

**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

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

May 5, 2021

**A. Dimitri Lascaris Law
Professional Corporation**
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Lawyers for the Defendant, Bruce Livesey

TO: SERVICE LIST

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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
(Sworn on May 5, 2021)

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

SAY:

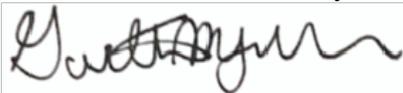
1. I am a lawyer at Kalloghlian Myers LLP and co-counsel to the Defendant, Bruce Livesey, in the above-captioned action, as such, I have knowledge of the matters herein deposed. I swear this affidavit in support of Mr. Livesey's motion to dismiss the claims against him under s. 137.1 of the *Courts of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

2. Attached hereto as exhibits are the following documents that have been filed and/or produced by parties in this action:

Document	Exhibit
Statement of Claim filed November 7, 2017 (<i>The Catalyst Capital Group Inc. et al v. West Face Capital Inc. et al</i> ; Court File No. CV-17-587463-00CL)	"A"
Transcript from the cross-examination of Bruce Livesey held Dember 18, 2020	"B"

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Black Cube Research Report on Bruce Livesey	"I"
Black Cube Investigation Document #1 (BC000168)	"J"
Black Cube Investigation Document #2 (BC000447)	"K"

SWORN remotely by A.J. Freedman in the City of Toronto, in the Province of Ontario, on April 29, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

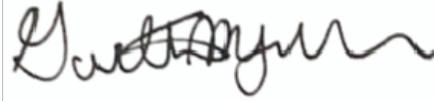


Commissioner for Taking Affidavits



A.J. Freedman

This is Exhibit "A" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "D. [unclear]", written over a horizontal line.

A Commissioner, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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, AND JOHN
DOES #1-10

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

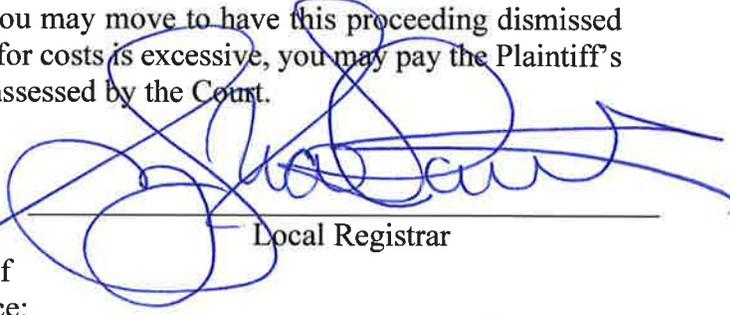
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

Date November 7, 2017

Issued by 

Local Registrar

Address of court office:

TO: WEST FACE CAPITAL INC.
2 Bloor Street E.
Suite 3000
Toronto, Ontario
M4W 1A8

SUPERIOR COURT
OF JUSTICE
383 UNIVERSITY AVE.
10TH FLOOR
TORONTO, ONTARIO
M5G 1E8

COUR SUPÉRIEURE
DE JUSTICE
383 AVE. UNIVERSITY
10E ÉTAGE
TORONTO, ONTARIO
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AND TO: GREGORY BOLAND
c/o West Face Capital Inc.
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AND TO: M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA
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M5V 2H1

AND TO: ADMIRALTY ADVISORS LLC
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75225

AND TO: FRIGATE VENTURES LP
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AND TO: ANSON INVESTMENTS LP
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AND TO: ANSON CAPITAL LP
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75240

AND TO: ANSON INVESTMENTS MASTER FUND LP
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AND TO: AIMF GP,
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AND TO: ANSON CATALYST MASTER FUND LP
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AND TO: ACF GP
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AND TO: MOEZ KASSAM
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AND TO: SUNNY PURI
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AND TO: BRUCE LANGSTAFF
158 St. Leonard's Ave
North York, Ontario
M4N 1K7

AND TO: ROB COPELAND
63 N. 3rd St.
Apt. 207
Brooklyn, New York
11249

AND TO: CLARITYSPRING INC.
545 5th Avenue
8th Floor
New York, New York, U.S.
10017

AND TO: NATHAN ANDERSON
c/o ClaritySpring Inc.
545 5th Avenue
8th Floor
New York, New York, U.S.
10017

AND TO: KEVIN BAUMANN

AND TO: JEFFREY MCFARLANE

AND TO: DARRYL LEVITT

AND TO: RICHARD MOLYNEUX

AND TO: AND JOHN DOES #1-10

CLAIM

1. The Plaintiffs claim against the Defendants, on a joint and several basis, for the following:
 - (a) General and aggravated damages in the amount of \$450,000,000 for defamation, injurious falsehood, the tort of causing loss by unlawful means (intentional interference with economic relations), civil conspiracy and unjust enrichment;
 - (b) In the alternative, an accounting of any and all gains from transactions in Callidus Shares (defined *infra*) and the derivative securities thereof on or after August 9, 2017, including without limitation gains from short positions covered on or after that date; and, to the extent that such amounts are greater than any amount of general damages awarded, disgorgement or such other equitable remedy in relation to such gains;
 - (c) A Declaration that the Defendants defamed the Plaintiffs;
 - (d) A Declaration that the Defendants breached s. 126.1 and s. 126.2 of the *Securities Act* (Ontario), RSO 1990, c. S.5 (the “*Securities Act*”);
 - (e) A Declaration that the Individuals Defendants (defined *infra*) are personally liable for the unlawful actions carried out by or through the corporations and/or other entities that are named as Defendants;
 - (f) Special damages for costs associated with the “investigation” of the willful misconduct of the Defendants, or some of them;
 - (g) Punitive and/or aggravated damages as against all of the Defendants in the amount of \$5,000,000.00;
 - (h) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (i) The costs of this action, plus the applicable taxes; and
 - (j) Such further and other relief as to this Honourable Court may seem just.

(A) THE PLAINTIFFS

2. The Plaintiff, The Catalyst Capital Group Inc. (“Catalyst”), is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as “special situations investments for control”.

3. The Plaintiff, Callidus Capital Corporation (“Callidus”), is a corporation with its head office located in Toronto, Ontario. Callidus is a publicly traded asset-based lender that provides capital on a bridge basis to meet the financing requirements of companies that cannot access traditional lending sources.

4. Callidus engages in asset-based lending by lending to corporate businesses and taking security against the assessed or appraised value of working capital and an identifiable portfolio of assets, which may include accounts receivable, inventory, equipment, real estate, and other assets.

5. In April 2014, Callidus made an initial public offering (“IPO”) of approximately forty per cent of its issued and outstanding shares. Prior to the IPO, Callidus was wholly owned by Catalyst. Investment funds managed by Catalyst continue to own or control approximately 2/3rds of the issued and outstanding shares of Callidus.

6. The shares of Callidus trade on the Toronto Stock Exchange under trade symbol CBL.TO (the “Callidus Shares”).

(B) THE DEFENDANTS

7. The Defendant West Face Capital Inc. (“West Face”) is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. West Face competes

with Catalyst in the special situations for control investment industry. One of the principals of West Face is the Defendant Gregory Boland (“Boland”).

8. West Face and Boland are vicariously liable for the acts or omissions of one another. In the alternative, West Face and Boland acted as agent for each other.

9. The Defendant M5V Advisors Inc. carrying on business as Anson Group Canada (“Anson Canada”), is a hedge fund incorporated in Ontario. At all relevant times, Anson Canada has entered into securities transactions on public markets, including short sales. Anson Canada is vicariously liable for the acts and omissions of its employees.

10. The Defendant Admiralty Advisors LLC (“Admiralty”) is a limited liability company organized pursuant to the laws of Texas. At all relevant times, Admiralty has engaged in securities transactions, including short sales.

11. The Defendant Frigate Ventures LP (“Frigate”) is a limited partnership organized pursuant to the laws of Texas. At all relevant time, Frigate was a registered investment fund manager with the Ontario Securities Commission that engaged in securities transactions, including short sales. Admiralty is the general partner of Frigate.

12. The Defendant Anson Investments LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

13. The Defendant Anson Capital LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

14. The Defendant Anson Investment Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

15. The Defendant AIMF GP is the general partner to Anson Investment Master Fund LP. At all relevant times, AIMF GP has engaged in securities transactions, including short sales.

16. The Defendant Anson Catalyst Master Fund LP is a limited partnership organized under the laws of Texas. At all relevant times, it has engaged in securities transactions, including short sales.

17. The Defendant ACF GP is the general partner to Anson Catalyst Master Fund LP. At all relevant times, it has engaged in securities transactions, including short shares.

18. The parties described in paragraphs 9-17 above are a family of hedge funds that carry on business as the Anson Group (“Anson”). Those funds claim to be focussed on long-short, market-neutral and opportunistic investment strategies.

19. The Defendants Moez Kassam (“Kassam”) and Adam Spears (“Spears”) are principals of Anson. The Defendant Sunny Puri (“Puri”) is an analyst at Anson (together, the Individual Anson Defendants”).

20. The Individual Anson Defendants and the entities that comprise Anson at all material times operated, acted and marketed themselves as a single entity. The Individual Anson Defendants and Anson are vicariously liable for the acts or omissions of one another. In the alternative, each of the Individual Anson Defendants and Anson acted as agent for the others.

21. The Defendant ClaritySpring Inc. (“Clarity”) is a Delaware incorporated company that is based in New York. Clarity’s principal is the Defendant Nathan Anderson (“Anderson”).
22. Clarity and Anderson are vicariously liable for the acts or omissions of one another. In the alternative, Clarity and Anderson acted as agent for each other.
23. West Face, Boland, Anson, Kassam, Spears, Puri, Clarity and Anderson are hereinafter referred to collectively as the “Wolfpack Conspirators”.
24. The Defendant Bruce Langstaff (“Langstaff”) is a former employee of Canaccord Genuity.
25. The Defendant Rob Copeland (“Copeland”) is a reporter with the Wall Street Journal (the “WSJ) and resides in New York, New York.
26. The Defendants Boland, Kassam, Spears, Puri, Anderson, Langstaff and Copeland are hereinafter referred to collectively as the “Individual Defendants”.
27. The Defendant Kevin Baumann (“Baumann”) is an individual residing in Red Deer, Alberta.
28. The Defendant Jeffrey McFarlane (“McFarlane”) is an individual residing in North Carolina, in the United States of America.
29. The Defendant Darryl Levitt (“Levitt”) is an individual residing in Toronto, Ontario.
30. The Defendant Richard Molyneux (“Molyneux”) is an individual residing in Toronto, Ontario.

31. Baumann, McFarlane, Levitt and Molyneux are hereinafter referred to collectively as the “Guarantor Conspirators”.

32. The Wolfpack Conspirators, the Guarantor Conspirators, Langstaff and Copeland are hereinafter referred to collectively as the “Conspirators”.

33. John Doe 1-10 are parties that participated in the Conspiracy (defined *infra*) and whose identities are presently unknown to the Plaintiffs. The Plaintiffs will substitute the actual names of these parties after they are discovered.

(C) WOLFPACK CONSPIRATORS TARGET CALLIDUS FOR A SHORT-SELLING STRATEGY

34. Short-selling is an investment strategy whereby an investor borrows shares in a publicly traded corporation and then sells the borrowed shares to third parties. A short sale strategy anticipates that the shares will decline in value, at which point the investor will buy back shares at the lower price and return them to the party from which it originally borrowed shares. Selling borrowed shares in this fashion is known as “selling short”. This activity may also be undertaken on what is known as a “naked short” basis, in which a party bets that the stock will go down in price without actually borrowing the stock or finding out if there is available stock to borrow in order to short it. Without an inventory of stocks to borrow, naked shorting can leave a stock open to market manipulation.

35. If the shares ultimately decline in value as anticipated, the difference between the higher price at which the investor sold the shares and the lower price at which the investor bought them back represents a profit to the short-selling investor.

36. If, instead of declining in value as anticipated by the investor, the shares appreciate in value, then the short-selling investor loses money on the investment. At some point, in order to cap its losses, the investor will buy back the shares at a higher price and return them to the lender. Because, in theory, the potential price of any stock is unlimited, the potential loss on a short-selling strategy is infinite.

37. The acts of the Defendants described herein amount to an unlawful conspiracy in that, at some point prior to the publication of the Article (defined *infra*) on August 9, 2017, the Defendants, with or without the John Doe Defendants: i) maliciously and intentionally or otherwise, entered into an agreement to injure the Plaintiffs or, alternatively, the predominant purpose of their acts as a whole was to cause injury to the Plaintiffs; ii) the Defendants used unlawful means – specifically, acts or a combination of acts that amount in law to actionable defamation, injurious falsehood, breaches of subsections 126.1 and 126.2 of the *Securities Act* and related regulations, including, but not limited to National Instrument 81-102 and unjust enrichment (each set out more specifically below) – with the knowledge that their actions were directly aimed at the Plaintiffs for the purpose of causing injury to the Plaintiffs; iii) caused the stock price of Callidus to drop; and (iv) in fact caused the Plaintiffs to suffer damages as a result of their conduct.

(D) GUARANTORS COORDINATE EFFORTS TO HARM CALLIDUS AND CATALYST

38. Several of the parties that received loans from Callidus were required to have their principals execute personal guarantees as a term and condition of the loan. When several of the borrowers subsequently defaulted on their loans, Callidus took steps to enforce the personal guarantees.

39. In particular, Callidus commenced actions to enforce personal guarantees against the following persons (together, the “Guarantors”):

- (a) Baumann in respect of a loan to Alken Basin Drilling Ltd.;
- (b) Andrew Levy (“Levy”) and Richard Jaross (“Jaross”) in respect of a loan to Esco Marine;
- (c) Levitt in respect of a loan to Fortress Resources;
- (d) Gary Smith (“Smith”) in respect of a loan to Fortress Resources;
- (e) Molyneux in respect of a loan to Fortress Resources; and
- (f) McFarlane in respect of a loan to Exchange Technology Group LLC.

(the “Guarantee Actions”)

40. In or around mid-2015, the Guarantors, and especially Baumann and Levy, started contacting each other to discuss and coordinate their responses to the Guarantee Actions.

41. Baumann also offered some of the Guarantors, including Levy and Jaross, substantial funding to fight the Guarantee Actions. The funding offered by Baumann was not, in fact, coming from Baumann himself, but from the Wolfpack Conspirators.

42. The Guarantors started to collectively discuss coordinating their defences to the Guarantee Actions and to do so in substantially the same fashion and with defences worded in substantially the same way.

43. In 2016, the Guarantors, except for Baumann, met in Albany, New York. During this meeting, the Guarantors discussed commencing a “RICO” action against Callidus. The Guarantors decided instead to defend the Guarantee Actions on the spurious basis of “fraudulent inducement” (or its equivalent) and to file specious counterclaims against Callidus.

44. The Guarantors thought that by defending each of the Guarantee Actions in a coordinated manner, they would have an opportunity to make it difficult for Callidus and Catalyst to succeed or embarrass Callidus and Catalyst with allegations of “fraudulent inducement” or its equivalent. The Guarantors also believed their coordinated attacks would force Callidus and Catalyst into discussing some alternative resolution.

45. The plea of fraudulent inducement is a defence typically seen in the United States pursuant to which a borrower will claim that it was induced to change its economic position in return for a promise by the lender that it will do something that the lender has no actual intention to do.

46. Such a plea was made by Smith, Levy and Jaross in connection with the Guarantee Actions against them in the United States courts. Smith was unsuccessful and his subsequent appeal was withdrawn in settlement of his case by payment of US\$10,000 to Callidus. Levy and Jaross were unsuccessful in all of the defences they asserted in the proceeding against them with the exception that the judge hearing the summary proceeding ordered a factual hearing into the fraudulent inducement issue. Before this happened, Levy and Jaross settled with Callidus and they acknowledged in the settlement that they would likely not have succeeded in their remaining plea of fraudulent inducement.

47. Similarly, Levitt and Molyneux made an exaggerated claim for \$150,000,000 against Callidus, essentially on the basis of purported fraud. When confronted with the fact that they had no such claim, they reduced the damages being sought from \$150,000,000 to \$1,000,000.

48. Baumann has made similar claims implying fraud against Callidus.

49. The actions of the Guarantors demonstrate a significant degree of coordination of their activities with a view to causing economic harm to Callidus and Catalyst.

50. The Guarantors that were primarily responsible for the coordination efforts were Levitt and to a lesser, but still important, degree, Baumann and McFarlane. While Levitt served as the overall “puppet master” of the Guarantors, Baumann also reached out to the other Guarantors and, as noted above, made the offer to fund the Levy and Jaross litigation in the amount of at least US\$250,000.

51. Catalyst and Callidus allege that funding did occur to support the Guarantors in the Guarantee Actions through several undisclosed “angels”, including the Wolfpack Conspirators. In many cases, the funders sought to keep their involvement secret through the use of non-disclosure agreements.

52. In addition to these coordinated activities, Levitt created an alter ego on Twitter known as “William Struth @Glasgow Skeptic”. William Struth was a former manager of the Glasgow Rangers football club who passed away in 1956. His image appears on the Twitter feed created by Levitt in order to mask his identity.

53. Through this alter ego, Levitt published false and defamatory statements intended to impugn Callidus and Catalyst. Essentially all of the tweets made through these aliases by Levitt are about Callidus and Catalyst and indicate a high degree of information that is not generally available to the public.

54. The use of an alias to publish false and defamatory statements about a target company is a frequent tool used by short sellers and other miscreants seeking to spread false news and manipulate market participants or other events.

55. Among the initial followers of the “William Struth @Glasgow Skeptic” Twitter feed were Brandon Moyse, a former employee of Catalyst and the subject of litigation with Catalyst, Anderson and Spears. Subsequent followers included McFarlane and Baumann.

(E) THE WOLFPACK CONSPIRES TO HARM CALLIDUS AND CATALYST

56. In or about late 2015, West Face retained Bruce Livesey (“Livesey”), an investigative journalist, to write an article regarding Catalyst’s principal, Newton Glassman, and Callidus/Catalyst. West Face intended to use the article to cause damage to Catalyst and Callidus and to launch a short attack.

57. During the course of Livesey’s “investigation”, he spoke to several of the Guarantors and learned that the Guarantors were coordinating their activities in response to the Guarantee Actions.

58. In or about late 2016, after learning of the Guarantor’s coordination from Livesey, West Face contacted the Guarantors to induce their participation in a wave of short attacks against Callidus.

59. Around the same time, West Face also encouraged another fund, Anson, to support its planned short attack. West Face disclosed to Anson the identity of the Guarantors and its knowledge of coordination between the Guarantors.

60. West Face also contacted Clarity, a firm that specializes in providing information to hedge funds, wealth managers and others in the financial services industry, and encouraged it to participate in the upcoming wave of short attacks against Callidus.

61. In or about December 2016, the Wolfpack Conspirators and the Guarantor Conspirators entered into a conspiracy with the intention to cause economic harm to Callidus and Catalyst (the “Conspiracy”).

62. For the Wolfpack Conspirators, the Conspiracy presented an opportunity to continue their short attacks against Callidus, which would allow them to make risk-free profits and, in the process, damage Catalyst and Callidus.

63. For the Guarantor Conspirators, the Conspiracy presented an opportunity to cause serious economic harm to Callidus and Catalyst through trying to frustrate the enforcement of substantial personal guarantees against each of them. Additionally, the Wolfpack Conspirators and others, the identity of whom the Plaintiffs are currently unaware, offered to (and did) fund the Guarantors’ defences in the Guarantee Actions.

64. The Wolfpack Conspirators and Guarantor Conspirators agreed that, in furtherance of the Conspiracy, they would execute the following plan of action: first, they spread false information through the Bay Street rumour mill. Second, certain of the Guarantor Conspirators filed false “whistleblower” complaints against Callidus through the Ontario Securities Commission (“OSC”) to “confirm” the rumours. Third, once the false whistleblower complaints were filed, the Conspirators worked together to leak the allegations contained in the complaints to the media in order to generate media interest. Fourth, the Conspirators, either directly or indirectly, took short positions in Callidus Shares. Fifth, the Conspirators timed a media report about the complaints to be released near the end of a trading day, which caused the price of Callidus Shares to rapidly decline. Finally, the Conspirators closed out their naked or other short positions at a substantial profit, all at the expense of Callidus’ market value and its shareholders.

65. The Conspiracy required very sophisticated coordination and perfect timing under the hand of the Wolfpack Conspirators. This pattern has been honed through repetition in other situations.

66. The Conspirators took steps to hide details of the Conspiracy in order to avoid detection and make it difficult to learn about the Conspiracy after the harm was done to the Plaintiffs. In particular, some of the Conspirators compelled at least some of the Guarantors to sign non-disclosure agreements to prevent them from disclosing information relating to the Conspiracy.

(F) CONSPIRATORS ABUSE OSC'S WHISTLEBLOWER PROGRAM

67. The first step of this very sophisticated attack required use of the OSC's "whistleblower" program. The "whistleblower" program, started in July 2016, permits persons with information about an alleged securities-related violation to report it to the OSC. The program offers anonymity to complainants and a financial reward in the event the complaint results in a penalty. The intent of the program is to encourage persons with information of alleged unfair, improper or fraudulent practices to come forward without fear of reprisal.

68. In furtherance of the Conspiracy, four of the Guarantor Conspirators, Baumann, McFarlane, Levitt (or Molyneux) and Clarity (or Anderson), agreed to file false and defamatory whistleblower complaints (the "Complaints") with the OSC relating to Callidus and Catalyst. These four "complainants" coordinated their complaints in order to portray different alleged issues with Callidus' continuous disclosure and matters relating to Catalyst to the OSC.

69. The "complainants" disclosed the Complaints, or the substance of the Complaints, to WSJ reporters in New York and Toronto. They did so knowing and intending that: (i) the Complaints were false; (ii) the fact and nature of the Complaints alleging fraud by Callidus and Catalyst would immediately be published and given widespread publicity; (iii) the publication of the existence and

substance of the Complaints (falsely) alleging fraud would injure Callidus and Catalyst; (iv) the effect of such widespread publicity would immediately cause a significant drop in the price of Callidus Shares; and (v) these steps, events and consequences would give them or their co-Conspirators an opportunity to engage in profitable short selling of Callidus Shares, all which was in furtherance of the Conspiracy.

70. Catalyst pleads and the fact is that the Complaints, which were filed in or around late 2016 and early 2017, also falsely alleged that Callidus and Catalyst were in the same line of business, which created a conflict of interest. In addition, the Complaints falsely alleged that Callidus and Catalyst had engaged in illegal accounting practices with respect to loans that related to the Guarantors.

71. The Complaints were defamatory. They falsely and maliciously state or imply that:

- (i) Callidus misled its shareholders;
- (ii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (iii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

72. The sole motivation for filing the Complaints was in furtherance of the Conspiracy.

73. The intention of the Complaints was to enable the Conspirators to spread rumours within the financial industry that Callidus and Catalyst were the subject of *bona fide* OSC whistleblower complaints and subject to “investigations” by the OSC and the Toronto Police in order to undermine the public confidence in both firms. They were designed to feed the Bay Street rumour mill.

74. In fact, as pleaded herein, the Complaints were not *bona fide*. Rather, the Complaints were defamatory and part of the Conspiracy to harm Callidus and Catalyst and to enable the Conspirators to profit by an illegal and manipulative “short and distort” campaign against the Callidus Shares.

(G) CONSPIRATORS ENDEAVOUR TO PUBLISH EXISTENCE OF THE COMPLAINTS AND OTHER ARTICLES CRITICAL OF CALLIDUS AND CATALYST

75. The Wolfpack Conspirators and the Guarantor Conspirators undertook the initial steps of contacting journalists in an effort to leak the existence of the Complaints and other false allegations about Callidus and Catalyst.

76. Initially, the Wolfpack Conspirators and the Guarantor Conspirators engaged Livesey, who had a prior relationship with West Face, to write a negative story targeting Callidus, Catalyst and their principals. The Wolfpack Conspirators agreed to compensate Livesey for his drafting a negative story regarding Callidus, Catalyst and their principals.

77. Livesey drafted a story based on information fed to him by one or more of the Conspirators. The information that was provided to Livesey included information that formed the basis for the Complaints.

78. In furtherance of the Conspiracy, the Wolfpack Conspirators worked with Livesey to contact two different news outlets -- Canadian Business Magazine and the Globe and Mail newspaper -- with the goal of convincing these organizations to print Livesey’s freelance negative story about Callidus, Catalyst and their principals. However, these outlets chose not to publish the Livesey freelance story.

79. Having been frustrated by the failure of their first attempt, the Conspirators then sought to create another “story” that Callidus was under “investigation” by the authorities based on the submission of the false Complaints. In order to interest news outlets with this “story”, they disclosed the substance of the Complaints. The Conspirators intended to create the appearance of a credible news story about alleged nefarious practices at Callidus and Catalyst.

80. Callidus and Catalyst have positively denied any such “investigation”.

81. The Conspirators approached Reuters in 2017 with the existence of the Complaints and encouraged it to publish a negative story about Callidus and Catalyst. Reuters decided not to publish the story.

82. Prior to approaching Reuters, the Conspirators also sought to approach other reputable news organizations, whose identities are known only to them, in 2017, with the existence of the Complaints and encouraged those organizations to publish a negative story about Callidus and Catalyst. Those organizations also decided not to publish the story.

83. After being rejected by these credible media outlets, the Conspirators decided that they required a different approach to accomplish their goal of having a negative and false story published about Callidus and Catalyst.

84. As a result, the Conspirators contacted a different reporter, Copeland of the WSJ, with the intention of having Copeland write a story that would insinuate that Callidus and Catalyst were under “investigation” by both the OSC and the Toronto Police for fraud.

85. Copeland had a prior relationship with Anderson. Anderson recruited Copeland to join the Conspiracy and to write the story, which would assist the Conspirators to further the Conspiracy.

86. Copeland was directed by the Conspirators to “interview” McFarlane, who provided Copeland with details of his Complaint. Specifically, McFarlane detailed to Copeland that Callidus and Catalyst engaged in allegedly nefarious accounting practices concerning a loan that Callidus extended to XTG. McFarlane had filed a Complaint regarding these accounting practices but, in doing so, made false allegations that Callidus and Catalyst had engaged in false or illegal accounting practices with respect to XTG. Similar conversations occurred with Baumann, Molyneux, Levitt and Anderson.

87. During the course of writing the article requested by the Conspirators, Copeland contacted Callidus and Catalyst. Initially, Copeland refused to disclose to Callidus and Catalyst the subject of the article.

88. Despite Copeland’s refusal to disclose the subject of the article, Callidus and Catalyst agreed to meet with Copeland and his colleague, Jacquie McNish (“McNish”), to clarify the information and facts that Copeland indicated he would be relying on for the article.

89. The meeting between Copeland, McNish and representatives of Callidus and Catalyst took place on August 8, 2017. During that meeting, Callidus and Catalyst provided detailed information of the accounting surrounding XTG and confirmed that all of this information was available on the public record. This information flatly contradicted information that had been provided to Copeland and McNish by the Conspirators. Copeland disclosed that there had been four different whistleblower complaints to the OSC concerning Callidus and Catalyst, three of which had been filed by Guarantors.

90. During the meeting with Callidus and Catalyst, Copeland did not take any notes about any of the responses provided by Callidus and Catalyst including detailed explanations provided regarding the accounting practices surrounding XTG.

91. In fact, Callidus' and Catalyst's accounting for XTG was correct and properly disclosed on the public record.

92. Despite receiving information that refuted the basis for their story, and without making any further inquiries or conducting appropriate diligence, Copeland and McNish decided to publish it anyway. Copeland and McNish drafted the story in a manner that strongly implied and suggested that Catalyst and Callidus had engaged in fraudulent behavior concerning XTG, and that they were under "investigation" by the authorities for that and other matters. They also falsely reported that company representatives had declined to offer a comment.

93. On August 9, 2017, in furtherance of the Conspiracy, Copeland contacted the Conspirators before submitting the article for publication by the WSJ. The Conspirators encouraged Copeland to release the article near the end of the trading day on August 9. Copeland advised the Conspirators that he would do so and he did.

(H) WEST FACE, ANSON AND JOHN DOES EXECUTE WAVE OF SHORT ATTACKS

94. On or about August 9, 2017, in furtherance of the Conspiracy, the Wolfpack Conspirators and one or more of the John Doe Defendants took short positions in Callidus Shares, either directly or indirectly.

95. The Wolfpack Conspirators and one or more of the John Doe Defendants took the short positions through Langstaff and others, who are known to the Conspirators but unknown to the Plaintiffs.

96. Langstaff and others, who are known to the Conspirators but unknown to the Plaintiffs, had been previously recruited by the Wolfpack Conspirators in the Conspiracy. Langstaff, in furtherance of the Conspiracy, assisted the Wolfpack Conspirators and the John Doe Defendants to take short positions in Callidus Shares, either directly or indirectly.

97. In a typical “short”, the investor borrows a company’s stock from another investor, on the theory that the company’s share value will decline over a period of time as described in paragraphs above.

98. On or about August 9, the Wolfpack Conspirators took “naked short” positions. This means that the Wolfpack Conspirators took a short position, betting that Callidus’ stock price would decline, without actually borrowing the stock from another investor. In other words, in addition to betting that Callidus’ stock price would decline, the Wolfpack Conspirators bet that they could purchase Callidus Shares to cover their short positions from the market directly without having to first borrow them.

99. This type of short is extremely risky because it requires the short selling investor to purchase the stock to cover his or her short position. The investor bets that he or she can purchase the stock for a lower price at the end of the day than it could have at the open of the market. This bet is very risky when shorting a stock that has a low trading volume, like Callidus, because the investor may not be able to purchase the stock to cover its short position, which leaves it exposed to serious losses if the share price increases. In the case of Callidus, the strategy is even more risky

because Catalyst and its related funds own more than 2/3rds of Callidus Shares and they are not made available for borrowing.

100. In addition to naked shorts, the Wolfpack Conspirators and the John Doe Defendants took other positions, the particulars of which are only known to them, to simulate a short position and profit from the damaging effects of the Article.

101. As at August 8, 2017, the average daily trading volume of Callidus's stock was (a) for the preceding 60 day period, 64,737 shares, (b) for the preceding 30 day period, 63,999 shares, and (c) for the preceding 10 day period, 48,224 shares.

102. The Wolfpack Conspirators, however, knew as a result of their activities that, at the end of the day on August 9, there would be sufficient trading volume to cover their short position.

103. At 3:29 pm EDT on August 9, 2017, Copeland's article was posted on thewallstreetjournal.com (the "Article"). The headline of the Article was "*Canadian Private-Equity Giant Accused by Whistleblowers of Fraud*". The Article was hidden behind a "pay wall", meaning that only those people who subscribe to the WSJ could see the full text of the Article. Those who were not subscribers only saw the headline and first paragraph of the Article, which read as follows:

TORONTO -- At least four individuals have filed whistleblower complaints with Canadian securities regulators alleging fraud at a multibillion-dollar investment firm and its publicly traded lending arm, according to people familiar with the matter and documents reviewed by The Wall Street Journal.

104. The headline and first paragraph of the Article contained the word "fraud" two separate times. The thrust of the Article was exactly what the Conspirators intended – it impressed upon

the general public that Callidus and Catalyst were under “investigation” by the authorities and that the “investigation” concerned fraudulent accounting transactions recorded by Callidus and Catalyst.

105. In addition to publication on thewallstreetjournal.com, the Article was published on the Dow Jones Newswire and other means that caused immediate dissemination of the Article in its entirety, including the references to Catalyst and Callidus, to other market participants.

106. Just prior to the publication of the Article and the close of market at 4:00 pm EDT, the Article had the exact effect intended by the Wolfpack Conspirators. A significant number of those persons holding Callidus Shares divested them after 3:30 pm EDT which, in turn, led to a sharp decline in Callidus’ stock price. Due to stock market rules that prohibit Callidus from being in the market after 3:30pm through its Normal Course Issuer Bid, the broker administering that bid could not provide support for the stock price. These rules were known to the Conspirators.

107. Simultaneous with the publication of the Article at 3:29 p.m. and within the span of a single minute (3:29:00 – 3:29:59), the volume spiked with 13,000 shares traded, dropping the price from \$14.92 to \$14.73 on multiple individual trades. Significantly, in the preceding 30 minutes prior to 3:29 p.m., only 3,100 shares had traded in total.

108. Over the next 30 minutes (3:30 p.m. – 4:00 p.m., the close of the trading day), over 157,400 shares traded, dropping the price by the end of the trading day to \$13.41.

109. The timing of the sell-side trading activity reflected at 3:29 p.m. was designed to cause the share price to begin to decline to exaggerate the negative pressure anticipated to be caused by the Article. The timing was part of the scheme of the Wolfpack Conspirators and the John Doe

Defendants to ensure that the share price was dramatically reduced in the last 30 minutes of the trading day and to ensure a disorderly sell-off by panicked investors.

110. During the chaotic sell-off, the Wolfpack Conspirators and the John Doe Defendants were able to purchase Callidus Shares to cover their naked (and other) short positions. Because of the decline in Callidus' share price, they were able to significantly profit. The short paid out because the share price was lower when they eventually purchased the Callidus shares than it was when they secured the naked short (and other simulated short positions) at the beginning of the trading day.

111. The Conspirators' short and distort attack was successful – beginning on August 9, 2017 through August 14, 2017, Callidus' share price declined from \$15.36 to \$10.48 (reflecting a market capitalization loss of \$246,440,000 in less than 4 trading days).

(I) ARTICLE AND COMPLAINTS ARE FALSE

112. The Article, read as a whole, and the Complaints make false and defamatory statements (the "Defamatory Words") about Callidus and Catalyst to the effect that:

- (i) Callidus and Catalyst improperly "seize" companies to whom loans have been made;
- (ii) Callidus is engaged in illegal or improper accounting in relation to Callidus's loan portfolio;
- (iii) Callidus and Catalyst are engaged in criminal or fraudulent activities in relation to Callidus's loan portfolios;
- (iv) Callidus and Catalyst are under "investigation" for fraud or other illegal activity by the OSC and/or the Toronto Police Service;

- (v) Callidus and Catalyst are treating McFarlane unfairly or unjustly by pursuing him in a Guarantee Action;
- (vi) Callidus and Catalyst improperly file “multiple lawsuits” against borrowers
- (vii) Callidus and Catalyst dealt improperly or illegally in relation to the XTG loan;
- (viii) Callidus and Catalyst caused XTG to go into insolvency proceedings shortly after it purchased a loan from a US bank;
- (ix) Callidus and Catalyst intentionally caused Callidus to be “overpaid” for the XTG investment;
- (x) Callidus and Catalyst delayed or underreported potential losses in respect of the XTG investment;
- (xi) Callidus misled its shareholders or investors;
- (xii) Callidus and Catalyst conduct business for nefarious purposes and do not have integrity in their business dealings; and
- (xiii) Callidus and Catalyst are not reputable and do not conduct business in an ethical manner.

113. The Article as a whole, and the Defamatory Words, take on additional and further defamatory meanings and implications simply from inclusion in the same Article with each other. The plain meaning of the statements taken together is that the Plaintiffs act fraudulently with misstated financial statements and nefarious business practices. This is spurious, false and damaging to the Plaintiffs’ reputation and good will. The Plaintiffs intend to rely on the entirety of the Defamatory Words in support of this Action.

(J) LIABILITY AND DAMAGES RELATED TO THE SHORT ATTACKS

Breaches of the *Securities Act*

114. The Defendants' unlawful short attack was intended to, and did, drive down the price of Callidus Shares to artificially low levels. Although the full details of the Defendants' conduct in this regard are known only to them, such conduct includes, without limitation:

- (a) Providing tip-offs and previews to selected investors of the Defendants' intention to disseminate false negative information into the market concerning Callidus, and of the planned timing of such dissemination;
- (b) The concerted accumulation of open short positions in advance of the publication of the Article so as to take advantage of market price declines when the Article was published;
- (c) Encouraging selected investors to do the same;
- (d) The Defendants' participation in and preparation of the Article with its false and misleading negative content concerning Callidus;
- (e) The Defendants' efforts to ensure publication of the Article; and
- (f) The Defendants' actions after the Article was published to continue the downward pressure on the price of Callidus Shares.

115. By participating in the short attack, each Defendant, directly or indirectly, engaged or participated in a course of conduct relating to the Callidus Shares that they knew and intended, or reasonably ought to have known, would result in or contribute to an artificially low price for the Callidus Shares, in violation of section 126.1 of the *Securities Act*.

116. Additionally, each Defendant, directly or indirectly, made a statement or statements that they knew or reasonably ought to have known was misleading or untrue, or that failed to state a fact that was necessary to make the statement not misleading, and that would reasonably be

expected to have a significant effect on the market price or value of the Callidus Shares, in violation of section 126.2 of the *Securities Act*.

117. The Defendants' breaches of the *Securities Act* are "unlawful acts" that, in part, form the basis of the civil conspiracy claim, as pleaded above.

Causing loss by unlawful means/ intentional interference

118. By participating in the publication of the Defamatory Words, the Defendants deceived third-party market participants into believing that Callidus and Catalyst were engaged in fraudulent activity and were subject to "investigation" by the OSC and the Toronto Police. The Defamatory Words were published to induce these market participants to sell their Callidus Shares, thereby lowering the Callidus share price for a prolonged period of time.

119. In so doing, the Defendants interfered with Callidus's and Catalyst's economic relations with its investors and caused harm to Callidus and Catalyst in the form of a lower price for the Callidus Shares.

120. In the alternative to damages to compensate Callidus and Catalyst for having caused them loss by unlawful means, the Defendants are liable to pay restitution, disgorgement or to otherwise account for any and all ill-gotten gains obtained as a result of their conduct.

Personal Liability of the Individual Defendants

121. The Individual Defendants completely dominated and controlled the corporate entities among the Defendants and caused them to engage in the tortious and unlawful conduct described above. In addition, the conduct alleged involved malice and dishonesty in which the Individual Defendants sought to use the corporate entities among the Defendants to obtain significant

personal financial benefits. As the Individual Defendants caused the corporate entities within the Defendants to direct wrongful things to be done, this is an appropriate case to pierce the corporate veil and impose personal liability on the Individual Defendants. In the alternative, the corporate entities among the Defendants acted as agents for the Individual Defendants, who ultimately profited from the unlawful conduct.

122. In addition, or in the further alternative, the defamatory and otherwise unlawful conduct that was carried out by the Individual Defendants constituted independent wrongful acts that were contrary to the best interests of the corporate entities among the Defendants. In these circumstances, they are personally liable for the damages they caused, separate and apart from the liability of the corporate entities.

Liability of the John Doe Defendants

123. John Doe Defendants 1-10 are persons or entities whose names are not known to the Plaintiffs, but who:

- (i) participated in the Conspiracy;
- (ii) were aware of the contents of the Article prior to its publication and broadcast;
- (iii) knew or ought to have known that the Article contained false and defamatory assertions about Callidus and Catalyst that would cause the market price of Callidus Shares to decline and otherwise cause damage to Callidus and Catalyst;
- (iv) decided thereby to take short positions in Callidus's Shares, and did so; and,

- (v) thereby stood to gain by covering their short positions after the Article was broadcast and the market price of Callidus's Shares had declined.

124. John Doe Defendants 1-10 are jointly and severally liable for the wrongs committed by the Defendants.

Unjust Enrichment

125. The Defendants, including the John Doe Defendants 1-10, have been unjustly enriched or otherwise benefited through their participation in the unlawful short selling attack. Specifically: i) the Defendants received a benefit in the form of profit they made as a result of the short selling scheme; ii) the benefit was at Callidus's expense, as it corresponded to a decline in Callidus's market capitalization, which constitutes an injury to Callidus; and iii) there was no juristic reason for the enrichment.

126. The Defendants are liable to the Plaintiffs as a result of their unjust enrichment and should be required to disgorge their unjust gains, including their profits from selling the shares of Callidus, and to pay over such gains to the Plaintiffs. All such unjust gains should similarly be imposed with a constructive trust, effective as of August 9, 2017, pending further order of this Court.

127. In addition to the damages claimed above, as a result of the Defendants' conduct, the Plaintiffs have suffered, and continue to suffer, injury to their character and good reputation, which has further resulted in great embarrassment, loss of profits and loss of opportunity. The Plaintiffs are entitled to damages for reputational harm, disruption of their business, services and affairs, its loss of corporate opportunities, costs of investigating and correcting the false and defamatory statements, and/ or any other matter initiated resulting from the false and defamatory information, and other consequential damages resulting from the Defendants' scheme and market manipulation.

Punitive Damages

128. The Plaintiffs claim that an award of punitive damages is appropriate, having regard to the high-handed, wilful, wanton, reckless, contemptuous and contumelious conduct of the Defendants. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiffs for punitive damages.

129. The Plaintiffs are entitled to damages equal to the cost of the “investigation” of the Defendants’ misconduct undertaken by Callidus and Catalyst which resulted in sworn statements, discovery of emails and other facts and evidence which form the basis on which this Action is based.

(K) SERVICE EX JURIS

130. The Defendants’ actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario.

131. The Plaintiffs plead and rely upon Rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

132. The Plaintiffs propose that this action be tried at Toronto.

November 7, 2017

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Lawyers for the Plaintiffs

THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs

-and- WEST FACE CAPITAL INC. et al.
Defendants

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Court File No.

Q/M-5760916

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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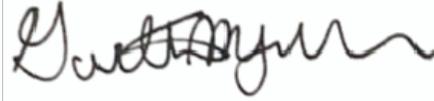
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Lawyers for the Plaintiffs

This is Exhibit "B" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "G. [unclear]", written over a horizontal line.

A Commissioner, etc.

Catalyst v West Face et al.

Bruce Livesey
on Friday, December 18, 2020



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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 -

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

33 -----
34 --- This is the transcript of the
35 Cross-Examination of BRUCE LIVESEY on his
affidavits sworn November 7, 2019 and September 4,
2020 respectively, taken via Zoom Videoconferencing
with all participants attending remotely, on the
18th day of December, 2020.

1 A P P E A R A N C E S:
2 DAVID C. MOORE, Esq., for the Plaintiffs,
3 & MATTHEW KARABUS, Esq., (Defendants to the
4 Counterclaim), The
5 Catalyst Capital Group
6 Inc. and Callidus
7 Capital Corporation
8 and the Defendants to
9 the Counterclaim,
10 Gariel De Alba, James
11 Riley and Newton
12 Glassman

13
14 MATTHEW MILNE-SMITH, Esq., for the Defendants
15 & MAURA O'SULLIVAN, Esq., (Plaintiffs by
16 Counterclaim), West
17 Face Capital Inc. and
18 Gregory Boland

19
20 DIMITRI LASCARIS, Esq., for the Defendant,
21 Bruce Livesey

22
23 Kevin Baumann Self Represented

24
25 Also Present: Philip Panet, General Counsel, West

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Face Capital

Jim Riley

REPORTED BY: Deana Santedicola, RPR, CRR, CSR

I N D E X

WITNESS: BRUCE LIVESEY

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

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I N D E X

(CONT'D)

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- - - - -

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NO.	DESCRIPTION	PAGE/LINE NO.
1:	Electronic document brief of exhibits referred to during the Cross-Examination of Mr. Livesey.....	225:13

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

2

3 BRUCE LIVESSEY; AFFIRMED.

4 CROSS-EXAMINATION BY MR. MOORE:

5 1 Q. So, Mr. Livesey, my name is David
6 Moore. We have not met obviously, and in the
7 course of this cross-examination, if you don't hear
8 a question properly or you don't understand it,
9 please say so. If there is an issue between
10 counsel, we'll sort it out. Hopefully there won't
11 be too many. But just take your time, and we'll
12 try to avoid talking over each other because, if we
13 do that, it will be impossible for the court
14 reporter to prepare a proper transcript.

15 So with that said, could you state your
16 full name for the record?

17 A. It is Bruce Robert Livesey.

18 2 Q. And you reside in Toronto?

19 A. Yes.

20 3 Q. And what is your current
21 occupation?

22 A. I do a combination of corporate
23 due diligence work and some journalism.

24 4 Q. And which would you say would be
25 the predominant aspect of your work; would it be

1 the corporate due diligence or work as a
2 journalist?

3 A. Corporate due diligence.

4 5 Q. And was that something that you
5 started through your firm i20 Research under the
6 name Mosaic, or was that something that preceded
7 that incorporation?

8 A. It started with Mosaic.

9 6 Q. All right. So I am looking at
10 your supplemental affidavit that was sworn on
11 September 4th, 2020?

12 A. Uhm-hmm.

13 7 Q. Are you familiar with that
14 affidavit?

15 A. Yes.

16 8 Q. And are there any changes or
17 corrections that are necessary to be made to that
18 affidavit before I ask a few questions about it?

19 A. Not that I am aware of at the
20 moment.

21 9 Q. All right. And in paragraph 2 of
22 that affidavit, you refer to the fact that you were
23 the founder and a principal of i20 Research Inc.
24 and that that company was incorporated in 2014?

25 A. Yes.

1 10 Q. And it says that it formerly
2 operated the name Mosaic Advisors Canada Inc.?

3 A. Yes.

4 MR. LASCARIS: Mr. Moore, before you
5 continue, I would like to suggest that Mr. Livesey
6 have the affidavit before him while he is answering
7 these questions so he can see what you are
8 referring to.

9 BY MR. MOORE:

10 11 Q. Okay. Give us a minute.

11 MR. KARABUS: Can everyone see my
12 screen?

13 THE DEPONENT: Okay. I have it in
14 front of me.

15 MR. LASCARIS: Sorry, you are going to
16 share it on the screen, Mr. Karabus?

17 MR. KARABUS: Can you see it?

18 MR. LASCARIS: No, I can't.

19 MR. KARABUS: Okay. Give me a moment,
20 please. Do you have it now?

21 MR. LASCARIS: Yes.

22 THE DEPONENT: Yes, I can see it.

23 BY MR. MOORE:

24 12 Q. All right. So I am referring to
25 paragraph 2 in that affidavit.

1 A. Yes.

2 13 Q. And I just want to clarify, was
3 Mosaic Advisors Inc. the company that was
4 incorporated in 2014?

5 A. Yes.

6 14 Q. And so that was the corporate
7 entity that I gather became known as or you adopted
8 a name of i20 Research Inc.?

9 A. Yes, I changed the name, I think,
10 in 2018.

11 15 Q. So those aren't -- as I understand
12 it then, those are not two separate companies. It
13 is simply that you did a change of name for Mosaic
14 Advisors Canada Inc. to i20 Research Inc.?

15 A. That's correct.

16 16 Q. So one company throughout in
17 effect; is that right?

18 A. Yes.

19 17 Q. All right. And in paragraph 3 and
20 4 of your affidavit of September 4, 2020, you say
21 that:

22 "In late March or early April
23 2015, Mr. Voorheis hired Mosaic to
24 perform some research into the
25 Plaintiff, Callidus Capital

1 Corporation."

2 Right?

3 A. That's correct.

4 18 Q. And just to clarify, you had
5 earlier said in paragraph 2 that you were the
6 founder and a principal of i20 Research Inc. Are
7 there other principals? What do you mean by
8 "principal"?

9 A. Well -- well, there is only one
10 owner, and that is me, I guess, is the best way to
11 put it.

12 19 Q. Well, you are the sole shareholder
13 of firstly Mosaic Advisors Canada Inc. as it then
14 was?

15 A. Yes.

16 20 Q. Is that right?

17 A. That's correct.

18 21 Q. And you remain the sole
19 shareholder of i20 Research Inc.?

20 A. Yes.

21 22 Q. So you are the sole shareholder of
22 those entities throughout?

23 A. Yes.

24 23 Q. All right. So I come back to my
25 question. What do you mean that you are "a

1 principal"? Is there another principal in some
2 capacity or some means other than as a shareholder?

3 A. No.

4 24 Q. So just to be clear, is it your
5 evidence that there is no one else with any
6 financial interest whatsoever in either Mosaic
7 Advisors Canada Inc. or i20 Research Inc.; is that
8 your evidence?

9 A. That is my evidence.

10 25 Q. And so when Mr. Voorheis hired you
11 in late March or early April 2015, how did that
12 come about?

13 A. I called him. I knew Mr. Voorheis
14 in my capacity as a journalist. I reached out to
15 him as part of the marketing of Mosaic to see if I
16 could obtain business from him.

17 26 Q. And is there some marketing
18 material that you had prepared at that time to
19 outline the services that Mosaic was able to offer?

20 A. Yes.

21 27 Q. Do you still have that?

22 A. Possibly.

23 28 Q. Well, will you look and see and
24 undertake to produce it?

25 U/T A. Yes.

1 29 Q. And before I go much further down
2 this line, in reading your earlier affidavit, SLAPP
3 affidavit in this matter, to my reading of it,
4 there was no reference whatsoever to any of this
5 history of your being hired by Mr. Voorheis in
6 connection with Callidus back in 2015, was there?

7 A. I think not, no.

8 30 Q. Why was that?

9 MR. LASCARIS: Well, we take the
10 position, Mr. Moore, that this is not what you
11 pled. Your client pleads wrongly that my client
12 was hired by Mr. Boland or West Face in late 2015.
13 First of all, there is no pleading that he was ever
14 hired by Mr. Voorheis in early 2015.

15 And secondly, we take the position that
16 the work performed for Mr. Voorheis was privileged.
17 It was actually his law firm that retained
18 Mr. Livesey.

19 MR. MOORE: Sorry, you are saying that
20 the work that you performed for Mr. Voorheis was
21 privileged?

22 MR. LASCARIS: Yes, and we also say
23 that this was not relevant to the case pled.

24 MR. MOORE: I see. So let me get this
25 straight. The work performed by this investigative

1 company for Mr. Voorheis was privileged. What type
2 of privilege are you asserting in respect of that
3 work?

4 MR. LASCARIS: Litigation privilege.

5 BY MR. MOORE:

6 31 Q. Litigation privilege. So in April
7 of 2015, is it your understanding that Mr. Voorheis
8 was anticipating or contemplating litigation with
9 Callidus or Catalyst?

10 A. Are you --

11 MR. LASCARIS: You are asking
12 Mr. Livesey, I take it?

13 THE DEPONENT: You are asking me now?

14 BY MR. MOORE:

15 32 Q. I am asking Mr. Livesey.

16 A. Okay. So can you repeat your
17 question?

18 33 Q. Is it your evidence that in March
19 or April of 2015 Mr. Voorheis was anticipating
20 litigation with Callidus or Catalyst?

21 A. That I don't know. I don't know.

22 34 Q. Well, I am talking about -- I'm
23 asking about including up to the present time
24 because there is no Schedule B listing in your
25 affidavit of documents identifying any privileged

1 documents, let alone the basis for that privilege.

2 So do you have any basis sitting here
3 this morning to assert that Mr. Voorheis, to the
4 best of your knowledge, was contemplating any
5 litigation with respect to Callidus or Catalyst at
6 that time?

7 A. No.

8 MR. LASCARIS: Well, I think
9 Mr. Livesey discusses this in his supplemental
10 affidavit.

11 BY MR. MOORE:

12 35 Q. Well, can you help me where he
13 says that or touches upon that in his supplemental
14 affidavit?

15 A. Well, in six, I say he gave me no
16 reason why he wanted the research down.

17 36 Q. And I just note -- while you are
18 pausing to let me know what you say touches upon
19 this subject in your supplemental affidavit, I just
20 note that the Schedule B to your affidavit of
21 documents, where there is a place to identify even
22 categories, says nil -- or sorry, Voorheis, I
23 should say, in his affidavit says nil. He doesn't
24 assert privilege over any documents or categories
25 of documents.

1 So is there anything else you want to
2 add to what you have said already on that subject?

3 A. Sorry, I am trying to find in my
4 affidavit reference to your earlier question, so
5 you are jumping ahead here.

6 In paragraph 10:

7 "It was only later on, in May
8 or June of that year, after Mosaic
9 had finished its research into
10 Callidus, that Mr. Voorheis informed
11 me that he was attempting to see if
12 there were grounds for an investors'
13 class action lawsuit against
14 Callidus. To my knowledge, that
15 proposed lawsuit was never
16 commenced."

17 So that is answering your first
18 question, and sorry, what was your second question?

19 37 Q. Well, is there anything else apart
20 from that?

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

22 38 Q. All right. So given the fact that
23 Mr. Voorheis in his affidavit of documents where
24 Schedule B provides the place to assert privilege
25 over any documents, and he says nil, I take it you

1 are not continuing to say that any documents
2 relating to your dealings with Mr. Voorheis are
3 privileged, or are you?

4 U/A MR. LASCARIS: We'll take that under
5 advisement.

6 BY MR. MOORE:

7 39 Q. Well, do you have a file of some
8 kind in connection with your dealings with
9 Mr. Voorheis in 2015?

10 A. Yes.

11 40 Q. All right. And how long did your
12 engagement with Mr. Voorheis continue?

13 A. I did about three days of work for
14 him.

15 41 Q. I didn't ask you that, how many
16 days' work you did for him. How long did your
17 engagement with him continue?

18 A. Okay. Well, be more specific.
19 When you say "engagement", I compute that as for
20 how long -- how many days he employed me, and I
21 said it was for three days, so I don't know what
22 you are asking me about.

23 42 Q. Well, how long did you have some
24 form of -- because I don't have any of these
25 documents. They have not been listed by

1 Mr. Voorheis because he is not claiming any
2 privilege. They have not been listed in your
3 affidavit of documents. So I am shooting in the
4 dark here, unfortunately. That is why I'm asking
5 these questions.

6 So my question is how long did your
7 retainer, your consulting arrangement, call it what
8 you will, persist with Mr. Voorheis?

9 A. I think the work commenced in
10 April of 2015, and there was a pause while
11 Mr. Voorheis sort of was thinking about what to do,
12 and then I did a little bit of work, I think, in
13 the summer, like June, a little bit more to finish
14 it off, of 2015.

15 43 Q. All right. And your counsel has
16 taken under advisement the position about
17 production of documents, and just to avoid any
18 misunderstanding, I am looking for production of
19 any and all documents relating to your contacts
20 with Mr. Voorheis, your engagement, the work you
21 did for him, the follow-up, and I don't want to get
22 hung up on semantics, any documentation, including
23 electronic documentation, pertaining to that
24 subject throughout the piece. And again, I am
25 saying that just to make sure that the scope of

1 what is taken under advisement is clear. But is
2 that acceptable, Mr. Lascaris, you'll let me know?

3 U/A MR. LASCARIS: Yes, that is understood,
4 Mr. Moore. Thank you.

5 BY MR. MOORE:

6 44 Q. All right. So, Mr. Livesey, I
7 take it you don't have the specific documents with
8 you. In any case, your counsel has taken that
9 under advisement. Correct, you don't have them
10 with you?

11 MR. LASCARIS: What do you mean by
12 "with him"? You mean on his computer --

13 BY MR. MOORE:

14 45 Q. Well, do you have a hard copy
15 file? Is it an electronic file? What form are
16 these documents pertaining to?

17 A. Well, they would be in an
18 electronic file somewhere.

19 46 Q. And so you still have it then,
20 right?

21 A. I have, presumably, yes.

22 47 Q. All right. And let me just ask
23 you --

24 MR. LASCARIS: We do have -- sorry. We
25 do have some documents, Mr. Moore, yes.

1 BY MR. MOORE:

2 48 Q. All right. And without putting
3 the document up because you have taken it under
4 advisement, I just want to know what type of
5 documents that exist. Was there anything in
6 writing that evidenced or documented your
7 engagement?

8 A. Was there a contract, is that what
9 you are asking?

10 49 Q. Yes, that is another way of asking
11 it, yes.

12 A. There was no written contract, no.

13 50 Q. Okay. Well, then I am going to
14 have to be a little more granular than that. Was
15 there an exchange of emails, some documentation
16 that would set out the basis of your arrangement
17 with Mr. Voorheis? I am not limiting it to a
18 six-page document entitled "contract". I want to
19 know whatever documentation. Is there
20 documentation that reflects the arrangements you
21 made with Mr. Voorheis back in March or April 2015?

22 A. No.

23 51 Q. Did he pay you?

24 A. Yes.

25 52 Q. How much did he pay you?

1 A. I can't recall.

2 53 Q. Well, approximately.

3 A. I think it was less than \$5,000.

4 54 Q. Well, will you undertake to check
5 your records and let me know how much he paid you
6 and when?

7 A. I don't have those records
8 anymore.

9 55 Q. What do you mean you don't have
10 those records anymore?

11 A. I don't -- I have searched for the
12 invoice, and I can't find it.

13 56 Q. Oh, so you rendered an invoice?

14 A. Yes.

15 57 Q. All right. Did you render more
16 than one invoice? So you said there was some work
17 you did initially, and then there was a pause when
18 we thought about what to do, and was there a
19 subsequent invoice or invoices?

20 A. There might have been, but I don't
21 recall.

22 58 Q. And what other types of documents?
23 Would there be emails with Mr. Voorheis?

24 A. Not anymore, no.

25 59 Q. I didn't ask you whether anymore.

1 Would there have been emails with Mr. Voorheis?

2 A. Possibly.

3 60 Q. Possibly?

4 A. Well, I don't -- I mean, you
5 are -- was there -- were there emails with
6 Mr. Voorheis? Possibly. I don't recall
7 specifically.

8 61 Q. I see. Well, let me get this
9 straight with your evidence here on this
10 examination. Are you saying you can't remember
11 whether there was ever a single email back and
12 forth with Mr. Voorheis about any of this? Is that
13 your evidence here?

14 A. I am saying there might have been
15 and there might not have been. I don't recall.

16 62 Q. I see. Were there letters?

17 A. No.

18 63 Q. Were there text messages?

19 A. You mean, like, did I put mail in
20 the mailbox to Mr. Voorheis and he received it?

21 64 Q. Mr. Livesey, you know what a
22 letter is. Let's not dance around. Was there
23 correspondence?

24 A. No, I --

25 65 Q. Not whether you went to the post

1 office and licked a stamp and put it on. Was there
2 correspondence?

3 A. Sorry, again, you are speaking
4 over yourself. Are you asking did I send him a
5 letter in the mail?

6 66 Q. I am asking you to explain to
7 me -- your counsel -- well, obviously you have
8 confirmed there still are some documents, whatever
9 that may be. They have not been identified by
10 anybody. But beyond that, I am just trying to
11 understand, while your counsel considers in due
12 course his position about production of those
13 documents, whatever remains, what type of documents
14 there were.

15 This is not complicated. You have said
16 you can't remember whether there were or were not
17 emails. There may have been. There were invoices.
18 Were there any letters?

19 A. No.

20 67 Q. You don't know, you don't know.
21 Just answer the question.

22 A. I don't recall sending him a
23 letter, no.

24 68 Q. All right. Were there any text
25 messages?

1 A. I don't recall.

2 69 Q. I see. And have you given your
3 counsel the extent of your knowledge and all of the
4 records, electronic and otherwise, that you
5 currently have with respect to Mr. Voorheis?

6 A. I can't recall.

7 70 Q. All right. Mr. Lascaris, I know
8 you understand what I am talking about, but I just
9 want to be clear. As far as I am concerned, there
10 needs to be an appropriate inquiry for any and all
11 correspondence, documents, communications of any
12 sort whatsoever, including as defined in the Rules
13 of Civil Procedure. I just want to avoid any
14 misunderstanding on your client's part about what I
15 am asking for.

16 I am sure you understand, but we can
17 agree that my request and your advisement extends
18 to all of that; is that fair?

19 U/A MR. LASCARIS: Yes. So you want to
20 ensure that we have identified all documents
21 pertaining to this retainer, and there are
22 documents, Mr. Moore, and I will take your request
23 under advisement.

24 MR. MOORE: All right. Well, again,
25 not just the retainer. The work that was done, the

1 communication --

2 MR. LASCARIS: I understand.

3 MR. MOORE: All the communication --

4 MR. LASCARIS: I said pertaining to
5 this retainer. I didn't say the retainer. I
6 understand. It is pertaining to this particular
7 assignment.

8 BY MR. MOORE:

9 71 Q. All right. I am saying this
10 because of the way your client is responding. We
11 don't have any identification of anything at the
12 moment.

13 Now -- so when you approached
14 Mr. Voorheis, did you meet with him? How did you
15 make the introduction in terms of your new company
16 Mosaic Advisors Canada Inc.?

17 A. I either called or emailed him and
18 asked for a meeting, and we arranged a meeting.

19 72 Q. And where did you meet?

20 A. We met at his offices.

21 73 Q. And in your affidavit, you say
22 that was late March or early April, 2015?

23 A. Yes.

24 74 Q. And how are you able to specify
25 that time frame? Do you have some record or an

1 employment book or something of that nature?

2 A. No.

3 75 Q. All right. So how are you able to
4 identify that specific time frame, late March or
5 early April 2015?

6 A. Well, I know that we did, for
7 example, the interview with Mr. Levy in mid-April
8 of 2015, so that indicates to me around the time,
9 and I would have started the work not long after
10 meeting Mr. Voorheis, so that is how.

11 76 Q. So when you refer to Mr. Levy in
12 the time frame of that, you are referring to
13 paragraph 10 of your affidavit of September 4,
14 2020?

15 A. Yes.

16 77 Q. When you say that you first spoke
17 to Mr. Levy on April 17, 2015?

18 A. Yes.

19 78 Q. So if I understand you correctly,
20 the initiation of that interview with Mr. Levy was
21 in furtherance of your engagement by Mr. Voorheis;
22 correct?

23 A. Correct.

24 79 Q. All right. And in paragraph 8 of
25 your affidavit, you say you decided to reach out to

1 some of the companies which had borrowed from
2 Callidus to find out what had happened to those
3 loans; do you see that?

4 A. Yes.

5 80 Q. And how many times in all did you
6 speak to Mr. Levy?

7 A. Once. At that time -- you mean at
8 that time?

9 81 Q. No, I mean throughout, up to now.

10 A. Oh, you mean since -- as of 2015?

11 82 Q. No, I mean from 2015 until --

12 MR. LASCARIS: Are you referring to
13 conversations with Mr. Levy in the context of
14 Mr. Livesey's work for Mr. Voorheis, or are you
15 referring to all conversations with Mr. Levy?

16 MR. MOORE: All conversations.

17 MR. LASCARIS: Okay.

18 THE DEPONENT: I think three times.

19 BY MR. MOORE:

20 83 Q. And when were those contacts?

21 A. So the first one --

22 84 Q. The first one, I take it, was
23 April 17, 2015?

24 A. Correct.

25 85 Q. And as I understand it, you kept a

1 tape of that, a recording of that contact?

2 A. Correct.

3 86 Q. All right. And I note that with
4 reference to your affidavit of documents -- I am
5 not going to turn it up, but documents 286 through
6 294 of your affidavit of documents in this matter
7 is a list of transcripts of recordings of people
8 that you have talked to in connection with
9 Callidus. There were a number of people you talked
10 to and, as I read it or I inferred from what you
11 have listed in your Schedule A, that you have a
12 practice of recording conversations like that; is
13 that right?

14 A. Yes.

15 87 Q. All right. And what is the
16 purpose of that, from your perspective?

17 A. What?

18 88 Q. Recording those types of
19 interviews.

20 A. It is the purposes of research and
21 accuracy.

22 89 Q. So just to be clear, when you are
23 speaking to someone about a company that you are
24 investigating or doing due diligence about, it
25 would be your normal practice to keep a tape of

1 that conversation to make sure you get it right and
2 you have a record of what the conversation was,
3 right?

4 A. Yes.

5 90 Q. All right. And I take it then you
6 followed that practice in this case?

7 A. Yes, but not necessarily with
8 all -- every conversation.

9 91 Q. Yes, and I was going to say but
10 not always, right?

11 A. No.

12 92 Q. All right. I am jumping a bit
13 ahead here, but you met in person with Mr. Boland
14 and had an interview with him; correct?

15 A. Yes.

16 93 Q. Did you tape that?

17 A. Yes.

18 94 Q. Why haven't you produced that?

19 U/A MR. LASCARIS: We have taken the
20 position that those are covered by journalist
21 source privilege. Now, once I have had the
22 opportunity -- I understand there was discussion
23 with Mr. Boland regarding his interviews with
24 Mr. Livesey, and when I have had the opportunity to
25 review the transcripts, which I have not had,

1 Mr. Moore, we will examine the question of waiver,
2 and we may end up producing those tape recordings.

3 MR. MOORE: Well, how come that
4 document isn't listed in your Schedule B in any
5 way, shape or form?

6 MR. LASCARIS: Well, we identified the
7 document -- we say that documents are being
8 withheld on the basis of journalist source
9 privilege.

10 BY MR. MOORE:

11 95 Q. Well, journalistic source
12 privilege, as I understand it -- aside from the
13 fact that we don't accept it would be applicable to
14 this, it is the first time hearing that any such
15 claim is being advanced in respect of Mr. Boland,
16 but we'll leave that quibble to one side.

17 But my understanding is journalistic
18 source privilege only protects the identity of the
19 source. So, Mr. Lascaris, you can let me know in
20 due course whether or not you are going to produce
21 that tape, but beyond that, did you also have
22 interviews with Mr. Panet of West Face?

23 A. I had discussions with Mr. Panet.

24 96 Q. Well, okay, I guess I would call a
25 discussion an interview. So did you tape any of

1 your conversations with Mr. Panet?

2 A. I don't recall.

3 MR. LASCARIS: Yes, we do have
4 recordings of those, and we take the same position
5 with respect to those.

6 BY MR. MOORE:

7 97 Q. I see. So how many -- let's get
8 some specificity here. How many recordings are
9 there of conversations with Mr. Panet?
10 Mr. Lascaris, if the witness can tell me, that is
11 fine, but I don't want him to guess.

12 MR. LASCARIS: It was either two or
13 three. I don't know -- I can't recall exactly, but
14 there is either two or three, Mr. Moore.

15 BY MR. MOORE:

16 98 Q. All right. And what about with
17 Mr. Boland? I know there was a meeting at West
18 Face's offices with Mr. Boland that you have now
19 confirmed was taped.

20 Were there any other conversations with
21 Mr. Boland that were recorded?

22 A. Yes.

23 99 Q. How many? Give me your
24 approximate number, if you can.

25 A. One.

1 MR. LASCARIS: Well --

2 BY MR. MOORE:

3 100 Q. So one more meaning two?

4 MR. LASCARIS: There are separate
5 recordings -- I mean, Mr. Livesey can correct me if
6 I am wrong, but there are separate recordings of
7 one conversation. It is not a continuous audio
8 recording of the entire conversation.

9 THE DEPONENT: Yes. So just to be
10 clear, I met Mr. Boland on more than one occasion
11 when I was doing the Canadian Business article, so
12 we -- because of his schedule, we would -- we
13 couldn't get everything covered in one interview,
14 so we did a series of interviews in person.

15 And then I think there might have been
16 a follow-up phone conversation.

17 BY MR. MOORE:

18 101 Q. All right. Well, let me just
19 understand what you said. You said you did a
20 series of interviews with Mr. Boland in person.
21 How many separate interviews were there?

22 A. Three or four.

23 102 Q. And do you keep a recording of
24 each one of those interviews?

25 A. Yes.

1 103 Q. So there would be, subject to
2 verification, you might be off by a number, but in
3 principle, you would have or do have several
4 different tapes of different interviews with
5 Mr. Boland in this series of interviews; correct?

6 A. Correct.

7 104 Q. All right. And what about --
8 those are in-person meetings. What about phone
9 discussions with Mr. Boland? How many
10 conversations over the phone did you have with him
11 in reference to the story?

12 A. Just to be clear, ones I taped or
13 ones I didn't tape, or it doesn't matter?

14 105 Q. Well, let's deal with -- one step
15 at a time. I want to know your best estimate of
16 how many phone conversations there were, and then
17 we'll deal with which ones were taped or not taped.

18 So how many phone conversations were
19 there as distinct from in-person meetings?

20 A. I don't recall.

21 106 Q. Well, ten, five? If it is a pure
22 guess, your counsel will let me know, but just
23 since you are here and I am here, I just want to
24 get some sense if you can tell me approximately how
25 many. If not, don't guess.

1 A. I don't know. Maybe half a dozen.

2 107 Q. I see. And what approximate time
3 frame are we talking about? Is this October or
4 November or thereabouts of 2016 or some different
5 time frame?

6 A. So --

7 108 Q. Your best recollection.

8 A. So in preparation for the Canadian
9 Business article, there was the three or four on
10 the record -- sorry, off-the-record interviews in
11 person. There was perhaps five or six phone
12 conversations.

13 And then because of the fact that the
14 article then was taken to Report on Business
15 Magazine, there would have been further
16 conversations in 2017, just again as part of
17 updating the article.

18 109 Q. And those further conversations,
19 would they have been in person or by telephone or
20 both?

21 A. Telephone.

22 110 Q. Sorry?

23 A. Telephone. I might have -- if I
24 recall, I had to stop off at their offices to --
25 because they were -- there was some documents they

1 were interested in me looking at, and so I would
2 pick them up at their offices. So I would have
3 cause to stop by their office occasionally to pick
4 something up.

5 111 Q. I see. So, again, I want to be
6 clear. I don't want the scope of the advisement or
7 undertaking, as the case may be, to be limited by
8 any semantics that, well, it is only in preparation
9 for the Canadian Business or the ROB or whatever.

10 What I am asking for is a full and
11 complete listing, disclosure, of all of the
12 conversations, whether in-person or by telephone or
13 in some other means, between Mr. Livesey and
14 Mr. Boland with respect to Callidus or Catalyst at
15 any time.

16 MR. LASCARIS: I understand the scope
17 of your disclosure, Mr. Moore. You are referring,
18 of course, to recordings of some kind of these
19 conversations; correct?

20 MR. MOORE: No, I am referring to -- I
21 want to know how many contacts there were of that
22 description, and then how many of those were
23 recorded. In other words, if it turns out that it
24 goes back to 2015 -- I don't know because no one
25 has disclosed this, but if it turns out that back

1 in 2015 or even earlier there was a series of
2 conversations in person, on the phone, or whatever
3 between Mr. Livesey and Mr. Boland and that
4 extended forward to 2018 or 2019, I want to know
5 the details. I want to know how many there were in
6 person or by telephone or some other means in case
7 I'm missing something, how many there were, as best
8 can be reconstructed.

9 And then secondly, I want to know how
10 many of those communications were recorded by some
11 means. I don't want to be hung up on some
12 qualifying adjective about the time frame or it was
13 for ROB or for some other purpose. I want the full
14 scope of it.

15 MR. LASCARIS: I understand.

16 MR. MOORE: Is that acceptable to take
17 that under advisement and let me know?

18 U/A MR. LASCARIS: Yes. Yes, it is, yes.

19 BY MR. MOORE:

20 112 Q. All right. And that is
21 Mr. Boland. I wish to have the same undertaking or
22 advisement, as the case may be, with respect to
23 Mr. Panet. Is that acceptable?

24 U/A MR. LASCARIS: I understand. Yes, I'll
25 take that under advisement, Mr. Moore.

1 BY MR. MOORE:

2 113 Q. All right. And is there anyone
3 else at West Face that you spoke to about Catalyst
4 or Callidus? For example -- I'll give you a couple
5 of examples. Did you ever speak to Anthony Griffin
6 about either of those companies?

7 A. No, not that I recall, no.

8 114 Q. Did you speak to anyone else? Did
9 you speak to Mr. Dea, D-e-a?

10 A. No.

11 115 Q. Did you speak to -- I don't want
12 this to be a guessing game. Did you speak to
13 anyone else at West Face apart from Mr. Panet and
14 Mr. Boland at any time about Callidus or Catalyst?

15 A. Not that I recall, no.

16 116 Q. Well, you'll check your records
17 and whatever is going to be reviewed by your
18 counsel and let me know if there is anyone else; is
19 that acceptable?

20 U/T A. Yes.

21 117 Q. All right. Now, you said that
22 from time to time you would attend at West Face's
23 offices because there were some documents that they
24 wanted you to see; correct? That is what you said?

25 A. Yes.

1 118 Q. My question is, how many times did
2 that happen?

3 A. I am guessing maybe two, maybe
4 three.

5 119 Q. And do you know what documents
6 they provided to you? Could you identify them?

7 A. Right now?

8 120 Q. Well, by way of undertaking.

9 U/A MR. LASCARIS: We'll take that under
10 advisement, Mr. Moore.

11 BY MR. MOORE:

12 121 Q. All right. And let's be clear
13 again on the scope. I don't know whether all of
14 those documents have been produced or listed in
15 Schedule A, so to the extent any of the Schedule A
16 listed documents were ones that were provided by
17 West Face, will you undertake to identify those as
18 best you can?

19 U/A MR. LASCARIS: We will take that under
20 advisement as well.

21 BY MR. MOORE:

22 122 Q. Okay. And when I say "okay", I am
23 not -- I understand your position.

24 And beyond those that are currently
25 listed in Schedule A, are there additional

1 documents that were picked up, provided by West
2 Face, that are not in Schedule A or otherwise
3 produced? Will you undertake to advise me of that,
4 and if there are, provide me with a list of what
5 those are?

6 U/A MR. LASCARIS: Under advisement.

7 BY MR. MOORE:

8 123 Q. And going the other way, did you
9 ever provide West Face with any documents?

10 A. No, not that I recall, no.

11 124 Q. All right. Well, for the record,
12 there was a lengthy pause before you came to that
13 answer. Did you ever provide them with drafts of
14 any of your proposed stories?

15 A. No.

16 125 Q. Did anyone else on your behalf or
17 connected with you do so?

18 A. No.

19 126 Q. And explain to me how it would
20 come about that you would know to go to West Face
21 to pick up documents? Did you get a phone call or
22 an email and say, Bruce, there are some documents
23 we think you should see. You come on by and pick
24 them up? I am paraphrasing. Don't get hung up by
25 the words I am using. Explain to me what the

1 process was.

2 A. It was either by a phone call --
3 probably a phone call.

4 127 Q. Well, either by a call or probably
5 by -- is it possible that some of that was by email
6 as well?

7 A. I don't recall.

8 128 Q. I didn't ask whether you recall.
9 Is it possible --

10 A. I don't recall whether it was
11 possible, okay? You are asking me -- you say was
12 it possible? I am saying I don't recall.

13 129 Q. You don't recall what is possible?

14 A. I don't recall what is possible.

15 130 Q. I see. Well, I'll ask the
16 question and then I'll ask for an undertaking. Are
17 there any emails or other forms of written
18 communication from West Face indicating there are
19 documents that they think you should pick up?
20 Mr. Lascaris, will you undertake to inquire and let
21 me know and produce such communications?

22 U/A MR. LASCARIS: I'll take that under
23 advisement.

24 BY MR. MOORE:

25 131 Q. And, Mr. Livesey, did you ever

1 receive documents from West Face not by way of
2 physical pickup, but also by email or some other
3 means?

4 A. You mean like were they sent
5 electronically to me?

6 132 Q. Yeah, that is what I mean.

7 A. I don't recall. I don't think so,
8 but I don't recall.

9 133 Q. All right. And, Mr. Lascaris, can
10 the advisement or undertaking extend to that
11 inquiry as well?

12 U/A MR. LASCARIS: Same answer.

13 BY MR. MOORE:

14 134 Q. All right. Now, going back to the
15 time when you were doing work for Mr. Voorheis, you
16 reached out to Mr. Levy, according to your
17 affidavit, on April 17th; correct?

18 A. Yes.

19 135 Q. And your affidavit says that you
20 became aware of other borrowers who were or had
21 been involved with Callidus; correct?

22 A. Yes.

23 136 Q. And what other borrowers did you
24 reach out to back in 2015?

25 A. I don't recall them at the moment.

1 137 Q. Well, let me see if I can help
2 refresh your memory. Looking at the list of
3 borrowers, would you have been aware of Mr. Levitt?
4 Did you become aware of Mr. Levitt?

5 A. No.

6 MR. LASCARIS: Just to be clear,
7 Mr. Moore, we are talking about during the period
8 of the work for Mr. Voorheis's law firm, is that
9 what you are referring to?

10 MR. MOORE: That's right.

11 MR. LASCARIS: Okay.

12 BY MR. MOORE:

13 138 Q. And --

14 A. So Mr. Levitt, no, I did not know
15 of his existence at that time, or nor did I speak
16 to him.

17 139 Q. All right. Who else did you know
18 of? Did you know of Mr. Baumann?

19 A. I learned of Mr. Baumann, I think,
20 after my retainer was finished. I came across
21 his -- I think his website was up briefly at that
22 time, and for some reason, I can't remember why,
23 but I came across it.

24 140 Q. And were you --

25 A. But at that time -- but I did not

1 speak to Mr. Baumann as part of the work for
2 Mr. Voorheis, at least I don't think so, no.

3 141 Q. And when did you first learn about
4 Mr. Levitt?

5 A. 2016, I think, not 2015.

6 142 Q. And what about Mr. Molyneux?

7 A. Sorry?

8 143 Q. What about Mr. Molyneux? When did
9 you first learn about Mr. Molyneux?

10 A. Molyneux? Who is Mr. Molyneux?
11 Remind me again.

12 144 Q. He is one of the Fortress
13 guarantors, a co-Defendant with Mr. Levitt in the
14 Ontario guarantee proceedings.

15 A. Right, right. Well, again,
16 define -- I mean, I don't recall, but it would have
17 been some time 2016, 2017.

18 145 Q. When -- just to put this in
19 context, when do you say the work you were doing
20 for Mr. Voorheis finished?

21 A. Well, we have already discussed
22 that.

23 146 Q. No, we haven't. You indicated you
24 did some work in early -- or late March, early
25 April. There was a pause. You did something more

1 in June or July, I think you said.

2 A. Yes.

3 147 Q. But you didn't say when it
4 finished. I am asking you, when did it finish?

5 A. It would have finished in the
6 summer, June -- I think June of 2015.

7 148 Q. All right. So these contacts
8 with -- your awareness then of Baumann,
9 Levitt/Molyneux, and the rest I'll ask you about,
10 that came after your work for Mr. Voorheis was
11 finished --

12 A. Yes.

13 149 Q. -- according to your evidence?

14 A. Yes.

15 150 Q. And what about Mr. McFarlane of
16 XTG, when did you first become aware of him?

17 A. I think when I was doing the
18 research for Voorheis.

19 151 Q. What about Mr. Duhamel?

20 A. That would have been
21 researching -- I don't recall that. I think that
22 was researching -- it might have been as far as
23 2017. I don't recall.

24 152 Q. So how was it that you became
25 aware of Mr. Baumann? You said through his

1 website? You were just poking around? You had
2 nothing better to do? You came across
3 Mr. Baumann's website? I just want to understand
4 better than I do how that took place.

5 A. I really can't recall. I really
6 can't recall. It might have been --

7 153 Q. You would --

8 A. It might have been poking around
9 on the website. I just -- on the web. I can't
10 recall.

11 154 Q. I see.

12 A. I don't remember the -- how I
13 heard about him or -- I do remember that for a
14 moment there was -- his website was up at some
15 point, and I remember looking at it, and then I
16 think it came down, so...

17 155 Q. And what about -- how was it you
18 came to learn about who Mr. Levitt was? You said
19 it was 2016 sometime.

20 A. So this was probably after I
21 commenced the -- and I say "probably" because I
22 think it was after I commenced the Canadian
23 Business article that I learned of him. I can't
24 recall if somebody gave me his name or he called
25 me. I can't remember now. It is too long ago.

1 156 Q. Well, I take it you spoke with him
2 on the phone, or did you meet with him or both?

3 A. I spoke to him on the phone. I
4 didn't meet him at that time, no, or I didn't meet
5 him until much later. 2018 or something.

6 157 Q. Sorry, when?

7 A. I think possibly 2018. Well,
8 yeah, I would have met him by 2018. I think that
9 was the first time I met him in person, I think,
10 but I -- the communication with Mr. Levitt in
11 preparation for these articles was on the phone.

12 158 Q. All right. And how many phone
13 conversations did you have with him, your best
14 estimate?

15 A. Again, you have to be more
16 specific. Since 2016 or today or at that time?
17 What do you mean?

18 159 Q. Well, from -- at any time. From
19 since 2016.

20 A. I can't recall.

21 160 Q. All right. Then let's do it year
22 by year if we have to go that way.

23 A. Okay. I am just going to tell you
24 I can't recall.

25 161 Q. Your best estimate. When you are

1 doing your research for the articles, whether it be
2 Canadian Business, ROB, SIRF, whoever it may have
3 been, how many times in that context -- your best
4 estimate -- did you speak to Mr. Levitt on the
5 phone?

6 A. I don't know. 20-plus.

7 162 Q. Sorry?

8 A. Perhaps over 20.

9 163 Q. Over 20?

10 A. Yes.

11 164 Q. And will you undertake to produce
12 your phone records, including your cell phone
13 records, from January 1, 2015, going forward so
14 that we can reconstruct -- I appreciate you are
15 going from memory now, but we can reconstruct just
16 how many of those phone calls took place?

17 U/A MR. LASCARIS: We'll take that under
18 advisement, Mr. Moore.

19 BY MR. MOORE:

20 165 Q. And so of the 20 phone calls or
21 whatever the number was, do you remember your
22 initial phone conversation with Mr. Levitt?

23 A. Yes. Vaguely, yeah.

24 166 Q. All right. And you didn't know
25 him and he didn't know you prior to that, I take

1 it; correct?

2 A. That's correct.

3 167 Q. All right. And you placed that in
4 conjunction with your research activities in
5 connection with the article or articles you were
6 considering at that point in time, right?

7 A. Correct.

8 168 Q. Did you tape that phone call?

9 A. I don't think so.

10 169 Q. Well, do you have a recollection
11 of not taping it? I don't want you to guess. I
12 can understand your practice --

13 A. Well, you are -- okay. So I
14 don't --

15 170 Q. The --

16 A. Then the answer is I don't know.
17 My recollection is no, but I don't know.

18 171 Q. All right. Well, I don't want you
19 to recollect something if you really don't
20 recollect it because my --

21 A. Okay. Well --

22 172 Q. Well, let me finish. My
23 understanding of your practice when you were
24 conducting these research interviews or
25 investigative interviews or whatever you want to

1 call them, that your practice was indeed to keep a
2 transcript, keep a recording of them. You did that
3 with Mr. Levy, and you did that with a series of
4 other people alluded to in your affidavit of
5 documents. I am having trouble understanding why
6 it was you suggest that it may not have been that
7 way with Mr. Levitt. Can you help me understand
8 that better?

9 A. Yes. Okay. So let me clarify.
10 If I am interviewing someone or talking to them
11 with the purposes of research -- so this is for an
12 article or in my work for my firm -- I will record
13 the conversation.

14 If I am just --

15 173 Q. Let me make sure I heard you. You
16 said you will record the conversation?

17 A. Yes. So if I am -- if the purpose
18 of the conversation is for a job, okay -- in other
19 words, I am being employed by a company or a media
20 outlet to produce a product for them, when I am
21 interviewing somebody for the purposes that that is
22 the formal interview, and I am gathering
23 information, I am being -- you know, the classic Q
24 and A, like, interview, then I will record it for
25 research purposes.

1 174 Q. Yes.

2 A. If I am talking to someone to get,
3 like, an update or a clarification or fact-checking
4 something or more mundane matters, I do not record
5 them.

6 175 Q. I understand what you are saying,
7 and let's just break that down a little bit with
8 respect to Mr. Levitt. You testified that your
9 purpose of contacting Mr. Levitt was to conduct
10 research for a story you were working on, and you
11 didn't know him beforehand?

12 A. That's correct.

13 176 Q. So I am having trouble
14 understanding why in that context that type of
15 conversation was not recorded. I would have
16 thought it would have been recorded.

17 A. Because it was not clear until
18 you -- if you are talking to someone for the first
19 time -- and people call me often out of the blue
20 about stories or projects -- I don't know whether
21 there is any value in the conversation, so I don't
22 automatically turn on the tape recorder.

23 177 Q. All right.

24 A. So if Mr. Levitt called me to chat
25 about the subject at hand -- in this case, Callidus

1 and Catalyst -- I don't know this guy. I don't
2 know who he is. I don't know what the value of
3 this conversation is. I don't know -- you know,
4 and so I would not record it.

5 If, having ascertained that Mr. Levitt
6 or anyone else had information that would be of use
7 to me in the purposes of researching my articles,
8 then I would arrange a formal interview. I would
9 also find out, especially in this matter, whether
10 they wanted it off the record or on the record, and
11 then I would record it depending on how this
12 conversation could go.

13 178 Q. So I take it at some point in
14 connection with Mr. Levitt you ascertained or
15 concluded that he would have some information that
16 would be potentially relevant and that at least
17 some of your conversations with him were recorded;
18 is that correct?

19 A. Yes.

20 179 Q. And can you give me an approximate
21 number -- if you can't, I don't want you to guess,
22 but if you can give me an approximation of how many
23 of your phone conversations with Mr. Levitt were
24 recorded, that would be useful. Can you give me
25 any approximation?

1 A. The approximation is one.

2 180 Q. So let me get this straight. So
3 when you are that specific, I take it you are
4 sure -- well, are you sure that it was just only
5 one time that you recorded Mr. Levitt?

6 A. As far as I understand, yes.

7 181 Q. Well, have you prepared a list of
8 the calls you had and which were recorded and which
9 weren't?

10 A. Do I have a list? I don't think
11 so. I don't recall. I might. I think so. I
12 don't recall. I don't recall.

13 182 Q. Well, if you might, you think so,
14 you don't recall, which is it?

15 A. I don't recall.

16 183 Q. Mr. Lascaris, if there is a list
17 or lists of contacts like this with Mr. Levitt or
18 any of the other debtors -- by that I include
19 Mr. Baumann, Mr. Duhamel, Mr. Molyneux,
20 Mr. McFarlane -- will you provide that?

21 U/T MR. LASCARIS: Yes, we will.

22 BY MR. MOORE:

23 184 Q. And whether or not there is a
24 list -- again, I have identified some borrowers.
25 Whether or not there is a list, will you advise as

1 best you can how many such contacts and
2 conversations took place and which ones were
3 recorded and provide the recordings? And I am
4 talking from the beginning of the period that is
5 relevant going back to at least to 2015. Will you
6 take that under advisement?

7 U/A MR. LASCARIS: I'll take that under
8 advisement.

9 BY MR. MOORE:

10 185 Q. All right. Now, you seem to
11 have -- or a remembrance at least of at least one
12 recorded conversation with Mr. Levitt. Do you
13 remember approximately when that was? I presume
14 sometime in the fall of 2016, but you tell me.

15 A. It was either the fall of 2016 or
16 sometime in early 2017.

17 186 Q. And do you recall how long that
18 conversation was?

19 A. No.

20 187 Q. All right. Well, let me go at it
21 this way. I am not asking you to tell me whether
22 it was 72 minutes and 45 seconds. Was it an hour,
23 half an hour, a couple of hours? Can you give me
24 an approximation?

25 A. Probably more like a half an hour.

1 188 Q. And you indicated that over the
2 period you have had quite a number of phone calls
3 with Mr. Levitt. Twenty or more I think you said;
4 correct?

5 A. Yes.

6 189 Q. So the call that was recorded,
7 would that have been immediately after your initial
8 conversation with Mr. Levitt? In other words,
9 early on in the time frame when you knew of him?

10 A. Sorry, repeat the question? My
11 wife just came into the room.

12 190 Q. The conversation with Mr. Levitt
13 that was recorded, would that have been early on in
14 the span of your communications with Mr. Levitt?
15 Well, let me put it to you this way while you
16 are --

17 A. Well, I am just trying to -- well,
18 there is context to this, so --

19 191 Q. Yeah, the context, as I understand
20 it, is -- from your evidence a moment ago is that
21 in your initial conversation with Mr. Levitt,
22 whether he called you or you him, you wouldn't
23 necessarily have been sure whether he would have
24 any potentially relevant information, so that is
25 why your initial call with him would not probably

1 have been recorded.

2 However, I take it you determined that,
3 yes, there was some potentially relevant
4 information; hence the recorded call.

5 That is why it strikes me as logical
6 that that reported call would have been early on in
7 your knowledge of Mr. Levitt. That is why I'm
8 asking the question and putting that context.
9 Hopefully that may assist you.

10 A. Well, the reason I don't recall
11 specifically is it was in the context of the
12 articles and how they changed. So if you have seen
13 the original draft of my article for Canadian
14 Business and then the subsequent draft of my
15 article for the Report on Business Magazine and
16 then finally the two articles for SIRF, is the
17 articles changed.

18 And in the original iteration of the
19 article, it was primarily about these two
20 individuals on Bay Street who were engaged in this
21 battle, this dispute, and it was profiling who they
22 are and, you know, sort of explaining to people
23 their background and the origins of the dispute,
24 specifically over the matter about Wind.

25 So the issue of the fact that

1 Mr. Glassman or Callidus had some problems or
2 disputes with some of the borrowers from Callidus
3 was much less relevant to those articles. It
4 really wasn't the focus of those articles. So
5 Mr. Levitt's complaint is about Callidus and how he
6 had been treated by Callidus, and that was of less
7 concern to me in 2016 and 2017.

8 And just to add, at no point did I ever
9 write in any of my articles about Mr. Levitt or his
10 dispute with Callidus.

11 192 Q. When Mr. Levitt would contact you
12 all these additional times, the 20 additional
13 times, would that be to update you and provide you
14 with additional information?

15 A. Usually, yes.

16 193 Q. Well, "usually". What other
17 purpose was there?

18 A. Well, yeah, I think that was it.
19 Yeah, he would call me to update me, and he, like
20 many of the people who had problems with Callidus,
21 who felt they had been -- seen their companies
22 destroyed by Callidus, obviously had an interest in
23 someone publishing an article about what Callidus
24 was doing.

25 194 Q. And so when he called you to

1 update you, what was he updating you about? What
2 kinds of things did he say?

3 A. He was interested in what progress
4 I was making, and he would -- as you recall, must
5 recall, Mr. Moore, there had been considerable
6 litigation, mountains of litigation involving
7 Callidus and its borrowers and Boland and West
8 Face, and it seems like anyone who had any
9 association with Mr. Glassman he seems to sue, so
10 there was always updates on litigation and
11 developments and all this piece of the litigation.

12 195 Q. Let me just stop you there. The
13 lawsuits involving Callidus were lawsuits to try to
14 collect on the guarantee; isn't that right? In the
15 case of Mr. Levitt and Mr. Duhamel and Mr. Baumann
16 and Mr. Levy, those were claims by Callidus to
17 collect on guarantors' obligations under loan
18 documents they signed; isn't that right? Whether
19 they were well-founded or not well-founded, that
20 was the nature of the litigation; isn't that right?

21 A. As far as I understand, yes.

22 196 Q. Yes. So as an experienced
23 financial journalist and now investigator, that
24 would be normal course lawsuits. When a borrower
25 defaults on a loan and there is a guarantor, the

1 lender will go after the guarantor if they don't
2 voluntarily meet their obligations. Isn't that
3 pretty common, sir, in your experience?

4 A. Are you asking me about the
5 validity of these lawsuits?

6 197 Q. Please listen to my question.

7 A. I understand --

8 198 Q. I just said --

9 A. I understand your question.

10 199 Q. Well, then listen to my question
11 because I am --

12 A. And I am --

13 200 Q. Whether they were valid -- let me
14 finish. Whether they were valid or not, it is
15 standard fare that lenders whose loans --

16 A. I don't know. I don't know. I
17 don't know what is standard fare in that business.

18 201 Q. I see. All right.

19 A. I don't know. I don't know. I
20 have no idea.

21 202 Q. As a financial journalist and
22 investigator and the like, you don't know whether
23 it is standard for lenders to sue guarantors who
24 fail to abide by their obligations? You can't tell
25 me whether that is standard or not. Okay.

1 A. Of course not. That is
2 ridiculous.

3 203 Q. Well, your answer is ridiculous in
4 my view, sir, but let's move on.

5 A. No, no, I can explain to you why
6 it is ridiculous, because it is not like every case
7 is going to be the same, is it? Right? There are
8 going to be circumstances where there is no point
9 in suing them.

10 204 Q. No, that is right, but where the
11 borrower -- where the lender has a guaranteed loan
12 or where the guarantors may have means to honour
13 their guarantee, it is not uncommon for a lender to
14 go after the guarantor to fulfil their obligations;
15 isn't that right?

16 A. I am sure it is not uncommon.

17 205 Q. All right. So I have asked, I
18 believe, at least --

19 MR. LASCARIS: Mr. Moore, might this be
20 a good time for a break? Mr. Moore?

21 MR. MOORE: Yes, let me just cover
22 something off, and then we'll take the morning
23 break.

24 MR. LASCARIS: Okay.

25 BY MR. MOORE:

1 206 Q. I have asked for an undertaking
2 and an advisement, as the case may be, with respect
3 to Mr. Levitt. I think that is extended to the
4 other guarantors that I have named, and let me ask
5 you this question, if you remember. Did you tape
6 any conversation you had with Mr. McFarlane?

7 A. Yes.

8 207 Q. And do you remember how many such
9 taped conversations there would have been?

10 A. No.

11 208 Q. All right. But that will fall
12 within the undertaking or advisement, Mr. Lascaris?

13 U/A MR. LASCARIS: We are taking the same
14 position.

15 BY MR. MOORE:

16 209 Q. Just while he is here, I want to
17 cover it. What about Mr. Duhamel? Were there
18 taped conversations with Mr. Duhamel? We'll find
19 out -- through the either response to the
20 undertaking or advisement as the case may be, we'll
21 find out the details, but were there any, to the
22 best of your recollection, taped conversations with
23 Mr. Duhamel?

24 A. No, I don't think I ever spoke to
25 Mr. Duhamel.

1 MR. MOORE: All right. Let's come back
2 at quarter to 12:00.

3 MR. LASCARIS: That is fine.

4 Mr. Moore, I don't know if there is a
5 delay in your hearing what I am saying, but we seem
6 to be talking over each other, not intentionally.

7 I just want to be clear, our position
8 with respect to those other recordings that you
9 have identified with Mr. Livesey just now is the
10 same as with respect to the recordings of the
11 Boland conversations.

12 MR. MOORE: So you are claiming --
13 subject to further consideration, I take it, you
14 are claiming journalistic source privilege over all
15 of those other recordings?

16 MR. LASCARIS: Yes, subject to the same
17 comments I made about Mr. Boland's recordings.

18 MR. MOORE: Well, again, my
19 understanding is that the source privilege covers
20 the identity of the source, not the actual
21 recording. But we can deal with that as need be.
22 Perhaps that will have to be the subject of further
23 submissions to the Court, but we'll leave it at
24 that for now. Let's take the break until a quarter
25 to 12:00. Thank you.

1 MR. LASCARIS: Thank you.

2 -- RECESSED AT 11:26 A.M.

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

4 BY MR. MOORE:

5 210 Q. So, Mr. Livesey, I want to go back
6 to your affidavit to page 3, the prior page to the
7 one that is on the screen. So at paragraph 4, you
8 say until you were:

9 "[...] approached by
10 Mr. Voorheis in connection with that
11 assignment," referring to Callidus,
12 "[...] I had never heard of Callidus
13 or Newton Glassman."

14 A. Yes.

15 211 Q. Do you see where I am reading
16 from?

17 A. Yes.

18 212 Q. So I take it that based on what I
19 have heard you say so far today, you provided some
20 promotional material to Mr. Voorheis, and that it
21 was he then who approached you to bring up the
22 possibility of an engagement about Callidus;
23 correct?

24 A. Yes, yes. When we met, he -- it
25 was he who raised Callidus.

1 213 Q. And tell me more about how that
2 came up, what he said and what the conversation was
3 about that.

4 A. Well, again, it was -- because I
5 knew nothing about these companies, I don't recall
6 the details because it was a little bit -- it was
7 going over my head. But he was at the time --
8 because it wasn't just Callidus. There were other
9 companies he was interested in because he did -- I
10 did another spot of work unrelated to Callidus for
11 him on a completely different type of company. It
12 was a very tiny contract.

13 So he was -- he appeared to be
14 interested in companies who he felt were misleading
15 investors perhaps in some way. I mean, I am
16 just -- and he was looking for some more
17 information about -- in the case of Callidus, about
18 Callidus.

19 214 Q. And did he raise anything about
20 Catalyst, or was it just Callidus?

21 A. Well, again, because I was
22 unfamiliar with the companies, I think he referred
23 to Catalyst and Callidus, but I was getting them
24 confused because they sounded similar, and so at
25 times I was not quite sure what he was talking

1 about because he was -- I didn't understand at that
2 time the structure. I didn't know anything about
3 these companies. I didn't know the structure of
4 them. And then on top of it, to add to the
5 confusion, Catalyst and Callidus often sounded the
6 same, so it was -- I don't recollect. I think he
7 was talking about both of them, but it got a bit
8 confusing about what he was referring to.

9 215 Q. And he would have -- or did he
10 mention Mr. Glassman by name at that time?

11 A. I don't recall.

12 216 Q. Well, I am just reading your
13 affidavit:

14 "Until I was approached by
15 Mr. Voorheis in connection with that
16 assignment, I had never heard of
17 Callidus or Newton Glassman."

18 So I take it, as a result of
19 Mr. Voorheis approaching you, you heard of the name
20 Newton Glassman in connection with that discussion?

21 A. Well, again --

22 217 Q. That is my interpretation. Is
23 that right?

24 A. No, I know, but you are asking me
25 about the very first time we met and had a

1 discussion about Callidus or Catalyst. You are
2 asking me did he mention Mr. Glassman at that
3 meeting, and I am telling you I don't recall.

4 218 Q. All right.

5 A. But obviously at some point I
6 learned of the existence of Newton Glassman.

7 219 Q. Okay. You are trailing off for at
8 least me a little bit in terms of the end of your
9 answers, so could you just try to go slowly and
10 keep your voice up.

11 A. Sure.

12 220 Q. And that will be easier for me,
13 anyway.

14 So at that first meeting, do you have
15 any recollection of about how long that was?

16 A. I don't know, perhaps half an hour
17 to 45 minutes.

18 221 Q. And was it -- you say there was
19 another spot of work that you did. Was that
20 discussed at that same meeting, or was your initial
21 meeting devoted strictly to Callidus-related
22 matters?

23 A. Well, the initial meeting was me,
24 you know, talking about my company and what we were
25 offering, and so the intention of the meeting was

1 for me to sort of explain what I was up to, and
2 then I think he raised the issue of Callidus and
3 Catalyst.

4 And then the second contract, I don't
5 even recall when that was initially discussed.

6 222 Q. Well, did the second contract have
7 anything to do with Callidus or Catalyst or Newton
8 Glassman?

9 A. No.

10 223 Q. All right. So is it your best
11 recollection then that the subject matter of
12 Callidus and/or Catalyst and/or Newton Glassman
13 came up at the first meeting you had with
14 Mr. Voorheis?

15 A. That is my vague recollection,
16 yes.

17 224 Q. And who else was at that meeting?

18 A. There were a couple of his
19 juniors, who I don't recall their names.

20 225 Q. Well, without --

21 A. Like he --

22 226 Q. -- adopting that characterization,
23 do you recall whether Mr. Woolcombe was at the
24 meeting?

25 A. No.

1 THE COURT REPORTER: I'm sorry, I
2 missed that. Who was at the meeting?

3 BY MR. MOORE:

4 227 Q. Mr. Woolcombe.

5 A. I don't recall if he was at the
6 meeting.

7 228 Q. I'll give you the spelling later.
8 Have you met? Did you meet him
9 eventually?

10 A. Eventually, yes.

11 229 Q. That is his partner, right?

12 A. I don't know.

13 230 Q. Okay. And did you meet him in
14 connection with this assignment?

15 A. No. Well, not -- like I have
16 never had any discussions with Mr. Woolcombe about
17 anything to do with Catalyst or Callidus, no.

18 231 Q. And after this initial meeting
19 with Mr. Voorheis about the assignment, was a
20 contract entered into right then and there, or was
21 that at some later time?

22 A. I think it was at some later
23 time --

24 232 Q. Contract, I mean oral, in writing,
25 in some way, shape or form.

1 A. I understand.

2 233 Q. In any way.

3 A. I think it was entered into later
4 on. I think the details of what I was planning to
5 do or going to do were entered -- were decided
6 later on.

7 234 Q. Okay. And approximately how
8 long was it -- between your initial meeting to
9 introduce yourself and pitch your new company, how
10 long between that meeting and the time when the
11 contract was arrived at, approximately?

12 A. Approximately, two weeks.

13 235 Q. Two weeks?

14 A. Yes.

15 236 Q. And you say in your affidavit that
16 Mr. Voorheis told you that he had shorted Callidus
17 stock in the past, after it went public in the
18 summer of 2014; do you see where -- in paragraph 5
19 of your affidavit?

20 A. Uhm-hmm.

21 237 Q. "[...] but had cashed out his
22 position by the time he engaged Mosaic
23 to investigate Callidus."

24 Do you see that?

25 A. Yes.

1 238 Q. Did he tell you he was considering
2 a further short position or he held any further
3 short position in 2015?

4 A. He did not indicate -- no, he did
5 not indicate he was either planning to or had any
6 short position at that time.

7 239 Q. Just give me a minute.

8 I am not going to go through all of the
9 documents, but there is just a couple I am going to
10 ask you about proximate to the time of your
11 arrangements with Mr. Voorheis.

12 Could you bring up Voorheis production
13 ending in 0001.

14 MR. KARABUS: They all end in 001.
15 There you go.

16 BY MR. MOORE:

17 240 Q. Oh, I see. Okay. This is
18 Voorheis production 03, and the 01, it goes from
19 page 1 to page 4.

20 And this is "Investment Considerations
21 - Short", "Draft No. 1, February 11, 2015."

22 A. Okay.

23 241 Q. And I am not going to go through
24 it all, but just take a moment and look at it, sir.
25 I am not going to go through every paragraph of it.

1 A. [Witness reviews document.]

2 Okay.

3 MR. LASCARIS: Just to reflect, when
4 you say "look at it", Mr. Moore, what he is looking
5 at --

6 MR. MOORE: Sorry?

7 THE DEPONENT: I can just see one page,
8 by the way.

9 MR. LASCARIS: I just want to --

10 BY MR. MOORE:

11 242 Q. Okay. So let's scroll down. He
12 has got "Pros" and "Cons". For example, "Con"
13 number 5 is:

14 "The time when the market will
15 figure out that the shares of CBL
16 are overvalued or that CBL is a scam
17 is unknown."

18 That is on the "Con" side of the
19 ledger, according to this document. And I am not
20 going to go through them all. Let's go through a
21 few -- scroll down another page or so.

22 MR. LASCARIS: So now we are on page 3
23 of the document.

24 BY MR. MOORE:

25 243 Q. On page 3 of the document now.

1 Let's go to the last page.

2 A. [Witness reviews document.]

3 244 Q. And let's go to another document,
4 just to provide some context for the questions that
5 I am going to ask you. Let's go to Voorheis
6 production 98, and this is a document entitled "VWK
7 Fund: Callidus Capital Corp. Profit & Loss"
8 January 1, 2015, to April 11, 2017; do you see that
9 at the top?

10 A. I see the document, yes.

11 245 Q. So when you were meeting with
12 Mr. Voorheis about your prospective engagement and
13 the work you were going to do about Callidus, did
14 he get into any of the details about Callidus, the
15 types of questions or pros and cons that were
16 referred to in the context of trading? What did he
17 tell you? What did he say?

18 A. He said --

19 246 Q. Do any of these documents ring a
20 bell with you at all, sir?

21 A. No, I have never seen these
22 documents. He did not talk to me about any trading
23 he was doing or not doing. His instructions, as I
24 indicated in my affidavit, were extremely vague,
25 which was actually a bit frustrating.

1 247 Q. So let's go to --

2 A. I think --

3 248 Q. Sorry. Keep going. I'm sorry.

4 A. I was going to say my impression
5 was that he -- there were things about Callidus
6 that to him, as an experienced securities lawyer
7 and investor, didn't make any sense, and I think he
8 was hoping I could -- that my research would shed
9 some light on them.

10 249 Q. And is that what he was asking you
11 to look into?

12 A. On what?

13 250 Q. The things that didn't make any
14 sense in his view about Callidus, unless he -- you
15 just said that was your impression.

16 A. Yeah, that was my impression, was
17 that there was aspects of the way Callidus was
18 structured or doing its business that to him didn't
19 make any business sense, so...

20 251 Q. You have to keep your voice up,
21 sir, at least for me.

22 A. Okay. Sorry.

23 252 Q. There were aspects of what?

24 A. There were aspects of how Callidus
25 was operating and structured that to him didn't

1 seem to make any business sense.

2 253 Q. All right. So I want to take you
3 to Voorheis production 96, and this is a document
4 entitled "Draft Version 2: April 2, 2015, Callidus
5 Capital Corporation", and there is two pages of
6 questions. And just take a moment, sir, and read
7 down to the end of question number 7 and then we'll
8 scroll down and you can see the rest of the
9 document. Let me know when you are finished.

10 A. [Witness reviews document.]

11 Okay.

12 254 Q. Let's look at the rest of it.

13 A. [Witness reviews document.]

14 Okay.

15 255 Q. Let's look at the final part.

16 A. [Witness reviews document.]

17 Okay.

18 256 Q. So let's go back to the first
19 page. So these are under the heading "Questions".
20 The first question is:

21 "Do you know Callidus and its
22 business and/or Newton Glassman?"

23 Do you see that?

24 A. Yes.

25 257 Q. And then there is a series of

1 questions that you have had a chance to read. Are
2 these questions that he was suggesting might form
3 the basis of your inquiries?

4 A. No.

5 258 Q. Well, what did he suggest you do?

6 A. Well, again, you've got to
7 remember that, as I said earlier, that I knew
8 nothing about this company or anything, so the
9 context of the conversation was I had to go away
10 and learn a bit more about what he was talking
11 about, which I did, because by then the West Face
12 report was on BNN, so I looked at that, and I think
13 the Veritas -- the Veritas report was out by then,
14 so I looked at that. And I, you know, did the
15 usual article search to see what the media was
16 saying about any of this, which was not much.

17 And then -- and again, I can't remember
18 how this unfolded, but the upshot of all of that
19 was we ended up just calling some of the
20 borrowers -- people who had borrowed money from
21 Callidus to see what had happened.

22 259 Q. All right. Well, I'll get to that
23 in a moment, sir, but that is coming up in your
24 affidavit. Just to put the context in place, this
25 is a document entitled -- it is April 2nd, 2015,

1 which is at the very time when you say he asked you
2 to look into Callidus on his behalf for some form
3 of compensation, and you are telling me that -- and
4 I guess you would have told him you didn't know
5 anything about Callidus or Glassman? You would
6 have told him that, right?

7 A. Yeah, probably. I mean, I
8 don't --

9 260 Q. Well, of course you would have
10 told --

11 A. Yeah.

12 261 Q. Of course you would have told him
13 that. And I presume you would have said, Now,
14 Mr. Voorheis, I don't know anything about this
15 company. I don't know Mr. Glassman from Adam. I
16 have never heard of him. Can you fill me in on
17 some background to get me going?

18 Isn't that how the conversation would
19 have went -- would have gone, sir?

20 A. Well, no, that is not exactly how
21 it went. He just began --

22 262 Q. Well, forget whether it is
23 exactly. Don't get hung up on the semantics of my
24 words. Isn't that the gist of how the conversation
25 would have gone, sir?

1 A. Well, you are asking me whether
2 I asked him, Tell me more. I think it was more he
3 just began talking about it, and I listened. And
4 again, I didn't really know much of what he was
5 talking about, so -- because --

6 263 Q. Sorry, say that again. You what?
7 You didn't what?

8 A. He began talking at some point
9 about these companies, which I was unfamiliar with.

10 264 Q. Yes.

11 A. And so I listened in the hopes of
12 understanding what he was getting at, and --

13 265 Q. Did you take any notes as you were
14 listening to what he was getting at?

15 A. No.

16 266 Q. Were you recording the interview?

17 A. No. No, this was just there to
18 talk about my company, and after -- you know --

19 267 Q. No. Sir, just a moment. Sir, you
20 were not just there to talk about your company. He
21 is now in the process of asking you to take on an
22 engagement on his behalf for something that you
23 knew nothing about.

24 A. No.

25 268 Q. So we are past the point of --

1 A. No, no.

2 269 Q. -- just talking generally about
3 your company.

4 A. No, you are wrong.

5 270 Q. Is this -- are these the kinds of
6 things --

7 A. You are wrong. You are wrong.

8 271 Q. Let me finish, and I won't talk
9 over you.

10 A. You are saying things which are
11 not true.

12 272 Q. Let me finish. Are these the
13 kinds of things that you would have talked about?

14 A. What I am saying --

15 MR. LASCARIS: What Mr. Livesey --
16 sorry, Mr. Livesey, one moment. There is a lot of
17 talking over going on here, and so it is -- I think
18 also, in fairness, you have not allowed Mr. Livesey
19 to finish answering your questions. Please do
20 that, Mr. Moore.

21 And he did say very clearly that this
22 meeting, he went there with the intention of
23 presenting his investigative services to
24 Mr. Voorheis. That was the purpose of the meeting.
25 I think you have mischaracterized what he testified

1 about the purpose of the meeting.

2 MR. MOORE: Well, that may have been
3 the original purpose, but it transformed into a
4 specific engagement. That is what I am asking
5 about.

6 MR. LASCARIS: You just said now -- you
7 just said that is not -- the meeting was about this
8 company or these companies. It was clearly not
9 intended to be that at the outset. At some point,
10 the Callidus -- Callidus and/or Catalyst came up,
11 and that is what his testimony is. So with that,
12 I'll turn it over to Mr. Livesey to answer your
13 question.

14 Perhaps you should ask it again,
15 Mr. Moore, just to refresh Mr. Livesey's
16 recollection.

17 BY MR. MOORE:

18 273 Q. All right. Were these types of
19 topics under the "Questions" matters that
20 Mr. Voorheis discussed in the meeting when your
21 assignment came up?

22 A. No.

23 274 Q. He didn't say anything about these
24 things at all?

25 A. No.

1 275 Q. Well, what did he say? Like you
2 are drawing just a complete and total one hundred
3 percent blank of what he said? What did he say?

4 A. He -- again, you are asking me a
5 conversation that occurred almost six years ago
6 that was maybe in duration half an hour. So my
7 recollection was he began talking about a company,
8 these companies, and he was interested in them and
9 was interested in me doing some research on them.
10 And that was the sum total of the conversation.

11 So there were no specifics, and none of
12 the detail listed in those questions, none of that
13 came up. Of course no. There would be no point
14 because I didn't know what he was talking about.
15 He understood I didn't know what he was talking
16 about, so I had to go and find out and do some
17 cursory background research on what he was talking
18 about so that when we talked again I would have a
19 better idea of what he wanted me to do.

20 276 Q. And did you come back to him once
21 you had made additional inquiries to discuss the
22 assignment in more detail?

23 A. Probably, yes, I would assume so.
24 I don't -- I mean, I imagine I did.

25 277 Q. All right. Well, would that have

1 been at another meeting?

2 A. It might have been; it might not
3 have been. I can't recall.

4 278 Q. But there would have been, I take
5 it, as best you can remember, in all probability a
6 follow-up meeting and discussion with Mr. Voorheis
7 about the assignment you would agree to take on;
8 correct?

9 A. Correct.

10 279 Q. All right. Now, at paragraph 6 of
11 your affidavit, you say:

12 "At the time at which
13 Mr. Voorheis engaged Mosaic,
14 Mr. Voorheis did not give to me a
15 reason why he wanted this research
16 to be done."

17 I take it you are referring to this
18 initial meeting where the assignment was first
19 raised; correct?

20 A. Well, no, I am referring to the
21 entirety of that assignment, that he never
22 explained to me what the end purpose was for this
23 research, like how he planned to use it. He never
24 said that to me.

25 280 Q. I see. So, I mean, that is not

1 what your affidavit says, but you are now saying
2 that he never ever --

3 A. Well, no, I am saying that --
4 well, no. Okay. So he -- let me clarify.

5 He -- up until a point I finished these
6 three days of work for him, it was unclear to me
7 why he wanted -- what the purpose, like the end
8 purpose, what he was planning to use this was for.

9 281 Q. Yes.

10 A. So at a later point, in the
11 summer, I knew he was interested in the prospect of
12 seeing if there was grounds for an investors class
13 action lawsuit against Callidus, but that was not
14 told to me at the time of the assignment or when I
15 was doing those three days' worth of work.

16 282 Q. And over what time frame did you
17 conduct those three days' worth of work,
18 approximately?

19 A. A week and a half, perhaps, a week
20 to week and a half, because it was trying to reach
21 people and, you know, you can't reach them always
22 all at once.

23 283 Q. And turning to paragraph 7 of your
24 affidavit, you say that:

25 "Mr. Voorheis's instructions on

1 how to pursue Mosaic's research into
2 Catalyst were vague."

3 Do you see that?

4 A. Yes.

5 284 Q. All right. So we are now talking
6 about at the beginning of your assignment. You
7 have said he didn't tell you anything about the
8 reason. We have just been through that. And your
9 affidavit says his instructions on how to do it,
10 whatever the purpose, were vague. So tell me about
11 those vague instructions. He gave you some
12 instructions. What were they?

13 A. Well, I think it was -- I think
14 the best way to understand this was that he was --
15 as I said earlier, he was confused about aspects of
16 Callidus's business. He wanted perhaps another set
17 of eyes on it. And that is why he was a bit
18 unclear. He was, like, Go away and, you know, read
19 these reports that have been already published,
20 were in the public domain, and then come back and
21 discuss what I should do.

22 And so I think at some point -- and I
23 can't remember when -- it was -- or even like --
24 even if I had the conversation, it wasn't that very
25 directly, but the upshot of that was I -- the only

1 really kind of course of action that made any sense
2 was to talk to some of the borrowers because -- I
3 mean, Callidus's operation is pretty
4 straightforward. They lend money to people, and
5 they -- at a high interest rate, and if it all
6 works out, they get a return. It is not rocket
7 science. So --

8 285 Q. So -- sorry. I don't want to
9 interrupt you. Keep going.

10 A. So that being the core of their
11 business, you know, it was the only thing that
12 seemed logical to do, was to talk to some of the
13 people who had done any business with Callidus.

14 286 Q. All right. So I understand from
15 what you have just testified to that Mr. Voorheis
16 mentioned to you that there were some reports out
17 there that you should look at; correct? That is
18 what you just said?

19 A. I don't recall if he said that or
20 if it came up somehow. Anyway, the -- again, you
21 are asking --

22 287 Q. Well, you just testified --

23 A. You are asking --

24 288 Q. Sir, no, if you can't give an
25 answer, don't give the answer. But your evidence

1 just now was that he told you about certain reports
2 that you should look at. That is what you just
3 said.

4 A. I don't think I said that.

5 289 Q. And are those the two reports that
6 are alluded to in paragraph 7 of your affidavit?

7 A. I don't think he necessarily said,
8 Look at this report. I don't recall what he said.
9 I said the reality at that time was that there were
10 reports out there. I don't recall if Mr. Voorheis
11 referred to the reports or not. He may have; he
12 may not have.

13 [Court Reporter intervenes for
14 clarification.]

15 290 Q. So we'll have the transcript, but
16 in any case, you say that all you had to work with
17 was a report on Callidus by Veritas, which you say
18 had been published, and a report on Callidus by
19 West Face, which BNN had posted online, and I am
20 referring to paragraph 7 of your affidavit;
21 correct?

22 A. Yes, that's correct, and --

23 291 Q. All right. And where --

24 A. Yes, that is the basis of it.

25 292 Q. Let me know when you are finished.

1 A. I am finished.

2 293 Q. Where did you get those reports
3 from, sir?

4 A. Well, the BNN one was online.

5 294 Q. I didn't ask whether it was
6 online. I am asking where you got it from. Where
7 did you get it from?

8 A. Okay. Well, I thought when I said
9 it was online, that that was my answering your
10 question, so let me be clear.

11 295 Q. Well, no --

12 A. I got it online. I got at least
13 the West Face online because it was online. The
14 Veritas report, I don't recall where I got it from.
15 It is too long ago.

16 296 Q. I see. Well, can you go back and
17 as best you can reconstruct for me exactly when and
18 where it was posted online and exactly how you got
19 it? I am talking about the West Face report as at
20 early April 2017.

21 A. At the time of these conversations
22 in April or late March of 2017, BNN had a story
23 about the issue of the debate, the proposed debate
24 between Newton Glassman and Greg Boland because by
25 that time it was known that Mr. Boland had been

1 critical of Callidus and Mr. Glassman. So there
2 was this -- I think it was Glassman who had
3 suggested a debate, some sort of debate. So I
4 think, if I recall, BNN had published a small story
5 about this -- the proposed debate, and they
6 attached as a link West Face's report.

7 297 Q. So that is the story where you say
8 it was available online?

9 A. Yes.

10 298 Q. You are talking about the West
11 Face report; correct?

12 A. Yes, that's correct.

13 299 Q. And is that how you got it? Is it
14 your evidence that you downloaded the article -- or
15 the report from that story or from that link?

16 A. Yes.

17 300 Q. Or did you get it from some other
18 source or in some other way?

19 A. No, I think that -- my
20 recollection is I downloaded it from BNN.

21 301 Q. All right. And I take it from
22 reading that story you were aware that Mr. Boland
23 had some criticisms or at least was reported to
24 have some criticisms of Callidus and/or
25 Mr. Glassman; is that right?

1 A. Yes.

2 302 Q. All right. And so undertaking
3 this investigative assignment for Mr. Voorheis, did
4 you reach out to Mr. Boland and ask him for any
5 information about those criticisms at that time?

6 A. No.

7 303 Q. Why not?

8 A. Well, I guess I didn't think it
9 was material.

10 304 Q. So you didn't think that
11 Mr. Boland's criticisms that were the genesis of
12 this story you are now referring to about Callidus
13 were at all relevant to what Mr. Voorheis had asked
14 you to look into? Is that your evidence, sir?

15 A. Well, you asked me a question, did
16 I reach out to him. I said, No, I did not, so --

17 305 Q. Well, I asked you why, and I am
18 following up on the why.

19 A. And I am telling -- sorry?

20 306 Q. I asked you --

21 A. Well, and I told you -- and I said
22 to you it was not material to what I was attempting
23 to do.

24 307 Q. I see.

25 [Court Reporter intervenes for

1 clarification.]

2 BY MR. MOORE:

3 308 Q. So let's go a little more slowly.

4 Mr. Livesey, I was asking you -- I
5 understand your answer was you didn't reach out to
6 Mr. Boland at that time, and my follow-up question
7 was why. And as part of that question, I just
8 wanted to make sure I understood your evidence
9 today.

10 And that is why I asked you, is it your
11 evidence that in the context of Mr. Voorheis not
12 understanding or having some issues about
13 Callidus's business, when you saw that Mr. Boland
14 was critical of Callidus's business, you really
15 thought that that had no relevance to what
16 Mr. Voorheis was asking you to do? Is that your
17 evidence?

18 A. Well, okay, this is my answer. At
19 the time --

20 309 Q. I am asking you.

21 A. What?

22 310 Q. I am asking you to explain.

23 A. I about to, so please stop
24 interrupting me. Every time I start to answer, you
25 interrupt me, and then the transcriber can't

1 transcribe our conversation very well.

2 So in the context of what Mr. Voorheis
3 was asking me to do, and given that he, among the
4 things he does, is runs an investment firm, in this
5 type of work you don't necessarily call up other
6 investment firms to talk about an assignment for
7 another investment firm because you don't know
8 whether these investment firms might be in
9 competition or have conflicts of interest or that
10 your client doesn't necessarily want them to know
11 of the research you are doing.

12 So this is not -- this was not doing a
13 journalistic article where you call just about
14 everybody you can find. This was for a client
15 where you have to be more circumspect about who you
16 call, and especially in the investment world.

17 So I had the West Face report. I had
18 the Veritas report. And I was using those to
19 conduct -- to at least initiate my research and did
20 not think it was going to be appropriate to call
21 Mr. Boland, who at that point I also knew very
22 little about his dispute with Mr. Glassman.

23 311 Q. When did you first contact West
24 Face about any of the issues surrounding Callidus?

25 A. That is in my affidavit.

1 312 Q. No, I don't think it is clearly
2 expressed in your affidavit. I am asking --

3 A. It is extremely clear in my
4 affidavit. The date, you know, it is -- you
5 haven't been reading my affidavits very closely,
6 but it was after Canadian Business had assigned the
7 article, which would have been, I think, in August
8 of 2016. So sometime in late August or early
9 September -- it must have been probably August of
10 2016, did we -- I reach out to Mr. Boland or to
11 West Face.

12 313 Q. I think your affidavit indicates
13 when you spoke to Mr. -- just a moment.

14 A. Well, it indicates when I got
15 assigned the story, and it indicates the first
16 meeting of Mr. Boland. And therefore, somewhere
17 between when I got assigned to the first meeting, I
18 called them up, and he and I spoke. He was very,
19 very reluctant to do an article, but we agreed to
20 meet to discuss it.

21 314 Q. So you are referring to paragraphs
22 53 to 57 of your first affidavit -- I won't turn it
23 up right at this moment, but you are referring to
24 your first affidavit sworn in November 2019?

25 A. Yes.

1 315 Q. And that indicates when you
2 first -- according to that affidavit, when you
3 first had any contact with Mr. Boland. Had you
4 ever had any prior contact with anyone at West Face
5 about any Callidus-related issues before your
6 contact with Mr. Boland?

7 A. No.

8 316 Q. And did you read the West Face
9 report that is referred to in your second
10 affidavit?

11 A. The West Face report that was on
12 BNN, yes, I read it.

13 317 Q. And did you read the Veritas
14 report that is referred to in your second
15 affidavit?

16 A. Yes.

17 318 Q. And then if I understand your
18 evidence correctly, you went about contacting
19 various borrowers?

20 A. For Mr. Voorheis, yes.

21 319 Q. And you refer to Mr. Levy in
22 paragraph 10?

23 MR. LASCARIS: Are you referring to
24 the --

25 BY MR. MOORE:

1 320 Q. In your second affidavit.

2 A. Which affidavit?

3 321 Q. Sorry?

4 A. Which affidavit are you referring
5 to?

6 322 Q. This is your second affidavit
7 where you then refer to reaching out to Mr. Levy.

8 A. Yes.

9 323 Q. So I'll ask you -- it may be
10 covered by one of the advisements earlier, but I'll
11 ask you in any event to be certain.

12 What other borrowers, aside from
13 Mr. Levy, did you reach out to in the context of
14 the work you were doing for Mr. Voorheis?

15 A. I don't recall at this time. It
16 has been too much time has passed.

17 324 Q. Did you prepare a report of some
18 kind for Mr. Voorheis?

19 A. Yes.

20 325 Q. And how long is that report?

21 A. I don't recall.

22 326 Q. Your best recollection.

23 A. Four to six pages.

24 327 Q. And did that report refer to who
25 you contacted and what you did?

1 A. I think so. I haven't looked at
2 it in a long time, so -- I don't recall, but
3 probably.

4 328 Q. Did you look at it proximate to
5 the swearing of your affidavits, or is it way back
6 in time when you last looked at it?

7 A. I don't recall the last time I
8 looked at it.

9 329 Q. Not lately, in any event?

10 A. No.

11 330 Q. All right. And that will be among
12 the documents I'll be asking for production of.
13 Again, I am not going to go over the questions and
14 undertakings, but to be sure, you know, that is one
15 of them, Mr. Lascaris.

16 U/A MR. LASCARIS: Yes, and we'll take that
17 under advisement, Mr. Moore.

18 BY MR. MOORE:

19 331 Q. All right. So when you finished
20 your report, did you meet in person with
21 Mr. Voorheis to discuss its contents?

22 A. Yes.

23 332 Q. And did you meet him once or more
24 than once for that purpose?

25 A. I think just once.

1 333 Q. All right. And did you make any
2 notes of that meeting?

3 A. No.

4 334 Q. Did you meet with Mr. Voorheis
5 just the two of you, or were there other people at
6 that meeting?

7 A. There were -- again, a couple of
8 his juniors were there, if I recall.

9 335 Q. And do you have a recollection of
10 how long that meeting was?

11 A. You know, probably within half an
12 hour.

13 336 Q. Do you recall whether you sent
14 Mr. Voorheis a copy of your work, your report, in
15 advance so that he could digest it in order to
16 prepare for your meeting?

17 A. So the chronology was I did
18 research. I met with Mr. Voorheis. I sort of gave
19 him the gist of my findings. And then he at that
20 point did not indicate whether he wanted a report,
21 because I think he was trying to figure out what he
22 might do with it or how useful it might be to him
23 or whatever -- I mean, you would have to ask him
24 what he was thinking at the time.

25 And then there was a gap between my

1 meeting with him to discuss what I found and then
2 putting the results of the meeting into some form
3 of report, which came later.

4 337 Q. And how long was it between the
5 meeting when the report had not been prepared and
6 the time when you actually put something on paper
7 in the form of a report?

8 A. I think it was a little over a
9 month.

10 338 Q. And did Mr. Voorheis specifically
11 ask you, I would like your findings on paper? Did
12 he -- again, don't get hung up on my words, but did
13 he specifically ask you to prepare a written
14 report?

15 A. Yes.

16 339 Q. And did he call you and ask you?
17 Did he send you an email? How did that happen?

18 A. He probably called me.

19 340 Q. And when you met with him -- I
20 take it the meeting was after your three days or so
21 of work and research that you referred to; correct?

22 A. Correct.

23 341 Q. So would that have been sometime
24 late April, approximately? Is that a fair
25 estimation?

1 A. Yeah, probably late April --

2 342 Q. 2015?

3 A. Yeah, late April, early May.

4 343 Q. All right. And for the purpose of
5 that meeting, although there was no written report,
6 did you compile some notes to help you describe
7 what you had done?

8 A. Possibly. I don't recall.

9 344 Q. And the work product -- the work
10 product that resulted from the three days of work,
11 did you prepare notes for that? How did you keep
12 track of the work that you were doing and the
13 conclusions you were arriving at?

14 A. Well, so when I do research, I
15 create a file. I place any documents relevant to
16 the research in the file. So I would have possibly
17 in this case drawn up a list of names of people to
18 reach out to. I would have called them. And then
19 some of the recordings would have ended up in the
20 file. Some of the material might have been
21 transcribed, not all of it, some of it, depending
22 on, you know, how much of use it was going to be.
23 And so that is generally how it progresses.

24 345 Q. And my question for listing and
25 production of documents would extend to all of

1 that, Mr. Lascaris.

2 U/A MR. LASCARIS: Understood, Mr. Moore.

3 Under advisement.

4 BY MR. MOORE:

5 346 Q. All right. And did you take that
6 work product material with you to the meeting with
7 Mr. Voorheis to explain what you had done?

8 A. No. I just would have given a
9 summation -- it wasn't a very -- because I --
10 again, just to explain the context, you know, three
11 days, talking to half a dozen borrowers, this was
12 not like you are spending months or weeks on a
13 project. So it was not difficult to summarize sort
14 of generally what I was finding in a conversation,
15 so I didn't necessarily need to bring work product.
16 As I said, I might have made a few notes. I can't
17 recall. I might have just told him off the top of
18 my head what I had found.

19 So this was not an enormously in-depth
20 research project.

21 347 Q. And in any event, the substance or
22 gist of what you did and concluded would be
23 reflected in the written report that you prepared
24 later on; correct?

25 A. Yes.

1 348 Q. All right. And without turning
2 this into a memory contest, because I'm assuming
3 you haven't looked at that material for some time;
4 correct?

5 A. That's correct.

6 349 Q. All right. And can you tell me,
7 was the gist of your conclusion a positive
8 conclusion or a negative conclusion about Callidus?

9 A. It was a negative conclusion.

10 350 Q. All right. And you say that at
11 some point you learned -- not at the beginning, but
12 at some point you learned -- in paragraph 10, you
13 say:

14 "[...] in May or June of that
15 year [...] that Mr. Voorheis was
16 attempting to see if there were
17 grounds for an investors' class
18 action lawsuit against Callidus."
19 Paragraph 10 of your second affidavit.

20 A. Yes.

21 351 Q. And you go on to say:

22 "To my knowledge, that proposed
23 lawsuit was never commenced."

24 Correct?

25 A. Yes.

1 352 Q. All right. And was it at one of
2 your in-person meetings with Mr. Voorheis that he
3 told you that was the purpose?

4 A. I don't think so, no. I don't
5 recall. I don't -- I know -- my recollection is
6 that some point in that time he -- that was of
7 interest to him. I have a sense it may have been
8 on the phone we discussed it. I can't recall.

9 353 Q. All right. And at some point did
10 he tell you that he was not going to do that?

11 A. Well, I -- I think it was --
12 anyway, at some point -- no, I don't think he
13 formally told me anything, like in terms of -- I
14 think he was looking at it and then I didn't hear
15 anything about it, and I had no communication with
16 him for some time. But then I think on a
17 subsequent conversation the following year, or
18 perhaps later that year, I can't recall, I learned
19 he had not pursued it.

20 354 Q. A subsequent conversation with
21 him?

22 A. Yes.

23 355 Q. All right. So at some point later
24 on he told you that he wasn't -- he hadn't and
25 wasn't proceeding with it; is that right?

1 A. Yes.

2 356 Q. All right.

3 A. Because I had other -- as I
4 mentioned to you, a second contract with him, so I
5 was having other dealings with him. And at some
6 point I am sure I might have asked him or he
7 relayed to me that he was not pursuing a lawsuit.

8 357 Q. And I take it that would have been
9 probably sometime -- well, you tell me. When would
10 that have been? In late 2015 or 2016, or can you
11 assist at all?

12 A. I can't recall. It would have
13 been sometime -- by 2016 or in -- you know,
14 definitely by 2016 or sometime in 2016 I knew that,
15 but I can't recall whether it was late 2015 or
16 later on in 2016.

17 358 Q. And I understood you to say
18 earlier that you did your initial work, the three
19 days' research and what you describe, and then
20 there was a delay or a hiatus of some kind, an
21 interruption. And then later on, I understood you
22 to say in the summer sometime, there was some
23 additional work that you undertook. Do I have that
24 right, or do I misunderstand what happened?

25 A. Well, so the timeline is I did the

1 research in the April 2015 period. We met. I sort
2 of gave him an oral explanation of my findings.
3 And then he sort of went away to think about it.
4 So sometime -- I think it was probably around June
5 of 2015 I had wrote the report, and then sometime
6 around that time frame I know he was talking about
7 the class action idea. And then it fell off or he
8 stopped communicating with me. I was -- I think I
9 was doing this other contract for him, which was
10 also very small. It didn't take a lot of time. So
11 there was some communication with him about that
12 because that involved -- it is a long story, but it
13 was a small contract, but it involved waiting a
14 period of time to see a certain development. So,
15 you know, there was reason to contact him later on
16 to tell him how things had developed.

17 So it's a little -- as I said, there
18 was communication with him on and off through 2015.
19 So at what point I heard or learned he dropped the
20 idea of the class action, I can't recall
21 specifically.

22 359 Q. All right. What I want to
23 understand better than I do is this question.
24 After you spent your three days of research and
25 made the verbal presentation and then summarized

1 that in a written report, did Mr. Voorheis ask you
2 to do anything more in relation to Callidus or
3 Catalyst, for that matter?

4 A. No. I was never engaged by
5 Mr. Voorheis after June of 2015. As far as I
6 recall -- well, I was not engaged in any other
7 contract to do any further research on Callidus or
8 Catalyst.

9 360 Q. And in terms of the privilege that
10 you have asserted at the beginning of this
11 cross-examination over these materials, referring
12 to the assignment that you have described, has
13 Mr. Voorheis instructed you to assert any
14 privilege?

15 MR. LASCARIS: Yes.

16 MR. MOORE: And when did that
17 instruction occur?

18 MR. LASCARIS: Well, it would have been
19 after Mr. Livesey was added as a party to this
20 proceeding.

21 MR. MOORE: And was that direction or
22 instruction given in writing?

23 MR. LASCARIS: No.

24 MR. MOORE: So this is what? A verbal
25 discussion between Mr. Voorheis and Mr. Livesey

1 directly? I'm asking. Is that what happened?

2 MR. LASCARIS: No. This is between
3 counsel --

4 MR. MOORE: Then what happened?

5 MR. LASCARIS: This is between counsel.

6 MR. MOORE: So does that mean Mr. Steep
7 or someone from McCarthys had a conversation with
8 you, Mr. Lascaris, and took the position that
9 Mr. Livesey asserted privilege over these
10 materials?

11 MR. LASCARIS: Yes, that's correct.

12 BY MR. MOORE:

13 361 Q. And again, can you pin down when
14 that happened? Will you take a look at it and let
15 me know if you can?

16 U/A MR. LASCARIS: I'll take that under
17 advisement. As I sit here now, no, I can't be
18 precise about that.

19 MR. MOORE: And just to be clear, as I
20 understand what has been said earlier, the
21 so-called privilege asserted in that regard is
22 litigation privilege; correct?

23 MR. LASCARIS: Yes.

24 BY MR. MOORE:

25 362 Q. And we have heard about this

1 proposed class action that never went anywhere.
2 Was there any other litigation associated or
3 allegedly associated with the work that Mr. Livesey
4 undertook? Mr. Livesey, was there any other --
5 were you ever aware of any other potential
6 litigation that Mr. Voorheis was looking into?

7 A. No.

8 363 Q. And I take it that the class
9 action pertained -- or potential class action
10 pertained to the affairs of Callidus and
11 improprieties or alleged improprieties by Callidus?
12 I mean --

13 A. Yes.

14 364 Q. -- those are my words. Don't get
15 hung up on that exactly --

16 A. Yes, yes.

17 365 Q. -- but is that the gist of it?

18 A. Yes, yes. Well, yes, that
19 Callidus had not been forthcoming to its investors,
20 something to that effect.

21 366 Q. All right. And other than the
22 decision that was communicated to you -- I think we
23 have it sometime in late 2015, maybe early 2016 --
24 that that litigation was not going to be commenced
25 by Mr. Voorheis, have you ever had any subsequent

1 discussion with Mr. Voorheis about any such
2 litigation?

3 A. That he would -- just to clarify,
4 Mr. Moore, that subsequent litigation that he would
5 initiate; is that what you are asking about?

6 367 Q. Yes, yes.

7 A. No.

8 368 Q. Well, just to be clear. The
9 decision, as far as you know, was made by the end
10 of 2015 or early 2016 not to commence that
11 litigation; correct? I want to make sure I have
12 got the timing right.

13 A. It might have been made even
14 earlier than that, possibly the summer of 2015, but
15 I am not --

16 369 Q. All right. Fair enough, but no
17 later than early 2016, your best recollection?

18 A. Yes, that's right, that by then he
19 dropped the idea.

20 370 Q. All right. Now, in paragraph 18
21 of your affidavit, you refer to paragraph 137(b) of
22 Mr. Riley's conspiracy affidavit, and you take
23 issue with the allegation that Voorheis asked you
24 or Mosaic to investigate Callidus and all of its
25 loans. Do you have paragraph 18 of your affidavit?

1 A. Yes, I see that.

2 371 Q. This is your second affidavit,
3 September 4, 2020; correct?

4 A. Yes.

5 372 Q. Okay. And you explain -- and you
6 say that that is false because you say:

7 "I spoke to only a handful of
8 Callidus borrowers to find out what
9 sort of experiences they had had
10 with Callidus. Neither I nor Mosaic
11 were hired to investigate all of
12 Callidus's loans."

13 Do you see that?

14 A. Yes.

15 373 Q. Did Mr. Voorheis place some limits
16 on what you were supposed to do? Like did he tell
17 you, investigate three loans and no more, or five
18 and no more, or investigate Mr. Levy and no one
19 else? Was there some kind of limitation on your
20 instructions? I thought they were very vague.

21 A. They were.

22 374 Q. So I take it Mr. Voorheis didn't
23 place any limit on what you were supposed to look
24 into; correct?

25 A. Well, there was -- correct, but

1 there was obviously the limitation of time, that he
2 was not giving me an enormously large contract to
3 spend weeks on this.

4 375 Q. I take it you investigated what
5 you thought you should investigate and reported
6 back, right?

7 A. Yes.

8 376 Q. Not because Mr. Voorheis said, Do
9 this and don't do that, or focus on this and don't
10 focus on that. You did what you thought you should
11 do and that is what took place; correct?

12 A. Correct.

13 377 Q. All right. And I take it that
14 when you spoke to Mr. Levy you told him you had
15 been engaged by Mr. Voorheis to investigate
16 Callidus, right?

17 A. No.

18 378 Q. Can we go to Exhibit 30 to the
19 conspiracy affidavit. Go to paragraph 84 of the
20 May 29 conspiracy affidavit of Mr. Riley. So you
21 see paragraph 84 of Mr. Riley's affidavit, sir? It
22 says:

23 "As described in a memo from
24 Levy to a lawyer Levy unsuccessfully
25 tried to retain to commence a RICO

1 action against Catalyst and
2 Callidus:

3 'Apparently Voorheis has come to
4 hate Callidus and has hired the firm
5 Mosaic (Mr. Bruce Livesey
6 416-919-5143) to investigate
7 Callidus and all of its loans.'"

8 Do you see that quote?

9 A. Yes.

10 379 Q. And do you have any dispute that
11 that's a correct quote from the August 14, 2015,
12 exhibit?

13 A. What?

14 380 Q. I take it there is no dispute that
15 the quote in paragraph 84 that I just read out is
16 an accurate recital of part of that Exhibit 30;
17 correct?

18 A. I don't know.

19 381 Q. Okay. Well, all right. If you
20 are going to be that way, let's bring it up.

21 MR. LASCARIS: Just to clarify for
22 Mr. Livesey, you are referring to Mr. Levy's memo
23 of August 14th, 2015, and you are asking him if
24 that excerpt is an accurate extract from that memo,
25 right?

1 MR. MOORE: Correct.

2 THE DEPONENT: Yeah, I have no idea.

3 BY MR. MOORE:

4 382 Q. All right. Well, let's then get
5 Exhibit 30, and we'll find it, and we'll verify.
6 Well, you know -- well, yeah, let's do that. Let's
7 do that. Do you see where the screen has been
8 highlighted to identify a portion of this document,
9 sir?

10 A. Yes.

11 383 Q. And it says -- it refers to some
12 prior litigation with Conrad Black and Hollinger;
13 do you see that? And then it says:

14 "Apparently Voorheis has come
15 to hate Callidus and has hired the
16 firm Mosaic (Mr. Bruce Livesey
17 416-919-5143) to investigate
18 Callidus and all of its loans."

19 Do you see that?

20 A. Yes.

21 384 Q. So we can agree that paragraph 84
22 of Mr. Riley's affidavit is an accurate quote from
23 this document; correct?

24 A. Sure.

25 385 Q. Okay. I guess -- I take it, sir,

1 from your answers you never bothered to read this
2 document before swearing any of your affidavits
3 because you said you had no idea whether 84 had an
4 accurate quote or not. You haven't read this
5 document before?

6 A. What document are you referring
7 to?

8 386 Q. This is Exhibit 30 to Mr. Riley's
9 affidavit.

10 A. Okay.

11 387 Q. You never read it before, right?

12 A. No.

13 388 Q. Okay. Well, now -- you didn't
14 have any idea before, but now you know that
15 Mr. Riley accurately quoted this in his affidavit;
16 can we agree on that?

17 MR. LASCARIS: Mr. Moore, to be clear,
18 you are asking a question about an exhibit to an
19 affidavit, okay?

20 MR. MOORE: Correct.

21 MR. LASCARIS: Perhaps you should ask
22 Mr. Livesey whether he reviewed Mr. Riley's
23 affidavit.

24 MR. MOORE: Well, I presume he has
25 reviewed his affidavit because he accuses Mr. Riley

1 of making various false statements, one after
2 another after another after another in his
3 September 4 sworn reply affidavit, so I presume
4 that he has done something to read this affidavit
5 before he swears that.

6 MR. LASCARIS: Mr. Moore --

7 MR. MOORE: So I'll ask him. No, that
8 is fair. I'll ask the question.

9 MR. LASCARIS: Mr. Moore --

10 BY MR. MOORE:

11 389 Q. Have you read Mr. Riley's
12 affidavit of --

13 MR. LASCARIS: Mr. Moore, you can ask
14 him your question. He did not say in his -- but
15 you are mischaracterizing his affidavit.
16 Mr. Livesey did not accuse Mr. Riley of misquoting
17 Mr. Levy's memorandum, okay? He said the statement
18 that he told that -- that he claimed Voorheis had
19 hired him to investigate all of the loans was not
20 accurate, that that's not a true statement.

21 BY MR. MOORE:

22 390 Q. Mr. Lascaris, I am just responding
23 or reacting to your suggestion that I should ask
24 your client whether he has read Mr. Riley's May
25 29th affidavit, as if, implicit in your suggestion,

1 maybe he hasn't. And I am just responding with
2 some credulity or incredulity to that proposition
3 in light of the fact that his September 4th
4 affidavit repeatedly accuses Mr. Riley of being
5 false in that affidavit. But I'll ask the
6 question.

7 Have you read, sir, Mr. Riley's May
8 29th, 2020, conspiracy affidavit?

9 A. I read the portions that dealt
10 with me. I don't recall if I read the whole thing
11 in all of its details, but I read the section --
12 because obviously I was interested in the sections
13 that dealt with me and then how to respond to them.
14 So I probably skimmed --

15 391 Q. So --

16 A. I probably skimmed it but went
17 looking for the bits that pertained to my
18 particular case.

19 392 Q. All right.

20 A. And then I replied in my affidavit
21 to the sections that dealt with his allegations
22 against me.

23 393 Q. All right. And so let me go back
24 to a question I asked you a few minutes ago, and
25 then once I finish this part of my

1 cross-examination, that would be a convenient time
2 to break for lunch.

3 A few minutes ago I asked you whether
4 or not -- or I suggested to you that you told
5 Mr. Levy that in fact you had been hired by
6 Mr. Voorheis, and your evidence was that, no, you
7 didn't tell Mr. Levy that; do you recall giving
8 that evidence a few minutes ago?

9 A. Yes, and the recording of that
10 conversation reveals that to be true.

11 394 Q. No, no, I am asking about whether
12 you told Mr. Levy that Mr. Voorheis had hired you.
13 That was my question.

14 A. I --

15 395 Q. And you testified a few minutes
16 ago that, no, you didn't tell Mr. Levy that.

17 A. That's correct.

18 396 Q. Yes. So --

19 MR. LASCARIS: Mr. --

20 BY MR. MOORE:

21 397 Q. So do you know where else, if
22 anywhere --

23 MR. LASCARIS: Mr. Moore, he is telling
24 you that the recording confirms his account of what
25 happened within this conversation with Mr. Levy.

1 BY MR. MOORE:

2 398 Q. Well, please don't interrupt my
3 cross-examination.

4 Can I ask you this, sir. Where else
5 would Mr. Levy have learned that you hired Mr. --
6 that you were hired by Mr. Voorheis to look into
7 Callidus? Where else would he have learned from
8 that but for your conversation with him? Isn't
9 that something you told him, sir, during your
10 conversation?

11 A. You must be deaf. You must be
12 deaf, or you can't read. The conversation with
13 Mr. Levy, which was recorded in its entirety,
14 clearly shows I did not tell him that. So I don't
15 know what you are referring to.

16 399 Q. Well, just listen to my question.
17 Isn't it --

18 A. I did listen.

19 400 Q. Just -- I am asking about your
20 hiring -- your having been hired by Mr. Voorheis.
21 I know what you have testified about in respect of
22 certain other matters. I am asking you, again,
23 about your being hired by Mr. Voorheis and the fact
24 that you told that to Mr. Levy, which you deny.

25 A. I -- yeah. So --

1 401 Q. Is there any other --

2 A. No, just to --

3 402 Q. Is there --

4 A. No, let me get this straight. So
5 let me talk, and you keep talking.

6 It is clear that in my conversation
7 from April of 2015 I never told Mr. Levy that I was
8 working for Mr. Voorheis, okay? You have produced
9 a document, which I have no idea what it is, that
10 seems to suggest that he found out or knew that I
11 worked for him. I have no idea how he found that
12 out. I have no idea. I didn't tell him.

13 Somewhere else -- like you've got to remember, as
14 far as I understand, that at various times other
15 people were talking about Callidus, so who Mr. Levy
16 was in touch with, you know, I don't know, and what
17 they told him, I don't know.

18 So the answer to your question is how
19 did he find out? I have no clue, but I didn't tell
20 him, and my recording of my conversation with him
21 clearly shows that.

22 403 Q. So you must have told someone else
23 then, I guess? If you are suggesting that someone
24 else told him, that must have come as a result of
25 your disclosing it to somebody; correct?

1 A. I don't know.

2 404 Q. Well, that is the only logical
3 explanation I can --

4 A. I don't know -- you know, I don't
5 know who talked -- I mean, who talked to who, who
6 told him, who communicated with him, I don't know.
7 You asked me if I told him. I am just telling you
8 now I didn't tell him, and the recording of my
9 conversation --

10 405 Q. Did you tell the other people that
11 you were in contact with in May of 2015?

12 A. I don't recall. No, I don't think
13 so, but I don't recall.

14 406 Q. And did Mr. Voorheis tell you that
15 he had come to hate Callidus?

16 A. No. I mean, I knew -- I
17 eventually knew, discovered eventually that he had
18 had an earlier dispute with Mr. Glassman over
19 Hollinger, and there was ill will between them, but
20 I think there was some sort of -- I subsequently
21 discovered a legal action between them over
22 that, so --

23 407 Q. Can you just keep your voice up,
24 and then we'll finish for lunch.

25 A. Sorry. I learned that there was

1 ill will between the two that had dated back to
2 Hollinger, the issue of Hollinger, so I got the
3 impression that Mr. Voorheis had no love for
4 Mr. Glassman, but the word "hate" is pretty strong,
5 so I don't recall me or anyone else using that
6 term.

7 408 Q. When you say that you found out
8 that there was no love held by Mr. Voorheis by
9 Mr. Glassman, was that something you learned in the
10 course of your discussions with Mr. Voorheis or
11 from some other source?

12 A. Well, it was apparent from my
13 discussions with Mr. Voorheis that he was -- how do
14 I characterize this? He was like -- very much as
15 reflected in the reports by Veritas and West Face,
16 that he felt that there was something suspicious
17 about what Callidus was doing.

18 409 Q. Well, I am asking about something
19 different. I'm asking about the wording in this
20 document that Voorheis has come to hate Callidus --

21 A. Well, I have responded to that.

22 410 Q. And that you -- and you did, so
23 let me finish. And you said "hate" is a strong
24 word. And let me ask it this way. Did you derive
25 the impression from your discussions with

1 Mr. Voorheis that he was antagonistic towards
2 Mr. Glassman?

3 A. Yes.

4 411 Q. All right. On that note, it would
5 be a convenient time to break for lunch. It is 1
6 o'clock or just after 1:00. Shall we break until 2
7 o'clock?

8 (DISCUSSION OFF THE RECORD.)

9 -- RECESSED AT 1:00 P.M.

10 -- RESUMED AT 2:00 P.M.

11 BY MR. MOORE:

12 412 Q. So, Mr. Livesey, just to make sure
13 I understand the kind of research that you were
14 doing for Mr. Voorheis, when you speak of research,
15 that would mean contacting people like borrowers in
16 this case; correct?

17 A. Yes.

18 413 Q. And reviewing documents. You gave
19 some examples of that; correct?

20 A. Yes.

21 414 Q. And what else would go into
22 research? Would you do a search of some kind of
23 your own, or how would you -- what else does your
24 research consist of, I guess, is my question?

25 A. Well, we would have -- or I would

1 have polled -- you know, I usually check newspaper
2 articles to see if the -- in particular, the
3 financial press has written anything about the
4 subject. So in this case, I would have found out
5 what they had written about Callidus, Mr. Glassman
6 and Catalyst.

7 415 Q. Yes.

8 A. I would have looked at the website
9 of the companies and seen what is on the website.
10 So you are looking for information, potential names
11 of people to talk to.

12 I don't know if I did in this case, but
13 you might check on SEDAR, you know, the financial
14 statements of a company to get a sense of their
15 size, and I might have done that in this case, to
16 look at the size of the loan books, its gross,
17 things like that.

18 416 Q. Did you do that? Is there
19 anything else? I didn't mean to stop you. Is
20 there anything else that you would include within
21 the type of research you did?

22 A. You know, I mean, just -- you are
23 trying to, you know, glean from the public record
24 what is available both online and for the media.
25 So, yeah, that is generally it, and then based on

1 what you find, you sort of -- in this case, you
2 know, I came up with, as I said in my earlier
3 testimony, that, you know, the Callidus business
4 was very straightforward. They lent money to
5 companies that were distressed with the intention
6 that the companies pay it back with interest.

7 So it was clear that, you know, there
8 wasn't much to do except perhaps talk to some of
9 the borrowers, so that was the extent of it.

10 417 Q. Did you in fact look at SEDAR, do
11 you remember?

12 A. I don't remember. I likely did,
13 but I don't recall.

14 418 Q. Did you ever read the prospectus
15 for the company when it went public?

16 A. No, I don't think so at that time,
17 no. I mean, prospectuses, as you know, are
18 daunting documents, and it really was -- and I
19 don't think I would have been able to -- so my
20 recollection is at that time, no. In later --

21 419 Q. Did you at some later time? I'm
22 sorry, I don't mean to interrupt.

23 A. At a later point, yes, when I was
24 researching the media articles, I looked at it.

25 420 Q. All right. And so you indicated

1 that you had another engagement or assignment with
2 Mr. Voorheis independent of anything to do with
3 Callidus and Catalyst?

4 A. Yes.

5 421 Q. I am not interested in that other
6 than to know when was that over?

7 MR. LASCARIS: Sorry. Wait. You are
8 asking Mr. Livesey for details of the other
9 assignment which he said has nothing to do with
10 Callidus?

11 MR. MOORE: No, I just wanted to know.
12 I expressly am not asking for details. I just
13 wanted to know when that assignment was over.

14 MR. LASCARIS: Okay. I'll let you
15 answer that. Please go ahead, Mr. Livesey.

16 THE DEPONENT: I think it was over by
17 the fall of 2015.

18 BY MR. MOORE:

19 422 Q. And after 2015, did you maintain
20 contact with Mr. Voorheis?

21 A. Occasionally.

22 423 Q. And what -- what was the purpose?
23 For what reason did you maintain that contact?

24 A. For business purposes, and then
25 when I commenced research on the Canadian Business

1 article, I think we spoke briefly.

2 424 Q. And tell me about that.

3 A. I don't recall if we spoke
4 actually when I was researching the Canadian
5 Business article, but at some point when I began
6 the media articles, I did talk to him, and he gave
7 me some analysis or some information or his
8 thoughts, which were not -- I didn't use or were
9 not, you know -- were not helpful in terms of what
10 I was actually -- the story I was writing, so...

11 425 Q. Well, what did he give you?

12 A. One was sort of a very
13 convoluted -- he explained the structure of
14 Callidus and Catalyst in a very convoluted way. He
15 thought certain things that the companies were
16 doing were perhaps unethical, and then he talked
17 about at one point whether or not Mr. Glassman had
18 engaged in insider trading. I think that was the
19 extent of it.

20 426 Q. And these communications, were
21 they verbal or in writing?

22 A. Verbal.

23 427 Q. Nothing in writing?

24 A. No. The focus -- just to be
25 clear, you know, by the time -- the media -- the

1 stories I was writing for the media were about the
2 dispute, as you know, between Mr. Boland and
3 Mr. Glassman and mostly about the battle over Wind.
4 So Mr. Voorheis's issues or concerns with Callidus
5 and Catalyst were not really germane to that.

6 428 Q. And I take it you understood that
7 Mr. Voorheis would be interested to know if and
8 when you would be publishing a story about
9 Mr. Glassman; correct?

10 A. Sorry, I just -- I didn't hear all
11 that. If you could just repeat?

12 429 Q. Were you aware -- you understood
13 that Mr. Voorheis was interested to know if and
14 when you would be publishing a story involving
15 Mr. Glassman; is that correct?

16 A. I presume so, yes.

17 430 Q. And why was that, do you know?

18 A. Well, as is common in
19 circumstances where people have an interest in
20 other people, and Mr. Voorheis had a dim view of
21 Mr. Glassman, as you know, it would not have been
22 surprising if he was not interested in an article.

23 431 Q. And in fact you told him about
24 what was happening with the article that was
25 evolving; correct?

1 A. Well, be more specific.

2 432 Q. Well, let's go to Voorheis
3 production 70. This is an email from
4 Mr. Voorheis's productions indicating that you
5 called him saying that you had found an outlet for
6 the Glassman story; do you see that?

7 A. Yes.

8 433 Q. Is that referring ultimately to
9 what became the SIRF outlet?

10 A. Yes.

11 434 Q. So you knew that he had an
12 interest in knowing if you were going to be
13 publishing something about Mr. Glassman, right?

14 A. Yes.

15 435 Q. And did you know at that time that
16 he either had or was holding a short position?

17 A. No.

18 436 Q. Let's go back to Voorheis
19 production 98. This is one of the documents we
20 looked at earlier. I am not going to go through
21 all the numbers, but it is a profit and loss from
22 January 2015 through to April of 2017.

23 A. Uhm-hmm.

24 437 Q. Do you remember looking at this
25 before?

1 A. Yes.

2 438 Q. And were you aware that
3 Mr. Voorheis had an interest in -- a particular
4 interest during that period of time?

5 A. Sorry. Again, the last part of
6 your sentence got a little jumbled.

7 439 Q. Do you know that Mr. Voorheis had
8 been engaging in trading over that period of time?

9 A. And this, again -- sorry --
10 extends from when to when?

11 440 Q. The document says January 1, 2015,
12 through April 11, 2017, and are you saying
13 Mr. Voorheis -- this was one of the funds that he
14 controlled or was trading?

15 A. No, he never told me anything
16 about his trading or in shorting or investing in
17 any of --

18 441 Q. Do you see under column "D", there
19 is -- next to "Consulting" -- do you see about
20 halfway through that page there is a heading
21 "Consulting"?

22 A. Yes.

23 442 Q. The title is column "B",
24 "Consulting"?

25 A. Yes.

1 443 Q. And then under "Description",
2 there is some names?

3 A. Yes.

4 444 Q. Do you recognize any of those
5 names?

6 A. No.

7 445 Q. You don't know who "Nate" would be
8 or "Nate bonus" would be?

9 A. No.

10 446 Q. Was there a Nate? Was there
11 someone who went by the name of Nate who was --
12 became interested or involved in the Callidus
13 matter?

14 A. Well, there was a Nathan.

15 447 Q. Yes. Did he go --

16 A. I don't recall anyone ever
17 referring to him as Nate.

18 448 Q. I see. Let's go to your
19 production, Schedule A production. Just a moment.
20 Give me a minute.

21 All right. So this is production
22 number 409 from your affidavit of documents. Do
23 you see the -- I'm not going to go through all
24 these documents. There is a series of emails.

25 A. Uhm-hmm.

1 449 Q. Do you see the first one on the
2 screen here is from Nathan Anderson to M. Robinson
3 of Bloomberg, copied to livesey@rogers.com; that is
4 you, I presume?

5 A. Yes.

6 450 Q. And it says:

7 "Hello.

8 I think you two would benefit
9 from speaking with each other. I've
10 given you each some background on
11 the other - I'll let you take it
12 from here.

13 Warm regards.

14 Nate".

15 A. Uhm-hmm.

16 451 Q. My guess is going to be that's
17 Nate -- Nate Anderson; correct?

18 A. Yes.

19 452 Q. So does that refresh your memory
20 that sometimes Mr. Anderson went by the name of
21 Nate?

22 A. Well, I --

23 453 Q. Well, do you find that a hard
24 question to answer, sir?

25 A. Well, no, no, I don't -- I never

1 referred to him as Nate. I never heard anyone else
2 refer to him as Nate, but yes, that is in the
3 email, but -- so I guess in answer to your
4 question, it didn't to me -- twig to me that anyone
5 called him Nate, but he called himself Nate.

6 454 Q. Well, this -- go ahead, go ahead.
7 Keep talking. I didn't want to interrupt you. Are
8 you finished?

9 A. Yes. So just to clarify, I never
10 referred to him as Nate. I don't recall anyone
11 else referring to him as Nate. And so -- but he
12 clearly occasionally referred to himself as Nate,
13 so that is the first I have ever noticed that,
14 quite frankly.

15 455 Q. I see. Well, in any event,
16 according to this email, he himself referred to
17 himself as Nate, right?

18 A. Sure.

19 MR. LASCARIS: Mr. Livesey just
20 acknowledged that, Mr. Moore.

21 BY MR. MOORE:

22 456 Q. Yeah, I would have thought it
23 would have been an easy question to answer. Let's
24 go to the first document in this string -- no, in
25 this package. And you say:

1 "Hi Nathan,
2 Good to talk to you yesterday."

3 This is back in April of 2017.

4 A. Uhm-hmm.

5 457 Q. What was the context of your
6 maintaining or having contact with Mr. Anderson in
7 April of 2017?

8 A. Well, I was working on the story
9 for The Globe and Mail at the time.

10 458 Q. And what were you talking to him
11 about?

12 A. About Callidus.

13 459 Q. Yes. What was the discussion?

14 A. I can't recall.

15 460 Q. Did you know that he was a short
16 seller?

17 A. No.

18 461 Q. When did you learn that?

19 A. Well, I don't know that to be true
20 to this day.

21 462 Q. Okay. You are not familiar with
22 the material in this case where he has referred to
23 himself as a professional short seller?

24 A. No.

25 463 Q. You are not aware of that?

1 A. No.

2 MR. LASCARIS: It may surprise you to
3 know, Mr. Moore, that Mr. Livesey has not read
4 every document of the bajillion documents produced
5 in this case.

6 BY MR. MOORE:

7 464 Q. No, I understand.

8 A. And that is the ones you guys
9 produced alone.

10 465 Q. When was the last time you talked
11 to Mr. Anderson?

12 A. I can't recall. I can't recall.
13 It might have been sometime last year. I can't
14 recall. I think he sent me something this year,
15 some research he had done, nothing to do with
16 Callidus, so it might have been this year.

17 466 Q. And --

18 A. I wouldn't --

19 467 Q. Go ahead. Sorry.

20 A. I wrote a story for The Globe and
21 Mail's business magazine in 2015 about a mining
22 company, and he had done some research on the same
23 company, so I think he sent me a link to something
24 he had done on it because there was overlap of
25 interest, just kind of, you know, because we

1 were -- we had interest in a company years ago, I
2 had.

3 [Court Reporter intervenes for
4 clarification.]

5 THE DEPONENT: That is my bad. I
6 mumble. I apologize.

7 BY MR. MOORE:

8 468 Q. Can we go to the Riley conspiracy
9 affidavit, page 97, specifically paragraph 215. Do
10 you see the paragraph that is on the screen there
11 that has been highlighted?

12 A. Yes.

13 469 Q. And can we go to Exhibit 175, and
14 that is part of the string that we looked at
15 before, I think. It says from Mr. Anderson that he
16 looked forward to staying in touch?

17 A. Uhm-hmm.

18 470 Q. And what was the -- did you in
19 fact stay in touch with him?

20 A. Yeah. I guess on and off
21 occasionally, yeah.

22 471 Q. And can I take you to paragraph
23 223 of this affidavit as well. Do you see there is
24 reference to you and Mr. Anderson making
25 arrangements to meet in July of 2017? Do you

1 remember anything about that?

2 A. Yes.

3 472 Q. What do you remember about that?

4 A. He was coming through Toronto on
5 business.

6 473 Q. Yes.

7 A. And so we had lunch downtown.

8 474 Q. And what was the subject matter of
9 the conversation?

10 A. It was more of a sort of getting
11 to know each other. I don't recall -- we might
12 have spoken about Callidus or Catalyst, I don't
13 recall, but it was more of a social get-together,
14 as I said in my affidavit. But there was no
15 specific intent in the sense of -- like we were
16 not -- you know, the article at this point had
17 been -- I think The Globe had -- I can't remember
18 exactly. It was around that time they had -- yes.
19 They had already pulled it down, and so the article
20 was in limbo and so -- but it wasn't really --
21 there wasn't really a lot of point talking about
22 Catalyst because it was no -- the article was sort
23 of up in the air, so it was more of a just to get
24 to know each other.

25 475 Q. Well, when you say the article was

1 up in the air, are you talking about the Reuters
2 article?

3 A. No, the Report on Business
4 Magazine article I had written.

5 476 Q. What was your understanding about
6 his dealings with the press at that time?

7 A. Whose?

8 477 Q. Mr. Anderson's.

9 A. I had no understanding. I mean --
10 like in regards to what?

11 478 Q. In regards to Callidus.

12 A. I have no understanding of his
13 relationship to the press.

14 479 Q. Did you talk about Callidus?

15 A. At that lunch?

16 MR. LASCARIS: He has answered that
17 question, Mr. Moore.

18 BY MR. MOORE:

19 480 Q. I don't think he really did answer
20 that question, but if he did, I don't recall it.
21 Just help me out. What was --

22 A. I said -- okay. Just to repeat,
23 at the time that he and I had lunch, the fate of
24 the Report on Business Magazine, which had been
25 pulled from the August issue by then, was up in the

1 air. So at that point, you know, when an article
2 is up in the air, there is really not much point in
3 discussing the subject because --

4 481 Q. Did he ask you about the status of
5 the article?

6 A. I don't recall.

7 482 Q. Did the topic of Callidus come up
8 in your conversations with him at this point in
9 time?

10 A. I can imagine it did in passing,
11 but that was not the intention of the lunch. As I
12 said to you, the intention of the lunch was simply
13 to meet each other as -- to get to know each other
14 a bit better because he happened to be coming
15 through Toronto.

16 483 Q. And you had had some common
17 interest historically in Callidus, right?

18 A. I don't know what you mean by that
19 question.

20 484 Q. Well, you both had made some
21 inquiries and had discussions about Callidus;
22 correct?

23 A. Yes.

24 485 Q. And was there anything else in
25 common that the two of you had?

1 A. Well, we both are interested in
2 cases of companies behaving badly, so --

3 486 Q. I see.

4 A. That is what --

5 487 Q. And he was --

6 A. Sorry, I was just trying to finish
7 my question.

8 488 Q. Go ahead, go ahead.

9 A. He researches companies and I
10 research companies, and so we obviously had a
11 common interest in that respect.

12 489 Q. All right. So I take it that he
13 expressed to you that he had thought that Callidus
14 had acted badly?

15 A. Yes.

16 490 Q. And did you express the same thing
17 to him?

18 A. I don't -- well --

19 491 Q. Or words to that effect?

20 MR. LASCARIS: Mr. Moore, are you
21 referring to the lunch specifically, or are you
22 talking at any time?

23 MR. MOORE: Well, the lunch or any time
24 for that matter. At any time.

25 MR. LASCARIS: Okay.

1 THE DEPONENT: Well, I think it would
2 be fair to say that Mr. Anderson was critical of
3 Callidus, and I had come to the conclusion, having
4 done a lot of research, that a lot of the
5 criticisms were valid. So we were --
6 concurrence -- we were in concurrence on certain
7 issues about Callidus.

8 BY MR. MOORE:

9 492 Q. And you told him in one way or the
10 other that you concurred with him in term of
11 Callidus acting badly, as far as you were
12 concerned; correct?

13 A. Well, no, that is not the way, you
14 know -- I am not -- like he was a source of
15 information. He had done a lot of research on
16 Callidus, and as a journalist, you are interested
17 in people who have done research on the subject
18 that you yourself are writing about, so it is
19 natural I would have talked to him, and I wanted to
20 see his research and checked out his research.
21 That is what I do, as a journalist does.

22 So it is -- whatever research he
23 produced, I was interested in looking at and
24 discussing it with him. But I am not -- we don't
25 spend our time, you know, complaining or whinging

1 about the focus. We are just sharing information,
2 or me trying to understand his information, in this
3 case.

4 493 Q. All right. I am not talking about
5 complaining. I was trying to ask you, without
6 getting hung up on the specific words, whether you
7 told him your own view, your own conclusion, that
8 Callidus had acted improperly? In whatever way you
9 want to put that, did you make that known to him?

10 A. Well, it is not the way -- I mean,
11 I think the best I can say in regards to that is
12 that I think he understood that we had similar
13 opinions about the state of affairs of Callidus.

14 494 Q. All right. And did he give you
15 copies of his whistleblower report?

16 A. Possibly. I know I got them. I
17 don't know whether it was through him directly or
18 not. It might have been.

19 495 Q. Well, if you didn't get it from
20 him, who else did you get it from?

21 A. There are other people I was in
22 touch with in researching the articles who might
23 have provided it to me, so...

24 496 Q. You are familiar with what
25 whistleblower complaints are, right?

1 A. Yes.

2 497 Q. And that is a familiar term to
3 you; correct?

4 A. Yes.

5 498 Q. And is it your experience that
6 normally whistleblower complaints are maintained as
7 confidential?

8 A. I am not aware of that, no.

9 499 Q. Well, you don't know that it is
10 usual that whistleblower complaints are
11 confidential?

12 A. No.

13 500 Q. You don't know that?

14 A. I don't know that.

15 MR. LASCARIS: He has answered the
16 question now three times, Mr. Moore. He said --

17 MR. MOORE: Well, I just want to make
18 sure I heard the answer correctly. That's all.

19 MR. LASCARIS: Well, I think you did,
20 Mr. Moore. I think you have heard his answer
21 perfectly.

22 THE DEPONENT: Yes. I am just saying
23 why would I know that necessarily?

24 BY MR. MOORE:

25 501 Q. So when did he provide you with --

1 or when were you provided with the whistleblower
2 complaint that Mr. Anderson had prepared?

3 A. Sometime in winter/spring of 2017.

4 502 Q. And --

5 A. Or it might have been --

6 503 Q. So tell me more about those
7 circumstances.

8 MR. LASCARIS: Mr. Moore, he is still
9 speaking. Please don't talk over the witness.

10 MR. MOORE: Well, sometimes his voice
11 goes down a little bit at the end of his answer,
12 and I think he is finished, so I'll try and give
13 him time --

14 MR. LASCARIS: That is fine.

15 MR. MOORE: -- that he is finished, but
16 if you could just keep your voice up so I don't
17 jump in prematurely, that would be helpful.

18 MR. LASCARIS: That is fair.

19 THE DEPONENT: Sometime in the first
20 half of 2017.

21 BY MR. MOORE:

22 504 Q. And you say you can't recall
23 whether you got it from him or from someone else?

24 A. That's correct.

25 505 Q. What did you do with it when you

1 got it, whatever the source?

2 A. I read it.

3 506 Q. What else did you do with it?

4 A. Well, at that point, not much.

5 507 Q. Okay. Not much. Does that mean
6 something, like a little bit? Just -- I don't want
7 to play games here. Just tell me what happened.
8 What --

9 A. I read it. I read it with
10 interest, but it was -- again, by the time I
11 received it -- so just -- the timeline here is
12 important. I wrote an article for Canadian
13 Business, which was finished in the fall of 2016.
14 As you know, they declined to publish it. It was
15 sent to The Globe and Mail at the end of 2016.
16 They agreed to publish it. There were revisions
17 done, but the basis of the original Canadian
18 Business article was not much changed -- and you
19 can check this yourself -- from what The Globe and
20 Mail planned to publish. So that the general
21 essence of the articles were pretty much the same,
22 with some minor changes.

23 The information that Mr. Anderson
24 provided me, which is now spring of, maybe early
25 summer of 2017, was not going to in any way be

1 inserted into my article, if I thought it was worth
2 inserting into my article for the ROB magazine.
3 The story was already done by then. It was
4 finished. So I read it, but I didn't do anything
5 with it at that time because there was nothing to
6 do. Once my article -- if The Globe had published
7 the article, that would have been the end of my
8 interest in the whole subject.

9 508 Q. So let me get this straight. If I
10 understand your evidence correctly, you are saying
11 that you had finished your draft article for The
12 Globe and Mail as of what date?

13 A. Well, I was finished --

14 509 Q. Approximately.

15 A. The article was pulled in early
16 June of 2017. The finished -- my portion of the
17 work on it would have been done in probably April,
18 early May of 2017, and that was just, as I said,
19 making certain changes that the editor wanted.

20 But the essence of that article -- and
21 you can check this yourself because you have the
22 copies -- was not that much different from the
23 piece I had written for Canadian Business, which
24 was primarily about the dispute between Mr. Boland
25 and Mr. Glassman and in particular over Wind.

1 Mr. Anderson had no interest in Wind and that
2 dispute. He was writing about other matters in his
3 whistleblower report.

4 510 Q. So is it your evidence that when
5 you received the whistleblower complaint sometime
6 around the spring of 2017 that you didn't consider
7 that it had any relevance to a pending or draft
8 article about Callidus?

9 A. When I read his report, it was --
10 my story for The Globe was already -- my
11 recollection, it was in the can, it was finished,
12 and I really had no interest in trying to -- and
13 again, these articles are done, especially for the
14 magazine -- they go through many hands and many
15 revisions, fact-checking, lawyering, and they do
16 not like, you know, sudden changes or insertions
17 very late in the game because of the way -- the
18 magazine has an internal process that goes on for
19 weeks of getting these articles very ready, and any
20 changes late in the process, they are not happy
21 about.

22 So there was nothing I saw in
23 Mr. Anderson's report that would require me going
24 back and trying to insert something into my
25 article, as I said to you, largely because my

1 article had to do -- and you can check this -- with
2 the dispute between Mr. Boland and Mr. Glassman
3 over the battle over Wind. Mr. Anderson, as far as
4 I recall, wrote nothing about Wind or had any
5 interest in that subject.

6 511 Q. And did Mr. Anderson say why he
7 was giving you his whistleblower complaint?

8 A. Well, I said to you, I don't think
9 he -- I don't recall if he was the one who gave it
10 to me.

11 512 Q. Well, whoever you got it from, did
12 that person say why it was being given to you?

13 A. Well, I mean, again, as a
14 journalist working on a subject, people think all
15 sorts of things are going to be of interest to us
16 if they know you are working on a subject. So the
17 upshot is that, you know, given I was interested in
18 the subject, they thought I might be interested in
19 what the contents of the report are.

20 513 Q. All right. And not only
21 interested in the subject of the report, but
22 whoever gave it to you was interested perhaps in
23 your including it in an article you might be
24 publishing, right?

25 MR. LASCARIS: Mr. Moore, you are

1 asking Mr. Livesey to speculate about what some
2 unknown person had in their head when they gave the
3 report to Mr. Livesey. I mean, he is in no
4 position -- he doesn't even remember who gave it to
5 him. He is in no position to --

6 MR. MOORE: Yeah. No, I have heard
7 that.

8 MR. LASCARIS: So I mean, you are
9 asking him --

10 MR. MOORE: I am asking for the
11 context. I am asking questions based upon the
12 conversations he had with the anonymous purveyor of
13 the whistleblower complaint, and he says he can't
14 remember who that was. So I am asking him based
15 on --

16 MR. LASCARIS: Well, the --

17 BY MR. MOORE:

18 514 Q. Let me finish. I am asking him
19 based on the conversations with that mystery person
20 whether or not it was his impression that that
21 person was interested in having him publish
22 something about that report. Did you form any
23 impression in that regard, sir, based upon your
24 conversations with whoever this mystery person was?

25 A. So the best way to explain this is

1 that at this time -- we are talking now the spring
2 and summer of 2017 -- people, because I had called
3 them, knew I was working on a story initially for
4 Canadian Business and then for The Globe and Mail,
5 and no article had appeared.

6 So at their -- as far as they knew,
7 they didn't know what the content of the article I
8 had written was. They didn't know whether the
9 article was going to appear or when it might
10 appear. All they knew is I was a journalist that
11 was interested in the subject, so people would send
12 me occasionally information that they thought might
13 be interested in some article that I might be
14 working on.

15 So whoever gave it to me, whether it
16 was Mr. Anderson or someone else, had no idea the
17 schedule with The Globe and Mail, the content of
18 the article with The Globe and Mail or where the
19 article with The Globe and Mail was at, and to be
20 fair, neither did I, because at that point it was
21 in limbo, and I was trying to work out with The
22 Globe and Mail what to do with the article.

23 515 Q. And so one of the people you were
24 in contact with in this time frame would have
25 included Mr. Levitt who was giving you updates from

1 time to time?

2 A. Mr. Levitt would occasionally call
3 me with updates, yes.

4 516 Q. And do you recall whether at this
5 time -- that is in the spring of 2017 -- he was
6 calling you with updates?

7 A. I don't recall specifically. He
8 may have.

9 517 Q. No, I am not asking for a specific
10 date, you know, April 11th, June 3rd, et cetera.
11 In the spring of 2017, given you have said that he
12 called you 20-plus times with updates, is it
13 reasonable to conclude, probable, that he would
14 have been giving you updates -- Mr. Levitt, that
15 is -- during the time frame of the spring of 2017?
16 Is that a reasonable conclusion?

17 A. Possibly.

18 518 Q. Is it possible that Mr. Levitt
19 gave you a copy of the whistleblower complaint?

20 A. I don't recall. I don't recall.
21 I mean, look, anything is possible.

22 519 Q. I didn't ask whether you --

23 A. But Mr. -- anything is possible.
24 It is possible. I don't recall. I might have
25 gotten --

1 520 Q. Mr. Levitt -- sorry, finish if you
2 want. I didn't mean to cut you off.

3 A. Anything is possible. So it
4 was -- it could have been. I don't recall. That
5 is the best I can say.

6 521 Q. Well, sir, can't we just do a
7 little bit better than anything is possible? Do
8 you recall giving testimony earlier that Mr. Levitt
9 was updating you, and he was anxious that some kind
10 of story be published, or words to that effect? Do
11 you remember your evidence along those lines
12 earlier today?

13 A. You are asking me about a period
14 that -- again, I can't even recall -- like I think
15 I might have spoken initially with Mr. Levitt in
16 2016. I can't be certain. And then over -- you
17 know, occasionally, he would contact me. I think
18 he was obviously interested in what was happening
19 to an article, but he was also giving me
20 information, which is completely understandable.
21 This is what people do when they are interested
22 in -- we are all interested in a similar subject,
23 and he is interested in a journalist reporting on
24 something.

25 But you are saying in this particular

1 period of time, was it possible? It is possible,
2 yes, but I don't recall. That is what I am saying.
3 So I don't know what more I can add to that.

4 522 Q. Do you have any specific
5 recollection of any particular conversations with
6 Mr. Levitt, or is that all kind of in the mist of
7 time, as far as you are concerned?

8 MR. LASCARIS: You are referring to
9 conversations about this case, I assume, Mr. Moore?

10 BY MR. MOORE:

11 523 Q. Well, Callidus. With the 20
12 updates that you got from time to time, is there
13 anything that you can remember at all about that,
14 or is it just a complete blank?

15 A. Well, you've got to remember that
16 this --

17 524 Q. You can explain, sir. Just answer
18 my question. If the answer is you don't remember
19 anything, it is a complete blank, you can explain
20 that, but just please answer my question.

21 MR. LASCARIS: He was in the process of
22 explaining it when you interrupted him, Mr. Moore.

23 MR. MOORE: Well, I would like the
24 answer first. The explanation can come. I would
25 like to get the answer first.

1 MR. LASCARIS: Well, let him talk and
2 maybe you'll get the answer.

3 THE DEPONENT: Yes.

4 BY MR. MOORE:

5 525 Q. Well, I would like the answer
6 first --

7 A. You keep interrupting me, so it is
8 hard to get an answer out. I was about to say to
9 you, as you well know, the saga of Mr. Glassman and
10 Callidus, Catalyst, Boland, and all of these
11 borrowers and all of their individual cases have
12 many, many moving parts to them, and many parties
13 have many interests in these various disputes.

14 So Mr. Levitt had a particular interest
15 because he had a dispute with your client, and
16 which is ongoing, as far as I understand, and so he
17 would contact me about aspects about -- you know,
18 as I said, there are many moving parts to the saga
19 of Callidus and Catalyst, and so he might -- you
20 would think it would be of interest to me that I
21 should know the information, which is not uncommon.
22 When you are doing a story about a subject that is
23 of interest to people, they contact you and say,
24 Well, you should know about this, whether it is
25 germane to your work or not.

1 So that is all I can say about
2 Mr. Levitt in regards to what he told me. So he
3 would give me periodic updates to both his own
4 case, other aspects of, you know, what was going
5 on, and, you know, so be it.

6 526 Q. Let's go to Livesey production
7 281, if we can, and just scroll down that a little
8 ways and maybe it will refresh the witness's
9 memory.

10 A. [Witness reviews document.]

11 527 Q. Do you remember seeing this
12 document, sir?

13 A. Yes.

14 528 Q. And does this assist you in
15 remembering who you got it from?

16 A. No.

17 529 Q. And how did you get it? Was it --
18 did you get a hard copy? Was it delivered to you?
19 Was it sent to you by email? How did you get it?

20 A. It was -- oh, that is a good
21 question. I don't recall.

22 530 Q. You don't recall. Okay.

23 A. It was -- I think I saw a hard
24 copy -- no, I don't recall. I got an electronic
25 version eventually, but I might have received a

1 hard copy originally. I can't recall.

2 531 Q. All right. Well, will you refresh
3 your memory and undertake to advise me of your best
4 recollection about how you got it? Firstly, I
5 understand you to say you got a hard copy in the
6 first instance is your best recollection?

7 A. I might have gotten a hard copy
8 initially, and then I know I eventually got an
9 electronic copy.

10 532 Q. All right. So when you -- anyway,
11 let's not quibble about that. If you got a hard
12 copy, do you remember how you got it?

13 A. No. I told you. I have answered
14 that question.

15 [Court Reporter intervenes for
16 clarification.]

17 MR. LASCARIS: That is all right. I
18 had nothing to say. Go ahead, Mr. Moore.

19 BY MR. MOORE:

20 533 Q. All right. Well, did you get a
21 brown paper envelope? Did someone drop it off at
22 your office? Can you make reasonable inquiries to
23 refresh your memory about how you received a hard
24 copy of this document?

25 MR. LASCARIS: Mr. Moore, we will

1 make --

2 MR. MOORE: Will you undertake to do
3 that?

4 U/T MR. LASCARIS: We will make -- in the
5 interests of moving this along, we will make
6 reasonable inquiries.

7 BY MR. MOORE:

8 534 Q. All right. Now, what about the
9 electronic copy, how did that come? You said you
10 got an electronic copy.

11 A. I have answered that question.

12 535 Q. No, you have not answered that
13 question.

14 A. I --

15 536 Q. You said you have got an
16 electronic copy. I want to know how, from whom,
17 when you got the electronic copy.

18 A. I have explained all that to you,
19 if you were listening to me.

20 537 Q. No, you haven't. Let's not debate
21 it. You tell me when, by under cover of what email
22 or what electronic means you received an electronic
23 copy of the whistleblower complaint?

24 A. And as I said to you before, I
25 have no recollection.

1 538 Q. No, I am not depending upon your
2 recollection. I am asking you to go back and
3 produce the documentation that will evidence the
4 electronic copy having been sent to you. I am
5 trying to avoid this being a memory contest because
6 that is not a very fruitful exercise, as far as I
7 am concerned, in this cross-examination.

8 U/T MR. LASCARIS: Mr. Moore, we'll make
9 reasonable inquiries and see if we can ascertain
10 how Mr. Livesey, who has said he does not remember
11 how he received an electronic copy, in fact
12 received it.

13 BY MR. MOORE:

14 539 Q. Okay. Well, let's get something
15 straight. I take it we can agree that he would
16 have received the electronic copy electronically?
17 Can we agree upon that?

18 MR. LASCARIS: Well, somebody might
19 have handed him a USB key. If that is an
20 electronic transmission, I guess you are right, I
21 don't know, if that is what you mean by
22 "electronically".

23 The fact of the matter is he doesn't
24 know how he got, as he sits here now, the
25 electronic version of it, and we will make

1 reasonable inquiries. He has been very clear he
2 doesn't recall, as he sits here now.

3 BY MR. MOORE:

4 540 Q. Fine. So let's go to page 47,
5 paragraph 99 of Mr. Riley's conspiracy affidavit.
6 Can you see that properly on the screen,
7 Mr. Livesey?

8 A. No.

9 541 Q. Okay. Let's make it a little
10 bigger then. There we go. Take a moment and read
11 paragraph 99, please.

12 A. [Witness reviews document.]

13 542 Q. Let me know when you are finished
14 reading that paragraph.

15 A. Yes, I'm finished.

16 543 Q. Just out of interest, did Mosaic
17 or i20 ever hold a licence under the Private
18 Investigators Act or whatever the statute is
19 called?

20 A. Well, I have a private
21 investigator's licence.

22 544 Q. You personally do?

23 A. Yes.

24 545 Q. Will you produce a copy of it?

25 A. I can, yes.

1	546	Q.	All right.
2		A.	Have you asked have I? No, but I
3			can. Yes.
4	547	Q.	No, will you?
5		A.	Yes.
6	U/T	MR. LASCARIS:	We'll produce it.
7		BY MR. MOORE:	
8	548	Q.	All right. Now, let's look at --
9			well, how was it that you became employed as a
10			private investigator with Forensic Restitution?
11		A.	I am not employed as a private
12			investigator with Forensic Restitution.
13	549	Q.	I didn't ask you whether you are
14			now, but you were before; correct?
15		A.	No.
16	550	Q.	Well, let's look at Exhibit 36.
17			This is an extract from the Forensic Restitution
18			website. Have you seen this before?
19		A.	Yes.
20	551	Q.	And you will see it refers to you
21			as a private investigator for the company?
22		A.	Yes.
23	552	Q.	So were you a private investigator
24			for Forensic Restitution --
25		A.	No. Well --

1 553 Q. -- at some point in time?

2 A. I have never been employed by
3 them, meaning they have never given me any work,
4 and I have never been on their payroll.

5 554 Q. Well, let's not get hung up as to
6 whether you were an employee or on the payroll.

7 Have you ever been a consultant for the company?

8 A. Well, a consultant? Yes, I have
9 done the occasional bit of -- I have given
10 Mr. Oswald advice now and then.

11 555 Q. And --

12 A. But he has never paid me for it.

13 556 Q. Have you ever --

14 A. I have never been compensated.

15 557 Q. I'm sorry?

16 A. I have never been compensated for
17 it.

18 558 Q. Have you ever -- and when I say
19 "you", I mean either your company or a consulting
20 arm of your company or directly or indirectly, ever
21 submitted an invoice?

22 A. To Mr. -- to Forensic Restitution?

23 559 Q. Yes.

24 A. No.

25 560 Q. Or anyone connected with Forensic

1 Restitution?

2 A. Anyone connected to it? What do
3 you mean by "connected"?

4 MR. LASCARIS: Mr. Moore, you are
5 asking whether Mr. Livesey has given an invoice to
6 anybody connected with Forensic Restitution; is
7 that your question?

8 BY MR. MOORE:

9 561 Q. I am trying to come at this pretty
10 simply. We see this website listing Mr. Livesey as
11 a private investigator for this firm, and without
12 dancing around whether he is an employee or a this
13 or a that, has he ever asked for any compensation
14 for whatever he was doing for Forensic Restitution?

15 MR. LASCARIS: Mr. Livesey, have you
16 ever asked for any compensation for anything you
17 did for Forensic Restitution?

18 THE DEPONENT: No.

19 MR. LASCARIS: Thank you.

20 BY MR. MOORE:

21 562 Q. How was it that you become listed
22 as an investigator or consultant of some kind on
23 the Forensic Restitution website?

24 A. Well, as -- when I set up my
25 company, I was looking for people who had

1 experience and the requisite skills to investigate
2 companies, who were familiar with financial
3 statements, forensic accounting, skills such as
4 that.

5 And I had learned of Mr. Oswald, and he
6 is an independent forensic accountant, and I run an
7 independent company, so we thought it made sense
8 that we would do business together if we could.

9 So that is -- and as part of
10 advertising to clients that we have access to
11 certain people with certain talents, we put them on
12 our website that we have access to this talent. So
13 that is what he did, and that is what I did on my
14 website.

15 563 Q. And when did you have the
16 discussions with Mr. Oswald about this?

17 A. 2018.

18 564 Q. How did that come about?

19 A. I called him up.

20 565 Q. And where did you get his name
21 from?

22 A. Well, I had met him as a result of
23 doing the research on Callidus.

24 566 Q. And that was through Mr. Baumann,
25 right?

1 A. No. Well, not really. I can't
2 remember. Somehow --

3 567 Q. So wait a minute. No, well,
4 maybe, not really? What is it?

5 A. Well again -- listen. Please.
6 Like we have been telling you this repeatedly to
7 let me finish answering your question before you
8 interrupt.

9 So when I was doing the research on
10 Callidus at some point, again possibly -- it was
11 probably like 2017, I somehow got in touch with
12 Mr. Oswald. I can't remember the circumstances of
13 how. And he had done some work for Mr. Baumann,
14 and we discussed it.

15 568 Q. Do you remember whether he
16 contacted you or you contacted him?

17 A. I just told you I don't recall. I
18 think -- I don't recall. I really don't recall.

19 569 Q. Well, you were aware there was a
20 connection of some kind between him and
21 Mr. Baumann; correct?

22 A. Yes. He had done some work for
23 Mr. Baumann.

24 570 Q. What was your understanding about
25 that connection?

1 A. Well, Mr. Baumann had hired
2 Mr. Oswald to investigate -- what had he asked him
3 to investigate? Some aspect of Callidus or
4 Catalyst.

5 571 Q. And who told you that? Did
6 Mr. Baumann tell you that? Did Mr. Levitt tell you
7 that? Who told you that?

8 A. Who told me what?

9 572 Q. What you just said.

10 A. Well, I spoke to Mr. Oswald. I
11 met with Mr. Oswald.

12 573 Q. Yeah.

13 A. So somewhere in the course of that
14 he indicated or someone indicated that he had done
15 work for Mr. Baumann, and he wanted to show me what
16 the research was about, which he did, which again
17 was -- I don't think I ever used it.

18 574 Q. Not only are you referred to on
19 the website of Forensic Restitution, but Mr. Levitt
20 and Mr. Oswald are employed by i20 Research; isn't
21 that right?

22 A. Mr. Levitt is not employed by i20
23 Research.

24 575 Q. Stan Levitt and Dave Oswald were
25 employed at i20 Research; isn't that right?

1 A. But Stan Levitt has nothing to do
2 with the -- I think you are confusing your Levitts.

3 576 Q. Well, what about Dave Oswald? Was
4 he employed or has he been employed in the past by
5 i20 Research?

6 A. Again, when you use the word
7 "employ", you suggest it -- it would in common
8 parlance suggest that he was on my payroll, and the
9 answer is no. I have on occasion --

10 577 Q. Was --

11 A. Let me finish. I have on occasion
12 contracted forensic accounting work to him, none of
13 which has anything to do with Callidus, Catalyst,
14 Newton Glassman, or any of the other parties
15 involved in this ridiculous lawsuit.

16 578 Q. Let's go back to Exhibit 35 to
17 Mr. Riley's affidavit. Do you see it says on the
18 page that is on the screen "i20 Staff +
19 Associates"?

20 A. Yes.

21 579 Q. And Mr. Oswald is listed under the
22 heading "Staff + Associates" --

23 A. Yes.

24 580 Q. -- as a forensic consultant?

25 A. Yes.

1 581 Q. So in your parlance, as you put
2 it, does that make him an employee, a consultant, a
3 staff, an associate? What does that make him,
4 according to you?

5 A. Well, in that case he would fall
6 under associate.

7 582 Q. I see. And is that Mr. Levitt's
8 brother?

9 A. Yes.

10 583 Q. And how did you become -- how did
11 that introduction take place?

12 A. He was working for Mr. Oswald.

13 584 Q. He was working for Mr. Oswald over
14 at Forensic Restitution; correct?

15 A. That's correct.

16 585 Q. And so he then became associated
17 with your company as well?

18 A. That's correct.

19 586 Q. And we also know that Darryl
20 Levitt works or worked at Forensic Restitution as
21 well; correct?

22 A. I don't know.

23 587 Q. You don't know?

24 A. Mr. --

25 588 Q. So let's go back to that website

1 again. Do you --

2 A. Well, again --

3 589 Q. -- see Darryl Levitt?

4 A. You are using language which is
5 not -- that has no bearing on the reality of these
6 relationships.

7 590 Q. I see. So I am just looking at
8 the screen now of Exhibit 36 where it refers -- if
9 I said Stan Levitt earlier, I apologize, but when
10 we look at this "Our Team & Expertise", this is
11 Forensic Restitution talking about "Our Team" and
12 "Meet the Team", we have got Mr. Oswald, right?
13 And we have got -- if we scroll down a bit, it
14 lists you as part of the team; correct?

15 A. Yes.

16 591 Q. And it lists Mr. Levitt, Darryl
17 Levitt, as part of the team; correct?

18 A. Uhm-hmm, yes.

19 592 Q. And according to this, it says
20 that he is the General Counsel as part of the team;
21 correct?

22 A. Yes.

23 593 Q. All right. So are you saying that
24 that bears no resemblance to reality, or what are
25 you saying?

1 A. Well, again, Mr. Moore, you have
2 used language to say is he working for. "Employed
3 by" is the term you constantly use, and "employed
4 by" in common parlance means that you are on my
5 payroll. I pay you a salary. And that is not the
6 case in this situation, both of my firm and, as far
7 as I understand, with Forensic Restitution. These
8 are --

9 594 Q. So he is part of the team but not
10 an employee on the payroll, but in some capacity he
11 is part of the team, as were you; correct?

12 A. Well, you would have to ask
13 Mr. Oswald these questions because he put them on
14 his website, you know, so I really can't speak for
15 Mr. Oswald.

16 595 Q. Well, no, I am just asking you to
17 speak for yourself, sir, because you are on the
18 website. I am looking at you staring out from the
19 website. Did you ever register any objection with
20 Forensic Restitution, Mr. Oswald or anyone else,
21 along the lines of, Hey, Mr. Oswald, you posted me
22 as part of your team. Take me out of there because
23 I am not part of your team. Now, don't get hung up
24 by the semantics of my question. Did you ever
25 raise any objection like that?

1 A. Well, why would I?

2 596 Q. I am asking you if you did.

3 That's all.

4 A. No. Look, again, this was sort of
5 like --

6 597 Q. Thank you. That is my question.

7 MR. LASCARIS: Wait, but he was going
8 to say something, so please let Mr. Livesey --

9 BY MR. MOORE:

10 598 Q. Okay. Go ahead, go ahead.

11 A. You know, both Mr. Oswald and
12 myself are running very small companies, and I mean
13 very small, meaning that as far as I know I am the
14 only employee of mine, and he is probably the only
15 employee of his. But we have access to talent
16 that, in the event a client wants to employ us, we
17 can access.

18 So that is why on our websites we have
19 done this. It is simply to say, in the event you
20 hire our firms, we can employ the skills of these
21 people. That is all this is about. There is
22 nothing -- it is as transparent as that.

23 599 Q. So I am just trying to understand
24 these relationships, sir. Now, can you help me
25 out. When was it, to your best recollection, that

1 you became -- when you first became part of the
2 Forensic Restitution team? When did that happen?

3 A. In 2018 or 2019. I can't remember
4 the exact date.

5 600 Q. Well, okay. Can you undertake to
6 review your records or whatever else you need to
7 review and be a little more specific than just that
8 two-year time frame?

9 A. Sure.

10 U/T MR. LASCARIS: Yes, we'll do that,
11 Mr. Moore, yes.

12 BY MR. MOORE:

13 601 Q. And will you also produce whatever
14 documents exist -- and I use that term in the
15 broadest possible definition, including as defined
16 under the Rules of Civil Procedure, any documents
17 that exist relating to your becoming or being part
18 of the Forensic Restitution team? Will you make
19 that inquiry and let me have those documents,
20 whatever they may be?

21 U/A MR. LASCARIS: We'll take that under
22 advisement.

23 BY MR. MOORE:

24 602 Q. And with respect to Exhibit 35 and
25 i20 Research and the reference to Mr. Oswald as

1 part of "Staff + Associates", will you let me know
2 when it was that Mr. Dave Oswald became part of the
3 staff and associates of your company?

4 U/T MR. LASCARIS: Yes, that is fine.

5 BY MR. MOORE:

6 603 Q. And will you agree to provide
7 whatever documents, using the same definition or
8 broad definition, relating to Mr. Oswald becoming a
9 member of the staff and associates of i20?

10 U/A MR. LASCARIS: We'll take that under
11 advisement, Mr. Moore.

12 MR. MOORE: I'm sorry?

13 MR. LASCARIS: We will take that under
14 advisement.

15 BY MR. MOORE:

16 604 Q. And the same question with respect
17 to Stan Levitt?

18 U/A MR. LASCARIS: The same answers.

19 BY MR. MOORE:

20 605 Q. All right. Let me ask you about
21 the contacts you had with Callidus in 2016 about a
22 story that you were contemplating at that time, and
23 I'll take you to page 153 of the Riley conspiracy
24 affidavit. Just read paragraph 403 to yourself.

25 A. [Witness reviews document.]

1 Okay.

2 606 Q. Is it true that you contacted
3 Callidus and Catalyst in or about September 2016
4 through Mr. Gagnier?

5 A. No -- well, I called Callidus,
6 yes, and they put me -- they put -- they said if
7 you have any media inquiries, talk to Mr. Gagnier,
8 so yes.

9 607 Q. And when you contacted -- who did
10 you contact at Callidus?

11 A. I just called them up and said --
12 in these circumstances, I call them up, and I say,
13 I'm a journalist writing an article for Canadian
14 Business. I am doing a story about 'x'. Could I
15 speak to -- often I say, you know, Who deals with
16 the media, anyone in the company? Because they
17 often -- a lot of companies like reporters to deal
18 with a specific person about media inquiries, so I
19 think I probably said something to the effect of,
20 Who can I talk to that deals with the media? So
21 they put me through --

22 608 Q. And that led you to Mr. Gagnier?

23 A. Yes.

24 609 Q. And did you speak to Mr. Gagnier?

25 A. Yes.

1 610 Q. And had you had any prior dealings
2 with Mr. Gagnier?

3 A. No.

4 611 Q. Had you had any prior contacts at
5 all with Catalyst or Callidus?

6 A. No.

7 612 Q. All right. So just to be clear, I
8 take it when you were doing your research for
9 Mr. Voorheis back in 2015, and you described that,
10 you never picked up the phone and contacted either
11 Catalyst or Callidus to ask for any comment about
12 anything at that juncture, right?

13 A. No.

14 613 Q. All right. And I want to be
15 clear, I think you have said this before, but I
16 just want to be certain. You never downloaded the
17 prospectus that spelled out the details of
18 Callidus's business and how it was structured and
19 how it operated; you never did that either, right?

20 MR. LASCARIS: No, no. Did you say
21 never ever, or you mean --

22 BY MR. MOORE:

23 614 Q. No, I mean in 2015. In 2015.

24 A. No.

25 615 Q. All right. And so when you spoke

1 to Mr. Gagnier, is it accurate, as is stated in
2 this paragraph 403, that you advised Mr. Gagnier
3 that the article was going to be a fair and
4 balanced piece, not taking sides as between Boland
5 and Glassman; is that fair?

6 A. I never said that to him, no.

7 616 Q. So you deny telling Mr. Gagnier
8 that you were going to write a fair and balanced
9 piece? You say you never said anything like that?

10 A. Well, not like -- again, you are
11 asking me about a conversation I had a long time
12 ago, but that is not the sort of language I would
13 use. The assumption, if you are calling someone up
14 as a reporter, is -- and again, the context of
15 this, it was not a secret that Mr. Boland and
16 Mr. Glassman were involved in a dispute which had
17 become public. It was well known in at least some
18 circles of Bay Street.

19 So I would never have said to him, I am
20 going to do a fair and balanced reporting. That is
21 assumed. It is I called them up and said, I am
22 doing this story, and I would like to speak to
23 Mr. Glassman, and would that be possible?

24 617 Q. And -- well, did you tell them
25 that the story was not just about Mr. Glassman but

1 also about Mr. Boland and the dispute that existed?

2 A. Yes.

3 618 Q. All right.

4 A. And that --

5 619 Q. And please don't get hung up on
6 the specific, you know, four words or five words in
7 the last line of paragraph 403. Did you convey in
8 one way or the other that you intended to write a
9 fair and balanced article, whether you used those
10 specific words or not?

11 A. I don't know how to answer that
12 question. Like I don't --

13 620 Q. What is the problem with answering
14 that question?

15 A. Well, because the way -- well,
16 because it is not the way these conversations go.
17 The conversations go where I say I am writing -- I
18 have been assigned an article by Canadian Business
19 magazine. In this case it was about Mr. Boland,
20 and part of it had to do with his dispute with
21 Mr. Glassman, and I would like to arrange an
22 interview with Mr. Glassman. Would that be okay?

23 And in that -- and you have got to
24 remember at this point, you know, I had spent about
25 three days working for Mr. Voorheis. I had done

1 some research prior to calling up Mr. Gagnier
2 because the process before you start calling people
3 generally is you do some more research, but in this
4 case, I probably wouldn't -- because I knew
5 Mr. Glassman -- because I knew in my discussions
6 with the editor at Canadian Business magazine that
7 they were interested in this dispute between
8 Mr. Glassman and Mr. Boland, so I -- you know, in
9 terms of the details that was going to
10 eventually -- in terms of the details of the
11 research that would eventually come, I would have,
12 you know, called them fairly early on to see if
13 both sides would participate in the article.

14 So in terms of any conclusions I had
15 drawn about Mr. Glassman, they were very few, and
16 you hope that if Mr. Glassman and his people had
17 cooperated with the article, then an article would
18 appear as if, you know, they had their point of
19 view expressed in it. But they declined.

20 So by that juncture, by this particular
21 juncture, I was just trying to get a sense of
22 whether they would produce Mr. Glassman.

23 621 Q. You said your conclusions were
24 very few. You testified earlier that you had
25 concluded -- you had reached negative conclusions

1 about Callidus as a result of the work you had
2 undertaken for Mr. Voorheis, right?

3 A. That was only one aspect, a very
4 small aspect of the business, so --

5 622 Q. Well, I don't know because none of
6 that documentation has been produced, sir. But you
7 say it was a very small aspect of the business.

8 A. What --

9 623 Q. Help me understand that better
10 because you didn't say that before. What very
11 small aspect of the business did your negative
12 conclusions relate to?

13 A. Okay. So just so you understand
14 this, all right, I was -- I did three days of
15 research and that was very focussed on the
16 relationship between a handful of the borrowers and
17 Callidus. Those borrowers had had a negative
18 experience with Callidus. And if you read the
19 testimony -- or the interview I did with Mr. Levy,
20 he makes that abundantly clear why, at least in his
21 particular experience.

22 There was -- that was a tiny sliver of
23 the entirety of the story about Catalyst --
24 Callidus, Mr. Boland. For example, a huge portion,
25 which is what I ended up focussing on in my story,

1 which you would know if you actually read them, was
2 about the dispute with Wind, and that was a whole
3 saga at that point I knew nothing about because I
4 hadn't researched it yet.

5 So, you know, I had a negative view
6 based on a very thin sliver of information. In the
7 totality of Mr. Glassman's business, that might
8 have just been it. There could conceivably have
9 been no other negative issues. So --

10 624 Q. And you disclose -- sorry, let me
11 know when you are finished.

12 A. So yes, at the time I spoke to
13 Mr. Gagnier, I knew very little about the totality
14 of Mr. Glassman's operation and his relationships
15 and his disputes, whatever they may be.

16 625 Q. You knew that there was a lawsuit
17 underway involving Catalyst -- or sorry, Callidus
18 and Veritas and West Face about some allegations
19 that Veritas and West Face had made about
20 Callidus's business; you knew that, right?

21 A. Yes.

22 626 Q. Is that a yes?

23 A. Yes.

24 627 Q. All right. And that related to
25 allegations or criticisms that are contained in the

1 Veritas and West Face reports; correct?

2 A. Yes.

3 628 Q. And those criticisms were relating
4 to Callidus's business as a borrower; correct?

5 A. Well, those criticisms had to do
6 with the soundness of Callidus's loan book is my
7 recollection.

8 629 Q. Well, its business as a lender to
9 various third parties, right?

10 A. I guess so --

11 630 Q. We are not going to go through all
12 the reports, but that is in general terms what the
13 criticisms related to; correct?

14 A. Well, again, I would characterize
15 it as the criticisms in those reports were that
16 Callidus was claiming 'x' about its loans, and
17 those were reports were saying 'y' about those
18 loans. That was the general thrust of those
19 reports.

20 631 Q. When you approached Mr. -- when
21 you had your conversation with Mr. Gagnier about
22 the article you were preparing and your request to
23 interview, was it Mr. Glassman you wanted to
24 interview?

25 A. Yes.

1 632 Q. Did you tell him that you had
2 previously been retained as a consultant for
3 Mr. Voorheis?

4 A. No.

5 633 Q. Why not?

6 A. Well, it is not germane.

7 634 Q. Sorry?

8 A. It is not germane.

9 635 Q. It is not germane. So let me get
10 it straight. I guess when you are calling Gagnier
11 in September of 2016 -- I want to let you finish
12 shaking your head all you want, sir. Are you
13 finished?

14 A. I am laughing too, just in case.

15 636 Q. Yeah, no, it is the same. It
16 isn't funny.

17 I guess at that juncture, in September
18 2016, you are wearing your journalist hat, right?

19 A. I was working as a journalist at
20 that time, yeah. My business was -- as I also
21 explained in my affidavits, at that point I was not
22 doing any work for Mosaic at that time. I was
23 working -- because I had just finished a stint on
24 the staff of the National Observer, which had begun
25 in the summer of 2015, and so by the summer -- as I

1 explained in my affidavit, the National Observer
2 laid me off because they had run out of money, so I
3 went out and got a bunch of journalism assignments,
4 one of which was the Canadian Business assignment.

5 So why would I tell --

6 637 Q. You --

7 A. Why would I tell Mr. Gagnier I had
8 done a bit of work for Mr. Voorheis? What had that
9 to do with anything?

10 638 Q. Well, actually I am the one who
11 asks the questions here, sir, but I'll continue
12 doing that. My question was, in September of 2016,
13 insofar as your approach to Mr. Gagnier, your
14 approach would have been wearing your journalist
15 hat, if you will; is that correct?

16 A. Yes.

17 639 Q. All right. And would you agree,
18 sir, that someone receiving an inquiry from a
19 journalist such as yourself in those circumstances,
20 whether it be Mr. Glassman and Callidus or
21 Mr. Boland and West Face, would have a reasonable
22 expectation that a journalist of integrity would
23 approach the situation with an unbiased frame of
24 mind? Would you agree with that?

25 A. Yes.

1 640 Q. And in other words, the
2 journalist, professional journalist, would not come
3 to writing a story with any prior views about
4 either Mr. Glassman or Mr. Boland? That would be a
5 reasonable expectation; correct?

6 A. Sorry, say that again? I got
7 distracted.

8 641 Q. It would be a reasonable
9 expectation that a professional journalist would
10 come to write a story like that without having any
11 pre-existing views one way or the other about
12 Mr. Boland or Mr. Glassman; would you agree with
13 that? That would be the expectation?

14 A. Whose expectation?

15 642 Q. Any reasonable person's
16 expectation.

17 A. Well, I can't speak to any
18 reasonable expectation -- any reasonable person --

19 643 Q. Well, isn't that part of the
20 professionalism that goes with being a journalist,
21 that you don't take sides, and you approach a story
22 from an unbiased starting point? Isn't that
23 standard?

24 MR. LASCARIS: So, Mr. Moore, I just
25 want to -- you are confounding two concepts. The

1 one is having a pre-existing view and the other is
2 being biased. You seem to be equating those two
3 things.

4 MR. MOORE: Well, I don't think you
5 should be interjecting like that, but let me ask
6 you this.

7 MR. LASCARIS: Well, then just please
8 be consistent in your language. If you want to
9 know what Mr. Livesey has to say about whether
10 journalists should have pre-existing views or not,
11 that is one question, and whether they should be
12 unbiased is a different question.

13 And I am asking you simply, if you want
14 to ask both of those questions, go ahead, but you
15 are confounding these two terms, and that is the
16 problem. It is becoming -- it is confusing, and it
17 is hard to know exactly what you are asking
18 Mr. Livesey.

19 BY MR. MOORE:

20 644 Q. Well, no, I don't think --

21 A. But it is. Your question is --

22 645 Q. I am --

23 A. Let me explain why your question
24 is ridiculous, okay? Your question is ridiculous.
25 So let's say I have been assigned to do a story

1 about a serial killer who is in prison for killing
2 a lot of people. You think a journalist going into
3 that situation might not have any preconceived
4 notions about that person, that they might not feel
5 emotional that a serial killer might not be a good
6 person, someone who has confessed to killing all
7 these people? I mean, that is ludicrous. Of
8 course they are.

9 646 Q. Are you finished, sir?

10 A. Yes.

11 647 Q. So are you equating that
12 hypothetical question you just asked me with the
13 situation that prevailed in September of 2016 when
14 you contacted Boland and Glassman through their
15 offices to talk about writing a story? Is that the
16 analogy you are drawing?

17 A. You asked me a hypothetical.

18 648 Q. I am asking you. I am asking you.
19 Answer my question.

20 A. No, no, you are asking me --

21 649 Q. Look --

22 A. -- a hypothetical, would a
23 reasonable person not have biases, bla, bla, bla,
24 and I just explained to you it would depend, right?
25 Here is the -- I gave you an example of where, no,

1 of course, a reasonable person would have biases if
2 they were asked to do a story about a serial
3 killer.

4 650 Q. So answer my question --

5 A. So that is why your question is
6 ridiculous.

7 651 Q. I see. So are you equating the
8 hypothetical serial killer that you just postulated
9 with the situation that existed in September 2016?

10 A. No.

11 652 Q. Yes or no?

12 A. No.

13 653 Q. No. Thank you. So did you make a
14 conscious decision not to tell Callidus or Gagnier
15 that you had had a prior assignment with
16 Mr. Voorheis pertaining to Callidus? Was that a
17 conscious decision on your part?

18 A. No, it wasn't a decision at all.
19 It just wasn't pertinent. It wasn't -- it doesn't
20 matter. It is irrelevant.

21 654 Q. Well, whether it is irrelevant or
22 not, was that something that you consciously turned
23 your mind to and concluded, Well, I am not going to
24 tell him because it is not relevant?

25 A. Well, look -- oh, boy. These

1 questions are so stupid, and they are stupid
2 because you learn about stories from all sorts of
3 different sources and, you know, it is not relevant
4 to the story you produce. You go in to do --

5 655 Q. Sir, if Mr. Lascaris wants to
6 object to the question as not being relevant, he
7 can object, or if it is stupid or if it is
8 something else, he can object. And I am sure he
9 will. He is no wallflower.

10 But subject to that, I would ask you to
11 answer the question. Did you consciously turn your
12 mind as to whether you should or should not
13 disclose your prior assignment, yes or no?

14 A. And I --

15 656 Q. I'm not asking to debate whether
16 it is relevant or stupid or something else. Did
17 you consciously turn your mind?

18 MR. LASCARIS: Mr. Moore, you keep
19 demanding answers without giving Mr. Livesey an
20 opportunity to answer. So please allow him to
21 speak before you pose the next question.

22 MR. MOORE: That is not true.

23 MR. LASCARIS: I think I have shown you
24 quite -- oh, the transcript will eminently prove
25 that to be true. I have shown you a great deal of

1 latitude, so please just allow him to answer the
2 question. And this is a question, by the way, you
3 have already asked, and I believe he has answered
4 it. But I am going to allow you to ask it again.
5 Just allow him to speak until he is done.

6 BY MR. MOORE:

7 657 Q. It hasn't been answered. What we
8 have had is a combination of his views and laughter
9 and musings about how stupid it is. I would just
10 like him to answer whether it was something he
11 turned his mind to. It is a very simple question;
12 yes or no?

13 A. I didn't turn my mind to it.
14 How's that?

15 658 Q. I'm not putting words in your
16 mouth. I'm asking you.

17 A. And I am saying it never crossed
18 my mind.

19 659 Q. All right. And did you ever
20 disclose that at any time in your dealings with
21 Mr. Gagnier or Callidus in the fall of 2016?

22 A. No.

23 660 Q. And can we go to -- well, why
24 don't we -- it is 25 to 4:00. Why don't we take a
25 break until 10 to 4:00, and then we'll come back

1 and wrap this up.

2 MR. LASCARIS: That is fine. Thank
3 you.

4 MR. MOORE: Thank you.

5 -- RECESSED AT 3:35 P.M.

6 -- RESUMED AT 3:50 P.M.

7 BY MR. MOORE:

8 661 Q. So, Mr. Livesey, I take it in your
9 reply affidavit, that is, the September 4th
10 affidavit, to the extent there were statements in
11 Mr. Riley's earlier affidavits that you felt were
12 incorrect, you have identified them, is that fair,
13 to the best of your ability?

14 A. Yes.

15 662 Q. All right. And can I go to
16 paragraph 235 of Mr. Riley's conspiracy affidavit,
17 if you could just read that.

18 A. [Witness reviews document.]

19 663 Q. Let me know when you have read it.

20 A. Yes.

21 664 Q. If we could go to Exhibit 193.
22 And let me know when you have had a chance to read
23 this.

24 A. [Witness reviews document.]

25 Yes.

1 665 Q. So I was asking you earlier about
2 when you first contacted or heard from Mr. Levitt.

3 A. Yes.

4 666 Q. And you see in this email Mr. Levy
5 was apparently giving your contact information to
6 Darryl Levitt in January 2017.

7 A. Okay.

8 667 Q. Do you see that?

9 A. Yes.

10 668 Q. So is it reasonable to conclude
11 that Mr. Levitt would have contacted you after that
12 time as a result of this introduction?

13 A. Yes.

14 669 Q. All right. And I am not certain
15 whether I asked this question earlier or not. If I
16 did, I apologize, but in case I didn't, after your
17 first conversation with Mr. Levy, up until the
18 present time, could you give me your best estimate
19 of how many times you spoke to Mr. Levy?

20 A. I think three times, and that
21 would include the first time in April of 2017.

22 670 Q. And I think the details of that
23 and any recordings or other notes or anything to do
24 with those contacts, Mr. Lascaris, I think we
25 agreed that would be subsumed by the earlier

1 inquiry and either undertaking or advisement; is
2 that right?

3 U/A MR. LASCARIS: I can confirm that it is
4 included now, if I didn't already.

5 BY MR. MOORE:

6 671 Q. All right. Now I am going to ask
7 for a similar undertaking and/or advisement with a
8 number of the other Defendants in the lawsuit, the
9 non-guarantor, non-borrower Defendants, of whom
10 there are several.

11 Rather than try to articulate that
12 verbally on the record right now for all of those
13 individuals, can we agree that I'll write you a
14 letter articulating what the undertaking and
15 advisement extends to, and we can do it on that
16 basis and save some time and transcript space this
17 afternoon?

18 MR. LASCARIS: Yeah, just to be clear,
19 I'll tell you whether or not I am in agreement with
20 your understanding of it once I see your letter.

21 MR. MOORE: What I am saying is rather
22 than go through each other person and say, Will you
23 advise of A, B, C, or undertake to do so, I'll
24 write you a letter, and we can take it that
25 question has been asked, and you can advise me of

1 your position whether the answer is yes, you will,
2 or no, you won't, or it is under advisement or
3 whatever, rather than take ten minutes and go
4 through them all individually. That's all. Is
5 that acceptable?

6 U/T MR. LASCARIS: That makes sense, yes.

7 BY MR. MOORE:

8 672 Q. All right. With reference to this
9 email that is on the screen --

10 A. Yes.

11 673 Q. -- had you indicated to Mr. Levy
12 at some point that you had been investigating
13 Glassman for at least a couple of years? Do you
14 remember that?

15 A. No -- well -- and I explained this
16 in my affidavit. So -- I said I had not been
17 investigating for two years. Like, again, it sort
18 of depends on -- do you mean did some research
19 begin two years earlier or for the entirety of two
20 years, like that full-time job two years? So if he
21 means did I begin the research two years earlier, I
22 had begun it in, as we know, April of 2015. So by
23 January of 2017, it was almost two years where I
24 had knew of the subject, but that doesn't mean that
25 I had been working on researching Callidus for a

1 totality of two years.

2 674 Q. And did you express a belief to
3 Mr. Levy that Callidus was a house of cards?

4 A. I have no recollection of that.

5 675 Q. In any event, you didn't comment
6 on this email or on paragraph 235 of Mr. Riley's
7 affidavit in your reply affidavit; correct? You
8 can tell me if --

9 A. Yes, we did. We did -- we
10 responded to -- yes, we responded to this, not -- I
11 don't think -- I can't recall if we responded to
12 the house of cards thing. We responded to the
13 issue of the two years, yes, we did.

14 676 Q. Well, the record will be what the
15 record is.

16 A. Yes.

17 677 Q. Whatever your response is, it will
18 be evident from your reply affidavit; correct?

19 A. Yes.

20 678 Q. All right. Now, in terms of the
21 proposal that you were at -- or you were making
22 about a story regarding Glassman, can we go to
23 paragraph 242 of Mr. Riley's conspiracy affidavit
24 of May 29th, 2020.

25 A. Okay.

1 679 Q. Let me know when you have read
2 that.

3 A. [Witness reviews document.]
4 Yes.

5 680 Q. And by that time, had you
6 contacted borrowers or individuals connected to
7 XTG, Esco, Opus, Alken Basin, Bluberi, Leader, and
8 SFX? So XTG would be Mr. McFarlane. You had
9 contacts with him by then; is that right?

10 A. I had spoken about it to him, yes.

11 681 Q. And Esco Marine, we know you spoke
12 to Mr. Levy?

13 A. Yes.

14 682 Q. Did you ever speak to Mr. Jaross?

15 A. From? Who was he from?

16 683 Q. He was involved in Esco Marine,
17 along with Mr. Levy.

18 A. No, I only spoke to Mr. Levy.

19 684 Q. And Opus Resources?

20 A. I don't recall --

21 685 Q. And that relates to Mr. Molyneux
22 and Mr. Levitt and Mr. Scott, I believe -- I may
23 have the name wrong -- who was the third guarantor
24 who was sued in the United States. Mr. Smith, I'm
25 sorry.

1 A. So --

2 686 Q. We know you had spoken --

3 A. I spoke to Mr. Levitt. I spoke to
4 Mr. Levitt but none of the others.

5 687 Q. All right. And Alken Basin?

6 A. I spoke to --

7 688 Q. Alken Basin, sorry, is
8 Mr. Baumann?

9 A. Yes, I had spoken to Mr. Baumann.

10 689 Q. And Bluberi is Mr. Duhamel?

11 A. I did not speak to him. I spoke
12 to, I think, their counsel.

13 690 Q. I see. And did you speak to
14 someone associated with Leader?

15 A. I don't recall.

16 691 Q. And what about SFX?

17 A. I don't recall.

18 692 Q. And can we turn up Exhibit 199,
19 and this was a proposed story for consideration by
20 Bloomberg?

21 A. I guess so, yes.

22 693 Q. Well, you can do better than guess
23 so. Isn't that the case?

24 A. Well, you are just showing this to
25 me. I think so --

1 694 Q. I guess this is all pretty funny
2 to be doing this, isn't it, sir? Can we agree this
3 is a pitch to Bloomberg?

4 A. You are asking me questions
5 that -- you know, you are shoving a document in
6 front of me and then saying, Is this it? And I am,
7 like, I have to look at this.

8 695 Q. What -- I can't understand what
9 you are saying. Can you slow down a bit? And
10 maybe, sir, you could stop the smirking and the
11 laughing and the commentary and just answer the
12 questions, okay?

13 Is this a pitch that you were making to
14 Bloomberg on November 7th, 2017?

15 A. You know, again, Mr. Moore, I try
16 to respond, and you just talk, and I was trying to
17 explain something. So anyway, it would appear to
18 be a pitch to Bloomberg that I wrote.

19 696 Q. Yes. And did you have
20 conversations with a representative at Bloomberg
21 about this proposed story?

22 A. Yes.

23 697 Q. And did you have email
24 communications with Bloomberg about this proposed
25 story?

1 A. I don't recall.

2 698 Q. All right. In any event,
3 Mr. Lascaris, I'll send you a letter outlining the
4 inquiries I wish to be made, rather than trying to
5 deal with them all, as we discussed, by way of the
6 transcript. I'll deal with that in the way that we
7 discussed a few minutes ago, all right?

8 MR. LASCARIS: Yeah, I just want to --
9 you know, as a note of caution, Mr. Moore, I don't
10 want to receive some 30-page letter which has all
11 sorts of requests in it that you could not possibly
12 have gotten in within the seven hours allocated to
13 you. So I am going to --

14 MR. MOORE: No, no --

15 MR. LASCARIS: -- operate under the
16 assumption that you are going to be restrained in
17 terms of the number of requests that you make and
18 so forth.

19 MR. MOORE: What I am going to be
20 requesting is the production of documents, you
21 know, properly defined with respect to several of
22 the additional Defendants, and a small number of
23 additional people, like a Bloomberg person. It is
24 not going to be a 30-page letter, I can assure you.

25 MR. LASCARIS: Okay. Thank you.

1 BY MR. MOORE:

2 699 Q. All right. Now, I want to ask you
3 about your questions that were put to Mr. Gagnier.
4 And if we could go to paragraph 404 of Mr. Riley's
5 conspiracy affidavit. Let me know when you have
6 had a chance to read that.

7 A. [Witness reviews document.]

8 Okay.

9 700 Q. And in your affidavit, your
10 September 4th, 2020, affidavit, just to give you
11 the cross-reference to these portions of
12 Mr. Riley's affidavit, the appropriate place to
13 look would be page 10 of your affidavit. I don't
14 need -- I'm just letting you know that, and if we
15 can bring it up, that is fine. September 4th.

16 Starting at paragraph 35, you make
17 reference to specific paragraphs of Mr. Riley's
18 affidavit that you wish to comment on, and I am not
19 going to read it all, but you say -- in paragraphs
20 35 and 36, you set out your comment or
21 disagreement, as the case may be, with paragraph
22 403; correct?

23 A. [Witness reviews document.]

24 I am getting a little bit confused
25 here. Sorry.

1 701 Q. Well, I'm just giving you the
2 context. I am going to ask you about some specific
3 paragraphs in Mr. Riley's affidavit surrounding
4 this time frame, and I am just in fairness to you
5 giving you the cross-reference to your responding
6 affidavit where you advert to this part of
7 Mr. Riley's affidavit.

8 A. Okay.

9 702 Q. I am just giving you a chance to
10 look at this to refresh your memory. That is all.

11 A. Sure. Okay.

12 703 Q. All right. And so you see -- you
13 comment upon paragraph 403 in paragraphs 35 and 36,
14 and then you go to paragraph 405, and it goes on
15 from there.

16 So I want to go back to paragraph 404
17 of Mr. Riley's affidavit, which you don't comment
18 on.

19 A. Okay.

20 704 Q. And just read paragraph 404.

21 A. [Witness reviews document.]

22 Yes.

23 705 Q. And let's go to Exhibit 248. So
24 the first page of this exhibit with the number --
25 the page number 4211 in the upper right-hand corner

1 is your initial list of questions dated October 5,
2 2016. So I just want you to take a moment and look
3 at those questions. Let me know when you have read
4 them --

5 A. Any chance they could be --
6 anyway. Okay.

7 [Witness reviews document.]

8 Thank you.

9 706 Q. Let me know when you have reached
10 the end of the part on the screen, and we'll scroll
11 down so you can read them through.

12 And just while you are doing that -- or
13 in the process of doing that, I'll give you a
14 preview. I'm going to be asking you in a moment or
15 suggesting to you in a moment that there is no
16 reference in the questions that you detail here to
17 any lawsuit involving Mr. Glassman and his father.
18 So just with that advance indication in mind,
19 please go through these questions.

20 A. You can go up now.

21 707 Q. And read them to yourself.

22 A. [Witness reviews document.]

23 I am finished.

24 708 Q. Let's keep going then. Scroll
25 down.

1 A. [Witness reviews document.]

2 709 Q. Let me know when you are finished
3 reading this page.

4 A. Okay.

5 710 Q. And before you move further, I
6 have a question about the third-last bullet. It
7 says:

8 "We have noticed in court files
9 [...]"

10 Do you see that?

11 A. Yes.

12 711 Q. So did you take steps or did
13 someone else on your behalf take steps to search
14 court files?

15 A. I did a search, yes.

16 712 Q. Did anyone else? You had a
17 fact-checker as well, as I understand it?

18 A. She would have just reviewed the
19 material I produced. I don't think she
20 independently, as far as I know, didn't check the
21 court file.

22 713 Q. All right. And how did you review
23 the court ones?

24 A. I went down to -- well, it is
25 right beside your office, the courthouse. What is

1 the address again? I think it is the 10th floor or
2 whatever the floor is, 8th floor, and there is a
3 kiosk there, a computer kiosk, and you can punch in
4 people's names or companies and find out what
5 litigation has occurred, and that is what I did.

6 714 Q. And did you -- independent of
7 that, did you get court documents from any other
8 source?

9 A. Yes.

10 715 Q. What other sources for that?

11 A. Well, there was obviously the
12 court file involved in the Wind litigation, so I
13 went down into the bowels of -- I am forgetting all
14 these addresses, but the other courthouse where
15 they hold the records, I went through those. And I
16 think other people gave me some other court
17 documents.

18 716 Q. All right. Were some of the other
19 people, did that include West Face?

20 A. Yes.

21 717 Q. And as best you can -- this may be
22 covered by what I asked before, but in case it
23 isn't, can you identify, to the extent you can,
24 which court documents, or documents, for that
25 matter, you received from West Face?

1 A. I think most of it had to do with
2 the Wind litigation.

3 718 Q. Well, whatever most of it is,
4 Mr. Lascaris, will you make efforts to identify
5 what documents you obtained from West Face and let
6 me know, to the extent you can? Sorry, are you
7 going to take that under advisement, or what is the
8 position?

9 A. I think his microphone turned off.

10 719 Q. You are on mute.

11 U/A MR. LASCARIS: Oh, my apologies. Yes,
12 I said I would take that under advisement.

13 BY MR. MOORE:

14 720 Q. All right. And the fact-checker
15 you used, what was her name again?

16 A. Catherine -- hold on.

17 721 Q. It is in Mr. --

18 A. I always forget Catherine's last
19 name.

20 722 Q. -- Boland's reply affidavit. Was
21 that person at Dowling Research?

22 A. Yes, that's right.

23 723 Q. And do you have communications
24 with her in which you outline or identify the areas
25 that you want her to fact-check? How does that

1 work?

2 A. Well, she gets -- yeah, Catherine
3 Dowling. She gets -- so a copy of the article.

4 724 Q. Yes.

5 A. Usually when I do pieces for The
6 Globe and Mail, it has got footnotes, so every line
7 is footnoted about where the origins of the
8 research came from. I don't think I did it in the
9 case of the Canadian Business piece because of time
10 constraints.

11 So she would get a copy of the
12 completed article, the one they were planning to
13 publish, and she would get all of the documents
14 that we were referring to and interviews referred
15 to in that article.

16 So she doesn't get all the research
17 because there is obviously mountains of research
18 that we didn't write about. So she would only get
19 the research that was referenced in the article, so
20 whether that is court documents or interview
21 transcripts or media articles, so she would receive
22 that. And then I would have a conversation -- or I
23 had a conversation with her, and we would sort of
24 go through it, and I would -- in this case, I would
25 have probably given her more pointers of where to

1 find things because I don't think -- this version
2 was not footnoted.

3 And she is also given a list of
4 contacts, people she has to call to fact-check
5 things. So she calls everybody and she says, Did
6 you talk to Mr. Livesey? Did you say this?

7 And then she spends a few days working
8 on it and then eventually reports back to me, and
9 we go through it, and we have a discussion on what
10 she has found different from my version. And it
11 then it goes to the editor.

12 725 Q. All right. And, Mr. Lascaris, I
13 am not sure whether those documents evidencing
14 those communications are contained in your client's
15 affidavit of documents, so 409, and then there is a
16 supplemental set of about 11.

17 Could I ask you to tell me this.
18 Firstly, whether -- if the communications that
19 Mr. Livesey has just alluded to, if they are
20 contained in the Exhibit A listing, just direct me
21 to where those are, and if they are not contained,
22 I would ask that they be produced. You'll take
23 that under advisement, just to save time, if you
24 want.

25 U/A MR. LASCARIS: Yes, I'll do that, under

1 advisement.

2 BY MR. MOORE:

3 726 Q. Okay. And let's carry on with
4 this list of questions. And go to the next page.

5 MR. LASCARIS: By the way, Mr. Moore,
6 just to be clear, your last request was with
7 respect to Ms. Dowling specifically?

8 MR. MOORE: Yes, yes, that's correct.

9 MR. LASCARIS: Okay.

10 BY MR. MOORE:

11 727 Q. Well, I am not sure that is her
12 name. Her first name is Catherine, and it is
13 Dowling Research. So if Dowling is her last name,
14 that is right.

15 Was there any other fact-checker that
16 was involved in this process, Mr. Livesey, or just
17 her?

18 A. No, the -- she only fact-checked
19 the version for Canadian Business, and then when
20 The Globe took it on, they assigned some of their
21 own staff on the magazine to fact-check it. They
22 didn't use an outside fact-checker. They did it
23 internally.

24 728 Q. All right. So if you can take a
25 moment and read the page that we scrolled down to.

1		A. [Witness reviews document.]
2	729	Q. And let me know when you are
3		finished.
4		A. [Witness reviews document.]
5		Okay.
6	730	Q. Okay. Let's go on and let's keep
7		scrolling down so Mr. Livesey has a chance to read
8		all of the questions.
9		A. [Witness reviews document.]
10		I think you just went up a bit too
11		much.
12	731	Q. So you need us to go back up a
13		bit?
14		A. Yeah, just a bit.
15		Okay. Thank you.
16		[Witness reviews document.]
17		Okay.
18	732	Q. Keep going.
19		A. [Witness reviews document.]
20		Okay.
21	733	Q. Just keep going.
22		A. [Witness reviews document.]
23	734	Q. All right. We'll stop there. So
24		actually the page there reflects the exchange -- an
25		earlier exchange between yourself and Mr. Gagnier,

1 and Mr. Gagnier -- I won't read it all, but
2 Mr. Gagnier is asking the questions being put, and
3 that is indeed what followed in what we just looked
4 at on October 5; correct?

5 A. Okay.

6 735 Q. Well, you don't have to agree with
7 me. Is that a yes?

8 A. You are saying -- sorry, repeat
9 the question. I apologize.

10 736 Q. So the exchange between yourself
11 and Mr. Gagnier ended with Mr. Gagnier asking you
12 are you going to provide him with questions, and he
13 was asking when to expect the questions and the
14 fact-checking. That is his email of September
15 20th, right?

16 A. Yes, I see that.

17 737 Q. And then that is followed about
18 two weeks later by your October 5 detailed list of
19 questions that you have just read through, the
20 previous several pages, right?

21 A. Yes.

22 738 Q. All right. And am I correct in my
23 understanding that this was the first time you had
24 ever put any questions to anyone at Callidus or
25 Catalyst?

1 A. I think so.

2 739 Q. And you would agree with me there
3 is a lot of detail in those questions, right?

4 A. Yes.

5 740 Q. A large number of detailed
6 questions; correct?

7 A. Yes.

8 741 Q. And given the fact that there is
9 outstanding litigation pending, I take it you would
10 agree it would take awhile for anybody to digest
11 those questions and put together answers; would you
12 agree with that?

13 A. I -- well, I don't know how -- I
14 apologize, I don't know how to answer your question
15 because you are saying because of outstanding
16 litigation. I don't know -- I don't know how long
17 it would take anyone, but it would take more than a
18 day or two perhaps, yes.

19 742 Q. Well, let me get it straight. It
20 would take more than a day or two; is that your
21 answer?

22 A. Yes.

23 743 Q. I just want to make sure I have
24 got your answer right.

25 A. Yes.

1 744 Q. So you think -- let me be sure I
2 understand. Are you saying it would take maybe a
3 day or two, not a lot longer than that? Is that
4 what you are suggesting, sir?

5 MR. LASCARIS: Mr. Moore, you re-asked
6 him the question already, and he answered again
7 yes. This is the third time you are asking the
8 question.

9 BY MR. MOORE:

10 745 Q. So I want to make sure. Are you
11 saying that you would expect some people to be able
12 to answer those questions in a day or two?

13 MR. LASCARIS: That's the fourth time
14 you have asked the question, Mr. Moore.

15 BY MR. MOORE:

16 746 Q. I don't think that is exactly the
17 question I asked. Is that your answer?

18 A. Okay. So I don't know the
19 resources of Callidus or Catalyst. I don't know
20 how many people they would have put on this. I
21 don't know how accessible they are to the
22 materials. So it is impossible for me to know.

23 So your responding with disbelief is
24 based on -- I have no idea how long it would take
25 them. I mean, why would I? I don't know the

1 resources that Callidus -- how quickly they can
2 access things. I am not suggesting --

3 747 Q. All right. That is fine.

4 A. I am not suggesting it would have
5 taken a shorter period of time, but it could have
6 taken more than a day or two, probably, yes.

7 748 Q. All right. In any event, in
8 relatively short order, within a month, you are
9 proposing an article premised on the conclusion
10 that there is fraud going on, right?

11 A. What?

12 749 Q. We saw your proposal to Bloomberg
13 about a question, is Glassman committing fraud, or
14 words to that effect, right?

15 A. That is --

16 750 Q. That is the gist of the article
17 you are proposing within a month, right?

18 A. No, that is a year later.

19 751 Q. Let's keep going. Let's not
20 debate it.

21 A. No, no, no, no. Wait a second.
22 Wait a second. You are getting your timeline mixed
23 up. This is now September -- fall of 2016.

24 752 Q. I'm sorry. You are right.

25 A. The Bloomberg proposal was the

1 following year in November of 2017.

2 753 Q. You are right. You are right.
3 You are right. Let's keep going. Let's keep
4 going.

5 So let's go to Mr. Riley's affidavit,
6 paragraph 405 -- or sorry. Yes, paragraph 405 and
7 406, and I would ask you to read those.

8 A. [Witness reviews document.]

9 Okay.

10 754 Q. So let's go to 250, Exhibit 250.
11 You see this is -- let's go up a little further --
12 an email from yourself to Mr. Gagnier dated
13 November 22nd. You say:

14 "We found a 1982 court action
15 launched by Mr. Glassman and one of
16 his sisters against their father
17 [...] does Mr. Glassman wish to
18 comment on this suit and why he and
19 his sibling felt it was necessary to
20 launch it?"

21 Skipping a few words.

22 Do you see that?

23 A. Yes.

24 755 Q. Who told you about that court
25 action?

1 A. Who told me? It is in the court
2 files.

3 756 Q. I didn't ask you that.

4 A. I don't recall --

5 757 Q. Who told you about that court
6 action, sir?

7 A. I don't recall, Mr. Moore.

8 758 Q. Did Mr. Panet tell you?

9 A. I don't recall, Mr. Moore.

10 759 Q. Did Mr. Boland tell you?

11 A. I don't recall.

12 760 Q. In any event, it wasn't true. You
13 hadn't found the action. You hadn't found it in
14 the court files, had you?

15 A. I don't recall.

16 761 Q. So do you recall that your
17 fact-checker asked West Face -- the fact-checker
18 was asking another fact-checker at West Face to
19 provide copies of the court documents; do you
20 remember that, sir?

21 A. What?

22 762 Q. Do you remember that your
23 fact-checker then asked West Face to become the
24 fact-checker to provide copies of the court files?
25 Do you remember that?

1 A. No, I don't know what you are
2 talking about.

3 763 Q. Okay. Well, let's look at
4 Mr. Boland's responding affidavit at -- can we just
5 turn it up. Let's go to paragraph 68.

6 A. Okay, 68.

7 764 Q. Let me know when you are finished
8 reading 68.

9 A. [Witness reviews document.]
10 Okay.

11 765 Q. And then read paragraph 69.

12 A. Yes, I have read that.

13 766 Q. And does that refresh your memory
14 that Mr. Panet was the one who provided the court
15 file access?

16 A. Sure.

17 767 Q. Well, I'm asking you. You don't
18 have to agree with me. I'm just asking you.

19 A. That might be true, yes. I don't
20 know. You are asking me about events from a very
21 long time ago, so --

22 768 Q. Well, we'll help you. I'll help
23 you. If you go to Exhibit F in this affidavit,
24 page 46 in the upper right-hand corner of the
25 document.

1 A. I'm a little bit puzzled of what
2 these questions have anything to do with anything,
3 but anyway.

4 769 Q. Well, don't you worry about that,
5 sir. Someone else will sort that out. It is great
6 you find this so funny. I wish you would just
7 concentrate on the questions and answers. We'll
8 get through it a little more easily. I also wish
9 we had a video of this whole cross-examination, but
10 that is another matter.

11 So do you see page 46? Let's expand it
12 a little bit.

13 A. Well, you ask questions and then
14 you wander off, you know, and it is very hard to
15 follow what you are talking about, so I have long
16 lost the train of thought here. When you start
17 off --

18 770 Q. Well, your train of thought --

19 A. You started --

20 771 Q. Sorry, let me know when you
21 finish.

22 A. You started off with a question
23 about the fact-checker doing some double dipping,
24 checking or something or other, but I am long lost
25 what this has to do with anything. Anyway, go on.

1 772 Q. Are you finished, sir?

2 A. Yes.

3 773 Q. Okay. I know it is very, very
4 confusing, so I'll make sure you understand my
5 question. The question is whether you remembered
6 that your fact-checker had asked West Face to be a
7 fact-checker in respect of the lawsuit by
8 Mr. Glassman and his sister --

9 A. Well, the --

10 774 Q. Let me finish, sir.

11 A. Yes, yes.

12 775 Q. -- against Mr. Glassman's father
13 that is referred to in the questions. I asked you
14 whether you remembered that West Face became the
15 fact-checker for that, and you said you didn't
16 know, maybe not, maybe yes. With reference to this
17 material, do you now acknowledge that that
18 happened?

19 A. Dimitri, can you tell me what he
20 is asking me? I don't understand what he is asking
21 me. Do you understand what he is asking me?

22 MR. LASCARIS: Bruce, if you need the
23 question to be clarified, please ask.

24 THE DEPONENT: I am hoping someone else
25 who is listening to this understands the question

1 he is asking me. So you are asking me the
2 fact-checker asked West Face for this lawsuit, and
3 I don't know anything about that. That is what
4 Ms. Dowling was doing. Why would I have any
5 knowledge of what she is necessarily doing? As I
6 told you, she goes off and does her fact-checking
7 on her own.

8 BY MR. MOORE:

9 776 Q. And reports back to you; correct?
10 That is what you explained before.

11 A. No, she reports back to me -- she
12 says, Okay, you wrote this sentence, and this is
13 what I have -- and she doesn't necessarily -- I
14 mean, it depends if she found -- the only thing she
15 reports back to me is if she found in my draft, she
16 differed in her fact-checking with something I
17 wrote, so she found facts that were contrary or
18 different. So that is all she -- you know, we
19 don't go through every line saying, Yes, you got
20 that right, you got that right, you got that right.
21 She goes, When I checked this fact, I found; when
22 you wrote this, it was more like this. And then we
23 have a discussion and sometimes an argument
24 depending on what it was, and we come to some
25 resolution and then we move on.

1 So no, she doesn't call me up and says,
2 I called all these people and I asked for all these
3 documents. She does not do that.

4 777 Q. Do you agree or disagree that you
5 got the documentation and the links with respect to
6 the lawsuit by Mr. Glassman and his sister from
7 West Face? Do you agree or disagree?

8 A. I don't know --

9 778 Q. Let me finish. And if that is a
10 terribly confusing question for you at 4:35 or 4:30
11 this afternoon, Mr. Lascaris, I am content that you
12 answer that question by way of undertaking.

13 A. You are asking me a question about
14 whether or not I received a document --

15 779 Q. Mr. Lascaris, is that
16 satisfactory?

17 U/T MR. LASCARIS: We'll answer it by way
18 of undertaking to the best of our ability.

19 BY MR. MOORE:

20 780 Q. That is fine. And can you
21 clarify, sir, with reference to this page 46, why
22 it was that any fact-checking was going on about a
23 family law file involving Laura MacDonald?

24 A. Who?

25 781 Q. Well, read the page, sir, the top

1 of the page.

2 A. I can't see the page.

3 782 Q. Well, okay, sir --

4 A. It is tiny print. You have just
5 shoved another document in front of me and said --
6 now you are saying -- you asked me a question,
7 without asking if I have even read the email.

8 [Witness reviews document.]

9 Okay. So what is your --

10 783 Q. Do you see that?

11 A. Yes.

12 784 Q. And had you asked Mr. Panet -- did
13 you ask Mr. Panet about information regarding Laura
14 MacDonald?

15 A. No.

16 785 Q. Why was he doing this?

17 A. He did it on his own volition.

18 786 Q. He just out of the blue one day
19 decided to send you this information? You hadn't
20 asked him about anything --

21 A. That's right.

22 787 Q. -- on the subject? Is that your
23 evidence?

24 A. That is my evidence.

25 788 Q. I see.

1 A. But as I also explained in my
2 affidavit, at this point the article was finished,
3 and I don't think -- and I don't -- let me see.
4 Yeah, and I don't -- I didn't even open this file.
5 I didn't even look at it. I didn't see this
6 material until it appeared in Mr. Riley's affidavit
7 this year. So, you know, I didn't even -- I didn't
8 ask for it. I didn't open it. I knew nothing
9 about it. And it wasn't relevant to my article
10 because my article was finished by then.

11 789 Q. So just to be clear, you have no
12 idea why Mr. Panet sent this to you; is that what
13 you are saying?

14 A. That is what I am saying.

15 790 Q. And as far as the court documents
16 about Mr. Glassman's lawsuit against his father,
17 how did you get those documents, sir?

18 A. I would have to check my records.

19 791 Q. All right. Will you undertake to
20 let me know how you got those documents?

21 U/T MR. LASCARIS: We will make best
22 efforts to determine that, yes.

23 BY MR. MOORE:

24 792 Q. And when you got those documents?

25 U/T MR. LASCARIS: The same answer.

1 BY MR. MOORE:

2 793 Q. And from whom you first heard
3 anything about the subject of a lawsuit by
4 Mr. Glassman and his sister against their father?
5 Prior to getting the documents, where did you get
6 that information from? Will you undertake to
7 advise of that?

8 U/T MR. LASCARIS: If we can confine it to
9 reasonable efforts, we will provide the answer to
10 that.

11 MR. MOORE: All right. I want to take
12 just a two-minute break, review my notes. We'll
13 come back. There are a couple of wrap-up
14 questions, then we will be finished. Actually,
15 let's take five minutes. We'll come back at 10 to
16 5:00 and then we'll finish it up before 5 o'clock.

17 MR. LASCARIS: Thank you.

18 -- RECESSED AT 4:39 P.M.

19 -- RESUMED AT 4:47 P.M.

20 BY MR. MOORE:

21 794 Q. So, Mr. Livesey, I just have a few
22 more questions.

23 A. Sure.

24 795 Q. Did you or any of your companies
25 directly or indirectly ever engage in any

1 short-selling of Callidus stock?

2 A. No.

3 796 Q. Did you ever do so or your
4 companies ever do so on anyone else's behalf?

5 A. No.

6 797 Q. You testified earlier about
7 downloading the West Face report and perhaps the
8 Veritas report as well. Will you undertake, in
9 case it isn't covered by what I asked before, to
10 provide the specific URL of the website from which
11 you downloaded either of those reports?

12 MR. LASCARIS: We'll make --

13 THE DEPONENT: Just as a quick note,
14 the BNN eventually took the report offline. I
15 think your client complained to them, so they took
16 it down eventually.

17 MR. LASCARIS: Bruce, do you have the
18 URL? Do you know, as you sit here, whether you
19 have a record of the URL?

20 THE DEPONENT: No, I do not.

21 BY MR. MOORE:

22 798 Q. I just ask that you inquire and
23 let me know, or you can take it under advisement.

24 U/T MR. LASCARIS: We'll make reasonable
25 inquiries and let you know.

1 BY MR. MOORE:

2 799 Q. All right. We have covered I am
3 going to write you a letter about specific
4 inquiries with other Defendants and a few other
5 individuals and rather than trying to be that
6 precise at 5 o'clock.

7 Did you ever speak to Mr. Copeland
8 about any issues involving Callidus?

9 A. No.

10 800 Q. What about Catalyst?

11 A. I never spoke to Mr. Copeland
12 about anything ever. I have never talked to him or
13 communicated with him.

14 801 Q. What about Ms. McNish?

15 A. No, I had no communication with
16 Ms. McNish about anything to do with Callidus or
17 Catalyst.

18 802 Q. So let me be absolutely clear. Is
19 it your evidence that you had no communications
20 directly or indirectly with anyone from The Wall
21 Street Journal regarding -- or in advance of the
22 story that they published -- or Dow Jones
23 published, I should say, in August 2017?

24 A. That's correct.

25 803 Q. So do I understand that -- I take

1 it you know that Dow Jones has asserted
2 journalistic source privilege over certain of their
3 communications with the people they spoke to about
4 that story; you are aware of that?

5 A. No.

6 804 Q. Okay. Well, Mr. Lascaris, you are
7 aware of that, right?

8 MR. LASCARIS: Yes.

9 MR. MOORE: All right. So do I
10 understand, Mr. Lascaris, that your client,
11 Mr. Livesey, is not asserting or claiming any
12 journalistic source privilege over any
13 communications with Dow Jones or anyone associated
14 with that Dow Jones article?

15 MR. LASCARIS: That's correct.

16 BY MR. MOORE:

17 805 Q. All right. And could I ask you to
18 look at your production, Mr. Livesey's production,
19 BLIV266.

20 MR. LASCARIS: Sorry, could you give
21 that to me again?

22 MR. MOORE: 266.

23 MR. LASCARIS: Okay.

24 MR. MOORE: We can do this by way of
25 undertaking. It is a list of comments and --

1 MR. LASCARIS: And what is it? Do you
2 want me to look it now?

3 BY MR. MOORE:

4 806 Q. Well, we can bring it up. While
5 we are here, we can bring it up. It will just take
6 a minute.

7 So, Mr. Livesey, this is your
8 production number 266.

9 A. Okay.

10 807 Q. Do you recognize this?

11 A. Not really.

12 808 Q. Well, it came from your
13 productions. Will you confirm that this is a
14 document that you prepared and let me know?

15 U/T MR. LASCARIS: We'll make best efforts
16 to provide that answer, yes.

17 THE DEPONENT: I didn't prepare this.
18 I don't think I prepared this, no.

19 MR. LASCARIS: Well, it appears we have
20 an answer.

21 BY MR. MOORE:

22 809 Q. Well, can you explain how it is in
23 your productions?

24 A. Well, somebody gave it to me, but
25 I didn't prepare this.

1 810 Q. Who gave it to you?

2 A. I would have to check. Like
3 this --

4 811 Q. Will you undertake to check and
5 let me know?

6 A. There is a lot of stuff here that
7 is like I know -- yeah, like I don't recall seeing
8 this, quite frankly, and I didn't prepare it.

9 812 Q. Well, the reason I'm asking about
10 it is because it is document 266 in your
11 productions. So will you make further inquiries
12 and let me know where this came from?

13 A. Sure.

14 U/T MR. LASCARIS: We'll make best efforts
15 to provide you the answer.

16 BY MR. MOORE:

17 813 Q. And obviously it came into your
18 possession at some point in time. Otherwise, it
19 wouldn't be listed in your Schedule A productions.

20 MR. LASCARIS: Are you speaking to me
21 or Mr. Livesey?

22 BY MR. MOORE:

23 814 Q. I'm just making an observation.
24 My question is, if you say -- you are going to
25 inquire and see where this came from. You may want

1 to correct your answer if on reflection you realize
2 that you did prepare it. Assuming you didn't
3 prepare it and your answer remains the same, can
4 you help me out and let me know who did prepare it
5 and where it came from?

6 U/T MR. LASCARIS: If we can through
7 reasonable effort, we'll let you know.

8 BY MR. MOORE:

9 815 Q. And once you received it, when you
10 received it, did you share it with anyone else?

11 A. No. I don't recall. I have a
12 vague idea of where I might have got it, but I have
13 to check because it is too vague, but I definitely
14 didn't share it with anyone.

15 MR. LASCARIS: Okay. Well, let's not
16 speculate now, Bruce. Why don't you do your
17 checking and then we'll provide that answer.

18 THE DEPONENT: Sure.

19 BY MR. MOORE:

20 816 Q. And the reference "SS" three lines
21 down, and it says:

22 "A PE due-diligence firm [...]"
23 et cetera.

24 Do you know who that is referring to?

25 MR. LASCARIS: Sorry, what line is

1 this, Mr. Moore?

2 MR. MOORE: Three lines down.

3 MR. LASCARIS: Three lines from the
4 top?

5 BY MR. MOORE:

6 817 Q. Yes -- or, sorry, I have got a
7 different form of it. The third entry down under
8 "Source".

9 A. So is it "A PE [...]" --

10 818 Q. Under the word "Gerald (Bluberi
11 CEO)", and then it says "SS"; do you see that?

12 MR. LASCARIS: Sorry, "Gerald"? Oh,
13 yes, right under his name. Yes, go ahead.

14 BY MR. MOORE:

15 819 Q. And to the right of that under the
16 notes", it says:

17 "A PE due-diligence firm

18 [...]",

19 et cetera.

20 MR. LASCARIS: Okay. And your question
21 is?

22 BY MR. MOORE:

23 820 Q. So what is "SS" referring to, do
24 you know?

25 A. No.

1 821 Q. All right. Well, again, I'm
2 asking you these questions at 5 o'clock on a Friday
3 night. So if on further reflection you are able to
4 provide any clarification as to who that is or deal
5 with my other questions, will you do that?

6 U/T MR. LASCARIS: We'll do that,
7 Mr. Moore.

8 BY MR. MOORE:

9 822 Q. All right. Well, when this
10 document refers to "According to BL" -- like as an
11 example, if you go two-thirds of the way through
12 the "Source", next to "Joe Lewis, Albany Bahamas",
13 you will see to the right of that it says
14 "According to BL"?

15 A. Yes.

16 823 Q. Do you agree with me that that is
17 referring to Bruce Livesey?

18 A. No.

19 824 Q. You don't agree with that?

20 A. It is not referring to me.

21 825 Q. Is there some other person with
22 the initials "BL" --

23 A. Yes.

24 826 Q. -- who would be a logical source
25 of information in respect of these types of

1 matters --

2 A. Yes.

3 827 Q. -- that you are aware of?

4 A. Yes.

5 828 Q. Who?

6 A. Well, you must know. This is your
7 lawsuit. You are suing him.

8 829 Q. Who is the other "BL"?

9 A. You don't know the other "BL"?
10 Look at your own list of who you are suing.

11 830 Q. Well, why don't you -- you know,
12 it is 5 o'clock. Why don't you tell me? You are
13 so smart. Why don't you tell me, and we can finish
14 this question?

15 A. I presume it is Bruce Langstaff.

16 831 Q. I see. Okay. Thank you. Subject
17 to -- is that your understanding of who that is?
18 That is what you say?

19 A. Well, no, I don't know who it is.
20 It is not me. You asked me who it could be. It
21 could be Bruce Langstaff, given that that's the
22 other "BL" --

23 832 Q. All right. Thank you. I much
24 appreciate your insight. Thank you, sir. Subject
25 to the questions that have been refused or taken

1 under advisement for the most part and any
2 undertakings and any follow-up in connection with
3 those matters, those are my questions. Thank you.

4 MR. LASCARIS: Thank you, Mr. Moore.

5 THE DEPONENT: Thank you.

6 MR. LASCARIS: Have a good weekend.

7 MR. MOORE: And we'll reserve Exhibit 1
8 for the documents that we have referred to during
9 the cross-examination, and we'll assemble them in
10 the same practice as has been used with the other
11 cross-examinations.

12 MR. LASCARIS: That is fine.

13 EXHIBIT NO. 1: Electronic document
14 brief of exhibits referred to during
15 the Cross-Examination of Mr. Livesey.

16
17 -- Adjourned at 5:01 p.m.
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REPORTER'S CERTIFICATE

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

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

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

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

Dated this 24th day of December, 2020.



NEESONS, A VERITEXT COMPANY

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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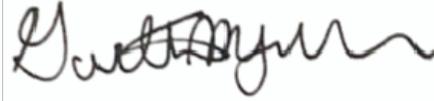
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This is Exhibit "C" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "D. [unclear]", written over 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

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."	See answer to question 2 below.
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 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>Voorheis & Co. LLP and Mr. Livesey continue to assert litigation privilege over: (1) the final report Mr. Livesey provided to Voorheis & Co. LLP in or about June 2015; and (2) a partial draft, dated June 26, 2015, of the final report he provided to Voorheis & Co. LLP.</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>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
3.	28-30	94-96	UA	To produce the tape recordings of Mr. Livesey's interviews with Mr. Boland and with Mr. Panet.	<p>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 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>
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. Copies of those emails are being produced herewith.</p>

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					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.
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. 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

No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
					event, Mr. Livesey is not in possession of his phone records for the period January 1, 2015 to December 31, 2018.
8.	51-52; 59; 184-185	184; 206-208; 670	UA	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>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 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 "D" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "G. [unclear]", written over a horizontal line.

A Commissioner, etc.

To: DeCloet, Derek[DDeCloet@globeandmail.com]
Bcc: Jim Riley[jriley@catcapital.com]; Rocco DiPucchio[rdipucchio@counsel-toronto.com]
From: Dan Gagnier[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7F77CE12BA2B48CCA322370CE3BB4ACB-DG]
Sent: Wed 3/29/2017 1:06:07 PM (UTC)
Subject: As discussed

[From Bruce - follow up queries.msg](#)
[RE From Bruce Livesey - re list of questions.msg](#)
[Letter to Bruce Livesey - November 24 2016.PDF](#)
[Questions for Catalyst DG.pdf](#)
[Appeal Court Decision re Catalyst v WF Veritas.pdf](#)
[Letter to David Miller.pdf](#)
[Original Livesey.pdf](#)

Derek,

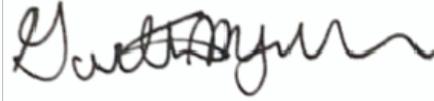
Thanks again for taking the time to discuss the inquiry from Bruce Livesey to Catalyst Capital Group regarding a story under consideration by ROB Magazine. As discussed, attached is the previous correspondence with Mr. Livesey and an account of his conduct and representations. The letter from counsel to Mr. Livesey provides a detailed timeline of events. His original questions are attached and then, in another document, our written responses to aggregated questions. An email of follow up questions from Livesey is included – those questions are addressed in the letter from counsel to Mr. Livesey. A letter to David Miller, GC of Rogers, also provides some additional perspective.

I am also including the decision by the Appeal Court in relation to the defamation litigation against West Face and Veritas. Beyond being a recent development, this was something that litigation counsel spent time trying to explain to Mr. Livesey in terms of context and that these pending decisions impact the ability to draw conclusions on the arguments of both parties involved (the decision had not yet been rendered). As you can see by the decision, the Court chastised both the lower court judge and West Face – whereas Mr. Livesey was dismissive of the discussions around this appeal and the appeal of the Moyse decision – both rooted in errors of law. His response, as you can see by the attached emails, was to follow up with a number of questions around unproven claims.

Let me know when you have had a chance to review and discuss further.

Best,
Dan
646-569-5897

This is Exhibit "E" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "D. [unclear]", written over a horizontal line.

A Commissioner, etc.

In The Matter Of:
Callidus Capital Corp. vs.
Esco Marine

CONFIDENTIAL - Andrew Levy
August 30, 2017
Protective Order



Bingham Farms/Southfield • Grand Rapids
Detroit • Ann Arbor • Flint • Lansing • Jackson • Mt. Clemens • Saginaw • Troy

Original File LEVY_CONFIDENTIAL - ANDREW.txt
Min-U-Script® with Word Index

Page 1

1 - - - - -x
2 In the Matter of
3 CALLIDUS CAPITAL CORP.,
4 Plaintiff,
5 -against-
6 ESCO MARINE,
7 Defendant.
8 - - - - -x
9 605 Third Avenue, Suite 230
10 New York, New York 10158
11 August 30, 2017
12 10:24 a.m.
13 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
14
15 INTERVIEW of ANDREW LEVY, held at the above time
16 and place, taken before David Novick, a Shorthand
17 Reporter and Notary Public of the State of
18 New York.
19
20
21
22
23
24
25 * * *

Page 2

1 APPEARANCES:
2
3 DICKINSON WRIGHT, L.L.P.
4 Attorneys for CALLIDUS CAPITAL CORP.
5 199 Bay Street
6 Suite 2200
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8 Toronto, Ontario M5L 1G4
9 Ph: (416) 777-0101
10 BY: JOHN D. LESLIE, ESQ.
11 E-mail: jleslie@dickinsonwright.com
12
13 ATLAS, HALL & RODRIGUEZ
14 Attorneys for ESCO MARINE
15 818 Pecan Avenue
16 McAllen, Texas 78501
17 Ph: (956) 632-8262
18 BY: BRENT A. BISHOP, ESQ.
19 E-mail: bbishop@atlashall.com
20
21 ALSO PRESENT:
22 JAMES A. RILEY
23 DORON YITZCHAKI
24 JOE BARRION (Videographer)
25 * * *

Page 3

1 THE VIDEOGRAPHER: One moment. This begins
2 Media Number 1 of Andrew Levy in the Matter of
3 Callidus Capital Corp. versus Esco Marine. This
4 meeting is being held at Hodgson Russ, LLP on
5 8-30-2017. My name is Joe Barrion from U.S.
6 Legal Support; I am the video specialist. The
7 court reporter today is David Novick, also with
8 U.S. Legal Support. We are going on the record
9 at 10:24 a.m. Counsel will now state their
10 appearance for the record.
11 MR. BISHOP: Go ahead, sir.
12 MR. LESLIE: John David Leslie for Callidus.
13 MR. BISHOP: Brent Bishop for Andrew Levy
14 and Richard Jaross.
15 THE VIDEOGRAPHER: Will the court reporter
16 please swear in the Witness?
17 (By the court reporter:)
18 Q. Would you please state your full name for
19 the record?
20 A. Andrew Levy.
21 Q. Would you please state your business address
22 for the record?
23 A. 21 Benedict Place, Greenwich, Connecticut
24 06830.
25 MR. LESLIE: First, just on the record,

Page 4

1 Mr. Bishop, we confirmed this is not a
2 deposition; this is an under-the-oath interview
3 for the purposes of settlement discussions.
4 MR. BISHOP: Yes, sir.
5 EXAMINATION BY
6 MR. LESLIE:
7 Q. Mr. Levy, you're a Defendant in an action
8 that was brought by Callidus, correct?
9 A. Yes.
10 Q. And that is in relation to a guarantee that
11 you provided to Callidus?
12 A. Yes.
13 Q. And that was in relation to a company that
14 you were involved with called Esco Marine?
15 A. Yes.
16 Q. And as I understand it, Esco Marine is now
17 in bankruptcy?
18 A. It is.
19 Q. And with respect to the claim that was
20 brought by Callidus as against you and your
21 guarantee, you delivered defenses and
22 counterclaims, correct?
23 A. Correct.
24 Q. And for the purposes of this interview, as
25 we discussed with your Counsel, I'm not here to get

Page 5

1 into those defenses and counterclaims. Those have
 2 been litigated up to this point and hopefully will
 3 not be litigated any further after today. So I'm
 4 not going to get into any of those defenses or
 5 counterclaims. But to set this up, in reviewing
 6 your defenses and counterclaims and reviewing other
 7 defenses and counterclaims from other guarantors in
 8 other actions in which Callidus is involved, those
 9 defenses and counterclaims are very similar in a
 10 number of these actions. And I'm not one to
 11 generally believe in coincidences, you know, as I
 12 get older and older in this practice and in this
 13 business; and so, that leads me to believe that a
 14 number of the guarantors in a number of the
 15 Callidus actions have spoken to one another and
 16 have had contact with one another regarding their
 17 claims, their defenses, and their strategies in
 18 moving forward. And so, that's my setup to the
 19 questions to you; and my question to you is, have
 20 you had contacts -- any contact whatsoever -- with
 21 other guarantors in other actions for which
 22 Callidus has brought?
 23 **A. Yes.**
 24 Q. And what guarantors are those?
 25 **A. Those are Fortress Resources, Darryl Levitt,**

Page 6

1 **and another South African, sort of a, French name**
 2 **-- Molyneux.**
 3 Q. Richard Molyneux?
 4 **A. Richard Molyneux. And Gary Smith Opes**
 5 **Resources -- same company, I believe;**
 6 **Jeff McFarlane from the Xchange Technologies,**
 7 **Kevin Baumann, Alken Bain Drilling, Gerald Duhamel,**
 8 **Bluberi Gaming; I also spoke to prior -- someone in**
 9 **the prior action, Sherwood Hockey, an attorney**
 10 **Sandra McNeilly (phonetic) -- let me turn this**
 11 **phone off. There's a flood alert here. It looks**
 12 **good to me.**
 13 Q. Does -- so Sandra McNeilly? And she was
 14 with -- is that Sherwood Park?
 15 **A. Sherwood -- I don't know, Sherwood Hockey.**
 16 **I have it Sherwood Hockey; you know, she was their**
 17 **attorney.**
 18 Q. So anyone else of the guarantors?
 19 **A. I believe one of Richard -- I believe**
 20 **Richard might have spoken with Jerome Harvey**
 21 **(phonetic) of J. Harvey Industries. I did not.**
 22 Q. Did you have any contact with the -- with
 23 Blair Bury of Midwest Asphalt?
 24 **A. No.**
 25 Q. Blaine Johnson of Midwest Asphalt?

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1 **A. No.**
 2 Q. Jeffrey Reed of Midwest Asphalt?
 3 **A. No, I don't know. I've never heard of that**
 4 **company.**
 5 Q. David -- Dr. David Genecov -- that's
 6 G-E-N-E-C-O-V -- of Forest Park Medical?
 7 **A. I believe either -- I think Mr. Jaross might**
 8 **have spoken with him. I don't think I did, but I**
 9 **believe I had some contact with him of some sort,**
 10 **but not much.**
 11 Q. Dr. Robert Wyatt?
 12 **A. He's of the same --**
 13 Q. Same: Forest Park?
 14 **A. Yeah. No.**
 15 Q. No? Okay. Dr. Wade Baker? Barker. Sorry.
 16 **A. No. I don't recall any of those names, but**
 17 **I do recall having some contact with them.**
 18 Q. So we've indicated that you have had contact
 19 with these guarantors. How did that contact come
 20 about? Who initiated it?
 21 **A. That's an interesting question.**
 22 Q. Good. I'm glad I come up with an
 23 interesting question now and then.
 24 **A. Right. I don't know if we initiated it.**
 25 **Somehow we -- I don't know. I think we were**

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1 **definitely called by some folks in Canada, a fellow**
 2 **name Bruce Livesy from Mosaic. You probably know**
 3 **who he is; he's tied up with WestFace, and they**
 4 **wouldn't -- they had done a report, WestFace, and**
 5 **they wouldn't give it to us, because I think**
 6 **Callidus was suing them for defamation or**
 7 **something. They wouldn't give us the report, but**
 8 **we -- it was in the public record somewhere on some**
 9 **case, so we got a copy of that report.**
 10 Q. Let me just step back for a second, because
 11 I want to be clear on this. So Bruce Livesy, do
 12 you know the spelling of Mr. Livesy's name?
 13 **A. Livesy, I think it is. L-I-V --**
 14 **MR. RILEY: L-I-V-E-S-Y.**
 15 **A. Yeah, I've meet him in person.**
 16 Q. And you say he was with the company called
 17 Mosaic?
 18 **A. That's what's in my notes.**
 19 Q. And you were saying that he initiated a
 20 phone call with you?
 21 **A. He did, at some point, initiate a phone call**
 22 **with me.**
 23 Q. And do you recall, about, from a timeframe,
 24 when he initiated that phone call with you?
 25 **A. It was early on in this case, sometime in 20**

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1 -- we'll say mid-2015, somewhere in there.
 2 Q. And --
 3 A. **Or earlier.**
 4 Q. And he, I'm assuming, gave you a call on the
 5 phone?
 6 A. **Yeah, he called on the phone.**
 7 Q. And you had never met him before?
 8 A. **No, I never met him at all, but I -- the**
 9 **first time I've heard of him or his name or his**
 10 **company.**
 11 Q. And can you, to the best of your knowledge
 12 -- recollection -- describe that phone call?
 13 A. **Well, he, I guess, wanted information as to**
 14 **what Esco was doing, and the conversations were**
 15 **really no more than -- it was in the public record.**
 16 **Basically, it was, you know, "Callidus is suing us,**
 17 **we're suing them," et. cetera, and that was -- that**
 18 **was basically it. I asked him for this report that**
 19 **I heard about, and I don't know where I read about**
 20 **it, and, you know, he wouldn't give it to me.**
 21 Q. So Mr. Livesy wouldn't give you the report?
 22 A. **He wouldn't give me the report. And I spoke**
 23 **to their attorney, too, who had called me --**
 24 **Matthew Milme Smith (phonetic); he wouldn't give me**
 25 **the report either.**

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1 Q. And why was Matthew Milme Smith calling you?
 2 Let me just deal with Livesy first, and then, we'll
 3 get into Matthew Milme Smith.
 4 A. **Okay.**
 5 Q. So, as I understand it, he gives you a call,
 6 basically, out of the blue, you're saying?
 7 A. **Yes.**
 8 Q. No -- you didn't initiate it?
 9 A. **No.**
 10 Q. He initiated the phone call. He was asking
 11 you about what was going on with your litigation
 12 with Callidus?
 13 A. **Yes.**
 14 Q. And you told him you were defending it, I'm
 15 assuming?
 16 A. **Yeah. I told him that. I don't know --**
 17 **whatever was the status of the case at that time;**
 18 **you know, they sued our guarantees, we filed --**
 19 **affirmed the defenses, counterclaims; it's all in**
 20 **the public record. You know, knock yourself out.**
 21 Q. Did you provide any documentation to
 22 Mr. Livesy?
 23 A. **No.**
 24 Q. Did he ask for any documentation from you?
 25 A. **He did not. Well, I don't recall if he did**

Page 11

1 **or he didn't, but he didn't get any, and I don't**
 2 **think he did ask for any.**
 3 Q. And how did that call conclude?
 4 A. **I don't know. I mean, he just got what he**
 5 **wanted to do. I asked him whom he was working for;**
 6 **he said he was hired by the WestFace Capital, who**
 7 **was in litigation with Callidus.**
 8 Q. And did he indicate to you or did you
 9 indicate to him that there would be any follow-up
 10 on this conversation?
 11 A. **No.**
 12 Q. And was there -- was there any follow-up on
 13 that conversation?
 14 A. **He did call several other times, but in,**
 15 **like, you know, extended intervals -- I mean, you**
 16 **know, like, four or five months later and then**
 17 **another time four or five months later.**
 18 Q. And how many phone calls do you recall that
 19 you would have had with Mr. Livesy?
 20 A. **I would say three. It was three.**
 21 Q. And with respect to the next phone call, if
 22 you can recall -- and you may not be able to recall
 23 each and every phone call, but if you can, I would
 24 appreciate it if you can. With respect to the next
 25 phone call, what was he calling about?

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1 A. **It was the same thing. In other words, he**
 2 **wanted to know the status of the Esco litigation.**
 3 **That was basically all he wanted to know, and I'll**
 4 **say the conversation really didn't get beyond**
 5 **what's in the public record. I mean, all that**
 6 **stuff is public record, all the counterclaims with**
 7 **him.**
 8 Q. Did he ask about what your strategy was
 9 going to be with respect to your defense as against
 10 Esco -- as against Callidus?
 11 A. **No. I wouldn't have told him anyway.**
 12 Q. Did he ask you to do anything further on his
 13 behalf or on behalf of WestFace?
 14 A. **No.**
 15 Q. Do you keep notes of your conversations --
 16 of your phone conversations?
 17 A. **I have spotty notes.**
 18 Q. I would ask, if you could, produce those
 19 notes --
 20 A. **Well, this is not a deposition, so I didn't**
 21 **-- Discovery's over in this case; we're not going**
 22 **to produce -- no, we produced everything -- well, I**
 23 **should let Brent say that.**
 24 Q. Well, Richard can talk about this. Again,
 25 the purpose of this settlement discussion is that

1 -- and the whole premise to this, Mr. Levy, is that
 2 -- you are to be forthcoming and provide all the
 3 information you have as it relates to third parties
 4 and guarantors, and the documentation that would
 5 have been exchanged is important to that, and part
 6 of -- in our view, part of -- what the
 7 settlement --
 8 **A. Before you go -- the reasoning -- I do not**
 9 **have notes; I have -- like, I keep big notebook**
 10 **with a lot of stuff in it, and I just have, like,**
 11 **you know, April 17th, you know, Bruce Livesy -- I**
 12 **have two entries; I reviewed this last night; I**
 13 **have two entries for him, and I know he's called**
 14 **more than two times, probably three, maybe four.**
 15 **So that's really it. I don't have notes.**
 16 Q. Whatever you do have I would ask that you
 17 produce, because it is important that you even have
 18 a note that Mr. Livesy contacted you on
 19 such-and-such a date.
 20 **A. Uh-huh.**
 21 Q. That's important to our client.
 22 **MR. BISHOP:** I want to make sure -- because
 23 his notebook will have conversations he had with
 24 my firm. Obviously --
 25 **MR. LESLIE:** I only want -- I'm not here to

1 **A. Relatively recent. I mean, let's say within**
 2 **the last two or three months.**
 3 Q. And the contents of that conversation, was
 4 it similar to the other conversations?
 5 **A. Yes. Always the same; you know, "What's**
 6 **doing in your case?"**
 7 Q. And after that conversation that you had
 8 with Mr. Livesy two or three months ago, there's
 9 been no further conversations with Mr. Livesy since
 10 that time?
 11 **A. No.**
 12 Q. Now, you also indicated that Counsel for --
 13 as you understand it, for -- WestFace,
 14 Matthew Milm Smith, had also gave you a phone call?
 15 **A. Yeah, I don't know who initiated that call;**
 16 **it could have been me, but -- it could have very**
 17 **well been me, and I might have gotten his name from**
 18 **Livesy -- I don't know where else I would have**
 19 **gotten it from. So I believe I called him, and I**
 20 **had a conversation with him; I asked him for this**
 21 **report -- I was interested in this report; it said**
 22 **that 42 percent of Callidus companies were in**
 23 **bankruptcy; it mentioned Esco Marine. I wanted to**
 24 **see that report, and he said he just couldn't give**
 25 **it to me, because it was in litigation. That was**

1 violate solicitor-client privilege. You can
 2 redact what you think is -- you need to be
 3 redacted or anything; I'm not here to do that,
 4 but I think it is -- it's vitally important to,
 5 again, be forthright and --
 6 **MR. BISHOP:** We'll get you copies of
 7 anything that's not privileged. I would just
 8 ask that we not make a condition precedent to
 9 exchanging signature pages today, you know, the
 10 receipt of that.
 11 **MR. LESLIE:** Well, you've undertaken to
 12 provide it; you're Counsel for Mr. --
 13 **MR. BISHOP:** I'm a man of my word.
 14 **MR. LESLIE:** Not only that -- yeah, you're a
 15 man of your word, you have been, and so, that's
 16 -- the undertaking's fine with us, with our
 17 client.
 18 Q. Okay. So we've talked about a conversation
 19 with Mr. Livesy, about three conversations you
 20 recall after the first conversation?
 21 **A. Yes. As I say, there were three or four**
 22 **conversations. In other words, I have, you know,**
 23 **notes of two as to when --**
 24 Q. When was the last conversation that you
 25 would have had with Mr. Livesy?

1 **really the extent of the conversation.**
 2 Q. With Mr. -- with Matthew Milm Smith, was --
 3 you called him --
 4 **A. I think I did.**
 5 Q. -- you're looking for a report, because you
 6 thought the report may be helpful to your case?
 7 **A. Yes.**
 8 Q. And he indicated that he could not release
 9 it to you?
 10 **A. Yes.**
 11 Q. Did you have any other further conversations
 12 with Mr. Milm Smith?
 13 **A. No.**
 14 Q. Now, let me -- so that's the end of the
 15 conversations with Mr. Livesy and Mr. Milm Smith?
 16 **A. Yes.**
 17 Q. Now, let me get back, because I think I was
 18 -- when I started my questioning or I prefaced the
 19 questioning, that was to say you had spoken to one,
 20 two, three, four, five, you know, six guarantors
 21 and maybe more through Mr. Jaross -- Jaross -- and
 22 I think I'd asked you the question, "Well, how did
 23 this officially come about?" You know, how did you,
 24 as guarantors, get together? Who was leading the
 25 charge? Who was making the phone calls? Who was,

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1 sort of, the person that was coordinating all the
 2 guarantors? That led you into this conversation
 3 with Mr. Livesy, but did Mr. Livesy advise you of
 4 other guarantors that were in litigation with
 5 Callidus?
 6 **A. No, no. He -- well, I don't know if he did**
 7 **or he didn't, quite frankly. Yeah. I don't think**
 8 **he did, quite frankly. I can't say for sure, but I**
 9 **don't think he did. He was just interested in what**
 10 **was happening with Esco.**
 11 Q. So from that -- so you're not sure whether
 12 or not he named other guarantors for your nod?
 13 **A. I don't believe he did.**
 14 Q. How did all these guarantors that you've
 15 mentioned that you've had conversations with, how
 16 did it all start? Somebody had to initiate
 17 something here, so it's either yourself initiated
 18 and said, "Well, I know of these other guarantors,"
 19 or one of the guarantors contacted you and said,
 20 "Hey, you know, we're all in this with Callidus and
 21 let's get together."
 22 **A. Right. I might have -- once I got this**
 23 **memorandum, I think I might have contacted**
 24 **Jeff McFarlane. I think I did. And then, I got a**
 25 **call from Daryl Levitt, who, you know, seemed to**

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1 **know all these people.**
 2 Q. So --
 3 **A. And somehow, I got a call from**
 4 **Kevin Baumann. I mean, Richard spoke to**
 5 **Kevin Baumann quite a bit; I had spoken with him a**
 6 **couple of times. But Kevin Baumann, I don't know**
 7 **how he got into the picture. I think he called us,**
 8 **I recall. Like, I think I called McFarlane -- I**
 9 **had a call from Daryl Levitt, and Daryl Levitt, you**
 10 **know, he was in touch with all these folks, so --**
 11 Q. So let me just, sort of, try to take one at
 12 a time here. So it sounds like, Mr. Levy, you were
 13 saying that you made contact with Mr. McFarlane;
 14 I'm going to suggest to you that Mr. Livesy may
 15 have advised you of other guarantors in Ontario
 16 such as Mr. McFarlane who you may wish to contact.
 17 **A. I don't think he did. I don't think he did.**
 18 Q. That's a different statement. You don't
 19 think he did, but he may have?
 20 **A. It's possible, but as I say, I don't recall**
 21 **that he did. I recall I got the name**
 22 **Xchange Technologies out of that memorandum; I**
 23 **called Xchange Technologies; I got some guy on the**
 24 **phone who was the CFO; he said, "McFarlane isn't**
 25 **here anymore, and, you know, you can reach him at**

Page 19

1 **X, Y, Z."**
 2 Q. Now, this memorandum -- maybe I'm missing
 3 something, because I wasn't involved in the U.S.
 4 litigation. When you're saying "this memorandum,"
 5 what are we -- what are you referencing?
 6 **A. Well, it was a memorandum written by**
 7 **WestFace Capital that was, like, 50 pages long, and**
 8 **it went through the loans. Its claim in this**
 9 **memorandum was that Callidus had overvalued these**
 10 **loans and, you know, it was a good short or**
 11 **something -- I mean, you know, "You guys have the**
 12 **memorandum; you know more about it," but I did read**
 13 **the memorandum, and I got the name**
 14 **Xchange Technologies out of there. I don't think I**
 15 **followed up.**
 16 Q. So this memorandum, where did you get your
 17 hands on this memorandum?
 18 **A. It was public record somewhere; it's filed**
 19 **in some case; and I had an attorney find it, and we**
 20 **found it; it's filed in a case in Canada.**
 21 Q. Can you undertake to provide me just so that
 22 -- I want to make sure that we're all on the same
 23 page of what this memorandum is, because there
 24 would be a number -- as you know, in any -- as you
 25 know as a lawyer, in a number of cases, there's a

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1 number of filings. So -- there's all kinds of
 2 different filings. So if you could provide us with
 3 the memorandum that you're referring to, that would
 4 be helpful so that we can narrow down exactly what
 5 document that is. Okay? Okay. So you've
 6 indicated that you then reached out to
 7 Jeffrey McFarlane, and what was the purpose of your
 8 phone call to Mr. McFarlane?
 9 **A. Well, what we were trying to prove is fraud**
 10 **in the inducement, and fraud in the inducement, as**
 11 **you know, is a matter of intent, okay? So how do**
 12 **you prove intent? You either get somebody to admit**
 13 **what was running through their minds, which is very**
 14 **unlikely, or you prove it through circumstantial**
 15 **evidence. So we were looking for other**
 16 **similarly-situated borrowers who could confirm our**
 17 **story so we could prove through circumstantial**
 18 **evidence a premeditated intent to defraud. So what**
 19 **-- and, you know, your folks know this; I mean, I**
 20 **know your -- Mike Hammer is on vacation or**
 21 **whatever, but -- I lost my train of thought.**
 22 Q. Why you were calling Mr. McFarlane.
 23 **A. No, no. Those folks have put in affidavits**
 24 **in our litigation.**
 25 Q. Right.

1 **A. Right? McFarlane even -- some weren't made**
2 **for this litigation, like Gary Smith; he had an**
3 **affidavit in his litigation, so we took that and**
4 **put it. So all these folks, we used their**
5 **affidavits of what their relationship was with**
6 **Callidus to prove a pattern, et. cetera, so that**
7 **was why I contacted or tried to contact McFarlane;**
8 **I ultimately did find him.**

9 Q. And was Mr. McFarlane more than willing to
10 assist you in helping you with your case?

11 **A. Yes.**

12 Q. And you then said -- and I'm going to get
13 into more discussions with all the guarantors of
14 what may have been said, so I'm going to leave that
15 at this point and I'll come back to it. But you
16 then said that you got a call from Mr. Levitt?

17 **A. Yes.**

18 Q. And was that a call, again, similar to the
19 call from Mr. Livesy, kind of, out of the blue, or
20 did you try to reach out to him, did Mr. McFarlane
21 reach out to him, or how did Mr. Levitt --

22 **A. I don't know. Maybe McFarlane told him -- I**
23 **don't know. But I got a call from him; I didn't**
24 **know who he was.**

25 Q. And what did Mr. Levitt say to you in this

1 that Mr. Baumann also agreed that we should work
2 together as guarantors?
3 **A. Well, he agreed to help -- he's, like -- you**
4 **know, Daryl Levitt's a lawyer; you'd have a totally**
5 **different conversation. I mean, Kevin Baumann is a**
6 **bit of a loose-cannon type guy, so he agreed to**
7 **help; he did help, wrote an affidavit, et. cetera,**
8 **but I mean, I wasn't going to discuss the**
9 **intricacies of the case with him, because, you**
10 **know, he's not a lawyer.**

11 Q. And when did Mr. Duhamel get involved with
12 you guys? How did that come about?

13 **A. It came about, I would say, through**
14 **Daryl Levitt. I didn't --**

15 Q. You did initially contact him?

16 **A. No, I didn't know much about him.**

17 Q. Did Mr. Duhamel initiate contact with you or
18 through Mr. Levitt?

19 **A. No, no. I really haven't had a lot of**
20 **contact with him.**

21 Q. And Mr. Molyneux -- you indicated that you
22 had contact with Mr. Molyneux?

23 **A. I had met him once. I didn't have a lot of**
24 **contact with him.**

25 Q. And you also had contact with Gary Smith.

1 initial phone call?
2 **A. Well, we compared notes about what, you**
3 **know, relationships that Callidus -- you know, what**
4 **documents, what the case was all about, a history**
5 **of Fortress Resources, the history of Esco; you**
6 **know, we basically discussed our cases.**

7 Q. And did you agree with Mr. Levitt as you
8 agreed with Mr. McFarlane: that you guys would,
9 sort of, assist one another in your respective
10 cases as best you could?

11 **A. Ultimately, I think. Not particularly on**
12 **that first phone call, but ultimately.**

13 Q. And then, you indicated that Mr. Baumann
14 from Alken Bain Drilling also gave you a call and
15 perhaps Richard a call also?

16 **A. I think he called Richard. He called**
17 **Richard somehow. He found Richard, and then --**
18 **yeah, I had spoken to him a couple of times, but**
19 **Richard -- I don't know. Richard sort of, like,**
20 **became friends with him, I think. You can ask**
21 **Richard.**

22 Q. And was that initial discussion along the
23 same lines as that with Mr. McFarlane and
24 Mr. Levitt: that, again, you know, to be fair,
25 you're looking to prove a defense to your case and

1 How did that come about?

2 **A. Through Daryl Levitt.**

3 Q. So when did this, sort of, contact, sort of,
4 begin with the other guarantors? When did you
5 first, sort of, reach out, approximately, to
6 Mr. McFarlane?

7 **A. Somewhere around mid-2015.**

8 Q. And when did -- would have Mr. Levitt then
9 contacted you around that same time period?

10 **A. Yeah, right after that.**

11 Q. And as a result of these contacts, did you
12 guys -- because you've got, like I say, I mean,
13 very similar strategies, similar to defenses, et.
14 cetera, et. cetera. Did you guys start meeting
15 weekly? Did you have telephone conferences? Did
16 you have e-mails? Did you have a chat room? How
17 did you guys -- no. How did you guys, sort of,
18 keep together?

19 **A. Right. Well, we did talk on the phone, and**
20 **then, you know, documents were filed; they had**
21 **access to -- you know, Levitt was a lawyer at**
22 **Norton Rose; you know, they had access to what we**
23 **filed, so they just read what we filed; I didn't**
24 **read much of what they filed. I know they had a**
25 **case in Kentucky. You know, I don't know what was**

1 happening in Canada; I really didn't look at it
2 very, you know, much, but I think they looked at
3 all of our documents and, you know, looked at some
4 of the -- possibly looked at some of the --
5 defenses --
6 Q. Would you have -- sorry.
7 A. -- and counterclaims.
8 Q. Would you have group teleconferences?
9 A. We had a couple. We actually had meeting --
10 a face-to-face meeting. Sorry I didn't write the
11 date of it down, but I can get that to you, but we
12 met in Albany --
13 Q. Sorry. I'm just going to stop for a second.
14 MR. LESLIE: Mr. Bishop, if we can get that
15 -- if we call to get that -- date?
16 MR. BISHOP: Yeah, I mean, same as before:
17 as long as that's not a condition to getting
18 signature pages.
19 MR. LESLIE: No, no. I just said that's an
20 undertaking that they'll provide it. That's
21 fine.
22 MR. BISHOP: I want to make sure. So now,
23 when you talk about meetings, I think you have
24 to be careful. There was one meeting -- because
25 we talked about it at the mediation; I mean they

1 Q. Was Mr. Baumann there?
2 A. No.
3 Q. He was not there. Duhamel -- you said Gary
4 Smith was there -- Mr. Smith was there?
5 A. Yes. Gary Smith was there.
6 Q. Jerome Harvey? Was he there?
7 A. No, he was not there. And we were there.
8 Q. And you were there.
9 A. Mr. Jaross and myself. We were --
10 Q. Who coordinated this meeting? Who said,
11 "Hey, let's all get together and meet"?
12 A. Well, I think it was everyone's idea, but I
13 think it was Daryl Smith -- not -- Daryl Levitt
14 coordinated it, and it was to meet with a law firm
15 up there on, you know, this idea they -- of a Ricoh
16 case combined -- you know, combined -- case. So we
17 met in the offices of Boies, Schiller -- you know
18 who: Boies, Schiller -- David Boies, et. cetera;
19 it was in the Albany office. So we met there.
20 Q. And that meeting was to discuss -- and I
21 don't want -- to be fair to you, I will not ask you
22 about solicitor-client discussions that may have
23 occurred there. But that meeting was, to you,
24 about a possible Ricoh claim that you guys would
25 bring as guarantors?

1 were proposing to do a Ricoh claim.
2 MR. YITZCHAKI: I wasn't at the meeting, but
3 I know what you're speaking about.
4 MR. BISHOP: But obviously, you can't
5 discuss with these gentlemen anything that would
6 have happened with an attorney. So don't
7 disclose any discussion you would have had with
8 an attorney.
9 Q. This is a meeting in Albany?
10 A. A meeting in Albany.
11 Q. No lawyers there? I mean, Mr. Levitt was
12 there -- he's a lawyer -- but no lawyers were
13 there?
14 A. No. There was -- we first, I guess, had
15 dinner together with all these folks; it's the
16 first time I had met them -- the only time I've
17 actually met them in person; you know, Jeff
18 McFarlane and Daryl Levitt, Gary Smith, the French
19 folks, Duhamel and other folks.
20 Q. Yeah. I'm a pretty particular guy, so I'll
21 just go through this. You've indicated that at
22 this meeting in Albany, New York, Mr. Levitt was
23 there, Mr. McFarlane was there, Mr. Duhamel was
24 there. Was Mr. Molyneux there?
25 A. Yes, he was there.

1 A. Yes, as lenders -- as borrowers.
2 Q. Borrowers. Excuse me. Borrowers.
3 A. I'm representing a lot of lenders.
4 Q. And I don't know this, but what came out of
5 that meeting?
6 A. Well, what came out of the meeting was,
7 Boies, Schiller studying the Ricoh claim and
8 whether it was a viable cause of action, et.
9 cetera.
10 Q. So was there any -- you had no other
11 face-to-face meetings?
12 A. No.
13 Q. You would have had other telephone
14 conferences?
15 A. Yes.
16 Q. Who would initiate those telephone
17 conferences?
18 A. Well, I don't think we had a lot of group
19 conferences, but I mean Daryl was my contact in
20 Canada -- Daryl Levitt; I spoke to Jeff McFarlane
21 now and then. So --
22 Q. So from your perspective -- because every
23 group, right, has to -- or generally every group
24 generally has to -- have a leader. So vis-a-vis
25 Canada and what was going on in Canada, you were

1 saying that that was Mr. Levitt?
2 **A. Well, if there is a leader, I would say he's**
3 **the leader; I wouldn't say he was a formal leader.**
4 **You know, he was a lawyer; you know, he knows how**
5 **to organize things, et. cetera, so I gather -- you**
6 **know, it wasn't that many people, right? I'm**
7 **talking about --**
8 Q. And I also know that, you know, for -- that
9 there was a lot of -- there was communication that
10 seemed that all the guarantors seemed to know what
11 was going on with all the other guarantors to a
12 great extent. Who was feeding that information to
13 the other guarantors? Was it if you guys all
14 agreed that if something came up you knew about,
15 you would send it off to the other guarantors, or
16 how did that work?
17 **A. Well, I mean, there was communication every**
18 **couple of weeks as to, you know, what was doing and**
19 **summary judgment in Kentucky and -- you know, et.**
20 **cetera.**
21 Q. And what was Mr. Baumann's involvement in
22 these conversations or in the exchange of
23 information?
24 **A. None. None. He was off on his own, you**
25 **know --**

1 **Jeff McFarlane.**
2 Q. And would you guys exchange e-mails and
3 other things between each other?
4 **A. Not a lot. Not a lot. Phone calls.**
5 **MR. LESLIE:** Anything that's not privileged
6 -- again, I'd like to have anything that's not
7 privileged to produce in relation to any of
8 these conversations between Mr. Levy and any of
9 the guarantors.
10 **MR. BISHOP:** Again, knowledge is not a
11 condition precedent to setting the guideline
12 today.
13 Q. Now, did any of these guarantors that we
14 have mentioned, did they offer to provide any
15 financial assistance to you and Mr. Jaross in
16 relation to your litigation with Callidus?
17 **A. I think Kevin Baumann did. I don't know if**
18 **he was -- if he was -- kidding or not, but --**
19 Q. And did you take him up on his offer?
20 **A. No.**
21 Q. And why not?
22 **A. Well, we sort of made it towards the end**
23 **while we were settling, but, you know, we have our**
24 **own resources.**
25 Q. And did he -- did Mr. Baumann -- I assume

1 Q. We have seen tweets and Twitter things from
2 him at times, but you're saying that was just his,
3 sort of, doing it on his own and making comments on
4 his own? He wasn't really --
5 **A. He wasn't part of this, sort of, group, if**
6 **you want to call it a group; he wasn't part -- but**
7 **yeah, we talked to him -- also Richard talked to**
8 **him, I talked to him two or three times; Richard**
9 **has talked to him; I think I even talked to his**
10 **lawyer, possibly, at one point; there's a lawyer**
11 **out in the sticks out there in Calgary here,**
12 **wherever it was.**
13 Q. So just -- I don't think I'll take you
14 through each and every conversation; I'll just take
15 you through it more broadly. How many
16 conversations -- we know of one face-to-face
17 meeting you had with the guarantors. How many
18 conversations do you think -- since the time that
19 you began the litigation with Callidus up to this
20 point, how many conversations do you believe that
21 you would have had?
22 **A. With which?**
23 Q. With the other guarantors.
24 **A. I mean, if I had to put a number, I would**
25 **say maybe 20 with Daryl Levitt and five or six with**

1 since you said no to him, did Mr. Baumann call you
2 and indicate, or during some discussion, and say,
3 "By the way, Mr. Levy, you know, if you got some
4 financial issues here, we can help you out or I can
5 help you out"?
6 **A. Yeah. I think he had that conversation with**
7 **Richard, so you can ask -- that's one of the few**
8 **things you can actually ask Richard about.**
9 Q. But he did offer financial support to have
10 you continue on with your litigation as against
11 Callidus?
12 **A. He did. As I said, I don't know if he was**
13 **serious, you know, but -- because I didn't take him**
14 **up on it.**
15 Q. Did he ever specifically state how much that
16 was going to be?
17 **A. I mean, I think he was talking about six**
18 **figures.**
19 Q. And was that strictly to cover legal fees,
20 or what was the purpose of the payment?
21 **A. Oh. The legal fees.**
22 Q. He wasn't providing you with money to, sort
23 of, entice you to continue on with the litigation
24 against Callidus?
25 **A. No.**

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1 Q. Well, you never know, so I have to ask the
2 question.
3 **A. Uh-huh.**
4 Q. So it was about six figures and it was to
5 continue on with it. Did he say -- did he ever
6 indicate to you that that was purely on his own
7 directive or whether or not somebody else was
8 prepared, that it was going to be group of people
9 putting the money together or another third party
10 putting the money together, or --
11 **A. No. He didn't say. I mean, it was -- I**
12 **assumed it was from him, but I have no idea where**
13 **he would, you know --**
14 Q. Did you think that was kind of odd: that
15 some other guarantor out in Calgary, Alberta would
16 be willing to offer -- six figures is a, you know,
17 fair amount of money for anybody to assist you in
18 your legal costs?
19 **A. Did I think it was odd? No, I didn't think**
20 **it was that odd.**
21 Q. Why wouldn't you think it was odd? I mean,
22 you know, generally, other people in another action
23 are not going to say, "Hey, jeez. I feel bad for
24 you. Here's a hundred grand" --
25 **A. No, it wasn't to feel bad. I think it was**

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1 -- you know, they were looking for a joint -- I
2 guess some kind of joint -- action in unity, in
3 strength.
4 Q. He wanted to keep you in the game?
5 **A. Yeah, yeah. I didn't find it odd. You**
6 **know, as I said, I don't know if it was believable,**
7 **but I didn't find it odd.**
8 Q. With respect to any other litigation, were
9 you offered legal fees with respect to -- from
10 anybody else or any other monies with respect to --
11 commencing any litigation -- other litigation -- as
12 against Callidus or Catalyst, such as a Ricoh
13 claim, et. cetera? Did Mr. Baumann say, "Hey,
14 look, if we're going to pursue this Ricoh claim,
15 I'll cover the legal fees for you guys"? Did
16 anybody say that?
17 **A. Boies, Schiller had talked to several**
18 **litigation funds. You know, there are funds that**
19 **lent money for litigation, right?**
20 Q. Right, I know those, yeah. But amongst
21 either of the -- any of the -- guarantors, were any
22 of the guarantors saying that, "Look, let's take
23 this on and I'll fund you guys to pursue this
24 litigation"?
25 **A. No, no one else.**

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1 Q. No other party that you can think of?
2 **A. No, there weren't.**
3 Q. There wasn't?
4 **A. No.**
5 Q. Okay. Now, in your discussions with the
6 guarantors, did you get to the point in these
7 discussions about the fact that the guarantors
8 intended to file a whistleblower complaint with the
9 Ontario Securities Commission?
10 **A. No. The first I knew about that was reading**
11 **their Wall Street Journal article, quite frankly.**
12 Q. In all those discussions -- I mean, you had
13 20-some-odd or more discussions and the lawyers
14 that you had meetings about, you know, Ricoh
15 claims, or possible Ricoh claims, et. cetera -- you
16 were not aware that the guarantors never advised
17 you during these phone conversations or through
18 e-mail that they intended to file a complaint with
19 the Ontario Securities Commission? That was part
20 of their strategy?
21 **A. Daryl might have indicated that they would**
22 **file a complaint with the Ontario Securities**
23 **Commission, but they never -- I didn't know Canada**
24 **had a whistleblower law, and no talk was ever made;**
25 **I guess you get an award for being a whistleblower,**

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1 so, you know --
2 Q. Nobody asked you, Mr. Levy --
3 **A. Nobody asked me to share in it, no. So as I**
4 **say, I read it in the Journal article. I said,**
5 **"Canada has a whistleblower law? I didn't know**
6 **that." You know, and I -- I knew there was**
7 **whistleblower activity in the U.S., but -- you**
8 **know, so I didn't know --**
9 Q. So nobody approached you personally to make
10 a complaint to the Ontario Securities Commission?
11 **A. No, no.**
12 Q. You're aware, though -- you've read the
13 Wall Street Journal article, as we all have; you're
14 aware that Mr. McFarlane was named in there as
15 being a whistleblower?
16 **A. Yes, he was.**
17 Q. You also know that -- in the article that --
18 there were allegedly -- and again, we say
19 "allegedly," because we don't believe anything in
20 the article, but allegedly -- that there was three
21 other whistleblowers?
22 **A. Uh-huh.**
23 Q. Do you know who those other whistleblowers
24 were?
25 **A. I don't. I don't.**

1 Q. You're not aware -- you had no discussion to
 2 determine whether that was Mr. Levitt, or do you
 3 have any information or any best guess of who it is
 4 based on your discussions with the guarantors?
 5 **A. No, I don't. They caught me by surprise.**
 6 Q. When you read that Wall Street Journal
 7 article, you said it would have caught you by
 8 surprise, as it did all of us. Did you not have a
 9 conversation with your guarantor group after that
 10 to ask them, "Hey, what's this all about? What's
 11 going on here?" Considering how close you guys all
 12 were to the point where Mr. Baumann was going to
 13 offer you a hundred thousand dollars to attend, did
 14 you not have any discussion --
 15 **A. I said six figures.**
 16 Q. Six figures. Okay. So it could be more
 17 than a hundred thousand. I will let Mr. Bishop
 18 comment on that. But with respect to --
 19 **A. I didn't ask him whether it was Canadian or**
 20 **U.S. either.**
 21 **MR. RILEY:** Well, you said it was six
 22 figures.
 23 **A. Right. It was definitely six figures.**
 24 Q. But you had no subsequent conversations with
 25 the guarantors after the Wall Street Journal

1 Q. Similarly -- and just because I want to make
 2 sure I'm thorough in my questioning, did anybody
 3 approach you about making a complaint to the
 4 Toronto Police against Callidus or Catalyst?
 5 **A. I don't think we can talk about that. I**
 6 **don't think we can talk about that.**
 7 **MR. BISHOP:** Let's go off the record.
 8 **THE VIDEOGRAPHER:** We're going off the
 9 record. The time is 11:12.
 10 (Whereupon, a discussion was held off the
 11 record.)
 12 **THE VIDEOGRAPHER:** One moment. We are now
 13 back on the record. The time is 11:15.
 14 Q. So Mr. Levy, we just got off the record,
 15 because you had, sort of, gotten into an area where
 16 I hadn't even asked the question, and we had an
 17 off-the-record discussion, and we cleared that up.
 18 But my question to you was specific; it was whether
 19 or not you were -- you or -- you were asked by
 20 anybody to contact the Toronto Police Services to
 21 have -- to lodge -- a complaint against Callidus
 22 and/or Catalyst?
 23 **A. I was not.**
 24 Q. Are you aware --
 25 **A. If anyone asked me, I wouldn't have done it**

1 article came out? I mean, it's a -- clearly -- you
 2 know, it's -- it is what it is. It's a big event.
 3 **A. It is a big event. I think I talked to**
 4 **Daryl. Daryl called me and he said, "Are you going**
 5 **to settle with these guys?", and I said, "No, I**
 6 **don't know. It depends." I was kind of cagey, but**
 7 **he said, "You would have approached him, too?" I**
 8 **don't know if it was -- you know, that was, kind**
 9 **of, the last conversation I had with Daryl, and**
 10 **that was after that article, and that was it. The**
 11 **last conversation I had with Jeff McFarlane was**
 12 **when he, you know, won his appeal there on summary**
 13 **judgment; you know, I sent him a high five or**
 14 **whatever. You know, since then, I mean, we're**
 15 **talking seriously about settlement; we're -- you**
 16 **know, we're going to settle or we're not going to**
 17 **settle. So it wasn't --**
 18 Q. You have no knowledge or even any best guess
 19 as to who the other whistleblowers would have been?
 20 **A. No. I mean it could have been some of these**
 21 **guys we're talking to. It could have been Blueberi**
 22 **Gaming for all I know. I have no idea. As I said,**
 23 **I didn't know about -- I didn't know they were**
 24 **doing this; you know, they never told us about**
 25 **this.**

1 **anyway. Nobody asked me to do it.**
 2 Q. And I'll just follow up with a lead-up
 3 question. Did you or Mr. Jaross lodge any
 4 complaint with any regulatory body as against
 5 Callidus or Catalyst?
 6 **A. Not regulatory or investigative body. We**
 7 **have not.**
 8 Q. Do you know of anybody within the guarantor
 9 group or any third party that you're aware of that
 10 launched a complaint with the Toronto Police in
 11 relation to Callidus or Catalyst?
 12 **A. I don't know, you know, if anybody --**
 13 Q. Well, we know that McFarlane did it with
 14 respect to the -- because he admitted he did it,
 15 which gets me -- leads me -- to believe that you
 16 confide in the press, I guess, what you do. But we
 17 know that he made the complaint with the
 18 Ontario Securities Commission. Do you know if he
 19 is the one who made the complaint with the
 20 Toronto Police, as was indicated in the Wall Street
 21 Journal article?
 22 **A. You know, I do not know who, if anyone,**
 23 **initiated a complaint with the Toronto Police.**
 24 Q. Now, with respect to the Wall Street Journal
 25 article, when you're having all these discussions

1 with your guarantor group, were there any
 2 discussions about bringing this issue and these
 3 disputes that you had with Callidus to the press?
 4 **A. No.**
 5 Q. Nobody ever discussed that with you?
 6 **A. No, no. Nobody thought that was a good**
 7 **idea.**
 8 Q. And so, you never have contacted any press
 9 outlet or media outlet to discuss the Callidus
 10 case?
 11 **A. They have called me, but I have never called**
 12 **them.**
 13 Q. And who called you? Do you recall?
 14 **A. Yeah, I wrote it down. I got a call from**
 15 **the Wall Street Journal, Toronto, Canada edition, a**
 16 **guy named Ben Dummett -- D-U-M-M-E-T-T. That was**
 17 **early on, I would say sometime in 2015. And I got**
 18 **a call from the Brownsville Herald, the paper in**
 19 **Brownsville. I had his name here. Yeah. Somebody**
 20 **from the Brownsville paper.**
 21 Q. When you determine whose name that was, if
 22 you could let us know.
 23 **A. Yeah. That's odd. Oh. Steven Clarke**
 24 **(phonetic). Steven Clarke from the Brownsville**
 25 **Herald. He called me; I think he called Richard.**

1 Q. We'll all do that after, but you think it's
 2 somebody from the Business Journal?
 3 **A. He was a guy writing -- he was a freelance**
 4 **writer, and I forget his name.**
 5 Q. Well, maybe we can undertake to find out who
 6 that name is, and we can talk about it off the
 7 record.
 8 **A. He called a couple of times, but for some**
 9 **reason, I can't find any record of his calling, and**
 10 **I don't remember his name. I get him confused with**
 11 **this Bruce Livesy; it sort of sounded like him.**
 12 Q. Did anybody else, any other newspapers,
 13 media outlets?
 14 **A. No.**
 15 Q. Did you ever get a call from a Rob Copeland
 16 (phonetic) from the Wall Street Journal out of
 17 New York?
 18 **A. No.**
 19 Q. So obviously, the person who wrote the
 20 article never contacted you? He was the one who
 21 actually wrote the article?
 22 **A. Never contacted me.**
 23 **MR. BISHOP:** There was that -- there was a
 24 second name on the "By" line in the Wall Street
 25 Journal; it was a female reporter.

1 **You can ask Richard, you know, but we -- we didn't**
 2 **tell him very much.**
 3 Q. Okay. When you say you didn't tell him very
 4 much, you did have a discussion with him, though?
 5 **A. Oh, yeah, yeah. I told him Esco is in**
 6 **bankruptcy, you know, et. cetera. I just told him**
 7 **what was -- you know, we're worried about what**
 8 **newspapers write just like anybody else, so --**
 9 Q. Did you advise him of any other guarantors
 10 that this gentleman at the Brownsville Herald could
 11 contact?
 12 **A. I don't believe so. I don't believe so. As**
 13 **I said, I had a very short conversation with him.**
 14 **I know Richard spoke with him, so he probably would**
 15 **tell you a little more on that issue.**
 16 Q. Did any other papers call you?
 17 **A. Yes.**
 18 Q. Or any other media?
 19 **A. Yes. It's a guy in Canada, but I'm confused**
 20 **with Livesy, but it was a guy who worked for the**
 21 **Business Journal -- the Canada Business Journal. I**
 22 **think he ultimately sold the story to the Toronto**
 23 **paper. The Business Journal wouldn't print it.**
 24 **THE WITNESS:** Do you know -- Jim, do you
 25 know his name, who I'm talking about?

1 **MR. LESLIE:** Her name is --
 2 Q. I can ask you that question, too.
 3 Jackie McNish (phonetic)?
 4 **A. No. I never got a call from the Wall Street**
 5 **Journal in New York.**
 6 Q. So you made no comment to them whatsoever?
 7 You've already said you didn't speak to them, but
 8 you did say that you did have some general
 9 discussions with the Brownsville Herald. To my
 10 knowledge, they -- did they ever write an article?
 11 Because I've never seen an article.
 12 **A. I think they did write an article and asked**
 13 **whether I was in bankruptcy and some people haven't**
 14 **been paid. I don't know --**
 15 **MR. BISHOP:** It would've probably been in,
 16 like, 2015.
 17 **A. A long time ago.**
 18 Q. It would have nothing to do with this --
 19 what we're talking about today?
 20 **A. No.**
 21 Q. It was just about the fact that there was a
 22 bankruptcy at Esco Marine and --
 23 **MR. BISHOP:** Yeah. It was kind of a big
 24 Ontario news story.
 25 Q. Now, let's take a -- because I'm going to go

1 -- maybe we'll take, like, just a quick ten-minute
 2 break, because I'm going to go into -- just so that
 3 people know, I'm going to go into more of a
 4 discussion about other third parties in a second,
 5 but it's probably a good time to take a ten-
 6 15-minute break.
 7 **THE VIDEOGRAPHER:** We're going off the
 8 record; the time is 11:23.
 9 (Whereupon, a break was taken at 11:23 a.m.,
 10 and the interview resumed at 11:42 a.m.)
 11 **THE VIDEOGRAPHER:** One moment. This marks
 12 the beginning of Media Number 2 in the video
 13 meeting of Andrew Levy. We are now back on the
 14 record. The time is 11:42.
 15 Q. Mr. Levy, just before we start, I did speak
 16 at the break, and I think it is -- actually, it's
 17 Bruce Livesy who's with the Rogers Business Journal
 18 that was -- that we talked about.
 19 A. Okay.
 20 **MR. RILEY:** May I speak?
 21 **MR. LESLIE:** Yeah, sure.
 22 **MR. RILEY:** Bruce Livesy was a freelancer
 23 who wanted to have an article published by the
 24 Rogers Business Journal.
 25 A. But who's with Mosaic?

1 A. Oh, no, no, no, no. These are big -- you
 2 know, one of the most -- a company called
 3 Parabellum. I think Parabellum is in London --
 4 based in London, anyway. So, you know, these are
 5 big operations.
 6 Q. We spoke about at least two third parties
 7 outside of the guarantor that we spoke of that you
 8 had some contact with, and that was Mr. Livesy who
 9 gave you a call directly, and you've already gave
 10 your testimony about that together with the fact
 11 that you had contacted Mr. Milm Smith regarding a
 12 report from WestFace. Did you have contact or did
 13 any other third party contact you whatsoever about
 14 anything in relation to your litigation with
 15 Callidus?
 16 A. That's a pretty wide-open question.
 17 Q. I want it to be as wide open as possible, so
 18 any other third party. Any third party.
 19 A. So let's, you know, go through my notes. I
 20 did speak to Greg Boland with WestFace Capital.
 21 Q. Let's just -- why don't we do one at a time
 22 so I don't lose track. So Mr. Boland, did he
 23 contact you directly?
 24 A. He did. He contacted me; I spoke to him two
 25 or three times; and the conversation was, you know,

1 **MR. RILEY:** It appears to be the same
 2 person.
 3 A. Same guy? Oh, I see. No wonder why I
 4 confused him. It's the same guy.
 5 **MR. RILEY:** That's what I'm saying.
 6 Q. That's why you were confused and that's --
 7 A. So he does everything. He makes a living
 8 doing all kinds of things.
 9 Q. I just want to go back to -- just to -- the
 10 meeting in Albany. Other than the guarantors that
 11 you mentioned and the lawyers, were there any other
 12 parties at the meeting in Albany?
 13 A. No.
 14 Q. And when we talked about the funding or the
 15 possible funding should there have been a Ricoh
 16 action, when we were talking about third-party
 17 funding, you were talking about some of these
 18 litigation funds that fund all kinds of different
 19 litigation; there wasn't anybody specific they were
 20 going to for the funding? You said Boies, Smith?
 21 A. No, no. Boies, Schiller. Boies, Schiller
 22 had gone to several litigation funds to fund this,
 23 you know, Ricoh case.
 24 Q. These were just generic litigation finds;
 25 they are no connection to Callidus or Catalyst?

1 basically, "What's happening in your case?", and he
 2 told me what was happening in his case, but
 3 nothing, you know, that you could have gotten just
 4 by, you know, getting it off the records.
 5 Q. When did he first contact you?
 6 A. You know, I would say probably about a year
 7 ago -- about a year ago. So I had a couple of
 8 conversations with him.
 9 Q. So let's just stick with the one
 10 conversation a year ago. Was this before or after
 11 Mr. Livesy had contacted you?
 12 A. It was definitely after.
 13 Q. And he called you, again, sort of, for lack
 14 of a better term, out of the blue?
 15 A. Yes, he called me.
 16 Q. And he starts the conversation -- as best
 17 you can recall, how did he start the conversation?
 18 A. Well, he basically just wanted to know the
 19 status of the Esco litigation and what was
 20 happening. It was the same thing that Livesy was
 21 asking, really.
 22 Q. But why -- did he say why he wanted to know
 23 that? He must have given you some background. If
 24 I called you out of the blue and said, "Hey, by the
 25 way, Mr. Levy" --

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1 A. No, no, no. He told me that, you know, I
 2 have this case with Callidus where they stole one
 3 of their employees and took a deal -- a wind park
 4 or solar deal or something like that -- and, you
 5 know, they were suing and Callidus sued him for
 6 defamation; you know, he told me all about his
 7 case; I really didn't listen or had much to say.
 8 Yeah. But then, he wanted to know what was
 9 happening with Esco and what were we doing, and I
 10 told him, you know, where the case was, what we
 11 filed, et. cetera. And, you know, if he was
 12 interested in it, he'd just go, you know -- he
 13 says, "Well, we have lawyers in the U.S., so we can
 14 look that up." I said, "Well, you know, it's all
 15 there for you to look up."
 16 Q. Did he ask for any assistance from you going
 17 forward? Did he ask anything from you?
 18 A. No, not at all.
 19 Q. And again, back to -- you -- did you keep
 20 notes or at least a time when he called in your
 21 book?
 22 A. I don't. I mean, one time, he called me,
 23 and I was handling some kind of a mediation in
 24 Philadelphia, and he called me right before the
 25 mediation on my cell phone --

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1 Q. So again, obviously, we'll have the same
 2 undertaking for any documentation that you have in
 3 relation to any call with either the guarantors or
 4 any third party, that being both handwritten and
 5 electronic.
 6 MR. BISHOP: As long as it doesn't impede us
 7 getting signed up.
 8 Q. And then, you said that Mr. Boland -- so
 9 that was the end of the first conversation, and
 10 then, he contacted you again?
 11 A. A couple of times. I think I probably spoke
 12 to him three times, approximately.
 13 Q. And is that the last time that you spoke
 14 with Mr. Boland?
 15 A. I would have to say maybe, like, six months
 16 ago.
 17 Q. And do you recall what that discussion was
 18 about?
 19 A. Same thing: "Where are you in your case?
 20 What are you doing?"
 21 Q. Did he tell you where he was in his case?
 22 A. He did. He did tell me where he was in his
 23 case.
 24 Q. What was he telling you?
 25 A. I don't know. He said he won something,

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1 some motion. It really didn't affect me, so, I
 2 mean, what did I care, quite frankly? But, you
 3 know, listen -- you know, I don't know. I think we
 4 ultimately got a transcript of that case but not
 5 because of him. But yeah, I don't know. He told
 6 me some things about what was happening in Ontario
 7 Court, and as I said, it didn't really affect me,
 8 so I just listened.
 9 Q. Did he ask, you know -- like, as you were
 10 with the guarantors, the guarantors, you guys, sort
 11 of, came to, I wouldn't say an agreement with a
 12 capital A agreement, but that you would assist each
 13 other and exchange information and assist in the
 14 defenses and the counterclaims as against Callidus,
 15 and you even went as far as having the meeting in
 16 Albany. Did Mr. Boland suggest that in looking for
 17 some of your assistance?
 18 A. No. He never asked for anything. We didn't
 19 ask for anything from him. We already had his
 20 memorandum, and that was about it.
 21 Q. So we dealt with Mr. Boland. Did you -- was
 22 there any other third party that contacted you?
 23 A. Yeah. There was a guy named Dave Oswald
 24 (phonetic) from Forensic Restitution; he contacted
 25 me in June of 2016. David Oswald, Forensic

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1 Restitution. I have no idea. I believe I spoke
 2 with him. I sort of recall speaking with him. I
 3 forgot who he even worked for.
 4 Q. What was Mr. Oswald inquiring about when he
 5 contacted you?
 6 A. Our case.
 7 Q. In what respect, though?
 8 A. I really don't know. I mean, I don't recall
 9 exactly what he wanted to know. He wanted to
 10 discuss our case; I discussed our case with him,
 11 but I sort of don't remember a lot, except, as I
 12 said, I had a note this guy called in June of 2016,
 13 and I forgot who he was working for. I think he
 14 told me who he was working for, but I just didn't
 15 write it down. But anyway that's --
 16 Q. He was working for?
 17 A. A company called Forensic Restitution. He
 18 was working for somebody, you know, involving
 19 Callidus, but as I say, I don't know.
 20 Q. Do you know what Forensic Restitution even
 21 does?
 22 A. I don't know what they do, but they -- you
 23 know, I think they investigate things. I don't
 24 know. I do not know. I just give you that name.
 25 Q. Did he -- did he ask you to do anything for

1 him? Do you recall the specifics of the
 2 conversation?
 3 **A. No, I really don't recall much about the**
 4 **conversation, honestly, except for the fact that**
 5 **had I not written it down, I probably wouldn't have**
 6 **recalled it at all.**
 7 Q. But your notes don't -- if you can go back
 8 in your notes and see if it indicates who he might
 9 have been calling on his behalf.
 10 **A. No, that's all it says. It says**
 11 **David Oswald, Forensic Restitution, June, 2016.**
 12 **That's all my notes say. I looked at the notes --**
 13 Q. You don't recall anything else about that
 14 conversation?
 15 **A. No, I don't, but you can look him up. I**
 16 **mean, they're involved somehow. That's all I can**
 17 **say. The next guy I did speak to was a fellow on**
 18 **your list there named Bruce Langstaff. I spoke to**
 19 **him on April 25th, 2017. He called me -- the guy**
 20 **is from Canada; I said, you know, "What are you up**
 21 **to? What is your dog in this hunt?" and he said**
 22 **he worked for Canaccord Adams, but he was, you**
 23 **know, helping Westface. So I said, "Well, do you**
 24 **work for WestFace?" He says, "No. I work for**
 25 **Canaccord Adams, but, you know, Greg Boland is a**

1 **A. I mean, nothing of any substance, you know?**
 2 **Nothing of any substance.**
 3 Q. Did he want to know how your case was going?
 4 **A. He might have asked about the case, but, I**
 5 **mean, nothing of any, like, real substance; it was**
 6 **almost like a personal call. I mean it was kind of**
 7 **-- you're talking about odd; it was odd.**
 8 Q. Did he want to know that you were still
 9 pursuing your claims against Callidus?
 10 **A. Yeah, I think we discussed it a little bit,**
 11 **but I was speaking directly to Boland. I told**
 12 **Boland exactly what we were doing, you know; we**
 13 **look it up, and then, this fellow calls, and, you**
 14 **know, it was literally like a -- as I said, like a**
 15 **-- personal-type call; I have no idea.**
 16 Q. How did that initial call end?
 17 **A. Nothing. We just had a conversation for**
 18 **five or ten minutes. You know, as I say, what I**
 19 **recall was he was -- he apparently knew**
 20 **Newton Glassman, he sued his father or something --**
 21 **you know, I don't know; he just knew him for a long**
 22 **period of time, and that was it. So -- yeah, that**
 23 **was it.**
 24 Q. Did he -- any follow-up calls with
 25 Mr. Langstaff?

1 **friend of mine," or something like that; and -- I**
 2 **mean the conversation veered onto talking about**
 3 **Newton Glassman and he was just getting married and**
 4 **this and that, but it was really almost nothing**
 5 **about the case. As I say, I have no idea why this**
 6 **guy called.**
 7 Q. So, you know, this is --
 8 **A. I mean, apparently, he knew Newton Glassman**
 9 **for years, this fellow Langstaff.**
 10 Q. So he calls you -- let's just -- I'm trying
 11 to get some context here. So he calls you again,
 12 another guy who calls you out of the blue; you
 13 didn't initiate the phone call?
 14 **A. Right, did not.**
 15 Q. And he calls you up and he says, "Hi, I'm
 16 Bruce Langstaff from Canaccord. I'm -- I work at
 17 Canaccord, but I'm helping you out at WestFace?"
 18 **A. Yes, helping him out for some reason, a**
 19 **friend of mine.**
 20 Q. And "I need -- and so, I'm here to gather
 21 some information from you"?
 22 **A. Not really. I mean, you know, the guy's**
 23 **sort of a jovial guy; he seems like a nice guy.**
 24 Q. What type of questions did he ask you, if
 25 you can recall?

1 **A. He might have called a second time, but I**
 2 **don't have a note of it, but I recall he might have**
 3 **called one more time.**
 4 Q. And what was that follow-up call for?
 5 **A. Similar. Nothing of any -- maybe something**
 6 **that wouldn't stick in your mind.**
 7 Q. He must have been looking for -- I mean, to
 8 be fair, Mr. Levy, I mean he doesn't know you, so
 9 it's not like he's calling you to schedule a golf
 10 game and go for drinks or something. So there had
 11 to be -- I mean, you know, you've been around and
 12 you're like me; probably, you know, all us lawyers
 13 always understand that somebody's calling for a
 14 reason; nobody calls for nothing, and --
 15 **A. That's why I found it odd, because he -- as**
 16 **I had been speaking to his friend, Boland -- I gave**
 17 **Boland everything we were doing, you know. So I**
 18 **don't know why he called at all, quite frankly.**
 19 Q. You had a similar conversation, though, with
 20 Mr. Langstaff about what you were doing, where
 21 things were going?
 22 **A. He was like Livesy; you know, he's one of**
 23 **these guys who's always looking for some details;**
 24 **you know, I mean, he was just like a guy you would**
 25 **meet over a beer. As I say, when you talk about**

1 **odd, I found it odd he just called to commiserate.**
 2 **I don't know. I mean we were both in litigation**
 3 **with Callidus; I guess that was the --**
 4 Q. Except that Canaccord's not in litigation
 5 with Callidus?
 6 A. **No, not Canaccord. I found it odd that he**
 7 **worked with Canaccord and he would get involved**
 8 **with these things. So I found the whole thing very**
 9 **odd. But anyway, he did get in contact me just for**
 10 **your -- the -- information.**
 11 Q. And after the second phone call, was there
 12 any -- so that second phone call, it looks like the
 13 first phone call was fairly recent, so that would
 14 have been just April 25th of 2017, you indicated.
 15 So when was this last call that you had? So that
 16 would even be more recent. A month ago?
 17 A. **At least a couple of months ago.**
 18 Q. Did he discuss with you about whether or not
 19 you had any discussions with Callidus regarding
 20 settlement?
 21 A. **No, no. Definitely not. No. The only**
 22 **person I had that conversation with was Daryl, you**
 23 **know, when Daryl called me -- the last time he**
 24 **called me -- which was, you know, maybe a couple of**
 25 **weeks ago.**

1 call with you?
 2 A. **Well, he wanted to know about the Esco case,**
 3 **and, you know, basically, I told him what was on**
 4 **the record. I mean, everything about the Esco case**
 5 **is really on the record when you come right down to**
 6 **it. I know you haven't been involved, but if you**
 7 **look at all the counterclaims, you know, the briefs**
 8 **and all that -- it's all on the record. So, you**
 9 **know, there was -- I did discuss it with him. But,**
 10 **you know, I said, "Look, you know, you can read a**
 11 **lot of this stuff, you know" --**
 12 Q. But why did he want to know about the Esco
 13 case?
 14 A. **Well, you have to look up who Clarity Spring**
 15 **is. You have to --**
 16 **THE WITNESS:** Are you familiar at all, Jim?
 17 **MR. RILEY:** We might want to go off the
 18 record.
 19 Q. He can't tell you. So you seem to know what
 20 Clarity Spring is. So what is Clarity Spring?
 21 A. **Well, Clarity Spring files whistleblower**
 22 **cases, and Clarity Spring --**
 23 Q. Is it a law firm, or is it --
 24 A. **No, no. They do work with a law firm,**
 25 **uh-huh. Yeah, they do work with a law firm, but**

1 Q. Any other third party that has contacted
 2 you? We -- now, we know it's Livesy, Boland,
 3 Langstaff.
 4 A. **Yeah. Okay. Well, the answer is yes. I'm**
 5 **going to give you, you know, something you may not**
 6 **know -- it's a pretty sensitive piece of**
 7 **information -- but I was contacted by a firm called**
 8 **Clarity Spring. Are you familiar with those folks?**
 9 Q. Clarity Spring?
 10 A. **Clarity Spring.**
 11 Q. I don't know. I would likely go on break
 12 and talk to my client. I am not familiar,
 13 Mr. Levy, but my client may be, but -- so who from
 14 Clarity Spring gave you a call?
 15 A. **A fellow named Nathan Anderson (phonetic).**
 16 **Nathan Anderson.**
 17 Q. And again, this was an unsolicited phone
 18 call?
 19 A. **It was definitely an unsolicited phone call.**
 20 Q. And when did this phone call take place?
 21 A. **I would say it took place somewhere around**
 22 **December of last year.**
 23 Q. So December, 2016?
 24 A. **Yeah, somewhere around there.**
 25 Q. And what was the purpose of Mr. Anderson's

1 **they filed the whistleblower in the Platinum Equity**
 2 **case, which was a multibillion dollar hedge fund in**
 3 **New York. They filed that whistleblower case in --**
 4 **you know, in -- December of last year; those guys**
 5 **were arrested in the Southern District of New York,**
 6 **and the whole fund has blown up or whatever. So**
 7 **anyway, I believe -- I do not know, but I believe**
 8 **they filed the whistleblower memorandum in this**
 9 **case. So --**
 10 Q. And that would be with the -- with the --
 11 U.S. authorities you're saying, a memorandum?
 12 What's a memorandum? Like a --
 13 A. **It's a detail -- these guys have done a lot**
 14 **of work. These guys have done a lot of work.**
 15 Q. And how do you know that?
 16 A. **Because of the depth of what this guy knew**
 17 **when I spoke with him.**
 18 Q. And when you say "the depth of what he knew"
 19 -- "the depth of what he knew," do you mean he knew
 20 about other cases other than Esco?
 21 A. **He knew a lot about Catalyst.**
 22 Q. Catalyst or Callidus?
 23 A. **Catalyst.**
 24 Q. Catalyst?
 25 A. **He knew a lot about Catalyst.**

1 Q. What was he asking of you?
2 **A. Just -- he was asking about the Esco case.**
3 **As I was saying to people, if you're asking me**
4 **about the Esco case, it's all on the record when**
5 **you come right down to it.**
6 Q. But he was relaying a lot of information to
7 you that indicated that he knew a lot about what
8 was going on with Catalyst and Callidus?
9 **A. Yes.**
10 Q. When he got on the phone, when he first
11 introduced himself, he would have introduced
12 himself as "Mr. Anderson from Clarity Spring. I
13 want to ask a few questions, because I am looking
14 to do something, or I am investigating something,
15 or I am" --
16 **A. Yeah. That's --**
17 Q. So what did he say?
18 **A. He said he was investigating Callidus and**
19 **Catalyst.**
20 Q. And you advised him what the status of your
21 Esco case was. How did he -- did he ask for
22 anything from you? Any deliverables of any type?
23 **A. No, no.**
24 Q. Did -- and how did the conversation end?
25 **A. Well, I think he, you know, got what he**

1 call, did he follow up with you at all?
2 **A. No.**
3 Q. And you've had no further communication with
4 Clarity Spring?
5 **A. I have -- he might have called once more,**
6 **but, you know, I don't have any record of it.**
7 Q. When he was calling once more, do you recall
8 what the purpose of that phone call was and what
9 was discussed at that time?
10 **A. No. I mean, all he wanted was information**
11 **about Esco and the case, basically -- not about**
12 **Esco, but the case. Where was the case, what was**
13 **the status.**
14 Q. So when was the last time you think -- when
15 you say he might have called one more time -- we
16 know that December, 2016 was the initial phone
17 call. So is this a recent phone call in the last
18 30, 60, 90 days?
19 **A. No. These calls were all around at the turn**
20 **of the year. In other words, the first call was**
21 **somewhere, I would say, December, give or take, as**
22 **I don't have a record of it. The second call, if**
23 **there was a second call, would have come around**
24 **February or so. I seem to recall he called back; I**
25 **can't say for sure. But anyway, I spoke to him at**

1 **wanted; I told him about the case.**
2 Q. Did he say to you what he planned to do --
3 what Mr. Anderson had planned to do?
4 **A. No, he -- but I asked him. I asked him, and**
5 **he said, "Well, we work on whistleblower cases,"**
6 **and that's what he said. I later checked them out,**
7 **like I checked everyone else out, including you,**
8 **before I meet with them, right, and found out they**
9 **were in the Platinum case; the Wall Street Journal**
10 **was heavily involved in the Platinum case.**
11 Q. And you said that you believe that he filed
12 a memorandum?
13 **A. Well, I believe that's where he was going.**
14 Q. Do you know if he filed a memorandum with
15 the Ontario Securities Commission?
16 **A. He wouldn't do that.**
17 Q. No?
18 **A. The Ontario Securities Commission doesn't**
19 **have a great reputation in the United States; it's**
20 **considered a toothless organization. He wouldn't**
21 **have filed it --**
22 Q. Do you know if he's filed anything in the
23 U.S., to your knowledge?
24 **A. I do not know. I do not know.**
25 Q. Did he -- after your December of 2016 phone

1 **least once.**
2 Q. Okay. So that's Mr. Anderson. Any other --
3 let's move on to some other third parties.
4 **A. And then, you know, the law firm they work**
5 **with is a law firm called Berman D'Valario. Berman**
6 **-- B-E-R-M-A-N -- D'Valario -- D-V-A-L-A-R-I-O.**
7 **They're in Boston, and they filed whistleblower**
8 **cases; they filed the Platinum case.**
9 Q. And did they contact you, somebody from
10 Berman?
11 **A. It's possible, because I have the name**
12 **Bryan -- B-R-Y-A-N -- Wood. Bryan Wood from Berman**
13 **D'Valario. They've actually changed their name. I**
14 **happened to look them up last night, because I was**
15 **trying to get my thoughts here. They changed their**
16 **name to Berman Tobacco.**
17 Q. And so, do you recall what the conversation
18 with Mr. Wood was about?
19 **A. No, I don't even recall that I had a**
20 **conversation with him, but I have his name down**
21 **from these other guys, but I may very well have**
22 **spoken to him.**
23 Q. And if you did speak to him, would that have
24 been around the December, 2016, January, 2017 --
25 **A. Yes, it was all -- yes, around that time.**

1 Q. Did Mr. Wood indicate to you what his plans
2 were or --
3 **A. No, not particularly, except he was working**
4 **on the Callidus matter and, you know, wanted some**
5 **information. You know, as I say, we don't like**
6 **these -- we like to litigate in Texas, if we**
7 **litigate, so we don't like newspapers and other**
8 **people poking in, because they just cause problems.**
9 **So I was very circumspect on what I said to him,**
10 **and I just gave him stuff on the record, because,**
11 **you know, that guy's not doing me any good, I mean,**
12 **so -- but anyway, they did call.**
13 Q. Any -- now, the next third party?
14 **A. That's it. That's it. You have exhausted**
15 **my entire sheet of people I've spoken to, and I**
16 **have reviewed -- I actually prepared for this. I**
17 **have been reviewing all my notes.**
18 Q. Do you recall if a Roland Keiper from
19 Clearwater Capital, or anybody from Clearwater
20 Capital gave you a phone call?
21 **A. No. I looked all these guys up. I never**
22 **heard of Roland Keiper; I now know who he is. But**
23 **Greg Boland worked for Keiper at some point. So**
24 **that's all -- I know that from looking it up.**
25 Q. Puri? Sunny Puri from Anson Partners or

1 **by Warren Buffett, just got run over. What is it?**
2 **Home -- whatever is the Canadian lender who sold it**
3 **short and Buffett bought it and --**
4 Q. Sahan Adrangi -- that's S-A-H-A-N,
5 A-D-R-A-N-G-I -- at Kerrisdale Capital?
6 **A. I don't know.**
7 Q. Nobody? No one ever contacted you?
8 **A. I never heard of those people. No. I never**
9 **heard of those people.**
10 Q. So of the third parties that contacted you
11 throughout this process, we know Bruce Livesy?
12 **A. Uh-huh.**
13 Q. We know that you contacted
14 Matthew Milm Smith?
15 **A. Uh-huh. Yes.**
16 Q. We know that Mr. Langstaff contacted you
17 from Canaccord. We know that Mr. Oswald from
18 Forensic Restitution contacted you. We know that
19 Nathan Anderson from Clarity Spring contacted you.
20 And we know that Bryan Wood from the Berman law
21 firm contacted you.
22 **A. Might have contacted me. I don't recall**
23 **whether I spoke -- I believe I did, but I just**
24 **don't recall it.**
25 Q. And there's no other party that contacted

1 anybody from Anson Partners?
2 **A. No. As I say, the first time I've ever --**
3 **when I looked them up, they were, like, short**
4 **sellers, these guys.**
5 Q. But you've never spoken to them or knowingly
6 called them? Nobody has called you?
7 **A. No. I never spoke to them, never heard of**
8 **them.**
9 Q. Moez Kassam -- K-A-S-S-A-M?
10 **A. I never heard of him, I never spoke to him,**
11 **and I can't find him on Google, so --**
12 Q. Shawn Kimmel of K2 Partners?
13 **A. Oh, no. That's the other guy I can't find.**
14 **This other guy, Kassam, is some kind of a**
15 **short-seller-type character. No. Kimmel -- I've**
16 **never heard of Kimmel.**
17 Q. Or anybody at K2 Partners?
18 **A. No. I can't even find them either.**
19 Q. Matthew MacIssac MMCAP?
20 **A. I don't know him.**
21 Q. Nothing? No contact?
22 **A. Never heard of him.**
23 Q. Marc Cohodes? C-O-H-O-D-E-S?
24 **A. I did not have any contact with him. There**
25 **was a Google image guy that just got himself killed**

1 you that you recall?
2 **A. I can't recall any other party, and I don't**
3 **have any others. I made a pretty thorough search**
4 **of the little notes that I keep these days, so I**
5 **don't keep time sheets anymore.**
6 Q. Fair enough. Now, do you know, in your
7 conversation with the other guarantors of whether
8 or not any of the parties that contacted you, those
9 being Livesy, Boland, Langstaff, Oswald, Anderson,
10 Wood, whether or not they received similar phone
11 calls?
12 **A. From?**
13 Q. From any of those third parties that you --
14 that contacted you.
15 **A. I don't know. I have no idea.**
16 Q. Did you have any discussions with the
17 guarantors about third parties contacting you?
18 **A. Contacting me? No. I might have had a**
19 **conversation with Daryl about Clarity Spring; they**
20 **might have contacted him, too. I might have had**
21 **that conversation only with Daryl, not with any of**
22 **these other folks.**
23 Q. You don't know if Livesy contacted any of
24 the other guarantors?
25 **A. Who? Livesy? I don't know about Livesy.**

1 **He knew everything; he must have contacted**
2 **everyone. You know, he never told me he did, but,**
3 **you know, the guy's like a walking encyclopedia.**
4 Q. Do you know if Mr. Boland had contacted any
5 of the other guarantors?
6 A. **I do not know.**
7 Q. Do you know if Mr. Langstaff, has he
8 contacted you, did he contact other guarantors?
9 A. **Yeah, I have no idea what he did.**
10 Q. Mr. Oswald? Did he contact any other
11 guarantors, do you know?
12 A. **I don't know, but he's with some firm that**
13 **sounds like he might well have, but I have no idea;**
14 **he didn't tell me.**
15 Q. You believe Mr. Anderson would have
16 contacted Mr. Levitt. Do you know if he contacted
17 any other guarantors?
18 A. **I would imagine he did. As I say, I don't**
19 **know, but this guy sounds like a pretty thorough**
20 **character, so -- but I don't know; I really just**
21 **discussed the Esco matter with him.**
22 Q. Other than these conversations that you've
23 relayed to us with third parties, those are all --
24 that is the full list of third parties that
25 contacted you throughout this litigation?

1 **You can follow up with Richard.**
2 Q. Did -- any of these third parties that you
3 mentioned to us, did they provide any -- were they
4 willing to provide any -- non-financial support to
5 support your claim as against Callidus?
6 A. **Only the guarantor -- the three other**
7 **guarantor-type litigants, they, you know, were**
8 **prepared to write affidavits, et. cetera. And**
9 **Kevin Baumann, he did write an affidavit in the**
10 **Esco litigation.**
11 Q. Did any of these third parties either
12 discuss with you or ask you or have any discussions
13 with you about filing a complaint with the Ontario
14 Securities Commission?
15 A. **No, no.**
16 Q. You seemed to hesitate, so I just want to
17 make sure that --
18 A. **Well, we talked about it. As I say, it does**
19 **not -- not to cast aspersions, but it just doesn't**
20 **have a great reputation with the United States. I**
21 **mean, Canada has no national securities commission**
22 **like the SEC. I mean, the SEC is, you know --**
23 Q. So who would you have discussed the
24 difference between the SEC and the Ontario
25 Securities Commission with? Like, who -- out of

1 A. **Yes.**
2 **MR. BISHOP:** When you said -- did you say
3 Milton Smith or Gary Smith?
4 **THE WITNESS:** Milme -- M-I-L-M-E.
5 **MR. BISHOP:** But we talked about a Gary
6 Smith, too.
7 **MR. LESLIE:** Gary Smith is another
8 guarantor.
9 Q. I'm going to go through a few more similar
10 questions that I did with the guarantors, and then,
11 I think we're going to take just a quick break, and
12 then, we'll come back to finish up the questioning.
13 Did any of these third parties that you spoke to
14 look to offer you any financial support to continue
15 on with your litigation against Callidus?
16 A. **No. We just got only Baumann. As I say, I**
17 **don't know if he was, you know, serious or has any**
18 **money, et. cetera.**
19 Q. Right. So you don't know where he's going
20 to come up with this six figures?
21 A. **I have no idea, because I didn't have any**
22 **interest, and --**
23 Q. But Richard might know a little bit more, so
24 we'll call --
25 A. **Richard might know. Richard might know.**

1 these third parties, who did you have those
2 discussions with?
3 A. **Only with Daryl. Daryl's a lawyer. You**
4 **know, but, as I say, no one ever asked me to join**
5 **in with filing anything with the Ontario Securities**
6 **Commission, and we haven't, and if anyone asked us,**
7 **we wouldn't, but no one asked us.**
8 Q. So you believe that Daryl may therefore --
9 as a result of your conversation, did Mr. Levitt,
10 to your belief, contact Mr. Anderson of
11 Clarity Spring to advise him of the possibility of
12 any whistleblower action in the United States?
13 A. **No. I don't think Daryl Levitt had anything**
14 **to do with that. Just by my feelings and what I've**
15 **heard, I don't think he had anything to do with it.**
16 **I think they sort of intimidated they were hired by**
17 **limited partners of Catalyst; they intimidated that.**
18 **That's, you know, what I gleaned --**
19 Q. Mr. Anderson of Clarity Springs intimidated to
20 you during the phone conversation that some limited
21 partners of Catalyst had contacted Clarity Spring?
22 A. **That's what I gleaned. I don't know if it**
23 **was -- yeah, that's what I gleaned from it.**
24 Q. Do you know -- did any of these third
25 parties advise you -- did he mention -- just let me

1 step back in that question. Did he advise you who
 2 those limited partners were?
 3 **A. No.**
 4 Q. He just intimated that there was limited
 5 partners of Catalyst that were looking at retaining
 6 Clarity Spring?
 7 **A. That's what I gleaned. You know, I asked**
 8 **him who he was working for. You always want to**
 9 **know, you know, if somebody's asking questions who**
 10 **you're working for. So he sort of intimated; he**
 11 **wouldn't tell me directly. He might have been**
 12 **working for himself for all I know, but anyway,**
 13 **that's what he intimated.**
 14 Q. Did any of these third parties have any
 15 discussions with you about filing a complaint
 16 against the Toronto Police -- filing a complaint
 17 with the Toronto Police against Callidus?
 18 **A. No, no. We went over that.**
 19 Q. And none of the third parties that we just
 20 spoke of had any discussions with you about the
 21 Toronto Police?
 22 **A. I don't know. I mean, Daryl may have**
 23 **mentioned it to me, but, as I say, we don't care**
 24 **about the Toronto Police, honestly. I mean, I know**
 25 **you're from Toronto, but we don't care about the**

1 **relationship with the Wall Street Journal.**
 2 Q. And why do you say that?
 3 **A. Because they wrote a story on Platinum --**
 4 **they wrote a story on Platinum before those guys**
 5 **were arrested. It broke the story, I believe --**
 6 **the Wall Street Journal.**
 7 Q. None of those third party groups, as you've
 8 indicated, they were not there to provide you with
 9 any financial assistance or non-financial
 10 assistance; is that correct?
 11 **A. That is correct.**
 12 Q. Okay. Let's -- we'll just go off the record
 13 for two seconds or probably five minutes, and then,
 14 I'll finish up with my concluding questions.
 15 **THE VIDEOGRAPHER:** We're going off the
 16 record. The time is 12:21.
 17 (Whereupon, a discussion was held off the
 18 record.)
 19 (Whereupon, a break was taken at 12:21 p.m.
 20 and the interview resumed at 12:38 p.m.)
 21 **THE VIDEOGRAPHER:** One moment. We are now
 22 back on the record. The time is 12:38.
 23 Q. Okay. I am going to put this on the record
 24 just because we need the clarification. So earlier
 25 this morning, we had some off-the-record

1 **Toronto Police.**
 2 Q. But Daryl -- out of all the parties we
 3 named, the guarantor group and the third-party
 4 group, Daryl was the only one who may have been
 5 discussing the Toronto Police with you?
 6 **A. Yes, because I had most of my discussions**
 7 **with Daryl. As I say, Daryl is a lawyer, et.**
 8 **cetera. I felt more comfortable speaking with him.**
 9 Q. Did any third party, either Mr. Anderson or
 10 any of the third parties that we've named of the
 11 third party group, did they ask you to assist in
 12 filing a complaint with the SEC?
 13 **A. No, they definitely didn't.**
 14 Q. Nobody approached you to do so?
 15 **A. No, definitely not.**
 16 Q. Did any of the third parties have any
 17 discussions with you about going to the press with
 18 respect to claims as against Callidus or Catalyst?
 19 **A. No, no.**
 20 Q. Were you aware that any of these third
 21 parties were -- had intimated to you that they were
 22 going to go to the press with this -- their -- you
 23 know, their -- allegations?
 24 **A. No. The only thing I know is**
 25 **Clarity Spring, you know, must have had some**

1 discussions that you made that Roland Keiper of
 2 Clearwater Capital may have contacted you, and that
 3 was a mistake -- I won't use "a mistake" -- an
 4 inadvertence -- by your lawyer, because you did
 5 look him up on the Internet, but there was no
 6 contact between you and Mr. Keiper directly?
 7 **A. No, no. There was never -- he never**
 8 **contacted me, I never contacted him. I never heard**
 9 **of him until you promulgated that list and -- but I**
 10 **did look him up and found out who he was.**
 11 Q. Fair enough. I just want to go back to that
 12 call that you had with Mr. Anderson from
 13 Clarity Spring. You indicated that he -- that two
 14 things: one, that it was very sensitive, and I
 15 don't know what you meant by "sensitive." Did
 16 Mr. Anderson say it was sensitive to you, or was
 17 it --
 18 **A. Well, you know, I don't know all the law,**
 19 **but when you interfere with whistleblowers, you can**
 20 **get into a lot of trouble. So I don't want to be**
 21 **there. You know, I tried to be forthcoming with**
 22 **you, probably -- which, you know, you've asked me**
 23 **to do and I agreed to do, but as I say, you mess**
 24 **with whistleblowers, you can get in trouble.**
 25 Q. So that was your reference to "sensitive"?

1 **A. Yes.**
2 Q. And then, you indicate, too, that he seemed
3 to have in-depth knowledge of Catalyst and
4 Callidus; and when you say "in-depth knowledge," is
5 there any specifics -- can you give me specifics of
6 why you say that he had in-depth knowledge that you
7 recall?
8 **A. I don't have any specifics, but he -- this**
9 **guy -- knew what he was talking about. I mean, he**
10 **had clearly knew all the background, and -- he just**
11 **knew a lot; that was my impression of him. I can't**
12 **give you any specifics that I remember, but he knew**
13 **a lot; he -- you know, I wasn't his first call.**
14 Q. But you don't know who else you spoke to
15 because you indicated previously you weren't sure
16 if he spoke to any of the other guarantors --
17 **A. I have no idea who he spoke to, but I have a**
18 **feeling he spoke to a lot of people.**
19 Q. Just on David Oswald -- at the break, we
20 noticed that David Oswald with Forensic Restitution
21 is actually out of Toronto, Ontario.
22 **A. Oh, is he? Okay.**
23 Q. Do you know if any of the -- did you have
24 any discussions with the guarantors in Ontario
25 about the possible retention of Mr. Oswald?

1 Q. And we know that other media outlets
2 contacted you, but you've indicated that you didn't
3 give them any information, either the Wall Street
4 Journal or any other media outlet; you indicated
5 that you had not -- you did not speak to them?
6 **A. No, I spoke to this fellow Ben Dummett from**
7 **the Wall Street Journal Toronto or Canada edition**
8 **and I told him about the Esco case.**
9 Q. That was it?
10 **A. That was it.**
11 Q. And did you -- do you recall if you ever got
12 contacted by a Lawrence Delevingne --
13 D-E-L-E-V-I-N-G-N-E?
14 **A. No, it does not ring a bell.**
15 Q. It does not ring a bell?
16 **A. No.**
17 Q. Did anybody from the news organization
18 Reuters end up calling -- contacting -- you?
19 **A. You know, it's possible. It's possible, but**
20 **I just don't recall it. I have a note here; I say**
21 **Reuters, John Tellik (phonetic), but I don't know**
22 **if he called and I never called him back; I just**
23 **don't recall speaking with him, except I recall I**
24 **think he called me and left a message, and I don't**
25 **think I ever got to speak with him, but I believe**

1 **A. No, no. As I say, I never discussed it with**
2 **anybody. He called me, and I don't recall much**
3 **about him, except I had a note -- you know,**
4 **Forensic Restitution, David Oswald, June, 2016.**
5 **That was my only note, and I vaguely remember that**
6 **this guy called me, but I forgot who he**
7 **represented. I did ask him, and I just forgot who**
8 **he was employed by.**
9 Q. Again, I think, given through your Counsel
10 an undertaking, if that does play some -- you know,
11 it's another -- all these questions are important,
12 but that's another important piece. If you do end
13 up recalling or you find it in your notes or in an
14 e-mail, I ask that you --
15 **A. We'll let you know. As I say, when I talk**
16 **to someone, I ask them who they're calling on**
17 **behalf of.**
18 Q. And I'm just canvassing some of the older
19 questions. You indicated when we talked about the
20 media, that you had spoken to the Brownsville
21 Herald, I believe. That was way back when when
22 they had nothing to do with the "whistleblower" or
23 any of that operation?
24 **A. No, no, it was in March; that was when Esco**
25 **stopped operating.**

1 **he did call.**
2 Q. And any other -- just so -- I want to cover
3 off everything. Any other -- in your notes there
4 that you have, any other media outlets that you can
5 recall?
6 **A. No, no. As I said, this guy Livesy, as I**
7 **say, he was working for a Canadian business journal**
8 **or whatever; he said he was writing a story, called**
9 **several times.**
10 Q. And anybody else --
11 **A. I've given you all the media. As I say, I**
12 **don't like talking to the media.**
13 Q. So nobody else in the media; we've covered
14 off all the guarantors, the guarantor group that
15 you spoke with; and we covered off all the third
16 parties?
17 **A. Yes, we have.**
18 Q. And just -- I don't know if I've asked the
19 question directly, and you probably have given the
20 answers, but I'm just going to go through these
21 fairly quickly. I think you've indicated that
22 neither you nor any of your advisors filed any
23 complaint with OSC?
24 **A. No. You asked that about three times, but**
25 **no.**

1 Q. And not with the Toronto Police either?
2 **A. No. I definitely didn't.**
3 Q. I think I told you I may repeat some of the
4 questions, but I always find that sometimes you
5 don't ask all the questions and you leave and you
6 go, "Jeez, I should have -- I don't know why I
7 didn't ask that question." So there was nobody that
8 advised you that there was this -- any coordinated
9 effort to make complaints to the Ontario Securities
10 Commission or the Toronto Police Department?
11 **A. No.**
12 Q. We have -- we have your undertaking to
13 provide all the documents and either letters,
14 e-mails, memos, meeting notes, texts, everything
15 that you have in relation to your communications
16 with the guarantors and any third parties.
17 **A. Yeah. We try to keep, you know, very low**
18 **e-mail traffic, because we don't like e-mails.**
19 Q. You don't -- other than the information
20 you've told me, you don't have any other
21 information about any coordination amongst the
22 guarantors or third parties or anything to attempt
23 or to look to short-sell the stock of Catalyst or
24 Callidus? It should be Callidus.
25 **A. No, we don't know a lot about that, and, you**

1 **matter years ago. I know who he is, but I do not**
2 **believe I ever spoke with him. And the other guy I**
3 **have on this sheet is a fellow named Eric Inspector**
4 **(phonetic) from Captor Financial, who I found was a**
5 **Callidus borrower, but after I looked him up, I**
6 **decided that I didn't want to really talk with him,**
7 **because he has gotten in trouble with one of these**
8 **securities commissions. So I said -- yeah, I mean,**
9 **I'm not going to call that guy. So, you know --**
10 **but I got his name out of some report or something**
11 **-- I don't know where I got his name, quite**
12 **frankly, but I got his name.**
13 Q. Anybody else on your sheet?
14 **A. No, that's it.**
15 Q. And if you, again -- you do have, as we're
16 looking to answer these undertakings, you do have
17 -- if anything comes up, you are -- or another name
18 pops up or when you're looking through your notes
19 again when you're producing this, you do have an
20 undertaking to provide that to us.
21 **MR. LESLIE:** And what I'd also like,
22 Counsel, is that, you know, we're not going to
23 go through another -- because we do have to get
24 this done, but if another name does pop up, I
25 would ask that the name be provided together

1 **know, it's not our -- you know, not our -- concern.**
2 **I've never sold stock short myself, so I wouldn't**
3 **do it; it's a very risky thing to do.**
4 Q. Just give me one second. One last question.
5 I know you've been -- and I appreciate -- and I
6 will say this: that you've spent the time to go
7 through your notes and to try to narrow down phone
8 conversations and that kind of thing. Is there
9 anybody else on that sheet that you have not
10 mentioned to us during this examination?
11 **A. No, there is nobody on this sheet. I have**
12 **gone over the sheet a couple of times, but I'll go**
13 **over it again. No, I have Wes Voorheis (phonetic)**
14 **on this sheet, because somebody gave me his name.**
15 **I do not believe I ever spoke with Wes Voorheis.**
16 **In fact, I almost can certainly tell you that, but**
17 **somehow, I had his name, so I stuck it down here,**
18 **because I know he has had involvement.**
19 Q. So you don't know how you came up with
20 Mr. Voorheis's name? It would have been through a
21 guarantor?
22 **A. Someone -- one of these guys. It could have**
23 **been Livesy -- I don't know -- but I have his name;**
24 **he's a securities lawyer; he worked with**
25 **Newton Glassman in the Conrad Black (phonetic)**

1 with the background of why the name has popped
2 up and what it is about and what occurred,
3 because I just don't want to be left -- you
4 know, you look through the whole thing, there's
5 a name, and we have no context to that name.
6 **A. I don't think it's going to happen, because,**
7 **as I say, I made a pretty thorough search --**
8 **MR. LESLIE:** Is that fair?
9 **MR. BISHOP:** As long as we sign today and
10 walk out with signature pages.
11 Q. The last question I do have for you that I
12 didn't ask is, did you become or how did you become
13 aware of any settlement with Gary Smith from Opes?
14 **A. I think Daryl told me.**
15 Q. Daryl told you?
16 **A. Yeah.**
17 Q. Did he tell you -- was he able to tell you
18 the details of the settlement?
19 **A. No.**
20 Q. It was just that he had settled?
21 **A. He had settled and he was out of there --**
22 **out of the group.**
23 Q. Did he tell you any details of the
24 settlement: the amount of the settlement, how much
25 it was for or anything?

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1 A. No.
 2 Q. Nothing? Just that it was settled?
 3 A. Yes. It was gone. It wasn't going to have
 4 him around anymore.
 5 Q. Okay. I think -- thank you for your time,
 6 and subject to, you know, getting the undertakings,
 7 those are my questions.
 8 A. Okay. Very good. Thank you. I will update
 9 you --
 10 **THE VIDEOGRAPHER:** This marks the end of
 11 Media Number 2, interview meeting of Andrew
 12 Levy. We are going off the record. The time is
 13 12:51.
 14 (Whereupon, this examination was concluded
 15 at 12:51 p.m.)
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I N D E X

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C E R T I F I C A T I O N

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2
3 I, DAVID NOVICK, a Notary Public for and within
4 the State of New York, do hereby certify:
5 That the witness whose testimony as herein set
6 forth, was duly sworn by me; and that the within
7 transcript is a true record of the testimony given
8 by said witness.
9 I further certify that I am not related to any of
10 the parties to this action by blood or marriage,
11 and that I am in no way interested in the outcome
12 of this matter.
13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 30th day of August, 2017.
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DAVID NOVICK

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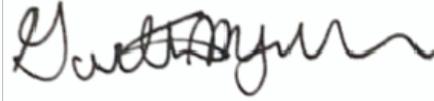
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This is Exhibit "F" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "D. [unclear]", written over a horizontal line.

A Commissioner, etc.

MOORE BARRISTERS

PROFESSIONAL CORPORATION

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March 21, 2018

VIA Email to: boyd.rodgy@gmail.com

Mr. Roderick Boyd
Suthern Investigative Reporting Foundation
3819 Park Avenue
Wilmington, NC
28403

Dear Mr. Boyd,

We act as special litigation counsel to The Catalyst Capital Group Inc. (“Catalyst”) and Callidus Capital Corporation (“Callidus”).

This letter is a preliminary response to the contents of a March 13, 2018 email sent by Bruce Livesey to Dan Gagnier, in which Mr. Livesey stated that he is working on a story about Catalyst and Callidus for the Southern Investigative Reporting Foundation (“SIRF”).

Mr. Boyd, you should be aware that my clients believe that there are numerous persons who are antagonistic to them and who are intent on and actively engaged in continuing attempts to harm each of Catalyst, Callidus, and Newton Glassman. My clients further believe that several of these persons have been in contact with various news organizations to advance their agendas, and that they include persons who have been named or are referred to in legal proceedings commenced by Catalyst and/or Callidus.

As you are aware, Mr. Livesey is a freelance reporter. However, you may not be aware that he holds a well-known, openly expressed animus against Catalyst, Callidus, and Newton Glassman. This is evident from Mr. Livesey’s use of expletives and his circulation of totally unfounded allegations about Catalyst, Callidus and Glassman to anyone who will listen. These communications have been confirmed to Catalyst by sources who have direct knowledge of the verbal attacks Mr. Livesey has made against my clients.

In addition, my clients are in the possession of sworn testimony from one or more guarantors of Callidus’ debt, who Mr. Livesey has frequently contacted in an attempt to solicit criticism

adverse to my clients. In the course of these contacts—notwithstanding the pretense that he was operating as a responsible journalist—Mr. Livesey advised that he had been hired by West Face Inc.

Mr. Livesey's animus and agenda has included repeated attempts over the past 16 months to persuade over half a dozen media outlets to publish articles which were defamatory of Catalyst, Callidus, and Mr. Glassman. After due consideration, each of the above media outlets declined to publish the defamatory stories which Mr. Livesey was pitching.

Among other things, Mr. Livesey had also been the source of false allegations and rumors that Catalyst, Callidus and Mr. Glassman are guilty of misconduct and are under investigation for criminal wrongdoing by the authorities charged with the duty to deal with such matters. This is completely untrue.

In fact, not only have such authorities repeatedly and directly confirmed to my clients and their counsel that my clients are not under investigation, but also have advised that whatever allegations may have been conveyed to them, that they followed usual practice of conducting a preliminary review of any allegations of misconduct--whatever the source--and determined that nothing warranted the opening of any file or the commencement of any investigation.

Indeed, my clients and their counsel have been actively meeting with authorities and cooperating with an investigation of market manipulation in which the press had been used as a tool by the wrongdoers.

If you have not reviewed the litigation filed by Catalyst regarding the wolfpack conspirators and the litigation initiated in several jurisdictions to hold guarantors of debts owed to Callidus, you should do so, and your time and attention should be focused upon those details. Coordinated market manipulation in Canada should be of extreme interest to an organization dedicated to "the goal of providing in-depth financial investigative reporting for the common good" and one that is a member of, and follows the ethical standards of, the Society of Professional Journalists. (www.spj.org/pdf/spj-code-of-ethics.pdf).

Insofar as Mr. Livesey's proposed story relates to specific questions on Catalyst and Callidus as presented by Mr. Livesey, it should be concerning to you that the public record of disclosures by Callidus clearly show that Mr. Livesey's questions are riddled with inaccuracies, misunderstandings and purposeful fabrications.

In addition, many of the questions contained in Mr. Livesey's email relate to guarantors who are seeking to avoid their personal guarantee obligations and appear to be written as a platform to advance the interests of those guarantors. The *facts* relating to many of these matters—including

Callidus' positions—are detailed in publicly available Court filings in several jurisdictions. With the exception of the Emsco case (which is erroneously described by Livesey in his email), these issues remain before the Courts. Accordingly, Callidus considers it inappropriate to make any further comments beyond what has already been filed on the public record.

Although Catalyst is a private entity, recent disclosures on investments such as Gateway Casinos & Entertainment also demonstrate the bias and falsity implicit in many of Mr. Livesey's questions and show lack of understanding or purposeful effort on the part of Mr. Livesey to injure my clients.

Given the significant issues identified, we anticipate that you and SIRF will have concerns in publishing a story in line with Mr. Livesey's agenda (and the agenda of his sponsors, past or present) against my clients. Should the story nevertheless progress to publication, my clients intend to carefully review the contents of same, and wish to notify you that they will not hesitate to pursue all appropriate legal remedies available to them.

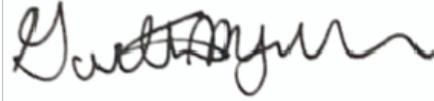
Yours very truly,

MOORE BARRISTERS

A handwritten signature in cursive script that reads "David Moore".

Per: David C. Moore

This is Exhibit "G" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "D. [unclear]", written over a horizontal line.

A Commissioner, etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

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

Defendants

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

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

- 2 -

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

AND BETWEEN:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

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

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS
given at the Cross-Examination of James Riley held on November 18, 2020

Cross-Examination by Dimitri Lascaris

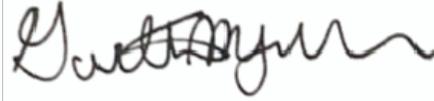
No.	Pg.	Q.	Category	Specific Question	Answer or Precise Basis for Refusal
1.	709-710	2054	UA	To advise whether the Plaintiffs are asserting all the causes of action in paragraph 1(a) of the Fresh as Amended SOC against Mr. Livesey.	The Plaintiffs are pleading civil conspiracy and the tort of causing loss by unlawful means against Mr. Livesey at this time.
2.	710	2055-2056	UT	To confirm that the Plaintiffs never served a libel notice on Mr. Livesey.	Mr. Livesey was not served with a Notice of Libel.
3.	710-711	2057	UT	To advise whether the Plaintiffs are alleging that Mr. Livesey violated sections 126.1 and 126.2 of the Ontario <i>Securities Act</i> .	Yes.
4.	725-726	2103	UT	To confirm that the Plaintiffs are alleging that Mr. Livesey took part in the establishment of a data room where false information was shared, and that Mr. Livesey provided Anderson and Clarity with access to a Dropbox facility.	Yes.

5.	726-729	2104-2107	UA	<p>To advise whether the Plaintiffs have any direct evidence that Mr. Livesey actually participated in the establishment of the data room or that he provided access to a Dropbox facility; and if so, to advise what the evidence is.</p>	<p>This question assumes or seeks an answer “confirming” that the only source/basis of the particular issue being raised is limited to a specific paragraph and/or exhibit to Mr. Riley’s affidavits.</p> <p>This assumption and/or approach is inaccurate and inappropriate.</p> <p>While the answer now provided in response to this question focus on the specific paragraph or email raised by the questioner, the Plaintiffs’ evidence of and the basis for the allegation made are much broader. The Plaintiffs allege that the Defendants conspired with each other. The underlying nature of the conspiracies is set out in the Plaintiffs (Amended) Statement of Claim and is reflected in the reasons for decision of the Honourable Justice Wilton-Siegel, dated January 9, 2019.</p> <p>In these circumstances, the Plaintiffs can and do rely upon all of the acts of the co-conspirators and all of the documents and other evidence, direct and circumstantial, implementing or constituting the conspiracy. Consequently, all of the evidence relating to the actions and conduct of each conspirator is relevant to and supports the Plaintiffs’ claims against all of the conspirators. Hence, the relevance of the Riley Affidavits to any given issue cannot be confined to any one paragraph or exhibit – all of the facts asserted and exhibits are relevant to and probative of the alleged conspiracies.</p> <p>The same is true with respect to the productions (and further productions to come), to the Anti-SLAPP cross-examinations conducted to date, and to the discovery examinations to be conducted (of both the Anti-SLAPP Moving Parties and to the other Defendants who have not</p>
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					brought Anti-SLAPP motions, who have not been questioned at all).
6.	730	2110	UT	To advise whether the Plaintiffs have any direct evidence that Mr. Livesey filed a false complaint with the SEC and/or OSC against Catalyst, Callidus or Glassman.	See the answer to Q. 2104-2107 above.
7.	735-736	2116	UT	To advise whether the Plaintiffs are alleging that Mr. Livesey took short positions either directly or indirectly in Callidus shares.	Examinations for discovery have not occurred in the conspiracy action for any defendant. Accordingly, the Plaintiffs are unaware, at this time, of whether Mr. Livesey took short positions either directly or indirectly in Callidus shares.
8.	746-747	2137	UT	To advise whether the Plaintiffs are asserting defamation against Mr. Livesey.	Defamation is not being alleged against Mr. Livesey at this time.
9.	747	2138	UT	To advise, if the Plaintiffs are asserting the cause of action of defamation of Mr. Livesey, whether that cause of action is based strictly on what was said in the Wall Street Journal article or also based on what was said in the two articles Mr. Livesey co-authored and were published by SIRF after the Wall Street Journal article.	Defamation is not being alleged against Mr. Livesey at this time.

10.	747-749	2139	UT	To advise if the Plaintiffs are relying on any direct evidence that Mr. Livesey picked up the phone and physically contacted Mr. Copeland directly.	See the answer to Q. 2104-2107 above.
11.	759-760	2166	UT	To advise whether the Plaintiffs are asserting that Mr. Livesey used encrypted and self-destructing messaging applications such as Confide with one or more of the Defendants in the course of this conspiracy.	Examinations for discovery have not occurred in the conspiracy action for any defendant. Accordingly, the Plaintiffs do not, at this time, have any direct evidence at this time that Mr. Livesey used encrypted and self-destructing messaging applications such as Confide with one or more of the Defendants in the course of this conspiracy.

This is Exhibit "H" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "G. [unclear]", written over a horizontal line.

A Commissioner, etc.

DRAFT
Confidential
Attorney Client Privilege

Callidus Capital Corporation

Strategic Review & Remediation Plan

February 25, 2019



Agenda

- I. **Executive Summary**

- II. Current State of the Business?

- III. How Did CBL Get Here?

- IV. Where does CBL want to be?

- V. Preliminary Remediation Plan Recommendation

Executive Summary

- The Company, the Shareholders and the team have all been through a challenging three years. CBL needs to focus on **Stabilizing** the platform, **Monetizing** non-core assets and **Simplifying** the business model back to a true Asset Based Lender
- **Stabilize the Platform**
 - CBL is in **CRISIS** and is no longer viable as a public company without a significant recapitalization of its balance sheet and a complete rotation of its portfolio from unprofitable, non-cash generating assets to stable to cash paying asset based loans
 - CBL requires significant annual funding just to maintain it's own current operations and to fund its Operating Subsidiaries and Watchlist Loans.
 - Virtually all sources of liquidity are fully depleted
 - The Braslyn Privatization process may be the only viable option for CBL to remain a going concern
 - An immediate Remediation Plan is necessary to return to a profitable business and will require significant changes to CBL's Governance, Credit Committee Approval Process, Loan Loss Provision/Valuation Approval Process, and Strategic Planning
- **Monetize Non-core Assets**
 - CBL has 15 of 17 non-core portfolio companies and should monetize assets as quickly as possible
 - In 2018, CBL funded \$82 million to these companies to protect net carrying values
- **Simplify the Business Model**
 - Corrective initiatives will take up to two years to fully implement for CBL to reposition, rotate and rebuild CBL's portfolio
 - Restart, Rebrand and Relaunch the platform and focus exclusively as an Asset Based Lender
 - Access near term funding to support current operations of CBL and money-losing subsidiaries as CBL transitions back to a lender from Distressed Private Equity
 - Access Growth capital in order to originate and rebuild build a cash paying Asset Based Loan portfolio that will generate enough positive income to fund on-going operations
 - Build a stable, diversified portfolio in order to raise less expensive debt capital to provide for a > 10% ROIC net off losses

Agenda

I. Executive Summary

II. Current State of the Business

III. How Did CBL Get Here?

IV. Where does CBL want to be?

V. Preliminary Remediation Plan Recommendation

Current State of the Business

- Callidus has transformed over the past five years from an Asset Based Lender to a Distressed Private Equity business with **59% of Investments** being valued on an Enterprise Value approach rather than hard asset coverage
- **Cash Flow Concerns**
 - CBL generated over \$312 million in net losses over the last three years
 - 2018 generated **\$8.7 million of cash interest** from its portfolio, yet had over **\$118 million** in cash outflows to fund CBL Operations and existing portfolio cash deficits
 - \$28 million spent to fund CBL operations; \$82 million to fund losses at Operating Subsidiaries and watchlist loans; \$8 million in interest payments
 - As of February 24, 2019, CBL has only **\$32 million cash** remaining on its Balance Sheet of which approximately \$5 million is restricted cash
 - CBL currently has three signed Term Sheets for new deals but lacks the capital to close any of these deals
 - No further access to Fund V participation or further Guarantee Advance or any other funding sources
 - CBL borrowed **\$135 million** from Catalyst under the Subordinated Debt Bridge, Catalyst Guarantee Advance and hold backs to Catalyst Fund V participations
 - Projected liquidity for 2019 is estimated at negative \$30 million and will end the year with \$0 cash on hand
- **Valuation Concerns**
 - Callidus Book Equity has fallen **76%** from the IPO and its Market Capitalization has also fallen **91%** from its peak in August 2015.
 - As of December 31, 2018, CBL will have a remaining **Book Value of only \$50 million** and that will continue to decline in 2019 and trend negative quickly as Operating Losses continue and the Subordinated Debt Bridge Loan continues to accrete an additional **\$40 million** in 2019
 - As of Q3 2018, there was only \$110 million (~\$2/share) of remaining BV. As of December 31, 2018, Book Value is estimated at approximately \$50 million or ~\$1 per share

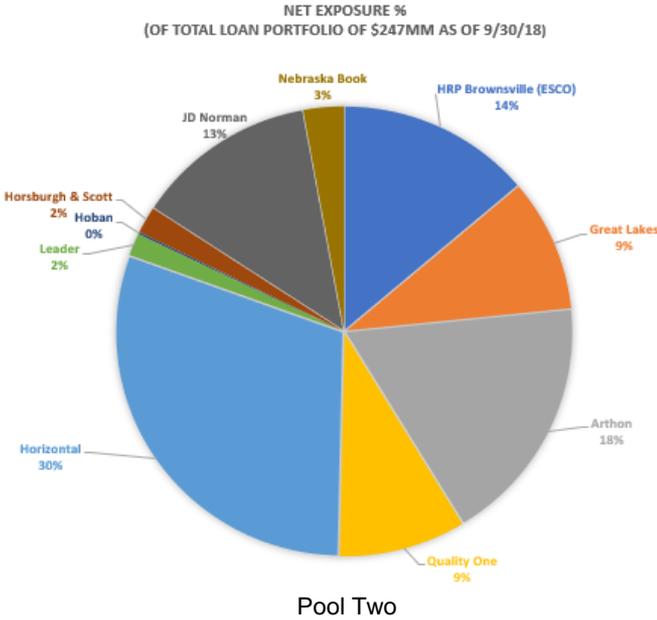
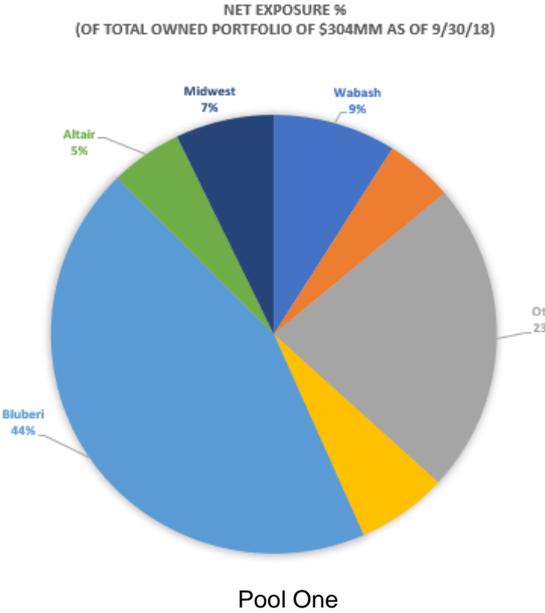
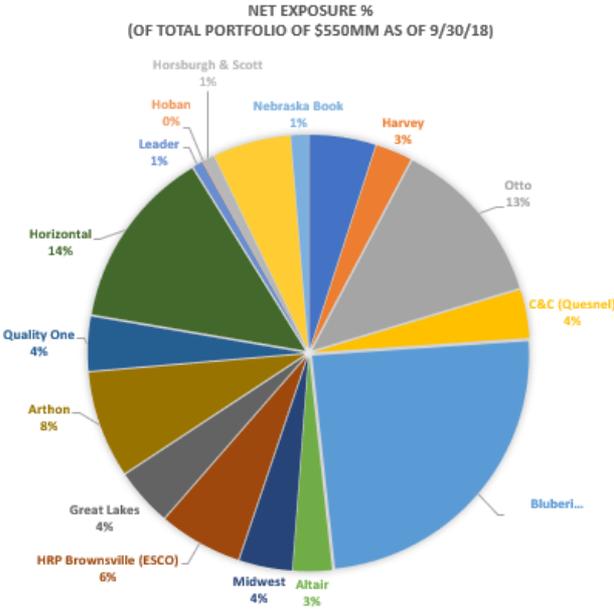
Current State of the Business

- **Imminent Portfolio Concerns**

- Bluberi is a significant asset that is presently unstable
 - Licensing remains a significant problem
 - 2018 Bonuses and 2019 plan remain unapproved by CBL Credit Committee given the Unanimous Approval requirement
 - If Management leaves the company, value will quickly deteriorate
 - CBL performed a wide search for a new CEO in 2018 and was unsuccessful attracting a CEO due to concerns over a budget that was determined to be too aggressive
- JD Norman is the latest threat to CBL and Catalyst, as it is a \$95 million (\$US) loan to a company that has encountered significant challenges which led to the need for additional capital immediately or possibly face bankruptcy

Current State of the Business

- As of Q3 2018, CBL managed \$550 million of net exposure (net of Fund V Participations), yet manages two distinctive pools of assets
 - Pool One: ~\$330 million in six owned distressed/stressed subsidiaries requiring a Distressed Private Equity skill set
 - Pool Two: ~\$250 million in 10 loans of which six effectively are/will be managed as wholly owned subsidiaries (i.e.,HRP Brownsville, Great Lakes, Arthon, Horizontal, Leader and JDNorman (new))



Conclusion

- CBL does not have the requisite skill set, resources or capital to properly manage owned subsidiary assets

Footnote: All figure net of Fund V Participations

CBL Stock/Market Cap Decline Driven by Weakening Loan Portfolio Performance and a Series of Dilutive Corporate Activities

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- CBL currently trades at \$1.70 per share or \$97 million in market capitalization
- CBL trades at a .89x Book Value and .85x Braslyn's \$2 per share Privatization Offer based on September 30, 2018 balance sheet
- Performance of the stock has led to significant losses to shareholders and little confidence in the company



Agenda

- I. Executive Summary

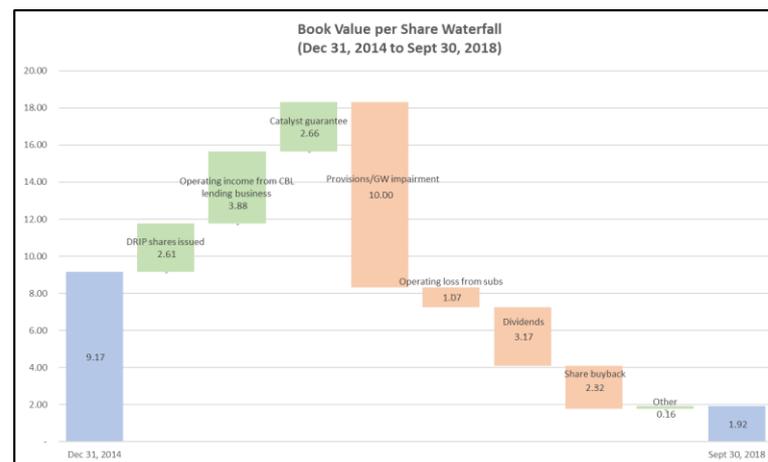
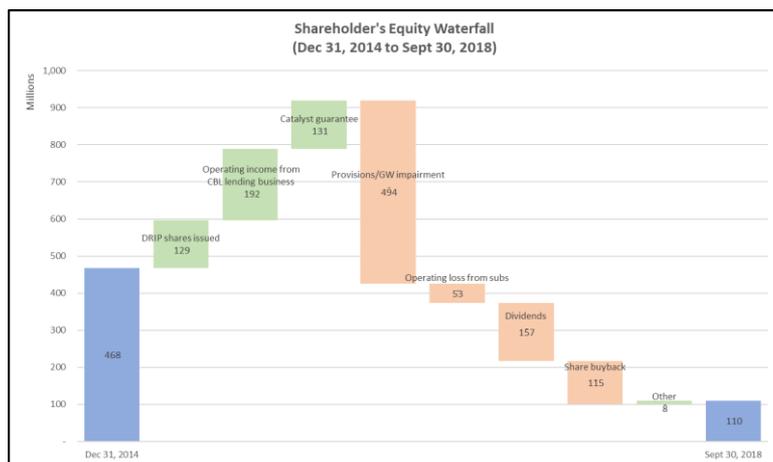
- II. Where is CBL Today?

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How did CBL Get Here?



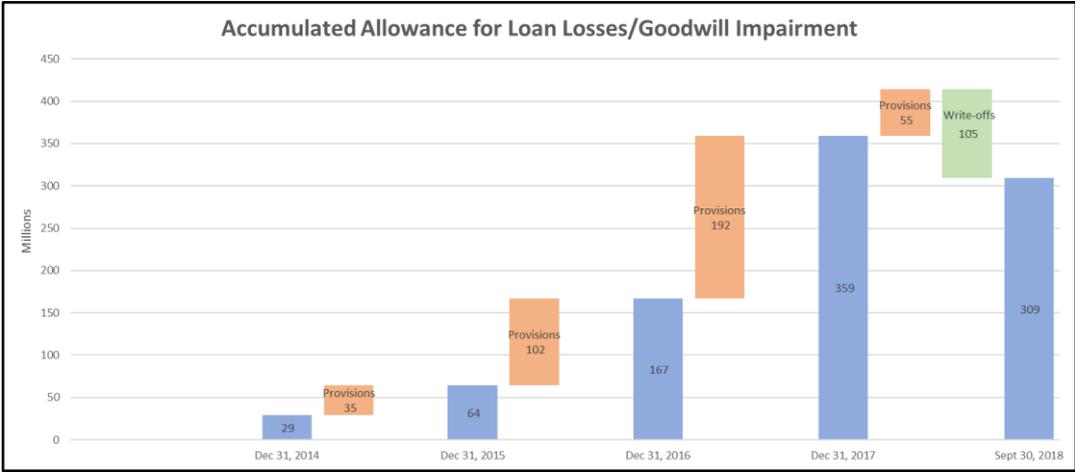
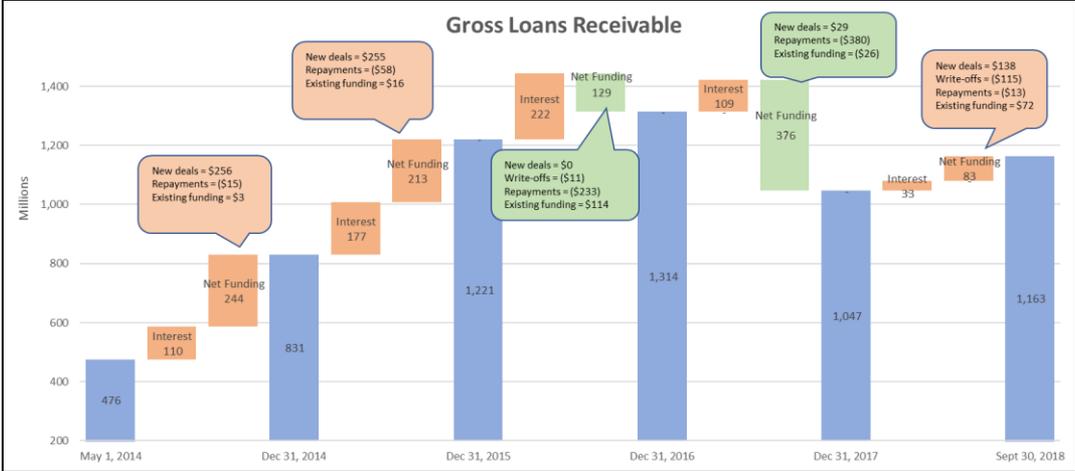
Key Facts

- CBL has lost over **77%** of Book Equity Value since the IPO in 2014
- CBL has also lost **91%** of Market Capitalization from \$1.139 Billion (Aug 25, 2015; 2.87x BV) to \$96.45 million (Feb 15, 2019; .88x BV)
- Loan Loss Provisions accounted for over \$494 million as of September 30, 2018
- High Gross Loan Yields produced extremely low Net Yields after Loan Losses
- Operating Company Subsidiaries have been and continue to be a drain on book value and liquidity for CBL

Conclusions

- Aggressive Enterprise Value valuations, “doubling down” on investments, and high Fees and PIK interest coupons drove unachievable realizations
- Unsuccessful Corporate Actions including a Dilutive Share Repurchase and Dividend Program cost \$272 million of book value and liquidity
- We expect further increase in LLPs for Q4 of approximately ~ \$66 million

How did CBL Get Here?



CBL Debt Summary 2014-2018

CALLIDUS CAPITAL CORPORATION Cost of Debt Summary

(\$MMs)	Dec-18	Dec-17	Dec-16	Dec-15	Dec-14
Debt					
Non-revolving term loan (Mar 31, 2019) ⁽¹⁾	\$ 38	\$ 50	\$ 50	\$ 50	\$ 50
Revolving credit facility ⁽²⁾	-	-	100	303	213
Bridge facility (Apr 30, 2019) ⁽³⁾	407	313	335	309	116
Collateralized loan obligation (Dec 7, 2021)	84	86	101	-	-
Fund V Over advance	53	-	-	-	-
Guarantee Over advance	33	-	-	-	-
Non-revolving term loan amortization facility	11	-	-	-	-
Other Payables (XTG cash, participation income, other)	6	-	-	-	-
Total (Inc. non-interest bearing amounts outstanding)	\$ 632	\$ 449	\$ 587	\$ 663	\$ 379
Total (Exc. non-interest bearing amounts outstanding)	\$ 529	\$ 449	\$ 587	\$ 663	\$ 379
Cost of debt⁽⁴⁾					
Non-revolving term loan (Mar 31, 2019) ⁽¹⁾	8.7%	8.7%	8.7%	8.7%	8.7%
Revolving credit facility (Jan 15, 2019) ⁽²⁾	-	-	8.8%	5.0%	5.5%
Bridge facility (Apr 30, 2019) ⁽³⁾	9.5%	12.1%	9.6%	9.8%	14.4%
Collateralized loan obligation (Dec 7, 2021) ⁽⁵⁾	5.6%	5.7%	5.4%	-	-
Fund V Over advance	-	-	-	-	-
Guarantee Over advance	-	-	-	-	-
Non-revolving term loan amortization facility	-	-	-	-	-
Other Payables (XTG cash, participation income, other)	-	-	-	-	-
Cost of Debt (Inc. non-interest bearing)	7.3%	10.5%	8.7%	7.5%	8.7%
Cost of Debt (Exc. non-interest bearing)	8.8%	10.5%	8.7%	7.5%	8.7%

(1) Matures the earlier of: (i) March 31, 2019, and (ii) completion of privatization transaction

(2) Revolving credit facility terminated in FY17 as 'nil' loan balance outstanding at end of revolving period

(3) Matures the earlier of: (i) April 30, 2019, and (ii) day following repayment of senior debt in full

(4) Weighted average cost of debt for the three month periods ended Dec 31, 2014 through Sept 30, 2018; assumes cost of debt for Dec 31, 2018 is consistent with Sept 30, 2018

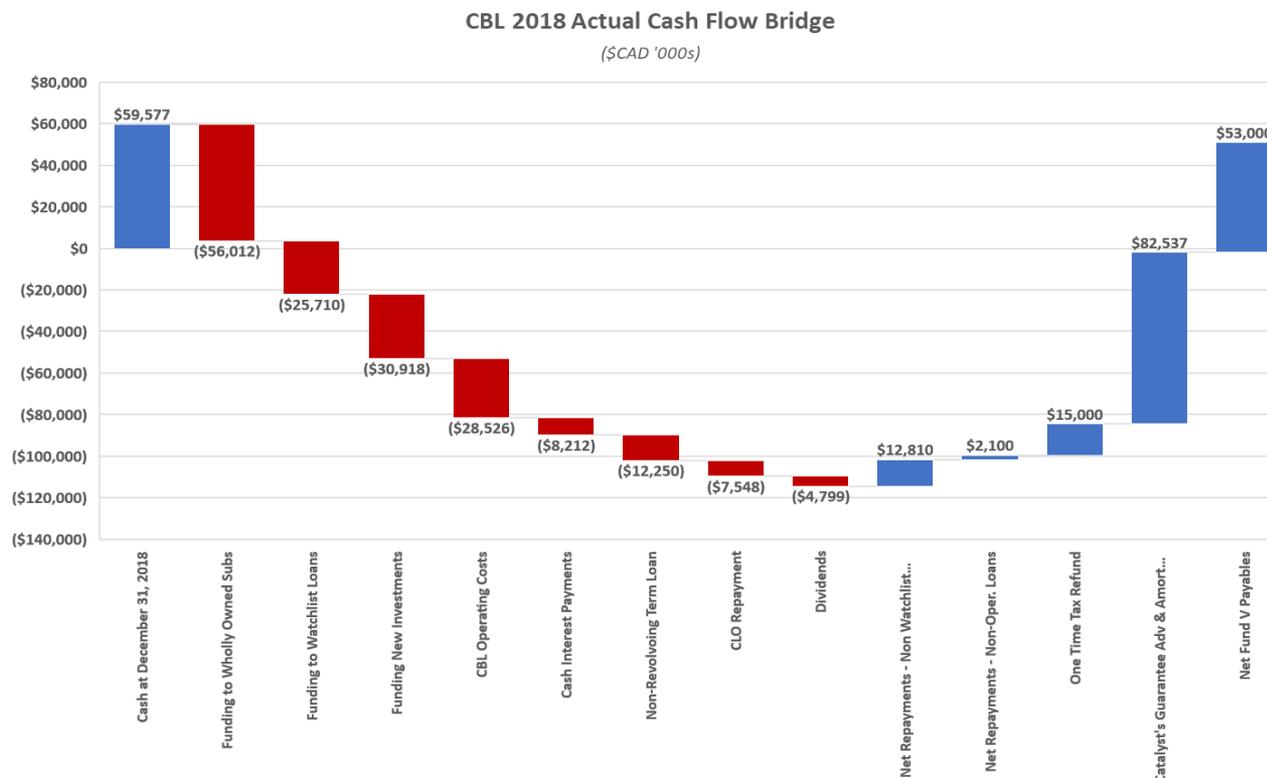
(5) Loan currently in amortization period; revolving period ended Dec, 2018

- Debt liabilities increased significantly in 2018
- Due to poor performance, access to third party debt funding has virtually vanished for CBL
- Since CBL has not produced positive cash flow for several years, it has relied on unnatural sources of liquidity from Catalyst

Conclusions

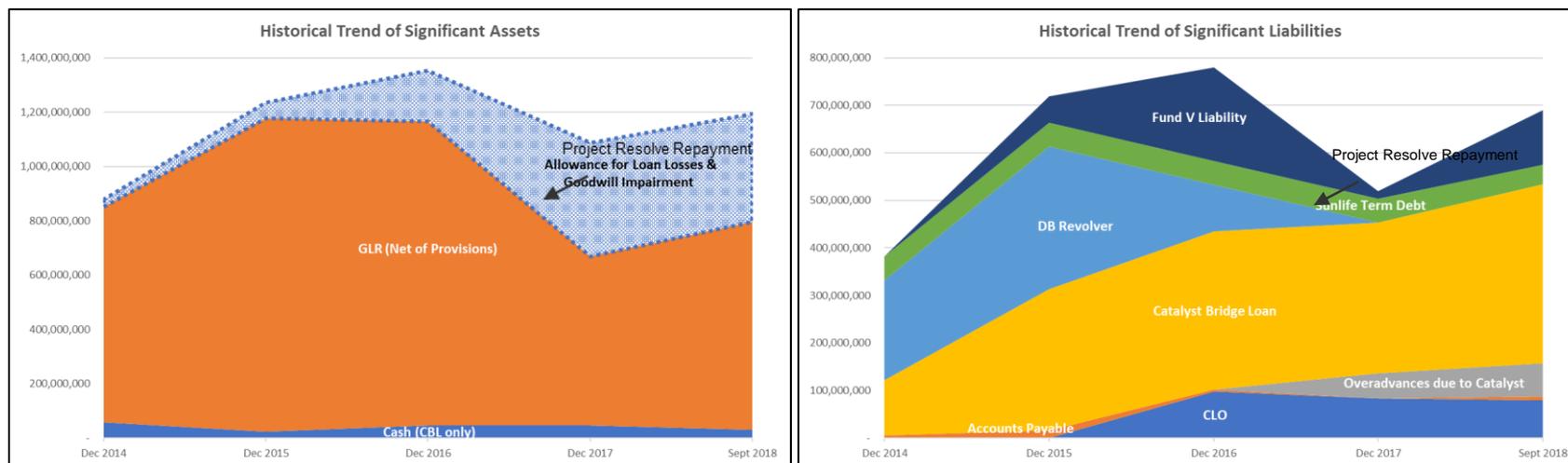
- CBL grew too aggressively post-IPO growing Gross Loans Receivable by 176% in 2 ½ years
- Loan Loss Provisions began to surface in 2015 and have continued through 2018
- High Unsustainable Gross Loan Yields produced extremely low Net Yields after Loan Losses
- New deal Origination was virtually halted in 2016 and capital was used to repurchase stock (above book value) and pay Dividends
- Catalyst became the only source of capital due to poor performance

CBL's 2018 ACTUAL Cash Flow Bridge



- For 2018, cash flow from Operations was **Negative \$118 million**
 - \$28 million of CBL Operating Costs plus
 - **\$82 to fund Existing Portfolio to cover losses, working capital and capex - \$56 million to Wholly Owned Subs + \$26 million to Watchlist Loans while the Net Carrying Value declined \$60 million over the year**
 - \$8mm of Interest Cost
- \$15 million Tax Refund is non-recurring
- Only \$31 million of New Investments in 2018
- Received \$136 million in funds from Catalyst from \$83 million in Guarantee Advances and \$53 million in Fund V Participation hold-hold backs
- Without Fund V Participation hold-backs cash would be \$0

....Driven by Weak Performance in CBL's Lending Business



Conclusions

- Beginning in 2016 Loan Loss Provisions began to accelerate and have continued to expand
- Except for \$62 million remaining on the CLO, the current portfolio is unfinanceable due to performance issues and lack of sufficient diversification
- Along with the Catalyst Subordinated Debt Bridge, Over-advances from Guarantees and Participation Interest payables have been used as a source of funding
- The Subordinated Debt Bridge will accrete another \$40 million in 2019

Performance at CBL's Owned Subsidiaries & Watchlist loans continue to drag on Book Value and Liquidity

Callidus Capital Corporation Subsidiaries & Material Loans

\$MM CAD	FX rate = 1.2545 December 31, 2017			FX rate = 1.3637 December 31, 2018			Avg rate = 1.2961				Δ in Net Carrying Value	
	GLR	LLP	Net Carrying Value	GLR	LLP	FX	Net Carrying Value	Δ in GLR	Δ in GLR (due to FX)	Δ in GLR (due to net loss)		Δ in GLR (due to actual funding)
Bluberi	128.6	75.0	203.6	135.4	-	-	135.4	6.8	-	(1.9)	8.7	(68.2)
Harvey	34.2	(11.2)	23.1	39.3	(8.9)	-	30.3	5.0	3.1	-	1.9	7.2
Wabash	35.6	(8.9)	26.6	37.4	(23.9)	-	13.5	1.8	3.5	(9.2)	7.5	(13.1)
Otto	80.9	10.2	91.1	95.0	26.7	-	121.6	14.1	7.9	(10.2)	16.4	30.6
C&C Value Add	-	-	-	-	-	-	-	-	-	-	-	-
C&C Quesnel	47.4	(21.9)	25.5	47.4	(21.9)	-	25.5	(0.0)	-	-	(0.0)	(0.0)
Midwest	21.7	(5.8)	15.9	26.6	(7.9)	-	18.7	4.9	2.3	(5.8)	8.3	2.8
Alken/Altair	29.1	(13.2)	15.9	28.8	(15.5)	-	13.2	(0.3)	-	(2.0)	1.7	(2.7)
Horizontal	185.2	(131.9)	53.3	223.6	(165.3)	-	58.3	38.4	17.2	-	21.1	5.0
Leader	31.7	-	31.7	42.4	(38.2)	-	4.2	10.7	3.2	-	7.5	(27.5)
Arthon	64.6	(19.8)	44.8	56.4	(27.2)	-	29.1	(8.2)	-	-	(8.2)	(15.6)
Great lakes	44.9	(15.5)	29.4	50.0	(34.7)	-	15.4	5.1	4.0	-	1.2	(14.0)
HRP ESCO (Oldco)	24.0	(21.6)	2.5	26.5	(26.5)	-	-	2.4	2.1	-	0.3	(2.5)
ESCO Opco	-	-	-	11.7	-	-	11.7	11.7	0.6	-	11.1	11.7
HRP Financial Instrument	46.9	(22.5)	-	51.9	(25.0)	-	26.8	5.0	4.1	-	0.8	26.8
Delta	774.9	(187.1)	563.3	872.1	(368.5)	-	503.7	97.3	48.0	(29.1)	78.4	(59.6)

Of the \$97 million change in GLR, \$48 million was due to FX and the remaining \$44 million change is due to \$78 million of net funding of which operating losses reduced values by \$29 million.

Conclusions

- Operating performance at CBL Subsidiaries and Watchlist Loans continue to deteriorate resulting in a **net write down of \$60 million despite over \$80 million in cash funding** throughout the year
- It is apparent that in an effort to keep loan loss provisions lower, the 5 year Discounted Cash Flow model was used. As a result, these companies needed cash to fund losses, capex and working capital, otherwise these companies would be forced to liquidate which would produce a very significant write down to Net Carrying Values
- These fundings were approved by CBL Credit Committee

CBL's Liquidity Projections for 2019

For the three month period ended (S'MMMs)	Mar-19	Jun-19	Sep-19	Dec-19	Mar-20	Total
Opening cash balance ⁽¹⁾	28	34	(2)	(2)	2	28
Liquidity (Needs):						
A. Funding proceeds (use) - existing portfolio ⁽²⁾	(1)	(47)	34	2	43	30
B. Debt service and principal repayment obligations						
(i) Debt service ⁽³⁾	(7)	(3)	(3)	(3)	(3)	(19)
(ii) Principal repayment obligations ⁽⁴⁾	(56)	(418)	-	-	(19)	(493)
C. Capital markets programs ⁽⁵⁾						-
D. Payments related to foreign currency contracts ⁽⁶⁾	-	-	-	-	-	-
E. Ongoing operating costs ⁽⁷⁾	(6)	(6)	(6)	(6)	(6)	(30)
Total	(70)	(474)	24	(7)	14	(512)
Liquidity Sources:						
F. Realize (fully or partially) on guarantee amounts ⁽⁸⁾		-				-
G. Undrawn / extension of maturing credit facilities ⁽⁹⁾		418				418
H. Catalyst Fund V - loan participation interests ⁽¹⁰⁾	(16)	21	(25)	8	(15)	(26)
I. Sale / recap of wholly owned subsidiaries ⁽¹¹⁾	92	(1)	-	2	-	93
J. Syndication of loans ⁽¹²⁾						-
K. Privatization transaction funding ⁽¹³⁾						-
Total	76	438	(25)	11	(15)	486
Ending cash balance	34	(2)	(2)	2	2	2
Realize on guarantee amounts - remaining	59	59	59	59	59	59
Availability - \$15.5MM liquidity support letter	4	4	4	4	4	4
less: undrawn borrower commitments ⁽¹⁴⁾	-	(10)	(6)	(9)	-	-
less: amounts owing to Catalyst Funds ⁽¹⁵⁾	(41)	(41)	(41)	(41)	(41)	(41)
less: minimum cash ⁽¹⁶⁾	(20)	(20)	(20)	(20)	(20)	(20)
less: contingency [NTD: to be determined]						
Cash and guarantee amounts	36	(10)	(6)	(5)	4	4

Conclusions

- Organic Liquidity is very tight and historic sources of additional liquidity are now very limited (i.e., guarantee over advance, Fund V Interest Participations Deferrals, and Sub Debt Bridge)
- CBL must do a much better job projecting liquidity
- Owned Subsidiaries funding requirements including Capex, W/C and Operating Losses remains significant and challenging to meet. However, reducing fundings will have a direct and immediate negative impact on Valuations of owned Subsidiaries.

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Qualities of a Successful Credit Manager

	Callidus' Grade
Strong Leadership & Vision	To Be Discussed
Experienced & Committed People	To Be Discussed
Secure, Positive, Collaborative Corporate Culture	To Be Discussed
Proven Performance Track Record	To Be Discussed
Dynamic Proprietary Originations Platform	To Be Discussed
Repeatable, Scalable, Objective & Responsive Investment Process	To Be Discussed
Consensus Driven Decision Making & Shared Accountability	To Be Discussed
Independent, Objective Valuation/LLP Process with Proven "Back Tested" Results	To Be Discussed
Access to Low Cost Debt Capital	To Be Discussed
Sound Governance, Oversight, Hygiene & Compliance – (e.g., Avoid Conflict of Interest)	To Be Discussed
Proven Risk Management System and Consistently Applied Protocols	To Be Discussed
High Percentage of Income from Recurring Cash Pay Interest Income	To Be Discussed
Strong External Relationships, Brand & Reputation	To Be Discussed
Effective Financial & Operations Infrastructure and Rigorous Control Environment	To Be Discussed
Alignment of Interests/Compensation to Investor Performance	To Be Discussed

What is Valued by the Market of the Investment Manager

- CBL is an Internally Managed commercial finance company
- Publicly traded credit managers trade on a combination as a multiple of NAV (i.e., Book Value) and ROE or Available capital left for distribution
- The Global Private Debt Market is among the fastest growing segments of Alternative Asset Investing
- The closest comparable companies to CBL are Business Development Companies in the US that trade on BV and an expected risk adjusted Dividend or ROE (8-12%)
- “Healthy” Internally Managed BDCs trade at a premium to BV given the market’s positive view of the Management Team’s track record, profitability, access and cost of capital
- Externally Managed BDC’s are valued in and around BV since the portfolio of loans can be repaid by the borrower
- Less healthy BDCs trade at a significant discount to Book Value because the market has lost confidence in the portfolio and expect more losses and a lower BV over time
- There have been several recent acquisitions and/or offers made to acquire portfolio and/or the manager
- Manager Values for healthy managers assume a 50% contribution margin on fees earned and apply a 4-5 multiple
- Given lack of profitability at CBL, it is more likely that the CBL Servicer/Manager platform would be valued on an Replacement Cost Approach of the Infrastructure, the perceived quality of the team and existing relationships versus a greenfield approach

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CBL Preliminary Remediation Plan Recommendation

	Action Item
STEP 1	Complete Privatization or Balance Sheet Recapitalization ASAP
STEP 2	Revamp Governance Oversight & Credit Committee Approval Process
STEP 3	Monetize Wholly Owned Subs as soon as practicable
STEP 4	Work out of ALL Watchlist Loans ASAP
STEP 5	Secure short term funding to maintain operations
STEP 6	Externalize CBL Management Company and manage legacy and New Investments separately
STEP 7	Secure growth capital
STEP 8	Rationalize expenses and right size team, G&A, legal, Accounting, rent and other public company expenses
STEP 9	Restart, Rebrand and Relaunch
STEP 10	Build a of ~20 healthy loans to securitize and reduce cost of capital and generate a 10-12% ROIC

Potential Callidus Restart Plan

- Assuming Balance Sheet is capitalized to the satisfaction of the Auditors to close out 2018
- CBL needs extensions of all Catalyst support/financing commitments
- CBL needs to maintain a minimum of \$20 million to fund existing daily revolver commitments [as already reflected in our 2019 Liquidity projections]
- CBL Operations need to be supported until such time as CBL portfolio generates ~\$20 million in cash per year from operations
- Restart Plan:
 - CBL requires ~ \$50 million of Growth capital to support new cash pay Asset Based Loans
 - Fund V continues its participation up to an additional \$150 million in new loans
 - At ~25% Callidus and ~75% Fund V relationship would provide for a \$200 million total loan portfolio (estimated to take two years to build)
 - This diversified performing portfolio can be financed with a senior debt warehouse line up to ~\$120 million
 - \$120 million would be used to buyback Fund V participation
 - Portion to be used for new loans and a portion would be returned to Fund V
- Braslyn could also replace/partner with Catalyst in this plan

CBL Debt Refinancing

Callidus Capital Corporation		
Liquidity / Financing / Privatization Summary		
Firm Contacted	Amount	Outcome
Debt / Warehouse facility		
Macquarie	NAV based facility;	On hold; requires Catalyst guarantee
Barclays	Warehouse facility	Ongoing discussions; on hold; revisit once diversity increases
Fortress	Up to US\$175,000,000	Pricing undisclosed; "Revaluation Event"; 25-35% Advance Rate; Pending Privatization
Natixis	Warehouse facility	Referral to Fortress
Deutsche Bank	Extension of CLO amortization period	Investor (SEI) declined extension request;
Deutsche Bank	Extension of warehouse facility	Financial institution declined extension request; revisit once diversity increases
TD	Extension of warehouse facility	Financial institution was part of DB warehouse facility which was terminated Jul-17
State Bank of India	Extension of warehouse facility	Financial institution was part of DB warehouse facility which was terminated Jul-17
Sunlife	Extension	Extended to Mar-19
BAML	Refinance warehouse facility	Financial institution passed; pending privatization
JPM	Refinance warehouse facility	Financial institution passed; pending privatization
Wells Fargo	Refinance warehouse facility	Financial institution passed
BMO	Term facility	Financial institution passed
CIBC	Debt capital markets financing	Financial institution passed
NBF	Debt capital markets financing	Financial institution passed
Recapitalization of subsidiaries		
Gordon Brothers Finance Co	Up to \$50MM for HRP, HWD, Otto	12% Coupon plus 2.5% fee; 65% NOLV
RBC	Refinance Callidus loan (C&C)	Financial institution passed
Scotia	Refinance Callidus loan (C&C)	Financial institution passed
Fort Capital	Refinance Callidus loan (C&C)	Raymond James engaged
Alvarez Marsal	Refinance Callidus loan (C&C)	Raymond James engaged
Raymond James	Refinance Callidus loan (C&C)	Raymond James engaged
EDC, BDC	Capex facility (C&C)	Ongoing discussions with company directly
White Oak	Refinance Callidus loan (Otto)	up to \$10 million cash flow loan when business is EBITDA positive

- CBL has approached 14 Lenders about refinancing the Catalyst Sub Debt. To date, all have past, required a Catalyst Guarantee or in the case of Fortress put CBL in significant risk
- Catalyst Subordinated Debt is unfinanceable given current portfolio, lack of cash pay interest income and \$165 million in senior obligations (CLO, Guarantee Advances, Fund V Participation hold back, Sun Life Amortization facility)
- In addition, CBL has approached 9 lenders about senior debt financing at the subsidiaries

CBL Portfolio Refinancing

As at Dec. 31, 2018

All amounts in CAD

		Bluberi	Midwest	Otto	Wabash	Altair	C&C (Quesnel)	Total Proceeds
Current 3rd party debt		\$0	\$4,227,519		\$0	\$0	\$0	
Working Capital Assets								
	AR	75.0%	\$3,027,044	\$18,140,594	\$3,015,281	\$699,419	\$2,013,791	
	INV	50.0%	\$5,260,878	\$13,531,947	\$834,814	\$80,640	\$4,962,388	
Total W/C Assets			\$8,287,922	\$0	\$31,672,541	\$3,850,095	\$780,059	\$6,976,179
W/C Availability			\$4,900,722	\$0	\$20,371,419	\$2,678,868	\$564,884	\$3,991,537
M&E Assets (FLV)			\$0	\$1,464,986	\$12,506,270	\$2,922,985	\$1,500,000	\$5,000,000
M&E advance rate		70.0%						
M&E Proceeds			\$0	\$1,025,490	\$8,754,389	\$2,046,090	\$1,050,000	\$3,500,000
								\$16,375,969
Real Estate Assets (appraised value)			\$4,000,000	\$7,702,500	\$4,810,000	\$2,730,000	\$0	
RE advance rate		50.0%						
RE Proceeds			\$2,000,000	\$3,851,250	\$2,405,000	\$1,365,000	\$0	\$0
								\$9,621,250
Total Potential Debt Proceeds			\$25,000,000	\$4,876,740	\$8,405,000	\$6,089,957	\$1,614,884	\$7,491,537
			Cash Flow	Term Sheet				
Less Net Funding Requirements			\$0	\$0	(\$2,945,000)	(\$5,124,000)	\$0	(\$6,969,000)
Subtotal			\$25,000,000	\$4,876,740	\$5,460,000	\$965,957	\$1,614,884	\$522,537
<i>CLO Debt Repayment</i>			(\$11,220,146)	(\$3,976,884)	(\$1,465,951)			
								(\$16,662,981)
Total Net Proceeds			\$13,779,854	\$899,856	\$3,994,049	\$965,957	\$1,614,884	\$522,537
TTM EBITDA			\$6,000,000	(\$1,883,700)	(\$391,300)	(\$6,940,488)	(\$635,835)	na
Debt to TTM EBITDA			4.2x	na	na	na	na	na
Quick Sale Estimate			\$70,000,000	\$13,000,000	\$40,000,000	\$20,000,000	\$3,000,000	\$10,000,000
Debt proceeds as a % of Quick Sale			36%	38%	21%	30%	54%	75%
								34%

- The CBL teams have assessed the opportunity to raise senior debt financing at the subsidiaries. CBL has already pledge certain collateral to the CLO and would therefore be required to pay down the CLO

CBL Privatization Effort

Outreach Contact List			
Investor Name	Contact Names and Titles	Signed NDA	Did Not Sign NDA
AlpInvest Partners	Michael Hacker (Managing Director, Secondary Inve	Signed	
Apax Partners	Ashish Karandikar (Partner)Vivek Vyas (Principal)	Signed	
Apollo Global Management	Matt Michelini (Partner)Ming Dang (Principal)	Signed	
Ares Management	Michael Arougheti (Co-Founder, President of Ares M	Signed	
Blackstone Group LP / GSO Capital Partners	David Flannery (Senior Managing Director, Co-Head	Signed	
BlueMountain Capital	Avi Korn (Portfolio Manager)Brad Schwartz (Portfoli	Signed	
Centerbridge Partners	Matthew Kabaker (Managing Director, Head of FIG)I	Signed	
Coller Capital	David Platter (Partner, Co-Head of Origination)Yonat	Signed	
D.E. Shaw	Shi Nisman (Managing Director)Seth Charnow (Seni	Signed	
ECN Capital	Steve Hudson	Signed	
Fortress Investment Group	Joel Holsinger (Managing Director, Co-Head of Direc	Signed	
GIC	Eric Wilmes (Head of Private Equity, Americas) Krish	Signed	
HarbourVest Partners	Raj Senapati (Principal)	Signed	
Lone Star	Kevin Barner (Managing Director)	Signed	
Macquarie Group	David Horowitz (Managing Director, Corporate and	Signed	
Marubeni Corporation	Mokkoh Nobuyuki (Director, Marubeni America Cor	Signed	
Partners Group	Riyadh Mohammed (VP)	Signed	
PIMCO	Sean Hinze (SVP)Adam Gubner (SVP)Daniel Ballen (S	Signed	
Pine Brook	Larry Marsiello (Senior Managing Director)	Signed	
Reverence Capital Partners	Peter Aberg (Co-Founder, Partner)	Signed	
Solar Capital	Scott Rosen (Head of Specialty Finance)	Signed	
Soros Fund Management	Vipul Tandon (Managing Director, Private Equitiy)	Signed	
Stone Point Capital	Nicolas Zerbib (Senior Principal)Christopher Doody (Signed	
Tavistock	Joe Lewis (Contacted by Newton Glassman) James (.	Signed	

- CBL engaged Goldman Sachs to assist in finding a partner for the Privatization effort. GS reached out to 68 parties. Only 24 parties signed the NDA and only Tavistock/Braslyn remain interested.

CBL Privatization Effort

Investor Name	Contact Names and Titles	Signed NDA	Did Not Sign NDA
AB (AllianceBernstein)	Matthew Bass (COO, Alternatives)		Not Signed
ADIA	Jerome Mourgue d'Algue (Senior Portfolio Manager)		Not Signed
Atairos Group	Michael Angelakis (CEO)Vikram Pandit (Head of FIG / CEO, Orogen)		Not Signed
BlackRock Inc.	Tom Wojcik (Head of IR / Corporate Development) Ian Qiu (Director, C		Not Signed
Brookfield Asset Management	Bruce Flatt (CEO)Barry Blattman (Senior Partner)		Not Signed
Carlyle	John Redett (Managing Director, FIG)		Not Signed
CarVal Investors	Jerry Keefe (Managing Director, Head of Distressed Debt Americas) Ay		Not Signed
China Oceanwide	Can be provided upon request		Not Signed
Corsair Capital	James Kirk (Principal)		Not Signed
CPPIB	Mark Machin (President and CEO)Ryan Selwood (Global Head of Priva		Not Signed
Crescent Capital Group	Jean-Marc Chapus (Co-Founder)Jason Breaux (Managing Director, Spe		Not Signed
Crestview Partners	Quentin Chu (Partner)		Not Signed
Dundon Capital Partners	Tom Dundon (Founder) John Zutter (Partner)		Not Signed
Eldridge / Security Benefit	Tony Minella (President)		Not Signed
Fosun	Can be provided upon request		Not Signed
Franklin Resources	Chuck Johnson (Board)		Not Signed
GTCR	Collin Roche (Head of FIG/Technology)		Not Signed
Guggenheim Partners	Michael Constantino (Senior Managing Director, Head of Strategy)		Not Signed
HNA Capital	Tony Cui (CFO, HNA Capital)Mabel Li (CEO, HNA Capital)		Not Signed
Itochu Corporation	Shigeki Tsuchihara (M&A Group, Structured Finance Dept., Finance Di		Not Signed
JC Flowers	Eric Rahe (Managing Director)		Not Signed
KIC	Can be provided upon request		Not Signed
KKR	Tagar Olson (Head of Financial Services) Chris Harrington (Director)		Not Signed
Koch Industries	Brett Watson (Managing Director)		Not Signed
Legg Mason	Tom Hoops (Head of Business Development)		Not Signed
Lightyear Capital	Thierry Ho (Managing Director, FIG)		Not Signed
Lovell Minnick	Jason Barg (Principal)		Not Signed
Manulife	Can be provided upon request		Not Signed
Marathon Asset Management	Andrew Rabinowitz (President, COO)		Not Signed

CBL Privatization Effort

Investor Name	Contact Names and Titles	Signed NDA	Did Not Sign NDA
MSD Capital	David Caro (Managing Director, Private Capital Group)		Not Signed
Northleaf Capital Partners	Rob MacLellan (Chairman)		Not Signed
NPS	Can be provided upon request		Not Signed
Oaktree Capital Group	Matt Pendo (Managing Director)		Not Signed
OMERS Capital Partners	Eric Haley (Managing Director)		Not Signed
OTPP	Michael Murray (Director, Teachers Private Capital)		Not Signed
Power Corporation / Great-West Life	Can be provided upon request		Not Signed
PSP Investments	Guthrie Stewart (SVP, Global Head of Private Investments)		Not Signed
Qatar Investment Authority	Leslie Mapondera (Head of Financial Institutions Portfolio)		Not Signed
SMBC	Steve Lau (SVP, Corporate Development)		Not Signed
Starr Investments	Geoff Clark (Senior Managing Director)		Not Signed
Temasek Holdings	Dilhan Pillay (Head, Americas) Chin Yee Png (Managing Director)		Not Signed
TPG Capital	Eric Leathers (MD, Financial Services) Peter Nurnberg (VP, Financial Ser		Not Signed
Varde Partners	Aneek Mamik (NA Head of Specialty Finance)		Not Signed
Warburg Pincus	Arjun Thimmaya (Managing Director, FS)		Not Signed

CBL Privatization Effort

Firm Name	Contacts	Date Engaged	NDA/Data Room	Decline Reason
Ares	Mitchell Goldstein, Mary Fry	Sep-2017	Yes	Collateral quality and structure
Blackstone	Aaron Weiner, Alexander Greeley, Christopher James	Sep-2017	Yes	Collateral quality, structure and team
Bybrook	Ash Thomas-Watson	Jul-2018	Yes	Collateral quality and structure
Colbeck Capital Management	Peter Ma, Laura Albert	Sep-2018	Yes	Collateral quality and structure
Coller Capital	Benjamin Carper, Lauren Din, Yonatan Puterman	Mar-2017	Yes	Structure and terms. Provided a termheet
Gamut Capital	Brent Kirshner, Noah Leichtling	Jun-2018	Yes	Collateral quality and structure. Reputational/litigation risk.
Gordon Brothers Finance Company	Matthew Cohen, Michael Muldowney, Blair Nelson, Ken Frieze, Larry Klaff, Lisa Galeota, Caitlin Sanders, Chris Santos, Tim Lynch	Jul-2018	Yes	Terms. Submitted two termsheets (too expensive)
HG Vora Capital Management	Amos Amit, Marcus Dunlop, Jason Gart	Jul-2018	Yes	Collateral quality and structure
HPS Investment Partners, LLC	Colbert Cannon, Taylor Kushner	May-2018	Yes	Collateral quality and structure
King Street Capital	Patrick Dowd, Noah Charney, Brandon Brier	Sep-2017	Yes	Collateral quality
Landmark Partners	Christopher Bass, John Byrne, Kathryn Regan, Amrit Singh, Ian Charles, Michael Carrano	Aug-2017	Yes	Collateral quality and team
Marblegate Asset Management	Andrew Milgram	Jul-2018	Yes	Collateral quality
Monroe Capital	Aaron Peck, Kyle Asher, Jeremy Simmons	Dec-2017	Yes	Collateral quality
Origami	Jeff Young, Tom Elden	Aug-2017	Yes	Terms. Submitted a termsheet (steep discount)
Pretium	Ted Huffman, Donna Winston	Mar-2018		Collateral quality
Siguler Guff	Stephanie Slutzky, Tony Cusano	Jan-2018	Yes	Collateral quality
Solar Capital	Daniel Hong, Michael Pizette, Steven Migliero, Scott Rosen	Jun-2018	Yes	Collateral quality
Spectrum Financial	Bryan Martin	Sep-2017	Yes	Collateral quality and structure
Tavistock Group	James B. Avery, Josh Levy, Adam Cyrus	Apr-2017	Yes	Structure
Wynnchurch	John Hatherly, Morty White, JD Frank	May-2018	Yes	Collateral quality and structure
Alpinvest	Michael Hacker	Mar-2017		Collateral quality, structure and team
Fortress	Roger Baumann	Nov-2017	Yes	Team

- In addition, CBL engaged MetricPoint to assist in finding a Privatization partner. All parties declined due to reasons listed above.

Preliminary CBL Expense Rationalization Plan

Preliminary Conclusions

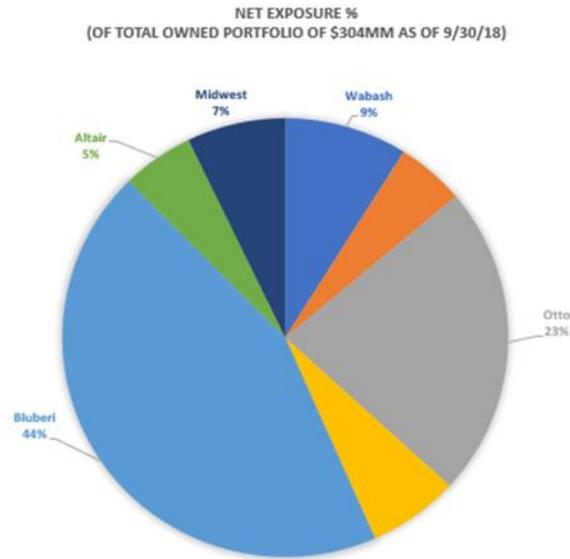
- CBL has a bloated infrastructure for an Asset Based Lending business. However, given that CBL is managing both Distressed Private Equity and Loans as a public company under IFRS rules, it had been necessary to retain most of the staff to date
- There are several areas that can be addressed quickly as a private company that can reduce operating expenses immediately
- However, it depends how much access to growth capital to rebuild the portfolio that will determine the ultimate headcount and salary
- Compensation systems need to be addressed to more closely align incentives to performance

Callidus Capital

Preliminary Expense Rationalization Plan (\$000)

	<u>2018E</u>
CBL Lending Business Operating Expenses	\$25,000
Salaries	\$13,856
G&A	\$3,533
Legal & Professional Fees	\$4,387
Audit	\$1,702
Other (Legal, Audit, Ops, etc.)	\$1,522
	<u>\$25,000</u>
Adjustments	
Public Company Costs	
Director Fees	(\$803)
Legal & Professional Fees	(\$2,000)
Audit & Accounting Fees	(\$1,000)
General & Administrative Expense	(\$889)
Insurance	(\$59)
	<u>(\$4,752)</u>
Salaries Reductions	(\$3,000)
Other G&A Reductions	(\$500)
	<u>(\$3,500)</u>
Total Adjustments	<u>(\$8,252)</u>
Pro Forma Operating Costs	\$16,748

...Performance at CBL's Owned Subsidiaries continues to drag on Book Value and Liquidity ³⁷⁰



Summary of Subsidiary Operating Income (Losses) Callidus Capital Corporation For the Period Ended December 31, 2018 In CAD\$ millions

	Net Income (Loss) Excluding CBL Interest	
	Q4-2018	YTD-2018
Otto	(1.9)	(10.2)
Wabash	(2.3)	(9.2)
Midwest	(2.0)	(5.4)
Altair	(0.6)	(1.5)
Bluberi	(1.2)	(1.9)
C&C	(5.8)	4.4
Total for subs	(13.8)	(23.8)

Primary Conclusions

- All owned subsidiaries have been both unprofitable and cash flow negative
- In 2018, CBL funded over \$55 million into these subsidiaries and yet the enterprise values continued to deteriorate
- In addition, audit costs for CBL have skyrocketed due to consolidation required under IFRS
- All six subsidiaries should be sold in an orderly fashion as soon as is most practical

CBL Portfolio Monetization Plan - Bluberi

Bluberi	
Description	Slot machines development, manufacturing & distribution
Net Carrying Value 12/31/18	\$134 million
CLO Funding	\$18.7 million
Management Plan	Aggressive
Funding Requirements in 2019	\$0
Monetization Plan	Hold until Q3 2019. If management is on track to hit plan, hire Gaming Industry Investment Bank and launch a sale process in Q4 2019 and close sale in Q1 2020. Expected value - \$100-125 million if management achieves 2019 budget. If management misses plan - ~\$75 million
Risks	<ul style="list-style-type: none"> • Management turnover due to non-payment of 2018 earned bonuses • Consistently missed previous budgets • Further Licensing Delays

Bluberi (CAD '000s)	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Total</u>
Revenue	21,396	25,829	46,102	65,083	86,757	113,125	358,292
EBITDA	4,977	9,777	24,130	39,154	57,523	80,421	215,982
Net Income	(7,282)	(1,208)	8,231	15,676	30,745	44,666	90,827
Capex	(8,005)	(6,193)	(15,184)	(19,094)	(22,020)	(24,201)	(94,696)
Changes in W/C	(4,059)	(1,076)	(5,377)	(5,035)	(5,749)	(6,994)	(28,289)
Total repay / (funding)*	(7,087)	2,509	3,569	15,025	29,754	49,226	92,996

CBL Portfolio Monetization Plan - Otto

Otto	
Description	Manufacturer of plastic injection molded waste containers
Net Carrying Value 12/31/18	\$ million
CLO Funding	\$18.75 million
Management Plan	Legacy Business – Moderate Carts as a Service – Venture Risk
Funding Requirements in 2019	\$3 million
Monetization Plan	Market company as soon as possible. Hire investment bank in Q1. Two strategics interested (IPL and Akon Investment) and are interested in strategically located manufacturing locations. Expected Range \$30-\$40 million.
Risks	<ul style="list-style-type: none"> • Warranty issue with Waste Management – TBD • Contract renewal with Waste Management • Otto/Callidus credit profile cause for concern by key suppliers

Otto (USD '000s)	2018	2019	2020	2021	2022	2023	Total
Revenue	101,370	104,479	124,041	128,914	128,779		587,583
EBITDA	(13,833)	4,442	17,767	19,903	19,827		48,106
Net Income	(21,946)	(6,389)	4,713	6,356	6,479		(10,787)
Capex	(5,163)	(10,248)	(12,289)	(5,474)	(5,082)		(38,256)
Changes in W/C	(4,673)	2,860	(3,003)	(1,547)	119		(6,244)
Total repay / (funding)*	(23,669)	(2,945)	2,475	12,882	14,864	-	3,606

Legacy and Caas combined
Forecast is only 4 years out (ie. till FYE 2022)

CBL Portfolio Monetization Plan - Wabash

Wabash	
Description	Green sand casting manufacturing
Net Carrying Value 12/31/18	\$ 18.1million (US\$)
CLO Funding	\$0
Management Plan	Requires winning new lager contracts
Funding Requirements in 2019	\$5.1 million
Monetization Plan	Hold until Q4 2019. If management on track, hire Investment Bank to determine if there is demand for the company's or its plant assets. Would likely only include strategics interested in Wabash's capacity versus financial buyers at this point given negative EBITDA. Expected value of \$15-18 million if company on plan or \$8-10 million.
Risks	<ul style="list-style-type: none"> • Tesla volumes uncertainty • Requires \$5.1 million on new capex in 2019

Wabash (USD '000s)	2018	2019	2020	2021	2022	2023	Total
Revenue	6,312	16,504	30,299	40,761	48,587	53,673	196,137
EBITDA	(5,339)	(1,913)	4,566	8,967	10,274	11,513	28,068
Net Income	(7,946)	(5,391)	748	5,087	6,524	7,939	6,962
Capex	(1,442)	(2,000)	(2,000)	(2,500)	(2,500)	(3,000)	(13,442)
Changes in W/C	(924)	(1,211)	(2,032)	(1,399)	(1,139)	(740)	(7,446)
Total repay / (funding)*	(7,705)	(5,124)	534	5,068	6,634	7,772	7,180

CBL Portfolio Monetization Plan - Midwest

Midwest	
Description	Regional Asphalt Paving
Net Carrying Value 12/31/18	\$ million
CLO Funding	\$14.4 million
Management Plan	Fair, but weather dependent
Funding Requirements in 2019	\$0
Monetization Plan	If company has a strong spring season and can produce a \$3 million of Run Rate EBITDA, then market the asset in 3Q 2019. Estimated 5x EBITDA or \$15 million in proceeds
Risks	<ul style="list-style-type: none"> • Still recovering from Bankruptcy • Small company subject to uncontrollable risks (e.g., weather)

Midwest (USD's)	2018	2019	2020	2021	2022	2023	Total
Revenue	25,988	30,202	34,782	39,082	43,901	49,237	223,192
EBITDA	(2,968)	1,131	2,201	2,984	4,040	4,942	12,330
Net Income	(4,441)	(1,028)	(10)	728	1,706	2,742	(303)
Capex	(4,460)	(1,023)	(1,500)	(1,500)	(1,500)	(1,500)	(11,483)
Changes in W/C	(1,950)	307	(546)	(513)	(574)	(636)	(3,912)
Total repay / (funding)*	(9,377)	415	155	971	1,966	2,806	(3,064)

TCF Bank funded approx \$3mm of the FY'18 CAPEX

CBL Portfolio Monetization Plan – C&C Value Added Lumber

C&C Value Added Lumber	
Description	Manufacturer of Value Added specialty lumber
Net Carrying Value 12/31/18	\$25.5 million
CLO Funding	\$0
Management Plan	Venture Risk to commercialize manufacturing of New Products
Funding Requirements in 2019	\$7-10 million
Monetization Plan	Hold until Q4 2020. If successful in producing and selling new products, seek to sell in first half 2021.
Risks	<ul style="list-style-type: none"> Commercialization of manufacturing delayed Significant Capex required

C&C Value Added	2018	2019	2020	2021	2022	2023	Total
Revenue		40,313	50,755	50,755			141,823
EBITDA		4,961	13,492	13,492			31,944
Net Income		1,998	9,200	8,266			19,464
Capex		(6,745)	(4,575)	(4,365)			(15,685)
Changes in W/C		(5,186)	239	5,861			915
Total repay / (funding)*	-	(6,969)	9,156	14,988	-	-	17,175

Forecasts are only three years out (ie. till FYE 2021)

No 2018 data as value add is a new operation as of Jan 2019

CBL Portfolio Monetization Plan - Altair

Altair/Alken	
Description	Oil Well drilling services
Net Carrying Value 12/31/18	\$ 13.2 million
CLO Funding	\$0
Management Plan	Aggressive
Funding Requirements in 2019	\$0
Monetization Plan	Management currently pursuing new customers within Mining and Oil & Gas industries. If unsuccessful, move to liquidation in Q2 or Q4 (industry auctions). Proceeds estimated at \$2-\$4 million
Risks	<ul style="list-style-type: none"> • Unsuccessful in winning new business in new industries • Industry Risks • Negotiation & Execution of liquidations

Altair	2018	2019	2020	2021	2022	2023	Total
Revenue	3,283	12,196	11,800				27,279
EBITDA	(1,279)	2,156	3,086				3,963
Net Income	(3,144)						(3,144)
Capex		(366)	(354)				(720)
Changes in W/C	(0)	-	-				(0)
Total repay / (funding)*	(1,279)	1,790	2,732				3,243

Forecasts are only two years out (ie. till FYE 2020)

Disclaimer

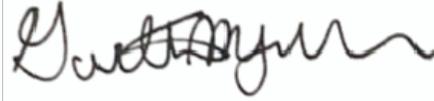
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A.J. Freedman, sworn before me this 5th
day of May, 2021

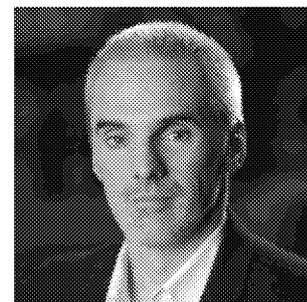
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A Commissioner, etc.

Bruce Livesey

Relation to the Case

1. Livesey is an investigative journalist accused of being bribed and providing false information of Kalidus



Professional Information

2. Present¹: Lead investigative reporter, *National Observer*.²
 - a) Linda Solomon Wood is the founder and the editor of *National Observer*³
3. Global NEWS: Livesey was fired for creating an “unfounded” documentary of the Koch brothers.⁴
4. 01/2001- 12/2009: Producer, *CBC Television*.⁵
 - a) Associate producer for *The Fifth Estate*⁶
 - b) Producer of the investigative unit of *The National*, *The Fifth Estate* and *CBC News Sunday*⁷
5. 10/1998 – 01/2001: Investigative Reporter, *Torstar Media Group*.⁸

*Awards*⁹

6. Co-winner of Dupont Award (one of the most prestigious U.S. television awards)
7. Canadian Association of Journalism (CAJ) award
8. In 2017, Livesey won a National Newspaper Award for a series of stories on the powerful Irving family for the *National Observer*¹⁰
9. In 2016, Livesey was part of the *National Observer* team that won four awards at the Canadian Online Publishing Awards (COPA)¹¹
10. 2015, 2017 Livesey was nominated for a Society of Business Editors and Writers Canada award
11. 2008, 2013: won two Gemis and 10 National Magazine Awards

12. 2012: won the Canadian Ethnic Media Award for best TV story (a documentary he co-produced on how the mass media depicts Arabs)¹²
13. 2010: Winner of RTDNA award
14. 1998: 2 Geminis and 3 National Magazine Awards.¹³

Publications

15. In 2012, Livesey's bestselling book about fraud in the financial industry, **Thieves of Bay Street**, was published by **Random House** and was **nominated for an Arthur Ellis Award for best non-fiction crime book** the following year.¹⁴
 - a) *The Russian mobster who laundered his ill-gotten gains through the Toronto Stock Exchange with the help of some of Canada's biggest investment houses and most powerful lawyers*¹⁵ - might refers to the case of Catalyst(BC)
 - b) Under the headline "Canada Isn't Rotten to the Core", the **new editor of the Ivey Business Journal, Thomas Watson**, attacked this book.¹⁶
 - c) Website + blog for the book: <http://thievesofbaystreet.ca/>

Education

16. 1982 – 1985: BAA in Journalism, *Ryerson University*.¹⁷
17. 1982: *Fredericton High School*¹⁸

Personal Information

18. Date of birth:
19. Marital status: married¹⁹
 - a) Wife: Gabrielle Barkany
 - b) Facebook: <https://www.facebook.com/gabrielle.barkany>
20. Currently resides in Toronto, Canada.²⁰
21. Hometown: Vancouver, Canada²¹
22. Phone: +1 416 483 6490²²



Interest

23. Livesey owns a dog named Charlie.

Social Media

32. LinkedIn profile: <https://www.linkedin.com/in/bruce-livesey-989a982/>



- a) Livesey LI is not well developed, his last update of his professional career is from 2009 when he stopped working at CBC Television.
- b) Publication saved on LinkedIn: “Rebecca MacDonald - JUST ENERGY Hard Sell,Hard Times”²³
- c) Livesey gave one recommendation on LinkedIn, to Robin Harvey journalist.

33. Twitter: <https://twitter.com/livesey416>

34. Facebook: <https://www.facebook.com/bruce.livesey.7>

- a) About: *I am a Toronto-based journalist, TV director and author of the upcoming book about Canada's financial industry "Thieves of Bay Street"*

35. Instagram: <https://www.instagram.com/brucelivesey/> - no post yetc

Additional information

36. In late 2014, he was researching a story about the Koch brothers, owners of the second-largest private business in America, and their Canadian connections. 16x9 commissioned and approved the story and published a teaser on its website, but in late January 2015, two days before the air date, the show pulled the piece from its broadcast schedule without explanation. Soon, a Canadaland post blamed the documentary's removal on Global TV's associations with the oil industry. Livesey says that he was later fired because of the Canadaland article, though he maintains he wasn't the one who leaked the story of his documentary's removal. He took the Koch brothers story with him when he left. Three months later, the National Observer published the piece as part of the independent publication's launch.²⁴

Approach scenarios

- a) xx

37.

References

¹ <http://rrj.ca/natural-fit/>

² <http://www.nationalobserver.com/u/bruce-livesey>

³ <http://rrj.ca/natural-fit/>

⁴ <http://www.canadalandshow.com/global-news-kills-koch-brothers-story-fires-journalist/>

⁵ <https://www.linkedin.com/in/bruce-livesey-989a982/>

⁶ <http://www.nationalobserver.com/u/bruce-livesey>

⁷ <http://www.nationalobserver.com/u/bruce-livesey>

⁸ <https://www.linkedin.com/in/bruce-livesey-989a982/>

⁹ <http://www.nationalobserver.com/u/bruce-livesey>

¹⁰ <http://www.nationalobserver.com/u/bruce-livesey>

¹¹ <http://www.nationalobserver.com/u/bruce-livesey>

¹² <http://www.nationalobserver.com/u/bruce-livesey>

¹³ <http://www.penguinrandomhouse.com/authors/127429/bruce-livesey>

¹⁴ <http://www.nationalobserver.com/u/bruce-livesey>

¹⁵ <http://thievesofbaystreet.ca/about/>

¹⁶ <http://thievesofbaystreet.ca/category/blog/>

¹⁷ <https://www.linkedin.com/in/bruce-livesey-989a982/>

¹⁸

<https://www.facebook.com/bruce.livesey.7/about?lst=100013073706770%3A100003537035015%3A1505196960§ion=education&pnref=about>

¹⁹

<https://www.facebook.com/bruce.livesey.7/about?lst=100013073706770%3A100003537035015%3A1505196960>

²⁰ <https://www.linkedin.com/in/bruce-livesey-989a982/>

²¹

<https://www.facebook.com/bruce.livesey.7/about?lst=100013073706770%3A100003537035015%3A1505196960>

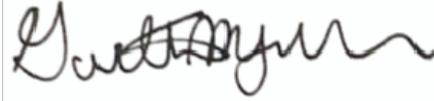
²²

<https://www.facebook.com/bruce.livesey.7/about?lst=100013073706770%3A100003537035015%3A1505196960>

²³ <https://beta.theglobeandmail.com/report-on-business/rob-magazine/rebecca-macdonalds-just-energy-golden-era-over-for-gas-marketer/article12222874/?ref=http://www.theglobeandmail.com&>

²⁴ <http://rrj.ca/natural-fit/>

This is Exhibit "J" referred to in the Affidavit of
A.J. Freedman, sworn before me this 5th
day of May, 2021

A handwritten signature in black ink, appearing to read "D. [unclear]", written over a horizontal line.

A Commissioner, etc.

There is an unofficial Canadian (“Bay street”, as the Toronto “Wall street”) entity called “the wolf pack”, which conducts organized efforts aimed at Shorting (in the financial sense) public company’s stock. They do so by jointly and in coordination. Their main tools of the trade are fictitious news reports, filing whistleblower claims and any other coordinated effort.

The main question is to receive an explanation/information regarding:

1. its members,
2. their methodologies and criminal actions.
3. Activities regarding Shorting a specific company called “Callidus” (an effort which included falsifying Whistleblower reports regarding Callidus and filing them to the Canadian regulators).

The questions are:

1. What are the names of the parties comprising the WP
2. What are the names of the individuals who have been leading the WP activities
3. What are names of the parties coordinating the whistle-blowing effort
4. Is there talk about Callidus among members of the WP?
5. Is a company called West Face Capital (or its CEO Greg Boland) being part or heading the Wolf Pack.
6. Is there a connections between the Wolf Pack and media outlets, particularly the WSJ
7. Does the Wolf Pack fund Livesey’s activities,
8. Are there confidentiality agreements between members of the Wolf Pack?
9. Does he have access to copies of the Whistleblower complaints/drafts?

Potential members of the Wolf Pack:

K2 (Shawn Kimel)

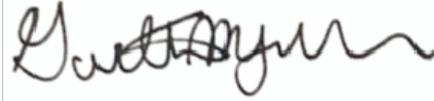
Anson Group (Moez Kassam)

MM Asset Management

Samara Capital

Parkwood Investment Management

This is Exhibit "K" referred to in the Affidavit
of A.J. Freedman, sworn before me this 5th
day of May, 2021

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A Commissioner, etc.

General idea

A telecommunications company called **Wind Telecom** (the Canadian part) was about to be sold, for various issues and was in the market sometime in 2014.

A Private equity company called Catalyst or Callidus (mother and subsidiary) started negotiation with Wind. The main issue/problem being that regulatory issues disturbed the sale.

2 possible buyers of this stake were:

- 1) **Catalyst Investment**, who initially negotiated the purchase from our client and was really close to execution of the deal. They even signed an exclusive agreement stopping the client from negotiating with other parties till August 2014.
- 2) **Consortium of investors**, headed by Anthony (Tony) Lacavera (Founder and CEO of Wind) and his fund Globalive. The other participants of the consortium were West Face, and a number of private equity firms.

Catalys/Callidus did the footwork to make sure the regulator will confirm the deal and a shortwhile after he did – Wind was sold to a competitor of Catalyst/Callidus!! In a manner of days it changed owners, screwing over Catalyst/Callidus.

The reason (or main reason) for this eventuality is that an employee of Catalyst called **Brandon Moyse**, which was the analyst responsible for preparing the regulatory agreement regarding the Wind deal, left the company to the competitor **West Face Capital** (“WFC” or “WF”) merely two or something days before **Wind** was sold to **West Face**, when he left he did so with laptop probably full with his work materials.

Catalys/Callidus immediately began a litigation process, including several lawsuits against everybody involved (e.g. Moyse, West Face, Wind’s CEO) aimed at retrieving the profits of the lost Wind deal profits. The litigations are still undergoing today, and an appeal hearing is scheduled for 20.9.17.

Over the years **Catalys/Callidus** looks like it was winning, however a very weird decision by Judge **Francis Newbold** against C&C made significant damage to their claims. The appeal is against this decision, and one of the key objective of the project is to provide information to overturned the decision.

Alongside the litigation process, Cullidus (a public company traded in Canada) has been targeted by an ongoing Short Attack. The attack included aggressive short positions, false reports, ordered media articles and recently (early August of 2017) 4 public whistleblower complaints to the Canadian authorities. This has obviously made significant damage to Callidus share price and has threatened its very existence.

It is suspected that the short attack, and all the actions that followed, were orchestrated by a secret group known as the **Wolf Pack** (“WP”). It is suspected that the WP work together to target Canadian companies and use criminal actions to destroy them and in the process make

a big profit. The existence of the WP has never been officially proven, and the exact list of the people/companies comprising it are unknown, though it seems likely that West Face and its CEO are directly involved, if not leading the Pack.

Project objectives

In general, the project has 3 main vectors of activity which consist of the goals of the project. Some of the actors have are relevant to more than one vector of course.

1. Wind – Providing intelligence proving that WF used privileged C&C data, and other forbidden actions, to steal the wind deal from C&C. This vector will focus on WF employees, Moyse and Wind management.
2. Newbould – Providing intelligence showing that Newbould either acted against C&C for a non legitimate reason, or he was not in a position to make any judgment on the case for general reasons. This vector will of course focus on Newbould, and partially on WF management and people close to Newbould.
3. WP – Providing intelligence exposing the WP, its members, their methodologies and criminal actions in order to stop the attacks against Callidus. This vector will focus on WF management, suspected WP members, the whistleblowers and other elements involved in the attacks

RFI Vector 1 – Wind

Catalyst Capital Group Inc. accused a consortium of investors, including **Globalive Capital Inc.** - Wind founder **Anthony Lacavera's** investment firm - and **West Face Capital Inc.** of using confidential information from Catalyst's negotiations with VimpelCom Ltd. Wind's owner at the time, to kill Catalyst's deal and buy Wind for themselves, using the former Catalyst employee Brandon Moyse, who gave confidential materials about the deal to West Face.

Useful anecdote in this context: when the judge ordered him to present the laptop as evidence he said "Sure" and then submitted it after using a military level scrubber on it...claiming he was ashamed of the porn he watched from it...In violation of his "cool off" clause in his employment contract with C&C, Moyse started working for WF a few days after resigning from C&C, exactly at the time the Wind deal was stolen. Moyse finished his work at WF and joined a different firm about 6 months afterwards. It is suspected that WF are still paying him silence money, either directly or through subsidizing his salary at his new job.

WF has made a huge profit on the Wind deal, and it is suspected that losing the profits of the deal will cause the downfall of the firm, which has presenting very low numbers for the last few quarters.

RFI questions

1. Any evidence that Moyse took information from catalyst, about Wind or anything else when he left catalyst
2. Evidence of what was deleted by Moyse from his personal devices
3. Evidence of catalyst confidential information transmitted between Moyse and WFC beyond the "investment memo"
4. Internal WFC documents using catalepsy confidential information to develop the investment thesis or negotiating strategy for Wind.
5. Instruction from WFC to Moyse to destroy evidence on electronic devices
6. Evidence of communication between Moyse and WFC after he was prohibited from working at West Face
7. Correspondence from Moyse indicating that he destroyed evidence of confidential information he passed to WFC
8. Correspondence internally at WFC or between Consortium (WFC, LG Capital, Tannenbaum Capital Partners, Globalive) discussing information provided to WFC by Moyse.
9. Internal industry Canada/office of the privy council / office of the PM correspondence or memos that record fears about litigation from catalyst over restriction on the spectrum transfer in 2014.
10. Evidence of current communication between Moyse and West Face.
11. Was the Wind CEO or managers in contact with the WFC during the exclusivity period
12. What is the current situation at WFC
13. Does WFC do short-trading?
14. How does WFC promise returns to its clients

RFI block 2 – Wolf Pack (“WP”):

1. Names of the parties comprising the WP
2. Names of the individuals who have been leading the WP activities
3. Names of the parties coordinating the whistleblowing effort
4. Any correspondence between members of the WP and whistleblowers in the Callidus/Catalyst case
5. Correspondence between WP and WFC or its head, Greg Boland or anyone else there.
6. Evidence to the WFC directing activities of the WP
7. Evidence that WFC is funding any litigation or activity against WFC
8. Evidence of correspondence and connection between the WP and any other media outlet, including Thomson Reuters, Canadian Business or the WSJ.
9. Evidence of dealings between WFC and Bruce Livesey relating to Callidus/Catalyst and any payment for services by or to Livesey.
10. Evidence of any Short positions held by members of the WP in Callidus.
11. Evidence of confidentiality agreements between members of the WP/Whistleblowers.
12. Copies of the Whistleblower complaints or any drafts of such. Preferably as part of the correspondence of WP.
13. Any correspondence between WFC and Craig Boyer
14. Any correspondence between WP and Craig Boyer

Veritas – by October 31, 2017

- The slide deck or any materials exchanged at the December 17, 2014 meeting between West Face and Veritas
- Correspondence between Veritas and West Face discussing West Face's short selling strategy and requesting that Veritas produce a report that would injure Callidus
- evidence of West Face communicating the contents of its Callidus "research" to any third parties beyond Veritas
- evidence of any scheme by West Face and Veritas to manipulate the stock price of Callidus for the benefit of West Face or any third parties, including members of the Wolf Pack
- evidence of any financial payment from West Face to Veritas

WSJ – by October 31, 2017

- Evidence indicating that Copeland was communicating with the members of the Wolf Pack prior to publication of the article in the WSJ
- communications between the WSJ and the whistleblowers

1. Boland + Moyze; Wind; Callidus
2. Destruction of evidence
3. Wind, how they got it?

Wolf Pack RFI

4. Callidus – Wolf Pack, Market Manipulation; they went to six news outlets. The “wolf pack”. News of wolf pack's connection to the short attacks. And also west face's connection
5. Boland called ESCO

6. Annsen run by Alex Spears; Mark Cahoodas and his involvement.
7. Tying or showing what Moyze took. And that its info of Callidus and Wind.
8. Who orchestrated? What was agentd
9. Whistlelores
 - a. Kevin Baumann – twitter; ran Alkan. Very active on twitter. Tweet about a personal guarantee litigation being funded by a third party
 - b. Jeff McFarland – former CEO of XTG
 - c. One or more of executives at Fortress Resource – Rob Molyneux; XXXX Levy – from Fortress Resources
 - d. Former employee – Craig Boyer.
10. Bias by newbould // illegality by WF (not only regarding Moyze)
11. ניובולד אוהב לשתות
12. Anything related to Wind – Moyze, information, what was on t he device, what he destroyed.
13. Postpone the appeal if thres criminality
14. West Face and Annsen colluded in forging files (according to a DD company)
- 15.

RFI Vector 2 – Newbold

As was expected – the case went to court, and Catalyst/Callidus won (as they should). West Face appeal to the court anew, and a problem starts when the presiding judge, a Jew called Lederer, retired and a judge called **Francis Newbold** receives the chair and ruled against Catalyst/Callidus.

The decision of Judge Newbould makes no sense. At all. Or so the lawyers say. The hidden or suspected reason of the judge to this erratic behavior is derived from the judge's explicit WASPiness, i.e hatred to Jews, blacks, Indians etc. and there are many behaviours that support this theory.

What does Judge Newbould have to do with all that?

He was a judge on the hearings, including hearings of Brandon Moyses, the former employee of Catalyst, who gave the materials to West Face and helped them succeed.

Judge Newbould appeared quite biased against Catalyst and ruled that Brandon Moyses is clean and did not transfer anything, even though such a ruling seemed as quite irrational in the overall circumstances of evidence which were submitted.

Overall, the judge is almost the main target of the whole project. Any bias against Catalyst or Jews (Catalyst's owner is Jewish) would be quite a success in proving his rulings must be heard by the courts again.

Background information about Newbould:

1. Newbould has a reputation of taking on the most famous cases and acting against the "new money" tycoons
2. In the past several years Newbould was in a position to assign which judge goes to which case. He took the high profile cases, and there is a rumor that some people could "convince" him to place specific judges in specific cases
3. Newbould judgment against Catalyst was specifically and personally harmful against Catalyst's owner (a new money Jew), and it seems like he has bad feelings against him
4. Newbould was said to the president of a rich member's club in the 90s and upheld a no Jew no black policy. He left in 1996 when the club was forced to accept a Jew
5. To act against some Canadian-Indians vendors near his house, he wrote the local municipality a letter using his office's letterhead. A complaint was filed against him in the judge ethics committee, and he was forced to retire one year before pension age to avoid prosecution

6. Once retired, Newbould started working for a law firm, stating that he would serve as an arbitrator. It is worth noting that the over his career he judged in favour of this law firm many times
7. Rumors are that Newbould has a drinking problem as well as financial problems
8. Rumors state that after Newbould made the decision against Catalyst and its Jewish owner, he celebrated the decision and bragged to his friends that he “got that rich Jew”
9. In summation – while Newbould has had a long respectable career, it is tainted in the past few years by suspicion of racism, abuse of power, bribery (financial and other), substance abuse and a specific hatred to Catalyst and its’ owner

Tony lacavera told WF how to buy wind during the exclusivity period

Judgement of their loss in November 2014; and then WP and WFC started a short campaign against Callidus

May 2014 – Moyze left to WF

December 2014 – left WF

After Nov 2014, WF and Veritas issued a report of Callidus (false) wanting to short the stock (defamation action).

NWBould hates rich people

Suspects of Wolf Pack

1. WFC
2. Annsen
3. MM Capital
4. K2 – Sean Kimmel (boss)
5. XXXX
6. XXXX
7. Mark Cahoodas
- 8.
9. ESCO is a borrower – and they give testimony to Catalyst, in exchange for not demanding money.

RFI BLOCK 2

As was expected – the case went to court, and Catalyst/Callidus won (as they should). West Face appeal to the court anew, and a problem starts when the judge that presiding, a Jew called Lederer goes to pension and a judge called Francis Newbould receives the chair and rules against Catalyst/Callidus

The judgement of Judge Newbould makes no sense. At all. Or so the lawyers say. The hidden or suspected reason of the judge to this erratic behavior is derived from the judge's explicit WASPiness, i.e hatred to Jews, blacks, Indians etc. and there are many behaviors that support that claim. For instance, he was the president of a golf club which started allowing access to jews only circa 1996. Newbould was forced into resignation a year earlier due to an event in which he (as supposed of him) tried to get some Indians from his territory, and sent a complaint letter, as a resident, to a board responsible for such issues. Problem was that he used a letterhead of the court in which he was working. A complaint was filed and he resigned so as not to deal with it.

Questions:

1. Bias against Catalyst/Callidus or its owner Newton Glassman
2. Anti Semitism
3. Deal with West Face for decision
4. Inappropriate connection with West Face

RFI BLOCK 3 – Short attack

1. Conspiracy between short attackers
2. Proof that wolf pack memebres met and talked with WF
3. Whistleblowers connect with Boland
4. Bruce Langstaff/Cannacord – is/was he working for Boland and WF.
5. Who is in Wolf Back
 - a. Bruce Langstaff?
 - b. West Face?
 - c. K2?
 - d. Ansen?
 - e.

Guys, we need both teams to understand the following. On Naomi's typed notes snowy alleges a partner at a law firm said that for \$5mm he can get the right judge from the commercial list on the case. if true that means newbould is dirty/criminal. Even if the \$\$\$ wasn't to go AT ALL to newbould, he was the chief judge of the commercial list. As such, while he was the chief judge of the commercial list, he is the one that allocates cases to the himself and the other commercial list judges. That means, if the statement is true that even if not for \$\$, somehow newbould was known to be able to be influenced to ensure 'the right judge' got the case in question.

In addition, by definition newbould allocated to HIMSELF our cases (mobility, moyse, and we know he was trying to get control of the inducement action because in a prior decision he refused to allow the moyse case and the inducement action to be merged and then tried to get control of it but we prevented such).

This is very very serious and if true goes beyond 'bias' to literally potential criminality. If we get that, everything is truly game/set/match/championship/EVERYTHING in one fell swoop. We don't even have to prove way face /boland actually pd him off (that would be incredible too though). If we show he abused his office to allocate cases and used that power to allocate himself our cases? Even not for \$\$\$? KABOOOM!!!!

And it makes me wonder why snowy alleges newbould is 'terrified' of snowy.

From notes, new possible tgt--rudinsky. Used to work at GMP. Fired for cause. Allegedly still out of work. Good possibility of helping us for either \$\$\$ or to avoid being charged. He was the guy at GMP doing what Langstaff is doing at cannacord. He for sure can give us info on whole Wolfpack and confirm how they spread false rumors in mkt etc.

Jim and Naomi (Brian's jr lawyer) just finished a mtng w a 'source'- Vincent Hanna's pi. I have asked that Naomi's hand written notes be fwded to u asap and followed up when typed up. 2 of the important 'facts' that need to be chased down: 1. 'Levitt', one of the fortress principals and a former norton rose lawyer, allegedly wrote an email to cohodes asking for direction etc on how to manipulate/ use the whistleblower pgm and other 'advice'. Jim literally saw the emails on snowy's computer. This is unequivocal proof of both conspiracy AND intent to manipulate BOTH the mkt (criminal) and abuse he whistleblower system (quasi-criminal). This is very serious and very valuable to us. 2. Snowdy alleges he has proof cohodes has chinese backing/\$. If we find out who it is and sick the chinese backers on cohodes, that could be a good fact for us. Snowdy also alleges anson partners Canada are the most dirty of the Wolfpack. If prove that and connection to west face, very helpful.

Let's arrange asap. Tell us what needs to be done. On a separate note, we did some digging today. We can't figure out how Stornoway makes enough \$\$\$ to pay moyse, on its own, properly. At most, true whole firm appears to make \$2mm-\$3mm per yr, GROSS revenue and that's b4 having to pay tailwind etc. We think there is some deal w west face (or there was). Given west face returns etc, any financial support it could have been giving either stornoway or to moyse directly is severely at risk since west face is unlikely to exist shortly just from its poor perf alone. That could be an opening w moyse. On addition, the likely indictment or filing of criminal charges against west face for the wolf pack stuff alone very likely to put moyse on the radar screen for the authorities. Bottom line: maybe there is a deal to cut w moyse for either \$\$ (west face unlikely to directly or indirectly be able to pay him much longer) or immunity. The ability to cut such a deal w moyse goes up infintitely if we have an actual copy /evidence of what he actually gave west face. very likel

Also, we have emails from former CEO of wind, tony Lacavera, improperly giving info etc to west face partners during our exclusivity period. I may have forgotten to tell guys that when I was in London. Means Lacavera maybe a tgt/helpful and he may be a keyword on searches.

14:21

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

**Reply Affidavit of A.J. Freedman
(sworn May 5, 2021)**

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**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**

Proceeding commenced at Toronto

**SECOND SUPPLEMENTARY MOTION RECORD OF
BRUCE LIVESEY
(ANTI-SLAPP MOTION)**

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