:9	2283 791:19	2335 807:1	2389 823:16
2177 764:7	2231 778:24	2284 792:4	2336 807:3	2390 824:23
2178 764:10	2232 779:11	2285 792:9	2337 807:15	2391 825:6
2179 764:12	2233 779:21	2286 792:12	2338 807:19	2392 825:9
2180 764:20	2234 780:1	2287 792:14	2339 808:6	2393 825:13
2181 764:24	2235 781:3	2288 792:23	2340 808:13	2394 825:19
2182 765:3	2236 781:9	2289 793:4	2341 808:25	2395 825:24
2183 765:11	2237 781:13	2290 793:9	2342 809:3	2396 826:19
2184 765:15	2238 781:19	2291 793:14	2343 809:5	2397 827:2
2185 765:20	2239 781:21	2292 793:19	2344 809:9	2398 827:6
2186 766:5	2240 782:2	2293 793:23	2345 809:11	2399 827:16
2187 766:12	2241 782:7	2294 793:25	2346 809:16	23rd 861:8
2188 766:20	2242 782:11	2295 794:3	2347 809:22	2400 828:2
2189 767:2	2243 782:16	2296 794:7	2348 809:25	2401 828:7
2190 767:6	2244 783:8	2297 794:10	2349 810:3	2402 828:11
2191 767:12	2245 783:13	2298 794:15	2350 810:7	2403 828:16
2192 767:16	2246 783:21	2299 794:17	2351 810:12	2404 829:7
2193 767:20	2247 784:7	23.9 764:21 765:10, 12, 17	2352 810:15	2405 829:14
2194 768:2	2248 784:14	2300 795:6	2353 810:25	2406 829:21
2195 768:5	2249 784:18	2301 795:17	2354 811:7	2407 830:3
2196 768:12	2250 784:23	2302 795:20	2355 811:12	2408 830:5
2197 768:23	2251 785:3	2303 796:1	2356 812:4	2409 830:11
2198 769:3			2357 812:15	2410 830:16
2199 769:15				

2411 831:5	2464 849:18	2515 864:14	29 696:23 705:8	710:5 699:22
2412 831:12	2465 850:1	2516 865:4	29th 705:12	711:4 699:15
2413 831:19	2466 850:4	2517 865:15		72.2 794:13
2414 831:25	2467 850:12	2518 865:19	< 3 >	795:23
2415 832:9	2468 850:17	2519 865:22	3 872:19	726:6 699:15
2416 832:14	2469 850:24	2520 866:4	3:17 882:10	727:1 699:15
2417 832:16	2470 851:5	2521 866:9	30 862:10, 25	728:15 699:15
2418 832:19	2471 851:15	2522 866:17	31 773:25	728:25 699:22
2419 833:2	2472 851:21	2523 866:23	774:21 775:16,	728:7 699:15
2420 833:10	2473 852:2	2524 867:2	19, 23 821:3, 14	730:21 699:15
2421 833:24	2474 852:15	2525 867:9	353 853:12	736:1 699:15
2422 834:2	2475 852:21	2526 867:14	857:20 858:4	74 724:16, 19
2423 834:7	2476 853:3	2527 867:20	37 769:25	746:17 699:16
2424 834:13	2477 853:11	2528 868:6	770:6, 11	747:19 699:16
2425 834:19	2478 853:16	2529 868:9		748:25 699:16
2426 835:1	2479 853:22	2530 868:14	< 4 >	75 809:7
2427 835:7	2480 854:4	2531 868:20	4 708:1 834:20	760:5 699:16
2428 835:11	2481 854:9	2532 868:25	835:1 872:7	761/23 700:16
2429 835:19	2482 855:1	2533 869:4	40 847:3	768:20 699:22
2430 835:22	2483 855:8	2534 869:11	4-10 696:13	770:24 699:22
2431 836:1	2484 855:12	2535 869:16	43 833:18	774:16 699:22
2432 836:11	2485 855:21	2536 869:23	441 702:16	776:20 699:22
2433 836:19	2486 855:25	2537 870:5	450 709:19	778:21 699:16
2434 836:24	2487 856:3	2538 870:9	4th 707:12	7th 706:15, 17
2435 837:7	2488 856:5	2539 870:14		
2436 837:12	2489 856:8	254 759:20	< 5 >	< 8 >
2437 837:17	2490 856:14	2540 871:8	5 696:23 806:3	8 821:14
2438 839:10	2491 856:19	2541 871:13	500 708:14, 21	807:25 699:23
2439 839:25	2492 857:4	2542 871:17	54 778:17	809:15 699:16
2440 840:7	2493 857:12	2543 871:23	54.8 778:24	813:14 699:23
2441 841:12	2494 857:19	2544 872:2	55 777:10	813:2 699:23
2442 841:19	2495 857:23	2545 872:6	778:11, 25	813:20 699:23
2443 841:22	2496 858:3	2546 872:19	57 712:8, 21	815:14 699:17
2444 842:1	2497 858:8	2547 872:24		815:25 699:23
2445 843:13	2498 858:11	2548 873:3	< 6 >	816:10 699:23
2446 843:21	2499 858:16	2549 874:3	6 806:14	816:19 699:24
2447 843:25	25 712:2	2550 874:7	60 793:16	818:1 699:24
2448 844:17	819:13 820:24	2551 874:10	795:23 796:2, 5,	818:23 699:24
2449 845:4	2500 858:22	2552 874:15	6, 12	82 755:12
245 752:4, 12	2501 859:5	2553 874:20	60.2 774:3, 8, 15	824:9 700:7
2450 845:9	2502 859:11	2554 875:4	63 716:20, 22	826:14 699:17
2451 845:15	2503 860:2	2555 875:9	717:16	827:14 699:24
2452 845:20	2504 860:15	2556 875:20	66 780:15	83 725:7
2453 846:19	2505 860:19	2557 876:5	791:8 796:13	839:21 700:7
2454 846:25	2506 861:3	2558 877:15		84 847:3
2455 847:7	2507 861:13	2559 877:25	< 7 >	840:13 700:8
2456 847:13	2508 862:9	2560 878:21	7 700:14	852:12 699:24
2457 847:25	2509 862:15	2561 879:2	761:22, 23	856:11 699:24
2458 848:2	251 759:19	2562 880:3	810:18 863:11	858:14 699:17
2459 848:14	2510 862:18	2563 880:13	7.9 767:17, 22	861:1 699:17
2460 848:22	2511 862:21	25th 883:18	770:10	871:2 699:17
2461 849:6	2512 862:23	27th 752:23	702:13 699:14	875:14 700:8
2462 849:9	2513 863:3	28 846:21	71:17 879:18	875:23 700:8
2463 849:16	2514 863:8	28th 702:6	710:20 699:14	876:14 700:8

877:19 700:8
878:25 699:17
882:3 700:8
8th 707:20
820:3 821:11
822:18, 25 823:4

< 9 >
9 735:16 806:3,
24 815:23
846:17 847:11,
19
90 735:3
97 755:20

< A >
A.J 698:5
716:21
a.m 701:1
760:22, 23
absence 749:21
absent 809:12
absolute 842:17
absolutely
728:13
abstract 758:11,
12
accept 703:20
acceptable
761:19 762:15,
17 803:14
805:13, 24
accepted
720:17 771:22,
24 783:24
784:15
access 725:17
726:3, 12, 19
accessible
859:25
accomplishment
715:19
accords 708:12
account 704:12
715:20 850:3
Accounting
777:2
accounts 760:7
777:20
accumulated
770:12
accurate 757:4
accurately
863:21

accused 845:22
ACF 696:10
acknowledge
834:23
acknowledged
737:17
acquire 709:5
780:18 781:5
783:10
acquired 773:12
775:11
acquisition
783:21
Act 710:25
711:3 713:8
727:9, 14
acted 745:23
747:3 814:17
action 705:14
710:4 716:7
721:3 727:6
746:7, 10, 13, 20
747:13, 14
761:10 811:9
833:19 849:10
863:13 867:25
868:22 876:16,
18 877:2 878:4
Actions 712:13,
24 713:14 715:6
active 856:23
actively 807:16
activities 851:1,
10 852:22, 25
activity 758:21
860:5 871:18
acts 814:16
actual 724:11
726:22 812:5
839:17 840:1,
19 845:2
ADAM 696:11
add 767:23
added 803:6
additional
704:12 766:2,
13 770:9
797:18, 19
address 702:2
838:25
addressed
847:14
addressing
854:20

adequate 758:8,
19
Adjourned
882:10
adjustments
764:13
ADMIRALTY
696:9
adopt 854:2
868:19
advance 762:23
767:16
advanced 766:8,
21 767:21
advances
766:13 770:8
774:9 776:15
advertisement
873:22
advertising
873:10
advice 716:1, 3
832:7, 17
advise 726:6
730:22 734:4
743:17 831:4
877:16 878:24
advised 710:11
738:8 744:7
810:10 831:4
858:20 859:8
advisement
699:20 710:6
729:1 746:8
760:25 768:21
770:22, 25
774:17 776:13,
19 807:24
808:1 813:3
815:3 816:1, 11
818:3, 11
827:13 842:25
852:5, 13 854:7
856:9, 11
advisements
699:8, 19
advising 833:8
advisor 857:18
Advisor.ca
864:24
ADVISORS
696:8, 9 857:15
affairs 757:22
759:15

affidavit 701:8,
9, 13, 21 702:16
705:8, 16
706:14 707:11,
12, 19, 21 708:1,
18 714:6, 10, 15
720:21, 24
721:23, 24
722:12 726:10
733:2, 14, 19
734:9, 15 736:6
743:4, 5 744:25
745:14 749:6,
10 752:5 753:2,
5, 10 755:13
759:20 762:4, 5
763:23 765:12
768:18, 24
770:5 772:2, 7
773:24 774:20
776:23 782:17
786:4, 5 792:10,
12, 16 794:4, 11,
20 795:5, 12
797:18 798:4
802:23 806:2,
23 807:22
815:11, 18
819:15 826:16
827:17 831:17
832:23 833:13
837:5 846:3, 8
847:3 849:14
853:8, 10, 12, 14
854:16 855:11,
18, 19 856:16
857:20 858:1
872:7, 21
874:11 876:10
878:5, 13
affidavits
696:23 703:17
706:23 728:12
731:12 736:18
743:22 762:3
837:6 868:15, 18
AFFIRMATION
701:3
afoot 744:12
after 747:18
777:10 833:3
850:21 857:24
858:18 873:21
878:24

agency 830:20
836:4, 14 837:14
agent 789:20,
21 805:11
agents 790:4, 6
ago 707:24
730:11, 14
759:4 784:8, 16
819:6
agree 721:7
737:1, 3 756:24
759:2, 18
762:13 768:4,
10 781:14, 19
782:16 805:21
829:22 835:22
845:4 847:8
848:15 874:20
agreed 735:4
773:13 834:3
880:5
agreeing 875:2
agreement
721:9 737:4
766:4 786:21,
23 787:20, 22
791:12 804:14
agreements
712:18
ahead 708:3
737:2 825:6
877:6
AIMF 696:10
aiming 781:1
ALBA 696:18
697:10
alerted 869:17,
18
allegation
702:18 713:21
715:8, 12
716:13 717:22
719:5, 25
729:20 732:25
734:22, 24
735:1 737:6, 12
738:21 739:2,
24 740:11, 22
741:10 742:25
748:16 749:23
750:2 756:8
835:23, 25
allegations
710:12 715:22
725:14, 19

742:14 750:6 751:12, 14 843:22, 23 846:16 867:23 875:5, 12 allege 712:10 740:14 759:21 alleged 711:8, 13, 17, 24 716:24 717:17 718:25 724:18, 24 725:8 727:14 729:4 733:16 735:4, 15 738:4, 14 742:3 747:25 851:17, 19 866:12 874:22 allegedly 724:24 alleges 702:17 alleging 711:1 712:22 713:11 725:25 726:5 729:11, 18 730:6, 15 735:23 738:19 739:3, 8 740:6 741:13 745:21 746:18 747:20 748:13, 19 811:10 allowed 824:12 862:13 alongside 709:4 Amended 705:22 709:15 766:3 amount 708:17 765:22 766:2 770:6 772:8, 11, 14 774:7 775:7 776:13 amounts 770:14 774:11 776:17 and/or 716:24 717:17 720:13 730:7 797:25 830:8 835:24 866:5 ANDERSON 696:11 697:22 725:16 726:3, 13 729:9 827:22 828:2, 9, 14 829:11	830:13 837:9 841:19 845:7, 8, 18 859:5, 7, 16 860:3, 17 869:24 870:20, 25 Anderson's 832:20 834:22 Andrew 717:23 722:6 angels 712:14 announcement 792:5 803:25 anonymous 848:20 ANSON 696:8, 9, 10 701:16 860:11, 13, 16 answered 731:18 732:6 754:11 759:4, 5 763:10 812:10 839:4 852:11 857:9 answering 751:25 answers 730:22 826:12 842:10 843:3 847:23 877:11 880:25 anticipated 762:25 anti-SLAPP 706:15 707:11 751:11 anybody 837:11 860:15 864:11 869:12 anymore 862:14 anyway 715:15 870:23 880:20 apart 820:9 859:15 860:2 apologize 706:2 753:2 776:9 792:19 794:9 800:6 825:12 872:17 875:11, 22 876:1 apologizing 762:23 appear 699:14, 21 700:7 appeared 861:4	appears 822:4 873:22 appended 846:8 application 798:10 applications 759:23, 25 appreciate 704:20, 21 710:11 770:20 approach 720:24 approached 738:7 743:14 appropriate 751:10, 15 approval 797:25 798:1, 5, 14, 15, 19, 21 799:5 808:10, 25 approximate 724:23 approximately 706:21 707:4 772:16 794:15, 16 April 752:9, 18 755:24 880:7, 10 area 779:14 847:14 argue 715:14 716:17 721:14 727:10 874:15, 17 argued 727:19 arguing 875:17 argument 799:7 845:25 846:4 argumentative 875:1 arises 881:5 arising 879:4 880:24 881:18 arm's 769:9 arose 880:14 arrangement 800:25 806:5, 9 808:24 822:22 arrangements 805:23 article 717:1, 19 719:20, 23 722:17 746:2 747:15, 18 752:10, 18, 23	810:1, 4, 11 811:19 817:17 840:4 841:8 846:8 847:10 848:11, 18 853:6, 25 855:5, 16 856:21 857:8, 25 858:19 859:22 861:8, 13 864:5, 21, 24 865:9, 17, 24 866:22 867:6 868:3 869:21 articles 747:16, 21 752:7, 8 815:23 847:20 852:17 861:3 864:9, 18 ascertain 834:16 aside 834:4 asked 704:2 719:14 720:3 730:14 741:6 746:5 750:15 753:3, 4 799:9 802:25 821:21 822:1 831:10 832:4 834:2 880:4, 18, 19 881:19 asking 705:6, 21 731:19 732:4, 23 733:24 734:6 739:4, 23 740:14 741:3, 12 744:1 745:4, 5, 6 748:24 750:13 751:19 758:11 774:13 779:3 811:17, 20 812:7 818:4 819:15 821:23 824:6 825:10 833:25 834:1 836:11, 12, 19 837:8 838:3 842:20 881:10, 17 assembled 829:15 asserted 746:10	asserting 710:3 746:6, 13, 15 747:12 759:23 assess 757:3 assessing 757:20 asset 775:11 777:8 778:5 780:19 790:21 assist 873:16 assistance 699:10 729:8 assisted 744:9 assume 727:20 775:2 812:12 849:12 866:24 assuming 746:23 attach 831:16 833:1 attached 807:5, 21 829:23 832:23 833:9, 12 attaches 813:12, 18 828:20 829:1 attack 854:21, 24, 25 attacks 811:10 attempting 751:23 attempts 742:19 attending 696:24 828:4 attention 752:10 audio 714:23 822:25 August 696:23 722:2, 14 735:16 748:2 769:9 791:2 792:7 815:23 816:15 818:21 820:3 821:11, 14 822:17, 25 823:4 830:5 846:16 847:11 Australia 807:12 author 865:1 authorized 875:9 available 708:14 767:9, 22 avers 749:11 avoid 763:11, 20
--	---	--	---	--

<p>aware 714:3 727:5 731:7, 23 732:20, 24 733:5 734:5, 12, 17 736:3, 8, 16 742:18 748:21 749:8 810:4 811:1, 5, 15 812:6, 12 819:16, 20, 25 820:10, 12, 17 821:10, 13, 24 822:10 823:1 825:9, 14 826:11, 12, 20 830:6 831:14, 18, 19, 21 832:1, 3, 12 836:8, 13, 20 837:15 839:25 848:22 849:19, 20, 25 850:18 861:13 865:25 868:8 869:4, 7 873:24 874:10 ax 844:21, 24 axes 844:3</p> <p>< B > B.C 696:19, 20 B00000473 802:8 back 702:3, 13 717:4 723:14 724:17 733:3 746:22 760:19 767:6 772:1 777:14, 15, 16 781:5, 23 795:15 811:25 813:6 815:3 818:11, 25 821:1 822:18 825:17 839:13 843:16 855:23 864:4 879:3, 15 background 822:20 bailliwick 878:17 balance 765:12 779:4 balanced 720:14 bar 715:19 Barristers</p>	<p>698:21 base 717:22 based 719:25 725:5 738:10 740:25 747:14, 16 765:21 778:3, 6 807:17 823:2 873:18 basic 786:2 basically 786:8 basis 710:10 823:19 840:16 863:14 873:10 877:17, 23 BAUMANN 696:12 698:15 830:13 835:13, 23 837:10, 19 838:15 839:1 841:19 842:22 845:5, 16 Baumann's 837:25 BC 698:8, 10 bear 763:13 began 803:25 behalf 722:10 787:23 797:9 814:9, 12, 14, 17 818:16 826:25 belief 719:7, 12 747:19 754:20 860:22 believe 725:6 740:25 746:8 756:13 761:21 775:19 787:22 798:11 803:22 820:2 822:14, 19 826:6 830:9 835:21 853:7 870:1 believes 781:2 BENJAMIN 697:4 best 707:16 711:14 752:14 763:12 791:14 851:9 better 791:23 877:19 bid 784:13 big 817:22</p>	<p>bit 806:10 817:9 826:7 847:15 BLACK 696:19, 20 698:10, 12 702:17, 19 blank 831:2, 5 blind 828:15 Board 808:8, 21, 22 body 734:7 BOLAND 696:8, 13 697:18 698:17 707:20 716:24 717:18 718:6, 9 719:2, 6, 8 720:1 721:10, 19 722:23 724:18 878:2, 14 borrower 764:18 765:15 844:9 845:8 borrowers 844:1, 18 850:5, 6 857:17 borrower's 783:10 bottom 834:10 bought 765:4, 8 771:17 box 835:8 boxes 835:3, 8 Boyer 850:15 851:18 852:7 853:24 854:23 Boyer's 850:20 851:1, 10 852:22 Braslyn 800:17 801:1, 3, 13 804:10, 14 805:13 808:12 breach 851:18 852:7 869:5 breached 710:24 break 728:5 760:12, 16 764:14 824:15 breakdown 770:23 774:14 brief 700:14 761:23 803:12 862:3, 6 865:7 866:18</p>	<p>briefed 810:21, 22 briefly 876:6 bring 702:24 broad 732:22 866:11 broader 734:6 broadly 780:2 broke 772:23 806:10 809:18 817:8 brother 794:9 brought 789:16 790:3, 9 BRUCE 696:11, 13 698:5, 22 705:6 714:10 business 769:8 780:2, 21 781:12 783:11, 17 784:15, 19, 20 844:20 847:18 852:24 861:5 businesses 757:2 780:8 844:2 buy 769:10 781:7 788:7 873:15 buying 873:17 buyout 801:3 bypass 866:15</p> <p>< C > c.o.b 696:8 call 709:17 754:17 769:19 774:22, 25 775:5 846:3 854:24 879:3 called 789:20 807:3 824:11 879:20 CALLIDUS 696:5, 18 697:6 709:7, 8, 12 712:10 719:22 720:13 722:15 724:20 729:11, 20 730:8 731:9, 25 734:16 735:6, 20, 25 736:8, 19 737:7, 20 738:12, 21</p>	<p>739:10 740:8, 24 741:16 748:8, 15 756:2, 7, 12 764:17, 25 765:4, 20 766:8, 13, 17, 21, 22 767:9 768:7 769:10, 11, 25 770:8, 14 771:4, 17 772:11, 14 773:8, 25 774:9, 12, 22 776:17 777:18 780:3, 17, 25 781:14, 15, 24 782:5, 12, 22 783:5, 8, 9, 15, 22 784:8, 9, 11, 13, 14, 20, 22, 24 785:2, 11, 12, 21 792:24 793:5, 13, 17, 20 794:23 795:10, 15 796:25 798:13 799:22 800:1, 19, 21 805:13, 19, 20 809:17, 22, 25 810:15 811:14, 15 812:6, 20 814:9, 13, 19 815:8 816:18 825:1 826:4 830:8, 17 831:25 835:15, 24 836:7 841:22 842:8 843:18 844:1 845:11, 22 846:7, 14 847:9, 18 849:12, 24 850:6, 18 852:6, 18 854:18 858:18 859:18, 20, 23 861:5 866:4 867:24 868:3, 7, 25 871:13 875:5, 10 880:9 Callidus/Catalyst 741:4 Callidus's 771:8 797:14 799:12 808:8 840:9 841:16 842:2</p>
--	--	--	---	---

850:25 calling 748:18 calls 817:6, 11 818:15 821:17 822:7 campaign 756:1, 7, 12 Canaccord 735:7 CANADA 696:8 757:11 Canada's 756:25 Canadian 774:1, 3, 8, 15 775:2 776:14 777:16, 19, 21 778:4, 5, 12, 18 779:8 867:11 candour 848:25 849:4, 6, 7 CAPITAL 696:5, 8, 9, 13, 18 697:5, 7, 17 698:17, 19 708:5 756:25 757:12 767:17, 22 770:11 782:25 835:15 carbon 828:15 careful 791:24 799:4, 6 case 713:23 716:7 721:3 727:10 736:17 781:13, 14 783:11 789:23 790:8 791:2 802:2 808:20 840:24 844:10 845:5, 6 846:9, 11 851:18 866:3, 25 867:13 cases 712:15 781:8 843:25 cash 794:25 795:3 796:18 cash-out 861:11 864:2 CATALYST 696:5, 10, 18 697:5 702:18 708:5, 8 709:1, 2, 6 712:10 718:1, 2 719:22 720:13 722:2,	15, 21 723:2, 6, 25 724:20 729:11, 19 730:8 731:9, 25 734:16 738:21 739:11 740:24 741:16 748:9, 15 773:13, 17 774:22, 25 775:6, 7, 10, 12 777:8 778:3 779:16 780:3, 9, 17 781:24 782:5, 9, 22, 23 783:2, 3, 5, 10, 19, 20 784:9, 20, 21 785:4, 16, 22 786:3, 8, 19, 24 787:17, 20 788:15, 20 789:2, 4 790:9, 24 791:3 792:5, 6 793:1 795:10 796:20, 24 797:4 799:21 800:1, 19 801:7 804:10, 14 805:16, 17, 18 810:15 811:14 812:6, 20 814:9, 13, 18 815:8 816:18 825:1 826:3 830:8, 18 832:1 835:24 836:7 840:9 843:18 845:11, 23 846:6 847:9 849:12, 24 850:6, 18, 25 852:18 859:18, 23 861:5 866:5, 6, 11 867:23 868:25 871:13 875:5, 10 880:4, 6, 8 Catalyst's 717:1, 19 777:2 798:17 799:12 catch 867:10 categorically 868:15 category 867:4 caused 719:11 caution 762:18	CCAA 782:1 866:7 ceased 855:4 cents 809:7 CEO 698:17 784:25 785:2 certain 781:7 certainly 710:8 727:24 746:18 755:8 810:8, 25 831:20 CERTIFICATE 883:1 Certified 883:4 certify 883:4 cetera 732:20 733:5 734:9 742:16 744:10 747:3 751:7 Chair 794:5 800:22 808:7 chance 838:14, 15 change 799:25 824:16 changes 795:9 855:8 chapter 782:1 844:11, 12 characterization 799:15 charge 867:20 charged 766:17, 22 774:11 790:16 charges 770:14 774:11 776:16 check 826:15 835:3, 4, 7, 8 848:3 871:2, 4 checked 835:8 Chief 708:7 814:15 circular 801:20 802:4 807:4, 7, 21 circumstances 758:3 circumstantial 732:17 734:8 cite 734:21 766:24 civil 709:25 Claim 705:23, 25 706:1	709:15, 17 710:13, 22 712:3, 9 713:21 716:21 717:16 718:23, 24, 25 724:16, 17 725:8 727:3 728:14 729:4 735:3, 12, 13, 14 737:15 738:3, 24 745:19 747:25 750:19 810:16, 24 813:17 874:24 877:17 claimed 722:9 815:9 836:9 842:17 claims 811:8 clarification 718:17 751:22 799:10 clarify 701:9 730:9 733:24 Clarity 725:17 726:3, 13 CLARITYSPRING 696:11 697:21 clear 711:1 716:8 744:1 766:7 813:22 818:18 852:5 clearly 751:12 813:12 client 731:22 732:25 733:17, 20 739:2, 4 746:7, 10, 14, 16 747:17 749:22, 24 750:7 790:9 817:18 clients 789:15 client's 821:22 close 735:8 809:3 closed 809:6, 8 closely 802:3 closing 772:15 co-authored 747:17 752:7 co-conspirator 735:7 co-conspirators 733:16	Code 871:20, 25 872:5, 8, 20 873:25 Cohen 865:9, 14, 18 co-investor 790:14 collateral 845:3 colleague 761:13 861:7 colour 822:20 come 746:22 752:10 754:7 760:19 767:6 808:18 814:23 852:2 853:16 857:21 comes 744:21 860:16 864:23 Coming 803:19 813:22 commenced 711:12, 23 803:20 811:9 commencing 701:1 comment 751:24 866:19 COMMERCIAL 696:3 Commission 831:13 836:3 837:13 871:10 commitments 778:1 committed 708:13 791:10 Committee 785:14 794:5 798:12 801:9, 10, 25 804:11 808:7, 18, 22 committee's 808:13 common 747:1 756:25 793:13 communicated 723:4 743:19, 23 744:14 749:18, 22, 24 communication 819:21 870:8 communications 704:13 733:15 734:9 742:16
---	--	---	---	--

744:2, 4, 25 745:5, 7, 8, 11 754:13 755:10 815:9 818:14 825:18 836:12 871:5 companies 757:3, 14 Company 698:1 757:22 759:1, 16 780:22 865:25 866:16 869:6 compare 741:5 833:3 compared 823:14 833:11 comparison 823:7, 9, 18 824:2, 7 834:4 compensated 708:20, 23 complained 711:8, 16 complaining 839:10 complaint 729:10, 19 730:7 731:8, 24 733:20 734:2, 16, 23 831:6 832:20 834:22 835:4, 14 837:20 838:21, 23 842:6, 17, 18, 23 871:9 complaints 731:11, 17, 20 738:9 824:24 825:2, 21 826:1 830:7, 18 831:13, 16 832:6, 11, 12 836:6, 15 837:8, 9 841:17, 18, 24 842:2, 4 843:8, 18 845:24 complete 761:17 completed 775:19 833:21 851:2, 4 852:23 855:16 856:20 857:7	completely 817:17, 18 863:11 complex 830:24 compliance 831:20 832:5 840:10, 11 concern 850:19 851:15 concerned 744:16 746:5 850:7 851:21 concert 745:23 747:3 concluded 857:2, 11 conclusion 808:18 851:10, 12 852:3, 7 853:4 conduct 758:8, 19 850:20 871:21, 25 872:8, 21 874:1 conducted 782:12 conference 754:17 Confide 759:23 760:1, 6, 8 confidence 848:25 849:6, 7 confirm 711:5 739:1 754:18, 23 756:4 765:3 766:7, 14 809:16 825:18 877:16, 25 878:12 confirmed 719:9 755:8 confirming 773:2 confused 776:3 783:4 confusion 872:4, 6 connection 710:12 718:22 731:11, 12 857:17 878:3 considerable 708:17 consideration 804:16	considered 800:20 801:15 838:23 consistent 847:24 conspiracy 701:9, 22 705:7, 16 708:1 710:1 713:7 716:7 721:3 724:25 725:21 727:2, 6, 14 735:17 746:19 747:2 748:20 750:4, 6 753:2 759:20 760:2 762:5 786:4, 5 792:9, 12, 17, 18 811:9 826:16 827:17 849:10, 13 853:11, 14 857:19 867:24 868:22 869:19, 20 874:23 876:16 878:4 Conspirator 712:4 727:8 731:2 Conspirators 712:15, 20 713:8 716:10 725:10, 11, 16, 23 727:4 729:6, 7, 15 730:4 731:14 735:4, 8, 18 738:5, 6, 18 740:17 745:22, 24 747:3 748:2, 3 conspire 724:19 constant 794:18 constituent 750:4 contact 720:16 740:15, 16, 17 742:24 744:8 820:11, 13 contacted 720:12 724:18 744:7 748:4, 14, 17 749:2, 12, 24 830:23, 24 contacts 742:16 811:12 812:5, 23 813:10	816:24 818:17 819:2, 5 824:25 825:16 830:17 contain 743:22 contained 746:1 containing 725:18 contains 744:25 CONT'D 700:3 CONT'D)..701- 704 699:4 contemplated 815:21 contemporaneou s 720:25 752:15 contemporaneou sly 752:17 807:18 content 770:21 834:13 852:11 863:10 873:21 contents 720:23 context 742:9 751:10, 15 753:18 758:21 762:12, 13, 14 768:25 805:15 continue 873:20 Continued 696:22 701:5 773:4 792:25 continuing 725:20 759:20 805:16, 17, 19 continuous 836:22 837:4 contract 816:16 contracts 816:17 control 780:10, 11, 12, 13, 15, 18 783:10, 22 784:19 788:20 793:25 797:5, 7, 11 controlled 793:16 796:20 convenient 824:15 conversation 837:2 conversion 778:7 convert 777:21	778:5, 19 COO 785:18 COPELAND 696:11 697:25 745:24 748:5, 7, 14 749:2, 13, 18, 22, 24 820:5 829:25 859:8, 12 867:24 868:2, 23 869:12 870:10, 15, 19 871:11 874:5, 23 875:6, 11 Copeland's 819:14 874:10 876:10 copied 733:4 copies 762:14 811:8 copy 702:5 706:7, 9 707:7, 8 714:15, 17 723:7 803:17 804:20 807:20 810:9, 19, 23 828:15 corporate 786:15, 22 787:1, 16, 19 788:16, 21 CORPORATION 696:5, 18 697:7 835:15 correct 705:12, 13 706:4 707:6 710:2, 15 711:3, 25 717:21 720:5, 7 721:25 724:14 733:1 745:9, 15 756:4 758:2, 9 761:11 765:1, 2, 13, 14, 19, 23 766:11, 23 767:10, 11, 14 768:1, 8 769:12 771:13, 14, 25 773:5, 6, 8, 16, 19 774:4, 5, 24 775:4, 7, 12 776:8 777:11 779:6 781:16 782:6, 20 783:24 784:17, 20, 23,
--	---	--	---	---

24 785:5 786:9,
10, 13, 14, 16
787:17, 18
788:8, 11, 22, 25
789:5, 8, 16
790:25 791:1,
18 793:2, 17
795:25 796:19,
22 797:1, 2, 6,
16 798:2, 3, 17
799:4 803:21,
22 806:24
809:2 815:24
816:6 818:22
819:11 820:16
827:22 828:5
829:13, 17
830:1, 3, 4, 8
831:22, 24
832:23 834:9
835:24 836:1
845:7, 12, 18, 19
846:1 847:12
848:7, 18 854:1,
6, 10 855:7, 17
856:1 859:6
863:2 868:4, 5,
12, 13, 16, 23, 24
876:13, 14
877:18 878:23
883:14
corrected 702:1
correcting 754:4
correction
701:15 854:12
correctly
737:16 741:19
868:18
correspondence
817:3 819:21
Counsel 698:18,
23 699:10
705:5 716:1, 4
746:8 750:17,
20 761:8
768:15, 19
770:21 774:13
776:5 795:8
802:6 813:6
814:16 815:12
819:7, 9 820:6
827:17 832:7,
16 839:14
867:2 871:17
878:2, 15 881:19
count 867:17
Counterclaim
696:16, 21
697:4, 9, 16
698:8 853:24
878:3, 15
country 863:6
couple 701:6
707:19 759:11
763:17 813:19
864:16, 17
course 700:15
718:7 719:3
754:8 760:2
761:24 794:24
820:1 879:6
Court 696:1, 2
714:22 751:21
797:25 798:5,
14, 18 808:10,
15 824:4
838:16 844:10,
20 845:1 883:23
court-appointed
782:15 783:16
courtroom
758:24
court-
supervised
844:16
cover 773:13
880:5, 9
covered 763:14,
17
COVID-related
792:1
cratered 791:25
created 786:8
creating 849:11
credible 843:19,
23, 24 844:5, 22
845:10, 25
credit 767:9
785:14
criminal 729:13
835:14 837:20
838:21, 23
criticize 867:1
criticized 878:18
Cross-
Examination
696:22 699:4, 5,
6 700:16 701:4
703:22 705:1,
19 706:13
707:18 761:5,
25 839:6 881:1,
6
cross-
examinations
704:15 708:19
cross-examine
744:21 876:21
cross-examining
737:18
CRR 698:25
883:3, 24
CSR 698:25
883:4, 24
CUBE 696:19,
20 698:10, 12
702:17, 19, 20
currency
777:20, 24 778:6
current 760:9
cursor 873:5
cut 769:21, 22
cutting 717:3
CV-17-587463-
00CL 696:1

< D >
d/b/a 696:19, 20
698:9, 11
damages 709:19
Dan 811:21
812:11 822:14
849:23
Danny 753:7, 20,
25 754:2, 3, 16
755:4, 11
DARCY 698:7
DARRYL 696:12
701:15 828:15
DARYLL 698:14
data 725:12
726:1, 11, 19
728:1 730:16
date 734:1
777:22, 24
778:7, 11
791:20 794:20
795:4, 11
803:23 804:3
809:13 820:23
821:1 849:22
851:6 852:6
867:6, 10 870:25
dated 705:23
819:13 883:18
dates 772:2
776:3 811:25
DAVID 697:3
703:11 794:8
800:22 865:9,
14, 18
day 696:25
761:4 838:16
845:1 846:7
873:21 883:18
days 759:4
763:9
DE 696:18
697:10
deal 701:10, 11
750:20 751:6
769:3 780:2
811:12 815:2
816:12 858:16
864:15 867:23
dealers 790:4
dealing 703:16
827:21 852:22
dealt 771:15
839:11 870:25
Deana 698:25
704:24 705:20
883:3, 24
DEARDEN
697:2 701:14,
22 702:3, 13
704:4, 21 710:5,
9, 20 715:9, 13
716:6, 18 717:3
727:20 730:13
732:5, 10
737:21 743:6
761:21 768:20
769:21 770:24
774:16 775:22,
25 776:2, 20
778:13, 15, 18,
21 779:3, 7, 23
783:1 784:1
787:8, 12 792:2,
17, 21 796:3, 7
798:18 802:7,
11, 16, 18 803:1,
5, 16 805:1
807:9, 25 808:3
809:18 812:1
817:13, 16, 21
821:16 822:1, 6
823:6, 20, 24
824:6, 9, 13, 17
826:6, 8, 14
827:7, 14, 24
828:20, 25
829:5 833:18
836:16 837:18,
23 838:2, 7, 11,
12, 17 839:7, 21
840:13, 16, 17
841:2, 4, 12
842:5, 11, 14, 22
843:2, 4 846:2,
9, 10, 13 847:1,
4 851:12 852:4,
12 854:5, 9
856:11 858:14
859:1 860:10
861:1, 19, 22, 25
862:7 863:9, 22,
23, 25 867:5
870:17 871:2
872:14 875:14,
16, 23 876:1, 2,
12, 14, 23 877:1,
6, 9, 19 878:6, 9,
12, 16, 22, 25
879:9, 16, 21, 25
880:2, 15, 17, 23
881:2, 8, 13, 16,
23 882:3, 6
Dearden's 776:7
debate 704:5
731:3 732:17
739:3 818:3
debating 704:6,
7
debt 769:10
772:15 781:16,
18 782:4
December
696:23 773:25
774:21 775:16,
18, 23 779:15
791:22 829:12
decided 796:20
decision 797:14
799:25 873:11
declaration
710:23
DeCloet 722:3,
5, 8, 16, 20, 25
723:1, 5, 7, 24
724:12

deductions 777:10	department 831:20 840:10	diligence 758:8, 19 759:1	disclosed 836:21	dividends 794:25
defamation 709:21 746:13, 16 747:13, 20	depends 757:25	DIMITRI 698:4	disclosure 703:3 704:1 836:22 837:4	divorce 739:21
Defamatory 745:25	DEPONENT 713:2, 5 724:4 737:24 741:18 759:5 761:2 769:22 775:24 776:1 778:14, 16, 19 779:24 783:3 784:3 792:18 796:4, 9 798:20, 23 799:16 807:10 809:20 812:2 814:22 823:8 827:25 833:20 847:2 860:11 861:17, 21 864:4 871:1, 4 872:16	DiPucchio 814:20, 24 815:17 819:6, 8, 12, 21 820:10	disclosures 757:3 759:16	document 702:21 703:21 704:11 721:9 736:13 767:3, 7 768:13 769:1, 16 772:4 777:5 802:15, 17 803:11, 12, 17 804:4 806:16, 20 816:23 825:10, 15 826:9 828:8, 13 829:16 833:8 834:12 835:20 838:20 850:9 853:15 859:8 862:1, 4 867:3, 14, 16
default 764:4	DEPOSITION 722:6 723:23	DiPucchio's 820:23	discoveries 715:14	documentation 855:17
defaulted 844:2, 19	describe 783:13	direct 726:22, 25 727:24 728:4, 8, 17, 22 729:8 730:11, 18, 23 731:1 732:4, 14 733:25 734:3, 5 740:15, 17 742:24 744:2, 3 745:4, 11 748:25 764:3 813:10 820:11, 13	discovery 703:15 725:4 750:16, 22, 25 751:6, 16	documents 700:14 703:17 761:14, 24 803:10 804:22, 24 805:4 807:18 812:20, 23 813:4, 9 815:12 826:2, 17 828:17 829:10, 23 849:9 855:13 870:15 876:6, 9, 16 877:2 878:1, 5, 13 879:11
Defendant 697:24 698:4 705:5 748:5 862:19 863:14	deposit 734:2	directed 814:8	discussed 702:11 725:22 850:12	Doe 735:19
Defendants 696:13, 21 697:3, 8, 14, 20 698:7, 24 709:20 710:24 711:17, 24 731:21 735:19 759:21 760:1 812:22 813:11 829:25 849:10	deposition 722:6 723:23	directly 713:13	discussing 791:6 850:15	doing 705:3
defer 815:12	DESCRIPTION 700:13	715:5 727:9, 13 735:5, 21, 24 736:7, 19 737:7 741:17 742:17 744:14, 18 745:11 748:17 749:2 788:24 797:3 816:8 820:4 873:18	DISCUSSION 704:25 714:11 717:9 724:6 727:19 732:17 762:12 787:7 792:5 824:19 843:14	disparaging 716:25 717:19 719:20
define 725:23	describing 722:1	Director 708:4, 10 717:23 753:20 785:14, 16, 18 809:17, 22, 25 810:19	discussions 703:13	display 762:9 794:11
defined 712:5, 20 729:15 730:4 808:16	DESIGN 747:1	Directors 798:12, 13 800:2, 21, 23 801:11, 15 804:15 808:8, 21, 22 810:11, 22, 25	dismiss 751:11	displayed 832:22 861:9
definition 716:19 836:16	design 747:1	disagree 704:17 780:6 783:12 869:14 874:25 875:1	dismissing 716:25 717:19 719:20	disparaging 716:25 717:19 719:20
delay 772:19 773:3 833:6	desire 758:7	disagreed 704:17 780:6 783:12 869:14 874:25 875:1	disparaging 716:25 717:19 719:20	display 762:9 794:11
Delevigne 738:11 743:15, 20	detail 769:4 786:4	disagreement 872:12	disparaging 716:25 717:19 719:20	displayed 832:22 861:9
Delevingne 738:20 739:9 740:1, 16, 23 741:7 742:12, 23 743:24 744:9 745:2, 12	details 769:4	discharged 765:16	disparaging 716:25 717:19 719:20	displayed 832:22 861:9
deliberate 855:2, 3	Detective 838:8		disparaging 716:25 717:19 719:20	displayed 832:22 861:9
delivering 748:19	determine 809:13		display 762:9 794:11	displayed 832:22 861:9
denial 715:7, 11 726:14 734:18, 21 736:9 737:5	developed 831:15		display 762:9 794:11	displayed 832:22 861:9
denied 728:14 736:5	devoted 708:17		display 762:9 794:11	displayed 832:22 861:9
denies 714:5 726:11 734:15 743:9, 10 868:15 874:11	difference 765:17 767:21, 23, 24 768:3, 6, 17 839:16 840:18		display 762:9 794:11	displayed 832:22 861:9

<p>double-check 854:3 doubt 810:3 Dow 697:25 698:24 761:9 810:16 829:24 832:21 834:8, 9, 14 835:11 848:16 871:20 872:20 873:7, 22, 25 DOW000557 820:21 DOW000999 834:8 835:12 DOW001023 832:21 Draft 807:4, 7, 20 Dropbox 725:17 726:4, 12, 19 728:1 due 758:8, 19, 25 770:12 774:10 776:16 Duff 770:17 DUHAMEL 696:12 duplication 763:21 duty 851:18 852:8</p> <p>< E > earlier 709:16 762:25 789:25 836:10 early 748:1 755:24 763:3 773:4 791:4 794:19 795:11 811:24 easier 706:8 762:13 echo 705:20 766:17 797:24 economic 709:25 effect 723:12 730:10, 18 777:25 780:10 801:13 880:11 effective 775:16, 18, 22</p>	<p>effort 758:17 795:21 efforts 769:7 elaborate 708:11 elected 795:2 Electronic 700:14 745:7 761:23 863:10 elements 750:4 Elwood 876:6, 15 879:10 email 702:6, 8 733:15 745:11 748:19 755:3 820:19 821:3, 7, 11 828:21 829:1 835:12 838:19 839:4 870:2, 7 871:3 emails 703:12 733:3, 4 745:1, 14 817:2 818:5, 14 838:19 871:6 EMMANUEL 696:19 employee 873:12 encourage 741:11 743:17 873:16 encouraged 738:9, 19 739:9 740:7, 20, 22 741:14 742:1 encouragement 732:19 encrypted 759:22, 24 ended 765:20 ends 806:24 enforceable 765:21 enforcement 836:4, 14 837:14 engage 822:19 engaged 755:25 756:6, 11 805:8, 10 816:17 ensue 771:12 ensuing 730:16 enter 788:3 805:22 856:24 entered 702:25 704:19 787:23</p>	<p>enterprise 780:11, 24 781:6 enters 786:23 787:20 entire 765:8 entirely 751:9, 15 entities 788:24 entitled 881:2, 21 entity 709:10 790:20 equities 861:10 864:1 equity 709:9 781:7 equivalent 777:22 778:17 errors 701:6, 7 848:4 Esco 717:23 722:7 844:10, 11 especially 763:18 Esq 697:2, 3, 4, 5, 14, 20, 24, 25 698:4, 5, 7 essentially 754:12 799:17 Established 725:12 establishment 726:1, 18 727:25 730:16 ethical 869:5 evening 846:16 847:10 event 726:23 854:23 events 720:12, 25 764:16 832:2 854:22 eventually 741:1 everybody 803:14 848:2 everyone's 864:9 evidence 713:24 715:4, 11, 23 717:21 718:5, 8 719:1, 4, 25 720:6, 7, 11, 14, 17 721:18 726:17, 22, 25 727:24</p>	<p>728:3, 4, 8, 13, 17, 22, 23 730:11, 18, 23 731:1, 7, 24 732:4, 14, 18, 24 733:19, 25 734:3, 5, 8, 21 736:17, 18, 21 737:19 741:10 743:22 745:8 749:1, 5, 21 751:13 756:4, 10 771:23 796:15 839:22 840:23 855:5 859:12 868:22 869:1, 3 evidencing 721:9 exact 804:4 exactly 877:20 880:17 examination 703:15 718:15 719:9, 12 750:16, 22 751:5 803:13 824:6 838:13 860:25 865:7 878:24 879:6, 22, 23 883:11 examinations 725:4 751:16 754:12 761:16 examine 716:11 746:19 757:2, 22 843:1 examined 716:15 763:8 870:11, 16 example 818:1 831:16 examples 733:3 734:10 exception 709:3 exchange 730:17 779:8 837:19 exchanged 829:11 exchanges 733:15 Exclude 822:10 excluding</p>	<p>821:16, 20 Excuse 753:9 executed 735:10 868:11 executive 784:24 785:7 814:13 840:10 executives 785:21 exercise 859:19, 20 exercised 797:8, 9 exhibit 701:20 702:5, 7, 24 703:1 761:18, 19, 22, 23 803:3, 7, 13 807:5, 22 819:14 828:10 833:18 847:3 862:3, 5 863:11 872:7 EXHIBITS 700:11 733:6 826:16 827:21 829:15 865:6 existence 738:8 expansive 734:7 expect 774:12 805:24 858:12 expedition 716:19 experience 715:20 750:14, 21 751:4, 8 expert 788:6 explain 774:21 805:3, 5 explanation 768:15, 16 explore 817:23 exposed 850:19 express 808:14 extent 745:16 804:22 813:17 847:22 848:8 856:23 external 832:16</p> <p>< F > FACE 696:8, 13 697:17 698:17, 19 716:24 717:17 718:6, 10 719:2, 6, 8</p>
--	---	---	--	--

720:1, 16 721:10, 18 722:10, 23 723:4, 12, 16 755:23, 25 769:24 811:2 878:2, 14 Face's 864:10 facilitate 725:20 facility 725:18 726:4, 13, 20 728:1 770:9 fact 713:23 718:20 722:14, 24 735:10 736:17, 24 738:17 744:18, 24 758:24 759:13 831:16 833:4 839:19 843:9 857:23 862:12 878:1, 23 facts 725:3 failed 769:8 fails 704:12 fair 719:23, 24 720:14 740:5 811:4 819:1 829:9, 21 839:8 841:15 842:2, 20 846:25 848:1 849:1, 12 852:8 855:12 863:1 866:24 868:20 871:8 874:24 877:1 fairly 756:24 794:18 868:19 fairness 716:6 754:5 838:18 839:3 fall 791:4 857:25 false 716:25 717:18 719:20 725:13, 18 726:1 729:9, 18 730:7 740:9 741:15 742:20 743:11 750:1 falsehood 709:22 familiar 799:13 828:17 829:7 839:18 840:11	865:11, 25 868:14 fan 862:12 favour 808:23 February 816:15 818:20 fee 766:22, 25 767:5 768:6, 10, 11, 14 feed 866:16 feel 726:14 769:5 feels 839:11 fees 770:13 774:10 776:16 fiction 863:21 fiduciary 851:18 852:8 Fifth 772:18 figure 738:1 File 696:1 812:21 813:1, 18 821:21 filed 728:13 729:7, 18 730:6 731:8, 13, 21, 24 733:20 734:15, 22 830:7, 19 831:6 837:9 843:18 files 827:2 850:23 filing 731:16 835:3 financial 777:19, 23 778:2, 8 780:22 857:18 financially 780:4 Financier 865:10, 11 find 728:11 760:7 762:19 768:13 802:5 853:10 fine 739:22 740:5 748:23 758:15 760:17, 21 763:1 775:21 778:24 796:11 808:2, 6 813:24 815:6 823:16 824:12 832:9 833:5 837:7 847:25 848:5 851:23	852:2 854:4, 9, 13 856:8 863:8 864:20, 23 871:8 880:1 881:12, 15, 25 finish 718:18 719:17 763:1, 3 815:1 finished 702:22 769:19 772:24 881:4 firing 874:4 firm 784:25 firms 757:1 780:4 789:15 fishing 716:19 fist 702:10 flatly 743:9, 10 focuses 855:1 focussed 854:20 focussing 792:23 follow 802:3 813:3 following 699:8, 14, 21 700:7 763:7 775:19 793:15 859:21 860:24 forbidden 871:20 force 873:20 foregoing 883:5, 13 forgiven 765:13 766:10 form 713:12 719:11 831:14, 17, 18 832:22 833:12, 20, 21 834:1, 20 835:7 Formal 835:14 838:21, 23 839:17 forms 831:22 832:10 833:3 834:4 forth 733:3 777:15 815:4 822:18 883:7 forthcoming 873:9, 13 Fortress 844:11 forward 735:11	805:12 forwarded 821:7 forwarding 835:13, 16 found 733:21 823:25 833:17 frame 720:22 799:7 812:18 818:20 836:7 852:19, 21 fraud 748:11 835:9, 23 free 726:14 769:5 FREEDMAN 698:5 Fresh 705:22 709:15 FRIGATE 696:9 front 705:9 714:18 715:1 762:6 763:7, 24 846:24 872:9 873:4 FrontWell 709:13 froze 772:25 frozen 717:12, 13, 14 764:5 fulfilled 851:19 fulfilling 728:19 full 745:16 772:10, 14 837:18 full-time 708:10 function 797:8 FUND 696:10 709:3 753:21 755:17 756:6 779:17 786:16, 21 788:8, 16 789:24 791:4, 6, 7, 8, 9, 10, 13, 17, 20 792:6 funded 715:5 801:3 funders 712:16 funding 712:11, 23 713:7, 13, 17, 25 funds 709:3, 4 775:10, 12, 13 777:9 778:3 780:9 782:19 783:2, 3, 6, 19,	20 784:21 786:3, 8, 20, 21 787:21 788:19 789:2, 4, 19 790:1, 6, 9, 17, 25 793:1, 4, 11 795:10 796:18, 24 797:5, 9 799:21 800:19 805:18 fund-to-fund 790:14 furtherance 727:6 735:17 744:12 fussed 866:20 future 773:14 880:5 < G > GABRIEL 696:18 Gagnier 811:21, 25 812:11, 24 813:4, 10 814:5 815:10 816:3, 17 817:3, 6, 11 818:5, 15 819:3 820:11, 19 821:6 822:7 826:23 827:9, 11 Gagnier's 812:21, 25 813:18 821:21 849:23 Gail 837:19 Gariel 697:10 gathering 725:3 Gaya 698:20 General 698:18 727:4 786:15, 18, 22 787:16, 19, 24 788:2, 16, 21 814:16 836:12 generally 780:4 828:16 831:19 generate 852:18 generated 850:13 853:6 855:6, 15 generically 752:6 GEORGE 696:12 GERALD 696:12
---	--	---	---	--

give 732:16
753:9 770:21
774:14 793:11
808:1 816:10
822:20 853:9
given 722:6
783:19 803:10
808:25 816:23
877:11 881:6
giving 728:16
840:13 875:7
GLASSMAN
696:18 697:12
717:2, 20
719:21 722:22
724:20 729:12,
20 730:8 731:9,
25 734:16
784:23 816:8
821:8 845:23
861:6
Glassman's
863:19
Global 753:21
Globe 722:3
862:9 863:4
Goldman 805:8
Good 705:2, 4
761:3, 6, 7
Gowlings
865:14
GP 696:10
great 809:14
855:12
Greg 698:17
GREGORY
696:8, 13 697:18
grind 844:3, 21,
25
grounds 876:12
GROUP 696:5,
8, 18, 20 697:5
708:5 713:16
860:18 869:18,
19
Guarantee
712:12, 24
713:14 714:1
715:6 773:17
774:22 775:6
783:18 880:6, 9,
11
Guarantor
725:10 729:6

731:14 738:6
745:23 748:3
Guarantors
712:12, 23
713:14, 17, 25
765:15
guess 703:18
877:19
guide 699:9
guilty 729:12
Guy 753:8, 20
754:1, 2, 3, 16,
18 755:4, 11
< H >
hand 704:7, 8
780:25
handy 706:8
Hanna 754:13,
19, 21, 24 755:2,
3, 10
Hanna's 753:7,
25
happen 717:15
751:16 801:7, 8
happened
783:14 808:24
812:18 835:2
866:25
happens 764:12
happy 833:7
844:24 863:18
hard 707:8
710:9 714:15,
17 762:14
harm 724:19
Harrington
753:21
Harvard 789:3
headed 777:2
heading 806:8
835:1 861:9
headline 863:16,
19 864:3 867:6,
11
headsets 717:5
hear 705:20
787:9, 10
heard 769:20
840:3, 24 841:6
hearing 764:10
766:17
held 715:15
782:4 785:3, 11,
21 793:5

796:25 868:2, 6,
10, 11
hell 750:10
he'll 842:7
help 800:4
helpful 764:1
781:9 790:18
800:9 801:5
helps 799:25
highlighted
873:6
hire 757:1, 12
hired 719:2, 5
720:1 722:23
723:4, 13
755:22 756:6
758:25
hires 759:14
hiring 757:21, 24
Hold 827:23
holding 859:19
866:16
holds 784:24
788:23
homework
824:10
hone 817:14
honesty 849:4
hope 721:8
750:8 827:13
Hopefully
717:15 746:22
horse 771:21
783:24 784:13,
16
hours 708:14,
15, 22
hypothetical
857:4
< I >
i.e 869:9 873:8
identification
703:19
identified 789:2
803:2 830:12
834:7
identifies 789:21
identify 728:11
802:5 804:19
862:4
identifying
865:23
identity 753:7,

25
II 789:24 793:1
III 775:13
789:24 793:1
illegal 757:18
758:4 759:2, 17
illustrating
733:6
imagine 708:16
710:9
IMETs 830:24
immediately
857:24
impact 771:7
854:21
implemented
854:18
implication
713:6
implied 824:1
important 769:5
838:24 847:8
impression
755:9
improper
757:18, 24
758:4 759:2, 17
impropriety
851:22
inability 734:21
inaudible 751:20
include 712:20
725:23 729:15
730:4 802:19
803:12 822:6
862:3, 5 863:3,
10 865:7
866:17 869:9
included 712:5
738:17 876:9
includes 767:12
including
712:14 733:17
770:9 771:11
773:14 880:6
inconsistent
754:10 877:22
increase 767:14
794:22 795:1
increased 767:9
795:23
incumbent
728:18
Independent
794:5 798:12,

13 800:1, 20, 21,
23 801:9, 10, 15,
25 804:10, 15
808:7
independently
824:4
INDEX 699:12,
19 700:5, 11
indicate 720:17
842:7
indicated
715:15 719:14,
19 830:22
834:10 870:21
indicating
773:24 795:22
indirect 728:23
indirectly
713:13 715:5
735:5, 21, 25
736:8, 20 737:7
741:17 742:17
788:24 797:3
873:18
individually
742:9
individuals
740:10, 13
820:15 830:7, 11
induce 724:19
inducing 749:25
industry 864:25
inference 721:2
inferences
732:18
informal 703:13
information
710:11 725:13,
19 726:2 740:9
742:21 743:11
744:10 757:25
760:9 770:18
771:6 795:16
807:4, 7, 21
811:8 833:10
851:9 858:22
859:15, 18, 23
860:13, 21, 23
868:2, 10
869:11 873:9, 19
informed 710:9
inherently
757:17, 18 758:2
In-House
698:23 820:6

initial 781:14
798:6 804:13
812:10 857:17
initially 805:9
811:21
initiate 799:25
800:17
initiated 790:24
798:10 801:8,
10, 13
injurious 709:22
innocent 701:7
inquiries 836:5,
8, 14, 17 837:15
839:16 840:1, 4,
5, 8, 19 841:1, 7,
8 851:5 852:13
inquiry 827:6
836:13
insinuate 748:8
insofar 746:4
insolvency
771:10 780:20
781:25 782:3, 8,
12 783:16, 23
784:12 844:13
instance 783:25
842:23 844:7
instituted
794:23
institutional
757:11, 20
758:7, 18 759:14
instruction
816:22
integral 782:24
intended 732:21
intention 748:6
749:14
intentional
709:24
intentions
720:19
interact 857:16
interacted
718:21 808:11
814:10 822:15
825:23
interacting
857:16
interaction
718:1, 5, 7
754:8 755:4
825:25

interactions
719:3 822:14
826:4, 10, 24
827:3, 9, 11
interest 770:12
774:10 776:16
780:14, 16
867:12 868:10
interested
771:3, 5, 7
794:19 802:3
816:16 825:24
831:9 860:21, 23
interesting
727:19 751:2, 4
841:1
interests 709:9
868:16, 23 869:2
interference
709:24
interjections
842:11
internal 872:14,
16
internally 831:24
internet 764:9
interpret 750:19
interpretation
713:15 725:2
interpretations
751:7
interrupting
838:13 839:6
intervenes
714:22 751:21
invest 709:4
789:25 790:1, 17
invested 709:2
781:15 791:9, 10
investigate
757:13 759:15
investigating
757:19 831:10
investigation
748:10 830:23
831:3, 11
839:17 840:2, 5,
6, 19 841:9, 10
investigator
757:6, 7, 21
758:25 759:15
investigators
757:2, 13
investing
790:16 791:25

investment
755:17 757:21
763:16 775:3,
11 777:9
779:16 782:4,
19 786:8, 16
789:15, 17
873:11
INVESTMENTS
696:9, 10 791:10
investor 757:20
758:19 759:14
781:15 790:3
805:25
investors 757:1,
11 778:1
779:17 780:3,
10 788:7 789:1,
4, 15, 22, 23, 25
790:9, 15 850:4,
5 859:10
investor's 758:7
involve 798:16
involved 724:24
727:9, 13
730:15 742:18
754:16 761:10
790:20 798:24
799:11 800:18
807:17 814:21
831:22 866:6
involvement
712:17 726:22
727:25 731:1
829:24
involving
720:16 811:2
850:15
INVOP 696:20
IPO 783:20
793:15
irrelevant 755:1
issue 704:1
714:23 731:3
744:16 745:16
750:6 815:23
823:1, 2 839:14
issued 772:5
793:8 810:16
846:16
issues 751:6
823:17 824:7
items 703:6
iteration 705:25

IV 775:14
789:24 793:1
< J >
Jacque 698:1
817:14
JAMES 696:19,
23 697:10 699:2
JAMIESON
696:19
January 865:9
867:10
Jaross 701:18,
19, 20 702:1, 6
JEFFREY
696:12
JENNIFER
697:25 761:13
JIM 701:3 847:1
job 874:17
JOHN 696:13
735:19 754:14
828:14
Jones 697:25
698:24 761:9
810:16 829:25
832:21 834:8,
10, 14 835:12
848:16 871:20
872:20 873:8,
23, 25
Joseph 698:23
Journal 741:2
742:11, 13
746:2 747:15,
18 748:6
749:13, 15
761:9 810:1, 17
811:13, 16, 17
812:7, 22
813:11 815:22
816:25 817:4, 7,
12, 18, 21 818:6,
7, 17 819:2, 13,
22 820:5, 12
825:1, 22, 23
827:10 830:1, 6,
17 846:7, 15
847:10, 20
848:11, 17
849:1 852:17
853:6, 25 855:5,
15 856:21
857:7, 25
858:19 859:22

861:6 864:17,
19 865:24
869:22 871:19
872:8 876:17
journalist
871:20
journalists
761:10 811:13,
16 812:7 820:5,
12 824:25
826:5, 11, 24
827:12
Journal's 822:5,
11 823:15
JSOT 830:23,
25 841:24
July 705:23
706:3, 5 748:1
811:23, 24
819:13 820:24
821:3, 14 870:4
jump 724:16
June 738:7
742:14 744:12
811:23, 24
JUSTICE 696:2
772:6 784:12
< K >
KASSAM 696:10
keeping 703:4
KEVIN 696:12
698:15
key 806:4
kind 720:22
734:6 745:7, 12
746:11 750:15
769:20 771:20
777:14 808:9
871:18
kinds 733:14
741:3 750:14, 20
Kingman 754:14
knew 742:22
744:8 807:18
825:1, 21
knowing 744:11
knowledge
711:11, 14, 22
712:1 716:8
732:19 753:4
790:11 816:7
830:18 850:11
859:18 860:21,
23 864:9

866:22 868:1, 6,
9 873:13
known 825:4, 7
knows 842:8

< L >

lack 751:13
LANGSTAFF
696:11 735:7
large 842:19
LASCARIS
698:4 705:1
710:6, 7, 21
711:6 713:10
714:12, 24
715:10, 14, 17
716:7, 16 717:7,
10 721:6 724:9
726:8, 24
727:17 728:5, 9,
20 729:2
730:12, 20
731:5 732:5, 8,
12, 23 733:8, 12,
18 734:11
735:2 736:2, 23
737:10, 13, 22,
25 738:25
739:7, 15, 18, 22
740:4, 18
741:20 743:1, 7
744:3, 17, 22
745:6, 17
746:21 747:4, 8,
10, 23 748:21,
24 749:4 750:8,
23 751:1, 9
752:3 756:15,
20 758:13, 16
759:6 760:4, 11,
17, 20, 24 761:3
LASCARIS.....7
05-761 699:5
Late 707:4
748:1 773:4
811:23
launch 791:3
launched 792:7
laundry 746:7
law 716:8
727:7 756:25
Lawrence
698:21 738:11
lawsuit 757:19

862:19
lawsuits 863:20
lawyer 755:15
757:19 758:18
759:13 814:6, 9,
11, 12
lawyers 715:21
757:10
lawyer's 758:7
Lax 819:9
lead 780:19
781:25
leads 867:12
learn 754:7
858:25
learned 718:8
719:4 752:19
753:6, 19, 24
829:9
learning 825:15
leave 704:16
727:16 752:1
834:3 878:22
leaving 850:23
led 782:9
left 850:21
legal 751:6
814:18
legislation
751:11
legitimate 844:8
lend 781:1
lender 764:19,
20, 22 766:16,
22 781:1 857:1
lender's 765:5
lending 781:4
841:16, 21
842:3, 8
length 769:9
lengthy 728:12
801:23 804:6
letter 816:22
819:12, 13, 16,
17 820:23
letters 816:22
level 791:11
leverage 867:12
LEVITT 696:12
698:14 699:4
701:4, 17, 24
702:4, 8, 10, 12,
15, 17 703:12,
24 704:6, 11, 18
737:17, 19

828:15 830:13
841:20 845:5, 17
Levitt's 702:6
Levy 702:6, 9,
11 717:23
718:11 719:10,
12 720:4 722:6,
7, 9, 21 723:3,
10, 23 724:12
liability 788:13
libel 710:14
762:4 763:22
773:23 774:19
792:19 833:18
872:7 876:18
life 706:8
light 734:20
736:24 737:4
749:20
limited 786:12
787:24 788:5, 7,
13
listed 878:4
listen 747:4
litigants 715:21
litigation 714:1
811:2, 4 815:21
845:11, 13, 14,
15 859:17 860:4
LIVESEY
696:13 698:5,
22 705:6
706:14 707:10
710:4, 13, 15
711:2, 12 712:3,
20, 22 713:12,
18, 24 714:4, 10
715:5 716:11,
25 717:18
718:1, 2, 5, 8, 21
719:1, 5, 14
720:1, 3, 12, 18
721:10, 19
722:1, 8, 9, 11,
22 723:2, 3, 13
725:24, 25
726:2, 5, 17
727:13 729:16,
18, 21 730:4, 6,
15 731:7, 24
733:4, 25
735:24 736:5,
19 737:6
738:17, 19, 22
739:9, 13 740:6,

11, 15, 22 741:3,
8, 13, 25 742:3,
12, 17 743:9, 23
744:7 745:2, 12
746:4 747:13
748:14, 17
749:1, 9, 10
751:13 752:7
755:22 756:5
759:24 760:10
Livesey's 711:8
714:15 715:6
720:24 721:22
722:4, 16
726:10 727:25
734:14 737:5
743:3
LLC 696:9
LLP 755:16
loan 764:17, 22,
25 765:5, 6, 8,
10, 16, 21 766:4
769:25 770:8
771:4, 8 774:1,
2, 9 776:15
783:20 853:20,
22 854:19
855:6 856:25
857:2, 6, 10, 23
858:6
loaned 766:3
880:9
loans 773:14
781:5, 7 783:9
844:19 845:3
850:13 852:17
853:4, 6, 8, 21
854:18 855:14
880:6
long 732:16
801:21 827:8,
11 833:6
longer 785:2
looked 728:12
792:19
looking 702:7
713:2 739:24
767:2 792:9
806:2 813:23,
24 824:14
834:14 846:19
858:3
lookout 849:23
lose 788:13

loss 709:23
774:2
losses 773:14
880:5
lot 750:10
762:11, 19
763:8 824:17
827:21 829:17,
18, 19 838:19
868:17
lots 763:1
776:23
low 867:12
LP 696:9, 10
755:18
LPs 709:4
LUCAS 697:20
LUNG 697:20
836:25 847:15
850:12 852:24
854:15

< M >
M5V 696:8
Madam 787:4
813:22
made 701:14
710:13 721:18
731:12 732:25
742:19 757:25
770:6 771:4, 22,
24 773:12
774:8, 22
776:14 784:8, 9,
13, 19 800:1
811:1 835:16
836:8 841:24
843:24 845:25
846:5 847:8
850:14 853:9
871:9 875:12
883:10
Mail 722:3
862:9 863:4
main 705:14
majority 793:5,
12 805:20
making 816:19
836:4, 14
manage 783:6
787:21
management
785:12 786:20,
23 787:20
788:11, 13

790:21 807:4, 7, 21 manager 788:18 790:22 797:8 managers 789:17 manages 755:16 786:20 Managing 708:4, 10 783:23 785:4, 9, 16, 18 mandate 808:14 816:23 manner 719:8 March 775:19, 25 791:24 792:1 861:8 MARCO 697:5 margin 879:19 Marine 717:24 722:7 mark 703:19 761:18 marked 803:3, 13 865:6 market 782:20 789:19 791:13, 15, 17 848:9 849:21 850:8 858:23, 25 867:11 marketplace 856:24 markets 756:25 757:12 782:25 791:25 MASTER 696:10 material 720:11 776:24 799:5 873:14 materially 757:4 math 768:1, 10 854:1, 2, 5 matter 819:24 820:1 853:24 876:20 matters 718:23 811:18 814:18 840:11 848:10 864:10 876:22 MATTHEW 697:14 maypole 759:11 MCFARLANE 696:12 701:16,	19 702:9, 11 763:18 771:16, 24 830:13 841:20 845:6, 17 McFarlane's 842:16 McGill 789:6 McNish 698:2 817:14 820:5, 19 821:17 822:8, 15 829:25 meaning 797:11 means 708:20 709:23 727:5 741:11 meant 699:9 718:17 meeting 722:2, 5, 14, 19 723:24 820:2 821:11, 15 822:17, 25 823:4 meetings 754:15 755:10 828:4 member 715:19 785:13 members 808:21 831:1 869:19 memorized 756:18 memory 709:11 756:18 776:11 791:14 807:17 811:22 826:15 833:2 mention 829:22 mentioned 819:6, 7 mentions 849:24 866:8 mere 718:20 758:24 759:13 messages 874:14, 16, 19 messaging 759:22, 25 Messrs 830:13 met 755:4 820:4 825:22 831:1 MICHAEL 698:7 microphone 717:6	middle 866:10 873:3 migrated 742:11 migration 741:7 mill 848:24 million 709:19 764:21, 25 765:4, 6, 10, 17, 18, 22 766:9, 15, 21, 23 767:10, 12, 17, 22, 24, 25 768:6, 14, 16 769:11 770:1, 6, 10, 11 772:16, 17 774:3, 8, 15 775:2 776:14 777:10 778:12 MILNE-SMITH 697:14 756:23 758:12 864:8, 14 880:23 881:5, 9, 11, 14, 20, 24 882:4 mind 860:16 minority 799:17 801:11, 17 misapprehension 744:6 misconduct 729:13 mislead 838:22 misleading 720:18 misled 721:4 misreading 867:16 missed 781:21 793:9 810:13 misspeak 800:13 misunderstandin g 765:25 misunderstood 802:25 Mobilicity 866:3, 7, 15, 25 MOEZ 696:10 MOLYNEUX 696:12 moment 730:11, 14 753:10 764:6 766:6 772:25 784:7, 16 806:6 819:6	853:10, 17 873:5 876:20 money 766:3, 8 775:7 781:1, 2, 4 790:16 880:9 months 853:23 858:13 MOORE 697:3 703:11 704:7, 10, 22 711:4 713:1, 4 720:9 724:2, 5 726:6, 21 727:1 728:2, 7, 15, 25 730:9, 14, 21 732:3, 7, 9, 11, 13 733:2, 9, 11, 13, 23 734:25 736:1, 21 737:8, 11 738:23 739:5, 12, 17, 20, 23 740:12 741:17 742:14 743:25 744:5, 20 745:4, 10 746:17, 25 747:5, 6, 9, 19 748:16, 22, 25 750:2, 11, 12, 24 751:3, 16, 18 756:13, 17 758:10, 15 759:3 760:3, 5, 15, 19, 21 799:1, 9 813:2, 13, 14, 20, 25 814:2, 20, 25 815:14, 20, 25 816:10, 19 817:8, 11 818:1, 18, 23 861:16 877:9 878:16, 23 Moore's 729:22 877:20 Morawetz 772:6 784:13 Morgan 790:5, 10, 13, 19, 20 morning 705:2, 4, 7 760:16 761:6, 7 motion 706:15, 23 707:11 751:10 760:5 863:13 877:11 motions 703:15,	16 727:19 803:4 mouth 787:9 move 702:23 714:13 716:20 752:1 762:18 780:1 839:5, 12 841:3, 14 842:12 863:24 867:22 moving 771:10 787:9 843:15 mow 764:10 muddy 828:23 multiple 703:2 mute 704:23 muzzled 882:2 < N > naked 735:8 named 709:8 712:3 names 754:4 805:10 narrowly 720:23 NATHAN 696:11 697:22 828:13 870:20 nature 719:13 720:2, 10 734:4, 5 745:1 749:3 857:6 near 873:4 necessarily 702:4 703:9 713:18, 19 748:17 805:21 necessary 731:2 798:2 needed 778:10 NEESON 883:23 negative 738:12, 20 739:10 740:8, 10, 23 741:15 742:21 780:11, 13, 18 negotiate 800:24 neither 845:21 net 774:2 New 738:10 766:8 790:24 791:3, 6, 8, 10 805:21 847:14 850:13 852:17, 24 853:6, 21
--	---	---	--	--

854:17, 19 855:6, 14 857:23 news 810:8 873:9, 23 NEWTON 696:18 697:11 717:1, 20 719:21 863:19 night 707:13 non-disclosure 712:18 normally 708:9 750:15, 20 805:24 nosings 812:17 note 814:2 816:19 856:4, 7 865:17 noted 699:13, 21 700:6 notes 817:2 818:14 867:16 879:17 883:14 notice 710:14 November 696:25 702:6 706:14, 16, 17 707:20 714:15, 17 721:22, 24 726:10 734:14 736:6 743:4, 6, 8 749:10 752:23 772:6 810:17 883:18 number 705:21 733:5 773:14 774:15 778:22 779:2, 19 789:23 816:16, 25 817:1, 5 834:10, 17 846:22 880:5 numbered 761:19 numbers 864:12 numerous 703:12 733:3 nutshell 703:14 < O > object 704:10 732:22, 23 824:9 863:11 objected 876:7 objecting 839:21	objection 840:16 875:14 877:21 objections 883:10 obligation 715:22, 24 777:21 778:4 obligations 788:4 occasions 869:17 occur 712:11 871:19 occurred 782:8 783:11 795:4 809:5 823:3 occurring 720:25 October 764:24 862:10, 25 880:10 offence 874:4 offer 769:9, 10 771:22 783:24 784:8, 9, 14, 16 801:16 808:19 offered 739:14 740:8 742:5, 19 offering 743:9 office 849:23 Officer 708:8 814:14, 16 ones 761:17 800:23 818:8 857:15 ongoing 771:12 ONTARIO 696:2 710:25 711:3 831:13 836:3 837:12 871:9 operates 786:16 Operating 708:8 814:16 872:1 opinion 862:10, 24 863:12, 16 Opportunities 753:21 opportunity 716:11 843:1 875:7 opposed 750:24 751:4 opposite 777:25	option 796:17 options 709:5 order 772:5 773:12 781:5 784:18 798:6 organizations 702:18 original 714:10 originally 767:21 870:3 originated 741:2 853:20 857:24 originating 787:5 OSA 711:18, 25 OSC 711:8, 10, 11, 16, 23 729:10, 19 730:7 731:8, 25 733:20 734:1, 2, 17 748:10 798:1, 23 830:20 831:12, 14 832:20 836:13, 23 841:25 842:18 845:21 O'Sullivan 819:10 outline 772:7 801:24 outset 746:6 outside 832:7 outstanding 760:6 793:12 overlooking 745:15 overly 800:14 805:7 Overview 806:8 owned 787:16 793:1, 11, 16 ownership 775:2 794:22 795:9 < P > P.M 824:20, 21 882:10 PAGE/LINE 700:13 PAGES 699:3, 14, 21 700:7	paid 708:21 765:22 766:16, 22 768:7 772:9 Panet 698:18 papers 717:6 paragraph 701:8, 23 702:16 707:25 709:18 710:22 712:2, 8, 21 716:20, 22 717:16 721:22 724:16, 19 725:7 729:3, 17 730:5 735:3, 11 737:14 738:3, 13 739:13 740:3, 20, 25 741:21 742:2, 15, 21 743:12 744:15 745:18, 21 746:20, 25 747:24 748:13 750:19 752:4 753:1, 5 755:12, 20 759:19 766:1, 14 767:8 768:17 769:14, 15 770:5 772:7, 12 773:24 776:23 779:4, 20 792:10, 11, 13, 23 793:15 794:11, 12 796:7 802:24 803:19 806:14, 24 827:18 828:19 829:14 847:1 853:12, 17 857:20 858:4 866:9 873:4 paragraphs 714:5, 9, 20 715:1 726:9 734:13 735:23 736:5, 12 739:21, 25 743:2 749:10 762:10 763:23 768:24 774:20 786:5 806:3 827:19 829:22, 24	paraphrase 724:5 park 741:9 part 713:16 725:25 746:18 748:20 758:18 782:25 802:2 807:5, 7 810:7 830:25 834:20 835:2, 24 871:10, 19 874:4 partially 816:4 participant 805:22 participants 696:24 participate 788:14 801:9 participated 726:18 727:5 732:20 733:4 participating 708:19 participation 725:21 729:9 particular 702:8 711:1 726:23 727:9 758:21 780:14 particularly 802:3 parties 822:22 829:12 860:1, 4, 8 868:21 Partner 785:4, 9 786:16, 18, 23 787:16, 19 788:2, 16 Partners 755:17 787:24 788:21 partnership 787:24 788:5, 7 partnerships 786:12 788:17 party 859:17 passed 742:22 744:11 patient 762:21 pay 775:1, 7 payments 721:18 pending 830:23 869:20 people 731:16 741:8 763:8
---	--	---	--	---

781:1 783:4
805:12 831:20
850:10 869:10
people's 702:24
percent 793:16
794:13 795:23
796:12
percentage
716:9 795:1, 9
796:5, 25
period 773:7
789:11 794:18
795:4, 10
807:11 816:15
819:9 850:13
852:25 855:3
858:24
person 754:17
755:2 802:10
804:18 873:16
personal 807:12
825:11, 15
persons 712:5
persuade 748:14
pertain 739:25
Phelps 770:18
PHIL 697:24
816:19 817:13
Philip 698:18
Phillips 754:14
phone 729:22,
23 748:18
749:1 818:15
820:7 821:17
822:7
phrase 848:23
physically
734:2 749:2
pick 815:7
picked 749:1
picking 748:18
picks 861:10
864:1
picture 851:7
864:6
piece 862:10, 24
piecemeal
816:12
place 703:10
731:4 783:22
795:7, 13
817:22 824:15
883:6

placement
789:20, 21
790:4, 6 805:11
Plaintiff 696:6
739:3, 8
Plaintiffs
696:16 697:2,
15 709:19
710:3, 14, 23
711:7, 15
712:22 713:11
715:4, 7 717:22
718:8, 22 719:4
720:18 724:22
725:22, 25
726:4 727:23
729:14, 17
730:6 734:23
735:23 737:18
738:18 739:1
740:6, 21
741:13 742:1
745:9, 20 746:6,
15 747:12
748:13 749:17,
23 750:1
752:11, 19
812:24 813:17
818:16 820:4
821:24 826:25
Plaintiff's 819:2
plan 735:10
794:24 797:23
806:4 809:1
planned 790:24
planning 791:3
play 880:7
played 731:16
pleaded 851:25
pleading 750:17
pleadings 751:7
852:1
pleased 879:7
plus 767:22
point 720:22
724:23 727:22
728:21 736:22
742:11 766:15
767:4 769:6, 25
770:4 771:13,
17 773:10
816:18, 21
826:22 831:2, 5
847:8 848:23
849:2, 8 853:5

pointed 727:2
832:4
points 782:17
Police 748:11
830:21 835:17
836:3, 14
837:13 841:25
845:21
policy 872:15,
16
politely 856:25
poor 879:3
portion 766:9
792:25
pose 769:5
posed 821:12,
14 879:22
position 708:10
721:5 727:3
730:22 736:7
744:5, 6 784:24
785:4, 8, 11, 12
841:2 843:17
868:7
positions 735:6,
9, 20, 24 785:21
859:20 868:11
positive 780:12,
15, 18
possession
716:9 721:13
745:9
possible 757:19,
20
post-Wall 861:6
864:16
potential 730:25
practice 756:25
practices
841:16, 21
842:3, 8
pre-August
847:18
precise 796:5
800:8 811:24
premature
725:4 791:7
premise 727:11
730:25
premises 727:21
preparation
706:13 778:7
prepare 778:2
815:11

prepared 715:7,
12 734:23
737:5 749:23
750:5 803:10
830:19
preparing
708:18 777:22
828:3
prerogative
703:20
Present 698:17
presented 767:8
presume 818:6
pretty 817:22
820:19 867:3
previous 776:19
864:5 877:10
previously
766:10
pre-Wall 864:18
865:24
price 772:10, 13
809:6, 7 847:18
primarily 822:21
principal 717:1,
20 755:15
770:8 774:9
776:15
principals 722:7
PRIOR 701:3
708:6 719:12
754:11 756:1
761:16 764:18,
19, 20, 22 765:5,
16 766:16, 22
791:9 811:1
815:22 819:20,
22 824:25
830:16 848:17
873:14 879:24
private 757:5
797:20, 23
798:1 800:17
801:21 861:10
864:1
privates 801:23
privatization
799:13 804:7,
11 808:9
privilege 813:12,
17 815:9 836:9
842:17 876:13
877:11, 17

problem 702:15
764:9 787:4
807:19 812:19
proceed 863:14
877:22
proceeding
781:20, 22
782:3, 9, 14
783:16 844:13
proceedings
711:12, 23
771:9, 11, 18
773:4 780:20,
21 784:12
798:9 883:5
process 742:18
771:21 782:1
783:23 797:23
798:1, 10
799:13 803:20
804:6 808:10
831:22 844:10,
16, 21 845:2
850:14, 22
855:14
processing
844:13
produced
807:23 812:20,
23, 24, 25 813:5,
11 824:3, 4
826:2, 7 827:4,
7 828:9 829:15
837:24 841:24
855:13 859:15
860:1, 8, 12
861:16, 18, 23
865:3 868:22
869:1 871:18,
23 872:9, 12
878:1, 5, 14
production
703:3 803:2, 5
816:15 817:1
833:11 834:14,
20 835:12, 20
860:5 864:11
870:13
productions
731:12 807:8,
23 808:4
817:24 820:21
821:22 822:5,
12 829:11
837:25 857:5

859:2, 14, 16 860:3 864:10, 19 professional 757:1, 7, 13, 21 758:25 759:14 profit 735:9 profitable 780:23 program 794:23 832:1, 3, 8, 10 prohibited 873:12 prohibition 873:25 874:5 proper 758:22 834:1 850:20 851:16 866:15 872:13 property 873:8 proposal 800:16 828:3, 7, 18 829:2, 10 proposals 804:7, 12 805:9, 12 proposed 722:16 742:20 798:15 808:16 prospect 792:6 prospective 850:5, 6 provide 713:7 767:17 770:22 provided 706:22 712:22 713:13, 17, 25 725:16 726:3, 12, 19 739:14 740:9 742:20 807:6 810:9, 19, 23 811:7 859:8, 12 provides 831:15 providing 743:10 provision 774:2 proxy 801:20 802:4 PSY 696:20 public 757:2, 13 759:16 773:8 792:4, 5 802:15, 17 803:24 804:22, 23	805:4 862:1 869:6 publication 752:16, 18 815:23 847:19 852:16 855:4 857:24 858:18 859:21 861:6 864:17, 25 865:11, 23 869:21 870:21, 25 873:14, 23 publicly 792:25 793:5, 20 publish 738:11, 20 739:10 740:23 745:24 749:16 published 741:2 747:17 752:8, 9, 19, 23 810:1, 5 846:6 847:10 848:12 publishing 862:17 pull 708:2 714:7 punishments 874:9 purchase 765:9 772:10, 13 784:8, 10, 15 798:16 799:11 purchased 764:25 799:17 PURI 696:11 purportedly 720:13 purpose 699:10 743:20 749:19, 25 758:1 808:17 863:12 purposes 703:4 705:24 876:21, 22 pursuant 758:6 766:3 783:18 786:20 pursue 760:7 put 703:2 716:8 720:20 747:6 754:13 758:20 761:17 780:20 783:20 795:20 802:11	804:15 805:15 808:19 812:21 813:18 815:1, 19, 25 818:10 822:3 838:3, 8 851:6 867:6 870:10, 15 876:8, 23 877:6 878:21 879:10 883:7 putting 702:11 704:11 706:7 767:20 806:7 838:19 839:22 874:20 < Q > Q2 853:20 858:2 qualify 854:11 question 703:1, 9 710:17 716:5 717:20 718:19 722:13 724:21 726:16, 21 727:11, 21 730:1, 10, 13, 19, 25 731:19 732:6, 13, 21 733:24 734:3, 7 739:5 740:14 741:9 744:1 745:10, 13 746:9, 22, 23 747:5, 7 752:22 753:3, 17 754:6, 22 755:6 758:13, 14 759:4, 9, 12 763:9 764:6 765:25 766:19 772:25 773:1 779:13 784:2, 4 787:9, 10 797:12 799:1, 11, 23 800:8 801:12 812:5, 10 813:13 821:1 822:2 825:14 826:12, 21 830:16 831:8, 11 832:4, 10 834:3 836:13 839:2, 4, 18, 23 842:25	844:18 847:7 848:21 850:25 852:9, 10, 15 854:11 855:1 856:9 857:10 870:23 874:16 875:4, 18, 24 878:7, 11 879:17, 22 880:8, 18 881:18 questioners 763:17 877:18 questioning 836:25 questions 704:1 705:7, 22 706:12 719:13 720:2, 10 728:3, 4 741:3, 6 744:10 750:13, 15, 20 751:19, 25 752:2 760:13, 25 761:1, 16 769:5 777:13 786:2 789:10 797:19 799:6 811:17, 21 812:7, 11, 13 813:19 814:3 815:1, 2, 20 816:1, 11 818:2, 10, 19 821:12, 14, 25 822:12 823:23 824:1 836:10, 19 842:1, 11 843:3 862:2 865:5 866:18 876:7, 11, 20 877:4, 7, 13 879:4, 8, 10 880:15, 24 881:3, 10, 17, 19 882:1 questions/reques ts 699:13, 20 700:6 quibble 795:18 quick 760:12 quickly 702:7 quintessential 716:19 quite 786:17 826:7 867:13	quote 774:2 807:4 828:3 839:16, 17 < R > R/F 700:6 824:9 839:21 840:13 875:14, 23 876:14 877:19 882:3 raise 823:18 raised 850:10 raising 782:18 ran 808:9 range 874:8 rate 779:8 RCMP 830:25 831:1 reach 791:21 reacting 862:10 reaction 862:11 read 701:25 706:14, 18 707:5, 12, 13, 14, 21 713:20 736:14 742:4, 8 750:2, 3 769:13 775:1 777:3 810:7 841:5 855:24 861:19 863:16, 21 866:21 872:22 873:3, 6 reading 733:14 741:19 806:11 839:3 873:2 reads 738:24 867:11 ready 763:4 real 823:1 realization 782:14 845:1, 3 realize 844:9 realized 844:8, 15 really 703:25 724:10 731:18 751:24 756:21 777:13 805:1 846:11 848:21 realtime 879:19 reason 777:17 796:4 799:9 856:15
--	---	--	--	--

<p>reasons 807:12 855:2 856:19 recall 714:14 737:21, 23, 24 746:5 749:7 755:7 766:25 767:5 768:10, 11 775:16 792:8 804:3 812:16 814:21 820:7 837:2 850:15 851:3 853:9 859:7 865:16 871:6 872:11 877:20 878:19 received 703:5 769:9 821:8 Receiver 771:1, 5, 22 772:18 782:15 receivership 771:12, 17 773:3, 11 783:17 RECESSED 760:22 824:20 recognize 864:6 recognized 839:15, 19, 25 840:18 recollection 707:16 752:14 756:19 825:15 870:18 recommend 808:23 record 702:25 703:10, 14 704:11, 25 714:11 717:8, 9 720:21 766:7 778:25 787:7 789:2 795:7 802:4, 7, 19, 21 803:1, 4 812:22 813:19 815:20 824:19 838:8 841:13 860:20 861:4 864:22 867:7 874:21 875:17 876:8, 23 877:7, 25 879:10 880:16 recorded 821:18 883:11</p>	<p>recordings 822:25 records 756:14 795:15 817:2, 6, 10 818:14, 15 recounted 767:18 redemption 798:16 re-examination 879:17 880:2, 21 881:9, 18 refer 705:24 707:19 772:1 828:2 855:18, 19, 22 864:18 866:3 876:5 referable 789:10 reference 752:6 766:15 770:25 794:13 797:22 803:11 830:3 850:14 856:16 866:4 referenced 770:5 references 782:18 835:23 referencing 751:18 referred 700:15 709:16 720:21 761:18, 24 803:9 804:20 811:3 827:17 829:1 830:12 848:6 854:23 874:22 referring 706:1 713:1 723:9 762:3, 20 767:1 773:18, 21 789:13 794:4 828:8, 18 837:1 848:15 869:23, 25 refers 747:1 804:5 807:3 826:17 839:14 865:24 refinanced 781:17 reflected 768:17</p>	<p>refusal 824:11 842:13, 14 878:10 882:5 refusals 699:9 700:5 760:25 879:4, 6 refuse 877:16 879:13 881:12, 14 refused 700:6 refusing 876:12 881:25 Regan 837:19 838:9 regard 763:13 813:19 838:1 859:24 876:8 regarding 717:1, 19 719:21 764:17 816:24 818:16 846:15 regards 741:25 regulator 798:15, 19 837:14 845:22 regulators 830:21 regulatory 798:20 reinvestment 794:24 rejected 769:11 relate 742:15 829:16 related 723:24 relates 704:13 relating 705:7 722:16 826:2 relation 703:6 727:14 730:11 751:14 relations 709:25 relative 741:1 release 848:18 released 880:22 relevance 795:19 823:21 relevant 771:8 778:11 779:11 818:7 877:4 relieved 854:6 rely 748:25 876:9 877:2 relying 876:15,</p>	<p>17 remained 799:21 remaining 800:18 801:4 remains 744:24 remember 805:10 822:16 832:25 849:22 854:14 858:6, 12 870:2, 6 874:18 remotely 696:24 repaid 783:9 repay 781:2 repeat 729:25 764:6 766:18 842:1 847:16 repeated 725:14 repeating 763:14 849:11 rephrase 839:23 replete 734:9 reply 704:2 707:10 876:10 report 770:19 772:18 792:24 808:15 816:8 855:21, 24 856:17 865:10, 12 REPORTED 698:25 816:4 830:6 Reporter 714:22 738:10 748:4 751:21 787:4 813:23 822:15 824:4 869:5 883:4 reporters 740:7 741:15 810:17 812:13 817:19 819:3 822:20 825:25 848:17 REPORTER'S 883:1 reporting 773:25 777:8 779:16 883:23 reports 777:18 representative 718:2, 21 722:15, 21 723:2, 5, 25</p>	<p>821:23 826:3 849:1 875:10 representatives 820:3 represented 722:20 representing 801:11 reproduced 849:13 request 768:13, 15 816:14 860:20 requested 722:3 827:9 requests 703:2 776:19 require 768:25 required 774:25 re-read 706:19 841:13 resent 843:4 reserve 847:23 867:1 879:2 resolve 714:22 respect 720:24 730:17 750:6 760:6, 9 780:7 818:19 827:3 respecting 855:13 respective 780:8 respectively 696:24 respond 703:25 856:22 response 703:5 751:24 821:10, 12, 13, 25 822:12 846:6 847:9 responsible 840:10 responsive 826:21 restarted 853:19 Restated 766:4 restricted 862:16, 24 restructure 781:6 restructuring 780:13, 19 781:25 782:8, 13</p>
--	---	---	--	--

<p>restructurings 782:24 result 747:21 754:9, 12, 15 755:3 767:13 771:3 794:22 795:2 822:18 844:3 857:7 resulting 804:14 RESUMED 760:23 824:21 resurrect 783:17 retained 716:25 717:18 718:6, 9 719:8 814:8 retainer 721:9, 10 Reuters 738:7, 10 739:25 740:7 741:15 742:16 743:10 744:12 812:16 825:8, 10, 16, 18, 25 826:4, 7, 10, 16, 17, 24 827:3, 12 830:22 861:8 863:25 review 776:25 807:17 810:8 836:22 837:4 850:23 851:1 852:23, 25 reviewed 826:19 835:19 reviews 736:13 769:1, 16 772:4 777:5 806:16, 20 834:12 853:15 rhyme 877:12 RICHARD 696:12 697:2 Rick 794:6, 8 828:22 rights 879:3 RILEY 696:19, 23 697:11 699:2 701:3, 25 703:9 704:20 705:2 714:14, 25 728:13 730:1 731:6 732:24 734:12 736:14 744:24 749:6 756:22</p>	<p>760:24 761:6 771:6 774:7 776:6 787:15 799:4 805:6 807:19 815:7 818:25 821:23 824:2, 6, 23 829:1 833:2 834:15 835:20 838:20 839:13 841:15 842:20 843:16 851:22 852:10 856:14 858:17 861:14 862:4, 11 867:22 872:24 875:22 876:11 879:3, 7, 14 880:8, 21, 25 Riley's 720:23 733:9 846:8 ringing 729:23 ROB 696:11 697:24 Rocco 819:8 role 788:10, 12 808:14 roles 731:16 ROMEO 697:5 room 725:12 726:1, 12, 19 728:1 730:16 804:18 ROSEN 696:19 864:22 865:1 roughly 775:1 786:5 853:23 rounding 778:25 RPR 698:25 883:3, 24 rules 825:13 rumour 848:24 rumours 848:9, 15 849:11, 19, 20 850:8 run 870:4 < S > Saad 698:20 Sachs 805:8 salary 708:21, 24 sale 860:5 868:7</p>	<p>sales 858:18 859:2, 19 868:11 Santedicola 698:25 883:3, 24 save 803:14 SAVILLE 697:25 761:14 762:9 819:15 867:15, 17 scope 877:21 scoured 733:19 screen 706:7 736:11 753:13 763:25 802:12 834:8 838:4 857:22 872:9 scroll 798:9 806:17, 19, 21 819:18 827:20 834:21 866:2, 7 se 703:17 SEC 729:10, 19 730:7 731:8 732:1 733:20 734:17 secret 712:17 Secretary 785:13 section 710:24, 25 777:1 806:23 sections 711:2, 9, 17 secured 772:14 securities 709:1, 9 710:25 711:3 755:14 830:20 831:13 836:3 837:12, 14 871:10 873:15, 17 security 844:8, 9 seek 709:19 710:23 751:11 seeking 703:25 704:3 718:17 seize 844:15 seized 844:2, 7, 14 self-destructing 759:22, 25 Self- Represented 698:14, 15 sell 769:7 873:15</p>	<p>selling 756:1 873:17 semi-retired 708:6 semi-retirement 708:7, 12 send 803:16 senior 785:7, 11 831:1 sense 755:2 824:18 sentence 702:10 739:13 740:2, 3 744:15 796:8 separately 834:5 September 707:12 714:16 803:21 804:1 sequence 720:12 series 835:2 serious 729:12 869:5 served 710:14 serves 782:20 Service 837:13 873:23 set 752:1 808:12 853:8 883:6 shape 713:12 share 702:22 809:6, 7 shared 725:13 726:2 shareholder 799:22 805:17, 18 shareholders 796:17 799:22 801:11, 17 805:19, 23 808:15, 20 850:4 shareholdings 799:18 shares 709:1, 5, 9, 12 735:6, 20, 25 736:8, 19, 22 737:7, 19 788:23 792:25 793:6, 8, 13, 17, 20 796:18, 21, 25 797:5, 14 798:17 799:12,</p>	<p>16 801:4 858:23 868:2, 7, 10 869:6 shine...until 861:10 864:2 short 735:5, 9, 20, 24 736:7 756:1 764:14 806:4 854:21, 24, 25 858:17 859:2, 19, 20 860:5 868:7, 11 shorted 736:19 737:6, 19 858:24 Shorthand 883:4, 14 shorting 736:22 shortly 775:17 810:9 short-selling 756:7, 11 811:10 858:17, 21 short-sells 755:18 show 795:9 819:15 820:18 828:21 832:19 835:11 857:6 861:3, 7 864:5, 21 865:8 867:4, 15, 18 873:1 showing 833:12 834:8, 11 849:10 872:20 873:5 shown 722:5 723:7 724:3, 7, 12 shows 845:24 shuffling 717:5 sign 704:23 788:3 signatory 787:25 significant 823:17 silences 729:24 similar 801:23 836:6 837:9 similarly 785:10 864:15 873:7 simple 703:5 720:22 786:11</p>
--	---	--	---	--

800:7, 10 simplest 781:11 simplicity 705:24 simplistic 805:7 simply 758:17 779:15 825:14 single 727:8 795:7 sir 702:2 705:9 707:21 708:16 715:8, 18, 24 716:4 717:21 721:7 724:21 726:14 729:14 730:20 731:19 733:9, 21 734:18 736:3, 9, 16 741:22 743:21 749:20 752:5 753:12 758:9 759:7 761:4 762:15, 24 768:25 769:14, 20 772:9 786:2, 7 799:8 815:16 816:5 819:23 868:1 875:6 SIRF 747:18, 21 752:8, 19 sit 731:6, 19, 23 770:15 situation 781:16 situations 782:19 SLAPP 703:14 704:14 706:22 SLAPPs 703:23 slightly 754:25 795:22 848:23 slippery 797:7 slow 762:23 slowdown 854:19 855:2 slowdowns 855:3 soapbox 782:24 so-called 731:13 837:20 solicit 804:7 805:9, 11 solicitation 804:6, 20	solicitations 804:13, 21 805:5 soliciting 804:9, 11 somebody 753:2 758:24 828:14 833:24 Sorry 701:12 705:12 706:16 707:2 708:13 711:20 713:4, 11 714:16 717:3, 4 721:24 722:22 723:1 724:16 729:22, 25 730:12 732:12 737:2, 10 739:17 741:21, 23 743:5, 13 747:7 751:23 752:12 753:11, 23 757:5 759:9 764:20 766:17, 18, 19 769:13, 19, 24 772:23, 24 778:16 781:21 787:3 790:13 791:24 792:15, 18 793:9, 10 794:8 797:23 800:6 802:24 805:15 806:10 809:18 814:1 817:8 819:8 820:22 825:5, 6, 12 828:22 832:9 833:7, 21 834:9 836:11 838:11 856:5, 6 857:14 858:5 862:16, 21 867:15 871:24 872:3, 24 880:3, 23 sort 764:14 795:7 808:18 817:13 833:11 853:22 855:2 873:8 sought 703:7 712:16 sounds 716:18 source 739:14 740:9 742:5, 20	743:9 766:25 771:6 812:14 sources 858:23, 25 speaking 733:10 747:1 817:17 829:2 843:23 SPEARS 696:11 Special 798:12 808:17, 22 865:10, 12 specific 719:4 727:14 734:1 746:19 842:5 843:7, 10 specifically 702:19 747:20 755:8 760:8 762:11 806:3 824:24 832:11 837:7 848:14 speculating 857:13 speculation 860:22 spoke 784:16 836:24 spot 878:22 St 698:20 staged 771:21 stalking 771:21 783:24 784:13, 16 Stanley 790:5, 10, 13, 19, 20, 21 star's 861:10 864:1 start 726:24 743:3 744:3 763:6, 15, 23 780:7, 9, 22 783:1 started 767:13 791:25 795:22 starting 762:24 777:15 825:3 state 707:25 746:12 753:5 755:13, 20 stated 709:18 710:23 712:9 837:3 statement 702:10, 16	705:22, 25 709:15 718:23, 24, 25 738:23 759:18 776:8 810:16, 24 846:15 847:5 855:25 866:25 868:19 869:15 874:23 875:2, 3 878:23 statements 717:23 720:4 746:1 777:19, 23 778:2, 8 staying 782:2 steer 842:10 843:2, 5, 6 steering 843:11 stenographically 883:11 step 731:1 steps 733:6 801:24 sticking 855:10 stock 755:19 795:1, 2 847:18 858:18 859:20 stop 738:14 839:5 stopped 852:24 853:4 story 718:3 720:14 738:12, 20 739:10, 14 740:8, 9, 10, 23 741:1, 5, 8, 16 742:6, 10, 20, 22 743:10, 11, 16, 18 748:7, 15 749:16 750:1 810:14 812:17 869:12 870:3 straightened 871:25 stranger 863:20 STRATEGY 696:19, 20 698:9, 11 Street 741:2 742:10, 13 746:2 747:15, 18 748:6 749:13, 15 761:9 810:1, 17 811:13, 16, 17	812:7, 22 813:11 815:22 816:24 817:4, 7, 12, 18, 21 818:6, 17 819:2, 13, 22 820:4, 12 822:4, 11 823:15 825:1, 22, 23 827:10 830:1, 6, 17 846:7, 15 847:10, 19 848:11, 17 849:1 852:17 853:5, 25 855:4, 15 856:21 857:7, 25 858:19 859:22 861:6 864:16, 19 865:24 869:21 871:19 872:8 876:17 strict 873:25 874:5 strictly 747:14 873:11 strictures 873:19 struck 801:8 808:7 structure 786:18 790:15 structured 786:12 Student-at-Law 698:20 study 802:15 subject 704:14 760:24 811:18 826:1 831:2 835:14 836:22 837:4 841:16 842:3, 7 848:10 877:10 879:5 880:22 submission 832:21 835:16 877:5 subparagraphs 827:21 subscribe 727:15 730:24 subsequent 754:15 790:1
---	---	---	--	---

subsequently 754:17 830:12 855:16	715:7, 11 737:5 749:20 798:4	869:24 870:5, 20, 24 871:6	779:9, 11 781:23 782:3 783:4, 19 785:1, 3, 12, 15, 19, 22 789:9 790:23 794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	traded 792:25 793:5, 20
subsidiary 786:19 788:17	syndicate 830:2 859:9, 10	thereabouts 774:20 791:23	3, 12, 15, 19, 22 789:9 790:23 794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	trading 756:14 873:21
substance 718:24 723:23 730:10 822:16	talk 709:14 737:15 763:22 764:16	thereof 751:13	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	transaction 765:13, 21 768:8 797:20 798:16 800:18 801:14
substantial 735:9	talked 770:10 791:21	thing 745:13 762:18 807:11 825:20 836:20 840:6, 21 841:10 847:21 874:12	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	transactions 763:22 801:23
substantive 821:13, 24	talking 732:9 741:22 758:10 779:1, 17 782:21 793:19 795:11 817:14, 25 833:24 845:2 846:14 869:18, 20	things 714:13 718:25 720:15 727:15 763:2 770:7 784:25 822:21 827:8 839:20 840:12 870:10 874:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	transcribed 821:18 883:12
successor 709:8	technical 797:10 800:14 801:14	thinking 853:13, 18 870:9	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	transcript 718:12 722:5 723:8, 10, 15 724:3, 6, 8 738:2 803:15 823:11, 15 824:3 848:3, 7 883:14
suggest 856:15	tangled 863:19	third 780:14 873:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	transcripts 822:7, 24 823:3, 18
suggested 744:10 815:20 845:20	term 712:5 729:15 738:17 773:20 801:14 840:4 841:7 859:9	thought 747:6 772:24 780:12 812:10 813:4 815:16 872:12 879:9	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	transfer 775:15
suggesting 768:2, 5 803:6 856:3	terms 727:4 748:18 762:2 770:7, 8 771:4 774:8 776:14 780:12 781:11 791:12 805:8 806:4 808:12, 16 821:11 823:1 826:10 827:9 831:12 866:11	threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	transferred 775:9, 10, 13
summarize 844:4	test 776:11	Tilak 738:9, 19 739:9 740:1, 15, 22 741:6 742:12, 23 743:15, 19, 23 744:8 745:2, 12	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	transmission 828:13
summary 806:4	testifies 722:11	time 701:10 706:18, 20 707:14, 24 708:17 714:2 715:4, 16 716:3, 14 720:8, 15 721:1, 20 723:5 724:13, 23 725:5 727:23 731:4, 10 735:1 736:22 737:9, 12 741:4 744:21 746:11 756:5, 8 757:12 760:13 761:1, 15 762:4, 19 763:1 765:9, 13 769:18 770:4 772:15 773:13	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	Treatment 777:2
SUNNY 696:11	testimony 723:10 724:11 749:21 750:9, 10 883:9	thought 747:6 772:24 780:12 812:10 813:4 815:16 872:12 879:9	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	tremendous 715:20
Sunshine's 855:21, 24 856:17	texts 745:1 817:2 818:14	third 780:14 873:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	trends 847:17
SUPERIOR 696:2		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	true 727:23 743:21, 24 782:23 845:16, 17 883:13
support 706:15 707:11 712:11, 23 713:14, 25 714:6 728:14 798:5		Tilak 738:9, 19 739:9 740:1, 15, 22 741:6 742:12, 23 743:15, 19, 23 744:8 745:2, 12	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	truth 863:20
supported 715:23		time 701:10 706:18, 20 707:14, 24 708:17 714:2 715:4, 16 716:3, 14 720:8, 15 721:1, 20 723:5 724:13, 23 725:5 727:23 731:4, 10 735:1 736:22 737:9, 12 741:4 744:21 746:11 756:5, 8 757:12 760:13 761:1, 15 762:4, 19 763:1 765:9, 13 769:18 770:4 772:15 773:13	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	trying 718:13, 16 724:11 738:25 747:11 759:9 793:11 795:18 799:6 800:15 833:6 843:5, 6
supporting 719:4 734:22		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	TUNLEY 697:24 761:5 762:1 764:5 768:22 769:23 771:2 774:18 775:22 776:4, 20, 21 778:23 779:6, 10, 25 783:7 784:6 787:8, 11 792:3, 22
suppose 750:13		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	
surely 869:7		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	
Sutin 794:4, 6, 8 795:5 800:22 804:5 808:6 809:16, 19 810:18		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	
Sutin's 795:12 797:17 798:4 802:23 806:2 807:22		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	
swear 815:18		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	
switch 777:14		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	
swore 707:10, 20 714:6 815:16		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	
sworn 696:23 705:8 706:14		threshold 791:21	794:1 796:13, 23 797:12 803:14 807:11 809:17, 20, 23 810:4 812:18 814:18, 19, 21 818:20 824:15 829:16 833:13 836:6 837:16 850:7, 14 851:7 852:16, 19, 21 853:5 854:2 855:15 859:21 861:11 864:2 868:3, 4 871:12, 14, 15 872:4 883:6, 7, 10	

796:10 798:19,
22, 25 799:2, 3,
19 802:8, 9, 13,
20 803:8, 18
805:2 807:14
808:2, 5 809:19,
21 812:3 813:2,
8, 15, 21 814:3,
4, 23 815:5, 15
816:2, 13, 20
817:10, 15, 20,
23 818:12, 22,
24 821:17, 19
822:2, 3, 9
823:12, 22
824:5, 11, 14, 22
826:8, 18
827:15 828:1,
22 829:4, 6
833:23 836:18
837:22 838:5,
10, 12, 22, 25
839:9, 24
840:15, 22
841:11 842:9,
15, 21, 24
843:12 846:5,
12, 18 847:6
851:14 852:5, 9,
14 854:6, 8
856:13 858:15
859:2, 4 860:14
861:2, 23, 24
862:1, 8 863:9,
18, 24 864:13
867:5, 8, 19
870:19 871:7
872:18 875:15,
19, 25 876:3, 4,
19, 25 877:3, 8,
12, 14, 24 878:8,
11, 17, 20 879:1,
12, 21 880:1, 4,
14 881:1, 6
TUNLEY.....76
1-882 699:6
Tunley's 700:16
761:25
turn 716:1
790:17 832:7,
16 847:13
tweets 848:20
Twitter 848:9,
15, 24 849:11

850:2
two-part 720:2
two-thirds
780:15 791:9
796:13
type 721:3
730:19 741:5
790:14
typically 781:24
857:15

< U >
U.S 764:22
765:1, 4, 6, 17,
18, 22 766:9, 16,
21, 23 767:17,
25 769:11
770:1, 6 777:9,
10, 14, 15, 16, 21
778:1, 3, 5, 12
779:23, 24
844:13
U/A 699:21
710:5 728:25
768:20 770:24
774:16 776:20
807:25 813:2,
14, 20 815:25
816:10, 19
818:1, 23
827:14 852:12
856:11
U/T 699:13
702:13 710:20
711:4 726:6
727:1 728:7, 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
UK 696:20
698:11
ultimately
800:24 808:24,
25 811:18
unanimously
808:23
uncertainty
746:12
underlying
718:23 727:11,

21 730:24
732:24 845:3
understand
715:18, 21, 23
718:14, 16
727:7 728:15,
17, 19 730:13
732:14 737:16
740:13 745:20
747:12 751:12
756:3 765:11
766:20 771:11
772:20 777:17
778:9 779:2
782:3 784:1, 4
790:24 794:5
796:16 797:25
801:5, 6, 12
806:1 828:23
830:14 832:20
835:3 843:16
845:4 853:1
861:22 864:25
872:11 874:3
876:7, 11
understanding
710:2 722:4
746:15 786:7,
11 788:6
791:16 795:24
808:9 819:11
834:22 839:15,
23 878:6
understands
722:1 848:2
understood
771:23 787:15
789:12
undertake
726:6 734:4
774:14 804:19
undertaken
699:13 850:23
undertaking
728:16, 19
730:17 768:18
770:22 774:7
776:13 802:6
807:24 809:13
840:8, 14 851:8
858:11
undertakings
699:8, 12
underwriting
854:19

undisclosed
712:13
unequivocally
734:15
unfairly 839:11
unfounded
875:11
units 788:7
University
789:3, 6
unlawful 709:23
unpack 741:11
unpaid 770:12
774:10 776:15
unrelated
817:17
unsuccessful
783:18
upcoming
703:16
USD 772:16, 17
779:4
uses 832:11

< V >
value 769:25
774:1 779:15
variations
823:10
various 727:5
731:13 742:15
755:9 782:17
828:4
VENTURES
696:9
verbatim 822:24
Veritas 811:2, 3
vesting 772:5
773:12 784:18
vests 784:19
VI 791:17 792:6
video 717:13
Videoconferenci
ng 696:24
view 713:9
727:15 742:11
Vincent 753:7,
25 754:13, 19,
21, 23 755:1, 3,
10
violate 874:5
violated 711:2
violations 711:9,
13, 17, 25

VIRGINIA 696:19
VMK 755:17
volume 858:23
860:6
VOORHEIS
696:13 724:18,
23 755:14, 15,
16, 23, 25 756:6,
11 859:3, 5, 16
860:3, 17
vote 796:24
797:13 808:23
voted 797:5, 15
voting 793:6, 8,
20, 21

< W >
wait 729:23
walk 734:1
Wall 741:2
742:10, 12
746:2 747:15,
18 748:5
749:13, 15
761:9 810:1, 17
811:13, 15, 16
812:7, 22
813:10 815:22
816:24 817:3, 6,
11, 18, 21 818:6,
17 819:2, 12, 22
820:4, 11 822:4,
11 823:14
825:1, 22, 23
827:10 830:1, 5,
17 846:7, 15
847:9, 19
848:11, 16, 25
852:16 853:5,
24 855:4, 15
856:21 857:7,
25 858:19
859:22 869:21
871:19 872:8
876:17
wanted 703:8
733:23 756:21
801:7 856:6
857:20
wanting 782:23
794:24 874:25
wants 852:10
ways 727:5
web 863:19
week 870:11, 16

Weissman 698:23 820:6
Wes 755:14
WESLEY 696:12
WEST 696:8, 13
697:16 698:17,
18 716:24
717:17 718:6,
10 719:2, 5, 8
720:1, 16
721:10, 18
722:10, 23
723:4, 12, 16
755:23, 25
811:2 864:10
878:2, 14
whatsoever
703:22 743:22
whistleblower
824:24 825:2,
21 826:1 828:3,
18 829:2 830:2,
7 831:15, 21
832:5, 8 842:18
whistleblowers
830:10 843:17
845:10
wholly 787:16
wholly-owned
786:19
willing 801:17
Willis 862:12
863:12 881:22
882:1
withdraw 715:8,
12 716:13
734:23 737:6
749:23 750:5
875:4, 6
withdrawing
715:16 734:25
737:8, 11
WITNESS 699:2
720:10 724:2
732:16 736:13
750:9, 25 751:5
769:1, 16 772:4
777:5 799:12
806:16, 20
834:12 838:18
839:2, 8 840:17,
25 842:10
843:3, 6 853:15
883:7, 9

witnesses
838:14 877:10
Wolfpack 712:4,
14, 19 725:9, 15,
23 729:5, 15
730:3 731:13
735:4, 8, 18
738:5, 18
745:22 747:2
748:2 811:1
won't 716:8
717:15 791:20
875:20, 21
879:12
word 723:18
740:19, 21
741:11 742:1
744:18 797:7,
11 835:9 844:7,
24 851:23
words 725:2
733:25 745:25
758:3 822:17
849:3, 4, 5
work 708:13, 20
757:11 795:21
805:3, 5 816:18
833:7
working 722:10
723:16 767:17,
22 770:10
works 768:8
Worldwide
865:10
worries 776:10
worry 762:24
838:16
worth 795:21
wrap-up 750:16
Wright 828:14
writ 842:19
write 716:25
717:18 720:13
740:7 741:15
743:18 748:7,
15 749:15, 25
862:13
writes 869:7
writing 816:24
852:24 862:25
869:13
written 721:8
741:5 742:10
745:7 870:8
871:5

wrong 792:15
856:9 878:18
wrongdoing
845:23
wrote 862:24

< X >
XTG 763:16, 22
764:4, 17
771:17 773:11,
14 775:3, 11
777:2, 8 779:16
781:13 782:2
783:14 784:10,
15 822:21
880:6, 10
XTG's 767:9
783:11

< Y >
Yeah 701:14
754:22 776:7
781:17 784:3
796:12 806:13
819:18, 19
828:20 833:5
863:5
year 706:24
707:3 708:15
775:20 812:1
829:12
yesterday
737:17 763:18
771:16, 24
York 738:10

< Z >
Zoom 696:24

This is Exhibit "D" referred to in the affidavit of
A.J. Freedman, sworn before me this 10th
day of May, 2021

A handwritten signature in blue ink, appearing to be "SFC", written above a horizontal line.

A Commissioner, etc.

Catalyst v West Face et al.

James Riley
on Thursday, April 22, 2021



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

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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

--- This is Continued Cross-Examination of 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 22nd day of
April, 2021.

1 A P P E A R A N C E S :

2 DAVID C. MOORE, Esq., for the Plaintiffs,
3 & KEVIN JONES, Esq., (Defendants to the
4 & MATTHEW KARABUS, Esq., 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

14 MATTHEW MILNE-SMITH, Esq., for the Defendants
15 & ANDREW CARLSON, Esq., (Plaintiffs by
16 & MAURA O'SULLIVAN Counterclaim), West
17 Face Capital Inc. and
18 Gregory Boland

20 LINDA PLUMPTON, Esq., for the Defendants,
21 M5V Advisors Inc.
22 c.o.b. Anson Group
23 Canada, Admiralty
24 Advisors LLC, Frigate
25 Ventures LP, Anson

1		Investments LP, Anson
2		Capital LP, Anson
3		Investments Master
4		Fund LP, AIMF GP,
5		Anson Catalyst Master
6		Fund LP, ACF GP, Moez
7		Kassam, Adam Spears
8		and Sunny Puri
9		
10	REBECCA SHOOM, Esq.,	for the Defendants,
11		ClaritySpring Inc. and
12		Nathan Anderson
13		
14	DIMITRI LASCARIS, Esq.,	for the Defendant,
15	& A.J. FREEDMAN, Esq.,	Bruce Livesey
16		
17	JOHN ADAIR, Esq.,	for the Defendants to
18		the Counterclaim, BC
19		Strategy Ltd. d/b/a
20		Black Cube and BC
21		Strategy UK Ltd. d/b/a
22		Black Cube
23		
24	DEVIN JARCAIG, Esq.,	for the Defendant
25		(Plaintiff by

1 Counterclaim), Bruce
2 Langstaff

3
4 DARYLL LEVITT Self-Represented

5
6 KEVIN BAUMANN Self-Represented

7
8 Also Present: Greg Boland, CEO, West Face Capital
9 Philip Panet, General Counsel, West
10 Face Capital
11 Tanya Barbiero, Law Clerk,
12 Davies Ward
13 Kate Mazzuocco, Student-at-Law,
14 Davies
15 Patrick White, Student-at-Law,
16 Davies

17
18 REPORTED BY: Deana Santedicola, RPR, CRR, CSR

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8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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I N D E X

WITNESS: JAMES RILEY

PAGES

CROSS-EXAMINATION BY MR. MILNE-SMITH
(Cont'd)..... 890 - 1053

CROSS-EXAMINATION BY MR. LASCARIS
(Cont'd)..... 1054 - 1083

CROSS-EXAMINATION BY MR. BAUMANN
(Cont'd)..... 1084 - 1103

**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: 908:24, 916:18,
934:9, 972:8, 984:13, 1001:8, 1029:17, 1042:15,
1043:2

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
927:19, 992:17, 1000:10, 1007:8

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: 942:8, 944:13, 945:15, 954:23, 964:13, 995:10, 996:12, 1016:5, 1016:18, 1031:16, 1092:18, 1093:5, 1093:9, 1096:10, 1098:3, 1101:20, 1102:5, 1102:11, 1103:17, 1103:23

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INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
8	Compendium of documents.....	891:22
9	Letter of Engagement dated September 11, 2017, between Tamara Global Holdings and B.C. Strategy UK Ltd.....	1055:25
10	Email from Mr. DiPucchio to Mr. Glassman, copying Mr. Riley, dated September 7, 2017.....	1060:6

1 -- Upon commencing at 10:07 a.m.

2

3 JAMES RILEY; UNDER PRIOR AFFIRMATION.

4 CROSS-EXAMINATION BY MR. MILNE-SMITH

5 (CONT'D):

6 2564

Q. All right. Good morning,
Mr. Riley. This is a continued cross-examination,
and so the first thing I would like to do - and I
have discussed this with Mr. Moore in advance - is
to mark for the purposes of the record as Exhibit
5 [sic] the compendium of documents that I am going
to be using during this examination. I'm just
going to put on the record the agreement I worked
out with Mr. Moore in advance, and he will correct
me if I have got anything wrong.

What I have done in this compendium is
I have included documents, and in some cases, just
for ease of the witness, I have excerpted and I
have highlighted some documents, but I think we are
all agreed that what should go into the record are
the documents that I actually take Mr. Riley to,
and it should be the unexcerpted and unhighlighted
versions of those documents.

So when we put together our motion
record, and we put documents in, we won't be using

1 ones highlighted with my eye. We'll be using the
2 neutral, plain, unexcerpted and unhighlighted
3 documents, notwithstanding the fact that the
4 compendium I'll be using on this examination has
5 highlighted and excerpted copies.

6 So are we all agreed on that?

7 MR. MOORE: That is a fair summary. I
8 would add that to the extent that the documents are
9 ones that are documents that have been delivered by
10 way of undertaking or advisements, et cetera, as
11 part of the prior examination, from my standpoint,
12 I'm not sure that they need to be marked. You are
13 welcome to do so, but to my view of it, you know,
14 those materials are just continued evidence on the
15 pre-existing transcript.

16 But from a convenience standpoint, if
17 you have a compendium, and you want to mark
18 specific documents in the way that you have
19 described, I have no problem with that.

20 MR. MILNE-SMITH: Okay. That's great.
21 Thank you, Mr. Moore, and we are agreed on that.

22 EXHIBIT NO. 8: Compendium of
23 documents.

24 BY MR. MILNE-SMITH:

25 2565

Q. So let's go to tab 1. Mr. Riley,

1 this is an excerpt from your December 5th, 2019,
2 affidavit. It was the first affidavit you swore in
3 these anti-SLAPP motions, and this is the affidavit
4 you swore in support of the Catalyst parties'
5 anti-SLAPP motion against the West Face
6 counterclaim.

7 So with all of that by way of context,
8 if we can just go over the page to paragraph 103.
9 I just want to give you the context here. So it is
10 the next page. So here you are discussing the
11 first investor letter, and you'll see that at
12 paragraph 103 you provide an excerpt from The First
13 Investor Letter of August 14, 2017, and you advise
14 the investors in the Catalyst Fund Limited
15 Partnership II and II-PP Investors that:

16 "As a brief update on the West
17 Face and Wind litigation, new facts
18 helpful to the case have been
19 discovered. These relate not only
20 to their stand-alone behavior but
21 also to possible interference and
22 market manipulation involving West
23 Face and others in Callidus."

24 And go over the page to paragraph 105,
25 you state:

1 "[...] Catalyst is under an
2 obligation to keep investors
3 informed of matters concerning the
4 management, conduct and performance
5 of the investment Funds."

6 And, Mr. Riley, you would agree that
7 that obligation means all material information,
8 good or bad; correct?

9 MR. MOORE: Just one second. My
10 understanding is that what we are to be doing on
11 this examination and any other follow-up
12 examinations, including, for example, the one that
13 was the day before yesterday, was to be asking
14 questions arising from documents produced by reason
15 of Justice Boswell and Justice McEwen decisions as
16 opposed to, you know, going over ground that either
17 was raised or could have been raised during the
18 four-day prior examination.

19 So I'm just not sure how this line of
20 questioning is tied to what I just said.

21 MR. MILNE-SMITH: You are going to
22 say -- well, I think you can see where we are going
23 quite clearly, Mr. Moore. We are, of course, going
24 to discuss the documents in relation to Danny Guy
25 and Vincent Hanna, but I think in fairness to the

1 witness, I need to put to him and make sure that he
2 is aware of and recalls the testimony that he has
3 given by way of affidavit before I take him to the
4 documents so that he can fairly have the context
5 and be able to answer the questions I'm going to
6 put to him about Vincent Hanna or Danny Guy and
7 Derrick Snowdy.

8 MR. MOORE: Okay. Fair enough. So
9 what I understand you to be saying is you are just
10 referring the witness to certain portions of his
11 December 5 affidavit to provide some context for
12 questions you are going to ask about the Danny Guy
13 documents?

14 MR. MILNE-SMITH: That is exactly
15 right.

16 MR. MOORE: Okay. That is fine. Go
17 ahead.

18 BY MR. MILNE-SMITH:

19 2566 Q. Okay. So, Mr. Riley, when you
20 describe in paragraph 105 the obligation to keep
21 investors informed, I take it, of course, that
22 that's an obligation to keep them informed of all
23 relevant material information, not just the good
24 news; correct?

25 A. I would have to look at each piece

1 of information you are referring to. So it is a
2 hypothetical, and I would have to have it in a
3 context to answer that question properly.

4 2567 Q. But as a general matter, you
5 accept that a fiduciary obligation to inform
6 investors includes all material information, not
7 just good information; correct?

8 A. It may depend on whether there is
9 confidentiality that attaches to it and other
10 circumstances like that. So I think to phrase it
11 that baldly, I can't agree with that.

12 2568 Q. All right. Paragraph 107 states
13 that:

14 "The August 14, 2017 Investor
15 Letter informed our investors of new
16 facts helpful to its litigation
17 regarding the WIND acquisition
18 [...]"

19 And if you go over to paragraph 108,
20 you can see that the information helpful to the
21 litigation was the Vincent Hanna email of August
22 11, 2017; do I have that right?

23 A. Yes.

24 2569 Q. And we now know that Vincent Hanna
25 was in fact a gentleman by the name of Danny Guy;

1 correct?

2 A. Yes.

3 2570 Q. And --

4 A. Are you agreeing with that now
5 too?

6 2571 Q. I am certainly saying that we have
7 evidence to support that now that I have seen it.

8 A. Thank you.

9 2572 Q. And you also would agree with me
10 that Danny Guy was relying, for the assertions he
11 was making in this email, at least in part, on a
12 private investigator by the name of Derrick Snowdy?

13 A. Yes.

14 2573 Q. And you provided that information
15 to investors, or Catalyst provided that information
16 to investors on August the 14th because it believed
17 that information to be credible at the time;
18 correct?

19 A. That is correct.

20 2574 Q. So we then go to tab 2, your May
21 29th, 2020, affidavit.

22 A. The only thing I'll ask,
23 Mr. Milne-Smith, to the extent that I have been
24 asked questions on these paragraphs before.

25 2575 Q. Yes.

1 A. I have not reviewed the transcript
2 from that, from my examination. So to the extent
3 that I have said something that is not consistent
4 with what I am saying now, I would ask you to
5 please --

6 MR. MOORE: Read it in context.

7 THE DEPONENT: Yeah.

8 BY MR. MILNE-SMITH:

9 2576 Q. That is fine. I don't think you
10 are saying anything different. So this is our --

11 A. You know, without looking at the
12 transcript, I can't remember what I was asked.

13 2577 Q. That is fine. So this is your May
14 29th, 2020, affidavit, which was your responding
15 affidavit to the Defendants' anti-SLAPP motions in
16 the conspiracy action.

17 A. Which Defendants? All of them?

18 2578 Q. All of them.

19 A. Okay.

20 2579 Q. So you swore one affidavit in
21 response to all the Defendants in the conspiracy
22 action, and there was a separate one on the Dow
23 Jones action. So this is the conspiracy affidavit.

24 A. Yes, conspiracy. Thank you.

25 2580 Q. Okay. So we go over the page to

1 paragraph 101. So in this context, you are
2 explaining the genesis of the Wolfpack action as I
3 understand it, and you, again, refer to the Vincent
4 Hanna email; you see that?

5 A. Yes.

6 2581 Q. And if you go to paragraph 105.
7 So you see just above that you have, again,
8 excerpted the Vincent Hanna email, and then at
9 paragraph 105, you say that the Vincent Hanna email
10 was corroborated on August the 30th by Mr. Levy's
11 testimony; do you recall that?

12 A. Can you scroll down to page 50,
13 please?

14 2582 Q. Let's see if we included it. No,
15 we didn't include that, but that is fine. We went
16 over Mr. Levy's testimony, and I don't intend to go
17 there again. I'll let the affidavit stand for
18 itself on that. I just wanted to remind you of the
19 facts.

20 And then if we go to tab 3, this is the
21 August 20th affidavit, which was your reply
22 affidavit in respect of the anti-SLAPP motion
23 brought by Catalyst and Callidus. So it is sort of
24 the reply from the first December 5th affidavit we
25 looked at. So this is, again, in the context of

1 the West Face counterclaim.

2 And if we go to paragraph 141, you will
3 see that you, again, rely on the Vincent Hanna
4 email to defend the first investor letter of August
5 14th, 2017; do you see that?

6 A. Yes.

7 MR. MOORE: Well, paragraph 141 says
8 what it says.

9 BY MR. MILNE-SMITH:

10 2583 Q. Yes. And then in the following
11 paragraphs - and if we can just sort of zoom out a
12 little bit so you can see the rest of that page -
13 you can see that on paragraphs 142 to 144 you are
14 essentially criticizing, disagreeing, use whatever
15 word you want, but taking issue with Mr. Boland's
16 evidence wherein he questioned Mr. Hanna's bona
17 fides; is that fair?

18 A. Yes.

19 2584 Q. Okay. So we will -- I'm just
20 doing this in chronological order, but, Mr. Moore,
21 you have my undertaking that we will come back to
22 Vincent Hanna, and I just wanted to lay that
23 groundwork so that we had that done in advance.

24 MR. MOORE: I understand.

25 BY MR. MILNE-SMITH:

1 2585 Q. What I would like to do now is go
2 to an excerpt from Mr. Glassman's affidavit, and
3 this relates specifically to a new production that
4 was made by Martin Musters -- or that was made by
5 Catalyst of a Martin Musters document. If we can
6 go to tab 4, this is an affidavit that was sworn by
7 Mr. Glassman in the motion before Justice Boswell
8 with respect to privilege.

9 And I take it, Mr. Riley, that you
10 reviewed a draft of and certainly saw a final copy
11 of Mr. Glassman's affidavit in this regard?

12 A. I apologize, but I do not recall
13 seeing it.

14 2586 Q. Okay. Well, let's go and look and
15 see if you are familiar with the facts. So if we
16 go to paragraph 12(a), Mr. Glassman is describing
17 certain events which happened, and he has just
18 described what he describes as the short attack on
19 Callidus, and he says:

20 "Concurrent with or shortly
21 after the above events, several
22 things happened which caused me to
23 fear for my safety, and for the
24 safety of my family, my partners
25 [...] and their families, and the

1 employees of Catalyst and Callidus."
2 And the first thing he points to is he
3 says:

4 "On or about July 22, 2017,
5 Callidus' computer system was
6 subjected to a sophisticated cyber
7 attack by unknown persons, which
8 included infecting the system with a
9 ransomware virus."

10 Do you recall that incident?

11 A. I do.

12 2587 Q. And this was one of the incidents
13 on which Catalyst and Callidus rely on to justify
14 the retainer of Tamara Global, and through them,
15 Black Cube and Psy Group; do I understand that
16 correctly?

17 A. Yeah --

18 MR. MOORE: You say "justify the
19 retainer". It is part of the factual context in
20 which one has to consider and examine everything
21 that could happen. When you say "justified", I
22 think they were entitled to retain people, but it
23 is the factual context leading up to certain
24 events.

25 BY MR. MILNE-SMITH:

1 2588 Q. Okay. That is a helpful
2 clarification. Tab 5. So this is an August 18th,
3 2017, email from Marty Musters to you, Mr. Riley,
4 and you see from the email signature that
5 Mr. Musters works for a company called Computer
6 Forensics Inc. He is essentially a computer
7 expert, for lack of a better term; fair?

8 A. Yes.

9 2589 Q. And if we then go over, you can
10 see there is a reference to "Callidus Cyber Breach
11 report.pdf". If we go to the next tab, tab 6, that
12 is the report itself which you received from
13 Mr. Musters on August 18th, correct?

14 A. August -- dated -- yes.

15 2590 Q. Yes. The date of the report is
16 August 17th.

17 A. No, I understand. I saw that date
18 and corrected myself.

19 2591 Q. Yes. That is fine. You received
20 the email on the 18th. So you obviously received
21 and reviewed this report?

22 A. Yes.

23 2592 Q. Okay. And if we can skip forward
24 to the next page, I think it is page 8 of the
25 report, and you will just see I have highlighted

1 Mr. Musters' conclusion here. He says that:

2 "[...] this attack was geared
3 towards obtaining money from the
4 victim company [...]"

5 A. Yes.

6 2593 Q. You saw and were aware of that;
7 correct?

8 A. Yes.

9 2594 Q. And forward to the next page.

10 This is page 10 of the report. So you will see the
11 highlighted passages under section 4.3, "How
12 successful was the attack". It says:

13 "The objective was to encrypt a
14 sufficient amount of data to make it
15 palatable for the business to pay
16 \$55,000 for the retrieval of that
17 data. The attack was successful in
18 that on 7 File servers and 4
19 computers was encrypted. Had
20 Callidus not had backups, it would
21 have been in a dilemma [...]"

22 A. Yes.

23 2595 Q. So ultimately, Callidus had
24 backups and did not have to pay any ransom to these
25 computer hackers who launched this attack; correct?

1 A. Correct.

2 2596 Q. And you have no reason to disagree
3 with Mr. Musters' conclusion that this was a random
4 attack by computer hackers for a modest sum of
5 money?

6 A. That is his conclusion, and I am
7 not a computer expert, but I found it highly
8 suspicious that we had a cyber attack at the
9 same -- at a contemporaneous time when Vincent
10 Hanna was saying that we might be the subject of an
11 attack.

12 2597 Q. And --

13 A. And I am not disagreeing with
14 Marty Musters.

15 2598 Q. Okay. Good. That is the
16 important thing. Can we then go to tab 7. So this
17 is one of the email chains that arises out of the
18 first contact with Mr. Hanna, which we have already
19 looked at on August the 11th, and I just want to
20 sort of confirm the chronology.

21 So this email indicates -- you see I
22 have highlighted it there. It is an email exchange
23 between Glassman and Mr. Hanna, as he was calling
24 himself then, on August 21st, 2017.

25 A. I'm sorry. Just -- I apologize.

1 I don't mean to over-speak. I found, when I was
2 reviewing this on -- I didn't review a hard copy.
3 I reviewed it on the -- on a computer -- on my
4 iPad.

5 2599 Q. Yes.

6 A. I find this email chain very
7 confusing because it is kind of back and forth,
8 back and forth. So if we are going to go through
9 this, I would ask you to go through quite slowly
10 because I found it very confusing going through it.

11 2600 Q. I understand that, and I don't
12 think we have to go through the whole thing, but I
13 will go as slowly as you want to. In fact, one of
14 the things I wanted to confirm in order to sort out
15 the chronology here is that you will see the email
16 at the top where it says when it was sent, and it
17 says 6:43 p.m., and then the one below that says
18 17:14, so 5:14, but it says "Jim riley and counsel
19 confirmed for 4 p.m.", so it seems to be confirming
20 a meeting in the past.

21 My interpretation of this is -- you
22 will see the first email time and date says "UTC".

23 A. Yes.

24 2601 Q. And I believe that stands for
25 universal time coordinates, which is six hours

1 ahead of us?

2 A. That is Greenwich Mean Time is the
3 other name for that.

4 2602 Q. Yes.

5 A. Yeah, I -- I can't do the math in
6 my head on what the time differential is, but that
7 sounds reasonable.

8 2603 Q. Right. So my interpretation of
9 this is that it is not in fact referring to a time
10 machine where you are confirming a meeting for
11 before it happened. What in fact is happening is
12 that at -- it is actually minus 6. So 11:14 on
13 Monday, Mr. Glassman is writing:

14 "Jim riley and counsel
15 confirmed for 4 p.m."

16 A. Who told you about the time
17 machine?

18 2604 Q. I think that was part of Gadi Ben
19 Efraim's retainer?

20 A. Yeah. In other words, I agree
21 with you. I always find it confusing when -- why
22 it is that email systems use different time frames;
23 i.e., local time as opposed to UTC.

24 2605 Q. Right.

25 A. But I will take it that there was

1 a meeting that was prospective at that time.

2 2606 Q. Okay. And the simple thing -- all
3 I'm really wanting to confirm with this is that on
4 or about August 21st, you had a meeting with John
5 Kingman Philips; correct?

6 A. That is correct.

7 2607 Q. And John Kingman Philips was
8 counsel to Danny Guy?

9 A. Correct.

10 2608 Q. Okay. And if we scroll down to
11 the bottom of this, it refers to other potential
12 attendees, just the bottom of this page. You will
13 see it refers to Jon Levin, Rocco DiPucchio,
14 potentially one additional lawyer. Did anybody
15 else attend that first meeting with you and
16 Mr. Philips?

17 A. Naomi Lutes from Mr. Greenspan's
18 office.

19 2609 Q. Okay.

20 A. I believe.

21 MR. MOORE: Yes, Mr. Milne-Smith, my
22 recollection is that -- do you remember, in the
23 course of this motion, there were some emails that
24 were and remain subject to privilege that are
25 between counsel that weren't part of the

1 productions, and so I think they still remain in
2 that context.

3 But my recollection is there was some
4 considerable back and forth about who was going to
5 go or who could go or who ended up going to that
6 meeting on August 21. That is a correct date. We
7 can -- if you want me to double-check and confirm
8 who was at that meeting, if you don't have that
9 pinned down from the documentation, we can
10 endeavour to do that.

11 THE DEPONENT: My best memory is that
12 that was Mr. Philips, me, and Naomi Lutes.

13 BY MR. MILNE-SMITH:

14 2610 Q. Okay. And I appreciate that from
15 both of you confirming it. Mr. Moore, why don't I
16 leave it this way. My understanding from our
17 review of the documents is that this was the first
18 meeting -- the first face-to-face meeting, but if
19 there is something else in the documents I don't
20 have access to that indicates that there was an
21 earlier face-to-face meeting between the Catalyst
22 parties on one hand and any of the Guy parties on
23 the other, you'll let me know?

24 U/T MR. MOORE: Will do. I mean, I think
25 that that type of meeting would not have been, from

1 our standpoint -- or, you know, with the back and
2 forth, some of it may have been with counsel and
3 privileged, but the fact of a meeting like that
4 would not have been within that -- you know,
5 subject to those constraints, and so my
6 recollection of the documents is the same of yours,
7 that it is August 21st, the first actual
8 face-to-face meeting, but if it is anything
9 different than that, we'll let you know.

10 BY MR. MILNE-SMITH:

11 2611

12 Q. Okay. Okay. So let's then go to
13 the next tab, tab 8. This is another email chain
14 between Mr. Hanna and Mr. Glassman, and this one we
15 are going to go slowly through, Mr. Riley, just
16 to -- again to pin down the chronology. If we
17 could go to the last page of the tab, so page 5.
18 So you will see this is on August 21st. This is
19 the one we had just looked at. This is August
20 21st, confirming the meeting we just talked about.
21 And then if we go up a little bit on this page, you
22 will see now on August 22nd Mr. Hanna is writing
23 and saying:

24 "I trust you have been
25 debriefed [on] [...] yesterday's
meeting [...]. Shall we set up the

1 Wednesday meeting? That meeting
2 should consist of you, Jim and our
3 'trusted guy' only."

4 So Mr. Hanna is suggesting another
5 meeting with our "trusted guy"; do you see that?

6 A. Yes.

7 2612 Q. And "our trusted guy", as he
8 called him, turned out to be Derrick Snowdy;
9 correct?

10 A. I don't think that is right,
11 because the next meeting was with Vincent Hanna on
12 a speakerphone at Matt Milne's -- sorry, at Kingman
13 Philips' office.

14 2613 Q. Yes.

15 A. In chronological.

16 2614 Q. And I think you are right in terms
17 of what actually happened, but in terms of what
18 Mr. Hanna is proposing here, you are not aware of
19 anybody else being his "trusted guy" other than
20 Derek Snowdy; correct?

21 A. I can't answer that conclusively
22 because I don't know whether he was trying to play
23 a game where he was alluding to someone else or
24 whether it was Derrick Snowdy. I --

25 2615 Q. Okay.

1 A. I don't have -- at that time, we
2 didn't have -- I'm not even sure we were aware of
3 who Snowdy was.

4 MR. MOORE: Or his counsel John Philip
5 potentially.

6 THE DEPONENT: Well, no, we were aware
7 of this guy named Philips because we had met with
8 him on the 21st.

9 MR. MOORE: Okay.

10 BY MR. MILNE-SMITH:

11 2616 Q. Okay, that is fine. Over to page
12 4 then. So Mr. Glassman agrees to arrange another
13 meeting at the same venue. He says "at the same
14 venue as yesterday". Vincent Hanna says that.

15 A. Yes.

16 2617 Q. And if we then go to page 3, I
17 understand from this exchange that this second
18 meeting happened on August the 23rd -- just go up
19 to the top of that page. You will see the
20 highlighted portion. Right. So you see on the
21 22nd, he says:

22 "We will see you tomorrow",
23 being the 23rd, "at 1PM at the same
24 place [...]".

25 So that meeting happened on August

1 23rd; correct?

2 A. This is why I find it -- and I
3 apologize, I find it very confusing because of the
4 back and forth on these emails. The next meeting I
5 think was the 23rd.

6 2618 Q. That is fine, and we are going to
7 come to the note to that meeting. I'm just trying
8 to do this in order to give you the full context.

9 A. But it is quite possible that when
10 we look at it, I may have to rephrase, but as I
11 say -- as I said at the beginning, I found this a
12 very confusing sequence -- well, it is more in the
13 context of there was a lot of back and forth.

14 2619 Q. That is fine. That is fine. I
15 think your answer is definitive enough for our
16 purposes at this time. Again, I'm just trying to
17 give you the context.

18 So we then go up to page 2 of this
19 document, you will see that Mr. Hanna asks
20 Mr. Glassman for his cell phone number in
21 confidence, and he says:

22 "The client would like to speak
23 with you directly."

24 And he asks if he uses WhatsApp.

25 It is my understanding - and tell me if

1 I have it wrong - Vincent Hanna originally
2 pretended that he was talking for someone else, but
3 the client he is referring to is in fact Danny Guy,
4 who was the person corresponding here? We are
5 operating on the same assumption here; correct?

6 A. We were very confused by this
7 email as to why it was the client would like to
8 speak to you directly, whether that was John
9 Kingman Philips or someone else, some other
10 counsel. So I never took this as anything more
11 than we were going to have a conversation with
12 someone who was most likely Danny Guy.

13 2620 Q. Okay.

14 A. In retrospect. It was going to be
15 Mr. Hanna, but in retrospect, it was Danny Guy.

16 2621 Q. Understood. So then go over to
17 the first page, and Mr. Glassman provides his cell
18 phone number. That is Mr. Glassman's cell phone
19 number; correct?

20 A. That is correct.

21 2622 Q. Okay. And he says:

22 "Also have another # that we
23 know for sure is ok."

24 Were you aware that Mr. Glassman
25 carried at least two cell phones?

1 A. I don't -- I don't recall, but I
2 think there has been a review of all of the phones
3 that were issued to him, and so I don't know. It
4 would not surprise me he had another private
5 line -- or another phone that he used.

6 2623 Q. And in your communications with
7 Mr. Glassman, were you aware that there were two
8 phones and you should call one of the phones for
9 certain purposes and another of the phones for
10 other purposes?

11 A. If I called him, I would call him
12 on a 302 number.

13 2624 Q. Okay. So whatever the other
14 number was, it wasn't for purposes of communicating
15 with you?

16 A. That is correct.

17 2625 Q. Okay. Tab 9. So I understand
18 this handwriting is Naomi Lutes; correct?

19 A. Yes, and I just want to go through
20 the -- I just want to look at it quickly. So it is
21 Waddell Philips, it is me, Newton, Brian Greenspan,
22 and Naomi Lutes. Yes, this is Naomi's
23 handwriting --

24 2626 Q. Yes, it's --

25 A. -- to the best of my recollection,

1 yes. She was taking notes at that meeting.

2 2627 Q. And it says "'Vincent Hanna'", in
3 quotes, "on the phone"; correct?

4 A. Correct. Well, that is -- that --
5 he was dialled in.

6 2628 Q. Right, and that is an accurate
7 account by your recollection of who participated in
8 this meeting?

9 A. Yes.

10 2629 Q. And have you reviewed at any time
11 the notes of this meeting, whether back in August
12 2017 or in preparation of your affidavits and this
13 cross-examination?

14 A. Yes, I have, although there is
15 sometimes I couldn't -- some of them I have no
16 memory of what was said.

17 2630 Q. And that is fine, and some of it I
18 find hard to read and you probably do too.

19 A. Yes.

20 2631 Q. All I want to know is if sitting
21 here today you are aware of any -- you recall
22 seeing any significant inaccuracies in Ms. Lutes'
23 notes of the meeting?

24 A. Can you scroll down? Because my
25 recollection is no, but, again, with some of the

1 stuff, I couldn't understand -- or couldn't read,
2 as you said.

3 MR. MOORE: Matt, is that going to be a
4 question that you are going to be applying to
5 several of these notes or all of them, or do you
6 have an intent? What are your intentions there?

7 BY MR. MILNE-SMITH:

8 2632 Q. Yes, it is, and look, I don't want
9 to make this more difficult than it is. I'm not
10 asking him to verify the contents of all the notes,
11 because he can't read some of it, he can't remember
12 some of it, and frankly, I don't think it is a fair
13 question to ask the witness.

14 All I want to know is if there is going
15 to be some argument put forward that the notes are
16 just wrong somewhere, I would like to know about
17 that in advance.

18 U/T MR. MOORE: Yes, I mean, if there is
19 some material chunk that is missing or wrong or
20 whatever, you want to know that. It would seem to
21 me to make sense that rather than have the witness
22 trying to scroll through the notes with, you know,
23 some of the difficulty in reading them, if you want
24 to identify either now or you can let me know
25 separately, you know, this question applies to the

1 following 'x', 'y', 'z' number of notes, then, you
2 know, I'm prepared to undertake to advise you along
3 the lines of your inquiry, if there is something
4 materially wrong or missing, rather than, you know,
5 take time on the transcript and kind of -- rather
6 than while we are all waiting for the witness to
7 try and scroll through it, if that makes sense.

8 MR. MILNE-SMITH: I perfectly agree. I
9 thank you for that undertaking, and I will give you
10 a list of the notes in question in that regard.

11 MR. MOORE: All right.

12 THE DEPONENT: Thank you.

13 BY MR. MILNE-SMITH:

14 2633 Q. So let's then go to the next
15 document, tab 10. So just, again, to give you the
16 context, Mr. Riley, this is an email from a
17 Ms. Oberson, who I understand was administrative
18 staff at Catalyst.

19 A. She was my EA.

20 2634 Q. Right, and she is sending it to
21 Mr. Greenspan and Ms. Lutes, copying you, on
22 September 1st, and she is including a copy of a
23 Memo to File dated August 26th, 2017, which we are
24 just about to look at. And my understanding is
25 that what this records is, on August the 26th,

1 there was a meeting between two investigators or
2 individuals retained by Catalyst with Derrick
3 Snowdy?

4 A. Yes.

5 2635 Q. Okay. So let's then go to the --

6 A. Should we go to the memo just to
7 make sure? I think I know which one it is if you
8 could just -- perfect. Thank you.

9 2636 Q. Yes.

10 A. This is Klatt's memo?

11 2637 Q. That is correct. That was my
12 first question, was to confirm that. So Tom Klatt
13 was one individual who attended and took the notes,
14 and -- on behalf of Catalyst, and Peter Barakett
15 was the other individual retained by Catalyst. And
16 it is Klatt, K-l-a-t-t.

17 A. Just to correct, we did not retain
18 Klatt. Klatt is an investigator who does work with
19 Brian Greenspan's office.

20 2638 Q. Okay. So --

21 A. He was not on our retainer. He
22 was retained by Brian.

23 2639 Q. But on behalf of Catalyst?

24 A. Yes, we were the client.

25 2640 Q. Understood.

1 A. We were Brian's client.

2 2641 Q. Yes. Looking at the notes, it
3 seems pretty clear he is an ex-cop who works with
4 lawyers often.

5 A. Yes, he was I think Metro
6 Homicide.

7 2642 Q. Yes. Police officers have a
8 particular way of taking notes that anybody who has
9 seen it can recognize. So I take it you have seen
10 and reviewed this memo?

11 A. Yes, I have.

12 2643 Q. And would you agree with me that
13 it is fair to say that Mr. Klatt's notes are in a
14 number of places very skeptical of Mr. Snowdy?

15 A. Yes.

16 2644 Q. And --

17 A. As were we. As were we. We were
18 skeptical of Snowdy. I think you'll see that in
19 some of the texts that go back and forth between
20 Vincent Hanna and Newton and then Danny Guy and
21 Newton.

22 2645 Q. Yes, you are exactly right, and I
23 am going to take you to that right now. So let's
24 go to tab 12.

25 A. Yes, I didn't mean to get ahead of

1 myself.

2 2646 Q. No, that is fine. Tab 12 is a
3 lengthy -- I don't know if this is a WhatsApp or a
4 text message exchange, but it is -- whatever app
5 was used for it, it is an exchange of text messages
6 between Mr. Glassman on the right in green and
7 Mr. Guy on the left in gray; correct?

8 A. Yes.

9 2647 Q. Okay. So if we go to --

10 A. You said Mr. Guy?

11 2648 Q. Yes.

12 A. Do we know at this time that it
13 is --

14 2649 Q. I believe so, because --

15 A. Oh, it says at the top "Danny
16 Guy".

17 2650 Q. Yes.

18 A. Sorry, I just wanted to make sure
19 that it was because those email chains start
20 with -- or sorry. I apologize. These text
21 messages start as communications from Vincent
22 Hanna.

23 2651 Q. Now, I don't want to mislead you,
24 Mr. Riley. It is entirely possible that as of
25 August 23rd when this starts, you don't yet know

1 that it is Danny Guy. This would have been printed
2 at the end of the exchange, and by that time,
3 Mr. Glassman would have filled in "Danny Guy" as
4 who the person is, but I don't want to represent
5 that or mislead you. But I think we are all on the
6 same page that sitting here now today we know it
7 was Danny Guy; fair?

8 A. Yes, and I would agree with that.

9 2652 Q. Okay. So let's go to page 3 of
10 this document, and, Mr. Moore, if you are printing
11 things out, and if there is one document I'm going
12 to be referring to repeatedly in this
13 cross-examination, it will be this document, so
14 this may be one that is worth printing out and
15 having on hand.

16 MR. MOORE: What tab is this? Matthew,
17 sorry, what tab?

18 MR. MILNE-SMITH: 12.

19 MR. MOORE: All right.

20 BY MR. MILNE-SMITH:

21 2653 Q. So, again, the highlighting here
22 is mine, so it is solely to draw your attention to
23 the relevant passages. So you will see these
24 exchanges are happening on August 25th and August
25 26th. So the August 26th -- if we look at the

1 August 26th one, there is one at 15:14 where
2 Mr. Glassman says that he hasn't "yet gotten a
3 download re today's mtng(s)". So just to situate
4 you, that is the meeting --

5 MR. MOORE: They're frozen.

6 MR. MILNE-SMITH: -- we were just
7 looking at between Barakett and Klatt?

8 Sorry, can you hear me, Mr. Moore? I
9 heard someone say that it's frozen.

10 Deana, you can hear me, right?

11 THE COURT REPORTER: I can hear you,
12 but I think on their side they're frozen.

13 MR. MILNE-SMITH: Yeah. Okay. We'll
14 take a pause and wait for them to come back online.

15 [Discussion Off the Record to resolve
16 technical issues.]

17 BY MR. MILNE-SMITH:

18 2654 Q. So we were on tab 12, the text
19 message exchange, and what I have highlighted and
20 underlined here are messages on August the 26th,
21 which appear to be Mr. Glassman's reactions to the
22 first meeting that we just looked at between
23 Mr. Barakett, Mr. Klatt, and Mr. Snowdy.

24 So Mr. Glassman says:

25 "Got the debrief.

1 Unfortunately my guys found the mtng
2 very disappointing and your guy
3 provided little to no new or
4 actionable information."

5 MR. MOORE: What time are you at? We
6 have a hard copy of it. The problem is that the
7 green highlighting when printed basically obscures
8 all the text underneath.

9 MR. MILNE-SMITH: Oh.

10 MR. MOORE: So we'll have to follow on
11 the screen.

12 MR. MILNE-SMITH: Okay.

13 MR. MOORE: So what time are we talking
14 about, the particular exchange?

15 THE DEPONENT: 7 o'clock.

16 MR. MILNE-SMITH: 18:51.

17 MR. MOORE: All right. Thanks.

18 BY MR. MILNE-SMITH:

19 2655 Q. So you see that, and then there is
20 another longer one at 7:00 p.m., that I won't read
21 the whole thing, but it is essentially saying that
22 Mr. Glassman's team won't let him near Mr. Snowdy
23 until they have verified his credibility.

24 And then there is another one at the
25 bottom of the page at 7:05 where Mr. Glassman says,

1 in the underlined portion:

2 "He", being Snowdy, "came
3 across allegedly very poorly and
4 completely unprofessional and
5 lacking in credibility."

6 Mr. Riley, I take it that what
7 Mr. Glassman is doing is providing an accurate
8 summary of the reporting you heard back from
9 Mr. Klatt and Mr. Barakett about their assessment
10 of Mr. Snowdy?

11 A. Although I think he is expressing
12 it in the sense that he would like to see some sort
13 of documentary or other proof to establish what
14 Snowdy was saying, because if you go back to -- for
15 me, Snowdy is a bit of a confusing guy because
16 sometimes he speaks very clearly, and other times,
17 I could never understand what he was talking about.

18 And so that I think at the meeting he
19 had with Klatt and with Barakett, he was trying to
20 be obtuse. That is my view of that.

21 2656 Q. All right.

22 A. Based on subsequent dealings with
23 Snowdy.

24 2657 Q. And the conclusion at the time
25 that your team, if I can call it, had was that he

1 came across very poorly, completely unprofessional,
2 lacking in credibility; fair?

3 A. Yes. However, part of it was that
4 he was not able to give them any proof other than
5 what he said.

6 2658 Q. Right, and if someone makes
7 serious allegations and then has no hard evidence
8 to back up those allegations, it undermines their
9 credibility, and that is what was happening with
10 Derrick Snowdy; correct?

11 A. Yes.

12 2659 Q. Okay. And then --

13 A. Or the question is -- I think the
14 question was to credibility, because subsequently
15 he does give us some information that was
16 meaningful.

17 2660 Q. Well, we are going to come to
18 that. So let's go down on page 4. Keep going.
19 Stop there. So here Mr. Glassman, still on the
20 same day, just after 7 o'clock, he is saying:

21 "My guys do not trust him or
22 anything related to him one iota
23 now. Very badly damaged the
24 situation."

25 And then he says:

1 "Your guys knows his own
2 reputation and what he has done in
3 the past. I read the briefing note
4 on him last wk. whatever 'history'
5 he has, I was 'expecting' a
6 professional w[ith] self
7 awareness."

8 Do you see that?

9 A. Yes, but could you also read the
10 text that is just above that --

11 2661 Q. Yes.

12 A. -- the text you've highlighted.

13 2662 Q. Yes. So Mr. Guy said:

14 "Look man. My guy had a
15 history with one of your guys. I
16 don't think he trusted them to pull
17 his pants down. What were u
18 expecting from this first meeting"
19 So that is Mr. Guy's explanation, and
20 Mr. Glassman says that is simply intellectually
21 dishonest. So he is not accepting the excuses from
22 Mr. Guy; correct?

23 MR. MOORE: Well, I mean, the words
24 say -- the words are what they are. It is
25 Mr. Glassman's way of expressing himself. This

1 isn't Mr. Riley. The words are what they are.

2 THE DEPONENT: It is a bit of a

3 heated --

4 BY MR. MILNE-SMITH:

5 2663 Q. That is fine.

6 A. There is a certain amount of
7 emotion running through these texts in my view.

8 2664 Q. That is fine. The fact that I
9 wanted to confirm is that this refers to a briefing
10 note on him that Mr. Glassman had read last week,
11 so do I take it that Catalyst or individuals
12 retained directly or indirectly by Catalyst had
13 prepared a briefing note on Mr. Snowdy?

14 A. I don't recall a briefing note.

15 MR. MOORE: I think that may be the
16 Klatt note.

17 THE DEPONENT: Other than the Klatt
18 note.

19 U/A MR. MOORE: If there is some different
20 note, we'll take that under advisement to check and
21 see. If there is a different note, and it is
22 solicitor-client, then that will be one thing, but
23 we'll make inquiries and see, but it may be
24 referring to the Klatt note.

25 BY MR. MILNE-SMITH:

1 2665 Q. Okay. So go over to page 6.
2 Let's see if we can help on that. So stop there.
3 So you see that -- the passage I have underlined at
4 the bottom. This is still more texts on August the
5 26th. And he says -- Mr. Glassman says at the
6 bottom of that note:

7 "Your own guy's court record
8 etc. speaks for itself as well".

9 So Catalyst had dug into Mr. Snowdy's
10 court record; correct?

11 A. Well -- and again, I don't recall
12 that -- where that -- what the source of that
13 comment was from.

14 2666 Q. So, Mr. Riley, were you aware in
15 August 2017 or are you aware now, that, for
16 example, Mr. Snowdy filed for bankruptcy in 2009
17 owing \$13 million in liabilities; were you aware of
18 that?

19 A. Not at the time, but I think
20 subsequently we did find that out.

21 2667 Q. Okay. And were you aware then or
22 are you aware now that in 2014 an order was made by
23 Justice Thorburn restraining Mr. Snowdy from
24 directly or indirectly assisting any person to
25 disclose documentary or oral discovery in

1 proceedings involving CN Railway?

2 A. I have not looked at the CN case,
3 and I am aware that he had some interaction with
4 Justice Thorburn after the -- we learned that after
5 the fact.

6 2668 Q. So you weren't aware in August of
7 2017 that specific findings of wrongdoing had been
8 made by Justice Thorburn against Mr. Snowdy?

9 A. No.

10 2669 Q. And you weren't aware that J.D.
11 Irving company had a court order against him based
12 on alleged forging and disseminating of documents
13 to cause mischief; you weren't aware of that in
14 August 2017?

15 A. No.

16 2670 Q. Okay. Well, we'll see if
17 Mr. Glassman is aware of it, I suppose. If we go
18 over to page 7 --

19 MR. MOORE: Is that part of this
20 compendium, or is that a different document?

21 MR. MILNE-SMITH: No, we are staying in
22 this compendium.

23 MR. MOORE: No, no, no, but I'm saying
24 is that -- you make reference to the J.D. Irving
25 matter or order, I guess, you have been

1 referencing.

2 MR. MILNE-SMITH: Yes, these are all --
3 I mean, the Court decisions are public documents.
4 I will take you to --

5 MR. MOORE: But I was just
6 asking whether or not -- you know, there is lots of
7 court decisions and lots of courts and lots of
8 public documents, but I'm just wondering whether
9 that particular one that you just alluded to is
10 part of this compendium or not? I haven't had a
11 chance to go through the entire compendium.

12 MR. MILNE-SMITH: Well, it is, and
13 let's pull it up then. So keep tab 12 open, but
14 pull up tab 13. So this is the CN Railway v.
15 Holmes decision.

16 MR. MOORE: Yes.

17 MR. MILNE-SMITH: And if you go to the
18 next page, it talks about Mr. Snowdy's conduct.
19 I'm not going to read through it.

20 MR. MOORE: That is fine.

21 MR. MILNE-SMITH: And if you go to the
22 next page. And keep going. We'll just go to the
23 punch line. Keep going down to paragraphs 36 to
24 40. There. So this, if you look at the last
25 paragraph I have highlighted there:

1 "For these reasons, an Order is
2 granted to restrain Derrick Snowdy
3 from directly or indirectly
4 assisting any person to disclose any
5 documentary or oral discovery in
6 these proceedings or the content of
7 any such documentary or oral
8 discovery."

9 So that is what I was referring to.

10 MR. MOORE: Oh, I see. All right. I'm
11 wondering, could we take a short break, ten
12 minutes?

13 MR. MILNE-SMITH: Yes. Let me just
14 close the loop then, since you have asked. Pull up
15 tab 14.

16 MR. MOORE: Yes.

17 BY MR. MILNE-SMITH:

18 2671 Q. This is a Globe and Mail article
19 from May 30th, 2019, and it references the J.D.
20 Irving court order that I referred to. So scroll
21 down. There. So:

22 "A J.D. Irving source said the
23 family 'got exercised' about The
24 Globe's questions to the government
25 because, they alleged, sensitive

1 information about the company has
2 been previously forged and
3 disseminated to 'cause mischief'.
4 The source provided no further
5 details but added that J.D. Irving
6 has a court order against Toronto
7 private investigator Derrick
8 Snowdy."

9 So, Mr. Riley, were you aware of these
10 allegations about Mr. Snowdy in August of 2017?

11 A. No.

12 MR. MILNE-SMITH: Okay. Let's take a
13 break for ten minutes.

14 MR. MOORE: Thank you.

15 -- RECESSED AT 10:59 A.M.

16 -- RESUMED AT 11:06 A.M.

17 BY MR. MILNE-SMITH:

18 2672 Q. So I'm just continuing with tab
19 12, the August 26 part of the text exchange between
20 Mr. Guy and Mr. Glassman. So you see where
21 Mr. Glassman says:

22 "He", referring to Snowdy, "has
23 a lot of credibility and other
24 issues to overcome b4 he even enters
25 a room."

1 And then skipping down a bit:

2 "He is tainted. That's a
3 fact."

4 And then continuing near the bottom of
5 the page, it says:

6 "He has been involved
7 personally in some very dubious
8 lawsuits. He has been declared
9 bankrupt. He has had testimony
10 thrown out for lack of credibility.
11 All unrelated to the rcmp issue. I
12 read the file and it's all publicly
13 avail[able]."

14 So I take it from that that there was
15 in fact a file prepared by Catalyst -- or for
16 Catalyst or Callidus and given to Mr. Glassman.
17 Does that help refresh your recollection as to
18 whether you had seen a file on Mr. Snowdy -- not
19 the Barakett and Klatt memo, but an actual file
20 referring to all these dubious events in
21 Mr. Snowdy's past? Had you seen that back in
22 August of 2017?

23 A. To the best of my memory, no.

24 2673 Q. And had you seen the file that
25 Mr. Glassman is referring to here before you swore

1 the affidavits I took you to at the beginning of
2 this cross-examination where you referred to
3 Mr. Hanna's evidence? That was the December 5th
4 affidavit of 2019, the May 29, 2020, affidavit, and
5 the August 20, 2020, affidavit. When you referred
6 to Mr. Hanna's evidence in those affidavits, had
7 you seen the file on Mr. Snowdy which had been
8 prepared for the benefit of Mr. Glassman?

9 U/T MR. MOORE: Just a minute. Just a
10 minute. You are assuming from the terminology that
11 there is some stand-alone file. I'm not at all
12 sure that that is the case. We'll make inquiries,
13 but that may be Mr. Glassman's way of alluding to
14 things that gives rise to that impression, but I'm
15 not at all sure that there is a stand-alone file
16 chock-a-block full of documents. We'll inquire and
17 let you know.

18 BY MR. MILNE-SMITH:

19 2674

20 Q. Okay. Thank you. So let me ask
21 it a different way then. Were you aware at the
22 time you swore your affidavits in 2019 and 2020
23 that Mr. Snowdy had been personally involved in
24 some very dubious lawsuits, that he had been
25 declared bankrupt, that he had testimony thrown out
for lack of credibility? Were you aware of those

1 facts?

2 A. To the best of my memory, no.

3 2675 Q. So before you swore those three
4 affidavits, neither Mr. Glassman nor anybody else
5 told you about those questionable aspects of
6 Mr. Snowdy's past?

7 A. To the best of my memory, no.

8 2676 Q. Let's go to tab 15. So this is an
9 email exchange between Mr. Guy, who is now using
10 his "danny@harringtonglobal" email address, and
11 Mr. Glassman. You are copied on it. Do you see
12 that Mr. Glassman is using there a different email
13 account than one we have seen before? It is
14 "n_gzglassman"; do you see that?

15 A. Yes.

16 2677 Q. And you were obviously aware that
17 he had a second Catalyst email account?

18 A. Yes.

19 2678 Q. And for what purpose --

20 MR. MOORE: You can ask Mr. Glassman
21 about that, but I'll just say right now, the
22 characterization of that as some ultra secret, top
23 secret, James Bond-type email address that occurred
24 on the conversation with Justice McEwen the other
25 day is completely inaccurate. But you can ask

1 Mr. Glassman in due course about that email
2 address.

3 MR. MILNE-SMITH: Well, I didn't refer
4 to it as anything other than a second email
5 address, and I would appreciate you not to put
6 words in the witness's mouth before I ask my
7 question.

8 MR. MOORE: No, no, but I just -- you
9 didn't say that, Mr. Milne-Smith, you are right.
10 It was Mr. Carlson. That is the way that was
11 described the other day.

12 So let's not get into a debate about
13 that, but if you have questions about that email
14 address, certainly Mr. Glassman will be prepared to
15 answer those questions and is probably a better
16 source than this witness.

17 BY MR. MILNE-SMITH:

18 2679 Q. All I wanted to know was that
19 Mr. Riley was aware of it, which he has confirmed,
20 and then I want to ask you, for what purposes would
21 you use this second email address to communicate
22 with Mr. Glassman as opposed to his first email
23 address?

24 A. To the best of my memory, we
25 always used his -- the other "catcapital".

1 2680 Q. So you were copied on this, but
2 you would never write to him an email of your own
3 using this second one, at least unless you were
4 replying, I suppose?

5 A. Unless in reply, but to use it as
6 my primary communication with him, to the best of
7 my memory, no.

8 2681 Q. So you had no -- you have no
9 information as to the purposes for which this
10 second email address was used?

11 A. No.

12 MR. MOORE: Mr. Riley personally?

13 MR. MILNE-SMITH: Yes.

14 MR. MOORE: Let's leave that question
15 for Mr. Glassman.

16 MR. MILNE-SMITH: Yes.

17 MR. MOORE: That is fine.

18 BY MR. MILNE-SMITH:

19 2682 Q. Well, I just want to know whether
20 Mr. Riley had any understanding, but he said he
21 doesn't, so that is fine.

22 Mr. Riley, had you seen -- the text
23 exchange that we have been looking at, tab 12,
24 between Mr. Glassman and Mr. Guy, had you seen that
25 before you swore your affidavits in 2019 and 2020?

1 A. To the best of my memory, no.

2 2683 Q. Tab 16. So this is an email from
3 you to Mr. Greenspan in which you approve a form of
4 retainer agreement. And if we go to tab 17, I
5 think this is the retainer agreement for Tamara
6 Global, but let me give you the documents that
7 connect this all together.

8 Tab 17 is from Mr. Greenspan to
9 Mr. Tanuri, copying you, and it attaches a "Letter
10 of Engagement.pdf", asks him to execute and return.

11 And then if we go to tab 18, this is
12 the attached retainer agreement.

13 So do I have this correct that these
14 three documents all relate to the retainer of
15 Mr. Tanuri by Mr. Greenspan on behalf of Catalyst
16 and Callidus?

17 A. Yes.

18 2684 Q. And what I have done is, I have --
19 if you go to the third page of this tab, I have
20 pasted together the document from two different
21 sources - I just want to make this clear on the
22 record - to show you the signed page. So you will
23 see that the document ID at the top on this page is
24 436, and if you go back to the previous two pages,
25 it is 403.

1 So all I have done is paste there, so
2 we have it in one place, the signed version.

3 MR. MOORE: So just so I make sure I
4 understand, in effect, you're saying it was signed
5 in counterparts, and you amalgamated and so we have
6 it all in one place.

7 MR. MILNE-SMITH: That is exactly
8 right.

9 MR. MOORE: All right. Thank you.

10 BY MR. MILNE-SMITH:

11 2685 Q. So you were aware of, you
12 reviewed, and you approved this retainer agreement
13 in advance, Mr. Riley?

14 A. Yes.

15 2686 Q. And you'll see that I have
16 highlighted here on the page -- the first page of
17 the retainer agreement - this is tab 18 - the scope
18 of the retainer agreement relates to a, quote:

19 "[...] qualitative property,
20 personnel and equipment assessment
21 of the current needs and future
22 requirements of our client/clients
23 [...]"

24 A. Yes.

25 2687 Q. That is consistent with your

1 understanding of the purpose of the retainer?

2 A. Yes.

3 2688 Q. And there is nothing here about
4 gathering evidence?

5 MR. MOORE: No, but you have got to
6 read the whole paragraph, and you have
7 Mr. Glassman's -- or Mr. Greenspan's affidavit, so
8 I'm not sure that that is really a fair way to put
9 it.

10 MR. MILNE-SMITH: Well, that is what I
11 want to find -- look, I want to understand what --

12 MR. MOORE: Reading that sentence in
13 isolation and putting the question that way in the
14 context where there is, you know, so many documents
15 and other materials directly bearing upon this
16 point that you are aware of, I'm just not sure that
17 that is a fair way to put it to this witness. That
18 is all I'm saying.

19 MR. MILNE-SMITH: I'm not going to
20 characterize it then. I want to -- forget about
21 the words on the page, Mr. Riley.

22 MR. MOORE: Well, that is why --

23 BY MR. MILNE-SMITH:

24 2689 Q. I want to get your understanding
25 of the purposes of Tamara Global, because you said

1 at the time you had reviewed it and you approved
2 it, right?

3 A. Yes.

4 2690 Q. Okay. So as of September the 1st,
5 2017, which is the date of this agreement, would
6 you agree with me that the scope of the retainer
7 that you approved, at least, would not extend to
8 gathering evidence from parties with whom Catalyst
9 had -- or Callidus had a dispute?

10 A. Well, I think it also says "may be
11 expanded or modified", and I think that this was at
12 the beginning -- sorry, can you go back to the date
13 again? I'm trying to keep this in context.

14 Yes, so this is at the very beginning
15 of this process.

16 2691 Q. Yes.

17 A. And I think that it was not clear
18 how much or how little they would be doing. For
19 example, in the early part, they reviewed our
20 computer systems, both at Callidus and Catalyst.
21 They did a security assessment, and also started to
22 provide security personnel.

23 2692 Q. So --

24 A. It expanded over time.

25 2693 Q. Okay. So you think that it was

1 consistent with the nature, scope, and purpose of
2 this retainer for there to be investigations
3 conducted of current and former employees of West
4 Face, suspected members of the Wolfpack, spouses of
5 individuals referred to above, and Justice Frank
6 Newbould; do you see that as being consistent with
7 the purpose of the retainer you approved?

8 R/F MR. MOORE: I object to that question.
9 I think that is a misleading question. I think
10 that ignores the context, that ignores other
11 documents in the record that fully explain the
12 evolution in short order of this retainer. So I
13 object to the form of that question. I think it is
14 unfair.

15 BY MR. MILNE-SMITH:

16 2694 Q. All right. That is fine.
17 Mr. Riley, I'm trying to throw you a lifeline here.
18 I'm offering you the opportunity --

19 MR. MOORE: I don't think you are
20 trying to throw any lifeline anywhere,
21 Mr. Milne-Smith, so let's not debate whether it is
22 a lifeline or an anchor or whatever it is you are
23 trying to throw his way. All I'm saying is the
24 record is quite clear from a variety of sources how
25 this retainer evolved very quickly, consistent with

1 the original wording of this letter, into different
2 matters that went well beyond security issues.

3 That is all I'm saying. It has been
4 the subject of several affidavits, several
5 documents, several productions, as you know. So I
6 don't think much is gained at all, quite frankly,
7 in taking one line out of this letter and putting
8 it to the witness that -- you know, implicitly that
9 all of this is all inconsistent.

10 So that is why I objected to the
11 question. So let's keep -- keep going.

12 MR. MILNE-SMITH: I understand your
13 objection --

14 MR. MOORE: Keep going, keep going.

15 MR. MILNE-SMITH: Please don't
16 interrupt my question again. You can refuse my
17 question, but let me finish it and get it on the
18 record.

19 MR. MOORE: Well, I understood you were
20 finished it, and I objected to the form of that
21 question because I think it is misleading. So that
22 is my objection. Let's move on to the next
23 question.

24 BY MR. MILNE-SMITH:

25 2695 Q. Okay. I was trying to ask the

1 next question, and you interrupted it. So let me
2 ask it.

3 Mr. Riley, I'm trying to throw you a
4 lifeline here. I'm giving you an opportunity to
5 disavow and say it was inconsistent with your
6 understanding of the purpose of the retainer for
7 Black Cube to engage in the conduct that it did.
8 Are you prepared to do that? Are you prepared to
9 disavow Black Cube's conduct as being inconsistent
10 with this retainer that you approved, or do you
11 think it is consistent with the retainer you
12 approved?

13 R/F MR. MOORE: Stop. Don't answer that
14 question. That is such a broad question. Black
15 Cube's conduct is quite a different premise or a
16 different question than you were purporting to get
17 into before. What you were getting into before
18 was, you know, was it consistent with this retainer
19 to conduct investigations of third parties,
20 et cetera.

21 If you are talking about conduct broad
22 brush now, which is a very, very broad way of
23 putting it, I think that is way too broad.

24 BY MR. MILNE-SMITH:

25 2696 Q. Was it inconsistent with the

1 retainer for Black Cube to run a sting on Justice
2 Newbould?

3 MR. MOORE: Hold on. The retainer
4 doesn't refer to a sting, nor does the retainer of
5 Black Cube, as you well know. And as you well
6 know, the retainer of Black Cube -- which I presume
7 we are going to get to or maybe that will be with
8 Mr. Glassman, the retainer of Black Cube expressly
9 provides that Black Cube is to have the sole
10 authority to decide how to go about their
11 investigative activities, and it has several
12 provisions in there that alludes to their expertise
13 and experience and proprietary methods, et cetera,
14 et cetera, et cetera.

15 R/F So I really think that that's an unfair
16 way of putting it, and it is way too broad. So I
17 object.

18 BY MR. MILNE-SMITH:

19 2697 Q. Okay. That is not responsive to
20 anything that I asked, but I'll try a slightly
21 different question and see if I get a better
22 answer. If you just want to refuse them all, then
23 I'll take that, and I will rely on it.

24 Mr. Riley --

25 MR. MOORE: I don't agree with that

1 characterization, but you and I can stop debating
2 it with each other. What is your next question?

3 BY MR. MILNE-SMITH:

4 2698 Q. Mr. Riley, would you agree with me
5 that it was inconsistent with the purposes of your
6 retainer as you approved it with Tamara Global for
7 parties retained by Tamara Global to conduct a
8 sting on Alex Singh, former general counsel of West
9 Face?

10 A. I would have to go to the
11 chronology. I'm not even sure I knew who Black
12 Cube was at the time.

13 2699 Q. That is not my question.

14 A. Sorry --

15 2700 Q. My question -- and let me repeat
16 my question for you.

17 MR. MOORE: The problem with your
18 question, Mr. Milne-Smith, is that there is a
19 distinction between Black Cube undertaking an
20 investigation into certain areas on the one hand as
21 opposed to the methods that they chose to use to
22 undertake those investigations on the other hand,
23 which is a separate issue, as you know.

24 And so lumping them together in that
25 way, in my view, is not appropriate.

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

2 MR. MOORE: So --

3 BY MR. MILNE-SMITH:

4 2701 Q. Sorry, Mr. Moore, I'm going to
5 read my question again, and it doesn't refer to
6 Black Cube. Here is my question:

7 "Mr. Riley, would you agree
8 with me that it was inconsistent
9 with the purposes of your retainer
10 as you approved it with Tamara
11 Global for parties retained by
12 Tamara Global to conduct a sting on
13 Alex Singh, former general counsel
14 of West Face?"

15 A. Yes, and I think that Brian
16 Greenspan at one point told them not to do any
17 activities like that.

18 2702 Q. Okay. So you agree with me on
19 that. Do you agree with me that it was
20 inconsistent with the purposes of your retainer as
21 you approved it with Tamara Global for parties
22 retained by Tamara Global to conduct a sting on
23 Justice Newbould?

24 A. Yes.

25 2703 Q. And do you agree with me that it

1 was inconsistent with the purposes of your retainer
2 as you approved it with Tamara Global for parties
3 retained by Tamara Global to conduct a sting on
4 anyone related to West Face or litigation between
5 West Face and Catalyst?

6 MR. MOORE: Well, just before you
7 answer that question, you have my objection. I
8 think you are lumping together different concepts,
9 so I object to that. But the witness can answer.
10 Why don't you repeat your question.

11 BY MR. MILNE-SMITH:

12 2704 Q. Do you agree with me that it was
13 inconsistent with the purposes of your retainer as
14 you approved it with Tamara Global for parties
15 retained by Tamara Global to conduct a sting on
16 anyone related to West Face or litigation between
17 West Face and Catalyst?

18 A. Yes.

19 2705 Q. Thank you. Tab 19. So this is
20 another letter from Mr. Greenspan on September the
21 11th, 2017, to a bank in Israel. Did you receive a
22 copy of this letter at the time? Are you familiar
23 with this letter?

24 A. Scroll down, please.

25 [Witness reviews document.]

1 Scroll down, please.

2 Whether I recall the specific letter, I
3 do recall the arrangements with Tamara Global.

4 2706 Q. And you recall Mr. Greenspan
5 writing to an Israeli bank to essentially approve
6 the payments that were going to be made pursuant to
7 this retainer?

8 A. I will have to say yes, because
9 I'm sure I would have seen this because I would
10 have helped to organize getting the wire transfers
11 to Greenspan.

12 2707 Q. Right, and this was sent for
13 purposes of banking and making the necessary
14 payments; correct?

15 A. Yes, and I'm guessing that it has
16 something to do with compliance with the money
17 laundering and AML-type legislation in Israel.

18 2708 Q. Right, and obviously, given that
19 purpose, this is an important letter, and to your
20 knowledge, Mr. Greenspan would have been as
21 accurate as possible with respect to his
22 understanding of the purposes of the retainer as
23 described in his letter; correct?

24 A. Yes.

25 2709 Q. Okay. And the bottom of the first

1 page describes the scope of the retainer as
2 Mr. Greenspan understood it; is that fair?

3 A. Yes, and I think that is
4 consistent with what I said earlier.

5 2710 Q. Right. And all of these are what
6 I would call defensive measures; correct?

7 MR. MOORE: Well, it is not an
8 exclusive list. It doesn't purport to be an
9 exclusive list.

10 THE DEPONENT: Yes, including but not
11 limited to.

12 BY MR. MILNE-SMITH:

13 2711 Q. That is not my question. My
14 question is the four items --

15 A. You should highlight the lead-in,
16 which is --

17 2712 Q. That is fine, Mr. Riley, but that
18 is not my question. My question is that the four
19 items listed here could all be characterized as
20 defensive measures; correct?

21 THE COURT REPORTER: I think he frozen,
22 Matt.

23 [Discussion Off the Record to resolve
24 technical issues.]

25 BY MR. MILNE-SMITH:

1 2713 Q. Okay. Good. We'll go back on the
2 record. So, Mr. Riley, we were looking at tab 19,
3 the September 11th -- I'll call it the banking
4 letter, for lack of a better term --

5 A. Yes.

6 2714 Q. -- from Mr. Greenspan to the
7 Israeli bank.

8 Now, I certainly accept what you said,
9 which is that the language of the letter is
10 including but not limited to. And let me just
11 confirm, again, your understanding, at least, about
12 the purposes of the retainer that Mr. Greenspan is
13 referring to in this letter. So I'm not asking
14 about what Mr. Greenspan said. I'm asking about
15 your understanding of the purposes of the retainer
16 that Mr. Greenspan is describing.

17 Your understanding of the purposes of
18 that retainer does not include any stings or
19 surveillance on anybody, frankly?

20 MR. MOORE: Well, hold on. You are
21 lumping together two different things.

22 MR. MILNE-SMITH: All right. Is the
23 question refused?

24 MR. MOORE: I think you need to be
25 clearer in your questions. Like you know -- hold

1 it. You know what the date is of the Black Cube
2 retainer.

3 MR. MILNE-SMITH: We are getting there.
4 Don't worry, we are getting there. I'm just doing
5 this one step at a time.

6 MR. MOORE: No, but no one has all
7 these dates memorized. Maybe I do and maybe you
8 do, but not everybody has all these dates
9 memorized. So, you know, I really think there
10 needs to be some basic -- I think we are echoing
11 because I took you off mute, Matthew.

12 MR. MILNE-SMITH: That is better.

13 MR. MOORE: I think there needs to be
14 some basic recognition of that in the way these
15 questions are put, and as you know, the September
16 11th Black Cube retainer had pretty clear and
17 strong confidentiality provisions. It was not
18 intended to be a public investigation. It was
19 intended to be a private and confidential
20 investigation.

21 Anyway, let's go. I just would ask you
22 to try not to lump together separate concepts and
23 to bear in mind the dates that maybe you and I are
24 the ones best familiar with them at this juncture,
25 but not everyone has them consigned to memory.

1 BY MR. MILNE-SMITH:

2 2715 Q. Let me make this very, very easy
3 for everybody, Mr. Moore, because I don't want the
4 witness to be confused.

5 Mr. Riley, the time frame that we were
6 referring to is September 11th, 2019. Now, I don't
7 expect you -- sorry, 2017.

8 I don't expect you to remember the
9 dates, but in terms of signposts of what had
10 happened and what had not happened, The Wall Street
11 Journal article had been published. You had
12 retained Tamara Global. But you had not yet
13 received the results because the sting hadn't
14 occurred. The sting on Justice Newbould hadn't
15 occurred. You hadn't received the results, and
16 therefore, to the best of my knowledge, you were
17 unaware of any of these Black Cube activities going
18 on.

19 So that is the time period that we are
20 talking about. Fair?

21 A. Yes.

22 2716 Q. And am I correct that until the
23 results of the sting on Justice Newbould were
24 provided to Catalyst, you were unaware that Black
25 Cube was conducting stings against various parties,

1 including Justice Newbould; correct?

2 A. That is correct.

3 2717 Q. So we are in that time frame. As
4 of that time frame, before you were aware that the
5 stings had happened, you did not understand the
6 scope of Tamara Global's retainer or anybody
7 retained by Tamara Global to conduct the stings or
8 surveillance on people?

9 MR. MOORE: Well, you can't lump
10 together stings and surveillance. You know, that
11 really is not a fair way of putting the question.

12 BY MR. MILNE-SMITH:

13 2718 Q. Well, one at a time then. Stings.
14 Did it include stings?

15 MR. MOORE: If you want to be clear and
16 fair in your questions, you should ask about, you
17 know, at a certain point and when to the witness's
18 knowledge was a third party contractor retained to
19 do investigative work. That is a fair question.
20 But to lump things together that are disparate in
21 nature is not fair.

22 MR. MILNE-SMITH: Mr. Moore --

23 R/F MR. MOORE: I object to the form of
24 that question for that reason, for the second time
25 at least now, and I would ask you to rephrase it.

1 BY MR. MILNE-SMITH:

2 2719 Q. We'll do it one at a time, and I
3 am dealing with Mr. Riley's mindset at this time
4 before he was aware the stings were taking place.
5 So obviously you didn't know at this point that
6 Black Cube had been retained; correct?

7 A. To the best of my memory, yes, I
8 did not.

9 2720 Q. Correct. So you didn't believe
10 that the scope of the retainer that Mr. Greenspan
11 is referring to here extended to conducting stings?

12 MR. MOORE: You are lumping -- he said
13 he didn't know they were retained, so how can he
14 comment further?

15 BY MR. MILNE-SMITH:

16 2721 Q. You didn't understand that it
17 extended to anyone? You didn't know about Black
18 Cube, but you didn't believe that -- under the
19 auspices of this retainer, you did not understand
20 that anyone would be conducting stings; correct?

21 A. That is correct.

22 2722 Q. You didn't understand that --
23 under the auspices of this retainer, you didn't
24 understand that anybody would be conducting
25 surveillance on individuals?

1 A. That -- and I am hesitating
2 because at this point we had retained -- or sorry,
3 during this time frame, whether it was at this time
4 or subsequent, we hired people that -- as, for lack
5 of a better word, body guards who also did some
6 kind of checks to make sure that everything was
7 secure. So I would take that to perhaps involve
8 surveilling.

9 2723 Q. Okay, but for the purposes of
10 providing --

11 A. Sorry, and I'm not trying to
12 quibble. It is just Nir and his team had a
13 responsibility to ensure a degree of physical
14 safety.

15 2724 Q. And any surveillance would be
16 limited to those purposes of providing physical
17 safety; correct?

18 A. By Nir and those, yes.

19 2725 Q. Okay. And certainly the scope of
20 the retainer, as you understood it, would not
21 extend to promoting negative stories about West
22 Face or Greg Boland or Justice Newbould?

23 A. Yes.

24 2726 Q. And if you look at the second page
25 here, it authorized payment of up to \$5 million;

1 you knew about that?

2 A. Yes.

3 2727 Q. And that sum was to be paid by the
4 Catalyst Funds; correct? It wasn't being paid by
5 Mr. Glassman personally or by the management
6 company. It was being paid out of the resources of
7 the funds?

8 A. No, no, I believe that was paid
9 for by the Catalyst Capital Group Inc., i.e., the
10 manager, us.

11 2728 Q. Okay. If we could go to tab 20.
12 So just very quickly, this indicates a payment of
13 just over \$1 million by Greenspan, Humphrey, Lavine
14 to Tamara Global. You were aware of this when it
15 happened; correct?

16 A. Whether I received a copy -- did I
17 receive a copy of this document, the wire transfer?

18 2729 Q. That is a very fair question.
19 Pull up tab 21. So you will see Mr. Greenspan down
20 below is saying:

21 "[...] find confirmation of the
22 transfer".

23 And then up at the top:

24 "Will confirm receipt of funds
25 once in our account."

1 And you are copied.

2 A. Yes.

3 2730 Q. So I'm using this just to
4 illustrate a general point. To the best of your
5 knowledge, you were kept aware of payments that
6 were being made by Greenspan's firm on behalf of
7 Catalyst to Tamara Global; correct?

8 A. Yes.

9 2731 Q. Let's go back to tab 12. That is
10 the text exchange, and I want to look at page 11.
11 So this is on September 4th now, and Mr. Glassman
12 says:

13 "We r delivering a few things
14 [...]"

15 MR. MOORE: I don't think -- I don't
16 know if it has page numbers on it, does it?

17 THE DEPONENT: No. Can you use your
18 hand to point to which document you are reading.

19 BY MR. MILNE-SMITH:

20 2732 Q. So this is -- if you look at the
21 top right-hand corner of the page.

22 A. Yes.

23 2733 Q. It has Bates stampings, so you see
24 page 11 there?

25 A. Yes.

1 2734 Q. Okay. So that is the page we are
2 on. It starts on August 31st, and it goes through
3 to September the 4th.

4 MR. MOORE: All right.

5 BY MR. MILNE-SMITH:

6 2735 Q. And I am looking at the underlined
7 passage in the middle:

8 "We r delivering a few things
9 to the authorities tomorrow. We r
10 also pushing the media."

11 Do you see that, Mr. Riley?

12 A. Yes.

13 MR. MOORE: Can you just help me for a
14 second? I have got a hard copy of this tab 12.

15 MR. MILNE-SMITH: Yes.

16 MR. MOORE: And in the upper right-hand
17 corner - this will just help me follow along - it
18 has got a CAT number.

19 MR. MILNE-SMITH: Yes.

20 MR. MOORE: And the last two digits on
21 the one you have got there is 11.

22 MR. MILNE-SMITH: Those are the page
23 numbers.

24 MR. MOORE: And I'm assuming that is
25 page 11, and it is all in sequence after that.

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

2 MR. MOORE: So if you refer to a page
3 number with reference to those last two digits,
4 that will make it easier for me at least to figure
5 out exactly where we are in this document.

6 MR. MILNE-SMITH: That is what I have
7 been doing and will continue to do throughout.

8 MR. MOORE: Okay. So then page 14?
9 Let's go back to that, because I'm not sure I was
10 on the same page 14 as you were.

11 MR. MILNE-SMITH: No, no, we were never
12 on page 14. We have always been on page 11. I'm
13 sorry if I misspoke.

14 MR. MOORE: Well, I may have misspoken.
15 I may be misunderstanding. Okay. Page 11. Fine.

16 BY MR. MILNE-SMITH:

17 2736 Q. Okay. So this refers on September
18 the 4th to delivering things to the authorities and
19 pushing the media. Am I correct in understanding
20 that what Catalyst was pushing to the media and
21 authorities was about activities of the alleged
22 Wolfpack?

23 A. Well, it was relating to the short
24 attack and evidence that we were starting to
25 discover, yes.

1 2737 Q. And you will see --

2 A. That is what I --

3 [Court Reporter intervenes for
4 clarification.]

5 THE DEPONENT: Sorry. I apologize.

6 BY MR. MILNE-SMITH:

7 2738 Q. And you'll see the next

8 highlighted passage at 20:37, it states that:

9 "[...] jsot asked us to move it
10 fwd if we could w[ith] the media."

11 JSOT is -- I can't remember the
12 acronym, but it is a police service essentially;
13 correct?

14 A. JSOT is Joint Serious Offences
15 Task Force, which is a joint task force between
16 essentially the RCMP through IMET and the OSC.
17 There may be others involved in there. And they
18 are housed at the OSC's offices.

19 2739 Q. And you were aware that this was
20 happening in early September of 2017?

21 A. I would have been in meetings with
22 JSOT.

23 2740 Q. Yes. And the reason that you
24 were, as Mr. Glassman says, delivering things to
25 the authorities, is because if you have evidence of

1 what you believe to be improper behaviour, it is
2 important to take it to the relevant authorities;
3 correct?

4 A. Well, could I put it in context?
5 The reason we reached out to JSOT in the first
6 place was because Reuters had indicated that we
7 were under investigation. So we met with JSOT to
8 ask the question, Are we under investigation? As a
9 result of that, they said, No, you are not under
10 investigation, which I found unusual, and also
11 authorized us to state that publicly if we were
12 asked.

13 So that is the context. And then there
14 was interaction between us and JSOT as we evolved
15 in our investigation of the conspiracy.

16 2741 Q. So I'm not sure that answered my
17 question, so let me ask it again.

18 If you have evidence of improper
19 behaviour, it is appropriate to take it to the
20 authorities? That is what was happening here;
21 correct?

22 A. We had activity -- as we were
23 uncovering things, we had activity that we thought
24 was relevant to their assessment of
25 short-and-distort cases.

1 2742 Q. Okay. And it is also appropriate,
2 on your view of matters, with this being one
3 example, it is also appropriate, if you think you
4 have evidence of unlawful behaviour, it is
5 appropriate to take it to the media?

6 A. Well, I think we were trying to
7 achieve some balance in the media so that they
8 would be looking at short-and-distort as a general
9 topic.

10 MR. MOORE: I think that is a very
11 broad question. I think it depends on the
12 circumstances, but as a general proposition, for
13 all purposes, for all parties, I think that is a
14 very, very broad question.

15 BY MR. MILNE-SMITH:

16 2743 Q. As long as you are not saying
17 anything false, it is appropriate to take matters
18 of interest to the public, to the media, so that
19 they can publicize it?

20 MR. MOORE: Not necessarily, not if it
21 is subject to some form of confidentiality, not if
22 doing so might be inconsistent with obligations to
23 your own investors. I mean, there could be all
24 kinds of circumstances that would bear upon the
25 appropriateness of taking materials to the media.

1 You ought not to be taking what is supposed to be a
2 confidential whistleblower complaint and taking it
3 to the media for the purpose of stirring up strife
4 and helping with a short-and-distort.

5 You would have to look at the
6 circumstances that existed with respect to any
7 potential disclosure to the media, and so I think
8 that question is way too broad.

9 MR. MILNE-SMITH: Mr. Moore, if you
10 object to my question, I prefer that you simply
11 object to it and refuse it, rather than to give the
12 answer yourself.

13 R/F MR. MOORE: Well, I'm not giving the
14 answer. I'm objecting to it, and I think I'm
15 entitled to give an explanation for my objection.
16 I think I'm supposed to give an explanation for my
17 objection. So that is my objection. I think your
18 question is way too broad.

19 MR. MILNE-SMITH: Justice McEwen can
20 decide on what exactly happened here. Let's move
21 on.

22 MR. MOORE: That is fine. That is
23 fine.

24 BY MR. MILNE-SMITH:

25 2744 Q. Go over to page 12. So this is

1 Mr. Glassman saying:

2 "[...] they said pt blank" --
3 and this is referring to JSOT from
4 the previous page. "[...] they said
5 pt blank to jim riley and a lawyer
6 of ours beginning of last wk."

7 So was it correct that JSOT instructed
8 you to take your information about the alleged
9 Wolfpack to the media?

10 A. I don't have a recollection of
11 that. I think that we had broad-ranging
12 discussions with JSOT about what was -- what the
13 activities were there.

14 2745 Q. And it was Stephen Fraser and
15 Jonathan Yu, Y-u, that you were interacting with at
16 JSOT?

17 A. And Faiz Ahmed.

18 2746 Q. Could you spell that last one,
19 please?

20 A. Can I make sure that I spell --
21 may I look at my phone to make sure I spell it
22 correctly?

23 2747 Q. Sure.

24 A. F-a-i-z, last name Ahmed,
25 A-h-m-e-d.

1 2748 Q. Okay. So you don't recall any of
2 Mr. Ahmed, Mr. Fraser, or Mr. Yu instructing you to
3 take your information to the media?

4 A. I don't recall. Can we take a
5 break for a minute, please?

6 2749 Q. Yes.

7 A. Thank you.

8 MR. MILNE-SMITH: In fact, why don't we
9 take -- this is obviously going to take longer than
10 I had anticipated. We have already taken a morning
11 break.

12 [DISCUSSION OFF THE RECORD.]

13 -- RECESSED AT 11:48 A.M.

14 -- RESUMED AT 12:20 P.M.

15 BY MR. MILNE-SMITH:

16 2750 Q. Okay. We had a conversation off
17 the record clarifying names of some of the people
18 that were referred to this morning. Mr. Riley, at
19 one point you referred to a gentleman by the name
20 of Nir, N-i-r, as sort of the head security
21 individual --

22 A. Yes.

23 2751 Q. -- that was assigned to Catalyst
24 or Mr. Glassman, and I think you said his last name
25 is Maman, M-a-m-a-n, correct?

1 A. Correct.

2 2752 Q. Okay. And so picking up where we
3 left off, Mr. Riley, you wanted me to take you to
4 this text in the middle of the page in tab 12 at
5 page 12, September 4th. I had taken you to the
6 point where it said:

7 "[...] they said pt blank to
8 jim riley and a lawyer of ours
9 beginning of last wk."

10 And then you wanted me to take you
11 to -- in the middle of the page where it says:

12 "We r driving fwd." This is
13 Mr. Glassman speaking. "We r
14 driving fwd. w[ith] jsot blessings
15 and helping them."

16 So that was your understanding as well
17 at the time; correct?

18 A. Well, I want to actually -- it is
19 in the time frame -- and it was probably in July
20 when we first met with JSOT.

21 2753 Q. Yes.

22 A. And at the end of the meeting, we
23 discussed a couple of things, and you have to
24 appreciate that JSOT very rarely told us anything.
25 They just listened carefully and took notes.

1 2754 Q. Yes.

2 A. But when we -- when I asked them
3 point blank what should we do with this apparent
4 Wolfpack behaviour that we were seeing at that time
5 leading up to the Reuters -- potential Reuters
6 article, and I basically asked them, should we, in
7 effect, roll over, do nothing and just take it, or
8 should we fight back, their advice to us was to
9 fight back as hard as we could.

10 So that is the overall context I think
11 of that period of time.

12 2755 Q. Okay. So tab 22. So just zoom
13 out a bit. Mr. Riley, this is an email that was
14 sent to you -- sorry, sent to Mr. Glassman by
15 Mr. DiPucchio at a time when he was external
16 counsel at Lax O'Sullivan on September 7th, and you
17 were copied, and he describes what the subject line
18 indicates as a "Wish list of Evidence/Information".
19 Now, obviously you received this email in its
20 original form; correct?

21 A. Yes.

22 2756 Q. Now, what has happened to this is
23 that somebody has printed out this document and
24 then sort of annotated it with handwriting. And
25 what I would like to know is whether you ever saw

1 this handwritten annotated version of the document
2 as it is presented on the screen now?

3 A. And --

4 2757 Q. And, sorry, let me clarify. When
5 I say "whether you ever saw", during the
6 contemporaneous events in, say, September through
7 November of 2017, had you seen this version of the
8 document?

9 A. Not that I recall.

10 2758 Q. Okay. So the first time you
11 recall seeing this version of the document would
12 have been in more recent months preparing for the
13 litigation?

14 A. I'm not even sure that I -- I'm
15 not even sure that I have seen this until now. I
16 may have because, as you know, there are a lot of
17 documents in this case.

18 2759 Q. Okay.

19 A. A lot of pieces of paper.

20 2760 Q. Okay. And certainly, it is not
21 your handwriting on the page?

22 A. No. It appears to be Newton.

23 2761 Q. Okay. That was our understanding
24 as well. And this is a Black Cube production. I
25 take it that you were certainly not aware of this

1 document as handwritten and as marked up -- oh,
2 sorry, it is a Catalyst production, but we are
3 going to come to something where you see it gets to
4 Black Cube.

5 You certainly were not aware of this
6 document or anything like it being provided to
7 Black Cube; correct?

8 A. Correct.

9 2762 Q. Okay. So if we can go to page 4
10 of this document --

11 MR. MOORE: So, Mr. Milne-Smith, let me
12 just -- the record will be what it is, but I'm not
13 sure that this is -- or certainly all of it is a
14 Catalyst production. I believe that this document
15 or at least part of this document, certainly the
16 yellow pages, but perhaps the whole annotated email
17 as well - I may be mistaken in my recollection - is
18 a Black Cube production, and it is alluded to in
19 Schedule C to the recent affidavit of documents
20 dealing with Black Cube documents.

21 MR. MILNE-SMITH: Well, it is in Black
22 Cube's productions, but the version we are using
23 here, as you can see from the Bates stamp at the
24 top of the page that is on the screen, indicates
25 that it was also produced by Catalyst.

1 MR. MOORE: Okay.

2 MR. MILNE-SMITH: In the most recent
3 round of productions following the Justice Boswell
4 motion.

5 MR. MOORE: Fair enough.

6 MR. MILNE-SMITH: Okay.

7 MR. MOORE: All I'm telling you is --
8 well, okay. That is fair. It may be included
9 because we got it from Black Cube. I'm not sure.
10 But in any event, I see what you are saying.

11 BY MR. MILNE-SMITH:

12 2763 Q. Okay. So you were not aware of
13 this document. You have already given that
14 evidence. I just want to bring your attention to
15 the fact that on the page we brought up, which is
16 page 4 of the production, it refers to Justice
17 Frank Newbould, and it says then:

18 "Evidence/reasons for:

19 A bias against Catalyst/N.

20 Glassman;

21 B, anti-Semitism;

22 C, deal with West Face for
23 decision;

24 D, inappropriate

25 conversation/dealings with West Face

1 or Boland;

2 E, deal/move to Thornton

3 Grout".

4 And then it indicates "U.S. \$75,000 per
5 item above".

6 A. I apologize. I'll take what you
7 are saying. I actually can't read this as it is.

8 U/T MR. MOORE: We'll get the transcript,
9 Matt, and if we disagree with your interpretation
10 of the writing -- it is pretty faint on the
11 document on the screen, but if we disagree with
12 your recital of the words, we'll let you know.

13 BY MR. MILNE-SMITH:

14 2764 Q. That is fine. So I just want
15 to -- look, I understand, Mr. Riley, that you have
16 given evidence, which I accept, that you weren't
17 aware of this document at the time and certainly
18 hadn't seen it at the time and maybe hadn't seen it
19 at all until I put it on the screen. I just wanted
20 to give it to you for context because what I would
21 like now to ask you, Mr. Riley -- if we could bring
22 up on the screen the Justice Boswell decision,
23 paragraph 354. This isn't part of my compendium
24 because it is not evidence. It is a prior judicial
25 decision, so it is not a tab of the compendium, and

1 I am not proposing to mark it as an exhibit, but I
2 would like to bring up this judgment and
3 specifically go to paragraph 354.

4 So at paragraph 354 of Justice
5 Boswell's decision, he writes as follows:

6 "There was nothing in the
7 judgment of Justice Newbould [...]"

8 Sorry, before I read this, I take it
9 you received, are aware of, and read the decision
10 of Justice Boswell; fair?

11 A. I skimmed it. I didn't read it in
12 detail.

13 2765 Q. Okay. Well, let me read this
14 paragraph to you then.

15 A. Yes.

16 2766 Q. "There was nothing in the judgment
17 of Justice Newbould", and this is
18 referring to the decision in the Moyse
19 action, "that would suggest he was
20 biased, a racist or a depraved
21 anti-Semite. The sting perpetrated on
22 him was unvarnished random virtue
23 testing or worse."

24 You would agree with Justice Boswell's
25 conclusions in that regard, wouldn't you?

1 MR. MOORE: Just a minute. I don't
2 think that is -- no, we don't agree with that for
3 this reason -- or there may be parts of it we
4 agree, part we don't agree.

5 As you know, during the argument I made
6 it clear to Justice Boswell that I was not asking
7 His Honour to make any judgments or findings or
8 conclusions whatsoever about Justice Frank
9 Newbould. Some of the confidential material that
10 was filed before him alluded to some prior issues
11 that had arisen with Justice Newbould in connection
12 with the Mid-Bowline action and therein certain of
13 those confidential materials.

14 So there was prior context that gave
15 rise to a potential recusal application that
16 Catalyst had been considering in the aftermath of
17 that January session with Justice Newbould.

18 So these statements, they are what they
19 are, but they don't reflect a full record or
20 articulation or debate in terms of all of the
21 history leading up to that point in time.

22 BY MR. MILNE-SMITH:

23 2767 Q. Mr. Riley, you are an officer of
24 the court. You are a lawyer. And I want to give
25 you the opportunity, if your lawyer will let you,

1 to agree with what Justice Boswell has written here
2 in paragraph 354, which I read into the record. Do
3 you agree with it, and if you disagree with it,
4 please tell me why?

5 MR. MOORE: Well, I don't -- you know,
6 I don't see what the relevance is or purpose is or
7 legitimacy is of asking this witness to agree or
8 disagree with some observations by Justice Boswell.
9 They are what they are. We sought leave to appeal.
10 We were not successful.

11 MR. MILNE-SMITH: That is fine.

12 MR. MOORE: So --

13 MR. MILNE-SMITH: We can rely on that
14 refusal moving forward.

15 MR. MOORE: What I am saying to you,
16 which is not part of the debate or record or
17 argument before Justice Boswell, was some of the
18 underlying circumstances that preceded that, and I
19 am not talking about in relation to a sting. I'm
20 not talking about racial issues. I'm talking about
21 what had been a potential recusal application some
22 months earlier.

23 So my observations are not intended to
24 suggest there was evidence of racial bias. My
25 position or what I am saying now is not commenting

1 upon a sting. All I'm saying is that the entire
2 prior history in context of the matters that
3 Mr. Greenspan and I gave advice about was not fully
4 before Justice Boswell. That is all.

5 BY MR. MILNE-SMITH:

6 2768

 Q. Mr. Riley, I'll give you one last
7 chance. If you want to refer to any of this
8 evidence that your counsel is referring to that you
9 say is inconsistent with Justice Boswell's
10 conclusion here that you want to rely on to say he
11 was wrong, here is your opportunity. Give it to
12 me.

13 MR. MOORE: No, I think that is an
14 improper question, and I refuse -- or I'll take
15 that under advisement, but I don't want to open up
16 the record. The record before Justice Boswell was
17 what it was. Maybe you have got to order the
18 transcript of that argument and it will make it
19 clear to you what I am saying.

20 BY MR. MILNE-SMITH:

21 2769

 Q. That is fine. I don't want an
22 advisement. I don't want something prepared by
23 counsel. I withdraw the question.

24 Mr. Riley -- okay. You can take that
25 off the screen and go back to tab 22. If you just

1 go down to the bottom of the page, it states:

2 "West Face [...]"

3 And again, Mr. Moore, you can advise me
4 if you take any issue with my reading of this
5 document on the page. It says:

6 "West Face, evidence of other
7 criminality not related to us U.S.
8 \$25,000/item."

9 And then number (ii):

10 "confirmation of assets under
11 management U.S. \$20,000."

12 And then:

13 "confirmation of current
14 notices of Redemption."

15 And then the amount, which I guess was
16 under there, has been cut off.

17 You would agree that none of this
18 relates to any ongoing litigation between Catalyst
19 and West Face as of September 2017? So criminality
20 not --

21 MR. MOORE: Sorry, not --

22 BY MR. MILNE-SMITH:

23 2770 Q. Hang on. Criminality not related
24 to us, assets under management, and notices of
25 redemption, none of that relates to any ongoing

1 litigation between Catalyst or Callidus and West
2 Face; correct?

3 MR. MOORE: What? Currently?

4 BY MR. MILNE-SMITH:

5 2771 Q. No, I said as of September 2017.
6 That is when this was taking place.

7 A. This appears to be more in the
8 nature of background information.

9 2772 Q. Right, but not directly related to
10 any issues in litigation?

11 A. Well, again, you are asking me
12 about a document that, to the best of my knowledge,
13 I have never seen until now, and I can barely read
14 it. Unfortunately, there is not a lot of contrast
15 between the ink and the yellow page, or at least
16 not sufficient on this computer screen.

17 2773 Q. Forget what is on the page,
18 Mr. Riley. I'm going to ask --

19 A. I am not trying to argue with you,
20 Mr. Milne-Smith. I'm just saying I'm having
21 trouble reading it. I think it is more in the
22 context of -- this is in the context of the ongoing
23 investigation by us into the Wolfpack and the
24 short-and-distort attack.

25 2774 Q. Would you agree with me that what

1 is -- that the notion of seeking evidence -- forget
2 about what is on the page. I'm going to put it to
3 you as a general proposition, all right.

4 A. Okay. Thank you.

5 2775 Q. Would you agree with me that
6 looking for these three things, number one,
7 evidence of criminality not related to Callidus or
8 Catalyst; number two, confirmation of assets under
9 management; and number three, confirmation of
10 current notices of redemption; would you agree with
11 me that those three items have no relation to
12 existing litigation by Catalyst or Callidus as of
13 September 2017, and in fact, constituted random
14 virtue testing?

15 A. No, I disagree with that.

16 2776 Q. And you would agree with me that
17 confirmation of current notices of redemption would
18 be prejudicial information about West Face and, if
19 public, would be harmful to West Face; do you agree
20 with that?

21 A. It would depend on what the facts
22 were, but I think that what is relevant is what was
23 the state of its business at the time.

24 2777 Q. And if there was evidence of
25 notices of redemption, that would be negative

1 information about West Face; correct?

2 A. Well, it wouldn't be good
3 information -- it wouldn't be good facts from West
4 Face's point of view.

5 2778 Q. Right, and so if someone -- let me
6 ask this question more generally. When you were --

7 MR. MOORE: It depends how many there
8 were. If there were none --

9 MR. MILNE-SMITH: I haven't asked my
10 question yet, Mr. Moore.

11 MR. MOORE: I thought you had. Sorry.
12 Go ahead.

13 BY MR. MILNE-SMITH:

14 2779 Q. Were you aware in September of
15 2017 of whether or not Catalyst or anyone on its
16 behalf had engaged someone to look for evidence of
17 West Face receiving notices of redemption? Were
18 you aware of that going on in September 2017?

19 A. I think that generally I was aware
20 that people -- we were trying to figure out what
21 the state of West Face's business was and what kind
22 of -- why they might be involved in a short attack,
23 what might --

24 2780 Q. And if they were receiving notices
25 of redemption, the goal then was to publicize that

1 and to harm their public reputation; correct?

2 A. No, not necessarily. That could
3 be relevant to ongoing litigation, potential.
4 Excuse me, potential litigation in connection with
5 the short-and-distort attack.

6 2781 Q. Okay. Okay.

7 A. To also put it in context, we were
8 operating in a vacuum at this time. We were trying
9 to gather information. So, for example, having
10 Levy under oath helped us get to a number of issues
11 to go forward with. Similarly -- and although we
12 were skeptical of Snowdy, we were trying to garner
13 from him documentary evidence or taped evidence
14 that would help us understand the facts as they
15 might exist.

16 So that is why, when you go back to
17 some of Newton's texts, he is talking about the
18 need for Snowdy to come up with evidence, and
19 evidence in that context, not being what Snowdy
20 said, a piece of paper or a tape, because Snowdy
21 liked to tape conversations.

22 2782 Q. We'll come back to Snowdy in just
23 a moment. Before we leave this subject matter, you
24 have told me that you weren't aware of this
25 document. You have told me about -- that you

1 weren't aware of the various bounties relating to
2 Justice Newbould. If you had been aware of
3 something like this going on, you would have tried
4 to put a stop to it, right, because you know it is
5 wrongful?

6 MR. MOORE: That is a totally
7 hypothetical question. What is the relevance of
8 that?

9 BY MR. MILNE-SMITH:

10 2783 Q. It is not hypothetical, Mr. Moore.
11 It actually happened. We know that Black Cube
12 conducted stings on Justice Newbould in trying to
13 fulfil these bounties. Mr. Riley has said he did
14 not know about it, and I want to give him the
15 opportunity to disavow this conduct completely if
16 he so chooses.

17 So, Mr. Riley, had you known that this
18 was, in fact, going on, you would have tried to put
19 a stop to it, wouldn't you?

20 MR. MOORE: I'll object to that
21 question on the grounds of relevance, but you can
22 go ahead and answer the question.

23 THE DEPONENT: I think it was
24 subsequent that Mr. Greenspan tried to ensure that
25 there were no stings carried out by Black Cube.

1 BY MR. MILNE-SMITH:

2 2784 Q. No, but that is what happened. I
3 want to find out from your perspective. If you had
4 known this was going on prior to September 18 or
5 19, whenever it was discovered, you would have
6 tried to put a stop to it; correct?

7 A. I think so.

8 2785 Q. Yes. Thank you. I would have
9 been shocked if you gave a different answer quite
10 frankly, so thank you.

11 Let's go back to Mr. Snowdy.

12 MR. MOORE: I don't think any of this
13 is particularly relevant. We did try to put a stop
14 to it, but let's get on with it.

15 BY MR. MILNE-SMITH:

16 2786 Q. Yes. Can you please bring up tab
17 25. So these are notes that Ms. Lutes is sending
18 to Yossi Tanuri on September the 12th, 2017, and as
19 I'm shortly going to show you, my understanding is
20 that these are notes of a meeting that you and
21 Ms. Lutes had with Derrick Snowdy on or about
22 September 12. Do you recall that meeting as a
23 general matter?

24 A. I do.

25 2787 Q. Okay. So let's go to the notes at

1 tab 26.

2 A. Is there a typed version of these
3 notes?

4 2788 Q. This one -- yes. So why don't we
5 go right to that. Tab 27.

6 A. Yes, if we could, please. Thank
7 you.

8 2789 Q. So, Mr. Moore, I'm going to ask
9 that these two tabs, 26 and 27, be incorporated
10 into the previous undertaking you gave in respect
11 of any inaccuracies in the notes from Mr. Riley's
12 perspective?

13 U/T MR. MOORE: I understand. That is
14 fine.

15 BY MR. MILNE-SMITH:

16 2790 Q. And certainly we have not seen,
17 and so let me just confirm with you, Mr. Riley, you
18 don't recall contemporaneously writing an email, a
19 letter, putting anything on paper indicating that
20 you disagreed with the contents of this memo or any
21 other notes memorializing a meeting that you
22 participated in; correct?

23 A. In other words, do I take this --
24 sorry, it is only because that was a very long
25 question. My understanding of your question is, do

1 I think this is an accurate transcript of what
2 occurred at the meeting, generally speaking?

3 2791 Q. No, so I apologize. Let me ask
4 again because I have got that general undertaking
5 from Mr. Moore, which certainly makes things
6 easier.

7 MR. MOORE: So we are not aware of any
8 document from Mr. Riley when he received this,
9 either the handwritten notes or the typed version,
10 writing back and saying, you know, page 2 is wrong.
11 We are not aware of any such document. But I think
12 your question was even broader than that, or may
13 have extended to any meeting ever. So that is
14 the -- again, I think I can safely say I'm not
15 aware of any other documents like that either, but
16 that is subject to Mr. Riley correcting me, or us
17 discovering something different, that is the answer
18 to that question.

19 BY MR. MILNE-SMITH:

20 2792 Q. Okay. That is exactly what I
21 expected. Go back to tab 12, please, and I would
22 like to go to page 19 --

23 A. I apologize. Why are we not
24 finishing this document?

25 2793 Q. Because I don't have any questions

1 about it other than making sure that there aren't
2 any inaccuracies. I think the document speaks for
3 itself.

4 A. Okay. Thank you.

5 MR. MOORE: So tab 12, yes.

6 BY MR. MILNE-SMITH:

7 2794 Q. And page 19. That is, again, the
8 page numbering in the top right-hand corner.

9 MR. MOORE: Yes.

10 BY MR. MILNE-SMITH:

11 2795 Q. So we established that that
12 meeting took place on or about September 12th, so
13 now we are looking at what Mr. Glassman says to
14 Mr. Guy about that meeting. So you see -- this is
15 Tuesday, September 12th, 2017, 19:46, and
16 Mr. Glassman says:

17 "Jim thought snowy is full of
18 shit and falling in value. Gotta
19 go."

20 Now, I'm not going to try and put
21 Mr. Glassman's colourful language into your mouth,
22 but is it safe to say that his assessment there is
23 an accurate representation of the general
24 impressions of Mr. Snowdy?

25 MR. MOORE: Well, wait a minute. Wait

1 a minute.

2 THE DEPONENT: You are putting words in
3 my mouth.

4 MR. MOORE: That is exactly what you
5 are doing.

6 THE DEPONENT: Sorry, I want to answer
7 that.

8 MR. MOORE: Okay. Yes, go ahead. I'm
9 sorry. Go ahead.

10 THE DEPONENT: Newton was trying to
11 pressure Danny and Snowdy to come up with
12 documentary proof. If you go through the context
13 of -- we had I would call a healthy skepticism
14 about Snowdy, and we were not prepared to move
15 forward on anything that Snowdy said without a
16 piece of paper. That is why we shifted away from
17 Snowdy and towards getting Levy under oath and then
18 trying to get Levitt under oath, because we thought
19 that was a richer source of information.

20 But for all --

21 BY MR. MILNE-SMITH:

22 2796 Q. Okay --

23 A. Sorry, can I finish, please?

24 2797 Q. Go ahead.

25 A. For all of Snowdy's whatever,

1 however you want to characterize Newton's
2 skepticism, the ironic part about Snowdy is Snowdy
3 would give us little pieces of information that
4 were helpful. For example - and just by way of one
5 example - the email that he had from Levitt to
6 Cohodes, was it a helpful thing. Some parts of
7 what he said helped inform how to look at other
8 facts and events; for example, how they used social
9 media.

10 So there were nuggets -- and I think
11 there is an email or a text from Brian Greenspan
12 reflecting on the meeting he had -- a meeting he
13 had with Snowdy where he said it was two and a half
14 hours of interesting but irrelevant information and
15 two minutes of, I can't -- whether he said it was
16 helpful or relevant information, and Snowdy is -- I
17 mean, he is not someone that I would ever rely upon
18 for everything he said, but where he could come up
19 with a piece of documentary evidence or a tape of
20 something or anything that could verify what he was
21 saying, I took it -- not that I proceeded on it,
22 but that it was indicative of something we should
23 look into; i.e., verify.

24 2798

 Q. And ultimately, you chose not to,
25 for example, obtain an affidavit from Derrick

1 Snowdy?

2 A. No.

3 2799 Q. And you didn't choose to obtain an
4 affidavit from Danny Guy?

5 A. No.

6 2800 Q. And if you go over to the next
7 page of this document, page 20. It is not
8 underlined, but keep going down. So yes, the one
9 near the bottom of the page here at 20:12. It
10 says -- no, go up a little bit. There. So you see
11 Danny Guy says:

12 "Ya he", being Snowdy, "tells
13 me he is making progress with Jim.
14 He trusts him."

15 And Mr. Glassman replies:

16 "Jim is a crazy polite wasp. I
17 love him dearly but snowdy is
18 clearly not great at his job if he
19 can't read btwn the lines w[ith]
20 jim. Jim is furious that Snowdy
21 keeps wasting his time and not
22 producing any real substantive back
23 up. I keep forcing him to go back."

24 This was an accurate summary of your
25 assessment of the meetings to date as of September

1 25th?

2 A. First of all, I don't agree with
3 that I'm a "crazy polite wasp".

4 2801 Q. Fine. Put that --

5 A. That is obviously a sense of -- I
6 think that may have been Newton's interpretation of
7 what I fed back to him. My frustration with Snowdy
8 at that time was that Snowdy -- Snowdy had a
9 narrative that he would keep going back to. So you
10 would meet with him a second meeting -- let's say
11 you had meeting one, and then you had the second
12 meeting. He would start off where he started on
13 the first meeting. So you tended to be -- it was
14 not iterative. So it took time to pry out from him
15 facts and information, and you had to sort of work
16 with him.

17 So that was my frustration. And you
18 know, frankly, Snowdy -- Snowdy is an interesting
19 character, but at that time did have some -- he
20 clearly had a relationship with Cohodes and that
21 was helpful to understanding the overall
22 short-and-distort and how it worked.

23 2802 Q. Tab 28. This is an email from
24 Mr. Glassman to you and some other lawyers and
25 Mr. de Alba on September 13th, subject "Naomi's

1 notes". Now, this document was not produced, as
2 far as we can tell, by Catalyst. It was produced
3 by Black Cube, and Black Cube isn't one of the
4 recipients of Mr. Glassman's September 13th, 2017,
5 email. What we see instead is that above it is
6 forwarded by Yossi Tanuri to Avi Yanus, which is
7 how Black Cube presumably gets it.

8 My interpretation of this - and tell me
9 if you have any reason to think I'm wrong - is that
10 Mr. Glassman blind-copied Mr. Tanuri, which is how
11 he got it to forward it on to Avi Yanus. Is that
12 consistent with your understanding of how
13 Mr. Glassman would have communicated with
14 Mr. Tanuri?

15 MR. MOORE: Do you know?

16 THE DEPONENT: I don't know that. I
17 can't -- there is -- I always thought that when you
18 do a bcc, it shows up on the email, but I'm not a
19 tech guy, but I always thought that is the way it
20 worked.

21 BY MR. MILNE-SMITH:

22 2803 Q. Okay. The reason I'm interested
23 in this is because it didn't show up in Catalyst's
24 productions. Did Catalyst at any time since, say,
25 September 1, 2017, take any steps to erase from its

1 servers this or any other email relating to these
2 matters in issue?

3 A. No.

4 2804 Q. Have you taken steps to search
5 Mr. Glassman's emails for anything that was
6 blind-copied to Tanuri?

7 A. I was not running the document
8 production. That was Rocco.

9 2805 Q. Okay. If there is any --

10 A. And I'm not -- I'm just deferring
11 that I didn't handle the production of documents.

12 2806 Q. That is fine. If any explanation
13 can be provided as to why this document was not
14 produced, and if any efforts can be made to produce
15 any other documents like this that may have been
16 missing, I would like an undertaking to do that?

17 U/A MR. MOORE: All right. We'll take that
18 under advisement. I mean, I'm speculating, so --
19 well, I don't want to speculate. I'll take that
20 under advisement. Let me put it this way. I don't
21 agree with the underlying premise that it wasn't
22 produced in the sense that it may have been listed
23 in the continuing or current Schedule B, I want to
24 check that, but if there is some omission with
25 respect to this document, we'll make inquiries.

1 BY MR. MILNE-SMITH:

2 2807 Q. Thank you. Tab 29.

3 A. Sorry, could I just read this
4 email?

5 2808 Q. Sure.

6 A. Can you just scroll down?

7 "Levitt of fortress clearly was
8 part of it and according to notes
9 reached out to cohodes to help
10 orchestrate etc."

11 So that is the Snowdy email that I
12 referred to.

13 2809 Q. Yes.

14 A. And:

15 "Then boland is connected to
16 Levitt at fortress [...]"

17 Okay.

18 And then Alex Spears. So this is all
19 in the context of information that we were getting
20 from Snowdy.

21 2810 Q. Yes. Tab 29. So this is what is
22 described on its face as a "First Presentation" of
23 September 13, 2017, by Black Cube in regards to
24 Project Camouflage. It is an 84-page PowerPoint
25 presentation. Did you receive this document either

1 at a meeting with Black Cube or in any other manner
2 contemporaneously in September of 2017?

3 A. No.

4 2811 Q. So you were completely unaware of
5 this document until it was produced in this
6 litigation; fair?

7 A. To the best of my knowledge,
8 yes -- or best of my memory, yeah. In fact, could
9 you scroll down? Because it is not a document --
10 even the cover page --

11 2812 Q. Well, let me take you to a couple
12 of indicative pages. So go to page 35. So, for
13 example, this is a profile that had been prepared
14 by Black Cube, on its face, at least, of Brandon
15 Moyse's wife, and it describes who the agent is,
16 who is going to approach her, and what the proposed
17 approach is. You never saw anything like this;
18 correct?

19 A. That is correct.

20 2813 Q. Okay.

21 A. Is that Brandon Moyse's wife, a
22 picture of her?

23 2814 Q. Yes, it is.

24 A. Okay.

25 2815 Q. And there is pictures of any

1 number of targets and family members that are in
2 this document. You certainly -- I'll give you this
3 opportunity, again, Mr. Riley, in fairness. If you
4 had known that Black Cube or anybody purporting to
5 be acting under Catalyst's authority was targeting,
6 surveilling, and stinging family members of people
7 related to litigation somehow with Catalyst, you
8 would not have approved that, and you would have
9 tried to put it to a stop; correct?

10 R/F MR. MOORE: Don't answer the question.
11 You are lumping together targeting, whatever that
12 means --

13 MR. MILNE-SMITH: That is fine.

14 MR. MOORE: -- surveilling, whatever
15 that means, and stinging. So you can't lump
16 together all of those subjects, and I think the
17 question is improper.

18 BY MR. MILNE-SMITH:

19 2816 Q. That is fine. Tab 30. I am just
20 going to give you the opportunity, Mr. Riley, and
21 if Mr. Moore wants to refuse, that is perfectly
22 fine with me.

23 MR. MOORE: Well, I'm inviting you to
24 put your questions properly so you don't mix
25 together a number of separate concepts. So if you

1 don't choose to do that, that is your prerogative.

2 BY MR. MILNE-SMITH:

3 2817 Q. Okay. Mr. Riley, if you had been
4 aware of parties purporting to act on Catalyst's
5 behalf surveilling people, like, Sari Richter, you
6 would not have approved of that?

7 A. I would need more information to
8 make that assessment.

9 2818 Q. So in some circumstances, it could
10 be okay to approach Sari Richter under the auspices
11 of a phony NGO?

12 R/F MR. MOORE: No, no, that is not the
13 same question. That is the whole point. You are
14 not listening to my objection. You just asked a
15 question about surveilling, and now you have asked
16 a follow-up question that is equating that with
17 some form of sting that you start going on about.
18 That is lumping different concepts together. That
19 is not a proper way to do it, so I repeat my
20 objection.

21 BY MR. MILNE-SMITH:

22 2819 Q. If you want to do this -- all
23 right. If you want to get into this, let's get
24 into it. Go back to tab 29, please, and let's go
25 to page 35. So let's ask this one at a time. What

1 this document indicates is that an agent, being a
2 45 year old female, under the cover of an NGO
3 program coordinator, is going to approach Ms. Sari
4 Richter with the following story:

5 "An NGO for developing
6 countries that aids with education
7 for kids is looking for teachers.
8 Brandon's wife is an art therapist
9 and she will help with our plan in
10 Toronto, which is a friendship city
11 of Rio de Janeiro, from an art
12 perspective."

13 That is describing the proposed sting
14 on Ms. Richter, and through her, Brandon Moyse.
15 Had you been aware --

16 MR. MOORE: Apparently.

17 THE DEPONENT: Was there a sting
18 conducted on Sari Richter?

19 BY MR. MILNE-SMITH:

20 2820

21 Q. Yes, there was. Yes, there was.
22 There is an affidavit that Brandon Moyse swore to
23 this effect, and it is available in the record of
24 these proceedings if you want. Had you been aware
25 of --

A. Sorry, I just --

1 MR. MOORE: Sorry, go ahead with --

2 BY MR. MILNE-SMITH:

3 2821 Q. Had you been aware of this --

4 MR. MOORE: But I am going to --

5 BY MR. MILNE-SMITH:

6 2822 Q. Had you been aware of this -- let

7 me ask the question. Had you been aware of this

8 happening at the time before it happened, you would

9 have tried to put a stop to it; correct?

10 MR. MOORE: I am going to object to the

11 question, but go ahead and answer.

12 THE DEPONENT: I most likely would

13 have.

14 BY MR. MILNE-SMITH:

15 2823 Q. So we'll come back to some

16 examples of surveillance in future examples of

17 this. I think that is enough for now.

18 Tab 30. So this is another invoice.

19 This is a second payment of \$1.25 million by Tamara

20 to Black Cube. The funds for this would have been

21 provided by the Catalyst Capital Group management

22 company, as you said before; correct?

23 A. Correct.

24 2824 Q. And --

25 A. So I can't read -- I should follow

1 up. Most likely, but is there another -- this is
2 from Tamara to the correspondent bank for whoever
3 it is.

4 2825 Q. Yes.

5 A. For B.C. Strategy UK Ltd., but is
6 there another corresponding wire transfer for USD
7 \$1,250,000 from us to Tamara?

8 2826 Q. This is all I have.

9 A. Okay. Then -- I mean, on its face
10 it says that it is for "Service, Litigation Support
11 - Second Payment", to B.C. Strategy UK.

12 2827 Q. Okay.

13 MR. MOORE: Just to interject,
14 Mr. Milne-Smith, I believe the earlier invoice --
15 or maybe it is a wire transfer that you alluded to
16 was I think on September 5 to Tamara Global for a
17 million dollars and -- 1.25 million, I think.

18 MR. MILNE-SMITH: Yes.

19 MR. MOORE: But rather than you and I
20 trying to discuss this on the record like this,
21 maybe you and I can informally discuss it, but I
22 believe that that invoice related to the original
23 funds paid to Tamara Global but wasn't related to
24 Black Cube. That is my recollection. But rather
25 than debate that, we can perhaps try to clarify

1 that, you and I.

2 BY MR. MILNE-SMITH:

3 2828 Q. Here is -- let me try and
4 short-circuit this. Can I get a schedule --
5 because we have got these bits and pieces, and it
6 is very hard to put together, can I get a schedule
7 of payments made by Catalyst to Tamara Global
8 during the period from September to November of
9 2017?

10 U/A MR. MOORE: I'll take that under
11 advisement.

12 BY MR. MILNE-SMITH:

13 2829 Q. Okay. Tab 31.

14 A. Can I ask, again, is there a typed
15 version of this?

16 2830 Q. There is not.

17 A. Okay. Thank you.

18 2831 Q. At least not that has been
19 provided to us.

20 A. And this is --

21 2832 Q. So --

22 A. May I just -- sorry. Can I
23 just -- can I read -- Meeting with Jim Riley and
24 Derrick Snowdy at Greenspan's offices.

25 2833 Q. Correct.

1 A. Okay. Yes, I just wanted to get a
2 context.

3 2834 Q. So this is September 18, 2017, and
4 again, I would just like to flag this as following
5 under the previous undertaking, to advise us if
6 there are any errors, omissions, inaccuracies,
7 Mr. Moore?

8 U/T MR. MOORE: Yes, subject to the caveat
9 that there may be parts of this we have difficultly
10 reading, but subject to that, yes.

11 BY MR. MILNE-SMITH:

12 2835 Q. That is fine. So this was
13 September 18 of 2017. Let's then go back to tab
14 12, the text chain, to see Mr. Glassman's account.

15 MR. MOORE: What page?

16 BY MR. MILNE-SMITH:

17 2836 Q. So we have already looked at some
18 of this. Let's go to page 21. We already looked
19 at page 20 before. So on page 21, Mr. Glassman
20 says that he speaks with you "a dozen times per day
21 and r beyond close." Now, I understand there may
22 be some element of hyperbole here, but is this a
23 fair representation, as a general matter, that you
24 and Mr. Glassman were in regular communication and
25 had a close working relationship ?

1 A. Yes.

2 2837 Q. Go to page 23, please. So this
3 is -- now you'll see it is October 3rd, and
4 Mr. Glassman is saying, in the middle of the page
5 there, that he is anticipating a meeting with Brian
6 Greenspan that day. And we'll come to
7 Mr. Greenspan's notes of that. But I want to just
8 confirm that your understanding was consistent with
9 Mr. Glassman's where he says, at the bottom of the
10 page, at 10:29, where he says:

11 "His", meaning Snowdy's,
12 "conversations w[ith] jim were
13 disastrous."

14 That is consistent with your reports to
15 Mr. Glassman in terms of the meeting?

16 A. I didn't tend to use the word
17 "disastrous". I -- again, it was the frustration
18 of not -- of how long it took to get a fact, a fact
19 being a document or something that you could say
20 was credible from Snowdy.

21 2838 Q. And if you -- we read along there,
22 it says --

23 A. I think it is fair to say that
24 Newton was pretty upset by that conversation.

25 2839 Q. Yes. He says:

1 "It was DISASTROUS w[ith] jim.
2 Period. Snowdy clearly has no self
3 perception or self judgment. Others
4 find him to be both not credible and
5 likely double dealing. Jsot and
6 others refuse to rely on ANYTHING he
7 says and have proof as to why he is
8 not credible. They r letting brian
9 meet w[ith] him as a favor", this
10 being Brian Greenspan, "and because
11 they trust and rely on brian. U
12 need to stop arguing w[ith] me, u
13 don't know all the facts, and I am
14 trying to do YOU a favor.
15 Fuck!!!!!!"

16 A. That is what it says, plus five
17 exclamation marks -- six exclamation marks. So I
18 this it is fair to say - and it is all in caps -
19 that he was quite upset with Danny.

20 2840 Q. With Danny and with Snowdy;
21 correct?

22 A. Well, his conversations with Danny
23 in saying that Snowdy is not bringing forward the
24 information that he purported to have.

25 2841 Q. Right, and go down to the next

1 page, page 24, and stop there. So there is some
2 personal comments which I'll skip over. The
3 underlined portion says:

4 "Snowdy has his one last
5 chance. If he blows it, u r",
6 meaning Danny Guy, "severely damaged
7 w[ith] him. Period. U linked
8 yourself far too intimately w[ith]
9 him." Being Snowdy. "His
10 resurrection is, in my opinion,
11 literally an imperative FOR U AND
12 YOUR CREDIBILITY. Fuck u r
13 thick!!!!"

14 2842 Q. So putting aside --

15 A. But it is not in caps and there is
16 less exclamation marks.

17 2843 Q. Putting aside the emotion and the
18 hyperbole, you certainly would agree with
19 Mr. Glassman's message here that the credibility of
20 Guy was linked to the credibility of Snowdy?

21 A. That would be Newton's impression,
22 yes.

23 2844 Q. And --

24 A. Danny is a different character.
25 Like sometimes I could not understand what Danny

1 was, but he had -- he had a view on the overall
2 short-and-distorts that were going on and seemed to
3 have interesting -- he had views.

4 2845 Q. Over to the next page, page 25.
5 Keep going down. There. Mr. Glassman writes in
6 the underlined passage:

7 "That's why your credibility is
8 so tied to snowy and so damaged
9 along w[ith] him."

10 You would agree with Mr. Glassman's
11 assessment that Mr. Guy's credibility was damaged
12 by problems with Mr. Snowdy's credibility?

13 A. I'm not sure I would go so far as
14 to say that. I would say that Danny was impacted
15 obviously because he kept putting forward Snowdy,
16 but I think they are two different characters, but
17 again, both very complex in terms of dealing with
18 them.

19 2846 Q. And putting aside the degree of
20 damage it did, you may not have gone as far as
21 Mr. Glassman did, but you would accept, of course,
22 the obvious point that to the extent Guy put
23 forward Snowdy as the person with relevant
24 information and Snowdy's credibility was harmed,
25 that reflected negatively on the credibility of

1 Mr. Guy as well?

2 A. Only insofar as Snowdy was not
3 able to come up with a document that helped inform
4 us, and I think I have said this before - and maybe
5 I wasn't clear - my view on Snowdy, my personal
6 view, was that he was helpful in painting a
7 picture, but you could only rely on that picture to
8 the extent that you could find a piece of paper or
9 some other documentary proof of what he had to say.
10 And sometimes we could do that and sometimes we
11 could not.

12 2847 Q. And in fact, he provided very
13 little in the way of documentary evidence. You
14 have pointed to an email between Levitt and
15 Cohodes. I'm not aware of anything else that you
16 attached to one of your affidavits that was
17 provided by Danny Guy -- sorry, by Derrick Snowdy;
18 correct?

19 A. Whether it was attached to my
20 affidavits or not -- after four or five affidavits,
21 you tend to forget what was attached, but there
22 were emails from Cohodes to Snowdy and Adam Spears
23 where he introduces them to each other. And I
24 would have to go back. I had a separate file that
25 I kept of -- kind of as we were evolving the

1 Wolfpack, and you have seen probably my childish
2 drawings where I kept adding facts to try and
3 figure out what the pattern was.

4 2848 Q. So I would like to be advised of
5 which affidavits -- sorry, which exhibits to any of
6 your affidavits in this proceeding were provided by
7 Derrick Snowdy?

8 U/A MR. MOORE: Well, I'll take that under
9 advisement.

10 BY MR. MILNE-SMITH:

11 2849 Q. Okay. Page 26. Right there. And
12 Mr. Glassman says -- again, referring to Snowdy and
13 speaking to Guy, he says:

14 "He has hurt your reputation
15 and credibility, likely
16 irreparably."

17 That was consistent with your
18 understanding of Mr. Glassman's view of the matter?

19 A. I would say that the relationship
20 between Danny and Newton was going downhill, and at
21 one point they stopped dealing with each other.
22 And I know there is a prior email where -- or prior
23 text, rather, where Newton provides my contact
24 details to Danny.

25 So at some point Newton stopped dealing

1 with Danny Guy, and I dealt with Danny Guy and
2 Snowdy on a go-forward basis. I was always -- not
3 always, but I was probably the most interactive
4 with Snowdy.

5 2850 Q. And that is why -- and that was
6 because Mr. Glassman concluded that Mr. Guy's
7 credibility had been harmed, likely irreparably, as
8 he states here? That is why he handed off Snowdy
9 to you?

10 A. No, I think that -- no, I think he
11 was frustrated with Danny and the inability to come
12 up with hard evidence, if I can use that term
13 colloquially.

14 2851 Q. That is fine. Go to page 29. So,
15 first of all, I want you to just help me with the
16 timing of this. So I'm going to read what it says
17 and then I'm going to ask you about the timing. So
18 there is communications between Mr. Guy and
19 Mr. Glassman about how long they have been going at
20 this, and Mr. Glassman says:

21 "No. Months. Convenient
22 memory u have there so let me remind
23 u. This started for us late in
24 June. By 3rd wk of July 'vincent
25 Hanna' had already had mtngs w[ith]

1 Jim. B4 aug 01 u and I were
2 speaking. That's months."

3 Pause there. The evidence we have seen
4 is that the first contact was in August and that is
5 also when the meetings were. So are we missing
6 something, or is Mr. Glassman just getting his
7 dates wrong?

8 A. Well, is 12:39 at night or in the
9 morning; do you know?

10 2852 Q. This is military time, so it is --
11 I believe that is afternoon.

12 A. Okay. There was no contact -- the
13 first contact with Vincent Hanna was the email that
14 came out of the blue on September -- or sorry,
15 August --

16 2853 Q. 11th.

17 A. -- 11th. Late in June, that
18 sounds about the time frame when Reuters approached
19 us with basically the story that evolved into The
20 Wall Street Journal story. I think that is roughly
21 the time frame.

22 2854 Q. Okay. So you had not --

23 A. I had no -- that is dead wrong, by
24 third week Vincent had already had meetings with
25 Jim.

1 2855 Q. Okay. That is fine.

2 A. And also, "B4 aug 01 u and I were
3 speaking", that is wrong.

4 2856 Q. Okay. That is fine.

5 A. The first interaction with
6 Snowdy/Danny Guy/ --

7 MR. MOORE: Vincent Hanna.

8 THE DEPONENT: Vincent Hanna. But your
9 internet connection is unstable. Can you hear us
10 all right? Okay. Thank you. That didn't occur
11 until that date in August.

12 [Court Reporter intervenes for
13 clarification.]

14 BY MR. MILNE-SMITH:

15 2857 Q. So we are all on the same page
16 then, Mr. Riley.

17 A. Some of these things make no sense
18 to me. Now, it is also pretty easy to get confused
19 on time frames here.

20 2858 Q. That is fine. I agree. So let me
21 just go to the summary then. You see the all
22 capped words in the middle of the paragraph. I'm
23 just going to start reading:

24 "THAT IS MONTHS since we r now
25 mid oct. what he has given us is

1 less valuable than what my dogs left
2 for me on our lawn this am. Thanks
3 a ton. U and he", being Snowdy,
4 "have wasted enormous time and is
5 one of the key reasons the
6 authorities r so resentful."

7 Do you see that passage that I have
8 just read?

9 A. Yes, I do.

10 2859 Q. Now, Mr. Riley, we have gone
11 through in some exhaustive detail pages and pages
12 like this between Mr. Glassman and Mr. Guy
13 complaining about Mr. Snowdy and telling him that
14 Mr. Guy's own credibility is tied to that of
15 Mr. Snowdy; do you recall all of that that we have
16 gone through in exhaustive detail?

17 A. I do.

18 2860 Q. Now, you didn't disclose any of
19 those concerns about the reliability of Snowdy and
20 Guy in communications to Catalyst investors, did
21 you?

22 A. No.

23 2861 Q. And you didn't tell the Court in
24 your affidavits, nor did you tell your investors in
25 your investor letters, that what Snowdy gave to

1 Catalyst was worth less than what Mr. Glassman's
2 dogs left on his lawn?

3 A. I disagree with that, because by
4 that point, we had the Levy transcript and Levy's
5 documents that were leading us to understand
6 Levitt's role, and also the possible roles that
7 West Face, Langstaff, and others played in the
8 piece. So we had -- although there may have been a
9 time frame when we were skeptical about Snowdy and
10 only saw small bits of documentary as opposed to
11 oral evidence, we started to improve up in what we
12 got from Levy and what we were discovering on
13 Levitt, and the Cohodes email and --

14 2862 Q. Mr. --

15 MR. MOORE: Because there was this --
16 the reference to what was left on the lawn,
17 et cetera, was set out in some investor letter, if
18 that is your question, I think he has answered it.
19 The answer is no.

20 THE DEPONENT: Yeah, I think that it is
21 fair to say that as we were moving forward, we
22 didn't see a reason to deviate from where we
23 thought we had communicated with investors but
24 wanted to get more information.

25 BY MR. MILNE-SMITH:

1 2863 Q. Mr. Riley, the interview with
2 Mr. Levy was done at the end of August of 2017;
3 correct?

4 A. That is -- I don't remember the
5 exact date, but I think that is probably when it
6 occurred.

7 2864 Q. It was before these email -- these
8 text exchanges that I just read to you in October
9 of 2017, certainly?

10 A. Yes.

11 2865 Q. Putting aside the language about
12 what the dogs leave on the lawn, you, Catalyst,
13 never disclosed to its investors that there were
14 serious credibility concerns about Vincent Hanna;
15 i.e., Danny Guy?

16 A. First of all, I don't think we
17 ever -- I want to try -- and maybe I'm -- I
18 apologize if I'm not being articulate enough. In
19 this time frame, we were trying to obtain as much
20 information as we could from any source that we
21 could. Although we didn't find Hanna/ -- well, let
22 me distinguish. I found Danny Guy more credible
23 than Snowdy. The problem with Snowdy was you
24 weren't sure exactly what he was telling you was
25 always the truth or whether he was skewing it, and

1 that is why we insisted on documentary or oral
2 proof.

3 And if you go back, you'll see the
4 theme that Newton is playing through is show us,
5 you know, in a sense, tangible proof.

6 2866 Q. Mr. Riley, I am not asking you
7 whether you had any evidence to support your case.
8 That is not my question. Please listen very
9 carefully to the question I'm asking you.

10 We have looked through pages upon pages
11 of Mr. Glassman excoriating Danny Guy about the
12 credibility of Mr. Snowdy and, by association,
13 Mr. Guy. Putting aside whether you agree with
14 Mr. Glassman or not, you agree with me that we have
15 seen that correspondence; correct?

16 A. Yes. And I think that Newton was
17 trying to get Danny Guy to come up with tangible
18 proof.

19 2867 Q. And, Mr. Riley, you would also
20 agree with me that Catalyst never disclosed to its
21 investors that the source of the information cited
22 in the first investor letter of August 14th was
23 considered to have serious credibility problems by
24 Newton Glassman, the Chairman of Catalyst Capital?
25 You never disclosed that to your investors?

1 unless we want to go back and look at them.

2 MR. MOORE: No, we are not going to go
3 back.

4 THE DEPONENT: Okay.

5 R/F MR. MOORE: I object to that. The
6 affidavits speak for themselves. You can argue if
7 they were trumpeted or they were this or they were
8 that or they were the next thing. The record is
9 what the record is, and the affidavits speak for
10 themselves.

11 BY MR. MILNE-SMITH:

12 2870 Q. And, Mr. Riley, in your
13 description of the Vincent Hanna email in those
14 three different affidavits, at no point did you
15 disclose to the Court that there were credibility
16 issues with Mr. Hanna - i.e., Danny Guy - held by
17 Newton Glassman?

18 R/F MR. MOORE: The affidavits speak for
19 themselves.

20 BY MR. MILNE-SMITH:

21 2871 Q. And you never disclosed to the
22 Court that there were major credibility issues with
23 Derrick Snowdy, whose credibility was intimately
24 linked to the credibility of Mr. Guy? You never
25 disclosed that either in your affidavits, did you?

1 MR. MOORE: Well, the affidavits speak
2 for themselves. Whether we argue the case now or
3 argue it later, the affidavits say what they say
4 and, you know, let's leave it at that.

5 BY MR. MILNE-SMITH:

6 2872 Q. That's fine. And instead of
7 disclosing these credibility problems to your
8 investors, to West Face, or to the Court, you
9 fought a motion up to the Divisional Court to
10 prevent disclosure of this correspondence with
11 Mr. Guy in which Mr. Glassman excoriated his
12 credibility; that is what happened, isn't it?

13 MR. MOORE: No, what happened was that
14 we advanced -- the client advanced what we believed
15 to be legitimate privilege issues, common interest
16 privilege issues, with respect to the Danny Guy --
17 Vincent Hanna or Danny Guy communications, and as
18 the notes indicated on their face, there was
19 reference to joint common interest privilege being
20 asserted from time to time. Justice Boswell
21 rejected that, so be it. That was the Court's
22 ruling. But I don't agree with your
23 characterization.

24 BY MR. MILNE-SMITH:

25 2873 Q. Tab 32.

1 A. Just before we move on, the way
2 you have asked the question, I think I have to add,
3 even though there is question -- you'll see that
4 the actual questions of credibility are by Newton,
5 and he puts -- he characterizes what I communicated
6 to him in a certain way. To the extent that
7 subsequent events and subsequent documentation gave
8 better colour to what Snowdy was saying or proved
9 up what Snowdy was saying, I think that is
10 important.

11 2874 Q. We'll let the record reflect
12 whether Catalyst has anything to support its --
13 we'll have plenty of argument about that, don't you
14 worry. Tab 32 --

15 MR. MOORE: We are not worried. Let's
16 keep going. Let's keep going.

17 BY MR. MILNE-SMITH:

18 2875 Q. Tab 32 is a September 19th, 2017,
19 presentation prepared by Black Cube about Project
20 Camouflage. Am I correct --

21 A. What was the -- sorry.

22 MR. MOORE: It is a document.

23 MR. MILNE-SMITH: Let me ask the
24 question.

25 MR. MOORE: And it is what it is.

1 Whether it is a presentation -- just like the other
2 document, it has got some words on it. There is no
3 indication that that's a presentation, per se. But
4 we are looking at the document, BC679/1. So what
5 are you referring to?

6 THE DEPONENT: And this is a
7 subsequent -- sorry, the other one was what date?

8 BY MR. MILNE-SMITH:

9 2876 Q. December 13th.

10 A. Okay. So it's -- this is a
11 different document. I should have asked it that
12 way. I apologize.

13 2877 Q. Just let me ask the question,
14 Mr. Moore. Please don't interrupt me while I'm
15 asking my question.

16 My only question about this, did you
17 ever see this document?

18 A. Not to my knowledge.

19 2878 Q. Okay. And just for the sake of
20 the record, because, Mr. Moore, you took issue with
21 me calling it a presentation, the name of the
22 document from the metadata is "Final client
23 presentation.ptx"?

24 MR. MOORE: That is this particular
25 document?

1 MR. MILNE-SMITH: That is this
2 particular document.

3 MR. MOORE: Okay. Fine.

4 BY MR. MILNE-SMITH:

5 2879 Q. So you never saw this document,
6 Mr. Riley?

7 A. No. As I said, I think I have
8 already said, not to my knowledge. The first time
9 I think I have seen it was today.

10 2880 Q. So --

11 MR. MOORE: So if you think you are
12 clarifying that, Mr. Milne-Smith, then I would
13 suggest that whatever preceded it was a draft of
14 some kind that apparently I guess West Face -- or
15 not West Face, Black Cube had been working on, it
16 appears, from what you have just described from the
17 metadata. So what is the next question?

18 BY MR. MILNE-SMITH:

19 2881 Q. Page 9. So, for example,
20 Mr. Riley, you were unaware that Black Cube had
21 conducted apparently physical surveillance of the
22 West Face offices?

23 A. I have never seen this picture
24 before, and I'm not aware of the surveillance.

25 2882 Q. Okay. That is the answer to my

1 question. And had you been aware that there were
2 ex-Mossad agents conducting physical surveillance
3 on West Face offices, you would have put an end to
4 something like that; correct?

5 A. I don't know.

6 2883 Q. Okay. Page 11. I really can't
7 make out what the screenshot is, but the title of
8 the slide is "Surveillance on Frank Newbould". Had
9 you been aware that Black Cube was conducting
10 covert surveillance on Justice Frank Newbould, you
11 would have put a stop to it; correct?

12 A. Yes.

13 2884 Q. And page 53.

14 MR. MOORE: Well, I don't know -- is
15 that the best copy that we have of that?

16 THE DEPONENT: What is -- I'm trying to
17 actually find -- I'm actually trying to understand.
18 Sorry, can you just go back? I can't even see what
19 the picture is. Maybe it is a bad picture.

20 BY MR. MILNE-SMITH:

21 2885 Q. Neither can I. It is not
22 important. I can't tell either, Mr. Riley, but it
23 is not important. The question is -- which you
24 have answered, is about the issue of surveillance
25 on Justice Frank Newbould.

1 MR. MOORE: I just don't know what that
2 surveillance is. But anyway, keep going. Let's
3 keep going. Page 53, is that where you are at?

4 MR. MILNE-SMITH: Yes.

5 MR. MOORE: Okay.

6 BY MR. MILNE-SMITH:

7 2886 Q. Page 53 is -- I'm guessing that
8 the person in the middle of the page with a
9 backpack on is Brandon Moyse. The title of the
10 slide is "Brandon Moyse Surveillance". Had you
11 been aware that Black Cube was conducting physical
12 surveillance of Brandon Moyse, you would have put a
13 stop to it?

14 A. I'm not so sure on that because
15 Brandon Moyse to me was a very problematic fellow.

16 2887 Q. All right. Tab 33. Were you
17 aware that Black Cube prepared a profile of Andrew
18 Willis, the journalist for The Globe and Mail?

19 A. No.

20 2888 Q. And am I correct that Catalyst has
21 in the past successfully lobbied The Globe and Mail
22 to prohibit Mr. Willis from writing about Catalyst
23 or Callidus?

24 A. Yes.

25 2889 Q. Tab 34.

1 MR. MOORE: Well, lobbied The Globe and
2 Mail, I think the Globe and Mail -- whatever
3 decisions were made or not made by the Globe and
4 Mail about Mr. Willis's role or lack of role or
5 whatever in any ongoing reporting, I'm quite sure
6 that the Globe and Mail was -- whatever they
7 decided, they decided in their own right in
8 accordance with what they thought was appropriate,
9 whatever that may be.

10 MR. MILNE-SMITH: Mr. Moore, you do
11 whatever you want, but I am putting you on notice
12 that I will rely on the fact that after a witness
13 has given an answer, you then purport to come in
14 and give a different answer. So --

15 MR. MOORE: No, it is not a different
16 answer. I just take issue with the kind of
17 connotation of "lobbying". You know, the Globe and
18 Mail, whatever they decided to do, they decided to
19 do.

20 BY MR. MILNE-SMITH:

21 2890 Q. Well, the witness didn't take
22 issue. He answered yes. So I'm going to ask my
23 next question. Tab 34.

24 MR. MOORE: Let's keep going.

25 THE DEPONENT: Sorry, I was not

1 involved in that, but there was interaction with
2 the Globe and Mail where the Globe and Mail decided
3 to not have Andy cover Callidus/Catalyst issues,
4 but I wasn't involved in that. I'm only giving you
5 what I have been told.

6 BY MR. MILNE-SMITH:

7 2891 Q. Tab 34. This is an email from
8 Mr. Glassman to you on September 20th. It attaches
9 a contact card for Virginia Jamieson.

10 A. Yes.

11 2892 Q. And Mr. Glassman says:

12 "This is the person they want U
13 to contact. Allegedly needs to talk
14 w[ith] u around 9:45am and
15 recommended not from your own cell
16 or our office landline etc."

17 A. Yes.

18 2893 Q. Well, who did you understand
19 "they" to be that Mr. Glassman was referring to?

20 A. Gadi.

21 2894 Q. And Gadi is Gadi Ben Efraim?

22 A. Yes.

23 2895 Q. And he was an associate of Tamara
24 Global?

25 A. I had met Yossi and Gadi at the

1 same time. It was never clear to me what their
2 actual relationship was, but I think Gadi
3 retained -- sorry, Yossi retained Gadi to perform
4 for --

5 2896 Q. And when did you meet them?

6 A. We met them in late August, early
7 September, at a hotel.

8 2897 Q. Okay.

9 A. In Toronto.

10 2898 Q. And what --

11 MR. MOORE: I think the date was August
12 31st. We can verify that, but I think it was
13 August 31st, to my recollection.

14 BY MR. MILNE-SMITH:

15 2899 Q. Okay. And what did you understand
16 the nature of Mr. Ben Efraim's retainer to be?

17 A. That he would help with the
18 physical -- like the survey of our computers,
19 surveys of our security arrangements, and as it
20 evolved, help with the litigation.

21 2900 Q. And clearly, the --

22 A. Not at that time. At that time,
23 we had -- we met them, and the caution that Brian
24 Greenspan had was, I hope they are not
25 over-promising and under-delivering.

1 2901 Q. So as of September 20th, your
2 understanding of the nature of Mr. Ben Efraim's
3 retainer was that it was related to security?

4 A. No, by this time, this involves
5 the Newbould tape.

6 2902 Q. Yes.

7 A. That is Rosh Hashanah.

8 2903 Q. Okay. So you understood then that
9 the purpose of meeting with Virginia Jamieson was
10 to publicize the content of the Newbould sting?

11 A. Yes -- no, publicize what was on
12 the tape.

13 2904 Q. Publicize what was on the tape,
14 and what was on the tape came from the Newbould
15 sting?

16 A. Correct.

17 2905 Q. Okay. You knew what was on the
18 tape? You had seen it or heard it?

19 A. No, I had only heard extracts at
20 that time. I have never seen the full tape. I was
21 given highlights.

22 2906 Q. Okay. So you knew that what was
23 on the tape was the contents or excerpts from a
24 meeting between Justice Newbould and an operative
25 of Black Cube operating under false pretenses?

1 A. The only thing -- whether false
2 pretense is the right word or not, I'm not sure,
3 but yes, I was aware of the source at the
4 Scaramouche dinner.

5 2907 Q. Operating under a pretext, if you
6 prefer?

7 A. Thank you. Yes, that is the word
8 I was trying to remember.

9 2908 Q. Okay. And it was recommended to
10 you not to use your cell or office landline. That
11 was because you were trying not to leave a digital
12 trace of contact with her?

13 A. I did use my cell.

14 2909 Q. Yes.

15 A. I believe.

16 2910 Q. But you understood that the reason
17 why you were advised not to use your cell or office
18 landline was because somebody, whether it is
19 Mr. Ben Efraim or Mr. Glassman, thought it
20 appropriate not to leave a digital trace of your
21 contact with her; correct?

22 A. I would take -- whether I took
23 that at the time or not, I don't recall.

24 2911 Q. Okay.

25 THE COURT REPORTER: I'm sorry, did you

1 say you did use your cell or you didn't?

2 THE DEPONENT: I did use my cell.

3 BY MR. MILNE-SMITH:

4 2912 Q. And just to confirm that, tab 36.

5 So there are two -- these are from Virginia
6 Jamieson's phone records. It indicates two
7 incoming calls, the morning of September 21st, from
8 416-302-6040, which is your cell phone number;
9 correct?

10 A. That is correct.

11 2913 Q. And --

12 A. And is her number -- what is the
13 917 number? Is that hers?

14 2914 Q. No, that is just --

15 A. Because it is just a partial
16 number.

17 2915 Q. That is just another incoming
18 number to Ms. Jamieson.

19 A. Okay.

20 2916 Q. And perhaps we'll redact that from
21 anything that goes in the Court file. I don't know
22 who that is, but there is no need to put someone
23 else's --

24 A. Yeah, I was just going to say --
25 is 917 a New York area code?

1 2917 Q. Yes.

2 A. I don't know what it is. Okay.

3 2918 Q. And you understood that the
4 purpose of meeting Ms. Blatchford and providing her
5 with a USB stick containing the excerpts from the
6 sting or pretext interview, if you prefer, with
7 Justice Newbould was for her to provide those
8 transcripts and the story surrounding it to
9 Christie Blatchford and other journalists?

10 A. Yes.

11 2919 Q. Tab 37. This is a -- just zoom
12 out so we can see the whole page. We have -- so
13 what is in red here is our translation that we have
14 obtained. Mr. Moore, you can let us know if you
15 disagree with our translation in any way from the
16 Hebrew.

17 U/T MR. MOORE: Yes.

18 BY MR. MILNE-SMITH:

19 2920 Q. What we understand this to be is a
20 text exchange between Yossi Tanuri and Avi Yanus.
21 So it is from the phone of Mr. Yanus. So what is
22 in green on the right is Mr. Yanus; what is in
23 white on the left is Mr. Tanuri. And if you have
24 any evidence to the contrary, you are welcome to
25 give it to us by way of undertaking.

1 So what Mr. Tanuri says is -- I have
2 underlined it:

3 "The hoped for strategy is that
4 the public pressure from an article
5 makes it impossible for the court to
6 ignore and they have [...]" -- it
7 should say "the means".

8 Or I'm not sure what it says. I'll
9 read it verbatim:

10 "[...] they have to means the
11 case back to lower court."

12 So --

13 A. Okay.

14 MR. MOORE: Well, and I also -- I see
15 that that -- you know, whether it will make any
16 difference, I'm not sure, but -- so that appears to
17 be a partial rendition of the translation the way
18 it is cut off. But we'll let you know whether we
19 disagree with that translation. I think I had
20 raised it some time ago that we could compare notes
21 on translations of some of these documents.

22 BY MR. MILNE-SMITH:

23 2921 Q. Yes. Just to be clear, just to be
24 clear, what I read to you is -- that is original
25 English. The text thread skips between English and

1 Hebrew, so that is not a translation. That is the
2 original.

3 My first question, Mr. Riley, is you
4 have never seen this text exchange before; correct?

5 A. No.

6 2922 Q. Okay. So let me ask -- I provided
7 that to you by way of context just in case you had
8 seen it and to be fair to you, but I'm not asking
9 you now -- I want you to accept this as a general
10 proposition, not tied to this document which you
11 hadn't seen before. You would agree with me, as an
12 officer of the court, that attempting to apply
13 pressure to a court by extra-legal means by way of
14 news articles would be an abuse of process and
15 improper?

16 R/F MR. MOORE: Well, I think that is a
17 legal question. I don't think the witness can
18 properly answer that question, whether it is an
19 abuse of process or not.

20 BY MR. MILNE-SMITH:

21 2923 Q. All right. Well, let me separate
22 it from the legal question. You would agree with
23 me, as an officer of the court, Mr. Riley, that
24 conduct like this would be improper and unworthy of
25 a litigant before the courts of Ontario?

1 A. Sorry, what context am I saying,
2 as an officer of the court? I think then to the
3 extent that there was evidence of possible
4 inappropriate abuse, that that's relevant to the
5 courts, relevant to the judicial system. So I
6 think there is a tension between what the effect of
7 it would be and the existence of it.

8 2924 Q. So, Mr. Riley, let's examine that
9 a little bit then. If there is evidence of
10 improper influence or improper conduct by a
11 judicial officer, the proper way for a litigant to
12 resolve a manner -- issues like that, is to bring
13 it before the Court in proper proceedings; correct?

14 A. Yes.

15 2925 Q. And the wrong way to do it is not
16 to bring it before the Court but to bring it to the
17 news outlets and to attempt to use public pressure
18 on the courts by extra-judicial means; namely,
19 media articles to put pressure on the Court. That
20 is the wrong way to do it, right?

21 A. Yeah, I think the bigger issue is,
22 should the Court be aware of the facts.

23 2926 Q. But we just covered that. The way
24 to make the Court aware of the fact is to bring the
25 appropriate motion and proceeding; correct?

1 A. Yes.

2 2927 Q. The wrong way to do it is to get
3 stories into news articles and hope that that will
4 apply indirect pressure on the Court to reach a
5 particular outcome. That is the wrong way to do
6 it; correct?

7 A. This is a very tough issue for me
8 because what is on that tape I find offensive, but
9 I also respect the judiciary, and having the
10 background -- some of my relatives were judges in
11 the Alberta court, so I have always been torn
12 between respect for the judiciary and the proper
13 functioning and what is on that tape.

14 2928 Q. Given the chance to do it over
15 again, sir, you would have either brought it to the
16 Court in a judicial proceeding, or you would have
17 done nothing? Given the chance to do it over
18 again, you wouldn't have taken those tapes to
19 Ms. Jamieson to give to Ms. Blatchford, would you?

20 A. Yeah, I would not do that.

21 2929 Q. Okay. Tab 38. This is just to
22 nail down the events. I'm not sure we have quite
23 covered it off yet. This is a text message
24 exchange. You can see your phone number at the
25 top, and it is sent by Virginia Jamieson, who

1 describes herself as "the woman that you met about
2 the USB key for Christie Blatchford"; correct?

3 A. Yes.

4 2930 Q. Okay. So you agree with me that
5 you met with Ms. Jamieson the morning of September
6 21st, which was the date of those phone calls that
7 we saw, and you provided her -- you provided
8 Virginia Jamieson with a USB stick containing --

9 A. No, I did not. I'm going to cut
10 you off there. I did not provide her with a USB
11 stick.

12 2931 Q. What did you provide her with?

13 A. Coordinates given to me by Gadi as
14 to where she could find the Newbould tape in the --
15 on the internet.

16 2932 Q. Okay. So you provided her with --
17 was it a piece of paper, or was it just something
18 you had memorized and told her where to look?

19 A. No, it was coordinates on a piece
20 of paper, which I subsequently took back from her
21 and then threw away.

22 2933 Q. Okay. So the way this arrangement
23 was worked out is that -- so who provided you with
24 this piece of paper? It was Gadi Ben Efraim?

25 A. No, Gadi gave me the coordinates

1 orally, and I wrote them down on a piece of paper.

2 2934 Q. Okay. And as part of your
3 operational security, you then showed her the piece
4 of paper. She wrote it down. And then you threw
5 away the piece of paper?

6 A. No, she went to another park bench
7 in whatever the park is that is across from the
8 Rosedale subway station where I met her, and she
9 went and did whatever she did on her computer and
10 decided that she had what she needed.

11 2935 Q. And at that time, you threw away
12 the piece of paper?

13 A. I did.

14 2936 Q. So that no trace was left at
15 Catalyst of having provided this information to
16 Ms. Jamieson?

17 A. I'm not sure what the piece of
18 paper would have told, but it was a sticky, and I
19 didn't want to put it in my pocket.

20 2937 Q. Okay. Tab 40. So this -- the
21 first email in this chain is from Sharon, who I
22 understand -- and you can see from the email
23 signature, it is Sharon Kisluk, who was an
24 individual employed by Psy Group; correct?

25 A. Yes.

1 2938 Q. So you had understood that Psy
2 Group had been retained by Tamara Global on
3 Catalyst's behalf?

4 A. I don't know who retained --
5 sorry, when I say that, I don't know whether Tamara
6 Global retained Psy or whether Gadi retained Psy.
7 I don't know who the retainer was with. Sharon
8 was --

9 2939 Q. You understand --

10 A. Sorry. I apologize.

11 2940 Q. You understood that someone on
12 Catalyst's behalf had retained Psy Group; correct?

13 A. Yes, by this time. When I first
14 met Sharon in our offices in Toronto, I didn't know
15 she was with Psy. I didn't know who Psy was.

16 2941 Q. And when did you first meet Sharon
17 at your offices in Toronto?

18 A. I believe sometime in September,
19 but I can't recall the date.

20 2942 Q. And when did you learn that
21 someone on behalf of Catalyst had retained Psy
22 Group?

23 A. Through Gadi, I guess.

24 2943 Q. And do you know when that was?

25 A. No.

1 2944 Q. Was it before or after the
2 adjournment of the Moyse appeal?

3 A. I don't know.

4 2945 Q. Okay. But before October 23rd,
5 the email we are looking at here?

6 A. Yes.

7 2946 Q. And you understand that the
8 purposes of Psy Group's retainer was to create
9 positive narratives in the media about Catalyst and
10 negative narratives in the media about West Face,
11 Greg Boland, and Justice Newbould?

12 A. I don't know about that, but I'm
13 reading here:

14 "[...] with Virginia, a PR
15 specialist who is in touch with
16 Rachel Levy from Business Insider.
17 The subject is [West Face] [...]"

18 2947 Q. Yes. So you understand that the
19 purpose of Sharon's communication was to convince
20 Rachel Levy of Business Insider to write an
21 article, the subject of which was West Face and its
22 poor financials?

23 A. That is what I would take it to
24 mean.

25 2948 Q. And you agree with me that pushing

1 a story about West Face's poor financials had
2 nothing to do with any ongoing litigation?

3 A. I think it is fair to say we were
4 under attack by the press, and I think that
5 originated in large part by -- directly or
6 indirectly by West Face. So I would --

7 2949 Q. Well, that is --

8 A. -- say this is a pushback.

9 2950 Q. We will see if you can prove that
10 case on May 17th, Mr. Riley. Tab 41.

11 [Court Reporter intervenes for
12 clarification.]

13 THE DEPONENT: I apologize. I thought
14 I was taking long enough. Is it Matt, or is it me,
15 or it both of us? Sorry, I'm not looking to assign
16 blame. I'm trying to pause before I answer, so I
17 apologize if I'm not.

18 BY MR. MILNE-SMITH:

19 2951 Q. I will do the same.

20 So tab 41 is a November 30th email --
21 [Discussion off the record to resolve
22 audio interference.]

23 BY MR. MILNE-SMITH:

24 2952 Q. Back on the record. Mr. Riley,
25 this is a November 30th, 2017, email from Brian

1 Greenspan to you. The subject line is "Letter of
2 Engagement", and then it has certain attachments.

3 You will see that the second email in
4 the chain from Yossi Tanuri to Brian Greenspan
5 refers to:

6 "Mobile security systems for
7 both Catalyst Helicopter and Jet
8 Plane".

9 A. Yes.

10 2953 Q. And that is part of what
11 Mr. Tanuri or Mr. Ben Efraim was providing?

12 A. He arranged for that, yes, which
13 systems didn't work. They were inappropriate for
14 our aircraft.

15 2954 Q. And if you go to tab 43 --

16 MR. MOORE: Now, just before we leave
17 this document, my recollection is - and I may be
18 mistaken - that this is one of the documents
19 recently obtained from Mr. Tanuri that we included
20 in our recent affidavit of documents.

21 MR. MILNE-SMITH: Yes.

22 MR. MOORE: In terms of the provenance
23 of the document.

24 MR. MILNE-SMITH: Yes.

25 MR. MOORE: Okay.

1 [Court reporter intervenes for
2 clarification.]

3 MR. MOORE: In terms of the provenance
4 or the source of the document. Okay. Sorry, go
5 ahead. Go ahead.

6 BY MR. MILNE-SMITH:

7 2955 Q. Tab 43 is a financial statement
8 dated as of November 30th, 2017, which if I'm
9 reading this correctly - and tell me if I'm wrong -
10 indicates that Catalyst to date had paid Mr. Tanuri
11 or his company just under \$4.2 million U.S. and had
12 been invoiced for \$26,000 less than that,
13 indicating that you had a balance on your account.

14 A. I see that.

15 2956 Q. Are you familiar -- is this the
16 kind of invoice that would have come across your
17 desk?

18 A. No, not that I recall.

19 2957 Q. Were you aware as of the end of
20 November 30th that Catalyst had paid to Mr. Tanuri
21 approximately \$4.2 million?

22 A. Whether I knew the total or not, I
23 would have to -- in there you break it down into
24 the work that they had done to survey the
25 computers, the security devices, and a large -- a

1 significant amount of that would be I think the
2 security arrangements with Nir.

3 So without having to break down -- I
4 would not do it by total. I would do it by
5 breakdown as to function.

6 MR. MOORE: But, again, just in terms
7 of the source and timing, this is I believe one of
8 the recent documents we have added that was
9 received finally sometime in mid to late February
10 2021.

11 THE DEPONENT: And what is the source
12 of this document? From Yossi?

13 MR. MOORE: This is from Yossi.
14 Eventually, after -- without getting into all the
15 details, after various requests and whatnot - and
16 I'm not going to go down that road - that he sent
17 certain documents, a package of documents, around
18 the middle or end of February, of which this was
19 one of the documents, and we included those
20 documents in our -- in the recently delivered
21 affidavit of documents.

22 BY MR. MILNE-SMITH:

23 2958 Q. Tab 46. This is what we have
24 called the Dalton report?

25 A. Yes.

1 2959 Q. It is stamped "Draft", but I don't
2 believe we received any copy that was not stamped
3 "Draft". If there was some other final copy, I'm
4 sure, Mr. Moore, you'll provide it or point me to
5 it in the productions?

6 MR. MOORE: Yes. Mr. Milne-Smith, my
7 recollection is that the final version that we are
8 aware of is still marked "Draft". My recollection
9 is that there was a segment added to it on the eve
10 of the board meeting in question, on or about
11 February 27th. And I am assuming that what you
12 have attached here is what you have received as the
13 last or latest version of that document?

14 MR. MILNE-SMITH: Yes.

15 U/T MR. MOORE: All right. So I'll verify
16 this, but assuming all that is correct, I'll verify
17 that this is the final version and that there is no
18 other superseding version. That is my
19 understanding.

20 MR. MILNE-SMITH: I can make it even
21 easier for you, Mr. Moore, if you want. I'm going
22 to refer to certain passages of this document, and
23 if you want to advise me that there is a later
24 version where any of the passages I refer to are
25 changed, then I think that would suffice for our

1 purposes .

2 U/T MR. MOORE: No, that is fine. I'm just
3 telling you that my recollection is that the
4 document had a section added to it fairly shortly
5 before the board meeting and that reference to it
6 as a "Draft" and the date on the document may not
7 have been completely updated, that's all.

8 But to the best of my knowledge, we
9 have given you the final version of the document as
10 it was ultimately provided to the board.

11 MR. MILNE-SMITH: That is fine.

12 MR. MOORE: You know, that's all.

13 BY MR. MILNE-SMITH:

14 2960 Q. That is fine. Thank you. If we
15 could go to the last page, 31. You will see I have
16 highlighted the disclaimer there. It states that
17 it was:

18 "[...] prepared by Patrick
19 Dalton at the request of the
20 Independent Directors of Callidus
21 Capital Corporation ('Callidus') in
22 connection with the Consulting
23 Agreement between Callidus and
24 Patrick Dalton dated October 29,
25 2018. Nothing contained herein

1 (including Mr. Dalton's views,
2 opinions, or recommendations)
3 constitutes investment, legal, tax
4 or other advice nor is it to be
5 relied on in making any decision."

6 Do you see that disclaimer by

7 Mr. Dalton?

8 A. I have to. It is there.

9 2961 Q. Okay. And following receipt of
10 this report by Callidus and Catalyst, neither
11 Callidus nor Catalyst fired Mr. Dalton?

12 A. No.

13 2962 Q. He quit because his mandate at
14 that time was completed; correct?

15 A. Correct, although he subsequently
16 became CEO of Callidus and FrontWell.

17 2963 Q. Yes. We are coming to that
18 momentarily.

19 A. All right. I do apologize. I got
20 ahead of myself. The only other thing I would
21 point out is that:

22 "The information contained in
23 the document is intended for the
24 Board of Directors of Callidus
25 Capital and their respective

1 Counsel."

2 There is another part to that, and I am
3 not sure of the origin of this disclaimer, but it
4 looks to me like it was primarily drafted by
5 Mr. Dalton's counsel.

6 2964 Q. Understood. Following receipt of
7 this report, obviously, Callidus and Catalyst
8 didn't sue Mr. Dalton over the contents?

9 A. But I don't think we had that
10 ability.

11 2965 Q. And there is --

12 A. No, we did not, and I don't think
13 we would have had the ability to do so.

14 2966 Q. Okay. And the independent
15 directors -- let me rephrase. There is no
16 contemporaneous evidence of the independent
17 directors of Callidus rejecting or disagreeing with
18 the views set out in this report?

19 A. Well, the only thing I remember is
20 that in the information circular that was put
21 forward -- produced for the going-private
22 transaction, there were additional thoughts that
23 were expressed that I think were -- have to be
24 attributed to the Board of -- the Independent
25 Committee because the Independent Committee was

1 running that process, and the --

2 2967 Q. So in terms of contemporaneous
3 views of the Independent Committee, that is it;
4 correct?

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

6 2968 Q. Okay. If you could go to page 12
7 of this document.

8 A. Could you expand it? It is hard
9 to read. Sorry, maybe --

10 2969 Q. No, hang on. I'm actually not
11 going to take you into the chart. I'm just looking
12 at the text at the bottom.

13 A. Okay. Thank you.

14 2970 Q. Can you see that on your screen,
15 the two highlighted lines?

16 A. I do.

17 2971 Q. Okay. It says:

18 "Due to poor performance,
19 access to third party debt funding
20 has virtually vanished for CBL."

21 You understand CBL to be the stock
22 ticker reference for Callidus?

23 A. Correct.

24 2972 Q. And:

25 "Since CBL has not produced

1 positive cash flow for several
2 years, it has relied on unnatural
3 sources of liquidity from Catalyst."
4 Do you see that?

5 A. I don't know what an unnatural
6 source of liquidity means. I just don't -- I don't
7 know what he meant by that.

8 2973 Q. So let's take out that. If we
9 rephrase that to say:

10 "Since CBL has not produced
11 positive cash flow for several
12 years, it has relied on [...]
13 liquidity from Catalyst."
14 You would agree with that statement?

15 A. I agree with that.

16 2974 Q. Okay. So as someone with years of
17 experience in this industry, Mr. Riley, help me
18 out. Would you agree that a business like Callidus
19 makes money by lending money and then by either
20 earning interest or some other form of economic
21 return on its investment?

22 A. Yes, and also by managing -- you
23 have to have a combination of two parts to the
24 business. One is producing, producing new loans
25 and new sources of revenue, and managing any

1 positions that have gone sideways.

2 So to the extent that you can't create
3 new business, you run into liquidity problems.

4 2975 Q. All right. And so if you can't
5 make new loans, that impairs your ability to earn
6 income?

7 A. Yes, and you have to look at why
8 you can't get new loans, and part of it is when you
9 are labelled as a fraudster in the public and
10 privately -- or social media, it is problematic.

11 2976 Q. So, Mr. Riley, you would agree
12 with me that there is not one word in Mr. Dalton's
13 report -- since you brought the issue up, there is
14 not one word in Mr. Dalton's report about Callidus
15 being labelled as a fraudster?

16 A. Yes, and I don't think that is
17 because he understood the effect and the overall
18 effect also of the various securities reviews we
19 had been under in the period -- in the relevant
20 period.

21 2977 Q. And what Mr. Dalton attributes the
22 poor performance to is a lack of positive cash flow
23 for several years and poor performance? That is
24 what he says; correct?

25 A. But then you have to dig deep --

1 what I am saying, with respect, is you have to dig
2 deeper and look at the ability to create new
3 business.

4 2978 Q. Okay. So you disagree with
5 Mr. Dalton's -- the opinions expressed by
6 Mr. Dalton?

7 A. I respect Patrick, but I wasn't
8 impressed by the report.

9 2979 Q. And you would agree with me, as
10 you have said before, that regardless of what your
11 views were, the independent directors of Callidus
12 and in fact the entire Board of Directors of
13 Callidus has chose to retain Mr. Dalton, again, as
14 the President or Chief Executive Officer of both
15 Callidus and FrontWell Capital; correct?

16 A. Correct.

17 2980 Q. And FrontWell Capital essentially
18 took over the new business of Callidus in terms of
19 generating new loans?

20 A. It is -- yes, I'm not quibbling,
21 Mr. Milne-Smith. It is -- FrontWell is an
22 independent company which has carried on the
23 business -- the type of business that Callidus
24 carried on.

25 2981 Q. Right. Callidus --

1 A. I'm not trying to quibble. I'm
2 just saying it is a separate entity. There was no
3 transfer of assets and even a minimal transfer of
4 people.

5 2982 Q. Just so we are clear, Callidus
6 continues to manage its existing portfolio?

7 A. Yeah.

8 2983 Q. But it no longer tries to initiate
9 new loans?

10 A. That is correct.

11 2984 Q. FrontWell does that?

12 A. That is correct. I agree with
13 that a hundred percent.

14 2985 Q. Okay. And Mr. Dalton is at the
15 head of both companies?

16 A. Yes.

17 2986 Q. Tab 47. Now, if we could go to
18 answer to undertaking number 38, which is the
19 second page of this tab. So, Mr. Riley, on your
20 previous examination I asked you whether Callidus
21 accused West Face of involvement in stock
22 manipulation to the Securities Commission in the
23 period leading up to the July 25, 2017, letter from
24 Rocco DiPucchio to me, and the answer provided is
25 that it was refused on the basis of relevance, but

1 without prejudice to that position, Callidus did
2 not; in other words, Callidus did not accuse West
3 Face of involvement in stock manipulation in the
4 period leading up to July 25, 2017. Do you see
5 that?

6 A. Yes.

7 2987 Q. Could you go to tab 48, please.
8 This is an email that you sent to an R. Sanchioni
9 of the OSC in the period leading up to July 25,
10 2017; correct?

11 A. Yes.

12 2988 Q. And you list four parties, Marc
13 Cohodes, West Face, Kevin Baumann, Nathan Anderson
14 of ClaritySpring; correct?

15 A. Yes.

16 2989 Q. And these are parties that you are
17 accusing of manipulating the market for securities
18 of Callidus; correct?

19 A. Well --

20 MR. MOORE: Read what it said.

21 "These are the names we
22 mentioned as possibly involved."

23 BY MR. MILNE-SMITH:

24 2990 Q. And what you are saying possibly
25 involved in is manipulating the market for

1 securities of Callidus; correct?

2 A. Yes.

3 2991 Q. So your answer to undertaking was
4 incorrect?

5 A. I --

6 MR. MOORE: Well, we can debate that.
7 I think to say that these -- at the outset, that to
8 say that these are names as being possibly
9 involved -- and in fact, as I recall, that is
10 before the actual article, but let's not get into
11 the weeds. I'm not sure that I would equate that
12 with an allegation of stock manipulation. But in
13 any event, you have the two documents.

14 MR. MILNE-SMITH: Mr. Moore, I'm going
15 to read to you the transcript here. I asked the
16 question:

17 "What you are saying possibly
18 involved in is manipulating the
19 market for securities of Callidus;
20 correct?

21 Answer: Yes."

22 So, Mr. Moore, I don't appreciate you
23 coming in and then trying to correct the record on
24 that. I asked a clear question. I got a clear
25 answer. The answer to the undertaking was

1 incorrect.

2 MR. MOORE: No, what I am saying to you
3 is to say to somebody that it is possible that they
4 may have been involved I think is somewhat
5 different than the question that was the subject of
6 the undertaking. Like was an accusation made?
7 Yes, they were involved. No, you may think that is
8 splitting hairs, we can debate that, but the record
9 is what it is.

10 MR. MILNE-SMITH: Mr. Moore, the
11 witness agreed to what he was referring to as being
12 possibly involved was possibly involved in
13 manipulating the market for securities of Callidus.

14 MR. MOORE: I'm drawing a distinction
15 between saying someone may be possibly involved and
16 the kind of -- the actual allegation they were
17 involved that, given the wording of the
18 undertaking, was what I think was being referenced.

19 But we can debate that at another time
20 and place if you want.

21 MR. MILNE-SMITH: All right. That is
22 fine. I'll let you make that argument.

23 Mr. Riley, subject to the answers,
24 advisements, refusals, undertakings given,
25 et cetera, and any additional documentation that

1 may come through in the period between now and
2 Tuesday, those are my questions for today.

3 MR. MOORE: So shall we take a lunch
4 break? Mr. Lascaris, I understand you have -- you
5 are going to go next in the batting order here?

6 MR. LASCARIS: Yes. Do you need a
7 lunch break, because I thought that is what we took
8 around 12 o'clock?

9 MR. MOORE: Oh, I'm sorry.

10 [DISCUSSION OFF THE RECORD.]

11 -- RECESSED AT 2:00 P.M.

12 -- RESUMED AT 2:15 P.M.

13 CROSS-EXAMINATION BY MR. LASCARIS

14 (CONT'D):

15 2992 Q. So we are continuing your
16 cross-examination today, Mr. Riley, and I would
17 like to begin -- I have sent eight documents that
18 were produced by Black Cube to your counsel this
19 morning, and I am going to ask you about those
20 documents.

21 And I would like to begin with
22 BC002320, which is up on the screen currently, and
23 I am pretty sure that Mr. Milne-Smith earlier today
24 was asking you questions about this. This is a
25 Letter of Engagement between Tamara Global Holdings

1 and B.C. Strategy UK Ltd., the owner of the Black
2 Cube brand in certain countries; do you see that
3 document?

4 A. I see it, but you said I may have
5 seen this earlier today. I don't recall. Did we
6 go through this with Mr. Milne-Smith?

7 MR. MOORE: No, we did not.

8 BY MR. LASCARIS:

9 2993 Q. You know, I'm referring -- you
10 know what I'm talking -- my mistake. I'm referring
11 to the email from Mr. DiPucchio which was marked up
12 apparently with the handwriting of Mr. Glassman.

13 A. Okay.

14 2994 Q. That was the document --

15 A. That one we did go through.

16 2995 Q. Yes.

17 A. Yes.

18 2996 Q. Having said that, sir, have you
19 seen this document before today?

20 A. I don't recall, but it is possible
21 I saw it. I do not recall.

22 2997 Q. Can we mark this as an exhibit,
23 please?

24 MR. MOORE: That is fine.

25 EXHIBIT NO. 9: Letter of Engagement

1 dated September 11, 2017, between
2 Tamara Global Holdings and B.C.
3 Strategy UK Ltd.

4 BY MR. LASCARIS:

5 2998

Q. So I'm going to take you to
6 section 22 of the Letter of Engagement between
7 Tamara Global Holdings and B.C. Strategy UK, and
8 you will see there there is certain fixed payments
9 that are stipulated, and then there are what I will
10 call contingent payments that are dependent upon
11 success in the following section, section 23.

12 So do you know, sir, what the total
13 amount paid to B.C. Strategy UK Ltd. under this
14 agreement was in the end ultimately?

15 A. I do not know.

16 2999

Q. And you see that section 23 refers
17 to an Annex A?

18 A. Yes.

19 MR. MOORE: So you are referring to
20 BC002320, right?

21 MR. LASCARIS: Correct.

22 MR. MOORE: Okay.

23 THE DEPONENT: Could you just scroll
24 down for a minute and tell me who the signatories
25 to this agreement are?

1 BY MR. LASCARIS:

2 3000 Q. So it looks like Dr. Avi Yanus
3 signed this agreement and Yossi --

4 A. Tanuri.

5 3001 Q. Tanuri, yes. So, again, you'll
6 see that there is a reference in paragraph 23 to
7 Annex A.

8 A. Uhm-hmm.

9 3002 Q. I am going to come back to that in
10 a moment. I just want to draw that to your
11 attention for the time being.

12 A. Sure.

13 MR. MOORE: Just a minute. Can I just
14 say that my recollection is, in addition to these
15 three pages, there is also a document that has been
16 produced called "Terms and Conditions".

17 MR. LASCARIS: Yes. I don't have
18 questions about those Terms and Conditions today,
19 but that is true.

20 MR. MOORE: Okay. All right.

21 BY MR. LASCARIS:

22 3003 Q. So, again, I'm going to come back
23 to this Annex A reference in paragraph 23. Now as
24 I understand - and I just want to make sure I have
25 got this correct - what happened was Catalyst

1 retained Tamara Global Holdings. Tamara Global
2 Holdings retained Black Cube or, as it is referred
3 to here, B.C. Strategy UK Ltd., the owner of the
4 Black Cube brand in certain countries. And --

5 A. I'm sorry, just -- and I don't
6 mean to interrupt your question, but you said that
7 Catalyst had retained Yossi. I think technically
8 Yossi's -- whatever the name of his company is, was
9 retained by the Greenspan firm.

10 3004 Q. Okay. And ultimately, though, is
11 it correct that payments made by Tamara to B.C.
12 Strategy UK under this agreement were reimbursed to
13 Tamara by Catalyst or Callidus?

14 A. Reimbursed by Greenspan, and we
15 reimbursed Greenspan.

16 3005 Q. Right. So the ultimate --

17 A. Yes, ultimately we paid the money.

18 3006 Q. Right. Okay. Yes, now,
19 Mr. Riley, I'm sure you know, there are many firms
20 out there that provide corporate investigative
21 services of the type, broadly speaking, that are
22 provided by Tamara and Black Cube; is that fair?

23 A. I mean, I'm not an expert in the
24 field, if there are other firms, I guess.

25 3007 Q. Okay. Well, why in particular, if

1 you know, was a decision made to hire Tamara?

2 A. I don't know why that decision
3 was -- Tanuri? Did you say Tanuri?

4 3008 Q. Tamara Global Holdings.

5 A. Tamara? Yes, Tamara -- Yossi
6 Tanuri was a very close friend of Newton, and they
7 worked together on joint projects in Israel
8 relating to charitable matters, so there was a
9 relationship there.

10 3009 Q. Is it your understanding the
11 decision to choose this particular firm was based
12 entirely on that relationship, or would it also
13 have been based upon the skill and proficiency of
14 Tamara in the field in which it provides services?

15 A. I can't unpack that. So, I mean,
16 it was a total package, so it was Yossi and his --
17 what he could bring to the table.

18 3010 Q. Okay. Let's put this document
19 aside for now. I'm going to take you now to
20 BC002322, and this was the document which you were
21 discussing for some time this morning with
22 Mr. Milne-Smith. It is an email from Mr. DiPucchio
23 to Mr. Glassman on which you were copied, dated
24 September 7, 2017. Again, I would like to mark
25 this as an Exhibit.

1 MR. MOORE: Again, to be clear, it is
2 an annotated version of that email.

3 MR. LASCARIS: Correct.

4 MR. MOORE: It appears to be dated
5 September 11th.

6 EXHIBIT NO. 10: Email from
7 Mr. DiPucchio to Mr. Glassman, copying
8 Mr. Riley, dated September 7, 2017.

9 BY MR. LASCARIS:

10 3011 Q. Well, I'm looking at the "Sent"
11 line under "Stefanie Wright" at the top of the
12 first page.

13 A. Sorry, I think what we are
14 pointing out is, at the top of Annex A, it says
15 "11/9/2017" and then it has "AV" initials.

16 3012 Q. Right. Okay, but the email was
17 sent to you and Mr. Glassman it appears on
18 September 7th, right?

19 A. Yes.

20 3013 Q. And subsequently, apparently it
21 was Mr. Glassman who printed this out and wrote on
22 it and added two pages to your -- the pages. That
23 was, as I understood your testimony this morning,
24 apparently his handwriting?

25 A. Yes.

1 3014 Q. Okay. And you see at the top of
2 the first page of the email the words "Annex A -
3 LOE" have been written?

4 A. Yes.

5 3015 Q. And I take it "LOE" stands for
6 Letter of Engagement?

7 A. I think that seems logical to me.

8 3016 Q. Yes, and so is it your
9 understanding that this would be the Annex A that
10 was referred to in paragraph 22 of the Letter of
11 Engagement we just looked at together?

12 A. I also believe that is logical.

13 3017 Q. In the upper right-hand corner of
14 each of these pages in this document, this email
15 that has been printed out, it appears to be
16 somebody's initials. Do you know whose initials
17 those are?

18 A. Yeah, I would be speculating, but
19 I think it is whoever was representing -- whoever
20 was signing for Black Cube. If you go back, what
21 was his name?

22 3018 Q. I don't have that name at the top
23 of my head, but you would be speculating --

24 MR. MOORE: Well, if you go to the last
25 document we looked at, the same initials appear on

1 that document, and then at the end of that
2 document, it is signed by Avi Yanus. So if you put
3 all that together, logic would dictate that it is
4 Avi Yanus' initials in the upper right-hand corner.

5 THE DEPONENT: But, again, I don't know
6 Mr. Yanus, but that would be my conclusion --

7 BY MR. LASCARIS:

8 3019 Q. Okay.

9 A. -- based on what --

10 3020 Q. Right. Now, in the left-hand
11 column of this email, there are certain items. So
12 what has happened here is that Mr. DiPucchio has
13 identified various categories of information or
14 evidence that he would hope the investigators can
15 acquire, and they have been -- each of those items
16 of information or evidence, there is a letter in
17 caps in the left-hand column that apparently
18 Mr. Glassman assigned to each item, right?

19 A. Yes.

20 3021 Q. Now, on the DiPucchio email -- and
21 I can take you back there if you want to look at
22 it. Well, why don't we just go there quickly. In
23 paragraph 23 -- so we are back now at the Letter of
24 Engagement, and you will see that in paragraph 23
25 there are certain payments stipulated for

1 categories of items (a), (b), (c), (d), and (e)?

2 A. Yes.

3 3022 Q. So my question to you is, is it
4 your understanding that those letters that appear
5 in the left-hand column of the email correspond to
6 the letters in paragraph 23 of the Letter of
7 Engagement?

8 A. That I can't say. I mean, it is
9 an inference, but I can't say for sure.

10 3023 Q. All right. Let's just scroll
11 down. You may very well have the same answer for
12 my next question, but just to cover it off. Again,
13 in the email you will see -- if you go down to
14 about two-thirds of the way under the heading
15 "General - by October 31, 2017", you will see:

16 "evidence of dealings between
17 West Face and Bruce Livesey relating
18 to Callidus/Catalyst and any payment
19 for services by Livesey."

20 A. Yes.

21 3024 Q. And you see that Mr. Glassman has
22 put a "C" in caps beside that item of evidence or
23 information, right?

24 A. Yes.

25 3025 Q. And so you don't know whether that

1 "C" corresponds to the (c) in paragraph 23 of the
2 Letter of Engagement?

3 A. I can't say that with certainty.

4 3026 Q. All right. Do you know whether
5 Black Cube was adjudged to have been successful in
6 acquiring evidence of dealings between West Face
7 and Bruce Livesey relating to Callidus/Catalyst and
8 any --

9 A. I do not know.

10 [Court reporter intervenes for
11 clarification.]

12 BY MR. LASCARIS:

13 3027 Q. So my question was, do you know
14 whether Black Cube was adjudged to be successful in
15 finding evidence of dealings between West Face and
16 Bruce Livesey relating to Callidus/Catalyst and --

17 A. I do not.

18 3028 Q. I'm sorry, if I could finish.

19 A. Yes. I apologize.

20 3029 Q. Okay. Thank you. Any payment for
21 services by Livesey; that was my question.

22 A. I do -- are you finished?

23 3030 Q. Yes.

24 A. I do not know.

25 3031 Q. Would you expect that Mr. Glassman

1 would know the answer to that question?

2 A. You will have to ask Mr. Glassman.

3 3032 Q. Are you in a position to say
4 whether Black Cube was adjudged to be successful,
5 you know, for purposes of the Letter of Engagement,
6 in acquiring any of the evidence particularized in
7 Mr. DiPucchio's email?

8 A. I do not know.

9 3033 Q. Let's go to the third document.
10 This is BC00168.

11 A. Who is the author of this
12 document, please?

13 3034 Q. I was going to ask you that
14 question, Mr. Riley. I have not been able to glean
15 from the document who the author is. Evidently,
16 you don't know.

17 MR. MOORE: What does Black Cube say in
18 their affidavit of documents who -- do they
19 describe would the author is?

20 MR. LASCARIS: I can't tell you off the
21 top of my head as I sit here.

22 MR. MOORE: All right.

23 BY MR. LASCARIS:

24 3035 Q. But in any event, it appears
25 Mr. Riley doesn't know the answer to that question.

1 A. The only thing that I would say --
2 and this is not on any kind of expertise, but there
3 is an odd phrasing by saying:

4 "There is an unofficial
5 Canadian ('Bay street', as the
6 Toronto 'Wall street') entity called
7 'the wolf pack' [...]"

8 It is an odd way to phrase something.

9 3036 Q. All right.

10 MR. MOORE: Subject to checking the
11 affidavit of documents, my guess is -- you know
12 what? I shouldn't guess. I shouldn't guess.

13 MR. LASCARIS: We'll do that. We'll
14 check and see.

15 MR. MOORE: All right.

16 BY MR. LASCARIS:

17 3037 Q. And presumably you don't know
18 either, sir, when this document was generated?

19 A. No. No.

20 3038 Q. All right.

21 A. Could you scroll down? Is this
22 the whole of the document?

23 3039 Q. Well, it is one page. Okay. I
24 take it you still don't know who the author is
25 and/or the date on which it was generated, the

1 document?

2 A. I -- no, I do not.

3 3040 Q. Okay. Let's go to the next
4 document. We are going to finish sooner than I had
5 anticipated. BC000447.

6 A. Is this part of the same document,
7 or is this a different document.

8 MR. MOORE: No, it looks like to be a
9 different document.

10 BY MR. LASCARIS:

11 3041 Q. This has been produced as a
12 separate document.

13 A. Okay.

14 3042 Q. So have you seen this document
15 before, sir? And if you want me to scroll through
16 it, I can do that.

17 A. No. You can scroll down, but
18 there is nothing --

19 [Witness reviews document.]

20 There is a lot of typos in here.

21 3043 Q. So that is it. I believe that is
22 the end of the document -- oh, no, there is more.
23 So does this refresh your recollection at all,
24 Mr. Riley?

25 A. No, I don't recognize this

1 document.

2 3044 Q. Okay. Let's go to the next one.

3 A. What is -- anyways.

4 3045 Q. Sorry, you had a question?

5 A. Well, what is -- sorry, scroll way
6 up. What does "RFI" mean? Do you have any idea?

7 3046 Q. I would be guessing.

8 A. Okay. I just -- I was trying to
9 understand, but anyways, I don't recognize this
10 document.

11 3047 Q. Okay. I am going to take you to
12 the next document, and this would be BC000679. It
13 is possible that Mr. Milne-Smith took you to this
14 document today, but I'm not --

15 A. Yes, he did. He did.

16 3048 Q. Yes. So just refresh my
17 recollection, sir. Was this a document you had
18 seen before Mr. Milne-Smith took you to the
19 document?

20 A. Not to my recollection. I think
21 whatever I said to Mr. Milne-Smith I repeat to you.
22 And I think I said that not to my recollection have
23 I ever seen this before, before today.

24 3049 Q. The next document, BC000919. This
25 is another document entitled the same as the prior

1 document, "Camouflage", but apparently generated
2 later in time, in November --

3 A. Did we see this this morning?

4 MR. MOORE: No, we didn't.

5 THE DEPONENT: We didn't look at this
6 one this morning.

7 BY MR. LASCARIS:

8 3050 Q. Right. So I take it that you have
9 not seen this document either ever -- prior to
10 today?

11 A. Can you scroll down?

12 3051 Q. Sure.

13 A. Just so I -- it is a thick
14 document from what I can see.

15 3052 Q. Yes. It is 197 pages.

16 A. Is this an iteration of the same
17 document?

18 3053 Q. Well, the dates are different, so
19 presumably this document incorporates investigative
20 findings that weren't available when the prior
21 document was generated.

22 A. I have not seen this document, to
23 my knowledge.

24 3054 Q. Okay. Now, I just want to take
25 you to one particular page of this document.

1 Sorry, bear with me for one second. Sorry, it is
2 scrolling very slowly, unfortunately. So this is
3 page -- or it is the PDF page 169 of BC000919, and
4 you can see that here there is a profile of my
5 client, Mr. Livesey, and under "Relation to the
6 Case", it states:

7 "Livesey is an investigative
8 journalist accused of being bribed
9 and providing false information of
10 the Catalyst Capital Group."

11 Do you see that?

12 A. I do.

13 3055 Q. Sir, you understand that
14 Mr. Livesey is an investigative journalist with
15 decades of experience?

16 MR. MOORE: Well --

17 BY MR. LASCARIS:

18 3056 Q. He is a career journalist --

19 A. He has had a career of some years.

20 3057 Q. And would you agree with me that
21 an accusation that Mr. Livesey took a bribe to
22 write a false article about Catalyst or any other
23 subject would be potentially highly damaging to
24 Mr. Livesey's career and his standing in the
25 journalistic community?

1 MR. KARABUS: Dimitri, I'm sorry to
2 interrupt. It is Matthew Karabus. David's
3 computer has frozen again.

4 MR. LASCARIS: Okay.

5 MR. KARABUS: So just give us a moment.

6 MR. LASCARIS: Sure.

7 [DISCUSSION OFF THE RECORD.]

8 BY MR. LASCARIS:

9 3058 Q. So, again, my question to you,
10 sir, was -- you know, I just pointed out to you
11 that in this document, BC000919, on PDF page 169,
12 there is an accusation -- or it is stated that
13 there is an accusation that Mr. Livesey was bribed
14 to provide false information relating to the
15 Catalyst Capital Group, right?

16 A. I see that.

17 3059 Q. And my question to you is, would
18 you agree with me that that accusation,
19 particularly if it became publicly known, could
20 potentially be highly damaging to Mr. Livesey's
21 career and his reputation within the journalistic
22 community?

23 A. I think there is a different
24 response to that than the question you have asked.
25 And I am not trying to duck the question, so let me

1 do it into two parts.

2 Mr. Livesey has in effect two principal
3 aspects to his life. One is the so-called
4 investigative journalist, but the other is where he
5 does due diligence work, and I forget the name of
6 his current company, but throughout this piece, we
7 have seen two instances where in one instance Levy
8 said that he was ostensibly working on behalf of
9 West Face, and then subsequently we saw something
10 that said he was working on behalf of Voorheis.

11 So I think when you talk about it --
12 the problem I have in answering your question
13 directly is that I can't separate what Livesey
14 learned in his private -- or in his investigative
15 side, his due diligence investigative side, and his
16 journalistic side.

17 3060 Q. Okay. I understand the
18 distinction you are making, but, you know, one
19 would not normally refer to this compensation to an
20 investigator to acquire information about an
21 investigative target as a bribe. So I think it is
22 fair, would you not agree with me, that the use of
23 that term suggests that what is being alleged is
24 that Mr. Livesey, in the course of writing an
25 article about Catalyst, which allegedly contained

1 false information, took money for the purpose of
2 doing that, not a payment from a media
3 organization, a legitimate media organization, but
4 somebody actually gave him a payment to write a
5 false article. Isn't that what is being alleged
6 here, and the payment was made to him in his
7 capacity as a journalist?

8 A. Well, I think -- I can't divine
9 that from that one sentence, but we do know that
10 Livesey was being compensated by someone, either
11 West Face or Voorheis, while he was in the course
12 of this story.

13 3061 Q. That is your allegation.

14 A. Well, that is the evidence we
15 have.

16 3062 Q. Well, let's assume that what is
17 being alleged here is that he took a bribe in his
18 capacity as a journalist to write a false article
19 about Catalyst. Would you --

20 MR. MOORE: Just hold on. Before you
21 answer that question, let's get this straight.
22 This is not a Catalyst document.

23 THE DEPONENT: Yeah.

24 MR. LASCARIS: Right.

25 MR. MOORE: This is a Black Cube

1 document, not a Catalyst document.

2 BY MR. LASCARIS:

3 3063 Q. Well, it is the allegation of
4 Catalyst and Callidus, is it not, that Mr. Livesey
5 took payments from West Face or Mr. Boland in
6 order -- for the purpose of inducing him to write
7 false and disparaging articles about Catalyst?

8 A. I think it has never been clear to
9 me what Mr. Livesey's role was when he was writing
10 that article.

11 3064 Q. Right. But in the Statement of
12 Claim, sir, it is alleged, is it not, that
13 Mr. Livesey took payments from West Face and/or
14 Mr. Boland for the purpose of writing false and
15 disparaging articles about Catalyst or Callidus?

16 A. And that I think was -- stemmed
17 from what we had found with Levy at the time.

18 3065 Q. Right.

19 A. That is the basis for that I
20 think.

21 MR. MOORE: Well, the Statement of
22 Claim is quite a lengthy document. I don't know if
23 there is a paragraph that makes that allegation in
24 that form. You know, the Statement of Claim will
25 speak for itself. It is alleged that he was hired

1 by certain people, but I don't believe the
2 Statement of Claim mirrors the language that is
3 contained in this page of the Black Cube document.

4 BY MR. LASCARIS:

5 3066 Q. All right. Let's park this for a
6 moment, and maybe I'll, you know, pull up the
7 Statement of Claim shortly so we can -- we'll take
8 a little break, and I can find it for you, and I
9 will ask you then, because that is, I assure you,
10 what the allegation is in the claim.

11 So let's go now to BC001124.

12 MR. MOORE: We have it.

13 BY MR. LASCARIS:

14 3067 Q. Again, have you seen this document
15 before today, sir?

16 A. No.

17 3068 Q. So you wouldn't know who authored
18 it or when it was generated?

19 A. Well, I can only tell from the top
20 that it may have been authored by Black Cube.

21 3069 Q. Right. I'm talking about the
22 individual.

23 A. Sorry, who is the individual?

24 3070 Q. Presumably a human being actually
25 prepared this.

1 A. Oh, well, then I don't know who
2 that was. Sorry, sorry. You don't believe in
3 artificial intelligence?

4 3071 Q. Who knows, maybe Black Cube is --

5 A. We have evolved from time machines
6 to artificial intelligence.

7 3072 Q. Right. In any event, you don't
8 know what human being, if any, authored this?

9 A. No, I do not.

10 3073 Q. Right, nor do you know when it was
11 generated?

12 A. No, I do not. What are the -- can
13 you scroll down? This is the first time I'm seeing
14 this, so --

15 3074 Q. Sure.

16 A. What are the footnotes referring
17 to?

18 [Witness reviews document.]

19 Oh, I see.

20 3075 Q. It refers to various --

21 A. These are just searches on the
22 internet.

23 3076 Q. Right.

24 A. Okay.

25 3077 Q. Okay. So this is going to end

1 quickly. I'm going to take you to the last
2 document, BC002476, and if you would like, I can
3 scroll through this for you.

4 A. [Witness reviews document.]

5 3078 Q. Again, does this document look
6 familiar to you? Have you seen this document prior
7 to today?

8 A. Do you know who the author is?

9 3079 Q. No.

10 A. So there is the reference to Polar
11 and to West Face up there, MMCAP.

12 3080 Q. So I was going to ask you if you
13 knew who the author was and if you knew when it was
14 generated, the documents?

15 A. Can you scroll down? Some of this
16 information is kind of ringing a bell - for
17 example, the chicken farmer - but I don't -- you
18 know, where -- maybe I have seen it in something
19 else, but I don't recall seeing this document.

20 MR. LASCARIS: Okay, so let's just take
21 a quick break. I'm going to find that language in
22 the Statement of Claim and come back and ask you
23 that one question, and then we'll be done.

24 MR. MOORE: Okay.

25 MR. LASCARIS: Just give me five

1 minutes.

2 MR. MOORE: Sure.

3 MR. LASCARIS: Thanks.

4 -- RECESSED AT 2:46 P.M.

5 -- RESUMED AT 2:51 P.M.

6 BY MR. LASCARIS:

7 3081 Q. So unfortunately, Mr. Riley, I
8 don't have the last iteration of the Statement of
9 Claim saved on this laptop. I had a laptop issue a
10 couple of weeks ago. What I do have saved on my
11 laptop is the April 2019 version of the claim.

12 A. Do you have -- what was pleaded
13 above?

14 3082 Q. Oh, let me just scroll up. So
15 this is the beginning under the heading
16 "Conspirators Endeavour to Publish Existence of the
17 Complaints and Other Articles Critical of Callidus
18 and Catalyst".

19 So you will see here it's -- now, the
20 word "bribe" is not used, but what is alleged is
21 that a private party, not a media organization, but
22 either Mr. Boland and/or West Face engaged
23 Mr. Livesey, a journalist, to write a negative
24 story targeting Callidus, Catalyst, and their
25 principals, and that West Face and Mr. Boland

1 agreed to compensate Mr. Livesey for his writing of
2 a negative story.

3 A. And what was the date of this
4 document?

5 3083 Q. You mean this version of the
6 claim?

7 A. This version of the claim, yes.

8 3084 Q. April 2019.

9 MR. MOORE: Okay.

10 THE DEPONENT: Okay. Thank you.

11 BY MR. LASCARIS:

12 3085 Q. So that allegation remained in the
13 subsequent and most recent version of the pleading,
14 and my question to you is -- now, again, what is
15 being alleged here is that a private equity firm
16 and one of its principals hired a journalist to
17 write a negative story -- not a media organization,
18 but a private equity firm and one of its principals
19 hired a journalist to write a negative story.

20 And my question to you is, that
21 allegation, do you agree with me that it would have
22 the potential to seriously damage Mr. Livesey's
23 standing within the journalistic community?

24 MR. MOORE: Just a minute. Just a
25 minute. How does that question arise out of the

1 purpose of this re-attendance, and that is to deal
2 with the documents or questions over which
3 privilege had been asserted and subsequently dealt
4 with by Justices Boswell and McEwen? I mean, isn't
5 that a question of law and --

6 MR. LASCARIS: That was not -- it was
7 not my intention to go to the claim. I was
8 focussing on the document produced by Black Cube
9 where they used the word "bribe".

10 MR. MOORE: Okay. Well, that's why --
11 you know, "bribe" is not referred to in the claim.
12 It is referred to in that document.

13 MR. LASCARIS: Well, I took us to this
14 claim because you were contesting that this had
15 been an allegation that had been made by the
16 Plaintiffs, and the fact that the word "bribe" is
17 not used here I would suggest to you doesn't alter
18 the fundamental substance of the allegation. It is
19 an allegation that ended up in a Black Cube
20 document that West Face and Mr. Boland paid
21 Mr. Livesey to write an article, a negative
22 article, about Callidus and Catalyst.

23 MR. MOORE: All right. Well, we can
24 agree to disagree. I think the use of the word
25 "bribe" has a somewhat different connotation. It

1 is certainly not something that is put that way in
2 the Statement of Claim. In my view, at least. But
3 back to your -- I think your question was would the
4 publication of that line in the -- whatever page it
5 is of that document you were looking at earlier,
6 would that be -- if it was made public, be damaging
7 to Mr. Livesey? I think that was your question?

8 MR. LASCARIS: Well, the allegation,
9 yes, which appears there and elsewhere, not
10 necessarily with the use of the word "bribe", but
11 the allegation was that private parties hired a
12 journalist to write a negative article about
13 Catalyst.

14 MR. MOORE: Okay. If you want to put
15 the question again to the witness would the
16 publication of that phrase and wherever it was in
17 that document be potentially damaging, I don't know
18 if the witness can answer that or not.

19 THE DEPONENT: I'm not sure I have that
20 skill set.

21 MR. MOORE: Let's go back --

22 THE DEPONENT: Sorry --

23 MR. MOORE: I'm sorry, let's not go off
24 on to the pleading. Let's go back to where your
25 question originated. Put the question again. I

1 may voice an objection and just have the witness
2 answer the question.

3 MR. LASCARIS: All right. So I'm back
4 to the --

5 MR. MOORE: Let's go back to the
6 document. Repeat your question, and we'll deal
7 with it that way.

8 BY MR. LASCARIS:

9 3086 Q. Okay. Let me just make sure I
10 have got the right document up on the screen here.

11 Okay. There it is. So this is, again,
12 BC000919, and it is PDF page 169 of the document.
13 And you will see there that it is asserted that:

14 "Livesey is an investigative
15 journalist accused of being bribed
16 and providing false information of
17 the Catalyst Capital Group Inc."

18 So my question to you, sir, is do you
19 agree with me that that accusation, were it to
20 become known to the public, could potentially be
21 very damaging to Mr. Livesey's career and his
22 standing in the journalistic community?

23 MR. MOORE: Just a minute. I'm going
24 to object to that question, but under the rules, I
25 can register the objection, and the witness can go

1 ahead and answer subject to that. So go ahead.

2 THE DEPONENT: My answer is perhaps,
3 but it is also -- there are some facts in here that
4 I don't think are apparent on this document.
5 Livesey held himself out as a -- and I think
6 currently, as doing due diligence for money or for
7 compensation. So I don't know how you can separate
8 that kind of activity that he undertakes from his
9 investigative journalist side.

10 And I also -- what was not known to us
11 at the time of that drafting of the pleadings was
12 the relationship that he had with Voorheis.

13 So there is some reason to believe he
14 had a relationship with West Face and some reason
15 to believe he had a relationship with Voorheis for
16 which he is being compensated for doing due
17 diligence activities. What those activities were,
18 I don't think we know at this time, except that he
19 did interact with Esco, Esco Marine.

20 MR. LASCARIS: All right. No need for
21 us to go around in circles. Thank you, sir, for
22 your time, and I'll turn it over to Mr. Baumann.

23 THE DEPONENT: Okay. Thank you.

24 MR. MOORE: Thank you.

25 THE DEPONENT: Can we take a brief

1 pause, or do we want to go straight into Baumann?

2 MR. BAUMANN: Oh, absolutely,
3 Mr. Riley, go ahead.

4 (DISCUSSION OFF THE RECORD.)

5 -- RECESSED AT 2:58 P.M.

6 -- RESUMED AT 3:05 P.M.

7 CROSS-EXAMINATION BY MR. BAUMANN

8 (CONT'D):

9 3087 Q. Before we jump into anything, I'm
10 just going to talk a bit of stuff this morning.
11 Could you tell me who you spoke with in meetings or
12 discussions relating to JSOT, the OSC or police?

13 A. Yes, we spoke with -- primarily
14 with Ahmed Faiz, and what is Stephen's last name?
15 Stephen...

16 MR. MOORE: Fraser.

17 THE DEPONENT: Fraser, Stephen Fraser.

18 BY MR. BAUMANN:

19 3088 Q. Okay. And who are they both with,
20 sir?

21 A. They are with JSOT.

22 3089 Q. Okay.

23 A. And IMET, they are both.

24 [Court Reporter intervenes for
25 clarification.]

1 Sorry, let me back up. There are two
2 parts to who they are. One is that they are IMET,
3 which is the Integrated Market Enforcement Team
4 which is primarily an RCMP-focussed group, and they
5 are also part of the JSOT, which is the Joint
6 Serious Offences Task Force.

7 So now, in their capacity, I believe
8 their business cards read as being JSOT, but I
9 would have to go back and look.

10 3090 Q. Mr. Riley, how many times were you
11 allowed to meet with each one of them individuals?

12 A. We met on several occasions, but I
13 don't know the actual number and I don't have any
14 notes from the meetings.

15 3091 Q. Would it be more than six?

16 A. Probably. Probably.

17 3092 Q. So a fair amount of meetings. How
18 long would the duration be of the meetings, a half
19 an hour, an hour?

20 A. Probably an hour.

21 3093 Q. At least an hour, okay. Great,
22 that is good.

23 Darla, if you could go to Mr. Willis'
24 profile and workup, please. Mr. Riley, can you
25 tell me why -- and this goes back. What brought it

1 up to me is you mentioned in a previous
2 cross-examination that Mr. Willis will never do
3 another story on Callidus. Can you explain to me
4 why Andrew Willis was --

5 MR. MOORE: First of all, that is not
6 what he said.

7 THE DEPONENT: Well, I would have to
8 look back at what I said to answer that properly.
9 You are referring -- do you have the actual wording
10 from the transcript?

11 BY MR. BAUMANN:

12 3094 Q. Okay, we'll dig that out. I can't
13 do that right now. But there was a reference to
14 you believed -- I thought that comment was you
15 didn't think Mr. Willis would be doing another
16 story, but you know, we'll leave that aside.

17 The true question is, why would Black
18 Cube do a story on a journalist? Like was he on
19 the hit list or was --

20 A. I don't know what you mean by
21 that. I think this is just --

22 3095 Q. Was he trying to be discredited --

23 A. Before today, I hadn't seen this
24 document. This looks to me like just a profile of
25 a columnist who wrote about us.

1 3096 Q. It is a Black Cube profile.

2 A. Well, it came from a Black Cube
3 document, yes.

4 3097 Q. Okay, that's all. You have never
5 seen it prior to this obviously.

6 MR. MOORE: Let's be clear, that is
7 Black Cube 001196.

8 BY MR. BAUMANN:

9 3098 Q. Yes. Mr. Riley, I want to jump
10 back to the JSOT/IMET meetings. Was Norton Rose
11 ever there to represent you, Mr. Glassman or any
12 companies you are involved in? Were they ever
13 there with you or was Walied Soliman ever there?

14 A. No, no, no.

15 3099 Q. No, okay.

16 THE COURT REPORTER: I'm sorry, can you
17 repeat that? Did you say Mr. Soliman?

18 THE DEPONENT: Walied Soliman, he the
19 Chairman of Norton Rose.

20 BY MR. BAUMANN:

21 3100 Q. Okay, my assistant, Darla, is
22 going to jump to the police report. Just prior to
23 that is Mr. Karabus' email to me, and we'll see
24 what the response was to me. Keep scrolling.

25 Okay, right there.

1 So, Mr. Riley, when I was allowed to
2 question you last time, I said that the police
3 report that you submitted to the Black Falls RCMP
4 in Alberta was two years after the event. Would
5 you agree that that was actually just over four
6 years?

7 MR. MOORE: Sorry, which document are
8 we referring to here?

9 BY MR. BAUMANN:

10 3101 Q. We are now going to flow to the
11 next document when Beresh's police report came out
12 of Edmonton.

13 A. Okay, I'm not sure I understand
14 the question, Mr. Baumann.

15 3102 Q. Oh, sorry, you -- I touched on it
16 in my questioning that your police complaint came
17 two years after the alleged event. Actually, it
18 was four years.

19 A. But the two years is your wording.

20 3103 Q. Yes, that's correct.

21 A. Okay.

22 3104 Q. The true number is --

23 A. Without going back to the
24 document, I'll go with your four years, if you
25 prefer that.

1 MR. MOORE: No, let's just -- just a
2 minute. Let us know what document you are
3 referring to as the police complaint or, you know,
4 what is the document by which you are measuring the
5 timeline, the two years or four years?

6 MR. BAUMANN: Yes, Mr. Moore, Darla is
7 going right to the Beresh complaint right now.

8 MR MOORE: Okay.

9 BY MR. BAUMANN:

10 3105 Q. It's right there. So July 10,
11 2019, is when the police complaint went in, and it
12 was relating to alleged conduct in '15, the spring
13 of '15, April of '15.

14 So, Mr. Riley, I'll ask you again. Why
15 would you bring a police complaint four years after
16 an alleged event? Can you please explain that to
17 me?

18 A. It was a decision made internally
19 at Catalyst. Why we did it is I think subject to
20 our discretion.

21 3106 Q. Was that yours and Mr. Glassman's
22 doing?

23 A. No, I was -- I think it was
24 primarily Rocco's determination that it was
25 appropriate.

1 3107 Q. Rocco DiPucchio?

2 A. Yes, I believe.

3 MR. MOORE: It was a Catalyst or a
4 Callidus decision, a corporate decision.

5 BY MR. BAUMANN:

6 3108 Q. Okay. You don't consider that
7 uncommon, though, or strange four years after an
8 event?

9 A. No, I do not.

10 3109 Q. No? Okay.

11 So we are going to go to the witness
12 statement. It is right behind this document,
13 please, Darla.

14 Mr. Riley, can you tell me why you
15 would not sign this witness statement, which is a
16 serious statement and should be considered serious.
17 It is alleging fraud to the police. Can you tell
18 me why this was not signed?

19 A. Because that was what I was asked
20 to provide to Brian Beresh's private investigator.
21 That is what he asked me to -- he helped us prepare
22 it in conjunction with counsel, and I wasn't asked
23 to sign it.

24 3110 Q. Do you believe the contents are
25 true and correct, Mr. Riley?

1 A. I believe the contents were based
2 on the pleadings and facts that we are aware of,
3 and I think we were pretty careful in that.

4 3111 Q. Mr. Riley, are you considering
5 signing this and re-submitting it to the police?

6 A. Why would we re-submit it?

7 3112 Q. Well, if you think I'm a fraud and
8 you think I stole money from you, why don't you
9 bring it forward?

10 A. Well, it has been -- it is in the
11 hands of the RCMP, and they'll do with it what they
12 choose to do.

13 3113 Q. Okay. So, Mr. Riley, would you
14 agree that Alken was obviously put through a
15 process by Callidus?

16 A. Through a receivership process,
17 yes.

18 3114 Q. Yes.

19 A. Court-supervised. Through a
20 court-supervised process, yes.

21 3115 Q. Would you be surprised or would
22 you agree that during Callidus' operating of my
23 business, Sinclair for Callidus incurred between
24 700- and \$800,000 of additional payables with no
25 communication with me at all? Would you be

1 surprised by that?

2 MR. MOORE: Now, just a minute. Just a
3 minute. I mean, that question -- just give me a
4 minute.

5 I'm not sure that that at all arises
6 out of anything that has been produced or ordered
7 by Justice McEwen. That sounds to me very much
8 like something to do with the allegations in the
9 Amended Statement of Claim that you wanted to file
10 but were not permitted to file.

11 It also sounds to me that it parallels
12 some allegations that I believe are contained in
13 the Alberta proceedings before the Alberta Court of
14 Queen's Bench, and it also sounds to me like
15 something or a subject matter that Justice McEwen
16 specifically said that the witness did not have to
17 re-attend to answer.

18 R/F So on all those grounds, I object to
19 getting into this area.

20 BY MR. BAUMANN:

21 3116 Q. Okay, I may get a similar answer
22 for the next question.

23 Mr. Riley, would you be surprised that
24 I have located between 15 and 20 million dollars
25 worth of supplier payables scattered throughout the

1 country relating to Callidus-controlled
2 receiverships whereby the payables were incurred
3 while Callidus controlled them companies? Would
4 that number surprise you?

5 R/F MR. MOORE: The same position.

6 BY MR. BAUMANN:

7 3117 Q. It's a simple question. Would
8 that number surprise you?

9 R/F MR. MOORE: It is not a simple question
10 in any way, shape or form, and it is not a proper
11 question for the purpose of this re-attendance. So
12 for the reasons I just articulated, and others
13 which I won't clutter up the record with, I'm
14 objecting to that question.

15 BY MR. BAUMANN:

16 3118 Q. Okay. Mr. Riley, as a lawyer,
17 would you consider that a risk to the economy if
18 there is a lending firm out there controlling many,
19 many receiverships and incurring a lot of bills?
20 Would that not be a risk to the economy,
21 unsuspecting parties in good faith doing work and
22 never getting paid?

23 MR. MOORE: I don't think that question
24 has anything to do with this case or this
25 re-attendance, and it is such a broad question. I

1 am going to object to the question, but Mr. Riley,
2 if you feel you can answer it, you can answer it,
3 but otherwise, I think it is just completely out of
4 bounds in terms of this examination.

5 BY MR. BAUMANN:

6 3119 Q. Okay, we'll leave it at that.

7 Darla is going to go to the credit
8 agreement, Mr. Riley, because you referenced it and
9 you attached it to your police complaint, and we
10 have reason to go there.

11 So, Mr. Riley, would you agree that
12 Callidus could refuse any funding whatsoever at its
13 sole discretion?

14 MR. MOORE: Just a minute. Let us get
15 to the document.

16 MR. BAUMANN: Okay.

17 MR. MOORE: Is this the document that
18 is Exhibit A to the affidavit, your affidavit of
19 June 25, 2018, I assume in Alberta?

20 BY MR. BAUMANN:

21 3120 Q. This document my assistant pulled
22 out of Mr. Riley's police complaint.

23 A. But this is from your affidavit,
24 right? If we could go to the top of the document,
25 please?

1 3121 Q. It is Callidus' loan agreement.

2 A. But this is taken from your
3 affidavit, correct?

4 3122 Q. Yeah -- well, actually, it was
5 taken by Callidus and put into your police
6 complaint.

7 A. No, no, scroll down. Scroll down,
8 please -- or scroll up to the top. This document
9 is Exhibit A referred to in the affidavit of Kevin
10 Baumann sworn the 25th day of July, 2015.

11 MR. MOORE: So, Mr. Baumann, as far as
12 I can see, the fact of the police complaint was
13 something that was deemed to be an appropriate
14 question and we produced the document. I'll see
15 where you are going with this, but if it is the
16 first of a series of questions that are going to
17 try to litigate or re-litigate or debate the
18 meaning, application, et cetera, of this credit
19 agreement, in my view that is not what this witness
20 was ordered to answer.

21 So like let's have your next question.
22 We have identified the document as something that
23 was attached to one of your affidavits in the
24 Alberta courts. So what is the question that you
25 have --

1 MR. BAUMANN: No, ask your colleague,
2 Mr. Karabus. It came in the disclosure to me
3 relating to the police report from Mr. Riley.

4 MR. MOORE: Okay, so what is your
5 question?

6 BY MR. BAUMANN:

7 3123 Q. Would you agree that Callidus
8 could withhold funds for any reason whatsoever at
9 its sole discretion?

10 R/F MR. MOORE: Well, don't answer that
11 question. That is completely parallel with what
12 has been litigated or you are attempting to
13 litigate in the Alberta Queen's Bench in which you
14 challenged by various ways and means, so far as I
15 can tell without any success whatsoever, before the
16 courts in Alberta about the receivership and
17 various other issues in connection with your loan
18 in Alberta.

19 MR. BAUMANN: Don't give me that crap,
20 Mr. Moore. We haven't even started, neither have
21 all the other borrowers.

22 I have a question for you, Mr. Riley.

23 MR. MOORE: You know what, Mr. Baumann,
24 if you are going to --

25 MR. BAUMANN: If --

1 MR. MOORE: Hold on, just a minute.
2 You are entitled to ask your questions.

3 MR. BAUMANN: What do you mean when
4 you --

5 MR. MOORE: Just a minute. Just a
6 minute. Just a minute. You are entitled to ask
7 your questions, and I am entitled to object if I
8 think it is appropriate to object.

9 MR. BAUMANN: Well, don't --

10 MR. MOORE: Just a minute. What I
11 don't have to do is sit here and listen to you talk
12 like that. So if you keep that kind of language
13 up, this examination is going to be over very
14 quickly. Now, we are probably going to be over
15 very quickly anyway if we can give any credence to
16 what you said earlier that you would be no more
17 than 20 minutes, but please don't clutter the
18 record with your interjections and conclusions
19 along those lines because it is not appropriate.

20 What is your next question?

21 BY MR. BAUMANN:

22 3124 Q. Mr. Riley, is it just sheer
23 coincidence that the majority, if in fact not all,
24 of the borrowers in this claim are saying that
25 Callidus withheld funds at their sole discretion

1 and abused the sole discretion clause? Are they
2 not saying that?

3 R/F MR. MOORE: We are not litigating the
4 guarantee actions in this proceeding, so I object
5 to that question.

6 BY MR. BAUMANN:

7 3125 Q. The guarantee action is why this
8 action is started, sir.

9 Okay, we'll carry on.

10 Mr. Riley, you are a lawyer. Have you
11 ever researched the sole discretion clause? Have
12 you ever researched precedent in Canada relating to
13 the abuse of the sole discretion clause? Have you
14 ever done that?

15 A. You are asking two questions.
16 Have I looked at it? Probably. Do I recall what
17 the conclusion was? No.

18 3126 Q. You should. We are just about
19 done. We have a couple more questions, Mr. Moore,
20 and you can get out of there.

21 Mr. Riley, would you agree that when a
22 company's relationships with its suppliers and
23 customers are strained, whether that company be
24 Alken or Callidus or any company, when them
25 relationships are strained and they are destroyed,

1 would you agree that that would affect the value of
2 them companies?

3 MR. MOORE: Well, you know, it would be
4 easier to let the witness -- that question has got
5 nothing to do with this re-examination or
6 re-attendance. It has got nothing to do with the
7 order of Justice McEwen. It has got nothing to do
8 with any proper question, but it is easier to
9 just -- Mr. Riley, can you answer that question?

10 THE DEPONENT: Would you ask the
11 question -- Deana, could you read the question
12 back, possibly?

13 BY MR. BAUMANN:

14 3127 Q. Mr. Riley, if a company's
15 relationships with its suppliers and its customers
16 were destroyed, would it not affect that company's
17 value?

18 MR. MOORE: Okay, I am going to object
19 to the question but, Mr. Riley, go ahead and answer
20 if you can.

21 THE DEPONENT: I'm not sure I can
22 answer that question. It depends on -- there is
23 all sorts -- you want me to conclude -- that is not
24 a question. That is a conclusion on your part.
25 And I am not trying to be argumentative, Mr.

1 Baumann. I am trying to be responsive.

2 In any insolvency situation, okay,
3 there is always some impact on the supplier where
4 in some cases they are preserved and in some cases
5 they are not. As you are aware of in insolvency
6 cases, there are classes of creditors that are
7 absolutely necessary to the business and others
8 that are not, and that is part of the process.

9 And the people that chose to extend
10 credit on an unsecured basis rank lower than people
11 who chose to advance credit on a secured basis.

12 So your question is a conclusion that
13 you want me to reach that I can't reach for you.

14 BY MR. BAUMANN:

15 3128 Q. I guess Mr. Dalton can give you a
16 report on that one.

17 So, Mr. Riley, I seen this morning Mr.
18 Glassman's emails between Mr. Guy. So on that
19 date, a mere two months prior to the filing of this
20 Wolfpack claim, Mr. Glassman obviously had no faith
21 or confidence in the evidence.

22 MR. MOORE: Well, what is the question?
23 What is the question?

24 BY MR. BAUMANN:

25 3129 Q. So he highly questioned it;

1 correct?

2 A. He questioned what Snowdy said
3 based on not getting a particular document. But I
4 think your premise, as I'm understanding it, is
5 that everything we did was premised on the
6 Snowdy/Danny Guy. I think my evidence this morning
7 was it was quite the contrary. We were looking for
8 subsequent proof, and we got that from Levy and to
9 a lesser extent Levitt, and we were doing it based
10 on evidence that we had seen. Remember, this is a
11 conspiracy case, so we can only go on the stuff
12 that we can find in our process.

13 3130 Q. What was the Cadbury moment that
14 made you guys decide to bring this --

15 A. Sorry --

16 MR. MOORE: What is that?

17 BY MR. BAUMANN:

18 3131 Q. Because you weren't going there --
19 you guys were not there.

20 R/F MR. MOORE: Don't answer the question.

21 The Cadbury moment? Don't answer the question.

22 THE DEPONENT: What is a Cadbury
23 moment?

24 MR. MOORE: Don't answer the question.

25 BY MR. BAUMANN:

1 3132 Q. What was the point where you
2 determined we are filing this claim, that we have
3 enough evidence AND we are not wasting everybody's
4 time and resources?

5 R/F MR. MOORE: Don't answer the question.

6 BY MR. BAUMANN:

7 3133 Q. What was the determining factor?
8 Going by Brian Greenspan's email and Glassman's own
9 text, he wasn't there two months prior to it. What
10 was the changing factor? What was it?

11 R/F MR. MOORE: Just a moment. We are not
12 getting into that kind of debate with you. It is
13 not a proper question. I'm instructing the witness
14 not to answer the question.

15 What is your next question?

16 MR. BAUMANN: It should be a proper
17 question. This is a claim --

18 MR. MOORE: What is your next question?

19 [Court Reporter intervenes for
20 clarification due to cross-talk and
21 audio issues.]

22 BY MR. BAUMANN:

23 3134 Q. To finish off, Mr. Riley, did you
24 ever look at the fundamentals of Callidus' business
25 to try and say could this be us internally instead

1 of it being everyone else's fault? Did you think
2 to maybe go down to the accountant or accounting
3 department to see what the state of the company
4 was?

5 MR. MOORE: You know, that is -- just a
6 minute.

7 MR. BAUMANN: All these parties did not
8 wreck your company. It was done. It was done
9 before the claim was brought.

10 MR. MOORE: The allegations in this
11 case are not predicated upon the allegation that
12 all of the difficulties of Callidus and all of the
13 problems with the loans are all the fault of
14 everyone else. That is not the allegation we have
15 made in this case, and I am not going to get into a
16 big long debate about that with you.

17 R/F In my view, that is not a proper
18 question arising out of Mr. Riley's re-attendance.

19 BY MR. BAUMANN:

20 3135 Q. So was the big determining factor
21 that, hey, we are losing our ability to raise more
22 money and more funds and continue to play this?

23 R/F MR. MOORE: Don't answer that question.

24 MR. BAUMANN: Thank you for your time,
25 and I surely thank Mr. Dalton. He was about the

1 only honest one I have seen in this mess so far.

2 Thank you.

3 MR. MOORE: Thank you.

4 So I think we stand adjourned until
5 Tuesday at 10:00 o'clock.

6 [Discussion Off the Record.]

7

8 -- Adjourned at 3:27 p.m.

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1 REPORTER'S CERTIFICATE

2
3
4 I, DEANA SANTEDICOLA, RPR, CRR,
5 CSR, Certified Shorthand Reporter, certify:

6 That the foregoing proceedings were
7 taken before me at the time and place therein set
8 forth, at which time the witness was put under oath
9 by me;

10 That the testimony of the witness
11 and all objections made at the time of the
12 examination were recorded stenographically by me
13 and were thereafter transcribed;

14 That the foregoing is a true and
15 correct transcript of my shorthand notes so taken.

16
17
18 Dated this 23rd day of April, 2021.

19
20 

21
22 _____
23 NEESONS, A VERITEXT COMPANY

24 PER: DEANA SANTEDICOLA, RPR, CRR, CSR

WORD INDEX

< \$ >

\$1 957:13
\$1,250,000 999:7
\$1.25 998:19
\$13 928:17
\$20,000 977:11
\$25,000/item
977:8
\$26,000 1040:12
\$4.2 1040:11, 21
\$5 956:25
\$55,000 903:16
\$75,000 972:4
\$800,000
1091:24

< 0 >

001196 1087:7
01 1009:1
1010:2

< 1 >

1 891:25
991:25 1015:15
1.25 999:17
10 889:21
903:10 917:15
1060:6 1089:10
10:00 1104:5
10:07 890:1
10:29 1002:10
10:59 932:15
1000:10 888:24
1001:8 888:18
1007:8 888:24
101 898:1
1016:18 889:8
1016:5 889:7
1029:17 888:18
103 892:8, 12
1031:16 889:8
1042:15 888:18
1043:2 888:19
105 892:24
894:20 898:6, 9
1053 888:5
1054 888:7
1055:25 889:20
1060:6 889:23
107 895:12
108 895:19
1083 888:7

1084 888:9
1092:18 889:8
1093:5 889:8
1093:9 889:8
1096:10 889:8
1098:3 889:9
11 889:19
895:22 958:10,
24 959:21, 25
960:12, 15
1021:6 1056:1
11/9/2017
1060:15
11:06 932:16
11:14 906:12
11:48 966:13
1101:20 889:9
1102:11 889:9
1102:5 889:9
1103 888:9
1103:17 889:9
1103:23 889:9
11th 904:19
948:21 951:3
952:16 953:6
1009:16, 17
1060:5
12 919:24
920:2 921:18
922:18 930:13
932:19 937:23
958:9 959:14
964:25 967:4, 5
983:22 985:21
986:5 1001:14
1046:6 1054:8
12(a 900:16
12:20 966:14
12:39 1009:8
12th 983:18
986:12, 15
13 930:14
993:23
13th 990:25
991:4 1019:9
14 892:13
895:14 931:15
960:8, 10, 12
141 899:2, 7
142 899:13
144 899:13
14th 896:16
899:5 1014:22

15 935:8
1089:12, 13
1092:24
15:14 922:1
16 938:2
169 1070:3
1071:11 1082:12
17 938:4, 8
17:14 905:18
17th 902:16
1038:10
18 938:11
939:17 983:4
1001:3, 13
18:51 923:16
18th 902:2, 13,
20
19 948:19
951:2 983:5
985:22 986:7
19:46 986:15
197 1069:15
19th 1018:18
1PM 911:23
1st 917:22
941:4

< 2 >

2 896:20
912:18 985:10
2:00 1054:11
2:15 1054:12
2:46 1078:4
2:51 1078:5
2:58 1084:5
20 884:23
934:5 957:11
989:7 1001:19
1092:24 1097:17
20:12 989:9
20:37 961:8
2009 928:16
2014 928:22
2015 1095:10
2017 889:19, 23
892:13 895:14,
22 899:5 901:4
902:3 904:24
915:12 917:23
928:15 929:7,
14 932:10
933:22 941:5
948:21 953:7
961:20 969:7
977:19 978:5

979:13 980:15,
18 983:18
986:15 991:4,
25 993:23
994:2 1000:9
1001:3, 13
1013:2, 9
1018:18
1038:25 1040:8
1050:23 1051:4,
10 1056:1
1059:24 1060:8
1063:15
2018 1043:25
1094:19
2019 884:23
892:1 931:19
934:4, 21
937:25 953:6
1078:11 1079:8
1089:11
2020 884:23
896:21 897:14
934:4, 5, 21
937:25
2021 884:25
1041:10 1105:18
20th 898:21
1024:8 1026:1
21 908:6
957:19 1001:18,
19
21st 904:24
907:4 909:7, 17,
19 911:8
1028:7 1034:6
22 901:4
968:12 976:25
1056:6 1061:10
22nd 884:24
909:21 911:21
23 1002:2
1056:11, 16
1057:6, 23
1062:23, 24
1063:6 1064:1
23rd 911:18, 23
912:1, 5 920:25
1037:4 1105:18
24 1004:1
25 983:17
1005:4 1050:23
1051:4, 9
1094:19

2564 890:6
2565 891:25
2566 894:19
2567 895:4
2568 895:12
2569 895:24
2570 896:3
2571 896:6
2572 896:9
2573 896:14
2574 896:20
2575 896:25
2576 897:9
2577 897:13
2578 897:18
2579 897:20
2580 897:25
2581 898:6
2582 898:14
2583 899:10
2584 899:19
2585 900:1
2586 900:14
2587 901:12
2588 902:1
2589 902:9
2590 902:15
2591 902:19
2592 902:23
2593 903:6
2594 903:9
2595 903:23
2596 904:2
2597 904:12
2598 904:15
2599 905:5
25th 921:24
990:1 1095:10
26 932:19
984:1, 9 1007:11
2600 905:11
2601 905:24
2602 906:4
2603 906:8
2604 906:18
2605 906:24
2606 907:2
2607 907:7
2608 907:10
2609 907:19
2610 908:14
2611 909:11
2612 910:7
2613 910:14

2614 910:16	2668 929:6	2718 954:13	2772 978:9	2824 998:24
2615 910:25	2669 929:10	2719 955:2	2773 978:17	2825 999:4
2616 911:11	2670 929:16	2720 955:9	2774 978:25	2826 999:8
2617 911:16	2671 931:18	2721 955:16	2775 979:5	2827 999:12
2618 912:6	2672 932:18	2722 955:22	2776 979:16	2828 1000:3
2619 912:14	2673 933:24	2723 956:9	2777 979:24	2829 1000:13
2620 913:13	2674 934:19	2724 956:15	2778 980:5	2830 1000:16
2621 913:16	2675 935:3	2725 956:19	2779 980:14	2831 1000:18
2622 913:21	2676 935:8	2726 956:24	2780 980:24	2832 1000:21
2623 914:6	2677 935:16	2727 957:3	2781 981:6	2833 1000:25
2624 914:13	2678 935:19	2728 957:11	2782 981:22	2834 1001:3
2625 914:17	2679 936:18	2729 957:18	2783 982:10	2835 1001:12
2626 914:24	2680 937:1	2730 958:3	2784 983:2	2836 1001:17
2627 915:2	2681 937:8	2731 958:9	2785 983:8	2837 1002:2
2628 915:6	2682 937:19	2732 958:20	2786 983:16	2838 1002:21
2629 915:10	2683 938:2	2733 958:23	2787 983:25	2839 1002:25
2630 915:17	2684 938:18	2734 959:1	2788 984:4	2840 1003:20
2631 915:20	2685 939:11	2735 959:6	2789 984:8	2841 1003:25
2632 916:8	2686 939:15	2736 960:17	2790 984:16	2842 1004:14
2633 917:14	2687 939:25	2737 961:1	2791 985:3	2843 1004:17
2634 917:20	2688 940:3	2738 961:7	2792 985:20	2844 1004:23
2635 918:5	2689 940:24	2739 961:19	2793 985:25	2845 1005:4
2636 918:9	2690 941:4	2740 961:23	2794 986:7	2846 1005:19
2637 918:11	2691 941:16	2741 962:16	2795 986:11	2847 1006:12
2638 918:20	2692 941:23	2742 963:1	2796 987:22	2848 1007:4
2639 918:23	2693 941:25	2743 963:16	2797 987:24	2849 1007:11
2640 918:25	2694 942:16	2744 964:25	2798 988:24	2850 1008:5
2641 919:2	2695 943:25	2745 965:14	2799 989:3	2851 1008:14
2642 919:7	2696 944:25	2746 965:18	27th 1042:11	2852 1009:10
2643 919:12	2697 945:19	2747 965:23	28 990:23	2853 1009:16
2644 919:16	2698 946:4	2748 966:1	2800 989:6	2854 1009:22
2645 919:22	2699 946:13	2749 966:6	2801 990:4	2855 1010:1
2646 920:2	26th 917:23, 25	2750 966:16	2802 990:23	2856 1010:4
2647 920:9	921:25 922:1,	2751 966:23	2803 991:22	2857 1010:15
2648 920:11	20 928:5	2752 967:2	2804 992:4	2858 1010:20
2649 920:14	27 984:5, 9	2753 967:21	2805 992:9	2859 1011:10
2650 920:17	2700 946:15	2754 968:1	2806 992:12	2860 1011:18
2651 920:23	2701 947:4	2755 968:12	2807 993:2	2861 1011:23
2652 921:9	2702 947:18	2756 968:22	2808 993:5	2862 1012:14
2653 921:21	2703 947:25	2757 969:4	2809 993:13	2863 1013:1
2654 922:18	2704 948:12	2758 969:10	2810 993:21	2864 1013:7
2655 923:19	2705 948:19	2759 969:18	2811 994:4	2865 1013:11
2656 924:21	2706 949:4	2760 969:20	2812 994:11	2866 1014:6
2657 924:24	2707 949:12	2761 969:23	2813 994:20	2867 1014:19
2658 925:6	2708 949:18	2762 970:9	2814 994:23	2868 1015:6
2659 925:12	2709 949:25	2763 971:12	2815 994:25	2869 1015:19
2660 925:17	2710 950:5	2764 972:14	2816 995:19	2870 1016:12
2661 926:11	2711 950:13	2765 973:13	2817 996:3	2871 1016:21
2662 926:13	2712 950:17	2766 973:16	2818 996:9	2872 1017:6
2663 927:5	2713 951:1	2767 974:23	2819 996:22	2873 1017:25
2664 927:8	2714 951:6	2768 976:6	2820 997:20	2874 1018:11
2665 928:1	2715 953:2	2769 976:21	2821 998:3	2875 1018:18
2666 928:14	2716 953:22	2770 977:23	2822 998:6	2876 1019:9
2667 928:21	2717 954:3	2771 978:5	2823 998:15	2877 1019:13

2878 1019:19	2928 1033:14	2982 1050:5	3025 1063:25	3079 1077:9
2879 1020:5	2929 1033:21	2983 1050:8	3026 1064:4	3080 1077:12
2880 1020:10	2930 1034:4	2984 1050:11	3027 1064:13	3081 1078:7
2881 1020:19	2931 1034:12	2985 1050:14	3028 1064:18	3082 1078:14
2882 1020:25	2932 1034:16	2986 1050:17	3029 1064:20	3083 1079:5
2883 1021:6	2933 1034:22	2987 1051:7	3030 1064:23	3084 1079:8
2884 1021:13	2934 1035:2	2988 1051:12	3031 1064:25	3085 1079:12
2885 1021:21	2935 1035:11	2989 1051:16	3032 1065:3	3086 1082:9
2886 1022:7	2936 1035:14	2990 1051:24	3033 1065:9	3087 1084:9
2887 1022:16	2937 1035:20	2991 1052:3	3034 1065:13	3088 1084:19
2888 1022:20	2938 1036:1	2992 1054:15	3035 1065:24	3089 1084:22
2889 1022:25	2939 1036:9	2993 1055:9	3036 1066:9	3090 1085:10
2890 1023:21	2940 1036:11	2994 1055:14	3037 1066:17	3091 1085:15
2891 1024:7	2941 1036:16	2995 1055:16	3038 1066:20	3092 1085:17
2892 1024:11	2942 1036:20	2996 1055:18	3039 1066:23	3093 1085:21
2893 1024:18	2943 1036:24	2997 1055:22	3040 1067:3	3094 1086:12
2894 1024:21	2944 1037:1	2998 1056:5	3041 1067:11	3095 1086:22
2895 1024:23	2945 1037:4	2999 1056:16	3042 1067:14	3096 1087:1
2896 1025:5	2946 1037:7	29th 896:21	3043 1067:21	3097 1087:4
2897 1025:8	2947 1037:18	897:14	3044 1068:2	3098 1087:9
2898 1025:10	2948 1037:25		3045 1068:4	3099 1087:15
2899 1025:15	2949 1038:7		3046 1068:7	30th 898:10
29 884:23	2950 1038:9	< 3 >	3047 1068:11	931:19 1038:20,
934:4 993:2, 21	2951 1038:19	3 898:20	3048 1068:16	25 1040:8, 20
996:24 1008:14	2952 1038:24	911:16 921:9	3049 1068:24	31 1000:13
1043:24	2953 1039:10	3:05 1084:6	3050 1069:8	1043:15 1063:15
2900 1025:21	2954 1039:15	3:27 1104:8	3051 1069:12	3100 1087:21
2901 1026:1	2955 1040:7	30 995:19	3052 1069:15	3101 1088:10
2902 1026:6	2956 1040:15	998:18	3053 1069:18	3102 1088:15
2903 1026:8	2957 1040:19	3000 1057:2	3054 1069:24	3103 1088:20
2904 1026:13	2958 1041:23	3001 1057:5	3055 1070:13	3104 1088:22
2905 1026:17	2959 1042:1	3002 1057:9	3056 1070:18	3105 1089:10
2906 1026:22	2960 1043:14	3003 1057:22	3057 1070:20	3106 1089:21
2907 1027:5	2961 1044:9	3004 1058:10	3058 1071:9	3107 1090:1
2908 1027:9	2962 1044:13	3005 1058:16	3059 1071:17	3108 1090:6
2909 1027:14	2963 1044:17	3006 1058:18	3060 1072:17	3109 1090:10
2910 1027:16	2964 1045:6	3007 1058:25	3061 1073:13	3110 1090:24
2911 1027:24	2965 1045:11	3008 1059:4	3062 1073:16	3111 1091:4
2912 1028:4	2966 1045:14	3009 1059:10	3063 1074:3	3112 1091:7
2913 1028:11	2967 1046:2	3010 1059:18	3064 1074:11	3113 1091:13
2914 1028:14	2968 1046:6	3011 1060:10	3065 1074:18	3114 1091:18
2915 1028:17	2969 1046:10	3012 1060:16	3066 1075:5	3115 1091:21
2916 1028:20	2970 1046:14	3013 1060:20	3067 1075:14	3116 1092:21
2917 1029:1	2971 1046:17	3014 1061:1	3068 1075:17	3117 1093:7
2918 1029:3	2972 1046:24	3015 1061:5	3069 1075:21	3118 1093:16
2919 1029:11	2973 1047:8	3016 1061:8	3070 1075:24	3119 1094:6
2920 1029:19	2974 1047:16	3017 1061:13	3071 1076:4	3120 1094:21
2921 1030:23	2975 1048:4	3018 1061:22	3072 1076:7	3121 1095:1
2922 1031:6	2976 1048:11	3019 1062:8	3073 1076:10	3122 1095:4
2923 1031:21	2977 1048:21	302 914:12	3074 1076:15	3123 1096:7
2924 1032:8	2978 1049:4	3020 1062:10	3075 1076:20	3124 1097:22
2925 1032:15	2979 1049:9	3021 1062:20	3076 1076:23	3125 1098:7
2926 1032:23	2980 1049:17	3022 1063:3	3077 1076:25	3126 1098:18
2927 1033:2	2981 1049:25	3023 1063:10	3078 1077:5	3127 1099:14
		3024 1063:21		

3128 1100:15
3129 1100:25
3130 1101:13
3131 1101:18
3132 1102:1
3133 1102:7
3134 1102:23
3135 1103:20
31st 959:2
1025:12, 13
32 1017:25
1018:14, 18
33 1022:16
34 1022:25
1023:23 1024:7
35 994:12
996:25
354 972:23
973:3, 4 975:2
36 930:23
1028:4
37 1029:11
38 1033:21
1050:18
3rd 1002:3
1008:24

< 4 >
4 900:6 903:18
905:19 906:15
911:12 925:18
970:9 971:16
4.3 903:11
40 930:24
1035:20
403 938:25
41 1038:10, 20
4-10 884:13
416-302-6040
1028:8
43 1039:15
1040:7
436 938:24
45 997:2
46 1041:23
47 1050:17
48 1051:7
4th 958:11
959:3 960:18
967:5

< 5 >
5 884:23
890:11 894:11

902:2 909:16
999:16
5:14 905:18
50 898:12
53 1021:13
1022:3, 7
5th 892:1
898:24 934:3

< 6 >
6 902:11
906:12 928:1
6:43 905:17

< 7 >
7 889:23
903:18 904:16
923:15 925:20
929:18 1059:24
1060:8
7:00 923:20
7:05 923:25
700 1091:24
7th 968:16
1060:18

< 8 >
8 889:17
891:22 902:24
909:12
84-page 993:24
890 888:5
891:22 889:17

< 9 >
9 889:18
914:17 1020:19
1055:25
9:45am 1024:14
908:24 888:17
916:18 888:17
917 1028:13, 25
927:19 888:24
934:9 888:18
942:8 889:6
944:13 889:6
945:15 889:7
954:23 889:7
964:13 889:7
972:8 888:18
984:13 888:18
992:17 888:24
995:10 889:7
996:12 889:7

< A >
A.J 886:15
a.m 890:1
932:15, 16
966:13
ability 1045:10,
13 1048:5
1049:2 1103:21
absolutely
1084:2 1100:7
abuse 1031:14,
19 1032:4
1098:13
abused 1098:1
accept 895:5
951:8 972:16
1005:21 1031:9
accepting
926:21
access 908:20
1046:19
account 915:7
935:13, 17
957:25 1001:14
1040:13
accountant
1103:2
accounting
1103:2
accurate 915:6
924:7 949:21
985:1 986:23
989:24 1015:13
accusation
1053:6 1070:21
1071:12, 13, 18
1082:19
accuse 1051:2
accused
1050:21 1070:8
1082:15
accusing
1051:17
ACF 884:10
886:6
achieve 963:7
acquire 1062:15
1072:20
acquiring
1064:6 1065:6
acquisition
895:17
acronym 961:12

act 996:4
acting 995:5
action 897:16,
22, 23 898:2
973:19 974:12
1098:7, 8
actionable 923:4
actions 1098:4
activities
945:11 947:17
953:17 960:21
965:13 1083:17
activity 962:22,
23 1083:8
actual 909:7
933:19 1018:4
1025:2 1052:10
1053:16
1085:13 1086:9
ADAIR 886:17
ADAM 884:11
886:7 1006:22
add 891:8
1018:2
added 932:5
1041:8 1042:9
1043:4 1060:22
adding 1007:2
addition 1057:14
additional
907:14 1045:22
1053:25 1091:24
address 935:10,
23 936:2, 5, 14,
21, 23 937:10
adjourned
1104:4, 8
adjournment
1037:2
adjudged
1064:5, 14
1065:4
administrative
917:17
ADMIRALTY
884:9 885:23
advance 890:9,
14 899:23
916:17 939:13
1100:11
advanced
1017:14
advice 968:8
976:3 1044:4

advise 892:13
917:2 977:3
1001:5 1042:23
advised 1007:4
1027:17
advisement
888:22 927:20
976:15, 22
992:18, 20
1000:11 1007:9
advisements
888:11, 21
891:10 1053:24
ADVISORS
884:8, 9 885:21,
24
affect 1099:1, 16
affidavit 892:2,
3 894:3, 11
896:21 897:14,
15, 20, 23
898:17, 21, 22,
24 900:2, 6, 11
934:4, 5 940:7
970:19 988:25
989:4 997:21
1039:20
1041:21
1065:18
1066:11
1094:18, 23
1095:3, 9
affidavits
884:23 915:12
934:1, 6, 21
935:4 937:25
943:4 1006:16,
20 1007:5, 6
1011:24 1015:7,
16, 19, 22, 25
1016:6, 9, 14, 18,
25 1017:1, 3
1095:23
AFFIRMATION
890:3
after 900:21
925:20 929:4
959:25 1006:20
1023:12 1037:1
1041:14, 15
1088:4, 17
1089:15 1090:7
aftermath
974:16

afternoon 1009:11 agent 994:15 997:1 agents 1021:2 ago 1030:20 1078:10 agree 893:6 895:11 896:9 906:20 917:8 919:12 921:8 941:6 945:25 946:4 947:7, 18, 19, 25 948:12 973:24 974:2, 4 975:1, 3, 7 977:17 978:25 979:5, 10, 16, 19 990:2 992:21 1004:18 1005:10 1010:20 1014:13, 14, 20 1015:11 1017:22 1031:11, 22 1034:4 1037:25 1047:14, 15, 18 1048:11 1049:9 1050:12 1070:20 1071:18 1072:22 1079:21 1080:24 1082:19 1088:5 1091:14, 22 1094:11 1096:7 1098:21 1099:1 agreed 890:20 891:6, 21 1053:11 1079:1 agreeing 896:4 agreement 890:13 938:4, 5, 12 939:12, 17, 18 941:5 1043:23 1056:14, 25 1057:3 1058:12 1094:8 1095:1, 19 agrees 911:12 ahead 894:17 906:1 919:25	980:12 982:22 987:8, 9, 24 998:1, 11 1040:5 1044:20 1083:1 1084:3 1099:19 Ahmed 965:17, 24 966:2 1084:14 A-h-m-e-d 965:25 aids 997:6 AIMF 884:10 886:4 aircraft 1039:14 ALBA 884:18 885:10 990:25 Alberta 1033:11 1088:4 1092:13 1094:19 1095:24 1096:13, 16, 18 Alex 946:8 947:13 993:18 Alken 1091:14 1098:24 allegation 1052:12 1053:16 1073:13 1074:3, 23 1075:10 1079:12, 21 1080:15, 18, 19 1081:8, 11 1103:11, 14 allegations 925:7, 8 932:10 1092:8, 12 1103:10 alleged 929:12 931:25 960:21 965:8 1072:23 1073:5, 17 1074:12, 25 1078:20 1079:15 1088:17 1089:12, 16 allegedly 924:3 1024:13 1072:25 alleging 1090:17 allowed 1085:11 1088:1	alluded 930:9 970:18 974:10 999:15 alludes 945:12 alluding 910:23 934:13 alter 1080:17 amalgamated 939:5 Amended 1092:9 AML-type 949:17 amount 903:14 927:6 977:15 1041:1 1056:13 1085:17 anchor 942:22 and/or 1066:25 1074:13 1078:22 ANDERSON 884:11 886:12 1051:13 ANDREW 885:15 1022:17 1086:4 Andy 1024:3 Annex 1056:17 1057:7, 23 1060:14 1061:2, 9 annotated 968:24 969:1 970:16 1060:2 ANSON 884:8, 9, 10 885:22, 25 886:1, 2, 5 answered 962:16 1012:18 1021:24 1023:22 answering 1072:12 answers 1053:23 anticipated 966:10 1067:5 anticipating 1002:5 anti-Semite 973:21 anti-Semitism 971:21 anti-SLAPP 892:3, 5 897:15 898:22	anybody 907:14 910:19 919:8 935:4 951:19 954:6 955:24 995:4 Anyway 952:21 1022:2 1097:15 anyways 1068:3, 9 apologize 900:12 904:25 912:3 920:20 961:5 972:6 985:3, 23 1013:18 1019:12 1036:10 1038:13, 17 1044:19 1064:19 app 920:4 apparent 968:3 1083:4 Apparently 997:16 1020:14, 21 1055:12 1060:20, 24 1062:17 1069:1 appeal 975:9 1037:2 appear 888:17, 23 889:6 922:21 1061:25 1063:4 appears 969:22 978:7 1020:16 1030:16 1060:4, 17 1061:15 1065:24 1081:9 application 974:15 975:21 1095:18 applies 916:25 apply 1031:12 1033:4 applying 916:4 appreciate 908:14 936:5 967:24 1052:22 approach 994:16, 17 996:10 997:3 approached 1009:18 appropriate 946:25 962:19	963:1, 3, 5, 17 1023:8 1027:20 1032:25 1089:25 1095:13 1097:8, 19 appropriateness 963:25 approve 938:3 949:5 approved 939:12 941:1, 7 942:7 944:10, 12 946:6 947:10, 21 948:2, 14 995:8 996:6 approximately 1040:21 April 884:25 1078:11 1079:8 1089:13 1105:18 area 1028:25 1092:19 areas 946:20 argue 978:19 1016:6 1017:2, 3 arguing 1003:12 argument 916:15 974:5 975:17 976:18 1018:13 1053:22 argumentative 1099:25 arisen 974:11 arises 904:17 1092:5 arising 893:14 1103:18 arrange 911:12 arranged 1039:12 arrangement 1034:22 arrangements 949:3 1025:19 1041:2 art 997:8, 11 article 931:18 953:11 968:6 1030:4 1037:21 1052:10 1070:22 1072:25 1073:5, 18 1074:10
---	--	--	---	---

1080:21, 22 1081:12 articles 1031:14 1032:19 1033:3 1074:7, 15 1078:17 articulate 1013:18 articulated 1093:12 articulation 974:20 artificial 1076:3, 6 aside 1004:14, 17 1005:19 1013:11 1014:13 1059:19 1086:16 asked 896:24 897:12 931:14 945:20 961:9 962:12 968:2, 6 980:9 996:14, 15 1018:2 1019:11 1050:20 1052:15, 24 1071:24 1090:19, 21, 22 asking 893:13 916:10 930:6 951:13, 14 974:6 975:7 978:11 1014:6, 9 1019:15 1031:8 1054:24 1098:15 asks 912:19, 24 938:10 aspects 935:5 1072:3 asserted 1017:20 1080:3 1082:13 assertions 896:10 assessment 924:9 939:20 941:21 962:24 986:22 989:25 996:8 1005:11 assets 977:10, 24 979:8 1050:3 assign 1038:15	assigned 966:23 1062:18 assistance 888:13 assistant 1087:21 1094:21 assisting 928:24 931:4 associate 1024:23 association 1014:12 assume 1073:16 1094:19 assuming 934:10 959:24 1042:11, 16 assumption 913:5 assure 1075:9 attached 938:12 1006:16, 19, 21 1042:12 1094:9 1095:23 attaches 895:9 938:9 1024:8 attachments 1039:2 attack 900:18 901:7 903:2, 12, 17, 25 904:4, 8, 11 960:24 978:24 980:22 981:5 1038:4 attempt 1032:17 attempting 1031:12 1096:12 attend 907:15 attended 918:13 attendees 907:12 attending 884:24 attention 921:22 971:14 1057:11 attributed 1045:24 attributes 1048:21 audio 1038:22 aug 1009:1 1010:2	August 884:23 892:13 895:14, 21 896:16 898:10, 21 899:4 902:2, 13, 14, 16 904:19, 24 907:4 908:6 909:7, 17, 18, 21 911:18, 25 915:11 917:23, 25 920:25 921:24, 25 922:1, 20 928:4, 15 929:6, 14 932:10, 19 933:22 934:5 959:2 1009:4, 15 1010:11 1013:2 1014:22 1025:6, 11, 13 auspices 955:19, 23 996:10 author 1065:11, 15, 19 1066:24 1077:8, 13 authored 1075:17, 20 1076:8 authorities 959:9 960:18, 21 961:25 962:2, 20 1011:6 authority 945:10 995:5 authorized 956:25 962:11 AV 1060:15 avail[able] 933:13 available 997:22 1069:20 Avi 991:6, 11 1029:20 1057:2 1062:2, 4 aware 894:2 903:6 910:18 911:2, 6 913:24 914:7 915:21 928:14, 15, 17, 21, 22 929:3, 6, 10, 13, 17 932:9 934:20, 25 935:16 936:19 939:11 940:16	954:4 955:4 957:14 958:5 961:19 969:25 970:5 971:12 972:17 973:9 980:14, 18, 19 981:24 982:1, 2 985:7, 11, 15 996:4 997:15, 23 998:3, 6, 7 1006:15 1020:24 1021:1, 9 1022:11, 17 1027:3 1032:22, 24 1040:19 1042:8 1091:2 1100:5 awareness 926:7 < B > B.C 884:19, 20 889:20 999:5, 11 1055:1 1056:2, 7, 13 1058:3, 11 b4 932:24 1009:1 1010:2 back 899:21 905:7, 8 908:4 909:1 912:4, 13 915:11 919:19 922:14 924:8, 14 925:8 933:21 938:24 941:12 951:1 958:9 960:9 968:8, 9 976:25 981:16, 22 983:11 985:10, 21 989:22, 23 990:7, 9 996:24 998:15 1001:13 1006:24 1014:3 1016:1, 3 1021:18 1030:11 1034:20 1038:24 1057:9, 22 1061:20 1062:21, 23 1077:22 1081:3, 21, 24 1082:3, 5 1085:1, 9, 25	1086:8 1087:10 1088:23 1099:12 background 978:8 1033:10 backpack 1022:9 backups 903:20, 24 bad 893:8 1021:19 badly 925:23 balance 963:7 1040:13 baldly 895:11 bank 948:21 949:5 951:7 999:2 banking 949:13 951:3 bankrupt 933:9 934:24 bankruptcy 928:16 Barakett 918:14 922:7, 23 924:9, 19 933:19 Barbiero 887:11 barely 978:13 Based 924:22 929:11 1059:11, 13 1062:9 1091:1 1101:3, 9 basic 952:10, 14 basically 923:7 968:6 1009:19 basis 1008:2 1050:25 1074:19 1100:10, 11 Bates 958:23 970:23 batting 1054:5 BAUMANN 884:12 887:6 888:8 1051:13 1083:22 1084:1, 2, 7, 18 1086:11 1087:8, 20 1088:9, 14 1089:6, 9 1090:5 1092:20 1093:6, 15 1094:5, 16, 20 1095:10, 11 1096:1, 6, 19, 23,
---	--	---	---	---

25 1097:3, 9, 21
1098:6 1099:13
1100:1, 14, 24
1101:17, 25
1102:6, 16, 22
1103:7, 19, 24
Bay 1066:5
BC 886:18, 20
BC000447
1067:5
BC000679
1068:12
BC000919
1068:24 1070:3
1071:11 1082:12
BC001124
1075:11
BC00168
1065:10
BC002320
1054:22 1056:20
BC002322
1059:20
BC002476
1077:2
BC679/1 1019:4
bcc 991:18
bear 952:23
963:24 1070:1
bearing 940:15
beginning
912:11 934:1
941:12, 14
965:6 967:9
1078:15
behalf 918:14,
23 938:15
958:6 980:16
996:5 1036:3,
12, 21 1072:8, 10
behavior 892:20
behaviour
962:1, 19 963:4
968:4 1015:5
believe 905:24
907:20 920:14
955:9, 18 957:8
962:1 970:14
999:14, 22
1009:11
1027:15
1036:18 1041:7
1042:2 1061:12
1067:21 1075:1
1076:2 1083:13,

15 1085:7
1090:2, 24
1091:1 1092:12
believed 896:16
1017:14 1086:14
bell 1077:16
Ben 906:18
1024:21
1025:16 1026:2
1027:19
1034:24 1039:11
bench 1035:6
1092:14 1096:13
benefit 934:8
Beresh 1089:7
Beresh's
1088:11 1090:20
best 908:11
914:25 933:23
935:2, 7 936:24
937:6 938:1
952:24 953:16
955:7 958:4
978:12 994:7, 8
1021:15 1043:8
1046:5
better 902:7
936:15 945:21
951:4 952:12
956:5 1018:8
bias 971:19
975:24
biased 973:20
big 1103:16, 20
bigger 1032:21
bills 1093:19
bit 899:12
909:20 924:15
927:2 933:1
968:13 989:10
1032:9 1084:10
bits 1000:5
1012:10
BLACK 884:19,
20 886:20, 22
901:15 944:7, 9,
14 945:1, 5, 6, 8,
9 946:11, 19
947:6 952:1, 16
953:17, 24
955:6, 17
969:24 970:4, 7,
18, 20, 21 971:9
982:11, 25
991:3, 7 993:23

994:1, 14 995:4
998:20 999:24
1018:19
1020:15, 20
1021:9 1022:11,
17 1026:25
1054:18 1055:1
1058:2, 4, 22
1061:20 1064:5,
14 1065:4, 17
1073:25 1075:3,
20 1076:4
1080:8, 19
1086:17 1087:1,
2, 7 1088:3
blame 1038:16
blank 965:2, 5
967:7 968:3
Blatchford
1029:4, 9
1033:19 1034:2
blessings
967:14
blind-copied
991:10 992:6
blows 1004:5
blue 1009:14
board 1042:10
1043:5, 10
1044:24
1045:24 1049:12
body 956:5
BOLAND 884:8,
13 885:18
887:8 956:22
972:1 993:15
1037:11 1074:5,
14 1078:22, 25
1080:20
Boland's 899:15
bona 899:16
Bond-type
935:23
borrowers
1096:21 1097:24
Boswell 893:15
900:7 971:3
972:22 973:10
974:6 975:1, 8,
17 976:4, 16
1017:20 1080:4
Boswell's 973:5,
24 976:9
bottom 907:11,
12 923:25

928:4, 6 933:4
949:25 977:1
989:9 1002:9
1046:12
bounds 1094:4
bounties 982:1,
13
brand 1055:2
1058:4
Brandon 994:14,
21 997:14, 21
1022:9, 10, 12, 15
Brandon's 997:8
Breach 902:10
break 931:11
932:13 966:5,
11 1040:23
1041:3 1054:4,
7 1075:8
1077:21
breakdown
1041:5
Brian 914:21
918:19, 22
947:15 988:11
1002:5 1003:8,
10, 11 1025:23
1038:25 1039:4
1090:20 1102:8
Brian's 919:1
bribe 1070:21
1072:21
1073:17
1078:20 1080:9,
11, 16, 25
1081:10
bribed 1070:8
1071:13 1082:15
brief 892:16
1083:25
briefing 926:3
927:9, 13, 14
bring 971:14
972:21 973:2
983:16 1032:12,
16, 24 1059:17
1089:15 1091:9
1101:14
bringing
1003:23
broad 944:14,
21, 22, 23
945:16 963:11,
14 964:8, 18

1093:25
broader 985:12
broadly 1058:21
broad-ranging
965:11
brought 898:23
971:15 1033:15
1048:13
1085:25 1103:9
BRUCE 884:11,
13 886:15
887:1 1063:17
1064:7, 16
brush 944:22
btwn 989:19
business
903:15 979:23
980:21 1037:16,
20 1047:18, 24
1048:3 1049:3,
18, 23 1085:8
1091:23 1100:7
1102:24

< C >
c.o.b 884:8
885:22
Cadbury
1101:13, 21, 22
call 914:8, 11
924:25 950:6
951:3 987:13
1056:10
called 902:5
910:8 914:11
1041:24
1057:16 1066:6
CALLIDUS
884:5, 18 885:6
892:23 898:23
900:19 901:1, 5,
13 902:10
903:20, 23
933:16 938:16
941:9, 20 978:1
979:7, 12
1022:23
1043:20, 21, 23
1044:10, 11, 16,
24 1045:7, 17
1046:22
1047:18
1048:14
1049:11, 13, 15,
18, 23, 25

1050:5, 20 1051:1, 2, 18 1052:1, 19 1053:13 1058:13 1074:4, 15 1078:17, 24 1080:22 1086:3 1090:4 1091:15, 22, 23 1093:3 1094:12 1095:1, 5 1096:7 1097:25 1098:24 1102:24 1103:12 Callidus/Catalyst 1024:3 1063:18 1064:7, 16 Callidus- controlled 1093:1 calling 904:23 1019:21 calls 1028:7 1034:6 Camouflage 993:24 1018:20 1069:1 CANADA 884:8 885:23 1098:12 Canadian 1066:5 capacity 1073:7, 18 1085:7 CAPITAL 884:5, 8, 9, 13, 18 885:5, 7, 17 886:2 887:8, 10 957:9 998:21 1014:24 1043:21 1044:25 1049:15, 17 1070:10 1071:15 1082:17 capped 1010:22 caps 1003:18 1004:15 1062:17 1063:22 card 1024:9 cards 1085:8 career 1070:18, 19, 24 1071:21 1082:21 careful 1091:3	carefully 967:25 1014:9 CARLSON 885:15 936:10 carried 913:25 982:25 1049:22, 24 carry 1098:9 case 892:18 929:2 934:12 969:17 1014:7 1017:2 1030:11 1031:7 1038:10 1070:6 1093:24 1101:11 1103:11, 15 cases 890:17 962:25 1100:4, 6 cash 1047:1, 11 1048:22 CAT 959:18 CATALYST 884:5, 10, 18 885:5 886:5 892:4, 14 893:1 896:15 898:23 900:5 901:1, 13 908:21 917:18 918:2, 14, 15, 23 927:11, 12 928:9 933:15, 16 935:17 938:15 941:8, 20 948:5, 17 953:24 957:4, 9 958:7 960:20 966:23 970:2, 14, 25 974:16 977:18 978:1 979:8, 12 980:15 991:2, 24 995:7 998:21 1000:7 1011:20 1012:1 1013:12 1014:20, 24 1018:12 1022:20, 22 1035:15 1036:21 1037:9 1039:7 1040:10, 20 1044:10, 11 1045:7 1047:3, 13 1057:25 1058:7, 13	1070:10, 22 1071:15 1072:25 1073:19, 22 1074:1, 4, 7, 15 1078:18, 24 1080:22 1081:13 1082:17 1089:19 1090:3 Catalyst/N 971:19 Catalyst's 991:23 995:5 996:4 1036:3, 12 catcapital 936:25 categories 1062:13 1063:1 caused 900:22 caution 1025:23 caveat 1001:8 CBL 1046:20, 21, 25 1047:10 cell 912:20 913:17, 18, 25 1024:15 1027:10, 13, 17 1028:1, 2, 8 CEO 887:8 1044:16 certain 894:10 900:17 901:23 914:9 927:6 946:20 954:17 974:12 1018:6 1039:2 1041:17 1042:22 1055:2 1056:8 1058:4 1062:11, 25 1075:1 certainly 896:6 900:10 936:14 951:8 956:19 969:20, 25 970:5, 13, 15 972:17 984:16 985:5 995:2 1004:18 1013:9 1081:1 certainty 1064:3 CERTIFICATE 1105:1 Certified 1105:5 certify 1105:5	cetera 891:10 944:20 945:13, 14 1012:17 1053:25 1095:18 chain 905:6 909:12 1001:14 1035:21 1039:4 chains 904:17 920:19 Chairman 1014:24 1087:19 challenged 1096:14 chance 930:11 976:7 1004:5 1033:14, 17 changed 1042:25 changing 1102:10 character 990:19 1004:24 characterization 935:22 946:1 1017:23 characterize 940:20 988:1 characterized 950:19 characterizes 1018:5 characters 1005:16 charitable 1059:8 chart 1046:11 check 927:20 992:24 1066:14 checking 1066:10 checks 956:6 chicken 1077:17 Chief 1049:14 childish 1007:1 chock-a-block 934:16 choose 989:3 996:1 1059:11 1091:12 chooses 982:16 chose 946:21 988:24 1049:13 1100:9, 11 Christie 1029:9 1034:2	chronological 899:20 910:15 chronology 904:20 905:15 909:15 946:11 chunk 916:19 circles 1083:21 circular 1045:20 circumstances 895:10 963:12, 24 964:6 975:18 996:9 cited 1014:21 city 997:10 Claim 1074:12, 22, 24 1075:2, 7, 10 1077:22 1078:9, 11 1079:6, 7 1080:7, 11, 14 1081:2 1092:9 1097:24 1100:20 1102:2, 17 1103:9 clarification 902:2 961:4 1010:13 1038:12 1040:2 1064:11 1084:25 1102:20 clarify 969:4 999:25 clarifying 966:17 1020:12 CLARITYSPRING 884:11 886:11 1051:14 classes 1100:6 clause 1098:1, 11, 13 clear 919:3 938:21 941:17 942:24 952:16 954:15 974:6 976:19 1006:5 1025:1 1030:23, 24 1050:5 1052:24 1060:1 1074:8 1087:6 clearer 951:25 clearly 893:23 924:16 989:18 990:20 993:7
---	--	--	--	---

1003:2 1025:21 Clerk 887:11 client 912:22 913:3, 7 918:24 919:1 1017:14 1019:22 1070:5 client/clients 939:22 close 931:14 1001:21, 25 1059:6 clutter 1093:13 1097:17 CN 929:1, 2 930:14 code 1028:25 Cohodes 988:6 990:20 993:9 1006:15, 22 1012:13 1051:13 coincidence 1097:23 colleague 1096:1 colloquially 1008:13 colour 1018:8 colourful 986:21 column 1062:11, 17 1063:5 columnist 1086:25 combination 1047:23 come 899:21 912:7 922:14 925:17 970:3 981:18, 22 987:11 988:18 998:15 1002:6 1006:3 1008:11 1014:17 1023:13 1040:16 1054:1 1057:9, 22 1077:22 coming 1044:17 1052:23 commencing 890:1 comment 928:13 955:14 1086:14 commenting 975:25	comments 1004:2 COMMERCIAL 884:3 Commission 1050:22 Committee 1045:25 1046:3 common 1017:15, 19 communicate 936:21 communicated 991:13 1012:23 1018:5 communicating 914:14 communication 937:6 1001:24 1037:19 1091:25 communications 914:6 920:21 1008:18 1011:20 1015:2 1017:17 community 1070:25 1071:22 1079:23 1082:22 companies 1050:15 1087:12 1093:3 1099:2 company 902:5 903:4 929:11 932:1 957:6 998:22 1040:11 1049:22 1058:8 1072:6 1098:23, 24 1103:3, 8 1105:23 company's 1098:22 1099:14, 16 compare 1030:20 Compendium 889:17 890:11, 16 891:4, 17, 22 929:20, 22 930:10, 11 972:23, 25 compensate 1079:1	compensated 1073:10 1083:16 compensation 1072:19 1083:7 complaining 1011:13 complaint 964:2 1088:16 1089:3, 7, 11, 15 1094:9, 22 1095:6, 12 Complaints 1078:17 completed 1044:14 completely 924:4 925:1 935:25 982:15 994:4 1043:7 1094:3 1096:11 complex 1005:17 compliance 949:16 comprised 1015:15 computer 901:5 902:5, 6 903:25 904:4, 7 905:3 941:20 978:16 1035:9 1071:3 computers 903:19 1025:18 1040:25 concepts 948:8 952:22 995:25 996:18 concerning 893:3 concerns 1011:19 1013:14 conclude 1099:23 concluded 1008:6 conclusion 903:1 904:3, 6 924:24 976:10 1062:6 1098:17 1099:24 1100:12 conclusions 973:25 974:8 1097:18 conclusively 910:21	Concurrent 900:20 Conditions 1057:16, 18 conduct 893:4 930:18 944:7, 9, 15, 19, 21 946:7 947:12, 22 948:3, 15 954:7 982:15 1031:24 1032:10 1089:12 conducted 942:3 982:12 997:18 1020:21 conducting 953:25 955:11, 20, 24 1021:2, 9 1022:11 confidence 912:21 1100:21 confidential 952:19 964:2 974:9, 13 confidentiality 895:9 952:17 963:21 confirm 904:20 905:14 907:3 908:7 918:12 927:9 951:11 957:24 984:17 1002:8 1028:4 confirmation 957:21 977:10, 13 979:8, 9, 17 confirmed 905:19 906:15 936:19 confirming 905:19 906:10 908:15 909:19 confused 913:6 953:4 1010:18 confusing 905:7, 10 906:21 912:3, 12 924:15 conjunction 1090:22 connect 938:7 connected 993:15 connection 974:11 981:4	1010:9 1043:22 1096:17 connotation 1023:17 1080:25 consider 901:20 1090:6 1093:17 considerable 908:4 considered 1014:23 1090:16 considering 974:16 1091:4 consigned 952:25 consist 910:2 consistent 897:3 939:25 942:1, 6, 25 944:11, 18 950:4 991:12 1002:8, 14 1007:17 conspiracy 897:16, 21, 23, 24 962:15 1101:11 Conspirators 1078:16 constituted 979:13 constitutes 1044:3 constraints 909:5 Consulting 1043:22 contact 904:18 1007:23 1009:4, 12, 13 1024:9, 13 1027:12, 21 contained 1043:25 1044:22 1072:25 1075:3 1092:12 containing 1029:5 1034:8 Cont'd 888:5, 7, 9 889:2 890:5 1054:14 1084:8 contemporaneou s 904:9 969:6 1045:16 1046:2
---	---	---	--	--

<p>contemporaneou sly 984:18 994:2</p> <p>content 931:6 1026:10</p> <p>contents 916:10 984:20 1026:23 1045:8 1090:24 1091:1</p> <p>contesting 1080:14</p> <p>context 892:7, 9 894:4, 11 895:3 897:6 898:1, 25 901:19, 23 908:2 912:8, 13, 17 917:16 940:14 941:13 942:10 962:4, 13 968:10 972:20 974:14 976:2 978:22 981:7, 19 987:12 993:19 1001:2 1031:7 1032:1</p> <p>contingent 1056:10</p> <p>continue 960:7 1103:22</p> <p>Continued 884:22 890:7 891:14</p> <p>continues 1050:6</p> <p>continuing 932:18 933:4 992:23 1054:15</p> <p>contractor 954:18</p> <p>contrary 1029:24 1101:7</p> <p>contrast 978:14</p> <p>controlled 1093:3</p> <p>controlling 1093:18</p> <p>convenience 891:16</p> <p>Convenient 1008:21</p> <p>conversation 913:11 935:24 966:16 1002:24</p>	<p>conversation/dea lings 971:25</p> <p>conversations 981:21 1002:12 1003:22</p> <p>convince 1037:19</p> <p>coordinates 905:25 1034:13, 19, 25</p> <p>coordinator 997:3</p> <p>COPELAND 884:11</p> <p>copied 935:11 937:1 958:1 968:17 1059:23</p> <p>copies 891:5</p> <p>copy 900:10 905:2 917:22 923:6 948:22 957:16, 17 959:14 1021:15 1042:2, 3</p> <p>copying 889:22 917:21 938:9 1060:7</p> <p>corner 958:21 959:17 986:8 1061:13 1062:4</p> <p>corporate 1058:20 1090:4</p> <p>CORPORATION 884:5, 18 885:7 1043:21</p> <p>correct 890:14 893:8 894:24 895:7 896:1, 18, 19 902:13 903:7, 25 904:1 907:5, 6, 9 908:6 910:9, 20 912:1 913:5, 19, 20 914:16, 18 915:3, 4 918:11, 17 920:7 925:10 926:22 928:10 938:13 949:14, 23 950:6, 20 953:22 954:1, 2 955:6, 9, 20, 21 956:17 957:4, 15 958:7 960:1, 19 961:13</p>	<p>962:3, 21 965:7 966:25 967:1, 17 968:20 970:7, 8 978:2 980:1 981:1 983:6 984:22 994:18, 19 995:9 998:9, 22, 23 1000:25 1003:21 1006:18 1013:3 1014:15 1015:21 1018:20 1021:4, 11 1022:20 1026:16 1027:21 1028:9, 10 1031:4 1032:13, 25 1033:6 1034:2 1035:24 1036:12 1042:16 1044:14, 15 1046:4, 23 1048:24 1049:15, 16 1050:10, 12 1051:10, 14, 18 1052:1, 20, 23 1056:21 1057:25 1058:11 1060:3 1088:20 1090:25 1095:3 1101:1 1105:15</p> <p>corrected 902:18</p> <p>correcting 985:16</p> <p>correctly 901:16 965:22 1040:9</p> <p>correspond 1063:5</p> <p>correspondence 1014:15 1017:10</p> <p>correspondent 999:2</p> <p>corresponding 913:4 999:6</p> <p>corresponds 1064:1</p> <p>corroborated 898:10</p>	<p>Counsel 887:9 888:13 905:18 906:14 907:8, 25 909:2 911:4 913:10 946:8 947:13 968:16 976:8, 23 1045:1, 5 1054:18 1090:22</p> <p>Counterclaim 884:16, 21 885:4, 9, 16 886:18 887:1 892:6 899:1</p> <p>counterparts 939:5</p> <p>countries 997:6 1055:2 1058:4</p> <p>country 1093:1</p> <p>couple 967:23 994:11 1015:14 1078:10 1098:19</p> <p>course 893:23 894:21 907:23 936:1 1005:21 1072:24 1073:11</p> <p>Court 884:1, 2 922:11 928:7, 10 929:11 930:3, 7 931:20 932:6 950:21 961:3 974:24 1010:12 1011:23 1016:15, 22 1017:8, 9 1027:25 1028:21 1030:5, 11 1031:12, 13, 23 1032:2, 13, 16, 19, 22, 24 1033:4, 11, 16 1038:11 1040:1 1064:10 1084:24 1087:16 1092:13 1102:19</p> <p>courts 930:7 1031:25 1032:5, 18 1095:24 1096:16</p> <p>Court's 1017:21</p> <p>Court- supervised 1091:19, 20</p>	<p>cover 994:10 997:2 1024:3 1063:12</p> <p>covered 1032:23 1033:23</p> <p>covert 1021:10</p> <p>crap 1096:19</p> <p>crazy 989:16 990:3</p> <p>create 1037:8 1048:2 1049:2</p> <p>credence 1097:15</p> <p>credibility 923:23 924:5 925:2, 9, 14 932:23 933:10 934:25 1004:12, 19, 20 1005:7, 11, 12, 24, 25 1007:15 1008:7 1011:14 1013:14 1014:12, 23 1016:15, 22, 23, 24 1017:7, 12 1018:4</p> <p>credible 896:17 1002:20 1003:4, 8 1013:22</p> <p>credit 1094:7 1095:18 1100:10, 11</p> <p>creditors 1100:6</p> <p>criminality 977:7, 19, 23 979:7</p> <p>Critical 1078:17</p> <p>criticizing 899:14</p> <p>Cross- Examination 884:22 888:4, 6, 8 890:4, 7 915:13 921:13 934:2 1054:13, 16 1084:7 1086:2</p> <p>cross-talk 1102:20</p> <p>CRR 887:18 1105:4, 24</p> <p>CSR 887:18 1105:5, 24</p>
--	--	--	---	---

CUBE 884:19, 20 886:20, 22 901:15 944:7 945:1, 5, 6, 8, 9 946:12, 19 947:6 952:1, 16 953:17, 25 955:6, 18 969:24 970:4, 7, 18, 20 971:9 982:11, 25 991:3, 7 993:23 994:1, 14 995:4 998:20 999:24 1018:19 1020:15, 20 1021:9 1022:11, 17 1026:25 1054:18 1055:2 1058:2, 4, 22 1061:20 1064:5, 14 1065:4, 17 1073:25 1075:3, 20 1076:4 1080:8, 19 1086:18 1087:1, 2, 7
Cube's 944:9, 15 970:22
current 939:21 942:3 977:13 979:10, 17 992:23 1072:6
Currently 978:3 1054:22 1083:6
customers 1098:23 1099:15
cut 977:16 1030:18 1034:9
CV-17-587463-00CL 884:1
cyber 901:6 902:10 904:8

< D >
d/b/a 884:19, 20 886:19, 21
Dalton 1041:24 1043:19, 24 1044:7, 11 1045:8 1048:21 1049:6, 13 1050:14 1100:15 1103:25

Dalton's 1044:1 1045:5 1048:12, 14 1049:5
damage 1005:20 1079:22
damaged 925:23 1004:6 1005:8, 11
damaging 1070:23 1071:20 1081:6, 17 1082:21
Danny 893:24 894:6, 12 895:25 896:10 907:8 913:3, 12, 15 919:20 920:15 921:1, 3, 7 987:11 989:4, 11 1003:19, 20, 22 1004:6, 24, 25 1005:14 1006:17 1007:20, 24 1008:1, 11 1013:15, 22 1014:11, 17 1016:16 1017:16, 17
danny@harringtonglobal 935:10
Darla 1085:23 1087:21 1089:6 1090:13 1094:7
DARRYL 884:12
DARYLL 887:4
data 903:14, 17
date 902:15, 17 905:22 908:6 941:5, 12 952:1 989:25 1010:11 1013:5 1019:7 1025:11 1034:6 1036:19 1040:10 1043:6 1066:25 1079:3 1100:19
dated 889:18, 22 902:14 917:23 1040:8 1043:24 1056:1 1059:23 1060:4, 8 1105:18

dates 952:7, 8, 23 953:9 1009:7 1069:18
DAVID 885:2
David's 1071:2
Davies 887:12, 14, 16
day 884:24 893:13 925:20 935:25 936:11 1001:20 1002:6 1095:10 1105:18
DE 884:18 885:10 990:25 997:11
dead 1009:23
deal 971:22 1080:1 1082:6
deal/move 972:2
dealing 955:3 970:20 1003:5 1005:17 1007:21, 25
dealings 924:22 1063:16 1064:6, 15
dealt 1008:1 1080:3
Deana 887:18 922:10 1099:11 1105:4, 24
dearly 989:17
debate 936:12 942:21 974:20 975:16 999:25 1052:6 1053:8, 19 1095:17 1102:12 1103:16
debating 946:1
debrief 922:25
debriefed 909:24
debt 1046:19
decades 1070:15
December 884:23 892:1 894:11 898:24 934:3 1019:9
decide 945:10 964:20 1015:6 1101:14
decided 1023:7, 18 1024:2 1035:10

decision 930:15 971:23 972:22, 25 973:5, 9, 18 1044:5 1059:1, 2, 11 1089:18 1090:4
decisions 893:15 930:3, 7 1023:3
declared 933:8 934:24
deemed 1095:13
deep 1048:25
deeper 1049:2
defend 899:4
Defendant 886:14, 24
Defendants 884:13, 21 885:3, 8, 14, 20 886:10, 17 897:15, 17, 21
defensive 950:6, 20
deferring 992:10
definitive 912:15
degree 956:13 1005:19
delivered 891:9 1041:20
delivering 958:13 959:8 960:18 961:24
department 1103:3
depend 895:8 979:21
dependent 1056:10
depends 963:11 980:7 1099:22
DEPONENT 897:7 908:11 911:6 917:12 923:15 927:2, 17 950:10 958:17 961:5 982:23 987:2, 6, 10 991:16 997:17 998:12 1010:8 1012:20 1015:24 1016:4 1019:6 1021:16 1023:25 1028:2 1038:13

1041:11 1056:23 1062:5 1069:5 1073:23 1079:10 1081:19, 22 1083:2, 23, 25 1084:17 1086:7 1087:18 1099:10, 21 1101:22
depraved 973:20
Derek 910:20
Derrick 894:7 896:12 910:8, 24 918:2 925:10 931:2 932:7 983:21 988:25 1000:24 1006:17 1007:7 1016:23
describe 894:20 1065:19
described 891:19 900:18 936:11 949:23 993:22 1020:16
describes 900:18 950:1 968:17 994:15 1034:1
describing 900:16 951:16 997:13
DESCRIPTION 889:15 1016:13
desk 1040:17
destroyed 1098:25 1099:16
detail 973:12 1011:11, 16
details 932:5 1007:24 1041:15
determination 1089:24
determined 1102:2
determining 1102:7 1103:20
developing 997:5
deviate 1012:22
devices 1040:25
DEVIN 886:24
dialled 915:5
dictate 1062:3

<p>difference 1030:16</p> <p>different 897:10 906:22 909:9 927:19, 21 929:20 934:20 935:12 938:20 943:1 944:15, 16 945:21 948:8 951:21 983:9 985:17 996:18 1004:24 1005:16 1015:19 1016:14 1019:11 1023:14, 15 1053:5 1067:7, 9 1069:18 1071:23 1080:25</p> <p>differential 906:6</p> <p>difficult 916:9</p> <p>difficulties 1103:12</p> <p>difficultly 1001:9</p> <p>difficulty 916:23</p> <p>dig 1048:25 1049:1 1086:12</p> <p>digital 1027:11, 20</p> <p>digits 959:20 960:3</p> <p>dilemma 903:21</p> <p>diligence 1072:5, 15 1083:6, 17</p> <p>DIMITRI 886:14 1071:1</p> <p>dinner 1027:4</p> <p>DiPucchio 889:21 907:13 968:15 1050:24 1055:11 1059:22 1060:7 1062:12, 20 1090:1</p> <p>DiPucchio's 1065:7</p> <p>directly 912:23 913:8 927:12 928:24 931:3 940:15 978:9 1038:5 1072:13</p>	<p>Directors 1043:20 1044:24 1045:15, 17 1049:11, 12</p> <p>disagree 904:2 972:9, 11 975:3, 8 979:15 1012:3 1029:15 1030:19 1049:4 1080:24</p> <p>disagreed 984:20</p> <p>disagreeing 899:14 904:13 1045:17</p> <p>disappointing 923:2</p> <p>disastrous 1002:13, 17 1003:1</p> <p>disavow 944:5, 9 982:15</p> <p>disclaimer 1043:16 1044:6 1045:3</p> <p>disclose 928:25 931:4 1011:18 1016:15</p> <p>disclosed 1013:13 1014:20, 25 1016:21, 25</p> <p>disclosing 1017:7</p> <p>disclosure 964:7 1017:10 1096:2</p> <p>discover 960:25</p> <p>discovered 892:19 983:5</p> <p>discovering 985:17 1012:12</p> <p>discovery 928:25 931:5, 8</p> <p>discredited 1086:22</p> <p>discretion 1089:20 1094:13 1096:9 1097:25 1098:1, 11, 13</p> <p>discuss 893:24 999:20, 21</p>	<p>discussed 890:9 967:23</p> <p>discussing 892:10 1059:21</p> <p>Discussion 922:15 950:23 966:12 1038:21 1054:10 1071:7 1084:4 1104:6</p> <p>discussions 965:12 1084:12</p> <p>dishonest 926:21</p> <p>disparaging 1074:7, 15</p> <p>disparate 954:20</p> <p>dispute 941:9</p> <p>disseminated 932:3</p> <p>disseminating 929:12</p> <p>distinction 946:19 1053:14 1072:18</p> <p>distinguish 1013:22</p> <p>divine 1073:8</p> <p>Divisional 1017:9</p> <p>document 900:5 912:19 917:15 921:10, 11, 13 929:20 938:20, 23 948:25 957:17 958:18 960:5 968:23 969:1, 8, 11 970:1, 6, 10, 14, 15 971:13 972:11, 17 977:5 978:12 981:25 985:8, 11, 24 986:2 989:7 991:1 992:7, 13, 25 993:25 994:5, 9 995:2 997:1 1002:19 1006:3 1018:22 1019:2, 4, 11, 17, 22, 25 1020:2, 5 1031:10 1039:17, 23 1040:4 1041:12 1042:13, 22</p>	<p>1043:4, 6, 9 1044:23 1046:7 1055:3, 14, 19 1057:15 1059:18, 20 1061:14, 25 1062:1, 2 1065:9, 12, 15 1066:18, 22 1067:1, 4, 6, 7, 9, 12, 14, 19, 22 1068:1, 10, 12, 14, 17, 19, 24, 25 1069:1, 9, 14, 17, 19, 21, 22, 25 1071:11 1073:22 1074:1, 22 1075:3, 14 1076:18 1077:2, 4, 5, 6, 19 1079:4 1080:8, 12, 20 1081:5, 17 1082:6, 10, 12 1083:4 1086:24 1087:3 1088:7, 11, 24 1089:2, 4 1090:12 1094:15, 17, 21, 24 1095:8, 14, 22 1101:3</p> <p>documentary 924:13 928:25 931:5, 7 981:13 987:12 988:19 1006:9, 13 1012:10 1014:1</p> <p>documentation 908:9 1018:7 1053:25</p> <p>documents 889:17 890:11, 17, 19, 21, 23, 25 891:3, 8, 9, 18, 23 893:14, 24 894:4, 13 908:17, 19 909:6 929:12 930:3, 8 934:16 938:6, 14 940:14 942:11 943:5 969:17 970:19, 20 985:15 992:11, 15 1012:5</p>	<p>1030:21 1039:18, 20 1041:8, 17, 19, 20, 21 1052:13 1054:17, 20 1065:18 1066:11 1077:14 1080:2</p> <p>dogs 1011:1 1012:2 1013:12</p> <p>doing 893:10 899:20 924:7 941:18 952:4 960:7 963:22 987:5 1073:2 1083:6, 16 1086:15 1089:22 1093:21 1101:9</p> <p>dollars 999:17 1092:24</p> <p>double 1003:5</p> <p>double-check 908:7</p> <p>Dow 897:22</p> <p>downhill 1007:20</p> <p>download 922:3</p> <p>dozen 1001:20</p> <p>draft 900:10 1020:13 1042:1, 3, 8 1043:6</p> <p>drafted 1045:4</p> <p>drafting 1083:11</p> <p>draw 921:22 1057:10</p> <p>drawing 1053:14</p> <p>drawings 1007:2</p> <p>driving 967:12, 14</p> <p>dubious 933:7, 20 934:23</p> <p>duck 1071:25</p> <p>due 936:1 1046:18 1072:5, 15 1083:6, 16 1102:20</p> <p>dug 928:9</p> <p>DUHAMEL 884:12</p> <p>duration 1085:18</p> <p>< E > EA 917:19</p>
--	--	--	--	---

<p>earlier 908:21 950:4 975:22 999:14 1054:23 1055:5 1081:5 1097:16 early 941:19 961:20 1025:6 earn 1048:5 earning 1047:20 ease 890:18 easier 960:4 985:6 1042:21 1099:4, 8 easy 953:2 1010:18 echoing 952:10 economic 1047:20 economy 1093:17, 20 Edmonton 1088:12 education 997:6 effect 939:4 968:7 997:22 1032:6 1048:17, 18 1072:2 efforts 992:14 Efraim 1024:21 1027:19 1034:24 1039:11 Efraim's 906:19 1025:16 1026:2 element 1001:22 else's 1028:23 1103:1 Email 889:21 895:21 896:11 898:4, 8, 9 899:4 902:3, 4, 20 904:17, 21, 22 905:6, 15, 22 906:22 909:12 913:7 917:16 920:19 935:9, 10, 12, 17, 23 936:1, 4, 13, 21, 22 937:2, 10 938:2 968:13, 19 970:16 984:18 988:5, 11 990:23 991:5, 18 992:1 993:4, 11 1006:14</p>	<p>1007:22 1009:13 1012:13 1013:7 1015:10, 13, 20 1016:13 1024:7 1035:21, 22 1037:5 1038:20, 25 1039:3 1051:8 1055:11 1059:22 1060:2, 6, 16 1061:2, 14 1062:11, 20 1063:5, 13 1065:7 1087:23 1102:8 emails 907:23 912:4 992:5 1006:22 1100:18 EMMANUEL 884:19 emotion 927:7 1004:17 employed 1035:24 employees 901:1 942:3 encrypt 903:13 encrypted 903:19 endeavour 908:10 1078:16 ended 908:5 1080:19 Enforcement 1085:3 engage 944:7 engaged 980:16 1078:22 Engagement 889:18 1039:2 1054:25 1055:25 1056:6 1061:6, 11 1062:24 1063:7 1064:2 1065:5 Engagement.pdf 938:10 English 1030:25 enormous 1011:4 ensure 956:13 982:24 enters 932:24 entire 930:11 976:1 1049:12</p>	<p>entirely 920:24 1059:12 entitled 901:22 964:15 1068:25 1097:2, 6, 7 entity 1050:2 1066:6 equate 1052:11 equating 996:16 equipment 939:20 equity 1079:15, 18 erase 991:25 errors 1001:6 Esco 1083:19 Esq 885:2, 3, 4, 14, 15, 20 886:10, 14, 15, 17, 24 essentially 899:14 902:6 923:21 949:5 961:12, 16 1049:17 establish 924:13 established 986:11 eve 1042:9 event 971:10 1052:13 1065:24 1076:7 1088:4, 17 1089:16 1090:8 events 900:17, 21 901:24 933:20 969:6 988:8 1018:7 1033:22 Eventually 1041:14 everybody 952:8 953:3 everybody's 1102:3 evidence 891:14 896:7 899:16 925:7 934:3, 6 940:4 941:8 960:24 961:25 962:18 963:4 971:14 972:16, 24 975:24 976:8 977:6 979:1, 7,</p>	<p>24 980:16 981:13, 18, 19 988:19 1006:13 1008:12 1009:3 1012:11 1014:7 1015:5 1029:24 1032:3, 9 1045:16 1062:14, 16 1063:16, 22 1064:6, 15 1065:6 1073:14 1100:21 1101:6, 10 1102:3 Evidence/Informa tion 968:18 Evidence/reason s 971:18 Evidently 1065:15 evolution 942:12 evolved 942:25 962:14 1009:19 1025:20 1076:5 evolving 1006:25 exact 1013:5 exactly 894:14 919:22 939:7 960:5 964:20 985:20 987:4 1013:24 examination 890:12 891:4, 11 893:11, 18 897:2 1015:9 1050:20 1094:4 1097:13 1105:12 examinations 893:12 examine 901:20 1032:8 example 893:12 928:16 941:19 963:3 981:9 988:4, 5, 8, 25 994:13 1020:19 1077:17 examples 998:16 excerpt 892:1, 12 900:2 excerpted 890:18 891:5 898:8</p>	<p>excerpts 1026:23 1029:5 exchange 904:22 911:17 920:4, 5 921:2 922:19 923:14 932:19 935:9 937:23 958:10 1029:20 1031:4 1033:24 exchanges 921:24 1013:8 exclamation 1003:17 1004:16 exclusive 950:8, 9 ex-cop 919:3 excoriated 1017:11 excoriating 1014:11 Excuse 981:4 excuses 926:21 execute 938:10 Executive 1049:14 exercised 931:23 exhaustive 1011:11, 16 Exhibit 890:10 891:22 973:1 1055:22, 25 1059:25 1060:6 1094:18 1095:9 EXHIBITS 889:13 1007:5 exist 981:15 existed 964:6 existence 1032:7 1078:16 existing 979:12 1050:6 ex-Mossad 1021:2 expand 1046:8 expanded 941:11, 24 expect 953:7, 8 1064:25 expected 985:21 expecting 926:5, 18</p>
---	--	---	---	---

<p>experience 945:13 1047:17 1070:15</p> <p>expert 902:7 904:7 1058:23</p> <p>expertise 945:12 1066:2</p> <p>explain 942:11 1086:3 1089:16</p> <p>explaining 898:2</p> <p>explanation 926:19 964:15, 16 992:12</p> <p>expressed 1045:23 1049:5</p> <p>expressing 924:11 926:25</p> <p>expressly 945:8</p> <p>extend 941:7 956:21 1100:9</p> <p>extended 955:11, 17 985:13</p> <p>extent 891:8 896:23 897:2 1005:22 1006:8 1018:6 1032:3 1048:2 1101:9</p> <p>external 968:15</p> <p>extracts 1026:19</p> <p>extra-judicial 1032:18</p> <p>extra-legal 1031:13</p> <p>eye 891:1</p> <p>< F ></p> <p>FACE 884:8, 13 885:17 887:8, 10 892:5, 17, 23 899:1 942:4 946:9 947:14 948:4, 5, 16, 17 956:22 971:22, 25 977:2, 6, 19 978:2 979:18, 19 980:1, 17 993:22 994:14 999:9 1012:7 1017:8, 18 1020:14, 15, 22 1021:3 1037:10, 17, 21 1038:6 1050:21 1051:3, 13 1063:17</p>	<p>1064:6, 15 1072:9 1073:11 1074:5, 13 1077:11 1078:22, 25 1080:20 1083:14</p> <p>Face's 980:4, 21 1038:1</p> <p>face-to-face 908:18, 21 909:8</p> <p>fact 891:3 895:25 905:13 906:9, 11 909:3 913:3 927:8 929:5 933:3, 15 966:8 971:15 979:13 982:18 994:8 1002:18 1006:12 1023:12 1032:24 1049:12 1052:9 1080:16 1095:12 1097:23</p> <p>factor 1102:7, 10 1103:20</p> <p>facts 892:17 895:16 898:19 900:15 935:1 979:21 980:3 981:14 988:8 990:15 1003:13 1007:2 1032:22 1083:3 1091:2</p> <p>factual 901:19, 23</p> <p>faint 972:10</p> <p>fair 891:7 894:8 899:17 902:7 916:12 919:13 921:7 925:2 940:8, 17 950:2 953:20 954:11, 16, 19, 21 957:18 971:5, 8 973:10 994:6 1001:23 1002:23 1003:18 1012:21 1031:8 1038:3 1058:22 1072:22 1085:17</p> <p>fairly 894:4 1043:4</p>	<p>fairness 893:25 995:3</p> <p>faith 1093:21 1100:20</p> <p>Faiz 965:17 1084:14</p> <p>F-a-i-z 965:24</p> <p>falling 986:18</p> <p>Falls 1088:3</p> <p>false 963:17 1026:25 1027:1 1070:9, 22 1071:14 1073:1, 5, 18 1074:7, 14 1082:16</p> <p>familiar 900:15 948:22 952:24 1040:15 1077:6</p> <p>families 900:25</p> <p>family 900:24 931:23 995:1, 6</p> <p>farmer 1077:17</p> <p>fault 1103:1, 13</p> <p>favor 1003:9, 14</p> <p>fear 900:23</p> <p>February 1041:9, 18 1042:11</p> <p>fed 990:7</p> <p>feel 1094:2</p> <p>fellow 1022:15</p> <p>female 997:2</p> <p>fides 899:17</p> <p>fiduciary 895:5</p> <p>field 1058:24 1059:14</p> <p>fight 968:8, 9</p> <p>figure 960:4 980:20 1007:3</p> <p>File 884:1 903:18 917:23 933:12, 15, 18, 19, 24 934:7, 11, 15 1006:24 1028:21 1092:9, 10</p> <p>filed 928:16 974:10</p> <p>filing 1100:19 1102:2</p> <p>filled 921:3</p> <p>final 900:10 1019:22 1042:3, 7, 17 1043:9</p>	<p>finally 1041:9</p> <p>financial 1040:7</p> <p>financials 1037:22 1038:1</p> <p>find 905:6 906:21 912:2, 3 915:18 928:20 940:11 957:21 983:3 1003:4 1006:8 1013:21 1021:17 1033:8 1034:14 1075:8 1077:21 1101:12</p> <p>finding 1015:2, 4 1064:15</p> <p>findings 929:7 974:7 1069:20</p> <p>fine 894:16 897:9, 13 898:15 902:19 911:11 912:6, 14 915:17 920:2 927:5, 8 930:20 937:17, 21 942:16 950:17 960:15 964:22, 23 972:14 975:11 976:21 984:14 990:4 992:12 995:13, 19, 22 1001:12 1008:14 1010:1, 4, 20 1017:6 1020:3 1043:2, 11, 14 1053:22 1055:24</p> <p>finish 943:17 987:23 1064:18 1067:4 1102:23</p> <p>finished 943:20 1064:22</p> <p>finishing 985:24</p> <p>fired 1044:11</p> <p>firm 958:6 1058:9 1059:11 1079:15, 18 1093:18</p> <p>firms 1058:19, 24</p> <p>fixed 1056:8</p> <p>flag 1001:4</p> <p>flow 1047:1, 11 1048:22 1088:10</p>	<p>focussing 1080:8</p> <p>follow 923:10 959:17 998:25</p> <p>following 888:11, 17, 23 889:6 899:10 917:1 971:3 997:4 1001:4 1044:9 1045:6 1056:11</p> <p>follows 973:5</p> <p>follow-up 893:11 996:16</p> <p>footnotes 1076:16</p> <p>Force 961:15 1085:6</p> <p>forcing 989:23</p> <p>foregoing 1105:6, 14</p> <p>Forensics 902:6</p> <p>forged 932:2</p> <p>forget 940:20 978:17 979:1 1006:21 1072:5</p> <p>forging 929:12</p> <p>form 938:3 942:13 943:20 954:23 963:21 968:20 996:17 1047:20 1074:24 1093:10</p> <p>former 942:3 946:8 947:13</p> <p>forth 905:7, 8 908:4 909:2 912:4, 13 919:19 1105:8</p> <p>fortress 993:7, 16</p> <p>forward 902:23 903:9 916:15 975:14 981:11 987:15 991:11 1003:23 1005:15, 23 1012:21 1045:21 1091:9</p> <p>forwarded 991:6</p> <p>fought 1017:9</p> <p>found 904:7 905:1, 10 912:11 923:1</p>
---	---	---	---	--

962:10 1013:22 1074:17 four-day 893:18 frame 953:5 954:3, 4 956:3 967:19 1009:18, 21 1012:9 1013:19 frames 906:22 1010:19 Frank 942:5 971:17 974:8 1021:8, 10, 25 frankly 916:12 943:6 951:19 983:10 990:18 Fraser 965:14 966:2 1084:16, 17 fraud 1090:17 1091:7 fraudster 1048:9, 15 FREEDMAN 886:15 friend 1059:6 friendship 997:10 FRIGATE 884:9 885:24 FrontWell 1044:16 1049:15, 17, 21 1050:11 frozen 922:5, 9, 12 950:21 1071:3 frustrated 1008:11 frustration 990:7, 17 1002:17 Fuck 1003:15 1004:12 fulfil 982:13 full 912:8 934:16 974:19 986:17 1026:20 fully 942:11 976:3 function 1041:5 functioning 1033:13 FUND 884:10 886:4, 6 892:14	fundamental 1080:18 fundamentals 1102:24 funding 1046:19 1094:12 Funds 893:5 957:4, 7, 24 998:20 999:23 1096:8 1097:25 1103:22 furious 989:20 future 939:21 998:16 fwd 961:10 967:12, 14 < G > GABRIEL 884:18 Gadi 906:18 1024:20, 21, 25 1025:2, 3 1034:13, 24, 25 1036:6, 23 gained 943:6 game 910:23 Gariel 885:10 garner 981:12 gather 981:9 gathering 940:4 941:8 geared 903:2 General 887:9 895:4 946:8 947:13 958:4 963:8, 12 979:3 983:23 985:4 986:23 1001:23 1031:9 1063:15 generally 980:6, 19 985:2 generated 1066:18, 25 1069:1, 21 1075:18 1076:11 1077:14 generating 1049:19 genesis 898:2 gentleman 895:25 966:19 GEORGE 884:12 GERALD 884:12 gild 1015:17	give 892:9 912:8, 17 917:9, 15 925:4, 15 938:6 964:11, 15, 16 972:20 974:24 976:6, 11 982:14 988:3 995:2, 20 1023:14 1029:25 1033:19 1071:5 1077:25 1092:3 1096:19 1097:15 1100:15 given 894:3 933:16 949:18 971:13 972:16 1010:25 1023:13 1026:21 1033:14, 17 1034:13 1043:9 1053:17, 24 gives 934:14 giving 944:4 964:13 1024:4 GLASSMAN 884:18 885:12 889:21 900:7, 16 904:23 906:13 909:13 911:12 912:20 913:17, 24 914:7 920:6 921:3 922:2, 24 923:25 924:7 925:19 926:20 927:10 928:5 929:17 932:20, 21 933:16, 25 934:8 935:4, 11, 12, 20 936:1, 14, 22 937:15, 24 945:8 957:5 958:11 961:24 965:1 966:24 967:13 968:14 971:20 986:13, 16 989:15 990:24 991:10, 13 1001:19, 24 1002:4, 15 1005:5, 21 1007:12 1008:6, 19, 20 1009:6	1011:12 1014:11, 14, 24 1016:17 1017:11 1024:8, 11, 19 1027:19 1055:12 1059:23 1060:7, 17, 21 1062:18 1063:21 1064:25 1065:2 1087:11 1100:20 Glassman's 900:2, 11 913:18 922:21 923:22 926:25 934:13 940:7 986:21 991:4 992:5 1001:14 1002:9 1004:19 1005:10 1007:18 1012:1 1089:21 1100:18 1102:8 glean 1065:14 Global 889:19 901:14 938:6 940:25 946:6, 7 947:11, 12, 21, 22 948:2, 3, 14, 15 949:3 953:12 954:7 957:14 958:7 999:16, 23 1000:7 1024:24 1036:2, 6 1054:25 1056:2, 7 1058:1 1059:4 Global's 954:6 Globe 931:18 1022:18, 21 1023:1, 2, 3, 6, 17 1024:2 Globe's 931:24 goal 980:25 go-forward 1008:2 going-private 1045:21 Good 890:6 893:8 894:23 895:7 904:15 951:1 980:2, 3 1085:22 1093:21 Gotta 986:18	government 931:24 GP 884:10 886:4, 6 granted 931:2 gray 920:7 great 891:20 989:18 1085:21 green 920:6 923:7 1029:22 Greenspan 914:21 917:21 938:3, 8, 15 947:16 948:20 949:4, 11, 20 950:2 951:6, 12, 14, 16 955:10 957:13, 19 976:3 982:24 988:11 1002:6 1003:10 1025:24 1039:1, 4 1058:9, 14, 15 Greenspan's 907:17 918:19 940:7 958:6 1000:24 1002:7 1102:8 Greenwich 906:2 Greg 887:8 956:22 1037:11 GREGORY 884:8, 13 885:18 ground 893:16 grounds 982:21 1092:18 groundwork 899:23 GROUP 884:5, 8, 18, 20 885:5, 22 901:15 957:9 998:21 1035:24 1036:2, 12, 22 1070:10 1071:15 1082:17 1085:4 Group's 1037:8 Grout 972:3 guarantee 1098:4, 7 guards 956:5 guess 929:25 977:15 1020:14 1036:23
--	--	--	--	---

1058:24 1066:11, 12 1100:15 guessing 949:15 1022:7 1068:7 guide 888:12 Guy 893:24 894:6, 12 895:25 896:10 907:8 908:22 910:3, 5, 7, 19 911:7 913:3, 12, 15 919:20 920:7, 10, 16 921:1, 3, 7 923:2 924:15 926:13, 14, 22 932:20 935:9 937:24 986:14 989:4, 11 991:19 1004:6, 20 1005:22 1006:1, 17 1007:13 1008:1, 18 1010:6 1011:12, 20 1013:15, 22 1014:11, 13, 17 1016:16, 24 1017:11, 16, 17 1100:18 1101:6 guys 923:1 925:21 926:1, 15 1101:14, 19 Guy's 926:19 928:7 1005:11 1008:6 1011:14 < H > hackers 903:25 904:4 hairs 1053:8 half 988:13 1085:18 hand 908:22 921:15 946:20, 22 958:18 handed 1008:8 handle 992:11 hands 1091:11 handwriting 914:18, 23 968:24 969:21 1055:12 1060:24	handwritten 969:1 970:1 985:9 Hang 977:23 1046:10 Hanna 893:25 894:6 895:21, 24 898:4, 8, 9 899:3, 22 904:10, 18, 23 909:13, 21 910:4, 11, 18 911:14 912:19 913:1, 15 915:2 919:20 920:22 1008:25 1009:13 1010:7, 8 1013:14, 21 1015:4, 10, 20 1016:13, 16 1017:17 Hanna's 899:16 934:3, 6 happen 901:21 happened 900:17, 22 906:11 910:17 911:18, 25 953:10 954:5 957:15 964:20 968:22 982:11 983:2 998:8 1017:12, 13 1057:25 1062:12 happening 906:11 921:24 925:9 961:20 962:20 998:8 hard 905:2 915:18 923:6 925:7 959:14 968:9 1000:6 1008:12 1046:8 harm 981:1 harmed 1005:24 1008:7 harmful 979:19 Hashanah 1026:7 head 906:6 966:20 1050:15 1061:23 1065:21 heading 1063:14 1078:15 healthy 987:13	hear 922:8, 10, 11 1010:9 heard 922:9 924:8 1026:18, 19 heated 927:3 Hebrew 1029:16 1031:1 held 1016:16 1083:5 Helicopter 1039:7 help 928:2 933:17 959:13, 17 981:14 993:9 997:9 1008:15 1025:17, 20 1047:17 helped 949:10 981:10 988:7 1006:3 1090:21 helpful 892:18 895:16, 20 902:1 988:4, 6, 16 990:21 1006:6 helping 964:4 967:15 hesitating 956:1 hey 1103:21 highlight 950:15 highlighted 890:19 891:1, 5 902:25 903:11 904:22 911:20 922:19 926:12 930:25 939:16 961:8 1043:16 1046:15 highlighting 921:21 923:7 highlights 1026:21 highly 904:7 1070:23 1071:20 1100:25 hire 1059:1 hired 956:4 1074:25 1079:16, 19 1081:11 history 926:4, 15 974:21 976:2 hit 1086:19	Hold 945:3 951:20, 25 1015:12 1073:20 1097:1 Holdings 889:19 1054:25 1056:2, 7 1058:1, 2 1059:4 Holmes 930:15 Homicide 919:6 honest 1104:1 Honour 974:7 hope 1025:24 1033:3 1062:14 hoped 1030:3 hotel 1025:7 hour 1085:19, 20, 21 hours 905:25 988:14 housed 961:18 human 1075:24 1076:8 Humphrey 957:13 hundred 1050:13 hurt 1007:14 hyperbole 1001:22 1004:18 hypothetical 895:2 982:7, 10 < I > i.e 906:23 957:9 988:23 1013:15 1016:16 ID 938:23 idea 1068:6 identified 1062:13 1095:22 identify 916:24 ignore 1030:6 ignores 942:10 II 892:15 977:9 II-PP 892:15 illustrate 958:4 IMET 961:16 1084:23 1085:2 impact 1100:3 impacted 1005:14 impairs 1048:5 imperative	1004:11 implicitly 943:8 importance 1015:10 important 904:16 949:19 962:2 1018:10 1021:22, 23 impossible 1030:5 impressed 1049:8 impression 934:14 1004:21 impressions 986:24 improper 962:1, 18 976:14 995:17 1031:15, 24 1032:10 improve 1012:11 inability 1008:11 inaccuracies 915:22 984:11 986:2 1001:6 inaccurate 935:25 inappropriate 971:24 1032:4 1039:13 incident 901:10 incidents 901:12 include 898:15 951:18 954:14 included 890:17 898:14 901:8 971:8 1039:19 1041:19 includes 895:6 including 893:12 917:22 950:10 951:10 954:1 1044:1 income 1048:6 incoming 1028:7, 17 inconsistent 943:9 944:5, 9, 25 946:5 947:8, 20 948:1, 13 963:22 976:9 incorporated 984:9 incorporates 1069:19
---	---	--	---	--

incorrect 1052:4 1053:1	932:1 937:9 965:8 966:3 978:8 979:18 980:1, 3 981:9 987:19 988:3, 14, 16 990:15 993:19 996:7 1003:24 1005:24 1012:24 1013:20 1014:21 1015:3 1035:15 1044:22 1045:20 1062:13, 16 1063:23 1070:9 1071:14 1072:20 1073:1 1077:16 1082:16	intent 916:6 intention 1080:7 intentions 916:6 interact 1083:19 interacting 965:15 interaction 929:3 962:14 1010:5 1024:1 interactive 1008:3 interest 963:18 1017:15, 19 1047:20 interested 991:22 interesting 988:14 990:18 1005:3 interference 892:21 1038:22 interject 999:13 interjections 1097:18 internally 1089:18 1102:25 internet 1010:9 1034:15 1076:22 interpretation 905:21 906:8 972:9 990:6 991:8 interrupt 943:16 1019:14 1058:6 1071:2 interrupted 944:1 intervenes 961:3 1010:12 1038:11 1040:1 1064:10 1084:24 1102:19 interview 1013:1 1029:6 intimately 1004:8 1016:23 introduces 1006:23 investigation 946:20 952:18, 20 962:7, 8, 10, 15 978:23 investigations 942:2 944:19 946:22	investigative 945:11 954:19 1058:20 1069:19 1070:7, 14 1072:4, 14, 15, 21 1082:14 1083:9 investigator 896:12 918:18 932:7 1072:20 1090:20 investigators 918:1 1062:14 investment 893:5 1044:3 1047:21 INVESTMENTS 884:9, 10 886:1, 3 investor 892:11, 13 895:14 899:4 1011:25 1012:17 1014:22 1015:2 investors 892:14, 15 893:2 894:21 895:6, 15 896:15, 16 963:23 1011:20, 24 1012:23 1013:13 1014:21, 25 1017:8 inviting 995:23 invoice 998:18 999:14, 22 1040:16 invoiced 1040:12 involve 956:7 involved 933:6 934:22 961:17 980:22 1024:1, 4 1051:22, 25 1052:9, 18 1053:4, 7, 12, 15, 17 1087:12 involvement 1050:21 1051:3 involves 1026:4 involving 892:22 929:1 INVOP 884:20	iota 925:22 iPad 905:4 ironic 988:2 irrelevant 988:14 irreparably 1007:16 1008:7 Irving 929:11, 24 931:20, 22 932:5 isolation 940:13 Israel 948:21 949:17 1059:7 Israeli 949:5 951:7 issue 899:15 933:11 946:23 977:4 992:2 1019:20 1021:24 1023:16, 22 1032:21 1033:7 1048:13 1078:9 issued 914:3 issues 922:16 932:24 943:2 950:24 974:10 975:20 978:10 981:10 1016:16, 22 1017:15, 16 1024:3 1032:12 1096:17 1102:21 item 972:5 1062:18 1063:22 items 950:14, 19 979:11 1062:11, 15 1063:1 iteration 1069:16 1078:8 iterative 990:14 < J > J.D 929:10, 24 931:19, 22 932:5 JAMES 884:19, 22 885:10 888:2 890:3 935:23 JAMIESON 884:19 1024:9 1026:9 1028:18 1033:19, 25 1034:5, 8 1035:16
-----------------------------------	--	--	---	--

<p>Jamieson's 1028:6 Janeiro 997:11 January 974:17 JARCAIG 886:24 JEFFREY 884:12 Jet 1039:7 Jim 905:18 906:14 910:2 965:5 967:8 986:17 989:13, 16, 20 1000:23 1002:12 1003:1 1009:1, 25 job 989:18 JOHN 884:13 886:17 907:4, 7 911:4 913:8 Joint 961:14, 15 1017:19 1059:7 1085:5 Jon 907:13 Jonathan 965:15 JONES 885:3 897:23 Journal 953:11 1009:20 journalist 1022:18 1070:8, 14, 18 1072:4 1073:7, 18 1078:23 1079:16, 19 1081:12 1082:15 1083:9 1086:18 journalistic 1070:25 1071:21 1072:16 1079:23 1082:22 journalists 1029:9 jsot 961:9, 11, 14, 22 962:5, 7, 14 965:3, 7, 12, 16 967:14, 20, 24 1003:5 1084:12, 21 1085:5, 8 JSOT/IMET 1087:10 judges 1033:10</p>	<p>judgment 973:2, 7, 16 1003:3 judgments 974:7 judicial 972:24 1032:5, 11 1033:16 judiciary 1033:9, 12 July 901:4 967:19 1008:24 1050:23 1051:4, 9 1089:10 1095:10 jump 1084:9 1087:9, 22 junction 952:24 June 1008:24 1009:17 1094:19 JUSTICE 884:2 893:15 900:7 928:23 929:4, 8 935:24 942:5 945:1 947:23 953:14, 23 954:1 956:22 964:19 971:3, 16 972:22 973:4, 7, 10, 17, 24 974:6, 8, 11, 17 975:1, 8, 17 976:4, 9, 16 982:2, 12 1017:20 1021:10, 25 1026:24 1029:7 1037:11 1092:7, 15 1099:7 Justices 1080:4 justified 901:21 justify 901:13, 18 < K > KARABUS 885:4 1071:1, 2, 5 1087:23 1096:2 KASSAM 884:10 886:7 Kate 887:13 keeps 989:21 kept 958:5 1005:15 1006:25 1007:2</p>	<p>KEVIN 884:12 885:3 887:6 1051:13 1095:9 key 1011:5 1034:2 kids 997:7 kind 905:7 917:5 956:6 980:21 1006:25 1020:14 1023:16 1040:16 1053:16 1066:2 1077:16 1083:8 1097:12 1102:12 kinds 963:24 Kingman 907:5, 7 910:12 913:9 Kisluk 1035:23 Klatt 918:12, 16, 18 922:7, 23 924:9, 19 927:16, 17, 24 933:19 K-l-a-t-t 918:16 Klatt's 918:10 919:13 knew 946:11 957:1 1026:17, 22 1040:22 1077:13 knowledge 949:20 953:16 954:18 958:5 978:12 994:7 1019:18 1020:8 1043:8 1069:23 known 982:17 983:4 995:4 1071:19 1082:20 1083:10 knows 926:1 1076:4 < L > labelled 1048:9, 15 lack 902:7 933:10 934:25 951:4 956:4 1023:4 1048:22 lacking 924:5 925:2</p>	<p>landline 1024:16 1027:10, 18 LANGSTAFF 884:11 887:2 1012:7 language 951:9 986:21 1013:11 1075:2 1077:21 1097:12 laptop 1078:9, 11 large 1038:5 1040:25 LASCARIS 886:14 888:6 1054:4, 6, 13 1055:8 1056:4, 21 1057:1, 17, 21 1060:3, 9 1062:7 1064:12 1065:20, 23 1066:13, 16 1067:10 1069:7 1070:17 1071:4, 6, 8 1073:24 1074:2 1075:4, 13 1077:20, 25 1078:3, 6 1079:11 1080:6, 13 1081:8 1082:3, 8 1083:20 late 1008:23 1009:17 1025:6 1041:9 latest 1042:13 launched 903:25 laundering 949:17 Lavine 957:13 Law 887:11 1080:5 lawn 1011:2 1012:2, 16 1013:12 lawsuits 933:8 934:23 lawyer 907:14 965:5 967:8 974:24, 25 1093:16 1098:10 lawyers 919:4 990:24</p>	<p>Lax 968:16 lay 899:22 lead-in 950:15 leading 901:23 968:5 974:21 1012:5 1050:23 1051:4, 9 learn 1036:20 learned 929:4 1072:14 leave 908:16 937:14 975:9 981:23 1013:12 1017:4 1027:11, 20 1039:16 1086:16 1094:6 left 920:7 967:3 1011:1 1012:2, 16 1029:23 1035:14 left-hand 1062:10, 17 1063:5 legal 1031:17, 22 1044:3 legislation 949:17 legitimacy 975:7 legitimate 1017:15 1073:3 lending 1047:19 1093:18 lengthy 920:3 1074:22 lesser 1101:9 Letter 889:18 892:11, 13 895:15 899:4 938:9 943:1, 7 948:20, 22, 23 949:2, 19, 23 951:4, 9, 13 984:19 1012:17 1014:22 1039:1 1050:23 1054:25 1055:25 1056:6 1061:6, 10 1062:16, 23 1063:6 1064:2 1065:5 letters 1011:25 1063:4, 6 letting 1003:8 Levin 907:13</p>
---	--	---	--	--

<p>LEVITT 884:12 887:4 987:18 988:5 993:7, 16 1006:14 1012:13 1101:9 Levitt's 1012:6 Levy 981:10 987:17 1012:4, 12 1013:2 1037:16, 20 1072:7 1074:17 1101:8 Levy's 898:10, 16 1012:4 liabilities 928:17 life 1072:3 lifeline 942:17, 20, 22 944:4 liked 981:21 lily 1015:17 Limited 892:14 950:11 951:10 956:16 LINDA 885:20 lines 917:3 989:19 1046:15 1097:19 linked 1004:7, 20 1016:24 liquidity 1047:3, 6, 13 1048:3 listed 950:19 992:22 listen 1014:8 1097:11 listened 967:25 listening 996:14 literally 1004:11 litigant 1031:25 1032:11 litigate 1095:17 1096:13 litigated 1096:12 litigating 1098:3 litigation 892:17 895:16, 21 948:4, 16 969:13 977:18 978:1, 10 979:12 981:3, 4 994:6 995:7 999:10 1025:20 1038:2 LIVESEY 884:13 886:15</p>	<p>1063:17, 19 1064:7, 16, 21 1070:5, 7, 14, 21 1071:13 1072:2, 13, 24 1073:10 1074:4, 13 1078:23 1079:1 1080:21 1081:7 1082:14 1083:5 Livesey's 1070:24 1071:20 1074:9 1079:22 1082:21 LLC 884:9 885:24 loan 1095:1 1096:17 loans 1047:24 1048:5, 8 1049:19 1050:9 1103:13 lobbied 1022:21 1023:1 lobbying 1023:17 local 906:23 located 1092:24 LOE 1061:3, 5 logic 1062:3 logical 1061:7, 12 long 963:16 984:24 1002:18 1008:19 1038:14 1085:18 1103:16 longer 923:20 966:9 1050:8 looked 898:25 904:19 909:18 922:22 929:2 1001:17, 18 1014:10 1061:11, 25 1098:16 looking 897:11 919:2 922:7 937:23 951:2 959:6 963:8 979:6 986:13 997:7 1019:4 1037:5 1038:15 1046:11 1060:10 1081:5 1101:7</p>	<p>looks 1045:4 1057:2 1067:8 1086:24 loop 931:14 losing 1103:21 lot 912:13 932:23 969:16, 19 978:14 1067:20 1093:19 lots 930:6, 7 love 989:17 lower 1030:11 1100:10 LP 884:9, 10 885:25 886:1, 2, 4, 6 lump 952:22 954:9, 20 995:15 lumping 946:24 948:8 951:21 955:12 995:11 996:18 lunch 1054:3, 7 Lutes 907:17 908:12 914:18, 22 915:22 917:21 983:17, 21 < M > M5V 884:8 885:21 machine 906:10, 17 machines 1076:5 made 900:4 928:22 929:8 949:6 958:6 974:5 992:14 1000:7 1015:3 1023:3 1053:6 1058:11 1059:1 1073:6 1080:15 1081:6 1089:18 1101:14 1103:15 1105:11 Mail 931:18 1022:18, 21 1023:2, 4, 6, 18 1024:2 major 1016:22 majority 1097:23 making 896:11 949:13 986:1</p>	<p>989:13 1044:5 1072:18 Maman 966:25 M-a-m-a-n 966:25 man 926:14 manage 1050:6 management 893:4 957:5 977:11, 24 979:9 998:21 manager 957:10 managing 1047:22, 25 mandate 1044:13 manipulating 1051:17, 25 1052:18 1053:13 manipulation 892:22 1050:22 1051:3 1052:12 manner 994:1 1032:12 Marc 1051:12 Marine 1083:19 mark 890:10 891:17 973:1 1055:22 1059:24 marked 891:12 970:1 1042:8 1055:11 market 892:22 1051:17, 25 1052:19 1053:13 1085:3 marks 1003:17 1004:16 Martin 900:4, 5 Marty 902:3 904:14 MASTER 884:10 886:3, 5 material 893:7 894:23 895:6 916:19 974:9 materially 917:4 materials 891:14 940:15 963:25 974:13 math 906:5 Matt 910:12 916:3 950:22 972:9 1038:14</p>	<p>matter 895:4 929:25 981:23 983:23 1001:23 1007:18 1092:15 matters 893:3 943:2 963:2, 17 976:2 992:2 1059:8 MATTHEW 885:4, 14 921:16 952:11 1071:2 MAURA 885:16 Mazzuocco 887:13 McEwen 893:15 935:24 964:19 1080:4 1092:7, 15 1099:7 MCFARLANE 884:12 meaning 1002:11 1004:6 1095:18 meaningful 925:16 means 893:7 995:12, 15 1030:7, 10 1031:13 1032:18 1047:6 1096:14 meant 888:12 1047:7 measures 950:6, 20 measuring 1089:4 media 959:10 960:19, 20 961:10 963:5, 7, 18, 25 964:3, 7 965:9 966:3 988:9 1032:19 1037:9, 10 1048:10 1073:2, 3 1078:21 1079:17 meet 990:10 1003:9 1025:5 1036:16 1085:11 meeting 905:20 906:10 907:1, 4, 15 908:6, 8, 18, 21, 25 909:3, 8,</p>
--	---	--	---	--

19, 25 910:1, 5, 11 911:13, 18, 25 912:4, 7 915:1, 8, 11, 23 918:1 922:4, 22 924:18 926:18 967:22 983:20, 22 984:21 985:2, 13 986:12, 14 988:12 990:10, 11, 12, 13 994:1 1000:23 1002:5, 15 1026:9, 24 1029:4 1042:10 1043:5 meetings 961:21 989:25 1009:5, 24 1084:11 1085:14, 17, 18 1087:10 members 942:4 995:1, 6 Memo 917:23 918:6, 10 919:10 933:19 984:20 memorializing 984:21 memorized 952:7, 9 1034:18 memory 908:11 915:16 933:23 935:2, 7 936:24 937:7 938:1 952:25 955:7 994:8 1008:22 1046:5 mentioned 1051:22 1086:1 mere 1100:19 mess 1104:1 message 920:4 922:19 1004:19 1033:23 messages 920:5, 21 922:20 met 911:7 962:7 967:20 1024:25 1025:6, 23 1034:1, 5 1035:8 1036:14 1085:12	metadata 1019:22 1020:17 methods 945:13 946:21 Metro 919:5 mid 1010:25 1041:9 Mid-Bowline 974:12 middle 959:7 967:4, 11 1002:4 1010:22 1022:8 1041:18 military 1009:10 million 928:17 956:25 957:13 998:19 999:17 1040:11, 21 1092:24 Milne's 910:12 MILNE-SMITH 885:14 888:4 890:4 891:20, 24 893:21 894:14, 18 896:23 897:8 899:9, 25 901:25 907:21 908:13 909:10 911:10 916:7 917:8, 13 921:18, 20 922:6, 13, 17 923:9, 12, 16, 18 927:4, 25 929:21 930:2, 12, 17, 21 931:13, 17 932:12, 17 934:18 936:3, 9, 17 937:13, 16, 18 939:7, 10 940:10, 19, 23 942:15, 21 943:12, 15, 24 944:24 945:18 946:3, 18 947:1, 3 948:11 950:12, 25 951:22 952:3, 12 953:1 954:12, 22 955:1, 15 958:19 959:5, 15, 19, 22 960:1,	6, 11, 16 961:6 963:15 964:9, 19, 24 966:8, 15 970:11, 21 971:2, 6, 11 972:13 974:22 975:11, 13 976:5, 20 977:22 978:4, 20 980:9, 13 982:9 983:1, 15 984:15 985:19 986:6, 10 987:21 991:21 993:1 995:13, 18 996:2, 21 997:19 998:2, 5, 14 999:14, 18 1000:2, 12 1001:11, 16 1007:10 1010:14 1012:25 1015:18 1016:11, 20 1017:5, 24 1018:17, 23 1019:8 1020:1, 4, 12, 18 1021:20 1022:4, 6 1023:10, 20 1024:6 1025:14 1028:3 1029:18 1030:22 1031:20 1038:18, 23 1039:21, 24 1040:6 1041:22 1042:6, 14, 20 1043:11, 13 1049:21 1051:23 1052:14 1053:10, 21 1054:23 1055:6 1059:22 1068:13, 18, 21 mind 952:23 mindset 955:3 mine 921:22 minimal 1050:3 minus 906:12 minute 934:9, 10 966:5 974:1 986:25 987:1	1056:24 1057:13 1079:24, 25 1082:23 1089:2 1092:2, 3, 4 1094:14 1097:1, 5, 6, 10 1103:6 minutes 931:12 932:13 988:15 1078:1 1097:17 mirrors 1075:2 mischief 929:13 932:3 mislead 920:23 921:5 misleading 942:9 943:21 missing 916:19 917:4 992:16 1009:5 misspoke 960:13 misspoken 960:14 mistake 1055:10 mistaken 970:17 1039:18 misunderstandin g 960:15 mix 995:24 MMCAP 1077:11 Mobile 1039:6 modest 904:4 modified 941:11 MOEZ 884:10 886:6 MOLYNEUX 884:12 moment 981:23 1057:10 1071:5 1075:6 1101:13, 21, 23 1102:11 momentarily 1044:18 Monday 906:13 money 903:3 904:5 949:16 1047:19 1058:17 1073:1 1083:6 1091:8 1103:22 months 969:12 975:22 1008:21 1009:2 1010:24 1100:19 1102:9	MOORE 885:2 890:9, 14 891:7, 21 893:9, 23 894:8, 16 897:6 899:7, 20, 24 901:18 907:21 908:15, 24 911:4, 9 916:3, 18 917:11 921:10, 16, 19 922:5, 8 923:5, 10, 13, 17 926:23 927:15, 19 929:19, 23 930:5, 16, 20 931:10, 16 932:14 934:9 935:20 936:8 937:12, 14, 17 939:3, 9 940:5, 12, 22 942:8, 19 943:14, 19 944:13 945:3, 25 946:17 947:2, 4 948:6 950:7 951:20, 24 952:6, 13 953:3 954:9, 15, 22, 23 955:12 958:15 959:4, 13, 16, 20, 24 960:2, 8, 14 963:10, 20 964:9, 13, 22 970:11 971:1, 5, 7 972:8 974:1 975:5, 12, 15 976:13 977:3, 21 978:3 980:7, 10, 11 982:6, 10, 20 983:12 984:8, 13 985:5, 7 986:5, 9, 25 987:4, 8 991:15 992:17 995:10, 14, 21, 23 996:12 997:16 998:1, 4, 10 999:13, 19 1000:10 1001:7, 8, 15 1007:8 1010:7 1012:15 1015:12, 22 1016:2, 5, 18 1017:1, 13
---	---	--	---	--

1018:15, 22, 25 1019:14, 20, 24 1020:3, 11 1021:14 1022:1, 5 1023:1, 10, 15, 24 1025:11 1029:14, 17 1030:14 1031:16 1039:16, 22, 25 1040:3 1041:6, 13 1042:4, 6, 15, 21 1043:2, 12 1051:20 1052:6, 14, 22 1053:2, 10, 14 1054:3, 9 1055:7, 24 1056:19, 22 1057:13, 20 1060:1, 4 1061:24 1065:17, 22 1066:10, 15 1067:8 1069:4 1070:16 1073:20, 25 1074:21 1075:12 1077:24 1078:2 1079:9, 24 1080:10, 23 1081:14, 21, 23 1082:5, 23 1083:24 1084:16 1086:5 1087:6 1088:7 1089:1, 6, 8 1090:3 1092:2 1093:5, 9, 23 1094:14, 17 1095:11 1096:4, 10, 20, 23 1097:1, 5, 10 1098:3, 19 1099:3, 18 1100:22 1101:16, 20, 24 1102:5, 11, 18 1103:5, 10, 23 1104:3 morning 890:6 966:10, 18 1009:9 1028:7 1034:5 1054:19 1059:21	1060:23 1069:3, 6 1084:10 1100:17 1101:6 motion 890:24 892:5 898:22 900:7 907:23 971:4 1017:9 1032:25 motions 892:3 897:15 mouth 936:6 986:21 987:3 move 943:22 961:9 964:20 987:14 1018:1 moving 975:14 1012:21 Moyse 973:18 997:14, 21 1022:9, 10, 12, 15 1037:2 Moyse's 994:15, 21 mtng 923:1 mtng(s) 922:3 mtngs 1008:25 Musters 900:4, 5 902:3, 5, 13 903:1 904:3, 14 mute 952:11 < N > n_gzglassman 935:14 nail 1033:22 named 911:7 names 966:17 1051:21 1052:8 Naomi 907:17 908:12 914:18, 22 Naomi's 914:22 990:25 narrative 990:9 narratives 1037:9, 10 NATHAN 884:11 886:12 1051:13 nature 942:1 954:21 978:8 1025:16 1026:2 near 923:22 933:4 989:9	necessarily 963:20 981:2 1081:10 necessary 949:13 1100:7 needed 1035:10 needs 939:21 952:10, 13 1024:13 NEESONS 1105:23 negative 956:21 979:25 1037:10 1078:23 1079:2, 17, 19 1080:21 1081:12 negatively 1005:25 neither 935:4 1021:21 1044:10 1096:20 neutral 891:2 new 892:17 895:15 900:3 923:3 1028:25 1047:24, 25 1048:3, 5, 8 1049:2, 18, 19 1050:9 Newbould 942:6 945:2 947:23 953:14, 23 954:1 956:22 971:17 973:7, 17 974:9, 11, 17 982:2, 12 1021:8, 10, 25 1026:5, 10, 14, 24 1029:7 1034:14 1037:11 news 894:24 1031:14 1032:17 1033:3 NEWTON 884:18 885:11 914:21 919:20, 21 969:22 987:10 1002:24 1007:20, 23, 25 1014:4, 16, 24 1016:17 1018:4 1059:6 Newton's 981:17 988:1 990:6 1004:21	NGO 996:11 997:2, 5 night 1009:8 Nir 956:12, 18 966:20 1041:2 N-i-r 966:20 normally 1072:19 Norton 1087:10, 19 note 912:7 926:3 927:10, 13, 14, 16, 18, 20, 21, 24 928:6 noted 888:16, 23 889:5 notes 915:1, 11, 23 916:5, 10, 15, 22 917:1, 10 918:13 919:2, 8, 13 967:25 983:17, 20, 25 984:3, 11, 21 985:9 991:1 993:8 1002:7 1017:18 1030:20 1085:14 1105:15 notice 1023:11 notices 977:14, 24 979:10, 17, 25 980:17, 24 notion 979:1 notwithstanding 891:3 November 969:7 1000:8 1038:20, 25 1040:8, 20 1069:2 nuggets 988:10 number 912:20 913:18, 19 914:12, 14 917:1 919:14 959:18 960:3 977:9 979:6, 8, 9 981:10 995:1, 25 1028:8, 12, 13, 16, 18 1033:24 1050:18 1085:13 1088:22 1093:4, 8	numbering 986:8 numbers 958:16 959:23 < O > Oberson 917:17 object 942:8, 13 945:17 948:9 954:23 964:10, 11 982:20 998:10 1016:5 1082:24 1092:18 1094:1 1097:7, 8 1098:4 1099:18 objected 943:10, 20 objecting 964:14 1093:14 objection 943:13, 22 948:7 964:15, 17 996:14, 20 1082:1, 25 objections 1105:11 objective 903:13 obligation 893:2, 7 894:20, 22 895:5 obligations 963:22 obscures 923:7 observations 975:8, 23 obtain 988:25 989:3 1013:19 obtained 1029:14 1039:19 obtaining 903:3 obtuse 924:20 obvious 1005:22 occasions 1085:12 occur 1010:10 occurred 935:23 953:14, 15 985:2 1013:6 o'clock 923:15 925:20 1054:8 1104:5 oct 1010:25
---	--	--	--	--

October 1002:3
1013:8 1037:4
1043:24 1063:15
odd 1066:3, 8
Offences
961:14 1085:6
offensive 1033:8
offering 942:18
office 907:18
910:13 918:19
1024:16
1027:10, 17
officer 974:23
1031:12, 23
1032:2, 11
1049:14
officers 919:7
offices 961:18
1000:24
1020:22 1021:3
1036:14, 17
old 997:2
omission 992:24
omissions
1001:6
ones 891:1, 9
952:24
ongoing 977:18,
25 978:22
981:3 1023:5
1038:2
online 922:14
ONTARIO 884:2
1031:25
open 930:13
976:15
operating 913:5
981:8 1026:25
1027:5 1091:22
operational
1035:3
operative
1026:24
opinion 1004:10
opinions 1044:2
1049:5
opportunity
942:18 944:4
974:25 976:11
982:15 995:3, 20
opposed 893:16
906:23 936:22
946:21 1012:10
oral 928:25
931:5, 7
1012:11 1014:1
orally 1035:1
orchestrate
993:10
order 899:20
905:14 912:8
928:22 929:11,
25 931:1, 20
932:6 942:12
976:17 1054:5
1074:6 1099:7
ordered 1092:6
1095:20
organization
1073:3 1078:21
1079:17
organize 949:10
origin 1045:3
original 943:1
968:20 999:22
1030:24 1031:2
originally 913:1
originated
1038:5 1081:25
OSC 961:16
1051:9 1084:12
OSC's 961:18
ostensibly
1072:8
O'SULLIVAN
885:16 968:16
ought 964:1
outcome 1033:5
outlets 1032:17
outset 1015:8
1052:7
overall 968:10
990:21 1005:1
1048:17
overcome
932:24
over-promising
1025:25
over-speak
905:1
owing 928:17
owner 1055:1
1058:3
< P >
p.m 905:17, 19
906:15 923:20
966:14 1054:11,
12 1078:4, 5
1084:5, 6 1104:8
pack 1066:7
package
1041:17 1059:16
PAGE/LINE
889:15
PAGES 888:3,
17, 23 889:6
938:24 970:16
994:12 1011:11
1014:10
1057:15
1060:22
1061:14 1069:15
paid 957:3, 4, 6,
8 999:23
1040:10, 20
1056:13
1058:17
1080:20 1093:22
painting 1006:6
palatable 903:15
Panet 887:9
pants 926:17
paper 969:19
981:20 984:19
987:16 1006:8
1034:17, 20, 24
1035:1, 4, 5, 12,
18
paragraph
892:8, 12, 24
894:20 895:12,
19 898:1, 6, 9
899:2, 7 900:16
930:25 940:6
972:23 973:3, 4,
14 975:2
1010:22 1057:6,
23 1061:10
1062:23, 24
1063:6 1064:1
1074:23
paragraphs
896:24 899:11,
13 930:23
1015:14
parallel 1096:11
parallels
1092:11
park 1035:6, 7
1075:5
part 891:11
896:11 901:19
906:18 907:25
925:3 929:19
930:10 932:19
941:19 970:15
972:23 974:4
975:16 988:2
993:8 1035:2
1038:5 1039:10
1045:2 1048:8
1067:6 1085:5
1099:24 1100:8
partial 1028:15
1030:17
participants
884:24
participated
915:7 984:22
particular 919:8
923:14 930:9
1019:24 1020:2
1033:5 1058:25
1059:11
1069:25 1101:3
particularized
1065:6
particularly
983:13 1071:19
parties 892:4
908:22 941:8
944:19 946:7
947:11, 21
948:2, 14
953:25 963:13
996:4 1051:12,
16 1081:11
1093:21 1103:7
partners 900:24
Partnership
892:15
parts 974:3
988:6 1001:9
1047:23 1072:1
1085:2
party 954:18
1046:19 1078:21
passage 928:3
959:7 961:8
1005:6 1011:7
passages
903:11 921:23
1042:22, 24
paste 939:1
pasted 938:20
Patrick 887:15
1043:18, 24
1049:7
pattern 1007:3
pause 922:14
1009:3 1038:16
1084:1
pay 903:15, 24
payables
1091:24
1092:25 1093:2
payment 956:25
957:12 998:19
999:11 1063:18
1064:20 1073:2,
4, 6
payments 949:6,
14 958:5
1000:7 1056:8,
10 1058:11
1062:25 1074:5,
13
PDF 1070:3
1071:11 1082:12
people 901:22
954:8 956:4
966:17 980:20
995:6 996:5
1050:4 1075:1
1100:9, 10
percent 1015:15
1050:13
perception
1003:3
perfect 918:8
perfectly 917:8
995:21
perform 1025:3
performance
893:4 1046:18
1048:22, 23
period 953:19
968:11 1000:8
1003:2 1004:7
1048:19, 20
1050:23 1051:4,
9 1054:1
permitted
1092:10
perpetrated
973:21
person 913:4
921:4 928:24
931:4 1005:23
1022:8 1024:12

<p>personal 1004:2 1006:5 personally 933:7 934:22 937:12 957:5 personnel 939:20 941:22 persons 901:7 perspective 983:3 984:12 997:12 Peter 918:14 Philip 887:9 911:4 Philips 907:5, 7, 16 908:12 910:13 911:7 913:9 914:21 phone 912:20 913:18 914:5 915:3 965:21 1028:6, 8 1029:21 1033:24 1034:6 phones 913:25 914:2, 8, 9 phony 996:11 phrase 895:10 1066:8 1081:16 phrasing 1066:3 physical 956:13, 16 1020:21 1021:2 1022:11 1025:18 picking 967:2 picture 994:22 1006:7 1020:23 1021:19 pictures 994:25 piece 894:25 981:20 987:16 988:19 1006:8 1012:8 1034:17, 19, 24 1035:1, 3, 5, 12, 17 1072:6 pieces 969:19 988:3 1000:5 pin 909:15 pinned 908:9 place 911:24 939:2, 6 955:4 962:6 978:6 986:12 1053:20 1105:7</p>	<p>places 919:14 plain 891:2 Plaintiff 884:6 886:25 Plaintiffs 884:16 885:2, 15 1080:16 plan 997:9 Plane 1039:8 play 910:22 1103:22 played 1012:7 playing 1014:4 pleaded 1078:12 pleading 1079:13 1081:24 pleadings 1083:11 1091:2 plenty 1018:13 PLUMPTON 885:20 plus 1003:16 pocket 1035:19 point 940:16 947:16 954:17 955:5 956:2 958:4, 18 966:19 967:6 968:3 974:21 980:4 996:13 1005:22 1007:21, 25 1012:4 1016:14 1042:4 1044:21 1102:1 pointed 1006:14 1071:10 pointing 1060:14 points 901:2 Polar 1077:10 Police 919:7 961:12 1084:12 1087:22 1088:2, 11, 16 1089:3, 11, 15 1090:17 1091:5 1094:9, 22 1095:5, 12 1096:3 polite 989:16 990:3 poor 1037:22 1038:1 1046:18 1048:22, 23</p>	<p>poorly 924:3 925:1 portfolio 1050:6 portion 911:20 924:1 1004:3 portions 894:10 position 975:25 1051:1 1065:3 1093:5 positions 1048:1 positive 1037:9 1047:1, 11 1048:22 possible 892:21 912:9 920:24 949:21 1012:6 1032:3 1053:3 1055:20 1068:13 possibly 1051:22, 24 1052:8, 17 1053:12, 15 1099:12 potential 907:11 964:7 968:5 974:15 975:21 981:3, 4 1079:22 potentially 907:14 911:5 1070:23 1071:20 1081:17 1082:20 PowerPoint 993:24 PR 1037:14 preceded 975:18 1020:13 precedent 1098:12 predicated 1103:11 pre-existing 891:15 prefer 964:10 1027:6 1029:6 1088:25 prejudice 1051:1 prejudicial 979:18 premise 944:15 992:21 1101:4 premised 1101:5 preparation 915:12 prepare 1090:21</p>	<p>prepared 917:2 927:13 933:15 934:8 936:14 944:8 976:22 987:14 994:13 1018:19 1022:17 1043:18 1075:25 preparing 969:12 prerogative 996:1 Present 887:8 Presentation 993:22, 25 1018:19 1019:1, 3, 21 presentation.ptx 1019:23 presented 969:2 preserved 1100:4 President 1049:14 press 1038:4 pressure 987:11 1030:4 1031:13 1032:17, 19 1033:4 presumably 991:7 1066:17 1069:19 1075:24 presume 945:6 pretended 913:2 pretense 1027:2 pretenses 1026:25 pretext 1027:5 1029:6 pretty 919:3 952:16 972:10 1002:24 1010:18 1054:23 1091:3 prevent 1017:10 previous 938:24 965:4 984:10 1001:5 1050:20 1086:1 previously 932:2 primarily 1045:4 1084:13 1085:4 1089:24</p>	<p>primary 937:6 principal 1072:2 principals 1078:25 1079:16, 18 printed 921:1 923:7 968:23 1060:21 1061:15 printing 921:10, 14 PRIOR 890:3 891:11 893:18 972:24 974:10, 14 976:2 983:4 1007:22 1068:25 1069:9, 20 1077:6 1087:5, 22 1100:19 1102:9 private 896:12 914:4 932:7 952:19 1072:14 1078:21 1079:15, 18 1081:11 1090:20 privately 1048:10 privilege 900:8 907:24 1017:15, 16, 19 1080:3 privileged 909:3 problem 891:19 923:6 946:17 1013:23 1072:12 problematic 1022:15 1048:10 problems 1005:12 1014:23 1017:7 1048:3 1103:13 proceeded 988:21 proceeding 1007:6 1032:25 1033:16 1098:4 proceedings 929:1 931:6 997:23 1032:13 1092:13 1105:6 process 941:15 1031:14, 19 1046:1 1091:15, 16, 20 1100:8 1101:12 produce 992:14</p>
--	--	---	--	---

<p>produced 893:14 970:25 991:1, 2 992:14, 22 994:5 1045:21 1046:25 1047:10 1054:18 1057:16 1067:11 1080:8 1092:6 1095:14</p> <p>producing 989:22 1047:24</p> <p>production 900:3 969:24 970:2, 14, 18 971:16 992:8, 11</p> <p>productions 908:1 943:5 970:22 971:3 991:24 1042:5</p> <p>professional 926:6</p> <p>proficiency 1059:13</p> <p>profile 994:13 1022:17 1070:4 1085:24 1086:24 1087:1</p> <p>program 997:3</p> <p>progress 989:13</p> <p>prohibit 1022:22</p> <p>Project 993:24 1018:19</p> <p>projects 1059:7</p> <p>promoting 956:21</p> <p>proof 924:13 925:4 987:12 1003:7 1006:9 1014:2, 5, 18 1101:8</p> <p>proper 996:19 1032:11, 13 1033:12 1093:10 1099:8 1102:13, 16 1103:17</p> <p>properly 895:3 995:24 1031:18 1086:8</p> <p>property 939:19</p> <p>proposed 994:16 997:13</p>	<p>proposing 910:18 973:1</p> <p>proposition 963:12 979:3 1031:10</p> <p>proprietary 945:13</p> <p>prospective 907:1</p> <p>prove 1038:9</p> <p>proved 1018:8</p> <p>provenance 1039:22 1040:3</p> <p>provide 892:12 894:11 941:22 1029:7 1034:10, 12 1042:4 1058:20 1071:14 1090:20</p> <p>provided 896:14, 15 923:3 932:4 953:24 970:6 992:13 998:21 1000:19 1006:12, 17 1007:6 1031:6 1034:7, 16, 23 1035:15 1043:10 1050:24 1058:22</p> <p>provides 913:17 945:9 1007:23 1059:14</p> <p>providing 924:7 956:10, 16 1029:4 1039:11 1070:9 1082:16</p> <p>provisions 945:12 952:17</p> <p>pry 990:14</p> <p>PSY 884:20 901:15 1035:24 1036:1, 6, 12, 15, 21 1037:8</p> <p>pt 965:2, 5 967:7</p> <p>public 930:3, 8 952:18 963:18 979:19 981:1 1030:4 1032:17 1048:9 1081:6 1082:20</p> <p>publication 1081:4, 16</p>	<p>publicize 963:19 980:25 1026:10, 11, 13</p> <p>publicly 933:12 962:11 1071:19</p> <p>Publish 1078:16</p> <p>published 953:11</p> <p>pull 926:16 930:13, 14 931:14 957:19 1075:6</p> <p>pulled 1094:21</p> <p>punch 930:23</p> <p>PURI 884:11 886:8</p> <p>purport 950:8 1023:13</p> <p>purported 1003:24</p> <p>purporting 944:16 995:4 996:4</p> <p>purpose 888:13 935:19 940:1 942:1, 7 944:6 949:19 964:3 975:6 1026:9 1029:4 1037:19 1073:1 1074:6, 14 1080:1 1093:11</p> <p>purposes 890:10 912:16 914:9, 10, 14 936:20 937:9 940:25 946:5 947:9, 20 948:1, 13 949:13, 22 951:12, 15, 17 956:9, 16 963:13 1037:8 1043:1 1065:5</p> <p>pursuant 949:6</p> <p>pushback 1038:8</p> <p>pushing 959:10 960:19, 20 1037:25</p> <p>put 890:13, 24, 25 894:1, 6 916:15 936:5 940:8, 17 952:15 962:4 972:19 979:2</p>	<p>981:7 982:4, 18 983:6, 13 986:20 990:4 992:20 995:9, 24 998:9 1000:6 1005:22 1021:3, 11 1022:12 1028:22 1032:19 1035:19 1045:20 1059:18 1062:2 1063:22 1081:1, 14, 25 1091:14 1095:5 1105:8</p> <p>puts 1018:5</p> <p>putting 940:13 943:7 944:23 945:16 954:11 984:19 987:2 1004:14, 17 1005:15, 19 1013:11 1014:13 1023:11</p> <p>< Q ></p> <p>qualitative 939:19</p> <p>Queen's 1092:14 1096:13</p> <p>question 895:3 916:4, 13, 25 917:10 918:12 925:13, 14 936:7 937:14 940:13 942:8, 9, 13 943:11, 16, 17, 21, 23 944:1, 14, 16 945:21 946:2, 13, 15, 16, 18 947:5, 6 948:7, 10 950:13, 14, 18 951:23 954:11, 19, 24 957:18 962:8, 17 963:11, 14 964:8, 10, 18 976:14, 23 980:6, 10 982:7, 21, 22 984:25 985:12, 18 995:10, 17 996:13, 15, 16</p>	<p>998:7, 11 1012:18 1014:8, 9 1018:2, 3, 24 1019:13, 15, 16 1020:17 1021:1, 23 1023:23 1031:3, 17, 18, 22 1042:10 1052:16, 24 1053:5 1058:6 1063:3, 12 1064:13, 21 1065:1, 14, 25 1068:4 1071:9, 17, 24, 25 1072:12 1073:21 1077:23 1079:14, 20, 25 1080:5 1081:3, 7, 15, 25 1082:2, 6, 18, 24 1086:17 1088:2, 14 1092:3, 22 1093:7, 9, 11, 14, 23, 25 1094:1 1095:14, 21, 24 1096:5, 11, 22 1097:20 1098:5 1099:4, 8, 9, 11, 19, 22, 24 1100:12, 22, 23 1101:20, 21, 24 1102:5, 13, 14, 15, 17, 18 1103:18, 23</p> <p>questionable 935:5</p> <p>questioned 899:16 1100:25 1101:2</p> <p>questioning 893:20 1088:16</p> <p>questions 893:14 894:5, 12 896:24 931:24 936:13, 15 951:25 952:15 954:16 985:25 995:24 1018:4 1054:2, 24 1057:18 1080:2 1095:16 1097:2, 7 1098:15, 19</p>
--	---	---	---	---

<p>questions/reques ts 888:16, 22 889:5 quibble 956:12 1050:1 quibbling 1049:20 quick 1077:21 quickly 914:20 942:25 957:12 1062:22 1077:1 1097:14, 15 quit 1044:13 quite 893:23 905:9 912:9 942:24 943:6 944:15 983:9 1003:19 1023:5 1033:22 1074:22 1101:7 quote 939:18 quotes 915:3</p> <p>< R > R/F 889:5 942:8 944:13 945:15 954:23 964:13 995:10 996:12 1016:5, 18 1031:16 1092:18 1093:5, 9 1096:10 1098:3 1101:20 1102:5, 11 1103:17, 23 Rachel 1037:16, 20 racial 975:20, 24 racist 973:20 Railway 929:1 930:14 raise 1103:21 raised 893:17 1030:20 random 904:3 973:22 979:13 rank 1100:10 ransom 903:24 ransomware 901:9 rarely 967:24 rcmp 933:11 961:16 1088:3 1091:11</p>	<p>RCMP-focussed 1085:4 reach 1033:4 1100:13 reached 962:5 993:9 reactions 922:21 Read 897:6 915:18 916:1, 11 923:20 926:3, 9 927:10 930:19 933:12 940:6 947:5 972:7 973:8, 9, 11, 13 975:2 978:13 989:19 993:3 998:25 1000:23 1002:21 1008:16 1011:8 1013:8 1030:9, 24 1046:9 1051:20 1052:15 1085:8 1099:11 reading 916:23 940:12 958:18 977:4 978:21 1001:10 1010:23 1037:13 1040:9 real 989:22 really 907:3 940:8 945:15 952:9 954:11 1021:6 reason 893:14 904:2 954:24 961:23 962:5 974:3 991:9, 22 1012:22 1027:16 1083:13, 14 1094:10 1096:8 reasonable 906:7 reasons 931:1 1011:5 1093:12 re-attend 1092:17 re-attendance 1080:1 1093:11, 25 1099:6 1103:18</p>	<p>REBECCA 886:10 recall 898:11 900:12 901:10 914:1 915:21 927:14 928:11 949:2, 3, 4 966:1, 4 969:9, 11 983:22 984:18 1011:15 1027:23 1036:19 1040:18 1052:9 1055:5, 20, 21 1077:19 1098:16 recalls 894:2 receipt 957:24 1044:9 1045:6 receive 948:21 957:17 993:25 received 902:12, 19, 20 953:13, 15 957:16 968:19 973:9 985:8 1041:9 1042:2, 12 receivership 1091:16 1096:16 receiverships 1093:2, 19 receiving 980:17, 24 RECESSED 932:15 966:13 1054:11 1078:4 1084:5 recipients 991:4 recital 972:12 recognition 952:14 recognize 919:9 1067:25 1068:9 recollection 907:22 908:3 909:6 914:25 915:7, 25 933:17 965:10 970:17 999:24 1025:13 1039:17 1042:7, 8 1043:3 1057:14 1067:23 1068:17, 20, 22</p>	<p>recommendation s 1044:2 recommended 1024:15 1027:9 record 890:10, 13, 20, 25 922:15 928:7, 10 938:22 942:11, 24 943:18 950:23 951:2 966:12, 17 970:12 974:19 975:2, 16 976:16 997:22 999:20 1015:6, 16 1016:8, 9 1018:11 1019:20 1038:21, 24 1052:23 1053:8 1054:10 1071:7 1084:4 1093:13 1097:18 1104:6 recorded 1105:12 records 917:25 1028:6 recusal 974:15 975:21 red 1029:13 redact 1028:20 Redemption 977:14, 25 979:10, 17, 25 980:17, 25 re-examination 1099:5 refer 898:3 936:3 945:4 947:5 960:2 976:7 1042:22, 24 1072:19 reference 902:10 929:24 960:3 1012:16 1017:19 1043:5 1046:22 1057:6, 23 1077:10 1086:13 referenced 1053:18 1094:8 references 931:19</p>	<p>referencing 930:1 referred 931:20 934:2, 5 942:5 966:18, 19 993:12 1015:14 1058:2 1061:10 1080:11, 12 1095:9 referring 894:10 895:1 906:9 913:3 921:12 927:24 931:9 932:22 933:20, 25 951:13 953:6 955:11 965:3 973:18 976:8 1007:12 1019:5 1024:19 1053:11 1055:9, 10 1056:19 1076:16 1086:9 1088:8 1089:3 refers 907:11, 13 927:9 960:17 971:16 1039:5 1056:16 1076:20 reflect 974:19 1018:11 reflected 1005:25 reflecting 988:12 refresh 933:17 1067:23 1068:16 refusal 975:14 refusals 888:12 889:4 1053:24 refuse 943:16 945:22 964:11 976:14 995:21 1003:6 1094:12 refused 889:5 951:23 1050:25 regard 900:11 917:10 973:25 regarding 895:17 regardless 1049:10 regards 993:23 register 1082:25 regular 1001:24</p>
---	--	---	--	--

reimbursed 1058:12, 14, 15 rejected 1017:21 rejecting 1045:17 relate 892:19 938:14 related 925:22 948:4, 16 977:7, 23 978:9 979:7 995:7 999:22, 23 1026:3 relates 900:3 939:18 977:18, 25 relating 960:23 982:1 992:1 1059:8 1063:17 1064:7, 16 1071:14 1084:12 1089:12 1093:1 1096:3 1098:12 relation 893:24 975:19 979:11 1070:5 relationship 990:20 1001:25 1007:19 1025:2 1059:9, 12 1083:12, 14, 15 relationships 1098:22, 25 1099:15 relatives 1033:10 relevance 975:6 982:7, 21 1050:25 relevant 894:23 921:23 962:2, 24 979:22 981:3 983:13 988:16 1005:23 1015:4 1032:4, 5 1048:19 reliability 1011:19 relied 1015:9, 20 1044:5 1047:2, 12 re-litigate 1095:17 rely 899:3 901:13 945:23	975:13 976:10 988:17 1003:6, 11 1006:7 1023:12 relying 896:10 remain 907:24 908:1 remained 1079:12 remember 897:12 907:22 916:11 953:8 961:11 1013:4 1027:8 1045:19 1101:10 remind 898:18 1008:22 remotely 884:24 rendition 1030:17 repeat 946:15 948:10 996:19 1068:21 1082:6 1087:17 repeatedly 921:12 rephrase 912:10 954:25 1045:15 1047:9 replies 989:15 reply 898:21, 24 937:5 replying 937:4 report 902:12, 15, 21, 25 903:10 1041:24 1044:10 1045:7, 18 1048:13, 14 1049:8 1087:22 1088:3, 11 1096:3 1100:16 report.pdf 902:11 REPORTED 887:18 REPORTER 922:11 950:21 961:3 1010:12 1027:25 1038:11 1040:1 1064:10 1084:24 1087:16 1102:19 1105:5	REPORTER'S 1105:1 reporting 924:8 1023:5 reports 1002:14 represent 921:4 1087:11 representation 986:23 1001:23 representing 1061:19 reputation 926:2 981:1 1007:14 1071:21 request 1043:19 requests 1041:15 requirements 939:22 researched 1098:11, 12 resentful 1011:6 resolve 922:15 950:23 1032:12 1038:21 resources 957:6 1102:4 respect 898:22 900:8 949:21 964:6 984:10 992:25 1017:16 1033:9, 12 1049:1, 7 respective 1044:25 respectively 884:23 responding 897:14 response 897:21 1071:24 1087:24 responsibility 956:13 responsive 945:19 1100:1 rest 899:12 restrain 931:2 restraining 928:23 re-submit 1091:6 re-submitting 1091:5 result 962:9	results 953:13, 15, 23 RESUMED 932:16 966:14 1054:12 1078:5 1084:6 resurrection 1004:10 retain 901:22 918:17 1049:13 retained 918:2, 15, 22 927:12 946:7 947:11, 22 948:3, 15 953:12 954:7, 18 955:6, 13 956:2 1025:3 1036:2, 4, 6, 12, 21 1058:1, 2, 7, 9 retainer 901:14, 19 906:19 918:21 938:4, 5, 12, 14 939:12, 17, 18 940:1 941:6 942:2, 7, 12, 25 944:6, 10, 11, 18 945:1, 3, 4, 6, 8 946:6 947:9, 20 948:1, 13 949:7, 22 950:1 951:12, 15, 18 952:2, 16 954:6 955:10, 19, 23 956:20 1025:16 1026:3 1036:7 1037:8 retrieval 903:16 retrospect 913:14, 15 return 938:10 1047:21 Reuters 962:6 968:5 1009:18 revenue 1047:25 review 905:2 908:17 914:2 reviewed 897:1 900:10 902:21 905:3 915:10 919:10 939:12 941:1, 19 reviewing 905:2 reviews 948:25 1048:18	1067:19 1076:18 1077:4 RFI 1068:6 RICHARD 884:12 richer 987:19 Richter 996:5, 10 997:4, 14, 18 right-hand 958:21 959:16 986:8 1061:13 1062:4 RILEY 884:19, 23 885:11 888:2 889:22 890:3, 7, 21 891:25 893:6 894:19 900:9 902:3 905:18 906:14 909:14 917:16 920:24 924:6 927:1 928:14 932:9 936:19 937:12, 20, 22 939:13 940:21 942:17 944:3 945:24 946:4 947:1, 7 950:17 951:2 953:5 959:11 965:5 966:18 967:3, 8 968:13 972:15, 21 974:23 976:6, 24 978:18 982:13, 17 984:17 985:8, 16 995:3, 20 996:3 1000:23 1010:16 1011:10 1013:1 1014:6, 19 1015:7, 20 1016:12 1020:6, 20 1021:22 1031:3, 23 1032:8 1038:10, 24 1047:17 1048:11 1050:19 1053:23 1054:16 1058:19 1060:8 1065:14, 25 1067:24 1078:7
---	---	---	---	---

1084:3 1085:10, 24 1087:9 1088:1 1089:14 1090:14, 25 1091:4, 13 1092:23 1093:16 1094:1, 8, 11 1096:3, 22 1097:22 1098:10, 21 1099:9, 14, 19 1100:17 1102:23 Riley's 955:3 984:11 1094:22 1103:18 ringing 1077:16 Rio 997:11 rise 934:14 974:15 risk 1093:17, 20 road 1041:16 ROB 884:11 Rocco 907:13 992:8 1050:24 1090:1 Rocco's 1089:24 role 1012:6 1023:4 1074:9 roles 1012:6 roll 968:7 room 932:25 Rose 1087:10, 19 Rosedale 1035:8 ROSEN 884:19 Rosh 1026:7 roughly 1009:20 round 971:3 RPR 887:18 1105:4, 24 rules 1082:24 ruling 1017:22 run 945:1 1048:3 running 927:7 992:7 1046:1 < S > safe 986:22 safely 985:14 safety 900:23, 24 956:14, 17 sake 1019:19 Sanchioni 1051:8	Santedicola 887:18 1105:4, 24 Sari 996:5, 10 997:3, 18 saved 1078:9, 10 Scaramouche 1027:4 scattered 1092:25 Schedule 970:19 992:23 1000:4, 6 scope 939:17 941:6 942:1 950:1 954:6 955:10 956:19 screen 923:11 969:2 970:24 972:11, 19, 22 976:25 978:16 1046:14 1054:22 1082:10 screenshot 1021:7 scroll 898:12 907:10 915:24 916:22 917:7 931:20 948:24 949:1 993:6 994:9 1056:23 1063:10 1066:21 1067:15, 17 1068:5 1069:11 1076:13 1077:3, 15 1078:14 1095:7, 8 scrolling 1070:2 1087:24 se 1019:3 search 992:4 searches 1076:21 secret 935:22, 23 section 903:11 1043:4 1056:6, 11, 16 secure 956:7 secured 1100:11 securities 1048:18 1050:22	1051:17 1052:1, 19 1053:13 security 941:21, 22 943:2 966:20 1025:19 1026:3 1035:3 1039:6 1040:25 1041:2 seeking 979:1 segment 1042:9 self 926:6 1003:2, 3 Self- Represented 887:4, 6 sending 917:20 983:17 sense 916:21 917:7 924:12 990:5 992:22 1010:17 1014:5 sensitive 931:25 sentence 940:12 1073:9 separate 897:22 946:23 952:22 995:25 1006:24 1031:21 1050:2 1067:12 1072:13 1083:7 separately 916:25 September 889:18, 22 917:22 941:4 948:20 951:3 952:15 953:6 958:11 959:3 960:17 961:20 967:5 968:16 969:6 977:19 978:5 979:13 980:14, 18 983:4, 18, 22 986:12, 15 989:25 990:25 991:4, 25 993:23 994:2 999:16 1000:8 1001:3, 13 1009:14 1018:18 1024:8 1025:7 1026:1 1028:7 1034:5 1036:18 1056:1	1059:24 1060:5, 8, 18 sequence 912:12 959:25 series 1095:16 serious 925:7 961:14 1013:14 1014:23 1085:6 1090:16 seriously 1079:22 servers 903:18 992:1 service 961:12 999:10 services 1058:21 1059:14 1063:19 1064:21 session 974:17 set 909:25 1012:17 1045:18 1081:20 1105:7 severely 1004:6 shape 1093:10 Sharon 1035:21, 23 1036:7, 14, 16 Sharon's 1037:19 sheer 1097:22 shifted 987:16 shit 986:18 shocked 983:9 SHOOM 886:10 short 900:18 931:11 942:12 960:23 980:22 short-and-distort 962:25 963:8 964:4 978:24 981:5 990:22 short-and- distorts 1005:2 short-circuit 1000:4 Shorthand 1105:5, 15 shortly 900:20 983:19 1043:4 1075:7 show 938:22 983:19 991:23 1014:4	showed 1035:3 shows 991:18 sic 890:11 side 922:12 1072:15, 16 1083:9 sideways 1048:1 sign 1090:15, 23 signatories 1056:24 signature 902:4 1035:23 signed 938:22 939:2, 4 1057:3 1062:2 1090:18 significant 915:22 1041:1 signing 1061:20 1091:5 signposts 953:9 similar 1092:21 Similarly 981:11 simple 907:2 1093:7, 9 simply 926:20 964:10 Sinclair 1091:23 Singh 946:8 947:13 sir 1033:15 1055:18 1056:12 1066:18 1067:15 1068:17 1070:13 1071:10 1074:12 1075:15 1082:18 1083:21 1084:20 1098:8 sit 1065:21 1097:11 sitting 915:20 921:6 situate 922:3 situation 925:24 1100:2 skeptical 919:14, 18 981:12 1012:9 skepticism 987:13 988:2
---	--	--	--	---

skewing 1013:25	1002:11 1005:12, 24	sort 898:23 899:11 904:20 905:14 924:12 966:20 968:24 990:15	spring 1089:12 staff 917:18 stamp 970:23 stamped 1042:1, 2	Stephen 965:14 1084:15, 17
skill 1059:13 1081:20	so-called 1072:3	social 988:8 1048:10	stampings 958:23	Stephen's 1084:14
skimmed 973:11	sole 945:9 1094:13 1096:9 1097:25 1098:1, 11, 13	sorts 1099:23	stand 898:17 1104:4	steps 991:25 992:4
skip 902:23 1004:2	solely 921:22	sought 975:9	stand-alone 892:20 934:11, 15	stick 1029:5 1034:8, 11
skipping 933:1	solicitor-client 927:22	sounds 906:7 1009:18 1092:7, 11, 14	standing 1070:24 1079:23 1082:22	sticky 1035:18
skips 1030:25	Soliman 1087:13, 17, 18	source 928:12 931:22 932:4 936:16 987:19 1013:20 1014:21 1027:3 1040:4 1041:7, 11 1047:6	stands 905:24 1061:5	sting 945:1, 4 946:8 947:12, 22 948:3, 15 953:13, 14, 23 973:21 975:19 976:1 996:17 997:13, 17 1026:10, 15 1029:6
slide 1021:8 1022:10	somebody 968:23 1027:18 1053:3 1073:4	sources 938:21 942:24 1047:3, 25	start 920:19, 21 990:12 996:17 1010:23	stinging 995:6, 15
slightly 945:20	somewhat 1053:4 1080:25	speak 912:22 913:8 1015:22, 25 1016:6, 9, 18 1017:1 1074:25	started 941:21 990:12 1008:23 1012:11 1096:20 1098:8	stings 951:18 953:25 954:5, 7, 10, 13, 14 955:4, 11, 20 982:12, 25
slowly 905:9, 13 909:14 1070:2	sooner 1067:4	speakerphone 910:12	starting 960:24	stipulated 1056:9 1062:25
small 1012:10	sophisticated 901:6	speaking 967:13 985:2 1007:13 1009:2 1010:3 1058:21	starts 920:25 959:2	stirring 964:3
Snowdy 894:7 896:12 910:8, 20, 24 911:3 918:3 919:14, 18 922:23 923:22 924:2, 10, 14, 15, 23 925:10 927:13 928:16, 23 929:8 931:2 932:8, 10, 22 933:18 934:7, 22 981:12, 18, 19, 20, 22 983:11, 21 986:17, 24 987:11, 14, 15, 17 988:2, 13, 16 989:1, 12, 17, 20 990:7, 8, 18 993:11, 20 1000:24 1002:20 1003:2, 20, 23 1004:4, 9, 20 1005:8, 15, 23 1006:2, 5, 17, 22 1007:7, 12 1008:2, 4, 8 1011:3, 13, 15, 19, 25 1012:9 1013:23 1014:12 1016:23 1018:8, 9 1101:2	sorry 904:25 910:12 920:18, 20 921:17 922:8 941:12 946:14 947:4 953:7 956:2, 11 960:13 961:5 968:14 969:4 970:2 973:8 977:21 980:11 984:24 987:6, 9, 23 993:3 997:25 998:1 1000:22 1006:17 1007:5 1009:14 1018:21 1019:7 1021:18 1023:25 1025:3 1027:25 1032:1 1036:5, 10 1038:15 1040:4 1046:9 1054:9 1058:5 1060:13 1064:18 1068:4, 5 1070:1 1071:1 1075:23 1076:2 1081:22, 23 1085:1 1087:16 1088:7, 15 1101:15	SPEARS 884:11 886:7 993:18 1006:22	state 892:25 962:11 979:23 980:21 1103:3	stock 1046:21 1050:21 1051:3 1052:12
Snowdy/Danny 1010:6 1101:6		specialist 1037:15	stated 1071:12	stole 1091:8
Snowdy's 928:9 930:18 933:21 935:6 987:25		specific 891:18 929:7 949:2	statement 1015:13 1040:7 1047:14 1074:11, 21, 24 1075:2, 7 1077:22 1078:8 1081:2 1090:12, 15, 16 1092:9	Stop 925:19 928:2 944:13 946:1 982:4, 19 983:6, 13 995:9 998:9 1003:12 1004:1 1021:11 1022:13
		specifically 900:3 973:3 1092:16	statements 974:18	stopped 1007:21, 25
		speculate 992:19	states 895:12 961:8 977:1 1008:8 1043:16 1070:6	stories 956:21 1033:3
		speculating 992:18 1061:18, 23	station 1035:8	story 997:4 1009:19, 20 1029:8 1038:1 1073:12 1078:24 1079:2, 17, 19 1086:3, 16, 18
		spell 965:18, 20, 21	staying 929:21	strained 1098:23, 25
		splitting 1053:8	Stefanie 1060:11	strange 1090:7
		spoke 1084:11, 13	stemmed 1074:16	
		spouses 942:4	stenographically 1105:12	
			step 952:5	

STRATEGY 884:19, 20 886:19, 21 889:20 999:5, 11 1030:3 1055:1 1056:3, 7, 13 1058:3, 12 Street 953:10 1009:20 1066:5, 6 strife 964:3 strong 952:17 Student-at-Law 887:13, 15 stuff 916:1 1084:10 1101:11 subject 904:10 907:24 909:5 943:4 963:21 968:17 981:23 985:16 990:25 1001:8, 10 1037:17, 21 1039:1 1053:5, 23 1066:10 1070:23 1083:1 1089:19 1092:15 subjected 901:6 subjects 995:16 submitted 1088:3 subsequent 924:22 956:4 982:24 1018:7 1019:7 1079:13 1101:8 subsequently 925:14 928:20 1034:20 1044:15 1060:20 1072:9 1080:3 substance 1080:18 substantive 989:22 subway 1035:8 success 1056:11 1096:15 successful 903:12, 17 975:10 1064:5, 14 1065:4 successfully	1022:21 sue 1045:8 suffice 1042:25 sufficient 903:14 978:16 suggest 973:19 975:24 1020:13 1080:17 suggesting 910:4 suggests 1072:23 sum 904:4 957:3 summary 891:7 924:8 989:24 1010:21 SUNNY 884:11 886:8 SUPERIOR 884:2 superseding 1042:18 supplier 1092:25 1100:3 suppliers 1098:22 1099:15 support 892:4 896:7 999:10 1014:7 1018:12 suppose 929:17 937:4 supposed 964:1, 16 surely 1103:25 surprise 914:4 1093:4, 8 surprised 1091:21 1092:1, 23 surrounding 1029:8 surveillance 951:19 954:8, 10 955:25 956:15 998:16 1020:21, 24 1021:2, 8, 10, 24 1022:2, 10, 12 surveilling 956:8 995:6, 14 996:5, 15 survey 1025:18 1040:24	surveys 1025:19 suspected 942:4 suspicious 904:8 swore 892:2, 4 897:20 933:25 934:21 935:3 937:25 997:21 1015:7 sworn 884:23 900:6 1095:10 system 901:5, 8 1032:5 systems 906:22 941:20 1039:6, 13 < T > tab 891:25 896:20 898:20 900:6 902:2, 11 904:16 909:12, 16 914:17 917:15 919:24 920:2 921:16, 17 922:18 930:13, 14 931:15 932:18 935:8 937:23 938:2, 4, 8, 11, 19 939:17 948:19 951:2 957:11, 19 958:9 959:14 967:4 968:12 972:25 976:25 983:16 984:1, 5 985:21 986:5 990:23 993:2, 21 995:19 996:24 998:18 1000:13 1001:13 1017:25 1018:14, 18 1022:16, 25 1023:23 1024:7 1028:4 1029:11 1033:21 1035:20 1038:10, 20 1039:15 1040:7 1041:23 1050:17, 19	1051:7 table 1059:17 tabs 984:9 tainted 933:2 talk 1024:13 1072:11 1084:10 1097:11 talked 909:19 talking 913:2 923:13 924:17 944:21 953:20 975:19, 20 981:17 1055:10 1075:21 talks 930:18 Tamara 889:19 901:14 938:5 940:25 946:6, 7 947:10, 12, 21, 22 948:2, 3, 14, 15 949:3 953:12 954:6, 7 957:14 958:7 998:19 999:2, 7, 16, 23 1000:7 1024:23 1036:2, 5 1054:25 1056:2, 7 1058:1, 11, 13, 22 1059:1, 4, 5, 14 tangible 1014:5, 17 Tanuri 938:9, 15 983:18 991:6, 10, 14 992:6 1029:20, 23 1030:1 1039:4, 11, 19 1040:10, 20 1057:4, 5 1059:3, 6 Tanya 887:11 tape 981:20, 21 988:19 1026:5, 12, 13, 14, 18, 20, 23 1033:8, 13 1034:14 taped 981:13 tapes 1033:18 target 1072:21 targeting 995:5, 11 1078:24 targets 995:1 Task 961:15	1085:6 tax 1044:3 teachers 997:7 team 923:22 924:25 956:12 1085:3 tech 991:19 technical 922:16 950:24 technically 1058:7 tells 989:12 tend 1002:16 1006:21 tended 990:13 tension 1032:6 term 902:7 951:4 1008:12 1072:23 terminology 934:10 terms 910:16, 17 953:9 974:20 1002:15 1005:17 1039:22 1040:3 1041:6 1046:2 1049:18 1057:16, 18 1094:4 testimony 894:2 898:11, 16 933:9 934:24 1060:23 1105:10 testing 973:23 979:14 text 920:4, 5, 20 922:18 923:8 926:10, 12 932:19 937:22 958:10 967:4 988:11 1001:14 1007:23 1013:8 1029:20 1030:25 1031:4 1033:23 1046:12 1102:9 texts 919:19 927:7 928:4 981:17 Thanks 923:17 1011:2 1078:3 theme 1014:4 therapist 997:8
--	---	--	---	--

thick 1004:13 1069:13	24 946:12 948:22 952:5 953:5, 19 954:3, 4, 13, 24 955:2, 3 956:3 967:17, 19 968:4, 11, 15 969:10 972:17, 18 974:21 979:23 981:8 989:21 990:8, 14, 19 991:24 996:25 998:8 1009:10, 18, 21 1010:19 1011:4 1012:9 1013:19 1015:1 1017:20 1020:8 1025:1, 22 1026:4, 20 1027:23 1030:20 1035:11 1036:13 1044:14 1053:19 1057:11 1059:21 1069:2 1074:17 1076:5, 13 1083:11, 18, 22 1088:2 1102:4 1103:24 1105:7, 8, 11	tomorrow 911:22 959:9	ton 1011:3	1088:22 1090:25 1105:14	1029:17 1042:15 1043:2
thing 890:8 896:22 901:2 904:16 905:12 907:2 923:21 927:22 988:6 1016:8 1027:1 1044:20 1045:19 1066:1	topic 963:9	top 905:16 911:19 920:15 935:22 938:23 957:23 958:21 970:24 986:8 1033:25 1060:11, 14 1061:1, 22 1065:21 1075:19 1094:24 1095:8	trumpeted 1015:9 1016:7	Uhm-hmm 1057:8	
things 900:22 905:14 921:11 934:14 951:21 954:20 958:13 959:8 960:18 961:24 962:23 967:23 979:6 985:5 1010:17	total 1040:22 1041:4 1056:12 1059:16	torn 1033:11	trust 909:23 925:21 1003:11 1015:11	UK 884:20 886:21 889:20 999:5, 11 1055:1 1056:3, 7, 13 1058:3, 12	
third 938:19 944:19 954:18 1009:24 1046:19 1065:9	total 1040:22 1041:4 1056:12 1059:16	Toronto 932:6 997:10 1025:9 1036:14, 17 1066:6	trusted 910:3, 5, 7, 19 926:16	ultimate 1058:16	
Thorburn 928:23 929:4, 8	total 1040:22 1041:4 1056:12 1059:16	trace 1027:12, 20 1035:14	truth 1013:25	ultimately 903:23 988:24 1043:10 1056:14 1058:10, 17	
Thornton 972:2	total 1040:22 1041:4 1056:12 1059:16	transaction 1045:22	trying 910:22 912:7, 16 916:22 924:19 941:13 942:17, 20, 23 943:25 944:3 956:11 963:6 978:19 980:20 981:8, 12 982:12 987:10, 18 999:20 1003:14 1013:19 1014:17 1021:16, 17 1027:8, 11 1038:16 1050:1 1052:23 1068:8 1071:25 1086:22 1099:25 1100:1	ultra 935:22	
thought 962:23 980:11 986:17 987:18 991:17, 19 1012:23 1023:8 1027:19 1038:13 1054:7 1086:14	total 1040:22 1041:4 1056:12 1059:16	transcript 891:15 897:1, 12 917:5 972:8 976:18 985:1 1012:4 1052:15 1086:10 1105:15	Tuesday 986:15 1054:2 1104:5	unaware 953:17, 24 994:4 1020:20	
thoughts 1045:22	total 1040:22 1041:4 1056:12 1059:16	transcripts 1029:8	turn 1083:22	uncommon 1090:7	
thread 1030:25	timeline 1089:5	transfer 957:17, 22 999:6, 15 1050:3	turned 910:8	uncovering 962:23	
threw 1034:21 1035:4, 11	times 924:16 1001:20 1085:10	transfers 949:10	two-thirds 1063:14	under-delivering 1025:25	
throw 942:17, 20, 23 944:3	timing 1008:16, 17 1041:7	translation 1029:13, 15 1030:17, 19 1031:1	type 908:25 1049:23 1058:21	underlined 922:20 924:1 928:3 959:6 989:8 1004:3 1005:6 1030:2	
thrown 933:10 934:24	title 1021:7 1022:9	translations 1030:21	typed 984:2 985:9 1000:14	underlying 975:18 992:21	
ticker 1046:22	today 915:21 921:6 1015:9 1020:9 1054:2, 16, 23 1055:5, 19 1057:18 1068:14, 23 1069:10 1075:15 1077:7 1086:23	trouble 978:21	typos 1067:20	undermines 925:8	
tied 893:20 1005:8 1011:14 1031:10	today's 922:3	true 1057:19 1086:17	< U >	underneath 923:8	
time 896:17 904:9 905:22, 25 906:2, 6, 9, 16, 22, 23 907:1 911:1 912:16 915:10 917:5 920:12 921:2 923:5, 13 924:24 928:19 934:21 941:1,	told 906:16 935:5 947:16 967:24 981:24, 25 1024:5 1034:18 1035:18	trouble 978:21	U.S 972:4 977:7, 11 1040:11	understand 894:9 898:3 899:24 901:15 902:17 905:11 911:17 914:17 916:1 917:17 924:17 939:4 940:11 943:12 954:5 955:16, 19, 22, 24 972:15 981:14 984:13 1001:21 1004:25 1012:5 1021:17 1024:18 1025:15 1029:19 1035:22 1036:9 1037:7, 18	

1046:21 1054:4 1057:24 1068:9 1070:13 1072:17 1088:13 understanding 893:10 908:16 912:25 917:24 937:20 940:1, 24 944:6 949:22 951:11, 15, 17 960:19 967:16 969:23 983:19 984:25 990:21 991:12 1002:8 1007:18 1026:2 1042:19 1059:10 1061:9 1063:4 1101:4 Understood 913:16 918:25 943:19 950:2 956:20 1026:8 1027:16 1029:3 1036:1, 11 1045:6 1048:17 1060:23 undertake 917:2 946:22 undertaken 888:16 undertakes 1083:8 undertaking 891:10 899:21 917:9 946:19 984:10 985:4 992:16 1001:5 1029:25 1050:18 1052:3, 25 1053:6, 18 undertakings 888:11, 15 1053:24 unexcerpted 890:22 891:2 unfair 942:14 945:15 Unfortunately 923:1 978:14 1070:2 1078:7 unhighlighted 890:22 891:2 universal 905:25 unknown 901:7 unlawful 963:4	unnatural 1047:2, 5 unofficial 1066:4 unpack 1059:15 unprofessional 924:4 925:1 unrelated 933:11 unsecured 1100:10 unstable 1010:9 unsuspecting 1093:21 unusual 962:10 unvarnished 973:22 unworthy 1031:24 update 892:16 updated 1043:7 upper 959:16 1061:13 1062:4 upset 1002:24 1003:19 USB 1029:5 1034:2, 8, 10 USD 999:6 uses 912:24 UTC 905:22 906:23 < V > vacuum 981:8 valuable 1011:1 value 986:18 1099:1, 17 vanished 1046:20 variety 942:24 various 953:25 982:1 1041:15 1048:18 1062:13 1076:20 1096:14, 17 VENTURES 884:9 885:25 venue 911:13, 14 verbatim 1030:9 verified 923:23 verify 916:10 988:20, 23 1025:12 1042:15, 16	VERITEXT 1105:23 version 939:2 969:1, 7, 11 970:22 984:2 985:9 1000:15 1042:7, 13, 17, 18, 24 1043:9 1060:2 1078:11 1079:5, 7, 13 versions 890:23 victim 903:4 Videoconferenci ng 884:24 view 891:13 924:20 927:7 946:25 963:2 980:4 1005:1 1006:5, 6 1007:18 1081:2 1095:19 1103:17 views 1005:3 1044:1 1045:18 1046:3 1049:11 Vincent 893:25 894:6 895:21, 24 898:3, 8, 9 899:3, 22 904:9 910:11 911:14 913:1 915:2 919:20 920:21 1008:24 1009:13, 24 1010:7, 8 1013:14 1015:4, 10, 20 1016:13 1017:17 VIRGINIA 884:19 1024:9 1026:9 1028:5 1033:25 1034:8 1037:14 virtually 1046:20 virtue 973:22 979:14 virus 901:9 voice 1082:1 VOORHEIS 884:13 1072:10 1073:11 1083:12, 15 < W > w[ith] 926:6 961:10 967:14	989:19 1002:12 1003:1, 9, 12 1004:7, 8 1005:9 1008:25 1024:14 Waddell 914:21 wait 922:14 986:25 waiting 917:6 Walied 1087:13, 18 Wall 953:10 1009:20 1066:6 wanted 898:18 899:22 905:14 920:18 927:9 936:18 967:3, 10 972:19 1001:1 1012:24 1092:9 wanting 907:3 wants 995:21 Ward 887:12 wasp 989:16 990:3 wasted 1011:4 wasting 989:21 1102:3 ways 1096:14 Wednesday 910:1 weeds 1052:11 week 927:10 1009:24 weeks 1078:10 WESLEY 884:12 WEST 884:8, 13 885:16 887:8, 9 892:5, 16, 22 899:1 942:3 946:8 947:14 948:4, 5, 16, 17 956:21 971:22, 25 977:2, 6, 19 978:1 979:18, 19 980:1, 3, 17, 21 1012:7 1017:8 1020:14, 15, 22 1021:3 1037:10, 17, 21 1038:1, 6 1050:21 1051:2, 13 1063:17 1064:6, 15 1072:9 1073:11	1074:5, 13 1077:11 1078:22, 25 1080:20 1083:14 whatnot 1041:15 WhatsApp 912:24 920:3 whatsoever 974:8 1015:13 1094:12 1096:8, 15 whistleblower 964:2 White 887:15 1029:23 wife 994:15, 21 997:8 Willis 1022:18, 22 1085:23 1086:2, 4, 15 Willis's 1023:4 Wind 892:17 895:17 wire 949:10 957:17 999:6, 15 Wish 968:18 withdraw 976:23 withheld 1097:25 withhold 1096:8 WITNESS 888:2 890:18 894:1, 10 916:13, 21 917:6 936:16 940:17 943:8 948:9, 25 953:4 975:7 1023:12, 21 1031:17 1053:11 1067:19 1076:18 1077:4 1081:15, 18 1082:1, 25 1090:11, 15 1092:16 1095:19 1099:4 1102:13 1105:8, 10 witness's 936:6 954:17 wk 926:4 965:6 967:9 1008:24 wolf 1066:7 Wolfpack 898:2 942:4 960:22
--	---	--	---	--

965:9 968:4
978:23 1007:1
1100:20
woman 1034:1
wondering
930:8 931:11
won't 890:25
923:20, 22
1093:13
word 899:15
956:5 1002:16
1027:2, 7
1048:12, 14
1078:20 1080:9,
16, 24 1081:10
wording 943:1
1053:17 1086:9
1088:19
words 906:20
926:23, 24
927:1 936:6
940:21 972:12
984:23 987:2
1010:22 1019:2
1051:2 1061:2
work 918:18
954:19 990:15
1039:13
1040:24 1072:5
1093:21
worked 890:13
990:22 991:20
1034:23 1059:7
working
1001:25
1020:15 1072:8,
10
works 902:5
919:3
workup 1085:24
worried 1018:15
worry 952:4
1018:14
worse 973:23
worth 921:14
1012:1 1092:25
wreck 1103:8
Wright 1060:11
write 937:2
1037:20
1070:22 1073:4,
18 1074:6
1078:23
1079:17, 19
1080:21 1081:12

writes 973:5
1005:5
writing 906:13
909:21 949:5
972:10 984:18
985:10 1022:22
1072:24 1074:9,
14 1079:1
written 975:1
1061:3
wrong 890:15
913:1 916:16,
19 917:4
976:11 985:10
991:9 1009:7,
23 1010:3
1032:15, 20
1033:2, 5 1040:9
wrongdoing
929:7
wrongful 982:5
wrote 1035:1, 4
1060:21 1086:25

< Y >
Ya 989:12
Yanus 991:6, 11
1029:20, 21, 22
1057:2 1062:2,
4, 6
Yeah 897:7
901:17 906:5,
20 922:13
994:8 1012:20
1015:24
1028:24
1032:21
1033:20 1050:7
1061:18
1073:23 1095:4
year 997:2
years 1047:2,
12, 16 1048:23
1070:19 1088:4,
6, 17, 18, 19, 24
1089:5, 15
1090:7
yellow 970:16
978:15
yesterday
893:13 911:14
yesterday's
909:24
York 1028:25

Yossi 983:18
991:6 1024:25
1025:3 1029:20
1039:4 1041:12,
13 1057:3
1058:7 1059:5,
16
Yossi's 1058:8
Yu 965:15
966:2
Y-u 965:15

< Z >
Zoom 884:24
899:11 968:12
1029:11

THE CATALYST CAPITAL GROUP INC., *et al*
Plaintiffs

and

WEST FACE CAPITAL INC., *et al*
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**Affidavit of A.J. Freedman
(sworn May 10, 2021)**

**A. Dimitri Lascaris Law
Professional Corporation**
G101-360 Rue Saint-Jacques
Montreal, QC H2Y 1P5

A. Dimitri Lascaris (LSO #50074A)
alexander.lascaris@gmail.com
Tel: (514) 941-5991
Fax: (519) 660-7845

A.J. Freedman (LSO# 73196R)
aj@kalloghlianmyers.com
Tel: (647)-968-9560
Fax: (647)-243-6620
c/o A. Dimitri Lascaris Law P.C

**Lawyers for the Defendant, Bruce
Livesey**

THE CATALYST CAPITAL GROUP INC., *et al*
Plaintiffs

and

WEST FACE CAPITAL INC., *et al*
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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**THIRD SUPPLEMENTARY MOTION RECORD OF
BRUCE LIVESEY
(ANTI-SLAPP MOTION)**

**A. Dimitri Lascaris Law
Professional Corporation**
G101-360 Rue Saint-Jacques
Montreal, QC H2Y 1P5

A. Dimitri Lascaris (LSO #50074A)
alexander.lascaris@gmail.com
Tel: (514) 941-5991
Fax: (519) 660-7845

A.J. Freedman (LSO# 73196R)
aj@kalloghlianmyers.com
Tel: (647)-968-9560
Fax: (647)-243-6620
c/o A. Dimitri Lascaris Law P.C

Lawyers for the Defendant, Bruce Livesey